

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS**

AFFINITY FIRST FEDERAL CREDIT UNION;  
ASPIRE COMMUNITY FEDERAL CREDIT  
UNION, f/k/a PRAIRIE FEDERAL CREDIT  
UNION; CAPITAL CREDIT UNION, including  
former NEW SALEM CREDIT UNION and  
NORIDIAN EMPLOYEES CREDIT UNION; CCE  
FEDERAL CREDIT UNION, f/k/a CITY AND  
COUNTY EMPLOYEES CREDIT UNION;  
COMMUNITY CREDIT UNION; DAKOTA  
PLAINS CREDIT UNION; DAKOTA WEST  
CREDIT UNION; FARGO PUBLIC SCHOOLS  
FEDERAL CREDIT UNION; FARGO V.A.  
FEDERAL CREDIT UNION; FIRST  
COMMUNITY CREDIT UNION, including former  
CITIZENS COMMUNITY CREDIT UNION, ELM  
RIVER CREDIT UNION, and NORTHERN  
EDUCATORS CREDIT UNION; FLASHER  
COMMUNITY CREDIT UNION; FREEDOM  
COMMUNITY CREDIT UNION; HOMETOWN  
CREDIT UNION; LAMOURE CREDIT UNION;  
MED PARK CREDIT UNION; MINOT AREA  
SCHOOLS FEDERAL CREDIT UNION; NORTH  
STAR COMMUNITY CREDIT UNION, including  
former ASCENTIA FEDERAL CREDIT UNION,  
NORTHERN TIER FEDERAL CREDIT UNION,  
and TOLNA CO-OP FEDERAL CREDIT UNION;  
POSTAL FAMILY FEDERAL CREDIT UNION;  
RAILWAY CREDIT UNION, including former  
GENIE-WATT CREDIT UNION; RIVERFORK  
FEDERAL CREDIT UNION; TOWN AND  
COUNTRY CREDIT UNION including former  
FARGO FORUM FEDERAL CREDIT UNION;  
UNITED SAVINGS CREDIT UNION;  
UNIVERSITY FEDERAL CREDIT UNION; VUE  
COMMUNITY CREDIT UNION; and WESTERN  
COOPERATIVE CREDIT UNION, including former  
RAY COOPERATIVE CREDIT UNION, BEACH  
CO-OP CREDIT UNION, GLEN ULLIN CREDIT  
UNION, AND DICKINSON EDUCATORS  
CREDIT UNION,

PLAINTIFFS,

Case No.

v.

NATIONAL CREDIT UNION ADMINISTRATION  
BOARD, in its capacity as liquidating agent for U.S.  
Central Federal Credit Union,

DEFENDANT.

## **COMPLAINT**

Plaintiffs, by and through their undersigned counsel, Foulston Siefkin LLP, submit this Complaint against the National Credit Union Administration Board, in its capacity as liquidating agent for U.S. Central Federal Credit Union (hereinafter the “NCUA”), and states as follows:

### **INTRODUCTION**

1. Prior to the financial collapse in 2008–2009, U.S. Central Federal Credit Union (“U.S. Central”) was the largest corporate credit union in the United States. U.S. Central provided services to other corporate credit unions, including Midwest Corporate Federal Credit Union (“Midwest Corporate”). It acted as a “corporate credit union’s credit union.”

2. Due to investment losses incurred by U.S. Central, the NCUA implemented the Corporate Stabilization Program and placed U.S. Central into conservatorship in 2009. Later, on October 1, 2010, the NCUA closed U.S. Central and placed it into liquidation. The NCUA appointed itself the liquidating agent. After the U.S. Central Membership Capital Account (“MCA”) balances were depleted through the recognition of losses, the NCUA issued claim receipts to MCA holders, specifically informing them in writing that “[n]o further action is required on your part to file or activate a liquidation claim.” Midwest Corporate, as an MCA holder of U.S. Central, received a claim receipt in 2010. Midwest subsequently dissolved in 2011. Plaintiffs are the former capital members of Midwest Corporate.

3. Nearly a decade later, the NCUA determined there were sufficient funds available to make an interim distribution to former MCA holders of U.S. Central. However, even though the NCUA previously informed Midwest Corporate that Midwest Corporate had a claim for which no further action was required, the NCUA advised the former capital members of Midwest Corporate that Midwest Corporate was ineligible to receive a distribution because Midwest Corporate no longer existed. The NCUA then advised that the former capital members of Midwest Corporate could file individual claims. Although Plaintiffs filed individual claims seeking their pro rata share of Midwest Corporate's claim receipt, the NCUA disallowed the claims. Plaintiffs now seek judicial determination that: (1) Midwest Corporate's valid claim be distributed pro rata to its former members as required by applicable law, or, in the alternative, escheated to the State of North Dakota for distribution pursuant to state law; (2) Plaintiffs' claims be deemed allowed and paid; or (3) a judicial determination that Midwest Corporate's valid claim is held in constructive trust for the benefit of its former members and be distributed pro rata.

### **PARTIES**

4. Plaintiff Affinity First Federal Credit Union is a federally chartered credit union located with a principal place of business located at 811 South Broadway, Suite A, Minot, North Dakota 58701, Charter #12980.

5. Plaintiff Aspire Community Federal Credit Union - f/k/a Prairie Federal Credit Union, is a federally chartered credit union with a principal place of business located at 1430 South Broadway, Minot, North Dakota 58701, Charter #1888.

6. Plaintiff Capital Credit Union (including former New Salem Credit Union and Noridian Employees Credit Union) is a federally insured, North Dakota chartered credit union with

a principal place of business located at 204 West Thayer Avenue, Bismarck, North Dakota 58501, Charter #61637.

7. Plaintiff CCE Federal Credit Union, f/k/a City and County Employees Credit Union, is a federally chartered credit union with a principal place of business located at 316 10th Street North, Fargo, North Dakota 58102, Charter #24944.

8. Plaintiff Community Credit Union is a federally insured North Dakota-chartered credit union with a principal place of business located at 20 North 1st Street, New Rockford, North Dakota 58356, Charter #61336.

9. Plaintiff Dakota Plains Credit Union is a federally insured, North Dakota-chartered credit union with a principal place of business located at 212 5th Avenue Edgeley, North Dakota 58433, Charter #63613.

10. Plaintiff Dakota West Credit Union is a federally insured, North Dakota-chartered credit union with a principal place of business located at 340 North Main Street, Watford City, North Dakota 58854, Charter #62380.

11. Plaintiff Fargo Public Schools Federal Credit Union is a federally chartered credit union with a principal place of business located at 1609 32nd Avenue South, Fargo, North Dakota 58103, Charter #47.

12. Plaintiff Fargo V.A. Federal Credit Union is a federally chartered credit union with a principal place of business located at 2101 Elm Street North, Fargo, North Dakota 58102, Charter #288.

13. Plaintiff First Community Credit Union (including former Citizens Community Credit Union, Emden Farmer's Union Credit Union, Elm River Credit Union, Portland Credit Union, and Northern Educators Credit Union) is a federally insured, North Dakota-chartered credit

union with a principal place of business located at 310 10th Street SE, Jamestown, North Dakota 58401, Charter #60103.

14. Plaintiff Flasher Community Credit Union is a federally insured, state-chartered credit union with a principal place of business located at 105 North Main Street, Flasher, North Dakota 58535, Charter #64240.

15. Plaintiff Freedom Community Credit Union is a federally insured, state-chartered credit union with a principal place of business located at 2940 University Drive North, Fargo, North Dakota 58102, Charter #62722.

16. Plaintiff Hometown Credit Union is a federally insured, North Dakota-chartered credit union with a principal place of business located at 18 Main Avenue South, Kulm, ND 58456, Charter #61648.

17. Plaintiff LaMoure Credit Union is a federally insured, North Dakota-chartered credit union with a principal place of business located at 203 7th Street SE, LaMoure, North Dakota 58458, Charter #62218.

18. Plaintiff Med Park Credit Union is a federally insured, North Dakota-chartered credit union with a principal place of business located at 1200 South Columbia Road, Grand Forks, North Dakota 58201, Charter #62593.

19. Plaintiff Minot Area Schools Federal Credit Union is a federally chartered credit union with a principal place of business located at 215 2nd Street SE, Minot, North Dakota 58701, Charter #8943.

20. Plaintiff North Star Community Credit Union (including former Ascentia Federal Credit Union, Northern Tier Federal Credit Union and Tolna Co-op Federal Credit Union) is a

federally insured, North Dakota-chartered credit union with a principal place of business located at 109 Central Avenue North, Maddock, North Dakota 58348, Charter #62563.

21. Plaintiff Postal Family Federal Credit Union is a federally chartered credit union with a principal place of business located at 2730 12th Avenue South, Fargo, North Dakota 58103, Charter #951.

22. Plaintiff Railway Credit Union (including former Genie-Watt Credit Union) is a federally insured, North Dakota-chartered credit union with a principal place of business located at 1006 East Main Street, Mandan, North Dakota 58554, Charter #60787.

23. Plaintiff Riverfork Federal Credit Union is a federally chartered credit union with a principal place of business located at 711 North Washington Street, Grand Forks, North Dakota 58203, Charter #13067.

24. Plaintiff Town and Country Credit Union (including former Fargo Forum Federal Credit Union) is a federally insured, North Dakota chartered credit union with a principal place of business located at 615 South Broadway, Minot, North Dakota 58701, Charter # 60790.

25. Plaintiff United Savings Credit Union is a federally insured, North Dakota-chartered credit union with a principal place of business located at 1001 1st Avenue North, Fargo, North Dakota 58102, Charter #65578.

26. Plaintiff University Federal Credit Union is a federally chartered credit union with a principal place of business located at 1575 17th Avenue South, Grand Forks, North Dakota 58201, Charter #1904.

27. Plaintiff Vue Community Credit Union is a federally insured, North Dakota-chartered credit union with a principal place of business located at 818 East Main Avenue, Bismarck, North Dakota 58501, Charter #64408.

28. Plaintiff Western Cooperative Credit Union (including former Ray Cooperative Credit Union, Beach Co-op Credit Union, Glen Ullin Credit Union, and Dickinson Educators Credit Union) is a federally insured, North Dakota-chartered credit union with a principal place of business located at 1300 Bison Drive, Williston, North Dakota 58801, Charter #61758.

29. Plaintiffs were members of Midwest Corporate, which, in turn, was a member of U.S. Central.

30. Defendant NCUA, in its capacity as liquidating agent for U.S. Central Federal Credit Union (“U.S. Central”) is an administrative agency of the United States of America. Pursuant to 12 U.S.C. § 1789(a)(2), the NCUA must “designate an agent upon whom service of process may be made in any State, territory, or jurisdiction in which any insured credit union is located.” NCUA may be served via a copy of the summons and complaint to the United States attorney for the District of Kansas or to an assistant United States attorney or clerical employee whom the United States attorney designates in a writing filed with the court clerk or a copy of each by registered or certified mail to the civil-process clerk at the United States attorney's office, with a copy of each by registered or certified mail to the Attorney General of the United States and to the NCUA. Fed. R. Civ. P. (4)(i).

31. U.S. Central formerly operated as a credit union with a principal place of business located 9701 Renner Boulevard, Lenexa, Kansas 66219.

### **JURISDICTION AND VENUE**

32. This Court has jurisdiction over the subject matter under 28 U.S.C. § 1331, as this case involves questions of federal law, and over the NCUA pursuant to 12 U.S.C. § 1789(a)(2), which provides that “[a]ll suits of a civil nature at common law or in equity to which the [NCUA]

shall be a party shall be deemed to arise under the laws of the United States, and the United States district courts shall have original jurisdiction thereof, without regard to the amount in controversy.”

33. Jurisdiction and venue are also proper in the District of Kansas under 12 U.S.C. § 1787(b)(6)(A)(ii) and 12 C.F.R. § 709.7 because the claims herein require judicial determinations of the NCUA’s allowance or disallowance of liquidation claims and the principal place of business of the liquidated entity was located in Lenexa, Kansas.

### **GENERAL ALLEGATIONS**

#### **A. The NCUA issued Midwest Corporate a valid and approved Claim Receipt.**

34. On October 1, 2010, the NCUA placed U.S. Central into liquidation and appointed itself the liquidating agent. Midwest Corporate, a North Dakota-based credit union, was an MCA holder of U.S. Central at the time.

35. On October 5, 2010, the NCUA issued a Claim Receipt for Member Contributed Capital to Midwest Corporate (the “Claim Receipt”). A true and correct copy of the Claim Receipt is attached hereto and incorporated herein by reference as Exhibit 1.

36. The Claim Receipt was mailed to P.O. Box 7008, Bismarck, North Dakota 58507-7008, the then office of Midwest Corporate. It provided, in relevant part:

Under normal circumstances, a member of USC is required to file a claim against the liquidation estate to recover its depleted capital on the basis of, for example, an “error in accounting estimation.” In recognition of credit unions’ concerns about the depletion of their capital, however, the NCUA Board has chosen to issue this “Claim Receipt for Member Contributed Capital” representing the value of your PIC and MCA balances as of November 30, 2008.

37. The Claim Receipt indicated Midwest Corporate had a member Paid-in Capital (“PIC”) balance of \$3,300,000.00 and an MCA balance of \$10,448,323.99.

38. The Claim Receipt specifically states that “Upon final resolution of the USC liquidation estate, this Claim Receipt will enable you to share pro rata in the net proceeds, if any,

to the extent of your PIC and MCA balances as of the record date. *No further action is required on your part to file or activate a liquidation claim.*” (Emphasis added).

39. The Claim Receipt does not expire or otherwise terminate, and has never been withdrawn or revoked.

**B. When Midwest Corporate dissolved, its remaining assets became Plaintiffs’ property by operation of law, including the Claim Receipt.**

40. On March 14, 2011, the board of directors of Midwest Corporate voted to voluntarily liquidate Midwest Corporate. On March 25, 2011, a special meeting of the capital holders of Midwest Corporate was held and the members voted to liquidate. James Laidlaw was appointed as the liquidating agent.

41. On October 27, 2011, James Laidlaw as liquidating agent for Midwest Corporate, sent the NCUA a Certificate of Dissolution and Liquidation certifying to the NCUA that the liquidation was complete. The NCUA, being fully aware of the outstanding Claim Receipt and fully satisfied that all assets of Midwest Corporate were distributed, cancelled Midwest Corporate’s charter effective October 27, 2011. *See* 12 U.S.C. § 1766(b)(5) (“*upon such proof as shall be satisfactory to the Board in the case of a voluntary liquidation, that distribution has been made and that liquidation has been completed*, as provided herein, the [NCUA] shall cancel the charter of such Federal credit union”) (emphasis added).

42. The NCUA held a special relationship with Midwest Corporate’s members because the cancellation of Midwest Corporate’s charter gave its members reasonable assurance that Midwest assets had been liquidated and distributed. Further, the NCUA is statutorily tasked with oversight of the dissolution of credit unions.

43. Under 12 U.S.C. § 1766(b)(5), a federal credit union’s corporate existence continues for a period of three years from the date its charter has been cancelled.

44. The Supreme Court of the United States has concluded that gaps in federal statutes bearing on corporate law matters should be filled with state law unless state law is inconsistent with federal policy. *Kamen v. Kemper Financial Services, Inc.*, 500 U.S. 90, 99 (1991).

45. Thus, because the Federal Credit Union Act and the NCUA's regulations are silent as to the ownership interest of the assets of a voluntarily dissolved credit union, state corporate law provides the answer. It is hornbook law that all remaining assets of a dissolved corporation become property of the shareholders by operation of law. *See e.g.*, 16A Fletcher Cyc. Corp. § 8144.40 (“Corporation continuance statutes do not supplant the equitable rule that shareholders succeed to the assets of a dissolved corporation and therefore they are entitled to maintain an action on that basis despite expiration of the corporation’s wind-up period.”); 19 C.J.S. Corporations § 950 (“In the context of corporate law, the general rule is that when a corporation is dissolved and its affairs wound up, such assets as remain, after the satisfaction and discharge of all liabilities and obligations, belong to the shareholders.”); 19 Am. Jur. 2d Corporations § 2468 (“The shareholders of a corporation, when its existence ceases, become vested with legal title to its property as tenants in common. . . .”); 16A Fletcher Cyc. Corp. § 8224 (“After dissolution, the property of the corporation passes to the shareholders, subject to the payment of corporate debts.”); *see also Canadian Ace Brewing Co. v. Joseph Schlitz Brewing Co.*, 629 F.2d 1183, 1187 (1980) (citing to 16A W. Fletcher, *Cyclopedia of the Law of Private Corporations* § 8224 (1979 Rev. Vol. Richard P. Eickhoff) (applying Illinois law); *Carmichael v. Halstead Nursing Center, Ltd.*, 237 Kan. 495, 499-500 (1985); *Levy v. Liebling*, 238 F.2d 505, 507-508 (7<sup>th</sup> Cir. 1956) (applying Kentucky law).

46. No formal method of transfer is necessary and transfer by operation of state law is not inconsistent with the policy or the purpose of the Federal Credit Union Act. *See, e.g., Sicherman v. Nat'l Credit Union Admin. Bd.*, 535 B.R. 196, 200 (N.D. Ohio 2015) (“The Federal

Credit Union Act of 1934 is a comprehensive scheme designed to protect the interests of creditors of defunct federal credit unions.”) (cleaned up).

47. Thus, as an asset of Midwest Corporate, the Claim Receipt passed by operation of law *pro rata* to each member of Midwest Corporate without the necessity of a bill or sale or any other transfer documentation. As a matter of law, Midwest Corporate’s Claim Receipt became Plaintiffs’ property.

**C. The NCUA wrongfully denied payment of Midwest Corporate’s Claim Receipt and wrongfully denied Plaintiffs’ individual claims.**

48. At no point either before or after the cancellation of Midwest Corporate’s charter did the NCUA inform Midwest Corporate or its capital holders that the Claim Receipt would not be honored, despite its knowledge of Midwest Corporate’s dissolution and its participation in cancelation of Midwest Corporate’s charter. The NCUA further knew the identity of individual capital holders of Midwest Corporate and had previously required them to write off their investments in Midwest Corporate and U.S. Central, other than the Claim Receipt. Despite this knowledge, the NCUA, did not mail claim notices to the undersigned capital holders of Midwest Corporate. Under 12 U.S.C. § 1787(b)(3)(C), the NCUA, as the liquidating agent for U.S. Central, was required to notify in writing claimants not appearing on the credit union’s books regarding the liquidation within 30 days of discovering the name and address of such claimants.

49. In April 2021, the NCUA authorized 100% reimbursement of MCA and 3% of PIC in the U.S. Central liquidation.

50. Although Plaintiffs were entitled to payment of the entire MCA balance of \$10,448,323.99 and payment of \$99,000.00 on the PIC balance based on the Claims Receipt, the NCUA sent Plaintiffs letters on May 27, 2021, advising that the NCUA would not distribute the funds due under the Claims Receipt. In relevant part, the letters provided:

[T]he NCUA cancelled, effective October 27, 2011, the charter of Midwest Corporate. While 12 U.S.C. §1766(b)(5) extends the legal existence of a liquidated credit union three years after the cancelation of its charter for the purpose of concluding its affairs, neither the Federal Credit Union Act nor the NCUA's regulations has the authority to further extend a liquidated credit union's legal existence. Accordingly, Midwest Corporate ceased its legal existence in October 2014.

Recently, the Liquidating Agent of U.S. Central determined sufficient funds are available in the U.S. Central Asset Management Estate to make an interim distribution to its former capital account holders. Since Midwest Corporate liquidated in 2011, however, and the three-year provision to conclude the affairs of the liquidated credit union ended in 2014, Midwest Corporate is ineligible to receive a distribution. Because Midwest Corporate no longer exists, there will be no distribution from the U.S. Central Asset Management Estate to Midwest Corporate, and therefore, no ensuing distribution from the Midwest Corporate estate to your institution.

A true and correct copy of one of the May 27, 2021, letters are attached hereto and collectively marked as Exhibit 2 and are incorporated herein by reference. The NCUA's stated position is contrary to law and equity.

51. After various attempts to resolve the matter with the NCUA, attorney Greg Tschider sent a letter to the Assistant General Counsel for the NCUA on May 19, 2022, on behalf of the Credit Union Association of the Dakotas (a professional financial trade association that serves 69 credit unions throughout North and South and Dakota). Many of Midwest Corporate's former capital members are members of the Credit Union Association of the Dakotas. In the letter, Tschider provided the legal basis why payments related to Midwest Corporate's Claim Receipt should either be paid to Midwest Corporate's former capital members directly or to the North Dakota Unclaimed Property Division for distribution under state law. A true and correct copy of the May 19, 2022, letter is attached hereto as Exhibit 3 and is incorporated herein by reference.

52. The NCUA's Associate General Counsel responded by letter dated June 9, 2022, in which he restated the NCUA's incorrect legal position that Midwest Corporate was not eligible for payment because its corporate existence had previously ceased. In part, the letter provides:

As was previously explained, Midwest Corporate liquidated voluntarily in 2011, its liquidating agents completed the dissolution of the institution's assets and liabilities, the credit union's charter was canceled, and, pursuant to 12 U.S.C. § 1766(b)(5), the period for winding up the credit union's affairs ended three years later. As a result, there is no legal entity to which to pay any claim, and the former capital holders of Midwest lack legal authority to assert the claim on behalf of the terminated credit union.

In your letter, you also appear to be making an independent claim to the assets of U.S. Central on behalf of Midwest Corporate's former capital holders and refer to North Dakota escheatment law. But escheatment does not apply here. A state's rights to escheat are solely derivative of the property interest held by the citizen of the state. Midwest Corporate no longer existed as a legal entity, and was not eligible for a payment, when the Liquidating Agent for U.S. Central determined that sufficient funds from U.S. Central's estate were available for distribution. Because Midwest Corporate is no longer eligible for payments as a terminated entity (and had no right to payment from U.S. Central while in existence), there is no escheatable property. Accordingly, the former capital holders of Midwest Corporate may not utilize escheatment to revive Midwest Corporate's claim for their benefit, even if they had the authority to enforce North Dakota escheatment laws and escheatment would otherwise apply.

53. The NCUA's counsel also included a separate letter from the liquidating agent. The letter noted that, although a notice to creditors was previously published in the Kansas City Star permitting claims to be filed by January 14, 2011, former capital members of Midwest Corporate could file claims after the waiver date pursuant to 12 U.S.C. § 1787(b)(5)(C)(ii). True and correct copies of the June 9, 2022, letters are attached hereto and collectively marked as Exhibit 4 and are incorporated herein by reference.

54. Upon information and belief, Midwest Corporate's claim, or alternatively, the claims of its members, would be retained by the NCUA or paid out proportionately to other Midwest Corporate creditors, which would result in unjust enrichment.

55. Under 12 U.S.C. § 1787(b)(5)(C)(ii), claims filed after the waiver dated may be considered by the liquidating agent if: “(I) the claimant did not receive notice of the appointment of the liquidating agent before such date; and (II) such claim is filed in time to permit payment of such claim.”

56. The individual Plaintiffs did not receive notice of the appointment of the liquidating agent before the waiver date. The individual Plaintiffs had no knowledge of the publication of the creditor notice and were not informed of any date on which claims were to be submitted.

57. Upon information and belief, the NCUA may have distributed funds to other similarly situated claimants, and funds remain for distribution to Plaintiffs now and at the time the Plaintiffs filed their claims on September 2, 2022.

58. Because a valid Claim Receipt had already been issued, it would have been improper for any capital holders of Midwest Corporate, even had they been timely notified of the same, to assert individual and separate claims during the waiver period because Midwest Corporate was still in existence at that time.

59. On September 2, 2022, Plaintiffs submitted individual claims requesting payment of Midwest Corporate’s distribution in accordance with each Plaintiff’s pro rata share. True and correct copies of the individual claims are attached hereto and collectively marked as Exhibit 5 and are incorporated herein by reference.

60. Exhibit 5 contains verified information setting forth the ratio of ownership percentages Plaintiffs held in Midwest Corporate. Below are the applicable percentages as of March 2011:

<u>Credit Union</u>	<u>Membership Capital</u>	<u>Percentage Ownership</u>
Affinity First Federal FCU	22,309.00	2.254%
Area Community CU	11,242 .00	1.136 %
Ascentia Federal CU (merged into North Star Credit Union)	8,208.00	0.829 %
Burlington Northern of GF FCU (n/k/a Northern Valley FCU)	10 ,048.00	1.015 %
Capital Credit Union	73,215.00	7.397%
Catholic United Financial	134.00	0.014%
Citizens Community CU (merged with First Community Credit Union)	73,215.00	7.397%
City & County Employees CU	6,168.00	0.623%
Community CU	73,215.00	7.397%
Dakota Plains CU	19,958.00	2.016%
Dakota West CU	58,210.00	5.881%
Elm River CU (merged with First Community Credit Union)	9,591.00	0.969%
Fargo Public Schools FCU	13,989.00	1 .413%
Fargo VA Federal CU	3,710.00	0.375%
FFE Federal CU	2,243.00	0.227%
First Community CU	79,482.00	8.030%
Flasher Community CU	3,632.00	0.367%
Freedom Community CU	11,350.00	1.147%
GEM Federal CU (Great River Federal Credit Union)	9,704.00	0.980%
Genie-Watt CU (merged with Railway Credit Union)	7,778.00	0.786%
Glen Ullin CU (merged with Western Cooperative CU)	451.00	0.046%
Hometown CU	26,191.00	2.646%
LaMoure CU	10,211.00	1.032 %
Med Park CU	8,471.00	0.856 %
Minot Area Schools Federal CU	4,749.00	0.480%
New Salem CU (merged with Capital Credit Union)	14,634.00	1.478%
Noridian Employees CU (merged with Capital Credit Union)	2,726.00	0.275%
North Star Community CU	67,759.00	6.846%
Northern Tier Federal CU (merged with North Star Community CU)	46,794.00	4.728%
Northland Educators FCU (merged with First Community Credit Union)	12,087.00	1.221%
NSP Federal CU	470.00	0.047%

Postal Family Federal CU	11,633.00	1.175%
Prairie Federal CU (n/k/a Aspire Community Federal CU)	39,100.00	3.950%
Railway CU	30,293.00	3.061%
Ray Co-Op CU (merged with Western Cooperative CU)	5,184 .00	0.524%
Riverfork FCU	8,906.00	0.900%
Tel U Watt Federal CU	2,132.00	0.215%
Tolna Co-Op Federal CU (merged with North Star Credit Union)	608.00	0.061%
Town & Country CU	73,215.00	7.397%
United Savings CU	22,570.00	2.280%
University Federal CU	10,999.00	1.111%
Vue Community CU	19,595.00	1.980%
Western Cooperative CU	73,620.00	7.438%
<b>Total</b>	<b>\$989,799.00</b>	<b>100.000%</b>

61. On or about February 9, 2023, the NCUA sent each Plaintiff a letter dated February 10, 2023, disallowing the individual claims. In relevant part, the letters again misapplied the applicable law:

On October 5, 2010, the Liquidating Agent issued a claim certificate to Midwest—a member of USC—a copy of which is attached to your proof of claim. Subsequent to USC’s liquidation, the members of Midwest elected to voluntarily liquidate Midwest, and Midwest’s charter, was cancelled on October 27, 2011. Under 12 U.S.C. § 1766(b)(5), the corporate existence of a federal credit union continues for a period of three years after the cancellation of the charter. Midwest’s corporate existence therefore ended in 2014. Accordingly, neither Midwest nor your credit union has legal standing to enforce any right to payment arising under Midwest’s claim receipt.

In the affidavit attached to your proof of claim, you suggest that Midwest’s claim receipt was transferred to its former shareholders, including your credit union. However, you fail to provide any factual or legal authority in support of that suggestion. Specifically, you fail to provide evidence that the claim receipt was distributed or transferred to anyone in the course of Midwest’s liquidation or legal authority establishing that Midwest’s claim receipt devolved to its shareholders as a matter of law. Consequently, you have not proved that the claim receipt, or any portion thereof, was transferred to you at any time, and your claim with USC is denied accordingly.

A true and correct copy of one of the denial letters is attached hereto as Exhibit 6 and is incorporated herein by reference.

62. Subsequently, on or about February 16, 2023, the NCUA re-sent each Plaintiff a letter disallowing the individual claims, but this time the letter included information related to the claim determination review options. True and correct copies of the letters with the claim determination review options are attached hereto as Exhibit 7 and is incorporated herein by reference.

63. This action is timely filed pursuant to 12 U.S.C. § 1787(b)(6)(A) and 12 C.F.R. § 709.7(c).

64. Plaintiffs timely submitted their individual claims and Midwest Corporate previously received its Claim Receipt from the NCUA prior to the waiver date. Plaintiffs have exhausted all required administrative remedies prior to filing this action.

65. The Court’s standard of review related to the NCUA’s denial of claims is de novo. 12 C.F.R. § 709.7(a) provides that “A claimant may either request agency review of an initial determination of the liquidating agent to disallow a claim or seek a de novo judicial determination of claims.”

**COUNT I**  
**Judicial Determination Ordering Payment of  
Midwest Corporate’s Allowed Claim to its Former Members**

66. Plaintiffs incorporate the allegations in paragraphs 1 through 65 as if fully set forth herein.

67. Under 12 U.S.C. § 1787(b)(5)(B), “The liquidating agent shall allow any claim received on or before the date specified in the notice published under the paragraph (3)(B)(i) by the liquidating agent from any claimant which is proved to the satisfaction of the liquidating agent.”

68. Under 12 U.S.C. § 1787(b)(2)(F), “The Board, as . . . liquidating agent, shall pay all valid obligations of the credit union in accordance with the prescriptions and limitations of this Chapter.”

69. The NCUA lacks discretion to withhold payment of claims.

70. On October 5, 2010, the NCUA issued the Claim Receipt to Midwest Corporate.

71. The Claim Receipt provided, in relevant part: “In recognition of credit unions’ concerns about the depletion of their capital, however, the NCUA Board has chosen to issue this ‘Claim Receipt for Member Contributed Capital’ representing the value of your PIC and MCA balances as of November 30, 2008.”

72. The Claim Receipt indicated Midwest Corporate had a PIC balance of \$3,300,000.00 and an MCA balance of \$10,448,323.99.

73. The Claim Receipt specifically states that “Upon final resolution of the USC liquidation estate, this Claim Receipt will enable you to share pro rata in the net proceeds, if any, to the extent of your PIC and MCA balances as of the record date. No further action is required on your part to file or activate a liquidation claim.”

74. The Claim Receipt does not expire or otherwise terminate and has not been withdrawn or revoked.

75. Although Midwest Corporate dissolved, its assets, including the Claim Receipt and the right to payment thereon, passed by operation of law to Plaintiffs. The assets of a dissolved entity must pass and legally are not extinguished as suggested by the NCUA. *See e.g., Canadian Ace Brewing Co. v. Joseph Schlitz Brewing Co.*, 629 F.2d 1183, 1187 (1980) (citing to 16A W. Fletcher, Cyclopedia of the Law of Private Corporations § 8224 (1979 Rev. Vol. Richard P. Eickhoff) (applying Illinois law); *Carmichael v. Halstead Nursing Center, Ltd.*, 237 Kan. 495, 499-500 (1985); *Levy v. Liebling*, 238 F.2d 505, 507-508 (7<sup>th</sup> Cir. 1956) (applying Kentucky law).

76. Each Plaintiff’s ownership percentages in Midwest Corporate were provided to the NCUA and supported by affidavit. The NCUA had sufficient information to assist in determining

to whom and in what amount payments should have been made. Payment of the Claim Receipt should be made because the NCUA has already authorized 100% reimbursement of MCA and 3% of PIC in the U.S. Central liquidation.

77. Accordingly, the Claim Receipt is a proven claim and/or a valid obligation that the NCUA, as liquidating agent, must pay in accordance with the prescriptions and limitations set forth in the controlling statutes and regulations. In other words, any pro rata payments owed on account of the Claim Receipt must be paid directly to Plaintiffs as the former capital holders of Midwest Corporate.

78. Alternatively, should the Court determine that NCUA is not obligated to pay the former capital holders of Midwest Corporate directly, then the payment owed to Midwest Corporate under the Claim Receipt must be paid to the North Dakota Unclaimed Property Division for distribution under state law as Midwest Corporate resided in North Dakota where its principal place of business was located. *See* 12 C.F.R. § 710.6(d).

## **COUNT II**

### **Judicial Determination Allowing Claims of Former Members of Midwest Corporate**

79. Plaintiffs incorporate the allegations in paragraphs 1 through 78 as if fully set forth herein.

80. Should the Court determine that Plaintiffs are not entitled to payment based on the Claim Receipt issued to Midwest Corporate, Plaintiffs respectfully seek allowance of their individual claims in the alternative.

81. 12 U.S.C. § 1787(b)(5)(C)(ii) provides that claims filed after the waiver dated may be considered by the NCUA: “(I) the claimant did not receive notice of the appointment of the liquidating agent before such date; and (II) such claim is filed in time to permit payment of such claim.”

82. Because a valid Claim Receipt had already been issued to Midwest Corporate, it would have been improper for any capital holders of Midwest Corporate, even had they been timely notified of the same, to assert individual and separate claims during the waiver period because Midwest Corporate was still in existence.

83. Plaintiffs did not receive notice of the appointment of the liquidating agent before the waiver date. Plaintiffs had no knowledge of the publication of the creditor notice and were not informed of any date on which claims were to be submitted.

84. On September 2, 2022, Plaintiffs submitted individual claims requesting payment of Midwest Corporate's distribution in accordance with each Plaintiff's pro rata share of Midwest Corporate. The NCUA had sufficient information to approve the claims and any failure to do so was arbitrary, capricious, and an abuse of any discretion the NCUA may have had. The Claim Receipt passed by operation of law to Plaintiffs. Plaintiffs' individual claims were filed in time to permit payment of such claims.

85. The NCUA sent each Plaintiff a letter disallowing the claims even though the claims were timely filed and contained sufficient information to satisfactorily prove the claims.

86. Upon information and belief, the NCUA has distributed funds to other similarly situated claimants, and funds remain for distribution to Plaintiffs.

87. This action is timely filed pursuant to 12 U.S.C. § 1787(b)(6)(A)(ii) and 12 C.F.R. § 709.7(c).

88. Based on the information submitted, the NCUA has wrongfully denied Plaintiff's individual claims. Accordingly, the Court should review the claims de novo and order that each of the claims are approved for payment.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully request the Court to enter judgment in their favor and against the NCUA as follows:

A. For a judicial determination that the Claim Receipt is an allowed claim for which available funds shall be paid by the NCUA directly to Plaintiffs in the respective percentage of their prior ownership interest in Midwest Corporate as set forth above.

B. Alternatively, for a judicial determination that the Claim Receipt is an allowed claim owed to Midwest Corporate and that any amounts payable to the dissolved entity be paid by the NCUA to the North Dakota Unclaimed Property Division for distribution under state law as Midwest Corporate resided in North Dakota where its principal place of business was located.

C. Alternatively, for a judicial determination that Plaintiffs' individual claims are allowed claims for which available funds shall be paid by the directly to Plaintiffs in the respective percentage of their prior ownership interest in Midwest Corporate as set forth above.

D. Alternatively, for a judicial determination that the Claim Receipt is held in constructive trust for the benefit of Plaintiffs and that such trust be distributed to Plaintiffs in the respective percentage of their prior ownership interest in Midwest Corporate as set forth above.

E. For a judicial determination for any other issues raised herein and for such additional relief that the Court deems just, fair, and equitable.

**DESIGNATION OF PLACE OF TRIAL**

Plaintiffs hereby designates the place of trial in the above action to be Kansas City, Kansas.

Respectfully submitted,

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