IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
ABERDEEN DIVISION

IN RE: UNITED FURNITURE INDUSTRIES, INC., *aka* United Furniture, *aka* Lane Furniture Debtor.	Chapter 11 Case No. 22-13422-SDM
TORIA NEAL; JAMES PUGH; and KALVIN HOGAN, on behalf of themselves and all others similarly situated, Plaintiffs. - against - UNITED FURNITURE INDUSTRIES, INC.; DAVID BELFORD individually and as Trustee for SEPARATE PROPERTY TRUST CREATED BY DAVID BELFORD and DAVID A. BELFORD IRREVOCABLE TRUST; and STAGE CAPITAL, LLC, Defendants.	Adversary Proc. No. 23-01005-SDM

NON-EMPLOYER DEFENDANTS' MEMORANDUM IN SUPPORT OF ITS PARTIAL MOTION FOR SUMMARY JUDGMENT

INTRODUCTION

Defendant United Furniture Industries, Inc. ("UFI") is insolvent. Plaintiffs seek to recover for Defendant UFI's termination of employees that resulted from its shutdown. Rather than wait their place in line of creditors, Plaintiffs seek to recover from Defendants David A. Belford, individually and as trustee for the Separate Property Trust Created by David A. Belford ("SPT") and the David A. Belford Irrevocable Trust ("Irrevocable Trust"), and Stage Capital, LLC (collectively the "Non-Employer Defendants"). However, Plaintiffs lack a legal vehicle to

pierce the veil of Non-Employer Defendants. Plaintiffs' theories are based on incorrect assumptions.

Nevertheless, Plaintiffs continue to allege that Non-Employer Defendants are a "single employer" with Defendant UFI under 29 U.S.C. § 2101, *et seq.* (the "WARN Act"). They simply are not. The Department of Labor ("DOL") has outlined five factors to determine "single employer" liability under the WARN Act. Not a single factor weighs in favor of finding a "single employer" relationship. In addition, the plain language and subsequent case law interpreting the WARN Act is clear that individuals, like Mr. Belford, cannot be held liable. With no factors supporting Plaintiffs' claim of a "single employer" relationship and no individual liability allowed under the statute, Non-Employer Defendants are entitled to summary judgment on Plaintiffs' WARN Act claims. Similarly, Plaintiffs are not able to prove single employer liability under the California WARN Act ("Cal/WARN"), so the Non-Employer Defendants are entitled to summary judgment on this claim as well.

Notwithstanding their failure to show a "single employer" relationship between Non-Employer Defendants and Defendant UFI, Plaintiffs have also failed to show any entitlement to accrued but unused paid time-off ("PTO") under North Carolina or Mississippi law. In North Carolina, Plaintiffs must show an employer policy or practice of paying unpaid PTO upon termination. In Mississippi, Plaintiffs must show an employment contract providing for payment of unpaid PTO upon termination. Plaintiffs have not shown either—rather, the relevant handbook provision does not provide for PTO payout on termination. Summary judgment in favor of Non-Employer Defendants is therefore warranted on Plaintiffs' unpaid PTO claims under North Carolina and Mississippi state law.

Plaintiffs' termination is not the result of Non-Employer Defendants' conduct, actual or constructive. Defendant UFI is solely at fault. The undisputed evidence supports this conclusion, and no reasonable factfinder could conclude otherwise.

STATEMENT OF MATERIAL FACTS

Ownership of UFI.

1. As of November 21, 2022, the Belford Separate Property Trust owned 60% of United and the remaining 40% was owned by Mr. Belford's children's trusts. (Ex. 1,[1] at SCB-000331 (Credit Agreement between Wells Fargo and United Furniture).)
2. The Irrevocable Trust has no ownership interest in UFI. (*Id.*)
3. David A. Belford is the trustee of the SPT. (Ex. 2, at SCB-006280 (Third Amended & Restated Separate Property Trust Agreement).)
4. Howard Belford is the trustee of the Irrevocable Trust. (Ex. 3, at SCB-001149–50 (David A. Belford Irrevocable Trust Agreement for the Benefit of His Lineal Descendants).)

Officers and Directors of UFI.

5. As of November 21, 2022, UFI's Board of Directors (the "Board") had only two directors, Mr. Belford and Jason Gabauer. (Ex. 4, at SCB-006225 (Written Action of the Board of Directors of United Furniture Industries, Inc. In Lieu of Meeting).)
6. Todd Evans was the Chief Executive Officer of UFI in November 2022. (Ex. 5, at pp. 26, 35 (Collected Excerpts from Deposition Transcript of Todd Evans).)
7. Lynda Barr was the Chief Financial Officer of UFI in November 2022. (Ex. 6, at pp. 47–49 (Collected Excerpts from Deposition Transcript of Lynda Barr).)

Officers and Directors of Stage Capital, LLC

[1] All exhibit references refer to exhibits filed as attachments to Non-Employer Defendants' Partial Motion for Summary Judgment, (Dkt. #203), filed contemporaneously herewith.

8. Stage Capital, LLC is a "family office management company" for "the Belford family." (Ex. 7, at NEAL-159–60 (Collected Excerpts from Deposition Transcript of Jason Gabauer).)

9. In November of 2022, Mr. Gabauer held the title of Chief Financial Officer for Stage Capital, LLC. (*Id.*)

10. Mr. Gabauer is currently the Chief Operating Officer of Stage Capital, LLC. (*Id.*)

11. There are only two officers at Stage Capital, LLC – Mr. Gabauer and Mr. Belford. (*Id.*, at NEAL-163–64.)

12. Mr. Belford is the chairman of the board of directors at Stage Capital, LLC. (*Id.*)

UFI's Mass Termination of Employees.

13. United Furniture Industries, Inc. ("UFI") was a furniture manufacturing company that, as of November 2022, employed approximately 2,700 employees. (Ex. 8, at ¶13 (Answer and Affirmative Defense to Second Amended Class-Action Adversary Complaint for Violation of Federal WARN Act 29 U.S.C. § 2101, *et seq.*, and Other Laws).)

14. On the morning of November 21, 2022, Ms. Barr requested that counsel from McGuireWoods provide a WARN notice and received a draft of the WARN notice on the same day. (Ex. 9, at 2–3 (E-Mail Correspondence between McGuireWoods and Lynda Barr); Ex. 6, at p. 131–36 (Collected Excerpts from Deposition Transcript of Lynda Barr).)

15. At 5:15 p.m. on November 21, 2022, Mr. Evans and Ms. Barr sent a letter to the Board, dated 4:12 p.m.[2] on November 21, 2022, which stated, in relevant part:

[2] Non-Employer Defendants are unaware of why the letter to the Board was dated 4:12 p.m. yet was not sent to the Board until 5:15 p.m. Regardless, the exact timing of the drafting of the letter is not dispositive of Non-Employer Defendants' Motion.

> At this point, we have no authorization or ability to move the company forward. We have received no official direction from the Board. As a result, we are taking the following actions:
>
> 1) We are having employment termination notices prepared and engaging a firm to complete a companywide distribution of the notices[.]
>
> 2) All employees will be notified to not return to work at 6 p.m. CST (November 21, 2022)[,]
>
> 3) We will notify all primary lenders, Wells, Renasant, Rosenthal and CIT, of the status prior to our departure this evening[.]

(Ex. 10 (E-Mail Correspondence Between Lynda Barr and Board of Directors, Attaching Letter to Board of Directors); Ex. 6, at p. 129 (Collected Excerpts from Deposition Transcript of Lynda Barr).)

16. At approximately 8:49 p.m., a text communication was sent to all employees which stated, "[a]t the instruction of the board of directors of United Furniture Industries, Inc., and all subsidiaries, the company, we regret to inform you that due to unforeseen circumstances, the company has been forced to make the difficult decision to terminate the employment of all its employees effective immediately on November 21, 2022, with the exception of over-the-road drivers that are out on delivery." (Ex. 11, at NEAL-389 (Text Communication to UFI Employees); Ex. 12, at P00001–02 (Mass Communications to UFI Employees).)

17. At 9:59 p.m., on November 21, 2022, the Board resolution was provided to Mr. Belford for signature via an electronic-signature software. (Ex. 13, at SCB0006226–27 (DocuSign Request Email Sent to David Belford).)

18. At 12:13 a.m. the next day, November 22, 2022, the members of the Board, Mr. Belford and Mr. Gabauer, executed a resolution that stated, in pertinent part, "the Board deems it advisable and in the best interests of the Company and its shareholders to immediately

effectuate an orderly winddown of its operations." (Ex. 14, at SCB-006222–25 (DocuSign Confirmation Email Sent to David Belford).)

Non-Employer Defendants Have Continued to "Operate" Since November 2022.

19. As of November 18, 2024, Stage Capital, LLC continues to operate and has not filed for bankruptcy. (Ex. 15, at ¶9 (Declaration of Jason Gabauer).)

20. As of November 18, 2024, Mr. Belford is alive and has not filed for bankruptcy. (*Id.*, at ¶10.)

21. As of November 18, 2024, Mr. Belford remains the trustee of the SPT, which continues to maintain its corpus. (*Id.*, at ¶11.)

Lack of Commonality of Operations between Stage Capital, LLC and UFI.

22. Stage Capital, LLC would occasionally provide tax information to UFI's tax preparer but did not prepare, file, or execute documents on UFI's behalf. (*Id.*, at ¶3.)

23. Stage Capital, LLC and UFI did not share insurance plans, 401(k) plans, employee benefits plans, or any employment policies. (*Id.*, at ¶4.)

24. Stage Capital, LLC and UFI did not share administrative or purchasing services. (*Id.*, at ¶5.)

25. Stage Capital, LLC and UFI did not share employees. (*Id.*, at ¶6.)

26. Stage Capital, LLC and UFI did not share equipment. (*Id.*, at ¶7.)

27. Stage Capital, LLC and UFI did not commingle finances. (*Id.*, at ¶8.)

Evidence (or Lack Thereof) Regarding Employment Policies.

28. There is no evidence of an employment policy or practice of paying accrued but unused PTO upon employment termination. (Ex. 16, at ¶3 (Declaration of Geoffrey S. Trotier).)

29. There is no evidence of any employment agreement between the entire Plaintiff-class and any Defendants, especially Non-Employer Defendants. (*Id.* at ¶4.)

30. There is no evidence of shared personnel policies. (*Id.* at ¶5; Ex. 5, at pp. 86–87 (Collected Excerpts from Deposition Transcript of Todd Evans); Ex. 6, at pp. 120–21 (Collected Excerpts from Deposition Transcript of Lynda Barr).)

31. There is no evidence of transfer of employees between the Non-Employer Defendants and UFI. (Ex. 16, at ¶6 (Declaration of Geoffrey S. Trotier); Ex. 5, at p. 88 (Collected Excerpts from Deposition Transcript of Todd Evans).)

32. There is no evidence that Non-Employer Defendants and UFI shared health or benefits plans for their respective personnel. (Ex. 16, at ¶7 (Declaration of Geoffrey S. Trotier); Ex. 5, at pp. 86–87 (Collected Excerpts from Deposition Transcript of Todd Evans).)

Further Evidence (or Lack Thereof) Regarding Lack of Dependency of Operations.

33. UFI maintained its own Human Resources and Information Technology departments. (Ex. 5, at pp. 87–88 (Collected Excerpts from Deposition Transcript of Todd Evans.)

34. UFI did not rely on Non-Employer Defendants for significant portions of its revenue. (Ex. 5, at p. 93 (Collected Excerpts from Deposition Transcript of Todd Evans; Ex. 6, at pp. 127–28 (Collected Excerpts from Deposition Transcript of Lynda Barr).)

35. There is no evidence or allegations of commingling of finances between Non-Employer Defendants and UFI. (Ex. 16, at ¶8 (Declaration of Geoffrey S. Trotier); Ex. 17 (Second Amended Class Action Adversary Complaint).)

36. There is no evidence or allegations of fraudulent transfer of title between Non-Employer Defendants and UFI. (Ex. 16, at ¶9; Ex. 17 (Second Amended Class Action Adversary Complaint).)

Todd Evans' Control over Operations of UFI.

37. As the Chief Executive Officer (CEO) of United Furniture Industries (UFI), Mr. Evans exercised de facto control over UFI on a daily basis. (Ex. 18 (Documents Regarding Evans' Control over UFI); Ex. 5, at pp. 26, 35 (Collected Excerpts from Deposition Transcript of Todd Evans).)

38. Mr. Evans handpicked his C-suite and management team. (Ex. 18, at IRE0000262, IRE0000264, SCB-000377, SCB-000384, SCB-000457 (Documents regarding Evans' Control over UFI, here specifically referring to E-Mails regarding Daniel Siggers' and Keith News' employment agreements, restructuring of UFI's management team, and hiring of Lynda Barr); Ex. 5, at p. 59 (Collected Excerpts from Deposition Transcript of Todd Evans); Ex. 6, at pp. 47, 79 (Collected Excerpts from Deposition Transcript of Lynda Barr).)

39. In early June 2022, Mr. Evans dictated the hire, employment terms, and compensation terms for Ms. Barr, the individual that he insisted on hiring as Chief Financial Officer (CFO) for UFI. (Ex. 18, at SCB-000457 (Documents Regarding Evans' Control over UFI, here specifically referring to an E-Mail thread regarding the hire of Lynda Barr); Ex. 5, at p. 93 (Collected Excerpts from Deposition Transcript of Todd Evans).)

40. Mr. Belford recognized that Mr. Evans had this authority, stating, "100% your call. Just making sure I understand." (Ex. 18, at SCB-000457 (Documents Regarding Evans' Control over UFI, here specifically referring to an E-Mail thread regarding the hire of Lynda Barr).)

41. Mr. Evans recruited and hired Van Bui as the General Manager of Asia, Import Division for UFI. (Ex. 5, at pp. 40–41, 82 (Collected Excerpts from Deposition Transcript of Todd Evans.)

42. On June 5, 2022, Mr. Evans hired Daniel Siggers as the Chief Operations Officer for UFI, determining Mr. Siggers' employment and compensation terms. (Ex. 18, at IRE0000262 (Documents Regarding Evans' Control over UFI, here specifically referring to an E-Mail thread regarding Daniel Siggers' employment agreement); Ex. 5, at p. 90 (Collected Excerpts from Deposition Transcript of Todd Evans).)

43. On June 8, 2022, Mr. Evans made the decision to hire Keith News as President of Sales for Lane Furniture, setting the employment and compensation terms for Mr. News. (Ex. 18, at IRE0000264 (Documents Regarding Evans' Control over UFI, here specifically referring to an E-Mail thread regarding Keith News' employment agreement); Ex. 5, at pp. 82, 91 (Collected Excerpts from Deposition Transcript of Todd Evans).)

44. On June 10, 2022, Mr. Evans dictated a reorganization of C-suite structure for UFI and its subsidiaries. (Ex. 18, at SCB-000384 (Documents Regarding Evans' Control over UFI, here specifically referring to restructuring of UFI's management team).)

45. Related to the organization, Mr. Evans notified the Board of the hire of Doug Hanby as President of one of UFI's subsidiaries and the termination, which he "demanded," of an employee who did not fit with Evans' reorganization. (Ex. 5, at pp. 62–65 (Collected Excerpts from Deposition Transcript of Todd Evans).)

46. On June 10, 2022, Mr. Evans further amended Mr. News' employment agreement. (Ex. 18, at SCB-000377 (Documents Regarding Evans' Control over UFI, here specifically referring to an E-Mail thread on Mr. News' employment agreement).)

47. Renegotiated Jay Quimby's, one of UFI's vice presidents, employment agreement as Mr. Evans felt Mr. Quimby was overcompensated and receiving the same compensation regardless of UFI's profitability, which Mr. Evans admitted Mr. Belford was not aware of. (Ex. 5, at pp. 92–93 (Collected Excerpts from Deposition Transcript of Todd Evans).)

48. Mr. Evans routinely communicated to the entire C-suite and management structure to UFI, directing business and driving sales. (Ex. 18, at SCB-005529 (Documents Regarding Evans' Control over UFI, here specifically referring to an E-Mail thread regarding Evans' leadership of UFI); Ex. 6, at pp. 87–88 (Collected Excerpts from Deposition Transcript of Lynda Barr).) Mr. Belford recognized that Mr. Evans was "the leader [UFI] need[s]." (Ex. 18, at SCB-005529 (Documents Regarding Evans' Control over UFI, here specifically referring to an E-Mail regarding Evans' leadership of UFI).)

49. Mr. Evans routinely executed agreements on behalf of UFI. (Ex. 5, at pp. 66–67, 69 (Collected Excerpts from Deposition Transcript of Todd Evans).)

Mr. Evans' Unfettered Authority to Reorganize, Restructure, Terminate, and Conduct Reductions in Force.

50. Mr. Evans had both the authority to and history of conducting company-wide reductions in force. On June 8, 2022, Mr. Evans solely made the decisions as to which departments and positions to include in a reduction in force, including restricting the sales department and cutting half of the IT budget. (Ex. 18, at SCB-001757 (Documents Regarding UFI's Control over UFI, here specifically referring to an E-Mail regarding Evans' decision to perform a reduction in force and cutting the IT budget); Ex. 5, at pp. 72–74 (Collected Excerpts from Deposition Transcript of Todd Evans).) This reduction was part of the Mr. Evans' goal to downsize and identify what operations were necessary for UFI to continue

with lower overhead, a general directive given by the Board. (Ex. 5, at pp. 72–74 (Collected Excerpts from Deposition Transcript of Todd Evans).

51. Mr. Evans unilaterally decided to end all incentives for the sales department at UFI and its subsidiaries on June 20, 2022. (Ex. 18, at IRE0005985 (Documents Regarding UFI's Control over UFI, here specifically referring to an E-Mail from Evans regarding the decision to end incentives for the sales department); Ex. 5, at pp. 83–86 (Collected Excerpts from Deposition Transcript of Todd Evans).)

52. Mr. Evans exercised independent judgment to determine how to execute on the Board's overarching goals for the company, including reducing overhead costs. (Ex. 5, at pp. 74–76 (Collected Excerpts from Deposition Transcript of Todd Evans).)

53. Mr. Evans identified and closed certain manufacturing facilities as part of the C-Suite plan to optimize costs and rationalization, pursuant to the Board's general directive to return UFI to financial stability. (Ex. 6, at pp. 99–100 (Collected Excerpts from Deposition Transcript of Lynda Barr).)

54. Mr. Evans independently acted to negotiate with multiple lenders regarding financing for UFI, including negotiating with Wells Fargo Real Estate, engaging appraisals of multiple properties, negotiating real estate deals, and negotiating with UFI's suppliers over outstanding debts. (Ex. 18, at IRE0000132 (Documents Regarding Evans' Control over UFI, here specifically referring to an E-Mail thread regarding negotiations for financing of UFI).)

55. Mr. Evans made the decision to terminate the President of UFI Transportation. He reorganized the management structure to determine where all UFI termination inquires would be sent after the termination of the UFI Transportation President. (Ex. 18, at SCB-

000144 (Documents Regarding Evans' Control over UFI, here specifically referring to an E-Mail regarding the UFI Transportation President's discharge).) Notably, Mr. Belford was not included in this structure and did not receive any such termination inquiries. (*Id.*)

56. Mr. Evans recommended, along with Ms. Barr, the engagement of Chapter 11 counsel and selected that counsel. (Ex. 18, at IRE0000123 (Documents Regarding Evans' Control over UFI, here specifically referring to an E-Mail regarding retention of Chapter 11 counsel), *see also* Ex. 18, at IRE0000125 (Documents Regarding Evans' Control over UFI, here specifically referring to an E-Mail regarding retention of new counsel).)

Ms. Barr Exercised Control Over UFI.

57. Ms. Barr, a self-described "thought partner" CFO, similarly exercised de facto control over UFI, in tandem with Mr. Evans whom she worked in "partnership" with every day. (Ex. 6, at pp. 33–34 (Collected Excerpts from Deposition Transcript of Lynda Barr).)

58. Ms. Barr directed the previous reduction in force which occurred in June 2022 and executed a list of actions which she determined were necessary prior to the reduction in force. (Ex. 19 (WARN Action Items List from Lynda Barr); Ex. 6, at pp. 103–06 (Collected Excerpts from Deposition Transcript of Lynda Barr).) As part of this list, Ms. Barr was involved in drafting the WARN notice used in this reduction in force. (Ex. 19 (E-Mail from Lynda Barr of WARN Action Items List).)

59. In this process, Ms. Barr leaned on her previous experience directing reductions in force at three prior employers and a previous reduction that she led at UFI. (Ex. 6, at pp. 36, 37, 39, 101–06 (Collected Excerpts from Deposition Transcript of Lynda Barr).)

60. Ms. Barr dictated extensive changes to UFI's health benefits in late October 2022. (Ex. 20 (E-Mail from Lynda Barr Dictating Changes to UFI's Benefits Plan).)

61. In tandem with UFI's Human Resources Department and UFI's in-house counsel, Ms. Barr made changes to UFI's 401(k) Plan, which were then dictated to Mr. Belford by Mr. Evans. (Ex. 18, at IRE0000195 (Documents Regarding Evans' and Barr's Control over UFI, here specifically referring to an E-Mail regarding changes to UFI's 401(k) Plan); *see also* Ex. 18, at SCB-003985 (Documents Regarding Evans' and Barr's Control over UFI, here specifically referring to an E-Mail regarding changes to UFI's 401(k) Plan); Ex. 5, at pp. 89–90 (Collected Excerpts from Deposition Transcript of Todd Evans).)

62. With Mr. Evans' approval, Ms. Barr hired an independent accounting firm to help investigate questionable financial practices occurring at UFI. (Ex. 6, at p. 85 (Collected Excerpts from Deposition Transcript of Lynda Barr).) This investigation required the shutdown of the Company's manufacturing operations without express Board authorization. (Ex. 6, at p. 86 (Collected Excerpts from Deposition Transcript of Lynda Barr).)

Mr. Belford's Exercises Supervision Typical of a Board Member and Investor

63. Mr. Belford, as a member of the Board, only approved "major strategic" and "big" decisions. (Ex. 6, at pp. 93–94 (Collected Excerpts from Deposition Transcript of Lynda Barr).)

64. Mr. Belford, as a member of the Board, primarily presented general directives to UFI. (Ex. 6, at p. 100 (Collected Excerpts from Deposition Transcript of Lynda Barr).)

65. Mr. Belford was not aware of key issues with the import side of UFI's business, lack of payments to vendors, and certain key customers of UFI which represented more than 50% of the company's revenue. (Ex. 5, at pp. 28–31 (Collected Excerpts from Deposition

Transcript of Todd Evans); Ex. 6, at p. 146 (Collected Excerpts from Deposition Transcript of Lynda Barr).)

66. At his deposition, Mr. Belford repeatedly responded that he did not know UFI management's understanding of the refinancing options. (Ex. 21, at p. 89 (Collected Excerpts from Deposition Transcript of David Belford).)

67. Mr. Belford further testified that the Board authorized the termination of all employees only because management, who was "running day-to-day," requested it (Ex. 21, at p. 127–28 (Collected Excerpts from Deposition Transcript of David Belford).)

68. Mr. Belford refused to loan UFI more money because UFI's management had not provided him with financial statements, as "any investor would." (Ex. 21, at p. 96–98 (Collected Excerpts from Deposition Transcript of David Belford).)

Stage Capital's Role with UFI Was Purely Administrative.

69. Stage Capital, LLC facilitated transfer of funds when UFI needed an influx of cash but did not directly provide any capital. (Ex. 6, at p. 110 (Collected Excerpts from Deposition Transcript of Lynda Barr).)

70. Although a management agreement between UFI and Stage Capital, LLC existed, neither UFI nor Stage Capital, LLC were aware that the agreement existed until Ms. Barr discovered it. (Ex. 6, at p. 67 (Collected Excerpts from Deposition Transcript of Lynda Barr).)

71. Once they learned of the management agreement, UFI and Stage Capital, LLC terminated the agreement. (*Id.*)

Mr. Evans and Ms. Barr Independently Exercised De Facto Control over UFI by Deciding to Shut Down UFI and Fire Substantially All of Its Employees.

72. On November 21, 2022, Mr. Evans and Ms. Barr had prepared the WARN notices, before they communicated their shutdown decision to the Board. ((Ex. 9, at 2–3 (E-Mail Correspondence between McGuireWoods and Lynda Barr).)

73. At 5:15 p.m. EST, on November 21, 2022 Mr. Evand and Ms. Barr told the Board the following, through written correspondence:

> At this point, we have no authorization or ability to move the company forward. We have received no official direction from the Board. As a result, we are taking the following actions:
>
> 1) We are having employment termination notices prepared and engaging a firm to complete a companywide distribution of the notices[.]
>
> 2) All employees will be notified to not return to work at 6 p.m. CST (November 21, 2022)[,]
>
> 3) We will notify all primary lenders, Wells, Renasant, Rosenthal and CIT, of the status prior to our departure this evening[.]

(Ex. 10 (E-Mail Correspondence Between Lynda Barr and Board of Directors, Attaching Letter to Board of Directors); Ex. 6, at p. 129 (Collected Excerpts from Deposition Transcript of Lynda Barr).)

74. At 8:49 p.m. EST, on November 21, 2022, the mass termination occurred when Mr. Evans and Ms. Barr sent the text communication. (Ex. 12 at P00002 (Mass Communication to UFI Employees).)

75. At 12:13 a.m., EST, on November 22, 2022, the Board signed a resolution authorizing Mr. Evans and Ms. Barr to act. (Ex. 14, at SCB-006222–25 (DocuSign Confirmation Email Sent to David Belford).)

UFI Policy Did Not Provide for Payment of Paid Time Off on Termination.

76. The 2021 Employee Handbook has a Vacation Policy that does not provide for payment of accrued vacation on termination. Rather, the policy only provides payment of accrued

vacation during the two one-week temporary facility shutdowns that are annually scheduled for July and the week after the Christmas holiday. (Ex. 22, p. 33 (Collected Excerpts from UFI Handbook, here specifically referring to "Vacation").)

77. The 2021 Employee Handbook states that it is not a contract. (Ex. 22, p. 45 (Collected Excerpts from UFI Handbook, here specifically referring to "Handbook Acknowledgement Form").)

LEGAL STANDARD

"Summary judgment is appropriate only if there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." *Vann v. City of Southaven, Miss.*, 884 F.3d 307, 309 (5th Cir. 2018) (quotation marks omitted); Fed. R. Civ. P. 56(a). "A genuine dispute of material fact exists if a reasonable [factfinder] could enter a verdict for the non-moving party." *Doe v. Edgewood Indep. Sch. Dist.*, 964 F.3d 351, 358 (5th Cir. 2020). The moving party "bears the initial responsibility of ... demonstrat[ing] the absence of a genuine issue of material fact," *Jones v. United States*, 936 F.3d 318, 321 (5th Cir. 2019) (citation omitted), and "identifying those portions of [the record] which it believes demonstrate the absence of a genuine issue of material fact[.]" *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). "In deciding a summary judgment motion, the court draws all reasonable inferences in the light most favorable to the nonmoving party." *Easom v. US Well Servs., LLC*, No. CV H-20-2995, 2023 WL 6279359 (S.D. Tex. Sept. 26, 2023) (citing *Darden v. City of Fort Worth*, 880 F.3d 722, 727 (5th Cir. 2018), *cert. denied sub. nom. City of Fort Worth, Tex. v. Darden*, 139 S. Ct. 69 (2018)). However, a plaintiff cannot establish a genuine issue of material fact without "produc[ing] *significant evidence* demonstrating the existence of a genuine fact issue." *Russell v. Harrison*, 736 F.2d 283, 287 (5th Cir. 1984) (emphasis in original). "[C]onclusory allegations,

unsubstantiated assertions, or only a scintilla of evidence" are insufficient. *Milton v. Texas Dep't of Crim. Just.*, 707 F.3d 570, 572 (5th Cir. 2013) (alterations in original).

"Where the nonmovant bears the burden of proof at trial, the movant may merely point to an absence of evidence, thus shifting to the non-movant the burden of demonstrating by competent summary judgment proof [i.e., significant evidence] that there is an issue of material fact warranting trial." *Lyons v. Katy Indep. Sch. Dist.*, 964 F.3d 298, 301–02 (5th Cir. 2020) (citation and quotation marks omitted). "[A] fact is 'material' if its resolution could affect the outcome of the action." *Dyer v. Houston*, 964 F.3d 374, 379 (5th Cir. 2020) (citation and quotation marks omitted).

Notably, in a non-jury case (like here), the trial court has "greater discretion to consider what weight it will accord the evidence." *Jones v. United States*, 936 F.3d 318, 321 (5th Cir. 2019). At the summary-judgment stage, a judge in a bench trial may "decide that the same evidence, presented to him or her as trier of fact in a plenary trial, could not possible lead to a different result." *Matter of Placid Oil Co.*, 932 F.2d 394, 398 (5th Cir. 1991). Indeed, the Fifth Circuit has stated that, "the judge, as trier of fact, is in a position to and ought to draw his inferences without resort to the expense of trial." *Nunez v. Superior Oil Co.*, 572 F.2d 1119, 1124 (5th Cir. 1978).

ARGUMENT

I. THE NON-EMPLOYER DEFENDANTS ARE NOT A "SINGLE EMPLOYER" WITH UFI.

While the WARN Act does not address when a related entity may be held liable under a "single employer" theory, the DOL has done so via regulation. 20 C.F.R. § 639.3(a)(2); *Fleming v. Bayou Steel BD Holdings II L.L.C.*, 83 F.4th 278, 294–95 (5th Cir. 2023). The five factors to be considered are:

(1) Common ownership;
(2) Common directors and/or officers;
(3) De facto exercise of control;
(4) Unity of personnel policies emanating from a common source; and
(5) The dependency of operations.

20 C.FR. § 639.3(a)(2). Application of these factors is "a factual question rather than a legal one." *Fleming*, 83 F.4th at 295 (quoting *Pearson v. Component Tech. Corp.*, 247 F.3d 471, 496 (3d Cir. 2001)) (internal quotations omitted).[3] These factors are not weighed equally. The third factor (de facto exercise of control) is the most important factor. *Fleming*, 83 F.4th at 299.

Here, based on the record, no reasonable factfinder could conclude that Non-Employer Defendants and Defendant UFI are a "single employer."

A. The Non-Employer Defendants Did Not Exercise *De Facto* Control Over UFI.

As noted above, the de facto control factor is of highest importance. De facto control considers "whether the [defendant] has specifically directed the allegedly illegal employment practice that forms the basis for the litigation.'" *Id.* at 297 (quoting *Pearson*, 247 F.3d at 491) (alterations in original) (internal quotations omitted). Here, the alleged employment practice is the termination of employees. However, it is also important to consider the independence of UFI's day-to-day operations, even before the termination.

1. The Non-Employer Defendants Did Not Control the Day-To-Day Operations of UFI.

a. Mr. Evans and Ms. Barr Controlled the Day-to-Day Operations of UFI.

[3] The Fifth Circuit has expressly limited the "single employer" analysis to the factors outlined by the DOL. *Fleming v. Bayou Steel BD Holdings II L.L.C.*, 83 F.4th 278, 295 n. 14 (5th Cir. 2023).

Non-Employer Defendants lacked de facto control over the day-to-day operations of UFI. Instead, Mr. Evans exercised de facto control over UFI on a daily basis as his role was to manage the affairs of UFI. (Statement of Material Facts ("SOMF") ¶ 37.) For example, he:

- Handpicked his C-suite and management team. (SOMF ¶ 38.)

- Dictated the hire, employment terms, and compensation terms for Ms. Barr, who he insisted be hired as Chief Financial Officer at UFI, in early June 2022. (SOMF ¶ 39.) Mr. Belford, recognizing Mr. Evans' authority, stated "100% your call. Just making sure I understand." (SOMF ¶ 40.)

- Recruited and hired Van Bui as the General Manager of Asia, Import Division for UFI. (SOMF ¶ 41.)

- Recruited, interview, and hired Daniel Siggers as the Chief Operations Officer at UFI and determined Siggers' employment and compensation terms on June 5, 2022. (SOMF ¶ 42.)[4]

- Hired Keith News as President of Sales for Lane Furniture and set News' employment and compensation terms on June 8, 2022. (SOMF ¶ 43.)

- Dictated a reorganization of the C-suite structure for UFI and its subsidiaries on June 10, 2022. (SOMF ¶ 44.) Related to the organization, Mr. Evans notified the Board of the hire of Doug Hanby as President of one of UFI's subsidiaries and the termination, which he "demanded," of an employee who did not fit with Evans' reorganization. (SOMF ¶ 45.)

- Further amended News' employment agreement on June 10, 2022. (SOMF ¶ 46.)

- Renegotiated Jay Quimby's, one of UFI's vice presidents, employment agreement as Mr. Evans felt Mr. Quimby was overcompensated and receiving the same compensation regardless of UFI's profitability, which Mr. Evans admitted Mr. Belford was not aware of. (SOMF ¶ 47.)

- Routinely communicated to the entire C-suite and management structure at UFI, directing business and driving sales. (SOMF ¶ 48.) Mr. Belford recognized that Mr. Evans was "the leader [UFI] need[s]." (*Id.*)

- Routinely executed agreements on behalf of UFI. (SOMF ¶ 49.)

[4] While Mr. Gabauer handled the administrative drafting of Mr. Siggers' employment agreement, the terms of the agreement were directed by Mr. Evans. (Evans Dep. 90:25–91:10.)

Perhaps even more pertinent to the case at bar, Mr. Evans had unfettered authority to reorganize, restructure, terminate, and conduct reductions in force. For example, he:

- Had both the authority to and history of conducting company-wide reductions in force. On June 8, 2022, Mr. Evans solely made the decisions as to which departments and positions to include in a reduction in force, including restricting the sales department and cutting half of the IT budget. (SOMF ¶ 50.) This reduction was part of the Mr. Evans' goal to downsize and identify what operations were necessary for UFI to continue with lower overhead, a general directive given by the Board. (*Id.*)

- Unilaterally decided to end all incentives for the sales department at UFI and its subsidiaries on June 20, 2022. (SOMF ¶ 51.)

- Exercised independent judgment to determine how to execute on the Board's overarching goals for the company, including reducing overhead costs. (SOMF ¶ 52.)

- Identified and closed certain manufacturing facilities as part of the C-Suite plan to optimize costs and rationalization, pursuant to the Board's general directive to return UFI to financial stability. (SOMF ¶ 53.)

- Independently acted to negotiate with multiple lenders regarding financing for UFI, including negotiating with Wells Fargo Real Estate, engaging appraisals of multiple properties, negotiating real estate deals, and negotiating with UFI's suppliers over outstanding debts. (SOMF ¶ 54.)

- Made the decision to terminate the President of UFI Transportation. He reorganized the management structure to determine where all UFI termination inquires would be sent after the termination of the UFI Transportation President. (SOMF ¶ 55.) Notably, Mr. Belford was not included in this structure and did not receive any such termination inquiries. (*Id.*)

- Recommended, along with Ms. Barr, the engagement of Chapter 11 counsel and selected that counsel. (SOMF ¶ 56.)

Ms. Barr, a self-described "thought partner" CFO, similarly exercised de facto control over UFI, in tandem with Mr. Evans whom she worked in "partnership" with every day. (SOMF ¶ 57.) For example, Ms. Barr directed the previous reduction in force which occurred in June 2022 and executed a list of actions which she determined were necessary prior to the reduction in

force. (SOMF ¶ 58.) As part of this list, Ms. Barr was involved in drafting the WARN notice used in this reduction in force. (*Id.*)[5] In this process, Ms. Barr leaned on her previous experience directing reductions in force at three prior employers and a previous reduction that she led at UFI. (SOMF ¶ 59.)

Further, Ms. Barr was involved in the following company actions, without Board input:

- Dictated extensive changes to UFI's health benefits in late October 2022. (SOMF ¶ 60.)
- In tandem with UFI's Human Resources Department and UFI's in-house counsel, made changes to UFI's 401(k) Plan, which were then dictated to Mr. Belford by Mr. Evans. (SOMF ¶ 61.)
- With Mr. Evans' approval, hired an independent accounting firm to help investigate questionable financial practices occurring at UFI. (SOMF ¶ 62.) This investigation required the shutdown of the Company's manufacturing operations without express Board authorization. (*Id.*)

The list of Mr. Evans' and Ms. Barr's exercise of daily de facto control over UFI is extensive. Notwithstanding the clear documentation that Mr. Evans and Ms. Barr operated independently in deciding to conduct a termination of employees (as discussed further below), it would be illogical to conclude that given the large amount of evidence showing Mr. Evans' and Ms. Barr's control of UFI (especially in the context of terminations and reductions in force) that Non-Employer Defendants would usurp control at the eleventh hour after remaining passive and maintaining confidence in Mr. Evans' and Ms. Barr's ability to lead UFI. In short, UFI's C-suite, specifically Mr. Evans and Ms. Barr, was empowered to run UFI as they saw fit. As such, the de facto control factor weighs in favor of not finding a "single employer" relationship.

b. Mr. Belford Only Approved High-Level Decisions and Maintained Only General Knowledge of UFI's Operations.

[5] Notably, the November 2022 termination was not Ms. Barr's first experience with the WARN Act as she had conducted other mass layoffs in her previous roles for various companies, including UFI. (Barr Dep. 30:7–21; 36:20–37:10, 42:9–43:14, 97:6–98:12, 101:9–14.)

Mr. Belford, as a member of the Board, only approved "major strategic" and "big" decisions. (SOMF ¶ 63.) Similar to any other corporate board, Mr. Belford, as a member of the Board, primarily presented general directives to UFI. (SOMF ¶ 64.)

Although Plaintiffs attempt to paint Mr. Belford as a micro-manager, the evidence has revealed otherwise. Mr. Evans admitted that Mr. Belford was not aware of key issues with the import side of UFI's business, lack of payments to vendors, and certain key customers of UFI which represented more than 50% of the company's revenue. (SOMF ¶ 65.) At his deposition, Mr. Belford repeatedly responded that he did not know UFI management's understanding of the refinancing options. (SOMF ¶ 66.) Mr. Belford further testified that the Board authorized the termination of all employees only because management, who was "running day-to-day," requested it. (SOMF ¶ 67.) Mr. Belford refused to loan UFI more money because UFI's management had not provided him with financial statements, as "any investor would." (SOMF ¶ 68.) Mr. Belford was not a micro-manager. He was prudent investor and board member who exercised his duties with care, acting only on direction from UFI's C-Suite.

c. Stage Capital, LLC Performed a Purely Administrative Role with Respect to UFI.

Stage Capital, LLC's role, if any, in UFI was purely administrative. For example, Stage Capital, LLC drafted employment agreements for UFI; however, it was Mr. Evans who was dictating the terms of those agreements. (SOMF ¶¶ 39, 42, 43.) Stage Capital, LLC was merely the scrivener. (*Id.*) Stage Capital, LLC facilitated transfer of funds when UFI needed an influx of cash but did not directly provide any capital. (SOMF ¶ 69.) Stage Capital, LLC occasionally provided tax information to UFI's tax preparer but did not prepare, file, or execute documents on UFI's behalf. (SOMF ¶ 22.)

Although a management agreement between UFI and Stage Capital, LLC existed, neither UFI nor Stage Capital, LLC were aware that the agreement existed until Ms. Barr discovered it. (SOMF ¶ 70.) Once they learned of the management agreement, UFI and Stage Capital, LLC terminated the agreement. (SOMF ¶ 71.)

d. There is No Evidence of Contention that the Non-Employer-Defendant-Trusts Exercised Control.

Plaintiffs have not alleged (let alone produced evidence) that Mr. Belford, as a trustee for either trust, exercised control over UFI. First, Mr. Belford is not the trustee for the Irrevocable Trust; Howard Belford is. (SOMF ¶ 4.) Therefore, Mr. Belford could not have taken any actions as the trustee for the Irrevocable Trust. Second, Mr. Belford is the trustee for the SPT; however, as discussed below in Section IV, individuals (regardless of trustee status) are not liable for violations of the WARN Act. Even if individuals could be held liable (they cannot), as explained above, Mr. Belford exercised only the requisite oversight expected of owners of close corporations.

2. Mr. Evans and Ms. Barr Alone and Without Board Authorization Directed the Termination of Almost All Employees.

Mr. Evans and Ms. Barr were at the helm and in control of UFI. Mr. Belford acted solely within scope of his Board role, and the remaining Non-Employer Defendants were not involved in UFI's operations. Thus, it comes as no surprise that Mr. Evans and Ms. Barr directed UFI's shutdown.

Mr. Evans and Ms. Barr were the first—and only—voices advocating for the shutdown of UFI. Mr. Evans and Ms. Barr had prepared the WARN notices earlier that day, before they communicated their shutdown decision to the Board. (SOMF ¶ 14.) Mr. Evans and Ms. Barr told the Board that they were shutting down UFI—they did not "ask". Specifically, they said:

> At this point, we have no authorization or ability to move the company forward. We have received no official direction from the Board. As a result, we are taking the following actions:
>
> 1) We are having employment termination notices prepared and engaging a firm to complete a companywide distribution of the notices[.]
>
> 2) All employees will be notified to not return to work at 6 p.m. CST (November 21, 2022)[.]
>
> 3) We will notify all primary lenders, Wells, Renasant, Rosenthal and CIT, of the status prior to our departure this evening[.]

(SOMF ¶ 15.) Mr. Evans and Ms. Barr did not *tell* the Board that they were shutting down the company until 5:15 p.m. that day. (SOMF ¶ 15.) The termination occurred when Mr. Evans and Ms. Barr sent the text communication at 8:49 p.m. EST on November 21, 2022. (SOMF ¶ 16.)

The Non-Employer Defendants, as the Board of Defendant UFI, did not take any action until after Mr. Evans and Ms. Barr fired all UFI employees. At 12:13 a.m., EST, on November 22, 2022, the Board signed a resolution authorizing Mr. Evans and Ms. Barr to act. (SOMF ¶ 18.) It was impossible for the Non-Employer Defendants to have specifically directed the termination, which took place nearly three-and-a-half hours before the Non-Employer Defendants signed the authorization.

Accordingly, Non-Employer Defendants did not specifically direct the shutdown of UFI or otherwise control the day-to-day operations of UFI. Because the Plaintiffs cannot prove this, the most important element of the "single employer" test, this factor weighs in favor of granting summary judgment for Non-Employer Defendants.

B. There is No Common Ownership Between Non-Employer Defendants and UFI.

Plaintiffs cannot show sufficient common ownership between Non-Employer Defendants and Defendant UFI to succeed on this factor. The fact that Mr. Belford is the trustee for a singular trust with an ownership interest in UFI is insufficient to establish common ownership.

Moreover, no other Non-Employer Defendant (i.e. neither Stage Capital, LLC nor Mr. Belford, individually) holds any ownership of UFI. No reasonable factfinder could therefore find for Plaintiffs on this factor.

"Ownership entails possession, not mere control." *Fleming*, 83 F.4th at 295. In fact, "[t]he common ownership factor requires more than control[; o]therwise this factor would collapse into the de facto control factor." *Fleming*, 83 F.4th at 295 (citing *Pennington v. Fluor Corp.*, 19 F.4th 5489, 596–99 (4th Cir. 2021). In short, management is not ownership.

Here, UFI is owned by the SPT and the trusts to the benefit of David Belford's children ("Belford's Children's Trusts), as contemplated by the Irrevocable Trust. The SPT owns 60% of UFI; Belford's Children's Trusts own 40%. (SOMF ¶ 1.) The Irrevocable Trust has no direct ownership interest in UFI. (*Id.*) Mr. Belford, individually, has no direct ownership interest in UFI. (*Id.*) Stage Capital, LLC, has no ownership interest in UFI. (*Id.*) Even if Plaintiffs can show that Stage Capital, LLC may have provided certain services to assist in management of UFI, this fact is insufficient. Ownership is separate from management.

In passing, the Fifth Circuit has stated that "there may be circumstances where a significant financial relationship short of direct ownership nonetheless amounts to common ownership." *Fleming*, 83 F.4th at 296. The only clue as to what the Fifth Circuit meant by "significant financial relationship" is their citation of *Pearson v. Component Technology Corp*, 247 F.3d 471, 497 (3d Cir. 2001), which found common ownership resulting from stock transfers without consideration, which the Fifth Circuit summarized as "fraudulent transfer of title." *Fleming*, 83 F.4th at 296. That is not the case here and this has not been alleged. (SOMF ¶¶ 35, 36.)

Mr. Belford's status as both trustee and beneficiary of the SPT does not change the analysis. The formation of a trust separates the legal and equitable ownership interests in certain property. *In re Orr*, 180 F.3d 656, 660 (5th Cir. 1999). The legal interest is placed in the trustee. *Id.* The equitable interest is placed in the beneficiary. *Id.* The fact that an individual serves this dual role does not automatically merge the property interests and extinguish the trust. 1 Revocable Trusts (5th), George M. Turner, *Analysis of the concepts of trusts*, § 4:6 (2024) ("In practice throughout much of the United States, individuals are allowed to act as their own trustees without there being an automatic merger."). While Belford is the legal and equitable owner of the SPT, that is not equivalent to "Belford is the owner of UFI." Such a conclusion ignores the longstanding principals of trust formation (i.e., separation of ownership interests) firmly rooted in centuries of common law.

Plaintiffs have insufficient evidence to show that there is sufficient common ownership between Non-Employer Defendants and UFI. This factor weighs against a finding of a "single employer" relationship.

As to Stage Capital, LLC, Plaintiffs have not and cannot produce any evidence proving that Stage Capital, LLC had an ownership interest in UFI. Although Stage Capital, LLC provided occasional financial advice pursuant to the terminated management agreement, this does not indicate ownership (or control). Management is not ownership.

Even assuming Plaintiffs could show that Non-Employer Defendants hold common ownership with UFI (they have not), this factor alone is not dispositive and is of "limited significance to the inquiry at hand, since it is well established that stock ownership alone is not grounds for holding a parent liable for its subsidiary's actions." *Vogt v. Greenmarine Holding, LLC*, 318 F.Supp.2d 136, 142 (S.D.N.Y. 2004) (*citing United States v. Bestfoods*, 524 U.S. 51,

61-62 (1998)). As such, this factor weighing in favor of Plaintiffs would not preclude grant of Non-Employer Defendants' summary-judgment motion.

C. There is Only One Common Director, which the Fifth Circuit Has Held Is Insufficient to Support a "Single Employer" Finding on this Factor.

The common-directors/officers factor asks "whether the two nominally separate corporations: (1) actually have the same people occupying officer or director positions with both companies; (2) repeatedly transfer management-level personnel between the companies; or (3) have officers and directors of one company occupying some sort of formal management position with respect to the second company." *Fleming*, 83 F.4th at 297 (quoting *Pearson*, 247 F.3d at 498) (internal quotations omitted). In simpler terms, the factor "look[s] only to whether some of the same individuals comprise (or, at some point did comprise) the formal management team of each company." *Id.* (quoting *Pearson*, 247 F.3d at 498) (alterations in original) (internal quotations omitted).

Here, Mr. Belford, individually and as trustee, is an individual. Individuals do not have officers, directors, or other management-level personnel. As such, this factor weighs against a finding of a "single employer" relationship as to Mr. Belford or the Trusts.

Stage Capital, LLC and UFI had no common officers; Stage Capital, LLC and UFI had no common directors. As Chief Operations Office of Stage Capital, LLC and a member of the UFI Board, Mr. Gabauer was an officer of Stage Capital, LLC and a director of UFI, but not an officer or director of both. (SOMF ¶¶ 5, 9.) Further, Mr. Gabauer was only 50% of the Board and did not control a majority. The Fifth Circuit has held such circumstances to be insufficient. In *Fleming*, there were three common directors, with no majority of the board, and no common officers. *Fleming*, 83 F.4th at 297 ("BDCM and Bayou Steel had common directors, though never a majority of the Board. They had no common officers. This lack of commonality weighs

against liability for BCDM[.]"). The Fifth Circuit held these circumstances insufficient for a "single employer" finding on this factor. *Id.* Here, there is only one director in common, no majority of the board, and no common officers. This factor weighs in favor of no "single employer" relationship between Non-Employer Defendants and UFI.

Regardless, even if this factor weighs in favor of finding a "single employer" relationship, it weights "not heavily so." *Fleming*, 83 F.4th at 297. As such, it does not preclude granting summary judgment in Non-Employer Defendants' favor.

D. Non-Employer Defendants' and UFI's Personnel Policies Do Not Emanate from a Common Source.

The "personnel policies" factor weighs against a finding of a "single employer" relationship. This factor asks whether the Non-Employer Defendants "had separate responsibilities regarding personnel issues," or "whether the nominally separate corporations actually functioned as a single entity with respect to [personnel] policies on a regular-day-to-day basis." *Fleming*, 83 F.4th at 298. Examples of such unified policies include where "employees of the various entities were all covered by the same benefits plan," and "[e]mployees who moved from one entity to the another [sic] did not experience a change in coverage." *Id.* at 298–99 (quoting *Hollowell v. Orleans Reg'l Hosp. LLC*, 217 F.3d 379, 389 (5th Cir. 2000).

UFI and Stage Capital, LLC did not share insurance plans, 401(k) plans, any other benefits, or employment policies. (SOMF ¶ 23.) Mr. Evans and Ms. Barr had no knowledge of any such sharing. (SOMF ¶ 23.)[6] As such, this factor weighs in favor of no "single employer" relationship between Non-Employer Defendants and UFI.

[6] Mr. Evans' and Ms. Barr's lack of knowledge does not create a genuine dispute of material fact. *Hemphill v. State Farm Mut. Auto. Ins. Co.*, 805 F.3d 535, 541 (5th Cir. 2015) ("Lack of memory by itself is insufficient to create a genuine dispute of fact.")

E. Non-Employer Defendants and UFI Did Not Depend On Each Other for Their Day-to-Day Functioning.

Non-Employer Defendants and UFI did not depend on each other to function. In considering the "dependency-of-operations" factor, courts consider "the existence of arrangements such as the sharing of administrative or purchasing services, interchanges of employees or equipment, and commingled finances." *Administaff Companies, Inc. v. New York Joint Bd., Shirt & Leisurewear Div.*, 337 F.3d 454, 458 (5th Cir. 2003). This factor cannot be established "by the parent corporation's exercise of its ordinary powers of ownership," and "the mere fact that [a company's] chain-of-command ultimately results in the top officers of the [company] reporting to the parent corporation does not establish the kind of day-to-day control necessary to establish [dependency] of operations." *Pearson*, 247 F.3d at 501. Moreover, companies are not "dependent" if one continues to operate after the closure of the other. *In re APA Transp. Corp. Consol. Litig.*, 541 F.3d 233, 245 (3d Cir. 2008), *as amended* (Oct. 27, 2008) ("Moreover, [Company A] and [Company B] were clearly not 'dependent' upon one another to continue operation, and there is no stronger evidence for this fact than that [Company B] continued to operate without incident after [Company A] folded.")

Here, there are no shared administrative or purchasing services between UFI and Stage Capital. (SOMF ¶ 24.) There is no interchange of employees.[7] (SOMF ¶ 25.) There is no interchange of equipment. (SOMF ¶ 26.) There is no commingling of finances. (SOMF ¶ 27.) UFI maintained, at the least, its own Human Resources and Information Technology departments. (SOMF ¶ 33.) Moreover, Mr. Evans has affirmatively stated that he does not

[7] Mr. Evans testimony that he is "not sure" whether UFI shared or transferred employees with any other company is not sufficient to create a genuine dispute of material fact. (Evans Dep. 58:14–17.) *Welsh v. Fort Bend Indep. Sch. Dist.*, 941 F.3d 818, 826 (5th Cir. 2019), *abrogated on other grounds by Hamilton v. Dallas Cnty.*, 79 F.4th 494 (5th Cir. 2023) ("Unsupported speculation does not create a genuine issue of material fact").

remember UFI sharing employees with Non-Employer Defendants. (SOMF ¶ 31.) Neither Mr. Evans nor Ms. Barr listed Non-Employer Defendants as customers upon which UFI relied on for significant portions of its revenue. (SOMF ¶ 34.) In addition, any communications between the top officers of UFI (i.e., Mr. Evans and Ms. Barr) and Non-Employer Defendants is that typical of a parent corporation's exercise of its ordinary powers of ownership, which the Fifth Circuit has held to be insufficient to establish dependency of operations. *Pearson*, 247 F.3d at 501.

Mr. Belford, individually and as a trustee, does not "operate" in a fashion contemplated by the dependency-of-operations factor. Mr. Belford, individually, does not have "operations." He continues to exist, even though UFI has ceased operations. (SOMF ¶ 20.) Similarly, Mr. Belford, as a trustee, lacks "operations." Trusts are legal fictions, not independently operating entities. Even if trusts did "operate," the trusts here will continue to separate the legal and equitable interests of their corpus, regardless of UFI's operations. (SOMF ¶ 21.)

Further, none of the Non-Employer Defendants filed for bankruptcy after the shutdown of UFI. (SOMF ¶¶ 19–21.) There is "no stronger evidence" of a lack of dependency than such continued operation. *In re APA*, 541 F.3d at 245.

In summary, all five of the factors promulgated by the Department of labor weigh in favor of the conclusion that Non-Employer Defendants **do not** amount to a "single employer" with UFI. Summary judgment for Non-Employer Defendants is warranted.

II. UNDER CAL/WARN, NON-EMPLOYER DEFENDANTS ARE NOT LIABLE UNDER ANY APPLICABLE STANDARD.

Whereas the federal WARN Act uses the five-factor test for "single employer" liability, no similar test has been enacted by statute or regulation for Cal/WARN. Further, to date, no California court has held whether the "single employer" test for the WARN Act is applicable to Cal/WARN. As such, courts are split on how to analyze a "single employer" under Cal/WARN.

Some courts apply the same "single employer" analysis as under the WARN Act. *See e.g.*, *In re AFA Inv., Inc.*, 2012 WL 6544945 (Bankr. D. Del. 2012). Other courts have adopted a "separate employer" test. *See In re HMR Foods Holding, LP*, 602 B.R. 855 (Bankr. D. Del. 2019*)*.

No matter which test is used, Non-Employer Defendants are not liable under Cal/WARN.

A. Non-Employer Defendants Are Not Liable Under the "single employer" Test Used for the Federal WARN Act.

While not definitively adopting the "single employer" test as the appropriate standard for Cal/WARN, Judge Walrath of the United States Bankruptcy Court for the District of Delaware applied the "single employer" test when deciding a motion to dismiss, which included both WARN Act and Cal/WARN claims. *In re AFA Inv., Inc.*, 2012 WL 6544945 at *2; *also see Austen v. Catterton Partners V, LP*, 709 F. Supp. 2d 168, 170 n.3 (D. Conn. 2010) (noting defendants' assumption that the legal analysis applicable to the WARN Act is also applicable to Cal/WARN). As discussed at length above, all five factors of the federal WARN Act weigh in favor of finding that Non-Employer Defendants are not a "single employer" with UFI. As such, under this Cal/WARN standard, Non-Employer Defendants are not a "single employer."

B. Non-Employer Defendants Are Not Liable Under the Test Articulated in *HMR Foods*.

One case has suggested, in dicta, that the WARN Act's "single employer" test does not apply to Cal/WARN claims. *See In re HMR Foods Holding, LP*, 602 B.R. 855, 877 (Bankr. D. Del. 2019). Rather, "single employer" liability under Cal/WARN can only be found if the alleged "single employer" "order[ed] a shut down in violation of the Act." *Id.* (emphasis omitted). In *HMR Foods*, because the subsidiary, rather than the parent company, ordered the shutdown, the court granted the parent company's motion to dismiss. *Id.* at 877–78. Relevant

here, the *HMR Foods* court did not opine that "single employer" liability could be extended to an individual, such as Mr. Belford—following federal WARN Act jurisprudence.

Under the *HMR Foods* standard, Non-Employer Defendants are not liable. As discussed above in Section II.B, Non-Employer Defendants did not order the termination. Mr. Evans and Ms. Barr did. The UFI Board—note Stage Capital, not Mr. Belford individually, not the Trusts—only issued authorization at the demand of Mr. Evans and Ms. Barr, and after they summarily fired all UFI employees. The text communication terminating employees was made nearly three-and-a-half hours prior to any action regarding the termination by Non-Employer Defendants. Non-Employer Defendants could not have ordered what was already done. Therefore, Non-Employer Defendants are not liable for violation of Cal/WARN under the *HMR Foods* standard.

III. DAVID A. BELFORD, AN INDIVIDUAL, CANNOT BE HELD LIABLE UNDER THE WARN ACT.

Individuals, like Mr. Belford (even acting as a trustee or a Board member), cannot be held liable for WARN Act violations. The WARN Act provides that "[a]n *employer* shall not order a plant closing or mass layoff until the end of a 60-day period after the *employer* serves written notice of such order[.]" 29 U.S.C. § 2102(a) (emphasis added). The WARN Act defines "employer" as "*any business enterprise* that employes (A) 100 or more employees, excluding part-time employees; or (B) 100 or more employees who in the aggregate work at least 4,000 hours per week (exclusive of hours of overtime)[.]" 29 U.S.C. §2101(a)(1) (emphasis added). The WARN Act's accompanying regulations provide further guidance:

> The term "employer" includes non-profit organizations of the requisite size. Regular Federal, State, local and federally recognized Indian tribal governments are not covered. However, the term "employer" includes public and quasi-public entities which engage in business (i.e., take part in a commercial or industrial enterprise, supply a service or good on a mercantile basis, or provide independent management of public assets, raising revenue and making desired investments), and which are separately organized from the regular government, which have

> their own governing bodies and which have independent authority to manage their personnel and assets.

20 C.F.R. § 639.3. Further, the Senate-House Conference Report, accompanying the WARN legislation, stated:

> *"Employer*". The Conference Agreement retains the Senate Amendment language that the term "employer" means a business enterprise. *The Conferees intend that a "business enterprise" be deemed synonymous with the terms company, firm or business,* and that it consist of one or more sites of employment under common ownership or control. For example, General Motors has dozens of automobile plants throughout the country. Each plant would be considered a site of employment, but as provided in the bill, there is only one "employer"—General Motors.

House Conf. Rep. No. 100–576, 100th Cong., 2nd Sess., 1045, 1046 (emphasis added).

Based on this analysis, district courts repeatedly have held that "employer" under the WARN Act means a corporate entity (*i.e.*, corporation, limited partnership, partnership) and not an individual person. *Cruz v. Robert Abbey, Inc.*, 778 F. Supp. 605, 609 (E.D.N.Y. 1991) ("Since it is also clear that neither the statute, the regulations nor the legislative [sic] makes any reference to 'persons,' let alone to persons who are the 'alter-ego' of a corporation, the Court finds that WARN does not apply to individual persons."); *see also Carpenters Dist. Council of New Orleans & Vicinity v. Dillard Dep't Stores, Inc.*, 778 F. Supp. 297, 316 (E.D. La. 1991), *aff'd in part, rev'd in part*, 15 F.3d 1275 (5th Cir. 1994); *Hollowell v. Orleans Reg'l Hosp.*, 1998 WL 283298 (E.D. La. 1998) ("*Hollowell I*"), *aff'd sub nom. Hollowell II*, 217 F.3d 379 (5th Cir. 2000); *Pierluca v. Quality Res., Inc.*, 2016 WL 4163565 at *1 (M.D. Fla. 2016); *Smith v. ABC Training Ctr. of Maryland, Inc.*, 2013 WL 3984630 at *5 (D. Md. Aug. 1, 2013).[8]

Moreover, the Fifth Circuit has already rejected traditional veil-piercing approaches in the context of the federal WARN Act and limits "single employer" analysis strictly to the DOL

[8] In their withdrawn Second Motion for Partial Summary Judgment addressing single employer liability, Non-Employer Defendants have not identified any circuit court that has addressed the issue.

factors. *Fleming*, 83 F.4th at 295 n. 14 ("We consider the debate closed in this circuit and follow the DOL factors for the single-employer question without resorting to general veil-piercing principles."). Only one court in the Fifth Circuit has considered whether an individual may be liable as the "alter-ego" of a corporation by piercing the corporate veil, but only under Louisiana state law, and only if the individual has been proven to have committed "fraud or deceit in a third party."[9] *Compare Hollowell I,* 1998 WL 283298 at *9 (allowing individual liability under a veil-piercing theory) *with Cruz*, 778 F. Supp. at 609. Plaintiffs have pleaded neither veil piercing nor fraud (which further must be pleaded with particularity) in their Second Amended Complaint. (*Dkt.* 57; Fed. R. Civ. P. 9(b)). In light of the strong Fifth Circuit statement against veil piercing, the strong line of district court cases holding against individual liability, and Plaintiff's failure to plead veil piercing or fraud, the Court should disregard this unpublished 1998 Louisiana *Holloway* case. Only *Cruz* (*i.e.,* no individual liability under the WARN Act) is consistent with the plain language of the statute and Fifth Circuit precedent.[10]

The WARN Act and weight of authority is clear: there is *no* individual liability under the WARN Act. As an individual person, not a "business enterprise," Mr. Belford cannot be held liable for violation of the WARN Act. Even viewing Mr. Belford as trustee for the SPT, he remains an individual, not a "business enterprise." He therefore remains immune to liability under the WARN Act. Mr. Belford cannot be held liable, even under an "alter-ego" theory. Mr. Belford, individually and as a trustee, is therefore entitled to judgment as a matter of law.

IV. PLAINTIFFS CANNOT MAINTAIN A CLAIM AGAINST THE TRUSTS OR THE RESPECTIVE TRUSTEES.

[9] *Holloway* has not been cited in any decision finding WARN Act liability against an individual.
[10] Even assuming the WARN Act is still subject to a veil-piercing analysis (it is not), the current circumstances do not warrant piercing the corporate veil—a drastic remedy exercised only in "clearly extraordinary" circumstances. *Gray v. Edgewater Landing, Inc.*, 541 So. 2d 1044, 1046 (Miss. 1989).

As discussed above, Plaintiffs cannot maintain claims against either the Trusts or individually against their respective trustees. First, there are no allegations (or evidence) that the trustees took any actions relevant to the Trusts, either as to the shutdown or the general operations of UFI. Moreover, Plaintiffs have not named the correct trustee as to the Irrevocable Trust. Further, and as discussed in this section, Plaintiffs have made no distinction between the individual and trustee capacity of Mr. Belford.

Under Ohio law, the law of both named trusts, a party bringing suit against a trustee must, in pleading, maintain the distinction between a trustee's individual and trustee capacity. *UAP-Columbus JV326132 v. Young*, 10th Dist. Franklin No. 11AP-926 2012-Ohio-2471, ¶ 16, 2012 WL 1997704, at *3 ("Because a trustee is both a representative and an individual, 'the capacity [in which the trustee is sued] must be clear and the distinction between the two different capacities must be maintained.'") (quoting *MacAlpin v. Van Voorhis*, 11th Dist. Lake No. 8-176, 1981 WL 3787, at *3 (Ohio Ct. App. Sept. 28, 1981) (quoting 23 Ohio Jurisprudence 2d, Fiduciaries, Section 159)) (internal quotations omitted) (other alterations in original). Failure to maintain this distinction may damn claims against either the person's individual capacity or trustee capacity. *See UAP-Columbus*, 2012-Ohio-2471, ¶ 18, 2012 WL 1997704, at *4 (limiting claims against a trustee to their individual (not trustee) capacity when complaint neither named the individual's trustee capacity in the case caption nor referred to the individual as trustee or any alleged actions taken as trustee in the complaint allegations).

Here, Plaintiffs have failed to maintain the distinction between Mr. Belford as an individual and as a trustee. The Complaint only refers to Mr. Belford without noting what actions were taken on behalf of himself or in his capacity as trustee. Indeed, they have not alleged that Mr. Belford took any action in his capacity as trustee. As such, Plaintiffs cannot show that Mr.

Belford took any actions as trustee (as they have not alleged any) and any claims against Mr. Belford in his capacity as trustee must fail.[11]

V. PLAINTIFFS CANNOT STATE A CLAIM FOR UNPAID PAID TIME-OFF UNDER NORTH CAROLINA LAW.

Non-Employer Defendants are entitled to judgment as a matter of law on the Plaintiffs' claim for unpaid PTO under North Carolina law. *See* N.C. Gen. Stat. § 95-25.1, *et seq*. Under North Carolina law, employers are not required to pay employees accrued but unused PTO, unless the employer had a policy or practice of doing so. N.C. Gen. Stat. § 95-25.2(16), 95-25.12; *see Hamilton v. APV Baker, Inc.*, 2006 WL 8438684, at *8 (E.D.N.C. May 2, 2006). Plaintiff bears the burden of proof on entitlement to unpaid PTO. North Carolina Pattern Instructions – Civil, No. 640.60, "Employment Relationships – Wage & Hour Act – Wage Payment Claim" (2017) ("On this issue, the burden of proof is on the plaintiff.").

Vacation was not required to be paid out at termination. UFI's employee handbook only provides payout during the two one-week shutdowns that annually occurred in December for the Christmas holidays and in July. (SOMF ¶ 76.) UFI's permanent shutdown in November 2022 was not a temporary one-week break and does not fit within the requirements of the policy.

To date, Plaintiffs have presented no evidence of such a policy or practice. (SOMF ¶ 28.) Similarly, Plaintiffs have provided no authority assigning individual liability for such claims. To Non-Employer Defendants' knowledge, no such policy or practice existed. As in *Hamilton*, summary judgment is therefore proper as "Plaintiff[s] present[] no evidence in support of [their] allegation that defendants had such a policy and practice." 2006 WL 8438684, at *8.

[11] Of course, any claims against Mr. David Belford related to the Irrevocable Trust must fail because he was not the trustee of the Irrevocable Trust. (SOMF ¶ 4.)

VI. PLAINTIFFS CANNOT STATE A CLAIM FOR UNPAID PAID TIME-OFF UNDER MISSISSIPPI LAW.

Non-Employer Defendants are similarly entitled to judgment as a matter of law on the Plaintiffs' claim for unpaid PTO under Mississippi law. In Mississippi, employees are not entitled to payment for accrued but unused PTO upon termination, unless there is an employment *contract* providing for such payment. *See Fuselier, Ott & McKee, P.A. v. Moeller*, 507 So. 2d 63, 67–68 (Miss. 1987) ("[T]he Court holds that an employee, *contractually* due vacation pay at the time of his involuntary dismissal, has a claim for such against his employer, absent *contract* terms to the contrary.") (emphasis added). A formal employment agreement or union contract is required, a mere *employment policy* is not sufficient. *See Fuselier*, 507 So. 2d at 65 (concerning a formal "Employment Agreement"); *Ross v. Fair*, 145 Miss. 18, 110 So. 841, 842 (1927) (repeatedly referencing a "contract"); *Buse v. Mississippi Emp. Sec. Comm'n*, 377 So. 2d 600, 601 (Miss. 1979) (concerning a "collective bargaining agreement"); *Livestock Feeds v. Loc. Union No. 1634 to Cong. of Indus. Workers*, 73 So. 2d 128, 129 (1954) (concerning a "collective bargaining agreement").

No contract exists, and Plaintiffs cannot produce any evidence to the contrary. (SOMF ¶ 29.) A policy would not suffice. Moreover, the employee handbook specifically states that it is not a contract. (SOMF ¶ 77.) Non-Employer Defendants are therefore entitled to summary judgment on Plaintiffs' claim for unpaid PTO under Mississippi law.

CONCLUSION

For the foregoing reasons, Non-Employer Defendants ask this Court to grant Non-Employer Defendants' Partial Motion for Summary Judgment.

DATED: December 13, 2024

HUSCH BLACKWELL LLP

By: */s/ Geoffrey S. Trotier*
Geoffrey S. Trotier

Ryan A. Burgett
Mississippi Bar No. 105090
Husch Blackwell LLP
736 Georgia Avenue, Suite 300
Chattanooga, Tennessee 37402
Telephone: (423) 266-5500
Facsimile: (423) 266-5499
Email: ryan.burgett@huschblackwell.com
Resident Attorney

Geoffrey S. Trotier, *admitted pro hac vice*
Husch Blackwell LLP
511 N. Broadway, Suite 1100
Milwaukee, WI 53202-5502
Telephone: 414.978.5437
Facsimile: 414.223.5000
Email: geoff.trotier@huschblackwell.com

Michael P. Coury (MS 103809)
6000 Poplar Avenue, Suite 400
Memphis, TN 38119-3955
Office: (901) 525-1322
Fax No: (901) 525-2389
mcoury@glanker.com

Attorney for Stage Capital, LLC, David A. Belford, individually and as the trustee for the Separate Property Trust Created by David A. Belford and the David A. Belford Irrevocable Trust.

CERTIFICATE OF SERVICE

I certify that on December 13, 2024, I filed a true and correct copy of the foregoing through the Court's ECF system which sent notice to all attorneys of record as follows:

Casey L. Lott William "Jack" Simpson Langston & Lott, PLLC 100 South Main Street Booneville, MS 38829	Philip C. Hearn, Esq. Charles C. Cole, Esq. Hearn Law Firm, PLLC Post Office Box 5009 Jackson, Mississippi 39296
Mike Farrell, Esq. Mike Farrell, PLLC 210 E. Capitol Street Regions Plaza, Suite 2180 Jackson, MS 39201	W. Thomas McCraney, III Douglas C. Noble, MS Bar No. 10526 McCraney Montagnet Quin & Noble, PLLC 602 Steed Road, Suite 200 Ridgeland, Mississippi 39157
Jack A. Raisner René S. Roupinian Raisner Roupinian LLP 270 Madison Avenue, Suite 1801 New York, New York 10016	Douglas C. Noble McCraney | Montagnet | Quin | Noble PLLC 602 Steed Road • Suite 200 Ridgeland, Mississippi 39157
Craig M. Geno Law Offices of Craig M. Geno, PLLC 587 Highland Colony Parkway Ridgeland, MS 39157	Derek A. Henderson Anna Claire Henderson 1765-A Lelia Drive, Suite 103 Jackson, Mississippi 39216

DATED: December 13, 2024

/s/ *Geoffrey S. Trotier*
Geoffrey S. Trotier