

**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 Bankr. Case No. 22-13422-SDM
TORIA NEAL; JAMES PUGH; and KALVIN HOGAN, on behalf of themselves and all others similarly situated Plaintiffs, v. 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.	Adv. Proc. No. 23-01005-SDM

**PLAINTIFFS' MEMORANDUM IN SUPPORT OF MOTION FOR PARTIAL
SUMMARY JUDGMENT**

COME NOW, Plaintiffs, Toria Neal, James Pugh, and Calvin Hogan (collective referred to as "the Class Representatives" or "Class Representatives"), individually and on behalf of the certified classes and subclasses, and files this Partial Motion for Summary Judgment. In support thereof, Plaintiffs would show as follows:

ITEMIZED MATERIAL FACTS

1. United Furniture Industries, Inc. (“United”) was a furniture manufacturing company that, as of November 2022, employed approximately 2,700 employees. Answer and Affirmative Defenses to Second Amended Class Action Adversary Complaint for Violation of Federal WARN Act, ECF No. 69, ¶ 13.
2. On November 21, 2022, United abruptly terminated the entirety of its workforce. *Id.* at ¶ 14.
3. As of November 21, 2022, United had only two board members, David Belford and Jason Gabauer. ECF No. 206-1, SCB-6224, 6225.
4. Jason Gabauer is currently the Chief Operating Officer of Stage Capital, LLC. ECF No. 206-2, NEAL-159, 160. In November of 2022, Mr. Gabauer held the title of Chief Financial Officer for Stage Capital, LLC. *Id.* There are only two officers at Stage Capital, LLC – Jason Gabauer and David Belford. ECF No. 206-3, NEAL-163, 164.
5. David Belford is the chairman at Stage Capital. *Id.*
6. Belford was paid \$250,000 per year by UFI for his work as an officer. ECF No. 206-19, UFI000755 – UFI000757.
7. Belford compensation was listed on UFI’s tax return under officer compensation, and his time spent on the company was listed at 25%. ECF No. 206-20, SCB006915.
8. Belford was listed as the Chief Executive Officer in United’s employee database. ECF No. 206-21, UFI000787.
9. Stage Capital is a “family office management company” for “the Belford family.” ECF No. 206-2, NEAL-160. Stage Capital “handles all of the business affairs, operating companies, and other business for” David Belford. ECF No. 206-4, NEAL-165, 166. Stage Capital also handles the business affairs for David Belford’s spouse and trusts for his children. *Id.*

10. Stage Capital had a management agreement with United in which it would “provide Executive Services that are typical of what senior executives would be performing if employed directly by [United].” ECF No. 206-5, SCB-000034. This agreement authorized Stage Capital to “exercise any and all rights and powers necessary or appropriate to provide the Executive Services to [United].” *Id.* United paid a fee to Stage Capital for its services under the management agreement. ECF No. 206-6, NEAL-228.
11. Jason Gabauer explained to David Belford that Gabauer terminated the management agreement between Stage Capital and United on August 30, 2022, at the request of the law firm McGuire Woods. ECF No. 206-7, SCB-003247. As Gabauer stated, the termination of the management agreement was “all part of making sure [Belford is] protected as well as [Belford’s] other assets, so we are not piercing the corporate veil.” *Id.*
12. At 10:15 p.m. on November 21, 2022, Lynda Barr, the former CFO of United, sent a letter to David Belford and Jason Gabauer which stated, “we find ourselves with an inability to ensure funding of the operations of United Furniture Industries, Inc. At this point, we have no authorization or ability to move the company forward. We have received no official direction from the Board.” ECF No. 206-8, SCB-000429.
13. Later that night, the members of United’s Board of Directors, David Belford and Jason 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.” ECF No. 206-1, SCB-006224. The resolution continued in stating, “the Board authorizes the Officers to take any action necessary to immediately terminate all of the Company’s employees.” *Id.*

14. When asked if it was within the purview of day-to-day operations for United's former CEO and CFO to shut the company down, Mr. Belford stated, "I don't – I'm not sure. I'm not that experienced in that." ECF No. 206-9, NEAL-140. Mr. Gabauer, when similarly asked whether the company could shut down without his authorization as a board member, Mr. Gabauer responded, "I don't know how to answer that. I don't know. I don't know." ECF No. 206-10, NEAL-348.
15. In his deposition, Mr. Gabauer explained that United's company counsel shared a request to United's board of directors requesting authorization from the board to close, and the board of directors authorized such closure. *Id.* Mr. Belford, described the situation as "the board took the recommendation of management to shut the company down." ECF No. 206-9, NEAL-140.
16. Todd Evans, United's former CEO at the time of closure, explained the events leading up to the closure as, "[a]t some point [on November 21, 2022] (in the afternoon, to the best of my recollection) we were told we would have a resolution forthcoming with directions on how to proceed. Late that evening, we received the written board resolution terminating all UFI employees. [Lynda] Barr and I conveyed to the employees that they should not report on Tuesday, November 22." ECF No. 206-11, NEAL-3.
17. Lynda Barr, United's former CFO at the time of closure, explained the events leading up to the closure as, "[l]ate in the evening on November 21, Evans and I received a formal written resolution of the board, consisting of Belford and Gabauer, terminating all UFI employees effective immediately." ECF No. 206-12, NEAL-9.
18. At the Hearing on the Motion to Convert this Case to a Chapter 11 proceeding, Lynda Barr further explained the events leading up to United's closure as follows, "[e]ssentially from a management perspective, we no longer had confidence in our ability to fund payroll. We did

not feel that it would be appropriate to continue to work employees. And we waited direct instructions from the board as to our next step.” Then when asked, “[a]nd were those instructions received?”, Barr replied, “[w]e eventually received a board of directors resolution indicating that we should terminate all employees.” ECF No. 206-13, NEAL-395. She stated again that “at approximately 11:45 at night, we finally received a board of directors resolution instructing us to terminate all employees.” ECF No. 206-13, NEAL-396.

19. At approximately 11:43 p.m., Lynda Barr and Todd Evans caused a text communication to be 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.” ECF No. 206-14, NEAL-389 (emphasis added).

20. This Court, in its Order Granting United’s Motion to Convert the Case to Chapter 11, found, “[s]everal of the parties pointed out in their closing arguments that the debtor-in-possession is ‘under the thumb’ of the equity shareholders. While there is no ‘smoking gun’ before the Court indicating that Belford is working behind the curtain to control UFI as a debtor-in-possession, there is more than enough evidence demonstrating an overlap between current management and Belford that raises questions as to whether UFI will perform its fiduciary duties as expected. The evidence presented to the Court demonstrates that the same person or entity that is funding UFI’s operations, potential liquidation sale, and compensation of its professionals is the exact same person or entity responsible for UFI’s abrupt shuttering of operations, *termination of thousands of employees without notice*, and inaction with respect to preserving

assets or collateral.” Memorandum Opinion and Order Granting United Furniture Industries, Inc.’s Motion to Convert Case to Chapter 11, Denying as Moot Wells Fargo Bank, National Association’s Emergency Motion for Appointment of an Interim Trustee, and Ordering the Appointment of a Chapter 11 Trustee, ECF No. 106, p. 29 (emphasis added).

21. As of November 21, 2022, the Belford Separate Property Trust owned 60% of United and the remaining 40% was owned by David Belford’s children’s trusts. ECF No. 206-15, NEAL-208.
22. The children’s trusts had an ownership interest in United but zero control. ECF No. 206-16, NEAL172-174.
23. During his time as CEO, Todd Evans understood that he was reporting to the board of Stage Capital. ECF No. 206-17, Evans Depo. p. 48. Mr. Evans described the relationship as Stage Capital being “the management arm,” and he viewed Stage Capital and UFI as one in the same. ECF No. 206-17, Evans Depo. p. 53.
24. Mike Watson, the former CEO of UFI who immediately preceded Todd Evans, was an employee of Stage Capital. ECF No. 206-17, Evans Depo. p. 46.
25. In June of 2022, Belford and Evans were discussing Evans’ potential role as CEO, and Belford told Evans that he “didn’t need a committee to make decisions, that he could make decisions and we could move quick.” ECF No. 206-17, Evans Depo. p. 49. This is despite the fact that there were at least three other board members at the time – Mike Watson, Doug Hanby, and Larry George. ECF No. 206-22, SCB000013.
26. Evans was given a directive from Belford and Gabauer to cut overhead. ECF No. 206-17, Evans Depo. p. 74. Belford gave his opinions on how to conduct the these overhead reductions.
Id.

27. Evans was instructed by Belford and Gabauer to renegotiate the compensation of Jay Quimby. ECF No. 206-17, Evans Depo. p. 92.
28. In her deposition, Barr explained that “Stage Capital had full responsibility managing all the investments, all of the trusts, all of the investments of the trusts which is why there was a management agreement between the entities.” ECF No. 206-18, Barr Depo. p. 61. Barr further explained that United accrued a monthly expense for the management fee owed to Stage Capital under the agreement. *Id.* at p. 72.
29. Barr also explained that Mike Watson managed three legal entities – Solstice Sleep, United, and another entity – that were unaffiliated but were owned and controlled via Stage Capital. ECF No. 206-18, Barr Depo. p. 62. Barr also explained that Watson facilitated transactions these entities which would have resulted in shifts of earnings across them. *Id.* at pp. 75-76. For example, she described a large purchase of mattresses from Solstice by United that United did not have the ability to sell. *Id.* at 76. Thus, those mattresses just sat in a warehouse. *Id.* She explained that this transaction allows Solstice to record a large sale and profit from the transaction and the corresponding amount is buried in United’s inventory. *Id.* at 77.
30. Barr also explained that “Stage Capital had responsibility for managing all of the investments of the David Belford and affiliated trusts. And all of our discussions revolved around Stage Capital and David Belford and Jason. Then you also had the fact that David Belford was essentially the sole – when I arrived, was the sole director of the company. So he was the only director of the company, and then Jason Gabauer was appointed so the company would have two directors. And both of them come through Stage Capital.” ECF No. 206-18, Barr Depo. pp. 62-63.

31. Barr described the ownership of United as “David Belford, through various trust mechanisms that were managed by Stage Capital; Stage Capital having full responsibility for managing the trusts ownership because it’s owned somehow in that trust scenario.” ECF No. 206-18, Barr Depo. pp. 63-64.
32. When asked who was providing strategic direction for United, Barr explained, “So Todd and I were evaluating, but we worked for and communicated with David Belford and Jason Gabauer. Jason Gabauer was in our offices extensively, so he was right there to have the conversations with. And Todd typically talked to David on a daily basis with regards to what we were seeing, what we thought we should be doing, and considering what could or should be done with regards to turning the company performance around.” ECF No. 206-18, Barr Depo. pp. 68-69.
33. Barr explained that Belford and Belford alone had the authority to appoint and remove members of United’s board of directors. ECF No. 206-18, Barr Depo. p. 78.
34. Barr explained that the negotiations of hiring C-suite employees at United went through Belford. ECF No. 206-18, Barr Depo. p. 79.
35. When United was working through the process of revaluating its inventory, Barr explained that she and Evans were “in constant contact” with Belford and Gabauer, and she was “always talking to Jason.” ECF No. 206-18, Barr Depo. p. 87. She continued in explaining that both Belford and Gabauer wanted to sue the former auditors of United for misstatements of the financials. *Id.*
36. When asked what decisions she had to run by the board, Barr explained that Gabauer was “pretty much on-site” and “involved in knowing everything that was going on.” ECF No. 206-18, Barr Depo. p. 94. She also explained that when the decision was made to list a couple of

properties, Belford was “contradicting the real estate agent and telling [her and Evans] exactly how much the company had to list the property for.” *Id.*

37. Barr explained that Gabauer personally fired a lower-level employee at United. ECF No. 206-18, Barr Depo. p. 95.

38. Barr and Evans were developing a plan to restructure United, and their plan was presented to Belford, Gabauer, and Belford’s son – who was being transitioned into a role at headquarters from a sales role. ECF No. 206-18, Barr Depo. p. 100.

39. Despite Barr and Evans’ recommendation that United pursue a Chapter 11 filing, Belford repeatedly stated, “I don’t want it in bankruptcy.” ECF No. 206-18, Barr Depo. p. 119. Belford was resistant to Barr and Evans’ recommendation that United pursue a Chapter 11 filing. *Id.* at 150.

40. On the morning of November 21, 2022, Belford requested Evans and Barr to reach out to Wells Fargo to see if Wells Fargo would provide \$6 million United needed in liquidity. ECF No. 206-18, Barr Depo. p. 130.

41. Barr explained that she and Evans waited until they received the resolution from the Board of Directors to send the notification to the employees that their employment was terminated. ECF No. 206-18, Barr Depo. p. 163.

STANDARD

Summary judgment is appropriate when “the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). “A genuine dispute of material fact exists ‘if the evidence is sufficient for a reasonable jury to return a verdict for the nonmoving party.’ *Adhers v. SEI Priv. Tr. Co.*, 982 F.3d 312, 315 (5th Cir. 2020). Typically, “[c]redibility determinations, the weighing of the evidence, and the drawing

of legitimate inferences are jury functions, not those of a judge.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986). However, in a bench trial¹, the judge acts as a “trier of fact” in place of the jury. *See In re Placid Oil Co.*, 923 F.2d 394, 398 (5th Cir. 1991). Thus, “the district court has somewhat greater discretion to consider what weight it will accord the evidence” when considering summary judgment. *Id.* at 397. “Specifically, ‘even at the summary judgment stage a judge in a bench trial has the limited discretion to decide that the same evidence, presented to him or her as trier of fact in a plenary trial, could not possibly lead to a different result.’” *Fleming v. Bayou Steel BD Holdings II L.L.C.*, 88 F.4th 278, 294 (5th Cir. 2023) (quoting *In re Placid Oil Co.*, 923 F.2d at 398). The Court may “conclude on the basis of the affidavits, depositions, and stipulations before it, that there are no genuine issues of material fact, even though decision may depend on inferences to be drawn from what has been incontrovertibly proved.” *In re Placid Oil Co.*, 923 F.2d at 397.

ARGUMENT

1. Stage Capital, LLC and David Belford may be held liable for United’s violation of the federal WARN Act as a “single employer.”

The federal Workers Adjustment and Retraining Notification Act (“WARN Act”) imposes liability on the “employer who orders a plant closing or mass layoff” without giving the required notice. 29 U.S.C. § 2104(a)(1). “To be liable, Defendants must have been Plaintiffs’ employer, and they must have ordered the closing or layoff.” *Fleming*, 88 F.4th at 294. Here, the uncontroverted facts establish that Stage Capital, LLC and David Belford ordered the mass layoffs or plant closings that occurred on November 21, 2022, and are rightfully considered to be a “single employer” with United.

¹ In *Fleming v. Bayou Steel BD Holdings II, L.L.C.*, the Fifth Circuit held there is no right to a jury trial under the WARN Act. 83 F.4th 278, 293 (5th Cir. 2023).

A. Stage Capital, LLC and David Belford ordered the mass layoffs or plant closings that occurred on November 21, 2022.

Again, on or about November 21, 2022, United terminated the entirety of its workforce. Answer and Affirmative Defenses to Second Amended Class Action Adversary Complaint for Violation of Federal WARN Act, ECF No. 69, ¶ 14. At that time, Todd Evans was serving as CEO and Lynda Barr was serving as CFO. As of November 21, 2022, United only had two board members, David Belford and Jason Gabauer. ECF No. 206-1, SCB-6224, 6225. Jason Gabauer was, at the time, Stage Capital's Chief Financial Officer. ECF No. 206-2, NEAL-159, 160. David Belford is the chairman of Stage Capital. ECF No. 206-3, NEAL-163, 164. Stage Capital "handles all of the business affairs, operating companies, and other business for" David Belford, David Belford's spouse, and trusts for his children. ECF No. 206-4, NEAL-165, 166. Up until August 30, 2022, Stage Capital had a management agreement with United in which it would "provide Executive Services that are typical of what senior executives would be performing if employed directly by [United]." ECF No. 206-5, SCB-000034. As Jason Gabauer explained, the termination of the management agreement was at the request of McGuire Woods and was "all part of making sure [Belford is] protected as well as [Belford's] other assets, so we are not piercing the corporate veil." ECF No. 206-7, SCB-003247.

At 10:15 p.m. on November 21, 2022, Lynda Barr, the former CFO of United, sent a letter to David Belford and Jason Gabauer which stated, "we find ourselves with an inability to ensure funding of the operations of United Furniture Industries, Inc. At this point, we have no authorization or ability to move the company forward. We have received no official direction from the Board." ECF No. 206-8, SCB-000429. At the Hearing on the Motion to Convert this Case to a Chapter 11 proceeding, Lynda Barr further explained the events leading up to United's closure as follows, "[e]ssentially from a management perspective, we no longer had confidence in our

ability to fund payroll. We did not feel that it would be appropriate to continue to work employees. And we waited direct instructions from the board as to our next step.” ECF No. 206-13, NEAL-395. Barr continued by stating, “at approximately 11:45 at night, we finally received a board of directors resolution instructing us to terminate all employees.” ECF No. 206-13, NEAL-396.

Similarly, Todd Evans, by Declaration, explained the events leading up to the closure as, “[a]t some point [on November 21, 2022] (in the afternoon, to the best of my recollection) we were told we would have a resolution forthcoming with directions on how to proceed. Late that evening, we received the written board resolution terminating all UFI employees. [Lynda] Barr and I conveyed to the employees that they should not report on Tuesday, November 22.” ECF No. 206-11, NEAL-3. At approximately 11:43 p.m., Lynda Barr and Todd Evans caused a text communication to be 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.” ECF No. 206-14, NEAL-389 (emphasis added).

Sometime during the night of November 21, 2022, United’s board of directors – composed of David Belford and Jason Gabauer – handed down 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.” ECF No. 206-1, SCB-006224. The resolution continued in stating, “the Board authorizes the Officers to take any action necessary to immediately terminate all of the Company’s employees.” *Id.* Barr and Evans waited for several

hours until they received the board resolution before they notified the employees that their employment was terminated effective immediately. ECF No. 206-18, Barr Depo. p. 163.

While neither Belford nor Gabauer expressly admit that Belford and Stage Capital ordered the November 21, 2022, layoffs, both categorize their actions as “authorizing” such to occur. Mr. Belford described his actions as “the board took the recommendation of management to shut the company down.” ECF No. 206-9, NEAL-140. Curiously, neither Belford nor Gabauer knows whether the officers of United could have closed the company down and terminated the entirety of its workforce without board member involvement. *Id.*; ECF No. 206-10, NEAL-348.

Last, this Court, in its Order Granting United’s Motion to Convert the Case to Chapter 11, found, “[s]everal of the parties pointed out in their closing arguments that the debtor-in-possession is ‘under the thumb’ of the equity shareholders. While there is no ‘smoking gun’ before the Court indicating that Belford is working behind the curtain to control UFI as a debtor-in-possession, there is more than enough evidence demonstrating an overlap between current management and Belford that raises questions as to whether UFI will perform its fiduciary duties as expected. The evidence presented to the Court demonstrates that the same person or entity that is funding UFI’s operations, potential liquidation sale, and compensation of its professionals is the exact same person or entity responsible for UFI’s abrupt shuttering of operations, ***termination of thousands of employees without notice***, and inaction with respect to preserving assets or collateral.” Memorandum Opinion and Order Granting United Furniture Industries, Inc.’s Motion to Convert Case to Chapter 11, Denying as Moot Wells Fargo Bank, National Association’s Emergency Motion for Appointment of an Interim Trustee, and Ordering the Appointment of a Chapter 11 Trustee, ECF No. 106, p. 29 (emphasis added).

Here, there are sufficient uncontroverted facts for this Court to conclude that Belford and Stage Capital ordered the layoffs that occurred on November 21, 2022. Both Lynda Barr and Todd Evans state that Belford and Stage Capital ordered the layoffs. This is consistent with the near midnight message disseminated to all employees notifying them of their termination which began with the phrase “at the instruction of the board of directors.” ECF No. 206-14, NEAL-389. This conclusion is further supported by the November 21, 2022, board resolution deeming it in the best interests of the United to “immediately effectuate an orderly winddown of [United’s] operations” and “authoriz[ing] the Officers to take any action necessary to immediately terminate all of [United’s] employees.” ECF No. 206-1, SCB-006224.

At most, Belford and Stage Capital will claim that Belford and Gabauer “authorized” the layoffs but did not “order” them. However, these two phrases exhibit a distinction without a difference. This distinction is certainly insufficient to prevent this Court from drawing the inference that Belford and Stage Capital ordered the November 21, 2022, layoffs from the uncontroverted facts. Such an inference is likewise consistent with the Court’s previous opinion in which the Court noted Belford’s involvement in the termination of thousands of employees without notice. *See* Memorandum Opinion and Order Granting United Furniture Industries, Inc.’s Motion to Convert Case to Chapter 11, Denying as Moot Wells Fargo Bank, National Association’s Emergency Motion for Appointment of an Interim Trustee, and Ordering the Appointment of a Chapter 11 Trustee, ECF No. 106, p. 29

B. Stage Capital, LLC and David Belford should be considered a “single employer” with United.

Although the WARN Act does not directly address when a related entity may be held liable under a single employer theory, the Department of Labor (DOL) has done so via regulation. “The DOL regulations specify ‘factors to be considered’ in determining whether a related entity is so

intertwined with the employer that the two may be considered a single employer, such that the related entity may be liable for the actual employer's WARN Act violation.” *Fleming*, 83 F.4th at 295; *see* 20 C.F.R. § 639.3(a)(2). The five factors 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.F.R. § 639.3(a)(2).

The question of de facto control is of such importance that “liability might be warranted even in absence of the other factors.” *Fleming*, 83 F.4th at 299; *Pearson Component Tech. Corp.*, 247 F.3d 471, 504 (3rd 2001). “[T]he de facto control factor looks to who ‘specifically directed the allegedly illegal employment practice.’” *Fleming*, 83 F.4th at 299. Thus, if a Defendant “specifically directed the [mass layoff or plant closing] without proper notice, the [Defendant] may be liable for the [direct employer’s] WARN Act violation even absent other factors.” *Id.* (internal citations omitted).

- i. There is ample uncontroverted evidence to establish that Stage Capital and Belford exercised de facto control over United.

“This factor considers whether the defendant has specifically directed the allegedly illegal employment practice that forms the basis for the litigation.” *Fleming*, 84 F.4th at 297; *Administaff Companies, Inc. v. New York Joint Bd., Shirt & Leisureware Div.*, 337 F.3d 454, 457-58 (5th Cir. 2003).

Here, there are sufficient uncontroverted facts for this Court to conclude that Belford and Stage Capital ordered the layoffs that occurred on November 21, 2022. Again, both Lynda Barr and Todd Evans state that Belford and Stage Capital ordered the layoffs. ECF No. 206-11, NEAL-3; ECF No. 206-13, NEAL-395, 396. This is consistent with the near midnight message disseminated to all employees notifying them of their termination which began with the phrase “at the instruction of the board of directors.” ECF No. 206-14, NEAL-389. This conclusion is further

supported by the November 21, 2022, board resolution deeming it in the best interests of the United to “immediately effectuate an orderly winddown of [United’s] operations” and “authoriz[ing] the Officers to take any action necessary to immediately terminate all of [United’s] employees.” ECF No. 206-1, SCB-006224. Barr and Evans waited until they received such resolution before communicating to the employees that their employment was terminated effective immediately. ECF No. 206-18, Barr Depo. p. 163. There are ample uncontroverted facts for this Court to find that Stage Capital and Belford ordered the November 21, 2022, layoffs.

Moreover, Stage Capital and Belford were intrinsically involved in the operations of United. For example, Mike Watson, the former CEO of UFI who immediately preceded Todd Evans, was an employee of Stage Capital. ECF No. 206-17, Evans Depo. p. 46. When Belford and Evans were discussing Evans possibly becoming the new CEO of United, Belford told Evans that he “didn’t need a committee to make decisions, that he could make decisions and we could move quick.” ECF No. 206-17, Evans Depo. p. 49. This is despite the fact that there were at least three other board members at the time – Mike Watson, Doug Hanby, and Larry George. ECF No. 206-22, SCB000013.

During Todd Evans time as CEO, it was his understanding that he reported to the to the board of Stage Capital. ECF No. 206-16, Evans Depo. p. 48. Mr. Evans described the relationship as Stage Capital being “the management arm,” and he viewed Stage Capital and UFI as one in the same. ECF No. 206-17, Evans Depo. p. 53.

Regarding personnel, Evans was given a directive from Belford and Gabauer to cut overhead. ECF No. 206-17, Evans Depo. p. 74. Belford continually weighed in on how to conduct these overhead reductions. *Id.* Likewise, both Belford and Gabauer instructed Evans to renegotiate the compensation of Jay Quimby. ECF No. 206-17, Evans Depo. p. 92.

When discussing Stage Capital's role, Lynda Barr explained, "Stage Capital had full responsibility managing all the investments, all of the trusts, all of the investments of the trusts which is why there was a management agreement between the entities." ECF No. 206-18, Barr Depo. p. 61. Barr continued by explaining, "all of our discussions revolved around Stage Capital and David Belford and Jason. Then you also had the fact that David Belford was essentially the sole – when I arrived, was the sole director of the company. So he was the only director of the company, and then Jason Gabauer was appointed so the company would have two directors. And both of them come through Stage Capital." ECF No. 206-18, Barr Depo. pp. 62-63. When asked who was providing strategic direction for United, Barr explained, "[s]o Todd and I were evaluating, but we worked for and communicated with David Belford and Jason Gabauer. Jason Gabauer was in our offices extensively, so he was right there to have the conversations with. And Todd typically talked to David on a daily basis with regards to what we were seeing, what we thought we should be doing, and considering what could or should be done with regards to turning the company performance around." ECF No. 206-18, Barr Depo. pp. 68-69. When asked what decisions she had to run by the board, Barr explained that Gabauer was "pretty much on-site" and "involved in knowing everything that was going on." ECF No. 206-18, Barr Depo. p. 94. She also explained that when the decision was made to list a couple of properties, Belford was "contradicting the real estate agent and telling [her and Evans] exactly how much the company had to list the property for." *Id.* Gabauer even personally fired a lower-level employee at United. ECF No. 206-18, Barr Depo. p. 95.

Barr also explained that Mike Watson, a former employee of Stage Capital, managed three legal entities – Solstice Sleep, United, and another entity – that were unaffiliated but were owned and controlled via Stage Capital. ECF No. 206-18, Barr Depo. p. 62. Barr also explained that

Watson facilitated transactions across these entities which would have resulted in shifts of earnings across them. *Id.* at pp. 75-76. For example, she described a large purchase of mattresses from Solstice by United that United did not have the ability to sell. *Id.* at 76. Thus, those mattresses just sat in a warehouse. *Id.* She explained that this transaction allows Solstice to record a large sale and profit from the transaction and the corresponding amount is buried in United's inventory. *Id.* at 77.

Moreover, Barr explained that Belford and Belford alone had the authority to appoint and remove members of United's board of directors. ECF No. 206-18, Barr Depo. p. 78. Similarly, she stated that the negotiations of hiring C-suite employees at United went through Belford. ECF No. 206-18, Barr Depo. p. 79.

When trying to work through United's financial difficulties, including the process of revaluating its inventory, Barr explained that she and Evans were "in constant contact" with Belford and Gabauer, and she was "always talking to Jason." ECF No. 206-18, Barr Depo. p. 87. She continued in explaining that both Belford and Gabauer wanted to sue the former auditors of United for misstatements of the financials. *Id.* Barr and Evans were developing a plan to restructure United, and their plan was presented to Belford, Gabauer, and Belford's son – who was being transitioned into a role at headquarters from a sales role. ECF No. 206-18, Barr Depo. p. 100. Despite Barr and Evans' recommendation that United pursue a Chapter 11 filing, Belford repeatedly stated, "I don't want it in bankruptcy." ECF No. 206-18, Barr Depo. p. 119. Belford was resistant to Barr and Evans' recommendation that United pursue a Chapter 11 filing. *Id.* at p. 150.

As can be seen from the undisputed facts above, Belford and Stage Capital exercised significant control over United. Whether it be unilaterally hiring a replacement CEO and removing

all other directors from the Board, facilitating transactions across Belford owned entities to shift earnings, including Belford's son in strategic conversations with United's management team, or simply firing a lower-level employee, Belford and Stage capital were continuously involved in the operations of United.

ii. There were common directors and officers between Stage Capital and United.

As of November 21, 2022, United had two members of its board of directors – David Belford and Jason Gabauer. ECF No. 206-1, SCB-6224, 6225. Jason Gabauer was, at the time, Stage Capital's CFO. ECF No. 206-2, NEAL-159, 160. David Belford was Stage Capital's chairman. ECF No. 206-3, NEAL-163, 164. Mr. Gabauer and Mr. Belford were the only two directors for United and the only two officers for Stage Capital as of November 21, 2022. Likewise, Belford was listed as the "Chief Executive Officer" in United's employee database. ECF No. 206-21, UFI000787. Belford was also paid \$250,000.00 per year for his work as an officer for United. ECF No. 206-19, UFI000755 – UFI000757; ECF No. 206-20, SCB006915. This factor is apparent.

iii. Common ownership existed among Belford, Stage Capital, and United.

Here, Belford and Stage Capital were not the direct owners of United. Rather, the owners of United were the Separate Property Trust Created by David A. Belford and "five children's trusts." ECF No. 206-15, NEAL-208. However, this factor does not require direct ownership. *See Fleming*, 83 F.4th at 296. "Rather, there may be circumstances where a significant financial relationship short of direct ownership nonetheless amounts to common ownership." *Id.*

Here, the Separate Property Trust was an owner in United and David Belford was a beneficiary of the Separate Property Trust. ECF No. 206-16, NEAL-173-174. The remaining

shares were owned by David Belford's children's trusts. ECF No. 206-16, NEAL-172. The children's trusts, however, only had minority ownership in United and zero control. *Id.*

Likewise, Stage Capital existed for the sole purpose of handling all the business affairs, operating companies, and other business for David Belford, his spouse, and trusts for his children. ECF No. 206-4, NEAL-165, 166. As Barr explained, United was owned by "David Belford, through various trust mechanisms that were managed by Stage Capital; Stage Capital having full responsibility for managing the trusts ownership because it's owned somehow in that trust scenario." ECF No. 206-18, Barr Depo. pp. 63-64. Thus, despite no direct common ownership, there is common ownership among Stage Capital, Belford, and United.

iv. Stage Capital and United depended upon each other to operate.

Again, Stage Capital had a management agreement with United in which it would "provide Executive Services that are typical of what senior executives would be performing if employed directly by [United]." ECF No. 206-5, SCB-000034. This agreement authorized Stage Capital to "exercise any and all rights and powers necessary or appropriate to provide the Executive Services to [United]." *Id.* United paid a fee to Stage Capital for its services under the management agreement. ECF No. 206-6, NEAL-228. As Barr explained, United was accruing an expense every month for the management agreement between it and Stage Capital. Thus, given Stage Capital provided "Executive Services" to United and United paid fees to Stage Capital for those services, both depended upon one another to operate.

In summary, four of the five factors promulgated by the Department of Labor weigh in favor of the conclusion that Belford and Stage Capital amount to a "single employer" with United. Of those four, the de facto control factor is of such importance that liability might be warranted in the absence of all other factors. Thus, for these reasons, there is ample uncontroverted evidence

for this Court to conclude that Belford and Stage Capital amount to a “single employer” with United.

C. The opinion from the *Fleming v. Bayou Steel* matter on remand does not support a contrary conclusion.

On April 1, 2024, the United States District Court for the Eastern District of Louisiana held a bench trial “to decide one issue... whether the Defendant exercised de facto control over [the company’s] decision to close its [facility] and order Plaintiffs’ layoffs.” *Fleming v. Bayou Steel BD Holdings II LLC*, 2024 WL 1621128 at *1 (E.D. La. Apr. 15, 2024). The court ultimately ruled that the Defendant did not exercise de facto control over the decision to close the facility. However, there are two critical factual distinctions between *Fleming* and the matter at hand.

First, the Plaintiffs in *Fleming* presented “no testimony from any witnesses as to who decided that the plant would be closed without the WARN notices required by law.” *Id.* at *3. In the case at hand, both Lynda Barr and Todd Evans have provided testimony that the November 21, 2022, layoffs were ordered by Belford and Stage Capital. This difference is critical.

Second, the plant closure in *Fleming* was ordered by “independent directors.” *Id.* at *4. Here, there are no “independent directors” for Belford and Stage Capital to blame. The only two members of United’s board of directors as of November 21, 2022, were the officers at Stage Capital. Thus, the independence in *Fleming* is lacking in the case at hand.

These factual distinctions are critical and explain why the Defendants will find no support in the *Fleming* opinion on remand.

CONCLUSION

The WARN Act imposes liability on more than merely the direct employer for violations of its provisions. Any employer who orders a plant closing or mass layoff without giving the required notice can be held liable for violations of the WARN Act. Here, there is ample evidence

for this Court to conclude that Belford and Stage Capital ordered the November 21, 2022. Moreover, there is sufficient uncontroverted evidence to establish that there were common directors and officers, common ownership, and dependency of operations among the Defendants. Thus, for the reasons stated herein, Plaintiffs respectfully requests this Court grant their Motion for Partial Summary Judgment and find that David Belford and Stage Capital, LLC ordered the November 21, 2022, layoffs and amount to a “single employer” with United.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I certify that on December 16, 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.

DATED: December 16, 2024

/s/ William "Jack" Simpson
William "Jack" Simpson