

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

<b>In re:</b>  <b>UNITED FURNITURE INDUSTRIES, INC., aka United Furniture, aka Lane Furniture,</b>  <b>Debtor</b>	<b>Chapter 11</b>  <b>Bankr. Case No. 22-13422-SDM</b>
<b>TORIA NEAL; JAMES PUGH; and KALVIN HOGAN, on behalf of themselves and all others similarly situated</b>  <b>Plaintiffs,</b>  <b>v.</b>  <b>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</b>  <b>Defendants.</b>	<b>Adv. Proc. No. 23-01005-SDM</b>

**PLAINTIFFS' MEMORANDUM IN SUPPORT OF RESPONSE TO BELFORD  
DEFENDANTS' 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 Memorandum in Support of Response to Belford Defendants' Motion for Partial Summary Judgment. In support thereof, Plaintiffs would show as follows:

**RESPONSE TO 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, at SCB-000331 (Credit Agreement between Wells Fargo and United Furniture).)

**Undisputed.**

2. The Irrevocable Trust has no ownership interest in UFI. (*Id.*)

**Undisputed.**

3. David A. Belford is the trustee of the Separate Property Trust. (Ex. 2, at SCB-006280 (Third Amended & Restated Separate Property Trust Agreement).)

**Undisputed.**

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).)David Belford is the chairman at Stage Capital. *Id.*

**Undisputed.**

### **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).)

**Undisputed.**

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).)

**Undisputed.**

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).)

**Undisputed.**

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).)

**Undisputed.**

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

**Undisputed.**

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

**Undisputed.**

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

**Undisputed.**

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

**Disputed in part. Gabauer described Belford as the “chairman.” Given Stage Capital is an LLC, it is likely Stage Capital does not have a board of directors.**

#### **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).)

**Undisputed.**

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).)

**Disputed in part. Ms. Barr received a draft of the WARN Notice from McGuire Woods on November 21, 2022. However, it is not clear from either the email correspondence or depositions testimony cited that Ms. Barr requested that counsel from McGuire Woods provide a WARN notice.**

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. on November 21, 2022, which stated in relevant part:

At this point, we have no authorization or ability to move the company forward. We have received no formal 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 the 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).)

**Undisputed.**

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).)

**Disputed. This communication was sent after 11 p.m. CST.**

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).)

**Disputed in part. By failing to include what time zone, Plaintiffs cannot determine precisely when this email was sent. The email cited by the Belford Defendants says the email was sent at 2:59 a.m. on November 22, 2022. Consequently, the time zone cannot be CST or EST.**

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).)

**Disputed in part. By failing to include what time zone, Plaintiffs cannot determine precisely when this email was sent. The email cited by the Belford Defendants says the**

**email was sent at 5:13 a.m. on November 22, 2022. Consequently, the time zone cannot be CST or EST.**

**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).)

**Undisputed.**

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

**Undisputed.**

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

**Undisputed.**

**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.)

**Disputed. Mike Watson, the CEO of UFI who immediately preceded Todd Evans, was an employee of Stage Capital who would have executed documents on UFI’s behalf.**

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

**Undisputed.**

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

**Disputed. Preliminarily, it is not clear what “administrative or purchasing services” means. Notwithstanding, Stage Capital and UFI had a management agreement in place in which Stage Capital would “provide Executive Services that are typical of what senior**

**executives would be performing if employed directly by [United].” “Executive Services” appears to be synonymous with administrative services.**

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

**Disputed.** Mike Watson, the CEO of UFI who immediately preceded Todd Evans, was an employee of Stage Capital while serving as CEO of UFI.

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

**Undisputed.**

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

**Disputed.** Preliminarily, it is not certain what “commingle finances” means. However, Stage Capital and UFI were involved in transactions which were facilitated for the purpose of shifting earnings across entities. For example, while Mike Watson was CEO of both UFI and Solstice, another entity owned by Belford and managed by Stage Capital, UFI purchased a large quantity of mattresses from Solstice that UFI had no ability to sell. These mattresses just sat in UFI’s inventory.

#### **Evidence (of 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).)

**Undisputed.**

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

**Undisputed.**

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).)

**Undisputed.**

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).)

**Undisputed.**

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).)

**Undisputed.**

#### **Further Evidence (of 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).)

**Undisputed.**

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).)

**Undisputed.**

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).



**Disputed.** Preliminarily, it is not certain what “commingle finances” means. However, Stage Capital and UFI were involved in transactions which were facilitated for the purpose of shifting earnings across entities. For example, while Mike Watson was CEO of both UFI and Solstice, another entity owned by Belford and managed by Stage Capital, UFI purchased a large quantity of mattresses from Solstice that UFI had no ability to sell. These mattresses just sat in UFI’s inventory.

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).)

**Disputed.** Preliminarily, it is not certain what “fraudulent transfer of title” means. However, Stage Capital and UFI were involved in transactions which were facilitated for the purpose of shifting earnings across entities. For example, while Mike Watson was CEO of both UFI and Solstice, another entity owned by Belford and managed by Stage Capital, UFI purchased a large quantity of mattresses from Solstice that UFI had no ability to sell. These mattresses just sat in UFI’s inventory.

#### **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).)

**Disputed.** The assertion that Evans “exercised de facto control over UFI on a daily basis” is more akin to a legal conclusion as opposed to a fact. Notwithstanding the above, Evans did not exercise unfettered control over UFI.

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).)

**Disputed. All hiring decisions regarding United's C-suite and management team were made jointly with Belford. ECF No. 208-9, Evans Depo p. 60.**

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).)

**Disputed. All hiring decisions regarding United's C-suite and management team were made jointly with Belford. ECF No. 208-9, Evans Depo p. 60. The employment agreements were drafted by Gabauer. *Id.***

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).)

**Undisputed as to the contents of the email. Disputed that Evans possessed full authority over the hiring and setting the terms of employment for United's C-suite and management team. See ECF No. 208-9, Evans Depo p. 60.**

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).)

**Undisputed.**

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).)

**Undisputed that Mr. Evans hired Daniel Siggers. Disputed that Mr. Evans had full authority to determine Mr. Siggers' employment and compensation terms. See ECF No. 208-9, Evans Depo p. 60.**

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).)

**Undisputed that Mr. Evans hired Keith News. Disputed that Mr. Evans had full authority to determine Mr. News' employment and compensation terms. See ECF No. 208-9, Evans Depo p. 60.**

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).)

**Disputed. In the Exhibit cited, Mr. Evans is not dictating a reorganization of the C-suite structure. He is recommending that “Doug” assume the role of President of UFIT. In this same email, Mr. Evans recognizes that “we” – referring to he, Belford, and Gabauer – “need to get Doug’s deal ironed out.”**

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).)

**Disputed that Mr. Evans “notified the Board of the hire of Doug Hanby.” In the very deposition transcript pages that the Belford Defendants cite, Mr. Evans explains, “we – we being David, myself, and Jason kind of shared that document, discussed the terms of it, what, you know, we went back and forth on what it needed to look like, the bonus and so forth.” Thus, it is apparent that Belford and Gabauer were involved in the negotiations of Mr. Hanby’s employment, and Mr. Evans did not merely “notify” the board of the hiring.**

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).)

**Undisputed that Mr. Evans proposed amendments to Mr. News’ employment agreement to Belford and Gabauer. Disputed that Mr. Evans, solely, amended 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).)

**Plaintiff cannot state whether this fact is disputed or not because the first sentence does not contain a subject. It is not clear who the Belford Defendants claim renegotiated Jay Quimby's employment agreement. However, in the pages of deposition transcript the Belford Defendants cite, Mr. Evans states he was "instructed to renegotiate Jay's agreement" by Belford and Gabauer.**

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).)

**Undisputed.**

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).)

**Undisputed that Mr. Evans would execute agreements on behalf of UFI from time to time. 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).

**Disputed in part. Both the documents and depositions transcript pages cited by the Belford Defendants show that these terminations were the product of a directive from Belford. The “goal to downsize and identify what operations were necessary for UFI to continue with lower overhead” was Belford’s goal, not Evans’. It is also disputed that Evans solely made the decisions as to which departments and positions to include in a reduction in force.**

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).)

**Disputed. In the very deposition transcript pages that the Belford Defendants cite, Mr. Evans explains that these decisions were made by both him and Belford. He says, “[and] so we determined that it was not necessary to have both, so they were eliminated.” He then later states, “[t]hose were a couple of things that David and I discussed in June.”**

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).)

**Undisputed.**

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).)

**Disputed. In the deposition transcript pages cited by the Belford Defendants, Ms. Barr explains the decision to close the facilities were “discussed with everyone.” While Ms. Barr explains that Mr. Evans made the recommendation to close the facilities, she does not state who identified the facilities for closure or that Mr. Evans, alone, “closed” the facilities.**

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).)

**Disputed in part. Evans engaged in these negotiations but whether he acted “independently” is not supported by the emails cited by the Defendants.**

55. Mr. Evans made the decision to terminate the President of UFI Transportation. He reorganized the management structure to determine where all UFI termination inquiries 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.*)

**Disputed. The email cited by the Belford Defendants is a company-wide communication notifying everyone that Doug Hanby was no with United. It does not indicate who made the decision. Likewise, the email notifies everyone of where to send inquiries, but it does not specify who made the decision of where all inquiries would be sent.**

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).)

**Undisputed.**

**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).)

**Disputed that Ms. Barr exercised "de facto control over UFI." This representation is more akin to a legal conclusion than a fact.**

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).)

**Disputed in part. Neither the email nor depositions transcript pages cited by the Belford Defendants establish that Ms. Barr “directed” the previous reduction in force. At most, these documents establish that provided a suggested list of action items because of the planned reductions in force.**

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).)

**Disputed in part. As of June 2022, Ms. Barr had not been involved with any previous reductions in force at United. Thus, should could not have “leaned on” a previous reduction at United.**

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).)

**Undisputed.**

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).)

**Undisputed.**

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).)

**Disputed in part. Ms. Barr hired an independent accounting firm with Evans' approval. However, whether United's manufacturing operations were shutdown "without express Board authorization" is disputed. Ms. Barr explained that Gabauer "was well aware that [United] was doing a physical inventory because it did require a shut down of manufacturing operations to do a physical count."**

**Mr. Belford 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).)

**Disputed. In the very deposition transcript pages cited by the Belford Defendants, Ms. Barr explained Belford contradicted the real estate agent that United hired and directed what price United had to list the specific piece of real estate for. She also explained that Belford's approval came with him acting in different capacities. Sometimes he would sign as a board member of United while other times he would sign on behalf of Stage Capital or the trusts.**

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).)

**Disputed. The deposition transcript page cited by the Belford Defendants contains no such representation by Ms. 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).)

**Undisputed.**

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).)

**Undisputed.**

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).)

**Undisputed that this was Belford's testimony.**

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).)

**Undisputed that this was Belford's testimony.**

**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).)

**Disputed. The deposition transcript page cited by the Belford Defendants contains no support for this fact.**

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).)

**Disputed. The deposition transcript page cited by the Belford Defendants contains no support for this fact.**

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

**Disputed. The agreement was terminated, but there is no indication that it was terminated once it was learned of. In fact, according to Gabauer, the termination of the 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.” ECF No. 208-1, SCB-003247.**

**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).)

**Undisputed that the WARN Notices were prepared prior to the Board authorization concerning the terminations. Disputed that the “shutdown decision” was Evans and Barr’s.**

73. 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. on November 21, 2022, which stated in relevant part:

At this point, we have no authorization or ability to move the company forward. We have received no formal 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 the 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).)

**Undisputed.**

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).)

**Disputed. The statement concerning when the mass termination “occurred” is more of a legal conclusion as opposed to a factual assertion. Notwithstanding, the text communication which was sent prior to the Board authorization concerning the layoff only instructed them employees to not return to work the following day. It did not notify the employees of any termination.**

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).)

**Disputed in part.** By failing to include what time zone, Plaintiffs cannot determine precisely when this email was sent. The email cited by the Belford Defendants says the email was sent at 5:13 a.m. on November 22, 2022. Consequently, the time zone cannot be CST or EST.

**UFI Policy Did Not Provide for 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”).)

**Undisputed.**

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”).)

**Undisputed.**

**ARGUMENT**

**I. Stage Capital, LLC, David Belford, and the Separate Property Trust 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 v. Bayou Steel BD Holdings II L.L.C.*, 83 F.4th 278, 294 (5th Cir. 2023). Here, the uncontroverted facts establish that Stage Capital, LLC and David Belford, individually and as Trustee for the Separate Property Trust, (collectively “the

Belford Defendants”) ordered the mass layoffs or plant closings that occurred on November 21, 2022, and are rightfully considered to be a “single employer” with United.

**A. The Belford Defendants exercised *de facto* control over United.**

In their Memorandum, the Belford Defendants recognize that this factor is “of highest importance.” ECF No. 204, p. 18. “[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).

**1. The Belford Defendants ordered the plant closings or mass layoffs 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. 203, ¶ 5. Jason Gabauer was, at the time, Stage Capital’s Chief Financial Officer. ECF No. 203, ¶ 9. David Belford is the chairman of Stage Capital. ECF No. 206-3, NEAL-163, 164. Stage Capital is a “family office management company” for the “Belford family.” ECF No. 203, ¶ 8. 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. 208-2, 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. 208-1, SCB-003247.

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. 208-3, 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. 208-4, NEAL-390-401. In her deposition, Barr explained that she and Evans "waited several hours" for Belford to sign the board resolution terminating all employees. ECF No. 208-5; Barr Depo. p. 163. Sometime after 11 p.m. CST on November 21, 2022, the resolution was executed and 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. 208-6, 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.* Once the board resolution terminating all employees was received, 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. 203-11, NEAL-389 (emphasis added). *Id.*

In their memorandum, the Belford Defendants claim it was “impossible” for them to have directed a layoff that occurred “nearly three-and-a-half hours before” they signed the resolution. ECF No. 204, p. 24. In making this argument, the Belford Defendants mistakenly claim that the first text communication sent to the employees of United terminated them. This text communication merely instructed employees to not return to work on November 22, 2022, and instructed the over the road drivers to not complete their current deliveries and return the equipment to one of three locations. ECF No. 203-12, P00002. The text also notified employees that “additional information would be available tomorrow morning” and encouraged them to “be patient.” *Id.* Notably, no part of this message tells the employees that they have been or are to be terminated. Consequently, the text message sent prior to the board authorization being executed did not terminate the employees.

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. 208-7, 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. 208-8, NEAL-348.

Here, there are sufficient uncontroverted facts for this Court to draw the inference that the Belford Defendants ordered the November 21, 2022, layoffs. 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.

**2. Neither Evans nor Barr had unfettered authority to direct the operations of United as they saw fit.**

In their memorandum, the Belford Defendants contend that Evans “handpicked his C-suite and management team” and discuss the hiring of several individuals in effort to establish that Evans had some complete and unfettered authority to make such hires. *See* ECF No. 204, p. 19. However, the Belford Defendants completely ignore Evans’ deposition testimony in which he states, “But to be clear, I consulted with David on all the c-suites we hired prior to making an offer and he and I discussed the salaries and whether you want to call it negotiating or whatever, but we each agreed as to what that would be.” ECF No. 208-9, Evans Depo p. 60. Likewise, the Belford Defendants cite Evans’ renegotiation of Jay Quimby’s agreement but ignore Evans’ testimony that he was specifically instructed by Belford and Gabauer to conduct the renegotiation. *See* ECF No. 203-5, p. 92 (“I was instructed to renegotiate Jay’s agreement.”). Evans simply had no authority to make these hires and set their compensation without first consulting Belford.

Similarly, the Belford Defendants’ assertion that Evans had unbridled authority to conduct company-wide reductions in force is unsupported by the evidence. The Belford Defendants fail to recognize that any previous reductions in force were at the directive of Belford. In his deposition, Evans explained that Belford had requested these reductions “for over a period of time” before Evans became CEO. ECF No. 203-5, Evans Depo. p. 74. The list of individuals who would be terminated was prepared by the previous executives and Evans only added to that list. *Id.* Evans also explained that these layoffs were a product of a directive that came from Belford. *Id.* Belford

“frequently” shared his opinions with Evans as to how to carryout these terminations. ECF No. 208-10, Evans Depo. p. 75.

Evans, likewise, did not “unilaterally” decide to end all incentives for the sales department at United. In his deposition, Evans explained that the changes to the sales commissions structure were a couple of things that he and David discussed in June. ECF No. 203-5, Evans Depo. pp. 84-85.

Suffice to say, all the actions the Belford Defendants rely on to claim that Evans had unbridled discretion to operate United were taken jointly with Belford or Gabauer.

The same is true for Barr. The Belford Defendants claim that Barr “directed” the layoffs at United in June of 2022, but cite to no factual support for that assertion. The materials on which they rely support, at most, that Barr provided a suggested list of action items in light of the planned reductions in force. *See* ECF No. 203-19. While Barr did hire an independent accounting firm to help investigate some of United’s financial practices, this did not lead to the shutdown of manufacturing operations without express board approval. In her deposition, Barr explained that Gabauer was “well aware that [United] was doing a physical inventory because it did require a shutdown of manufacturing operations to do the counts.” ECF No. 203-6, Barr Depo. p. 86.

In sum, the Belford Defendants claim that Evans and Barr controlled the day-to-day operations of United without input from Belford and Gabauer is not supported by the evidence. Belford and Gabauer were routinely involved in the operations – whether it be providing input concerning matters of great significance or cold calling customers. Whatever authority Evans and Barr possessed was subject to direct oversight by both Belford and Gabauer.

### **3. Belford was involved in the operations of United.**

The Belford Defendants claim that Belford only approved “major strategic” and “big” decisions. *See* ECF No. 204, p. 22. Likewise, they claim that Belford only provided “general directives to UFI.” *Id.* These assertions are belied by the testimony and documents that have been discovered in the litigation of this matter.

As a preliminary matter, the Belford Defendants provide no definition of what constitutes a “major strategic” or “big” decision. Without providing such definition, it is difficult to discern what effect the establishment of such “fact” would have on the outcome of this motion or at trial. For example, would a “major strategic” or “big” decision include terminating the entirety of the company’s workforce? Notwithstanding, Belford’s involvement in the operations of United included more than merely approving “big” decisions.

For example, at one point United decided to sell a couple of facilities that had been closed. Barr testified that Belford contradicted the real estate agent that United hired and directed what price United had to list the specific piece of real estate for. ECF No. 208-11, Barr Depo, p. 94.

Moreover, Belford dictated the pricing of certain goods that United was selling. On November 11, 2022, Belford emailed Evans requesting that United add a premium of between \$7-10 per seat for furniture produced in California. ECF No. 208-12, SCB-003913. On September 19, 2022, Belford emailed Evans stating, “[w]e need to communicate w/ Big Lots its \$8 more a seat out of California or we need to close the factor by December 15.” ECF No. 208-13, SCB-004185. On October 13, 2022, Belford emailed Evans stating, “Todd, we really need to fast track our closing of additional facilities due to economic correction. California once you get an answer if Big Lots wants to pay 10%-15% more to keep it open.” ECF No. 208-14, SCB-005681.

Belford also cold called potential new customers of United in effort to generate business. On May 3, 2022, Belford emailed Jay Quimby and Will Belford stating, “I am no longer going to

give accounts that I cold call to anyone. No more gifts. I am out cold calling I expect our salesmen to bring in new accounts.” ECF No. 208-15, SCB-005339. He even provided input on how Lane should label its products. ECF No. 208-16, SCB-003921 (“we need large hang tags and LANE all over the boxes”).

As can be seen from the above, Belford involvement in the operations of United ranged from cold calling customers, advising on what labels to affix to merchandise, setting price points for products, and demanding real estate be listed for certain prices. The Belford Defendants’ assertion that Belford’s involvement was limited to “big” decisions – whatever that phrase means – is not a candid appraisal of his true involvement.

**4. Stage Capital and the Separate Property Trusts were involved in the operations of United.**

In November of 2022, Stage Capital had two officers – David Belford and Jason Gabauer. In November of 2022, United had two members of its board of directors – David Belford and Jason Gabauer. In November of 2022, the majority shareholder – who had 100% control – of United was the Belford Separate Property Trust. *See* ECF No. 208-17, NEAL172-174. The Trustee of the Belford Separate Property Trust was David Belford.

In her deposition, Barr explained the relationship between Stage Capital, United, and the trusts as:

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. 208-18, Barr Depo. pp. 62-63. Barr further explained that both Belford and Gabauer would sign off as board members of United, on behalf of Stage Capital, or on behalf of the trusts.

ECF No. 208-11, Barr Depo. pp. 93-94. In sum, Belford wore at least three hats when transacting business with or on behalf of United, and Gabauer wore at least two. Given the overlap between the board members, equity holders, and third-party management company, the most obvious conclusion is that Belford and Gabauer were simultaneously acting in more than one capacity when they transacted business with and on behalf of United.

Notwithstanding the above, Evans' immediate predecessor was Mike Watson. Mike Watson was an employee of Stage Capital. ECF No. 208-19, Evans Depo. p. 46. Further, until the end of August of 2022, a management agreement existed between Stage Capital and United whereby Stage Capital agreed to "provide Executive Services that are typical of what senior executives would be performing if employed directly by [United]." ECF No. 208-2, 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.* It simply cannot be said that Stage Capital was not involved in the operations of United when one of its employees served as United's CEO and it performed services for United under an agreement that described the services as "typical of what senior executives would be performing if employed directly by United."

**B. Common Ownership exists between United and the Belford Defendants.**

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. 208-20, 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. 208-17, NEAL-173-174. The remaining

shares were owned by David Belford's children's trusts. *Id.* 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. 208-21, 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. 208-18, Barr Depo. pp. 63-64. Thus, despite no direct common ownership, there is common ownership among Stage Capital, Belford, and United. This is precisely the type of situation the Fifth Circuit recognized in *Fleming* when it held, "there may be circumstances where a significant financial relationship short of direct ownership nonetheless amounts to common ownership."

**C. There are common officers and directors between United and the Belford Defendants.**

As of November 21, 2022, United had two members of its board of directors – David Belford and Jason Gabauer. ECF No.203, ¶ 5. Jason Gabauer was, at the time, Stage Capital's CFO. ECF No.203, ¶ 5. David Belford was Stage Capital's chairman. ECF No. 203-7, NEAL-163. 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. 208-22, UFI000787. Belford was also paid \$250,000.00 per year for his work as an officer for United. ECF No. 208-23, UFI000755 – UFI000757; ECF No. 208-24, SCB006915. This factor is apparent.

In their Memorandum, the Belford Defendants claim there is "only one director in common, no majority of the board, and no common officers." ECF No. 203, p. 28. This assertion

is puzzling. Perhaps the Belford Defendants forgot the other member of United's board of directors is Belford – who just so happens to be the other officer at Stage Capital. In any event, it is abundantly clear that there are two common directors and officers between United and Stage Capital. Likewise, while a trust does not have officers or directors, the trustee and beneficiary of the Separate Property Trust is Belford. Thus, there is commonality between United and the Belford Defendants.

**D. Stage Capital and United depended upon one another to operate.**

In *Administaff Companies, Inc. v. New York Joint Bd., Shirt & Leisurewear Div.*, the Fifth Circuit explained that when evaluating this factor, courts should consider ““the existence of arrangements such as the sharing of administrative or purchasing services, interchanges of employees or equipment, and commingled finances.” 337 F.3d 454, 458 (5th Cir. 2003). Here, all of these factors are present.

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. 208-2, 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. 208-25, Barr Depo. pp. 72-73. 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. Consequently, United and Stage Capital shared administrative services.



Moreover, Evans' immediate predecessor, Mike Watson, was an employee of Stage Capital and concurrently served as the CEO to three separate entities that were managed by Stage Capital. ECF No. 208-18, Barr Depo. p. 62. Thus, United and Stage Capital interchanged its CEO up until the hiring of Todd Evans.

Further, while Watson was serving his concurrent roles across the entities managed by Stage Capital, he facilitated transactions that shifted earnings across the entities. ECF No. 208-26, Barr Depo. pp. 75-76. There is no greater sign of "comingling of finances" than using the separate entities you manage as mechanisms for you to shift earnings when needed.

In summary, four of the five factors promulgated by the Department of Labor weigh in favor of the conclusion that the Belford Defendants 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 the Belford Defendants amount to a "single employer" with United.

## **II. The Belford Defendants are liable under any standard for the Cal/WARN violations.**

The Belford Defendants cite to two separate standards utilized by federal courts not in California to determine who can be determined an "employer" under Cal/WARN. The Defendants claim that "no California court has held whether the "single employer" test for the WARN Act is applicable to Cal/WARN." ECF No. 203, p. 30. This is no longer true.

### **A. This Court should apply the definition of "employer" as written in Cal/WARN.**

Preliminarily, under Cal/WARN, the phrase "employer" is defined as "any person, as defined by Section 18, who directly or indirectly owns and operates a covered establishment. A parent corporation is an employer as to any covered establishment directly owned and operated by its corporate subsidiary." Cal. Lab. Code § 1400.5(b). "Employer" is defined by Section 18 as

“any *person*, association, organization, partnership, *business trust*, limited liability company, or corporation.” Cal. Lab. Code § 18 (emphasis added). Thus, under Cal/WARN, an individual or a trust can be deemed an “employer” if it “directly or indirectly owns and operates a covered establishment.”

In *Su v. Capital Mailing Services, Inc.*, the California Court of Appeals held that the alleged employer also “qualified as an ‘employer’ under the Act because the evidence showed that [the alleged employer] was the ‘person’ who owned and operated CMS during the relevant time period.” 2024 WL 4902513, at \*5 (Cal. Ct App. Nov. 27, 2024). In reaching this conclusion, the Court did not apply either the five-factor test promulgated by the DOL or the “separate employer” test applied in *In re HMR Foods Holding, LP*. Rather, the Court just applied the plain language of the definition of “employer” found in Cal/WARN. This Court should follow suit.

Here, Belford, Stage Capital, and the Separate Property Trust collectively owned and operated the “covered establishment” in California. Again, the Separate Property Trust owned 60% of United but had 100% control. *See* ECF No. 208-17, NEAL-172. Belford was the trustee and beneficiary of the Separate Property Trust. “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. 208-18, Barr Depo. p. 61. 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 and the trust’s assets, directed the company’s activities.” ECF No. 208-18, Barr Depo. pp. 63-64.

In *Su*, the Court found instructive that the alleged employer was the chief executive officer, president, chief financial officer, and secretary of CMS. *Su*, 2024 WL 4902513 at \*6. Here, Belford was one half of the board of directors of United, listed as the “Chief Executive Officer” in

United's employee database, and paid \$250,000 per year for his work as an officer for United. ECF No. 208-22, UFI000787; ECF No. 208-24, SCB006915. The Separate Property Trust was the controlling shareholder of United, and one of the largest secured lenders. Stage Capital's CFO represented the second half of the board of directors of United, operated under with United in which it would provide "Executive Services," and directly employed United's preceding CEO Mike Watson. It is abundantly clear that the Belford Defendants indirectly owned and operated United.

**B. The Belford Defendants are liable under the "single employer" test used in Federal WARN.**

The Belford Defendants identified two opinions which suggest that the analysis for who constitutes an "employer" under Cal/WARN is the same as used for the Federal WARN Act. *See* ECF No. 203, pp. 30-31. If this Court agrees, the Belford Defendants are liable under Cal/WARN for the same reasons they are liable under the Federal WARN Act as discussed above. The Belford Defendants amount to a "single employer" with United.

**C. The Belford Defendants are liable under the test articulated in *HMR Foods*.**

In *HMR Foods*, the Bankruptcy Court for the District of Delaware stated that an alleged employer can only be held liable under Cal/WARN if the alleged employer ordered the shutdown. *In re HMR Foods Holding, LP*, 602 B.R. 855, 877 (Bankr. D. Del 2019). As discussed in detail above, the Belford Defendants ordered the mass layoffs or plant closings that occurred on November 21, 2022. Thus, if this Court applies the standard announced in *HMR Foods*, the Belford Defendants are liable under Cal/WARN.

**III. David Belford can be held individually liable for the Federal WARN violations.**

In their Memorandum, the Belford Defendants propose an interpretation of the WARN Act that would provide immunity to individuals for WARN Act violations. In essence, they suggest

that the WARN Act does not impose liability on individuals under any circumstances. Such an interpretation is not found in the statute's language or accompany regulations, inconsistent with other courts' decisions, and contrary to the WARN Act's remedial nature.

**A. There is no outright prohibition against individual liability under the WARN Act in the Fifth Circuit.**

As a preliminary matter, there is no outright prohibition of individual liability under the WARN Act in the Fifth Circuit. In *Plastisource Workers Committee v. Coburn*, the Fifth Circuit held, "we must reject Coburn's contention that, as a matter of law, an individual can never be held liable for WARN Act violations." 283 Fed.Appx. 181, 186 (5th Cir. 2008). Consequently, there is no outright prohibition of individual liability under the WARN Act in the Fifth Circuit.

**B. The definition of employer in both the statute and accompanying regulations is broader than the Belford Defendants suggest.**

The word "employer" is defined as "any business enterprise that employs (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). The regulations promulgated by the Department of Labor contain the exact same definition. 29 C.F.R. § 639.3(a)(1). Thus, there is no language in either the statute or the implementing regulations which excludes individuals from the definition of "employer." Rather, the only prerequisite is that the alleged employer be a "business enterprise" and employ the requisite number of employees.

Finding no support in the statute and regulations alone, the Belford Defendants turn to a Senate-House Conference Report which contains the following language:

'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. This language has been interpreted by several courts to mean that a “business enterprise” under the WARN Act is limited to a corporate entity and not an individual person. *See Cruz v. Robert Abbey, Inc.*, 778 F. Supp. 605, 609 (E.D.N.Y. 1991). However, this interpretation is incorrect.

The critical sentence says, “[t]he 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.” The report then provides an example which states, “[f]or 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.” When the Report says that the Conferees intend that a “business enterprise” be deemed synonymous with the terms company, firm or business, it meant to **broaden** the definition of employer, not limit it. The Conferees intended to illustrate that an “employer” can have multiple locations but still be considered one employer. To state another way, an “employer” is not one location of a company, firm or business, but it is the company, firm or business as a whole. That is why the two explanatory sentences state the automobile plants are not the employers, but General Motors as a whole is.

If the intended meaning of this paragraph was to limit the definition of “employer” to only corporate entities, wouldn’t you expect to see some indication as to how General Motors was structured in the example? Would one not expect there to be some designation of General Motors as “General Motors, Inc.” or “General Motors, LLC?” After all, if the corporate designation is of utmost importance for this paragraph, why is it absent from the example? Moreover, if the intended meaning was to limit the definition of “employer” to only corporate entities, why are the

examples not different forms of corporate entities? “Company, firm or business” are not examples of different types of corporate entities. Again, if the intended meaning of this paragraph is what the Belford Defendants suggest, wouldn’t one expect the list of examples to include things such as “corporation, partnership, or limited liability company?” In fact, the absence of any of these common forms of business formations is a strong indicator that the Report’s intended meaning was *not* to limit the definition of employer to only corporate entities.

Similarly, there is no indication as to whether “General Motors” is just a “doing business as” – or DBA – name or an actual legal entity. Since we are left to guess at what corporate structure General Motors operates as, let’s assume General Motors is just a DBA name for a sole proprietor. If a sole proprietor owns and operates the automobile plants through out the country under the DBA “General Motors,” applying the logic in the Conference Report, the “employer” would be the sole proprietor using the DBA. Applying the Belford Defendants’ logic, there would be no employer because a sole proprietor is not a legal entity. Herein lies the rub.

While the Courts cited by the Belford Defendants have assumed the sentence “[t]he Conferees intend that a ‘business enterprise’ be deemed synonymous with the terms company, firm or business” means the Conferees intended to limit the definition of employers to only corporate entities, that assumption is (1) not binding on this Court and (2) unsupported by the Report’s language. The most likely explanation for the intention of this paragraph is that the Conferees desired to explain that the word “employer” is broader than just one location when the alleged “employer” has multiple locations.

Once this Conference Report is viewed through the proper lens, there is no support for the assertion that an individual cannot be an “employer” or part of a “business enterprise.”

**C. Other courts have imposed liability on individuals for WARN Act violations.**

While a few courts have held that individuals cannot be held liable for WARN Act violations, most have relied on the faulty assumption that the above Conference Report exhibits Congress's intention to limit "employer" to only corporate entities. However, this is not unanimous. In *Mowat v. DJSP Enterprises, Inc.*, the District Court for the Southern District of Florida held that Stern, an individual, may be held liable as a "single employer" for the alleged WARN Act violation. 2011 WL 13214330, at \*3-4 (S.D. Fla. Apr. 28, 2011).

Similarly, in *Marques v. Telles Ranch, Inc.*, the District Court for the Northern District of California held "a sole proprietorship is subject to liability under WARN if it is a 'business enterprise.'" 1994 WL 392232, at \*2 (N.D. Cal. June 29, 1994). Notably, the Court rejected *Cruz*'s assumption that Congress intended "business enterprise" to mean "corporate entity." *Id.* n. 1. Rather, the Court stated, "[h]ad Congress intended to exclude all non-corporate business entities, it would have explicitly stated its intention in the statute." *Id.*

Further, a fiduciary, such as a trustee, who "continue[s] to operate the business for the benefit of creditors" succeeds to the WARN obligations of the employer, and therefore, would be liable for any WARN violations. *See* 54 Fed. Reg. 16,045 (1989).

In sum, at least one court has held that an individual can be liable as a "single employer" under the WARN Act. Other courts have held that sole proprietors and "fiduciaries" can be held liable for WARN violations despite their status as individuals.

**D. Excluding individuals from liability under the WARN Act is contrary to the WARN Act's remedial nature.**

The Fifth Circuit has recognized that the WARN Act is a remedial statute. *See Easom v. US Well Services, Inc.*, 37 F.4th 238, 244 (5th Cir. 2022). As a remedial statute, the WARN Act is to be construed liberally. *R&W Tech. Servs. Ltd v. Commodity Future Trading Com'n*, 205 F.3d 165, 173 (5th Cir. 2000). "It is a general rule of law that statutes which are remedial in nature are

entitled to a liberal construction, in favor of the remedy provided by law, or in favor of those entitled to the benefits of the statute.” *Stroo v. Farmer*, 200 F.Supp. 344, 346 (S.D. Miss. 1961).

If this Court were to conclude that an individual cannot constitute at least a component of a “business enterprise,” it would create additional limitations to the WARN Act that are not present in either the statute or the regulations. Moreover, it would provide no redress for employees that found themselves victim of a mass layoff or plant closing if their employer just so happened to operate as a sole proprietor rather than using a limited liability company, corporation, or partnership. Such a conclusion would require this Court to adopt a narrow construction and include limitations not found in the text. Given the remedial nature of the WARN Act, this Court should broadly construe its provisions in favor of providing terminated employees a remedy so they may receive the benefits of the statute.

#### **IV. Plaintiffs can maintain their claims against the Separate Property Trust.**

The Belford Defendants’ argument that claims against the Separate Property Trust should be dismissed because “Plaintiffs have failed to maintain the distinction between Mr. Belford as an individual and as a trustee” are meritless. The Ohio case the Belford Defendants rely on states, “Courts will find that a defendant is sued in his capacity as trustee if a complaint identifies the defendant as a trustee either in the caption or in a factual allegation.” *UAP-Columbus JV326132 v. Young*, 2012 WL 1997704, at \*3 (Ohio Ct. App. June 5, 2012). The caption of the Complaint and the factual allegations in the Complaint identify Belford as Trustee of the Separate Property Trust. Consequently, this argument has no merit.

#### **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 the Belford Defendants ordered the November 21, 2022 layoffs. 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 deny the Belford Defendants Motion for Partial Summary Judgment.

Respectfully Submitted,

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**CERTIFICATE OF SERVICE**

I certify that on December 27, 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 27, 2024

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