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BEFORE THE IOWA SUPREME COURT

No. 21-0649

ROBERT BENDA, on behalf of himself
and all others similarly situated,
Plaintiff- Appellant,
v.
PRAIRIE MEADOWS RACETRACK AND
CASINO, INC.,
Defendant-Appellee.

IOWA HORSEMEN'S BENEVOLENT AND
PROTECTIVE ASSOCIATION
and
IOWA THOROUGHBRED BREEDERS AND
OWNERS ASSOCIATION,
Intervenors.

APPEAL FROM THE DISTRICT COURT
OF POLK COUNTY CASE NO. LACL143202
Hon. Scott D. Rosenberg

APPELLANT'S AMENDED FINAL BRIEF

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I. ISSUES ON APPEAL

1. Whether the District Court Violated Iowa's Class Certification Rules, Misapplied Iowa Law, And Reversed Iowa's Liberal Class Action Standard, Thereby Abusing Its Discretion In Denying Class Certification.

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Wal-Mart Stores, Inc. v. Dukes, 564 U.S. 338 (2011)

Ward v. Dixie Nat'l Life Ins. Co., 595 F.3d 164 (4th Cir. 2010)

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II. ROUTING STATEMENT

Because this case involves the application of existing legal principles, transfer to the Court of Appeals is appropriate. Iowa R. App. P. 6.1101(3)(a).

III. STATEMENT OF THE CASE

Nature of the Case. This lawsuit seeks to remedy a class-wide injury suffered by owners and breeders of Iowa-bred racehorses due to a miscalculation that cost them millions of dollars.

From 2012-2015, Prairie Meadows Racetrack and Casino, Inc. ("Prairie Meadows") underpaid "purse supplements" and "breeder's awards," which are bonus payments intended to reward owners and breeders, respectively, of Iowa-bred horses. Under its contractual obligations and Iowa law, Prairie Meadows was to pay 20% of its annual net purse money as purse supplements or breeder's awards for successful Iowa-bred thoroughbred horses and quarter horses. However, Prairie Meadows underpaid those bonus payments by greater than $2 million over a four-year period.

Plaintiff Robert Benda ("Benda") is an Iowa horse owner and breeder who was shortchanged thousands of dollars by Prairie

Meadows' miscalculation, and he brought this putative class action lawsuit to recover monies owed to him and others similarly situated.

Relevant Events of Prior Proceedings. On December 21, 2018, Benda filed a petition on behalf of himself and others similarly situated, alleging claims for unjust enrichment, breach of implied contract, breach of contract, violation of a statutory duty, and declaratory relief. Benda's petition was subsequently amended on October 22, 2019, and that amended petition was the operative pleading for purposes of class certification. *See* Appendix ("App.") App. v. 1, pp. 10-19.[1]

In October 2019, Iowa Horsemen's Benevolent and Protective Association ("IHBPA") intervened as a defendant.

In January 2020, IHBPA filed a motion for summary judgment on all claims, later joined by Prairie Meadows, which Benda resisted.

In May 2020, Benda filed a motion for class certification with an appendix of supporting materials and a motion to approve his fee

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[1] Benda's second amended petition was filed in February 2021, around the time of the class certification hearing, adding claims related to 2016-2018.

agreement. App. v. 1, pp. 480-694; App. v. 2, pp. 10-119. The class certification hearing was initially scheduled in June 2020 but then rescheduled to February 2021. In October 2020, Benda filed an amended brief and supplemental appendix in support of his motion for class certification. App. v. 2, pp. 152-239.

Meanwhile, in late May 2020, the Iowa Thoroughbred Owners and Breeders Association ("ITBOA") intervened as a defendant.

Prairie Meadows, IHBPA, and ITBOA resisted Benda's motion for class certification. No party resisted the motion to approve Benda's fee agreement.

On December 31, 2020, the district court granted in part and denied in part IHBPA's motion for summary judgment, dismissing Benda's claims for 1) unjust enrichment; 2) breach of implied contract; 3) the breach of statutory duty; and 4) the declaratory relief, but denying IHBPA's motion, and thus preserving Benda's claim, for breach of written contract. App. v. 3, pp. 53-63.

In January 2021, Benda submitted a combined reply in support of his motion for class certification and a supplemental appendix of materials. App. v. 3, pp. 64-245.

On February 10, 2021, the court conducted a virtual hearing with the parties and both intervenors on Benda's motion to certify a class. The parties stipulated that the records submitted in the parties' appendices could be received by the court. App. v. 4, pp. 112, 159, 215. Benda called three live witnesses at the hearing: (1) Sahan Totagamuwa, an expert witness (2) Maggi Moss, a successful horse owner and putative class member, and (3) Benda. App. v. 4, pp. 111, 113, 136, 164. IHBPA called only its executive director, Jon Moss (no relation to Maggi Moss). App. v. 4, p. 197. Neither ITBOA nor Prairie Meadows called any witnesses. App. v. 4, p. 215.

On April 29, 2021, the court issued an order denying Benda's motion for class certification. App. v. 4, pp. 32-57 (hereinafter "Order"). Benda timely appealed the order on May 13, 2021. App. v. 4, pp. 58-60. The district court proceedings are stayed pending the outcome of this appeal.

IV. STATEMENT OF THE FACTS

A. Horse Racing Terminology and Payments

This case requires familiarity with some horseracing terms. Prairie Meadows hosts thoroughbred and quarter horse races between

May and September each year, with the entire racing season referred to as a "meet." Over the course of a meet, Prairie Meadows is required to pay all qualifying horses statutorily calculated totals in "purses," "purse supplements," and "breeders awards." Within a meet, those amounts are paid out among individual horse races in accordance with "condition books" published by Prairie Meadows in advance of each race for horse owners to review and determine which races they want to enter. App. v. 1, pp. 571-627, 673; App. v. 2, pp. 16-19, 53-55; App. v. 4, pp. 149-50, 177-78.

Each race has a "purse" amount allocated to it, and that purse money is split among the horses that finish the race. A horse that does not perform well may earn only a small "participation purse," but a horse that does well may earn several thousand dollars in purse winnings. The participation purse and purse winnings, which go to the horse owners, are sometimes called a "base purse."

Additionally, there are statutorily required bonus payments for Iowa-bred horses that are calculated from the base purse amounts. Iowa-bred means horses that were "foaled," or born, in Iowa. "Iowa-foaled" and "Iowa-bred" are synonymous.

Both Iowa-bred and non-Iowa-bred horses race at Prairie Meadows. If an Iowa-bred horse performs well enough in a race, the owner of that horse is entitled to a "purse supplement." Historically, Prairie Meadows calculated purse supplements for each race as a percentage of the base purse, which was then published in the condition books.

Separately, a payment known as a "breeder's award" is due to the original breeder of a qualifying Iowa-bred horse, which is verified by the Iowa Department of Agriculture and Land Stewardship. Iowa law requires that breeders of first place finishing Iowa-bred horses receive a breeder's award equal to 12% of the sum of the base purse and purse supplement over the course of a meet. App. v. 1, pp. 667-68. Prairie Meadows also paid a 6% breeder's award for thoroughbreds when an Iowa-bred horse finished second, third, or fourth. App. v. 1, p. 667.

Purse supplements and breeder's awards are intended to reward and incentivize breeding of racehorses in Iowa. Consistent with that purpose, in 2011 the Iowa Legislature enacted a statute to codify a minimum amount that must be paid every year as either purse supplements or breeder's awards:

> No less than twenty percent of all net purse moneys distributed to each breed, as described in section 99D.7, subsection 5, paragraph "b", shall be designated for registered Iowa-bred foals in the form of breeder's awards or purse supplement awards to enhance and foster the growth of the horse breeding industry.

Iowa Code § 99D.22(1)(c).

A minimum aggregate amount of purse supplements and breeder's awards was also contractually guaranteed in Prairie Meadows' written agreements with the organizations that negotiated racing contracts for each meet on behalf of the owners of thoroughbreds and quarter horses that raced at Prairie Meadows. For instance, in 2010, Prairie Meadows' written agreement with IHBPA provided: "20% of the net purse amount allocated for Thoroughbred Horses each year shall be supplemented to Iowa bred horses placing in first through fourth positions, but capped at a maximum of $50,000 per race." App. v. 1, p. 557; *see also* App. v. 1, p. 566 (2015-2019 agreement with identical language to section 99D.22(1)(c)).

B. <u>Prairie Meadows' Miscalculation Of The Iowa-Bred Bonus Payments</u>

The heart of this lawsuit is Prairie Meadows' underpayment of these purse supplements and breeder's awards to Iowa horse owners

and breeders. The underpayment resulted from Prairie Meadows' miscalculation of "net purse moneys," a term used in Iowa Code § 99D.22(1)(c) and Prairie Meadows' written agreements.

Prairie Meadows' horseracing purses are developed from a legislated formula. The starting point is the prior year's net receipts, the "casino net win." After a deduction for Vision Iowa, the difference is multiplied by 11% to arrive at the <u>*minimum*</u> total annual purses for horse racing. Iowa Code § 99F.6(4)(a)(3) and (5). Starting in 2013, one-half of "advance deposit wagering" revenue was added. *See* Iowa Code § 99D.11(6)(c)(2). The resulting amount is then split among the breeds – 76% to thoroughbreds, 15.25% to quarter horses, and 8.75% to standardbreds. *See* Iowa Code § 99D.7(5)(b). Two percent (2%) of the allocations for thoroughbreds and quarter horses are deducted and distributed to IHBPA and the Iowa Quarter Horse Racing Association ("IQHRA"), respectively. *See* Iowa Code § 99D.7(5)(c)(2) & (3). The amount left after the 2% payments is the "net purse money" for each breed. Indeed, Prairie Meadows' internal emails summarized: "Net purse money = total purse as split between breed less the 2% administrative fee as calculated on that breed." App. v. 1, pp. 629, 680-

82; *see also* App. v. 1, pp. 627, 674-77. The statutory formula is as follows:

<u>Purse Supplement and Breeder's Award Formula</u>

	Prior Year Casino Net Win
–	Vision Iowa Payments
=	Calculated Net Win
*	Minimum Legislated Purse Percentage (11%)
+	Advanced Deposit Wagering (50%)
=	Total Purse Funds
*	Allocation for Each Breed (76% for Thoroughbreds, 15.25% for Quarter Horses)
=	Total Purse for Each Breed
–	Administration Fee (2%)
=	**Net Purse Money for Each Breed**
*	**Minimum Percentage for Purse Supplements & Breeder's Awards (20%)**
=	**Minimum Amount Due as Purse Supplement & Breeder's Awards for Each Breed**

App. v. 4, pp. 61, 114-18.

Iowa Code section 99D.22(1)(c) and Prairie Meadows' agreements unambiguously required Prairie Meadows to pay 20% of the net purse money for each breed in the form of purse supplements or breeder's awards. In other words, there was a minimum amount

that Prairie Meadows was required to pay in the form of one of the bonus payments for Iowa-bred horses. This requirement is sometimes called the "20% requirement." Importantly, the 20% requirement concerned *only* the purse supplements and breeder's awards. The base purses won by Iowa-bred horses do *not* count toward the 20% requirement. App. v. 2, pp. 49-50, 116-17. To satisfy the 20% requirement, Prairie Meadows should have simply multiplied the "net purse money" by 20% and then paid at least that amount as bonus payments for Iowa-bred horses every year.

Instead of following the plain language of its own agreements and section 99D.22(1)(c), Prairie Meadows *divided* the net purse money by *120%* to arrive at the amount it would pay as base purses, with the difference between the net purse money and the base purses designated for the bonus payments. Essentially, Prairie Meadows budgeted one-sixth (16.67%) of the net purse money for the bonus payments instead of the statutorily and contractually required one-fifth (20%). Prairie Meadows has sometimes referred to its historical one-sixth calculation as the "Rasmussen formula" or the "Rasmussen

rule," but regardless of the name, it did not fulfill the 20% requirement. See App. v. 4, pp. 72-73, 123-25.

C. IRGC Confirmation Of The 20% Requirement

In November 2014, ITBOA filed a Petition for Declaratory Order with the Iowa Racing and Gaming Commission" ("IRGC"), requesting a declaration to confirm that Prairie Meadows was miscalculating the amount owed as bonus payments for Iowa-bred horses. ITBOA's Petition alleged: "'Net purse moneys,' as used in section 99D.22 is clearly intended to refer to the gross purse moneys from pari-mutuel wagering, advance deposit wagering, and gambling revenues minus the distributions to the organizations referred to in section 99D.7(5)(c)(2) and (3)." App. v. 1, p. 519 (¶ 6). ITBOA requested that the IRGC issue a declaratory order affirming that definition. App. v. 1, p. 521.

ITBOA's aim was to prevent Prairie Meadows from depriving its members from receiving the full benefit of the Iowa-bred bonus payments, i.e., more money for Iowa-bred owners and breeders. App. v. 1, pp. 522-23; App. v. 2, pp. 194-95. ITBOA's counsel calculated the impact of its requested declaratory relief would be about $460,000 for thoroughbreds in 2014 alone. App. v. 2, pp. 189-90. Leading up to the

petition to the IRGC, ITBOA received questions from its members and board members as to why Prairie Meadows was not paying the "true 20 percent." App. v. 2, pp. 198-200. However, ITBOA never demanded that Prairie Meadows correct the underpayment of breeder's awards and purse supplements retrospectively. App. v. 2, pp. 191-92.

IHBPA's executive director, Jon Moss, calculated that the requested relief would shift about $466,000 annually to the Iowa-bred bonus payments, which Moss assumed would come from the base purses paid to all horse owners. App. v. 2, pp. 21, 33-34. IHBPA, which also counts as its members the owners of non-Iowa bred horses, intervened against ITBOA's petition and stated: "If the ITBOA's requested relief is granted, the IHBPA and IHBPA members will receive a reduced amount from the purse moneys." App. v. 1, pp. 528, 533. IHBPA opposed any reduction in the base purses, even if it meant more money for owners of Iowa-bred horses (who are also IHBPA members).

The IRGC ultimately agreed with ITBOA, concluding that 20% of net purse money means 20% of the amount allocated for each breed

less the 2% fees paid to the applicable organization. The IRGC announced its decision at the public meeting in January 2015 and then issued a Declaratory Order. App. v. 1, pp. 551, 658-64. Prairie Meadows claims that it started following the IRGC order for the 2016 meets, although shortfalls continued in 2016-2018. App. v. 4, pp. 62-67, 121-23.

D. Benda's Lawsuit

Plaintiff Robert Benda ("Benda") is a retired military veteran who started in the Iowa Bred Program in 2006, and has continuously owned, raced, or bred Iowa-bred horses since then. App. v. 4, pp. 164-70. Benda's horses have been successful, earning purse supplements and/or breeder's awards from 2006 to 2021. App. v. 2, p. 85; App. v. 3, p. 244; App. v. 4, pp. 168-72, 175-76.

In December 2018, Benda filed this lawsuit on behalf of himself and others similarly situated to remedy the underpayment of purse supplements and breeder's awards by Prairie Meadows from 2012-2015. In his third cause of action, which survived summary judgment, Benda seeks to enforce Prairie Meadows' written agreements with IHBPA. App. v. 1, pp. 32-42. Specifically, Prairie Meadows' written

agreement covering the 2010-2014 racing seasons contained the following provision:

> Purses to Be Paid To Thoroughbreds…. 20% of the net purse amount allocated for Thoroughbred Horses each year shall be supplemented to Iowa bred horses placing in first through fourth positions, but capped at a maximum of $50,000 per race.

App. v. 1, p. 557 (¶ 4)); *see also* App. v. 1, p. 566 (¶ 4). That provision addressed Prairie Meadows' obligation to make bonus payments for Iowa-bred horses that raced and qualified for the payments. App. v. 2, pp. 12-14.[2] Prairie Meadows extended its agreement with IHBPA for the 2015-2019 race seasons, and that contract contained language that mirrors the 20% requirement in Iowa Code § 99D.22(1)(c). IHBPA and Prairie Meadows agree that the contractual 20% requirement was intended to benefit owners of all horses that raced at Prairie Meadows, including Benda. App. v. 2, pp. 15, 52-53. Benda's claim is that he was injured along with other owners and breeders of Iowa-bred horses by

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[2] IHBPA claims that the 20% requirement in the agreement covering the 2010-2014 race seasons was meant to embody the Rasmussen Rule. The plain language of the agreement refutes that claim, however, and even if IHBPA's position were correct, the record is uncontroverted that Prairie Meadows also failed to comply with the Rasmussen Rule. *See* App. v. 4, pp. 125-26, 160-63.

Prairie Meadows' failure to fulfill the contractual 20% requirement. App. v. 1, pp. 32-41; App. v. 4, pp. 185, 195.

To pursue these claims on behalf of himself and others similarly situated, Benda has engaged two law firms, The Weinhardt Law Firm and The Smith Law Firm, to prosecute the claims. App. v. 4, pp. 185-86. Benda requested that the district court approve the fee agreement between him and his counsel pursuant to Iowa Rule of Civil Procedure 1.276. App. v. 2, pp. 120-27. That motion was unresisted, although no ruling has been issued.

E. <u>The Proposed Class</u>

Benda's proposed class is: "All horse breeders or owners who were eligible to receive breeder's awards or purse supplement awards from Prairie Meadows for one or more Iowa-foaled horses (as defined and limited by Iowa Code 99D.2) from 2012-2015." App. v. 1, p. 40 (¶ 47) (the "Proposed Class" and "Proposed Class Members").

Prairie Meadows maintains voluminous reports that identify the owners and breeders of Iowa-bred horses who received purse supplements and breeder's awards from 2012-2015. App. v. 1, pp. 180-428. According to those records, the Proposed Class includes 508 owners who received purse supplements and 313 breeders who

received breeder's awards from 2012-2015. Some of those owners or breeders were multiple people (e.g., two people jointly owning a horse), and there is overlap between the owners and breeders in the Proposed Class. After adjusting for that overlap, the Proposed Class is an estimated **847** individuals altogether.

F. Damages to the Proposed Class and Benda

Benda's counsel engaged a forensic accountant, Sahan Totagamuwa, to calculate the precise damages suffered by the Proposed Class and Benda. Totagamuwa's report is part of the record. App. v. 2, pp. 87-110. Totagamuwa reviewed Prairie Meadows' business records as to the total purse calculations each year and the actual payments of purse supplements and breeder's awards. App. v. 2, pp. 92-93; App. v. 4, pp. 114, 119-22, 158. For 2012-2015, the total underpayment was $1,836,117 for Iowa-bred thoroughbreds and $210,012 for Iowa-bred quarter horses. App. v. 2, p. 100. That is the difference between what Prairie Meadows actually paid in purse supplements and breeder's awards each year and what it would have paid if it had complied with the 20% requirement. App. v. 4, pp. 62-67, 119-22, 162. Said another way, Prairie Meadows underpaid the

bonus payments owed to the Proposed Class Members by ***$2,046,129*** during the class period. *Id.*

Totagamuwa also calculated Benda's damages specifically. Totagamuwa assumed that all owners and breeders of Iowa-bred horses would share in the underpayment damages on a pro rata basis – that is, each purse supplement and breeder's award would increase by the same percentage. *See* App. v. 2, pp. 94-96, 103-04; App. v. 4, pp. 126-28. For example, if the underpayment was remedied, then every purse supplement and breeder's award in 2012 would have been 14.67% greater. In 2015, the proportional increase was 29.52%. The total underpayment to Benda from 2012-2015 was $4,953.32. App. v. 4, pp. 62-67, 126-28, 133-34, 173.

Next, Totagamuwa calculated the amount that Benda's base purse winnings might have decreased *if* Prairie Meadows had maintained the *minimum* legislated purse percentage (11%) for its total annual purses, such that an increase in Iowa-bred bonus payments would have caused a dollar-for-dollar decrease in the base purses.

App. v. 4, pp. 128-34.[3] The percentage decrease in base purses ranged from 3.08% to 5.42% for thoroughbreds. Relying on Prairie Meadows' records for all base purses, purse supplements, and breeder's awards paid to Benda from 2012-2015, Totagamuwa calculated that Benda's minimum damages were $2,001.83, excluding interest. App. v. 2, pp. 94-97; App. v. 4, pp. 133-34, 173. That is, Benda was underpaid about $2,000 in bonus payments even if we accept the challenged proposition that his base purses would have been less. App. v. 4, pp. 62-67, 128-34, 173.

G. Reactions To Benda's Lawsuit

Within two months of Benda filing this action, Prairie Meadows called a meeting with IHBPA and ITBOA to discuss the lawsuit. Present at the meeting were Prairie Meadows' President and CEO,

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[3] Benda disputes whether this "offset" is appropriate for purposes of class recovery. Nevertheless, this calculation shows that even if Prairie Meadows maintained only its *minimum* statutory obligations to pay purse monies, the Proposed Class Members still suffered significant damages. Because the legislated purse percentage (11%) is a *minimum*, however, Prairie Meadows could lawfully be ordered to pay the Proposed Class Members' damages from its casino net win such that no offset would exist. *See* App. v. 1, pp. 682-83, 686-88; App. v. 4, pp. 129-30.

Chief Operating Officer, Vice President of Racing, Vice President of Finance, and outside legal counsel. App. v. 1, pp. 637; App. v. 2, pp. 28-29. No one could remember another meeting where IHBPA or ITBOA met with all those officers of Prairie Meadows. App. v. 1, pp. 691-93; App. v. 2, p. 24.

During the meeting Jon Moss shared his calculation of the amount at stake in Benda's lawsuit. *See* App. v. 1, 684-85, 692-94; App. v. 2, pp. 39-44. He compared how Prairie Meadows calculated the total money available for bonus payments from 2012-2015 and how the bonus payments would have been calculated if Prairie Meadows had complied with the 20% requirement, and his calculation showed an underpayment of $1,818,261 for thoroughbreds. *See* App. v. 1, p. 554; App. v. 2, p. 58. That calculation was *less than one percent different* from Totagamuwa's calculation for thoroughbreds. Moss did not calculate the difference for quarter horses.

Prairie Meadows told ITBOA to "produce a letter," App. v. 2, p. 27, which ITBOA did the very next day. *See* App. v. 1, p. 641. ITBOA's executive director, Brandi Jo Fett, signed the letter without any board members reviewing, without surveying or consulting with any Iowa-

bred owners or breeders, and without consulting with an attorney or even reading Benda's lawsuit. App. v. 2, pp. 212-14, 219-20.[4]

In mid-2019, Prairie Meadows gathered virtually identical letters from IHBPA and IQHRA while those organizations were in the middle of contract negotiations with Prairie Meadows. *See* App. v. 1, pp. 555, 642-46; App. v. 2, pp. 68-79. Prairie Meadows even obtained a letter about this lawsuit from the organization that represents standardbred horse racing in Iowa, even though this lawsuit has nothing to do with standardbred horses. App. v. 1, pp. 643-47; App. v. 2, pp. 80-82.

When challenged for any evidence that the horse organizations could make an informed decision about the merits of this case, Prairie Meadows' corporate representatives testified they were not aware of any evidence, just "[a] hundred percent speculation," App. v. 2, pp. 83-84, admitting that "[n]o one has any evidence." App. v. 2, p. 30.

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4 At hearing, ITBOA seemed to abandon the arguments made in Fett's letter, which were thoroughly addressed in the district court briefing. *See* App. v. 2, pp. 166-68. Given that the district court did not rely on the points made in Fett's letter, it is unnecessary to discuss the letter more here.

There was one common sense proposition that everyone agreed on: Horse owners and breeders desire more money and will complain if they realize they are underpaid. App. v. 1, pp. 678-79; App. v. 2, pp. 57, 118-19.

H. Intervenors' Positions Relating to Class Certification

1. ITBOA

As to this lawsuit, ITBOA acted through its executive director (Fett) and its twelve-person board of directors. ITBOA's board never consulted or surveyed its members about this lawsuit and could not point to any statements or admissions by its members that are contrary to the allegations in Benda's petition. App. v. 3, p. 187-88, 224. Nor did ITBOA's Board solicit input from its members, or even advise its membership of the claims in this action, through its regular newsletter. App. v. 3, pp. 151-52. ITBOA members never voted on the claims in this lawsuit. App. v. 3, pp. 148-49. Nor was this lawsuit discussed at ITBOA's annual meeting or at a special meeting. App. v. 3, pp. 149-51. No ITBOA member has stated that they would exclude themselves from the class if it were certified. App. v. 3, p. 188.

ITBOA's executive director feared that if Prairie Meadows is required to correct its miscalculation of the 20% requirement, the

payment will come out of the purse fund for future years. App. v. 2, pp. 201-02. ITBOA believed it will hurt the "industry" to "go back" for the underpayment from 2012-2015 because the money might come out of the purses for future years. App. v. 2, pp. 203-04. However, the assumption that Prairie Meadows would use future purse money to pay for a judgment in this lawsuit was pure speculation:

> Q. Well, you earlier said that you assumed that they [Prairie Meadows] would take any money that went to address this back pay as you are going back into 2012 through 2015, that that money could come out of future purses. If I understood you right.
>
> A. Yeah, we assume that. We assume it would have to come out of purses. Because the code said purses.
>
> Q. Well, is that just speculation on your part?
>
> A. ***Yes. Yes. That's just speculation. Totally***.

App. v. 2, p. 207 (emphasis added).

In May 2020, ITBOA's president, Steve Renftle, drafted a Resolution that was read to ITBOA's Board and approved orally. App. v. 3, pp. 172-73, 216. The Resolution began by claiming that all 400 of ITBOA's members "are financially savvy and sophisticated businesspersons, knowledgeable in the horse breeding and racing industry and very familiar with racing contracts and the formulas used

to govern purses and payouts." App. v. 2, pp. 248-49. When asked about this statement, however, Renftle said he "would like to think" this statement is true but he does not know about the sophistication of any ITBOA members as businesspersons. App. v. 3, pp. 175-76. When asked how many members are sophisticated or knowledgeable, he replied: "That would be a guess. I do not know." He does not know what level of knowledge any ITBOA member has about racing contracts. App. v. 3, p. 177.

Renftle's Resolution also stated: "Benda's requested relief would damage Iowa's racing industry, and would be contrary to the interests of ITBOA's members." App. v. 2, p. 249. Renftle gave several contradictory explanations for this statement, but when pressed on each, he admitted he was speculating:

- Renftle first said: "If Benda wins this, somebody is going to have to pay that money back. It's going to come out of purses, we are worried." App. v. 3, pp. 188-89. This concern was not based on any statement, information, or analysis. App. v. 3, p. 191. In his words, however, this was "***[j]ust speculation***." *Id.* (emphasis added).

- Renftle also claimed: "[W]e feel after the attorneys take all the money, there won't be any left." App. v. 3, p. 190. Implicitly, this comment admits that the class members would like to receive more money due to this class action – a proposition that no one has disputed. *See also* App. v. 3, pp. 178-79. But when asked why Renftle was concerned about attorney fees, he said: "I don't know. ***Just a speculation on my part***." App. v. 3, p. 190 (emphasis added).
- Renftle claimed he was "not really" concerned about horse owners being required to pay back money, App. v. 3, pp. 190-91, but then he said there is a concern "[i]f they went back and tried to get purse money back from people that were overpaid according to the lawsuit." App. v. 3, pp. 192-93. When asked the basis for that concern, Renftle said "the lawsuit." And when pressed to explain, he said: "I just don't know how it will shake out in court." *Id.* This concern, he admitted, was "***similar speculation***" as the other concerns. *Id.* (emphasis added).

The extent and significance of Renftle's speculation was obvious in the following exchange:

> Q. Okay. But the concerns you raised you said were speculation. I'm asking you to – if your speculation is wrong about how this – what effect this lawsuit would have, do you still believe the outcome of this lawsuit would damage the horse racing industry?
>
> A. I guess time would tell.
>
> Q. So what does that mean?
>
> A. It means I don't know.

App. v. 3, p. 197.

2. IHBPA

For its opposition to certification, IHBPA relied entirely on statements or actions from just a few of its members. IHBPA has not attempted to survey or consult its members who are part of the Proposed Class concerning this lawsuit. App. v. 3, pp. 125, 129, 131-32. IHBPA could not point to any statements or admissions by members of the Proposed Class that contradict Benda's allegations in the Petition. App. v. 3, pp. 219-20.

IHBPA presented three affidavits in the district court record. First, its executive director, Moss, who is not a Proposed Class

Member, asserted that eight of IHBPA's board members are in the Proposed Class.

Second, a board member, Allen Poindexter, signed an affidavit stating in part that this lawsuit is not "good for the horseracing industry in Iowa." App. v. 2, p. 364. None of IHBPA's directors, including Poindexter, stated that they would exclude themselves from the class if it were certified. Also, there is no evidence in this record as to how each of those eight directors has voted, or if they have voted, on any matter involving this lawsuit.

Third, IHBPA offered an affidavit from Leroy Gessmann, a former president of IHBPA during the time that it opposed ITBOA's petition to the IRGC. App. v. 3, pp. 117-18. Gessmann stated that he disagrees with Benda's written contract claim, but Gessmann's affidavit did not say that he would exclude himself from this lawsuit if a class is certified.

IHBPA's resistance to class certification, like ITBOA's resistance, derived from a speculative fear about how Prairie Meadows will pay for an award of damages. IHBPA was afraid that Prairie Meadows would

force horse owners to pay back purse money that they received from 2012-2015. App. v. 3, pp. 119-24, 130, 207.

Days before the class certification hearing, Moss said that IHBPA was afraid of the "unknown" if a class was certified. App. v. 4, pp. 144-45. At the hearing, Moss spoke repeatedly about his concern about how Prairie Meadows would come up with what he acknowledged was a $1.8 million shortfall:

> So how would this be fair to Prairie Meadows to now come up with this, we estimate, $1.8 million difference for thoroughbreds? And the question then becomes: If it's not fair, then how are they going to come up with it? Where does that money come from?
>
> The money doesn't just -- it's not been set aside. Prairie Meadows is not the recipient of this money.

App. v. 4, p. 203.

> So what happens if they have to come up with this 1.8 million? Well, it creates uncertainty. You don't create a stable industry by having this money floating out there that Prairie Meadows all of a sudden has to come up with and pay out of pocket that they weren't intending to do.

App. v. 4, p. 205. That perceived uncertainty drove IHBPA to intervene in the case. App. v. 4, p. 214.

V. ARGUMENT

The district court's denial of class certification rested on multiple errors that individually and cumulatively were an abuse of discretion.

The district court ignored common questions of law and fact among the class. The court focused instead on individual questions in the class that were premised on a hotly contested and legally dubious offset defense relating to the calculation of class members' damages. The district court's analysis violated binding precedent as to the commonality and predominance standards. Further, by accepting the offset defense, the court contravened Iowa law concerning Prairie Meadows' minimum purse calculation and violated the well-established rule that a plaintiff's allegations must be accepted as true in deciding a motion for class certification. The district court improperly strayed into the merits of the offset defense, and in doing so it misunderstood Iowa law, and then relied on that defense to find that individual issues would predominate over common ones.

Further, the district court erred by relying on the positions taken by ITBOA and IHBPA to find that there is "no common interest" among the class and to conclude that Benda would not be an adequate representative. The court (1) incorrectly relied on purely and admittedly speculative fears about how Prairie Meadows may respond to a judgment in this case, (2) conflated the organizations, acting

through a small number of people, with the Proposed Class of nearly 850 people, (3) mistakenly treated the conflict about whether to pursue a remedy in this case as a "fundamental" one that prevents certification, (4) ignored Prairie Meadows' role in soliciting the positions from the organizations, and (5) ignored and failed to address the well-established safeguards meant to protect antagonistic class members if certification was granted.

The district court then parlayed its erroneous views and assumptions about intra-class opposition into a finding that Benda is not an adequate representative, and in doing so, the court misapplied Iowa law and ignored the prerequisites for adequacy under the Iowa rules.

Infected with legal error, misapplication of the class certification rules, and unsupported findings, the district court's ruling denying class certification is fatally flawed. This Court should reverse that ruling and remand for an order granting Benda's motion.

A. <u>Error Preservation</u>

Benda preserved error by moving for class certification and by raising these issues and arguments to the district court on several

occasions. App. v. 1, 480-513; App. v. 2, pp. 152-84; App. v. 3, pp. 64-105.

B. <u>Standard of Review</u>

This court reviews a denial of a motion for class certification for abuse of discretion. *Vos v. Farm Bureau Life Ins. Co.*, 667 N.W.2d 36, 44 (Iowa 2003). An abuse of discretion exists where "discretion was exercised on grounds clearly untenable or, to an extent, clearly unreasonable." *Martin v. Amana Refrigeration, Inc.*, 435 N.W.2d 364, 367 (Iowa 1989). A ground for decision is clearly untenable if it is not supported by substantial evidence or if it is based on an erroneous application of law. *Graber v. City of Ankeny*, 616 N.W.2d 633, 638 (Iowa 2000). Thus, misapplication of the law is always an abuse of discretion. *Everly v. Knoxville Cmty. Sch. Dist.*, 774 N.W.2d 488, 492 (Iowa 2009). Specifically, it is an abuse of discretion for a district court to apply the class certification rules in a manner that violates "the remedial nature of our class rules and the fact that we are to 'liberally construe' the rules in favor of the maintenance of class actions." *Limmer v. City of Council Bluffs*, 2016 WL 3556392, at *3 (Iowa Ct. App. June 29, 2016) (reversing denial of class certification as an abuse

of discretion); *Staley v. Barkalow*, 2013 WL 2368825, at *13 (Iowa Ct. App. May 30, 2013) (same).

C. <u>Iowa's Class Action Rules</u>

For a class action to be certified in Iowa, the class must be so numerous or so constituted that joinder of all members is impracticable, and there must be a question of law or fact common to the class. Iowa R. Civ. P. 1.261. Once these two requirements are met, the court next considers whether the representative parties will fairly and adequately protect the interests of the class, Iowa R. Civ. P. 1.262(2), and whether a class action should be permitted for the fair and efficient adjudication of the controversy, Iowa R. Civ. P. 1.263(1).

In determining whether the class action would be a fair and efficient adjudication of the controversy, the Court weighs the thirteen factors enumerated in Iowa R. Civ. P. 1.263(1), including whether a joint or common interest exists among the class members and whether common questions of law or fact predominate over any questions affecting only individual members.

The basic purpose for class actions is to provide small claimants an economically viable vehicle for redress in court. *Lucas v. Pioneer, Inc.*,256 N.W.2d 167, 175 (Iowa 1977). Thus, our class action rules are

to be construed liberally and courts should favor maintenance of class actions. *Id. at* 172.

The burden of establishing that a proposed class of plaintiffs meets these prerequisites rests with the proponent. *Stone v. Pirelli Armstrong Tire Corp.*, 497 N.W.2d 843, 846 (Iowa 1993). Reflecting Iowa's liberal standard, "[e]xcept where the facts underlying the class are merely speculative . . . the proponent's burden is light." *City of Dubuque v. Iowa Trust*, 519 N.W.2d 786, 791 (Iowa 1994) (citing 2 Herbert B. Newberg & Alba Conte, Newberg on Class Actions § 720 at 70 (3d ed. 1992)).

When deciding whether to certify a class, "the trial court should accept allegations in the complaint as true." *Comes v. Microsoft Corp.*, 696 N.W.2d 318, 324 (Iowa 2005) (citation omitted). The district court "need not inquire further into the facts supporting [a] plaintiff['s] position." *Id.* (quoting *City of Dubuque*, 519 N.W.2d at 791). This principle reflects the early stage of litigation at which class certification is decided and the court's ability to decertify an improvidently certified class, *see Comes*, 696 N.W.2d at 324, as well as Iowa's policy in favor

of certification, *see Freeman v. Grain Processing Corp.*, 895 N.W.2d 105, 114 (Iowa 2017) (citation omitted).

"The factors in rule 1.263(1) center on two broad considerations: achieving judicial economy by **encouraging** class litigation while preserving, as much as possible, the rights of litigants — both those presently in court and those who are only potential litigants." *Luttenegger v. Conseco Fin. Serv. Corp.*, 671 N.W.2d 425, 437 (Iowa 2003) (internal quotations omitted; emphasis added). Finally, to determine whether the representative party will fairly and adequately protect the interests of the class, the Court must find all three prerequisites of Iowa. R. Civ. P. 1.263(2).

In sum, Iowa law encourages the use of class actions for cases just such as this, to prevent the need for multiple plaintiffs to "vindicate their rights in separate lawsuits." *Comes*, 696 N.W.2d at 320; *Lucas*, 256 N.W.2d at 172. Thus, under Iowa's liberal standard for class certification, the district court should have been looking for a way to certify the class, not for a way to reject certification. The latter was the court's approach, resulting in the errors discussed below.

D. The Court's Cumulative Errors Violated Iowa's Class Certification Rules And Reversed Iowa's Liberal Class Action Standard.

1. The District Court Erred In Determining There Was Insufficient Commonality Among The Class Claims.

In determining that the Proposed Class lacked "'common complaints that can be presented . . . in the unified proceeding,'" the district court ignored the class-wide nature of the statutory and contractual formulas that Prairie Meadows undisputedly underpaid. App. v. 4, p. 49 (Order at 18 (quoting *Luttenegger*, 671 N.W.2d at 437)). The court also ignored this basic fact in concluding there are "no common questions of law or fact that predominate over any questions affecting only individual members of the class." App. v. 4, p. 55 (Order at 24). This issue was "one of primary focus" for the district court. App. v. 4, p. 42 (Order at 11). In reaching these conclusions, the district court failed to examine the applicable legal rules and unambiguously violated them in this case.

Commonality, or the existence of "a question of law or fact common to the case," is one of the prerequisites in Rule 1.262 for a class action. Commonality only requires a "significant aspect" that "can be resolved for all members of the class in a single adjudication,"

and there is no need for "complete identity of facts relating to all class members." *Luttenegger*, 671 N.W.2d at 437 (citation omitted). For commonality to exist, "'claims must depend on a common contention' of 'such a nature that it is capable of classwide resolution—which means that the determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke.' To satisfy the commonality requirement, '[e]ven a single [common] question' will do.'" *Freeman*, 895 N.W.2d at 116-17.

Predominance is closely related to commonality. One of the thirteen factors the court must subsequently consider is whether such common issues *predominate* over individual issues. This Court defined the predominance requirement in *Luttenegger*:

> as one authority has noted, the test for predominance is a pragmatic one . . . When common questions represent a significant aspect of the case and they can be resolved for all members of the class in a single adjudication, there is a clear justification for handling the dispute on a representative rather than an individual basis.

671 N.W.2d at 437 (citing 7A Wright, Miller and Kane, Federal Practice and Procedure § 1778, at 528-33 (1986)).

At least three common questions of law and fact exist here – and the district court did not acknowledge any of them. ***First***, each class

member's claim depends on determinations of what Prairie Meadows' contracts required and whether Prairie Meadows complied. These are "'classic issues that are considered common to a class.'" *Comes*, 696 N.W.2d at 323 (quoting *Luttenegger*, 671 N.W.2d at 440 (cleaned up)); *accord Martin*, 435 N.W.2d at 368 (holding that breach of implied warranty constituted common question); *Vignaroli*, 360 N.W.2d at 744–45 (finding that common claims arising from written provisions in defendant's employment manual predominated).

Second, the resolution of each class member's claim requires that Prairie Meadows' miscalculation harmed the class member. And when "[a]ll class members allegedly suffered a common injury," raising questions of common conduct and causation, a common question exists even when the "nature and amount of damages" differs. *Freeman*, 895 N.W.2d at 117. Indeed, the Proposed Class suffered a common injury because Prairie Meadows' underpayment was to the group as a whole, which reinforces why class treatment is appropriate.

Third, damages for the class action would depend on a common question: the straightforward application of the appropriate formula. *See* App. v. 4, p. 135 (Totagamuwa's model is applicable to all Proposed

Class Members). "[I]n cases where the fact of injury and damage breaks down in what may be characterized as 'virtually a mechanical task,' 'capable of mathematical or formula calculation,' the existence of individualized claims for damages . . . offer[s] no barrier." *Windham v. American Brands, Inc.*, 565 F.2d 59, 68 (4th Cir. 1977) (collecting cases). Iowa law holds the same. *Vignaroli*, 360 N.W.2d at 745. Common questions from damages formulas are so routine that the Supreme Court has issued specific guidelines – which Benda clearly meets – for their demonstration. *See Comcast Corp. v. Behrend*, 569 U.S. 27, 35 (2013).

The district court did not mention or consider any of these common questions of law or fact. Rather, the district court concluded that a certified class would require "individual analysis as to whether the IRGC interpretation of the formula for awards and purses would benefit or be a detriment to each and every horse owner and breeder in Iowa." App. v. 4, p. 49 (Order at 18). As a matter of law, variation in individual damage calculations is an insufficient reason to deny class certification. *Vignaroli*, 360 N.W.2d at 745 ("[T]the fact that a potential class action involves individual damage questions does not

preclude class action certification when issues of liability are common to the class."); *see also City of Dubuque*, 519 N.W.2d at 792 (same); *Limmer*, 2016 WL 3556392, at *3 ("Our supreme court has rejected the notion that the mere fact that there may be damage issues unique to different class members precludes class certification.").

Indeed, variation in the individual damage claims is the point of using a damages formula in a class action. While the formula will give different results for different members, the process is essentially mechanical. As such, formulas allow the court to "resolve an issue that is central to the validity of each one of the claims in one stroke." *Freeman*, 895 N.W.2d at 117 (quoting *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011)). The mere possibility that not every Proposed Class Member would receive damages, or that their damages awards would vary, does not mean that individual issues would predominate.[5]

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[5] Federal authorities support this point. *E.g.*, *Eddleman v. Jefferson Cty., Ky.*, 96 F.3d 1448 (table), 1996 WL 495013, at *6 (6th Cir. 1996) ("Varying damage levels rarely prohibit a class action if the class members' claims possess factual and legal commonality."); Rubenstein, 2 Newberg on Class Actions § 4:54 (5th ed.)("[C]ourts in every circuit have held that the 23(b)(3) predominance requirement is

The district court found not only that damage awards would vary, but also that some class members might be "injured" by the relief Benda seeks in this case. App. v. 4, pp. 49-50 (Order at 18-19). The court further stated: "Each owner and breeder has unique interests that would not necessarily be satisfied by whatever relief, if any, they may receive from a successful lawsuit. Indeed, it may even cause some of the purported class members to actually lose money payable to other members of the same class through overpayment of awards and purses if such is found to be the case." App. v. 4, p. 49 (Order at 18); *see also id.* at App. v. 4, p. 54 (Order at 23: "Some members of class may receive additional funds. Some may lose funds mistakenly paid out.").

However, there is no plausible and legal way that any of the Proposed Class Members could be liable for payments received. Neither Prairie Meadows, the intervenors, nor the district court has explained how this could happen, let alone petitioned the Court for such relief. Benda is seeking only to correct the underpayment. He has

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satisfied despite the need to make individualized damage determinations and a recent dissenting decision of four Supreme Court Justices characterized the point as 'well nigh universal.'" (citation omitted)).

not made a claim to collect from his fellow class members. *Id.*; *see also* App. v. 4, p. 196. Moreover, Prairie Meadows has not asserted any claims to recoup money from allegedly overpaid horse owners; nor has Prairie Meadows even hinted at a plausible legal basis for a claim that it could make. *See* App. v. 4, p. 213. The idea that this lawsuit would injure any Proposed Class Member is a legal fantasy. By relying on an erroneous legal foundation, the district court abused its discretion.

2. *The Court Impermissibly And Incorrectly Assumed The Merits Of A Defense To Benda's Lawsuit.*

By accepting the idea that some class members could be "injured" if the class is certified, App. v. 4, pp. 49-50 (Order at 18-19), the district court accepted this legal fantasy as true, impermissibly decided the merits of this case, and even worse, it misapplied Iowa law. One of Prairie Meadows' defenses in this case is that the underpayments of purse supplements and breeder's awards for Iowa-bred horses should be offset by alleged overpayments of base purses to all horses. Iowa law does not support that offset, however, because the amount that Prairie Meadows pays in purses is a _minimum_ legislated percentage. *See* Iowa Code § 99F.6(4)(a)(3) ("no less than eleven

percent . . ."); *see also* App. v. 4, pp. 129-30, 132-33. Accordingly, if Prairie Meadows remedies the underpayment of purse supplements and breeder's awards, it would not be required to reduce its base purse payments. The overpayments and underpayments are not zero-sum because the total payouts could exceed the statutory *minimum*. It was an abuse of discretion for the district court to rely on grounds that implicitly, and even explicitly, contradicted Iowa law.

In addition to misunderstanding Iowa law as to Prairie Meadows' minimum purse calculation, the district court independently abused its discretion by wading into Prairie Meadows' offset defense. Iowa's class action rules do not permit an inquiry into the merits of class action claims for relief. *Vos*, 667 N.W.2d at 36. The district court must accept the plaintiff's allegations as true. *Comes*, 696 N.W.2d at 324. Only speculative facts are to be disregarded. *Id.* "The appropriate inquiry is not the strength of each class member's personal claim, but rather, whether they, as a class, have common complaints." *Martin*, 435 N.W.2d at 367.

Here, the district court turned the class action rules upside down. It accepted an unproven and heavily disputed *defense* as true, and then

relied on that defense as a ground for denying class certification. For the class certification motion, Iowa case law required the district court to resolve the defenses *in Benda's favor* at this stage. The district court impermissibly strayed into the merits of the alleged offset defense and accepted the defense as true, and that was an abuse of discretion. *See Edson v. Chambers*, 519 N.W.2d 832, 834 (Iowa Ct. App. 1994) (listing "fail[ure] to follow established legal rules" as an abuse of discretion).

3. *The District Court Erred In Finding A Fundamental Conflict Of Interest Based On Speculative Fears That Are Contrary To Iowa Law.*

The district court further erred when it concluded "there is no common interest to support a class action." App. v. 4, p. 49 (Order at 18). To reach that conclusion, the district court accepted *as true* the intervenors' fears that a certified class would somehow "adversely impact the members of the purported class by causing a reduction in future awards and purses." App. v. 4, p. 49 (Order at 18); *see also* App. v. 4, p. 37 (Order at 6: "If Prairie Meadows had to pay out the sums now sought by Benda and his purported class, a substantial sum as calculated by Benda, the funds would have to come from moneys that would or could be used to pay out future purses and awards to

members of the ITBOA and the IHBPA."); App. v. 4, p. 54 (Order at 23: "Future awards and purses could be significantly reduced if Prairie Meadows would be required to pay out over $2,000,000 in addition to the legal fees and costs incurred by this class action.").

Multiple witnesses have admitted that the fear about deductions from future purses is complete speculation – and for good reason. *See* Section IV.H.1, *supra*. Iowa law clearly forbids Prairie Meadows from reducing *future* horseracing purses to pay for a judgment. The annual minimum purse allocation at Prairie Meadows is tied to the prior year's net receipts. *See* Iowa Code § 99F.6(4)(a)(3). Prairie Meadows does not have discretion in applying the statutory formulas (unless, of course, it can never be held to account for its misapplication of the formulas, as Benda seeks to do here), and there is no deduction in the purse formula for a judgment related to an underpayment in prior years. No one has even speculated as to how Prairie Meadows could reduce future purse awards and still comply with Iowa law. Iowa law plainly forbids the alarmist theory that the district court accepted as a real possibility, if not a certainty. It is no wonder that every witness,

when pressed, has admitted that this fear about future purses is wholly speculative. It completely lacks any factual or legal substance.

The district court correctly noted that "unduly speculative" conflicts are "generally not fundamental, App. v. 4, p. 47 (Order at 16), citing a Seventh Circuit case. That statement of law is not controversial. Indeed, in *Kragnes v. City of Des Moines*, 810 N.W.2d 492 (Iowa 2012), this Court provided especially helpful analysis of speculative concerns from putative class members. There, a single representative plaintiff filed a class action challenging franchise fees that the City of Des Moines assessed for utility services. The City opposed class certification arguing that there was a fundamental conflict of interest between the class representative and other members of the class who benefit from the City's franchise fees and who would suffer economically as a result of a judgment against the City. Retrospectively, the City argued that it would have raised property taxes if it had not imposed the franchise fees, and therefore, some class members benefited by avoiding higher property taxes. *Id.* at 498. Prospectively, the City argued that it would pay for the franchise fee refund (roughly $40 million) by increasing property taxes, and

therefore, class members who are property owners would tend to oppose the lawsuit. *Id.*

The supposed conflict within the class in *Kragnes* did not defeat certification because it was "substantially based on speculation." *Id.* at 501. The City's retrospective contention that it would have increased property taxes if it had not imposed the illegal franchise fees was "infused with speculation" about the fiscal decisions by the City and the impact of those decisions on property owners. *Id.* This Court "decline[d] to engage in [such] retrospective speculation." *Id.* Furthermore, the prospective concern about property tax increases to pay for the franchise fee refund was also "rife with speculation – beginning with speculation about what City leaders would have done in the past and ending with predictions about what City leaders will do in the future. And in between is speculation about the effect of hypothetical decisions on property owners." *Id.* at 502. This Court affirmed the district court's decision to overrule such speculative concerns and certify the class.[6]

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[6] Federal courts similarly do not tolerate allegations of intra-class conflict based on speculative predictions. *See, e.g.*, *Ward v. Dixie Nat'l*

The intervenors' fears in this case about possible liability of horse owners who benefited from the miscalculation and about future reductions in purses are analogous to the speculative fears that the Supreme Court rejected in *Kragnes*. Tellingly, the intervenors' retrospective and prospective concerns are also inconsistent with each other, proving that the intervenors are just guessing as to what Prairie Meadows might do if it was ordered to remedy the past miscalculation. Those guesses are speculation, and admittedly so. Without considering *Kragnes* or the testimony by each witness admitting they were speculating, the district court accepted the speculative fears at face value and then relied on those fears as a ground for denying class certification. That was an abuse of discretion.

Life Ins. Co., 595 F.3d 164, 179-80 (4th Cir. 2010) (rejecting defendant's argument that the class plaintiff's contract interpretation would cause some plaintiffs to "lose on the net," because that "uncertain prediction" was "merely speculative or hypothetical."); *Gunnells v. Healthplan Servs., Inc.* 348 F.3d 417, 430 (4th Cir. 2003) (rejecting hypothetical intra-class conflict based on potential legal claims against some class members where the defendant failed to show those claims were viable, no such claim had been filed, and the statutory of limitations now barred the claims).

Finally, the district court also abused its discretion in making the following findings:

> [Benda's lawsuit] would put both intervenors in a potentially antagonistic bargaining position with Prairie Meadows and could subject the IHBPA to claims of breach of contract on existing contracts between the parties.
>
> * * *
>
> The contracts negotiated with Prairie Meadows for purses and awards would be placed in jeopardy and could subject those who negotiated and agreed to those contracts liable for a claim of breach of contract brought by Prairie Meadows."

App. v. 4, pp. 37, 48 (Order at 6, 17). There is no evidence to support these findings. Neither of the intervenors made these arguments, and for good reason. The notion that Prairie Meadows could sue IHBPA or the people who negotiated a contract, which Prairie Meadows breached, is absurd. By the same token, the notion that a lawsuit to enforce Prairie Meadows' past contracts could place such contracts "in jeopardy" is puzzling, to say the least. Because these grounds for the district court's ruling lacked any supporting evidence, the district court abused its discretion. *See Edson*, 519 N.W.2d at 834 (stating an abuse

of discretion occurs if a district court bases a decision "on a record devoid of facts to support the decision").

4. *The District Court Incorrectly Conflated The Intervenors And The Proposed Class.*

The district court found this case "unique" based on a fatal conflation between the proposed class and what it incorrectly described as "the two groups, the ITBOA and the IHBPA, *who represent almost every proposed class member*," that intervened to oppose class certification. App. v. 4, p. 38 (Order at 7 (emphasis added)). In other places, the district court repeated this misstatement that "virtually all" of the Proposed Class "are members of both the IHBPA and the ITBOA," App. v. 4, p. 38 (Order at 7), and that "a large majority of the purported class members are objecting to the class certification." App. v. 4, p. 48 (Order at 17).

These statements are untenable and unjustifiable given the record before the district court. The evidence of objection came from a small number of Proposed Class Members (about a dozen) who did nothing to survey, consult, or verify the positions of any other Proposed Class Members. *See* p. IV.H., *supra*. Indeed, the single most successful winner of Iowa-bred purse supplements was unaware of this lawsuit

and did not support the intervenors' positions. In light of this record, for the district court to equate the intervenors' position with "almost every proposed class member" was an abuse of discretion.

As to ITBOA, the district court took at face value the resolution stating that ITBOA "represents 400 plus Iowa-bred thoroughbred owners and breeders." App. v. 4, p. 36 (Order at 5). The record showed, however, that ITBOA had only 269 members, or 333 members if husband-and-wife memberships are counted as two. App. v. 3, pp. 144-46, 168-70, 209-11, 213. Also, many of those members are not breeders or owners of Iowa-bred horses (the Proposed Class Members), but rather are trainers, farm managers, farm owners, stallion owners, Iowa-residents who own non-Iowa-bred thoroughbreds, and people who are "generally interested in thoroughbred racing." App. v. 3, pp. 137-44, 209-10. Thus, ITBOA's membership is significantly less than 400 people and it includes many people who are *not* breeders or owners of Iowa-bred horses. App. v. 3, pp. 174-75.

Moreover, ITBOA's membership has changed over the years, so the organization in 2020-2021 included people who were not involved

in horseracing during the relevant time period for this lawsuit, and vice versa. App. v. 3, pp. 147-48, 174. Ultimately, ITBOA cannot say how many of its members won breeder's awards or purse supplements from 2012-2015. App. v. 3, pp. 154, 225. Indeed, only one-third of ITBOA's Board of Directors (4 of 12 people) are members of the Proposed Class.[7] ITBOA's president, Renftle, is not a Proposed Class Member. App. v. 3, pp. 152-53.

IHBPA has a larger total membership than ITBOA – about 1,100 members – but that is because membership is automatic and includes many people who are *not* Proposed Class Members. App. v. 4, p. 174. Any owner of a thoroughbred who races at Prairie Meadows, whether Iowa-bred or not, is a *de facto* member of IHBPA. App. v. 4, p. 173. Notably, IHBPA represents the interests of owners of non-Iowa-bred thoroughbred horses, whose interests are against this lawsuit according to IHBPA. App. v. 2, p. 60.

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[7] This statement comes from cross-checking the list of ITBOA board members, *see* App. v. 3, p. 226, with the reports of purse supplement and breeder's award winners from 2012-2015. Renftle could not say how many of the board members are within the Proposed Class. App. v. 3, pp. 186-67.

Despite its large membership, IHBPA does not cover the Proposed Class. IHBPA does not represent horse breeders, and it has nothing to do with quarter horses. App. v. 2, p. 42; App. v. 3, pp. 115-16. And, like ITBOA, IHBPA cannot say how many of its members *in 2020-2021* received purse supplements or breeder's awards during *2012-2015*. App. v. 3, pp. 115-16, 224-25. At best, 8 of its 11 directors are Proposed Class Members, though none have stated they would opt out if the class was certified.

Yet, the district court erroneously equated the intervenors with the Proposed Class, concluding that the intervenors represent "almost every proposed class member." That finding is unsupported by substantial evidence because the Proposed Class is undisputedly much different than IHBPA's and ITBOA's total membership. Likewise, there is not substantial evidence for the district court's statement that "a large majority of the purported class members are objecting to class certification." In reality, it was about 12 people, at most, out of nearly 850 Proposed Class Members.[8]

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[8] This number of objections is clearly below the quantity required to defeat certification. *See* Rubenstein, 1 Newberg on Class Actions

The intervenors do not speak for their individual members, let alone for the Proposed Class Members, as to the claims in this lawsuit. There is no evidence that any meaningful number of the intervenors' members are aware of, let alone understand, the claims in this lawsuit.[9] Moss could not identify a single Proposed Class Member who understood they would receive more money if this lawsuit is successful and yet still opposed class certification. App. v. 2, p. 59, 63-65.

The disconnect between the intervenors' positions and the Proposed Class was brought home by the hearing testimony of Maggi Moss, an Iowa attorney and tremendously successful horsewoman who raced horses at Prairie Meadows going back to 1997. App. v. 4, pp. 136-38. Ms. Moss had the most wins at Prairie Meadows for 13 years, including the class period, and she earned more purse supplement money than any other owner in 2012. App. v. 4, pp. 74, 137, 139-40.

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§ 3:65 (5th ed.) (stating that a "very large proportion of the class" must oppose the lawsuit for certification to be denied).

[9] Information about the total payments of purse supplements and breeder's awards is not shared with individual horse owners and breeders. App. v. 1, pp. 670-72; App. v. 2, p. 85; App. v. 4, pp. 140-42, 181-82. Thus, while individual owners and breeders may have known what they received, they would not have known whether the total payments satisfied the 20% requirement over the course of a meet.

Nevertheless, Ms. Moss was not aware of this lawsuit until contacted about testifying days before the hearing (over two years from the beginning of the lawsuit). App. v. 4, pp. 142-43, 155-56. Neither ITBOA nor IHBPA consulted with Ms. Moss before claiming to object on her behalf. *Id.* Ms. Moss stated that she would stay in the class if it was certified. App. v. 4, p. 143. Astoundingly, the district court's ruling does not even mention Ms. Moss's testimony.

Ironically, the district court assumed that ITBOA's board and IHBPA's board spoke for the "virtually all" of the Proposed Class Members, while the court accepted the intervenors' claims that Benda does not speak for them.[10] Indeed, Benda does not speak for all the Proposed Class Members, but neither do the board members of ITBOA and IHBPA speak for their individual members, let alone those who would be among the Proposed Class, regarding whether they might stay in or opt out of this lawsuit. The *organizations*, as directed by board members, opposed certification, not the individual members at

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10 *See* App. v. 4, pp. 33-34 (Order at 2-3, quoting affidavits from Gessmann and Poindexter with identical statements that "Benda does not represent my interests as an owner and breeder of Iowa-foaled horses").

large, the majority of whom, including some like Ms. Moss, may in fact support this lawsuit. Thus, the district court committed reversible error in assuming that the intervenors' positions in this lawsuit reflected the position of whatever unknown number of Proposed Class Members are among their ranks.

5. The Court Erred In Concluding That The Alleged Conflict Was Fundamental.

Even setting aside all the problems outlined above, the district court also erred as a matter of law in determining that the alleged conflict with the intervenors is a "fundamental" one.

"Not every disagreement between a representative and other class members will stand in the way of a class action suit. The conflict must be fundamental, going to the specific issues and controversies." *Vignaroli*, 360 N.W.2d at 746.

As to the central question of whether Prairie Meadows paid all purse supplements and breeder's awards in compliance with the 20% requirement, there was no conflict with ITBOA. The entire reason that ITBOA filed the declaratory action with the IRGC is because ITBOA agreed that Prairie Meadows was not following the 20% requirement. App. v. 1, pp. 522, 546-47. ITBOA expects that if Prairie Meadows

complied with the 20% requirement, then Iowa-bred owners and breeders *would receive more money*. App. v. 2, pp. 193-95. ITBOA had not performed any analysis of the underpayment, App. v. 2, pp. 234, 237-39, but IHBPA's executive director had done so and had no basis to disagree with Totagamuwa's calculation of the underpayment. App. v. 4, pp. 211-13.

Insofar as a conflict existed with anyone, it only concerned whether to pursue a remedy at all. Similarly, in *Kragnes*, the "crux" of the case against the City was the illegality of the franchise fee, and there was "no fundamental conflict among the class members as to that issue." 810 N.W.2d at 500. There was a sharp conflict in *Kragnes* about whether the lawsuit should be pursued at all – as "many of the members of the class" were "hostile" to the remedy requested in the class action. *Id.* However, the Court held that the issue of reimbursement was *secondary* to that of liability and therefore did not rise to a fundamental conflict sufficient to preclude certification. Even if some class members "prefer[red] to leave their right to a refund unremedied, this does not mandate a determination that the district court abused its discretion in certifying a class." *Id.* at 502 (emphasis

added); *see also Thompson v. United Transp. Union*, 2005 WL 2216965, at *3 (Iowa Ct. App. Sept. 14, 2005) (holding that the district court correctly determined that a potential economic conflict arising from a possible overpayment to some class members was not a fundamental conflict).

Without considering *Kragnes*, the district court concluded that "[a] conflict concerning allocation of remedies amongst class members with competing interests can be fundamental and can thus render a representative plaintiff inadequate." App. v. 4, p. 47 (Order at 16). However, there was no conflict concerning allocation of remedies here. In *Ortiz v. Fibreboard Corp.*, 527 U.S. 815, 857 (1999), which the district court cited, the class was divided over how to allocate a limited fund of money among the members. There is no evidence of a comparable dispute here.

Nor is this case analogous to *Amchem Prod., Inc. v. Windsor*, 521 U.S. 591 (1997), the other case the district court cited for a "fundamental" conflict. In *Amchem*, the representative plaintiffs, who had present injuries from asbestos exposure, could not represent a "single giant class" that included other plaintiffs who were exposed but

not yet injured. *Id.* at 626-27. Here, there is no conflict between class members who are presently injured and those that may be injured in the future. All the Proposed Class Members have been shortchanged by Prairie Meadows, and there is no claim for any future damages.

The district court abused its discretion by ignoring binding Iowa authority, *Kragnes*, and instead leaning on two inapposite and non-binding cases, *Ortiz* and *Amchem*, to find a fundamental conflict.

6. The District Court Ignored Prairie Meadows' Role In Soliciting The Intervenors' Positions In This Case.

"Courts have also been hesitant to warrant expressions of disapproval by class members where these might be the product of solicitation or pressure by the defendant." Rubenstein, 1 Newberg on Class Actions § 3:65 (5th ed). The weirdly similar letters that Prairie Meadows solicited from horse organizations, including the intervenors, demonstrate the extent of Prairie Meadows' influence on the horse-racing organizations in Iowa and its willingness to use that influence to defend against this lawsuit. The overall record shows a coordinated plan by Prairie Meadows to construct a supposed consensus among the horse organizations. *See* Section IV.G., *supra*.

Even if Prairie Meadows did not make any "threats" or "demands," the pressure from Prairie Meadows was evident from the circumstances. In February 2019, Prairie Meadows' executives put ITBOA's leadership on the spot during an unprecedented meeting. ITBOA was asked to state a position on this lawsuit before reviewing the lawsuit or consulting with legal counsel about it. Indeed, the absence of information provided by Prairie Meadows led ITBOA to take a position based on complete speculation. Then, in May 2020, ITBOA's board meeting minutes, which were approved at a subsequent meeting without modification, stated: "Prairie Meadow's lawyer contacted Steve [Renftle] regarding the class action lawsuit initiated by Terry Benda. ***Prairie Meadows was adamant*** that ITBOA have a lawyer present to represent breeders." App. v. 3, p. 217 (emphasis added); *see also* App. v. 3, pp. 196-98. ITBOA intervened in this lawsuit less than two weeks later.[11]

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[11] The district court incorrectly stated that ITBOA approved Renftle's Resolution "shortly after Benda filed his suit." App. v. 4, p. 38 (Order at 7). Renftle drafted his Resolution *18 months* after Benda's lawsuit was commenced and only after Prairie Meadows "adamant[ly]" demanded that ITBOA intervene. App. v. 3, p. 217.

We should not pretend, moreover, that IHBPA and ITBOA are equal parties with Prairie Meadows in all these interactions. IHBPA and ITBOA depend on Prairie Meadows, as those organizations depend on Prairie Meadows for funding and exist only to promote thoroughbred horse racing *at Prairie Meadows*.

Maggi Moss's testimony at the certification hearing clearly showed why these circumstances matter. She began:

> Q. Did Mr. [Jon] Moss explain or make any statements to you as to why he believed people were reluctant to cooperate with this lawsuit?
>
> A. Yes. We did have that discussion. And one of the things we discussed was my own experiences of speaking out or saying anything adverse as to Prairie Meadows management, yes.

App. v. 4, p. 144. Ms. Moss explained how Prairie Meadows retaliated against her, quite publicly, after she stood up for workers at the track when Prairie Meadows was cutting expenses. App. v. 4, pp. 145-48. Ms. Moss then connected the dots to this case:

> A. . . . So I believe based on my experience of speaking out, I think ***the horsemen are scared of retaliation***, meaning if this lawsuit was in any way successful or taking on management or Prairie Meadows, I think they're fearful of their own purse money they rely on; fearful of their stalls, which are allocated to different owners. I think there's a real fear of the horsemen taking on an unknown that would be adverse to Prairie Meadows.

> Q. In your conversation with Mr. Moss was it your understanding that he connected the dots the way that you have in terms of your experience and the current reluctance from horse owners?
>
> A. That is my belief, yes. It was a friendly conversation. He at one point said, you know, ***You laid down on the sword for the horsemen and look what happened to you***. You know, at racetracks there's kind of a good ol' club there where you just go with the flow, and taking on people or management is not looked upon favorably. And that is the gist of the discussion we had.

App. v. 4, pp. 145-46 (emphasis added).

Given all these circumstances, the district court should have been skeptical of the positions expressed by IHBPA's and ITBOA's leadership in response to Prairie Meadows' demands. At minimum, the district court should have at least considered these circumstances. Failure to do so was an abuse of discretion.

7. The District Court Failed To Consider The Safeguards Available for Those Who Oppose Class Certification.

Multiple safeguards exist to protect class members who oppose certification. These safeguards are established in the rules and recognized in case law. Benda argued them below, but the district court ignored them entirely.

First, the involvement of Prairie Meadows, IHBPA and ITBOA in this lawsuit ensures that the viewpoint and rights of those resisting certification will be adequately advanced as the litigation moves forward. *See Horton v. Goose Creek Indep. Sch. Dist.*, 690 F.2d 470, 487-88 (5th Cir. 1982) (approving certification of a class action notwithstanding disagreement among class members, because the view opposing the lawsuit was "asserted energetically and forcefully by the defendant."); *Grover v. Michelin N. Am., Inc.*, 192 F.R.D. 305, 307 (M.D. Ala. 2000) ("[T]o the extent that Michelin is arguing that the class members who would prefer to maintain the *status quo* share an identity of interests with Michelin, they are adequately represented by Michelin—which has vigorously asserted that view."). The district court did not explain why the parties in this action cannot protect the interests of the Proposed Class Members who oppose this lawsuit.

Second, the court can protect those antagonistic Proposed Class Members by certifying the class in a way that allows such members to opt out. *See* Iowa R. Civ. P. 1.267. Federal courts routinely point to the opportunity to opt out as a safeguard when there is intra-class conflict

or antagonism.[12] The district court mentioned, once, the opportunity of class members to opt out if they did wish to participate in the class action. App. v. 4, p. 42 (Order at 11). However, the court did not explain why the opt-out procedure was an insufficient safeguard in this case. Instead, the court returned its focus to the antagonism itself and confused the intervenors' positions with action by "a large number of purported class members [to] *actively seek* at the very beginning of the certification process not to be members of the class." App. v. 4, p. 42 (Order at 11 (emphasis added)). Of course, the purpose of the opt-out procedure is to protect class members who do not wish to participate. The district court gave no explanation for why that procedure is inadequate here.

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[12] *E.g.*, *Allen v. Dairy Farmers of Am., Inc.*, 2012 WL 5844871, at *7 (D. Vt. Nov. 19, 2012); *Matamoros v. Starbucks Corp.*, 699 F.3d, 129t 139 (1st Cir. 2012); *Lauber v. Belford High Sch.*, 2012 WL 5822243, at *6-7 (E.D. Mich. Jan. 23, 2012); *Larry James Oldsmobile-Pontiac-GMC Truck Co. v. Gen. Motors Corp.*, 164 F.R.D. 428, 437 (N.D. Miss. 1996); *Rental Car of N.H., Inc. v. Westinghouse Elec. Corp.*, 496 F. Supp. 373, 384 (D. Mass. 1980).

8. The District Court Failed To Follow The Rules Relating To Benda's Adequacy As A Representative And Instead Relied On Flawed Assumptions And Legally Irrelevant Considerations.

The district court concluded that Benda would not be an adequate representative of the proposed class. App. v. 4, p. 50 (Order at 19). The court ignored Iowa Rule of Civil Procedure 1.263(2), which should guide the analysis here, and instead repeated the intervenors' positions against certification to conclude that Benda is not an adequate representative. For the reasons stated above, the court's analysis of the intervenors' position was riddled with reversible error, which also infects the court's conclusion that Benda is not an adequate representative plaintiff.

Where the district court should have started is Iowa Rule of Civil Procedure 1.263(2), which sets forth three prerequisites for a court to conclude that representative parties will fairly and adequately protect the interests of the class:

> a. The attorney for the representative parties will adequately represent the interests of the class.
>
> b. The representative parties do not have a conflict of interest in the maintenance of the class action.

c. The representative parties have or can acquire adequate financial resources, considering rule 1.276, to ensure that the interests of the class will not be harmed

There was no controversy about the first prerequisite. No party has argued that Benda's attorneys could not adequately represent the interests of the class, and no party objected to Benda's motion to approve a fee agreement. In fact, Maggi Moss, an attorney who is "very familiar with the law firms," testified that she "respects this law firm very, very, very much . . . probably more than anyone." App. v. 4, p. 154. The district court gave no indication that Benda's attorneys were a factor in the decision to deny certification.

As to the second prerequisite under Rule 1.263(2), the representative party's resources, the district court went astray, drawing at length from disputed facts presented by IHBPA regarding Benda's "legal and financial problems dating as far back as 2016." App. v. 4, p. 50-53 (Order at 19-22).[13] However, the court's entire foray into Benda's finances was irrelevant and contrary to the class action rules.

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[13] This was yet another example of the district court taking the intervenors' statements at face value and ignoring the contradictory

This is because Iowa R. Civ. P. 1.263(2)(c) allows the representative party's counsel to advance the costs of litigation, pursuant to Iowa R. Civ. P.1.276. In *Comes*, this Court quoted Judge Easterbrook: "The very feature that makes class treatment appropriate — small individual stakes and large aggregate ones — ensures that the representative will be unwilling to vouch for the entire costs. Only a lunatic would do so." 696 N.W.2d at 327 (quoting *Rand v. Monsanto Co.*, 926 F.2d 596, 599 (7th Cir. 1991) (Easterbrook, J)).[14] As is typical, Benda's counsel have themselves promised to bear the cost of pursuing this class action with the expectation of receiving their fees upon settlement, and note that their fee arrangement with Benda, which has been submitted to the Court, has not been challenged.

That leaves the third prerequisite: "The representative parties do not have a conflict of interest in the maintenance of the class action."

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evidence without explanation. *See* App. v. 3, pp. 244-45; App. v. 4, pp. 186-90.

[14] This lesson applies here. In addition to many hundreds of hours of attorney time involved, Benda's retained expert, Totagamuwa, charged over $20,000 in fees before the class certification hearing. App. v. 4, p. 135. The individual claims in this case would not be economically worthwhile for the Proposed Class Members.

Iowa R. Civ. P. 1.263(2)(b). Here, the Court improperly found a "conflict of interest" based on the intervenors' antipathy toward Benda as the representative:

> His position is basically one of antagonist to the class he wishes to represent. Benda's credibility and standing based upon the history of his actions within the horse racing industry and his own personal litigation and disciplinary history would make his representation less effective. IHBPA's resistance to the motion for class certification and its accompanying appendix is not complimentary to Benda.

App. v. 4, p. 50 (Order at 19).

As discussed above, the district court erred in finding a conflict of interest based on the intervenors' speculative and legally baseless fears about how Prairie Meadows might react to a judgment. Those fears, which are attributable only to a small fraction of the Proposed Class, do not make Benda an inadequate representative, as a leading treatise explained:

> Conflicts that are merely speculative or hypothetical will not affect the adequacy inquiry. A conflict must be manifest at the time of certification rather than dependent on some future event or turn in the litigation that might never occur. For this reason, potential conflicts over the distribution of damages—which would arise only if the plaintiffs succeed in showing liability on a class-wide basis—will not bar a finding of adequacy at the class certification stage.

Rubenstein, 1 Newberg on Class Actions § 3:58 (5th ed).

Additionally, none of the financial or legal issues identified in the district court's order (quoting IHBPA's brief) were sufficient to deny certification in this case. Benda's challenges and disputes, all of which occurred after 2015 and as a result of a service-related disability, *see* App. v. 4, pp. 186-90, have no bearing on any claim or defense in this case or on Benda's ability to represent the best interests of the class. None of the matters referenced affect the merits of Benda's claims or any of the factual or legal issues surrounding Prairie Meadows' miscalculation of the Iowa-bred bonus payments. None of Benda's prior lawsuits or interactions with the IRGC would be a defense to the claims in this case. As such, they were legally irrelevant to the certification motion, the district court abused its discretion by relying on them. One treatise acknowledged:

> Most courts have rejected the contention that a proposed representative is inadequate because of prior unrelated unsavory, unethical, or even illegal conduct. . . . Courts either do not permit challenges to adequacy on this basis or allow them only to the degree that the personal characteristics are somehow relevant to the litigation; even when permitted, such challenges are rarely upheld.

Rubenstein, 1 Newberg on Class Actions § 3:68 (5th ed.).[15]

If Benda had intentionally destroyed evidence related to this case, that is a "special circumstance[]" that could render someone inadequate. *Stone*, 497 N.W.2d at 847. Or perhaps if Benda had been found to have participated in a fraudulent scheme to compete with the class members, that would be a problem. *E.g.*, *Folding Cartons, Inc.*, 79 F.R.D. 698, 703 (N.D. Ill. 1978) (cited in *Stone*, 497 N.W.2d at 847). But here, there was no claim that Benda was dishonest or fraudulent, much less in relation to this action, and certainly the district court did not make any finding to that effect.

The district court detected Prairie Meadows' and the intervenors' personal antipathy toward Benda, echoing the antipathy that Prairie

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[15] *See also Mularkey v. Holsum Bakery, Inc.*, 120 F.R.D. 118, 122 (D. Ariz. 1988) (granting certification despite the fact the class representative had been sued for fraud, pled guilty to federal crime of aiding and abetting theft by a bank employee, failed to file his most recent tax returns, and failed to pay state sales tax on his business for over two years"); *Stanich v. Travelers Indem. Co.*, 259 F.R.D. 294, 315 (N.D. Ohio 2009) (finding the class representative adequate though the representative was, wholly unrelated to the class action, terminated for violating employment policies because there was no "connection between the unethical or dishonest conduct and the claims at issue in the class action").

Meadows directed toward Maggi Moss. App. v. 4, pp. 144-46. However, the test for an adequate class representative is not a popularity contest. Nor is it whether he has lived a perfect life.[16] At the end of the day, none of the attacks on Benda have any consequence for his claims in this case, as proven by the fact he has continued to receive breeder's awards through 2020-2021. App. v. 4, pp. 169, 171-72. He is personally owed money as an intended beneficiary of the operative contracts with Prairie Meadows, and he is fully capable of representing the interests of the Proposed Class.

9. Summary

The cumulative effect of the district court's erroneous assumptions, errors of law, misapplication of the class rules, and unsupported findings was to turn Iowa's liberal standard for allowing class actions on its head. The court ignored or bypassed the evidence

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[16] *See Dubin v. Miller*, 132 F.R.D. 269, 272 (D. Colo. 1990) ("Moreover, few plaintiffs come to court with halos above their heads; fewer still escape with those halos untarnished. For an assault on the class representative's credibility to succeed, the party mounting the assault must demonstrate that there exists admissible evidence so severely undermining plaintiff's credibility that a fact finder might reasonably focus on plaintiff's credibility, to the detriment of the absent class members' claims.").

and argument supporting certification and accepted at face-value the opposing views on the merits of Benda's claims, as though it was looking for a way not to certify the class. That approach is exactly the opposite of what Iowa law requires. Given the remedial purpose of class action rules and the approach required under Iowa law, this Court should conclude that the district court abused its discretion in finding that no common interest existed and that individual issues predominated over common ones. *See Limmer*, 2016 WL 3556392, at *3 (reversing denial of class certification as an abuse of discretion in light of the remedial purpose of class rules and liberal standard for certification); *Staley*, 2013 WL 2368825, at *13 (same).

VI. CONCLUSION

The Plaintiff/Appellant, Robert Benda, on behalf of himself and others similarly situated, prays that the Court reverse April 29, 2021 order denying class certification, and remand the case for the district court to certify the class and for further proceedings; and for such other relief as the Court deems just.

VII. POSITION REGARDING ORAL ARGUMENT

This matter should be submitted with oral argument and the Benda respectfully request the same. Iowa Rule of Appellate Procedure 6.908.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the typeface requirements and type-volume limitation of Iowa Rs. App. P. 6.903(1)(d) and 6.903(1)(g)(1) or (2) because this brief has been prepared in a proportionally spaced typeface using Georgia typeface in 14 point font and contains 13,971 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(d) and 6.903(1)(g)(1).

*Todd M. Lantz*_________ February 11, 2022
Signature Date

CERTIFICATE OF SERVICE

On the 11th day of February, 2022, the undersigned served the within Appellant's Amended Final Brief on all parties to this appeal by e-filing it on the State of Iowa's Electronic Data Management System.

I further certify that the 9th day of February, 2022, I filed this document with the Clerk of the Supreme Court, Iowa Judicial Branch Building, 1111 E. Court Avenue, Des Moines, Iowa 50319, by e-filing it in the State of Iowa's Electronic Data Management System.

Michele Baldus   February 11, 2022
Signature   Date