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STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

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ROUTING STATEMENT

Appellee, Prairie Meadows Racetrack and Casino, Inc. (“Prairie Meadows”), requests the Court to retain the case under Iowa Rule of Appellate Procedure 6.1101(2)(f) (presents substantial questions of enunciating legal principles). The case deals particularly with issues relating to the application of rules for certification of class actions and the discretion to be exercised by the district court in denial of motions seeking class certification. To the extent that Intervenor, Iowa Horseman’s Benevolent and Protective Association (“IHBPA”), also requests the Court to retain the case, Prairie Meadows relies on the grounds asserted in IHBPA’s brief and incorporates the grounds herein.

STATEMENT OF THE CASE

This appeal presents a unique and unusual set of facts. Plaintiff, Robert “Terry” Benda (“Benda”), appeals a ruling from the district court denying his motion to certify a class action on a claim for breach of written contracts to which neither Benda nor any of the members of the putative class were a party. App. v. 4 p. 58. Benda asserts the right to certify a class on the claim despite the fact that both parties to the written agreements (Prairie Meadows and IHBPA) deny the contracts were breached and oppose certifying the class. App. v. 1 p. 55; v. 2 pp. 368-369. Moreover, Benda presses forward in

his effort to certify a class in the face of the opposition of all organizations that represent the putative class members for business purposes in Iowa, including intervenors in the underlying action who oppose class certification. App. v. 1 pp. 45-46, v. 2 pp. 133-137; v. 2 pp. 248-249; v. 1 p. 642.

Benda originally filed his petition in the Iowa District Court for Polk County on December 21, 2018. App. v. 1 p. 10. Benda is a resident of Altoona, Iowa, and, among other things, a former employee of Prairie Meadows. App. v. 1 p. 10. The original action alleged that Prairie Meadows had underpaid “Iowa breeder awards” and asserted that Prairie Meadows itself was enriched by underpaying the “breeder’s supplements” at the expense of Iowa horse breeders. App. v. 1 p. 12, 14. Benda claimed that it would be “unjust” to permit Prairie Meadows to retain any benefit received. App. v. 1 p. 14.

In addition, Benda alleged that Prairie Meadows had breached an implied contract with Benda and a statutory duty under Iowa Code Chapter 99D; sought declaratory relief under the Chapter; and made a claim for class relief under Iowa’s class action rules. App. v. 1 pp. 5-8. The original petition sought compensation for the alleged underpayments for the years 2012-2015 both for Benda and other putative class members, should the Court certify the action as a class action. App. v. 1 pp. 14, 17.

On October 1, 2019, roughly nine months after filing his petition, Benda requested leave to amend the petition, seeking to add a claim for breach of written contracts between Prairie Meadows and the IHBPA. App. v. 1 pp. 28-30. Prairie Meadows did not resist the motion and the court granted the motion on October 22, 2019, stating that the amended petition was to be considered filed as of that date. App. v. 1 p. 43.

Three days later, on October 25, 2019, IHBPA through its own hired counsel moved to intervene in the case because of its status as a party to the written contracts with Prairie Meadows and its interests relating to the transactions at issue in the case. App. v. 1 pp. 45-46. On December 30, 2019, despite Benda's resistance and after an oral hearing, the court granted the motion and permitted IHBPA to intervene in the case. App. v. 1 pp. 61-63.

On January 17, 2020, IHBPA filed a motion for summary judgment on all claims asserted by Benda in the case. App. v. 1 pp. 64-67. Prairie Meadows joined in the motion. App. v. 1 p. 478. Benda resisted the motion and the court set a hearing on the motion on May 29, 2020. On May 28, 2020, Intervenor Iowa Thoroughbred Breeders and Owners Association ("ITBOA") moved to intervene in the case. App. v. 2 pp. 133-137.

In its motion, ITBOA stated that it represented more than 400 owners and breeders of Iowa-bred thoroughbred horses that would be affected by the

lawsuit and sought to intervene in the action because Benda's requested relief would damage the Iowa horse-racing industry, would be contrary to the interests of ITBOA's members, and because neither Benda nor his counsel could properly represent the interests of its owners and breeders in the action. App. v. 2 pp. 135-137. ITBOA also sought to join in and otherwise support IHBPA's motion for summary judgment and ITBOA stated its opposition to Benda's effort to obtain class certification. App. v. 2 pp. 141-142.

Benda filed his motion for class certification on May 8, 2020. App. v. 1 p. 480. As a part of the motion, Benda sought to have the class certification hearing take place on June 11 and 12, 2020. Id. However, after holding a hearing on May 29 on various motions filed by the parties including the motion for summary judgment, the court denied Benda's motion to confirm the June 11 date and moved the class certification hearing to be scheduled on a mutually agreeable date in February, 2021. App. v. 2 p. 144.

On December 31, 2020, the district court granted IHBPA and Prairie Meadows' motion for summary judgment in all respects, except that the court left standing Benda's claim for breach of the written contracts between Prairie Meadows and IHBPA first stated in Benda's amended petition filed October 22, 2019. App. v. 3 pp. 53-63.

On June 15, 2020, the court granted ITBOA's motion to intervene and on June 18, 2020, ITBOA entered an appearance in the case. App. v. 2 pp. 148-150. After subsequent briefing on Benda's motion for class certification, Prairie Meadows and both Intervenors filed resistances to Benda's motion.

On February 10, 2021, the court held a hearing on Benda's motion to certify a class. App. v. 4 p. 109. On April 29, 2021, the court issued an order denying Benda's motion for class certification. App. v. 4 pp. 32-57. Benda filed an appeal of the order on May 13, 2021, seeking to overturn the order and obtain class certification. Prairie Meadows and both Intervenors have resisted, requesting that the Court affirm the district court's order denying class certification and dismiss the appeal, returning the case to the district court for further proceedings on Benda's breach of contracts claim.

STATEMENT OF THE FACTS

Prairie Meadows is an Iowa non-profit corporation. App. v. 1 p. 11; v. 1 p. 20. It is, and has been for many years, the only venue in the state of Iowa for live parimutuel racing of thoroughbred horses and quarter horses. App. v. 3 p. 10-11.

Intervenor IHBPA represents that thoroughbred horse racing industry in Iowa. It is recognized by both Congress and the Iowa Legislature as the bargaining agent that deals with Prairie Meadows. See, 15 U.S.C. § 3002,

3004; Iowa Code § 99F.6(4)(a)(3). IHBPA is the exclusive “horseman’s group” or “host racing association” under the Federal Interstate Horse Racing Act, which means that Prairie Meadows must obtain IHBPA’s consent for certain wagers to be placed on Prairie Meadows’ horse races. See, 15 U.S.C. § 3002, 3004(a). In gaining consent, Prairie Meadows “must have a written agreement with” the Iowa HBPA. See, 15 U.S.C. § 3004(a).

Iowa law also provides that the Iowa Racing and Gaming Commission (IRGC) is to “regulate the purse structure for all of horse racing” in Iowa (see, Iowa Code § 99D.7), and authorize horse racetracks in Iowa, i.e., Prairie Meadows, to “use receipts from gambling games within the racetrack enclosure to supplement purses for races, particularly for Iowa-bred horses pursuant to an agreement which shall be negotiated between the licensee and representatives of...horse owners.” See, Iowa Code § 99F.6(4)(a)(3).

Intervenor IHBPA, as representative of the thoroughbred industry in Iowa, enters into contracts with Prairie Meadows under the above-stated legal provisions. Pursuant to Iowa law, contracts between IHBPA and Prairie Meadows must be approved by the IRGC. App. v. 1 pp. 69-70. Intervenor ITBOA, established in 1969, is a non-profit organization responsible for the breeding and raising of thoroughbred horses in Iowa. App. v. 2 p. 133. ITBOA

is the largest association in Iowa of thoroughbred breeders and owners. App. v. 2 pp. 250, 251.

In January 2015, IHBPA had 1200 members, with one-third of the members (approximately 400) also belonging to the ITBOA. App. v. 1 p. 548. Prior to January 2015, a certain formula had been used by Prairie Meadows and IHBPA in calculating purse supplements that were to be provided to owners of Iowa thoroughbred horses which had become known as the “Rasmussen formula.” Id. The formula was called the “Rasmussen formula” because it was developed by Jim Rasmussen, representing Prairie Meadows, along with representatives of IHBPA and the ITBOA. Id. The intent and purpose of developing the supplement was to set aside money to give a financial boost to Iowa-bred horses. Id.

After all parties agreed to the supplement, Prairie Meadows calculated the supplement for each year in which it held a horse-racing meet and negotiated with the horse organizations ancillary purse agreements reflecting the purses and purse supplements. The use of the formula did not change throughout the period of time that ancillary purse agreements were being developed from 2004-2010. Negotiations about the supplements became contentious and after lengthy negotiations between all the parties, in 2010, for

the first time, the parties agreed that Prairie Meadows and IHBPA would enter into a multi-year contract.

In addition, the horse organization, to avoid further controversy, decided to approach the legislature to have the agreements they made in 2010 enacted into law. IHBPA sought to develop a law codifying the formula for the supplement as a means of protecting the ITBOA and avoiding controversy over the money to be paid to owners and breeders of Iowa-bred horses. It was IHBPA's position that the language used in Iowa code 99D.22 was consistent with the Rasmussen formula that had been used for many years. App. v. 1 pp. 548-549. At the time the law was enacted, IHBPA took the position that it would be bad for the horse racing industry to use any calculation other than the Rasmussen formula. App. v. 1 p. 548.

After the law was enacted, controversy again developed because ITBOA began to take the position that the law enacted required a different calculation than the Rasmussen formula for purse supplements, which calculation would generate more money for purse supplements to be paid to the owners and breeders of Iowa-bred horses (but less money for purse awards for which all owners and horses racing at Prairie Meadows would be eligible). App. v. 1 pp. 547-548.

In January 2015, ITBOA brought this controversy before the IRGC, asking the IRGC to accept ITBOA's interpretation of the 2012 purse supplement statute. App. v. 1 pp. 546-547. At the IRGC hearing, IHBPA continued to take the position that the Rasmussen formula was the formula codified in the statute. App. v. 1 p. 548. IHBPA argued that if the IRGC adopted the ITBOA's position, supplements would increase but purses would drop by a corresponding amount. Id. IHBPA pointed out that gambling revenue was decreasing in Iowa, which also led to a decrease in the purses. Id. IHBPA argued that coupled with a decrease in gambling revenue, decreasing the purses by changing the supplement formula would be a dramatic decrease for all thoroughbreds racing at Prairie Meadows and that this would damage the Iowa horse racing industry, making it less attractive for out-of-state owners to enter their out-of-state horses in Iowa. Id. Prairie Meadows took a neutral position throughout the hearing held by the IRGC on this issue and never changed their position prior to the decision by the IRGC in January 2015. App. v. 1 p. 524-525; v. 3 pp. 15-17.

In their meeting of January 22, 2015, the IRGC made a decision between the competing arguments of the ITBOA and IHBPA with respect to the formula codified in the statute for purse supplements. App. v. 1 pp. 550-551. Despite IHBPA's arguments and finding it a "close question," the IRGC

decided that the ITBOA's position on the language of the statute was correct and required a change in the formula for calculating purse supplements so that the Rasmussen formula was not to be used any longer. App. v. 1 p. 551.

Recognizing that the change could be disruptive to the interests of all parties involved in horse racing in Iowa, the IRGC determined that the new formula need not be used in the 2015 race meet for which preparations had already been made, and the purses pertaining to individual races had already been calculated. Id. IRGC chair Jeff Lamberti, after ruling in favor of the ITBOA's position on the formula for calculating purse supplements, stayed the decision until November 1, 2015, to allow any party that wanted to appeal or try to obtain a change in the ruling to do so. Id. All parties, including Prairie Meadows, acquiesced in the IRGC's decision.

In the nearly four-year period between the IRGC's decision in January 2015 and the filing of the Benda lawsuit four (4) days before Christmas in 2018, no one questioned the IRGC's decision not to apply the change in purse supplement formula in a retroactive manner. App. v. 3 p. 11. As Chair Lamberti noted in the January 2015 meeting, the point of the decision was to settle the controversy that had developed between the horse organizations over the formula for purse supplements and it was not in the best interests of

anyone to take any action that would disrupt the upcoming meets. App. v. 1 p. 551.

Both Intervenors have taken the position that Prairie Meadows did not breach its contracts with IHBPA in its payment of purse supplements or breeder awards. William Leroy Gessman, the president of the IHBPA from 2002-2017 also has stated his disagreement with the claim that Prairie Meadows breached the IHPBA contract during the years 2012-2015. App. v. 2 p. 369. Gessman led the contract negotiations with Prairie Meadows in those years on behalf of IHBPA and has declared that Prairie Meadows allocated funds to purse supplements consistent with IHBPA's intent in the contract in those years. App. v. 2 p. 368.

Robert Benda is a resident of Altoona, Iowa, and was a member of the ITBOA before January 2015. App. v. 1 p. 32; v. 2 p. 376. At one point prior to 2015, Benda ran to be a board member of the ITBOA, but lost. App. v. 2 p. 376. As an ITBOA board member, Benda followed the minutes of the board before 2015 and had discussions with ITBOA board members that caused him to become aware of ITBOA's position that purse supplements should be calculated differently around the time that the ITBOA presented that position to the IRGC in January 2015. App. v. 2 p. 376.

Benda continued to race horses into the 2017 season, after which he retired from the industry and didn't race horses due to his physical condition. Also in 2017, Benda's license was suspended due to his actions at the racetrack and thereafter he no longer held a license to race horses in Iowa. App. v. 3 p. 25.

Benda has never made it clear what motivated him to pursue this action. However, Benda became employed by Prairie Meadows in February 2013 as a maintenance supervisor. App. v. 5 p. 12-20. Benda was terminated from his position in April 2015 and had a dispute with Prairie Meadows over the payment of vacation pay. Id. He pursued a claim for the vacation pay but never received any.

The Benda lawsuit was the first time anyone brought a claim against Prairie Meadows seeking class relief. App. v. 3 p. 11. After the lawsuit was filed, there was a meeting between Prairie Meadows executives and the horse organizations representing breeders and owners of Iowa thoroughbred horses including the ITBOA. At no time in the meeting or at any other time did Prairie Meadows demand that the ITBOA or any other horse organization intervene in the lawsuit. App. v. 3 p. 12.

Neither during the meeting with the ITBOA nor at any other time did anyone from Prairie Meadows threaten the ITBOA or any other horse

organization with adverse consequences because of the Benda lawsuit. App. v. 3 p. 12. Letters written by all the horse organizations in Iowa opposing the Benda lawsuit and the participating of ITBOA and IHBPA as Intervenors opposing the Benda lawsuit were decisions made by those organizations and not the result of pressure by Prairie Meadows or anyone on Prairie Meadows' behalf. App. v. 3 p. 12. In the meeting with Prairie Meadows, the representatives of horse organizations present were of the opinion that the Benda lawsuit had no merit because Prairie Meadows had paid out purse supplements and breeders' awards appropriately over the years. App. v. 3 p. 18. No one present at the meeting, including the representatives of horse organizations, agreed with the lawsuit or made any effort to participate in it. App. v. 3 p. 12.

Benda's recitation of the contents of board meeting minutes from May, 2020 for the ITBOA board, in which Benda implied that board president Steve Renftle was contacted by a Prairie Meadows lawyer who pressured ITBOA to intervene in the lawsuit leaves out critical parts of the record. Benda's Brief, at 68-69. In deposition, Renftle was asked by Prairie Meadows counsel in this case about the conversation he had with someone he characterized as a person from Prairie Meadows in May 2020. App. v. 4 p. 17. Renftle was asked if he knew the name of the "young guy" from Prairie

Meadows he claimed to have talked to. Id. Renftle did not know the person. Renftle was asked if that person was Dennis Ogden. Id. Renftle said it was not. Id. Renftle was asked if the person was Tom Flynn (the only other counsel for Prairie Meadows in this case). Id. Renftle stated that it was not Tom Flynn and that the only time he had ever talked to Flynn, he talked about golf. App. v. 4 pp. 17-18.

Renftle confirmed that he had never talked to Dennis Ogden before his deposition was taken on December 30, 2020, and he stated that he could not provide the identity of any lawyer for Prairie Meadows who had called him. App. v. 4 p. 18. Renftle was asked if the minutes of the board meeting on May 16, 2020, were inaccurate as to the conversation that was described by someone else in the minutes. Id. Renftle confirmed that the minutes were not accurate. Id.

ARGUMENT

- I. THE OPENING PARAGRAPHS OF BENDA’S ARGUMENT SECTION IN HIS BRIEF ARE NOT IN COMPLIANCE WITH IOWA RULE OF APPELLATE PROCEDURE 6.903(2)(g) AND SHOULD BE IGNORED.

Iowa Rule of Appellate Procedure 6.903(2)(g) requires the arguments section of the Appellant’s brief to be structured so that each issue raised on appeal “is addressed in a separately numbered division.” See, Iowa Rule of Appellate Procedure 6.903(2)(g)(2021). The opening paragraphs of Benda’s brief (pp. 39-41) appear to be an effort to summarize Benda’s complaints with the district court’s ruling on Benda’s motion for class certification raising, in summary form, multiple issues that are not addressed in separately numbered divisions. Prairie Meadows disagrees generally with the claims made by Benda in the opening paragraphs, but will not address Benda’s statements specifically since the section should be ignored as not in compliance with the Rules.

Benda’s sections on error preservation, the standard of appellate review, and the subsequent narrative with respect to Benda’s contentions similarly fail to comply with the requirement that they be “addressed in a separately numbered division.” While the structure of the Argument section makes it difficult to comply with the requirements of Iowa Rule of Appellate

Procedure 6.903(3), Prairie Meadows will endeavor to respond to Benda's statements and argument separately and in an orderly fashion.

II. RESPONSE TO BENDA'S STATEMENT ON ERROR PRESERVATION

It is a fundamental doctrine of appellate review that issues must ordinarily be both raised and decided by the district court before this Court will decide them on appeal. See, *Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2002). For error to be preserved on an issue, it must be both raised and decided by the district court. See, *DuTrac Community Credit Union v. Hefel*, 893 N.W.2d 282, 293 (Iowa 2017). The district court's ruling and order on plaintiff's motion for class certification in this case is thorough and well-reasoned, and decided all issues raised by the parties at the hearing on the motion for class certification. Prairie Meadows does not dispute Benda's claim that error was preserved on the issues raised in his brief.

III. RESPONSE TO BENDA'S STATEMENT OF THE STANDARD OF REVIEW

Prairie Meadows agrees with Benda that the standard for review of a district court ruling denying certification of a class action is for abuse of discretion. As stated in *Vos v. Farm Bureau Life Ins. Co.*, 667 N.W.2d 36, such review "is limited because the district court enjoys broad discretion in the certification of class action lawsuits." See, *Vos v. Farm Bureau Life Ins.*

Co., 667 N.W.2d 36, 44 (Iowa 2003). An abuse of discretion is found only when the district court's grounds for certifying or not certifying a class action are clearly unreasonable. See, *Anderson Contracting, Inc. v. DSM Copolymers Inc.*, 776 N.W.2d 846, 848 (Iowa 2009). However, if the district court weighs and considers the factors and comes to a reasoned conclusion as to whether a class action should be permitted for a fair adjudication of the controversy, this Court will affirm it. See, *Luttenegger v. Conseco Fin. Servicing Corp.*, 671 N.W.2d 425, 437 (Iowa 2003).

IV. THE DISTRICT COURT CORRECTLY EXERCISED ITS BROAD DISCRETION IN DENYING BENDA'S MOTION FOR CLASS CERTIFICATION.

A. Benda's Evidence Does Not Satisfy Either of the Requirements in Rule 1.261

Iowa Rules of Civil Procedure 1.261 through 1.263 govern class actions. See, *Freeman v. Grain Processing Corp.*, 895 N.W.2d 105, 114 (Iowa 2017). Class certification is appropriate if the court finds all of the following:

- a. The requirements of rule 1.261 have been satisfied.
- b. A class action should be permitted for the fair and efficient adjudication of the controversy.

c. The representative parties fairly and adequately will protect the interests of the class. See, Iowa R. Civ. P. 1.262(2).

Rule 1.261 governs the commencement of a class action and requires a class to be “so numerous ... that joinder of all members ... is impracticable” and a “question of law or fact [be] common to the class.” See, Iowa R. Civ. P. 1.261(1)–(2).

Benda has the burden to establish that the purported class of plaintiffs meets the prerequisites for certifying a class action. See, *Vignaroli v. Blue Cross of Iowa*, 360 N.W.2d 741, 744 (Iowa 1985). See also, *City of Dubuque v. Iowa Trust*, 519 N.W.2d 786, 791 (Iowa 1994). A failure of proof on any one of the prerequisites is fatal to class certification. *Id.*

1. Numerosity

Benda claims to have established that the proposed class he requests to be certified contains “an estimated 847 individuals altogether.” However, the evidence presented by Benda does not support his claim. First, Benda himself cannot name any person who would participate in the class and the organizations designated to represent horse owners and breeders in Iowa unanimously oppose Benda’s motion. App. v. 2 p. 377.

As noted in its board resolution on May 27, 2020, the ITBOA was established in 1969 and is a nonprofit organization responsible for

promoting the breeding and raising of thoroughbreds in Iowa. The ITBOA currently represent approximately 400 Iowa bred thoroughbred owners and breeders who are financially savvy and sophisticated business persons, knowledgeable in the horse breeding and racing industry and very familiar with racing contracts and the formulas used to govern purses and payout. ITBOA members hold licenses from IRGC to race their Iowa bred thoroughbred horses and do so primarily at Prairie Meadows. The ITBOA has not only sent a letter opposing the action but has also intervened and hired counsel to oppose the action.

The same is true for the IHBPA, which is the exclusive “horsemen’s group” or “host racing association” under the federal Interstate Horseracing Act, which means that Prairie Meadows must obtain the IHBPA’s consent for certain wagers to be placed on Prairie Meadows’ races. See, 15 U.S.C. § 3002, 3004(a). To gain that consent, Prairie Meadows “must have a written agreement with” the IHBPA. See, 15 U.S.C. § 3004(a). The lawsuit is also opposed by the Iowa Quarter Horse Racing Association which has sent a letter in opposition to the lawsuit.

Benda relies on the analysis of his lawyers who purport to have “estimated” that the number of owners and breeders “short changed” by Prairie Meadows “exceeds 500” and to have a proposed class “estimated” at

“847 people.” They fail to explain how their analysis could yield numbers that large when the ITBOA claims only to have approximately 400 members in its group. Moreover, Benda attacks the ITBOA’s number as too large due to the composition of the group, claiming that ITBOA represents, in fact, only between 269 and 333 members, some of which are not owners or breeders of Iowa-bred horses.

Prairie Meadows disagrees with the claim of Benda’s lawyers that the class-size “cannot seriously be challenged.” In fact, it is Benda’s burden to show a class so numerous that it is impractical to join them. See, Iowa R. Civ. P. 1.261. At this point, Benda cannot name more than one individual who would participate in such a class if it were certified and the organization governing the members of the purported class oppose the class action altogether. Benda’s claim that he can identify an “estimated” over 800 individuals who could be class members makes no sense given that ITBOA membership does not approach that quantity of persons. Benda’s evidence fails to satisfy the numerosity requirement and should be rejected.

2. Predominance

The court properly put a primary focus on the predominance issue in the case. The facts established by Benda show that only he considers it in his best interest to pursue a small damage award for alleged miscalculation

of purse supplements and breeder awards for the years 2012-2015 by Prairie Meadows. Virtually all other owners and breeders of Iowa-bred horses who have weighed in on the issue oppose such relief.

Both of the organizations who represent owners and breeders of Iowa-bred horses oppose the litigation and, in fact, have taken affirmative steps and spent considerable time, effort and money trying to end Benda's effort to recover such monies. Even the IRGC and the Iowa Quarter Horse Racing Association, neither of which are directly involved, have weighed in in opposition to retroactive application of the ruling made by the IRGC and have stated that, in their opinion, it is not in the best interests of the Iowa horse racing industry or its members to allow such claims to go forward.

Even Maggi Moss on whom Benda relies heavily for support would make no comment on the merits of the litigation and does not say that she supports the merits of the lawsuit in its current posture. App. v. 4 p. 153. Even if Benda could identify other potential claimants, there are serious questions about whether those individuals would participate given the prospect that their participation might result in no award due to offset possibility or other damage to the horse racing industry in Iowa should a large double payment be imposed on Prairie Meadows.

This case is very similar to cases in which courts have found that class certification is inappropriate where the theory of liability cannot be established with generalized evidence by the representative on behalf of the entire class. See, *Roland v. Annett Holdings, Inc.*, 940 N.W.2d 752, 760 (Iowa 2020) (and cases cited therein). It is certainly ironic for Benda's lawyers to claim that Prairie Meadows has made no claim against the horse owners who were supposedly overpaid, nor is there a "plausible and legal way" that any of the proposed class members could be liable for the amount received. Benda's Brief, at 49-50. It is, in fact, this very "legal fantasy" that Benda's lawyers claim Prairie Meadows used to strike fear in the hearts of the organizations and to cause them to send letters opposing Benda's claims. There is certainly a question whether many of the owners and breeders that would be a part of the class were overpaid base purses if they now try to recover more in breeders' awards or purse supplements.

The reason that such a question exists is because Prairie Meadows paid out all of the purse money required under the law and the only real issue here is whether the owners and breeders who were entitled to the money got it or whether the money was paid to other owners and breeders not entitled to it under the IRGC's interpretation. This question requires individual determinations to be made between different breeders and owners some of

whom have only Iowa-foaled horses and others of have both Iowa-foaled horses and out-of-state horses.

These questions complicate an award so much that they predominate over the single question whether any owner and breeder that is a part of the class would have been underpaid some amount. In other words, no owner or breeder involved in any class can receive an underpayment without first determining whether that owner or breeder also was overpaid base purses. Given the foregoing, the questions that Benda claims are predominant are not, or at least not clearly so, and, therefore, Benda has not met the requirement of predominance.

V. CLASS CERTIFICATION IS NOT NECESSARY FOR THE FAIR AND EFFICIENT ADJUDICATION OF THIS CONTROVERSY.

Under the Iowa Rules of Civil Procedure, the court may certify an action as a class action if it finds all of the following:

- a. The requirements of rule 1.261 have been satisfied;
- b. A class action should be permitted for the fair and efficient adjudication of the controversy;
- c. The representative parties fairly and adequately will protect the interests of the class. See, Iowa R. Civ. P. 1.262(2)(2021).

Iowa Rule of Civ. P. 1.263(1) sets forth a number of factors that the district court is to consider and weigh in determining whether the prerequisite of rule 1.262(2)(b) have been met. See, *Luttenegger v. Conseco Fin. Serv. Corp.*, 671 N.W.2d 425, 437 (Iowa 2003). The relevant factors are:

a. Whether a joint or common interest exists among members of the class;

b. Whether the prosecution of separate actions by or against individual members of the class would create a risk of inconsistent or varying adjudications with respect to individual members of the class that would establish incompatible standards of conduct for a party opposing the class;

c. Whether adjudications with respect to individual members of the class as a practical matter would be dispositive of the interests of other members not parties to the adjudication or substantially impair or impede their ability to protect their interests;

d. Whether a party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making final injunctive relief or corresponding declaratory relief appropriate with respect to the class as a whole;

e. Whether common questions of law or fact predominate over any questions affecting only individual members;

f. Whether other means of adjudicating the claims and defenses are impracticable or inefficient;

g. Whether a class action offers the most appropriate means of adjudicating the claims and defenses;

h. Whether members who are not representative parties have a substantial interest in individually controlling the prosecution or defense of separate actions;

i. Whether the class action involves a claim that is or has been the subject of a class action, a government action, or other proceeding;

j. Whether it is desirable to bring the class action in another forum;

k. Whether management of the class action poses unusual difficulties;

l. Whether any conflict of laws issues involved pose unusual difficulties;

m. Whether the claims of individual class members are insufficient in the amounts or interests involved, in view of the complexities of the issues and the expenses of the litigation, to afford significant relief to the members of the class. See, Iowa Rule of Civ. P.1.263(1)(2021).

A. No Joint or Common Interest

A review of the factors involved in determining whether the second prerequisite (“fair and efficient adjudication”) has been met shows that class certification is not necessary for the fair and efficient adjudication of the controversy raised by Benda’s claims. First, Benda has not shown that a joint or common interest exists among members of the class. First, so far, the only potential members of the class who have expressed an opinion on Benda’s claims have universally and uniformly opposed them. Benda has not provided any evidence that any person other than him has a joint or common interest in Benda’s claims.

B. No Risk of Inconsistent Adjudications

Secondly, Benda has not shown that prosecution in separate actions by individual members of the class would create a risk of inconsistent or varying adjudications. This is because, at present, there is no evidence that any member of the putative class would even bring such a claim. It has now been nearly 7 years since the IRGC ruling and literally the only individual who has expressed an interest in Benda’s claim is Benda himself. Other members who have expressed an opinion on Benda’s claim that could be putative class members have all opposed.

The horse organizations designated to represent putative class members oppose Benda's claims and would likely advise putative class members not to participate in the class action due to the potential damage that could be done to the Iowa horseracing industry. Given these facts, it is not certain that any separate actions would be prosecuted relating to the claims made by Benda. Certainly, no other such claims have been made orally or otherwise since the IRGC made its ruling nearly 7 years ago. Benda has presented no evidence other than speculation that such claims will ever exist and cannot rely on this factor as evidence the class certification is necessary.

As a corollary to the previous argument, there is no evidence that an adjudication of Benda's claim would be dispositive of the interests of other members or would substantially impair or impede their ability to protect their interests if any claims were brought. Benda's claim could easily be determined in a small claims action which would have no effect on other individual members' claim should any ever be brought. The small claims action would be unlikely to have any precedential effect with respect to claims other than Benda's and would not impair the interests of other putative class members if any ever surfaced as to their claims.

C. No Other Viable Option Argument is False

Benda's lawyers' assertion that there is "no other viable option" for remedying underpayments made is belied by the IRGC ruling itself. If that claim were true, the IRGC would have required Prairie Meadows to go back and recalculate a breeders' awards and purse supplements made in earlier years. If that claim were true, the ITBOA or other horse organizations with affected members, by now, would have asserted claims for systematic underpayment of their members. Instead, the only person who has raised the issue is Benda now nearly 7 years after the ruling was made. It is very difficult to tell if there are other class members who have any interest in obtaining funds allegedly underpaid for those years at this time. There is no need to place the burden of time and expense on Prairie Meadows or any other party to determine those issues when the only person who has expressed an interest in the underpayments is Benda. Furthermore, if the IRGC, the horse organizations involved and Prairie Meadows all agree that there is no use to go back and try to sort out what payments should have been made in past years, the factors weigh heavily against doing so solely to satisfy Benda.

VI. BENDA WILL NOT FAIRLY AND ADEQUATELY PROTECT THE INTERESTS OF THE CLASS.

The Iowa Supreme Court has stated that “adequacy of representation is perhaps the most significant of the prerequisites to a determination of class certification.” See, *Stone v. Pirelli Armstrong Tire Corp.*, 497 N.W.2d 843, 846 (Iowa 1993). If the named plaintiff would not fairly and adequately protect the interests of the class because of such matters as lack of credibility, potential conflicts of interest and inadequate financial resources then certification may not appropriate. *Id.*

A. Benda’s Conflict of Interest

Benda’s actions show that he has a conflict of interest with putative members of the class. First, the organizations that represent individuals who own and breed Iowa horses oppose the action. This is because of their concern with the impact it will have on the Iowa horseracing industry and on individual members of the class who may have received overpayments of base purses and may end up worse off than when they began. While it is possible that some of those members will opt out the class, it is not clear that all of them will and should those members of the class who remain in the class determine that they will end up in a worse position by participating in

the class, there is no reason to believe that Benda or his lawyers will allow them to avoid the negative effects of participating in the class.

Moreover, should Prairie Meadows be required to make a double payment of monies already paid for previous racing seasons, it is likely that will be a negative impact of those payments on breeders and owners going forward. It is difficult to tell at this point exactly what those impacts will be but Benda's pursuit of the action will put him in conflict with those people who still race horses and may experience negative impacts since Benda is no longer racing and no longer has a license to race horses. Benda and his lawyers do not have any particular concern about negative effects that may happen to breeders and owners going forward because they have no current "skin in the game." This presents a likely conflict between putative class members who are still racing and Benda or other putative class members who no longer participate in races.

B. Benda's Interests are Personal and Vindictive, Not Altruistic

It is not clear why Benda got involved in this lawsuit in the first place. His damages consist only between \$2,000 and \$5,000 that he claims he would have received over a four-year period roughly seven years ago. Benda has had numerous conflicts with Prairie Meadows, the Iowa Racing and Gaming Commission and owners and trainers participating in race meets.

App. v. 2 pp. 379-387; v. 3 pp. 20-52. Some of the conflicts have resulted in the entry of judgments against Benda for his failure to pay trainers involved in the race meet. *Id.* His conflict with Prairie Meadows employees resulted in his termination from employment with Prairie Meadows. App. v. 2 p. 378, v. 5 p. 14. Benda has also sought to blame Prairie Meadows for actions taken by stewards at a race meet one of whom was employed by Prairie Meadows which actions were later upheld by the IRGC and which actions resulted in, among other things, Benda's loss of his license to race horses at Prairie Meadows. App. v. 2 pp. 379-387; v. 3 pp. 20-52.

All of these incidents show that Benda's interest in this litigation is more about his problems with Prairie Meadows than it is about assisting other class members to recover amount of money, however small, over a four-year period that Benda and his lawyers allege were underpaid of four (4) to eight (8) years before the lawsuit was filed. The fact that no other putative class member has sought to recover such amounts, and the fact that the amount owed to Benda himself is relatively small, shows powerfully that Benda's agenda to attack Prairie Meadows is his predominant motive for engaging in this action which will not make him a good representative of the class.

Benda's judgment as to the best interests of the class will likely be affected by his animus toward Prairie Meadows. There is no evidence that Benda is well-respected in the horseracing community or that he has a community of interest with other putative members. In fact, the evidence is to the contrary. In addition to Benda's previous scrapes with the IRGC and Prairie Meadows, Benda at one point ran to be a member of the board of the ITBOA and lost his race. App. v. 2 p. 376. Benda will not be interested in protecting the interests of the class in a fair and adequate manner, and the motion for class certification was properly rejected.

CONCLUSION

For the reasons stated above, the Court should affirm the district court's ruling and order denying Benda's motion for class certification and remand the case to the district court for further proceedings not inconsistent with its opinion.

REQUEST FOR ORAL ARGUMENT

Prairie Meadows, through counsel, requests to be heard in oral argument upon the submission of this cause.

CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME
LIMITATION AND TYPE AND TYPE-STYLE
REQUIREMENTS

1. This brief complies with the type-volume limitations of Iowa R. App. P. 6.903(1)(g)(1) or (2) because this brief contains 6,918 words, excluding parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

2. This brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(e) and the type-style requirements of Iowa R. App. P. 6.903(1)(f) because this brief has been prepared in a proportionally spaced typeface using Microsoft Office Word format 2010 in Times New Roman 14-point style.

<u><i>/s/ Dennis P. Ogden</i></u>	February 16, 2022
Dennis P. Ogden	Date

CERTIFICATE OF FILING AND
SERVICE

The undersigned certifies that on February 16, 2022 a copy of this Final Brief of the Appellant was filed electronically with the Clerk of the Iowa Supreme Court through the EDMS system, and which system further will provide access to and service of the Brief on that same date to:

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