BEFORE THE IOWA SUPREME COURT

No. 21-0649

ROBERT BENDA, on behalf of himself
and all others similarly situated,

Plaintiff-Appellant,

vs.

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
HON. SCOTT D. ROSENBERG

INTERVENOR IOWA HORSEMEN'S BENEVOLENT AND PROTECTIVE ASSOCIATION'S AMENDED FINAL BRIEF

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STATEMENT OF THE ISSUE

Whether the district court, which found that the named plaintiff will not fairly and adequately represent the class and that individual issues will predominate, abused its discretion in denying class certification?

ROUTING STATEMENT

The Iowa HBPA believes this case should stay with the Supreme Court. A finding that a named plaintiff will fairly and adequately represent the class is not merely a requirement under the Iowa Rules of Civil Procedure; it is necessary under the Fourteen Amendment's Due Process Clause. *Hansberry v. Lee*, 311 U.S. 32, 41 (1940). Too often, litigants lose sight of that fact. The district court in this case did not, but a decision from the Supreme Court would provide needed binding precedent on fundamental issues of when and whether class certification is appropriate.

STATEMENT OF THE CASE

This is a purported class action brought by Robert Benda, a former race-horse owner who claims that Prairie Meadows underpaid "purse supplements" and "breeder's awards" from 2010-2018. As explained in more detail below, Benda alleges that Prairie Meadows miscalculated the amount of aggregate money that is statutorily and contractually required to be set aside and ultimately paid to owners and breeders whose Iowa-bred horses finish in the top four places at Prairie Meadows. (The statutes and contracts do not dictate how much money must be awarded for any individual race but instead only cover an aggregate amount.)

The issue was first addressed by the Iowa Racing and Gaming Commission in January 2015, based on a petition for declaratory order filed by the other intervenor in this case, the Iowa Thoroughbred Breeders and Owners Association (ITBOA). (App. V. 1 111-17). At that time, the Racing and Gaming Commission told Prairie Meadows that it had to change the way it calculated the aggregate amount of money for purse supplements, but that it did not need to do so until the *following* race season (2016) because the Commission did not want to disturb the 2015 race meet. (App. V. 1 116-17).

Benda, who had his license stripped by the Commission in 2017, took that Commission ruling and filed a purported class action, seeking over $2 million in damages for alleged underpayments going back to 2012 (and later amended to go back to 2010) on behalf of "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." (App. V. 1 40).

Benda alleged four substantive counts in his amended petition: (1) violation of Iowa Code section 99D.22, (2) breach of implied contract, (3) unjust enrichment, and (4) breach of express contract. (App. V. 1 32-42). The first three claims were premised on an alleged violation of section 99D.22; the fourth claim was based on a contract between Prairie Meadows and the Iowa Horsemen's Benevolent and Protective Association (Iowa HBPA) for which Benda claimed to be a third-party beneficiary. Even though Benda's contract claim is based on

the Iowa HBPA contract, Benda opposed the Iowa HBPA's motion to intervene and later asked the court to prohibit the Iowa HBPA from talking with its own members—and even its own board members—about the case. (Resistance to motion intervene; App. V. 2 128-32). The district court granted Iowa HBPA's motion to intervene (App. V. 1 61-63), and Benda withdrew his request to restrict the Iowa HBPA from communication with its own members about the lawsuit. (App. V. 2 146-47).

The Iowa HBPA filed for summary judgment, which the district court granted in part. The court dismissed the first three claims, agreeing with Iowa HBPA's argument that there is no private right of action for damages based on a violation of Iowa Code section 99D.22. (App. V. 3 53-63). The court denied summary judgment on the breach of contract claim, concluding that the IRGC's prior proceedings on this issue did not implicate the primary jurisdiction doctrine. (*Id.*). Thus, the only claim remaining is for breach of the two Prairie Meadows/Iowa HBPA contracts, which is based on an interpretation of that contract that both signatories, the Iowa HBPA and Prairie Meadows, reject.

Indeed, Benda—who was not involved in the negotiation of the contract, had no knowledge of the parties' course of dealing, and had not seen the contract before this lawsuit (App. V. 2 386, Benda Depo. Tr. 150)—is the only person to claim a breach. He nevertheless asked the district court to name him as the class representative of all owners and breeders of Iowa-bred horses who were entitled

to purse supplements and breeder's awards from 2010-2018. Benda also claimed during in his class certification filings that he, on behalf of the class, is seeking damages for Prairie Meadows alleged breach of contracts with the Quarter Horse Racing Association, a separate trade association that represents owners of quarter horses. But Benda did not plead such a breach in any of his petitions, he did not race quarter horses at Prairie Meadows during the term of the contracts, and he does not contend to be a third-party beneficiary of those contracts. (App. V. 2 257, Benda Depo. Tr. 21).

The district court denied Benda's motion for class certification. Following a hearing in which Benda testified, the court, "employing its broad discretion[] to weigh the competing factors and determine whether a class action will provide a fair and efficient adjudication of the controversy," found that "a class action in this matter would pose unusual and quite probably insurmountable difficulties in its management." (App. V. 4 40, 55). Among other things, the district court found that:

- "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." (*Id.* at App. V. 4 50).

- "Benda is not an adequate representative party to protect the interests of the purported class members," as "his position is basically one of antagonist to the class he wishes to represent." (*Id.* at App. V. 4 50).
- "There is a substantial interest among members who are not representative parties in controlling their own individual prosecution or non-prosecution of their own separate actions or interests." (*Id.* at App. V. 4 55).
- The interests of absent class members "do not align with those of Benda as the proposed class representative." (*Id.*).
- "There are no common questions of law or fact that predominate over any questions affecting only individual members of the class. In fact, the purported class has a substantial interest in not pursuing any form of class action." (*Id.*).

Benda appealed the denial of class certification and Benda's individual breach-of-contract lawsuit is currently stayed pending this appeal.

STATEMENT OF THE FACTS

This is far from the usual breach-of-contract action. The amount of money that Prairie Meadows pays in purses each year is governed in part by statute, by the Iowa Racing and Gaming Commission, and by contracts that are "negotiated between the [Prairie Meadows] and representatives of . . . horse

owners." Iowa Code § 99F.6(4)(a)(3). Understanding this regulatory environment is important in reviewing the district court's findings and conclusion that "the grounds for class certification do not exist." (App. V. 4 54).

A. Purses and the Role of the Iowa HBPA

Horse racing is heavily regulated under both state and federal law, and the Iowa HBPA—which represents over 1,100 horsemen who run thoroughbred horses at Prairie Meadows—has an express role in each. (App. V. 2 366).

Under the federal Interstate Horseracing Act, out-of-state wagers cannot be placed on the outcome of a Prairie Meadows race unless Prairie Meadows has "a written agreement with the horsemen's group" that represents the majority of owners and trainers racing there. 15 U.S.C.A. § 3002(12). The Iowa HBPA is that group for thoroughbred racing. (App. V. 4 198-99).

The Iowa HBPA's role is also recognized in Iowa code. Under Chapters 99D and 99F, the IRGC has broad regulatory authority to "regulate the purse structure for race meetings" (Iowa Code § 99D.7) but it must authorize 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." Iowa Code § 99F.6(4)(a)(3). Again, for thoroughbred horses, the Iowa HBPA is that representative.

The "supplement purses" referenced in that statutory provision—generally referred to as "purse supplements"—are bonus payments made to owners of Iowa-bred horses who place in first through fourth place. When an Iowa-bred horse places in an "open" race (a race that is open to Iowa-bred horses and non-Iowa-bred horses), the owner of that horse receives the base purse *and* the purse supplement because their horse was bred in Iowa. The owner of a non-Iowa-bred horse would only receive the base purse. There are also races that are limited to Iowa-bred horses, in which the owner of each placing horse receives both the base purse and the supplement.

The total amount of money that Prairie Meadows sets aside for thoroughbred racing is established before the racing season, as agreed to by Prairie Meadows and the Iowa HBPA and approved by the IRGC. (App. V. 1 118-26, 136-37). For example, the 2010 Prairie Meadows/Iowa HBPA contract sets total purse money (money available for purses and purse supplements) at 83% of "11% of the first $200 Million of net receipts" and "6% of net receipts above $200 million." (App. V. 1 128). Excerpts from these contracts from 2004 through 2015 are at Appendix pages 118-141. (App. V. 1 118-26, 136-37). These contracts must be approved by the IRGC.[1]

[1] *See* Iowa Code § 537A.4 (stating gambling contracts are void except for those authorized by statute, including under chapter 99F); *id.* § 99F.4 (conferring regulatory and supervisory jurisdiction over all gambling contracts to the IRGC);

The focus of this case is how that total amount of money is divided between base purses and purse supplements. Going back more than 25 years, and until 2016, the amount of money that Prairie Meadows set aside for purse supplements was governed by what Prairie Meadows and the Iowa HBPA call the "Rasmussen formula," which sets the purse supplement amount at 20% of the amount of money that is set aside for base purses. (App. V. 1 150-51). In 2004 and 2005 contracts, for example, Prairie Meadows and the Iowa HBPA agreed that that $15 million would be allocated for total purse money, of which $12.5 would be allocated for base purses and $2.5 million would be allocated for purse supplements. (App. V. 1 119, 121). Thus, the purse supplement ($2.5 million) was 20% of the base purse amount ($12.5 million), which the contracts refer to as the "net purse amount." (*Id.*) Or phrased another way, the "net purse amount" is the total amount of purse money divided by 1.2, and the purse supplement is 20% of that amount. (*Id.*). That is the so-called Rasmussen formula.

The parties used the same construct in the 2006 contract, which states that "20% of the net purse amount allocated for Thoroughbred Horses (the gross Thoroughbred Horse purse amount divided by 1.20) shall be supplemented to

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Iowa Admin. Code r. 491-1.5(6) (requiring IRGC approval of "purse supplements for Iowa-breds")

the Iowa bred horses placing in first through fourth positions." (App. V. 1 122). The "gross" amount refers to the total amount available for thoroughbred horses, and the "net purse amount" refers to the amount of money available for base purses. (*Id.*). The Iowa HBPA and Prairie Meadows carried that same formula through 2007, 2008, and 2009. (App. V. 1 123-25).

In 2010, the two parties entered into a five-year agreement and again stated that "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." (App. V. 1 126). At this point, Benda claims that the definition of "net purse" changed. In his view, the use of "net purse" in the 2010 contract refers to the total amount of money available for base purses and purse supplements (i.e., what the earlier contracts called the "gross purse amount"). For example, if there is $15 million available for base purses and purse supplements, Benda contends that purse supplements must be 20% of the entire $15 million. Thus, the total for purse supplements would be $3 million instead of $2.5 million.

Leroy Gessmann, the former president of the Iowa HBPA from 2002-2017, disagrees. (App. V. 2 368). He led the contract negotiations for the Iowa HBPA each of those years and maintains that the intent was to continue with the "Rasmussen formula," where the "net purse amount" is equal to the total amount available for thoroughbred racing (what the earlier contracts call the

"gross thoroughbred horse purse amount") divided by 1.2. (App. V. 1 122, 150-51; V. 4 202, 206). Gessmann also owned Iowa-bred horses during the proposed class period and won purse supplements, making him a member of the proposed class. (App. V. 2 369).

B. The 2011 Legislation

The issue was further complicated in 2011, when the Iowa HBPA, among other stakeholders, asked the legislature to codify their existing practice of allocating purse supplements based on the Rasmussen formula. (App. V. 1 150). Among other things, the legislation set the amount of money that would be allocated for purse supplements and "breeder's awards"—which are moneys paid to the breeder, rather than the owner, of an Iowa-bred horse. The resulting statute states: "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).[2]

[2] In his statement of facts, Benda claims that "[o]ver the course of a meet, Prairie Meadows is required to pay all qualifying horses statutorily calculated totals in 'purses,' 'purse supplements,' and breeder's awards." (Benda Br. 15). There is no statute that governs how much purse money or purse supplement money must be paid in each race. The Iowa HBPA contracts, which are what Benda's remaining claims are based on, provide only for an aggregate amount of money to be designated for purses and purse supplements. So too does Iowa Code

Prairie Meadows and the Iowa HBPA believed that this new statute simply codified their existing contractual practice and thus Prairie Meadows continued to use the Rasmussen formula, meaning that it set the purse supplement (and now also breeder's awards) percentage to be 20 percent of what was set aside for base purse money. (App. V. 1 113, 150).

C. Proceedings before the Iowa Racing and Gaming Commission

The new statute, passed in 2011, did not take effect until the 2012 racing season, which starts in May and goes through October, but some Iowa breeders and owners began to complain immediately that the statute required Prairie Meadows to calculate purses differently than it had in the past. (App. V. 1 151-52). In early 2012, before the race season began in May, the President of the Iowa Thoroughbred Breeder's and Owners Association (ITBOA) met with IRGC Administrator Jack Ketterer to complain that, under the new statute, Prairie Meadows should be calculating purse supplements differently. (*Id.* at App. V. 1 152). The ITBOA, who represents only Iowa breeders and owners (whereas the Iowa HBPA represents all owners and breeders who race at Prairie Meadows) believed that purse supplements should be 20 percent of the entire amount allocated for thoroughbreds. (App. V. 1 151-52).

99D.22. That fact is an important to understanding the problems with Benda's arguments, both on the merits of the claims (which are not at issue here) and on class certification.

Despite the complaints to Ketterer and then to Administrator Brian Ohorilko, who took over when Ketterer retired in March 2012, the IRGC took no action. (App. V. 1 149, 152). Prairie Meadows continued to allocate the gambling proceeds as it had for several years under the Rasmussen formula. (App. V. 1 150-51).

Then, before the 2015 race season, the ITBOA filed a petition for declaratory order with the IRGC under Iowa Code section 17A. (App. V. 1 111). The ITBOA asked the IRGC to declare that ITBOA's interpretation of Iowa Code section 99D.22(1)(c) was the correct one and that Prairie Meadows should change how it calculates the allocation for purse supplements and breeder's awards. (*Id.*) The ITBOA told the IRGC that it was "not asking the [IRGC] to make the order retroactive, or make it effective for the 2015 race season, but [was] willing to have it take effect January 1, 2016." (App. V. 1 149, IRGC Jan. 2015 Minutes at 8).

In a written decision, filed on January 22, 2015, the IRGC agreed with the ITBOA and ordered that Prairie Meadows change the calculation *after* the 2015 race season. (App. V. 1 116-17, 147-48, IRGC Dec. Order at 6-7). The IRGC acknowledged "that for the last twenty-plus years" Prairie Meadows had been calculating purse supplements for Iowa-bred horses based on the "Rasmussen formula," but concluded that the statutory language relating to purse supplements, when read in context of other language in Iowa Code Chapter 99D,

had a different meaning where "net purse moneys" referred to the total amount available for base purses and purse supplements. (App. V. 1 113, 115-16). The IRGC nevertheless believed it to be a "close question" and "to avoid any disruptions in the 2015 meet and in order to best protect all parties' interest," the IRGC declared that its order would "not become effective until November 1, 2015"—i.e., *after* the 2015 season finished in October. (App. V. 1 116-17). In other words, the IRGC acknowledged that, for the then-upcoming 2015 season, Prairie Meadows would continue to set aside purse supplement funds using the Rasmussen formula.

At the IRGC's next meeting in March 2015, the IRGC approved the new five-year contract between the Iowa HBPA and Prairie Meadows—the second contract that is the basis for Benda's breach of contract claim. (App. V. 1 108). That contract again states that the allocation of purse supplements and breeder's awards were to be 20 percent of net purses. (App. V. 1 136-41). The IRGC approved the contract knowing Prairie Meadows was using the Rasmussen formula for the 2015 race season, because the IRGC wanted to "avoid any disruption during the 2015 meet." (App. V. 1 108, 117). No one—no horse organization, owner, or breeder—objected to the IRGC's decision. (*Id.* at App. V. 1 117)

Per the January 2015 IRGC order, Prairie Meadows continued to use the Rasmussen formula for the 2015 race season. (App. V. 1 36).

Four years later, Benda filed this lawsuit, asking the district court to certify a class of plaintiffs—virtually all of whom are members of both the Iowa HBPA and the ITBOA—despite the fact that the Iowa HBPA disagrees with Benda's interpretation of the contract and despite the fact that the ITBOA stated in the Racing and Gaming proceeding that it did not want to disturb purses distributed in prior years. The Iowa HBPA, and later the ITBOA, intervened and opposed both the merits of this lawsuit and the motion for class certification.

D. Robert Benda's Litigation History

Robert Benda is a former horse owner and breeder, the key word being *former*. Benda no longer races horses at Prairie Meadows because of a string of legal and financial troubles dating back to 2016. As explained further below, Benda's legal and financial inability to race horses at Prairie Meadows puts him in conflict the members of the proposed class who can and still do race horses at Prairie Meadows.

Benda's legal troubles started around 2016. In September 2016, based on complaint to the Iowa Racing and Gaming Commission, the Board of Stewards held a hearing to determine whether Benda, as an owner, had been "training his horses without obtaining an IRGC license." (App. V. 2 271). The Board also heard evidence on Benda's complaint against his trainer for alleged "gross negligence/undue risk and serious injury to his horse 'Rock Lil Sis.'" (*Id.*). The Board "did not find any evidence to substantiate Benda's claim" against his trainer but determined, at that time, that "Benda was not training horses under

[his trainer's] name." (*Id.*). The Board did warn Benda "that he was very close to crossing over the line between owner and trainer." (*Id.*).

That warning marked the beginning of Benda's problems with his trainers and the IRGC. For whatever reason, Benda stopped paying his trainers sometime in 2017, which led to several lawsuits (highlighted below) and the ultimate suspension of Benda's license to race horses at Prairie Meadows. In August 2017, Benda took a horse from a Prairie Meadows' barn that was scheduled to race that day. (App. V. 2 272). That is a serious violation of the racing and gaming rules, so Benda had to appear before the Board of Stewards. At the hearing, the Board found Benda's justification for removing the horse to be not credible. The Board concluded that Benda had violated IRGC rules and it fined him $250. (*Id.*). Benda failed to pay the fine, which was issued in 2017, until after he filed the lawsuit and sought to represent all owners of Iowa-bred horses. (App. V. 2 261-62, 275; V. 4. 192-94).

In 2017 Benda was the defendant in multiple lawsuits brought by his trainers for failure to pay for their services. *See Tracy v. Benda*, Polk Co. No. SCSC603508, SCSC603509, SCSC603510; *Landers v. Benda*, Polk Co. No. LACL133881. The Court entered judgments against Benda in each case, requiring him to pay damages of $2,660, $2,978.25, $2,017.50, and $4,095, plus interest and costs. (App. V. 2 317-30). At the time of the class certification hearing, Benda had not satisfied the judgements entered in favor of Tanner

Tracy, one of Benda's former trainers, but Benda claimed that he had been in contact with Tracy's counsel and had "made arrangements" for payment. (App. V. 4 192-94).

On July 19, 2019, the Polk County district court entered a judgment against Benda in the amount of $12,500 plus interest and costs in a breach-of-contract action for failure to pay the plaintiff for services provided to Benda's horses. (App. V. 2 335-38, Petition and Judgment Entry in *Bolinger v. Benda*, Polk Co. Case No. LACL143502).

On September 10, 2019, in a debt-collection action, the Polk County district court entered default judgment against Benda and in favor of UMB Bank, NA for $19,969.19, plus interest and costs. At the time of the ruling, the docket showed that UMB Bank was still trying, unsuccessfully, to collect that judgment. (App. V. 2 341-44, Judgment and Docket in *UMB Bank NA v. Benda*, Polk Co. Case No. LACL144863). Indeed, UMB Bank even executed a levy on Benda's interests in this lawsuit. (App. V. 4 21-31).

On November 15, 2019, the Polk County district court entered another default judgment in another debt-collection case, *Community Choice Credit Union v. Benda*, Polk Co. Case No. LACL145613, requiring Benda to pay $6,525.73, plus accrued interest of $266.31, plus additional interest and fees. (App. V. 2 345-47).

In 2019, Benda was also the defendant in a forcible entry and detainer action that his landlord had to file to remove him from the premise after the

expiration of the lease. Benda lost, appealed, and the district associate judge affirmed. *Estate of William Hummel v. Benda*, Polk Co. Case No. SCSC641495, Order Regarding Small Claims Appeal (Nov. 19, 2019). This case is notable as an example of yet another one of Benda's troubles with the legal system, but it's also relevant because Benda abandoned his horses in the process. When Benda was evicted, he refused to move his horses from the barns on the property, so the Polk County Sheriff was forced to take possession of them and turn them over to the Animal Rescue League. (App. V. 2 348-50). The Sheriff's Office notified Benda that he could reclaim the horses upon payment of fees incurred by the Animal Rescue League, which Benda did for just two of the seven horses. (*Id.*). He left the other five with the Animal Rescue League, along with his unpaid bills. (*Id.*).

On November 2, 2020, the Polk County district court entered yet another judgment against Benda in the amount of $8,962.14, plus accrued but unpaid interest in the amount of $551.55, plus continuing interest at a contract rate of 9.74%. (App. V. 2 358-59, Judgment in *Community Choice Credit Union v. Benda*, Polk Co. Case No. 05771 LACL147485). The court entered that judgment after Benda avoided service for months, then denied the claims but failed to lodge any real defense to the lawsuit. (App. V. 2 351-57).

And finally, on November 25, 2020, the Polk County district court entered default judgment against Benda in a foreclosure action. (App. V. 2 360-63,

Foreclosure Decree, *Community Choice Credit Union v. Benda*, Polk Co. No. EQCE085308).

Time and again, Benda has forced opposing parties and creditors to incur costs and fees to collect on claims that Benda had no defense to.

E. The Racing and Gaming Commission Suspends Benda's License

Because of his failure to pay his trainers, and because of his failure to pay the fine levied by the Board of Stewards, in 2017 the IRGC stripped Benda of his license to race at Prairie Meadows. (App. V. 2 261-62, 274-75). Benda appealed, but to no avail. In a letter to the IRGC, dated January 26, 2018, Benda accused the IRGC's Board of Stewards of "entrapment practices" and alleged that Rick Olson—who is a proposed class member,[3] a member of the Iowa House of Representatives, and the attorney for Benda's former trainer—was involved "in inappropriate possession of my personally owned" property. (App. V. 2 312). Benda also accused the Board of Stewards of "injecting misrepresentations and unauthorized evidence" into the proceedings against him. (App. V. 2 315).

At the time of the class certification hearing, Benda's license was still suspended. (App. V. 4 191). Although he said he might work to get it back in "a

[3] App. V. 1 309, 375-76, 388, 390 (showing Olson receiving breeder's awards during the relevant time period).

couple years," (*id.*) Benda also testified at his deposition that he has no intention of racing at Prairie Meadows. (App. V. 2 262, 381). And even if Benda were to regain his license, it does not appear that he has the financial ability to own and race horses anytime soon, having had multiple default judgments entered against him in recent years.

STANDARD OF REVIEW

This Court has frequently and recently "emphasized the district court's broad discretion" in weighing the factors to determine whether a class should be certified and has thus stated that its review is "limited" to determining whether the court abused that broad discretion. *Freeman v. Grain Processing Corp.*, 895 N.W.2d 105, 119 (Iowa 2017). Benda acknowledges that standard of review upfront but then goes on to argue that the standard should be less deferential when the district court denies certification. According to Benda, "the district court should have been looking for a way to certify the class, not for a way to reject certification." (Benda Br. 43) (emphasis in original).

It's not entirely clear what that means, in that there is no indication that the district court was "looking for a way" to do anything but apply the law and exercise its discretion. In any event, this Court's precedents make clear that "review of the district court's ruling granting ***or denying*** certification of a class is limited because the district court enjoys broad discretion in the certification of

class action lawsuits." *Freeman*, 895 N.W. 2d at 113 (emphasis added; quotation omitted). And that is as it should be. Indeed, how would such a one-way standard of review work from a legal or practical perspective? No Court has adopted a standard that is less deferential for orders denying certification than it is for orders granting certification. This Court should not be the first.

SUMMARY OF THE ARGUMENT

Under Iowa's class-action rules, Benda had the burden to convince the district that it should certify—and that he should represent—a class of "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 2010-2018." (2nd Amend. Pet. ¶ 47). To do that, Benda had the burden to prove, and the district court had to expressly find, that:

(a) the class is so numerous that joinder is impracticable and that there are questions of law or fact common to the class;

(b) a class action should be permitted for the fair and efficient adjudication of the controversy; and

(c) Benda fairly and adequately will protect the interests of the class.

Iowa R. Civ. P. 1.262(2); *see also Vos v. Farm Bureau Life Ins.* Co., 667 N.W.2d 36, 44–45 (Iowa 2003).

"A failure of proof on any one of the prerequisites is fatal to class certification (*Vos*, 667 N.W.2d at 45), but the district court—having heard all the evidence, listened to Benda's testimony, and considered the arguments of Prairie Meadows and the interveners—found that Benda failed to meet his burden on all of them. The district court got it right, and certainly did not abuse its broad discretion.

Most class-certification battles have two sides: On one side, there is the named plaintiff who, understandably, wants class certification; on the other side, there is the defendant who is being sued and, understandably, does not want class certification.

This case is different. Indeed, it may be unprecedented in that two groups who *already* represent virtually every proposed class member have intervened to say that this case should be dismissed and class certification denied. We have not seen a reported case where there was such uniform opposition to a class-action lawsuit by the proposed class. That, by itself, says something—especially when the named Plaintiff fails to provide evidence that other class members understand his claims and support his efforts. *See Audio-Video World of Wilmington, Inc. v. MHI Hotels Two, Inc.*, No. 7:09-CV-00039-F, 2010 WL 6239353, at *15 (E.D.N.C. Dec. 8, 2010), report and recommendation adopted as modified, No. 7:O9-CV-39-F, 2011 WL 1059169 (E.D.N.C. Mar. 18, 2011) (denying certification where "Defendants have raised a real question about the alignment

of interests across the class and Plaintiffs have done virtually nothing to dispel that notion.").

But this is about much more than the opposition from the Iowa HBPA and the ITBOA. The Iowa rules on class actions provide that a court cannot certify a class if the named plaintiff does not adequately represent that class. That rule is logical, but it's also constitutionally necessary; due process requires as much. *Hansberry v. Lee*, 311 U.S. 32, 41 (1940).

Robert Benda is not an adequate representative of owners and breeders of Iowa-bred horses, and certainly not with respect to the claims at issue. The IRGC stripped him of his license, meaning that he cannot race horses at Prairie Meadows and that his interests diverge from those who still do. In addition, Benda had no involvement in the negotiation and execution of the Iowa HBPA agreements that form the basis for his breach-of-contract claim, while other proposed class members *do* have that first-hand knowledge. (Unsurprisingly, they disagree with Benda.)

Benda's experience with the judicial system (multiple default judgements, dismissed claims, a foreclosure action, and an adverse ruling requiring the Polk County Sheriff to forcibly remove him and his horses from someone else's property, etc.) also shows that he is a poor representative of himself, much less a class of others. Benda cannot and should not be allowed to represent and make decisions on behalf of all owners and breeders of Iowa-bred horses.

But the problems with class certification are not limited to Benda's poor representation. Even under Benda's flawed legal theory of the case, some of the proposed class members likely benefited from Prairie Meadows' calculation of purse supplements, and those class members have interests that are at odds with other class members.

Also, even accepting Benda's theory that horse owner can maintain a breach-of-contract action based on a third-party beneficiary theory, individual issues would predominate—namely, the trial would devolve into numerous mini trials about which class members were aware of the terms of the Prairie Meadows/Iowa HBA contracts and their course of dealing during the class period. Indeed, in defense of the breach-of-contract claim, Prairie Meadows could call every horse owner to the stand to determine his or her knowledge of the situation. A class cannot be certified under that scenario. *See Roland v. Annett Holdings*, *Inc.,* 940 N.W.2d 752, 760 (Iowa 2020) (holding that class certification is not appropriate where individual issues predominate).

The class-action devise is a valuable tool when used correctly, but everything about this class action is wrong. Benda is free to bring a claim on his own behalf, as he sees fit. But that is all this case should be. The motion for class certification was correctly denied.

I. The district court was correct to find that Benda will not fairly and adequately represent the class.

"The inquiry into adequacy of representation, in particular, requires the district court's close scrutiny, because the purpose of [the class-action rules] is to ensure due process for absent class members, who generally are bound by a judgment rendered in a class action." *Rattray v. Woodbury Cty., IA*, 614 F.3d 831, 835 (8th Cir. 2010) (Colloton, J.). For multiple reasons, the district court was correct that Benda would not provide the needed constitutional protection that is required by adequacy of representation.

A. Because Benda is legally and financially prohibited from racing horses at Prairie Meadows, his interest conflicts with the interests of the proposed class.

Benda's interests do not align with the interests of the class, because—unlike most of the class members—Benda does not (indeed, cannot) race horses at Prairie Meadows. He is no longer part of the industry, and thus does not share the interests of many owners and breeders who still do own or breed horses that race at Prairie Meadows. The very fact that the Iowa HBPA and the ITBOA oppose this lawsuit and class certification shows, by itself, that Benda's interests do not align with those of the class and that certification should be denied. These organizations *already* represent the interests of owners and breeders of Iowa-bred horses. And what Benda fails to understand (or just refuses to acknowledge), is that these organizations are run by directors who are members of the proposed

class. Indeed, eight of the Iowa HBPA's eleven directors are members of the proposed class and all oppose this lawsuit. (App. V. 2 366, Moss Aff. ¶ 4; App. V. 4 206).

These class members, who are being advised by legal counsel, disagree with the merits of this lawsuit, and they have made that clear in their filings. But it's more than that. Even when legal claims are meritorious (again, these are not), it is often not in a plaintiff's interests to file a lawsuit. There are almost always other considerations at play. For example, a manufacturer that sells a large percentage of its products to one customer may forgo a meritorious breach-of-contract claim against its customer because maintaining the long-term relationship is more important than one contract dispute. And so it is here.

Putting on a racing meet requires the coordination of owners, trainers, breeders, and—obviously—Prairie Meadows. They are all partners; they are working together for the common good of the entire industry. Suing Prairie Meadows for over $2 million hurts Prairie Meadows, who is a partner in promoting the horseracing industry in Iowa. Many (and maybe all) of those who still race horses at Prairie Meadows have no interest in going backwards, to undue the payments that have already been made or to make Prairie Meadows pay an additional $2 million. These class members and their associations (Iowa HBPA and ITBOA) thus have an interest in opposing this lawsuit, regardless of the merits. To them, that $2 million is better spent on advertising and promoting the

racing industry. Or in promoting the health of Prairie Meadows' gaming operations generally, since future purse money is derived from that gaming revenue. (App. V. 4 202, 204-05). They see no reason for Prairie Meadows to spend thousands of dollars on attorney's fees to defend a lawsuit over a purse-supplement formula that owners of Iowa-bred horses supported—which is another conflict among the class members.

When Prairie Meadows decided what percentage of funds to set aside for purse supplements, it was not making that decision in a vacuum. Representatives of owners and breeders of Iowa-bred horses were part of that discussion. During the proposed class period, the Iowa HBPA was led by Gessmann, a proposed class member. (App. V. 1 549, 629-30). He was responsible for negotiating the contracts that Benda is suing under and, as Benda has conceded, Gessmann believes that Prairie Meadows was correctly allocating purse supplements under the Iowa HBPA contracts and the statute. (App. V. 1 489; V. 2 368-69).

Indeed, when the ITBOA filed its petition for declaratory order with the IRGC, it wasn't Prairie Meadows who fought the change; it was Gessmann and the Iowa HBPA, which is governed by a board that contains members who are part of the proposed class. (App. V. 1 150-51; V. 4 202). In other words, there are class members who, for a variety of reasons, oppose any lawsuit at all. Allen Poindexter who sits on the Iowa HBPA board was the largest breeders of Iowa-bred horses during the class period (App. V. 2 364), accounting for

approximately 15% of all Iowa-bred horses. (App. V. 4 200). Regardless of the merits of this case, Poindexter does not support this lawsuit and does not believe Benda represents his interests. (App. V. 2 365).

Even the ITBOA, the organization that filed the declaratory order proceeding with the IRGC that started the debate over purse supplements, does not believe it is in the interests of the horse industry and current owners and breeders to sue Prairie Meadows for $2 million. That is why the ITBOA expressly told the IRGC that it wanted prospective relief only. (App. V. 1 641; V. 2 268). That decision was made by ITBOA board members, the very same people who are proposed class representatives here. (*Id.*) How can Robert Benda, who can no longer race horses at Prairie Meadows and does not have an interest in the health of the industry, represent these class members? Surely, he cannot. Even if Benda somehow got his license back, he does not have the financial ability to care for and race horses at Prairie Meadows. Based on the recent collection actions and default judgments against him, it appears that Benda is on the verge of bankruptcy, which creates its own class-certification problems. *See Dechert v. Cadle Co.*, 333 F.3d 801 (7th Cir. 2003) (Posner, J.) (ruling that a bankruptcy trustee cannot serve as a representative of a class). Indeed, shortly before the district court denied class certification, one of the debtors attempted to put a levy on Benda's interests in this case. (App. V. 4 21-31).

Even if there are proposed class members who believe that something should be done about purse supplements from 2010-2018, their preferred remedy (and the only possible remedy) might be one that Benda has not requested, precisely because he would not benefit from it. The two Iowa HBPA contracts that Benda is suing under state that if there are "any underpaid purses or supplements" from prior years, those funds must be "set aside in a separate account to be used for "purses and/or supplements" in future years. (App. V. 1 558, 565; V. 4 210-11). In other words, the Iowa HBPA contracts themselves dictate an equitable remedy if Prairie Meadows underpays purse supplements, but Benda did not plead that remedy because he no longer races horses at Prairie Meadows. When asked why he did not request the contractual remedy, Benda stated: "Well, that would be unfair to the owners in 2012 to '15 that no longer are participating. How do they recover – how do they recover? Such in a specific instance myself. I'm not racing." (App. V. 2 265, Benda Depo. Tr. 170).

That is a clear and fundamental conflict of interest that is neither speculative nor imaginary. "The premise of a class action is that litigation by representative parties adjudicates the rights of all class members, so basic due process requires that named plaintiffs possess undivided loyalties to absent class members." *Broussard v. Meineke Disc. Muffler Shops, Inc.*, 155 F.3d 331, 338 (4th Cir. 1998). That is not true of Benda, as he admits.

Courts have recognized that in cases like these—where the named plaintiff is no longer a participant in the industry but many of the class members are—that a class cannot be certified. The reason, as explained above, is that the class members who are still participating in the industry have different interests and goals than those who, like Benda, are not. In *Broussard*, a group of ten franchisees sued the franchisor, Meineke Discount Muffler Shops, claiming that Meineke's handling of franchise advertising breached the standard franchise agreement with each franchisee. The district court certified a class of plaintiffs, but the Fourth Circuit reversed.

The franchisees, like the horse owners and breeders in this case, had different interests, depending on whether they remained franchisees. As the court explained, the class members who were no longer franchisees had "an interest only in maximizing any damages Meineke would have to pay." *Broussard*, 155 F.3d at 338. They did not care about Meineke's financial success as a whole or how Meineke would manage its advertising program going forward. *Id.* at 338.

The class members who were still franchisees had different interests. Some franchisees had an interest in avoiding litigation altogether; to them, "pursuing any litigation at all was in tension with the evident desire [] to put the advertising dispute with Meineke behind them." *Id.* at 339. And some had an interest in seeking restitution as the sole remedy, where Meineke would put funds in an account for future advertising. *Id.* As the Court explained, these conflicting

interests—those who wanted no litigation at all, those who wanted equitable relief for future advertising, and those who just wanted money damages—made class certification inappropriate.

As for the dispute about which remedy to choose—money damages that benefited former franchisees and a remedial remedy that benefited current franchisees—the court stated the named plaintiff's strategy of "[p]ursuing a damage remedy that was at best irrelevant and at worst antithetical to the long-term interests of a significant segment of the putative class added insult to injury" to the erroneous class-certification ruling. *Id.* The same would be true here, which is why the district court was correct to deny the motion for class certification.

Similarly, in *Audio-Video World of Wilmington, Inc. v. MHI Hotels Two, Inc.*, No. 7:09-CV-00039-F, 2010 WL 6239353, at *14 (E.D.N.C. Dec. 8, 2010), the court declined to certify a class action of former and current owners of condo units in the Shell Island Resort Hotel. As the Court recognized, there was tension between those who still owned units in the hotel and those who no longer did. In denying certification, the court stated that, "importantly, [the named] Plaintiffs have provided no evidence that a single other unit owner wishes to join their proposed class. Instead, they simply contend that '[i]t is in the best interest of Class members to recover all monetary amounts they are entitled to.'" *Id.* at *14. "While, in a vacuum, this statement might be true," the court "believe[d] it to be

at the very least possible and at the most quite likely that, *even assuming liability*, many of the owners of units still managed by [the defendant] might rather forego the possibility of some small monetary recovery to which they were entitled in the interest of avoiding conflict with" the manager of the condo building. *Id.*

Again, the same is true here. As far as we know, there is not a single proposed class member who still races at Prairie Meadows who agrees with Benda's objective of suing to collect purse supplement funds from 2010-2018. And the only proposed class member who has given any support for this lawsuit, Maggie Moss, admitted that she "not gotten into the merits" but merely trusts and respects Benda's lawyers. (App.V. 4 153).

Benda tries to explain away the lack of support, acting as if the opposition to this lawsuit is based upon some misinformation campaign started by Prairie Meadows. But no such pressure has been applied to the Iowa HBPA by Prairie Meadows, at least beyond Prairie Meadows expressing understandable frustration at being sued for calculating purse supplements under an interpretation that the Iowa HBPA and many owners and breeders of Iowa-bred horses supported. And the ITBOA has, since Benda accused Prairie Meadows of undue pressure, hired its own counsel and passed a resolution to oppose this lawsuit and Benda's request for class certification.

The only thing that is problematic in this lawsuit is the fact that it exists at all. Indeed, Benda went so far as to file a motion to prevent the Iowa HBPA, an

entity that is the sole representative of horsemen at Prairie Meadows under federal law, from talking with its members (and even its own board of directors) about this lawsuit. The fact that Benda has gone to such lengths to muzzle opposition to this case shows that it is not appropriate to certify him as the representative of a class of all owners and breeders of Iowa-bred horses.

It is Benda's burden to prove that he is an adequate class member. He has fallen well short. *See Audio Audio-Video World,* 2010 WL 6239353, at *15 ("Defendants have raised a real question about the alignment of interests across the class and Plaintiffs have done virtually nothing to dispel that notion.").

B. Other members of the proposed class have a more significant personal and financial interest in this case.

Benda's claim here is small; about $2,000 according to his filings. But others, who were much more successful owners and breeders of Iowa-bred horses than Benda, have a bigger stake in this case than Benda does. Allen Poindexter, for example. Over the last ten years, he has bred, owned, and raced about as many Iowa-bred horses than anyone else—and perhaps more than anyone else. (App. V. 2 364). In 2012 alone, he received more in Iowa purse supplements than all but two other owners at Prairie Meadows. (App. V. 2 285, showing totals for Poindexter Thoroughbreds LLC). So, if Prairie Meadows did underpay the purse supplement fund, Poindexter is one of the biggest victims. Yet Poindexter does not believe that this lawsuit should be prosecuted. (App. V.

2 364-65). Again, he does not believe that it is good for the horse industry, and he does not believe that Benda represents the interests of the class. (*Id.*).

There are other problems with Benda's representation. Even assuming *any* proposed class member can bring a claim for breach of the Iowa HBPA contract under a third-party beneficiary theory, Benda is not the person to lead that charge. He has no knowledge of the contract negotiations or what the parties said during those negotiations. He has no knowledge of the intent of the signors. And he has no knowledge of the course of dealing between Prairie Meadows and the Iowa HBPA. Put simply, he knows nothing about it.

But there are class members who do. Leroy Gessmann, for one. He is a class member and was the lead negotiator on the contract. (App. V. 2 368). If any individual horse owners should be able to speak on behalf of a class as to the meaning of the Iowa HBPA contract, it's Gessmann, not Benda. Benda has nothing to offer, and thus he is not a proper representative of the class with respect to the claim for breach of the Iowa HBPA contracts.

C. Federal and State law make the Iowa HBPA, not Benda, the agent of horsemen for purposes of contracting for horse purses at Prairie Meadows.

To certify Benda's class request would also be inconsistent with federal and state law.

Under the federal Interstate Horseracing Act, there is only one representative of thoroughbred horseman at each racetrack for purposes

agreements on wagering and other areas of racing. *See* 15 U.S.C. § 3002, 3004. The Iowa HBPA is that one representative at Prairie Meadows, which is why the Iowa HBPA is the entity that negotiates and signs agreements with Prairie Meadows for the division of purse money. If the Court were to reverse the district court's decision and appoint Benda as a representative of this class, that order would conflict with the Interstate Horseracing Act.

It would also conflict with Iowa law. Under Iowa Code, the IRGC is to "regulate the purse structure for all horse racing" and authorize 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*." Iowa Code § 99F.6(4)(a)(3) (emphasis added). The Iowa HBPA, as representative of the thoroughbred industry, is the statutory representative that enters into those contracts with Prairie Meadows. To put Benda in the driver's seat on the meaning of the Iowa HBPA contract would be inconsistent with Iowa's gaming laws.

Because the Iowa HBPA's authority to enter into contracts for purse money with Prairie Meadows is statutory, and because the Iowa HBPA—not Benda—is the representative of thoroughbred owners who race at Prairie Meadows, Benda cannot be class representative with respect to litigating the meaning of the Iowa HBPA contracts.

D. Benda did not receive purse supplement awards or breeder's awards for his role in owning or breeding a quarter horse, so he cannot represent a class in any lawsuit suing under the quarter-horse association's agreement.

Benda is asking to represent a class of quarter-horse owners based upon an alleged breach by Prairie Meadows of a contract between Prairie Meadows and the Quarter Horse Racing Association. But Benda has not pleaded a breach of the Quarter Horse Association contract in any of his three petitions. And, in any event, he did not race quarter horses and did not receive any purse supplement or breeder's awards from quarter horse races, so he does not have standing to bring a third-party beneficiary claim under that contract. (App. V. 2 257, Benda Depo. Tr. 21). "Plaintiffs simply cannot advance a single collective breach of contract action on the basis of multiple different contracts," especially when they are not a party nor a third-party beneficiary of that contract. *Broussard*, 155 F.3d at 340.

E. Some proposed class members benefited from Prairie Meadows' allocation of purse funds, creating an additional conflict within the class.

Reading Benda's brief, one might assume that owners and breeders of Iowa-bred horses are a discrete group from owners and breeders of non-Iowa-bred horses. That is not true. The vast majority of owners who race at Prairie Meadows own both Iowa-bred horses and non-Iowa-bred horses. (*See* App. V. 2 276-310) (showing that numerous owners who received purse supplements also

received base purses for non-Iowa-bred horses). That creates a conflict within the class.

The contracts between the Iowa HBPA and Prairie Meadows provide for a set amount of total money that is allocated for thoroughbred racing, so if Prairie Meadows under-allocated money for purse supplements under the contract, it necessarily over-allocated money for base purses under the same contract. That means someone who was highly successful with their non-Iowa-bred horses may have—under Benda's theory—been "overpaid" in base purse money by more than they were "underpaid" in purse supplements for their Iowa-bred horses.

Benda claims that this overpayment issue is not a problem, because there is nothing prohibiting Prairie Meadows from paying more in purse money than is required under Iowa Code. That is true, but Benda's remaining claims are not based on the statute; they are based on the Iowa HBPA contract. And, in any event, the use of the Rasmussen formula inevitably benefited some of the class members per the terms of the contracts, which creates yet another conflict between class members. *See Valley Drug Co. v. Geneva Pharmaceuticals, Inc.*, 350 F.3d 1181, 1198 (11th Cir. 2003) (stating that "[a] fundamental conflict exists where some party members claim to have been harmed by the same conduct that benefited other members of the class. In such a situation, the named representatives cannot 'vigorously prosecute the interests of the class through qualified counsel' because their interests are actually or *potentially* antagonistic to,

or in conflict with, the interests and objectives of other class members"); *Pickett v. Iowa Beef Processors*, 209 F.3d 1276 (11th Cir. 2000) (finding that adequacy was not met when the allegedly illegal contracts used by the defendant benefited some cattle ranchers who were members of the putative class); *Bieneman v. City of Chicago*, 864 F.2d 463, 12 Fed. R. Serv. 3d 807 (7th Cir. 1988) (denying certification to a putative class of landowners alleging harm caused by the city's decision to build an airport next to their land, reasoning that "[s]ome of these [class members] undoubtedly derive great benefit" from the proximity of the airport to their property).

* * *

Benda has the burden of proving that he is an adequate representative. *Vos*, 667 N.W.2d at 45. In the face of so much opposition and conflicting objectives among the class members, Benda did not come close to doing so. He will not fairly and adequately represent the interests of the class, and thus his motion for class certification was correctly denied.

II. **Individual issues will predominate the trial, making class certification inappropriate.**

Benda claims throughout his brief that the district court cannot consider the merits of his claims. That is not as black and white as Benda makes it out to be. True, "[c]ertification of a class action does not depend on a determination of whether the plaintiffs will ultimately prevail on the merits," but "determining

whether the requirements for class certification are met 'will entail some overlap with the merits of the plaintiff's underlying claim.'" *Freeman*, 895 N.W.2d at 120. (quoting *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 351 (2011)). "That cannot be helped" because "the class determination generally involves considerations that are enmeshed in the factual and legal issues comprising the plaintiff's cause of action." *Dukes*, 564 U.S. at 351 (cleaned up).

Benda's claim is premised on the idea that he and the proposed class members are third-party beneficiaries of the Prairie Meadows Iowa HBPA contracts, and that Prairie Meadows breached those contracts by underpaying total purse supplement funds based on the Rasmussen formula. In arguing that this claim is subject to class-wide treatment, Benda overlooks fundamental tenants of contract law.

A "[third-party beneficiary's] rights can rise no higher than those of the promisee," *Olney v. Hutt*, 105 N.W.2d 515, 518 (1960), and in this case the promisee (the Iowa HBPA) indisputably wanted and urged Prairie Meadows to perform the contract using the Rasmussen formula. Thus, even if the plain language of the contract supported Benda's interpretation (it does not, but that is not an issue to be decided here), the Iowa HBPA and Prairie Meadows either amended their contract through course of dealing or, at the very least, the Iowa HBPA waived any right to now contend that the purse supplement allocations should have been different. *See Belle City Amusements, Inc. v. Iowa State Fair Auth.*,

423 F. Supp. 3d 663, 667 (S.D. Iowa 2019) (ruling on summary judgment that the parties had modified the contract by their actions and course of dealing).

In certain situations, courts have ruled that a contract cannot be modified after a third-party beneficiary justifiably relies on the promises therein, but that is where the class-certification problem comes into play. *See Audio Odyssey, Ltd. v. United States*, 243 F. Supp. 2d 951, 969 (S.D. Iowa 2003), aff'd, 373 F.3d 870 (8th Cir. 2004) (discussing the law of contract modification and its effect on third-party beneficiaries). If a class member was unaware of the contractual provision in the Iowa HBPA/Prairie Meadows contract, and thus did not rely on the promises therein, then the Iowa HBPA and Prairie Meadows were free to modify it and the horse owner's rights are subject to that modification (assuming these owners are third-party beneficiaries). *See id.* (ruling that the third-party beneficiary cannot claim justifiable reliance on the contractual provision when they were unaware of its existence prior to modification). Thus, the knowledge and justifiable reliance of every class member would be in play.

Also, and related, some class members like Gessmann knew exactly how Prairie Meadows was calculating the purse-supplement allocation and even encouraged it. Surely a third-party beneficiary cannot recover under that scenario, and thus Prairie Meadows will be able to call each class member as part of its defense to examine the witnesses on his or her understanding and support of Prairie Meadows' past practices. "These inquiries would create mini trials

within the larger class action, which is unsuitable." *Roland*, 940 N.W.2d at 760 (reversing the district court's grant of class certification because individual issues would predominate). As a result, the class certification is not appropriate.

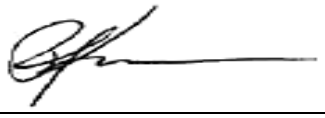
CONCLUSION

The district court correctly ruled that Benda is not an adequate class representative and that "a class action in this matter would pose unusual and quite probably insurmountable difficulties in its management." (App. V. 4 40, 55). That decision should be affirmed under any standard of review, and should certainly be affirmed under this Court's limited review of decisions to deny class certification.

REQUEST FOR ORAL ARGUMENT

Intervenor Iowa Horsemen's Benevolent and Protective Association respectfully requests to be heard orally upon the submission of this appeal.

BELIN McCORMICK, P.C.

By: 

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PROOF OF SERVICE

I hereby certify that on the 15th day of February, 2022, I electronically filed the foregoing Intervenor Iowa HBPA's Amended Final Brief with the Clerk of the Supreme Court by using the Iowa Electronic Document Management System which will send notice of electronic filing to the following. Per Rule 16.317(1)(a), this constitutes service of the document for purposes of the Iowa Court Rules.

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CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that:

1. This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) because this brief contains 9,706 words, excluding the 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 Word 2007 in Garamond 14 pt.

Dated: February 15, 2022

/s/ Lori McKimpson

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