

connection with the failure to pay severance and personal stock purchases. In addition, Plaintiffs claim Defendants violated Chapter 91A of the Iowa Code by failing to make the termination payments. Defendants moved to dismiss and denied all claims. The parties engaged in written discovery and then in a private mediation session with Mediator Edwin Oster on December 3, 2021. At the conclusion of the mediation, the parties reached a settlement agreement where Flexsteel agreed to certification of the class for settlement purposes and to pay \$1,275,000. The parties now seek the Court's approval to approve and implement the settlement by distribution among the class.

Motion to Certify the Class For Settlement Purposes

Plaintiffs ask the Court to certify a class for settlement purposes in connection with the proposed resolution. The Court has broad discretion in determining whether class certification is appropriate, including defining the scope of the class. *Krueger v. Ameriprise Fin., Inc.*, 304 F.R.D. 559, 568 (D. Minn. 2014), citing *Shapiro v. Midwest Rubber Reclaiming Co.*, 626 F.2d 63, 71 (8th Cir.1980). The same is true under Iowa law. *Freeman v. Grain Processing Corp.*, 895 N.W.2d 105, 113 (Iowa 2017); *Legg v. W. Bank*, 873 N.W.2d 756, 758 (Iowa 2016). To justify certification, the class must meet the requirements of Fed. R. Civ. Proc. 23(a) and satisfy one of three subsections of Rule 23(b). *Krueger v. Ameriprise Fin., Inc.*, 304 F.R.D. at 568, citing *In re St. Jude Med., Inc.*, 425 F.3d 1116, 1119 (8th Cir. 2005). The requirements of Rule 23(a) are:

- (1) the class is so numerous that joinder of all members is impracticable;
- (2) there are questions of law or fact common to the class;
- (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and

(4) the representative parties will fairly and adequately protect the interests of the class.

Fed. R. Civ. Proc. 23(a); Krueger v. Ameriprise Fin., Inc., 304 F.R.D. 559, 568 (D. Minn. 2014)

Plaintiffs ask the Court to certify the following Settlement Class:

United States based permanent employees of Flexsteel whose employment was terminated as a result of Flexsteel restructuring/downsizing/facility closure at any time during the period of January 1, 2020 through December 3, 2021, excluding individuals who signed releases and individuals on temporary assignment at Flexsteel. This group includes approximately 300 former employees mostly stationed in Dubuque and Starkville, MS.

Plaintiff must first show “the class is so numerous that joinder of all members is impracticable.” Fed. R. Civ. P. 23(a)(1). To meet the numerosity requirement, the parties must show that the class is sufficiently large so as to render joinder of all its members impracticable. *Sanft v. Winnebago Industries, Inc.*, 214 F.R.D. 514, 520 (N.D. Iowa 2003), amended in part, 216 F.R.D. 453 (N.D. Iowa 2003). In assessing the numerosity requirement, courts consider a variety of factors including (1) the number of persons in the proposed class; (2) the nature of the action, (3) the size of the individual claims; (4) the inconvenience of trying individual suits; (5) the geographic dispersion of class members; (6) the identification of class members; (7) the financial resources of class members; and (8) judicial efficiency. *Karg v. Transamerica Corp.*, 1:18-CV-134-CJW-KEM, 2020 WL 3400199, at *2 (N.D. Iowa Mar. 25, 2020).

There is no arbitrary number requirement in the 8th Circuit. *See e.g., Ark. Educ. Ass'n*, 446 F.2d at 765-66 (approving a class of only twenty members); *McCluskey v. Trustees of Red Dot Corp. Employee Stock Ownership Plan and Tr.*, 268 F.R.D. 670, 673 (W.D. Wash. 2010) (Proposed class of 27 members met numerosity requirement.) Here, all class members lost their jobs

because Flexsteel eliminated its recreational vehicle business during the first wave of the COVID-19 pandemic. The claims as settled range from less than \$1000 per person to just over \$15,000, small enough numbers to make it unlikely that many class members would be able to file individual lawsuits in federal court. Moreover, the burden on the Court of dealing with dozens if not hundreds of individual lawsuits would be great, not to mention inconvenient. The total number of employees meets the numerosity requirement.

Common questions of law and fact exist among class members. “Sufficient commonality exists when common questions and practices tie class members' claims together.” *Karg v. Transamerica Corp.*, No. 1:18-CV-134-CJW-KEM, 2020 WL 3400199, at *2–3 (N.D. Iowa Mar. 25, 2020). As the Court knows, Plaintiffs’ case for severance pay depended on Flexsteel’s alleged history and company documents, which Plaintiffs argued established there was a severance formula applicable to all class members. Plaintiffs claimed the formula applied to all class members provided for a week of severance for each year of service with a minimum of four weeks and a maximum of 26 weeks. The evidence needed to prove an ERISA plan existed for severance benefits would be the same for all. Thus, there are common legal and factual issues among the class members.

The proposed class meets the typicality requirement of Rule 23(a). The claims of the class representatives are the same as the class they seek to represent. The claims of all class members arise from the same event and purported characterization of Defendants’ motivations: Flexsteel’s decision to terminate its Recreational Vehicle and Hospitality lines of business on April 28, 2020 without paying severance benefits, using the pandemic as a reason to accelerate a long-planned company restructuring. “In general, typicality is established if the claims of all members arise from a single event or share the same legal theory. If the legal theories of the

representative plaintiffs are the same or similar to those of the class, slight differences in fact will not defeat certification.” *In re Teflon Prod. Liab. Litig.*, 254 F.R.D. 354, 364 (S.D. Iowa 2008) (internal citations omitted). Members of the settlement class rely on the same legal theory for their claim: that Flexsteel failed to pay eligible employees severance under an ERISA-governed severance plan without giving notice of plan modification.

Class representatives will fairly and adequately protect the interests of class members. Six former employees are serving as class representatives from the two primary production facilities that manufactured furniture for recreational vehicles. Flexsteel employed these representatives in managerial, production, and administrative positions in Dubuque, Iowa and Starkville, Mississippi. Plaintiffs are aware of no conflicts and all of the representatives, especially Rodney Carroll and Todd Van Der Jagt, have been active in discovery, settlement, damage calculations and theory formulation. These representatives will adequately represent the class members and meet the requirements of Fed. R. Civ. Proc. 23(a).

Common questions of law and fact predominate

In addition to meeting the requirements of Fed. R. Civ. Proc. 23(a), the plaintiffs must show that the common questions of law or fact among class members predominate over individual questions and that the class action is superior to other available methods for fairly and efficiently adjudicating the controversy. Fed. R. Civ. Proc. 23(b)(3). The questions at the heart of the case focus on whether Flexsteel’s plant closures without paying severance violated ERISA by failing to adhere to its established severance plans. Plaintiffs intended to focus on Flexsteel’s long range plans to restructure the company, as evidenced in its shareholder communications, past company practice of paying severance, and company documents to prove their claims. These efforts applied to all those terminated in the heat of the pandemic and thus common

questions of law and fact predominate. A class action is the superior method of adjudication over many individual claims. The Court should certify this class for settlement purposes.

The Court should appoint Plaintiffs' Attorneys as Class Counsel.

Plaintiffs ask the Court to appoint Plaintiffs' counsel as Class Counsel. In considering this request, the Court must consider:

- (i) the work counsel has done in identifying or investigating potential claims in the action;
- (ii) counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action;
- (iii) counsel's knowledge of the applicable law; and
- (iv) the resources that counsel will commit to representing the class.

Fed. R. Civ. Proc 23 (g).

Dorothy O'Brien undertook drafting the pleadings, legal research, discovery, responding to the motions to dismiss, and preparation for mediation. Ms. O'Brien has extensive experience in class and collective actions and in litigating multiple plaintiff cases, including successful jury trials of a 348 member FLSA class for unpaid wages and a 22-member group for unpaid wages, retaliation and battery. Ms. O'Brien has litigated a fair number of ERISA claims. Kelsey Marquard devoted extensive hours to intake of the case, client contact, legal research, and drafting pleadings on the underlying legal theories of ERISA and WARN Act, along with the potential remedies and anticipated defenses. This case is Ms. Marquard's second class action. Counsel for plaintiffs assert their knowledge of the applicable law is good and pledge they will commit the needed time, effort and resources to see this case to conclusion. Thus, the Plaintiffs ask that Dorothy O'Brien and Kelsey Marquard be appointed Class Counsel.

Preliminary Approval of Settlement

Plaintiffs ask the Court to preliminarily approve the Class Action Settlement Agreement along with notices to class members informing them of their rights and the process to receive

their share or alternatively to object to, or opt out of, the settlement. Plaintiffs proposed a 2-step notice procedure that starts with a short form 6” x 9” postcard size notice. The proposed post card notice is attached to this brief as Exhibit 1. The second step is a long form notice, attached as Exhibit 2, that will appear on the settlement website to be established. The proposed procedure does not require claim forms. This is a Rule 23 Class, where all members are considered in unless they opt out. *See, Fed. R. Civ. Proc. 23(c)(2)*. Finally, Plaintiffs point out there are gaps to be filled into the notice, which will be done when the class settlement administrator arrangements are finalized.

The district court has wide discretion in determining whether to approve a class settlement even when some members of the class object. *In re Uponor, Inc. F1807 Plumbing Fittings Prods. Liab. Litig.*, 716 F.3d 1057, 1063 (8th Cir. 2013) (quoting *In re BankAmerica Corp. Sec. Litig.*, 350 F.3d 747, 752 (8th Cir.2003)). “Only upon the clear showing that the district court abused its discretion will this court intervene to set aside a judicially approved class action settlement.” *Id.* Great weight is accorded to the views of the trial court because of its exposure “the litigants, and their strategies, positions and proofs.” *Marshall v. Natl. Football League*, 787 F.3d 502, 508 (8th Cir. 2015).

The district court should review and approve a class action settlement only if it is “fair, reasonable, and adequate.” Fed .R. Civ. P. 23(e)(2). At issue are four factors: “(1) the merits of the plaintiff's case weighed against the terms of the settlement, (2) the defendant's financial condition, (3) the complexity and expense of further litigation, and (4) the amount of opposition to the settlement.” *In re Uponor*, 716 F.3d at 1063 (quoting *Van Horn*, 840 F.2d at 607). “The single most important factor in determining whether a settlement is fair, reasonable, and

adequate is a balancing of the strength of the plaintiff's case against the terms of the settlement.” *Marshall*, 787 F.3d at 508 citing *Van Horn*, 840 F.2d at 607.

The District Court “acts as a fiduciary [that] must serve as a guardian of the rights of absent class members,” and the Court cannot accept a settlement that is not fair, reasonable, and adequate. *Grunin v. Int'l House of Pancakes, Inc.*, 513 F.2d 114, 123 (8th Cir. 1975). The balance of the merits of the plaintiff's case against the settlement terms is the most important consideration. *Id.*, *Perez v. CRST Intl., Inc.*, 18-CV-23-CJW-KEM, 2019 WL 2329320, at *1 (N.D. Iowa May 31, 2019).

Additionally, this Court has previously considered whether a dismissal is appropriate under Rule 23 by considering the following factors: “1) the circumstances leading to the decision to voluntarily dismiss the class action; 2) any settlement or concession of class interests made by the class representative(s) or counsel; 3) class members' possible reliance on the filing of the action if they are likely to know of it either because of publicity or other circumstances; 4) amount of time for class members to file other actions in view of applicable statute(s) of limitations; and 5) any other factors bearing on possible prejudice or loss of benefit to the absent class members created by the dismissal.” *Schultzen v. Woodbury Cent. Cmty. Sch. Dist.*, 217 F.R.D. 469, 471 (N.D. Iowa 2003); *Perez v. CRST Intl., Inc.*, 18-CV-23-CJW-KEM, 2019 WL 2329320, at *2 (N.D. Iowa May 31, 2019).

Here, the proposed settlement plan is based primarily on the terminated employees' claims to a health insurance premium subsidy and distributed according to a specific formula. In other plant closings that were part of the company restructure Flexsteel retained terminated employees on the company's health insurance plan at the active employee rate for as long as they qualified for COBRA or until they found new employment with health insurance benefits.

Plaintiffs calculate this benefit, which included coverage for family members, at \$1075 per month. The proposed distribution utilizes a formula accounting for years of service and compensation level to exhaust the agreed-upon settlement funds (less costs, fees, administrative expenses, and service awards) on a pro rata basis.

Plaintiffs' Risk in Going Forward

An important piece of the Court's analysis factors in the Plaintiffs' concessions in accepting the settlement balanced against the strength of their case. *Marshall v. Natl. Football League*, 787 F.3d 502, 508. Admittedly, the proposed settlement is less than the potential total damages should the plaintiffs have prevailed at trial. There are three main reasons justifying the compromise. First, the uncertainty of total damages. A primary damage component is the COBRA health insurance subsidy included with the severance plan. As noted above, Flexsteel previously provided health insurance at the employee rate until the terminated employee obtained new insurance. Even among the class representatives this figure varies, with some eligible for the subsidy for 30-60 days and others still without medical insurance. Second, the WARN Act defines its damages as "back pay." Under both Iowa and Mississippi law, any back pay awards must be used to reimburse the state for unemployment benefits. Settlement allows the parties flexibility in allocation of the proceeds to minimize or eliminate any payback requirement by allocating to an exempt category such as health insurance or medical expenses. *See, e.g., Iowa Code 96.1A(b) and 96.5. Iowa Administrative Code 871-23.4.*

Third, as the Court knows, proving the ERISA claims requires evidence of a written plan. *See Emmenegger v. Bull Moose Tube Co.*, 197 F.3d 929, 934 (8th Cir. 1999). Discovery to date has not produced handbook evidence of a promise for the severance plan. Would diving into the

24,000 documents identified in e-discovery produce more evidence of a written ERISA plan?

The answer remains unclear. Plaintiffs faced risk in pursuing the litigation and decided settlement was a better path.

Defendants' Financial Situation; Statute of Limitations

Plaintiffs have no reason to suspect Defendants would be unable to pay an adverse judgment. Discovery showed there was insurance coverage for some of the claims and the company had allocated \$1.7 million for restructuring/termination benefits prior to the onset of the pandemic. At the time Defendants terminated the members of the proposed settlement class, it reported \$60 million in cash on hand.

If some class members opt out of the settlement, it would still be possible for them to bring another ERISA action. Iowa's statute of limitations for a written contract is 10 years. The WARN Act statute of limitations would be five years. *Aaron v. Brown Group, Inc.*, 80 F.3d 1220, 1225 (8th Cir. 1996); *Iowa Code* 614.1. We are almost two years from most of the terminations at issue. Thus, there would be time for any who opt out to bring their own action. The factors discussed above meet the requirement of showing the settlement is fair, reasonable and adequate. The Court should give preliminary approval to the proposed settlement, approve the proposed notice, set a date for the final fairness hearing, objections, appoint class counsel and certify the class for settlement purposes.

For all the reasons outlined in this brief, Plaintiffs ask the court to 1) certify the class for settlement purposes; 2) appoint the undersigned as Class Counsel; 3) preliminarily approve the settlement; and 4) approve the proposed notice and 5) set a date for the final fairness hearing in June 2022.

Respectfully submitted,

/s/ Dorothy A. O'Brien

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Certificate of Service

I, Dorothy A. O'Brien, certify that the foregoing document was served via email on the following attorneys of record on February 25, 2022:

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