

*ELECTRONICALLY FILED*

**COMMONWEALTH OF KENTUCKY  
FAYETTE CIRCUIT COURT  
FOURTH DIVISION  
CIVIL ACTION NO. 20-CI-00332**

HAYNES PROPERTIES, LLC, et al.

PLAINTIFFS

v. **SECOND AFFIDAVIT OF W. HENRY (HANK) GRADDY, IV**

BURLEY TOBACCO GROWERS COOPERATIVE ASSOC., et al.

DEFENDANTS

\* \* \* \* \*

Comes the affiant, after first having been duly sworn, and states as follows:

1. My name is W. Henry (Hank) Graddy, IV. I am the owner of the law firm, W.H. Graddy & Associates located at 137 North Main Street, Versailles, Kentucky, 40383. and as such I have personal knowledge as to this action and as to the matters about which I state herein. I have been admitted to the Kentucky Bar Association and have practiced law in Woodford County, Kentucky (in Versailles and in Midway) since 1975. My KBA # is 26350.
2. I hereby offer this Second Affidavit in support of W.H. Graddy & Associates' ("Graddy") Petition for Award of Attorneys' fees. This second affidavit modifies the earlier 8/10/2021 Graddy affidavit and attaches recent correspondence from Roger Quarles, Eddie Gilkison, Ian Horn and Jackie Prewitt for the Estate of Henry Graddy Prewitt.
3. On the basis of this experience and on the basis of the success in this case over the opposition of the other litigants in the courtroom, where the efforts of Graddy have helped the Court decide to take control over the \$1.35 million grant fund away from the Defendants in this action and where the Court has awarded control over that fund

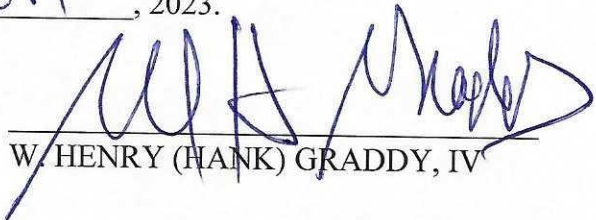
to the Class Members equally, W.H. Graddy & Associates asks the Court to find that Graddy is entitled to an Award of Attorneys' Fees in this action.

**CONCLUSION**

- 4. We request that such fee award be based upon a percentage of the sums that have been brought within the **control** of every qualified Class Member, which was the action sought by Graddy, and ordered by the Court, which created a second Common Fund, and we request that such percentage should not exceed 7.5% (seven point five per cent).

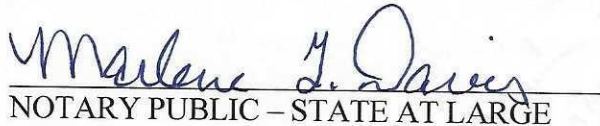
Further the affiant sayeth naught.

Dated this 22 day of March, 2023.

  
 W. HENRY (HANK) GRADDY, IV

COMMONWEALTH OF KENTUCKY  
COUNTY OF WOODFORD

Subscribed, sworn to, and acknowledged before me this 22nd day of March, 2023.

  
 NOTARY PUBLIC - STATE AT LARGE

Marlene T. Davis  
NAME

623297  
NOTARY ID #

My commission expires: June 10, 2023

Respectfully Submitted,

/s/ W. Henry Graddy, IV  
 W. Henry Graddy, IV  
 Dorothy T. Rush  
 W. H. Graddy & Associates  
 137 North Main Street

Versailles, Kentucky 40383  
(859) 879-0020  
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[Dtrush@graddylaw.com](mailto:Dtrush@graddylaw.com)

**CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the foregoing was served via email to the following:

Hon. Kevin G. Henry  
Sturgill, Turner, Barker & Maloney PLLC  
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Lexington, KY 40507  
[khenry@sturgillturner.com](mailto:khenry@sturgillturner.com)  
[ccole@sturgillturner.com](mailto:ccole@sturgillturner.com)

Hon. John N. Billings  
Billings Law Firm, PLLC  
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[nbillings@blfky.com](mailto:nbillings@blfky.com)

Hon. Robert E. Maclin, III  
Hon. Jaron P. Blandford  
Hon. Jason R. Hollon  
Hon. Katie Yunker  
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[jhollon@mcbayerfirm.com](mailto:jhollon@mcbayerfirm.com)  
[kyunker@mcbayerfirm.com](mailto:kyunker@mcbayerfirm.com)

This the 22 day of March, 2023.

/s/ W. Henry Graddy, IV  
W. Henry Graddy, IV

March 21,2023

Dear Judge Goodman,

I appreciate this opportunity to encourage this court to provide the deserved payment award to my Attorneys Hank Graddy and Dorothy Rush. I can attest to the numerous conversations and resulting hours of research and briefs, which lead to successfully allowing class members this opportunity to claw back their personal funds from the Coop common fund.

I initially approached Attorney Chappell who advised Hank Graddy is successfully proficient in other class action successes. Class action attempts are formidable tasks to any firm but especially a two person office. He accepted my "small retainer" ( his words but a lot to me) to face unknown odds of success when not nearly all facts were known nor class members all identified.

As you may know I was a Coop director since 1997 serving in various capacities including President for 7 years. I voted against the finished settlement solely because of the \$1.5 million takings provision that was to become Coop Part II by even their own description. While it's been described as a "Grant" it's notable there were no expectations from the Coop from the recipient. Typical Grants anywhere are riddled with required expectations, with none included here proves this gift was a last gasp takings.

Ultimately Coop Part II revealed virtually the same leadership group claiming to solve the same issues that led to the downfall and dissolution of a 100 yr organization, that by their own admission failed from poor management practices resulting in millions of assets lost while claiming to "represent" Burley tobacco growers.

Our Burley market place had completely shifted to the reduced and continuing declining demand for Burley leaf. The leadership failed to adjust while investing Coop assets(including activities) unwisely resulting in no tangible results for members.

The desire for a new advocacy group to be funded by taking personal monies is wrong without permission. This new group report filed with this court illustrates exactly our concerns, as Mr. Graddy outlines in his brief.

- There are no tangible results any different than the activities prior to Coop dissolution.

- There is no indicated Industry support nor any membership dues income to provide self sustainability any organization needs to be successful while at this same time this is a measurement desired by this court.

I've always characterized these funds as simply "riding around money". That mimics many Coop junkets from past years. A paid membership is an ultimate measurement of member's commitment to support their personal beliefs of expectations. The report lists no measures of success other than the various conversations in various locations. The efforts with reforming H2A workers and China sale hopes were dashed long ago despite efforts by American Farm Bureau and every leaf dealer in the world.

With our updated knowledge of class size being 2602 against current grower numbers of 500-800 ( which decline annually per Dr Will Snell in his latest analysis) it's obvious the ability to decide individually whether to donate their personal funds validates Hank Grady's work. He should be awarded similarly to the other class attorneys in this matter.

Sincerely,

Roger Quarles.

---

**Supporter of Graddy getting a legal fee**

messages

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**ilk@email.com** <ilk@email.com>  
o: hgraddy@graddylaw.com  
c: quarlesnet@aol.com

Mon, Mar 20, 2023 at 5:05 PM

Mr. Graddy:

Pleased add my name to the list of Burley Cooperative members that support your request for a 7.5% fee to recover your legal expenses.

Thanks for your help.



**L. Edwin (Eddie) Gilkison**

**345 Calloway White Road**

**Winchester, Ky. 40391 – Cell 859-749-0033 Office 859-744-3530**

F9217C0F-CCE3-4314-BA8F-202C1BF00A67 : 000006 of 000031

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**Hank Graddy** <hgraddy@graddylaw.com>  
o: ilk@email.com  
cc: Hank Graddy <hgraddy@graddylaw.com>

Mon, Mar 20, 2023 at 5:17 PM

Eddie Gilkison  
Thank you!  
Hank Graddy  
[Quoted text hidden]

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**Forward: Award Fee Approval Letter**

message

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**Hank Graddy** <hgraddy@graddylaw.com>  
To: Hank Graddy <hank.graddy@gmail.com>

Wed, Mar 22, 2023 at 4:03 PM

----- Forwarded message -----

From: **Horn, Ian I (COT)** <ian.Horn@ky.gov>  
Date: Mon, Mar 20, 2023 at 12:15 PM  
Subject: Award Fee Approval Letter  
To: hgraddy@graddylaw.com <hgraddy@graddylaw.com>  
Cc: Diana Horn <dphorn@gmail.com>, Dad <maristow@gmail.com>

Hank,

Regarding the last payout (or vote to payout) of the Burley Coop Association, I find it fair that you receive a 7.5% award fee. If the other lawyers received a fee for the first two portions, it is only reasonable that you should receive the same award fee for the portion for which you litigated on our behalf. I witnessed how hard you worked and fought for the growers. Thank you.

Sincerely,

---

**Ian Horn****Systems Engineer****Division of Geographic Information**

Office of IT Architecture &amp; Governance

Commonwealth Office of Technology

500 Mero Street, 1<sup>st</sup> Floor

Frankfort, KY 40601

ian.horn@ky.gov

<https://kygeonet.ky.gov/><https://kyfromabove.ky.gov/>

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This message, including any attachment, may contain confidential information and is for the exclusive use of the intended recipient(s). If you are not an intended recipient you are not authorized to disseminate, distribute or copy this e-mail. Please notify the sender immediately if you have received this e-mail by mistake and delete this e-mail from your system.

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**wd: Burley Co-Op**

message

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**ank Graddy** <hgraddy@graddylaw.com>  
o: Hank Graddy <hank.graddy@gmail.com>

Wed, Mar 22, 2023 at 4:03 PM

----- Forwarded message -----

From: **jackie prewitt** <jprewitt1231@gmail.com>  
Date: Mon, Mar 20, 2023 at 12:31 PM  
Subject: Burley Co-Op  
To: Hank Graddy <hgraddy@graddylaw.com>

Dear Hank,

I'm writing to let you know of my support in your request of a 7.5% fee recovery for your legal services on behalf of the members of the Burley Co-Op of which my deceased spouse was a member. I appreciate all of your hard work toward giving members a choice. I'm looking forward to receiving my postcard and making my choice.

Thank You,

Jacquelyn Prewitt, Executrix  
Estate of Henry Graddy Prewitt



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FAYETTE CIRCUIT COURT  
FOURTH DIVISION  
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HAYNES PROPERTIES, LLC, et al.

PLAINTIFFS

v.

**NOTICE OF FILING**

BURLEY TOBACCO GROWERS COOPERATIVE ASSOC., et al.

DEFENDANTS

\* \* \* \* \*

Come now the Objectors, Roger Quarles, et al., by and through counsel, and tender the attached previously filed pleadings, and affidavit with correspondence, in support of the Renewed Petition for Attorney's Fees, as follows:

On March 17, 2023, W. Henry Graddy, IV, Graddy & Associates Law Firm filed a Renewed Motion for an award of attorney's fees. The attached pleadings have previously been filed in this matter and are attached in support of the renewed motion. The attached second affidavit from W. Henry Graddy, IV includes correspondence to Mr. Graddy in support of the request.

Respectfully submitted,

/s/ W. Henry Graddy, IV

W. Henry Graddy, IV

Dorothy T. Rush

W. H. Graddy & Associates

137 N. Main Street

Versailles, KY 40383

(859) 879-0020

(855) 398 4562 - facsimile

[hgraddy@graddylaw.com](mailto:hgraddy@graddylaw.com)

**CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate of the foregoing was served via E-Mail, on this the 22nd day of March, 2023, on the following:

Hon. Kevin G. Henry  
Hon. Charles D. Cole  
Sturgill, Turner, Barker & Maloney PLLC  
333 W. Vine Street, Suite 1500  
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Hon. John N. Billings  
Hon. Christopher Thacker  
Hon. Richard J. Dieffenbach  
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cthacker@blfky.com  
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Hon. Robert E. Maclin, III  
Hon. Jaron P. Blandford  
Hon. Jason R. Hollon  
Hon. Katie Yunker  
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jblandford@mcbayerfirm.com  
jhollon@mcbayerfirm.com  
kyunker@mcbayerfirm.com

/s/ W. Henry Graddy, IV  
W. Henry Graddy, IV

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**COMMONWEALTH OF KENTUCKY  
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CIVIL ACTION NO. 20-CI-00332**

HAYNES PROPERTIES, LLC, et al.

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**NOTICE OF FILING**

BURLEY TOBACCO GROWERS COOPERATIVE ASSOC., et al.

DEFENDANTS

\* \* \* \* \*

Come now W. Henry Graddy, IV and Dorothy T. Rush, for and on behalf of Objecting Class Members ROGER QUARLES, W. GARY WILSON, IAN HORN, RICHARD HORN, CAMPBELL GRADDY and DAVID LLYOD and hereby give NOTICE OF FILING OF ADDITIONAL OBJECTORS to the award of \$1.5 Million to a new or existing Tobacco Liaison/Advocacy Nonprofit who have expressed support for the Objection of Roger Quarles directly to Roger Quarles.

**ADDITIONAL OBJECTORS:**

1. John Farris Lackey, Richmond, KY 40475
2. Rick Lawson Richmond KY 40475
3. Donna Lawson, Richmond KY 40475
4. Phillip Ecton, Carlisle KY
5. Robert Barton is already on the list of objectors wishes to add Opposition to the \$1.5.
6. Eddie Gilkison is already on the list of objectors, wishes to add Opposition to \$1.5.
7. Mike Furnish is on the list of objectors, wishes to add Opposition to \$1.5.
8. James and Mary Sexton, Edmonton, KY
9. Billy Harmon, Columbia, KY
10. Dan Furnish, Cynthiana, KY
11. Roy Livingood, Carlisle, KY
12. Marion Livingood, Carlisle, KY
13. Robert Livingood, Carlisle, KY
14. David Livingood, Carlisle, KY
15. Donald Livingood, Carlisle, KY
16. Mary Heighton, Junction City, KY 40440

17. Durand Hensley, Calmen, KY
18. Harry Sparks, Winchester, KY
19. Steve Kinkade, Leitchfield, KY 42754
20. Roman Barrett, Glasgow, KY
21. Carey Barrett, Glasgow, KY
22. Robert Barrett, Glasgow, KY
23. Kenneth Sartin, - Past Co-op Director
24. Vic King, Maysville, KY
25. Ashley King, Maysville, KY
26. Andrew King, Maysville, KY
27. Phillip Coyle, Maysville, KY
28. Phillip Coyle, II, Maysville, KY
29. Richard Mattingly, Springfield, KY
30. Janet Mattingly, Springfield, KY
31. David Wimpy, Crofton, KY
32. Tim Lyons, Mt. Sterling, KY
33. Joe Lipps, Shelbyville, KY
34. Danny Townsend, Jeffersonville, KY
35. Judy Townsend, Jeffersonville, KY
36. Berkley Marx, Mt. Sterling, KY
37. Kent Miles,
38. Mike Murphy,
39. Keeton McCardy,
40. Christian McCardy
41. Alan Glass, Georgetown, KY
42. Dale Glass, Georgetown, KY
43. Jerry Moore, Smith's Grove, KY
44. Don Ferguson, Greensburg, KY

Respectfully submitted,

/s/ W. Henry Graddy, IV

W. Henry Graddy, IV

Dorothy T. Rush

W. H. Graddy & Associates

137 N. Main Street

Versailles, KY 40383

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(859) 229-4033 – Cell Phone

(855) 398 4562 - Facsimile

[hgraddy@graddylaw.com](mailto:hgraddy@graddylaw.com)

**CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate of the foregoing was served via E-Mail, on this the 7th day of May, 2021 on the following:

Hon. Kevin G. Henry  
Hon. Charles D. Cole  
Sturgill, Turner, Barker & Maloney PLLC  
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[khenry@sturgillturner.com](mailto:khenry@sturgillturner.com)  
[ccole@sturgillturner.com](mailto:ccole@sturgillturner.com)

Hon. John N. Billings  
Hon. Christopher Thacker  
Hon. Richard J. Dieffenbach  
Billings Law Firm, PLLC  
145 Constitution Street  
Lexington, KY 40507-2112  
[nbillings@blfky.com](mailto:nbillings@blfky.com)  
[cthacker@blfky.com](mailto:cthacker@blfky.com)  
[rich.dieffenbach@blfky.com](mailto:rich.dieffenbach@blfky.com)

Hon. Robert E. Maclin, III  
Hon. Jaron P. Blandford  
Hon. Jason R. Hollon  
Hon. Katie Yunker  
McBrayer, PLLC  
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[jblandford@mcbayerfirm.com](mailto:jblandford@mcbayerfirm.com)  
[jhollon@mcbayerfirm.com](mailto:jhollon@mcbayerfirm.com)  
[kyunker@mcbayerfirm.com](mailto:kyunker@mcbayerfirm.com)

Hon. Jeremy S. Rogers  
Dinsmore & Shohl, LLP  
101 South Fifth St., Suite 2500  
Louisville, KY 40202  
[Jeremy.rogers@dinsmore.com](mailto:Jeremy.rogers@dinsmore.com)

/s/ W. Henry Graddy, IV  
W. Henry Graddy, IV

ELECTRONICALLY FILED

COMMONWEALTH OF KENTUCKY  
FAYETTE CIRCUIT COURT  
FOURTH DIVISION  
CIVIL ACTION NO. 20-CI-00332

HAYNES PROPERTIES, LLC, et al.

PLAINTIFFS

v.

**OBJECTION TO TENDERED PROPOSED  
OPINION AND ORDER APPROVING PARTIAL SETTLEMENT  
AS SUPPLEMENTED PER ORDER OF MAY 11, 2021**

BURLEY TOBACCO GROWERS COOPERATIVE ASSOC., et al.

DEFENDANTS

\* \* \* \* \*

Come now objecting class members, ROGER QUARLES, W. GARY WILSON, IAN HORN, RICHARD HORN, CAMPBELL GRADDY, AND DAVID LLOYD, in Response, and OBJECT to certain portions of the “[*proposed*] OPINION AND ORDER APPROVING PARTIAL SETTLEMENT”, as follows:

On May 7, 2021, these Objecting Class Members and farmers filed their Objection to the proposed Opinion and Order Approving Partial Settlement with the Affidavit of Roger Quarles and with a Notice of Filing that added additional objectors who are in support of the objections contained herein. On May 11, 2021, the Court entered an order that appears to be addressed to Plaintiffs Haynes Properties, LLC et al., and the McBrayer Law Firm as well as Defendant Craddock and the Billings Law Firm, affording these named entities until May 14, 2021 to supplement their filings. That order recited that “Neither Burley Tobacco Growers nor any of the farmers filed any objections.”

These Objectors are farmers and they did file detailed objections. These farmers/Objectors now wish to supplement and clarify their May 7, 2021 Objections, if the Court will accept this filing.

## SUMMARY

THESE OBJECTORS ARE OBJECTING TO THE FOLLOWING SECTION OF THE  
“STIPULATION AND AGREEMENT OF PARTIAL SETTLEMENT” AT PAGE 10:

- xiv. Distributing One Million, Five Hundred Thousand Dollars (\$1,500,000.00) of and from the BTGCA assets to a farming-related non-profit entity, existing or to be formed, approved by the BTGCA Board of Directors, whose mission shall include (i) serving and acting as a liaison on behalf of tobacco growers of all types of tobacco with tobacco leaf dealers and tobacco purchasers, (ii) advocacy for producers/growers and land owners involved in the production of all types of tobacco, and (iii) other services and support of education and research beneficial to growers of all types of tobacco (herein the “Tobacco Liaison/Advocacy Nonprofit”).

The grounds for such objection include each of the following:

1. This provision in the proposed settlement agreement is in direct violation of KRS 272.325(3).
2. This provision is not fair, reasonable and adequate, where the \$1.5 million belongs to the Burley Tobacco Growers Cooperative Association (“BTGCA”) MEMBERS, and most of those members no longer raise any tobacco and will receive no benefit from the creation of a new “Tobacco Liaison/Advocacy Nonprofit”.. As such, this provision fails to treat class members equitably relative to each other.
3. This provision constitutes waste of money as revealed by the clearly inadequate several “business plans” tendered by the representatives of the newly formed Burley and Dark Tobacco Producer Association, Inc. (“BDTPA” or “Tobacco Nonprofit”) and the testimony of Roger Quarles.

These Objectors ask the Court to strike this section as a violation of KRS 272.325(3).

Alternatively, in the event the Court does not have the authority to strike a provision as contrary to statute, these Objectors ask the Court to express its opinion that the \$1.5 million is the

property of the Class Members and cannot be taken from these Class Members without their consent. Based upon such opinion, the Court should conditionally disapprove the partial settlement with instructions to the Burley Cooperative and these Objectors to resume negotiations to address these concerns and return to Court in one month. *See: Cotton v. Hinton*, 559 F.2d.1326, 1331, (5<sup>th</sup> Cir. 1977); *Romstadt v. Apple Computer, Inc.*, 948 F. Supp. 701, 707 (N.D. Ohio 1996); *Bowling v. Pfizer, Inc.*, 143 F.R.D. 138 (S.D. Ohio 1992).

With this section cured, these Objectors will ask the Court to find that the partial settlement is fair, reasonable and adequate, and should be approved.

### **PROCEDURAL BACKGROUND**

On January 27, 2021, the undersigned counsel filed a written objection for Roger Quarles to this section of the proposed settlement with an additional objection to paragraph k on page 12. On that date, Roger Quarles also filed his written objection to this section. On January 29, 2021, the undersigned filed the same objection on behalf of Campbell Graddy, David Lloyd, and Gary Wilson and Ian Horn and Richard Horn.

On February 17, 2021, the Burley Tobacco Grower Cooperative Association (“BTGCA” or “Burley Cooperative”) filed a response to these Objections, asserting that this “gift” of \$1.5 million in Co-op assets to another organization was authorized by KRS 272.211(1) and KRS 272.325(3). That Response failed to address how this “gift” to another “Tobacco Liaison/Advocacy Nonprofit” was fair or reasonable to the majority of Co-op members who no longer raise tobacco.

On February 23, these Objectors filed their Reply to the BTGCA Response. Objectors asked the Court to find that KRS 272.211(1) did not apply to an agricultural association that had



agreed to dissolution, noting that that statute opens with a reference to an association that is receiving or utilizing agricultural products, i.e. a “going concern.” Objectors then asked the Court to find that KRS 272.325(3) does apply to the BTGCA once it made the decision to commence the process of dissolution, and that statute prohibits the proposed “gift” described in the challenged section.

On February 23, 2021, the undersigned filed the names of additional objectors who support the objection of Roger Quarles.

At the Fairness Hearing, commenced on February 24, 2021, these Objectors asked the Court to allow the parties to attempt to mediate a resolution of this issue. During the continuation of the Fairness Hearing on March 1 and March 8, 2021, all parties learned that the BPGCA had already formed a new tobacco organization, the Burley and Dark Fired Tobacco Producer Association, Inc., with its principal office in the home of the BTGCA President, Al Pedigo. The initial Board of Director of the new organization named an initial board of nine member, seven of whom are currently on the board of the BTGCA,

The Court expressed its willingness to allow the parties a brief period to see if this issue could be mediated. Based thereupon, the undersigned declined to cross examine Al Pedigo, Penny Greathouse and Darrell Varner, but reserved the right to such cross examination if mediation was not successful.

Mediation was held on March 12, 2021 with Hon. Robert Houlihan, which was not successful, and the parties filed a Joint Report on Mediation which included the March 10, 2021 “Business Plan” for the new organization, and a letter response and offer of compromise from the undersigned addressed to Judge Goodman and presented during the mediation.

By Orders entered on March 22, and April 19, 2021, Hon. Katie Yunker and Hon. Jeremy Rogers were instructed to draft proposed orders to be in conformity with the rulings and opinions rendered by the Court during the Fairness Hearing. On April 30, 2021, these proposed Orders were filed.

Consistent with prior practice, these Objectors have no response or objection to the proposed Opinion and Order Awarding Service Fees and Attorneys' Fees and Nontaxable Costs.

### **OBJECTION TO PROPOSED OPINION AND ORDER APPROVING PARTIAL SETTLEMENT**

This objection is in two parts. The first part can be called procedural.

**FIRST OBJECTION:** The Order and Opinion as tendered failed to limit the contents to those matters that the Court has ruled upon and has rendered an opinion. The Court has made no ruling and rendered no opinion on the award of \$1.5 million to a "Tobacco Liaison/Advocacy Nonprofit". The Court has stated that it was willing to consider this issue as a separate issue that was capable of being decided separately from the remainder of the Partial Settlement. Therefore, the Court must strike from this proposed opinion and order the entire discussion of this issue found starting at page 11, paragraphs 22 through 28, and on page 14, paragraph 2.

The undersigned intends to recall Roger Quarles and asserts his right to cross examine Al Pedigo, Darrell Varner and Penny Greathouse, which rights were expressly reserved during the Fairness Hearing.

**SECOND OBJECTION:** Notwithstanding that the proof on this issue has not closed, the following portion of the objection will address the merits of this challenged provision.

- a. The "gift" provision is in direction violation of Kentucky Law.**

These Objectors object to the funding from Burley Cooperative assets by a \$1.5 million grant or “gift” to a replacement tobacco advocacy group – the Burley and Dark Tobacco Producers Association Inc - because it is contrary to law.

The BTGCA attempts to avoid the mandate of KRS 272.325(3) by now adding the word “pre-dissolution” to this award. The court is urged to read again Section 4.1.c.(xiv) quoted above. The word “pre-dissolution” does not appear in that paragraph. The Court is further requested to read again all of Section 4, which describes the partial settlement, includes settlement class declaration and forms the BTGCA Dissolution Committee at Subsection c. The challenged paragraph is the 14<sup>th</sup> subparagraph that describes to duties of the BTGCA Dissolution Committee. The 14<sup>th</sup> task of the Dissolution Committee cannot be called a “pre-dissolution” task.

The BTGCA argument is further weakened upon review of subparagraphs a. and b. Subparagraph a. mandates that pursuant to KRS 272.325(3) and KRS 412.070, the Settlement Class Members *alone* have any claim to the assets of the BTGCA. Subparagraph b. asks for judgment dissolving the BTGCA and after payment of liabilities and litigation costs, the net assets are to be paid on a per capita basis to the members of the Settlement Class.

The Court directed the Burley Cooperative to respond to the January 27 and 29, 2021 objections and the Burley Cooperative responded on February 17, 2021 without any assertion that the \$1.5 million was a “pre-dissolution” award, further weakening this post hoc attempted justification.

The Court is urged to find that the Burley Cooperative is using what can be called “Orwellian” language to try to defend a “gift” of \$1.5 million of its assets to fund an organization to do virtually the same thing the Burley Cooperative claims it has been doing for the past decade. If this “gift” were actually made before dissolution, in effect, the Burley Cooperative would be

creating a rival third tobacco organization and such gift could be seen as an illegal breach of the Board of Directors fiduciary duties to the Burley Cooperative. It is only AFTER the Burley Cooperative was on the course toward dissolution that some board members acted to create a new organization. This is a proposed dissolution “gift” that must be found to be illegal.

The Court is urged to find and conclude as a matter of law that KRS 272.325(3) controls this matter and it precludes any “gift” until after the net assets are distributed to the members and until such time as the cost of further distribution approximates the amount remaining to be distributed. Where this gift is contrary to law, it must be red-lined out of an otherwise fair, reasonable and adequate partial settlement agreement.

Alternatively, in the event the Court does not have the authority to strike a provision as contrary to statute, these Objectors ask the Court to express its opinion that the \$1.5 million is the property of the Class Members and cannot be taken from these Class Members without their consent. Based upon such opinion, the Court should **conditionally disapprove** the partial settlement with instructions to the Burley Cooperative and these Objectors to resume negotiations to address these concerns and return to Court in one month. *See: Cotton v. Hinton*, 559 F.2d.1326, 1331, (5<sup>th</sup> Cir. 1977); *Romstadt v. Apple Computer, Inc.*, 948 F. Supp. 701, 707 (N.D. Ohio 1996); *Bowling v. Pfizer, Inc.*, 143 F.R.D. 138 (S.D. Ohio 1992).

With this section cured, these Objectors will ask the Court to find that the partial settlement is fair, reasonable and adequate, and should be approved.

The proposed Opinion and Order relied upon KRS 272.111 and KRS 272.325 for the legality of making this \$1.5 million gift to BDTPA. Objectors have previously argued and continue to argue that this action is illegal and in violation of those provisions.

KRS 272.211(1) provides that an association has the following powers:

To engage in any activity in connection with the producing, marketing, selling, harvesting, preserving, drying, processing, canning, packaging, grading, storing, handling, or utilization of any agricultural products produced or delivered to it by its members and others; or the manufacturing or marketing of the by-products thereof; or in connection with the purchase, hiring, or use by its members and others of supplies, machinery, or furnishing services of economic or educational nature; or in any one (1) or more of the activities specified in this section.

This statute applied to the Burley Cooperative when it was a going concern. While the BGTC was engaged in the business of utilizing “agricultural products produced or delivered to it by its members and others” the activities described in this statute apply. This statute has no applicability once the BGTC has agreed to dissolution. It is compelling that this statute was not cited in Section 4 of the Partial Settlement. Seeking to rely on this statute is an afterthought by the Burley Cooperative. Further, there is nowhere in this statute any authorization for the BGTC to “gift” \$1.5 million of the funds that belong to the Burley Cooperative Members. To the extent that the proposed Opinion and Order is relying on “furnishing services of economic or educational nature” in support of its argument, gifting \$1.5 million to a new nonprofit does not fit that definition.

KRS 272.325 governs dissolution of an association. *See*: KRS 272.325: Dissolution of association – Procedure.

KRS 272.325(3) provides:

After the payment of the association’s debts and after provision has been made for the retirement of its capital stock outstanding, if any, at par and accruals thereon, and other fixed obligations, if any, held by members, the net assets remaining if no provision is made in the association’s articles of incorporation, bylaws, or contracts with members may be distributed to members and other patrons by distribution based on dollar volume of purchases by such members and patrons or other unit of measure or on products marketed as shown by the association books over the preceding five (5) fiscal years **OR** if the estimated cost of making such distribution, in the opinion of the committee approximate more than fifty percent (50%) of the amount available for distribution, the association may dispose of its net assets by converting them to cash and paying the money over to the College of Agriculture of the University of Kentucky, or to any nonprofit farm organization operating within the areas served by the cooperative.

(Emphasis added).

The proposed Opinion and Order asserted that “[t]he dissolution statute, KRS 272.325, does not prohibit such expenditure. . .” Proposed Opinion and Order at 13. In fact, the statute does prohibit such an expenditure unless the dissolution committee concludes that the “estimated cost of making such distribution” is more than 50% of the total amount available for distribution. The correct reading of this statute requires the Court to find that the Settlement provision that takes \$1.5 million off the top, before any distribution to the Class Members, is an illegal action that violates KRS 272.325(3). The proposed Opinion and Order stated that “ KRS 272.325(3) demonstrates a basic public policy in favor of – and, at a minimum, not inconsistent with – spending of part of a dissolving agricultural cooperative association’s net assets to fund ‘any nonprofit farm organization operating within the areas served by the cooperative.’” Proposed Opinion and Order at 13. This statement is only true to the extent that the assets of a agricultural cooperative are so few that half of the assets would be spent making the distribution; it does not apply to \$1.5 million to be paid before any distribution to the Burley Cooperative Members.

**b. The “gift” provision is not fair, reasonable or accurate where most Class Members no longer raise tobacco and will see no benefit from the creation of a new tobacco advocacy organization.**

The proposed Opinion and Order asserted that the distribution to BDTPA strikes a “balance” between former growers and current growers. However, class settlements must be equitable. The Manual for Complex Litigation, Fourth Ed., Section 21.62 requires consideration of “the apparent intrinsic fairness of the settlement terms.” In making such determination courts have considered such factors as “nonmonetary relief, such as coupons or discounts, [that] is unlikely to have much, if any market or other value to the class.” The use of the word “balance” does not justify giving some Burley Cooperative Class Members more benefits than other Class Members.

The Settlement provision that authorizes the \$1.5 million gift to a New Tobacco Nonprofit creates three segments of Class Members and treats these segments significantly differently from the others:

1. Most Class Members no longer raise tobacco. For this category, the Settlement uses a portion of what would have been their distributive share to create a nonmonetary new “Tobacco Liaison/Advocacy Nonprofit” that provides no benefit to them.

2. About 1,000 Class Members are still raising tobacco, and the Burley Cooperative asks the Court to find that these Class Members will receive an indirect nonmonetary benefit from the “new tobacco liaison nonprofit” in spite of the lack of benefit from the Burley Cooperative since 1997 and in spite of the fact that Roger Quarles and Rick Horn and Ian Horn and others are still raising tobacco but are opposed to this expenditure as a deduction from their distributive share.

3. The initial Tobacco Nonprofit Board had seven members who are currently on the BTGCA Board. In response to objection that this challenged provision resulted in the BTGCA distributing control over \$1.5 million to the same people who control the BTGCA, four have stepped down, leaving three existing Burley Cooperative Board members who are giving themselves, as Tobacco Nonprofit Board members control over the \$1.5 million.

The inequity has not been cured. It is simply more concentrated.

There must be a correlation between the treatment of various class members and the facts of the case. “[T]he settlement treats class members equitably. While the class members may receive differing amounts, the amount that each class member will receive is based on the amount LVNV improperly assessed him or her. Thus, the class members are treated equitably relative to each other.” *Elliot v. LVNV Funding, LLC*, 2019 U.S. Dist. LEXIS 143692, 23 (W.D. Ky. 2019).

“Fairness calls for a comparative analysis of the treatment of class members vis-á-vis each other and vis-á-vis similar individuals with similar claims who are not in the class.” *In re Sketchers Toning Shoe Prods. Liab. Litig.*, 2012 U.S. Dist. LEXIS 113641, 20-21 (W.D. Ky. 2012). “In the face of a motion for preliminary approval, the Court's role is to "evaluate whether the proposed settlement 'appears to be the product of serious, informed, non-collusive negotiation, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class, and falls within the range of possible approval.” *Id.* at 21.

The gift of \$1.5 million to BDTPA gives preferential treatment to class members still raising tobacco. Objectors are having their distribution from BTGCA reduced for the benefit of Class Members still growing tobacco and those members of the BTGCA Board who will continue their roles in BDPTA.

**c. The provision of the “gift” constitutes a waste of BGTCA assets.**

Objectors file herewith the affidavit of Roger Quarles that describes the current real world status of the burley industry in Kentucky. This affidavit makes clear that the burley tobacco is in a downward spiral that the Burley Cooperative was powerless to stop and that the new Tobacco Nonprofit is in an even weaker position to change.

The funds are to be in structured distributions of 5% annually by a qualified fiduciary holding the funds. The retention of \$1.5 million to fund a new nonprofit is excessive and wasteful in light of the future of the burley tobacco industry in Kentucky.

The Fairness Hearing commenced on February 24, 2021. During that hearing on that date, counsel for the BTGCA, when questioned by Judge Goodman, represented that he had no knowledge of the composition of the Board of or planned activities of a new nonprofit that would be funded by \$1.5 million of BTGCA assets. However, the Articles of Incorporation had been filed



on February 22, 2021, two days prior to the Fairness Hearing. Although BTGCA expressed ignorance to the composition of the Board of any new nonprofit, The Articles name nine Directors for the New Tobacco Association: 1. Al Pedigo (President), 2. Eddie Warren (Vice-President), 3. David Chappelle, 4. Guy Heitkemper, 5. Tom Ingram (Treasurer), 6. Don Mitchell, 7. James Dale Seay, 8. Mark Turner, and 9. Darrell Varner. The first seven names are currently serving on the Board of Directors of the BTGCA, holder of the office indicated by their names. Mark Turner was formerly a member of the Board of the BTGCA. This Court questioned the composition of the Board due to concerns that any new nonprofit would be run by the same people operating BTGCA as it was being dissolved for failure to serve the purpose for which it was created.

These Objectors ask the Court to note this evasiveness by the BTGCA as evidence that this \$1.5 million distribution to the new nonprofit is a disguised gift to the current BTGCA Board to continue their ineffectual activities at the expense of the members of BTGCA.

In response to criticism that the Board of Directors would continue to operate the BTGCA in all but name, David Chappelle, Guy Heitkemper, Tom Ingram, Donald Mitchell and Eddie Warren resigned from their positions on the Board of Directors during the initial meeting of the Board of Directors of Burley and Dark Tobacco Producer Association, Inc. (BDTPA). However, Al Pedigo, former Burley Cooperative Board member Mark Turner, and Dale Seay remain members of the Tobacco Nonprofit Board. This has done nothing to assuage the concerns of objectors that the same team that led BTGCA into judicial dissolution will be helming the BDTPA. The Board of BTGCA has wasted corporate assets in the past and Objectors have no guarantee corporate waste will not continue in the new organization as asserted in the proposed Opinion and Order. The mere fact that there are “assurances” the money will go to BDTPA does not eliminate the risk of waste.

The proposed Opinion and Order recited that the \$1.5 million will be placed in a restricted endowment whereby 5% of the annual income from the endowment would be disbursed to the DBTPA “after an initial start-up distribution from principal” of an unspecified amount as directed by the Business Plan. The holder of this restricted endowment is not identified. The question of whether the holder of the funds will be compensated for this fiduciary position is unanswered.

The Business Plan places the start-up figure at \$100,000.00 but the expense categories noted as start-up only and not annual expenses equal \$15,000.00. The balance of the remaining expenses, which are annual expenses, brings the total first year projected budget to approximately \$100,000.00. The Business Plan contains hopes of earning sponsorships to help pay for annual costs after the start-up distribution, in conjunction with the 5% annual distribution of income but fails to explain how the BDTPA will cover annual expenses in the second year without further distribution from the principal.

Frankly, this so-called “Business Plan” is not a business plan at all. It is replete with vague generalizations. “The Company must gain the trust and confidence of tobacco producers.” The business plan fails to explain how the existing Burley Cooperative Board of Directors will gain trust from the tobacco producers that have lost confidence in their leadership of the Burley Cooperative to such an extent that virtually all agree that the Burley Cooperative has outlived its usefulness and must be dissolved. “The Company will open dialogues with the major stakeholders in the Kentucky tobacco industry.” “...the Company will lobby in the interest of tobacco producers as issues develop.” “Much of the Company’s services focus on networking and facilitating communication...”

At page 5 of the Business Plan, the Company plans to market itself pursuant to a generic “Marketing Plan” without any specific dates, plans, measurable goals and benchmarks or anyway

to define success. The Operational Plan consists of no more than the description of two types of member and the duties of the President, Vice-President, Secretary and Treasurer. Within the Operational Plan is found the only specific item in the document: “The salary range for the President is expected to [sic] approximately \$40,000.00, plus reimbursement of reasonable travel expenses.” This expense is the major budget item in the first year Projected Budget of \$97,500.00 to \$114,000.00. Like the Marketing Plan, the Operational Plan is devoid of specifics such as dates, measurable targets and goals, with benchmarks and some definition of success.

It appears that the Business Plan of the BDPTA is to meet and talk. In other words, this Business Plan would allow selected members of the BGTCA to continue doing indefinitely what the BGTCA Board has been doing for the past ten years – meeting and talking while the Tobacco Industry continues its current death spiral. The New Tobacco Association will be doing this “meeting and talking” using money that belongs to someone else.

Nowhere in the Business Plan is that any new initiative, new proposed legislation, new way to recruit new tobacco producers in Kentucky or any other new approach that might give an observer any basis to invest in this organization.

In response to the March 11, 2021 letter from the Objectors that criticized the above features of the “Business Plan” the BTGCA filed an amended “Business Plan” on March 24, 2021, that removed the provision that would pay \$40,000 to the President of the new Tobacco Nonprofit and replaced that with a payment of \$45,000 to an unnamed administrative staff person.

More recently, Al Pedigo was interviewed by Farmers Pride and he made the following statements about the “business plan” of the new Tobacco Nonprofit:

“Let me just say that we only need one commodity group in the state,” Pedigo said.  
“We are not trying to do anything to the Council”

Currently, checkoff funds go to the Council, which has an agreement with the co-op for use of the funds. Pedigo said he hopes that the new group would work with the council and gradually the two groups would merge.

See attached to the affidavit of Roger Quarles.

Furthermore, through the process of dissolving the BGTCA, BGTCA has offered no evidence of recent advocacy efforts, no positions taken, and no successful actions taken on behalf of the BGTCA members. In fact, the evidence of record is to the contrary, that the BGTCA has failed its members in such a serious manner that it should be judicially dissolved. The Business Plan does not discuss past ineffective or effective strategies or any definitive new strategies to be taken to change the status quo of tobacco in Kentucky – decline. Al Pedigo testified during the Fairness Hearing that the BGTCA helped include tobacco farmers in the COVID stimulus package; however, he provided no physical evidence and the Objectors have not yet been given the opportunity to cross-examine Mr. Pedigo.

Objectors presented several objections to the \$1.5 million gift. Objectors previously stated:

Of the approximately thirty members who have objected to the proposed settlement, eleven objected to the grant of \$1.5 million to a new nonprofit. Billings Law Firm, PLLC’s Combined Response to Objections Regarding Fees and Supplemental Memorandum in Support of Motion for Award of Attorney’s Fees and Costs and Expenses at Exhibit 1. Wayne Cropper objected to “taking assets and create another tobacco lobbying group; refers to council for burley tobacco; entitled to his share of Coop assets – not to be given away to nearly the same guys that failed to properly run the coop.” Jerry Rankin objected because the “\$1.5 is excessive.” According to the table provided by the Billings Law Firm, of the 4 categories of objections, objections to the \$1.5 million donation to a new nonprofit was the second highest category.

Reply to BTGCA’s Response to Objection to Funding New Nonprofit for Tobacco Growers Liaison and Advocacy at 11. In addition, Objectors previously tendered the names of thirty-eight additional individuals objecting to the gift. Objectors concurrently file a complete list of all

objectors to that gift. During the Fairness Hearing, not one person testified that they supported the gift but for those individuals who would directly benefit from it, to wit the members of the new Board of BDTPA and the members of the Board of BTGCA.

**d. The Objectors propose an alternative method of funding BDTPA.**

Objectors propose that \$1.5 million could be held, in trust, for a two-year period with the interest income to be paid to the BDTPA, to determine whether the mission of the new nonprofit could be realized and operate from the interest generated.. After the end of the two-year period, the the \$1.5 million held in trust would be distributed to the BTGCA members and the new nonprofit could continue operating in a self-sustaining manner if it is able to do so. If it is not able to do so, the Class Members will not have \$1.5 million wasted on a dying industry and will see the benefit of their membership and support of BTGCA through past years. More details about funding opportunities, including new legislation to include tobacco check-off funds from dark leaf and cigar tobacco sales are set forth in the Objectors Offer of Compromise attached to the Joint Report on Mediation.

Under this approach, the funding for a Tobacco Liaison/Advocacy Nonprofit come from those in the tobacco industry and not from those who have left that industry. This is a more equitable solution than that contained in the proposed partial settlement agreement and proposed Opinion and Order.

Finally, Objectors will ask the Court to ensure that the Dissolution Committee will distribute to all Class Members their per capita portion of the over \$7 million Net Operating Loss described in the attached affidavit of Roger Quarles.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate of the foregoing was served via E-Mail, on this the 14th day of May, 2021 on the following:

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