#### ELECTRONICALLY FILED

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

ROGER QUARLES, RICK HORN, IAN HORN, CAMPBELL GRADDY, DAVID LLOYD, And GARY WILSON

CLASS ACTION OBJECTORS/APPELLANTS

v.

#### **NOTICE OF APPEAL**

HAYNES PROPERTIES, LLC, MITCH AND SCOTT HAYNES DBA ALVIN HAYNES & SONS, S&GF MANAGEMENT, LLC ON BEHALF OF THEMSELVES AND ALL OTHERS SIMILARLY SITUATED

PLAINTIFFS/APPELLES

BURLEY TOBACCO GROWERS COOPERATIVE ASSOC., AND GREG CRADDOCK ON BEHALF OF HIMSELF AND ALL OTHERS SIMILARLY SITUATED

**GREG CRADDOCK** 

DEFENDANTS/APPELLEES

\* \* \* \* \* \* \*

Under RAP 2, notice is given that, Class Action Objectors/Appellants, Roger Quarles, Rick Horn, Ian Horn, Campbell Graddy, David Lloyd, and Gary Wilson appeal from the orders entered on August 24, 2021, denying Graddy Attorneys' Fees, April 5, 2023, Order re Renewed Graddy Motion and June 1, 2023, denying Graddy's Motion to Alter, Amend or Vacate. Copies of those orders are attached. RAP 2(B)(2)(a). This appeal is being taken from the Fayette Circuit Court to the Kentucky Court of Appeals. RAP(B)(2)(b).

The Cass Action Objectors/Appellants are Roger Quarles, Ian Horn, Campbell Graddy, David Lloyd and Gary Wilson. The Class Action Objectors/Appellants are represented by John S. Friend, Friend Law, PSC, 908 Minoma Ave., Louisville, KY 40217, Telephone: (502)542-2455, johnny@friendlawky.com, and W. Henry Graddy, IV, and Dorothy T. Rush, W. H. Graddy & Associates, 137 North Main Street, Versailles, Kentucky 40282, Telephone: (859) 879-0020, Facsimile: (855) 398-4562, hgraddy@graddylaw.com, dtrush@graddylaw.com.

The Plaintiffs/Appellees are Haynes Properties, LLC, Mitch and Scott Haynes DBA Alvin Haynes & Sons, S&GF Management, LLC, on behalf of themselves and all others similarly situated. These Plaintiffs/Appellees are represented by Hon. Robert E. Maclin, III, Jaron P. Blandford, Hon. Jason R. Hollon, McBrayer, PLLC, 201 East Main Street, Suite 900, Lexington Kentucky 40507-1361, Telephone: (859) 231-8780, remaclin@mcbrayerfirm.com, jblandford@mcbrayerfirm.com, jhollon@mcbrayerfirm.com.

The Defendant/Appellee is, in part, Burley Tobacco Growers Cooperative Association. This Defendant/Appellee is represented by Hon. Kevin G. Henry, Hon. Charles D. Cole, Sturgill, Turner, Barker & Maloney PLLC, 333 W. Vine Street, Suite 1500, Lexington, KY 40507, Telephone: (859) 255-8581, khenry@sturgillturner.com, ccole@sturgillturner.com.

The Defendant/Appellee is, in part, Greg Craddock. Greg Craddock is represented by Hon. John Billings, Billings Law Firm, PLLC, 145 Constitution Street, Lexington, Kentucky 40507, Telephone: (859) 225-5240, nbillings@blfky.com.

Class Counsel are Katherine K. Yunker and Jason Hollon, McBrayer, PLLC, 201 East Main Street, Suite 900, Lexington Kentucky 40507-1361, Telephone: (859) 231-8780

Respectfully submitted,

/s/ John S. Friend
John S. Friend
Friend Law, PSC
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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

#### **CERTIFICATE OF SERVICE**

I hereby certify that, on June 26, 2023, a true and accurate of the foregoing was served via Kentucky CourtNet 2.0 on all counsel of record and via US Postal Service on the unrepresented objectors listed below pursuant to Circuit Court Order that all documents be served on unrepresented objectors:

Hon. Kevin G. Henry Hon. Charles D. Cole Sturgill, Turner, Barker & Maloney PLLC 333 W. Vine Street, Suite 1500 Lexington, KY 40507 khenry@sturgillturner.com ccole@sturgillturner.com

Hon. Robert E. Maclin, III Hon. Jaron P. Blandford Hon. Jason R. Hollon Hon. Katie Yunker McBrayer, PLLC 201 E. Main Street, Suite 900 Lexington, KY 40507 remaclin@mcbrayerfirm.com jblandford@mcbrayerfirm.com jhollon@mcbrayerfirm.com kyunker@mcbrayerfirm.com

20-CI-00332

06/26/2023

Hon. John Billings Billings Law Firm, PLLC 145 Constitution Street Lexington, Kentucky 40507 nbillings@blfky.com.

Pursuant to the April 18, 2023, Order Re Service List, notice is provided to these unrepresented objectors by United States Mail, sent to the following:

David Barnes	Jennifer Darnell	Berkley Marks
768 Bowman Mill Road	248 Grady Lane	5399 Paris Pike

Berry, Kentucky 41003 Cynthiana, Kentucky 41031 Mt. Sterling, Kentucky 40353

Jacob Barnes	Brent Dunaway	Jerry Rankin
1088 Bowman Mill Road	1547 Ky Highway 1054 N	4540 Perryville Road
Berry, Kentucky 41003	Berry, Kentucky 41003	Danville, Kentucky 40422

Ben Clifford William David Furnish Richard Sparks 2459 Ky. Highway 1284 E 1320 Highway 982 1499 Thatchers Mill Cynthiana, Kentucky 41031 Cynthiana, Kentucky 41031 Paris, Kentucky 40361

Lincoln Clifford	Michael Furnish	Jarrod Stephens
Ky Highway 1284 E	750 Smith Martin Lane	504 Commonwealth Lane
Cynthiana Kentucky 41031	Cynthiana, Kentucky 41031	Cynthiana, Kentucky 41031

Wayne Cooper	Leonard E. Gilkison	Addison Thomson
5350 Raymond Road	345 Calloway White Road	2224 Mr. Vernon Park
Mayslick, Kentucky 41055	Winchester, Kentucky 40391	Cynthiana, Kentucky 41031

Josh Curtis	George M. Darnell	William A. Thomson
1402 Ky Highway 1940	1593 Grays Run Pike	1809 Mt. Vernon Pike
Cynthiana, Kentucky 41031	Cynthiana, Kentucky 41031	Cynthiana, Kentucky 41031

Robert E. Barton	Dudley Wayne Hatcher
Barton Bros. Farm	648 Hood Road
4095 Huffman Mill Pike	Morgantown, Kentucky 42261

Danny Townsend Bruce Quarles
Judy Townsend Steven Quarles

Lexington, Kentucky 40511

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NA: 000005 of 000005

11620 Main Street Jeffersonville, Kentucky 40337 Travis Quarles 10570 Owenton Road Frankfort, Kentucky 40601

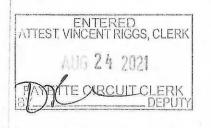
> /s/ John S. Friend John S. Friend

## COMMONWEALTH OF KENTUCKY FAYETTE CIRCUIT COURT FOURTH DIVISION

HAYNES PROPERTIES, LLC, et al.

V.

BURLEY TOBACCO GROWERS COOPERATIVE ASSOCIATION, et al.



**PLAINTIFFS** 

20-CI-332

**DEFENDANTS** 

#### **ORDER**

The above-styled matter came before the Court on August 20, 2021, on a Motion for Entry of Order of Method and Manner of Actual Notice of Petition for Allowance of Attorneys' Fees and Notice and a Motion for Award of Attorneys' Fees and Notice, both filed by W.H. Graddy & Associates, W. Henry (Hank) Graddy, IV and Dorothy Rush, counsel for the Roger Quarles, et al., Objectors. Having reviewed the Record, relevant case law, and memorandums of parties, as well as having heard the arguments of counsel, this Court HEREBY DENIES the motions for the following reasons:

A common fund recovery is only applicable to attorneys who create a common fund. *See Kincaid v. Johnson, True & Guarnieri,* LLP, 538 S.W.3d 901, 919-20 (Ky. App. 2017). In this case, there has been no change in the common fund available to the class members, though the distribution of certain assets has changed. The mediated Partial Settlement as approved by the Court in its Amended Opinion and Order of July 26, 2021 treated the gross sum of \$1.5 million as a pre-dissolution grant by the Board of

Directors of BTGCA to the newly-formed Burley and Dark Tobacco Producers

Association, under certain modified terms, that was not to be reduced by any claim for attorneys' fees except to compensate the actual time spent by Class Counsel overseeing the postcard opt-out program.

At the core, what the Court did in response to the many objectors was to change the method and manner of distribution of the \$1.5 million, without any guarantee it would be given to the class members. While the class members may, upon the conclusion of two years, withdraw their contribution, this is entirely dependent on the individual and is consistent with a member's right to withdraw their contribution. Therefore, the amount potentially granted to the class is speculative, as it is possible that all or most class members will choose to donate their share to the Burley and Dark Tobacco Producers Association and remain members of said organization. This means that Graddy as counsel for certain objectors did not create a common fund or increase the assets of the common fund; rather, Graddy helped provide a different framework for the distribution of the \$1.5 million.

Graddy was not involved in the prosecution of this action; he was neither class counsel nor did he take part in the original settlement in this case. He became involved in this case after the Court asked for objections from the class, and though he was involved in many hearings and proceedings following his clients' objections, he was ultimately involved in the narrow issue objected to by his clients. Therefore, while he

was certainly an effective attorney for the sake of his clients, his role in this case was largely tied to the desires of his clients—even if those desires were beneficial to the class.

While Graddy advocated for its clients' position on the settlement, it has not shown that this advocacy alone was the cause of the change in how the \$1.5 million will be distributed. The Court took into consideration the concerns raised by the unrepresented objectors regardless of their pro se status. Aside from the Objectors represented by Graddy, there were at least ten (10) other objections filed in opposition to the 1.5 million distribution. Graddy has not established that its actions "created" something more than did the pro se objectors or that, absent its presence in the case, the Court would not have sustained the objections. The Court has been extremely cognizant throughout this process of its position as the fiduciary for the class. As such, the Court paid great care to ensuring that the class members were heard and properly protected, as demonstrated by the Court's decision to deviate from other terms of the settlement, such as the other firms' awards of attorneys' fees and the proposed class definition.

Given under my hand this August 2021.

HON. JULIE MUTH GOODMAN
JUDGE, FAYETTE CIRCUIT COURT

**Filed** 

#### CLERK'S CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing has been served on this \_\_\_\_\_ day of August, 2021, via U.S. Mail, first class, to the following:

Katherine K. Yunker AUG 2 4 2021
Jason R. Hollon
McBrayer PLLC
201 E. Main Street, Suite 900
Lexington, KY 40507-1361
Settlement Class Counsel

Jeremy S. Rogers
Dinsmore & Shohl LLP
101 South Fifth Street, Suite 2500
Louisville, KY 40202
jeremy.rogers@dinsmore.com
Counsel for Defendant Burley Tobacco
Growers Cooperative Association

Kevin G. Henry
Charles D. Cole
Sturgill, Turner, Barker & Maloney
PLLC
333 West Vine Street, Suite 1500
Lexington, KY 40507
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Counsel for Defendant Burley Tobacco
Growers Cooperative Association

John N. Billings
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cthacker@blfky.com
rich.dieffenbach@blfky.com
Counsel for Defendant Greg Craddock on
behalf of himself and all others similarly
situated

W. Henry Graddy, IV 137 North Main St. Versailles, KY 40383 Counsel for Objector Roger Quarles

David Tachau
101 S. Fifth St., Ste. 3600
PNC Tower
Louisville, KY 40202-3120
(502) 238-9900
dtachau@tachaulaw.com
Counsel for Billings Law Firm, PLLC

Fayette Circuit Court Clerk

# EXH: 000001 of 000003

#### COMMONWEALTH OF KENTUCKY FAYETTE CIRCUIT COURT FOURTH DIVISION

Civil Action No. 20-CI-00332

HAYNES PROPERTIES, LLC, et al.

**PLAINTIFFS** 

VS.

Order re Renewed Graddy Motion

**BURLEY TOBACCO GROWERS** COOPERATIVE ASSOCIATION, et al.

ENTERED ATTEST, VINCENT RIGGS, CLERK APR 05 2023 FAYETTE CIRCUIT CL

**DEFENDANTS** 

This matter came before the Court on March 24, 2023, to hear the Renewed Graddy Motion for Award of Attorney's Fees and Notice ("Renewed Motion"), filed by the law firm of W.H. Graddy & Associates ("the Graddy firm") and seeking an award of attorney's fees in an amount up to \$99,375. Class Counsel and the Co-op having filed responses thereto, the parties having had an opportunity to be heard, and the Court being duly and sufficiently advised, IT IS HEREBY ORDERED as follows:

1. The Court DENIES the Renewed Motion, declining to make any award of attorney's fees to the Graddy firm.

2. This Order is final and appealable, there being no just cause for delay.

Given under my hand this 3/day of April, 2023.

VINCENT RIGGS, CLERK

DEPUTY

Hon. Julie Muth Goodman Judge Fayette Circuit Court

PREPARED and ATTESTED BY the undersigned that this proposed Order was prepared in conformity with rulings made at the hearing and circulated on 3/27/23 to counsel present at the

hearing pursuant to RFCC 19B, and that attorney W. Henry Graddy, IV authorized signing for him as "have seen," but not "agreed."

/s/ Katherine K. Yunker Katherine K. Yunker (KBA # 79592) Jason R. Hollon (KBA # 96148) McBrayer PLLC 201 E. Main Street, Suite 900 Lexington, KY 40507-1361 Counsel for Settlement Class

#### HAVE SEEN:

Filed

/s/ W. Henry Graddy, IV (w/ permission) W. Henry Graddy, IV W.H. GRADDY & ASSOCIATES 137 N. Main Street Versailles, KY 40383 Counsel for Objectors Roger Quarles et al. and representative of the Movant firm

#### **CLERK'S CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of this filing has been served on this Hay of April, 2023, via U.S. Mail, first class, to the following:

Robert E. Maclin, III Katherine K. Yunker Jason R. Hollon McBrayer PLLC 201 E. Main Street, Suite 900 Lexington, KY 40507-1361 Counsel for Named Plaintiffs and Settlement Class Representatives

Jeremy S. Rogers DINSMORE & SHOHL LLP 101 South Fifth Street, Suite 2500 Louisville, KY 40202 Counsel for Defendant Burley Tobacco Growers Cooperative Association

Kevin G. Henry Charles D. Cole STURGILL, TURNER, BARKER & MALONEY PLLC 333 West Vine Street, Suite 1500 Lexington, KY 40507 Counsel for Defendant Burley Tobacco Growers Cooperative Association

John N. Billings Richard J. Dieffenbach BILLINGS LAW FIRM, PLLC 145 Constitution Street Lexington, KY 40507 Counsel for Defendant Greg Craddock

EXH: 000003 of 000003

W. Henry Graddy, IV
Dorothy T. Rush
W.H. GRADDY & ASSOCIATES
137 N. Main Street
Versailles, KY 40383
Counsel for Objectors Roger Quarles
et al.

And to the following unrepresented objectors to the proposed Settlement, listed on Schedule A of the 6/11/21 Opinion and Order, at the addresses given in their respective objections:

J.B. Amburgey
David Barnes
Jacob Barnes
Robert E. Barton
Ben Clifford
Lincoln Clifford
Wayne Cropper
Josh Curtis

George M. Darnell Jennifer Darnell Brent Dunaway Michael Furnish

William David Furnish Leonard Edwin Gilkison Billy G. Hall

**Dudley Wayne Hatcher** 

Steve Lang
Berkley Mark
Bruce Quarles
Steven Quarles
Travis Quarles
Jerry Rankin
Richard Sparks
Jarrod Stephens
Addison Thompson
William A. Thomson
Danny Townsend

Clerk, Fayette Circuit Court

Judy Townsend

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### COMMONWEALTH OF KENTUCKY FAYETTE CIRCUIT COURT FOURTH DIVISION

95721

Civil Action No. 20-CI-00332

HAYNES PROPERTIES, LLC, et al.

PLAINTIFFS

vs. Order denying Graddy CR 59 Motion to Alter, Amend or Vacate this Court's Order of April 5, 2023

BURLEY TOBACCO GROWERS COOPERATIVE ASSOCIATION, et al.

**DEFENDANTS** 

This matter came before the Court on May 5, 2023, to hear the CR 59 Motion to Alter, Amend or Vacate this Court's Order of April 5, 2023 ("CR 59 Motion"), filed by the law firm of W.H. Graddy & Associates (the "Graddy firm") and seeking this Court alter, amend, or vacate its April 5, 2023 Order denying the Graddy firm's Renewed Motion for Award of Attorney's Fees. Class Counsel having filed a response thereto, the parties having had an opportunity to be heard, and the Court being duly and sufficiently advised, IT IS HEREBY ORDERED as follows:

1. The Court DENIES the CR 59 Motion. For the reasons stated in the Court's April 5, 2023 Order and its August 24, 2021 Order, both of which are expressly adopted and incorporated herein, and for those reasons stated on the record on May 5, 2023, March 24, 2023, and August 20, 2021, the Court CONCLUDES that the Graddy firm is not entitled to an award of attorney's fees or costs as such an award is not authorized by law or by any agreement of the parties. In response to allegations made or positions taken in the CR 59 Motion or during the hearing, the Court also FINDS that the Graddy firm's representation on behalf of its clients was not a "but for" cause of any modification to the settlement agreement provisions relating to the \$1.5 million grant or any benefit to the class as a whole because (a) the Court had raised issues

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with the settlement agreement provisions about the \$1.5 million before any written objections were filed, (b) there were objectors to the provisions about the \$1.5 million other than the persons the Graddy firm represented, and (c) the Court's exercise of its fiduciary responsibilities to the class were the actual and sufficient reason for any modifications ordered in the Amended Opinion and Order Approving Partial Settlement entered July 28, 2021.

- 2. The Court further DENIES as MOOT the Graddy firm's request in its CR 59 Motion for leave to negotiate an award of attorney's fees and costs with class counsel and the parties, it being represented at the hearing that there had been unsuccessful negotiations following the filing of the CR 59 Motion.
  - This order is final and appealable, there being no just cause for delay. 3.

Given under my hand this 📈 day of May 202

Judge Fayette Circuit Court

PREPARED BY:

/s/ Jason R. Hollon

Katherine K. Yunker (KBA # 79592) Jason R. Hollon (KBA # 96148)

MCBRAYER PLLC

**Filed** 

201 E. Main Street, Suite 900

Lexington, KY 40507-1361

Counsel for Settlement Class

06/26/2023

EXH: 000003 of 000004

PM

HAVE SEEN, in conformity with the rulings made at hearing: 06/26/2023 01:44:06

95721

#### /s/ W. Henry Graddy, IV (w/permission)

W. Henry Graddy, IV W.H. GRADDY & ASSOCIATES 137 N. Main Street Versailles, KY 40383 Counsel for Objectors Roger Quarles et al. and representative of the Movant firm

#### /s/ Kevin G. Henry (w/permission)

Kevin G. Henry Charles D. Cole STURGILL, TURNER, BARKER & MALONEY PLLC 333 West Vine Street, Suite 1500 Lexington, KY 40507 Counsel for Defendant Burley Tobacco Growers Cooperative Association

#### **CLERK'S CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the foregoing has been served on this day 2023, via U.S. Mail, first class, to the following counsel and unrepresented objectors to the proposed settlement:

Katherine K. Yunker Robert E. Maclin, III Jason R. Hollon MCBRAYER PLLC 201 E. Main Street, Suite 900 Lexington, KY 40507-1361 Counsel for Settlement Class Representatives and Named Plaintiffs Kevin G. Henry Charles D. Cole STURGILL, TURNER, BARKER & MALONEY PLLC 333 West Vine Street, Suite 1500 Lexington, KY 40507 Counsel for Defendant Burley Tobacco Growers Cooperative Association

W. Henry Graddy, IV Dorothy T. Rush W.H. GRADDY & ASSOCIATES 137 N. Main Street Versailles, KY 40383 Counsel for Objectors Roger Quarles et al.

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J.B. Amburgey P. O. Box 47 Means, KY 40346

David Barnes 768 Bowman Mill Road Berry, KY 41003

Jacob Barnes 1088 Bowman Mill Road Berry, KY 41003

Ben Clifford 2459 Ky. Hwy. 1284 E Cynthiana, KY 41031

Lincoln Clifford Ky Hwy 1284 E Cynthiana KY 41031

Wayne Cropper 5350 Raymond Road Mayslick, KY 41055

Josh Curtis 1402 KY Hwy 1940 Cynthiana, KY 41031

Robert E. Barton Barton Bros. Farm 4095 Huffman Mill Pike Lexington, KY 40511

George M. Darnell 1593 Grays Run Pike Cynthiana, KY 41031

Jennifer Darnell 248 Gray Lane Cynthiana, KY 41031

Brent Dunaway 1547 KY Highway 1054 N Berry KY 41003

William David Furnish 1320 Highway 982 Cynthiana, KY 41031

Michael Furnish 750 Smith Martin Ln. Cynthiana, KY 41031-6997

Leonard E. Gilkison 345 Calloway White Road Winchester, KY 40391

George M. Darnell 1593 Grays Run Pike Cynthiana, KY 41031

**Dudley Wayne Hatcher** 648 Hood Rd. Morgantown, KY 42261

Bruce Quarles Steven Quarles Travis Quarles 10570 Owenton Road Frankfort, KY 40601

Steve Lang 703 Gray Lane 95721 Cynthiana, KY 41031

Berkley Marks 5399 Paris Pike Mt. Sterling KY 40353

Jerry Rankin 4540 Perryville Road Danville, KY 40422

Richard Sparks 1499 Thatchers Mill Paris, KY 40361

Jarrod Stephens 504 Commonwealth Lane Cynthiana KY 41031

Addison Thomson 2224 Mt. Vernon Park Cynthiana, KY 41031

William A. Thomson 1809 Mt. Vernon Pike Cynthiana, KY 40131

Danny Townsend Judy Townsend 11620 Main St. Jeffersonville, KY 40337

Clerk, Fayette Circuit Court



#### Commonwealth of Kentucky Vincent Riggs, Fayette Circuit Clerk

Received From: JOHN FRIEND Account Of: JOHN FRIEND

Case Title: HAYNES PROPERTIES LLC, ET AL VS. BURLE' Confirmation Number: 164408130

TOBACCO GROWERS COOP Filed On 6/26/2023 4:05:41PM

<u>#</u>	Item Description		<u>Amount</u>
1	Court Facilities Fee		\$25.00
2	Money Collected For Others(Postage)		\$3.96
3	Money Collected For Others(Attorney Tax Fee - Appeals)		\$10.00
4	Civil Filing Fee		\$150.00
5	Charges For Services(Copy - Photocopy)		\$3.60
		TOTAL:	\$192.56

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