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**COMMONWEALTH OF KENTUCKY
COURT OF APPEALS
NO. 2023-CA-0767-MR**

APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE JULIE MUTH GOODMAN, JUDGE
CIVIL ACTION NO. 20-CI-00332

ROGER QUARLES, ET AL.

APPELLANTS,

v.

HAYNES PROPERTIES, LLC, ET AL.

APPELLEES

**Plaintiff-Appellees'
Supplemental Prehearing Statement**

Plaintiff-Appellees, Haynes Properties, LLC, Mitch and Scott Haynes d/b/a Alvin Haynes and Sons, and S&GF Management, LLC, as the named plaintiffs and class representatives for the certified Settlement Class, hereby file this Supplemental Prehearing Statement pursuant to Kentucky Rule of Appellate Procedure 22(c)(4). This Supplemental Statement provides the complete and correct listing of the Plaintiff-Appellees on appeal along with their counsel, supplements the Appellants' purported facts, and provides additional information regarding the issues on appeal along with a jurisdictional challenge that Plaintiff-Appellees will raise to this appeal.

1. Information Regarding Appellees: Information was given in Appellants' Prehearing statement that the Plaintiff-Appellees were, in part, Haynes Properties, LLC and

“Mitch and Scott Haynes.”¹ However, the correct party names of Plaintiff-Appellees are Haynes Properties, LLC, Mitch and Scott Haynes d/b/a Alvin Haynes and Sons, and S&GF Management, LLC, as the named plaintiffs and class representatives for the certified Settlement Class.

2. Identifying Information Regarding Counsel for Plaintiff-Appellees: Information was given in Appellants’ Prehearing statement that the Plaintiff-Appellees were represented by Robert E. Maclin III, Jaron P. Blandford, and Jason R. Hollon of McBrayer PLLC. The full and correct names, addresses, and telephone number appellate counsel for Plaintiff-Appellees, including Settlement Class Counsel, are as follows:

Robert E. Maclin III
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201 East Main Street, Suite 900
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The Settlement Class Counsel appointed by the Fayette Circuit Court are Katherine K. Yunker and Jason R. Hollon.

3. Additional Facts on Appeal: This matter originated with a class action complaint filed by Plaintiff-Appellees in the Fayette Circuit Court on January 27, 2020, on behalf of themselves and those similar situated as members of Defendant-Appellee Burley Tobacco Growers Cooperative Association (“BTGCA”). Plaintiff-Appellees, in part, sought the judicial dissolution of the BTGCA and the distribution of its net assets to its members. Following a period of litigation and a mediation, Plaintiff-Appellees, Defendant BTGCA, and named Defendant-

¹ Appellants’ Prehearing Statement also listed the other Appellees as Burley Tobacco Growers Cooperative Association and Greg Craddock.

Appellee Greg Craddock (who had sought a non-judicial dissolution of the BTGCA), agreed in principle to a partial settlement agreement.

The parties presented the proposed partial settlement agreement for the Circuit Court's approval on June 10, 2020, pursuant to Kentucky Civil Rule (CR) of Procedure 23.05. The partial settlement agreement, in relevant part, provided for the dissolution of the BTGCA and the distribution of its net assets to members of a non-opt-out class. The partial settlement agreement further provided that \$1.5 million of BTGCA assets would be set aside and used to fund a new nonprofit tobacco advocacy group.

Following a notice program, appointed Settlement Class Counsel and the Circuit Court received several objections to the partial settlement agreement. One of the categories of objections was to the \$1.5 million fund to the new nonprofit advocacy group. This category of objection was raised by several individuals, some of which were not class members, and by the Appellants, represented by W. H. Graddy & Associates. These objectors argued that the \$1.5 million should be included in the net dissolution assets of the BTGCA to be distributed to the Settlement Class.

The Circuit Court conducted a fairness hearing on February 24, March 1, and concluded on March 8, 2021, and approved the partial settlement by order entered June 11, 2021. Following a CR 59.03 motion to alter, amend, or vacate filed by BTGCA, the Circuit Court entered its Amended Opinion and Order Approving Partial Settlement on July 28, 2021. As part of its approval, the Circuit Court provided the new nonprofit with \$175,000 and implemented a process by which Class members could elect to receive a proportionate share of the remainder of the \$1.5 million approximately (2) years following the organization of the new nonprofit.²

² Settlement Class Counsel is currently implementing this process.

W.H. Graddy & Associates, W. Henry (Hank) Graddy, IV, and Dorothy Rush applied for an award of attorneys' fees, as counsel for Appellant objectors, pursuant to CR 23.08 and KRS 412.070, in the amount of 24% of the remainder of the \$1.5 million. The Circuit Court denied this request by Order entered on August 24, 2021. W.H. Graddy & Associates, W. Henry (Hank) Graddy, IV, and Dorothy Rush renewed their request on March 17, 2023, this time seeking an attorney's fee award of 7.5% of the remainder of the \$1.5 million. The Circuit Court again denied this request by Order entered on April 5, 2023. On April 17, 2023, W.H. Graddy & Associates, W. Henry (Hank) Graddy, IV, and Dorothy Rush filed a CR 59.03 motion to alter, amend, or vacate the Court's April 5, 2023 Order. This CR 59.03 motion was noticed for a hearing on April 28, 2023. However, W.H. Graddy & Associates, W. Henry (Hank) Graddy, IV, and Dorothy Rush, failed to serve any of the unrepresented objectors and requested that the hearing be continued so that the CR 59.03 motion could be properly served. Following the continued hearing on May 5, 2023, the Circuit Court denied the CR 59.03 motion by Order entered June 1, 2023, and this appeal followed.

4. Issues Proposed to be Raised on Appeal: Appellants' Prehearing Statement asserts that the issue on appeal is whether the Circuit Court abused its direction in denying the request for attorney's fees and that "objector fees are an issue of first impression in Kentucky." At this stage, Plaintiff-Appellees have not confirmed the latter assertion in the context of class actions. However, the requests of W.H. Graddy & Associates, W. Henry (Hank) Graddy, IV, and Dorothy Rush for attorney's fees were made pursuant to KRS 412.070, which has been interpreted in a number of cases by Kentucky appellate courts.

In addition, among the issues proposed to be raised on appeal is a jurisdictional challenge to Appellants' appeal. No CR 59 motion was served upon all required persons within ten (10)

days after entry of the April 5, 2023 Order, and no notice of appeal was filed within thirty (30) days after the date of notation of service of the April 5, 2023 Order. Further, there are issues with respect to the standing of Appellants to prosecute this appeal.

Respectfully submitted,

/s/ Jason R. Hollon

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served this 27th day of July 2023, upon counsel via the e-filing system and U.S. Mail, postage prepaid, and electronic mail, and upon unrepresented persons via first class U.S. Mail, postage prepaid, as shown on the attached Service List below:

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