

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

*Filed Electronically*

**Roger Quarles, *et al.***

**Appellants**

v.

**Haynes Properties, LLC, *et al.***

**Appellees**

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**Plaintiff-Appellees' Motion to Dismiss**

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MOTION

Plaintiff-Appellees, Haynes Properties, LLC, Mitch and Scott Haynes d/b/a Alvin Haynes & Sons, and S&GF Management, LLC, as the named plaintiffs and appointed class representatives for the certified Settlement Class, hereby move to dismiss this appeal due to the Objector-Appellants' failure to file a timely notice of appeal. In support of this Motion, Plaintiffs attach Exhibits 1-8 hereto and state as follows:

ARGUMENT

In addition to and separate from the grounds raised by Defendant-Appellee Burley Tobacco Growers Cooperative Association ("the Co-op") in its motion to dismiss filed July 27, 2023,<sup>1</sup> the appeal by Objector-Appellants Roger Quarles *et al.* ("the Quarles Objectors") must be dismissed because the time for noticing the appeal began running no later than April 5, 2023, and

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<sup>1</sup> Plaintiff-Appellants support the Co-op motion, but do not repeat here the grounds presented therein. This motion does not rely on any of the points made in the Co-op motion, *e.g.*, that an appeal had to be taken from the 2021 order, the Objector-Appellants lack standing to appeal from the denial of an attorney-fee award, or the appeal is defective for failure to include an indispensable appellant.

expired after May 5, 2023. The notice of appeal was not filed until June 26, 2023, *i.e.*, 82 days after entry of the final and appealable order. Although a timely CR 59.05 motion tolls the running of the 30-day appeal period specified by RAP 3(A)(1), the only such motion presented to the Circuit Court was not served as required within the 10-day period allowed by CR 59.05.

Despite the length and complexity of the underlying proceeding, the untimeliness of the notice of appeal is demonstrated by a handful of facts and filings:

1. More than 30 persons who were not named parties, including the six (6) Quarles Objectors, appeared in the case in early 2021 by presenting timely written objections to provisions in the proposed settlement. The Quarles Objectors, who were represented by attorneys of the firm W.H. Graddy & Associates (the attorneys and firm herein collectively referred to as “the Graddy Firm”), objected only to the proposed grant of \$1.5 million to a new nonprofit. Other objectors (none of whom were represented by counsel) also raised this objection, and raised other objections, including to the exclusion of pre-2015 growers from the class and to any award or the proposed amount of an award of attorney fees to Plaintiffs’ or additional Defendant Greg Craddock’s attorneys.<sup>2</sup>
2. The Court held a multi-day CR 23.05(2) fairness hearing and then entered orders considering the presented objections and approving the settlement — somewhat modified, including as to both the \$1.5 million grant and the attorney-fee awards. A final and appealable Amended Opinion and Order Approving Partial Settlement (“the Approval Order”; attached as Exhibit 1), was entered July 28, 2021.<sup>3</sup> Although the Approval Order

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<sup>2</sup> Some unrepresented objectors raised objections in more than one category. At least one unrepresented objector protested against the inclusion of the 2020 crop year in the class definition, and another questioned the overall fairness of the proposed settlement.

<sup>3</sup> The Approval Order (Exh.1, pp.5 (¶4), 12 (¶18)) refers to and incorporates a more extensive discussion of the attorney-fee requests in the separate Opinion and Order Awarding Service Fees and Attorneys’ Fees and Nontaxable Costs, entered June 11, 2021.

was challengeable by both the settlement proponents (active or tacit) and the objectors, no appeal was taken.

3. In August 2023, the Graddy Firm moved *pro per* for an award of attorneys' fees of up to 24% of the \$1.5 million grant-fund (\$360,000.00). By Order entered August 24, 2021 (attached as Exhibit 2), this request was denied.
4. In November 2021 and March 2023, Class Counsel moved for a winnowing of the list of those to be served in the case; each time asking that service no longer be required on the unrepresented objectors. The Quarles Objectors filed a written opposition to the earlier request (attached as Exhibit 3), and neither the November 2021 nor March 2023 request was successful.
5. On March 17, 2023, the Graddy Firm filed its *pro per* Renewed Graddy Motion for Award of Attorney's Fees and Notice, requesting up to 7.5% of the \$1.325 remaining in the grant-fund (\$99,375.00). The Court entered a final and appealable Order denying the Renewed Motion on April 5, 2023. *See* 4/5/23 Order (attached as Exhibit 4).
6. The Graddy Firm filed a CR 59.05 Motion on April 17, 2023, the deadline day. The certificate attests to service on counsel for the Co-op and for Plaintiffs/Settlement Class Representatives and on an attorney for the Burley and Dark Tobacco Producer Association, Inc. (a nonparty)<sup>4</sup> but only on them. *See* 4/17/23 Motion (attached as Exhibit 5).
7. After the 4/28/23 initially noticed hearing, on May 1, 2023, the Graddy Firm filed a Re-notice of Graddy CR 59 Motion to Alter, Amend or Vacate (attached as Exhibit 6), stating that it had "failed to give notice to the unrepresented objectors" (p.1) and attesting to service on the various counsel and the unrepresented objectors (pp.2-3).

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<sup>4</sup> Courtesy copies of filings on certain issues have been provided at times to this attorney, D. Gaines Penn. Neither the Association nor the attorney has been named or formally appeared in the case.

8. On May 5, 2023, at the re-noticed hearing, the Court announced that it was denying the CR 59.05 motion.<sup>5</sup> The written Order on the ruling (attached as Exhibit 7) was entered on June 1, 2023.
9. On June 26, 2023, the Quarles Objectors filed their Notice of Appeal (attached as Exhibit 8). No other notice of appeal has been filed.

The failure to serve the unrepresented objectors by the CR 59.05 deadline (4/17/23) makes the Graddy Firm's CR 59.05 motion untimely. The appeals period was not tolled, and no notice of appeal was filed on or before the deadline of May 5, 2023.

Rule of Appellate Procedure 3(A)(1) mandates that the notice of appeal be filed with the Fayette Circuit Clerk "no later than 30 days from the date of notation of service of the judgment or order appealed from." The date of notation of the latest judgment or final order among the three orders challenged in the Notice of Appeal (Exh. 8) was on April 5, 2023; the noted service included counsel for named parties, counsel for the Quarles Objectors (the Graddy Firm), and the unrepresented objectors. *See* 4/5/23 Order (Exh. 4) pp. 2-3. Thus, per RAP 3(A)(2), the date for "fixing the running of the time for appeal" was April 5, 2023.

"All appeals shall be taken by filing a notice of appeal ... within the time allowed by RAP 3." RAP 2(A)(1). As was true before the Rules of Appellate Procedure came into effect, "[t]he timely filing of a notice of appeal is jurisdictional." RAP 2(A)(2). "The failure of a party to timely file a notice of appeal ... shall result in a dismissal or denial." RAP 10(A); superseded

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<sup>5</sup> At the 4/28/23 hearing, and again at the re-noticed 5/5/23 hearing, Class Counsel expressed the position that the failure to serve the unrepresented objectors made the CR 59 Motion untimely. By the end of the 5/5/23 A.M. hearing, the Graddy Firm knew that its Motion had been denied and that filing a notice of appeal that day would obviate any question of whether the appeal was timely.

CR 76.02(2) (same). The federal court rules are similarly worded and applied to make timeliness jurisdictional.<sup>6</sup>

“If a party files a timely motion in the trial court [under CR 50.02, CR 52.02, or CR 59] ..., the time to file an appeal runs for all parties from the entry of the order disposing of the last such remaining motion....” RAP 3(E)(2) (emphasis added). The only CR 50.02, 52.02, or 59 motion between the 4/5/23 Order and the 6/26/23 Notice of Appeal was the Graddy Firm’s Motion filed April 17, 2023 (Exh. 5), and re-noticed May 1, 2023 (Exh. 6). Assuming *arguendo* that the Graddy Firm and the Quarles Objectors each was a “party” within the meaning of RAP 3(E)(2), the CR 59.05 Motion had to be timely in order to extend the time for noticing the appeal.<sup>7</sup>

The express timeliness requirement for a CR 59.05 motion is that it “shall be served no later than 10 days after entry of the final judgment.” CR 59.05 (motion to vacate, alter, or amend);<sup>8</sup> *see also* CR 59.02 (motion for new trial; same). Filing is not mentioned; only service can meet the deadline.<sup>9</sup> CR 59.05 service is one of the few deadlines for which no extension may be granted. *See* CR 6.02. The short, inflexible 10-day window is purposely unforgiving,

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<sup>6</sup> *See, e.g.*, Fed. R. App. P. 3(a)(1), (2); *Browder v. Director, Dept. of Corrections*, 434 U.S. 257, 264 (1978) (timely notice of appeal is “mandatory and jurisdictional”).

<sup>7</sup> *See Marris Elec. Co., Inc. v. Rubloff Basford, LLC*, 190 S.W.3d 363, 367 (Ky. App. 2006) (appeals period not tolled by untimely CR 59.05 motion); *see also Acevedo-Villalobos v. Hernandez*, 22 F.3d 384, 390 (1st Cir. 1994) (same); *Flores v. Proconier* 745 F.3d 338, 339 (5th Cir. 1984) (same).

<sup>8</sup> Civil Rule 59.05 “is considered the same as [federal Rule] 59(e).” *Gullion v. Gullion*, 163 S.W.3d 888, 891 n.2 (Ky. 2005). In 1995, after 60 years of being phrased to require service within 10 days, federal Rules 59(b) and 59(e) were amended to require filing no later than 10 days after entry of the judgment. This did not, however, diminish the requirement that service occur within 10 days. As the 1995 Advisory Committee Notes pointed out, Rule 5 required filing within a reasonable time after service and with a certificate showing the service on other parties.

<sup>9</sup> *See Huddleston v. Murley*, 757 S.W.2d 216, 217-18 (Ky. App. 1988) (noting that “appellees and the trial court have confused the crucial difference between the filing of a motion and the serving of a motion”; holding that a new trial motion served by the deadline per its certificate was timely despite being filed on the 11th day).

“to fix a definite time when judgments become final and free from attack.” *Ligon Spec’d Hauler, Inc. v. Smith*, 691 S.W.2d 902, 904 (Ky. App. 1985). The rules for required service of a CR 59.05 motion, like those regarding the requirement that an appellate brief be served on all parties, “are not complex or technical.... They are fundamental Due Process requirements, essential for the protection of parties’ rights, not the least of which are those of *pro se* [parties].” *Vander Boegh v. Bank of Oklahoma, N.A.*, 394 S.W.3d 917, 921 (Ky. App. 2013) (addressing CR 5.02 and CR 76.12(5)).<sup>10</sup> The rule for service expressly requires that “every written motion..., and every notice ... and similar papers shall be served upon each party except those in default for failure to appear.” CR 5.01 (emphases added).<sup>11</sup> Although the unrepresented objectors appeared and actually participated in the case, they were not served by the Graddy Firm with the CR 59.05 Motion.

The Graddy Firm’s CR 59.05 Motion was filed on April 17, 2023, the last day of the CR 59.05 deadline. Its certificate of service (Exh. 5 pp.6-7) attests to service on counsel for the Co-op and for Plaintiffs/Settlement Class Representatives and on a non-party’s attorney, but only on them. The Graddy Firm’s 5/1/23 Renote (Exh. 6 p.1), admits that the 4/17/23 Motion failed to give notice to the unrepresented objectors and that it should mail written notice to them. The plain language of CR 59.05 requires “service” within 10 days, and the required service is on “each party” (CR 5.01). Thus, there was no timely CR 59.05 motion to postpone the appeal deadline beyond May 5, 2023. As in *Marrs Elec. Co., Inc. v. Rubloff Basford, LLC*, 190 S.W.3d 363, 367 (Ky. App. 2006), the 30-day appeal period was “not tolled and consequently expired well before the notice of appeal here was filed.”

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<sup>10</sup> Service of an appellate brief on all parties before or concurrent with filing is now required by RAP 30(B). Service is to comply with RAP 5, which refers to the standards of CR 5.01, .02, and .03.

<sup>11</sup> Service is complete on mailing/delivery, to the attorney if a party is represented by one, but to the party otherwise, at the last known address of such person. CR 5.02(1). If no address is known for a person, a motion, notice, or other paper may be served “by leaving it with the clerk of the court.” CR 5.02(1).

The Quarles Objectors might protest that some service was made on the tenth day and is sufficient to make the Motion timely. The Graddy Firm may have started, but did not complete, service within 10 days and so missed the deadline. There is little caselaw about the effect of deficiencies in service on the timeliness of motions to vacate, alter, or amend a judgment; however, this suggests that applying the service rule “in accordance with its literal language has not been a source of hardship.” *Simmons v. Ghent*, 970 F.2d 392, 393 (7th Cir. 1992).<sup>12</sup> Kentucky precedent does confirm that completing some but not all requirements by a Rule deadline is not sufficient.<sup>13</sup> Furthermore, allowing movant to extend the CR 59.05 time period by starting service at the deadline and completing it days or weeks later would subvert the purpose of the 10-day deadline.<sup>14</sup>

The Quarles Objectors might also argue that only named parties qualify as “parties” under the Civil or Appellate Rules. This would be self-defeating, because although it might excuse the failure to serve the unrepresented objectors, it would still require that the Quarles

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<sup>12</sup> The U.S. Seventh Circuit Court held that there had been no timely Rule 59(e) motion without Rule 5 service on a defendant who had not been summoned into the case. *See also In re Long Island Props., Inc. (Mast Corp. v. Buckley)*, 125 F.2d 206, 207 (2nd Cir. 1942) (defective hearing notice was not cured by re-notice that “was served on only a fraction of the parties to be affected [by the requested relief], contrary to Rule 5”).

<sup>13</sup> *See, e.g., Excel Energy, Inc. v. Cwlth. Inst’l Secs., Inc.*, 37 S.W.3d 713, 716 (Ky. 2000) (one-day late filing after filing fee received by clerk made notice of appeal untimely despite “clock-and-drop” on deadline day); *Bruner v. Sullivan Univ. Sys., Inc.*, 544 S.W.3d 669, 672 (Ky. App. 2018) (notice of appeal not timely despite electronic submission and receipt of “NEF” notice on deadline day when fee not paid and “NCP” notice not given that day); *Simmons v. Taylor*, 451 S.W.2d 385, 389 (Ky. 1970) (30-day period for election contest not met when challenger did not serve amended complaint on adverse parties per CR 5.01 by deadline; “Nothing that occurred after the limitation period could breathe life into it.”).

<sup>14</sup> *See Ligon*, 691 S.W.2d at 904 (Ky. App. 1985) (CR 59.02’s deadline would be defeated if movant allowed to complete a new-trial motion “at its leisure” after the deadline); *Taylor v. Warman*, 331 S.W.2d 899, 900 (Ky. 1960) (untimely second CR 59.01 motion did not toll appeals deadline; Rules “do not contemplate or permit the staying of the time for taking an appeal indefinitely by the filing of a series of motions for a new trial.”); *McNabola v. Chicago Transit Auth.*, 10 F.3d 501, 521 (7th Cir. 1986) (vacating award of prejudgment interest on untimely Rule 59(e) motion; Rule 59 “time limit would be a joke if parties could continually file new motions, preventing the judgment from becoming final.”).

Objectors' appeal be dismissed as untimely.<sup>15</sup> An appeal deadline is tolled by a timely CR 59.05 motion by and for parties:

If a party timely files in the trial court any of the following motions under the Kentucky Rules of Civil Procedure, the time to file an appeal runs for all parties from the entry of the order disposing of the last such remaining motion.

RAP 3(E)(2) (emphases added). Neither the Graddy Firm<sup>16</sup> nor any of the Quarles Objectors was named as a party to the Fayette Circuit Court case, and so any CR 59.05 motion the Graddy Firm filed would not create the tolling effect for anyone<sup>17</sup>; even if it could, the time for “non-parties” like the Quarles Objectors to file an appeal would not be affected.

Furthermore, once the Fayette Circuit Court certified it, “the class of unnamed persons described in the certification acquired a legal status separate from the interest asserted by [the named plaintiff].” *Sosna v. Iowa*, 419 U.S. 393, 399 (1975).<sup>18</sup> The judgment entered in the Approval Order is binding on unnamed members of the certified Class of burley tobacco growers (see Exh. 1 pp. 24-27 (ordering ¶¶ 4-8)), because certification brings their claims into the case and makes them parties to the case.<sup>19</sup> For the federal courts, “[t]he label “party” does not indicate an absolute characteristic, but rather a conclusion about the applicability of various

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<sup>15</sup> Plaintiff-Appellees note that such an argument would also concede that the Quarles Objectors lacked standing to appeal. See *Petition Comm. by and through a Majority of its Members v. Bd. of Educ. of Johnson County, Kentucky*, 509 S.W.3d 58, 63 (Ky. App. 2016) (only an adversely-affected party of record in the underlying action has standing to appeal).

<sup>16</sup> The Quarles Objectors, through their Graddy Firm attorneys, have unequivocally stated “that the Graddy law firm and W. Henry Graddy and Dorothy Rush are not parties to this litigation,” and have participated only as counsel for the Quarles Objectors. See Quarles Partial Opposition (Exh. 3) p.3.

<sup>17</sup> Cf. *Lapiner v. Maimon*, 429 S.W.3d 816, 820-21 (Tex. Civ. App. 2014) (person denied intervention in a derivative action was a non-party who “cannot extend the appellate timetable by assailing the final judgment with a motion for new trial”).

<sup>18</sup> Federal decisions guide Kentucky courts’ analysis of class-action rules, because CR 23 “mirrors its federal counterpart.” *Hensley v. Haynes Trucking, LLC*, 549 S.W.3d 430, 436 & n.4 (Ky. 2018).

<sup>19</sup> See *Sosna*, 419 U.S. at 399 n.8 (describing consequence of certification for unnamed class members); *Molock v. Whole Foods Mkt. Group, Inc.*, 952 F.3d 293, 297-98 (D.C. Cir. 2020) (discussing party status of unnamed class members).



procedural rules that may differ based on context.” *Devlin v. Scardelletti*, 536 U.S. 1, 9-10 (2002).<sup>20</sup> In the context of the Graddy Firm’s requests to be awarded attorneys’ fees and to alter, amend, or vacate the 4/5/23 Order’s denial of an award, Kentucky’s CR 23.08(2) expressly recognizes participatory status for each Class member:<sup>21</sup> “A class member, or a party from whom payment is sought,<sup>22</sup> may object to the motion” making a claim for an attorney-fee award.

In addition, and uniquely among unnamed Class members, there are unrepresented objectors who submitted timely written objections on the potential award of attorneys’ fees. *See* Approval Order (Exh. 1) p.13 (¶18). The unrepresented objectors were served with other parties’ filings in response to the March 2023 fee motion by the Graddy Firm and with the 4/5/23 Order re Renewed Graddy Motion. *See* Exh. 4, pp.2-3 (Clerk’s Certificate). At the least, they were CR 5.01 “parties” required to be served with the CR 59.05 Motion.

In November 2021, a filing by the Graddy Firm on behalf of the Quarles Objectors made an argument for why the Quarles Objectors should remain on the CR 5 service list that is indistinguishably applicable to the unrepresented objectors. In response to Class Counsel’s point that the objectors — represented or unrepresented — were not parties to claims that remained pending in the case after the Approval Order, the Quarles Objectors pointed out they had “timely filed written objections which have been considered by the Court” relating to the \$1.5 million grant-fund and “have a particular and unique interest in the implementation of ... restrictions” that had

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<sup>20</sup> *See, e.g., Megronigle v. Allstate Prop. & Cas. Ins. Co.*, 671 S.W.3d 293, 297-98 (Ky. 2023) (holding that sanctions under CR 37.02(2) are not permitted against a non-party deponent).

<sup>21</sup> In its requests for an attorney-fee award, the Graddy Firm has recognized in the abstract Class members’ interest in attorney-fee issues, by asking that notice of the request be directed to Class members and a hearing held so they can comment thereon. It simply has neglected to honor that interest by CR 5 service on objector Class members who have appeared, been specifically named in the proceedings, voiced objections about attorneys’ fees, and had those objections considered by the Court.

<sup>22</sup> Most Class members are also persons “from whom payment is sought” for the requested Graddy Firm fee award. Distributions to qualified or electing Class members of shares in the Co-op’s net dissolution proceeds or in the remaining grant-fund will necessarily be diminished by any award to the Graddy Firm.

been imposed by the Court on the grant-fund. Quarles Partial Opposition (Exh. 3) pp. 2,3. Thus, because they had appeared and objected as to one aspect of the proposed settlement, they argued that they should be included in all further service of case filings — *i.e.* that objectors are parties for purposes of CR 5.01 service.<sup>23</sup> This reasoning covers the unrepresented objectors as well.

If there were any remaining question whether objectors were parties for purposes of CR 5.01 required service, then service on them of a case filing like the CR 59.05 Motion would nonetheless be mandatory because the Fayette Circuit Court required that they be served. A court conducting a class action may issue orders “to protect certified class members and fairly conduct the action” that require “giving appropriate notice to some or all class members of ... any step in the action.” CR 23.04(1)(b)(i). To the extent that CR 5.01 service of objectors was customary rather than required for much of 2021, it became a CR 23.04(1)(b)(i) directive after Class Counsel sought to have that service discontinued in November 2021. Class Counsel twice sought to stop CR 5.01 service on the unrepresented objectors, and the Fayette Circuit Court twice declined to allow discontinuance. In addition to being served (as the Quarles Objectors’ counsel) with the respective motions and orders, a Graddy Firm attorney participated in consideration of the motions and was present for the Court’s rulings thereon. The Graddy Firm was aware that notice in the form of CR 5.01 service to the unrepresented objectors was required for its filings and that notice should be given to them, but failed to serve them by the CR 59.05 deadline. The CR 59.05 Motion was late, and thus so was the Quarles Objectors’ notice of appeal.

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<sup>23</sup> See also 5/1/23 Renotice (Exh. 6) p.1, which collectively labels as “parties” all those served, including the unrepresented objectors: “The parties will take notice that ... the attached Graddy CR 59 Motion” will be brought on for hearing on May 5, 2023.

## CONCLUSION

WHEREFORE, Plaintiffs-Appellees respectfully request that this Court dismiss the appeal.

Respectfully submitted,

/s/ Katherine K. Yunker

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## EXHIBITS ATTACHED

<u>Exhibit</u>	<u>Description</u>
1.	Amended Opinion and Order Approving Partial Settlement, entered July 28, 2021
2.	Order entered August 24, 2021, denying Graddy Firm motions requesting an award of attorneys' fees
3.	Quarles Partial Opposition to Settlement Class Representatives' Motion for Order regarding Case Administration, filed November 10, 2021
4.	Order re Renewed Graddy Motion, entered April 5, 2023
5.	Graddy CR 59 Motion to Alter, Amend or Vacate the Court's Order of April 5, 2023, filed April 17, 2023
6.	Renotice of Graddy CR 59 Motion to Alter, Amend or Vacate the Court's Order of April 5, 2023, filed May 1, 2023
7.	Order denying Graddy CR 59 Motion to Alter, Amend or Vacate this Court's Order of April 5, 2023, entered June 1, 2023
8.	Notice of Appeal filed June 26, 2023 (without attachments)

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was served this 22nd day of August 2023, upon counsel via U.S. Mail, postage prepaid, and electronic mail, and upon unrepresented persons via first class U.S. Mail, postage prepaid, as shown on the Service List below:

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COMMONWEALTH OF KENTUCKY  
FAYETTE CIRCUIT COURT  
FOURTH DIVISION

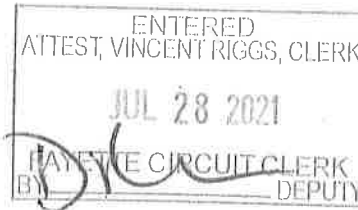
HAYNES PROPERTIES, LLC, et al.

PLAINTIFFS

v.

20-CI-332

BURLEY TOBACCO GROWERS  
COOPERATIVE ASSOCIATION,  
et al.



DEFENDANTS

Amended Opinion and Order Approving Partial Settlement

This matter came before the Court at the Fairness Hearing on February 24, 2021, continued on March 1, 2021, and concluded on March 8, 2021, on the remaining provisions of the Parties' Stipulation and Agreement of Partial Settlement ("Partial Settlement") pursuant to CR 23.05(2).

In its original Opinion and Order Approving Partial Settlement, the Court modified the terms of the settlement regarding the disposition of the \$1.5 million. Following the entry of the original Opinion and Order, the BTGCA filed a Motion to Alter or Amend that was heard on July 9, 2021. During that hearing, the Court instructed counsel for BTGCA and the Roger Quarles Defendants to confer with their clients about the method of addressing the \$1.5 million distribution proposed by BTGCA in its Motion and discussed by the Parties and the Court during the hearing. The Court gave the Parties one week to file notice with the Court regarding the outcome of those discussions. Both Parties complied with the Court's order, and this Amended Opinion and Order

*DR*

Approving Partial Settlement follows. Only the section regarding the disposition of the \$1.5 million has been amended.

1. Present at the Fairness Hearing were: (i) Robert E. Maclin, III, Katherine K. Yunker, Jason R. Hollon, Drake W. Staples and Cary Howard, of McBrayer PLLC, counsel for Named Plaintiffs and Settlement Class Representatives; (ii) Named Plaintiffs and Settlement Class Representatives, Penny Greathouse of S&GF Management, LLC and Mitch Haynes and Scottie Haynes of Haynes Properties, LLC and Alvin Haynes & Sons; (iii) Kevin G. Henry of Sturgill, Turner, Barker & Moloney, PLLC and Jeremy S. Rogers of Dinsmore & Shohl LLP, counsel for Defendant Burley Tobacco Growers Cooperative Association ("BTGCA"); (iv) Kathy Sanford, administrative assistant for BTGCA, and Al Pedigo, president of BTGCA; (v) John N. Billings, Christopher L. Thacker, and Richard J. Dieffenbach of Billings Law Firm, PLLC, counsel for Defendant Greg Craddock and other members of the proposed settlement class; (vi) Defendant Greg Craddock, (vii) W. Henry Graddy, IV and Dorothy Rush of W.H. Graddy & Associates, counsel for Objectors Roger Quarles, W. Gary Wilson, Ian Horn, Richard Horn, Campbell Graddy and David Lloyd; (viii) Objector Roger Quarles; (ix) Darrell Varner, President of the Council for Burley Tobacco; (x) on February 24, 2021, Steve Weisbrot of the Angeion Group, LLC (Settlement Administrator per Order Directing Notice of Proposed Settlement in Settlement Class and Scheduling Fairness Hearing entered November 17, 2020); and (xi) on March 8, 2021, David B. Tachau of Tachau Meek PLC, counsel for the Billings Law Firm. Others attended

all or parts of the Fairness Hearing, as interested persons or members of the general public.

2. The Court heard and accepted sworn testimony from witnesses Mr. Weisbrot, Mr. Mitch Haynes, Ms. Greathouse, Mr. Pedigo, Mr. Varner, Mr. Quarles, and Mr. Maclin. The Court also thoroughly reviewed the entire record in this case, including all objections to provisions of the Partial Settlement filed by those persons set forth on Schedule A. The Court has heard the arguments of counsel and has otherwise been duly and sufficiently advised. At the close of the March 1, 2021 hearing, the Court, pursuant to Fayette Circuit Court Local Rule 19, instructed Class Counsel Katherine K. Yunker and BTGCA counsel Jeremy S. Rogers to prepare a proposed Opinion and Order and allowed seven days thereafter for any objections to the proposed Opinion and Order to be submitted to the Court for consideration. In response to the proposed Opinion and Order tendered by the Parties, the Court received the following objections: Named Plaintiffs objected only to the language of paragraph 25 of the proposed Opinion and Order Approving Partial Settlement; Greg Craddock and the Billings Law Firm objected only to the fact that Billings did not receive 7.5% in fees and that the fee sharing agreement was found invalid in the proposed Opinion and Order Awarding Service Fees and Attorneys' Fees and Nontaxable Costs; and Roger Quarles and those similarly situated objected to the proposed Opinion and Order Approving Partial Settlement, only as to the disposition of the \$1.5 million.



This Court having heard the arguments of counsel, received testimony from parties, reviewed all pleadings and memorandums of law, reviewed the relevant law and applied same to the facts of this case, and being otherwise sufficiently advised hereby, finds, opines, orders, and adjudges as follows:

**FACTUAL FINDINGS, PROCEDURAL BACKGROUND, AND STANDARD**

3. Named Plaintiffs filed their first Complaint on January 27, 2020, subsequently filed three Amended Complaints, and on May 5, 2020 filed their final pleading that was a Corrected Third Amended Complaint. Therefore, the operative pleading is the Corrected Third Amended Complaint that was filed on April 28, 2020 and added Greg Craddock, and others similarly situated, as defendants. These newly named defendants were opposed to a judicial dissolution and instead sought, through their counsel, the Billings Law Firm, a non-judicial dissolution. Among other claims, the Corrected Third Amended Complaint sought the judicial dissolution of BTGCA (Count II) and the distribution of its net assets to the appropriate members of BTGCA (Count III). On April 21, 2020, prior to the Craddock Defendants being parties to the action, the Court stayed all discovery, at the request of the parties, so they could engage in mediation. The above described claims are the subject of the Partial Settlement, which was mediated and settled approximately 25 days later on or about May 15, 2020.<sup>1</sup> Unfortunately, the parties

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<sup>1</sup> See Billings law firm letter dated May 15, 2020, informing the Billings firm's clients of a proposed settlement.

did not date the actual settlement agreement, though some documents filed in the Record allege the settlement was effectuated on or about that date.

4. The undated Agreement was filed in the record on June 10, 2020 along with a petition requesting this Court's approval pursuant to CR 23.05. Since that time, the Court has conducted numerous hearings on the matter. Through the Court's Orders, for reasons stated on the Record, certain non-essential provisions of the Partial Settlement have been modified or waived by the Parties and the Court. Despite this, the essential elements of the Partial Settlement remain intact.<sup>2</sup> All prior Orders of the Court regarding the Partial Settlement remain effective, and the following prior Orders and Opinions are incorporated herein and made a part hereof as if set forth at length: (i) the Findings and Conclusions entered on September 27, 2020, as amended by Amended Preliminary Certification Order entered November 17, 2020; (ii) the Preliminary Certification Order entered on November 10, 2020 as amended by Amended Preliminary Certification Order entered November 17, 2020; (iii) the Order Directing Notice of Proposed Settlement in Settlement Class and Scheduling Fairness Hearing entered November 17, 2020; (iv) the Findings and Opinion entered February 7, 2021; and (v) that separate Opinion and Order addressing the award of attorneys' fees and costs, as well as class representative service awards that is entered simultaneously with this Opinion and Order.

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<sup>2</sup> See, e.g., October 16, 2020 Joint Stipulated Summary of Partial Settlement; November 17, 2020 Amended Preliminary Certification Order.

## ANALYSIS OF FAIRNESS OF CLASS SETTLEMENT

Rule 23.05 mandates that claims of a certified class may be settled only with the Court's approval and only after the Court finds that the applicable procedures set forth in the controlling rule are followed and met. The Court hereby addresses each of the relevant procedures and explains the actions that were taken to effectuate the mandated compliance.

### Adequate Notice to Settlement Class Members.

5. CR 23.05(1) requires the Court to direct notice in a reasonable manner to all class members who would be bound by the proposal. "Due process requires that notice to the class be reasonably calculated, under all the circumstances, to appraise intended parties of the pendency of the class action and afford them an opportunity to present their objection." *Does 1-2 v. Déjà Vu Services, Inc.*, 925 F.3d 886, 900 (6th Cir. 2019) (quoting *Vassalle v. Midland Funding LLC*, 708 F.3d 747, 759 (6th Cir. 2013)). The Court directed this in its Order entered November 17, 2020.

6. The sworn declarations and exhibits put into evidence by Class Counsel, in addition to Mr. Weisbrof's testimony, established that the Notice Program and Notices to members of the Settlement Class of the Partial Settlement satisfy all Due Process, statutory, and Civil Rules requirements and are sufficient and binding on the Parties, including the named Parties, all participating Settlement Class Members, all non-participating Settlement Class members, and all other interested parties. The Notice

Program utilized the best available updated mailing list of BTGCA members in the relevant time period, multiple publications and postings in all the states where the members reside; additionally, the notice targeted publications and locations where the members tended to gather or read,<sup>3</sup> all of which exceeds the minimum standard of “notice in a reasonable manner to all class members who would be bound by the proposal.”<sup>4</sup> Receipt of Form W-9’s from over 50% of the addresses demonstrates that the Notice was adequate. *See, e.g., Sabo v. United States*, 102 Fed.Cl. 619, 629 (2011) (approving notice of settlement where, of the 2,176 class members, 517 responded to the notice, representing about 22.8% of the total class). Additionally, the Court will note that none of the objections questioned the adequacy of the notice.

The Partial Settlement is Fair, Reasonable, and Adequate.

7. Most importantly, the Court may approve a proposed settlement that would bind class members who are not named parties and did not negotiate or sign it “only after a hearing and on finding that it is fair, reasonable, and adequate.” CR 23.05(2). That hearing has now been held, and the Court herein addresses the factors it considered

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<sup>3</sup> For example: in the newspapers the Lexington Herald-Leader, the Owensboro Messenger-Inquirer, the Charleston Gazette-Mail, The Columbus Dispatch, The Indianapolis Star, The Kansas City Star, and The Tennessean; through the settlement website at [www.btgcasettlement.com](http://www.btgcasettlement.com); in two consecutive issues of Farmer’s Pride; and disseminated in an outreach campaign to agencies and organizations interacting with burley farmers in the five-state area covered by the Co-op.

<sup>4</sup> CR 23.05(1).

and determined had been met, thus allowing it to find that the proposed settlement as to the dissolution is “fair, reasonable, and adequate.” *Id.*

8. Prior to its 2018 amendment, the text of federal Rule 23(e) mirrored the text of Kentucky’s current CR 23.05.<sup>5</sup> In 2019, the U.S. Court of Appeals for the Sixth Circuit set forth seven factors courts in its jurisdiction must consider when determining whether a settlement is “fair, reasonable, and adequate”: (1) the “risk of fraud or collusion”; (2) the “complexity, expense and likely duration of the litigation”; (3) the “amount of discovery engaged in by the parties”; (4) the “likelihood of success on the merits”; (5) the “opinions of class counsel and class representatives”; (6) the “reaction of absent class members”; and (7) the “public interest.”<sup>6</sup> Some of these were then codified in the 2018 amendment of Rule 23(e)(2), which lists factors federal courts must consider, without limiting the consideration of other factors. Under the current Rule, a federal court must consider whether:

- (A) the class representatives and class counsel have adequately represented the class;
- (B) the proposal was negotiated at arm’s length;
- (C) the relief provided for the class is adequate, taking into account:
  - (i) the costs, risks, and delay of trial and appeal;

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<sup>5</sup> “It is well established that Kentucky courts rely upon Federal case law when interpreting a Kentucky rule of procedure that is similar to its federal counterpart. .... Federal Rule of Civil Procedure 23 is the federal counterpart of CR 23, and is similar. Thus, federal case law is persuasive in interpreting CR 23.” *Manning v. Liberty Tire Servs. of Ohio, LLC*, 577 S.W.3d 102, 109 n.3 (Ky. App. 2019) (citing *Curtis Green & Clay Green, Inc. v. Clark*, 318 S.W.3d 98, 105 (Ky. App. 2010); see also, e.g., *Hensley v. Haynes Trucking, LLC*, 549 S.W.3d 430, 436 n.4 (Ky. 2018).

<sup>6</sup> *Does 1-2 v. Deja Vu Servs., Inc.*, 925 F.3d 886, 894-95 (6th Cir. 2019).

- (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;
  - (iii) the terms of any proposed award of attorney's fees, including timing of payment; and
  - (iv) any agreement required to be identified under Rule 23(e)(3); and
- (D) the proposal treats class members equitably relative to each other.

FED. R. CIV. P. 23(e)(2). In order to discharge its fiduciary duty to class members by determining whether the proposed Partial Settlement is fair, reasonable, and adequate, this Court considered the factors developed by the Sixth Circuit and those enumerated in current Rule 23(e)(2). The Court hereby finds that:

9. A sufficient showing has been made from the testimony, affidavits, and exhibits submitted by all parties that the Partial Settlement, as to the dissolution of BTGCA is fair, reasonable, and adequate. Furthermore, there has been a clear showing that Class Counsel have adequately represented the proposed Settlement Class, and that the Partial Settlement was negotiated at arm's length. There is no evidence in the written record or oral arguments that indicate any "risk of fraud or collusion" in connection with the dissolution as part of the Partial Settlement.<sup>7</sup>

10. Further, the Partial Settlement provides relief to the proposed Settlement Class that is adequate. The Partial Settlement reflects shared common goals of all Parties and Class Members, including: a prompt, efficient liquidation of remaining BTGCA

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<sup>7</sup> See *Does 1-2*, 925 F.3d at 894-95.

assets and payment of its debts, leading to a prompt, equal distribution of net assets to eligible participating Class Members, thus avoiding the risk of multiple, inconsistent, and expensive litigation, particularly since BTGCA members are in five states and relevant membership encompasses multiple crop years in the Settlement Class (now 2015-2020); a forbearance covenant to partially relieve past and present BTGCA directors, officers, and employees from risk to their personal and business assets, which relieves BTGCA of a duty to reserve as much as \$10 million of its net assets to honor indemnification and advancement demands by such persons, therefore enabling a greater sum to be distributed sooner to participating Class Members; and funding from BTGCA assets of a \$1.5 million to create a tobacco advocacy group (now identified as the Burley and Dark Tobacco Producers Association, Inc.) under the terms and conditions set forth in this opinion.

11. The complexity, expense, and likely duration of the litigation as well as questions concerning the likelihood of success on the merits of the relevant claim for judicial dissolution, all factor in favor of the fairness, reasonableness, and adequacy of the Partial Settlement.<sup>8</sup>

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<sup>8</sup> See *Does 1-2*, 925 F.3d at 894-95.

12. In addition, both Class Counsel and Class Representatives have unequivocally advocated for approval of the Partial Settlement, which also weighs heavily in favor of its fairness, reasonableness, and adequacy.<sup>9</sup>

13. Likewise, the reaction of absent Class Members to the proposed Partial Settlement weighs in favor of approval.<sup>10</sup> As discussed in more detail later in this Opinion, several Class Members filed objections to specific portions of the Partial Settlement. However, those objections represent a relatively small fraction of the total number of Class Members who have been provided notice and an opportunity to object. Moreover, no Class Member has objected to the Partial Settlement as a whole, to its basic conceptual framework, or to its basic terms about dissolution of BTGCA and distribution of its net assets to appropriate members. Nor has any Class Member objected to the releases and the accompanying forbearance covenant that protect BTGCA and its current and former directors, officers, employees, and agents in connection with the Partial Settlement and allow for prompt distribution of BTGCA's net assets.

14. The Court further finds that the public interest will be best served by implementation of the remaining essential terms of the Partial Settlement.<sup>11</sup> The public interest would not be served by continuing this litigation on the issue of how the dissolution should occur, as such protracted litigation would further deplete BTGCA's

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<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*



assets, which are already diminishing. The public interest is best served by expediting the dissolution of BTGCA, the liquidation of its assets, and the prompt distribution of its net assets to its appropriate members sooner rather than later.

15. The Court has looked to Kentucky and federal law, and the Court finds and concludes that the Partial Settlement meets all core factors. It avoids the cost and delay of litigation over any disputes concerning whether judicial or non-judicial dissolution would be forced upon a solvent agricultural cooperative and the likelihood of appeal thereafter. The Partial Settlement provides an effective means of equal distribution of BTGCA net assets to participating Class Members in accordance with the controlling law,<sup>12</sup> and is therefore fair and equitable.

Disclosure of Agreement Made in Connection with the Proposed Partial Settlement.

16. CR 23.05(3) requires that the parties file “a statement identifying any agreement made in connection with the proposal.” The Statement filed by the McBrayer and Billings firms on October 16, 2020, technically satisfied the notice requirement. The identified agreement is addressed in more detail in a separate Opinion and Order concerning the requests for attorneys’ fees, costs, and class representative service awards.

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<sup>12</sup> E.g., KRS 272.325 (dissolution procedures for agricultural cooperative association).

Allowance of Class Member Objections.

17. CR 23.05(5) requires allowance of class member objections. The notice given pursuant to CR 23.05 and 23.08 about the proposed settlement and fee requests informed the class members of the opportunity to object and how to do so.<sup>13</sup> More than 25 class members submitted written objections to the Court, clearly demonstrating that this requirement has also been satisfied.

18. The Court received, reviewed, and carefully analyzed all objections to the Partial Settlement. The objections fall into three general categories: (a) objections to the potential award of attorneys' fees and costs; (b) objections to the definition of the Settlement Class; and (c) objections to the BTGCA's expenditure of \$1.5 million of the assets to fund a nonprofit tobacco advocacy organization. The objections to requests for award of attorneys' fees and costs are addressed in a separate Opinion and Order.

Class Definition.

19. After extensive review and careful consideration, the Court overrules the objections to the definition of the Settlement Class. A few objectors take issue with the fact that the Settlement Class does not include those who ceased their involvement with burley tobacco prior to the 2015 crop year. Other objectors take issue with the fact that the Settlement Class includes farmers who were recently involved with burley tobacco

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<sup>13</sup> While no objections were filed as to the fee-sharing agreement specifically, said agreement was not included in the notice to class members. This is discussed in more detail in the Opinion and Order Awarding Service Fees and Attorneys' Fees and Nontaxable Costs.

only in the 2020 crop year. These objections are not supported by the controlling law, primarily the five-year membership window established in KRS 272.325(3).<sup>14</sup>

20. Upon the dissolution of an agricultural cooperative association such as BTGCA, after payment of debts, the law provides for the association's net assets to be distributed to its members "as shown by the association books over the preceding five (5) fiscal years," if "no provision is made in the association's articles of incorporation, bylaws, or contracts with members" as to the manner or amounts of distribution. KRS 272.325(3). Here, BTGCA's Articles, Bylaws, and past contracts with members contain no provision for distribution of its net assets in the event of dissolution, so the Court is mandated to follow the statutes.

21. The dissolution statute does not specify what the five fiscal years of membership are to "preced[e]" for distribution purposes—whether it is the date of formal dissolution, the date dissolution proceedings are first initiated, or the date on which the association's assets are finally liquidated or distributed. *See* KRS 272.235. Here, judicial dissolution was requested in January 2020 by the Named Plaintiffs with the filing of this lawsuit. Yet, due to the delays attendant with litigation, exacerbated by the

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<sup>14</sup> The five-year membership window provided by KRS 272.325(3) is also consistent with KRS 272.291, which provides that any unclaimed book equities in an agricultural cooperative association organized under KRS Chapter 272 may be recovered by, and placed in the income of, the association after a period of five years. It is further consistent, generally, with Kentucky's statutes of limitations, which provide for five or fewer years for a person to initiate action to claim funds withheld. *See, e.g.*, KRS 413.120 (five year limitation for implied or unwritten contract, other liability created by statute, trespass to personal property, damages for withholding personal property, or injury to the rights of plaintiff not arising on contract); KRS 413.125 (two year limitation for taking, detaining, or injuring personal property, including action for specific recovery or conversion).

COVID-19 pandemic, the order to dissolve BTGCA is being issued in 2021. Accordingly, the Parties have agreed, and the Court has ruled after discussions with all counsel that the BTGCA members entitled to distribution of net assets are those who engaged in relevant burley farming activities in the appropriate states during crop years 2015-2020. There is no statutory or other basis in law to extend the eligible membership years to before 2015. Further, as a practical matter, the Court notes that the vast majority of eligible Class Members have been engaged in relevant burley tobacco farming activities in more than one of the years 2015-2020, such that defining class membership to encompass all of those years is not only required by law but also fair and equitable as among the Class Members. In addition, those persons who were involved in burley tobacco farming in the 2020 crop year but not in the 2015-2019 crop years appear to comprise an extremely small percentage of Class Members. As such, it is only equitable to find the years 2015-2020 to be the relevant years for defining class members, in spite of any ambiguity as to how these five years should be measured.

The \$1.5 Million Nonprofit Funding.

22. The majority of the class member objections opposed the provision in the Partial Settlement that BTGCA would spend \$1.5 million of its assets, to fund a nonprofit tobacco advocacy entity in order to perpetuate part of BTGCA's mission. The objections raised the concern that such funds should be included in BTGCA's net assets and distributed to its members rather than paid to fund a nonprofit tobacco advocacy entity.

Some objections also raised the concern that such an expenditure of BTGCA funds would be unlawful under KRS 272.235 or otherwise. Another concern expressed at the Hearing was that the expenditure could be construed as inequitable to Class Members who have ceased to grow tobacco and would therefore receive no benefit from the advocacy of the funded nonprofit organization.

23. At the time of the initiation of this lawsuit, BTGCA's duly elected board of directors had resolved to reserve \$3.5 million for future operations, focusing on advocacy for tobacco farmers, while distributing the remainder of net assets to members.<sup>15</sup> In the course of the mediation, the Parties agreed to the \$1.5 million provision involving funding of a separate nonprofit tobacco advocacy entity. The Court finds that this concept was a good-faith compromise and is commendable in theory.

24. Furthermore, this provision strikes a balance between the interests of Class Members, such as its Board Members, who did not want BTGCA to be dissolved, and those who did. The proposed funding of a broader tobacco grower nonprofit advocacy group could continue important parts of the authorized and stated purposes of an agricultural cooperative under Sections 111 and 211 of KRS chapter 272. The Court heard testimony and argument concerning the advocacy efforts of BTGCA on behalf of tobacco farmers, which resulted in substantial benefits to such farmers as part of the federal

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<sup>15</sup> See, e.g., First Am. Compl., ¶11.h; March 17, 2021 Named Plaintiffs' Verified Mot. and Supporting Memo. for Temp. Injunctive Relief, at Exh. A.

stimulus package associated with the COVID-19 pandemic and that continuing such efforts is a driving force behind the desire to fund a tobacco advocacy nonprofit. In addition, the funding of the nonprofit tobacco advocacy entity as part of the Partial Settlement avoids a situation in which the competing interests of Class Members who continue to grow tobacco or will grow tobacco in the future would be inequitably disadvantaged by the complete loss of BTCGA's advocacy function relative to those who have ceased to grow tobacco. Based on the evidence presented, the Court acknowledges that some members will continue to grow tobacco, even if it is not burley, and may desire an advocacy organization. However, the Court notes that no strong support was voiced by any grower members to fund such an organization.

25. Pursuant to KRS 272.111, an agricultural cooperative association such as BTGCA is authorized "to engage in *any activity* in connection with the production, harvesting, marketing, selling, preserving, drying, processing, canning, packing, grading, storing, handling, shipping or utilization of the agricultural products owned, leased, handled or marketed by its members and other farmers, with the manufacture or marketing of the by-products thereof, in connection with the manufacturing, selling, or supplying to its members and other farmers of machinery, equipment or supplies, in the financing of the above-enumerated activities, in performing or furnishing services of economic or educational nature, on a cooperative basis for those engaged in agriculture, or in any one or more of the activities specified herein." (Emphasis added.) KRS chapter

272 provides further, broader authority for an agricultural cooperative association like BTGCA, “[t]o engage in any activity in connection with ... furnishing services of economic or educational nature” relating to the relevant agricultural products, “[t]o establish and accumulate reasonable reserves,” and

[t]o do each and every thing necessary, suitable, or proper for the accomplishment of any one (1) or more of the purposes, or the attainment of any one or more of the objectives [t]herein enumerated; or conducive to or expedient for the interest or benefit of the association; and to contract accordingly; and to exercise and possess all powers, rights, and privileges necessary or incidental to the purposes for which the association is organized or to the activities in which it is engaged; and in addition, any other rights, powers, and privileges granted by the laws of this state to corporations generally, except such as are inconsistent with the express provisions of KRS 272.101 to 272.341, and to do any such thing anywhere.”

KRS 272.211.

26. Given the broad statutory authority for a wide range of activities by BTGCA, the Court finds that BTGCA, through action of its duly elected board of directors, has the legal authority to spend \$1.5 million of its dissolution assets to fund a nonprofit entity that advocates for tobacco farmers. The dissolution statute, KRS 272.325, does not prohibit such expenditure. More importantly, the Court recognizes it is a compromise reached by the Board and the Plaintiffs as part of a settlement agreement that would result in subsequent dissolution of BTGCA only if effectuated (including the expenditure). Moreover, 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."

27. The mission of the new nonprofit entity, if successful, includes (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 and lobbying for tobacco 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 tobacco.<sup>16</sup>

28. The Court has been mindful of the allegations in this lawsuit concerning waste of BTGCA's assets by certain Parties and some Objectors—indeed, this belief was alleged as a primary justification for the January lawsuit requiring class certification and dissolution. It is also apparent that such a distribution may benefit certain members of the class more than others; members who no longer grow burley tobacco but are otherwise part of the class would not benefit from this disposition of funds, though they have just as much claim to the settlement funds as any other class member.

29. Due to the objections and the Court's own concerns it reserved its ruling on the \$1.5 million distribution at the close of the Fairness Hearing and requested the Parties and the objectors mediate. The Court advised the Parties if they could not reach an

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<sup>16</sup> See March 24, 2021 Supplemental Filing Re: Initial Corporate Actions by Burley and Dark Tobacco Producers Association, Inc., at Bylaws for Burley and Dark Tobacco Producers Association, Inc., at Article I.



agreement at this mediation, that the Court would make a ruling, based on what disposition would be most fair, reasonable, and equitable to all of the class members. Unfortunately, the mediation proved unsuccessful, so the Court took on the task of adding those governors it believed would allow the disbursement to be fair, reasonable, and equitable. Following the entry of the original Opinion and Order, including the Court's new framework for handling the \$1.5 million, the BTGCA filed a Motion to Alter or Amend the Opinion and Order, first arguing for a return to the original terms of the agreement and, in the alternative, setting out an acceptable procedure along the lines of that which the Court ordered in its Opinion and Order. The Court ordered counsel for BTGCA and the Roger Quarles Defendants to confer with their clients over the acceptability of the proposed changes. The Court enters the present order following acknowledgement by both Parties that this is an acceptable disposition. Therefore, the Court hereby modifies the terms of the Settlement Agreement to provide:

30. The Burley and Dark Tobacco Producers Association, Inc. shall have two directors on its Board chosen from the list of objectors set out in Schedule A. Furthermore, Board members will receive no remuneration for their position on the Board—all hours dedicated to this new non-profit must be on a volunteer basis.

31. The Court approves the Parties' agreed compromise to the Stipulation and Agreement of Partial Settlement to include the grant of \$1.5 million of assets for the benefit of the nonprofit entity Burley and Dark Tobacco Producers Association, Inc. The

\$1.5 million grant fund shall be held and administered by the Dissolution Committee after entry of this Order, with initial distributions to Burley and Dark Tobacco Producer Association, Inc. ("Burley and Dark Tobacco" or the "nonprofit") in the sum of (a) \$100,000 for its first year of operations and then (b) \$75,000 for its second year of operations. The remaining grant fund shall be invested by the Dissolution Committee as a "prudent investor," and investment account statements for the fund shall be given to Class Counsel regularly. During the first two years of its operation, Burley and Dark Tobacco may make use of the interest income on that \$1.5 million. Burley and Dark Tobacco will be expected to provide its financial statements and Form 990 to Class Counsel and the Dissolution Committee.

32. Within ninety (90) days following the end of Burley and Dark Tobacco's first full year of operations, Class Counsel shall prepare a mailing to all "qualified class members," meaning those in the Settlement Class who have current, valid W-9's on file with the Settlement Administrator and who shared in the primary distribution of net assets of the Cooperative. This mailing will provide those class members the option to request and be paid individually their proportionate share of the remainder of the grant fund (less the sum of all approved costs of administration, including the hourly fees of Class Counsel and the Dissolution Committee, and fee to the Settlement Administrator and expenses of mailing and processing) by returning a signed postcard to the Settlement Administrator, stating either that they wish to withdraw their support for

the nonprofit and be paid their share of the net remainder of the grant fund or they wish to leave their share in place as part of the permanent endowment grant to fund the nonprofit. Class Counsel shall cause these mailings to be sent out no later than eight months into Burley and Dark Tobacco's second operating year. The form and content of such mailing and return postcard shall be created by Class Counsel, with approval from the Court.

33. Qualified class members shall be given 60 (sixty) days after the mailing date to return their signed postcard to Class Counsel or Class Counsel's designee (such as the Settlement Administrator). After the 60-day period, Class Counsel and the Settlement Administrator shall verify the returns. After all fees and costs of administration have been determined and approved, Class Counsel and the Settlement Administrator shall determine the shares of the grant fund payable to each of the qualified class members who returned the postcard indicating they wish to withdraw and be paid their net share of the grant fund, subject to any tax documentation needing to be updated.

34. The remainder of the grant fund shall then be transferred to the Burley and Dark Tobacco non-profit, to use in furtherance of its mission, in keeping with its bylaws and the laws governing non-profit organizations. No restriction will be placed on these funds by the Court, other than those already in place by operation of law. The new non-profit will, at that time, no longer need to provide financial statements and

Form 990 documentation to the Court or Class Counsel.

35. The McBrayer Firm, as Class Counsel, will receive legal fees and expenses based on time spent working on this portion of the Settlement Agreement, which will follow a lodestar analysis.

36. This method of implementation of the \$1.5 million grant incorporates the business judgment of the elected Board of Directors of BTGCA and considers the testimony from the Fairness hearing and is intended to ensure that Burley and Dark Tobacco will have sufficient resources to be a benefit to those members of the Settlement Class who grow tobacco in the future while also allowing qualified class members to directly voice their support for, or to withdraw from, the nonprofit. As such, this is a fair, reasonable and equitable outcome for all qualified class members, giving them the right to be members of the nonprofit or not, preserving their withdrawal rights, while honoring the terms of the Partial Settlement.

#### **ORDER**

1. Consistent with the prior Orders of this Court, the Partial Settlement is hereby approved pursuant to CR 23.05.

2. The sum of \$1.5 million from BTGCA's pre-dissolution assets shall be distributed to the Burley and Dark Tobacco Producers Association, Inc. consistent with the terms of this Opinion and Order and subject to further monitoring by the Court and Class Counsel and further Orders of this Court.

3. Beginning immediately after the entry of this Opinion and Order, the business of BTGCA shall be concluded, and BTGCA shall be judicially dissolved and its net assets liquidated and distributed, including an equitable distribution of the \$7 million net operating loss to help offset tax impact from the dissolution distribution as allowed by law, after applicable costs and expenses, to the Settlement Class, under the auspices of the BTGCA Dissolution Committee, which shall have all powers and authorities of a dissolution committee or a board of directors of a Kentucky agricultural cooperative association under Kentucky law, including standing and control of all causes of action of the BTGCA and full power to compromise any debts and claims, and shall undertake such actions to wind up and dissolve BTGCA as the Dissolution Committee deems may be reasonable and necessary, subject to monthly reports, monitoring, and further Orders of this Court.

4. The Settlement Class, each on behalf of itself, himself, or herself and on behalf of its/his/her respective heirs, assigns, beneficiaries, and successors, shall be deemed to have:

- (i) partially released BTGCA and partially released the BTGCA's past and present officers, directors, and employees and their personal representatives, heirs and assigns (collectively, "the Partially Released Parties") from any and all liabilities, rights, claims, actions, causes of action, demands, damages, penalties, costs, attorneys' fees, losses, and remedies, whether known or

unknown, existing or putative, suspected or unsuspected, liquidated or unliquidated, legal, statutory, or equitable, including those that result from, arise out of, are based upon, or relate to conduct that was alleged or could have been alleged in this action, including direct, joint, or several derivative or other claims of any and all Settlement Class, however they may exist or arise—except and only to the extent of and up to \$5 million in coverage under BTGCA insurance policy # NY 19DOLV03934NV (and renewals and extensions thereof) underwritten by Navigators Insurance Company and any other available insurance coverages for any Partially Released Parties; and

- (ii) expressly reserved and not released to the extent of and up to \$5 million in coverage under BTGCA insurance policy # NY 19DOLV03934NV (and renewals and extensions thereof) underwritten by Navigators Insurance Company and any other available insurance coverages, the Partially Released Parties of or from any and all other liabilities, rights, claims, actions, causes of action, demands, damages, penalties, costs, attorneys' fees, losses, and remedies, whether known or unknown, existing or putative, suspected or unsuspected, liquidated or unliquidated, legal, statutory, or equitable, including those that result from, arise out of, are based upon, or relate to conduct that was alleged or could have been alleged in this lawsuit, including direct, joint or several derivative or other claims, however they may exist or

arise, against the Partially Released Parties, Navigators Insurance Company, and any other insurance carrier at any time providing insurance coverage(s) for the Partially Released Parties, jointly or severally.

5. The Settlement Class members, each on behalf of itself, himself, or herself and on behalf of its/his/her respective heirs, assigns, beneficiaries, and successors, shall be deemed to have partially and irrevocably released and forever discharged for all time, the Partially Released Parties of and from any and all liabilities, rights, claims, actions, causes of action, demands, damages, penalties, costs, attorneys' fees, losses, and remedies, whether known or unknown, existing or putative, suspected or unsuspected, liquidated or unliquidated, legal, statutory, or equitable, for the judicial, non-judicial, or other dissolution or liquidation of BTGCA.

6. The Settlement Class, each on behalf of itself, himself or herself and on behalf of its/his/her respective heirs, assigns, beneficiaries, and successors, shall be deemed to have covenanted and agreed not to execute any judgment on, and to forebear from collection remedies against past and present officers, directors and employees of BTGCA or their personal and business assets over, above, except, and other than to the extent of available insurance coverage under any Insurance Policies, such covenant including an agreement not to record any judgment liens against BTGCA or BTGCA's past or present officers, directors, or employees, not to report any judgment against them to any credit reporting or similar agencies, and waiving any execution as to any assets

(personal, business or otherwise) of BTGCA's past and present officers, directors and employees. This covenant shall not be read, construed or considered to discharge or release any Insurance Carrier from any duty to defend, duty to indemnify or liability upon the claims reserved and not released herein.

7. No Special Meeting of the Members of BTGCA shall be held to vote on a non-judicial dissolution and liquidation of the assets of BTGCA, having been made moot and obviated by the final approval herein of the Partial Settlement for judicial dissolution that is fair, reasonable and adequate to all Settlement Class Members.

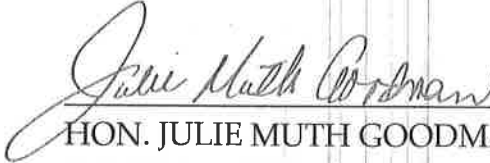
8. Distributions to Settlement Class Members shall require each person or entity to file a W-9 with the settlement Administrator. Any amounts from a distribution payment made to the Settlement Class that remain unclaimed 90 days after distribution of the checks to the Settlement Class shall revert back for re-distribution to the Settlement Class; provided that any unclaimed amounts (residual funds) remaining 90 days after the last round of distribution payment to the Settlement Class Members, shall be held pending further orders of this Court.

9. Pursuant to CR 54.02, and other applicable law, this is a final and appealable judgment as to the above matters, and there is no just cause for delay. Provided, however, the Court retains jurisdiction for oversight of the judicial dissolution, the distribution process, determination of any Class Member eligibility, Burley and Dark Tobacco



Producers Association, Inc., and other unresolved portions of the Plaintiffs' pleadings, all being subject to further Orders of the Court.

Entered this 26<sup>th</sup> day of June, 2021.

  
HON. JULIE MUTH GOODMAN  
JUDGE FAYETTE CIRCUIT COURT

**CLERK'S CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of this filing was served on the ~~26<sup>th</sup>~~ **JUL 28 2021** of June, 2021, via mail upon the objectors listed on Schedule A at the addresses given in their respective objections and via the Court Net e-filing system and via electronic mail upon the following

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Growers Cooperative Association*


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*Counsel for Defendant Burley Tobacco  
Growers Cooperative Association*

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Katherine K. Yunker, Esq.  
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Class Representatives*

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dtgrush2@gmail.com  
*Counsel for Objectors Roger Quarles,  
W. Gary Wilson, Ian Horn, Richard Horn,  
Campbell Graddy and David Lloyd, and  
Objector Roger Quarles*

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Clerk, Fayette Circuit Court

Schedule A

J.B. Amburgey

David Barnes

Jacob Barnes

Robert E. Barton

Ben Clifford

Lincoln Clifford

Wayne Cropper

Josh Curtis

Clay Darnell

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

Ben Quarles

Bruce Quarles

Steven Quarles

Travis Quarles

Jerry Rankin

Richard Sparks

Jarrold Stephens

Addison Thomson

William A. Thomson

Danny Townsend

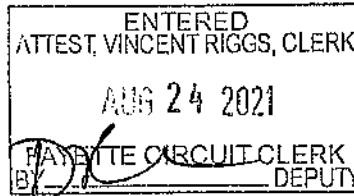
Judy Townsend

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.

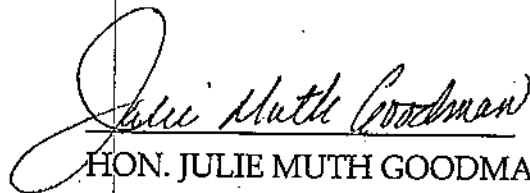
At the core, what the Court did in response to the many objectors was to change the method and manner of distribution of the \$1.5 million, without any guarantee it would be given to the class members. While the class members may, upon the conclusion of two years, withdraw their contribution, this is 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 27<sup>th</sup> day of August 2021.



HON. JULIE MUTH GOODMAN  
JUDGE, FAYETTE CIRCUIT COURT

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 24 2021**  
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rich.dieffenbach@blfky.com  
*Counsel for Defendant Greg Craddock on  
behalf of himself and all others similarly  
situated*

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*Counsel for Objector Roger Quarles*

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*Counsel for Billings Law Firm, PLLC*

  
Fayette Circuit Court Clerk

*ELECTRONICALLY FILED*

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

HAYNES PROPERTIES, LLC, et al.

PLAINTIFFS

v. **QUARLES PARTIAL OPPOSITION TO SETTLEMENT CLASS  
REPRESENTATIVES' MOTION FOR AN  
ORDER REGARDING CASE ADMINISTRATION**

BURLEY TOBACCO GROWERS COOPERATIVE ASSOC., et al.

DEFENDANTS

\* \* \* \* \*

Come now the Objectors, Roger Quarles, et al., by and through counsel, and oppose, in part, the Settlement Class Representatives' Motion for an Order Regarding Case Administration, as follows:

Quarles and the other objectors represented by the undersigned led the fight for class members to retain funds that were otherwise slated to be gifted to a new nonprofit. Quarles and the other objectors were successful in this to the extent that the new nonprofit directors could not be composed of a recycled Board of Directors from BTGCA, reduced direct funding of the new nonprofit and award of control over the distribution of remaining ("net") funds to allow each class member a vote on whether to receive his or her share of the net award or gift his or her share of such net award to the new nonprofit.

To the extent that the Objectors' arguments helped reach this result, these Objectors oppose being dismissed from this action and being precluded from participating in the implementation of what they helped achieve.

Exhibit  
3



For this reason, Quarles, et al., OPPOSE IN PART, the Settlement Class Representatives' Motion for an Order Regarding Case Administration.

Specifically, Quarles et al. object to Paragraph 4 to the extent it states that "...to include objectors (*pro se* and those represented by counsel) and others who are not parties to claims that remain pending in the case." To the contrary, these Objectors were successful, in part, in their advocacy for the restrictions on the initial gift of \$1.5 million to the newly formed nonprofit, the Burley and Dark Tobacco Producers Association, Inc., including the restriction that the net award would be under the control of the class members and subject to their vote. The final version of such restrictions includes the consent of these Objectors to deduct \$100,000 from the \$1.5 million in the first year and \$75,000 from the \$1.5 million in the second year for the new nonprofit, and orders that all Class Members who have qualified for distribution of net Coop assets (filed W-9 etc.) shall be given a ballot to either receive their net respective share of the \$1.5 million or give their net respective share of the \$1.5 million to the new tobacco nonprofit. Clearly, these Objectors have a particular and unique interest in the implementation of these restrictions.

Based on the interest of these Objectors in the proper implementation of the Class Members vote, these Objectors and their counsel ask the Court to allow them to remain on the list of CR 5 service of class filings.

Quarles et al. object to Paragraph 4.a. These Objectors agree that the Graddy fee application was overruled on August 24, 2021, by a non-final, interlocutory order. These Objectors and Graddy retain the right to request the Court reconsider such interlocutory order and to request the Court find that Graddy has, in fact, met the burden of proof to receive a fee award. Graddy anticipates renewing his prior motion when the Class Members receive their ballots and

return them to the Court and Class Representatives. Graddy anticipates that his argument that he has helped create a common fund will be more persuasive at that stage.

Quarles et al. object to Paragraph 4.c. These Objectors agree that the Graddy law firm and W. Henry Graddy and Dorothy Rush are not parties to this litigation but they are counsel for the Quarles et al. Objectors and they have timely filed written objections which have been considered by the Court. As such, these Objectors had the right to appeal the July 28, 2021, Amended Opinion and Order Approving (“Order Approving”). These Objectors had the right to appeal the August 24, 2021, Order where the Court heard the Motion to Alter, Amend, or Vacate by “Intervening Defendants/Objectors Roger Quarles, et al.” and where the Court reasoned that the Quarles Objector had failed to meet the high bar for setting aside a judgment under CR 59.05.

These Objectors elected not to appeal where they had accomplished what they had objected to by helping the Court remove control over the net award of \$1.5 million from the Defendant BGTCA Board of Directors and putting control over that net award in the hands of the Class Members.

During oral argument on the CR 59.05 motion on August 20, 2021, the opposing counsel argued that some of our objections related to who would hold the \$1.5 million during distribution and the implementation of the distribution of the ballots to Class Members and the Court appeared to agree.

The undersigned counsel for the Roger Quarles et al. Objectors ask the Court to require that this law firm shall be included in all further service of case filings on behalf of these Objectors..

**WHEREFORE, The undersigned counsel for the Roger Quarles et al.. (these Objectors”) ask the Court to require that this law firm shall be included in all further service of case filings on behalf of these Objectors.**

Respectfully submitted,

/s/ W. Henry Graddy, IV

W. Henry Graddy, IV  
Dorothy T. Rush  
W. H. Graddy & Associates  
137 N. Main Street  
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(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 11th day of November, 2021 on the following:

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Hon. John N. Billings  
Hon. Christopher Thacker  
Hon. Richard J. Dieffenbach  
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Hon. Robert E. Maclin, III  
Hon. Jaron P. Blandford  
Hon. Jason R. Hollon  
Hon. Katie Yunker

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Hon. Jeremy S. Rogers  
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Hon. David Tachau  
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Courtesy copy to:  
Hon. Julie Muth Goodman  
c/o Alicia Dean  
aliciadean.kycourts.net

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

COMMONWEALTH OF KENTUCKY  
FAYETTE CIRCUIT COURT  
FOURTH DIVISION

Civil Action No. 20-CI-00332

HAYNES PROPERTIES, LLC,  
*et al.*

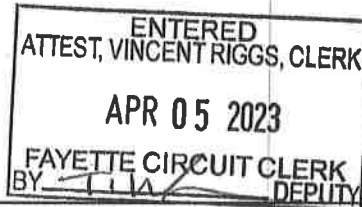
PLAINTIFFS

Order

vs.

re Renewed Graddy Motion

BURLEY TOBACCO GROWERS  
COOPERATIVE ASSOCIATION,  
*et al.*



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 31<sup>st</sup> <sup>March</sup> day of April, 2023.

\_\_\_\_\_  
/s/ JULIE MUTH GOODMAN  
A TRUE COPY  
ATTEST: VINCENT RIGGS, CLERK  
FAYETTE CIRCUIT COURT  
BY: [Signature] 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

TW

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:

/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 5th day of April, 2023, via U.S. Mail, first class, to the following:

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Growers Cooperative Association*

Kevin G. Henry  
Charles D. Cole  
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*Counsel for Defendant Greg Craddock*

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  
Judy Townsend



Clerk, Fayette Circuit Court

*ELECTRONICALLY FILED*

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

HAYNES PROPERTIES, LLC, et al.

PLAINTIFFS

v. **GRADDY CR 59 MOTION TO ALTER, AMEND OR VACATE  
THIS COURT’S ORDER OF APRIL 5, 2023**

BURLEY TOBACCO GROWERS COOPERATIVE ASSOC., et al.

DEFENDANTS

\* \* \* \* \*

Comes now W. H. Graddy & Associates (“Graddy”), the Counsel for the Objectors, Roger Quarles, et al., and MOVES this Court to Alter, Amend or Vacate this Court’s Order of April 5, 2023, denying Graddy’s Renewed Motion for Award of Attorney’s Fees.

Graddy’s Renewed Motion for an Award of Attorney’s Fees was heard on March 24, 2023. Graddy argued to the Court that he was renewing his motion for attorney’s fees where his direct representation of the objectors Roger Quarles, Ian Horn, Rick Horn, Campbell Graddy, David Lloyd and Gary Wilson (Graddy, Lloyd and Wilson have been determined to be excluded from Class Members) and his indirect representation of forty four (44) additional objectors to one specific aspect of the Settlement Agreement – the award by the Burley Coop Board of Directors of a gift of \$1.5 million of Burley Coop assets to a new tobacco nonprofit helped to create a benefit to all Class Members. The Settlement Agreement as tendered did not give the Class Members any control over this gift.

At the March 24, 2023 argument, Graddy tendered his earlier pleadings filed on May 14, 2021 objecting to the proposed ruling on pending motions tendered by Class Counsel, and asked



the Court to find that such gift was illegal and to restore/retain these funds in the settlement funds to be distributed to the Class Members. Graddy then argued in the alternative as follows:

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.

This alternative would require that Class Members would have to consent to such gift. This alternative was what the Court ordered in the June 11, 2021 order approving and was what the Court ordered in the July 26, 2021 amended order approving. Graddy helped to create a \$1.325 million fund previously unavailable to Class Members that is now available to all Class Members. In fact, the Court has found that Graddy's efforts were beneficial to the Class Members. In its August 20, 21, 2021 analysis, the Court stated that, "Therefore, while he [Graddy] was certainly an effective attorney for the sake of his clients, his role was largely tied to the desires of his clients – even if those desires were beneficial to the class." Graddy reminded the Court of this language in its prior orders that Graddy intended to benefit his clients but also provided a benefit to the class. Video at 10:48:50.

On April 1, 2023, each Class Member was mailed a ballot and given a vote on whether to receive his or her proportionate share of the \$1.325 million or gift his or her share to the new tobacco nonprofit, the Burley and Dark Fired Tobacco Producers Association.

Graddy was the only attorney who asked the Court to approve this benefit to every Class Member, and Graddy's advocacy was either opposed by all other attorneys or they took no position.

Graddy argued on March 24, 2023, that each Class Member can now vote on the distribution of his or her proportionate share to retain for the member or give to the new entity.

Video at 10:48:00. Graddy was concerned that this wording indicated that his representation benefitted his clients in a different way than class, as a whole, benefitted. Video at 10:49:50. Graddy argued that this was not the case. Video at 10:50:40. Graddy further asked the Court to reconsider its position that the common fund did not change, only the distribution of certain assets. Graddy argued that this was objectionable where previously the \$1.5 million would go entirely to the new entity, not the BGTCA members. BGTCA members did not have a say in that distribution. Video at 10:52:10. Graddy called into question this Court’s assertion that his advocacy “alone” was the cause of the change in distribution of the \$1.5 million. Graddy argued that was not the standard for awarding of attorney’s fees. Video at 11:03:23.

This Court ruled on this matter orally on March 24, 2023. The Court recited that this matter came to the Court as a settlement class; that Haynes Properties, representing the putative class members had reached a settlement with BGTCA. The Court in determining the fees, looked closely at CR 23.08 in determining the reasonableness of fees. When looking at CR 23.08, the Court looked at the language “by the parties agreement.” Nothing in the agreement agreed to grant attorney’s fees to anyone other than those specifically referenced therein. The Court found no legal grounds to change its original decision to deny Graddy attorney’s fees based on the clear language of CR 23.08. Because this matter came as a settlement class with a settlement agreement, the Court stated that it was constrained by that agreement. Video at 11:19:35-11:23:40.

**I. THIS COURT INCORRECTLY FOUND THAT CR 23.08 COMPELLED A DENIAL OF ATTORNEY’S FEES IF SUCH FEES WERE NOT PART OF AN AGREEMENT.**

CR 23.08 clearly states “[i]n a certified class action the court shall approve or award reasonable attorney’s fees and nontaxable costs that **are authorized by law** or by the parties’ agreement.” (emphasis added).

CR 23.08 governs the award of attorney’s fees in a class action providing that, “[i]n a certified class action the court shall approve or award reasonable attorney’s fees and nontaxable costs that are authorized by law or by the parties’ agreement.” CR 23.08. This rule was introduced into the Kentucky Civil Rules of Procedure in 2010, to be effective in 2011 and, to date, only one unpublished opinion has discussed the requirements in any length. In *College Retirement Equities Fund, Corp. v. Rink*, No. 2012-CA-002050-MR, 2015 WL 226112 (Ky. App. Jan. 16, 2015), the Kentucky Court of Appeals examined an award of attorney’s fees pursuant to CR 23.08. The *Rink* Court noted that “no Kentucky appellate court has addressed how a trial court is to determine a reasonable fee under CR 23.08” and it relied upon the federal courts’ interpretation of the analogous Fed. R. Civ. P. 23(h). An award of a reasonable attorney’s fees in this case is authorized by Kentucky law relating to common-fund recoveries. The common fund doctrine recognizes that a “lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney’s fee from the fund as a whole.” *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980).

The Notes of Advisory Committee on 2003 amendments to Fed.R. Civ. P. 23, state that “[s]ubdivision (h) applies to ‘an action certified as a class action.’ This includes cases in which there is a simultaneous proposal for class certification and settlement. . .” “In some situations, there may be a basis for making an award to other counsel whose work produced a beneficial result for the class, such as attorneys who acted for the class before certification but were not appointed class counsel, or **attorneys who represented objectors to a proposed settlement** under Rule 23(e) or to the fee motion of class counsel.” (emphasis added).

This Court’s finding that it was constrained by the settlement agreement reached between Haynes Properties and BGTCa conflicts with these Notes. Objectors and their counsel provide a

benefit for the class, as a whole, when they advocate against the stated terms of the agreement and then successfully have the objectionable terms amended or removed. This Court agreed in its August 24, 2021 Order stating “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 desire were **beneficial to the class.**” (emphasis added).

The Court is requested to reconsider the analysis it stated on March 24, 2023, and recognize that Graddy application for a fee award was not governed by the proposed Settlement Agreement and that he relies upon the “are authorized by law” language in Civil Rule 23.08.

**II. UNDER THIS COURT’S ANALYSIS, NO COUNSEL FOR OBJECTORS WILL BE GRANTED ATTORNEY’S FEES.**

This Court’s finding that it was constrained by the settlement agreement regarding attorney’s fees would preclude counsel for any objector receiving attorney’s fees as, by definition, there can be no objector to the settlement agreement until the settlement agreement had been reached and presented to the court for approval in a settlement class action. Objectors would not have representation as parties to the settlement agreement until after an agreement has been reached, thus said counsel would not have a fee award provision contained in the settlement agreement.

This undermines the incentive contained in Rule 23 for attorney’s fees to “attract competent counsel” *Rink, supra*, at 10.

**III. GRADDY REQUESTS THE LEAVE OF THIS COURT TO SEEK AN AGREEMENT WITH OPPOSING COUNSEL REGARDING TO ATTORNEY’S FEES.**

If this Court is unpersuaded by Graddy’s above argument, Graddy requests leave of this Court to attempt to reach an agreement with Class Counsel and the attorneys of record regarding

attorney's fees. If an agreement is reached, Graddy requests that the Court consider the agreement and submit the matter to a fairness hearing.

**NOTICE**

The parties will take notice that the Objectors will bring the foregoing on for hearing, on April 28, 2023, at the hour of 10:00 a.m. or as soon thereafter as counsel may be heard.

Respectfully submitted,

/s/ W. Henry Graddy, IV  
W. Henry Graddy, IV  
Dorothy T. Rush  
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137 N. Main Street  
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(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 17th day of April, 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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khenry@sturgillturner.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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1101 College Street  
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Bowling Green, KY 42102-0770  
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/s/ W. Henry Graddy, IV

W. Henry Graddy, IV

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.*



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 31<sup>st</sup> <sup>March</sup> day of April, 2023.

/S/ JULIE MUTH GOODMAN  
A TRUE COPY  
ATTEST: VINCENT RIGGS, CLERK  
FAYETTE CIRCUIT COURT  
BY: T.W. 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

TW

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:

/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 5th day 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*



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  
Judy Townsend



Clerk, Fayette Circuit Court

*ELECTRONICALLY FILED*

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

HAYNES PROPERTIES, LLC, et al.

PLAINTIFFS

**v. RENOTICE OF GRADDY CR 59 MOTION TO ALTER, AMEND OR VACATE  
THIS COURT’S ORDER OF APRIL 5, 2023**

BURLEY TOBACCO GROWERS COOPERATIVE ASSOC., et al.

DEFENDANTS

\* \* \* \* \*

Comes now W. H. Graddy & Associates (“Graddy”), the Counsel for the Objectors, Roger Quarles, et al., and RENOTICES their CR 59 Motion to Alter, Amend or Vacate this Court’s Order of April 5, 2023, previously noticed to be heard on April 28, 2023, as follows:

Where Graddy previously noticed the April 17, 2023, CR 59 Motion to Alter, Amend or Vacate this Court’s Order of April 5, 2023 but failed to give notice to the unrepresented objectors, and where Graddy requested the Court to pass the motion one week to allow Graddy to mail written notice to the unrepresented objectors as per the court order of April 18, 2023.

The parties will take notice that Graddy and these Objectors will bring the attached Graddy CR 59 Motion on for hearing, in the Fayette Circuit Courthouse, Fourth Division, Lexington, Kentucky, **on May 5, 2023, at the hour of 10:00 a.m.** or as soon thereafter as counsel may be heard.

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 us Postal Service mail on the unrepresented objectors listed below and via E-Mail, on this the 1st day of May, 2023 on the following:

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@mcbayerfirm.com  
jblandford@mcbayerfirm.com  
jhollon@mcbayerfirm.com  
kyunker@mcbayerfirm.com

Hon. D. Gaines Penn  
ENGLISH, LUCAS, PRIEST & OWSLEY, LLP  
1101 College Street  
PO Box 770  
Bowling Green, KY 42102-0770  
[gpenn@elpolaw.com](mailto:gpenn@elpolaw.com)

and via first-class U.S. Mail, postage prepaid, on unrepresented objectors listed on Schedule A of the Opinion and Order entered June 11, 2021, at 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 (Eddie) Gilkison, Bill G. Hall, Dudley Wayne Hatcher, Steve Lang, Berkley Marks, Bruce Quarles, Travis Quarles, Steven Quarles, Danny Townsend, Jerry Rankin, Richard Sparks, Jarrod Stephens, Addison Thomson, William A. Whomson, Judy Townsend.

/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. **GRADDY CR 59 MOTION TO ALTER, AMEND OR VACATE  
THIS COURT’S ORDER OF APRIL 5, 2023**

BURLEY TOBACCO GROWERS COOPERATIVE ASSOC., et al.

DEFENDANTS

\* \* \* \* \*

Comes now W. H. Graddy & Associates (“Graddy”), the Counsel for the Objectors, Roger Quarles, et al., and MOVES this Court to Alter, Amend or Vacate this Court’s Order of April 5, 2023, denying Graddy’s Renewed Motion for Award of Attorney’s Fees.

Graddy’s Renewed Motion for an Award of Attorney’s Fees was heard on March 24, 2023. Graddy argued to the Court that he was renewing his motion for attorney’s fees where his direct representation of the objectors Roger Quarles, Ian Horn, Rick Horn, Campbell Graddy, David Lloyd and Gary Wilson (Graddy, Lloyd and Wilson have been determined to be excluded from Class Members) and his indirect representation of forty four (44) additional objectors to one specific aspect of the Settlement Agreement – the award by the Burley Coop Board of Directors of a gift of \$1.5 million of Burley Coop assets to a new tobacco nonprofit helped to create a benefit to all Class Members. The Settlement Agreement as tendered did not give the Class Members any control over this gift.

At the March 24, 2023 argument, Graddy tendered his earlier pleadings filed on May 14, 2021 objecting to the proposed ruling on pending motions tendered by Class Counsel, and asked

the Court to find that such gift was illegal and to restore/retain these funds in the settlement funds to be distributed to the Class Members. Graddy then argued in the alternative as follows:

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.

This alternative would require that Class Members would have to consent to such gift. This alternative was what the Court ordered in the June 11, 2021 order approving and was what the Court ordered in the July 26, 2021 amended order approving. Graddy helped to create a \$1.325 million fund previously unavailable to Class Members that is now available to all Class Members. In fact, the Court has found that Graddy's efforts were beneficial to the Class Members. In its August 20, 21, 2021 analysis, the Court stated that, "Therefore, while he [Graddy] was certainly an effective attorney for the sake of his clients, his role was largely tied to the desires of his clients – even if those desires were beneficial to the class." Graddy reminded the Court of this language in its prior orders that Graddy intended to benefit his clients but also provided a benefit to the class. Video at 10:48:50.

On April 1, 2023, each Class Member was mailed a ballot and given a vote on whether to receive his or her proportionate share of the \$1.325 million or gift his or her share to the new tobacco nonprofit, the Burley and Dark Fired Tobacco Producers Association.

Graddy was the only attorney who asked the Court to approve this benefit to every Class Member, and Graddy's advocacy was either opposed by all other attorneys or they took no position.

Graddy argued on March 24, 2023, that each Class Member can now vote on the distribution of his or her proportionate share to retain for the member or give to the new entity.

Video at 10:48:00. Graddy was concerned that this wording indicated that his representation benefitted his clients in a different way than class, as a whole, benefitted. Video at 10:49:50. Graddy argued that this was not the case. Video at 10:50:40. Graddy further asked the Court to reconsider its position that the common fund did not change, only the distribution of certain assets. Graddy argued that this was objectionable where previously the \$1.5 million would go entirely to the new entity, not the BGTCA members. BGTCA members did not have a say in that distribution. Video at 10:52:10. Graddy called into question this Court's assertion that his advocacy "alone" was the cause of the change in distribution of the \$1.5 million. Graddy argued that was not the standard for awarding of attorney's fees. Video at 11:03:23.

This Court ruled on this matter orally on March 24, 2023. The Court recited that this matter came to the Court as a settlement class; that Haynes Properties, representing the putative class members had reached a settlement with BGTCA. The Court in determining the fees, looked closely at CR 23.08 in determining the reasonableness of fees. When looking at CR 23.08, the Court looked at the language "by the parties agreement." Nothing in the agreement agreed to grant attorney's fees to anyone other than those specifically referenced therein. The Court found no legal grounds to change its original decision to deny Graddy attorney's fees based on the clear language of CR 23.08. Because this matter came as a settlement class with a settlement agreement, the Court stated that it was constrained by that agreement. Video at 11:19:35-11:23:40.

**I. THIS COURT INCORRECTLY FOUND THAT CR 23.08 COMPELLED A DENIAL OF ATTORNEY'S FEES IF SUCH FEES WERE NOT PART OF AN AGREEMENT.**

CR 23.08 clearly states "[i]n a certified class action the court shall approve or award reasonable attorney's fees and nontaxable costs that **are authorized by law** or by the parties' agreement." (emphasis added).

CR 23.08 governs the award of attorney's fees in a class action providing that, "[i]n a certified class action the court shall approve or award reasonable attorney's fees and nontaxable costs that are authorized by law or by the parties' agreement." CR 23.08. This rule was introduced into the Kentucky Civil Rules of Procedure in 2010, to be effective in 2011 and, to date, only one unpublished opinion has discussed the requirements in any length. In *College Retirement Equities Fund, Corp. v. Rink*, No. 2012-CA-002050-MR, 2015 WL 226112 (Ky. App. Jan. 16, 2015), the Kentucky Court of Appeals examined an award of attorney's fees pursuant to CR 23.08. The *Rink* Court noted that "no Kentucky appellate court has addressed how a trial court is to determine a reasonable fee under CR 23.08" and it relied upon the federal courts' interpretation of the analogous Fed. R. Civ. P. 23(h). An award of a reasonable attorney's fees in this case is authorized by Kentucky law relating to common-fund recoveries. The common fund doctrine recognizes that a "lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole." *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980).

The Notes of Advisory Committee on 2003 amendments to Fed.R. Civ. P. 23, state that "[s]ubdivision (h) applies to 'an action certified as a class action.' This includes cases in which there is a simultaneous proposal for class certification and settlement. . ." "In some situations, there may be a basis for making an award to other counsel whose work produced a beneficial result for the class, such as attorneys who acted for the class before certification but were not appointed class counsel, or **attorneys who represented objectors to a proposed settlement** under Rule 23(e) or to the fee motion of class counsel." (emphasis added).

This Court's finding that it was constrained by the settlement agreement reached between Haynes Properties and BGTCa conflicts with these Notes. Objectors and their counsel provide a



benefit for the class, as a whole, when they advocate against the stated terms of the agreement and then successfully have the objectionable terms amended or removed. This Court agreed in its August 24, 2021 Order stating “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 desire were **beneficial to the class.**” (emphasis added).

The Court is requested to reconsider the analysis it stated on March 24, 2023, and recognize that Graddy application for a fee award was not governed by the proposed Settlement Agreement and that he relies upon the “are authorized by law” language in Civil Rule 23.08.

**II. UNDER THIS COURT’S ANALYSIS, NO COUNSEL FOR OBJECTORS WILL BE GRANTED ATTORNEY’S FEES.**

This Court’s finding that it was constrained by the settlement agreement regarding attorney’s fees would preclude counsel for any objector receiving attorney’s fees as, by definition, there can be no objector to the settlement agreement until the settlement agreement had been reached and presented to the court for approval in a settlement class action. Objectors would not have representation as parties to the settlement agreement until after an agreement has been reached, thus said counsel would not have a fee award provision contained in the settlement agreement.

This undermines the incentive contained in Rule 23 for attorney’s fees to “attract competent counsel” *Rink, supra*, at 10.

**III. GRADDY REQUESTS THE LEAVE OF THIS COURT TO SEEK AN AGREEMENT WITH OPPOSING COUNSEL REGARDING TO ATTORNEY’S FEES.**

If this Court is unpersuaded by Graddy’s above argument, Graddy requests leave of this Court to attempt to reach an agreement with Class Counsel and the attorneys of record regarding

attorney's fees. If an agreement is reached, Graddy requests that the Court consider the agreement and submit the matter to a fairness hearing.

### NOTICE

The parties will take notice that the Objectors will bring the foregoing on for hearing, on April 28, 2023, at the hour of 10:00 a.m. or as soon thereafter as counsel may be heard.

Respectfully submitted,

/s/ W. Henry Graddy, IV

W. Henry Graddy, IV

Dorothy T. Rush

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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 17th day of April, 2023 on the following:

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

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EWB : 000007 of 000007

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Steven Quarles  
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Richard Sparks  
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Michael Furnish  
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Filed

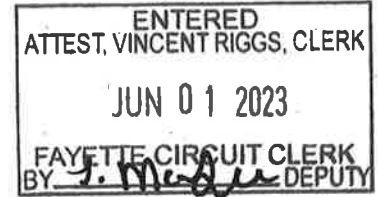
20-CI-00332

05/01/2023

Vincent Riggs, Fayette Circuit Clerk

COMMONWEALTH OF KENTUCKY  
FAYETTE CIRCUIT COURT  
FOURTH DIVISION

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

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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:

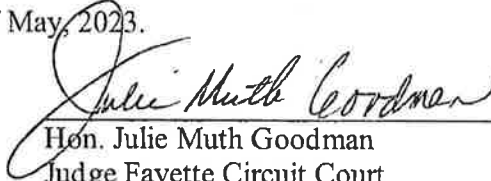
1. The Court DENIES the CR 59 Motion. For the reasons stated in the Court's April 5, 2023 Order and its August 24, 2021 Order, both of which are expressly adopted and incorporated herein, and for those reasons stated on the record on May 5, 2023, March 24, 2023, and August 20, 2021, the Court CONCLUDES 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

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.

3. This order is final and appealable, there being no just cause for delay.

Given under my hand this 25<sup>th</sup> day of May, 2023.

  
\_\_\_\_\_  
Hon. Julie Muth Goodman  
Judge Fayette Circuit Court

PREPARED BY:

/s/ Jason R. Hollon

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, in conformity  
with the rulings made at hearing:

/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 1st day  
of June 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  
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Representatives and Named Plaintiffs*

Kevin G. Henry  
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Growers Cooperative Association*

W. Henry Graddy, IV  
Dorothy T. Rush  
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*Counsel for Objectors Roger Quarles et al.*

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George M. Darnell  
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Cynthiana, KY 41031

Jennifer Darnell  
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Cynthiana, KY 41031

Michael Furnish  
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Cynthiana, KY 41031-6997

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Steven Quarles  
Travis Quarles  
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Cynthiana, KY 41031

Berkley Marks  
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Jerry Rankin  
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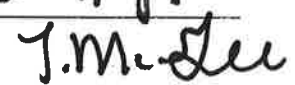
Richard Sparks  
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Danny Townsend  
Judy Townsend  
11620 Main St.  
Jeffersonville, KY 40337

  
Clerk, Fayette Circuit Court 



*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 Class 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@mcbayerfirm.com, jblandford@mcbayerfirm.com, jhollon@mcbayerfirm.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

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(502)542-2455  
johnny@friendlawky.com

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(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  
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ccole@sturgillturner.com

Hon. Robert E. Maclin, III  
Hon. Jaron P. Blandford  
Hon. Jason R. Hollon  
Hon. Katie Yunker  
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 jhollon@mcbayerfirm.com  
 kyunker@mcbayerfirm.com

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 768 Bowman Mill Road Berry, Kentucky 41003	Jennifer Darnell 248 Grady Lane Cynthiana, Kentucky 41031	Berkley Marks 5399 Paris Pike Mt. Sterling, Kentucky 40353
Jacob Barnes 1088 Bowman Mill Road Berry, Kentucky 41003	Brent Dunaway 1547 Ky Highway 1054 N Berry, Kentucky 41003	Jerry Rankin 4540 Perryville Road Danville, Kentucky 40422
Ben Clifford 2459 Ky. Highway 1284 E Cynthiana, Kentucky 41031	William David Furnish 1320 Highway 982 Cynthiana, Kentucky 41031	Richard Sparks 1499 Thatchers Mill Paris, Kentucky 40361
Lincoln Clifford Ky Highway 1284 E Cynthiana Kentucky 41031	Michael Furnish 750 Smith Martin Lane Cynthiana, Kentucky 41031	Jarrold Stephens 504 Commonwealth Lane Cynthiana, Kentucky 41031
Wayne Cooper 5350 Raymond Road Mayslick, Kentucky 41055	Leonard E. Gilkison 345 Calloway White Road Winchester, Kentucky 40391	Addison Thomson 2224 Mr. Vernon Park Cynthiana, Kentucky 41031
Josh Curtis 1402 Ky Highway 1940 Cynthiana, Kentucky 41031	George M. Darnell 1593 Grays Run Pike Cynthiana, Kentucky 41031	William A. Thomson 1809 Mt. Vernon Pike Cynthiana, Kentucky 41031
Robert E. Barton Barton Bros. Farm 4095 Huffman Mill Pike Lexington, Kentucky 40511	Dudley Wayne Hatcher 648 Hood Road Morgantown, Kentucky 42261	
Danny Townsend Judy Townsend	Bruce Quarles Steven Quarles	

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Travis Quarles  
10570 Owenton Road  
Frankfort, Kentucky 40601

/s/ John S. Friend

John S. Friend

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