

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

Civil Action No. 20-CI-00332

filed electronically

HAYNES PROPERTIES, LLC, *et al.*

PLAINTIFFS

v.

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

DEFENDANTS

**Settlement Class Counsel's Report re
Collection of TAGS Fee Debt through Offsets to Distributions**

Settlement Class Counsel, Katherine K. Yunker and Jason R. Hollon, hereby provide the following report detailing the collection of over \$115,000 in TAGS fee debt owed to the Co-op, in accordance with provisions of the Stipulation and Agreement of Partial Settlement that were approved without modification in the 7/28/21 Amended Opinion and Order Approving Partial Settlement. Class Counsel state as follows:

1. Among the proposed settlement provisions approved without modification were requirements of the Stipulation and Agreement of Partial Settlement ¶¶ 4.1.c.xii and 4.1.j, that the Dissolution Committee provide a list of Class members “that owe accrued, but unpaid TAGS fees to the BTGCA” and that such TAGS fee debts be deducted from distributions made to those Class members and “revert back to the Settlement Administration Account for re-distribution to the Settlement Class.”¹ TAGS fee debts of Class members thus would be collected through off-set and added to the dissolution proceeds.

¹ The individual notice about the proposed class action settlement mailed December 1, 2020, and FAQ #7 of the website maintained by the Settlement Administrator contained the following statement: “A settlement class member that presently owes the Co-op for unpaid Tobacco Administrative Grading Service (‘TAGS’) fees will have the amount of the TAGS fees owed deducted from his, her, or its initial distribu-

2. From 2012 through 2020, the Co-op had a business/billing agreement with the USDA's Agricultural Marketing Service ("AMS") relating to tobacco inspection and grading services offered by AMS to burley and flue-cured tobacco producers and manufacturers. Pursuant to the agreement, the Co-op established a Tobacco Administrative Grading Service ("TAGS") program to handle administrative and billing tasks for the services AMS offered. In turn, the Co-op contracted with AgWin Group, LLC ("AgWin") to operate the TAGS program, including billing growers the per-pound-inspected TAGS fee. One to 1.5 cents (1.0-1.5¢) per pound inspected was due from the Co-op to AMS regardless of whether or when the growers paid the TAGS fee; the contract between AgWin and the Co-op then provided for an allocation between them of the remainder of the TAGS fees collected. AgWin charged a 1% per month fee in interest on delinquent TAGS fee accounts, and would not schedule a TAGS fee debtor for inspection/grading services on a current crop until the delinquent TAGS fee debt was paid.

3. In December 2021, the Co-op and AgWin agreed to a division of the uncollected TAGS fees owed and interest accrued thereon as of the end of October 2021, with the right to collect and retain 100% of such TAGS fee debts going to:

- the Co-op — for growers "included in the BTGCA liquidation program";
- AgWin — for growers "not included in the BTGCA liquidation program."

AgWin was also to provide the Co-op with a listing of all burley accounts receivable, and to stop all interest/fee charges as of October 30, 2023.

4. Prior to the first mailing of the initial dissolution distribution on December 15, 2021, Class Counsel received an AgWin-prepared spreadsheet listing burley growers' delinquent

tion share payment. Like other Co-op assets, these TAGS fee amounts will be added to the pool of net assets and paid out to settlement class members in the next payment."

TAGS fees and accrued interest as of October 30, 2021. The spreadsheet listed name, address, and total owed; tax I.D. numbers (TINs) were not available, and there were at least three sets of debts separately listed but owed by evidently the same person. The AgWin spreadsheet listed 234 TAGS fees debts, totaling \$232,873.39 — an average of \$1008.11 each, with a median debt of \$475.87. Individual debts ranged from \$11,170.91 to \$3.77. The listed debtor addresses were from five (5) states:

Indiana	3
Kentucky	191
Ohio	4
Tennessee	34
Virginia	2

Kentucky addresses included the three obviously duplicate debtors, the largest and smallest TAGS fees owed, and totaled \$183,107.27 of debt.

5. Class Counsel identified 91 of the listed debtors as Class members qualified and eligible for distributions of Co-op net dissolution proceeds, and thus who could have their distributions offset to collect the listed TAGS debt. These 91 Class members owed \$119,418.03 in total; debts with Kentucky addresses (which included two duplicate sets) totaled \$106,930.09. Individual debts ranged from \$11.49 to \$11,170.91, with a median TAGS debt owed of \$751.77.

The debtor addresses were from four (4) states:

Indiana	1
Kentucky	84
Ohio	2
Tennessee	4

The three Class members identified with the greatest debts — herein referred to as Growers X, Y, and Z (all with Kentucky addresses) — respectively owed \$11,170.91, \$7,646.15, and \$7,410.12.

6. As Class Counsel arranged for the initial distribution of \$5670 each (in four mailing groups) and the second distribution of \$3630 each, the Settlement Administrator was sent a list of Class members identified as TAGS debtors, their Notice I.D.s, names, and addresses, and the respective amount to be offset against the distribution. The debtor Class member would then be issued a check that was net of the listed TAGS fee debt. The check stub for the initial distribution included the following statement:

Note that if the amount of your check is less than \$5670.00, then TAGS fees owed to the Co-op have been deducted from the payment to you.

(The check stub in the second distribution referred to an amount less than \$3930.00.) This provided notice to those identified as owing TAGS fees that there had been a deduction, why, and (implicitly) of what amount.² No offset Class member has contacted the Class Counsel team to question either that TAGS fees were owed or the amount owed.

7. The TAGS fee debts of Growers X, Y, and Z were greater than the initial distribution of \$5670 and so they were not issued a check in that distribution. Instead, Class Counsel sent them each a letter explaining that they were being credited with the full distribution as a reduction to TAGS fees owed and stating how much remained owing by each. The letter also described the source of the information about TAGS fees owed and provided contact information for AgWin. Growers Y and Z received reduced checks for the second distribution; however, Grower X has yet to receive a check, and has been sent a letter at each applicable distribution to state the credit given and how much remains to be offset for his debt. Through the October 2023 distribution to electing members from the special Fund, Grower X has had \$10,053.89 of TAGS

² In addition, updates to the website homepage while the initial distribution was being made included a listing of Notice I.D.s for those who had been issued checks, on which “a (T) by a Notice I.D. means that TAGS fees were subtracted for that individual.”

debt offset. Although it is anticipated some amount of the original debt will remain un-offset after the final dissolution distribution, Grower X has already paid 90% of his TAGS debt.

8. Statistics for the TAGS fees collected in each distribution, including the number of debtors and cumulative remaining TAGS debt to be collected from those debtors at each stage are as follows:

Distribution	TAGS debtors	Collected	Remaining debt (cum.)
1st dissol'n (2021-22)	88	107,771.67	9217.18
2nd dissol'n (11/9/22)	6	10,075.45	1570.91
spec'l Fund (10/26/23)	1	453.89	1117.02
TOTAL to date	91	\$118,301.01	\$1117.02

9. Funds to enable payment of the full amount to all eligible, qualified Class members were transferred to the Settlement Administrator for each distribution. The offset amounts for TAGS fees were not paid out to the respective debtors and remained in the Settlement Administrator's Qualified Settlement Fund. This follows the process specified for unpaid TAGS fees in ¶ 4.1.j of the Stipulation and Settlement Agreement, that "the Settlement Administrator ... deduct from such ... respective distribution the amount owed ... for such unpaid TAGS fees, and all TAGS fees so debited ... shall revert back to the Settlement Administration Account for re-distribution to the Settlement Class."

10. The remaining, un-offset TAGS debts on the AgWin listing total \$113,455.35; uncollected debts range from \$10,675.53 to \$3.77; the median such debt is \$368.72. Thus, the un-offset debts skew lower than those collected through offset. In addition, the un-offset debts are a

majority of the debt listings with non-Kentucky addresses — 67% of the Indiana, 50% of the Ohio, 88% of the Tennessee, and 100% of the Virginia listings.

11. It is Class Counsel's position that the 91 Class members identified among the TAGS debtors on the AgWin listing and whose distributions have been offset for TAGS fee debt are all "included in the BTGCA liquidation program" and thus the Co-op is entitled to retain 100% of the fees collected through offset and does not owe any portion of those fees to AgWin. It is also Class Counsel's position that — excepting only an offset as to Grower X for the amount in the final distribution of dissolution proceeds — nothing further is due to the Co-op from any of the 91 offset Class members and all 91 should be treated as having no further balance due on the listed TAGS fee debt (including Grower X after all the distributions have been made).

12. It is Class Counsel's position that the un-offset debt in the AgWin listing is of growers "not included in the BGTCA liquidation program", *i.e.*, debtors who are not qualified and eligible to receive a share in the Co-op's dissolution proceeds; if so, it is AgWin (not the Co-op) that has the right to collect and retain 100% of each such debt. In the alternative, for any individual un-offset debt in the AgWin listing which the Co-op is entitled to collect and retain, it is Class Counsel's position that the costs of attempted collection on behalf of the Co-op would outweigh any possible or probable recovery.

Respectfully submitted,

/s/ Katherine K. Yunker

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served this 8th day of December 2023, upon counsel via the e-filing system and electronic mail and upon unrepresented persons via first class U.S. Mail, postage prepaid, as shown on the attached Service List.

/s/ Katherine K. Yunker

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