A TRUE COPY
ATTEST: VINCENT RIGGS, CLERK
FAYETTE CIRCUIT COURT
BY _____ DEPUTY

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

ENTERED
ATTEST: VINCENT RIGGS CLERK
SEP 27 2020
FAYETTE CIRCUIT CLERK'S
BY _____ DEPUTY

HAYNES PROPERTIES, LLC, **PLAINTIFFS**
et al.

vs. **FINDINGS and OPINION**

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

On January 27, 2020, Plaintiffs initiated this proceeding by filing a complaint against Defendant Burley Tobacco Growers Cooperative Association ("the Co-op" or "the Association"), alleging causes of action for breach of fiduciary duty, judicial dissolution, and declaratory judgment. The named Plaintiffs, Haynes Properties, LLC, Mitch and Scott Haynes d/b/a Alvin Haynes & Sons, and S&GF Management, LLC, represent that they are engaged in the production of burley tobacco in Kentucky and all have been and are members in good standing of the Association. They assert their claims on behalf of themselves and all other similarly situated grower-members of the Association. The complaint has been amended a number of times, by right and by allowance; the operative pleading at this time is the Corrected Third Amended Complaint, filed May 5, 2020. The amendments, *inter alia*, added Named Defendant Greg Craddock as a party, individually and on behalf of similarly situated Association members, and a request for injunctive relief.

In March and April 2020, the Court addressed Plaintiffs' motion for temporary injunctive relief and the Co-op's motion to dismiss the complaint. After oral arguments and a review of all

the pleadings and the relevant caselaw, the Court entered an Order that, *inter alia,* directed that the Co-op

> shall not dissipate or distribute to its members or other persons (except its secured lender) any portion of net sale proceeds of its securities portfolio, its real property at 620 South Broadway or its Tobacco Inventory, but it may continue to pursue sales of each such asset in the ordinary course of its business.

3/30/20 Order ¶5 (p.2). On April 21, 2020, the Court entered a superseding Agreed Order containing the same directive and which, *inter alia*, stayed all discovery in the case; that Order remains in force.

On June 10, 2020, the parties notified the Court that they had reached a partial settlement of the matter, by filing a Joint Motion to Enter an agreed order granting preliminary approval of the partial settlement, approving a notice program, and establishing approval procedures for the settlement and a proposed settlement-only class. As an attachment to the Joint Motion, the parties submitted a Stipulation and Agreement of Partial Settlement ("the Stipulation and Agreement"), signed by all the named parties. The partial settlement focuses on dissolution of the Co-op and a *per capita* distribution of its net assets to a settlement class comprised of certain current and former Co-op members. Paragraph 17.4 (pp. 22-23) of the Stipulation and Agreement provides that this Court "shall have exclusive jurisdiction over any suit, action, proceeding, or dispute arising out of or relating to this Agreement that cannot be resolved by negotiation and agreement by counsel for the Parties." In addition, paragraph 18.3 (p. 24) requires the parties and their counsel to "use their reasonable best efforts to obtain … all necessary approvals of the Court required by this Agreement…." Pursuant to CR 23 and the law, the Court refused to grant the Joint Motion.

Instead, the Court held hearings about the proposed partial settlement and settlement-only class on June 29, July 23, and August 13 and 20, 2020. The Court questioned the parties about

various aspects of the settlement proposed, received and reviewed written submissions by the parties about their settlement agreement and certain other issues, and is now prepared to enter rulings, based on the record and the law, that are prefatory to an evidentiary hearing and determinations about whether the proposed settlement deserves consideration by the class, preliminary certification of the proposed settlement-only class, and notice to unnamed class members. *See In re New Motor Vehicles Canadian Export Antitrust Litig.*, 236 F.R.D. 53, 55-56 (D. Me. 2006) (explaining why the inquiries related to ordering notice of a settlement to a class do not include "preliminary approval" of the settlement). The rulings, about the appropriateness of CR 23.01(a) and (b) treatment for the agreed-upon dissolution and distribution of net assets and the definition of the proposed settlement class, are set out in parts 2 and 3 of this Opinion. The Court begins by reviewing its responsibilities with respect to class certification matters, particularly in the context of settlement, and concludes by briefly reviewing the next steps in the process.

1. This Court is responsible for protecting the interests and rights of absent class members.

From its inception, this action has been asserted to be one brought on behalf of others similarly situated and has sought certification of a litigating class of Co-op members. In addition, Gregory Craddock was named as a defendant to the action on behalf of himself and others similarly situated, an asserted class of Co-op members sharing the same legal counsel and seeking dissolution of the Co-op and distribution of the net proceeds in accordance with a particular plan. (*See* Third Am. Cmplt. ¶6.) Now, the parties' Stipulation and Agreement proposes a class, and the parties have jointly moved under CR 23 for certification of a settlement class and approval of a settlement binding upon that class.

It has long been recognized by the Kentucky courts that a trial court has a duty "to protect members of a class represented in litigation by named members only." *Shelton v. Simpson*, 441

S.W.2d 421, 423 (Ky. 1969); *Bernheim v. Wallace*, 186 Ky. 459, 217 S.W. 916, 921 (1920). The present Civil Rules codify many of the specifics of that duty. CR 23.01 and 23.02 establish prerequisites that must be found to have been satisfied before a class may be certified or a class action maintained. CR 23.03(1) requires the court to make the determination by order whether to certify the action (or parts thereof, *see* CR 23.03(6)) as a class action "[a]t an early practicable time after a person sues...." In certifying a class, the court must define the class and the class claims, issues, or defenses," and appoint class counsel. CR 23.03(2). The Court's considerations in making the appointment are focused on ensuring that class counsel will fairly and adequately represent the interests of the class. *See* CR 23.07(1)(b), (2), and (4); *Summit Med. Grp., Inc. v. Coleman*, 599 S.W.3d 445, 451 (Ky. App. 2019). Soon after certification, a court must direct "the best notice that is practicable under the circumstances," to the members of a CR 23.02(c)-category class (CR 23.03(4)(b)), and may direct "appropriate notice" to the members of a class of a different category (subpart 4(a)). The court may require notice of other steps or opportunities to participate in order "to protect certified class members and fairly conduct the action." CR 23.04(1(b)).

A class may be certified only if the trial court is satisfied, after rigorous analysis, that the Civil Rule prerequisites have been met. *Gen. Tel. Co. of Southwest v. Falcon*, 457 U.S. 157, 161 (1982).[1]

> "Rule 23 does not set forth a mere pleading standard. A party seeking class certification must affirmatively demonstrate his compliance with the Rule — that is, he must be prepared to prove that there are in fact sufficiently numerous parties, common questions of law or fact, etc." The *Dukes* Court expounded on this rule, stating, "certification is proper only if the trial court is satisfied, after a rigorous analysis, that the prerequisites of [Rule 23] have been satisfied." "This 'rigorous

[1] Federal law may guide a "class certification decision because CR 23 mirrors its federal counterpart, Federal Rules of Civil Procedure Rule (FRCP) 23." *Hensley v. Haynes Trucking, LLC*, 549 S.W.3d 430, 436 (Ky. 2018).

> analysis' standard will frequently require the trial court 'to probe behind the pleadings before coming to rest on the certification question.'"

Hensley v. Haynes Trucking, LLC, 549 S.W.3d 430, 442 (Ky. 2018) (citations and footnotes omitted) (quoting *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350-51 (2011)).

This Court's duties to protect the interests and due process rights of absent class members are increased and heightened in the context of a settlement. The requirement that the court has a duty to protect the unnamed members of a class when approving a settlement, recognized in *Shelton v. Simpson*, 441 S.W.2d 421, 423 (Ky. 1969), is codified in CR 23.05. The core of this rule's substantive standards and procedural requirements is that the court may approve a settlement, voluntary dismissal, or compromise binding class members only after notice and a hearing and "on finding that it is fair, reasonable, and adequate." CR 23.05(1), (2).

Furthermore, when a court is considering a request for settlement-only certification, the Rule 23 specifications —

> designed to protect absentees by blocking unwarranted or overbroad class definitions — demand undiluted, even heightened, attention in the settlement context. Such attention is of vital importance, for a court asked to certify a settlement class will lack the opportunity, present when a case is litigated, to adjust the class, informed by the proceedings as they unfold.

Amchem Products, Inc. v. Windsor, 521 U.S. 59, 620 (1997) (emphasis added). Rule 23(e), the federal parallel to CR 23.05,

> was designed to function as an additional requirement, not a superseding direction, for the "class action" to which Rule 23(e) refers is one qualified for certification under Rule 23(a) and (b). Subdivisions (a) and (b) focus court attention on whether a proposed class has sufficient unity so that absent members can fairly be bound by decisions of class representatives. That dominant concern persists when settlement, rather than trial, is proposed.

Id. at 621. A settlement does not somehow preempt this Court's responsibility to conduct a rigorous analysis of the CR 23.01 and 23.02 prerequisites for certification.

Settlement actually heightens this Court's certification duties, because it faces "a bargain proffered for its approval without benefit of adversarial investigation." *Amchem*, 521 U.S. at 621. Under the class-settlement rule, a trial court "acts as a fiduciary who must serve as a guardian of the rights of absent class members." *Grunin v. Int'l House of Pancakes*, 513 F.2d 114, 123 (8th Cir. 1975); *Reynolds v. Beneficial Nat'l Bank*, 288 F.3d 277, 279-80 (7th Cir. 2002) (gathering circuit cases); *Allen v. Bedolla*, 787 F.3d 1218, 1223 (9th Cir. 2015) (same). This Court must, and will, exercise the highest degree of vigilance in discharging its fiduciary duty to absent class members as it now turns to addressing the suitability for class treatment of the dissolution cause of action (and settlement) and the definition of the class proposed to be bound by the settlement and receive the net proceeds from the Co-op's dissolution.

2. An appropriate settlement class definition comprises all Association members from any of the past five fiscal years.

The Court, having thoroughly reviewed the record and having conducted multiple hearings with counsel, hereby FINDS and RULES as follows:

The cause of action asserted in this case for dissolution of the Association and distribution of all net assets, as pled in the Corrected Third Amended Complaint, is appropriate and suitable for certification of a class under CR 23.02(a) and (b). A well-defined class is an essential prerequisite to proceeding under CR 23. *See, e.g., Hensley*, 549 S.W.3d at 444 ("a definable class must exist"); *see also* CR 23.03(2) ("An order that certifies a class action must define the class ..."). Plaintiffs' Corrected Third Amended Complaint purports to assert a claim for judicial dissolution of the Association on behalf of "all members of [the Association] in Kentucky, Indiana, Ohio, Missouri and West Virginia at any time during the burley tobacco crop years 2015 to

2019." (Third Am. Compl., ¶ 15.) The Association's eligible membership[2] from the last five fiscal years, that include the 2015-2019 growing seasons, as proposed in both the operative pleading and in the parties' settlement agreement, is appropriate as the settlement class.

The law in Kentucky, as codified in KRS 272.325(3), mandates that upon the dissolution of an agricultural cooperative association such as the Association, after payment of the association's debts, the association's net assets are 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. Here, the Co-op Articles, Bylaws, and Contracts contain no provision for distribution of its net assets in the event of dissolution, so the Court must look to the Kentucky Revised Statutes.[3] The Association's fiscal year ends September 30, the same time as the end of the traditional burley growing season.

There has been some dispute about the Association's August 2014 amendment to its articles of incorporation, which provided that it "shall admit members into the Association in

---

[2] Among other things, membership in the Association is governed by KRS 272.191(1), which provides, "Under terms and conditions prescribed in its bylaws, an association may admit as members (or issue voting stock to) only persons engaged in the production of agricultural products, including tenants and landlords who receive any part of the crop raised on the leased premises or one or more associations of such producers." At all relevant times, the Association's membership has been limited to those growing burley tobacco in Kentucky, Indiana, Ohio, Missouri, and West Virginia.

[3] The five-year look-back 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). The Court notes that Kentucky law provides a longer statute of limitations for written contract claims. *See* KRS 413.090(2); KRS 413.160. However, there is no suggestion that membership in the Association is a matter of written contract, and, in any event, the right to be paid a portion of an agricultural cooperative association's net assets upon dissolution is governed exclusively by the more-specific provisions of KRS 272.325(3).

accordance with the provisions of its bylaws." (8/13/14 Articles of Amendment, ¶ 2.c (emphasis added).) This was a change from the original 1922 articles, which provided that the Co-op "shall admit members into the Association upon payment of an entrance fee of Five ($5.00) Dollars and other uniform conditions." (1922 Articles of Inc., ¶ 6 (emphasis added).) Plaintiffs allege the 2014 revision was *ultra vires* or otherwise ineffectual, which the Association disputes. The Association's Bylaws have been amended several times during the five-year period encompassing its 2015-2019 fiscal years. Yet, there is no dispute that the Association's membership on an annual basis has always been limited to those who are actively producing and marketing burley tobacco in Kentucky, Indiana, Ohio, Missouri, and West Virginia during the current crop year. Thus, any dispute about the amendment to the Association's articles is irrelevant for purposes of the Court's determination, as there is no dispute that the Association's membership, since its foundation in 1922, has consistently been based on being a "producer (land owner, operator, landlord, tenant or sharecropper) currently sharing in the risk of producing and marketing Burley tobacco in the states of Indiana, Kentucky, Missouri, Ohio and West Virginia." (*See, e.g.*, 8/15/19 Bylaws, Art. I § 1; 1/16/15 Bylaws, Art. I § 1 (emphasis added).)

In fact, the law mandates an agricultural cooperative association such as the Co-op, "[u]nder terms and conditions prescribed in its bylaws," may admit as members "only persons engaged in the production of agricultural products, including tenants and landlords who receive any part of the crop raised on the leased premises or one or more associations of such producers." KRS 272.191(1) (emphasis added). Thus, as a matter of law, for the appropriate five-year time period, the Co-op's membership criteria have, at a minimum, included these required prerequisites.

Accordingly, based on KRS 272.325(3) and KRS 272.191(1), the settlement-only class proposed by the parties, comprised of Association members (whether on the official list or not) from any of the past five (5) fiscal years is appropriate for the Court's consideration for preliminary certification and for the distribution contemplated in the parties' settlement agreement. In particular, the Court finds the following to be an appropriate definition of the proposed class:

> A person[4] who was a landowner, operator, landlord, tenant, or sharecropper growing burley tobacco in Indiana, Kentucky, Missouri, Ohio, or West Virginia during one or more of the 2015-19 annual burley tobacco growing seasons.[5]

In all three of the Plaintiffs' complaints, they specifically referred to the case of *Congleton v. Burley Tobacco Growers Cooperative Association*, Fayette Circuit Court Civil Action No. 06-CI-00069 ("*Congleton*"). (*See, e.g.,* Third Am. Compl., ¶ 8.) Plaintiffs alleged the Association has not made distributions to its members since distributions were made by reason of *Congleton*. (*Id.*) The Court has reviewed numerous Orders and other documents from *Congleton*, has addressed the *Congleton* rulings and the potential impact on the case at bar in hearings conducted to date, and otherwise duly considered whether *Congleton* impacts the issues before the Court in this case. The Court now finds that *Congleton* has no impact on the proposed settlement or proposed settlement-only class at issue in this case. The proper class definition in this case is determined by the provisions of KRS 272.325(3), which mandates the appropriate distribution of any net assets as a result of the Association's dissolution. The past distributees of funds as a result of *Congleton*, as such, have no rights to distributions of the net assets as a result of any

---

[4] A "person" means an individual, partnership, limited liability company, corporation, trust, joint venture, or other recognized business entity.

[5] The annual burley tobacco growing season commences on or about March 1 with the tobacco cut, harvested, and hung in barns to close the season prior to September 30 of the same year, such that each growing season falls within a fiscal year of the Association.

dissolution of the Association, unless they were members in one of the fiscal years 2015-2019. This conclusion is appropriate for the following reasons.

First, the Court in *Congleton* entered a declaratory judgment determining the rights to certain funds held by the Association arising from, among other things, the federal Fair and Equitable Tobacco Reform Act ("FETRA"). While not a class action, *Congleton* was adjudicated as a common fund. The Court determined that certain funds arising from FETRA belonged to members of the Co-op as of 2004 (when the federal tobacco loan and price support system ended), while other funds arising from FETRA belonged to the Association as an entity going forward. The Court held that such determinations were "most appropriately the subject of a declaratory judgment that will be binding upon the Association and its members...." (2/13/07 *Congleton* Op. & Order, p. 14, ¶ 42; *see also*, *id.* at ¶¶ 18, 53, 57.) Those determinations were formalized in a final judgment, which was fully effectuated with proper and complete payments made to all appropriate Association members under the Court's direction. All funds retained by the Co-op as a result of *Congleton* were adjudicated to have belonged to the Co-op and not made conditional or subject to any right of reversion or requirement as to how the Association would use such funds in the future. After due notice and publicity, no Association members or distributees of FETRA funds through *Congleton* ever intervened or asserted any separate action, sought dissolution of the Association, or claimed the right to any distribution of assets inconsistent with the final judgment in *Congleton*.

Second, as a declaratory judgment expressly adjudicating the rights of the Association and its members (who as co-members were privies, and whose rights as a matter of law were identical to the members who were named plaintiffs in *Congleton*), the result of *Congleton* is conclusive. *See, e.g., Bowling Green v. Milliken*, 257 Ky. 245, 251, 77 S.W.2d 777, 779 (1934)

("A declaration of rights by a court having jurisdiction to grant relief will be binding on the respondent and on all citizens similarly situated to those who are parties to such action.").

Third, as it relates to funds held by the Association which, arguably, could be traced to the funds currently held by the Association derived from FETRA or otherwise, *Congleton* adjudicated the rights to specific FETRA tobacco or specific funds derived therefrom, held at the time by the Association. As such, the nature of the Court's jurisdiction and judgment in *Congleton* was *in rem* concerning said property. The Court's judgment in *Congleton* was thus binding upon the Association and determinative of rights in and to the property held by the Association. *See, e.g., Commonwealth v. Maynard*, 294 S.W.3d 43, 49 (Ky. App. 2009) ("As noted above, *in rem* proceedings target the property itself and are designed to determine the interests of persons in said property … a judgment *in rem,* by a court of competent jurisdiction, is a pronouncement upon the status of the subject matter, and is binding upon the world.").

Fourth, and finally, the result of *Congleton* was that certain funds were paid to the Association's members or former members pursuant to the Court's series of final Orders and final judgment, and a settlement agreement by which the Association and named plaintiffs in *Congleton* agreed that those rulings would be accepted and not appealed. The Association members or former members who were not named plaintiffs, although not signing parties to that settlement, derived benefits from that agreement, including certainty that a large common fund would be distributed and acceleration of the process so that most of the funds were distributed in 2008. Both the terms of the settlement agreement and the surrounding circumstances evidence that the non-signing current and former members of the Association were direct third-party beneficiaries of the agreement. *Simpson v. JOC Coal, Inc.*, 677 S.W.2d 305, 307-09 (Ky. 1984). The common-fund participants thus were entitled to enforce the benefits of that agreement, but were also

bound by the terms that confirmed the Association's rights in certain funds going forward. *See Olshan Foundation Repair and Waterproofing v. Otto*, 276. S.W.3d 827, 831-32 (Ky. App. 2009) (binding subsequent purchasers enforcing a warranty to the arbitration clause in a related contract document); *Five-Star Lodging, Inc. v. George Construction, LLC*, 344 S.W.3d 119, 123-25 (Ky. App. 2010) (applying two-year limitations period in construction bond to property owner, despite confusing circumstances).

3. Dissolution and distribution of net proceeds are appropriate matters for class treatment under CR 23.02(a) and (b).

The Court, having thoroughly reviewed the record and having conducted multiple hearings with counsel, hereby FINDS and RULES as follows:

"In Kentucky, a party must fulfill the prerequisites of CR 23.01 and 23.02 to be able to maintain a class action." *Hensley*, 549 S.W.3d at 442. If the CR 23.01 prerequisites are fulfilled, meeting the criteria as to any one of the CR 23.02 categories is all that is necessary to proceed with class certification. *Id.* at 449. Subject to a determination about CR 23.01, which will be made after an evidentiary hearing into the numerosity, commonality, typicality, and adequacy criteria, this Court now rules that the proposed class for the dissolution-distribution matters in the pleadings and parties' proposed settlement may and should be maintained as a CR 23.02(a) or CR 23.02(b) class.[6]

The unitary nature of the decision needed for a corporate entity's dissolution and distribution of net assets among its owners make class treatment appropriate under CR 23.02 subparts (a)

[6] Although it may also be the case that the proposed settlement class meets the criteria for a CR 23.02(c) class, this Court declines to consider possible certification under that category. Only one category must be met, *Haynes*, 549 S.W.3d at 449, and the federal caselaw consensus is that the stronger, more traditional categories provided in Kentucky under CR 23.02(a) and (b) should be used even if a class is also certifiable under the third category. *See, e.g., First Federal of Michigan v.* Barrow, 878 F.2d 912, 919 (6th Cir. 1989); *Mehling v. New York Life Ins. Co.*, 246 F.R.D. 467, 475 n.6 (E.D. Pa. 2007).

and (b). Classes certified under the equivalent federal Rules 23(b)(1) and (b)(2) "share the most traditional justifications for class treatment — that individual adjudications would be impossible or unworkable as in a (b)(1) class, or that the relief sought must perforce affect the entire class at once as in a (b)(2) class." *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 361-62 (2011). "The difficulties which would be likely to arise if resort were had to separate actions by or against the individual members of the class here furnish the reasons for, and the principal key to, the propriety and value of utilizing the class-action device." 1966 Rules Amendments, Advisory Committee Notes, 39 F.R.D. 69, 100.

By tradition and design, the two subparts of CR 23.02(a) are particularly appropriate for the circumstances presented by dissolution of a corporate entity and distribution of its remaining assets. In such a case, "separate actions by ... individual class members would risk establishing 'incompatible standards of conduct for the party opposing the class,' or would 'as a practical matter be dispositive of the interests' of nonparty class members 'or substantially impair or impede their ability to protect interests....'" *Amchem*, 521 U.S. at 614 (quoting from the federal equivalents of CR 23.01(a)(i) and (ii)). A corporate entity like the Co-op cannot be dissolved for some purposes or as to some of its member-owners but not as to others. Similarly, any portion of its net assets directed to be distributed to one person is then not available to be distributed to any other person. The subpart (a) class certification category is often used in the federal courts for pension-plan litigation and settlements in which collective harm is alleged and the remedy involves distributions to pension plan participants or to the plan itself.[7] Even before the rules were

[7] *See, e.g., Mehling v. New York Life Ins. Co.*, 246 F.R.D. 467, 475-77 (E.D. Pa. 2007) (preliminarily certifying settlement classes); *Clemons v. Norton Healthcare Inc. Retirement Plan,* 271 F.R.D. 562, 567 (W.D. Ky. 2011) (certifying participant class for determining plan's liability for alleged underpayment), *aff'd in relevant part*, 890 F.R.D. 254, 279-81 (6th Cir. 2018); *Banyai v. Mazur*, 205 F.R.D. 160, 165 (S.D.N.Y. 2002) (certifying beneficiary litigating class).

amended to their modern form, subpart (a)(ii) type classes were used for cases involving owners of a corporate entity and rights they held in or against the entity as a whole or which required a unitary decision.[8]

In addition or in the alternative, a dissolution-and-distribution class meets the requirements for a CR 23.02(b) class, in which "final injunctive relief or corresponding declaratory relief with respect to the class as a whole" is appropriate. An order for the Co-op to dissolve and a declaration of the rights of members in its remaining assets settles "the legality of behavior with respect to the class as a whole" and must be "based on grounds which have general application to the class." 1966 Advisory Committee Notes, 39 F.R.D. at 102.[9] This category has supported Kentucky courts' certification of classes seeking declaratory or injunctive relief affecting rights and interests that are "not distinct, but collective." *Black v. Elkhorn Coal Corp.*, 233 Ky. 588, 26 S.W.2d 481, 483 (1930) (bondholders' request for injunction and declaration re sale of mortgaged property).[10] The same practical need for one rule to be applied across the board is present in this case with respect to the dissolution of the Co-op and distribution of its net assets.

This Court is aware that an adjudication for dissolution and distribution could be accomplished in a suit by a singled Co-op member-owner. This reinforces the conclusion that the class meets the CR 23.02(a)(i) criterion that "adjudications with respect to the individual members of

---

[8] *See, e.g. Clark v. Wilson*, 316 S.W.2d 693, 696-97 (Ky. 1958) (examining *res judicata* effect of 1928 shareholders' representative action); *Supreme Tribe of Ben-Hur v. Cauble*, 255 U.S. 356 (1921) (challenge to fraternal association reorganization); *Arling v. Kenton Bldg. and Savings Ass'n*, 8 Ky. L. Rptr. 698 (Ky. Jan. 26, 1887) (suit for dissolution and settlement of association for named plaintiffs and other owners having a like interest); 1966 Advisory Committee Notes, 39 F.R.D. at 101 (giving other examples).

[9] *See, e.g., Clemons*, 271 F.R.D. at 567 (certifying retirement-plan claims under the federal equivalents of CR 23.02(a)(i) and (b) because the plan should apply the same method the same way to each member, and "any relief the court imposes should consistently apply to all class members").

[10] *See also Fitzpatrick v. Patrick*, 410 S.W.2d 143, 144 (Ky. 1966) (tax challenge); *City of Bromley v. Smith*, 838 S.W.2d 423 (Ky. 2004) (same); *Bridges v. F.H. McGraw & Co.*, 302 S.W.2d 109, 113 (Ky. 1957) (workers' suit for construction of a collective bargaining agreement).

the class would as a practical matter be dispositive of the interests of the other members not parties to the adjudications," but does not make class treatment superfluous. In fact, the best way to fairly and efficiently adjudicate matters that will necessarily affect those who are not named parties to this action is to proceed with the notice and other due-process protections that CR 23 requires for a class action. This Court thus finds that class treatment under CR 23.02(a) and (b) is superior to other available methods for adjudicating a dissolution of the Co-op and a distribution of its net assets.

4. The parties should proceed to make an evidentiary showing regarding the CR 23.01 prerequisites to a class action.

Although essential, an approved definition and a ruling that a dissolution-distribution class is maintainable under CR 23.02(a)-(b) are not sufficient for class certification. This Court must also make findings that the CR 23.01 criteria have been met and must appoint class counsel pursuant to CR 23.07. Therefore, the parties are directed to present evidence regarding the CR 23.01(a)-(d) prerequisites of numerosity, commonality, typicality, and adequacy of representation, and this Court will conduct an evidentiary hearing thereon, to be held at a time acceptable to all the parties. The parties may concurrently present requests and support for appointment of class counsel under CR 23.07.

After this Court has determined if it will preliminarily certify a settlement class, should it do so, it will turn to directing the appropriate notice to be given to the class members pursuant to CR 23.03(4)(a), 23.04(1)(b), and 23.05(1).[11] Other orders for the conduct of proceedings may also be entered pursuant to CR 23.04. Furthermore, prior to the issuance of CR 23.05(1) notice

[11] In addition: (a) CR 23.08(1) requires that notice of any motion by class counsel for a fee award be "directed to class members in a reasonable manner"; and (b) CR 23.05(2) requires a hearing on the proposed settlement, of which notice should be given to the class members.

of the proposed settlement, this Court will determine whether, at this preliminary stage, the proposed settlement is sufficiently fair, reasonable, and adequate to merit consideration by the class members.

Given under my hand this 22nd day of September 2020.

Hon. Julie Muth Goodman
Judge, Fayette Circuit Court

CLERK'S CERTIFICATE OF SERVICE

I hereby certify that on this _____day of SEP 27 2020, 2020, a true and correct copy of this entered Findings and Opinion was served electronically via the KYeCourts e-filing system, and via U.S. Mail postage prepaid upon the following:

Robert E. Maclin, III, Esq.
Jaron P. Blandford, Esq.
Jason R. Hollon, Esq.
McBrayer PLLC
201 E. Main Street, Suite 900
Lexington, KY 40507-1361
remaclin@mcbrayerfirm.com
jblandford@mcbrayerfirm.com
jhollon@mcbrayerfirm.com
Counsel for Named Plaintiffs, Haynes Properties, LLC, Mitch and Scott Haynes dba Alvin Haynes & Sons and S&GF Management, LLC on behalf of themselves and all others similarly situated

Kevin G. Henry, Esq.
Charles D. Cole, Esq.
Sturgill, Turner, Barker & Maloney PLLC
333 W. Vine Street, Suite 1500
Lexington, KY 40507
khenry@sturgillturner.com
ccole@sturgillturner.com
Counsel for Defendant Burley Tobacco Growers Cooperative

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

John N. Billings, Esq.
Billings Law Firm, PLLC
145 Constitution Street
Lexington, KY 40507
nbillings@blfky.com
Counsel for Defendant Greg Craddock on behalf of himself and all others similarly situated

Clerk, Fayette Circuit Court
FAYETTE CIRCUIT CLERK