

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

ELECTRONICALLY FILED

HAYNES PROPERTIES, LLC, *et. al.*

PLAINTIFFS

v.

BURLEY TOBACCO GROWERS
COOPERATIVE ASSOCIATION, *et al.*

DEFENDANTS

PETITION FOR SETTLEMENT CLASS REPRESENTATIVE SERVICE AWARDS

NOTICE

Please take notice that this motion will come on for consideration by the Court at the Fairness Hearing scheduled for Wednesday, February 24, 2021, beginning at 9:00 a.m.

PETITION

Comes Plaintiffs and Settlement Class Representatives Haynes Properties, LLC, Mitch and Scott Haynes dba Alvin Haynes & Sons, and S&GF Management, LLC (collectively, the “Settlement Class Representatives”), by counsel, and hereby respectfully petition the Court to each be awarded \$5000 in recognition of their service as Settlement Class Representatives from the net proceeds (as defined herein) from the liquidation of the Burley Tobacco Growers Cooperative Association (the “Co-op”). In support, the Settlement Class Representatives state as follows:

The Settlement Class Representatives are tobacco growers and long-time Co-op members. For more than a year, the Settlement Class Representatives have diligently worked to

further the interests of the Settlement Class.¹ The Settlement Class Representatives' efforts include planning, filing, and pursuing this lawsuit, testifying in court, and helping to obtain preliminary class certification of the Settlement Class and submitting the settlement for consideration by the Settlement Class. Since their appointment, the Settlement Class Representatives have continued their efforts and spoken to numerous farmers, answered questions, and distributed literature to members of the Settlement Class.

The Settlement Class Representatives' efforts were undertaken without any guaranteed award and they devoted their time, expertise, and other resources in furthering the interests of the Settlement Class. For these reasons, and those detailed below, the Settlement Class Representatives should each be awarded \$5000 from the net proceeds² from the dissolution of the Co-op.

Service awards are “typically award[ed] to class representatives for their often extensive involvement with a lawsuit.” *Hadix v. Johnson*, 322 F.3d 895, 897 (6th Cir. 2003).³ “[Service awards] are efficacious ways of encouraging members of a class to become class representatives and rewarding individual efforts taken on behalf of the class.” *Id.* The settlement provides for up to \$5000 in service awards for each Settlement Class Representative from the liquidation of

¹ For the purposes of this Petition, the Settlement Class Representatives' actions described herein were done through their associated individual representatives: Mitch Haynes, Scotty Haynes, and Penny Greathouse.

² For the purposes of this Petition, the “net proceeds” from the dissolution of the Co-op are the proceeds that remain after the Co-op has liquidated its assets, paid its debts, and contributed the \$1.5 million toward funding a nonprofit organization, in accordance with the settlement.

³ As CR 23 mirrors its federal counterpart, Fed. R. of Civ. Pro. 23, see *Hensley v. Haynes Trucking, LLC*, 439 S.W.3d 430, 436 (Ky. 2018), Kentucky courts rely upon federal case law when interpreting the Kentucky class action rule. See *Curtis Green & Clay Green, Inc. v. Clark*, 318 S.W.3d 98, 105 (Ky. App. 2010).

the Co-op. The proposed service awards are reasonable⁴ and satisfy objective standards typically applied to such awards.

Federal courts have fashioned different tests for their review of proposed service awards.⁵ The Sixth Circuit has acknowledged that service awards may be appropriate, but has yet to “detail[] precisely when they are appropriate.” *Hadix*, 322 F.3d at 897-98. Some courts in the Sixth Circuit have considered the following factors in determining the propriety of service awards:

(1) the action taken by the Class Representatives to protect the interests of Class Members and others and whether these actions resulted in a substantial benefit to Class members; (2) whether the Class Representatives assumed substantial direct and indirect financial risk; and (3) the amount of time and effort spent by the class Representatives in pursuing the litigation.

Enterprise Energy Corp. v. Columbia Gas Transmission Corp., 137 F.R.D. 240, 250 (S.D. Ohio 1991) (awarding \$300,000 in service awards). Under these factors, the requested service awards of \$5000 are reasonable and appropriate.⁶

The Settlement Class Representatives stepped forward and brought this action to address the numerous issues at the Co-op. At the time this action was initiated, the Co-op was no longer functioning for the benefit of its members and was instead operating to benefit a select few while dissipating its assets. Through their attorneys, the Settlement Class Representatives placed significant pressure on the Co-op early in the lawsuit to face these issues. As a result, the Co-op agreed to engage in settlement discussions with a stay of discovery. During these discussions,

⁴ Courts within the Sixth Circuit have approved service awards of varying amounts depending on the circumstances. *See, e.g., Brotherton v. Cleveland*, 141 F.Supp.2d 907, 913-14 (S.D. Ohio 2001) (\$50000 service award); *In re Dun & Bradstreet Credit Servs. V. Customer Litig.*, 130 F.R.D. 366, 373-74 (S.D. Ohio 1990) (\$35000 to \$55000 awards).

⁵ 5 Newburg on Class Actions § 17:13 (5th ed. 2012) (describing different approaches).

⁶ Sworn statements about the actions of the Settlement Class Representatives are given in the attached Affidavit of Robert E. Maclin, III (attached hereto as **Exhibit A**).

the settlement was reached which secured the dissolution of the Co-op, halted the continuing waste of Co-op's assets, and, if approved, will get money in the hands of the members of the Settlement Class in an expedited fashion. Further, the settlement provides that the majority of the Co-op's assets will be distributed to the members. These actions significantly benefited the Settlement Class.

Not only did the Settlement Class Representatives assist in securing an exceptional result for the members of the Settlement Class, but they also did so in an efficient manner. This efficiency was crucial as prolonged litigation would have resulted in the Co-op's assets continuing to be depleted, substantially reducing the amount recovered for the Settlement Class members. The expedited recovery was significant and warrants a service award.

Further, the Settlement Class Representatives assumed a substantial risk in initiating this lawsuit. While their agreement with their attorneys was based upon a contingency fee arrangement, prosecuting the suit required a significant investment of their time and effort. Given the uncertainty of litigation, they risked that their investment of time would be wasted. Moreover, initiating this lawsuit placed the Settlement Class Representatives in the public eye. Being in a public position, each Settlement Class Representative and their associated individual representatives (Mitch Haynes, Scotty Haynes, and Penny Greathouse) were subjected to public scrutiny and potential backlash, and their party status meant it was likely they would be investigated and deposed.⁷

⁷ See *Johnson v. W2007 Grace Acquisition I, Inc.*, No. 13-2777, 2015 WL 12001269, *15 (W.D. Tenn. Dec. 4, 2015) (awarding \$7500 in service awards and noting the risks inherent in being investigated and deposed).

Finally, the Settlement Class Representatives took substantial time assisting their attorneys with this litigation. They assisted with discovery obligations, received copies and reviewed or provided comments on each pleading filed in this case, provided input as to the strategy and direction of the case, testified at a court hearing, and were directly involved in settlement negotiations. The settlement negotiations alone included reviewing and participating in drafting more than a dozen drafts of a potential stipulation and agreement of partial settlement, which culminated in the settlement now being considered by the Settlement Class. The Settlement Class Representatives also spent significant time listening to and noting comments from other burley tobacco growers before and after the case was filed, and fielding inquiries from various Settlement Class members as to the status of this lawsuit.

Since being appointed Settlement Class Representatives, each has discussed the matter with numerous farmers, answered questions, and distributed information/literature to members of the Settlement Class. The Settlement Class Representatives remain committed to protecting the interests of the members of the Settlement Class in the future. These efforts and their commitment support the requested service award.

On these objective factors, the Settlement Class Representatives have demonstrated that their time and efforts have benefited the Settlement Class and they should be awarded \$5000 as a reasonable service award.

CONCLUSION

For the reasons set forth herein, the Settlement Class Representatives respectfully each request an award of \$5000 from the net proceeds from the dissolution of the Co-op in recognition of their service.

Respectfully submitted,

/s/Robert E. Maclin, III

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this filing was served this 15th day of January, 2021, via the KYeCourts e-filing system, and via U.S. Mail postage prepaid upon the following:

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DEFENDANTS

AFFIDAVIT OF ROBERT E. MACLIN, III

Comes the Affiant, Robert E. Maclin, III, and after being first duly sworn, deposes and states as follows:

1. I am one of the attorneys for the Settlement Class Representatives, Haynes Properties, LLC, Mitch and Scott Haynes dba Alvin Haynes & Sons, and S&GF Management, LLC (collectively, the "Settlement Class Representatives"), and as such I have personal knowledge as to this action and as to the matters about which I depose and state herein.
2. I hereby offer this Affidavit in support of the Petition for Settlement Class Representative Service Awards.
3. I am an equity partner with McBrayer, PLLC ("McBrayer"), and I have been licensed to practice law in the Commonwealth of Kentucky since 1984, and in Texas since 1991. I practice law throughout Kentucky in state and federal court.
4. I have reviewed the prior Affidavit that I executed on September 29, 2020, and which was filed in support of Named Plaintiffs Motion Pursuant to CR 23.01 for Preliminary Class Certification and Appointment of Settlement Class Representatives. I hereby incorporate said Affidavit herein, attach said Affidavit hereto, and offer the Affidavit in further support of the Petition for Settlement Class Representative Service Awards.



5. I have reviewed the Affidavit of Mitch Haynes dated September 25, 2020, the Affidavit of Penny Greathouse dated September 28, 2020, and the Affidavit of Scotty Haynes, dated September 25, 2020, which were previously filed in support of the Named Plaintiffs Motion Pursuant to CR 23.01 for Preliminary Class Certification and Appointment of Settlement Class Representatives. I hereby attach said Affidavits hereto and offer the Affidavits in further support of the Petition for Settlement Class Representative Service Awards.

6. In addition to this information, I represent that I have been involved with this action since the preliminary investigation and the initial preparation of the initiating document and I am familiar with the facts and circumstances giving rise to the statements made herein.

7. Since their appointment, the Settlement Class Representatives have continued with their past efforts and actions by staying in regular communications with me and with others at McBrayer, received and read pleadings in this case, regularly communicated with burley tobacco farmers and members of the Settlement Class, and expended the time and effort to remain and be available to provide input and comments as requested.

8. By coming forward and filing the suit, the Settlement Class Representatives took action to remedy the issues with the Co-op and stood up for its members. The Settlement Class Representatives participated in the mediations that led the settlement, which secured the dissolution of the Co-op and stopped the ongoing dissipation of the Co-op's assets. The settlement was reached in a direct and efficient manner.

9. The Settlement Class Representatives have assumed significant risk in initiating this lawsuit as they have been required to invest their time and energy into the suit, with no guarantee of any remuneration whatsoever. Each have been placed in the public eye and could be subject to public scrutiny.

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

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

PLAINTIFFS

v. AFFIDAVIT OF ROBERT E. MACLIN, III, ESQ.

BURLEY TOBACCO GROWERS COOPERATIVE
ASSOCIATION

DEFENDANTS

AND

GREG CRADDOCK
ON BEHALF OF HIMSELF AND
ALL OTHERS SIMILARLY SITUATED

** ** *

Comes the Affiant, Robert E. Maclin, III, Esq., and after being first duly sworn, deposes and states as follows:

1. I am lead co-counsel in this Action, and as such I have personal knowledge as to this Action and as to the matters about which I depose and state herein.
2. I am a member of the law firm of McBrayer, PLLC ("McBrayer"), and I have been licensed to practice law in the Commonwealth of Kentucky since 1984 and in Texas since 1991. I practice law extensively across Kentucky and in Texas.
3. McBrayer serves as counsel for Named Plaintiffs Haynes Properties, LLC, Mitch and Scott Haynes dba Alvin Haynes & Sons, and S&GF Management, LLC in this Action.
4. Named Plaintiffs, through their representatives Mitch Haynes, Scott Haynes, and Penny Greathouse, by the motion to which this affidavit is attached and made a part thereof, have

moved the Court for appointment as Settlement Class Representatives.¹ This Affidavit is respectfully submitted in support of that motion, and such other motions as may properly come before the Court and as the Court may otherwise determine appropriate.

5. Named Plaintiffs, Haynes Properties, LLC, Mitch and Scott Haynes dba Alvin Haynes & Sons, and S&GF Management, LLC, and their families have been for decades and are engaged in the production and marketing of burley tobacco in Kentucky and Named Plaintiffs, Haynes Properties, LLC, Mitch and Scott Haynes dba Alvin Haynes & Sons, and S&GF Management, LLC have been and are members in good standing of Defendant Burley Tobacco Growers Cooperative Association (the "Co-Op").

6. Preceding the filing of this Action, Named Plaintiffs and members of their families participated with McBrayer PLLC in the process of pre-litigation research and analysis involving the current state of the burley tobacco industry and its decline, the past and current operations (and inactions and actions and conduct of officers and directors) and purposes of the Co-Op and its decline in purpose and usefulness, and the ways or means in which the members of the Co-Op could and should receive compensation for their interests in the Co-Op.

7. Ultimately, the Named Plaintiffs with McBrayer concluded that instituting this Action was the best method in which to preserve and protect the rights and interests of the members of the proposed Settlement Class (as determined in the Court's September 22, 2020 Findings and Opinion). So, on January 27, 2020, Named Plaintiffs initiated this proceeding by filing a complaint against the Co-Op alleging causes of action for breach of fiduciary duty, judicial dissolution, and declaratory judgment.

¹ Mitch Haynes is requesting appointment on behalf of Named Plaintiff, Haynes Properties, LLC, Scott Haynes is requesting appointment on behalf of Named Plaintiff, Mitch and Scott Haynes dba Alvin Haynes & Sons, and Penny Greathouse is requesting appointment on behalf of Named Plaintiff, S&GF Management, LLC.

8. Named Plaintiffs have asserted their claims on behalf of themselves and all other similarly situated members of the Co-Op. The complaint has been amended a number of times, and 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 ("Craddock") as a party, individually and on behalf of similarly situated Co-Op members, and a request for injunctive relief.

9. Since the filing of the Action on January 27, 2020, a Complaint and three Amended Complaints have been filed and served, discovery has been served on the Co-Op and responded to in part, over twenty subpoenas have been issued, a motion to dismiss has been filed and responded to, a motion for injunctive relief has been filed and responded to, numerous orders have been entered, numerous emails and letters have been exchanged among counsel, and numerous meetings have occurred among counsel. Named Plaintiffs have reviewed substantive communications between counsel, have participated in and reviewed each and every substantive pleading filed on their behalf in this Action, and have been regularly kept abreast of the formal and informal discovery in this Action.

10. In March and April 2020, the Court addressed Named Plaintiffs' motion for temporary injunctive relief to prevent further dissipations of the Co-Op's assets, including by making contracts to purchase burley tobacco for the crop year 2020 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 on the Named Plaintiffs motion, essentially sustaining that motion, and ordering that the Co-Op shall "not dissipate or distribute to its members or other persons (except its secured lender) any portions 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.” On April 21, 2020, the Court entered a superseding Agreed Order containing the same directive. In these Orders, the Court further accepted and maintained jurisdiction over the Co-Op’s assets. Named Plaintiffs, in consultation with McBrayer, thereafter began intense settlement negotiations involving the Co-Op,² Craddock, and their respective counsel.

11. Mediation sessions were ongoing and conducted by Robert F. Houlihan, Jr., Esq., a well-respected mediator and former litigator in central Kentucky. Named Plaintiffs with McBrayer and the other parties through their respective counsel, engaged in settlement negotiations led by Mr. Houlihan from April 21, 2020 through June 9, 2020, which culminated in the Stipulation and Agreement of Partial Settlement.

12. The mediation consisted of video conference sessions that occurred multiple times per week wherein counsel caucused in separate rooms and met amongst each other to negotiate the terms of the Stipulation and Agreement of Partial Settlement. Throughout the settlement negotiations, the Co-Op’s attorneys maintained a hard stance and made shrewd negotiation efforts. Ultimately Named Plaintiffs with Craddock, prevailed and obtained a partial settlement providing for the Co-Op’s dissolution and estimated to have a value to the members of the proposed Settlement Class in the range of twenty-five to thirty million dollars.

13. Following the Stipulation and Agreement of Partial Settlement, the parties jointly notified the Court that a partial settlement had been reached and filed a Joint Motion to Enter an agreed order granting preliminary approval of the partial settlement, approving a notice program,

² The Co-Op has five seasoned trial lawyers at three separate law firms. The Co-Op’s attorneys include Charles E. English, Esq. and D. Gaines Penn, Esq. of English, Lucas, Priest & Owsley, LLP, Kevin G. Henry, Esq. and Charles D. Cole, Esq. of Sturgill, Turner, Barker & Moloney, PLLC, and Jeremy S. Rogers of Dinsmore & Shohl, LLP. English, Penn, Henry, Cole, and Rogers each, individually, have many years’ experience litigating and defending claims like those brought by McBrayer on their clients’ behalves and mounted a strong, collective defense on the Co-Op behalf in this case. Jeremy S. Rogers, Esq. did not participate in the Mediation sessions.

and establishing approval procedures for the settlement and a proposed settlement-only class. The partial settlement provides for the dissolution of the Co-Op and a *per capita* distribution of its net assets to a proposed settlement class comprised of current and former 2015-2019 crop year burley tobacco producer members of the Co-Op.

14. After several hearings on and following this motion, the Court entered a Findings and Opinion on September 22, 2020 related to the proposed Settlement Class and preliminary certification of the Action as a class action. The Court determined that this Action is appropriate and suitable for certification of a class action under CR 23.02(a) and (b) and defined the proposed Settlement Class as follows:

A person³ 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 seasons⁴.

The determination by this Court that this Action is appropriate and suitable for certification of a class action under CR 23.02(a) and (b) and of the proposed Settlement Class is consistent with the relief requested by Named Plaintiffs and the definition of the proposed Settlement Class advocated by Named Plaintiffs, by counsel, in their Corrected Third Amended Complaint and during the partial settlement negotiations.

15. Mitch Haynes, Scott Haynes and Penny Greathouse (and presumably Craddock to which no objection is made) have requested to be appointed as proposed Settlement Class Representatives. Each have spent a considerable amount of time and effort in assisting in the litigation of this Action. But for the willingness of Mitch Haynes, Scott Haynes and Penny

³ A "person" means an individual, partnership, limited liability company, corporation, trust, joint venture, or other recognized business entity.

⁴ 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 Co-Op.

Greathouse to represent the proposed Settlement Class in this Action and the actions they directed, including the various motions seeking to stop dissipation of moneys, the Co-Op would have been left to its own devices, including expending and dissipating funds for operations during 2020 and the members of the proposed Settlement Class may have not received any significant payment or certainly less from its dissolution.

16. Since late 2018, McBrayer has analyzed, strategized, and prosecuted this Action on behalf of Named Plaintiffs and the proposed Settlement Class, both before and after filing of the Action, and, in doing so, it has expended a tremendous amount of time and resources. McBrayer accepted, has continued and will continue the representation of Named Plaintiffs' on a contingency fee basis, and accordingly has incurred and fully expects to incur substantial attorney time and advanced expenses, and thus a substantial amount of risk in prosecuting this complex, multi-faceted case.

17. McBrayer does have experience handling complex litigation cases in all state and federal trial and appellate courts, including commercial and business litigation, and before state and federal regulatory agencies. McBrayer's clients include local governments, small and large businesses, including healthcare organizations, feed stores/agricultural service providers, horse and livestock farms and ranches, horse owners, banks, insurance companies, developers and contractors, utility companies, restaurants, hotels, and trucking companies, whose claims are defended and prosecuted in a zealous and responsible manner. McBrayer has served as defense counsel on numerous putative class action cases, including *McKenzie, et al. v. Allconnect, Inc.*, U.S. District Court, Eastern District of Kentucky, Central Division at Lexington, Case No. 5:18-cv-00359-JMH; *Ware v. CFK Enterprises, Inc.*, U.S. District Court, Eastern District of Kentucky, 5:19-cv-00183-DCR-EBA, *Gearhart v. Express Scripts, Inc.*, U.S. District Court, Eastern District

of Kentucky, No. 0:18-cv-00002-HRW; *Anthony, et al. v. Winterwood, Inc. a/k/a Winterwood Property Management*, Commonwealth of Kentucky, Jefferson Circuit Court, Division Three, Civil Action No. 17-CI-004548; *Hensley, et al. v. Haynes Trucking, LLC, et al.*, Commonwealth of Kentucky, Fayette Circuit Court, Division Seven, Civil Action No. 10-CI-03986; *James R. Turner, et al. v. Grant County Detention Center, et al.*, U.S. District Court, Eastern District of Kentucky, Northern Division at Covington, Case No. 05-CV-148-DLB; *Grubb, et al. v. Marcum, et al.*, U.S. District Court, Eastern District of Kentucky, Southern Division as London, Case No. 05-CV-498-DCR; and *Wilson, et al. v. Franklin Co., Kentucky*, U.S. District Court, Eastern District of Kentucky, Frankfort Division, Case No. 97-35. McBrayer has served as plaintiff's counsel on several putative class action cases, including *Triad Health Systems, Inc., et al. v. Purdue Pharma L.P., et al.*, U.S. District Court, Northern District of Ohio, Eastern Division, Case No. 1:19-op-45780-Dap; *Family Practice Clinic of Booneville, Inc., et al. v. Purdue Pharma L.P., et al.*, U.S. District Court, Northern District of Ohio, Eastern Division, Case No. 1:18-op-45390-DAP; *Hays, et al. v. Comm. of Kentucky, Cabinet for Health and Family Services, Dep't for Medicaid Services, et al.*, Commonwealth of Kentucky, Franklin Circuit Court, Division Two, Civil Action No. 13-CI-00117; and *Congleton, et al. v. Burley Tobacco Growers Cooperative Association, et al.*, Commonwealth of Kentucky, Fayette Circuit Court, Division Four, Civil Action No. 06-CI-00069.

18. In addition to McBrayer's professional accomplishments, I have research and educational training and experience in burley tobacco production. I hold both a B.S. (Agricultural Economics -1977) from the University of Kentucky and an M.S. in Agricultural Economics from the University of Kentucky (1979). My Master's thesis, entitled "Underproduction of Burley Tobacco Quotas in Kentucky 1971-1977," focused on underproduction of burley tobacco under

the federal price support quota system. I am the author or co-author of several reference publications used in tobacco agricultural studies, including "Effectiveness of Burley Tobacco Poundage Quotas in Kentucky Production and Supply," *Tobacco Science*, Vol XXIV, pp 73-76, an additional article on the same subject matter in *Tobacco International*, Vol. 182, No. 13, pp. 85-88, and "Burley Tobacco Costs, Now and Next Year," which appeared in the December, 1980 issue of *Progressive Farmer*. I was employed by the University of Kentucky, Department of Agricultural Economics, as a Farm Management Instructor from 1980-81,

19. Beyond my role as an attorney, throughout my entire life I have been involved in various farming and ranching operations, including periodically being involved in burley tobacco production. Currently, my wife and I own and operate Merefield Farm (horses, livestock and grain) in Midway, Kentucky.

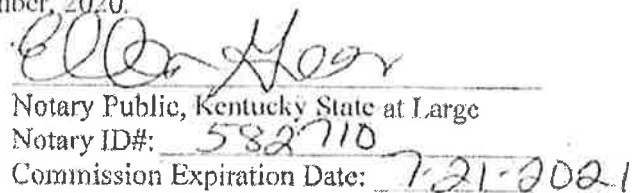
20. I am very familiar with the law surrounding and applicable to claims for breach of fiduciary duty, judicial dissolution, injunctive relief, and declaratory judgments. I have litigated, both on plaintiff and defense side, cases involving these types of claims both in federal and state court. This work has required me to become and remain familiar with the applicable procedural and substantive law.

21. In two previous cases, my expertise as an attorney and farm background resulted in favorable outcomes. I served as plaintiff's class counsel in the case of *Dolan v. Land*, 667 S.W.2d 684 (1984), in which a group of farmers successfully challenged the method of assessment by the Property Valuation Administrator of agricultural land located in Fayette County, Kentucky. I also represented burley tobacco farmers in *Congleton*, Fayette Circuit Court, Civil Action No. 06-CI-00069 and obtained a summary judgment and of the largest recoveries recorded in the history of Fayette County, Kentucky.

23. McBrayer has the financial resources to continue to prosecute and is fully prepared to prosecute this Action on behalf of the Named Plaintiffs and the proposed Settlement Class.

Robert E. Maclin, III

The foregoing Affidavit was acknowledged, subscribed to, and sworn to before me by Robert E. MacLin, III on this the 29th day of September, 2020.



**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**

- 1 -

4. Haynes Properties and Mitch Haynes and Scott Haynes dba Alvin Haynes & Sons have been engaged in the production of burley tobacco since at least the 2005 crop year. Our father, Alvin (Stick) S. Haynes, as well as our grandfather, Earl Haynes, grew up in the tobacco fields of Central Kentucky and our father Stick Haynes, early in his career measured and monitored burley tobacco quota production for the Agricultural Stabilization and Conservation Service of the United States Department of Agriculture (ASCS) in Central Kentucky. The Haynes family for at least three generations has been directly and intimately involved in the production of burley tobacco in Central Kentucky on farms in Montgomery, Scott, Fayette and Bourbon Counties of Kentucky.

5. My brother and I have worked with my father and grandfather in their burley tobacco production starting at a very young age.

6. Over the past some thirty years, my brother and I have personally engaged in all aspects of burley tobacco production, including having prepared burley tobacco beds to raise burley tobacco plants for transplanting, "pulled" burley tobacco plants for transplanting, operated a "burley tobacco setter" for the transplanting of burley tobacco plants, hoed "chopped burley tobacco", operated a Hi-Boy to spray burley tobacco with insecticides and herbicides, broken the flowers (topped burley tobacco), dropped sticks from a Hi-Boy, cut burley tobacco, housed burley tobacco, taken down burley tobacco, stripped burley tobacco, and taken burley tobacco to market.

7. Haynes Properties and my brother and I dba Alvin Haynes & Sons have grown and marketed burley tobacco in Kentucky in the 2016-2019 crop years (Haynes Properties, 2015 and prior crop years). Haynes Properties and my brother and I dba Alvin Haynes & Sons have planted and will produce crops of burley tobacco at farms we own in Scott and Montgomery Counties of Kentucky for the 2020 crop year. In this activity, Haynes Properties, LLC and my brother and I dba Alvin Haynes & Sons

shared in the risk of growing burley tobacco in Kentucky with other farmers who grew burley tobacco in those crop years.

8. Because of Haynes Properties and my brother and I dba Alvin Haynes & Sons activities growing and marketing burley tobacco in Kentucky, Haynes Properties, LLC and my brother and I dba Alvin Haynes & Sons are and have been a member of the Burley Tobacco Cooperative Association ("Co-Op") for the 2016-2020 crop years; Haynes Properties 2015 and prior crop years.

9. A crop year runs from around March 1 of a calendar year and concludes when the burley tobacco is cut, harvested, and hung in barns around September 30 of that same calendar year.

10. Prior to Haynes Properties and my brother and I dba Alvin Haynes & Sons becoming a member of the Co-Op, my father and grandfather were members of the Co-Op for decades.

11. As a result of my background and experience, I am familiar with the workings of the Co-Op and its lengthy history.

12. The Co-Op was formed in the 1920s to have as its members those persons who were a landowner, operator, landlord, tenant, or sharecropper growing burley tobacco in Indiana, Kentucky, Missouri, Ohio, or West Virginia and who shared in the risk of growing their burley tobacco.

13. I have reviewed the membership rolls that were provided by the Co-Op in response to discovery requests in this action. The membership of the Co-Op has ranged from tens of thousands around the turn of the millennium to approximately 3,683 growers over the last five (5) crop years. In crop year 2015, there were 3550 members. In crop year 2016, there were 2821 members. In crop year 2017, there were 289 members. In crop year 2018, there were 247 members. In crop year 2019, there were 998 members.

14. It is my observation and opinion that the Co-Op in its current state serves no purpose and provides no benefit to its members; and its time and purpose or at end.

15. Around 2018, myself and other members of the Co-Op became aware of an Operational Review of the Co-Op (the "Operational Review") which was prepared by the Kentucky Center for Agriculture and Rural Development and the Center for Cooperatives in the College of Food, Agricultural and Environmental Sciences at The Ohio State University at the request of the Co-Op.

16. The Operational Review found that:

- The Co-Op purchased burley tobacco from less than 10% of the total amount of burley tobacco growers and an even smaller percentage of those burley tobacco growers sold their burley tobacco *exclusively* to the Co-Op;
- The Co-Op offered and contracted for a price less than other purchasers of burley tobacco offered;
- The Co-Op has steadily declined in its financial performance since 2014 and the decline is continuing;
- Any burley tobacco that the Co-Op has purchased has been sold in very small amounts and the Co-Op's burley tobacco inventory has increased;
- The Co-Op's buying and selling of burley tobacco was and is at a net loss;
- The Co-Op does not maintain any membership equity accounts, fails to have consistent, effective communication with its members, and the Co-Op is missing certain rules and laws that all Co-Ops need to operate; and
- The Co-Op is spending significant amount of funds maintaining its offices, staff, board, and inventory.

17. The Operational Review supports my opinions and beliefs the like of opinion and beliefs of many others with whom I have spoken. It has been and is abundantly apparent to me and others that the Co-Op has been for some time of no effect and purpose, has been and is doing nothing to serve its membership and whose time is and for some time has been, at end.

18. Because of these failures, Penny Greathouse and my brother Scotty Haynes and I engaged the McBrayer law firm, to seek a dissolution of the Co-Op and to seek redress to the Co-Op members for any improper actions by certain of its past and present officers and directors and employees. In doing so, we provided information to the McBrayer Law Firm to assist in the development of the complaint and had an active role in the development of the strategy and theories of this lawsuit.

19. On January 27, 2020, Haynes Properties, LLC, and my brother and I dba Alvin Haynes & Sons, together with SG&F Management, LLC filed our complaint in this action. It is our position that the Co-Op should be dissolved, and its assets distributed to its members; and that certain officers and directors should be held accountable for their actions and inactions and failures in the performance of their responsibilities for the Co-Op.

20. In furtherance of the dissolution and distribution of the assets of the Co-Op, it is necessary that with Haynes Properties, LLC, and my brother and I dba Alvin Haynes & Sons together with SG&F Management, LLC, seek a ruling from a court as to who the members of the Co-Op are and who is entitled to a *per capita* share of the net assets of the Co-Op.

21. Haynes Properties, LLC, and Mitch Haynes and Scott Haynes dba Alvin Haynes & Sons, together with SG&F Management, LLC are and have been acting on behalf of ourselves and those persons whom were 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 (the "Settlement Class").

22. Although Haynes Properties, LLC, and Mitch Haynes and Scott Haynes dba Alvin Haynes & Sons and SG&F Management, LLC are growing burley tobacco this crop year, we support having the Settlement Class to be made up of those who were 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 because our suit was brought before the 2020 crop year.

23. Haynes Properties, LLC, and Mitch Haynes and Scott Haynes dba Alvin Haynes & Sons, and SAG&F Management, LLC are not seeking, aside from a potential representative service fee, any more distribution or damages than any other member of the proposed Settlement Class. We believe that each member of the Settlement Class is entitled to the same *per capita* distribution of the net assets of the Co-Op and has identical rights, interests, and claims related to the actions of the officers and directors. As such, we are confident that neither Haynes Properties, LLC, and Mitch and Scott Haynes dba Alvin Haynes & Sons, nor SG&F Management, LLC do not have any interests adverse to the members of the Settlement Class.

24. The claims that Haynes Properties, LLC, and Mitch Haynes and Scott Haynes dba Alvin Haynes & Sons and SG&F Management, LLC have asserted are the result of the same actions and omissions of the Co-Op.

25. Because Haynes Properties, LLC, and Mitch Haynes and Scott Haynes dba Alvin Haynes & Sons brought the claims in this matter on behalf of a proposed class and the parties are proposing the Settlement Class, I understand that I have a responsibility to represent the best interests of the Settlement Class. I have done so and will continue to do so in the future. In this regard, I have committed to serve and will serve on the committee to oversee the dissolution and the liquidation of the Co-Op and which will address other matters as to the partial settlement as set forth in the Agreement and Stipulation of Partial Settlement reached in this matter, as discussed below.

26. It is my belief and opinion that the February 5, 2020 Plan that was enacted by the

Co-Op in response to our complaint would be detrimental to the interests of the proposed Settlement Class as it would allow for a new entity to retain \$3,500,000 and would include the Co-Op incurring approximately \$3,000,000 in overhead over the next three (3) years. Further, the February 5, 2020 Plan was not clear as to who would vote on its approval or what members would be entitled to distribution of any net assets. Finally, the February 5, 2020 Plan did not include any provisions for the claims against certain of the past or present officers and directors and employees of the Co-Op.

27. In the event the February 5, 2020 Plan were allowed to move forward, Haynes Properties, LLC and my brother and I dba Alvin Haynes & Sons would be negatively impacted and affected in an identical manner as each of the members of the Settlement Class.

28. Since the filing of the lawsuit, I have, on behalf of Haynes Properties, LLC and My brother and I dba Alvin Haynes & Sons and the Settlement Class, been significantly involved in assisting our attorneys in steering and furthering the litigation. I have worked with counsel to review and prepare pleadings in this case; I have read, commented, and spoke with counsel prior to each and every pleading, that was filed in this case, having been so filed. I have met repeatedly with my counsel at my offices in Lexington, Kentucky. I have been provided with each and every pleading filed in this case by the other parties and have reviewed and discussed those pleadings with my counsel. I have listened and heard and noted comments from numerous other burley tobacco growers, both before and after our case was filed, on the matters about which Haynes Properties, LLC, and Mitch Haynes and Scott Haynes dba Alvin Haynes & Sons and SG&F Management, LLC have raised in this case. I have met and spoken with my brother, and Penny Greathouse who represent the other Named Plaintiffs in this case as to their view of the litigation. My brother has spoken to the press and my brother and I and our employees have kept in regular

contact with counsel both before and after the case was filed. My brother and I have made input into the strategy and direction of the case moving forward.

29. On May 13, 2020, on behalf of Haynes Properties, LLC, and my brother and I dba Alvin Haynes & Sons as Named Plaintiffs together with Penny Greathouse on behalf of SG&F Management, LLC, I participated in a some eight hour mediation before Hon. Bobby Houlihan, as mediator. This participation included evaluations and discussions of relevant facts and governing documents and helping to make decisions as to what positions to take in the mediation. As a result of our work with the McBrayer attorneys, Haynes Properties, LLC, and Mitch Haynes and Scott Haynes dba Alvin Haynes & Sons and SG &F Management, LLC were able to negotiate a partial settlement with the Co-Op and Defendant Greg Craddock, on behalf of himself and other members of Co-Op.

30. From or about May 14, 2020 through or about June 8, 2020, I reviewed and participated in the negotiation of more than a dozen drafts of a Stipulation and Agreement of Partial Settlement; ultimately culminating in the Stipulation and Agreement of Partial Settlement which I executed on behalf of Haynes Properties, LLC and my brother and I dba Alvin Haynes & Sons \ and which was filed in this action on June 10, 2020.

31. This Stipulation and Agreement of Partial Settlement generally speaking provides for an agreement between the Co-Op and a Settlement Class of landowners, operators, landlords, tenants or sharecroppers growing burley tobacco in Indiana, Kentucky, Missouri, Ohio or West Virginia during one or more of the 2015-19 annual burley tobacco growing seasons. The key terms of the partial settlement are: (i) the dissolution of the Co-Op, (ii) the amount of \$1,500,000 of the assets of the Co-Op to be transferred to a farming-related non-profit entity that will acts as a liaison, advocate, support, educator and researcher on behalf of tobacco growers of all types of tobacco,

32. I support this partial settlement because it allows for the sure and efficient dissolution of the Co-Op and ensures that the vast majority of the Co-Op's assets will be distributed to its members as members of the Settlement Class, *per capita*. Further, because the partial settlement allows for the complete liquidation of all the assets of the Co-Op, given the risk and uncertainty attendant to continued litigation, the partial settlement provides a substantial value to each member of the proposed Settlement Class. Finally, the partial settlement reserves all claims against the officers and directors to the extent of the Co-Op's insurance policy; and allows and provides for the immediate distribution of the Co-Op's net assets without the withholding by the Co-Op of reserves of millions of dollars to protect the Co-Op's past and present officers, directors and employees from their individual exposures to future defense costs and liabilities.

34. I have served and will continue to serve the best interests of the Settlement Class.

Mitch Haynes

- 9 -

The foregoing Affidavit was acknowledged, subscribed to, and sworn to before me by Mitch Haynes, on this the 29th day of September, 2020.



Steven M. Green
Notary Public, Kentucky State at Large
Commission ID No.: 582710
Commission Expiration Date: 7-31-2021

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this pleading was served this 29th day of September 2020 electronically via the KYeCourts e-filing system, and via U.S. Mail postage prepaid upon the following:

Jeremy S. Rogers, Esq.
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Tobacco Growers Cooperative Association*

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Counsel for Defendant, Burley Tobacco Growers Cooperative

John N. Billings, Esq.
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nbillings@blfky.com
Counsel for Defendant, Greg Craddock on behalf of himself and all others similarly situated

/s/ Robert E. Maclin, III
Robert E. Maclin, III, Esq.
Counsel for Named Plaintiffs, Haynes Properties,
LLC, Mitch Haynes and Scott Haynes dba Alvin
Haynes & Sons and S&GF Management, LLC on

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

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

PLAINTIFFS

v. AFFIDAVIT OF ALVIN S. (SCOTTY) HAYNES, JR. IN
SUPPORT OF NAMED PLAINTIFFS MOTION PURSUANT TO CR 23.01

BURLEY TOBACCO GROWERS COOPERATIVE
ASSOCIATION

DEFENDANTS

AND

GREG CRADDOCK
ON BEHALF OF HIMSELF AND
ALL OTHERS SIMILARLY SITUATED

** ** ** ** ** **

Comes the Affiant, Alvin S. (Scotty) Haynes, Jr. and after being first duly sworn, deposes
and states as follows:

1. I am a resident of Nicholasville, Kentucky.
2. I am one of the two members with my brother, Mitch Haynes in Haynes Properties, LLC, a Kentucky Limited Liability Company ("Haynes Properties") with principal offices located at 1229 Versailles Road, P.O. Box 8638, Lexington, Kentucky 40533 and one of the two partners with my brother Mitch Haynes in Alvin Haynes & Sons, a Kentucky General Partnership, with principal offices located at 1229 Versailles Road, P.O. Box 8638, Lexington, Kentucky 40533.
3. Haynes Properties, LLC and Mitch Haynes and Scott Haynes dba Alvin Haynes and Sons are two of the Named Plaintiffs in this action.

4. Haynes Properties and Mitch Haynes and Scott Haynes dba Alvin Haynes & Sons have been engaged in the production of burley tobacco since at least the 2005 crop year. Our father, Alvin (Stick) S. Haynes, as well as our grandfather, Earl Haynes, grew up in the tobacco fields of Central Kentucky and our father Stick Haynes, early in his career measured and monitored burley tobacco quota production for the Agricultural Stabilization and Conservation Service of the United States Department of Agriculture (ASCS) in Central Kentucky. The Haynes family for at least three generations has been directly and intimately involved in the production of burley tobacco in Central Kentucky on farms in Montgomery, Scott, Fayette and Bourbon Counties of Kentucky.

5. My brother and I have worked with my father and grandfather in their burley tobacco production starting at a very young age.

6. Over the past some thirty years, my brother and I have personally engaged in all aspects of burley tobacco production, including having prepared burley tobacco beds to raise burley tobacco plants for transplanting, "pulled" burley tobacco plants for transplanting, operated a "burley tobacco setter" for the transplanting of burley tobacco plants, hoed "chopped burley tobacco", operated a Hi-Boy to spray burley tobacco with insecticides and herbicides, broken the flowers (topped burley tobacco), dropped sticks from a Hi-Boy, cut burley tobacco, housed burley tobacco, taken down burley tobacco, stripped burley tobacco, and taken burley tobacco to market.

7. Haynes Properties and my brother and I dba Alvin Haynes & Sons have grown and marketed burley tobacco in Kentucky in the 2016-2019 crop years (Haynes Properties, 2015 and prior crop years). Haynes Properties and my brother and I dba Alvin Haynes & Sons have planted and will produce crops of burley tobacco at farms we own in Scott and Montgomery Counties of Kentucky for the 2020 crop year. In this activity, Haynes Properties, LLC and my brother and I dba Alvin Haynes & Sons shared in the risk of growing burley tobacco in Kentucky

with other farmers who grew burley tobacco in those crop years.

8. Because of Haynes Properties and my brother and I dba Alvin Haynes & Sons activities growing and marketing burley tobacco in Kentucky, Haynes Properties, LLC and my brother and I dba Alvin Haynes & Sons are and have been a member of the Burley Tobacco Cooperative Association ("Co-Op") for the 2016-2020 crop years; Haynes Properties 2015 and prior crop years.

9. A cross year runs from around March 1 of a calendar year and concludes when the burley tobacco is cut, harvested, and hung in barns around September 30 of that same calendar year.

10. Prior to Haynes Properties and my brother and I dba Alvin Haynes & Sons becoming a member of the Co-Op, my father and grandfather were members of the Co-Op for decades.

11. As a result of my background and experience, I am familiar with the workings of the Co-Op and its lengthy history.

12. The Co-Op was formed in the 1920s to have as its members those persons who were a landowner, operator, landlord, tenant, or sharecropper growing burley tobacco in Indiana, Kentucky, Missouri, Ohio, or West Virginia and who shared in the risk of growing their burley tobacco.

13. I have reviewed the membership rolls that were provided by the Co-Op in response to discovery requests in this action. The membership of the Co-Op has ranged from tens of thousands around the turn of the millennium to approximately 3,683 growers over the last five (5) crop years. In crop year 2015, there were 3550 members. In crop year 2016, there were 2821 members. In crop year 2017, there were 289 members. In crop year 2018, there were 247 members. In crop year 2019, there were 998 members.

14. It is my observation and opinion that the Co-Op in its current state serves no purpose and provides no benefit to its members; and its time and purpose or at end.

15. Around 2018, myself and other members of the Co-Op became aware of an Operational Review of the Co-Op (the "Operational Review") which was prepared by the Kentucky Center for Agriculture and Rural Development and the Center for Cooperatives in the College of Food, Agricultural and Environmental Sciences at The Ohio State University at the request of the Co-Op.

16. The Operational Review found that:

- The Co-Op purchased burley tobacco from less than 10% of the total amount of burley tobacco growers and an even smaller percentage of those burley tobacco growers sold their burley tobacco *exclusively* to the Co-Op;
- The Co-Op offered and contracted for a price less than other purchasers of burley tobacco offered;
- The Co-Op has steadily declined in its financial performance since 2014 and the decline is continuing;
- Any burley tobacco that the Co-Op has purchased has been sold in very small amounts and the Co-Op's burley tobacco inventory has increased;
- The Co-Op's buying and selling of burley tobacco was and is at a net loss;
- The Co-Op does not maintain any membership equity accounts, fails to have consistent, effective communication with its members, and the Co-Op is missing certain rules and laws that all Co-Ops need to operate; and
- The Co-Op is spending significant amount of funds maintaining its offices, staff, board, and inventory.

17. The Operational Review supports my opinions and beliefs the like of opinion and beliefs of many others with whom I have spoken. It has been and is abundantly apparent to me and others that the Co-Op has been for some time of no effect and purpose, has been and is doing nothing to serve its membership and whose time is and for some time has been, at end.

18. Because of these failures, Penny Greathouse and my brother Mitch Haynes and I engaged the McBrayer law firm, to seek a dissolution of the Co-Op and to seek redress to the Co-Op members for any improper actions by certain of its past and present officers and directors and employees. In doing so, we provided information to the McBrayer law firm to assist in the development of the complaint and had an active role in the development of the strategy and theories of this lawsuit.

19. On January 27, 2020, Haynes Properties, LLC, and my brother and I dba Alvin Haynes & Sons, together with SG&F Management, LLC filed our complaint in this action. It is our position that the Co-Op should be dissolved, and its assets distributed to its members; and that certain officers and directors should be held accountable for their actions and inactions and failures in the performance of their responsibilities for the Co-Op.

20. In furtherance of the dissolution and distribution of the assets of the Co-Op, it is necessary that with Haynes Properties, LLC, and my brother and I dba Alvin Haynes & Sons together with SG&F Management, LLC, seek a ruling from a court as to who the members of the Co-Op are and who is entitled to a *per capita* share of the net assets of the Co-Op.

21. Haynes Properties, LLC, and Mitch and Scott Haynes dba Alvin Haynes & Sons, together with SG&F Management, LLC are and have been acting on behalf of ourselves and those persons whom were 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 (the "Settlement Class").

22. Although Haynes Properties, LLC, and Mitch and Scott Haynes dba Alvin Haynes & Sons and SG&F Management, LLC are growing burley tobacco this crop year, we support having the Settlement Class to be made up of those who were 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 because our suit was brought before the 2020 crop year.

23. Haynes Properties, LLC, and Mitch and Scott Haynes dba Alvin Haynes & Sons, and SAG&F Management, LLC are not seeking, aside from a potential representative service fee, any more distribution or damages than any other member of the proposed Settlement Class. We believe that each member of the Settlement Class is entitled to the same *per capita* distribution of the net assets of the Co-Op and has identical rights, interests, and claims related to the actions of the officers and directors. As such, we am confident that neither Haynes Properties, LLC, and Mitch and Scott Haynes dba Alvin Haynes & Sons, nor SG&F Management, LLC do not have any interests adverse to the members of the Settlement Class.

24. The claims that Haynes Properties, LLC, and Mitch and Scott Haynes dba Alvin Haynes & Sons and SG&F Management, LLC have asserted are the result of the same actions and omissions of the Co-Op.

25. Because Haynes Properties, LLC, and Mitch and Scott Haynes dba Alvin Haynes & Sons brought the claims in this matter on behalf of a proposed class and the parties are proposing the Settlement Class, I understand that I have a responsibility to represent the best interests of the Settlement Class. I have done so and will continue to do so in the future.

26. It is my belief and opinion that the February 5, 2020 Plan that was enacted by the Co-Op in response to our complaint would be detrimental to the interests of the proposed Settlement Class as it would allow for a new entity to retain \$3,500,000 and would include the Co-Op incurring approximately \$3,000,000 in overhead over the next three (3) years. Further, the February 5, 2020 Plan was not clear as to who would vote on its approval or what members would

be entitled to distribution of any net assets. Finally, the February 5, 2020 Plan did not include any provisions for the claims against certain of the past or present officers and directors and employees of the Co-Op.

27. In the event the February 5, 2020 Plan were allowed to move forward, Haynes Properties, LLC and my brother and I dba Alvin Haynes & Sons would be negatively impacted and affected in an identical manner as each of the members of the Settlement Class.

28. Since the filing of the lawsuit, I have, on behalf of Haynes Properties, LLC and My brother and I dba Alvin Haynes & Sons and the Settlement Class, been significantly involved in assisting our attorneys in steering and furthering the litigation. I have worked with counsel to review and prepare pleadings in this case; I have read, commented, and spoke with counsel prior to each and every pleading, that was filed in this case, having been so filed. I have met repeatedly with my counsel at my offices in Lexington, Kentucky. I have been provided with each and every pleading filed in this case by the other parties and have reviewed and discussed those pleadings with my counsel. I have listened and heard and noted comments from numerous other burley tobacco growers, both before and after our case was filed, on the matters about which Haynes Properties, LLC, and Mitch and Scott Haynes dba Alvin Haynes & Sons and SG&F Management, LLC have raised in this case. I have met and spoken with my brother, and Penny Greathouse who represent the other Named Plaintiffs in this case as to their view of the litigation. My brother has spoken to the press and my brother and I and our employees have kept in regular contact with counsel both before and after the case was filed. My brother and I have made input into the strategy and direction of the case moving forward.

29. On May 13, 2020, on behalf of Haynes Properties, LLC, and my brother and I dba Alvin Haynes & Sons as Named Plaintiffs together with Penny Greathouse on behalf of SG&F

Management, LLC, I participated in a some eight hour mediation before Hon. Bobby Houlihan, as mediator. This participation included evaluations and discussions of relevant facts and governing documents and helping to make decisions as to what positions to take in the mediation. As a result of our work with the McBrayer attorneys, Haynes Properties, LLC, and Mitch and Scott Haynes dba Alvin Haynes & Sons and SG &F Management, LLC were able to negotiate a partial settlement with the Co-Op and Defendant Greg Craddock, on behalf of himself and other members of Co-Op.


30. From or about May 14, 2020 through or about June 8, 2020, I reviewed and participated in the negotiation of more than a dozen drafts of a Stipulation and Agreement of Partial Settlement; ultimately culminating in the Stipulation and Agreement of Partial Settlement which I executed on behalf of Haynes Properties, LLC and my brother and I dba Alvin Haynes & Sons \ and which was filed in this action on June 10, 2020.

31. This Stipulation and Agreement of Partial Settlement generally speaking provides for an agreement between the Co-Op and a Settlement Class of landowners, operators, landlords, tenants or sharecroppers growing burley tobacco in Indiana, Kentucky, Missouri, Ohio or West Virginia during one or more of the 2015-19 annual burley tobacco growing seasons. The key terms of the partial settlement are: (i) the dissolution of the Co-Op, (ii) the amount of \$1,500,000 of the assets of the Co-Op to be transferred to a farming-related non-profit entity that will acts as a liaison, advocate, support, educator and researcher on behalf of tobacco growers of all types of tobacco, (iv) the forbearance by the Settlement Class from enforcing any judgment against past and present officers, directors and employees of the Co-Op or their personal and business assets other than to the extent of available insurance coverage (which I understand to be \$5,000,000.00 of coverage),

32. I support this partial settlement because it allows for the sure and efficient dissolution of the Co-Op and ensures that the vast majority of the Co-Op's assets will be distributed to its members as members of the Settlement Class, *per capita*. Further, because the partial settlement allows for the complete liquidation of all the assets of the Co-Op, given the risk and uncertainty attendant to continued litigation, the partial settlement provides a substantial value to each member of the proposed Settlement Class. Finally, the partial settlement reserves all claims against the officers and directors to the extent of the Co-Op's insurance policy; and allows and provides for the immediate distribution of the Co-Op's net assets without the withholding by the Co-Op of reserves of millions of dollars to protect the Co-Op's past and present officers, directors and employees from their individual exposures to future defense costs and liabilities.

34. I have served and will continue to serve the best interests of the Settlement Class.

7 day of September, 2020.



Alvin S. (Scotty) Haynes, Jr.

COMMONWEALTH OF KENTUCKY)
) SCT
COUNTY OF FAYETTE)

ELLEN M. GREEN
My Commission Expires 07-21-2021
NOTARY PUBLIC
Notary ID # 582710
STATE AT LARGE, KENTUCKY

Notary Public, Kentucky State at Large

Commission ID No.: 582710
Commission Expiration Date: 7-21-2021

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this pleading was served this 29 day of September 2020 electronically via the KYeCourts e-filing system, and via U.S. Mail postage prepaid upon the following:

Jeremy S. Rogers, Esq.
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*Counsel for Defendant, Burley
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Counsel for Defendant, Greg Craddock on behalf of himself and all others similarly situated

/s/ Robert E. Maclin, III
Robert E. Maclin, III, Esq.
Counsel for Named Plaintiffs, Haynes Properties,
LLC, Mitch Haynes and Scott Haynes dba Alvin
Haynes & Sons and S&GF Management, LLC on
behalf of themselves and all others similarly
situated

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

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

PLAINTIFFS

v. AFFIDAVIT OF PENNY GREATHOUSE IN
SUPPORT OF NAMED PLAINTIFFS' MOTION PURSUANT TO CR 23.01

BURLEY TOBACCO GROWERS COOPERATIVE
ASSOCIATION

DEFENDANTS

AND

GREG CRADDOCK
ON BEHALF OF HIMSELF AND
ALL OTHERS SIMILARLY SITUATED

** ** ** ** ** **

Comes the Affiant, Penny Greathouse, and after being first duly sworn, deposes and states
as follows:

1. I am a resident of Midway, Kentucky.
2. I am the organizer and one of the four members of S&GF Management, LLC, a Kentucky Limited Liability Company ("S&GF"), with principal office located at 1622 Moores Mill Road, Midway, Kentucky, 40347. My husband, Edward (Teddy) B. Greathouse, and my daughter and son-in-law, Shawn and Jamie Sutherland, are the three other members of S&GF. S&GF Management's principal business is cattle and crop production, including the production of

burley tobacco, on related and leased farm properties in Woodford, Scott and Franklin Counties, Kentucky.

3. S&GF is one of the Named Plaintiffs in this action.

4. S&GF has been engaged in the production of burley tobacco since its formation in the 2016 crop year. Prior to the formation of S&GF, my husband Teddy Greathouse and I, either directly or through business entities, which he and I jointly or severally own and have owned, have been actively engaged in the production of burley tobacco in Central Kentucky for decades.

5. I was born and raised on a farm on McCowans Ferry Road in Woodford County, Kentucky on which burley tobacco was produced by my father William Harvey Jones, and worked with my father in his burley tobacco production starting with the young age of 6. During his lifetime, my father was a member of the Burley Tobacco Growers Cooperative Association ("Co-Op"); and for a period of time served as a director of the Co-Op and as a director for the Council for Burley Tobacco.

6. Over the past some fifty years, I have personally engaged in all aspects of burley tobacco production, including having prepared burley tobacco beds to raise burley tobacco plants for transplanting, "pulled" burley tobacco plants for transplanting, operated a "burley tobacco setter" for the transplanting of burley tobacco plants, hoed "chopped burley tobacco", operated a Hi-Boy to spray burley tobacco with insecticides and herbicides, broken the flowers (topped burley tobacco), dropped sticks from a Hi-Boy, cut burley tobacco, housed burley tobacco, taken down burley tobacco, stripped burley tobacco, and taken burley tobacco to market.

7. S&GF grew and marketed burley tobacco in Kentucky in the 2016, 2017, 2018, and 2019 crop years. S&GF has planted and will produce a crop of burley tobacco in Kentucky for the 2020 crop year. In this activity, S&GF shared in the risk of growing burley tobacco in

Kentucky with other farmers who grew burley tobacco in those crop years.

8. Because of S&GF's activities growing and marketing burley tobacco in Kentucky, it is and has been a member of the Co-Op for the 2016, 2017, 2018, 2019, and 2020 crop years.

9. A crop year runs from around March 1 of a calendar year and concludes when the burley tobacco is cut, harvested, and hung in barns around September 30 of that same calendar year.

10. Prior to S&GF becoming a member of the Co-Op, my family and my husband's family have been members of the Co-Op for decades.

11. As a result of my background and experience, I am familiar with the workings of the Co-Op and its lengthy history.

12. The Co-Op was formed in the 1920s to have as its members those persons who were a landowner, operator, landlord, tenant, or sharecropper growing burley tobacco in Indiana, Kentucky, Missouri, Ohio, or West Virginia and who shared in the risk of growing their burley tobacco.

13. I have reviewed the membership rolls that were provided by the Co-Op in response to discovery requests in this action. The membership of the Co-Op has ranged from tens of thousands around the turn of the millennium to approximately 3,683 growers over the last five (5) crop years. In crop year 2015, there were 3550 members. In crop year 2016, there were 2821 members. In crop year 2017, there were 289 members. In crop year 2018, there were 247 members. In crop year 2019, there were 998 members.

14. It is my observation and opinion that the Co-Op in its current state serves no purpose and provides no benefit to its members; and its time and purpose or at end.

15. Around 2018, myself and other members of the Co-Op became aware of an Operational Review of the Co-Op (the "Operational Review") which was prepared by the

Kentucky Center for Agriculture and Rural Development and the Center for Cooperatives in the College of Food, Agricultural and Environmental Sciences at The Ohio State University at the request of the Co-Op.

16. The Operational Review found that:

- The Co-Op purchased burley tobacco from less than 10% of the total amount of burley tobacco growers and an even smaller percentage of those burley tobacco growers sold their burley tobacco *exclusively* to the Co-Op;
- The Co-Op offered and contracted for a price less than other purchasers of burley tobacco offered;
- The Co-Op has steadily declined in its financial performance since 2014 and the decline is continuing;
- Any burley tobacco that the Co-Op has purchased has been sold in very small amounts and the Co-Op's burley tobacco inventory has increased;
- The Co-Op's buying and selling of burley tobacco was and is at a net loss;
- The Co-Op does not maintain any membership equity accounts, fails to have consistent, effective communication with its members, and the Co-Op is missing certain rules and laws that all Co-Ops need to operate; and
- The Co-Op is spending significant amount of funds maintaining its offices, staff, board, and inventory.

17. The Operational Review supports my opinions and beliefs the like of opinion and beliefs of many others with whom I have spoken. It has been and is abundantly apparent to me and others that the Co-Op has been for some time of no effect and purpose, has been and is doing nothing to serve its membership and whose time is and for some time has been, at end.

18. Because of these failures, Mitch Haynes, Scott Haynes and I engaged the McBrayer law firm, to seek a dissolution of the Co-Op and to seek redress to the Co-Op members for any improper actions by certain of its past and present officers and directors and employees. In doing so, we provided information to the McBrayer law firm to assist in the development of the complaint and had an active role in the development of the strategy and theories of this lawsuit.

19. On January 27, 2020, S&GF, together with Haynes Properties, LLC, and Haynes and Scott Haynes dba Alvin Haynes & Sons, filed our complaint in this action. It is our position that the Co-Op should be dissolved, and its assets distributed to its members; and that certain officers and directors should be held accountable for their actions and inactions and failures in the performance of their responsibilities for the Co-Op.

20. In furtherance of the dissolution and distribution of the assets of the Co-Op, it is necessary that S&GF, together with Haynes Properties, LLC, and Haynes and Scott Haynes dba Alvin Haynes & Sons, seek a ruling from a court as to who the members of the Co-Op are and who is entitled to a *per capita* share of the net assets of the Co-Op.

21. S&GF, together with Haynes Properties, LLC, and Haynes and Scott Haynes dba Alvin Haynes & Sons, are and have been acting on behalf of ourselves and landowners, operators, landlords, tenants, or sharecroppers growing burley tobacco in Indiana, Kentucky, Missouri, Ohio, or West Virginia during one or more of the 2015-19 annual burley tobacco growing seasons (the "Settlement Class").

22. Although S&GF Management, LLC, Haynes Properties, LLC, and Haynes and Scott Haynes dba Alvin Haynes & Sons are growing burley tobacco this crop year, we support having the Settlement Class to be made up of those who were 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 because our suit was brought before the 2020 crop year.

23. S&GF, Haynes Properties, LLC, and Haynes and Scott Haynes dba Alvin Haynes & Sons, are not seeking, aside from a potential representative service fee, any more distribution or damages than any other member of the proposed Settlement Class. We believe that each member

of the Settlement Class is entitled to the same *per capita* distribution of the net assets of the Co-Op and has identical rights, interests, and claims related to the actions of the officers and directors. As such, we are confident that neither S&GF, nor Haynes Properties, LLC, and Haynes and Scott Haynes dba Alvin Haynes & Sons, do not have any interests adverse to the members of the Settlement Class.

24. The claims that S&GF, Haynes Properties, LLC, and Haynes and Scott Haynes dba Alvin Haynes & Sons have asserted are the result of the same actions and omissions of the Co-Op.

25. Because S&GF brought the claims in this matter on behalf of a proposed class and the parties are proposing the Settlement Class, I understand that I have a responsibility to represent the best interests of the Settlement Class. I have done so and will continue to do so in the future. In this regard, I have committed to serve and will serve on the committee to oversee the dissolution and the liquidation of the Co-Op and which will address other matters as to the partial settlement as set forth in the Agreement and Stipulation of Partial Settlement reached in this matter, as discussed below.

26. It is my belief and opinion that the February 5, 2020 Plan that was enacted by the Co-Op in response to our complaint would be detrimental to the interests of the proposed Settlement Class as it would allow for a new entity to retain \$3,500,000 and would include the Co-Op incurring approximately \$3,000,000 in overhead over the next three (3) years. Further, the February 5, 2020 Plan was not clear as to who would vote on its approval or what members would be entitled to distribution of any net assets. Finally, the February 5, 2020 Plan did not include any provisions for the claims against certain of the past or present officers and directors and employees of the Co-Op.

27. In the event the February 5, 2020 Plan were allowed to move forward, S&GF would

be negatively impacted and affected in an identical manner as each of the members of the Settlement Class.

28. Since the filing of the lawsuit, I have, on behalf of S&GF and the Settlement Class, been significantly involved in assisting our attorneys in steering and furthering the litigation. I have worked with counsel to review and prepare pleadings in this case; I have read, commented, and spoke with counsel prior to each and every pleading, that was filed in this case, having been so filed. I have met repeatedly with my counsel at my farm office in Midway, Kentucky. I have been provided with each and every pleading filed in this case by the other parties and have reviewed and discussed those pleadings with my counsel. I have listened and heard and noted comments from numerous other burley tobacco growers, both before and after our case was filed, on the matters about which S&GF, Haynes Properties, LLC, and Haynes and Scott Haynes dba Alvin Haynes & Sons have raised in this case. I have met and spoken with Haynes and Scott Haynes who represent the other Named Plaintiffs in this case as to their view of the litigation. I have spoken to the press and have kept in regular contact with counsel both before and after the case was filed. I have made input into the strategy and direction of the case moving forward.

29. On May 13, 2020, on behalf of S&GF, as a Named Plaintiff, together with Haynes and Scott Haynes on behalf of Haynes Properties, LLC, and Haynes and Scott Haynes dba Alvin Haynes & Sons, I participated in a some eight hour mediation before Hon. Bobby Houlihan, as mediator. This participation included evaluations and discussions of relevant facts and governing documents and helping to make decisions as to what positions to take in the mediation. As a result of our work with the McBrayer attorneys, S&GF, Haynes Properties, LLC, and Haynes and Scott Haynes dba Alvin Haynes & Sons were able to negotiate a partial settlement with the Co-Op and Defendant Greg Craddock, on behalf of himself and other members of Co-Op.

30. From or about May 14, 2020 through or about June 8, 2020, I reviewed and participated in the negotiation of more than a dozen drafts of a Stipulation and Agreement of Partial Settlement — ultimately culminating in the Stipulation and Agreement of Partial Settlement which I executed on behalf of SG&F and which was filed in this action on June 10, 2020.

31. This Stipulation and Agreement of Partial Settlement generally speaking provides for an agreement between the Co-Op and a Settlement Class of landowners, operators, landlord, tenants, or sharecroppers growing burley tobacco in Indiana, Kentucky, Missouri, Ohio, or West Virginia during one or more of the 2015-19 annual burley tobacco growing seasons. The key terms of the partial settlement are: (i) the dissolution of the Co-Op, (ii) the amount of \$1,500,000 of the assets of the Co-Op to be transferred to a farming-related non-profit entity that will act as a liaison, advocate, support, educator and researcher on behalf of tobacco growers of all types of tobacco, (iv) the forbearance by the Settlement Class from enforcing any judgment on, and against, past and present officers, directors and employees of the Co-Op or their personal and business assets other than to the extent of available insurance coverage (which I understand to be \$5,000,000.00 of coverage), and (v) for the distribution of the net proceeds after expenses and attorneys' fees and costs to the members of the Settlement Class on a *per capita* basis.

32. I support this partial settlement because it allows for the sure and efficient dissolution of the Co-Op and ensures that the vast majority of the Co-Op's assets will be distributed to its members as members of the Settlement Class, *per capita*. Further, because the partial settlement allows for the complete liquidation of all the assets of the Co-Op, given the risk and uncertainty attendant to continued litigation, the partial settlement provides a substantial value to each member of the proposed Settlement Class. Finally, the partial settlement reserves all claims against the officers and directors to the extent of the Co-Op's insurance policy; and allows and

provides for the immediate distribution of the Co-Op's net assets without the withholding by the Co-Op of reserves of millions of dollars to protect the Co-Op's past and present officers, directors and employees from their individual exposures to future defense costs and liabilities.

33. As such, I believe that the partial settlement is in the best interests of the proposed Settlement Class and allows for the expedited dissolution and distribution of the Co-Op's net assets to those who are or could be members based on the 2015-2019 crop years.

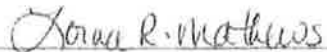
34. I have served and will continue to serve the best interests of the Settlement Class.

Further the Affiant sayeth naught this 28th day of September, 2020.


Penny Greathouse

COMMONWEALTH OF KENTUCKY)
) SCT
COUNTY OF FAYETTE)

The foregoing Affidavit was acknowledged, subscribed to, and sworn to before me by Penny Greathouse on this the 28 day of September, 2020.


Notary Public, Kentucky State at Large
Commission ID No.: 581660
Commission Expiration Date: 6/21/22

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this pleading was served this ____ day of _____, 2020 electronically via the KYeCourts e-filing system, and via U.S. Mail postage prepaid upon the following:

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