COMMONWEALTH OF KENTUCKY
FAYETTE CIRCUIT COURT
FOURTH DIVISION

HAYNES PROPERTIES, LLC, et al. — PLAINTIFFS

v. — 20-CI-332

ENTERED
ATTEST, VINCENT RIGGS, CLERK
JUN 11 2021
FAYETTE CIRCUIT CLERK
BY ____ DEPUTY

BURLEY TOBACCO GROWERS COOPERATIVE ASSOCIATION, et al. — DEFENDANTS

Opinion and Order Approving Partial Settlement

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

1. Present at the Fairness Hearing were: (i) Robert E. Maclin, III, Katherine K. Yunker, Jason R. Hollon, Drake W. Staples and Cary Howard, of McBrayer PLLC, counsel for Named Plaintiffs and Settlement Class Representatives; (ii) Named Plaintiffs and Settlement Class Representatives, Penny Greathouse of S&GF Management, LLC and Mitch Haynes and Scottie Haynes of Haynes Properties, LLC and Alvin Haynes & Sons; (iii) Kevin G. Henry of Sturgill, Turner, Barker & Moloney, PLLC and Jeremy S. Rogers of Dinsmore & Shohl LLP, counsel for Defendant Burley Tobacco Growers Cooperative Association ("BTGCA"); (iv) Kathy Sanford, administrative assistant for BTGCA, and Al Pedigo, president of BTGCA; (v) John N. Billings, Christopher L. Thacker, and Richard J.

Dieffenbach of Billings Law Firm, PLLC, counsel for Defendant Greg Craddock and other members of the proposed settlement class; (vi) Defendant Greg Craddock, (vii) W. Henry Graddy, IV and Dorothy Rush of W.H. Graddy & Associates, counsel for Objectors Roger Quarles, W. Gary Wilson, Ian Horn, Richard Horn, Campbell Graddy and David Lloyd; (viii) Objector Roger Quarles; (ix) Darrell Varner, President of the Council for Burley Tobacco; (x) on February 24, 2021, Steve Weisbrot of the Angeion Group, LLC (Settlement Administrator per Order Directing Notice of Proposed Settlement in Settlement Class and Scheduling Fairness Hearing entered November 17, 2020); and (xi) on March 8, 2021, David B. Tachau of Tachau Meek PLC, counsel for the Billings Law Firm. Others attended all or parts of the Fairness Hearing, as interested persons or members of the general public.

2. The Court heard and accepted sworn testimony from witnesses Mr. Weisbrot, Mr. Mitch Haynes, Ms. Greathouse, Mr. Pedigo, Mr. Varner, Mr. Quarles, and Mr. Maclin. The Court also thoroughly reviewed the entire record in this case, including all objections to provisions of the Partial Settlement filed by those persons set forth on **Schedule A**. The Court has heard the arguments of counsel and has otherwise been duly and sufficiently advised. At the close of the March 1, 2021 hearing, the Court, pursuant to Fayette Circuit Court Local Rule 19, instructed Class Counsel Katherine K. Yunker and BTGCA counsel Jeremy S. Rogers to prepare a proposed Opinion and Order and allowed seven days thereafter for any objections to the proposed Opinion and Order to be

submitted to the Court for consideration. In response to the proposed Opinion and Order tendered by the Parties, the Court received the following objections: Named Plaintiffs objected only to the language of paragraph 25 of the proposed Opinion and Order Approving Partial Settlement; Greg Craddock and the Billings Law Firm objected only to the fact that Billings did not receive 7.5% in fees and that the fee sharing agreement was found invalid in the proposed Opinion and Order Awarding Service Fees and Attorneys' Fees and Nontaxable Costs; and Roger Quarles and those similarly situated objected to the proposed Opinion and Order Approving Partial Settlement, only as to the disposition of the $1.5 million.

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

FACTUAL FINDINGS, PROCEDURAL BACKGROUND, AND STANDARD

3. Named Plaintiffs filed their first Complaint on January 27, 2020, subsequently filed three Amended Complaints, and on May 5, 2020 filed their final pleading that was a Corrected Third Amended Complaint. Therefore, the operative pleading is the Corrected Third Amended Complaint that was filed on April 28, 2020 and added Greg Craddock, and others similarly situated, as defendants. These newly named defendants were opposed to a judicial dissolution and instead sought, through their

counsel, the Billings Law Firm, a non-judicial dissolution. Among other claims, the Corrected Third Amended Complaint sought the judicial dissolution of BTGCA (Count II) and the distribution of its net assets to the appropriate members of BTGCA (Count III). On April 21, 2020, prior to the Craddock Defendants being parties to the action, the Court stayed all discovery, at the request of the parties, so they could engage in mediation. The above described claims are the subject of the Partial Settlement, which was mediated and settled approximately 25 days later on or about May 15, 2020.[1] Unfortunately, the parties did not date the actual settlement agreement, though some documents filed in the Record allege the settlement was effectuated on or about that date.

4. The undated Agreement was filed in the record on June 10, 2020 along with a petition requesting this Court's approval pursuant to CR 23.05. Since that time, the Court has conducted numerous hearings on the matter. Through the Court's Orders, for reasons stated on the Record, certain non-essential provisions of the Partial Settlement have been modified or waived by the Parties and the Court. Despite this, the essential elements of the Partial Settlement remain intact.[2] All prior Orders of the Court regarding the Partial Settlement remain effective, and the following prior Orders and Opinions are incorporated herein and made a part hereof as if set forth at length: (i) the Findings and Conclusions entered on September 27, 2020, as amended by Amended Preliminary

[1] *See* Billings law firm letter dated May 15, 2020, informing the Billings firm's clients of a proposed settlement.

[2] *See, e.g.*, October 16, 2020 Joint Stipulated Summary of Partial Settlement; November 17, 2020 Amended Preliminary Certification Order.

Certification Order entered November 17, 2020; (ii) the Preliminary Certification Order entered on November 10, 2020 as amended by Amended Preliminary Certification Order entered November 17, 2020; (iii) the Order Directing Notice of Proposed Settlement in Settlement Class and Scheduling Fairness Hearing entered November 17, 2020; (iv) the Findings and Opinion entered February 7, 2021; and (v) that separate Opinion and Order addressing the award of attorneys' fees and costs, as well as class representative service awards that is entered simultaneously with this Opinion and Order.

<u>ANALYSIS OF FAIRNESS OF CLASS SETTLEMENT</u>

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

<u>Adequate Notice to Settlement Class Members.</u>

5. CR 23.05(1) requires the Court to direct notice in a reasonable manner to all class members who would be bound by the proposal. "Due process requires that notice to the class be reasonably calculated, under all the circumstances, to appraise intended parties of the pendency of the class action and afford them an opportunity to present their objection." *Does 1–2 v. Déjà Vu Services, Inc.*, 925 F.3d 886, 900 (6th Cir. 2019) (*quoting*

Vassalle v. Midland Funding LLC, 708 F.3d 747, 759 (6th Cir. 2013)). The Court directed this in its Order entered November 17, 2020.

6. The sworn declarations and exhibits put into evidence by Class Counsel, in addition to Mr. Weisbrot's testimony, established that the Notice Program and Notices to members of the Settlement Class of the Partial Settlement satisfy all Due Process, statutory, and Civil Rules requirements and are sufficient and binding on the Parties, including the named Parties, all participating Settlement Class Members, all non-participating Settlement Class members, and all other interested parties. The Notice Program utilized the best available updated mailing list of BTGCA members in the relevant time period, multiple publications and postings in all the states where the members reside; additionally, the notice targeted publications and locations where the members tended to gather or read,[3] all of which exceeds the minimum standard of "notice in a reasonable manner to all class members who would be bound by the proposal."[4] Receipt of Form W-9's from over 50% of the addresses demonstrates that the Notice was adequate. *See, e.g., Sabo v. United States*, 102 Fed.Cl. 619, 629 (2011) (approving notice of settlement where, of the 2,176 class members, 517 responded to the notice, representing

---

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

[4] CR 23.05(1).

about 22.8% of the total class). Additionally, the Court will note that none of the objections questioned the adequacy of the notice.

The Partial Settlement is Fair, Reasonable, and Adequate.

7. Most importantly, the Court may approve a proposed settlement that would bind class members who are not named parties and did not negotiate or sign it "only after a hearing and on finding that it is fair, reasonable, and adequate." CR 23.05(2). That hearing has now been held, and the Court herein addresses the factors it considered and determined had been met, thus allowing it to find that the proposed settlement as to the dissolution is "fair, reasonable, and adequate." *Id.*

8. Prior to its 2018 amendment, the text of federal Rule 23(e) mirrored the text of Kentucky's current CR 23.05.[5] In 2019, the U.S. Court of Appeals for the Sixth Circuit set forth seven factors courts in its jurisdiction must consider when determining whether a settlement is "fair, reasonable, and adequate": (1) the "risk of fraud or collusion"; (2) the "complexity, expense and likely duration of the litigation"; (3) the "amount of discovery engaged in by the parties"; (4) the "likelihood of success on the merits"; (5) the "opinions of class counsel and class representatives"; (6) the "reaction of absent class

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

members"; and (7) the "public interest."[6] Some of these were then codified in the 2018 amendment of Rule 23(e)(2), which lists factors federal courts must consider, without limiting the consideration of other factors. Under the current Rule, a federal court must consider whether:

> (A) the class representatives and class counsel have adequately represented the class;
>
> (B) the proposal was negotiated at arm's length;
>
> (C) the relief provided for the class is adequate, taking into account:
>
> > (i) the costs, risks, and delay of trial and appeal;
> >
> > (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;
> >
> > (iii) the terms of any proposed award of attorney's fees, including timing of payment; and
> >
> > (iv) any agreement required to be identified under Rule 23(e)(3); and
>
> (D) the proposal treats class members equitably relative to each other.

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

9. A sufficient showing has been made from the testimony, affidavits, and exhibits submitted by all parties that the Partial Settlement, as to the dissolution of BTGCA is fair, reasonable, and adequate. Furthermore, there has been a clear showing

---

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

that Class Counsel have adequately represented the proposed Settlement Class, and that the Partial Settlement was negotiated at arm's length. There is no evidence in the written record or oral arguments that indicate any "risk of fraud or collusion" in connection with the dissolution as part of the Partial Settlement.[7]

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

[7] *See Does 1-2*, 925 F.3d at 894-95.

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

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

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

---

[8] *See Does 1-2*, 925 F.3d at 894-95.

[9] *Id.*

[10] *Id.*

and former directors, officers, employees, and agents in connection with the Partial Settlement and allow for prompt distribution of BTGCA's net assets.

14. The Court further finds that the public interest will be best served by implementation of the remaining essential terms of the Partial Settlement.[11] The public interest would not be served by continuing this litigation on the issue of how the dissolution should occur, as such protracted litigation would further deplete BTGCA's assets, which are already diminishing. The public interest is best served by expediting the dissolution of BTGCA, the liquidation of its assets, and the prompt distribution of its net assets to its appropriate members sooner rather than later.

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

---

[11] *Id.*

[12] *E.g.*, KRS 272.325 (dissolution procedures for agricultural cooperative association).

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

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

Allowance of Class Member Objections.

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

18. The Court received, reviewed, and carefully analyzed all objections to the Partial Settlement. The objections fall into three general categories: (a) objections to the potential award of attorneys' fees and costs; (b) objections to the definition of the Settlement Class; and (c) objections to the BTGCA's expenditure of $1.5 million of the

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

assets to fund a nonprofit tobacco advocacy organization. The objections to requests for award of attorneys' fees and costs are addressed in a separate Opinion and Order.

<u>Class Definition.</u>

19. After extensive review and careful consideration, the Court overrules the objections to the definition of the Settlement Class. A few objectors take issue with the fact that the Settlement Class does not include those who ceased their involvement with burley tobacco prior to the 2015 crop year. Other objectors take issue with the fact that the Settlement Class includes farmers who were recently involved with burley tobacco only in the 2020 crop year. These objections are not supported by the controlling law, primarily the five-year membership window established in KRS 272.325(3).[14]

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

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

272.325(3). Here, BTGCA's Articles, Bylaws, and past contracts with members contain no provision for distribution of its net assets in the event of dissolution, so the Court is mandated to follow the statutes.

21. The dissolution statute does not specify what the five fiscal years of membership are to "preced[e]" for distribution purposes—whether it is the date of formal dissolution, the date dissolution proceedings are first initiated, or the date on which the association's assets are finally liquidated or distributed. *See* KRS 272.235. Here, judicial dissolution was requested in January 2020 by the Named Plaintiffs with the filing of this lawsuit. Yet, due to the delays attendant with litigation, exacerbated by the COVID-19 pandemic, the order to dissolve BTGCA is being issued in 2021. Accordingly, the Parties have agreed, and the Court has ruled after discussions with all counsel that the BTGCA members entitled to distribution of net assets are those who engaged in relevant burley farming activities in the appropriate states during crop years 2015-2020. There is no statutory or other basis in law to extend the eligible membership years to before 2015. Further, as a practical matter, the Court notes that the vast majority of eligible Class Members have been engaged in relevant burley tobacco farming activities in more than one of the years 2015-2020, such that defining class membership to encompass all of those years is not only required by law but also fair and equitable as among the Class Members. In addition, those persons who were involved in burley tobacco farming in the 2020 crop year but not in the 2015-2019 crop years appear to

comprise an extremely small percentage of Class Members. As such, it is only equitable to find the years 2015-2020 to be the relevant years for defining class members, in spite of any ambiguity as to how these five years should be measured.

The $1.5 Million Nonprofit Funding.

22. The majority of the class member objections opposed the provision in the Partial Settlement that BTGCA would spend $1.5 million of its assets, to fund a nonprofit tobacco advocacy entity in order to perpetuate part of BTGCA's mission. The objections raised the concern that such funds should be included in BTGCA's net assets and distributed to its members rather than paid to fund a nonprofit tobacco advocacy entity. Some objections also raised the concern that such an expenditure of BTGCA funds would be unlawful under KRS 272.235 or otherwise. Another concern expressed at the Hearing was that the expenditure could be construed as inequitable to Class Members who have ceased to grow tobacco and would therefore receive no benefit from the advocacy of the funded nonprofit organization.

23. At the time of the initiation of this lawsuit, BTGCA's duly elected board of directors had resolved to reserve $3.5 million for future operations, focusing on advocacy for tobacco farmers, while distributing the remainder of net assets to members.[15] In the course of the mediation, the Parties agreed to the $1.5 million

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

provision involving funding of a separate nonprofit tobacco advocacy entity. The Court finds that this concept was a good-faith compromise and is commendable in theory.

24. Furthermore, this provision strikes a balance between the interests of Class Members, such as its Board Members, who did not want BTCGA to be dissolved, and those who did. The proposed funding of a broader tobacco grower nonprofit advocacy group could continue important parts of the authorized and stated purposes of an agricultural cooperative under Sections 111 and 211 of KRS chapter 272. The Court heard testimony and argument concerning the advocacy efforts of BTGCA on behalf of tobacco farmers, which resulted in substantial benefits to such farmers as part of the federal stimulus package associated with the COVID-19 pandemic and that continuing such efforts is a driving force behind the desire to fund a tobacco advocacy nonprofit. In addition, the funding of the nonprofit tobacco advocacy entity as part of the Partial Settlement avoids a situation in which the competing interests of Class Members who continue to grow tobacco or will grow tobacco in the future would be inequitably disadvantaged by the complete loss of BTCGA's advocacy function relative to those who have ceased to grow tobacco. Based on the evidence presented, the Court acknowledges that some members will continue to grow tobacco, even if it is not burley, and may desire an advocacy organization. However, the Court notes that no strong support was voiced by any grower members to fund such an organization.

25. Pursuant to KRS 272.111, an agricultural cooperative association such as BTGCA is authorized "to engage in *any activity* in connection with the production, harvesting, marketing, selling, preserving, drying, processing, canning, packing, grading, storing, handling, shipping or utilization of the agricultural products owned, leased, handled or marketed by its members and other farmers, with the manufacture or marketing of the by-products thereof, in connection with the manufacturing, selling, or supplying to its members and other farmers of machinery, equipment or supplies, in the financing of the above-enumerated activities, in performing or furnishing services of economic or educational nature, on a cooperative basis for those engaged in agriculture, or in any one or more of the activities specified herein." (Emphasis added.) KRS chapter 272 provides further, broader authority for an agricultural cooperative association like BTGCA, "[t]o engage in any activity in connection with ... furnishing services of economic or educational nature" relating to the relevant agricultural products, "[t]o establish and accumulate reasonable reserves," and

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

KRS 272.211.

26. Given the broad statutory authority for a wide range of activities by BTGCA, the Court finds that BTGCA, through action of its duly elected board of directors, has the legal authority to spend $1.5 million of its dissolution assets to fund a nonprofit entity that advocates for tobacco farmers. The dissolution statute, KRS 272.325, does not prohibit such expenditure. More importantly, the Court recognizes it is a compromise reached by the Board and the Plaintiffs as part of a settlement agreement that would result in subsequent dissolution of BTGCA only if effectuated (including the expenditure). Moreover, KRS 272.325(3) demonstrates a basic public policy in favor of—and, at a minimum, not inconsistent with—spending of part of a dissolving agricultural cooperative association's net assets to fund "any nonprofit farm organization operating within the areas served by the cooperative."

27. The mission of the new nonprofit entity, if successful, includes (i) serving and acting as a liaison on behalf of tobacco growers of all types of tobacco with tobacco leaf dealers and tobacco purchasers, (ii) advocacy and lobbying for tobacco producers/growers and land owners involved in the production of all types of tobacco, and (iii) other services and support of education and research beneficial to growers of tobacco.[16]

---

[16] *See* March 24, 2021 Supplemental Filing Re: Initial Corporate Actions by Burley and Dark Tobacco Producers Association, Inc., at Bylaws for Burley and Dark Tobacco Producers Association, Inc., at Article I.

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

29. Due to the objections and the Court's own concerns it reserved its ruling on the $1.5 million distribution at the close of the Fairness Hearing and requested the Parties and the objectors mediate. The Court advised the Parties if they could not reach an agreement at this mediation, that the Court would make a ruling, based on what disposition would be most fair, reasonable, and equitable to all of the class members. Unfortunately, the mediation proved unsuccessful, so the Court now takes on the task of adding those governors it believes will allow the disbursement to be fair, reasonable, and equitable. Therefore, the Court cannot find this aspect of the Partial Settlement to be fair, reasonable, and equitable without the following restrictions:

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

31. The organization may have one employee to provide administrative support to the non-profit; this individual will be allowed a salary of $45,000 per year and the organization will be allowed $15,000 per year for overhead costs.

32. The sum of $1.5 million will be disbursed to the new organization, and it may fund the $60,000 from the principal, other than those costs, the new organization may only make use of the interest income on that $1.5 million. Thereafter, the principal will not be touched for two years.

33. The non-profit has two years from the entry of this order in which to become self-sufficient, as the Parties represented was its goal and intent. At the end of those two years, the Court shall conduct a hearing at which time the Board will present proof it has become self-sufficient. Should the Court find that the goal has been met, then the $1.5 million will be immediately distributed to the class members. If the Court finds that the organization has not become self-sufficient, the issue of the $1.5 million shall be given to a vote of the class members: (1) allow the organization to retain the $1.5 million as an asset in order for the organization to remain an ongoing concern, thus demonstrating their full support for this new organization, or (2) allow the funds to be distributed to the class members. The majority vote shall control as to whether the $1.5 million remains an asset of the organization or is promptly disbursed to the class members.

34. In the case that the $1.5 million is returned to the class members, the McBrayer firm, as Class Counsel, will receive 7.5% of that amount, as it is anticipated that class counsel will implement the voting processes just as it implemented the original distribution.

35. This method of disposition of the $1.5 million ensures that the non-profit receives the assistance needed, per the representations of BTGCA, but also allows the class members to directly voice their support, or lack thereof, for the organization. This outcome is fair, reasonable, and equitable for the class members, while also honoring the terms of the Partial Settlement.

ORDER

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

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

3. Beginning immediately after the entry of this Opinion and Order, the business of BTGCA shall be concluded, and BTGCA shall be judicially dissolved and its net assets liquidated and distributed, including an equitable distribution of the $7 million net operating loss to help offset tax impact from the dissolution distribution as allowed

by law, after applicable costs and expenses, to the Settlement Class, under the auspices of the BTGCA Dissolution Committee, which shall have all powers and authorities of a dissolution committee or a board of directors of a Kentucky agricultural cooperative association under Kentucky law, including standing and control of all causes of action of the BTGCA and full power to compromise any debts and claims, and shall undertake such actions to wind up and dissolve BTGCA as the Dissolution Committee deems may be reasonable and necessary, subject to monthly reports, monitoring, and further Orders of this Court.

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

(i) partially released BTGCA and partially released the BTGCA's past and present officers, directors, and employees and their personal representatives, heirs and assigns (collectively, "the Partially Released Parties") from any and all liabilities, rights, claims, actions, causes of action, demands, damages, penalties, costs, attorneys' fees, losses, and remedies, whether known or unknown, existing or putative, suspected or unsuspected, liquidated or unliquidated, legal, statutory, or equitable, including those that result from, arise out of, are based upon, or relate to conduct that was alleged or could have been alleged in this action, including direct, joint, or several derivative or other claims of any and all Settlement Class, however they may exist or arise—except and only to the extent of and up to $5 million in coverage under BTGCA insurance policy # NY 19DOLV03934NV (and renewals and extensions thereof) underwritten by Navigators Insurance Company and any other available insurance coverages for any Partially Released Parties; and

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

5. The Settlement Class members, each on behalf of itself, himself, or herself

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

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

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

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

9. Pursuant to CR 54.02, and other applicable law, this is a final and appealable judgment as to the above matters, and there is no just cause for delay. Provided, however, the Court retains jurisdiction for oversight of the judicial dissolution, the distribution process, determination of any Class Member eligibility, Burley and Dark Tobacco Producers Association, Inc., and other unresolved portions of the Plaintiffs' pleadings, all being subject to further Orders of the Court.

Entered this 11th day of June, 2021.

Julie Muth Goodman

HON. JULIE MUTH GOODMAN
JUDGE FAYETTE CIRCUIT COURT

CLERK'S CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this filing was served this JUN 11 2021 day of June, 2021, via mail upon the objectors listed on Schedule A at the addresses given in their respective objections and via the Court Net e-filing system and via electronic mail upon the following

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

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

Robert E. Maclin, III, Esq.
Katherine K. Yunker, Esq.
Jason R. Hollon, Esq.
McBrayer PLLC
201 E. Main Street, Suite 900
Lexington, Kentucky 40507-1361
remaclin@mcbrayerfirm.com
kyunker@mcbrayerfirm.com
j.hollon@mcbrayerfirm.com
Counsel for Named Plaintiffs and Settlement Class Representatives

John N. Billings, Esq.
Christopher L. Thacker, Esq.
Richard J. Dieffenbach, Esq.
Billings Law Firm, PLLC
145 Constitution Street
Lexington, Kentucky 40507
nbillings@blfky.com
cthacker@blfky.com
rich.dieffenbach@blfky.com
Counsel for Defendant Greg Craddock

W. Henry Graddy, IV, Esq.
Dorothy Rush, Esq,
W.H. Graddy & Associates
137 N. Main Street
Versailles, Kentucky 40383
hgaddy@graddylaw.com
dtgrush2@gmail.com
Counsel for Objectors Roger Quarles, W. Gary Wilson, Ian Horn, Richard Horn, Campbell Graddy and David Lloyd, and Objector Roger Quarles

David B. Tachau
Tachau Meek PLC
101 S. Fifth St., Ste. 3600
PNC Tower
Louisville, Kentucky 40202-3120
dtachau@tachaulaw.com
Counsel for Billings Law Firm, PLLC

Vincent Riggs
FAYETTE CIRCUIT CLERK

Clerk, Fayette Circuit Court

Schedule A

J.B. Amburgey
David Barnes
Jacob Barnes
Robert E. Barton
Ben Clifford
Lincoln Clifford
Wayne Cropper
Josh Curtis
Clay Darnell
George M. Darnell
Jennifer Darnell
Brent Dunaway
Michael Furnish
William David Furnish
Leonard Edwin Gilkison
Billy G. Hall
Dudley Wayne Hatcher
Steve Lang
Berkley Mark
Ben Quarles
Bruce Quarles
Steven Quarles
Travis Quarles
Jerry Rankin
Richard Sparks
Jarrod Stephens
Addison Thomson
William A. Thomson
Danny Townsend
Judy Townsend