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

HAYNES PROPERTIES, LLC, et al.

PLAINTIFFS

**v. MOTION TO ALTER OR AMEND AMENDED OPINION AND ORDER  
APPROVING PARTIAL SETTLEMENT  
AND NOTICE**

BURLEY TOBACCO GROWERS COOPERATIVE ASSOC., et al.

DEFENDANTS

\* \* \* \* \*

Come now objecting class members, ROGER QUARLES, W. GARY WILSON, IAN HORN, RICHARD HORN, CAMPBELL GRADY, AND DAVID LLOYD, and by and through Counsel and MOVE this Court to Alter or Amend the “Amended Opinion and Order Approving Partial Settlement,” entered July 28, 2021, as follows:

Civil Rule 59.05 authorizes a party to move the court to alter or amend a final judgment provided the motion is served not later than 10 days after entry of the order. This Court’s Amended Opinion and Order was entered on July 28, 2021.

Previously, this Court entered an Opinion and Order Approving Partial Settlement on June 11, 2021. The Burley Tobacco Growers Cooperative Association (“BTGCA”) moved the Court to alter or amend that opinion and order which motion was limited to the restrictions on the \$1.5 million distribution to a new tobacco Non-profit, the Burley and Dark Tobacco Producers Association (“BDTPA”), as explained in paragraph 29, and found in that opinion and order at paragraphs 30, 31, 32, 33, 34 and 35. Specifically, paragraph 33 ordered that at the end of two years, if the BDTPA proves that it is self-sufficient, “then the \$1.5 million will be immediately distributed to the class members.” Alternatively, if the Court found that the BDTPA had not

become self-sufficient, the Court directed that this matter would be subject to a vote of the class members who would decide that: “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.” Page 20. At paragraph 35, the Court found that this method of disposition of the \$1.5 million “...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.”

At that Opinion and Order, page 25, paragraph 8, the Court addressed the matter of unclaimed distributions to Settlement Class Members, directing that amounts remaining unclaimed 90 days after distribution shall revert back for re-distribution, provided that any unclaimed amounts (residual funds) remaining 90 days after the last round of distribution shall be held pending further orders of the Court. This language addressed the second part of these Objectors objection to the proposed Partial Settlement, at page 12, paragraph 12 regarding residual funds.

On June 22, 2021, the BTGCA filed a Motion to Alter or Amend the June 11, 2021 Opinion and Order, with specific objections to Opinion and Order paragraphs 28, 30, 31, 32, 33, 34, and 35. However, following these specific objections, at page 6, the BTGCA proposed an alternative, as follows: “If...the Court is unwilling to approve the Partial Settlement without a “return” of the approximately \$1.3-\$1.4 million to this case, the Cooperative at least asks the Court to modify paragraphs 33-34...” to allow the Settlement Administrator and Class Counsel simply mail to all Class Members who have filed W-9’s a notice and return postcard on which each Class Members may request his/her share of the remaining balance of the endowment as a supplemental distribution.

On June 8, 2021, these Objectors filed their Response to the BTGCA motion noting that it appeared to be a Civil Rule 59 motion in response to a final and appealable “Order Approving” but that it failed to meet any of the four basic grounds for such a motion, but noting the alternative suggested by the BTGCA concerning a vote by Class Members. On June 8, 2021, these Objectors also filed a motion to order the parties to return to mediation to seek agreement on how to implement the Class Member voting option.

This matter was heard on June 9, 2021. Following argument of counsel, the Court indicated that it was not willing to refer the matter back to mediation and the Court questioned counsel concerning areas of potential agreement concerning the Class Member voting and related matters. The Objectors and the BTGCA were given one week to consult with clients and respond.

On July 28, the Court entered an “Amended Opinion and Order Approving Partial Settlement.”

### **SPECIFIC REQUESTS TO ALTER OR AMEND**

1. Objectors respectfully request that this Court amend ¶ 2 under “ORDER” at page 23.

That paragraph recites:

The sum of \$1.5 million from BGTCA’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 Cass Counsel and further Orders of this Court.

Amended Opinion and Order Approving Partial Settlement at 23. This paragraph is unchanged from the June 11, 2021, Opinion and Order. However, the amended paragraph 31 on page 20 directs that the \$1.5 million grant fund shall be held and administered by the Dissolution Committee, and that after the first and second year distributions to the “Nonprofit” the Dissolution Committee shall invest the remaining grant funds as a “prudent investor.” The Court is now requested to amend paragraph 2 on page 23 to reflect that the sum of \$1.5 million shall be held

and administered by the Dissolution Committee 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.

2. Objectors respectfully request the Court to amend paragraph 31 on Page 20, 21 as follows: Delete the award of two years of interest income in addition to an award of \$100,000.00 for the first year of operation and \$75,000.00 for the second year of operation. The terms of compromise that the undersigned heard on July 9, 2021 were for the fixed amounts of \$100,000.00 and \$75,000.00 in year one and two. Adding interest income to those amounts was not agreed to by the undersigned nor by the Objectors. See Objectors Consent filed July 16, 2021.

3. Objectors respectfully request the Court to amend paragraph 32 on Page 21 as follows: Delete the opening sentence beginning with, “Within ninety (90) days following the end of the Burley and Dark Tobacco’s first year.” Replace that sentence with the following: “When the Class Counsel and the Dissolution Committee mail their initial distribution check to all qualified Class Members, meaning those who have a current, valid W-9 on file with the Settlement Administrator, that distribution shall include a Notice that explains the content of the option and the return postcard.” Delete the sentence that reads: “Class Counsel shall cause these mailings to be sent no later than eight months into the Burley and Dark Tobacco’s second year.”

These Objectors believe that there is no valid reason to delay the vote. The first distribution mailing will be the mailing that will get the most attention from Class Members. The Burley and Dark Tobacco organization benefits from having this vote take place as soon as possible.

By separate pleading, the undersigned counsel is filing a Motion for a Fee Award and a Motion for an Order concerning notice, opportunity to object and a second fairness hearing. The

undersigned will ask the Court to include written Notice of the Objectors' Counsel's motion for a fee award to be included in the mailing of the initial distribution to all qualified Class Members.

4. Objectors respectfully request the Court to amend paragraph 33 as follows: Replace "60 (sixty) days" with 90 (ninety) days.

5. Objectors respectfully request the Court to delete all of Paragraph 34. This was not agreed to by the undersigned Counsel for the Objectors on June 9, 2021, nor was it considered or agreed to by the Objectors. A new paragraph 34 should instruct Class Counsel and Settlement Administrator to verify all postcards that elect to endow the Nonprofit and after deducting expenses determine how much of the endowment as held by the Dissolution Committee shall be distributed to the Burley and Dark Tobacco Nonprofit. Class Members who have not returned a postcard within the ninety (90) day period shall be given at least one written reminder and a second ninety (90) day period to select an option. The proportion of funds of Class Members who do not vote shall be added to the residual funds and governed by paragraph 8 under the ORDER on page 27 of the Opinion and Order.

Objectors respectfully request the Court to amend paragraph 35 to add this sentence: "Graddy, as counsel for the Objectors, has filed a Motion for a Fee Award of not to exceed 24% of the funds added to the Common Fund, which motion will be subject to Notice requirements, an opportunity to Object and a second Fairness Hearing."

### **NOTICE**

The parties will take notice that the Objectors will bring the foregoing on for hearing via Zoom conference call, on August 20, 2021 at the hour of 10:00 a.m. or as soon thereafter as counsel may be heard.

Respectfully submitted,

/s/ W. Henry Graddy, IV

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### **CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate of the foregoing was served via E-Mail, on this the 6th day of August, 2021 on the following:

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