

COMMONWEALTH OF KENTUCKY  
FAYETTE CIRCUIT COURT  
FOURTH DIVISION

Civil Action No. 20-CI-00332

*filed electronically*

HAYNES PROPERTIES, LLC, *et al.*

PLAINTIFFS

v.

BURLEY TOBACCO GROWERS  
COOPERATIVE ASSOCIATION, *et al.*

DEFENDANTS

Settlement Class Representatives'  
Motion for Ruling re Additional Time for Class Members

NOTICE

Please take notice that this motion will come on for hearing before the Court at the Robert F. Stephens Courthouse, 120 North Limestone, Lexington, Kentucky 40507, on Friday, April 9, 2021, at 10:00 a.m. or as soon thereafter as counsel may be heard.

MOTION

Settlement Class Representatives Haynes Properties, LLC, Mitch and Scott Haynes d/b/a Alvin Haynes & Sons, and S&GF Management, LLC (collectively "Settlement Class Representatives") hereby move for an order finding that settlement class members may have additional time to establish their membership in the settlement class and to submit valid W-9 forms, as outlined herein.

In their Memorandum in support of the Motion for Ruling re Sufficiency of Notice filed February 16, 2021 (pp. 13-14; footnotes omitted), Settlement Class Representatives stated:

Work has begun by the settlement administrator and Class Counsel to verify documents received, identify obvious deficiencies, and notify the submitters, giving them an opportunity to cure the deficiencies. It is also the plan that once the settlement administrator assesses that it has received most of any documents that were mailed by the deadline, it will send a follow-up communication to those

on the Co-op's confirmed-membership list from whom nothing has been received. Class Counsel takes the position that those who were confirmed on the Co-op's list or who identified themselves as possible class members by the 1/29/21 deadline should be allowed a reasonable amount of time to complete or supplement their documents to establish their membership or to submit a proper W-9 so that they may be paid a distribution share. Further time may be necessary to obtain the Court's decision when there is a dispute about membership or eligibility.

Settlement Class Representatives now follow up and ask the Court to allow additional time for submission of documents and to set guidelines for those who are not confirmed class members and whose first submission is after the 1/29/21 deadline, and state as follows:

1. The group preliminarily certified as a CR 23.02(a) and (b) settlement-only class includes those meeting the following definition:

A person 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 2015–2020 annual Burley tobacco growing seasons.

Amended Preliminary Certification Order, entered November 17, 2020.

2. The Co-op provided a spreadsheet with over 4000 entries of names and addresses of those who had provided documents to the Co-op demonstrating that they met the settlement class definition at least one growing season in 2014–2020. The Order Directing Notice of Proposed Settlement, entered November 17, 2020 (“Notice Order”), recognized those with 2015–2020 documentation as settlement class members (approximately 3,200 individuals/entities on the Co-op spreadsheet) and that those with 2014 documentation possibly could establish membership with documentation for a later year (approximately 850 individuals/entities on the Co-op spreadsheet). Notice Order ¶ 4. The Court directed that the long-form notice be mailed to all those on the Co-op spreadsheet, with a blank W-9 (tax identification number) form, and a business reply envelope addressed to the settlement administrator. *Id.* ¶ 8.a. It also directed a notice program through various media and channels to reach other potential settlement class members who were not on the Co-op spreadsheet. *Id.* ¶ 8.b.

3. The Notice Order set January 29, 2021, as the deadline for various steps by settlement class members or interested persons, including to send:

- document(s) to establish their membership in the settlement class, if not one of the approximately 3200 entries on the Co-op spreadsheet already documented as involved in burley tobacco production during 2015-2020 (§11);
- a completed W-9 form, to be eligible to be paid for the distribution of the Co-op's net assets if the proposed settlement is approved (§11); and/or
- a written objection to a determination regarding their settlement class membership.

4. The notice program was implemented as ordered. *See, generally*, 2/16/21 Motion for Ruling re Sufficiency of Notice, Exhs. A and B (Declarations and attachments). The long-form notice repeatedly and prominently announces the 1/29/21 deadline and that every settlement class member must act by the deadline to establish or verify class membership and to enable payment from an eventual distribution if the proposed settlement was approved. In addition, the long-form notice explains how class membership could be established or verified, the necessity of submitting a completed W-9, various methods of submitting documents, and how to contest an adverse membership determination. *See* long-form notice<sup>1</sup> with deadline and documentation statements highlighted, attached hereto as Exhibit 1. The long-form notice served as the FAQ page of the settlement-administration website, [www.BTGCAsettlement.com](http://www.BTGCAsettlement.com), and the website's homepage — like the short-form (publication) notice and the first page of the long-form

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<sup>1</sup> A copy of the long-form notice was attached as Exhibit 1 to the Declaration of Steven Weisbrot, filed 2/16/21 as Exhibit A to the Motion for Ruling re Sufficiency of Notice.

notice — emphasized the 1/29/21 deadline. Further, the brief short-form notice<sup>2</sup> conveyed that every interested person needed to act promptly (by the 1/29/21 deadline), including the warning: “You must verify that you are a class member and submit a W-9 to receive a payment.”

5. Many confirmed settlement class members (from the Co-op spreadsheet) and other interested persons heeded the warnings and mailed, faxed, uploaded, or otherwise submitted a W-9 or grower documentation (or both) by the 1/29/21 deadline.<sup>3</sup> However:

- Over 1050 of the confirmed class members from the Co-op spreadsheet submitted nothing or have made no other discernable response to the notice.
- Over 575 persons who are not confirmed class members have submitted a W-9, but no documents to establish their class membership including those listed on the Co-op spreadsheet as from 2014 only.
- Over 80 persons who are not confirmed class members have submitted documents to establish their class membership but no W-9.
- Other persons, both those who are confirmed class members and those who are not, have submitted documents that are deficient in some way, *e.g.*, an unsigned W-9, partially cut-off Form FSA 578, or contract dated outside the class years, or are otherwise insufficient to establish class membership or eligibility to be paid.
- Other persons have simply filled out the generic contact information but provided no other information.

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<sup>2</sup> A copy of the short-form notice was included in Exhibit 1 attached to the Declaration of Brian S. Powers, filed 2/16/21 as Exhibit B to the Motion for Ruling re Sufficiency of Notice.

<sup>3</sup> In total, the Settlement Administrator received a W-9 or alleged grower documentation from approximately 3330 confirmed settlement class members (from the Co-op spreadsheet) and other interested persons/entities.

- Some may have sent or attempted to transmit documents that did not reach the settlement administrator.
- Over 45 submissions of W-9s from confirmed members or documentation from those who are not confirmed members have been postmarked or otherwise transmitted after the 1/29/21 deadline; some of these include an explanation about why the submission missed the deadline<sup>4</sup> and for some it is unknown.

6. In addition, no determination was issued before January 29, 2021, that any unconfirmed person or entity was or was not a settlement class member; thus, it was impossible for any such person or entity to file an objection to an adverse determination with the Court before the 1/29/21 deadline or to know that their W-9 or documentation was deficient.

7. Settlement class members will be precluded by the settlement if approved and the resulting judgment on the claims for dissolution and distribution, regardless of whether they are identified and eligible for payment in the distribution. Class Representatives think it is important to due process, is consistent with the proposed settlement, and furthers the efficient administration of justice that settlement class members be given additional time to provide documents to establish their class membership (if necessary) and their eligibility for sharing in the distribution of net assets following the Co-op's dissolution. Therefore, Class Representatives propose that the Court enter an Order providing as follows in ¶¶ a.-e.:

- a. Those from whom grower documents or a W-9 were received on or before April 5, 2021 will be considered to be on-time.

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<sup>4</sup> For example, Settlement Class Counsel have heard from (a) individuals that did not submit documents until after the 1/29/21 deadline because they winter in Florida and the mail did not reach them until after 1/29/21, (b) an individual who had a medical emergency in their family and missed the 1/29/21 deadline, and (c) individuals who simply did not realize that further action was required until after the 1/29/21 deadline.

- b. Confirmed settlement class members from whom a W-9 has not been received by April 5, 2021, shall be notified via an individual notice that a valid W-9 must be received by a date certain stated in said notice. Class representatives suggest that the date be 30-45 days from the date the individual notices are to be mailed.
- c. Confirmed or possible settlement class members who submitted documents on-time, but that are deficient, incomplete, or otherwise insufficient to establish class membership (if applicable) or eligibility for payment,<sup>5</sup> shall be notified via an individual notice that they must submit sufficient, complete, and valid documents in time for those documents to be received by a date certain stated in said notice. Class representatives suggest that the date be 45-60 days from the date such individual notices are to be given. Furthermore, at the discretion of the settlement administrator, after consultation with class counsel, if such additional documents are also deficient, incomplete, or otherwise insufficient to establish the submitter's class membership (if applicable) or eligibility for payment, then the submitter may be given an additional, abbreviated opportunity to supplement the same.
- d. Those who can establish that they submitted class-membership documents or a W-9 on or before the 1/29/21 deadline, but from whom no document has been received, may provide proof of the earlier submission and sufficient, complete, and valid documents to establish class membership (if applicable) and eligibility

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<sup>5</sup> This category includes those persons who have, for example, submitted only a W-9 but are not confirmed class members.

for payment, to be received no later than the same date certain set pursuant to the provisions of ¶ b.

- e. Anyone else from whom documents are received after April 5, 2021, must establish good cause for the lateness of the submission. Furthermore, at the discretion of the settlement administrator, after consultation with class counsel, if documents first received after April 5, 2021, are deficient, incomplete, or otherwise insufficient to establish the submitter's class membership (if applicable) or eligibility for payment, then the submitter may be determined to be ineligible for any distribution of the Co-op's net assets.

### CONCLUSION

WHEREFORE, Settlement Class Representatives respectfully request that the Court enter an order finding that settlement class members may have additional time to establish their membership in the settlement class and to submit valid W-9 forms, as outlined above.

Respectfully submitted,

/s/ Jason R. Hollon

Katherine K. Yunker (KBA # 79592)

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*Settlement Class Counsel*

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was served this 6th day of April, 2021, electronically via the e-filing system, and via electronic mail upon the following:

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