

**COMMONWEALTH OF KENTUCKY
FAYETTE CIRCUIT COURT
FOURTH DIVISION**

Civil Action No. 20-CI-00332

HAYNES PROPERTIES, LLC,
et al.

PLAINTIFFS

vs.

**Order Directing Notice of Proposed Settlement to
Settlement Class and Scheduling Fairness Hearing**

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

DEFENDANTS

On motion of the Class Representatives to direct notice of the proposed settlement to the settlement class and to schedule a fairness hearing for the consideration of the proposed settlement, after a hearing held on November 10, 2020, in which the Court heard argument and objections from Class Counsel and counsel for the parties along with statements from Steven Weisbrot of Angeion Group, LLC and the Class Representatives, and the Court being otherwise duly and sufficiently advised, IT IS HEREBY ORDERED AND ADJUDGED as follows:

1. Class Representatives' Motion to Direct Notice of Proposed Settlement to Class and Schedule Fairness Hearing for Consideration of the Proposed Settlement is GRANTED.
2. Civil Rule 23.05(2) allows the Court to approve the proposed settlement "only after a hearing and on a finding that it is fair, reasonable, and adequate." Any member of the class that would be bound by the settlement has the right to object to the proposal (CR 23.05(5)) and the Court must "direct notice in a reasonable manner to all class members who would be bound by the proposal." CR 23.05(1). "An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an

opportunity to present their objections.” *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950).

3. “The Due Process Clause ... gives unnamed class members the right to notice of the settlement of a class action”; “[t]o comport with the requirements of due process, notice must be reasonably calculated to reach interested parties” *Fidel v. Farley*, 534 F.3d 508, 513-14 (6th Cir. 2008) (internal quotations marks and citations omitted). “Due process does not ... require actual notice to each party intended to be bound by the adjudication of a representative action.” *Id.* at 514 (emphasis in original). The rules do not provide a specific method of notice, and only require that notice be given in a “reasonable manner.”

4. The Co-op has produced a spreadsheet that contains over 4,000 names and addresses of individuals and entities that provided documentation demonstrating their involvement with the production of burley tobacco in Kentucky, Indiana, Missouri, Ohio, or West Virginia at some point during 2014-2020. Many of the individuals and entities on the Co-op spreadsheet are members of the Settlement Class and, for example, those that last provided documentation in 2014 could establish membership in the Settlement Class by providing certain documentation for a later year.

5. The Court finds that both the proposed long-form notice, and short-form notice, along with the proposed envelope, as amended in the supplement to Class Representatives’ motion filed November 12, 2020, are reasonable and sufficient to provide notice to known and unknown members of the Settlement Class. The notices and envelope increase the likelihood that class members will take the time to read the notice, learn of their rights, and what action they must take. The notice text clearly and concisely states the information in plain and easily understood language, and describes the nature of the action, the definition of the class certified, and

the claims and issues. Moreover, the notice text conveys that a class member may enter an appearance through an attorney if they wish, may appear at the fairness hearing, and may object to the proposed settlement. The notice text accurately states the binding effect of the proposed settlement if approved by the Court. Further, the notice text conveys a clear description of the potential attorney's fee award(s), the contemplated creation of an advocacy/educational nonprofit, and the consequent limitation of claims against the Co-op and its officers and directors.

6. Accordingly, the Court APPROVES the proposed long-form notice, short-form notice, and envelope in the format attached to the Class Representatives' supplement to their motion, filed November 12, 2020.

7. The Class Representatives have proposed a notice program that is reasonable and designed to apprise members of the Settlement Class of the pending action, the terms of the proposed settlement, and how they can get more information or voice any objection they may have to the proposed settlement. The notice program further serves to motivate members of the Settlement Class to take action to secure their *per capita* share of the distribution of the Co-op's net assets. The notice program is reasonably designed to provide informative notice to both the members of the Settlement Class contained on the Co-op's spreadsheet and those who are not contained thereon and whose identity and address are unknown.

8. As such, the Court APPROVES the following notice program:

- a. The settlement administrator will complete a direct mailing to the individuals and entities listed on the Co-op's spreadsheet including a copy of the long-form notice along with a blank W-9 and return envelope. The settlement administrator will first conduct a search of the National Change of Address database for each individual and entity listed on the Co-op's spreadsheet. The settlement administrator will receive and process any mailings returned as

undeliverable, conduct a further address verification on the returned mailings, and conduct a second mailing to any updated addresses.

- b. The settlement administrator will further implement a program to reach members of the Settlement Class not contained on the Co-op's spreadsheet as follows:
 - i. A digital banner and social media advertisement campaign;
 - ii. Digital banner advertisements placed on www.tobaccobusiness.com;
 - iii. A 1/4 page black and white advertisement run in *Farmers Pride* for two consecutive publications;
 - iv. A press release regarding the proposed settlement; and
 - v. An outreach campaign to transmit to relevant governmental offices (e.g., agricultural extension offices, farm services agency, etc.) and non-governmental organizations interacting with burley farmers (e.g. Farm Bureaus, tobacco warehouses, receiving stations, etc.) in each county in Indiana, Kentucky, Missouri, Ohio, and West Virginia in which said advertisement/short-form notice is most likely to reach individuals/entities that grew burley tobacco at any point in one of the 2015-2020 crop years in those five states.
- c. **The settlement administrator will set up and maintain a website** accessible by members of the Settlement Class and the public. The website will contain the long-form notice, the short-form notice, the partial settlement agreement, the most recent complaint, the Court's decisions regarding class certification and the proposed settlement, relevant filings made after the initial notice mailing, and other relevant information. The website will allow potential members of the Settlement Class to confirm their class membership, will accept documentation to establish membership of individuals and entities in the Settlement Class, and will accept online W-9 submissions with e-signatures.
- d. The settlement administrator will maintain a call center accessible by members of the Settlement Class and the public. The call center will be staffed by a live operator and will be able to direct callers to the website for more information and provide instruction as to how to confirm their or a related entity's

listing on the Co-op's membership spreadsheet and how to submit documentation to establish membership in the Settlement Class. The call center will be able to answer any frequently asked question regarding the proposed settlement.

- e. The settlement administrator would be responsible for receiving and verifying the W-9 documents and will send a deficiency notification to those individuals or entities that submit an incomplete or inconsistent W-9 documents.

9. The Court finds that the retention of Angeion Group, LLC is reasonable to facilitate the administration of the notice program approved herein and to administer the proposed settlement in the event the Court approves the same. Accordingly, the request to retain Angeion Group, LLC as settlement administrator is hereby APPROVED.

10. In order to facilitate the fairness hearing, the settlement administrator shall mail out the notice package to the individuals and entities listed on the Co-op spreadsheet on or before December 1, 2020.

11. Members or persons who think they are members of the settlement class shall verify/establish their class membership through the settlement administrator (who will use the Co-op spreadsheet) and send in a completed W-9 tax form to the settlement administrator on or before January 29, 2021.

12. Any person may ask for permission to speak at the fairness hearing and must convey that request in writing to the Court on or before January 29, 2021.

13. Members or persons who have asked for a Court ruling that they are members of the settlement class may object to the determination regarding their settlement class membership or to all or part of the proposed settlement by sending a written objection to the Court (which will distribute the objection to all parties) on or before January 29, 2021.

14. A fairness hearing to consider the proposed settlement pursuant to CR 23.05 is hereby scheduled for February 24, 2021, beginning at the hour of 9:00 a.m. at the Robert J. Stephens Courthouse, 120 N. Limestone, Lexington, Kentucky 40507.

SO ORDERED this 13th day of November 2020.



Hon. Julie Muth Goodman
Judge, Fayette Circuit Court

CLERK'S CERTIFICATE OF SERVICE

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

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