IN THE SUPREME COURT OF THE STATE OF NEVADA

****

AEROGROW INTERNATIONAL, INC.,

Petitioner,

vs.

EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR CLARK COUNTY, THE HONORABLE ELIZABETH GONZALEZ,

Respondents,

and

BRADLEY LOUIS RADOFF, FRED M. ADAMCYZK, THOMAS C. ALBANESE, WILLIAM A. ALMOND, III, MICHAEL S. BARISH, GEORGE C. BETKE, JR. 2019 TRUST, DIANA BOYD, ANNE CAROL DECKER, THOMAS H. DECKER, THE DEUTSCH FAMILY TRUST, JOHN C. FISCHER, ALFREDO GOMEZ, ALFREDO GOMEZ FMT CO CUST IRA ROLLOVER, LAWRENCE GREENBERG, PATRICIA GREENBERG, KAREN HARDING, H.L. SEVERANCE, INC. PROFIT SHARING PLAN & TRUST, H.L. SEVERANCE, INC. PENSION PLAN & TRUST, DANIEL G. HOFSTEIN, KEVIN JOHNSON, CANDICE KAYE, LAURA J. KOBY, CAROLE

Case Number:

District Court Case Number: A-21-827665-B (**Lead Case**), Dept. XI

PETITIONERS' APPENDIX (VOLUME 1 OF 12)

FOR WRIT OF MANDAMUS TO REVERSE DISTRICT COURT'S ORDER GRANTING JOINT MOTION TO COMPEL

L. MCLAUGHLIN, BRIAN PEIERLS, JOSEPH E. PETER, ALEXANDER PERELBERG, AMY PERELBERG, DANA PERELBERG, GARY PERELBERG, LINDA PERELBERG, THE REALLY COOL GROUP, RICHARD ALAN RUDY REVOCABLE LIVING TRUST, JAMES D. RICKMAN, JR., JAMES D. RICKMAN, JR. IRREVOCABLE TRUST, PATRICIA D. RICKMAN IRREVOCABLE TRUST, ANDREW REESE RICKMAN TRUST, SCOTT JOSEPH RICKMAN IRREVOCABLE TRUST, MARLON DEAN ALESSANDRA TRUST, BRYAN ROBSON, WAYNE SICZ IRA, WAYNE SICZ ROTH IRA, THE CAROL W. SMITH REVOCABLE TRUST, THOMAS K. SMITH, SURAJ VASANTH, CATHAY C. WANG, LISA DAWN WANG, DARCY J. WEISSENBORN, THE MARGARET S. WEISSENBORN REVOCABLE TRUST, THE STANTON F. WEISSENBORN IRA, THE STANTON F. WEISSENBORN REVOCABLE TRUST, THE STANTON F. WEISSENBORN IRREVOCABLE TRUST, THE NATALIE WOLMAN LIVING TRUST, ALAN BUDD ZUCKERMAN, JACK WALKER, STEPHEN KAYE, THE MICHAEL S. BARISH IRA, AND THE ALEXANDER PERELBERG IRA,

Real Parties in Interest.

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CERTIFICATE OF SERVICE

Pursuant to Nev. R. App. P. 25, I certify that I am an employee of Brownstein Hyatt Farber Schreck, LLP, and that on this 13th day of May, 2021, I electronically filed, served, and sent via United States Mail a true and correct copy of the above and forgoing that, in accordance therewith, I caused a copy of the **PETITIONERS' APPENDIX (VOLUME 1 of 12) FOR WRIT OF MANDAMUS TO REVERSE DISTRICT COURT'S ORDER GRANTING JOINT MOTION TO COMPEL** to be hand delivered, in a sealed envelope, on the date and to the addressee(s) shown below:

Court:

Judge Elizabeth Gonzalez
Eighth Judicial District of Clark County
Regional Justice Center
200 Lewis Ave.
Las Vegas, NV 89155

Real Parties in Interest:

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Attorneys for Real Parties in Interest FRED M. ADAMCYZK, THOMAS C. ALBANESE, WILLIAM A. ALMOND, III, MICHAEL S. BARISH, GEORGE C. BETKE, JR. 2019 TRUST, DIANA BOYD, ANNE CAROL DECKER,

THOMAS H. DECKER, THE DEUTSCH FAMILY TRUST, JOHN C. FISCHER, ALFREDO GOMEZ, ALFREDO GOMEZ FMT CO CUST IRA ROLLOVER, LAWRENCE GREENBERG, PATRICIA GREENBERG, KAREN HARDING, H.L. SEVERANCE, INC. PROFIT SHARING PLAN & TRUST, H.L. SEVERANCE, INC. PENSION PLAN & TRUST, DANIEL G. HOFSTEIN, KEVIN JOHNSON, CANDICE KAYE, LAURA J. KOBY, CAROLE L. MCLAUGHLIN, BRIAN PEIERLS, JOSEPH E. PETER, ALEXANDER PERELBERG, AMY PERELBERG, DANA PERELBERG, GARY PERELBERG, LINDA PERELBERG, THE REALLY COOL GROUP, RICHARD ALAN RUDY REVOCABLE LIVING TRUST, JAMES D. RICKMAN, JR., JAMES D. RICKMAN, JR. IRREVOCABLE TRUST, PATRICIA D. RICKMAN IRREVOCABLE TRUST, ANDREW REESE RICKMAN TRUST, SCOTT JOSEPH RICKMAN IRREVOCABLE TRUST, MARLON DEAN ALESSANDRA TRUST, BRYAN ROBSON, WAYNE SICZ IRA, WAYNE SICZ ROTH IRA, THE CAROL W. SMITH REVOCABLE TRUST, THOMAS K. SMITH, SURAJ VASANTH, CATHAY C. WANG, LISA DAWN WANG, DARCY J. WEISSENBORN, THE MARGARET S. WEISSENBORN REVOCABLE TRUST, THE STANTON F. WEISSENBORN IRA, THE STANTON F. WEISSENBORN REVOCABLE

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/s/ Wendy Cosby
An employee of Brownstein Hyatt Farber Schreck, LL

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Counsel for Plaintiff Nicoya Capital LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

OVERBROOK CAPITAL LLC, on Behalf of Itself and All Others Similarly Situated, Plaintiff, vs. AEROGROW INTERNATIONAL, INC., CHRIS HAGEDORN, H. MACGREGOR CLARKE, DAVID B. KENT, CORY MILLER, PATRICIA M. ZIEGLER, SMG GROWING MEDIA, INC., and SCOTTS MIRACLE-GRO COMPANY, Defendants.	Case No.: A-21-827665-B Dept. No.: XVI **STIPULATION AND [PROPOSED] ORDER CONSOLIDATING RELATED CASES, APPOINTING LEAD PLAINTIFF AND LEAD AND LIAISON COUNSEL, AND PROVIDING FOR FILING OF CONSOLIDATED COMPLAINT**
NICOYA CAPITAL LLC, on Behalf of Itself and All Others Similarly Situated, Plaintiff, vs.	Case No.: A-21-827745-B Dept. No.: XVI

CHRIS HAGEDORN, H. MACGREGOR CLARKE, DAVID B. KENT, CORY MILLER, PATRICIA M. ZIEGLER, JAMES HAGEDORN, PETER SUPRON,

- and -

AEROGROW INTERNATIONAL, INC., a Nevada Corporation, and AGI ACQUISITION SUB, INC., a Nevada Corporation, SMG GROWING MEDIA, INC., an Ohio Corporation, AND SCOTTS MIRACLE-GRO COMPANY, an Ohio Corporation,

Defendants.

STIPULATION AND [PROPOSED] ORDER CONSOLIDATING RELATED CASES, APPOINTING LEAD PLAINTIFF AND LEAD AND LIAISON COUNSEL, AND PROVIDING FOR FILING OF CONSOLIDATED COMPLAINT

WHEREAS, Plaintiff Overbrook Capital LLC ("Overbrook Capital") filed a complaint in this Court on January 11, 2021;

WHEREAS, Nicoya Capital LLC ("Nicoya Capital") filed a complaint in this Court on January 13, 2021;

WHEREAS, both complaints allege related facts concerning a pending offer to acquire the stock held by the minority shareholders of Aerogrow International, Inc., name similar defendants, and assert the same or substantially similar claims; thus, Overbrook Capital and Nicoya Capital agree that the complaints are related and warrant consolidation;

WHEREAS, Overbrook Capital and Nicoya Capital desire to appoint a leadership structure for Plaintiffs; and

WHEREAS, Overbrook Capital and Nicoya Capital desire to establish a schedule for the filing of a consolidated complaint.

/ / /

THEREFORE, Overbrook Capital and Nicoya Capital stipulate as follows:

1. The *Overbrook Capital LLC* and *Nicoya Capital LLC* cases are hereby consolidated for all purposes, including trial.

2. Nicoya Capital LLC shall serve as Lead Plaintiff.

3. Bottini & Bottini, Inc. shall serve as Plaintiffs' Lead Counsel, and Kemp Jones, LLP shall serve as Plaintiffs' Liaison Counsel. Plaintiffs' Lead Counsel shall have authority over the following matters on behalf of all plaintiffs: (a) convening meetings of plaintiffs' counsel; (b) making assignments regarding initiating, responding to, scheduling, and briefing of motions, determining the scope, order, and conduct of all discovery proceedings, and assigning work to plaintiffs' counsel in such a manner as to avoid duplication of effort and inefficiencies; (c) retaining experts; and (d) other matters concerning the prosecution of or settlement of the cases.

4. Plaintiffs' Lead Counsel shall have authority to communicate with Defendants' counsel and the Court on behalf of plaintiffs. Defendants' counsel may rely on all agreements made with Plaintiffs' Lead Counsel, and such agreements shall be binding.

5. Plaintiffs shall file a Consolidated Complaint by February 26, 2021.

6. This Order shall apply to each subsequently filed action that arises out of the same or substantially same transactions or events as this consolidated action that is subsequently filed in or transferred to this Court. Plaintiffs' Lead Counsel shall call to the attention of the Court the filing or transfer of any related action arising out of similar facts and circumstances as are alleged in this consolidated action and that therefore might properly be consolidated with this action.

/ / /

IT IS SO STIPULATED.

DATED this 17th day of February, 2021.

KEMP JONES, LLP

/s/ Don Springmeyer

Don Springmeyer, Esq. (#1021)
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Francis A. Bottini, Jr., Esq. (*pro hac vice forthcoming*)
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Attorneys for Nicoya Capital LLC

DATED this 17th day of February, 2021.

MUEHLBAUER LAW OFFICE, LTD.

/s/ Andrew R. Muehlbauer

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Attorneys for Overbrook Capital LLC

* * *

ORDER

THE COURT, having reviewed the parties' stipulation and good cause appearing, orders as follows:

1. The *Overbrook Capital LLC* and *Nicoya Capital LLC* cases are hereby consolidated for all purposes, including trial.

2. Nicoya Capital LLC shall serve as Lead Plaintiff.

3. Bottini & Bottini, Inc. shall serve as Plaintiffs' Lead Counsel, and Kemp Jones, LLP shall serve as Plaintiffs' Liaison Counsel. Plaintiffs' Lead Counsel shall have authority over

the following matters on behalf of all plaintiffs: (a) convening meetings of plaintiffs' counsel; (b) making assignments regarding initiating, responding to, scheduling, and briefing of motions, determining the scope, order, and conduct of all discovery proceedings, and assigning work to plaintiffs' counsel in such a manner as to avoid duplication of effort and inefficiencies; (c) retaining experts; and (d) other matters concerning the prosecution of or settlement of the cases.

4. Plaintiffs' Lead Counsel shall have authority to communicate with Defendants' counsel and the Court on behalf of plaintiffs. Defendants' counsel may rely on all agreements made with Plaintiffs' Lead Counsel, and such agreements shall be binding.

5. Plaintiffs shall file a Consolidated Complaint by February 26, 2021.

6. This Order shall apply to each subsequently filed action that arises out of the same or substantially same transactions or events as this consolidated action that is subsequently filed in or transferred to this Court. Plaintiffs' Lead Counsel shall call to the attention of the Court the filing or transfer of any related action arising out of similar facts and circumstances as are alleged in this consolidated action and that therefore might properly be consolidated with this action.

Dated this 18th day of February, 2021

7FB DE4 7734 0FAC
Timothy C. Williams
District Court Judge

ZJ

Respectfully submitted,

KEMP JONES, LLP

/s/ Don Springmeyer
Don Springmeyer, Esq. (#1021)
Michael J. Gayan, Esq. (#11135)
3800 Howard Hughes Parkway, 17th Floor
Las Vegas, Nevada 89169

Attorneys for Nicoya Capital LLC

From: Andrew Muehlbauer
To: Michael Gayan
Cc: Don Springmeyer
Subject: RE: [External] Aerogrow Matters
Date: Wednesday, February 17, 2021 9:43:03 AM
Attachments: image002.png

Hey Michael. Looks good. Please affix my e-signature.

Thanks,

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Muehlbauer Law Office, Ltd.
7915 West Sahara Ave., Suite 104
Las Vegas, Nevada 89117
Telephone: 702.330.4505
Facsimile: 702.825.0141

Licensed in Nevada, Illinois, and Arizona

From: Michael Gayan <m.gayan@kempjones.com>
Sent: Wednesday, February 17, 2021 9:42 AM
To: Andrew Muehlbauer <Andrew@mlolegal.com>
Cc: Don Springmeyer <d.springmeyer@kempjones.com>
Subject: Aerogrow Matters

Hi Andrew,

Please let me know if we may submit this stipulation and order to the Court with your esignature.

Thanks,

Michael Gayan, Esq.

KEMP | JONES
ATTORNEYS AT LAW

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CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Overbrook Capital, LLC, Plaintiff(s) vs. Aerogrow International, Inc., Defendant(s)	CASE NO: A-21-827665-B DEPT. NO. Department 16

AUTOMATED CERTIFICATE OF SERVICE

This automated certificate of service was generated by the Eighth Judicial District Court. The foregoing Stipulation and Order was served via the court's electronic eFile system to all recipients registered for e-Service on the above entitled case as listed below:

Service Date: 2/18/2021

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CASE NO: A-21-829854-B
Department 13

DISTRICT COURT

CLARK COUNTY, NEVADA

BRADLEY LOUIS RADOFF,

Plaintiff,

v.

CHRIS HAGEDORN, an individual; H. MACGREGOR CLARKE, an individual; DAVID B. KENT, an individual; CORY MILLER, an individual; PATRICIA M. ZIEGLER, individual; JAMES HAGEDORN, an individual; PETER SUPRON, an individual; AEROGROW INTERNATIONAL, INC., a Nevada Corporation; AGI ACQUISITION SUB, INC., a Nevada Corporation; SMG GROWING MEDIA, INC., an Ohio Corporation; THE SCOTTS MIRACLE-GRO COMPANY, an Ohio Corporation; DOES I through X, inclusive; and ROE CORPORATIONS I through X, inclusive.

Defendants.

Case No.:

Dept. No.:

COMPLAINT

Business Court Requested:
NRS 92A, *et seq.* Decision Required

Arbitration Exemption Requested:
NAR 3(A) - Disputed Amount Exceeds $50,000

Plaintiff Bradley Louis Radoff ("Plaintiff"), by his attorneys, submits this Complaint as a minority stockholder of AeroGrow International, Inc. ("AeroGrow" or "Company") who has been harmed as a result of Defendants' breaches of fiduciary duties related to a buyout of the public minority interest in AeroGrow by the Company's controlling stockholder ("Merger"), and alleges the following based upon information and belief and counsels' investigation of publicly available

information specified below, except for the allegations relating to Plaintiff, which are alleged on knowledge.

I. NATURE OF THE ACTION

1. AeroGrow (a Nevada corporation) has entered into an Agreement and Plan of Merger ("Merger Agreement") with The Scotts Miracle-Gro Company ("Scotts Miracle-Gro"), its wholly owned subsidiary, SMG Growing Media, Inc. ("SMG Growing Media"), and AGI Acquisition Sub, Inc. ("Merger Sub"), a direct, wholly owned subsidiary of SMG Growing Media (collectively "Scotts"), for the grossly inadequate consideration of $3.00 per share.

2. Scotts Miracle-Gro, an Ohio corporation, currently owns approximately 80.5% of AeroGrow's common stock through SMG Growing Media. As controlling stockholder, Scotts owes fiduciary duties to minority stockholders. However, as described in detail below, Scotts violated its duties by forcing through a Merger that was fundamentally flawed and unfair to minority shareholders (including Plaintiff). Among other things, Scotts engaged in manipulative conduct in order to acquire AeroGrow at a substantial discount to its true value. Specifically, on August 18, 2020, Scotts announced its intent to acquire AeroGrow for $1.75 per share – driving down the price of AeroGrow stock, which had been trading at approximately $5.70 per share. Having put a damper on what had been a steadily increasing stock price, Scotts's manipulations were successful because the price soon fell to just under $3.00 per share. It was at that point that on November 11, 2020, Scotts and AeroGrow entered into the Merger Agreement, pursuant to which minority shareholders like Plaintiff would only receive $3.00 per share – which is almost 50% less than the trading price prior to Scotts's August 2020 announcement. Scotts also impermissibly interfered with the sales process so that, while portrayed as a legitimate transaction, it ostensibly cheats minority stockholders like Plaintiff.

3. Similarly, members of AeroGrow's Board of Directors ("Board") owe their own fiduciary duties to shareholders. As set forth below, the Board breached their duties by, among other things, failing to represent the Company's unaffiliated stockholders diligently in their negotiations with Scotts, agreeing to the unfair and inadequate Merger consideration that they knew to be overly favorable to Scotts (at the expense of Plaintiff), failing to secure the best

consideration reasonably available, and by refusing to request or demand, and thus failing to secure, the inclusion of any measures designed to protect Plaintiff, such as conditioning the Merger on the approval of an independent "Special Committee" and the affirmative vote of an informed majority of the minority stockholders. The Board and the Special Committee did essentially nothing to protect minority stockholders like Plaintiff; rather, the Board has agreed to sell AeroGrow to Scotts in a transaction that is not in the best interests of shareholders as the Company is rapidly growing and does not need capital.

4. Furthermore, a majority of AeroGrow's Board members, as representatives of Scotts, were tainted by significant conflicts of interest with respect to the Merger. These Board members are therefore further liable for breaching their fiduciary duties within their capacities as directors of AeroGrow.

5. If completed, the Merger will mark the end of AeroGrow as a public company and Plaintiff will be divested of his ownership interest. Accordingly, Scotts and the Board have a duty to ensure (and have the burden to show) that both the process leading up to the Merger, as well as the agreed consideration, are entirely fair to Plaintiff (as well as other minority shareholders). Scotts and the Board cannot meet this burden.

6. For these reasons, and as set forth in detail herein, Plaintiff seeks to recover damages resulting from Defendants' violations of their fiduciary duties.

II. JURISDICTION AND VENUE

7. This Court has jurisdiction over all causes of action asserted herein pursuant to the Constitution of the State of Nevada. This Court has jurisdiction over each defendant named herein, because each defendant is a corporation or individual with sufficient minimum contacts with Nevada to render the exercise of jurisdiction by Nevada courts permissible under traditional notions of fair play and substantial justice. AeroGrow International, Inc. and AGI Acquisition Sub, Inc. are corporations incorporated under Nevada law, and certain other defendants are current or former directors and officers of AeroGrow.

8. The Eighth Judicial District is the proper forum, because this Action involves significant issues of Nevada corporate law, because AeroGrow is a Nevada corporation, and

because the merger agreement contains a forum selection clause making this court the proper court for any disputes relating to the merger.

III. PARTIES

9. Plaintiff is, and has been at all relevant times, the owner of 559,299 shares of AeroGrow common stock. Plaintiff has also delivered notice to AeroGrow, before the shareholder vote, written notice of his intent to demand payment for his shares, and has not voted his shares in favor of the Merger, as set forth in NRS 92A.420.

10. Defendant AeroGrow International, Inc. is a Nevada corporation with its principal executive offices located at 5405 Spine Blvd., Boulder, Colorado. As of January 20, 2021, AeroGrow had outstanding 34,328,036 shares of common stock, of which 27,639,294 shares were beneficially owned by the Purchaser Parties and their respective affiliates (including Defendant Scotts Miracle-Gro). The Company is actively traded on the OTCQB for early-stage and developing US and international companies under the symbol "AERO."

11. Defendant AGI Acquisition Sub, Inc. is a Nevada corporation which was formed to effectuate the merger. It is a wholly-owned subsidiary of SMG Growing Media and of Scotts Miracle-Gro Company. The Proxy states that AGI "was incorporated in 2020 by Parent solely for the purpose of entering into the transactions contemplated by the Merger Agreement." Pursuant to the terms of the Merger Agreement, AGI Acquisition Sub, Inc. will merge with and into AeroGrow and Plaintiff will be divested of his stock in the Company.

12. Defendant Scotts Miracle-Gro Company is an Ohio corporation and is a party to the merger agreement with AeroGrow. Through its wholly-owned subsidiary SMG Growing Media, Inc., it owns 80.5% of the common stock of AeroGrow and is a majority and controlling shareholder of AeroGrow. Scotts Miracle-Gro stock is actively traded on the New York Stock Exchange ("NYSE") under the symbol "SMG."

13. Defendant SMG Growing Media is an Ohio corporation and wholly-owned subsidiary of Scotts Miracle-Gro. SMG Growing Media is a holding company of Scotts, through which it owns its 80.5% stake in AeroGrow. SMG Growing Media is a party to the merger agreement with AeroGrow and is a majority and controlling shareholder of AeroGrow.

14. Defendant Chris J. Hagedorn has been a director of AeroGrow since 2013 and Chairman of the Board since November 2016. Hagedorn is the son of Defendant James Hagedorn, who caused him to be appointed as Chairman of AeroGrow. He is a member of the Audit Committee, and the Governance, Compensation and Nominating Committee. Hagedorn was appointed the General Manager of The Hawthorne Gardening Company in October 2014 and was previously appointed Director of Indoor Gardening at Scotts Miracle-Gro in May of 2013. From 2011 to 2013, Mr. Hagedorn served as a Marketing Manager for the North Region at Scotts Miracle-Gro. Mr. Hagedorn was initially appointed to the Board by Scotts Miracle-Gro pursuant to a provision of the Securities Purchase Agreement between AeroGrow and Scotts Miracle-Gro.

15. Defendant H. MacGregor Clarke has been a director of AeroGrow since April 2018 and previously served as a director from July 2009 to March 2013. Clarke currently is a member of the Audit Committee, and served as one of the two members of the Special Committee. He has served as Senior Vice President and Chief Financial Officer of Johns Manville, a Berkshire Hathaway company, since March 2013 and previously served as AeroGrow's Chief Financial Officer from May 2008 through March 2013. From 2007 to 2008, Clarke was President and Chief Executive Officer, and from 2006 to 2007, Chief Financial Officer, of Ankmar, LLC, a garage door manufacturer, distributor and installer. From 2003 to 2006, Clarke was a senior investment banker with FMI Corporation, a management consulting and investment banking firm serving the building and construction industry. From 1997 to 2002, Clarke served as an operating group Chief Financial Officer, then Vice President and General Manager for Johns Manville Corporation, a subsidiary of Berkshire Hathaway Inc. Clarke also served as Vice President, Corporate Treasurer, and international division Chief Financial Officer for The Coleman Company, Inc. Prior to joining Coleman, Clarke was with PepsiCo, Inc. for over nine years.

16. Defendant David B. Kent has been a director of AeroGrow since April 2018. He currently is a member of the Governance Committee, and the Compensation and Nominating Committee. Kent served as one of the two members of the Special Committee. Kent has served in various senior managerial roles and is currently Co-Founder of Darcie Kent Vineyards.

17. Defendant Cory J. Miller joined the AeroGrow Board in 2019 and is currently a member of the Audit Committee. He serves as the Vice President of Finance & Information Technology at The Hawthorne Gardening Company. Miller began his career at Scotts Miracle-Gro in 2000 and has held several roles of increasing responsibility. Previous leadership roles at Scotts include VP of Finance, Merger & Acquisition Integration; VP of Finance, Chief Internal Auditor; VP of Finance, Sales; and VP of Finance, Marketing. Prior to joining Scotts, Miller was a member of the audit practice of Ernst and Young

18. Defendant Patricia M. Ziegler joined the AeroGrow Board in 2019 and is currently the Chief Digital and Marketing Services Officer at Scotts Miracle-Gro. She is a member of the Governance Committee and the Compensation and Nominating Committee. Ziegler began her career at Scotts Miracle-Gro in 2011 and has held several roles within the marketing team with brand, advertising, and digital leadership responsibilities. Currently, Ziegler is responsible for driving growth with direct to consumer.

19. Defendant James Hagedorn is the Chairman and CEO of Scotts Mircle-Gro. James Hagedorn is also the largest individual shareholder of Scotts, owning 15,118,269 shares of stock and options, giving him 26.95% voting control of Scotts stock. James Hagedorn is a controlling shareholder of Scotts and thus also of AeroGrow; Hagedorn is the father of Defendant Chris Hagedorn and caused Chris Hagedorn to be appointed as Chairman of AeroGrow.

20. Defendant Peter Supron is the Chief of Staff of Scotts Mircle-Gro. Supron effectively serves as Defendant James Hagedorn's "right hand man" and was actively involved in the negotiation of the Merger.

21. Defendants Chris Hagedorn, Clarke, Kent, Miller, and Ziegler are collectively referred to as the Board. The Board, together with Defendants James Hagedorn and Peter Supron, Nominal Defendant AeroGrow, and Defendants Scotts Miracle-Gro Company, SMG Growing Media, Inc. and AGI Acquisition Sub, Inc., are collectively referred to as the "Defendants."

22. The names and capacities, whether individuals, corporate, associate or otherwise of Defendants named herein as DOE and ROE CORPORATION are unknown or not yet confirmed. Upon information and belief, said DOE and ROE CORPORATION Defendants are

responsible for damages suffered by Plaintiff and, therefore, Plaintiff sues said Defendants by such fictitious names. Plaintiff will ask leave to amend this Complaint to show the true names and capacities of each DOE and ROE CORPORATION Defendant at such time as the same has been ascertained.

IV. FURTHER SUBSTANTIVE ALLEGATIONS

A. Background of AeroGrow and its Growth Potential

23. Formed in March 2002, AeroGrow's "principal business is developing, marketing, and distributing advanced indoor aeroponic garden systems designed and priced to appeal to the consumer gardening, cooking and small indoor appliance markets worldwide." *See* AeroGrow Form 10-Q, dated Nov. 16, 2020, at 8. Since 2005, the Company has focused greatly on "consumer gardening," and in furtherance thereof, offers consumers a range of products, including over 40 varieties of seed pod kits, an array of accessory products, and eight different models of its flagship product, the AeroGarden system.

24. Scotts Miracle-Gro, together with its subsidiaries, are "the leading manufacturer and marketer of branded consumer lawn and garden products in North America . . . marketed under some of the most recognized brand names in the industry. [Their] key consumer lawn and garden brands include Scotts and Turf Builder lawn and grass seed products; Miracle-Gro, Nature's Care, Scotts, LiquaFeed and Osmocote, gardening and landscape products; and Ortho, Roundup, Home Defense and Tomcat branded insect control, weed control and rodent control products. [They] are the exclusive agent of the Monsanto Company." *See* Scotts 2019 Form 10-K at 2.

25. Furthermore "[through Scotts Miracle-Gro's] Hawthorne segment, [they] are a leading manufacturer, marketer and distributor of nutrients, growing media, advanced indoor garden, lighting and ventilation systems and accessories for hydroponic gardening. Our key hydroponic gardening brands include General Hydroponics, Gavita, Botanicare, Vermicrop, Agrolux, Can-Filters and AeroGarden." *See* Scotts 2019 Form 10-K at 2.

26. Since its inception in 2002, AeroGrow has had a promising future because of its indoor garden systems, seed pod kits, and its AeroGarden line of products. And in the past year, AeroGrow has expanded its product offerings with new and higher average-selling-price products,

and has seen increasing sell-through in its distribution channels. AeroGrow is also benefitting from demand for homegrown food and the legalization of cannabis.

27. As the last four quarters have indicated, the Company was well-situated to actualize its potential. On October 1, 2019, the Company's trading price closed at $0.96, but having reported increasingly optimistic revenues and groundbreaking earnings, AeroGrow's shares reached $6.10 as of August 18, 2020, offering a glimpse into the Company's assured potential.

28. For example, for the Third Quarter of the Fiscal Year 2020 ended December 31, 2019, AeroGrow reported net income of $1.2 million, on revenues of $18.5 million, up 43% from the previous quarter. In a February 11, 2020 Press Release, the Company's President and CEO, J. Michael Wolfe ("Wolfe") described it as follows:

> "Results for the 3rd Quarter of our Fiscal Year 2020 were exceptional. . . . With sales up 43% and solid growth in all of our channels, the highly successful launch of a new line of products and the introduction of a very effective marketing program, I believe this was the best quarter in the Company's history."
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> "On a cautionary note, we are carefully monitoring the coronavirus situation in China and any risks we may have as a result. While it is too early to know what, if any, implications there may be in our business, there is a possibility that we will see some disruptions to our supply chain and product development efforts beginning later this spring if the situation persists."
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> "Coming off of a strong holiday selling season with new products that have been well received and what we believe is a scalable marketing program, we are positioned well for continued growth. Moreover, when you consider the addition of the new products in our development pipeline, you can see why I'm so excited about what lies ahead for AeroGrow. I look forward to updating you on our progress."

29. Given the Company's stellar performance and prospects, Wolfe further expressed his optimism for the future of the Company: "As pleased as I am with our 3rd quarter results, I'm even more excited about what's ahead for us as we look to our Fiscal 2021, which begins in April [2020]."

30. Amidst the Covid-19 Pandemic, which ushered in a "home gardening" boom, AeroGrow's Fourth Quarter of the Fiscal Year 2020 ended March 31, 2020, saw a net income of $1.226 million on revenues of $11.8 million. As quoted in the Company's June 23, 2020 Press Release, Wolfe (once again) expressed his satisfaction with the Company's financial results, stating:

> "I am very pleased with our Q4 and FY 2020 results, both of which posted record sales and profitability. . . . All three of our distribution channels – [Amazon.com, Inc.], Direct-to-Consumer and Retail – in performed very well during the 4th quarter, continuing their strong performance from the Holiday season. In addition, we continued to gain momentum on all of our key metrics, with our marketing efficiencies, gross margin and overall profitability making notable gains."
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> "Over the past several months the COVID-19 pandemic has had a significant and positive impact on our business that will further accelerate our sales in Q1 of FY 2021 – with sales in the quarter tracking to more than 3X over the prior year. Traffic on our web site and our product rankings on Amazon.com began spiking in mid-to-late March as consumers with an increased interest in at-home meal preparation began looking for access to fresh, safe food sources . . . and the AeroGarden certainly meets these needs. However, relatively few of these sales were recognized in March due to temporary product backorders and shipping backlogs. We have expanded our supply chain and steadily improved our order fill rates during Q1, and by early July we expect to be consistently in stock to support what we anticipate will be continued strong demand across our entire product line."
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> "I think the overall state of the business as we begin FY 2021 is at an all-time high. Not only are our sales, profitability and other key metrics all on a significant upward trend, our balance sheet has never been stronger with $10.3 million in cash on hand and $3.8 million in receivables as of 6/15/20 while carrying little debt. As disruptive as the COVID-19 pandemic has been across the world, it appears to have had a profound positive impact on consumers' interest in the AeroGarden. While the awareness of the AeroGarden in the minds of consumers has been steadily increasing over the past several quarters, we believe that the pandemic has further increased this awareness and may be moving our products from being considered somewhat discretionary to being more of a consumer staple."

31. The Company's upward trend continued into the First Quarter of the Fiscal Year 2021 ended June 30, 2020, when AeroGrow reported net income of $2.7 million on revenues of $16.4 million. This marked an astounding 267% increase from $4.5 million during the corresponding period for the prior year, a verifiable demonstration of the Company's exponential growth. Again, Wolfe told the public that:

> "Our 1st Quarter results were exceptional by every measure. . . . Sales across all three of our distribution channels – Amazon, Direct-to-Consumer and Retail – were extremely strong throughout the quarter. This is our third consecutive quarter with record sales and profitability, and we saw further acceleration of our results due to the Covid-19 pandemic beginning in March. This was driven by increased interest in gardening, at-home meal preparation and access to fresh, safe food sources . . . and the AeroGarden certainly meets all of these needs. We experienced an increase in sales across all product types, including gardens, seed pod kits and accessories."
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> "We have also successfully expanded capacity with all of our critical suppliers to keep up with what appears to be continued strong demand for our products. Our July sales – while having moderated from the original surge we experienced during the early days of the pandemic – have remained at a considerably higher level on a YOY basis. If this sales trend continues, we believe our expanded supply chain and distribution infrastructure will be prepared to meet it."

See AeroGrow Form 8-K Exhibit 99.1 dated August 11, 2020.

32. Significantly, in a November 16, 2020 Press Release published days after the execution of the Merger Agreement, the Company proclaimed net income as being $1.3 million on revenues of $14.3 million during the Second Quarter of the Fiscal Year 2021 ended September 30, 2020 – a staggering 224% increase from the corresponding period for the prior year:

> "Our string of excellent results continued in the second quarter," said [Wolfe]. "Sales across all three of our distribution channels – [Amazon.com, Inc.], Direct-to-Consumer and Retail - were strong throughout the quarter. This is our fourth consecutive quarter with record sales and profitability, a trend which accelerated due to the COVID-19 pandemic beginning in March. That being said, it appears the significant COVID sales spike that we experienced this spring has moderated - but with the business now routinely operating at a much higher level than it was prior to the pandemic. We believe this spike reflects an increased interest in gardening, at-home meal preparation and access to fresh, safe food sources . . . and the AeroGarden certainly meets all of these needs."
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> "Over the past six months we have focused on refining our pricing model and reducing our product costs. This focus helped drive our gross margin up to 43.2%, an increase of over 1,000 bps vs. the same period last year. Our gross margin has also benefited from a larger portion of our sales coming through our Direct-to-Consumer channel (AeroGarden.com), which affords us better margins. In addition, our digital marketing programs continued to help drive our growth with significantly improved efficiencies. These factors drove the significant improvement in our sales and operating profit and demonstrate the leverage in our business as it continues to scale."

33. And just recently, on February 16, 2021 (just one week before the shareholder vote on the Merger), the Company announced even more growth in the Third Quarter for Fiscal 2021, including a 107% revenue increase and a 290% increase in operating profit. The Company also announced that its nine month results showed a 151% increase in revenue, and that income from operations rose to $8.7 million – up from a prior year loss of $918,000:

> Boulder, CO – (February 16, 2021) – AeroGrow International, Inc. (OTCQB: AERO) ("AeroGrow" or "the Company"), the manufacturer and distributor of AeroGardens – the world's leading family of In-Home Garden Systems™ – announced results for its third quarter ended December 31, 2020.
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> For the quarter ended December 31, 2020 the Company recorded net revenue of $38.4M, an increase of 107% over the same period in the prior year. Income from Operations was $4.7M, an increase of 290% vs. the prior year. Gross margin improved to 41.1%, an increase of 590 basis points vs the prior year.
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> For the nine months ended December 31, 2020, net revenue stands at $69.1M, an increase of 151% vs. the same period last year. Income from Operations was $8.7M, up from a loss of $918K the prior year. Gross margin for the period improved to 42.0%, up 760 basis points vs. the prior year.

See AeroGrow Ex. 99.1 to Form 8-K, dated Feb. 16, 2021.

34. Therefore, while AeroGrow's business has had "promise" for some time now, it is finally delivering on that promise and Scotts is stealing from Plaintiff the opportunity to share in those results.

B. Scotts's Control Over AeroGrow Cannot Be Denied

35. Scotts Miracle-Gro is a majority and controlling shareholder of AeroGrow. As of January 20, 2021, Scotts Miracle-Gro and its respective affiliates beneficially owned 27,639,294 shares of common stock of AeroGrow, representing approximately 80.5% of the Company's outstanding shares of common stock.

36. Consistent with its 80.5% ownership interest and as laid out in AeroGrow's most recent Form 10-K, Scotts has "effective control over all matters affecting the Company." AeroGrow Form 10-K at 9. This includes AeroGrow's "business strategy, operations, managerial decisions and potential capital transactions." *Id*.

37. Their relationship, termed a "strategic alliance" by AeroGrow, dates back to April 2013, when AeroGrow entered into a Securities Purchase Agreement with SMG Growing Media, as well as the following related agreements: (i) an Intellectual Property Sale Agreement; (ii) a Technology Licensing Agreement; (iii) a Brand Licensing Agreement; and (iv) a Supply Chain Management Agreement.

38. In accordance with the Securities Purchase Agreement, AeroGrow issued: "(i) 2.6 million shares of Series B Convertible Preferred Stock, par value $0.001 per share ("Series B Preferred Stock"); and (ii) a warrant to purchase up to 80% of the Company's common stock for an aggregate purchase price of $4.0 million." AeroGrow 2020 Form 10-K at 2. The warrant was fully exercised in November 2016, giving Scotts ownership and control of 80.5% of AeroGrow's common stock. It further granted Scotts the right to appoint three of the five members of the AeroGrow Board.

39. In accordance with the Intellectual Property Agreement, for $500,000 AeroGrow agreed to sell Scotts Miracle-Gro all intellectual property associated with the Company's hydroponic products ("Hydroponic IP"), with the exception of the AeroGrow and AeroGarden

trademarks, granting Scotts Miracle-Gro the right to use the AeroGrow and AeroGarden trademarks in connection with the sale of products using the Hydroponic IP.

40. In accordance with the Technology Licensing Agreement, Scotts Miracle-Gro, in five-year increments, granted AeroGrow "an exclusive license to use the Hydroponic IP in North America and certain European countries in return for a royalty of 2% of annual net sales, as determined at the end of each fiscal year through March 2020." AeroGrow 2020 Form 10-K at 2.

41. In accordance with the Brand Licensing Agreement, for 5% of AeroGrow's incremental growth in net sales, as compared to their net sales during the fiscal year ended March 31, 2013, Scotts granted AeroGrow use of "certain of Scotts Miracle-Gro's trade names, trademarks and/or service marks to rebrand the AeroGarden, and, with the written consent of Scotts Miracle-Gro, other products in the AeroGrow Markets." AeroGrow 2020 Form 10-K at 2.

42. In accordance with the Supply Chain Services Agreement, "Scotts Miracle-Gro will pay AeroGrow an annual fee equal to 7% of the cost of goods of all products and services requested by Scotts Miracle-Gro during the term of the Technology Licensing Agreement." AeroGrow 2020 Form 10-K at 2.

43. Furthermore, as noted above, three of the five AeroGrow directors have been appointed by Scotts Miracle-Gro and are, thus, affiliated with Scotts Miracle-Gro, granting them "effective control over the Board of Directors" (AeroGrow 2020 Form 10-K at 9):

> **Hagedorn**, Chairman of the AeroGrow Board since November 2016, was initially appointed to the Board in 2013, by Scotts Miracle-Gro. Hagedorn's ties to Scotts, however, are not only professional, but familial. His father, James Hagedorn, the former President of Scotts Miracle-Gro, is its current Chairman of the Board and Chief Executive Officer, having originally joined the Board in fiscal 1995 when his father's company, Stern's Miracle-Gro Products, Inc., merged with Scotts Miracle-Gro. Furthermore, as of November 22, 2019, Hagedorn Partnership, L.P, comprised of members of Hagedorn's immediate and extended family, still beneficially owns approximately 26% of Scotts Miracle-Gro's outstanding common shares. Hagedorn's allegiance clearly belongs to Scotts.
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> **Miller** was appointed to the Board in April 2019 but maintains his role as Vice President of Finance & Information Technology at the Hawthorne Gardening Company, a wholly owned subsidiary of Scotts Miracle-Gro, having held several roles at Scotts Miracle-Gro since 2000. Like, Hagedorn, Miller also serves on the Audit Committee.
>
> **Ziegler**, like Miller was appointed to the Board in April 2019. The active Chief Digital and Marketing Services Officer at Scotts Miracle-Gro, he has an established history with Scotts, having occupied various other positions at Scotts Miracle-Gro since 2011.

> Both Ziegler and Miller were appointed to fill the vacancies left by Peter D. Supron and Albert J. Messina, the previous occupants of Scotts's Board seats. In their stead, both Directors have since their appointment, been representatives of Scotts Miracle-Gro. And like Hagedorn, Ziegler serves on the Governance, Compensation and Nominating Committee.

44. James Hagedorn of Scotts has also at all times run Scotts as more of a dictatorship than a publicly-traded company. He does not tolerate differences of opinion or dissent and tells executives, and even fellow directors, to leave if they do not like or agree with his fiat. For example, on June 3, 2013 Scotts Miracle-Gro announced the resignation of three directors and explained the departures in an awkwardly worded SEC filing. All three had resigned "following a unanimously-supported reprimand of Hagedorn that stemmed from the use of inappropriate language," the statement said, but none of the departures were "related to any disagreement relating to the company's operations, policies, practices or financial reporting."[1] In recent years, as Hagedorn switched the focus of Scotts to providing resources for the growing of cannabis, he simply told executives and directors who did not agree with the focus on the cannabis industry to leave the company.

45. Although the details of what exactly occurred remained secret for years, even to Scotts's employees, the abrupt resignations of three board members certainly raised eyebrows. "They were the three strongest and the three most willing to challenge Jim," says one former senior executive.

46. James Hagedorn has applied the same control he exerts at Scotts to AeroGrow, appointing a majority of AeroGrow's directors and installing his son Chris Hagedorn as Chairman of the Board (notwithstanding his lack of public board experience). And after it acquired its controlling stake in AeroGrow in 2016, Scotts Miracle-Gro and the Hagedorn family began using such control to benefit themselves to the detriment of the Company's minority shareholders. As just one example, Scotts Miracle-Gro in 2020 caused AeroGrow to agree to take out a loan from Scotts at an interest rate of 10%, despite interest rates being at historically low levels.

[1] *See* Dan Alexander, "Cannabis Capitalist: Scotts Miracle-Gro CEO Bets Big On Pot Growers," FORBES, July 6, 2016, *available at* https://www.forbes.com/sites/danalexander/2016/07/06/cannabis-capitalist-scotts-miracle-gro-ceo-bets-big-on-pot-growers/?sh=12d9c6d66155.

47. Scotts's Chief of Staff Peter Supron reports directly to James Hagedorn, who instructed Supron to protect Scotts's interests in the Merger and instructed Supron to engage in the conduct described in the Proxy Statement for the Merger, pursuant to which Scotts forced AeroGrow's minority shareholders to accept the unfair $3.00 Merger price and interfered with the market check and the ability to attempt to obtain a higher bid from third parties.

C. Defendants Seek to Squeeze Out Minority Shareholders at No Premium So That Scotts Alone Can Realize the Benefits of the Company's Improving Financial Results

48. Defendants have long known that any attempt at corporate restructuring would be imbalanced and highly partisan, in favor of Scotts. As stated in every AeroGrow Form 10-K since November 2016, when Scotts overwhelmingly became the Company's controlling stockholder:

> Scotts Miracle-Gro's controlling interest could make it more difficult for a third party to acquire us, even if a proposed acquisition would be beneficial to you, and you may not realize the premium return that stockholders may realize in conjunction with corporate takeovers. In addition, pursuant to the Securities Purchase Agreement, three of the five members of our Board of Directors are delegates of Scotts Miracle-Gro. . . . Your ability to influence key corporate decisions has been significantly diminished and you may disagree with decisions made by Scotts Miracle-Gro.

See, e.g., AeroGrow 2017 Form 10-K at 12.

49. Nonetheless, even with this knowledge, the AeroGrow Board yielded to Scotts at the outset, capitulating to its interests at the expense of AeroGrow's unaffiliated stockholders.

50. According to Scotts Miracle-Gro's Schedule 13D filed on March 2, 2020, the inevitability of a corporate restructuring became apparent during the Company's February 27, 2020 Board Meeting, as Scotts condemned what it considered to be AeroGrow's flawed and complex operating model and equally convoluted ownership structure, and recommended a series of transactions that it said would rectify these perceived issues: (i) a reverse stock split pursuant to Section 78.207 of the Nevada Revised Statutes, in conjunction with a possible parent-subsidiary merger, and (ii) outsourcing most of AeroGrow's operations to a Scotts affiliate. Both could be done by the Scotts-controlled Board without stockholder approval.

51. Described as "abrupt, unnecessarily urgent and potentially conflicting with prior Board direction" (Proxy at 30), the disadvantages of Scotts's proposed transactions to AeroGrow's minority stockholders were immediately known to the Defendants and predictably derided.

Defendants Clarke and Kent communicated to Scotts's representatives (Hagedorn, Miller, and Ziegler) their "discomfort with the approach taken by Scotts Miracle-Gro vis-a-vis AeroGrow's unaffiliated minority stockholders and also . . . expressed the importance of considering options in addition to those suggested by Scotts Miracle-Gro to ensure that the interests of unaffiliated minority stockholders were considered and protected." Proxy at 30.

52. On March 26, 2020, the AeroGrow Board elected to form the Special Committee, which included Clarke and Kent, to conduct "a broad review of strategic alternatives focused on maximizing shareholder value." AeroGrow Form 8K, Exhibit 99.1 dated June 23, 2020. However, while authorized to engage independent advisors in their endeavor, the Special Committee was "not delegated authority to approve or reject the Scotts Miracle-Gro framework, but rather to review it and engage an independent financial advisor." Proxy at 30.

53. Soon thereafter, the likelihood of an acquisition of AeroGrow became all but certain. From June 29, 2020, onward, Stifel, Nicolaus & Company, Inc. ("Stifel"), the Special Committee's exclusive financial advisor, contacted 102 strategic and 220 financial parties, including Scotts, to discuss the possibility of a deal. Four potential, undisclosed candidates, not including Scotts, were considered to varying degrees.

54. Scotts also actively discouraged and frustrated the consideration of any alternative offers to purchase the Company or its assets. In the aftermath of the February 27, 2020 AeroGrow Board Meeting, Hagedorn, acting on behalf of Scotts, would emphasize how "AeroGrow had sold several rights and entered into license agreements with Scotts Miracle-Gro that may not be transferable to third-party buyers of AeroGrow, without Scotts Miracle-Gro's consent." Proxy at 30. Going forward, Scotts Miracle-Gro, directly or through Hagedorn, deliberately highlighted the issue of their "intellectual property and other commercial rights and their highly conditional nature." Proxy at 38. It was regularly communicated to Stifel and Bryan Cave, the Special Committee's exclusive legal counsel, that "Scotts Miracle-Gro did not believe that any bidder would be able to step into AeroGrow's shoes with respect to the contractual arrangements between Scotts Miracle-Gro and AeroGrow and that bidders should, [sic] be informed of Scotts Miracle-Gro's position." Proxy at 39. Thus, Scotts advised the Special Committee and its advisors that it

needed to inform potential third-party bidders that they would either be buying a lawsuit or purchasing a company without its valuable assets.

55. Indeed, Scotts threatened to block any effort to sell AeroGrow to anyone else. Scotts informed AeroGrow, the Special Committee, and the legal counsel for the Special Committee that it would not sell its ownership stake in AeroGrow and that it would essentially hold any continuation of Scotts Miracle-Gro's intellectual property and other commercial agreements with AeroGrow hostage and would not offer to sell any of those agreements "on the same favorable terms" to any other potential acquirers. Proxy at 40.

56. On August 18, 2020, Scotts filed another Schedule 13D, this time announcing to the public, that one day earlier, they had sent a letter to Stifel declaring their desire and willingness to acquire all outstanding shares of AeroGrow it did not currently own, stating:

> Accordingly, Scotts is prepared to acquire the shares of AeroGrow common stock that it does not currently own in a merger transaction pursuant to which AeroGrow shareholders would receive $1.75 per share in cash for their shares of AeroGrow common stock, subject to the negotiation of a mutually acceptable definitive merger agreement including customary terms and conditions.

57. As a news report at the time noted:

> Scotts Miracle-Gro Co. (NYSE: SMG), owner of 80.5% of AeroGrow International Inc. (OTCQB: AERO) stock, offered this week to purchase the remainder of Boulder-based indoor grow system manufacturer's outstanding shares for $1.75 per share.
>
> **When documents related to the offer were filed with the U.S. Securities and Exchange Commission on Tuesday, AeroGrow's stock was trading as high as $5.74 per share, close to the firm's 52-week high. The price tumbled nearly 30% on Wednesday and was down another 22.72% on Thursday**, finishing the day trading at $3.13.
>
> Unsurprisingly, this development is not sitting well with some current AeroGrow investors, who say **Scotts is bullying the much smaller firm**.
>
> "I started investing in Aero about four years ago in 2016. I did a large amount of research on the Aero team and on its products, and saw the huge potential for the growth of hydroponics especially relating to growing cannabis," Gary Perelberg told BizWest in an email. " . . . **This kind of greed from a company as large as Scotts is unprecedented especially since it comes at a time when Aero's price was literally skyrocketing** and closely related companies such as GrowGeneration were rapidly increasing in stock price."[2]

[2] *See* Lucas High, "Acquisition Offer From Scotts Sends AeroGrow Stock Tumbling," Daily Camera, Aug. 20, 2020, *available at* https://www.dailycamera.com/2020/08/20/acquisition-offer-from-scotts-sends-aerogrow-stock-tumbling/ (emphasis added).

58. Scotts's offer also did not require the approval of the Merger by the Special Committee, nor did it require a majority vote of the Company's minority shareholders. However, the "customary conditions" referred to were defined several weeks later in a Letter of Intent ("Letter of Intent") between AeroGrow and Scotts, on October 2, 2020. That Letter of Intent, however, still failed to include any crucial protections for AeroGrow's minority stockholders such as a majority of the minority voting provision.

59. The market understood the magnitude of a $1.75 offer from a controlling stockholder. Prior to Scotts's offer, AeroGrow's stock price had ascended to a 52-week high of $6.10 and closed at $5.735, **327% more than Scotts's offer**, reflecting the Company's growth over the preceding months and its potential for more. However, as the market learned of Scotts's paltry $1.75 offer, the Company's share price plunged to close at $4.05 on August 19, 2020.

60. Not only had Scotts woefully undervalued AeroGrow, but it timed its lowball offer to place an artificial cap on the trading price of the Company's stock at a time when it was experiencing explosive growth. In so doing, Scotts speciously lowered AeroGrow's share valuation, preventing it from continuing to rise in line with the Company's dramatically improving revenue and profitability.

61. During the course of September 2020, AeroGrow's share price, successfully capped by Scotts's offer, fluctuated between $2.97 and $3.42.

62. Contemporaneously, Scotts continued to participate in lackluster negotiations with the Special Committee, Stifel, and Bryan Cave, acceding to a still deficient price of $3.00 per share of AeroGrow common stock that it did not already own, to more closely approach AeroGrow's then-artificially lowered share price. The Special Committee was quick to yield, failing in any attempt to persuade Scotts to further augment their offer.

63. On October 1, 2020, the Letter of Intent formalized Scotts's $3.00 offer, subject to certain customary conditions, including:

> (a) satisfactory completion by Scotts and its advisors of its confirmatory due diligence review of AeroGrow; (b) execution of the Definitive Documents; (c) receipt by the parties of all required and advisable material governmental, regulatory and third-party approvals and consents; (d) expiration of the waiting period under the Hart-Scott-Rodino Act, if applicable; (e) the absence of any material adverse change in the business, assets, liabilities, indebtedness, results of operations, financial condition or

prospects of AeroGrow; and (f) the receipt by the Special Committee of the opinion of Stifel, Nicolaus & Company, Incorporated to the effect that the Merger Consideration is fair, from a financial point of view, to AeroGrow's shareholders (other than SMG).

64. As a controlling stockholder, the structure of the Merger was incontrovertibly an abuse of process, and a brazen attempt to gouge the Company's minority stockholders. Scotts's initial offer failed to condition the offer, up front, on any measure protective of AeroGrow's minority stockholders, including the approval of the Special Committee and/or the affirmative vote of an informed majority of the minority stockholders (which would have empowered minority stockholders to stand up to Scotts) and was therefore, at the very least, coercive and an abuse of its overwhelming share majority and unencumbered negotiating power. Scotts's initial offer had the effect of eliminating any possibility of simulating an arm's-length bargaining process as between Scotts and the Company or the subsequently created Special Committee. Furthermore, that the AeroGrow Board refused to request or demand such provisions as part of the Merger knowing the Company's unaffiliated stockholders would be damaged thereby represents the preferential treatment granted to Scotts throughout the "negotiation process," characterized by elevating Scotts's interests to the foreground while relegating those of the minority stockholders.

65. Furthermore, insofar as it agreed to be bound by the Letter of Intent provision "restrict[ing] AeroGrow and its representatives from directly or indirectly, soliciting, initiating or encouraging the submission of any acquisition proposals from other parties through November 15, 2020" (Proxy at 42), the Board knowingly curtailed their ability to fully explore all avenues to ensure that they obtained the best price available for the benefit of the Company's unaffiliated stockholders as unlikely as that may have been.

66. On November 11, 2020, AeroGrow, on the unanimous recommendation of the Special Committee, entered into the Merger Agreement with SMG Growing Media, the Merger Sub, and Scotts Miracle-Gro. At the effective time of the Merger, the Merger Sub would merge with and into AeroGrow, leaving AeroGrow as the surviving corporation and a direct, wholly owned subsidiary of SMG Growing Media and an indirect, wholly owned subsidiary of Scotts Miracle-Gro. The Merger Agreement, adopting the final offer set forth in the October 2, 2020 non-binding Letter of Intent, offers each shareholder of AeroGrow common stock, with the exception

of the security holders affiliated with Scotts, $3.00 in cash per share, for an aggregate consideration of approximately $20.1 million. Furthermore, pursuant to the Merger Agreement:

> The stockholders of the Issuer will be asked to vote on the approval of the Merger Agreement at a special stockholders meeting that will be held on a date to be announced (the "Special Meeting"). The Reporting Persons and the Issuer expect that the closing of the Merger will occur in the first quarter of 2021 subject to, among other conditions, the approval of the Merger Agreement by a majority of the outstanding shares of Common Stock entitled to vote on such matter. The Reporting Persons and their respective affiliates currently beneficially own approximately 80% of the Issuer's outstanding shares of Common Stock. **Approval of the holders of at least a majority of the shares of Common Stock not beneficially owned by the Reporting Persons and their respective affiliates is not required for the Issuer to complete the Merger**.

Emphasis added.

67. Ultimately, the proposed transaction set forth in the Merger Agreement is coercive and prejudicial to the Company's minority stockholders. As the final result of spurious negotiations, futilely conducted to accord the Merger a semblance of propriety, Scotts and the Company's Board agreed to extinguish all shares of AeroGrow's unaffiliated stockholders for woefully inadequate consideration.

68. As agreed to by Scotts and the AeroGrow Board, the Merger exploits Scotts's overwhelming share majority to impose the Merger on the Company's unaffiliated stockholders, leaving out any protective measures the Board should have secured on their behalf and thus eliminating any need for their assent to the proposed transaction, rendering Plaintiff impotent.

D. The Process Leading Up to the Merger Was Unfair Because Scotts and the AeroGrow Board Members Appointed by Scotts Faced an Irreconcilable Conflict of Interest, Yet Deliberately Rejected Any Meaningful Mechanism to Protect AeroGrow's Minority Shareholders

69. Any acquiror logically wants to pay as little as possible when they are a buyer. And normally, if the acquiror is a random third party with no relationship to the target company, it has the right to try to drive as hard a bargain as possible.

70. But Scotts is no random, unaffiliated third-party. As demonstrated above, Scotts is a majority and controlling shareholder. And the Board of Directors of a target company always has a fiduciary duty to maximize value for the Company's shareholders in any sale. Here, the only shareholders who were being asked to sell their shares are the Company's minority shareholders, like Plaintiff.

71. The problem faced by Scotts is that it is on both sides of the transaction. It is a buyer in that Scotts is the one paying for the stock of the minority shareholders. And it is also representing the sellers since a majority of AeroGrow's Board is comprised of individuals appointed by Scotts.

72. An irreconcilable conflict thus existed: Scotts could not satisfy its duties to its own shareholders by trying to minimize the value paid for the rest of AeroGrow's stock, while at the same time satisfying its fiduciary duty as majority AeroGrow Board members to maximize the price received by AeroGrow's minority shareholders. Controlling shareholders in such a conflicted position must establish procedural and substantive safeguards to attempt to counter their control and influence, and to protect the target company's minority shareholders.

73. First, controlling shareholders should appoint a Special Committee comprised of truly ***independent*** directors who have ***plenary power*** to either approve or reject the proposed transaction. Second, controlling shareholders almost always subject the transaction, if it is approved by the Special Committee, to a "majority of the minority" requirement, meaning the merger or other transaction will not be approved unless a majority of the minority shareholders vote in favor of the merger, after full disclosure of all material facts.

74. Here, Scotts did not employ either safeguard. It appointed a Special Committee but the committee had no authority to approve or reject the transaction. It was just given authority to make a "recommendation." The actual authority to approve the merger remained with the full AeroGrow Board, which was controlled by Scotts since Scotts had appointed 3 out of 5 members of the board.

75. In addition, neither Scotts nor the AeroGrow Board insisted on a majority of the minority vote. To the contrary, the supine and conflicted AeroGrow Board did as Scotts wanted: the merger was only subjected to a majority vote of all shareholders, which was meaningless because Scotts already owned 80.5% of the stock. Since it was allowed to vote its own stock in favor of its own, conflicted transaction, Scotts is able to approve the merger without a single vote from any minority shareholder.

76. More specifically, in the ensuing months after the February 27, 2020 special meeting, Defendants attempted to put some window dressing on their squeeze-out plan, but failed to engage in any substantive effort to protect the minority shareholders.

77. As the Company's financial results continued to significantly improve in the ensuing quarters of 2020, Defendants ignored the steadily improving stock price, which had increased to $5.74 by the time Defendants announced the $1.75 per share offer on August 20, 2020. The $1.75 per share offer not only was 70% below the price of the stock at the time, but also significantly undervalued the stock based on the Company's fair market value. Scotts was under an obligation to keep its offer confidential, but purposely disclosed it in a public 13-D filing to cause the stock to collapse and contaminate the bidding process. Would-be suitors now knew Scotts was not interested in selling its 80.5% stake and thus that they would be follish to invest resources in exploring a bid.

78. As indicated herein, the AeroGrow Board breached its fiduciary duties by completely failing to protect the interests of the minority shareholders, and by allowing Scotts to control every aspect of the negotiations and to ward off any interested third party bidder. The Defendants readily admitted the blatant conflict-of-interest posed by a self-interested transaction involving the Company's controlling stockholder. As a result, to create some minimal appearance of separation, AeroGrow appointed a Special Committee, but completely restricted the authority of the committee. The committee was not given typical "plenary" authority to approve or reject a proposed transaction with Scotts, and instead was merely given useless "advisory" authority to "review" the transaction and hire a financial advisor:

> **The Special Committee was not delegated authority to approve or reject the Scotts Miracle-Gro framework**, but rather to review it and engage an independent financial advisor.

See Proxy at 30 (emphasis added).

79. The AeroGrow Board could have and should have given the Special Committee full authority to approve or reject Scotts's proposal, but did not because the full Board itself formed the committee, and the full Board is completely controlled by Scotts and did not want the committee to have any actual authority. It succeeded in stripping the committee of any real

authority (other than to rubber stamp the pre-ordained Scotts transaction), and in doing so breached its fiduciary duties.

80. Scotts and the Hagedorn family were so heavy-handed in their tactics that they actually refused to provide indemnification to the members of AeroGrow's Special Committee. Indemnification is provided in every single corporate merger or transaction, with the acquiring company universally obtaining and paying for a special "tail" directors and officers insurance policy ("D&O Policy") to protect the target company's board members. The fact that Scotts repeatedly refused to agree to provide indemnification to the members of the Special Committee amply demonstrates its (successful, and, improper) influence over the entire process, and the abject failure of AeroGrow to neutralize this improper influence in any way. As the Proxy admits:

> In addition, the letter stated that the Special Committee members were requesting that Scotts Miracle-Gro formally indemnify them against claims, costs and liabilities arising because of their services as directors of AeroGrow and Special Committee members and that Mr. Hagedorn, as Chairman of AeroGrow and an executive of Scotts Miracle-Gro, coordinate the preparation of an indemnification agreement with Scotts Miracle-Gro's counsel.
>
> * * *
>
> On May 29, 2020, Scotts Miracle-Gro's internal legal counsel informed Bryan Cave that, in deference to the independence of the Special Committee's process, Scotts Miracle-Gro would not be able to provide indemnification to the members of the Special Committee. Bryan Cave responded to clarify that the Special Committee was not requesting a new indemnity agreement but instead a covenant not to sue coupled with a payment guaranty of AeroGrow's existing indemnification obligations. **On June 1, 2020, Scotts Miracle-Gro's internal legal counsel reiterated that Scotts Miracle-Gro would not provide separate indemnification of AeroGrow's Board members (including the Special Committee) directly through an indemnity agreement or indirectly through a guarantee**."

See Proxy at 32-33 (emphasis added).

81. In other words, Scotts would not even agree not to sue AeroGrow's Special Committee if it did not like its "recommendation" and even under circumstances where the committee had already been denied any authority to reject Scotts's offer.

82. Moreover, as demonstrated herein, not only did the Special Committee lack plenary authority to approve or reject the transaction, but Scotts was improperly allowed to participate in all aspects of the AeroGrow Board's deliberations. Scotts sent Mr. Supron as its babysitter to every meeting of the AeroGrow Board. No truly independent Board would ever allow a third party suitor

to sit in on its Board meetings where the very purpose was to consider the fairness of the third party's bid. Yet that is exactly what the AeroGrow Board allowed to happen here.

83. As such, Defendants never formed a truly independent special committee of directors with plenary authority (1) to evaluate and negotiate the Merger, (2) to consider strategic alternatives, or (3) with the authority to unilaterally approve or reject the Merger. Instead, the full AeroGrow Board, including Scotts's designees on the Board, allowed Scotts to essentially direct the Merger "negotiations" on both the buy- and sell-sides through the management teams Scotts oversaw, and simply had the directors appointed by Scotts recuse themselves from certain Board meetings where Scotts knew that management – including Scotts own Chief of Staff Supron – would steer the Board to Scotts's desired outcome. AeroGrow's Chairman Hagedorn knew AeroGrow management could not act independently of him or his father (Scotts's Chairman and CEO), because as the Company's controlling stockholder, Scotts controlled all aspects of AeroGrow's business, even its lines of credit, which were provided by Scotts.

84. Scotts was allowed to participate in every aspect of the process, including the selection of the projections used by AeroGrow for the discounted cash flow analysis. Scotts even conditioned a line of credit to AeroGrow upon the success of its proposal, assuring that AeroGrow could not survive without Scotts:

> **On May 8, 2020, the Board held a telephonic meeting with** representatives of AeroGrow's management, a representative of HBC and **Mr. Supron present**. AeroGrow's management presented a business update to the Board, including a report on recent sales results and trends. **Management also presented, and the Board reviewed and agreed to, financial projections, which would form the basis of the "management projections**" (as defined and further described under "—Management Projections"). The Board also discussed the need for a working capital line of credit and **representatives of Scotts Miracle-Gro stated that a line of credit might be available from Scotts Miracle-Gro if Scotts Miracle-Gro's restructuring proposal progressed**.

See Proxy at 31 (emphasis added). In any event, AeroGrow's business had (and has) been accelerating so much that projections would get stale very quickly, such that simply rolling them to current would make the $3.00 Merger price outside Stifel's fairness range (*see, e.g., infra* at ¶148).

85. Second, Hagedorn and the other AeroGrow directors who had been appointed by Scotts never fully recused themselves from the Board's deliberations or vote on the Merger. Instead, they merely had AeroGrow form a Special Committee which had no authority to reject the Merger. As such, approval of the Merger still fell to the full Board, a majority of which were appointed by Scotts and thus are not independent.

86. Third, Defendants did not engage or permit the Board to engage independent financial or legal advisors. Instead, Defendants engaged Stifel and conditioned the vast majority of Stifel's fee on the successful completion of the Merger, thus compromising its objectiveness. If Stifel did not find the transaction fair, it would not receive the lion's share of its compensation. Stifel would receive only $450,000 if the Merger did not go through, but would receive an additional $2,687,000 if the Merger was approved:

> **The Company paid Stifel a fee, which is referred to in this proxy statement as the opinion fee, of $450,000 for providing the Stifel opinion to the Special Committee (not contingent upon the consummation of the Merger)**, of which $225,000 is creditable against the transaction fee described below. **The Company has also agreed to pay Stifel a fee**, which is referred to in this proxy statement as the transaction fee, for its services as financial advisor to the Company in connection with the Merger based upon the aggregate consideration payable in the Merger (which as of the day prior to the date of this proxy statement, and net of the creditable portion of the opinion fee described above, is estimated to be **approximately $2,687,000), which transaction fee is contingent upon the completion of the Merger**.

See Proxy at 62 (emphasis added).

87. Fourth, Defendants did not condition the Merger on the affirmative vote of a majority of AeroGrow's minority stockholders. Instead, Defendants structured the Merger so the only affirmative vote necessary to consummate the Merger was that of Scotts, since Scotts owns 80.5% of the stock and only a majority of all outstanding shares is necessary for approval of the merger, as stated in the Proxy:

> For us to complete the Merger, under NRS 92A.120, holders of a majority of the outstanding shares of common stock at the close of business on the Record Date must vote "**FOR**" the Merger Agreement Proposal. **The transaction has not been structured to require the approval of the holders of at least a majority of the shares of common stock beneficially owned by security holders unaffiliated with the Purchaser Parties and their respective affiliates (including Scotts Miracle-Gro and our directors who are affiliated with Scotts Miracle-Gro**, to the extent such directors beneficially own any shares of common stock).

See Proxy at 10 (emphasis added). In other words, the approval of the minority shareholders is not even required, and Scotts is allowed to simply approve its own self-interested transaction.

88. Fifth, Scotts torpedoed the ability of AeroGrow's bankers to perform a market check by repeatedly refusing to tell the bankers (Stifel) whether it would be willing to sell its AeroGrow stock and by emphatically stating that it would never agree to sell AeroGrow's IP to any third party. These positions were largely conveyed to AeroGrow by Scotts's Chief of Staff Supron, at the direction of Defendant Hagedorn.

89. Sixth, as revealed in belated disclosures that AeroGrow filed on January 12, 2021, Scotts engaged Wells Fargo (its own corporate banker) to provide drastically reduced "projections" to Stifel and coach Stifel to use the lower, unrealistic projections. Indeed, Scotts's manipulated (reduced) projections for AeroGrow were much lower than AeroGrow management's (increased) projections. Using the artificial, lower projections forced on Stifel by Scotts was the only way to arrive at depressed valuations that would make Scotts's $3.00 offer appear to look better than it was.

90. The Proxy admits that Scotts refusal to sell its IP to a third party decreased the value received by the minority shareholders:

> The Board also discussed the ownership by Scotts Miracle-Gro of certain intellectual property used by AeroGrow and the various other contractual relationships between AeroGrow and Scotts Miracle-Gro. It was recognized that **these licenses and agreements may negatively impact the value of AeroGrow to, or frustrate a transaction with, third parties**.

See Proxy at 31 (emphasis added).

91. On July 31, 2020, AeroGrow's common stock closed trading on the OTCQB at $4.25 per share, having increased to reflect the Company's significantly improved financial condition and results.

92. Meanwhile, Stifel had been tasked with the futile effort of trying to solicit competing third party bids. The Proxy indicates that the entire supposed "market check" process was a charade. Scotts feigned ignorance as to whether it would be a "buyer" or "seller," when in fact everyone knew clearly that Scotts would only be a buyer, and that no third party would submit a meaningful bid if Scotts was not willing to sell its 80.5% stake.

93. During the process, AeroGrow's stock more than tripled as it continued to report breakout financial results. Scotts became perturbed by this, since it obviously wanted to pay as little as possible for AeroGrow. As AeroGrow's tremendous financial results continued to be reported, Scotts used its control of Aergrow to interfere in the market check process and to ward off third party suitors through improper interference and through improper communications with Stifel in which it asserted that its IP would pose problems for third party bidders:

> After the close of trading **on June 23, 2020, AeroGrow issued a press release announcing its financial results for the fiscal year ended March 31, 2020, reporting a 29% increase in sales and a 134% increase in income from operations over the prior fiscal year's fourth fiscal quarter. The press release also noted that AeroGrow expected sales in the first fiscal quarter of fiscal year 2021 to be three times previous fiscal year's first fiscal quarter.** The press release also announced that the Board had formed the Special Committee to conduct "a broad review of strategic alternatives focused on maximizing stockholder value" and that the Special Committee had engaged Stifel to serve as financial advisor to assist in the review.
>
> On June 24, 2020, AeroGrow's common stock closed trading on the OTCQB at $3.15 per share.
>
> **On June 25, 2020, Mr. Supron expressed concerns to Stifel regarding third-party valuations of AeroGrow compared to Scotts Miracle-Gro's valuation due to Scotts Miracle-Gro's ownership of certain intellectual property assets** used in the AeroGrow business.

See Proxy at 34 (emphasis added).

94. Again, Scotts's conduct and positions were largely conveyed by Defendant Supron, who was acting at the behest of James Hagedorn. Scotts also accomplished its conduct through Defendant Chris Hagedorn, James Hagedorn's son and one of Scotts's three appointees to AeroGrow's Board.

95. Moreover, as late as August 1, 2020, Scotts still had not advised Stifel whether Scotts would be willing to sell its 80.5% stake to a third party, thus undermining any efforts to obtain competing third party bids. On that date, Scotts called Stifel and expressed indignation that the deadline for the submission of bids had been extended:

> **On August 1, 2020, Mr. Supron telephonically informed Mr. Kent that the Special Committee did not promptly inform the Board that the deadline for indications of interest had been extended and expressed concerns about Stifel's outreach process. Mr. Kent replied that Scotts Miracle-Gro should use the additional time to determine if they were a buyer or a seller.** Mr. Kent further reiterated that Stifel continued to present AeroGrow to potential bidders "as is" meaning all agreements with Scotts Miracle-Gro would remain in place with a third-party buyer, and that an

> auction might occur at a later date **so Scotts Miracle-Gro needed to decide if they wanted to participate.**
>
> On August 2, 2020, Mr. Clarke responded to Mr. Supron agreeing that the Board should receive an update and reminding Mr. Supron that August 12 was proposed as the date for Stifel to brief the Board on the status of the end of the first phase of the bidding process. He stated that, at that time, the Board could determine next steps.

See Proxy at 37 (emphasis added).

96. The Proxy also states that Scotts Chief of Staff, Mr. Supron, also contacted Stifel on August 6, 2020 and expressed displeasure that he had not been updated regarding competing bids/expression of interest:

> On August 6, 2020, Mr. Supron communicated with Mr. Clarke to express concerns that Scotts Miracle-Gro had no meaningful discussions with Stifel since their engagement and that the Board may lose time in the process. **Mr. Supron recommended that Scotts Miracle-Gro and Stifel discuss the indications of interest** and what Stifel would expect regarding the proceeds to AeroGrow's stockholders through this transaction. **He indicated that Scotts Miracle-Gro could more clearly address at that point whether it was a buyer or seller as well as outline any conditions Scotts Miracle-Gro may have in working with various sellers.** Mr. Clarke replied that Scotts Miracle-Gro could ensure the Board did not lose any time in the process by confirming its position as a buyer or seller, and also that **it would not be appropriate to share the indications of interest with Scotts Miracle-Gro since the market check process was not yet complete**.

See Proxy at 38.

97. Other statements in the Proxy indicate that Scotts was waiting to see how bids would come in until it submitted a firm bid. Scotts, through its designees on AeroGrow's Board, continuously (and successfully) influenced the Special Committee, demonstrating the lack of independence of the committee. The Proxy notes that:

> On July 31, 2020, Mr. Miller emailed Mr. Wolfe to request an update regarding the timeline for bids being submitted to Stifel and stating that a meeting should be scheduled to discuss the process, the list of bids and the start of the discussions on a path forward. Messrs. Clarke and Kent responded that the Special Committee granted an extension to Stifel to continue receiving indications of interest until August 10, 2020 and that Stifel had requested a special meeting be called for August 12 or 13 for an update. Mr. Miller responded that this matter should have been discussed by AeroGrow's management with the entire Board and that his request for a meeting the following week remained. Messrs. Clarke and Kent emailed Mr. Miller, members of AeroGrow's management, Mr. Hagedorn and Mr. Supron regarding Mr. Miller's concerns, stating that the Special Committee engaged the financial advisor and, therefore, had granted the extension and that AeroGrow management was not involved in the process and was not consulted. Messrs. Clarke and Kent further indicated that AeroGrow was still awaiting a firm indication from Scotts Miracle-Gro.

See Proxy at 37.

98. A Schedule 13D filed on July 31, 2020 also noted that:

> On July 28, 2020, SMG sent a letter to the financial advisor requesting a meeting to discuss the status of the financial advisor's process so that the Reporting Persons, as the beneficial owners of approximately 80% of the outstanding shares of Common Stock of the Issuer, can better evaluate any identified potential alternatives and, in particular, whether they would be more likely to pursue an acquisition of the remaining shares of Common Stock of the Issuer that they do not currently own or sell their various rights and interests in the Issuer to a third party.

99. These facts demonstrate that Scotts was running the show, that Scotts acted as if Stifel were its banker, not AeroGrow's banker, that Scotts still had not told Stifel as of August 6, 2020 whether it would be willing to sell its stake to a third party, and thus that Stifel never had any chance to solicit any real competing bids for AeroGrow. Scotts even went so far as to demand that Stifel tell it what bids it had received from other parties.

100. Moreover, Stifel's "efforts" to do a market check were completely undermined by Scotts's repeated and emphatic declaration that it would not sell AeroGrow's intellectual property to any third party and its continuous filing of documents in the public realm without appropriate redaction. The effect of this proclamation by Scotts was obviously to dramatically reduce the indications of interest from third parties, since not owning the intellectual property would require the third party to continue to pay licensing fees to Scotts, which Scotts could increase at its whim at any time. The Proxy admits that third parties were discouraged from bidding due to the IP issue:

> Party D verbally proposed an all cash transaction whereby Party D would purchase all of AeroGrow's common stock at a price between $1.98 and $2.56 per share. **Party D expressed a preference for Party D to own all relevant AeroGrow intellectual property**. . . .

See Proxy at 38 (emphasis added).

101. The Proxy also states that a proposal for a value higher than Scotts's eventual proposal was received but was dead on arrival due to the refusal of Scotts to sell its stake or IP to the third party:

> On July 31, 2020, **Stifel received a written indication of interest from a financial party ("Party B") to acquire all of the common stock of AeroGrow for cash at an implied price between $2.80 to $3.32 per share** based on a range of EBITDA multiples of 10x to 12x, with an assumption that EBITDA for the trailing 12 months as of September 30, 2020 would be $8.8 million. This EBITDA assumption was generally consistent with the management projections; however, it assumed the elimination of certain Scotts Miracle-Gro royalty payments. **The indication of interest assumed Party B would own all relevant AeroGrow intellectual property** and also indicated that the purchase would be partially financed with third-party debt. During the weeks

> subsequent to Party B's submission of an indication of interest, representatives of Stifel held multiple follow-up calls with representatives of Party B in order to better understand (i) the details and intent regarding elements of Party B's indication of interest; (ii) Party B's willingness to improve the terms of its indication of interest (either to the high end of the purchase price range or above); (iii) Party B's requirement to acquire relevant intellectual property rights from Scotts Miracle-Gro and enter into commercial arrangements of transitional or longer-term nature with Scotts Miracle-Gro; and (iv) whether there was a reasonable expectation that Scotts Miracle-Gro would be a seller of its controlling equity interest of AeroGrow under the terms of Party B's indication of interest. **In later discussion, points (iii) and (iv) above became key elements of discussion**.

See Proxy at 37 (emphasis added).

102. Scotts's tactics were revealed when the Company admitted in the Proxy that Scotts stated that AeroGrow should reject competing bids because it would not sell its IP to the bidders. Even though other bidders had made initial offers of as high as $3.32 per share, and that AeroGrow's stock was trading at $5.74 per share at the time, Scotts made a ridiculously low and bad faith $1.75 per share offer on August 17, 2020 in order to ward off third party suitors and cause an artificial cratering of AeroGrow's stock price:

> On August 17, 2020, **Scotts Miracle-Gro delivered a letter to Stifel noting that it did not believe any of the four indications of interest received were worth further pursuing in part because of Scotts Miracle-Gro's intellectual property and other commercial rights** and their highly conditional nature. Pursuant to the letter, **Scotts Miracle-Gro proposed to acquire all of the shares of AeroGrow that it did not already own for $1.75 per share in cash.**
>
> **On August 17, 2020, AeroGrow's common stock closed trading on the OTCQB at $5.70 per share.**

See Proxy at 38-39 (emphasis added).

103. In other words, Scotts consented to AeroGrow soliciting competing bids, but with the proviso that it would not sell its IP to the third parties. Then, when the third party bids predictably came in below AeroGrow's stock price due to the fact that the third party bidders would be required to pay unknown royalties to Scotts for the IP, Scotts "instructed" Stifel, which was supposed to be AeroGrow's banker, not Scotts's banker, to reject the bids due to the IP problems, and then Scotts offered $1.75 for the minority shareholders' stock, which was 70% below the existing stock price.

104. When bankers are retained to shop a company, they require all interested parties to sign confidentiality provisions to safeguard the Company's information and also to avoid one

bidder from learning the identity or price that another bidder is willing to offer. Otherwise, bidders could get together and conspire to offer the lowest possible price.

105. Here, Stifel did not publicly disclose the identity of bidders or their prices or "indications of interest." After Scotts made its bad faith $1.75 offer on August 17, 2020, however, Scotts publicly disclosed, at the objection of Stifel, its offer price in order to sabotage the entire process and ward off third party bidders. The Proxy states that "[o]n August 18, 2020, Scotts Miracle-Gro and its affiliates filed an amendment to their Schedule 13D with the SEC disclosing its $1.75 per share offer." *See* Proxy at 39.

106. The Proxy also states that:

> Also, on August 19, 2020, Bryan Cave communicated to representatives of AeroGrow and Scotts Miracle-Gro that, in order to motivate potential third-party bidders to stay in the process and dedicate the resources necessary to further explore a transaction, the Special Committee requested that Scotts Miracle-Gro or AeroGrow agree to assure the highest bidder that its due diligence and transaction expenses up to $250,000 will be reimbursed in the event Scotts outbids their proposal or the Board terminates the process. A representative of Scotts Miracle-Gro indicated that **Scotts Miracle-Gro would like the opportunity to meet with the bidders and provide them with an overview of Scotts Miracle-Gro's intellectual property and other commercial rights and address expectations on value and transferability of such rights**. Scotts Miracle-Gro noted that if after such discussion bidders chose to move forward, Scotts would be amenable to discussing some level of financial assurance.

See id. (emphasis added).

107. In other words, Stifel was having such a hard time trying to get third party bidders to "stay in the process" in light of Scotts's obvious control of the process, that Stifel's attorneys asked Scotts to agree to reimburse the high bidder's due diligence costs up to $250k in the event that Scotts outbid their proposal. Scotts refused and instead said it would want to first meet with the bidders and educate them about why it was never going to sell its IP, thus ensuring the lack of any interest by third parties – an obvious interference by a controlling shareholder. The purported market check was a complete sham, orchestrated by Scotts simply to receive significantly reduced bids due to Scotts refusal to sell its IP to third party bidders, and so Scotts could then use the low bids to claim it was offering a slightly higher price than the artificial bids.

108. Tellingly, Scotts never even retained its own banker, which is customary in any "real" merger. Scotts did not need a banker because it never performed any real assessment of

AeroGrow's value, and instead just picked a price for which it wanted to acquire AeroGrow's minority stock on the cheap.

109. After it made its $1.75 bid on August 20, 2020, Scotts continued to abuse its control of AeroGrow and engage in conduct designed to deter third party bidders:

> On August 27, 2020, **a representative of Scotts Miracle-Gro informed a representative of Bryan Cave that Scotts Miracle-Gro did not believe that any bidder would be able to step into AeroGrow's shoes with respect to the contractual arrangements between Scotts Miracle-Gro and AeroGrow and that bidders should, be informed of Scotts Miracle-Gro's position.**
>
> * * *
>
> On August 28, 2020, Scotts Miracle-Gro also delivered to Bryan Cave by email an updated summary of Scotts Miracle-Gro intellectual property and other rights relating to AeroGrow that had been previously shared with the Board on June 1, 2020. **Scotts Miracle-Gro indicated in its email that such summary should be shared with bidders to understand AeroGrow's limited intellectual property rights if the various commercial license agreements with Scotts Miracle-Gro were to be terminated by Scotts Miracle-Gro. Scotts Miracle-Gro also indicated that bidders should be informed of AeroGrow's alleged failure to perform its obligations under certain agreements with Scotts Miracle-Gro** per the above referenced reservation of rights letters.
>
> On September 1, 2020, on behalf of AeroGrow, **Mr. Wolfe responded to the reservation of rights letters received from Scotts Miracle-Gro disagreeing with the assertion that Scotts Miracle-Gro's affiliate had the right to terminate the Brand License Agreement and the Technology License Agreement**.

See Proxy at 39 (emphasis added).

110. These disclosures underscore the fact that Scotts was acting in bad faith and making unfounded assertions solely to discourage third party bidders, in a blatant effort to reduce the price it would have to pay, thus harming minority shareholders. The Proxy specifically states that Scotts instructed Bryan Cave that the relevant information "should be shared with bidders," thus emphasizing that the purpose was to discourage bidders and/or reduce the price they were willing to offer for AeroGrow. Moreover, the fact that AeroGrow's CEO Mr. Wolfe "disagree[d] with the assertion that Scotts Miracle-Gro's affiliate had the right to terminate the Brand License Agreement" demonstrates that Scotts assertions lacked a factual basis and were being asserted in a manner calculated to harm the interests of AeroGrow's minority shareholders, to whom Scotts owed a fiduciary duty due to its status as a majority and controlling shareholder.

111. In ultimately deciding to "recommend" the merger, the toothless Special Committee noted that damage to the value received by the minority shareholders:

> The Special Committee also considered the non-binding indications of interest received from Stifel's market outreach, noted the uncertainty regarding the likelihood of completing a transaction with any of the bidders besides Scotts Miracle-Gro, and noted **that only one bidder exceeded the $3.00 per share price offered by Scotts Miracle-Gro, but that bid was dependent on Scotts Miracle-Gro selling certain intellectual property to the bidder at a price which had not been determined and that would ultimately reduce dollar-for-dollar the total per-share consideration paid to stockholders**. The Special Committee further considered the fact that some bidders had assumed certain intellectual property rights belonging to, and commercial arrangements with, Scotts Miracle-Gro would continue or be transferred to the prevailing bidder and that such arrangements were not possible without cooperation from Scotts Miracle-Gro. Furthermore, **the Special Committee noted that Scotts Miracle-Gro had told the Special Committee on September 17, 2020 that any such continuation would not be offered "on the same favorable terms**." **The Special Committee also discussed the general uncertainty regarding whether Scotts Miracle-Gro would constructively participate in a full sale process, and that without such participation by Scotts Miracle Gro as the 80% beneficial owner, no process could move forward**.

See Proxy at 41 (emphasis added).

112. The Proxy also explains in great detail that AeroGrow's CEO did not believe any of Scotts's assertions about the supposed integral nature of Scotts's IP, and that in fact AeroGrow had developed a work-around allowing it to conduct business without Scotts's IP:

> On September 1, 2020, the Special Committee met telephonically with representatives of Stifel and Bryan Cave. The Special Committee considered Scotts Miracle-Gro's position on existing intellectual property agreements and its August 18, 2020 bid. **Discussion included management's position that the Scotts Miracle-Gro trademarks are not of value to AeroGrow** and the nutrients patent, which management believes to be the sole remaining piece of Scotts Miracle-Gro intellectual property in use in AeroGrow's current product range and will not be used in Large Size Products ("LSPs") under co-development with Scotts Miracle-Gro, **has a simple work around for a third-party bidder**, leaving only the retail distribution rights to the LSPs, excluding Amazon and direct-to-consumer, as the lone potential value generator for AeroGrow that would be lost to a third-party acquirer.
>
> **On September 1, 2020, at the request of Stifel, Mr. Wolfe sent an email to Stifel setting forth AeroGrow management's position on how AeroGrow would operate without Scotts Miracle-Gro's involvement**, including management's opinion on intellectual property rights. This analysis was further updated on September 14, 2020.

See Proxy at 40 (emphasis added).

113. These admissions/disclosures are striking, and amply demonstrate that the executives at AeroGrow who were unaffiliated with Scotts, including CEO Wolfe, viewed the entire process as bogus and completely dictated by Scotts, on unfair terms.

114. The entire lengthy discussion of Scotts's basically worthless IP also suggests that Scotts was using its domination and control of AeroGrow to force it to pay inflated licensing fees for such IP, thereby harming AeroGrow's minority shareholders even before the merger. This was not only the opinion of CEO Wolfe, but also one that Stifel concurred with:

> On September 2, 2020, the Board held a meeting with representatives of Stifel and HBC present. The representatives of Stifel discussed the third-party outreach process and bids along with information that it would need and analysis to be conducted if Stifel were to be asked to provide a fairness opinion in connection with a proposed transaction. The representatives of Stifel also discussed the royalty and license arrangements between Scotts Miracle-Gro and AeroGrow and summarized their assessment of the relevant intellectual property issues related to AeroGrow's use of several Scotts Miracle-Gro trademarks and a nutrients patent. **The representatives of Stifel supported management's view that a third-party bidder would not need these trademarks or the patent to successfully operate AeroGrow. The representatives of Stifel also discounted AeroGrow's continued need for shared services and working capital under third-party ownership**.

See Proxy at 40 (emphasis added).

115. By September 17, 2020, Scotts still had not told Stifel whether it would be willing to sell its stake. On that date, however, Scotts ended the charade and admitted it would not sell its stake at the depressed and unfair prices being offered by third parties (and ultimately by Scotts itself):

> On September 17, 2020, the Special Committee held a telephonic meeting with representatives of Stifel and Bryan Cave present. Mr. Supron and Scotts Miracle-Gro's internal legal counsel also attended. **The Special Committee sought clarity from Scotts Miracle-Gro as to whether Scotts Miracle-Gro would be a buyer or a seller** in a potential transaction. Scotts Miracle-Gro indicated it did not believe a sale transaction with any of the bidders would be acceptable to **Scotts Miracle-Gro because it had decided that, at the valuations implied by the proposals, it did not want to sell its ownership stake in AeroGrow and, consequently, indicated its position as a buyer only**. **Scotts Miracle-Gro representatives also informed the Special Committee that any continuation of Scotts Miracle-Gro's intellectual property and other commercial agreements with AeroGrow would not be offered "on the same favorable terms" to potential acquirers**. Representatives of Scotts Miracle-Gro then discussed the possibility of purchasing all of AeroGrow common stock it did not own at a price of $3.00 per share.

See Proxy at 40 (emphasis added).

116. After Scotts made its $3.00 offer, the Special Committee asked Scotts whether it would increase the offer and was told no:

> Between September 20 and 22, 2020, representatives of Stifel attempted to negotiate with Scotts Miracle-Gro to improve its offer of $3.00 per share. Although Scotts Miracle-Gro was unwilling to increase its offer price, Mr. Supron assured

> representatives of Stifel that there would be no downward adjustments to the $3.00 per share offer price.

See id.

117. These disclosures are consistent with the fact that, from the beginning, Scotts was going to offer what it wanted, and no more. It structured the deal so that it alone could vote its shares in favor, ensuring success. The Special Committee was impotent, lacking any authority to accept or reject the merger. Stifel was merely going through the motions, and in the end accepted a multi-million dollar fee that was contingent on Scotts getting its way. Had Stifel done the right thing and refused to provide a fairness opinion, it would have received a fee of only $450,000. By bending to Scotts's will, Stifel received an additional $2,687,000.

118. The Special Committee acknowledged the fact that no effective sale process could occur since Scotts was not a willing participant to a fair and transparent process. The Proxy states:

> The Special Committee also discussed the general uncertainty regarding whether Scotts Miracle-Gro would constructively participate in a full sale process, and that without such participation by Scotts Miracle Gro as the 80% beneficial owner, **no process could move forward.**

See Proxy at 41 (emphasis added).[3]

E. The Special Committee Was Not Properly Advised By Independent Counsel or Bankers and Instead Received Most of Its Input and Direction From Scotts and Its Designees to AeroGrow's Board

119. Outsider directors are allowed to rely on outside advisors. In mergers, outside directors frequently rely on specialized lawyers and bankers to advise them on complex issues of finance and law. When a Special Committee is appointed, it is done so because conflicts of interest are present. The Proxy admits that is why AeroGrow appointed the Special Committee here.

[3] Moreover, the Company admitted in its Annual Report that Scotts's proposal posed a conflict of interest as well as a high risk of not adequately compensating minority shareholders for the future value of the Company: "The proposal and related transactions may **pose conflicts of interest and** may result in: (i) cessation of AeroGrow's status as a publicly traded company and SEC-reporting company; and (ii) **may result in the liquidation of common stock held by minority shareholders at a price that may not represent the full future economic value of the common stock**." *See* AeroGrow's 2020 Annual Report at 17 (emphasis added). These disclosures or warnings provided no protection to minority shareholders, however, because the minority shareholders have no ability to prevent the Merger. Defendants only conditioned approval of the Merger on the vote of a majority of all outstanding shares; And since Scotts owns 80.5% of all shares, it can approve the Merger by itself.

120. The Proxy states that the Special Committee retained Bryan Cave (lawyers) and Stifel (bankers) to represent it, but a close review of the Proxy reveals that Bryan Cave and Stifel did little to ensure that the Special Committee was not unduly influenced by Scotts and the conflicted members of the AeroGrow Board.

121. First, the Proxy states that AeroGrow's law firm, which is not independent, was involved in the initial outreach to Bryan Cave and that, even after Bryan Cave was retained to represent the Committee, the Company's law firm provided directions to the Committee, including advising them as to their duties:

> On February 28, 2020, Messrs. Clarke and Kent held a telephonic meeting with **AeroGrow's outside legal counsel, Hutchinson Black and Cook, LLC** ("HBC") and initiated communications with Bryan Cave Leighton Paisner LLP ("Bryan Cave") to represent the independent directors and a special committee of the Board should such special committee be approved by the Board. **Representatives of HBC and Bryan Cave advised Messrs. Clarke and Kent of their legal and fiduciary duties**.
>
> On March 1, 2020, a representative of Bryan Cave contacted Scotts Miracle-Gro regarding the proposed Schedule 13D amendment and discussed issues with internal counsel at Scotts Miracle-Gro.

See Proxy at 29 (emphasis added).

122. To ensure the independence of the Committee and its counsel, the Company's counsel should not have been involved in selecting Bryan Cave, nor in the process of advising the Committee as to their fiduciary duties.

123. Moreover, the Proxy discloses that Bryan Cave was not materially involved in advising the Committee on substantive matters, and that in fact the Committee had many interactions directly with Chris Hagedorn, Scotts, and other individuals who were conflicted. For example, the Proxy states that:

> **On March 10, 2020, Mr. Hagedorn sent a letter to Messrs. Clarke and Kent via email expressing that the Board has long identified AeroGrow's overhead as a significant drag on performance and that Scotts Miracle-Gro has provided support to AeroGrow and its management to encourage growth and profitability. The letter stated that Scotts Miracle-Gro believed that radical change was the only viable course available to AeroGrow's stockholders** and that the operational and structural proposals recommended by Scotts Miracle-Gro at the February Board meeting reflected Scotts Miracle-Gro's good faith effort to provide tangible value to all stockholders. The letter also instructed Messrs. Clarke and Kent to engage a financial advisor to independently evaluate the Scotts Miracle-Gro framework as well as any alternative strategic plans or transactions as suggested by Messrs. Clarke and Kent.

See Proxy at 30 (emphasis added).

124. Normally, communications to a Special Committee would go through the Committee's bankers and lawyers, and not come directly from conflicted management or the third party whose self-interested transaction the Committee is tasked with reviewing.

125. The Proxy reveals that the full, conflicted Board continued to be involved in all aspects of the potential transaction with Scotts, despite the formation of the Special Committee, and that the Company's law firm (Hutchison Black & Cook or "HBC") attended and provided advice to the full Board (including Clarke and Kent, the members of the Special Committee), and that Bryan Cave was conspicuously absent from those meetings, thus leaving Clarke and Kent to receive most of their guidance from the Company's counsel, not from Bryan Cave.

126. For example, on April 7, 2020 Scotts submitted an initial proposal regarding suggested operational changes, including a cost reduction plan, organizational changes, and a proposed 2.5% royalty to the Special Committee. Far from allowing the Special Committee to review the proposal in an independent manner, the proposal was considered at a meeting the same day (April 7, 2020) at which the entire Board and the Company's lawyers, as well as Mr. Supron from Scotts, attended, but at which neither Bryan Cave nor any banker retained by the Special Committee was allowed to attend:

> **On April 7, 2020, the Board held a meeting by videoconference attended by all members of the Board, certain members of AeroGrow's management, a representative of HBC and Mr. Supron. The Board discussed the April 6, 2020 written proposal from Scotts Miracle-Gro** and questions and requests for additional information from Scotts Miracle-Gro ensued. The Board also discussed the ownership by Scotts Miracle-Gro of certain intellectual property used by AeroGrow and the various other contractual relationships between AeroGrow and Scotts Miracle-Gro. It was recognized that these licenses and agreements may negatively impact the value of AeroGrow to, or frustrate a transaction with, third parties. The Board also discussed AeroGrow's fiscal year 2021 operating plan and requested further development of the plan, including the potential impacts of COVID-19.

See Proxy at 31 (emphasis added).

127. For the Special Committee to have any semblance of independence, it should have been the entity tasked with exclusively considering any proposed transaction with Scotts, and should have been allowed to meet by itself and receive independence advice from its own lawyers and bankers. Instead, the full conflicted Board was allowed to attend and fully participate in the discussions regarding all of Scotts's proposals. So too was Scotts's representatives, including

Supron. The Special Committee itself, meanwhile, did not even have its own lawyers or bankers present at most meetings.

128. The Special Committee did not even retain Stifel until May 6, 2020, well after it had engaged in substantive discussions and evaluations of proposals from Scotts. Moreover, the Proxy states that Stifel is allegedly independent of Scotts, but does not represent that Stifel is independent of AeroGrow. For Stifel to be truly independent, it would have to be independent of AeroGrow since AeroGrow is controlled by Scotts.

129. Stifel also lacked independence because, as noted in the Proxy, the vast majority of Stifel's compensation was contingent on it arriving at the conclusion that the Merger was fair from a financial point of view to AeroGrow's minority shareholders.

130. Scotts also presented a revised proposal on May 8, 2020 to AeroGrow's Board:

> On May 8, 2020, the Board held a telephonic meeting with representatives of AeroGrow's management, a representative of HBC and Mr. Supron present. AeroGrow's management presented a business update to the Board, including a report on recent sales results and trends. Management also presented, and the Board reviewed and agreed to, financial projections, which would form the basis of the "management projections" (as defined and further described under "—Management Projections"). The Board also discussed the need for a working capital line of credit and representatives of Scotts Miracle-Gro stated that a line of credit might be available from Scotts Miracle-Gro if Scotts Miracle-Gro's restructuring proposal progressed.
>
> Mr. Supron then presented a revised proposal from Scotts Miracle-Gro to the Board. Mr. Supron explained that, under this revised proposal, AeroGrow would remain a separate, publicly traded legal entity with limited operations and remain 80% owned by Scotts Miracle-Gro. Its operations (other than financial statement preparation and SEC reporting) would be consolidated with Scotts Miracle-Gro, effective October 1, 2020.

See Proxy at 31.

131. Again, neither Bryan Cave nor Stifel were present at the May 8, 2020 meeting to provide advice to the Special Committee. These facts amply demonstrate that the key decision makers were Scotts and its designees on AeroGrow's Board; the Committee was a mere fig leaf that quickly became an afterthought, and whose eventual "recommendation" was meaningless since the full Board, controlled by Scotts, retained the right to approve the Merger.

132. The Proxy also states that:

> On May 12, 2020, **HBC, Bryan Cave and Scotts Miracle-Gro's internal legal counsel discussed the processes under consideration by the Board and Special Committee to review Scotts Miracle-Gro's proposal.**
>
> **On May 15, 2020, Bryan Cave provided a courtesy copy of the draft Stifel engagement letter to HBC and Scotts Miracle-Gro's internal legal counsel. Bryan Cave, HBC and Scotts Miracle-Gro's internal legal counsel exchanged comments on the draft Stifel engagement letter over the next several days.**

See Proxy at 32 (emphasis added).

133. These disclosures reveal that both Scotts and the Company's legal counsel (HBC) were fully involved and had influence over all aspects of the Special Committee's deliberations and work. Scotts was even allowed to provide comments and changes to Stifel's retention terms. Clearly, neither the Special Committee nor either of its advisors (Bryan Cave and Stifel) were independent of Scotts or the Company.

134. The supine AeroGrow Board and the feckless Special Committee also allowed Scotts to dictate the scope and terms of the market check undertaken by Stifel. The market check was a key method by which the AeroGrow Board could fulfill its fiduciary duty to maximize value in any transaction. Scotts should have had absolutely no involvement in the market check performed by Stifel. However, not only was Scotts involved in the market check, it dictated what Stifel was allowed and not allowed to do. The Proxy states:

> On June 23, 2020, **Mr. Supron, Scotts Miracle-Gro's internal legal counsel, representatives of Stifel and Bryan Cave discussed the market check process and strategic alternatives that Scotts Miracle-Gro would be willing to consider.**

See Proxy at 34 (emphasis added).

135. The Special Committee's compensation was even subject to approval by Scotts. The Proxy states that:

> On June 2 and 3, 2020, the Special Committee, Bryan Cave, Mr. Hagedorn, Mr. Supron and Scotts Miracle-Gro's internal legal counsel engaged in discussion via email regarding the Special Committee's requests for additional compensation for service on the Committee. . . .

See Proxy at 34.

F. The Merger Consideration is Unfair and is the Result of Defendants' Self-Dealing and Breach of the Duty of Loyalty at the Expense of AeroGrow's Minority Stockholders

136. The proposed offer of $3 in cash per share is inappropriate, unfair, and inadequate. The proposed transaction is being pursued to enable Scotts to acquire 100% equity ownership of the Company and its valuable assets at a price only favorable to Scotts. The Merger allows Scotts to do so at the expense of the Company's minority stockholders, including Plaintiff, who will be denied the true value of his equity investment and the benefits thereof including, among other things, the Company's future financial prospects.

137. For example, in comparison to the three months ended September 30, 2019, the three months ended September 30, 2020 saw an increase in AeroGrow's net income to $1.3 million, up from a $1.1 million loss; an increase in the Company's total revenue of 223.5% ($9.9 million); an increase in sales to retailer customers of 141.5% ($6.5 million); an increase in sales in the Company's direct-to-consumer channel of 210.2% ($3.4 million); and an increase in the total dollar sales of AeroGarden units, the Company's most popular product representative of a majority of the Company's total revenue over the year, of 269.2%.

138. Similarly, the six months ended September 30, 2019, contrasted with the six months ended September 30, 2020 saw: an increase in AeroGrow's net income to $3.9 million, rather than a $2.13 million loss; an increase in the Company's total revenue of 245.3% ($21.8 million); an increase in sales to retailer customers of 217% ($11.2 million); an increase in sales in the Company's direct-to-consumer channel of 299.6% ($10.6 million); an increase in the total dollar sales of seed pod kits and accessories of 208.5% ($6.9 million); and an increase in the total dollar sales of AeroGarden units of 244.1%.

139. The Merger price – agreed to by Defendants – represents a number based on the Company's artificially depressed share price, and thus fails to legitimately account for AeroGrow's rapidly increasing financial success. AeroGrow's common stock had already reached a 52-week high of $6.10 per share the day of Scotts's initial offer to take the Company private, more than 200% higher than the $3.00 per share finally offered in the proposed transaction. The Merger also comes at a time when AeroGrow's share price is undergoing explosive growth and actively seeks

to withhold from Plaintiff the opportunity to share proportionately in the future success of the Company and its valuable assets.

140. Moreover, from the beginning of the process, Scotts's alleged justification for engaging in the transaction was that AeroGrow was allegedly not doing well and needed some kind of "major" restructuring in order to improve performance. That assertion was completely false and was proven false in the months following the February 2020 meeting in which Scotts initially raised the claim that major change was needed to benefit AeroGrow's shareholders. In fact, no major change was made at AeroGrow after February 2020; notwithstanding the lack of any change, AeroGrow's earnings rapidly improved and the stock more than tripled. Thus, the Company was doing tremendous and no change was needed for AeroGrow's stockholders to benefit.

141. Far from benefitting AeroGrow shareholders (other than itself), Scotts's squeeze-out transaction was made at a price that was 70% below the market price when announced. Thus, the Merger is obviously a value destroying event. For Scotts, however, since it is not selling its AeroGrow stock, but buying it, the Merger represents a huge value creating event not justified by anything other than Scotts's bold and unlawful power grab/abuse of control. Defendants' misconduct represents a clear breach of fiduciary duty. In any transaction where insiders, especially a majority and controlling shareholder, receive any benefit, the minority shareholders must receive commensurate benefits. Scotts and its designees to AeroGrow's Board are not permitted to steal from the minority shareholders just to line their own pockets with even more money than they have already misappropriated from the Company. And yet that is exactly what they did here.

142. Scotts itself indicated it did not want to sell its stock at such paltry levels and thus Scotts has implicitly acknowledged the price it is offering is not fair value.

143. Defendants breached their fiduciary duties and engaged in wrongful conduct that depressed the value of AeroGrow's stock, even before Scotts's formal offer was made. For example, financial results and stock price in 2020 would have been even better had Defendants not intentionally delayed the introduction of the Company's most promising product. In

AeroGrow's August 11, 2020 press release, the Company stated that it would be "launching the Grow Anything Appliance, our most ambitious product to date."

144. But Defendants had previously announced in November 2019 that the Grow Anything Appliance/Bloom would be launched in the first few months of 2020. On November 14, 2019, AeroGrow had issued the following press release touting Grow Anything as a key product poised to earn huge revenues for AeroGrow in a billion-dollar market:

> BOULDER, Colo., Nov. 14, 2019 (GLOBE NEWSWIRE) – AeroGrow International, Inc. (OTCQB: AERO) ("AeroGrow" or "the Company"), the manufacturer and distributor of AeroGardens - the world's leading family of In-Home Garden SystemsTM – **announced today the launch of its largest and most innovative product to date.**
>
> Last week, AeorGrow's Board of Directors formally approved making the final capital expenditures required to tool, complete the software development and begin manufacturing this new addition to AeroGrow's product portfolio. As a result, **in the coming months AeroGrow will be bringing to market its most ambitious home gardening innovation yet – the "Grow Anything" Appliance**, a fully automated and self-contained indoor gardening system. The Grow Anything Appliance will revolutionize in-home-growing with the world's first and most advanced on-board plant computer, accessible both on the device and through a proprietary app.
>
> Using community-based, plant-specific recipes and advanced-system artificial intelligence, the refrigerator-sized appliance monitors and adjusts all key environmental factors – light, temperature, humidity, water quality and nutrient levels – to maximize growth and output for any variety of plant at every stage of growth. The product also features a highly effective LED grow light system designed to optimize plant growth at all stages, a nutrient auto-dosing system, an automated plant drying/curing cycle, and even an on-board camera to remotely monitor growth and plant health.
>
> **The Grow Anything Appliance, which is planned to be marketed under the Botanicare brand, has been four years in the making through a rigorous Research & Development process**. Prototype units have been growing throughout the Company's home state of Colorado for the past year with impressive results – both in terms of quality and quantity of crop output. **The product will be manufactured by the Company's proven manufacturing partners, with the first products set to be available in the market during the first half of 2020.**
>
> "**We believe our Grow Anything appliance will be the most advanced indoor home-growing device ever launched," said J. Michael Wolfe, AeroGrow's President & CEO**. "At our core, we've always been a product-centric company – and this newest launch truly demonstrates our commitment to innovative R&D, design functionality and plant growing efficacy. Moreover, as the name implies, it truly allows users to grow anything they want . . . and to do it in a way that is sure to produce exceptional crops time and again.
>
> "**The large plant Grow Anything appliance is the first step for AeroGrow into the rapidly growing space of fully automated, appliance sized home-growing systems – a market we've sized at well over a billion dollars world-wide and one we plan to pursue vigorously**."

See AeroGrow Form 8-K, dated Nov. 14, 2019 (emphasis added).

145. Thus, AeroGrow's Grow Anything Appliance/Bloom was ready to be sold in the beginning of 2020. However, doing so would have resulted in significant additional revenues to AeroGrow and therefore caused its stock to skyrocket even more. Scotts and its designees to the AeroGrow Board therefore wrongfully instructed CEO Wolfe to hold back the launch so that the significant expected revenues from Grow Anything would not be reflected in the Company's financial results, thus aiding Scotts's efforts to squeeze out the minority shareholders at a lower, unfair price that did not reflect the Company's true value and prospects.

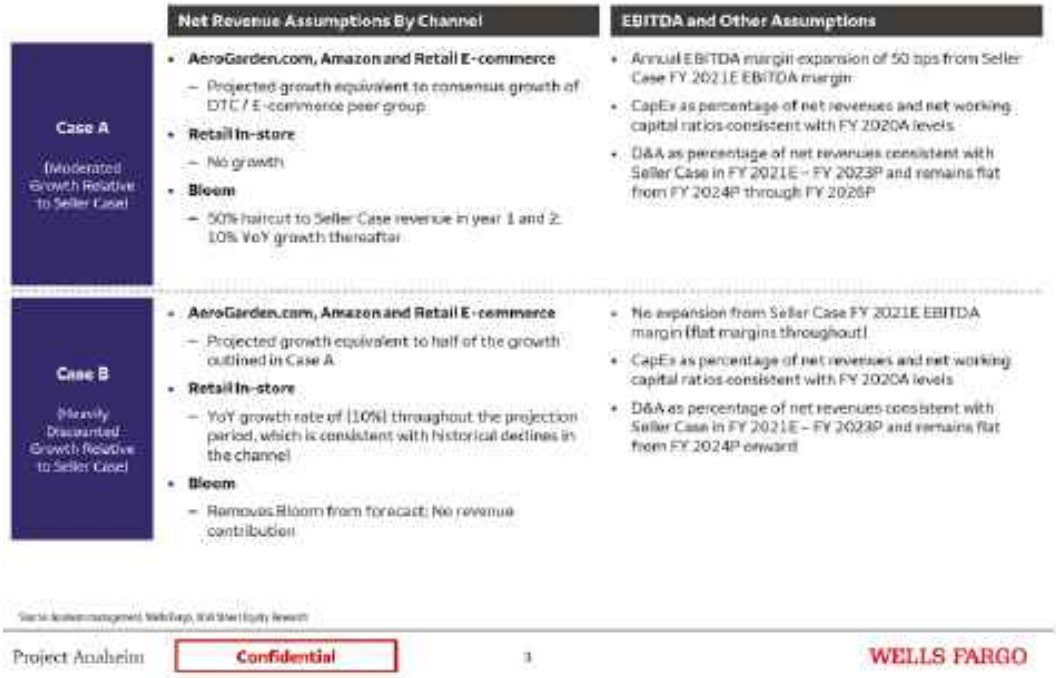
146. Scotts's complete and bad faith manipulation of the value to be received by AeroGrow shareholders in the Merger was revealed in even more detail in belated disclosures that AeroGrow filed with the SEC on January 12, 2021. On that date, AeroGrow filed an Amended Schedule 13D with the SEC in which it disclosed for the first time certain key financial presentations. Among those were the presentation that Stifel made to the AeroGrow Board of Directors on November 10, 2020. That presentation revealed much higher management forecasts for AeroGrow than had been previously disclosed. The Stifel presentation confirmed that AeroGrow's management expects major top line contributions from Grow Anything/Bloom in the coming years, as reflected in the attached chart prepared by Stifel:

147. As this analysis shows, AeroGrow's projections state that AeroGrow's revenues show an increase from $92 million in fiscal 2021 (which is almost over, since AeroGrow's fiscal year 2021 ends on March 31, 2021) to $188.2 million by 2023; gross profits are expected to more than double from $30.7 million to $63.4 million in the same period.

148. Moreover, the expected outsized contribution to AeroGrow's revenues in the coming years from Grow Anything/Bloom is demonstrated by the yellow highlighting in the above chart. In the current 2021 fiscal year, Grow Anything/Bloom is only expected to contribute 2% to net revenues. By 2023, the contribution is expected to grow to 23%.

149. Based on these accurate forecasts, **Stifel had prepared a valuation range for AeroGrow's stock of between $5.90 per share and $8.20 per share**. But Scotts did not want to pay anything close to fair value for the stock held by the minority shareholders, and thus embarked on a plan to manufacture new numbers more to its liking.

150. Scotts was able to accomplish this by instructing its own banker, Wells Fargo, to heavily discount AeroGrow's forecasts to arrive at lower numbers. Scotts told Wells Fargo to prepare two new cases (Case A and Case B) in which Wells Fargo was instructed to use large haircuts in the projections:



151. As the chart above demonstrates, Wells Fargo applied unrealistic haircuts to AeroGrow's forecasts, including, in Case A, assuming absolutely no growth in Retail sales and the application of an arbitrary 50% haircut in the first two years of the forecasts; in Case B, Wells Fargo applied even more drastic haircuts ("Heavily Discounted Growth Relative to Seller Case"), including completing removing all revenue from Grow Anything/Bloom from the forecasts ("Removes Bloom from forecast; No revenue contribution").

152. Amazingly, Wells Fargo applied these huge haircuts to AeroGrow's projections without even speaking to AeroGrow's management or engaging in any due diligence whatsoever. As acknowledged in an amended Schedule 13D: "Wells Fargo reduced the AeroGrow projections "**without performing any due diligence with [AeroGrow's] management.**"[4]

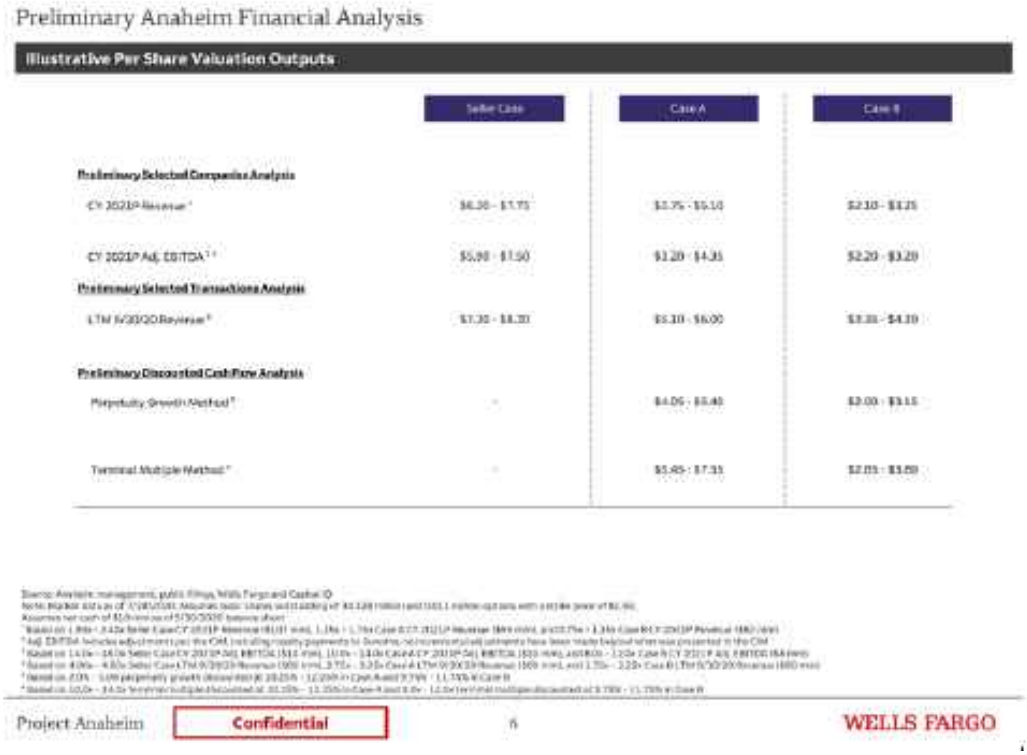
[4] *See* Amended Schedule 13D, filed Jan. 12, 2021, *available at* https://www.sec.gov/Archives/edgar/data/1316644/000119312520310012/d22041dex99c3.htm (emphasis added).

153. These disclosures demonstrate how desperate Scotts was to come up with manipulated numbers to try to make its low-ball offer seem better than it was: it simply told its own banker to completely take out all projected revenue from the Company's key product. Scotts had agreed to spend millions on R&D for this product in past years, and thus recognized the value of the product. When the money had been spent, however, and AeroGrow was on the verge of more than doubling its revenues and gross profits over the next two years as a direct result of the investment in Grow Anything/Bloom, Scotts decided to acquire AeroGrow so it could misappropriate the huge upside of Bloom for itself, to the exclusion of the Company's minority shareholders. Defendants' misconduct in telling Wells Fargo to simply take out all expected revenues from Bloom from the forecasts under Case B amply demonstrates bad faith and demonstrates the unfairness of the Merger consideration.

154. After it had Wells Fargo manipulate the forecasts prepared by AeroGrow's management, Scotts then used its control to coerce Stifel into lowering its prior valuation of AeroGrow by using the Wells Fargo analysis as leverage, telling Stifel that its analysis was not reliable and needed to be reduced. Stifel eventually agreed to use a revised valuation method "which reduces management growth estimates for annual core revenue growth by 10% and annual Bloom revenue growth by 50%."[5]

155. The following chart from Wells Fargo discloses the original $5.90 to $8.20 valuation range derived from Stifel's original analysis and management's actual forecasts, compared to the "manipulated" valuation range derived by Wells Fargo through two new cases that heavily discounted the original management forecasts:

[5] *See* Amended Schedule 13D filed Jan. 12, 2021, available at https://www.sec.gov/Archives/edgar/data/1316644/000119312520310012/d22041dex99c1.h



156. Tellingly, even Scotts's own conflicted banker, Wells Fargo, using heavily discounted financial forecasts, arrived at valuation ranges that were significantly higher than Scotts's $3.00 Merger price. And as the chart above demonstrates, Wells Fargo's alternative Case A valuation derived values for AeroGrow of between $5.10-$6.00 per share using a Precedent Transactions analysis, and of between $5.45-$7.55 under a DCF analysis.

157. In addition, to further attempt to prevent AeroGrow's rapidly improving financial forecasts and earnings from causing further increases in AeroGrow's stock price, Scotts instructed CEO Wolfe to cease holding earnings calls and to cease sending the annual letter to shareholders. Both items were standard practice in past years. Scotts thus used its control of AeroGrow to prevent Wolfe from communicating the substantial progress AeroGrow was making.

158. The $3.00 Merger price is not fair because Stifel's fairness opinion uses valuation ranges that indicate the price is not fair. In other places, as indicated above, Defendants caused Stifel to use inputs that are not market based and, therefore, do not reflect true value.

159. For example, even when it used financial projections that had been manipulated by Scotts (through its banker Wells Fargo), Stifel ran a DCF analysis and came to the conclusion that the merger price of $3.00 is not fair from a financial point of view. Stifel's Terminal Multiple Method Base Case DCF analysis resulted in a value for AeroGrow stock of between $3.47 and $4.57, which is higher than the $3.00 merger price:

> "**[Stifel] calculated implied equity values per share ranging from $3.47 to $4.57**, the high-end of which range was the equity value per share derived using the high-end terminal multiple and applying the low-end discount rate, and the low-end of which range was the equity value per share derived using the low-end terminal multiple and applying the high end discount rate. **Stifel noted that the Merger Consideration falls below the range of implied equity values per share implied by this analysis**.

See Proxy at 60 (emphasis added).

160. Stifel also ran an alternative "Perpetuity Growth Method" DCF analysis in an attempt to make the merger consideration look fair. But it used extremely high and unreasonable discount rates of 14-16% to arrive at its depressed valuation range of $1.93 to $2.53 per share under such analysis. Stifel indicated that it chose the extremely high discount rates "based on Stifel's estimation of the Company's weighted average cost of capital." *See id*. But this makes no sense. Interest rates are historically low. And AeroGrow's principal line of credit is the one it was forced to accept from Scotts. That interest rate is extremely high and non-market, demonstrating the unreasonableness of the 14-16% rate Stifel used. Had Stifel used more reasonable and market-based discount rates, it would have derived a much higher valuation for AeroGrow's stock under its manipulated Perpetuity Growth Method DCF analysis.

161. Stifel used the unrealistic 14-16% discount rates for all its analyses, including the Terminal Method DCF analysis.

162. Stifel also utilized a Comparable Companies analysis as part of its valuation methodologies. That methodology used overly conservative financial projections that had been manipulated by Defendants, and that did not accurately reflect the large upside from the Company's rapidly increasing revenues and profits. Even then, Stifel derived an implied value for the Company's stock of $3.58 based on expected 2021 financial results and using a "third quartile" metric.

163. Moreover, on the eve of the sham shareholder vote, AeroGrow reported strong earnings that easily exceed the projections used in Stifel's "fairness" opinion:

> **AeroGrow Reports 3rd Quarter Results**
>
> - **3rd Quarter Revenue Increases 107% to $38.4 Million**
> - **3rd Quarter Operating Profit Increases 290% to $4.7 Million**
> - **Nine month results: Revenue up 151% to $69.1 Million; Income From Operations Rises to $8.7 Million, up from a Prior Year loss of $918 Thousand**
>
> Boulder, CO - (February 16, 2021) – AeroGrow International, Inc. (OTCQB: AERO) ("AeroGrow" or "the Company"), the manufacturer and distributor of AeroGardens – the world's leading family of In-Home Garden Systems™ – announced results for its third quarter ended December 31, 2020.
>
> For the quarter ended December 31, 2020 the Company recorded net revenue of $38.4M, an increase of 107% over the same period in the prior year. Income from Operations was $4.7M, an increase of 290% vs. the prior year. Gross margin improved to 41.1%, an increase of 590 basis points vs the prior year.
>
> For the nine months ended December 31, 2020, net revenue stands at $69.1M, an increase of 151% vs. the same period last year. Income from Operations was $8.7M, up from a loss of $918K the prior year. Gross margin for the period improved to 42.0%, up 760 basis points vs. the prior year.

See AeroGrow Ex. 99.1 to Form 8-K, dated Feb. 16, 2021.

G. <u>The Defective Terms of The Merger Agreement</u>

164. Under the terms of the Merger Agreement, Plaintiff will receive just $3.00 per share cash. He will be divested of his ownership of AeroGrow stock and denied the ability to participate in any way in the future value of the Company.

165. The Defendants, in stark contrast, are allowed to retain their stock and ownership in AeroGrow and will reap the rewards and upside of the Company, whose assets will be usurped by Scotts and SMG Growing Media, Inc.

166. The Merger is a *fait accompli*. The only condition to the Merger is the majority vote of all outstanding shares of AeroGrow. Scotts, through its wholly-owned subsidiary SMG Growing Media, Inc., owns 80.5% of AeroGrow stock. As the Merger Agreement and Proxy state, Scotts and SMG Growing Media, Inc. are contractually obligated to vote in favor of the Merger: "Subject to the terms of the Merger Agreement, Parent has agreed to vote all shares of common stock it beneficially owns in favor of the Merger Agreement Proposal." *See* Proxy at 87. Thus, the Merger

has already been effectively approved. It is not even clear why Scotts is holding a meeting, other than to create some bogus appearance of some semblance of a "process."

H. The Merger Was Intended To, and Will Increase, Scotts's Revenues and Profits

167. The Merger will allow Scotts to obtain complete control of AeroGrow and to increase its financial performance by acquiring AeroGrow's assets and business for itself:

> The Purchaser Parties and Scotts Miracle-Gro have undertaken to pursue the Merger at this time in light of the opportunities they perceive to enhance Parent's and, in turn, Scotts Miracle-Gro's, financial performance by means of acquiring the Company's brands and other assets through the Merger. For the Purchaser Parties and Scotts Miracle-Gro, the purpose of the Merger is to enable them to exercise complete control of the Company. . . .

See Proxy at 63.

168. As demonstrated herein, AeroGrow's financial performance increased dramatically during 2020 and was well-positioned to continue doing so. In fact, AeroGrow had invested substantial R&D in the years prior to the Merger and was just beginning to reap the rewards of such substantial capital improvements when Scotts orchestrated its take-under merger at no premium, and in fact at a substantial discount to AeroGrow's stock price and fair value.

169. As a result of the Merger, Plaintiff will be denied his ownership interest in AeroGrow. Scotts, on the other hand, is misappropriating AeroGrow's substantial assets and value for itself, to the detriment of the minority shareholders.

FIRST CLAIM FOR RELIEF

For Breaches of Fiduciary Duty Against Scotts Miracle-Gro Company, James Hagedorn, and SMG Growing Media, Inc. As Controlling Stockholders

170. Plaintiff repeats and re-alleges each and every allegation contained above as if fully set forth herein.

171. As AeroGrow's controlling stockholders, Scotts Miracle-Gro Company, James Hagedorn, and SMG Growing Media, Inc. owed Plaintiff fiduciary duties of loyalty and care. In breach of those duties, Defendants used their control of AeroGrow's corporate machinery to, among other things, orchestrate the AeroGrow Board's approval of the Merger.

172. The Merger was a self-interested transaction for Defendants that was intended to and did benefit them and Scotts at the expense of AeroGrow's minority shareholders. For example,

the Merger is expected to improve Scotts's revenues, EBITDA and free cash flow. Moreover, by abusing their control of AeroGrow, Defendants are acquiring the minority's stock at a mere $3.00 per share, $20,066,226 below the August 18, 2020 market value of the stock and a significantly greater amount lower than the fair value of the stock.

173. The Merger was also the product of unfair dealing. Scotts Miracle-Gro Company, James Hagedorn, and SMG Growing Media, Inc. initiated, structured, negotiated, caused the AeroGrow Board to approve, and priced the Merger to serve Scotts's interests at the expense of AeroGrow's minority stockholders. Scotts Miracle-Gro Company, James Hagedorn, and SMG Growing Media, Inc. wielded their position as AeroGrow's controlling stockholders to prevent the AeroGrow Board from negotiating at arm's length with Scotts, including by (1) failing to form a special committee of independent with the unilateral authority to approve or reject the Merger, engage independent legal and financial advisors, and consider strategic alternatives; (2) engaging hopelessly conflicted financial and legal advisors to advise the Special Committee on the Merger; (3) controlling the Merger negotiations by overseeing AeroGrow's senior management in their conduct, by dictating the terms of the market check, and by telling third party suitors, through Stifel, that Scotts would not sell its IP to any third party. Defendants knew that cloaking every level of the process with conflicted advisors would steer the Board to approve the Merger on the unfair terms they chose.

174. Defendants also wielded their position as AeroGrow's controlling stockholder to ensure they controlled the vote on the Merger. Defendants instructed the Board to only make the Merger subject to the vote of a majority of all outstanding shares, including Defendants' 80.5% stake. Defendants did not subject the Merger to the approval of a majority of AeroGrow's minority stockholders, thus completely disenfranchising Plaintiff.

175. By reason of the foregoing, Plaintiff has suffered damages.

SECOND CLAIM FOR RELIEF

For Breach of Fiduciary Duty Against Chris Hagedorn, H. MacGregor Clarke, David B. Kent, Cory Miller, and Patricia M. Ziegler

176. Plaintiff repeats and re-alleges each and every allegation contained above as if fully set forth herein.

177. Defendants are directors of AeroGrow, and as such owe fiduciary duties to Plaintiff as a minority shareholder.

178. By the acts, transactions and courses of conduct alleged herein, Defendants, as directors of the Company, have knowingly violated their fiduciary duties owed to Plaintiff.

179. As alleged above, Defendants violated their fiduciary duties owed to Plaintiff and acted to put the interests of Scotts ahead of the interests of Plaintiff or acquiesced in those actions by fellow Defendants. These Defendants knowingly failed to take adequate measures to ensure that the interests of Plaintiff are properly protected, failed to engage in an adequate process and failed to negotiate a fair price, thereby, essentially acquiescing to Scotts's interests. Defendants acted without independence and under the control of Scotts and its affiliates.

180. Alternatively, in agreeing to the Merger, Defendants initiated a process to sell AeroGrow that imposed a heightened fiduciary responsibility on them and requires enhanced scrutiny by the Court. Defendants owed fundamental fiduciary obligations to Plaintiff to take all necessary and appropriate steps to maximize share value in implementing such a transaction. Among other things, these Defendants knew the price at which AeroGrow's stock had been trading for immediately prior to Scotts's initial squeeze-out proposal and at all relevant times thereafter and knew that the Company's revenues and net income were rapidly increasing, yet they accepted a price that was grossly inadequate.

181. As alleged above, Defendants violated their fiduciary duties owed to Plaintiff by knowingly failing to maximize stockholder value in that they failed to proceed in a process designed to obtain the best consideration reasonably available. For example, Defendants knowingly failed to secure a majority of the minority voting condition for the benefit of Plaintiff.

182. Defendants violated, among other fiduciary duties owed to Plaintiff, their duties of undivided loyalty, good faith, care and candor.

183. By reason of the foregoing, Plaintiff has suffered damages.

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THIRD CLAIM FOR RELIEF

For Aiding And Abetting Breach of Fiduciary Duty Against James Hagedorn, Peter Supron, AeroGrow International, Inc., AGI Acquisition Sub, Inc., Chris Hagedorn, H. MacGregor Clarke, David B. Kent, Cory Miller, and Patricia M. Ziegler

184. Plaintiff repeats and re-alleges each and every allegation contained above as if fully set forth herein.

185. As alleged in detail herein, Scotts Miracle-Gro Company and its wholly-owned subsidiary SMG Growing Media, Inc. are majority and controlling shareholders of AeroGrow, owning 80.5% of its stock. Scotts and SMG Growing Media breached their fiduciary duties to Plaintiff. James Hagedorn, AeroGrow International, Inc., AGI Acquisition Sub, Inc., Chris Hagedorn, H. MacGregor Clarke, David B. Kent, Cory Miller, and Patricia M. Ziegler aided and abetted those breaches of fiduciary duties.

186. As participants in the fundamentally flawed negotiation process, James Hagedorn, Peter Supron, AeroGrow International, Inc., AGI Acquisition Sub, Inc., Chris Hagedorn, H. MacGregor Clarke, David B. Kent, Cory Miller, and Patricia M. Ziegler had actual knowledge that Scotts and SMG Growing Media were breaching their fiduciary duties. Defendants knew that Scotts and SMG Growing Media were using the Merger to benefit Scotts, to the detriment of Plaintiff.

187. Defendants advocated and assisted those breaches, and actively and knowingly encouraged and participated in said breaches. Defendants knowingly and intentionally participated in Scotts's scheme by, among other things: (1) working with AeroGrow's management, Stifel, and Wells Fargo to value AeroGrow's business in accordance with Scotts's and SMG Growing Media's wishes; (2) failing to conduct a proper market check for AeroGrow; (3) advising Stifel that Scotts's IP was necessary, when according to Wolfe was largely unnecessary and that AeroGrow had a workaround; and (4) agreeing with Scotts's and SMG Growing Media's management regarding the nature and value of the Merger Consideration before getting agreement from the Board or Special Committee.

188. Chris Hagedorn, H. MacGregor Clarke, David B. Kent, Cory Miller, and Patricia M. Ziegler also knowingly participated in Scotts's and SMG Growing Media's scheme by

approving the Merger as AeroGrow directors (1) without conducting adequate due diligence; (2) without receiving any independent advice about whether the Merger was fair to, and in the best interests of, AeroGrow's minority shareholders; and (3) by allowing Scotts and its financial advisor, Wells Fargo, to manipulate the financial forecasts prepared by AeroGrow's management.

189. Defendants assisted in Scotts's and SMG Growing Media's fiduciary breaches to extract benefits for themselves – i.e., continued employment and increased compensation – from James Hagedorn, who controls their salaries, wanted to consummate the Merger for his and Scotts's benefit, and to whom they are beholden.

190. As a direct and proximate result of Defendants' wrongful conduct, Plaintiff suffered damages.

191. Plaintiff has been damaged by Defendants' actions as described herein this Cause of Action and seeks recovery for the damages caused thereby.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment as follows:

A. Declaring that Defendants breached their fiduciary duties and/or aided and abetted other defendants' breaches of fiduciary duty, and are liable to Plaintiff for such breaches in an amount to be proven at trial but nonetheless in an amount in excess of $15,000.00;

B. Awarding monetary relief to Plaintiff in an amount to be proven at trial but nonetheless in an amount in excess of $15,000.00;

C. Awarding Plaintiff the costs and disbursements of this action, including reasonable attorneys' fees, accountants' and experts' fees, costs and expenses; and

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D. Granting such other and further relief as the Court deems just and proper.

DATED: February 22, 2021

Respectfully submitted,

MARQUIS AURBACH COFFING

/s/ Terry A. Coffing

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Attorneys for Plaintiff

JURY TRIAL DEMANDED

Pursuant to Rule 38(b) of the Nevada Rules of Civil Procedure, Plaintiff hereby demands a trial by jury on all claims set forth herein.

DATED February 22, 2021

Respectfully submitted,

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Counsel for Lead Plaintiff Nicoya Capital LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

OVERBROOK CAPITAL LLC, on Behalf of Itself and All Others Similarly Situated, Plaintiff, vs. AEROGROW INTERNATIONAL, INC., CHRIS HAGEDORN, H. MACGREGOR CLARKE, DAVID B. KENT, CORY MILLER, PATRICIA M. ZIEGLER, SMG GROWING MEDIA, INC., and SCOTTS MIRACLE-GRO COMPANY, Defendants.	Case No.: A-21-827665-B Dept. No.: XI **NOTICE OF RELATED CASE**
NICOYA CAPITAL LLC, on Behalf of Itself and All Others Similarly Situated, Plaintiff, vs. CHRIS HAGEDORN, H. MACGREGOR CLARKE, DAVID B. KENT, CORY	Case No.: A-21-827745-B Dept. No.: XI

MILLER, PATRICIA M. ZIEGLER, JAMES HAGEDORN, PETER SUPRON,

- and -

AEROGROW INTERNATIONAL, INC., a Nevada Corporation, and AGI ACQUISITION SUB, INC., a Nevada Corporation, SMG GROWING MEDIA, INC., an Ohio Corporation, AND SCOTTS MIRACLE-GRO COMPANY, an Ohio Corporation,

Defendants.

NOTICE OF RELATED CASE

Pursuant to paragraph 6 of the Stipulation and Order Consolidating Related Cases, Appointing Lead Counsel, and Providing for Filing of Consolidated Complaint entered on February 18, 2021, Plaintiffs hereby provide notice to the Court of the following related, subsequently filed action arising out of similar facts and circumstances as are alleged in this consolidated action and request the related case be consolidated for all purposes, including trial: *Radoff v. Hagedorn, et al.*, Case No. A-21-829854-B. A proposed consolidation order is attached hereto as **Exhibit 1**.

DATED this 24th day of February, 2021.

Submitted by,

KEMP JONES, LLP

/s/ Don Springmeyer

Don Springmeyer, Esq. (#1021)
Michael Gayan, Esq. (#11135)
3800 Howard Hughes Pkwy., 17th Floor
Las Vegas, NV 89169

Attorneys for Lead Plaintiff Nicoya Capital LLC

CERTIFICATE OF SERVICE

I hereby certify that on the 24th day of February, 2021, I served a true and correct copy of the foregoing **NOTICE OF RELATED CASE** via the Court's electronic filing system only, pursuant to the Nevada Electronic Filing and Conversion Rules, Administrative Order 14-2, to all parties currently on the electronic service list.

/s/ Ali Augustine
An Employee of Kemp Jones, LLP

Exhibit 1

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DISTRICT COURT

CLARK COUNTY, NEVADA

OVERBROOK CAPITAL LLC, on Behalf of Itself and All Others Similarly Situated, Plaintiff, vs. AEROGROW INTERNATIONAL, INC., CHRIS HAGEDORN, H. MACGREGOR CLARKE, DAVID B. KENT, CORY MILLER, PATRICIA M. ZIEGLER, SMG GROWING MEDIA, INC., and SCOTTS MIRACLE-GRO COMPANY, Defendants.	Case No.: A-21-827665-B Dept. No.: XI **[PROPOSED] ORDER CONSOLIDATING RELATED CASE**
NICOYA CAPITAL LLC, on Behalf of Itself and All Others Similarly Situated, Plaintiff, vs. CHRIS HAGEDORN, H. MACGREGOR	Case No.: A-21-827745-B Dept. No.: XI

CLARKE, DAVID B. KENT, CORY MILLER, PATRICIA M. ZIEGLER, JAMES HAGEDORN, PETER SUPRON,

- and -

AEROGROW INTERNATIONAL, INC., a Nevada Corporation, and AGI ACQUISITION SUB, INC., a Nevada Corporation, SMG GROWING MEDIA, INC., an Ohio Corporation, AND SCOTTS MIRACLE-GRO COMPANY, an Ohio Corporation,

Defendants.

[PROPOSED] ORDER CONSOLIDATING RELATED CASE

WHEREAS, on February 18, 2021, Judge Williams entered the Stipulation and Order Consolidating Related Cases, Appointing Lead Counsel, and Providing for Filing of Consolidated Complaint (the "Stipulation and Order").

WHEREAS, the Stipulation and Order consolidated the *Overbrook Capital LLC* and *Nicoya Capital LLC* cases and ordered each subsequently filed action arising out of the same or substantially same transactions or events be consolidated with this action.

WHEREAS, *Radoff v. Hagedorn, et al.*, Case No. A-21-829854-B was filed on February 22, 2021. Plaintiffs subsequently filed a Notice of Related Case.

WHEREAS, based on a review of the relevant complaints, the *Radoff* case arises out of the same or substantially same transactions or events as this consolidated action.

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It is, therefore, ORDERED, ADJUDGED, and DECREED that *Radoff v. Hagedorn, et al.*, Case No. A-21-829854-B is hereby consolidated with the foregoing action for all purposes, including trial.

_____

Respectfully Submitted by:

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DISTRICT COURT

CLARK COUNTY, NEVADA

OVERBROOK CAPITAL LLC, on Behalf of Itself and All Others Similarly Situated, Plaintiff, vs. AEROGROW INTERNATIONAL, INC., CHRIS HAGEDORN, H. MACGREGOR CLARKE, DAVID B. KENT, CORY MILLER, PATRICIA M. ZIEGLER, SMG GROWING MEDIA, INC., and SCOTTS MIRACLE-GRO COMPANY, Defendants.	Case No.: A-21-827665-B Dept. No.: XI ~~[PROPOSED]~~ **ORDER CONSOLIDATING RELATED CASE**
NICOYA CAPITAL LLC, on Behalf of Itself and All Others Similarly Situated, Plaintiff, vs. CHRIS HAGEDORN, H. MACGREGOR	Case No.: A-21-827745-B Dept. No.: XI

CLARKE, DAVID B. KENT, CORY MILLER, PATRICIA M. ZIEGLER, JAMES HAGEDORN, PETER SUPRON,

- and -

AEROGROW INTERNATIONAL, INC., a Nevada Corporation, and AGI ACQUISITION SUB, INC., a Nevada Corporation, SMG GROWING MEDIA, INC., an Ohio Corporation, AND SCOTTS MIRACLE-GRO COMPANY, an Ohio Corporation,

Defendants.

[PROPOSED] ORDER CONSOLIDATING RELATED CASE

WHEREAS, on February 18, 2021, Judge Williams entered the Stipulation and Order Consolidating Related Cases, Appointing Lead Counsel, and Providing for Filing of Consolidated Complaint (the "Stipulation and Order").

WHEREAS, the Stipulation and Order consolidated the *Overbrook Capital LLC* and *Nicoya Capital LLC* cases and ordered each subsequently filed action arising out of the same or substantially same transactions or events be consolidated with this action.

WHEREAS, *Radoff v. Hagedorn, et al.*, Case No. A-21-829854-B was filed on February 22, 2021. Plaintiffs subsequently filed a Notice of Related Case.

WHEREAS, based on a review of the relevant complaints, the *Radoff* case arises out of the same or substantially same transactions or events as this consolidated action.

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It is, therefore, ORDERED, ADJUDGED, and DECREED that *Radoff v. Hagedorn, et al.*, Case No. A-21-829854-B is hereby consolidated with the foregoing action for all purposes, including trial.

February 24, 2021
Elizabeth Gonzalez, District Court Judge

Respectfully Submitted by:

/s/ Don Springmeyer

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Counsel for Lead Plaintiff Nicoya Capital LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

OVERBROOK CAPITAL LLC, on Behalf of Itself and All Others Similarly Situated, Plaintiff, vs. AEROGROW INTERNATIONAL, INC., CHRIS HAGEDORN, H. MACGREGOR CLARKE, DAVID B. KENT, CORY MILLER, PATRICIA M. ZIEGLER, SMG GROWING MEDIA, INC., and SCOTTS MIRACLE-GRO COMPANY, Defendants.	Case No.: A-21-827665-B Dept. No.: XI **NOTICE OF ENTRY OF ORDER CONSOLIDATING RELATED CASE**
NICOYA CAPITAL LLC, on Behalf of Itself and All Others Similarly Situated, Plaintiff, vs. CHRIS HAGEDORN, H. MACGREGOR	Case No.: A-21-827745-B Dept. No.: XI

CLARKE, DAVID B. KENT, CORY MILLER, PATRICIA M. ZIEGLER, JAMES HAGEDORN, PETER SUPRON,

- and -

AEROGROW INTERNATIONAL, INC., a Nevada Corporation, and AGI ACQUISITION SUB, INC., a Nevada Corporation, SMG GROWING MEDIA, INC., an Ohio Corporation, AND SCOTTS MIRACLE-GRO COMPANY, an Ohio Corporation,

Defendants.

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that an **ORDER CONSOLIDATING RELATED CASED** was entered in the above entitled matter on February 24, 2021, a copy of which is attached hereto.

DATED this 26th day of February, 2021.

KEMP JONES, LLP

/s/ Don Springmeyer
Don Springmeyer, Esq. (#1021)
Michael J. Gayan, Esq. (#11135)
3800 Howard Hughes Parkway, 17th Floor
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Attorneys for Nicoya Capital LLC

CERTIFICATE OF SERVICE

I hereby certify that on the 26th day of February, 2021, I served a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER CONSOLIDATING RELATED CASES** via the Court's electronic filing system only, pursuant to the Nevada Electronic Filing and Conversion Rules, Administrative Order 14-2, to all parties currently on the electronic service list.

/s/ Ali Augustine
An Employee of Kemp Jones, LLP

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DISTRICT COURT

CLARK COUNTY, NEVADA

OVERBROOK CAPITAL LLC, on Behalf of Itself and All Others Similarly Situated, Plaintiff, vs. AEROGROW INTERNATIONAL, INC., CHRIS HAGEDORN, H. MACGREGOR CLARKE, DAVID B. KENT, CORY MILLER, PATRICIA M. ZIEGLER, SMG GROWING MEDIA, INC., and SCOTTS MIRACLE-GRO COMPANY, Defendants.	Case No.: A-21-827665-B Dept. No.: XI ~~[PROPOSED]~~ **ORDER CONSOLIDATING RELATED CASE**
NICOYA CAPITAL LLC, on Behalf of Itself and All Others Similarly Situated, Plaintiff, vs. CHRIS HAGEDORN, H. MACGREGOR	Case No.: A-21-827745-B Dept. No.: XI

CLARKE, DAVID B. KENT, CORY MILLER, PATRICIA M. ZIEGLER, JAMES HAGEDORN, PETER SUPRON,

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AEROGROW INTERNATIONAL, INC., a Nevada Corporation, and AGI ACQUISITION SUB, INC., a Nevada Corporation, SMG GROWING MEDIA, INC., an Ohio Corporation, AND SCOTTS MIRACLE-GRO COMPANY, an Ohio Corporation,

Defendants.

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WHEREAS, the Stipulation and Order consolidated the *Overbrook Capital LLC* and *Nicoya Capital LLC* cases and ordered each subsequently filed action arising out of the same or substantially same transactions or events be consolidated with this action.

WHEREAS, *Radoff v. Hagedorn, et al.*, Case No. A-21-829854-B was filed on February 22, 2021. Plaintiffs subsequently filed a Notice of Related Case.

WHEREAS, based on a review of the relevant complaints, the *Radoff* case arises out of the same or substantially same transactions or events as this consolidated action.

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It is, therefore, ORDERED, ADJUDGED, and DECREED that *Radoff v. Hagedorn, et al.*, Case No. A-21-829854-B is hereby consolidated with the foregoing action for all purposes, including trial.

February 24, 2021

Elizabeth Gonzalez, District Court Judge

Respectfully Submitted by:

/s/ Don Springmeyer

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DISTRICT COURT

CLARK COUNTY, NEVADA

BRADLEY LOUIS RADOFF,

Plaintiff,

vs.

CHRIS HAGEDORN, an individual; H. MACGREGOR CLARKE, an individual; DAVID B. KENT, an individual; CORY MILLER, an individual; PATRICIA M. ZIEGLER, individual; JAMES HAGEDORN, an individual; PETER SUPRON, an individual; AEROGROW INTERNATIONAL, INC., a Nevada Corporation; AGI ACQUISITION SUB, INC., a Nevada Corporation; SMG GROWING MEDIA, INC., an Ohio Corporation; THE SCOTTS MIRACLE-GRO COMPANY, an Ohio Corporation; DOES I through X, inclusive; and ROE CORPORATIONS I through X, inclusive.

Defendants.

Case No.: A-21-829854-B
Dept. No.: 13

Business Court Requested:
NRS 92A, *et seq.* Decision Required

Arbitration Exemption Requested:
NAR 3(A) - Disputed Amount Exceeds $50,000

FIRST AMENDED COMPLAINT

Plaintiff Bradley Louis Radoff ("Plaintiff"), by and through his attorneys, Marquis Aurbach Coffing, hereby submits his First Amended Complaint as a minority stockholder of AeroGrow International, Inc. ("AeroGrow" or "Company"), who has been harmed as a result of Defendants' breaches of fiduciary duties related to a buyout of the public minority interest in

AeroGrow by the Company's controlling stockholder ("Merger"), and alleges the following based upon information and belief and counsels' investigation of publicly available information specified below, except for the allegations relating to Plaintiff, which are alleged on knowledge.

I. NATURE OF THE ACTION

1. AeroGrow (a Nevada corporation), has entered into an Agreement and Plan of Merger ("Merger Agreement") with The Scotts Miracle-Gro Company ("Scotts Miracle-Gro"), its wholly owned subsidiary, SMG Growing Media, Inc. ("SMG Growing Media"), and AGI Acquisition Sub, Inc. ("Merger Sub"), a direct, wholly owned subsidiary of SMG Growing Media (collectively "Scotts"), for the grossly inadequate consideration of $3.00 per share.

2. Scotts Miracle-Gro, an Ohio corporation, currently owns approximately 80.5% of AeroGrow's common stock through SMG Growing Media. As controlling stockholder, Scotts owes fiduciary duties to minority stockholders. However, as described in detail below, Scotts violated its duties by forcing through a Merger that was fundamentally flawed and unfair to minority shareholders (including Plaintiff). Among other things, Scotts engaged in manipulative conduct in order to acquire AeroGrow at a substantial discount to its true value. Specifically, on August 18, 2020, Scotts announced its intent to acquire AeroGrow for $1.75 per share – driving down the price of AeroGrow stock, which had been trading at approximately $5.70 per share. Having put a damper on what had been a steadily increasing stock price, Scotts's manipulations were successful because the price soon fell to just under $3.00 per share. It was at that point that on November 11, 2020, Scotts and AeroGrow entered into the Merger Agreement, pursuant to which minority shareholders like Plaintiff would only receive $3.00 per share – which is almost 50% less than the trading price prior to Scotts's August 2020 announcement. Scotts also impermissibly interfered with the sales process so that, while portrayed as a legitimate transaction, it ostensibly cheats minority stockholders like Plaintiff.

3. Similarly, members of AeroGrow's Board of Directors ("Board") owe their own fiduciary duties to shareholders. As set forth below, the Board breached their duties by, among other things, failing to represent the Company's unaffiliated stockholders diligently in their negotiations with Scotts, agreeing to the unfair and inadequate Merger consideration that they

knew to be overly favorable to Scotts (at the expense of Plaintiff), failing to secure the best consideration reasonably available, and by refusing to request or demand, and thus failing to secure, the inclusion of any measures designed to protect Plaintiff, such as conditioning the Merger on the approval of an independent "Special Committee" and the affirmative vote of an informed majority of the minority stockholders. The Board and the Special Committee did essentially nothing to protect minority stockholders like Plaintiff; rather, the Board has agreed to sell AeroGrow to Scotts in a transaction that is not in the best interests of shareholders as the Company is rapidly growing and does not need capital.

4. Furthermore, a majority of AeroGrow's Board members, as representatives of Scotts, were tainted by significant conflicts of interest with respect to the Merger. These Board members are therefore further liable for breaching their fiduciary duties within their capacities as directors of AeroGrow.

5. The completed Merger will mark the end of AeroGrow as a public company and Plaintiff will be divested of his ownership interest. Accordingly, Scotts and the Board have a duty to ensure (and have the burden to show) that both the process leading up to the Merger, as well as the agreed consideration, are entirely fair to Plaintiff (as well as other minority shareholders). Scotts and the Board cannot meet this burden.

6. For these reasons, and as set forth in detail herein, Plaintiff seeks to recover damages resulting from Defendants' violations of their fiduciary duties.

II. JURISDICTION AND VENUE

7. This Court has jurisdiction over all causes of action asserted herein pursuant to the Constitution of the State of Nevada. This Court has jurisdiction over each defendant named herein, because each defendant is a corporation or individual with sufficient minimum contacts with Nevada to render the exercise of jurisdiction by Nevada courts permissible under traditional notions of fair play and substantial justice. AeroGrow International, Inc. and AGI Acquisition Sub, Inc. are corporations incorporated under Nevada law, and certain other defendants are current or former directors and officers of AeroGrow.

8. The Eighth Judicial District is the proper forum, because this Action involves significant issues of Nevada corporate law, because AeroGrow is a Nevada corporation, and because the merger agreement contains a forum selection clause making this court the proper court for any disputes relating to the merger.

III. PARTIES

9. Plaintiff is, and has been at all relevant times, the owner of 559,299 shares of AeroGrow common stock. Plaintiff has also delivered notice to AeroGrow, before the shareholder vote, written notice of his intent to demand payment for his shares, and has not voted his shares in favor of the Merger, as set forth in NRS 92A.420.

10. Defendant AeroGrow International, Inc. is a Nevada corporation with its principal executive offices located at 5405 Spine Blvd., Boulder, Colorado. As of January 20, 2021, AeroGrow had outstanding 34,328,036 shares of common stock, of which 27,639,294 shares were beneficially owned by the Purchaser Parties and their respective affiliates (including Defendant Scotts Miracle-Gro). The Company is actively traded on the OTCQB for early-stage and developing US and international companies under the symbol "AERO."

11. Defendant AGI Acquisition Sub, Inc. is a Nevada corporation which was formed to effectuate the merger. It is a wholly-owned subsidiary of SMG Growing Media and of Scotts Miracle-Gro Company. The Proxy states that AGI "was incorporated in 2020 by Parent solely for the purpose of entering into the transactions contemplated by the Merger Agreement." Pursuant to the terms of the Merger Agreement, AGI Acquisition Sub, Inc. will merge with and into AeroGrow and Plaintiff will be divested of his stock in the Company.

12. Defendant Scotts Miracle-Gro Company is an Ohio corporation and is a party to the merger agreement with AeroGrow. Through its wholly-owned subsidiary SMG Growing Media, Inc., it owns 80.5% of the common stock of AeroGrow and is a majority and controlling shareholder of AeroGrow. Scotts Miracle-Gro stock is actively traded on the New York Stock Exchange ("NYSE") under the symbol "SMG."

13. Defendant SMG Growing Media is an Ohio corporation and wholly-owned subsidiary of Scotts Miracle-Gro. SMG Growing Media is a holding company of Scotts, through

which it owns its 80.5% stake in AeroGrow. SMG Growing Media is a party to the merger agreement with AeroGrow and is a majority and controlling shareholder of AeroGrow.

14. Defendant Chris J. Hagedorn has been a director of AeroGrow since 2013 and Chairman of the Board since November 2016. Hagedorn is the son of Defendant James Hagedorn, who caused him to be appointed as Chairman of AeroGrow. He is a member of the Audit Committee, and the Governance, Compensation and Nominating Committee. Hagedorn was appointed the General Manager of The Hawthorne Gardening Company in October 2014 and was previously appointed Director of Indoor Gardening at Scotts Miracle-Gro in May of 2013. From 2011 to 2013, Mr. Hagedorn served as a Marketing Manager for the North Region at Scotts Miracle-Gro. Mr. Hagedorn was initially appointed to the Board by Scotts Miracle-Gro pursuant to a provision of the Securities Purchase Agreement between AeroGrow and Scotts Miracle-Gro.

15. Defendant H. MacGregor Clarke has been a director of AeroGrow since April 2018 and previously served as a director from July 2009 to March 2013. Clarke currently is a member of the Audit Committee, and served as one of the two members of the Special Committee. He has served as Senior Vice President and Chief Financial Officer of Johns Manville, a Berkshire Hathaway company, since March 2013 and previously served as AeroGrow's Chief Financial Officer from May 2008 through March 2013. From 2007 to 2008, Clarke was President and Chief Executive Officer, and from 2006 to 2007, Chief Financial Officer, of Ankmar, LLC, a garage door manufacturer, distributor and installer. From 2003 to 2006, Clarke was a senior investment banker with FMI Corporation, a management consulting and investment banking firm serving the building and construction industry. From 1997 to 2002, Clarke served as an operating group Chief Financial Officer, then Vice President and General Manager for Johns Manville Corporation, a subsidiary of Berkshire Hathaway Inc. Clarke also served as Vice President, Corporate Treasurer, and international division Chief Financial Officer for The Coleman Company, Inc. Prior to joining Coleman, Clarke was with PepsiCo, Inc. for over nine years.

16. Defendant David B. Kent has been a director of AeroGrow since April 2018. He currently is a member of the Governance Committee, and the Compensation and Nominating

Committee. Kent served as one of the two members of the Special Committee. Kent has served in various senior managerial roles and is currently Co-Founder of Darcie Kent Vineyards.

17. Defendant Cory J. Miller joined the AeroGrow Board in 2019 and is currently a member of the Audit Committee. He serves as the Vice President of Finance & Information Technology at The Hawthorne Gardening Company. Miller began his career at Scotts Miracle-Gro in 2000 and has held several roles of increasing responsibility. Previous leadership roles at Scotts include VP of Finance, Merger & Acquisition Integration; VP of Finance, Chief Internal Auditor; VP of Finance, Sales; and VP of Finance, Marketing. Prior to joining Scotts, Miller was a member of the audit practice of Ernst and Young

18. Defendant Patricia M. Ziegler joined the AeroGrow Board in 2019 and is currently the Chief Digital and Marketing Services Officer at Scotts Miracle-Gro. She is a member of the Governance Committee and the Compensation and Nominating Committee. Ziegler began her career at Scotts Miracle-Gro in 2011 and has held several roles within the marketing team with brand, advertising, and digital leadership responsibilities. Currently, Ziegler is responsible for driving growth with direct to consumer.

19. Defendant James Hagedorn is the Chairman and CEO of Scotts Mircle-Gro. James Hagedorn is also the largest individual shareholder of Scotts, owning 15,118,269 shares of stock and options, giving him 26.95% voting control of Scotts stock. James Hagedorn is a controlling shareholder of Scotts and thus also of AeroGrow; Hagedorn is the father of Defendant Chris Hagedorn and caused Chris Hagedorn to be appointed as Chairman of AeroGrow.

20. Defendant Peter Supron is the Chief of Staff of Scotts Mircle-Gro. Supron effectively serves as Defendant James Hagedorn's "right hand man" and was actively involved in the negotiation of the Merger.

21. Defendants Chris Hagedorn, Clarke, Kent, Miller, and Ziegler are collectively referred to as the Board. The Board, together with Defendants James Hagedorn and Peter Supron, Nominal Defendant AeroGrow, and Defendants Scotts Miracle-Gro Company, SMG Growing Media, Inc. and AGI Acquisition Sub, Inc., are collectively referred to as the "Defendants."

22. The names and capacities, whether individuals, corporate, associate or otherwise of Defendants named herein as DOE and ROE CORPORATION are unknown or not yet confirmed. Upon information and belief, said DOE and ROE CORPORATION Defendants are responsible for damages suffered by Plaintiff and, therefore, Plaintiff sues said Defendants by such fictitious names. Plaintiff will ask leave to amend this Complaint to show the true names and capacities of each DOE and ROE CORPORATION Defendant at such time as the same has been ascertained.

IV. FURTHER SUBSTANTIVE ALLEGATIONS

A. Background of AeroGrow and its Growth Potential

23. Formed in March 2002, AeroGrow's "principal business is developing, marketing, and distributing advanced indoor aeroponic garden systems designed and priced to appeal to the consumer gardening, cooking and small indoor appliance markets worldwide." *See* AeroGrow Form 10-Q, dated Nov. 16, 2020, at 8. Since 2005, the Company has focused greatly on "consumer gardening," and in furtherance thereof, offers consumers a range of products, including over 40 varieties of seed pod kits, an array of accessory products, and eight different models of its flagship product, the AeroGarden system.

24. Scotts Miracle-Gro, together with its subsidiaries, are "the leading manufacturer and marketer of branded consumer lawn and garden products in North America . . . marketed under some of the most recognized brand names in the industry. [Their] key consumer lawn and garden brands include Scotts and Turf Builder lawn and grass seed products; Miracle-Gro, Nature's Care, Scotts, LiquaFeed and Osmocote, gardening and landscape products; and Ortho, Roundup, Home Defense and Tomcat branded insect control, weed control and rodent control products. [They] are the exclusive agent of the Monsanto Company." *See* Scotts 2019 Form 10-K at 2.

25. Furthermore "[through Scotts Miracle-Gro's] Hawthorne segment, [they] are a leading manufacturer, marketer and distributor of nutrients, growing media, advanced indoor garden, lighting and ventilation systems and accessories for hydroponic gardening. Our key hydroponic gardening brands include General Hydroponics, Gavita, Botanicare, Vermicrop, Agrolux, Can-Filters and AeroGarden." *See* Scotts 2019 Form 10-K at 2.

26. Since its inception in 2002, AeroGrow has had a promising future because of its indoor garden systems, seed pod kits, and its AeroGarden line of products. And in the past year, AeroGrow has expanded its product offerings with new and higher average-selling-price products, and has seen increasing sell-through in its distribution channels. AeroGrow is also benefitting from demand for homegrown food and the legalization of cannabis.

27. As the last four quarters have indicated, the Company was well-situated to actualize its potential. On October 1, 2019, the Company's trading price closed at $0.96, but having reported increasingly optimistic revenues and groundbreaking earnings, AeroGrow's shares reached $6.10 as of August 18, 2020, offering a glimpse into the Company's assured potential.

28. For example, for the Third Quarter of the Fiscal Year 2020 ended December 31, 2019, AeroGrow reported net income of $1.2 million, on revenues of $18.5 million, up 43% from the previous quarter. In a February 11, 2020 Press Release, the Company's President and CEO, J. Michael Wolfe ("Wolfe") described it as follows:

> "Results for the 3rd Quarter of our Fiscal Year 2020 were exceptional. . . . With sales up 43% and solid growth in all of our channels, the highly successful launch of a new line of products and the introduction of a very effective marketing program, I believe this was the best quarter in the Company's history."
>
> "On a cautionary note, we are carefully monitoring the coronavirus situation in China and any risks we may have as a result. While it is too early to know what, if any, implications there may be in our business, there is a possibility that we will see some disruptions to our supply chain and product development efforts beginning later this spring if the situation persists."
>
> "Coming off of a strong holiday selling season with new products that have been well received and what we believe is a scalable marketing program, we are positioned well for continued growth. Moreover, when you consider the addition of the new products in our development pipeline, you can see why I'm so excited about what lies ahead for AeroGrow. I look forward to updating you on our progress."

29. Given the Company's stellar performance and prospects, Wolfe further expressed his optimism for the future of the Company: "As pleased as I am with our 3rd quarter results, I'm even more excited about what's ahead for us as we look to our Fiscal 2021, which begins in April [2020]."

30. Amidst the Covid-19 Pandemic, which ushered in a "home gardening" boom, AeroGrow's Fourth Quarter of the Fiscal Year 2020 ended March 31, 2020, saw a net income of

$1.226 million on revenues of $11.8 million. As quoted in the Company's June 23, 2020 Press Release, Wolfe (once again) expressed his satisfaction with the Company's financial results, stating:

> "I am very pleased with our Q4 and FY 2020 results, both of which posted record sales and profitability. . . . All three of our distribution channels – [Amazon.com, Inc.], Direct-to-Consumer and Retail – in performed very well during the 4th quarter, continuing their strong performance from the Holiday season. In addition, we continued to gain momentum on all of our key metrics, with our marketing efficiencies, gross margin and overall profitability making notable gains."
>
> "Over the past several months the COVID-19 pandemic has had a significant and positive impact on our business that will further accelerate our sales in Q1 of FY 2021 – with sales in the quarter tracking to more than 3X over the prior year. Traffic on our web site and our product rankings on Amazon.com began spiking in mid-to-late March as consumers with an increased interest in at-home meal preparation began looking for access to fresh, safe food sources . . . and the AeroGarden certainly meets these needs. However, relatively few of these sales were recognized in March due to temporary product backorders and shipping backlogs. We have expanded our supply chain and steadily improved our order fill rates during Q1, and by early July we expect to be consistently in stock to support what we anticipate will be continued strong demand across our entire product line."
>
> "I think the overall state of the business as we begin FY 2021 is at an all-time high. Not only are our sales, profitability and other key metrics all on a significant upward trend, our balance sheet has never been stronger with $10.3 million in cash on hand and $3.8 million in receivables as of 6/15/20 while carrying little debt. As disruptive as the COVID-19 pandemic has been across the world, it appears to have had a profound positive impact on consumers' interest in the AeroGarden. While the awareness of the AeroGarden in the minds of consumers has been steadily increasing over the past several quarters, we believe that the pandemic has further increased this awareness and may be moving our products from being considered somewhat discretionary to being more of a consumer staple."

31. The Company's upward trend continued into the First Quarter of the Fiscal Year 2021 ended June 30, 2020, when AeroGrow reported net income of $2.7 million on revenues of $16.4 million. This marked an astounding 267% increase from $4.5 million during the corresponding period for the prior year, a verifiable demonstration of the Company's exponential growth. Again, Wolfe told the public that:

> "Our 1st Quarter results were exceptional by every measure. . . . Sales across all three of our distribution channels – Amazon, Direct-to-Consumer and Retail – were extremely strong throughout the quarter. This is our third consecutive quarter with record sales and profitability, and we saw further acceleration of our results due to the Covid-19 pandemic beginning in March. This was driven by increased interest in gardening, at-home meal preparation and access to fresh, safe food sources . . . and the AeroGarden certainly meets all of these needs. We experienced an increase in sales across all product types, including gardens, seed pod kits and accessories."

> "We have also successfully expanded capacity with all of our critical suppliers to keep up with what appears to be continued strong demand for our products. Our July sales – while having moderated from the original surge we experienced during the early days of the pandemic – have remained at a considerably higher level on a YOY basis. If this sales trend continues, we believe our expanded supply chain and distribution infrastructure will be prepared to meet it."

See AeroGrow Form 8-K Exhibit 99.1 dated August 11, 2020.

32. Significantly, in a November 16, 2020 Press Release published days after the execution of the Merger Agreement, the Company proclaimed net income as being $1.3 million on revenues of $14.3 million during the Second Quarter of the Fiscal Year 2021 ended September 30, 2020 – a staggering 224% increase from the corresponding period for the prior year:

> "Our string of excellent results continued in the second quarter," said [Wolfe]. "Sales across all three of our distribution channels – [Amazon.com, Inc.], Direct-to-Consumer and Retail - were strong throughout the quarter. This is our fourth consecutive quarter with record sales and profitability, a trend which accelerated due to the COVID-19 pandemic beginning in March. That being said, it appears the significant COVID sales spike that we experienced this spring has moderated - but with the business now routinely operating at a much higher level than it was prior to the pandemic. We believe this spike reflects an increased interest in gardening, at-home meal preparation and access to fresh, safe food sources . . . and the AeroGarden certainly meets all of these needs."

> "Over the past six months we have focused on refining our pricing model and reducing our product costs. This focus helped drive our gross margin up to 43.2%, an increase of over 1,000 bps vs. the same period last year. Our gross margin has also benefited from a larger portion of our sales coming through our Direct-to-Consumer channel (AeroGarden.com), which affords us better margins. In addition, our digital marketing programs continued to help drive our growth with significantly improved efficiencies. These factors drove the significant improvement in our sales and operating profit and demonstrate the leverage in our business as it continues to scale."

33. And just recently, on February 16, 2021 (just one week before the shareholder vote on the Merger), the Company announced even more growth in the Third Quarter for Fiscal 2021, including a 107% revenue increase and a 290% increase in operating profit. The Company also announced that its nine month results showed a 151% increase in revenue, and that income from operations rose to $8.7 million – up from a prior year loss of $918,000:

> Boulder, CO – (February 16, 2021) – AeroGrow International, Inc. (OTCQB: AERO) ("AeroGrow" or "the Company"), the manufacturer and distributor of AeroGardens – the world's leading family of In-Home Garden Systems™ – announced results for its third quarter ended December 31, 2020.
>
> For the quarter ended December 31, 2020 the Company recorded net revenue of $38.4M, an increase of 107% over the same period in the prior year. Income from

> Operations was $4.7M, an increase of 290% vs. the prior year. Gross margin improved to 41.1%, an increase of 590 basis points vs the prior year.
>
> For the nine months ended December 31, 2020, net revenue stands at $69.1M, an increase of 151% vs. the same period last year. Income from Operations was $8.7M, up from a loss of $918K the prior year. Gross margin for the period improved to 42.0%, up 760 basis points vs. the prior year.

See AeroGrow Ex. 99.1 to Form 8-K, dated Feb. 16, 2021.

34. Therefore, while AeroGrow's business has had "promise" for some time now, it is finally delivering on that promise and Scotts is stealing from Plaintiff the opportunity to share in those results.

B. <u>Scotts's Control Over AeroGrow Cannot Be Denied</u>

35. Scotts Miracle-Gro is a majority and controlling shareholder of AeroGrow. As of January 20, 2021, Scotts Miracle-Gro and its respective affiliates beneficially owned 27,639,294 shares of common stock of AeroGrow, representing approximately 80.5% of the Company's outstanding shares of common stock.

36. Consistent with its 80.5% ownership interest and as laid out in AeroGrow's most recent Form 10-K, Scotts has "effective control over all matters affecting the Company." AeroGrow Form 10-K at 9. This includes AeroGrow's "business strategy, operations, managerial decisions and potential capital transactions." *Id*.

37. Their relationship, termed a "strategic alliance" by AeroGrow, dates back to April 2013, when AeroGrow entered into a Securities Purchase Agreement with SMG Growing Media, as well as the following related agreements: (i) an Intellectual Property Sale Agreement; (ii) a Technology Licensing Agreement; (iii) a Brand Licensing Agreement; and (iv) a Supply Chain Management Agreement.

38. In accordance with the Securities Purchase Agreement, AeroGrow issued: "(i) 2.6 million shares of Series B Convertible Preferred Stock, par value $0.001 per share ("Series B Preferred Stock"); and (ii) a warrant to purchase up to 80% of the Company's common stock for an aggregate purchase price of $4.0 million." AeroGrow 2020 Form 10-K at 2. The warrant was fully exercised in November 2016, giving Scotts ownership and control of 80.5% of AeroGrow's

common stock. It further granted Scotts the right to appoint three of the five members of the AeroGrow Board.

39. In accordance with the Intellectual Property Agreement, for $500,000 AeroGrow agreed to sell Scotts Miracle-Gro all intellectual property associated with the Company's hydroponic products ("Hydroponic IP"), with the exception of the AeroGrow and AeroGarden trademarks, granting Scotts Miracle-Gro the right to use the AeroGrow and AeroGarden trademarks in connection with the sale of products using the Hydroponic IP.

40. In accordance with the Technology Licensing Agreement, Scotts Miracle-Gro, in five-year increments, granted AeroGrow "an exclusive license to use the Hydroponic IP in North America and certain European countries in return for a royalty of 2% of annual net sales, as determined at the end of each fiscal year through March 2020." AeroGrow 2020 Form 10-K at 2.

41. In accordance with the Brand Licensing Agreement, for 5% of AeroGrow's incremental growth in net sales, as compared to their net sales during the fiscal year ended March 31, 2013, Scotts granted AeroGrow use of "certain of Scotts Miracle-Gro's trade names, trademarks and/or service marks to rebrand the AeroGarden, and, with the written consent of Scotts Miracle-Gro, other products in the AeroGrow Markets." AeroGrow 2020 Form 10-K at 2.

42. In accordance with the Supply Chain Services Agreement, "Scotts Miracle-Gro will pay AeroGrow an annual fee equal to 7% of the cost of goods of all products and services requested by Scotts Miracle-Gro during the term of the Technology Licensing Agreement." AeroGrow 2020 Form 10-K at 2.

43. Furthermore, as noted above, three of the five AeroGrow directors have been appointed by Scotts Miracle-Gro and are, thus, affiliated with Scotts Miracle-Gro, granting them "effective control over the Board of Directors" (AeroGrow 2020 Form 10-K at 9):

> **Hagedorn**, Chairman of the AeroGrow Board since November 2016, was initially appointed to the Board in 2013, by Scotts Miracle-Gro. Hagedorn's ties to Scotts, however, are not only professional, but familial. His father, James Hagedorn, the former President of Scotts Miracle-Gro, is its current Chairman of the Board and Chief Executive Officer, having originally joined the Board in fiscal 1995 when his father's company, Stern's Miracle-Gro Products, Inc., merged with Scotts Miracle-Gro. Furthermore, as of November 22, 2019, Hagedorn Partnership, L.P, comprised of members of Hagedorn's immediate and extended family, still beneficially owns

approximately 26% of Scotts Miracle-Gro's outstanding common shares. Hagedorn's allegiance clearly belongs to Scotts.

Miller was appointed to the Board in April 2019 but maintains his role as Vice President of Finance & Information Technology at the Hawthorne Gardening Company, a wholly owned subsidiary of Scotts Miracle-Gro, having held several roles at Scotts Miracle-Gro since 2000. Like, Hagedorn, Miller also serves on the Audit Committee.

Ziegler, like Miller was appointed to the Board in April 2019. The active Chief Digital and Marketing Services Officer at Scotts Miracle-Gro, he has an established history with Scotts, having occupied various other positions at Scotts Miracle-Gro since 2011. Both Ziegler and Miller were appointed to fill the vacancies left by Peter D. Supron and Albert J. Messina, the previous occupants of Scotts's Board seats. In their stead, both Directors have since their appointment, been representatives of Scotts Miracle-Gro. And like Hagedorn, Ziegler serves on the Governance, Compensation and Nominating Committee.

44. James Hagedorn of Scotts has also at all times run Scotts as more of a dictatorship than a publicly-traded company. He does not tolerate differences of opinion or dissent and tells executives, and even fellow directors, to leave if they do not like or agree with his fiat. For example, on June 3, 2013 Scotts Miracle-Gro announced the resignation of three directors and explained the departures in an awkwardly worded SEC filing. All three had resigned "following a unanimously-supported reprimand of Hagedorn that stemmed from the use of inappropriate language," the statement said, but none of the departures were "related to any disagreement relating to the company's operations, policies, practices or financial reporting."[1] In recent years, as Hagedorn switched the focus of Scotts to providing resources for the growing of cannabis, he simply told executives and directors who did not agree with the focus on the cannabis industry to leave the company.

45. Although the details of what exactly occurred remained secret for years, even to Scotts's employees, the abrupt resignations of three board members certainly raised eyebrows. "They were the three strongest and the three most willing to challenge Jim," says one former senior executive.

[1] *See* Dan Alexander, "Cannabis Capitalist: Scotts Miracle-Gro CEO Bets Big On Pot Growers," FORBES, July 6, 2016, *available at* https://www.forbes.com/sites/danalexander/2016/07/06/cannabis-capitalist-scotts-miracle-gro-ceo-bets-big-on-pot-growers/?sh=12d9c6d66155.

46. James Hagedorn has applied the same control he exerts at Scotts to AeroGrow, appointing a majority of AeroGrow's directors and installing his son Chris Hagedorn as Chairman of the Board (notwithstanding his lack of public board experience). And after it acquired its controlling stake in AeroGrow in 2016, Scotts Miracle-Gro and the Hagedorn family began using such control to benefit themselves to the detriment of the Company's minority shareholders. As just one example, Scotts Miracle-Gro in 2020 caused AeroGrow to agree to take out a loan from Scotts at an interest rate of 10%, despite interest rates being at historically low levels.

47. Scotts's Chief of Staff Peter Supron reports directly to James Hagedorn, who instructed Supron to protect Scotts's interests in the Merger and instructed Supron to engage in the conduct described in the Proxy Statement for the Merger, pursuant to which Scotts forced AeroGrow's minority shareholders to accept the unfair $3.00 Merger price and interfered with the market check and the ability to attempt to obtain a higher bid from third parties.

C. Defendants Seek to Squeeze Out Minority Shareholders at No Premium So That Scotts Alone Can Realize the Benefits of the Company's Improving Financial Results

48. Defendants have long known that any attempt at corporate restructuring would be imbalanced and highly partisan, in favor of Scotts. As stated in every AeroGrow Form 10-K since November 2016, when Scotts overwhelmingly became the Company's controlling stockholder:

> Scotts Miracle-Gro's controlling interest could make it more difficult for a third party to acquire us, even if a proposed acquisition would be beneficial to you, and you may not realize the premium return that stockholders may realize in conjunction with corporate takeovers. In addition, pursuant to the Securities Purchase Agreement, three of the five members of our Board of Directors are delegates of Scotts Miracle-Gro. . . . Your ability to influence key corporate decisions has been significantly diminished and you may disagree with decisions made by Scotts Miracle-Gro.

See, e.g., AeroGrow 2017 Form 10-K at 12.

49. Nonetheless, even with this knowledge, the AeroGrow Board yielded to Scotts at the outset, capitulating to its interests at the expense of AeroGrow's unaffiliated stockholders.

50. According to Scotts Miracle-Gro's Schedule 13D filed on March 2, 2020, the inevitability of a corporate restructuring became apparent during the Company's February 27, 2020 Board Meeting, as Scotts condemned what it considered to be AeroGrow's flawed and complex operating model and equally convoluted ownership structure, and recommended a series

of transactions that it said would rectify these perceived issues: (i) a reverse stock split pursuant to Section 78.207 of the Nevada Revised Statutes, in conjunction with a possible parent-subsidiary merger, and (ii) outsourcing most of AeroGrow's operations to a Scotts affiliate. Both could be done by the Scotts-controlled Board without stockholder approval.

51. Described as "abrupt, unnecessarily urgent and potentially conflicting with prior Board direction" (Proxy at 30), the disadvantages of Scotts's proposed transactions to AeroGrow's minority stockholders were immediately known to the Defendants and predictably derided. Defendants Clarke and Kent communicated to Scotts's representatives (Hagedorn, Miller, and Ziegler) their "discomfort with the approach taken by Scotts Miracle-Gro vis-a-vis AeroGrow's unaffiliated minority stockholders and also . . . expressed the importance of considering options in addition to those suggested by Scotts Miracle-Gro to ensure that the interests of unaffiliated minority stockholders were considered and protected." Proxy at 30.

52. On March 26, 2020, the AeroGrow Board elected to form the Special Committee, which included Clarke and Kent, to conduct "a broad review of strategic alternatives focused on maximizing shareholder value." AeroGrow Form 8K, Exhibit 99.1 dated June 23, 2020. However, while authorized to engage independent advisors in their endeavor, the Special Committee was "not delegated authority to approve or reject the Scotts Miracle-Gro framework, but rather to review it and engage an independent financial advisor." Proxy at 30.

53. Soon thereafter, the likelihood of an acquisition of AeroGrow became all but certain. From June 29, 2020, onward, Stifel, Nicolaus & Company, Inc. ("Stifel"), the Special Committee's exclusive financial advisor, contacted 102 strategic and 220 financial parties, including Scotts, to discuss the possibility of a deal. Four potential, undisclosed candidates, not including Scotts, were considered to varying degrees.

54. Scotts also actively discouraged and frustrated the consideration of any alternative offers to purchase the Company or its assets. In the aftermath of the February 27, 2020 AeroGrow Board Meeting, Hagedorn, acting on behalf of Scotts, would emphasize how "AeroGrow had sold several rights and entered into license agreements with Scotts Miracle-Gro that may not be transferable to third-party buyers of AeroGrow, without Scotts Miracle-Gro's consent." Proxy at

30. Going forward, Scotts Miracle-Gro, directly or through Hagedorn, deliberately highlighted the issue of their "intellectual property and other commercial rights and their highly conditional nature." Proxy at 38. It was regularly communicated to Stifel and Bryan Cave, the Special Committee's exclusive legal counsel, that "Scotts Miracle-Gro did not believe that any bidder would be able to step into AeroGrow's shoes with respect to the contractual arrangements between Scotts Miracle-Gro and AeroGrow and that bidders should, [sic] be informed of Scotts Miracle-Gro's position." Proxy at 39. Thus, Scotts advised the Special Committee and its advisors that it needed to inform potential third-party bidders that they would either be buying a lawsuit or purchasing a company without its valuable assets.

55. Indeed, Scotts threatened to block any effort to sell AeroGrow to anyone else. Scotts informed AeroGrow, the Special Committee, and the legal counsel for the Special Committee that it would not sell its ownership stake in AeroGrow and that it would essentially hold any continuation of Scotts Miracle-Gro's intellectual property and other commercial agreements with AeroGrow hostage and would not offer to sell any of those agreements "on the same favorable terms" to any other potential acquirers. Proxy at 40.

56. On August 18, 2020, Scotts filed another Schedule 13D, this time announcing to the public, that one day earlier, they had sent a letter to Stifel declaring their desire and willingness to acquire all outstanding shares of AeroGrow it did not currently own, stating:

> Accordingly, Scotts is prepared to acquire the shares of AeroGrow common stock that it does not currently own in a merger transaction pursuant to which AeroGrow shareholders would receive $1.75 per share in cash for their shares of AeroGrow common stock, subject to the negotiation of a mutually acceptable definitive merger agreement including customary terms and conditions.

57. As a news report at the time noted:

> Scotts Miracle-Gro Co. (NYSE: SMG), owner of 80.5% of AeroGrow International Inc. (OTCQB: AERO) stock, offered this week to purchase the remainder of Boulder-based indoor grow system manufacturer's outstanding shares for $1.75 per share.
>
> **When documents related to the offer were filed with the U.S. Securities and Exchange Commission on Tuesday, AeroGrow's stock was trading as high as $5.74 per share, close to the firm's 52-week high. The price tumbled nearly 30% on Wednesday and was down another 22.72% on Thursday**, finishing the day trading at $3.13.

> Unsurprisingly, this development is not sitting well with some current AeroGrow investors, who say **Scotts is bullying the much smaller firm**.
>
> "I started investing in Aero about four years ago in 2016. I did a large amount of research on the Aero team and on its products, and saw the huge potential for the growth of hydroponics especially relating to growing cannabis," Gary Perelberg told BizWest in an email. " . . . **This kind of greed from a company as large as Scotts is unprecedented especially since it comes at a time when Aero's price was literally skyrocketing** and closely related companies such as GrowGeneration were rapidly increasing in stock price."[2]

58. Scotts's offer also did not require the approval of the Merger by the Special Committee, nor did it require a majority vote of the Company's minority shareholders. However, the "customary conditions" referred to were defined several weeks later in a Letter of Intent ("Letter of Intent") between AeroGrow and Scotts, on October 2, 2020. That Letter of Intent, however, still failed to include any crucial protections for AeroGrow's minority stockholders such as a majority of the minority voting provision.

59. The market understood the magnitude of a $1.75 offer from a controlling stockholder. Prior to Scotts's offer, AeroGrow's stock price had ascended to a 52-week high of $6.10 and closed at $5.735, **327% more than Scotts's offer**, reflecting the Company's growth over the preceding months and its potential for more. However, as the market learned of Scotts's paltry $1.75 offer, the Company's share price plunged to close at $4.05 on August 19, 2020.

60. Not only had Scotts woefully undervalued AeroGrow, but it timed its lowball offer to place an artificial cap on the trading price of the Company's stock at a time when it was experiencing explosive growth. In so doing, Scotts speciously lowered AeroGrow's share valuation, preventing it from continuing to rise in line with the Company's dramatically improving revenue and profitability.

61. During the course of September 2020, AeroGrow's share price, successfully capped by Scotts's offer, fluctuated between $2.97 and $3.42.

62. Contemporaneously, Scotts continued to participate in lackluster negotiations with the Special Committee, Stifel, and Bryan Cave, acceding to a still deficient price of $3.00 per share

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[2] *See* Lucas High, "Acquisition Offer From Scotts Sends AeroGrow Stock Tumbling," Daily Camera, Aug. 20, 2020, *available at* https://www.dailycamera.com/2020/08/20/acquisition-offer-from-scotts-sends-aerogrow-stock-tumbling/ (emphasis added).

of AeroGrow common stock that it did not already own, to more closely approach AeroGrow's then-artificially lowered share price. The Special Committee was quick to yield, failing in any attempt to persuade Scotts to further augment their offer.

63. On October 1, 2020, the Letter of Intent formalized Scotts's $3.00 offer, subject to certain customary conditions, including:

> (a) satisfactory completion by Scotts and its advisors of its confirmatory due diligence review of AeroGrow; (b) execution of the Definitive Documents; (c) receipt by the parties of all required and advisable material governmental, regulatory and third-party approvals and consents; (d) expiration of the waiting period under the Hart-Scott-Rodino Act, if applicable; (e) the absence of any material adverse change in the business, assets, liabilities, indebtedness, results of operations, financial condition or prospects of AeroGrow; and (f) the receipt by the Special Committee of the opinion of Stifel, Nicolaus & Company, Incorporated to the effect that the Merger Consideration is fair, from a financial point of view, to AeroGrow's shareholders (other than SMG).

64. As a controlling stockholder, the structure of the Merger was incontrovertibly an abuse of process, and a brazen attempt to gouge the Company's minority stockholders. Scotts's initial offer failed to condition the offer, up front, on any measure protective of AeroGrow's minority stockholders, including the approval of the Special Committee and/or the affirmative vote of an informed majority of the minority stockholders (which would have empowered minority stockholders to stand up to Scotts) and was therefore, at the very least, coercive and an abuse of its overwhelming share majority and unencumbered negotiating power. Scotts's initial offer had the effect of eliminating any possibility of simulating an arm's-length bargaining process as between Scotts and the Company or the subsequently created Special Committee. Furthermore, that the AeroGrow Board refused to request or demand such provisions as part of the Merger knowing the Company's unaffiliated stockholders would be damaged thereby represents the preferential treatment granted to Scotts throughout the "negotiation process," characterized by elevating Scotts's interests to the foreground while relegating those of the minority stockholders.

65. Furthermore, insofar as it agreed to be bound by the Letter of Intent provision "restrict[ing] AeroGrow and its representatives from directly or indirectly, soliciting, initiating or encouraging the submission of any acquisition proposals from other parties through November 15, 2020" (Proxy at 42), the Board knowingly curtailed their ability to fully explore all avenues to

ensure that they obtained the best price available for the benefit of the Company's unaffiliated stockholders as unlikely as that may have been.

66. On November 11, 2020, AeroGrow, on the unanimous recommendation of the Special Committee, entered into the Merger Agreement with SMG Growing Media, the Merger Sub, and Scotts Miracle-Gro. At the effective time of the Merger, the Merger Sub would merge with and into AeroGrow, leaving AeroGrow as the surviving corporation and a direct, wholly owned subsidiary of SMG Growing Media and an indirect, wholly owned subsidiary of Scotts Miracle-Gro. The Merger Agreement, adopting the final offer set forth in the October 2, 2020 non-binding Letter of Intent, offers each shareholder of AeroGrow common stock, with the exception of the security holders affiliated with Scotts, $3.00 in cash per share, for an aggregate consideration of approximately $20.1 million. Furthermore, pursuant to the Merger Agreement:

> The stockholders of the Issuer will be asked to vote on the approval of the Merger Agreement at a special stockholders meeting that will be held on a date to be announced (the "Special Meeting"). The Reporting Persons and the Issuer expect that the closing of the Merger will occur in the first quarter of 2021 subject to, among other conditions, the approval of the Merger Agreement by a majority of the outstanding shares of Common Stock entitled to vote on such matter. The Reporting Persons and their respective affiliates currently beneficially own approximately 80% of the Issuer's outstanding shares of Common Stock. **Approval of the holders of at least a majority of the shares of Common Stock not beneficially owned by the Reporting Persons and their respective affiliates is not required for the Issuer to complete the Merger**.

Emphasis added.

67. Ultimately, the proposed transaction set forth in the Merger Agreement is coercive and prejudicial to the Company's minority stockholders. As the final result of spurious negotiations, futilely conducted to accord the Merger a semblance of propriety, Scotts and the Company's Board agreed to extinguish all shares of AeroGrow's unaffiliated stockholders for woefully inadequate consideration.

68. As agreed to by Scotts and the AeroGrow Board, the Merger exploits Scotts's overwhelming share majority to impose the Merger on the Company's unaffiliated stockholders, leaving out any protective measures the Board should have secured on their behalf and thus eliminating any need for their assent to the proposed transaction, rendering Plaintiff impotent.

D. The Process Leading Up to the Merger Was Unfair Because Scotts and the AeroGrow Board Members Appointed by Scotts Faced an Irreconcilable Conflict of Interest, Yet Deliberately Rejected Any Meaningful Mechanism to Protect AeroGrow's Minority Shareholders

69. Any acquiror logically wants to pay as little as possible when they are a buyer. And normally, if the acquiror is a random third party with no relationship to the target company, it has the right to try to drive as hard a bargain as possible.

70. But Scotts is no random, unaffiliated third-party. As demonstrated above, Scotts is a majority and controlling shareholder. And the Board of Directors of a target company always has a fiduciary duty to maximize value for the Company's shareholders in any sale. Here, the only shareholders who were being asked to sell their shares are the Company's minority shareholders, like Plaintiff.

71. The problem faced by Scotts is that it is on both sides of the transaction. It is a buyer in that Scotts is the one paying for the stock of the minority shareholders. And it is also representing the sellers since a majority of AeroGrow's Board is comprised of individuals appointed by Scotts.

72. An irreconcilable conflict thus existed: Scotts could not satisfy its duties to its own shareholders by trying to minimize the value paid for the rest of AeroGrow's stock, while at the same time satisfying its fiduciary duty as majority AeroGrow Board members to maximize the price received by AeroGrow's minority shareholders. Controlling shareholders in such a conflicted position must establish procedural and substantive safeguards to attempt to counter their control and influence, and to protect the target company's minority shareholders.

73. First, controlling shareholders should appoint a Special Committee comprised of truly ***independent*** directors who have ***plenary power*** to either approve or reject the proposed transaction. Second, controlling shareholders almost always subject the transaction, if it is approved by the Special Committee, to a "majority of the minority" requirement, meaning the merger or other transaction will not be approved unless a majority of the minority shareholders vote in favor of the merger, after full disclosure of all material facts.

74. Here, Scotts did not employ either safeguard. It appointed a Special Committee but the committee had no authority to approve or reject the transaction. It was just given authority to

make a "recommendation." The actual authority to approve the merger remained with the full AeroGrow Board, which was controlled by Scotts since Scotts had appointed 3 out of 5 members of the board.

75. In addition, neither Scotts nor the AeroGrow Board insisted on a majority of the minority vote. To the contrary, the supine and conflicted AeroGrow Board did as Scotts wanted: the merger was only subjected to a majority vote of all shareholders, which was meaningless because Scotts already owned 80.5% of the stock. Since it was allowed to vote its own stock in favor of its own, conflicted transaction, Scotts is able to approve the merger without a single vote from any minority shareholder.

76. More specifically, in the ensuing months after the February 27, 2020 special meeting, Defendants attempted to put some window dressing on their squeeze-out plan, but failed to engage in any substantive effort to protect the minority shareholders.

77. As the Company's financial results continued to significantly improve in the ensuing quarters of 2020, Defendants ignored the steadily improving stock price, which had increased to $5.74 by the time Defendants announced the $1.75 per share offer on August 20, 2020. The $1.75 per share offer not only was 70% below the price of the stock at the time, but also significantly undervalued the stock based on the Company's fair market value. Scotts was under an obligation to keep its offer confidential, but purposely disclosed it in a public 13-D filing to cause the stock to collapse and contaminate the bidding process. Would-be suitors now knew Scotts was not interested in selling its 80.5% stake and thus that they would be follish to invest resources in exploring a bid.

78. As indicated herein, the AeroGrow Board breached its fiduciary duties by completely failing to protect the interests of the minority shareholders, and by allowing Scotts to control every aspect of the negotiations and to ward off any interested third party bidder. The Defendants readily admitted the blatant conflict-of-interest posed by a self-interested transaction involving the Company's controlling stockholder. As a result, to create some minimal appearance of separation, AeroGrow appointed a Special Committee, but completely restricted the authority of the committee. The committee was not given typical "plenary" authority to approve or reject a

proposed transaction with Scotts, and instead was merely given useless "advisory" authority to "review" the transaction and hire a financial advisor:

> **The Special Committee was not delegated authority to approve or reject the Scotts Miracle-Gro framework**, but rather to review it and engage an independent financial advisor.

See Proxy at 30 (emphasis added).

79. The AeroGrow Board could have and should have given the Special Committee full authority to approve or reject Scotts's proposal, but did not because the full Board itself formed the committee, and the full Board is completely controlled by Scotts and did not want the committee to have any actual authority. It succeeded in stripping the committee of any real authority (other than to rubber stamp the pre-ordained Scotts transaction), and in doing so breached its fiduciary duties.

80. Scotts and the Hagedorn family were so heavy-handed in their tactics that they actually refused to provide indemnification to the members of AeroGrow's Special Committee. Indemnification is provided in every single corporate merger or transaction, with the acquiring company universally obtaining and paying for a special "tail" directors and officers insurance policy ("D&O Policy") to protect the target company's board members. The fact that Scotts repeatedly refused to agree to provide indemnification to the members of the Special Committee amply demonstrates its (successful, and, improper) influence over the entire process, and the abject failure of AeroGrow to neutralize this improper influence in any way. As the Proxy admits:

> In addition, the letter stated that the Special Committee members were requesting that Scotts Miracle-Gro formally indemnify them against claims, costs and liabilities arising because of their services as directors of AeroGrow and Special Committee members and that Mr. Hagedorn, as Chairman of AeroGrow and an executive of Scotts Miracle-Gro, coordinate the preparation of an indemnification agreement with Scotts Miracle-Gro's counsel.
>
> * * *
>
> On May 29, 2020, Scotts Miracle-Gro's internal legal counsel informed Bryan Cave that, in deference to the independence of the Special Committee's process, Scotts Miracle-Gro would not be able to provide indemnification to the members of the Special Committee. Bryan Cave responded to clarify that the Special Committee was not requesting a new indemnity agreement but instead a covenant not to sue coupled with a payment guaranty of AeroGrow's existing indemnification obligations. **On June 1, 2020, Scotts Miracle-Gro's internal legal counsel reiterated that Scotts Miracle-Gro would not provide separate indemnification of AeroGrow's Board members**

> **(including the Special Committee) directly through an indemnity agreement or indirectly through a guarantee**."

See Proxy at 32-33 (emphasis added).

81. In other words, Scotts would not even agree not to sue AeroGrow's Special Committee if it did not like its "recommendation" and even under circumstances where the committee had already been denied any authority to reject Scotts's offer.

82. Moreover, as demonstrated herein, not only did the Special Committee lack plenary authority to approve or reject the transaction, but Scotts was improperly allowed to participate in all aspects of the AeroGrow Board's deliberations. Scotts sent Mr. Supron as its babysitter to every meeting of the AeroGrow Board. No truly independent Board would ever allow a third party suitor to sit in on its Board meetings where the very purpose was to consider the fairness of the third party's bid. Yet that is exactly what the AeroGrow Board allowed to happen here.

83. As such, Defendants never formed a truly independent special committee of directors with plenary authority (1) to evaluate and negotiate the Merger, (2) to consider strategic alternatives, or (3) with the authority to unilaterally approve or reject the Merger. Instead, the full AeroGrow Board, including Scotts's designees on the Board, allowed Scotts to essentially direct the Merger "negotiations" on both the buy- and sell-sides through the management teams Scotts oversaw, and simply had the directors appointed by Scotts recuse themselves from certain Board meetings where Scotts knew that management – including Scotts own Chief of Staff Supron – would steer the Board to Scotts's desired outcome. AeroGrow's Chairman Hagedorn knew AeroGrow management could not act independently of him or his father (Scotts's Chairman and CEO), because as the Company's controlling stockholder, Scotts controlled all aspects of AeroGrow's business, even its lines of credit, which were provided by Scotts.

84. Scotts was allowed to participate in every aspect of the process, including the selection of the projections used by AeroGrow for the discounted cash flow analysis. Scotts even conditioned a line of credit to AeroGrow upon the success of its proposal, assuring that AeroGrow could not survive without Scotts:

> **On May 8, 2020, the Board held a telephonic meeting with** representatives of AeroGrow's management, a representative of HBC and **Mr. Supron present**. AeroGrow's management presented a business update to the Board, including a report on recent sales results and trends. **Management also presented, and the Board reviewed and agreed to, financial projections, which would form the basis of the "management projections"** (as defined and further described under "—Management Projections"). The Board also discussed the need for a working capital line of credit and **representatives of Scotts Miracle-Gro stated that a line of credit might be available from Scotts Miracle-Gro if Scotts Miracle-Gro's restructuring proposal progressed**.

See Proxy at 31 (emphasis added). In any event, AeroGrow's business had (and has) been accelerating so much that projections would get stale very quickly, such that simply rolling them to current would make the $3.00 Merger price outside Stifel's fairness range (*see, e.g., infra* at ¶148).

85. Second, Hagedorn and the other AeroGrow directors who had been appointed by Scotts never fully recused themselves from the Board's deliberations or vote on the Merger. Instead, they merely had AeroGrow form a Special Committee which had no authority to reject the Merger. As such, approval of the Merger still fell to the full Board, a majority of which were appointed by Scotts and thus are not independent.

86. Third, Defendants did not engage or permit the Board to engage independent financial or legal advisors. Instead, Defendants engaged Stifel and conditioned the vast majority of Stifel's fee on the successful completion of the Merger, thus compromising its objectiveness. If Stifel did not find the transaction fair, it would not receive the lion's share of its compensation. Stifel would receive only $450,000 if the Merger did not go through, but would receive an additional $2,687,000 if the Merger was approved:

> **The Company paid Stifel a fee, which is referred to in this proxy statement as the opinion fee, of $450,000 for providing the Stifel opinion to the Special Committee (not contingent upon the consummation of the Merger)**, of which $225,000 is creditable against the transaction fee described below. **The Company has also agreed to pay Stifel a fee**, which is referred to in this proxy statement as the transaction fee, for its services as financial advisor to the Company in connection with the Merger based upon the aggregate consideration payable in the Merger (which as of the day prior to the date of this proxy statement, and net of the creditable portion of the opinion fee described above, is estimated to be **approximately $2,687,000), which transaction fee is contingent upon the completion of the Merger**.

See Proxy at 62 (emphasis added).

87. Fourth, Defendants did not condition the Merger on the affirmative vote of a majority of AeroGrow's minority stockholders. Instead, Defendants structured the Merger so the only affirmative vote necessary to consummate the Merger was that of Scotts, since Scotts owns 80.5% of the stock and only a majority of all outstanding shares is necessary for approval of the merger, as stated in the Proxy:

> For us to complete the Merger, under NRS 92A.120, holders of a majority of the outstanding shares of common stock at the close of business on the Record Date must vote "**FOR**" the Merger Agreement Proposal. **The transaction has not been structured to require the approval of the holders of at least a majority of the shares of common stock beneficially owned by security holders unaffiliated with the Purchaser Parties and their respective affiliates (including Scotts Miracle-Gro and our directors who are affiliated with Scotts Miracle-Gro**, to the extent such directors beneficially own any shares of common stock).

See Proxy at 10 (emphasis added). In other words, the approval of the minority shareholders is not even required, and Scotts is allowed to simply approve its own self-interested transaction.

88. Fifth, Scotts torpedoed the ability of AeroGrow's bankers to perform a market check by repeatedly refusing to tell the bankers (Stifel) whether it would be willing to sell its AeroGrow stock and by emphatically stating that it would never agree to sell AeroGrow's IP to any third party. These positions were largely conveyed to AeroGrow by Scotts's Chief of Staff Supron, at the direction of Defendant Hagedorn.

89. Sixth, as revealed in belated disclosures that AeroGrow filed on January 12, 2021, Scotts engaged Wells Fargo (its own corporate banker) to provide drastically reduced "projections" to Stifel and coach Stifel to use the lower, unrealistic projections. Indeed, Scotts's manipulated (reduced) projections for AeroGrow were much lower than AeroGrow management's (increased) projections. Using the artificial, lower projections forced on Stifel by Scotts was the only way to arrive at depressed valuations that would make Scotts's $3.00 offer appear to look better than it was.

90. The Proxy admits that Scotts refusal to sell its IP to a third party decreased the value received by the minority shareholders:

> The Board also discussed the ownership by Scotts Miracle-Gro of certain intellectual property used by AeroGrow and the various other contractual relationships between AeroGrow and Scotts Miracle-Gro. It was recognized that **these licenses and**

> **agreements may negatively impact the value of AeroGrow to, or frustrate a transaction with, third parties**.

See Proxy at 31 (emphasis added).

91. On July 31, 2020, AeroGrow's common stock closed trading on the OTCQB at $4.25 per share, having increased to reflect the Company's significantly improved financial condition and results.

92. Meanwhile, Stifel had been tasked with the futile effort of trying to solicit competing third party bids. The Proxy indicates that the entire supposed "market check" process was a charade. Scotts feigned ignorance as to whether it would be a "buyer" or "seller," when in fact everyone knew clearly that Scotts would only be a buyer, and that no third party would submit a meaningful bid if Scotts was not willing to sell its 80.5% stake.

93. During the process, AeroGrow's stock more than tripled as it continued to report breakout financial results. Scotts became perturbed by this, since it obviously wanted to pay as little as possible for AeroGrow. As AeroGrow's tremendous financial results continued to be reported, Scotts used its control of Aergrow to interfere in the market check process and to ward off third party suitors through improper interference and through improper communications with Stifel in which it asserted that its IP would pose problems for third party bidders:

> After the close of trading **on June 23, 2020, AeroGrow issued a press release announcing its financial results for the fiscal year ended March 31, 2020, reporting a 29% increase in sales and a 134% increase in income from operations over the prior fiscal year's fourth fiscal quarter. The press release also noted that AeroGrow expected sales in the first fiscal quarter of fiscal year 2021 to be three times previous fiscal year's first fiscal quarter.** The press release also announced that the Board had formed the Special Committee to conduct "a broad review of strategic alternatives focused on maximizing stockholder value" and that the Special Committee had engaged Stifel to serve as financial advisor to assist in the review.
>
> On June 24, 2020, AeroGrow's common stock closed trading on the OTCQB at $3.15 per share.
>
> **On June 25, 2020, Mr. Supron expressed concerns to Stifel regarding third-party valuations of AeroGrow compared to Scotts Miracle-Gro's valuation due to Scotts Miracle-Gro's ownership of certain intellectual property assets** used in the AeroGrow business.

See Proxy at 34 (emphasis added).

94. Again, Scotts's conduct and positions were largely conveyed by Defendant Supron, who was acting at the behest of James Hagedorn. Scotts also accomplished its conduct through Defendant Chris Hagedorn, James Hagedorn's son and one of Scotts's three appointees to AeroGrow's Board.

95. Moreover, as late as August 1, 2020, Scotts still had not advised Stifel whether Scotts would be willing to sell its 80.5% stake to a third party, thus undermining any efforts to obtain competing third party bids. On that date, Scotts called Stifel and expressed indignation that the deadline for the submission of bids had been extended:

> **On August 1, 2020, Mr. Supron telephonically informed Mr. Kent that the Special Committee did not promptly inform the Board that the deadline for indications of interest had been extended and expressed concerns about Stifel's outreach process. Mr. Kent replied that Scotts Miracle-Gro should use the additional time to determine if they were a buyer or a seller.** Mr. Kent further reiterated that Stifel continued to present AeroGrow to potential bidders "as is" meaning all agreements with Scotts Miracle-Gro would remain in place with a third-party buyer, and that an auction might occur at a later date **so Scotts Miracle-Gro needed to decide if they wanted to participate.**
>
> On August 2, 2020, Mr. Clarke responded to Mr. Supron agreeing that the Board should receive an update and reminding Mr. Supron that August 12 was proposed as the date for Stifel to brief the Board on the status of the end of the first phase of the bidding process. He stated that, at that time, the Board could determine next steps.

See Proxy at 37 (emphasis added).

96. The Proxy also states that Scotts Chief of Staff, Mr. Supron, also contacted Stifel on August 6, 2020 and expressed displeasure that he had not been updated regarding competing bids/expression of interest:

> On August 6, 2020, Mr. Supron communicated with Mr. Clarke to express concerns that Scotts Miracle-Gro had no meaningful discussions with Stifel since their engagement and that the Board may lose time in the process. **Mr. Supron recommended that Scotts Miracle-Gro and Stifel discuss the indications of interest** and what Stifel would expect regarding the proceeds to AeroGrow's stockholders through this transaction. **He indicated that Scotts Miracle-Gro could more clearly address at that point whether it was a buyer or seller as well as outline any conditions Scotts Miracle-Gro may have in working with various sellers.** Mr. Clarke replied that Scotts Miracle-Gro could ensure the Board did not lose any time in the process by confirming its position as a buyer or seller, and also that **it would not be appropriate to share the indications of interest with Scotts Miracle-Gro since the market check process was not yet complete**.

See Proxy at 38.

97. Other statements in the Proxy indicate that Scotts was waiting to see how bids would come in until it submitted a firm bid. Scotts, through its designees on AeroGrow's Board, continuously (and successfully) influenced the Special Committee, demonstrating the lack of independence of the committee. The Proxy notes that:

> On July 31, 2020, Mr. Miller emailed Mr. Wolfe to request an update regarding the timeline for bids being submitted to Stifel and stating that a meeting should be scheduled to discuss the process, the list of bids and the start of the discussions on a path forward. Messrs. Clarke and Kent responded that the Special Committee granted an extension to Stifel to continue receiving indications of interest until August 10, 2020 and that Stifel had requested a special meeting be called for August 12 or 13 for an update. Mr. Miller responded that this matter should have been discussed by AeroGrow's management with the entire Board and that his request for a meeting the following week remained. Messrs. Clarke and Kent emailed Mr. Miller, members of AeroGrow's management, Mr. Hagedorn and Mr. Supron regarding Mr. Miller's concerns, stating that the Special Committee engaged the financial advisor and, therefore, had granted the extension and that AeroGrow management was not involved in the process and was not consulted. Messrs. Clarke and Kent further indicated that AeroGrow was still awaiting a firm indication from Scotts Miracle-Gro.

See Proxy at 37.

98. A Schedule 13D filed on July 31, 2020 also noted that:

> On July 28, 2020, SMG sent a letter to the financial advisor requesting a meeting to discuss the status of the financial advisor's process so that the Reporting Persons, as the beneficial owners of approximately 80% of the outstanding shares of Common Stock of the Issuer, can better evaluate any identified potential alternatives and, in particular, whether they would be more likely to pursue an acquisition of the remaining shares of Common Stock of the Issuer that they do not currently own or sell their various rights and interests in the Issuer to a third party.

99. These facts demonstrate that Scotts was running the show, that Scotts acted as if Stifel were its banker, not AeroGrow's banker, that Scotts still had not told Stifel as of August 6, 2020 whether it would be willing to sell its stake to a third party, and thus that Stifel never had any chance to solicit any real competing bids for AeroGrow. Scotts even went so far as to demand that Stifel tell it what bids it had received from other parties.

100. Moreover, Stifel's "efforts" to do a market check were completely undermined by Scotts's repeated and emphatic declaration that it would not sell AeroGrow's intellectual property to any third party and its continuous filing of documents in the public realm without appropriate redaction. The effect of this proclamation by Scotts was obviously to dramatically reduce the indications of interest from third parties, since not owning the intellectual property would require

the third party to continue to pay licensing fees to Scotts, which Scotts could increase at its whim at any time. The Proxy admits that third parties were discouraged from bidding due to the IP issue:

> Party D verbally proposed an all cash transaction whereby Party D would purchase all of AeroGrow's common stock at a price between $1.98 and $2.56 per share. **Party D expressed a preference for Party D to own all relevant AeroGrow intellectual property**. . . .

See Proxy at 38 (emphasis added).

101. The Proxy also states that a proposal for a value higher than Scotts's eventual proposal was received but was dead on arrival due to the refusal of Scotts to sell its stake or IP to the third party:

> On July 31, 2020, **Stifel received a written indication of interest from a financial party ("Party B") to acquire all of the common stock of AeroGrow for cash at an implied price between $2.80 to $3.32 per share** based on a range of EBITDA multiples of 10x to 12x, with an assumption that EBITDA for the trailing 12 months as of September 30, 2020 would be $8.8 million. This EBITDA assumption was generally consistent with the management projections; however, it assumed the elimination of certain Scotts Miracle-Gro royalty payments. **The indication of interest assumed Party B would own all relevant AeroGrow intellectual property** and also indicated that the purchase would be partially financed with third-party debt. During the weeks subsequent to Party B's submission of an indication of interest, representatives of Stifel held multiple follow-up calls with representatives of Party B in order to better understand (i) the details and intent regarding elements of Party B's indication of interest; (ii) Party B's willingness to improve the terms of its indication of interest (either to the high end of the purchase price range or above); (iii) Party B's requirement to acquire relevant intellectual property rights from Scotts Miracle-Gro and enter into commercial arrangements of transitional or longer-term nature with Scotts Miracle-Gro; and (iv) whether there was a reasonable expectation that Scotts Miracle-Gro would be a seller of its controlling equity interest of AeroGrow under the terms of Party B's indication of interest. **In later discussion, points (iii) and (iv) above became key elements of discussion**.

See Proxy at 37 (emphasis added).

102. Scotts's tactics were revealed when the Company admitted in the Proxy that Scotts stated that AeroGrow should reject competing bids because it would not sell its IP to the bidders. Even though other bidders had made initial offers of as high as $3.32 per share, and that AeroGrow's stock was trading at $5.74 per share at the time, Scotts made a ridiculously low and bad faith $1.75 per share offer on August 17, 2020 in order to ward off third party suitors and cause an artificial cratering of AeroGrow's stock price:

> On August 17, 2020, **Scotts Miracle-Gro delivered a letter to Stifel noting that it did not believe any of the four indications of interest received were worth further pursuing in part because of Scotts Miracle-Gro's intellectual property and other**

> **commercial rights** and their highly conditional nature. Pursuant to the letter, **Scotts Miracle-Gro proposed to acquire all of the shares of AeroGrow that it did not already own for $1.75 per share in cash.**
>
> **On August 17, 2020, AeroGrow's common stock closed trading on the OTCQB at $5.70 per share.**

See Proxy at 38-39 (emphasis added).

103. In other words, Scotts consented to AeroGrow soliciting competing bids, but with the proviso that it would not sell its IP to the third parties. Then, when the third party bids predictably came in below AeroGrow's stock price due to the fact that the third party bidders would be required to pay unknown royalties to Scotts for the IP, Scotts "instructed" Stifel, which was supposed to be AeroGrow's banker, not Scotts's banker, to reject the bids due to the IP problems, and then Scotts offered $1.75 for the minority shareholders' stock, which was 70% below the existing stock price.

104. When bankers are retained to shop a company, they require all interested parties to sign confidentiality provisions to safeguard the Company's information and also to avoid one bidder from learning the identity or price that another bidder is willing to offer. Otherwise, bidders could get together and conspire to offer the lowest possible price.

105. Here, Stifel did not publicly disclose the identity of bidders or their prices or "indications of interest." After Scotts made its bad faith $1.75 offer on August 17, 2020, however, Scotts publicly disclosed, at the objection of Stifel, its offer price in order to sabotage the entire process and ward off third party bidders. The Proxy states that "[o]n August 18, 2020, Scotts Miracle-Gro and its affiliates filed an amendment to their Schedule 13D with the SEC disclosing its $1.75 per share offer." *See* Proxy at 39.

106. The Proxy also states that:

> Also, on August 19, 2020, Bryan Cave communicated to representatives of AeroGrow and Scotts Miracle-Gro that, in order to motivate potential third-party bidders to stay in the process and dedicate the resources necessary to further explore a transaction, the Special Committee requested that Scotts Miracle-Gro or AeroGrow agree to assure the highest bidder that its due diligence and transaction expenses up to $250,000 will be reimbursed in the event Scotts outbids their proposal or the Board terminates the process. A representative of Scotts Miracle-Gro indicated that **Scotts Miracle-Gro would like the opportunity to meet with the bidders and provide them with an overview of Scotts Miracle-Gro's intellectual property and other commercial rights and address expectations on value and transferability of such rights**. Scotts

> Miracle-Gro noted that if after such discussion bidders chose to move forward, Scotts would be amenable to discussing some level of financial assurance.

See id. (emphasis added).

107. In other words, Stifel was having such a hard time trying to get third party bidders to "stay in the process" in light of Scotts's obvious control of the process, that Stifel's attorneys asked Scotts to agree to reimburse the high bidder's due diligence costs up to $250k in the event that Scotts outbid their proposal. Scotts refused and instead said it would want to first meet with the bidders and educate them about why it was never going to sell its IP, thus ensuring the lack of any interest by third parties – an obvious interference by a controlling shareholder. The purported market check was a complete sham, orchestrated by Scotts simply to receive significantly reduced bids due to Scotts refusal to sell its IP to third party bidders, and so Scotts could then use the low bids to claim it was offering a slightly higher price than the artificial bids.

108. Tellingly, Scotts never even retained its own banker, which is customary in any "real" merger. Scotts did not need a banker because it never performed any real assessment of AeroGrow's value, and instead just picked a price for which it wanted to acquire AeroGrow's minority stock on the cheap.

109. After it made its $1.75 bid on August 20, 2020, Scotts continued to abuse its control of AeroGrow and engage in conduct designed to deter third party bidders:

> On August 27, 2020, **a representative of Scotts Miracle-Gro informed a representative of Bryan Cave that Scotts Miracle-Gro did not believe that any bidder would be able to step into AeroGrow's shoes with respect to the contractual arrangements between Scotts Miracle-Gro and AeroGrow and that bidders should, be informed of Scotts Miracle-Gro's position.**
>
> * * *
>
> On August 28, 2020, Scotts Miracle-Gro also delivered to Bryan Cave by email an updated summary of Scotts Miracle-Gro intellectual property and other rights relating to AeroGrow that had been previously shared with the Board on June 1, 2020. **Scotts Miracle-Gro indicated in its email that such summary should be shared with bidders to understand AeroGrow's limited intellectual property rights if the various commercial license agreements with Scotts Miracle-Gro were to be terminated by Scotts Miracle-Gro. Scotts Miracle-Gro also indicated that bidders should be informed of AeroGrow's alleged failure to perform its obligations under certain agreements with Scotts Miracle-Gro** per the above referenced reservation of rights letters.

> On September 1, 2020, on behalf of AeroGrow, **Mr. Wolfe responded to the reservation of rights letters received from Scotts Miracle-Gro disagreeing with the assertion that Scotts Miracle-Gro's affiliate had the right to terminate the Brand License Agreement and the Technology License Agreement**.

See Proxy at 39 (emphasis added).

110. These disclosures underscore the fact that Scotts was acting in bad faith and making unfounded assertions solely to discourage third party bidders, in a blatant effort to reduce the price it would have to pay, thus harming minority shareholders. The Proxy specifically states that Scotts instructed Bryan Cave that the relevant information "should be shared with bidders," thus emphasizing that the purpose was to discourage bidders and/or reduce the price they were willing to offer for AeroGrow. Moreover, the fact that AeroGrow's CEO Mr. Wolfe "disagree[d] with the assertion that Scotts Miracle-Gro's affiliate had the right to terminate the Brand License Agreement" demonstrates that Scotts assertions lacked a factual basis and were being asserted in a manner calculated to harm the interests of AeroGrow's minority shareholders, to whom Scotts owed a fiduciary duty due to its status as a majority and controlling shareholder.

111. In ultimately deciding to "recommend" the merger, the toothless Special Committee noted that damage to the value received by the minority shareholders:

> The Special Committee also considered the non-binding indications of interest received from Stifel's market outreach, noted the uncertainty regarding the likelihood of completing a transaction with any of the bidders besides Scotts Miracle-Gro, and noted **that only one bidder exceeded the $3.00 per share price offered by Scotts Miracle-Gro, but that bid was dependent on Scotts Miracle-Gro selling certain intellectual property to the bidder at a price which had not been determined and that would ultimately reduce dollar-for-dollar the total per-share consideration paid to stockholders**. The Special Committee further considered the fact that some bidders had assumed certain intellectual property rights belonging to, and commercial arrangements with, Scotts Miracle-Gro would continue or be transferred to the prevailing bidder and that such arrangements were not possible without cooperation from Scotts Miracle-Gro. Furthermore, **the Special Committee noted that Scotts Miracle-Gro had told the Special Committee on September 17, 2020 that any such continuation would not be offered "on the same favorable terms**." **The Special Committee also discussed the general uncertainty regarding whether Scotts Miracle-Gro would constructively participate in a full sale process, and that without such participation by Scotts Miracle Gro as the 80% beneficial owner, no process could move forward**.

See Proxy at 41 (emphasis added).

112. The Proxy also explains in great detail that AeroGrow's CEO did not believe any of Scotts's assertions about the supposed integral nature of Scotts's IP, and that in fact AeroGrow had developed a work-around allowing it to conduct business without Scotts's IP:

> On September 1, 2020, the Special Committee met telephonically with representatives of Stifel and Bryan Cave. The Special Committee considered Scotts Miracle-Gro's position on existing intellectual property agreements and its August 18, 2020 bid. **Discussion included management's position that the Scotts Miracle-Gro trademarks are not of value to AeroGrow** and the nutrients patent, which management believes to be the sole remaining piece of Scotts Miracle-Gro intellectual property in use in AeroGrow's current product range and will not be used in Large Size Products ("LSPs") under co-development with Scotts Miracle-Gro, **has a simple work around for a third-party bidder**, leaving only the retail distribution rights to the LSPs, excluding Amazon and direct-to-consumer, as the lone potential value generator for AeroGrow that would be lost to a third-party acquirer.
>
> **On September 1, 2020, at the request of Stifel, Mr. Wolfe sent an email to Stifel setting forth AeroGrow management's position on how AeroGrow would operate without Scotts Miracle-Gro's involvement**, including management's opinion on intellectual property rights. This analysis was further updated on September 14, 2020.

See Proxy at 40 (emphasis added).

113. These admissions/disclosures are striking, and amply demonstrate that the executives at AeroGrow who were unaffiliated with Scotts, including CEO Wolfe, viewed the entire process as bogus and completely dictated by Scotts, on unfair terms.

114. The entire lengthy discussion of Scotts's basically worthless IP also suggests that Scotts was using its domination and control of AeroGrow to force it to pay inflated licensing fees for such IP, thereby harming AeroGrow's minority shareholders even before the merger. This was not only the opinion of CEO Wolfe, but also one that Stifel concurred with:

> On September 2, 2020, the Board held a meeting with representatives of Stifel and HBC present. The representatives of Stifel discussed the third-party outreach process and bids along with information that it would need and analysis to be conducted if Stifel were to be asked to provide a fairness opinion in connection with a proposed transaction. The representatives of Stifel also discussed the royalty and license arrangements between Scotts Miracle-Gro and AeroGrow and summarized their assessment of the relevant intellectual property issues related to AeroGrow's use of several Scotts Miracle-Gro trademarks and a nutrients patent. **The representatives of Stifel supported management's view that a third-party bidder would not need these trademarks or the patent to successfully operate AeroGrow. The representatives of Stifel also discounted AeroGrow's continued need for shared services and working capital under third-party ownership**.

See Proxy at 40 (emphasis added).

115. By September 17, 2020, Scotts still had not told Stifel whether it would be willing to sell its stake. On that date, however, Scotts ended the charade and admitted it would not sell its stake at the depressed and unfair prices being offered by third parties (and ultimately by Scotts itself):

> On September 17, 2020, the Special Committee held a telephonic meeting with representatives of Stifel and Bryan Cave present. Mr. Supron and Scotts Miracle-Gro's internal legal counsel also attended. **The Special Committee sought clarity from Scotts Miracle-Gro as to whether Scotts Miracle-Gro would be a buyer or a seller** in a potential transaction. Scotts Miracle-Gro indicated it did not believe a sale transaction with any of the bidders would be acceptable to **Scotts Miracle-Gro because it had decided that, at the valuations implied by the proposals, it did not want to sell its ownership stake in AeroGrow and, consequently, indicated its position as a buyer only**. **Scotts Miracle-Gro representatives also informed the Special Committee that any continuation of Scotts Miracle-Gro's intellectual property and other commercial agreements with AeroGrow would not be offered "on the same favorable terms" to potential acquirers**. Representatives of Scotts Miracle-Gro then discussed the possibility of purchasing all of AeroGrow common stock it did not own at a price of $3.00 per share.

See Proxy at 40 (emphasis added).

116. After Scotts made its $3.00 offer, the Special Committee asked Scotts whether it would increase the offer and was told no:

> Between September 20 and 22, 2020, representatives of Stifel attempted to negotiate with Scotts Miracle-Gro to improve its offer of $3.00 per share. Although Scotts Miracle-Gro was unwilling to increase its offer price, Mr. Supron assured representatives of Stifel that there would be no downward adjustments to the $3.00 per share offer price.

See id.

117. These disclosures are consistent with the fact that, from the beginning, Scotts was going to offer what it wanted, and no more. It structured the deal so that it alone could vote its shares in favor, ensuring success. The Special Committee was impotent, lacking any authority to accept or reject the merger. Stifel was merely going through the motions, and in the end accepted a multi-million dollar fee that was contingent on Scotts getting its way. Had Stifel done the right thing and refused to provide a fairness opinion, it would have received a fee of only $450,000. By bending to Scotts's will, Stifel received an additional $2,687,000.

118. The Special Committee acknowledged the fact that no effective sale process could occur since Scotts was not a willing participant to a fair and transparent process. The Proxy states:

> The Special Committee also discussed the general uncertainty regarding whether Scotts Miracle-Gro would constructively participate in a full sale process, and that without such participation by Scotts Miracle Gro as the 80% beneficial owner, **no process could move forward.**

See Proxy at 41 (emphasis added).[3]

E. The Special Committee Was Not Properly Advised By Independent Counsel or Bankers and Instead Received Most of Its Input and Direction From Scotts and Its Designees to AeroGrow's Board

119. Outsider directors are allowed to rely on outside advisors. In mergers, outside directors frequently rely on specialized lawyers and bankers to advise them on complex issues of finance and law. When a Special Committee is appointed, it is done so because conflicts of interest are present. The Proxy admits that is why AeroGrow appointed the Special Committee here.

120. The Proxy states that the Special Committee retained Bryan Cave (lawyers) and Stifel (bankers) to represent it, but a close review of the Proxy reveals that Bryan Cave and Stifel did little to ensure that the Special Committee was not unduly influenced by Scotts and the conflicted members of the AeroGrow Board.

121. First, the Proxy states that AeroGrow's law firm, which is not independent, was involved in the initial outreach to Bryan Cave and that, even after Bryan Cave was retained to represent the Committee, the Company's law firm provided directions to the Committee, including advising them as to their duties:

> On February 28, 2020, Messrs. Clarke and Kent held a telephonic meeting with **AeroGrow's outside legal counsel, Hutchinson Black and Cook, LLC** ("HBC") and initiated communications with Bryan Cave Leighton Paisner LLP ("Bryan Cave") to represent the independent directors and a special committee of the Board should such special committee be approved by the Board. **Representatives of HBC and Bryan Cave advised Messrs. Clarke and Kent of their legal and fiduciary duties**.

[3] Moreover, the Company admitted in its Annual Report that Scotts's proposal posed a conflict of interest as well as a high risk of not adequately compensating minority shareholders for the future value of the Company: "The proposal and related transactions may **pose conflicts of interest and** may result in: (i) cessation of AeroGrow's status as a publicly traded company and SEC-reporting company; and (ii) **may result in the liquidation of common stock held by minority shareholders at a price that may not represent the full future economic value of the common stock**." *See* AeroGrow's 2020 Annual Report at 17 (emphasis added). These disclosures or warnings provided no protection to minority shareholders, however, because the minority shareholders have no ability to prevent the Merger. Defendants only conditioned approval of the Merger on the vote of a majority of all outstanding shares; And since Scotts owns 80.5% of all shares, it can approve the Merger by itself.

> On March 1, 2020, a representative of Bryan Cave contacted Scotts Miracle-Gro regarding the proposed Schedule 13D amendment and discussed issues with internal counsel at Scotts Miracle-Gro.

See Proxy at 29 (emphasis added).

122. To ensure the independence of the Committee and its counsel, the Company's counsel should not have been involved in selecting Bryan Cave, nor in the process of advising the Committee as to their fiduciary duties.

123. Moreover, the Proxy discloses that Bryan Cave was not materially involved in advising the Committee on substantive matters, and that in fact the Committee had many interactions directly with Chris Hagedorn, Scotts, and other individuals who were conflicted. For example, the Proxy states that:

> **On March 10, 2020, Mr. Hagedorn sent a letter to Messrs. Clarke and Kent via email expressing that the Board has long identified AeroGrow's overhead as a significant drag on performance and that Scotts Miracle-Gro has provided support to AeroGrow and its management to encourage growth and profitability. The letter stated that Scotts Miracle-Gro believed that radical change was the only viable course available to AeroGrow's stockholders** and that the operational and structural proposals recommended by Scotts Miracle-Gro at the February Board meeting reflected Scotts Miracle-Gro's good faith effort to provide tangible value to all stockholders. The letter also instructed Messrs. Clarke and Kent to engage a financial advisor to independently evaluate the Scotts Miracle-Gro framework as well as any alternative strategic plans or transactions as suggested by Messrs. Clarke and Kent.

See Proxy at 30 (emphasis added).

124. Normally, communications to a Special Committee would go through the Committee's bankers and lawyers, and not come directly from conflicted management or the third party whose self-interested transaction the Committee is tasked with reviewing.

125. The Proxy reveals that the full, conflicted Board continued to be involved in all aspects of the potential transaction with Scotts, despite the formation of the Special Committee, and that the Company's law firm (Hutchison Black & Cook or "HBC") attended and provided advice to the full Board (including Clarke and Kent, the members of the Special Committee), and that Bryan Cave was conspicuously absent from those meetings, thus leaving Clarke and Kent to receive most of their guidance from the Company's counsel, not from Bryan Cave.

126. For example, on April 7, 2020 Scotts submitted an initial proposal regarding suggested operational changes, including a cost reduction plan, organizational changes, and a

proposed 2.5% royalty to the Special Committee. Far from allowing the Special Committee to review the proposal in an independent manner, the proposal was considered at a meeting the same day (April 7, 2020) at which the entire Board and the Company's lawyers, as well as Mr. Supron from Scotts, attended, but at which neither Bryan Cave nor any banker retained by the Special Committee was allowed to attend:

> **On April 7, 2020, the Board held a meeting by videoconference attended by all members of the Board, certain members of AeroGrow's management, a representative of HBC and Mr. Supron. The Board discussed the April 6, 2020 written proposal from Scotts Miracle-Gro** and questions and requests for additional information from Scotts Miracle-Gro ensued. The Board also discussed the ownership by Scotts Miracle-Gro of certain intellectual property used by AeroGrow and the various other contractual relationships between AeroGrow and Scotts Miracle-Gro. It was recognized that these licenses and agreements may negatively impact the value of AeroGrow to, or frustrate a transaction with, third parties. The Board also discussed AeroGrow's fiscal year 2021 operating plan and requested further development of the plan, including the potential impacts of COVID-19.

See Proxy at 31 (emphasis added).

127. For the Special Committee to have any semblance of independence, it should have been the entity tasked with exclusively considering any proposed transaction with Scotts, and should have been allowed to meet by itself and receive independence advice from its own lawyers and bankers. Instead, the full conflicted Board was allowed to attend and fully participate in the discussions regarding all of Scotts' proposals. So too was Scotts's representatives, including Supron. The Special Committee itself, meanwhile, did not even have its own lawyers or bankers present at most meetings.

128. The Special Committee did not even retain Stifel until May 6, 2020, well after it had engaged in substantive discussions and evaluations of proposals from Scotts. Moreover, the Proxy states that Stifel is allegedly independent of Scotts, but does not represent that Stifel is independent of AeroGrow. For Stifel to be truly independent, it would have to be independent of AeroGrow since AeroGrow is controlled by Scotts.

129. Stifel also lacked independence because, as noted in the Proxy, the vast majority of Stifel's compensation was contingent on it arriving at the conclusion that the Merger was fair from a financial point of view to AeroGrow's minority shareholders.

130. Scotts also presented a revised proposal on May 8, 2020 to AeroGrow's Board:

> On May 8, 2020, the Board held a telephonic meeting with representatives of AeroGrow's management, a representative of HBC and Mr. Supron present. AeroGrow's management presented a business update to the Board, including a report on recent sales results and trends. Management also presented, and the Board reviewed and agreed to, financial projections, which would form the basis of the "management projections" (as defined and further described under "—Management Projections"). The Board also discussed the need for a working capital line of credit and representatives of Scotts Miracle-Gro stated that a line of credit might be available from Scotts Miracle-Gro if Scotts Miracle-Gro's restructuring proposal progressed.
>
> Mr. Supron then presented a revised proposal from Scotts Miracle-Gro to the Board. Mr. Supron explained that, under this revised proposal, AeroGrow would remain a separate, publicly traded legal entity with limited operations and remain 80% owned by Scotts Miracle-Gro. Its operations (other than financial statement preparation and SEC reporting) would be consolidated with Scotts Miracle-Gro, effective October 1, 2020.

See Proxy at 31.

131. Again, neither Bryan Cave nor Stifel were present at the May 8, 2020 meeting to provide advice to the Special Committee. These facts amply demonstrate that the key decision makers were Scotts and its designees on AeroGrow's Board; the Committee was a mere fig leaf that quickly became an afterthought, and whose eventual "recommendation" was meaningless since the full Board, controlled by Scotts, retained the right to approve the Merger.

132. The Proxy also states that:

> On May 12, 2020, **HBC, Bryan Cave and Scotts Miracle-Gro's internal legal counsel discussed the processes under consideration by the Board and Special Committee to review Scotts Miracle-Gro's proposal.**
>
> **On May 15, 2020, Bryan Cave provided a courtesy copy of the draft Stifel engagement letter to HBC and Scotts Miracle-Gro's internal legal counsel. Bryan Cave, HBC and Scotts Miracle-Gro's internal legal counsel exchanged comments on the draft Stifel engagement letter over the next several days.**

See Proxy at 32 (emphasis added).

133. These disclosures reveal that both Scotts and the Company's legal counsel (HBC) were fully involved and had influence over all aspects of the Special Committee's deliberations and work. Scotts was even allowed to provide comments and changes to Stifel's retention terms. Clearly, neither the Special Committee nor either of its advisors (Bryan Cave and Stifel) were independent of Scotts or the Company.

134. The supine AeroGrow Board and the feckless Special Committee also allowed Scotts to dictate the scope and terms of the market check undertaken by Stifel. The market check was a key method by which the AeroGrow Board could fulfill its fiduciary duty to maximize value in any transaction. Scotts should have had absolutely no involvement in the market check performed by Stifel. However, not only was Scotts involved in the market check, it dictated what Stifel was allowed and not allowed to do. The Proxy states:

> On June 23, 2020, **Mr. Supron, Scotts Miracle-Gro's internal legal counsel, representatives of Stifel and Bryan Cave discussed the market check process and strategic alternatives that Scotts Miracle-Gro would be willing to consider.**

See Proxy at 34 (emphasis added).

135. The Special Committee's compensation was even subject to approval by Scotts. The Proxy states that:

> On June 2 and 3, 2020, the Special Committee, Bryan Cave, Mr. Hagedorn, Mr. Supron and Scotts Miracle-Gro's internal legal counsel engaged in discussion via email regarding the Special Committee's requests for additional compensation for service on the Committee. . . .

See Proxy at 34.

F. The Merger Consideration is Unfair and is the Result of Defendants' Self-Dealing and Breach of the Duty of Loyalty at the Expense of AeroGrow's Minority Stockholders

136. The proposed offer of $3 in cash per share is inappropriate, unfair, and inadequate. The proposed transaction is being pursued to enable Scotts to acquire 100% equity ownership of the Company and its valuable assets at a price only favorable to Scotts. The Merger allows Scotts to do so at the expense of the Company's minority stockholders, including Plaintiff, who will be denied the true value of his equity investment and the benefits thereof including, among other things, the Company's future financial prospects.

137. For example, in comparison to the three months ended September 30, 2019, the three months ended September 30, 2020 saw an increase in AeroGrow's net income to $1.3 million, up from a $1.1 million loss; an increase in the Company's total revenue of 223.5% ($9.9 million); an increase in sales to retailer customers of 141.5% ($6.5 million); an increase in sales in the Company's direct-to-consumer channel of 210.2% ($3.4 million); and an increase in the total

dollar sales of AeroGarden units, the Company's most popular product representative of a majority of the Company's total revenue over the year, of 269.2%.

138. Similarly, the six months ended September 30, 2019, contrasted with the six months ended September 30, 2020 saw: an increase in AeroGrow's net income to $3.9 million, rather than a $2.13 million loss; an increase in the Company's total revenue of 245.3% ($21.8 million); an increase in sales to retailer customers of 217% ($11.2 million); an increase in sales in the Company's direct-to-consumer channel of 299.6% ($10.6 million); an increase in the total dollar sales of seed pod kits and accessories of 208.5% ($6.9 million); and an increase in the total dollar sales of AeroGarden units of 244.1%.

139. The Merger price – agreed to by Defendants – represents a number based on the Company's artificially depressed share price, and thus fails to legitimately account for AeroGrow's rapidly increasing financial success. AeroGrow's common stock had already reached a 52-week high of $6.10 per share the day of Scotts's initial offer to take the Company private, more than 200% higher than the $3.00 per share finally offered in the proposed transaction. The Merger also comes at a time when AeroGrow's share price is undergoing explosive growth and actively seeks to withhold from Plaintiff the opportunity to share proportionately in the future success of the Company and its valuable assets.

140. Moreover, from the beginning of the process, Scotts's alleged justification for engaging in the transaction was that AeroGrow was allegedly not doing well and needed some kind of "major" restructuring in order to improve performance. That assertion was completely false and was proven false in the months following the February 2020 meeting in which Scotts initially raised the claim that major change was needed to benefit AeroGrow's shareholders. In fact, no major change was made at AeroGrow after February 2020; notwithstanding the lack of any change, AeroGrow's earnings rapidly improved and the stock more than tripled. Thus, the Company was doing tremendous and no change was needed for AeroGrow's stockholders to benefit.

141. Far from benefitting AeroGrow shareholders (other than itself), Scotts's squeeze-out transaction was made at a price that was 70% below the market price when announced. Thus,

the Merger is obviously a value destroying event. For Scotts, however, since it is not selling its AeroGrow stock, but buying it, the Merger represents a huge value creating event not justified by anything other than Scotts's bold and unlawful power grab/abuse of control. Defendants' misconduct represents a clear breach of fiduciary duty. In any transaction where insiders, especially a majority and controlling shareholder, receive any benefit, the minority shareholders must receive commensurate benefits. Scotts and its designees to AeroGrow's Board are not permitted to steal from the minority shareholders just to line their own pockets with even more money than they have already misappropriated from the Company. And yet that is exactly what they did here.

142. Scotts itself indicated it did not want to sell its stock at such paltry levels and thus Scotts has implicitly acknowledged the price it is offering is not fair value.

143. Defendants breached their fiduciary duties and engaged in wrongful conduct that depressed the value of AeroGrow's stock, even before Scotts's formal offer was made. For example, financial results and stock price in 2020 would have been even better had Defendants not intentionally delayed the introduction of the Company's most promising product. In AeroGrow's August 11, 2020 press release, the Company stated that it would be "launching the Grow Anything Appliance, our most ambitious product to date."

144. But Defendants had previously announced in November 2019 that the Grow Anything Appliance/Bloom would be launched in the first few months of 2020. On November 14, 2019, AeroGrow had issued the following press release touting Grow Anything as a key product poised to earn huge revenues for AeroGrow in a billion-dollar market:

> BOULDER, Colo., Nov. 14, 2019 (GLOBE NEWSWIRE) – AeroGrow International, Inc. (OTCQB: AERO) ("AeroGrow" or "the Company"), the manufacturer and distributor of AeroGardens - the world's leading family of In-Home Garden SystemsTM – **announced today the launch of its largest and most innovative product to date.**
>
> Last week, AeroGrow's Board of Directors formally approved making the final capital expenditures required to tool, complete the software development and begin manufacturing this new addition to AeroGrow's product portfolio. As a result, **in the coming months AeroGrow will be bringing to market its most ambitious home gardening innovation yet – the "Grow Anything" Appliance**, a fully automated and self-contained indoor gardening system. The Grow Anything Appliance will

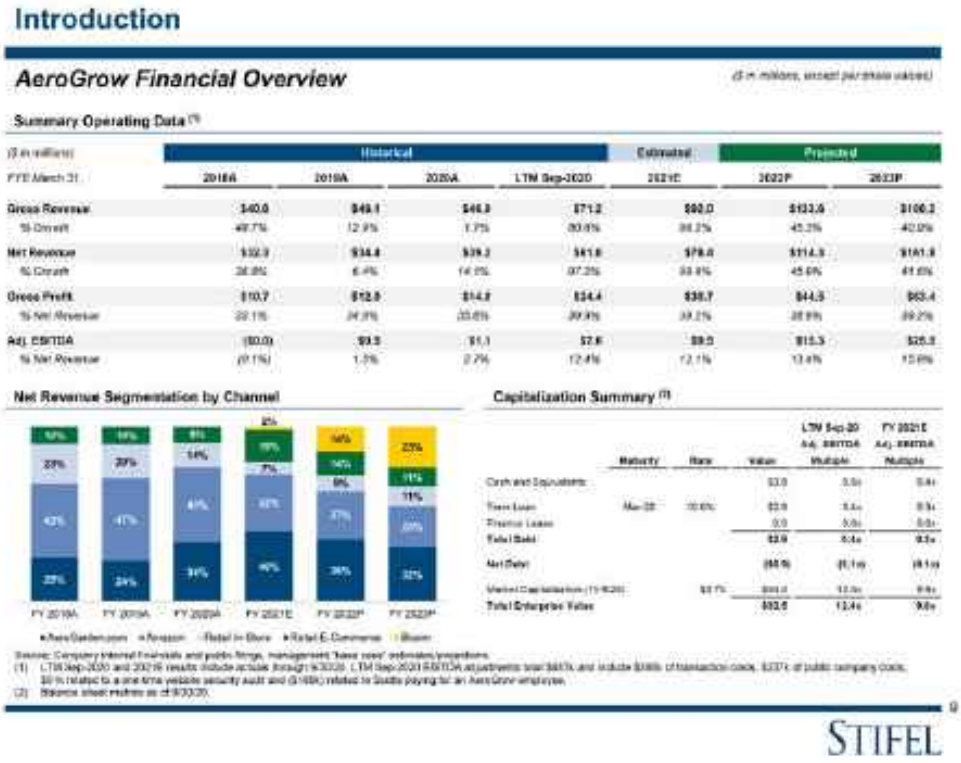
> revolutionize in-home-growing with the world's first and most advanced on-board plant computer, accessible both on the device and through a proprietary app.
>
> Using community-based, plant-specific recipes and advanced-system artificial intelligence, the refrigerator-sized appliance monitors and adjusts all key environmental factors – light, temperature, humidity, water quality and nutrient levels – to maximize growth and output for any variety of plant at every stage of growth. The product also features a highly effective LED grow light system designed to optimize plant growth at all stages, a nutrient auto-dosing system, an automated plant drying/curing cycle, and even an on-board camera to remotely monitor growth and plant health.
>
> **The Grow Anything Appliance, which is planned to be marketed under the Botanicare brand, has been four years in the making through a rigorous Research & Development process**. Prototype units have been growing throughout the Company's home state of Colorado for the past year with impressive results – both in terms of quality and quantity of crop output. **The product will be manufactured by the Company's proven manufacturing partners, with the first products set to be available in the market during the first half of 2020.**
>
> "**We believe our Grow Anything appliance will be the most advanced indoor home-growing device ever launched," said J. Michael Wolfe, AeroGrow's President & CEO**. "At our core, we've always been a product-centric company – and this newest launch truly demonstrates our commitment to innovative R&D, design functionality and plant growing efficacy. Moreover, as the name implies, it truly allows users to grow anything they want . . . and to do it in a way that is sure to produce exceptional crops time and again.
>
> "**The large plant Grow Anything appliance is the first step for AeroGrow into the rapidly growing space of fully automated, appliance sized home-growing systems – a market we've sized at well over a billion dollars world-wide and one we plan to pursue vigorously**."

See AeroGrow Form 8-K, dated Nov. 14, 2019 (emphasis added).

145. Thus, AeroGrow's Grow Anything Appliance/Bloom was ready to be sold in the beginning of 2020. However, doing so would have resulted in significant additional revenues to AeroGrow and therefore caused its stock to skyrocket even more. Scotts and its designees to the AeroGrow Board therefore wrongfully instructed CEO Wolfe to hold back the launch so that the significant expected revenues from Grow Anything would not be reflected in the Company's financial results, thus aiding Scotts's efforts to squeeze out the minority shareholders at a lower, unfair price that did not reflect the Company's true value and prospects.

146. Scotts's complete and bad faith manipulation of the value to be received by AeroGrow shareholders in the Merger was revealed in even more detail in belated disclosures that AeroGrow filed with the SEC on January 12, 2021. On that date, AeroGrow filed an Amended

Schedule 13D with the SEC in which it disclosed for the first time certain key financial presentations. Among those were the presentation that Stifel made to the AeroGrow Board of Directors on November 10, 2020. That presentation revealed much higher management forecasts for AeroGrow than had been previously disclosed. The Stifel presentation confirmed that AeroGrow's management expects major top line contributions from Grow Anything/Bloom in the coming years, as reflected in the attached chart prepared by Stifel:

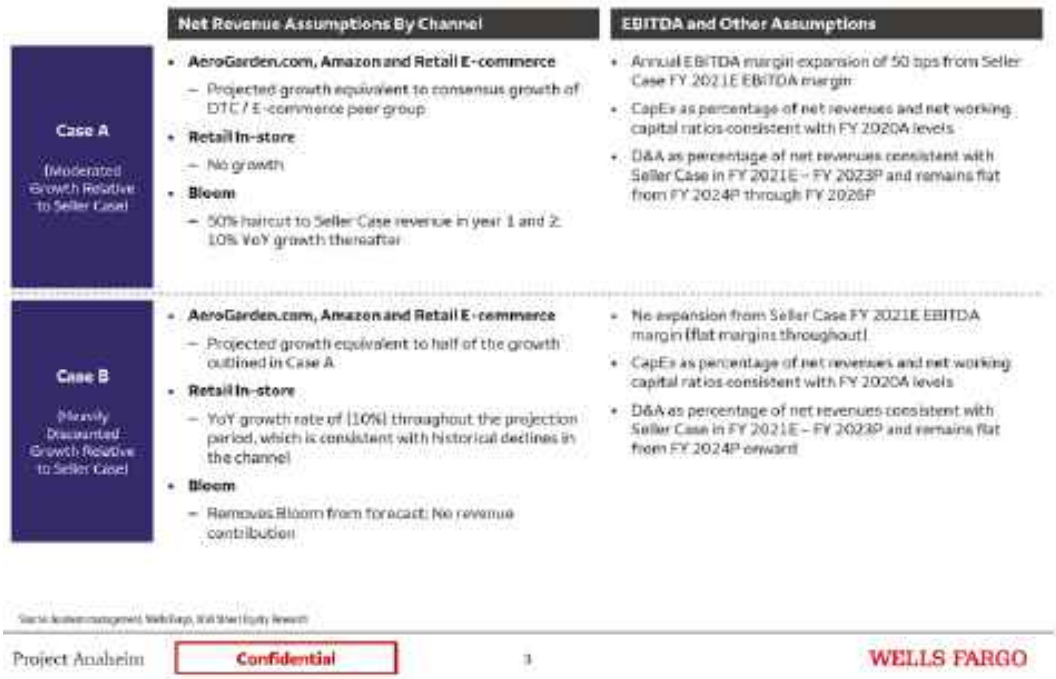


147. As this analysis shows, AeroGrow's projections state that AeroGrow's revenues show an increase from $92 million in fiscal 2021 (which is almost over, since AeroGrow's fiscal year 2021 ends on March 31, 2021) to $188.2 million by 2023; gross profits are expected to more than double from $30.7 million to $63.4 million in the same period.

148. Moreover, the expected outsized contribution to AeroGrow's revenues in the coming years from Grow Anything/Bloom is demonstrated by the yellow highlighting in the above chart. In the current 2021 fiscal year, Grow Anything/Bloom is only expected to contribute 2% to net revenues. By 2023, the contribution is expected to grow to 23%.

149. Based on these accurate forecasts, **Stifel had prepared a valuation range for AeroGrow's stock of between $5.90 per share and $8.20 per share**. But Scotts did not want to pay anything close to fair value for the stock held by the minority shareholders, and thus embarked on a plan to manufacture new numbers more to its liking.

150. Scotts was able to accomplish this by instructing its own banker, Wells Fargo, to heavily discount AeroGrow's forecasts to arrive at lower numbers. Scotts told Wells Fargo to prepare two new cases (Case A and Case B) in which Wells Fargo was instructed to use large haircuts in the projections:



	Net Revenue Assumptions By Channel	EBITDA and Other Assumptions
Case A (Moderated Growth Relative to Seller Case)	• **AeroGarden.com, Amazon and Retail E-commerce** – Projected growth equivalent to consensus growth of DTC / E-commerce peer group • **Retail In-store** – No growth • **Bloom** – 50% haircut to Seller Case revenue in year 1 and 2; 10% YoY growth thereafter	• Annual EBITDA margin expansion of 50 bps from Seller Case FY 2021E EBITDA margin • CapEx as percentage of net revenues and net working capital ratios consistent with FY 2020A levels • D&A as percentage of net revenues consistent with Seller Case in FY 2021E – FY 2023P and remains flat from FY 2024P through FY 2026P
Case B (Heavily Discounted Growth Relative to Seller Case)	• **AeroGarden.com, Amazon and Retail E-commerce** – Projected growth equivalent to half of the growth outlined in Case A • **Retail In-store** – YoY growth rate of (10%) throughout the projection period, which is consistent with historical declines in the channel • **Bloom** – Removes Bloom from forecast; No revenue contribution	• No expansion from Seller Case FY 2021E EBITDA margin (flat margins throughout) • CapEx as percentage of net revenues and net working capital ratios consistent with FY 2020A levels • D&A as percentage of net revenues consistent with Seller Case in FY 2021E – FY 2023P and remains flat from FY 2024P onward

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151. As the chart above demonstrates, Wells Fargo applied unrealistic haircuts to AeroGrow's forecasts, including, in Case A, assuming absolutely no growth in Retail sales and the application of an arbitrary 50% haircut in the first two years of the forecasts; in Case B, Wells Fargo applied even more drastic haircuts ("Heavily Discounted Growth Relative to Seller Case"), including completing removing all revenue from Grow Anything/Bloom from the forecasts ("Removes Bloom from forecast; No revenue contribution").

152. Amazingly, Wells Fargo applied these huge haircuts to AeroGrow's projections without even speaking to AeroGrow's management or engaging in any due diligence whatsoever. As acknowledged in an amended Schedule 13D: "Wells Fargo reduced the AeroGrow projections "**without performing any due diligence with [AeroGrow's] management.**"[4]

153. These disclosures demonstrate how desperate Scotts was to come up with manipulated numbers to try to make its low-ball offer seem better than it was: it simply told its own banker to completely take out all projected revenue from the Company's key product. Scotts had agreed to spend millions on R&D for this product in past years, and thus recognized the value of the product. When the money had been spent, however, and AeroGrow was on the verge of more than doubling its revenues and gross profits over the next two years as a direct result of the investment in Grow Anything/Bloom, Scotts decided to acquire AeroGrow so it could misappropriate the huge upside of Bloom for itself, to the exclusion of the Company's minority shareholders. Defendants' misconduct in telling Wells Fargo to simply take out all expected revenues from Bloom from the forecasts under Case B amply demonstrates bad faith and demonstrates the unfairness of the Merger consideration.

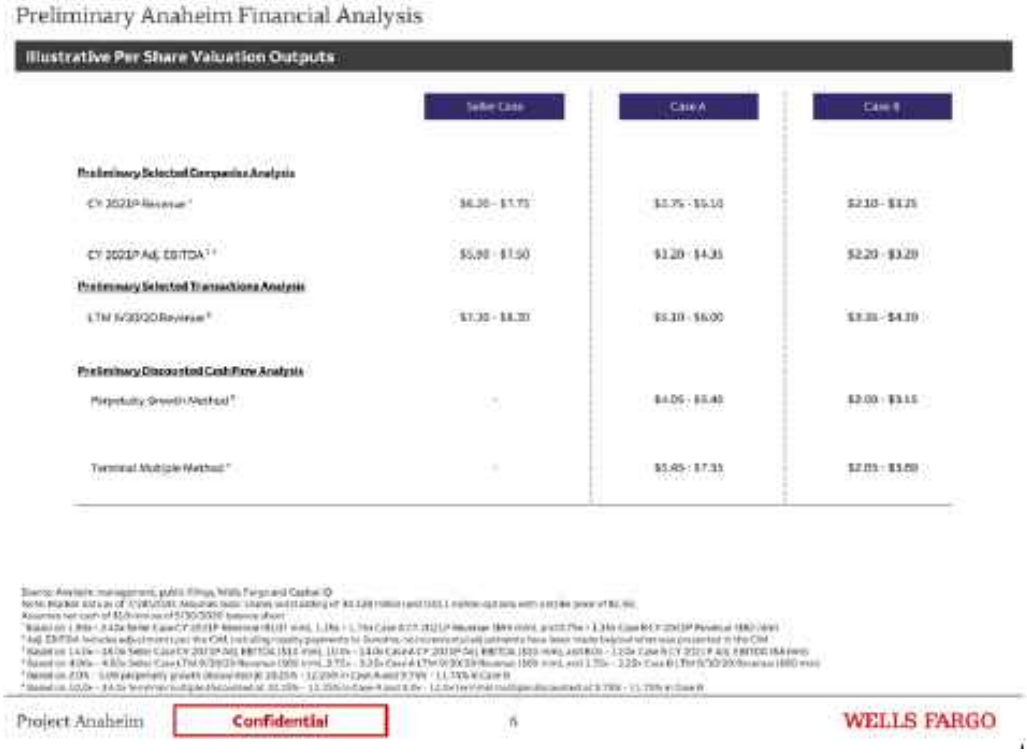
154. After it had Wells Fargo manipulate the forecasts prepared by AeroGrow's management, Scotts then used its control to coerce Stifel into lowering its prior valuation of AeroGrow by using the Wells Fargo analysis as leverage, telling Stifel that its analysis was not reliable and needed to be reduced. Stifel eventually agreed to use a revised valuation method "which reduces management growth estimates for annual core revenue growth by 10% and annual Bloom revenue growth by 50%."[5]

155. The following chart from Wells Fargo discloses the original $5.90 to $8.20 valuation range derived from Stifel's original analysis and management's actual forecasts,

[4] *See* Amended Schedule 13D, filed Jan. 12, 2021, *available at* https://www.sec.gov/Archives/edgar/data/1316644/000119312520310012/d22041dex99c3.htm (emphasis added).

[5] *See* Amended Schedule 13D filed Jan. 12, 2021, available at https://www.sec.gov/Archives/edgar/data/1316644/000119312520310012/d22041dex99c1.h

compared to the "manipulated" valuation range derived by Wells Fargo through two new cases that heavily discounted the original management forecasts:


Preliminary Anaheim Financial Analysis

Illustrative Per Share Valuation Outputs

	Seller Case	Case A	Case B
Preliminary Selected Companies Analysis			
CY 2021P Revenue [1]	$6.30 - $7.75	$5.75 - $6.50	$4.50 - $5.25
CY 2021P Adj. EBITDA [1]	$1.00 - $1.50	$1.20 - $1.80	$0.20 - $0.30
Preliminary Selected Transactions Analysis			
LTM 9/30/20 Revenue [2]	$7.30 - $8.30	$5.10 - $6.00	$3.35 - $4.10
Preliminary Discounted Cash Flow Analysis			
Perpetuity Growth Method [3]	-	$4.05 - $5.40	$2.00 - $3.15
Terminal Multiple Method [4]	-	$5.45 - $7.55	$2.05 - $3.50

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156. Tellingly, even Scotts's own conflicted banker, Wells Fargo, using heavily discounted financial forecasts, arrived at valuation ranges that were significantly higher than Scotts's $3.00 Merger price. And as the chart above demonstrates, Wells Fargo's alternative Case A valuation derived values for AeroGrow of between $5.10-$6.00 per share using a Precedent Transactions analysis, and of between $5.45-$7.55 under a DCF analysis.

157. In addition, to further attempt to prevent AeroGrow's rapidly improving financial forecasts and earnings from causing further increases in AeroGrow's stock price, Scotts instructed CEO Wolfe to cease holding earnings calls and to cease sending the annual letter to shareholders. Both items were standard practice in past years. Scotts thus used its control of AeroGrow to prevent Wolfe from communicating the substantial progress AeroGrow was making.

158. The $3.00 Merger price is not fair because Stifel's fairness opinion uses valuation ranges that indicate the price is not fair. In other places, as indicated above, Defendants caused Stifel to use inputs that are not market based and, therefore, do not reflect true value.

159. For example, even when it used financial projections that had been manipulated by Scotts (through its banker Wells Fargo), Stifel ran a DCF analysis and came to the conclusion that the merger price of $3.00 is not fair from a financial point of view. Stifel's Terminal Multiple Method Base Case DCF analysis resulted in a value for AeroGrow stock of between $3.47 and $4.57, which is higher than the $3.00 merger price:

> "**[Stifel] calculated implied equity values per share ranging from $3.47 to $4.57**, the high-end of which range was the equity value per share derived using the high-end terminal multiple and applying the low-end discount rate, and the low-end of which range was the equity value per share derived using the low-end terminal multiple and applying the high-end discount rate. **Stifel noted that the Merger Consideration falls below the range of implied equity values per share implied by this analysis**.

See Proxy at 60 (emphasis added).

160. Stifel also ran an alternative "Perpetuity Growth Method" DCF analysis in an attempt to make the merger consideration look fair. But it used extremely high and unreasonable discount rates of 14-16% to arrive at its depressed valuation range of $1.93 to $2.53 per share under such analysis. Stifel indicated that it chose the extremely high discount rates "based on Stifel's estimation of the Company's weighted average cost of capital." *See id*. But this makes no sense. Interest rates are historically low. And AeroGrow's principal line of credit is the one it was forced to accept from Scotts. That interest rate is extremely high and non-market, demonstrating the unreasonableness of the 14-16% rate Stifel used. Had Stifel used more reasonable and market-based discount rates, it would have derived a much higher valuation for AeroGrow's stock under its manipulated Perpetuity Growth Method DCF analysis.

161. Stifel used the unrealistic 14-16% discount rates for all its analyses, including the Terminal Method DCF analysis.

162. Stifel also utilized a Comparable Companies analysis as part of its valuation methodologies. That methodology used overly conservative financial projections that had been manipulated by Defendants, and that did not accurately reflect the large upside from the

Company's rapidly increasing revenues and profits. Even then, Stifel derived an implied value for the Company's stock of $3.58 based on expected 2021 financial results and using a "third quartile" metric.

163. Moreover, on the eve of the sham shareholder vote, AeroGrow reported strong earnings that easily exceed the projections used in Stifel's "fairness" opinion:

> **AeroGrow Reports 3rd Quarter Results**
>
> - **3rd Quarter Revenue Increases 107% to $38.4 Million**
> - **3rd Quarter Operating Profit Increases 290% to $4.7 Million**
> - **Nine-month results: Revenue up 151% to $69.1 Million; Income from Operations Rises to $8.7 Million, up from a Prior Year loss of $918 Thousand**
>
> Boulder, CO - (February 16, 2021) – AeroGrow International, Inc. (OTCQB: AERO) ("AeroGrow" or "the Company"), the manufacturer and distributor of AeroGardens – the world's leading family of In-Home Garden Systems™ – announced results for its third quarter ended December 31, 2020.
>
> For the quarter ended December 31, 2020 the Company recorded net revenue of $38.4M, an increase of 107% over the same period in the prior year. Income from Operations was $4.7M, an increase of 290% vs. the prior year. Gross margin improved to 41.1%, an increase of 590 basis points vs the prior year.
>
> For the nine months ended December 31, 2020, net revenue stands at $69.1M, an increase of 151% vs. the same period last year. Income from Operations was $8.7M, up from a loss of $918K the prior year. Gross margin for the period improved to 42.0%, up 760 basis points vs. the prior year.

See AeroGrow Ex. 99.1 to Form 8-K, dated Feb. 16, 2021.

G. The Defective Terms of The Merger Agreement

164. Under the terms of the Merger Agreement, Plaintiff will receive just $3.00 per share cash. He will be divested of his ownership of AeroGrow stock and denied the ability to participate in any way in the future value of the Company.

165. The Defendants, in stark contrast, are allowed to retain their stock and ownership in AeroGrow and will reap the rewards and upside of the Company, whose assets will be usurped by Scotts and SMG Growing Media, Inc.

166. The Merger is a *fait accompli*. The only condition to the Merger is the majority vote of all outstanding shares of AeroGrow. Scotts, through its wholly-owned subsidiary SMG Growing Media, Inc., owns 80.5% of AeroGrow stock. As the Merger Agreement and Proxy state, Scotts and SMG Growing Media, Inc. are contractually obligated to vote in favor of the Merger: "Subject

to the terms of the Merger Agreement, Parent has agreed to vote all shares of common stock it beneficially owns in favor of the Merger Agreement Proposal." *See* Proxy at 87. Thus, the Merger has already been effectively approved. It is not even clear why Scotts is holding a meeting, other than to create some bogus appearance of some semblance of a "process."

H. <u>The Merger Was Intended To, and Will Increase, Scotts's Revenues and Profits</u>

167. The Merger will allow Scotts to obtain complete control of AeroGrow and to increase its financial performance by acquiring AeroGrow's assets and business for itself:

> The Purchaser Parties and Scotts Miracle-Gro have undertaken to pursue the Merger at this time in light of the opportunities they perceive to enhance Parent's and, in turn, Scotts Miracle-Gro's, financial performance by means of acquiring the Company's brands and other assets through the Merger. For the Purchaser Parties and Scotts Miracle-Gro, the purpose of the Merger is to enable them to exercise complete control of the Company. . . .

See Proxy at 63.

168. As demonstrated herein, AeroGrow's financial performance increased dramatically during 2020 and was well-positioned to continue doing so. In fact, AeroGrow had invested substantial R&D in the years prior to the Merger and was just beginning to reap the rewards of such substantial capital improvements when Scotts orchestrated its take-under merger at no premium, and in fact at a substantial discount to AeroGrow's stock price and fair value.

169. As a result of the Merger, Plaintiff will be denied his ownership interest in AeroGrow. Scotts, on the other hand, is misappropriating AeroGrow's substantial assets and value for itself, to the detriment of the minority shareholders.

170. As expected, the merger was pushed through by the majority shareholders on February 23, 2021. AeroGrow set the effective date of the merger as February 26, 2021. This effective date triggered specific obligations of AeroGrow and its stockholders pursuant to NRS 92A et seq., commonly known as Nevada's Dissenter's Rights statute.

171. AeroGrow, however, has failed and refused to abide by the provisions of NRS 92A by amongst other things, unilaterally and prematurely paying its merger consideration of $3.00 a share to the beneficial stockholders (those who held their shares in "street name" through a broker or institution as opposed to holding stock certificates) in an attempt to undermine and prevent the

beneficial owners, including Plaintiff, from obtaining consent letters from the record owners (the transfer agent or other institutions in whose name the shares are registered) and therefore prevent Plaintiffs and the other beneficial owners from complying with certain requirements of NRS 92A in order to exercise dissenter's rights.

172. Moreover, AeroGrow's rush to payment resulted in AeroGrow failing to provide financial information with the payment as required by NRS 92A.460(2). Such financial other information was supposed to be provided to dissenting stockholders so that they could submit their own estimate of fair value, which is due 30 days after receiving payment. AeroGrow's improper conduct in prematurely making payment, and not providing the required financial information, has also nonsensically resulted in Plaintiff and the other beneficial owners having to provide their own estimate of fair value before the deadline to even elect to exercise dissenter's rights by making a Demand for Payment. And presumably, AeroGrow has taken the unlawful position that because it paid the merger consideration of $3.00 per share to Plaintiff and the beneficial owners, despite Plaintiff and those beneficial owners having timely delivered Notices of Intent to Demand Payment for Shares, that AeroGrow need not provide Dissenter's Notices to either the beneficial owners, such as Plaintiff, or the record owners as required by NRS 92A.430,thereby further violating Plaintiff's and the other beneficial owners' rights under the statute.

173. The Defendants continue to ignore their obligations under NRS 92A to the detriment of the Plaintiff thereby hindering his opportunity to obtain fair value for his shares in the corporation.

FIRST CLAIM FOR RELIEF

For Breaches of Fiduciary Duty Against Scotts Miracle-Gro Company, James Hagedorn, and SMG Growing Media, Inc. As Controlling Stockholders

174. Plaintiff repeats and re-alleges each and every allegation contained above as if fully set forth herein.

175. As AeroGrow's controlling stockholders, Scotts Miracle-Gro Company, James Hagedorn, and SMG Growing Media, Inc. owed Plaintiff fiduciary duties of loyalty and care. In

breach of those duties, Defendants used their control of AeroGrow's corporate machinery to, among other things, orchestrate the AeroGrow Board's approval of the Merger.

176. The Merger was a self-interested transaction for Defendants that was intended to and did benefit them and Scotts at the expense of AeroGrow's minority shareholders. For example, the Merger is expected to improve Scotts's revenues, EBITDA and free cash flow. Moreover, by abusing their control of AeroGrow, Defendants are acquiring the minority's stock at a mere $3.00 per share, $20,066,226 below the August 18, 2020 market value of the stock and a significantly greater amount lower than the fair value of the stock.

177. The Merger was also the product of unfair dealing. Scotts Miracle-Gro Company, James Hagedorn, and SMG Growing Media, Inc. initiated, structured, negotiated, caused the AeroGrow Board to approve, and priced the Merger to serve Scotts's interests at the expense of AeroGrow's minority stockholders. Scotts Miracle-Gro Company, James Hagedorn, and SMG Growing Media, Inc. wielded their position as AeroGrow's controlling stockholders to prevent the AeroGrow Board from negotiating at arm's length with Scotts, including by (1) failing to form a special committee of independent with the unilateral authority to approve or reject the Merger, engage independent legal and financial advisors, and consider strategic alternatives; (2) engaging hopelessly conflicted financial and legal advisors to advise the Special Committee on the Merger; (3) controlling the Merger negotiations by overseeing AeroGrow's senior management in their conduct, by dictating the terms of the market check, and by telling third party suitors, through Stifel, that Scotts would not sell its IP to any third party. Defendants knew that cloaking every level of the process with conflicted advisors would steer the Board to approve the Merger on the unfair terms they chose.

178. Defendants also wielded their position as AeroGrow's controlling stockholder to ensure they controlled the vote on the Merger. Defendants instructed the Board to only make the Merger subject to the vote of a majority of all outstanding shares, including Defendants' 80.5% stake. Defendants did not subject the Merger to the approval of a majority of AeroGrow's minority stockholders, thus completely disenfranchising Plaintiff.

179. By reason of the foregoing, Plaintiff has suffered damages.

SECOND CLAIM FOR RELIEF

For Breach of Fiduciary Duty Against Chris Hagedorn, H. MacGregor Clarke, David B. Kent, Cory Miller, and Patricia M. Ziegler

180. Plaintiff repeats and re-alleges each and every allegation contained above as if fully set forth herein.

181. Defendants are directors of AeroGrow, and as such owe fiduciary duties to Plaintiff as a minority shareholder.

182. By the acts, transactions and courses of conduct alleged herein, Defendants, as directors of the Company, have knowingly violated their fiduciary duties owed to Plaintiff.

183. As alleged above, Defendants violated their fiduciary duties owed to Plaintiff and acted to put the interests of Scotts ahead of the interests of Plaintiff or acquiesced in those actions by fellow Defendants. These Defendants knowingly failed to take adequate measures to ensure that the interests of Plaintiff are properly protected, failed to engage in an adequate process and failed to negotiate a fair price, thereby, essentially acquiescing to Scotts's interests. Defendants acted without independence and under the control of Scotts and its affiliates.

184. Alternatively, in agreeing to the Merger, Defendants initiated a process to sell AeroGrow that imposed a heightened fiduciary responsibility on them and requires enhanced scrutiny by the Court. Defendants owed fundamental fiduciary obligations to Plaintiff to take all necessary and appropriate steps to maximize share value in implementing such a transaction. Among other things, these Defendants knew the price at which AeroGrow's stock had been trading for immediately prior to Scotts's initial squeeze-out proposal and at all relevant times thereafter and knew that the Company's revenues and net income were rapidly increasing, yet they accepted a price that was grossly inadequate.

185. As alleged above, Defendants violated their fiduciary duties owed to Plaintiff by knowingly failing to maximize stockholder value in that they failed to proceed in a process designed to obtain the best consideration reasonably available. For example, Defendants knowingly failed to secure a majority of the minority voting condition for the benefit of Plaintiff.

186. Defendants violated, among other fiduciary duties owed to Plaintiff, their duties of undivided loyalty, good faith, care and candor.

187. By reason of the foregoing, Plaintiff has suffered damages.

/ /

/ /

THIRD CLAIM FOR RELIEF

For Aiding and Abetting Breach of Fiduciary Duty Against James Hagedorn, Peter Supron, AeroGrow International, Inc., AGI Acquisition Sub, Inc., Chris Hagedorn, H. MacGregor Clarke, David B. Kent, Cory Miller, and Patricia M. Ziegler

188. Plaintiff repeats and re-alleges each and every allegation contained above as if fully set forth herein.

189. As alleged in detail herein, Scotts Miracle-Gro Company and its wholly-owned subsidiary SMG Growing Media, Inc. are majority and controlling shareholders of AeroGrow, owning 80.5% of its stock. Scotts and SMG Growing Media breached their fiduciary duties to Plaintiff. James Hagedorn, AeroGrow International, Inc., AGI Acquisition Sub, Inc., Chris Hagedorn, H. MacGregor Clarke, David B. Kent, Cory Miller, and Patricia M. Ziegler aided and abetted those breaches of fiduciary duties.

190. As participants in the fundamentally flawed negotiation process, James Hagedorn, Peter Supron, AeroGrow International, Inc., AGI Acquisition Sub, Inc., Chris Hagedorn, H. MacGregor Clarke, David B. Kent, Cory Miller, and Patricia M. Ziegler had actual knowledge that Scotts and SMG Growing Media were breaching their fiduciary duties. Defendants knew that Scotts and SMG Growing Media were using the Merger to benefit Scotts, to the detriment of Plaintiff.

191. Defendants advocated and assisted those breaches, and actively and knowingly encouraged and participated in said breaches. Defendants knowingly and intentionally participated in Scotts's scheme by, among other things: (1) working with AeroGrow's management, Stifel, and Wells Fargo to value AeroGrow's business in accordance with Scotts's and SMG Growing Media's wishes; (2) failing to conduct a proper market check for AeroGrow; (3) advising Stifel

that Scotts's IP was necessary, when according to Wolfe was largely unnecessary and that AeroGrow had a workaround; and (4) agreeing with Scotts's and SMG Growing Media's management regarding the nature and value of the Merger Consideration before getting agreement from the Board or Special Committee.

192. Chris Hagedorn, H. MacGregor Clarke, David B. Kent, Cory Miller, and Patricia M. Ziegler also knowingly participated in Scotts's and SMG Growing Media's scheme by approving the Merger as AeroGrow directors (1) without conducting adequate due diligence; (2) without receiving any independent advice about whether the Merger was fair to, and in the best interests of, AeroGrow's minority shareholders; and (3) by allowing Scotts and its financial advisor, Wells Fargo, to manipulate the financial forecasts prepared by AeroGrow's management.

193. Defendants assisted in Scotts's and SMG Growing Media's fiduciary breaches to extract benefits for themselves – i.e., continued employment and increased compensation – from James Hagedorn, who controls their salaries, wanted to consummate the Merger for his and Scotts's benefit, and to whom they are beholden.

194. As a direct and proximate result of Defendants' wrongful conduct, Plaintiff suffered damages.

195. Plaintiff has been damaged by Defendants' actions as described herein this Cause of Action and seeks recovery for the damages caused thereby.

FOURTH CLAIM FOR RELIEF

Declaratory Relief

Defendants Violated NRS 92A

196. Despite the allegations in the complaint, the Defendants proceeded forward with the merger over the objection of the Plaintiff.

197. As a result of the merger, the Defendants had obligations pursuant to NRS 92A that they failed to meet and continue to ignore.

198. The Defendants' failures and omissions include but are not limited to their: (1) failure to provide the information required to be submitted with payment of the merger

consideration; (2) premature payment of the merger consideration before delivering the Dissenter's Notice under NRS 92A.430 and before a Demand for Payment under NRS 92A.440 was even due; and (3) failure to provide the Dissenter' Notice with all requisite information to parties such as the Plaintiff who had previously advised the Company of their intent to dissent and demand payment for shares.

199. Due to the Defendants' failures to comply with the statute, the Plaintiff's ability to comply with NRS 92A.400 are severely impacted and may well be impossible to comply with.

200. The Defendants have failed to substantially comply with the provisions of NRS 92A et seq.

201. The Plaintiff seeks declaratory relief from this Court determining: (1) the rights and obligations of the parties under NRS 92A; and (2) that AeroGrow has violated the statute and thereby triggered the remedies afforded under NRS 92A which include an award of attorney's fees, costs and interest.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment as follows:

A. Declaring that Defendants breached their fiduciary duties and/or aided and abetted other defendants' breaches of fiduciary duty, and are liable to Plaintiff for such breaches in an amount to be proven at trial but nonetheless in an amount in excess of $15,000.00;

B. Awarding monetary relief to Plaintiff in an amount to be proven at trial but nonetheless in an amount in excess of $15,000.00;

C. Awarding Plaintiff the costs and disbursements of this action, including reasonable attorney's fees, accountants' and experts' fees, costs and expenses;

D. Granting such other and further relief as the Court deems just and proper.

E. The Plaintiff is entitled to an award of attorney's fees and costs as special damages and as and for the Defendants' violation of NRS 92A.

DATED: March 15, 2021.

Respectfully submitted,

MARQUIS AURBACH COFFING

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Attorney for Proposed Plaintiff-Intervenors

DISTRICT COURT

CLARK COUNTY, NEVADA

BRADLEY LOUIS RADOFF,

Plaintiff,

v.

CHRIS HAGEDORN, an individual; H. MACGREGOR CLARKE, an individual; DAVID B. KENT, an individual; CORY MILLER, an individual; PATRICIA M. ZIEGLER, individual; JAMES HAGEDORN, an individual; PETER SUPRON, an individual; AEROGROW INTERNATIONAL, INC., a Nevada Corporation; AGI ACQUISITION SUB, INC., a Nevada Corporation; SMG GROWING MEDIA, INC., an Ohio Corporation; THE SCOTTS MIRACLE-GRO COMPANY, an Ohio Corporation; DOES I through X, inclusive; and ROE CORPORATIONS I through X, inclusive.

Defendants.

Case No.: A-21-829854-B
Dept. No.: 13

PROPOSED PLAINTIFF-INTERVENORS' MOTION TO INTERVENE ON AN ORDER SHORTENING TIME

Proposed Plaintiff-Intervenors Fred M. Adamczyk, Thomas C. Albanese, William A. Almond, III, Michael S. Barish, George C. Betke, Jr. 2019 Trust, Diana Boyd, Anne Carrol Decker, Thomas H. Decker, The Deutsch Family Trust, John C. Fischer, Alfredo Gomez, Alfredo Gomez FMT CO CUST IRA Rollover, Lawrence Greenberg, Patricia Greenberg, Karen Harding, H.L

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Severance, Inc. Profit Sharing Plan & Trust, H.L. Severance, Inc. Pension Plan & Trust, Daniel G. Hofstein, Kevin Johnson, Candice Kaye, Laura J. Koby, Carole L. McLaughlin, Brian Peierls, Joseph E. Peter, Alexander Perelberg, Amy Perelberg, Dana Perelberg, Gary Perelberg, Linda Perelberg, The Really Cool Group, Richard Alan Rudy Revocable Living Trust, James D. Rickman, Jr., James D. Rickman, Jr. Irrevocable Trust, Patricia D. Rickman Irrevocable Trust, Andrew Reese Rickman Trust, Scott Joseph Rickman Irrevocable Trust, Marlon Dean Alessandra Trust, Bryan Robson, Wayne Sicz IRA, Wayne Sicz Roth IRA, The Carol W. Smith Revocable Trust, Thomas K. Smith, Suraj Vasanth, Cathay C. Wang, Lisa Dawn Wang, Darcy J. Weissenborn, The Margaret S. Weissenborn Revocable Trust, The Stanton F. Weissenborn IRA, The Stanton F. Weissenborn Revocable Trust, The Stanton F. Weissenborn Irrevocable Trust, The Natalie Wolman Living Trust, and Alan Budd Zuckerman (collectively herein "Plaintiff-Intervenors") hereby respectfully submit their Motion to Intervene on an Order Shortening Time. This Motion is based upon NRCP 24, NRS 12.130 and NRS 30.130, the following memorandum of points and authorities, the pleadings and papers on file in this action, the accompanying exhibits, and any oral argument the Court may wish to entertain.

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ORDER SHORTENTING TIME

Upon the Declaration of J. Robert Smith and good cause appearing therefore,

IT IS HEREBY ORDERED, ADJUDGED and DECREED that the time for hearing of the above-entitled matter will be shortened and will be heard on _____ day of _____, 2021 a the hour of _____ ____.m. in Department 13 of the Eighth Judicial District Court, located at the Regional Justice Center, 200 Lewis Avenue, Las Vegas, Nevada 89155.

Opposition Briefs will be due: _____

Any Reply Briefs will be due: _____

_____
DISTRICT COURT JUDGE

Submitted by:

SIMONS HALL JOHNSTON PC

_____
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DECLARTION OF J. ROBERT SMITH
IN SUPPORT OF ORDER SHORTENTING TIME

I, J. Robert Smith, certify and declare as follows:

1. I am a partner with the law firm of Simons Hall Johnston PC, counsel for Plaintiff-Intervenors.

2. I am duly licensed to practice law in the State of Nevada and have personal knowledge of and I am competent to testify concerning the facts herein.

3. I represent the interests of Plaintiff-Intervenors who were the beneficial stockholders of slightly over 1,044,000 shares of AeroGrow International, Inc. common stock.

4. Beneficial stockholders are those who purchase shares through brokerages and other financial institutions, but whose legal title to the shares are registered in the name of Cede & Co., which is the nominee of the Depository Trust Company (DTC). As a result, Cede is the stockholder of record for Plaintiff-Intervenors, just as it is for the vast majority shareholders in publicly traded companies.

5. In November 2020, AeroGrow announced that it was going to be acquired by the Scotts Miracle-Gro Company (SMG) who already owned 80.5% of the outstanding shares of AeroGrow, through a merger with one of SMG's affiliated entities, AGI Acquisition Sub, Inc.

6. In connection with this merger, AeroGrow announced to the public that it would offer the merger consideration of $3.00 per share and that its stockholders could exercise dissenter's rights pursuant to NRS 92A.300, et seq. if they were dissatisfied with the amount of the merger consideration.

7. AeroGrow set February 23, 2021 as the date to vote on the merger.

8. Pursuant to NRS 92A.420, any stockholder intending to dissent must first provide a written prerequisite Notice of Intent to Demand Payment of Shares prior to the vote on the merger.

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9. Pursuant to NRS 92A.420, I caused to be delivered to AeroGrow prior to the vote on the merger written prerequisite Notices of Intent to Demand Payment of Shares on behalf of a group of stockholders, including Plaintiff-Intervenors. *See* ***Exhibits A, B and C.*** Several other Plaintiff-Intervenors submitted their own Notices of Intent to Demand Payment of Shares. *See* ***Exhibit D.***

10. On February 23, 2021, the merger was approved. AeroGrow set the effective date of the merger as February 26, 2021.

11. Pursuant to NRS 92A.430, within 10 days of the effective date of the merger, AeroGrow was required to send a Dissenter Notice packet with a Demand for Payment form to stockholders of record who delivered a Notice of Intent to Demand Payment of Shares, including to the nominees who are the stockholders of record (i.e. Cede) for those beneficial stockholders who delivered Notices of Intent to Demand Payment of Shares.

12. Within one business day of the merger's effective date, however, AeroGrow decided to repurchase all the shares stock held by the beneficial stockholders, including Plaintiff-Intervenors, who held their stock through brokerages and other financial institutions for the merger consideration of $3.00 per share.

13. AeroGrow then failed to send the Dissenter Notice packets to any of the Plaintiff-Intervenors (or to DTC/Cede on their behalf) whose shares were unilaterally repurchased without their authorization.

14. Despite AeroGrow's failure to deliver the Dissenter Notice packets, I instructed the Plaintiff-Intervenors to contact their brokers and other institutions in which their shares were held to have them request a letter of consent to the dissent from the stockholder of record (DTC/Cede), which I would then deliver to AeroGrow.

15. Pursuant to NRS 92A.400(2), a beneficial stockholder is required to submit a letter of consent to the dissent from the stockholder of record "not later than the time the beneficial stockholder asserts dissenter's rights."

16. Almost immediately, I began getting telephone calls and emails from the Plaintiff-Intervenors stating that their brokers and financial institutions could not obtain the letter of consent because the shares no longer existed due to AeroGrow's repurchase. *See* ***Exhibit E*** (some of the

communications from brokers).

17. I also spoke directly with representatives from Fidelity, TD Ameritrade, Vanguard and others who told me the same thing: that because the shares were immediately repurchased by AeroGrow, DTC/Cede could not provide the consent letter even if they requested it.

18. In effect, AeroGrow's repurchase of the beneficial stockholders' shares made it impossible to obtain the consent letters required by NRS 92A.400(2).

19. Plaintiff in this action is a similarly situated beneficial stockholder to that of Plaintiff-Intervenors.

20. Plaintiff also could not obtain the consent letter as result of AeroGrow repurchasing his shares.

21. On March 15, 2021, Plaintiff filed a First Amended Complaint specifically alleging AeroGrow's violation of NRS 92A.300, et seq. and seeking declaratory relief to determine the rights and obligations of parties under NRS 92A.

22. On March 17, 2021, I received a letter from AeroGrow's counsel stating that it was AeroGrow's position that the Plaintiff-Intervenors, who were beneficial stockholders, no longer had dissenter's rights. ***Exhibit F.***

23. Plaintiff's counsel received a similar letter. ***Exhibit G.***

24. In those letters, and despite the plain language of the statute, AeroGrow maintains that the letter of consent from the stockholder of record (i.e. DTC/Cede) had to be delivered to AeroGrow prior to the vote on the merger, rather than the date the beneficial stockholder actually asserts dissenter's rights. *Id.*

25. By AeroGrow taking this position, Plaintiff-Intervenors are effectively precluded from pursuing dissenter's rights and the valuation process that is provided to them by statute.

26. An Order Shortening Time is necessary because Plaintiff intends to file a Motion to Compel and/or Determine Compliance with NRS 92A, or alternatively, Injunctive Relief on an order shortening time. Plaintiff's Motion will seek to correct AeroGrow's failures and misapplication of the law, and to declare the rights and obligations of the parties as a result of AeroGrow's conduct that made it impossible for Plaintiff-Intervenors to now obtain the consent letters. Plaintiff-

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Intervenors intend to join and participate in Plaintiff's Motion to protect their rights. This can only occur if the Court allows Plaintiff-Intervenors to intervene on an Order Shortening Time.

27. Attached as *Exhibits A, B and C* are true and correct copies of letters from me to AeroGrow enclosing Notices of Intent to Demand Payment of Shares that I caused to be delivered to AeroGrow prior to the vote on the merger.

28. Attached as *Exhibit D* are true and correct copies of Notices of Intent to Demand Payment of Shares for others who sent them to AeroGrow directly.

29. Attached as *Exhibit E* is a true and correct copies of communications I received from several Plaintiff-Intervenors and their brokers regarding the inability to obtain consent letters.

30. Attached as *Exhibit F* is a true and correct copy of a letter to me from Maximillien D. Fetaz, counsel for AeroGrow, dated March 17, 2021.

31. Attached as *Exhibit G* is a true and correct copy of a letter to Terry Coffing, counsel for Plaintiff, from Maximillien D. Fetaz, counsel for AeroGrow, dated March 17, 2021.

32. Pursuant to NRS 53.045, I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct.

DATED this 22nd day of March, 2021.

J. Robert Smith

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Proposed Plaintiff-Intervenors are 52 stockholders of AeroGrow International, Inc. who are similarly situated to Plaintiff and whose rights under Nevada's Dissenter's Rights Statute (NRS 92A.300 et seq.) are in immediate jeopardy of being extinguished by AeroGrow's misconduct in failing to comply with the provisions of the Statute. Plaintiff's First Amended Complaint has asserted claims involving AeroGrow's violations of NRS 92A that will affect the rights and obligations of Plaintiff-Intervenors who have, like Plaintiff, submitted timely Notices of Intent to Demand Payment of Shares in accordance with the Statute. AeroGrow has not only failed to provide Dissenter Notices to Plaintiff and Plaintiff-Intervenors as required by NRS 92A but has recently taken the position that Plaintiff and Plaintiff-Intervenors do not have the right to dissent. Plaintiff-Intervenors, therefore, hereby respectfully submit their Motion to Intervene on an Order to Shorten Time to protect their rights under NRS Chapter 92A, including obtaining a ruling from this Court regarding the rights and obligations of the parties.

II. STATEMENT OF FACTS

Nevada's Dissenter's Rights Statute, NRS 92A.300 et seq., allows stockholders to dissent from certain corporate actions, such as a merger, and seek the fair value of their shares. That statute sets forth an orderly process for initial notices, demand, payment, and ultimately fair value determination for the shares.

AeroGrow was, until recently, a publicly traded company with the ticker symbol AERO. On November 12, 2020, AeroGrow announced that it would seek to merge with AGI Acquisition Sub, Inc., an affiliate of Scotts Miracle-Grow Company (SMG). AeroGrow would be the surviving corporation and a wholly-owned subsidiary of SMG's parent company, SMG Growing Media, Inc. To effectuate that merger, the majority of shareholders had to vote in favor of the merger. The date set for the merger vote was February 23, 2021.

AeroGrow's proposed merger triggered certain obligations for both AeroGrow and any shareholder who was considering exercising dissenter's rights under NRS 92A. Pursuant to NRS 92A.420, a "stockholder" must deliver a prerequisite Notice of Intent to Demand Payment of Shares

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prior to the merger vote. NRS 92A sets forth two classes of stockholders: (1) "stockholders of record"; and (2) "beneficial stockholders." Stockholders of record are those in whose name shares are registered in the records of the corporation, while a beneficial stockholder are those whose shares are held in a voting trust or by a nominee as the stockholder of record. In general, stockholders of record hold stock certificates while beneficial stockholders purchased their shares through brokerages and other financial institutions, but whose legal title to the shares are registered in the name of Cede & Co., which is the nominee of the Depository Trust Company (DTC). The vast majority of stockholders in publicly traded corporations are beneficial stockholders, as they purchased the shares through brokerages. Plaintiff and the Plaintiff-Intervenors are all beneficial stockholders.

Significantly, NRS 92A.325 defines "stockholders" to include both stockholders of record and beneficial stockholders. Because a "stockholder" must deliver a prerequisite Notice of Intent to Demand Payment of Shares prior to the merger vote, both stockholders of record and beneficial stockholders had to deliver a written Notice of Intent to Demand Payment of Shares prior to merger vote on February 23, 2021. Each of the Plaintiff-Intervenors delivered a written Notice of Intent to Demand Payment of Shares prior to merger vote. ***Exhibits A, B, C and D.***

On February 23, 2021, the majority of AeroGrow shareholders approved the merger. AeroGrow then set the effective date of the merger as February 26, 2021.[1]

AeroGrow was then supposed to deliver Dissenter's Notices to the stockholders of record, including the nominees who are the stockholders of record for those beneficial stockholders who delivered Notices of Intent to Demand Payment of Shares. *See* NRS 92A.430. The stockholders

[1] Pursuant to NRS 92A.240 the effective date is the date and time of the filing of the articles of merger with the Secretary of State, or a later date which had to be within 90 days of filing the articles of incorporation. Notably, AeroGrow could have set the effective date much later, but chose to set it shortly after the merger vote.

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(including beneficial stockholders) then must decide whether to exercise dissenter's rights by making a Demand for Payment. NRS 92A.440. Notably, beneficial stockholders must provide a letter of consent to dissent from the stockholders of record, such as DTC/Cede, ***"not later than the time the beneficial stockholder asserts dissenter's rights."*** NRS 92A.400(2)(a) (*emphasis added*).

After receiving the Demand for Payment from the stockholders, AeroGrow is supposed to then pay the merger consideration, which it set at $3.00 per share. NRS 92A.460. If a dissenting stockholder (one who submitted their Demand for Payment) is dissatisfied with the amount paid, the dissenter must then submit their own estimate of fair value of the shares. NRS 92A.480. If the parties cannot agree on the fair value, AeroGrow is required to file an action in the Nevada District Court to have the Court determine the fair value of the shares. NRS 92A.490.

That is how this process was supposed to work. Unfortunately, AeroGrow decided to disregard the Statute. On or about March 1, 2021, within one busines day of the effective date of the merger, AeroGrow issued a directive to repurchase all shares of beneficial stockholders who had not submitted a letter of consent prior to the vote on the merger. As a result, those beneficial stockholders' shares were re-purchased by AeroGrow without the beneficial stockholder's authorization. As a consequence, the beneficial stockholders, and the stockholders of record who held the shares on their behalf, no longer held any shares.

Not understanding the reason behind AeroGrow's premature payment of the merger consideration, counsel for Plaintiff-Intervenors instructed them to nevertheless contact their brokers to request the letter of consent from the stockholders of record (i.e. DTC/Cede). *See Declaration of J. Robert Smith in Support of Order Shortening Time ("Smith Decl."), at ¶14.* The consent letters would then be submitted by the deadline to demand payment, which was to be identified in the Dissenter Notice packets that counsel expected to receive within 10 days of the effective date of the merger as required under NRS 92A.430(2). *Id.* Plaintiff-Intervenors then began contacting their brokers to obtain the consent letters. *Smith Decl., at ¶16.*

Unfortunately, despite numerous requests and demands by the Plaintiff-Intervenors to their brokers, and many hours on the phone by the undersigned counsel with brokers and DTC/Cede, all of the brokers and DTC/Cede, stated that they could not issue the consent letters because they no

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longer owned the shares due to the premature repurchase by AeroGrow. *See Smith Decl., at ¶¶16-17.* Simply put, AeroGrow's re-purchase of the beneficial stockholders' shares made it impossible to obtain the consent letters and comply with NRS 92A.400(2).

On or about March 5, 2021 AeroGrow sent out Dissenter's Notices to <u>some</u> of the stockholders who delivered Notices of Intent to Demand Payment of Shares, but failed to deliver Dissenter's Notices to Plaintiff and any of the Plaintiff-Intervenors. *Smith Decl., at ¶13.*

After not receiving a Dissenter's Notice within the statutory time period, Plaintiff filed a First Amended Complaint ("FAC") asserting a claim for Declaratory Relief regarding the rights and obligations of the parties under NRS 92A. The FAC pointed out that:

> The Defendants' failures and omissions include but are not limited to their: (1) failure to provide the information required to be submitted with payment of the merger consideration; (2) premature payment of the merger consideration before delivering the Dissenter's Notice under NRS 92A.430 and before a Demand for Payment under NRS 92A.440 was even due; and (3) failure to provide the Dissenter' Notice with all requisite information to parties such as the Plaintiff who had previously advised the Company of their intent to dissent and demand payment for shares.

FAC, at ¶198.

Plaintiff's FAC went on to state that:

> Due to the Defendants' failures to comply with the statute, the Plaintiff's ability to comply with NRS 92A.400 are severely impacted and may well be impossible to comply with.
>
> The Defendants have failed to substantially comply with the provisions of NRS 92A et seq.
>
> The Plaintiff seeks declaratory relief from this Court determining: (1) the rights and obligations of the parties under NRS 92A; and (2) that AeroGrow has violated the statute and thereby triggered the remedies afforded under NRS 92A which include an award of attorney's fees, costs and interest.

FAC, at ¶¶199-201.

On March 17, 2021, AeroGrow's counsel sent a letter to Plaintiff's counsel and to Plaintiff-Intervenor's counsel stating that it was AeroGrow's position that letters of consent from the stockholders of record, such as DTC/Cede, had to be submitted before the vote on the merger was taken, rather than at the time dissenter's rights are asserted. See ***Exhibits F and G.*** According to

AeroGrow, any beneficial stockholder who did not submit the letter of consent prior to February 23, 2021 lost their right to dissent. AeroGrow's position is in direct contradiction of the plain language of NRS 92A.400(2), the Model Business Act (upon which Nevada's Dissenter's Rights Statute is based), as well as fundamental principles of statutory interpretation. Moreover, AeroGrow's unlawful conduct, and misapplication of the law, has now prevented Plaintiff and Plaintiff Intervenors from complying with NRS 92A.400(2) and they are at risk of losing their dissenter's rights without Court intervention. Plaintiff-Intervenors, therefore, seek to intervene in the Declaratory Relief Claim of this action and join Plaintiff in a Motion to have the Court declare the rights and obligations of the parties under NRS 92A, including that AeroGrow's wrongful violation of the provisions of NRS 92A has made it impossible for Plaintiff-Intervenors to now comply with their obligations under the statute.

III. ARGUMENT

Plaintiff-Intervenors should be permitted to intervene as a matter of right under NRCP 24(a). That Rule states in pertinent part:

> (a) **Intervention of Right.** On timely motion, the court must permit anyone to intervene who:
>
> > (1) is given an unconditional right to intervene by a state or federal statute; or
> >
> > (2) claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest.

NRS 12.130 also addresses intervention as a matter of right. That statute states in relevant part:

> **Intervention: Right to intervention; procedure, determination and costs; exception.**
>
> 1. Except as otherwise provided in subsection 2:
>
> > (a) Before the trial, any person may intervene in an action or proceeding, who has an interest in the matter in litigation, in the success of either of the parties, or an interest against both.
> >
> > (b) An intervention takes place when a third person is permitted to become a party to an action or proceeding between other persons, either by joining the plaintiff in

SIMONS HALL JOHNSTON PC
6490 S. McCarran Blvd., Ste. F-46
Reno, NV 89509
Phone: (775) 785-0088

> claiming what is sought by the complaint, or by uniting with the defendant in resisting the claims of the plaintiff, or by demanding anything adversely to both the plaintiff and the defendant.

NRS 12.130(1)(a)-(b).

In addition to intervention as a matter of right, a party may also seek to join in a case through permissive intervention pursuant to NRCP 24(b). That Rule states:

> (b) **Permissive Intervention.**
>
> (1) **In General.** On timely motion, the court may permit anyone to intervene who:
>
> (A) is given a conditional right to intervene by a state or federal statute; or
>
> (B) has a claim or defense that shares with the main action a common question of law or fact.

The Nevada Supreme Court has held that "intervention is appropriate only during ongoing litigation [i.e. before trial], where the intervenor has an opportunity to protect or pursue an interest which will otherwise be infringed." *Lopez v. Merit Ins. Co.,* 109 Nev. 553, 556, 853 P.2d 1266, 1267-68 (1993).

Moreover, intervention is mandatory under NRS 30.130. Declaratory relief under NRS 30.130, and incorporated into NRCP 57, provides that in an action for declaratory relief "all persons shall be made parties who have or claim any interest which would be affected by the declaration, and no declaration shall prejudice the rights of persons not parties to the proceeding." There cannot be any legitimate argument that an action seeking declaratory relief related to the interpretation of NRS 92A, and in turn the parties', including Plaintiff-Intervenors', rights and obligations under the Statute implicate "an interest that would be affected by such declaration." Thus, under NRS 30.130, Plaintiff-Intervenors must also be joined.

A. PLAINTIFF-INTERVENORS MUST BE PERMITTED TO INTERVENE AS A MATTER OF RIGHT

Plaintiff-Intervenors are entitled to intervene because they meet all the criteria under NRCP 24(a). First, Plaintiff-Intervenors' Motion is timely. Whether an application for intervention is timely under NRCP 24 "is a matter within the sound discretion of the trial court." *Lawler v.*

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Reno, NV 89509
Phone: (775) 785-0088

Ginochio, 94 Nev. 623, 626, 584 P.2d 667,668 (1978). "The most important question to be resolved in the determination of timeliness of an application for intervention is not the length of the delay by the intervenor but the extent of prejudice to the rights of existing parties resulting from the delay." *Id.* at 626. Here, Plaintiff-Intervenors' Motion is timely as such intervention will not prejudice the existing parties. This litigation is in its infancy. Plaintiff has only recently filed his First Amended Complaint and Defendants have not yet even filed an Answer. Further, as NRS 12.130(1) states, intervention is appropriate if it is brought "[b]efore the trial." There is no trial date set in this case.

Second, Plaintiff-Intervenors' Motion should be granted because they have a significant protectable interest in obtaining the fair value of their AeroGrow shares under NRS Chapter 92A, which will be directly affected by any Court order pertaining to a shareholder's right to dissent under NRS Chapter 92A.

Third, intervention is proper because the First Amended Complaint seeks, among other things, declaratory relief regarding the interpretation and construction of NRS 92A, as well as AeroGrow's non-compliance with the statutory requirements of that Chapter. Plaintiff-Intervenors will insist that AeroGrow failed to follow the statutory provision of NRS 92A, and as a result of their improper actions has made it impossible for Plaintiff-Intervenors to comply with certain requirements under the statute, and are thus at risk of losing their dissenter's rights unless the Court declares the rights and obligations of the parties under NRS 92A.

Finally, Plaintiff-Intervenors' interests are not adequately protected by any other party to the litigation. Although Plaintiff is similarly situated to the Plaintiff-Intervenors because he was likewise prevented from obtaining a consent letter from the stockholder of record by AeroGrow's misconduct, each shareholder has been individually harmed and has an individual right to pursue dissenter's rights against AeroGrow for the fair value of their shares. Without such intervention, any Court order that applies solely to Plaintiff could leave Plaintiff-Intervenors without a remedy, and thus a loss of their statutory dissenter's rights.

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6490 S. McCarran Blvd., Ste. F-46
Reno, NV 89509
Phone: (775) 785-0088

B. INTERVENTION IS ALSO MANDATORY UNDER NRS 30.130

As set forth above, NRS 30.130 mandates intervention because Plaintiff's claims include a declaratory relief claim under a statute. As NRS 30.130 states:

> When declaratory relief is sought, all persons ***shall*** be made parties who have or claim any interest which would be affected by the declaration . . . . *(emphasis added)*.

Because declaratory relief is sought regarding the rights and obligations of the parties under NRS 92A, which will affect Plaintiff-Intervenors' rights and obligations under that statute, Plaintiff-Intervenors must be allowed to intervene in this action.

C. ALTERNATIVELY, PERMISSIVE INTERVENTION IS APPROPRIATE

Alternatively, if the Court does not find that Plaintiff-Intervenors are entitled to intervene as a matter of right, permissive intervention is appropriate because Plaintiff-Intervenors' claims with respect to NRS 92A share facts and questions of law with this case. Plaintiff-Intervenors hold specific and enumerated rights pursuant to NRS 92A. Plaintiff-Intervenors' claims share the same factual and legal issues as those already presented in this litigation, including whether AeroGrow's interpretation of NRS 92A and its conduct in making it impossible for Plaintiff and Plaintiff-Intervenors to obtain letters of consent from the stockholders of record, was proper. As is more fully described above, permitting Plaintiff-Intervenors to intervene in this matter will not "unduly delay or prejudice the adjudication of rights of the original parties" to the case. Plaintiff-Intervenors, therefore, should be permitted to intervene pursuant to NRCP 24(a).

Intervention is also appropriate under principles of judicial economy. Although Plaintiff-Intervenors could file a separate action for declaratory and injunctive relief, then move to either consolidate that action with this action or pursue a separate action, such course would not promote judicial economy. Instead, it would increase the expense, time and resources of this Court and the parties. It is simply more efficient to have the beneficial stockholders intervene in this action so that the exact same issue and relief sought by Plaintiff can apply to Plaintiff-Intervenors.

/ / /

/ / /

/ / /

SIMONS HALL JOHNSTON PC
6490 S. McCarran Blvd., Ste. F-46
Reno, NV 89509
Phone: (775) 785-0088

IV. CONCLUSION

In light of the foregoing, Plaintiff-Intervenors request that their Motion to Intervene be granted.

AFFIRMATION: This document does not contain the social security number of any person.

DATED this 22nd day of March, 2021.

SIMONS HALL JOHNSTON PC

J. ROBERT SMITH (NSB #10992)
KENDRA JEPSEN (NSB #14065)
6490 S. McCarran Blvd., Ste. F-46
Reno, Nevada 89509
Telephone: (775) 785-0088

Attorney for Proposed Plaintiff-Intervenors

SIMONS HALL JOHNSTON PC
6490 S. McCarran Blvd., Ste. F-46
Reno, NV 89509
Phone: (775) 785-0088

SIMONS HALL JOHNSTON PC
6490 S. McCarran Blvd., Ste. F-46
Reno, NV 89509
Phone: (775) 785-0088

PROOF OF SERVICE

I, Kiley P. Rasmussen, declare:

I am employed in the City of Reno, County of Washoe, State of Nevada by the law offices of Simons Hall Johnston PC. My business address is 6490 S. McCarran Blvd., Ste. F-46, Reno, Nevada 89509. I am over the age of 18 years and not a party to this action.

On March 22, 2021, I served the foregoing **PROPOSED PLAINTIFF-INTERVENORS' MOTION TO INTERVENE ON AN ORDER SHORTENING TIME** by causing the document to be served via electronic service through the Court's CM ECF electronic filing system, addressed as follows:

Terry A. Coffing
Alexander K. Calaway
Marquis Aurbach Coffing
10001 Park Run Drive
Las Vegas, NV 89145
(702) 942-2136

M. Magali Mercera
mmm@pisanellibice.com

James J. Pisanelli
lit@pisanellibice.com

Cinda Towne
cct@pisanellibice.com

DATED this 22nd day of March, 2021.

K. Rasmussen
An Employee of Simons Hall Johnston PC

EXHIBIT LIST

NO	DESCRIPTION	PAGES
A.	Notices of Intent to Demand Payment of Shares on behalf of a group of stockholders	70
B.	Notices of Intent to Demand Payment of Shares on behalf of a group of stockholders	6
C.	Notices of Intent to Demand Payment of Shares on behalf of a group of stockholders	14
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G.	Letter to Plaintiff's Counsel, dated March 17, 2021	3

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6490 S. McCarran Blvd., Ste. F-46
Reno, NV 89509
Phone: (775) 785-0088

EXHIBIT A

EXHIBIT A

HOLLAND&HART

J. Robert Smith
Phone (775) 327-3000
jrsmith@hollandhart.com

February 18, 2021

Via UPS Overnight Delivery

AeroGrow International, Inc.
5405 Spine Road
Boulder, CO 80301

Via Hand Delivery

AeroGrow International, Inc.
c/o United Registered Agents, Inc.
701 S. Carson Street, Suite 200
Carson City, NV 89701

Re: Notice of Intent to Demand Payment for Shares
Special Meeting Date: February 23, 2021 @ 10:00 a.m.

Dear Board of Directors:

As you are aware, AeroGrow International, Inc. has given notice of a special meeting of shareholders on February 23, 2021, 10:00 a.m. (Mountain Time) to vote on a proposed Merger Agreement.

Pursuant to NRS 92A.420(1)(a), the following stockholders hereby give their written Notice of Intent to Demand Payment for Shares if the proposed Merger Agreement is approved:

1. Almond, William A. III
2. Barish, Michael S.
3. Boyd, Diana
4. Boyd, Michal
5. Decker, Anne Carroll
6. Decker, Thomas H.
7. Fischer, John C.
8. Gomez, Alfredo
9. Gomez, Alfredo FMT CO CUST IRA Rollover, FBO Alredo Gomez
10. Greenberg, Lawrence
11. Greenberg, L. Wayne & Patricia, JT
12. Harding, Karen
13. Harding, Wayne
14. Harding, Wayne E. III
15. H.L. Severance, Inc. Pension Plan and Trust
16. H.L. Severance, Inc. Profit Sharing Plan and Trust
17. Hofstein, Daniel Garrett
18. Kaye, Candice

HOLLAND&HART

19. Kaye, Stephen
20. Koby, Laura J.
21. March Trade & Finance, Inc.
22. Nidax Limited Partnership
23. Northern Trust Company of Delaware as Trustee and for the benefit of:
    a) The Peierls By-Pass Trust
    b) UD E F Peierls for B E Peierls
    c) UD E F Peierls for E J Peierls
    d) U D E S Peierls for E F Peierls, et al
    e) UD Ethel F. Peierls Charitble Lead Trust
    f) UD J N Peierls for B E Peierls
    g) UD J N Peierls for E J Peierls
    h) UW E S Peierls for BEP Art VI-Accum
    i) UW E S Peierls for EJP Art VI-Accum
    j) UW J N Peierls for B E Peierls
    k) UW J N Peierls for E J Peierls
24. Orme, Tom
25. Parmenter, Rebecca
26. Peierls, Brian E.
27. Perelberg, Alexander
28. Perelberg, Amy
29. Perelberg, Dana
30. Perelberg, Gary
31. Perelberg, Linda
32. The Richard Alan Rudy Revocable Living Trust
33. Richard Alan Rudy, Trustee FBO Richard Alan Rudy
34. Robson, Bryan
35. Severance, H. Leigh
36. Severance, Leigh and Sharon JT
37. Sicz, Wayne, IRA FBO Wayne Sicz
38. Sicz, Wayne, ROTH IRA FBO Wayne Allen Sicz
39. Smith, Thomas K.
40. Thunderfunding, LLC
41. Vasanth, Suraj
42. Walker, Jack J.
43. Walker, Marsha S.
44. Wang, Cathay C.
45. Wang, Cathay Chachy and Lisa Dawn
46. Wolman, Lewis & Eletise
47. Wolman, Lewis & Eletise, JT
48. The Natalie Wolman Living Trust
49. Zuckerman, Alan Budd

HOLLAND&HART LLP

Executed written Notices of Intent to Demand Payment for Shares are enclosed for each of the above-identified stockholders.

Please note that starting March 1, 2021 I will be joining another law firm. Please send the Dissenter's Notices and direct all future correspondence and communications regarding the above stockholders to me at the following:

J. Robert Smith
Simons Hall & Johnston
6490 S. McCarran Blvd., Suite F-46
Reno, Nevada 89509
rsmith@shjnevada.com
(775) 785-0088

If you have any questions, please let me know.

Sincerely,

J. Robert Smith
Of Holland & Hart LLP

Encls.
JRS/cr

16198746_v1

February 17, 2021

Via UPS Overnight Delivery

AeroGrow International, Inc.
5405 Spine Road
Boulder, CO 80301

Via Hand Delivery

AeroGrow International, Inc.
c/o United Registered Agents, Inc.
701 S. Carson Street, Suite 200
Carson City, NV 89701

Re: Notice of Intent to Demand Payment for Shares
Special Meeting Date: February 23, 2021 @ 10:00 a.m.

Dear Board of Directors:

Pursuant to NRS 92A.420(1)(a), I hereby give written notice of my intent to exercise dissenter's rights and to demand payment for shares if the proposed merger transaction is approved at the above-referenced Special Meeting of the Shareholders.

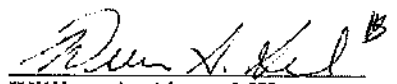
Name: William A. Almond III
2000 Fir Street
Glenview, IL 60025
almondwa@gmail.com

Address: c/o J. Robert Smith
Simons Hall & Johnston
6490 S. McCarran Blvd., Suite F-46
Reno, Nevada 89509
rsmith@shjnevada.com
(775) 785-0088

Shares Owned: 2,500

Please direct all future correspondence and notices to my attorney at the address set forth above.

Sincerely,



William A. Almond III

16205947_v1

February 11, 2021

Via UPS Overnight Delivery

AeroGrow International, Inc.
5405 Spine Road
Boulder, CO 80301

Via Hand Delivery

AeroGrow International, Inc.
c/o United Registered Agents, Inc.
701 S. Carson Street, Suite 200
Carson City, NV 89701

Re: Notice of Intent to Demand Payment for Shares
Special Meeting Date: February 23, 2021 @ 10:00 a.m.

Dear Board of Directors:

Pursuant to NRS 92A.420(1)(a), I hereby give written notice of my intent to exercise dissenter's rights and to demand payment for shares if the proposed merger transaction is approved at the above-referenced Special Meeting of the Shareholders. I am the beneficial owner of 174,000 shares.

Name: Michael S. Barish

Address: c/o J. Robert Smith
Simons Hall & Johnston
6490 S. McCarran Blvd., Suite F-46
Reno, Nevada 89509
rsmith@shjnevada.com
(775) 785-0088

Shares Owned: 174,000

Please direct all future correspondence and notices to my attorney at the address set forth above.

Sincerely,

Michael S. Barish

16177738_v1

February 11, 2021

Via UPS Overnight Delivery

AeroGrow International, Inc.
5405 Spine Road
Boulder, CO 80301

Via Hand Delivery

AeroGrow International, Inc.
c/o United Registered Agents, Inc.
701 S. Carson Street, Suite 200
Carson City, NV 89701

Re: Notice of Intent to Demand Payment for Shares
Special Meeting Date: February 23, 2021 @ 10:00 a.m.

Dear Board of Directors:

Pursuant to NRS 92A.420(1)(a), I hereby give written notice of my intent to exercise dissenter's rights and to demand payment for shares if the proposed merger transaction is approved at the above-referenced Special Meeting of the Shareholders. I am the beneficial owner of 2,000 shares.

Name: Michael S. Barish

Address: c/o J. Robert Smith
Simons Hall & Johnston
6490 S. McCarran Blvd., Suite F-46
Reno, Nevada 89509
rsmith@shjnevada.com
(775) 785-0088

Shares Owned: 2,000

Please direct all future correspondence and notices to my attorney at the address set forth above.

Sincerely,

Michael S. Barish

16177753_v1

February 17, 2021

Via UPS Overnight Delivery

AeroGrow International, Inc.
5405 Spine Road
Boulder, CO 80301

Via Hand Delivery

AeroGrow International, Inc.
c/o United Registered Agents, Inc.
701 S. Carson Street, Suite 200
Carson City, NV 89701

Re: Notice of Intent to Demand Payment for Shares
Special Meeting Date: February 23, 2021 @ 10:00 a.m.

Dear Board of Directors:

Pursuant to NRS 92A.420(1)(a), I hereby give written notice of my intent to exercise dissenter's rights and to demand payment for shares if the proposed merger transaction is approved at the above-referenced Special Meeting of the Shareholders.

Name: Diana Boyd

Address: c/o J. Robert Smith
Simons Hall & Johnston
6490 S. McCarran Blvd., Suite F-46
Reno, Nevada 89509
rsmith@shjnevada.com
(775) 785-0088

Shares Owned: 5,730

Please direct all future correspondence and notices to my attorney at the address set forth above.

Sincerely,

Diana Boyd

16205305_v1

February 17, 2021

Via UPS Overnight Delivery

AeroGrow International, Inc.
5405 Spine Road
Boulder, CO 80301

Via Hand Delivery

AeroGrow International, Inc.
c/o United Registered Agents, Inc.
701 S. Carson Street, Suite 200
Carson City, NV 89701

Re: Notice of Intent to Demand Payment for Shares
Special Meeting Date: February 23, 2021 @ 10:00 a.m.

Dear Board of Directors:

Pursuant to NRS 92A.420(1)(a), I hereby give written notice of my intent to exercise dissenter's rights and to demand payment for shares if the proposed merger transaction is approved at the above-referenced Special Meeting of the Shareholders.

Name: Michal Boyd

Address: c/o J. Robert Smith
Simons Hall & Johnston
6490 S. McCarran Blvd., Suite F-46
Reno, Nevada 89509
rsmith@shjnevada.com
(775) 785-0088

Shares Owned: 19,000

Please direct all future correspondence and notices to my attorney at the address set forth above.

Sincerely,

Michal Boyd

16205166_v1

February 17, 2021

Via UPS Overnight Delivery *Via Hand Delivery*

AeroGrow International, Inc.
5405 Spine Road
Boulder, CO 80301

AeroGrow International, Inc.
c/o United Registered Agents, Inc.
701 S. Carson Street, Suite 200
Carson City, NV 89701

Re: Notice of Intent to Demand Payment for Shares
Special Meeting Date: February 23, 2021 @ 10:00 a.m.

Dear Board of Directors:

Pursuant to NRS 92A.420(1)(a), I hereby give written notice of my intent to exercise dissenter's rights and to demand payment for shares if the proposed merger transaction is approved at the above-referenced Special Meeting of the Shareholders.

Name: Anne Carol Decker

Address: c/o J. Robert Smith
Simons Hall & Johnston
6490 S. McCarran Blvd., Suite F-46
Reno, Nevada 89509
rsmith@shjnevada.com
(775) 785-0088

Shares Owned: 12,000

Please direct all future correspondence and notices to my attorney at the address set forth above.

Sincerely,

Anne Carol Decker

Anne Carol Decker

Carroll

16205358_v1

1

February 17, 2021

Via UPS Overnight Delivery Via Hand Delivery

AcroGrow International, Inc.
5405 Spine Road
Boulder, CO 80301

AcroGrow International, Inc.
c/o United Registered Agents, Inc.
701 S. Carson Street, Suite 200
Carson City, NV 89701

Re: Notice of Intent to Demand Payment for Shares
Special Meeting Date: February 23, 2021 @ 10:00 a.m.

Dear Board of Directors:

Pursuant to NRS 92A.420(1)(a), I hereby give written notice of my intent to exercise dissenter's rights and to demand payment for shares if the proposed merger transaction is approved at the above-referenced Special Meeting of the Shareholders.

Name: Thomas H. Decker

Address: c/o J. Robert Smith
Simons Hall & Johnston
6490 S. McCarran Blvd., Suite F-46
Reno, Nevada 89509
rsmith@shjnevada.com
(775) 785-0088

Shares Owned: 33,100

Please direct all future correspondence and notices to my attorney at the address set forth above.

Sincerely,

Thomas H. Decker

February 17, 2021

Via UPS Overnight Delivery

AeroGrow International, Inc.
5405 Spine Road
Boulder, CO 80301

Via Hand Delivery

AeroGrow International, Inc.
c/o United Registered Agents, Inc.
701 S. Carson Street, Suite 200
Carson City, NV 89701

Re: Notice of Intent to Demand Payment for Shares
Special Meeting Date: February 23, 2021 @ 10:00 a.m.

Dear Board of Directors:

Pursuant to NRS 92A.420(1)(a), I hereby give written notice of my intent to exercise dissenter's rights and to demand payment for shares if the proposed merger transaction is approved at the above-referenced Special Meeting of the Shareholders.

Name: John C. Fischer

Address: c/o J. Robert Smith
Simons Hall & Johnston
6490 S. McCarran Blvd., Suite F-46
Reno, Nevada 89509
rsmith@shjnevada.com
(775) 785-0088

Shares Owned: 19,716

Please direct all future correspondence and notices to my attorney at the address set forth above.

Sincerely,

John C. Fischer

16205215_v1

February 12, 2021

Via UPS Overnight Delivery

AeroGrow International, Inc.
5405 Spine Road
Boulder, CO 80301

Via Hand Delivery

AeroGrow International, Inc.
c/o United Registered Agents, Inc.
701 S. Carson Street, Suite 200
Carson City, NV 89701

Re: Notice of Intent to Demand Payment for Shares
Special Meeting Date: February 23, 2021 @ 10:00 a.m.

Dear Board of Directors:

Pursuant to NRS 92A.420(1)(a), I hereby give written notice of my intent to exercise dissenter's rights and to demand payment for shares if the proposed merger transaction is approved at the above-referenced Special Meeting of the Shareholders. I am the beneficial owner of 13,586 shares.

Name: Alfredo Gomez

Address: c/o J. Robert Smith
Simons Hall & Johnston
6490 S. McCarran Blvd., Suite F-46
Reno, Nevada 89509
rsmith@shjnevada.com
(775) 785-0088

Shares Owned: 13.586

Please direct all future correspondence and notices to my attorney at the address set forth above.

Sincerely,

Alfredo Gomez

16184578_v1

February 12, 2021

Via UPS Overnight Delivery

AeroGrow International, Inc.
5405 Spine Road
Boulder, CO 80301

Via Hand Delivery

AeroGrow International, Inc.
c/o United Registered Agents, Inc.
701 S. Carson Street, Suite 200
Carson City, NV 89701

Re: Notice of Intent to Demand Payment for Shares
Special Meeting Date: February 23, 2021 @ 10:00 a.m.

Dear Board of Directors:

Pursuant to NRS 92A.420(1)(a), I hereby give written notice of my intent to exercise dissenter's rights and to demand payment for shares if the proposed merger transaction is approved at the above-referenced Special Meeting of the Shareholders. I am the beneficial owner of 24,537 shares.

Name: Alfredo Gomez
FMT CO CUST IRA Rollover, FBO Alfredo Gomez

Address: c/o J. Robert Smith
Simons Hall & Johnston
6490 S. McCarran Blvd., Suite F-46
Reno, Nevada 89509
rsmith@shjnevada.com
(775) 785-0088

Shares Owned: 24,537

Please direct all future correspondence and notices to my attorney at the address set forth above.

Sincerely,

Alfredo Gomez

16184569_v1

February 11, 2021

Via UPS Overnight Delivery

AeroGrow International, Inc.
5405 Spine Road
Boulder, CO 80301

Via Hand Delivery

AeroGrow International, Inc.
c/o United Registered Agents, Inc.
701 S. Carson Street, Suite 200
Carson City, NV 89701

Re: Notice of Intent to Demand Payment for Shares
Special Meeting Date: February 23, 2021 @ 10:00 a.m.

Dear Board of Directors:

Pursuant to NRS 92A.420(1)(a), I hereby give written notice of my intent to exercise dissenter's rights and to demand payment for shares if the proposed merger transaction is approved at the above-referenced Special Meeting of the Shareholders. I am the beneficial owner of 6,000 shares.

Name: Lawrence Greenberg

Address: c/o J. Robert Smith
Simons Hall & Johnston
6490 S. McCarran Blvd., Suite F-46
Reno, Nevada 89509
rsmith@shjnevada.com
(775) 785-0088

Shares Owned: 6,000

Please direct all future correspondence and notices to my attorney at the address set forth above.

Sincerely,

Lawrence Greenberg

16177815_v1

February 11, 2021

Via UPS Overnight Delivery

AeroGrow International, Inc.
5405 Spine Road
Boulder. CO 80301

Via Hand Delivery

AeroGrow International, Inc.
c/o United Registered Agents, Inc.
701 S. Carson Street, Suite 200
Carson City, NV 89701

Re: Notice of Intent to Demand Payment for Shares
Special Meeting Date: February 23, 2021 @ 10:00 a.m.

Dear Board of Directors:

Pursuant to NRS 92A.420(1)(a), we hereby give written notice of our intent to exercise dissenter's rights and to demand payment for shares if the proposed merger transaction is approved at the above-referenced Special Meeting of the Shareholders. We are the beneficial owners of 6,000 shares.

Name: L. Wayne & Patricia Greenberg, JTWROS

Address: c/o J. Robert Smith
Simons Hall & Johnston
6490 S. McCarran Blvd., Suite F-46
Reno, Nevada 89509
rsmith@shjnevada.com
(775) 785-0088

Shares Owned: 6,000

Please direct all future correspondence and notices to our attorney at the address set forth above.

Sincerely,

L. Wayne Greenberg

Patricia Greenberg

16177862_v1

February 11, 2021

Via UPS Overnight Delivery

AeroGrow International, Inc.
5405 Spine Road
Boulder, CO 80301

Via Hand Delivery

AeroGrow International, Inc.
c/o United Registered Agents, Inc.
701 S. Carson Street, Suite 200
Carson City, NV 89701

Re: Notice of Intent to Demand Payment for Shares
Special Meeting Date: February 23, 2021 @ 10:00 a.m.

Dear Board of Directors:

Pursuant to NRS 92A.420(1)(a), I hereby give written notice of my intent to exercise dissenter's rights and to demand payment for shares if the proposed merger transaction is approved at the above-referenced Special Meeting of the Shareholders. I am the beneficial owner of 3,612 shares.

Name: Karen Harding

Address: c/o J. Robert Smith
Simons Hall & Johnston
6490 S. McCarran Blvd., Suite F-46
Reno, Nevada 89509
rsmith@shjnevada.com
(775) 785-0088

Shares Owned: 3,612

Please direct all future correspondence and notices to my attorney at the address set forth above.

Sincerely,

Karen Harding

Karen Harding

16177954_v1

February 10, 2021

UPS Overnight Delivery
Via First Class ~~U.S. Mail~~, Certified ~~U.S. Mail~~, Return Receipt

AeroGrow International, Inc.
5405 Spine Road
Boulder, CO 80301

Via Hand Delivery

AeroGrow International, Inc.
c/o United Registered Agents, Inc.
701 S. Carson Street, Suite 200
Carson City, NV 89701

Re: Notice of Intent to Demand Payment for Shares
Special Meeting Date: February 23, 2021 @ 10:00 a.m.

Dear Board of Directors:

Pursuant to NRS 92A.420(1)(a), I hereby give written notice of my intent to exercise dissenter's rights and to demand payment for shares if the proposed merger transaction is approved at the above-referenced Special Meeting of the Shareholders.

Name: Wayne Harding

Address: c/o J. Robert Smith
Simons Hall & Johnston
6490 S. McCarran Blvd., Suite F-46
Reno, Nevada 89509
rsmith@shjnevada.com
(775) 785-0088

Shares Owned: 50

Please direct all future correspondence and notices to my attorney at the address set forth above.

Sincerely,

Wayne Harding

16171694_v1

February 10, 2021

UPS Overnight Delivery
Via ~~First Class U.S. Mail, Certified~~ U.S. ~~Mail, Return Receipt~~

Via Hand Delivery

AeroGrow International, Inc.
5405 Spine Road
Boulder, CO 80301

AeroGrow International, Inc.
c/o United Registered Agents, Inc.
701 S. Carson Street, Suite 200
Carson City, NV 89701

Re: Notice of Intent to Demand Payment for Shares
Special Meeting Date: February 23, 2021 @ 10:00 a.m.

Dear Board of Directors:

Pursuant to NRS 92A.420(1)(a), I hereby give written notice of my intent to exercise dissenter's rights and to demand payment for shares if the proposed merger transaction is approved at the above-referenced Special Meeting of the Shareholders.

Name: Wayne E. Harding, III

Address: c/o J. Robert Smith
Simons Hall & Johnston
6490 S. McCarran Blvd., Suite F-46
Reno, Nevada 89509
rsmith@shjnevada.com
(775) 785-0088

Shares Owned: 2,500

Please direct all future correspondence and notices to my attorney at the address set forth above.

Sincerely,

Wayne E. Harding, III

16171706_v1

February 18, 2021

UPS Overnight Delivery
Via ~~First Class U.S. Mail, Certified U.S. Mail, Return Receipt~~

AeroGrow International, Inc.
5405 Spine Road
Boulder, CO 80301

Via Hand Delivery

AeroGrow International, Inc.
c/o United Registered Agents, Inc.
701 S. Carson Street, Suite 200
Carson City, NV 89701

Re: Notice of Intent to Demand Payment for Shares
Special Meeting Date: February 23, 2021 @ 10:00 a.m.

Dear Board of Directors:

Pursuant to NRS 92A.420(1)(a), H.L. Severance, Inc. Pension Plan and Trust hereby gives written notice of its intent to exercise dissenter's rights and to demand payment for shares if the proposed merger transaction is approved at the above-referenced Special Meeting of the Shareholders.

Name: H.L. Severance, Inc. Pension Plan and Trust

Address: c/o J. Robert Smith
Simons Hall & Johnston
6490 S. McCarran Blvd., Suite F-46
Reno, Nevada 89509
rsmith@shjnevada.com
(775) 785-0088

Shares Owned: 857

Please direct all future correspondence and notices to my attorney at the address set forth above.

Sincerely,

H.L. Severance, Inc. Pension Plan and Trust

H. Leigh Severance

H. Leigh Severance

16187076_v1

February 18, 2021

UPS overnight Delivery
Via ~~First Class U.S. Mail, Certified U.S. Mail, Return Receipt~~

AeroGrow International, Inc.
5405 Spine Road
Boulder, CO 80301

Via Hand Delivery

AeroGrow International, Inc.
c/o United Registered Agents, Inc.
701 S. Carson Street, Suite 200
Carson City, NV 89701

Re: Notice of Intent to Demand Payment for Shares
Special Meeting Date: February 23, 2021 @ 10:00 a.m.

Dear Board of Directors:

Pursuant to NRS 92A.420(1)(a), H.L. Severance, Inc. Profit Sharing Plan and Trust hereby gives written notice of its intent to exercise dissenter's rights and to demand payment for shares if the proposed merger transaction is approved at the above-referenced Special Meeting of the Shareholders.

Name: H.L. Severance, Inc. Profit Sharing Plan and Trust

Address: c/o J. Robert Smith
Simons Hall & Johnston
6490 S. McCarran Blvd., Suite F-46
Reno, Nevada 89509
rsmith@shjnevada.com
(775) 785-0088

Shares Owned: 56,919

Please direct all future correspondence and notices to my attorney at the address set forth above.

Sincerely,

H.L. Severance, Inc. Profit Sharing
Plan and Trust

H. Leigh Severance
H. Leigh Severance

16187077_v1

February 17, 2021

Via UPS Overnight Delivery

AeroGrow International, Inc.
5405 Spine Road
Boulder, CO 80301

Via Hand Delivery

AeroGrow International, Inc.
c/o United Registered Agents, Inc.
701 S. Carson Street, Suite 200
Carson City, NV 89701

Re: Notice of Intent to Demand Payment for Shares
Special Meeting Date: February 23, 2021 @ 10:00 a.m.

Dear Board of Directors:

Pursuant to NRS 92A.420(1)(a), I hereby give written notice of my intent to exercise dissenter's rights and to demand payment for shares if the proposed merger transaction is approved at the above-referenced Special Meeting of the Shareholders. I am the beneficial owner of 5,000 shares.

Name: Daniel Garrett Hofstein

Address: c/o J. Robert Smith
Simons Hall & Johnston
6490 S. McCarran Blvd., Suite F-46
Reno, Nevada 89509
rsmith@shjnevada.com
(775) 785-0088

Shares Owned: 5,000

Please direct all future correspondence and notices to my attorney at the address set forth above.

Sincerely,

Daniel Garrett Hofstein

16204237 v1

February 10, 2021

UPS Overnight Delivery
Via First Class U.S. Mail, Certified U.S. Mail, Return Receipt

Via Hand Delivery

AcroGrow International, Inc.
5405 Spine Road
Boulder, CO 80301

AcroGrow International, Inc.
c/o United Registered Agents, Inc.
701 S. Carson Street, Suite 200
Carson City, NV 89701

Re: Notice of Intent to Demand Payment for Shares
Special Meeting Date: February 23, 2021 @ 10:00 a.m.

Dear Board of Directors:

Pursuant to NRS 92A.420(1)(a), I hereby give written notice of my intent to exercise dissenter's rights and to demand payment for shares if the proposed merger transaction is approved at the above-referenced Special Meeting of the Shareholders.

Name: Candice Kaye

Address: c/o J. Robert Smith
Simons Hall & Johnston
6490 S. McCarran Blvd., Suite F-46
Reno, Nevada 89509
rsmith@shjnevada.com
(775) 785-0088

Shares Owned: 12,000

Please direct all future correspondence and notices to my attorney at the address set forth above.

Sincerely,

Candice Kaye

16171725 v1

February 10, 2021

UPS Overnight Delivery
Via ~~First Class U.S. Mail, Certified~~ U.S. Mail, Return Receipt

AeroGrow International, Inc.
5405 Spine Road
Boulder, CO 80301

Via Hand Delivery

AeroGrow International, Inc.
c/o United Registered Agents, Inc.
701 S. Carson Street, Suite 200
Carson City, NV 89701

Re: Notice of Intent to Demand Payment for Shares
Special Meeting Date: February 23, 2021 @ 10:00 a.m.

Dear Board of Directors:

Pursuant to NRS 92A.420(1)(a), I hereby give written notice of my intent to exercise dissenter's rights and to demand payment for shares if the proposed merger transaction is approved at the above-referenced Special Meeting of the Shareholders.

Name: Stephen Kaye

Address: c/o J. Robert Smith
Simons Hall & Johnston
6490 S. McCarran Blvd., Suite F-46
Reno, Nevada 89509
rsmith@shjnevada.com
(775) 785-0088

Shares Owned: 53,300

Please direct all future correspondence and notices to my attorney at the address set forth above.

Sincerely,

Stephen Kaye

16171739 v1

February 11, 2021

Via UPS Overnight Delivery

AeroGrow International, Inc.
5405 Spine Road
Boulder, CO 80301

Via Hand Delivery

AeroGrow International, Inc.
c/o United Registered Agents, Inc.
701 S. Carson Street, Suite 200
Carson City, NV 89701

Re: Notice of Intent to Demand Payment for Shares
Special Meeting Date: February 23, 2021 @ 10:00 a.m.

Dear Board of Directors:

Pursuant to NRS 92A.420(1)(a), I hereby give written notice of my intent to exercise dissenter's rights and to demand payment for shares if the proposed merger transaction is approved at the above-referenced Special Meeting of the Shareholders. I am the beneficial owner of 1,000 shares.

Name: Laura J. Koby

Address: c/o J. Robert Smith
Simons Hall & Johnston
6490 S. McCarran Blvd., Suite F-46
Reno, Nevada 89509
rsmith@shjnevada.com
(775) 785-0088

Shares Owned: 1,000

Please direct all future correspondence and notices to my attorney at the address set forth above.

Sincerely,

Laura J. Koby

16178192_v1

February 10, 2021

UPS Overnight Delivery
Via ~~First Class U.S. Mail, Certified U.S. Mail, Return Receipt~~

AeroGrow International, Inc.
5405 Spine Road
Boulder, CO 80301

Via Hand Delivery

AeroGrow International, Inc.
c/o United Registered Agents, Inc.
701 S. Carson Street, Suite 200
Carson City, NV 89701

Re: Notice of Intent to Demand Payment for Shares
Special Meeting Date: February 23, 2021 @ 10:00 a.m.

Dear Board of Directors:

Pursuant to NRS 92A.420(1)(a), March Trade & Finance, Inc. hereby gives written notice of its intent to exercise dissenter's rights and to demand payment for shares if the proposed merger transaction is approved at the above-referenced Special Meeting of the Shareholders.

Name: March Trade & Finance, Inc.

Address: c/o J. Robert Smith
Simons Hall & Johnston
6490 S. McCarran Blvd., Suite F-46
Reno, Nevada 89509
rsmith@shjnevada.com
(775) 785-0088

Shares Owned: 762

Please direct all future correspondence and notices to the company's attorney at the address set forth above.

Sincerely,

March Trade & Finance, Inc.

Jack J. Walker, President

16171751 v1

February 12, 2021

Via UPS Overnight Delivery

AeroGrow International, Inc.
5405 Spine Road
Boulder, CO 80301

Via Hand Delivery

AeroGrow International, Inc.
c/o United Registered Agents, Inc.
701 S. Carson Street, Suite 200
Carson City, NV 89701

Re: Notice of Intent to Demand Payment for Shares
Special Meeting Date: February 23, 2021 @ 10:00 a.m.

Dear Board of Directors:

Pursuant to NRS 92A.420(1)(a), Nidax Limited Partnership hereby gives written notice of its intent to exercise dissenter's rights and to demand payment for shares if the proposed merger transaction is approved at the above-referenced Special Meeting of the Shareholders. Nidax Limited Partnership is the beneficial owner of 18,650 shares.

Name: Nidax Limited Partnership

Address: c/o J. Robert Smith
Simons Hall & Johnston
6490 S. McCarran Blvd., Suite F-46
Reno, Nevada 89509
rsmith@shjnevada.com
(775) 785-0088

Shares Owned: 18,650

Please direct all future correspondence and notices to the attorney at the address set forth above.

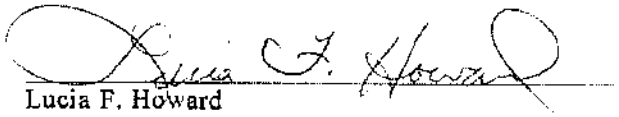
Sincerely,

Nidax Limited Partnership, an Arizona Limited Partnership

By: ND Management, Inc., General Partner

By: _____
Lucia F. Howard, President

Accepted and Approved:



Lucia F. Howard
Personal Representative of the Estate of Wayne N. Howard

16185463_v1

February 12, 2021

Via UPS Overnight Delivery

AeroGrow International, Inc.
5405 Spine Road
Boulder, CO 80301

Via Hand Delivery

AeroGrow International, Inc.
c/o United Registered Agents, Inc.
701 S. Carson Street, Suite 200
Carson City, NV 89701

Re: Notice of Intent to Demand Payment for Shares
Special Meeting Date: February 23, 2021 @ 10:00 a.m.

Dear Board of Directors:

Pursuant to NRS 92A.420(1)(a), Northern Trust Company of Delaware, as Trustee for and on behalf of the record stockholder The Peierls By-Pass Trust, hereby gives written notice of their intent to exercise dissenter's rights and to demand payment for shares if the proposed merger transaction is approved at the above-referenced Special Meeting of the Shareholders.

Stockholder: The Peierls By-Pass Trust

Address: c/o J. Robert Smith
Simons Hall & Johnston
6490 S. McCarran Blvd., Suite F-46
Reno, Nevada 89509
rsmith@shjnevada.com
(775) 785-0088

Shares Owned: 4,500

Please direct all future correspondence and notices to the attorney at the address set forth above.

Sincerely,

Northern Trust Company of Delaware, as Trustee for and on behalf of The Peierls By-Pass Trust

By: _____
Joshua Fishman
(Print Name)

Joshua W. Fishman
Officer
The Northern Trust Company of Delaware

16180328_v1

February 11, 2021

Via UPS Overnight Delivery

AeroGrow International, Inc.
5405 Spine Road
Boulder, CO 80301

Via Hand Delivery

AeroGrow International, Inc.
c/o United Registered Agents, Inc.
701 S. Carson Street, Suite 200
Carson City, NV 89701

Re: Notice of Intent to Demand Payment for Shares
Special Meeting Date: February 23, 2021 @ 10:00 a.m.

Dear Board of Directors:

Pursuant to NRS 92A.420(1)(a), Northern Trust Company of Delaware, as Trustee for and on behalf of the record stockholder U D E F Peierls for B E Peierls, hereby gives written notice of their intent to exercise dissenter's rights and to demand payment for shares if the proposed merger transaction is approved at the above-referenced Special Meeting of the Shareholders.

Stockholder: U D E F Peierls for B E Peierls

Address: c/o J. Robert Smith
Simons Hall & Johnston
6490 S. McCarran Blvd., Suite F-46
Reno, Nevada 89509
rsmith@shjnevada.com
(775) 785-0088

Shares Owned: 6,500

Please direct all future correspondence and notices to the attorney at the address set forth above.

Sincerely,

Northern Trust Company of Delaware, as Trustee for and on behalf of U D E F Peierls for B E Peierls

By: _____
Joshua Fishman
(Print Name)
Joshua W. Fishman
Officer
The Northern Trust Company of Delaware

16180228_v1

February 11, 2021

Via UPS Overnight Delivery

AeroGrow International, Inc.
5405 Spine Road
Boulder, CO 80301

Via Hand Delivery

AeroGrow International, Inc.
c/o United Registered Agents, Inc.
701 S. Carson Street, Suite 200
Carson City, NV 89701

Re: Notice of Intent to Demand Payment for Shares
Special Meeting Date: February 23, 2021 @ 10:00 a.m.

Dear Board of Directors:

Pursuant to NRS 92A.420(1)(a), Northern Trust Company of Delaware, as Trustee for and on behalf of the record stockholder U D E F Peierls for E J Peierls, hereby gives written notice of their intent to exercise dissenter's rights and to demand payment for shares if the proposed merger transaction is approved at the above-referenced Special Meeting of the Shareholders.

Stockholder: U D E F Peierls for E J Peierls

Address: c/o J. Robert Smith
Simons Hall & Johnston
6490 S. McCarran Blvd., Suite F-46
Reno, Nevada 89509
rsmith@shjnevada.com
(775) 785-0088

Shares Owned: 6,500

Please direct all future correspondence and notices to the attorney at the address set forth above.

Sincerely,

Northern Trust Company of Delaware, as Trustee for and on behalf of U D E F Peierls for E J Peierls

By: _____
Joshua Fishman
(Print Name)
Joshua W. Fishman
Officer
The Northern Trust Company of Delaware

16180191_v1

February 11, 2021

Via UPS Overnight Delivery

AeroGrow International, Inc.
5405 Spine Road
Boulder, CO 80301

Via Hand Delivery

AeroGrow International, Inc.
c/o United Registered Agents, Inc.
701 S. Carson Street, Suite 200
Carson City, NV 89701

Re: Notice of Intent to Demand Payment for Shares
Special Meeting Date: February 23, 2021 @ 10:00 a.m.

Dear Board of Directors:

Pursuant to NRS 92A.420(1)(a), Northern Trust Company of Delaware, as Trustee for and on behalf of the record stockholder U D E S Peierls for E F Peierls, et al., hereby gives written notice of their intent to exercise dissenter's rights and to demand payment for shares if the proposed merger transaction is approved at the above-referenced Special Meeting of the Shareholders.

Stockholder: U D E S Peierls for E F Peierls, et al.

Address: c/o J. Robert Smith
Simons Hall & Johnston
6490 S. McCarran Blvd., Suite F-46
Reno, Nevada 89509
rsmith@shjnevada.com
(775) 785-0088

Shares Owned: 4,250

Please direct all future correspondence and notices to the attorney at the address set forth above.

Sincerely,

Northern Trust Company of Delaware, as Trustee for and on behalf of U D E S Peierls for E F Peierls, et al.

By: _____
Joshua Fishman
(Print Name)

Joshua W. Fishman
Officer
The Northern Trust Company of Delaware

16180346_v1

February 12, 2021

Via UPS Overnight Delivery

AeroGrow International, Inc.
5405 Spine Road
Boulder, CO 80301

Via Hand Delivery

AeroGrow International, Inc.
c/o United Registered Agents, Inc.
701 S. Carson Street, Suite 200
Carson City, NV 89701

Re: Notice of Intent to Demand Payment for Shares
Special Meeting Date: February 23, 2021 @ 10:00 a.m.

Dear Board of Directors:

Pursuant to NRS 92A.420(1)(a), Northern Trust Company of Delaware, as Trustee for and on behalf of the record stockholder UD Ethel F. Peierls Charitable Lead Trust, hereby gives written notice of their intent to exercise dissenter's rights and to demand payment for shares if the proposed merger transaction is approved at the above-referenced Special Meeting of the Shareholders.

Stockholder: UD Ethel F. Peierls Charitable Lead Trust

Address: c/o J. Robert Smith
Simons Hall & Johnston
6490 S. McCarran Blvd., Suite F-46
Reno, Nevada 89509
rsmith@shjnevada.com
(775) 785-0088

Shares Owned: 22,500

Please direct all future correspondence and notices to the attorney at the address set forth above.

Sincerely,

Northern Trust Company of Delaware, as Trustee for and on behalf of UD Ethel F. Peierls Charitable Lead Trust

By: _____
Joshua Fishman
(Print Name)
Joshua W. Fishman
Officer
The Northern Trust Company of Delaware

16180259_v1

February 11, 2021

Via UPS Overnight Delivery

AeroGrow International, Inc.
5405 Spine Road
Boulder, CO 80301

Via Hand Delivery

AeroGrow International, Inc.
c/o United Registered Agents, Inc.
701 S. Carson Street, Suite 200
Carson City, NV 89701

Re: Notice of Intent to Demand Payment for Shares
Special Meeting Date: February 23, 2021 @ 10:00 a.m.

Dear Board of Directors:

Pursuant to NRS 92A.420(1)(a), Northern Trust Company of Delaware, as Trustee for and on behalf of the record stockholder UD J N Peierls for B E Peierls, hereby gives written notice of their intent to exercise dissenter's rights and to demand payment for shares if the proposed merger transaction is approved at the above-referenced Special Meeting of the Shareholders.

Stockholder: UD J N Peierls for B E Peierls

Address: c/o J. Robert Smith
Simons Hall & Johnston
6490 S. McCarran Blvd., Suite F-46
Reno, Nevada 89509
rsmith@shjnevada.com
(775) 785-0088

Shares Owned: 8,250

Please direct all future correspondence and notices to the attorney at the address set forth above.

Northern Trust Company of Delaware, as Trustee for and on behalf of UD J N Peierls for B E Peierls

By: _____
Joshua Fishman
(Print Name)

Joshua W. Fishman
Officer
The Northern Trust Company of Delaware

16180201_v1

February 11, 2021

Via UPS Overnight Delivery

AeroGrow International, Inc.
5405 Spine Road
Boulder, CO 80301

Via Hand Delivery

AeroGrow International, Inc.
c/o United Registered Agents, Inc.
701 S. Carson Street, Suite 200
Carson City, NV 89701

Re: Notice of Intent to Demand Payment for Shares
Special Meeting Date: February 23, 2021 @ 10:00 a.m.

Dear Board of Directors:

Pursuant to NRS 92A.420(1)(a), Northern Trust Company of Delaware, as Trustee for and on behalf of the record stockholder UD J N Peierls for E J Peierls, hereby gives written notice of their intent to exercise dissenter's rights and to demand payment for shares if the proposed merger transaction is approved at the above-referenced Special Meeting of the Shareholders.

Stockholder: UD J N Peierls for E J Peierls

Address: c/o J. Robert Smith
Simons Hall & Johnston
6490 S. McCarran Blvd., Suite F-46
Reno, Nevada 89509
rsmith@shjnevada.com
(775) 785-0088

Shares Owned: 8,250

Please direct all future correspondence and notices to the attorney at the address set forth above.

Northern Trust Company of Delaware, as
Trustee for and on behalf of U D J N Peierls
for E J Peierls

By: _____
Joshua Fishman
(Print Name)

Joshua W. Fishman
Officer
The Northern Trust Company of Delaware

16180217_v1

February 11, 2021

Via UPS Overnight Delivery

AeroGrow International, Inc.
5405 Spine Road
Boulder, CO 80301

Via Hand Delivery

AeroGrow International, Inc.
c/o United Registered Agents, Inc.
701 S. Carson Street, Suite 200
Carson City, NV 89701

Re: Notice of Intent to Demand Payment for Shares
Special Meeting Date: February 23, 2021 @ 10:00 a.m.

Dear Board of Directors:

Pursuant to NRS 92A.420(1)(a), Northern Trust Company of Delaware, as Trustee for and on behalf of the record stockholder UW E S Peierls for BEP ART VI-ACCUM, hereby gives written notice of their intent to exercise dissenter's rights and to demand payment for shares if the proposed merger transaction is approved at the above-referenced Special Meeting of the Shareholders.

Stockholder: UW E S Peierls for BEP ART VI-ACCUM

Address: c/o J. Robert Smith
Simons Hall & Johnston
6490 S. McCarran Blvd., Suite F-46
Reno, Nevada 89509
rsmith@shjnevada.com
(775) 785-0088

Shares Owned: 5,500

Please direct all future correspondence and notices to the attorney at the address set forth above.

Sincerely,

Northern Trust Company of Delaware, as
Trustee for and on behalf of UW E S Peierls
for BEP ART VI-ACCUM

By: Joshua Fishman
Joshua Fishman
(Print Name)
Joshua W. Fishman
Officer
The Northern Trust Company of Delaware

16180377_v1

February 12, 2021

Via UPS Overnight Delivery

AeroGrow International, Inc.
5405 Spine Road
Boulder, CO 80301

Via Hand Delivery

AeroGrow International, Inc.
c/o United Registered Agents, Inc.
701 S. Carson Street, Suite 200
Carson City, NV 89701

Re: Notice of Intent to Demand Payment for Shares
Special Meeting Date: February 23, 2021 @ 10:00 a.m.

Dear Board of Directors:

Pursuant to NRS 92A.420(1)(a), Northern Trust Company of Delaware, as Trustee for and on behalf of the record stockholder UW E S Peierls for EJP ART VI-ACCUM, hereby gives written notice of their intent to exercise dissenter's rights and to demand payment for shares if the proposed merger transaction is approved at the above-referenced Special Meeting of the Shareholders.

Stockholder: UW E S Peierls for EJP ART VI-ACCUM

Address: c/o J. Robert Smith
Simons Hall & Johnston
6490 S. McCarran Blvd., Suite F-46
Reno, Nevada 89509
rsmith@shjnevada.com
(775) 785-0088

Shares Owned: 3,750

Please direct all future correspondence and notices to the attorney at the address set forth above.

Sincerely,

Northern Trust Company of Delaware, as
Trustee for and on behalf of UW E S Peierls
for EJP ART VI-ACCUM

By: _____
Joshua Fishman
(Print Name)

Joshua W. Fishman
Officer
The Northern Trust Company of Delaware

16180363_v1

February 11, 2021

Via UPS Overnight Delivery

AeroGrow International, Inc.
5405 Spine Road
Boulder, CO 80301

Via Hand Delivery

AeroGrow International, Inc.
c/o United Registered Agents, Inc.
701 S. Carson Street, Suite 200
Carson City, NV 89701

Re: Notice of Intent to Demand Payment for Shares
Special Meeting Date: February 23, 2021 @ 10:00 a.m.

Dear Board of Directors:

Pursuant to NRS 92A.420(1)(a), Northern Trust Company of Delaware, as Trustee for and on behalf of the record stockholder UW J N Peierls for B E Peierls, hereby gives written notice of their intent to exercise dissenter's rights and to demand payment for shares if the proposed merger transaction is approved at the above-referenced Special Meeting of the Shareholders.

Stockholder: UW J N Peierls for B E Peierls

Address: c/o J. Robert Smith
Simons Hall & Johnston
6490 S. McCarran Blvd., Suite F-46
Reno, Nevada 89509
rsmith@shjnevada.com
(775) 785-0088

Shares Owned: 8,000

Please direct all future correspondence and notices to the attorney at the address set forth above.

Sincerely,

Northern Trust Company of Delaware, as
Trustee for and on behalf of UW J N Peierls
for B E Peierls

By: _____
Joshua Fishman
(Print Name)

Joshua W. Fishman
Officer
The Northern Trust Company of Delaware

16180295_v1

February 11, 2021

Via UPS Overnight Delivery

AeroGrow International, Inc.
5405 Spine Road
Boulder, CO 80301

Via Hand Delivery

AeroGrow International, Inc.
c/o United Registered Agents, Inc.
701 S. Carson Street, Suite 200
Carson City, NV 89701

Re: Notice of Intent to Demand Payment for Shares
Special Meeting Date: February 23, 2021 @ 10:00 a.m.

Dear Board of Directors:

Pursuant to NRS 92A.420(1)(a), Northern Trust Company of Delaware, as Trustee for and on behalf of the record stockholder UW J N Peierls for E J Peierls, hereby gives written notice of their intent to exercise dissenter's rights and to demand payment for shares if the proposed merger transaction is approved at the above-referenced Special Meeting of the Shareholders.

Stockholder: UW J N Peierls for E J Peierls

Address: c/o J. Robert Smith
Simons Hall & Johnston
6490 S. McCarran Blvd., Suite F-46
Reno, Nevada 89509
rsmith@shjnevada.com
(775) 785-0088

Shares Owned: 8,000

Please direct all future correspondence and notices to the attorney at the address set forth above.

Sincerely,

Northern Trust Company of Delaware, as Trustee for and on behalf of UW J N Peierls for E J Peierls

By: _____
Joshua Fishman
(Print Name)

Joshua W. Fishman
Officer
The Northern Trust Company of Delaware

16180282_v1

NORTHERN TRUST

The Northern Trust Company of Delaware
1313 N. Market Street, Suite 5300
Wilmington, DE 19801

CERTIFICATE OF INCUMBENCY

The undersigned, Assistant Secretary of The Northern Trust Company of Delaware, a limited purpose trust company under Delaware law (hereinafter "NTDE"), hereby certifies as follows:

1. That the undersigned is the duly elected, qualified and acting Assistant Secretary of NTDE and is charged with maintaining the records, minutes and seal of NTDE.

2. That pursuant to NTDE's By-Laws, the following named persons were designated and appointed to the offices indicated below, and that said persons do continue to hold such offices at this time, and the signatures set forth opposite the names are genuine signatures.

David A. Diamond, President
The Northern Trust Company of Delaware

Bobbi Lynn Kent, Senior Vice President
The Northern Trust Company of Delaware

Rebecca S. Beste, Senior Vice President
The Northern Trust Company of Delaware

Gregory J. Wood, Senior Vice President
The Northern Trust Company of Delaware

Jillian K. Williams, Senior Vice President
The Northern Trust Company of Delaware

Nai-te J. Watson, Senior Vice President
The Northern Trust Company of Delaware

Alexis L. Borrelli, Vice President
The Northern Trust Company of Delaware

John J. Sullivan, Vice President
The Northern Trust Company of Delaware

David J. Henninger, Vice President
The Northern Trust Company of Delaware

Mikal L. Payne, Vice President
The Northern Trust Company of Delaware

Joshua W. Fishman, Officer
The Northern Trust Company of Delaware

Jeremie S. Heisey, Officer
The Northern Trust Company of Delaware

Elaine Walters, Officer
The Northern Trust Company of Delaware

Ronnett K. Roach, Officer
The Northern Trust Company of Delaware

Hope Lemon, Officer
The Northern Trust Company of Delaware

Marisa M. Muller, Officer
The Northern Trust Company of Delaware

Gabrielle Wright, Officer
The Northern Trust Company of Delaware

Kyle Luke, Officer
The Northern Trust Company of Delaware

3. That pursuant to NTDE's By-Laws, as amended, the undersigned has the power and authority to execute this certificate on behalf of NTDE and that the undersigned has so executed this certificate and set the seal of NTDE this 7 day of December 2020.

Jillian K. Williams, Assistant Secretary
The Northern Trust Company of Delaware

February 16, 2021

Via UPS Overnight Delivery

AeroGrow International, Inc.
5405 Spine Road
Boulder, CO 80301

Via Hand Delivery

AeroGrow International, Inc.
c/o United Registered Agents, Inc.
701 S. Carson Street, Suite 200
Carson City, NV 89701

Re: Notice of Intent to Demand Payment for Shares
Special Meeting Date: February 23, 2021 @ 10:00 a.m.

Dear Board of Directors:

Pursuant to NRS 92A.420(1)(a), I hereby give written notice of my intent to exercise dissenter's rights and to demand payment for shares if the proposed merger transaction is approved at the above-referenced Special Meeting of the Shareholders. I am the beneficial owner of 79,000 shares.

Name: Tom Orme

Address: c/o J. Robert Smith
Simons Hall & Johnston
6490 S. McCarran Blvd., Suite F-46
Reno, Nevada 89509
rsmith@shjnevada.com
(775) 785-0088

Shares Owned: 79,000

Please direct all future correspondence and notices to my attorney at the address set forth above.

Sincerely,

Tom Orme

16198166_v1

February 17, 2021

Via UPS Overnight Delivery

AeroGrow International, Inc.
5405 Spine Road
Boulder, CO 80301

Via Hand Delivery

AeroGrow International, Inc.
c/o United Registered Agents, Inc.
701 S. Carson Street, Suite 200
Carson City, NV 89701

Re: Notice of Intent to Demand Payment for Shares
Special Meeting Date: February 23, 2021 @ 10:00 a.m.

Dear Board of Directors:

Pursuant to NRS 92A.420(1)(a), I hereby give written notice of my intent to exercise dissenter's rights and to demand payment for shares if the proposed merger transaction is approved at the above-referenced Special Meeting of the Shareholders.

Name: Rebecca Parmenter

Address: c/o J. Robert Smith
Simons Hall & Johnston
6490 S. McCarran Blvd., Suite F-46
Reno, Nevada 89509
rsmith@shjnevada.com
(775) 785-0088

Shares Owned: 5,000

Please direct all future correspondence and notices to my attorney at the address set forth above.

Sincerely,

Rebecca Parmenter

Rebecca Parmenter 02/16/2021

16705251_v1

Brian Eliot Peierls
3017 McCurdy St.
Austin, TX 78723-2902

February 12, 2021

AeroGrow International, Inc.
5405 Spine Road
Boulder, CO 80301

Via Hand Delivery
AeroGrow International, Inc.
c/o United Registered Agents, Inc.
701 S. Carson Street, Suite 200, Carson City, NV 89701

Re: Notice of Intent to Demand Payment for Shares
Special Meeting Date: February 23, 2021 @ 10:00 a.m.

Dear Board of Directors:

Pursuant to NRS 92A.420(1)(a), I, as the beneficial owner of 32,500 shares of Aerogrow International, Inc.(AERO/00768M202), hereby give written notice of my intent to exercise dissenter's rights and to demand payment for my shares if the proposed merger transaction is approved at the above-referenced Special Meeting of the Shareholders. My shares are currently held on my behalf at DTC/Cede by DTC participant Hilltop Securities, Inc. in nominee name. I have requested that these shares be withdrawn from DTC and placed in my name.

Stockholder: Brian Eliot Peierls

Address: c/o J. Robert Smith
Simons Hall & Johnston
6490 S. McCarran Blvd., Suite F-46
Reno, Nevada 89509
rsmith@shjnevada.com
(775) 785-0088

Shares Owned: 32,500

Please direct all future correspondence and notices to the attorney at the address set forth above.

Sincerely,

Brian Eliot Peierls

Brian Eliot Peierls

February 10, 2021

UPS Overnight Delivery
Via ~~First Class U.S. Mail, Certified~~
~~U.S. Mail, Return Receipt~~

AeroGrow International, Inc.
5405 Spine Road
Boulder, CO 80301

Via Hand Delivery

AeroGrow International, Inc.
c/o United Registered Agents, Inc.
701 S. Carson Street, Suite 200
Carson City, NV 89701

Re: Notice of Intent to Demand Payment for Shares
Special Meeting Date: February 23, 2021 @ 10:00 a.m.

Dear Board of Directors:

Pursuant to NRS 92A.420(1)(a), I hereby give written notice of my intent to exercise dissenter's rights and to demand payment for shares if the proposed merger transaction is approved at the above-referenced Special Meeting of the Shareholders.

Name: Alexander Perelberg

Address: c/o J. Robert Smith
Simons Hall & Johnston
6490 S. McCarran Blvd., Suite F-46
Reno, Nevada 89509
rsmith@shjnevada.com
(775) 785-0088

Shares Owned: 95,466

Please direct all future correspondence and notices to my attorney at the address set forth above.

Sincerely,

Alexander Perelberg

16171787_v1

February 11, 2021

Via UPS Overnight Delivery

AeroGrow International, Inc.
5405 Spine Road
Boulder, CO 80301

Via Hand Delivery

AeroGrow International, Inc.
c/o United Registered Agents, Inc.
701 S. Carson Street, Suite 200
Carson City, NV 89701

Re: Notice of Intent to Demand Payment for Shares
Special Meeting Date: February 23, 2021 @ 10:00 a.m.

Dear Board of Directors:

Pursuant to NRS 92A.420(1)(a), I hereby give written notice of my intent to exercise dissenter's rights and to demand payment for shares if the proposed merger transaction is approved at the above-referenced Special Meeting of the Shareholders. I am the beneficial owner of 2,500 shares.

Name: Alexander Perelberg

Address: c/o J. Robert Smith
Simons Hall & Johnston
6490 S. McCarran Blvd., Suite F-46
Reno, Nevada 89509
rsmith@shjnevada.com
(775) 785-0088

Shares Owned: 2,500

Please direct all future correspondence and notices to my attorney at the address set forth above.

Sincerely,

Alexander Perelberg

16178072_v1

February 10, 2021

UPS Overnight Delivery
Via ~~First Class U.S. Mail, Certified U.S. Mail, Return Receipt~~

AeroGrow International, Inc.
5405 Spine Road
Boulder, CO 80301

Via Hand Delivery

AeroGrow International, Inc.
c/o United Registered Agents, Inc.
701 S. Carson Street, Suite 200
Carson City, NV 89701

Re: Notice of Intent to Demand Payment for Shares
Special Meeting Date: February 23, 2021 @ 10:00 a.m.

Dear Board of Directors:

Pursuant to NRS 92A.420(1)(a), I hereby give written notice of my intent to exercise dissenter's rights and to demand payment for shares if the proposed merger transaction is approved at the above-referenced Special Meeting of the Shareholders.

Name: Amy Perelberg

Address: c/o J. Robert Smith
Simons Hall & Johnston
6490 S. McCarran Blvd., Suite F-46
Reno, Nevada 89509
rsmith@shjnevada.com
(775) 785-0088

Shares Owned: 13,500

Please direct all future correspondence and notices to my attorney at the address set forth above.

Sincerely,

Amy Perelberg

16171797_v1

February 10, 2021

UPS overnight Delivery
Via ~~First Class U.S. Mail, Certified~~
~~U.S. Mail, Return Receipt~~

AeroGrow International, Inc.
5405 Spine Road
Boulder, CO 80301

Via Hand Delivery

AeroGrow International, Inc.
c/o United Registered Agents, Inc.
701 S. Carson Street, Suite 200
Carson City, NV 89701

Re: Notice of Intent to Demand Payment for Shares
Special Meeting Date: February 23, 2021 @ 10:00 a.m.

Dear Board of Directors:

Pursuant to NRS 92A.420(1)(a), I hereby give written notice of my intent to exercise dissenter's rights and to demand payment for shares if the proposed merger transaction is approved at the above-referenced Special Meeting of the Shareholders.

Name: Dana Perelberg

Address: c/o J. Robert Smith
Simons Hall & Johnston
6490 S. McCarran Blvd., Suite F-46
Reno, Nevada 89509
rsmith@shjnevada.com
(775) 785-0088

Shares Owned: 41,085

Please direct all future correspondence and notices to my attorney at the address set forth above.

Sincerely,

Dana Perelberg

16171800_v1

February 10, 2021

UPS Overnight Delivery
Via ~~First Class U.S. Mail, Certified U.S. Mail, Return Receipt~~

AeroGrow International, Inc.
5405 Spine Road
Boulder, CO 80301

Via Hand Delivery

AeroGrow International, Inc.
c/o United Registered Agents, Inc.
701 S. Carson Street, Suite 200
Carson City, NV 89701

Re: Notice of Intent to Demand Payment for Shares
Special Meeting Date: February 23, 2021 @ 10:00 a.m.

Dear Board of Directors:

Pursuant to NRS 92A.420(1)(a), I hereby give written notice of my intent to exercise dissenter's rights and to demand payment for shares if the proposed merger transaction is approved at the above-referenced Special Meeting of the Shareholders.

Name: Gary Perelberg

Address: c/o J. Robert Smith
Simons Hall & Johnston
6490 S. McCarran Blvd., Suite F-46
Reno, Nevada 89509
rsmith@shjnevada.com
(775) 785-0088

Shares Owned: 17,417

Please direct all future correspondence and notices to my attorney at the address set forth above.

Sincerely,

GAPerelberg

Gary ~~Per~~elberg

16171804_v1