

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. KOBAY, CAROLE

Case Number: Electronically Filed
May 13 2021 11:44 a.m.
Elizabeth A. Brown
District Court Case Number: Clerk of Supreme Court
A-21-827665-B (Lead Case), Dept. XI

**PETITIONERS' APPENDIX
(VOLUME 3 OF 12)**

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

L. MCCLAUGHLIN, 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. WEISSENBOEN, THE
MARGARET S. WEISSENBOEN
REVOCABLE TRUST, THE
STANTON F. WEISSENBOEN IRA,
THE STANTON F. WEISSENBOEN
REVOCABLE TRUST, THE
STANTON F. WEISSENBOEN
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 3 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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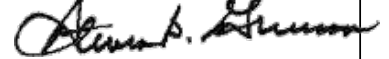
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GREENBERG, KAREN HARDING,
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& TRUST, DANIEL G. HOFSTEIN,
KEVIN JOHNSON, CANDICE KAYE,
LAURA J. KOBY, CAROLE L.
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JOSEPH E. PETER, ALEXANDER
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DANA PERELBERG, GARY
PERELBERG, LINDA PERELBERG,
THE REALLY COOL GROUP,
RICHARD ALAN RUDY REVOCABLE
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RICKMAN, JR., JAMES D. RICKMAN,
JR. IRREVOCABLE TRUST,
PATRICIA D. RICKMAN
IRREVOCABLE TRUST, ANDREW
REESE RICKMAN TRUST, SCOTT
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TRUST, MARLON DEAN
ALESSANDRA TRUST, BRYAN
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SICZ ROTH IRA, THE CAROL W.
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THOMAS K. SMITH, SURAJ
VASANTH, CATHAY C. WANG, LISA
DAWN WANG, DARCY J.
WEISSENBOHN, THE MARGARET S.
WEISSENBOHN REVOCABLE
TRUST, THE STANTON F.
WEISSENBOHN IRA, THE STANTON
F. WEISSENBOHN 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
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/s/ Wendy Cosby

An employee of Brownstein Hyatt Farber Schreck, LL



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6 *Attorney for Proposed Plaintiff-Intervenors*

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8
9 **DISTRICT COURT**
10 **CLARK COUNTY, NEVADA**

11 BRADLEY LOUIS RADOFF,

12 Plaintiff,

13 v.

14
15 CHRIS HAGEDORN, an individual; H.
MACGREGOR CLARKE, an individual;
16 DAVID B. KENT, an individual; CORY
MILLER, an individual; PATRICIA M.
17 ZIEGLER, individual; JAMES
HAGEDORN, an individual; PETER
18 SUPRON, an individual; AEROGROW
INTERNATIONAL, INC., a Nevada
19 Corporation; AGI ACQUISITION SUB,
INC., a Nevada Corporation; SMG
20 GROWING MEDIA, INC., an Ohio
Corporation; THE SCOTTS MIRACLE-
21 GRO COMPANY, an Ohio Corporation;
22 DOES I through X, inclusive; and ROE
23 CORPORATIONS I through X, inclusive.

24 Defendants.

Case No.: A-21-829854-B

Dept. No.: 13

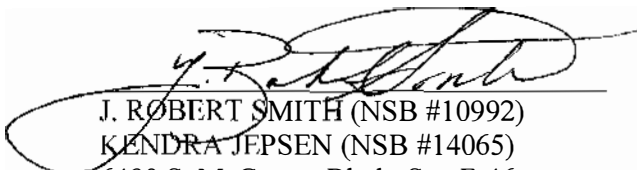
**PROPOSED PLAINTIFF-
INTERVENORS' MOTION TO
INTERVENE ON AN ORDER
SHORTENING TIME**

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

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1 Severance, Inc. Profit Sharing Plan & Trust, H.L. Severance, Inc. Pension Plan & Trust, Daniel G.
2 Hofstein, Kevin Johnson, Candice Kaye, Laura J. Koby, Carole L. McLaughlin, Brian Peierls,
3 Joseph E. Peter, Alexander Perelberg, Amy Perelberg, Dana Perelberg, Gary Perelberg, Linda
4 Perelberg, The Really Cool Group, Richard Alan Rudy Revocable Living Trust, James D. Rickman,
5 Jr., James D. Rickman, Jr. Irrevocable Trust, Patricia D. Rickman Irrevocable Trust, Andrew Reese
6 Rickman Trust, Scott Joseph Rickman Irrevocable Trust, Marlon Dean Alessandra Trust, Bryan
7 Robson, Wayne Sicz IRA, Wayne Sicz Roth IRA, The Carol W. Smith Revocable Trust, Thomas
8 K. Smith, Suraj Vasanth, Cathay C. Wang, Lisa Dawn Wang, Darcy J. Weissenborn, The Margaret
9 S. Weissenborn Revocable Trust, The Stanton F. Weissenborn IRA, The Stanton F. Weissenborn
10 Revocable Trust, The Stanton F. Weissenborn Irrevocable Trust, The Natalie Wolman Living Trust,
11 and Alan Budd Zuckerman (collectively herein "Plaintiff-Intervenors") hereby respectfully submit
12 their Motion to Intervene on an Order Shortening Time. This Motion is based upon NRCP 24, NRS
13 12.130 and NRS 30.130, the following memorandum of points and authorities, the pleadings and
14 papers on file in this action, the accompanying exhibits, and any oral argument the Court may wish
15 to entertain.

16
17 SIMONS HALL JOHNSTON PC

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19 
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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 12th day of April, 2021 at the hour of 9:00 a.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: April 6, 2021.

Any Reply Briefs will be due: April 9, 2021.

DATED this 24th day of March, 2021.


DISTRICT COURT JUDGE

Submitted by:

SIMONS HALL JOHNSTON PC


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KENDRA JEPSEN (NSB #14065)

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Attorney for Proposed Plaintiff-Intervenors

**DECLARATION OF J. ROBERT SMITH
IN SUPPORT OF ORDER SHORTENING 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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1 9. Pursuant to NRS 92A.420, I caused to be delivered to AeroGrow prior to the vote on
2 the merger written prerequisite Notices of Intent to Demand Payment of Shares on behalf of a group
3 of stockholders, including Plaintiff-Intervenors. *See Exhibits A, B and C.* Several other Plaintiff-
4 Intervenors submitted their own Notices of Intent to Demand Payment of Shares. *See Exhibit D.*

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

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

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

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

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

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

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

1 communications from brokers).

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

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

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

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

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

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

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

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

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

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

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.

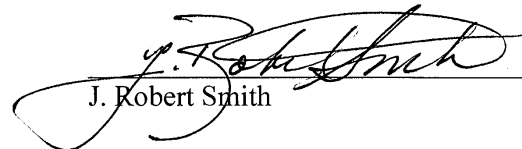
29. Attached as *Exhibit E* is a true and correct copies of communications I received from several Plaintiff-Intervenors and their brokers regarding the inability to obtain consent letters.

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

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

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

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

17 On February 23, 2021, the majority of AeroGrow shareholders approved the merger.
18 AeroGrow then set the effective date of the merger as February 26, 2021.¹

19 AeroGrow was then supposed to deliver Dissenter’s Notices to the stockholders of record,
20 including the nominees who are the stockholders of record for those beneficial stockholders who
21 delivered Notices of Intent to Demand Payment of Shares. *See* NRS 92A.430. The stockholders
22
23

24 ¹ Pursuant to NRS 92A.240 the effective date is the date and time of the filing of the articles of
25 merger with the Secretary of State, or a later date which had to be within 90 days of filing the articles
26 of incorporation. Notably, AeroGrow could have set the effective date much later, but chose to set
27 it shortly after the merger vote.
28

(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 business 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

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

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

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

10 The Defendants' failures and omissions include but are not limited to their: (1)
11 failure to provide the information required to be submitted with payment of the
12 merger consideration; (2) premature payment of the merger consideration before
13 delivering the Dissenter's Notice under NRS 92A.430 and before a Demand for
14 Payment under NRS 92A.440 was even due; and (3) failure to provide the
Dissenter's 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.

15 FAC, at ¶198.

16 Plaintiff's FAC went on to state that:

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

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

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

24 FAC, at ¶¶199-201.

25 On March 17, 2021, AeroGrow's counsel sent a letter to Plaintiff's counsel and to Plaintiff-
26 Intervenor's counsel stating that it was AeroGrow's position that letters of consent from the
27 stockholders of record, such as DTC/Cede, had to be submitted before the vote on the merger was
28 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 Intervenor from complying with NRS 92A.400(2) and they are at risk of losing their dissenter's rights without Court intervention. Plaintiff-Intervenor, 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-Intervenor to now comply with their obligations under the statute.

III. ARGUMENT

Plaintiff-Intervenor 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

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.*

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

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

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

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

26 ///

27 ///

28 ///

1 **B. INTERVENTION IS ALSO MANDATORY UNDER NRS 30.130**

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

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

6 Because declaratory relief is sought regarding the rights and obligations of the parties under NRS
7 92A, which will affect Plaintiff-Intervenors' rights and obligations under that statute, Plaintiff-
8 Intervenors must be allowed to intervene in this action.

9 **C. ALTERNATIVELY, PERMISSIVE INTERVENTION IS APPROPRIATE**

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

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

26 ///

27 ///

28 ///

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

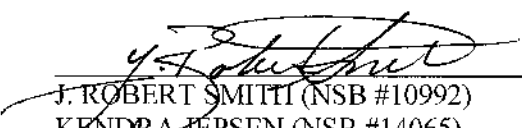
IV. CONCLUSION

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

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.

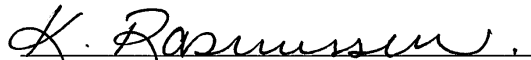

An Employee of Simons Hall Johnston PC

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
D.	Notices of Intent to Demand Payment of Shares	9
E.	Communications from Brokers	7
F.	Letter from AeroGrow's Counsel, dated March 17, 2021	5
G.	Letter to Plaintiff's Counsel, dated March 17, 2021	3

EXHIBIT A

EXHIBIT A



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 LLP Attorneys at Law

Phone (775) 327-3000 Fax (775) 786-6179 www.hollandhart.com

5441 Kietzke Lane Second Floor Reno, Nevada 89511

Aspen Billings Boise Boulder Carson City Cheyenne Colorado Springs Denver Denver Tech Center Jackson Hole Las Vegas Reno Salt Lake City Santa Fe Washington, D.C.

PA00293



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 Charitable 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

February 18, 2021

Page 3



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,

A handwritten signature in blue ink, appearing to read "J. Robert Smith".

J. Robert Smith
Of Holland & Hart LLP

Encls.
JRS/cr

16198746_v1

PA00295

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.

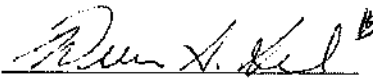
Name: William A. Almond III
2000 Fir Street
Glenview, IL 60025
almondwa@gmail.com

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

PA00296

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

PA00297

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

PA00298

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

PA00299

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.

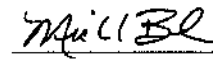
Name: Michal Boyd

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

PA00300

February 17, 2021

Via UPS Overnight Delivery Via Hand Delivery

AeroGrow International, Inc. AeroGrow International, Inc.
5405 Spine Road c/o United Registered Agents, Inc.
Boulder, CO 80301 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 Carroll Decker

16205358_v1

February 17, 2021

Via UPS Overnight Delivery Via Hand Delivery

AeroGrow International, Inc. AeroGrow International, Inc.
5405 Spine Road c/o United Registered Agents, Inc.
Boulder, CO 80301 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

16205351_v1

1

PA00302

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.

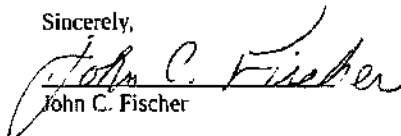
Name: John C. Fischer

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

PA00303

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

PA00304

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.

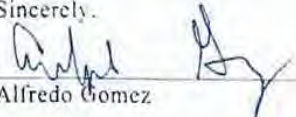
Name: Alfredo Gomez
FMT CO CUST IRA Rollover, FEO Alfredo Gomez

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

in184569.x1

PA00305

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

PA00306

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.

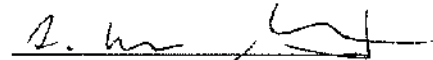
Name: L. Wayne & Patricia Greenberg, JTWROS

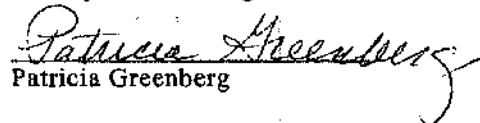
Address: c/o J. Robert Smith
Simons Hall & Johnston
6490 S. McCarran Blvd., Suite F-46
Reno, Nevada 89509
rsmith@shjnevada.com
(775) 785-0088

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

PA00307

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

16177954_v1

PA00308

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 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

PA00309

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

PA00310

February 18, 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), 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

February 18, 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), 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

16187077_v1

PA00312

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 VI

PA00313

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

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: 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

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:

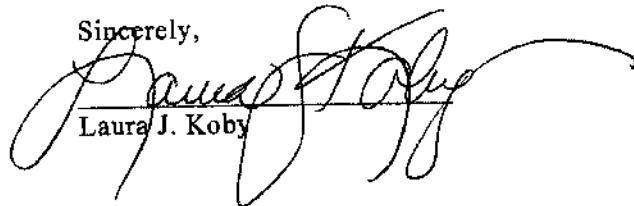
Pursuant to NRS 92A.420(1)(a), I hereby give written notice of my intent to exercise dissenter's rights and to demand payment for shares if the proposed merger transaction is approved at the above-referenced Special Meeting of the Shareholders. I am the beneficial owner of 1,000 shares.

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

PA00316

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), 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

PA00317

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

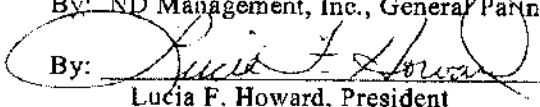
Shares Owned: 18,650

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

PA00318

Accepted and Approved:

A handwritten signature in cursive script, appearing to read "Lucia F. Howard", is written over a horizontal line.

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

PA00320

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:



(Print Name)

Joshua W. Fishman
Officer

The Northern Trust Company of Delaware

16180228_v1

PA00321

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.

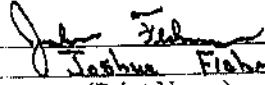
Stockholder: U D E F Peierls for E J Peierls
Address: c/o J. Robert Smith
Simons Hall & Johnston
6490 S. McCarran Blvd., Suite F-46
Reno, Nevada 89509
rsmith@shjnevada.com
(775) 785-0088

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: 
(Print Name)

Joshua W. Fishman
Officer

The Northern Trust Company of Delaware

16180191_v1

PA00322

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

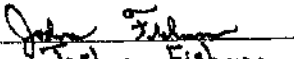
Shares Owned: 4,250

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:



(Print Name)

Joshua W. Fishman
Officer

The Northern Trust Company of Delaware

16180346_v1

PA00323

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.

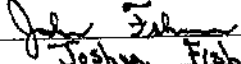
Stockholder: UD Ethel F. Peierls Charitable Lead Trust
Address: c/o J. Robert Smith
Simons Hall & Johnston
6490 S. McCarran Blvd., Suite F-46
Reno, Nevada 89509
rsmith@shjnevada.com
(775) 785-0088

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 W. Fishman
(Print Name)

Joshua W. Fishman
Officer

The Northern Trust Company of Delaware

16180259_v1

PA00324

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

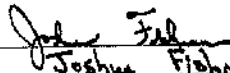
Address: c/o J. Robert Smith
Simons Hall & Johnston
6490 S. McCarran Blvd., Suite F-46
Reno, Nevada 89509
rsmith@shjnevada.com
(775) 785-0088

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 W. Fishman
(Print Name)

Joshua W. Fishman
Officer

The Northern Trust Company of Delaware

16180201_v1

PA00325

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 UD J N Peierls
for E J Peierls

By: 

(Print Name)

Joshua W. Fishman
Officer

The Northern Trust Company of Delaware

16180217_v1

PA00326

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

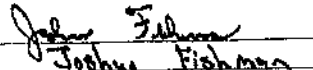
Shares Owned: 5,500

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:


(Print Name)

Joshua W. Fishman
Officer

The Northern Trust Company of Delaware

16180377_v1

PA00327

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(f)(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@shjneveda.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 W. Fishman
Joshua W. Fishman
(Print Name)

16180363_v1

Joshua W. Fishman
Officer
The Northern Trust Company of Delaware

PA00328

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:


(Print Name)

Joshua W. Fishman
Officer

The Northern Trust Company of Delaware

16180295_v1

PA00329

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

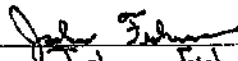
Shares Owned: 8,000

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 W. Fishman
(Print Name)

16180282_v1

Joshua W. Fishman
Officer
The Northern Trust Company of Delaware

PA00330



NORTHERN TRUST

The Northern Trust Company of Delaware
1319 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


Rebecca S. Beste, Senior Vice President
The Northern Trust Company of Delaware


Jillian K. Williams, Senior Vice President
The Northern Trust Company of Delaware


Alexis L. Borrelli, Vice President
The Northern Trust Company of Delaware



David J. Henninger, Vice President
The Northern Trust Company of Delaware


Joshua W. Fishman, Officer
The Northern Trust Company of Delaware


Elaine Walters, Officer
The Northern Trust Company of Delaware


Hope Lemon, Officer
The Northern Trust Company of Delaware


Gabrielle Wright, Officer
The Northern Trust Company of Delaware


Bobbi Lynn Kent, Senior Vice President
The Northern Trust Company of Delaware


Gregory J. Wood, Senior Vice President
The Northern Trust Company of Delaware

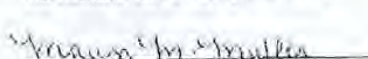

Natalie J. Wilson, Senior Vice President
The Northern Trust Company of Delaware


John J. Sullivan, Vice President
The Northern Trust Company of Delaware


Mikal L. Payne, Vice President
The Northern Trust Company of Delaware


Jerome S. Heisey, Officer
The Northern Trust Company of Delaware


Ronald K. Ronch, Officer
The Northern Trust Company of Delaware


Marisa M. Miller, 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 89309
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

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

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

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:

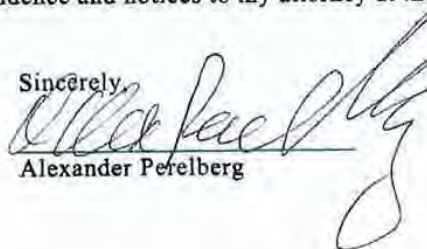
Pursuant to NRS 92A.420(1)(a), I hereby give written notice of my intent to exercise dissenter's rights and to demand payment for shares if the proposed merger transaction is approved at the above-referenced Special Meeting of the Shareholders.

Name: 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

PA00335

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

PA00336

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:

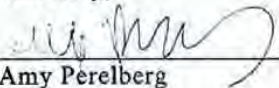
Pursuant to NRS 92A.420(1)(a), I hereby give written notice of my intent to exercise dissenter's rights and to demand payment for shares if the proposed merger transaction is approved at the above-referenced Special Meeting of the Shareholders.

Name: 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

PA00337

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:

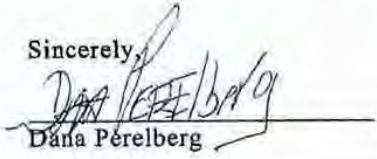
Pursuant to NRS 92A.420(1)(a), I hereby give written notice of my intent to exercise dissenter's rights and to demand payment for shares if the proposed merger transaction is approved at the above-referenced Special Meeting of the Shareholders.

Name: 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

PA00338

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: 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,

GARY Perelberg
Gary Perelberg

16171804_v1

PA00339

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.

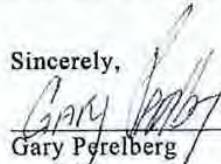
Name: Gary Perelberg

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: 60,436

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

Sincerely,



Gary Perelberg

16171804_v1

PA00340

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:

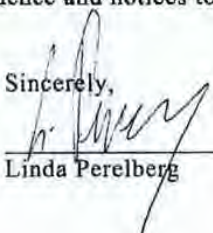
Pursuant to NRS 92A.420(1)(a), I hereby give written notice of my intent to exercise dissenter's rights and to demand payment for shares if the proposed merger transaction is approved at the above-referenced Special Meeting of the Shareholders.

Name: Linda 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: 15,000

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

Sincerely,



Linda Perelberg

16171814_v1

PA00341

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 80501

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), The Richard Alan Rudy Revocable Living 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: The Richard Alan Rudy Revocable Living Trust
Address: c/o J. Robert Smith
Simons Hall & Johnston
6490 S. McCarran Blvd., Suite F-46
Reno, Nevada 89509
rsmith@shynevada.com
(775) 785-0088

Shares Owned: 7,000

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

Sincerely,

The Richard Alan Rudy Revocable Living Trust

R. Alan Rudy
Richard Alan Rudy, Trustee

1447994.v1

PA00342

February 10, 2021

UPS overnight Delivery
~~Via First Class U.S. Mail Certified~~
~~U.S. Mail, Return Receipt~~

AeroGrow International, Inc.
3403 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.

Name:

R. Alan Rudy
Israel Rudy, Trustee FBO R. Alan Rudy

Address:

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

Shares Owned: 13,000

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

Sincerely,

Israel Rudy is deceased
10/1995
pr

R. Alan Rudy, Trustee
FBO R. Alan Rudy

R. Alan Rudy
Israel Rudy, Trustee FBO R. Alan Rudy
R. Alan Rudy
R. Alan Rudy, Beneficiary

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 45,197 shares.

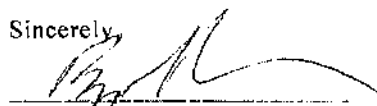
Name: Bryan Robson

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: 45,197

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

Sincerely,


Bryan Robson

February 13, 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.

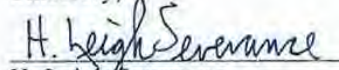
Name: H. Leigh Severance

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: 35,515

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

Sincerely,


H. Leigh Severance

February 13, 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.

Name: Leigh and Sharon Severance, JT

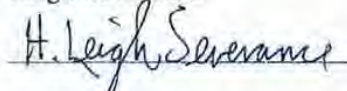
Address: c/o J. Robert Smith
Simons Hall & Johnston
6490 S. McCarran Blvd., Suite F-46
Reno, Nevada 89509
rsmith@shjnevada.com
(775) 785-0088

Shares Owned: 14,289

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

Sincerely,

Leigh Severance



Sharon Severance



16187005_v1

PA00346

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:

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 7,500 shares.

Name: IRA FBO Wayne Sicz

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: 7,500

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

Sincerely,


Wayne Sicz

16209650_v1

PA00347

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:

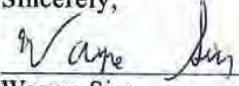
Pursuant to NRS 92A.420(1)(a), I hereby give written notice of my intent to exercise dissenter's rights and to demand payment for shares if the proposed merger transaction is approved at the above-referenced Special Meeting of the Shareholders. I am the beneficial owner of 1,000 shares.

Name: ROTH IRA FBO Wayne Sicz ^{Allen}
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,


Wayne Sicz

16209673_v1

PA00348

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: AKA(T. K. Smith) THOMAS K. SMITH

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,

Thomas K. Smith
AKA(T. K. Smith)

16171825_v1

PA00349

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), Thunderfunding, LLC 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.

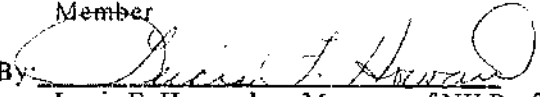
Name: Thunderfunding, LLC
Address: c/o J. Robert Smith
Simons Hall & Johnston
6490 S. McCarran Blvd., Suite F-46
Reno, Nevada 89509
rsmith@shjnevada.com
(775) 785-0088

Shares Owned: 83,334

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

Thunderfunding, LLC, an Arizona Limited Liability Company

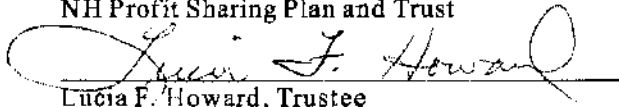
By: NH Profit Investments II, LLC, its Managing Member

By: 
Lucia F. Howard, as Manager of NH Profit Investments II, LLC

Accepted and Approved:

PA00350

NH Profit Sharing Plan and Trust


Lucia F. Howard, Trustee

16171900_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: Suraj ~~Vasanth~~ Vasanth
Address: c/o J. Robert Smith
Simons Hall & Johnston
6490 S. McCarran Blvd., Suite F-46
Reno, Nevada 89509
rsmith@shjneveda.com
(775) 785-0088

Shares Owned: 33,000

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

Sincerely,


Suraj ~~Vasanth~~ Vasanth

16171855_v1

PA00352

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.

Stockholder's Name: Jack J. Walker

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: 252,871

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

Sincerely,



Jack J. Walker

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.

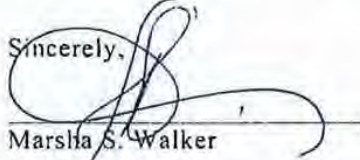
Dear Board of Directors:

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

Shares Owned: 50,031

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

Sincerely,

Marsha S. Walker

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 45,598 shares.

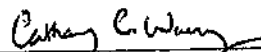
Name: Cathay C. Wang

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: 45,598

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

Sincerely,


Cathay C. Wang

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 65,204 shares.


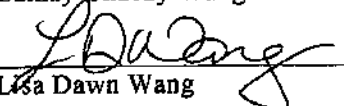
Name: Cathay Chachy Wang & Lisa Dawn Wang

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: 65,204

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

Sincerely,


Cathay Chachy Wang

Lisa Dawn Wang

16178156_v1

PA00356

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 35,001 shares.

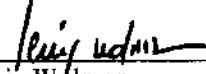
Name: Lewis & Eletise Wolman

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

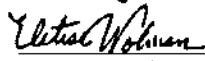
Shares Owned: 35,001

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

Sincerely,



Lewis Wolman



Eletise Wolman

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.

Name: Lewis & Eletise Wolman, JT

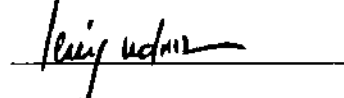
Address: c/o J. Robert Smith
Simons Hall & Johnston
6490 S. McCarran Blvd., Suite F-46
Reno, Nevada 89509
rsmith@shjnevada.com
(775) 785-0088

Shares Owned: 45,000

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

Sincerely,

Lewis Wolman



Eletise Wolman



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), The Natalie Wolman Living Trust, dated December 8, 2010 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. The Trust is the beneficial owners of 17,500 shares.


Name: The Natalie Wolman Living Trust, dated December 8, 2010

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: 17,500

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

Sincerely,



Natalie Wolman, Trustee



David W. Fulker, Trustee

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), The Natalie Wolman Living Trust, dated December 8, 2010 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. The Trust is the beneficial owners of 8,300 shares.

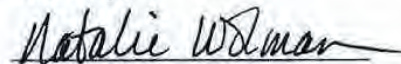
Name: The Natalie Wolman Living Trust, dated December 8, 2010

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: 8,300

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

Sincerely,



Natalie Wolman, Trustee



David W. Fulker, Trustee

16199078_v1

PA00360

February 13, 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 14,000 shares.

Name: Alan Budd Zuckerman
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: 14,000

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

Sincerely,


Alan Budd Zuckerman

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 25,000 shares.

Name: Alan Budd Zuckerman

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: 25,000

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

Sincerely,


Alan Budd Zuckerman

16178181_v1

PA00362

EXHIBIT B

EXHIBIT B



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

February 19, 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. Fred M. Adamczyk
2. William Duncan
3. Kevin Johnson

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

Holland & Hart LLP Attorneys at Law

Phone (775) 327-3000 Fax (775) 786-6179 www.hollandhart.com

5441 Kietzke Lane, Second Floor, Reno, Nevada 89511

Aspen Billings Boise Boulder Carson City Cheyenne Colorado Springs Denver Denver Tech Center Jackson Hole Las Vegas Reno Salt Lake City Santa Fe Washington, D.C.

PA00364



If you have any questions, please let me know.

Sincerely,

A handwritten signature in blue ink, appearing to read "J. Robert Smith", written over the printed name.

J. Robert Smith
Of Holland & Hart LLP

Encls.
JRS/cr

16216952_v1

February 19, 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:

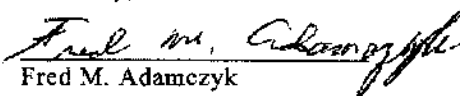
Pursuant to NRS 92A.420(1)(a), I hereby give written notice of my intent to exercise dissenter's rights and to demand payment for shares if the proposed merger transaction is approved at the above-referenced Special Meeting of the Shareholders.

Name: Fred M. Adamczyk
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: 9,000

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

Sincerely,


Fred M. Adamczyk

16216177_v1

PA00366

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:

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.

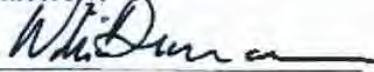
Name: William Duncan

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: 9,000

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

Sincerely,


William Duncan

February 19, 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 15,447 shares.

Name: Kevin Johnson
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: 15,447

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

Sincerely,

Kevin Johnson

Kevin Johnson

16216119_v1

PA00368

February 19, 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 3,000 shares.

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

Shares Owned: 3,000

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

Sincerely,

Kevin Johnson

Kevin Johnson

16216123_v1

PA00369

EXHIBIT C

EXHIBIT C



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

February 22, 2021

Via Hand 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. Albanese, Thomas Coleton
2. The Deutsch Family Trust TRUA
3. Carole L. McLaughlin IRA Rollover FBO Carole L. McLaughlin
4. Really Cool Group
5. The Carole W. Smith Revocable Trust TRUA
6. Weissenborn, Darcy
7. The Margaret S. Weissenborn Revocable Trust TRUA
8. Stanton F. Weissenborn IRA FBO Stanton F. Weissenborn
9. The Stanton F. Weissenborn Revocable Trust dated October 2, 2010
10. The Stanton F. Weissenborn Irrevocable Trust

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:

Holland & Hart LLP Attorneys at Law

Phone (775) 327-3000 Fax (775) 786-6179 www.hollandhart.com

5441 Kietzke Lane Second Floor Reno, Nevada 89511

Aspen Billings Boise Boulder Carson City Cheyenne Colorado Springs Denver Denver Tech Center Jackson Hole Las Vegas Reno Salt Lake City Santa Fe Washington, D.C.

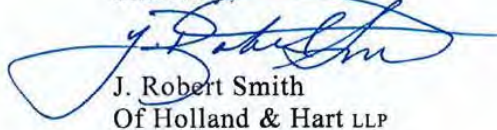
PA00371



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

16225100_v1

February 19, 2021

Hand Delivery
~~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.

Stockholder: Thomas Coleton Albanese
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,



Thomas Coleton Albanese

16216674_v1

PA00373

February 19, 2021

Hand Delivery

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), The Deutsch Family Trust TRUA 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. The Trust is the beneficial owner of 1,000 shares.

Stockholder: The Deutsch Family Trust TRUA

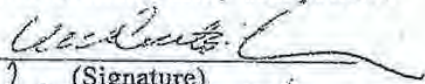
Address: c/o J. Robert Smith
Simons Hall & Johnston
6490 S. McCarran Blvd., Suite F-46
Reno, Nevada 89509
rsmith@shjneveda.com
(775) 785-0088

Shares Owned: 1,000

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

Sincerely,

The Deutsch Family Trust TRUA


(Signature)
Walter H. Deutsch, Trustee
(Print Name)

16216518_v1

PA00374

February 19, 2021

Via Hand Delivery

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

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.

Stockholder: Carole L. McLaughlin MD
7537 York Drive
Saint Louis, Missouri 63105

Shares Owned: 7,880

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

Sincerely,

Carole L. McLaughlin MD
(Signature)

Carole L McLaughlin
(Print Name)

IRA Rollover FBO Carole L McLaughlin

16216076_v1

PA00375

February 19, 2021

Via Hand Delivery

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

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.

Stockholder:

Joseph E. Peter

Shares Owned:

1000

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

Sincerely,

(Signature)

Joseph E. Peter
(Print Name)

16216876_v1

2221 Harcourt Drive
Cleveland Heights
Ohio 44106
216 702 5318

PA00376

February 22nd, 2021

HAND 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:

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

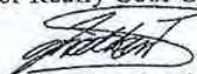
exercise of rights

Stockholder's Name: REALLY COOL GROUP *c/o J. Robert Smith*
Simons Hall & Johnston
6490 S. McCarran Blvd., Ste F-46
Reno, NV 89509
(775) 785-0088

Number of Shares Owned: 530

Sincerely,

For Really Cool Group


Jonathan Segal -Director

February 19, 2021

Hand Delivery
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), The Carol W. Smith Revocable Trust TRUA 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. The Trust is the beneficial owner of 2,500 shares.

Stockholder: The Carol W. Smith Revocable Trust TRUA


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 the Trust's attorney at the address set forth above.

Sincerely,

The Carol W. Smith Revocable Trust TRUA


Carol W. Smith, Trustee

16216477_y1

PA00378

February 19, 2021

~~Hand Delivery~~
~~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.

Stockholder: Darcy J. Weissenborn
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,


Darcy J. Weissenborn

February 19, 2021

~~Hand Delivery~~
~~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.

Stockholder: Darcy J. Weissenborn

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,


Darcy J. Weissenborn

February 19, 2021

Hand Delivery
~~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), The Margaret S. Weissenborn Revocable Trust TRUA 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. The Trust is the beneficial owner of 2,500 shares.

Stockholder: The Margaret S. Weissenborn Revocable Trust TRUA

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 the Trust's attorney at the address set forth above.

Sincerely,

The Margaret S. Weissenborn Revocable Trust
TRUA

(Signature)

Simon F. Weissenborn
(Print Name)

16216488_v1

PA00381

February 19, 2021

~~Hand Delivery~~
~~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), Stanton F. Weissenborn IRA FBO Stanton F. Weissenborn hereby gives 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.

Stockholder: Stanton F. Weissenborn IRA FBO Stanton F. Weissenborn

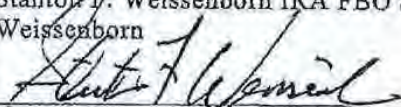
Address: c/o J. Robert Smith
Simons Hall & Johnston
6490 S. McCarran Blvd., Suite F-46
Reno, Nevada 89509
rsmith@shjnevada.com
(775) 785-0088

Shares Owned: 2,500

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

Sincerely,

Stanton F. Weissenborn IRA FBO Stanton F. Weissenborn


Stanton F. Weissenborn

16216555_v1

PA00382

February 19, 2021

Hand Delivery
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), The Stanton F. Weissenborn Revocable Trust dated October 2, 2010 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. The Trust is the beneficial owner of 10,000 shares.

Stockholder: The Stanton F. Weissenborn Revocable Trust dated October 2, 2010

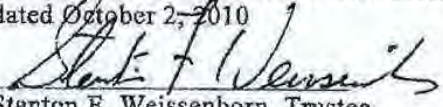
Address: c/o J. Robert Smith
Simons Hall & Johnston
6490 S. McCarran Blvd., Suite F-46
Reno, Nevada 89509
rsmith@shjnevada.com
(775) 785-0088

Shares Owned: 10,000

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

Sincerely,

The Stanton F. Weissenborn Revocable Trust
dated October 2, 2010


Stanton F. Weissenborn, Trustee

16216448_v1

PA00383

February 19, 2021

~~Via UPS Overnight Delivery~~
Hand 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), The Stanton F. Weissenborn Irrevocable 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. The Trust is the beneficial owner of 1,000 shares.

Stockholder: The Stanton F. Weissenborn Irrevocable Trust

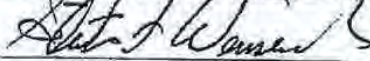
Address: c/o J. Robert Smith
Simons Hall & Johnston
6490 S. McCarran Blvd., Suite F-46
Reno, Nevada 89509
rsmith@shjnevada.com
(775) 785-0088

Shares Owned: 1,000

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

Sincerely,

The Stanton F. Weissenborn Irrevocable Trust



(Signature)

Stanton F. Weissenborn

(Print Name)

EXHIBIT D

EXHIBIT D

February 17, 2021

Via USPS Certified Overnight Delivery

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

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 exercise these rights on behalf of the **Patricia D Rickman Irrevocable Trust**, beneficial owner of 10,000 shares of AeroGrow International, Inc. held by Fidelity Brokerage Services.

Name: Patricia D Rickman Irrevocable Trust

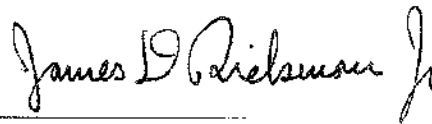
Address: James D Rickman Jr, Trustee
5209 Medallion DR E
Westerville OH 43082

614 205-2730 Mobile
Jamesrickmanjr@gmail.com

Shares Owned: 10,000

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

Sincerely,



James D Rickman Jr
Trustee of the Patricia D Rickman Irrevocable Trust

PA00386

February 17, 2021

Via USPS Certified Overnight Delivery

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

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

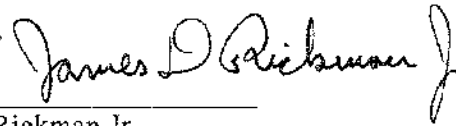
Dear Board of Directors:

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 35,000 shares of AeroGrow International, Inc. held for me by Fidelity Brokerage Services.

Name: James D Rickman JR
Address: 5209 Medallion DR E
Westerville OH 43082
614 205-2730 Mobile
jamesrickmanjr@gmail.com
Shares Owned: 35,000

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

Sincerely,



James D Rickman Jr

PA00387

February 17, 2021

Via USPS Certified Overnight Delivery

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

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 exercise these rights on behalf of the **Marlon Dean Alessandra Trust**, beneficial owner of 5,000 shares of AeroGrow International, Inc. held by Fidelity Brokerage Services.

Name: Marlon Dean Alessandra Trust

Address: James D Rickman Jr, Trustee
5209 Medallion DR E
Westerville OH 43082

614 205-2730 Mobile
jamesrickmanjr@gmail.com

Shares Owned: 5,000

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

Sincerely,



James D Rickman Jr
Trustee of the Marlon Dean Alessandra Trust

PA00388

February 17, 2021

Via USPS Certified Overnight Delivery

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

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 exercise these rights on behalf of the **Scott Joseph Rickman Irrevocable Trust**, beneficial owner of 5,000 shares of AeroGrow International, Inc. held by Fidelity Brokerage Services.

Name: **Scott Joseph Rickman Irrevocable Trust**

Address: James D Rickman Jr, Trustee
5209 Medallion DR E
Westerville OH 43082

614 205-2730 Mobile
jamesrickmanjr@gmail.com

Shares Owned: 5,000

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

Sincerely,



James D Rickman Jr
Trustee of the Scott Joseph Rickman Irrevocable Trust

PA00389

February 17, 2021

Via USPS Certified Overnight Delivery

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

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 exercise these rights on behalf of the **James Dean Rickman JR Irrevocable Trust**, beneficial owner of 35,000 shares of AeroGrow International, Inc. held by Fidelity Brokerage Services.

Name: James Dean Rickman JR Irrevocable Trust

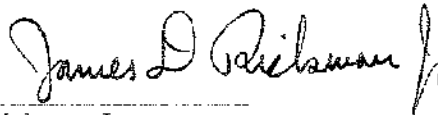
Address: James D Rickman Jr, Trustee
5209 Medallion DR E
Westerville OH 43082

614 205-2730 Mobile
jamesrickmanjr@gmail.com

Shares Owned: 35,000

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

Sincerely,



James D Rickman Jr
Trustee of the James Dean Rickman JR Irrevocable Trust

PA00390

February 17, 2021

Via USPS Certified Overnight Delivery

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

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 exercise these rights on behalf of the **Andrew Reese Rickman Trust**, beneficial owner of 5,000 shares of AeroGrow International, Inc. held by Fidelity Brokerage Services.

Name: **Andrew Reese Rickman Trust**

Address: James D Rickman Jr, Trustee
5209 Medallion DR E
Westerville OH 43082

614 205-2730 Mobile
jamesrickmanjr@gmail.com

Shares Owned: 5,000

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

Sincerely,



James D Rickman Jr
Trustee of the Andrew Reese Rickman Trust

PA00391



March 17, 2021

Dear James Rickman:

The following is in response to your request for proof of delivery on your item with the tracking number:
EJ62 7403 150U S.

Item Details

Status:	Delivered
Status Date / Time:	February 19, 2021, 11:18 am
Location:	BOULDER, CO 80301
Postal Product:	Priority Mail Express 1-Day®
Extra Services:	Insured PO to Addressee Up to \$100 insurance included
Actual Recipient Name:	WAIVED

Note: Actual Recipient Name may vary if the intended recipient is not available at the time of delivery.

Shipment Details

Weight:	4.0oz
----------------	-------

Recipient Signature

The recipient's signature is not available because the waiver of signature that you authorized was exercised at the time of delivery.

Thank you for selecting the United States Postal Service® for your mailing needs. If you require additional assistance, please contact your local Post Office™ or a Postal representative at 1-800-222-1811.

Sincerely,
United States Postal Service®
475 L'Enfant Plaza SW
Washington, D.C. 20260-0004

PA00392



WESTERVILLE
617 MCCORKLE BLVD
WESTERVILLE, OH 43082-9640
(800)275-8777

February 17, 2021

02/17/2021 06:01 PM

Product	Qty	Unit Price	Price
---------	-----	------------	-------

PM Express 1-Day	1		\$26.35
------------------	---	--	---------

Flat Rate Env			
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Boulder, CO 80301

Flat Rate

Signature Requested

Scheduled Delivery Date

Thu 02/18/2021 12:00 PM

Money Back Guarantee

Tracking #:

EJ6271031505

Insurance

Up to \$100.00 included

Total			\$26.35
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Grand Total:			\$26.35
--------------	--	--	---------

Credit Card Remitted			\$26.35
----------------------	--	--	---------

Card Name: VISA

Account #: XXXXXXXXXX3149

Approval #: 035606

Transaction #: 758

AID: A0000000031010

AL: VISA CREDIT

PIN: Not Required

Chip

USPS is experiencing unprecedented volume increases and limited employee availability due to the impacts of COVID-19. We appreciate your patience.

In a hurry? Self-service kiosks offer quick and easy check-out. Any Retail Associate can show you how.

Save this receipt as evidence of insurance. For information on filing an insurance claim go to <https://www.usps.com/help/claims.htm>

Text your tracking number to 28777 (2USPS) to get the latest status. Standard Message and Data rates may apply. You may also visit www.usps.com USPS Tracking or call 1-800-222-1811.

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All sales final on stamps and postage.
Refunds for guaranteed services only.
Thank you for your business.

Tell us about your experience.
Go to <https://postalexperience.com/Pos>
or scan this code with your mobile device.



ght Delivery

c.

at to Demand Payment)
ig Date: February 23, 2

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e above-referenced Spec
elf of the Andrew Reese
v International, Inc. held

Andrew Reese Rick

James D Rickman Jr
5209 Medallion DR
Westerville OH 430

614 205-2730 Mobil

t: 5,000

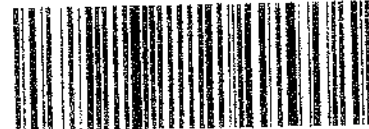
e correspondence and notices to mc at the address set forth

Sincerely,

James D Rickman Jr

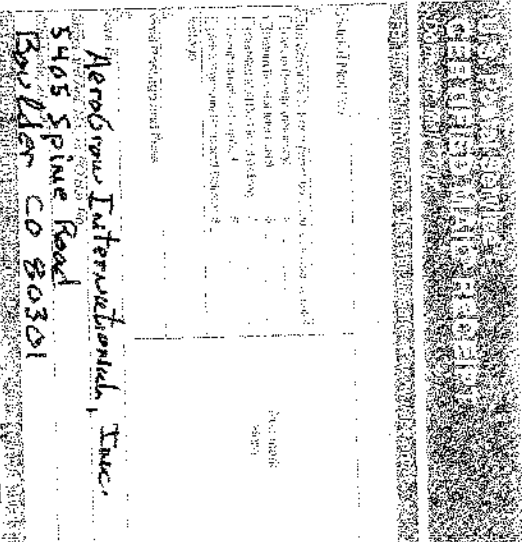
Trustee of the Andrew Reese Rickman Trust

7020 0090 0002 2942 2498



7020 0090 0002 2942 2498

7020 0090 0002 2942 2498



PA00393

Newcastle, Maine 04553-0295
February 18, 2021

Mr. Grey Gibbs
Senior Vice President of Finance and Administration
AeroGrow International, Inc.
5405 Spine Road
Boulder, Colorado 80301

Dear Mr. Gibbs:

I have unsuccessfully attempted to contact you by telephone and followed up with e-mail requests on February 11 and 17 to be considered a dissident to the merger proposal described in materials for the virtual special meeting of AeroGrow International stockholders to be held on February 23, 2021. Since It is unclear from that exhaustive document that e-mail transmission qualifies as "written expression," I forward this letter to overcome any such technicality. Please provide appropriate forms for submission to the court of jurisdiction. I understand that they are to be forwarded within 10 days after action to be taken at the referenced stockholders meeting. My e-mail address is betke@tidewater.net.

I am a Chartered Financial Analyst, a former professional securities researcher, and an institutional and corporate portfolio manager who personally owns 10,000 shares acquired prior to January 8, 2021 and held in my account with Janney Montgomery Scott. That purchase was prompted by a television advertisement of your intriguing household product and subsequent investment investigation back in December 2019. I nonetheless was compelled to vote against the contemplated action (electronically through Janney) and am sympathetic with the position advanced by other dissidents as described on page 8 of the meeting documentation.

It is particularly disturbing that anyone acquiring shares subsequent to the January 8 record date and before receipt of detailed materials mailed on January 22 is disadvantaged by lack of information, including exclusion of pertinent unaudited December-quarter data generally known to management by the time of issuance. Moreover, everyone purchasing shares since January 8 appears to have been deliberately and unfairly excluded from participation with the "dissenter" class.

Yours truly,

George C. Betke, Jr.

PA00394

EXHIBIT E

EXHIBIT E

Robert Smith

From: David Conner <David.Conner@lplfinancial.com>
Sent: Thursday, March 18, 2021 1:33 PM
To: Robert Smith
Cc: Kim Sicz; Christine Stawinsky
Subject: RE: AeroGrow Dissenters Rights Cusip 00768M202

Hello Wayne/Robert,

DTC will not sign or confirm anything that involves the words dissenters rights or Wayne Sicz.

I just submitted a form to have DTC confirm 1,000 and 7,500 shares and then we will go from there.

Thank you for your partnership,

David Conner
LPL Financial
Associate Analyst | Service, Trading & Operations
Corporate Actions

Toll-free: 800-877-7210 | ext 186564
Direct: 858-450-9606 | ext 186564
Email: David.Conner@LPLFinancial.com
One team on one mission

We take care of our advisors so they can take care of their clients.

From: David Conner
Sent: Tuesday, March 16, 2021 1:23 PM
To: 'rsmith@shjneveda.com' <rsmith@shjneveda.com>
Cc: 'Kim Sicz' <kim.sicz@gmail.com>; Christine Stawinsky <Christine.Stawinsky@lplfinancial.com>
Subject: FW: AeroGrow Dissenters Rights Cusip 00768M202

Hello – please see what DTC said. Rose at DTC has been extremely helpful in responding to email today. A lot of the fixes are super easy however the line in blue???

Not surprised by the cannot state Consent to Dissent and removing Wayne's name seems counterproductive overall for your benefit. Please advise how you would like me to go forward.

Also if you have any success stories of client receiving what's needed AFTER 2/23/21 that would also help us.

Thank you for your partnership,

David Conner
LPL Financial
Associate Analyst | Service, Trading & Operations
Corporate Actions

Toll-free: 800-877-7210 | ext 186564
Direct: 858-450-9606 | ext 186564
Email: David.Conner@LPLFinancial.com

RE: Aeroflow Disenters Rights Culp 0076AM202

To: David Correy, Demand and Disent/DTC

As per the documentation we have for this merger all disents were to be received prior to the meeting which took place on 2/23/21. As DTC was the registered holder dissent would have needed to be processed through us. At this time with all shares having been paid out there is nothing left to be dissented on and therefore no action to be take on our part.

Alfred M. Vaughn Jr.
Operations Generalist
Mandatory Reorg Announcements
DTC/Tampa

Robert Smith

From: Alan Rudy <tillydad@gmail.com>
Sent: Monday, March 15, 2021 7:38 PM
To: COGDELLBRADSHAW.TEAM
Subject: Re: AeroGrow

I never accepted the offer, nor did I authorize you to accept on my behalf.

Sent from my iPad

> On Mar 15, 2021, at 1:58 PM, COGDELLBRADSHAW.TEAM <CogdellBradshaw.team@fmr.com> wrote:
>
> Mr. Rudy,
>
> I wanted to reach out in follow up regarding your email.
>
> I have been in contact with our reorganization team and was informed that unfortunately we cannot provide the letter on your behalf for the following reasons:
>
> 1. While Fidelity holds (held) the shares in your account, ultimately you or the trust was the owner of the shares. Fidelity was holding your shares in street name for benefit of you (the trust)
> 2. Dissenters Rights need to be exercised prior to the merger taking place
>
> Unfortunately we will not be able to sign the letter you prepared.
>
> Warmest Regards,
>
> Erica L Soares
> Sr. Relationship Manager
> Private Client Group
> Personal Investing
>
> Fidelity Investments
> 12532 Memorial Drive
> Houston, TX 77024
> 713-467-1222 x 53736
> Fax 713-468-3224
> Notice: All email sent to or from Fidelity Investments is subject to retention, monitoring, and/or review by Fidelity personnel.
> Please note that Fidelity is unable to accept orders left over voicemail or email regarding any account.
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> Brokerage services are provided through Fidelity Brokerage Services LLC, and investment advisory services are provided through Fidelity Personal and Workplace Advisors LLC., both Fidelity Investment companies.
> Fidelity Brokerage Services LLC, Member NYSE and SIPC 900 Salem Street, Smithfield, RI 02917.

Robert Smith

From: John Fischer <fischjc@gmail.com>
Sent: Monday, March 22, 2021 7:18 AM
To: Robert Smith; Jack Walker
Subject: Re: AeroGrow - Status Update

Dear Robert Smith,

Today I made my 5th call (all on recorded lines) to Vanguard requesting a consent letter from the record holder to pursue dissenter's rights.

My prior requests were denied by the Mutual Fund Trade Department, Investment Department, and Corporate Actions Department. Last Friday, according to a broker Ciccozzi, the Corporate Action Department stated that the consent letter could not be requested because the "merger is complete",

I also sent an email to Vanguard for the same request on 3/15 and no one has responded.

Today I spoke to Asa McLaurin and Earl Dixon requesting an email from Vanguard stating their reason in writing for not requesting the consent letter. Dixon reached out to Corporate Actions with my request to put the reason for denial in writing. Their response was "not able to accommodate my request."

Sincerely,
John Fischer

Robert Smith

From: Diana B <dianalbboyd@gmail.com>
Sent: Thursday, March 18, 2021 10:35 AM
To: Robert Smith; Diana Boyd
Subject: reply from Vanguard about consent letter for AERO

Response from Vanguard:

Dear Ms. Boyd:

Thank you for taking the time to contact us.

If you wanted to dissent from the merger, you would have had to do so PRIOR to the merger being approved.

At this point you are no longer able to dissent, and we are no longer able to provide a Letter on Consent.

Ultimately, you were mailed notification of a special meeting on January 28, 2021. The special meeting date was February 23, 2021, which is when the vote on the merger proposal was to occur. That notification also informed you of your right to dissent. You received the notification via email and actually voted against the merger. However, the proxy statement shows on page 6 of 219 that clients wishing to exercise their dissent must do so BEFORE the vote on the merger agreement proposal which is to take place at the Special Meeting. Thus, there is no option for you as your right to dissent must have been exercised before the Special Meeting on February 23, 2021.

To answer your questions:

1. The name of the entity that holds held your shares, – we custody shares at the Depository Trust Company Corporation (DTCC)
2. Whether the broker received any information from DTC about the merger I would be surprised if they did not – we received notification of a special meeting from the company, Aerogrow International, which was forwarded along to clients on 01/28/2021. This was sent to you via email informing you of a special meeting and the opportunity to vote on the merger.
3. Whether your broker has requested the consent letter; and – Page 6 that Special Meeting notification explained clients have the right to dissent on the merger but that dissent had to be done prior to the special meeting.

If you have additional questions, we can be reached at:

<https://support.vanguard.com/>

Sincerely,

Brian Cristall
Registered Representative
Vanguard Retail Investor Group

Robert Smith

From: Tanya Truscott <TTruscott@Cambiar.com>
Sent: Wednesday, March 17, 2021 2:17 PM
To: McNiese, Marques P; Robert Smith
Cc: Mike Barish
Subject: RE: AeroGrow Dissenters
Attachments: 9000 dissent letter.docx; 9002 dissent letter.docx

Thanks Marques – it sounds like there is a misunderstanding of what we are asking for.

Rob – could you explain the AeroGrow situation to Marques? He is our relationship manager at US Bank – where the shares were held for Mr. Barish.

Thanks

Tanya Truscott - Vice President, Settlements
Cambiar Investors, LLC www.cambiar.com

200 Columbine Street Suite 800, Denver, CO 80206
tel 303.302.9040 toll 888.673.9950 fax 303.302.9050

From: McNiese, Marques P <marques.mcnieste@usbank.com>
Sent: Wednesday, March 17, 2021 2:55 PM
To: Tanya Truscott <TTruscott@Cambiar.com>
Cc: Mike Barish <MBarish@Cambiar.com>
Subject: RE: AeroGrow Dissenters

Tanya –

This has been interesting. **At this point, DTC is unwilling to assist**, however there may be a small glimmer of hope. Do you happen to have evidence that written notice was sent AeroGrow with intent to demand payment before the vote on the merger agreement proposal? At this point, that may be the only think that will work for us. If this isn't the case and her still require a CEDE letter your legal counsel and DTC will have to work through the details.

The below is a response we received from DTC:

DTC cannot "facilitate dissenters action after the fact" as mentioned in the below chain.

Within the cash merger event announced on the CA Web, the comments state "Any stockholder who does not vote in favor of the Merger Agreement Proposal will have the right to dissent from the Merger and, in lieu of receiving the consideration prescribed under the Merger Agreement, obtain payment of the fair value of the stockholder's shares, but only if (1) the stockholder delivers to the Company, before the vote on the Merger Agreement

Proposal is taken at the Special Meeting written notice of the stockholder's intent to demand payment for the stockholder's shares if the Merger is effectuated..."

Since dissent requests had to be delivered to the company prior to the meeting date of 2/23/21, any requests submitted to DTC at this time cannot be facilitated since it is past the deadline and we have no shares remaining in our inventory. If a shareholder wishes to make a different type of shareholder demand, templates are available on our external site.

Sincerely,

Marques McNiese

Assistant Vice President | Relationship Manager | Investment Advisor Services
p. 513.632.4147 | f. 866.977.1024 | marques.mcnieste@usbank.com

U.S. Bank

U.S. Bank Tower

425 Walnut Street, Cincinnati, OH 45202|CN-OH-W5IT|www.usbank.com

EXHIBIT F

EXHIBIT F

March 17, 2021

Maximilien D. Fetaz
Attorney at Law
702.464.7083 tel
702.383.8135 fax
mfetaz@bhfs.com

VIA E-MAIL

J. Robert Smith, Esq.
Simons Hall Johnston
6490 S. McCarran Boulevard, Suite F-46
Reno, NV 89509
rsmith@shjnevada.com

Re: AeroGrow International, Inc. / Dissenter's Rights

Dear Mr. Smith:

My firm represents AeroGrow International, Inc. ("AeroGrow"). On March 11, 2021, AeroGrow received your letter dated March 4, 2021 (your "Letter"). We understand that you represent certain former stockholders of AeroGrow identified in your Letter and in connection with the Merger.¹

On March 5, 2021, in accordance with NRS 92A.430, AeroGrow mailed Dissenter's Notices to you, as counsel for certain former stockholders whom you represent. Certain other of the stockholders you represent did not receive a Dissenter's Notice because they did not comply with Nevada law in submitting their notices of intent to demand payment for their shares.

The following is a list of your clients, as numbered in your Letter, to whom AeroGrow sent Dissenter's Notices:

- 7. Boyd, Michal, Dr.
- 11. Duncan, William
- 18. Harding, Wayne
- 19. Harding, Wayne E. III
- 24. Kaye, Stephen
- 26. March Trade & Finance, Inc.
- 28. Nidax Limited Partnership
- 29. Orme, Tom

¹ All terms not defined herein have the meanings ascribed to them in AeroGrow's definitive proxy dated January 22, 2021.

22416486

bhfs.com

100 North City Parkway, Suite 1600
Las Vegas, NV 89106-4614
main 702.382.2101

Brownstein Hyatt Farber Schreck, LLP

30. Parmenter, Rebecca
31. The Peierls By-Pass Trust/ Jeff Peierls
32. U D E S Peierls for E F Peierls, et. al./ Northern Trust Company of Delaware, Trustee
33. U D E F Peierls for BE Peierls / Northern Trust Company of Delaware, Trustee
34. U D E F Peierls for E J Peierls / Northern Trust Company of Delaware, Trustee
35. UD Ethel F. Peierls Charitable Lead Trust/ Northern Trust Company of Delaware, Trustee
36. U D J N Peierls for B E Peierls / Northern Trust Company of Delaware, Trustee
37. U D J N Peierls for E J Peierls / Northern Trust Company of Delaware, Trustee
38. U W E S Peierls for BEP Art VI-Accum /Northern Trust Company of Delaware, Trustee
39. U W E S Peierls for EJP Art VI-Accum / Northern Trust Company of Delaware, Trustee
40. U W J N Peierls for B E Peierls / Northern Trust Company of Delaware, Trustee
41. U W J N Peierls for E J Peierls / Northern Trust Company of Delaware, Trustee
53. Richard Alan Rudy, Trustee FBO of R. Alan Rudy
56. Severance, H. Leigh
58. Severance, Leigh and Sharon JT
63. Thunderfunding, LLC
65. Walker, Jack J.
66. Walker, Marsha S.
75. Wolman, Lewis & Eletise
76. Wolman, Lewis & Eletise, JT
79. Zuckerman, Alan Budd

As you know, NRS 92A.400 imposes the following limitation on beneficial stockholders' right of dissent:

"2. A beneficial stockholder may assert dissenter's rights as to shares held on his or her behalf *only if* the beneficial stockholder:

- (a) Submits to the subject corporation the written consent of the stockholder of record to the dissent not later than the time the beneficial stockholder asserts dissenter's rights; and
- (b) Does so with respect to all shares of which he or she is the beneficial stockholder or over which he or she has power to direct the vote." (emphasis added).

The following beneficial stockholders, as numbered in your Letter, did not submit the statutorily required "written consent of the stockholder of record" with their purported notices of intent to demand payment for their shares:

1. Adamczyk, Fred M.
2. Albanese, Thomas C.
3. Almond, William A. III
4. Barish, Michael S. (174,000)
5. Barish, Michael S. (2,000)
6. Boyd, Diana
8. Decker, Anne Carrol
9. Decker, Thomas H.
10. The Deutsch Family Trust
12. Fischer, John C.
13. Gomez, Alfredo
14. Gomez, Alfredo FMT CO CUST IRA Rollover, FBO Alfredo Gomez
15. Greenberg, Lawrence
16. Greenberg, L. Wayne & Patricia, JT
17. Harding, Karen
20. Hoffstein, Daniel G.
21. Johnson, Kevin (15,447)
22. Johnson, Kevin (3,000)
23. Kaye, Candice
25. Koby, Laura J.
27. McLaughlin, Carole L., M.D.
42. Peierls, Brian E.
43. Peter, Joseph E.
44. Perelberg, Alexander (95,466)
45. Perelberg, Alexander (2,500)
46. Perelberg, Amy
47. Perelberg, Dana
48. Perelberg, Gary (17,417)
49. Perelberg, Gary (60,436)
50. Perelberg, Linda
51. The Really Cool Group
52. The Richard Alan Rudy Revocable Living Trust
54. Robson, Bryan
55. H.L. Severance, Inc. Profit Sharing Plan & Trust
57. H.L. Severance, Inc. Pension Plan & Trust
59. Sicz, Wayne IRA FBO Wayne Sicz
60. Sicz, Wayne ROTH IRA FBO Wayne Sicz
61. The Carol W. Smith Revocable Trust, TRUA
62. Smith, Thomas K.
64. Vasanth, Suraj
67. Wang, Cathay C.

68. Wang, Chathay Chachy and Wang, Lisa Dawn
69. Weissenborn, Darcy J. (1,000)
70. Weissenborn, Darcy J. (2,000)
71. The Margaret S. Weissenborn Revocable Trust TRUA
72. The Stanton F. Weissenborn IRA FBO Stanton F. Weissenborn
73. The Stanton F. Weissenborn Revocable Trust dated October 2, 2010
74. The Stanton F. Weissenborn Irrevocable Trust
77. The Natalie Wolman Living Trust, Dated 12/8/2010 / Natalie Wolman and David W. Fulker, Trustee
78. The Natalie Wolman Living Trust, Dated 12/8/2010 / Natalie Wolman and David W. Fulker, Trustee
80. Zuckerman, Alan Budd² (paid for shares held as beneficial owner only).

These above-listed beneficial stockholders (“Non-Compliant Stockholders”) failed to obtain and submit the “written consent of the stockholder of record to the dissent” before the vote on the Merger, and therefore failed to comply with NRS 92A.400 and 92A.420. As you know, NRS 92A.420 (a statutory provision cited in your correspondence accompanying the purported notices of intent to dissent) provides that “[a] stockholder who does not satisfy the requirements of subsection 1 or 2 and NRS 92A.400 *is not entitled to payment for his or her shares under this chapter* [NRS Chapter 92A].” See NRS 92A.420(3) (emphasis added). Accordingly, AeroGrow had (and has) no obligation to provide them (or you on their behalf) with a Dissenter’s Notice under NRS 92A.430.

These Non-Compliant Stockholders failed to comply with the clear, statutory prerequisites for demanding payment of fair value under NRS Chapter 92A and therefore AeroGrow properly paid them the Merger Consideration of \$3.00 per share. Your Letter erroneously asserts that the Non-Compliant Stockholders were “paid the \$3.00 per share that AeroGrow estimates to be the fair value of their shares.” But AeroGrow’s payment of the Merger Consideration to the Non-Compliant Stockholders was *not* a payment of “fair value” (as defined in NRS 92A.320) pursuant to NRS 92A.460 or otherwise. As you know, the Merger Consideration is distinct from the statutory “fair value” as defined in NRS 92A.320.

Simply put, those of your clients who complied with the requirements of Nevada law received a Dissenter’s Notice, and those of your clients who failed to do so received the Merger Consideration to which they were entitled.

² “Zuckerman, Alan Budd” is listed in your Letter twice (numbered as stockholder client 79 and 80). AeroGrow paid the Merger Consideration to Mr. Zuckerman for the shares he held beneficially for the reasons articulated herein. AeroGrow did not pay the Merger Consideration to Mr. Zuckerman for the 14,000 shares he held in his own name—*i.e.*, as stockholder of record—and as to those shares, AeroGrow sent him a Dissenter’s Notice.

J. Robert Smith, Esq.
March 17, 2021
Page 5

AeroGrow has complied with all applicable provisions of NRS Chapter 92A and will continue to do so. AeroGrow reserves all of its rights, defenses, and remedies under applicable law, including, without limitation, NRS 92A.500.

If necessary, I am happy to set up a time to discuss the above matters.

Sincerely,

Maximilien D. Fetaz, Esq.

CC via e-mail:

Marjorie P. Duffy, Esq.
Ashley F. Heintz, Esq.
Kirk B. Lenhard, Esq.
Travis F. Chance, Esq.

EXHIBIT G

EXHIBIT G

March 17, 2021

Maximilien D. Fétaz
Attorney at Law
702.464.7083 tel
702.383.8135 fax
mfetaz@bhfs.com

VIA E-MAIL

Terry A. Coffing, Esq.
Marquis Aurbach Coffing
10001 Park Run Drive
Las Vegas, NV 89145
tcoffing@maclaw.com

Re: Overbrook Capital LLC v. AeroGrow International, Inc., et al., Lead Case No. A-21-827665-B (Radoff v. Hagedorn, et al., Case No. A-21-829854-B)

Dear Terry:

My firm represents AeroGrow International, Inc. ("AeroGrow"), AGI Acquisition Sub, Inc., SMG Growing Media, Inc., The Scotts Miracle-Gro Company, Chris Hagedorn, Cory Miller, Patricia M. Ziegler, James Hagedorn, and Peter Supron in connection with the above captioned actions. I am writing concerning the First Amended Complaint filed on March 15, 2021 in *Radoff* and in response to your email of March 16, 2021.

I. AeroGrow Has Complied with NRS Chapter 92A

On behalf of Mr. Radoff, you sent a letter dated February 19, 2021 to the AeroGrow Board of Directors with the subject line, "Notice of Intent to Demand Payment for Shares Pursuant to NRS 92A.420; Special Meeting Dated February 23, 2021 at 10:00 a.m." ("February 19 Letter"). Your client did not provide any documentation to substantiate his stated ownership and, because your client does not appear on AeroGrow's record stockholder lists, it appears your client purported to assert dissenter's rights as a beneficial stockholder.

As you know, NRS 92A.400 imposes the following limitation on beneficial stockholders' right of dissent:

"2. A beneficial stockholder may assert dissenter's rights as to shares held on his or her behalf *only if* the beneficial stockholder:

(a) Submits to the subject corporation the written consent of the stockholder of record to the dissent not later than the time the beneficial stockholder asserts dissenter's rights; and

22421319

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Las Vegas, NV 89106-4514
main 702.382.2101

Brownstein Hyatt Farber Schreck, LLP

(b) Does so with respect to all shares of which he or she is the beneficial stockholder or over which he or she has power to direct the vote.” (emphasis added).

AeroGrow has not received the statutorily required “written consent of the stockholder of record” to accompany Mr. Radoff’s purported notice of intent to demand payment for his shares. To comply with Nevada law, AeroGrow should have received that consent prior to the vote on the Merger,¹ which occurred on February 23, 2021 at 10:00 a.m. MT, as your February 19 Letter noted.

Because Mr. Radoff, an apparent beneficial stockholder, failed to obtain and submit the “written consent of the stockholder of record to the dissent,” he failed to comply with NRS 92A.400 and 92A.420. As you know, NRS 92A.420 (a statutory provision cited in your correspondence accompanying the purported notice of intent to dissent) provides that “[a] stockholder who does not satisfy the requirements of subsection 1 or 2 and NRS 92A.400 *is not entitled to payment for his or her shares under this chapter* [NRS Chapter 92A].” See NRS 92A.420(3) (emphasis added). Accordingly, AeroGrow had (and has) no obligation to provide Mr. Radoff (or you on his behalf) with a Dissenter’s Notice under NRS 92A.430.

Mr. Radoff failed to comply with the clear, statutory prerequisites for demanding payment of fair value under NRS Chapter 92A, and therefore AeroGrow properly paid him the Merger Consideration of \$3.00 per share. Your First Amended Complaint erroneously asserts that Mr. Radoff was paid the Merger Consideration pursuant to NRS 92A.460. But AeroGrow’s payment of the Merger Consideration to Mr. Radoff was *not* a payment of “fair value” (as defined in NRS 92A.320) pursuant to NRS 92A.460 or otherwise. As you know, the Merger Consideration is distinct from the statutory “fair value” as defined in NRS 92A.320 and required by NRS 92A.460. For these reasons, the allegations in the First Amended Complaint that AeroGrow did not comply with NRS 92A.460 (*e.g.*, par. 172) are inaccurate and also premature insofar as the dissenters’ rights process is continuing.

Simply put, your client failed to comply with Nevada law, so he did not receive a Dissenter’s Notice. He received the Merger Consideration to which he was entitled.

AeroGrow has complied with all applicable provisions of NRS Chapter 92A and will continue to do so. AeroGrow reserves all of its rights, defenses, and remedies under applicable law, including, without limitation, NRS 92A.500.

For the above reasons, AeroGrow requests that your client voluntarily dismiss or otherwise withdraw the First Amended Complaint’s fourth claim for relief seeking declaratory relief immediately. I also note that Nevada courts have the power to assess fee and expenses where a

¹ All terms not defined herein have the meanings ascribed to them in AeroGrow’s definitive proxy dated January 22, 2021.

Terry A. Coffing, Esq.
March 17, 2021
Page 3

party acts “arbitrarily, vexatiously or not in good faith with respect to the rights provided by NRS 92A.300 to 92A.500, inclusive.” NRS 92A.500.

II. Appraisal Is the Exclusive Remedy to Challenge the Merger Consideration

Under Nevada law, appraisal is the exclusive remedy for stockholders who seek to challenge the purchase price of a transaction. NRS 92A.380(2). For that reason, Mr. Radoff’s first, second, and third claims for relief are precluded from proceeding. To avoid the unnecessary expenditure of the Court’s and the parties’ resources, my clients request that your client voluntarily dismiss the *Radoff* action immediately.

All rights, remedies, and defenses under Nevada law, including, without limitation, NRS 92A.500, and other applicable law are hereby reserved; nothing in this letter should be construed as a waiver of such rights, remedies, and defenses or admission of any kind.

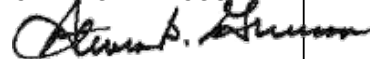
As we discussed, please let me know if you would like to set up a time to meet and confer on the above matters.

Sincerely,

Maximilien D. Fetaz, Esq.

CC via e-mail:

Marjorie P. Duffy, Esq.
Ashley F. Heintz, Esq.
Kirk B. Lenhard, Esq.
Travis F. Chance, Esq.
Brian Kerr, Esq.



Marquis Aurbach Coffing

Terry A. Coffing, Esq.

Nevada Bar No. 4949

Alexander K. Calaway, Esq.

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Las Vegas, Nevada 89145

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Facsimile: (702) 382-5816

tcoffing@maclaw.com

acalaway@maclaw.com

Attorneys for Plaintiff

Additional Counsel on Signature Page

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

HEARING REQUESTED

**PLAINTIFF'S AND PLAINTIFF-INTERVENORS' JOINT MOTION TO
COMPEL/DETERMINE COMPLIANCE WITH NRS 92A, OR ALTERNATIVELY,
INJUNCTIVE RELIEF, ON AN ORDER SHORTENING TIME**

//

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//

1 Plaintiff Bradley Louis Radoff ("Plaintiff"), by and through his attorneys, Marquis
2 Aurbach Coffing, and Plaintiff-Intervenors,¹ by and through their attorneys Simons Hall &
3 Johnston, hereby submit their Joint Motion to Compel/Determine Compliance with NRS 92A, or
4 Alternatively, Injunctive Relief on an Order Shortening Time. This Motion is made and based
5 upon the pleadings and papers on file herein, the Memorandum of Points & Authorities attached
6 hereto, and any oral argument allowed by counsel at the time of hearing.

7 MARQUIS AURBACH COFFING

8
9 By /s/ Terry A. Coffing
10 Terry A. Coffing, Esq.
11 Nevada Bar No. 4949
12 Alexander K. Calaway, Esq.
13 Nevada Bar No. 15188
14 10001 Park Run Drive
15 Las Vegas, Nevada 89145
16 *Attorney(s) for Plaintiff*

17 SIMONS HALL JOHNSTON PC

18 By /s/ J. Robert Smith
19 J. Robert Smith
20 Nevada Bar No. 10992
21 6490 S. McCarran Blvd., Ste. F-46
22 Reno, Nevada 89509
23 *Attorneys for Plaintiff-Intervenors*

24
25
26
27 ¹ Plaintiff-Intervenors are 52 stockholders of AeroGrow International, Inc. who are similarly
28 situated to Plaintiff and who recently filed a Motion to Intervene in this action in light of claims
and issues herein that will affect their rights and obligations. The names of the Plaintiff-Intervenors
are set forth in the Motion to Intervene.

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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 the 15th day of ~~March~~^{April}, 2021 at the hour of 9:00 a.m. in Department 13 of the Eighth Judicial District Court, located at the Regional Justice Center, 200 Lewis Avenue, Las Vegas, Nevada 89155.

Any Reply Briefs will be due: April 13, 2021.


DISTRICT COURT JUDGE

MARQUIS AURBACH COFFING

SIMONS HALL JOHNSTON PC

PA00415

1 **DECLARATION OF TERRY A. COFFING, ESQ. IN SUPPORT OF ORDER**
2 **SHORTENING TIME**

3 Terry A. Coffing, Esq. declares as follows:

4 1. I am a shareholder with the law firm of Marquis Aurbach Coffing, counsel for
5 Plaintiff in the above-stated action.

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

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

10 4. Along with my co-counsel, I represent Plaintiff who was the owner of 559,299
11 shares of AeroGrow International, Inc. ("AeroGrow") common stock. In November of 2020,
12 AeroGrow announced that it was going to be acquired by The Scotts Miracle-Gro Company
13 ("SMG") who already owned 80.5% of the outstanding shares of AeroGrow.

14 5. As part and parcel of this merger, AeroGrow provided notice to the public that there
15 are dissenter's rights pursuant to NRS 92A *et seq.*

16 6. Pursuant to this notice, the undersigned provided a Notice of Intent to Demand
17 Payment for Shares (attached hereto as **Exhibit A**) on February 19th, well in advance of the
18 proposed merger date of February 23rd.

19 7. Pursuant to NRS 92A.430, AeroGrow was required to send a Dissenter's Notice
20 package. ***AeroGrow failed to do so.*** Upon information and belief, AeroGrow may have provided
21 notice to some dissenters, an example is attached hereto as **Exhibit B**.

22 8. On March 15, 2021, Plaintiff filed a First Amended Complaint ("FAC") specifically
23 alleging AeroGrow's violation of the statute and seeking declaratory relief that any deadlines
24 imposed upon Plaintiff would be tolled or otherwise reset until the Court could resolve the issue.

25 9. Subsequently on March 17, 2021, I received the attached correspondence (attached
26 hereto as **Exhibit C**), from counsel on behalf of AeroGrow indicating that they did not believe that
27 my client maintained any dissenter's rights by virtue of the fact that there was no consent from the
28 transfer agent attached to the Notice of Intent to Dissent.

10. In taking this erroneous position, my client is effectively precluded from proceeding forward with the appraisal/valuation process that is specifically provided for by statute.

11. An order shortening time is necessary for this court to correct AeroGrow's misinterpretation of the statute and reset any deadlines until proper notice is provided. Alternatively, Plaintiff further requests injunctive relief to prevent the Defendants from further denying Plaintiff its rights.

Dated this 24th day of March, 2021.

/s/ Terry A. Coffing
Terry A. Coffing, Esq.

MEMORANDUM OF POINTS & AUTHORITIES

I. NATURE OF THE ACTION

AeroGrow entered into an Agreement and Plan of Merger (“Merger Agreement”) with SMG, 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.

At the time, SMG owned 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 the FAC, Scotts violated its duties by forcing 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.

Separate and apart from Plaintiff’s breach of fiduciary duty claims, Plaintiff has also asserted that AeroGrow violated Nevada’s Dissenter’s Rights Statute, NRS 92A.300, *et seq.* Nevada’s Dissenter’s Rights Statute (hereinafter the “Statute”) 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. Because AeroGrow was merging with another corporation, it was

1 required to notify its stockholders about a shareholder's meeting to vote on the merger, and to state
2 whether its stockholders would have dissenter's rights.

3 On or about January 22, 2021, AeroGrow provided public notice of the meeting to vote on
4 the merger by filing a Schedule 14A with the United States Securities and Exchange Commission
5 (the "Proxy"). See **Exhibit F**, attached hereto. In that Proxy, AeroGrow announced the
6 shareholder's meeting to vote on the merger would be February 23, 2021 at 10:00 a.m. *Id.* at pg.
7 9. AeroGrow also confirmed that its stockholders are entitled to assert dissenters' rights under
8 NRS 92A. *Id.* at pgs. 9, 80, 91, Annex C-1. The vote was a *fait accompli* as Defendants failed to
9 structure it in any way that would have protected the rights of minority stockholders – which is
10 entirely consistent with what they are doing now.

11 Under Nevada's Dissenter's Rights Statute, before a stockholder can actually exercise
12 dissenter's rights, a stockholder must first notify the corporation (in this case AeroGrow) in writing
13 of the stockholder's "**intent**" to demand payment for shares "before the [merger] vote is taken."
14 NRS 92A.420(1)(a) (emphasis added). This is merely a "prerequisite" notice to allow the
15 corporation to, among other things, ascertain the universe of possible dissenting stockholders and
16 to estimate how much of a cash payment may be required.² As NRS 92A.420 states in pertinent
17 part:

18 1. If a proposed corporate action creating dissenter's rights is submitted to a
19 vote at a stockholders' meeting, a stockholder who wishes to assert dissenter's
rights with respect to any class or series of shares:

20 (a) Must deliver to the subject corporation, ***before the vote is taken***, written
21 notice of the stockholder's ***intent to demand payment for his or her shares if***
the proposed action is effectuated. (emphasis added).

22 Importantly, this is not the deadline to actually assert dissenter's rights, but is merely a prerequisite
23 notice of ***intent*** that a stockholder may assert dissenter's rights at a later date.

24 Nevada's Dissenter's Rights Statute also distinguishes between "stockholders of record"
25 and "beneficial stockholders." NRS 92A.305 and 92A.330. Stockholders of record are those in
26 whose name shares are registered in the records of the corporation, while beneficial stockholders
27 are those whose shares are held in a voting trust or by a nominee as the stockholder of record. *Id.*

28 ² *C.f.* Model Business Corporation Act, Section 13.21, *official comments*, attached hereto as
Exhibit E.

1 In general, stockholders of record hold stock certificates while beneficial stockholders purchased
2 their shares through brokerages and other financial institutions, but whose legal title to the shares
3 are registered in the name of Cede & Co., which is the nominee of the Depository Trust Company
4 (“DTC”) (hereinafter “DTC/Cede”). The vast majority of stockholders in publicly traded
5 corporations are beneficial stockholders, as they purchased the shares through brokerages.
6 Plaintiff and the Plaintiff-Intervenors are all beneficial stockholders. All stockholders (which is
7 defined as both stockholders of record and beneficial stockholders in NRS 92A.325) must deliver
8 a written intent to demand payment prior to the merger vote. *See* NRS 92A.420.

9 After receiving the prerequisite notices of intent to demand payment of shares from its
10 stockholders, AeroGrow was required to send Dissenter Notice packets to those who delivered the
11 notices of intent. NRS 92A.430. The stockholders (including beneficial owners) then must decide
12 whether to exercise dissenter’s rights by making a Demand for Payment. NRS 92A.440. Unlike
13 stockholders of record, beneficial stockholders, however, have an additional obligation. They must
14 also provide a letter of consent from the stockholders of record, such as DTC/Cede, “not later than
15 the time the beneficial stockholder asserts dissenter’s rights.” NRS 92A.400(2)(a)(emphasis
16 added).³

17 After receiving the Demand for Payment, and a consent letter from the beneficial
18 stockholders, AeroGrow is supposed to then pay the merger consideration. NRS 92A.460. If a
19 dissenting stockholder is dissatisfied with the amount paid, the dissenter must then submit their
20 own estimate of fair value of the shares. NRS 92A.480. If the parties cannot agree on the fair
21 value, then AeroGrow is required to file an action in the Nevada District Court. NRS 92A.490.

22 That is how this process was supposed to work. AeroGrow, however, has ignored the
23 Statute and failed to follow this process.

24
25 _____
³ NRS 92A.400(2)(a) provides:

26 2. A beneficial stockholder may assert dissenter’s rights as to shares held on his
27 or her behalf only if the beneficial stockholder:

28 (a) Submits to the subject corporation the written consent of the stockholder of
record to the dissent ***not later than the time the beneficial stockholder asserts
dissenter’s rights.*** (emphasis added).

1 Remarkably, AeroGrow, is taking the position that it was not obligated to send Dissenter
2 Notices to beneficial stockholders or the stockholders of record who held shares on the
3 stockholder's behalf, if the beneficial stockholder did not submit a letter of consent from the
4 stockholder of record before to the vote on the merger, rather than when they "assert dissenter's
5 rights." See **Exhibit C**.

6 Specifically, despite Plaintiff and Plaintiff-Intervenors providing timely Notices of Intent
7 to Demand Payment of Shares, AeroGrow has disregarded those Notices and the plain language
8 of the Statute, and unilaterally and prematurely paid the merger consideration of \$3.00 per share
9 to the brokers in which Plaintiff's and Plaintiff-Intervenors' shares were held. By prematurely
10 paying Plaintiff and Plaintiff-Intervenors within a day or two of the effective date of the merger,
11 AeroGrow has prevented Plaintiff and Plaintiff-Intervenors from obtaining the letters of consent
12 from the stockholders of record. Both DTC/Cede and brokers have stated that they cannot provide
13 consent letters because they no longer hold the shares as a result of AeroGrow's improper and
14 premature repurchase of the shares. See **Exhibit D**.

15 Moreover, based on AeroGrow's erroneous position, AeroGrow failed to send Plaintiff and
16 Plaintiff-Intervenors the Dissenter's Notice as required by NRS 92A.430, preventing Plaintiff and
17 Plaintiff-Intervenors from making a Demand for Payment under NRS 92.440.

18 In sum, AeroGrow's misconduct has adversely and substantially prejudiced the rights of
19 Plaintiff and Plaintiff-Intervenors, who are now at risk of losing their dissenter's rights unless the
20 Court corrects AeroGrow's unlawful actions. Therefore, given AeroGrow's misconduct, this
21 Court's immediate intervention is needed in order to preserve Plaintiff's rights pursuant to Nevada
22 law.

23 **II. SUMMARY OF FACTS.**

24 1. Subsequent to the public announcement of the Merger in November in 2020, the
25 Plaintiff and Plaintiff-Intervenors believed that the Merger consideration of \$3.00 per share was
26 woefully inadequate largely due to the manipulations and failings of the Defendants. Plaintiff and
27 Plaintiff-Intervenors, therefore, retained counsel and began preparation to protect their rights as
28 dissenters under NRS 92A.

1 2. On February 13, 2021, Plaintiff, through counsel, notified AeroGrow of his
2 beneficial ownership, his number of shares and his intent to demand payment for shares as required
3 by NRS 92A.420. **Exhibit A**, attached hereto. Plaintiff-Intervenors did the same.⁴ As expected
4 in light of Defendants' failure to institute the appropriate protections for minority shareholders, on
5 February 23, 2021,⁵ the Merger was a *fait accompli* and approved by approximately 85% of the
6 votes of eligible shareholders.

7 3. Almost immediately thereafter, and prematurely, AeroGrow tendered the \$3.00 per
8 share price that they determined to be the Fair Value of the shares to Plaintiff's and Plaintiff-
9 Intervenors' brokers thereby eliminating their status as shareholders.

10 4. AeroGrow also failed to provide Plaintiff and Plaintiff Intervenors with the required
11 Dissenter's Notice package and demand for payment form as required by NRS 92A.430. Upon
12 information and belief, AeroGrow did provide shareholders who held *certificated* shares a
13 dissenter's notice, an example of which is attached hereto as **Exhibit B**. The Dissenter's Notice
14 is important because it triggers timelines for the Plaintiff and Plaintiff-Intervenors to act in order
15 to preserve their right to contest AeroGrow's value of the shares under NRS 92A.

16 5. On March 17, 2021, AeroGrow's counsel sent a letter to Plaintiff's and Plaintiff-
17 Intervenor's counsel. **Exhibit C**.⁶ In those letters, AeroGrow has taken the erroneous position
18 that Plaintiff and Plaintiff-Intervenors, despite providing their notice of Intent to Demand Payment
19 for Shares, are not entitled to assert their rights under NRS 92A because they did not provide a
20 Consent Letter from the stockholder of record, which is Cede & Company, Inc., the nominee of
21 DTC, at the time of submitting his notice. This interpretation of the statute is completely erroneous,
22 candidly makes no sense, and is now impossible.

23 6. As the plain language of the makes clear, and explained more thoroughly below,
24 the Consent Letter is not due until the Plaintiff actually "asserts" his right to dissent, which is when
25 the Demand for Payment is due, not before the vote on the merger when the Notice of ***Intent*** to
26 Demand Payment of Shares was due. NRS 92A.440. Indeed, providing this Consent Letter now is

27 ⁴ See Exhibits A-D, attached to Plaintiff-Intervenors' Motion to Intervene, on file herein.

28 ⁵ The effective date was February 26, 2021.

⁶ See also Exhibit F to Plaintiff-Intervenors' Motion to Intervene, on file herein.

1 impossible as AeroGrow has unilaterally and prematurely paid the Plaintiff's broker their
2 estimation of fair value and repurchased the shares.

3 7. Consequently, the shares are no longer owned by the Plaintiff or the stockholder of
4 record, DTC/Cede. As a result, DTC/Cede has refused to (and indeed cannot) provide a letter of
5 consent as evidenced by the email from the Plaintiff's broker attached hereto as **Exhibit D**. Similar
6 communications were sent to Plaintiff-Intervenors.⁷ Thus, not only has AeroGrow failed to comply
7 with their requirements under the NRS 92A, they have precluded the Plaintiff and Plaintiff-
8 Intervenors from being able to assert their rights under the Statute and will likely take the position
9 that the failure to assert any other further rights is untimely.⁸

10 8. Based upon the foregoing, the Plaintiff and Plaintiff-Intervenors seek an order from
11 this Court: (1) declaring AeroGrow in violation of the provisions of NRS 92A; (2) waiving the
12 obligation of beneficial stockholders to obtain the consent letters – which is has now become
13 impossible due to AeroGrow's unlawful conduct; and (3) compelling the Defendants' performance
14 with the statute and providing the requisite Dissenter's Notice so that there can be an orderly
15 resolution and determination of fair value.

16 **III. LEGAL ARGUMENT.**

17 AeroGrow's position that the letters of consent were due before the merger vote was taken
18 is patently wrong.⁹ AeroGrow is attempting to blur the deadline to deliver the prerequisite Notice
19 of Intent to Demand Payment for Shares under NRS 92A.420(1)(a), with the deadline to actually
20 "assert dissenter's rights," which is the date the Demand for Payment is due under NRS 92A.440.
21 As explained above, AeroGrow is taking the nonsensical position that notwithstanding the clear
22 language of the Statute, letters of consent were due before the merger vote was taken, as opposed
23 to the when the beneficial stockholder asserts dissenter's rights. AeroGrow's position and conduct
24

25
26 ⁷ See Exhibit E to Plaintiff-Intervenors' Motion to Intervene, no file herein.

27 ⁸ In fact, as can be seen by **Exhibit C**, AeroGrow clearly (but wrongly) believes they have no
28 further obligations to the Plaintiff under any theory of recovery based upon their breaches of
fiduciary duty as well.

⁹ This is AeroGrow's stated position as set forth in correspondence attached hereto as **Exhibit C**.

1 based thereon are not only contrary to the plain language of the Statute, other principles of statutory
2 construction, and the Model Business Corporation Act upon which Nevada's Dissenter's Statute
3 is based, but AeroGrow's conduct can only be considered a willful violation of the Statute. The
4 Court should not allow such egregious behavior that has disrupted the dissenter's rights process
5 and forced Plaintiff and Plaintiff's counsel to incur substantial time and expense to protect their
6 rights.
7

8 **A. THE DEADLINE TO DELIVER A LETTER OF CONSENT FROM THE**
9 **STOCKHOLDER OF RECORD IS THE DATE THE DEMAND FOR**
10 **PAYMENT IS DUE, NOT THE DATE OF THE VOTE ON THE MERGER.**

11 **1. The Plain Language of the Statute Makes it Clear that the Deadline to**
12 **Submit the Consent Letter is When the Demand for Payment is Due.**

13 AeroGrow is attempting to equate the language "before the vote is taken" in NRS
14 92A.420(1)(a), with the language "not later than the time the beneficial stockholder asserts
15 dissenter's rights" in NRS 92A.400(2). These deadlines, however, are two separate time periods.

16 "The goal of statutory interpretation is to give effect to the Legislature's intent."'
17 *Figueroa-Beltran v. United States*, 136 Nev. Adv. Op. 45, 467 P.3d 615, 621 (2020) (quoting
18 *Williams v. State, Dep't of Corr.*, 133 Nev. 594, 596, 402 P.3d 1260, 1262 (2017)) (internal
19 quotations omitted). "To ascertain the Legislature's intent, [courts] look to the statute's plain
20 language." *Id.* "[W]hen a statute's language is clear and unambiguous, the apparent intent must
21 be given effect, as there is no room for construction." *Edgington v. Edgington*, 119 Nev. 577, 582–
22 83, 80 P.3d 1282, 1286 (2003). *Williams v. State Dep't of Corr.*, 133 Nev. 594, 596, 402 P.3d 1260,
23 1262 (2017). "[Courts] avoid statutory interpretation that renders language meaningless or
24 superfluous." *Figueroa-Beltran*, 467 P.3d at 621 (quoting *Hobbs v. State*, 127 Nev. 234, 237, 251
25 P.3d 177, 179 (2011)). "If the statute's language is clear and unambiguous, [courts] will enforce
26 the statute as written." *Id.*
27
28

1 The plain language of NRS 92A.400 shows that the prerequisite notice was merely a notice
2 of “*intent*” to demand payment in the event the merger was approved, as opposed to actually
3 *asserting* dissenter’s rights, which is the language used in NRS 92A.400.

4 First, it is axiomatic that an “intent” is not an “assertion.” Second, because NRS
5 92A.420(1)(a) uses the language “if the proposed action is effectuated,” it is contemplated that
6 there may not even be a merger. In such instance, it would be nonsensical for a stockholder to
7 actually exercise dissenter’s rights prior to a failed vote, and thus no merger. Simply stated, a
8 stockholder cannot exercise dissenter’s rights when there is no merger. As a result, the plain
9 language in the statutes make it clear that the deadline to deliver the prerequisite *notice of intent*
10 to demand payment of shares could not be the same deadline to actually *assert* dissenter’s rights.
11 Therefore, based on the plain language in the statute the Court should declare the deadline to
12 deliver the consent letter to be the deadline to submit the Demand for Payment form.

13
14
15 **2. Even if Ambiguous, Other Principles of Statutory Interpretation Show the**
16 **Deadline to Deliver the Consent Letter is When the Demand for Payment is**
Due, Not the Date of the Merger Vote.

17
18 Even if the Court believed the different deadline language in NRS 92A.400(2) and NRS
19 92A.420(1)(a) to be ambiguous, principles of statutory construction still mandate the conclusion
20 that the deadlines are different. ““Only when the statute is ambiguous, meaning that it is subject
21 to more than one reasonable interpretation, do [courts] look beyond the language [of the statute]
22 to consider its meaning in light of its spirit, subject matter, and public policy.” *Figueroa-Beltran*,
23 467 P.3d at 621 (alteration in original) (internal quotations omitted); *see e.g. State v. Lucero*, 127
24 Nev. 92, 95, 249 P.3d 1226, 1228 (2011) (explaining that when a statute is ambiguous, this court
25 may then look to legislative history and construe the statute in a manner consistent with reason
26 and public policy). “Likewise, [a] court will interpret a rule or statute in harmony with other rules
27
28

1 and statutes.” *Id.* quoting *Clay v. Eighth Judicial Dish Court*, 129 Nev. 445, 451, 305 P.3d 898,
2 902 (2013) (internal quotations omitted).

3 The use of different terminology in a statute “evinces the legislature’s intent that different
4 meanings apply to the two terms” *Labastida v. State*, 115 Nev. 298, 302–03, 986 P.2d 443, 446
5 (1999); *see also Garnett v. ADT LLC*, 74 F. Supp. 3d 1332, 1335 (E.D. Cal. 2015) (“It is a ‘well-
6 established canon of statutory interpretation’ that the use of different words or terms within a
7 statute demonstrates an intent to convey a different meaning for those words.”)

9 Here, the Nevada Legislature chose to use the language “before the vote is taken” with
10 respect to the Notice of Intent (NRS 92A.420(2)), while using the language “not later than the time
11 the beneficial stockholder asserts dissenter’s rights” (NRS 92A.400(2)) with respect to the consent
12 letters. The legislature’s use of different language makes it clear that these two (2) times periods
13 are different. In fact, if the Legislature intended the deadlines to be the same, it could have easily
14 used the same language of “before the vote is taken” with respect to the deadline for the consent
15 letters in NRS 92.400(2). But the fact that different language was used is dispositive.

17 Moreover, it is telling that NRS 92A refers to those holding shares in the corporation as
18 “stockholders” prior to the time of submitting the Demand for Payment under NRS 92.440, then
19 switches to identifying them as “dissenters” after they deliver the Demand for Payment. Such
20 change in terminology further reflects the Nevada Legislature’s intent that the actual assertion of
21 dissenter’s rights occurs when the Demand for Payment is made, not when the Intent to Demand
22 Payment for Shares is submitted.

24 In addition, NRS 92A.440(3) explains that once a stockholder “makes a demand for
25 payment, that stockholder loses all rights as a stockholder, unless the stockholder withdraws
26 pursuant to subsection 4.” Thus, this section further demonstrates that it is when the demand for
27 payment is made that the stockholder is electing to exercise dissenter’s rights, and is no longer a
28 stockholder.

1 Finally, this interpretation naturally makes sense and is consistent with public policy. Most
2 beneficial stockholders who purchase their shares through brokerages, are unaware that their
3 shares are actually in the name of DTC/Cede. It takes time for a beneficial stockholder to contact
4 a broker to request the consent letter, who must then prepare its own letter to DTC/Cede to request
5 the consent letter. DTC/Cede must then prepare the actual consent letter to submit to the
6 corporation. Often, beneficial owners do not become aware that they may have the right to dissent
7 until shortly before the merger vote. Some never even received proxy materials.

9 In such instances it would be impossible for them to obtain a consent letter prior to the vote
10 on the merger. By making the deadline to deliver the consent letter as the date the beneficial
11 stockholder delivers the demand for payment form, and thus actually exercises dissenter's rights,
12 the legislature provided time for the beneficial stockholders to not only decide whether to exercise
13 dissenter's rights, but time to obtain the consent letters from the stockholders of record, such as
14 DTC/Cede.
15

16 **3. The Model Corporation Business Act, Upon Which Nevada's Dissenter's**
17 **Rights Statute is Based, Makes Clear that the Deadline to Submit the Consent**
18 **Letter is when the Demand for Payment is Due.**

19 Perhaps most telling of when the consent letter is due comes from the Model Corporation
20 Business Act. The provisions of NRS 92A.300–92A.500 “are patterned after, or are identical to,
21 the provisions of the 1984 Model Business Corporation Act (“Model Act”).” *Cohen v. Mirage*
22 *Resorts, Inc.*, 119 Nev. 1, 10, 62 P.3d 720, 726 (2003). Chapter 13 of the Model Act sets forth
23 “Appraisal Rights.” See **Exhibit E**.

24 Just like NRS 92A.440, Section 13.21 of the Model Act requires a shareholder to submit,
25 “***before the vote is taken***, written notice of the shareholder’s intent to demand payment if the
26 proposed action is effectuated.” (emphasis added). Likewise, Section 13.03 of the Model Act is
27 virtually identical to NRS 92A.400(b). That section of the Model Act states:
28

1 (b) A beneficial shareholder and a voting trust beneficial owner may assert
2 appraisal rights as to shares of any class or series held on behalf of the shareholder
only if such shareholder:

3 (1) submits to the corporation the record shareholder's written consent to the
4 assertion of such rights ***not later than date referred to in Section 13.22(b)(2)(ii);***
... (Emphasis added).

5 Section 13.22 of the Model Act is virtually equivalent to NRS 92A.420, which requires the
6 corporation to send an "appraisal notice" – which is equivalent to a Dissenter's Notice under NRS
7 92A.420 – to the stockholders along with a form containing instructions on where and where to
8 deliver the form. Significantly, Section 13.22(b)(2)(ii) states that the appraisal notice must
9 provide: "a date by which the corporation shall receive the form, which date may not be fewer than
10 40 nor more than 60 days after the date the subsection (a) appraisal notice is sent . . ."

11
12 Therefore, the deadline to submit the consent letter under Section 13.03 is the deadline to
13 submit the form under Section 13.22(b)(2) – ***which is the date set by the corporation after the***
14 ***appraisal notice is sent (aka the deadline to submit the Demand for Payment Form), and well***
15 ***after, and completely different from, the deadline to submit the Notice of Intent to Demand***
16 ***Payment (aka. the merger vote date).***

17
18 Therefore, given that Nevada's Dissenter's Rights Statute is based on, and virtually
19 identical to, the Model Act, there can be no question that the deadline to submit the consent letter
20 under NRS 92A.400(2) is the date set by AeroGrow in its Dissenter's Notice packet to submit the
21 Demand for Payment Form under NRS 92A.440. Consequently, AeroGrow's erroneous
22 interpretation of the deadline in NRS 92A.400(2) is completely inconsistent with the plain
23 language of the statute, other principles of statutory construction, and the Model Act upon which
24 Nevada's law is based. Any attempt by AeroGrow to now argue that Plaintiff and Plaintiff-
25 Intervenor had to submit a consent letter before the merger vote can only be considered
26 completely disingenuous and in bad faith – yet not entirely surprising given the level of disdain
27 that Defendants have shown to minority stockholders during this entire merger process.
28

1 In light of the foregoing, and consistent with the language of the statute, the Model Act and
2 the Nevada Legislature's intent, the Court should declare that the deadline for beneficial owners
3 to submit a letter of consent from the stockholder of record under NRS 92A.400(2) is the time the
4 Demand for Payment forms are due, and not at the time the vote on the merger is taken.

5
6 **B. AEROGROW'S IMPROPER INTERPRETATION OF THE STATUTE AND**
7 **CONDUCT HAS MADE IT IMPOSSIBLE FOR BENEFICIAL STOCKHOLDERS**
8 **TO COMPLY WITH NRS 92A.400**

9 As explained above, and below, not only has AeroGrow never sent a Dissenter's Notice
10 packet to Plaintiff or Plaintiff-Intervenors that would trigger certain deadlines, but its conduct in
11 misapplying the law has made it impossible for Plaintiff and Plaintiff-Intervenors to obtain the
12 consent letters. Because AeroGrow unilaterally decided to repurchase the stock of beneficial
13 stockholders without their authorization, the shares no longer exist. Despite numerous requests by
14 beneficial owners to their brokers to obtain the consent letters, and many hours by counsel
15 communicating with brokers and DTC to obtain the consent letters, the response was the same:
16 neither the brokers nor DTC/Cede could provide the consent letters because the shares were sold.

17 Therefore, because AeroGrow unlawfully repurchased the shares in violation of NRS 92A,
18 the beneficial stockholders are unable to obtain the consent letters under NRS 92A.400(2). In fact,
19 it is now impossible to obtain the consent letters as a consequence of AeroGrow's wrongful
20 violation of the provisions of NRS 92A. The Court should therefore recognize this impossibility
21 (as well as Defendants' role in creating it) and waive the requirement for Plaintiff and Plaintiff-
22 Intervenors to submit a consent letter.

23
24 **C. THE COURT SHOULD ISSUE AN ORDER: (1) DECLARING AEROGROW IN**
25 **VIOLATION OF NRS 92A; (2) WAIVING THE OBLIGATION TO OBTAIN THE**
26 **CONSENT LETTERS; AND (3) COMPELLING AEROGROW TO PROVIDE**
27 **BENEFICIAL OWNERS WITH DISSENTERS NOTICES WITH NEW**
28 **DEADLINES**

Because AeroGrow not only prematurely sold Plaintiff's and Plaintiff-Intervenors' shares
making it impossible for them to obtain the consent letters prior to the deadline to "assert"
dissenter's rights (aka the deadline to deliver the Demand for Payment Form), AeroGrow failed to
send them Dissenter's Notices as required by NRS 92A.430.

AeroGrow is represented by sophisticated counsel, and one of the largest law firms in the
United States (Jones Day). AeroGrow cannot argue that it simply did not understand the statute,

1 or that it merely made a mistake. In fact, the Proxy that it filed with the SEC repeatedly stated that
2 stockholders must follow, comply with, and strictly adhere to, the Dissenter's Rights Statutes or
3 they will lose their rights, and that due to the complexity of the Statutes they should consult legal
4 counsel. As their proxy stated:

5 A copy of the full text of the Dissenter's Rights Statutes is included as Annex C
6 to this proxy statement. *Failure to follow the procedures set forth in the*
7 *Dissenters' Rights Statutes will result in forfeiture of dissenter's rights.* You
8 are encouraged to read these provisions carefully and in their entirety. Moreover,
9 *due to the complexity of the procedures for exercising dissenter's rights,*
10 *stockholders who are considering exercising such rights are encouraged to seek*
11 *the advice of legal counsel.*

12 **Exhibit F**, at 9 (emphasis added).

13 Stockholders intending to exercise dissenter's rights should carefully review
14 Annex C to this proxy statement and *strictly adhere* to the Dissenter's Rights
15 Statutes. Failure to follow any of the statutory procedures precisely may result in
16 termination or waiver of these rights.

17 *Id.* at 81 (emphasis added). Similarly, and in all capitals and bold, AeroGrow stated:

18 **ANY HOLDER WHO WISHES TO BE DEEMED A DISSENTING**
19 **STOCKHOLDER AND BE ENTITLED TO EXERCISE DISSENTER'S**
20 **RIGHTS, OR WHO WISHES TO PRESERVE SUCH HOLDER'S RIGHT**
21 **TO DO SO, SHOULD CAREFULLY REVIEW THE FOREGOING**
22 **SUMMARY AND ANNEX C BECAUSE FAILURE TO TIMELY AND**
23 **PROPERLY COMPLY WITH THE PROCEDURES SPECIFIED**
24 **THEREIN WILL RESULT IN THE LOSS OF DISSENTER'S RIGHTS.**
25 **MOREOVER, BECAUSE OF THE COMPLEXITY OF THE**
26 **PROCEDURES FOR EXERCISING THE RIGHT TO SEEK APPRAISAL**
27 **OF SHARES, THE COMPANY BELIEVES THAT, IF A STOCKHOLDER**
28 **CONSIDERS EXERCISING SUCH RIGHTS, SUCH STOCKHOLDER**
SHOULD SEEK THE ADVICE OF SUCH STOCKHOLDER'S LEGAL
COUNSEL.

Id. at 82 (emphasis in original).

Remarkably, despite AeroGrow's admonitions, it is AeroGrow that failed to follow,
comply with and strictly adhere to the Dissenter's Rights Statutes. AeroGrow and its counsel
cannot argue that they did not understand the Statutes. AeroGrow and its counsel knew what was
required by the Dissenter's Rights Statutes. They simply and intentionally chose not to comply
with them. Consequently, this Court should issue an order declaring AeroGrow in violation of the
provision of NRS 92A. Otherwise, they will continue to flaunt the requirements of the Statutes.

1 In addition, given AeroGrow's failure to comply with the provision of NRS 92A, and their
2 unlawful conduct that made it impossible for beneficial stockholders to obtain consent letters from
3 the stockholders of record, the Court should issue an order waiving the requirement that beneficial
4 owners submit a letter of consent from the stockholders of record. Such letters cannot be obtained
5 as result of AeroGrow's premature and unlawful repurchase of their shares. At minimum, and to
6 the extent AeroGrow has become the stockholder of record of those shares, the Court should
7 compel AeroGrow to issue consent letters on behalf of the beneficial owners.

8 Finally, because AeroGrow has failed to provide Dissenter's Notices to the beneficial
9 owners who filed a Notice of Intent to Demand Payment of Shares as required by NRS 92A.430,
10 the Court should compel AeroGrow to send Dissenter's Notices to them. In addition, the new
11 Dissenter's Notices must identify new deadlines by which the Demand for Payment forms must
12 be submitted. This is the only process to get the dissenter's rights action back on track so that
13 Plaintiff's and Plaintiff-Intervenor's rights are protected and the fair value of AeroGrow's shares
14 can eventually be determined.

15
16 **IV. CONCLUSION**

17 In light of the foregoing, the Court should grant Plaintiff and Plaintiff-Intervenors' Joint
18 Motion to Compel/Determine Compliance with NRS 92A, Or Alternatively, Injunctive Relief on
19 an Order Shortening Time.

20 Dated this 24th day of March, 2021.

21
22 Respectfully submitted,

23 **MARQUIS AURBACH COFFING**

24 /s/ Terry A. Coffing

25 Terry A. Coffing, Esq.
26 Nevada Bar No. 4949
27 Alexander K. Callaway, Esq.
28 Nevada Bar No. 15188
10001 Park Run Drive
Las Vegas, NV 89145
Telephone: (702) 382-0711
Facsimile: (702) 382-5816

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BAKER BOTTS LLP
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Attorneys for Plaintiff

SIMONS HALL JOHNSTON PC

/s/ J. Robert Smith
J. Robert Smith
Nevada Bar No. 10992
Kendra Jepsen
Nevada Bar No. 14065
6490 S. McCarran Blvd., Ste. F-46
Reno, Nevada 89509
Attorneys for Plaintiff-Intervenors

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that the foregoing **PLAINTIFF'S AND PLAINTIFF-INTERVENORS' JOINT**
3 **MOTION TO COMPEL/DETERMINE COMPLIANCE WITH NRS 92A, OR**
4 **ALTERNATIVELY, INJUNCTIVE RELIEF, ON AN ORDER SHORTENING TIME** was
submitted electronically for filing and/or service with the Eighth Judicial District Court on the 24th
day of March, 2021. Electronic service of the foregoing document shall be made in accordance with
the E-Service List as follows:¹⁰

5 **OTHER SERVICE CONTACTS:**

6
7 Travis Chance tchance@bhfs.com
Wendy Cosby wcosby@bhfs.com
Maximillen Fetaz mfetaz@bhfs.com
8 Pamela Montgomery p.montgomery@kempjones.com
Don Springmeyer d.springmeyer@kempjones.com
9 M Magali Mercera mmm@pisanellibice.com
James J Pisanelli lit@pisanellibice.com
10 Cinda Towne cct@pisanellibice.com

11 I further certify that I served a copy of this document by mailing a true and correct copy thereof,
12 postage prepaid, addressed to:

13 Aerogrow International Inc. United Registered Agents
14 Inc. - 701 S. Casron St.
#200, Casron City, NV
15 89701

16 /s/ Skylar P. Cataneo
Skylar P. Cataneo, an employee of
17 Marquis Aurbach Coffing
18
19
20
21
22
23
24
25
26
27

28 ¹⁰ Pursuant to EDCR 8.05(a), each party who submits an E-Filed document through the E-Filing
System consents to electronic service in accordance with NRCP 5(b)(2)(D).

Exhibit A



MARQUIS AURBACH COFFING

DIRECT LINE: (702) 942-2136
DIRECT FAX: (702) 382-5816
EMAIL: TCOFFING@MACLAW.COM

ALBERT G. MARQUIS
PHILLIP S. AURBACH
AVECE M. HIGBEE
TERRY A. COFFING
SCOTT A. MARQUIS
JACK CHEN MIN JUAN
CRAIG R. ANDERSON
TERRY A. MOORE
GERALDINE TOMICH
NICHOLAS D. CROSBY
TYE S. HANSEEN
DAVID G. ALLEMAN
CODY S. MOUNTEER
CHAD F. CLEMENT
CHRISTIAN T. BALDUCCI
BRIAN R. HARDY
JORDAN B. PEEL

JARED M. MOSER
MICHAEL D. MAUPIN
KATHLEEN A. WILDE
JACKIE V. NICHOLS
RACHEL S. TYGRET
JAMES A. BECKSTROM
COLLIN M. JAYNE
ALEXANDER K. CALAWAY
SUSAN E. GILLESPIE

JOHN M. SACCO [RET.]
LANCE C. EARL
WILLIAM P. WRIGHT
JENNIFER L. MICHELI
OF COUNSEL

February 19, 2021

Via FedEx 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 Pursuant to NRS
92A.420; Special Meeting Dated February 23, 2021 at 10:00 a.m.**

Dear Board of Directors:

Please be advised that the law firm of Marquis Aurbach Coffing represents Mr. Bradley Louis Radoff ("Radoff") who is a stockholder of AeroGrow International, Inc. (the "Company") Reference is made to the February 23, 2021 Special Meeting of the Shareholders and Merger Agreement further described in the Company's January 22, 2021 definitive proxy statement.

Pursuant to NRS 92A.420(1)(a), Bradley Louis Radoff, the stockholder of record of 559,299 shares of common stock, par value \$0.001 per share, of AeroGrow International, Inc. (collectively the "Shares"), does hereby (a) give written notice of his intent to exercise dissenter's rights and (b) demands payment for shares if the proposed merger transaction is approved at the above-referenced Special Meeting of the Shareholders.

Stockholder: Bradley Louis Radoff

Address: c/o Terry A. Coffing, Esq.
Alexander K. Calaway, Esq.
Marquis Aurbach Coffing
Las Vegas, NV 89145
tcoffing@maclaw.com
acalaway@maclaw.com
(702)382-0711

Shares Owned: 559,299

February 19, 2021
Page 2

Please direct all future correspondence and notices to the undersigned address set forth above.

Sincerely,

MARQUIS AURBACH COFFING

A handwritten signature in blue ink, appearing to read 'Terry A. Coffing', with a long horizontal flourish extending to the right.

Terry A. Coffing, Esq.
Alexander K. Calaway, Esq.

TAC:jpc

MAC:16419-001 4277934_2 2/19/2021 9:53 AM

PA00435

Exhibit B

AEROGROW INTERNATIONAL, INC.

DISSENTER'S NOTICE

March 5, 2021

NOTICE IS HEREBY GIVEN, pursuant to Nevada Revised Statutes ("NRS") 92A.430, that effective on February 26, 2021, AeroGrow International, Inc., a Nevada corporation (the "Corporation") effectuated the Merger (as defined below) contemplated by that certain Agreement and Plan of Merger, dated as of November 11, 2020 (as amended to date, the "Merger Agreement"), by and among the Corporation, SMG Growing Media, Inc., an Ohio corporation ("Parent"), AGI Acquisition Sub, Inc., a Nevada corporation and wholly-owned subsidiary of Parent ("Merger Sub"), and, solely for the purposes stated in Section 6.4 of the Merger Agreement, The Scotts Miracle-Gro Company, an Ohio corporation ("Scotts Miracle-Gro"). Pursuant to the terms of the Merger Agreement, Merger Sub merged with and into the Corporation (the "Merger"), with the Corporation continuing as the surviving corporation in the Merger as a direct, wholly-owned subsidiary of Parent and an indirect, wholly-owned subsidiary of Scotts Miracle-Gro.

In accordance with NRS Chapter 92A, the Merger Agreement was adopted and approved by the respective boards of directors of the Corporation and Merger Sub, and approved (i) by the vote of the holders of a majority of the voting power of the outstanding common stock of the Corporation at a special meeting held on February 23, 2021, and (ii) by the written consent of the Corporation, in its capacity as the sole stockholder of Merger Sub prior to the effective time of the Merger (the "Effective Time").

In the Merger, each Eligible Share (as defined below) has been converted into the right to receive \$3.00 in cash, without interest thereon and subject to any required withholding of taxes (the "Per Share Merger Consideration"), and has ceased to be outstanding, has been cancelled and has ceased to exist. An "Eligible Share" is a share of common stock issued and outstanding immediately prior to the Effective Time other than (i) shares then held by Parent and any shares then held by the Corporation (such shares, the "Excluded Shares") and (ii) shares then held by stockholders ("Dissenting Stockholders") who have properly asserted dissenter's rights under NRS 92A.300 through 92A.500, inclusive (the "Dissenter's Rights Statutes"), and who have not withdrawn or otherwise waived or lost such dissenter's rights (such shares, the "Dissenting Shares"). Each Excluded Share has ceased to be outstanding, has been cancelled without payment of any consideration therefor and has ceased to exist. Each share of common stock of Merger Sub, issued and outstanding immediately prior to the Effective Time has been automatically converted into one share of the common stock of the Corporation, as the surviving corporation in the Merger. From and after the Effective Time, there shall be no transfers on the stock transfer books or ledger of the Corporation of any Eligible Shares or Dissenting Shares.

At the Effective Time, the Dissenting Shares outstanding immediately prior to the Effective Time and held immediately prior to the Effective Time by a Dissenting Stockholder, have been cancelled without payment of any consideration and have ceased to exist. No Dissenting Stockholder is entitled to receive the Per Share Merger Consideration with respect to the Dissenting Shares formerly owned by such Dissenting Stockholder. Each Dissenting Stockholder is entitled to receive only the payment of the fair value (as defined in NRS 92A.320) of the Dissenting Shares formerly owned by such Dissenting Stockholder in accordance with the Dissenter's Rights Statutes, solely to the extent such Dissenting Stockholder has properly asserted and not withdrawn or otherwise lost, and is otherwise entitled to, dissenter's rights in accordance with the Dissenter's Rights Statutes.

IN ORDER TO DEMAND PAYMENT UNDER THE DISSENTER'S RIGHTS STATUTES, A DISSENTING STOCKHOLDER MUST COMPLY WITH ALL OF THE PROCEDURAL REQUIREMENTS OF THE DISSENTER'S RIGHTS STATUTES, INCLUDING, WITHOUT LIMITATION, MAKING A WRITTEN DEMAND FOR PAYMENT USING THE ATTACHED FORM AND OTHERWISE COMPLYING WITH THE PROCEDURAL REQUIREMENTS OF NRS 92A.440. However, if any Dissenting Stockholder withdraws its assertion of dissenter's rights or demand for payment, or otherwise waives or loses its dissenter's rights, under the Dissenter's Rights Statutes with respect to such Dissenting Stockholder's Dissenting Shares, all such Dissenting Shares will be deemed to have been Eligible

Shares and thereupon be converted into the right to receive, without any interest thereon, the Per Share Merger Consideration with respect to such Eligible Shares pursuant to the Merger Agreement.

IN VIEW OF THE COMPLEXITY OF THE DISSENTER'S RIGHTS STATUTES, EACH DISSENTING STOCKHOLDER SHOULD CONSULT HIS, HER OR ITS LEGAL COUNSEL AND OTHER RELEVANT ADVISERS PRIOR TO COMPLETING AND RETURNING THE ATTACHED DEMAND FOR PAYMENT FORM.

Pursuant to NRS 92A.430 and 92A.440, a Dissenting Stockholder must take the following steps:

1. The Dissenting Stockholder must complete the Demand for Payment Form attached to this Notice as Exhibit A.
2. The Demand for Payment Form (along with all certificates, if any, formerly evidencing the shares of the common stock of the Corporation formerly held by the Dissenting Stockholder) must be received by the Corporation no later than April 12, 2021, at the following address:

AeroGrow International, Inc.
Attn: Bernard K. Asirifi
14111 Scottslawn Road
Marysville, Ohio 43041

The Dissenting Stockholder shall be deemed to have waived the right to demand payment with respect to all shares of the common stock of the Corporation formerly held by the Dissenting Stockholder unless the completed and signed Demand for Payment Form is received by the Corporation by the date specified above.

3. The Dissenting Stockholder must indicate, on the Demand for Payment Form, whether such Dissenting Stockholder was the beneficial owner his, her or its shares of the common stock of the Corporation as of November 12, 2020, which was the date on which the terms of the Merger were first announced to the news media or to the Corporation's stockholders generally.

A copy of the Dissenter's Rights Statutes is attached to this Notice as Exhibit B. A Dissenting Stockholder with questions regarding the requirements of and the procedures set forth in the Dissenter's Rights Statutes should consult his, her or its legal counsel and other relevant advisers. **FAILURE TO STRICTLY ADHERE TO THE REQUIREMENTS OF THIS NOTICE AND THE APPLICABLE PROVISIONS OF THE NRS CAN RESULT IN THE LOSS OF DISSENTER'S RIGHTS.**

* * * *

Dated as of the date first written above.

AEROGROW INTERNATIONAL, INC.

By: Bernard K. Asirifi
Name: Bernard K. Asirifi
Title: Assistant Secretary

EXHIBIT A

DEMAND FOR PAYMENT FORM

THIS FORM IS NOT EXHAUSTIVE OF THE PROCEDURAL REQUIREMENTS IMPOSED UPON DISSENTING STOCKHOLDERS UNDER NEVADA LAW. IN VIEW OF THE COMPLEXITY OF THE DISSENTER'S RIGHTS STATUTES (AS DEFINED BELOW), EACH DISSENTING STOCKHOLDER SHOULD CONSULT HIS, HER OR ITS LEGAL COUNSEL AND OTHER RELEVANT ADVISERS PRIOR TO COMPLETING AND RETURNING THIS DEMAND FOR PAYMENT FORM.

Effective on February 26, 2021, AeroGrow International, Inc., a Nevada corporation (the "Corporation") effectuated the Merger (as defined below) contemplated by that certain Agreement and Plan of Merger, dated as of November 11, 2020 (as amended to date, the "Merger Agreement"), by and among the Corporation, SMG Growing Media, Inc., an Ohio corporation ("Parent"), AGI Acquisition Sub, Inc., a Nevada corporation and wholly-owned subsidiary of Parent ("Merger Sub"), and, solely for the purposes stated in Section 6.4 of the Merger Agreement, The Scotts Miracle-Gro Company, an Ohio corporation ("Scotts Miracle-Gro"). Pursuant to the terms of the Merger Agreement, Merger Sub merged with and into the Corporation (the "Merger"), with the Corporation continuing as the surviving corporation in the Merger as a direct, wholly-owned subsidiary of Parent and an indirect, wholly-owned subsidiary of Scotts Miracle-Gro.

The undersigned, pursuant to Nevada Revised Statutes ("NRS") 92A.300 to 92A.500, inclusive (the "Dissenter's Rights Statutes"), hereby demands payment for all shares of common stock of the Corporation that (i) were owned by the undersigned immediately prior to the effective time of the Merger and (ii) as to which the undersigned has dissenter's rights as of the date hereof. Announcement of the terms of the Merger was first made to the news media or the Corporation's stockholders generally on November 12, 2020 (the "Announcement Date"). Pursuant to NRS 92A.440, the undersigned former holder of common stock of the Corporation hereby certifies that the undersigned acquired beneficial ownership of all such shares (please check only one box):

☐ prior to the Announcement Date

☐ on or after the Announcement Date

IN WITNESS WHEREOF, this Demand for Payment has been signed on _____, 2021.

(Print or type full name of stockholder)

(Signature)

(Title, if applicable)

<p>THIS DEMAND FOR PAYMENT FORM, PROPERLY COMPLETED AND SIGNED, MUST BE RECEIVED BY THE CORPORATION, ALONG WITH ANY AND ALL CERTIFICATES FORMERLY EVIDENCING THE SHARES OF COMMON STOCK OF THE CORPORATION YOU FORMERLY OWNED, BY NO LATER THAN <u>APRIL 12, 2021</u>. YOU SHALL BE DEEMED TO HAVE WAIVED THE RIGHT TO DEMAND PAYMENT WITH RESPECT TO ALL SHARES OF THE COMMON STOCK OF THE CORPORATION YOU FORMERLY OWNED UNLESS THE PROPERLY COMPLETED AND SIGNED FORM IS RECEIVED BY THE CORPORATION BY SUCH DATE.</p>
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EXHIBIT B

DISSENTER'S RIGHTS STATUTES
(NEVADA REVISED STATUTES 92A.300 TO 92A.500)

[attached]

RIGHTS OF DISSENTING OWNERS

NRS 92A.300 Definitions. As used in NRS 92A.300 to 92A.500, inclusive, unless the context otherwise requires, the words and terms defined in NRS 92A.305 to 92A.335, inclusive, have the meanings ascribed to them in those sections.

(Added to NRS by 1995, 2086)

NRS 92A.305 "Beneficial stockholder" defined. "Beneficial stockholder" means a person who is a beneficial owner of shares held in a voting trust or by a nominee as the stockholder of record.

(Added to NRS by 1995, 2087)

NRS 92A.310 "Corporate action" defined. "Corporate action" means the action of a domestic corporation.

(Added to NRS by 1995, 2087)

NRS 92A.315 "Dissenter" defined. "Dissenter" means a stockholder who is entitled to dissent from a domestic corporation's action under NRS 92A.380 and who exercises that right when and in the manner required by NRS 92A.400 to 92A.480, inclusive.

(Added to NRS by 1995, 2087; A 1999, 1631)

NRS 92A.320 "Fair value" defined. "Fair value," with respect to a dissenter's shares, means the value of the shares determined:

1. Immediately before the effectuation of the corporate action to which the dissenter objects, excluding any appreciation or depreciation in anticipation of the corporate action unless exclusion would be inequitable;
2. Using customary and current valuation concepts and techniques generally employed for similar businesses in the context of the transaction requiring appraisal; and
3. Without discounting for lack of marketability or minority status.

(Added to NRS by 1995, 2087; A 2009, 1720)

NRS 92A.325 "Stockholder" defined. "Stockholder" means a stockholder of record or a beneficial stockholder of a domestic corporation.

(Added to NRS by 1995, 2087)

NRS 92A.330 "Stockholder of record" defined. "Stockholder of record" means the person in whose name shares are registered in the records of a domestic corporation or the beneficial owner of shares to the extent of the rights granted by a nominee's certificate on file with the domestic corporation.

(Added to NRS by 1995, 2087)

NRS 92A.335 "Subject corporation" defined. "Subject corporation" means the domestic corporation which is the issuer of the shares held by a dissenter before the corporate action creating the dissenter's rights becomes effective or the surviving or acquiring entity of that issuer after the corporate action becomes effective.

(Added to NRS by 1995, 2087)

NRS 92A.340 Computation of interest. Interest payable pursuant to NRS 92A.300 to 92A.500, inclusive, must be computed from the effective date of the action until the date of payment, at the rate of interest most recently established pursuant to NRS 99.040.

(Added to NRS by 1995, 2087; A 2009, 1721)

NRS 92A.350 Rights of dissenting partner of domestic limited partnership. A partnership agreement of a domestic limited partnership or, unless otherwise provided in the partnership agreement, an agreement of merger or exchange, may provide that contractual rights with respect to the partnership interest of a dissenting general or limited partner of a domestic limited partnership are available for any class or group of partnership interests in connection with any merger or exchange in which the domestic limited partnership is a constituent entity.

(Added to NRS by 1995, 2088)

NRS 92A.360 Rights of dissenting member of domestic limited-liability company. The articles of organization or operating agreement of a domestic limited-liability company or, unless otherwise provided in the articles of organization or operating agreement, an agreement of merger or exchange, may provide that contractual rights with respect to the interest of a dissenting member are available in connection with any merger or exchange in which the domestic limited-liability company is a constituent entity.

(Added to NRS by 1995, 2088)

NRS 92A.370 Rights of dissenting member of domestic nonprofit corporation.

1. Except as otherwise provided in subsection 2, and unless otherwise provided in the articles or bylaws, any member of any constituent domestic nonprofit corporation who voted against the merger may, without prior notice, but within 30 days after the effective date of the merger, resign from membership and is thereby excused from all contractual obligations to the constituent or surviving corporations which did not occur before the member's

resignation and is thereby entitled to those rights, if any, which would have existed if there had been no merger and the membership had been terminated or the member had been expelled.

2. Unless otherwise provided in its articles of incorporation or bylaws, no member of a domestic nonprofit corporation, including, but not limited to, a cooperative corporation, which supplies services described in chapter 704 of NRS to its members only, and no person who is a member of a domestic nonprofit corporation as a condition of or by reason of the ownership of an interest in real property, may resign and dissent pursuant to subsection 1.

(Added to NRS by 1995, 2088)

NRS 92A.380 Right of stockholder to dissent from certain corporate actions and to obtain payment for shares.

1. Except as otherwise provided in NRS 92A.370 and 92A.390 and subject to the limitation in paragraph (f), any stockholder is entitled to dissent from, and obtain payment of the fair value of the stockholder's shares in the event of any of the following corporate actions:

(a) Consummation of a plan of merger to which the domestic corporation is a constituent entity:

(1) If approval by the stockholders is required for the merger by NRS 92A.120 to 92A.160, inclusive, or the articles of incorporation, regardless of whether the stockholder is entitled to vote on the plan of merger;

(2) If the domestic corporation is a subsidiary and is merged with its parent pursuant to NRS 92A.180; or

(3) If the domestic corporation is a constituent entity in a merger pursuant to NRS 92A.133.

(b) Consummation of a plan of conversion to which the domestic corporation is a constituent entity as the corporation whose subject owner's interests will be converted.

(c) Consummation of a plan of exchange to which the domestic corporation is a constituent entity as the corporation whose subject owner's interests will be acquired, if the stockholder's shares are to be acquired in the plan of exchange.

(d) Any corporate action taken pursuant to a vote of the stockholders to the extent that the articles of incorporation, bylaws or a resolution of the board of directors provides that voting or nonvoting stockholders are entitled to dissent and obtain payment for their shares.

(e) Accordance of full voting rights to control shares, as defined in NRS 78.3784, only to the extent provided for pursuant to NRS 78.3793.

(f) Any corporate action not described in this subsection pursuant to which the stockholder would be obligated, as a result of the corporate action, to accept money or scrip rather than receive a fraction of a share in exchange for the cancellation of all the stockholder's outstanding shares, except where the stockholder would not be entitled to receive such payment pursuant to NRS 78.205, 78.2055 or 78.207. A dissent pursuant to this paragraph applies only to the fraction of a share, and the stockholder is entitled only to obtain payment of the fair value of the fraction of a share.

2. A stockholder who is entitled to dissent and obtain payment pursuant to NRS 92A.300 to 92A.500, inclusive, must not challenge the corporate action creating the entitlement unless the action is unlawful or constitutes or is the result of actual fraud against the stockholder or the domestic corporation.

3. Subject to the limitations in this subsection, from and after the effective date of any corporate action described in subsection 1, no stockholder who has exercised the right to dissent pursuant to NRS 92A.300 to 92A.500, inclusive, is entitled to vote his or her shares for any purpose or to receive payment of dividends or any other distributions on shares. This subsection does not apply to dividends or other distributions payable to stockholders on a date before the effective date of any corporate action from which the stockholder has dissented. If a stockholder exercises the right to dissent with respect to a corporate action described in paragraph (f) of subsection 1, the restrictions of this subsection apply only to the shares to be converted into a fraction of a share and the dividends and distributions to those shares.

(Added to NRS by 1995, 2087; A 2001, 1414, 3199; 2003, 3189; 2005, 2204; 2007, 2438; 2009, 1721; 2011, 2814; 2012, 109)

NRS 92A.390 Limitations on right of dissent: Stockholders of certain classes or series; action of stockholders not required for plan of merger; shares of stock not issued and outstanding on date of first announcement of proposed action.

1. There is no right of dissent pursuant to paragraph (a), (b), (c) or (f) of subsection 1 of NRS 92A.380 in favor of stockholders of any class or series which is:

(a) A covered security under section 18(b)(1)(A) or (B) of the Securities Act of 1933, 15 U.S.C. § 77r(b)(1)(A) or (B), as amended;

(b) Traded in an organized market and has at least 2,000 stockholders and a market value of at least \$20,000,000, exclusive of the value of such shares held by the corporation's subsidiaries, senior executives, directors and beneficial stockholders owning more than 10 percent of such shares; or

(c) Issued by an open end management investment company registered with the Securities and Exchange Commission under the Investment Company Act of 1940, 15 U.S.C. §§ 80a-1 et seq., as amended, and which may be redeemed at the option of the holder at net asset value,

↪ unless the articles of incorporation of the corporation issuing the class or series or the resolution of the board of directors approving the plan of merger, conversion or exchange expressly provide otherwise.

2. The applicability of subsection 1 must be determined as of:

(a) The record date fixed to determine the stockholders entitled to receive notice of and to vote at the meeting of stockholders to act upon the corporate action requiring dissenter's rights; or

(b) The day before the effective date of such corporate action if there is no meeting of stockholders.

3. Subsection 1 is not applicable and dissenter's rights are available pursuant to NRS 92A.380 for the holders of any class or series of shares who are required by the terms of the corporate action to accept for such shares anything other than:

(a) Cash;
(b) Any security or other proprietary interest of any other entity, including, without limitation, shares, equity interests or contingent value rights, that satisfies the standards set forth in subsection 1 at the time the corporate action becomes effective; or

(c) Any combination of paragraphs (a) and (b).

4. There is no right of dissent for any holders of stock of the surviving domestic corporation if the plan of merger does not require action of the stockholders of the surviving domestic corporation under NRS 92A.130.

5. There is no right of dissent for any holders of stock of the parent domestic corporation if the plan of merger does not require action of the stockholders of the parent domestic corporation under NRS 92A.180.

6. There is no right of dissent with respect to any share of stock that was not issued and outstanding on the date of the first announcement to the news media or to the stockholders of the terms of the proposed action requiring dissenter's rights.

(Added to NRS by 1995, 2088; A 2009, 1722; 2013, 1285; 2019, 110, 2495)

NRS 92A.400 Limitations on right of dissent: Assertion as to portions only to shares registered to stockholder; assertion by beneficial stockholder.

1. A stockholder of record may assert dissenter's rights as to fewer than all of the shares registered in his or her name only if the stockholder of record dissents with respect to all shares of the class or series beneficially owned by any one person and notifies the subject corporation in writing of the name and address of each person on whose behalf the stockholder of record asserts dissenter's rights. The rights of a partial dissenter under this subsection are determined as if the shares as to which the partial dissenter dissents and his or her other shares were registered in the names of different stockholders.

2. A beneficial stockholder may assert dissenter's rights as to shares held on his or her behalf only if the beneficial stockholder:

(a) Submits to the subject corporation the written consent of the stockholder of record to the dissent not later than the time the beneficial stockholder asserts dissenter's rights; and

(b) Does so with respect to all shares of which he or she is the beneficial stockholder or over which he or she has power to direct the vote.

(Added to NRS by 1995, 2089; A 2009, 1723)

NRS 92A.410 Notification of stockholders regarding right of dissent.

1. If a proposed corporate action creating dissenter's rights is submitted to a vote at a stockholders' meeting, the notice of the meeting must state that stockholders are, are not or may be entitled to assert dissenter's rights under NRS 92A.300 to 92A.500, inclusive. If the domestic corporation concludes that dissenter's rights are or may be available, a copy of NRS 92A.300 to 92A.500, inclusive, must accompany the meeting notice sent to those stockholders of record entitled to exercise dissenter's rights.

2. If the corporate action creating dissenter's rights is taken by written consent of the stockholders or without a vote of the stockholders, the domestic corporation shall notify in writing all stockholders of record entitled to assert dissenter's rights that the action was taken and send them the dissenter's notice described in NRS 92A.430.

(Added to NRS by 1995, 2089; A 1997, 730; 2009, 1723; 2013, 1286; 2019, 111)

NRS 92A.420 Prerequisites to demand for payment for shares.

1. If a proposed corporate action creating dissenter's rights is submitted to a vote at a stockholders' meeting, a stockholder who wishes to assert dissenter's rights with respect to any class or series of shares:

(a) Must deliver to the subject corporation, before the vote is taken, written notice of the stockholder's intent to demand payment for his or her shares if the proposed action is effectuated; and

(b) Must not vote, or cause or permit to be voted, any of his or her shares of such class or series in favor of the proposed action.

2. If a proposed corporate action creating dissenter's rights is taken by written consent of the stockholders, a stockholder who wishes to assert dissenter's rights with respect to any class or series of shares must not consent to or approve the proposed corporate action with respect to such class or series.

3. A stockholder who does not satisfy the requirements of subsection 1 or 2 and NRS 92A.400 is not entitled to payment for his or her shares under this chapter.

(Added to NRS by 1995, 2089; A 1999, 1631; 2005, 2204; 2009, 1723; 2013, 1286)

NRS 92A.430 Dissenter's notice: Delivery to stockholders entitled to assert rights; contents.

1. The subject corporation shall deliver a written dissenter's notice to all stockholders of record entitled to assert dissenter's rights in whole or in part, and any beneficial stockholder who has previously asserted dissenter's rights pursuant to NRS 92A.400.

2. The dissenter's notice must be sent no later than 10 days after the effective date of the corporate action specified in NRS 92A.380, and must:

(a) State where the demand for payment must be sent and where and when certificates, if any, for shares must be deposited;

(b) Inform the holders of shares not represented by certificates to what extent the transfer of the shares will be restricted after the demand for payment is received;

(c) Supply a form for demanding payment that includes the date of the first announcement to the news media or to the stockholders of the terms of the proposed action and requires that the person asserting dissenter's rights certify whether or not the person acquired beneficial ownership of the shares before that date;

(d) Set a date by which the subject corporation must receive the demand for payment, which may not be less than 30 nor more than 60 days after the date the notice is delivered and state that the stockholder shall be deemed to have waived the right to demand payment with respect to the shares unless the form is received by the subject corporation by such specified date; and

(e) Be accompanied by a copy of NRS 92A.300 to 92A.500, inclusive.

(Added to NRS by 1995, 2089; A 2005, 2205; 2009, 1724; 2013, 1286)

NRS 92A.440 Demand for payment and deposit of certificates; loss of rights of stockholder; withdrawal from appraisal process.

1. A stockholder who receives a dissenter's notice pursuant to NRS 92A.430 and who wishes to exercise dissenter's rights must:

(a) Demand payment;

(b) Certify whether the stockholder or the beneficial owner on whose behalf he or she is dissenting, as the case may be, acquired beneficial ownership of the shares before the date required to be set forth in the dissenter's notice for this certification; and

(c) Deposit the stockholder's certificates, if any, in accordance with the terms of the notice.

2. If a stockholder fails to make the certification required by paragraph (b) of subsection 1, the subject corporation may elect to treat the stockholder's shares as after-acquired shares under NRS 92A.470.

3. Once a stockholder deposits that stockholder's certificates or, in the case of uncertified shares makes demand for payment, that stockholder loses all rights as a stockholder, unless the stockholder withdraws pursuant to subsection 4.

4. A stockholder who has complied with subsection 1 may nevertheless decline to exercise dissenter's rights and withdraw from the appraisal process by so notifying the subject corporation in writing by the date set forth in the dissenter's notice pursuant to NRS 92A.430. A stockholder who fails to so withdraw from the appraisal process may not thereafter withdraw without the subject corporation's written consent.

5. The stockholder who does not demand payment or deposit his or her certificates where required, each by the date set forth in the dissenter's notice, is not entitled to payment for his or her shares under this chapter.

(Added to NRS by 1995, 2090; A 1997, 730; 2003, 3189; 2009, 1724)

NRS 92A.450 Uncertificated shares: Authority to restrict transfer after demand for payment. The subject corporation may restrict the transfer of shares not represented by a certificate from the date the demand for their payment is received.

(Added to NRS by 1995, 2090; A 2009, 1725)

NRS 92A.460 Payment for shares: General requirements.

1. Except as otherwise provided in NRS 92A.470, within 30 days after receipt of a demand for payment pursuant to NRS 92A.440, the subject corporation shall pay in cash to each dissenter who complied with NRS 92A.440 the amount the subject corporation estimates to be the fair value of the dissenter's shares, plus accrued interest. The obligation of the subject corporation under this subsection may be enforced by the district court:

(a) Of the county where the subject corporation's principal office is located;

(b) If the subject corporation's principal office is not located in this State, in the county in which the corporation's registered office is located; or

(c) At the election of any dissenter residing or having its principal or registered office in this State, of the county where the dissenter resides or has its principal or registered office.

↪ The court shall dispose of the complaint promptly.

2. The payment must be accompanied by:

(a) The subject corporation's balance sheet as of the end of a fiscal year ending not more than 16 months before the date of payment, a statement of income for that year, a statement of changes in the stockholders' equity for that year or, where such financial statements are not reasonably available, then such reasonably equivalent financial information and the latest available quarterly financial statements, if any;

(b) A statement of the subject corporation's estimate of the fair value of the shares; and

(c) A statement of the dissenter's rights to demand payment under NRS 92A.480 and that if any such stockholder does not do so within the period specified, such stockholder shall be deemed to have accepted such payment in full satisfaction of the corporation's obligations under this chapter.

(Added to NRS by 1995, 2090; A 2007, 2704; 2009, 1725; 2013, 1287)

NRS 92A.470 Withholding payment for shares acquired on or after date of dissenter's notice: General requirements.

1. A subject corporation may elect to withhold payment from a dissenter unless the dissenter was the beneficial owner of the shares before the date set forth in the dissenter's notice as the first date of any announcement to the news media or to the stockholders of the terms of the proposed action.

2. To the extent the subject corporation elects to withhold payment, within 30 days after receipt of a demand for payment pursuant to NRS 92A.440, the subject corporation shall notify the dissenters described in subsection 1:

(a) Of the information required by paragraph (a) of subsection 2 of NRS 92A.460;

(b) Of the subject corporation's estimate of fair value pursuant to paragraph (b) of subsection 2 of NRS 92A.460;

(c) That they may accept the subject corporation's estimate of fair value, plus interest, in full satisfaction of their demands or demand appraisal under NRS 92A.480;

(d) That those stockholders who wish to accept such an offer must so notify the subject corporation of their acceptance of the offer within 30 days after receipt of such offer; and

(e) That those stockholders who do not satisfy the requirements for demanding appraisal under NRS 92A.480 shall be deemed to have accepted the subject corporation's offer.

3. Within 10 days after receiving the stockholder's acceptance pursuant to subsection 2, the subject corporation shall pay in cash the amount offered under paragraph (b) of subsection 2 to each stockholder who agreed to accept the subject corporation's offer in full satisfaction of the stockholder's demand.

4. Within 40 days after sending the notice described in subsection 2, the subject corporation shall pay in cash the amount offered under paragraph (b) of subsection 2 to each stockholder described in paragraph (e) of subsection 2.

(Added to NRS by 1995, 2091; A 2009, 1725; 2013, 1287)

NRS 92A.480 Dissenter's estimate of fair value: Notification of subject corporation; demand for payment of estimate.

1. A dissenter paid pursuant to NRS 92A.460 who is dissatisfied with the amount of the payment may notify the subject corporation in writing of the dissenter's own estimate of the fair value of his or her shares and the amount of interest due, and demand payment of such estimate, less any payment pursuant to NRS 92A.460. A dissenter offered payment pursuant to NRS 92A.470 who is dissatisfied with the offer may reject the offer pursuant to NRS 92A.470 and demand payment of the fair value of his or her shares and interest due.

2. A dissenter waives the right to demand payment pursuant to this section unless the dissenter notifies the subject corporation of his or her demand to be paid the dissenter's stated estimate of fair value plus interest under subsection 1 in writing within 30 days after receiving the subject corporation's payment or offer of payment under NRS 92A.460 or 92A.470 and is entitled only to the payment made or offered.

(Added to NRS by 1995, 2091; A 2009, 1726)

NRS 92A.490 Legal proceeding to determine fair value: Duties of subject corporation; powers of court; rights of dissenter.

1. If a demand for payment pursuant to NRS 92A.480 remains unsettled, the subject corporation shall commence a proceeding within 60 days after receiving the demand and petition the court to determine the fair value of the shares and accrued interest. If the subject corporation does not commence the proceeding within the 60-day period, it shall pay each dissenter whose demand remains unsettled the amount demanded by each dissenter pursuant to NRS 92A.480 plus interest.

2. A subject corporation shall commence the proceeding in the district court of the county where its principal office is located in this State. If the principal office of the subject corporation is not located in this State, the right to dissent arose from a merger, conversion or exchange and the principal office of the surviving entity, resulting entity or the entity whose shares were acquired, whichever is applicable, is located in this State, it shall commence the proceeding in the county where the principal office of the surviving entity, resulting entity or the entity whose shares were acquired is located. In all other cases, if the principal office of the subject corporation is not located in this State, the subject corporation shall commence the proceeding in the district court in the county in which the corporation's registered office is located.

3. The subject corporation shall make all dissenters, whether or not residents of Nevada, whose demands remain unsettled, parties to the proceeding as in an action against their shares. All parties must be served with a copy of the petition. Nonresidents may be served by registered or certified mail or by publication as provided by law.

4. The jurisdiction of the court in which the proceeding is commenced under subsection 2 is plenary and exclusive. The court may appoint one or more persons as appraisers to receive evidence and recommend a decision on the question of fair value. The appraisers have the powers described in the order appointing them, or any amendment thereto. The dissenters are entitled to the same discovery rights as parties in other civil proceedings.

5. Each dissenter who is made a party to the proceeding is entitled to a judgment:

(a) For the amount, if any, by which the court finds the fair value of the dissenter's shares, plus interest, exceeds the amount paid by the subject corporation; or

(b) For the fair value, plus accrued interest, of the dissenter's after-acquired shares for which the subject corporation elected to withhold payment pursuant to NRS 92A.470.

(Added to NRS by 1995, 2091; A 2007, 2705; 2009, 1727; 2011, 2815; 2013, 1288)

NRS 92A.500 Assessment of costs and fees in certain legal proceedings.

1. The court in a proceeding to determine fair value shall determine all of the costs of the proceeding, including the reasonable compensation and expenses of any appraisers appointed by the court. The court shall assess the costs against the subject corporation, except that the court may assess costs against all or some of the dissenters, in amounts the court finds equitable, to the extent the court finds the dissenters acted arbitrarily, vexatiously or not in good faith in demanding payment.

2. The court may also assess the fees and expenses of the counsel and experts for the respective parties, in amounts the court finds equitable:

(a) Against the subject corporation and in favor of all dissenters if the court finds the subject corporation did not substantially comply with the requirements of NRS 92A.300 to 92A.500, inclusive; or

(b) Against either the subject corporation or a dissenter in favor of any other party, if the court finds that the party against whom the fees and expenses are assessed acted arbitrarily, vexatiously or not in good faith with respect to the rights provided by NRS 92A.300 to 92A.500, inclusive.

3. If the court finds that the services of counsel for any dissenter were of substantial benefit to other dissenters similarly situated, and that the fees for those services should not be assessed against the subject corporation, the court

may award to those counsel reasonable fees to be paid out of the amounts awarded to the dissenters who were benefited.

4. In a proceeding commenced pursuant to NRS 92A.460, the court may assess the costs against the subject corporation, except that the court may assess costs against all or some of the dissenters who are parties to the proceeding, in amounts the court finds equitable, to the extent the court finds that such parties did not act in good faith in instituting the proceeding.

5. To the extent the subject corporation fails to make a required payment pursuant to NRS 92A.460, 92A.470 or 92A.480, the dissenter may bring a cause of action directly for the amount owed and, to the extent the dissenter prevails, is entitled to recover all expenses of the suit.

6. This section does not preclude any party in a proceeding commenced pursuant to NRS 92A.460 or 92A.490 from applying the provisions of NRS 17.117 or N.R.C.P. 68.

(Added to NRS by 1995, 2092; A 2009, 1727; 2015, 2566; 2019, 276)

Exhibit C

March 17, 2021

Maximilien D. Fetaz
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702.464.7083 tel
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VIA E-MAIL

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Rc: Overbrook Capital LLC v. AeroGrow International, Inc., et al., Lead Case No. A-21-827665-B (Radoff v. Hagedorn, et al., Case No. A-21-829854-B)

Dear Terry:

My firm represents AeroGrow International, Inc. ("AeroGrow"), AGI Acquisition Sub, Inc., SMG Growing Media, Inc., The Scotts Miracle-Gro Company, Chris Hagedorn, Cory Miller, Patricia M. Ziegler, James Hagedorn, and Peter Supron in connection with the above captioned actions. I am writing concerning the First Amended Complaint filed on March 15, 2021 in *Radoff* and in response to your email of March 16, 2021.

I. AeroGrow Has Complied with NRS Chapter 92A

On behalf of Mr. Radoff, you sent a letter dated February 19, 2021 to the AeroGrow Board of Directors with the subject line, "Notice of Intent to Demand Payment for Shares Pursuant to NRS 92A.420; Special Meeting Dated February 23, 2021 at 10:00 a.m." ("February 19 Letter"). Your client did not provide any documentation to substantiate his stated ownership and, because your client does not appear on AeroGrow's record stockholder lists, it appears your client purported to assert dissenter's rights as a beneficial stockholder.

As you know, NRS 92A.400 imposes the following limitation on beneficial stockholders' right of dissent:

"2. A beneficial stockholder may assert dissenter's rights as to shares held on his or her behalf *only if* the beneficial stockholder:

(a) Submits to the subject corporation the written consent of the stockholder of record to the dissent not later than the time the beneficial stockholder asserts dissenter's rights; and

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Brownstein Hyatt Farber Schreck, LLP

PA00448

(b) Does so with respect to all shares of which he or she is the beneficial stockholder or over which he or she has power to direct the vote.” (emphasis added).

AeroGrow has not received the statutorily required “written consent of the stockholder of record” to accompany Mr. Radoff’s purported notice of intent to demand payment for his shares. To comply with Nevada law, AeroGrow should have received that consent prior to the vote on the Merger,¹ which occurred on February 23, 2021 at 10:00 a.m. MT, as your February 19 Letter noted.

Because Mr. Radoff, an apparent beneficial stockholder, failed to obtain and submit the “written consent of the stockholder of record to the dissent,” he failed to comply with NRS 92A.400 and 92A.420. As you know, NRS 92A.420 (a statutory provision cited in your correspondence accompanying the purported notice of intent to dissent) provides that “[a] stockholder who does not satisfy the requirements of subsection 1 or 2 and NRS 92A.400 *is not entitled to payment for his or her shares under this chapter* [NRS Chapter 92A].” See NRS 92A.420(3) (emphasis added). Accordingly, AeroGrow had (and has) no obligation to provide Mr. Radoff (or you on his behalf) with a Dissenter’s Notice under NRS 92A.430.

Mr. Radoff failed to comply with the clear, statutory prerequisites for demanding payment of fair value under NRS Chapter 92A, and therefore AeroGrow properly paid him the Merger Consideration of \$3.00 per share. Your First Amended Complaint erroneously asserts that Mr. Radoff was paid the Merger Consideration pursuant to NRS 92A.460. But AeroGrow’s payment of the Merger Consideration to Mr. Radoff was *not* a payment of “fair value” (as defined in NRS 92A.320) pursuant to NRS 92A.460 or otherwise. As you know, the Merger Consideration is distinct from the statutory “fair value” as defined in NRS 92A.320 and required by NRS 92A.460. For these reasons, the allegations in the First Amended Complaint that AeroGrow did not comply with NRS 92A.460 (*e.g.*, par. 172) are inaccurate and also premature insofar as the dissenters’ rights process is continuing.

Simply put, your client failed to comply with Nevada law, so he did not receive a Dissenter’s Notice. He received the Merger Consideration to which he was entitled.

AeroGrow has complied with all applicable provisions of NRS Chapter 92A and will continue to do so. AeroGrow reserves all of its rights, defenses, and remedies under applicable law, including, without limitation, NRS 92A.500.

For the above reasons, AeroGrow requests that your client voluntarily dismiss or otherwise withdraw the First Amended Complaint’s fourth claim for relief seeking declaratory relief immediately. I also note that Nevada courts have the power to assess fee and expenses where a

¹ All terms not defined herein have the meanings ascribed to them in AeroGrow’s definitive proxy dated January 22, 2021.

Terry A. Coffing, Esq.
March 17, 2021
Page 3

party acts "arbitrarily, vexatiously or not in good faith with respect to the rights provided by NRS 92A.300 to 92A.500, inclusive." NRS 92A.500.

II. Appraisal Is the Exclusive Remedy to Challenge the Merger Consideration

Under Nevada law, appraisal is the exclusive remedy for stockholders who seek to challenge the purchase price of a transaction. NRS 92A.380(2). For that reason, Mr. Radoff's first, second, and third claims for relief are precluded from proceeding. To avoid the unnecessary expenditure of the Court's and the parties' resources, my clients request that your client voluntarily dismiss the *Radoff* action immediately.

All rights, remedies, and defenses under Nevada law, including, without limitation, NRS 92A.500, and other applicable law are hereby reserved; nothing in this letter should be construed as a waiver of such rights, remedies, and defenses or admission of any kind.

As we discussed, please let me know if you would like to set up a time to meet and confer on the above matters.

Sincerely,

Maximilien D. Fetaz, Esq.

CC via e-mail:

Marjorie P. Duffy, Esq.
Ashley F. Heintz, Esq.
Kirk B. Lenhard, Esq.
Travis F. Chance, Esq.
Brian Kerr, Esq.

Exhibit D

From: Mainiero, Ronald <rmainiero@btig.com>
Sent: Thursday, March 18, 2021 7:26 AM
To: Greg Lempel; Brad Radoff
Subject: RE: AERO-Dissenters Notices

Hi Greg,

As discussed, due to the fact the merger consideration has been paid, the AERO shares are no longer held at Cede & Co. Goldman is unable to retro actively provide these letters. As stated below, the merger payment would have to be returned to the company and Goldman would need something from the company stating the shares would also be returned to the client.

Goldman replied: It's generally not possible to exercise dissent after the merger has already paid in the market and there is usually a dissenters deadline before a merger completes. Did your client get approval from company or agent to do so? Essentially, are they looking to return the merger payment? Any additional info here would be helpful.

Regards,

Ron Mainiero
Senior Vice President, Prime Brokerage

BTIG
office: 212.527.3517
rmainiero@btig.com

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From: Greg Lempel <greg@fondrenlp.com>
Sent: Wednesday, March 17, 2021 5:02 PM
To: Mainiero, Ronald <rmainiero@btig.com>
Cc: Brad Radoff <brad@fondrenlp.com>; Pontecorvo, Nicholas <npontecorvo@btig.com>
Subject: [ext] RE: AERO-Dissenters Notices

Ron, Can Goldman provide letters for Brad and Radoff Family Foundation similar to attached? We have been advised merger consideration was received for Wolman shares similar to Brad and Radoff Family Foundation.

Please advise what is necessary to have Goldman send these letters on our behalf.

Thank you, Greg

Greg Lempel
Fondren Management LP
greg@fondrenlp.com
713 482 2196 (o)
713 480 5519 (m)

From: Mainiero, Ronald <rmainiero@btig.com>
Sent: Thursday, March 11, 2021 4:15 PM
To: Greg Lempel <greg@fondrenlp.com>
Cc: Brad Radoff <brad@fondrenlp.com>; Pontecorvo, Nicholas <npontecorvo@btig.com>
Subject: RE: AERO-Dissenters Notices

Hi Greg,

Goldman replied: It's generally not possible to exercise dissent after the merger has already paid in the market and there is usually a dissenters deadline before a merger completes. Did your client get approval from company or agent to do so? Essentially, are they looking to return the merger payment? Any additional info here would be helpful.

Regards,

Ron Mainiero
Senior Vice President, Prime Brokerage

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office: 212.527.3517
rmainiero@btig.com

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From: Greg Lempel <greg@fondrenlp.com>
Sent: Thursday, March 11, 2021 3:56 PM
To: Mainiero, Ronald <rmainiero@btig.com>
Cc: Brad Radoff <brad@fondrenlp.com>; Pontecorvo, Nicholas <npontecorvo@btig.com>
Subject: [ext] RE: AERO-Dissenters Notices

Ron, Please have goldman instruct DTC for AERO shares previously held in Bradley L. Radoff and Radoff Family Foundation account. Thank you, Greg

Greg Lempel
Fondren Management LP
greg@fondrenlp.com
713 482 2196 (o)
713 480 5519 (m)

From: Mainiero, Ronald <rmainiero@btig.com>
Sent: Thursday, March 11, 2021 1:48 PM
To: Greg Lempel <greg@fondrenlp.com>
Cc: Brad Radoff <brad@fondrenlp.com>; Pontecorvo, Nicholas <npontecorvo@btig.com>
Subject: RE: AERO-Dissenters Notices

Hi Greg,

Goldman replied: Template is attached. First letter is GS instruction to DTC, and second letter is the one DTC/CEDE & Co will return back to us.

Regards,

Ron Mainiero
Senior Vice President, Prime Brokerage

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rmainiero@btig.com

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From: Greg Lempel <greg@fondrenlp.com>
Sent: Thursday, March 11, 2021 2:03 PM
To: Mainiero, Ronald <rmainiero@btig.com>
Cc: Brad Radoff <brad@fondrenlp.com>; Pontecorvo, Nicholas <npontecorvo@btig.com>
Subject: [ext] RE: AERO-Dissenters Notices

Ron, I contacted DTC and they referred us back to broker (BTIG/Goldman) to access forms referenced in note below. We need forms to exercise Dissenters/Appraisal rights:

PARTICIPANTS WISHING TO EXERCISE DISSENTERS/APPRaisal RIGHTS THROUGH THE DEPOSITORY TRUST COMPANY (DTC) SHOULD ACCESS DTC S WEBSITE AT WWW.DTCC.COM CLICK ON THE ASSET SERVICES CATEGORY, THEN CLICK ON THE USER DOCUMENTATION FILE TO RETRIEVE THE REQUIRED FORMS UNDER PROXY SERVICE LETTERS. THE EXECUTED FORMS SHOULD BE SUBMITTED TO DTC S PROXY DEPARTMENT. 01/25/21: PARTICIPANTS MAY OBTAIN A COPY OF THE SCHEDULE 14A BY VISITING DTC S WEBSITE AT: WWW.DTCC.COM/LENS - LG20210125-077

Please reply with these forms. Thank you, Greg

Greg Lempel
Fondren Management LP
greg@fondrenlp.com

713 482 2196 (o)
713 480 5519 (m)

From: Mainiero, Ronald <rmainiero@btig.com>
Sent: Thursday, March 11, 2021 9:18 AM
To: Greg Lempel <greg@fondrenlp.com>
Cc: Brad Radoff <brad@fondrenlp.com>; Pontecorvo, Nicholas <npontecorvo@btig.com>
Subject: RE: AERO-Dissenters Notices

Hi Greg,

Goldman replied:

We show the below event has paid. Is there any additional information that you needed for the below query, so that we may research further.

Notification		Announcement ID: 79232564
Event Information : Merger - Mandatory Event		
Security:	AERO GROW INTERNATNL INC CMN	
Offer By:	SMG GROWING MEDIA IN	
Security ID:	<ul style="list-style-type: none">• Cusip: 00768M202• Isin: US00768M2026• Sedol:	
Meeting Date:	Feb 23 2021	
Pay Date:	Mar 1 2021	
Term 1:	CASH DISTRIBUTION	
	<ul style="list-style-type: none">• PayDate : Mar 1 2021• 3.000000000000 USD per 1.000000000000 of holding.	
<p>02/25/21: PARTICIPANTS ARE ADVISED THE CASH MERGER WAS APPROVED AT THE MEETING WE HAVE NOT RECEIVED THE FINAL EFFECTIVE DATE AT THIS TIME. WE WILL CONTINUE TO MONITOR AND UPDATE ACCORDINGLY. XT-CREATE DATE AND TIME:2020-11-16T13:42:20 XT-UPDATE DATE AND TIME:2021-02-25T16:59:40 XT-ASSET TYPE DTCASSTP:S010 XT-EVENT RDP REFERENCE NUMBER:C7200000768M20200000000000000010 OPTION:(1) RDP REFERENCE NUMBER:C7200000768M2020000000000000001001/26/21-PARTICIPANTS WISHING TO EXERCISE DISSENTERS/APPRaisal RIGHTS THROUGH DTC CAN OBTAIN THE REQUIRED FORMS AND INFORMATION ON SUBMITTING THE REQUEST AT DTCC S WEBSITE: DTCC.COM/SETTLEMENT-AND-ASSET-SERVICES/ISSUER-SERVICES/PROXY-DOCUMENTATION. THE EXECUTED FORMS SHOULD BE SUBMITTED TO DTC S PROXY DEPARTMENT VIA THE PORTAL. 11/16/20: PARTICIPANTS, AEROGROW INTERNATIONAL, INC. ENTERED INTO AN AGREEMENT AND PLAN OF MERGER WITH SMG GROWING MEDIA, INC., AN OHIO CORPORATION AGI ACQUISITION SUB, INC., A NEVADA CORPORATION AND DIRECT, WHOLLY-OWNED SUBSIDIARY OF PARENT (MERGER SUB AND, TOGETHER WITH PARENT, THE PURCHASER PARTIES), AND, SOLELY FOR THE PURPOSES STATED IN SECTION 6.4 OF THE MERGER MERGER AGREEMENT, THE SCOTTS MIRACLE-GRO COMPANY, AN OHIO CORPORATION RELATING TO THE PROPOSED ACQUISITION OF THE COMPANY BY PARENT. THE MERGER AGREEMENT PROVIDES THAT, UPON THE TERMS AND SUBJECT TO THE CONDITIONS SET THEREIN, MERGER SUB WILL BE MERGED WITH AND INTO THE COMPANY (THE MERGER) WITH THE COMPANY CONTINUING AS THE SURVIVING CORPORATION IN THE MERGER, AND, AT THE EFFECTIVE TIME OF THE MERGER EACH SHARE OF COMMON STOCK OF THE COMPANY PAR VALUE 0.001 PER SHARE (THE COMMON STOCK) (OTHER THAN EXCLUDED SHARES AND DISSENTING SHARES (EACH AS DEFINED IN THE MERGER AGREEMENT), ISSUED AND OUTSTANDING IMMEDIATELY PRIOR TO THE EFFECTIVE TIME WILL BE AUTOMATICALLY CONVERTED INTO THE RIGHT TO RECEIVE 3.00 IN CASH, WITHOUT INTEREST THEREON AND SUBJECT TO ANY REQUIRED WITHHOLDING OF TAXES (THE MERGER CONSIDERATION), 02/15/21: PARTICIPANTS ARE ADVISED THERE ARE NO UPDATES AT THIS TIME. DTC WILL CONTINUE TO MONITOR THE EVENT FOR ANY NEW INFORMATION. 01/25/21: PARTICIPANTS THE MEETING HAS BEEN SET FOR FEBRUARY 23, 2021, ANY STOCKHOLDER WHO DOES NOT VOTE IN FAVOR OF THE MERGER AGREEMENT PROPOSAL WILL HAVE THE RIGHT TO DISSENT FROM THE MERGER AND, IN LIEU OF RECEIVING THE CONSIDERATION PRESCRIBED UNDER TH E MERGER AGREEMENT, OBTAIN PAYMENT OF THE FAIR VALUE OF</p>		

THE STOCKHOLDER S SHARES, BUT ONLY IF (1) THE STOCKHOLDER DELIVERS TO THE COMPANY, BEFORE THE VOTE ON THE MERGER AGREEMENT PROPOSAL IS TAKEN AT THE SPECIAL MEETING, WRITTEN NOTICE OF THE STOCKHOLDER S INTENT TO DEMAND PAYMENT FOR THE STOCKHOLDER S SHARES IF THE MERGER IS EFFECTUATED, AND (2) THE STOCKHOLDER COMPLIES WITH ALL OTHER APPLICABLE REQUIREMENTS OF NEVADA LAW, WHICH ARE SUMMARIZED IN THE PROXY STATEMENT AND REPRODUCED IN THEIR ENTIRETY IN ANNEX C TO THE PROXY STATEMENT. YOU ARE ENCOURAGED TO READ THE PROXY STATEMENT AND ITS ANNEXES, INCLUDING ALL DOCUMENTS INCORPORATED BY REFERENCE INTO THE PROXY STATEMENT, CAREFULLY AND IN THEIR ENTIRETY. IF YOU HAVE ANY QUESTIONS CONCERNING THE MERGER, THE SPECIAL MEETING OR THE PROXY STATEMENT, WOULD LIKE ADDITIONAL COPIES OF THE ACCOMPANYING PROXY STATEMENT OR NEED HELP VOTING YOUR SHARES, PLEASE CONTACT THE COMPANY AT: AEROGROW INTERNATIONAL, INC. ATTENTION: SENIOR VICE PRESIDENT OF FINANCE AND ADMINISTRATION 5405 SPINE ROAD BOULDER, COLORADO 80301 GREYATAEROGROW.COM (303) 444-7755 PARTICIPANTS WISHING TO EXERCISE DISSENTERS/APPRaisal RIGHTS THROUGH THE DEPOSITORY TRUST COMPANY (DTC) SHOULD ACCESS DTC S WEBSITE AT WWW.DTCC.COM CLICK ON THE ASSET SERVICES CATEGORY, THEN CLICK ON THE USER DOCUMENTATION FILE TO RETRIEVE THE REQUIRED FORMS UNDER PROXY SERVICE LETTERS. THE EXECUTED FORMS SHOULD BE SUBMITTED TO DTC S PROXY DEPARTMENT. 01/25/21: PARTICIPANTS MAY OBTAIN A COPY OF THE SCHEDULE 14A BY VISITING DTC S WEBSITE AT: WWW.DTCC.COM/LENS - LG20210125-077

This corporate action event information is based upon our records and information as of today's date. Should this information, your relevant holdings, or entitlement terms change, we will notify you as soon as possible. Any entitlement details are provided for information only and are based upon a full election and are subject to adjustment based upon your reply.

Ron Mainiero

Senior Vice President, Prime Brokerage

BTIG

office: 212.527.3517

rmainiero@btig.com

www.btig.com

Disclaimer: <https://www.btig.com/disclaimer.aspx>



From: Greg Lempel <greg@fondrenlp.com>

Sent: Tuesday, March 09, 2021 6:18 PM

To: Mainiero, Ronald <rmainiero@btig.com>

Cc: Brad Radoff <brad@fondrenlp.com>; Pontecorvo, Nicholas <npontecorvo@btig.com>

Subject: [ext] AERO-Dissenters Notices

Ron, Please check we have received any dissenters holdings for AERO holdings. Thank you, Greg

Greg Lempel

Fondren Management LP

greg@fondrenlp.com

713 482 2196 (o)

713 480 5519 (m)

Exhibit E

CHAPTER 13

Appraisal Rights

Subchapter A.

RIGHT TO APPRAISAL AND PAYMENT FOR SHARES

§ 13.01. Definitions

§ 13.02. Right to appraisal

§ 13.03. Assertion of rights by nominees and beneficial shareholders

Subchapter B.

PROCEDURE FOR EXERCISE OF APPRAISAL RIGHTS

§ 13.20. Notice of appraisal rights

§ 13.21. Notice of intent to demand payment and consequences of voting or consenting

§ 13.22. Appraisal notice and form

§ 13.23. Perfection of rights; right to withdraw

§ 13.24. Payment

§ 13.25. After-acquired shares

§ 13.26. Procedure if shareholder dissatisfied with payment or offer

Subchapter C.

JUDICIAL APPRAISAL OF SHARES

§ 13.30. Court action

§ 13.31. Court costs and expenses

Subchapter D.

OTHER REMEDIES

§ 13.40. Other remedies limited

Subchapter A.

RIGHT TO APPRAISAL AND PAYMENT FOR SHARES

§ 13.01. DEFINITIONS

In this chapter:

“Affiliate” means a person that directly or indirectly through one or more intermediaries controls, is controlled by, or is under common control with another person or is a senior executive of such person. For purposes of section 13.02(b)(4), a person is deemed to be an affiliate of its senior executives.

“Corporation” means the domestic corporation that is the issuer of the shares held by a shareholder demanding appraisal and, for matters covered in sections 13.22 through 13.31, includes the survivor of a merger.

“Fair value” means the value of the corporation’s shares determined:

- (i) immediately before the effectiveness of the corporate action to which the shareholder objects;
- (ii) using customary and current valuation concepts and techniques generally employed for similar businesses in the context of the transaction requiring appraisal; and
- (iii) without discounting for lack of marketability or minority status except, if appropriate, for amendments to the articles of incorporation pursuant to section 13.02(a)(5).

“Interest” means interest from the date the corporate action becomes effective until the date of payment, at the rate of interest on judgments in this state on the effective date of the corporate action.

“Interested transaction” means a corporate action described in section 13.02(a), other than a merger pursuant to section 11.05, involving an interested person in which any of the shares or assets of the corporation are being acquired or converted. As used in this definition:

- (i) “Interested person” means a person, or an affiliate of a person, who at any time during the one-year period immediately preceding approval by the board of directors of the corporate action:
 - (A) was the beneficial owner of 20% or more of the voting power of the corporation, other than as owner of excluded shares;
 - (B) had the power, contractually or otherwise, other than as owner of excluded shares, to cause the appointment or election of 25% or more of the directors to the board of directors of the corporation; or
 - (C) was a senior executive or director of the corporation or a senior executive of any affiliate of the corporation, and that senior executive or director will receive, as a result of the corporate action, a financial benefit not generally available to other shareholders as such, other than:
 - (I) employment, consulting, retirement, or similar benefits established separately and not as part of or in contemplation of the corporate action;
 - (II) employment, consulting, retirement, or similar benefits established in contemplation of, or as part of, the corporate action that are not more favorable than those existing before the corporate action or, if more favorable, that have been approved on behalf of the corporation in the same manner as is provided in section 8.62; or
 - (III) in the case of a director of the corporation who will, in the corporate action, become a director or governor of the acquiror or any of its affiliates, rights and benefits as a director or governor that are provided on the same basis as those afforded by the acquiror generally to other directors or governors of such entity or such affiliate.
- (ii) “Beneficial owner” means any person who, directly or indirectly, through any contract, arrangement, or understanding, other than a revocable proxy, has or shares the power to vote, or to direct the voting of, shares; except that a member of a national securities exchange is not deemed to be a beneficial owner of securities held directly or indirectly

by it on behalf of another person if the member is precluded by the rules of the exchange from voting without instruction on contested matters or matters that may affect substantially the rights or privileges of the holders of the securities to be voted. When two or more persons agree to act together for the purpose of voting their shares of the corporation, each member of the group formed thereby is deemed to have acquired beneficial ownership, as of the date of the agreement, of all shares having voting power of the corporation beneficially owned by any member of the group.

- (iii) “Excluded shares” means shares acquired pursuant to an offer for all shares having voting power if the offer was made within one year before the corporate action for consideration of the same kind and of a value equal to or less than that paid in connection with the corporate action.

“Preferred shares” means a class or series of shares whose holders have preference over any other class or series of shares with respect to distributions.

“Senior executive” means the chief executive officer, chief operating officer, chief financial officer, and any individual in charge of a principal business unit or function.

“Shareholder” means a record shareholder, a beneficial shareholder, and a voting trust beneficial owner.

CROSS-REFERENCES

Directors’ action on director’s conflicting interest transaction, see § 8.62.

“Governor” defined, see § 1.40.

“Voting power” defined, see § 1.40.

OFFICIAL COMMENT

1. Overview

Chapter 13 proceeds from the premise that judicial appraisal should be provided by statute only when two conditions co-exist. First, a proposed corporate action as approved by a majority will result in a fundamental change in the shares to be affected by the action. Second, uncertainty concerning the fair value of the affected shares may cause reasonable persons to differ about the fairness of the terms of the corporate action. Uncertainty is reduced, however, in the case of publicly traded shares. This explains both the market exception described below and the limits provided to that exception.

When these two conditions exist in connection with domestications and conversions under chapter 9, mergers and share exchanges under chapter 11, and dispositions of assets requiring shareholder approval under chapter 12, chapter 13 provides for appraisal rights. Each of these actions will result in a fundamental change in the shares that a disapproving shareholder may believe was not adequately compensated by the terms approved by the majority. Shareholders are not entitled to appraisal, however, if the change will not alter the terms of the class or series of securities that they hold. For example, statutory appraisal rights are not available for shares of any class or series of the surviving corporation in a merger that are not being changed in the merger or for shares of any class or series that is not included in a share exchange. Appraisal is also not triggered by a voluntary dissolution under chapter 14 because the dissolution does not affect liquidation rights of the shares of any class or series.

With the exception of reverse stock splits that result in cashing out some of the shares of a class or series, chapter 13 does not grant appraisal rights in connection with amendments to the articles of incorporation. This does not reflect a judgment that an amendment changing the terms of a particular class or series may not have significant economic effects. Rather, it reflects a judgment that distinguishing among different types of amendments for the purposes of statutory appraisal is necessarily arbitrary. Chapter 13 delineates in section 13.02(a)(5) a list of actions for which the corporation may voluntarily choose to provide appraisal. It also allows, under section 13.02(c), a provision in the articles of incorporation that eliminates, in whole or in part, statutory appraisal rights for preferred shares, subject to certain conditions.

Chapter 13 provides an exception to appraisal rights for publicly traded shares, referred to as the “market exception.” This exception is available in those situations when shareholders are likely to receive fair value if they sell their shares in the market after the announcement of an appraisal-triggering transaction. For the market exception to apply under chapter 13, there must be a liquid market for the shares. The market exception does not apply where the appraisal-triggering action is a conflict transaction.

2. Definitions

Section 13.01 contains specialized definitions applicable only to chapter 13.

A. CORPORATION

The definition of “corporation” in section 13.01 includes, for purposes of the post-transaction matters covered in sections 13.22 through 13.31, a successor entity in a merger where the corporation is not the surviving entity. The definition does not include an acquiring entity in a share exchange or disposition of assets because the corporation whose shares or assets were acquired continues in existence in both of these instances and remains responsible for the appraisal obligations. Whether a foreign corporation or other form of domestic or foreign entity is subject to appraisal rights in connection with any of these transactions depends upon the applicable law of the relevant jurisdiction.

B. FAIR VALUE

Clause (i) of the definition of “fair value” in section 13.01 specifies that fair value is to be determined immediately before the effectiveness of the corporate action, which will be after the shareholder vote. Accordingly, section 13.01 permits consideration of changes in the value of the corporation’s shares after the shareholder vote but before the effectiveness of the transaction, to the extent such changes are relevant. Similarly, in a two-step transaction culminating in a merger, fair value is determined immediately before the second step merger, taking into account any interim changes in value.

Clause (ii) of the definition of “fair value” in section 13.01 adopts the view that different transactions and different contexts may warrant different valuation methodologies. Customary valuation concepts and techniques will typically take into account numerous relevant factors, and will normally result in a range of values, not a particular single value. A court determining fair value under chapter 13 should give great deference to the aggregate consideration accepted or approved by a disinterested board of directors for an appraisal-triggering transaction.

Valuation discounts for lack of marketability or minority status are inappropriate in most appraisal actions, both because most transactions that trigger appraisal rights affect the corporation as a whole and because such discounts may give the majority the opportunity to take advantage of

minority shareholders who have been forced against their will to accept the appraisal-triggering transaction. Clause (iii) of the definition of “fair value” adopts the view that appraisal should generally award a shareholder his or her proportional interest in the corporation after valuing the corporation as a whole, rather than the value of the shareholder’s shares when valued alone.

C. INTEREST

The specification of the rate of interest on judgments, rather than a more subjective rate, eliminates a possible issue of contention and should facilitate voluntary settlements. Other state law determines whether interest is compound or simple.

D. INTERESTED TRANSACTION

The term “interested transaction” addresses two groups of conflict transactions: those in subsections (i)(A) and (B) of the definition, which involve large shareholders; and those in subsection (i)(C), which involve senior executives and directors. The phrase “involving an interested person” as applied to subsections (i)(A) and (B) denotes participation beyond merely voting or participating on the same basis as other holders of securities of the same or a similar class or series. When a transaction fits within the definition of an interested transaction there are two consequences: the market exception will not be applicable, and the exclusion of other remedies under section 13.40 will not be applicable unless certain disinterested approvals have been obtained.

The definition of “beneficial owner” in subsection (ii) of the definition of “interested transaction” is used to identify possible conflict situations by deeming each member of a group that agrees to vote in concert to be a beneficial owner of all the voting shares owned by the members of the group. (In contrast, the term “beneficial shareholder,” as defined in section 1.40, is used to identify those persons entitled to appraisal rights.) When an acquisition is effected in two steps (a tender offer followed by a merger) within one year, and the consideration in the merger is of the same kind and of at least the same value as that in the tender offer, the two-step acquisition is properly considered a single transaction for purposes of identifying conflict transactions, regardless of whether the second-step merger is governed by section 11.04 or 11.05. Therefore the shares acquired in such an offer (defined as “excluded shares” in subsection (iii)) are excluded in subsections (i)(A) and (B) from the determination of whether a person is an “interested person” for purposes of the second-step merger.

A reverse split in which small shareholders are cashed out will constitute an interested transaction if there is an affiliate of the corporation who satisfies the test in subsections (i)(A) or (B). In that case, the corporation itself will be considered an affiliate of the large shareholder and fall within the definition of “interested person,” such that when the corporation acquires and cashes out the shares of the small shareholders the acquisition will be an interested transaction.

Subsection (i)(C) applies to management buyouts because management’s participation in the buyout group is itself “a financial benefit not generally available to other shareholders.” It also applies to transactions involving other types of economic benefits (excluding benefits afforded to shareholders generally) afforded to senior executives (as defined in section 13.01) and directors in specified conflict situations, unless specific objective or procedural standards are met. It would also apply to less common situations, such as where the vote of a director is manipulated by providing the director with special consideration to secure his or her vote in favor of the transaction. Section 13.01 specifically defines the term “affiliate” to include an entity of which a person is a senior executive. As a result of this definition, if a senior executive of the corporation