

**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 11:49 a.m.  
Elizabeth A. Brown  
District Court Case Number: Clerk of Supreme Court  
A-21-827665-B (Lead Case), Dept. XI

**PETITIONERS' APPENDIX  
(VOLUME 12 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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SCHRECK, LLP

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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 13<sup>th</sup> 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 12 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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C. BETKE, JR. 2019 TRUST, DIANA  
BOYD, ANNE CAROL DECKER,*

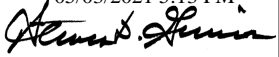
THOMAS H. DECKER, THE  
DEUTSCH FAMILY TRUST, JOHN C.  
FISCHER, ALFREDO GOMEZ,  
ALFREDO GOMEZ FMT CO CUST  
IRA ROLLOVER, LAWRENCE  
GREENBERG, PATRICIA  
GREENBERG, KAREN HARDING,  
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SHARING PLAN & TRUST, H.L.  
SEVERANCE, INC. PENSION PLAN  
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PATRICIA D. RICKMAN  
IRREVOCABLE TRUST, ANDREW  
REESE RICKMAN TRUST, SCOTT  
JOSEPH RICKMAN IRREVOCABLE  
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ROBSON, WAYNE SICZ IRA, WAYNE  
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SMITH REVOCABLE TRUST,  
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DAWN WANG, DARCY J.  
WEISSENBOERN, THE MARGARET S.  
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TRUST, THE STANTON F.  
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F. WEISSENBOERN REVOCABLE

*TRUST, THE STANTON F.  
WEISSENBORN IRREVOCABLE  
TRUST, THE NATALIE WOLMAN  
LIVING TRUST, ALAN BUDD  
ZUCKERMAN, JACK WALKER,  
STEPHEN KAYE, THE MICHAEL S.  
BARISH IRA, AND THE ALEXANDER  
PERELBERG IRA*

*/s/ Wendy Cosby*

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An employee of Brownstein Hyatt Farber Schreck, LL

  
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25 *Attorneys for Defendants AeroGrow International, Inc.,*

26 *AGI Acquisition Sub, Inc., SMG Growing Media, Inc., The*

27 *Scotts Miracle-Gro Company, Chris Hagedorn, Cory*

28 *Miller, Patricia M. Ziegler, James Hagedorn, and Peter*

*Supron*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

OVERBROOK CAPITAL LLC, on Behalf of  
Itself and All Others Similarly Situated,

*Plaintiffs,*

v.

AEROGROW INTERNATIONAL, INC.,  
CHRIS HAGEDORN, H. MACGREGOR  
CLARKE, DAVID B. KENT, CORY MILLER,  
PATRICIA M. ZIEGLER, SMG GROWING  
MEDIA, INC., and SCOTTS MIRACLE-GRO  
COMPANY,

*Defendants.*

CASE NO.: A-21-827665-B (**Lead Case**)  
DEPT NO.: XI

**STIPULATION AND ORDER  
REGARDING PLAINTIFFS'  
RESPONSE TO DEFENDANTS'  
MOTIONS TO DISMISS**

NICOYA CAPITAL, LLC, on behalf of itself  
and all other similarly situated,

*Plaintiffs,*

v.

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

and

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

*Defendants.*

BRADLEY LOUIS RADOFF,

*Plaintiff,*

v.

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

*Defendants.*

CASE NO.: A-21-827745-B

CASE NO.: A-21-829854-B

Lead Plaintiff Nicoya Capital, LLC (“Lead Plaintiff”) and Defendants James Hagedorn,  
Peter Supron, AGI Acquisition Sub, Inc., SMG Growing Media, Inc., The Scotts Miracle-Gro  
Company, Chris Hagedorn, H. Macgregor Clarke, David B. Kent, Cory Miller, Patricia M. Ziegler,  
and AeroGrow International, Inc. (“AeroGrow”) (collectively, “Defendants” and, together with



1 Lead Plaintiff, the “Parties”), by and through their respective counsel of record, stipulate and agree  
2 as follows:

3 WHEREAS, on February 26, 2021, pursuant to this Court’s February 18, 2021 order,  
4 Plaintiffs filed a Consolidated Class Action Complaint against Defendants, asserting claims (1) for  
5 breach of fiduciary duty against The Scotts Miracle-Gro Company, James Hagedorn, and SMG  
6 Growing Media, Inc., as alleged controlling stockholders; (2) for breach of fiduciary duty against  
7 Chris Hagedorn, H. MacGregor Clarke, David B. Kent, Cory Miller, and Patricia M. Ziegler; (3)  
8 and for aiding and abetting breach of fiduciary duty against James Hagedorn, Peter Supron,  
9 AeroGrow International, Inc., AGI Acquisition Sub, Inc., Chris Hagedorn, H. MacGregor Clarke,  
10 David B. Kent, Cory Miller, and Patricia M. Ziegler.

11 WHEREAS, the Parties agreed on a briefing schedule for Defendants’ responses to the  
12 Consolidated Complaint and submitted a stipulation and proposed order, which the Court entered  
13 on March 17, 2021;

14 WHEREAS, on April 16, 2021, Defendants filed the following two motions to dismiss  
15 directed to the Consolidated Complaint: (1) AeroGrow International, Inc., Chris Hagedorn, H.  
16 Macgregor Clarke, David B. Kent, Cory Miller & Patricia M. Ziegler’s Motion to Dismiss the  
17 Consolidated Class Action Complaint (the “AeroGrow and Directors’ Motion to Dismiss”); and (2)  
18 SMG Growing Media, Inc., The Scotts Miracle-Gro Company, AGI Acquisition Sub, Inc., James  
19 Hagedorn, & Peter Supron’s Motion to Dismiss the Consolidated Class Action Complaint (the  
20 “Scotts Defendants’ Motion to Dismiss”);

21 WHEREAS, the motions to dismiss assert arguments under Rule 12(b)(5), and the Scotts  
22 Defendants’ Motion to Dismiss also asserts arguments under Rule 12(b)(2) as to certain defendants;

23 WHEREAS, both motions to dismiss are currently subject to the same briefing schedule  
24 and are both set for hearing on June 21, 2021;

25 WHEREAS, Plaintiffs have advised Defendants that they believe they are entitled to  
26 discovery in order to oppose the Rule 12(b)(2) arguments in the Scotts’ Defendants’ Motion to  
27 Dismiss;

1 WHEREAS, Defendants dispute that Plaintiffs are entitled to discovery at this time,  
2 including, but not limited to, in order to oppose the Rule 12(b)(2) arguments asserted in the Scotts  
3 Defendants' Motion to Dismiss;

4 WHEREAS, the Parties have met and conferred about Plaintiffs' request to conduct  
5 discovery relevant to the Rule 12(b)(2) arguments asserted in the Scotts Defendants' Motion to  
6 Dismiss, and any potential effect of that request on the previously ordered briefing schedule;

7 WHEREAS, the Parties believe the compromise reflected in this stipulation represents a  
8 mutually-agreeable and efficient way to resolve the Parties' differences by holding in abeyance  
9 further briefing and the hearing on the portion of the Scotts Defendants' Motion to Dismiss  
10 asserting arguments under Rule 12(b)(2)—specifically, Argument Part II therein (pages 6-13)—  
11 while otherwise maintaining the current briefing schedule and hearing date on all other arguments  
12 presented in both motions to dismiss—*i.e.*, the arguments pursuant to Rule 12(b)(5) in both  
13 motions;

14 **ACCORDINGLY, IT IS HEREBY STIPULATED AND AGREED**, by and between the  
15 undersigned counsel for Lead Plaintiff and Defendants that:

16 1. The Parties agree that The Scotts Miracle-Gro Company and James Hagedorn have  
17 preserved those defenses and objections under Rule 12(b)(2) contained in their previously-filed  
18 motion to dismiss, and are in compliance with Rule 12(h) with respect to such motion;

19 2. The Parties agree that, at this time, Plaintiffs need not answer, respond to, or  
20 otherwise address the Rule 12(b)(2) arguments presented in the Scotts Defendants' Motion to  
21 Dismiss;

22 3. If the Court denies the Rule 12(b)(5) arguments in the pending motions to dismiss  
23 as to The Scotts Miracle-Gro Company and James Hagedorn, or grants the motion with leave to  
24 amend, the Parties will further meet and confer about the necessary discovery, if any, to oppose the  
25 Rule 12(b)(2) arguments in the Scotts Defendants' Motion to Dismiss;

26 4. The current briefing schedule and hearing date for the pending Rule 12(b)(5)  
27 motions to dismiss shall remain in effect; and  
28

5. The Parties further agree that this Stipulation shall not operate to waive, release, compromise, or prejudice any rights, defenses, arguments or claims Plaintiffs and Defendants may have, including any concerning any right to discovery, the scope of any such right to discovery, and the ability of this Court to exercise jurisdiction over Defendants.

**IT IS SO STIPULATED.**

DATED this 3<sup>rd</sup> day of May, 2021.

DATED this 3<sup>rd</sup> day of May, 2021.

**BROWNSTEIN HYATT FARBER  
SCHRECK, LLP**

**KEMP JONES LLP**

By: /s/ Maximilien D. Fetaz  
KIRK B. LENHARD, ESQ.  
Nevada Bar No. 1437  
MAXIMILIEN D. FETAZ, ESQ.  
Nevada Bar No. 12737  
TRAVIS F. CHANCE, ESQ.  
Nevada Bar No. 13800

By: /s/ Don Springmeyer  
DON SPRINGMEYER, ESQ.  
Nevada Bar No. 1021  
MICHAEL GAYAN, ESQ.  
Nevada Bar No. 11135

**JONES DAY**  
MARJORIE P. DUFFY, ESQ.  
(*pro hac vice* submitted)  
ASHLEY F. HEINTZ, ESQ.  
(admitted *pro hac vice*)

**BOTTINI & BOTTINI, INC.**  
FRANCIS A. BOTTINI, JR., ESQ.  
(*pro hac vice* forthcoming)  
YURY A. KOLESNIKOV, ESQ.  
(*pro hac vice* forthcoming)

*Attorneys for Defendants AeroGrow  
International, Inc., 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*

*Attorneys for Lead Plaintiff Nicoya Capital  
LLC*

DATED this 3<sup>rd</sup> day of May, 2021.

**PISANELLI BICE PLLC**

By: /s/ M. Magali Mercera  
JAMES J. PISANELLI, ESQ.  
Nevada Bar No. 4027  
M. MAGALI MERCERA, ESQ.  
Nevada Bar No. 11742

**BRYAN CAVE LEIGHTON  
PAISNER LLP**  
TIMOTHY R. BEYER, ESQ.  
(*pro hac vice* forthcoming)

*Attorneys for Defendants H. Macgregor Clarke  
and David B. Kent*

**ORDER**

The above stipulation having been considered and good cause appearing therefore,

IT IS HEREBY ORDERED that Defendants The Scotts Miracle-Gro Company and James Hagedorn have preserved all defenses and objections under Rule 12(b)(2) asserted in their previously-filed and pending motion, and are in compliance with Rule 12(h) with respect to such motion;

IT IS FURTHER ORDERED that Plaintiffs, at this time, need not answer, respond to, or otherwise address the Rule 12(b)(2) arguments presented in the Scotts Defendants' Motion to Dismiss;

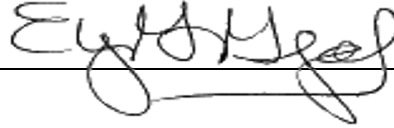
IT IS FURTHER ORDERED that after the Court rules on the pending Rule 12(b)(5) motions filed by Defendants, and if at that time any claims remain against The Scotts Miracle-Gro Company and James Hagedorn, the Parties will further meet and confer about the necessary discovery, if any, to oppose the Rule 12(b)(2) arguments in the Scotts Defendants' Motion to Dismiss;

**[ORDER CONTINUED ON THE FOLLOWING PAGE]**

1 IT IS FURTHER ORDERED that the current briefing schedule and hearing date for the  
2 pending Rule 12(b)(5) motions to dismiss shall remain in effect.

3 **IT IS SO ORDERED.**

4 DATED this \_\_\_\_ day of \_\_\_\_\_, 2021 **Dated this 3rd day of May, 2021**

5   
6 \_\_\_\_\_

7 Submitted by:

8 BROWNSTEIN HYATT FARBER SCHRECK, LLP **K79 ADA F907 ACFC**  
9 By: /s/ Maximilien D. Fetaz **Elizabeth Gonzalez**  
**District Court Judge**

10 KIRK B. LENHARD, ESQ., Nevada Bar No. 1437  
11 MAXIMILIEN D. FETAZ, ESQ., Nevada Bar No. 12737  
12 TRAVIS F. CHANCE, ESQ., Nevada Bar No. 13800

13 JONES DAY  
14 MARJORIE P. DUFFY, ESQ. (*pro hac vice* submitted)  
15 ASHLEY F. HEINTZ, ESQ. (*pro hac vice*)

16 *Attorneys for Defendants AeroGrow International, Inc., AGI*  
17 *Acquisition Sub, Inc., SMG Growing Media, Inc., The Scotts Miracle-*  
18 *Gro Company, Chris Hagedorn, Cory Miller, Patricia M. Ziegler,*  
19 *James Hagedorn, and Peter Supron*  
20  
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28

## Cosby, Wendy C.

---

**From:** Fetaz, Maximilien  
**Sent:** Monday, May 3, 2021 4:21 PM  
**To:** Magali Mercera; Don Springmeyer  
**Cc:** Lenhard, Kirk B.; Chance, Travis F.; Heintz, Ashley F.; Duffy, Marjorie P.; James Pisanelli; Beyer, Tim; Michael Gayan; Frank Bottini  
**Subject:** RE: [External] AeroGrow adv. Overbrook: SAO re Pltf's Response to Defts' Motions to Dismiss

Thank you Don. And I appreciate the close read Magali. I will make that change. Appreciate you both.

### Maximilien D. Fetaz

**Brownstein Hyatt Farber Schreck, LLP**

100 North City Parkway, Suite 1600

Las Vegas, NV 89106

702.464.7083 tel

[MFetaz@BHFS.com](mailto:MFetaz@BHFS.com)

---

**From:** Magali Mercera <mmm@pisanellibice.com>  
**Sent:** Monday, May 3, 2021 4:16 PM  
**To:** Don Springmeyer <d.springmeyer@kempjones.com>; Fetaz, Maximilien <MFetaz@BHFS.com>  
**Cc:** Lenhard, Kirk B. <KLenhard@BHFS.com>; Chance, Travis F. <tchance@bhfs.com>; Heintz, Ashley F. <aheintz@jonesday.com>; Duffy, Marjorie P. <mpduffy@jonesday.com>; James Pisanelli <jjp@pisanellibice.com>; Beyer, Tim <tim.beyer@bclplaw.com>; Michael Gayan <m.gayan@kempjones.com>; Frank Bottini <fbottini@bottinilaw.com>  
**Subject:** RE: [External] AeroGrow adv. Overbrook: SAO re Pltf's Response to Defts' Motions to Dismiss

Max –

There is an extra space and comma on page 4, line 24. Other than that correction, you may apply my e-signature.

Thanks,

### M. Magali Mercera

PISANELLI BICE, PLLC

Telephone: (702) 214-2100

[mmm@pisanellibice.com](mailto:mmm@pisanellibice.com) | [www.pisanellibice.com](http://www.pisanellibice.com)



*Please consider the environment before printing.*

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---

**From:** Don Springmeyer <d.springmeyer@kempjones.com>  
**Sent:** Monday, May 3, 2021 2:16 PM  
**To:** 'Fetaz, Maximilien' <MFetaz@BHFS.com>; Magali Mercera <mmm@pisanellibice.com>  
**Cc:** Lenhard, Kirk B. <KLenhard@BHFS.com>; Chance, Travis F. <tchance@bhfs.com>; Heintz, Ashley F. <aheintz@jonesday.com>; Duffy, Marjorie P. <mpduffy@jonesday.com>; James Pisanelli <jjp@pisanellibice.com>; Beyer, Tim <tim.beyer@bclplaw.com>; Michael Gayan <m.gayan@kempjones.com>; Frank Bottini

[<fbottini@bottinilaw.com>](mailto:fbottini@bottinilaw.com)

**Subject:** RE: [External] AeroGrow adv. Overbrook: SAO re Pltf's Response to Defts' Motions to Dismiss

CAUTION: External Email

Max,

You are authorized to affix my e-signature and deliver the document to the Court.

**Don Springmeyer, Esq.**



3800 Howard Hughes Pkwy., 17th Floor | Las Vegas, NV 89169  
(P) 702-385-6000 | (F) 702 385-6001 | [d.springmeyer@kempjones.com](mailto:d.springmeyer@kempjones.com)  
([profile](#)) ([vCard](#))

y forwarding this to sender, or by telephone at (702) 385-6000, and destroy the original transmission and its attachments without reading or saving them in any manner. Thank you.

---

**From:** Fetaz, Maximilien [<mailto:MFetaz@BHFS.com>]

**Sent:** Monday, May 3, 2021 1:00 PM

**To:** 'mmm@pisanellibice.com'; Don Springmeyer

**Cc:** Lenhard, Kirk B.; Chance, Travis F.; Heintz, Ashley F.; Duffy, Marjorie P.; James Pisanelli; Beyer, Tim; Michael Gayan; Frank Bottini

**Subject:** [External] AeroGrow adv. Overbrook: SAO re Pltf's Response to Defts' Motions to Dismiss

Don/Magali,

Attached is the final of the Stipulation and Order re Plaintiffs' response to Defendants' Motion to Dismiss. Please advise if we may affix your respective e-signature to the attached. Thank you,

**Maximilien D. Fetaz**

**Brownstein Hyatt Farber Schreck, LLP**

100 North City Parkway, Suite 1600

Las Vegas, NV 89106

702.464.7083 tel

[MFetaz@BHFS.com](mailto:MFetaz@BHFS.com)

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1 **CSERV**

2  
3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

5  
6 Overbrook Capital, LLC,  
7 Plaintiff(s)

CASE NO: A-21-827665-B

8 vs.

DEPT. NO. Department 11

9 Aerogrow International, Inc.,  
10 Defendant(s)

11 **AUTOMATED CERTIFICATE OF SERVICE**

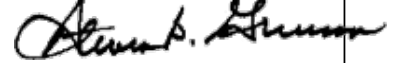
12  
13 This automated certificate of service was generated by the Eighth Judicial District  
14 Court. The foregoing Stipulation and Order was served via the court's electronic eFile system  
to all recipients registered for e-Service on the above entitled case as listed below:

15 Service Date: 5/3/2021

16 Ali Augustine	a.augustine@kempjones.com
17 Michael Gayan	m.gayan@kempjones.com
18 Travis Chance	tchance@bhfs.com
19 Maximillen Fetaz	mfetaz@bhfs.com
20 Terry Coffing	tcoffing@maclaw.com
21 Sherri Mong	smong@maclaw.com
22 Andrew Muehlbauer	andrew@mlollegal.com
23 Sean Connell	sean@mlollegal.com
24 Pamela Montgomery	p.montgomery@kempjones.com
25 Witty Huang	witty@mlollegal.com



1	Alexander Calaway	acalaway@maclaw.com
2	Kirk Lenhard	klenhard@bhfs.com
3	Don Springmeyer	d.springmeyer@kempjones.com
4	M Mercera	mmm@pisanellibice.com
5	James Pisanelli	lit@pisanellibice.com
6	Cinda Towne	cct@pisanellibice.com
7	James Pisanelli	lit@pisanellibice.com
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9	Kendra Jepsen	kjepsen@shjneveda.com
10	Ashley Heintz	aheintz@jonesday.com
11	Marjorie Duffy	mpduffy@jonesday.com
12	Michael Paslavsky	mpaslavsky@jonesday.com
13	Elizabeth Benshoff	ebenshoff@jonesday.com
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**NTSO**

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Columbus, Ohio 43215

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JONES DAY

1420 Peachtree Street, N.E., Suite 800

Atlanta, Georgia 30309

Telephone: 404.521.3939

*Attorneys for Defendants AGI Acquisition Sub, Inc., SMG  
Growing Media, Inc., The Scotts Miracle-Gro Company,  
AeroGrow International, Inc., Chris Hagedorn, Cory  
Miller, Patricia M. Ziegler, James Hagedorn, and Peter  
Supron*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

OVERBROOK CAPITAL LLC, on Behalf of  
Itself and All Others Similarly Situated,

*Plaintiffs,*

v.

AEROGROW INTERNATIONAL, INC.,  
CHRIS HAGEDORN, H. MACGREGOR  
CLARKE, DAVID B. KENT, CORY MILLER,  
PATRICIA M. ZIEGLER, SMG GROWING  
MEDIA, INC., and SCOTTS MIRACLE-GRO  
COMPANY,

*Defendants.*

CASE NO.: A-21-827665-B (**Lead Case**)  
DEPT NO.: XI

**NOTICE OF ENTRY OF  
STIPULATION AND ORDER  
REGARDING PLAINTIFFS'  
RESPONSE TO DEFENDANTS'  
MOTIONS TO DISMISS**

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NICOYA CAPITAL, LLC, on behalf of itself  
and all other similarly situated,

*Plaintiffs,*

v.

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

and

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

*Defendants.*

BRADLEY LOUIS RADOFF,

*Plaintiff,*

v.

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

*Defendants.*

CASE NO.: A-21-827745-B

CASE NO.: A-21-829854-B

1 PLEASE TAKE NOTICE that a Stipulation and Order Regarding Plaintiffs' Response to  
2 Defendants' Motions to Dismiss was entered on May 3, 2021. A copy of said order is attached  
3 hereto.

4 DATED this 4<sup>th</sup> day of May, 2021.

5 BROWNSTEIN HYATT FARBER SCHRECK, LLP

6 BY: /s/ Maximilien D. Fetaz  
7 KIRK B. LENHARD, ESQ.  
8 MAXIMILIEN D. FETAZ, ESQ.  
9 TRAVIS F. CHANCE, ESQ.

10 MARJORIE P. DUFFY, ESQ.  
11 (pro hac vice submitted)  
12 ASHLEY F. HEINTZ, ESQ.  
13 (admitted pro hac vice)  
14 JONES DAY

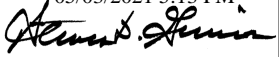
15 *Attorneys for Defendants AGI Acquisition Sub, Inc.,*  
16 *SMG Growing Media, Inc., The Scotts Miracle-Gro*  
17 *Company, AeroGrow International, Inc., Chris*  
18 *Hagedorn, Cory Miller, Patricia M. Ziegler, James*  
19 *Hagedorn, and Peter Supron*  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am an employee of Brownstein Hyatt Farber Schreck, LLP and pursuant to NRCP 5(b), EDCR 8.05, Administrative Order 14-2, and NEFCR 9, I caused a true and correct copy of the foregoing **NOTICE OF ENTRY OF STIPULATION AND ORDER REGARDING PLAINTIFFS’ RESPONSE TO DEFENDANTS’ MOTIONS TO DISMISS** to be submitted electronically to all parties currently on the electronic service list on May 4, 2021.

/s/ Wendy Cosby  
an employee of Brownstein Hyatt Farber Schreck, LLP

  
CLERK OF THE COURT

1 **SAO**

2 KIRK B. LENHARD, ESQ., NV Bar No. 1437

3 [klenhard@bhfs.com](mailto:klenhard@bhfs.com)

4 MAXIMILIEN D. FETAZ, ESQ., NV Bar No. 12737

5 [mfetaz@bhfs.com](mailto:mfetaz@bhfs.com)

6 TRAVIS F. CHANCE, ESQ., Nevada Bar No. 13800

7 [tchance@bhfs.com](mailto:tchance@bhfs.com)

8 BROWNSTEIN HYATT FARBER SCHRECK, LLP

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11 Telephone: 702.382.2101

12 Facsimile: 702.382.8135

13 MARJORIE P. DUFFY, ESQ. (*pro hac vice* submitted)

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15 JONES DAY

16 325 John H. McConnell Boulevard, Suite 600

17 Columbus, Ohio 43215

18 Telephone: 614.469.3939

19 ASHLEY F. HEINTZ, ESQ. (*pro hac vice*)

20 [aheintz@jonesday.com](mailto:aheintz@jonesday.com)

21 JONES DAY

22 1420 Peachtree Street, N.E., Suite 800

23 Atlanta, Georgia 30309

24 Telephone: 404.521.3939

25 *Attorneys for Defendants AeroGrow International, Inc.,*

26 *AGI Acquisition Sub, Inc., SMG Growing Media, Inc., The*

27 *Scotts Miracle-Gro Company, Chris Hagedorn, Cory*

28 *Miller, Patricia M. Ziegler, James Hagedorn, and Peter*

*Supron*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

OVERBROOK CAPITAL LLC, on Behalf of  
Itself and All Others Similarly Situated,

*Plaintiffs,*

v.

AEROGROW INTERNATIONAL, INC.,  
CHRIS HAGEDORN, H. MACGREGOR  
CLARKE, DAVID B. KENT, CORY MILLER,  
PATRICIA M. ZIEGLER, SMG GROWING  
MEDIA, INC., and SCOTTS MIRACLE-GRO  
COMPANY,

*Defendants.*

CASE NO.: A-21-827665-B (**Lead Case**)  
DEPT NO.: XI

**STIPULATION AND ORDER  
REGARDING PLAINTIFFS'  
RESPONSE TO DEFENDANTS'  
MOTIONS TO DISMISS**

NICOYA CAPITAL, LLC, on behalf of itself  
and all other similarly situated,

*Plaintiffs,*

v.

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

and

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

*Defendants.*

BRADLEY LOUIS RADOFF,

*Plaintiff,*

v.

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

*Defendants.*

CASE NO.: A-21-827745-B

CASE NO.: A-21-829854-B

Lead Plaintiff Nicoya Capital, LLC (“Lead Plaintiff”) and Defendants James Hagedorn,  
Peter Supron, AGI Acquisition Sub, Inc., SMG Growing Media, Inc., The Scotts Miracle-Gro  
Company, Chris Hagedorn, H. Macgregor Clarke, David B. Kent, Cory Miller, Patricia M. Ziegler,  
and AeroGrow International, Inc. (“AeroGrow”) (collectively, “Defendants” and, together with

1 Lead Plaintiff, the “Parties”), by and through their respective counsel of record, stipulate and agree  
2 as follows:

3 WHEREAS, on February 26, 2021, pursuant to this Court’s February 18, 2021 order,  
4 Plaintiffs filed a Consolidated Class Action Complaint against Defendants, asserting claims (1) for  
5 breach of fiduciary duty against The Scotts Miracle-Gro Company, James Hagedorn, and SMG  
6 Growing Media, Inc., as alleged controlling stockholders; (2) for breach of fiduciary duty against  
7 Chris Hagedorn, H. MacGregor Clarke, David B. Kent, Cory Miller, and Patricia M. Ziegler; (3)  
8 and for aiding and abetting breach of fiduciary duty against James Hagedorn, Peter Supron,  
9 AeroGrow International, Inc., AGI Acquisition Sub, Inc., Chris Hagedorn, H. MacGregor Clarke,  
10 David B. Kent, Cory Miller, and Patricia M. Ziegler.

11 WHEREAS, the Parties agreed on a briefing schedule for Defendants’ responses to the  
12 Consolidated Complaint and submitted a stipulation and proposed order, which the Court entered  
13 on March 17, 2021;

14 WHEREAS, on April 16, 2021, Defendants filed the following two motions to dismiss  
15 directed to the Consolidated Complaint: (1) AeroGrow International, Inc., Chris Hagedorn, H.  
16 Macgregor Clarke, David B. Kent, Cory Miller & Patricia M. Ziegler’s Motion to Dismiss the  
17 Consolidated Class Action Complaint (the “AeroGrow and Directors’ Motion to Dismiss”); and (2)  
18 SMG Growing Media, Inc., The Scotts Miracle-Gro Company, AGI Acquisition Sub, Inc., James  
19 Hagedorn, & Peter Supron’s Motion to Dismiss the Consolidated Class Action Complaint (the  
20 “Scotts Defendants’ Motion to Dismiss”);

21 WHEREAS, the motions to dismiss assert arguments under Rule 12(b)(5), and the Scotts  
22 Defendants’ Motion to Dismiss also asserts arguments under Rule 12(b)(2) as to certain defendants;

23 WHEREAS, both motions to dismiss are currently subject to the same briefing schedule  
24 and are both set for hearing on June 21, 2021;

25 WHEREAS, Plaintiffs have advised Defendants that they believe they are entitled to  
26 discovery in order to oppose the Rule 12(b)(2) arguments in the Scotts’ Defendants’ Motion to  
27 Dismiss;



1 WHEREAS, Defendants dispute that Plaintiffs are entitled to discovery at this time,  
2 including, but not limited to, in order to oppose the Rule 12(b)(2) arguments asserted in the Scotts  
3 Defendants' Motion to Dismiss;

4 WHEREAS, the Parties have met and conferred about Plaintiffs' request to conduct  
5 discovery relevant to the Rule 12(b)(2) arguments asserted in the Scotts Defendants' Motion to  
6 Dismiss, and any potential effect of that request on the previously ordered briefing schedule;

7 WHEREAS, the Parties believe the compromise reflected in this stipulation represents a  
8 mutually-agreeable and efficient way to resolve the Parties' differences by holding in abeyance  
9 further briefing and the hearing on the portion of the Scotts Defendants' Motion to Dismiss  
10 asserting arguments under Rule 12(b)(2)—specifically, Argument Part II therein (pages 6-13)—  
11 while otherwise maintaining the current briefing schedule and hearing date on all other arguments  
12 presented in both motions to dismiss—*i.e.*, the arguments pursuant to Rule 12(b)(5) in both  
13 motions;

14 **ACCORDINGLY, IT IS HEREBY STIPULATED AND AGREED**, by and between the  
15 undersigned counsel for Lead Plaintiff and Defendants that:

16 1. The Parties agree that The Scotts Miracle-Gro Company and James Hagedorn have  
17 preserved those defenses and objections under Rule 12(b)(2) contained in their previously-filed  
18 motion to dismiss, and are in compliance with Rule 12(h) with respect to such motion;

19 2. The Parties agree that, at this time, Plaintiffs need not answer, respond to, or  
20 otherwise address the Rule 12(b)(2) arguments presented in the Scotts Defendants' Motion to  
21 Dismiss;

22 3. If the Court denies the Rule 12(b)(5) arguments in the pending motions to dismiss  
23 as to The Scotts Miracle-Gro Company and James Hagedorn, or grants the motion with leave to  
24 amend, the Parties will further meet and confer about the necessary discovery, if any, to oppose the  
25 Rule 12(b)(2) arguments in the Scotts Defendants' Motion to Dismiss;

26 4. The current briefing schedule and hearing date for the pending Rule 12(b)(5)  
27 motions to dismiss shall remain in effect; and  
28

5. The Parties further agree that this Stipulation shall not operate to waive, release, compromise, or prejudice any rights, defenses, arguments or claims Plaintiffs and Defendants may have, including any concerning any right to discovery, the scope of any such right to discovery, and the ability of this Court to exercise jurisdiction over Defendants.

**IT IS SO STIPULATED.**

DATED this 3<sup>rd</sup> day of May, 2021.

DATED this 3<sup>rd</sup> day of May, 2021.

**BROWNSTEIN HYATT FARBER  
SCHRECK, LLP**

**KEMP JONES LLP**

By: /s/ Maximilien D. Fetaz  
KIRK B. LENHARD, ESQ.  
Nevada Bar No. 1437  
MAXIMILIEN D. FETAZ, ESQ.  
Nevada Bar No. 12737  
TRAVIS F. CHANCE, ESQ.  
Nevada Bar No. 13800

By: /s/ Don Springmeyer  
DON SPRINGMEYER, ESQ.  
Nevada Bar No. 1021  
MICHAEL GAYAN, ESQ.  
Nevada Bar No. 11135

**JONES DAY**  
MARJORIE P. DUFFY, ESQ.  
(*pro hac vice* submitted)  
ASHLEY F. HEINTZ, ESQ.  
(admitted *pro hac vice*)

**BOTTINI & BOTTINI, INC.**  
FRANCIS A. BOTTINI, JR., ESQ.  
(*pro hac vice* forthcoming)  
YURY A. KOLESNIKOV, ESQ.  
(*pro hac vice* forthcoming)

*Attorneys for Defendants AeroGrow  
International, Inc., 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*

*Attorneys for Lead Plaintiff Nicoya Capital  
LLC*

DATED this 3<sup>rd</sup> day of May, 2021.

**PISANELLI BICE PLLC**

By: /s/ M. Magali Mercera  
JAMES J. PISANELLI, ESQ.  
Nevada Bar No. 4027  
M. MAGALI MERCERA, ESQ.  
Nevada Bar No. 11742

**BRYAN CAVE LEIGHTON  
PAISNER LLP**  
TIMOTHY R. BEYER, ESQ.  
(*pro hac vice* forthcoming)

*Attorneys for Defendants H. Macgregor Clarke  
and David B. Kent*

**ORDER**

The above stipulation having been considered and good cause appearing therefore,

IT IS HEREBY ORDERED that Defendants The Scotts Miracle-Gro Company and James Hagedorn have preserved all defenses and objections under Rule 12(b)(2) asserted in their previously-filed and pending motion, and are in compliance with Rule 12(h) with respect to such motion;

IT IS FURTHER ORDERED that Plaintiffs, at this time, need not answer, respond to, or otherwise address the Rule 12(b)(2) arguments presented in the Scotts Defendants' Motion to Dismiss;

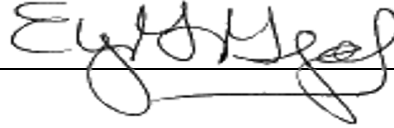
IT IS FURTHER ORDERED that after the Court rules on the pending Rule 12(b)(5) motions filed by Defendants, and if at that time any claims remain against The Scotts Miracle-Gro Company and James Hagedorn, the Parties will further meet and confer about the necessary discovery, if any, to oppose the Rule 12(b)(2) arguments in the Scotts Defendants' Motion to Dismiss;

**[ORDER CONTINUED ON THE FOLLOWING PAGE]**

1 IT IS FURTHER ORDERED that the current briefing schedule and hearing date for the  
2 pending Rule 12(b)(5) motions to dismiss shall remain in effect.

3 **IT IS SO ORDERED.**

4 DATED this \_\_\_\_ day of \_\_\_\_\_, 2021 **Dated this 3rd day of May, 2021**

5   
6 \_\_\_\_\_

7 Submitted by:

8 BROWNSTEIN HYATT FARBER SCHRECK, LLP **K79 ADA F907 ACFC**  
9 **Elizabeth Gonzalez**  
By: /s/ Maximilien D. Fetaz **District Court Judge**

10 KIRK B. LENHARD, ESQ., Nevada Bar No. 1437  
11 MAXIMILIEN D. FETAZ, ESQ., Nevada Bar No. 12737  
12 TRAVIS F. CHANCE, ESQ., Nevada Bar No. 13800

13 JONES DAY  
14 MARJORIE P. DUFFY, ESQ. (*pro hac vice* submitted)  
15 ASHLEY F. HEINTZ, ESQ. (*pro hac vice*)

16 *Attorneys for Defendants AeroGrow International, Inc., AGI*  
17 *Acquisition Sub, Inc., SMG Growing Media, Inc., The Scotts Miracle-*  
18 *Gro Company, Chris Hagedorn, Cory Miller, Patricia M. Ziegler,*  
19 *James Hagedorn, and Peter Supron*  
20  
21  
22  
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24  
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27  
28

## Cosby, Wendy C.

---

**From:** Fetaz, Maximilien  
**Sent:** Monday, May 3, 2021 4:21 PM  
**To:** Magali Mercera; Don Springmeyer  
**Cc:** Lenhard, Kirk B.; Chance, Travis F.; Heintz, Ashley F.; Duffy, Marjorie P.; James Pisanelli; Beyer, Tim; Michael Gayan; Frank Bottini  
**Subject:** RE: [External] AeroGrow adv. Overbrook: SAO re Pltf's Response to Defts' Motions to Dismiss

Thank you Don. And I appreciate the close read Magali. I will make that change. Appreciate you both.

### Maximilien D. Fetaz

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702.464.7083 tel

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**Sent:** Monday, May 3, 2021 4:16 PM  
**To:** Don Springmeyer <[d.springmeyer@kempjones.com](mailto:d.springmeyer@kempjones.com)>; Fetaz, Maximilien <[MFetaz@BHFS.com](mailto:MFetaz@BHFS.com)>  
**Cc:** Lenhard, Kirk B. <[KLenhard@BHFS.com](mailto:KLenhard@BHFS.com)>; Chance, Travis F. <[tchance@bhfs.com](mailto:tchance@bhfs.com)>; Heintz, Ashley F. <[aheintz@jonesday.com](mailto:aheintz@jonesday.com)>; Duffy, Marjorie P. <[mpduffy@jonesday.com](mailto:mpduffy@jonesday.com)>; James Pisanelli <[jjp@pisanellibice.com](mailto:jjp@pisanellibice.com)>; Beyer, Tim <[tim.beyer@bclplaw.com](mailto:tim.beyer@bclplaw.com)>; Michael Gayan <[m.gayan@kempjones.com](mailto:m.gayan@kempjones.com)>; Frank Bottini <[fbottini@bottinilaw.com](mailto:fbottini@bottinilaw.com)>  
**Subject:** RE: [External] AeroGrow adv. Overbrook: SAO re Pltf's Response to Defts' Motions to Dismiss

Max –

There is an extra space and comma on page 4, line 24. Other than that correction, you may apply my e-signature.

Thanks,

### M. Magali Mercera

PISANELLI BICE, PLLC

Telephone: (702) 214-2100

[mmm@pisanellibice.com](mailto:mmm@pisanellibice.com) | [www.pisanellibice.com](http://www.pisanellibice.com)



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**From:** Don Springmeyer <[d.springmeyer@kempjones.com](mailto:d.springmeyer@kempjones.com)>  
**Sent:** Monday, May 3, 2021 2:16 PM  
**To:** 'Fetaz, Maximilien' <[MFetaz@BHFS.com](mailto:MFetaz@BHFS.com)>; Magali Mercera <[mmm@pisanellibice.com](mailto:mmm@pisanellibice.com)>  
**Cc:** Lenhard, Kirk B. <[KLenhard@BHFS.com](mailto:KLenhard@BHFS.com)>; Chance, Travis F. <[tchance@bhfs.com](mailto:tchance@bhfs.com)>; Heintz, Ashley F. <[aheintz@jonesday.com](mailto:aheintz@jonesday.com)>; Duffy, Marjorie P. <[mpduffy@jonesday.com](mailto:mpduffy@jonesday.com)>; James Pisanelli <[jjp@pisanellibice.com](mailto:jjp@pisanellibice.com)>; Beyer, Tim <[tim.beyer@bclplaw.com](mailto:tim.beyer@bclplaw.com)>; Michael Gayan <[m.gayan@kempjones.com](mailto:m.gayan@kempjones.com)>; Frank Bottini

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**Subject:** RE: [External] AeroGrow adv. Overbrook: SAO re Pltf's Response to Defts' Motions to Dismiss

CAUTION: External Email

Max,

You are authorized to affix my e-signature and deliver the document to the Court.

**Don Springmeyer, Esq.**



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(P) 702-385-6000 | (F) 702 385-6001 | [d.springmeyer@kempjones.com](mailto:d.springmeyer@kempjones.com)  
([profile](#)) ([vCard](#))

y forwarding this to sender, or by telephone at (702) 385-6000, and destroy the original transmission and its attachments without reading or saving them in any manner. Thank you.

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**From:** Fetaz, Maximilien [<mailto:MFetaz@BHFS.com>]

**Sent:** Monday, May 3, 2021 1:00 PM

**To:** 'mmm@pisanellibice.com'; Don Springmeyer

**Cc:** Lenhard, Kirk B.; Chance, Travis F.; Heintz, Ashley F.; Duffy, Marjorie P.; James Pisanelli; Beyer, Tim; Michael Gayan; Frank Bottini

**Subject:** [External] AeroGrow adv. Overbrook: SAO re Pltf's Response to Defts' Motions to Dismiss

Don/Magali,

Attached is the final of the Stipulation and Order re Plaintiffs' response to Defendants' Motion to Dismiss. Please advise if we may affix your respective e-signature to the attached. Thank you,

**Maximilien D. Fetaz**

**Brownstein Hyatt Farber Schreck, LLP**

100 North City Parkway, Suite 1600

Las Vegas, NV 89106

702.464.7083 tel

[MFetaz@BHFS.com](mailto:MFetaz@BHFS.com)

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1 **CSERV**

2  
3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

5  
6 Overbrook Capital, LLC,  
7 Plaintiff(s)

CASE NO: A-21-827665-B

8 vs.

DEPT. NO. Department 11

9 Aerogrow International, Inc.,  
10 Defendant(s)

11 **AUTOMATED CERTIFICATE OF SERVICE**

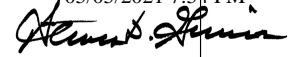
12  
13 This automated certificate of service was generated by the Eighth Judicial District  
14 Court. The foregoing Stipulation and Order was served via the court's electronic eFile system  
to all recipients registered for e-Service on the above entitled case as listed below:

15 Service Date: 5/3/2021

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17 Michael Gayan	m.gayan@kempjones.com
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CLERK OF THE COURT

**MARQUIS AURBACH COFFING**

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Alexander K. Calaway, Esq.  
Nevada Bar No. 15188  
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*Attorneys for Plaintiff*

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[kjepsen@shjnevada.com](mailto:kjepsen@shjnevada.com)  
*Attorneys for Proposed Plaintiff-Intervenors*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

OVERBROOK CAPITAL LLC, on Behalf  
of Itself and All Others Similarly Situated,

Plaintiffs,

v.

AEROGROW INTERNATIONAL, INC.,  
CHRIS HAGEDORN, H. MACGREGOR  
CLARKE, DAVID B. KENT, CORY  
MILLER, PATRICIA M. ZIEGLER, SMG  
GROWING MEDIA, INC., and SCOTTS  
MIRACLE-GRO COMPANY,

Defendants.

Case No.: **A-21-827665-B (Lead)**

A-21-829854-B (Sub)

A-21-827745-B (Sub)

MARQUIS AURBACH COFFING

10001 Park Run Drive  
Las Vegas, Nevada 89145  
(702) 382-0711 FAX: (702) 382-5816

1                   **[PROPOSED] ORDER GRANTING PLAINTIFF'S AND PLAINTIFF-**  
2                   **INTERVENORS' JOINT MOTION TO COMPEL/DETERMINE COMPLIANCE**  
3                   **WITH NRS 92A**

4                   This matter came before the Court on Plaintiff and Plaintiff-Intervenors' Motion to  
5                   Compel/Determine Compliance with NRS 92A, or Alternatively, Injunctive Relief, on an  
6                   Order Shortening Time ("Motion"), filed on March 24, 2021. The Court considered the  
7                   Motion in Chambers on April 19, 2021 and without oral argument pursuant to Adm. Order  
8                   21-03.

9                   NOW, THEREFORE, having reviewed the Motion, all briefing related thereto, the  
10                  papers, pleadings, and evidence on file herein, being fully advised on the matter, the Court,  
11                  with good cause appearing therefore, grants the Motion based upon the following:

12                  1.       AeroGrow International, Inc. ("AeroGrow") entered into an Agreement and  
13                  Plan of Merger entitling AeroGrow stockholders to dissenter's rights under NRS Chapter 92A.

14                  2.       Plaintiff and Plaintiff-Intervenors have identified themselves as former  
15                  beneficial stockholders of AeroGrow.

16                  3.       Prior to the vote on the merger, and in accordance with NRS 92A.420(1)(a),  
17                  Plaintiff and Plaintiff-Intervenors delivered to AeroGrow written notices of their intent to  
18                  demand payment for their shares if the merger is effectuated.

19                  4.       Pursuant to NRS 92A.430, AeroGrow was required to deliver dissenter's  
20                  notices to "any beneficial stockholder who has previously asserted dissenter's rights pursuant  
21                  to NRS 92A.400" no later than 10 days after the effective date of the merger.

22                  5.       The effective date of the merger was February 26, 2021.

23                  6.       The stockholders must then decide whether to exercise dissenter's rights by  
24                  making a demand for payment in accordance with NRS 92A.440.

25                  7.       Unlike stockholders who hold certificated shares, beneficial stockholders must  
26                  "[s]ubmit[] to the subject corporation the written consent of the stockholder of record to the  
27

1 dissent not later than the time the beneficial stockholder asserts dissenter's rights." NRS  
2 92A.440(2)(a).

3 8. Shortly after the effective date of the merger, AeroGrow paid Plaintiff and  
4 Plaintiff-Intervenors through their brokers and other institutions the merger consideration of  
5 \$3.00 per share.

6 9. After being paid the merger consideration, most of the Plaintiff and Plaintiff-  
7 Intervenors were unable to obtain written consent from their respective stockholder of record.

8 10. AeroGrow did not send Plaintiff and Plaintiff-Intervenors dissenter's notices  
9 pursuant to NRS 92A.430.

10 11. Pursuant to NRS 92A.400(2)(a) beneficial stockholders were not required to  
11 provide Aerogrow with written consent from the stockholders of record prior to the merger  
12 vote.

13 12. Beneficial stockholders must provide written consent from the stockholders of  
14 record "not later than the time the beneficial stockholder asserts dissenter's rights," which is  
15 when a dissenter demands payment pursuant to NRS 92A.440.

16 13. Aerogrow failed to comply with Chapter NRS 92A by: (1) paying Plaintiff and  
17 Plaintiff-Intervenors the merger consideration prior to the deadline to submit a demand for  
18 payment, after which Plaintiff and the majority of Plaintiff-Intervenors could not obtain the  
19 written consent from the stockholders of record; and (2) failing to send Plaintiff and Plaintiff-  
20 Intervenors dissenter's notices no later than 10 days after the effective date of the merger.

21 14. Therefore, Plaintiff and Plaintiff-Intervenors' Motion and requested relief is  
22 GRANTED in full.

23 15. Further, the Court recognizes that certain judicial relief is required for the  
24 parties to proceed with the dissenter's rights process.

25 **ACCORDINGLY, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED:**

26 1. That Plaintiff and Plaintiff-Intervenors' Motion is GRANTED;

2. That Defendant AeroGrow International, Inc. failed to comply with Chapter NRS 92A by paying Plaintiff and Plaintiff-Intervenors the merger consideration prior to the deadline to submit a demand for payment, after which Plaintiff and the majority of Plaintiff-Intervenors could not obtain the written consent from the stockholders of record;

3. That Defendant AeroGrow International, Inc. violated Chapter NRS 92A by failing to send Plaintiff and Plaintiff-Intervenors dissenter's notices no later than 10 days after the effective date of the merger;

4. That any requirement of Plaintiff and Plaintiff-Intervenors to obtain consent letters pursuant to NRS 92A.400(2)(a) is hereby waived;

5. That any requirement of Plaintiff and Plaintiff-Intervenors to deposit the stockholder's certificates, if any, pursuant to NRS 92A.440 is hereby waived;

6. That Defendant Aerogrow International, Inc. is compelled to provide Plaintiff and Plaintiff-Intervenors' with dissenter's notices in accordance with NRS 92A.430 no later than ten (10) days after entry of this order;

7. That the dissenter's notices must identify new deadlines by which the demand for payment forms must be submitted in compliance with NRS 92A.430(2)(d); and

8. That, although beneficial stockholders the Michael S. Barish IRA and the Alexander Perelberg IRA did not move to intervene, the related individual stockholders were included in the motion to intervene and were presumably intended to cover the related IRA entities; accordingly, both the Michael S. Barish IRA and the Alexander Perelberg IRA are subject to this Order.

**IT IS SO ORDERED** this \_\_\_\_ day of \_\_\_\_\_, 2021.

**Dated this 5th day of May, 2021**

  
DISTRICT COURT JUDGE

**EAA 80A 2343 8BC5**  
**Elizabeth Gonzalez**  
**District Court Judge**  
Page 4 of 6  
MAC-10419-001 4353150\_4 5/5/2021 2:30 PM

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Submitted by:

**MARQUIS AURBACH COFFING**

/s/ Terry A. Coffing

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/s/ J. Robert Smith

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///

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*Approved as to form:*

**BROWNSTEIN HYATT FARBER  
SCHRECK, LLP**

/s/ Maximilien D. Fetaz

KIRK B. LENHARD, ESQ.

MAXIMILIEN D. FETAZ, ESQ.

TRAVIS F. CHANCE, ESQ.

JONES DAY

MARJORIE P. DUFFY, ESQ.

(*pro hac vice* submitted)

ASHLEY F. HEINTZ, ESQ.

(*pro hac vice*)

*Attorneys for Defendants AeroGrow  
International, Inc., 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*

## Marie Jorczak

---

**From:** Chance, Travis F. <tchance@bhfs.com>  
**Sent:** Wednesday, May 05, 2021 2:03 PM  
**To:** Robert Smith; Alexander K. Calaway; Fetaz, Maximilien; Duffy, Marjorie P.; Heintz, Ashley F.  
**Cc:** Terry Coffing; Marie Jorczak; Jennifer P. Case  
**Subject:** RE: [External] Proposed Order E-Signatures [IWOV-iManage.FID1135574]

You can file with my signature.

Thanks,

**Travis F. Chance**  
Brownstein Hyatt Farber Schreck, LLP  
100 North City Parkway, Suite 1600  
Las Vegas, NV 89106  
702.464.7096 tel  
423.355.2635 cell  
tchance@bhfs.com

**From:** Robert Smith <rsmith@shjneveda.com>  
**Sent:** Wednesday, May 5, 2021 1:35 PM  
**To:** Alexander K. Calaway <acalaway@maclaw.com>; Chance, Travis F. <tchance@bhfs.com>; Fetaz, Maximilien <MFetaz@BHFS.com>; Duffy, Marjorie P. <mpduffy@jonesday.com>  
**Cc:** Terry Coffing <tcoffing@maclaw.com>; Marie Jorczak <mjorczak@MACLAW.com>; Jennifer P. Case <jcase@maclaw.com>  
**Subject:** RE: Proposed Order E-Signatures [IWOV-iManage.FID1135574]

You have my authorization.

J. Robert Smith  
*Partner*  
**SIMONS HALL JOHNSTON PC**  
[RSmith@SHJNevada.com](mailto:RSmith@SHJNevada.com)  
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**From:** Alexander K. Calaway <[acalaway@maclaw.com](mailto:acalaway@maclaw.com)>  
**Sent:** Wednesday, May 5, 2021 1:33 PM  
**To:** Chance, Travis F. <[tchance@bhfs.com](mailto:tchance@bhfs.com)>; Fetaz, Maximilien <[MFetaz@BHFS.com](mailto:MFetaz@BHFS.com)>; Duffy, Marjorie P. <[mpduffy@jonesday.com](mailto:mpduffy@jonesday.com)>; Robert Smith <[rsmith@shjnevada.com](mailto:rsmith@shjnevada.com)>  
**Cc:** Terry Coffing <[tcoffing@maclaw.com](mailto:tcoffing@maclaw.com)>; Alexander K. Calaway <[acalaway@maclaw.com](mailto:acalaway@maclaw.com)>; Marie Jorczak <[mjorczak@MACLAW.com](mailto:mjorczak@MACLAW.com)>; Jennifer P. Case <[jcase@maclaw.com](mailto:jcase@maclaw.com)>  
**Subject:** Proposed Order E-Signatures [IWOV-iManage.FID1135574]

Counsel,

Please confirm we may submit the attached proposed order to the Court with your e-signature.

Thanks,

Alex



**Alexander K. Calaway, Esq.**

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1 **CSERV**

2  
3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

5  
6 Overbrook Capital, LLC,  
7 Plaintiff(s)

CASE NO: A-21-827665-B

8 vs.

DEPT. NO. Department 11

9 Aerogrow International, Inc.,  
10 Defendant(s)

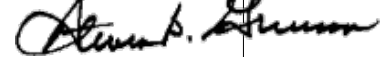
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**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

OVERBROOK CAPITAL LLC, on Behalf  
of Itself and All Others Similarly Situated,

Plaintiffs,

v.

AEROGROW INTERNATIONAL, INC.,  
CHRIS HAGEDORN, H. MACGREGOR  
CLARKE, DAVID B. KENT, CORY  
MILLER, PATRICIA M. ZIEGLER, SMG  
GROWING MEDIA, INC., and SCOTTS  
MIRACLE-GRO COMPANY,

Defendants.

Case No.: **A-21-827665-B (Lead)**

A-21-829854-B (Sub)

A-21-827745-B (Sub)

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**NOTICE OF ENTRY OF ORDER GRANTING PLAINTIFF'S AND PLAINTIFF-  
INTERVENORS' JOINT MOTION TO COMPEL/DETERMINE COMPLIANCE  
WITH NRS 92A**

Please take notice that an Order Granting Plaintiff's and Plaintiff-Intervenors' Joint Motion to Compel/Determine Compliance with NRS 92A was entered in the above-captioned matter on the 5th day of May, 2021, a copy of which is attached hereto.

Dated this 6th day of May, 2021.

MARQUIS AURBACH COFFING

By /s/ Alexander Calaway  
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Attorney(s) for Plaintiff

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing **NOTICE OF ENTRY OF ORDER GRANTING PLAINTIFF'S AND PLAINTIFF-INTERVENORS' JOINT MOTION TO COMPEL/DETERMINE COMPLIANCE WITH NRS 92A** was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 6th day of May, 2021. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:<sup>1</sup>

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The Scotts Miracle-Gro Company, Chris Hagedorn,  
Cory Miller, Patricia M. Ziegler, James Hagedorn, and  
Peter Supron*

/s/ Marie Jorczak  
An employee of Marquis Aurbach Coffing

<sup>1</sup> 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).

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**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

OVERBROOK CAPITAL LLC, on Behalf  
of Itself and All Others Similarly Situated,

Plaintiffs,

v.

AEROGROW INTERNATIONAL, INC.,  
CHRIS HAGEDORN, H. MACGREGOR  
CLARKE, DAVID B. KENT, CORY  
MILLER, PATRICIA M. ZIEGLER, SMG  
GROWING MEDIA, INC., and SCOTTS  
MIRACLE-GRO COMPANY,

Defendants.

Case No.: **A-21-827665-B (Lead)**

A-21-829854-B (Sub)

A-21-827745-B (Sub)

MARQUIS AURBACH COFFING

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1                   **[PROPOSED] ORDER GRANTING PLAINTIFF'S AND PLAINTIFF-**  
2                   **INTERVENORS' JOINT MOTION TO COMPEL/DETERMINE COMPLIANCE**  
3                   **WITH NRS 92A**

4                   This matter came before the Court on Plaintiff and Plaintiff-Intervenors' Motion to  
5                   Compel/Determine Compliance with NRS 92A, or Alternatively, Injunctive Relief, on an  
6                   Order Shortening Time ("Motion"), filed on March 24, 2021. The Court considered the  
7                   Motion in Chambers on April 19, 2021 and without oral argument pursuant to Adm. Order  
8                   21-03.

9                   NOW, THEREFORE, having reviewed the Motion, all briefing related thereto, the  
10                  papers, pleadings, and evidence on file herein, being fully advised on the matter, the Court,  
11                  with good cause appearing therefore, grants the Motion based upon the following:

12                  1.       AeroGrow International, Inc. ("AeroGrow") entered into an Agreement and  
13                  Plan of Merger entitling AeroGrow stockholders to dissenter's rights under NRS Chapter 92A.

14                  2.       Plaintiff and Plaintiff-Intervenors have identified themselves as former  
15                  beneficial stockholders of AeroGrow.

16                  3.       Prior to the vote on the merger, and in accordance with NRS 92A.420(1)(a),  
17                  Plaintiff and Plaintiff-Intervenors delivered to AeroGrow written notices of their intent to  
18                  demand payment for their shares if the merger is effectuated.

19                  4.       Pursuant to NRS 92A.430, AeroGrow was required to deliver dissenter's  
20                  notices to "any beneficial stockholder who has previously asserted dissenter's rights pursuant  
21                  to NRS 92A.400" no later than 10 days after the effective date of the merger.

22                  5.       The effective date of the merger was February 26, 2021.

23                  6.       The stockholders must then decide whether to exercise dissenter's rights by  
24                  making a demand for payment in accordance with NRS 92A.440.

25                  7.       Unlike stockholders who hold certificated shares, beneficial stockholders must  
26                  "[s]ubmit[] to the subject corporation the written consent of the stockholder of record to the  
27

1 dissent not later than the time the beneficial stockholder asserts dissenter's rights." NRS  
2 92A.440(2)(a).

3 8. Shortly after the effective date of the merger, AeroGrow paid Plaintiff and  
4 Plaintiff-Intervenors through their brokers and other institutions the merger consideration of  
5 \$3.00 per share.

6 9. After being paid the merger consideration, most of the Plaintiff and Plaintiff-  
7 Intervenors were unable to obtain written consent from their respective stockholder of record.

8 10. AeroGrow did not send Plaintiff and Plaintiff-Intervenors dissenter's notices  
9 pursuant to NRS 92A.430.

10 11. Pursuant to NRS 92A.400(2)(a) beneficial stockholders were not required to  
11 provide Aerogrow with written consent from the stockholders of record prior to the merger  
12 vote.

13 12. Beneficial stockholders must provide written consent from the stockholders of  
14 record "not later than the time the beneficial stockholder asserts dissenter's rights," which is  
15 when a dissenter demands payment pursuant to NRS 92A.440.

16 13. Aerogrow failed to comply with Chapter NRS 92A by: (1) paying Plaintiff and  
17 Plaintiff-Intervenors the merger consideration prior to the deadline to submit a demand for  
18 payment, after which Plaintiff and the majority of Plaintiff-Intervenors could not obtain the  
19 written consent from the stockholders of record; and (2) failing to send Plaintiff and Plaintiff-  
20 Intervenors dissenter's notices no later than 10 days after the effective date of the merger.

21 14. Therefore, Plaintiff and Plaintiff-Intervenors' Motion and requested relief is  
22 GRANTED in full.

23 15. Further, the Court recognizes that certain judicial relief is required for the  
24 parties to proceed with the dissenter's rights process.

25 **ACCORDINGLY, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED:**

26 1. That Plaintiff and Plaintiff-Intervenors' Motion is GRANTED;



2. That Defendant AeroGrow International, Inc. failed to comply with Chapter NRS 92A by paying Plaintiff and Plaintiff-Intervenors the merger consideration prior to the deadline to submit a demand for payment, after which Plaintiff and the majority of Plaintiff-Intervenors could not obtain the written consent from the stockholders of record;

3. That Defendant AeroGrow International, Inc. violated Chapter NRS 92A by failing to send Plaintiff and Plaintiff-Intervenors dissenter's notices no later than 10 days after the effective date of the merger;

4. That any requirement of Plaintiff and Plaintiff-Intervenors to obtain consent letters pursuant to NRS 92A.400(2)(a) is hereby waived;

5. That any requirement of Plaintiff and Plaintiff-Intervenors to deposit the stockholder's certificates, if any, pursuant to NRS 92A.440 is hereby waived;

6. That Defendant Aerogrow International, Inc. is compelled to provide Plaintiff and Plaintiff-Intervenors' with dissenter's notices in accordance with NRS 92A.430 no later than ten (10) days after entry of this order;

7. That the dissenter's notices must identify new deadlines by which the demand for payment forms must be submitted in compliance with NRS 92A.430(2)(d); and

8. That, although beneficial stockholders the Michael S. Barish IRA and the Alexander Perelberg IRA did not move to intervene, the related individual stockholders were included in the motion to intervene and were presumably intended to cover the related IRA entities; accordingly, both the Michael S. Barish IRA and the Alexander Perelberg IRA are subject to this Order.

**IT IS SO ORDERED** this \_\_\_\_ day of \_\_\_\_\_, 2021.

**Dated this 5th day of May, 2021**

  
DISTRICT COURT JUDGE

**EAA 80A 2343 8BC5**

**Elizabeth Gonzalez**  
**District Court Judge**

Page 4 of 6

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Submitted by:

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*Approved as to form:*

**BROWNSTEIN HYATT FARBER  
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/s/ Maximilien D. Fetaz

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**Subject:** RE: Proposed Order E-Signatures [IWOV-iManage.FID1135574]

You have my authorization.

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**Subject:** Proposed Order E-Signatures [IWOV-iManage.FID1135574]

Counsel,

Please confirm we may submit the attached proposed order to the Court with your e-signature.

Thanks,

Alex



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3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

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6 Overbrook Capital, LLC,  
7 Plaintiff(s)

CASE NO: A-21-827665-B

8 vs.

DEPT. NO. Department 11

9 Aerogrow International, Inc.,  
10 Defendant(s)

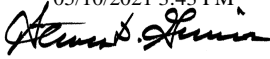
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Scotts Miracle-Gro Company, Chris Hagedorn, Cory  
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Supron*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

OVERBROOK CAPITAL LLC, on Behalf of  
Itself and All Others Similarly Situated,

*Plaintiffs,*

v.

AEROGROW INTERNATIONAL, INC.,  
CHRIS HAGEDORN, H. MACGREGOR  
CLARKE, DAVID B. KENT, CORY MILLER,  
PATRICIA M. ZIEGLER, SMG GROWING  
MEDIA, INC., and SCOTTS MIRACLE-GRO  
COMPANY,

*Defendants.*

CASE NO.: A-21-827665-B (Lead Case)  
DEPT NO.: XI

**AEROGROW INTERNATIONAL,  
INC.'S MOTION TO STAY ORDER  
GRANTING JOINT MOTION TO  
COMPEL PENDING RESOLUTION  
OF WRIT PURSUANT TO NRAP 8 ON  
ORDER SHORTENING TIME**

**HEARING REQUESTED**



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NICOYA CAPITAL, LLC, on behalf of itself  
and all other similarly situated,

*Plaintiffs,*

v.

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

and

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

*Defendants.*

BRADLEY LOUIS RADOFF,

*Plaintiff*

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-21-827745-B

CASE NO.: A-21-829854-B

1 Defendant AEROGROW INTERNATIONAL, INC. ("Defendant"), by and through its  
2 counsel of record, the law firms of Brownstein Hyatt Farber Schreck, LLP and Jones Day, hereby  
3 files this Motion to Stay Order Granting Joint Motion to Compel Pending Resolution of Writ  
4 Pursuant to NRAP 8 on Order Shortening Time (the "Motion"). This Motion is made and based  
5 upon the attached memorandum of points and authorities, the exhibits attached hereto, the pleadings  
6 and papers on file herein, the declaration of Maximilien D. Fetaz, Esq., and the argument of counsel  
7 to be made at the hearing on the Motion.

8 DATED this 10<sup>th</sup> day of May, 2021.

9 BROWNSTEIN HYATT FARBER SCHRECK, LLP

10 BY: /s/ Maximilien D. Fetaz

11 KIRK B. LENHARD, ESQ.

12 MAXIMILIEN D. FETAZ, ESQ.

13 TRAVIS F. CHANCE, ESQ.

14 MARJORIE P. DUFFY, ESQ.

15 (pro hac vice submitted)

16 ASHLEY F. HEINTZ, ESQ.

17 (pro hac vice)


18 JONES DAY

19 *Attorneys for Defendants AeroGrow International, Inc.,*  
20 *AGI Acquisition Sub, Inc., SMG Growing Media, Inc.,*  
21 *The Scotts Miracle-Gro Company, Chris Hagedorn,*  
22 *Cory Miller, Patricia M. Ziegler, James Hagedorn, and*  
23 *Peter Supron*  
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**ORDER SHORTENING TIME**

Good cause appearing, it is hereby ordered that the **AEROGROW INTERNATIONAL, INC.'S MOTION TO STAY ORDER GRANTING JOINT MOTION TO COMPEL PENDING RESOLUTION OF WRIT PURSUANT TO NRAP 8 ON ORDER SHORTENING TIME** shall be heard before the above-entitled Court located at the Regional Justice Center, 200 Lewis Avenue, Las Vegas, Nevada 89155, in Department XI, on shortened time on the 14 day of May, 2021 at the hour of Chambers'clock     .m.

DATED this      day of      ~~2021~~ Dated this 10th day of May, 2021

  
ELIZABETH G. GONZALEZ, DISTRICT COURT JUDGE

Respectfully Submitted By:

**FE8 D69 C440 2B70  
Elizabeth Gonzalez  
District Court Judge**

BROWNSTEIN HYATT FARBER SCHRECK, LLP

BY: /s/ Maximilien D. Fetaz  
KIRK B. LENHARD, ESQ.  
MAXIMILIEN D. FETAZ, ESQ.  
TRAVIS F. CHANCE, ESQ.

MARJORIE P. DUFFY, ESQ.  
(pro hac vice submitted)  
ASHLEY F. HEINTZ, ESQ.  
(pro hac vice)  
JONES DAY

*Attorneys for Defendants AeroGrow  
International, Inc., 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*

1     **DECLARATION OF MAXIMILIEN D. FETAZ, ESQ. IN SUPPORT OF AEROGROW**  
2     **INTERNATIONAL, INC.'S MOTION TO STAY ORDER GRANTING JOINT MOTION**  
3     **TO COMPEL PENDING RESOLUTION OF WRIT PURSUANT TO NRAP 8 ON**  
4     **ORDER SHORTENING TIME**

5             I, Maximilien D. Fetaz, Esq., hereby declare as follows:

6             1.       I am a shareholder with Brownstein Hyatt Farber Schreck, LLP, and local counsel  
7             of record for Defendant Aerogrow International, Inc. (“Defendant”) in the above captioned case.

8             2.       I make this declaration in support of Motion to Stay Order Granting Joint Motion to  
9             Compel Pending Resolution of Writ Pursuant to NRAP 8 on Order Shortening Time (the  
10            “Motion”).

11            3.       I have personal knowledge of the facts set forth herein.

12            4.       This request is made in good faith and without dilatory motive.

13            5.       On March 15, 2021, Plaintiff Radoff amended his complaint to add a new count for  
14            declaratory relief, seeking the Court to determine: “(1) the rights and obligations of the parties  
15            under NRS Chapter 92A; and (2) that AeroGrow has violated the statute[.]” First Am. Compl. ¶  
16            201, *Radoff v. Hagedorn, et al.*, No. A-21-829854-B (Dist. Ct. Nev. filed Mar. 15, 2021).

17            6.       On March 24, 2021, Plaintiff Radoff and the Proposed Intervenor (collectively,  
18            “Movants”) filed a motion titled “Motion to Compel/Determine Compliance with NRS 92A, or  
19            Alternatively, Injunctive Relief” (the “Motion to Compel”).

20            7.       On April 7, 2021, Defendant filed an opposition to the Motion (the “Opposition”),  
21            which was joined by Defendants H. MacGregor Clarke and David B. Kent, and Defendants AGI  
22            Acquisition Sub, Inc., SMG Growing Media, Inc., The Scotts Miracle-Gro Company, Chris  
23            Hagedorn, Cory Miller, Patricia M. Ziegler, James Hagedorn, and Peter Supron.

24            8.       The Court held an in-chambers hearing on the Motion to Compel on April 19, 2021.

25            9.       On May 5, 2021, the Court entered its Order granting in full Movants’ Motion to  
26            Compel. *See* Order Granting Plaintiff and Plaintiff-Intervenor’s Joint Motion to  
27            Compel/Determine Compliance with NRS 92A (the “Order”), filed herein on May 5, 2021.

28            10.      The Order, in part, compelled Defendant to provide Movants with dissenter’s  
              notices in accordance with NRS 92A.420 no later than 10 days after entry of the Order. The

1 dissenter's notices must identify new deadlines by which demand for payment forms must be  
2 submitted pursuant to NRS 92A.430(2)(d).

3 11. Notice of Entry of the Order was filed on May 6, 2021.

4 12. Accordingly, the deadline for Defendant to provide Movants with dissenter's notices  
5 in accordance with NRS 92A.420 is Sunday, May 16, 2021, thereby resuming the dissenter's rights  
6 statutory process as to the Movants.

7 13. Defendant intends to file a petition seeking extraordinary relief to the Nevada  
8 Supreme Court related to the Court's Order (the "Writ Petition").

9 14. Absent an order shortening time, a hearing on this matter set in the regular course  
10 will not occur until after Defendant is required to provide Movants with dissenter's notices pursuant  
11 to the Order, and may not occur until after expiration of the statutory deadlines by which Movants  
12 must submit demands for payment. Thus, the undersigned submits that good cause exists to hear  
13 the Motion on an order shortening time.

14 15. Concurrently with sending the Motion to chambers for consideration, the  
15 undersigned's office provided a courtesy copy via email to Movants' counsel of record.

16 16. Defendant respectfully requests that the Court set the Motion for hearing on or  
17 before May 14, 2021, or the earliest available date that the Court's calendar permits.

18 I declare under penalty of perjury that the foregoing is true and correct to the best of my  
19 knowledge.

20 DATED this 10th day of May, 2021.

21 /s/ Maximilien D. Fetaz  
22 MAXIMILIEN D. FETAZ

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION.**

3 By the Court granting the Motion to Compel, Movants effectively obtained a declaration of  
4 their rights and an injunction against Defendant. Despite Movants' failure to establish the  
5 necessary elements for a declaratory judgment, the Court found that written consents of the  
6 stockholders of record are due when a dissenter demands payment pursuant to NRS 92A.440 and  
7 Defendant violated NRS Chapter 92A. The Court also ordered Defendant to resume the dissenter's  
8 rights process as to Movants by providing to them dissenter's notices, with revised deadlines for  
9 demands for payment, within 10 days from entry of the Order.

10 Defendant respectfully disagrees with the Court's ruling and interpretation of NRS Chapter  
11 92A, and, therefore, intends to file a writ petition to seek guidance from the Nevada Supreme Court  
12 (the "Writ Petition"). A writ is appropriate where, as here, "there is not a plain, speedy and adequate  
13 remedy in the ordinary course of law." NRS 34.170. Further, the Order presents a novel question  
14 of statutory interpretation and "an important issue of law [that] needs clarification"—specifically,  
15 when a record stockholder's consent to a beneficial stockholder's dissent must be delivered under  
16 NRS Chapter 92A. *Archon Corp. v. Eighth Jud. Dist. Court*, 133 Nev. 816, 820, 407 P.3d 702, 706  
17 (2017) ("Advisory mandamus may be appropriate when 'an important issue of law needs  
18 clarification and considerations of sound judicial economy and administration militate in favor of  
19 granting the petition.'" (citation omitted)).

20 Because the Order requires Defendant to include Movants in the dissenter's rights process—  
21 by first providing dissenter's rights notices—in 10 days, Defendant seeks an order staying the Order  
22 pending resolution of the forthcoming Writ Petition. As explained below, the Court should enter a  
23 stay pending Defendant's forthcoming Writ Petition because (1) the purpose of the Writ Petition  
24 would be defeated without a stay because the dissenter's rights process as to the Movants would be  
25 well underway, and likely conclude, before the Nevada Supreme Court could consider the issue;  
26 (2) requiring Defendant to proceed with the dissenter's rights process (possibly to its resolution)  
27 with Movants who have not met a threshold statutory requirement would cause irreparable harm to  
28 Defendant; (3) Movants will suffer no harm, much less irreparable harm, from the stay because

1 they have already been paid and accepted the merger consideration and would be entitled to interest  
2 thereon in the event they prevail on the Writ Petition and later in a proceeding to determine fair  
3 value; and (4) Defendant is likely to succeed on the merits of the Writ Petition because a plain  
4 reading of the unambiguous statutes provide that a beneficial stockholder must submit consent of  
5 the stockholder of record before the vote on the transaction in order to receive the dissenter's notice  
6 and, thereafter, exercise its dissenter's rights to demand payment.

## 7 **II. PROCEDURAL BACKGROUND**

8 As the Court is well versed in the factual background of this matter, Defendant sets forth  
9 the relevant procedural background: (A) Plaintiff Radoff's amended complaint for declaratory  
10 relief; (B) Movant's Motion to Compel; and (C) the Court's Order Granting the Motion to Compel.

### 11 **A. Plaintiff Radoff's Amended Complaint Added a Claim for Declaratory Relief.**

12 On March 15, 2021, Plaintiff Radoff amended his complaint to add a new count for  
13 declaratory relief, seeking the Court to determine: "(1) the rights and obligations of the parties  
14 under NRS Chapter 92A; and (2) that AeroGrow has violated the statute[.]" First Am. Compl.  
15 ¶ 201, *Radoff v. Hagedorn, et al.*, No. A-21-829854-B (Dist. Ct. Nev. filed Mar. 15, 2021).

16 On March 17, 2021, AeroGrow's counsel sent letters to counsel for Movants explaining  
17 that Movants had failed to comply with the statutory requirement in NRS Chapter 92A to submit  
18 record stockholder consents and, as a consequence of their failure to comply, had received the  
19 merger consideration. *See* Proposed Pl.-Intervenor's Mot. to Intervene on an Order Shortening  
20 Time ("Mot. to Intervene"), filed in Case No. A-21-829854-B on March 23, 2021, Ex. F (Mar. 17,  
21 2021 Ltr. to J. Smith); Mot. to Compel, Ex. C (Mar. 17, 2021 Ltr. to T. Coffing). AeroGrow also  
22 requested that Plaintiff Radoff voluntarily dismiss or otherwise withdraw the First Amended  
23 Complaint's fourth claim for relief seeking declaratory relief. *See* Mot. to Compel, Ex. C.

### 24 **B. Movants Filed a Dispositive Motion on the Declaratory Relief Claim.**

25 On March 24, 2021, Movants filed a motion titled "Motion to Compel/Determine  
26 Compliance with NRS 92A, or Alternatively, Injunctive Relief" (the "Motion"). On an order  
27 shortening time, Movants effectively asked the Court to enter final judgment on Movants' claim  
28 for declaratory relief and supplemental relief in the form of a permanent injunction.

1 On April 7, 2021, Defendant filed an opposition to the Motion (the “Opposition”), which  
2 was joined by Defendants H. MacGregor Clarke and David B. Kent, and Defendants AGI  
3 Acquisition Sub, Inc., SMG Growing Media, Inc., The Scotts Miracle-Gro Company, Chris  
4 Hagedorn, Cory Miller, Patricia M. Ziegler, James Hagedorn, and Peter Supron.

5 On April 8, 2021, Movants filed a Supplement to Motion to Intervene amending their  
6 Motion to Intervene to include Jack Walker and Stephen Kaye (hereby included in “Movants”),  
7 two stockholders who were inadvertently excluded from the original Motion to Intervene.

8 On April 13, 2021, Movants filed their Reply in Support of the Motion.

9 **C. The Court Granted Movants’ Motion.**

10 After an in-chambers hearing on April 19, 2021, the Court granted in full Movants’ Motion.  
11 *See* Order Granting Plaintiff and Plaintiff-Intervenors’ Joint Motion to Compel/Determine  
12 Compliance with NRS 92A (the “Order”), filed herein on May 5, 2021, with notice of entry filed  
13 on May 6, 2021. The Order, in part, compelled Defendant to provide Movants with dissenter’s  
14 notices in accordance with NRS 92A.420 *no later than 10 days* after entry of the Order. Further,  
15 the Court ordered that the dissenter’s notices must identify new deadlines by which demand for  
16 payment forms must be submitted pursuant to NRS 92A.430(2)(d).

17 Defendant intends to file a petition seeking extraordinary relief to the Nevada Supreme  
18 Court related to the Court’s Order (the “Writ Petition”).

19 **III. ARGUMENT**

20 NRAP 8(a)(1) provides that a party seeking a stay pending resolution of a writ must  
21 ordinarily first move the District Court for “a stay of the judgment or order of, or proceedings in, a  
22 district court pending appeal or resolution of a petition to the Supreme Court or Court of Appeals  
23 for an extraordinary writ” or “an order suspending, modifying, restoring or granting an injunction  
24 while an appeal or original writ petition is pending.” NRAP 8(a)(1)(A), (C). A stay pending  
25 resolution of a writ is warranted when: (1) the object of the writ petition will be defeated if the stay  
26 is not granted; (2) the petitioner will suffer irreparable or serious injury if the stay is denied; (3) the  
27 real party in interest will not suffer irreparable or serious injury if the stay is granted; and (4) the  
28 petitioner has a likelihood of success on the merits of its appeal. *See Mikohn Gaming Corp. v.*



1 *McCrea*, 120 Nev. 248, 251, 89 P.3d 36, 38 (2004); *Hansen v. Eighth Jud. Dist. Court*, 116 Nev.  
2 650, 659, 6 P.3d 982, 986 (2000); *see also* NRAP 8(c). The Nevada Supreme Court has noted that  
3 no “one factor carries more weight than the others” but rather “recognized that *if one or two factors*  
4 *are especially strong, they may counterbalance other weak factors.*” *Mikohn Gaming Corp.*, 120  
5 Nev. at 251; 89 P.3d at 38 (emphasis added).

6 As demonstrated below, the requirements for a stay are satisfied in this case and, therefore,  
7 this Court should stay the Order pending resolution of the Writ Petition. Even if the Court continues  
8 to disagree with the merits of Defendant’s position, the other factors weigh heavily in favor of a  
9 stay.

10 **A. The Object of the Writ Petition will be Defeated if the Stay is Not Granted.**

11 The object of the Writ Petition is to obtain a determination as to whether NRS Chapter 92A  
12 requires a beneficial stockholder to submit to the subject corporation the written consent of the  
13 stockholder of record to the dissent prior to the vote on the transaction, in compliance with NRS  
14 92A.400, in order to proceed in the dissenter’s rights process. That object will be defeated if a stay  
15 is denied.

16 Indeed, without a stay, Movants would be proceeding in the dissenter’s rights statutory  
17 process, where Nevada law otherwise precludes them from doing so, before the Writ Petition could  
18 be heard and decided. As a first step in that otherwise unavailable process, the Order requires  
19 Defendant to provide dissenter’s notices *no later than May 16, 2021* to those 57 beneficial  
20 stockholders identified therein that did not comply with NRS Chapter 92A, where it would not  
21 otherwise be required to do so. As a result, without a stay here, Movants will be permitted to  
22 participate in the dissenter’s rights process in a matter of days without satisfying the threshold  
23 requirement set forth in NRS 92A.400—thereby rendering the limitation on the right of dissent in  
24 NRS 92A.400 a nullity—and before the Nevada Supreme Court would have the chance to resolve  
25 the question as to whether Movants may participate in the dissenter’s rights process.

26 Because the purpose of the Writ Petition will be defeated if a stay is not granted, this Court  
27 should immediately stay the Order.  
28

1                   **B. Defendant Will Suffer Irreparable Harm if a Stay is Not Granted.**

2                   If a stay is not granted, Defendant will suffer irreparably because it will have no choice but  
3 to allow beneficial stockholders to dissent even though it has no record that a stockholder of record  
4 consented to the dissents. Thus, even though NRS 92A.400 clearly requires that a stockholder of  
5 record must consent to the dissent for a beneficial stockholder to assert dissenter's rights, Defendant  
6 will be forced to allow these beneficial stockholders to participate in the dissenter's rights process,  
7 unless a stay is granted. And, as discussed above, Defendant will be forced to do so no later than  
8 May 16, 2021, which is well before the Nevada Supreme Court would have the opportunity to  
9 decide whether the statute permits Movants' participation in the process.

10                  Defendant will further suffer irreparable harm without a stay because the Writ Petition may  
11 not be decided prior to the statutory deadline for Defendant to file its petition for appraisal against  
12 Movants pursuant to NRS 92A.490. Given the Order's deadline for Defendant to send dissenter's  
13 notices by May 16, 2021, the latest Defendant could file a petition against Movants under NRS  
14 92A.490 would be approximately November 12, 2021—which is based on the longest time periods  
15 allowable under NRS 92A.440 (60 days), NRS 92A.460 (30 days), NRS 9A.470 (30 days), as  
16 applicable, NRS 92A.480 (30 days), and NRS 92A.490 (60 days)—and the deadline for the petition  
17 could well be earlier. Thus, the entire appraisal process may reasonably occur and possibly reach  
18 a resolution before the Nevada Supreme Court has the opportunity to consider whether Movants  
19 were permitted to participate in the dissenter's rights process in the first place.

20                  Moreover, Defendant must pursue the Writ Petition now—before the dissenter's rights  
21 process resumes for Movants—to avoid the risk that the Writ Petition will be denied on procedural  
22 grounds, such as by the equitable doctrine of laches. *See, e.g., Bldg. & Const. Trades Council of*  
23 *N. Nev. v. State ex rel. Pub. Works Bd.*, 108 Nev. 605, 611, 836 P.2d 633, 637 (1992) (finding that  
24 where the petitioner waited one month to file a writ, the doctrine of laches barred the writ because  
25 the petitioner “failed to take immediate legal action”). And if Defendant does not pursue a Writ  
26 Petition now, no other avenues for relief exist. Neither an appeal of the fiduciary suit nor an appeal  
27 of any (not yet filed) appraisal suit would address whether these “new dissenters” are entitled to be  
28 part of the dissenter's process because, by the time such an appeal could be heard, the dissenter's

1 process would already be complete. Because the Writ Petition is Defendant's only means to seek  
2 relief and clarification from the Nevada Supreme Court on this important and novel legal issue,  
3 Defendant should not be prejudiced by having to allow Movants to participate in the dissenter's  
4 rights process. *Cf. Archon Corp.*, 133 Nev. at 820, 407 P.3d at 706 (stating that advisory mandamus  
5 may be appropriate "to provide occasional appellate guidance on matters that often elude ordinary  
6 appeal, without establishing rules of appealability that will bring a flood of less important appeals  
7 in their wake." (citations omitted)).

8 For these reasons, a stay of the Order pending the outcome of the Writ Petition is warranted  
9 to avoid irreparable harm to Defendant.

10 **C. Movants Will Not Be Harmed by a Stay.**

11 On the other hand, Movants will not be harmed by a stay. Indeed, their rights vis-à-vis the  
12 dissenter's rights process would be preserved pending the stay and the Writ Petition. Additionally,  
13 Defendant already paid Movants, just as it paid all other non-dissenting stockholders, the merger  
14 consideration of \$3.00 per share of common stock, which each Movant accepted. *See* Mot. to  
15 Intervene at 11. The Order presumably permits Movants to continue to keep the merger  
16 consideration while the Writ Petition is pending, as it provides no mechanism for Movants to return  
17 the merger consideration to Defendant even though, as dissenters, they would not be entitled to it.  
18 To the extent the Writ Petition is denied and to the extent legal proceedings to determine fair value  
19 conclude that value exceeds the merger consideration, Movants are further protected here because  
20 during the pendency of the Writ Petition, they will also be entitled to interest on any amount over  
21 the merger consideration they already hold. *See* NRS 92A.340. Thus, Movants will suffer little to  
22 no cognizable, much less irreparable, injury if the stay is granted.

23 **D. Defendant Will Likely Prevail Before the Nevada Supreme Court Because**  
24 **Movants' Interpretation of NRS Chapter 92A Runs Afoul to the Unambiguous**  
25 **Language of the Statute Governing Dissenter's Rights.<sup>1</sup>**

26 The issue to be presented to the Nevada Supreme Court in the Writ Petition is whether,  
27 under Nevada law, in order to participate in the dissenter's rights process, a beneficial stockholder

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28 <sup>1</sup> Defendant recognizes that the Court has previously considered these arguments. Defendant,  
however, respectfully presents them here in compliance with NRAP 8(c)(4).

1 must submit to Defendant the consent of the stockholder of record prior to the vote on the  
2 transaction in compliance with NRS 92A.400. Based on the language of the statute itself and  
3 relevant Nevada case law, Defendant is likely to succeed on its Writ Petition.

4 Movants contended that the time to submit record stockholder consents is when the  
5 stockholder submits their demand for payment form to Defendant pursuant to NRS 92A.440. But,  
6 as explained in Defendant’s Opposition, the unambiguous language of NRS Chapter 92A, which  
7 governs the dissenter’s rights process, precludes this interpretation.

8 NRS 92A.400 limits the right of beneficial stockholders who wish to *assert* dissenter’s  
9 rights, and requires that beneficial stockholders submit record stockholder consents “not later than  
10 the time the beneficial stockholder *asserts* dissenter’s rights.” NRS 92A.400(2)(a) (emphasis  
11 added). NRS 92A.430 makes it clear that the time a “stockholder asserts dissenter’s rights” (NRS  
12 92A.400) precedes a company’s delivery of dissenter’s notices. Critically, a company must send  
13 dissenter’s notices to “any beneficial stockholder *who has previously asserted dissenter’s rights*  
14 *pursuant to NRS 92A.400.*” NRS 92A.430(1) (emphasis added). The submission of record  
15 stockholder consents pursuant to NRS 92A.400, thus, must occur *prior to* the company’s delivery  
16 of dissenter’s notices.

17 The only deadline that NRS Chapter 92A imposes on stockholder submissions that precede  
18 the company’s delivery of dissenter’s notices is the deadline for “a stockholder who wishes to *assert*  
19 dissenter’s rights” to submit a notice of intent to demand payment under NRS 92A.420. It sets the  
20 deadline for that requirement “*before the vote is taken.*” NRS 92A.420(1)(a) (emphasis added).  
21 Thus, “before the vote is taken” is the only deadline NRS Chapter 92A provides for the submission  
22 of record stockholder consents under NRS 92A.400.

23 To give full force and effect to NRS 92A.400, NRS 92A.420, and NRS 92A.430, the timing  
24 outlined in NRS 92A.420 controls and applies to NRS 92A.400. *See Arguello v. Sunset Station,*  
25 *Inc.*, 127 Nev. 365, 370, 252 P.3d 206, 209 (requiring courts to read statutory provisions “in a way  
26 that would not render words or phrases superfluous”); *see also Figueroa-Beltran v. United States,*  
27 *136 Nev. Adv. Op. 45, 467 P.3d 615, 621 (2020)* (“[Courts] avoid statutory interpretation that  
28 renders language meaningless or superfluous.”) (internal citations omitted).

1 The plain language of NRS 92A.420(3), which expressly references NRS 92A.400,  
2 confirms that the timing outlined in NRS 92A.420 applies to the record stockholder consent in NRS  
3 92A.400:

4 A stockholder who does not satisfy the requirements of subsection 1 or  
5 2 and **NRS 92A.400** is not entitled to payment for his or her shares under  
this chapter.

6 (emphasis added). In sum, under a straightforward reading of the statute—which gives meaning to  
7 all words, accounts for all statutory steps of the dissenter’s rights process, and does not create a  
8 conflict among statutory provisions—a beneficial stockholder who wishes to assert dissenter’s  
9 rights must submit to the corporation the written record stockholder consent *before the vote is*  
10 *taken*. See, e.g., *Edington v. Edington*, 119 Nev. 577, 582–83, 80 P.3d 1282, 1286 (2003) (“[W]hen  
11 a statute’s language is clear and unambiguous, the apparent intent must be given effect, as there is  
12 no room for construction.”).

13 Based on the foregoing, in addition to the further arguments set forth in Defendant’s  
14 Opposition, Defendant is likely to succeed on the merits of the Writ Petition.

15 **IV. CONCLUSION**

16 As set forth herein, a stay of the Order pending the decision of Defendant’s forthcoming  
17 Writ Petition is appropriate under the controlling four-factor test. Moreover, because Defendant  
18 has no other avenue to appeal the Order and the Writ Petition involves purely legal issues of  
19 statutory interpretation, it is ripe for review by the Nevada Supreme Court. See *Archon Corp.*, 133  
20 Nev. at 820, 407 P.3d at 706.

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1           Accordingly, Defendant respectfully requests that this Court grant the Motion and stay the  
2 Order pending the resolution of Defendant's Writ Petition.

3  
4           DATED this 10<sup>th</sup> day of May, 2021.

5                               BROWNSTEIN HYATT FARBER SCHRECK, LLP

6           BY:           /s/ Maximilien D. Fetaz            
7                       KIRK B. LENHARD, ESQ.  
8                       MAXIMILIEN D. FETAZ, ESQ.  
9                       TRAVIS F. CHANCE, ESQ.

10                      MARJORIE P. DUFFY, ESQ.  
11                      (*pro hac vice* submitted)  
12                      ASHLEY F. HEINTZ, ESQ.  
13                      (*pro hac vice*)  
14                      JONES DAY

15                      *Attorneys for Defendants AGI Acquisition Sub, Inc.,*  
16                      *SMG Growing Media, Inc., The Scotts Miracle-Gro*  
17                      *Company, Chris Hagedorn, Cory Miller, Patricia M.*  
18                      *Ziegler, James Hagedorn, and Peter Supron*

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am an employee of Brownstein Hyatt Farber Schreck, LLP and pursuant to NRCP 5(b), EDCR 8.05, Administrative Order 14-2, and NEFCR 9, I caused a true and correct copy of the foregoing **AEROGROW INTERNATIONAL, INC.’S MOTION TO STAY ORDER GRANTING JOINT MOTION TO COMPEL PENDING RESOLUTION OF WRIT PURSUANT TO NRAP 8 ON ORDER SHORTENING TIME** to be submitted electronically to all parties currently on the electronic service list on May 10, 2021.

/s/ Wendy Cosby  
an employee of Brownstein Hyatt Farber Schreck, LLP

1 **CSERV**

2  
3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

5  
6 Overbrook Capital, LLC,  
7 Plaintiff(s)

CASE NO: A-21-827665-B

8 vs.

DEPT. NO. Department 11

9 Aerogrow International, Inc.,  
10 Defendant(s)

11 **AUTOMATED CERTIFICATE OF SERVICE**

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

15 Service Date: 5/10/2021

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