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DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff,

vs.

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

Defendants.

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

Dept. No.: XI

FIRST AMENDED CONSOLIDATED CLASS ACTION COMPLAINT

Jury Demanded

Request for Business Court Assignment Pursuant to EDCR 1.61(a)

Exempt from Arbitration: Class Action/Complex Litigation

NICOYA CAPITAL LLC, on Behalf of Itself and All Others Similarly Situated, Plaintiff, vs. CHRIS HAGEDORN, H. MACGREGOR CLARKE, DAVID B. KENT, CORY MILLER, PATRICIA M. ZIEGLER, JAMES HAGEDORN, PETER SUPRON, - and - AEROGROW INTERNATIONAL, INC., a Nevada Corporation, AGI ACQUISITION SUB, INC., a Nevada Corporation, SMG GROWING MEDIA, INC., an Ohio Corporation, and SCOTTS MIRACLE-GRO COMPANY, an Ohio Corporation, Defendants.	Case No.: A-21-827745-B

Plaintiffs Overbrook Capital LLC ("Overbrook Capital") and Nicoya Capital LLC ("Nicoya Capital") (together "Plaintiffs"), based on Plaintiffs' personal knowledge with respect to themselves, and upon information and belief as to all other matters based upon, *inter alia*, a review of public filings, press releases, reports, and independent research, allege as follows:

I. NATURE OF THE ACTION

1. This is a stockholder class action (the "Action") brought by Plaintiffs on behalf of themselves and all other similarly situated minority stockholders of AeroGrow International, Inc. ("AeroGrow" or the "Company") against (a) AeroGrow's Board of Directors (Defendants Chris Hagedorn, H. MacGregor Clarke, David B. Kent, Cory Miller, and Patricia M. Ziegler) (the "Board"), as well as the Company's majority and controlling shareholder Scotts Miracle-Gro Company ("Scotts") for breaches of fiduciary duty; and (b) Scotts and its Chief Executive Officer and Chairman of the Board James Hagedorn, Scotts' Chief of Staff Peter Supron, Scotts' wholly

owned subsidiary AGI Acquisition Sub, Inc. ("AGI Acquisition") and certain other Scotts affiliates for aiding and abetting breaches of fiduciary duty.

2. AeroGrow is a Nevada corporation. AeroGrow is a developer, marketer, direct-seller, and wholesaler of advanced indoor garden systems designed for consumer use and priced to appeal to the gardening, cooking, healthy eating, and home and office decor markets. AeroGrow offers multiple lines of proprietary indoor gardens, grow lights, a patented nutrient formula, more than 40 corresponding proprietary seed pod kits, and various cooking, gardening and decor accessories, primarily in the United States and Canada, as well as selected countries in Europe.

3. The Scotts Miracle-Gro Company (*i.e.* Scotts) is a majority and controlling shareholder of AeroGrow. Defendants Ziegler, Chris Hagedorn, James Hagedorn, and Miller are affiliated with Scotts through their positions at Hawthorne, a wholly owned subsidiary of Scotts affiliate-SMG Growing Media, Inc. ("SMG"). At all relevant times during 2020, including as of December 1, 2020, Scotts beneficially owned 27,639,294 shares of common stock of AeroGrow, representing approximately 80.5% of the Company's outstanding shares of common stock. As the Company admitted in its Definitive Proxy filed with the U.S. Securities & Exchange Commission ("SEC") on January 22, 2021: "Scotts Miracle-Gro has held a significant equity ownership interest in AeroGrow since 2013. In 2016, when Scotts increased its equity ownership interest in AeroGrow above 80% (on a fully diluted basis), the Board was reconstituted, with three members affiliated with Scotts (currently, Ms. Ziegler and Messrs. Hagedorn and Miller) and two allegedly independent directors (currently, Messrs. Clarke and Kent) comprising AeroGrow's current five-member Board. Affiliates of Scotts are also party to several agreements with AeroGrow, including the Company's Brand License Agreement, the Technology License Agreement, the Supply Chain Services Agreement, the Collaboration Services Agreement and the 2020 Loan Agreement (each

as defined and described in "Other Important Information Regarding the Purchaser Parties and Scotts Miracle-Gro — Significant Past Transactions and Contracts)".[1]

4. After it acquired its controlling stake in AeroGrow in 2016, Scotts and the Hagedorn family began using such control to benefit themselves to the detriment of the Company's minority shareholders. As just one example, in 2020 and in all past years, Scotts caused AeroGrow to agree to take out a loan from Scotts at an interest rate of 10%, despite interest rates being at historically low levels and despite the fact that AeroGrow could have obtained the loan at a much lower rate from another party. SMG also is the originator of a mortgage on an AeroGrow property at the same 10% interest rate, despite the availability of much lower rates from third parties.

5. Scotts is led by Defendant James Hagedorn. According to Forbes, Hagedorn flies a plane named F-Bomb (which he uses to commute each day from New York to Scott's offices in Ohio), draws business lessons from Osama bin Laden (who Hagedorn describes as "a visionary") and compares himself to the protagonist in the Showtime series Billions ("so focused on winning that he's a little bit of an animal").[2]

6. In 2020, Defendants hatched a plan to acquire the stock of the Company's minority shareholders at a significant discount to market value in order to appropriate the valuable assets of the Company for themselves. Scotts states in the Proxy Statement for the merger (the "Merger") that its purpose in effectuating the squeeze-out/going private transaction is to obtain complete

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[1] *See* Definitive Proxy filed with the SEC on Schedule 14A on January 22, 2021 ("Proxy"), at p. 28.

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

control of AeroGrow and to increase its financial performance by acquiring AeroGrow's assets and business: "The Purchaser Parties and Scotts Miracle-Gro have undertaken to pursue the Merger at this time in light of the opportunities they perceive to enhance Parent's and, in turn, Scotts Miracle-Gro's, financial performance by means of acquiring the Company's brands and other assets through the Merger. For the Purchaser Parties and Scotts Miracle-Gro, the purpose of the Merger is to enable them to exercise complete control of the Company."[3]

7. As demonstrated herein, the plan culminated in an August 18, 2020 "takeunder" proposal, pursuant to which Scotts offered to buy minority shareholders out at a mere $1.75 per share, at a time when the stock was trading at $5.74 per share. As a news report at the time noted:

> Scotts Miracle-Gro Co. (NYSE: SMG), owner of 80.5% of AeroGrow International Inc. (OTCQB: AERO) stock, offered this week to purchase the remainder of Boulder-based indoor grow system manufacturer's outstanding shares for $1.75 per share.
>
> ***When documents related to the offer were filed with the U.S. Securities and Exchange Commission on Tuesday, AeroGrow's stock was trading as high as $5.74 per share, close to the firm's 52-week high. The price tumbled nearly 30% on Wednesday and was down another 22.72% on Thursday***, finishing the day trading at $3.13.
>
> Unsurprisingly, this development is not sitting well with some current AeroGrow investors, who say ***Scotts is bullying the much smaller firm***.
>
> "I started investing in Aero about four years ago in 2016. I did a large amount of research on the Aero team and on its products, and saw the huge potential for the growth of hydroponics especially relating to growing cannabis," Gary Perelberg told BizWest in an email. "… ***This kind of greed from a company as large as Scotts is unprecedented especially since it comes at a time when Aero's price was literally skyrocketing*** and closely related companies such as GrowGeneration were rapidly increasing in stock price."[4]

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[3] *See* Proxy, at p. 62.

[4] *See* Lucas High, "Acquisition Offer From Scott's Sends AeroGrow Stock Tumbling," Daily Camera, Aug. 20, 2020, available at https://www.dailycamera.com/2020/08/20/acquisition-offer-from-scotts-sends-aerogrow-stock-tumbling/, last visited Jan. 5, 2021.

8. Normally, of course, acquisition proposals include a substantial premium for the shareholders of the target company. Scotts' offer was made at a ***70% discount*** to the Company's stock price at the time. As noted in the article, the "take under" offer from Scotts sent AeroGrow's stock into a tailspin, declining 32% in the two days after the offer was announced, despite the Company posting record financial results in 2020.

9. Notably, Scotts did not actually negotiate a merger at the time, despite having multiple designees on AeroGrow's Board, but instead announced an offer to buy the stock held by the minority shareholders at a 70% discount. By announcing an offer at a 70% discount, Scotts and the Hagedorns succeeded in causing the Company's stock price to plummet.

10. After having caused a train wreck, Defendants then proceeded to negotiate a slightly improved price at $3.00 per share. But such price still represented a discount of 48% from where the stock was trading when the initial offer was made. As demonstrated herein, the merger was both unlawful and the result of actual fraud by Defendants. Defendants employed an unlawful process to effectuate the merger, failing to adopt or implement any procedural protections to protect Plaintiffs and the other minority shareholders. They also caused inaccurate and false disclosures to be made in the Proxy statement regarding the value of Aerogrow. Among other things, they knowingly manipulated the original financial forecasts prepared by Aerogrow's management.

11. The $3.00 per share price was fundamentally unfair and was only arrived at through Defendants' intentional, unlawful, and bad faith conduct. AeroGrow's projections show an increase in revenues from $92 million in fiscal 2021 (which is almost over, since AeroGrow's fiscal year 2021 ends on March 31, 2021) to $188.2 million by 2023; and gross profits are expected

to more than double from $30.7 million to $63.4 million in the same period, as demonstrated in the following chart:

Introduction

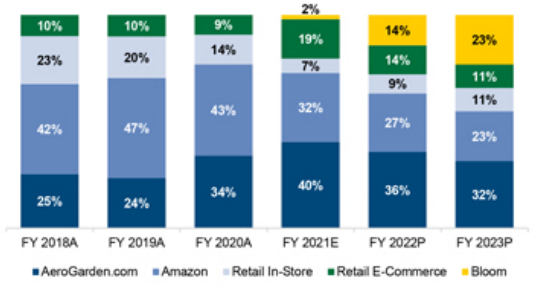
AeroGrow Financial Overview

($ in millions, except per share values)

Summary Operating Data (1)

($ in millions)	Historical				Estimated	Projected	
FYE March 31,	2018A	2019A	2020A	LTM Sep-2020	2021E	2022P	2023P
Gross Revenue	$40.8	$46.1	$46.9	$71.2	$92.0	$133.6	$188.2
% Growth	*49.7%*	*12.9%*	*1.7%*	*80.6%*	*96.2%*	*45.3%*	*40.9%*
Net Revenue	$32.3	$34.4	$39.2	$61.0	$78.4	$114.3	$161.8
% Growth	*36.8%*	*6.4%*	*14.1%*	*97.2%*	*99.8%*	*45.9%*	*41.6%*
Gross Profit	$10.7	$12.0	$14.0	$24.4	$30.7	$44.5	$63.4
% Net Revenue	*33.1%*	*34.8%*	*35.8%*	*39.9%*	*39.2%*	*38.9%*	*39.2%*
Adj. EBITDA	($0.0)	$0.5	$1.1	$7.6	$9.5	$15.3	$25.5
% Net Revenue	*(0.1%)*	*1.5%*	*2.7%*	*12.4%*	*12.1%*	*13.4%*	*15.8%*

Net Revenue Segmentation by Channel



Capitalization Summary (2)

	Maturity	Rate	Value	LTM Sep-20 Adj. EBITDA Multiple	FY 2021E Adj. EBITDA Multiple
Cash and Equivalents			$3.8	0.5x	0.4x
Term Loan	Mar-22	10.0%	$2.9	0.4x	0.3x
Finance Lease			0.0	0.0x	0.0x
Total Debt			**$2.9**	**0.4x**	**0.3x**
Net Debt			**($0.9)**	**(0.1x)**	**(0.1x)**
Market Capitalization (11/9/20)		$2.75	$94.4	12.5x	9.9x
Total Enterprise Value			**$93.5**	**12.4x**	**9.8x**

Source: Company internal financials and public filings, management "base case" estimates/projections.
(1) LTM Sep-2020 and 2021E results include actuals through 9/30/20. LTM Sep-2020 EBITDA adjustments total $487k and include $386k of transaction costs, $237k of public company costs, $51k related to a one-time website security audit and ($188k) related to Scotts paying for an AeroGrow employee.
(2) Balance sheet metrics as of 9/30/20.

9

STIFEL

12. Based on these projections the Company's banker – Stifel, Nicholas & Co., Inc. ("***Stifel***") – ***had prepared a valuation range for AeroGrow's stock of between $5.90 per share and $8.20 per share***. But Scotts did not want to pay anything close to fair value for the stock held by the minority shareholders, and thus embarked on a plan to manufacture new numbers more to its liking.

13. Scotts did so by instructing its own banker, Wells Fargo, to heavily discount AeroGrow's forecasts to arrive at lower numbers. Wells Fargo did this "without performing any due diligence with [AeroGrow's] management."[5] To do this, Scotts told Wells Fargo to simply prepare two new cases, Case A and Case B, in which Wells Fargo was instructed to apply large cuts to the projections. Tellingly, even Wells Fargo, using heavily discounted financial forecasts, arrived at valuation ranges that were significantly higher than Scotts' $3.00 Merger price. Wells Fargo's alternative Case A valuation derived values for AeroGrow of between $5.10 – $6.00 per share using a Precedent Transactions analysis and of between $5.45 – $7.55 under a Discounted Cash Flow ("DCF") analysis.

14. After it had Wells Fargo manipulate the forecasts prepared by AeroGrow's management downward, Scotts then used its control to coerce Stifel into lowering its prior valuation of AeroGrow by using the Wells Fargo analysis as leverage, telling Stifel that its analysis was not reliable and needed to be reduced.

15. In the end, a toothless "Special Committee" without any authority to reject the Merger admitted that Scotts' abuse of control had prevented any meaningful process from occurring. According to the Proxy: "***The Special Committee also discussed the general uncertainty regarding whether Scotts Miracle-Gro would constructively participate in a full sale process, and that without such participation by Scotts Miracle Gro as the 80% beneficial owner, no process could move forward."***[6]

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

[6] *See* Proxy at p. 41.

16. Moreover, AeroGrow admitted that the Scotts proposal, if completed, posed a conflict of interest as well as a high risk of not adequately compensating minority shareholders for the future value of the Company: "The proposal and related transactions may ***pose conflicts of interest and*** may result in: (i) cessation of AeroGrow's status as a publicly traded company and SEC-reporting company; and (ii) ***may result in the liquidation of common stock held by minority shareholders at a price that may not represent the full future economic value of the common stock***."[7] These disclosures or warnings provided no protection to the minority shareholders, however, because the minority shareholders have no ability to prevent the Merger: Defendants only conditioned approval of the Merger on the vote of a simple majority of all outstanding shares. Since Scotts owns 80.5% of all AeroGrow shares, it can, and has, approved the Merger by itself.

17. Amazingly, even AeroGrow's own former Chairman of the Board, Jack Walker, issued a press release stating that the Merger is egregiously unfair to Plaintiffs and the Class. Mr. Walker's press release was issued February 16, 2021, indicated that he and other shareholders holding 1,700,000 shares object to the Merger and intend to seek dissenters rights, and stated:

- "SMG [Scotts] engaged in manipulative practices in order to acquire AeroGrow at a substantial discount to fair market value. When SMG announced its intent to acquire AeroGrow in its Schedule 13D filed with the SEC on August 18, 2020, AeroGrow's stock was trading at approximately $5.70 per share. Because there were no definitive developments in the acquisition process that would necessitate such filing, it appears that the gratuitous announcement that SMG intended to acquire AeroGrow for $1.75 per share was intended to put a damper on the steadily increasing stock price."

- "SMG indulged the AeroGrow Special Committee sales process in order to create the impression of legitimacy, but that SMG's thumb was on the scale throughout the entire process. The Stockholders assert that SMG attempted to beat back the valuation at every opportunity and the AeroGrow Special Committee did little to protect the minority stockholders."

[7] *See, e.g.,* AeroGrow 2020 Annual Report at p. 17.

- "[A]bsent the clear and egregious manipulation by SMG, both the trading price and the appraised value of AeroGrow stock far exceed the meager price that the AeroGrow board ultimately accepted. The Stockholders strongly believe that the evidence they will present in the Nevada -dissenter's rights proceeding will prove that the $3.00 per share offer is wholly inadequate"

18. In addition, the August 20, 2020 offer was made at a time when Defendants knew that AeroGrow was experiencing rapid growth and had just reported record financial results. Just nine days earlier, AeroGrow had reported record financial results when it announced its quarterly financial results on Aug. 11, 2020:

> BOULDER, Colo., Aug. 11, 2020 (GLOBE NEWSWIRE) -- AeroGrow International, Inc. (OTCQB: AERO) ("AeroGrow" or the "Company"), the manufacturer and distributor of AeroGardens - the world's leading family of In-Home Garden Systems™ – announced today its results for the Quarter ended June 30, 2020.
>
> For the 1st quarter of Fiscal Year (FY) 2021 ended June 30, ***2020 the Company recorded net revenue of $16.4 million, an increase of 267% from $4.5M in the same period in the prior year. Income from Operations was $2.7M, up from a loss of $1.1M in the prior year period.***
>
> "***Our 1st Quarter results were exceptional by every measure," said President and CEO J. Michael Wolfe***. "Sales across all three of our distribution channels – Amazon, Direct-to-Consumer and Retail – were extremely strong throughout the quarter. This is our third consecutive quarter with record sales and profitability, and we saw further acceleration of our results due to the Covid-19 pandemic beginning in March. This was driven by increased interest in gardening, at-home meal preparation and access to fresh, safe food sources...and the AeroGarden certainly meets all of these needs. We experienced an increase in sales across all product types, including gardens, seed pod kits and accessories.
>
> "During the quarter we were able to refine our pricing model, which primarily ***drove our gross margin up to 44.8%, an increase of 1,230 bps from 32.5% in the same period last year***. Our gross margin also benefited from a larger portion of our sales coming through our Direct-to-Consumer channel (AeroGarden.com), which affords us better margins. In addition, we continued to see very good results and improved efficiencies in our digital marketing programs which played an important role in our sales growth. We believe these programs are further scalable as we enter what is traditionally our peak sales periods. These factors, in addition to increased sales, drove the significant improvement in our operating profit and demonstrate the leverage in our business as it continues to scale.
>
> "We have also successfully expanded capacity with all of our critical suppliers to keep up with what appears to be continued strong demand for our products. Our July sales – while having moderated from the original surge we experienced during the early days of the

pandemic – have remained at a considerably higher level on a YOY basis. If this sales trend continues, we believe our expanded supply chain and distribution infrastructure will be prepared to meet it.

"***Looking ahead, we have three new product introductions planned for the coming months***. We will be introducing a new Farm model and an all new Sprout into our AeroGarden product line, ***as well as launching the Grow Anything Appliance, our most ambitious product to date***. To be known as the "Bloom by Botanicare," we believe this refrigerator-sized, large-plant growing system is the most advanced in the world. Bloom monitors and dynamically adjusts key environmental factors for each stage of a plant's development – maximizing the speed of growth, yields, flavor and consistency of thousands of potential plant varieties. Bloom will launch later in our 2nd Quarter with an initial release designed to begin cultivating our community of growers, followed by distribution ramping throughout the fall. Apply to be a part our initial release program at Launch.BloomGrows.com.

"Our balance sheet as of June 30 had $10.3 million in cash on hand and $3.8 million in receivables. In addition, on August 3rd we secured a $7.5 million working capital line of credit from the Scotts Miracle-Gro Company. ***We believe the combination of our strong balance sheet and working capital line will support our efforts to have sufficient inventory for the upcoming season and take full advantage of additional upside opportunities that may present themselves.*** Finally, I want to recognize our incredible team here at AeroGrow, all of whom have worked tirelessly to deliver these results while preparing for our upcoming holiday season."

19. Not only did Scotts' August 20, 2020 offer ignore these record results which reflect a price that factored in AeroGrow's expected continuing improving results, it was made at a 70% discount. Simply put, Defendants are plundering AeroGrow and transferring value which belongs to the minority shareholders to Scotts. Because Defendants acted unlawfully and fraudulently with respect to depriving Plaintiffs and the Class of the fair value of their shares in the merger, and failed to ensure a fair process of fair price, they breached their duties under *Cohen v. Mirage Resorts*, Inc., 119 Nev. 1 (2003) and Plaintiffs are not limited to appraisal rights. *See* NRS 92A.380(2).

20. Moreover, AeroGrow's financial results announced on August 11, 2020 would have been even better had Defendants not intentionally delayed the introduction of the Company's

most promising product. The financial results also contained burdensome legal and deal costs that are one-time in nature. The quarter would have been even more profitable than reported but for these non-recurring, one-time, costs. As the August 11, 2020 press release noted, going forward the Company would be "launching the Grow Anything Appliance, our most ambitious product to date." AeroGrow had planned to launch the Grow Anything Appliance earlier in the year, but Scotts and its designees to the AeroGrow Board instructed CEO Wolfe to hold back the launch so that the significant expected revenues from Grow Anything would not be reflected in the Company's financial results, thus aiding Scotts' efforts to squeeze out the minority shareholders at a lower, unfair price that did not reflect the Company's true value and prospects.

21. Scott's next quarterly results, reported on November 16, 2020, were even better, and demonstrated the extent to which Scotts had made a low-ball offer which did not reflect the tremendous growth being experienced by AeroGrow. On November 16, 2020, Scotts announced the following stellar results for its Q2 fiscal results:

AEROGROW INTERNATIONAL, INC.
CONDENSED STATEMENTS OF OPERATIONS
(all amounts in thousands)

	Three Months ended September 30,		**Six Months ended September 30,**	
(in thousands, except per share data)	**2020**	**2019**	**2020**	**2019**
Net revenue	$ 14,310	$ 4,423	$ 30,721	$ 8,898
Cost of revenue	8,403	2,958	17,457	5,977
Gross profit	5,907	1,465	13,264	2,921
Operating expenses				
Research and development	294	276	595	487
Sales and marketing	2,888	1,369	5,703	2,772

General and administrative	1,406	893	2,980	1,787
Total operating expenses	4,588	2,538	9,278	5,046
Income (loss) from operations	1,319	(1,073)	3,986	(2,125)
Other (expense), net				
Interest expense – related party	(24)	(52)	(47)	(54)
Other (expense), net	(29)	(1)	(25)	(5)
Total other (expense), net	(53)	(53)	(72)	(59)
Net income (loss)	$ 1,266	$ (1,126)	$ 3,914	$ (2,184)
Net income (loss) per share, basic and diluted	$ 0.04	$ (0.03)	$ 0.11	$ (0.06)
Weighted average number of common shares outstanding, basic and diluted	34,328	34,328	34,328	34,328

22. As these financial results demonstrate, AeroGrow's revenues increased for the three months ending 9/30/2020 to $14,310,000, from just $4,423,000 in the same quarter the prior year. Gross profit increased from $1.465 million to $5.907 million. Further, the Company was able to achieve profitability well ahead of its seasonally strongest holiday season, and did so while investing heavily in R & D and incurring deal-related costs.

23. Then, on February 16, 2021, AeroGrow reported its most recent financial results, which far surpassed consensus expectations. For the quarter ended December 31, 2020 the Company recorded net revenue of $38.4M, an increase of 107% over the same period in the prior year. Income from Operations was $4.7M, an increase of 290% vs. the prior year. Gross margin improved to 41.1%, an increase of 590 basis points vs the prior year. For the nine months ended December 31, 2020, net revenue was $69.1M, an increase of 151% vs. the same period in the prior

year. Income from Operations was $8.7M, up from a loss of $918K the prior year. Gross margin for the period improved to 42.0%, up 760 basis points vs. the prior year. The Company is exhibiting rapid revenue acceleration coupled with operating leverage resulting in dramatic growth in cash flow and profitability.

24. These exponentially improving financial results were not reflected in the financial results and projections Defendants used to try to justify the paltry $3.00 Merger price for minority shareholders. To be sure, Scotts would never be a seller at $3.00, only a buyer. Scotts and its designees on AeroGrow's Board knew that AeroGrow's financial results were rapidly improving in 2020, and would continue to do so in future years, and used its insider information and control of AeroGrow to submit a proposal which was inherently unfair and did not reflect the Company's rapidly improving financial results. Defendants then structured the Merger so that only the approval of Scotts was required, thus completely disenfranchising the minority shareholders.[8] Defendants are abusing their control of AeroGrow to benefit themselves at the expense of the minority shareholders by orchestrating a forced sale of the stock held by the minority shareholders at a grossly unfair valuation. Defendants' conduct failed to comply with both the fair price and fair dealing doctrines widely accepted as standard protections for these situations.

25. As a result of Defendants' unlawful and fraudulent conduct, the proposed Merger was effectuated and Plaintiffs and the other minority shareholders were divested of their stock in AeroGrow at an unfair price and pursuant to an unlawful process, and substantially damaged. As

[8] As demonstrated herein, Defendants structured the self-interested transaction such that only the vote of a majority of all outstanding shares, as opposed to a majority of the minority shareholders voting, is required to approve the Merger.

indicated in AeroGrow's Proxy, "If the Merger is completed, our common stock will no longer be quoted on the OTCQB and will be deregistered under the Exchange Act."[9]

26. The only beneficiaries of the Merger are Scotts, its affiliates, and the Hagedorns.

27. Scotts wielded its status as AeroGrow's controlling stockholder to undermine any semblance of a process that would protect AeroGrow's minority stockholders from its self-dealing. From the beginning, Scotts spearheaded the process of squeezing out AeroGrow's minority shareholders. Far from insulating efforts to protect AeroGrow's minority shareholders, the Company's directors allowed Scotts and its representatives to run the show. As admitted by AeroGrow in the Proxy Statement sent to shareholders soliciting their vote in favor of the Merger, the entire process was started in February 2020 when a Board meeting was held at which all directors, including those appointed by Scotts, were allowed to attend and participate. The Proxy also admits that Scotts' Chief of Staff, Pete Supron, who was no longer an AERO Board member, was allowed to attend and participate in the AeroGrow Board meeting and in fact run the meeting:

> Following a regularly scheduled in-person Board meeting ***on February 27, 2020, the Board, with all Board members present, met in executive session*** without representatives of AeroGrow's management present. ***The Board was joined by Peter Supron, Chief of Staff at Scotts Miracle-Gro and a former member of the Board, who was present at the invitation of the Board Chair, Mr. Hagedorn.*** Mr. Supron presented to the Board a proposed framework that included restructuring AeroGrow's operations by consolidating substantially all business operations into Scotts Miracle-Gro and ***reducing the number of AeroGrow's stockholders*** through a reverse stock split in order to eliminate the expense associated with AeroGrow's public reporting obligations, ***possibly followed by a parent-subsidiary merger in which unaffiliated minority stockholder approval would not be required***. . . Mr. Supron postulated that ***the consummation of a reverse stock split would reduce the number of record stockholders to a number that would allow the common stock to (i) cease being quoted on the OTCQB and (ii) become eligible for termination of registration under the Exchange Act***, which would reduce the operating and compliance costs that AeroGrow incurs as a result of being a publicly-traded and SEC-reporting company. ***Pursuant to the Scotts Miracle-Gro framework, if, after giving effect to the reverse stock split, any stockholders would hold fractional shares of common stock,***

[9] *See* Proxy at p. 84.

> ***AeroGrow would pay to such holders in exchange for their fractional shares an amount in cash based on the value of the common stock***.

28. The Hagedorn family controls both companies. Defendant Chris Hagedorn is Chairman of AeroGrow, while his father James Hagedorn is Chairman, CEO, and the controlling shareholder of Scotts. Scotts' Chief of Staff is Peter Supron. Supron reports directly to James Hagedorn and took the actions alleged herein at the direction of James Hagedorn. The entire structure of the two companies was set up by Scotts to ensure total control of AeroGrow by Scotts, including control of each company by one of the Hagedorn clan. The original idea for the Merger, as stated above from the relevant portion of the Proxy, was to eliminate the minority shareholders of AeroGrow so Scotts could gain control of all the assets of the Company. Scotts even originally proposed that "minority stockholder approval would not be required." From the beginning, there was no effort given to protecting the interests of the minority shareholders.

29. Ironically, while Scotts' Chief of Staff, Supron, was allowed to attend the initial meeting of AeroGrow's Board in on February 27, 2020, AeroGrow's own CEO was excluded from the meeting. Once the meeting was over, AeroGrow's CEO was allowed to enter the room, but received a briefing not from his own Board but from Supron, who condescendingly assumed the Scotts squeeze out of the minority shareholders was a *fait accompli* and instructed AeroGrow's CEO that he should begin discussing severance agreements with AeroGrow employees:

> "***Mr. Wolfe, AeroGrow's Chief Executive Officer, rejoined the Board at the end of the executive session and the discussion was recapped to him by Mr. Supron***. In addition, given the pending filing of the amendment to Scotts Miracle-Gro's Schedule 13D, ***Mr. Supron encouraged Mr. Wolfe to immediately begin communication with AeroGrow's employees regarding the Scotts Miracle-Gro framework and the impact it would have on AeroGrow employees, including potential severance and retention bonus considerations***."[10]

[10] *See* Proxy at p. 29.

30. In other words, the Merger began with this February 27, 2020 meeting, which was instigated when Defendant Chris Hagedorn invited Peter Supron of Scotts to meet in executive session with AeroGrow's Board, without the Company's CEO, Mr. Wolfe, present. The proposal was to squeeze out AeroGrow's minority shareholders, without disclosure of any kind or even a vote, by effectuating a reverse stock split, which would reduce the number of shareholders so that the stock listing could be terminated, thus eliminating all liquidity for minority shareholders. Most minority shareholders would be left with fractional shares, which would be cashed out at no premium. As the Proxy admits, "On February 27, 2020, AeroGrow's common stock closed trading on the OTCQB at $1.62 per share." Thus, the proposal was to cash out fractional shares at approximately $1.62 per share. However, as demonstrated herein, Defendants knew that AeroGrow's results were rapidly improving and would continue to do so during 2020. As a result, Defendants were seeking to squeeze out the minority shareholders at no premium and at a time when they knew the Company's stock price did not reflect the stock's true value and the Company's near-term financial prospects.

31. At the conclusion of the February 27, 2020 meeting, without any thought having been given to the interests of the minority shareholders or any process whatsoever to try to shop the Company or maximize shareholder value (other than the value to be captured by Scotts and the Hagedorns), James Hagedorn's Chief of Staff, at Hagedorn's direction, summarily instructed AeroGrow's CEO "***to immediately begin communication with AeroGrow's employees regarding the Scotts Miracle-Gro framework and the impact it would have on AeroGrow employees, including potential severance and retention bonus considerations***." Obviously, Scotts believed it could do whatever it wanted and that the proposal was a done deal. Since Scotts would absorb AeroGrow into its operations, many of AeroGrow's employees would no longer be needed and

thus would be fired. It is telling that Scotts Chief of Staff Supron issued this directive at the very first meeting to discuss the proposal, before the AeroGrow Board had even met to discuss the proposal or formed a special committee, and thus obviously before it had approved any transaction with Scotts.

32. The Proxy also admits that in the ensuing months, Scotts told AeroGrow's bankers, who were ostensibly tasked with the job of shaking the bushes to see if any other suitors would be interested in AeroGrow, that Scotts owned AeroGrow's key intellectual property ("IP"), which it was allowing AeroGrow to use pursuant to a licensing agreement, but that Scotts would not sell the IP to any third party. But this assertion turned out to be false, according to AeroGrow's CEO, since AeroGrow no longer relied on Scott's IP and had a workaround for the one aspect that it did use covered by the IP. Thus, Scotts' misrepresentations to the bankers were simply additional means used to thwart any chance of a better offer materializing from third parties. It was clear that Scotts continuously tried to frustrate any "market check."

33. The AeroGrow Board and the eventually created Special Committee also allowed Scotts to dictate the scope and terms of the market check undertaken by Stifel. The market check was the main method that the AeroGrow Board was required to undertake to fulfill its fiduciary duty to maximize value in any transaction. Scotts should have had absolutely no involvement in the market check performed by the Committee's banker, Stifel. However, not only was Scotts involved in the market check, it dictated what Stifel was allowed and not allowed to do. It also requested visibility into the process and dictated its timeline.

34. As the Proxy states:

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

35. The following chart demonstrates how AeroGrow's stock began a huge rally in the first six months of 2020 as it reported record financial results, and then collapsed due to Scotts' manipulation of the Merger process and statement that it would only pay $1.75 per share for the Company stock:

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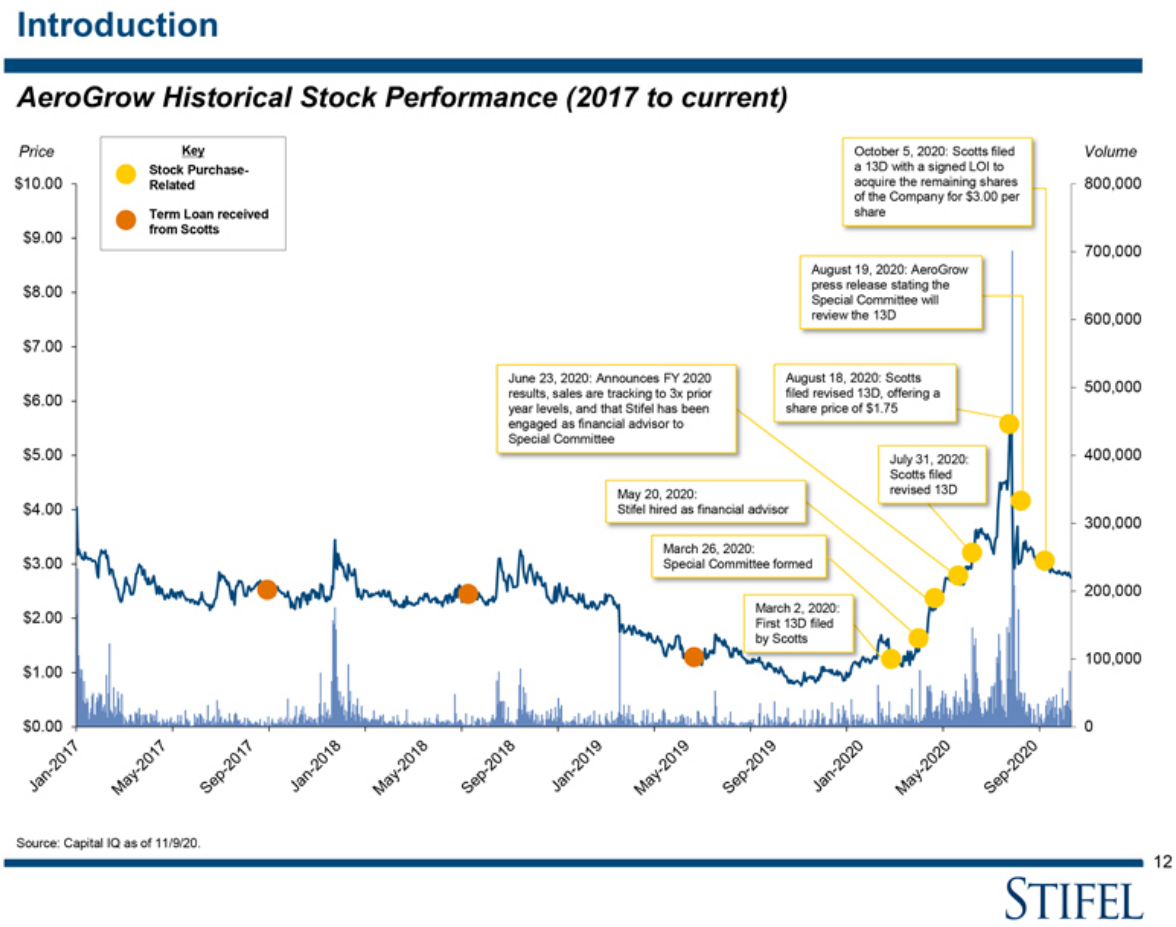

36. The brazen breaches of fiduciary duty committed by the Defendants do not comply with Nevada law. In any transaction between a majority and controlling shareholder and minority shareholders, the controlling shareholder owes fiduciary duties to the minority shareholders and

must adhere to both a fair price and fair process construct. AeroGrow's directors also owe a fiduciary duty to Plaintiffs and the Class.

37. In the ensuing months after the February 27, 2020 special meeting, Defendants attempted to put some window dressing on their squeeze-out plan, but failed to engage in any substantive effort to protect the minority shareholders. As the Company's financial results continued to significantly improve in the ensuing quarters of 2020, Defendants ignored the steadily improving stock price, which as noted above had increased to $5.74 by the time Defendants announced the $1.75 per share offer on August 20, 2020. The $1.75 per share offer not only was 70% below the price of the stock at the time, but also significantly undervalued the stock based on the Company's fair market value. Moreover, the $1.75 per share offer was neither conditioned on the formation of an independent Special Committee of the Board nor a majority-of-the-minority vote.

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

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

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

40. Scotts and the Hagedorn family were so heavy-handed in their tactics that they actually refused to agree not to sue the Special Committee members. The fact that Scotts repeatedly refused to agree to provide indemnification to the members of the Special Committee amply demonstrates its (successful, and, improper) influence over the entire process, and the abject failure of AeroGrow to neutralize this improper influence in any way. As the Proxy admits:

> "In addition, the letter stated that the Special Committee members were requesting that Scotts Miracle-Gro formally indemnify them against claims, costs and liabilities arising because of their services as directors of AeroGrow and Special Committee members and that Mr. Hagedorn, as Chairman of AeroGrow and an executive of Scotts Miracle-Gro, coordinate the preparation of an indemnification agreement with Scotts Miracle-Gro's counsel. . . On May 29, 2020, Scotts Miracle-Gro's internal legal counsel informed Bryan Cave that, in deference to the independence of the Special Committee's process, Scotts Miracle-Gro would not be able to provide indemnification to the members of the Special Committee. Bryan Cave responded to clarify that the Special Committee was not requesting a new indemnity agreement but instead a covenant not to sue coupled with a payment guaranty of AeroGrow's existing indemnification obligations. ***On June 1, 2020, Scotts Miracle-Gro's internal legal counsel reiterated that Scotts Miracle-Gro would not provide separate indemnification of AeroGrow's Board members (including the Special Committee) directly through an indemnity agreement or indirectly through a guarantee***." [11]

[11] *See* Proxy at p. 33.

41. In other words, Scotts would not even agree not to sue AeroGrow's Special Committee if it did not like its "recommendation." Moreover, by refusing to provide a payment guarantee, Scotts undermined the independence of the Special Committee, whose members risked not being paid (and/or not having funds to pay for advisors) should Scotts use its control of Aerogrow and/or the closing of the transaction to refuse payment of the Committee's fees and expenses.

42. Amazingly, the Special Committee's compensation was even subject to approval by Scotts, and the Committee had to come groveling to Scotts for more money to do its work. The Proxy states that:

> "***On June 2 and 3, 2020, the Special Committee, Bryan Cave, Mr. Hagedorn, Mr. Supron and Scotts Miracle-Gro's internal legal counsel engaged in discussion via email regarding the Special Committee's requests for additional compensation for service on the Committee***."[12]

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

44. As such, Defendants never formed a truly independent special committee of directors with plenary authority (1) to evaluate and negotiate the Merger, (2) to consider strategic alternatives, or (3) with the authority to unilaterally approve or reject the Merger. Instead, the full

[12] *See* Proxy at p. 34.

AeroGrow Board, including Scotts' designees on the Board, allowed Scotts to essentially direct the Merger "negotiations" on both the buy- and sell-sides through the management teams Scotts oversaw, and simply had the directors appointed by Scotts recuse themselves from certain Board meetings where Scotts knew that management — including Scotts own Chief of Staff Supron — would steer the Board to Scott's desired outcome. AeroGrow's Chairman Hagedorn knew AeroGrow management could not act independently of him or his father (Scotts' Chairman and CEO), because as the Company's controlling stockholder, Scotts controlled all aspects of AeroGrow's business, even its lines of credit, which were provided by Scotts.

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

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

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

47. Third, Defendants did not engage or permit the Board to engage independent financial or legal advisors. Instead, Defendants engaged Stifel, Nicolaus & Co., Inc. and conditioned the vast majority of Stifel's fee on the successful completion of the Merger, thus compromising its objectiveness. If Stifel did not find the transaction fair, it would not receive the lion's share of its compensation. Stifel would receive only $450,000 if the Merger did not go through, but would receive an additional $2,687,000 if the Merger was approved. Given the fact that Scotts had a blocking vote due to its 80% stake in AeroGrow, the only Merger that would deliver this multi-million-dollar fee was the Scotts proposal:

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

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

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

49. In other words, the approval of the minority shareholders is irrelevant in that Scotts was allowed to simply approve its own self-interested transaction. The Proxy admits as much: "Because the Purchaser Parties and their respective affiliates (including Scotts Miracle-Gro) may be deemed to beneficially own more than a majority of our outstanding shares of common stock as of the Record Date, they can satisfy the required vote . . . without the affirmative vote of any of our unaffiliated security holders."[13]

50. The end result was, predictably, approval of an offer that significantly undervalues the stock of the minority shareholders by allowing Scotts to acquire the Company on the cheap. By this action, Plaintiffs and the Class seek the damages caused to them by Defendants' breaches of fiduciary duty and aiding and abetting breaches of fiduciary duty. Plaintiffs also bring this Action to compel the Hagedorns and certain other defendants to disgorge any payments and/or benefits they received in connection with the Merger.

II. JURISDICTION AND VENUE

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

[13] *See* Proxy at p. ii.

52. The Eighth Judicial District is the proper forum, because this Action involves significant issues of Nevada corporate law, because AeroGrow is a Nevada corporation, and because the Merger Agreement (discussed below) contains a forum selection clause making this court the proper court for any disputes relating to the Merger.

III. PARTIES

53. Plaintiff Overbrook Capital LLC is a holder of shares of AeroGrow International, Inc. common stock, was a holder of AeroGrow International, Inc. common stock at the time of the Record Date for the Merger, has continuously held AeroGrow stock at all relevant times, and has the right to receive the Merger consideration.

54. Plaintiff Nicoya Fund LLC is a holder of AeroGrow International, Inc. common stock, was a holder of AeroGrow International, Inc. common stock at the time of the Record Date for the Merger, has continuously held AeroGrow stock at all relevant times, and has the right to receive the Merger consideration.

55. Defendant AeroGrow International, Inc. is a Nevada corporation with its principal executive offices located at 5405 Spine Blvd., Boulder, Colorado. AeroGrow's stock is traded on the Nasdaq/OTC:BB under the ticker symbol AERO. As of December 1, 2020, AeroGrow had outstanding 34,328,036 shares of common stock, of which 27,639,294 shares were beneficially owned by Scotts and its affiliated entities.

56. Defendant AGI Acquisition Sub, Inc. is a Nevada corporation which was formed to effectuate the Merger. It is a wholly-owned subsidiary of SMG Growing Media, Inc., an Ohio corporation, and of The Scotts Miracle-Gro Company, an Ohio corporation. The Proxy states that AGI "was incorporated in 2020 by Parent solely for the purpose of entering into the transactions contemplated by the Merger Agreement." Pursuant to the terms of the Merger Agreement, AGI

Acquisition Sub, Inc. will merge with and into AeroGrow International, Inc. (the "Company") and Plaintiffs and the Class will be divested of their stock in the Company.

57. Defendant Scotts Miracle-Gro Company is an Ohio corporation and is a party to the Merger Agreement with AeroGrow. Through its wholly-owned subsidiary SMG Growing Media, Inc., it owns 80.5% of the common stock of AeroGrow and is a majority and controlling shareholder of AeroGrow.

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

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

60. Defendant H. MacGregor Clarke has been a director of AeroGrow since April 2018 and previously served as a director from July 2009 to March 2013. Clarke currently is a member of the Audit Committee, and served as one of the two members of the Special Committee. He has served as Senior Vice President and Chief Financial Officer of Johns Manville, a Berkshire Hathaway company, since March 2013 and previously served as AeroGrow's Chief Financial

Officer from May 2008 through March 2013. From 2007 to 2008, Clarke was President and Chief Executive Officer, and from 2006 to 2007, Chief Financial Officer, of Ankmar, LLC, a garage door manufacturer, distributor and installer. From 2003 to 2006, Clarke was a senior investment banker with FMI Corporation, a management consulting and investment banking firm serving the building and construction industry. From 1997 to 2002, Clarke served as an operating group Chief Financial Officer, then Vice President and General Manager for Johns Manville Corporation, a subsidiary of Berkshire Hathaway Inc. Clarke also served as Vice President, Corporate Treasurer, and international division Chief Financial Officer for The Coleman Company, Inc. Prior to joining Coleman, Clarke was with PepsiCo, Inc. for over nine years.

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

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

63. Defendant Patricia M. Ziegler joined the AeroGrow Board in 2019 and is currently the Chief Digital and Marketing Services Officer at Scotts Miracle-Gro. She is a member of the

Board's Governance Committee and the Compensation and Nominating Committee. Ziegler began her career at Scotts Miracle-Gro in 2011 and has held several roles within the marketing team with brand, advertising, and digital leadership responsibilities. Currently, Ziegler is responsible for driving growth at Scotts with direct to consumer.

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

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

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

IV. SUBSTANTIVE ALLEGATIONS

A. Background of AeroGrow International and the Control of AeroGrow Exercised by Scotts Miracle-Gro

67. AeroGrow is a developer, marketer, direct-seller, and wholesaler of advanced indoor garden systems designed for consumer use and priced to appeal to the gardening, cooking, healthy eating, and home and office decor markets. AeroGrow offers multiple lines of proprietary

indoor gardens, grow lights, a patented nutrient formula, more than 40 corresponding proprietary seed pod kits, and various cooking, gardening and decor accessories, primarily in the United States and Canada, as well as selected countries in Europe.

68. The Scotts Miracle-Gro Company is a majority and controlling shareholder of AeroGrow. Defendants Ziegler, Hagedorn and Miller are affiliated with Scotts Miracle-Gro. As of December 1, 2020, Scotts Miracle-Gro and its respective affiliates beneficially owned 27,639,294 shares of common stock of AeroGrow, representing approximately 80.5% of the Company's outstanding shares of common stock.

69. Scotts Miracle-Gro has held a significant equity ownership interest in AeroGrow since 2013. In 2016, when Scotts Miracle-Gro increased its equity ownership interest in AeroGrow above 80% (on a fully diluted basis), the AeroGrow Board was reconstituted, with three members affiliated with Scotts Miracle-Gro appointed to the Board. The current Scotts designees to the AeroGrow Board are Defendants Ziegler, Chris Hagedorn, and Miller.

70. The AeroGrow Board has five members. Only a minority of the Board — Defendants Clarke and Kent — were not appointed by Scotts. The Company's most recent Annual Report, filed June 23, 2020, admits that a majority of the current Board is not independent. The Annual Report states: "Our Board has determined that Mr. Clarke and Mr. Kent are the only independent members of our Board of Directors during Fiscal 2020. Mr. Clarke served as the Chairman of the Audit Committee during Fiscal 2020. Chris J. Hagedorn was initially appointed to the Board by Scotts Miracle-Gro pursuant to a condition to the Securities Purchase Agreement between AeroGrow and Scotts Miracle-Gro which allows Scotts Miracle-Gro, as holder of the Series B Preferred Stock, to appoint one member to the Board of Directors. Additionally, Albert Messina and Peter Supron were appointed to the Board on November 29, 2016 by Scotts Miracle-

Gro after Scotts Miracle-Gro's exercise of, and pursuant to the terms of, the Warrant. Upon exercise of the Warrant, Scotts Miracle-Gro was entitled to appoint three of the five members of the Board (currently, Messrs. Hagedorn and Miller and Ms. Ziegler)."

71. Scotts has maintained its 80+% stock ownership in AeroGrow at all times since 2016. At all relevant times during 2020, Scotts Miracle-Gro and its affiliates held 27,639,294 shares of AeroGrow's common stock (representing approximately 80.5% of the outstanding shares of common stock as of December 1, 2020).

72. Affiliates of Scotts Miracle-Gro are also party to several agreements with AeroGrow. These various agreements were first described by AeroGrow in its 2016 Annual Report, which stated:

> **April 2013 Scotts Miracle-Gro Strategic Alliance**
>
> In April 2013 (the first month of Fiscal 2014), we entered into a Securities Purchase Agreement and strategic alliance with a wholly owned subsidiary of Scotts Miracle-Gro. In conjunction with this transaction, we entered into several other agreements, including: (i) an Intellectual Property Sale Agreement; (ii) a Technology Licensing Agreement; (iii) a Brand Licensing Agreement; and (iv) a Supply Chain Management Agreement. For further information on the strategic alliance with Scotts Miracle-Gro, please see Note 3 "Scotts Miracle-Gro Transactions – Convertible Preferred Stock, Warrants and Other Transactions" to our financial statements.
>
> ***Intellectual Property Sale Agreement***. Pursuant to the Intellectual Property Sale Agreement, we agreed to sell all intellectual property associated with our hydroponic products (the "Hydroponic IP"), other than the AeroGrow and AeroGarden trademarks, free and clear of all encumbrances, to Scotts Miracle-Gro for $500,000; we also agreed to pay 2% of our revenue to Scotts Miracle-Gro for a defined period. Scotts Miracle-Gro has the right to use the AeroGrow and AeroGarden trademarks in connection with the sale of products incorporating the Hydroponic IP.
>
> ***Technology Licensing Agreement***. Under the Technology Licensing Agreement, Scotts Miracle-Gro granted us an exclusive license to use the Hydroponic IP in North America and certain European Countries (collectively, the "AeroGrow Markets") in return for a royalty of 2% of annual net sales, as determined at the end of each fiscal year and will be paid in common stock for the first four years. The initial term of the Technology Licensing Agreement is five years, and we may renew the Technology License for additional five-

year terms by providing notice to Scotts Miracle-Gro at least six months in advance of the expiration of each five-year term.

Brand Licensing Agreement. Under the Brand Licensing Agreement, we may use certain of Scotts Miracle-Gro trade names, trademarks and/or service marks to rebrand the AeroGarden, and, with written consent of Scotts Miracle-Gro, other products in the AeroGrow Markets in exchange for our payment to Scotts Miracle-Gro of an amount equal to 5% of incremental growth in net sales, as compared to net sales during the fiscal year ended March 31, 2013. The initial term of the Brand Licensing Agreement is five years, and we may renew the Brand Licensing Agreement for additional five-year terms by providing notice to Scotts Miracle-Gro at least six months in advance of the expiration of each five-year term.

Supply Chain Services Agreement. Under the Supply Chain Services Agreement, Scotts Miracle-Gro will pay AeroGrow an annual fee equal to 7% of the cost of goods of all products and services requested by Scotts Miracle-Gro during the term of the Technology Licensing Agreement (referenced above), thereby assisting AeroGrow in exploiting the Hydroponic IP internationally (outside of the AeroGrow Markets).[14]

73. On November 29, 2016, Scotts Miracle-Gro fully exercised its warrant to purchase 80% of the Company's outstanding stock, when the derivative warrant liability was extinguished and the Convertible Preferred Stock was converted to common stock.

74. The following chart depicts some of the key events since Scotts' initial investment in AeroGrow:

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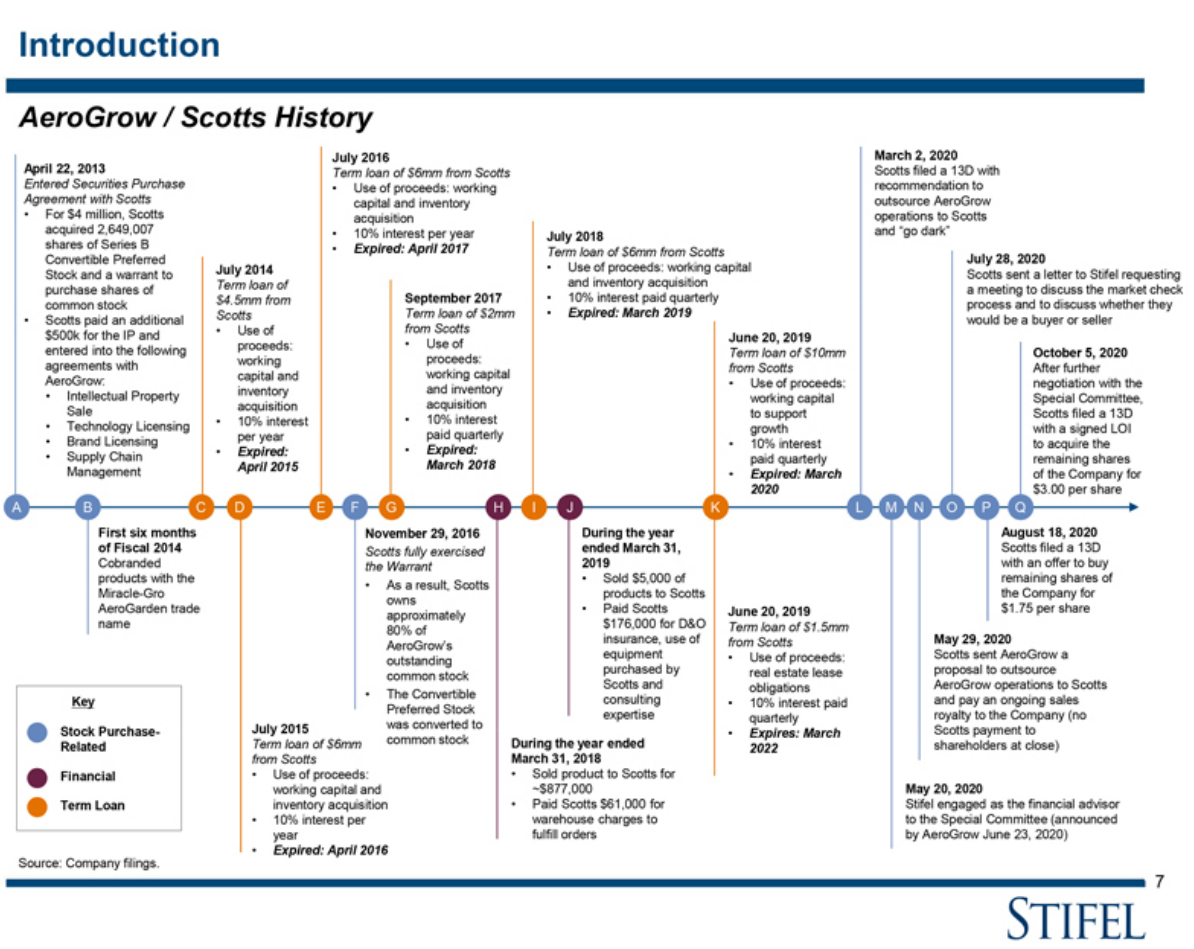
[14] *See* AeroGrow's 2016 Annual Report on Form 10-K, at p. 2.



75. Not only is Scotts a majority and controlling shareholder of AeroGrow due to its ownership of 80.5% of the stock, it also controls the Board through its three designees. Scotts also exercises control over AeroGrow through the licensing agreements, supply chain agreements, collaboration services agreement, and loans to AeroGrow.

76. James Hagedorn of Scotts has also, at all relevant times, run Scotts as more of a dictatorship than a publicly-traded company. He does not tolerate differences of opinion or dissent and tells executives, and even fellow directors, to leave if they don't like or agree with his fiat. For example, on June 3, 2013, Scotts announced the resignation of three directors and explained the departures in an awkwardly worded SEC filing. All three had resigned "following a

unanimously-supported reprimand of Hagedorn that stemmed from the use of inappropriate language," the statement said, but none of the departures were "related to any disagreement relating to the company's operations, policies, practices or financial reporting."[15] In recent years, as Hagedorn switched the focus of Scotts to providing resources for the growing of cannabis, he simply told executives and directors who did not agree with the focus on the cannabis industry to leave the company.

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

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

79. Scotts' Chief of Staff Peter Supron takes his direction from James Hagedorn, who instructed Supron to protect Scotts' interests in the Merger and instructed Supron to engage in the conduct described in the Proxy Statement for the Merger, pursuant to which Scotts forced

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

AeroGrow's minority shareholders to accept the unfair $3.00 Merger price and interfered with the market check and the ability of Stifel to attempt to obtain a higher bid from third parties.

B. Just As AeroGrow's Business Began a Rapid Improvement, Scotts Used Its Control of the Company to Squeeze Out the Minority Shareholders at Far Less Than Fair Value So That Scotts Could Keep for Itself the Value and Upside of the Company

80. During the last several years, AeroGrow invested in its business and positioned itself well for growth, and also expanded operations into foreign countries. As the Company's 2020 Annual Report stated:

> "We are in the business of developing, marketing, and distributing advanced indoor aeroponic and hydroponic garden systems. After several years of initial research and product development, we began sales activities in March 2006. Since that time we have expanded our operations and currently offer four different indoor garden models with many sub models with each model category, more than 40 seed pod kits, and various gardening and kitchen accessories. Although our business is focused on the United States and Canada, our products are available in other countries and we have continued to expand our market into Europe, including the United Kingdom, France, Germany, Italy and Spain."

81. Curiously, Mike Wolfe, AeroGrow's CEO did not issue an annual letter this year. Upon information and belief, he was instructed not to issue the letter by Scotts and also to cancel any earnings calls with stock analysts which historically had been standard practice. In addition, the Company took down all marketing materials and slowed the launch of Bloom, its new product line.

82. For the past several years, AeroGrow had also invested substantial amounts of capital in R&D and efforts to commercialize several promising new products. One of the most promising was its Grow Anything Appliance, which was part of its "Bloom" division and which it indicated in November 2019 would be one of its most lucrative products with a billion-dollar market. AeroGrow issued a press release stating that Grow Anything would start to be sold in

early 2020. However, Defendants later caused AeroGrow to delay launch of Grow Anything so that revenues from Grow Anything would not increase AeroGrow's stock price, and so that Scotts could appropriate the revenues and profits of Grow Anything/Bloom for itself.

83. By early 2020, Defendants were well aware that AeroGrow's financial results had significantly improved from the prior year, and would continue to do so going forward. Scotts decided it wanted to acquire the 19.5% of AeroGrow it did not already own while the stock was still cheap and before its rapidly improving results caused the stock to increase significantly.

84. AeroGrow reports its financial results on a "fiscal year" which does not correspond to the calendar year. Its 2020 fiscal year ended March 31, 2020.

85. Insiders, of course, know about a company's financial condition and results well before the results are publicly reported. Thus, in early 2020, as AeroGrow began closing out its fiscal year 2020 results, Defendants knew that AeroGrow would post significantly better results than fiscal year 2019. Scotts knew the results and forecasts as well because it had 3 designees on AeroGrow's five-member Board who were communicating that non-public information to Scotts. Defendants knew about these improving results at least by February 2020, and knew the Company would not be required to publicly disclose the results until June 23, 2020.

86. Thus, in February 2020, before AeroGrow's fiscal year 2020 results would be required to be publicly filed with the SEC, Scotts embarked on its campaign to squeeze out the minority shareholders before AeroGrow's stock began increasing in value in 2020.

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87. When AeroGrow's 2020 fiscal year was closed out on March 31, 2020 and its financial results were later filed, the improving financial condition started to become known. AeroGrow filed its Form 10-K Annual Report for fiscal year 2020 on June 23, 2020, and it reported the following results which significantly exceeded its 2019 results:

Statements of Operations Data

(in thousands, except per share data)	Fiscal Years ended March 31, 2020	2019
Revenues	$ 39,214	$ 34,366
Cost of revenue	25,185	22,395
Gross profit	14,029	11,971
Operating Expenses		
Research and development	877	590
Sales and marketing	8,852	8,462
General and administrative	3,992	2,913
Total operating expenses	13,721	11,965
Income from operations	308	6
Other income (expense)	(251)	(297)
Net income (loss)	$ 57	$ (291)
Net income (loss) per share, basic and diluted	$ 0.00	$ (0.01)
Weighted average number of common shares outstanding, basic and diluted	34,328	34,328
Weighted average number of common shares outstanding, diluted	34,328	34,328

Balance Sheet Data

(in thousands)	2020	2019
Cash and cash equivalents and restricted cash	$ 9,061	$ 1,756
Total assets	$ 22,047	$ 16,859
Total liabilities	$ 9,538	$ 4,407
Total stockholders' equity	$ 12,509	$ 12,452

88. As the Form 10-K noted: "Our net revenue in Fiscal 2020 totaled $39.2 million, an increase of 14.1% from Fiscal 2019 revenues. This increase was primarily due to our increased focus on driving sales with more targeted advertising campaigns, which led to: (i) increased Direct-to-consumer sales; (ii) continued sales through broader channels in store and web/internet channels (Amazon.com, woot!, Good Morning America, Macy's, etc.); and (iii) expanded sales through customer department stores (namely Macy's, and Kohl's). Additionally, the sales increase resulted

from newly acquired retail accounts, including tests with Mediocre Corporation and Wayfair. In summary, we believe increased targeted and general advertising drove sales increases in all of our channels."

89. The Form 10-K also revealed that AeroGrow had been able to significantly increase its revenues and profitability even after spending an extra $5 million on advertising, which it viewed as a long-term investment that would help drive increased revenues going forward: "For Fiscal 2020, we incurred $5.0 million in advertising expenditures, a 22.3% year-over-year increase compared to the Fiscal Year ended 2019, which included $812,000 in general television, YouTube, Facebook and other media advertising. The Company views this investment as a long-term commitment to increasing awareness of the AeroGarden brand and indoor gardening category to support growth in both our direct-to-consumer and retail channels."

90. The 2020 Annual Report also noted that sales had increased 64% in the direct-to-consumer segment of the Company's business: "***Direct-to-consumer sales during Fiscal 2020 increased to $13.3 million, or 64.6%***, in the face of alternative on-line retailer outlets (primarily Amazon.com). This increase resulted primarily from our efficiency of our promotional campaigns, scheduled promotional calendar and a redesigned and effective website. We believe that our increased presence on Amazon, and other select online retailers, as well as continued momentum from our general advertising and marketing campaign and an expanded user-base, led to greater customer visibility."

91. Financial results also improved even though the Company was making significant R&D expenditures which would be repaid in the years to come, at which time only Scotts would benefit.

92. The Defendants knew that the direct-to-consumer segment was a key segment and that the significant increase in sales in this segment was being driven by the Covid-19 pandemic, as consumers were shifting from buying the Company's products in retail stores and shifting to online purchases. Defendants knew this trend would continue and would significantly improve sales for the rest of calendar year 2020 and beyond. The Annual Report stated: "Direct-to-consumer revenue totaled $13.3 million in Fiscal 2020, as compared to $8.1 million in Fiscal 2019, principally reflecting our redesigned and better functioning website and our focus on advertising that drives sales brand awareness."

C. After Learning of AeroGrow's Significantly Improving Financial Results, Defendants Embarked on a Plan to Squeeze Out the Minority Shareholders at No Premium So That Scotts Alone Can Realize the Benefits of the Company's Improving Financial Results

93. After they learned of AeroGrow's rapidly improving financial results in February 2020, Defendants embarked on a plan to acquire the stock of the Company's minority shareholders for no premium, and before the improving results would cause the stock price to increase significantly or attract the attention of potential third-party suitors.

94. Further, Scotts' core business does not have an effective Direct to Consumer strategy, and sells through Brick-and-Mortar retailers which were curtailed during the various shelter in place orders during the Covid-19 pandemic. AeroGrow had a strategy to counter Scotts' seasonal business as well as draw in urban millennials, something critical to Scotts' long-term success.

95. At the time (on February 27, 2020), AeroGrow's stock price was trading at $1.62 and did not reflect the Company's improved 2020 results, which had not yet been publicly disclosed.

96. Scotts admits in the Proxy Statement for the Merger that its purpose in effectuating the squeeze-out/going private transaction is to obtain complete control of AeroGrow and to increase its financial performance by acquiring AeroGrow's assets and business for itself: "The Purchaser Parties and Scotts Miracle-Gro have undertaken to pursue the Merger at this time in light of the opportunities they perceive to enhance Parent's and, in turn, Scotts Miracle-Gro's, financial performance by means of acquiring the Company's brands and other assets through the Merger. For the Purchaser Parties and Scotts Miracle-Gro, the purpose of the Merger is to enable them to exercise complete control of the Company."[16]

97. Defendants never attempted to provide a mechanism for the minority shareholders to continue to participate in the future value of the Company or to be paid fair value for their shares. Instead, everything the Defendants did was designed to benefit Scotts by allowing it to expropriate the value of the Company for itself on the cheap.

98. Far from protecting AeroGrow's minority shareholders, the Company's directors allowed Scotts Miracle-Gro and its representatives to run the show. The process began in February 2020 when a Board meeting was held at which all directors, including those appointed by Scotts, were allowed to attend and participate. If that were not alone sufficient to demonstrate the irreconcilable conflict which tainted the entire process, the Proxy also admits that Scotts Chief of Staff was allowed to attend and participate in the AeroGrow board meeting:

> Following a regularly scheduled in-person Board meeting ***on February 27, 2020, the Board, with all Board members present, met in executive session*** without representatives of AeroGrow's management present. ***The Board was joined by Peter Supron, Chief of Staff at Scotts Miracle-Gro and a former member of the Board, who was present at the invitation of the Board Chair, Mr. Hagedorn.*** Mr. Supron presented to the Board a proposed framework that included restructuring AeroGrow's operations by consolidating substantially all business operations into Scotts Miracle-Gro and ***reducing the number of***

[16] *See* Proxy, at p. 62.

> ***AeroGrow's stockholders*** through a reverse stock split in order to eliminate the expense associated with AeroGrow's public reporting obligations, ***possibly followed by a parent-subsidiary merger in which unaffiliated minority stockholder approval would not be required***. . . Mr. Supron postulated that ***the consummation of a reverse stock split would reduce the number of record stockholders to a number that would allow the common stock to (i) cease being quoted on the OTCQB and (ii) become eligible for termination of registration under the Exchange Act***, which would reduce the operating and compliance costs that AeroGrow incurs as a result of being a publicly-traded and SEC-reporting company. ***Pursuant to the Scotts Miracle-Gro framework, if, after giving effect to the reverse stock split, any stockholders would hold fractional shares of common stock, AeroGrow would pay to such holders in exchange for their fractional shares an amount in cash based on the value of the common stock***.

99. At that same meeting Scotts informed AeroGrow it would be filing a form 13-D with the details of its proposal. This was a deliberate attempt to destabilize the Company and force management to confront employees and vendors in a rushed fashion and not allow the Board to seek maximum value for AeroGrow shareholders. The Proxy notes that:

> ***Mr. Supron also noted that Scotts Miracle-Gro would be filing an amendment to their Schedule 13D with the SEC describing the proposed framework later on February 27, 2020 or on the morning of February 28, 2020***….**Mr. Wolfe, AeroGrow's Chief Executive Officer, rejoined the Board at the end of the executive session and the discussion was recapped to him by Mr. Supron. In addition, given the pending filing of the amendment to Scotts Miracle-Gro's Schedule 13D, Mr. Supron encouraged Mr. Wolfe to immediately begin communication with AeroGrow's employees regarding the Scotts Miracle-Gro framework and the impact it would have on AeroGrow employees, including potential severance and retention bonus considerations**. …On March 5, 2020, Messrs. Clarke and Kent delivered a letter to Mr. Hagedorn copying Mr. Miller and Ms. Ziegler noting their discomfort with the approach taken by Scotts Miracle-Gro vis-a-vis AeroGrow's unaffiliated minority stockholders ***and also criticizing Scotts Miracle-Gro's approach as abrupt, unnecessarily urgent and potentially conflicting with prior Board direction regarding management priorities and the relative emphasis given to sales growth and profit improvement***. Messrs. Clarke and Kent expressed their interest in participating in a detailed review of AeroGrow's business model and range of options together with AeroGrow's management and potentially outside advisors. Messrs. Clarke and Kent expressed the importance of considering options in addition to those suggested by Scotts Miracle-Gro to ensure that the interests of unaffiliated minority stockholders were considered and protected.

100. The Hagedorn family controls both Scotts and AeroGrow. Defendant Chris Hagedorn is Chairman of AeroGrow, while his father James Hagedorn is Chairman and CEO of Scotts. The entire structure of the two companies was set up by Scotts to ensure total control of AeroGrow by Scotts, including control of each company by one of the Hagedorn clan. The original idea for the Merger, as stated above from the relevant portion of the Proxy, was to eliminate the minority shareholders of AeroGrow so Scotts could gain control of all the assets of the Company. Scotts even originally proposed that "minority stockholder approval would not be required." From the beginning, there was no effort given to protecting the interests of the minority shareholders. AeroGrow's own former Chairman of the Board, issuing a press release on February 16, 2021, stated that "SMG indulged the AeroGrow Special Committee sales process in order to create the impression of legitimacy, but that SMG's thumb was on the scale throughout the entire process" and that "the fairness opinion described in the proxy statement was based on inaccurate and incomplete information, including: inappropriate comparable companies; a flawed discounted cash flow analysis; and misleadingly low forecast numbers influenced by SMG, which differed materially from management's initial forecast."

101. While Scotts Chief of Staff, Peter Supron, was allowed to attend the initial meeting of AeroGrow's Board on February 27, 2020, AeroGrow's own CEO was excluded from the meeting. Once the meeting was over, AeroGrow's CEO was allowed to enter the room, but received a briefing not from his own Board but from Supron, who condescendingly assumed the Scotts squeeze out of the minority shareholders was a *fait accompli* and instructed AeroGrow's CEO that he should begin discussing severance agreements with AeroGrow employees:

> "***Mr. Wolfe, AeroGrow's Chief Executive Officer, rejoined the Board at the end of the executive session and the discussion was recapped to him by Mr. Supron***. In addition, given the pending filing of the amendment to Scotts Miracle-Gro's Schedule 13D, ***Mr. Supron encouraged Mr. Wolfe to immediately begin communication with***

AeroGrow's employees regarding the Scotts Miracle-Gro framework and the impact it would have on AeroGrow employees, including potential severance and retention bonus considerations."[17]

102. As these disclosures demonstrate, Scotts' idea from the beginning was to squeeze out AeroGrow's minority shareholders, without even a vote, by effectuating a reverse stock split, which would reduce the number of shareholders so that the stock listing could be terminated, thus eliminating all liquidity for minority shareholders. Most minority shareholders would be left with fractional shares, which would be cashed out at no premium. As the Proxy admits, "On February 27, 2020, AeroGrow's common stock closed trading on the OTCQB at $1.62 per share." Thus, the proposal was to cash out fractional shares at approximately $1.62 per share.

103. At the conclusion of the February 27, 2020 meeting, without any thought having been given to the interests of the minority shareholders or any process whatsoever to try to shop the company or maximize shareholder value (other than the value to be captured by Scotts and the Hagedorns), Scotts Chief of Staff summarily instructed AeroGrow's CEO "***to immediately begin communication with AeroGrow's employees regarding the Scotts Miracle-Gro framework and the impact it would have on AeroGrow employees, including potential severance and retention bonus considerations***." Obviously, Scotts believed it could do whatever it wanted and that its proposal was a done deal. Since Scotts would absorb AeroGrow into its operations, many of AeroGrow's employees would no longer be needed and thus would be fired. It is telling that Scotts Chief of Staff Supron issued this directive at the very first meeting to discuss the proposal, before the AeroGrow Board had even met to discuss the proposal, and thus obviously before it had approved any transaction with Scotts.

[17] *See* Proxy at p. 29.

104. The Proxy also admits that in the ensuing months, Scotts told AeroGrow's bankers, who were ostensibly tasked with the job of shaking the bushes to see if any other suitors would be interested in AeroGrow, that Scotts owned AeroGrow's key IP, which it was allowing AeroGrow to use pursuant to a licensing agreement, but that Scotts would not sell the IP to any third party. But this assertion turned out to be false, according to AeroGrow's CEO, since AeroGrow had a workaround for most of the processes covered by the IP. Thus, Scotts' representations to the bankers were simply additional means used to thwart any chance of a better offer materializing from third parties.

105. The brazen breaches of fiduciary duty committed by the Defendants do not comply with Nevada law. In any transaction between a majority and controlling shareholder and minority shareholders, the controlling shareholder owes fiduciary duties to the minority shareholders. AeroGrow's directors also owe a fiduciary duty to Plaintiffs and the Class.

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

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

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

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

109. An irreconcilable conflict thus existed: how could Scotts satisfy its duties to its own shareholders by trying to minimize the value paid for the rest of AeroGrow's stock, while at the same time satisfying its fiduciary duty as majority shareholder to maximize the price received by AeroGrow's minority shareholders?

110. Normally, controlling shareholders in such a Catch-22 position establish procedural and substantive safeguards to attempt to counter their control and influence, and to protect the target company's minority shareholders. First, controlling shareholders will typically appoint a Special Committee comprised of truly ***independent*** directors who have ***plenary power*** to either approve or reject the proposed transaction. Second, controlling shareholders almost always subject the transaction, if it is approved by the Special Committee, to a "majority of the minority" requirement, meaning the merger or other transaction will not be approved unless a majority of the minority shareholders vote in favor of the merger, after full disclosure of all material facts.

111. Here, Scotts did not condition its offer to acquire AeroGrow or otherwise employ either safeguard. The Board appointed a Special Committee but the Committee had no authority to approve or reject the transaction. It was just given authority to make a "recommendation." *"**The Special Committee was not delegated authority to approve or reject the Scotts Miracle-Gro framework***, but rather to review it and engage an independent financial advisor." *See* Proxy at p. 30. The actual authority to approve the Merger remained with the full AeroGrow Board, which was controlled by Scotts since Scotts had appointed 3 out of 5 members of the Board.

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

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

114. As the Company's financial results continued to significantly improve in the ensuing quarters of 2020, Defendants ignored the steadily improving stock price, which had increased to $5.74 by the time Defendants announced the $1.75 per share offer on August 20, 2020. The $1.75 per share offer not only was 70% below the price of AeroGrow's stock at the time, but also significantly undervalued the stock based on the Company's fair market value. Rather than keeping its offer confidential, Scotts purposely disclosed it in a public 13-D filing to cause the stock price of AeroGrow to collapse and contaminate the negotiation process.

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

abject failure of AeroGrow to neutralize this improper influence in any way. As the Proxy admits:

> "In addition, the letter stated that the Special Committee members were requesting that Scotts Miracle-Gro formally indemnify them against claims, costs and liabilities arising because of their services as directors of AeroGrow and Special Committee members and that Mr. Hagedorn, as Chairman of AeroGrow and an executive of Scotts Miracle-Gro, coordinate the preparation of an indemnification agreement with Scotts Miracle-Gro's counsel …On May 29, 2020, Scotts Miracle-Gro's internal legal counsel informed Bryan Cave that, in deference to the independence of the Special Committee's process, Scotts Miracle-Gro would not be able to provide indemnification to the members of the Special Committee. ***Bryan Cave responded to clarify that the Special Committee was not requesting a new indemnity agreement but instead a covenant not to sue coupled with a payment guaranty*** of AeroGrow's existing indemnification obligations. ***On June 1, 2020, Scotts Miracle-Gro's internal legal counsel reiterated that Scotts Miracle-Gro would not provide separate indemnification of AeroGrow's Board members (including the Special Committee) directly through an indemnity agreement or indirectly through a guarantee***."[18]

116. In other words, Scotts would not even agree not to sue AeroGrow's Special Committee if it did not like its "recommendation." Scotts' refusal to even provide a payment guarantee undermined the Special Committee's independence because the Committee had no guarantee that they or their advisors would be paid, given Scotts' control of the Company.

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

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[18] *See* Proxy at p. 33. [19] The offer letter was signed by Defendant Supron and sent to Stifel, the banker retained by the Special Committee.

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

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

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

120. Second, Hagedorn and the other AeroGrow directors who had been appointed by Scotts never fully recused themselves from the Board's deliberations or vote on the Merger.

Instead, they merely had AeroGrow form a Special Committee which had no authority to reject the Merger. As such, approval of the Merger still fell to the full Board, a majority of which were appointed by Scotts and thus are not independent.

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

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

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

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

> ***with Scotts Miracle-Gro***, to the extent such directors beneficially own any shares of common stock).

123. In other words, the approval of the minority shareholders is not even required, and Scotts is allowed to simply approve its own self-interested transaction.

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

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

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

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

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

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

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

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

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

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

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

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

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

would not be appropriate to share the indications of interest with Scotts Miracle-Gro since the market check process was not yet complete.

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

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

134. A Schedule 13D filed on July 31, 2020 also noted that "On July 28, 2020, SMG sent a letter to the financial advisor requesting a meeting to discuss the status of the financial advisor's process so that the Reporting Persons, as the beneficial owners of approximately 80% of the outstanding shares of Common Stock of the Issuer, can better evaluate any identified potential alternatives and, in particular, whether they would be more likely to pursue an acquisition of the remaining shares of Common Stock of the Issuer that they do not currently own or sell their various rights and interests in the Issuer to a third party."

135. These facts amply demonstrate that Scotts was running the show, that Scotts acted as if Stifel were its banker, not AeroGrow's banker, that Scotts still had not told Stifel as of August

6, 2020 whether it would be willing to sell its stake to a third party, and thus that Stifel never had any chance to solicit any real competing bids for AeroGrow. Scotts even went so far as to demand that Stifel tell it what bids it had received from other parties.

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

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

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

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

> Miracle-Gro and enter into commercial arrangements of transitional or longer-term nature with Scotts Miracle-Gro; and (iv) whether there was a reasonable expectation that Scotts Miracle-Gro would be a seller of its controlling equity interest of AeroGrow under the terms of Party B's indication of interest. ***In later discussion, points (iii) and (iv) above became key elements of discussion***.

138. Scotts' tactics were laid bare in the Proxy, when the Company admitted that Scotts told it that it should reject competing bids because it would not sell its IP to the bidders. Even though other bidders had made initial offers of as high as $3.32 per share, and that AeroGrow's stock was trading at $5.74 per share at the time, Scotts made a ridiculously low and bad faith $1.75 per share offer on August 17, 2020[19] in order to ward off third party suitors and cause an artificial cratering of AeroGrow's stock price:

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

139. In other words, Scotts consented to AeroGrow soliciting competing bids, but with the proviso that it would not sell its IP to the third parties. Then, when the third-party bids predictably came in below AeroGrow's stock price due to the fact that the third-party bidders would be required to pay unknown royalties to Scotts for the IP, Scotts "instructed" Stifel, which was supposed to be AeroGrow's banker, not Scotts' banker, to reject the bids due to the IP problems, and then Scotts offered $1.75 for the minority shareholders' stock, which was 70% below the existing stock price. Moreover, Scotts' offer was neither conditioned on the

[19] The offer letter was signed by Defendant Supron and sent to Stifel, the banker retained by the Special Committee.

establishment of an empowered, independent Special Committee of the Board nor on a majority of the minority voting condition.

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

141. Here, Stifel did not publicly disclose the identity of bidders or their prices or "indications of interest." After Scotts made its bad faith $1.75 offer on August 17, 2020, however, Scotts publicly disclosed, at the objection of Stifel, its offer price in order to sabotage the entire process and ward off third party bidders. The Proxy states that:

> "On August 18, 2020, Scotts Miracle-Gro and its affiliates filed an amendment to their Schedule 13D with the SEC disclosing its $1.75 per share offer."

142. The Proxy also states that:

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

143. In other words, Stifel was having such a hard time trying to get third party bidders to "stay in the process" in light of Scotts' obvious control of the process, that Stifel's attorneys asked Scotts to agree to reimburse the high bidder's due diligence costs up to $250k in the event

that Scotts outbid their proposal. Scotts refused and instead said it would want to first meet with the bidders and educate them about why it was never going to sell its IP, thus ensuring the lack of any interest by third parties. The purported market check was a complete sham, orchestrated by Scotts simply to receive significantly reduced bids due to Scotts refusal to sell its IP to third party bidders, and so Scotts could then use the low bids to claim it was offering a slightly higher price than the artificially low bids.

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

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

> "On August 27, 2020, ***a representative of Scotts Miracle-Gro informed a representative of Bryan Cave that Scotts Miracle-Gro did not believe that any bidder would be able to step into AeroGrow's shoes with respect to the contractual arrangements between Scotts Miracle-Gro and AeroGrow and that bidders should, be informed of Scotts Miracle-Gro's position***."

146. Moreover, the Proxy states that:

> On August 28, 2020, Scotts Miracle-Gro also delivered to Bryan Cave by email an updated summary of Scotts Miracle-Gro intellectual property and other rights relating to AeroGrow that had been previously shared with the Board on June 1, 2020. ***Scotts Miracle-Gro indicated in its email that such summary should be shared with bidders to understand AeroGrow's limited intellectual property rights if the various commercial license agreements with Scotts Miracle-Gro were to be terminated by Scotts Miracle-Gro. Scotts Miracle-Gro also indicated that bidders should be informed of AeroGrow's alleged failure to perform its obligations under certain agreements with Scotts Miracle-Gro*** per the above referenced reservation of rights letters.
>
> On September 1, 2020, on behalf of AeroGrow, ***Mr. Wolfe responded to the reservation of rights letters received from Scotts Miracle-Gro disagreeing with the assertion that Scotts Miracle-Gro's affiliate had the right to terminate the Brand License Agreement and the Technology License Agreement***.

147. These disclosures are highly unusual and serve to underscore the fact that Scotts was acting in bad faith and making unfounded assertions solely to discourage third party bidders, in a blatant effort to reduce the price it would have to pay, thus harming minority shareholders. The Proxy specifically states that Scotts instructed Bryan Cave that the relevant information "should be shared with bidders," thus underscoring the fact that the purpose was to discourage bidders and/or reduce the price they were willing to offer for AeroGrow. Moreover, the fact that AeroGrow's CEO Mr. Wolfe "disagree[d] with the assertion that Scotts Miracle-Gro's affiliate had the right to terminate the Brand License Agreement" demonstrates that Scotts' assertions lacked a factual basis and were being asserted in a manner calculated to harm the interests of AeroGrow's minority shareholders, to whom Scotts owed a fiduciary duty due to its status as a majority and controlling shareholder.[20]

[20] In ultimately deciding to "recommend" the Merger, the toothless Special Committee noted that damage to the value received by the minority shareholders: "The Special Committee also considered the non-binding indications of interest received from Stifel's market outreach, noted the uncertainty regarding the likelihood of completing a transaction with any of the bidders besides Scotts Miracle-Gro, and noted ***that only one bidder exceeded the $3.00 per share price offered by Scotts Miracle-Gro, but that bid was dependent on Scotts Miracle-Gro selling certain intellectual property to the bidder at a price which had not been determined and that would ultimately reduce dollar-for-dollar the total per-share consideration paid to stockholders***. The Special Committee further considered the fact that some bidders had assumed certain intellectual property rights belonging to, and commercial arrangements with, Scotts Miracle-Gro would continue or be transferred to the prevailing bidder and that such arrangements were not possible without cooperation from Scotts Miracle-Gro. Furthermore, ***the Special Committee noted that Scotts Miracle-Gro had told the Special Committee on September 17, 2020 that any such continuation would not be offered "on the same favorable terms***." ***The Special Committee also discussed the general uncertainty regarding whether Scotts Miracle-Gro would constructively participate in a full sale process, and that without such participation by Scotts Miracle Gro as the 80% beneficial owner, no process could move forward***." *See* Proxy at p. 41.

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

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

149. These kinds of admissions/disclosures in a proxy for a negotiated merger are unprecedented, and amply demonstrate that the executives at AeroGrow who were unaffiliated with Scotts, including CEO Wolfe, viewed the entire process as bogus and completely dictated by Scotts, on unfair terms.

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

> "On September 2, 2020, the Board held a meeting with representatives of Stifel and HBC present. The representatives of Stifel discussed the third-party outreach process and bids along with information that it would need and analysis to be conducted if Stifel were to be asked to provide a fairness opinion in connection with a proposed transaction. The representatives of Stifel also discussed the royalty and license arrangements between Scotts Miracle-Gro and AeroGrow and summarized their assessment of the relevant intellectual property issues related to AeroGrow's use of several Scotts Miracle-Gro trademarks and a nutrients patent. ***The representatives of Stifel supported management's view that a third-***

> ***party bidder would not need these trademarks or the patent to successfully operate AeroGrow. The representatives of Stifel also discounted AeroGrow's continued need for shared services and working capital under third-party ownership***."

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

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

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

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

153. These disclosures are unsurprising. From the beginning, Scotts was going to offer what it wanted, and no more. It structured the deal so that it alone could vote its shares in favor, ensuring success. The Special Committee was impotent, lacking any authority to accept or reject the Merger. Stifel was merely going through the motions, and in the end accepted a multi-million-dollar fee which was contingent on Scotts getting its way. Had Stifel done the honorable thing

and refused to provide a fairness opinion, it would have received a fee of only $450,000. By bending to Scotts will, Stifel received an additional $2,687,000.

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

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

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

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

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

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

> On February 28, 2020, Messrs. Clarke and Kent held a telephonic meeting with ***AeroGrow's outside legal counsel, Hutchinson Black and Cook, LLC*** ("HBC") and

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

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

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

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

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

161. The Proxy reveals that the full, conflicted Board continued to be involved in all aspects of the potential transaction with Scotts, despite the formation of the Special Committee,

and that the Company's law firm (Hutchison Black & Cook or "HBC") attended and provided advice to the full Board (including Clarke and Kent, the members of the Special Committee), and that Bryan Cave was conspicuously absent from those meetings, thus leaving Clarke and Kent to receive most of their guidance from HBC, not from Bryan Cave.

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

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

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

Supron. The Special Committee itself, meanwhile, didn't even have its own lawyers or bankers present at most meetings.

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

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

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

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

167. Again, neither Bryan Cave nor Stifel were present at the May 8, 2020 meeting to provide advice to the Special Committee. These facts amply demonstrate that the key decision makers were Scotts and its designees on AeroGrow's Board; the Committee was a mere fig leaf

which quickly became an afterthought, and whose eventual "recommendation" was meaningless since the full Board, controlled by Scotts, retained the right to approve the Merger.

168. The Proxy also states that:

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

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

170. The supine AeroGrow Board and Special Committee also allowed Scotts to dictate the scope and terms of the market check undertaken by Stifel. A market check, as limited a tool as it is where a company has a majority shareholder, was an important method that the AeroGrow Board had available to undertake to fulfill its fiduciary duty to maximize value in any transaction. Scotts should have had absolutely no involvement in the market check performed by Stifel. However, not only was Scotts involved in the market check, it dictated what Stifel was allowed and not allowed to do. The Proxy states:

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

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

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

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

172. Standing alone, the $3.00 Merger price represents over a 47% discount from the price the stock was trading at on August 18, 2020, the day after Scotts made its original $1.75 per share offer. On that date, AeroGrow stock closed at $5.74 per share. Since the Proxy states that there are 6,688,742 shares held by the Company's minority shareholders, the aggregate market value of the minority's stock on such date was $38,393,379.08. Scotts' offer at the time was just $1.75, representing an aggregate value of just $11,705,298.50. The original "take under" offer thus represented an offer which was $26,688,081 below market value. And the eventual $3.00 per share offer represented an offer that was still $20,066,226 below the August 18, 2020 market value of the stock.

173. While stock price alone is not determinative of value, AeroGrow's stock price on August 18, 2020 in fact failed to fully reflect AeroGrow's significantly improving revenues and prospects, and thus AeroGrow's value on such date was higher than its stock price reflected.

174. Moreover, from the beginning of the process Scotts' alleged justification for engaging in the transaction was that AeroGrow was allegedly not doing well and needed some kind of "major" restructuring in order to improve performance. That premise was completely false and was proven false in the months following the February 2020 meeting in which Scotts initially

raised the claim that major change was needed to benefit AeroGrow's shareholders. In fact, no major change was made at AeroGrow after February 2020. Notwithstanding the lack of any change, AeroGrow's earnings rapidly improved and the Company's stock price more than tripled. Thus, the Company was doing tremendous and no major change was needed for AeroGrow's stockholders to benefit.

175. Far from benefitting AeroGrow shareholders (other than itself), Scotts' squeeze-out transaction was made at a price that was 70% below the market price when announced. Thus, the Merger is obviously a value destroying event. For Scotts, however, since it is not selling its AeroGrow stock, but buying it, the Merger represents a huge value creating event not justified by anything other than Scotts' bold and unlawful power grab/abuse of control. Scotts itself indicated it did not want to sell its stock at such paltry levels and thus Scotts has implicitly acknowledged the price it is offering is not fair value.

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

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

> BOULDER, Colo., Nov. 14, 2019 (GLOBE NEWSWIRE) — ***AeroGrow International, Inc.*** (OTCQB: AERO) ("AeroGrow" or "the Company"), the

manufacturer and distributor of AeroGardens - the world's leading family of In-Home Garden Systems™ — ***announced today the launch of its largest and most innovative product to date.***

Last week, AeorGrow's Board of Directors formally approved making the final capital expenditures required to tool, complete the software development and begin manufacturing this new addition to AeroGrow's product portfolio. As a result, ***in the coming months AeroGrow will be bringing to market its most ambitious home gardening innovation yet — the "Grow Anything" Appliance***, a fully automated and self-contained indoor gardening system. The Grow Anything Appliance will revolutionize in-home-growing with the world's first and most advanced on-board plant computer, accessible both on the device and through a proprietary app.

Using community-based, plant-specific recipes and advanced-system artificial intelligence, the refrigerator-sized appliance monitors and adjusts all key environmental factors — light, temperature, humidity, water quality and nutrient levels — to maximize growth and output for any variety of plant at every stage of growth. The product also features a highly effective LED grow light system designed to optimize plant growth at all stages, a nutrient auto-dosing system, an automated plant drying/curing cycle, and even an on-board camera to remotely monitor growth and plant health.

The Grow Anything Appliance, which is planned to be marketed under the Botanicare brand, has been four years in the making through a rigorous Research & Development process. Prototype units have been growing throughout the Company's home state of Colorado for the past year with impressive results — both in terms of quality and quantity of crop output. ***The product will be manufactured by the Company's proven manufacturing partners, with the first products set to be available in the market during the first half of 2020***.

"We believe our Grow Anything appliance will be the most advanced indoor home-growing device ever launched," said J. Michael Wolfe, AeroGrow's President & CEO. "At our core, we've always been a product-centric company — and this newest launch truly demonstrates our commitment to innovative R&D, design functionality and plant growing efficacy. Moreover, as the name implies, it truly allows users to grow anything they want … and to do it in a way that is sure to produce exceptional crops time and again.

"***The large plant Grow Anything appliance is the first step for AeroGrow into the rapidly growing space of fully automated, appliance sized home-growing systems — a market we've sized at well over a billion dollars world-wide and one we plan to pursue vigorously***."

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

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

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Introduction

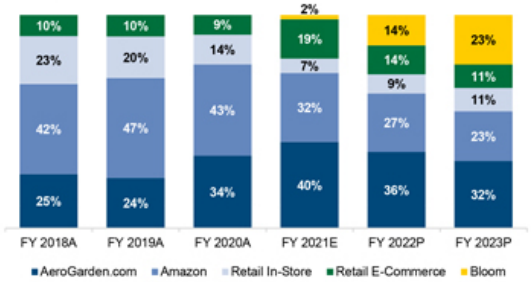
AeroGrow Financial Overview

($ in millions, except per share values)

Summary Operating Data [1]

($ in millions)	Historical				Estimated	Projected	
FYE March 31,	2018A	2019A	2020A	LTM Sep-2020	2021E	2022P	2023P
Gross Revenue	**$40.8**	**$46.1**	**$46.9**	**$71.2**	**$92.0**	**$133.6**	**$188.2**
% Growth	*49.7%*	*12.9%*	*1.7%*	*80.6%*	*96.2%*	*45.3%*	*40.9%*
Net Revenue	**$32.3**	**$34.4**	**$39.2**	**$61.0**	**$78.4**	**$114.3**	**$161.8**
% Growth	*36.8%*	*6.4%*	*14.1%*	*97.2%*	*99.8%*	*45.9%*	*41.6%*
Gross Profit	**$10.7**	**$12.0**	**$14.0**	**$24.4**	**$30.7**	**$44.5**	**$63.4**
% Net Revenue	*33.1%*	*34.8%*	*35.8%*	*39.9%*	*39.2%*	*38.9%*	*39.2%*
Adj. EBITDA	**($0.0)**	**$0.5**	**$1.1**	**$7.6**	**$9.5**	**$15.3**	**$25.5**
% Net Revenue	*(0.1%)*	*1.5%*	*2.7%*	*12.4%*	*12.1%*	*13.4%*	*15.8%*

Net Revenue Segmentation by Channel



Capitalization Summary [2]

	Maturity	Rate	Value	LTM Sep-20 Adj. EBITDA Multiple	FY 2021E Adj. EBITDA Multiple
Cash and Equivalents			$3.8	0.5x	0.4x
Term Loan	Mar-22	10.0%	$2.9	0.4x	0.3x
Finance Lease			0.0	0.0x	0.0x
Total Debt			**$2.9**	**0.4x**	**0.3x**
Net Debt			**($0.9)**	**(0.1x)**	**(0.1x)**
Market Capitalization (11/9/20)		$2.75	$94.4	12.5x	9.9x
Total Enterprise Value			**$93.5**	**12.4x**	**9.8x**

Source: Company internal financials and public filings, management "base case" estimates/projections.
(1) LTM Sep-2020 and 2021E results include actuals through 9/30/20. LTM Sep-2020 EBITDA adjustments total $487k and include $386k of transaction costs, $237k of public company costs, $51k related to a one-time website security audit and ($188k) related to Scotts paying for an AeroGrow employee.
(2) Balance sheet metrics as of 9/30/20.

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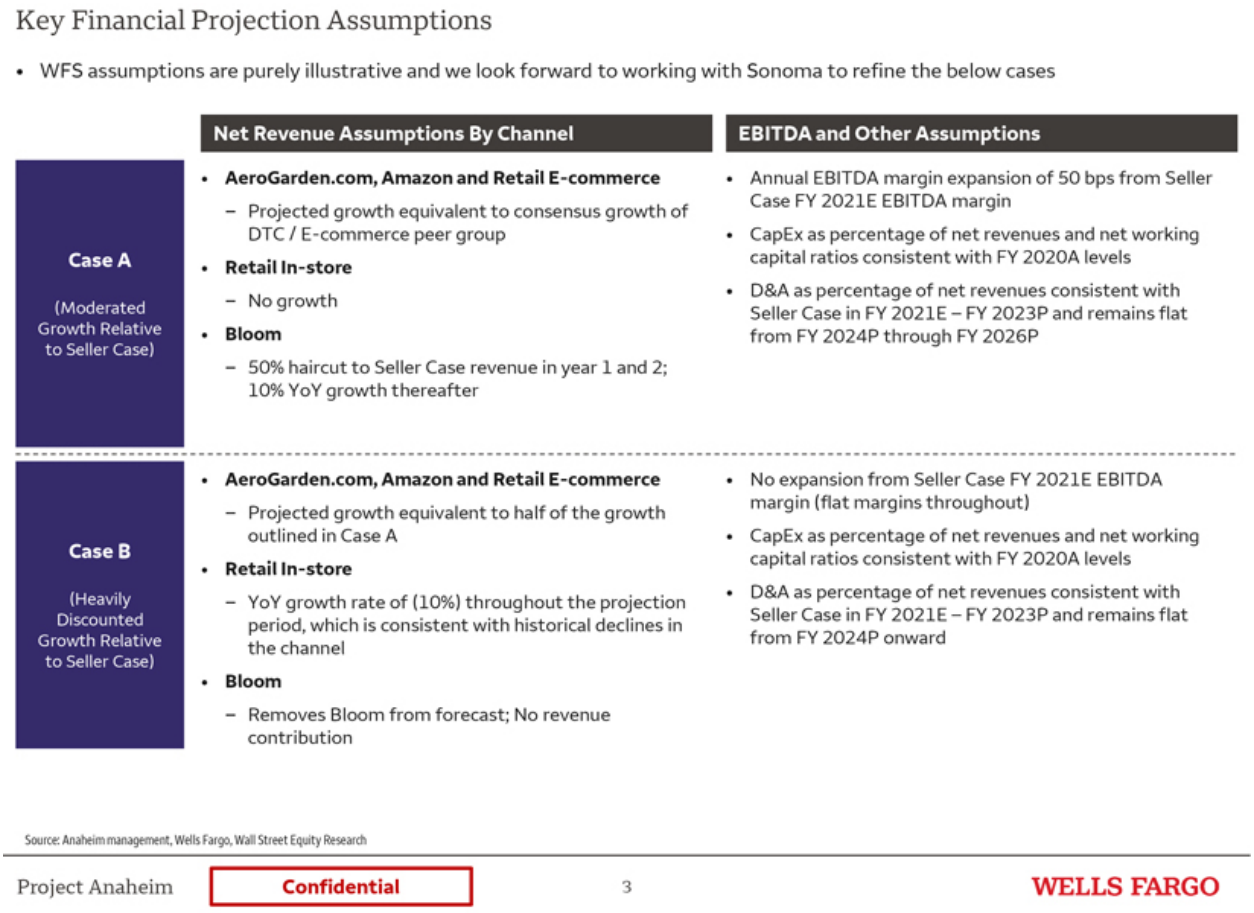
180. As this analysis shows, AeroGrow's projections state that AeroGrow's revenues are expected to increase from $92 million in fiscal 2021 (which is almost over, since AeroGrow's fiscal year 2021 ends on March 31, 2021) to $188.2 million by 2023; gross profits are expected to more than double from $30.7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

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

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

183. How did Scotts do so? By instructing its own bank, Wells Fargo (which had not been retained in a formal investment banking role), to heavily discount AeroGrow's forecasts to arrive at lower numbers. To do this, Scotts told Wells Fargo to simply prepare two new cases, Case A and Case B, in which Wells Fargo was instructed to make large cuts in the projections:



Key Financial Projection Assumptions

- WFS assumptions are purely illustrative and we look forward to working with Sonoma to refine the below cases

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

Source: Anaheim management, Wells Fargo, Wall Street Equity Research

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

185. Amazingly, Wells Fargo applied these huge cuts to AeroGrow's projections without even speaking to AeroGrow's management or engaging in any due diligence whatsoever! An amended Schedule 13D laid these egregious facts to bare:

> Wells Fargo reduced the AeroGrow projections "***without performing any due diligence with [AeroGrow's] management.***"[21]

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

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

demonstrates the unfairness of the Merger consideration. Wells Fargo's presentation, dated July 30, 2020, states that it had been instructed by Scotts to lower the AeroGrow projections: "Sonoma has informed WFS the projections contained in the CIM may be difficult to achieve. [Therefore], [w]ithout performing any due diligence with Anaheim's management, Wells Fargo has adjusted the projections."[22]

187. After it had Wells Fargo manipulate the forecasts prepared by AeroGrow's management, Scotts then used its control to coerce Stifel into lowering its prior valuation of AeroGrow by using the Wells Fargo analysis as leverage, telling Stifel that its analysis was not reliable and needed to be reduced. Stifel eventually agreed to use a revised valuation method "which reduces management growth estimates for annual core revenue growth by 10% and annual Bloom revenue growth by 50%."[23]

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

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[22] Because the deal had not yet been publicly announced at the time, Wells Fargo used code names to refer to both Scotts and AeroGrow, with "Sonoma" referring to Scotts and "Anaheim" referring to AeroGrow. Wells Fargo did not appear to agree with Scotts dour outlook, as it stated that AeroGrow "has experienced a significant uptick in operating performance as a result of COVID-19 as more consumers are allocating spending to at-home products."

[23] *See* Amended Schedule 13D filed 1/12/21, available at https://www.sec.gov/Archives/edgar/data/1316644/000119312520310012/d22041dex99c1.htm.

Preliminary Anaheim Financial Analysis

Illustrative Per Share Valuation Outputs

	Seller Case	Case A	Case B
Preliminary Selected Companies Analysis			
CY 2021P Revenue [1]	$6.20 - $7.75	$3.75 - $5.10	$2.10 - $3.25
CY 2021P Adj. EBITDA [2,3]	$5.90 - $7.50	$3.20 - $4.35	$2.20 - $3.20
Preliminary Selected Transactions Analysis			
LTM 9/30/20 Revenue [4]	$7.30 - $8.20	$5.10 - $6.00	$3.35 - $4.20
Preliminary Discounted Cash Flow Analysis			
Perpetuity Growth Method [5]	-	$4.05 - $5.40	$2.50 - $3.15
Terminal Multiple Method [6]	-	$5.45 - $7.55	$2.85 - $3.80

Source: Anaheim management, public filings, Wells Fargo and Capital IQ
Note: Market data as of 7/28/2020; Assumes basic shares outstanding of 34.328 million and 0.011 million options with a strike price of $1.55;
Assumes net cash of $10 mm as of 5/30/2020 balance sheet
[1] Based on 1.90x - 2.40x Seller Case CY 2021P Revenue ($107 mm), 1.25x - 1.75x Case A CY 2021P Revenue ($95 mm), and 0.75x - 1.25x Case B CY 2021P Revenue ($82 mm)
[2] Adj. EBITDA includes adjustments per the CIM, including royalty payments to Sonoma; no incremental adjustments have been made beyond what was presented in the CIM
[3] Based on 14.0x - 18.0x Seller Case CY 2021P Adj. EBITDA ($14 mm), 10.0x - 14.0x Case A CY 2021P Adj. EBITDA ($10 mm), and 8.0x - 12.0x Case B CY 2021P Adj. EBITDA ($8 mm)
[4] Based on 4.00x - 4.50x Seller Case LTM 9/30/20 Revenue ($60 mm), 2.75x - 3.25x Case A LTM 9/30/20 Revenue ($60 mm), and 1.75x - 2.25x Case B LTM 9/30/20 Revenue ($60 mm)
[5] Based on 2.0% - 3.0% perpetuity growth discounted at 10.25% - 12.25% in Case A and 9.75% - 11.75% in Case B
[6] Based on 10.0x - 14.0x terminal multiple discounted at 10.25% - 12.25% in Case A and 8.0x - 12.0x terminal multiple discounted at 9.75% - 11.75% in Case B

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

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

AeroGrow to prevent Wolfe from further communicating the substantial progress AeroGrow was making.

191. The $3.00 Merger price is not fair because Stifel's own fairness opinion relies on valuation ranges that indicate the price is not fair. In other places, as indicated above, Defendants caused Stifel to use inputs that are not market based or based on management's own projections and which therefore do not reflect fair value.

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

> "***[Stifel] calculated implied equity values per share ranging from $3.47 to $4.57***, the high-end of which range was the equity value per share derived using the high-end terminal multiple and applying the low-end discount rate, and the low-end of which range was the equity value per share derived using the low-end terminal multiple and applying the high end discount rate. ***Stifel noted that the Merger Consideration falls below the range of implied equity values per share implied by this analysis***.[24]

193. Stifel also ran an alternative "Perpetuity Growth Method" DCF analysis in an attempt to make the Merger consideration look fair ensuring its full fee of $2 million plus more would get paid. But Stifel used extremely high and unreasonable discount rates of 14-16% to arrive at its depressed valuation range of $1.93 to $2.53 per share under its new analysis. Stifel indicated that it chose the extremely high discount rates "based on Stifel's estimation of the Company's weighted average cost of capital." But this makes no sense. Interest rates are at

[24] *See* Proxy at p. 60.

historically low rates. And AeroGrow's principal line of credit is the one it was forced to accept from Scotts. That interest rate is extremely high and non-market, demonstrating the unreasonableness of the 14-16% rate Stifel used. Had Stifel used more reasonable and market-based discount rates, it would have derived a much higher valuation for AeroGrow's stock under its manipulated Perpetuity Growth Method DCF analysis. Using more suitable discount rates would yield a stock price in excess of $10/share. Furthermore, Stifel used the unrealistic 14-16% discount rates for all its analyses, including the Terminal Method DCF analysis.

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

195. Tellingly, after it signed the Merger Agreement with AeroGrow, Scotts announced much better than expected earnings on February 3, 2021. The financial results exceeded expectations due in substantial part to the record results reported by AeroGrow's business, as reflected in Scott's Hawthorne segment which the Company is a part of. Scott's February 3, 2021 press release was entitled "ScottsMiracle-Gro Announces Record First Quarter Results; U.S. Consumer Sales Increase 147%, Hawthorne Sales Rise 71%," and contained the following comments from Defendant James Hagedorn:

> MARYSVILLE, Ohio, Feb. 03, 2021 (GLOBE NEWSWIRE) -- ***The Scotts Miracle-Gro Company (NYSE: SMG),*** one of the world's leading marketers of branded consumer lawn and garden as well as hydroponic and indoor growing products, ***today announced company-wide sales increased 105 percent to a record $748.6 million in its fiscal first quarter primarily driven by strong retailer support in the U.S. Consumer segment as well as continued momentum in Hawthorne***.

> For the quarter ended January 2, 2021, income from continuing operations was $0.43 per diluted share, compared with a loss of $1.28 per share in fiscal 2020. Non-GAAP adjusted earnings – which is the basis of the Company's guidance – was ***$0.39 per diluted share in the quarter compared with a loss of $1.12 per share last year. Due to the seasonal nature of the lawn and garden category, ScottsMiracle-Gro has historically reported a loss during its first quarter. The results in 2021 mark the first time the Company has ever reported a first quarter profit.***
>
> "While we anticipated a strong start to fiscal 2021, ***both the U.S. Consumer and Hawthorne segments surpassed our expectations and put us on a good trajectory for the balance of the year," said Jim Hagedorn***, chairman and chief executive officer. "In U.S. Consumer, we are working closely with our retail partners as they prepare for the upcoming growing season. ***And Hawthorne continues to demonstrate its best-in-class performance within its industry***, working with retailers and growers to help drive their success. ***Our strong start gives us renewed confidence in our full-year outlook***."

197. Thus, Defendant James Hagedorn admitted in the press release that Scotts was able to turn a profit in its most recent quarter due in substantial part from the record financial results and spectacular growth of AeroGrow's business, as reflected in Scotts' Hawthorne segment. The press release specifically noted that "First quarter sales for the Hawthorne segment increased 71 percent to $309.4 million driven by strong demand in all categories of indoor growing equipment and supplies."

198. Thus, far from being unreliable or needing a 50% cut, the AeroGrow projections that Scotts instructed Wells Fargo to reduce substantially have in fact proven conservative. In short order AeroGrow's robust and record growth has contributed materially to Scotts' record financial results reported on February 3, 2021 and allowed Scotts to report a large profit of $0.39 per share in the quarter ended January 2, 2021 compared with a loss of $1.12 per share in 2020. As Hagedorn admitted, Scotts' appropriation of its 80% stake in AeroGrow allowed it to "mark the first time the Company has ever reported a first quarter profit." There is little wonder why

Scotts wanted to acquire the other 20% of AeroGrow. And far from having a value of just $3.00 per share, AeroGrow's stock is worth many multiples of that price.[25]

199. As a result of the huge growth experienced by AeroGrow's business, and its contribution to Scott's profitability, Scotts was forced to actually increase Hawthorne's financial projections. As the Feb. 3, 2021 press release stated:

> ***Hawthorne sales guidance was increased to a range of 20 to 30 percent from a previous range of 15 to 20 percent***.[26]

200. Scotts is so bullish on the rapidly improving results it is achieving from AeroGrow that it took out an ad in the 2021 Super Bowl for the first time. The ad featured Martha Stewart and John Travolta and aired on February 7, 2021.

201. James Hagedorn also appeared on CNBC's "Power Lunch" segment on Feb. 3, 2021, in which he admitted that the Hawthorne division was "***really catching fire***" and defended questions about why Scotts had not raised its earnings guidance more. On the strength of

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[25] Prior to the beginning of 2020, when AeroGrow's financial results began to vastly improve and AeroGrow started to realize impressive growth produced by the Company's previous R&D expenditures, Defendant Hagedorn had cursed the Hawthorne division and derided his own management team there for failing to deliver. In 2018, Hagedorn delivered a typical expletive-laced discourse during an analyst conference call, stating: "'And, dude, those bastards [at Hawtorne] are gun-shy as s--- right now, OK,' Hagedorn told analysts on the call. 'I'm just telling you real-time, living my life. What do you expect they're going to throw back at us? So they throw these numbers back at us, and I was like, what the hell?'" *See* Michael Sheetz, "Scotts Miracle-Gro CEO Lays Into Cannabis Unit Over Quarterly Results," CNBC, Aug. 2, 2018. The transformation of Hawthorne's results from 2018 to 2021 was due to AeroGrow's incredible growth and results. The 2018 CNBC article noted that "Hawthorne Gardening isn't going to meet Scotts' internal targets for growth for the foreseeable future, though Hagedorn didn't disclose how far short of the target the unit was now."

[26] Available at https://www.yahoo.com/now/scottsmiracle-gro-announces-record-first-120000192.html , last visited Feb. 23, 2021.

AeroGrow's contribution to its earnings, Scotts' stock price has increased substantially in less than three months, increasing from $169 on December 1, 2020 to $245 by February 11, 2021.

G. The Terms of The Merger Agreement

196. Under the terms of the Merger Agreement, Plaintiffs and the Class (*i.e.*, the Company's minority shareholders) will receive just $3.00 per share cash. They will be divested of their ownership of stock in AeroGrow and denied the ability to participate in any way in the future value of the Company.

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

198. The Merger was a *fait accompli* from the moment it was announced. The only condition to the Merger was the majority vote of all outstanding shares of AeroGrow. Scotts, through its wholly-owned subsidiary SMG Growing Media, Inc., owns 80.5% of AeroGrow stock. As the Merger Agreement and Proxy state, Scotts and SMG Growing Media, Inc. are contractually obligated to vote in favor of the Merger: "Subject to the terms of the Merger Agreement, Parent has agreed to vote all shares of common stock it beneficially owns in favor of the Merger Agreement Proposal." Thus, the Merger was already effectively approved by Scotts and Scotts alone. It is not even clear why Scotts is holding a meeting, other than to create some bogus appearance of some semblance of a "process."

It thus came as no surprise that, when the meeting was held on February 23, 2021, Scotts voted its shares in favor of the Merger and the Merger was approved. While Aerogrow had advised shareholders that questions would be entertained from shareholders at the meeting, questions were not allowed at the meeting, which lasted less than 15 minutes.

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

199. The Merger will allow Scotts to obtain complete control of AeroGrow and to increase its financial performance by acquiring AeroGrow's assets and business for itself: "The Purchaser Parties and Scotts Miracle-Gro have undertaken to pursue the Merger at this time in light of the opportunities they perceive to enhance Parent's and, in turn, Scotts Miracle-Gro's, financial performance by means of acquiring the Company's brands and other assets through the Merger. For Scotts, the purpose of the Merger is to enable it to exercise complete control of the Company."[27]

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

201. Indeed, AeroGrow's most recently reported financial results – disclosed after the Merger Agreement was signed – demonstrate that if anything AeroGrow's original projections were too conservative, not too aggressive, and that there clearly was no basis for Scotts to apply a 50% cut to the projections by AeroGrow's management.

202. On February 16, 2021, AeroGrow reported its most recent financial results, which far surpassed analysts' consensus expectations. For the quarter ended December 31, 2020 the Company recorded net revenue of $38.4M, an increase of 107% over the same period in the prior year. Income from Operations was $4.7M, an increase of 290% vs. the prior year. Gross margin

[27] *See* Proxy, at p. 62.

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

203. In its press release announcing its earnings on February 16, 2021, AeroGrow reported the following financial results:

AEROGROW INTERNATIONAL, INC.
CONDENSED BALANCE SHEETS

(in thousands, except share and per share data)	**December 31, 2020** (Unaudited)	**March 31, 2020** (Derived from Audited Statements)
ASSETS		
Current assets		
Cash	$ 13,636	$ 9,046
Restricted cash	15	15
Accounts receivable, net of allowance for doubtful accounts of $823 and $376 at December 31, 2020 and March 31, 2020, respectively	15,155	3,422
Other receivables	571	257
Inventory, net	11,593	4,788
Prepaid expenses and other	2,888	1,392
Total current assets	43,858	18,920
Property and equipment and intangible assets, net of accumulated depreciation of $5,962 and $5,467 at December 31, 2020 and March 31, 2020, respectively	2,224	1,229
Operating lease right-of-use	1,121	1,229
Deposits	555	669
Total assets	$ 47,758	$ 22,047
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities		
Accounts payable	$ 8,102	$ 2,332
Accounts payable related party	2,170	2,396

Accrued expenses	7,844	2,308
Finance lease liability	-	29
Notes payable related party-current portion	6,515	-
Debt associated with sale of intellectual property-current portion	10	17
Operating lease liability-current portion	146	58
Total current liabilities	24,787	7,140
Long term liabilities		
Notes payable related party	900	900
Operating lease liability	1,090	1,201
Other liability	-	297
Total liabilities	26,777	9,538
Commitments and contingencies		
Stockholders' equity		
Common stock, $.001 par value, 750,000,000 shares authorized, 34,328,036 shares issued and outstanding at December 31, 2020 and March 31, 2020, respectively	34	34
Additional paid-in capital	140,817	140,817
Accumulated deficit	(119,870)	(128,342)
Total stockholders' equity	20,981	12,509
Total liabilities and stockholders' equity	$ 47,758	$ 22,047

AEROGROW INTERNATIONAL, INC.
CONDENSED STATEMENTS OF OPERATIONS
(Unaudited)

	Three Months ended December 31,		**Nine Months ended December 31,**	
(in thousands, except per share data)	**2020**	**2019**	**2020**	**2019**
Net revenue	$ 38,367	$ 18,526	$ 69,088	$ 27,424
Cost of revenue	22,594	12,001	40,051	17,978
Gross profit	15,773	6,525	29,037	9,446
Operating expenses				
Research and development	454	308	1,049	794
Sales and marketing	7,860	3,780	13,563	6,553
General and administrative	2,751	1,230	5,731	3,017
Total operating expenses	11,065	5,318	20,343	10,364

Profit (loss) from operations	4,708	1,207	8,694	(918)
Other expense, net				
Interest expense – related party	(136)	(137)	(184)	(191)
Other expense, net	(14)	(4)	(38)	(9)
Total other expense, net	(150)	(141)	(222)	(200)
Net income (loss)	$ 4,558	$ 1,066	$ 8,472	$ (1,118)
Net income (loss) per share, basic and diluted	$ 0.13	$ 0.03	$ 0.25	$ (0.03)
Weighted average number of common shares outstanding, basic and diluted	34,328	34,328	34,328	34,328

204. Citing these outstanding financial results, AeroGrow's former Chairman, Jack Walker, issued a press release the same day stating that the Merger consideration was unfair and that he and certain other shareholders would seek appraisal rights. The release stated: "Following solid fiscal year 2020 results, AeroGrow announced a record first quarter fiscal year 2021, with revenue up 267%, gross margin improvement of 1,200 basis points, and its first-ever, first quarter profit of $2.7 million. In its earnings release, ***AeroGrow noted that 'favorable sales trends continue,' emphasizing that this is a trend and not a temporary blip.***"

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

V. CLASS ACTION ALLEGATIONS

206. Plaintiffs bring this action individually and as a class action pursuant to Rule 23 of the Nevada Rules of Civil Procedure on behalf of a class of all minority shareholders of AeroGrow International, Inc. who held AeroGrow stock as of the Effective Date for the Merger and had the

right to receive the Merger consideration, as well as their successors and assigns (the "Class"). The Class specifically excludes the following persons or entities: (a) any of the Defendants named herein; (b) any of the Defendants' parent companies, subsidiaries, and affiliates; (c) any of the Defendants' officers, directors, management, employees, subsidiaries, affiliates or agents; (d) all governmental entities; and (e) the judges and chambers staff in this case, as well as any members of their immediate families.

207. This Action is properly maintainable as a class action.

208. The Class is so numerous that joinder of all members is impracticable. AeroGrow has thousands of stockholders. As of December 1, 2020, there were approximately 6,688,742 shares of common stock issued and outstanding held by minority shareholders (this figure excludes 27,639,294 shares of common stock beneficially owned by the Scotts affiliated entities), since such shares are excluded from the Class.

209. There are questions of law and fact common to the Class, including, among other things, the following:

a. Whether the Individual Defendants breached their fiduciary duties;

b. Whether James Hagedorn, Scotts, SMG Growing Media, Inc., and AGI Acquisition Sub, Inc. aided and abetted the Individual Defendants' breaches of fiduciary duties;

c. Whether the Merger satisfies the entire fairness standard; and

d. Whether Plaintiffs and other members of the Class are entitled to damages or other relief.

210. Plaintiffs' claims are typical of the claims of the other members of the Class, and Plaintiffs do not have any interests adverse to the Class.

211. Plaintiffs are adequate representatives of the Class, have retained skilled counsel with extensive experience in litigation of this nature, and will fairly and adequately protect the interests of the Class.

212. The prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications with respect to individual members of the Class which would establish incompatible standards of conduct for the parties opposing the Class.

213. Defendants acted on grounds generally applicable to the Class with respect to the matters complained of herein, thereby making appropriate the relief sought herein with respect to the Class as a whole.

214. The common questions of law and fact predominate over questions affecting individual Class members and a class action is superior to other adjudication methods.

FIRST CLAIM FOR RELIEF

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

215. Plaintiffs repeat and re-allege each and every allegation contained above as if fully set forth herein.

216. As AeroGrow's controlling stockholders, Scotts Miracle-Gro Company, James Hagedorn, and SMG Growing Media, Inc. owed Plaintiffs and the Class fiduciary duties of loyalty and care. Pursuant to *Cohen v. Mirage Resorts, Inc.*, 119 Nev. 1 (2003), Defendants also owed Plaintiffs and the Class a duty to avoid unlawful and fraudulent conduct in the process and disclosures related to the merger.

217. Defendants breached those duties by acting unlawfully and fraudulently with respect to the merger. Among other things, Defendants used their control of AeroGrow's corporate machinery to (a) orchestrate the AeroGrow Board's approval of the Merger; (b) make misleading disclosures about the value of Aerogrow and its assets and stock value; (c) fraudulently manipulate the financial projections of Aerogrow, as alleged herein; (d) failure to ensure any procedural protections for Aerogrow's minority shareholders; and (d) otherwise engage in unlawful conduct that directly resulted in an unfair price and unfair process in the merger. In engaging in such conduct, Defendants acted intentionally, recklessly, and/or in bad faith.

218. Plaintiffs and the Class have the right to maintain this action because Defendants' conduct was unlawful or constituted or was the result of actual fraud against Plaintiffs and the Class. NRS 92A.380(2).

219. Defendants acted with scienter and knew that their conduct was unlawful, wrongful, coercive, and fraudulent, and/or acted with reckless indifference to the harm caused to Plaintiffs and the Class. Defendants' unlawful and fraudulent conduct directly and proximately caused pecuniary harm to Plaintiffs and the Class in that Plaintiffs and the Class received a lower price for their Aerogrow stock in the merger than that would have but for Defendants' misconduct.

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

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

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

223. Plaintiff and the Class are entitled to monetary relief, including damages based on the fair value of their stock, and other relief.

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SECOND CLAIM FOR RELIEF

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

224. Plaintiffs repeat and re-allege each and every allegation contained above as if fully set forth herein.

225. Defendants are directors of AeroGrow, and as such owe fiduciary duties of good faith, loyalty, and care to the Company's minority shareholders.

226. As alleged in detail herein, Defendants breached their fiduciary duties to Plaintiffs and the other members of the Class.

227. Defendants C. Hagedorn, Clarke, Kent, Miller, and Ziegler are not entitled to the protection of NRS 78.138 because, as alleged in this complaint, such Defendants were not entitled to rely on the information, opinions, reports, books of account or statements of Stifel and other persons who provided information related to the merger since Defendants had knowledge concerning the matters in question that caused reliance thereon to be unwarranted. For example, with respect to Stifel's fairness opinion, Defendants knew that the original financial forecasts presented to Stifel, which had been prepared by Aerogrow's management and were much higher, had been disregarded and replaced by lower, inaccurate, and manipulated forecasts due to improper influence by Scotts and its designees and agents, including Wells Fargo. Defendants also undermined Stifel's independence by making the vast majority of Stifel's fee contingent on Stifel determining that the $3.00 merger price was fair. As a result, Defendants knew Stifel's fairness opinion was not accurate, trustworthy, or reliable, and yet still included it in the Proxy, thus leading to inaccurate and false disclosures in the Proxy. Defendants are thus not entitled to the protection of the business judgment rule as codified in NRS 78.138.

228. Defendants also did not act in good faith or in an informed manner with respect to their approval of the merger. Defendants acted in bad faith, as alleged herein, by allowing Scotts to fully participate in all aspects of the merger process, by refusing to adopt any procedural protections for the minority shareholders, and by deterring third party bidders who may have been willing to pay more for the Company's stock.

229. Defendants' acts or failure to act constituted a breach of their fiduciary duties as directors, and such breaches involved intentional misconduct, fraud or a knowing violation of law.

230. As a result of the Defendants' conduct, Plaintiffs and the Class have suffered substantial harm and damages. Defendants were the proximate cause of such harm.

THIRD CLAIM FOR RELIEF

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

231. Plaintiffs repeat and re-allege each and every allegation contained above as if fully set forth herein.

232. As alleged in detail herein, Scotts Miracle-Gro Company and its wholly-owned subsidiary SMG Growing Media, Inc. are majority and controlling shareholders of AeroGrow, owning 80.5% of its stock. Scotts and SMG Growing Media breached their fiduciary duties to Plaintiffs and the other members of the Class and/or engaged in unlawful conduct and actual fraud with respect to the merger of Scotts and Aerogrow.

233. The AeroGrow Director Defendants also breached their fiduciary duties due to their conduct as directors of AeroGrow, as alleged herein.

234. James Hagedorn, AeroGrow International, Inc., AGI Acquisition Sub, Inc., Chris Hagedorn, H. MacGregor Clarke, David B. Kent, Cory Miller, and Patricia M. Ziegler aided and abetted the defendants' breaches of fiduciary duties.

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

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

237. Chris Hagedorn, H. MacGregor Clarke, David B. Kent, Cory Miller, and Patricia M. Ziegler also knowingly participated in Scotts' and SMG's scheme by approving the Merger as AeroGrow directors (1) without conducting adequate due diligence; (2) without receiving any independent advice about whether the Merger was fair to, and in the best interests of, AeroGrow's

minority shareholders; and (3) by allowing Scotts and its financial advisor, Wells Fargo, to manipulate the financial forecasts prepared by AeroGrow's management.

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

239. As a result of Defendants' conduct, Plaintiffs and the Class have suffered substantial harm and damages.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs demand judgment as follows:

A. Declaring that this Action is properly maintainable as a class action;

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

C. Awarding monetary relief to Plaintiffs and the Class in an amount to be proven at trial but nonetheless in an amount in excess of $15,000.00;

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

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

JURY TRIAL DEMANDED

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

DATED this 28th day of June, 2021

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CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of June, 2021, I served a true and correct copy of the foregoing **FIRST AMENDED CONSOLIDATED CLASS ACTION COMPLAINT** via the Court's electronic filing system only, pursuant to the Nevada Electronic Filing and Conversion Rules, Administrative Order 14-2, to all parties currently on the electronic service list.

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