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21 **EIGHTH JUDICIAL DISTRICT COURT**  
22 **CLARK COUNTY, NEVADA**

23 OVERBROOK CAPITAL LLC, on Behalf  
24 of Itself and All Others Similarly Situated,  
25 Plaintiff,

26 vs.

27 AEROGROW INTERNATIONAL, INC.,  
28 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)

Dep't. No. XIII

**STIPULATION AND AGREEMENT OF  
SETTLEMENT**

1 NICOYA CAPITAL LLC, on Behalf of  
2 Itself and All Others Similarly Situated,

3 Plaintiff,

4 vs.

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

9 - and -

10 AEROGROW INTERNATIONAL, INC.,  
11 a Nevada Corporation, AGI  
12 ACQUISITION SUB, INC., a Nevada  
13 Corporation, SMG GROWING MEDIA,  
14 INC., an Ohio Corporation, and SCOTTS  
15 MIRACLE-GRO COMPANY, an Ohio  
16 Corporation,

17 Defendants.  
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Case No.: A-21-827745-B

1 This Stipulation and Agreement of Settlement dated December 10, 2025 (“Stipulation”) in  
2 the action captioned *Overbrook Capital LLC v. AeroGrow International, Inc.*, Lead Case No. A-  
3 21-827665-B (“Action”), pending before the Eighth Judicial District Court, Clark County, Nevada,  
4 (“Court”), is entered into by and between Plaintiffs Overbrook Capital LLC and Nicoya Capital  
5 LLC (“Plaintiffs”), on behalf of themselves and each member of the Settlement Class (as defined  
6 below), and Defendants The Scotts Miracle-Gro Company (“Scotts Miracle-Gro”), SMG Growing  
7 Media, Inc. (“SMG Growing Media”), AeroGrow International, Inc. (“AeroGrow”), AGI  
8 Acquisition Sub, Inc., James Hagedorn, Peter Supron, Chris Hagedorn, Cory Miller, and Patricia  
9 M. Ziegler (the “Settling Defendants”), by and through their respective undersigned counsel. The  
10 Stipulation is intended by Plaintiffs and Defendants (as defined below and, collectively, with  
11 Plaintiffs, the “Parties” and, each individually, a “Party”) to fully, finally, and forever resolve,  
12 discharge, release, and settle the Released Claims and the Released Defendants’ Claims (both  
13 defined below), upon and subject to the terms and conditions hereof and subject to the Court’s  
14 approval.

#### 15 I. SUMMARY OF CLAIMS AND PROCEDURAL HISTORY

16 This is a shareholder class action asserting claims under Nevada state law for breach of  
17 fiduciary duty and aiding and abetting breach of fiduciary duty by the Settling Defendants and  
18 former defendants H. MacGregor Clarke and David Kent<sup>1</sup> (collectively, “Defendants”). The  
19 Action was brought on behalf of a class of all minority shareholders of AeroGrow who held  
20 AeroGrow stock as of the Effective Date for the merger between AeroGrow and SMG Growing  
21 Media (the “Merger”) pursuant to the agreement and plan of merger by and between AeroGrow,  
22 SMG Growing Media, and AGI Acquisition Sub, Inc. dated November 11, 2020 (the “Merger  
23 Agreement”), which provided AeroGrow shareholders the right to receive \$3.00 per share as the  
24 Merger consideration.

25 Plaintiffs allege that Defendants breached their fiduciary duties and/or aided and abetted

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27 <sup>1</sup> The Court previously granted summary judgment in favor of Defendants H. MacGregor Clarke and David  
28 B. Kent. *See* Findings of Fact, Conclusions of Law, & Order Granting H. MacGregor Clarke & David B. Kent’s Mot.  
for Summ. J., Mar. 17, 2025, on file.

1 other Defendants' breaches in connection with SMG Growing Media's 2021 acquisition of the  
2 minority shares in AeroGrow that it did not already own. Among other things, Plaintiffs allege  
3 that the Merger consideration was inadequate, that certain Defendants took steps to interfere with  
4 the market check process, that all material facts were not disclosed in the proxy for the Merger,  
5 and that Defendants took other actions to harm the minority stockholders.

6 On January 11, 2021, Plaintiff Overbrook Capital LLC ("Overbrook") filed a putative class  
7 action lawsuit on behalf of AeroGrow stockholders, captioned *Overbrook Capital, LLC v.*  
8 *AeroGrow International, Inc., et al.*, No. A-21-827665-B, asserting claims for breach of fiduciary  
9 duty and aiding and abetting breach of fiduciary duty (the "Overbrook Action"). On January 12,  
10 2021, Lead Plaintiff Nicoya Capital LLC ("Nicoya") filed a putative class action lawsuit on behalf  
11 of AeroGrow stockholders, captioned *Nicoya Capital, LLC v. Chris Hagedorn, et al.*, No. A-21-  
12 827745-B, asserting claims for breach of fiduciary duty and aiding and abetting breach of fiduciary  
13 duty (the "Nicoya Action"). On February 18, 2021, the Court consolidated the Overbrook Action  
14 and the Nicoya Action for all purposes, including trial, appointed Nicoya to serve as Lead Plaintiff,  
15 and appointed Bottini & Bottini, Inc. to serve as Lead Counsel and Kemp Jones, LLP to serve as  
16 Liaison Counsel. On February 22, 2021, Plaintiff Bradley Louis Radoff ("Radoff") filed a lawsuit  
17 captioned *Radoff v. Hagedorn, et al.*, No. A-21-829854-B, asserting claims for breach of fiduciary  
18 duty (the "Radoff Action"). On February 24, 2021, the Court consolidated the Radoff Action for  
19 all purposes, including trial, into the Overbrook Action. The Overbrook Action, the Nicoya  
20 Action, and the Radoff Action, as consolidated, are collectively referred to as the "Action."

21 On June 28, 2021, Plaintiffs filed their First Amended Consolidated Complaint. On July  
22 12, 2021, Defendants moved to dismiss the First Amended Consolidated Complaint. On October  
23 4, 2021, this Court denied Defendants' motion to dismiss the First Amended Consolidated  
24 Complaint.

25 On November 24, 2021, Defendants filed a Petition for Writ of Mandamus in the Nevada  
26 Supreme Court seeking review of the Court's order denying Defendants' motion to dismiss the  
27 First Amended Consolidated Complaint (the "First Petition"). On December 17, 2021, the Nevada  
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1 Supreme Court ordered Plaintiffs to answer the First Petition. Briefing on the First Petition was  
2 completed on February 18, 2022. After briefing, the Supreme Court denied the writ. *AeroGrow*  
3 *Int'l, Inc. v. Eighth Jud. Dist. Ct. of Nev.*, 511 P.3d 1035, 2022 WL 2384038 (Nev. June 30, 2022).

4 On March 15, 2022, Plaintiffs Nicoya and Overbrook filed a motion for class certification  
5 (the "Motion for Class Certification"). The Motion for Class Certification was set for hearing on  
6 April 18, 2022, at 9:00 a.m. Thereafter, the parties stipulated to certification of the Class (as  
7 defined below), and the Court approved the stipulation by order dated March 29, 2022. Notice of  
8 the class certification order was subsequently provided by the notice administrator, A.B. Data.

9 During the almost five years the Action has been pending, the Parties have engaged in  
10 extensive discovery efforts. In response to Plaintiffs' discovery requests, Defendants produced  
11 and Plaintiffs' counsel reviewed over 180,000 pages of documents. Following extensive document  
12 discovery, which also included interrogatories and requests for admission, twenty (20) depositions  
13 were taken. All named parties, including Plaintiffs and Defendants, were deposed. In addition,  
14 various third party depositions were taken, which included Wells Fargo, Stifel, EagleTree Capital,  
15 J. Michael Wolfe, and Grey Gibbs.

16 Expert discovery was also extensive. Plaintiffs retained Gil Matthews and Professor Ben  
17 Edwards. Both issued opening as well as rebuttal/reply reports and were deposed by Defendants.  
18 Defendants retained four experts – Professor Shane Johnson, Dr. Laura Simmons, Jan Kniffen,  
19 and Robert Kim – who issued opening and/or rebuttal/reply expert reports. Professor Johnson and  
20 Mr. Kniffen were deposed by Plaintiffs. At the time of settlement, each side had filed motions to  
21 exclude the other side's experts, which were set for hearing on October 2, 2025.

22 The Parties also engaged in discovery proceedings before a special master, in which  
23 Plaintiffs sought to compel the production of numerous documents certain Defendants had  
24 withheld under claim of privilege. The special master denied production of any additional  
25 documents and awarded fees and costs to those Defendants.

26 Five separate motions for summary judgment were filed, briefed, argued, and decided by  
27 the Court in March 2025. Subsequently, on April 11, 2025, certain settling Defendants filed a  
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1 second mandamus petition with the Nevada Supreme Court seeking review of the Court's orders  
2 denying in part the motions for summary judgment (the "Second Petition). On May 7, 2025, the  
3 Nevada Supreme Court ordered Plaintiffs to answer the Second Petition. Briefing on the Second  
4 Petition was completed on June 11, 2025. The Settling Defendants also filed motions both before  
5 the Court and the Nevada Supreme Court to stay the trial proceedings pending resolution of the  
6 Second Petition. The Court denied the motion to stay by order dated June 24, 2025. By order  
7 dated August 15, 2025, the Nevada Supreme Court also denied Defendants' motion to stay.

8 The Parties also engaged, on two separate occasions, a mediator to attempt to settle the  
9 Action. The first mediation occurred on October 4, 2022, with the Hon. Layn Phillips (Ret.) of  
10 Phillips ADR serving as mediator. The Parties exchanged mediation briefs and participated in a  
11 full-day mediation session, which was unsuccessful.

12 Almost three years later, in September 2025, after the motions for summary judgment had  
13 been adjudicated and the Parties were preparing for trial, the parties engaged Phillips ADR for a  
14 second time in an attempt to settle the Action. The Parties engaged in various offers and  
15 counteroffers but still had not reached any compromise leading up to the weekend before the  
16 calendar call. Over that weekend, the Phillips ADR issued a mediator's proposal to settle the  
17 Action. Finally, on the morning of the calendar call, the Parties settled the Action by accepting  
18 the mediator's proposal. The negotiations were hard-fought, arms-length, protracted, and fully  
19 informed by five years of active litigation.

20 The Parties thereafter engaged in further negotiations regarding the remaining material  
21 terms of the Settlement (as defined below), which are set forth in this Stipulation and which are  
22 subject to approval by the Court. This Stipulation (together with the Exhibits hereto) reflects the  
23 final and binding agreement between the Parties to fully, finally, and forever resolve, discharge,  
24 release, and settle the Action.

## 25 **II. PLAINTIFFS' INVESTIGATION AND THE BENEFITS OF SETTLEMENT**

26 Class Counsel (as defined below) have conducted an extensive investigation of the claims  
27 and the underlying events and transactions alleged in the Action. Among other things, Class  
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1 Counsel have analyzed public filings, records, documents produced by Defendants and third  
2 parties, retained two experts to analyze damages and Nevada law concerning the duties owed by  
3 directors and controlling shareholders of Nevada corporations in corporate mergers, and have  
4 researched the applicable law with respect to Plaintiffs' claims and the potential defenses thereto.  
5 Class Counsel have also conducted thorough research and briefing as part of opposing multiple  
6 sets of motions to dismiss, motions for summary judgment, and motions in limine filed by  
7 Defendants, as well as briefing two different mandamus petitions filed by Defendants with the  
8 Nevada Supreme Court.

9 Based on their investigation and review, Plaintiffs and Class Counsel have concluded that  
10 the terms and conditions of this Stipulation are fair, reasonable, and adequate to the Class and in  
11 their best interests, and have agreed to settle the claims raised in the Action pursuant to the terms  
12 and provisions of this Stipulation, after considering: (a) the substantial benefits that Plaintiffs and  
13 the Settlement Class will receive from the settlement of the Action; (b) the risks, costs, and  
14 uncertainties of further ongoing litigation and any appeals; (c) the desirability of permitting the  
15 Settlement to be consummated as provided by the terms of this Stipulation; and (d) Class Counsel's  
16 extensive experience in the prosecution of similar actions.

17 The Parties to this Stipulation and their counsel agree not to contend in any forum that the  
18 Action was brought or defended in bad faith, without a reasonable basis, or in violation of Nevada  
19 Rule of Civil Procedure 11 or any other similar law or statute. The Action is being voluntarily  
20 settled after advice of counsel and after Class Counsel and Plaintiffs have determined that the terms  
21 of the Settlement are fair, adequate, and reasonable to the Class.

### 22 **III. DEFENDANTS' DENIALS OF WRONGDOING AND LIABILITY**

23 Defendants have denied and continue to deny that they have committed any act or omission  
24 giving rise to any liability and/or violation of law, including under Nevada state law. Defendants  
25 have denied and continue to deny all charges of wrongdoing or liability against them arising out  
26 of any of the conduct, statements, acts, or omissions alleged, or that could have been alleged, in  
27 the Action. Defendants have also denied and continue to deny, *inter alia*, that Plaintiffs or the  
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1 Class or any AeroGrow shareholders have suffered any damages or were otherwise harmed by the  
2 conduct alleged in this Action. Defendants have asserted and continue to assert that the Merger  
3 consideration was fair and that the proxy for the Merger contained no material misstatements or  
4 omissions. Defendants have asserted and continue to assert that, at all times, they acted in good  
5 faith, in accordance with all applicable rules, regulations, and laws, and in the best interest of  
6 Plaintiffs, the Class, and all AeroGrow shareholders. Each Defendant reserves all defenses and  
7 objections to any claims that may be filed by any Person who timely and validly opts out of the  
8 Settlement as set forth in this Stipulation. Nothing in this Stipulation or its exhibits, nor the  
9 agreement to the Stipulation and its exhibits, shall be construed as an admission by any Defendant  
10 of any liability, fault, wrongdoing, or damage.

11 Nonetheless, Defendants have determined that it is desirable and beneficial to them that  
12 the Action be settled in the manner and upon the terms and conditions set forth in this Stipulation  
13 to avoid the further expense, inconvenience, burden, and uncertainty of this Action, the distraction  
14 and diversion of personnel and resources, and to obtain the conclusive and complete resolution  
15 and release of this Action and Released Claims.

#### 16 **IV. TERMS OF THE STIPULATION AND AGREEMENT OF SETTLEMENT**

17 NOW, THEREFORE, it is hereby STIPULATED AND AGREED, by and among the  
18 Parties to this Stipulation, through their undersigned attorneys, subject to approval by the Court,  
19 and in consideration of the benefits flowing to the Parties from the Settlement, that all Released  
20 Claims (as defined below) as against the Released Parties (as defined below) and all Released  
21 Defendants' Claims (as defined below) shall be finally and fully compromised, settled, released,  
22 and discharged, upon and subject to the following terms and conditions:

##### 23 **1. Definitions**

24 As used in this Stipulation, and in addition to the above-defined terms, the following terms  
25 shall have the meanings specified below:

26 1.1 "Administrator" means A.B. Data, Ltd. or such other entity as the Court shall  
27 appoint to administer the Settlement.  
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1           1.2     “Class” and “Class Members” means “All minority shareholders of AeroGrow  
2 International, Inc. who held AeroGrow stock as of the Effective Date for the Merger and had the  
3 right to receive the Merger consideration, as well as their successors and assigns. The Class  
4 specifically excludes the following Persons and entities: (a) any of the Defendants named in the  
5 complaint; (b) any of the Defendants’ parent companies, subsidiaries, and affiliates, (c) any of the  
6 Defendants’ officers, directors, management, employees, subsidiaries, affiliates or agents; (d) all  
7 governmental entities; and (e) the judges and chambers staff in this case, as well as any members  
8 of their immediate families,” (“Excluded Persons”). “Settlement Class” means all Class Members  
9 who do not timely and validly exclude themselves from the Settlement, and does not include any  
10 Excluded Person or any AeroGrow shareholder who owned the Dissenters Shares (as defined  
11 below), whether beneficially or as of record

12           1.3     “Class Counsel” and/or “Lead Counsel” means the law firm of Bottini & Bottini,  
13 Inc.

14           1.4     “Defendants’ Counsel” means the law firms of Jones Day, Brownstein Hyatt Farber  
15 Schreck, LLP, Bryan Cave Leighton Paisner, Pisanelli Bice PLLC, and any other firm that  
16 appeared as counsel of record in the Action.

17           1.5     “Dissenters Shares” means the shares of AeroGrow stock as to which dissenters’  
18 rights in connection with the Merger were properly exercised by those AeroGrow shareholders  
19 pursuant to NRS Chapter 92A.300-500 and who are respondents in the matter captioned *AeroGrow*  
20 *International, Inc. v. Quadre Investments, L.P., et al.*, Case No. A-21-836612-B.

21           1.6     “DTC Participants” means the participants of the Depository Trust Company  
22 (“DTC”) for whom Cede & Co., Inc. (“Cede”), as nominee for DTC, was the holder of record of  
23 AeroGrow common stock at the time such shares were paid the Merger consideration pursuant to  
24 the terms of the Merger Agreement.

25           1.7     “Eligible Beneficial Owner” means a Settlement Class Member who was the  
26 ultimate beneficial owner of any shares of AeroGrow common stock held of record by Cede at the  
27 time of the Merger.

1.8 "Eligible Record Holder" means a Settlement Class Member who was the record holder of any shares of AeroGrow common stock, other than Cede, at the time of the Merger.

1.9 "Effective Date of Settlement" or "Effective Date" means the date upon which all of the events and conditions set forth in ¶ 10.1 below have been met and have occurred. With respect to the Merger, "Effective Date" means February 26, 2021.

1.10 "Escrow Account" means an interest-bearing escrow account established by the Escrow Agent or their respective successor(s) to receive the Settlement Amount.

1.11 "Escrow Agent" means Class Counsel together with the Administrator.

1.12 "Expense and Cost Waiver" means the agreement pursuant to which Defendants agree to waive Plaintiffs' obligation to pay (and Defendants agree not to otherwise seek to enforce collection of) (a) any and all outstanding expenses, costs, and orders related in any way to the proceedings before the special master and (b) the costs award entered by the Court related to the dismissal from the Action of former defendants H. MacGregor Clarke and David Kent, such amounts totaling \$806,058.66.

1.13 "Fee and Expense Award" means the attorneys' fees and expenses awarded by the Court as described in ¶ 5.1.

1.14 "Final" with respect to the Judgment (as defined below) or any alternative judgment means: (i) if no appeal is filed, the expiration date of the time provided for filing or petitioning for any appeal, or (ii) if there is an appeal from the Judgment or any alternative judgment, the date of (a) final dismissal of all such appeals, or the final dismissal of any proceeding on certiorari or otherwise to review the Judgment, or (b) the date the Judgment or any alternative judgment is finally affirmed on appeal, and (1) the expiration of the time to file a petition for writ of certiorari or other form of review, (2) the denial of a writ of certiorari or other form of review, or (3) if certiorari or other form of review is granted, the date of final affirmance of the Judgment or any alternative judgment following review pursuant to that grant. However, any appeal or appellate proceeding seeking subsequent judicial review solely of an order issued with respect to (i) attorneys' fees, costs, or expenses, or (ii) the Plan of Allocation (as submitted or subsequently

1 modified) shall not in any way delay or preclude the Judgment from becoming Final.

2 1.15 "Judgment" means the judgment to be entered approving the Settlement,  
3 substantially in the form attached hereto as Exhibit B.

4 1.16 "Net Settlement Fund" means the Settlement Fund (as defined below) less: (i) any  
5 attorneys' fees and litigation expenses awarded by the Court; (ii) any awards or expenses to  
6 Plaintiffs awarded by the Court; (iii) notice and administration expenses; (iv) any required Taxes  
7 (as defined below); and (v) any other fees or expenses approved by the Court.

8 1.17 "Notice" means the Notice of Proposed Settlement of Class Action, which will be  
9 sent to members of the Class, substantially in the form attached hereto as Exhibit A-1 to Exhibit  
10 A.

11 1.18 "Person" means an individual, corporation, partnership, limited partnership, limited  
12 liability partnership, association, joint stock company, limited liability company or corporation,  
13 professional corporation, estate, legal representative, trust, unincorporated association,  
14 government or any political subdivision or agency thereof, and any business or legal entity and  
15 his, her, or its spouses, heirs, predecessors, successors, representatives, or assignees.

16 1.19 "Plaintiffs' Counsel" means those firms that have appeared on behalf of the Class  
17 in the Action: Bottini & Bottini, Inc., Wolf Popper LLP, Kemp Jones LLP, and Muehlbauer Law  
18 Office, Ltd.

19 1.20 "Plan of Allocation" means the plan described in the Notice or any alternate plan  
20 approved by the Court whereby the Net Settlement Fund (as defined above) shall be distributed to  
21 Settlement Payment Recipients (as defined below). Any Plan of Allocation is not part of the  
22 Stipulation, and the Released Parties (as defined below) shall have no responsibility therefor or  
23 liability with respect thereto.

24 1.21 "Preliminary Approval Order" means the proposed order preliminarily approving  
25 the Settlement and directing notice thereof to the Class, substantially in the form attached hereto  
26 as Exhibit A.

27 1.22 "Released Parties" means Defendants and their Related Parties as defined in this  
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1 Paragraph. "Related Parties" means each of a Defendant's predecessors, successors, or past,  
2 present, or future direct or indirect parents, subsidiaries, sister corporations, divisions, affiliates,  
3 or joint ventures, as well as each of their respective present or former directors, officers,  
4 employees, partners, members, principals, agents, underwriters, insurers, co-insurers, reinsurers,  
5 controlling shareholders, attorneys, accountants, auditors, financial or investment advisors or  
6 consultants, banks or investment bankers, personal or legal representatives, predecessors,  
7 successors, assigns, assignors, spouses, heirs, related or affiliated entities, any entity in which a  
8 Defendant has a controlling interest, any member of an individual Defendant's immediate family,  
9 any trust of which any Defendant is the settlor or which is for the benefit of any Defendant and/or  
10 member(s) of his or her family, and the legal representatives, heirs, successors in interest, or  
11 assigns of the Defendants.

12 1.23 "Released Claims" means any and all rights, liabilities, suits, debts, obligations,  
13 demands, damages, losses, judgment matters, issues, claims (including "Unknown Claims" as  
14 defined below), and causes of action of every nature and description whatsoever that have been or  
15 could have been asserted in the Action or could in the future be asserted in any forum, whether  
16 known or unknown, whether arising under federal, state, or common law, relating to AeroGrow or  
17 AeroGrow's Merger with SMG Growing Media, including all such claims and causes of action  
18 that Plaintiffs (i) asserted in the First Amended Consolidated Complaint filed in the Action on June  
19 28, 2021 (the "Complaint"), or (ii) asserted or could have asserted in the Complaint or in any  
20 complaint filed in any case ultimately consolidated in the Action or in any other forum that are  
21 based on the same set of operative facts as those set forth in the Complaint, except for claims  
22 relating to the enforcement of the Settlement. "Released Claims" do not include any claims to  
23 enforce this Stipulation, any claims by Defendants for insurance coverage, the appraisal claims  
24 asserted in *AeroGrow International, Inc. v. Quadre Investments, L.P., et al.*, Case No. A-21-  
25 836612-B, and any demands, losses, rights, and causes of action of any nature whatsoever that any  
26 Released Party may have against Class Members who timely and validly excludes themselves from  
27 the Settlement.  
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1.24 "Released Defendants' Claims" means all claims (including "Unknown Claims" as defined below), demands, losses, rights, and causes of action of any nature whatsoever that any Released Party may have against Plaintiffs, the Settlement Class Members, or Plaintiffs' Counsel relating to the institution, prosecution, or settlement of the Action. Released Defendants' Claims specifically includes the release of the obligation of Plaintiffs or Plaintiffs' Counsel to pay any outstanding costs or fees in the special master proceeding, as provided in the Expense and Cost Waiver. "Released Defendants' Claims" do not include claims to enforce this Stipulation, any claims by Defendants for insurance coverage, the appraisal claims asserted in *AeroGrow International, Inc. v. Quadre Investments, L.P., et al.*, Case No. A-21-836612-B, and any demands, losses, rights, and causes of action of any nature whatsoever that any Released Party may have against Class Members who timely and validly excludes themselves from the Settlement.

1.25 "Settlement" means the terms set forth in this Stipulation.

1.26 "Settlement Amount" means the sum of \$15,978,202.50 to be deposited into an Escrow Account pursuant to ¶3.1. The Settlement Amount also includes the Expense and Cost Waiver.

1.27 "Settlement Fairness Hearing" means the hearing scheduled by the Court to determine whether (i) the Settlement is fair, reasonable, and adequate, (ii) the Plan of Allocation is fair, reasonable, and adequate, and (iii) Class Counsel's request for an award of attorneys' fees and expenses, including awards to Plaintiffs, is reasonable.

1.28 "Settlement Fund" means the Settlement Amount plus any interest or income earned thereon.

1.29 "Settlement Payment Recipients" means all Eligible Beneficial Owners and all Eligible Record Holders.

1.30 "Summary Notice" means the summary notice of proposed Settlement and hearing for publication, substantially in the form attached hereto as Exhibit A-2 to Exhibit A.

1.31 "Unknown Claims" means (i) any and all claims and potential claims against the Released Parties which Plaintiffs or any Settlement Class Member do not know or suspect to exist

1 in their, his, her, or its favor as of the Effective Date of Settlement including, without limitation,  
2 those that, if known by such Plaintiff or Class Member, might have affected his, her, or its  
3 decision(s) with respect to the Settlement or the releases, including his, her, or its decision(s) to  
4 object or not to object to the Settlement or to exclude himself, herself, or itself from the Class, and  
5 (ii) any claims against Plaintiffs, Settlement Class Members, or Plaintiffs' Counsel which  
6 Defendants do not know or suspect to exist in their favor, which if known by any of them, might  
7 have affected their, his, her, or its decision(s) with respect to the Settlement. With respect to any  
8 and all Released Claims and Released Defendants' Claims, the Parties stipulate and agree that by  
9 operation of the Final Judgment, upon the Effective Date of Settlement, Plaintiffs and Defendants  
10 shall have expressly waived, and each Settlement Class Member shall be deemed to have waived,  
11 and by operation of the Final Judgment shall have expressly waived, the provisions, rights, and  
12 benefits of Cal. Civ. Code § 1542, which provides:

13 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE**  
14 **CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT**  
15 **TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE**  
16 **RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE**  
**MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE**  
**DEBTOR OR RELEASED PARTY;**

17 and any and all provisions, rights, and benefits conferred by any law of any state or territory of the  
18 United States, or principle of common law, which is similar, comparable, or equivalent to Cal.  
19 Civ. Code § 1542. Plaintiffs, Settlement Class Members, and Defendants may hereafter discover  
20 facts in addition to or different from those which he, she, or it now knows or believes to be true  
21 with respect to the subject matter of the Released Claims and the Released Defendants' Claims,  
22 but Plaintiffs and Defendants shall expressly fully, finally, and forever settle and release, and each  
23 Settlement Class Member, upon the Effective Date of Settlement, shall be deemed to have, and by  
24 operation of the Final Judgment shall have, fully, finally, and forever settled and released, any and  
25 all Released Claims and Released Defendants' Claims, known or unknown, suspected or  
26 unsuspected, contingent or non-contingent, disclosed or undisclosed, matured or unmatured,  
27 whether or not concealed or hidden, which now exist, or heretofore have existed, upon any theory  
28 of law or equity now existing or coming into existence in the future, including, but not limited to,

1 conduct which is negligent, intentional, with or without malice, or a breach of any duty, law, or  
2 rule, without regard to the subsequent discovery or existence of such different or additional facts.  
3 Plaintiffs and Defendants acknowledge, and Settlement Class Members shall be deemed to have  
4 acknowledged, that the inclusion of "Unknown Claims" in the definition of Released Claims and  
5 Released Defendants' Claims was separately bargained for and is an essential element of the  
6 Settlement of which these releases are a part.

7 **2. Scope and Effect of Settlement**

8 2.1 The obligations incurred pursuant to this Stipulation shall be in full and final  
9 disposition of: (i) this Action against Defendants; (ii) any and all Released Claims as against all  
10 Released Parties; and (iii) any and all Released Defendants' Claims.

11 2.2 (a) Upon the Effective Date of this Settlement, Plaintiffs and each and every  
12 Settlement Class Member and each and all of their each and all of their respective parent entities,  
13 associates, affiliates or subsidiaries, legal representatives, heirs, executors, administrators,  
14 predecessors, successors, predecessors-in-interest, successors-in-interest and assigns and all  
15 present or former officers, directors, employees, employers, attorneys, accountants, financial  
16 advisors of any of the foregoing persons, shall be deemed to have, and by operation of the Final  
17 Judgment shall have, fully, finally, and forever waived, released, compromised, settled, resolved,  
18 relinquished, and discharged all Released Claims against the Released Parties.

19 (b) Upon the Effective Date of this Settlement, Plaintiffs and each and every Settlement  
20 Class Member, and each and all of their respective parent entities, associates, affiliates or  
21 subsidiaries, legal representatives, heirs, executors, administrators, predecessors, successors,  
22 predecessors-in-interest, successors-in-interest and assigns and all present or former officers,  
23 directors, employees, employers, attorneys, accountants, financial advisors of any of the foregoing  
24 persons, will be permanently and forever barred, estopped, and enjoined from commencing,  
25 instituting, prosecuting, or continuing to prosecute any action or other proceeding in any court of  
26 law or equity, arbitration tribunal, administrative forum, or any other forum asserting the Released  
27 Claims against the Released Parties.

1 (c) Upon the Effective Date of this Settlement, each of the Released Parties shall be  
2 deemed to have, and by operation of the Final Judgment shall have, fully, finally, and forever  
3 released and discharged Plaintiffs, Plaintiffs' Counsel, and each and all of the Settlement Class  
4 Members from each and every one of the Released Defendants' Claims.

5 (d) The releases provided in this Stipulation shall become effective immediately upon  
6 the occurrence of the Effective Date of Settlement without the need for any further action, notice,  
7 condition, or event.

### 8 3. The Settlement Consideration

9 3.1 In consideration of the full and final settlement of all Released Claims asserted or  
10 that could have been asserted by any of the Plaintiffs or Settlement Class Members as against  
11 Defendants or any of the Released Parties, Scotts Miracle-Gro has agreed to deposit or cause to be  
12 deposited the Settlement Amount in the Escrow Account within ten (10) business days of the  
13 Court's Preliminary Approval Order. No other Defendant shall pay, or be liable to pay, any part  
14 of the Settlement Amount. If the entire Settlement Amount is not timely paid to the Escrow  
15 Account, Plaintiffs may terminate the Settlement but only if (a) Class Counsel has notified  
16 Defendants' Counsel in writing of Class Counsel's intention to terminate the Settlement; and (b)  
17 the entire Settlement Amount is not transferred to the Escrow Account within five (5) calendar  
18 days after Class Counsel has provided such written notice. Class Counsel shall provide  
19 Defendants' Counsel with all necessary information for payment by wire transfer or check,  
20 including a W-9, within ten (10) calendar days of execution of the Stipulation. In no event shall  
21 Plaintiffs attempt to terminate, or otherwise be entitled to terminate, the Settlement due to delays  
22 in depositing the Settlement Amount in the Escrow Account caused by incorrect or inadequate  
23 wire transfer information or instructions.

24 3.2 The Parties agree that the Settlement Fund is intended to be a Qualified Settlement  
25 Fund within the meaning of Treasury Regulation § 1.468B-1. The Settlement Fund, less any  
26 amounts incurred for Notice, administration, and/or Taxes (as defined below), plus any accrued  
27 interest thereon, shall revert to the Person(s) making the deposits if the Settlement does not become  
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1 effective for any reason, including by reason of a termination of the Settlement pursuant to ¶¶  
2 10.3–10.4 herein. The Settlement Fund includes any interest earned thereon.

3       3.3     Plaintiffs and Settlement Class Members shall look solely to the Settlement Fund  
4 as satisfaction of all claims that are released hereunder. Defendants shall have no obligation under  
5 this Stipulation or the Settlement to pay any additional amounts, and upon payment of the  
6 Settlement Amount set forth in ¶ 3.1, Defendants shall have no other obligation to pay, advance,  
7 fund, contribute, or reimburse any fees, expenses, costs, liability, or damages whatsoever alleged  
8 or incurred by Plaintiffs, by any Class Member, or by any of their attorneys, experts, advisors,  
9 agents, or representatives with respect to this Action, this Settlement, or Released Claims. Any  
10 award made by the Court pursuant to the Fee and Expense Application referred to in ¶ 5.1 hereof  
11 shall be paid exclusively from the Settlement Fund; any agreement between or among Plaintiffs’  
12 Counsel to divide fees, expenses, costs, or interest shall be between or among such Plaintiffs’  
13 Counsel only; and Defendants shall have no obligation, rights, liability, or responsibility with  
14 respect to any allocation between or among Plaintiffs’ Counsel, or with respect to any payment to  
15 any Plaintiffs’ Counsel, of any fees, expenses, costs, or interest, except in the event that the return  
16 of the Settlement Fund is required, consistent with the provisions of ¶¶ 10.3–10.4 herein. Plaintiffs  
17 and Settlement Class Members acknowledge that as of the Effective Date of Settlement, the  
18 releases given herein shall become effective immediately by operation of the Final Judgment and  
19 shall be permanent, absolute, and unconditional.

20       3.4     The Settlement Fund, net of any Taxes (as defined below), shall be used to pay: (i)  
21 the Notice and administration costs, fees, and expenses of the Settlement referred to in ¶ 4.2 hereof;  
22 (ii) any award made by the Court pursuant to the Fee and Expense Application referred to in ¶ 5.1  
23 hereof; and (iii) the remaining administration expenses, fees, and costs referred to in ¶4.2 hereof  
24 and any other costs, fees, payments, or awards subsequently approved by the Court. The balance  
25 of the Settlement Fund after the above payments shall be the Net Settlement Fund, which shall be  
26 distributed to the Settlement Payment Recipients as provided in ¶¶ 6.1–6.3 hereof. Any portions  
27 of the Settlement Fund required to be held in escrow prior to the Effective Date of Settlement shall  
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1 be held by the Escrow Agent for the Settlement Fund. The Settlement Fund held by the Escrow  
2 Agent shall be deemed to be in the custody of the Court and shall remain subject to the jurisdiction  
3 of the Court until such time as the Net Settlement Fund shall be distributed to Settlement Payment  
4 Recipients, or returned to Defendants pursuant to this Stipulation and/or further order of the Court.  
5 The Escrow Agent shall not disburse the Settlement Fund, or any portion thereof, except as  
6 provided in this Stipulation, or upon order of the Court. The Escrow Agent shall be responsible  
7 for investing the Settlement Fund in eligible investments, meaning obligations issued or  
8 guaranteed by the United States of America or any agency or instrumentality thereof, backed by  
9 the full faith and credit of the United States, or fully insured by the United States Government or  
10 an agency thereof, and the Escrow Agent shall reinvest the proceeds of these obligations or  
11 instruments as they mature in similar instruments at their then-current market rates. All risks  
12 related to the investment of the Settlement Fund in accordance with the investment guidelines set  
13 forth in this Paragraph shall be borne by the Settlement Fund and in no case by any Defendant or  
14 any of their Released Parties.

15 3.5 For the purpose of § 1.468B of the Internal Revenue Code and the Treasury  
16 regulations thereunder, the Escrow Agent shall be designated as the “administrator” of the  
17 Settlement Fund. The Escrow Agent shall timely and properly file all informational and other tax  
18 returns necessary or advisable with respect to the Settlement Fund (including, without limitation,  
19 the returns described in Treas. Reg. § 1.468B- 2(k)). Such returns (as well as the election described  
20 below) shall be consistent with this Paragraph and in all events shall reflect that all Taxes (as  
21 defined below, and including any estimated Taxes, interest, or penalties) on the income earned by  
22 the Settlement Fund shall be paid out of the Settlement Fund as provided herein.

23 3.6 All: (i) taxes (including any estimated taxes, interest, or penalties) arising with  
24 respect to the income earned by the Settlement Fund, including any taxes or tax detriments that  
25 may be imposed upon Defendants or their Related Parties with respect to any income earned by  
26 the Settlement Fund for any period during which the Settlement Fund does not qualify as a  
27 “Qualified Settlement Fund” for federal or state income tax purposes; and (ii) all other tax expenses  
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1 incurred in the operation of and implementation of this Paragraph, including, without limitation,  
2 expenses of tax attorneys and/or accountants and mailing and distribution expenses related to filing  
3 or failing to file the returns described in this Paragraph (collectively, "Taxes") shall promptly be  
4 paid out of the Settlement Fund by the Escrow Agent without further order from the Court. The  
5 Escrow Agent shall also be obligated to, and shall be responsible for, withholding from distribution  
6 to Settlement Class Members any funds necessary to pay such amounts, including the  
7 establishment of adequate reserves for any Taxes. The Parties agree to cooperate with the Escrow  
8 Agent, each other, and their tax attorneys and accountants to the extent reasonably necessary to  
9 carry out the provisions of this Paragraph.

10       3.7 Except to the extent Class Counsel are acting in their capacity as Escrow Agent,  
11 neither the Parties nor their counsel shall have any responsibility for or liability whatsoever with  
12 respect to: (i) any act, omission, or determination of the Escrow Agent or the Administrator, or  
13 any of their respective designees or agents, in connection with the administration of the Settlement  
14 Fund or otherwise; (ii) the Plan of Allocation; (iii) the determination, administration, calculation,  
15 or payment of any claims asserted against the Settlement Fund; or (iv) the payment or withholding  
16 of any Taxes, expenses, and/or costs incurred in connection with the taxation of the Settlement  
17 Fund or the filing of any returns. For avoidance of doubt, Defendants, Defendants' Counsel, and  
18 their other Released Parties shall have no responsibility for or liability whatsoever with respect to:  
19 (i) any act, omission, or determination of the Escrow Agent or the Administrator, or any of their  
20 respective designees or agents, in connection with the administration of the Settlement Fund or  
21 otherwise; (ii) the Plan of Allocation; (iii) the determination, administration, calculation, or  
22 payment of any claims asserted against the Settlement Fund; or (iv) the payment or withholding  
23 of any Taxes, expenses, and/or costs incurred in connection with the taxation of the Settlement  
24 Fund or the filing of any returns. Defendants, Defendants' Counsel, and their other Released  
25 Parties shall be indemnified and held harmless by the Escrow Agent, through the Settlement Fund,  
26 for Taxes and tax expenses (including, without limitation, Taxes payable by reason of any such  
27 indemnification).

1           **4.     Administration**

2           4.1     The Administrator shall administer and calculate the claims that shall be allowed  
3 and oversee distribution of the Net Settlement Fund pursuant to the Court's Orders and subject to  
4 such supervision of Class Counsel and/or the Court as the circumstances may require. The  
5 Administrator agrees to be subject to the jurisdiction of the Court with respect to the administration  
6 of the Settlement and the distribution of the Net Settlement Fund pursuant to the terms of this  
7 Stipulation. Defendants, Defendants' Counsel, and their other Released Parties shall have no role  
8 in, or responsibility for, the administration of the Settlement and shall have no liability to the  
9 Administrator, Escrow Agent, Plaintiffs, the Class, or any other Person in connection with, as a  
10 result of, or arising out of, such administration. The Administrator will not make any distributions  
11 to Settlement Class Members from the Net Settlement Fund until the Judgment becomes Final and  
12 all the conditions to the Effective Date of Settlement, described in ¶ 10.1 herein, have been  
13 satisfied.

14           4.2     Prior to the Effective Date of Settlement, Class Counsel may pay from the  
15 Settlement Fund, without further approval from the Court, the reasonable costs and expenses up  
16 to the sum of \$150,000.00 associated with Notice to the Class and the administration of the  
17 Settlement, including, without limitation, the actual costs of Notice and the administrative  
18 expenses incurred and fees charged by the Administrator in connection with providing Notice and  
19 processing the submitted claims. Prior to the Effective Date of Settlement, all costs and expenses  
20 incurred in connection with the administration of the Settlement in excess of \$150,000.00 shall be  
21 paid from the Settlement Fund subject to approval from the Court. After the Effective Date of  
22 Settlement, all costs and expenses incurred and fees charged by the Administrator in connection  
23 with the administration of the Settlement shall be paid from the Settlement Fund without further  
24 approval from the Court.

25           4.3     It shall be the Administrator's sole responsibility to disseminate the Notice and  
26 Summary Notice to the Class in accordance with this Stipulation and as ordered by the Court.  
27 Class Members shall have no recourse against Plaintiffs or Plaintiffs' Counsel with respect to any  
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1 claims they may have that arise from any failure of the Notice process.

2 4.4 Defendants, Defendants' Counsel, and their Released Parties bear any cost,  
3 responsibility, or liability for class Notice, administration, the review of claims of Class Members,  
4 or the allocation or distribution of the Settlement Fund.

5 **5. Fee and Expense Application**

6 5.1 Class Counsel will submit an application ("Fee and Expense Application") to the  
7 Court for an award from the Settlement Fund of: (i) attorneys' fees in the amount of 33 1/3% of  
8 the Settlement Fund; (ii) the reimbursement of litigation expenses incurred in connection with the  
9 prosecution of the Action in an amount not to exceed \$850,000; (iii) interest on such fees and  
10 expenses at the same rate and period as earned on the Settlement Fund (until paid); and (iv) a  
11 service award to Plaintiffs, not to exceed \$20,000 per plaintiff, in connection with their  
12 representation of the Class. Defendants shall not oppose or take a position on the application for  
13 such amounts.

14 5.2 Attorneys' fees, expenses, service awards, and interest as are awarded by the Court  
15 shall be paid solely from the Settlement Fund to Class Counsel immediately upon entry by the  
16 Court of an order awarding such amounts, notwithstanding the existence of any timely filed  
17 objections thereto, or potential for appeal therefrom, or collateral attack on the Settlement or any  
18 part thereof. Class Counsel, in their sole and exclusive discretion, may thereafter allocate such  
19 fees among Plaintiffs' Counsel based on Class Counsel's good faith judgment concerning  
20 counsel's contributions to the initiation, prosecution, and resolution of the Action and the results  
21 achieved, subject to each Plaintiffs' Counsel's (including their respective partners, shareholders,  
22 and/or firms) several obligations to repay the amounts they received to the Settlement Fund, if as  
23 a result of any appeal and/or further proceedings on remand, successful collateral attack, or if any  
24 of the conditions to the Effective Date of Settlement, described in ¶ 10.1 herein, fail to occur, the  
25 Fee and Expense Award is reduced or reversed or return of the Settlement Fund is required  
26 consistent with the provisions of ¶ 10.5 hereof. In such event, Plaintiffs' Counsel shall, within  
27 twenty-five (25) business days from the event which requires repayment of any or all of the Fee  
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1 and Expense Award, refund to the Settlement Fund the Fee and Expense Award paid to them,  
2 along with interest, as described above.

3 5.3 Furthermore, all Plaintiffs' Counsel (including their respective partners,  
4 shareholders, and/or firms) agree that they remain subject to the continuing jurisdiction of the  
5 Court for the purpose of enforcing their obligation to repay required attorneys' fees and expenses  
6 to the Settlement Fund as provided in this Stipulation.

7 5.4 This Settlement is not contingent on the allowance or disallowance by the Court of  
8 the Fee and Expense Application or any minimum or specific amount of attorneys' fees, litigation  
9 expenses, or awards to Plaintiffs. Notwithstanding any other provision of this Stipulation to the  
10 contrary, the Fee and Expense Application, which, if any such fees and expenses are awarded,  
11 must be paid solely out of the Settlement Fund under the terms of this Stipulation, shall be  
12 considered by the Court separate and apart from its consideration of the fairness, reasonableness,  
13 and adequacy of the Settlement, and any order or proceeding pertaining solely to the Fee and  
14 Expense Application, or any appeal of any order pertaining solely thereto or reversal or  
15 modification thereof, shall not operate to, or be grounds to, terminate or cancel this Stipulation or  
16 the Settlement of the Action, or affect or delay the finality of the Judgment approving this  
17 Settlement.

18 5.5 Beyond the obligation of Scotts Miracle-Gro to deposit or cause to be deposited the  
19 Settlement Amount in the Escrow Account, Defendants and the Released Parties shall have no  
20 responsibility for, and no liability whatsoever with respect to, any payment to Plaintiffs' Counsel  
21 and/or any other Person who receives payment from the Settlement Fund or claims entitlement to  
22 such payment.

23 5.6 Defendants and the Released Parties shall have no responsibility for, and no liability  
24 whatsoever with respect to, the allocation among Plaintiffs' Counsel and/or any Person who may  
25 assert some claim thereto, of any Fee and Expense Award that the Court may order in the Action.

26 5.7 Plaintiffs may submit an application for a service award in connection with their  
27 representation of the Class. Any awards or expenses to Plaintiffs shall be paid solely from the  
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1 Settlement Fund immediately upon entry by the Court of an order awarding such amounts,  
2 notwithstanding the existence of any timely filed objections thereto, or potential for appeal  
3 therefrom, or collateral attack on the Settlement or any part thereof. However, in the event that  
4 the Effective Date of Settlement does not occur, or the Judgment or the order approving Plaintiffs'  
5 application for a service award is reversed or modified, or the Stipulation is canceled or terminated  
6 for any other reason, and such reversal, modification, cancellation, or termination becomes Final  
7 and not subject to review, then Plaintiffs shall, within twenty-five (25) business days from  
8 receiving notice of such an occurrence, refund to the Settlement Fund such amounts previously  
9 paid to them from the Settlement Fund in an amount consistent with such reversal or modification,  
10 along with interest.

11 **6. Distribution to Settlement Payment Recipients**

12 6.1 The Administrator shall determine each Settlement Payment Recipient's pro rata  
13 share of the Net Settlement Fund as defined in the Plan of Allocation described in the Notice  
14 annexed hereto as Exhibit A-1 to Exhibit A, or in such other Plan of Allocation as the Court  
15 approves.

16 6.2 The Plan of Allocation set forth in the Notice is not a necessary term of this  
17 Stipulation and it is not a condition of this Stipulation that any particular Plan of Allocation be  
18 approved. The Released Parties will take no position with respect to the proposed Plan of  
19 Allocation or such Plan of Allocation as may be approved by the Court. The Plan of Allocation is  
20 a matter separate and apart from the Settlement between the Parties and any decision by the Court  
21 concerning the Plan of Allocation shall not affect the validity or finality of the proposed Settlement.

22 6.3 The Settlement is non-recapture, *i.e.*, it is not a claims-made settlement. Defendants  
23 shall not be entitled to get back any portion of the Settlement Amount, or interest earned thereon,  
24 once the Judgment becomes Final and all the conditions to the Effective Date of Settlement set  
25 forth in ¶ 10.1 herein have been satisfied. The Released Parties shall have no involvement in and  
26 shall have no responsibility or liability for determining the allocation of any payments to any  
27 Settlement Class Members or for any other matters pertaining to the Plan of Allocation.  
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1           **7.       Administration of the Settlement**

2           7.1       As soon as practicable after the Effective Date of Settlement, the Administrator  
3 shall distribute the Net Settlement Fund to the Settlement Payment Recipients as set forth in this  
4 Section 7.1 or as otherwise approved by the Court. To facilitate such distribution, within 10  
5 calendar days of the date of the signing of this Stipulation, Defendants or their agents shall request  
6 a Securities Position Report (“SPR”) from Cede & Co as of Feb. 23, 2021 (or the date the DTC  
7 provided payment) for AeroGrow stock. If Defendants cannot provide a copy of the SPR, then the  
8 Administrator shall promptly, and no later than 20 calendar days after execution of this Stipulation,  
9 obtain from DTC a copy of the allocation report or any similar document or data used by DTC to  
10 distribute the Merger consideration and any additional information necessary to identify all DTC  
11 Participants who received the Merger consideration in exchange for AeroGrow common stock in  
12 connection with the Merger, the number of shares as to which each DTC Participant received  
13 payment (and/or the amount of consideration each DTC Participant received), and the correct  
14 address or other contact information used to communicate with the appropriate representatives of  
15 each DTC Participant that received the Merger consideration (collectively, the “DTC  
16 Information”). Defendants’ Counsel shall make commercially reasonable efforts to cooperate with  
17 Plaintiffs’ Counsel and the Administrator as reasonably necessary to cause DTC to provide the  
18 DTC Information. Defendants shall also, within twenty (20) days of the execution of this  
19 Stipulation of Settlement, provide Class Counsel and the Administrator with a copy of AeroGrow’s  
20 list of stockholders of record used by AeroGrow or Scotts Miracle-Gro to distribute the Merger  
21 consideration and any additional information necessary to identify all record holders of AeroGrow  
22 common stock who received the Merger consideration in exchange for AeroGrow common stock  
23 in connection with the Merger, the number of shares as to which each record holder received  
24 payment (and/or the amount of consideration each record holder received), and the address or other  
25 contact information used to communicate with the appropriate representatives of each record  
26 holder that received the Merger consideration (collectively, the “Record Holder Information”).

27           7.2       The Net Settlement Fund will be allocated and distributed on a per share basis  
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1 among the Settlement Payment Recipients (the "Initial Distribution"). Each Settlement Payment  
2 Recipient will receive a pro rata payment from the Net Settlement Fund equal to the product of (i)  
3 the number of "Eligible Shares" held by the Settlement Payment Recipient, where Eligible Shares  
4 are shares held by the Settlement Payment Recipient at closing and for which the Settlement  
5 Payment Recipient received the Merger consideration, and (ii) the "Per-Share Recovery" for the  
6 Settlement, which will be determined by dividing the total amount of the Net Settlement Fund by  
7 the total number of Eligible Shares. For the avoidance of doubt, the Net Settlement Fund will be  
8 paid to the Settlement Payment Recipients.

9       7.3 With respect to AeroGrow common stock held of record at the closing by DTC  
10 through its nominee Cede, provided that the Administrator first receives the necessary DTC  
11 Information, the Administrator shall cause the relevant portion of the Net Settlement Fund to be  
12 allocated to Eligible Beneficial Owners who held their shares through DTC Participants by first  
13 distributing that portion of the Net Settlement Fund among the DTC Participants by paying each  
14 DTC Participant the Per-Share Recovery times its respective Closing Security Position (as defined  
15 below). For each DTC Participant, the "Closing Security Position" means the number of shares  
16 of AeroGrow common stock reflected on the DTC allocation report used by DTC to pay the Merger  
17 consideration, less any shares that were held by an Excluded Person at the time of the Acquisition.  
18 The Administrator shall further take all appropriate steps to instruct DTC Participants to distribute  
19 the portion of the Net Settlement Fund that they receive to the Eligible Beneficial Holders on a pro  
20 rata basis in accordance with each Eligible Beneficial Owner's "Closing Beneficial Ownership  
21 Position," which means, for each Eligible Beneficial Owner, the number of shares of AeroGrow  
22 common stock beneficially owned by such Eligible Beneficial Owner as of closing, for which the  
23 Eligible Beneficial Owner received payment of the Merger consideration, in a similar manner to  
24 that in which the DTC Participants were paid the Merger consideration in connection with the  
25 Merger. Defendants and Scotts Miracle-Gro shall cooperate with Plaintiffs' Counsel and the  
26 Administrator to provide information as to themselves and make reasonable efforts to obtain  
27 information from the other Excluded Persons and, as applicable, the relevant DTC Participants in  
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1 order to ensure that no portion of the Net Settlement Fund is distributed to any Excluded Person,  
2 including information sufficient (a) to identify the number of shares of AeroGrow common stock  
3 beneficially owned by each Excluded Person as of closing, (b) to identify the DTC Participant or  
4 non-Cede record holder through which such shares were held as of closing, and (c) to enable any  
5 relevant DTC Participant to identify and exclude from payment all shares of AeroGrow common  
6 stock beneficially owned by each Excluded Person as of closing (collectively, the “Excluded  
7 Person Information”).

8       7.4 With respect to AeroGrow common stock held of record at the closing of the  
9 Merger other than by Cede, as nominee for DTC (a “Closing Non-Cede Record Position”),  
10 provided that the Administrator first receives the necessary Record Holder Information, the  
11 Administrator will distribute the pro rata amount of the Net Settlement Fund attributable to the  
12 Eligible Record Holders by paying directly to each Eligible Record Holder an amount equal to the  
13 Per-Share Recovery times the number of shares of AeroGrow common stock comprising such  
14 Closing Non-Cede Record Position.

15       7.5 Payment pursuant to the Plan of Allocation or other such plan of allocation as may  
16 be approved by the Court shall be final and conclusive against all Settlement Class Members. All  
17 Settlement Class Members shall be subject to and bound by the provisions of the Stipulation, the  
18 releases contained herein, and the Final Judgment, and shall be deemed to have submitted to the  
19 jurisdiction of the Court, including, but not limited to, all releases provided for herein and in the  
20 Judgment.

21       7.6 No Person shall have any claim against the Released Parties, Defendants’ Counsel,  
22 Plaintiffs, Plaintiffs’ Counsel, or the Administrator, or any other Person designated by Class  
23 Counsel based on determinations or distributions made substantially in accordance with this  
24 Stipulation and the Settlement contained herein, the Plan of Allocation, or further order(s) of the  
25 Court.

26       7.7 The Net Settlement Fund shall be distributed to Settlement Payment Recipients  
27 substantially in accordance with the Plan of Allocation described in the Notice and approved by  
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1 the Court. If there is any balance remaining in the Net Settlement Fund six (6) months after the  
2 Initial Distribution of the Net Settlement Fund (whether by reason of tax refunds, uncashed checks,  
3 amounts returned by Excluded Persons who erroneously receive settlement payments, or  
4 otherwise), the Administrator shall, if feasible, distribute such balance among the Settlement  
5 Payment Recipients who received and deposited the Initial Distribution, in the same manner as the  
6 Initial Distribution. If the cost of making such a further distribution or distributions is  
7 unreasonably high, any balance that still remains in the Net Settlement Fund shall be donated to  
8 the Legal Aid Center of Southern Nevada or such other entity proposed by Class Counsel and  
9 approved by the Court.

10 7.8 Except for Scotts Miracle-Gro's obligation to pay the Settlement Amount,  
11 Defendants, Defendants' Counsel, and their other Released Parties shall have no liability,  
12 obligation, or responsibility whatsoever for the administration of the Settlement or disbursement  
13 of the Settlement Fund or the Net Settlement Fund. Class Counsel shall have the right, but not the  
14 obligation, to advise the Administrator to waive what Class Counsel reasonably deems to be formal  
15 or technical defects with respect to any disputes that may arise as to whether any Settlement Class  
16 Member is entitled to payment from the Net Settlement Fund, in the interests of achieving  
17 substantial justice.

18 7.9 All proceedings with respect to the administration, processing, and determination  
19 of claims and the determination of all controversies relating thereto, including disputed questions  
20 of law and fact with respect to the validity of claims, shall be subject to the jurisdiction of the  
21 Court.

22 7.10 The Net Settlement Fund shall be distributed by the Administrator to, or for the  
23 account of, Settlement Payment Recipients, as the case may be, only after the Effective Date of  
24 Settlement and after all matters with respect to the Fee and Expense Application have been  
25 resolved by the Court, all appeals therefrom have been resolved, or the time therefor has expired.

26 **8. Terms of Preliminary Approval Order**

27 8.1 Promptly after this Stipulation has been fully executed, Class Counsel shall apply  
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1 to the Court by motion on notice for entry of the Preliminary Approval Order, substantially in the  
2 form annexed hereto as Exhibit A. Class Counsel and Defendants' Counsel shall jointly request  
3 that the postmark deadline for objecting to or submitting exclusions from this Settlement be set at  
4 least sixty (60) calendar days after the date for the initial mailing of the Notice as set forth in the  
5 Preliminary Approval Order. Upon receiving any request(s) for exclusion ("Request for  
6 Exclusion"), the Administrator shall promptly notify Class Counsel and Defendants' Counsel of  
7 such Requests for Exclusion.

8 8.2 Any Class Member who wishes to opt out of the Class must submit a timely written  
9 Request for Exclusion on or before the opt-out date, in the manner specified in the Court's  
10 Preliminary Approval Order. A Request for Exclusion is valid only if it is signed by the Class  
11 Member or Class Members requesting exclusion in that request, states the number of AeroGrow  
12 shares held as of the Effective Date of the Merger, states the name and address of the brokerage  
13 firm where the shares were held as of the Effective Date of the Merger, and contains proof of  
14 ownership of AeroGrow stock as of the Effective Date of the Merger. Any Class Member who  
15 does not submit a timely and valid written Request for Exclusion will be bound by all proceedings,  
16 orders, and judgments in the Action.

17 **9. Terms of Judgment**

18 9.1 If the Settlement contemplated by this Stipulation is approved by the Court, Class  
19 Counsel shall request that the Court enter a Judgment, substantially in the form annexed hereto as  
20 Exhibit B.

21 **10. Effective Date of Settlement, Waiver, or Termination**

22 10.1 The Effective Date of Settlement shall be the date when all the following shall have  
23 occurred:

- 24 (a) the Court has entered the Preliminary Approval Order substantially in the  
25 form annexed hereto as Exhibit A;  
26 (b) the Settlement Amount has been deposited into the Escrow Account  
27 pursuant to ¶ 3.1;  
28

1 (c) Defendants have not exercised their option to terminate this Settlement  
2 pursuant to ¶ 10.4;

3 (d) final approval by the Court of the Settlement, following Notice to the Class;

4 (e) entry by the Court of a Judgment, or a judgment substantially in the form of  
5 Exhibit B annexed hereto, that has become Final.

6 10.2 [Intentionally left blank].

7 10.3 Plaintiffs, through Class Counsel, and each of the Defendants, through their  
8 respective counsel, shall, in each of their separate discretions, but in all events subject to ¶ 12.14  
9 herein, have the right to terminate the Settlement and this Stipulation, as to themselves, by  
10 providing written notice of their election to do so ("Termination Notice") to all other Parties hereto  
11 within twenty (20) business days of: (a) the Court's refusal to enter the Preliminary Approval  
12 Order substantially in the form of Exhibit A annexed hereto, whether or not the Court's refusal is  
13 in an appealable order; (b) the Court's refusal to approve this Stipulation or any material part of it  
14 (except as to any decision by the Court concerning any Fee and Expense Award); (c) the Court's  
15 refusal to enter the Judgment in substantially the form attached hereto as Exhibit B or the date on  
16 which any court of appeal affirms, or does not reverse, any appealable refusal by the Court to enter  
17 the Judgment in substantially the form attached hereto as Exhibit B; (d) the date on which the  
18 Judgment is modified or reversed by a court of appeal or any higher court in any material respect  
19 (except to the extent that the only modification or reversal pertains solely to the Fee and Expense  
20 Award); or (e) in the event that the Court enters an order giving preliminary approval that is not  
21 substantially in the form of Exhibit A annexed hereto or enters a judgment in a form that is not  
22 substantially in the form attached hereto as Exhibit B, and none of the Parties elects to terminate  
23 this Settlement, the date that such order or judgment is modified or reversed by a court of appeal  
24 or any higher court in any material respect.

25 10.4 As set forth in a separate agreement ("Supplemental Agreement") executed  
26 between Plaintiffs and Defendants, by and through their undersigned counsel, Scotts Miracle-Gro  
27 may, in its sole and exclusive discretion, terminate the Settlement and render it null and void in  
28

1 the event that the number of Class Members who submit Requests for Exclusion from the  
2 Settlement Class exceeds a certain percentage set forth in the Supplemental Agreement. The  
3 Parties agree to maintain the confidentiality of the Supplemental Agreement. The Supplemental  
4 Agreement will not be filed with the Court unless required by the Court or Court rule or unless  
5 and until a dispute as between Plaintiffs and Defendants concerning its interpretation or application  
6 arises. If submission of the Supplemental Agreement is ordered by the Court or is necessary to  
7 resolve a dispute between Plaintiffs and Defendants, the Parties will seek to have the Supplemental  
8 Agreement submitted to the Court *in camera* or filed under seal, but such disclosure shall be carried  
9 out to the fullest extent possible in accordance with the practices of the Court so as to preserve the  
10 confidentiality of the Supplemental Agreement.

11           10.5 Except as otherwise provided herein, in the event the Settlement is terminated in  
12 accordance herewith, the Judgment is vacated, or the Effective Date of Settlement fails to occur  
13 for any reason, then the Parties shall be deemed to have reverted to their respective status in the  
14 Action immediately prior to the execution of this Stipulation, the fact and terms of the Settlement  
15 shall not be admissible, used, or referenced in any trial of the Action, and, except as otherwise  
16 expressly provided, the Parties shall proceed in all respects as if this Stipulation and any related  
17 orders had not been entered, and any portion of the Settlement Amount previously paid by or on  
18 behalf of Defendants, together with any interest earned thereon (and, if applicable, re-payment of  
19 any attorneys' fee and expense award referred to in ¶ 5.2 hereof), less any Taxes due, if any, with  
20 respect to such income, and less costs of administration and notice actually incurred and paid or  
21 payable from the Settlement Amount (not to exceed \$150,000.00 without the prior approval of the  
22 Court) shall be returned to the Scotts Miracle-Gro or another entity it designates in writing within  
23 twenty-five (25) business days from the date of the event causing such termination. No order of  
24 the Court or modification or reversal on appeal of any order of the Court concerning the Plan of  
25 Allocation or the amount of any attorneys' fees, costs, expenses, and interest awarded by the Court  
26 to Plaintiffs' Counsel or the amount of any award or expenses by the Court to Plaintiffs shall  
27 constitute grounds for termination of the Settlement.

1           **11. No Admission of Wrongdoing**

2           11.1 Defendants deny that they have committed any act or omission giving rise to any  
3 liability and/or violation of law, and the Settling Defendants state that they are entering into this  
4 Settlement to eliminate the burden and expense of further litigation.<sup>2</sup> This Stipulation, whether or  
5 not consummated, including any and all of its terms, provisions, exhibits, and prior drafts, and any  
6 negotiations or proceedings related or taken pursuant to it:

7           (a) Shall not be offered, construed as, or received as evidence of, or evidence  
8 supporting, a presumption, concession, or admission against Defendants or the Released Parties  
9 with respect to any liability, negligence, fault, or wrongdoing, or in any way referred to for any  
10 other reason as against Defendants, in any civil, criminal, or administrative action or proceeding,  
11 other than such proceedings as may be necessary to effectuate the provisions of this Stipulation;  
12 provided, however, that if this Stipulation is approved by the Court and becomes effective pursuant  
13 to its terms, Defendants may refer to it to effectuate the liability protection granted them hereunder,  
14 and nothing in this Settlement shall restrict the ability of any Party hereto to advocate in favor or  
15 against the applicability of any offset to any claims asserted in any other action based on any  
16 amount paid herein;

17           (b) Shall not be construed as or received in evidence as an admission, concession, or  
18 presumption against Plaintiffs or any of the Class Members that any of their claims are without  
19 merit, or that any defenses asserted by Defendants have any merit, or that damages recoverable  
20 under the Complaint in this Action or any subsequent operative complaint filed in this Action  
21 would not have exceeded the Settlement Fund; and

22           (c) Notwithstanding the foregoing, Defendants, Plaintiffs, Class Members, and/or the  
23 Released Parties may file the Stipulation and/or the Final Judgment in any action that may be  
24 brought against them in order to support a defense or counterclaim based on principles of res  
25 judicata, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other

26  
27           <sup>2</sup> The Court previously granted summary judgment in favor of Defendants H. MacGregor Clarke and David  
28 B. Kent. *See* Findings of Fact, Conclusions of Law, & Order Granting H. MacGregor Clarke & David B. Kent's Mot.  
for Summ. J., Mar. 17, 2025, on file.

theory of claim preclusion or issue preclusion or similar defense or counterclaim.

## **12. Miscellaneous Provisions**

12.1 All the exhibits attached hereto are material and integral parts hereof and are fully incorporated herein by this reference as though fully set forth herein.

12.2 The Parties intend the Settlement to be a final and complete resolution of all disputes asserted or which could be asserted by Plaintiffs and/or any Settlement Class Member against the Released Parties with respect to the Released Claims. Accordingly, Plaintiffs and Defendants agree not to assert in any forum that the Action was brought by Plaintiffs or defended by Defendants in bad faith or without a reasonable basis. The Parties further agree not to assert in any forum that any party violated Nevada Rule of Civil Procedure 11 relating to the prosecution, defense, or settlement of the Action. The Parties agree that the amount paid and the other terms of the Settlement were negotiated at arm's-length in good faith by the Parties, and reflect a settlement that was reached voluntarily after consultation with experienced legal counsel and assisted by an experienced mediator.

12.3 This Stipulation may not be modified or amended, nor may any of its provisions be waived, except by a writing signed by all Parties hereto.

12.4 The headings herein are used for the purpose of convenience only and are not meant to have legal effect.

12.5 The administration and consummation of the Settlement as embodied in this Stipulation shall be under the authority of the Court, and the Court shall retain jurisdiction for the purpose of entering orders relating to the Fee and Expense Application, the Plan of Allocation, and enforcing the terms of this Stipulation.

12.6 The waiver by one Party of any breach of this Stipulation by any other Party shall not be deemed a waiver of any other prior or subsequent breach of this Stipulation.

12.7 This Stipulation and its exhibits and the Supplemental Agreement constitute the entire agreement among the Parties hereto concerning the Settlement of the Action, and no representations, warranties, or inducements have been made by any Party hereto concerning this



1 Stipulation and its exhibits other than the representations, warranties, and covenants contained and  
2 memorialized in such documents.

3 12.8 This Stipulation may be executed in one or more counterparts, and the signatures  
4 may be by facsimile, or electronically. All executed counterparts and each of them shall be deemed  
5 to be one and the same instrument provided that counsel for the Parties shall exchange among  
6 themselves original signed counterparts.

7 12.9 This Stipulation shall be binding upon, and inure to the benefit of, the successors,  
8 assigns, executors, administrators, heirs, and legal representatives of the Parties hereto. No  
9 assignment shall relieve any Party hereto of obligations hereunder.

10 12.10 The construction, interpretation, operation, effect, and validity of this Stipulation,  
11 and all documents necessary to effectuate it, shall be governed by the laws of the State of Nevada,  
12 without regard to conflicts of laws, and in accordance with the laws of the United States.

13 12.11 This Stipulation shall not be construed more strictly against one Party than another  
14 merely by virtue of the fact that it, or any part of it, may have been prepared by counsel for one of  
15 the Parties, it being recognized that it is the result of arm's-length negotiations between the Parties  
16 and all Parties have contributed substantially and materially to the preparation of this Stipulation.

17 12.12 All counsel and any other Person executing this Stipulation and any of the exhibits  
18 hereto, or any related settlement documents, warrant and represent that they have the full authority  
19 to do so and that they have the authority to take appropriate action required or permitted to be  
20 taken pursuant to the Stipulation to effectuate its terms.

21 12.13 The Settlement contemplated herein is not subject to or contingent upon  
22 confirmatory discovery or other additional discovery beyond that already undertaken in the Action.

23 12.14 Plaintiffs' Counsel and Defendants' Counsel agree to cooperate reasonably with  
24 one another in seeking Court approval of the order for notice and hearing, the Stipulation, and the  
25 Settlement, and to promptly agree upon and execute all such other documentation as may be  
26 reasonably required to obtain final approval by the Court of the Settlement.

27 12.15 All agreements made and orders entered during the course of the Action relating to  
28

1 the confidentiality of information shall survive this Stipulation.

2 IN WITNESS WHEREOF, the Parties hereto have caused this Stipulation to be executed,  
3 by their duly authorized attorneys, dated December 10, 2025.

4 DATED: December 10, 2025

BOTTINI & BOTTINI, INC.

5   
6

7 Francis A. Bottini, Jr., Esq.  
8 Aaron Arnzen, Esq.  
9 7817 Ivanhoe Avenue, Suite 102  
10 La Jolla, California 92037  
11 Telephone: (858) 914-2001  
12 Email : fbottini@bottinilaw.com

*Class Counsel*

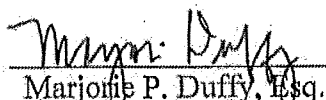
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*Liaison Counsel for Plaintiffs*

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24 845 Third Avenue, 12th Floor  
25 New York, NY 10022  
26 Telephone: (212) 759-4600  
27 Email: pavery@wolfdpopper.com  
28 *Counsel for Plaintiff Overbrook Capital LLC*

24 DATED: December 10, 2025

JONES DAY

25   
26 Marjorie P. Duffy, Esq.  
27  
28

1 Robert Watts, Esq.  
2 325 John H. McConnell Boulevard, Suite 600  
3 Columbus, OH 43215  
4 Telephone: (614) 469-3939  
5 Email: mpduffy@jonesday.com

*Counsel for the Settling Defendants*

DATED: December 10, 2025

PISANELLI BICE, PLLC



---

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Timothy R. Beyer (admitted *pro hac vice*)  
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*Counsel for H. MacGregor Clarke and David B.  
Kent*

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17 La Jolla, California 92037  
18 (P) (858) 914-2001 (F) (858) 914-2002

19 *Counsel for Plaintiffs*

20 **EIGHTH JUDICIAL DISTRICT COURT**  
21 **CLARK COUNTY, NEVADA**

22 OVERBROOK CAPITAL LLC, on Behalf  
23 of Itself and All Others Similarly Situated,  
24 Plaintiff,

25 vs.

26 AEROGROW INTERNATIONAL, INC.,  
27 CHRIS HAGEDORN, H. MACGREGOR  
28 CLARKE, DAVID B. KENT, CORY  
29 MILLER, PATRICIA M. ZIEGLER,  
30 SMG GROWING MEDIA, INC., and  
31 SCOTTS MIRACLE-GRO COMPANY,  
32 Defendants.

Case No. A-21-827665-B (Lead Case)  
Dep't. No. XIII

**[PROPOSED] ORDER PRELIMINARILY  
APPROVING SETTLEMENT AND  
PROVIDING FOR NOTICE**

**[EXHIBIT A]**

1 NICOYA CAPITAL LLC, on Behalf of  
2 Itself and All Others Similarly Situated,

3 Plaintiff,

4 vs.

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

9 - and -

10 AEROGROW INTERNATIONAL, INC.,  
11 a Nevada Corporation, AGI  
12 ACQUISITION SUB, INC., a Nevada  
13 Corporation, SMG GROWING MEDIA,  
14 INC., an Ohio Corporation, and SCOTTS  
15 MIRACLE-GRO COMPANY, an Ohio  
16 Corporation,

17 Defendants.  
18  
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28

Case No.: A-21-827745-B

1 WHEREAS, on December 10, 2025, the Parties to the above-entitled action ("Action")  
2 entered into a Stipulation and Agreement of Settlement ("Stipulation" or "Settlement"),<sup>1</sup> which is  
3 subject to review by this Court and which, together with the exhibits thereto, sets forth the terms  
4 and conditions for the Settlement of the claims alleged in the Action; and the Court having read  
5 and considered the Stipulation and the accompanying documents; and the Parties to the Stipulation  
6 having consented to the entry of this Preliminary Approval Order ("Order");

7 NOW, THEREFORE, IT IS HEREBY ORDERED, this \_\_\_\_ day of \_\_\_\_\_ 2025, that:

8 1. The Court preliminarily finds that:

9 (a) the Settlement resulted from informed, extensive arm's-length negotiations,  
10 including mediation among Plaintiffs and Defendants under the direction of a very experienced  
11 mediator, the Hon. Layn Phillips (Ret.) of Phillips ADR; and

12 (b) the Settlement is sufficiently fair, reasonable, and adequate to warrant  
13 providing notice of the Settlement to the Class.

14 2. A Settlement Fairness Hearing is hereby scheduled to be held on \_\_\_\_\_,  
15 2026 at 1:30 p.m., before the Hon. Mark R. Denton, Eighth Judicial District Court, Clark County,  
16 Nevada, Dept. 13, 200 Lewis Ave, Las Vegas, NV 89101, for the following purposes:

17 (a) to determine whether the proposed Settlement is fair, reasonable, and  
18 adequate, and should be approved by the Court;

19 (b) to determine whether the Judgment as provided under the Stipulation should  
20 be entered;

21 (c) to determine whether the proposed Plan of Allocation should be approved  
22 by the Court as fair, reasonable, and adequate;

23 (d) to consider Class Counsel's application for an award of attorneys' fees and  
24 expenses;

25 (e) to consider Plaintiffs' request for payment of services awards for their  
26 efforts in prosecuting this Action on behalf of the Class; and

27  
28 <sup>1</sup> All capitalized terms used herein have the meanings as defined in the Stipulation.

1 (f) to rule upon such other matters as the Court may deem appropriate.

2 3. The Court reserves the right to approve the Settlement with or without modification  
3 and with or without further notice to the Class and may adjourn the Settlement Fairness Hearing  
4 without further notice to the Class. The Court reserves the right to enter the Judgment approving  
5 the Stipulation regardless of whether it has approved the Plan of Allocation, Class Counsel's  
6 request for a Fee and Expense Award, and Plaintiffs' request for payment for their representation  
7 of the Class.

8 4. The Court approves the form, substance, and requirements of the Notice of  
9 Proposed Settlement of Class Action ("Notice") and the Summary Notice of Proposed Settlement  
10 of Class Action ("Summary Notice"), annexed hereto as Exhibits A-1 and A-2, respectively.

11 5. The Court approves the appointment of A.B. Data, Ltd. as the Administrator to  
12 supervise and administer the notice procedure in connection with the proposed Settlement as well  
13 as the processing of payments to Settlement Payment Recipients as more fully set forth below.

14 6. The Administrator shall cause the Notice, substantially in the form annexed hereto,  
15 to be mailed, by first-class mail, postage prepaid, within twenty-one (21) calendar days of this  
16 Order ("Notice Date") to all Class Members who can be identified with reasonable effort.

17 (a) The Administrator shall use reasonable efforts to give notice to nominee  
18 purchasers such as brokerage firms and other persons or entities who held AeroGrow common  
19 stock as of the Effective Date of the Merger, which was February 26, 2021, and had the right to  
20 receive the Merger consideration, as record owners but not as beneficial owners. Such nominee  
21 purchasers are directed, within fourteen (14) business days of their receipt of the Notice, to either  
22 forward copies of the Notice to their beneficial owners or to provide the Administrator with lists  
23 of the names and addresses of the beneficial owners, and the Administrator is ordered to send the  
24 Notice promptly to such identified beneficial owners. In addition, Settling Defendants or their  
25 agents shall provide Class Counsel and the Administrator with a Securities Position Report  
26 ("SPR") from Cede & Co as of Feb. 23, 2021 (or the date the DTC provided payment) for  
27 AeroGrow stock and/or shall cooperate with the Administrator as necessary to obtain a SPR and/or  
28

1 the DTC Information from Cede & Co. if Settling Defendants do not possess a copy of the SPR,  
2 and shall also provide Class Counsel and the Administrator with the Record Holder Information.

3 (b) Nominee purchasers who elect to send the Notice to their beneficial owners  
4 shall send a statement to the Administrator confirming that the mailing was made as directed.  
5 Additional copies of the Notice shall be made available to any record holder requesting such for  
6 the purpose of distribution to beneficial owners, and such record holders shall be reimbursed from  
7 the Settlement Fund, upon receipt by the Administrator of proper documentation, for the  
8 reasonable expense of sending the Notice to beneficial owners.

9 7. The Administrator shall cause the Summary Notice to be published once over a  
10 national newswire service, within twenty-one (21) calendar days of the date of this order.

11 8. Within fourteen (14) calendar days of the date of this order, the Administrator shall  
12 post the Stipulation, the joint motion for preliminary approval, this order, and the Notice on the  
13 [www.aerogrowshareholderlitigation.com](http://www.aerogrowshareholderlitigation.com) website.

14 9. Class Counsel shall, at least seven (7) calendar days before the Settlement Fairness  
15 Hearing, file with the Court and serve on the Parties proof of mailing of the Notice and proof of  
16 publication of the Summary Notice.

17 10. The form and content of the Notice and the Summary Notice, and the method set  
18 forth herein of notifying the Class of the Settlement and its terms and conditions, meet the  
19 requirements of Nevada law and due process, constitute the best notice practicable under the  
20 circumstances, and shall constitute due and sufficient notice to all persons and entities entitled  
21 thereto.

22 11. Class Members will not receive, and are not required to submit, a claim form in  
23 order to be eligible for payment of their pro rata share of the Net Settlement Fund. The Settlement  
24 is being administered as a direct pay Settlement.

25 12. Class Members shall be bound by all determinations and judgments in this Action,  
26 whether favorable or unfavorable, unless they request exclusion from the Settlement Class in a  
27 timely and proper manner, as hereinafter provided. A Class Member wishing to make such request  
28



1 shall, no later than sixty (60) calendar days after the Notice Date, mail a Request for Exclusion in  
2 written form by first-class mail postmarked to the address designated in the Notice. Such Request  
3 for Exclusion shall clearly indicate the name, address, and telephone number of the person seeking  
4 exclusion, that the sender requests to be excluded from the Class, contain documentary evidence  
5 such as a brokerage statement evidencing the Class Member's ownership of AeroGrow stock as of  
6 the Effective Date of the Merger, including the number of shares held as of such date, and must be  
7 signed by such person. The Request for Exclusion shall not be effective unless it is made in  
8 writing, postmarked within the time stated above, contains the information and documents stated  
9 above, and is accepted by the Court. Class Members requesting exclusion from the Settlement  
10 Class shall not be entitled to receive any payment out of the Net Settlement Fund as described in  
11 the Stipulation and Notice. Class Members may revoke such a request for exclusion up to fourteen  
12 (14) calendar days before the Settlement Fairness Hearing.

13 13. The Court will consider objections to the Settlement, the Plan of Allocation, the  
14 payment of service awards to Plaintiffs, and/or the Fee and Expense Award at the Settlement  
15 Fairness Hearing. Any Person wanting to object must do so in writing, and may also appear at the  
16 Settlement Fairness Hearing if they so choose.

17 (a) To the extent any Class Member desires to object in writing, such objections  
18 and any supporting papers, accompanied by proof of Class membership, shall be filed with the  
19 Clerk of the Court, Eighth Judicial District Court, Clark County, Nevada, Dept. 13, 200 Lewis  
20 Ave, Las Vegas, NV 89101, and copies of all such papers served no later than thirty (30) calendar  
21 days before the Settlement Fairness Hearing to each of the following: Francis A. Bottini, Bottini  
22 & Bottini, Inc., 7817 Ivanhoe Avenue, Suite 102, La Jolla, CA 92037, on behalf of the Plaintiffs  
23 and the Class; and Marjorie Duffy, Jones Day, 325 John H. McConnell Boulevard Suite 600,  
24 Columbus, Ohio 43215-2673, on behalf of the Settling Defendants.

25 (b) Persons who intend to object in writing to the Settlement, the Plan of  
26 Allocation, the request for the Fee and Expense Award, and/or Plaintiffs' request for payment of  
27 service awards for representing the Class and desire to present evidence at the Settlement Fairness  
28

1 Hearing are required to identify in their written objection any witnesses they may call to testify  
2 and exhibits, if any, they intend to introduce into evidence.

3 (c) If an objector hires an attorney to represent him, her, or it for the purposes  
4 of making an objection, the attorney must both effect service of a notice of appearance on counsel  
5 listed above and file it with the Court by no later than thirty (30) calendar days before the  
6 Settlement Fairness Hearing. A Class Member who files a written objection does not have to  
7 appear at the Settlement Fairness Hearing for the Court to consider his, her, or its objection. Any  
8 member of the Class who does not make his, her, or its objection in the manner provided shall be  
9 deemed to have waived such objection and shall forever be foreclosed from making any objection  
10 to the fairness or adequacy of the Settlement set forth in the Stipulation, to the Plan of Allocation,  
11 the Fee and Expense Award, and Plaintiffs' request for payment of service awards, unless  
12 otherwise ordered by the Court.

13 14. All papers in support of the Settlement, the Plan of Allocation, and any application  
14 by Plaintiffs' Counsel for the Fee and Expense Award and payment to Plaintiffs of service awards  
15 shall be filed fourteen (14) calendar days prior to the Settlement Fairness Hearing.

16 15. All funds held by the Escrow Agent shall be deemed and considered to be in  
17 *custodia legis* of the Court, and shall remain subject to the jurisdiction of the Court, until such time  
18 as such funds shall be distributed pursuant to the Stipulation and/or further order(s) of the Court.

19 16. The passage of title and ownership of the Settlement Fund to the Escrow Agent in  
20 accordance with the terms and obligations of the Stipulation is approved.

21 17. Defendants' Counsel and Plaintiffs' Counsel shall promptly furnish each other with  
22 copies of any and all objections that come into their possession. Class Counsel shall provide, or  
23 shall cause the Administrator to provide, to counsel for the Settling Defendants copies of every  
24 request for exclusion, along with a list of the names of stockholders who submitted requests for  
25 exclusion and, for each name, the number of shares opting out of the Settlement, on a rolling basis  
26 and as expeditiously as possible, and no later than three (3) business days from receipt thereof.

1           18. Pending final determination of whether the Settlement should be approved, the  
2 Plaintiffs, all Class Members, and each of them, and anyone who acts or purports to act on their  
3 behalf, shall not institute, commence, maintain, or prosecute, and are hereby barred and enjoined  
4 from instituting, commencing, maintaining, or prosecuting, any action, directly or indirectly, in  
5 any court or tribunal that asserts Released Claims against any of the Released Parties.

6           19. All reasonable expenses incurred in identifying and notifying Class Members, as  
7 well as administering the Settlement Fund, shall be paid as set forth in the Stipulation and herein.  
8 In the event the Settlement is not approved by the Court, or otherwise fails to become effective,  
9 neither Plaintiffs nor Plaintiffs' Counsel shall have any obligation to repay any amounts actually  
10 and properly disbursed from the Settlement Fund, except as provided for in the Stipulation.

11           20. If any specified condition to the Settlement set forth in the Stipulation is not  
12 satisfied and Plaintiffs or Defendants elect to terminate the Settlement, then, in any such event, the  
13 Stipulation, including any amendment(s) thereof, shall be null and void and of no further force or  
14 effect (except to the extent otherwise expressly provided in the Stipulation), without prejudice to  
15 any Party, and may not be introduced as evidence or referred to in this Action, or any action or  
16 proceeding by any person or entity for any purpose, and each Party shall be restored to his, her, or  
17 its respective position as it existed as of the date the Settlement was fully executed.

18           21. The Court may adjourn or continue the Settlement Fairness Hearing without further  
19 written notice.

20           22. The Court retains exclusive jurisdiction over the Action to consider all further  
21 matters arising out of or connected with the Settlement. The Court may approve the Settlement,  
22 with such modifications as may be agreed by the Parties, if appropriate, without further notice to  
23 the Class.

24  
25 DATED: \_\_\_\_\_

26 THE HONORABLE MARK R. DENTON  
27 DISTRICT COURT JUDGE  
28

1 **KEMP JONES, LLP**

2 Nathanael R. Rulis, Esq.  
3 Nevada Bar No. 11259  
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5 Francesca Bergeret-Simpson, Esq.  
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19 *Counsel for Plaintiffs*

20 **EIGHTH JUDICIAL DISTRICT COURT**  
21 **CLARK COUNTY, NEVADA**

22 OVERBROOK CAPITAL LLC, on Behalf  
23 of Itself and All Others Similarly Situated,  
24 Plaintiff,

25 vs.

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

32 Defendants.

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

Dep't. No. XIII

**NOTICE OF PROPOSED SETTLEMENT OF  
CLASS ACTION**

**[EXHIBIT A-1]**

1 NICOYA CAPITAL LLC, on Behalf of  
2 Itself and All Others Similarly Situated,

3 Plaintiff,

4 vs.

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

9 - and -

10 AEROGROW INTERNATIONAL, INC.,  
11 a Nevada Corporation, AGI  
12 ACQUISITION SUB, INC., a Nevada  
13 Corporation, SMG GROWING MEDIA,  
14 INC., an Ohio Corporation, and SCOTTS  
15 MIRACLE-GRO COMPANY, an Ohio  
16 Corporation,

17 Defendants.  
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Case No.: A-21-827745-B

1                                   **NOTICE OF PROPOSED SETTLEMENT OF CLASS ACTION**

2   **TO: ALL SHAREHOLDERS OF AEROGROW INTERNATIONAL, INC. WHO HELD**  
3   **AEROGROW STOCK AS OF THE EFFECTIVE DATE FOR THE MERGER<sup>1</sup>**  
4   **AND HAD THE RIGHT TO RECEIVE THE MERGER CONSIDERATION, AS**  
5   **WELL AS THEIR SUCCESSORS AND ASSIGNS.**

6                   **THIS NOTICE WAS AUTHORIZED BY THE COURT. IT IS NOT A LAWYER**  
7   **SOLICITATION. PLEASE READ THIS NOTICE CAREFULLY AND IN ITS**  
8   **ENTIRETY.**

9                                   **WHY SHOULD I READ THIS NOTICE?**

10           This Notice is given pursuant to an order issued by the Eight Judicial District Court, Clark  
11   County, Nevada (“Court”). This Notice serves to inform you of the proposed settlement of the  
12   above-captioned class action lawsuit (“Settlement”) and the hearing (“Settlement Fairness  
13   Hearing”) to be held by the Court to consider the fairness, reasonableness, and adequacy of the  
14   Settlement, as set forth in the Stipulation and Agreement of Settlement dated Dec. 9, 2025  
15   (“Stipulation”), by and between Lead Plaintiff Nicoya Capital, LLC, on behalf of itself and the  
16   Class (as defined below), and Defendants The Scotts Miracle-Gro Company (“Scotts Miracle-  
17   Gro”), SMG Growing Media, Inc., AeroGrow International, Inc. (“AeroGrow”), AGI Acquisition  
18   Sub, Inc., James Hagedorn, Peter Supron, Chris Hagedorn, Cory Miller, and Patricia M. Ziegler  
19   (collectively, the “Settling Defendants”).<sup>2</sup>

20           **This Notice is intended to inform you about how this lawsuit and proposed Settlement**  
21   **may affect your rights and what steps you may take in relation to it. This Notice is NOT an**  
22   **expression of any opinion by the Court as to the merits of the claims or defenses asserted in**  
23   **the lawsuit or whether Defendants engaged in any wrongdoing.**

24                                   **WHAT IS THIS LAWSUIT ABOUT?**

25                   **I. THE ALLEGATIONS**

26           This is a shareholder class action lawsuit. Plaintiffs challenge the Merger consideration  
27   received by the minority shareholders of AeroGrow, which was acquired in 2021 by SMG  
28   Growing Media, Inc., a wholly-owned subsidiary of Scotts Miracle-Gro (the “Merger”). Plaintiffs  
allege that the Merger consideration—\$3.00 per share—was inadequate and unfair and that the  
Defendants breached their fiduciary duties as directors and majority shareholders, and/or aided  
and abetted the breach of fiduciary duties, by interfering with the market check process, failing to  
make full disclosure of all relevant facts in the proxy statement for the Merger, and other alleged  
misconduct.

Defendants have denied, and continue to deny, these allegations, that there were any legal

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<sup>1</sup> The Effective Date for the Merger was February 26, 2021.

<sup>2</sup> The Stipulation can be viewed and/or downloaded at [www.aerogrowshareholderlitigation.com](http://www.aerogrowshareholderlitigation.com). All  
capitalized terms used herein have the same meaning as set forth in the Stipulation.

1 violations, or that Plaintiffs or Class Members suffered any damages under Nevada law.

2 **THE COURT HAS NOT RULED AS TO WHETHER THE SETTling**  
3 **DEFENDANTS ARE LIABLE. THIS NOTICE IS NOT INTENDED TO BE AN**  
4 **EXPRESSION OF ANY OPINION BY THE COURT WITH RESPECT TO THE TRUTH**  
5 **OF THE ALLEGATIONS IN THIS ACTION OR THE MERITS OF THE CLAIMS OR**  
6 **DEFENSES ASSERTED. THIS NOTICE IS SOLELY TO ADVISE YOU OF THE**  
7 **PROPOSED SETTLEMENT OF THIS ACTION AND YOUR RIGHTS IN CONNECTION**  
8 **WITH THAT SETTLEMENT.**

## 9 **II. PROCEDURAL HISTORY**

10 The first complaint was filed on January 11, 2021. Additional complaints were filed on  
11 January 12, 2021, and February 22, 2021. By orders dated February 18, 2021, and February 24,  
12 2021, the Court consolidated the related actions and appointed Nicoya Capital, LLC to serve as  
13 Lead Plaintiff, Bottini & Bottini, Inc. to serve as Lead Counsel, and Kemp Jones, LLP to serve as  
14 Liaison Counsel. A First Amended Consolidated Complaint was filed on June 28, 2021 (the  
15 "FACC"). On July 12, 2021, Defendants moved to dismiss the FACC. On October 4, 2021, this  
16 Court denied Defendants' motion to dismiss the FACC. Defendants sought review of the Court's  
17 order denying Defendants' motion to dismiss the FACC by the Nevada Supreme Court, which the  
18 Nevada Supreme Court denied on June 30, 2022. Defendants answered the FACC on November  
19 4, 2021.

20 On March 15, 2022, Plaintiffs filed their motion for class certification. Thereafter, the  
21 Parties filed a stipulation regarding class certification. On March 29, 2022, the Court granted the  
22 Parties' stipulation, certifying this Action as a class action.

23 The Parties have engaged in extensive discovery efforts. In response to Plaintiffs'  
24 discovery requests, Defendants have produced and Plaintiffs' counsel have reviewed over 180,000  
25 pages of documents. Discovery also included interrogatories, requests for admission, and 20  
26 depositions (including the depositions of Plaintiffs, all named Defendants, several third parties,  
27 and expert witnesses). In addition, the Parties engaged in litigation before the Court and a special  
28 master concerning discovery issues, including the proper scope of Defendants' assertions of  
privilege.

Five separate motions for summary judgment were filed, briefed, argued, and decided by  
the Court in March 2025. The Court granted the motion for summary judgment filed by  
Defendants Clarke and Kent. As a result, Defendants H. MacGregor Clarke and David B. Kent  
were dismissed from the Action. The remaining Defendants filed a petition for writ of mandamus  
seeking review by the Nevada Supreme Court of the Court's orders on the summary judgment  
motions; that petition remains pending. Various motions for clarification and/or reconsideration  
of the summary judgment orders were also filed with the Court and litigated by the Parties. The  
Court did not dismiss any further Defendants as a result of such motions.

Plaintiffs also retained two expert witnesses: Mr. Gil Matthews and Professor Ben  
Edwards. Defendants retained four experts: Professor Shane Johnson, Dr. Laura Simmons, Jan  
Kniffen, and Robert Kim. Following depositions of the experts, each side filed motions to exclude  
the other side's expert(s) from testifying at trial. Those motions remained pending at the time the

1 Settlement was reached.

2 The Court set the case for trial on a five-week stack starting on October 14, 2025. At the  
3 time they reached an agreement on the terms of Settlement (as described below), the Parties were  
4 diligently preparing for trial.

5 On October 4, 2022, Class Counsel and counsel for Defendants participated in a full-day  
6 mediation before the Hon. Layn Phillips (Ret.) of Phillips ADR to attempt to settle the Action.  
7 Prior to the mediation, the Parties prepared and submitted detailed mediation statements setting  
8 forth their respective positions on the merits and damages. Although the parties negotiated in good  
9 faith, no settlement was reached and litigation continued. Three years later, in September 2025,  
10 the Parties again mediated. After numerous proposals and counterproposals, Phillips ADR  
11 presented a double-blind mediator's proposal for a settlement of the Action on a class-wide basis,  
12 which was accepted by both sides on September 29, 2025. The Parties thereafter engaged in further  
13 negotiations regarding the material terms of the Settlement, which are set forth in the Stipulation  
14 and are subject to approval by the Court.

### 15 HOW DO I KNOW IF I AM A CLASS MEMBER?

16 You are a Class Member if you held AeroGrow stock as February 26, 2021, which was the  
17 Effective Date for the Merger, and had the right to receive the Merger Consideration of \$3.00 per  
18 share, or if you were the successor or assign of such persons. As set forth in the Stipulation,  
19 excluded from the Class are: (a) any of the Defendants named in the FACC; (b) any of the  
20 Defendants' parent companies, subsidiaries, and affiliates, (c) any of the Defendants' officers,  
21 directors, management, employees, subsidiaries, affiliates or agents; (d) all governmental entities;  
22 and (e) the judges and chambers staff in this case, as well as any members of their immediate  
23 families. Also excluded from the Settlement Class are those Persons who would otherwise be  
24 Class Members but who timely and validly exclude themselves therefrom. Also excluded from  
25 the Settlement Class are the Dissenters Shares owned by those Persons who properly exercised  
26 their dissenters' rights pursuant to NRS Chapter 92A.200-500 and who are respondents in the  
27 matter captioned *AeroGrow International, Inc. v. Quadre Investments, L.P. et al.*, Case No. A-21-  
28 836612-B (the "Dissenters Rights Action").

29 **PLEASE NOTE:** RECEIPT OF THIS NOTICE DOES NOT MEAN THAT YOU ARE  
30 A CLASS MEMBER OR THAT YOU WILL BE ENTITLED TO RECEIVE A PAYMENT  
31 FROM THE SETTLEMENT. ONLY PERSONS WHO HELD SHARES OF AEROGROW  
32 COMMON STOCK AS OF THE EFFECTIVE DATE OF THE MERGER AND HAD THE  
33 RIGHT TO RECEIVE THE MERGER CONSIDERATION FOR SUCH SHARES, OTHER  
34 THAN THE EXCLUDED PERSONS AND THOSE WHO OWNED DISSENTERS SHARES,  
35 ARE ENTITLED TO RECEIVE PROCEEDS FROM THE SETTLEMENT.

### 36 WHAT IS THE MONETARY VALUE OF THE PROPOSED SETTLEMENT?

37 The Settlement, if approved, will result in a cash settlement fund of \$15,978,202.50  
38 ("Settlement Fund"). The Settlement Fund, plus accrued interest and minus the costs of this Notice  
39 and all costs associated with the administration of the Settlement Fund, as well as attorneys' fees  
40 and expenses, and the payment to Plaintiffs for representing the Class, as approved by the Court  
41 ("Net Settlement Fund"), will be distributed to eligible Settlement Class Members pursuant to the  
42 Plan of Allocation that is described in the next section of this Notice.



1                                   **WHAT IS THE PROPOSED PLAN OF ALLOCATION?**

2           The objective of the Plan of Allocation is to equitably distribute the Net Settlement Fund  
3 among Settlement Class Members based on their respective economic losses resulting from the  
4 alleged legal violations alleged in the FACC. The Settlement Fund will be administered by the  
5 Administrator and the Escrow Agent and shall be used (subject to Court approval): (i) to pay all  
6 Administrative Costs; (ii) to pay any Fee and Expense Award, including any Plaintiff incentive  
awards; (iii) to pay any Taxes and Tax Expenses; and (iv) following the payment of (i), (ii), and  
(iii) herein, for subsequent disbursement of the Net Settlement Fund to the Settlement Payment  
Recipients as provided below.

7           Each Settlement Payment Recipient shall be allocated a pro rata share of the Net Settlement  
8 Fund based on the number of shares of AeroGrow common stock owned as of the Effective Date  
9 of the Merger. This calculation is not an estimate of the amount you will receive. It is a formula  
for allocating the Net Settlement Fund among all Settlement Payment Recipients.

10          Following the Effective Date of Settlement, the Administrator shall distribute the Net  
11 Settlement Fund to the Settlement Payment Recipients on a per-share basis. Settlement Payment  
Recipients do not have to submit a claim form or take any other action in order to receive payment.

12          Only the Settlement Payment Recipients will qualify to share in the distribution of the  
13 Settlement Fund to the Settlement Class after payment of settlement administration expenses,  
attorneys' fees and expenses, and Taxes and Tax Expenses.

14          RECEIPT OF THIS NOTICE DOES NOT NECESSARILY MEAN THAT YOU ARE  
15 ENTITLED TO RECEIVE PROCEEDS FROM THE SETTLEMENT. ONLY PERSONS WHO  
16 HELD SHARES OF AEROGROW COMMON STOCK AS OF THE EFFECTIVE DATE OF  
17 THE MERGER AND HAD THE RIGHT TO RECEIVE THE MERGER CONSIDERATION  
18 FOR SUCH SHARES, OTHER THAN THE EXCLUDED PERSONS AND THOSE WHO  
OWNED DISSENTERS SHARES, ARE ENTITLED TO RECEIVE PROCEEDS FROM THE  
SETTLEMENT.

19          Payment pursuant to the Plan of Allocation or other such plan of allocation as may be  
20 approved by the Court shall be final and conclusive against all Settlement Class Members.  
21 Defendants, Defendants' Counsel, and their other Released Parties shall have no liability  
22 whatsoever for the determination, administration, or investment of the Settlement Fund or the Net  
23 Settlement Fund; the calculation or distribution of any payment from the Settlement Fund or Net  
24 Settlement Fund; the performance or nonperformance of the Administrator, Escrow Agent, any  
DTC Participants, or any nominee holding shares on behalf of a Class Member; the determination,  
administration, payment, or withholding of Taxes (including interest and penalties) owed by the  
Settlement Fund; or any losses incurred in connection with any of the foregoing.

25          The Net Settlement Fund will not be distributed to the Settlement Payment Recipients until  
26 the Court has approved the Settlement and the proposed Plan of Allocation (or such other  
27 allocation plan as the Court may approve), the time periods for any petition for rehearing, appeal  
or review, whether by certiorari or otherwise of the Judgment approving the Settlement and the  
Plan of Allocation have expired, and the Judgment becomes Final.

1 The Court has jurisdiction to allow, disallow, or adjust on equitable grounds the claim of  
2 any Class Member. The Court also has the power to modify the Plan of Allocation without further  
notice to Class Members.

3 As soon as practicable after the Effective Date, the Administrator will distribute the Net  
4 Settlement Fund to the Settlement Payment Recipients as set forth below.

5 (a) The Net Settlement Fund will be allocated and distributed on a per-share basis among  
6 the Settlement Payment Recipients (the "Initial Distribution"). Each Settlement Payment  
7 Recipient will receive a pro rata payment from the Net Settlement Fund equal to the product of (i)  
8 the number of "Eligible Shares" held by the Settlement Payment Recipient, where Eligible Shares  
9 are shares held by the Settlement Payment Recipient at closing and for which the Settlement  
10 Payment Recipient received Merger consideration, and (ii) the "Per-Share Recovery" for the  
11 Settlement, which will be determined by dividing the total amount of the Net Settlement Fund by  
the total number of Eligible Shares. For the avoidance of doubt, the Net Settlement Fund will be  
paid to the holders of AeroGrow common stock who were paid the Merger consideration because  
their shares were converted into the right to receive Merger consideration pursuant to the terms of  
the Merger Agreement, other than Excluded Persons.

12 (b) With respect to AeroGrow common stock held of record at the closing by DTC through  
13 its nominee Cede, provided that the Administrator has the necessary DTC Information, the  
14 Administrator shall cause the relevant portion of the Net Settlement Fund to be allocated to Eligible  
15 Beneficial Owners who held their shares through DTC Participants by first distributing that portion  
16 of the Net Settlement Fund among the DTC Participants by paying each DTC Participant the Per-  
17 Share Recovery times its respective Closing Security Position (defined below). For each DTC  
18 Participant, the "Closing Security Position" means the number of shares of AeroGrow common  
19 stock reflected on the DTC allocation report used to pay the Merger consideration, less any shares  
20 that were held by an Excluded Person as of the Effective Date of the Merger. The Administrator  
21 shall further take all appropriate steps to instruct DTC Participants to distribute the portion of the  
22 Net Settlement Fund that they receive to the Eligible Beneficial Holders on a pro rata basis in  
23 accordance with each Eligible Beneficial Owner's "Closing Beneficial Ownership Position,"  
24 which means, for each Eligible Beneficial Owner, the number of shares of AeroGrow common  
25 stock beneficially owned by such Eligible Beneficial Owner as of the Effective Date of the Merger,  
26 for which the Eligible Beneficial Owner received payment of the Merger consideration, in a similar  
manner to that in which the DTC Participants paid the Merger consideration in connection with  
the Merger. The Settling Defendants shall cooperate with Class Counsel and the Administrator to  
provide information as to themselves and make reasonable efforts to obtain information from the  
other Excluded Persons and, as applicable, the relevant DTC Participants in order to ensure that  
no portion of the Net Settlement Fund is distributed to any Excluded Person, including information  
sufficient (a) to identify the number of shares of AeroGrow common stock beneficially owned by  
each Excluded Person as of the Effective Date of the Merger, (b) to identify the DTC Participant  
or non-Cede record holder through which such shares were held as of the Effective Date of the  
Merger, and (c) to enable any relevant DTC Participant to identify and exclude from payment all  
shares of AeroGrow common stock beneficially owned by each Excluded Person as of the  
Effective Date of the Merger (collectively, the "Excluded Person Information").

27 (c) With respect to AeroGrow common stock held of record as of the Effective Date of the  
28 Merger other than by Cede, as nominee for DTC (a "Closing Non-Cede Record Position"),

1 provided that the Administrator first receives the necessary Record Holder Information, the  
2 Administrator will distribute the pro rata amount of the Net Settlement Fund attributable to the  
3 Eligible Record Holders by paying directly to each Eligible Record Holder an amount equal to the  
4 Per-Share Recovery times the number of shares of AeroGrow common stock comprising such  
5 Closing Non-Cede Record Position.

6 (d) The Net Settlement Fund shall be distributed to Settlement Payment Recipients only  
7 after the Effective Date of the Settlement and after all Administrative Costs, all Taxes and Tax  
8 Expenses, any service award to Plaintiffs, and any Fee and Expense Award have been paid from  
9 the Settlement Fund or reserved.

10 (e) If there is any balance remaining in the Net Settlement Fund six (6) months after  
11 distribution of the Net Settlement Fund (whether by reason of tax refunds, uncashed checks,  
12 amounts returned by Excluded Persons who erroneously receive Settlement payments, or  
13 otherwise), the Administrator shall, if feasible, distribute such balance among the Settlement  
14 Payment Recipients who received and deposited the Initial Distribution, in the same manner as the  
15 Initial Distribution. If the cost of making such a further distribution or distributions is  
16 unreasonably high relative to the amount remaining in the Net Settlement Fund, Class Counsel  
17 may file a motion for an administrative order instructing the Administrator to distribute any  
18 balance which still remains in the Net Settlement Fund, after provision for all anticipated expenses,  
19 to the Legal Aid Society of Southern Nevada. Neither the Released Parties nor their indemnitors  
20 or insurers shall have any reversionary interest in the Net Settlement Fund.

21 (f) The Settlement is not a claims-made settlement. Upon the occurrence of the Effective  
22 Date, Defendants, the Released Parties, and any other Person or entity who or which paid any  
23 portion of the Settlement Amount shall have no right to the return of the Settlement Amount or  
24 any portion thereof for any reason whatsoever, including the inability to locate Class Members or  
25 the failure of Settlement Payment Recipients to deposit Settlement funds distributed by the  
26 Administrator, but the foregoing does not limit the right of the Defendants and Released Parties to  
27 enforce the terms of and their rights under the Stipulation.

28 **DO I NEED TO CONTACT CLASS COUNSEL IN ORDER TO PARTICIPATE IN  
DISTRIBUTION OF THE SETTLEMENT FUND?**

No. If you have received this Notice, you need not contact Class Counsel. If your address  
changes, please contact the Administrator at:

*AeroGrow International, Inc. Merger Litigation Settlement*

A.B. Data Group

600 A.B. Data Drive

Milwaukee, WI 53217

414-961-6400

[www.aerogrowshareholderlitigation.com](http://www.aerogrowshareholderlitigation.com)

**THERE WILL BE NO PAYMENTS IF THE STIPULATION IS TERMINATED**

The Stipulation may be terminated under several circumstances outlined in it. If the  
Stipulation is terminated, the Action will proceed as if the Stipulation had not been entered into.

1                                   **WHAT ARE THE REASONS FOR SETTLEMENT?**

2           The Settlement was only reached after highly-contested litigation of Plaintiffs' claims and  
3 Defendants' defenses and following extensive discovery. The Court has not reached any final  
4 decisions in connection with Plaintiffs' claims or the Settling Defendants' defenses. Instead,  
5 Plaintiffs and the Settling Defendants have agreed to this Settlement, which was reached with the  
6 substantial assistance of the Hon. Layn Phillips (Ret.) of Phillips ADR, a highly respected mediator  
7 with extensive experience in the mediation of complex shareholder class actions. In reaching the  
8 Settlement, the Parties have avoided the cost, delay, and uncertainty of further litigation, as  
9 detailed below.

10           As in any litigation, Plaintiffs and the proposed Class would face an uncertain outcome if  
11 they did not agree to the Settlement. The Parties expected the case to be challenged by both sides  
12 during an upcoming jury trial and that even if Plaintiffs succeeded, the Settling Defendants could  
13 file appeals that would postpone final resolution of the Action and potentially overturn a successful  
14 verdict in part or in full. Continuation of the Action against the Settling Defendants could also  
15 result in no recovery at all or a judgment that is less than the amount of the Settlement. Conversely,  
16 with regards to the Settling Defendants, continuing the case could result in a judgment in an  
17 amount greater than this Settlement. Accordingly, both Plaintiffs and the Settling Defendants have  
18 determined that Settlement on the terms set forth in the Stipulation was in their best interests in  
19 light of the facts and procedural posture of the Action and the uncertainty of continued litigation.

20           Plaintiffs and Plaintiffs' Counsel believe that the proposed Settlement is fair and reasonable  
21 to the members of the Class and is in the best interests of the Class. They have reached this  
22 conclusion for several reasons. Specifically, if the Settlement is approved, the Class will receive  
23 a certain and immediate monetary recovery. Additionally, Class Counsel believe that the  
24 significant and immediate benefits of the Settlement, when weighed against the significant risk,  
25 delay, and uncertainty of continued litigation, are an extremely favorable result for the Class.

26                                   **WHO REPRESENTS THE CLASS?**

27           The following attorneys are Lead Counsel for the Class:

28           Francis A. Bottini, Jr.  
          Aaron P. Arnzen  
          BOTTINI & BOTTINI, INC.  
          7817 Ivanhoe Avenue, Suite 102  
          La Jolla, CA 92037  
          Telephone: (858) 914-2001  
          Facsimile: (858) 914-2002

          If you have any questions about the Action, or the Settlement, you may consult with Class  
Counsel by contacting counsel at the phone numbers listed above.

          You may obtain a copy of the Stipulation by contacting the Administrator at:

*AeroGrow International, Inc. Merger Litigation Settlement*  
                                  A.B. Data Group

600 A.B. Data Drive  
Milwaukee, WI 53217  
414-961-6400  
www.aerogrowshareholderlitigation.com

### HOW WILL THE PLAINTIFFS' LAWYERS BE PAID?

Class Counsel will submit an application to the Court for an award from the Settlement Fund of: (i) attorneys' fees and the payment of litigation expenses incurred in connection with the prosecution of the Action, plus interest on both amounts at the same rate and period as earned on the Settlement Fund (until paid); and (ii) a service award of \$20,000 to Lead Plaintiff Nicoya Capital, LLC and \$15,000 to Plaintiff Overbrook in connection with their representation of the Class. Such sums as may be approved by the Court will be paid from the Settlement Fund. Class Members are not personally liable for any such fees or expenses.

The attorneys' fees and expenses requested will be the only payment to Plaintiffs' Counsel for their efforts in achieving this Settlement and for their risk in undertaking this representation on a wholly contingent basis. The fees requested will compensate Plaintiffs' Counsel for their work in achieving the Settlement. The Court will decide what constitutes a reasonable fee award and may award less than the amount requested by Plaintiffs' Counsel.

### CAN I EXCLUDE MYSELF FROM THE SETTLEMENT (OPT OUT)?

Yes. If you want to keep the right to sue the Settling Defendants on your own about the legal issues in this Action, then you must take steps to get out of the Class. This is called excluding yourself from, or "opting out" of, the Class. If you are requesting exclusion because you want to bring your own lawsuit based on the matters alleged in this Action, you may want to consult an attorney and discuss whether any individual claim that you may wish to pursue would be time-barred by the applicable statutes of limitation or repose.

To exclude yourself from the Class, you must send a signed letter by mail saying that you want to be excluded from the Class in the following Action: *Overbrook Capital LLC v. AeroGrow International, Inc., et al.*, Lead Case No. A-21-827665-B (Eighth Judicial District Court, Clark County, Nevada). To be effective, your request must include your name, address, telephone number, state the number of shares of AeroGrow common stock that you held on the Effective Date of the Merger, and contain proof of such ownership, such as a brokerage statement. Your exclusion request must be **postmarked no later than \_\_\_\_\_, 2026**, and sent to the Administrator at:

*AeroGrow International, Inc. Merger Litigation Settlement*

A.B. Data Group  
c/o EXCLUSIONS  
600 A.B. Data Drive  
Milwaukee, WI 53217

You cannot exclude yourself by phone or by e-mail. If you make a proper request for exclusion, you will not receive a Settlement payment, and you cannot object to the Settlement. If you make a proper request for exclusion, you will not be legally bound by anything that happens

1 in this Action.

## 2 **CAN I OBJECT TO THE SETTLEMENT?**

3 Yes. If you are a Class Member, you may object to any or all of the following: the terms  
4 of the Settlement, the Fee and Expense Award, Plaintiffs' request for payment of service awards  
5 for representing the Class, and/or the Plan of Allocation. In order for any objection to be  
6 considered, you must file a written statement, accompanied by proof of Class membership, with  
the Court and send a copy to Plaintiffs' Counsel and the Settling Defendants' Counsel by  
\_\_\_\_\_, 2026.

7 The Court's address is Eighth Judicial District Court, Clark County, Nevada, Dept. 13, 200  
8 Lewis Ave, Las Vegas, NV 89101; Class Counsel's address is Bottini & Bottini, Inc., 7817  
9 Ivanhoe Avenue, Suite 102, La Jolla, CA 92037, c/o Francis A. Bottini; the Settling Defendants'  
Counsel's address is Jones Day, 325 John H. McConnell Boulevard Suite 600, Columbus, Ohio  
43215-2673, c/o Marjorie Duffy.

10 Attendance at the Settlement Fairness Hearing is not necessary; however, Persons wishing  
11 to be heard orally at the Settlement Fairness Hearing are required to indicate in their written  
12 objection their intention to appear at the hearing and identify any witnesses they may call to testify  
and exhibits, if any, they intend to introduce into evidence.

## 13 **WHAT IS THE DIFFERENCE BETWEEN OBJECTING AND EXCLUDING MYSELF** 14 **FROM THE SETTLEMENT?**

15 Objecting is telling the Court that you do not like something about the proposed Settlement,  
16 the Plan of Allocation, Plaintiffs' Counsel's request for the Fee and Expense Award, and/or  
17 Plaintiffs' request for payment of service awards for representing the Class. You can object only  
18 if you stay in the Class. Excluding yourself is telling the Court that you do not want to be part of  
the Settlement Class. If you exclude yourself, you have no basis to object to the Settlement because  
the Settlement no longer applies to you.

## 19 **WHAT ARE MY RIGHTS AND OBLIGATIONS UNDER THE SETTLEMENT?**

20 If you are a Class Member and you do not exclude yourself from the Class, you may receive  
21 the benefit of, but in all circumstances you will be bound by, the terms of the Settlement described  
in this Notice, upon approval by the Court.

## 22 **WHAT CLAIMS WILL BE RELEASED BY THE SETTLEMENT?**

23 If the Settlement is approved by the Court, the Court will enter a Judgment. If the Judgment  
24 becomes Final pursuant to the terms of the Stipulation, all Settlement Class Members shall be  
25 deemed to have, and by operation of the Final Judgment shall have, fully, finally, and forever  
released, relinquished, and discharged the following Released Claims.

### 26 ***Released Plaintiffs' Claims***

27 "Released Claims" means any and all rights, liabilities, suits, debts, obligations, demands,  
28 damages, losses, judgment matters, issues, claims (including "Unknown Claims" as defined

below), and causes of action of every nature and description whatsoever that have been or could have been asserted in the Action or could in the future be asserted in any forum, whether known or unknown, whether arising under federal, state, or common law, relating to AeroGrow or AeroGrow's Merger with SMG Growing Media, Inc., including all such claims and causes of action that Plaintiffs (i) asserted in the FACC filed in the Action on June 28, 2021, or (ii) asserted or could have asserted in the FACC or in any complaint filed in any case ultimately consolidated in the Action or in any other forum that are based on the same set of operative facts as those set forth in the FACC, except for claims relating to the enforcement of the Settlement. "Released Claims" do not include any claims to enforce this Stipulation, any claims by Defendants for insurance coverage, and the appraisal claims asserted in *AeroGrow International, Inc. v. Quadre Investments, L.P., et al.*, Case No. A-21-836612-B, and any demands, losses, rights, and causes of action of any nature whatsoever that any Released Party may have against Class Members who timely and validly exclude themselves from the Settlement.

### ***Released Defendants' Claims***

"Released Defendants' Claims" means all claims (including "Unknown Claims" as defined below), demands, losses, rights, and causes of action of any nature whatsoever that any Released Party may have against Plaintiffs, Class Members, Plaintiffs' Counsel, or any of their Related Parties relating to the institution, prosecution, or settlement of the Action. Released Defendants' Claims specifically includes the release of the obligation of Plaintiffs or Plaintiffs' Counsel to pay any outstanding costs or fees in the Special Master Proceeding, as provided in the Expense and Cost Waiver. "Released Defendants' Claims" do not include claims to enforce this Stipulation or any claims by Defendants for insurance coverage, the appraisal claims asserted in *AeroGrow International, Inc. v. Quadre Investments, L.P., et al.*, Case No. A-21-836612-B, and any demands, losses, rights, and causes of action of any nature whatsoever that any Released Party may have against Class Members who timely and validly exclude themselves from the Settlement.

"Unknown Claims" means (i) any and all claims and potential claims against the Released Parties which Plaintiffs or any Settlement Class Member do not know or suspect to exist in their, his, her, or its favor as of the Effective Date of Settlement including, without limitation, those that, if known by such Plaintiff or Class Member, might have affected his, her, or its decision(s) with respect to the Settlement or the releases, including his, her, or its decision(s) to object or not to object to the Settlement or to exclude himself, herself, or itself from the Class, and (ii) any claims against Plaintiffs, Settlement Class Members, or Plaintiffs' Counsel which Defendants do not know or suspect to exist in their favor, which if known by any of them, might have affected their, his, her, or its decision(s) with respect to the Settlement. With respect to any and all Released Claims and Released Defendants' Claims, the Parties stipulate and agree that by operation of the Final Judgment, upon the Effective Date of Settlement, Plaintiffs and Defendants shall have expressly waived, and each Settlement Class Member shall be deemed to have waived, and by operation of the Final Judgment shall have expressly waived, the provisions, rights, and benefits of Cal. Civ. Code § 1542, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

**THE ABOVE DESCRIPTION OF THE PROPOSED SETTLEMENT AND RELEASES IS ONLY A SUMMARY.** The complete terms, including the definitions of “Released Parties” and “Unknown Claims” as used in the preceding paragraphs, are set forth in the Stipulation (including its exhibits), which may be obtained at [www.\\_\\_\\_\\_\\_.com](http://www._____.com) or by contacting Class Counsel or the Administrator as described on Page 7 above.

## THE SETTLEMENT FAIRNESS HEARING

The Court will hold a Settlement Fairness Hearing on \_\_\_\_\_, 2026, at 1:30 p.m., before the Honorable Mark R. Denton, at the Eighth Judicial District Court, Clark County, Nevada, Dept. 13, 200 Lewis Ave, Las Vegas, NV 89101, for the purpose of determining whether: (1) the Settlement as set forth in the Stipulation should be approved by the Court as fair, reasonable, and adequate; (2) Judgment as provided under the Stipulation should be entered; (3) to award Plaintiffs' Counsel the Fee and Expense Award out of the Settlement Fund and, if so, in what amount; (4) to pay Plaintiffs service awards for their efforts in representing the Class out of the Settlement Fund and, if so, in what amount; and (5) the Plan of Allocation should be approved by the Court. The Court may adjourn or continue the Settlement Fairness Hearing without further notice to members of the Class.

Any Class Member may appear at the Settlement Fairness Hearing and be heard on any of the foregoing matters; provided, however, that the Court may decline to hear any Class Member who has failed to submit a timely written objection as provided above on Page 8.

Unless otherwise directed by the Court, any Class Member who does not make his, her, or its objection in the manner provided herein shall be deemed to have waived all objections to the Settlement and shall be foreclosed from raising (in this or any other proceeding or on any appeal) any objection and any untimely objection shall be barred.

You may (but are not required to) hire an attorney at your own expense to represent you for purposes of objecting. If you do, your attorney must serve a notice of appearance on counsel and file it with the Court, at the addresses listed on Page 9, by no later than \_\_\_\_\_, 2026.

## INJUNCTION

The Court has issued an order enjoining all Class Members from instituting, commencing, maintaining, or prosecuting any action in any court or tribunal that asserts Released Claims against any Released Party, pending final determination by the Court of whether the Settlement should be approved.

## HOW DO I OBTAIN ADDITIONAL INFORMATION?

This Notice contains only a summary of the terms of the proposed Settlement. The records in this Action may be examined and copied at any time during regular office hours, and subject to customary copying fees, at the Clerk of the Eighth Judicial District Court, Clark County, Nevada. In addition, all the Settlement documents, including the Stipulation and this Notice may be obtained by contacting the Administrator at:

*AeroGrow International, Inc. Merger Litigation Settlement*  
A.B. Data Group



1 600 A.B. Data Drive  
2 Milwaukee, WI 53217  
3 414-961-6400  
4 www.aerogrowshareholderlitigation.com

5 In addition, you may contact Class Counsel, whose information is listed above on Page 7,  
6 if you have any questions about the Action or the Settlement.

7 **SPECIAL NOTICE TO BANKS, BROKERS, AND OTHER NOMINEES**

8 If you held any AeroGrow International, Inc. common stock as of February 26, 2021 as a  
9 nominee for a beneficial owner, then, within fourteen (14) business days after you receive this  
10 Notice, you must either: (1) send a copy of this Notice by First-Class Mail to all such Persons; or  
11 (2) provide a list of the names and addresses of such Persons to the Administrator at:

12 *AeroGrow International, Inc. Merger Litigation Settlement*

13 A.B. Data Group  
14 600 A.B. Data Drive  
15 Milwaukee, WI 53217  
16 414-961-6400  
17 www.aerogrowshareholderlitigation.com

18 If you choose to mail the Notice yourself, you may obtain from the Administrator (without  
19 cost to you) as many additional copies of these documents as you will need to complete the mailing.

20 Regardless of whether you choose to complete the mailing yourself or elect to have the  
21 mailing performed for you, you may obtain reimbursement for or advancement of reasonable  
22 administrative costs actually incurred or expected to be incurred in connection with forwarding the  
23 Notice and which would not have been incurred but for the obligation to forward the Notice, upon  
24 submission of appropriate documentation to the Administrator.

25 **DO NOT WRITE TO OR TELEPHONE THE COURT FOR INFORMATION.**

26 DATED: \_\_\_\_\_

27 BY ORDER OF THE EIGHTH JUDICIAL  
28 DISTRICT, CLARK COUNTY, NEVADA

1 **KEMP JONES, LLP**

2 Nathanael R. Rulis, Esq.

3 Nevada Bar No. 11259

4 N.Rulis@kempjones.com

5 Francesca Bergeret-Simpson, Esq.

6 Nevada Bar No. 16499

7 f.bergeret-simpson@kempjones.com

8 3800 Howard Hughes Pkwy., 17th Floor

9 Las Vegas, Nevada 89169

10 (P) (702) 385-6000 (F) (702) 385-6001

11 **BOTTINI & BOTTINI, INC.**

12 Francis A. Bottini, Jr., Esq. (*pro hac vice*)

13 fbottini@bottinilaw.com

14 Aaron P. Arnzen, Esq. (*pro hac vice*)

15 aarnzen@bottinilaw.com

16 7817 Ivanhoe Avenue, Suite 102

17 La Jolla, California 92037

18 (P) (858) 914-2001 (F) (858) 914-2002

19 *Counsel for Plaintiffs*

20 **EIGHTH JUDICIAL DISTRICT COURT**  
21 **CLARK COUNTY, NEVADA**

22 OVERBROOK CAPITAL LLC, on Behalf  
23 of Itself and All Others Similarly Situated,  
24 Plaintiff,

25 vs.

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

32 Defendants.

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

Dep't. No. XIII

**SUMMARY NOTICE OF PROPOSED  
SETTLEMENT OF CLASS ACTION**

**[EXHIBIT A-2]**

1 NICOYA CAPITAL LLC, on Behalf of  
2 Itself and All Others Similarly Situated,

3 Plaintiff,

4 vs.

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

9 - and -

10 AEROGROW INTERNATIONAL, INC.,  
11 a Nevada Corporation, AGI  
12 ACQUISITION SUB, INC., a Nevada  
13 Corporation, SMG GROWING MEDIA,  
14 INC., an Ohio Corporation, and SCOTTS  
15 MIRACLE-GRO COMPANY, an Ohio  
16 Corporation,

17 Defendants.  
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Case No.: A-21-827745-B

1                                   **NOTICE OF PROPOSED SETTLEMENT OF CLASS ACTION**

2   **TO: ALL MINORITY SHAREHOLDERS OF AEROGROW INTERNATIONAL, INC.**  
3   **WHO HELD AEROGROW STOCK AS OF THE EFFECTIVE DATE FOR THE**  
4   **MERGER<sup>1</sup> AND HAD THE RIGHT TO RECEIVE THE MERGER**  
5   **CONSIDERATION, AS WELL AS THEIR SUCCESSORS AND ASSIGNS.**

6                   **THIS NOTICE WAS AUTHORIZED BY THE COURT. IT IS NOT A LAWYER**  
7                   **SOLICITATION. PLEASE READ THIS NOTICE CAREFULLY AND IN ITS**  
8                   **ENTIRETY.**

9                   YOU ARE HEREBY NOTIFIED that a hearing will be held on \_\_\_\_\_, 2026, at  
10                  \_\_\_\_:\_\_\_\_.m., before the Honorable Mark R. Denton, at the Eighth Judicial District Court, Clark  
11                  County, Nevada, Dept. 13, 200 Lewis Ave, Las Vegas, NV 89101, to determine whether: (1) the  
12                  proposed settlement (“Settlement”) of the above-captioned action as set forth in the Stipulation  
13                  and Agreement of Settlement dated December 10, 2025 (“Stipulation”)<sup>2</sup> for \$15,978,202.50 should  
14                  be approved by the Court as fair, reasonable, and adequate; (2) the Judgment as provided under  
15                  the Stipulation should be entered; (3) the Court should approve the requested Fee and Expense  
16                  Award to Plaintiffs’ Counsel (as defined in the Notice of Proposed Settlement of Class Action  
17                  (“Notice”), which is discussed below); (4) Plaintiffs should receive service awards for representing  
18                  the Class out of the Settlement Fund and, if so, in what amount; and (5) the Plan of Allocation  
19                  should be approved by the Court as fair, reasonable, and adequate.

20                  This Action is a shareholder class action brought on behalf of all Persons who held the  
21                  common stock of AeroGrow International, Inc. (“AeroGrow”) as of the Effective Date for  
22                  AeroGrow’s merger with SMG Growing Media, Inc. (the “Merger”), and had the right to receive  
23                  the Merger Consideration, against AeroGrow, The Scotts Miracle-Gro Company, and certain of  
24                  their current and/or former officers, directors, and subsidiaries (collectively, “Defendants”) for,  
25                  among other things, allegedly breaching their fiduciary duties, and aiding and abetting the breach  
26                  of fiduciary duties, in connection with the Merger. Defendants deny all Plaintiffs’ allegations.

27                  \_\_\_\_\_  
<sup>1</sup> The Effective Date for the Merger was February 26, 2021.

28                  <sup>2</sup> The Stipulation can be viewed and/or downloaded at [www.aerogrowshareholderlitigation.com](http://www.aerogrowshareholderlitigation.com). All  
capitalized terms used herein have the same meaning as set forth in the Stipulation.

1           **IF YOU HELD COMMON STOCK OF AEROGROW ON FEBRUARY 26, 2021**  
2           **AND HAD THE RIGHT TO RECEIVE THE MERGER CONSIDERATION, YOUR**  
3           **RIGHTS MAY BE AFFECTED BY THE SETTLEMENT OF THIS ACTION.**

4           To share in the distribution of the Settlement Fund, you need not take any action at this  
5           time. Following the Effective Date, the Administrator shall distribute the Net Settlement Fund to  
6           eligible class members on a per-share basis. Class Members do not have to submit a claim form  
7           or take any other action in order to receive payment. If you are a member of the Class and do not  
8           request exclusion therefrom, you will be bound by the Settlement and any judgment and releases  
9           entered in the Action.

10           RECEIPT OF THIS NOTICE DOES NOT NECESSARILY MEAN THAT YOU ARE  
11           ENTITLED TO RECEIVE PROCEEDS FROM THE SETTLEMENT. ONLY PERSONS WHO  
12           HELD SHARES OF AEROGROW COMMON STOCK AS OF THE EFFECTIVE DATE OF  
13           THE MERGER AND HAD THE RIGHT TO RECEIVE CONSIDERATION FOR SUCH  
14           SHARES, OTHER THAN THE EXCLUDED PERSONS AND THOSE WHO OWNED  
15           DISSENTERS SHARES,<sup>3</sup> ARE ENTITLED TO RECEIVE PROCEEDS FROM THE  
16           SETTLEMENT.

17           If you have not received a copy of the Notice, which more completely describes the  
18           Settlement and your rights thereunder (including your right to object to the Settlement), you may  
19           obtain these documents, as well as a copy of the Stipulation (which, among other things, contains  
20           definitions for the defined terms used in this Summary Notice) and other settlement documents  
21           online at [www.Aerogrowshareholderlitigation.com](http://www.Aerogrowshareholderlitigation.com) or by writing to:

22                                   *AeroGrow International, Inc. Merger Litigation Settlement*  
23                                   A.B. Data Group  
24                                   600 A.B. Data Drive  
25                                   Milwaukee, WI 53217  
26                                   414-961-6400

27           <sup>3</sup> "Dissenters Shares" means the shares of AeroGrow stock as to which dissenters' rights in connection with  
28           the Merger were properly exercised by those AeroGrow shareholders pursuant to NRS Chapter 92A.300-500 and who  
          are respondents in the matter captioned *AeroGrow International, Inc. v. Quadre Investments, L.P., et al.*, Case No. A-  
          21-836612-B.

1           Inquiries should NOT be directed to Defendants, Defendants' Counsel, the Court, or the  
2 Clerk of the Court. Inquiries, other than requests for the Notice or for a Proof of Claim, may be  
3 made to Class Counsel:

4                               BOTTINI & BOTTINI, INC.  
5                               Francis A. Bottini, Jr.  
6                               7817 Ivanhoe Avenue, Suite 102  
7                               La Jolla, CA 92037  
8                               Telephone: (858) 914-2001

9           IF YOU DESIRE TO BE EXCLUDED FROM THE CLASS, YOU MUST SUBMIT A  
10 REQUEST FOR EXCLUSION SUCH THAT IT IS **POSTMARKED BY \_\_\_\_\_**,  
11 **2026**, IN THE MANNER AND FORM EXPLAINED IN THE NOTICE. ALL MEMBERS OF  
12 THE CLASS WHO HAVE NOT REQUESTED EXCLUSION FROM THE SETTLEMENT  
13 CLASS WILL BE BOUND BY THE SETTLEMENT.

14           IF YOU ARE A CLASS MEMBER, YOU HAVE THE RIGHT TO OBJECT TO THE  
15 SETTLEMENT, THE PLAN OF ALLOCATION, THE REQUEST BY PLAINTIFFS'  
16 COUNSEL FOR THE FEE AND EXPENSE AWARD, AND/OR THE PAYMENT OF SERVICE  
17 AWARDS TO PLAINTIFFS FOR REPRESENTING THE CLASS. ANY OBJECTIONS MUST  
18 BE FILED WITH THE COURT AND SENT TO CLASS COUNSEL AND DEFENDANTS'  
19 COUNSEL BY \_\_\_\_\_, **2026**, IN THE MANNER AND FORM EXPLAINED IN THE  
20 NOTICE.

21           DATED: \_\_\_\_\_

22                               BY ORDER OF THE EIGHTH JUDICIAL  
23                               DISTRICT, CLARK COUNTY, NEVADA

1 **KEMP JONES, LLP**

2 Nathanael R. Rulis, Esq.

3 Nevada Bar No. 11259

4 N.Rulis@kempjones.com

5 Francesca Bergeret-Simpson, Esq.

6 Nevada Bar No. 16499

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8 3800 Howard Hughes Pkwy., 17th Floor

9 Las Vegas, Nevada 89169

10 (P) (702) 385-6000 (F) (702) 385-6001

11 **BOTTINI & BOTTINI, INC.**

12 Francis A. Bottini, Jr., Esq. (*pro hac vice*)

13 fbottini@bottinilaw.com

14 Aaron P. Arnzen, Esq. (*pro hac vice*)

15 aarnzen@bottinilaw.com

16 7817 Ivanhoe Avenue, Suite 102

17 La Jolla, California 92037

18 (P) (858) 914-2001 (F) (858) 914-2002

19 *Counsel for Plaintiffs*

20 **EIGHTH JUDICIAL DISTRICT COURT**  
21 **CLARK COUNTY, NEVADA**

22 OVERBROOK CAPITAL LLC, on Behalf  
23 of Itself and All Others Similarly Situated,  
24 Plaintiff,

25 vs.

26 AEROGROW INTERNATIONAL, INC.,  
27 CHRIS HAGEDORN, H. MACGREGOR  
28 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)

Dep't. No. XIII

**[PROPOSED] FINAL JUDGMENT AND  
ORDER GRANTING FINAL APPROVAL OF  
CLASS ACTION SETTLEMENT**

**[EXHIBIT B]**

1 NICOYA CAPITAL LLC, on Behalf of  
2 Itself and All Others Similarly Situated,

3 Plaintiff,

4 vs.

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

9 - and -

10 AEROGROW INTERNATIONAL, INC.,  
11 a Nevada Corporation, AGI  
12 ACQUISITION SUB, INC., a Nevada  
13 Corporation, SMG GROWING MEDIA,  
14 INC., an Ohio Corporation, and SCOTTS  
15 MIRACLE-GRO COMPANY, an Ohio  
16 Corporation,

17 Defendants.  
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Case No.: A-21-827745-B



1 WHEREAS, the Court is advised that the Parties, through their counsel, have agreed,  
2 subject to Court approval following Notice to the Class and a hearing, to settle this Action upon  
3 the terms and conditions set forth in the Stipulation and Agreement of Settlement dated December  
4 10, 2025 (the "Stipulation" or "Settlement")<sup>1</sup>; and

5 WHEREAS, on \_\_\_\_\_, 2025, the Court entered its Order Preliminarily Approving  
6 Settlement and Providing for Notice, which preliminarily approved the Settlement and approved  
7 the form and manner of Notice to the Class of the Settlement,

8 WHEREAS, the Parties and Administrator have provided proof that said Notice has been  
9 disseminated to Class Members, and the Settlement Fairness Hearing has been held;

10 NOW, THEREFORE, based upon the Stipulation and all of the filings, records, and  
11 proceedings herein, and it appearing to the Court upon examination that the Settlement set forth in  
12 the Stipulation is fair, reasonable, and adequate, and upon a Settlement Fairness Hearing having  
13 been held after Notice to the Class of the Settlement to determine if the Settlement is fair,  
14 reasonable, and adequate and whether the Judgment should be entered in this Action;

15 **THE COURT HEREBY FINDS AND CONCLUDES THAT:**

16 A. The provisions of the Stipulation, including the definitions of the terms used  
17 therein, are hereby incorporated by reference as though fully set forth herein.

18 B. This Court has jurisdiction of the subject matter of this Action and over all the  
19 Parties and all Class Members for purposes of the Settlement.

20 C. The form, content, and method of dissemination of Notice given to the Class was  
21 adequate and reasonable and constituted the best notice practicable under the circumstances,  
22 including individual notice to all Class Members who could be identified through reasonable  
23 effort.

24 D. Notice, as given, complied with the requirements of Nevada law, satisfied the  
25 requirements of due process, and constituted due and sufficient notice of the matters set forth in  
26 the Settlement.

27  
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<sup>1</sup> All capitalized terms used herein have the same meaning as set forth in the Stipulation.

1 E. The Settlement, as set forth in the Stipulation, is fair, reasonable, and adequate.

2 (i) The Settlement was negotiated at arm's length by Plaintiffs on behalf of the  
3 Class and by Defendants, all of whom were represented by highly experienced and skilled counsel.  
4 The case settled only after, among other things: (a) extensive investigation by Plaintiffs' Counsel;  
5 (b) extensive discovery, including Plaintiffs' Counsel review of over 180,000 pages of documents  
6 produced by Defendants, the taking of 20 depositions, motion practice before a special master  
7 regarding Defendants' privilege assertions, and other significant discovery, including  
8 interrogatories, requests for admission, and expert discovery; (c) the filing of detailed complaints  
9 and extensive motion practice (including motions for summary judgment and motions in limine)  
10 in this Court; (d) the filing and briefing of two petitions for writ of mandamus to the Nevada  
11 Supreme Court, one of which was resolved and one of which was still pending at the time of the  
12 Settlement; (e) preparation for trial; and (f) two mediations conducted by an experienced mediator  
13 who was familiar with this Action, which included an exchange of detailed mediation statements  
14 and exhibits that highlighted the factual and legal issues in dispute. Accordingly, both Plaintiffs  
15 and Defendants were well-positioned to evaluate the settlement value of this Action. The  
16 Stipulation was entered into in good faith and is not collusive.

17 (ii) If the Settlement had not been achieved, both Plaintiffs and Defendants  
18 faced the expense, risk, and uncertainty of a trial of the Action and appeals. The Court takes no  
19 position on the merits of either Plaintiffs' or Defendants' arguments, but notes these arguments as  
20 evidence in support of the reasonableness of the Settlement.

21 F. Plaintiffs and Plaintiffs' Counsel have fairly and adequately represented the interest  
22 of the Class Members in connection with the Settlement.

23 G. Plaintiffs, all Settlement Class Members, and Defendants are hereby bound by the  
24 terms of the Settlement set forth in the Stipulation.

25 **IT IS HEREBY ORDERED THAT:**

26 1. The Settlement on the terms set forth in the Stipulation is finally approved as fair,  
27 reasonable, and adequate. The Settlement shall be consummated in accordance with the terms and  
28

1 provisions of the Stipulation. The Parties are to bear their own costs, except as otherwise provided  
2 in the Stipulation.

3 2. All Released Parties as defined in the Stipulation are released in accordance with,  
4 and as defined in, the Stipulation.

5 3. Upon the Effective Date of Settlement, Plaintiffs and each Settlement Class  
6 Member shall be deemed to have, and by operation of this Judgment shall have, fully, finally, and  
7 forever released, relinquished, and discharged all Released Claims against the Released Parties.

8 4. Upon the Effective Date of Settlement, each of the Released Parties shall be deemed  
9 to have, and by operation of this Judgment shall have, fully, finally, and forever released Plaintiffs,  
10 Plaintiffs' Counsel, and each and all the Settlement Class Members from all Released Defendants'  
11 Claims.

12 5. All Class Members who have not objected to the Settlement in the manner provided  
13 in the Notice of Proposed Settlement of Class Action ("Notice") are deemed to have waived any  
14 objections by appeal, collateral attack, or otherwise.

15 6. All Class Members who have failed to timely and properly submit valid requests  
16 for exclusion (requests to opt out) from the Class are bound by the terms and conditions of the  
17 Stipulation and this Judgment.

18 7. The requests for exclusion by the Persons or entities identified in Exhibit A to this  
19 Judgment are accepted by the Court.

20 8. All other provisions of the Stipulation are incorporated into this Judgment as if fully  
21 rewritten herein.

22 9. Plaintiffs and all Settlement Class Members are hereby barred and enjoined from  
23 instituting, commencing, maintaining, or prosecuting in any court or tribunal any of the Released  
24 Claims against any of the Released Parties.

25 10. Neither the Stipulation nor the Settlement, nor any act performed or document  
26 executed pursuant to or in furtherance of the Stipulation or the Settlement:

27 (a) Shall be offered or received against Defendants as evidence of, or evidence  
28

1 in support of, a presumption, concession, or admission with respect to any liability, negligence,  
2 fault, wrongdoing, or damages, or in any way referred to for any other reason as against  
3 Defendants, in any civil, criminal, or administrative action or proceeding, other than such  
4 proceedings as may be necessary to effectuate the provisions of the Stipulation; however,  
5 Defendants may refer to the Stipulation and the Settlement and any act performed or document  
6 executed pursuant to or in furtherance of the Stipulation and the Settlement to effectuate the  
7 liability protection granted them hereunder;

8 (b) Shall be construed as or received in evidence as an admission, concession,  
9 or presumption against Plaintiffs or any of the Settlement Class Members that any of their claims  
10 are without merit, or that any defenses asserted by Defendants have any merit, or that damages  
11 recoverable in this Action would have exceeded the Settlement Fund; and

12 (c) Notwithstanding the foregoing, Defendants, Plaintiffs, Settlement Class  
13 Members, and/or the Released Parties may file the Stipulation and/or this Judgment in any action  
14 that may be brought against them in order to support a defense or counterclaim based on principles  
15 of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar, or reduction, or  
16 any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

17 11. The Court hereby finds and concludes that due and adequate notice was directed to  
18 all Persons and entities who are Class Members advising them of the Plan of Allocation and of  
19 their right to object thereto, and a full and fair opportunity was accorded to all Persons and entities  
20 who are Class Members to be heard with respect to the Plan of Allocation.

21 12. The Court hereby finds and concludes that the formula for the calculation of  
22 payments to Settlement Payment Recipients, which is set forth in the Notice sent to Class  
23 Members, provides a fair and reasonable basis upon which to allocate the proceeds of the Net  
24 Settlement Fund established by the Stipulation among Class Members, with due consideration  
25 having been given to administrative convenience and necessity.

26 13. In the event that the Stipulation is terminated in accordance with its terms: (i) this  
27 Judgment shall be rendered null and void and shall be vacated *nunc pro tunc*; and (ii) this Action  
28

1 shall proceed as provided in the Stipulation.

2 Without affecting the finality of this Judgment in any way, this Court retains continuing  
3 jurisdiction over: (a) implementation of this Settlement and any award or distribution of the  
4 Settlement Fund, including interest earned thereon; (b) disposition of the Settlement Fund; (c)  
5 hearing and determining applications for attorneys' fees, interest, and expenses in the Action; and  
6 (d) all Parties hereto for the purpose of construing, enforcing, and administering the Stipulation.

7  
8 DATED: \_\_\_\_\_

BY ORDER OF THE EIGHTH JUDICIAL  
DISTRICT, CLARK COUNTY, NEVADA