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

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

26 Plaintiff,

27 vs.

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

34 Defendants.

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

36 Dept. No.: XIII

37 **UNOPPOSED MOTION FOR**
38 **PRELIMINARY APPROVAL OF**
39 **CLASS ACTION SETTLEMENT ON**
40 **ORDER SHORTENING TIME**

41 **[HEARING REQUESTED]**

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

Case No.: A-21-827745-B

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

16 Defendants.

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1 Plaintiffs, by and through Lead Counsel, move this Court for an order granting preliminary
2 approval of the proposed class action settlement on the terms and conditions set forth in the
3 Stipulation and Agreement of Settlement, a copy of which is attached hereto as Exhibit A to the
4 Declaration of Francis A. Bottini, Jr. Plaintiffs further move the Court for other related relief under
5 NRCP 23. Defendants do not oppose the relief sought in this Motion.

6 Plaintiffs make this Motion pursuant to and in accordance with NRCP 23(f), the following
7 memorandum of points and authorities, the pleadings and papers on file herein, the attached
8 declaration of Francis A. Bottini, Jr. and all exhibits attached thereto, the oral argument of counsel
9 and such other or further information as the Court may request.

10 DATED this 11th day of December, 2025.

11 Respectfully Submitted,
12 KEMP JONES, LLP

13 /s/ Nathanael R. Rulis
14 Nathanael R. Rulis, Esq. (#11259)
15 Francesca Bergeret-Simpson, Esq. (#16499)
3800 Howard Hughes Pkwy., 17th Floor
Las Vegas, Nevada 89169

16 *Liaison Counsel for Plaintiffs*

17 BOTTINI & BOTTINI, INC.
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21 *Lead Counsel for Plaintiffs*

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**Declaration of Francis A. Bottini, Jr. in Support of the Unopposed Motion and
Request for Order Shortening Time**

I, Francis A. Bottini, Jr., Esq., hereby declare as follows:

1. I am a partner of Bottini & Bottini, Inc. and have personal knowledge of the facts stated herein except those matters stated on information and belief, and as to those matters, I believe them to be true.

2. My firm is Lead Counsel for Plaintiffs in the above-captioned Action.¹ I have been the lead attorney from my firm handling this Action at all times since the Action was filed almost five years ago. I have been personally involved in all aspects of the litigation of the Action, from drafting the complaints, drafting the substantive briefs, taking almost all the depositions, arguing all the key motions, working with Plaintiffs' experts, and handling the settlement negotiations. Thus, I have direct personal knowledge of the facts contained in this declaration.

3. This is a shareholder class action lawsuit. Plaintiffs challenge the merger consideration received by the minority shareholders of AeroGrow International, Inc., (“AeroGrow”) which was acquired in 2021 (the “Merger”) by SMG Growing Media, Inc., a wholly-owned subsidiary of Defendant The Scotts Miracle-Gro Company (“Scotts Miracle-Gro”). Plaintiffs allege that the Merger consideration—\$3.00 per share—was inadequate and that the Defendants breached their fiduciary duties as directors and controlling shareholders 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 deny the allegations.²

4. This case has been actively litigated for almost five years, as discussed in more detail below. The end result is the Settlement before the Court for preliminary approval. The Settlement provides for a cash fund of \$15,978,202.50 for Class Members (the “Settlement Amount” or “Settlement Fund”). The Settlement Fund was calculated based on a value of \$6.25

¹ All capitalized terms used herein have the meanings as defined in the Stipulation and Agreement of Settlement, attached as Exhibit A, unless otherwise defined.

² The Court previously granted summary judgment in favor of Defendants H. MacGregor Clarke and David 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 per AeroGrow share. There are 4,916,370 shares in the Class. Thus, before deducting litigation
2 costs and attorneys' fees, Class Members will be receiving another \$3.25 per share above and
3 beyond the \$3.00 per share they received in the Merger.

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

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

24 7. On November 24, 2021, Defendants filed a Petition for Writ of Mandamus (the
25 "First Petition") in the Nevada Supreme Court seeking review of the Court's order denying
26 Defendants' motion to dismiss the FACC. On December 17, 2021, the Nevada Supreme Court
27 ordered Plaintiffs to answer the First Petition. Briefing on the First Petition was completed on
28 February 18, 2022. After full briefing, the Supreme Court denied the First Petition.

1 8. On March 15, 2022, Plaintiffs Nicoya and Overbrook filed a motion for class
2 certification (the “Motion for Class Certification”). The Motion for Class Certification was set for
3 hearing on April 18, 2022, at 9:00 a.m. Thereafter, the Parties stipulated to certification of the
4 Class, and the Court approved the stipulation by order dated March 29, 2022. Notice of the class
5 certification order was subsequently provided by the notice administrator, A.B. Data, Ltd. (“A.B.
6 Data”). The notice gave all Class Members an opportunity to opt out of the Class at such time. In
7 total, Class counsel received six requests from individuals requesting to opt out of the Class.

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

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

21 11. The Parties also engaged in discovery proceedings before special master Floyd
22 Hale, in which Plaintiffs sought to compel the production of numerous documents that the Settling
23 Defendants³ had withheld under claim of privilege. The special master denied production of any
24 additional documents.

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27 3 Defendants The Scotts Miracle-Gro Company, SMG Growing Media, Inc., AeroGrow International, Inc.,
28 AGI Acquisition Sub, Inc., James Hagedorn, Peter Supron, Chris Hagedorn, Cory Miller, and Patricia M. Ziegler are
referred to herein as the “Settling Defendants.”

1 12. Five separate motions for summary judgment were filed, briefed, argued, and
2 decided by the Court in March 2025. Subsequently, on April 11, 2025, the Settling Defendants
3 filed a second mandamus petition with the Nevada Supreme Court seeking review of the Court's
4 orders denying in part the motions for summary judgment (the "Second Petition"). The Settling
5 Defendants also filed motions in both this Court and the Nevada Supreme Court to stay the trial
6 proceedings pending resolution of the Second Petition. The Court denied the motion to stay by
7 order dated June 24, 2025. By order dated August 15, 2025, the Nevada Supreme Court also
8 denied the Settling Defendants' motion to stay. Various motions for clarification and/or
9 reconsideration of the summary judgment orders were also litigated by the parties. The Court
10 issued its most recent order with respect to such motions on September 3, 2025, when it denied
11 certain Defendants' motion for approval of a final order pursuant to NRCP 54(b).

12 13. The Court set this Action for trial on a five-week stack beginning on October 14,
13 2025. At the time they reached an agreement on the terms of Settlement, the Parties were diligently
14 preparing for trial, including identifying witnesses, selecting trial exhibits, and drafting their
15 opening statements and closing arguments. The Parties had also fully briefed 12 motions *in limine*,
16 including motions addressing the admissibility of opinion testimony offered by several designated
17 experts.

18 14. The Parties also engaged, on two separate occasions, a mediator to attempt to settle
19 the Action. The first mediation occurred on October 4, 2022, with the Hon. Layn Phillips (Ret.)
20 of Phillips ADR serving as mediator. The Parties exchanged mediation briefs and had a full-day
21 mediation session, which proved unsuccessful.

22 15. Almost three years later, in September 2025, after the motions for summary
23 judgment had been adjudicated and the Parties were preparing for trial, the Parties engaged Phillips
24 ADR for a second time in an attempt to settle the Action. The Parties exchanged various offers
25 and counteroffers but still had not reached any compromise leading up to the weekend before the
26 September 29, 2025 Calendar Call. Over that weekend, Phillips ADR issued a mediator's proposal
27 to settle the Action. Finally, on the morning of the Calendar Call, the Parties settled the Action by
28 accepting the mediator's proposal, and have documented their agreement to settle the case in a

1 term sheet, dated October 16, 2025. Needless to say, the negotiations were hard-fought, arms-
2 length, protracted, and fully informed by five years of active litigation.

3 16. The Parties thereafter engaged in further negotiations regarding the remaining
4 material terms of the Settlement, which are subject to approval by the Court. A true and complete
5 copy of the Stipulation of Settlement is attached hereto as Exhibit 1.

6 17. Subject to this Court's approval, Plaintiffs intend to engage A.B. Data, which
7 previously handled administration of the notice provided to Class Members regarding the prior
8 class certification order, to serve as the Administrator and establish and oversee a qualified
9 settlement fund to hold all settlement funds.

10 18. A true and correct copy of the Preliminary Approval Order is attached to the
11 Stipulation as Exhibit A.

12 19. A true and correct copy of the proposed Long-Form Notice is attached to the
13 Stipulation as Exhibit A-1.

14 20. A true and correct copy of the proposed Summary Notice is attached to the
15 Stipulation as Exhibit A-2.

16 21. A true and correct copy of the proposed Final Judgment and Order Granting Final
17 Approval to Class Action Settlement is attached to the Stipulation as Exhibit B.

18 22. Over the course of this Action, Class Counsel have invested substantial time and
19 resources to pursue the Class Members' claims against Defendants and to secure the Settlement.
20 Class Counsel did so with no guarantee of recovering anything.

21 23. Subject to the Court's review and approval under NRCP 23, Lead Counsel seek an
22 award of attorneys' fees in an amount of 33 1/3% of the Settlement Fund (*i.e.*, \$5,325,534.89), 33
23 1/3% of interest earned on the Settlement Fund, and reimbursement of costs not to exceed
24 \$850,000. These Fees are consistent with prevailing contingency fee awards. Defendants take no
25 position on these requests.

26 24. Lead Plaintiff has been vital in litigating this matter and a representative of Lead
27 Plaintiff was personally involved in litigating the Action and supports the Settlement.

1 25. Class Counsel have extensive experience litigating shareholder class actions,
2 including merger-related class actions. They understand and appreciate the defenses and position
3 of Defendants, but believe Plaintiffs would ultimately prevail at trial. Considering the Parties'
4 strongly divergent views, and their awareness of the burdens of proof necessary to establish
5 liability for the claims and the potential challenges to trying any class action, the Parties were able
6 to negotiate a fair settlement, taking into account the costs and risks of continued litigation.

7 26. The Parties have produced a result that they believe to be in their respective best
8 interests. The Parties also have taken into account the uncertainty and risk of the outcome of
9 further litigation, trials, potential appeals, and the difficulties and delays inherent in such litigation.
10 Plaintiffs also are aware of the burdens of proof necessary to establish liability for the claims
11 asserted in the action, the defenses thereto, the difficulties in establishing damages for Plaintiffs,
12 and the potential that the class could be de-certified.

13 27. Pursuant to EDCR 2.26, the Parties respectfully request an Order Shortening Time
14 in which their Motion for Preliminary Approval is to be heard. This is an unopposed motion, and
15 therefore no time is needed for opposition, or any other additional briefing. There is no reason to
16 delay. **Accordingly, Plaintiffs respectfully request that this Court set a hearing on the**
17 **Unopposed Motion for Preliminary Approval on or before December 19, 2025, or as soon**
18 **thereafter as the Court's schedule permits.**

19 || Dated this 11th day of December, 2025.

/s/ Francis A. Bottini, Jr.
FRANCIS A. BOTTINI, JR.

ORDER SHORTENING TIME

The Court having reviewed the Application for Order Shortening Time, and good cause appearing, IT IS HEREBY ORDERED that the foregoing Unopposed Motion For Preliminary Approval Of Class Action Settlement On Order Shortening Time shall be heard on the ___ day of ____, 2025, at ____ a.m./p.m., at the Courtroom of the above-entitled Court, in Department 13.

IT IS SO ORDERED.

Submitted by:

KEMP JONES, LLP

/s/ *Nathanael R. Rulis*

Nathanael R. Rulis, Esq. (#11259)
Francesca Bergeret-Simpson, Esq. (#16499)
3800 Howard Hughes Pkwy., 17th Floor
Las Vegas, Nevada 89169

Liaison Counsel for Plaintiffs

BOTTINI & BOTTINI, INC.
Francis A. Bottini, Jr., Esq. (*pro hac vice*)
Aaron P. Arnzen, Esq. (*pro hac vice*)
7817 Ivanhoe Avenue, Suite 102
La Jolla, California 92037

Lead Counsel for Plaintiffs

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

3 Lead Plaintiff Nicoya Capital LLC (“Nicoya”), on its own behalf and on behalf of all other
4 Class Members, moves for an order granting preliminary approval of the class action settlement
5 reached in this matter (the “Settlement”). Defendants The Scotts Miracle-Gro Company (“Scotts
6 Miracle-Gro”), SMG Growing Media, Inc., AeroGrow International, Inc. (“AeroGrow”), AGI
7 Acquisition Sub, Inc., James Hagedorn, Peter Supron, Chris Hagedorn, Cory Miller, and Patricia
8 M. Ziegler (the “Settling Defendants”), do not oppose this Motion. The Settlement was reached
9 following extensive investigation, discovery, motion practice, appellate proceedings, and many
10 arm’s length negotiations conducted with the assistance of an experienced mediator — the Hon.
11 Layn Phillips (Ret.) of Phillips ADR. When the benefits of the proposed Settlement are balanced
12 against the inherent risks of continued, protracted litigation, the fairness, adequacy, and
13 reasonableness of the Settlement is clear and compelling.

14 Accordingly, the Parties respectfully request that this Court grant preliminary approval of
15 the Settlement and enter the proposed Preliminary Approval Order attached as Exhibit A, that
16 provides for the following relief:

17 1. Preliminarily approving the Settlement under NRCP 23 subject to a final fairness
18 hearing by the Court after notice to the Class Members;

19 2. Approving the proposed form and method of notice to the Class Members,
20 including the Summary Notice attached as Exhibit A-1;

21 3. Directing notice to the Class Members within twenty-one (21) days after notice of
22 entry of the order granting preliminary approval;

23 4. Establishing deadlines for Class Members to submit objections to the Settlement
24 and opt out of the Settlement;

25 5. Appointing A.B. Data, Ltd. (“A.B. Data”) as the Administrator;

26 6. Setting the following dates/deadlines: (a) Class Member objection and opt out
27 deadline as 60 days from the Notice Date; (b) Plaintiffs’ deadline to file a motion
28 for final approval of the settlement and any motion for attorneys’ fees, costs, and

1 service awards as 14 days prior to the Settlement Fairness Hearing; and (c) a Final
2 Approval Hearing approximately 110 days after the Notice Date.

3 **II. FACTUAL BACKGROUND**

4 **A. Class Plaintiffs' Claims**

5 This case concerns the Merger between AeroGrow and SMG Growing Media, Inc., a
6 wholly owned subsidiary of Scotts Miracle-Gro. Prior to the Merger, SMG Growing Media owned
7 approximately 80% of AeroGrow's stock, and SMG Growing Media appointees held three of the
8 five seats on AeroGrow's board of directors (the "Board"). In February 2020, Defendant Peter
9 Supron, a Scotts Miracle-Gro employee, informed AeroGrow's Board that SMG Growing Media
10 sought to implement significant changes to the way that AeroGrow conducted its business. In
11 response, AeroGrow's Board formed a special committee to assess strategic alternatives and
12 engage in a market check process to determine the fair value of AeroGrow. After steps were taken
13 to advance these processes—including engaging counsel, hiring investment bankers, distributing
14 a Confidential Information Memorandum, receiving and analyzing preliminary indications of
15 interest from potential bidders, and calculating AeroGrow's value based on (*inter alia*) a
16 discounted cash flow analysis—SMG Growing Media submitted a non-binding offer to purchase
17 the outstanding shares of AeroGrow stock that it did not already own for \$1.75 per share. At least
18 two other non-binding indications of interest were received from third parties, including EagleTree
19 Capital. After negotiation with the special committee, SMG Growing Media increased its offer to
20 acquire the remaining outstanding shares of AeroGrow's stock to \$3.00 per share. The special
21 committee recommended the AeroGrow Board accept the offer, which it did, and on October 2,
22 2020, AeroGrow and SMG Growing Media entered into a letter of intent pursuant to which SMG
23 Growing Media agreed to purchase the shares of AeroGrow common stock that it did not already
24 own for \$3.00 per share (the "Merger Consideration"). After further negotiation over various
25 additional terms, AeroGrow and SMG Growing Media executed a Merger Agreement to effectuate
26 the Merger.

27 Plaintiffs' complaint alleges that the Merger Consideration received by the minority
28 shareholders of AeroGrow was inadequate, that Defendants breached their fiduciary duties as

1 directors and majority shareholders by interfering with the special committee's review of strategic
2 alternatives and the market check process, that Defendants failed to make full disclosure of all
3 relevant facts in the proxy for the Merger, and that Defendants engaged in other alleged
4 misconduct.

5 Defendants have denied and continue to deny all charges of wrongdoing or liability against
6 them arising out of any of the conduct, statements, acts, or omissions alleged, or that could have
7 been alleged, in the Action. Defendants have also denied and continue to deny, *inter alia*, the
8 allegations that Plaintiffs or the Class have suffered damages or were otherwise harmed by the
9 conduct alleged in this Action. Defendants have asserted and continue to assert that the Merger
10 Consideration was fair and that the proxy for the Merger contained no material misstatements or
11 omissions. Defendants have asserted and continue to assert that, at all times, they acted in good
12 faith and in accordance with all applicable rules, regulations, and laws and in the best interest of
13 all shareholders.

14 **B. Actions Filed Against Defendants, Consolidation, Defendants' Motion to
15 Dismiss, and Related Appellate Proceedings**

16 On January 11, 2021 Plaintiff Overbrook Capital LLC ("Overbrook") filed a putative class
17 action lawsuit on behalf of AeroGrow stockholders, captioned *Overbrook Capital, LLC v.*
18 *AeroGrow International, Inc.*, No. A-21-827665-B, asserting claims for breach of fiduciary duty
19 and aiding and abetting breach of fiduciary duty (the "Overbrook Action"). On January 12, 2021,
20 Lead Plaintiff Nicoya Capital LLC ("Nicoya") filed a putative class action lawsuit on behalf of
21 AeroGrow stockholders, captioned *Nicoya Capital, LLC v. Chris Hagedorn et al*, No. A-21-
22 827745-B, asserting claims for breach of fiduciary duty and aiding and abetting breach of fiduciary
23 duty (the "Nicoya Action"). On February 18, 2021, the Court consolidated the Overbrook Action
24 and the Nicoya Action for all purposes, including trial, into the Overbrook Action, with the lead
25 case number being A-21-827665-B; appointed Nicoya to serve as Lead Plaintiff; and appointed
26 Bottini & Bottini, Inc. to serve as Class Counsel and Kemp Jones, LLP to serve as Liaison Counsel.
27 On February 22, 2021, Plaintiff Bradley Louis Radoff ("Radoff") filed a lawsuit captioned *Radoff
28 v. Hagedorn*, No. A-21-829854-B, asserting claims for breach of fiduciary duty (the "Radoff

1 Action”). On February 24, 2021, the Court consolidated the *Radoff* Action for all purposes,
2 including trial, into the Overbrook Action (the Overbrook Action, the Nicoya Action, and the
3 Radoff Action, as consolidated, are collectively referred to as the “Action”).

4 On June 28, 2021, Plaintiffs filed their First Amended Consolidated Complaint (“FACC”),
5 asserting claims against Defendants for breach of fiduciary duties, and aiding and abetting the
6 breach of fiduciary duties. On July 12, 2021, Defendants moved to dismiss the FACC and, on
7 October 4, 2021, this Court denied the motion.

8 On November 24, 2021, Defendants filed a Petition for Writ of Mandamus (the “First
9 Petition”) in the Nevada Supreme Court seeking review of the Court’s order denying Defendants’
10 motion to dismiss the FACC. On December 17, 2021, the Nevada Supreme Court ordered
11 Plaintiffs to answer the First Petition. Briefing on the First Petition was completed on February
12 18, 2022. After full briefing, the Supreme Court denied the First Petition. *AeroGrow Int’l, Inc. v.*
13 *Eighth Jud. Dist. Ct. of Nevada*, 511 P.3d 1035 (Nev. June 30, 2022).

14 **C. Class Certification History**

15 On March 15, 2022, Plaintiffs Nicoya and Overbrook filed a motion for class certification
16 (the “Motion for Class Certification”). The Motion for Class Certification was set for hearing on
17 April 18, 2022, at 9:00 a.m. Thereafter, the Parties stipulated to certification of a Class consisting
18 of “[a]ll minority shareholders of AeroGrow who held AeroGrow stock as of the Effective Date
19 for the Merger and had the right to receive the Merger Consideration, as well as their successors
20 and assigns” (the “Class”). The Court approved the stipulation by order dated March 29, 2022.
21 Notice of the class certification order was subsequently provided to the Class by A.B. Data.

22 **D. Additional Pretrial Litigation and Preparation for Trial**

23 The Parties also engaged in litigated discovery proceedings before special master Floyd
24 Hale, in which Plaintiffs sought to compel the production of numerous documents the Settling
25 Defendants had withheld under claim of privilege. The special master denied production of any
26 additional documents.

27 After the close of fact discovery, Defendants filed five separate motions for summary
28 judgment. The motions were briefed, argued, and decided by the Court in March 2025. The Court

1 granted Defendants' H. MacGregor Clarke and David B. Kent's motion for summary judgment
2 and denied the remaining motions for summary judgment in part or in full. As a result, Defendants
3 H. MacGregor Clarke and David B. Kent were dismissed from the Action. Subsequently, on April
4 11, 2025, Defendants filed a second petition for writ of mandamus with the Nevada Supreme Court
5 seeking review of the Court's orders denying in part the motions for summary judgment (the
6 "Second Petition"). Defendants also filed motions in both this Court and the Nevada Supreme
7 Court to stay the trial proceedings pending resolution of the Second Petition. The Court denied
8 the motion to stay by order dated June 24, 2025. By order dated August 15, 2025, the Nevada
9 Supreme Court also denied Defendants' motion to stay. Various motions for clarification and/or
10 reconsideration of the summary judgment orders were also litigated by the parties. The Court
11 issued its most recent order with respect to such motions on September 3, 2025, when it denied a
12 motion filed by certain Defendants for final judgment pursuant to NRCP 54(b).

13 The Court set this Action for trial on a five-week stack beginning on October 14, 2025. At
14 the time they reached an agreement on terms, the Parties were diligently preparing for trial,
15 including identifying witnesses, selecting trial exhibits, and drafting their opening statements and
16 closing arguments. The Parties had also filed 12 motions in limine, including motions addressing
17 the admissibility of opinion testimony offered by several designated experts.

18 **E. Class Notice**

19 Pursuant to Court Orders following certification, Class Counsel caused Court-approved
20 notices to be mailed to all potential Class Members that A.B. Data identified, giving all Class
21 Members an opportunity to opt out of the Class at those times. In total, Class counsel received six
22 requests from individuals requesting to opt out of the Class. (Bottini Decl. ¶8.)

23 **F. Discovery and Investigation**

24 During the almost five years this Action has been pending, the Parties have engaged in
25 extensive discovery efforts. In response to Plaintiffs' discovery requests, Defendants produced
26 and Plaintiffs' counsel reviewed over 180,000 pages of documents. Following extensive document
27 discovery, which also included interrogatories and requests for admission, 20 depositions were
28 taken. All named parties, including Plaintiffs and Defendants, were deposed. In addition, various

1 third-party depositions were taken, which included Wells Fargo, Stifel, EagleTree Capital, J.
2 Michael Wolfe, and Grey Gibbs.

3 The parties also engaged in extensive expert discovery. Plaintiffs retained Gil Matthews
4 and Professor Ben Edwards. Both issued opening and rebuttal/reply reports and were deposed by
5 Defendants. Defendants retained four experts — Professor Shane Johnson, Dr. Laura Simmons,
6 Jan Kniffen, and Robert Kim, who issued opening and/or rebuttal/reply reports, and Shane Johnson
7 and Jan Kniffen were deposed. At the time of Settlement, each side had filed motions to exclude
8 the other side's experts, which were set for hearing on October 2, 2025.

9 In addition, as described above, the Parties also engaged in litigated discovery proceedings
10 before special master Floyd Hale, and in motion practice for various discovery disputes, including
11 several objections to the special master's reports and recommendations.

12 **G. Settlement Negotiations**

13 During the course of litigation, the Parties engaged, on two separate occasions, a mediator
14 to attempt to settle the Action. The first mediation occurred on October 4, 2022, with the Hon.
15 Layn Phillips (Ret.) of Phillips ADR serving as mediator. The Parties exchanged mediation briefs
16 and had a full-day mediation session, which proved unsuccessful.

17 Almost three years later, in September 2025, after the motions for summary judgment had
18 been adjudicated and the Parties were preparing for trial, the Parties engaged Phillips ADR for a
19 second time in an attempt to settle the Action. The Parties exchanged various offers and
20 counteroffers but still had not reached any compromise leading up to the weekend before this
21 Court's September 29, 2025 Calendar Call. Over that weekend, Phillips ADR issued a mediator's
22 proposal to settle the Action. Finally, on the morning of the Calendar Call, the Parties settled the
23 Action by accepting the mediator's proposal. The Parties thereafter engaged in further
24 negotiations regarding the remaining material terms of the Settlement, as set forth in the October
25 15, 2025 term sheet and the Stipulation and Agreement of Settlement. (Exhibit A.) The
26 negotiations were hard-fought, arms-length, protracted, and fully informed by five years of active
27 litigation. As Lead Plaintiff, Nicoya supports the Settlement.

28 The negotiations presided over by Judge Phillips (Ret.) involved only discussions of

1 potential relief to members of the Class.

2 **H. Lead Counsel's Investigation and Defendants' Denial of Wrongdoing**

3 Lead Counsel conducted a thorough and independent investigation of the facts and law
4 relating to the allegations in the FACC, including conferring with Lead Plaintiff and other
5 members of the Class, gathering discovery materials from Defendants and third parties, and
6 working with experts to develop relevant opinion evidence and damages models. The information
7 exchanged by the Parties through discovery was sufficient to reliably assess the merits of the
8 Parties' respective positions and to compromise the issues on a fair and equitable basis. In agreeing
9 to the proposed Settlement, Class Counsel and Lead Plaintiff have considered: (1) the evidence
10 produced in discovery and the applicable law; (2) the risks of continued litigation, including the
11 uncertainty of the outcome following any trial and appeals; and (3) the desirability of achieving
12 finality and the certainty of a recovery for all Class Members without further delay—the Action
13 has already been pending for almost five years.

14 Defendants have denied, and continue to deny, that they have any liability for the wrongs
15 alleged in the FACC. Defendants contend that they have dealt legally and fairly with the Class
16 Members. The Parties agree that nothing contained in the Settlement or this Motion is to be
17 construed or deemed an admission of liability, culpability, negligence, willfulness, lack of good
18 faith, or wrongdoing on the part of Defendants. Nevertheless, the Settling Defendants have
19 concluded that the Settlement is both desirable and beneficial.

20 **III. THE SETTLEMENT AGREEMENT**

21 A true and complete copy of the Stipulation and Agreement of Settlement is attached as
22 Exhibit A. The Settlement's key terms are noted below.

23 **A. The Class Members**

24 The Settlement resolves the claims of all Class Members in the Action who do not opt out
25 of the Settlement and who are not Excluded Persons and who do not own Dissenters Shares (the
26 "Settlement Class"). (Ex. 1-A, ¶ 1.2)

27 **B. Benefits to the Class Members**

28 The Settlement provides for substantial monetary awards to the Settlement Class. Scotts

1 Miracle-Gro, on behalf of Defendants, has agreed to pay or cause to be paid \$15,978,202.50 (the
2 “Settlement Amount”) into the Settlement Fund. The net amount that will be paid to members of
3 the Settlement Class (the “Net Settlement Amount”) is the Settlement Fund less: (i) any attorneys’
4 fees and litigation expenses awarded by the Court; (ii) any awards or expenses to Plaintiffs
5 awarded by the Court; (iii) notice and administration expenses; (iv) any required Taxes; and (v)
6 any other fees or expenses approved by the Court. (Ex. 1-A, ¶ 1.16).

7 **C. Settlement Administrator**

8 Plaintiffs intend to engage A.B. Data as the Administrator to provide administrative
9 services associated with identifying members of the Class, verifying Class Members’ identities,
10 and processing payments to Class Members. AB Data served as the Administrator at the class
11 certification stage, providing notice to Class Members of the class certification order, and is thus
12 knowledgeable about the Action and already has certain information necessary to identify Class
13 Members and administer the Settlement.

14 Subject to Court approval, the Administrator will provide notice of the Settlement to
15 members of the Class by (1) distributing notice to nominee holders, including banks and brokerage
16 houses, which the large majority of investors use to invest in the securities traded on the national
17 securities exchanges, (2) sending notice to record holders using the list of shareholders of record
18 as of the Merger; (3) causing the Summary Notice to be published once over a national newswire
19 service, and (4) posting the Long-Form Notice on the website AB Data previously established at
20 the class certification stage, which will now also be dedicated to providing relevant information.
21 Class Members will be provided information about how payments will be provided to them as well
22 as how they can object to or opt out of the Settlement. Class Members will not be required to
23 submit claims, since the Administrator will be able to identify Class Members who previously
24 received the Merger consideration and are eligible to receive their pro rata share of the Settlement.

25 The Administrator will determine each claimant’s pro rata share of the Net Settlement Fund
26 based upon each claimant’s Recognized Claim, as defined in the Plan of Allocation described in
27 the Notice annexed hereto as Exhibit A-1 to Ex. 1, or in such other Plan of Allocation as the Court
28 approves.

1 **D. Robust Fraud Prevention Measures**

2 The Settlement Administrator will take certain measures to prevent payments fraudulently
3 elicited by individuals who are not Class Members. This will include exercising fraud prevention
4 measures via electronic payments (*e.g.*, Venmo, Zelle, ACH). Banking information provided by
5 the Class Members for electronic payments will be cross-checked for identity verification. In the
6 event a Class Member is unable or chooses not to use electronic payment services, the Settlement
7 Administrator may send payment via check or other appropriate means that protects against
8 fraudulent payments. (Ex. 1-A at ¶ 49).

9 **E. Objections to Settlement**

10 Subject to Court approval, Class members will have a 60-day period in which to submit an
11 objection to the Settlement, beginning with the date of Summary Notice. Class Members who
12 object to the Settlement must file a written objection with the Court and serve it on Class Counsel
13 and Defendants' Counsel. Under the Settlement Agreement, any objecting Class Member must
14 file a timely objection with the Court, stating: his or her name and address, the title of the Action
15 and case number, a description of his or her objections, the number of AeroGrow shares held as of
16 the Effective Date of the Merger and provide proof of such ownership, the reasons for the
17 objections, a statement about whether or not the objector or his/her lawyer will appear at the
18 Settlement Fairness Hearing, and be personally signed by the Class Member.

19 **F. Attorney's Fees and Litigation Expenses**

20 Over the course of this Action, Class Counsel have invested substantial time and resources
21 to pursue the Class Members' claims against Defendants and to secure the Settlement. Class
22 Counsel did so on a contingency basis, with no guarantee of receiving any payment.

23 Subject to the Court's review and approval under NRCP 23, Lead Counsel seek an award
24 of attorney's fees in an amount of 33 1/3% of the Settlement Amount (*i.e.*, \$5,325,534.89), plus
25 interest hereon, and reimbursement of costs not to exceed \$850,000. These awards are consistent
26 with prevailing contingency fee awards. Defendants take no position on these requests.

27 **G. Service Awards to Plaintiffs**

28 Lead Plaintiff Nicoya has been vital in litigating this matter. A representative of Nicoya

1 has been personally involved in litigating the case and supports the Settlement. The Settlement
2 permits Plaintiffs to petition the Court under NRCP 23 for service awards for the Class
3 Representatives from the Settlement Fund. Lead Counsel requests that the Court authorize a
4 service award to Nicoya in the amount of \$20,000 and to Plaintiff Overbrook Capital in the amount
5 of \$15,000 to be paid from the Settlement Fund.

6 **H. Releases**

7 The Settlement provides that Plaintiffs and the Settlement Class Members will provide
8 customary releases to Defendants, which will become effective upon final approval of the
9 Settlement and its Effective Date. (Ex. 1-A at ¶¶ 1.22, 1.23, 1.24, 2.2.)

10 **IV. ARGUMENT**

11 **A. The Settlement Merits Preliminary Approval.**

12 A class action may not be dismissed, compromised or settled without the approval of the
13 Court. NRCP 23(f). Although Nevada case law lacks specifics on the settlement approval process,
14 the Nevada Supreme Court's class-action decisions often rely upon determinations made under
15 analogous portions of FRCP 23. *See, e.g., Shuette v. Beazer Homes Holdings Corp.*, 124 P.3d 530,
16 538, 121 Nev. 837, 847 (Nev. 2005). The Ninth Circuit employs a "strong judicial policy that
17 favors settlements, particularly where complex class action litigation is concerned." *In re Syncor*
18 *ERISA Litig.*, 516 F.3d 1095, 1101 (9th Cir. 2008) (citing *Class Pltffs v. City of Seattle*, 955 F.2d
19 1268, 1276 (9th Cir. 1992)).

20 Judicial proceedings under the federal rules have led to a defined procedure and specific
21 criteria for settlement approval in class action settlements, described in the MANUAL FOR COMPLEX
22 LITIGATION (FOURTH) (Fed. Judicial Center 2004) ("Manual") § 21.63, *et seq.*, including
23 preliminary approval, dissemination of notice to class members, and a fairness hearing. Manual
24 §§ 21.632, 21.633, 21.634. "Rule 23(e)(1) authorizes a court to grant preliminary approval of a
25 proposed class action settlement—and hence send notice of it to the class—so long as the moving
26 parties demonstrate that the court will 'likely be able to' grant final approval to the settlement."
27 NEWBERG AND RUBENSTEIN ON CLASS ACTIONS § 13:13 (6th ed.) ("Newberg") (citation omitted).
28 At the preliminary approval stage, the Court does not have to undertake an in-depth consideration

1 of the relevant factors that will be considered at the final approval hearing. Instead, the “judge
2 must make a preliminary determination on the fairness, reasonableness, and adequacy of the
3 settlement terms and must direct the preparation of notice of the certification, proposed settlement,
4 and date of the final fairness hearing.” Manual, § 21.632.

5 The decision to approve or reject a proposed settlement “is committed to the sound
6 discretion of the trial judge.” *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998).
7 This discretion is to be exercised “in light of the strong judicial policy that favors settlements,
8 particularly where complex class action litigation is concerned,” which minimizes substantial
9 litigation expenses for both sides and conserves judicial resources. *Linney v. Cellular Alaska
P’ship*, 151 F.3d 1234, 1238 (9th Cir. 1998) (quotations omitted); *see also Utility Reform Project
v. Bonneville Power Admin.*, 869 F.2d 437, 443 (9th Cir. 1989).

12 Courts in the Ninth Circuit analyzing preliminary approval under FRCP 23 agree that the
13 two-step process for class settlement approval begins with a low hurdle: “[a]t this preliminary
14 approval stage, the court need only ‘determine whether the proposed settlement is within the range
15 of possible approval.’” *Murillo v. Pac. Gas & Elec. Co.*, 266 F.R.D. 468, 479 (E.D. Cal. 2010)
16 citing *Gautreaux v. Pierce*, 690 F.2d 616, 621 n. 3 (7th Cir.1982)). To make the preliminary
17 fairness determination, courts may consider several relevant factors, including “the strength of the
18 plaintiff’s case; the risk, expense, complexity, and likely duration of further litigation; the risk of
19 maintaining class action status through trial; the amount offered in settlement; the extent of
20 discovery completed and the stage of the proceedings; [and] the experience and views of counsel.”
21 *Hanlon*, 150 F.3d at 1026.

22 Furthermore, courts must give “proper deference to the private consensual decision of the
23 parties,” since “the court’s intrusion upon what is otherwise a private consensual agreement
24 negotiated between the parties to a lawsuit must be limited to the extent necessary to reach a
25 reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion
26 between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and
27 adequate to all concerned.” *Id.* at 1027. Thus, in considering a potential settlement, the Court
28 need not reach any ultimate conclusions on the issues of fact and law which underlie the merits of

1 the dispute and need not engage in a trial on the merits. *See Officers for Just. v. Civil Serv.*
2 *Comm'n*, 688 F.2d 615, 625 (9th Cir. 1982).

3 Preliminary approval of a settlement should be granted if, as here, there are no “reservations
4 about the settlement, such as unduly preferential treatment of class representatives or segments of
5 the class, inadequate compensation or harms to the classes, the need for subclasses, or excessive
6 compensation for attorneys.” Manual § 21.632 at 321.

7 Based on these standards, the Parties respectfully submit that, for the reasons detailed
8 below, this Court should preliminarily approve the proposed Settlement as fair, reasonable, and
9 adequate under NRCP 23.

10 Here, the *Hanlon* factors weigh in favor of granting preliminary approval. First, the
11 Parties’ settlement negotiations occurred at arm’s length through several mediation sessions
12 presided over by a highly qualified neutral mediator — the Hon. Lay Phillips (Ret.) of Phillip
13 ADR. The first mediation occurred in 2022 and was unsuccessful. The second mediation occurred
14 in 2025 (three years later), after the case had been extensively litigated, including two petitions for
15 writs of mandamus to the Nevada Supreme Court, the resolution of five separate motions for
16 summary judgment, and the briefing of a dozen motions in limine, including the briefing of
17 competing motions to exclude expert witnesses. The fact that this Action only settled in response
18 to a mediator’s proposal on the day of the Calendar Call, and after almost five years of active
19 litigation, amply underscores the informed and arms-length nature of the Settlement. Needless to
20 say, before agreeing to the Settlement, the Parties engaged in substantial discovery and briefing
21 that informed the Parties as to the strengths and weaknesses of their respective positions in the
22 Action. Class Counsel is highly experienced in this area of the law, having acted as Class Counsel
23 in numerous successful shareholder class actions and having won commendation for their work.

24 **B. The Strength of Plaintiffs’ Case**

25 “When assessing the strength of [the] plaintiff’s case, the court does not reach ‘any ultimate
26 conclusions regarding the contested issues of fact and law that underlie the merits of this
27 litigation.’” *Van Lith v. iHeartMedia + Entm’t, Inc.*, No. 1:16-CV-00066-SKO, 2017 WL
28 1064662, at *11 (E.D. Cal. Mar. 20, 2017) (quoting *Adoma v. Univ. of Phoenix, Inc.*, 913 F. Supp.

1 2d 964, 975 (E.D. Cal. 2012)). The court must “evaluate objectively the strengths and weaknesses
2 inherent in the litigation and the impact of those considerations on the parties’ decisions to reach
3 these agreements.” *Adoma*, 913 F. Supp. 2d at 975.

4 The Settlement reflects a fair and reasonable result for members of the Class. Plaintiffs
5 believe that the extensive discovery conducted corroborated and supported Plaintiffs’ allegations
6 that Defendants undertook an unfair process to acquire Class Members’ AeroGrow stock for an
7 unfair value and pursuant to an unfair process. Plaintiffs and Class Counsel also believe there is
8 evidence from which a jury could rule in favor of the Class’s claims, and were prepared to try the
9 Action to a jury and had prepared the Action for trial as of the date of the Calendar Call, when the
10 Settlement was reached. On the other hand, there are mitigating factors that weigh in favor of the
11 Settlement. For various reasons, many of which the Parties have previously briefed in the motions
12 for summary judgment and motions in limine, there were substantial risks to members of the Class
13 from continuing to trial and any subsequent appeal. Where a court determines that a claim may
14 have “some measure of merit,” but that it also faces inherent challenges, the court should find that
15 the “strength of Plaintiff’s case” factor “weighs in favor” of approval of settlement. *Van Lith*,
16 2017 WL 1064662, at *11.

17 **C. Risk, Expense, Complexity, and Likely Duration of Further Litigation**

18 In assessing the degree of risk of continued litigation, “the court evaluates the time and
19 cost required.” *Adoma*, 913 F. Supp. 2d at 976. “[U]nless the settlement is clearly inadequate, its
20 acceptance and approval are preferable to lengthy and expensive litigation with uncertain results.”
21 *Id.* (quoting *Nat'l Rural Telecomm. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 526 (C.D. Cal.
22 2004)). “The parties . . . save themselves the time, expense, and inevitable risk of litigation.
23 Naturally, the agreement reached normally embodies a compromise; in exchange for the saving of
24 cost and elimination of risk, the parties each give up something that they might have won had they
25 proceeded with litigation.” *Officers for Just.*, 688 F.2d at 624 (quoting *United States v. Armour*
26 & Co., 402 U.S. 673, 681–82 (1971)).

27 The risks and expenses of continued litigation are plain; absent settlement, the Parties
28 would be required to continue litigation, including extensive trial preparation and trial, and likely

1 appeals, all of which may surface further outstanding issues. All told, there may be no recovery
2 or the ultimate recovery might be of no greater value—or of lesser value—to that set forth in the
3 Settlement. *See, e.g., Barbosa v. Cargill Meat Sols. Corp.*, 297 F.R.D. 431, 447 (E.D. Cal. 2013)
4 (concluding that this factor favored approval where “there remained significant procedural hurdles
5 for the putative class to confront” and “there were significant risks in continued litigation and no
6 guarantee of recovery”).

7 **D. Relief Offered in Settlement**

8 The relief offered in a settlement is assessed as a “complete package” for overall fairness.
9 *DIRECTV, Inc.*, 221 F.R.D. at 527 (quoting *Officers for Just.*, 688 F.2d at 628). Indeed, it is “well-
10 settled law that a proposed settlement may be acceptable even though it amounts to only a fraction
11 of the potential recovery that might be available to the class members at trial.” *Id.* (citing *Linney*,
12 151 F.3d at 1242).

13 Here, the relief includes the ability of Class Members to claim substantial monetary
14 benefits that, before fees and expenses, values AeroGrow stock at \$6.25 per share and provides for
15 an additional cash payment to Class Members of \$3.25 per share—more than doubles the \$3.00
16 per share Merger Consideration that Class Members originally received. The question of the true
17 fair value of AeroGrow stock as of the Merger was obviously hotly disputed. Defendants’
18 valuation expert opined that the fair value was actually less than the \$3.00 Merger Consideration,
19 advancing a value of just \$2.21 per share. *See* Expert Report of Shane A. Johnson, Ph.D. and
20 Laura E. Simmons, Ph.D., dated February 15, 2023, at ¶93, on file. Based on that valuation, the
21 Settlement provides Class Members with a recovery of 283% of the stock’s fair value and potential
22 recoverable damages, had the jury sided with Defendants and their expert. Plaintiffs’ valuation
23 expert, Gil Matthews, opined that the fair value of AeroGrow stock was much higher—\$9.20 per
24 share. *See* Amended Expert Rebuttal Report of Gil Matthews on Behalf of Plaintiffs, May 11,
25 2023, at p. 13, on file. Using that valuation, the Settlement represents a recovery of 68% of
26 maximum damages, had the jury sided with Plaintiffs. Moreover, juries have been known to
27 sometimes “split the baby.” Had they done that and taken a middle ground on valuation, they
28 could have decided that a fair valuation was around \$5.70 per share—below the \$6.25 total per

1 share value of the Settlement. By any measure, therefore, the Settlement represents a significant
2 recovery of potential recoverable damages and thus is eminently fair, reasonable, and adequate.

3 At the time of the Calendar Call, when the Settlement was reached on the proverbial steps
4 of the courthouse, each side had pending motions to exclude the other side's experts. Assuming
5 those motions were all denied, there were substantial risks to both sides of going to trial. Even if
6 Plaintiffs had prevailed at trial, the jury could have sided with Defendant's expert on valuation, in
7 which Plaintiffs could have recovered nothing since the \$2.21 valuation of Defendants' expert was
8 less than the \$3.00 the Class had already received in the Merger. On the other hand, if the jury
9 sided with the \$9.20 valuation of Plaintiffs' expert, Defendants could have appealed, delaying any
10 payment to Class Members and posing a potential for reversal on various grounds, including issues
11 such as the jury instructions. Defendants repeatedly argued in their two writ petitions to the
12 Nevada Supreme Court that the Court had employed the wrong legal standard. While the first of
13 those petitions was denied, the second remained pending at the time the Settlement was reached.
14 Defendants also would have had an appeal as a matter of right after trial, and the Nevada Supreme
15 Court had not yet had occasion to opine on the proper jury instruction for an "invalid merger"
16 claim at trial.

17 While a larger award may be "theoretically possible, 'the very essence of a settlement is
18 compromise, a yielding of absolutes and an abandoning of highest hopes.'" *Barbosa*, 297 F.R.D.
19 at 447 (quoting *Linney*, 151 F.3d at 1242); *see also Hanlon*, 150 F.3d at 1027 (the fact that "the
20 settlement could have been better ... does not mean the settlement presented was not fair,
21 reasonable, or adequate"). Accordingly, this factor weighs in favor of approval of the Settlement.

22 **E. Arm's Length, Non-Collusive, Negotiated Resolution**

23 The Ninth Circuit puts "a good deal of stock in the product of arms-length, negotiated
24 resolution." *Rodriguez v. W. Publ'g Corp.*, 563 F.3d 948, 965 (9th Cir. 2009) (citing *Hanlon*, 150
25 F.3d at 1027; *Officers for Just.*, 688 F.2d at 625). Critically, "[a]n initial presumption of fairness
26 is usually involved if the settlement is recommended by class counsel after arm's length
27 bargaining." *Wren v. RGIS Inventory Specialists*, No. C-06-05778 JCS, 2011 WL 1230826, at *6
28 (N.D. Cal. Apr. 1, 2011) (emphasis added), *supplemented*, No. C-06-05778 JCS, 2011 WL

1 1838562 (N.D. Cal. May 13, 2011).

2 Here, counsel for the Parties have separately reviewed and investigated the applicable law
3 and facts pertaining to Plaintiffs' claims, potential defenses thereto, the damages claimed, and
4 potential exposure. For almost five years, the Parties engaged in vigorous, contested motion
5 practice, considerable formal discovery that included robust discovery disputes, 20 depositions,
6 expert discovery and depositions, contested motions for summary judgment, motions in limine,
7 and two petitions for writs of mandamus to the Nevada Supreme Court.

8 Further, the Parties engaged in multiple arm's-length mediation sessions before Judge
9 Phillips (Ret.) of Phillips ADR. It was only after extensive negotiation, proposals, and counter-
10 proposals, that a mediator's proposal was made and ultimately accepted on the day of the Calendar
11 Call for trial.

12 The adversarial, non-collusive and arm's-length communications between the Parties'
13 counsel considered issues including, but not limited to monetary remuneration for members of the
14 Class and other Settlement Administration details. The resulting Settlement is the product of
15 dozens of hours of such arm's length negotiations between the Parties, which provides an ample
16 factual record warranting an initial presumption of fairness.

17 **F. Experience and Views of Counsel and Adequate Representation of the Class**

18 "In considering the adequacy of the terms of a settlement, the trial court is entitled to, and
19 should, rely upon the judgment of experienced counsel for the parties." *Van Lith*, 2017 WL
20 1064662, at *13 (citing *Barbosa*, 297 F.R.D. at 447). "Great weight is accorded to the
21 recommendation of counsel, who are the most closely acquainted with the facts of the underlying
22 litigation." *Id.* (quoting *Adoma*, 913 F.Supp.2d at 977 (internal citation omitted)). Accordingly,
23 "absent fraud, collusion, or the like," the Court "should be hesitant to substitute its own judgment
24 for that of counsel." *Id.* (citing *DIRECTV, Inc.*, 221 F.R.D. at 528).

25 Class Counsel has extensive experience in litigating shareholder class actions, including
26 such actions in the context of corporate mergers and acquisitions. (Bottini Decl. ¶ 24.) Class
27 Counsel was confident that Plaintiffs had a strong chance of success at trial, but also understood
28 and appreciated the defenses and position of Defendants. Considering the Parties' strongly

1 divergent views, and their awareness of the burdens of proof necessary to establish liability for the
2 claims and the potential challenges to trying any securities class action, the Parties were able to
3 negotiate a fair settlement, taking into account the costs and risks of continued litigation.

4 The Parties have produced a result that they believe to be in their respective best interests.
5 The Parties also have taken into account the uncertainty and risk of the outcome of further
6 litigation, trial, and probable appeal, and the difficulties and delays inherent in such further
7 litigation.

8 **G. The Settlement Has No Obvious Deficiencies**

9 Furthermore, because the Settlement has no obvious deficiencies, preliminary approval is
10 proper. *See Mora v. Cal West Ag Services, Inc.*, No. 1:15-cv-01490-LJO-EPG, 2019 WL 2084725,
11 at *3 (E.D. Cal. 2019), *report and recommendation adopted*, 2019 WL 3760402 (E.D. Cal. 2019)
12 (citing NEWBERG ON CLASS ACTIONS § 13:13 (5th ed. 2014)) (“The purpose of the initial review
13 is to ensure that an appropriate class exists and that the agreement is non-collusive, without obvious
14 deficiencies, and within the range of possible approval as to that class.”). No such obvious
15 deficiencies are present here. The Settlement includes a favorable cash recovery for Class
16 Members that represents a large percentage of the maximum potential recoverable damages, as
17 discussed in detail *supra*. The Settlement also provides for a streamlined, “direct pay” distribution
18 to Class Members by the Administrator, thus eliminating the need for Class Members to complete
19 and submit claim forms, as discussed below.

20 **H. The Proposed Method of Distributing Relief and Processing Claims Is
21 Adequate**

22 The distribution plan for the Settlement Fund set forth in Exhibit A-1 attached hereto, is
23 more than adequate to warrant preliminary approval. An experienced Administrator—A.B.
24 Data—will handle payments from the Settlement Fund directly to members of the Settlement
25 Class, without the need for Class Members to submit claim forms. The claims process is the most
26 rational and reasonable means for distributing funds to members of the Settlement Class. As
27 described in more detail in Exhibit A-1, the Administrator will obtain information about the
28 beneficial and record holders of AeroGrow stock who previously received the Merger
Consideration. The Plan of Allocation is simple and straightforward, as it provides that each

1 eligible Class Member will receive their pro rata share of the Net Settlement Fund based on how
2 many AeroGrow shares they held as of the Effective Date of the Merger. Each Class Member's
3 pro rata share of the Net Settlement Fund is easily computed by the Administrator based on the
4 number of shares each Class Member held, thus eliminating the need for claim forms and
5 expediting the processing of payments to Class Members.

6 Proposed settlements are not judged against a hypothetical or speculative measure of what
7 might have been achieved, as litigation is, by its nature, uncertain, and "the very essence of a
8 settlement is compromise, a yielding of absolutes and an abandoning of highest hopes." *Linney*,
9 151 F.3d at 1242. The Settlement achieves a fundamentally fair, adequate, and reasonable
10 resolution of all relevant claims.

11 **V. CONCLUSION**

12 For all the foregoing reasons, the Parties respectfully request that the Court grant
13 preliminary approval of the Settlement and enter the proposed Preliminary Approval Order
14 attached as Exhibit B that provides for the following relief:

- 15 1. Preliminarily approving the Settlement under NRCP 23 subject to a final fairness
16 hearing by the Court after notice to the Class Members;
- 17 2. Approving the proposed form and method of notice to the Class Members,
18 including the Summary Notice attached as Exhibit A-2 to Ex. 1;
- 19 3. Directing notice to the Class Members within twenty-one (21) days after notice of
20 entry of the order granting preliminary approval;
- 21 4. Establishing deadlines for Class Members to submit objections to the Settlement
22 and respond to obtain the Settlement benefits;
- 23 5. Appointing A.B. Data as the Administrator;
- 24 6. Setting the following dates/deadlines: (a) Class Member objection and response
25 deadlines of: (a) Class Member objection and opt out deadline as 60 days from the
Notice Date; (b) Plaintiffs' deadline to file a motion for final approval of the
settlement and any motion for attorneys' fees, costs, and service awards as 14 days
prior to the Settlement Fairness Hearing; and (c) a Final Approval Hearing

1 approximately 110 days after the Notice Date.

2 DATED this 11th day of December, 2025.

3 Respectfully Submitted,

4 KEMP JONES, LLP

5 */s/ Nathanael R. Rulis*

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13 *Lead Counsel for Plaintiffs*

CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of December, 2025, the foregoing UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT ON ORDER SHORTENING TIME was served via Electronic Service to all parties on the Court's service list.

/s/ Pamela McAfee
An employee of Kemp Jones, LLP

EXHIBIT 1

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20 *Lead Counsel for Plaintiffs*

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

23 OVERBROOK CAPITAL LLC, on Behalf Case No. A-21-827665-B (Lead Case)
24 of Itself and All Others Similarly Situated,
25 Plaintiff,

26 vs.

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

33 Defendants.

34 **STIPULATION AND AGREEMENT OF**
35 **SETTLEMENT**

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

Case No.: A-21-827745-B

Plaintiff,

vs.

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

- and -

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

Defendants.

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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 Kent¹ (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 ¹ 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.

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1 1.8 “Eligible Record Holder” means a Settlement Class Member who was the record
2 holder of any shares of AeroGrow common stock, other than Cede, at the time of the Merger.

3 1.9 “Effective Date of Settlement” or “Effective Date” means the date upon which all
4 of the events and conditions set forth in ¶ 10.1 below have been met and have occurred. With
5 respect to the Merger, “Effective Date” means February 26, 2021.

6 1.10 “Escrow Account” means an interest-bearing escrow account established by the
7 Escrow Agent or their respective successor(s) to receive the Settlement Amount.

8 1.11 “Escrow Agent” means Class Counsel together with the Administrator.

9 1.12 “Expense and Cost Waiver” means the agreement pursuant to which Defendants
10 agree to waive Plaintiffs’ obligation to pay (and Defendants agree not to otherwise seek to enforce
11 collection of) (a) any and all outstanding expenses, costs, and orders related in any way to the
12 proceedings before the special master and (b) the costs award entered by the Court related to the
13 dismissal from the Action of former defendants H. MacGregor Clarke and David Kent, such
14 amounts totaling \$806,058.66.

15 1.13 “Fee and Expense Award” means the attorneys’ fees and expenses awarded by the
16 Court as described in ¶ 5.1.

17 1.14 “Final” with respect to the Judgment (as defined below) or any alternative judgment
18 means: (i) if no appeal is filed, the expiration date of the time provided for filing or petitioning for
19 any appeal, or (ii) if there is an appeal from the Judgment or any alternative judgment, the date of
20 (a) final dismissal of all such appeals, or the final dismissal of any proceeding on certiorari or
21 otherwise to review the Judgment, or (b) the date the Judgment or any alternative judgment is
22 finally affirmed on appeal, and (1) the expiration of the time to file a petition for writ of certiorari
23 or other form of review, (2) the denial of a writ of certiorari or other form of review, or (3) if
24 certiorari or other form of review is granted, the date of final affirmance of the Judgment or any
25 alternative judgment following review pursuant to that grant. However, any appeal or appellate
26 proceeding seeking subsequent judicial review solely of an order issued with respect to (i)
27 attorneys’ fees, costs, or expenses, or (ii) the Plan of Allocation (as submitted or subsequently
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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 1.24 “Released Defendants’ Claims” means all claims (including “Unknown Claims” as
2 defined below), demands, losses, rights, and causes of action of any nature whatsoever that any
3 Released Party may have against Plaintiffs, the Settlement Class Members, or Plaintiffs’ Counsel
4 relating to the institution, prosecution, or settlement of the Action. Released Defendants’ Claims
5 specifically includes the release of the obligation of Plaintiffs or Plaintiffs’ Counsel to pay any
6 outstanding costs or fees in the special master proceeding, as provided in the Expense and Cost
7 Waiver. “Released Defendants’ Claims” do not include claims to enforce this Stipulation, any
8 claims by Defendants for insurance coverage, the appraisal claims asserted in *AeroGrow*
9 *International, Inc. v. Quadre Investments, L.P., et al.*, Case No. A-21-836612-B, and any demands,
10 losses, rights, and causes of action of any nature whatsoever that any Released Party may have
11 against Class Members who timely and validly excludes themselves from the Settlement.

12 1.25 “Settlement” means the terms set forth in this Stipulation.

13 1.26 “Settlement Amount” means the sum of \$15,978,202.50 to be deposited into an
14 Escrow Account pursuant to ¶3.1. The Settlement Amount also includes the Expense and Cost
15 Waiver.

16 1.27 “Settlement Fairness Hearing” means the hearing scheduled by the Court to
17 determine whether (i) the Settlement is fair, reasonable, and adequate, (ii) the Plan of Allocation
18 is fair, reasonable, and adequate, and (iii) Class Counsel’s request for an award of attorneys’ fees
19 and expenses, including awards to Plaintiffs, is reasonable.

20 1.28 “Settlement Fund” means the Settlement Amount plus any interest or income
21 earned thereon.

22 1.29 “Settlement Payment Recipients” means all Eligible Beneficial Owners and all
23 Eligible Record Holders.

24 1.30 “Summary Notice” means the summary notice of proposed Settlement and hearing
25 for publication, substantially in the form attached hereto as Exhibit A-2 to Exhibit A.

26 1.31 “Unknown Claims” means (i) any and all claims and potential claims against the
27 Released Parties which Plaintiffs or any Settlement Class Member do not know or suspect to exist

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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.

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

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

3. The Settlement Consideration

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

3.2 The Parties agree that the Settlement Fund is intended to be a Qualified Settlement Fund within the meaning of Treasury Regulation § 1.468B-1. The Settlement Fund, less any amounts incurred for Notice, administration, and/or Taxes (as defined below), plus any accrued interest thereon, shall revert to the Person(s) making the deposits if the Settlement does not become

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

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).

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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

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;

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- (c) Defendants have not exercised their option to terminate this Settlement pursuant to ¶ 10.4;
- (d) final approval by the Court of the Settlement, following Notice to the Class;
- (e) entry by the Court of a Judgment, or a judgment substantially in the form of Exhibit B annexed hereto, that has become Final.

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

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.

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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.² 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

27 2 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 theory of claim preclusion or issue preclusion or similar defense or counterclaim.

2 **12. Miscellaneous Provisions**

3 12.1 All the exhibits attached hereto are material and integral parts hereof and are fully
4 incorporated herein by this reference as though fully set forth herein.

5 12.2 The Parties intend the Settlement to be a final and complete resolution of all
6 disputes asserted or which could be asserted by Plaintiffs and/or any Settlement Class Member
7 against the Released Parties with respect to the Released Claims. Accordingly, Plaintiffs and
8 Defendants agree not to assert in any forum that the Action was brought by Plaintiffs or defended
9 by Defendants in bad faith or without a reasonable basis. The Parties further agree not to assert in
10 any forum that any party violated Nevada Rule of Civil Procedure 11 relating to the prosecution,
11 defense, or settlement of the Action. The Parties agree that the amount paid and the other terms
12 of the Settlement were negotiated at arm's-length in good faith by the Parties, and reflect a
13 settlement that was reached voluntarily after consultation with experienced legal counsel and
14 assisted by an experienced mediator.

15 12.3 This Stipulation may not be modified or amended, nor may any of its provisions be
16 waived, except by a writing signed by all Parties hereto.

17 12.4 The headings herein are used for the purpose of convenience only and are not meant
18 to have legal effect.

19 12.5 The administration and consummation of the Settlement as embodied in this
20 Stipulation shall be under the authority of the Court, and the Court shall retain jurisdiction for the
21 purpose of entering orders relating to the Fee and Expense Application, the Plan of Allocation, and
22 enforcing the terms of this Stipulation.

23 12.6 The waiver by one Party of any breach of this Stipulation by any other Party shall
24 not be deemed a waiver of any other prior or subsequent breach of this Stipulation.

25 12.7 This Stipulation and its exhibits and the Supplemental Agreement constitute the
26 entire agreement among the Parties hereto concerning the Settlement of the Action, and no
27 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.

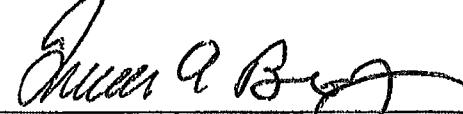
27 12.15 All agreements made and orders entered during the course of the Action relating to
28

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

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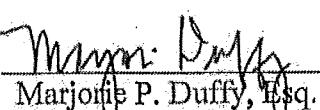
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Counsel for Plaintiff Overbrook Capital LLC

24 DATED: December 10, 2025

JONES DAY



25
26
27
28

Marjorie P. Duffy, Esq.

1
2
3
4
5
Robert Watts, Esq.
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Counsel for the Settling Defendants

DATED: December 10, 2025

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Las Vegas, NV 89101

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

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12 || *Counsel for Plaintiffs*

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

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

Dep't. No. XIII

18 || VS

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

[PROPOSED] ORDER PRELIMINARILY
APPROVING SETTLEMENT AND
PROVIDING FOR NOTICE

[EXHIBIT A]

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

Case No.: A-21-827745-B

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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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”),¹ 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 ¹ All capitalized terms used herein have the meanings as defined in the Stipulation.

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

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

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

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

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

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

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 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

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

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.

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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.

25 DATED:

THE HONORABLE MARK R. DENTON
DISTRICT COURT JUDGE

1 **KEMP JONES, LLP**
2 Nathanael R. Rulis, Esq.
3 Nevada Bar No. 11259
4 N.Rulis@kempjones.com
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17 La Jolla, California 92037
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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 Case No. A-21-827665-B (Lead Case)

25 Plaintiff,

26 Dep't. No. XIII

27 vs.

28 **NOTICE OF PROPOSED SETTLEMENT OF**
29 **CLASS ACTION**

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

36 Defendants.

37 [EXHIBIT A-1]

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

Case No.: A-21-827745-B

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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NOTICE OF PROPOSED SETTLEMENT OF CLASS ACTION

TO: ALL SHAREHOLDERS OF AEROGROW INTERNATIONAL, INC. WHO HELD AEROGROW STOCK AS OF THE EFFECTIVE DATE FOR THE MERGER¹ AND HAD THE RIGHT TO RECEIVE THE MERGER CONSIDERATION, AS WELL AS THEIR SUCCESSORS AND ASSIGNS.

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

WHY SHOULD I READ THIS NOTICE?

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

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

WHAT IS THIS LAWSUIT ABOUT?

I. THE ALLEGATIONS

This is a shareholder class action lawsuit. Plaintiffs challenge the Merger consideration received by the minority shareholders of AeroGrow, which was acquired in 2021 by SMG 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

¹ The Effective Date for the Merger was February 26, 2021.

² The Stipulation can be viewed and/or downloaded at www.aerogrowthshareholderlitigation.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
depositions (including the depositions of Plaintiffs, all named Defendants, several third parties,
and expert witnesses). In addition, the Parties engaged in litigation before the Court and a special
master concerning discovery issues, including the proper scope of Defendants’ assertions of
privilege.

26 Five separate motions for summary judgment were filed, briefed, argued, and decided by
27 the Court in March 2025. The Court granted the motion for summary judgment filed by
28 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.

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

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

10 **HOW DO I KNOW IF I AM A CLASS MEMBER?**

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

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

23 **WHAT IS THE MONETARY VALUE OF THE PROPOSED SETTLEMENT?**

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

WHAT IS THE PROPOSED PLAN OF ALLOCATION?

The objective of the Plan of Allocation is to equitably distribute the Net Settlement Fund among Settlement Class Members based on their respective economic losses resulting from the alleged legal violations alleged in the FACC. The Settlement Fund will be administered by the Administrator and the Escrow Agent and shall be used (subject to Court approval): (i) to pay all 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.

Each Settlement Payment Recipient shall be allocated a pro rata share of the Net Settlement Fund based on the number of shares of AeroGrow common stock owned as of the Effective Date 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
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.

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

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

(a) The Net Settlement Fund will be allocated and distributed on a per-share basis among the Settlement Payment Recipients (the “Initial Distribution”). Each Settlement Payment Recipient will receive a pro rata payment from the Net Settlement Fund equal to the product of (i) the number of “Eligible Shares” held by the Settlement Payment Recipient, where Eligible Shares are shares held by the Settlement Payment Recipient at closing and for which the Settlement Payment Recipient received Merger consideration, and (ii) the “Per-Share Recovery” for the 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.

(b) With respect to AeroGrow common stock held of record at the closing by DTC through its nominee Cede, provided that the Administrator has the necessary DTC Information, the Administrator shall cause the relevant portion of the Net Settlement Fund to be allocated to Eligible Beneficial Owners who held their shares through DTC Participants by first distributing that portion of the Net Settlement Fund among the DTC Participants by paying each DTC Participant the Per-Share Recovery times its respective Closing Security Position (defined below). For each DTC Participant, the “Closing Security Position” means the number of shares of AeroGrow common stock reflected on the DTC allocation report used to pay the Merger consideration, less any shares that were held by an Excluded Person as of the Effective Date of the Merger. The Administrator shall further take all appropriate steps to instruct DTC Participants to distribute the portion of the Net Settlement Fund that they receive to the Eligible Beneficial Holders on a pro rata basis in accordance with each Eligible Beneficial Owner’s “Closing Beneficial Ownership Position,” which means, for each Eligible Beneficial Owner, the number of shares of AeroGrow common stock beneficially owned by such Eligible Beneficial Owner as of the Effective Date of the Merger, 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”).

(c) With respect to AeroGrow common stock held of record as of the Effective Date of the 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
19 DISTRIBUTION OF THE SETTLEMENT FUND?**

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

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 www.aerogrowshareholderlitigation.com

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

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

WHAT ARE THE REASONS FOR SETTLEMENT?

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

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

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

WHO REPRESENTS THE CLASS?

The following attorneys are Lead Counsel for the Class:

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
7 the Court and send a copy to Plaintiffs' Counsel and the Settling Defendants' Counsel by
8 _____, 2026.

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

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

18 **WHAT IS THE DIFFERENCE BETWEEN OBJECTING AND EXCLUDING MYSELF
19 FROM THE SETTLEMENT?**

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

26 **WHAT ARE MY RIGHTS AND OBLIGATIONS UNDER THE SETTLEMENT?**

27 If you are a Class Member and you do not exclude yourself from the Class, you may receive
28 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.

29 **WHAT CLAIMS WILL BE RELEASED BY THE SETTLEMENT?**

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

34 ***Released Plaintiffs' Claims***

35 "Released Claims" means any and all rights, liabilities, suits, debts, obligations, demands,
36 damages, losses, judgment matters, issues, claims (including "Unknown Claims" as defined
37

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 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

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

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

SPECIAL NOTICE TO BANKS, BROKERS, AND OTHER NOMINEES

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

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

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

DO NOT WRITE TO OR TELEPHONE THE COURT FOR INFORMATION.

DATED:

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

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7817 Ivanhoe Avenue, Suite 102
La Jolla, California 92037
(P) (858) 914-2001 (F) (858) 914-2002

Counsel for Plaintiffs

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

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

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

Dep't. No. XIII

VS.

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

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

[EXHIBIT A-2]

Defendants.

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

Case No.: A-21-827745-B

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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NOTICE OF PROPOSED SETTLEMENT OF CLASS ACTION

TO: ALL MINORITY SHAREHOLDERS OF AEROGROW INTERNATIONAL, INC. WHO HELD AEROGROW STOCK AS OF THE EFFECTIVE DATE FOR THE MERGER¹ AND HAD THE RIGHT TO RECEIVE THE MERGER CONSIDERATION, AS WELL AS THEIR SUCCESSORS AND ASSIGNS.

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

YOU ARE HEREBY NOTIFIED that a hearing will be held on _____, 2026, at _____:_____.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, to determine whether: (1) the proposed settlement (“Settlement”) of the above-captioned action as set forth in the Stipulation and Agreement of Settlement dated December 10, 2025 (“Stipulation”)² for \$15,978,202.50 should be approved by the Court as fair, reasonable, and adequate; (2) the Judgment as provided under the Stipulation should be entered; (3) the Court should approve the requested Fee and Expense Award to Plaintiffs’ Counsel (as defined in the Notice of Proposed Settlement of Class Action (“Notice”), which is discussed below); (4) Plaintiffs should receive service awards for 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 as fair, reasonable, and adequate.

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

¹ The Effective Date for the Merger was February 26, 2021.

²⁷ ²⁸ 2 The Stipulation can be viewed and/or downloaded at www.aerogrowthshareholderlitigation.com. All capitalized terms used herein have the same meaning as set forth in the Stipulation.

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

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

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

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

AeroGrow International, Inc. Merger Litigation Settlement
A.B. Data Group
600 A.B. Data Drive
Milwaukee, WI 53217
414-961-6400

³ “Dissenters Shares” means the shares of AeroGrow stock as to which dissenters’ rights in connection with 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.

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

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

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

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

20 DATED: _____ BY ORDER OF THE EIGHTH JUDICIAL
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.

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

34 Dep't. No. XIII

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

38 **[EXHIBIT B]**

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

Case No.: A-21-827745-B

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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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”)¹; 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.

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28 ¹ 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
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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

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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
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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 administrating the Stipulation.

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8 DATED: _____

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

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EXHIBIT A

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

Case No.: A-21-827745-B

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

16 Defendants.

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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”),¹ 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

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28 ¹ 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

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 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

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
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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.

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

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

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

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

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

DATED:

THE HONORABLE MARK R. DENTON
DISTRICT COURT JUDGE