

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff,

vs.

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

Defendants.

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

Dept. No.: XIII

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

Plaintiff,

vs.

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

– and –

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

Defendants.

Case No.: A-21-827745-B

NOTICE OF PENDENCY OF CLASS ACTION

This is a Court-authorized notice. This is not a solicitation from a lawyer.

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.

PLEASE READ THIS NOTICE CAREFULLY AND IN ITS ENTIRETY. YOUR RIGHTS MAY BE AFFECTED BY THE PENDING CLASS ACTION LAWSUIT.

This Notice is sent to inform you that there is currently a class action pending in the Eighth Judicial District Court of Clark County, Nevada captioned *Overbrook Capital LLC v. AeroGrow International, Inc.*, Lead Case No. A-21-827665-B (Nev. Dist. Ct., Clark Cnty.) (“Action”). The Action is brought on behalf of AeroGrow minority stockholders and asserts claims for breach of fiduciary duty and aiding and abetting breach of fiduciary duty against AeroGrow International, Inc. (“AeroGrow”), Chris Hagedorn, Cory Miller, Patricia M. Ziegler, SMG Growing Media, Inc., AGI Acquisition Sub, Inc., The Scotts Miracle-Gro Company, James Hagedorn, Peter Supron, David B. Kent, and H. Macgregor Clarke (collectively, “Defendants”). The Action is brought by class representatives Overbrook Capital LLC and Nicoya Capital LLC (“Class Representatives”). The Action alleges that Defendants breached their fiduciary duties and/or aided and abetted breaches of fiduciary duties in conjunction with the merger whereby SMG Growing Media, Inc. acquired all outstanding shares of AeroGrow for \$3.00 in cash per share (the “Merger”).

On March 29, 2022, the Court presiding over the Action certified the Action as a class action on behalf of the following class: “All minority shareholders of AeroGrow International, Inc. who held AeroGrow stock as of the Effective Date for the Merger and had the right to receive the Merger consideration, as well as their successors and assigns” (“Class”).

This Notice is sent to you because you may be a member of the Class and, as a result, your rights might be affected by the pending class action.

THIS NOTICE IS SENT TO YOU ONLY TO APPRISE YOU OF THE PENDENCY OF THE ABOVE CLASS ACTION AND THE FACT THAT THE ACTION HAS BEEN CERTIFIED AS A CLASS ACTION. THERE HAS BEEN NO SETTLEMENT OR RESOLUTION ON THE MERITS OF PLAINTIFFS’ CLAIMS AND THERE IS NO CLAIM FORM TO SUBMIT. THERE HAS BEEN NO ADMISSION BY DEFENDANTS OR ANY EXPRESSION BY THE COURT ON THE VALIDITY OF THE CLAIMS.

If you do not wish to be a part of the Class, you must respond to this Notice with a written request for exclusion by **August 30, 2022** (see below).

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

SUMMARY OF YOUR OPTIONS

Do nothing.	Stay in the lawsuit. Await the outcome. By doing nothing, you keep the possibility of sharing in any recovery that may result from a resolution in favor of the Class, such as through trial or settlement. In exchange, you give up any right you may have to sue Defendants separately about the same factual circumstances and legal claims being raised in the Action, and you will be bound by the outcome of the Action if tried before a jury or decided by the Court. If the parties agree to a settlement, then you will have another opportunity to opt out or exclude yourself from the case at that time.
Ask to be excluded from the Class by sending a written request for exclusion postmarked no later than <u>August 30, 2022</u>.	Get out of the lawsuit. Get no benefits from it. If you ask to be excluded from the Class, you will not be bound by what happens in this Action and will keep any right you might have to sue Defendants separately about the same factual circumstances and legal claims being raised in this lawsuit. If a recovery is later awarded in this case, either through trial or settlement, you would not share in any such recovery.

I. OVERVIEW AND STATUS OF THE ACTION

A. Factual and Procedural Background

On January 11, 2021, Plaintiff Overbrook Capital LLC filed a putative class action lawsuit on behalf of AeroGrow stockholders, captioned *Overbrook Capital, LLC v. AeroGrow International, Inc.*, No. A-21-827665-B, asserting claims for breach of fiduciary duty and aiding and abetting breach of fiduciary duty (the “*Overbrook Action*”).

On January 12, 2021, Plaintiff Nicoya Capital LLC (“Nicoya”) filed a putative class action lawsuit on behalf of AeroGrow stockholders, captioned *Nicoya Capital, LLC v. Hagedorn*, No. A-21-827745-B, asserting claims for breach of fiduciary duty and aiding and abetting breach of fiduciary duty (the “*Nicoya Action*”).

On February 18, 2021, the Court consolidated the *Overbrook Action* and the *Nicoya Action* for all purposes, including trial, into the *Overbrook Action*, with the lead case number being A-21-827665-B, appointed Nicoya Capital LLC to serve as Lead Plaintiff, and appointed Bottini & Bottini, Inc. to serve as Lead Counsel and Kemp Jones, LLP to serve as Liaison Counsel.

On February 22, 2021, Plaintiff Bradley Louis Radoff filed a lawsuit captioned *Radoff v. Hagedorn*, No. A-21-829854-B, asserting claims for breach of fiduciary duty, aiding and abetting, and declaratory relief relating to the dissenter’s rights process under Nevada law (the “*Radoff Action*”). On February 24, 2021, the Court consolidated the *Radoff Action* for all purposes, including trial, into the *Overbrook Action* (the *Overbrook Action*, the *Nicoya Action*, and the *Radoff Action*, as consolidated, are collectively referred to as the “*Action*”).

On June 28, 2021, plaintiffs Overbrook Capital LLC and Nicoya Capital LLC filed their First Amended Consolidated Complaint.

On July 12, 2021, Defendants moved to dismiss the First Amended Consolidated Complaint. On October 4, 2021, the Court denied Defendants' motion to dismiss the First Amended Consolidated Complaint. Defendants filed a petition for writ of mandamus in the Nevada Supreme Court seeking review of that denial, and that petition remains pending.

On March 29, 2022, the Court certified the action as a class action on behalf of the following Class: "All minority shareholders of AeroGrow International, Inc. who held AeroGrow stock as of the Effective Date for the Merger and had the right to receive the Merger consideration, as well as their successors and assigns." The Court also appointed Overbrook Capital LLC and Nicoya Capital LLC as Class Representatives, Bottini & Bottini, Inc. as Class Counsel, and Kemp Jones, LLP as Liaison Class Counsel.

The Action alleges that Defendants breached their fiduciary duties and/or aided and abetted breaches of fiduciary duties in conjunction with the Merger.

Defendants deny all allegations of wrongdoing asserted in the Action and deny any liability whatsoever to any member of the Class.

The case is ongoing and there has been no determination made on the merits. You can obtain a copy of the operative complaint, the order denying the motion to dismiss, and the order granting Class certification by visiting www.AeroGrowShareholderLitigation.com.

B. Is there any money available now?

No. There has been no settlement and the Court has not made any determination on the validity of the Class Representatives' claims. As such, there is no money or other benefits available now.

There is no guarantee that money or any other benefit will ever be obtained.

If you choose to remain in the Class and if there is any recovery, either through trial or settlement, then you will be notified about how to ask for your share.

II. CLASS COUNSEL

Your interests in the Action are being represented by the Class Representatives and Class Counsel. Class Counsel's contact information is:

Plaintiffs' Class Counsel:

Francis A. Bottini, Jr.
Yury A. Kolesnikov
BOTTINI & BOTTINI, INC.
7817 Ivanhoe Avenue, Suite 102
La Jolla, California 92037
Telephone: (858) 914-2001
Facsimile: (858) 914-2002
fbottini@bottinilaw.com
ykolesnikov@bottinilaw.com

Plaintiffs' Liaison Class Counsel:

Don Springmeyer
Michael Gayan
Kemp Jones, LLP
3800 Howard Hughes Pkwy., 17th Floor
Las Vegas, NV 89169
Telephone: (702) 385-6000
Facsimile: (702) 385-6001

If you want to be represented by your own attorney, you may hire one at your own expense. If you do retain your own attorney, such counsel must enter an appearance on your behalf by filing a notice of appearance in the Action.

III. YOUR RIGHTS AND OPTIONS AS A CLASS MEMBER

A class action is a type of lawsuit in which one or several individuals or entities prosecute claims on behalf of all members of a group of similarly situated persons and entities to obtain monetary or other relief for the benefit of the entire group. Class actions avoid the necessity of each class member having to file his, her, or its own separate lawsuit to obtain relief. Class actions are used to decide legal and factual issues that are common to all members of the class.

In this case, the Court certified the Action as a class action. **You are a member of the Class if you held AeroGrow stock as of the Effective Date for the Merger and had the right to receive the Merger consideration, or are a successor or assignee of such a person.**

As a member of the Class, you have two options available to you, as explained below.

A. Do nothing and remain as a member of the Class.

If you are a member of the Class, you can choose to do nothing. If you do that, you will remain in the Class and will be bound by all orders and judgments in the Action, whether favorable or unfavorable. If the Class prevails on the common issues, or if a settlement is reached later on in the Action, you may be entitled to some recovery. If there is a final judgment in favor of Plaintiffs or Defendants, or if a settlement is reached, you will not be able to pursue a lawsuit on your own behalf with regard to any of the issues or claims at issue in this Action.

Your interests in the Action are being represented by the Class Representatives and Class Counsel. Class Counsel are representing the Class on a contingent fee basis, which means that they will be awarded attorneys' fees and costs only if the Class Representatives succeed in obtaining a recovery from one or more Defendants. Any attorneys' fees and costs will be awarded by the Court from the settlement or judgment, if any, obtained on behalf of the Class. You will not be separately responsible for any such fees or costs.

You may remain a member of the Class and elect to be represented by counsel of your own choosing. If you retain separate counsel, you will be responsible for that counsel's fees and expenses, and such counsel must enter an appearance on your behalf.

If at a later date the parties decide to settle, then you will have another opportunity to exclude yourself from the case. Absent settlement, however, you will not be able to exclude yourself from the Class or subsequent orders and judgments if you do nothing at this time.

B. Exclude yourself from the Class.

If you want to pursue your own lawsuit or claims against Defendants about the alleged conduct in this Action, do not want to be bound by what the Court does in this Action, or if you simply do not want to be a part of the Class pursuing claims against Defendants, you must ask to be excluded. If you choose to exclude yourself from the Class, you will not be bound by any orders or judgments in the Action, nor will you be eligible to share in any recovery that might be obtained in the Action.

Should you choose to be excluded or, in other words, “opt out” of the Action, you may be able to individually pursue claims against Defendants. However, please note that if you request exclusion from the Class and decide to pursue your own action individually, you may not be able to pursue certain claims because of the applicable statutes of limitation. You may want to consult with an attorney to determine whether any claim that you wish to pursue individually against Defendants may be time-barred.

IV. HOW DO I REQUEST EXCLUSION?

If you fall within the definition of the Class, you will automatically be considered a member of the Class unless you request an exclusion. Any member of the Class may request to be excluded from the Class by following the procedures set forth below.

If you wish to be excluded, you must send a signed letter by mail stating that you “request exclusion” from the Class in *Overbrook Capital LLC v. AeroGrow International, Inc.*, Lead Case No. A-21-827665-B (Nev. Dist. Ct., Clark Cnty.).

Be sure to include: (1) the name, address, and telephone number of the person or entity seeking to be excluded from the Class; (2) the number of shares of AeroGrow International, Inc. common stock held at the Effective Date of the Merger; and (3) the signature of the person or entity requesting exclusion or an authorized representative.

Your request for exclusion must contain all of the above information to be effective.

You must mail your exclusion request, **postmarked no later than August 30, 2022**, to:

AeroGrow International, Inc. Shareholder Litigation
c/o A.B. Data, Ltd.
EXCLUSIONS
P.O. Box 173001
Milwaukee, WI 53217

You cannot exclude yourself by telephone or email.

If your request for exclusion is timely mailed and includes all of the required information set forth above, you will not be a member of the Class and you will not be eligible to share in any later recovery, if any, in this Action. Only request exclusion if you do not wish to participate in this Action and do not wish to share in any potential recovery that the Class may obtain.

V. PLEASE KEEP YOUR ADDRESS CURRENT

To assist the Court and the parties in maintaining an accurate list of Class members, please update your name and contact information. You can update your contact information by contacting the Class Administrator at: AeroGrow International, Inc. Shareholder Litigation, c/o A.B. Data, Ltd., P.O. Box 173047, Milwaukee, WI 53217; or (877) 261-8296 (toll-free number).

If this Notice was forwarded to you by the postal service, or it was otherwise sent to you at an address that is no longer current, you should immediately contact the Class Administrator and provide them with your current address. If the Class Administrator does not have your current address, you may not receive notice of important developments in this Action, including, for example, any future settlement obtained for the benefit of the Class.

VI. WHERE YOU CAN FIND ADDITIONAL INFORMATION

This Notice provides only a summary of the Action and the claims asserted by the Class Representatives. For more detailed information, you may contact Class Counsel at the address listed above in Section II, contact the Class Administrator at the address listed above in Section V, or visit www.AeroGrowShareholderLitigation.com.

PLEASE DO NOT CALL OR WRITE TO THE COURT OR THE OFFICE OF THE CLERK FOR INFORMATION OR ADVICE.

VII. NOTICE TO SECURITIES BROKERS AND OTHER NOMINEES

If, for the beneficial interest of any person or entity other than yourself, you held shares of AeroGrow International, Inc. at the Effective Date of the Merger, you must, WITHIN FOURTEEN (14) DAYS OF YOUR RECEIPT OF THIS NOTICE, either: (a) request from the Class Administrator sufficient copies of the Notice to forward to all such beneficial owners and within fourteen (14) calendar days of receipt of those Notices forward them to all such beneficial owners; or (b) provide a list of the names and the last known addresses of each person or entity for whom or which you purchased such securities during the relevant period to the Class Administrator.

If you select option (a) above, you must send a statement to the Class Administrator confirming that the mailing was made, and you must retain your mailing records for use in connection with any further notices that may be provided in this Action. If you select option (b), the Class Administrator will send a copy of the Notice to the beneficial owners. All written communications concerning the foregoing should be addressed to the Class Administrator at: AeroGrow International, Inc. Shareholder Litigation, c/o A.B. Data, Ltd., P.O. Box 173047, Milwaukee, WI 53217.

Upon full and timely compliance with these directions, you may seek reimbursement of your reasonable expenses actually incurred (but not to exceed \$0.15 per mailing, excluding postage) by providing the Class Administrator with proper documentation supporting the expenses for which reimbursement is being sought.

Dated: July 1, 2022

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