

1 Fredrick A. Rafeedie (State Bar No. 138422)  
 2 farafeedie@jonesbell.com  
 3 **JONES, BELL, ABBOTT,**  
 4 **FLEMING & FITZGERALD L.L.P.**  
 5 601 South Figueroa Street, 27<sup>th</sup> Floor  
 Los Angeles, California 90017  
 Tel: 213-485-1555  
 Fax: 213-689-1004

6 Nancy A. Del Pizzo (*pro hac vice*)  
 7 nancy.delpizzo@rivkin.com  
 8 **RIVKIN RADLER LLP**  
 9 21 Main Street, Suite 158  
 Court Plaza South –West Wing  
 Hackensack, New Jersey 07601  
 Tel: 201-287-2460  
 Fax: 201-489-0495

10 Michael C. Cannata (*pro hac vice*)  
 11 michael.cannata@rivkin.com  
 12 **RIVKIN RADLER LLP**  
 13 926 RXR Plaza, West Tower  
 Uniondale, New York 11556-0926  
 Tel: 516-357-3233  
 Fax: 516-357-3333

14 *Attorneys for Plaintiff, AstaReal, Inc.*

15  
 16 **IN THE UNITED STATES DISTRICT COURT**  
 17 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

18  
 19 **ASTAREAL, INC.,**

20 **Plaintiff,**

21 **v.**

22 **ALGAE LIFE SCIENCES, INC.,**  
 23 **ALGAE HEALTH SCIENCES,**  
 24 **INC., BGG NORTH AMERICA,**  
**INC. and JINKE GROUP USA,**  
**INC.,**

25 **Defendants.**

Case No.: 8:16-cv-1664 AG (DFMx)

26 **PROTECTIVE ORDER**

27 **Scheduling Conference:**  
**February 6, 2017 at 9:00 a.m.**

28 **Courtroom: 10D**  
**Before the Honorable Andrew J. Guilford**

**First Amended Complaint Filed:**  
**December 23, 2016**

1 **1. PURPOSE AND LIMITS OF THIS ORDER**

2 Discovery in this action is likely to involve confidential, proprietary, or  
3 private information requiring special protection from public disclosure and from use for  
4 any purpose other than this litigation. Thus, the Court enters this Protective Order. This  
5 Order does not confer blanket protections on all disclosures or responses to discovery,  
6 and the protection it gives from public disclosure and use extends only to the specific  
7 material entitled to confidential treatment under the applicable legal principles.

8 The parties shall comply with L.R. 79-5.2.2(b) for purposes of filing with  
9 the Court any and all material designated in accordance with the terms set forth below,  
10 including any part of any pleadings and/or depositions and all papers (including  
11 pleadings, affidavits and memoranda of law) relying on or purporting to reproduce or  
12 paraphrase information designated in accordance with the terms set forth below.

13 **2. DESIGNATING PROTECTED MATERIAL**

14 **2.1 Over-Designation Prohibited.** Any party or non-party who designates  
15 information or items for protection under this Order as “CONFIDENTIAL,” or  
16 “HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY” must only designate  
17 specific material that qualifies under the appropriate standards. To the extent practicable,  
18 only those parts of documents, items, or oral or written communications that require  
19 protection shall be designated. Designations with a higher confidentiality level when a  
20 lower level would suffice are prohibited. Mass, indiscriminate, or routinized  
21 designations are prohibited. Unjustified designations expose the designator to sanctions,  
22 including the Court’s striking all confidentiality designations made by that designator.  
23 Designation under this Order is allowed only if the designation is necessary to protect  
24 material that, if disclosed to persons not authorized to view it, would cause competitive  
25 or other recognized harm. Material may not be designated if it has been made public, or  
26 if designation is otherwise unnecessary to protect a secrecy interest. If a designator learns  
27 that information or items that it designated for protection do not qualify for protection at  
28 all or do not qualify for the level of protection initially asserted, that designator must

1 promptly notify all parties that it is withdrawing the mistaken designation.

2       **2.2 Manner and Timing of Designations.** Designation under this Order  
3 requires the designator to affix the applicable legend (“CONFIDENTIAL,” or  
4 “HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY”) to each page that contains  
5 protected material. For testimony given in deposition or other proceeding, the  
6 designator shall specify all protected testimony and the level of protection being  
7 asserted. It may make that designation during the deposition or proceeding, or may  
8 invoke, on the record or by written notice to all parties on or before the next business  
9 day, a right to have up to 21 days from the deposition or proceeding to make its  
10 designation.

11       **2.2.1** A party or non-party that makes original documents or materials  
12 available for inspection need not designate them for protection until after the inspecting  
13 party has identified which material it would like copied and produced. During the  
14 inspection and before the designation, all material shall be treated as HIGHLY  
15 CONFIDENTIAL – ATTORNEY EYES ONLY. After the inspecting party has  
16 identified the documents it wants copied and produced, the producing party must  
17 designate the documents, or portions thereof, that qualify for protection under this Order.

18       **2.2.2** Parties shall give advance notice if they expect a deposition or other  
19 proceeding to include designated material so that the other parties can ensure that only  
20 authorized individuals are present at those proceedings when such material is disclosed  
21 or used. The use of a document as an exhibit at a deposition shall not in any way affect  
22 its designation. Transcripts containing designated material shall have a legend on the  
23 title page noting the presence of designated material, and the title page shall be followed  
24 by a list of all pages (including line numbers as appropriate) that have been designated,  
25 and the level of protection being asserted. The designator shall inform the court reporter  
26 of these requirements. Any transcript that is prepared before the expiration of the 21-day  
27 period for designation shall be treated during that period as if it had been designated  
28 HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY unless otherwise agreed.

1 After the expiration of the 21-day period, the transcript shall be treated only as actually  
2 designated.

3 **2.3 Inadvertent Failures to Designate.** An inadvertent failure to designate  
4 does not, standing alone, waive protection under this Order. Upon timely assertion or  
5 correction of a designation, all recipients must make reasonable efforts to ensure that the  
6 material is treated according to this Order.

### 7 **3. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

8 All challenges to confidentiality designations shall proceed under L.R. 37-  
9 1 through L.R. 37-4.

### 10 **4. ACCESS TO DESIGNATED MATERIAL**

11 **4.1 Basic Principles.** A receiving party may use designated material only for  
12 this litigation. Designated material may be disclosed only to the categories of persons  
13 and under the conditions described in this Order.

#### 14 **4.2 Disclosure of CONFIDENTIAL Material Without Further Approval.**

15 Unless otherwise ordered by the Court or permitted in writing by the designator, a  
16 receiving party may disclose any material designated CONFIDENTIAL only to:

17 **4.2.1** The receiving party's outside counsel of record in this action and  
18 employees of outside counsel of record to whom disclosure is reasonably necessary;

19 **4.2.2** The officers, directors, and employees of the receiving party to whom  
20 disclosure is reasonably necessary;

21 **4.2.3** Experts retained by the receiving party's outside counsel of record to  
22 whom disclosure is reasonably necessary, and who have signed the Agreement to Be  
23 Bound (Exhibit A);

24 **4.2.4** The Court and its personnel;

25 **4.2.5** Outside court reporters and their staff, professional jury or trial  
26 consultants, and professional vendors to whom disclosure is reasonably necessary;

27 **4.2.6** During their depositions, witnesses in the action to whom disclosure  
28 is reasonably necessary; and

1           **4.2.7** The author or recipient of a document containing the material, or a  
2 custodian or other person who otherwise possessed or knew the information.

3           **4.3 Disclosure of HIGHLY CONFIDENTIAL – ATTORNEY EYES**  
4 **ONLY Material Without Further Approval.** Unless permitted in writing by the  
5 designator, a receiving party may disclose material designated HIGHLY  
6 CONFIDENTIAL – ATTORNEY EYES ONLY without further approval only to:

7           **4.3.1** The receiving party’s outside counsel of record in this action and  
8 employees of outside counsel of record to whom it is reasonably necessary to disclose  
9 the information;

10           **4.3.2** The Court and its personnel;

11           **4.3.3** Outside court reporters and their staff, professional jury or trial  
12 consultants, and professional vendors to whom disclosure is reasonably necessary, and  
13 who have signed the Agreement to Be Bound (Exhibit A); and

14           **4.3.4** The author or recipient of a document containing the material, or a  
15 custodian or other person who otherwise possessed or knew the information.

16           **4.3.5** Experts retained by the receiving party’s outside counsel of record to  
17 whom disclosure is reasonably necessary, and who have signed the Agreement to Be  
18 Bound (Exhibit A);

19           **4.4 Procedures for Approving or Objecting to Disclosure of HIGHLY**  
20 **CONFIDENTIAL – ATTORNEY EYES ONLY Material to In-House Counsel.**  
21 Unless agreed to in writing by the designator:

22           **4.4.1** A party seeking to disclose to in-house counsel any material  
23 designated HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY must first make a  
24 written request to the designator providing the full name of the in-house counsel, the city  
25 and state of such counsel’s residence, and such counsel’s current and reasonably  
26 foreseeable future primary job duties and responsibilities in sufficient detail to determine  
27 present or potential involvement in any competitive decision-making.

28           **4.4.2** A party that makes a request and provides the information specified

1 in paragraphs 4.4.1 may disclose the designated material to the identified in-house  
2 counsel unless, within seven days of delivering the request, the party receives a written  
3 objection from the designator providing detailed grounds for the objection.

4 **4.4.3** All challenges to objections from the designator shall proceed under  
5 L.R. 37-1 through L.R. 37-4.

## 6 **5. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED** 7 **IN OTHER LITIGATION**

8 **5.1 Subpoenas and Court Orders.** This Order in no way excuses non-  
9 compliance with a lawful subpoena or court order. The purpose of the duties described  
10 in this section is to alert the interested parties to the existence of this Order and to give  
11 the designator an opportunity to protect its confidentiality interests in the court where  
12 the subpoena or order issued.

13 **5.2 Notification Requirement.** If a party is served with a subpoena or a court  
14 order issued in other litigation that compels disclosure of any information or items  
15 designated in this action as CONFIDENTIAL or HIGHLY CONFIDENTIAL –  
16 ATTORNEY EYES ONLY, that party must:

17 **5.2.1** Promptly notify the designator in writing. Such notification shall  
18 include a copy of the subpoena or court order;

19 **5.2.2** Promptly notify in writing the party who caused the subpoena or  
20 order to issue in the other litigation that some or all of the material covered by the  
21 subpoena or order is subject to this Order. Such notification shall include a copy of this  
22 Order; and

23 **5.2.3** Cooperate with all reasonable procedures sought by the designator  
24 whose material may be affected.

25 **5.3 Wait For Resolution of Protective Order.** If the designator timely seeks  
26 a protective order, the party served with the subpoena or court order shall not produce  
27 any information designated in this action as CONFIDENTIAL or HIGHLY  
28 CONFIDENTIAL – ATTORNEY EYES ONLY before a determination by the court

1 where the subpoena or order issued, unless the party has obtained the designator's  
2 permission. The designator shall bear the burden and expense of seeking protection of  
3 its confidential material in that court.

#### 4 **6. UNAUTHORIZED DISCLOSURE OF DESIGNATED MATERIAL**

5 If a receiving party learns that, by inadvertence or otherwise, it has  
6 disclosed designated material to any person or in any circumstance not authorized under  
7 this Order, it must immediately (1) notify in writing the designator of the unauthorized  
8 disclosures, (2) use its best efforts to retrieve all unauthorized copies of the designated  
9 material, (3) inform the person or persons to whom unauthorized disclosures were made  
10 of all the terms of this Order, and (4) use reasonable efforts to have such person or  
11 persons execute the Agreement to Be Bound (Exhibit A).

#### 12 **7. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE** 13 **PROTECTED MATERIAL**

14 When a producing party gives notice that certain inadvertently produced  
15 material is subject to a claim of privilege or other protection, the obligations of the  
16 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This  
17 provision is not intended to modify whatever procedure may be established in an e-  
18 discovery order that provides for production without prior privilege review pursuant to  
19 Federal Rule of Evidence 502(d) and (e).

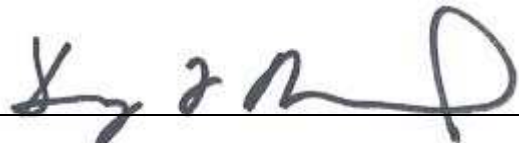
#### 20 **8. FINAL DISPOSITION**

21 Within 60 days after the final disposition of this action, each party shall  
22 return all designated material to the designator or destroy such material, including all  
23 copies, abstracts, compilations, summaries, and any other format reproducing or  
24 capturing any designated material. The receiving party must submit a written  
25 certification to the designator by the 60-day deadline that (1) identifies (by category,  
26 where appropriate) all the designated material that was returned or destroyed, and (2)  
27 affirms that the receiving party has not retained any copies, abstracts, compilations,  
28 summaries, or any other format reproducing or capturing any of the designated material.

1 This provision shall not prevent counsel from retaining an archival copy of all pleadings,  
2 motion papers, trial, deposition, and hearing transcripts, legal memoranda,  
3 correspondence, deposition and trial exhibits, expert reports, attorney work product, and  
4 consultant and expert work product, even if such materials contain designated material.  
5 Any such archival copies remain subject to this Order.

6 IT IS SO ORDERED.

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9 DATED: February 9, 2017

  
\_\_\_\_\_  
10 HON. DOUGLAS F. McCORMICK  
11 UNITED STATES MAGISTRATE JUDGE  
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1 EXHIBIT A

2 AGREEMENT TO BE BOUND

3 I, \_\_\_\_\_ [print or type full name], of \_\_\_\_\_ [print or type full  
4 address], declare under penalty of perjury that I have read in its entirety and understand  
5 the Protective Order that was issued by the United States District Court for the Central  
6 District of California on \_\_\_\_\_ [date] in the case of \_\_\_\_\_ [**insert**  
7 **formal name of the case and the number and initials assigned to it by the court**]. I  
8 agree to comply with and to be bound by all the terms of this Protective Order, and I  
9 understand and acknowledge that failure to so comply could expose me to sanctions and  
10 punishment for contempt. I solemnly promise that I will not disclose in any manner any  
11 information or item that is subject to this Protective Order to any person or entity except  
12 in strict compliance with this Order.

13 I further agree to submit to the jurisdiction of the United States District Court for  
14 the Central District of California for the purpose of enforcing this Order, even if such  
15 enforcement proceedings occur after termination of this action.

16 I hereby appoint \_\_\_\_\_ [print or type full name] of  
17 \_\_\_\_\_ [print or type full address and telephone number] as  
18 my California agent for service of process in connection with this action or any  
19 proceedings related to enforcement of this Order.

20  
21 Date: \_\_\_\_\_

22  
23 City and State where sworn and signed: \_\_\_\_\_

24  
25 Printed name: \_\_\_\_\_  
26 [printed name]

27 Signature: \_\_\_\_\_  
28 [signature]