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 13 REED MARICULTURE, INC.

14 UNITED STATES DISTRICT COURT  
 15 NORTHERN DISTRICT OF CALIFORNIA  
 16 SAN JOSE DIVISION

17 REED MARICULTURE, INC.  
 18 Plaintiff,

19 v.

20 SUSTAINABLE AQUATICS, LLC, and  
 21 MOSSEY CREEK ENTERPRISES,  
 22 Defendants.

23 \_\_\_\_\_  
 24 AND RELATED COUNTERCLAIM.

Case No. CV 11-02114 EJD (HRL)

**JOINT STIPULATED PROTECTIVE  
 ORDER**

**(MODIFIED BY THE COURT)**

25 It is hereby stipulated by and between Plaintiff/Counterclaim Defendants REED  
 26 MARICULTURE, INC., TIMOTHY REED AND LYN REED, and  
 27 Defendants/Counterclaimants, SUSTAINABLE AQUATICS, LLC and MOSSEY CREEK  
 28

1 ENTERPRISES, to entry of the following Protective Order pursuant to Federal Rule of Civil  
2 Procedure 26(c).

3 1. **Form of Information Governed.**

4 This Order shall govern any document, information or other thing which is  
5 designated as containing "Confidential Information" as defined herein, and is furnished by any  
6 party or nonparty to any party in connection with this action.

7 2. **Definition of Confidential Information.**

8 (a) The term "Confidential Information" shall be interpreted to mean  
9 information of a producing party which is not generally known to the public or trade, including  
10 but not limited to, business plans, existing or prospective products, services, research and  
11 development, marketing plans (including marketing surveys, strategies, performance and  
12 projections), financial information and statements (including budgets, sales or profit projections  
13 or reports, profit and loss statements, balance sheets and income statements) customer, vendor  
14 and supplier lists or other documents that identify the producing party's existing or prospective  
15 customers, vendors, or potential customers, vendors and suppliers and/or the terms of any  
16 relationships with the aforesaid, and a producing party's intellectual property, including but not  
17 limited to trademarks, trade names, inventions (whether or not patentable), and trade secrets as  
18 defined by California Civil Code section 3426.1.

19 (b) The scope of this Order shall be understood to encompass not only those  
20 items or things which are expressly designated as Confidential Information, but also any  
21 information derived therefrom, and all copies, excerpts, and summaries thereof, as well as  
22 testimony and oral conversation derived therefrom or integrally related thereto. The parties agree  
23 to treat as confidential any information produced by a third party if: (i) the third party has marked  
24 the documents or things produced as confidential or otherwise designated the information as  
25 confidential in the manner set forth in this Protective Order; and (ii) the documents or things  
26 produced fall within the definition of Confidential Information.

27 3. **Designated Material.**

28 (a) In this action, any person or entity or party to this action or third-party

1 witness (including counsel for the party or witness) (hereinafter the “Designating Person”) (i)  
2 producing, formally or informally, information or material, including information from the  
3 inspection of files, documents, and facilities, and documents obtained or received by counsel for  
4 either party pursuant to pretrial discovery in this action from any other party or third-party  
5 witness, in response to a discovery request or otherwise, or (ii) lodging with the Court any  
6 information or material, may designate such information or material as Confidential Information  
7 under this Order. All such information and material and all information or material derived from  
8 any such designated information or material constitutes “Designated Material” under this Order.  
9 The form of information protected includes, but is not limited to, documents and things, responses  
10 to requests to produce documents or other things, responses to interrogatories, responses to  
11 requests for admissions, deposition testimony and exhibits, and all copies, extracts, summaries,  
12 compilations, designations and portions thereof.

13 (b) The designation shall be made by marking the material either  
14 “CONFIDENTIAL” or “CONFIDENTIAL - ATTORNEYS ONLY,” or, in the case of  
15 information from the inspection of files, documents, or facilities, by informing the inspecting  
16 party that the information is either “CONFIDENTIAL” or “CONFIDENTIAL - ATTORNEYS  
17 ONLY” in writing.

18 (c) The “CONFIDENTIAL — ATTORNEYS ONLY” classification, being  
19 more highly protective of disclosure than the “CONFIDENTIAL” classification, governs  
20 information that would materially affect the business, financial, or commercial interests of the  
21 person producing such material if such information is disclosed. Types of materials that may be  
22 entitled to protection under the “CONFIDENTIAL — ATTORNEYS ONLY” designation  
23 include, but are not limited to, business plans, marketing plans (including marketing surveys,  
24 strategies, performance, and projections), financial statements (including budgets, sales or profit  
25 projections or reports, profit and loss statements, balance sheets and income statements),  
26 customer lists or any other document that identifies the producing party’s customers or potential  
27 customers and/or the terms of any relationships with the customers of a producing party,  
28 documents that identify the terms of any relationships with the suppliers of a producing party, a

1 producing party's intellectual property, including, but not limited to, trademarks, trade names,  
2 inventions (whether or not patentable), and trade secrets as defined by California Civil Code  
3 section 3426.1, and any other proprietary information a producing party reasonably designates as  
4 being protective of disclosure hereunder.

5 (d) Designation of information or material as "CONFIDENTIAL" or  
6 "CONFIDENTIAL - ATTORNEYS ONLY" under this Protective Order shall not create or alter  
7 any presumptions of confidentiality.

8 (e) Whenever only a portion of a document or thing is properly deemed  
9 "CONFIDENTIAL" or "CONFIDENTIAL - ATTORNEYS ONLY" under this Protective Order,  
10 the Designating Person shall, to the extent practicable, limit the designation to such portion of the  
11 material.

12 4. Access.  
13 ~~UNLESS OTHERWISE ORDERED OR AGREED TO IN WRITING BY THE DESIGNATING PARTY,~~  
14 Designated Material is subject to this Protective Order and shall be retained by  
15 receiving party's counsel, and neither the document nor other material so designated, nor the  
16 information disclosed therein, shall be disclosed to or used by any non-designating party or other  
17 person other than as provided below: (1) THE COURT AND ITS PERSONNEL;

18 (a) Material designated "CONFIDENTIAL" shall be disclosed only to (2) the  
19 officers of the parties to this action pursuant to the terms of paragraph (c) below, and (3) those  
20 individuals to whom Designated Material may be disclosed under the terms of subparagraphs (b),  
21 (c), (e) and (i) below.

22 (b) Material designated "CONFIDENTIAL - ATTORNEYS ONLY" shall be  
23 disclosed only to THE COURT AND ITS PERSONNEL; counsel, their legal associates and non-attorney office personnel; and also to a  
24 limited number of outside consultants (i.e., persons not an employee of a party), pursuant to  
25 subparagraph (c) below. Material designated "CONFIDENTIAL - ATTORNEYS ONLY"  
26 specifically may not be disclosed to the officers, directors, members and/or employees of parties  
27 to this action.

28 (c) Each person in paragraph 4(b) above, other than THE COURT AND ITS PERSONNEL; counsel, and their legal  
associates and non-attorney office personnel, to whom disclosure maybe made by counsel for a

1 non-designating party shall execute the attached Exhibit to Joint Stipulated Protective Order to be  
2 delivered beforehand to such Designating Person. Furthermore, outside consultants, in addition to  
3 executing the Exhibit to the Joint Stipulated Protective Order, shall, prior to their receipt of any  
4 Designated Material, be identified, in the manner set forth below, to the Designating Person.  
5 Counsel, the members of their respective law firms, and their employed associates and personnel  
6 shall not be required to be identified or to sign the Exhibit to the Joint Stipulated Protective  
7 Order, it being understood that they are bound by the terms hereof. The identification of persons  
8 under this paragraph shall include the full name, address, past and present employer(s), positions  
9 and responsibilities, and a statement concerning any involvement or affiliation, including stock  
10 ownership, with the parties to this action or any related corporate entity to a party, or with  
11 manufacturers, distributors, or sellers for electrical or electrical lighting product industry. The  
12 Designating Person shall have seven (7) calendar days from receiving the required identification  
13 to deliver to the notifying party and to serve on all other parties any good faith written objections  
14 to such disclosure to the person or persons selected by the counsel for the notifying party; such  
15 written objections must provide a detailed explanation of the basis for the objections. Absent  
16 timely objection, disclosure by the notifying party to the identified person or persons shall be  
17 deemed approved. Upon timely objection, disclosure to the objected-to person or persons shall  
18 not be made in order to permit the Designating Person time to ~~move for~~<sup>SEEK</sup> an order that disclosure  
19 not be made to the identified person or persons. The pre-filing conference of counsel outlined in  
20 Local Rule 37-1 shall occur within five (5) calendar days of receipt of the objections. If the  
21 parties are thereafter unable to resolve the matter, the Designating Person shall provide its portion  
22 ~~of Local Rule 37-2.2 Joint Stipulation to the notifying party with~~<sup>PARTY SHALL COMPLY WITH THE UNDERSIGNED'S  
STANDING ORDER RE CIVIL DISCOVERY DISPUTES WITHIN</sup> seven (7) calendar days from the  
23 date of the pre-filing conference of counsel. ~~Thereafter all the remaining provisions of Local Rule~~  
24 ~~37 shall apply and the Designating Person shall set the motion to be heard for the earliest possible~~  
25 ~~date available. If no such motion is made~~<sup>JUDICIAL INTERVENTION IS NOT SOUGHT</sup> in such time and manner, disclosure by the objecting  
26 party to the identified person or persons shall be deemed approved. If ~~such a motion is made,~~<sup>JUDICIAL INTERVENTION IS SOUGHT,</sup>  
27 there shall be no disclosure to the identified person or persons until the Court has ruled upon the  
28 ~~motion,~~<sup>MATTER,</sup> and then only in accordance with the ruling so made.

1 (d) Designated Material shall not be used by a recipient thereof or disclosed  
2 for any purposes other than for litigation of this action.

3 (e) Court Reporters and Interpreters. Court reporters and interpreters, who  
4 may be present at depositions, shall be presented with a copy of this Protective Order and  
5 acknowledge the obligation to be bound by its terms.

6 (f) Copies. Copies and extracts may be made by or for the fore-going persons,  
7 provided that all copies and extracts are appropriately marked. All copies and extracts are subject  
8 to paragraph 10 of this Order.

9 (g) Derivative Documents. Documents created in whole or in part with  
10 information derived from documents designated under this Protective Order shall be designated in  
11 the same manner as the source documents.

12 (h) Party's Own Information. The restrictions on the use of Confidential  
13 Information established by this Protective Order are applicable only to the use of Confidential  
14 Information received by a party from another party, or from a nonparty who has claimed its  
15 disclosure is confidential.

16 (i) Authors and Addressees. The designation of any document or thing as  
17 "CONFIDENTIAL" or "CONFIDENTIAL - ATTORNEYS ONLY" shall not preclude any party  
18 from showing the document to any person who appears as an author, addressee or recipient on the  
19 face of the document.

20 5. **Designating Documents and Materials.**

21 When a party producing documents or things wishes to designate some portion as  
22 "CONFIDENTIAL" or "CONFIDENTIAL – ATTORNEYS ONLY," such designation shall be  
23 made in the following manner: (1) For documents, by placing an appropriate legend on each page  
24 of the document; (2) For tangible objects, by placing a label or tag on the object or the container  
25 therefor, or if not practicable, as otherwise agreed; (3) For written discovery responses, by  
26 providing any portion thereof containing Confidential Information in a separate document,  
27 appended to the main body of the response (appropriately marked in accordance with paragraph  
28 3(b) hereof) and incorporated by reference therein; (4) For declarations or pleadings, in writing in

1 the declaration or pleading and on the face of any such declaration or pleading; (5) For  
2 depositions, following the procedure set forth in paragraph 6; and (6) For oral disclosures (other  
3 than deposition testimony) which are the subject of paragraph 2(b) above, by oral communication  
4 contemporaneous with the disclosure followed by confirmation in writing within fourteen (14)  
5 calendar days of the disclosure thereof.

6           **6.     Designating Depositions.**

7           (a)     Deposition transcripts or portions thereof may be designated as  
8 “CONFIDENTIAL” or “CONFIDENTIAL - ATTORNEYS ONLY” by a Designating Person  
9 either: (i) during the deposition, in which case the transcript of the designated testimony shall be  
10 transcribed on separate pages and marked by the reporter, as the Designating Person may direct;  
11 or (ii) by captioned, written notice to the reporter and all counsel of record, given within thirty  
12 (30) days after the reporter sends written notice that the transcript is available for review, in  
13 which case the court reporter shall mark the designated portion in the original transcript as though  
14 that portion was timely designated during the deposition session. Counsel receiving such notice  
15 shall be responsible for destroying any copies of the improperly designated transcript or portion  
16 thereof in their possession or control upon the availability of the properly designated transcript  
17 from the court reporter. Pending expiration of the thirty (30) days under (ii), deposition  
18 transcripts and exhibits not previously produced shall be treated as if they had been designated  
19 “CONFIDENTIAL - ATTORNEYS ONLY.”

20           (b)     Where testimony is designated at a deposition, the Designating Person may  
21 exclude from the deposition all persons other than those to whom the Designated Material may be  
22 disclosed under paragraph 4 of this Order. The failure of such other persons to comply with a  
23 request of this type shall constitute substantial justification for the counsel to advise the witness  
24 he need not answer a question seeking the revelation of confidential information.

25           (c)     Any party may mark Designated Material as a deposition exhibit and  
26 examine any witness thereon, provided that the deposition witness is one to whom the exhibit  
27 may be disclosed under paragraph 4 of this Order. In addition, Designated Material may be used  
28 by the receiving or non-designating parties in deposing the Designating Person, and in deposing

1 any directors, officers, employees, agents, or attorneys of such Designating Person.

2 7. Designation Challenges.

3 A party may challenge any other party's designation of information or materials  
4 produced herein as "CONFIDENTIAL" or "CONFIDENTIAL – ATTORNEYS ONLY" by  
5 serving a written objection upon the producing party. The producing party shall notify the  
6 challenging party in writing of the basis for the asserted designation within ten (10) days after  
7 receiving any written objection. The parties shall confer in good faith as to the validity of the  
8 designation within five (5) days after the challenging party has received the notice of the basis for  
9 the asserted designation. To the extent the parties are unable to reach an agreement as to the  
10 designation, ~~the objecting party may make an appropriate application to this Court within fifteen~~ <sup>THE PARTIES SHALL COMPLY WITH THE UNDERSIGNED'S STANDING ORDER RE CIVIL DISCOVERY DISPUTES</sup>  
11 (15) days after conferring with the producing party, with confidential portions thereof to be kept  
12 under seal, requesting that specifically identified documents, information, and/or deposition  
13 testimony be excluded from the provisions of this Protective Order or downgraded in terms of the  
14 degree of protection provided. Failure to make an application within this period shall constitute a  
15 waiver of the objection. Until a dispute over the asserted designation is finally resolved by the  
16 parties or the Court, all parties and persons shall treat the information or materials in question as  
17 designated as "CONFIDENTIAL" or "CONFIDENTIAL - ATTORNEYS ONLY," as applicable.

18 8. Court Procedures Under Seal.

19 ~~Upon the Court's approval to file documents under seal, the submissions shall then~~ <sup>A PARTY THAT SEEKS TO FILE UNDER SEAL ANY MATERIAL MUST</sup>  
20 ~~be made in accordance with the Court's Local Rules. In applications and motions to the Court, all~~ <sup>COMPLY WITH CIVIL LOCAL RULE 79-5 AND GENERAL ORDER No. 62.</sup>  
21 ~~submissions of Designated Material shall be filed with the Court in sealed envelopes on which~~  
22 ~~shall be affixed the title of the particular action, the title of the document, the word~~  
23 ~~"CONFIDENTIAL" or "CONFIDENTIAL – ATTORNEYS ONLY" and a statement~~  
24 ~~substantially in the following form:~~

25 ~~"THIS ENVELOPE CONTAINS MATERIALS SUBJECT TO A~~  
26 ~~PROTECTIVE ORDER ENTERED IN THIS ACTION. IT IS NOT~~  
27 ~~TO BE OPENED NOR ARE ITS CONTENTS TO BE~~  
28 ~~DISPLAYED, REVEALED OR MADE PUBLIC, EXCEPT BY~~  
~~ORDER OF THE COURT."~~



1 Unless otherwise ordered by the Court, any hearing which may refer to or describe  
2 Designated Material shall be held only after appropriate steps are taken to ensure that the  
3 confidentiality of the information is preserved during the hearing.

4 9. **Exceptions.**

5 The restrictions on dissemination of Confidential Information contained herein  
6 shall not apply to information which, prior to disclosure hereunder, is either in the possession or  
7 knowledge of the receiving party or person who, absent this Order is under no restriction with  
8 respect to the dissemination of such confidential information, or to information which is public  
9 knowledge or which, after disclosure, becomes public knowledge other than through an act or  
10 omission of a party receiving the information designated under this Order.

11 10. **No Prejudice.**

12 (a) Nothing in this Order shall be construed as requiring disclosure of  
13 privileged materials, materials subject to protection under the work product doctrine, or materials  
14 which are otherwise beyond the permissible scope of discovery. This Order is intended to provide  
15 a mechanism for the handling of Confidential Information to which there is no objection to  
16 producing or disclosing other than as to its confidentiality.

17 (b) Nothing in this Order shall preclude any party from seeking and obtaining  
18 additional or different protection with respect to the confidentiality of discovery.

19 (c) This Order shall not diminish any existing obligation or right with respect  
20 to Designated Material, nor shall it prevent a disclosure to which the Designating Person consents  
21 in writing before the disclosure takes place.

22 (d) The acceptance of Designated Material shall not constitute an admission or  
23 concession or permit an inference that the Confidential Information is, in fact, confidential.

24 (e) This Order shall be without prejudice to the right of any receiving party or  
25 persons to bring before the Court at any time the question of whether any particular information is  
26 properly categorized.

27 (f) The burden of proof with respect to the propriety or correctness in the  
28 designation of information as "CONFIDENTIAL" or "CONFIDENTIAL —ATTORNEYS

1 ONLY” shall rest on the party making such designations.

2 (g) A party may seek to make late designations of discovery by stipulation or  
3 court order if the party failed to make a timely designation through mistake or inadvertence.

4 (h) In the event that any Confidential Information is disclosed, either willfully  
5 or inadvertently, by a receiving party in contravention of this Order, the Confidential Information  
6 shall not lose its status through such disclosure and the disclosing party shall take all steps  
7 reasonably required to assure its continued confidentiality.

8 11. **Final Disposition.**

9 (a) Upon final termination of this action, each receiving party shall be under an  
10 obligation to assemble and return to the producing party all Designated Material produced in the  
11 terminated action that contains confidential information still subject to this Protective Order,  
12 including Derivative Documents and all copies thereof; provided, however, the counsel of record  
13 may elect to destroy any such materials.

14 (b) Notwithstanding the provisions of paragraph 11(a), the counsel for a  
15 receiving party may retain one copy of pleadings, attorney and consultant work product,  
16 Designated Materials and depositions taken in this action which contain confidential information  
17 that remains subject to this Protective Order.

18 12. **Modification and Survival.**

19 The restrictions imposed by this Order may only be modified or terminated by  
20 written stipulation of all parties ~~or by~~ <sup>AND</sup> order of this Court. This order shall survive termination of  
21 this action.

22 13. **Jurisdiction of this Court.**

23 The Court’s jurisdiction to enforce the terms of this Order expires six months after  
24 final termination of the action.

25 14. **Enforcement of Protective Order.**

26 In any action or proceeding to enforce any term of this Order, the non-prevailing  
27 party shall pay to the prevailing party all costs reasonably incurred in connection therewith,  
28 including, but not limited to, the prevailing party’s attorneys’ fees.

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IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

Dated: August 22, 2011 CARR, McCLELLAN, INGERSOLL, THOMPSON & HORN

By: \_\_\_\_\_ /s/  
John D. Minton  
Attorneys for  
SUSTAINABLE AQUATICS, LLC and  
MOSSEY CREEK ENTERPRISES

Dated: August 22, 2011 OMNI LAW GROUP, LLP

By: \_\_\_\_\_ /s/  
Trevor J. Zink  
Attorneys for  
REED MARICULTURE, INC., TIMOTHY REED and  
LYN REED

Filer's Attestation: Pursuant to General Order No. 45, § X(B), I attest that concurrence in the filing of this document has been obtained from its signatory.

Dated: August 22, 2011

\_\_\_\_\_  
/s/  
John D. Minton

AS MODIFIED BY THE COURT,  
PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated: 10/13/11

\_\_\_\_\_  
UNITED STATES DISTRICT JUDGE  
MAGISTRATE  
HOWARD R. LLOYD

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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, \_\_\_\_\_ [print or type full name], of  
\_\_\_\_\_ [print or type full address], declare under penalty of perjury that  
I have read in its entirety and understood the Stipulated Protective Order that was issued by the  
United States District Court for the Northern District of California on [date] in the case of *Reed  
Mariculture, Inc. v. Sustainable Aquatics, LLC, et al.*, case number CV 11-02114 EJD (HRL). I  
agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I  
understand and acknowledge that failure to so comply could expose me to sanctions and  
punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner  
any information or item that is subject to this Stipulated Protective Order to any person or entity  
except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for  
the Northern District of California for the purpose of enforcing the terms of this Stipulated  
Protective Order, even if such enforcement proceedings occur after termination of this action.

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

Date: \_\_\_\_\_

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

Printed name: \_\_\_\_\_  
[printed name]

Signature: \_\_\_\_\_  
[signature]

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