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 TESORO REFINING & MARKETING
 10 COMPANY LLC and TREASURE
 FRANCHISE COMPANY LLC
 11

12 **UNITED STATES DISTRICT COURT**
 13 **CENTRAL DISTRICT OF CALIFORNIA**

14 THOMAS KIM, an individual,
 KIM FAMILY VENTURES, LLC,
 15 a California limited liability company,

16 Plaintiffs,

17 vs.

18 TESORO REFINING & MARKETING
 COMPANY LLC, a Delaware limited
 19 liability company; TREASURE
 FRANCHISE COMPANY LLC, a
 20 Delaware limited liability company; and
 DOES 1 through 10, inclusive,

21 Defendants.
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CASE NO. 2:17-cv-06241-AB-RAO

*Assigned to the Honorable André
 Birotte, Jr.*

**STIPULATED PROTECTIVE
 ORDER¹**

DISCOVERY MATTER

Magistrate Judge: Honorable Rozella
 A. Oliver
Dept.: F

Action Filed: August 23, 2017
 Trial Date: March 12, 2019

27 ¹ This Stipulated Protective Order is substantially based, with modifications, on the model protective order provided
 28 under Magistrate Judge Rozella A. Oliver’s Procedures.

1 **PLEASE TAKE NOTICE** that Plaintiffs Thomas Kim and Kim Family
2 Ventures, LLC, on the one hand, and Defendants Tesoro Refining & Marketing
3 Company LLC and Treasure Franchise Company LLC, on the other hand,
4 (collectively referred to hereinafter as “Parties”) by and through their respective
5 counsel, hereby stipulate to this proposed protective order subject to approval of the
6 Court.

7 **IT IS HEREBY STIPULATED** that the Court be requested to enter the
8 following Stipulated Protective Order (“Protective Order”) in this matter:

9 **1. INTRODUCTION**

10 **A. PURPOSES AND LIMITATIONS**

11 Discovery in this action is likely to involve production of confidential,
12 proprietary or private information for which special protection from public
13 disclosure and from use for any purpose other than prosecuting this litigation may
14 be warranted. Accordingly, the Parties hereby stipulate to and petition the Court to
15 enter the following Stipulated Protective Order. The Parties acknowledge that this
16 Order does not confer blanket protections on all disclosures or responses to
17 discovery and that the protection it affords from public disclosure and use extends
18 only to the limited information or items that are entitled to confidential treatment
19 under the applicable legal principles.

20 **B. GOOD CAUSE STATEMENT**

21 Good Cause exists because discovery in the above-entitled action will
22 include disclosures by a disclosing Party of non-public information and documents
23 that such disclosing Party considers to be privileged, trade secret, proprietary,
24 and/or confidential to such Party (the “Confidential Information” or “Protected
25 Material”), which although may be relevant to these proceedings, would otherwise
26 be protected from disclosure, and consist of, among other things, confidential
27 business or financial information, information regarding confidential business
28 practices, or other confidential research, development, or commercial information

1 (including information implicating privacy rights of third parties), information
2 otherwise generally unavailable to the public, or which may be privileged or
3 otherwise protected from disclosure. Accordingly, to expedite the flow of
4 information, to facilitate the prompt resolution of disputes over confidentiality of
5 discovery materials, to adequately protect information the Parties are entitled to
6 keep confidential, to ensure that the Parties are permitted reasonable necessary uses
7 of such material in preparation for and in the conduct of trial, to address their
8 handling at the end of the litigation, and serve the ends of justice, a protective order
9 for such information is justified in this matter. It is the intent of the Parties that
10 information will not be designated as confidential for tactical reasons and that
11 nothing be so designated without a good faith belief that it has been maintained in a
12 confidential, non-public manner, and there is good cause why it should not be part
13 of the public record of this case.

14 The Parties wish to avoid the expenses, including attorney's fees, that would
15 necessarily be incurred to resolve a controversy regarding the potential disclosure
16 of such information deemed confidential. The Parties have agreed to the entry of
17 this Protective Order as evidenced by the signatures of their respective counsel.

18 **C. ACKNOWLEDGMENT OF PROCEDURE FOR FILING**
19 **UNDER SEAL**

20 The Parties further acknowledge, as set forth in Section 12.3, below, that this
21 Protective Order does not entitle them to file confidential information under seal;
22 Local Civil Rule 79-5 sets forth the procedures that must be followed and the
23 standards that will be applied when a Party seeks permission from the Court to file
24 material under seal.

25 There is a strong presumption that the public has a right of access to judicial
26 proceedings and records in civil cases. In connection with non-dispositive motions,
27 good cause must be shown to support a filing under seal. *See Kamakana v. City*
28 *and County of Honolulu*, 447 F.3d 1172, 1176 (9th Cir. 2006), *Phillips v. Gen.*

1 *Motors Corp.*, 307 F.3d 1206, 1210-11 (9th Cir. 2002), *Makar-Welbon v. Sony*
2 *Electrics, Inc.*, 187 F.R.D. 576, 577 (E.D. Wis. 1999) (even stipulated protective
3 orders require good cause showing), and a specific showing of good cause or
4 compelling reasons with proper evidentiary support and legal justification must be
5 made with respect to Protected Material that a Party seeks to file under seal. The
6 Parties' mere designation of Disclosure or Discovery Material as CONFIDENTIAL
7 does not—without the submission of competent evidence by declaration,
8 establishing that the material sought to be filed under seal qualifies as confidential,
9 privileged, or otherwise protectable—constitute good cause.

10 Further, if a Party requests sealing related to a dispositive motion or trial,
11 then compelling reasons, not only good cause, for the sealing must be shown, and
12 the relief sought shall be narrowly tailored to serve the specific interest to be
13 protected. *See Pintos v. Pacific Creditors Ass'n*, 605 F.3d 665, 677-79 (9th Cir.
14 2010). For each item or type of information, document, or thing sought to be filed
15 or introduced under seal in connection with a dispositive motion or trial, the Party
16 seeking protection must articulate compelling reasons, supported by specific facts
17 and legal justification, for the requested sealing order. Again, competent evidence
18 supporting the application to file documents under seal must be provided by
19 declaration.

20 Any document that is not confidential, privileged, or otherwise protectable in
21 its entirety will not be filed under seal if the confidential portions can be redacted.
22 If documents can be redacted, then a redacted version for public viewing, omitting
23 only the confidential, privileged, or otherwise protectable portions of the document,
24 shall be filed. Any application that seeks to file documents under seal in their
25 entirety should include an explanation of why redaction is not feasible.

26 **2. DEFINITIONS**

27 **2.1 Action:** This pending federal lawsuit.

28 **2.2 Challenging Party:** a Party or Non-Party that challenges the

1 designation of information or items under this Order.

2 **2.3 “CONFIDENTIAL” Information or Items:** information (regardless
3 of how it is generated, stored or maintained) or tangible things that qualify for
4 protection under Federal Rule of Civil Procedure section 26(c), and as specified
5 above in the Good Cause Statement.

6 **2.4 Counsel:** Outside Counsel of Record and House Counsel (as well as
7 their support staff).

8 **2.5 Designating Party:** a Party or Non-Party that designates information
9 or items that it produces in disclosures or in responses to discovery as
10 “CONFIDENTIAL.”

11 **2.6 Disclosure or Discovery Material:** all items or information,
12 regardless of the medium or manner in which it is generated, stored, or maintained
13 (including, among other things, testimony, transcripts, and tangible things), that are
14 produced or generated in disclosures or responses to discovery in this matter.

15 **2.7 Expert:** a person with specialized knowledge or experience in a matter
16 pertinent to the litigation who has been retained by a Party or its Counsel to serve as
17 an expert witness or as a consultant in this Action.

18 **2.8 House Counsel:** attorneys who are employees of a Party to this
19 Action. House Counsel does not include Outside Counsel of Record or any other
20 Outside counsel.

21 **2.9 Non-Party:** any natural person, partnership, corporation, association
22 or other legal entity not named as a Party to this action.

23 **2.10 Outside Counsel of Record:** attorneys who are not employees of a
24 Party to this Action but are retained to represent or advise a Party to this Action and
25 have appeared in this Action on behalf of that Party or are affiliated with a law firm
26 that has appeared on behalf of that Party, and includes support staff.

27 **2.11 Party:** any Party to this Action, including all of its officers, directors,
28 employees, consultants, retained experts, and Outside Counsel of Record (and their

1 support staffs).

2 **2.12 Producing Party:** a Party or Non-Party that produces Disclosure or
3 Discovery Material in this Action.

4 **2.13 Professional Vendors:** persons or entities that provide litigation
5 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
6 demonstrations, and organizing, storing, or retrieving data in any form or medium)
7 and their employees and subcontractors.

8 **2.14 Protected Material:** any Disclosure or Discovery Material that is
9 designated as “CONFIDENTIAL” or “Confidential-Attorneys’ Eyes Only”.

10 **2.15 Receiving Party:** a Party that receives Disclosure or Discovery
11 Material from a Producing or Designating Party.

12 **3. SCOPE**

13 The protections conferred by this Protective Order cover not only Protected
14 Material (as defined above), but also: (1) any information copied or extracted from
15 Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected
16 Material; and (3) any testimony, conversations, or presentations by Parties or their
17 Counsel that might reveal Protected Material. Any use of Protected Material at trial
18 shall be governed by the orders of the trial judge. This Order does not govern the
19 use of Protected Material at trial.

20 **4. DURATION**

21 Once a case proceeds to trial, information that was designated as
22 CONFIDENTIAL or maintained pursuant to this Protective Order used or
23 introduced as an exhibit at trial becomes public and will be presumptively available
24 to all members of the public, including the press, unless compelling reasons
25 supported by specific factual findings to proceed otherwise are made to the trial
26 judge in advance of the trial. *See Kamakana*, 447 F.3d at 1180-81 (distinguishing
27 “good cause” showing for sealing documents produced in discovery from
28 “compelling reasons” standard when merits-related documents are part of court

1 record).

2 **5. DESIGNATING PROTECTED MATERIAL**

3 **5.1 Exercise of Restraint and Care in Designating Material for**
4 **Protection.**

5 Each Party or Non-Party that designates information or items for protection
6 under this Protective Order must take care to limit any such designation to specific
7 material that qualifies under the appropriate standards. The Designating Party must
8 designate for protection only those parts of material, documents, items or oral or
9 written communications that qualify so that other portions of the material,
10 documents, items or communications for which protection is not warranted are not
11 swept unjustifiably within the ambit of this Protective Order. Mass, indiscriminate
12 or routinized designations are prohibited. Designations that are shown to be clearly
13 unjustified or that have been made for an improper purpose (e.g., to unnecessarily
14 encumber the case development process or to impose unnecessary expenses and
15 burdens on other parties) may expose the Designating Party to sanctions.

16 If it comes to a Designating Party's attention that information or items that it
17 designated for protection do not qualify for protection, that Designating Party must
18 promptly notify all other Parties that it is withdrawing the inapplicable designation.

19 **5.2 Manner and Timing of Designations.**

20 Except as otherwise provided in this Protective Order (see, e.g., second
21 paragraph of section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure
22 or Discovery Material that qualifies for protection under this Protective Order must
23 be clearly so designated before the material is disclosed or produced.

24 Designation in conformity with this Protective Order requires:

25 (a) for information in documentary form (e.g., paper or electronic
26 documents, but excluding transcripts of depositions or other pretrial or trial
27 proceedings), that the Producing Party affix at a minimum, the legend
28 "CONFIDENTIAL" or "CONFIDENTIAL - Attorneys' Eyes Only" (hereinafter

1 “CONFIDENTIAL legend”), to each page that contains protected material. If only
2 a portion of the material on a page qualifies for protection, the Producing Party also
3 must clearly identify the protected portion(s) (e.g., by making appropriate markings
4 in the margins). Any Confidential Information supplied in electronic form shall
5 also be accompanied by a document from the Designating Party identifying such
6 information to be either “Confidential” or “Confidential – Attorneys Only.”

7 A Party or Non-Party that makes original documents available for inspection
8 need not designate them for protection until after the inspecting Party has indicated
9 which documents it would like copied and produced. During the inspection and
10 before the designation, all of the material made available for inspection shall be
11 deemed “CONFIDENTIAL.” After the inspecting Party has identified the
12 documents it wants copied and produced, the Producing Party must determine
13 which documents, or portions thereof, qualify for protection under this Protective
14 Order. Then, before producing the specified documents, the Producing Party must
15 affix the appropriate “CONFIDENTIAL legend” to each page that contains
16 Protected Material. If only a portion of the material on a page qualifies for
17 protection, the Producing Party also must clearly identify the protected portion(s)
18 (e.g., by making appropriate markings in the margins).

19 (b) With respect to the examination of witnesses upon oral
20 deposition, when Confidential Information is supplied and/or when the deponent’s
21 testimony contains, reflects or relates in any way to Confidential Information, the
22 reporter will be informed of this Protective Order by the Party seeking
23 confidentiality and will be required to operate in a manner consistent therewith.
24 The reporter shall place on the cover of any deposition transcript which contains
25 any Confidential Information the words “Contains Confidential Information” and
26 must bear the legend “Confidential” or “Confidential – Attorneys Only” as
27 appropriate. Counsel for the respective Parties shall take appropriate steps to
28 prevent any portions of any deposition transcript designated “Confidential” or

1 “Confidential - Attorneys Only” from being disclosed to any person except as
2 provided in this Protective Order.

3 (1) Each Designating Party shall provide the other Parties
4 with a list of the page(s) of each deposition transcript and any exhibits attached
5 thereto that the Party has designated as “Confidential” and/or “Confidential -
6 Attorneys Only.” Unless the Parties otherwise agree, such list shall be provided to
7 the other Parties within fifteen business days after Counsel for the respective Parties
8 receives a copy of any deposition transcript and the deponent has either corrected
9 and signed the transcript or the time has lapsed for the deponent to make changes to
10 the transcript.

11 (2) The original or any copy of any deposition transcript,
12 which contains Confidential Information and is labeled “Confidential” or
13 “Confidential - Attorneys Only” must not be filed unless it can be accomplished
14 under seal, identified as being subject to this Protective Order, and protected from
15 being opened except by order of this Court.

16 (c) for information produced in some form other than documentary
17 and for any other tangible items, that the Producing Party affix in a prominent place
18 on the exterior of the container or containers in which the information is stored the
19 appropriate “CONFIDENTIAL legend.” If only a portion or portions of the
20 information warrants protection, the Producing Party, to the extent practicable, shall
21 identify the protected portion(s).

22 **5.3 Inadvertent Failures to Designate.**

23 If timely corrected, an inadvertent failure to designate qualified information
24 or items does not, standing alone, waive the Designating Party’s right to secure
25 protection under this Protective Order for such material. Upon timely correction of
26 a designation, the Receiving Party must make reasonable efforts to assure that the
27 material is treated in accordance with the provisions of this Protective Order.

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1 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

2 **6.1 Timing of Challenges.**

3 Any Party or Non-Party may challenge a designation of confidentiality at any
4 time that is consistent with the Court’s Scheduling Order.

5 **6.2 Meet and Confer.**

6 The Challenging Party shall initiate the dispute resolution process under
7 Local Rule 37.1 *et seq.*

8 **6.3 Burden of Persuasion.**

9 The burden of persuasion in any such challenge proceeding shall be on the
10 Designating Party. Frivolous challenges, and those made for an improper purpose
11 (e.g., to harass or impose unnecessary expenses and burdens on other Parties) may
12 expose the Challenging Party to sanctions. Unless the Designating Party has
13 waived or withdrawn the confidentiality designation, all Parties shall continue to
14 afford the material in question the level of protection to which it is entitled under
15 the Producing Party’s designation until the Court rules on the challenge.

16 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

17 **7.1 Basic Principles.**

18 A Receiving Party may use Protected Material that is disclosed or produced
19 by another Party or by a Non-Party in connection with this Action only for
20 prosecuting, defending or attempting to settle this Action. Such Protected Material
21 may be disclosed only to the categories of persons and under the conditions
22 described in this Protective Order. When the Action has been terminated, a
23 Receiving Party must comply with the provisions of section 13 below (FINAL
24 DISPOSITION).

25 Protected Material must be stored and maintained by a Receiving Party at a
26 location and in a secure manner that ensures that access is limited to the persons
27 authorized under this Protective Order.

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1 **7.2 Disclosure of “CONFIDENTIAL” Information or Items.**

2 All Confidential Information disclosed by a Designating Party to a Receiving
3 Party shall be received by such Receiving Party in confidence, shall be used by
4 such Receiving Party solely in connection with the trial or preparation for trial of
5 the above-noted action, shall be treated by it in the same manner with which it
6 treats its own information which it deems to be confidential and proprietary, and
7 shall not be disclosed, directly or indirectly, to any person except as provided in this
8 Section.

9 Unless otherwise ordered by the Court or permitted in writing by the
10 Designating Party, a Receiving Party may disclose any information or item
11 designated:

12 **7.2.1 “CONFIDENTIAL” only to:**

13 (a) the Receiving Party’s Outside Counsel of Record in this Action,
14 as well as employees of said Outside Counsel of Record to whom it is reasonably
15 necessary to disclose the information for this Action;

16 (b) the officers, directors, and employees (including House
17 Counsel) of the Receiving Party to whom disclosure is reasonably necessary for this
18 Action;

19 (c) Experts (as defined in this Protective Order) of the Receiving
20 Party to whom disclosure is reasonably necessary for this Action and who have
21 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

22 (d) the Court and its personnel;

23 (e) court reporters and their staff;

24 (f) professional jury or trial consultants, mock jurors, and
25 Professional Vendors to whom disclosure is reasonably necessary for this Action
26 and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit
27 A);

28 (g) the author or recipient of a document containing the information

1 or a custodian or other person who otherwise possessed or knew the information;

2 (h) during their depositions, witnesses, and attorneys for witnesses,
3 in the Action to whom disclosure is reasonably necessary provided: (1) the
4 deposing Party requests that the witness sign the form attached as Exhibit A hereto;
5 and (2) they will not be permitted to keep any confidential information unless they
6 sign the “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless
7 otherwise agreed by the Designating Party or ordered by the Court. Pages of
8 transcribed deposition testimony or exhibits to depositions that reveal Protected
9 Material may be separately bound by the court reporter and may not be disclosed to
10 anyone except as permitted under this Protective Order; and (3) any mediator or
11 settlement officer, and their supporting personnel, mutually agreed upon by any of
12 the parties engaged in settlement discussions.

13 **7.2.2 “CONFIDENTIAL-Attorneys’ Eyes Only” only to (other than**
14 **Designating Party):**

15 (a) Counsel for the Party whether or not counsel of record in this
16 proceeding (including members and employees of such counsel’s law firm) and in-
17 house counsel for the Party;

18 (b) persons engaged by the Party’s attorney to furnish expert and
19 litigation support services in this action, but not including the Party receiving the
20 information, or any director, officer, agent or employee of the Party;

21 (c) pursuant to the restrictions set forth of this Protective Order,
22 officers of the Court, members of the jury;

23 (d) such other persons as hereafter may be designated by written
24 agreement of the Parties or by order of the Court; and

25 (e) a deponent, if said deponent is the drafter of the documents or an
26 employee of the producing Party.

27 Said access shall be for the sole limited purpose of trial or preparation for
28 trial of the above-noted action. Except for the Designating Party, no Party to this

1 action or any director, officer, employee or agent of such Party (other than counsel)
2 shall have access to Confidential Information which is designated “Confidential -
3 Attorneys Only.”

4 Confidential Information designated by a Party as “Confidential - Attorneys
5 Only” may not be disclosed to a deponent unless he or she is a person qualified to
6 have access to such information pursuant to this Protective Order, the Parties
7 otherwise agree, or the Court, for good cause shown, otherwise orders. If
8 Confidential Information designated as “Confidential - Attorneys Only” is to be
9 discussed or disclosed in a deposition, any Party claiming such confidentiality may
10 exclude from the room any person who is not entitled to receive information or
11 documents, or any things designated as “Confidential - Attorneys Only.”

12 **7.2.3. Exhibit A.**

13 Confidential Information held by a Party may be disclosed to persons as
14 provided in Section 7.2, provided that prior to such disclosure such person to whom
15 disclosure of Confidential Information is to be made shall acknowledge and
16 confirm in the form of a Declaration, in the form of Exhibit A hereto, that he or she
17 has read this Protective Order and agrees to comply with its terms. However,
18 officers of the Court and the jury, and any other individuals listed in Sect. 7.2.1(a)-
19 (e) and (g) will be exempt from the requirement to execute Exhibit A. Although
20 this Protective Order does not require those individuals to execute Exhibit A, they
21 will be considered bound by the Protective Order pursuant to counsel’s execution of
22 this Protective Order. Confidential Information designated by a party as
23 “Confidential” may be disclosed by any other party to a deponent during the
24 deponent’s deposition provided that the deponent has been informed of this
25 Protective Order and executes a Declaration, in the form of Exhibit A hereto, that
26 he or she has read this Protective Order and agrees to comply with its terms. The
27 attorneys for the respective Parties shall maintain a file of such Declarations, and
28 shall furnish to the requesting attorney a list of the executing individuals (excluding

1 the names of experts and consultants whose names have not been disclosed in the
2 litigation to date and their employees) within twenty (20) days of receipt of a
3 written request.

4 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED**
5 **PRODUCED IN OTHER LITIGATION**

6 If a Party is served with a subpoena or a court order issued in other litigation
7 that compels disclosure of any information or items designated in this Action as
8 “CONFIDENTIAL,” “Confidential - Attorneys’ Only” that Party must:

9 (a) promptly notify in writing the Designating Party. Such
10 notification shall include a copy of the subpoena or court order; if there are fewer
11 than ten (10) days to comply, within two (2) days, if possible, or immediately, if
12 not, or if there are more than ten (10) days to comply, at least seven (7) court days
13 prior to the due date for compliance, notify the Designating Party of the pendency
14 of the subpoena, public records request, or order, in writing, and shall not produce
15 the designated information until the Designating Party has taken appropriate steps
16 to protect the material.

17 (b) it shall be the responsibility of the Designating Party to obtain
18 relief from the subpoena, public records request, or order prior to the date of
19 compliance, and, to give the Designating Party an opportunity to obtain such relief,
20 the Party from whom the information is sought shall not make the disclosure before
21 the actual due date of compliance set forth in the subpoena, public records request,
22 or other order. The Party must promptly notify in writing the Party who caused the
23 subpoena or order to issue in the other litigation that some or all of the material
24 covered by the subpoena or order is subject to this Protective Order. Such
25 notification shall include a copy of this Protective Order; and

26 (c) cooperate with respect to all reasonable procedures sought to be
27 pursued by the Designating Party whose Protected Material may be affected. If the
28 Designating Party timely seeks a Protective Order, the Party served with the

1 subpoena or court order shall not produce any information designated in this action
2 as “CONFIDENTIAL” before a determination by the court from which the
3 subpoena or order issued, unless the Party has obtained the Designating Party’s
4 permission. The Designating Party shall bear the burden and expense of seeking
5 protection in that court of its confidential material and nothing in these provisions
6 should be construed as authorizing or encouraging a Receiving Party in this Action
7 to disobey a lawful directive from another court.

8 **9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE**
9 **PRODUCED IN THIS LITIGATION**

10 (a) The terms of this Protective Order are applicable to information
11 produced by a Non-Party in this Action and designated as “CONFIDENTIAL.”
12 Such information produced by Non-Parties in connection with this litigation is
13 protected by the remedies and relief provided by this Protective Order. Nothing in
14 these provisions should be construed as prohibiting a Non-Party from seeking
15 additional protections.

16 (b) In the event that a Party is required, by a valid discovery
17 request, to produce a Non-Party’s confidential information in its possession, and the
18 Party is subject to an agreement with the Non-Party not to produce the Non-Party’s
19 confidential information, then the Party shall:

20 (1) promptly notify in writing the Requesting Party and the
21 Non-Party that some or all of the information requested is subject to a
22 confidentiality agreement with a Non-Party;

23 (2) promptly provide the Non-Party with a copy of the
24 Protective Order in this Action, the relevant discovery request(s), and a reasonably
25 specific description of the information requested; and

26 (3) make the information requested available for inspection
27 by the Non-Party, if requested.

28 (c) If the Non-Party fails to seek a protective order from this court

1 within 14 days of receiving the notice and accompanying information, the
2 Receiving Party may produce the Non-Party's confidential information responsive
3 to the discovery request. If the Non-Party timely seeks a protective order, the
4 Receiving Party shall not produce any information in its possession or control that
5 is subject to the confidentiality agreement with the Non-Party before a
6 determination by the court. Absent a court order to the contrary, the Non-Party
7 shall bear the burden and expense of seeking protection in this Court of its
8 Protected Material.

9 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

10 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
11 Protected Material to any person or in any circumstance not authorized under this
12 Protective Order, the Receiving Party must immediately: (a) notify in writing the
13 Designating Party of the unauthorized disclosures; (b) use its best efforts to retrieve
14 all unauthorized copies of the Protected Material; (c) inform the person or persons
15 to whom unauthorized disclosures were made of all the terms of this Protective
16 Order, and (d) request such person or persons to execute the "Acknowledgment and
17 Agreement to Be Bound" that is attached hereto as Exhibit A.

18 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
19 **PROTECTED MATERIAL**

20 When a Producing Party gives notice to Receiving Parties that certain
21 inadvertently produced material is subject to a claim of privilege or other
22 protection, the obligations of the Receiving Parties are those set forth in Federal
23 Rule of Civil Procedure section 26(b)(5)(B). This provision is not intended to
24 modify whatever procedure may be established in an e-discovery order that
25 provides for production without prior privilege review. Pursuant to Federal Rule of
26 Evidence sections 502(d) and (e), insofar as the Parties reach an agreement on the
27 effect of disclosure of a communication or information covered by the attorney-
28 client privilege or work product protection, the Parties may incorporate their

1 agreement in the Protective Order submitted to the Court. If a Supplying Party
2 realizes that it has inadvertently produced material it considers confidential without
3 so marking it, it may notify the Receiving Party of the mistake. Upon receiving
4 such notice, the Receiving Party will treat such material and the information
5 contained therein as Confidential or Confidential – Attorneys Only hereunder
6 depending upon the Supplying Party’s instructions, and shall promptly either so
7 mark such material or shall return the material, uncopied, to the Supplying Party,
8 who shall then promptly mark the material as Confidential or Confidential –
9 Attorneys Only and again deliver it to the Receiving Party.

10 **12. MISCELLANEOUS**

11 **12.1 Right to Further Relief.**

12 Nothing in this Protective Order abridges the right of any person to seek its
13 modification by the Court in the future.

14 **12.2 Right to Assert Other Objections.**

15 By stipulating to the entry of this Protective Order, no Party waives any right
16 it otherwise would have to object to disclosing or producing any information or
17 item on any ground not addressed in this Protective Order. Similarly, no Party
18 waives any right to object on any ground to use in evidence of any of the material
19 covered by this Protective Order. At any stage of the proceedings, any of the
20 Parties may object to a designation of the materials as Confidential Information.
21 The Party objecting to confidentiality must notify, in writing, counsel for the
22 Designating Party of the objected-to materials and the grounds for the objection. If
23 the dispute is not resolved consensually between the Parties within ten (10) days of
24 receipt of such a notice of objections, the Designating Party may move the Court
25 for a ruling on the objection. The materials at issue must be treated as Confidential
26 Information, as designated by the Designating Party, until the Court has ruled on
27 the objection or the matter has otherwise been resolved.

28 ///

1 **12.3 Filing Protected Material.**

2 A Party that seeks to file under seal any Protected Material must comply with
3 Local Civil Rule 79-5. Protected Material may only be filed under seal pursuant to
4 a court order authorizing the sealing of the specific Protected Material at issue. If a
5 Party’s request to file Protected Material under seal is denied by the court, then the
6 Receiving Party may file the information in the public record unless otherwise
7 instructed by the court.

8 If one Party wishes to file or lodge documents under seal, the other Party
9 shall not unreasonably withhold agreement to such procedure. If an agreement is
10 reached, the Parties shall submit to the Court a Stipulation and Proposed Order for
11 such filing or lodging under seal. If no such agreement is reached, then the
12 proponent of lodging or filing under seal shall submit an Application and Proposed
13 Order pursuant to Local Rule 79-5.2.

14 **12.4 Application.**

15 In the event any Confidential Information is used in any pretrial or discovery
16 proceeding in this action, it shall not lose its confidential status through such use.
17 All Confidential Information and pretrial deposition testimony given in this action
18 which contains or discusses Confidential Information (“Confidential Testimony”)
19 shall be presented only to persons authorized by the terms of this Protective Order
20 to have access to Confidential Information, or to the Court under seal. Any party
21 filing Confidential Information or Confidential Testimony with the Court shall
22 indicate to the Court on filing what portion(s) thereof are subject to this Protective
23 Order, and that the pretrial presentation of such Confidential Information or
24 Confidential Testimony shall be filed under seal. All such Confidential Information
25 and transcripts of Confidential Testimony shall be made available only to the Court
26 and its staff and to the persons authorized by the terms of this Protective Order to
27 have access to Confidential Information.

28 The provisions of this Protective Order apply to all proceedings in this

1 matter, including all appeals and proceedings upon remand.

2 **12.5 Advice of Counsel.**

3 Nothing in the foregoing provisions regarding confidentiality shall prevent or
4 otherwise restrict Counsel from rendering advice to their clients and, in the course
5 thereof, relying generally on examination of stamped confidential documents;
6 provided, however, that in rendering such advice and otherwise communicating
7 with such clients, Counsel shall not make specific disclosure of any item so
8 designated except pursuant to the foregoing provisions.

9 **13. FINAL DISPOSITION**

10 After the final disposition of this Action, as defined in paragraph 4, within 60
11 days of a written request by the Designating Party, each Receiving Party must
12 return all Protected Material to the Producing Party or destroy such material. As
13 used in this subdivision, “all Protected Material” includes all copies, abstracts,
14 compilations, summaries, and any other format reproducing or capturing any of the
15 Protected Material. Whether the Protected Material is returned or destroyed, the
16 Receiving Party must submit a written certification to the Producing Party (and, if
17 not the same person or entity, to the Designating Party) by the 60 day deadline that
18 identifies (by category, where appropriate) all the Protected Material that was
19 returned or destroyed and (2) affirms that the Receiving Party has not retained any
20 copies, abstracts, compilations, summaries or any other format reproducing or
21 capturing any of the Protected Material. Notwithstanding this provision, Counsel
22 are entitled to retain an archival copy of all pleadings, motion papers, trial,
23 deposition, and hearing transcripts, legal memoranda, correspondence, deposition
24 and trial exhibits, expert reports, attorney work product, and consultant and expert
25 work product, even if such materials contain Protected Material. Any such archival
26 copies that contain or constitute Protected Material remain subject to this Protective
27 Order as set forth in **Section 4 (DURATION)**.

28 ///

1 **14. VIOLATION**

2 Any violation of this Protective Order may be punished by appropriate
3 measures including, without limitation, contempt proceedings.

4 The Parties, their officers, agents and employees, and their attorneys, shall be
5 responsible to see that the purpose and effect of this Protective Order is achieved.

6 **15. DURATION**

7 A designation of confidentiality pursuant to this Protective Order shall be
8 effective and shall be respected by the Parties and all persons in any way involved
9 in these proceedings or to whose attention the aforesaid material or information
10 shall come unless and until otherwise ordered by the Court or stipulated by all
11 Parties to this action. These obligations of confidentiality and non-disclosure shall
12 survive for five years after the conclusion of this action.

13 **16. DURATION**

14 The Parties and all signatories to the certification attached hereto as Exhibit
15 A agree to be bound by this Protective Order pending its approval and entry by the
16 Court. In the event that the Court enters a different Protective Order, the Parties
17 agree to be bound by this Protective Order until such time as the Court may enter a
18 different Order. It is the Parties’ intent to be bound by the terms of this Protective
19 Order pending its entry so as to facilitate the production of Confidential
20 Information under the terms herein.

21 STIPULATED AND AGREED BY:

22 DATED: April 13, 2018

BUCHALTER
A Professional Corporation

23
24
25 By: /s/Alissa R. Pleau-Fuller
Alissa R. Pleau-Fuller
Attorneys for Defendants
26 TESORO REFINING & MARKETING
27 COMPANY LLC and TREASURE
28 FRANCHISE COMPANY LLC

1 DATED: April 13, 2018

BLEAU FOX, A P.L.C.

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By: /s/Megan C. Childress
Megan C. Childress
Attorneys for Plaintiffs
THOMAS KIM AND KIM FAMILY
VENTURES LLC

SIGNATURE ATTESTATION

Pursuant to Civil Local Rule 5-4.3.4(a)(2)(i), I hereby certify that authorization for the filing of this document has been obtained from each of the other signatories shown above and that all signatories concur in the filing’s content.

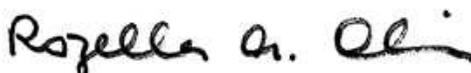
DATED: April 13, 2018

BUCHALTER
A Professional Corporation

By: /s/Alissa R. Pleau-Fuller
Alissa R. Pleau-Fuller
Attorneys for Defendants
TESORO REFINING & MARKETING
COMPANY LLC and TREASURE
FRANCHISE COMPANY LLC

FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

DATED: April 13, 2018



HONORABLE ROZELLA A. OLIVER
United States Magistrate Judge

1 **EXHIBIT A**

2 I, _____, of
3 _____(address), declare under penalty of perjury that I
4 have read in its entirety and understand the Stipulated Protective Order that was
5 issued by the Court on _____ in the case of *Thomas Kim, et al. v.*
6 *Tesoro Refining & Marketing Company LLC, et al.*, Case No. 2:17-cv-06241-AB-
7 RAO. I agree to comply with and to be bound by all of the terms of this Stipulated
8 Protective Order and understand and acknowledge that failure to comply could
9 expose me to sanctions and/or punishment in the nature of contempt. I solemnly
10 promise that I will not disclose in any manner any information or item that is
11 subject to this Stipulated Protective Order to any person or entity except in strict
12 compliance with the provisions of this Order.

13 I further agree to submit to the jurisdiction of the Court for the purpose of
14 enforcing the terms of this Stipulated Protective Order for the purpose of enforcing
15 the terms of this Stipulated Protective Order, even if such enforcement proceedings
16 occur after termination of this action. I hereby appoint
17 _____ of _____ as my California
18 agent for service of process in connection with this action or any proceedings
19 related to enforcement of this Stipulated Protective Order.

20 Executed this ___ day of _____, 20__, at _____
21 _____ [place].

22 _____Signature

23 Name:_____

24 Address:_____

25 Party requesting that the above-signed person have access to “CONFIDENTIAL”
26 and/or “CONFIDENTIAL – ATTORNEY'S EYES ONLY”

27 _____
28