

1 KEITH E. MCCULLOUGH (SBN 142519)
2 **KEVIN A. DAY (SBN 222560)**
3 kday@AlvaradoSmith.com
4 ALVARADOSMITH
5 A Professional Corporation
6 1 MacArthur Place, Suite 200
7 Santa Ana, California 92707
8 Tel: (714) 852-6800
9 Fax: (714) 852-6899

6 Attorneys for Defendants
7 **SHELL PIPELINE COMPANY, a Delaware**
8 **limited partnership and**
9 **ALON USA PARAMOUNT PETROLEUM**
10 **CORPORATION, a Delaware limited partnership**

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13 **UNITED STATES DISTRICT COURT**
14 **EASTERN DISTRICT OF CALIFORNIA**
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12 C & C PROPERTIES, INC., a California
13 corporation; JEC PANAMA, LLC, a
14 California limited liability company; and
15 WINGS WAY, LLC, a Delaware limited
16 liability company,

17 Plaintiffs,

18 v.

19 SHELL PIPELINE COMPANY, a
20 Delaware limited partnership; ALON
21 USA PARAMOUNT PETROLEUM
22 CORPORATION, a Delaware
23 corporation; EOTT ENERGY
24 OPERATING LIMITED
25 PARTNERSHIP, a Delaware limited
26 partnership; PLAINS ALL AMERICAN
27 GP, LLC, a Delaware limited liability
28 company; and DOES 1 through 25,
inclusive,

Defendants.

CASE NO.: 1:14-cv-01889-DAD-JLT

**STIPULATION FOR PROTECTIVE
ORDER; [PROPOSED]
STIPULATED PROTECTIVE
ORDER**

(Doc. 111)

1 **TO THE HONORABLE JENNIFER L. THURSTON, UNITED STATES**
2 **MAGISTRATE JUDGE:**

3 WHEREAS Plaintiffs C & C PROPERTIES, INC., JEC PANAMA, LLC, and
4 WINGS WAY, LLC (collectively, “Plaintiffs”), and Defendant ALON USA
5 PARAMOUNT PETROLEUM CORPORATION (“ALON”) (together with the
6 Plaintiffs, the “Parties” and each a “Party”), hereby stipulate to and request the Court
7 to enter an order approving the following confidentiality agreement and protective
8 order ("Stipulated Protective Order").

9 1. Definitions.

10 (a) “Pending Case” means the action captioned above, pending in the
11 United States District Court for the Eastern District of California.

12 (b) “Confidential Information” means information or tangible things
13 that qualify for protection under standards developed under Rule 26(c) of the Federal
14 Rules of Civil Procedure ("FRCP") and other applicable provisions of law.

15 (c) “Designating Party” means a Party or non-party that designates
16 Discovery Material as “Confidential” in the Pending Case, specifically as may be
17 produced in connection with Alon’s defense in the Pending Case.

18 (d) “Discovery Material” means all items or information, regardless of
19 the medium or manner generated, stored, or maintained (including, among other
20 things, testimony, transcripts, or tangible things) that are produced or generated in
21 disclosures or responses to discovery in the Pending Case.

22 (e) “Protected Material” means any Discovery Material that is
23 designated as “Confidential.”

24 (f) “Producing Party” means a Party or a non-party that produces
25 Discovery Material in the Pending Case.

26 (g) “Receiving Party” means a Party that receives Discovery Material
27 in the Pending Case.

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2. Designation of Confidential Information.

(a) For Confidential Information in documentary form (apart from transcripts of depositions), the Producing Party shall stamp “CONFIDENTIAL” on the copies of the document produced. Stamping “CONFIDENTIAL” on the cover of any multipage document shall designate all pages of the document as Confidential unless otherwise indicated by the Producing Party.

(b) For Confidential Information contained in testimony given in deposition, the Party or non-party offering or sponsoring the testimony must identify on the record, before the certification of the deposition transcript, all protected testimony and further specify any portions of the testimony that qualify as “CONFIDENTIAL.”

(c) Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate qualified information or items as “Confidential” does not, standing alone, waive the Designating Party’s right to secure protection under this Stipulated Protective Order for such material. If material is appropriately designated by “Confidential” after the material was initially produced, the Receiving Party, on timely notification of the designation, must make reasonable efforts to assure that the material is treated in accordance with the provisions of this Stipulated Protective Order.

(d) Discovery Material designated as Confidential Information under this Stipulated Protective Order and any summaries, copies, abstracts, or other documents derived in whole or in part from material designated as Confidential Information shall be used only for the purpose of the prosecution, defense, or settlement of the Contested Matter and for no other purpose.

3. Duration. Even after the termination of the Pending Case, the confidentiality obligations imposed by this Stipulated Protective Order shall remain in

1 effect until a Designating Party agrees otherwise in writing or a court order otherwise
2 directs.

3 4. Access to and Use of Protected Material.

4 (a) Protected Material that is designated as “Confidential” and
5 produced pursuant to this Stipulated Protective Order may be disclosed or made
6 available only to the Court, counsel for a Party (including the paralegal, clerical, and
7 secretarial staff employed by counsel), and “qualified persons” designated below:

8 (i) A Party, or an officer, director, or employee of a Party
9 deemed necessary by counsel to aid in the prosecution, defense, or settlement of the
10 Pending Case.

11 (ii) Any person or entity who authored, received, or was the
12 source of the Protected Material prior to its production or disclosure in this Action.

13 (iii) Experts or consultants (together with their clerical staff)
14 retained by counsel to assist in the prosecution, defense, or settlement of the Pending
15 Case, who have signed the “Acknowledgement and Agreement to Be Bound by
16 Protective Order” (Exhibit A).

17 (iv) Court reporters employed in the Pending Case.

18 (v) A witness at any deposition or other proceeding in the
19 Pending Case, who has signed the “Acknowledgement and Agreement to Be Bound
20 by Protective Order” (Exhibit A).

21 (vi) Any other person as to whom the Parties in writing agree,
22 and who has signed the “Acknowledgement and Agreement to Be Bound by
23 Protective Order” (Exhibit A).

24 (vii) The jurors empaneled in this Action, if any, and necessary
25 courtroom personnel, provided appropriate measures have been take to prevent the
26 Protected Material from becoming filed in the public record.

27 (b) Nothing in this Stipulated Protective Order shall impose any
28 restrictions on the use or disclosure by a Party of material obtained by such Party

1 independent of discovery in the Pending Case, regardless of whether such material is
2 also obtained through discovery in the Contested Matter or from disclosing its own
3 confidential material as it deems appropriate.

4 5. Challenging Confidentiality Designations.

5 (a) Timing of Challenges. Unless a prompt challenge to a Designating
6 Party's confidentiality designation is necessary to avoid foreseeable substantial
7 unfairness, unnecessary economic burdens, or a later significant disruption or delay of
8 the litigation, a Party does not waive its right to challenge a confidentiality designation
9 by electing not to mount a challenge promptly after the original designation is
10 disclosed.

11 (b) Meet and Confer. A Party that elects to initiate a challenge to a
12 Designating Party's confidentiality designation must do so in good faith. The process
13 can be initiated in writing or by voice to voice dialogue. However, if either side
14 requests a voice to voice dialogue during the meet and confer process, the non-
15 requesting side must, in good faith, attempt to comply with the requested voice to
16 voice dialogue as soon as possible. In conferring, the challenging Party must explain
17 the basis for its belief that the confidentiality designation was not proper and must
18 give the Designating Party an opportunity to review the designated material, to
19 reconsider the circumstances, and, if no change in designation is offered, to explain
20 the basis for the chosen designation. A challenging Party may proceed to the next
21 stage of the challenge process only if it has engaged in this meet and confer process
22 first.

23 (c) Judicial Intervention. A Party that elects to press a challenge to a
24 confidentiality designation after considering the justification offered by the
25 Designating Party may file and serve a motion that identifies the challenged material
26 (but does not include the confidential material in the PACER filing) and sets forth in
27 detail the basis for the challenge. Each such motion must be accompanied by a
28 competent declaration that affirms that the movant has complied with the meet and

1 confer requirements imposed in the preceding paragraph and that sets forth with
2 specificity the justification for the confidentiality designation that was given by the
3 Designating Party in the meet and confer dialogue.

4 6. Protected Material Subpoenaed Or Ordered Produced In Other Litigation.

5 (a) If a Receiving Party is served with a subpoena or an order issued in
6 other litigation that would compel disclosure of any information or items designated
7 in the Pending Case as “CONFIDENTIAL,” the Receiving Party must notify the
8 Designating Party, in writing (by fax, if possible) immediately and in no event more
9 than three court days after receiving the subpoena or order. Such notification must
10 include a copy of the subpoena or court order.

11 (b) The Receiving Party also must immediately inform in writing the
12 Party who caused the subpoena or order to issue in the other litigation that some or all
13 the material covered by the subpoena or order is the subject of this Stipulated
14 Protective Order. In addition, the Receiving Party must deliver a copy of this
15 Stipulated Protective Order promptly to the party in the other action that caused the
16 subpoena or order to issue.

17 (c) The purpose of imposing these duties is to alert the interested
18 Parties to the existence of this Stipulated Protective Order and to afford the
19 Designating Party in this case an opportunity to try to protect its confidentiality
20 interests in the court from which the subpoena or order issued.

21 7. Unauthorized Disclosure of Protected Material. If a Receiving Party
22 learns that, by inadvertence or otherwise, it has disclosed Protected Material to any
23 person or in any circumstances not authorized under this Stipulated Protective Order,
24 the Receiving Party must immediately (a) notify in writing the Designating Party of
25 the unauthorized disclosures, (b) use its best efforts to retrieve all copies of the
26 Protected Material, (c) inform the person or persons to whom unauthorized disclosures
27 were made of all the terms of this Stipulated Protective Order, and (d) request such
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1 person or persons execute the “Acknowledgment and Agreement to Be Bound” that is
2 attached hereto as Exhibit A.

3 8. Filing Protected Material. Without written permission from the
4 Designating Party or a court order secured after appropriate notice to all interested
5 persons, a Party may not file in the public record (*i.e.* on PACER) in the Pending Case
6 any Protected Material. A Party that seeks to file under seal any Protected Material
7 must comply with all FRCP sections and local rules that may apply with respect to
8 filing documents under seal.

9 9. This Stipulated Protective Order shall be without prejudice to the rights
10 of the Parties:

11 (a) to bring before the Court at any time the question of whether any
12 particular document or information is confidential or whether its use should be
13 restricted;

14 (b) to present a motion to the Court under FRCP 26(c) for a separate
15 protective order as to any particular document or information, including restrictions
16 differing from those as specified herein;

17 (c) to seek modification of this Stipulated Protective Order by the
18 Court in the future; or

19 (d) to object on any ground to use in evidence any of the material
20 covered by this Stipulated Protective Order.

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1 10. This Stipulated Protective Order is entered solely for the purpose of
2 facilitating the exchange of documents and information between the Parties to the
3 Contested Matter without unnecessarily involving the Court in the process. Nothing
4 in this Stipulated Protective Order nor the production of any information or document
5 under the terms of this Stipulated Protective Order nor any proceedings pursuant to
6 this Stipulated Protective Order shall be deemed to be an admission or waiver by
7 either Party or to be an alteration of the confidentiality or nonconfidentiality of any
8 such document or information or to be an alteration of any existing obligation of any
9 Party or the absence of any such obligation.

10 11. Final Disposition. This Stipulated Protective Order shall survive the final
11 termination of the Pending Case to the extent that the information contained in
12 Protected Material is not or does not become known to the public, and the Court shall
13 retain jurisdiction to resolve any dispute concerning the use of information disclosed
14 under this Stipulated Protective Order. Upon termination of the Contested Matter, the
15 Receiving Parties shall assemble and return the Protected Material received from a
16 Designating Party, including all copies of same, with a written description signed by
17 counsel that all such Protected Material is being returned, has not been disseminated
18 or shall certify the destruction thereof.

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1 12. Immediately Effective. The Parties hereto agree this Stipulated
2 Protective Order is immediately effective as between counsel upon the full execution
3 hereof. The Parties and their counsel agree that no documentation marked
4 confidential shall be shared with anyone other than counsel for the Parties until the
5 signed Order is received from the Court.

6 **IT IS SO STIPULATED.**

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8 DATED: October , 2016

ALVARADOSMITH
A Professional Corporation

9
10 By: _____

11 KEITH E. MCCULLOUGH
12 KEVIN A. DAY
13 Attorneys for Defendants
14 SHELL PIPELINE COMPANY, a
Delaware limited partnership and ALON
USA PARAMOUNT PETROLEUM
CORPORATION, a Delaware limited
partnership

15 DATED: October , 2016

THOMAS VOGELE & ASSOCIATES, APC

16
17
18 By: _____

19 Thomas A. Vogele
20 Timothy M. Kowal
21 Attorneys for plaintiffs C & C Properties,
22 Inc., JEC Panama, LLC, and Wings Way,
23 LLC
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ORDER

Based upon the stipulation of the parties, the Court **GRANTS** the stipulated protective order.

IT IS SO ORDERED.

Dated: October 11, 2016

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE

1 EXHIBIT A

2 ACKNOWLEDGEMENT AND AGREEMENT TO BE BOUND BY PROTECTIVE
3 ORDER

4
5 I, _____ [print or type full name], of
6 _____ [print or type full address], declare under penalty
7 of perjury that I have read in its entirety and understand the Stipulated Protective
8 Order that was issued by the United States District Court for the Eastern District of
9 California, on _____ in the case of *C & C Properties Inc.et al. v. Shell Pipeline*
10 *Company et al.*, District Case Number 1:14-cv-01889-DAD-JLT. I agree to comply
11 with and to be bound by all the terms of the Stipulated Protective Order, and I
12 understand and acknowledge that failure to so comply could expose me to sanctions
13 and punishment in the nature of contempt. I solemnly promise that I will not disclose
14 in any manner any information or item that is subject to the Stipulated Protective
15 Order to any person or entity except in strict compliance with the provisions of this
16 Order.

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18 I further agree to submit to the jurisdiction of the United State Bankruptcy
19 Court for the Eastern District of California, Sacramento Division, for the purpose of
20 enforcing the terms of this Stipulated Protective Order, even if such enforcement
21 proceedings occur after termination of the above-referenced bankruptcy case.

22 Date: _____

23 City and State where sworn and signed: _____

24 Printed name: _____

25 Signature: _____
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