

1 FENNEMORE CRAIG, P.C.
 Douglas C. Northup (Admitted Pro Hac Vice)
 2 2394 E. Camelback Road, Suite 600
 Phoenix, Arizona 85016-3429
 3 Telephone: (602) 916-5000
 Facsimile: (602) 916-5999
 4 Email: dnorthup@fclaw.com

5 FENNEMORE CRAIG, P.C.
 Karl L. Nielson (Nevada Bar No. 5082)
 6 300 South Fourth Street, Suite 1400
 Las Vegas, Nevada 89101
 7 Telephone: (702) 692-8000
 Facsimile: (702) 692-8099
 8 Email: knielson@fclaw.com

9 Attorneys for Defendants
 BP West Coast Products, LLC, Tesoro Refining &
 10 Marketing Company, LLC, Treasure Franchise
 Company, LLC, Jeff Cary, Derek Tomita, and
 11 Michael Glassman

12 **UNITED STATES DISTRICT COURT**

13 **DISTRICT OF NEVADA**

14 NEVADA WEST PETROLEUM, LLC, a
 Nevada limited liability company;
 15 QARAMAN SUNSET / DECATUR, LLC, a
 Nevada limited liability company; WASEF
 16 QARAMAN, LLC, a Nevada limited liability
 company; and QARAMAN MESQUITE,
 17 LLC,

18 Plaintiffs,

19 v.

20 BP WEST COAST PRODUCTS, LLC, a
 Delaware limited liability company; TESORO
 21 REFINING & MARKETING COMPANY,
 LLC, a Delaware limited liability company;
 22 TREASURE FRANCHISE COMPANY,
 LLC, a Delaware limited liability company;
 23 JEFF CARY, an individual; DEREK
 TOMITA, an individual; and MICHAEL
 24 GLASSMAN, an individual,

25 Defendants.

Case No. 2:15-cv-01684-APG-PAL

STIPULATED PROTECTIVE ORDER

1 Plaintiffs, NEVADA WEST PETROLEUM, LLC, a Nevada limited liability company;
2 QARAMAN SUNSET / DECATUR, LLC, a Nevada limited liability company; WASEF
3 QARAMAN, LLC, a Nevada limited liability company; and QARAMAN MESQUITE, LLC
4 (collectively, “Plaintiffs”), and Defendants BP WEST COAST PRODUCTS, LLC, a Delaware
5 limited liability company; TESORO REFINING & MARKETING COMPANY, LLC, a
6 Delaware limited liability company; TREASURE FRANCHISE COMPANY, LLC, a Delaware
7 limited liability company; JEFF CARY, an individual; DEREK TOMITA, an individual; and
8 MICHAEL GLASSMAN, an individual (collectively, “Defendants”), by and through their
9 respective counsel, have agreed to enter into a protective order pursuant to Federal Rule of Civil
10 Procedure 26(c) to be applied to this matter. The Parties agree that a protective order is required
11 to expedite the flow of discovery material, facilitate the prompt resolution of disputes over
12 confidentiality and adequately protect confidential material. Accordingly, the Parties respectfully
13 request that the following protective order be entered by the Court:

14 IT IS HEREBY ORDERED that:

15 1. This Stipulated Protective Order (“Protective Order”) shall apply to all
16 information, materials, or things subject to discovery in this action and produced from and after
17 the agreement of the Parties to the terms of the Protective Order (“Discovery Materials”),
18 including, without limitation, documents, testimony, and responses to information and discovery
19 requests provided pursuant to the Federal Rules of Civil Procedure, which contain proprietary,
20 confidential, or commercially sensitive information. The term “Party” (or, collectively, “Parties”)
21 means Plaintiffs and Defendants.

22 2. Discovery Materials may be designated, in appropriate circumstances, as
23 CONFIDENTIAL by a Party or non-party. The CONFIDENTIAL designation shall only be used
24 for information or material that is intended by a Party or non-party to be CONFIDENTIAL, as to
25 which the Party or non-party has exercised reasonable steps to maintain its secrecy, and as to
26 which the Party or non-party believes, in good faith, that there is good cause for

1 CONFIDENTIAL treatment. Notwithstanding the fact that a document, portion of a document or
2 category of documents is specifically encompassed by the above definition, each Party reserves
3 its rights to object to the production of any such documents or any other grounds as may be
4 available by law or rule of procedure.

5 3. Discovery Materials may be designated as CONFIDENTIAL by a Party or non-
6 party by stamping the words CONFIDENTIAL on the face of each page of the document or
7 designating information as CONFIDENTIAL by reference to the document and page number
8 being designated. Notwithstanding a Party or non-party's failure to stamp a document as
9 CONFIDENTIAL or designate by reference, the Parties agree that all Discovery Materials
10 provided pursuant to this Protective Order shall be treated as CONFIDENTIAL until such time, if
11 any, that contrary treatment is permitted pursuant to the terms of this Protective Order.

12 4. Any Party or non-party may designate deposition testimony or any portion of
13 deposition testimony CONFIDENTIAL by advising the reporter and counsel of such designation
14 during the course of the deposition or at any time thereafter. Any portions of any deposition
15 designated CONFIDENTIAL may only be filed with the Court if the provisions of Paragraph 5
16 below are complied with. Whenever any Discovery Materials designated as CONFIDENTIAL
17 are identified as an exhibit in connection with testimony given in this civil proceeding, they shall
18 be so marked and, if sought to be filed with the Court, the Party shall seek approval from the
19 Court to file the CONFIDENTIAL exhibit under seal with the Court, as provided in Paragraph 5
20 below.

21 5. Absent a stipulation between the Parties or a court order secured after appropriate
22 notice to all interested persons, a Party may not file in the public record in this action any
23 Discovery Material that has been designated as CONFIDENTIAL. The Party seeking to file any
24 document with the Court that contains any CONFIDENTIAL information shall seek approval to
25 file that document under seal. If a Party wishes to file or lodge Discovery Materials containing
26 CONFIDENTIAL information under seal, the other Party shall not unreasonably withhold

1 agreement to such procedure. If an agreement is reached, the Parties shall submit to the Court a
2 joint motion for leave to file or lodge those documents under seal. Pursuant to LR 10-5, if no
3 such agreement is reached, such papers shall be filed with the Court under seal and must be
4 accompanied by a motion for leave to file those documents under seal. In either event, such
5 motions and accompanying documents shall be filed in accordance with the Court's electronic
6 filing procedures. If papers are filed under seal pursuant to prior court order, the papers shall bear
7 the following notation on the first page, directly under the case number "FILED UNDER SEAL
8 PURSUANT TO COURT ORDER DATED _____." Further, in the event any
9 stamped CONFIDENTIAL document or the information contained therein is included with, or the
10 contents thereof are in any way disclosed, in any pleading, motion, deposition transcript or other
11 paper filed with Clerk of any Court, the Party seeking protection will have an opportunity to ask
12 the Court to preserve the confidentiality of that stamped CONFIDENTIAL document as the Court
13 deems appropriate, consistent with the Ninth Circuit's opinion in *Kamakana v. City and County*
14 *of Honolulu*, 447 F.3d 1172, 1178-79 (9th Cir. 2006). Until the Court makes a determination on
15 the preservation of confidentiality, such protected documents and information shall be filed under
16 seal and maintained under seal by the Clerk until further order of this Court in accordance with
17 this Order and LR 10-5. The use of any protected document or of the information contained
18 therein and any testimony associated with the protected information contained therein shall be
19 held in camera, if necessary, to prevent disclosure to nonparties, or otherwise under such
20 circumstances as will prevent the inadvertent disclosure of such documents and information,
21 unless the Court orders otherwise upon good cause shown. If a Party seeks to file under seal any
22 CONFIDENTIAL information, and the Court denies the request to file under seal, then within
23 seven (7) days thereafter, the designating Party must file a request with the Court to seal the
24 Discovery Materials containing the CONFIDENTIAL information, along with a supporting
25 declaration, otherwise the CONFIDENTIAL information will be filed in the public record.

26 6. Except upon prior written consent of the Party asserting CONFIDENTIAL

1 treatment or upon further order of a court of competent jurisdiction, information or material
2 designated as CONFIDENTIAL shall be held in strict confidence and shall be used solely for the
3 purposes of prosecution or defense of this civil proceeding, and shall not be used for any other
4 purposes.

5 7. Except as otherwise provided for in Section 9 of this Protective Order, all
6 CONFIDENTIAL information and material shall remain in the possession of counsel for the
7 respective Parties, and be stored in a secure place.

8 8. (a) No Party concedes that any information or material designated by another
9 Party as CONFIDENTIAL does in fact contain or reflect trade secrets, proprietary or confidential
10 information, or has been properly designated as CONFIDENTIAL. Notwithstanding the
11 provisions of Section 11 below, any Party may at any time, on reasonable notice, move for (i)
12 modification of this Protective Order, or (ii) relief from the provisions of this Protective Order
13 with respect to specific information or material, including without limitation the use of
14 CONFIDENTIAL information or material as exhibits at depositions, and in addition, the parties
15 may agree to necessary modifications of this Protective Order. Should any Party hereto seek to
16 utilize any CONFIDENTIAL information or material at the hearing of this matter, counsel for
17 such Party shall meet with counsel for the opposing Party in an effort to agree upon a procedure
18 to ensure the confidentiality of such information or material. In the event counsel is unable to
19 reach agreement, the matter will be submitted to the Court for resolution.

20 (b) A Party shall not be obligated to challenge the propriety of the designation of
21 information or material as CONFIDENTIAL at the time made, and failure to do so shall not
22 preclude a subsequent challenge thereof. If a Party challenges such designations, it shall send and
23 give notice to counsel for the Party who designated the document CONFIDENTIAL and they
24 shall attempt to resolve any challenge in good faith on an expedited and informal basis. If the
25 challenge cannot be expeditiously and informally resolved, the challenging Party may apply for
26 an appropriate ruling from the Court. This Protective Order shall not and does not change any

1 burden of going forward or burden of proof in any proceeding before the Court. The
2 CONFIDENTIAL information or material in issue shall continue to be treated as
3 CONFIDENTIAL until the Court orders otherwise or the Parties otherwise agree.

4 9. Except with the prior written consent of the Parties or upon prior order of the
5 Court obtained upon noticed motion, information or material designated as “CONFIDENTIAL”
6 shall not be shown, delivered, or disclosed to any person other than:

7 a) The Parties to this litigation;

8 b) The Parties’ litigation counsel of record or members of such counsel’s firm,
9 including associates for the respective Parties to this litigation, and paralegal, clerical, secretarial,
10 and administrative employees of such counsel assigned to assist in the preparation of this
11 litigation;

12 c) Any employee of any of the Parties involved in the litigation or any employee of
13 any affiliate of a Party (if such employee is involved in the litigation on behalf of a Party), and
14 any in-house attorneys for the respective parties who are advising the parties, including
15 paralegals, clerical, secretarial, and support staff of counsel assigned to assist in the preparation of
16 this litigation.

17 d) Employees of any professional photocopy service or other litigation support
18 service utilized by counsel in the preparation of this litigation;

19 e) Any author, recipient, or producing Party of such material;

20 f) The Court and any persons employed by the Court whose duties require access to
21 such material;

22 g) Any independent expert retained to assist in the preparation of this case or to
23 testify at trial or any other proceeding in this action. This includes stenographic and clerical
24 employees associated with such persons; and

25 h) Court reporters and other persons involved in recording deposition testimony in
26 this action by any means.

1 Any person or entity receiving or possessing CONFIDENTIAL information or material
2 subject to this Section 9 after the effective date of this Protective Order, other than the Parties
3 who are bound by this Protective Order and those persons or entities described in subsections (f)
4 and (h), shall be bound by the terms of this Protective Order and shall execute the
5 “Acknowledgement and Agreement to be Bound” in the form attached hereto as “Exhibit A.”
6 Any such person or entity receiving or possessing CONFIDENTIAL information under or
7 pursuant to this section shall also keep and maintain such materials in a secure place.

8 10. Provided all the procedures of governing disclosure as set forth herein are
9 followed and complied with, neither the provisions of this Protective Order nor the filing of any
10 information or material under seal shall prevent the use, in open court, at any hearing, or at trial of
11 this case, of any information or material that is subject to this Protective Order or filed under seal
12 pursuant to its provisions.

13 11. Unless ordered by a Court or agreed to in writing by the Parties, all material
14 designated as CONFIDENTIAL pursuant to this Protective Order shall be treated in accordance
15 with its designation and shall not be disclosed except under the terms of this Protective Order.

16 a) In the event that any Party objects to the designation of any information or
17 material, such Party may, in writing, request the designating Party to remove or change the
18 designation. Such written request shall specifically identify the information or material at issue.

19 b) The designating Party shall respond in writing within five (5) business days of
20 receipt of the written request, or within such other period of time as may be designated by order
21 of the Court or agreed to by the Parties. If the designating Party refuses to remove to change the
22 designation as requested, its written response shall state the reasons for this refusal. Failure to
23 provide a timely written response shall be deemed a refusal of the request.

24 c) If the designating Party fails to respond to a request or refuses to remove or
25 change the designation, the Party requesting re-designation shall have three (3) business days to
26 file a motion seeking such re-designation. It shall be the burden of the designating Party to

1 establish that the information or material is correctly designated within the meaning of this
2 Protective Order, and applicable case law.

3 d) In the event of such a motion, the information or material at issue may be
4 submitted to the Court for in camera inspection.

5 12. The Parties understand and agree that this Protective Order does not waive any
6 additional privilege, right of privacy or right of confidentiality that may apply to any interrogatory
7 or request for production served by any Party. Further, this stipulation does not waive or abrogate
8 any objection made by any Party in response to any other interrogatory or request for production.

9 13. The provisions of this Protective Order shall not terminate at the final conclusion
10 of this litigation. This Protective Order shall remain in full force and effect in perpetuity unless
11 modified, superseded or terminated by written consent of the parties or by order of the Court.
12 Each person subject to this Protective Order shall continue to be subject to the jurisdiction of the
13 United States District Court for the District of Nevada for the purpose of enforcement of the
14 terms of this Protective Order for as long as the Protective Order remains in effect. The Court
15 shall not be divested of the power to enforce the terms of this Protective Order as to any persons
16 subject to the Protective Order by the final conclusion of this litigation or by the filing of a notice
17 of appeal or other pleading that arguably has the effect of divesting this Court of jurisdiction of
18 this matter generally.

19 14. No later than 45 days after the final adjudication of this action, including any
20 appeals, and upon written request by a designating Party, all information or material designated
21 pursuant to this Protective Order shall be returned to the designating Party or shall be destroyed
22 (provided, however, counsel for each Party may retain one copy of any designated document,
23 which will remain subject to this Protective Order), unless a motion seeking modification of this
24 Protective Order is filed. In the event that such information or material is destroyed, the person or
25 persons responsible for such destruction shall certify in writing to the completion and manner of
26 destruction. This provision shall not apply to file copies of pleadings, briefs, and correspondence

1 maintained by the Parties' counsel in their respective litigation files in the ordinary course of
2 business.

3 15. The Court retains jurisdiction to make such amendments, modification, and
4 additions to this Protective Order as it may from time to time deem appropriate. Any Party may
5 make a request to the Court for any reasonable amendment to this Protective Order to facilitate
6 the efficient and appropriate handling of confidential information or material.

7 DATED May 19, 2016.

FENNEMORE CRAIG, P.C.

8

9

By: /s/ Karl L. Nielson
Douglas C. Northup (Admitted Pro Hac Vice)
2394 E. Camelback Road, Suite 600
Phoenix, Arizona 85016-3429
- and -
Karl L. Nielson (NVB No. 5082)
300 South Fourth Street, Suite 1400
Las Vegas, Nevada 89101
Attorneys for Defendants

10

11

12

13

14

15

DATED May 19, 2016.

MORRIS, SULLIVAN, LEMKUL & PITEGOFF

16

17

18

19

20

By: /s/ Christopher A. Turtzo
Jeffrey I. Pitegoff (NVB No. 005458)
Christopher A. Turtzo (NVB No. 10253)
3770 Howard Hughes Parkway, Suite 170
Las Vegas, NV 89169
Attorneys for Plaintiffs

21

ORDER

22

Pursuant to the foregoing stipulation of the Parties, IT IS SO ORDERED.

23

DATED this 31st day of May, 2016.

24

25


UNITED STATES MAGISTRATE JUDGE

26

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

EXHIBIT A

ACKNOWLEDGEMENT 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 understand the Stipulated Protective
Order that was issued by the United States District Court for the District of Nevada on
_____, 2016, in the case of Nevada West Petroleum, LLC, et al. v. BP West Coast
Products, LLC, et al., Case No. 2:15-cv-01684-APG-PAL. I agree to comply with and to be
bound by all the terms of the 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
the Stipulated Protective Order to any person or entity except in strict compliance with the
provisions of the Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____