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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

PACIFIC STEEL GROUP

Plaintiff,

v.

COMMERCIAL METALS COMPANY,
C M C STEEL FABRICATORS, INC.,
CMC STEEL US, LLC, DANIELI
CORPORATION, and GERDAU
REINFORCING STEEL,

Defendants.

Case No. 4:20-cv-07683-HSG

STIPULATION AND
PROTECTIVE ORDER

1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting or defending this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles. The parties further acknowledge, as set forth in Section 12.3, below, that this Stipulated Protective Order does not entitle them to file confidential information under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the court to file material under seal.

The Parties reserve the right, based on the documents produced by the other Parties, to seek permission for one or more designated business persons to review documents produced by

1 other Parties and designated “HIGHLY CONFIDENTIAL—ATTORNEYS’ EYES ONLY”
2 subject to an agreed-upon or Court-ordered protocol. The Parties also reserve the right to seek
3 permission to have past employees of a Party or of a Party’s competitor be deemed an “Expert”
4 who may review documents designated “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL—
5 ATTORNEYS’ EYES ONLY” in accordance with this Order, notwithstanding clause (2) of
6 paragraph 2.7 below.

7 2. DEFINITIONS

8 2.1 Challenging Party: a Party or Non-Party that challenges the designation of
9 information or items under this Order.

10 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is
11 generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of
12 Civil Procedure 26(c), or other information or tangible things required by non-disclosure agreement
13 or other contractual obligation to be kept confidential.

14 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as well
15 as their support staff).

16 2.4 Designated House Counsel: House Counsel designated by a Party to receive, in
17 accordance with the terms of this Order, information or items designated “HIGHLY
18 CONFIDENTIAL – ATTORNEYS’ EYES ONLY”. Each Party may designate only one
19 Designated House Counsel.

20 2.5 Designating Party: a Party or Non-Party that designates information or items that it
21 produces in disclosures or in responses to discovery as “CONFIDENTIAL” or “HIGHLY
22 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

23 2.6 Disclosure or Discovery Material: all items or information, regardless of the medium
24 or manner in which it is generated, stored, or maintained (including, among other things, testimony,
25 transcripts, and tangible things), that are produced or generated in disclosures or responses to
26 discovery in this matter.

27 2.7 Expert: a person with specialized knowledge or experience in a matter pertinent to
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1 the litigation who (1) has been retained by a Party or its counsel to serve as an expert witness or as a
2 consultant in this action, and (2) is not a past, current, or anticipated employee of a Party or of a
3 Party's competitor.

4 2.8 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" Information or Items:
5 extremely sensitive "Confidential Information or Items," disclosure of which to another Party or
6 Non-Party would create a substantial risk of serious harm that could not be avoided by less
7 restrictive means.

8 2.9 House Counsel: attorneys who are employees of a party to this action. House
9 Counsel does not include Outside Counsel of Record or any other outside counsel.

10 2.10 Non-Party: any natural person, partnership, corporation, association, or other legal
11 entity not named as a Party to this action.

12 2.11 Outside Counsel of Record: attorneys who are not employees of a party to this action
13 but are retained to represent or advise a party to this action and have appeared in this action on
14 behalf of that party or are affiliated with a law firm which has appeared on behalf of that party.

15 2.12 Party: any party to this action, including all of its officers, directors, employees,
16 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

17 2.13 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
18 Material in this action.

19 2.14 Professional Vendors: persons or entities that provide litigation support services
20 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing,
21 storing, or retrieving data in any form or medium) and their employees and subcontractors.

22 2.15 Protected Material: any Disclosure or Discovery Material that is designated as
23 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY."

24 2.16 Receiving Party: a Party that receives Disclosure or Discovery Material from a
25 Producing Party.

26 3. SCOPE

1 The protections conferred by this Stipulation and Order cover not only Protected Material (as
2 defined above), but also (1) any information copied or extracted from Protected Material; (2) all
3 copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,
4 conversations, communications, discovery responses, or presentations by Parties or their Counsel
5 that might reveal Protected Material. However, the protections conferred by this Stipulation and
6 Order do not cover the following information: (a) any information that is in the public domain at the
7 time of disclosure to a Receiving Party or becomes part of the public domain after its disclosure to a
8 Receiving Party as a result of publication not involving a violation of this Order, including becoming
9 part of the public record through trial or otherwise; and (b) any information known to the Receiving
10 Party prior to the disclosure or obtained by the Receiving Party after the disclosure from a source
11 who obtained the information lawfully and under no obligation of confidentiality to the Designating
12 Party. Any use of Protected Material at trial shall be governed by a separate agreement or order.

13 4. DURATION

14 Even after final disposition of this litigation, the confidentiality obligations imposed by this
15 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order
16 otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims and
17 defenses in this action, with or (if not re-filed by the deadline) without prejudice; and (2) final
18 judgment herein after the completion and exhaustion of all appeals, rehearings, remands, trials, or
19 reviews of this action, including the time limits for filing any motions or applications for extension
20 of time pursuant to applicable law.

21 5. DESIGNATING PROTECTED MATERIAL

22 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or
23 Non-Party that designates information or items for protection under this Order must take care to
24 limit any such designation to specific material that qualifies under the appropriate standards. To the
25 extent it is practical and not unduly burdensome to do so, the Designating Party must designate for
26 protection only those parts of material, documents, items, or oral or written communications that
27 qualify – so that other portions of the material, documents, items, or communications for which
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1 protection is not warranted are not swept unjustifiably within the ambit of this Order.

2 Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown
3 to be clearly unjustified or that have been made for an improper purpose (e.g., to unnecessarily
4 encumber or retard the case development process or to impose unnecessary expenses and burdens on
5 other parties) expose the Designating Party to sanctions.

6 If it comes to a Designating Party's attention that information or items that it designated for
7 protection do not qualify for protection at all or do not qualify for the level of protection initially
8 asserted, that Designating Party must promptly notify all other Parties that it is withdrawing the
9 mistaken designation.

10 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order
11 (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,
12 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so
13 designated before the material is disclosed or produced.

14 Designation in conformity with this Order requires:

15 (a) for information in documentary form (e.g., paper or electronic documents, but
16 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing Party
17 affix the legend "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES
18 ONLY" to each page that contains protected material. If only a portion or portions of the material on
19 a page qualifies for protection, the Producing Party also must clearly identify the protected portion(s)
20 (e.g., by making appropriate markings in the margins) and must specify, for each portion, the level
21 of protection being asserted.

22 A Party or Non-Party that makes original documents or materials available for inspection
23 need not designate them for protection until after the inspecting Party has indicated which material it
24 would like copied and produced. During the inspection and before the designation, all of the material
25 made available for inspection shall be deemed "HIGHLY CONFIDENTIAL – ATTORNEYS'
26 EYES ONLY." After the inspecting Party has identified the documents it wants copied and
27 produced, the Producing Party must determine which documents, or portions thereof, qualify for
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1 protection under this Order. Then, before producing the specified documents, the Producing Party
2 must affix the appropriate legend (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
3 ATTORNEYS’ EYES ONLY”) to each page that contains Protected Material. If only a portion or
4 portions of the material on a page qualify for “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
5 ONLY” protection, the Producing Party also must clearly identify the “HIGHLY CONFIDENTIAL
6 – ATTORNEYS’ EYES ONLY” portion(s) (e.g., by making appropriate markings in the margins).

7 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the
8 Designating Party identify on the record, before the close of the deposition, hearing, or other
9 proceeding, all protected testimony and specify the level of protection being asserted. When it is
10 impractical to identify separately each portion of testimony that is entitled to protection and it
11 appears that substantial portions of the testimony may qualify for protection, the Designating Party
12 may invoke on the record (before the deposition, hearing, or other proceeding is concluded) a right
13 to provisionally designate the transcript as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
14 ATTORNEYS’ EYES ONLY”, and have up to 28 days after receipt of the certified transcript of
15 the deposition (or hearing or other proceeding) to identify the specific portions of the testimony as
16 to which protection is sought and to specify the level of protection being asserted. Only those
17 portions of the testimony that are appropriately designated for protection within the 28 days shall
18 be covered by the provisions of this Stipulated Protective Order. Alternatively, a Designating
19 Party may specify, at the deposition or up to 28 days afterwards if that period is properly invoked,
20 that the entire transcript shall be treated as “CONFIDENTIAL,” but this alternative procedure
21 shall not apply to portions of the transcript a Designating Party wishes to designate “HIGHLY
22 CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” which portions shall be designated
23 specifically.

24 Parties shall give the other parties notice if they reasonably expect a deposition, hearing or
25 other proceeding to include Protected Material so that the other parties can ensure that only
26 authorized individuals who have signed the “Acknowledgment and Agreement to Be Bound”
27 (Exhibit A) are present at those proceedings. The use of a document as an exhibit at a deposition
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1 shall not in any way affect its designation as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL
2 – ATTORNEYS’ EYES ONLY.”

3 When a document or other material designated as “CONFIDENTIAL” or “HIGHLY
4 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” is introduced as an exhibit, counsel introducing
5 such exhibit shall advise the court reporter that the exhibit is “CONFIDENTIAL” or “HIGHLY
6 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” pursuant to this Stipulated Protective Order.
7 Transcripts containing Protected Material shall have an obvious legend on the title page that the
8 transcript contains Protected Material, and the title page shall be followed by a list of all pages
9 (including line numbers as appropriate) that have been designated as Protected Material and the level
10 of protection being asserted by the Designating Party. The Designating Party shall inform the court
11 reporter of these requirements. Any transcript that is prepared before the expiration of a 28-day
12 period for designation shall be treated during that period as if it had been designated “HIGHLY
13 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its entirety unless otherwise agreed. After the
14 expiration of that period, the transcript shall be treated only as actually designated.

15 (c) for information produced in some form other than documentary and for any other
16 tangible items, that the Producing Party affix in a prominent place on the exterior of the container or
17 containers in which the information or item is stored the legend “CONFIDENTIAL” or “HIGHLY
18 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” If only a portion or portions of the information
19 or item warrant protection, the Producing Party, to the extent practicable, shall identify the protected
20 portion(s) and specify the level of protection being asserted.

21 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
22 designate qualified information or items does not, standing alone, waive the Designating Party’s
23 right to secure protection under this Order for such material. Upon timely correction of a
24 designation, the Receiving Party must make reasonable efforts to assure that the information or
25 material is treated in accordance with the provisions of this Stipulated Protective Order.

26 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

27 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
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1 confidentiality at any time. Unless a prompt challenge to a Designating Party's confidentiality
2 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens,
3 or a significant disruption or delay of the litigation, a Party does not waive its right to challenge a
4 confidentiality designation by electing not to mount a challenge promptly after the original
5 designation is disclosed.

6 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process
7 by providing written notice to the Designating Party, through its Outside Counsel of Record, of each
8 designation it is challenging and describing the basis for each challenge. To avoid ambiguity as to
9 whether a challenge has been made, the written notice must recite that the challenge to
10 confidentiality is being made in accordance with this specific paragraph of the Protective Order. The
11 parties shall attempt to resolve each challenge in good faith and must begin the process by conferring
12 directly (in voice to voice dialogue; other forms of communication are not sufficient) within 14 days
13 of the date of service of notice. In conferring, the Challenging Party must explain the basis for its
14 belief that the confidentiality designation was not proper and must give the Designating Party an
15 opportunity to review the designated material, to reconsider the circumstances, and, if no change in
16 designation is offered, to explain the basis for the chosen designation. A Challenging Party may
17 proceed to the next stage of the challenge process only if it has engaged in this meet and confer
18 process first or establishes that the Designating Party is unwilling to participate in the meet and
19 confer process in a timely manner.

20 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
21 intervention, the Designating Party shall file and serve a motion to retain confidentiality under Civil
22 Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) within 21 days of the
23 initial notice of challenge or within 14 days of the parties agreeing that the meet and confer process
24 will not resolve their dispute, whichever is earlier.¹ Each such motion must be accompanied by a
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26 ¹ After any Party makes three (3) separate challenges to a Designating Party's confidentiality
27 designations that have been rejected (in whole or in substantial part) by the Court, the burden to
28 file a motion shall shift to the Challenging Party for any additional challenges, to avoid abuse of
the process. Failure by the Challenging Party to make such a motion including the required
declaration within 21 days of the initial notice of challenge or within 14 days of the parties

1 competent declaration affirming that the movant has complied with the meet and confer
2 requirements imposed in the preceding paragraph. Failure by the Designating Party to make such a
3 motion including the required declaration within 21 days (or 14 days, if applicable) shall
4 automatically waive the confidentiality designation for each challenged designation. In addition, the
5 Challenging Party may file a motion challenging a confidentiality designation at any time if there is
6 good cause for doing so, including a challenge to the designation of a deposition transcript or any
7 portions thereof. Any motion brought pursuant to this provision must be accompanied by a
8 competent declaration affirming that the movant has complied with the meet and confer
9 requirements imposed by the preceding paragraph.

10 The burden of persuasion in any such challenge proceeding shall be on the Designating
11 Party. Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose
12 unnecessary expenses and burdens on other parties) may expose the Challenging Party to sanctions.
13 Unless the Designating Party has waived the confidentiality designation by failing to file a motion to
14 retain confidentiality as described above, all parties shall continue to afford the material in question
15 the level of protection to which it is entitled under the Producing Party's designation until the court
16 rules on the challenge.

17 7. ACCESS TO AND USE OF PROTECTED MATERIAL

18 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or
19 produced by another Party or by a Non-Party in connection with this case only for prosecuting,
20 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to
21 the categories of persons and under the conditions described in this Order. When the litigation has
22 been terminated, a Receiving Party must comply with the provisions of section 13 below (FINAL
23 DISPOSITION).

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

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27 agreeing that the meet and confer process will not resolve their dispute, whichever is later, shall
28 automatically waive the challenge to each confidentiality designation. The burden of persuasion
remains on the Designating Party.

1 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered by
2 the court or permitted in writing by the Designating Party, a Receiving Party may disclose any
3 information or item designated “CONFIDENTIAL” only to:

4 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as employees
5 of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for
6 this litigation;

7 (b) the officers, directors, and employees (including House Counsel) of the Receiving
8 Party to whom disclosure is reasonably necessary for this litigation and who have signed the
9 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

10 (c) Experts (as defined in this Order) as well as their staff, of the Receiving Party to
11 whom disclosure is reasonably necessary for this litigation and who have signed the
12 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

13 (d) the court and its personnel;

14 (e) mediators and their staff who are engaged in mediation or alternative dispute
15 resolution with the Parties and who have signed the “Acknowledgment and Agreement to be Bound”
16 (Exhibit A);

17 (f) persons or entities that provide litigation support services retained by a Party or a
18 Party’s Outside Counsel of Record, including but not limited to court reporters and their staff,
19 professional jury or trial consultants, mock jurors, and Professional Vendors, to whom disclosure is
20 reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement
21 to Be Bound” (Exhibit A);

22 (g) during their depositions, witnesses in the action to whom disclosure is reasonably
23 necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A),
24 unless otherwise agreed by the Designating Party or ordered by the court. Pages of transcribed
25 deposition testimony or exhibits to depositions that reveal Protected Material must be identified as
26 such by the court reporter and may not be disclosed to anyone except as permitted under this
27 Stipulated Protective Order; and

1 (h) the author, addressees, or recipients of a document containing the information or a
2 custodian or other person who otherwise possessed, would have likely reviewed, or knew the
3 information, or who is specifically identified in the document.

4 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
5 Information or Items. Unless otherwise ordered by the court or permitted in writing by the
6 Designating Party, a Receiving Party may disclose any information or item designated “HIGHLY
7 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only to:

8 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as
9 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the
10 information for this litigation;

11 (b) Experts (as defined in this Order) as well as their staff, of the Receiving Party
12 (1) to whom disclosure is reasonably necessary for this litigation, (2) who have signed the
13 “Acknowledgment and Agreement to Be Bound” (Exhibit A), and (3) as to whom the procedures
14 set forth in paragraph 7.4, below, have been followed;

15 (c) Designated House Counsel of the Receiving Party (1) who has no involvement in
16 competitive decision-making, (2) to whom disclosure is reasonably necessary for this litigation,
17 (3) who has signed the “Acknowledgment and Agreement to be Bound” (Exhibit A), and (4)
18 whose name has been disclosed to the Designating Party;

19 (d) the court and its personnel;

20 (e) mediators and their staff who are engaged in mediation or alternative dispute
21 resolution with the Parties and who have signed the “Acknowledgment and Agreement to be
22 Bound” (Exhibit A);

23 (f) persons or entities that provide litigation support services retained by a Party or a
24 Party’s Outside Counsel of Record, including but not limited to court reporters and their staff,
25 professional jury or trial consultants, mock jurors, and Professional Vendors, to whom disclosure
26 is reasonably necessary for this litigation and who have signed the “Acknowledgment and
27 Agreement to Be Bound” (Exhibit A); and

1 (g) the author, addressees, or recipients of a document containing the information or a
2 custodian or other person who otherwise possessed or knew the information, or who is specifically
3 identified in the document.

4 7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY
5 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items to Experts.

6 (a) Unless otherwise ordered by the court or agreed to in writing by the Designating
7 Party, if a Party seeks to disclose to an Expert (as defined in this Order) any information or item
8 that has been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” pursuant
9 to Paragraph 7.3(b), then the Party seeking to disclose “HIGHLY CONFIDENTIAL –
10 ATTORNEYS’ EYES ONLY” information or items to the Expert shall inform the Party that
11 produced such “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information or
12 items of this fact in writing. The Party seeking to make such a disclosure need not disclose the
13 identity of the Expert, but must indicate, as appropriate, the general categories of information or
14 items that will be disclosed to the Expert.

15 (b) A Party that makes a request and provides the information specified in the
16 preceding paragraph may disclose the subject Protected Material to the identified Expert unless,
17 within 14 days of delivering the request, the Party receives a written objection from the
18 Designating Party. Any such objection must set forth in detail the grounds on which it is based.

19 (c) A Party that receives a timely written objection must meet and confer with the
20 Designating Party (through direct voice to voice dialogue) to try to resolve the matter by
21 agreement within seven days of the written objection. If no agreement is reached, the Party
22 seeking to make the disclosure to the Expert may file a motion as provided in Civil Local Rule 7
23 (and in compliance with Civil Local Rule 79-5, if applicable) seeking permission from the court to
24 do so. Any such motion must describe the circumstances with specificity, set forth in detail the
25 reasons why the disclosure to the Expert is reasonably necessary, assess the risk of harm that the
26 disclosure would entail, and suggest any additional means that could be used to reduce that risk. In
27 addition, any such motion must be accompanied by a competent declaration describing the parties’
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1 efforts to resolve the matter by agreement (i.e., the extent and the content of the meet and confer
2 discussions) and setting forth the reasons advanced by the Designating Party for its refusal to
3 approve the disclosure.

4 In any such proceeding, the Party opposing disclosure to the Expert shall bear the
5 burden of proving that the risk of harm that the disclosure would entail (under the safeguards
6 proposed) outweighs the Receiving Party's need to disclose the Protected Material to its Expert.

7 (d) Nothing in this Section shall require that the Expert be disclosed to the Designating
8 Party prior to the Court-ordered deadline for disclosure. If necessary, any motion or letter to the
9 Court shall be redacted so as to not disclose the Expert's name to the Designating Party.

10 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
11 LITIGATION

12 If a Party is served with a subpoena or a court order issued in other litigation that compels
13 disclosure of any information or items designated in this action as "CONFIDENTIAL" or "HIGHLY
14 CONFIDENTIAL – ATTORNEYS' EYES ONLY" that Party must:

15 (a) promptly notify in writing the Designating Party. Such notification shall include a
16 copy of the subpoena or court order;

17 (b) promptly notify in writing the party who caused the subpoena or order to issue in the
18 other litigation that some or all of the material covered by the subpoena or order is subject to this
19 Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and

20 (c) cooperate with respect to all reasonable procedures sought to be pursued by the
21 Designating Party whose Protected Material may be affected.²

22 If the Designating Party timely seeks a protective order, the Party served with the subpoena
23 or court order shall not produce any information designated in this action as "CONFIDENTIAL" or
24 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" before a determination by the court
25 from which the subpoena or order issued, unless the Party has obtained the Designating Party's

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27 ² The purpose of imposing these duties is to alert the interested parties to the existence of this
28 Protective Order and to afford the Designating Party in this case an opportunity to try to protect its
confidentiality interests in the court from which the subpoena or order issued.

1 permission. The Designating Party shall bear the burden and expense of seeking protection in that
2 court of its confidential material – and nothing in these provisions should be construed as
3 authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from
4 another court.

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

7 (a) The terms of this Order are applicable to information produced by a Non-Party in this
8 action and designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’
9 EYES ONLY.” Such information produced by Non-Parties in connection with this litigation is
10 protected by the remedies and relief provided by this Order. Nothing in these provisions should be
11 construed as prohibiting a Non-Party from seeking additional protections.

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

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

17 (2) promptly provide the Non-Party with a copy of the Stipulated Protective Order in
18 this litigation, the relevant discovery request(s), and a reasonably specific description of the
19 information requested; and

20 (3) make the information requested available for inspection by the Non-Party.

21 (c) If the Non-Party whose confidential information is sought pursuant to Section 9(b)
22 fails to object or seek a protective order from this court within 14 days of receiving the notice and
23 accompanying information, the Receiving Party may produce the Non-Party’s confidential
24 information responsive to the discovery request. If the Non-Party timely seeks a protective order, the
25 Receiving Party shall not produce any information in its possession or control that is subject to the
26 confidentiality agreement with the Non-Party before a determination by the court. Absent a court
27 order to the contrary, the Non-Party shall bear the burden and expense of seeking protection in this

1 court of its Protected Material.

2 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

3 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
4 Material to any person or in any circumstance not authorized under this Stipulated Protective Order,
5 the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized
6 disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c)
7 inform the person or persons to whom unauthorized disclosures were made of all the terms of this
8 Order, and (d) request such person or persons to execute the “Acknowledgment and Agreement to
9 Be Bound” that is attached hereto as Exhibit A.

10 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
11 MATERIAL

12 Pursuant to Federal Rule of Evidence 502(d), inadvertent production of a document or
13 information subject to a claim of attorney-client privilege, work product doctrine, or other applicable
14 privilege or protection (“Privileged Material”), or the incidental inclusion of Privileged Material in a
15 production made in a manner agreed by the Parties, is not a waiver of privilege or protection from
16 discovery in this litigation or in any other federal or state proceeding or private arbitration
17 proceeding so long as the disclosing party takes reasonable steps to rectify the error promptly after
18 identifying it and prior to the close of fact discovery in this litigation or otherwise complies with any
19 agreed procedure(s) for clawing back Privileged Material.

20 12. MISCELLANEOUS

21 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek
22 its modification by the court in the future.

23 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order
24 no Party waives any right it otherwise would have to object to disclosing or producing any
25 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no
26 Party waives any right to object on any ground to use in evidence of any of the material covered by
27 this Protective Order.

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1 12.3 Filing Protected Material. Without written permission from the Designating Party or a
2 court order secured after appropriate notice to all interested persons, a Party may not file in the
3 public record in this action any Protected Material. A Party that seeks to file under seal any Protected
4 Material must comply with Civil Local Rule 79-5. Protected Material may only be filed under seal
5 pursuant to a court order authorizing the sealing of the specific Protected Material at issue. Pursuant
6 to Civil Local Rule 79-5, a sealing order will issue only upon a request establishing that the
7 Protected Material at issue is privileged, protectable as a trade secret, or otherwise entitled to
8 protection under the law. If a Receiving Party's request to file Protected Material under seal pursuant
9 to Civil Local Rule 79-5(d) is denied by the court, then the Receiving Party may file the information
10 in the public record pursuant to Civil Local Rule 79-5(e) unless otherwise instructed by the court.

11 13. FINAL DISPOSITION

12 Within 60 days after the final disposition of this action, as defined in paragraph 4, each
13 Receiving Party must return all Protected Material to the Producing Party or destroy such material.
14 As used in this subdivision, “all Protected Material” includes all copies, abstracts, compilations,
15 summaries, and any other format reproducing or capturing any of the Protected Material. Whether
16 the Protected Material is returned or destroyed, the Receiving Party must submit a written
17 certification to the Producing Party (and, if not the same person or entity, to the Designating Party)
18 by the 60 day deadline that (1) identifies (by category, where appropriate) all the Protected Material
19 that was returned or destroyed and (2) affirms that the Receiving Party has not retained any copies,
20 abstracts, compilations, summaries or any other format reproducing or capturing any of the Protected
21 Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all
22 pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda,
23 correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant
24 and expert work product, even if such materials contain Protected Material. Any such archival copies
25 that contain or constitute Protected Material remain subject to this Protective Order as set forth in
26 Section 4 (DURATION).

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IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

DATED: March 10, 2021

/s/ Christopher C. Wheeler

I represent that concurrence in the filing of this document has been obtained from each of the other signatories.

Christopher C. Wheeler (SBN 224872)
Attorneys for Plaintiff Pacific Steel Group

DATED: March 10, 2021

/s/ Bonnie Lau

Bonnie Lau
Attorneys for Defendants Commercial Metals Company; CMC Steel Fabricators, Inc.; CMC Steel US, LLC; and Gerdau Reinforcing Steel

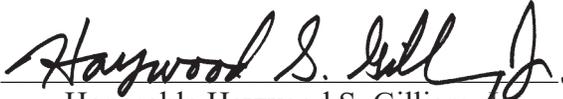
DATED: March 10, 2021

/s/ Michael S. Pullos

Michael S. Pullos
Attorneys for Defendant Danieli Corp.

PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: 4/28/2021


Honorable Haywood S. Gilliam, Jr.
United States District Judge

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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 understand 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 *Pacific Steel Group v. Commercial Metals Company, et al.*, No. 4:20-cv-07683-HSG. 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: _____

Signature: _____