

1 QUINN EMANUEL URQUHART & SULLIVAN, LLP

John D'Amato (Bar No. 143355)

2 johndamato@quinnemanuel.com

Viola Trebicka (Bar No. 269526)

3 violatrebicka@quinnemanuel.com

Robert P. Vance, Jr. (Bar No. 310879)

4 bobbyvance@quinnemanuel.com

865 South Figueroa Street, 10<sup>th</sup> Floor

5 Los Angeles, California 90017-2543

Telephone: (213) 443-3000

6 Facsimile: (213) 443-3100

7 Attorneys for Plaintiff California Steel  
Industries, Inc.

8  
9 **UNITED STATES DISTRICT COURT**

10 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

11  
12 California Steel Industries, Inc.

13 *Plaintiff,*

14 v.

15 BNSF Railway Company, CSX  
Transportation, Inc., Norfolk Southern  
16 Railway Company, and Union Pacific  
Railroad Company,

17 *Defendants.*  
18

Case No. 5:19-cv-02305-JGB-SP

[Discovery Matter: Referred to  
Magistrate Judge Sheri Pym]

**STIPULATED [PROPOSED]  
PROTECTIVE ORDER**

District Judge: Hon. Jesus G. Bernal  
Magistrate Judge: Hon. Sheri Pym

19 **1. A. PURPOSES AND LIMITATIONS**

20 Pursuant to Federal Rule of Civil Procedure 26(c), Plaintiff California Steel  
21 Industries, Inc. ("Plaintiff") and Defendants BNSF Railway Company, CSX  
22 Transportation, Inc., Norfolk Southern Railway Company, and Union Pacific  
23 Railroad Company ("Defendants," and with Plaintiff, the "Parties") hereby stipulate  
24 to this Protective Order.

25 The purpose of the Protective Order is to govern the pretrial disclosure and  
26 use by the parties of all documents, electronically stored information, testimony, and  
27 other information exchanged by the Parties. The Parties have agreed to the  
28

1 Protective Order. The substance of this Protective Order is identical in all material  
2 respects to the Protective Order recently entered in Multidistrict Litigation No.  
3 1869, to which this action has been noticed as a potential tag-along action.

4 The Parties further acknowledge, as set forth in Paragraph 11 below, that this  
5 stipulated Protective Order does not entitle them to file confidential information  
6 under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed  
7 and the standards that will be applied when a party seeks permission from the court  
8 to file material under seal.

#### 9 **B. GOOD CAUSE STATEMENT**

10 The Parties believe that there is good cause for the designations Protective  
11 Order. The “Confidential” designation is necessary to protect from public  
12 disclosure information that is a trade secret, or other confidential research,  
13 development, or financial information that is commercially sensitive, and personal  
14 information that is protected from disclosure by statute, regulation, or otherwise is  
15 entitled to protection from public disclosure. Further, the “Highly Confidential –  
16 Attorneys’ Eyes Only” designation is reserved for materials containing rate or cost  
17 data or other competitively sensitive information, the disclosure of which to another  
18 Party or non-party would create a substantial risk of causing the Producing Party to  
19 suffer a significant competitive or commercial disadvantage.

#### 20 **PROTECTIVE ORDER**

21 Pursuant to Federal Rule of Civil Procedure 26(c), the following provisions  
22 shall govern the pretrial disclosure and use by-the parties of all documents,  
23 electronically stored information (“ESI”), testimony, and other information given  
24 during the course of discovery.

#### 25 **1. DEFINITIONS**

26 **1.1 Party:** any named party to this action (the “Action”), including  
27 all of each named party’s officers, directors, employees, consultants, retained  
28 experts, and outside counsel (and their support staff).

1           1.2    Disclosure or Discovery Material: all documents, items, or other  
2 information, regardless of the medium or manner generated, stored, or maintained  
3 (including, among other things, testimony, transcripts, or tangible things) that are  
4 produced or generated in disclosures or responses to discovery in this matter.

5           1.3    “Confidential” Information or Items: information (regardless of  
6 how generated, stored or maintained), testimony or tangible things obtained during  
7 discovery in the Action that reveal a trade secret, or other confidential research,  
8 development, or financial information that is commercially sensitive, or that  
9 otherwise is entitled to protective treatment under Federal Rule Civil Procedure  
10 26(c), and personal information that is protected from disclosure by statute,  
11 regulation, or otherwise is entitled to protection from public disclosure.

12           1.4    “Highly Confidential – Attorneys’ Eyes Only” Information Or  
13 Items: “Confidential” Information or Items, such as materials containing rate or  
14 cost data or other competitively sensitive information, the disclosure of which to  
15 another Party or non-party would create a substantial risk of causing the Producing  
16 Party to suffer a significant competitive or commercial disadvantage.

17           1.5    Producing Party: a Party or non-party that produces Disclosure  
18 or Discovery Material in the Action.

19           1.6    Receiving Party: a Party that receives Disclosure or Discovery  
20 Material from a Producing Party in the Action.

21           1.7    Designating Party: a Party or non-party that designates  
22 Disclosure or Discovery Material as “Confidential” or “Highly Confidential —  
23 Attorneys’ Eyes Only.”

24           1.8    Protected Material: any Disclosure or Discovery Material that is  
25 designated as “Confidential” or “Highly Confidential — Attorneys’ Eyes Only.”

26           1.9    Outside Counsel: attorneys, paralegals and other support  
27 personnel who are not employees of a Party, but who are retained to represent or  
28 advise a Party in the Action.

1                   1.10 In House Counsel: attorneys, paralegals and other legal  
2 department personnel who are employees of a Party, to whom disclosure of  
3 Disclosure or Discovery Material is reasonably necessary for the Action.

4                   1.11 Counsel (without qualifier): Outside Counsel and In House  
5 Counsel (as well as their support staffs).

6                   1.12 Principal: an owner, officer, or executive of any plaintiff named  
7 in the lawsuits consolidated in the Action whose identity as an owner, officer, or  
8 executive of that plaintiff has been disclosed to the Parties.

9                   1.13 Expert: a person, who is not an owner, director, officer or  
10 employee of a Party, who has specialized knowledge or experience in a matter  
11 pertinent to the Action, including his or her employees and support personnel, who  
12 has been retained by a Party or its Counsel to serve as an expert witness or as a  
13 consultant in the Action. This definition includes without limitation professional  
14 jury or trial consultants retained in connection with the Action.

15                  1.14 Professional Vendors: persons or entities that provide litigation  
16 support services (e.g., photocopying; videotaping; translating; preparing exhibits or  
17 demonstrations; organizing, storing, retrieving data in any form or medium) and  
18 their employees and subcontractors.

19           2.     USE OF DISCLOSURE OR DISCOVERY MATERIAL. Subject to  
20 provisions of Paragraphs 13 and 15, no Disclosure or Discovery Material may be  
21 used by the Receiving Party for any reason other than the prosecution or defense of  
22 claims in, or the settlement of, the Action—and subject to any other applicable  
23 limits on discovery imposed by court rules, the Federal Rules of Civil Procedure, or  
24 otherwise.

25           3.     DESIGNATING MATERIAL. The Producing Party may designate  
26 documents, ESI or other materials “Confidential” or “Highly Confidential –  
27 Attorneys’ Eyes Only,” as specified below. The Producing Party shall apply a  
28 confidentiality designation only when that party has a reasonable, good faith belief

1 that the information so designated constitutes “Confidential” or “Highly  
2 Confidential — Attorneys’ Eyes Only” material. The protections conferred by this  
3 Order cover not only the protected information itself, but also any information  
4 copied or extracted therefrom, as well as copies, excerpts, summaries, or  
5 compilations thereof, plus testimony, conversations, or presentations by Parties or  
6 Counsel to or in court or in other settings that might disclose Protected Material to  
7 persons not authorized to receive such material.

8           3.1   Manner and Timing of Designations. Except as otherwise  
9 provided in this Order, or as otherwise stipulated or ordered, Disclosure or  
10 Discovery Material must be designated for protection under this Order by clearly  
11 designating the material before it is disclosed or produced.

12           3.2   The designation of materials as “Confidential” or “Highly  
13 Confidential – Attorneys’ Eyes Only” shall be made as follows:

14                   (a)   for produced documents, by imprinting the word(s)  
15 “Confidential” or “Highly Confidential — Attorneys’ Eyes Only” on the face of  
16 each page of a document so designated or in a similarly conspicuous location for  
17 non-document materials. Use of the legend “Highly Confidential” shall be  
18 construed as and shall have the same meaning and effect of use as the legend  
19 “Highly Confidential – Attorneys’ Eyes Only”;

20                   (b)   for written discovery responses, by imprinting the word(s)  
21 “Confidential” or “Highly Confidential – Attorneys’ Eyes Only” next to or above  
22 any response to a discovery request or on each page of a response;

23                   (c)   for depositions, by indicating on the record at the  
24 deposition which portions of the transcript and/or responses should be treated as  
25 “Confidential” or “Highly Confidential – Attorneys’ Eyes Only.” Alternatively,  
26 within thirty (30) days of receipt of a transcript or recording of a deposition or other  
27 pretrial or trial proceeding, the offering or sponsoring Party or non-party may  
28 designate such transcript or recording or any portion thereof as “Confidential” or

1 “Highly Confidential – Attorneys’ Eyes Only” by notifying all Parties, in writing, of  
2 the specific pages and lines of the transcript or recording that should be treated as  
3 “Confidential” or “Highly Confidential – Attorneys’ Eyes Only.” All transcripts or  
4 recordings of depositions shall be treated as “Highly Confidential – Attorneys’ Eyes  
5 Only” for thirty (30) days after receipt of the transcript or recording, or until written  
6 notice of a designation is received, whichever occurs first. Transcript pages  
7 containing Protected Material must be separately bound by the court reporter, who  
8 must affix to the top of each such page the legend “Confidential” or “Highly  
9 Confidential – Attorneys’ Eyes Only,” as instructed by the Party or non-party  
10 offering or sponsoring the witness or presenting the testimony;

11 (d) for ESI, either by imprinting the word “Confidential” or  
12 “Highly Confidential — Attorneys’ Eyes Only” on any disk or storage medium, or  
13 on the face of each page of a document so designated, or by designating the  
14 production as “Confidential” or “Highly Confidential – Attorneys’ Eyes Only” in  
15 the transmittal cover letter.

16 3.3 Upward Designation of Information or Items Produced by Other  
17 Parties or Non-Parties. Subject to the standards of paragraph 3, a Party may upward  
18 designate (i.e., change any Disclosure or Discovery Material produced without a  
19 designation to a designation of “Confidential” or “Highly Confidential – Attorneys’  
20 Eyes Only” or designate any Disclosure or Discovery Material produced as  
21 “Confidential” to a designation of “Highly Confidential –Attorneys’ Eyes Only”)  
22 any Disclosure or Discovery Material produced by any other Party or non-party,  
23 provided that said Disclosure or Discovery Material contains the upward designating  
24 Party’s own trade secrets or other confidential research, development, financial,  
25 personal, or commercially sensitive information, or otherwise is entitled to  
26 protective treatment under Federal Rule of Civil Procedure 26(c).

27 Upward designation shall be accomplished by providing written notice to all  
28 Parties identifying (by Bates number or other individually identifiable information)

1 the Disclosure or Discovery Material to be re-designated within thirty (30) days of  
2 production by the Producing Party. Failure to upward designate within thirty (30)  
3 days of production, alone, will not prevent a Party from obtaining the agreement of  
4 all Parties to upward designate certain Disclosure or Discovery Material or from  
5 moving the Court for such relief. Any Party may object to the upward designation  
6 of Disclosure or Discovery Material pursuant to the procedures set forth in  
7 paragraph 6 regarding challenging designations.

8 4. ACCESS TO AND USE OF PROTECTED MATERIAL

9 4.1 Disclosure of Confidential information. Unless otherwise  
10 ordered by the Court or permitted in writing by the Designating Party, a Receiving  
11 Party may disclose any information or item designated as “Confidential” only:

12 (a) to the Receiving Party’s Outside Counsel to whom it is  
13 reasonably necessary to disclose the information for the Action;

14 (b) to the Receiving Party’s In House Counsel to whom it is  
15 reasonably necessary to disclose the information for the Action;

16 (c) to no more than two Principals of the Receiving Party to  
17 whom it is reasonably necessary, to disclose the information for the Action and who  
18 have signed the “Agreement to Be Bound by Protective Order” (Exhibit A); except  
19 that, upon identification of that Principal, any Designating Party shall have five (5)  
20 days to petition the Court to challenge the Principal’s status as a Principal to whom  
21 Confidential information may be disclosed. Pending a decision whether  
22 Confidential Information may be disclosed to such a Principal, no Confidential  
23 Information shall be disclosed to that Principal without the consent of the  
24 Designating Party.

25 (d) to any Expert to whom disclosure is reasonably necessary  
26 for the Action who has signed the “Agreement to Be Bound by Protective Order”  
27 (Exhibit A);  
28

1 (e) to the Court and its personnel in the Action, including any  
2 relevant appellate court, in the event that any portion of the Action is appealed;

3 (f) to court reporters, their staffs, and professional vendors to  
4 whom disclosure is reasonably necessary for the Action;

5 (g) to any person who Counsel have a good faith basis to  
6 believe authored or previously received the material;

7 (h) to any person who is an employee of the Designating  
8 Party, or a former employee of the Designating Party (if they were employed by the  
9 Designating Party when the Confidential Information was created); and

10 (i) during the conduct of their depositions, to witnesses in the  
11 Action for whom Counsel has a good-faith basis to believe disclosure is reasonably  
12 necessary and who have signed the “Agreement to Be Bound by Protective Order”  
13 (Exhibit A). If in the future any Party deems in good faith that this subsection is  
14 unworkable, that Party can initiate its unilateral right to demand renegotiation of this  
15 subsection and submit an amendment to the Court for approval. The portions of the  
16 deposition transcript pertaining to such Confidential information shall automatically  
17 be deemed designated as “Confidential” (and any such Confidential information  
18 marked as an exhibit during a deposition shall continue to be designated as  
19 “Confidential”).

20 4.2 Disclosure of “Highly Confidential – Attorneys’ Eves Only”  
21 Information. Unless otherwise ordered by the Court or permitted in writing by the  
22 Designating Party, a Receiving Party may disclose any information or items  
23 designated “Highly Confidential — Attorneys’ Eyes Only” only:

24 (a) to the Receiving Party’s Outside Counsel to whom it is  
25 reasonably necessary to disclose the information for the Action;

26 (b) to no more than one In House Counsel for a Receiving  
27 Party, but only to the extent that the information or item designated “Highly  
28 Confidential — Attorneys’ Eyes Only” was produced by a Party in the Action and:



1 (i) was sent or received by a current or former  
2 employee of the Receiving Party; or  
3 (ii) is transaction data for transactions of the Party that  
4 In House Counsel represents, including summaries thereof.  
5 (c) to any Expert to whom disclosure is reasonably necessary  
6 for the Action who has signed the “Agreement to Be Bound by Protective Order”  
7 (Exhibit A);  
8 (d) to the Court and its personnel in the Action, including any  
9 relevant appellate court, in the event that any portion of the Action is appealed;  
10 (e) to court reporters, their staffs, and professional vendors to  
11 whom disclosure is reasonably necessary for the Action;  
12 (f) to any person who Counsel have a good faith basis to  
13 believe authored or previously received the material;  
14 (g) to any person who is an employee of the Designating  
15 Party, or a former employee of the Designating Party (if they were employed by the  
16 Designating Party when the “Highly Confidential – Attorneys’ Eyes Only”  
17 Information was created); and  
18 (h) during the conduct of their depositions, to witnesses in the  
19 Action for whom Counsel has a good-faith basis to believe disclosure is reasonably  
20 necessary and who have signed the “Agreement to Be Bound by Protective Order”  
21 (Exhibit A). Any Receiving Party intending to use “Highly Confidential –  
22 Attorneys’ Eyes Only” Information at the deposition of an individual who is not  
23 otherwise listed in subsections 4.2(a)-(g) of this paragraph shall provide written  
24 notice to the Designating Party identifying (by Bates number or other individually  
25 identifiable information) the “Highly Confidential – Attorneys’ Eyes Only”  
26 Information no later than two (2) business day before the intended disclosure. After  
27 receiving the notice, the Designating Party shall not disclose the notice or the  
28 information proposed to be disclosed to any other Party or non-party (including the

1 witness to whom the disclosure is proposed). Should the parties, after meeting and  
2 conferring, disagree that the proposed disclosure is reasonably necessary, the  
3 “Highly Confidential – Attorneys’ Eyes Only” Information shall not be disclosed to  
4 the witness unless and until the Court orders such disclosure. If in the future any  
5 Party deems in good faith that this subsection is unworkable, that Party can initiate  
6 its unilateral right to demand renegotiation of this subsection and submit an  
7 amendment to the Court for approval. The portions of the deposition transcript  
8 pertaining to such “Highly Confidential – Attorneys’ Eyes Only” information shall  
9 automatically be deemed designated as “Highly Confidential – Attorneys’ Eyes  
10 Only” (and any such “Highly Confidential – Attorneys’ Eyes Only” information  
11 marked as an exhibit during a deposition shall continue to be designated as “Highly  
12 Confidential – Attorneys’ Eyes Only”).

#### 13 4.3 Depositions.

14 (a) A Receiving Party’s In House Counsel will be permitted to  
15 attend any deposition of a former or current employee of the Receiving Party  
16 represented by that In House Counsel but will be required to leave the deposition  
17 room if any “Highly Confidential – Attorneys’ Eyes Only” documents or  
18 information is to be discussed, other than such “Highly Confidential – Attorneys’  
19 Eyes Only” documents or information the Receiving Party’s In House Counsel  
20 otherwise is permitted to receive pursuant to Paragraphs 4.1(b) and 4.2(b).

21 (b) A Receiving Party’s In House Counsel shall not be  
22 provided access to portions of any deposition transcript discussing information or  
23 items designated Highly Confidential – Attorneys’ Eyes Only, other than such  
24 “Highly Confidential – Attorneys’ Eyes Only” documents or information the  
25 Receiving Party’s In House Counsel otherwise is permitted to receive pursuant to  
26 Paragraphs 4.1(b) and 4.2(b).

27 5. RESPONSIBILITY FOR COMPLIANCE. The Party’s Counsel who  
28 discloses “Confidential” or “Highly Confidential- Attorneys’ Eyes Only”

1 information shall be responsible for assuring compliance with the terms of this  
2 Order with respect to persons to whom such “Confidential” or “Highly Confidential-  
3 Attorneys’ Eyes Only” information is disclosed, and shall obtain and retain the  
4 original Acknowledgements executed by qualified recipients of “Confidential” or  
5 “Highly Confidential – Attorneys’ Eyes Only” information (if such execution was  
6 required by the terms of this Order). If it comes to a Party’s or non-party’s attention  
7 that any materials that it designated for protection do not qualify for protection at  
8 all, or do not qualify for the level of protection initially asserted, that Party or non-  
9 party must promptly notify all other Parties that it is withdrawing the mistaken  
10 designation.

11       6.     CHALLENGES TO DESIGNATION. Entry of this Order shall be  
12 without prejudice to any party’s motion for relief from or modification of the  
13 provisions hereof or to any other motion relating to the production, exchange, or use  
14 of any document or ESI, or other information in the course of the Actions. If a party  
15 disagrees with a Producing Party’s designation of information as “Confidential” or  
16 “Highly Confidential – Attorneys’ Eyes Only,” or disputes the limitations on access  
17 to be accorded such information under this Order, the party contesting the  
18 designation or restriction on access shall provide to the Producing Party written  
19 notice of its disagreement and specifically identify the information or restriction on  
20 access in dispute, in compliance with Local Rule 37-1. If, despite good faith effort,  
21 the dispute cannot be resolved informally by the parties within ten (10) days of the  
22 Producing Party’s receipt of the written notice, the party contesting the designation  
23 or restriction on access may seek a determination from the Court with respect to the  
24 propriety of the designation. The Producing Party shall then have five (5) days from  
25 the filing of a motion contesting the designation or restriction on access to file an  
26 opposition to such motion, following which the contesting party shall be afforded  
27 three (3) days to file a reply memorandum. The “Confidential” or “Highly  
28 Confidential- Attorneys’ Eyes Only” status of the challenged material shall be

1 maintained until the Court shall rule on the motion. While the challenging party  
2 must initiate the motion before the Court, it is the burden of the party seeking  
3 protection under this Order to demonstrate that the “Confidential” or “Highly  
4 Confidential – Attorneys’ Eyes Only” designation is appropriate. A challenge under  
5 this paragraph shall not affect a party’s right of access to “Confidential” or “Highly  
6 Confidential – Attorneys’ Eyes Only” material or to disclose information as  
7 provided for in this Order. A party does not waive its right to challenge a  
8 confidentiality designation by not electing to mount a challenge promptly after the  
9 original designation is made.

10       7.     INADVERTENT FAILURE TO IDENTIFY MATERIALS AS  
11 “CONFIDENTIAL” OR “HIGHLY-CONFIDENTIAL – ATTORNEYS’ EYES  
12 ONLY”. Any party who inadvertently fails to identify materials as “Confidential”  
13 or “Highly Confidential – Attorneys’ Eyes Only” shall have ten (10) days from the  
14 discovery of its oversight to correct its failure. Such failure shall be corrected by  
15 providing to the Receiving Party written notice of the error and substituted copies of  
16 the inadvertently produced Disclosure or Discovery Material. Any party receiving  
17 such inadvertently unmarked Disclosure or Discovery Material shall make  
18 reasonable efforts to retrieve the Disclosure or Discovery Material distributed to  
19 persons not entitled to receive Disclosure or Discovery Material with the corrected  
20 designation. The right to designate as “Confidential” or “Highly Confidential –  
21 Attorneys’ Eyes Only” documents that were inadvertently not identified as such  
22 when produced shall be waived six months after production of the materials,  
23 provided however that there shall be no waiver where there is good cause shown for  
24 the failure to identify the mistaken designation.

25       8.     DISCLOSURE OF DISCLOSURE OR DISCOVERY MATERIAL  
26 PROTECTED BY THE ATTORNEY-CLIENT PRIVILEGE OR WORK  
27 PRODUCT DOCTRINE. Consistent with Federal Rule of Evidence 502, if a Party  
28 or non-party notifies my other Party that it disclosed Disclosure or Discovery

1 Material that is protected from disclosure under the attorney-client privilege, work  
2 product doctrine, and/or any other applicable privilege or immunity, or the  
3 Receiving Party discovers such disclosure, the disclosure shall not be deemed a  
4 waiver in whole or in part of the applicable privilege or protection, either as to the  
5 specific material or information disclosed or as to any other material or information  
6 relating thereto or on the same or related subject matter. If a Party or nonparty  
7 requests the return of such Disclosure or Discovery Material pursuant to this  
8 paragraph or if the Receiving Party recognizes that it has received Disclosure or  
9 Discovery Material that, based upon a reasonable interpretation, is subject to any of  
10 the privileges discussed in this paragraph, the Receiving Party shall destroy or return  
11 all copies of such Disclosure or Discovery Material to the Producing Party within  
12 five (5) business days of receipt of such notice or discovery, shall provide a  
13 certification of Counsel that all such disclosed Disclosure or Discovery Material has  
14 been returned or destroyed, and shall not use such items for any purpose unless and  
15 until further order of the Court. Any party providing notice to another that it has  
16 disclosed Disclosure or Discovery Material that is protected from disclosure under  
17 any of the privileges discussed in this paragraph must include, to the extent not  
18 already provided, within or simultaneously with such notice sufficient information  
19 for the Receiving Party to evaluate the privilege claim(s) asserted, per Rule 26(b)(5)  
20 of the Federal Rules of Civil Procedure. The Receiving Party may move the Court  
21 for an order allowing use of the Disclosure or Discovery Material in the Action, but  
22 further provided that the Receiving Party may not argue that the disclosure to the  
23 Receiving Party waived the privilege or immunity.

24 9. PROTECTED MATERIAL SUBPOENAED OR ORDERED  
25 PRODUCED IN OTHER LITIGATION. If a Receiving Party is served with a  
26 subpoena or an order issued in separate litigation that would compel disclosure of  
27 any information or items designated in the Action as “Confidential” or “Highly  
28 Confidential – Attorneys’ Eyes Only,” the Receiving Party must so notify the

1 Designating Party, in writing (by email or fax, if possible) immediately and in no  
2 event more than five (5) court days after receiving the subpoena or order. Such  
3 notification must include a copy of the subpoena or court order.

4 9.1 The Receiving Party also must immediately inform in writing the party  
5 who caused the subpoena or order to issue in the other litigation that some or all the  
6 material covered by the subpoena or order is the subject of this Order. In addition,  
7 the Receiving Party must deliver a copy of this Order promptly to the party in the  
8 other action that caused the subpoena or order to issue.

9 9.2 The purpose of imposing these duties is to alert the interested parties to  
10 the existence of this Order and to afford the Designating Party in this case an  
11 opportunity to protect its confidentiality interest in the court from which the  
12 subpoena or order is issued. The Designating Party shall bear the burden and the  
13 expense of seeking protection in that court of its Protected Material, and nothing in  
14 these provisions should be construed as authorizing or encouraging a Receiving  
15 Party in the Action to disobey a lawful directive from another court.

16 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL. If  
17 a Receiving Party learns that, by inadvertence, it has disclosed Protected Material to  
18 any person or in any circumstance not authorized under this Order, the Receiving  
19 Party must immediately (a) notify in writing the Designating Party of the  
20 unauthorized disclosures, (b) use its best efforts to retrieve all copies of the  
21 Protected Material, (c) inform the person or persons to whom unauthorized  
22 disclosures were made of all the terms of this Order, and (d) request such person or  
23 persons to execute the Agreement to Be Bound by Protective Order, that is attached  
24 hereto as Exhibit A.

25 11. FILING CONFIDENTIAL MATERIAL WITH THE COURT. If a  
26 Party files a document containing “Confidential” or “Highly Confidential –  
27 Attorneys’ Eyes Only” information with the Court, it shall do so in accordance with  
28 Civil Local Rule 79-5.

1           12.    INTRODUCING CONFIDENTIAL INFORMATION IN COURT  
2 PROCEEDINGS. A Party who seeks to introduce “Confidential” or “Highly  
3 Confidential – Attorneys’ Eyes Only” information at a hearing, pretrial or other  
4 proceeding shall advise the Court at the time of introduction that the information  
5 sought to be introduced is protected. If the party who designated the information as  
6 “Confidential” or “Highly Confidential – Attorneys’ Eyes Only” requests the  
7 protection be continued, the Court will review the information to determine if the  
8 information is entitled to continued protection. Prior to disclosure of “Confidential”  
9 or “Highly Confidential – Attorneys’ Eyes Only” information at a hearing, the  
10 Producing Party may seek further protections against public disclosure from the  
11 Court.

12           13.    USE AND DISCLOSURE OF INDEPENDENTLY OBTAINED  
13 INFORMATION. Nothing herein shall impose any restriction on the use or  
14 disclosure by a Party or its agent of its own information, or of publicly available  
15 information, or of information lawfully available to that Party, or of information that  
16 lawfully came into the possession of the Party independent of any disclosure of  
17 Disclosure or Discovery Material in the Action.

18           14.    ADVICE TO CLIENT. Nothing in this Order will bar or otherwise  
19 restrict Counsel from rendering advice to his or her client with respect to this matter  
20 or from generally referring to or relying upon “Confidential” or “Highly  
21 Confidential – Attorneys’ Eyes Only” material in rendering such advice.

22           15.    PRE-TRIAL APPLICATION ONLY. This Order shall apply to pre-  
23 trial proceedings in the Action and shall have no application at trial. The Parties  
24 agree to confer in good faith on a protective order to govern during trial in the  
25 Action. This Order, however, shall remain in effect until such time as an order to  
26 govern trial proceedings is entered. Should the Producing Party believe any  
27 document warrants protection beyond that described above, the parties shall confer  
28 with respect to the treatment of that specific document.

1           16.   DURATION OF ORDER/RETURN OF CONFIDENTIAL  
2 INFORMATION. All provisions of this Order restricting the use of “Confidential”  
3 or “Highly Confidential – Attorneys’ Eyes Only” information shall continue to be  
4 binding after the conclusion of the Action, unless otherwise agreed or ordered by the  
5 Court. Within sixty (60) days of the conclusion of the Action (whether by entry of a  
6 final order of dismissal, judgment, settlement, or disposition on appeal, or  
7 otherwise), a Producing Party may request that a person in the possession of the  
8 Producing Party’s “Confidential” or “Highly Confidential – Attorneys’ Eyes Only”  
9 information return or destroy that information (other than Outside Counsel’s copies  
10 of documents filed with the Court or Outside Counsel’s file copies of documents  
11 attached to or information incorporated in attorney work product prepared in  
12 connection with the Action). If the Receiving Party elects to destroy the  
13 “Confidential” or “Highly Confidential – Attorneys’ Eyes Only” information, it  
14 shall certify within sixty (60) days that such information has been destroyed. To the  
15 extent any person retains copies of the “Confidential” or “Highly Confidential –  
16 Attorneys’ Eyes Only” information pursuant to the terms of this paragraph, such  
17 “Confidential” or “Highly Confidential – Attorneys’ Eyes Only” information shall  
18 continue to be subject to the protections provided by this Order.

19           17.   RESERVATION OF RIGHTS. Nothing contained in this Order or any  
20 designation of confidentiality hereunder, or any failure to make such designation,  
21 shall be used or characterized by any party as an admission by a Party or a Party  
22 opponent. Nothing in this Order shall be deemed an admission that any particular  
23 information designated as “Confidential” or “Highly Confidential – Attorneys’ Eyes  
24 Only” is entitled to protection under the Order, Fed. R. Civ. P. 26(c), or any other  
25 law. Nothing in this Order shall be construed as granting any person or entity a  
26 right to receive, specific “Confidential” or “Highly Confidential – Attorneys’ Eyes  
27 Only” information where a court has entered an order precluding that person or  
28 entity from obtaining access to that information. The Parties specifically reserve the



1 right to challenge the designation of any particular information as “Confidential” or  
2 “Highly Confidential – Attorneys’ Eyes Only,” and agree that by stipulating to entry  
3 of this Order, no Party waives any right it otherwise would have to object to  
4 disclosing or producing any information or item on any ground not addressed in this  
5 Order. Similarly, no Party waives any right to object on any ground to introduction  
6 or use as evidence of any of the Disclosure or Discovery Material covered by this  
7 Order. The Parties reserve the right to request modifications of this protective order  
8 as reasonably necessary.

9 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD

10  
11 Dated: January 22, 2020

QUINN EMANUEL URQUHART &  
SULLIVAN LLP

12 By:

/s/ Viola Trebicka

13 John D’Amato

14 Viola Trebicka

15 Robert P. Vance, Jr.

16 865 S. Figueroa Street, 10th Floor

Los Angeles, California 90017

17 Telephone: (213) 443-3000

Facsimile: (213) 443-3100

18 Email: johndamato@quinnemanuel.com

violatrebicka@quinnemanuel.com

19 bobbyvance@quinnemanuel.com

20 Stephen R. Neuwirth (*pro hac vice*  
21 application pending)

22 Sami H. Rashid (*pro hac vice* application  
23 pending),

51 Madison Avenue, 22nd Floor

24 New York, New York 10010

25 Telephone: (212) 849-7000

Facsimile: (212) 849-7100

26 Email: stephenneuwirth@quinnemanuel.com

27 samirashid@quinnemanuel.com

1 *Attorneys for Plaintiff California Steel*  
2 *Industries, Inc.*

3 /s/ Robyn C. Crowther  
4 Robyn C. Crowther  
5 STEPTOE & JOHNSON LLP  
6 633 West 5th Street  
7 Suite 1900  
8 Los Angeles, California 90071  
9 Telephone: (213) 439-9428  
10 Facsimile: (213) 439-9599  
11 Email: rcrowther@steptoe.com

12 *Attorney for BNSF Railway Company*

13 /s/ Daniel M. Wall  
14 Daniel M. Wall  
15 Timothy L. O'Mara  
16 Christopher B. Campbell  
17 LATHAM & WATKINS LLP  
18 505 Montgomery Street, Suite 2000  
19 San Francisco, CA 94111  
20 Telephone: (415) 391-0600  
21 Fax: (415) 395-8095  
22 Email: dan.wall@lw.com  
23 tim.o'mara@lw.com  
24 christopher.campbell@lw.com

25 *Attorneys for Defendant Union Pacific*  
26 *Railroad Company*

27 /s/ John S. Gibson  
28 John S. Gibson  
CROWELL & MORING LLP  
3 Park Plaza 20th Floor  
Irvine, CA 92614-8505  
Telephone: (949) 798-1330  
Facsimile: 949.263.8414  
Email: jgibson@crowell.com

*Attorney for Defendant CSX Transportation*  
*Inc.*

/s/ Brian Condon  
Brian K. Condon

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ARNOLD & PORTER KAYE SCHOLER  
LLP  
777 So. Figueroa Street, 44th Floor  
Los Angeles, California 90017  
Telephone: (213) 243-4000  
Facsimile: (213) 243-4199  
Email: brian.condon@arnoldporter.com

*Attorney for Defendant Norfolk Southern  
Railway Company*

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**[PROPOSED] ORDER**

FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

DATED: January 22, 2020



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Hon. Sheri Pym  
United States Magistrate Judge

1 **EXHIBIT A**

2 **AGREEMENT TO BE BOUND BY PROTECTIVE ORDER**

3 I, \_\_\_\_\_, of

4 \_\_\_\_\_, declare under penalty of perjury that I  
5 have read in its entirety and understand the Protective Order entered by the United  
6 States District Court for the Central District of California in the case captioned  
7 *California Steel Industries, Inc. v. BNSF Railway Company, CSX Transportation,*  
8 *Inc., Norfolk Southern Railway Company, and Union Pacific Railroad Company,*  
9 Civil Action No. 5:19-cv-02305-JGB-SP (C.D. Cal. Dec. 2, 2019) (the “Action”).

10 I agree to comply with and to be bound by all the terms of this Protective  
11 Order, and I understand and acknowledge that failure to comply could expose me to  
12 sanctions and punishment in the nature of contempt. I solemnly promise that I will  
13 not disclose in any manner any information or item that is subject to this Protective  
14 Order to any person or entity except in strict compliance with the provisions of this  
15 Order.

16 I further agree to submit to the jurisdiction of the United States District Court  
17 for the Central District of California for the purpose of enforcing the terms of this  
18 Protective Order, even if such enforcement proceedings occur after termination of  
19 the Action.

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

21 City and State: \_\_\_\_\_

22 Printed Name: \_\_\_\_\_

23 Signature: \_\_\_\_\_

1 **E-SIGNATURE AFFIRMATION**

2 Pursuant to the United States District Court, Central District of California Local  
3 Rule 5-4.3.4, I attest that all other signatories listed, and on whose behalf the filing  
4 is submitted, concur in the filing's content and have authorized the filing.

5 Dated: January 22, 2020

QUINN EMANUEL URQUHART &  
SULLIVAN LLP

6 By: /s/ Viola Trebicka

7 John D'Amato

8 Viola Trebicka

9 Robert P. Vance, Jr.

865 S. Figueroa Street, 10th Floor

10 Los Angeles, California 90017

11 Telephone: (213) 443-3000

12 Facsimile: (213) 443-3100

13 Email: johndamato@quinnemanuel.com

violatrebicka@quinnemanuel.com

14 bobbyvance@quinnemanuel.com

15 Stephen R. Neuwirth (*pro hac vice*  
application forthcoming)

16 Sami H. Rashid (*pro hac vice*  
application forthcoming)

17 51 Madison Avenue, 22nd Floor

18 New York, New York 10010

19 Telephone: (212) 849-7000

20 Facsimile: (212) 849-7100

21 Email:

stephenneuwirth@quinnemanuel.com

22 samirashid@quinnemanuel.com

23 *Attorneys for Plaintiff California Steel*  
24 *Industries, Inc.*

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing has been filed using the Court's CM/ECF system on this the 16th day of January, 2020, which will automatically send a copy of the document to all counsel of record in this case.



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Viola Trebicka