UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

In the Matter of	)	
CHICAGO BRIDGE & IRON COMPANY N.V.,	)	
a foreign corporation	)	
CHICAGO BRIDGE & IRON COMPANY	)	
a corporation,	)	
	)	Docket No. 9300
and	)	
PITT-DES MOINES, INC.	)	
a corporation.	)	

To: The Honorable D. Michael Chappell
Administrative Law Judge

COMPLAINT COUNSEL'S OPPOSITION TO RESPONDENTS' MOTION TO WITHDRAW STIPULATED DOCUMENTS FROM EVIDENCE

Pursuant to Section 3.22(c) of the Federal Trade Commission's Rules of Practice ("FTC Rules"), 16 CFR §3.22 (c), Complaint Counsel files this opposition to Respondents' motion to withdraw stipulated documents from evidence ("Motion to Withdraw"). In their motion, Respondents have failed to demonstrate that any "manifest injustice," as required under *Henry v. Commissioner*, *inter alia*, stemmed from the admission of CX 1577 and CX 1578, the deposition testimony of Respondents' expert, John E. Vaughn, via a stipulation Respondents "reviewed and signed . . . when it

was offered by Complaint Counsel." Motion to Withdraw at 2. Thus, this court should refuse to allow Respondents to renege their prior agreement with Complaint Counsel and with this Tribunal.

In the alternative, should this court choose to examine the admissibility of CX 1577 and CX 1578, the court should find that these documents are clearly admissible on several grounds. First, CX 1577 and CX 1578 are statements made by a person authorized to speak on behalf of a party and are therefore party admissions under F.R.E. 801(d)(2)(C). Second, if Mr. Vaughn does not qualify as a person authorized to speak on the behalf of CBI, he clearly qualifies as an agent of the party, and CX 1577 and CX 1578 should be admitted as admissions of a party-agent under F.R.E. 801(d)(2)(D).[1] Third, Mr. Vaughn's statements were made under oath, in front of a court reporter, and with counsel accompanying him and preparing him to give testimony. As such, his comments are relevant, material and reliable, and therefore admissible under FTC Rule 3.43.

[1] Respondents contention that Mr. Vaughn's testimony should be treated similarly to Carroll Davis' testimony that was excluded under 801(d)(2)(A) is erroneous for several reasons. Most obviously, Complaint Counsel does not rely anywhere in this motion on 801(d)(2)(A) as a basis for the admission of Mr. Vaughn's testimony.

Mr. Davis' testimony is also easily distinguished from Mr. Vaughn's. Unlike Mr. Vaughn, Mr. Davis: 1) was not asked to testify in court on this case, 2) was not paid $100 per hour by CBI to testify for CBI, and 3) had not worked for over 100 hours specifically in preparation to give testimony, at the time he gave deposition testimony. CX 1577 at 57:8-24. Another reason to distinguish Mr. Davis' testimony is it came from an investigational hearing; Mr. Vaughn's testimony was taken in a deposition, with full opportunity for objection and cross-examination. Finally, Mr. Davis was never listed on Respondents' witness list; until December 23, 2002, Mr. Vaughn was never removed.

I. Statement of the Facts

On September 19, 2002, Respondents filed their final witness list. Respondents' Final Witness List at 10. On October 4, 2002, Respondents filed a motion for leave to modify their witness list by adding an expert witness, Mr. John E. Vaughn, over Complaint Counsel's opposition. Respondents' Motion for Leave to Modify Witness List ¶ 8. This motion was granted by the court. Order Granting Respondents' Motion for Leave to Modify Witness List at 3. Mr. Vaughn was added to Respondents' witness list and deposed on October 30, 2002.

After weeks of negotiation, on December 16, 2002, Complaint Counsel and Respondents signed JX 7, a stipulation to the admissibility of various exhibits. Included in JX 7 was the two-part transcript of Mr. Vaughn's deposition testimony, identified as CX 1577 and CX 1578. In court on December 20, 2002, during the live testimony of Luke Scorsone, confusion arose as to whether CX 1577 and CX 1578 had been admitted. Declaration of Michael Franchak ¶ 5. On December 22, 2002, Respondents informed Complaint Counsel for the first time that they did not intend to call Mr. Vaughn to give live testimony. *Id*. at ¶ 6. On December 23, 2002, Respondents informed this Tribunal that they would not be calling Mr. Vaughn to give live testimony. *Id*. at ¶ 6. On December 31, 2002, Respondent filed a motion to remove CX 1577 and CX 1578 from JX 7, claiming they were inadvertently included. Motion to Withdraw at 1.

II. CX 1577 and CX 1578 Have Already Been Admitted Into Evidence As Part of a Reviewed, Signed, and Submitted Joint Exhibit

Under *Henry v. Commissioner*, stipulations are not permitted to be withdrawn absent a showing of "manifest injustice." 362 F.2d 640, 643 (5th Cir. 1966) (stipulations "shall not be set aside

except to avoid manifest injustice"). *See Donovan v. Hamm's Drive Inn*, 661 F.2 316, 317 (5th Cir. 1981) ("They are bound by this stipulation, which we would reverse only if manifest injustice were shown or if the evidence contrary to the stipulation were substantial"); *Associated Beverages Co. v. P. Ballantine & Sons*, 287 F.2d 261, 263-264 (5th Cir. 1961); *Brinson v. Tomlinson*, 264 F.2d 30, 33-34 (5th Cir. 1959); *Loftin and Woodward, Inc. v. United States*, 577 F.2d 1206, 1232-1233 (5th Cir. 1978).

Respondents have failed to demonstrate any "manifest injustice" stemming from the admission of CX 1577 and CX 1578 via a stipulation they read, reviewed and signed. Respondents cite no law supporting their position that JX 7, a stipulation that was negotiated for weeks, and that Respondents admit they "reviewed and signed," should be disregarded.[2] Motion to Withdraw at 1-2. Instead Respondents ignore the legal precedent relating to the withdrawal of stipulations, as stated in *Henry v. Commissioner*. On these grounds alone, CX 1577 and CX 1578 should be admitted.

III. CX 1577 and CX 1578 Constitute Admissions By Persons Authorized to Speak on Behalf of a Party and Are Admissible Pursuant to FRE 801(d)(2)(C)

Even if Respondents are permitted to withdraw CX 1577 and CX 1578 from JX 7, the exhibits are independently admissible as admissions of persons authorized to speak on behalf of the party and therefore should be admitted into evidence. Under Federal Rule of Evidence (FRE) 801(d)(2)(C), a

[2] The stipulations in this matter are the result of long negotiations involving hundreds of exhibits at a time. If the court grants Respondents' motion to disregard JX 7, the entire stipulation process upon which both Complaint Counsel and Respondents have worked so hard would be put in jeopardy. Moreover, absent a requirement that "manifest injustice" be shown, both parties have an incentive to file several motions to withdraw other JXs, based on the discovery of exhibits that were "inadvertently included," in order to withdraw exhibits that no longer help their case.

statement is an admission, and not hearsay, if it is offered against a party and is "a statement by a person authorized by the party to make a statement concerning the subject." As careful review of legal precedent reveals, Mr. Vaughn was authorized to testify on behalf of CB&I on the subjects covered in his deposition. Throughout Mr. Vaughn's deposition, Respondents had the opportunity to object to the questioning as beyond the authorized scope; rarely were these objections made. As a result, Mr. Vaughn's testimony should be admitted as admissions under FRE 801(d)(2)(C).

Mr. Vaughn was authorized to testify on behalf of CBI on the subjects covered in his deposition. In *Glendale Federal Bank, FSB v. the United States*, 39 Fed. Cl. 422, 425 (Ct. Fed. Cl. 1997), the court held that "[w]hen an expert witness is put forward as a testifying expert at the beginning of trial, the prior deposition testimony of that expert in the same case is an admission against the party that retained him." In *Glendale*, the court reasoned that:

> By the time the trial begins, we may assume that those experts who have not been withdrawn are those whose testimony reflects the position of the party who retains them. At the beginning of trial we may hold the parties to a final understanding of their case and hence an *authorization* of their expert witnesses who have not been withdrawn. At this point when an expert is put forward for trial it is reasonable and fair to presume they have been *authorized*. This of necessity includes prior deposition testimony of that expert. This is also a rational and fair point at which to draw the *authorization* line.

39 Fed. Cl. at 424-425 (italics provided). Here, like the expert in *Glendale*, Mr. Vaughn was not withdrawn prior to the beginning of trial; indeed, until December, 23, 2002, Mr. Vaughn was on the Respondents' final witness list. Thus, under *Glendale*, Mr. Vaughn is authorized to testify for CB&I , and his deposition testimony is a party admission under FRE 801(d)(2)(C).

Despite Respondents' inaccurate and cursory citations to the contrary, case law with facts analogous to the present case reveals that expert deposition testimony is in fact a party admission under FRE 801(d)(2)(C). Motion to Withdraw at 5. In *Collins v. Wayne Corporation*, 621 F.2d 777 (5th Cir. 1980), the Fifth Circuit Court of Appeals reversed the exclusion of the deposition testimony of an expert (Greene) hired by the defendant to investigate the accident at issue in the case. 621 F.2d at 781. In *Collins*, shortly before trial, Plaintiffs moved to enter Mr. Greene's deposition transcript into evidence as a party admission, and the District Court for the Western District of Texas denied the motion. *Id.* at 780. On appeal, the Fifth Circuit held that "[Defendant] hired [the expert] to investigate the bus accident and to report his conclusions. In giving his deposition he was performing the function that [Defendant] had employed him to perform. His deposition, therefore, was an admission of [Defendant]." *Id*. at 782. Here, Mr. Vaughn was hired to evaluate Mr. Fan's analysis and testimony. Vaughn Report ¶ 5. He performed the function CB&I hired him to perform, and his deposition should likewise be a party admission.

Respondents cite *Kirk v. Raymark Industries, Inc.*, 61 F.3d 147 (3rd Cir. 1995) in support of their claim that statements by expert witnesses are not admissions. Motion to Withdraw at 5. *Kirk* is easily distinguished from the present case. In *Kirk*, the Third Circuit held that an expert testifying on behalf of a party in one litigation is not authorized to speak on behalf of the same party in later, *unrelated*, litigations. 61 F.3d at 164. Here, Mr. Vaughn's deposition testimony is meant to be used in the *same* litigation as the one in which it was produced. This same fact alone was enough for the Northern District of Illinois, in *Dean v. Watson*, to distinguish *Kirk* and admit expert testimony in a case with parallel, not inapposite facts. 1996 U.S. Dist. LEXIS 2243, *14-*15 (N.D. Ill. 1996)

(admitting expert "testimony at issue [that] was taken regarding the present litigation, not prior litigation unrelated to the incident at issue.")

A-Cal Copiers, Inc. v. North Am. Van Lines, Inc., 180 F.R.D. 183 (D. Mass. 1998) is also easily distinguishable. In *A-Cal Copiers*, the defendants hired an expert who wrote an earlier report relating to photocopiers which were at issue in the case. 180 F.R.D. at 186, 189. Plaintiffs attempted to introduce this report into evidence. *Id*. at 186. The plaintiffs cited FRE 801(d)(2)(C), a statement made by one authorized to speak on behalf of the party, as authority that the report was a party admission and therefore not hearsay. The court found exclusion of the report proper, because there was no evidence the defendant in any way authorized the expert to speak on its behalf. *Id*. at 189. Here, Mr. Vaughn was retained by Respondents to give testimony in front of a court reporter in *this* matter. In *A-Cal Copiers*, the expert was not retained by the defendants to testify in trial. *Id*. at 185-186. Further, plaintiffs in *A-Cal Copiers* were attempting to enter an *ex parte* written report, not the sworn, prepared and defended testimony of Mr. Vaughn. *Id*. at 189. Thus, *A-Cal* is irrelevant to the issue before the court in this matter, which relates to the admission of deposition testimony, not expert reports.[3]

IV. CX 1577 and CX 1578 Constitute Admissions By a Party-Agent And Are Admissible Pursuant to 801(d)(2)(D)

[3] Respondents' reliance on *Brandt v. Wand Partners, et al.*, 242 F.3d 6, 21 (1st Cir. 2001) is similarly flawed. In *Brandt*, the First Circuit cites the *Kirk* holding, but only in dictum; ultimately, the First Circuit did not reverse the admission of the expert's report under FRE 801(d)(2)(D). In fact, the First Circuit simply stated that there is disagreement over whether an expert witness automatically qualifies as a party agent, and neither ruled on whether the expert in question was an agent nor took a position on the issue. Further, *Brandt* dealt solely with a party admission under FRE 801(d)(2)(D), not admissions by parties authorized to speak on the behalf of a party (not necessarily agents) agents under FRE 801(d)(2)(C) and *Glendale*. 242 F.3d at 21-22.

If this Tribunal concludes that Mr. Vaughn was not authorized to testify on behalf of CB&I, CX 1577 and CX 1578 should be independently admissible as admissions by a party agent. Two of the three cases cited by Respondents note that, under particular circumstances, an expert witness, and independent contractors in general, *could* be a party agent if the party has been found to control the agent. *See* 61 F.3d at 164; 180 F.R.D. at 189.

The Third Circuit noted in *Kirk*, "[i]n theory, despite the fact that one party retained and paid for the services of an expert witness, expert witnesses are supposed to testify impartially in the sphere of their expertise. . . . Since an expert witness is not subject to the control of the party opponent with respect to consultation and testimony he or she is hired to give, the expert witness cannot be deemed an agent." 61 F.3d at 164, relying on *Restatement (Second) of Agency* § 1 cmt. a (1958).

Here, however, it is clear that Respondents completely controlled Mr. Vaughn's research, report, and testimony. For instance, Mr. Vaughn was denied access to relevant documents he requested. Mr. Vaughn testified that he requested from Respondents the actual costs incurred in connection to the Bozrah project from CB&I's employee Lee Presley, and the information was never provided to him. CX 1578 at 13-15. Further, Mr. Vaughn testified he only reviewed two bids from PDM and not others because Respondents did not provide him with any other PDM bids. CX 1577 at 59, 108, 116. Mr. Vaughn also testified he did not analyze CB&I's bids on some 1999 projects because they were not provided to him. *Id*. at 127.

In addition, Respondents' counsel played an inordinately large role in creating Mr. Vaughn's expert report. Mr. Vaughn testified that on all but three of the 65 paragraphs in his expert report, Respondents "did most of the typing;" Mr. Vaughn later indicated whether he agreed with the language

produced by the Respondents. *Id*. at 61, 62, 78. When asked how much of the report Mr. Vaughn himself typed, Mr. Vaughn testified he did "some" of the typing of three paragraphs of a 65 paragraph report. *Id*. at 62. When asked if he recalled typing anything else, Mr. Vaughn responded "I think that's all that I actually typed in myself." *Id*. at 62. Mr. Vaughn also testified that the information he relied upon in forming his expert opinion was provided to him by CB&I, not from his own files. *Id*. at 108.

In summary, as Mr. Vaughn was subject to the control of CB&I with respect to the consultation, report, and testimony he was hired to give, Mr. Vaughn was an agent of CB&I. As an agent of CB&I, his admissions are admissible evidence under FRE 801(d)(2)(C).

V. CX 1577 and CX 1578 Are Admissible Pursuant to FTC Rule 3.43(b)(1), Which Requires the Admission of Relevant, Material, and Reliable Evidence

FTC Rule 3.43(b)(1) requires the admission of relevant, material, and reliable evidence. In his expert report, Mr. Vaughn noted that "[d]uring my employment at CB&I, I became extremely well-versed in the proper methods and processes used for estimating costs on industrial tank projects such as field-erected liquid nitrogen and liquid oxygen tanks." Vaughn Expert Report ¶ 4. If Mr. Vaughn is an expert, under the theory espoused above in *Kirk*, Mr. Vaughn should not be under the control of CB&I and should be able to testify to the full extent of his expertise and relevant experience.[4]

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[4] Experts are permitted to testify to procedures and techniques in their respective fields. *See, e.g., United States v. Slade, et. al.*, 627 F.2d 293, 299 (D.C. Cir. 1980) (permitting an expert witness in the field of analytical chemistry to testify on the techniques and procedures of analyzing and identifying substances); *Antilles Steamship Company, Ltd. v. The Members of the American Hull Insurance Syndicate, et. al.*, 733 F.2d 195, 198 (2nd Cir. 1984) (permitting an expert witness to testify concerning customs and practices of the marine insurance industry); *PBM Products, Inc. v. Mead Johnson & Company*, 174 F. Supp. 2d 424, 427 (E.D. Va. 2001) (permitting an expert witness from the insurance industry to discuss industry customs with respect to mass marketing and forecasting plaintiff's losses); *Toren v. Braniff, Inc*., 893 F.2d 763, 766 (5th Cir. 1990) ("[T]he testimony of expert witnesses Joe Dooley, Fred Maurstad, and Charles Thornton explained clearly that lending of rotables among airlines is industry custom.");

Two months after the testimony of Mr. Vaughn has been delivered, and one month after Mr. Vaughn delivered a signed notarized errata sheet, Respondents claim to be following this Tribunal's Order to limit the scope of Mr. Vaughn's testimony to "the sole purpose of analyzing and testifying about the opinions of the particular witness identified in the confidential pleadings." Vaughn Errata Sheet; Motion to Withdraw, p. 4. However, Respondents have been not always been careful to limit the scope of Mr. Vaughn's testimony.[5] Notably, Respondents do not contest the admissibility of Mr. Vaughn's testimony related to "the sole purpose of analyzing and testifying about the opinions of the

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Sterling Drug, Inc. v. Yarrow, 408 F.2d 978, 922 (8th Cir. 1969) (permitting an expert witness to testify on industry custom in the drug manufacturing industry); *United States v. Reed*, 40 F.3d 1069, 1072-1073 (10th Cir. 1994) (permitting an FBI agent to testify as an expert witness about DNA testing, including the protocol for DNA testing, the actual physical procedures laboratory technicians use to conduct DNA testing, and the quality control techniques used to ensure accurate results).

[5] Prior to their recent motion, Respondents have noted at least a few instances in which Mr. Vaughn's testimony should not be limited. At Mr. Vaughn's deposition, Mr. Leon recognized that Mr. Vaughn's testimony "may have broader application as budget pricing discussions that are generally applicable." CX 1577 at 76-77. At the deposition of Barry Harris, Mr. Leon noted:

> I just -- I want to be clear. Dr. Harris is an expert witness. He's reviewed the record, and the CB&I witnesses testified about these matters, and in fact, *we have an expert witness who is specifically testifying about the use of budget prices.* So, if you want to ask Dr. Harris his understanding of the record, that's fine, but the questions you're asking him are almost premised as if he's telling you, you know, what CB&I does, and it -- I just think you need to distinguish your questions. He's not a fact witness.

Deposition of Barry Harris at 90 (italics supplied). Complaint Counsel has relied on these representations by Respondents to shape our direct and cross examinations. Despite their previous representations, Respondents now attempt to narrow the scope of Mr. Vaughn's testimony, at a very late date, not because they no longer find him relevant, but instead because they dislike what he has said.

In attempting to narrow the scope of Mr. Vaughn's testimony well after it was given, Respondents fail to identify specific areas that were "unrelated to Mr. Vaughn's work as an expert in this case." Motion to Withdraw at 6. Instead, Respondents cite a single instance of an objection they made that the question was beyond the proper scope of an expert, and the expert answered the question asked despite Respondents' objection in any case. In another instance, Respondents strategically omitted a relevant portion of the Vaughn testimony, choosing instead to mischaracterize Complaint Counsel's inquiry as related to the dynamics of a post acquisition CB&I. Motion to Withdraw at 7. Instead, as Respondents' Exhibit F reveals, Complaint Counsel asked whether Mr. Vaughn made comparisons of fixed firm pricing to actual pricing, which he did not do, and whether Mr. Vaughn made comparisons of fixed firm pricing to budget pricing, which *both* Mr. Vaughn and Mr. Fan did. *See* CX 1578 at 12-13.

particular witness identified in the confidential pleadings" under FTC Rule 3.43. Respondents' attempt to limit the scope of Mr. Vaughn's testimony is relevant *only* to the question of authorization under FRE 801(d)(2)(C); authorization is *not* an issue under FTC Rule 3.43. As noted above, Mr. Vaughn's testimony must merely be reliable.

Mr. Vaughn's testimony, made in front of a court reporter, with counsel available to object and prepare him, on cost calculations, the variability and fixed nature of costs, and pricing methods at CBI during his 37+ years working there, is clearly relevant and material to issues that have arisen in this case. Respondents also do not contend whether Mr. Vaughn's testimony related to his expert report is reliable. In fact, all of Mr. Vaughn's testimony, which is entirely related to his expertise, is reliable. Mr. Vaughn's testimony was taken under oath, in the presence of both parties (and hence not *ex parte*), by a certified reporter and notary public, and reviewed by Mr. Vaughn for errata and signed.

It is not clear that Respondents scope limitations are substantively meaningful in any regard. Nearly all of Mr. Vaughn's testimony directly relates to the scope Respondents have defined. Specifically, Mr. Vaughn was retained to analyze Mr. Fan's approach, analysis and estimate. Vaughn Expert Report ¶ 5; CX 1577 at 59. Mr. Vaughn testified at great length about Mr. Fan's work. In Respondents' *motion requesting leave of the court to add Mr. Vaughn to the witness list*, Respondents claimed they, as "merely lawyers and not engineers or tank builders" did not have the expertise to analyze Mr. Fan's work. Respondents' Motion for Leave to Modify Their Witness List, p. 3. This was because Mr. Fan's calculations indicated that Linde observed an 8.7% post-merger price increase in the supply of LIN/LOX tanks in the U.S. CX 1524-1526; Tr. 1005. Mr. Vaughn criticized the accuracy of Mr. Fan's estimate. Vaughn Expert Report ¶ 121. However, Mr. Vaughn also

testified that, in having no knowledge of "actual costs," Mr. Fan had no less information than a customer typically has in his situation. CX 1577 at 122. When asked what he would have done differently than Mr. Fan, Mr. Vaughn failed to identify a single thing. *Id*. at 125. Mr. Vaughn testified that Mr. Fan asked for "garbage" from CB&I, but Mr. Vaughn got even less than that from CB&I. *Id*. at 126. PDM, on the other hand, provided more information to Fan. *Id*. at 126-127.

VI. In Their Motion, Respondents Made Misrepresentations of Fact Which Should Not Go Uncontested

Respondents state that "[a]lthough Mr. Vaughn had a long career with CB&I, he has been retired since the end of 2000." Motion to Withdraw at 4. Respondents also allege "[s]ince Mr. Vaughn has been retired from the tank industry since 2000 and is no longer familiar with the inner workings of CB&I, any testimony unrelated to his expert report is not reliable." *Id*. at 6. Later in their motion, Respondents criticize certain questions made by Complaint Counsel by stating that "Complaint Counsel was aware that Mr. Vaughn had been retired in 2000 and his knowledge regarding CB&I and his experience in the industry was only current through December of 2000." *Id*. at 7. Respondents' summary of Mr. Vaughn's work experience is misleading in the first instance, and flatly false in the second and third. As noted in Mr. Vaughn's expert report, Mr. Vaughn "continued to work for CB&I full-time until April of 2001," and that Mr. Vaughn "worked part-time for CB&I" from April 2001 to March 2002. Vaughn Expert Report ¶ 1.[6]

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[6] Further, Respondents fail to note that in deciding which testimony of Mr. Vaughn is admissible, this court is not necessarily bound by the scope of its earlier order. *See Kiss v. K-Mart Corporation*, 2001 U.S. Dist. LEXIS 6744, *14-*22 (E.D. Pa. 2001) (admitting expert opinion testimony on issues not contained in the expert report and thereby in violation of the Court's order on expert discovery); *DeMarines v. KLM Royal Dutch Airlines*, 580 F.2d 1193, 1201-1202 (E.D. Pa. 1978) (finding reversible error where the trial court excluded expert testimony that "did not conform precisely to the pre-trial notice requirements.")

Respondents argue that "if the entirety of the [John Vaughn] depositions are allowed to remain in evidence, Respondents may be forced to call the expert, or another CB&I employee, in order to provide this Court with complete testimony, an event which could potentially add two additional trial days to Respondents' case." Motion to Withdraw at 1. If John Vaughn's admissions are not allowed to remain in evidence, Complaint Counsel may be forced to call Mr. Vaughn as a rebuttal witness, which could also add additional trial days to the present case.

VII. Conclusion

Respondents reviewed and signed a written agreement agreeing that CX 1577 and CX 1578 were to be admitted into evidence. Should the court allow the Respondents to renege on their agreement with Complaint Counsel and this Tribunal, Complaint Counsel respectfully requests that the Court admit CX 1577 and CX 1578 on any of the following grounds:

1.) They are admissions made by persons authorized to speak on behalf of the parties, pursuant to the *Glendale* and *Dean* decisions, and FRE 801(d)(2)(C);

2.) They are admissions made by an agent of the parties, pursuant to FRE 801(d)(2)(D); or

3.) They are relevant, material, and reliable under FTC Rule 3.43(b)(1).

Dated: Washington, D.C.
January 8, 2002

Respectfully submitted,

_____

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Counsel Supporting the Complaint

CERTIFICATE OF SERVICE

I hereby certify that I caused a copy of Complaint Counsel's Opposition to Respondents' Motion to Strike to be delivered by hand to

The Honorable D. Michael Chappell
Federal Trade Commission
H-104
6th and Pennsylvania Ave. N.W.
Washington D.C. 20580

Administrative Law Judge

and by hand to:

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Counsel for Respondents Chicago Bridge & Iron Company N.V. and Pitt-Des Moines, Inc.

Dated: January 8, 2002

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UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

In the Matter of	)	
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CHICAGO BRIDGE & IRON COMPANY	)	
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	)	Docket No. 9300
and	)	
PITT DES-MOINES, INC.	)	
a corporation.	)	

ORDER

Upon consideration of Respondents' Motion to Withdraw Stipulated Documents from Evidence and Complaint Counsel's Opposition thereto, it is HEREBY ORDERED AND ADJUDGED THAT, Respondents' Motion is DENIED.

ORDERED:

D. Michael Chappell
Administrative Law Judge

Date: _____, 2002