

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

COLUMBIA INSURANCE CO. and
MITEK INC.,

Plaintiffs,

v.

SIMPSON STRONG-TIE COMPANY
INC.,

Defendant.

Case No.: 3:19-CV-04683-TSH

~~[PROPOSED]~~ AMENDED PROTECTIVE
ORDER

Plaintiffs Columbia Insurance Co. and MiTek Inc. ("Plaintiffs") respectfully request the entry of the following Amended Protective Order, which is based on the Northern District's Stipulated Protective Order For Litigation Involving Patents, Highly Sensitive Confidential Information And/Or Trade Secrets:

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 this litigation and any Related 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 14.4, 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.

2. DEFINITIONS

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

2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil Procedure 26(c).

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

2.4 Designating Party: a Party or Non-Party that designates information or items that it produces in disclosures or in responses to discovery as “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL – PROSECUTION BAR.”

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

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

2.7 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items: extremely sensitive “Confidential Information or Items,” disclosure of which to another Party

1 or Non-Party would create a substantial risk of serious harm that could not be avoided by less
2 restrictive means.

3 2.8 “HIGHLY CONFIDENTIAL – PROSECUTION BAR” Information or Items:
4 extremely sensitive “Confidential Information or Items,” disclosure of which to another Party or
5 Non-Party would create a substantial risk of serious harm that could not be avoided by less
6 restrictive means and which could be used by the recipient to assist in its patent prosecution efforts.

7 2.9 House Counsel: attorneys who are employees of a party to this action. House Counsel
8 does not include Outside Counsel of Record or any other outside counsel.

9 2.10 Non-Party: any natural person, partnership, corporation, association, or other legal
10 entity not named as a Party to this action.

11 2.11 Outside Counsel of Record: attorneys who are not employees of a party to this action
12 but are retained to represent or advise a party to this action and have appeared in this action or a
13 Related Litigation on behalf of that party or are affiliated with a law firm which has appeared on
14 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,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or as
24 “HIGHLY CONFIDENTIAL – PROSECUTION BAR.”

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

27 2.17 '510 Patent: U.S. Patent No. 10,316,510, entitled "Hanger for Fire Separation Wall."
28

2.18 Related Patent: any patent, whether in the U.S. or abroad that claims priority from the application leading to the '510 Patent or from any patent application to which the '510 Patent claims priority.

2.19 Related Litigation: litigation or legal proceedings between the Parties of this litigation concerning the enforcement or validity of the '510 Patent and/or any Related Patents.

3. SCOPE

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

4. DURATION

Even after final disposition of this litigation and any Related Litigation, the confidentiality obligations imposed by this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims and defenses in this action or Related Litigation, with or without prejudice; and (2) final judgment herein after the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action or Related Litigation, including the time limits for filing any motions or applications for extension of time pursuant to applicable law.

5. DESIGNATING PROTECTED MATERIAL

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

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

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

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

Designation in conformity with this Order requires:

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

1 it is practical to do so.

2 A Party or Non-Party that makes original documents or materials available for inspection
3 need not designate them for protection until after the inspecting Party has indicated which material
4 it would like copied and produced. During the inspection and before the designation, all of the
5 material made available for inspection shall be deemed “HIGHLY CONFIDENTIAL –
6 PROSECUTION BAR.” After the inspecting Party has identified the documents it wants copied and
7 produced, the Producing Party must determine which documents, or portions thereof, qualify for
8 protection under this Order. Then, before producing the specified documents, the Producing Party
9 must affix the appropriate legend (“CONFIDENTIAL,” “HIGHLY CONFIDENTIAL –
10 ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL – PROSECUTION BAR”) to each
11 page that contains Protected Material. If only a portion or portions of the material on a page qualifies
12 for protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by
13 making appropriate markings in the margins) and must specify, for each portion, the level of
14 protection being asserted to the extent it is practical to do so.

15 The prosecution bar outlined in Paragraph 8 shall not apply to any individuals as a result of
16 having reviewed a document that is subsequently designated “HIGHLY CONFIDENTIAL –
17 PROSECUTION BAR.”

18 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the
19 Designating Party identify on the record, before the close of the deposition, hearing, or other
20 proceeding, all protected testimony and specify the level of protection being asserted. When it is
21 impractical to identify separately each portion of testimony that is entitled to protection and it
22 appears that substantial portions of the testimony may qualify for protection, the Designating Party
23 may invoke on the record (before the deposition, hearing, or other proceeding is concluded) a right
24 to have up to 21 days to identify the specific portions of the testimony as to which protection is
25 sought and to specify the level of protection being asserted. Only those portions of the testimony
26 that are appropriately designated for protection within the 21 days shall be covered by the provisions
27 of this Stipulated Protective Order. Alternatively, a Designating Party may specify, at the deposition
28

1 or up to 21 days afterwards if that period is properly invoked, that the entire transcript shall be
2 treated as “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or
3 “HIGHLY CONFIDENTIAL – PROSECUTION BAR.”

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

10 Transcripts containing Protected Material shall have an obvious legend on the title page that
11 the transcript contains Protected Material, and the title page shall be followed by a list of all pages
12 (including line numbers as appropriate) that have been designated as Protected Material and the
13 level of protection being asserted by the Designating Party. The Designating Party shall inform the
14 court reporter of these requirements. Any transcript that is prepared before the expiration of a 21-
15 day period for designation shall be treated during that period as if it had been designated “HIGHLY
16 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its entirety unless otherwise agreed. After
17 the expiration of that period, the transcript shall be treated only as actually designated.

18 The prosecution bar outlined in Paragraph 8 shall not apply to any individuals as a result of
19 having reviewed a document or transcript that is subsequently designated “HIGHLY
20 CONFIDENTIAL – PROSECUTION BAR.”

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

1 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
2 designate qualified information or items does not, standing alone, waive the Designating Party's
3 right to secure protection under this Order for such material. Upon timely correction of a
4 designation, the Receiving Party must make reasonable efforts to assure that the material is treated
5 in accordance with the provisions of this Order. The prosecution bar outlined in Paragraph 8 shall
6 not apply to any individuals as a result of having reviewed a document that is subsequently
7 designated "HIGHLY CONFIDENTIAL – PROSECUTION BAR."

8 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

9 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
10 confidentiality at any time. Unless a prompt challenge to a Designating Party's confidentiality
11 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
12 burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to
13 challenge a confidentiality designation by electing not to mount a challenge promptly after the
14 original designation is disclosed.

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

6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court intervention, the Designating Party shall file and serve a motion to retain confidentiality under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) within 21 days of the initial notice of challenge or within 14 days of the parties agreeing that the meet and confer process will not resolve their dispute, whichever is earlier. Each such motion must be accompanied by a competent declaration affirming that the movant has complied with the meet and confer requirements imposed in the preceding paragraph. Failure by the Designating Party to make such a motion including the required declaration within 21 days (or 14 days, if applicable) shall automatically waive the confidentiality designation for each challenged designation. In addition, the Challenging Party may file a motion challenging a confidentiality designation at any time if there is good cause for doing so, including a challenge to the designation of a deposition transcript or any portions thereof. Any motion brought pursuant to this provision must be accompanied by a competent declaration affirming that the movant has complied with the meet and confer requirements imposed by the preceding paragraph.

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

7. ACCESS TO AND USE OF PROTECTED MATERIAL

7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or produced by another Party or by a Non-Party in connection with this case only for prosecuting, defending, or attempting to settle this litigation or any Related Litigation. Such Protected Material may be disclosed only to the categories of persons and under the conditions described in this Order. Upon termination of this litigation and all then pending Related Litigation, a Receiving Party must

1 comply with the provisions of section 14 below (FINAL DISPOSITION).

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

4 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered
5 by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any
6 information or item designated “CONFIDENTIAL” only to:

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

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

13 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably
14 necessary for this litigation or Related Litigation and who have signed the “Acknowledgment and
15 Agreement to Be Bound” (Exhibit A);

16 (d) the court and its personnel;

17 (e) the court or tribunal conducting any Related Litigation and its personnel;

18 (f) court reporters and their staff, professional jury or trial consultants, and Professional
19 Vendors to whom disclosure is reasonably necessary for this litigation or Related Litigation and
20 who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

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

27 (h) the author or recipient of a document containing the information or a custodian or other
28

person who otherwise possessed or knew the information.

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

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

(b) Experts of the Receiving Party (1) to whom disclosure is reasonably necessary for this litigation or Related Litigation and (2) who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(c) the court and its personnel;

(d) the court or tribunal conducting any Related Litigation and its personnel;

(e) court reporters and their staff, professional jury or trial consultants, and Professional Vendors to whom disclosure is reasonably necessary for this litigation or Related Litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A); and

(f) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information.

8. PROSECUTION BAR

Absent written consent from the Producing Party, any individual who reviews “HIGHLY CONFIDENTIAL – PROSECUTION BAR” information shall not be involved in the prosecution of patents or patent applications relating to hangers that are used for connecting structural components to walls, including without limitation the patents asserted in this action and any patent or application claiming priority to or otherwise related to the patents asserted in this action, before any foreign or domestic agency, including the United States Patent and Trademark Office (“the Patent Office”). This prosecution bar is personal to the individuals reviewing information designated

“HIGHLY CONFIDENTIAL – PROSECUTION BAR” by the Designating Party and shall not be imputed to any other person. For purposes of this paragraph, “prosecution” includes directly or indirectly drafting, amending, advising, or otherwise affecting the scope of patent claims. To avoid any doubt, “prosecution” as used in this paragraph does not include representing a party challenging a patent before a domestic or foreign agency (including, but not limited to, a reissue protest, *ex parte* reexamination or *inter partes* reexamination). This provision shall not prohibit Outside Counsel of Record in this action or Related Litigation from participating in an *inter partes* review, post-grant review, or other proceedings related to the patents-in-suit or any other patents, provided that Outside Counsel of Record on the patent-owner side of such proceedings adhere to the restrictions on patent prosecution activity set forth previously in this paragraph with respect to any claim amendment proceedings. Specifically, Outside Counsel of Record on the patent-owner side of such proceedings who have reviewed information designated “HIGHLY CONFIDENTIAL – PROSECUTION BAR” by the Designating Party are prohibited from drafting, assisting in drafting, or advising the drafting of amended claims within or as a result of an *inter partes* review or post grant review, but may otherwise participate in any claim amendment proceedings (e.g., Outside Counsel of Record is not precluded from participating in the briefing or arguing of validity of any proposed amended claims). This Prosecution Bar shall begin when “HIGHLY CONFIDENTIAL – PROSECUTION BAR” information is first reviewed by the affected individual and shall end two (2) years after final termination of this action.

9. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this action as “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL – PROSECUTION BAR” that Party must:

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

(b) promptly notify in writing the party who caused the subpoena or order to issue in the

other litigation that some or all of the material covered by the subpoena or order is subject to this Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and

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

If the Designating Party timely seeks a protective order, the Party served with the subpoena or court order shall not produce any information designated in this action as “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL – PROSECUTION BAR” before a determination by the court from which the subpoena or order issued, unless the Party has obtained the Designating Party’s permission. The Designating Party shall bear the burden and expense of seeking protection in that court of its confidential material – and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from another court.

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

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

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

1. promptly notify in writing the Requesting Party and the Non-Party that some or all of the information requested is subject to a confidentiality agreement with a Non-Party;
2. promptly provide the Non-Party with a copy of the Stipulated Protective Order in this litigation, the relevant discovery request(s), and a reasonably specific description of the information requested; and

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

(c) If the Non-Party fails to object or seek a protective order from this court within 14 days of receiving the notice and accompanying information, the Receiving Party may produce the Non-Party's confidential information responsive to the discovery request. If the Non-Party timely seeks a protective order, the Receiving Party shall not produce any information in its possession or control that is subject to the confidentiality agreement with the Non-Party before a determination by the court. Absent a court order to the contrary, the Non-Party shall bear the burden and expense of seeking protection in this court of its Protected Material.

11. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

12. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

When a Producing Party gives notice to Receiving Parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in an e-discovery order that provides for production without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of a communication or information covered by the attorney-client privilege or work product protection, the parties may incorporate their agreement in the stipulated protective order submitted to the court.

13. MISCELLANEOUS

14.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek

its modification by the court in the future.

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

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

14. FINAL DISPOSITION

Within 60 days after the final disposition of this action and any then pending Related Litigation, as defined in paragraph 4, each Receiving Party must return all Protected Material to the Producing Party or destroy such material. As used in this subdivision, "all Protected Material" includes all copies, abstracts, compilations, summaries, and any other format reproducing or capturing any of the Protected Material. Whether the Protected Material is returned or destroyed, the Receiving Party must submit a written certification to the Producing Party (and, if not the same person or entity, to the Designating Party) by the 60-day deadline that (1) identifies (by category, where appropriate) all the Protected Material that was returned or destroyed and (2) affirms that the Receiving Party has not retained any copies, abstracts, compilations, summaries or any other format

1 reproducing or capturing any of the Protected Material. Notwithstanding this provision, Counsel are
2 entitled to retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing
3 transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney
4 work product, and consultant and expert work product, even if such materials contain Protected
5 Material. Any such archival copies that contain or constitute Protected Material remain subject to
6 this Protective Order as set forth in Section 4 (DURATION).

7
8
9 DATED: April 3, 2025

/s/ B. Scott Eidson

By: B. Scott Eidson

Stinson LLP

Attorneys for Plaintiffs

Columbia Insurance Co. and MiTek Inc.

10
11
12
13 IT IS SO ORDERED.

14
15 DATED: April 8, 2025



Hon. Thomas S. Hixson

United States Magistrate Judge

United States District Court
Northern District of California

EXHIBIT AACKNOWLEDGMENT 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 *Columbia Insurance
 Co. et al., v. Simpson Strong-Tie Company Inc.*, Northern District of California, Case No. 3:19-
 CV-04683-TSH. 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: _____