

The Honorable Brian A. Tsuchida

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IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

EARTHBOUND CORPORATION, a
Washington corporation; and INTACT
STRUCTURAL SUPPLY, LLC, a Washington
corporation,

Plaintiffs,

vs.

MITEK USA, INC., a Missouri corporation;
KEN KEYSE, an individual, and the
MARITAL COMMUNITY OF KEN AND
CINDY KEYSE, JAMES MILLER, an
individual, and the MARITAL COMMUNITY
OF JAMES MILLER AND LINDA MILLER,
and JASON BIRDWELL, an individual, and
the MARITAL COMMUNITY OF JASON
BIRDWELL AND LACHELLE BIRDWELL

Defendants.

Case No. 2:16-cv-1150

FIRST AMENDED COMPLAINT FOR
DAMAGES AND INJUNCTIVE RELIEF

JURY DEMAND

Plaintiffs Earthbound Corporation and Intact Structural Supply, LLC., by and through their
counsel of record, Sebris Busto James, file this Complaint for Damages and Injunctive Relief
against defendants MiTek USA, Inc., and individual defendants Ken Keyse, James Miller, and
Jason Birdwell, and their respective marital communities, alleging as follows:

I. PARTIES

1.1 Earthbound Corporation (“Earthbound”) is a privately-held Washington
Corporation. Intact Structural Supply LLC (“ISS”) is a privately-held Washington Limited

1 Liability Corporation. Both companies (collectively referred to as “Plaintiffs”) share common
2 ownership and leadership. The corporate headquarters for both companies are located in Monroe,
3 Washington. ISS sells Earthbound products and services in California.

4 1.2 Defendant MiTek USA, Inc. (“MiTek”) is a Missouri Corporation registered to do
5 business in the states of Washington, California, and elsewhere. It is owned by Berkshire
6 Hathaway, Inc., a publicly-traded global conglomerate. MiTek, through its division MiTek
7 Builder Products, sells building products and services. MiTek’s Hardy Frame Shear Wall System
8 and Z4 Tie-Down System compete directly with Plaintiffs’ products and services in the states of
9 Washington, California, and elsewhere. They are direct competitors.

10 1.3 Defendant Ken Keyse (“Keyse”) was formerly employed by ISS as its Regional
11 Sales Manager. He was hired by ISS in Washington State. His paychecks were processed by ISS
12 in Washington. His supervisor was located in Washington. He accessed Plaintiffs’ servers through
13 remote access in Washington. He attended meetings and social functions in Washington as part
14 of his work for ISS. At all times material hereto, defendants Ken Keyse and Cindy Keyse were
15 husband and wife. All actions hereinafter alleged to have been performed by Ken Keyse, were
16 done for and on his own behalf and for and on behalf of the marital community consisting of Ken
17 Keyse and Cindy Keyse.

18 1.4 Defendant James Miller (“Miller”) was formerly employed by ISS as its Product
19 Representative. He was hired by ISS in Washington State. His paychecks were processed by ISS
20 in Washington. His supervisor was located in Washington. He had access to Plaintiffs’ servers
21 through remote access in Washington. He attended meetings and social functions in Washington
22 as part of his work for ISS. All actions hereinafter alleged to have been performed by James
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1 Miller, were done for and on his own behalf and for and on behalf of the marital community
2 consisting of James Miller and Linda Miller.

3 1.5 Defendant Jason Birdwell (“Birdwell”) was formerly employed by ISS as its
4 Product Service Representative. He was hired by ISS in Washington State. His paychecks were
5 processed by ISS in Washington. His supervisor was located in Washington. He had access to
6 Plaintiffs’ servers through remote access in Washington. All actions hereinafter alleged to have
7 been performed by Jason Birdwell, were done for and on his own behalf and for and on behalf of
8 the marital community consisting of Jason Birdwell and Lachelle Birdwell.

9 **II. JURISDICTION AND VENUE**

10 2.1 Jurisdiction is proper in this Court under 28 U.S.C. § 1331, because Plaintiffs assert
11 claims arising under law of the United States.

12 2.2 Jurisdiction over Plaintiffs’ state law claims is proper in this Court under 28 U.S.C.
13 § 1367, because those claims are so related to Plaintiffs’ federal claims that they form part of the
14 same case or controversy.

15 2.3 The Court has jurisdiction over MiTek, Keyes, Miller, and Birdwell (jointly
16 “Defendants”), because they each have done business in Washington State and this District, and
17 Plaintiffs’ claims in this action arise out of those contacts.

18 2.4 Venue is proper in this Court under 28 U.S.C. § 1391 because a substantial part of
19 the events giving rise to Plaintiffs’ claims occurred in this District.

20 **III. FACTUAL ALLEGATIONS**

21 3.1 Earthbound manufactures products and provides services and systems for
22 earthquake tie down and connections in building construction. ISS markets and sells Earthbound
23 products, services, and systems in California. Prior to the events that led to this action, the products
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1 and services Earthbound sold through ISS in California represented a large percentage of
2 Earthbound's total business.

3 3.2 Together, Keyse, Miller, and Birdwell made up 100 percent of ISS's sales team and
4 served 100 percent of ISS's market. As the Regional Sales Manager, Keyse was responsible for
5 ISS's sales, scheduling, logistics, project management, customer relationships and the supervision
6 of Miller and Birdwell.

7 3.3 Earthbound has only two competitors for its products and services in the California
8 market, one of which is MiTek.

9 3.4 In 2014, MiTek entered into negotiations to buy Earthbound. MiTek had
10 previously proposed purchasing Earthbound in 2007, but no agreement was reached. As part of
11 both negotiations, the parties executed nondisclosure agreements ("NDAs"). The NDAs protected
12 confidential and proprietary business information and trade secrets belonging to both parties,
13 including the profits and losses for ISS and key staff. The NDAs prohibited either party from
14 using information gained through the course of the negotiations to the competitive disadvantage
15 of the other party. MiTek considered information about Earthbound's business practices and
16 products to be valuable. MiTek has retained such information on its servers, computers, and
17 storage devices to date.

18 3.5 During the course of the 2014 negotiations, Earthbound shared with MiTek its
19 confidential, proprietary information, including information about ISS, its customer base, and its
20 profits and losses. Earthbound disclosed three years of profit and loss statements. Significantly,
21 Earthbound disclosed its key personnel, sales, costs and profits, marketing strategy and pending
22 projects at ISS. Earthbound specifically discussed Keyse and Miller with MiTek and how they
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1 could contribute in the relevant market. Earthbound did so in reliance on the protections afforded
2 by the NDA and reliance on MiTek's business ethics.

3 3.6 Negotiations were unsuccessful, and MiTek did not purchase Earthbound. MiTek
4 chose a different business strategy: solicit key personnel at ISS and attempt to eliminate ISS's
5 market share in California.

6 3.7 After the negotiations with Earthbound failed in 2014, MiTek and its agents
7 contacted Keyse, Miller, and Birdwell for the purpose of stealing away ISS's sales and service
8 team and eliminating competition in certain markets. MiTek engaged in a concerted effort to
9 recruit from and destabilize ISS by taking its three key employees, Keyse, Miller and Birdwell.

10 3.8 In February or March of 2016, Defendants conspired to have Keyse, Miller, and
11 Birdwell leave ISS and join MiTek. The conspiracy included a plan to misappropriate Plaintiffs'
12 trade secrets and other confidential information and to engage in unfair competition against
13 Plaintiffs using that information. Keyse was critical in leading the conspiracy, and MiTek rewarded
14 him for his efforts. In March 2016, MiTek paid for Keyse to travel to its headquarters in Missouri
15 to discuss its strategy and job offer. Keyse agreed to deliver the other members of ISS's team,
16 Miller and Birdwell, to MiTek in exchange for compensation. Shortly thereafter, Keyse began
17 shopping for a yacht which he would purchase concurrently with his eventual MiTek job offer.

18 3.9 On or around April 11, 2016, MiTek made a payment to Keyse, who was still
19 employed by ISS. The payment was sufficiently large to enable Keyse to purchase a new boat.
20 MiTek also made payments to Miller and Birdwell, who were still employed by ISS. Such
21 payments were part of Defendants' conspiracy to misappropriate Plaintiffs' trade secrets and other
22 confidential information and to engage in unfair competition against Plaintiffs using that
23 information.

1 3.10 While they were employed by ISS, MiTek paid for Keyse, Miller and Birdwell to
2 travel to St Louis. They are believed to have traveled during the workweek and were compensated
3 by ISS for that time in the mistaken belief that they were loyally performing their job
4 responsibilities. During this period of time, Keyse, Miller and Birdwell ceased performing their
5 job duties for ISS and concentrated on moving ISS's trade secret and confidential, information to
6 MiTek.

7 3.11 During their employment with ISS, Keyse, Miller, and Birdwell held positions of
8 trust and confidence, and were given access to Plaintiffs' customer names and contact information,
9 customer requirements and preferences, negotiated supplier and vendor costs, self-designed parts,
10 proprietary design methods, job files, prior, current and pending bids/estimates, technical project
11 data, customer price lists, revenue, costs and profit margins, pending project lists, financial goals,
12 strategic planning, sales projections, the technology used by Plaintiffs, and other confidential,
13 competitive information. A substantial amount of this confidential, proprietary information was
14 maintained in a master spreadsheet. During their employment, Keyse, Miller, and Birdwell had
15 access to Plaintiffs' servers in Washington State through Remote Desktop portals. They were
16 given company computers and cell phones to fulfill their job duties. They stored company and
17 customer data on their computers and cell phones.

18 3.12 Keyse was in a particularly elevated position of trust and confidence with Plaintiffs.
19 Besides being entrusted with trade secrets and confidential information, Keyes was responsible for
20 the entire operations in California. Plaintiffs relied upon his commitment. Staff members were
21 retained based on Keyse's promised efforts. Investments were made to develop that market based
22 on his promised efforts. Keyse directed internal operations and efforts of personnel for company
23 clients. He also directed the use of company assets and investments without disclosing his motive
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1 or plans to leave to MiTek. For a few months before he resigned, Keyse did not forward promised
2 sales reports and forecasts to Plaintiffs. He held back critical business information. Thus, when
3 he resigned without prior notice, Keyse placed Plaintiffs in a difficult position with clients and
4 within the market. All of his conduct was designed to place Plaintiffs in a negative competitive
5 position and force Plaintiffs to sell to MiTek.

6 3.13 In May 2016 after receiving a MiTek job offer, Keyse began to systematically
7 misappropriate Plaintiffs' trade secret and confidential information. He created a personal
8 Microsoft OneDrive account to move Plaintiffs' trade secret and confidential information thereto.
9 Keyse could drag and drop Plaintiffs' trade secret and confidential, proprietary information into
10 such an account. He created a personal email account using his work email address ostensibly to
11 move data thereto without being tracked. It is believed Keyse was copying business
12 communications to his personal email account. He opened on Plaintiffs' servers, copied to
13 portable devices, and deleted from the servers some of Plaintiffs' trade secret and confidential,
14 proprietary information. This included customer lists, pending projects with the customer name,
15 job name and address, the quote, its status and aging report, pricing information, and expense
16 reports. Keyse also opened on his work laptop computer files from Plaintiffs' servers and then
17 copied them to USB drives. All of this conduct was committed *before* Defendants provided notice
18 that they had interviewed and accepted a position with a direct competitor, MiTek.

19 3.14 On or about May 20, 2016, MiTek made formal job offers to Keyse, Miller and
20 Birdwell. Days later Keyse, Miller and Birdwell accepted the offers. They did not inform
21 Plaintiffs of their activities or acceptance of new jobs at MiTek. Instead, they remained on ISS's
22 payroll and ceased working on ISS projects. Miller assisted in drafting the MiTek signing bonus
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1 and stipend agreements for Keyse, Birdwell and himself. During this time period while employed,
2 they met with ISS clients on behalf of MiTek.

3 3.15 In June 2016 with job offers in hand, Keyse continued his systematic
4 misappropriation of Plaintiffs' trade secret and confidential information. He accessed and copied
5 ISS's customer list, Excel Spreadsheet of pending jobs and tracker, pricing, and other data. On
6 June 10, 2016, he used a flash drive to copy that information. Keyse also deleted information,
7 hoping to harm ISS's operations after he resigned and accepted a position with ISS.

8 3.16 During this time frame, Keyse, Miller and Birdwell used their company-provided
9 computers/smart phones to communicate with MiTek, share business information with MiTek,
10 apply for jobs at MiTek, and draft their resignation letters. They would delete this information
11 before resigning from ISS.

12 3.17 On June 13, 2016 after months of planning their exit strategy and copying and
13 deleting trade secret and confidential, proprietary information, Keyse, Miller, and Birdwell finally
14 announced their resignations via email. Initially, Miller emailed a screenshot of his PDF
15 resignation letter). Then, Birdwell emailed his resignation letter an hour later. Earthbound
16 management contacted Keyse who explained that he too was resigning to join a direct competitor,
17 MiTek, with whom Earthbound had recently discussed a merger under the veil of a NDA. Keyse
18 and Miller offered to remain in ISS's office for two weeks to answer customer emails and calls,
19 but wanted to simultaneously be placed on MiTek's payroll. Plaintiffs declined their offer. Having
20 no reason to suspect foul play as of that date, Plaintiffs asked the three employees to reconsider
21 their decision to resign considering the investment and development Earthbound had made in them
22 and ISS; they declined.

1 3.18 Keyse informed Earthbound management that they had to accept that MiTek would
2 eventually purchase Earthbound, and that management should simply accept that reality, thus
3 demonstrating the conspiracy with MiTek. Recognizing that they could no longer remain in ISS's
4 office for another two weeks and harvest more of Plaintiffs' trade secrets and confidential
5 information and direct ISS's customers to MiTek at their ease, Keyse and Miller took immediate
6 action to copy additional trade secret and confidential information and take ISS's business
7 opportunities.

8 3.19 Before and after providing notice of his resignation, Keyse plugged three different
9 flash drives into his ISS computer onto which he uploaded Plaintiffs' information. He did so to
10 misappropriate Plaintiffs' trade secrets and other confidential information. Keyse was not
11 authorized to access or upload information from Plaintiffs' computers after his resignation. Nor
12 was he ever authorized to access and upload information to provide to a competitor such as MiTek
13 or to use in competition with Plaintiffs. Keyse has refused to return these three flash drives. Thus,
14 a direct competitor MiTek is in possession of Plaintiffs' trade secret and confidential, proprietary
15 information.

16 3.20 Birdwell used an external hard drive (SanDisk) to copy Plaintiffs' trade secret and
17 confidential, proprietary information. Plaintiffs did not authorize him to copy their trade secret
18 and confidential, proprietary information. Birdwell has refused to return that information or
19 produce the external hard drive to inventory his wrongful actions.

20 3.21 All actions hereinafter alleged to have been performed by James Miller, were done
21 fore and on his own behalf and for and on behalf of the marital community consisting of James
22 Miller and Linda Miller. Before resigning from ISS, Miller accessed Plaintiffs' servers to
23 misappropriate Plaintiffs' trade secrets and other confidential information by forwarding
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1 confidential documents such as shop drawings/laminates, summary of sales reports of current and
2 pending projects, and pricing information to his wife's personal email account. Miller was not
3 authorized to access or transfer information from Plaintiffs' computers after his resignation. Nor
4 was he ever authorized to access and transfer information to provide to a competitor such as MiTek
5 or to use in competition with Plaintiffs. Miller continued to forward Plaintiffs' trade secrets to his
6 wife's personal email account after tendering his resignation. Miller has likewise refused to return
7 this forwarded information. Miller also forwarded at least one business opportunity to his wife's
8 computer, keeping it from ISS.

9 3.22 After Keyse, Miller, and Birdwell gave notice of their resignation, Plaintiffs
10 immediately began to investigate their electronic activities and discovered that they had not
11 forwarded customer emails to headquarters in the last weeks, which explained a recent drop off in
12 ISS sales activities. Keyse, Miller, and Birdwell were preparing to leave Plaintiffs and planned to
13 serve those clients at MiTek. That is why they copied the computer information or forwarded it
14 to their wife's email account. Plaintiffs also discovered that Miller was performing finish
15 carpentry activities on Keyse's house during work hours, while being paid by ISS. Plaintiffs had
16 previously directed Miller to cease performing residential construction side work at the same time
17 he was employed by ISS. He and Keyse had ignored the direction. Plaintiffs cut off access by
18 Keyse, Miller, and Birdwell to any company computer and re-routed their cell phones to company
19 headquarters.

20 3.23 Realizing the situation, Keyse, Miller, or Birdwell accessed Plaintiffs' cell phones
21 and reset and deleted information, including texts regarding Keyse's receipt of compensation from
22 MiTek while still employed by ISS. Keyse transferred all of his data on his ISS-provided phone
23 to another phone and then deleted work-related files and MiTek employment documents on the
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1 ISS-provided phone. Miller reset his phone and destroyed all information on it. The three
2 employees used SD Micro Cards to copy important data. Their company phones contained
3 customer contacts, business communications (emails and texts), job site photographs,
4 bids/estimates, and other important information. Defendants' were not authorized to access or
5 delete information from Plaintiffs' cell phones or computers after their resignation. Apparently,
6 Keyse and Miller destroyed their SD Cards, and Birdwell deleted the information from his card.
7 They were attempting to cover up their actions.

8 3.24 After discovering of a wiped cell phone and electronic evidence, and given that
9 Keyse, Miller and Birdwell were joining a direct competitor (MiTek) who had recently analyzed
10 Plaintiffs' financial records under the NDA, Plaintiffs retained a forensic expert to examine the
11 departing employees' computers and cell phones, as well as Plaintiffs' server, to determine
12 whether the departing employees had unlawfully accessed Plaintiffs' server or misappropriated
13 any of Plaintiffs' trade secrets and confidential information. The forensic expert found evidence
14 of some of the unlawful conduct described above. The expert discovered that Keyse had
15 completely wiped his laptop and set up a personal Microsoft OneDrive account after accepting
16 employment with MiTek and before announcing his resignation. He also wiped or moved his
17 Earthbound emails, thereby taking from Plaintiffs thousands of work-related emails. He also
18 deleted business folders from Plaintiffs' servers. Plaintiffs' forensic investigation is ongoing.
19 Discovery is expected to reveal further acts of unlawful conspiracy, misappropriation, and
20 unauthorized computer access by Defendants.

21 3.25 On July 15, 2016, Plaintiffs, through legal counsel, sought to avoid the need for
22 legal process by writing to Defendants, demanding that they cease and desist from using Plaintiffs'
23 misappropriated trade secrets, return the flash drives that had been inserted in Keyse's computer,
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1 and cooperate in the protection, return, and deletion of Plaintiffs' data in Defendants' possession,
2 custody, or control.

3 3.26 Later that same day, Plaintiffs learned from a client that the client had received a
4 last minute unsolicited bid from MiTek for a project that the client said it had been planning to
5 award to ISS. MiTek's new bid was lower than the ISS's bid so the client chose MiTek's bid and
6 ISS lost the project. Keyse, Miller, and Birdwell were aware of the project from the pending
7 project list they had misappropriated, allowing MiTek to underbid ISS. The loss of the
8 aforementioned project was proximately caused by Defendants' wrongful acts.

9 3.27 MiTek has refused to restrict Keyse, Miller, and Birdwell from bidding jobs in
10 direct competition with ISS, contacting customers, or sharing or using information obtained from
11 Plaintiffs. On several occasions, Plaintiffs have requested that Keyse, Miller, and Birdwell be
12 quarantined from ISS bid pending projects. MiTek has uniformly refused such request and
13 continues to use ISS's former employees to compete directly with Plaintiffs in that market. Keyse,
14 Miller, and Birdwell have not denied that they copied and forwarded Plaintiffs' information.
15 Keyse, Miller, and Birdwell have not denied that they are now pursuing projects for MiTek that
16 they had pursued for ISS. Nor have they returned the flash drives used to upload information from
17 Plaintiffs' servers or the SD cards taken from Plaintiffs' phones. Keyse has not turned over the
18 contents to his OneDrive account. Defendants admit MiTek made payments to Keyse, Miller, and
19 Birdwell while they were employed by ISS.

20 3.28 Defendants are using the trade secrets and other confidential information they
21 misappropriated from Plaintiffs to unfairly compete with Plaintiffs. Defendants will engage in
22 further wrongful acts and unfair competition if not enjoined.
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1 **IV. FIRST CAUSE OF ACTION**

2 **Violation of Computer Fraud and Abuse Act**

3 4.1 Plaintiffs reallege and incorporate by reference the foregoing paragraphs of the
4 Complaint as though fully set forth herein.

5 4.2 Before and after resigning from ISS, Keyse, Miller, and Birdwell intentionally
6 accessed Plaintiffs' computers (including cell phones), which are used in interstate commerce,
7 without authorization and thereby obtained proprietary information from Plaintiffs' computers.

8 4.3 Before and after resigning from ISS, Keyse, Miller, and Birdwell, knowingly and
9 with intent to defraud, accessed Plaintiffs' computers (including cell phones) without
10 authorization, and thereby furthered the intended fraud and obtained information of value.

11 4.4 Before and after resigning from ISS, Keyse, Miller, and Birdwell intentionally
12 accessed Plaintiff's computers (including cell phones) without authorization and, as result of such
13 conduct, caused damage and loss.

14 4.5 On information and belief, MiTek conspired with Keyse, Miller, and Birdwell to
15 engage in such activities.

16 4.6 Defendants' actions violated the Computer Fraud and Abuse Act, 18 U.S.C. § 1030
17 et seq. Plaintiffs have suffered loss as result of Defendants' conduct in an amount exceeding
18 \$5,000, including the costs necessary to assess the scope of Defendants' unauthorized access and
19 any resulting damages to Plaintiffs' computers.

20 4.7 Plaintiffs are entitled to recover economic damages caused by Defendants in an
21 amount to be proven at trial.

1 forwarded it to their personal email or placed it on a OneDrive account. They have refused to
2 return Plaintiffs' trade secret and confidential, proprietary information. It will be inevitable that
3 they will use or disclose Plaintiffs' trade secrets in the performance of their job duties for MiTek.
4 To succeed at their new positions, they will rely on skills and information learned from ISS,
5 including trade secrets. They should be enjoined from working in a job that would inevitably result
6 in the use of those trade secrets.

7 **VII. FOURTH CAUSE OF ACTION**

8 **Unfair Business Practices/Competition**

9 7.1 Plaintiffs reallege and incorporate by reference the foregoing paragraphs of the
10 Complaint as though fully set forth herein.

11 7.2 MiTek has used methods of competition and engaged in unfair or deceptive acts or
12 practices in the conduct of commerce. MiTek requested, encouraged, or allowed Plaintiffs'
13 employees, Keyse, Miller, and Birdwell, to copy, remove, delete and not return Plaintiffs'
14 customer and contact information, financial information including revenue, costs and profits,
15 customer-specific pricing information, bids/estimates, pending projects, pricing methodology,
16 negotiated vendor and supplier discounts and information, product technology, and other
17 confidential and proprietary customer information for the benefit of Defendants.

18 7.3 MiTek has engaged in this conduct in an attempt to purchase Earthbound after
19 failed merger negotiations after obtaining trade secret and confidential, business information under
20 a NDA. MiTek is attempting to monopolize or combine or conspire with another person or persons
21 to monopolize commerce in earthquake structural and engineering solutions.

22 7.4 As a direct consequence of MiTek's conduct, Plaintiffs have suffered damages in
23 an amount to be proven at trial.

1 9.2 Defendants have accepted, retained, and/or used the benefits received and taken
2 from Plaintiffs under circumstances that make it inequitable for Defendants to retain the benefits
3 thereof.

4 9.3 Defendants should be required to hold all proceeds of their wrongful conduct in
5 trust for the benefit of Plaintiffs.

6 **X. SEVENTH CAUSE OF ACTION**

7 **Tortious Interference**

8 10.1 Plaintiffs reallege and incorporate by reference the foregoing paragraphs of the
9 Complaint as though fully set forth herein.

10 10.2 Plaintiffs had valid contractual relationships and/or business expectancies with
11 their clients, prospects, vendors, employees and suppliers. Plaintiffs have long-term client
12 relationships that have been maintained and developed over a substantial period of time. Plaintiffs
13 had financially supported Keyse, Miller and Birdwell to develop and maintain such relationships
14 on behalf of ISS.

15 10.3 Defendants knew of Plaintiffs' contractual relationships and/or business
16 expectancies with their clients, prospects, vendors and suppliers. Defendants are now in
17 possession of ISS's pending bid project list and customer list. Because of MiTek's knowledge
18 developed under NDAs with Earthbound, MiTek focused on Keyse, Miller, and Birdwell to
19 interfere with Plaintiffs' contractual relationships and/or business expectancies with their clients,
20 prospects, vendors and suppliers.

21 10.4 Defendants intentionally interfered with Plaintiffs' contractual relationships and/or
22 business expectancies with their clients, prospects, vendors and suppliers. These acts were
23 undertaken through improper means, including misappropriation and use of Plaintiffs' trade
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1 secrets and other confidential information, and for the improper purpose of harming Plaintiffs and
2 thereby benefitting Defendants.

3 10.5 MiTek intentionally interfered with Plaintiffs' contractual relationships and/or
4 business expectancies with Keyse, Miller, and Birdwell. These acts were undertaken through
5 improper means, including misappropriation and use of Plaintiffs' trade secrets and other
6 confidential information, which was obtained in part under the terms of a NDA, and for the
7 improper purpose of harming Plaintiffs and thereby benefitting MiTek.

8 10.6 As a direct consequence of Defendants' tortious interference, Plaintiffs have
9 suffered damages in an amount to be proven at trial.

10 **XI. EIGHTH CAUSE OF ACTION**

11 **Breach of Fiduciary Duty and Duty of Loyalty**

12 11.1 Plaintiffs reallege and incorporate by reference the foregoing paragraphs of the
13 Complaint as though fully set forth herein.

14 11.2 During their employment with ISS, Keyse, Miller, and Birdwell owed fiduciary
15 duties to ISS and/or Earthbound. Keyse, Miller, and Birdwell owed a common law duty of loyalty,
16 good faith, and fair dealing to ISS and/or Earthbound.

17 11.3 During their employment with ISS, Keyse, Miller, and Birdwell breached these
18 duties by using, sharing, downloading, transferring, deleting, and emailing to themselves
19 Plaintiffs' trade secrets and other confidential information, in order to further their own interests
20 and those of MiTek, in direct conflict with Plaintiffs' interests. They also breached these duties
21 by deleting Plaintiffs' trade secrets and confidential information from Plaintiffs' servers and their
22 telephones after providing notice of their resignation.

