

Kevin H. Marino
John A. Boyle
MARINO, TORTORELLA & BOYLE, P.C.
437 Southern Boulevard
Chatham, NJ 07928-1488
(973) 824-9300

OF COUNSEL:
Nicholas Groombridge*
**PAUL, WEISS, RIFKIND, WHARTON
& GARRISON LLP**
1285 Avenue of the Americas
New York, NY 10019-6064
(212) 373-3212
J. Steven Baughman*
Megan F. Raymond*
2001 K Street, NW
Washington, DC 20006-1047
(202) 223-7300

*Attorneys for Plaintiffs
AC Holdco, Inc. and Achieve3000, Inc.*

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

**AC HOLDCO, INC. and ACHIEVE3000,
INC.,**

Plaintiffs,

vs.

**BEABLE EDUCATION, INC., SAKI
DODELSON, and JOHN DOES 1-35,**

Defendants.

Civil Action No. _____

**COMPLAINT AND
DEMAND FOR TRIAL BY JURY**

**REDACTED PORTIONS OF THIS
DOCUMENT SUBJECT TO MOTION TO
SEAL PURSUANT TO L. CIV. R. 5.3(c)**

Plaintiffs, AC Holdco, Inc. (“AC Holdco”) and Achieve3000, Inc. (“Achieve3000”) (collectively, the “Company” or “Plaintiffs”), through their undersigned attorneys, by way of Complaint against Defendants, Beable Education, Inc. (“Beable”), Saki Dodelson (“Dodelson”), and John Does 1 through 35 (collectively, “Defendants”), hereby allege as follows:

* *Pro hac vice* applications to be submitted.

SUMMARY OF THE ACTION

1. This is an action for patent infringement under the patent laws of the United States, 35 U.S.C. § 1 *et seq.*, violation of other federal and state statutes, and breach of various contractual and other common-law duties. It is brought to recover compensatory and punitive damages and to secure permanent injunctive relief and the rescission of [REDACTED] [REDACTED], all based on (a) Beable's infringement of the Company's patent; (b) Defendants' theft of the Company's confidential and proprietary information; (c) Defendants' improper solicitation of the Company's employees and customers; and (d) Defendants' fraudulent inducement of [REDACTED].

2. Achieve3000, which is now the operating subsidiary of AC Holdco, is a nationally recognized leader in the online learning industry, providing patented technology-based products and services that differentiate and tailor educational instruction to students' individual skill levels. Based on its development and patenting of a proprietary software engine (the "Achieve3000 Software Engine") that facilitates an innovative differentiated learning system, the Company initially focused on and continues to specialize in literacy education, and today provides a broader suite of offerings across different educational content areas, including iCivics, social studies and science (including a full middle-school science curriculum). The Company also focuses on increasing students' financial literacy and career literacy, through a career center.

3. Defendant Dodelson co-founded Achieve3000 in 2001 with her sister-in-law, Dr. Susan Gertler ("Gertler") and, in her capacity as CEO, built Achieve3000 into a successful business. In March 2015, AC Holdco acquired all of Achieve3000's outstanding common stock pursuant to an Agreement and Plan of Merger (the "Acquisition") for approximately [REDACTED]. Dodelson personally received, directly and through trusts she controls, nearly [REDACTED] of the

stock purchase price ([REDACTED] of which was reinvested into the Company), as well as a substantial amount of options in AC Holdco.

4. After the Acquisition, AC Holdco retained Dodelson as CEO of the Company, but in 2017 she started to become discontented with her lack of control over the Company's strategic direction and chafed at having to answer to the Company's board of directors (the "Board") as the Company's revenue growth slowed. Dissatisfied that she was no longer able to dictate how the Company would be run, Dodelson resigned as CEO on April 18, 2018.

5. Four months later, on August 31, 2018, Dodelson filed an action against AC Holdco and certain of its Board members in New Jersey state court (the "New Jersey Litigation") alleging, *inter alia*, that AC Holdco had improperly withheld stock options and severance compensation to which she was entitled and that its Chairman had defamed her. On October 9, 2018, AC Holdco asserted counterclaims against Dodelson, Shira Gross and Invest in Literacy, LLC ("Invest in Literacy"), a company she founded shortly after resigning from AC Holdco. Those counterclaims alleged, *inter alia*, that Dodelson had breached her employment agreement and her fiduciary duties by misappropriating Company assets, absconding with a wealth of AC Holdco's confidential and proprietary information, and founding a new company to compete with Achieve3000 during her contractual non-compete period. Dodelson then filed a separate action in the Delaware Court of Chancery (the "Delaware Action") for advancement of her legal fees and indemnification in the New Jersey Litigation.

6. In court filings and discovery in the New Jersey Litigation, Dodelson repeatedly represented that she was not using AC Holdco's proprietary information or developing a business to compete with Achieve3000. For example, in a letter filed with the court on February 12, 2020 Dodelson expressly represented that her new company—then known as Mission With A Margin,

Inc. (“MWM”)—was not competing with Achieve3000, had no finished products that would compete with Achieve3000, and had not even begun developing products, much less products that would compete with Achieve3000.

7. [REDACTED], in reliance on these representations, AC Holdco entered into [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

8. Shortly after [REDACTED], Dodelson changed MWM’s name to Beable. Three months later, on or about May 28, 2020, Dodelson took the Beable website live and issued a press release announcing the launch of its new and fully formed differentiated literacy learning system. Beable’s May 28, 2020 press release and website—both of which repeatedly referenced¹ Achieve3000 and Dodelson’s connection to it—reveal that Beable, like Achieve3000, provides an online “literacy acceleration” program that employs initial assessments of students’ interests and abilities, differentiated instruction, personalized learning, and nonfiction-reading content for a broad range of grade levels. As explained below, that product clearly infringes Achieve3000’s patent and competes with Achieve3000’s core product.

9. At or about the time of Beable’s public launch, numerous former Achieve3000 employees changed their LinkedIn profiles to indicate that they were now working for Beable.

¹ After the Company sent a cease-and-desist letter to Dodelson’s former counsel, Beable removed all references to Achieve3000 from its website (except for those in external documents and pages linked to the website).

Many of those employees, it turns out, had been working at Beable for months; some had been with Beable for nearly a year. Indeed, as the Company recently learned, shortly after incorporating MWM in January 2019, Dodelson began to methodically entice Achieve3000 employees—totaling, at present, more than two dozen individuals—to leave the Company and covertly join her new venture, often in direct violation of contractual non-compete, non-solicitation and confidentiality obligations they owed the Company. On information and belief, these former employees, acting with Dodelson’s encouragement and approval, stole Achieve3000’s intellectual property and proprietary information, and transferred it to Beable.

10. Further, the Company has recently learned that Dodelson and Beable are soliciting Achieve3000’s customers, encouraging them to sever ties with Achieve3000 and enter into contracts with Beable. In fact, Dodelson is now participating with a recent, now former, Achieve3000 client in webinars broadcast nationwide to thousands of viewers in which she and the former Achieve3000 client emphasize her role in founding and running Achieve3000 and tout the similarities between Beable’s product and Achieve3000’s while assuring her audience that Beable’s product is far superior and now in use in the school district (in place of Achieve3000).

11. Dodelson and Beable are infringing the Company’s patent and unfairly competing with the Company through the unauthorized use of its proprietary intellectual property and the poaching of its employees and customers. Dodelson and Beable have indisputably been secretly developing their competing business, with the help of numerous former Achieve3000 employees, since early 2019, or possibly earlier. It has thus become clear that Dodelson fraudulently induced the Company to [REDACTED] by concealing, and indeed lying to the Company and the court about, her plan to infringe the Company’s patent, misappropriate and

exploit its proprietary intellectual property, and unfairly compete with it through the unlawful solicitation of its employees and customers.

12. AC Holdco entered into [REDACTED] in detrimental reliance on Dodelson's representations—including those made on February 12, 2020—that Beable (a) was not competing with Achieve3000; (b) had no customers or products; and (c) had not begun to develop any products, much less products that would compete with Achieve3000. AC Holdco also relied on Dodelson's numerous prior representations throughout the New Jersey Litigation, often under oath, in which she denied using the Company's proprietary information or attempting to develop products to compete with it. As is now clear, those representations were knowingly false when made, and were specifically designed to conceal Dodelson's misconduct to enable her to launch Beable without interference and [REDACTED].

13. With this action, the Company seeks compensatory and punitive damages to redress the harm caused by Beable's patent infringement, and Defendants' theft and misuse of proprietary information, improper solicitation of Achieve3000's employees and customers, and fraudulent inducement of [REDACTED]; and injunctive relief to prevent future harm that would otherwise flow from Defendants' misconduct.

THE PARTIES

14. Plaintiff AC Holdco, Inc. is a Delaware corporation with its principal place of business at 331 Newman Springs Road, Suite 304, Red Bank, New Jersey 07701. On March 18, 2015, AC Holdco acquired all of the outstanding capital stock of Achieve3000 Holdings, Inc., which continues to be a subsidiary of AC Holdco.

15. Plaintiff Achieve3000, Inc. is a Delaware corporation with its principal place of business at 331 Newman Springs Road, Suite 304, Red Bank, New Jersey 07701. At all times relevant to this Complaint, Achieve3000 was in the business of offering differentiated learning products and services to students and educational institutions.

16. Defendant Beable Education, Inc. is a Delaware corporation with its principal place of business at 1776 Avenue of the States, Suite 203, Lakewood, New Jersey 08701. Beable was known as MWM until March 13, 2020, when it formally changed its name. At all times relevant to this Complaint, Beable was in the business of developing differentiated learning products and services that compete with Plaintiffs' business.

17. Defendant Saki Dodelson is a New Jersey resident. Dodelson was a co-founder of Achieve3000 and, until April 18, 2018, served as CEO of AC Holdco.

18. Defendants John Does 1-35, fictitious names used to designate unknown parties, are current and former owners, officers, employees, and/or agents of Achieve3000 and/or AC Holdco who, after their departure from the Company, joined Beable as officers, employees, members and/or agents thereof and, on information and belief, directed or participated in Beable's unlawful activities as detailed in this Complaint. In many instances, the conduct of John Does 1-35 (the "John Doe Defendants") violated contractual non-compete, non-solicitation and/or confidentiality obligations owed by those employees to the Company. Because many of the John Doe Defendants misrepresented or concealed the identity of their new employer when leaving Achieve3000 (and Dodelson was misrepresenting and concealing the nature of her new business endeavor), the Company likely lost valuable evidence of those individuals' wrongdoing. Plaintiffs are not yet certain which of Achieve3000's former employees engaged in the above-described

misconduct. After conducting further investigation and discovery, Plaintiffs will seek leave of Court to amend this Complaint to state the true names and capacities of those defendants.

JURISDICTION AND VENUE

19. This Court has subject matter jurisdiction over all claims at issue in this action pursuant to 28 U.S.C. §§ 1331, 1338, and 1367(a), and 35 U.S.C. § 271 *et seq.* The Court has original jurisdiction over Plaintiffs' patent infringement, Lanham Act, and Defend Trade Secrets Act claims. The Court has supplemental jurisdiction over Plaintiffs' claims premised on Defendants' violations of New Jersey state law because those violations and Defendants' federal violations are so interrelated as to form part of the same case or controversy.

20. This Court has personal jurisdiction over Defendants because (a) Beable has committed acts of patent infringement and Defendants have committed other statutory and common-law violations in this District, and do continuous and systematic business here, including by soliciting business from and providing services to customers in this District;² (b) Beable has a regular and established place of business in this District, including its office in Lakewood,³ and directly and through agents—many of whom reside and work in this District—regularly does, solicits and transacts business in this District, including through its website at www.beable.com;⁴ and (c) Dodelson resides and works in this District.

² See, e.g., <https://www.roi-nj.com/2020/06/10/education/ed-tech-expert-dodelson-set-to-launch-latest-platform-beable/> (“So far, the company has signed agreements to work with two school districts in the country — including East Orange — and company officials said they are closing to reaching agreements with a dozen others, including at least four more in New Jersey.”).

³ See, e.g., <https://corp-staging.beable.com/contact/>; <https://www.prweb.com/releases/2014/05/prweb11850971.htm>.

⁴ See, e.g., <https://beable.com/terms-and-conditions/> (“The owner of the Website ... is based in the State of New Jersey”; defining “Company” as “Beable Education, Inc.”).

21. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b)(1)-(2) and 1400(b) because one or more of the Defendants resides in this District, because the events giving rise to the claims asserted herein occurred in this District, and because Beable has committed acts of infringement in this District and Defendants have committed other statutory and common-law violations in this District and have a regular and established place of business in this District. In addition, [REDACTED]

22. In particular, on information and belief, Beable has a regular and established place of business in this District located in Lakewood, New Jersey.⁵ On further information and belief, Beable employs engineers, salespersons, and/or other personnel within this District, including at its office in Lakewood, and has solicited business from and agreed to provide services to customers in this District.⁶

23. Beable has infringed and continues to infringe one or more claims of U.S. Patent No. 9,652,993 (the “’993 Patent” or “Patent-in-Suit”) at least by making, using, selling, and/or offering to sell what Beable has referred to as the “Beable Life-Ready Literacy System powered by the breakthrough BeableIQ Engine” (the “Beable Life-Ready Literacy System” or “System”) in the United States, including in this District.

24. Achieve3000, Inc. is the legal owner by assignment of the Patent-in-Suit, which was duly and legally issued by the United States Patent and Trademark Office (“USPTO”). Plaintiffs seek injunctive relief and monetary damages.

⁵ See, e.g., <https://beable.com/terms-and-conditions/> (“The owner of the Website ... is based in the State of New Jersey”).

⁶ See n.2, *supra*.

FACTUAL ALLEGATIONS

A. AC Holdco And Achieve3000's Business Success Relies Heavily On Intellectual Property, Including The Patent-In-Suit, And Trade Secrets.

25. AC Holdco, through its operating subsidiary Achieve3000, is an industry leader in providing differentiated literacy instruction, products, and services to schools and students nationwide. Upon developing a proprietary software engine that provides students with reading content tailored to their specific comprehension levels, Achieve3000 created and continues to develop an impressive library of literacy and other tools suited for an extensive range of educational contexts.

26. Achieve3000's core product—Achieve3000 Literacy—is a supplemental online literacy program that provides nonfiction reading content to students in grades pre-K through grade 12 and focuses on building phonemic awareness, phonics, fluency, reading comprehension, vocabulary, and writing skills. As explained on the company's website, Achieve3000 Literacy involves (a) “[d]ifferentiated instruction,” which “is the process of adapting instruction to meet the needs of each individual student,” and “starts with getting to know [the] students’ interests and abilities;” (b) “[a]ccelerated literacy growth,” which “occurs when a student’s actual growth exceeds what is expected based on their current reading level and the length of time they engage in instruction;” and (c) “a systematic and flexible approach to measuring growth, forecasting performance, targeting instruction, and creating a culture of literacy that celebrates and supports every student.” In short, the program helps students advance their reading skills by providing differentiated online instruction; teachers can use the program with an entire class of students or with individual students, and the assignments are tailored to each student’s individual reading ability level.

27. The Company's success largely stems from its development of seamlessly integrated solutions for literacy, social studies and science education of pre-K through grade 12 students. Specifically, the Company's software-based platform (a) provides embedded and benchmark assessments to provide precise information regarding each student's reading level; (b) utilizes "Lexile Levels"—a system for measuring reading comprehension levels—to provide reading content tailored to each student's reading level; (c) combines adjusted instruction and support tools with adaptive assessments to provide students with customized support; and (d) leverages predictive analytics to forecast students' readiness for exams and other educational goals, along with other data-driven strategies to accelerate, measure, and report students' progress.

28. As a result, Achieve3000's success and value derive substantially from its intellectual property and trade secrets, including, among other things: (a) the Patent-In-Suit; (b) the computer source code to the proprietary Achieve3000 Software Engine; (c) employees' knowledge pertaining to the Achieve3000 Software Engine's and related software's development, design, and use; (d) data relating to the software and the business's operations, customers, and strategies; (e) business plans, customer and supplier lists, and methodologies; and (f) other information regarding the specialized differentiated-learning industry and Achieve3000's specific business.

29. U.S. Patent No. 9,652,993 is entitled "Method and Apparatus For Providing Differentiated Content Based On Skill Level" and was issued on May 16, 2017, while Dodelson was CEO of Achieve3000. A true and correct copy of the '993 Patent is attached as Exhibit A.

30. The '993 Patent was filed on February 13, 2014, as U.S. Patent Application No. 14/180,179 and claims priority to, *inter alia*, U.S. Patent Application No. 11/920,087, filed August 31, 2006.

31. Achieve3000, Inc. is the owner of all rights, title, and interest in and to the '993 Patent, with the full and exclusive right to bring suit to enforce the '993 Patent, including the right to recover for past infringement.

32. The '993 Patent is valid and enforceable under United States Patent Laws.

B. Dodelson Received [REDACTED] From The Sale Of Achieve3000 And Was Retained As CEO Subject To An Employment Agreement Containing Non-Compete, Non-Solicitation and Confidentiality Restrictions.

33. On March 18, 2015, AC Holdco acquired Achieve3000—thereby acquiring all of Achieve3000's intellectual property and trade secrets—for approximately [REDACTED].

34. Dodelson benefited enormously from the sale of Achieve3000 to AC Holdco, which retained her as CEO. In the Acquisition, she received (a) nearly [REDACTED] ([REDACTED] of which was reinvested in the Company); (b) substantial management stock options in AC Holdco; and (c) as part of her Employment Agreement (defined below), a base salary of \$385,875 (subject to annual 5% increases), benefits and bonus payments, and stock options under AC Holdco's stock incentive plan. (Ex. B, Employment Agreement §§ 4, 5, 7.)

35. When acquiring Achieve3000, AC Holdco took every precaution to protect its investment, particularly its intellectual property and trade secrets.

36. Among other precautionary measures, AC Holdco prioritized negotiating an arrangement with Achieve3000's co-founder and then-CEO Saki Dodelson, who possessed intimate knowledge of Achieve3000's intellectual property and most sensitive information. Accordingly, as part of AC Holdco's acquisition agreement, AC Holdco and Dodelson entered into an Amended and Restated Employment Agreement, dated March 18, 2015 (the "Employment Agreement"), which named Dodelson as CEO of AC Holdco. (Ex. B, Employment Agreement.)

37. Among other things, the Employment Agreement contained detailed non-competition and non-solicitation provisions and other provisions designed to prohibit Dodelson

from taking or using the Company's proprietary information following the termination of her employment. (Ex. B, Employment Agreement § 8.)

38. For example, the Employment Agreement provided that Dodelson would not, for one year following her termination, "directly or indirectly engage in or become interested [in]," including as an owner, investor or employee, any business or enterprise that:

develops, manufactures, markets, licenses, sells or provides any product or service that directly competes with any product or service developed, manufactured, marketed, licensed, sold or provided, or planned to be developed, manufactured, marketed, licensed, sold or provided by the Company or any of its subsidiaries while the Executive was employed by the Company or any of its subsidiaries.

(Ex. B, Employment Agreement § 8(a).)

39. In addition, Dodelson agreed that for one year following the termination of her employment, she would not, directly or indirectly: (a) solicit or hire (or permit any organization controlled by her to solicit or hire) any of AC Holdco's or Achieve3000's employees; or (b) canvass or solicit, directly or indirectly, any of AC Holdco's or Achieve3000's customers or customer prospects. (Ex. B, Employment Agreement § 8(b).)

40. In Section 9.1 of the Employment Agreement, Dodelson agreed to protect and not to disclose to anyone or use for any purpose "all information, whether or not in writing, of a private, secret or confidential nature concerning the Company's business, business relationships or financial affairs (collectively, 'Proprietary Information')." ⁷ Dodelson expressly agreed that all such Proprietary Information "is and will be the exclusive property of the Company." (Ex. B, Employment Agreement § 9.1(a).)

⁷ Throughout this Complaint, the term "Proprietary Information" shall have the meaning ascribed to it in Section 9.1 of the Employment Agreement.

41. By and through Section 9.2 of the Employment Agreement, Dodelson assigned to AC Holdco all of her right, title and interest in and to “all inventions, improvements, discoveries, methods, developments, software, and works of authorship, whether patentable or not, which [were] created, made, conceived or reduced to practice by her or under her direction or jointly with others during her employment by [AC Holdco] or any of its subsidiaries.” (Ex. B, Employment Agreement § 9.2.) Dodelson also agreed that she would return and not retain any Proprietary Information, in whatever form, that she might have received upon the termination of her employment. (*See* Ex. B, Employment Agreement §§ 9.1 & 9.2.)

42. AC Holdco would not have proceeded with the Acquisition of Achieve3000 and retained Dodelson as CEO if she had refused the terms of the Employment Agreement. At the time, Plaintiffs believed that their arrangements with Dodelson not only protected the Company, but—given her retention as CEO and significant compensation from and after the Acquisition—also fostered sufficient good will with Dodelson and would ensure her good-faith compliance with her contractual obligations to Plaintiffs. As is now clear, Plaintiffs were mistaken.

C. After The Acquisition, Dodelson Became Discontented And Resigned From AC Holdco In April 2018, At Which Time She Misappropriated Significant Proprietary Information Belonging To The Company.

43. Following AC Holdco’s acquisition of Achieve3000, Dodelson became frustrated that she could no longer solely control the direction of the Company. Between March 2015 and April 2018, Dodelson consistently disagreed with the Board regarding strategic decisions and grew increasingly embittered and unable to cooperate effectively with other members of the Company’s management team.

44. On April 18, 2018, Dodelson resigned her position as CEO. At the time of her resignation, the Company was confident that the numerous precautionary measures it took during the Acquisition would protect its Proprietary Information from disclosure and misuse. As it

happened, Dodelson disregarded her obligations under the Employment Agreement, including the numerous provisions prohibiting her from misappropriating the Company's Proprietary Information.

45. At or about the time Dodelson resigned, she hired an outside vendor to download and store on a personal computer Proprietary Information belonging to the Company. As Dodelson later admitted in response to claims filed against her by AC Holdco in the New Jersey Litigation, she retained a personal computer containing a copy of her Achieve3000 email account, archived .pst files containing archived work emails, and AC Holdco documents that were held in cloud-based storage during the course of her employment with the Company.

46. On the same day she resigned, Dodelson emailed to her personal Gmail account approximately 180 Company emails. Those emails contained highly sensitive information, including AC Holdco's three-year financial plan, product development plans and budgets, a list of all employees and their salaries, and an analysis of all of AC Holdco's customers and their spending patterns.

47. Dodelson knew that her conduct was a violation of her Employment Agreement and otherwise improper. Accordingly, she tried to conceal her misappropriation of Company property by employing an outside vendor to delete evidence of her improper transfer of Company information to her personal Gmail account—both from her "Sent Items" and from her "Deleted Items" folders. At the time, unbeknownst to Plaintiffs, Dodelson had also removed and stolen all of her Company emails and documents for the purpose of developing a competing product and business. Plaintiffs did not discover Dodelson's misconduct until they restored and reviewed those emails from backup sources.

48. On April 25, 2018, just one week after she resigned, Dodelson established a new

venture, Invest in Literacy. Dodelson publicly touted that, like Achieve3000, Invest in Literacy would be focused on delivering content and technology to teach literacy to children. On information and belief, Dodelson established Invest in Literacy to compete unfairly with Achieve3000.

49. On many occasions following her resignation, Dodelson emailed Proprietary Information to her own email account at Invest in Literacy and to the email account of her assistant at Invest in Literacy, Michal Dodelson.

50. In addition, in direct violation of her non-solicitation covenants in Section 8(b) of the Employment Agreement, Dodelson solicited AC Holdco's employees to leave AC Holdco and join Invest in Literacy, including Achieve3000 co-founder Susan Gertler and Rivki Locker, both of whom resigned from the Company after Dodelson's resignation. Notably, Gertler made approximately [REDACTED] and Locker made approximately [REDACTED] from the sale of Achieve3000 to AC Holdco.

D. Dodelson Sued AC Holdco Seeking Even More Compensation While Secretly Misappropriating Plaintiffs' Proprietary Information And Soliciting Its Employees.

51. On August 31, 2018, Dodelson filed the New Jersey Litigation against AC Holdco and several of its Board members, alleging, among other things, that AC Holdco had improperly withheld severance payments and stock options to which she was entitled and that AC Holdco's Chairman had defamed her. *See Dodelson v. AC Holdco Inc. d/b/a Achieve3000, et al.*, OCN-L-2139-18 (Law Div. Aug. 31, 2018). Dodelson filed that Action in the Superior Court of New Jersey, Law Division, Ocean County (the "Law Division").

52. On October 9, 2018, AC Holdco asserted counterclaims against Dodelson and Invest in Literacy in the New Jersey Litigation, alleging, among other things, that Dodelson breached her Employment Agreement and her fiduciary duties to the Company by, among other

things, misappropriating Company assets, misappropriating AC Holdco's Proprietary Information, and establishing a competing business during her contractual non-compete period. On February 6, 2019, in response to Dodelson's amended complaint in the New Jersey Litigation, AC Holdco amended its counterclaims, adding claims against Dodelson's daughter Shira Gross for misappropriating Company assets.

53. Throughout the course of the New Jersey Litigation, Dodelson made numerous representations regarding the Proprietary Information she stole from the Company and the purportedly non-competitive nature of her new business venture. Plaintiffs have since learned that Dodelson's representations were intentionally false and thus that she fraudulently induced the Company to [REDACTED].

54. For example, on October 23, 2018, shortly after the Law Division issued an order to show cause in response to AC Holdco's request for expedited discovery and a preliminary injunction hearing, Dodelson's counsel filed a letter with the court stating, in pertinent part:

Ms. Dodelson never intended to, and never did, use any of the material attached to the injunction application for any competitive purpose, and indeed is not competing with [the Company] through . . . Invest in Literacy, LLC, or otherwise, in any violation of the terms of her 1-year non-competition agreement (which remains in place for only approximately six (6) more months in any event).

(Ex. C, October 23, 2018 Letter (emphasis added).)

55. Then, on November 1, 2018, Dodelson filed her opposition to AC Holdco's motion for a preliminary injunction together with a sworn declaration stating, under oath and penalty of perjury:

In an apparent effort to distract the Court from my claims, [AC Holdco] filed a preliminary injunction application on October 9, 2018, jumping to the conclusion that I "stole" confidential or proprietary information for the purpose of unlawfully competing with Achieve[3000]. *I categorically deny each and every one of*

these allegations, most of which amount to little more than speculation, and submit this Declaration to set the record straight.

....

Following my resignation from [the Company], I formed Invest in Literacy LLC (“Invest”), a New Jersey limited liability company. I formed Invest in Literacy to just keep myself “on the map” and explore certain charitable endeavors, for no compensation, and *in no way competitive with [Achieve3000]*.

Contrary to the claims made by [AC Holdco] in the Application, Invest has no employees, assets, revenue, bank account, tax ID number, or customers. *Invest has no products, and is not developing any products or services, including any product or services that would compete with [Achieve3000]*.

Indeed, *I have not pursued any commercial ventures* and have spent a large share of my time caring for my mother, my mother-in-law, and traveling and playing with my grandchildren. I have not solicited clients, customers, or employees for any new business or commercial venture, and *certainly not in any way competitive with [Achieve3000]*.

(Ex. D, 11/1/2018 Dodelson Decl. ¶¶ 1, 32–34 (emphasis added).)

56. Based in part on Dodelson’s representations in the October 23, 2018 letter and November 1, 2018 Declaration, the Company entered into a consent order with Dodelson and Invest in Literacy, withdrawing the Company’s request for a preliminary injunction (the “Consent Order”). The Consent Order provided that:

[Dodelson and Invest in Literacy] *shall not use or disclose to anyone any Proprietary Information* (as that term is defined in Section 9.1 of the Employment Agreement . . .), *including, but not limited to, what AC Holdco contends is Proprietary Information:* (a) that Dodelson emailed to her own personal email accounts or the email accounts of Invest in Literacy, (b) reflecting the contents of Dodelson’s AC Holdco email accounts and that is located on any computers, or other electronic devices . . . and (c) any other documents containing any of AC Holdco’s Proprietary Information

....

Within thirty (30) days, Dodelson further agrees that *she will return to AC Holdco, and provide a certification that she has not kept any*

copies of, any and all Proprietary Information detailed in paragraph 1 hereinabove, except that a copy of such Proprietary Information detailed in paragraph 1 hereinabove shall be held by her attorneys of record in this matter only for use in this litigation Within thirty (30) days of the conclusion of this litigation, including through the conclusion of any and all appeals, ***Dodelson shall cause counsel of record . . . to return all copies of the Proprietary Information*** detailed in paragraph 1 hereinabove to counsel of record for AC Holdco.

(Ex. E, Nov. 13, 2018 Consent Order, ¶¶ 1-3 (emphasis added).)

57. Plaintiffs have since discovered that those representations to the Court and to Plaintiffs were knowingly false. Specifically, while the New Jersey Litigation was proceeding throughout 2019, Dodelson was actively using the Company's Proprietary Information and soliciting its employees in order to build a company that would compete unfairly with Achieve3000, steal its business, and undermine the economic value of the Acquisition.

58. According to her LinkedIn profile, Dodelson was the CEO of Invest in Literacy from April 2018 through June 2019, at which time she became CEO of her present entity, then known as MWM and now known as Beable. Dodelson's public representation that she did not found that company until June 2019—which would have been after the April 18, 2019 expiration of her non-competition period with AC Holdco—was patently false, and a clear attempt to conceal the violation of her contractual and common-law duties to Plaintiffs. In truth, Dodelson incorporated MWM on January 16, 2019 and, on information and belief, immediately began efforts to entice Achieve3000 executives and employees to join her efforts to build a directly competing business, using the Company's own patented intellectual property and Proprietary Information, in an attempt to drive Achieve3000 out of business.

59. By April 14, 2019, still within the one-year non-compete period following her resignation on April 18, 2018, and while she was purportedly focused on charity work, Dodelson began listing two former Achieve3000 executives as employees of MWM. In fact, as of April

2019, MWM already had five employees, including Susan Gertler, as Chief Academic Officer; Rivki Locker, as Chief Product Officer; and Michelle McConnell, as Executive Editor. Gertler, Locker and McConnell are all former employees of Plaintiffs. Gertler (who co-founded Achieve3000 with Dodelson) and Locker held the same titles with MWM as they had at Achieve3000 less than a year prior. McConnell also now holds a similar title at Beable—Vice President of Content Development & Executive Editor—to the one she held at Achieve3000.

60. Despite repeatedly representing in court filings that she was not engaged in efforts to compete with AC Holdco, Dodelson continued throughout the New Jersey Litigation to develop a product designed to compete unfairly with Achieve3000 and to steal the Company's employees to assist her in that endeavor. On information and belief, Beable's efforts to solicit Achieve3000 employees involved direct communications with those individuals.

61. Within months, Dodelson's efforts to steal Achieve3000 employees began to pay dividends. After Dodelson enticed Gertler, Locker and McConnell to join her in April 2019, the following individuals all left Achieve3000 and immediately went to work for Beable in May 2019:

- Fred McCann left his position as Director of Development for Achieve3000 to work for Beable as a Senior Developer.
- Yael Goldberg left her position as a Senior Database Administrator at Achieve3000 to become a Senior Software Engineer at Beable.
- Yitty Landsman left her position as Development Manager for Achieve3000 to work for Beable as a Senior Software Engineer.
- Leah Kosman left her position as Corporate Communications Coordinator at Achieve3000 to work for Beable as Director of Operations.
- Sara Moskowitz left her position as Vice President, Corporate Communications at Achieve3000 to work for Beable as Vice President of Customer Experience (Moskowitz left Achieve3000 on May 30, 2019 and started at Beable in June).
- Theron Davis left his position as Senior Product Manager at Achieve3000 to work for Beable as Head of Platform. (Davis left Achieve3000 on May 24, 2019 and started at Beable in June).

62. The following month, June 2019, several more employees accepted positions at Beable and left Achieve3000, including (i) James Walker, who became a Senior Software Engineer at Beable; (ii) Susan Dally, who became Vice President, Project Management at Beable; and (iii) Gitel Yoffe, who was Vice President, Technology at Achieve3000 and, on information and belief, now works in a similar role for Beable. In addition, Terese Sarah, who had been Vice President, Academic Content and Standards and left Achieve3000 in August 2018 and began working for Beable as Senior Director in June 2019, less than one year after she left Achieve3000.

63. In June 2019, Melissa Peh, who had been Senior PHP Developer, left Achieve3000 to work for Beable as a Software Engineer. In July 2019, Alma Torres, who had been Vice President of Spanish Product Development, left Achieve3000 and went to work in August 2019 for Beable as Head of Spanish Content Development. Also in August 2019, Jill Foley left her position at Achieve3000 as Vice President, Acceleration Design to take a position the next month with Beable as Head of Student Experience. Karen Sikola left Achieve3000, where she had been a Supervising Editor, and joined Beable in a similar position in September 2019. In October 2019, Rochel Moskowitz, who had been a Software Developer, joined Beable in a position with the same title. Also in October 2019, Charles Harvey, a former Senior Developer for Achieve3000, joined Beable as a Developer.

64. Heidi Bushur left Achieve3000, where she was a Regional Vice President of Sales, in October 2019 and went to work shortly thereafter for Beable in the same position. Salman Badr left his position at Achieve3000 as a Senior Software Developer in November 2019 to immediately work for Beable in the same role.

65. In December 2019, Esther Breslauer, who had been Senior Data Quality Engineer, left Achieve3000 and went to work for Beable in January 2020 as Quality Assurance Manager. In

early January 2020, Jennifer Hansen, who had been a Scrum Master and Project Manager, left Achieve3000 to work for Beable as Senior Scrum Master. Also, in January 2020, Frumet Rosner, who had been Data Quality Engineer, Team Lead, left Achieve3000 to work for Beable as Quality Assurance Team Lead. A former Regional Vice President, Implementation at Achieve3000, Michele Robinson, also joined Beable in January 2020 in, on information and belief, a comparable role. In February 2020, Nicole Violette, who had been a Software Developer, left to work for Beable as Senior Developer.

66. In February 2020, Michael Marcos, who had been Director of Engineering at Achieve3000, left to work for Beable as Senior Software Developer. More recently, in June 2020, Rachel McGorry, who had been Junior User Experience Researcher, left to work for Beable as a Product Manager. Also, in June 2020, John Clancy, who had been Customer Support Team Lead, joined Beable in a position with the same title.

67. To date, Defendants have poached approximately thirty Company employees (including the Company's original co-founder), many of whom were bound by confidentiality, non-competition, and/or non-solicitation agreements.

E. Plaintiffs Relied Upon And Were Fraudulently Induced By Defendants' Knowing Misrepresentations When Entering Into [REDACTED].

68. On February 12, 2020, while Dodelson was unlawfully misappropriating Plaintiffs' Proprietary Information and soliciting numerous Company employees in violation of the one-year non-compete clause in her Employment Agreement, AC Holdco served a non-party subpoena on MWM in the New Jersey Litigation.

69. In response to the subpoena, Dodelson and Beable's counsel filed a letter with the Law Division containing what the Company now knows were significant misrepresentations. In that letter, counsel represented that:

During the [one-year restricted period after Dodelson’s resignation from the Company], *MWM had no operations*. Furthermore, *to date, MWM currently has no products or customers* and the record demonstrates that *MWM is not [] currently a competitor of Achieve*. These facts have been confirmed in documents produced in this case, publicly available information, and the sworn testimony of witness[es] who have already been deposed. The record is clear: *although at some time in the future MWM may—as is its right—eventually develop products that are competitive with Achieve*, some ten (10) months after the expiration of the twelve (12)-month restrictive covenants period: (1) *MWM does not compete with Achieve (it literally has no product yet)*; (2) MWM has no customers; and (3) Ms. Dodelson violated no restrictions in forming MWM and hiring its initial employees. As such, there is no good faith basis for the Subpoena.

(Ex. F, 2/12/2020 Letter (emphasis added).)

70. The February 12 letter noted that these facts had been confirmed by, *inter alia*, “the sworn testimony of witness[es] who have already been deposed” that MWM was not developing products competitive with Achieve3000.

71. Plaintiffs have since learned that Dodelson’s representations were knowingly false when made, as Beable launched in late May 2020 a product that directly competes with and clearly infringes Plaintiffs’ patent and other intellectual property rights concerning the Achieve3000 Software Engine. Even with its improper use of AC Holdco’s Proprietary Information and intellectual property, Beable could not possibly have developed its product in the short period of time after its explicit representations to the Law Division on February 12, 2020. By that date and unbeknownst to the Company, Beable already employed nearly two dozen former Achieve3000 employees.

72. The Law Division never decided Dodelson’s motion to quash the Company’s subpoena on MWM because, on [REDACTED]

[REDACTED].

73. [REDACTED]

[REDACTED]

74. [REDACTED]

[REDACTED]

[REDACTED]

75. [REDACTED]

[REDACTED]

8

76. [REDACTED]

[REDACTED]

8

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

77. Section 9.1 of the Employment Agreement imposes strict prohibitions on Dodelson's use of the Company's "Proprietary Information," providing as follows:

(a) The Executive agrees that ***all information***, whether or not in writing, of a private, secret or confidential nature concerning the Company's business, business relationships or financial affairs (collectively, "Proprietary Information") is and will be the ***exclusive property of the Company***. By way of illustration, but not limitation, Proprietary Information may include ***inventions, products, processes, methods, techniques, formulas, compositions, compounds, projects, developments, plans, research data, clinical data, financial data, personnel data, computer programs, customer and supplier lists, and contacts at or knowledge of customers or prospective customers of the Company***. The Executive will ***not disclose any Proprietary Information to any person or entity*** other than employees of the Company ***or use the same for any purposes*** (other than in the performance of her duties as an employee of the Company) without written approval by the Board, either during or after her employment with the Company or any of its subsidiaries, unless and until such Proprietary Information has become public knowledge without fault by the Executive.

(b) The Executive ***agrees that all files, letters, memoranda, reports, records, data, sketches, drawings, laboratory notebooks, program listings, or other written, photographic, or other tangible material containing Proprietary Information, whether created by the Executive or others, which comes into her custody or possession, will be and are the exclusive property of the Company to be used by the Executive only in the performance of her duties for the Company. All such materials or copies thereof and all tangible property of the Company in the custody or possession of the Executive will be delivered to the Company, upon the earlier of (i) a request by the Company or (ii) termination of her employment. After such delivery, the Executive will not retain any such materials or copies thereof or any such tangible property.***

(c) The Executive agrees that her obligation not to disclose or to use information and materials of the types set forth in Sections 9.1(a) and 9.1(b), and her obligation to return materials and tangible property, set forth in Section 9.1(b), also extends to such types of information, materials and tangible property of customers of the Company or suppliers to the Company or other third parties who may have disclosed or entrusted the same to the Company or to the Executive.

(Ex. B, Employment Agreement § 9.1 (emphasis added.))

78. Section 9.2 of the Employment Agreement similarly imposes strict prohibitions and obligations on Dodelson with respect to the Company's intellectual property, providing as follows:

(a) The Executive will make full and prompt disclosure to the Company of all inventions, improvements, discoveries, methods, developments, software, and works of authorship, whether patentable or not, which are created, made, conceived or reduced to practice by her or under her direction or jointly with others during her employment by the Company or any of its subsidiaries, whether or not during normal working hours or on the premises of the Company (all of which are collectively referred to in this Agreement as "Developments").

(b) The Executive agrees to assign and does hereby assign to the Company (or any person or entity designated by the Company) all her right, title and interest in and to all Developments and all related patents, patent applications, copyrights and copyright applications. However, this Section 9.2(b) will not apply to Developments that do not relate to the business or research and development conducted or planned to be conducted by the Company at the time such Development is created, made, conceived or reduced to practice and that are made and conceived by the Executive not during normal working hours, not on the Company's premises and not using the Company's tools, devices, equipment or Proprietary Information. The Executive understands that, to the extent this Agreement is construed in accordance with the laws of any state that precludes a requirement in an employee agreement to assign certain classes of inventions made by an employee, this Section 9.2(b) will be interpreted not to apply to any invention which a court rules and/or the Company agrees falls within such classes. The Executive also hereby waives all claims to moral rights in any Developments.

(c) The Executive agrees to cooperate fully with the Company, both during and after her employment with the Company or any

of its subsidiaries, with respect to the procurement, maintenance and enforcement of copyrights, patents and other intellectual property rights (both in the United States and foreign countries) relating to Developments. The *Executive will sign all papers*, including, without limitation, copyright applications, patent applications, declarations, oaths, formal assignments, assignments of priority rights, and powers of attorney, which the *Company may deem necessary or desirable in order to protect its rights and interests in any Development*. The Executive further agrees that if the Company is unable, after reasonable effort, to secure the signature of the Executive on any such papers, *any executive officer of the Company will be entitled to execute any such papers as the agent and the attorney-in-fact of the Executive*, and the Executive hereby *irrevocably designates and appoints each executive officer of the Company as her agent and attorney-in-fact to execute any such papers on her behalf*, and to take any and all actions as the Company may deem necessary or desirable in order *to protect its rights and interests in any Development*, under the conditions described in this sentence.

(Ex. B, Employment Agreement § 9.1 (emphasis added).)

79. Paragraphs 1 and 3 of the November 13, 2018 Consent Order also enjoin Dodelson from using and/or disclosing the Company's Proprietary Information:

1. Counterclaim Defendants *shall not use or disclose to anyone any Proprietary Information* (as that term is defined in Section 9.1 of the Employment Agreement annexed as Exhibit I to AC Holdco's Memorandum of Law in Support of the Preliminary Injunction Motion), *including, but not limited to, what AC Holdco contends is Proprietary Information*: (a) that Dodelson emailed to her own personal email accounts or the email accounts of Invest in Literacy, (b) reflecting the contents of Dodelson's AC Holdco email account and that is located on any computers, other electronic devices or is otherwise in Counterclaim Defendants' possession, custody, or control, and (c) any other documents containing any of AC Holdco's Proprietary Information in Counterclaim Defendants' possession, custody, or control.

3. Within thirty (30) days of the conclusion of this litigation, including through the conclusion of any and all appeals, Dodelson shall cause counsel of record for the Counterclaim Defendants *to return all copies of the Proprietary Information detailed in paragraph 1* hereinabove to counsel of record for AC Holdco.

(Ex. E, Consent Order (emphasis added).)

80. Finally, Paragraph 10 of the April 2, 2019 Stipulated Protective Order filed in the New Jersey Litigation provides:

10. Return or Certified Destruction of Confidential or Outside Counsel Eyes' Only Protected Information: *Within thirty (30) days after conclusion of this action*, including the conclusion of any and all appeals related thereto, or such other time as the Parties may agree in writing, counsel will, at their option, *return or destroy Confidential and Outside Counsel Eyes' Only Protected Information and all copies*, and will certify to the Designating Party, as appropriate, either that they are returning or that they have destroyed, all copies of Confidential and Outside Counsel Eyes' Only Protected Information. If counsel elects to destroy Confidential and Outside Counsel Eyes' Only Protected Information, they will consult with counsel for the Designating Party on the manner of destruction and obtain such Party's consent as to the method and means of destruction.

(Ex. H, Stipulated Protective Order ¶ 10 (emphasis added).)

81. Thus, Dodelson and Beable represented to AC Holdco and the Law Division just weeks before execution of [REDACTED] that they were not competing with Achieve3000, had no finished products that competed with Achieve3000, had not begun to develop any products at all (much less products that would compete with Achieve3000), and would return or destroy all confidential information in their possession following the New Jersey Litigation. Those representations were entirely consistent with others Dodelson had made throughout the New Jersey Litigation regarding the non-competitive nature of her business endeavors.⁹

82. As is now clear, those representations were knowingly false when made. AC Holdco relied on those misrepresentations when entering [REDACTED] [REDACTED] had Dodelson and Beable not made the material misrepresentations set forth above.

⁹ Further, Beable and Dodelson were concealing that, by mid-February 2020, nearly two dozen former Achieve3000 employees had joined MWM/Beable, a fact that would have strongly suggested that MWM/Beable was actively working to compete against Achieve3000.

F. Plaintiffs Discovered Defendants' Extensive Fraud And Breach Of [REDACTED], As Well As Defendants' Theft And Use Of The Company's Proprietary Information To Develop A Competing Product.

83. Undeterred by the New Jersey Litigation and [REDACTED], Defendants continued with their plan to create a direct competitor to Achieve3000 using Achieve3000's own employees and Proprietary Information. Just two weeks after [REDACTED], Dodelson renamed MWM as "Beable Education, Inc."

84. Then, on May 28, 2020, Beable issued a press release and posted information on its newly published website stating: "Dodelson Launches Beable, The First Life-Ready Literacy System for the Whole Child." (See <https://beable.com/about-us/about-newsroom/>; see also Ex. I, May 28, 2020 Press Release, available at: <https://beable.com/wp-content/uploads/2020/06/Beable-Announcement-final-052720.pdf>.)

85. The first two paragraphs of Beable's first press release twice mention Achieve3000 and Dodelson's connection to it, announcing that Beable would offer a similar product targeting the same customer-base—"K-12 students and educators." (Ex. I, May 28, 2020 Press Release). Just like Achieve3000, Beable claims that its business is "[p]owered by [a] proprietary BeableIQ engine [that] combines data science, automation, artificial intelligence and virtually unlimited scalability."

86. The May 28, 2020 press release further described Beable's "integrated system" as a product similar to Achieve3000's proprietary software engine and related product offerings, stating that it:

- [a]ssesses and addresses the whole child's passions, strengths, literacy and career goals;
- uses proprietary forecasting to individualize and prescribe the frequency and level of reading sessions and scaffolds, provided in both English and Spanish; provides a uniquely tailored path to lifelong success for all kids, with a "just-right" blend of

instructional methodologies for each child, including content differentiation in the classroom and personalized, self-selected reading outside the classroom;

- brings together social-emotional learning with literacy acceleration, core content acquisition, career exposure, and ACT/SAT prep;
- serves the entire student population according to each group's and each individual's particular needs – general education, special education, ELL, and gifted and talented;
- enables learning everywhere and every way – from whole class to small group to independent and from in-school to remote to blended.

(Ex. I, May 28, 2020 Press Release).

87. Beable thus made clear that its product, like Achieve3000's, provides an online "literacy acceleration" program that employs initial assessments of students' interests and abilities, differentiated instruction, personalized learning, and nonfiction-reading content for a broad range of grades and subjects.

88. Additionally, on its company website, Beable represents that its literacy program involves "Lexile acceleration," "content differentiated by reading levels," "individualization and personalization," and "Companion Courses, such as Vocabulary and Reading Comprehension"—descriptions that mirror Achieve3000's business and products.

89. In short, Beable is overtly and directly competing with AC Holdco by replicating Achieve3000's core product, infringing the Patent-In-Issue, and targeting the same consumer market served by Achieve3000.

90. In instances, Beable's website and press release appropriate Achieve3000's description of its product with little or no alteration. For example, whereas Achieve3000 states that its product involves "[a]ccelerated literacy growth," "Lexile levels" and "forecasting performance," Beable states that its product involves "literacy acceleration," "Lexile levels" and

“proprietary forecasting.” Beable has repeatedly invoked Achieve3000’s name in its press releases and on its website, seemingly to highlight the similarities of—and falsely imply a connection between—the two companies.

91. Less than one month after its public launch, Beable was already actively engaged in the solicitation of Achieve3000 customers. One such client, the City of East Orange, has terminated its contract with Achieve3000 and purchased services from Beable. Further, on information and belief, Dodelson expressly represented while soliciting another Achieve3000 customer that Beable’s product is effectively the same as (but better than) Achieve3000’s product. Dodelson is currently participating in nationwide webinars with a former Achieve3000 customer in which she and the customer are expressly touting Beable as a superior alternative to Achieve3000 that is now in use in the school district in place of Achieve3000.

92. [REDACTED]

[REDACTED]

[REDACTED]. Yet, Dodelson and Beable were doing the opposite at the very moment [REDACTED]; on information and belief, they were stealing Plaintiffs’ Proprietary Information and using it to develop a competing product, and plainly had no intent to return or destroy what they took. The same is true with respect to Dodelson’s fraudulent representations to Plaintiffs and the Court in her October 23, 2018, November 1, 2018, and February 12, 2020 court filings in the New Jersey Litigation.

93. Even with their improper use of AC Holdco’s Proprietary Information and intellectual property, Defendants could not possibly have developed their product in the short

period of time after their explicit representations to the Law Division on February 12, 2020. Rather, they surely began developing their competing products (again, using AC Holdco's Proprietary Information) many months prior to February 2020. Indeed, the numerous employees that Defendants solicited to join Beable long before February 2020 plainly demonstrate that to be so.

94. In sum, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].

COUNT ONE
(Patent Infringement Against Beable)

95. Plaintiffs repeat and reallege the allegations contained in Paragraphs 1 through 94 of this Complaint as though fully set forth herein.

THE '993 PATENT

96. The '993 Patent describes, among other things, "A system and method [] for providing differentiated content to a user comprising determining a skill level of the user, obtaining unmodified content, aligning the unmodified content to a set of content standards, modifying the aligned content in accordance with the user's skill level, providing the modified aligned content to the user." *See* Ex. A, '993 Patent, Abstract.

'993 PATENT ALLEGATIONS

97. Beable has infringed and is infringing, either literally or under the doctrine of equivalents, the '993 Patent in violation of 35 U.S.C. § 271 *et seq.*, by making, using (including for testing and demonstration purposes), selling, offering for sale, and/or importing into the United States without authority or license, the Beable Life-Ready Literacy System, that infringes at least claims 1 and 8 of the '993 patent.

98. On information and belief after a reasonable investigation, Beable's Life-Ready Literacy System includes apparatus and methods designed and used to provide students automatically with lessons that conform to the same core educational standards but are differentiated to match the reading level of each individual student. The reading level adjusted materials given to each student are differentiated from the same source material.

99. As one, non-limiting example, below (with claim language in italics) is a description of Beable's infringement of exemplary claim 1 of the '993 patent in connection with Beable's System. This description is based on publicly available information. Plaintiffs reserve the right to modify this description, including, for example, on the basis of information about the Beable Life-Ready Literacy System or other offerings of Beable that Plaintiffs obtain during discovery.

- *[1(a)] A computer implemented method for providing differentiated content to a user of a plurality of users, comprising the steps of:* - On information and belief, Beable makes, uses, sells, and/or offers to sell a system that provides differentiated content to one or more users. For example, Beable states that “the BeableIQ engine creates an individualized learning path for each student” and “[e]ach student receives lessons at the ‘just-right’ level for her needs. Every student in the class

reads the same lesson that covers the same core standards, but the lesson is automatically differentiated to match each student's reading ability."¹⁰ Regardless of whether the preamble of claim 1 adds any substantive limitation to the claim, the claim language is met by the use of Beable's products as they perform a method as laid out below for the remaining claim limitations.

- *[1(b)] obtaining in real-time, by a standards engine including one or more processors, a first unmodified content from at least one source using at least one computer;* - Beable's products are described as being part of an automated system (e.g., "propelled by the BeableIQ data and automation engine"), and as providing lessons that are "automatically differentiated to match each student's reading ability."¹¹ Beable explains on its website that these lessons that are "automatically differentiated" by its system include content from at least two sources (academic content and special interest content) that, on information and belief, comprises unmodified content before it is differentiated by Beable's system into multiple "just-right" versions:

¹⁰ See, e.g., <https://beable.com/products/literacy-acceleration/>; see also <https://beable.com/products/literacy-acceleration/> (describing students "clicking" and "hovering over" images in "[i]mmersive, interactive art [that] is at the center of the user experience").

¹¹ See *id.*

CORE INSTRUCTIONAL CONTENT

Once each student is presented with her own individualized path to achieve college and career readiness, the instruction begins.

- Each student receives lessons at the **'just-right'** level for her needs. Every student in the class reads the same lesson that covers the same core standards, but the lesson is automatically differentiated to match each student's reading ability. This ensures that the student is acquiring the content knowledge required for the core curriculum and for success on the end-of-course assessments while also building literacy proficiency.
- The lessons include a set of learning activities designed to assess the student's comprehension and propel her literacy skills forward. The activities are interactive, aligned to standards and fully tracked and reported to the teacher and school/district leadership team.

Students' individualized coursework comprises a combination of academic and special interest content. Academic content typically is assigned and required by the classroom teacher. Students select special interest content on their own, based on their individual interests.

- **Academic lessons** are aligned with state standards and cover larger required courses as well as required mini topics. Full courses are primarily designed to ensure Annual Growth for both content knowledge and expected literacy growth. Mini courses primarily target Catch-Up Growth for students who need a higher frequency of reading lessons. Beable in effect enables schools to 'kill two birds with one stone' – addressing core content area domains while also improving student literacy – while also giving teachers the flexibility to use whichever courses they choose, for whichever purpose.
- **Special interest content** appeals to students by covering a range of topics including sports, travel, amazing teens, wacky foods, extraordinary animals, technology, crime solving, art and music/dance. Students select content from this pool to increase their reading time and are rewarded as they get closer to the optimal number of sessions needed to achieve their growth goals.

Course List:

MS Civics
 HS US History II
 Debates
 World of Work
 (Career Course)
 Holocaust
 Financial
 Literacy
 Black History
 Hispanic
 Heritage
 Women in History
 Health

- On information and belief, these steps in Beable's automated system are carried out in real time using a computer or network of computers with one or more processors running software.¹² Beable emphasizes and promotes automation in Beable's system, and further states, *e.g.*, that teachers can choose specific content to provide to students as assignments, and that Beable's System's "digital agility" allows the system to "Adapt to Any Need, Any Time, Any Place," including "to extraordinary circumstances [such as an] instantaneous switch from live to blended to fully remote learning for an entire district, seamlessly and without missing a beat."¹³

¹² See, *e.g.*, <https://beable.com/approach-main/approach-engine/> ("The Beable Life-Ready Literacy System is based on the BeableIQ engine, which uniquely combines data intelligence, machine learning, automation and digital agility."). See also <https://beable.com/products/literacy-acceleration/> (describing students "clicking" and "hovering over" images in "[i]mmersive, interactive art [that] is at the center of the user experience").

¹³ See, *e.g.*, <https://beable.com/products/literacy-acceleration/> ("Students' individualized coursework comprises a combination of academic and special interest content. Academic content typically is assigned and required by the classroom teacher. Students select special interest content on their own, based on their individual interests."); <https://beable.com/approach-main/approach-engine/> (Beable stating its BeableIQ engine "uniquely combines data intelligence, machine learning, automation and digital agility."; "The

- *[1(c)] obtaining one or more educational standards using at least one computer; -*
As described above, on information and belief, Beable’s System is propelled by an automation engine hosted on a computer.¹⁴ On information and belief, Beable’s website further indicates that this System obtains and thereafter uses one or more educational standards. For example, Beable states that its “[a]cademic lessons are aligned with state standards and cover larger required courses as well as required mini topics”; that its “activities are interactive, aligned to standards and fully tracked and reported to the teacher and school/district leadership team”; that the “first step in Beable’s multi-dimensional approach is understanding the whole child,” and that as part of this process Beable gathers “information from administrators and teachers including special education classification and tier, ELL needs, and any special accommodations or learning needs. . . . With this holistic understanding of each student, the BeableIQ engine creates an individualized learning path for each student”; that “because of its multi-dimensional approach, Beable addresses all levels of an MTSS system, including general education, ELL and SpED”; and that Beable’s System employs the “globally adopted Lexile

Digital Agility to Adapt to Any Need, Any Time, Any Place”; “Adapts to any implementation scenario – classroom, pull-out, at-home, breaks in the school year, summer, blended and distance”; “Adapts to extraordinary circumstances – instantaneous switch from live to blended to fully remote learning for an entire district, seamlessly and without missing a beat.”); <https://beable.com/> (“Beable assesses and addresses the multiple aspects of a child: her passions, strengths, literacy goals and career goals. It individualizes and prescribes reading sessions and scaffolds to ensure that she reaches her goals. It provides career exposure based on her aptitudes and builds her soft skills at the same time. It applies a ‘just-for-her’ blend of instructional methodologies, including content differentiation in the classroom and self-selected, personalized reading outside the classroom. Beable does all of this across all settings and times: classroom, pull-out, remote and blended...on weekends, during holiday breaks and over the summer. Beable is the first multi-dimensional system that looks at all aspects of the child all the time, combining and re-combining exactly what she needs to advance her growth and ultimately achieve success.”).

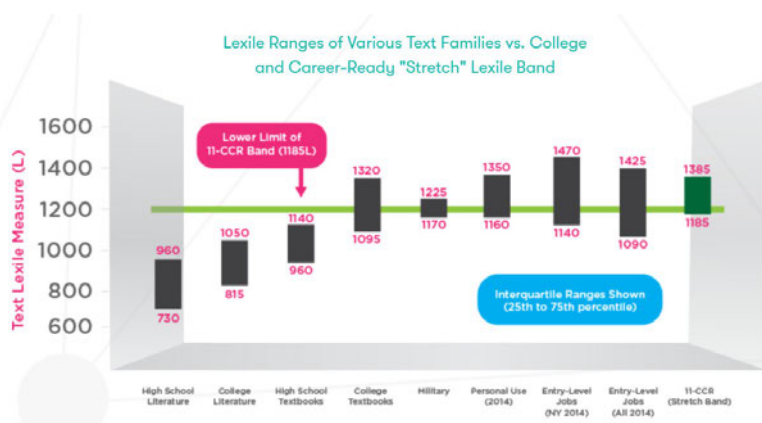
¹⁴ See, e.g., <https://beable.com/approach-main/approach-life-ready-literacy/>.

framework” with standardized “Lexile levels,” supplied to Beable through its partnership with MetaMetrics.¹⁵ On information and belief, such Lexile measures are used in a number of state standards, including Georgia, Texas, the Carolinas, and Minnesota, among others.¹⁶ On information and belief, Beable’s System uses at least one computer or a network of computers to obtain educational standards as part of its automated process of formulating differentiated lesson plans.¹⁷

- *[1(d)] evaluating the one or more educational standards to produce a unique standards code by analyzing at least one of one or more statements of the one or more educational standards, a structure of the one or more educational standards, a core meaning of the one or more educational standards, a related and ancillary meaning of the one or more educational standards, a learning mode referenced by the one or more educational standards, an intent of the one or more educational*

¹⁵ See, e.g., https://www.prweb.com/releases/beable_partners_with_metametrics_to_connect_literacy_to_life_readiness_with_computer_adaptive_tests_that_offer_lexile_measures/prweb17209751.htm

¹⁶ See, e.g., <https://lexile.com/departments-of-education/states-that-use-lexile/>; see also <https://beable.com/approach-main/literacy-challenge/>:



¹⁷ See, e.g., <https://beable.com/approach-main/approach-engine/> (“AUTOMATICALLY PRESCRIBE SESSIONS AND SCAFFOLDS: BeableIQ automatically prescribes the number of required reading sessions, including extra sessions and companion courses for ELL, SpED and gifted students.”).

standards, or related critical thinking, logical, philosophical, and pedagogical elements of the one or more educational standards using at least one computer; -

Beable states that its System, utilizing the BeableIQ engine, “combines data intelligence, machine learning, automation and digital agility,” and this engine ensures that differentiated content is provided to each user based on their reading level while “ensur[ing] that the student is acquiring the content knowledge required for the core curriculum.”¹⁸ On information and belief, as part of this process, Beable, with its System, evaluates one or more educational standards for core meaning, ancillary meaning, learning mode, intent, and related critical thinking, logical, philosophical, and pedagogical elements in order to produce a unique standards code that is then used internally by the System in its process of providing differentiated content consistent with the educational standards (which may include, *e.g.*, special education, ELL, Lexile and other standards). For example, Beable states that “BeableIQ automatically prescribes the number of required reading sessions, including extra sessions and companion courses for ELL, SpED and gifted students,” and that the “**Lexile measure** feeds necessary information to the *BeableIQ* engine so it can automatically create an individualized path by establishing the required number of reading sessions and *recommended Companion Courses* that each student needs to complete to get on track for grade-level comprehension. The Lexile measure allows the *BeableIQ* engine to

¹⁸ See, *e.g.*, <https://beable.com/approach-main/approach-engine/>; <https://beable.com/products/literacy-acceleration/>

automatically match students to appropriate versions of grade-appropriate text, ranging in complexity from a 200L to a 1300L, in English and Spanish.”¹⁹

- *[1(e)] analyzing, by the standards engine, the first unmodified content to determine a reading difficulty level of the first unmodified content in accordance with each of the one or more educational standards;* - As described above, Beable states that its System delivers differentiated modified versions of the same original, unmodified source content to match user reading levels. Also as described above, Beable partners with MetaMetrics for use of its Lexile reading level technology. On information and belief, the Lexile measure of a source text is a measure of its vocabulary, grammar, and length – *i.e.*, a difficulty level for a reader.²⁰ On information and belief, Beable’s System applies at least Lexile analysis to source material to determine a reading difficulty level in accordance with educational standards.²¹
- *[1(f)] generating in real-time, by a differentiation engine including one or more processors, a plurality of aligned versions of the first unmodified content by*

¹⁹ See, e.g., <https://beable.com/approach-main/approach-engine/> (“AUTOMATICALLY PRESCRIBE SESSIONS AND SCAFFOLDS”); <https://beable.com/products/literacy-acceleration/> (“Beable gathers additional information from administrators and teachers including special education classification and tier, ELL needs, and any special accommodations or learning needs. . . With this holistic understanding of each student, the BeableIQ engine creates an individualized learning path for each student”); <https://beable.com/> (“Because of its multi-dimensional approach, Beable addresses all levels of an MTSS system, including general education, ELL and SpED”).

²⁰ See, e.g., <https://lexile.com/educators/tools-to-support-reading-at-school/tools-to-determine-a-books-complexity/>.

²¹ See, e.g., <https://beable.com/products/literacy-acceleration/> (“Beable takes content differentiated by reading level and adds it to the multiple dimensions of individualization and personalization”; “The Lexile measure feeds necessary information to the BeableIQ engine so it can automatically create an individualized path by establishing the required number of reading sessions and recommended Companion Courses that each student needs to complete to get on track for grade-level comprehension. The Lexile measure allows the BeableIQ engine to automatically match students to appropriate versions of grade-appropriate text, ranging in complexity from a 200L to a 1300L, in English and in Spanish.”).

transforming format and content of the first unmodified content, wherein each of the plurality of aligned versions is transformed, respectively, according to a reading difficulty level associated with corresponding one of the one or more educational standards, wherein generating the plurality of aligned versions of the first unmodified content further comprises breaking up the first unmodified content into sentences, selecting a different vocabulary and sentence length according to each reading difficulty level in accordance with the unique standards code while maintaining subject matter of the first unmodified content; - Beable, with its System, generates lessons covering the same “core [educational] standards” to users in a form differentiated to each user’s reading level.²² The differentiation process is done as part of the use of Beable’s System, which carries out differentiation “automatically” using, *inter alia*, the BeableIQ engine.²³ Beable modifies the source lesson material to use different vocabulary and sentence length in order to differentiate the lesson to match user reading levels while conforming to a given educational standard.²⁴ On information and belief, these steps are carried out in real time using a computer or network of computers with one or more processors running software. Beable emphasizes and promotes automation in its

²² See, e.g., <https://beable.com/products/literacy-acceleration/>.

²³ See *id.*

²⁴ See, e.g., <https://beable.com/products/literacy-acceleration/> (“[e]ach student receives lessons at the ‘just-right’ level for her needs. Every student in the class reads the same lesson that covers the same core standards, but the lesson is automatically differentiated to match each student’s reading ability”; “Beable takes content differentiated by reading level and adds it to the multiple dimensions of individualization and personalization”; “The Lexile measure feeds necessary information to the BeableIQ engine so it can automatically create an individualized path.... The Lexile measure allows the BeableIQ engine to automatically match students to appropriate versions of grade-appropriate text, ranging in complexity from a 200L to a 1300L, in English and in Spanish.”).

system, and further states, *e.g.*, that teachers can choose specific content to provide to students as assignments, and that its System’s “digital agility” allows the system to “Adapt to Any Need, Any Time, Any Place.”²⁵

- *[l(g)] transmitting, simultaneously, a first aligned version of the plurality of aligned versions of the first unmodified content to the user, wherein the first aligned version corresponds to a reading skill level of the user;* - As discussed above, Beable states that, with its System, “[e]ach student receives lessons at the ‘just-right’ level for her needs. Every student in the class reads the same lesson that covers the same core standards, but the lesson is automatically differentiated to match each student’s reading ability.”²⁶ Further, on information and belief, each differentiated lesson corresponding to the reading level of each particular student using the system is transmitted to that particular student, while other versions are automatically sent to different students (such as other students in a class) at the same time based on their individual reading levels. Beable states that its System

²⁵ See, *e.g.*, <https://beable.com/products/literacy-acceleration/> (“Students’ individualized coursework comprises a combination of academic and special interest content. Academic content typically is assigned and required by the classroom teacher. Students select special interest content on their own, based on their individual interests.”); <https://beable.com/approach-main/approach-engine/> (Beable stating its BeableIQ engine “uniquely combines data intelligence, machine learning, automation and digital agility.”; “The Digital Agility to Adapt to Any Need, Any Time, Any Place”; “Adapts to any implementation scenario – classroom, pull-out, at-home, breaks in the school year, summer, blended and distance”; “Adapts to extraordinary circumstances – instantaneous switch from live to blended to fully remote learning for an entire district, seamlessly and without missing a beat.”); <https://beable.com/> (“Beable assesses and addresses the multiple aspects of a child: her passions, strengths, literacy goals and career goals. It individualizes and prescribes reading sessions and scaffolds to ensure that she reaches her goals. It provides career exposure based on her aptitudes and builds her soft skills at the same time. It applies a ‘just-for-her’ blend of instructional methodologies, including content differentiation in the classroom and self-selected, personalized reading outside the classroom. Beable does all of this across all settings and times: classroom, pull-out, remote and blended...on weekends, during holiday breaks and over the summer. Beable is the first multi-dimensional system that looks at all aspects of the child all the time, combining and re-combining exactly what she needs to advance her growth and ultimately achieve success.”).

²⁶ See, *e.g.*, <https://beable.com/products/literacy-acceleration/>

supports both “remote” and “in-school” learning, that (as noted above) the System ensures that “[e]very student in the class reads the same lesson... but the lesson is automatically differentiated to match each student’s reading level,” and that the System enables “instantaneous switch from live to blended to fully remote learning for an entire district.”²⁷ Further, as reported in an article linked to Beable’s website, Dodelson recently stated that the System permits students to catch up simultaneously with participation in the live lesson that is taking place with the rest of the class: “Dodelson explained that students pulled out of class to ‘catch up’ miss curriculum being learned while they’re gone. She said her multidimensional technology lets students remain in the classroom, combining catching up with working toward annual assessment standards.”²⁸

- *[1(h)] generating, by the differentiation engine, one or more lesson plans for the user, the one or more lesson plans comprising questions associated with the first aligned version and subject matter of the first unmodified content, wherein the one or more lesson plans comprises a lesson comprising one or more of a specific spoken language, a particular font size and level-appropriate vocabulary and a particular graphical format based on the reading skill level of the user; and –*
Beable’s System, including the BeableIQ engine, generates one or more lesson

²⁷ See, e.g., <https://beable.com/>; <https://beable.com/products/literacy-acceleration/>; <https://beable.com/approach-main/approach-engine/> (“In a rapidly changing and frequently uncertain world, students, educators and parents/guardians need digital agility more so than ever before.”; “Adapts to any implementation scenario – classroom, pull-out, at-home, breaks in the school year, summer, blended and distance.”; “Adapts to extraordinary circumstances – instantaneous switch from live to blended to fully remote learning for an entire district, seamlessly and without missing a beat.”).

²⁸ See, e.g., <https://www.roi-nj.com/2020/06/10/education/ed-tech-expert-dodelson-set-to-launch-latest-platform-beable/> (liked to by <https://beable.com/about-us/about-newsroom/>).

plans for each student who is using the System. As Beable states on its website, “the BeableIQ engine creates an individualized learning path for each student. BeableIQ calculates the number of sessions delivered at the just-right Lexile level each student needs to meet grade-level literacy goals....”²⁹ On information and belief, this “individualized path” for each student includes questions (“assess[ments]” of “comprehension”) associated with the differentiated reading material that is provided to the student. For example, Beable states that “[t]he lessons include a set of learning activities designed to assess the student’s comprehension and propel her literacy skills forward. The activities are interactive, aligned to standards and fully tracked and reported to the teacher and school/district leadership team.”³⁰ On information and belief, such lesson plans comprise a specific spoken language and are based on the reading skill level of the student using the System. For example, Beable states that “[t]he Lexile measure allows the BeableIQ engine to automatically match students to appropriate versions of grade-appropriate text, ranging in complexity from a 200L to a 1300L, in English and in Spanish.”³¹ This is further illustrated in the following example from Beable’s website for “Julio Santo,” a “Spanish-speaking ELL [English Language Learner] student” who is “reading below grade level, at a Lexile of 700L,” and whose

²⁹ See, e.g., <https://beable.com/products/literacy-acceleration/>. See also <https://beable.com/approach-main/approach-engine/> (“BeableIQ automatically prescribes the number of required reading sessions, including extra sessions and companion courses for ELL, SpED and gifted students.”).

³⁰ See, e.g., <https://beable.com/products/literacy-acceleration/>.

³¹ See, e.g., <https://beable.com/products/literacy-acceleration/>.

“individualized plan will include language scaffolds to provide extra support” and matched to his reading level³²:

Consider these three eighth-grade students and the individualized learning paths *BeableQ* provides:



Julio Santo is an ELL student reading below grade level, at a Lexile of 700L. He aspires to be a commercial pilot, which requires a Lexile above 1160L. To get there, Julio will need MORE than the two sessions per school week given that he needs both to catch up based on his starting point and to achieve expected annual growth. Accordingly, he should be completing FOUR sessions per week to get ready for graduation and his chosen career. So *BeableQ* will assign an extra TWO sessions per week to Julio – beyond the TWO that Shanise, who is starting at a higher Lexile level than Julio, will be assigned. The system will also recommend specific content that matches Julio’s interests to encourage completion of the requisite sessions. Additionally, since Julio is a Spanish-speaking ELL student, his individualized plan will include language scaffolds to provide extra support as he goes through his coursework.

- [1(i)] providing the one or more lesson plans questions associated with the first aligned version to the user via a communication system, - As discussed above, Beable’s System transmits its digital content (including assessments) to the student user, supporting “fully remote,” “at-home” and “in-school” learning.³³ On information and belief, Beable sends question assessments based on differentiated versions of lesson plans automatically to the user based on the user’s reading skill level via a communication system.

³² *Id.* (“the lesson is automatically differentiated to match each student’s reading ability”)

³³ See, e.g., <https://beable.com/>; <https://beable.com/approach-main/approach-engine/> (“In a rapidly changing and frequently uncertain world, students, educators and parents/guardians need digital agility more so than ever before.”; “Adapts to any implementation scenario – classroom, pull-out, at-home, breaks in the school year, summer, blended and distance.”; “Adapts to extraordinary circumstances – instantaneous switch from live to blended to fully remote learning for an entire district, seamlessly and without missing a beat.”).

- *[1(j)] wherein each of the plurality of aligned versions are equivalent substantially similar in subject matter, meaning and context to subject matter, meaning and context of the first unmodified content.* – Beable’s System delivers automatically differentiated lesson plans that cover “the same core [educational] standards.” On information and belief, Beable’s automatically differentiated lesson plans are equivalent and substantially similar in subject matter, meaning, and context to the unmodified lesson plan. As Beable states, “[e]ach student receives lessons at the ‘just-right’ level for her needs. Every student in the class reads the same lesson that covers the same core standards, but the lesson is automatically differentiated to match each student’s reading ability.”³⁴

100. As an additional, non-limiting example, below (with claim language in italics) is a description of Beable’s infringement of exemplary claim 8. This description is based on publicly available information. Plaintiffs reserve the right to modify this description, including, for example, on the basis of information about the Beable Life-Ready Literacy System that they obtain during discovery.

- *[8] A system for providing differentiated content to a user of a plurality of users, comprising:* - On information and belief, Beable makes, uses, sells, and/or offers to sell a system, which provides differentiated content to one or more users. For example, Beable states that “the BeableIQ engine creates an individualized learning path for each student” and “[e]ach student receives lessons at the ‘just-right’ level for her needs. Every student in the class reads the same lesson that covers the same core standards, but the lesson is automatically differentiated to

³⁴ See, e.g., <https://beable.com/products/literacy-acceleration/>.

match each student’s reading ability.”³⁵ Regardless of whether the preamble of claim 1 adds any substantive limitation to the claim, the claim language is met by Beable’s products as laid out below for the remaining claim limitations.

- *[a] at least one processor;* - As discussed above, on information and belief Beable’s automated System, including the BeableIQ data and automation engine, is computer-based and includes one or more processors.³⁶
- *[b] at least one input device coupled to at least one network; and* – As discussed above, Beable’s System transmits its digital content to remote student users, and can operate as, *inter alia*, a “fully remote” system with users separated from the classroom setting, including in an “at-home” “implementation scenario,”³⁷ and thus, on information and belief, necessarily includes at least one input device coupled to at least one network.³⁸
- *[c] at least one storage device storing processor executable instructions which, when executed by the at least one processor, performs a method including:* – As discussed above, Beable’s computerized System is largely automated and relies on the BeableIQ engine. On information and belief, the Beable Life-Ready

³⁵ See, e.g., <https://beable.com/products/literacy-acceleration/>.

³⁶ See, e.g., <https://beable.com/approach-main/approach-engine/> (“The Beable Life-Ready Literacy System is based on the BeableIQ engine, which uniquely combines data intelligence, machine learning, automation and digital agility.”). See also <https://beable.com/products/literacy-acceleration/> (describing students “clicking” and “hovering over” images in “[i]mmersive, interactive art [that] is at the center of the user experience”).

³⁷ See, e.g., <https://beable.com/approach-main/approach-engine/>.

³⁸ See, e.g., <https://beable.com/>; <https://beable.com/approach-main/approach-engine/> (“In a rapidly changing and frequently uncertain world, students, educators and parents/guardians need digital agility more so than ever before.”; “Adapts to any implementation scenario – classroom, pull-out, at-home, breaks in the school year, summer, blended and distance.”; “Adapts to extraordinary circumstances – instantaneous switch from live to blended to fully remote learning for an entire district, seamlessly and without missing a beat.”).

Literacy System necessarily includes at least one storage device from which processor executable instructions are executed.

101. Regarding the remaining limitations of claim 8, Plaintiffs incorporate by reference the discussion of Claim 1 in paragraph 99, *supra*, as if fully set forth herein.

102. On information and belief, Beable, at least through its founder/CEO, its Chief Academic Officer, and its Chief Product Officer, who are the three inventors of the '993 Patent, has been aware of the '993 Patent since the founding of the company, including prior to the launch of the Beable Life-Ready Literacy System. Beable has failed to take any action to avoid infringement. Accordingly, on information and belief, Beable knew that at least by making, using, selling, and/or offering for sale the Beable Life-Ready System, it was infringing the '993 Patent at least since Beable launched the Beable Life-Ready Literacy System (before Achieve3000 filed this action), and, despite this knowledge, Beable acted egregiously and willfully by commencing this infringement and continuing to infringe.

103. On information and belief, Beable's infringement of the '993 Patent was and continues to be willful and deliberate, entitling Plaintiffs to enhanced damages and attorneys' fees.

104. Additional discovery regarding Beable's knowledge of the '993 Patent likely will uncover additional facts related to its willful infringement.

105. Beable's infringement of the '993 Patent is exceptional and Achieve3000 is entitled to attorneys' fees and costs incurred in prosecuting this action under 35 U.S.C. § 285.

106. Plaintiffs have no adequate remedy at law for Beable's acts of infringement. As a direct and proximate result of Beable's acts of infringement, Plaintiffs have suffered and continues to suffer damages and irreparable harm. Unless Beable's acts of infringement are enjoined by this

Court, Plaintiffs will continue to be damaged and irreparably harmed. Plaintiffs are entitled to injunctive relief enjoining Beable from further infringement.

107. Plaintiffs are entitled to recover from Beable all damages that Plaintiffs have sustained including without limitation lost profits and not less than a reasonable royalty. The manufacture, use, offer for sale, and/or sale within the United States of Beable's infringing system before the expiration of the '993 Patent has caused and is continuing to cause injury to Plaintiffs, entitling them to damages or other monetary relief including all pre-judgment and post-judgment interest at the maximum rate permitted by law. For example, on information and belief, Plaintiffs have suffered and will suffer lost profits of their Achieve3000 product line because of Beable's infringing acts with respect to the Beable Life-Ready Literacy System, including sales of Achieve3000's product line that either were or will be lost as a result of Beable's infringement or were or will be made at eroded prices because of Beable's infringement. On information and belief, but for Beable's infringement, Plaintiffs would not or will not have suffered injury, entitling Plaintiffs to damages in the form of lost profits from at least diverted sales and price erosion, and not less than a reasonable royalty under 35 U.S.C. § 284.

**BEABLE IS ESTOPPED FROM CHALLENGING THE
VALIDITY OF THE '993 PATENT**

108. Beable is estopped from challenging the validity of the '993 Patent by the doctrine of assignor estoppel.

109. Beable is in privity with Defendant Dodelson, Susan Gertler, and Rivki Locker.

110. Dodelson is now the Chief Executive Officer of Beable,³⁹ was previously the CEO of Achieve3000, and is a co-founder of Achieve3000. Gertler is now the Chief Academic Officer

³⁹ See, e.g., <https://corp-staging.beable.com/about-us/about-leadership-team/>.

of Beable,⁴⁰ was previously the Chief Academic Officer of Achieve3000, and is a co-founder of Achieve3000. Locker is now the Chief Product Officer of Beable, and was previously Chief Product Officer at Achieve3000. Dodelson, Gertler, and Locker are the three named inventors on the '993 Patent, the patent asserted in this Complaint. In 2014, the inventors of the '993 Patent, including Dodelson, Gertler, and Locker, assigned their interests in that patent to Achieve3000, Inc.

111. In 2015, Dodelson, Gertler, and their fellow co-founders and other investors sold Achieve3000 to AC Holdco.⁴¹

112. Dodelson incorporated Beable in 2019, and subsequently became its CEO.⁴² Gertler serves as the Chief Academic Officer of Beable.⁴³ Gertler is noted on Beable's leadership page as being "instrumental to the success of [the company]."⁴⁴ Locker serves as the Chief Product Officer of Beable. On information and belief, at least Dodelson and Gertler both hold significant equity interests in Beable.

113. On information and belief, Dodelson, as founder and CEO of Beable, Gertler, as Chief Academic Officer of Beable, and Locker, as Chief Product Officer of Beable, directed the company's product development activities, including the decision to develop the Beable Life-Ready Literacy System. In addition to engaging in the same line of business as Dodelson's, Gertler's, and Locker's prior employer, Achieve3000, Beable also partners with the same Lexile

⁴⁰ *See id.*

⁴¹ *See, e.g.,* https://www.sec.gov/Archives/edgar/data/1637823/000089914015000363/xslFormDX01/primary_doc.xml

⁴² *See, e.g.,* <https://beable.com/about-us/about-story/>.

⁴³ *See, e.g.,* <https://beable.com/about-us/about-leadership-team/>.

⁴⁴ *Id.*

reading level creator, MetaMetrics Inc., that Dodelson, Gertler and Locker worked with at Achieve3000.⁴⁵

**THE INVENTIONS CLAIMED IN THE '993 PATENT ARE NOT
DIRECTED TO AN ABSTRACT IDEA, AND WERE NOT
WELL-UNDERSTOOD, ROUTINE, OR CONVENTIONAL**

114. As the USPTO Examiner who examined and allowed the claims of the '993 Patent affirmatively concluded, the claims are patent-eligible under 35 U.S.C. § 101 and the test for patent eligibility set forth in the Supreme Court's decision in *Alice Corp. v. CLS Bank Int'l*, 573 U.S. 208 (2014).

115. First, as the USPTO Examiner concluded, the '993 Patent is not directed to an abstract idea. Claim 1, for instance, is not drawn to a process that could be performed by a human mind or using pen and paper. Instead, it is drawn to a method that, *inter alia*, analyzes and determines a reading difficulty level of unmodified content and transforms format and content of the unmodified content to produce multiple aligned versions according to various reading levels associated with evaluated educational standards, and provides that transformed content to each user according to the user's reading skill level along with associated questions. For example, claim 1 is generally directed to an automated method including analysis and encoding of educational standards, an automated assessment of the reading difficulty level of unmodified source content, the transformation of that unmodified source content into a plurality of versions of varying reading difficulty levels associated with an educational standard, transmitting to a user a version corresponding to the user's reading skill level, generating a lesson plan with questions associated with that version, and posing those questions to the user.

⁴⁵ See, e.g., https://www.prweb.com/releases/beable_partners_with_metametrics_to_connect_literacy_to_life_readiness_with_computer_adaptive_tests_that_offer_lexile_measures/prweb17209751.htm.

116. The claimed invention provides a new and novel way to use technology to transform an unmodified text into something understandable by users with different reading levels and to deliver an appropriate version to each user, and evaluate the users based on this transformation. Indeed, the '993 Patent claims a technological invention that improves the functioning of an educational computer system that uses a reading-level diagnostic to create and deliver automatically multiple versions of a single piece of educational material tailored to multiple different reading levels. The '993 Patent achieves this by using a standards engine and a differentiation engine to perform specific tasks, such as obtaining unmodified content and educational standards, analyzing the unmodified content, generating multiple aligned versions of the content, transmitting a particular one of these aligned versions to a particular user corresponding to the user's reading skill level, and generating a lesson plan with questions based on the skill level of the user. The claims recite processors that execute each step and are transformed into special purpose computers to perform particular tasks, and are not generic computers performing generic functions.

117. Even if the claims were assumed, *arguendo*, to be directed to an abstract idea, the claims involve significantly more than any such abstract idea so as to make the claims patent eligible. For example, the claimed systems and methods produce a unique standards code by analyzing specific details of educational standards, analyze a reading difficulty level of content in accordance with education standards, generate in real time a plurality of aligned versions of the content by breaking it up into sentences, selecting a different vocabulary and sentence length according to each reading difficulty level in accordance with the code while maintaining the unmodified subject matter, and generate lesson plans associated with the generated aligned version, including one or more of a specific spoken language, a particular font size and level-

appropriate vocabulary and a particular graphical format based on the reading skill level of the user, and where the aligned versions are substantially similar in subject matter, meaning, and context. As the USPTO Examiner concluded in allowing the '993 Patent, these combined features were not known or obvious at the time to a person of ordinary skill. Thus, the invention represents a substantial improvement of the disparate methods and technologies known in the art, and the claims would thus be patent-eligible under 35 U.S.C. § 101 even if they were assumed to be directed to an abstract idea.

* * *

118. Based on the foregoing allegations, Plaintiffs are entitled to (i) a judgment that Beable has infringed one or more claims of the Patent-in-Suit literally and/or under the doctrine of equivalents; (ii) an injunction, in accordance with 35 U.S.C. § 283, enjoining Beable and all affiliates, employees, agents, officers, directors, attorneys, successors, and assigns, and all those acting in behalf of or in active concert or participation with Beable from (a) infringing the Patent-in-Suit and (b) making, using, selling, and offering for sale the Beable Life-Ready Literacy system; (iii) an order directing Beable to file with the Court and serve upon Plaintiffs' counsel within thirty (30) days after entry of the requested injunction, a report setting forth the manner and form in which Beable has complied with the injunction, including appropriate provisions relating to destruction and recall of infringing products and materials; (iv) an award of damages sufficient to compensate Plaintiffs for Beable's infringement under 35 U.S.C. § 284, including an enhancement of damages on account of Beable's willful infringement; (v) a finding that the case is exceptional under 35 U.S.C. § 285 and that Plaintiffs be awarded their reasonable attorneys' fees; and (vi) costs and expenses in this action and an award of prejudgment and post-judgment interest.

COUNT TWO
(Federal Lanham Act Violations Against All Defendants)

119. Plaintiffs repeat and reallege the allegations contained in Paragraphs 1 through 118 of this Complaint as though fully set forth herein.

120. Defendants, in connection with Plaintiffs' goods and services, (a) have used misleading descriptions of fact and false and misleading representations of fact that are likely to cause confusion, cause mistake, or deceive as to the affiliation, connection, and/or association of Beable and its products with Plaintiffs and Plaintiffs' products; and (b) in commercial advertising and promotion, have misrepresented the nature, characteristics and qualities of Defendants' goods, services, and commercial activities.

121. For example, in Beable's May 28, 2020 press release and through its website, Defendants refer to Beable's product as "[p]owered by [its] proprietary BeableIQ engine" and as a "system built anew." Beable states that it "invested in the most advanced technology available" to create its so-called "proprietary" system and that it is "revolutionary" and "even more ambitious" than the products that Dodelson and the other Achieve3000 co-founder now working at Beable created at Achieve3000. Since the May 28, 2020 press release, Defendants continue to make similar representations in other public statements.

122. Those statements constitute commercial advertising and promotion disseminated to the public and are both literally false and otherwise implicitly convey a false impression that is misleading in context and likely to deceive customers. As detailed above, the BeableIQ engine is a direct product of patent infringement and misappropriation of Plaintiffs' intellectual property, Proprietary Information and trade secrets. Accordingly, Beable's claim that the engine is "proprietary," "new," and a product of its own "invest[ment]" and innovation are false and misleading. Moreover, Defendants' references to Achieve3000 and description of Beable's

product as an “even more ambitious” product confuses customers, causing them to believe that Beable could and did legally use what its employees built for Achieve3000 and made it a better product, and that there is a legitimate business connection between Achieve3000 and Beable, all of which is false and materially misleading.

123. Moreover, Defendants’ above false statements were made in bad faith. As detailed above, Defendants, especially through their agent and officer Dodelson, seek to destroy Plaintiffs’ business by taking their customers, reputation, good will, and intellectual property. Indeed, through the above-described material misstatements, Defendants have already begun poaching Plaintiffs’ clients.

124. Based on the allegations outlined above, Defendants have engaged in false advertisement, misappropriation of Plaintiffs’ intellectual property and trade secrets, interfered with Plaintiffs’ ability to run the Company, and otherwise engaged in unfair competition against Plaintiffs willfully and maliciously.

125. Defendants’ above-described conduction violates the Lanham Act. As a direct and proximate result of Defendants’ violations of the Lanham Act, Plaintiffs have suffered and continue to suffer damages.

126. Pursuant to 15 U.S.C. § 1117, Plaintiffs are entitled to (i) damages for Plaintiffs’ lost revenue due to Defendants’ solicitation of existing and potential customers of Plaintiffs; (ii) damages for unjust enrichment in Defendants’ profits derived in whole or in part from Plaintiffs’ trade secrets; and (iii) costs of this suit.

127. Pursuant to 15 U.S.C. §§ 1116 and 1118, Plaintiffs are entitled to injunctive relief preventing Beable from continuing to offer and sell its differentiated learning software engine, hiring Plaintiffs’ employees for a one-year period, and prohibiting Defendants from mentioning

Achieve3000 or its products in Beable's marketing materials, sales presentations and public statements when describing Beable's business or its products.

COUNT THREE
(Defend Trade Secrets Act, 18 U.S.C. § 1836, Against All Defendants)

128. Plaintiffs repeat and reallege the allegations contained in Paragraphs 1 through 127 of this Complaint as though fully set forth herein.

129. Plaintiffs are owners and have rightful legal and equitable title to the Proprietary Information discussed above, which constitutes trade secrets for purposes of the Defend Trade Secrets Act and consists of Plaintiffs' financial, business, technical, economic, and software engineering information, including plans, designs, methods, techniques, processes, procedures, programs, codes, customer lists, and other sensitive information.

130. Because Plaintiffs' trade secrets are central to Plaintiffs' business of providing nationwide technological services and products for differentiated learning, much of which are sold through the internet, Plaintiffs' trade secrets are used in and intended for use in interstate commerce.

131. Plaintiffs undertook exhaustive measures to keep their Proprietary Information secret and confidential, as set forth above.

132. As detailed above, Plaintiffs' business is built on technological innovation and its intellectual property, including the Patent-In-Suit and related trade secrets. Because this information is unique and highly protected, and, in the case of Plaintiffs' trade secrets, maintained as secret, AC Holdco invested [REDACTED] to purchase Achieve3000 and its intellectual property. To date, the Company's Proprietary Information has derived and continues to derive independent economic value, actual and potential, from not being generally known to, and not being readily ascertainable through proper means by, another person who can obtain economic

value from the disclosure or use of the information. Indeed, Defendants have launched Beable on this very same premise and have begun poaching Achieve3000's customers by touting products and services built on the same exclusive intellectual property and trade secrets.

133. Defendants misappropriated Plaintiffs' trade secrets while knowing and having reason to know they were acquiring those trade secrets by improper means, as demonstrated by Dodelson's execution of an Employment Agreement prohibiting her from taking Proprietary Information and her retention of a vendor to delete evidence of her theft of Proprietary Information. The John Doe Defendants were subject to similar contractual restrictions, and yet, on information and belief, took and/or are using the Company's Proprietary Information for purposes of developing Beable with Dodelson. The John Doe Defendants also misrepresented and/or concealed the identity of their new employer, significantly impairing the Company's ability to take steps to prevent them from taking its Proprietary Information. Further, as detailed above, Dodelson and Beable made fraudulent misrepresentations in their filings in the New Jersey Litigation to conceal their misappropriation and to continue deceiving Plaintiffs to believe they were not using the Company's Proprietary Information or developing a product to compete with Achieve3000.

134. Dodelson and the John Doe Defendants further misappropriated Plaintiffs' trade secrets by disclosing them to Beable and, in turn, Beable misappropriated the trade secrets by disclosing them to other employees to develop its business.

135. At all relevant times, Defendants knowingly acquired and induced other Defendants to acquire Plaintiffs' trade secrets through improper means, and knew and had reason to know that each of the other Defendants also acquired trade secrets from Plaintiffs through improper means and in violation of their contractual and fiduciary duties to Plaintiffs.

136. As evidenced by MWM's unlawful activities during the New Jersey Litigation and Beable's launch shortly after [REDACTED], Defendants could not have developed Beable's so-called proprietary engine without the misappropriation and unlawful use of Plaintiffs' trade secrets. Defendants did not develop their business and purported proprietary software through reverse engineering, independent derivation, or any other lawful means of acquisition.

137. Because many of the John Doe Defendants entered into non-competition and non-solicitation agreements, in addition to agreements not to use or disclose Plaintiffs' Proprietary Information, Plaintiffs were defrauded into believing that no such information had been taken by those individuals. Dodelson, on the other hand, stole Company information and made numerous misrepresentations that she returned everything she took despite, on information and belief, never doing so or intending to do so. It was only upon Beable's May 28, 2020 press release and public launch that Plaintiffs discovered and reasonably could have discovered that Dodelson must have kept Plaintiffs' Proprietary Information and, on information and belief, conspired with the John Doe Defendants to steal additional information from Plaintiffs.

138. To date, Defendants have continued to misappropriate Plaintiffs' trade secrets, as evidenced by Beable's recent press release and active campaign to poach Plaintiffs' customers.

139. Pursuant to 18 U.S.C. § 1836(b)(3), Plaintiffs are entitled to (i) damages for Plaintiffs' lost revenue due to Defendants' solicitation of existing and potential customers of Plaintiffs and misappropriation of Plaintiffs' trade secrets; (ii) damages for unjust enrichment in Defendants' profits derived in whole or in part from Plaintiffs' trade secrets; (iii) exemplary damages of double the amount of compensatory damages due to Plaintiffs' willful and malicious misappropriation of Plaintiffs' trade secrets; (iv) injunctive relief preventing Beable from

continuing to offer and sell its differentiated learning software engine, hiring Plaintiffs' employees for a one-year period, and prohibiting Defendants from mentioning the Company or its products in Beable's marketing materials, sales presentations and public statements when describing Beable's business or its products; (v) an accounting and return of all Proprietary Information taken from Plaintiffs; and (vi) attorneys' fees due to Plaintiffs' willful and malicious misappropriation of Plaintiffs' trade secrets.

COUNT FOUR
**(New Jersey Unfair Competition Law, N.J.S.A. § 56:4-1, et seq.,
Against Dodelson & Beable)**

140. Plaintiffs repeat and reallege the allegations contained in Paragraphs 1 through 139 of this Complaint as though fully set forth herein.

141. As detailed above, Defendants have appropriated for their own use Plaintiffs' name, brand, trademark, reputation and/or goodwill by stealing Plaintiffs' Proprietary Information and selling it as their own, and advertising their product by heavily referencing Plaintiffs' product to suggest the same quality, reputation, and integrity and falsely imply a legitimate connection between Achieve3000 and Beable.

142. As detailed above (including, in particular, in Count Two), Defendants misappropriated for their own use Plaintiffs' name, reputation and good will by using misleading descriptions and false and misleading representations of fact that are likely to cause and have caused confusion, mistake, and deception as to the affiliation, connection, or association of Beable and its products with Plaintiffs and Plaintiffs' products; and in commercial advertising and promotion, have misrepresented the nature, characteristics and qualities of Defendants' goods, services, and commercial activities.

143. As detailed above (including, in particular, in Count Two), Defendants' statements in Beable's May 28, 2020 press release, on its website and elsewhere constitute commercial

advertising and promotion disseminated to the public and are both literally false and otherwise implicitly convey a false impression that is misleading in context and likely to deceive customers.

144. Defendants' above false statements were made in bad faith, as set forth in detail above.

145. Based on the allegations outlined above, Defendants have engaged in false advertisement, misappropriation of Plaintiffs' intellectual property and trade secrets, interfered with Plaintiffs' ability to run the Company, and otherwise engaged in unfair competition against Plaintiffs willfully and maliciously.

146. Defendants' above-described conduction violates N.J.S.A. § 56:4-1. As a direct and proximate result of Defendants' violations of N.J.S.A. § 56:4-1, Plaintiffs have suffered and continue to suffer damages.

147. Pursuant to N.J.S.A. § 56:4-2, Plaintiffs are entitled to (i) treble direct and indirect damages caused by Defendants' unlawful conduct; (ii) injunctive relief preventing Beable from continuing to offer and sell its differentiated learning software engine, hiring Plaintiffs' employees for a one-year period, and prohibiting Defendants from mentioning the Company or its products in Beable's marketing materials, sales presentations and public statements when describing Beable's business or its products; (iii) injunctive relief requiring Defendants to account for and return all of Plaintiffs' Proprietary Information and destroy any products derived or created from, in whole or in part, Plaintiffs' Proprietary Information; and (iv) injunctive relief requiring Defendants to remove all references to Plaintiffs' products and applied technologies from Beable's advertisements.

COUNT FIVE

(New Jersey Trade Secrets Act, N.J.S.A. § 56:15-1, et seq., Against All Defendants)

148. Plaintiffs repeat and reallege the allegations contained in Paragraphs 1 through 147 of this Complaint as though fully set forth herein.

149. As detailed above, Defendants have misappropriated and continue to misappropriate Plaintiffs' trade secrets.

150. Plaintiffs are owners and have rightful legal and equitable title to the Proprietary Information discussed above, which constitute trade secrets and consist of Plaintiffs' financial, business, technical, economic, and software engineering information, including plans, designs, methods, techniques, processes, procedures, programs, codes, customer lists, and other sensitive information.

151. As detailed above, because Plaintiffs' trade secrets are central to Plaintiffs' business of providing nationwide technological services and products for differentiated learning, much of which are sold on the internet, Plaintiffs' trade secrets are used in and intended for use in interstate commerce.

152. Plaintiffs undertook exhaustive measures to keep their Proprietary Information secret, as detailed above.

153. As detailed above, Plaintiffs' business is built on technological innovation and, in large part, the Patent-In-Suit, other intellectual property and related trade secrets concerning its proprietary software engine that enables their various differentiated learning applications. The Company's Proprietary Information has derived and continues to derive independent economic value, actual and potential, from not being generally known to, and not being readily ascertainable through proper means by, another person who can obtain economic value from the disclosure or use of the information.

154. As alleged above, Defendants misappropriated Plaintiffs' trade secrets while knowing and having reason to know that they were acquiring the trade secrets by improper means.

155. Dodelson and the John Doe Defendants further misappropriated Plaintiffs' trade secrets by disclosing them to Beable and, in turn, Beable misappropriated the trade secrets by disclosing them to other employees to develop its business.

156. At all relevant times, Defendants knowingly acquired and induced other Defendants to acquire Plaintiffs' trade secrets through improper means, and knew and had reason to know that each of the other Defendants also acquired trade secrets from Plaintiffs through improper means and in violation of their contractual and fiduciary duties to Plaintiffs.

157. As alleged above, Defendants could not have developed Beable's so-called proprietary engine without the misappropriation and unlawful use of Plaintiffs' trade secrets. Defendants did not develop their business and purported proprietary software through reverse engineering, independent derivation, or any other lawful means of acquisition.

158. Plaintiffs were defrauded into believing that none of their Proprietary Information had been taken and was being used by any former employee, including Dodelson, because (a) the John Doe Defendants had entered into agreements imposing on them broad confidentiality obligations and misrepresented and/or concealed the identity of their new employer when leaving Achieve3000; and (b) Dodelson was subject to similar contractual restrictions and made numerous representations that she had returned and was not using the Company's Proprietary Information. Plaintiffs only discovered, and reasonably could have discovered, that Dodelson must have kept Plaintiffs' Proprietary Information and, on information and belief, conspired with the John Doe Defendants to steal additional information from Plaintiffs' computers after Beable's May 28, 2020 press release and public launch.

159. To date, Defendants have continued to misappropriate Plaintiffs' trade secrets.

160. Pursuant to N.J.S.A. § 56:15-4, Plaintiffs are entitled to (i) damages for Plaintiffs' lost revenue due to Defendants' solicitation of existing and potential customers of Plaintiffs; (ii) damages for unjust enrichment in Defendants' profits derived in whole or in part from Plaintiffs' trade secrets; and (iii) punitive damages of double the amount of monetary damages due to Plaintiffs' willful and malicious misappropriation of Plaintiffs' trade secrets.

161. Pursuant to N.J.S.A. § 56:15-3, Plaintiffs are entitled to (i) injunctive relief preventing Beable from hiring any further of Plaintiffs' employees for the duration of this action; (ii) an accounting and return of all Proprietary Information taken from Plaintiffs; and (iii) injunctive relief preventing Beable from continuing to offer and sell its differentiated learning software engine, hiring Plaintiffs' employees for a one-year period, and prohibiting Defendants from mentioning the Company or its products in Beable's marketing materials, sales presentations and public statements when describing Beable's business or its products.

162. Pursuant to N.J.S.A. § 56:15-6, Plaintiffs are entitled to reasonable attorneys' fees, including a reasonable sum to cover the service of expert witnesses, due to Plaintiffs' willful and malicious misappropriation of Plaintiffs' trade secrets.

COUNT SIX

**(New Jersey Computer Related Offenses Act, N.J.S.A. § 2A:38A-3(a) & (c), Against
Dodelson & The John Doe Defendants)**

163. Plaintiffs repeat and reallege the allegations contained in Paragraphs 1 through 162 of this Complaint as though fully set forth herein.

164. Pursuant to N.J.S.A. § 2A:38A-3(a), Dodelson and the John Doe Defendants purposefully and knowingly took Plaintiffs' proprietary data and information concerning Plaintiffs' proprietary software engine and other sensitive information without authorization.

165. Pursuant to N.J.S.A. § 2A:38A-3(c), Dodelson and the John Doe Defendants purposefully and knowingly, without authorization, accessed and attempted to access Plaintiffs' computers, computer systems, and computer network.

166. Dodelson and the John Doe Defendants did not have authorization when they accessed Plaintiffs' computers and stole Plaintiffs' Proprietary Information because, *inter alia*, they did so after termination of their employment with the Company. As Sections 9.1 and 9.2 of the Employment Agreement and similar agreements between the John Doe Defendants and the Company provide, Dodelson and the John Doe Defendants were not authorized to access Plaintiffs' computers to obtain and steal information upon termination of their employment.

167. In addition, Dodelson and the John Doe Defendants obtained and stole Plaintiffs' Proprietary Information in a manner that exceeded their authorized access to Plaintiffs' computers. As stated above, Dodelson and the John Doe Defendants stole Plaintiffs' information shortly before and after leaving the Company.

168. At all relevant times, Dodelson and John Does stole Plaintiffs' Proprietary Information from their computers with the intent to defraud, as evidenced by Dodelson's premeditated decision to steal data with the aid of a vendor shortly before and after she left the Company. In addition, the John Does Defendants were, on information and belief, solicited to steal Plaintiffs' information for purposes of aiding Beable's development of a product to compete with Plaintiffs' business.

169. As detailed above, Plaintiffs (a) were defrauded into believing that none of their Proprietary Information had been taken and was being used by any former employee, including Dodelson; and (b) only discovered, and reasonably could have discovered after Beable's May 28, 2020 press release and public launch that Dodelson kept and used Plaintiffs' Proprietary

Information and, on information and belief, conspired with the John Doe Defendants to do the same.

170. Upon discovering the unauthorized theft of information from Plaintiffs' computers, Plaintiffs expended and continued to expend significant sums to engage service providers, including computer forensics experts, to determine the extent of the information stolen, the harm to Plaintiffs' hardware, the loss of information, and other harmful consequences to Plaintiffs' computers.

171. Dodelson and the John Doe Defendants have improperly used Plaintiffs' Proprietary Information to create Beable to compete directly with Plaintiffs, and have poached the Company's employees and customers. Due to that misconduct, Plaintiffs have suffered a loss of millions of dollars with respect to patent rights, trade secrets, human capital, and customers, among other things, that has diminished and continues to threaten the value and future success of Plaintiffs' business.

172. Pursuant to N.J.S.A. § 2A:38A-3, Plaintiffs are entitled to (i) compensatory damages; (ii) punitive damages; and (iii) cost of suit, including reasonable attorneys' fees, and costs of litigation and investigation.

173. Pursuant to N.J.S.A. § 2A:38A-5, Plaintiffs are entitled to injunctive relief for the immediate cessation of the use of Plaintiffs' Proprietary Information, the immediate return of such information, and an accounting of precisely what information was taken and the method by which that information was taken.

COUNT SEVEN
(Breach of Contract Against Dodelson)

174. Plaintiffs repeat and reallege the allegations contained in Paragraphs 1 through 173 of this Complaint as though fully set forth herein.

175. [REDACTED]

176. [REDACTED]

177. Dodelson continuously and repeatedly [REDACTED] [REDACTED] by retaining Plaintiffs' Proprietary Information, using it to develop patent-infringing technology for Beable for the purpose of competing with Plaintiffs' business, and refusing to cooperate with Plaintiffs' demands for compliance with these provisions.

178. As a direct and proximate result of Dodelson's breaches of [REDACTED] [REDACTED], Plaintiffs have suffered and continue to suffer damages.

179. As a result of Dodelson's breaches of [REDACTED], Plaintiffs are entitled to (i) compensatory damages; (ii) punitive damages; (iii) costs of suit, including reasonable attorneys' fees and costs of litigation and investigation; (iv) injunctive relief for the immediate cessation of the use of Plaintiffs' Proprietary Information and the immediate return of such information; and (v) an accounting of precisely what information was taken and the method by which that information was taken.

COUNT EIGHT
**(Breach of the Implied Covenant of Good Faith and Fair Dealing
Against Dodelson)**

180. Plaintiffs repeat and reallege the allegations contained in Paragraphs 1 through 179 of this Complaint as though fully set forth herein.

181. [REDACTED]

182. Dodelson breached the implied covenant of good faith and fair dealing by: (a) retaining Plaintiffs' Proprietary Information, using it to develop a technology system for Beable for the purpose of competing with Plaintiffs' business; and (b) using Achieve3000's name in its advertising (in its May 28, 2020 press release, its website, and other marketing materials) when describing Beable's product.

183. As a direct and proximate result of Dodelson's breaches of the implied covenant of good faith and fair dealing, Plaintiffs have suffered and continue to suffer significant damages.

184. As a result of Dodelson's breaches of the implied covenant of good faith and fair dealing, Plaintiffs are entitled to (i) compensatory damages; (ii) punitive damages; (iii) costs of suit, including reasonable attorneys' fees and costs of litigation and investigation; (iv) injunctive relief for the immediate cessation of the use of Plaintiffs' Proprietary Information and the immediate return of such information; and (v) an accounting of precisely what information was taken and the method by which that information was taken.

COUNT NINE
(Fraudulent Inducement Against Dodelson & Beable)

185. Plaintiffs repeat and reallege the allegations contained in Paragraphs 1 through 184 of this Complaint as though fully set forth herein.

186. As detailed above, in order to induce AC Holdco to enter into [REDACTED], Dodelson and Beable made material fraudulent representations in their February 12, 2020 letter to the Law Division that they were not competing with Achieve3000, had no finished products that would compete with Achieve3000, and had not begun developing any such competitive products (or any products at all).

187. Throughout the course of the New Jersey Litigation, Dodelson made similar misrepresentations regarding the non-competitive nature of her post-Achieve3000 activities and MWM/Beable's business. She also misrepresented that she (a) was not using and did not intend to use Plaintiffs' Proprietary Information to develop a product designed to compete with Plaintiffs' business; and (b) did not have and would otherwise return or destroy any of Plaintiffs' Proprietary Information in her. Dodelson made such misrepresentations in, *inter alia*, her October 23, 2018 and November 1, 2018 court submissions, as well as in discovery responses.

188. These were not promises of future performance, but rather misrepresentations of present fact. Dodelson and Beable were stealing Plaintiffs' Proprietary Information and using it to develop a competitor-product at the precise moment that they induced Plaintiffs to [REDACTED], as well as before and after [REDACTED]. That misconduct was separate and distinct from the breach of contract that followed.

189. Plaintiffs reasonably relied to their detriment on Dodelson's and Beable's misrepresentations by entering into [REDACTED]

[REDACTED]

[REDACTED].

190. As a direct and proximate result of Dodelson's and Beable's fraudulent inducement, Plaintiffs have suffered and continue to suffer significant damages.

191. Because Plaintiffs were fraudulently induced into entering into [REDACTED], Plaintiffs are entitled to (i) compensatory damages; (ii) punitive damages; (iii) rescission of [REDACTED]; (iv) a declaration that Plaintiffs are entitled to pursue and recover for Dodelson's breaches of the non-competition and non-solicitation provisions of the Employment Agreement, as set forth in this Complaint and AC Holdco's pleadings in the New Jersey Litigation; and (v) [REDACTED].

COUNT TEN
(Tortious Interference with Prospective Economic Advantage Against All Defendants)

192. Plaintiffs repeat and reallege the allegations contained in Paragraphs 1 through 191 of this Complaint as though fully set forth herein.

193. Plaintiffs have an existing and reasonable expectation of economic benefit and advantage to continue their business without competitors stealing their Proprietary Information and unfairly poaching customers and employees.

194. Moreover, by investing approximately [REDACTED] into the Acquisition, Plaintiffs reasonably expected that the sellers of the Company and existing employees would not thereafter steal the Company's valuable assets—*i.e.*, Proprietary Information—and create a new directly competing Company that would effectively undermine the entire purpose of Plaintiffs' Acquisition.

195. Furthermore, [REDACTED]

[REDACTED], which Defendants have directly violated by continuing to develop a product built from Plaintiffs' Proprietary Information to compete directly with Plaintiffs' business during and immediately after executing [REDACTED].

196. Defendants, through the Company's policies, non-solicitation agreements, non-competition agreements, and confidentiality agreements that Dodelson and the John Doe Defendants entered into with Plaintiffs, as well as established state and federal laws, at all relevant times had knowledge of Plaintiffs' expected economic advantage.

197. Through the myriad ways alleged above, which also resulted in Defendants' violations of numerous other state and federal laws as alleged in this Complaint, Defendants wrongfully interfered with Plaintiffs' expected economic advantage by stealing Plaintiffs' Proprietary Information and poaching Plaintiffs' customers and employees in a willful and malicious campaign to destroy Plaintiffs' business.

198. As a direct and proximate result of Defendants' tortious interference, Plaintiffs have suffered and continue to suffer significant damages, none of which Plaintiffs would have sustained absent Defendants' unlawful conduct.

199. As a result of Defendants' tortious interference, Plaintiffs are entitled to (i) compensatory damages; (ii) punitive damages; (iii) costs of suit, including reasonable attorneys' fees and costs of litigation and investigation; (iv) injunctive relief for the immediate cessation of the use of Plaintiffs' Proprietary Information and the immediate return of such information; and (v) an accounting of precisely what information was taken and the method by which that information was taken.

COUNT ELEVEN
(Conversion And Replevin Against Dodelson & John Does)

200. Plaintiffs repeat and reallege the allegations contained in Paragraphs 1 through 199 of this Complaint as though fully set forth herein.

201. Plaintiffs maintained all rights, title and interest in the intellectual property and trade secrets that Dodelson and the John Doe Defendants had access to and possessed on their computer devices, hard drives, flash drives, physical documents, and other tangible property belonging to the Company during their employment. Under Sections 9.1 and 9.2 of the Employment Agreement and similar agreements between the John Doe Defendants and the Company, the Company possessed a clear, uncontested right to ownership of the Proprietary Information at issue and, in many cases, the physical devices and documents that contained that information.

202. In conscious disregard of Plaintiffs' rights, Dodelson and the John Doe Defendants intentionally misappropriated Plaintiffs' Proprietary Information and the physical devices and documents in which they were stored by exercising dominion and control over them and by transferring them to Beable.

203. As a direct and proximate result of these acts of conversion by Dodelson and John Doe Defendants, Plaintiffs have incurred and will continue to incur damages.

204. Accordingly, Plaintiffs are entitled and authorized to recover the value of the stolen Proprietary Information and relief by replevin, requiring Defendants to return the stolen information in its entirety, including the form and devices in which it was originally taken.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully requests:

- A. That Judgment be entered that Beable has infringed one or more claims of the Patent-in-Suit, literally and/or under the doctrine of equivalents;
- B. That, in accordance with 35 U.S.C. § 283, Beable and all affiliates, employees, agents, officers, directors, attorneys, successors, and assigns, and all those acting in behalf of or in active concert or participation with Beable, be enjoined from (1) infringing the Patent-in-Suit and (2) making, using, selling, and offering for sale the Beable Life-Ready Literacy system;
- C. An order directing Beable to file with the Court and serve upon Plaintiffs' counsel within thirty (30) days after entry of the order of injunction, a report setting forth the manner and form in which Beable has complied with the injunction, including provisions relating to destruction and recall of infringing products and materials;
- D. An award of damages sufficient to compensate Plaintiffs for Beable's infringement under 35 U.S.C. § 284, including an enhancement of damages on account of Beable's willful infringement;
- E. That the case be found exceptional under 35 U.S.C. § 285 and that Plaintiffs be awarded their reasonable attorneys' fees;
- F. That Judgment be entered against Defendants awarding Plaintiffs general, compensatory, consequential, direct and indirect damages, as detailed above, in an amount to be determined at the time of trial;

- G. An injunction for the immediate cessation of the use of and immediate return of Plaintiffs' Proprietary Information and accounting of what was taken and the method by which the information was taken;
- H. An injunction preventing Beable from continuing to offer and sell its differentiated learning software engine, hiring any further of Plaintiffs' employees for a one-year period, and prohibiting Defendants from referencing or mentioning Achieve3000 or its products in Beable's marketing materials, sales presentations and public statements when describing Beable's business or its products;
- I. Rescission of [REDACTED];
- J. A declaration that Plaintiffs are entitled to pursue and recover for Dodelson's breaches of the non-competition and non-solicitation provisions of the Employment Agreement, as set forth in this Complaint and AC Holdco's pleadings in the New Jersey Litigation;
- K. An order directing Dodelson to [REDACTED];
- L. An award of punitive, treble and/or exemplary damages as set forth above;
- M. An award of attorneys' fees and costs of litigation and investigation;
- N. Costs and expenses in this action;
- O. An award of prejudgment and post-judgement interest; and
- P. Such other and further relief as the Court may deem just and proper.

Dated: July 21, 2020
Chatham, New Jersey

MARINO, TORTORELLA & BOYLE, P.C.

By: 

Kevin H. Marino
John A. Boyle
Wan Cha
437 Southern Boulevard
Chatham, New Jersey 07928-1488
(973) 824-9300
*Attorneys for Plaintiffs AC Holdco, Inc.
and Achieve3000, Inc.*

PAUL, WEISS, RIFKIND, WHARTON &
GARRISON LLP
Nicholas Groombridge
1285 Avenue of the Americas
New York, NY 10019-6064
(212) 373-3212
J. Steven Baughman
Megan F. Raymond
2001 K Street, NW
Washington, DC 20006-1047
(202) 223-7300
Of Counsel

JURY DEMAND

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiffs, AC Holdco, Inc. and Achieve3000, Inc., hereby demand a trial by jury on all issues properly so triable.

Dated: July 21, 2020
Chatham, New Jersey

MARINO, TORTORELLA & BOYLE, P.C.

By: 

Kevin H. Marino
John A. Boyle
Wan Cha
437 Southern Boulevard
Chatham, New Jersey 07928-1488
(973) 824-9300
*Attorneys for Plaintiffs AC Holdco, Inc.
and Achieve3000, Inc.*

PAUL, WEISS, RIFKIND, WHARTON &
GARRISON LLP
Nicholas Groombridge
1285 Avenue of the Americas
New York, NY 10019-6064
(212) 373-3212
J. Steven Baughman
Megan F. Raymond
2001 K Street, NW
Washington, DC 20006-1047
(202) 223-7300
Of Counsel

EXHIBIT A

(12) **United States Patent**
Dodelson et al.

(10) **Patent No.:** **US 9,652,993 B2**
 (45) **Date of Patent:** ***May 16, 2017**

(54) **METHOD AND APPARATUS FOR PROVIDING DIFFERENTIATED CONTENT BASED ON SKILL LEVEL**

USPC 434/323
 See application file for complete search history.

(71) Applicant: **Achieve3000, Inc.**, Lakewood, NJ (US)

(56) **References Cited**

(72) Inventors: **Saki Dodelson**, Lakewood, NJ (US);
Susan Gertler, Teaneck, NJ (US);
Rivki Locker, Lakewood, NJ (US)

U.S. PATENT DOCUMENTS

(73) Assignee: **ACHIEVE3000, INC.**, Lakewood, NJ (US)

6,606,480	B1 *	8/2003	L'Allier et al.	434/362
6,626,679	B2	9/2003	Skeans et al.	
7,493,077	B2	2/2009	Coleman et al.	
7,677,896	B1 *	3/2010	Sonwalkar	434/236
2003/0054328	A1	3/2003	Stuppy et al.	
2003/0152894	A1 *	8/2003	Townshend	G09B 7/04 434/178
2003/0175676	A1 *	9/2003	Theilmann et al.	434/350

(*) Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 U.S.C. 154(b) by 0 days.

This patent is subject to a terminal disclaimer.

(Continued)

FOREIGN PATENT DOCUMENTS

KR	20000030514	A	6/2000
KR	20020048679	A	6/2002

(21) Appl. No.: **14/180,179**

OTHER PUBLICATIONS

(22) Filed: **Feb. 13, 2014**

International Search Report Mailed on Jun. 1, 2007 for PCT Application No. PCT/US2006/034231.

(65) **Prior Publication Data**

US 2014/0193796 A1 Jul. 10, 2014

(Continued)

Related U.S. Application Data

Primary Examiner — Thomas Hong

(63) Continuation of application No. 11/920,087, filed as application No. PCT/US2006/034231 on Aug. 31, 2006, now Pat. No. 8,714,986.

(74) *Attorney, Agent, or Firm* — Moser Taboada

(51) **Int. Cl.**
G09B 5/10 (2006.01)
G09B 7/00 (2006.01)
G09B 7/08 (2006.01)

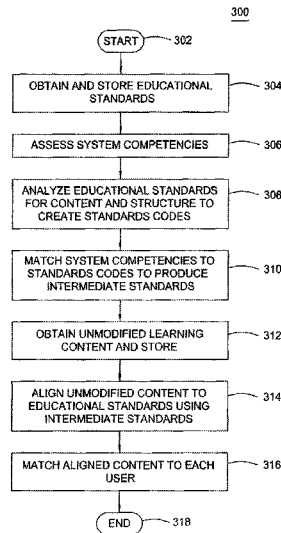
(57) **ABSTRACT**

A system and method is disclosed for providing differentiated content to a user comprising determining a skill level of the user, obtaining unmodified content, aligning the unmodified content to a set of content standards, modifying the aligned content in accordance with the user's skill level, providing the modified aligned content to the user, re-assessing the user's skill level based on a response from the user to the modified aligned content, and modifying new aligned content in accordance with the re-assessed user's skill level.

(52) **U.S. Cl.**
 CPC **G09B 5/10** (2013.01); **G09B 7/00** (2013.01); **G09B 7/08** (2013.01)

(58) **Field of Classification Search**
 CPC G09B 5/10

14 Claims, 12 Drawing Sheets



US 9,652,993 B2

Page 2

(56)

References Cited

U.S. PATENT DOCUMENTS

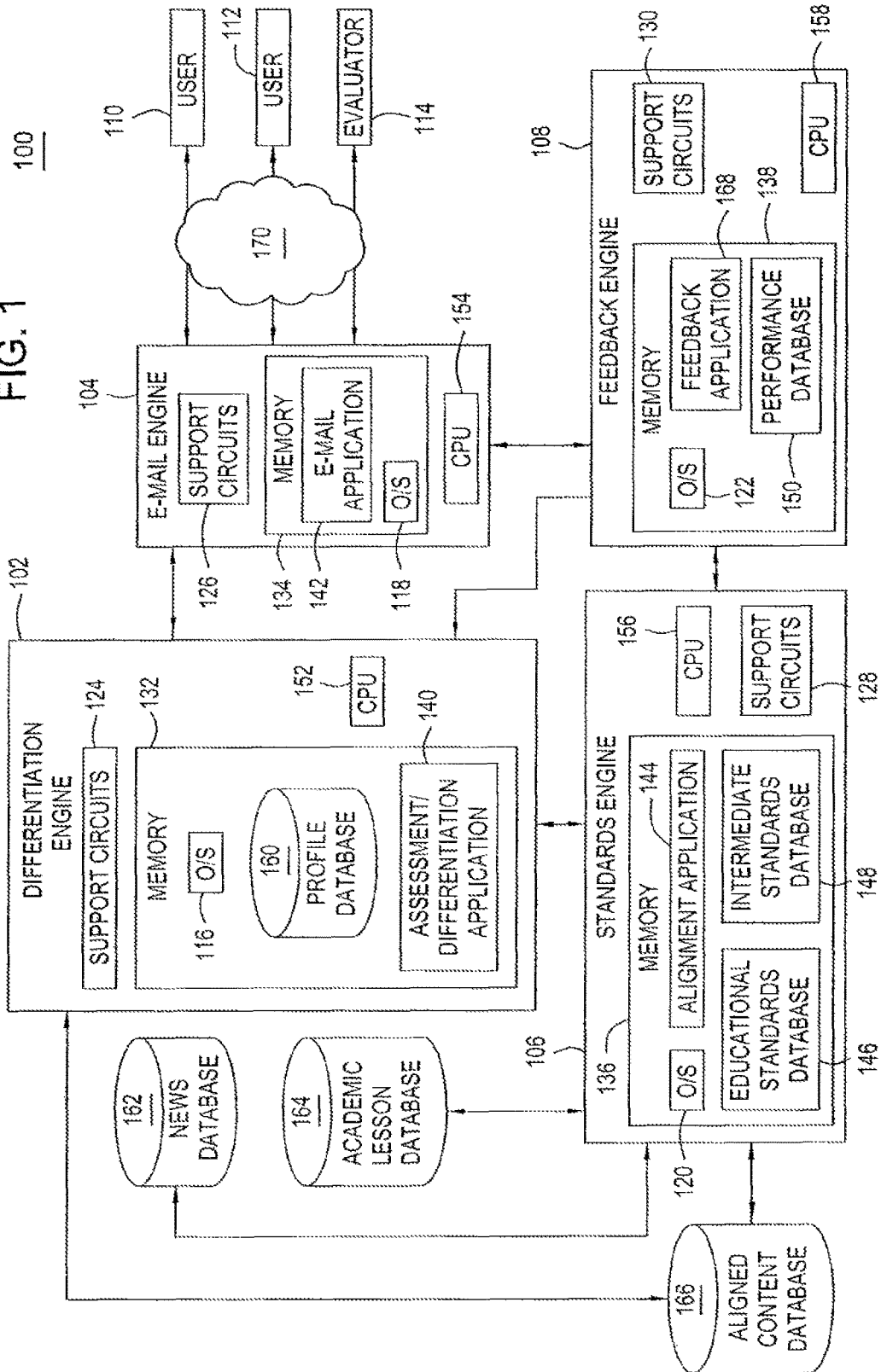
2003/0212541	A1*	11/2003	Kinder	G06F 17/27 704/4
2004/0110119	A1	6/2004	Riconda et al.	
2004/0152062	A1*	8/2004	Adams	434/336
2005/0158697	A1	7/2005	Nelson et al.	
2005/0196730	A1*	9/2005	Kellman	434/118
2005/0239032	A1*	10/2005	Hartenberger	G09B 7/00 434/322
2005/0287509	A1	12/2005	Mohler	
2006/0121433	A1*	6/2006	Adams	G09B 7/02 434/323
2006/0147890	A1*	7/2006	Bradford et al.	434/362
2006/0234201	A1	10/2006	Pierson et al.	
2007/0231780	A1	10/2007	Shulman	
2008/0131863	A1	6/2008	Stuppy	

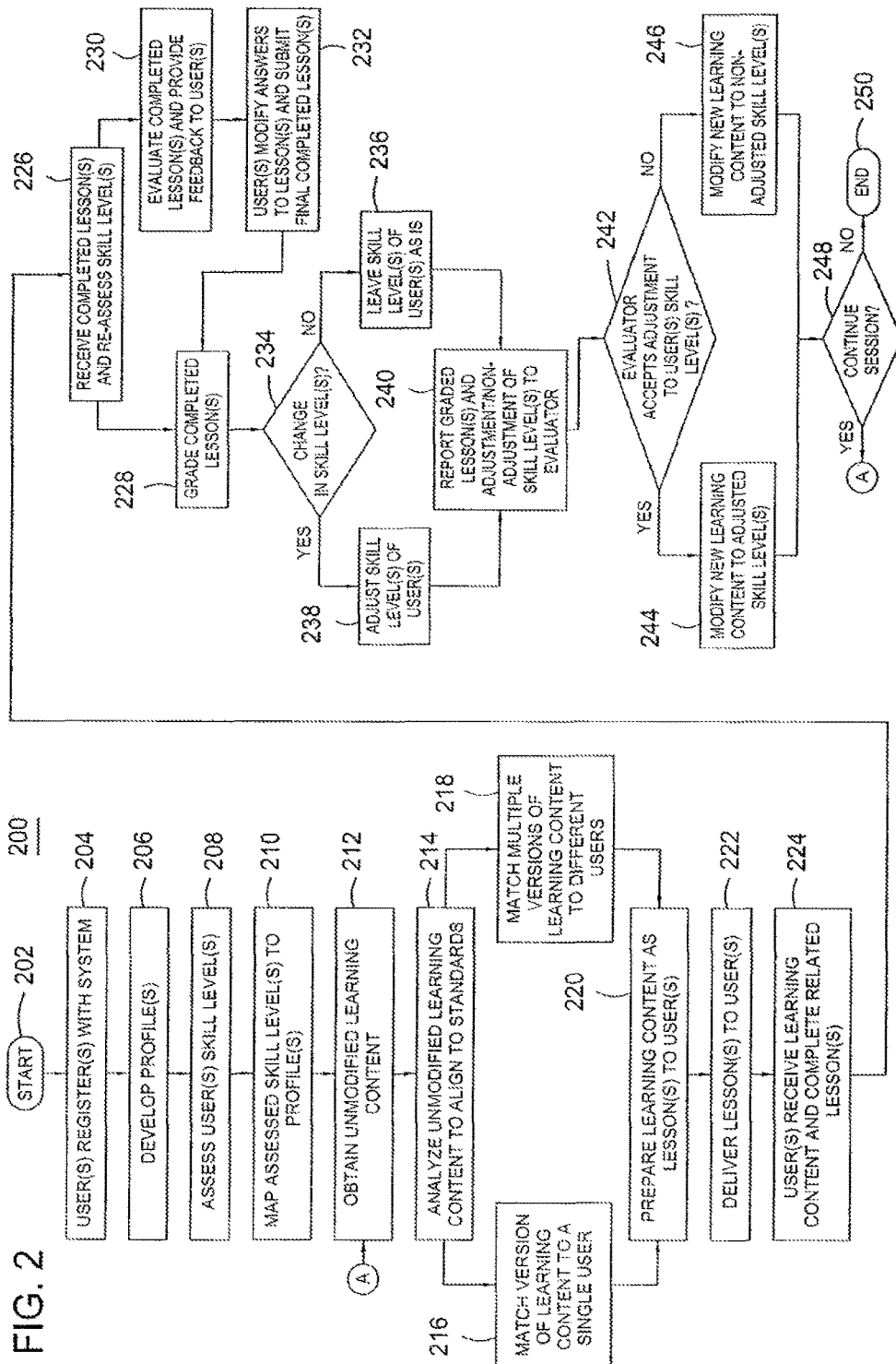
OTHER PUBLICATIONS

Written Opinion of the International Searching Authority Mailed on Jun. 1, 2007 for PCT Application No. PCT/US2006/034231.
International Preliminary Report on Patentability Mailed on Mar. 3, 2009 for PCT Application No. PCT/US2006/034231.

* cited by examiner

FIG. 1





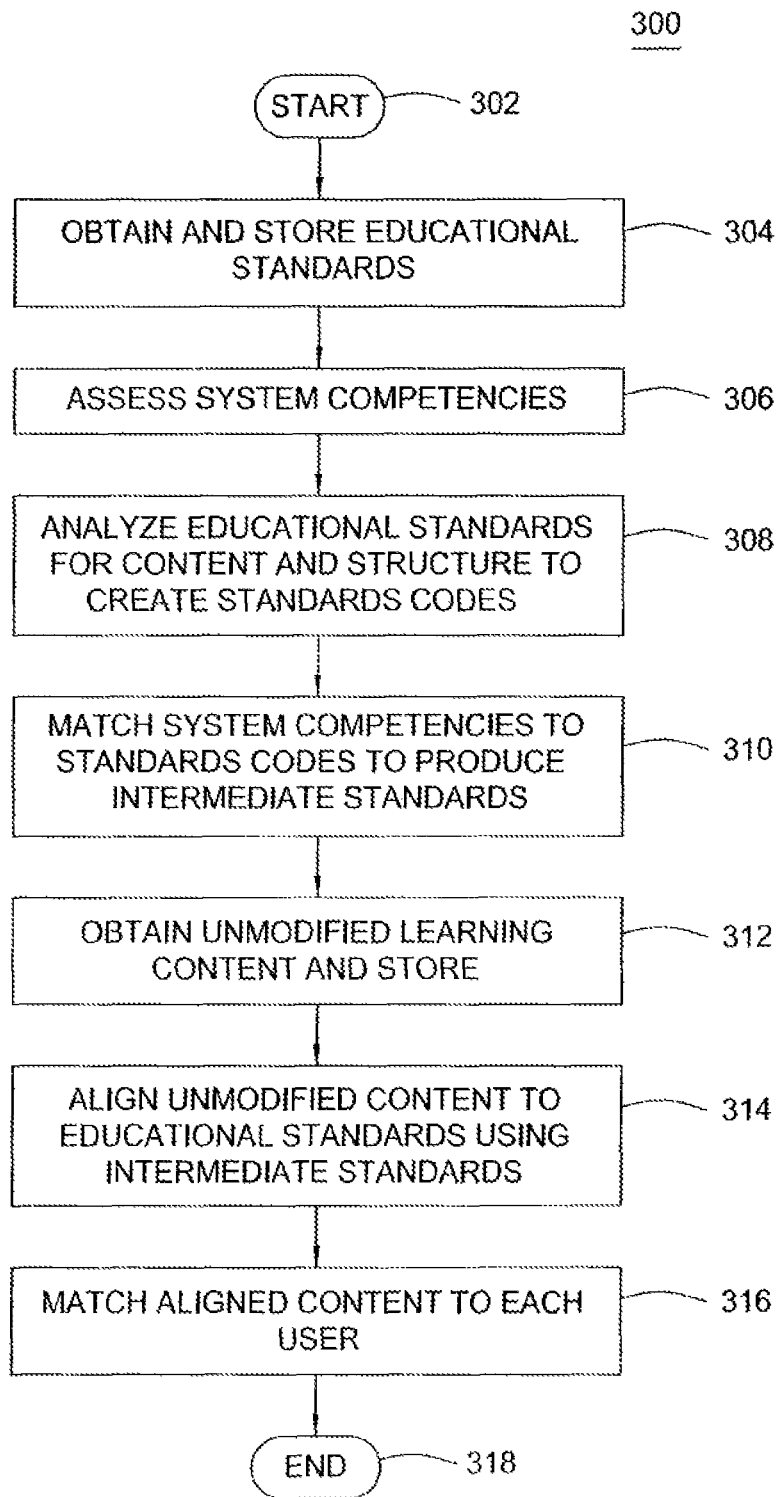
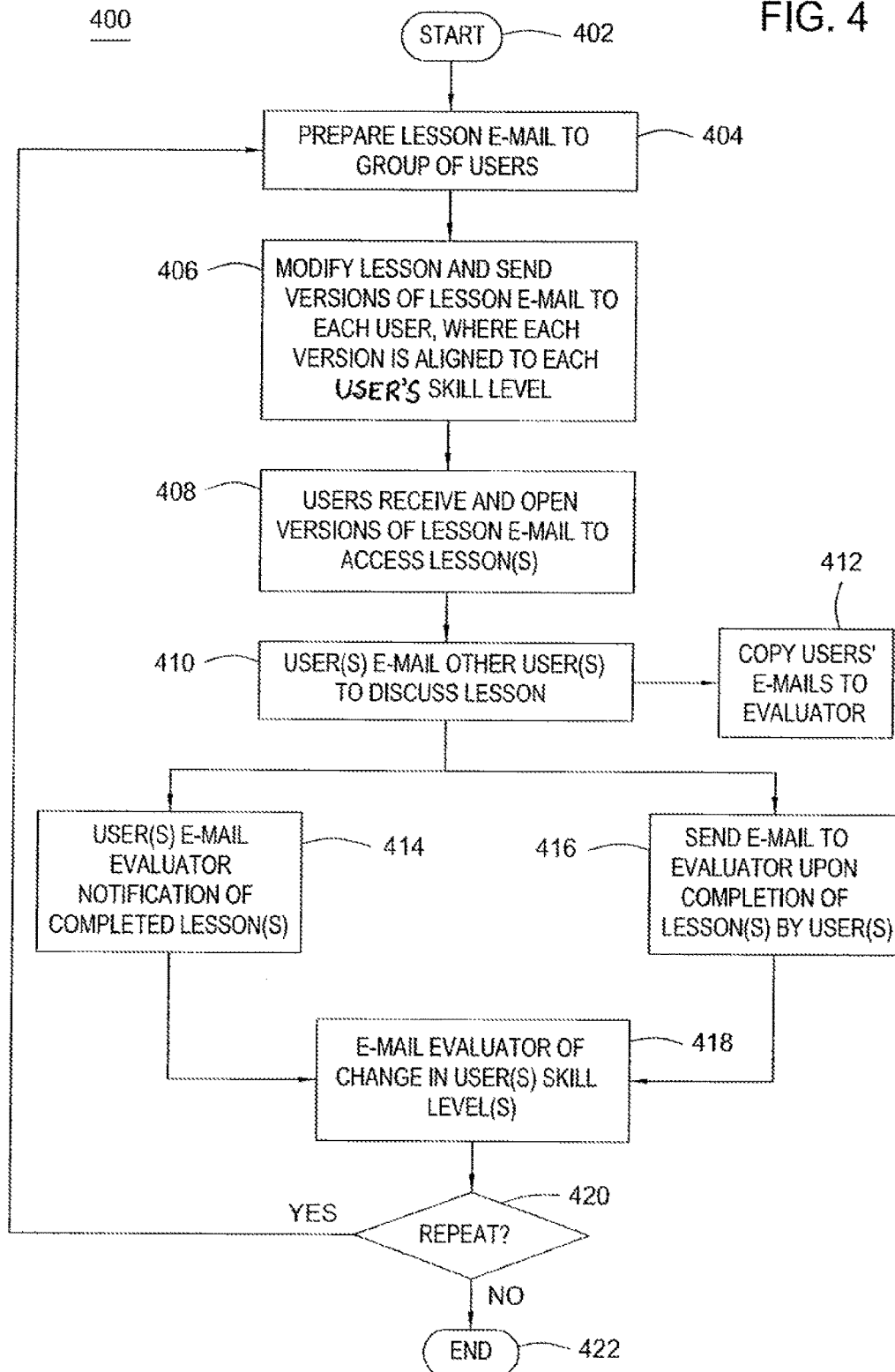


FIG. 3

FIG. 4



500

FIG. 5A

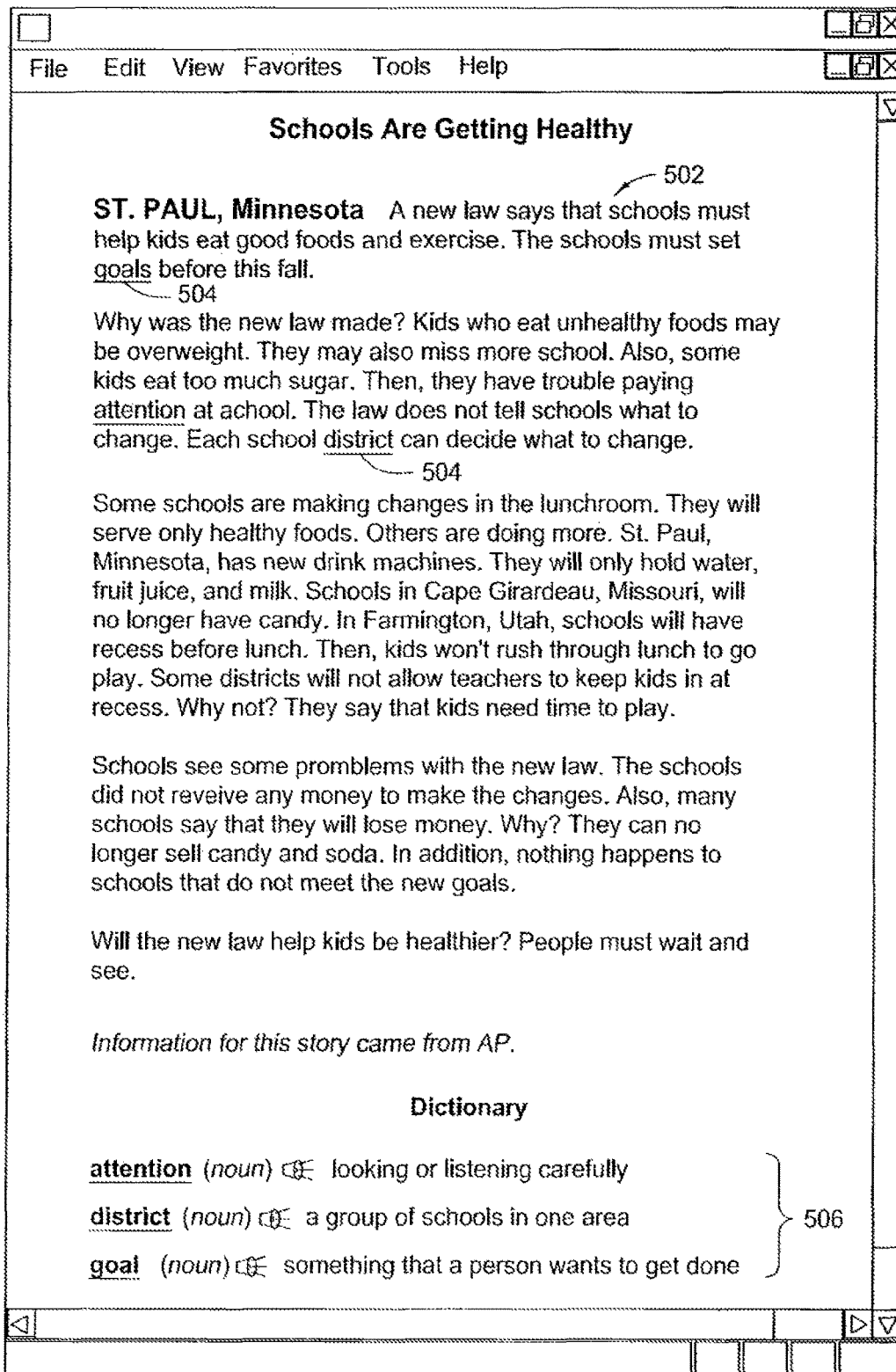


FIG. 5B

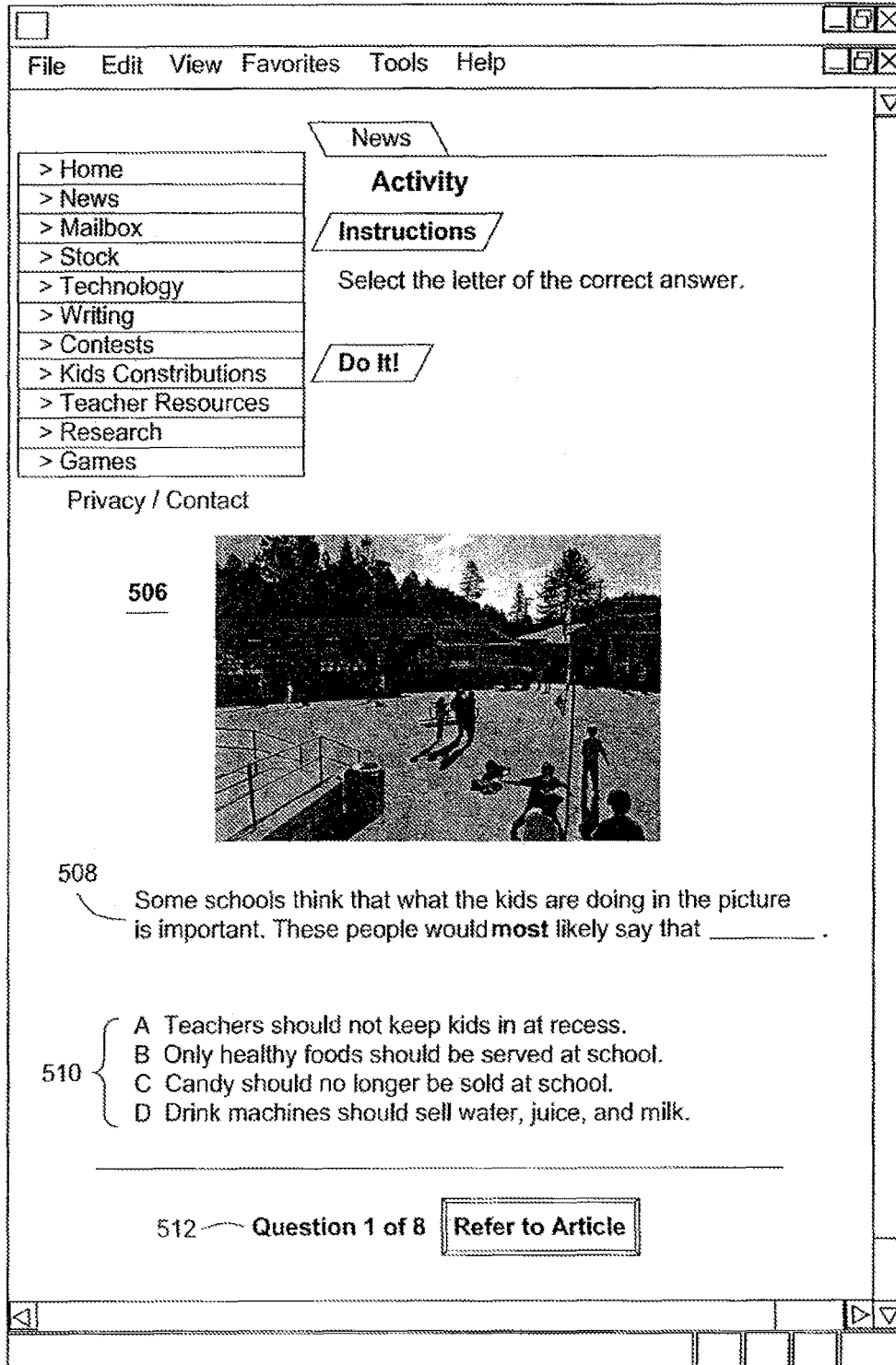
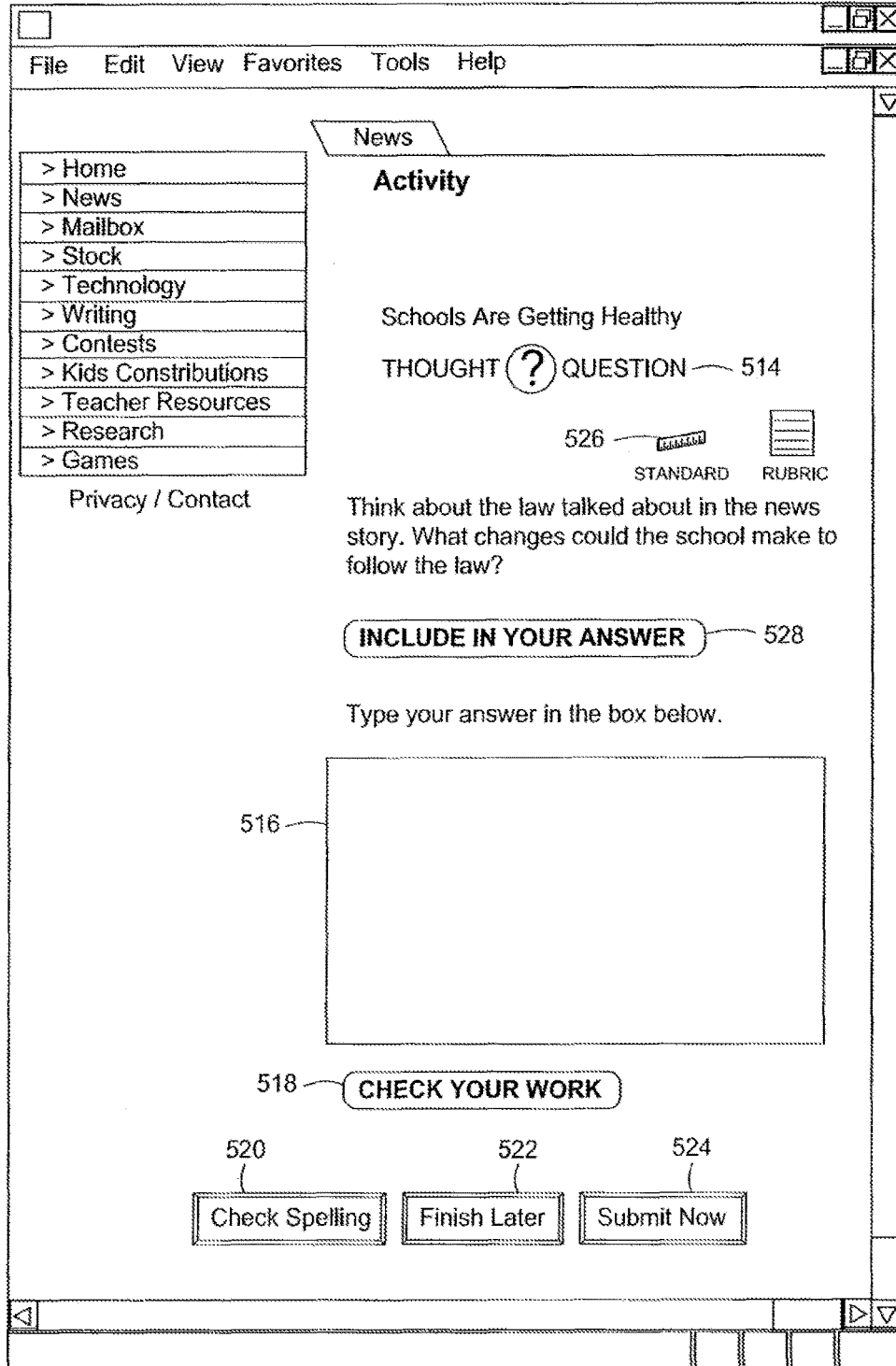


FIG. 5C



530

FIG. 5D

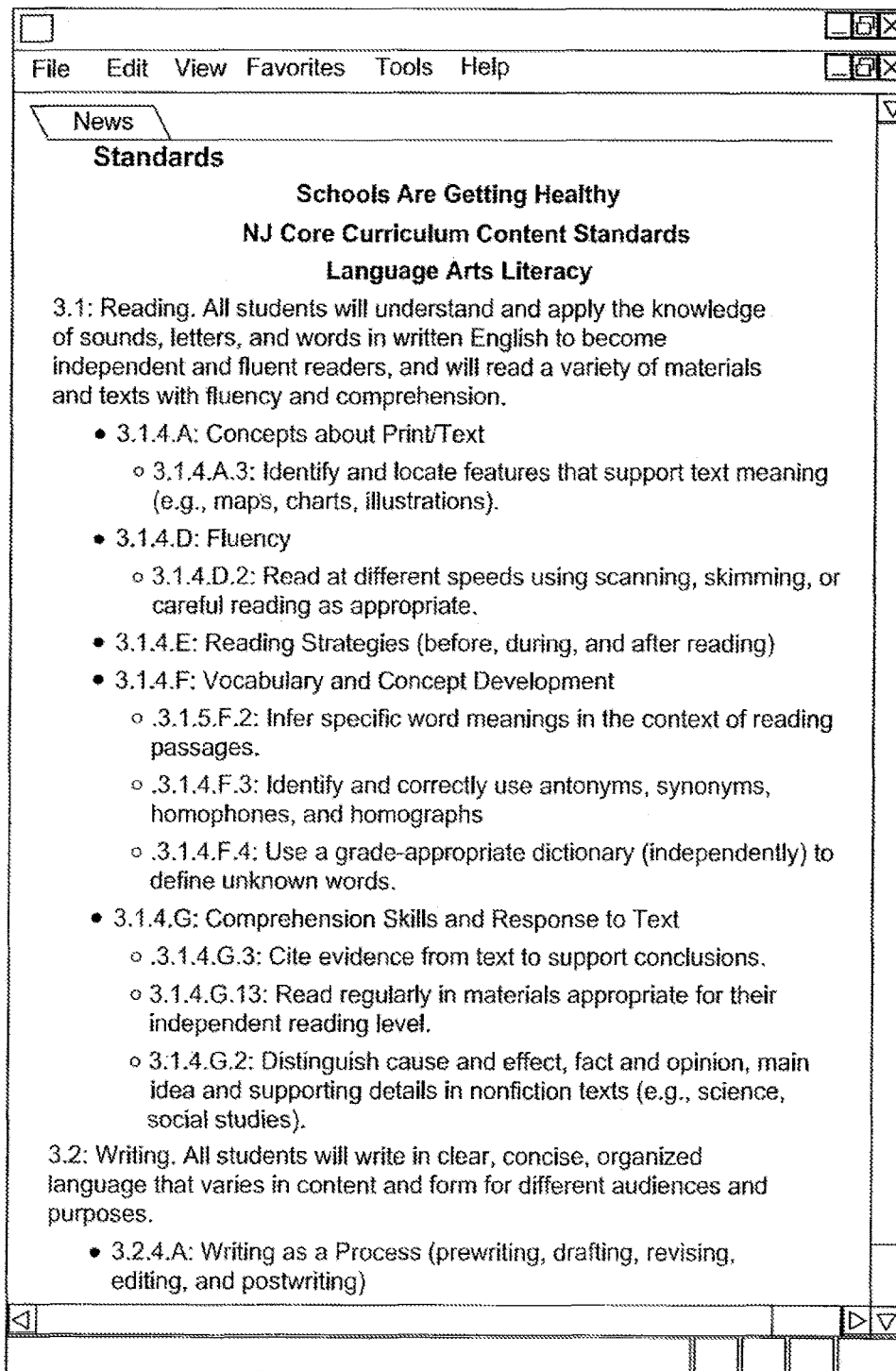
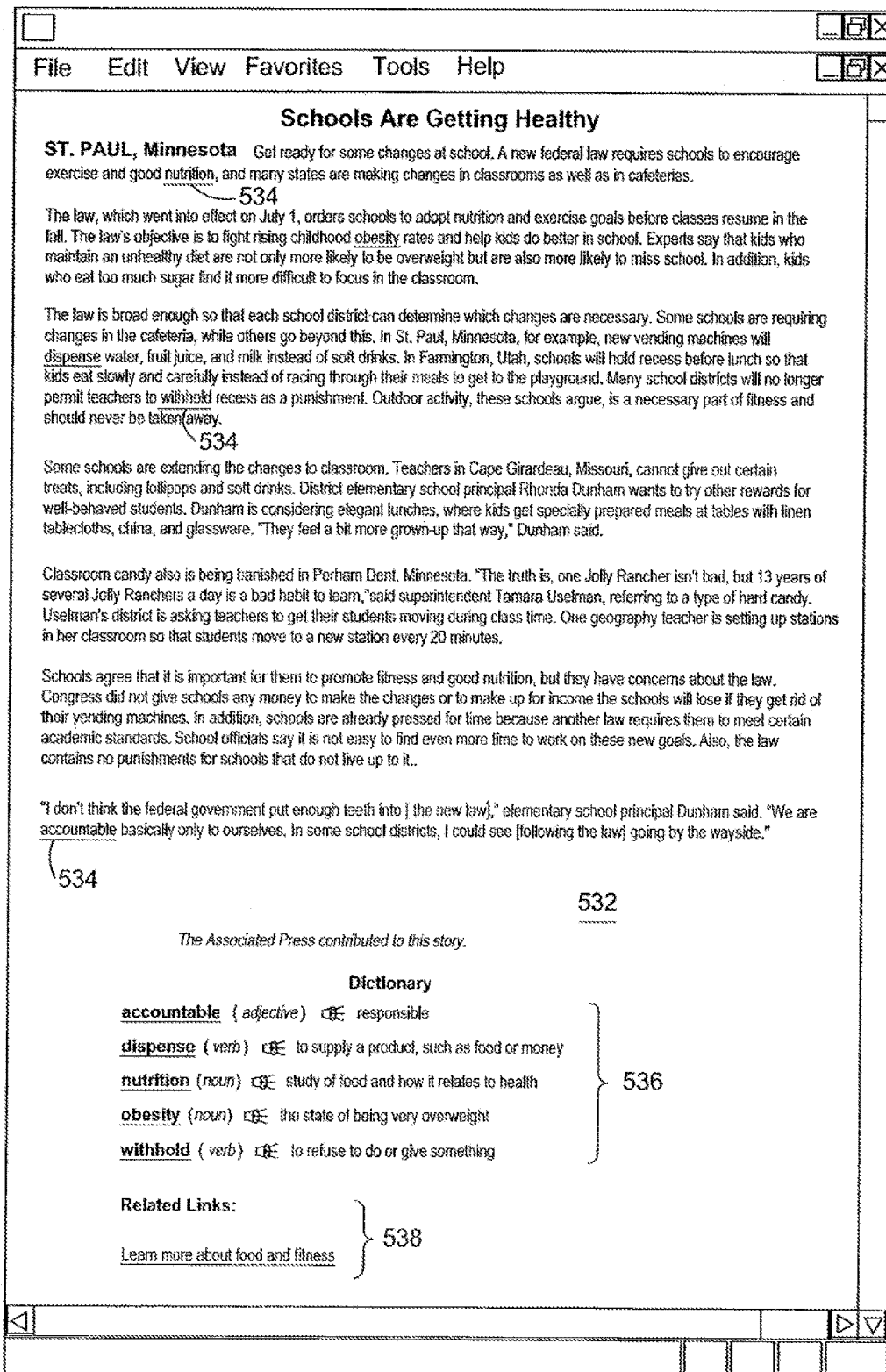


FIG. 5E



600			608			608			608			608		
Class: Grade6 — 602			610			612			Grade6					
			Sep 05			Oct 05			Nov 05			Dec 05		
User — 604	Read Level — 606	Total			Average Monthly Score			Total			Average Monthly Score			
		MC News Activities	MC News Activities	MC News Activities	MC News Activities	MC News Activities	MC News Activities	MC News Activities	MC News Activities	MC News Activities	MC News Activities	MC News Activities	MC News Activities	
1 Boyd, Frances	5.2 / 815L	27	55%	21	47%	36	74%	32	80%*	20	66%	20	66%	
2 Boyd, Scott	6.1 / -	21	41%	21	45%	20	50%	20	66%	20	66%	20	66%	
3 Brock, Zander	3.2 / 537L	21	47%	22	50%	21	53%	20	58%*	20	58%*	20	58%*	
4 Heuser, Ashley	9-10 / 1200L	21	47%	21	49%	20	52%	21	64%*	20	52%	20	54%	
5 Perez, Siarra	6.1 / 857L	14	52%	13	52%	12	53%	13	64%*	13	53%	13	64%*	
6 Test, Test	4.1 / -	21	47%	21	49%	20	52%	20	54%	20	52%	20	54%	
7 User, New	4.1 / -	21	47%	21	49%	20	52%	20	54%	20	52%	20	54%	
Class: Grade6 - Total Users: 7		146	48%	140	49%	149	55%	146	63%	146	55%	146	63%	
616														

FIG. 6

700

Snapshot of all standards Jan 5, 2006 - Feb 5, 2006						
Curriculum: Language Arts		702	Sections: Language Arts		Level: Performance Objective	
Class: Grade6		704	Grade6		Room No: Grade6	
User	Read Level	Questions Completed	Student has demonstrated mastery Score: 80 - 100%	Additional practice recommended Score: 65 - 80%	Aggressive Intervention strongly recommended Score: < 65%	
Boyd, Frances	5.2 / 815L	579	Concept 1;			
Boyd, Scott	6.1 / -	381	Concept 1;			
Brock, Zander	3.2 / 537L	419	Concept 4;			
			Concept 1;			
Heuser, Ashley	8-10 / 1200L	472	Concept 1;		Concept 4;	
Perez, Siarra	6.1 / 857L	403	Concept 1;			
Test, Test	4.1 / -	269	Concept 4;		Concept 1;	
User, New	4.1 / -	290	Concept 4;		Concept 1;	

FIG. 7

Export to Excel Print Report					
Analysis of a particular standard Jan 5, 2006 - Feb 5, 2006					
Sections: Language Arts					
Curriculum: Language Arts — 802					
Standard: READING					
Concept: Strand 3:: Comprehending Informational Text					
Performance Objective: Concept 3:: Persuasive Text					
Explain basic elements of argument in text and their relationship to the author's purpose and use of persuasive strategies.					
Room No: Grade6					
Grade: 6					
Class: Grade6 — 806					
Room No: Grade6					
Additional Activities that cover this Performance Objective					
click Article to preview - Click Assign to assign article to student					
818 —					
News > Demo > Essay Packing Up Assign					
User					
808	810	812	814	816	818
Boyd, Frances	5.2 / 815L	661	77	Additional practice recommended.	News > Demo > Essay Packing Up Assign
Boyd, Scott	6.1 / -	391	63	Aggressive intervention strongly recommended.	
Brook, Zander	3.2 / 537L	464	60	Aggressive intervention strongly recommended.	

FIG. 8

800

US 9,652,993 B2

1

**METHOD AND APPARATUS FOR
PROVIDING DIFFERENTIATED CONTENT
BASED ON SKILL LEVEL**

CROSS-REFERENCE TO RELATED
APPLICATIONS

This application is a continuation of pending U.S. patent application Ser. No. 11/920,087, entitled “System and Method for Providing Differentiated Content Based on Skill Level” filed on Nov. 8, 2007, which claims benefit of PCT Patent Application, International Application No. PCT/US2006/034231, International Filing Date 31 Aug. 2006. Each of the aforementioned related patent applications is herein incorporated in its entirety by reference.

BACKGROUND

Field of the Invention

Embodiments of the present invention generally relate to a system and method for providing instructional material to users, and more specifically, to a web-based system and method for providing customized instructional material to a plurality of users, where the instructional material is modified to match each skill level of each user.

Description of the Related Art

Existing instructional methods and tools available today are rigid and not structured to meet the requirements of a particular user. For example, in most classroom settings, a student is placed in a grade level that is initially based on the age of the student. An assessment test may be given to determine where to place the student within a particular subject level if the school offers multiple levels within one grade. For example, an English course may include a remedial level, an average or “regular” level, and an advanced or “honor” level. Once the student is placed within a particular course level, the student, along with the rest of the class, is given a series of lessons taken from a lesson plan chosen by the instructor, which may or may not be approved by a faculty head. The student may be tested periodically and, at the end of a school year, the instructor, or evaluator, will give the student a grade, which should be indicative of the student’s proficiency in the course.

If the student receives a passing grade, then he or she may advance to the next level. If the student fails the course, then the student must repeat the course. If the student fails too many courses, the student may be required to repeat the grade. In some grade school systems, the student may take remedial courses during the summer break between school years which, if successfully completed, allow the student to continue to the next level. A lesson plan is rarely, if ever, modified to accommodate the proficiency or skill level of a particular student, or even for a small group of students.

Because of the sheer number of students and the lack of resources available, class sizes typically prevent meaningful one-on-one interaction between an instructor and a student. The more fortunate students who are struggling with the subject matter may get private tutoring or help from family or friends. The students who excel in a particular subject matter typically receive the top grades and usually have to wait until the following school year to advance to the next grade level. These gifted students may lose interest in the certain courses because of the lack of intellectual stimulation. In addition, in today’s schools, many students come from different cultural and social backgrounds and English may not be their first language. Thus, a language barrier may

2

exist, adding another level of difficulty and frustration for both the English-speaking and non-English speaking students, and their instructor.

Educators take these factors into consideration, in addition to others, in developing instructional and educational programs. For example, various governing bodies, such as state and local school boards, establish educational requirements or recommendations. The educational requirements or recommendations are typically embodied in formal guidelines or standards. Such requirements or recommendations will be referred to herein as “educational standards.” Educators are encouraged, or required, to incorporate the educational standards in their educational plans.

To assist the educators, educational resource providers, such as textbook providers, generate resources that substantially correlate to the educational standards. The resource providers presently attempt to perform this correlation by obtaining the educational standards and, in a subjective determination by the resource provider, design resources correlated to the educational standards. For example, a textbook company creates social studies textbooks for a sixth grade skill level in accordance with state educational standards for sixth grade students. However, these resources may not include all the material preferred by an educator for a specific subject. In addition, resources quickly become outdated and do not take into account differences in skill levels between students within a grade level. Although the resources may be aligned to the appropriate educational standards, not all students in a class may be at the same education skill level. Thus, teaching from one textbook for a particular grade level may not be an efficient method of teaching, and may leave some students behind. Teachers do not have time to allow students to repeatedly practice the skills necessary to advance their skill levels, since the teachers must progress through a range of subject matter in accordance with educational standards. Thus, students do not necessarily receive enough time to perform exercises to increase their skill levels.

Additionally, students often are pressured to meet educational requirements to advance to the next grade level, regardless of whether the students’ skill levels have advanced. However, in a given grade level of students, a majority of the students may test lower in skill levels than the given grade. Thus, a teacher will provide learning material that is aligned to the lower skill level, which may not necessarily meet the educational requirements specified for grade level.

With the vast use of networked technologies, such as the Internet and the World Wide Web, new teaching tools and methods have been created to assist educators. Some classrooms are equipped with computer workstations. However, most of the teaching tools and methodologies used with computers today adopt the classic classroom paradigm described above.

The LEXILE Framework for Reading (MetaMetrics, Inc.) includes a method for analyzing reading material using, primarily, the word frequency and sentence lengths in a pre-determined block of text. LEXILE then assigns a LEXILE Score to the text based on a predetermined scale. The LEXILE Framework also provides assessment tests for students and provides a LEXILE score for each student. Educators may use the LEXILE system to match a student’s LEXILE score to appropriate reading material with the same LEXILE score. However, this system merely matches specific reading content to students with certain skill levels. An educator using the LEXILE system typically cannot use one learning resource or textbook for a class, but rather has to

US 9,652,993 B2

3

provide multiple materials to meet each student's assessed skill level. This is a burdensome task for the educator.

Thus, there is a need for a learning tool that allows a user to progress in the learning of a subject matter in a manner suited, customized or adapted for that particular user. There is a need for such a learning tool that does not demand the extensive resources required for one-on-one or small classroom settings. There is also a need for a learning tool that continuously assesses the learning progress of an individual user and customizes learning content suited the particular user while also aligning the learning content with applicable educational standards.

SUMMARY

An embodiment of the present invention includes a method for providing differentiated content to a user, comprising the steps of providing a first set of questions to the user, receiving a first set of answers related to the first set of questions from the user, analyzing the first set of answers to produce a first skill level associated with the user, obtaining a first unmodified content from at least one source, modifying the first unmodified content in accordance with the first skill level of the user to produce a first modified content, generating a second set of questions related to the first modified content, presenting the first modified content and the second set of questions to the user, receiving a second set of answers related to the second set of questions from the user, analyzing the second set of answers to produce a second skill level associated with the user, obtaining a second unmodified content from at least one source, and modifying the second unmodified content in accordance with the second skill level to produce a second modified content.

Another embodiment of the present invention includes a method for providing content to a plurality of users, where the content provided to each user is the same in information but customized in presentation in accordance with a skill level of each user, comprising the steps of providing a first set of questions to the plurality of users, receiving a plurality of first sets of answers related to the first set of questions, wherein each first set of answers is associated with each user of the plurality of users, analyzing each first set of answers of the plurality of first sets of answers to produce a plurality of first skill levels, wherein each first skill level is associated with each user, obtaining a first unmodified content from at least one source, modifying the first unmodified content to produce a plurality of versions of first modified content, wherein each version of first modified content is associated with each first skill level associated with each user, generating a plurality of second sets of questions wherein each second set of questions is related to each version of first modified content, matching each version of first modified content and each second set of questions to each first skill level associated with each user, and presenting each matched version of first modified content and each matched second set of questions to each user of the plurality of users.

Another embodiment of the present invention includes a computer system for providing differentiated content to a user comprises at least one central processing unit, at least one set of support circuits, a first server comprising a differentiation engine, wherein the differentiation engine comprises a profile database for storing a user profile, and an assessment application to perform the functions of developing a user profile, wherein the user profile comprises learning characteristics of the user, assessing a plurality of skill levels associated with the user, and preparing custom-

4

ized content based on the plurality of skill levels, and a second server comprising a standards engine communicatively connected with the differentiation engine, wherein the standards engine comprises a standards database for storing a plurality of sets of content standards, an intermediate standards database for storing a plurality of sets of intermediate standards, and an alignment application to perform the functions of obtaining unmodified content, and applying a set of intermediate standards to align the unmodified content to a set of content standards from the plurality of sets of content standards.

In yet another embodiment of the present invention, a computer system for providing differentiated content to a user comprising a central processing unit, a set of support circuits, and a server, wherein the server stores and maintains a memory comprising, at least one operating system, a differentiation engine, a communication engine interfacing with the differentiation engine, a standards engine interfacing with the differentiation engine, and a feedback engine interfacing with the differentiation engine, the communications engine, and the standards engine, is provided.

Another embodiment of the present invention includes a computer-readable memory medium storing executable code for implementing a method to provide differentiated content to a user on a computer, wherein the method comprises the steps of providing a first set of questions to the user, receiving a first set of answers related to the first set of questions from the user, analyzing the first set of answers to produce a first skill level associated with the user, obtaining a first unmodified content from at least one source, modifying the first unmodified content in relation to first skill level of the user to produce a first modified content, generating a second set of questions related to the first modified content, presenting the first modified content and the second set of questions to the user, receiving a second set of answers related to the second set of questions from the user, analyzing the second set of answers to produce a second skill level associated with the user, obtaining a second unmodified content from at least one source, and modifying the second unmodified content in relation to the second skill level to produce a second modified content.

Another embodiment of the present invention includes a computer-readable memory medium storing executable code for implementing a method to provide content to a plurality of users, where the content provided to each user is the same in information but customized in presentation in accordance with a skill level of each user, wherein the method comprises the steps of providing a first set of questions to the plurality of users, receiving a plurality of first sets of answers related to the first set of questions, wherein each first set of answers is associated with each user of the plurality of users, analyzing each first set of answers of the plurality of first sets of answers to produce a plurality of first skill levels, wherein each first skill level is associated with each user, obtaining a first unmodified content from at least one source, modifying the first unmodified content to produce a plurality of versions of first modified content, wherein each version of first modified content is associated with each first skill level associated with each user, generating a plurality of second sets of questions wherein each second set of questions is related to each version of first modified content, matching each version of first modified content and each second set of questions to each first skill level associated with each user, and presenting each matched

US 9,652,993 B2

5

version of first modified content and each matched second set of questions to each user of the plurality of users.

BRIEF DESCRIPTION OF THE DRAWINGS

So the manner in which the above recited features of the present invention may be understood in more detail, a more particular description of the embodiments of the present invention, briefly summarized above, may be had by reference to embodiments, some of which are illustrated in the appended drawings. It is to be noted, however, the appended drawings illustrate only typical embodiments of the present invention and are therefore not to be considered limiting of its scope, for the present invention may admit to other equally effective embodiments, in which:

FIG. 1 is a system for providing differentiated content based on multiple levels of skill, in accordance with an embodiment of the present invention;

FIG. 2 presents a method for differentiating content based on multiple levels of skill, in accordance with an embodiment of the present invention;

FIG. 3 presents a method for aligning content to multiple sets of content standards, in accordance with an embodiment of the present invention;

FIG. 4 presents a method for providing differentiated content to users, in accordance with an embodiment of the present invention;

FIGS. 5A-5E illustrate user interfaces associated with a system for providing differentiated content, based on multiple levels of skill, in accordance with an embodiment of the present invention;

FIG. 6 is a progress report of multiple users using differentiated learning content, based on multiple levels of skill, in accordance with an embodiment of the present invention;

FIG. 7 is a progress report of multiple users' performance in relation to different educational standards; and

FIG. 8 is a report of multiple users' performance in relation to a single educational standard, in accordance with an embodiment of the present invention.

DETAILED DESCRIPTION

FIG. 1 presents an embodiment of the present invention depicting a system 100 for providing differentiated content to a plurality of users based on associated levels of skill. System 100 comprises a differentiation engine 102, an electronic mail ("e-mail") engine 104 to function as a communications engine, a standards engine 106, and a feedback engine 108. Each engine 102, 104, 106, and 108 comprises a central processing unit (CPU) 152, 154, 156, and 158, support circuits 124, 126, 128, and 130, and a memory 132, 134, 136, and 138, respectively. The CPU 152, 154, 156, 158 may comprise one or more conventionally available microprocessors. The support circuits 124, 126, 128, 130 are well known circuits that comprise power supplies, clocks, input/output interface circuitry, and the like. Embodiments of the present invention encompass each engine 102, 104, 106, and 108 maintained on a single server, or on multiple servers, where a server may be any type of computing device adapted to distribute data and process data requests.

Memory 132, 134, 136, 138 may comprise any random access memory, read only memory, removable disk memory, flash memory, and various combinations of these types of memory. The memory 132, 134, 136, 138 is sometimes referred to as main memory and may in part be used as cache

6

memory or buffer memory. The memory 132, 134, 136, 138 stores various software packages and components, such as an operating system (O/S) 116, 118, 120, and 122, respectively. The memory may be stored on any computer-readable medium, including, but not limited to, any data storage device readable by a computer, whether volatile, non-volatile, or implemented electronically or otherwise, known in the art, including floppy disks, hard disks, CD-ROMs, DVDs, flash memories, non-volatile ROMs, and RAMs.

The assessment and differentiation application 140 comprises modules for assessing and re-assessing skill levels of users who interact with the system 100. The memory 132 also may include a database 160 for storing and maintaining user profiles. Each user profile may include user identification information, learning characteristics of a user, interests of a user, and an assessment of skill levels in a multiple subject matter areas.

The memory 132 of the differentiation engine 102 comprises an assessment and differentiation application 140 comprising modules for obtaining aligned content and matching the aligned content to a skill level of a user 110, 112. The assessment and differentiation application 140 also includes a module for preparing lesson plans for each user 110, 112, where each lesson plan includes the aligned content and lesson exercises appropriate for the skill level(s) of the user 110, 112. An embodiment of the present invention includes the assessment and differentiation application 140 obtaining the aligned content and matching it to the user's skill level in real-time, where the application 140 obtains the aligned content as soon as it is available, and matches the aligned content substantially immediately. Another embodiment of the present invention includes the assessment and differentiation application 140 obtaining the aligned content and matching the content to the user's skill level at preset periods of time, such as hourly, daily, monthly, and the like.

Aligned content is based upon unmodified content that is aligned to applicable content standards, for example, educational standards. The application 140 obtains the aligned content and modifies the aligned content to match at least one skill level associated with a user profile stored in database 160. The differentiation engine 102 may obtain the aligned content from a database 166 internal or external to the system 100. In another embodiment, the differentiation engine 102 may obtain aligned content by interfacing with the standards engine 106. In yet another embodiment of the present invention, the memory 132 comprises a database (not shown) for storing the modified aligned content.

The memory 134 of the e-mail engine 104 comprises an e-mail application 142 including modules for e-mailing content to users of the system 100. Users 110 and 112 and evaluators 114 may access the system 100 through the e-mail engine 104. Users 110 and 112 may communicate with each other using the e-mail engine 104 and may communicate with any other user associated with a group associated with the user 110, 112. For example, a student may e-mail any other student in his or her grade, his or her school, or his or her school district, depending on the communication boundaries set by the evaluator 114. Further, the evaluator 114 may use the e-mail engine 104 to provide lessons comprising modified content to a user 110, 112 or to a group of users.

The e-mail application 142 may edit the content and format of an e-mail using a skill level of the intended recipient to prepare and deliver a customized e-mail message. The e-mail application 142 may prepare a plurality of customized e-mail messages covering the same subject matter for delivery to multiple recipients. For example, the

evaluator **114** may compose an e-mail message to be sent to both users **110** and **112**, each having different associated skill levels. The e-mail engine **104** interfaces with the differentiation engine **102** to obtain the skill levels associated with users **110** and **112**, and edits the content and format of the original e-mail from the evaluator **114** to produce a customized version of the evaluator's original e-mail for each user **110**, **112**, where the presentation of the e-mail is appropriate for the skill level of each user **110**, **112**. Thus, user **110** will receive an e-mail from evaluator **114** modified to meet his or her specific skill level, and user **112** will receive an e-mail from evaluator **114** modified to meet his or her specific skill level.

The memory **136** of the standards engine **106** comprises at least one database **146** for storing a plurality of educational standards, such as state academic standards, local district academics standards, and the like. The memory **136** comprises another database **148** for storing a plurality of intermediate content standards that the system uses to align unmodified content to the plurality of educational standards.

The memory **136** of the standards engine **106** also comprises an alignment application **144** that includes modules for aligning unmodified content to educational standards stored in database **146** using the intermediate content standards stored in database **148**.

The standards engine **106** interacts with at least one content source to query for and obtain unmodified content, such as, for example, news articles, textbook excerpts, library journals, and the like. For example, the standards engine **106** may interact with a news database **162** and an academic lessons database **164**. In an embodiment of the present invention, the alignment application **144** queries the news database **162** to obtain news articles to be aligned to the educational standards stored in the database **146** and developed into differentiated learning lessons by the differentiation engine **102**. An aspect of this embodiment includes the alignment application **144** querying for and obtaining news articles, on a periodic basis, such as a daily basis, to create new aligned content. Another embodiment of the present invention includes the alignment application **144** querying for and obtaining unmodified content substantially continuously and aligning the unmodified content to the applicable educational standards in real-time. Another embodiment of the present invention includes the alignment application **144** periodically updating the educational standards stored in the database **146**.

Upon obtaining the unmodified content, the alignment application **144** may align the unmodified content to the applicable content standards stored in database **146** using the intermediate standards stored in database **148**. The aligned content then may be stored in a database **166**. The database **166** may be maintained external to the system **100**, such as, for example, on a storage area network. In another embodiment of the present invention, a database **166** for storing aligned content is maintained within the memory **136** of the standards engine **106**. The standards engine **106** interacts with the differentiation engine **102** to provide access to the aligned content database **166**, which the differentiation engine further modifies using the assessment and differentiation application to customize the aligned content in accordance with different skill levels of users, such as, users **110** and **112**.

In another embodiment of the present invention, a standards engine **106** includes a memory **136** with a database for storing both the educational standards and the intermediate standards. In yet another embodiment, at least one content standards database is maintained externally to the system

100, such as, for example, on a storage area network. A standards engine **106** interfaces with this external database to utilize the stored content standards data.

The memory **132** of the feedback engine **108** comprises a performance database **150** that stores performance and progress data associated with each user **110**, **112** of the system **100**. The memory **138** also may comprise a feedback application **168** having modules for generating performance and progress data associated with a user **110**, **112** of the system **100**. For example, an embodiment of the present invention includes the feedback application **168** generating a progress report of a user **110**, **112** regarding the user's performance on a customized lesson provided by the differentiation engine **102**. The progress report also may track the user's **110**, **112** performance in each subject matter in relation to the educational standards stored in the database **146**, and in relation to other users **110**, **112**, using feedback and performance data stored in the performance database **150**.

Via the feedback application **168**, the feedback engine **108** may interface with the standards engine **106** to access the standards database **146** for tracking the performance of a user **110**, **112** in comparison with one or more educational standard stored in the database **146**. The feedback engine **108** also interfaces with the differentiation engine **102** to access the profile database **160** and associate performance reports of a user **110**, **112** with the user's stored profile. The feedback application also includes modules for providing performance and progress data to a user **110**, **112** or evaluator **114** of the system using the e-mail engine **104**.

A user **110**, **112** may access the system **100** via the e-mail engine **104** through a communications network **170**. A user may use a common computer or any communications device to access the system **100** and the communications network **170** may be any conventional network, such as an Ethernet network, a fiber channel network, or a wide area network (WAN) that provides either a direct, or indirect (e.g., Internet access via a wired or wireless connection, or public switched telephone network (PSTN)) connection between the user **112** and the system **100**.

In the present embodiment, the system **100** is a stand-alone system maintained using one or more servers and one or more computing devices. Other embodiments of the present invention comprise incorporating system **100** into another system, such as, for example, a local school district system or a statewide educational system. The system is not limited to a specific operating system, but may be adapted to run on any operating system, including, but not limited to, LINUX and Microsoft WINDOWS.

Although the system **100** of this particular embodiment is described to be used as an educational tool, the scope of the present invention encompasses other embodiments comprising a system **100** to be used as an assessment and learning tool in any area of skill. Embodiments of the present invention encompass multiple types of users, such as, an educational student using the system **100** to receive educational lessons, a job applicant using the system for job training, or any person being assessed for a certain level of skill and receiving content based on their level of skill. An evaluator may be a teacher, an employer, or any person overseeing the utilization of the system **100** by a user **110**, **112**.

For example, an embodiment of the present invention comprises a differentiation system for assessing skill levels of job candidates and providing differentiated job training lessons aligned to applicable industry standards, where each lesson is customized to the learning levels of each job candidate of the system.

FIGS. 2 through 8 describe embodiments of the present invention related to a system for providing differentiated content where the content is used for teaching school-aged children. However, one of ordinary skill in the art would readily recognize that the scope of the present invention is not limited to embodiments pertaining to academic educational systems, but rather may encompass any system where differentiated content is provided to a user based on the assessed skill level(s) of the user.

FIG. 2 illustrates a flow diagram of a method 200 for using a system that provides differentiated academic content, in accordance with an embodiment of the system. The steps need not be in the sequence illustrated, and some steps may occur essentially simultaneously. This method may be performed using the system 100, including the differentiation engine 102, the e-mail engine 104, the standards engine 106, and the feedback engine 108, as described in the embodiment of FIG. 1. Using the system 100, the steps of the method 200 may occur in real-time, or the steps may occur at preset periodic intervals of time.

The method 200 begins at step 202 and progresses to step 204 where one or more users registers with the system 100. In this step, the user(s) may enter information such as, for example, grade level, contact information, personal interests, school district, and specific learning characteristics, such as, subject matter preferences, for example. The user(s) may access the system 100 using e-mail, such as, for example, through the email engine 104 described in the embodiment of FIG. 1, or may access the system 100 directly using, for example, an Internet web page associated with the system 100.

Upon receiving the entered information, at step 206, the system 100 develops a student profile associated with each user, and stores the profile in a database, such as, for example, the profile database 160 described in the embodiment of FIG. 1. At step 208, the system 100 assesses the skill level of the user(s) in one or more subject matters. To perform this step, the system 100 may, for example, deliver a set of questions to the user(s) in different subject matters, such as literacy, reading comprehension, vocabulary, and mathematics, and assess a skill level in each subject area based on a predetermined skill-level scale. For example, the system 100 may use the LEXILE Framework to assess a reading level associated with a number of users. The system 100 would then assign a LEXILE reading score to each user. In another embodiment of the present invention, the system 100 also assesses the fluency of each user in a specific language.

At step 210, the system 100 maps the assessed skill level(s) to each user's associated profile generated in step 206. The system 100 also may report the assessed users' skill levels to an evaluator associated with the user(s). The assessed skill level(s) may account for learning disabilities, handicaps, and any other conditions particular to a specific student.

Once the system 100 has assessed the skill level(s) of the users, the system 100 may create customized lesson plans for each user based upon each user's skill level(s). At step 212, the system 100 obtains unmodified (or raw) content to be developed into a lesson plan. The system 100 obtains the unmodified content from sources. The unmodified content includes, but is not limited to, textbook excerpts, periodical articles, news articles, literary excerpts, and the like. The unmodified content may come from any source, such as, for example, academic textbook, news sources, library databases, pre-developed lesson databases, and the like.

At step 214, the system 100 analyzes the difficulty level of the unmodified content in accordance with one or more educational standards, and aligns the unmodified content to the educational standards using a set of intermediate standards. In the present embodiment, the educational standards include, but are not limited to, state academic standards, local school district standards, and the like. At step 214, the system 100 produces multiple versions of the unmodified content, referred to herein as aligned content versions, each of which is substantially similar to the unmodified content in subject, meaning and context, but where each version of aligned content is aligned to a specific skill level associated with the educational standards.

For example, an embodiment of the present invention comprises a method for obtaining a news article on terrorism and aligning the news article to a set of educational standards for social studies by modifying the format and content of the original news article to produce aligned versions of the news article, where each version is associated with a specific skill level of the educational standards. For example, the system 100 may first obtain the news article and analyze the article against a set of state educational standards to determine the news article is appropriate for a high school reading comprehension level. The system 100 then creates an aligned content version of the unmodified news article for a second grade reading comprehension level by breaking up the article into shorter sentences and paragraphs, and rewriting the article using grade-appropriate vocabulary. In contrast, another example includes the system 100 creating an aligned content version of the unmodified news article for an eighth grade reading comprehension level by keeping the sentence lengths in the original article, but simplifying the vocabulary using appropriate grade level terms.

At step 216, the system 100 matches a specific version of the aligned content to a user using the user's pre-assessed skill level(s). The system 100 may modify further the matched aligned content version to increase comprehension of the aligned content version by the specific user. The system 100 matches a version of the aligned content to a user by matching specific areas of learning where the user exhibits a need for improvement, as assessed by the system 100 in step 208.

The system 100 also may match multiple aligned content versions to multiple users based upon each user's pre-assessed skill level(s), in step 218. Using the previous example, a system 100 may match multiple aligned versions of a news article on terrorism to multiple students in a current events class. Thus, each student receives an article covering the same terrorism subject matter, however, each student's version will be presented in a context and format customized to the student's skill level(s). The method of this embodiment provides for an unmodified learning content to be provided at multiple skill levels simultaneously, thereby providing for collaborative learning from the same unmodified learning content by many users of varying skill levels.

At step 220, the system 100 prepares one or more lesson plans associated with different versions of the aligned content. The lesson plans may include a set of lesson exercises, such as, for example, assessment questions and activities that relates in subject, context, and skill level to each version of the aligned content. An embodiment of the present invention includes a lesson plan comprising a set of vocabulary questions, an essay question for thinking comprehension, a set of mathematical exercises, a set of social studies questions, links to extended background material regarding the subject matter, games associated with the aligned con-

US 9,652,993 B2

11

tent, and a user-based poll to prompt interactive discussion of the aligned content. Another embodiment of the present invention includes providing an editing checklist as part of an essay question in a lesson plan, where the checklist provides a list of editing items that a user should include in an essay answer. In step 220, the system 100 may modify each lesson plan to match the specific learning characteristics of each user, such as, for example, using a specific spoken language, using different size fonts for each lesson, using level-appropriate vocabularies, different graphics, and may provide an audible feature that “reads aloud” one or more portions of the lesson plan. An embodiment of the present invention includes a system 100 modifying each lesson plan by providing the aligned content in a combination of English and a foreign language depending upon a user’s current level of progress in moving from the user’s native non-English language to English. Thus, the system 100 aligns both the learning content and the context of the related lesson plan to each user’s skill level(s).

In another embodiment of the present invention, the system 100 does not perform the function of preparing a lesson plan, in step 220, but proceeds to step 222, where the system 100 prepares to deliver the matched aligned version to each respective user.

In step 222, the system 100 prepares to deliver the lesson plans to each user using, for example, an e-mail system. The system 100 differentiates the context and format of each e-mail to customize the e-mail for each user. An embodiment of the present invention includes preparing differentiated e-mails and lesson plans to deliver a lesson to a group of users using each user’s preferred spoken language, specific font sizes for better comprehension, specific graphics, and a customized format correlated to each user’s skill level(s). Embodiments of the present invention include a system 100 that delivers lessons using e-mail wherein each e-mail includes a link to the lesson plan, includes a portion of the lesson plan, or includes the entirety of the lesson plan in the body of the e-mail.

In another embodiment of the present invention, a system 100 provides for an evaluator to generate a calendar of lesson plans related to a predetermined selection of unmodified contents or a predetermined selection of unmodified content subject matters, where the calendar covers a time period of an entire academic year. The evaluator may create the calendar in the system 100 using applications provided by the system 100. In an embodiment of the present invention, the evaluator may generate the calendar using a third party calendar application and load the calendar into the system 100. The system 100 then obtains unmodified content in accordance with the predetermined selection of unmodified contents or unmodified content subject matters, aligns the obtained unmodified content, and prepares lesson plans to be automatically delivered to the users at predetermined times, in accordance with the evaluator’s calendar.

At step 224, each user receives his or her customized e-mail delivering a lesson plan. Using the e-mail, each user may access his or her customized lesson and begins to perform the associated lesson exercises. As each user completes each lesson exercise, the system 100 receives each user’s inputs at step 226 and begins to dynamically re-assess the skill level(s) of each user.

Once each user completes the lesson exercise(s), each user may submit the completed lesson exercise(s) for grading. Grading may be performed by the system 100, as in step 228, and the results may be stored in a database and associated with each user’s profile. In an embodiment of the present invention, at step 230, the system 100 evaluates each

12

user’s performance in real-time as each user completes each lesson exercise, and provides feedback of the completed lesson to each user, prior to entering a final grade. The system 100 may provide the feedback in step 230 using a feedback engine 108, as described in the embodiment of FIG. 1. At step 232, the feedback feature allows each user to modify the answers to the lesson exercises prior to submitting the completed lesson exercise(s) for final grading. An aspect of this embodiment includes providing the feedback feature to selected users of differing skill levels.

In another embodiment of the present invention, the system 100 may deliver the completed lesson exercise(s) to an evaluator of the user(s) for grading. The evaluator may enter the results of each graded lesson exercise into the system 100 for further evaluation and analysis by the system 100.

Once the completed lesson exercise(s) have been graded in step 228, the system 100 may determine whether an adjustment should be made to a user’s skill level(s) based upon the completed lesson exercise(s), in step 234. If the system 100 determines the skill level assessed from the completed lesson is the same as the previous skill level of the user, in step 236, the system 100 does not adjust the skill level(s) associated with the user.

If the system 100 determines the skill level assessed from the completed lesson exercise(s) is different than the previous skill level of the user, the system 100 adjusts the appropriate skill level(s) of the user, at step 238. The system 100 is capable of providing continuous re-assessment of the user’s skill level(s).

At step 240, the system 100 reports the results of the completed lesson exercise(s) and any adjustments to the skill levels of one or more users to the evaluator. An embodiment of the present invention includes reporting the results individually to an evaluator. That is, the results are reported as each user completes a lesson exercise. Another embodiment of the present invention includes reporting the combined results of a group of users to an evaluator, for example, in a tabular format. The evaluator may select the specific characteristics associated with a report for the system 100 to generate.

At step 242, the evaluator evaluates the completed lessons and suggested adjustments and non-adjustments to one or more skill levels of each user. The evaluator may accept the completed lessons and suggested skill level adjustments/non-adjustments, and at step 244, the system 100 prepares a new lesson plan for each user, accounting for adjustments to skill level(s) to customize the new lesson plan for each user.

The evaluator also may reject either the completed lesson(s) for one or more users and/or the adjusted skill level(s) provided by the system. The evaluator may consider conditions regarding a user’s learning environment that are not available to the system 100. For example, the evaluator may be aware of a disruptive home, a loss of a user’s family member, an emergency situation, and the like. If the evaluator does not accept the adjusted skill levels provided by the system 100, at step 246, the system 100 may prepare a new lesson customized to each user in accordance with each user’s non-adjusted skill level(s).

At step 248, the system 100 determines whether a user’s learning session should continue. If the user’s learning session is at an end, for example, the user completes all lesson plans for a specific subject or within an allotted time period, the system 100 terminates the user’s learning session at step 250. If, however, the system 100 determines the

13

user's learning session should continue, the system 100 repeats the learning and evaluation process starting again with step 214.

Thus, the system of the embodiment described in FIG. 2 delivers differentiated content to each user that is aligned to the user's skill level(s), maintaining the same content topics, main ideas and core elements, and thereby providing evaluators with the ability to engage whole-class learning using individually differentiated content.

FIG. 3 presents a method 300 for aligning learning content to educational standards and differentiating the content to customize the content for multiple users, in accordance with an embodiment of the present invention. The method 300 illustrates steps that may be performed by a system 100 comprising a differentiation component 102 and a standards component 106, as described in the embodiment of FIG. 1. Using the system 100, the steps of the method 300 may occur in real-time, or the steps may occur at preset periodic intervals of time.

The method 300 begins at step 302 and progresses to step 304 where a system 100 for providing differentiated learning content obtains content standards and stores the standards in one or more databases, such as the educational standards database 146, described in the embodiment of FIG. 1. The content standards may be any type of accepted content standards used to align unmodified content to one or more skill levels.

At step 306, the system 100 performs a self-analysis and assesses the components and modules of the system 100, specifically, the differentiation engine 102, the e-mail engine 104, the standards engine 106, and the feedback engine 108. To perform the self-analysis, the system 100 assesses what technical functions and features each component of the system 100 includes at a particular time. The system 100 then produces a set of system competencies used by the system 100 to determine the types of unmodified content the system's components are capable of managing, the modifications may be made to the unmodified content when aligning the unmodified content to one or more educational standards, the modifications made to aligned content when the aligned content is matched to a user's skill level(s), and the types of lesson exercises included in a lesson plan related to the unmodified content.

For example, the system 100 may contain certain technology including voice to text recognition. When the system 100 performs the self-analysis, the system acknowledges the voice to text recognition technology and creates a system competency related to a lesson exercise that allows a user to execute the lesson exercise by "speaking" into a microphone connected to a computer. Thus, the system 100 acknowledges that such lesson exercises may be included in a lesson plan.

Another example includes adding a technology module to the system 100 as a new subject matter area for learning. When the system 100 performs the self-analysis, the system 100 acknowledges the technology module and creates one or more system competencies related to the technology module, such that the system 100 may obtain unmodified content related to technology and may generate lesson plans related to technology with lesson exercises for testing learning content related to technology. For example, the system 100 may obtain a new set of educational standards, such as the National Educational Technology Standards (NETS) generated by the International Society for Technology in Education (ISTE) to integrate into the system components, such as the standards engine 106. The system 100 then may obtain unmodified content related to technology, such as ethics in

14

using the Internet, for example, and align the unmodified content to the NETS standards to generate lesson plans matched to the skill levels of the users.

An embodiment of the present invention includes a system 100 with a technology module that identifies the platform and the software applications of a user's computer when the user accesses the system 100. The system 100 then incorporates the identified platform and software applications data into one or more technology lesson plans for the user. For example, the lesson plan may test the user's knowledge of certain commands available in a specific application stored on the user's computer, as part of an exercise in a technology lesson plan.

The set of system competencies is stored in a competencies database (not shown). The competencies database may be edited and updated at any time, by the system 100 or by a system administrator, based upon updates or alterations to the system 100. For example, the system 100 may perform a self-analysis on a periodic basis or when new elements are added to the system 100. In this manner, the system 100 is a "self monitoring" system. When new features and capabilities are added and implemented, the system performs the self-analysis and updates the system competencies.

At step 308, the system 100 analyzes the content standards to develop an understanding of the similarities and differences between each content standard and each skill level to which the content standards apply. Specifically, the analysis includes, but is not limited to, an evaluation of the statements of the standards, the structure of the standards, the core meaning of the standards, the related and ancillary meaning of the standards, the learning mode referenced by the standards, the intent of the standards, and the related critical thinking, logical, philosophical, and pedagogical elements of the content standards. Based upon the system's analysis of the multiple elements of the content standards, the system 100 creates a unique numerical scheme output as a set of unique standards codes. The standards codes relate to one or more elements of the content standards as analyzed by the system 100. The system may store this analysis in a system database, such as an intermediate standards database 148, as described in the embodiment of FIG. 1.

At step 310, the system 100 performs a comparative analysis of the system competencies and the standards codes to match each system competency with one or more applicable standards code. Each match between a system competency and a standards code is an intermediate standard, to produce a set of intermediate standards. The system 100 uses the intermediate standards to align unmodified content with stored content standards. The system 100 may update the intermediate standards as the system competencies change or are re-assessed, or when the system 100 performs an analysis of different or updated content standards. The system 100 may update the intermediate standards in real time, or at preset periodic time intervals. The intermediate standards are stored in a system database, such as the intermediate standards database 148.

At step 312, the system 100 obtains and stores unmodified content from one or more sources, such as industry databases, learning databases, proprietary databases, newspapers, and the like. The system 100 may categorize the unmodified content according to subject matter, source, chronologically, and the like.

At step 314, the system 100 aligns the unmodified content to an applicable set of stored content standards using a set of intermediate standards. The system 100 may perform this analysis using an application, such as the alignment application 144. An embodiment of the present invention

15

includes aligning the unmodified content to the applicable content standards using a hierarchical structure. The intermediate standards analyze not only the statements of the standards, but the structure of the standards, the intent behind the standards, which may be included as part of the standards, and the subtleties of the language of the standards.

In step 314, the system 100 develops multiple versions of the unmodified content where each version correlates to a specific hierarchical level of the content standards. The subject matter of each version is substantially the same as the unmodified content; however, each version includes a different presentation of the unmodified content. To develop the multiple versions, the system 100 substantially breaks down the unmodified content and builds a modified version of the unmodified content using skill level characteristics, such as appropriate vocabulary and sentence length. Links or "tags" may be attached to certain words within the modified version to map the aligned content with the applicable content standard. The system 100 may store the versions of the aligned content in a database, such as the aligned content database 166.

Once system 100 completes the alignment process, at step 316, the system 100 matches versions of aligned content to each user using skill levels associated with each user of the system 100. The system 100 may perform this function using an application, such as the differentiation application 140. The matched aligned content then may be used to develop one or more lesson plans for each user. The method may end at step 318. Another embodiment of the present invention includes a system 100 periodically repeating the method 300 to continually obtain new unmodified content to align to a set of applicable content standards. In yet another embodiment of the present invention, a system that continuously repeats method 300 is provided.

FIG. 4 illustrates a method 400 for providing differentiated aligned content to multiple users through an e-mail system, in accordance with an embodiment of the present invention. The method 400 illustrates steps that may be performed by a system 100 comprising a differentiation component and an e-mail component 104, such as the system described in the embodiment of FIG. 1. Using the system 100, the steps of the method 400 may occur in real-time, or the steps may occur at preset periodic intervals of time. Although this figure describes a method of communication using e-mail, the scope of the invention is not limited to an e-mail communication method, but includes other embodiments comprising methods of communication using text messaging, instant messaging, and any other type of electronic communication.

The method 400 begins at step 402 and proceeds to step 404, where a lesson plan is prepared for a group of users by an evaluator. Each user has a different skill level as assessed by the system 100, for example, by an assessment application 140 of the system 100. Embodiments of the present invention include users grouped by skill level, grade level, a specific school, a specific schooling district, and the like. In the present embodiment, the evaluator is a teacher. However, other embodiments include any type of evaluator who reviews a performance of one or more users of the system 100.

In step 404, the evaluator prepares a single e-mail to a group of users covering a specific lesson plan topic. The evaluator may include lesson plan content aligned to educational standards and stored in a system database, similar to the method described in the embodiment of FIG. 3. In another embodiment of the present invention, an evaluator

16

may provide a link to a lesson plan prepared and stored by a system 100 similar to the method described in the embodiment of FIG. 2. The evaluator may include general instructions applicable to the group of students.

At step 406, the system 100 modifies the evaluator's e-mail to produce multiple versions of the evaluator's e-mail, where each version correlates to one or more skill level(s) of each user. For example, a system 100 may modify the body of the e-mail using level-appropriate vocabulary, level-appropriate sentence length, specific graphics, multiple languages, and the like. The system 100 also verifies that the aligned content or selected lesson plan correlates to the skill level(s) of each user.

At step 408, each user receives an e-mail version correlated to the user's skill level(s), and opens the e-mail to access the learning content. Using the e-mail system, such as the email engine 104, each user may communicate with other users with an assigned group, such as, for example, a student, another evaluator, a school administrator, and the like, to discuss the lesson plan in his or her e-mail, at step 410. For example, a user may contact another user in his or her grade class to discuss the most recent lesson plan received in an e-mail. A user also may be restricted from using the e-mail engine 104 to communicate with anyone outside the user's assigned group(s), thereby limiting the use of the e-mail engine 104 to educational studies. In another embodiment, the system forwards a copy of each e-mail sent to a user to the user's parents, for their information and review. This allows the user's parents or guardian also to monitor their child's learning progress and completion of assigned lesson plans.

At step 412, the system 100 may send a copy of each e-mail sent by all users within a group to the group evaluator. This feature ensures that a user is not misusing the e-mail engine 104. An embodiment of the present invention includes language and content filters that may be applied to e-mail from one or more users. Another embodiment includes the evaluator choosing to receive copies of all e-mails sent by selected users.

At step 414, each user may notify the evaluator that he or she has completed a lesson plan, using the e-mail engine 104. In another embodiment of the present invention, the system 100 sends a notification to an evaluator when each user completes one or more lesson plans, at step 416. The evaluator then may access the system 100 and grade the completed lesson plan, or may allow the system 100 to grade the completed lesson plan and provide the graded results to the evaluator. This allows the evaluator to monitor the progress and performance of each user.

At step 418, the system 100 informs the evaluator that one or more skill levels associated with each user has been adjusted by the system. The evaluator may use the e-mail engine 100 to contact a specific user's parents or guardian to discuss the user's progress or lack thereof.

At step 420, the process may be repeated beginning at step 404 to prepare and deliver another lesson plan to the group of users. Alternately, the process may end at 422.

FIGS. 5A-5E present example graphic user interfaces for a differentiated lesson plan produced by a system for providing differentiating learning content, according to an embodiment of the present invention, such as the system 100 described in the embodiment of FIG. 1. In this embodiment, a system 100 obtains unmodified content from THE ASSOCIATED PRESS in the form of an article covering foods served at schools. The system 100 aligns the article to a set of educational standards and produces multiple versions of

the article, where each version is aligned to a specific educational standard, similar to the method described in the embodiment of FIG. 3.

FIG. 5A illustrates a lesson plan 500 of the article for a fourth grade reading comprehension level, in accordance with the New Jersey Core Curriculum Content Standards for Language Arts Literacy. The lesson plan 500 includes a modified article 502 covering the relevant subject matter, with highlighted level-appropriate vocabulary words 504. An embodiment of the present invention includes a system 100 that provides the modified article 502 as an audio file to the user. Thus, if a user is having difficulty reading the modified article 502, or portions of the article, the user may choose to hear the modified article 502 read audibly.

A dictionary definition 506 for each vocabulary word 504 is provided below the article. A user completing this lesson plan 500 may choose to hear the pronunciation of the vocabulary words 504 by clicking on a speaker icon appearing next to each word in the dictionary definitions 506. Another embodiment of the present invention includes presenting the lesson plan 500 in different languages, such as, for example, Spanish, and in different size fonts for each user. In yet another embodiment of the present invention, the system 100 presents the modified article 502 and the lesson plan 500 in accordance with the level of the user's fluency in a specific language. For example, a user who is learning English may receive a different version of the lesson plan 502 using basic vocabulary, in contrast to a user who is more proficient in the English language and, therefore, would receive the lesson plan 500 as presented in FIG. 5A.

An embodiment of the present invention includes a user with a fourth grade skill level in language arts and literacy receiving a daily lesson plan in an e-mail from his or her evaluator. Upon opening the e-mail, the user accesses the lesson plan 500 and reads through the article 502. Upon completing a review of article 502, the user begins to perform lesson exercises, such as the exercise 506 illustrated in FIG. 5B.

The exercise 506 comprises multiple choice questions 508 related to the article 502. In FIG. 5B, a question 508 is posed to the user, with a choice of four answers 510 available for the user's selection. The user may select the appropriate answer 510 and proceed to the next question 512. An aspect of the embodiment includes the system 100 re-assessing the literacy skill level of the user as he or she begins to answer each question 508 by comparing the answer 510 selected by the user to a standard correct answer and considering the time spent in answering the question 508.

Another lesson exercise is an essay question 514 presented in FIG. 5C. The user may complete the essay in the area 516 provided. While the user is entering his or her answer 516, the system 100 may analyze the answer to re-assess the skill level of the user in real time. An aspect of the embodiment includes analyzing the content of the answer 516 by vocabulary, word frequency, length of the answer 516, sentence length, and length of time spent answering the essay question 514. Another embodiment of the present invention includes the system 100 postponing the analysis of the user's answer 516 after the user submits the answer 516 in its entirety as complete.

In FIG. 5C, the user may check the spelling of the answer 510 using the "Check spelling" option 520. The user also may choose to complete the exercise at a later time by selecting the "Finish Later" option 522, for example, to leave the computer to eat a meal or perform a chore. Once

the user has completed his or her answer 516, the user submits the answer 516 to the system 100 using the "Submit Now" option 524.

Prior to submitting a completed answer, the user may check his or her work against a standard answer by selecting the "Check Your Work" option 518. Option 518 allows the system 100 to analyze the answer 516 against a standard correct answer and against the fourth grade level standard in general. The system 100 then may provide immediate feedback to the user regarding the user's answer 516 using the feedback engine 108, allowing the user to modify the answer 516 prior to submitting the answer 516 as complete. An embodiment of the present invention includes providing one or more editing checklists, such as the "Include in Your Answer" checklist 528 provided in FIG. 5C, to the user for guidance for assistance with preparing the essay answer 516.

As shown in FIG. 5C, the user or parent/guardian of a user may view the applicable educational standard by clicking on a standards icon 526. FIG. 5D presents an excerpt 530 of the educational standard used by the system to produce the lesson plan 500.

FIG. 5E presents a different version 532 of the original news article used to produce the lesson article 502 in FIG. 5A. The version 532 is aligned to an eighth grade skill level for language arts literacy in accordance with the standards presented in FIG. 5D. The version 532 of the article is longer in length than the version 502 presented in FIG. 5A, and comprises a greater collection of words, longer sentences, and vocabulary words 534 that are more difficult than the vocabulary words 504 illustrated in FIG. 5A.

Similar to the embodiment of FIG. 5A, dictionary definitions 536 of the selected vocabulary words 534 are provided below the article 532. Additional reading material regarding the subject matter of the article 532 may be provided to the user as a link 538. The link 538 may be included in every eighth grade lesson plan covering this specific article. In another embodiment of the present invention, the link 538 is provided in selected eighth grade lesson plans based upon each user's assessed skill level and interests provided in a related user profile.

FIG. 6 presents a progress report 600 produced by a system for producing differentiated content, according to an embodiment of the present invention, such as the system 100 with a feedback application 168, described in the embodiment of FIG. 1. The progress report 600 may be provided to an evaluator of one or more users through an e-mail communication. The system also may store the progress report 600 and provide compile the progress report 600 at the instruction of the evaluator.

In FIG. 6, the progress report 600 provides the performance progress of multiple users 604 in a specific class grade 602 over monthly time periods 608. An embodiment of the present invention provides for the evaluator to request a progress report for a customized period of time, such as, for example, monthly, quarterly, and annually.

Each user 604 is associated with a specific skill level 606 predetermined by the system. For example, in FIG. 6, the portion of the skill level 606 comprising "XXXL" relates to a LEXILE Score as determined by the system. The portion of the skill level 606 preceding the LEXILE Score relates to a grade level or educational standard level associated with each user 604.

The progress report 600 may include a total number 610 of lesson exercises completed by each user 604 within a specific time period, and an average grade 612 for each user 604. The progress report 600 also may provide a class average 616 for each specified time period. A change 614 in

US 9,652,993 B2

19

a skill level **606** of a user **604** that occurred during the specified time period may be indicated. The progress report **600** allows for the evaluator to efficiently track the performance of each user **604** using a minimum amount of time to prepare the report **600**, which provides more teaching time for the evaluator.

FIG. **7** presents another progress report **700** regarding multiple educational standards developed by a system for providing differentiated content, in accordance with an embodiment of the present invention, such as the system **100** described in the embodiment of FIG. **1**. The system **100** may use a feedback application to prepare the progress report **700**, such as the feedback application **168** described in the embodiment of FIG. **1**. The progress report **700** is provided to an evaluator of the group of users **706** and covers a specific curriculum **702**, such as language arts, for a specific class grade **704**. The users **706** are identified and each user's skill level **708** is provided similarly to the skill level **606** described in the embodiment of FIG. **6**.

A total number **710** of questions answered by each user **704** is provided for a specified time period. Subject areas **712** within the curriculum **702** where a user **704** has demonstrated a mastering of the area is provided in regards to a specific standard concept. Subject areas **714** and **716** where additional practice is suggested, and where poor performance is determined, also are provided regarding specific standard concepts. The progress report **700** allows an evaluator to review the performance of each user **704** in relation to specific standard concepts and to determine where immediate help may be needed, or where an increase in skill level may be required, such as where a user **704** has mastered all of the concepts regarding a particular standard.

FIG. **8** presents an analysis report **800** of multiple users' performance in regards to a single educational standard concept **804**, in accordance with an embodiment of the present invention. The progress report is provided by a system, such as system **100** with a feedback application **168**, as described in the embodiment of FIG. **1**, to an evaluator of a group of users **808**, and covers a specified curriculum **802**, such as language arts, for a sixth grade class **806**. The standard concept **804** covers reading comprehension at a specific level as defined by an applicable educational standard.

The class of users **808** is identified by name along with each user's assessed reading skill level **810**, similar to the skill levels **606** described in the embodiment of FIG. **6**. A number **812** of questions answered by each user **808**, where the questions relate to the identified standard concept **804**, is provided and a related average score **814** also is provided in the progress report **800**.

With respect to each user's performance, the progress report **800** may include recommended practices **816** to an evaluator regarding each user **808** regarding each user's performance. The progress report also may provide additional lesson exercises **818** for one or more users **808**, thereby assisting an evaluator in teaching the users **808**.

Each of the progress reports described in the embodiments of FIGS. **6**, **7**, and **8** may be stored in a database by the system **100**, such as a performance database **150** described in the embodiment of FIG. **1**.

While the foregoing is directed to embodiments of the present invention, other and further embodiments of the present invention may be devised without departing from the basic scope thereof, where the scope thereof is determined by the following claims.

20

The invention claimed is:

1. A computer implemented method for providing differentiated content to a user of a plurality of users, comprising the steps of:

5 obtaining in real-time, by a standards engine including one or more processors, a first unmodified content from at least one source using at least one computer;
obtaining one or more educational standards using at least one computer;

10 evaluating the one or more educational standards to produce a unique standards code by analyzing at least one of one or more statements of the one or more educational standards, a structure of the one or more educational standards, a core meaning of the one or more educational standards, a related and ancillary meaning of the one or more educational standards, a learning mode referenced by the one or more educational standards, an intent of the one or more educational standards, or related critical thinking, logical, philosophical, and pedagogical elements of the one or more educational standards using at least one computer;

analyzing, by the standards engine, the first unmodified content to determine a reading difficulty level of the first unmodified content in accordance with each of the one or more educational standards;

generating in real-time, by a differentiation engine including one or more processors, a plurality of aligned versions of the first unmodified content by transforming format and content of the first unmodified content, wherein each of the plurality of aligned versions is transformed, respectively, according to a reading difficulty level associated with corresponding one of the one or more educational standards, wherein generating the plurality of aligned versions of the first unmodified content further comprises breaking up the first unmodified content into sentences, selecting a different vocabulary and sentence length according to each reading difficulty level in accordance with the unique standards code while maintaining subject matter of the first unmodified content;

transmitting, simultaneously, a first aligned version of the plurality of aligned versions of the first unmodified content to the user, wherein the first aligned version corresponds to a reading skill level of the user;

generating, by the differentiation engine, one or more lesson plans for the user, the one or more lesson plans comprising questions associated with the first aligned version and subject matter of the first unmodified content, wherein the one or more lesson plans comprises a lesson comprising one or more of a specific spoken language, a particular font size and level-appropriate vocabulary and a particular graphical format based on the reading skill level of the user; and
providing the one or more lesson plans questions associated with the first aligned version to the user via a communication system,
wherein each of the plurality of aligned versions are equivalent substantially similar in subject matter, meaning and context to subject matter, meaning and context of the first unmodified content.

2. The method of claim **1**, further comprising:
providing a first set of questions to the user using at least one computer;
receiving a first set of answers related to the first set of questions from the user using at least one computer;

21

analyzing the first set of answers to produce a first reading level associated with the user using at least one computer; modifying the first unmodified content in accordance with the first reading level of the user to produce a first modified content using at least one computer; and preparing electronic message communications to the user via an electronic message system, wherein a body portion of the electronic message communications is customized to the first reading level of the user in addition to the first modified content using at least one computer.

3. The method of claim 1, further comprising facilitating communications among the plurality of users within a same reading level group using at least one computer.

4. The method of claim 2, further comprising the step of preparing a first lesson plan using the first modified content, wherein the first lesson plan comprises a set of lesson exercises related to the first reading level.

5. The method of claim 1, wherein the one or more educational standards are selected from the group consisting of educational standards for reading comprehension, literacy, vocabulary, and mathematics.

6. The method of claim 1, wherein aligning the first unmodified content further comprises mapping words within the first unmodified content to a content standard.

7. The method of claim 1, further comprising: generating a user profile of the user based on at least a grade level of the user, school district of the user, and subject matter preferences of the user; and performing an assessment of the user by posing a generated set of questions to the user, the generated set of questions based on the user profile, wherein the assessment comprises at least the reading skill level of the user.

8. A system for providing differentiated content to a user of a plurality of users, comprising:

- a) at least one processor;
- b) at least one input device coupled to at least one network; and
- c) at least one storage device storing processor executable instructions which, when executed by the at least one processor, performs a method including:

obtaining in real-time, by a standards engine executing on the at least one processor, a first unmodified content from at least one source using at least one computer; obtaining one or more educational standards using at least one computer;

evaluating one or more educational standards to produce a unique standards code by analyzing at least one of one or more statements of the standards, a structure of the standards, a core meaning of the standards, a related and ancillary meaning of the standards, a learning mode referenced by the standards, an intent of the standards, or related critical thinking, logical, philosophical, and pedagogical elements of the one or more educational standards using at least one computer;

analyzing, by the standards engine, the first unmodified content to determine a reading difficulty level of the first unmodified content in accordance with each of the one or more educational standards;

generating in real-time, by a differentiation engine including one or more processors, a plurality of aligned versions of the first unmodified content by algorithmically transforming format and content of the first unmodified content, wherein each of the plurality of

22

aligned versions is transformed, respectively, according to a reading difficulty level associated with corresponding one of the one or more educational standards, wherein generating the plurality of aligned versions of the first unmodified content further comprises breaking UP the first unmodified content into sentences, selecting a different vocabulary and sentence length according to each reading difficulty level in accordance with the unique standards code while maintaining subject matter of the first unmodified content;

transmitting, simultaneously, a first aligned version of the plurality of aligned versions of the first unmodified content to the user, wherein the first aligned version corresponds to a reading skill level of the user;

generating, by the differentiation engine, one or more lesson plans for the user, the lesson plan comprising questions associated with the first aligned version and subject matter of the first unmodified content, wherein the one or more lesson plans comprises a lesson comprising one or more of a specific spoken language, a particular font size and level-appropriate vocabulary and a particular graphical format based on the reading skill level of the user; and

providing the one or more lesson plans to the user via a communication system,

wherein each of the plurality of aligned versions are substantially similar in subject matter, meaning and context to subject matter, meaning and context of the first unmodified content.

9. The system of claim 8, further comprising: providing a first set of questions to the user using at least one computer coupled to the network;

receiving a first set of answers related to the first set of questions from the user using at least one computer; analyzing the first set of answers to produce a first reading level associated with the user using at least one computer;

modifying the first unmodified content in accordance with the first reading level of the user to produce a first modified content using at least one computer; and preparing electronic message communications to the user via an electronic message system, wherein a body portion of the electronic message communications is customized to a first reading level of the user in addition to the first modified content using at least one computer.

10. The system of claim 9, further comprising facilitating communications among the plurality of users within a same reading level group using at least one computer.

11. The system of claim 10, further comprising the step of preparing a first lesson plan using the first modified content, wherein the first lesson plan comprises a set of lesson exercises related to the reading skill level of the user.

12. The system of claim 10, wherein the one or more educational standards are selected from the group consisting of educational standards for reading comprehension, literacy, vocabulary, and mathematics.

13. The system of claim 10, wherein aligning the first unmodified content further comprises mapping words within the first unmodified content to a content standard.

14. The system of claim 10, wherein the at least one source is accessed across the network and comprises at least one of: a school database, a news database, an educational database, a proprietary database.

EXHIBIT B

**AMENDED AND RESTATED
EMPLOYMENT AGREEMENT**

By and Between

Saki Dodelson

and

AC Holdco Inc.

As of March 18, 2015

**AMENDED AND RESTATED
EMPLOYMENT AGREEMENT**

THIS AMENDED AND RESTATED EMPLOYMENT AGREEMENT (this "Agreement") dated as of March 18, 2015 by and between AC Holdco Inc., a Delaware corporation (the "Company"), and **Saki Dodelson** (the "Executive").

WITNESSETH:

WHEREAS, the Executive has been employed by Achieve3000 Holdings, Inc. ("Achieve3000") pursuant to the Employment Agreement dated as of July 14, 2013 (as may have been amended, the "Prior Agreement"), which agreement had an expiration date of July 13, 2016;

WHEREAS, pursuant to the Agreement and Plan of Merger, to be dated as of even date herewith, by and among the Company, AC Merger Sub, Inc., Achieve3000, and the other parties thereto (the "Merger Agreement"), the Company shall acquire all of the outstanding capital stock of Achieve3000;

WHEREAS, the Company and the Executive desire to enter into this Agreement to confirm the terms and conditions pursuant to which the Company will engage the Executive as an employee and officer of the Company; and

WHEREAS, both parties desire to specify the rights and obligations which each have with respect to the other in connection with the Executive's employment.

NOW, THEREFORE, in consideration of the agreements and covenants herein set forth, the parties hereby agree as follows:

1. Employment. The Company hereby employs the Executive and the Executive hereby accepts such employment and agrees to render her services as an employee of the Company during the Term (as hereinafter defined in Section 6), all subject to and on the terms and conditions herein set forth. The Executive will serve as President and Chief Executive Officer of the Company, and in such capacity the Executive will have the duties, responsibilities, authority and status as set forth in Section 2(b).

2. Duties, Responsibilities, Authority and Status of the Executive.

(a) The Executive will be based out of the Company's principal office located in Lakewood, New Jersey, or such other place or places within the continental United States as the Company's Board of Directors (the "Board") or its successors may determine.

(b) The Executive will use her best efforts to maintain and enhance the business and reputation of the Company. The Executive will be in charge of the business and affairs of the Company and will have such authority and status as is customary for her position. The Executive will perform such duties commensurate with her position as may from time to time be assigned by the Board, to which she will solely report. All other employees of the Company will solely report directly or indirectly to the Executive, provided that it shall not be a breach of this provision for the Board to designate that the Chief Financial Officer have a dotted

line reporting relationship to the Board and/or the Audit Committee of the Board in addition to his or her reporting line to the Executive. The Executive will be a director of the Company permitted to attend each of the meetings of the Board and any committees thereof, provided that the Executive shall have no rights to attend any portions of meetings held in executive session or any portions of meetings where the item of discussion relates solely to the Executive's employment, including (but not limited to) her compensation, performance, and/or service on the Board. The Company will provide appropriate office and secretarial support to the Executive commensurate with her position.

3. Exclusivity of Service. The Executive agrees to devote all of her business time, efforts and attention to the business and affairs of the Company on an exclusive basis; provided, however, that the Executive may engage in charitable activities, pursue personal investments, and, with the prior consent of the Board, serve on the board of directors of other businesses so long as such activities do not adversely affect the performance of the Executive's duties hereunder or create a potential business or fiduciary conflict.

4. Compensation.

(a) During the term, the Company will pay to the Executive, in addition to all other benefits and compensation provided in this Agreement, a base salary (the "Base Salary") at the annual rate of \$385,875 with respect to the 2015 calendar year, subject to a 5% increase at the beginning of each calendar year thereafter. The Base Salary may be further increased as the Board determines from time to time in its sole discretion. All payments of Base Salary will be made in accordance with the Company's policies, but no less frequently than monthly in arrears.

(b) In addition to the Base Salary, the Executive will have a bonus plan each year as established in good faith by the Company's Compensation Committee with the agreement of the Executive. The Executive's 2015 bonus plan is set forth in Exhibit A to this Agreement. The Executive's bonus plan for each subsequent year will be set forth in writing on or before March 31 of each year; provided that, if the bonus plan is not mutually agreed upon by such date, then the bonus plan for such year will be the same as the bonus plan for the prior year, making only the necessary changes to apply the bonus plan to the current year.

(c) All bonuses will be paid not later than March 15 after the fiscal year to which the bonus relates, but only if the Executive is employed on the last day of such fiscal year.

5. Benefits. The Executive will be entitled to the following benefits during the Term:

(a) The Company will provide the Executive with hospitalization, medical, dental, life and disability insurance on the same basis made available to other employees. The Executive will also participate in the Company's pension plan and any other compensation and benefit plans, if available, on the same basis as other similar employees of the Company.

(b) The Executive will be entitled to all holidays established as part of the Company's standard practices. The Executive will be entitled to 30 days of annual vacation (prorated for partial years of employment and with carryover of unused days based on the Company's policy) to be taken by the Executive at times mutually and reasonably agreed upon

by the Company and the Executive. Furthermore, the Executive will be entitled to sick leave available generally to the Company's employees pursuant to the Company's programs or policies in effect from time to time.

(c) The Executive will be entitled to reimbursement for all reasonable travel, entertainment and other expenses incurred in connection with the Company's business consistent with the Company's policies with respect thereto. In accordance with past practice, the Company will continue to provide Executive with a Company car having a monthly cost not in excess of amounts previously incurred with respect to such Company car.

6. Term of Employment. The initial term (the "Initial Term") of employment hereunder commenced on March 18, 2015 and will end on July 13, 2016, unless terminated prior thereto in accordance with Section 10. The term of employment hereunder will be extended for additional one-year terms (each a "Renewal Term") at the end of the Initial Term and each Renewal Term, unless the Company or the Executive gives written notice to the other of its or her intention not to renew the Agreement, provided that such notice must be given not less than 90 days prior to the end of the then current Initial or Renewal Term. As used herein, "Term" means the Initial Term and any subsequent Renewal Term(s). Notwithstanding anything herein to the contrary, the provisions of Sections 8, 9, 10(e) and 11 will survive the termination of the Executive's employment hereunder.

7. Stock Options; Valuations.

(a) As soon as practical following the execution of this Agreement, but in any event on or prior to June 30, 2015, the Company will grant Executive stock options under the Company's stock incentive plan (the "Stock Incentive Plan") in respect of shares of the Company's common stock representing 6.0% of the outstanding shares on a fully diluted basis as of the date hereof (the "Commencement Stock Options"). Such Commencement Stock Options shall have an exercise price equal to the fair market value of the common stock on the date of grant (and not less than the cash price per share paid to acquire Series A preferred stock of the Company in the equity financing of the Company in connection with the transactions contemplated by the Merger Agreement) and shall (i) vest on a monthly basis over not more than a 4-year period from the date hereof, with vesting commencing as of the date hereof; provided, however, that upon the occurrence of a Change in Control (as defined in the Stock Incentive Plan) (x) 50% of a portion the then-unvested Commencement Stock Options equal to the portion of the total consideration received by the stockholders of the Company in the form of capital stock of the purchaser or an affiliate thereof relative to the total consideration received by the stockholders of the Company in such Change in Control shall remain unvested in each remaining installment and shall continue to vest thereafter for the shorter of (i) the vesting schedule set forth above and (ii) 24 months from the date of such Change in Control, in each case pro-rata over such period and subject to Executive's continued employment with the Company or any of its subsidiaries through each applicable vesting date; and (y) except as set forth in clause (x), the remaining then-unvested Commencement Stock Options will vest in full upon the occurrence of a Change in Control; provided, further, that should Executive's employment with the Company or any of its subsidiaries be terminated by the Company (other than for Cause (as defined below), or as a result of Executive's death or permanent disability), or by Executive with Good Reason (as defined below), the then-unvested Commencement Stock Options will vest in full upon such termination provided that Executive executes, delivers and

does not revoke the general release required under Section 10(e); (ii) have no performance conditions; (iii) not be conditioned on the execution of restrictive covenants broader than the covenants set forth in this Agreement (but nothing shall preclude the Company from requiring a re-affirmation of the covenants set forth in this Agreement); and (iv) not have a definition of “cause” or “good reason” that is not as favorable in any respect as the definitions set forth in this Agreement. The Commencement Stock Options will otherwise be subject to the terms and conditions of the Stock Incentive Plan and an Option Grant Notice and Agreement evidencing such award.

(b) In connection with any repurchase of the shares of capital stock of the Company held by the Executive (or any permitted transferee of the Executive), the “fair market value” of such shares shall be determined in good faith by the Board without regard to any illiquidity, lack of control, lack of marketability or similar discounts. In the event that the Executive disagrees in good faith with the Board’s determination of fair market value, the Executive may request that fair market value be determined by an independent third-party nationally recognized valuation firm (the “Firm”) selected by the Company, subject to the Executive’s approval (such approval not to be unreasonably withheld or delayed). The Firm shall determine the fair market value, without regard to any illiquidity, lack of control, lack of marketability or similar discounts, within 30 business days of the date of its appointment, or such longer period as the Company and the Executive may agree. The Firm’s decision shall be (in the absence of manifest error) final and binding on the parties hereto; provided, however, if the Firm’s fair market value determination is lower than the Board’s determination, the Board’s determination shall control. The cost of such valuation shall be borne by the Company, except to the extent that the fair market value determined by the Firm is no greater than 110% of the fair market value determined by the Board, in which case the Executive will be required to reimburse the Company for 100% of such cost.

8. Non-Competition, Non-Solicitation and Non-Disparagement.

(a) The Executive agrees and covenants that (i) so long as she remains an employee of the Company or any of its subsidiaries and (ii) for the longer of (x) one year immediately following the termination of her employment with the Company and any of its subsidiaries and (y) three years immediately following the date first written above (the “Non-Compete Period”), she will not, without the consent of the Board, directly or indirectly engage in or become interested (whether as an owner, principal, agent, stockholder, member, partner, trustee, venturer, lender or other investor, director, officer, employee, consultant or through the agency of any corporation, limited liability company, partnership, association or agent or otherwise) in any business or enterprise that develops, manufactures, markets, licenses, sells or provides any product or service that directly competes with any product or service developed, manufactured, marketed, licensed, sold or provided, or planned to be developed, manufactured, marketed, licensed, sold or provided by the Company or any of its subsidiaries while the Executive was employed by the Company or any of its subsidiaries (except that ownership of not more than 1% of the outstanding securities of any class of any entity that are listed on a national securities exchange or traded in the over-the-counter market will not be considered a breach of this Section 8(a)).

Following termination of the Executive’s employment, upon written request by the Executive that reasonably and accurately describes the business or enterprise in which the Executive wants

to be involved and the Executive's potential role with such business or enterprise, the Company will respond in writing within 20 days whether or not it would deem such role to violate this non-competition covenant; the Executive will be free to accept such position if the Company responds favorably or does not respond within such 20-day period, subject to the continued accuracy of the Executive's description. The Executive will not be deemed to be engaged in a competitive activity solely because she is employed or otherwise involved with a business or enterprise that has an affiliate or division engaged in a competitive activity so long as the Executive does not provide services to or have responsibility regarding such affiliate or division.

(b) The Executive further agrees and covenants that (i) so long as she remains an employee of the Company or any of its subsidiaries and (ii) for the Non-Compete Period, she will not, without the consent of the Board, directly or indirectly, either alone or in association with others, (A) solicit, or permit any organization directly or indirectly controlled by the Executive to solicit, any employee of the Company or any of its subsidiaries to leave the employ of the Company or any of its subsidiaries, (B) solicit for employment, hire or engage as an independent contractor, or permit any organization directly or indirectly controlled by the Executive to solicit for employment, hire or engage as an independent contractor, any person who was employed by the Company or any of its subsidiaries at any time during the term of the Executive's employment with the Company or any of its subsidiaries; provided that this clause (B) will not apply to the solicitation, hiring or engagement of any individual whose employment with the Company or any of its subsidiaries has been terminated for a period of six months or longer (or twelve months in the case of an employee who is or was an officer of the Company or any subsidiary or affiliate thereof), or (C) canvass or solicit, or directly or indirectly cause or authorize to be solicited, or enter into, or directly or indirectly cause or authorize to be entered into, any competitive business from any person who (x) is, or, at any time within two years prior to the date of such action, has been, a customer or client or (y) is an active prospect to be a customer or client, of the Company or any of its subsidiaries.

(c) The Executive acknowledges that the Executive is agreeing to and shall comply, with the provisions of Sections 8(a) and 8(b) for, inter alia, the payments and other valuable consideration the Executive is receiving in connection with the transactions contemplated by the Merger Agreement and that the Executive's agreement to comply with the provisions of Sections 8(a) and 8(b) are necessary preconditions to the agreement of the parties to the Merger Agreement to enter into the Merger Agreement.

(d) If any restriction set forth in Sections 8(a) or 8(b) is found by any court of competent jurisdiction to be unenforceable because it extends for too long a period of time or over too great a range of activities or in too broad a geographic area, it will be interpreted to extend only over the maximum period of time, range of activities or geographic area as to which it may be enforceable.

(e) The Company and the Executive will at no time during or after termination of her employment make any disparaging remarks or comments about the other party or, in the case of the Company, its subsidiaries, directors, employees or shareholders, except as necessary to respond truthfully to any inquiry from the government, investors, or in connection with any legal process; provided, however, that the Company's non-disparagement obligations under this Section extend only to then-current officers and managers, and only for so long as those individuals are officers or managers of the Company.

9. Proprietary Information and Developments.

9.1. Proprietary Information.

(a) The Executive agrees that all information, whether or not in writing, of a private, secret or confidential nature concerning the Company's business, business relationships or financial affairs (collectively, "Proprietary Information") is and will be the exclusive property of the Company. By way of illustration, but not limitation, Proprietary Information may include inventions, products, processes, methods, techniques, formulas, compositions, compounds, projects, developments, plans, research data, clinical data, financial data, personnel data, computer programs, customer and supplier lists, and contacts at or knowledge of customers or prospective customers of the Company. The Executive will not disclose any Proprietary Information to any person or entity other than employees of the Company or use the same for any purposes (other than in the performance of her duties as an employee of the Company) without written approval by the Board, either during or after her employment with the Company or any of its subsidiaries, unless and until such Proprietary Information has become public knowledge without fault by the Executive.

(b) The Executive agrees that all files, letters, memoranda, reports, records, data, sketches, drawings, laboratory notebooks, program listings, or other written, photographic, or other tangible material containing Proprietary Information, whether created by the Executive or others, which comes into her custody or possession, will be and are the exclusive property of the Company to be used by the Executive only in the performance of her duties for the Company. All such materials or copies thereof and all tangible property of the Company in the custody or possession of the Executive will be delivered to the Company, upon the earlier of (i) a request by the Company or (ii) termination of her employment. After such delivery, the Executive will not retain any such materials or copies thereof or any such tangible property.

(c) The Executive agrees that her obligation not to disclose or to use information and materials of the types set forth in Sections 9.1(a) and 9.1(b), and her obligation to return materials and tangible property, set forth in Section 9.1(b), also extends to such types of information, materials and tangible property of customers of the Company or suppliers to the Company or other third parties who may have disclosed or entrusted the same to the Company or to the Executive.

9.2. Developments.

(a) The Executive will make full and prompt disclosure to the Company of all inventions, improvements, discoveries, methods, developments, software, and works of authorship, whether patentable or not, which are created, made, conceived or reduced to practice by her or under her direction or jointly with others during her employment by the Company or any of its subsidiaries, whether or not during normal working hours or on the premises of the Company (all of which are collectively referred to in this Agreement as "Developments").

(b) The Executive agrees to assign and does hereby assign to the Company (or any person or entity designated by the Company) all her right, title and interest in and to all Developments and all related patents, patent applications, copyrights and copyright applications. However, this Section 9.2(b) will not apply to Developments that do not relate to the business or

research and development conducted or planned to be conducted by the Company at the time such Development is created, made, conceived or reduced to practice and that are made and conceived by the Executive not during normal working hours, not on the Company's premises and not using the Company's tools, devices, equipment or Proprietary Information. The Executive understands that, to the extent this Agreement is construed in accordance with the laws of any state that precludes a requirement in an employee agreement to assign certain classes of inventions made by an employee, this Section 9.2(b) will be interpreted not to apply to any invention which a court rules and/or the Company agrees falls within such classes. The Executive also hereby waives all claims to moral rights in any Developments.

(c) The Executive agrees to cooperate fully with the Company, both during and after her employment with the Company or any of its subsidiaries, with respect to the procurement, maintenance and enforcement of copyrights, patents and other intellectual property rights (both in the United States and foreign countries) relating to Developments. The Executive will sign all papers, including, without limitation, copyright applications, patent applications, declarations, oaths, formal assignments, assignments of priority rights, and powers of attorney, which the Company may deem necessary or desirable in order to protect its rights and interests in any Development. The Executive further agrees that if the Company is unable, after reasonable effort, to secure the signature of the Executive on any such papers, any executive officer of the Company will be entitled to execute any such papers as the agent and the attorney-in-fact of the Executive, and the Executive hereby irrevocably designates and appoints each executive officer of the Company as her agent and attorney-in-fact to execute any such papers on her behalf, and to take any and all actions as the Company may deem necessary or desirable in order to protect its rights and interests in any Development, under the conditions described in this sentence.

10. Termination.

(a) **Cause.** The Company may terminate the employment of the Executive pursuant to this Agreement, whether or not for Cause, upon written notice by the Company to the Executive. If termination is for Cause, such notice will particularize the circumstances that give rise to the Cause upon which the termination is based. "Cause" means that (i) the Executive has failed in a material respect to perform her reasonably assigned duties as Chief Executive Officer or President, after the Board provides the Executive with written notice specifying the failure to perform that has occurred, and if such failure is capable of being cured, upon the Executive's failure to substantially cure such failure within 30 days after such notice is provided, (ii) the Executive has engaged in gross negligence or willful misconduct with regard to her employment, or (iii) the Executive has been convicted of any crime involving moral turpitude or any felony.

(b) **Incapacity.** If the Executive, in the reasonable judgment of a physician chosen by the Board, is incapacitated to the extent that she is unable to perform her material duties pursuant to this Agreement for a period of six months (whether consecutive or in any 12-month period) by reason of illness, disability or other incapacity, the Company may terminate this Agreement upon one month's prior notice after such six-month period.

(c) **Death.** This Agreement will terminate immediately upon the death of the Executive.

(d) **Good Reason.** The Executive may terminate her employment hereunder, whether or not for Good Reason, immediately upon written notice by the Executive to the Company. If termination is for Good Reason, such notice must identify the Good Reason upon which the termination is based. For the purposes of this Agreement “Good Reason” means (i) a material reduction in the Executive’s Base Salary or other compensation opportunity hereunder, (ii) removal of the Executive from the position, duties and title of President or Chief Executive Officer, a change in the reporting relationship of the Executive to the Board, or a change in the reporting relationship of those reporting to the Executive such that they no longer report directly or indirectly to the Executive; provided, however, that, following a Change in Control where the consideration received by the stockholders of the Company in connection with such transaction includes capital stock of the purchaser or an affiliate thereof, a change in the Executive’s title or reporting relationships shall not constitute Good Reason pursuant to this clause (ii) as long as Executive retains the duties of President and CEO of the Achieve unit, regardless of title; (iii) removal of the Executive from the Board; (iv) a change in Executive’s principal place of employment as of the date of this Agreement of more than 30 miles; or (v) any other action or inaction that constitutes a material breach by the Company of this Agreement or any other agreement with the Executive or right to which the Executive is entitled, in any such case after the Executive provides the Board with written notice specifying the circumstances that would give rise to Good Reason (within 90 days of the occurrence of the event constituting Good Reason), if such circumstances are not cured within 30 days after such notice is provided, and such termination shall be effective at the expiration of such 30 day notice period only if the Company has not fully cured such act or acts or failure or failures to act that give rise to Good Reason during such period.

(e) **Effect of Termination.** In the event the Company terminates the Executive’s employment without Cause or fails to renew the Agreement or the Executive terminates her employment for Good Reason, the Company will pay to the Executive an amount equal to 100% of the sum of (i) her current annual Base Salary at the time of termination of her employment and (ii) the maximum Target Bonus for the year in which her employment is terminated (which shall be the greater of \$300,000 or the Target Bonus then in effect), payable in equal installments over the 12 months following such termination in accordance with normal payroll practices, so long as (x) the Executive executes, delivers to the Company, and does not revoke a general release in favor of the Company and its affiliates in form and substance substantially similar to the release set forth in Exhibit B to this Agreement, subject to changes as necessary to effectuate a valid release of claims, within 21 days (or in the event that such termination is “in connection with an exit incentive or other employment termination program,” 45 days) following the date of termination; provided, however, that if the Executive’s date of termination and the last day of the applicable revocation period could fall in two separate taxable years, regardless of when the Executive actually executes the release, payments will not commence until the later taxable year and (y) the Executive complies with Sections 8 and 9 of this Agreement during such period. Subject to applicable law such as COBRA, the Company will have no further monetary obligation to the Executive or her legal representatives, as the case may be, except the payment to and reimbursement for any monies due to the Executive that accrued prior to the termination of her employment, including (1) all accrued but unpaid Base Salary through the date of termination of the Executive’s employment and (2) any unpaid annual bonus in respect of any completed fiscal year that has ended prior to the date of termination of the Executive’s employment, which amount shall be paid at such time annual bonuses are paid to

other senior executives of the Company, but in no event later than the date that is 2½ months following the last day of the fiscal year in which such termination occurred. In the event the Executive's employment terminates for any other reason, the Executive's Base Salary and bonus under Section 4 and all benefits under Section 5 will terminate immediately and the Company will have no further obligation to the Executive except payment of the Executive's Base Salary, accrued but unused vacation through the termination of employment, and reimbursement for any monies due to the Executive that accrued prior to the termination of employment.

11. Miscellaneous.

(a) **Tax Matters – 409A and 280G.** This Agreement is intended to be exempt from, or to comply with, Section 409A of the Internal Revenue Code of 1986, as amended (the "Code"), and will be interpreted and operated consistently with that intention. Each amount to be paid or benefit to be provided under this Agreement shall be construed as a separate identified payment for purposes of Section 409A of the Code. The Executive will bear all expense of and be solely responsible for all federal, state, local or foreign taxes owed by the Executive with respect to any payment made pursuant to this Agreement, including, without limitation, any excise tax imposed by Section 4999 of the Code ("Excise Tax"). If it is determined that any compensation or benefit due to the Executive, or the acceleration of the vesting of any options or other equity awards, would result in payment(s) that may be subject to an Excise Tax, the Company and the Executive will cooperate in good faith and use best efforts to obtain shareholder approval of the payment(s) (or the applicable part thereof) in a manner intended to satisfy the requirements of the "shareholder approval" exception currently contained in Section 280G of the Code and the regulations promulgated thereunder and thereby avoid the Excise Tax thereon. For purposes of clarification, the portion of the payments that will be subject to such shareholder approval will be limited to the portion that is required to be subject to such shareholder approval in order to obtain the shareholder approval necessary to avoid the Excise Tax. (For the avoidance of doubt, this means that the portion of such payments that is below three times the Executive's "base amount" (as defined under Section 280G of the Code) will not be subject to such shareholder approval.)

(b) **Representations.** The Executive represents and warrants that: (i) she is legally able to enter into and perform under this Agreement; (ii) she is not prohibited by the terms of any agreement, understanding or policy from entering into this Agreement; and (iii) the terms of this Agreement will not and do not violate or contravene the terms of any agreement, understanding or policy to which the Executive is a party or by which she is bound. The Executive agrees to and will indemnify and hold the Company harmless from and against all liability, costs or expenses (including reasonable attorneys' fees and disbursements) arising out of or resulting from the inaccuracy of the foregoing representations.

(c) **Specific Performance; Damages.** In the event of a breach or threatened breach of the provisions of Sections 8 or 9, the Executive agrees that the injury which would be suffered by the Company would be of a character that could not be fully compensated for solely by a recovery of monetary damages. Accordingly, the Executive agrees that in the event of a breach or threatened breach of Sections 8 or 9, in addition to and not in lieu of any damages sustained by the Company and any other remedies that the Company may pursue hereunder or under any applicable law, the Company will have the right to equitable relief, including issuance of a temporary or permanent injunction, by any court of competent jurisdiction against the

commission or continuance of any such breach or threatened breach, without the necessity of proving any actual damages or posting of any bond or other surety therefor. In addition to, and not in limitation of the foregoing, the Executive understands and confirms that, in the event of a breach or threatened breach of Sections 8 or 9, the Executive may be held financially liable to the Company for any loss suffered by the Company as a result.

(d) **Notices.** Any and all notices, demands or requests required or permitted to be given under this Agreement must be given in writing and sent, by registered or certified U.S. mail, return receipt requested, by hand, or by overnight courier, addressed to the parties hereto at their addresses first set forth above or such other addresses as they may from time to time designate by written notice, given in accordance with the terms of this Section. Notice given as provided in this Section will be deemed effective: (i) on the date hand delivered, (ii) on the first business day following the sending thereof by overnight courier, and (iii) on the third business day after the depositing thereof into the exclusive custody of the U.S. Postal Service.

(e) **Waivers.** No waiver by any party of any default with respect to any provision, condition or requirement of this Agreement will be deemed to be a waiver of any other provision, condition or requirement of this Agreement; nor will any delay or omission of any party to exercise any right hereunder in any manner impair the exercise of any such right accruing to it thereafter.

(f) **Preservation of Intent.** Should any provision of this Agreement be determined by a court having jurisdiction to be illegal or in conflict with any laws of any state or jurisdiction or otherwise unenforceable, the Company and the Executive agree that such provision will be modified to the extent legally possible so that the intent of this Agreement may be legally carried out.

(g) **Entire Agreement.** This Agreement sets forth the entire and only agreement or understanding between the parties relating to the subject matter hereof and supersedes and cancels all previous agreements, negotiations, letters of intent, correspondence, commitments and representations in respect thereof between them (including, for the avoidance of doubt, the Prior Agreement), and no party will be bound by any conditions, definitions, warranties or representations with respect to the subject matter of this Agreement except as provided in this Agreement.

(h) **Inurement; Assignment.** The rights and obligations of the Company under this Agreement will inure to the benefit of and will be binding upon the Company's successors and assigns. The Company may assign this Agreement to any person, firm or corporation in connection with any acquisition of the Company or other transaction which constitutes a Change in Control. Neither this Agreement nor any rights or obligations under this Agreement may be transferred or assigned by the Executive.

(i) **Amendment.** This Agreement may not be amended in any respect except by an instrument in writing signed by the parties hereto.

(j) **Headings.** The headings in this Agreement are solely for convenience of reference and will be given no effect in the construction or interpretation of this Agreement.

(k) **Counterparts.** This Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which when taken together will constitute one and the same instrument.

(l) **Expenses.** The Company will reimburse the Executive for her reasonable legal fees and expenses related to the negotiation of this Agreement, up to a maximum of \$10,000.

(m) **Governing Law.** This Agreement will be governed by, construed and enforced in accordance with the internal laws of the State of New Jersey, without giving reference to principles of conflict of laws.

(n) **Attorneys' Fees.** In any action between the parties hereto to enforce any provision of this Agreement or in which any provision of this Agreement is offered as a defense to any claim, the prevailing party will be entitled to an award of its reasonable attorneys' fees to the extent determined by the court to be appropriate under the circumstances.

[Signature page follows.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first written above.

COMPANY:

AC HoldCo, Inc.

By: 

Name: Blair Flicker

Title: Vice President and Treasurer

EXECUTIVE:

SAKI DODELSON

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first written above.

COMPANY:

AC HoldCo, Inc.

By: _____

Name: Blair Flicker

Title: Vice President and Treasurer

EXECUTIVE:



SAKI DODELSON

2015 BONUS PLAN

As specified below, for the 2015 calendar year, the Executive will be entitled to receive a target annual bonus of \$160,000 (the “Target Bonus Amount”), with the potential for the payment of an Overachievement Bonus (as defined below) in the event that the requisite levels of Revenue, EBITDA and/or New Orders (as each such term is defined below) are exceeded. Notwithstanding the foregoing, no portion of the Target Bonus Amount or the Overachievement Bonus (as defined below) for such year will be paid if Revenue is less than \$77,697,056.

Target Bonus Amount

The Executive will be paid the “Revenue Bonus”, the “EBITDA Bonus” and/or the “New Order Bonus” (each determined independently) in accordance with the following table and clauses (1) through (3) immediately following such table:

Target Bonus Component	Portion of Target Bonus Amount	Minimum Level (95% of Target)	Target Level
Revenue Bonus	40% (\$64,000)	\$77,697,056	\$81,786,375
EBITDA Bonus	40% (\$64,000)	\$23,481,891	\$24,717,780
New Order Bonus	20% (\$32,000)	\$50,996,190	\$53,680,200

- (1) Revenue Bonus: The Executive will earn 95% of the Revenue Bonus if the minimum level for such bonus is achieved, and 100% of the Revenue Bonus if the target level for such bonus is achieved. For Revenue achievement between those two levels, the bonus earned by the Executive will be prorated on a straight-line basis between a 95% and 100% bonus.
- (2) EBITDA Bonus: The Executive will earn 95% of the EBITDA Bonus if the minimum level for such bonus is achieved, and 100% of the EBITDA Bonus if the target level for such bonus is achieved. For EBITDA achievement between those two levels, the bonus earned by the Executive will be prorated on a straight-line basis between a 95% and 100% bonus.
- (3) New Order Bonus: The Executive will earn 95% of the New Order Bonus if the minimum level for such bonus is achieved, and 100% of the New Order Bonus if the target level for such bonus is achieved. For New Order achievement between those two levels, the bonus earned by the Executive will be prorated on a straight-line basis between a 95% and 100% bonus.

Overachievement Bonus

The Executive will be paid an “Overachievement Bonus” in accordance with the following table:

Overachievement Bonus Component	Target	Bonus Percentage for Amounts Above Target

Revenue	\$81,786,375	1.5%
EBITDA	\$24,717,780	4.0%
New Orders	\$53,680,200	1.5%

Executive will be eligible for an Overachievement Bonus when the Company meets at least 100% of the Target in any category, calculated as the designated percentage (in the chart above) of the amount by which such Target component has been exceeded.

Definitions

The term “Revenue” means revenues earned by the Company from all sources, as determined in accordance with U.S. generally accepted accounting principles and as reported in the Company’s audited financial statements.

The term “EBITDA” means the Company’s EBITDA as calculated in accordance with the method used by the Company and reported in the Company’s internal financial reports based on its audited financial statements.

The term “New Orders” means revenue earned by the Company from clients who were not clients of the Company in the previous fiscal year.

For purposes of determining “New Orders” (also referred to as “New Business”) the following rules and principles shall apply:

Rule #1: New School/ Product = New

- If a Customer has not had an active subscription in the last academic year, or the order date for the current order is after February 15th (Win-Back), then it’s considered New Business.
- Product: New Business is calculated independently for literacy vs. eScience. A new Achieve3000 product (eScience or Literacy) at a school is New Business.
- Win-Backs: The Renewal Team has until February 15, 2016 to renew schools which expired the previous fiscal year. After the February 15 deadline, the customer is considered new, and any orders booked are termed “Win-Backs,” which are considered New Business. For orders expiring after August 31st, the deadline is February 15 of the second year. (For example, if an order expires October 31, 2016, then Win-Back can occur any time after February 15, 2018.)
- Expansions: Expansions refer to new schools added to an order, which may also include existing schools. New vs. renew classification is calculated for each school individually. The new

schools will be considered New Business, and the renewing schools will be considered renewal business.

- Net New Business: The New Business portion of an Expansion must reflect an increase in net new business from current Customers. That is, for the order to count as New Business, the total dollar amount of the new order must be greater than that of the previous order.

Rule #2: Fiscal Year Rule

- Any order booked within the first fiscal year for a new account is considered New Business.

Rule #3: Same Subscription Period

- Upgrades to a New Business order, which fall within the same subscription period, inherit the New Business status. Upgrades include increasing licenses or professional development.
- If the upgrade extends beyond the subscription period of the original order (and it does not meet the parameters of Rule #2) then the order is split: the portion of the order that falls within the subscription period is considered New Business; the portion that falls outside of the subscription period is considered Renewal Business.

Rule #4: Summer Solutions & Grants

- Summer Solutions: Always considered New Business.
- Grants (formally known as pilots): The year a grant is issued is considered New Business; Subsequent order immediately following grant issue subscription period is also New Business.

Rule #5: Different source of funding, duration of subscription or product

- In the event a Customer had an active subscription in the last academic year, it would still be considered New Business in any one of the following three circumstances:
 - The Customer pays for the order from a different funding source than the previous order
 - The Customer places an order for a subscription whose duration is longer than the duration of the previous order

- The Customer places an order for a different product or service than the previous order

Rule #6: Renewal Business

- If account does not meet Rule #1, Rule #2, Rule #3, Rule #4 or Rule #5, then the account is considered Renewal Business.

GENERAL RELEASE OF CLAIMS

This General Release of Claims (this “**Release**”), dated as of [REDACTED], 20[REDACTED], confirms the following understandings and agreements by Saki Dodelson (hereinafter referred to as “**you**” or “**your**”).

In consideration of the promises set forth in this Release, you agree as follows:

1. **Opportunity for Review and Revocation.** You have twenty-one (21) days to review and consider this Release. Notwithstanding anything contained herein to the contrary, this Release will not become effective or enforceable for a period of seven (7) calendar days following the date of its execution, during which time you may revoke your acceptance of this Release by notifying [REDACTED], in writing. To be effective, such revocation must be received by AC Holdco Inc. (the “**Company**”) no later than 5:00 p.m. on the seventh calendar day following its execution. Provided that the Release is executed and you do not revoke it, the eighth (8th) day following the date on which this Release is executed shall be its effective date (the “**Effective Date**”). In the event of your revocation of this Release pursuant to this Section 1, this Release will be null and void and of no effect, and neither you nor the Company will have any obligations hereunder.

2. **Release and Waiver of Claims.**

(a) As used in this Release, the term “claims” will include all claims, covenants, warranties, promises, undertakings, actions, suits, causes of action, obligations, debts, accounts, attorneys’ fees, judgments, losses and liabilities, of whatsoever kind or nature, in law, equity or otherwise.

(b) For and in consideration of the payments and benefits described in the Section 10(e) (“**Severance**”) of that certain Amended and Restated Employment Agreement between you and the Company dated as of March ____, 2015 (the “**Employment Agreement**”), and other good and valuable consideration (the “**Consideration**”), but excluding the reservations set forth in Section 2(e) below, you, for and on behalf of yourself and your heirs, administrators, executors and assigns, effective the date hereof, do fully and forever release, remise and discharge the Company, its direct and indirect parents, subsidiaries and affiliates, together with their respective officers, directors, partners, shareholders, employees and agents (collectively, and with the Company, the “**Group**”) from any and all claims whatsoever up to the date hereof which you had, may have had, or now have against the Group, whether known or unknown, for or by reason of any matter, cause or thing whatsoever, including any claim arising out of or attributable to your employment or the termination of your employment with the Company or any of its subsidiaries, whether for tort, breach of express or implied employment contract, intentional infliction of emotional distress, wrongful termination, unjust dismissal, defamation, libel or slander, or under any federal, state or local law dealing with discrimination based on age, race, sex, national origin, handicap, religion, disability or sexual orientation. This release of claims includes, but is not limited to, all claims arising under the Age Discrimination in Employment Act (“**ADEA**”), Title VII of the Civil Rights Act, the Americans with Disabilities Act, the Civil Rights Act of 1991, the Family Medical Leave Act, and the Equal Pay Act, each as may be amended from time to time, and all other federal, state and local laws, the common law

and any other purported restriction on an employer's right to terminate the employment of employees.

(c) You acknowledge and agree that as of the date you execute this Release, you have no knowledge of any facts or circumstances that give rise or could give rise to any claims under any of the laws listed in the preceding paragraph.

(d) By executing this Release, you specifically release all claims relating to your employment and its termination under ADEA, a United States federal statute that, among other things, prohibits discrimination on the basis of age in employment and employee benefit plans.

(e) Notwithstanding any provision of this Release to the contrary, by executing this Release, you are not releasing any claims relating to: (i) your rights with respect to the Consideration; (ii) any claims that cannot be waived by law; (iii) your rights to indemnification pursuant to the Company's certificate of incorporation, by-laws or applicable law, (iv) your rights to vested benefits under Company's retirement plan(s), and (v) your rights as a stockholder or equity award holder of the Company or any subsidiary, including under any "rollover agreement," stockholders agreement and equity plan.

3. Knowing and Voluntary Waiver. You expressly acknowledge and agree that you:

(a) Are able to read the language, and understand the meaning and effect, of this Release;

(b) Have no physical or mental impairment of any kind that has interfered with your ability to read and understand the meaning of this Release or its terms, and that you are not acting under the influence of any medication, drug or chemical of any type in entering into this Release;

(c) Are specifically agreeing to the terms of the release contained in this Release because the Company has agreed to pay you the Consideration. The Company has agreed to provide the Consideration because of your agreement to accept it in full settlement of all possible claims you might have or ever had, and because of your execution of this Release (other than as set forth in Section 2(e) above);

(d) Understand that, by entering into this Release, you do not waive rights or claims under ADEA that may arise after the Effective Date;

(e) Had or could have had 21 calendar days in which to review and consider this Release;

(f) Were advised to consult with your attorney regarding the terms and effect of this Release; and

(g) Have not relied upon any representation or statement not set forth in this Release made by the Company or any of its representatives and have signed this Release knowingly and voluntarily.

4. No Suit. You represent that you have not filed or permitted to be filed against the Group, individually or collectively, any complaints or lawsuits arising out of your employment, or any other matter arising on or prior to the date hereof with respect to released claims hereunder; provided, that, for the avoidance of doubt, the foregoing representation shall not cover claims that are not released claims hereunder. If, notwithstanding this representation and warranty, you have filed or file such a complaint, charge, or lawsuit, you agree that you shall cause such complaint, charge, or lawsuit to be dismissed with prejudice and shall pay any and all costs required in obtaining dismissal of such complaint, charge, or lawsuit, including without limitation the attorneys' fees of any member of the Group against whom you have filed such a complaint, charge, or lawsuit. This paragraph shall not apply, however, to a claim of age discrimination under ADEA or to any non-waivable right to file a charge with the United States Equal Employment Opportunity Commission (the "*EEOC*"), provided, however, that if the EEOC were to pursue any claims relating to your employment with Company or any of its subsidiaries, you agree that you shall not be entitled to recover any monetary damages or any other remedies or benefits as a result and that this Release and the payment of the Consideration will control as the exclusive remedy and full settlement of all such claims by you.

5. Successors and Assigns. The provisions hereof shall inure to the benefit of your heirs, executors, administrators, legal personal representatives and assigns and shall be binding upon your heirs, executors, administrators, legal personal representatives and assigns.

6. Severability. If any provision of this Release shall be held by any court of competent jurisdiction to be illegal, void or unenforceable, such provision shall be of no force and effect. The illegality or unenforceability of such provision, however, shall have no effect upon and shall not impair the enforceability of any other provision of this Release.

7. Non-Admission. Nothing contained in this Release will be deemed or construed as an admission of wrongdoing or liability on the part of you or the Company.

8. Entire Agreement. This Release constitutes the entire understanding and agreement of the parties hereto regarding the subject matter hereof. This Release supersedes all prior negotiations, discussions, correspondence, communications, understandings and agreements between the parties relating to the subject matter of this Release.

9. Governing Law. EXCEPT WHERE PREEMPTED BY FEDERAL LAW, THIS RELEASE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH FEDERAL LAW AND THE LAWS OF THE STATE OF NEW JERSEY, APPLICABLE TO AGREEMENTS MADE AND TO BE PERFORMED IN THAT STATE. ANY DISPUTE OR CLAIM ARISING OUT OF OR RELATING TO THIS RELEASE SHALL BE BROUGHT EXCLUSIVELY IN THE FEDERAL COURT IN THE STATE OF NEW JERSEY. BY EXECUTION OF THE RELEASE, THE PARTIES HERETO, AND THEIR RESPECTIVE AFFILIATES, CONSENT TO THE EXCLUSIVE JURISDICTION OF SUCH COURT, AND WAIVE ANY RIGHT TO CHALLENGE JURISDICTION OR VENUE IN SUCH COURT WITH REGARD TO ANY SUIT, ACTION, OR PROCEEDING UNDER OR IN CONNECTION WITH THE RELEASE. EACH PARTY TO THIS RELEASE ALSO HEREBY WAIVES ANY RIGHT TO TRIAL BY JURY IN CONNECTION WITH ANY SUIT, ACTION OR PROCEEDING UNDER OR IN CONNECTION WITH THIS RELEASE.

Saki Dodelson

Dated: , 20

EXHIBIT C

大成 DENTONS

Richard I. Scharlat
Partner

Richard.Scharlat@dentons.com
D +1 212 768-6854

Dentons US LLP
1221 Avenue of the Americas
New York, NY 10020-1089
United States

dentons.com

October 23, 2018

The Honorable Craig L. Wellerson, J.S.C.
Superior Court of New Jersey
Ocean County Courthouse
100 Hooper Avenue, Courtroom #10, 3rd Floor
Toms River, New Jersey 08754

Re: *Dodelson v. AC HOLDCO, et al.*
Docket No. OCN-L-002139-18

Dear Judge Wellerson:

This firm represents plaintiff/counterclaim defendant Saki Dodelson and counterclaim defendant Invest In Literacy, LLC in this matter. On Friday, October 12, 2018, we received a copy of the application for a preliminary injunction, without any temporary restraints, from counsel for defendants and counterclaimant. On October 17, 2018 we received the signed Order to Show Cause from the Court, which allowed for some expedited discovery and a set a return date of November 9, 2018.

In short, we believe there is no need to waste additional judicial time and resources on this application. Now that we have had a chance to review the application, our clients have no problem agreeing to the entirety of the “relief” sought in the application on a consent basis, without any resolution on the merits of the claim, and without prejudice. Ms. Dodelson had, and has, no interest in using the materials in question other than to protect herself from defendant Adam Berger, which now can be undertaken in the context of this litigation.

Ms. Dodelson never intended to, and never did, use any of the materials attached to the injunction application for any competitive purpose, and indeed is not competing with counterclaimant through counterclaim defendant Invest in Literacy, LLC, or otherwise, in any violation of the terms of her 1-year non-competition agreement (which remains in place for only approximately six (6) more months in any event).



Despite Ms. Dodelson's willingness to consent to the "relief" sought in the injunction application, Achieve3000 has ignored our request to enter into any Consent Order. Specifically, on October 18, 2018, we offered to stipulate to the request relief and, when that was not acceptable, we advised Achieve3000's counsel the very next day that Ms. Dodelson was willing to enter into a Consent Order on the same terms. Achieve3000 refused to stipulate and has made no attempt to even negotiate terms of any Consent Order. As such, on its face it appears that Achieve300's injunction application has little to do with protecting allegedly Confidential Information, and more to do with continuing to try to smear Ms. Dodelson's good name.

Attached is a copy of the proposed Consent Order that would obviate the need for expedited discovery, early depositions or an injunction hearing. Hopefully, Achieve3000 has changed its mind and will sign this Consent Order, which contains the same terms as the Stipulation that was sent to Achieve3000's counsel. If not, then we respectfully request a conference with the Court tomorrow or Thursday to discuss whether there is any need to undergo the time and expenses of expedited discovery and having a hearing on the application.

Respectfully submitted,

/s/ Richard I. Scharlat

Richard I. Scharlat
Jonathan S. Jemison

Enc.

EXHIBIT D

DENTONS US LLP
Richard I. Scharlat (020321994)
Jonathan S. Jemison (030251999)
101 JFK Parkway
Short Hills, New Jersey 07078-2708
Phone: (973) 912-7100
Fax: (973) 912-7199
*Attorneys for Plaintiff and
Counterclaim Defendant Saki Dodelson and
Counterclaim Defendant Invest in Literacy LLC*

<p>SAKI DODELSON,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>AC HOLDCO INC. d/b/a A3K, ADAM BERGER, LARRY HANDEN, RYAN HINKLE, PETER SOBILOFF, and STUART UDELL</p> <p style="text-align: center;">Defendants.</p>
<p>AC HOLDCO INC. d/b/a ACHIEVE 3000,</p> <p style="text-align: center;">Counterclaimant,</p> <p style="text-align: center;">v.</p> <p>SAKI DODELSON and INVEST IN LITERACY LLC,</p> <p style="text-align: center;">Counterclaim Defendants.</p>

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: OCEAN COUNTY

DOCKET NO.: OCN-L-002139-18

Civil Action

DECLARATION OF SAKI DODELSON

SAKI DODELSON, of full age, under the penalties of perjury, hereby declares as follows:

1. I filed this action to recover severance (including a wage-based component), and options wrongfully denied to me by defendant/counterclaimant AC Holdco Inc. d/b/a A3K (“A3k”) and its Board of Directors (the “Board”), and to recoup damages that I suffered as a

result of the defamatory, discriminatory, and other tortious conduct by A3k's Chairman, defendant Adam Berger ("Berger"). In an apparent effort to distract the Court from my claims, A3k filed a preliminary injunction application on October 9, 2018, jumping to the conclusion that I "stole" confidential or proprietary information for the purpose of unlawfully competing with Achieve. I categorically deny each and every one of these allegations, most of which amount to little more than speculation, and submit this Declaration to set the record straight.

2. I co-founded A3k in 2001 with my sister-in-law Dr. Susan Gertler and acted as A3k's Chief Executive Officer ("CEO") for nearly two decades. Over that time, I built A3k into an immensely successful business. So much so, that in or about March 2015, a group of investors led by Insight Venture Partners ("IVP"), a New York-based venture capital and private equity firm, acquired A3k for approximately \$225 million.

3. Following the acquisition by IVP, I retained my roles as A3k's CEO and Chairman of the Board. During this time, from 2015 through 2017, our success continued at a compound annual growth rate of about 11% CAGR. At that time, I entered into an Amended Employment Agreement dated March 15, 2015 ("Employment Agreement"). A true and correct copy of my Employment Agreement is attached hereto as **Exhibit A**.¹

4. Although A3k continued to thrive under my leadership post-acquisition, IVP had other ideas about how to run the business and embarked on a campaign to slowly wrest control of the business from me, culminating in the events that transpired in February and March 2018, Berger was installed as the new Chairman of the Board in a Board Meeting held without my knowledge or participation. Soon thereafter, I was unceremoniously first advised of these events by defendant Peter Sobiloff, who was the new CFO of A3k installed by IVP. At this juncture, I

¹ By agreement between and among counsel, the exhibits referenced in this Declaration are being submitted to the Court for *in camera* review and are therefore not being filed electronically, without prejudice as to any pending opposition to any motion to seal or request for confidentiality.

still remained a A3k Board member and the CEO of A3k. A true and accurate copy of the March 8, 2018 email from Adam Berger about my removal as Chairman of the Board is attached hereto as **Exhibit B**.

5. As Berger's power grew, so too did his hostility towards me. As is detailed in the Complaint I filed on August 31, 2018 (the "Complaint"), a true and correct copy of which is attached hereto as **Exhibit C**, around the time of his installment as Chairman of the Board in or about March 2018, Berger began a malicious campaign to falsely disparage me to the Board, A3k employees and others, claiming that I was, *inter alia*, insubordinate, a liar, and unqualified to lead A3k.

6. Berger was also hostile towards me and my, and other employees', Orthodox Jewish religious beliefs. During one of his email tirades, for example, Berger questioned why I would be out of the office for Passover: [REDACTED]

[REDACTED] A true and correct copy of this email is attached hereto as **Exhibit D**.

7. Berger also made derogatory remarks to other female employees about "sitting upstairs" during prayer services and not shaking hands with men (Orthodox Jewish women sit separately from men during prayers, and do not shake hands with men, for modesty reasons). As both a women and an Orthodox Jew who observes the Jewish holidays strictly, I found these comments to be appalling.

8. Berger also attacked me personally. As one example, in an email that starts with what can only be described as a back-handed compliment that includes Berger' statement that Berger and defendant Stuart Udell (" Udell") [REDACTED]. In that same email Berger belittled me further, saying that I: [REDACTED]

[REDACTED]

[REDACTED] A true and accurate copy of this email is attached hereto as **Exhibit E**.

9. Berger also demeaned me repeatedly in his email communications, always copying others, such as Board Members—and even a Willkie Farr attorney—so as to voice his maligning of me to others. In an April 17, 2018 email, for example, Berger forbid me, A3k's founder and still CEO, from meeting or speaking with clients alone, and forced me to report to male subordinates about all my client contacts. Berger also ordered me to only communicate with A3k sales people through male subordinates that Berger designated. Berger's pretext for these restrictions was that information should not [REDACTED] A true and correct copy of this April 17, 2018 Email is attached hereto as **Exhibit F**.

10. Berger's treatment of me reached the tipping point when he wrote another hostile and demeaning email, falsely accusing me—while I was still the CEO of A3k—of ignoring his

[REDACTED] Berger then stated: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] A true and correct copy of this email is attached hereto as **Exhibit G**.

11. Realizing that I was being pushed out of the company that I had built and was being lied to (and about) by Berger, I became concerned that Berger and the IVP-dominated

Board would try to withhold from me the benefits and compensation I was entitled to receive under the Employment Agreement.

12. These concerns soon proved well-founded when on April 10, 2018 (after I was advised that the Board would replace me as CEO, but before I resigned that post) Berger presented me with a proposed transition agreement (the “Transition Agreement”), which he demanded that I immediately sign on the spot—without time to review or consult counsel. A true and correct copy of the Transition Agreement is attached hereto as **Exhibit H**. Despite Berger’s assurances that the Transition Agreement protected my interests and rights to compensation, the Transition Agreement was actually designed to substantially reduce my rights under the Employment Agreement by, *inter alia*, conditioning my right to receive my bargained-for benefits and compensation only upon Berger’s sole discretion and by changing the length of my non-competition obligations post-employment from one year to two years. Berger seemed determined to control me.

13. Among other things, in that version of the Transition Agreement, Berger tried to force the elimination of my ability under the Employment Agreement to terminate my employment for “Good Reason,” thus threatening to deprive me of the ability to resign on my own terms and still retain my rights to that compensation I earned and was owed.

14. I refused to sign the Transition Plan.

15. On April 18, 2018, I tendered my resignation as CEO of A3k with “Good Reason.” A true and correct copy of my resignation letter is attached hereto as **Exhibit I**.

16. Although I resigned as Achieve 3000’s CEO for “Good Reason” on April 18, 2018 and did not sign the Transition Agreement, from that time forward I remained: (1) a member of the A3k Board—until on or about June 7, 2018, and (2) CEO of Achieve Israel—

until in or about July 2018. Additionally, I remain a minority shareholder in A3k to this day and have every reason to want A3k to be profitable and succeed.

17. As a continuing A3k Board member and CEO of A3k Israel, I was entitled to keep all of my emails and information.

18. Despite my resignation as CEO, Berger never ceased his campaign of hostility and discriminatory conduct against me.

19. For example, after I submitted my resignation letter—but before it was made known to A3k employees—I advised some employees that I had a stomach virus and could not attend a meeting the morning after I resigned. Berger’s response, with its misogynistic and condescending tone and comments about [REDACTED] that would never be made to an outgoing male CEO, and speaks for itself:

[REDACTED]

■

[REDACTED]

A true and correct copy of this email is attached hereto as **Exhibit J**.

20. When I sent a farewell message to employees, Berger harshly criticized me—not for communicating with customers, but for sending the notice sooner than he wanted it sent. Ironically, Berger was happy for me to—and asked me to—send my farewell message to clients.

21. Given the escalating hostility that I experienced from Berger in the months preceding my resignation, including Berger's repeated lies and defamatory remarks contained in emails to me from Berger that he also chose to publish to other Board members, I felt compelled to take certain measures to protect myself.

22. Specifically, between on or about April 10, 2018 and or about April 22, 2018, I did two things in connection with my records to protect myself from Berger's lies, and evaluate potential retaliatory claims that might be leveled against me and/or claims I might bring to vindicate my rights.

23. First, I directed my A3k staff to make sure I had a copy of my emails on my personal laptop that I could refer to in the event I was cut off the system and needed to show the historical documents to legal counsel and/or relatedly, to defend myself from getting blamed for future failures by A3k that were out of my control (the "Historical Emails"). I also saved the Historical Emails because I was still operating with the understanding that, as would be typical in such a situation, there might be some reasonable transition period of months during which I might need access to them. In fact, A3k was still using me as the face of the company to meet with clients and to consult with Udell, the incoming CEO, even after I tendered my resignation for Good Cause—as late as May 2018.

24. Second, in the late morning/early afternoon of April 18, 2018, before submitting my resignation letter, I performed a search in my A3k email box for the word "Adam" which identified approximately 178 total emails (131 unique emails), some with attachments, between,

or including as recipients, myself and Berger (the “Preserved Emails”). I then forwarded the Preserved Emails as attachments via nine “cover” emails to my personal Gmail account.

Attached hereto as **Exhibit K** is a copy of transmittal emails to my counsel the various Preserved Emails. I even compiled some of the most egregious examples of Berger's treatment of me in a Word file and sent that to counsel as well. A copy of this email (with the Word file) is attached hereto as **Exhibit L**.

25. All of the Preserved Emails are dated between February 2018, when Berger began his tenure as the Chairman, through April 18, 2018. I collected the Preserved Emails believing that I would need evidence to corroborate my claims regarding Berger’s sustained and systematic disparagement of my professionalism and aptitude as A3k’s CEO, discriminatory conduct, as well as A3k's attempts to deprive me of the benefits that I was owed pursuant to the Employment Agreement.

26. After securing the Preserved Emails, I did not delete the original underlying emails included in the Preserved Emails from my A3k email Inbox; however, to avoid an unnecessary, and presumably immediate, confrontation with Berger and/or others while she received legal counsel regarding my rights, I did delete the “cover emails” (and the attached copies of underlying emails) from my Sent and Deleted Boxes. I understood from my time as CEO that those cover emails still remained on, and were recoverable from, the A3k server.

27. After Berger received my letter of resignation for Good Reason, in the afternoon of April 18, 2018, Berger expressly directed me to “maintain all books and records and data of the company until an orderly transition can be effected.” A true and correct copy of this email is attached hereto as **Exhibit M**. I followed this directive from Berger.

28. Later that afternoon, Berger advised me that he would direct Janette Jankowski and Mike Vantuso to “confidentially follow whatever security protocols are followed” for a separation from employment. Almost a month later, on or about May 15, 2018, A3k for the first time asked me to return what A3k deemed to be “assets” belonging to A3k, according to the security protocols it chose to use to effect an orderly transition. A3k was very specific about the “assets” it wanted returned as part of its security protocol, which were limited to:

- 2015 Acura MDX;
- MacBook Pro Computer;
- iPad Pro with Data Package;
- iPad Mini with Data Package;
- T-Mobile iPhone used for international; and
- 4 internet hot spots.

A true and correct copy of this email is attached hereto as **Exhibit N**. Emails, documents or other A3k information I might have did not make the list of assets important enough to return. I complied.

29. Aside from Ms. Jankowski's emails regarding the list of items above, A3k made no effort to determine whether, and to what, extent I retained any A3k documents or information. I had no exit interview and was not asked to return any information. A3k did not otherwise ask me for any of this information thereafter.

30. This is no surprise. During my seventeen (17) year tenure as CEO of A3k, I cannot remember a single time that A3k sought the return of emails, documents, or other information that was kept by any Board Member, Executive, or employee's personal computer or personal email address. Indeed, it is my strong belief that Berger, Jankowski and other staff at A3k knew that I had a copy of all my emails and information at all times on my personal computer—before and after I resigned—simply because of the way A3k did business and the way I operated as CEO.

31. Nevertheless, I am happy to return any emails, documents or information A3k might want as long as my attorneys can keep a copy for use in this litigation.

32. Following my resignation from A3k, I formed Invest in Literacy LLC (“Invest”), a New Jersey limited liability company. I formed Invest In Literacy to just keep myself “on the map” and explore certain charitable endeavors, for no compensation, and in no way competitive with A3k.

33. Contrary to the claims made by A3k in the Application, Invest has no employees, assets, revenue, bank account, tax ID number, or customers.² Invest has no products, and is not developing any products or services, including any product or services that would compete with A3k.

34. Indeed, I have not pursued any commercial ventures and have spent a large share of my time caring for my mother, my mother-in-law, and traveling and playing with my grandchildren. I have not solicited clients, customers, or employees for any new business or commercial venture, and certainly not in any way competitive with A3k.

35. In any event, it is also worth noting that, for all the speculation in the Application about my purported intention to use A3k confidential information to unlawfully compete through Invest, A3k waited until after I filed the Complaint to even question my post-employment activities. In fact, I sent a number of farewell emails to A3k employees in May 2018 from the Invest email account, and even communicated using that account with Udell, my replacement as CEO in late July 2018, yet it was not until months later, in October 2018, that A3k complained about my formation of Invest.

² In the interests of full disclosure, Invest in Literacy does have a LinkedIn page. I also have an email account, sakidodelson@investinliteracy.com, and have provided an email account under this domain name for my daughter to use, but that does not mean she is not employed by Invest in Literacy. No one is.

36. As noted above, A3k's sudden interest in securing purportedly confidential information, and its efforts to accuse me of stealing documents to unlawfully compete, is little more than an effort to avoid its misconduct in depriving me of, among other things, the more than 16 million stock options I rightfully earned.

37. My efforts to defend these baseless allegations uncovered a key admission from the former CFO of A3k at the relevant times in 2015 which demonstrates that A3k breached the Employment Agreement years ago to deprive me of those very same options. A true and accurate copy of the email from the former CFO of A3k is attached hereto as **Exhibit O**.

38. A true and accurate copy of the 2015 Omnibus Equity Compensation Plan (the "2015 Plan") is attached hereto as **Exhibit P**.

39. A true and accurate copy of the Stock Option Agreement (November 6, 2018) is attached hereto as **Exhibit Q**.

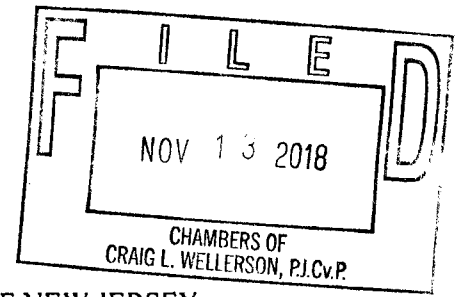
40. A true and correct copy of the July 26, 2018 letter from A3k notifying me of its intent to exercise its repurchase right and purportedly "repurchase" my options "for no consideration" because the "options have no value" is attached hereto as **Exhibit R**.



SAKI DODELSON

Dated: November 1, 2018

EXHIBIT E



SAKI DODELSON.

Plaintiff,

v.

AC HOLDCO INC. d/b/a ACHIEVE3000.
ADAM BERGER, LARRY HANDEN, RYAN
HINKLE. PETER SOBILOFF, and STUART
UDELL,

Defendants.

AC HOLDCO INC. d/b/a ACHIEVE 3000.

Counterclaim Plaintiff.

v.

SAKI DODELSON and INVEST IN
LITERACY LLC.

Counterclaim
Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: OCEAN COUNTY

DOCKET NO.: OCN-L-002139-18

Civil Action

CONSENT ORDER

WHEREAS, on or about October 10, 2018, Defendant/Counterclaim Plaintiff AC Holdco Inc. d/b/a Achieve3000 ("AC Holdco") filed a motion by way of an Order to Show Cause seeking a preliminary injunction, without temporary restraints, against Plaintiff/Counterclaim Defendant Saki Dodelson ("Dodelson") and Counterclaim Defendant Invest In Literacy, LLC ("Invest In Literacy") (together "Counterclaim Defendants") "preliminarily restraining the Counterclaim Defendants from using or disclosing to anyone any Proprietary Information ... belonging to AC Holdco, including but not limited to any such Proprietary Information that Dodelson emailed to her own personal email accounts" (the "OTSC");

WHEREAS, on or about October 10, 2018, AC Holdco also moved by way of an Order to Show Cause for expedited discovery in connection with its application for a preliminary injunction;

WHEREAS, On October 17, 2018 the Court ordered expedited discovery, which was conducted by the parties, and scheduled a return date for the OTSC on November 9, 2018;

WHEREAS, Dodelson and Invest in Literacy dispute each and every factual allegation and legal contention contained in the OTSC, including, without limitation, the allegation that Dodelson improperly possesses any AC Holdco Proprietary Information, all of which Dodelson and Invest In Literacy intend to vigorously defend in this action; and

WHEREAS, notwithstanding the foregoing, Dodelson and Invest In Literacy have agreed to consent to relief now sought in the OTSC as follows, obviating the need for the Court to rule on the preliminary injunction application:

THE PARTIES HEREBY CONSENT as follows:

I. Counterclaim Defendants shall not use or disclose to anyone any Proprietary Information (as that term is defined in Section 9.1 of the Employment Agreement annexed as Exhibit I to AC Holdco's Memorandum of Law in Support of the Preliminary Injunction Motion), including, but not limited to, what AC Holdco contends is Proprietary Information: (a) that Dodelson emailed to her own personal email accounts or the email accounts of Invest in Literacy, (b) reflecting the contents of Dodelson's AC Holdco email account and that is located on any computers, other electronic devices or is otherwise in Counterclaim Defendants' possession, custody, or control, and (c) any other documents containing any of AC Holdco's Proprietary Information in Counterclaim Defendants' possession, custody, or control.

2. Within thirty (30) days, Dodelson further agrees that she will return to AC Holdco. and provide a certification that she has not kept any copies of, any and all Proprietary Information as set forth in paragraph 1 hereinabove, except that a copy of such Proprietary Information detailed in paragraph 1 hereinabove shall be held by her attorneys of record in this matter only for use in this litigation, including any and all appeals. For the avoidance of doubt, nothing in this Consent Order shall be asserted as or deemed a waiver of any privileges.

3. Within thirty (30) days of the conclusion of this litigation, including through the conclusion of any and all appeals, Dodelson shall cause counsel of record for the Counterclaim Defendants to return all copies of the Proprietary Information detailed in paragraph 1 hereinabove to counsel of record for AC Holdco.

4. AC Holdco will withdraw its application for a preliminary injunction without prejudice. Notwithstanding this Consent Order, AC Holdco retains the right to seek additional restraints and/or equitable relief while this litigation is pending.

5. AC Holdco will withdraw its Motion for a Sealing Order, filed on October 9, 2018, without prejudice.

6. The parties shall meet and confer and submit a proposed Confidentiality Order containing at least two tiers of confidentiality ("Confidential" and "Outside Counsel Eyes' Only") (the "Confidentiality Order") within thirty (30) days of the entry of this Consent Order. To the extent any disagreements arise over the terms of the Confidentiality Order, they may be raised with the Court after that time. Pending the entry of such Confidentiality Order and designation thereunder by AC Holdco of any documents retained by counsel of record for the Counterclaim Defendants pursuant to paragraph 2 of this Consent Order, counsel of record for the Counterclaim Defendants shall treat all such documents as "Outside Counsel Eyes' Only."

7. With this Consent Order, Dodelson does not admit or concede that she breached any provision of the Employment Agreement in connection with Proprietary Information or otherwise, and AC Holdco does not admit or concede that Dodelson has any meritorious defenses to such alleged breach or otherwise. Further, the parties agree that the return of any documents in accordance with this Consent Order is not a concession that the documents are Proprietary Information as defined in the Employment Agreement referenced in paragraph 1 hereinabove, or otherwise. Nothing in this Consent Order will preclude Dodelson and Invest In Literacy from arguing that Dodelson did not breach the Employment Agreement, or Defendants from arguing that Dodelson did breach the Employment Agreement. The parties reserve all rights and defenses. This Consent Order is inadmissible before any trier of fact regarding the putative merits of AC Holdco's claims against Dodelson and Invest In Literacy in this Action and/or inadmissible in any proceeding or trial seeking permanent injunctive relief against Dodelson and/or Invest In Literacy. Nothing in this paragraph shall preclude any party from enforcing the terms of this Consent Order.

I hereby consent to the form and entry of this Consent Order:

NOVINS, YORK and JACOBUS
202 Main Street
Toms River, New Jersey 08753
Attorneys for AC Holdco

By: 

Michael B. York, Esq.

Dated: November 8, 2018


DENTONS US LLP
101 JFK Parkway
Short Hills, New Jersey 07078
Attorneys for Dodelson and Invest In Literacy

By: 

Richard I. Scharlat, Esq.

Dated: November 8, 2018

SO ORDERED:


Hon. Craig Wellerson, J.S.C.

November 13, 2018

EXHIBIT F



mwe.com

Richard Scharlat
Attorney at Law
rscharlat@mwe.com
+1 212 547 5421

February 12, 2020

VIA eCOURTS

The Honorable Craig L. Wellerson, J.S.C.
Superior Court of New Jersey
Ocean County Courthouse
100 Hooper Avenue
Toms River, New Jersey 08753

Re: *Dodelson v. AC Holdco Inc. et al.*, Docket No. OCN-L-002139-18
Motion Notice Letter (CBLP 4:105-4(h))

Dear Judge Wellerson,

We represent Plaintiff and Counterclaim Defendant Saki Dodelson (“Ms. Dodelson”) and non-party Mission With a Margin, Inc. (“MWM”) in connection with this matter. We write pursuant to N.J. Court Rule 4:105-4 of the Complex Business Litigation Program Rules (“CBLP”) to advise the Court of a discovery dispute in which MWM intends to file a motion to quash and for the issuance of a protective order pursuant to R. 4:10-3 concerning a January 28, 2020 subpoena issued to MWM by Defendant and Counterclaim Defendants AC Holdco Inc. d/b/a/ Achieve3000 (“Achieve”)(the “Subpoena”). The Subpoena seeks documents and testimony of a MWM corporate representative by February 28, 2020. It is MWM’s position that the Subpoena is improper, *inter alia*, because it is overly burdensome and does not seek information or material relevant to the underlying matter. Instead, it appears that the Subpoena is designed to improperly harass and annoy Ms. Dodelson and MWM.

By way of background, Ms. Dodelson is the former Chief Executive Officer of Achieve, who resigned for Good Reason from Achieve on April 18, 2018. Pursuant to Ms. Dodelson’s employment agreement with Achieve dated March 18, 2015 (the “Employment Agreement”), non-competition and non-solicitation clauses (to the extent enforceable at all) expired on April 18, 2019 -- one year after Ms. Dodelson’s departure.

During the restricted period, MWM had no operations. Furthermore, to date, MWM currently has no products or customers and the record demonstrates that MWM is not a currently a competitor of Achieve. These facts have been confirmed in documents produced in this case, publicly available information, and the sworn testimony of witness who have already been deposed. The record is clear: although at some time in the future MWM may -- as is its right -- eventually develop products that are

**McDermott
Will & Emery**

340 Madison Avenue New York NY 10173-1922 Tel +1 212 547 5400 Fax +1 212 547 5444
US practice conducted through McDermott Will & Emery LLP.

The Honorable Craig L. Wellerson, J.S.C.
February 12, 2020
Page 2

competitive with Achieve, some ten (10) months after the expiration of the twelve (12)-month restrictive covenants period: (1) MWM does not compete with Achieve (it literally has no product yet); (2) MWM has no customers; and (3) Ms. Dodelson violated no restrictions in forming MWM and hiring its initial employees. As such, there is no good faith basis for the Subpoena.

Notwithstanding these facts, the Subpoena improperly makes overly broad demands for information such as: (1) “a comparison of any products or services [MWM] offers or intends to offer with the products or services offered by [Achieve],”; (2) MWM’s “solicitations of funding and the sources of [MWM’s] financing,”; and (3) “[t]he development and maintenance of [MWM’s] business strategy.” The Subpoena is nothing more than an attempt by Achieve to harass Ms. Dodelson in connection with MWM, and improperly reveal to the marketplace what product or products MWM may intend to develop.

Should MWM be forced to comply with the Subpoena, it would be facing production of virtually every document created or maintained by MWM, including, without limitation, its confidential and proprietary data involving its plans for the future. Achieve’s only purported, ostensible justification for this intrusive attempt to access MWM’s inner workings is to test whether Ms. Dodelson, a co-founder of MWM, complied with her post-employment restrictions regarding noncompetition and non-solicitation of employees and customers. No such test is appropriate or warranted under the facts as established in the record and the controlling law. Rule 4:10-3 empowers the Court “for good cause shown... [to] make any order that justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense.”; see also *Gensollen v. Pareja*, 416 N.J. Super. 585, 591 (App. Div. 2010) (holding that “[T]he discovery rights provided by our court rules are not instruments with which to annoy, harass or burden a litigant.”). Rule 4:10-3 further affords trial courts “expansive authority” in fashioning protective orders -- including that “the discovery not be had.” *Id.*; *HD Supply Waterworks Grp., Inc. v. Dir., Div. of Taxation*, 29 N.J. Tax 573, 584 (2017). Indeed, under R. 1:9-2, a court “may quash or modify the subpoena or notice if compliance would be unreasonable or oppressive...” *See also State v. Cooper*, 2 N.J. 540, 557 (1949) (“The court is empowered to quash or modify the subpoena ‘if compliance would be unreasonable and oppressive.’”).

Pursuant to Rule 4:105-4(b), counsel for the parties have met and conferred in person on this issue on January 29, 2020 during the deposition of a non-party witness. Given the approaching Subpoena compliance date of February 28, 2020 and the upcoming close of discovery deadline, we respectfully submit this motion notice letter pursuant to R. 4:105-4(h) as the equivalent of a timely submission of this motion. (“Where a motion must be made within a certain time pursuant to the rules or court order, the submission of a motion notice letter, as provided in this rule, within the prescribed time shall be deemed the timely making of the motion.”). R. 4:105-4(h), (emphasis added). As such, although – in order to preserve the February 28, 2020 return date -- we are prepared to file the full set of motion papers today in support of the application to quash the Subpoena and for a protective order pursuant to R. 4:10-3 barring further inquiry in MWM’s affairs, we will rely on the Rule and will not file additional papers today unless directed by the Court.

The Honorable Craig L. Wellerson, J.S.C.
February 12, 2020
Page 3

In any event, the parties will be before the Court in this matter on other issues on February 18, 2020. Assuming Achieve takes the opportunity to respond to this letter within the time afforded by R. 4:105-4, we are prepared to conference with the Court on this issue at that time as well.

Respectfully submitted,

/s/ Richard I. Scharlat
Richard I. Scharlat

RIS/prp

cc: All parties via e-Courts

EXHIBIT G

FILED UNDER SEAL

EXHIBIT H

SAKI DODELSON,

Plaintiff,

v.

AC HOLDCO INC. d/b/a ACHIEVE3000 and
ADAM BERGER,

Defendants.

AC HOLDCO INC. d/b/a ACHIEVE3000,

Counterclaim
Plaintiff,

v.

SAKI DODELSON, INVEST IN LITERACY
LLC. and SHIRA GROSS.

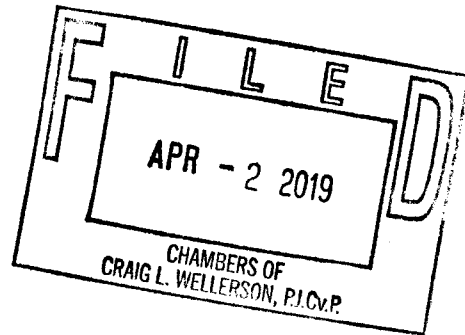
Counterclaim
Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: OCEAN COUNTY

DOCKET NO.: OCN-L-002139-18

Civil Action

**STIPULATED
PROTECTIVE ORDER**



WHEREAS Saki Dodelson, Invest in Literacy LLC, AC Holdco, Inc., Shira Gross, and Adam Berger (the "Parties") in this action are engaged in discovery proceedings which will include, among other things, the taking of depositions and the production of documents for inspection and copying; and

WHEREAS the Parties believe that entry of this Stipulated Protective Order (the "Order") will provide a level of confidentiality appropriate to the sensitivity of such information and consistent with the need for a fair disposition of this action, the Court, pursuant to New Jersey Court Rule 4:10-3, enters this Order governing the handling of such information produced, given, exchanged or filed by or among any of the Parties and any non-parties in connection with this action.

1. Confidential and Highly Confidential Information:

(A) For purposes of this Order, materials considered to be "Confidential," and which therefore may be designated by a Party or non-party ("Designating Party") as Confidential pursuant to New Jersey Court Rule 4:10-3, includes discovery materials such as documents, electronically-stored information, objects and things, responses to discovery requests, interrogatories and testimony adduced at deposition, deposition exhibits, and any copies, excerpts or summaries thereof, produced, given or exchanged by any Party or non-Party in the above-captioned matter containing non-public information related to studies or analyses by internal or outside experts or consultants; research or clinical data; current pricing or cost information, customer information, or other information regarding customer contracts; product plans, developments, or other information relating to products; information about suppliers or supplier contracts; financial data or business plans or projections; documents subject to a separate confidentiality obligation owed by a Designating Party to a third party; or any other information that is confidential, secret, private, proprietary or otherwise sensitive commercial, financial, investment, business or other information (herein "Discovery Materials").

(B) For purposes of this Order, materials considered to be "Outside Counsel Eyes' Only" shall mean Confidential information that a Designating Party believes in good faith to be particularly sensitive and could cause substantial financial or personal harm. Such information includes, without limitation, Confidential information concerning business, product and/or strategic plans and financial information; trade secrets; intellectual property; and information subject to written non-disclosure or confidentiality agreements, the expectation of privacy by a third party, or court or administrative order; and communications regarding any

Outside Counsel Eyes' Only information. Together, Confidential and Outside Counsel Eyes' Only materials are referred to herein as "Protected Information."

(C) Protected Information does not include materials that are or become, without violating this Order, a matter of public record or publicly-available by law or otherwise.

2. Designation of Confidential and Outside Counsel Eyes' Only Protected Information.

(A) The designation of Protected Information produced through discovery as "Confidential" or "Outside Counsel Eyes' Only" shall be made in the following manner:

(1) Documents or other tangible materials will be designated by stamping or labeling "Confidential" or "Outside Counsel Eyes' Only" on each page containing any confidential information, or in any other reasonable manner appropriate to the form in which the confidential information is produced.

(2) Deposition testimony shall be designated "Confidential" or "Outside Counsel Eyes' Only" (A) at the taking of the deposition by a statement on the record, by counsel at the time of such disclosure, or (B) by written notice sent to counsel of record for all Parties within twenty (20) days after receiving a copy of the transcript, except for depositions taken before entry of this Order. For depositions taken prior to the entry of this Order, designations shall be made within thirty (30) days of the date of entry of this Order. For a period of twenty (20) days after their receipt of a transcript (for depositions taken after entry of his Order), all Parties shall treat the entire text of the deposition, including any transcripts and exhibits, as Outside Counsel Eyes' Only under this Order. The cover of each deposition transcript (including any copies thereof) that contains Confidential or Outside Counsel Eyes' Only Protected Information shall bear the legend:

“THIS DEPOSITION TRANSCRIPT CONTAINS CONFIDENTIAL
INFORMATION PURSUANT TO PROTECTIVE ORDER”

In the event that such markings are not affixed by the court reporter, each party hereto agrees to affix the legends required by this paragraph to any and all printed or electronic copies of transcripts, or portions thereof, that contain Protected Information.

(3) Non-documentary and non-testimonial material, such as oral statements of counsel on the record, will be designated orally at the time of disclosure and promptly confirmed in writing.

(4) The Parties may modify these procedures for any particular deposition through agreement on the record at such deposition or for any sets of documents produced electronically through prior agreement, without prior order of the Court.

(B) A Party's inadvertent failure to designate Protected Information as “Confidential” or “Outside Counsel Eyes’ Only” does not constitute a waiver and may be corrected by a supplemental written notice to all Parties designating such Protected Information as “Confidential” or “Outside Counsel Eyes’ Only,” which notice shall be provided as promptly as practicable after learning of the inadvertent failure to designate. The Parties receiving such supplemental written notice will then mark and treat such Protected Information as “Confidential” or “Outside Counsel Eyes’ Only,” and that Protected Information will be fully subject to this Order as if it had been initially designated. If a Party or other signatory to this Order already has disclosed such Protected Information that Party or signatory shall assist the Designating Party in retrieving such Protected Information from all recipients not entitled to

receive it under the terms of this Order and shall act in good faith to prevent further disclosures except as authorized under the terms of this Order.

3. Permissible Disclosure of Protected Information

(A) Any Protected Information designated as "Confidential," and any information derived therefrom, may be disclosed only to the following persons: (i) a Party, including that Party's present and former officers, directors, and employees, to the extent necessary to assist counsel for that Party in the conduct of this action or for that Party to make decisions concerning this action, provided that prior to receiving such Confidential Protected Information each former officer, director or employee signs the Endorsement of Protective Order attached hereto as Exhibit A; (ii) in-house counsel, outside counsel who has entered an appearance in this action on behalf of a Party, as well as such counsel's partners and associates, contract attorneys, paralegals, secretarial staff, clerical and other regular or temporary employees, and service vendors of such counsel (including outside copying and litigation support services, such as translators and interpreters); (iii) any outside experts who have been consulted for the purpose of being retained, or who have been retained to provide assistance, expert advice or technical consultation, provided that, prior to receiving Confidential Protected Information, any such outside expert or consultant signs the Endorsement of Protective Order; (iv) the judges of the Court, Court staff, and any essential personnel retained or appointed by the Court (including Special Masters and their staffs); (v) the jury or other trier of fact in this action; (vi) any other person only upon order of the Court or upon written agreement of the Designating Party, (vii) persons who authored the Confidential Protected Information or who received such Confidential Protected Information through means other than disclosure in this action; and (viii) persons noticed for depositions or designated as trial witnesses and their attorneys to the

extent reasonably necessary in preparing to testify, and provided that no Confidential Protected Information is left in the possession of such person.

(B) Any Protected Information designated as "Outside Counsel Eyes' Only," and any information derived therefrom, may be disclosed only to the following persons:

(i) outside counsel who has entered an appearance in this action on behalf of a Party, as well as such counsel's partners and associates, contract attorneys, paralegals, secretarial staff, clerical and other regular or temporary employees, and service vendors of such counsel (including outside copying and litigation support services, such as translators and interpreters), provided, however, that with respect to contract attorneys, temporary employees or service vendors, such person or entity executes the Endorsement of Protective Order; (ii) any outside experts who have been retained to provide assistance, expert advice or technical consultation, provided that, prior to receiving any Outside Counsel Eyes' Only Protected Information, such outside expert or consultant signs the Endorsement of Protective Order; (iii) the judges of the Court, Court staff, and any essential personnel retained or appointed by the Court (including Special Masters and their staffs) subject to appropriate safeguards to protect the confidentiality of the Outside Counsel Eyes' Only Protected Information; (iv) the jury or other trier of fact in this action subject to appropriate safeguards to protect the confidentiality of the Outside Counsel Eyes' Only Protected Information; and (v) any other person only upon order of the Court or upon written agreement of the Designating Party.

(C) All persons given access to Protected Information shall (a) read and agree to be bound by this Order, (b) take all appropriate steps to prevent the disclosure of Protected Information, and (c) consent to this Court's continuing jurisdiction for purposes of enforcing and remedying any violations of the Order. If a Party seeks to introduce Confidential or subject to

appropriate safeguards to protect the confidentiality of the Outside Counsel Eyes' Only Protected Information Protected Information during the deposition of a deponent who is neither a Party nor a representative of a Party, that Party shall reasonably endeavor to obtain the deponent's agreement to be bound by this Order evidenced by the deponent's execution of the Endorsement of Protective Order. Regardless of whether such non-party deponent agrees to be bound by the terms of this Order, no Party shall allow such deponent to retain any copies of the Protected Information used during the deposition or to retain any transcripts of the deponent's testimony designated as Confidential or subject to appropriate safeguards to protect the confidentiality of the Outside Counsel Eyes' Only Protected Information, except to the extent such Protected Information was provided by the deponent.

(D) All Discovery Materials, Confidential Information and Outside Counsel Eyes' Only Protected Information shall be used only in connection with and for the purpose of the action captioned *Dodelson v. AC Holdco Inc. et al.*, OCN-L-002139-18, including counterclaims, cross-claims, third-party claims, and appeals (the "Litigation") and for no other purpose whatsoever, including other litigation, whether or not such other litigation involves one or more parties to this action. Discovery Materials, Confidential Protected Information and subject to appropriate safeguards to protect the confidentiality of the Outside Counsel Eyes' Only Protected Information shall not be disclosed to any person, corporation or entity for any purpose except as provided herein; provided however, nothing in this Order shall preclude counsel of record in this case from representing clients provided no Discovery Materials are disclosed in connection with such representation.

(E) Notwithstanding any other provision of this Order, the Receiving Party may make any and all use of Protected Information without restriction which (i) becomes public

through the action of persons other than the Receiving Party, provided that such action does not violate the terms of this Order; or (ii) the Receiving Party independently derives or develops other than through discovery in this action.

(F) Nothing in this Order prevents or restricts any counsel who has received Protected Information from rendering advice to their clients in this matter and, in the course thereof, relying generally on examination of Protected Information, provided, however, that no Protected Information is disclosed to any person other than as provided herein.

(G) All Parties, their respective counsel, and others bound by this Order will take all reasonable steps to prevent the disclosure of Protected Information other than in accordance with the terms of this Order.

(H) Nothing shall prevent broader disclosures beyond those limited by this Order if the Designating Party consents in writing to such disclosure.

(I) Nothing in this Order shall apply to or has any effect upon a Designating Party's use of its own Protected Information.

(J) In the event additional parties join or are joined in this action, they shall not have access to Protected Information until the newly-joined party or its counsel has executed the Endorsement of the Protective Order.

4. Non-Party Designation of Discovery Material: Any non-party to this action may designate any information produced by it pursuant to subpoena or by agreement, as "Confidential" or "Outside Counsel Eyes' Only" under the terms of this Order, so long as the non-party executes the Endorsement of the Protective Order. A non-party shall designate any Protected Information as "Confidential" or "Outside Counsel Eyes' Only" in a manner consistent with the procedures described in this Order.

5. **Use of Protected Information in Depositions:** During a deposition, a deponent may be shown and examined about Protected Information provided that the provisions of this Order are complied with. Deponents will not retain or copy portions of the transcript of their depositions that contain Protected Information not provided by them.

6. **Filing of Confidential or Outside Counsel Eyes' Only Protected Information with the Court:** Filing of material under seal in this Court is governed by the New Jersey Court Rules.

7. **Declassification:** If any Party believes that any Protected Information is not properly subject to the confidentiality provisions of this Order, that Party (an "Objecting Party") may so notify the Designating Party in writing and provide a description of the material which the Objecting Party believes should not be designated as Confidential or Outside Counsel Eyes' Only, and serve copies of such notice to counsel of record for all other Parties herein. If the Parties are unable to resolve the dispute, the Objecting Party may request by motion, or other means approved by the Court, a ruling that Protected Information designated as Confidential or Outside Counsel Eyes' Only is not entitled to such status and protection under the New Jersey Court Rules and this Order. Such motion shall be made within fifteen (15) days of notification to all Parties of the Objecting Party's challenge to the designation, or such other time period as the Designating and Objecting Parties may agree to in writing. The Designating Party shall have the burden of proof on such motion to justify the propriety of the Designating Party's designation. The protection afforded by this Order shall continue unless and until the Court grants any such motion by the Objecting Party.

8. **Subpoena by Third Parties, Courts or Agencies:** If another court or an administrative agency subpoenas or otherwise orders production of Confidential or Outside

Counsel Eyes' Only Protected Information which any Party or other person has obtained under the terms of this Order, the Party or other person to whom the subpoena or other process is directed will promptly notify the Designating Party in writing of all of the following: (a) the Protected Information requested for production in the subpoena or other process; (b) the date by which compliance with the subpoena or other process is requested; (c) the location at which compliance with the subpoena or other process is requested; (d) the identity of the party serving the subpoena or other process; and (e) the case name, jurisdiction and index, docket, complaint, charge, civil action or other identification number or other designation identifying the litigation, administrative proceeding or other proceeding in which the subpoena or other process has been issued. Unless otherwise ordered by such other court or administrative agency, Protected Information shall not be produced prior to the receipt of written notice by the Designating Party and after a reasonable opportunity to object has been offered. The Designating Party will bear the burden and all costs of opposing the subpoena in connection with the protection of Protected Information. The Parties represent that, as of the date of this Order, they are subject to no court, administrative or agency subpoenas that require them to produce Protected Information to any court, third-party or governmental agency.

9. Confidential or Outside Counsel Eyes' Only Protected Information Offered as Evidence at Trial: The manner in which Confidential or Outside Counsel Eyes' Only Protected Information will be handled at trial shall be determined by the Court conducting the trial.

10. Return or Certified Destruction of Confidential or Outside Counsel Eyes' Only Protected Information: Within thirty (30) days after conclusion of this action, including the conclusion of any and all appeals related thereto, or such other time as the Parties may agree

in writing, counsel will, at their option, return or destroy Confidential and Outside Counsel Eyes' Only Protected Information and all copies, and will certify to the Designating Party, as appropriate, either that they are returning or that they have destroyed, all copies of Confidential and Outside Counsel Eyes' Only Protected Information. If counsel elects to destroy Confidential and Outside Counsel Eyes' Only Protected Information, they will consult with counsel for the Designating Party on the manner of destruction and obtain such Party's consent as to the method and means of destruction.

11. Modification Permitted: Nothing herein shall prevent any Party or other person from seeking modification of this Order from the Court.

12. Responsibility of Attorneys as to Copies: The attorneys of record are responsible for employing reasonable measures to control and track access to and distribution of Confidential and Outside Counsel Eyes' Only Protected Information, including abstracts and summaries.

13. No Waiver of Rights or Implication of Discoverability

(A) No disclosure pursuant to any provision of this Order will waive any rights or privileges of any Party or person granted by this Order.

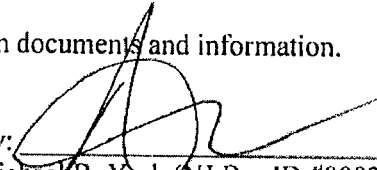
(B) This Order will not enlarge or affect the proper scope of discovery in this or any other litigation; nor will it imply that Protected Information is properly discoverable, relevant, or admissible in this or any other litigation. Each Party reserves the right to object to any disclosure of information or production of any documents that the Designating Party designates as Confidential or Outside Counsel Eyes' Only Protected Information on any ground it deems appropriate. No provision of this Order or Endorsement implies, nor do Plaintiff/Counterclaim Defendants concede, that the marking of any document or transcript


“Outside Counsel Eyes’ Only” or “Confidential” for the purposes of discovery in this litigation or otherwise is an admission that any such document or transcript contains information that is Proprietary or Confidential as defined and provided for in the March 2015 Employment Agreement between Dodelson and AC Holdco Inc. that is the subject of this litigation.

(C) The entry of this Order shall be without prejudice to the rights of the Parties or any non-party to assert or apply for additional or different protection. Nor will entry of the Order operate as an admission by any Party or non-party that the restrictions and procedures set forth herein constitute adequate protection for any particular information deemed by any Party to be Confidential or Outside Counsel Eyes’ Only Protected Information. Nothing herein prevents any Party from seeking an appropriate protective order to further govern the use of Confidential or Highly Confidential Protected Information at trial.

(D) Nothing will prevent disclosure beyond that required under this Order if the producing party consents in writing to such disclosure, or if the Court, after notice to all affected parties, orders such disclosures, subject to any review as authorized under the New Jersey Court Rules or the Local Rules of this Court.

(E) Nothing in this Order prevents a Designating Party from any use of its own documents and information.

By: 
Michael B. York (NJ Bar ID #000272006)
Novins, York & Jacobus
202 Main Street
Toms River, New Jersey 08753
(732) 349-7100

By: 
Richard I. Scharlat
Jonathan S. Jemison
Dentons US LLP
101 JFK Parkway
Short Hills, New Jersey 07078

Thomas J. Meloro (NJ Bar ID #032951989)
Jeffrey B. Korn
Jonathan D. Waisnor
Willkie Farr & Gallagher LLP
787 Seventh Avenue
New York, New York 10019
(212) 728-8000

*Attorneys for Defendants and Counterclaim
Plaintiff*

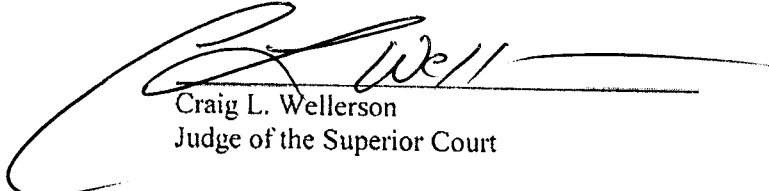
Dated: _____

Oleg Rivkin, Esq. Rivkin Law Group
800 3rd Avenue
NY, NY 10022

*Attorneys for Plaintiff and Counterclaim
Defendants*

Dated: _____

SO ORDERED this 2 day of APRIL, 2018.



Craig L. Wellerson
Judge of the Superior Court

CRAIG L. WELLERSON, J.S.C.

ENDORSEMENT OF PROTECTIVE ORDER

I hereby attest to my understanding that materials designated as Confidential Protected Information or Outside Counsel Eyes' Only Protected Information are provided to me subject to the Stipulated Protective Order dated _____, 2018 (the "Order"), in the above-captioned action (the "Action"); that I have been given a copy of and have read the Order; and that I agree to be bound by its terms. I also understand that my execution of this Endorsement of Protective Order, indicating my agreement to be bound by the Order, is a prerequisite to my review of any Discovery Materials or any information or documents designated as Confidential Protected Information or Outside Counsel Eyes' Only Protected Information pursuant to the Order.

I further agree that except as otherwise provided in the Order, I shall not disclose to others, except in accord with the Order, any Discovery Materials, Confidential Protected Information or Outside Counsel Eyes' Only Protected Information, in any form whatsoever, and that such Discovery Materials, Confidential Protected Information or Outside Counsel Eyes' Only Protected Information may be used only for the purposes authorized by the Order I further agree that except as otherwise provided in the Order, Discovery Materials, Confidential Protected Information and Outside Counsel Eyes' Only Protected Information shall be used only in connection with and for the purpose of the action captioned, *Dodelson v. AC Holdco Inc. et al.*, OCN-L-002139-18, including counterclaims, cross-claims, third-party claims, and appeals, and for no other purpose whatsoever, including other litigation, whether or not such other litigation involves one or more parties to this action.

I further agree to return all copies of any Discovery Materials, Confidential Protected Information or Outside Counsel Eyes' Only Protected Information I have received to

counsel who provided them to me, or to destroy such materials, upon completion of the purpose for which they were provided and no later than the conclusion of this Action.

I further agree and attest to my understanding that my obligation to honor the confidentiality of such Discovery Materials, Confidential Protected Information or Outside Counsel Eyes' Only Protected Information will continue even after this Action concludes.

I further agree and attest to my understanding that, if I fail to abide by the terms of the Order, I may be subject to sanctions, including contempt of court, for such failure. I agree to be subject to the jurisdiction of the Superior Court of New Jersey, Law Division, Ocean County, for the purposes of any proceedings relating to enforcement of the Order. I further agree to be bound by and to comply with the terms of the Order as soon as I sign this Endorsement, regardless of whether the Order has been entered by the Court.

Date: _____

By: _____

Print Name

EXHIBIT I



For Immediate Release

**Ed-Tech Leader Saki Dodelson Launches Beable,
The First Life-Ready Literacy System for the Whole Child**

Beable supports districts and students with the first-ever multi-dimensional system connecting literacy to life-readiness

(LAKEWOOD, NJ) — May 27, 2020 — Saki Dodelson and the founders of Achieve3000® today announced the launch of [Beable](#), a first-of-its-kind Life-Ready Literacy System that leverages next-generation technology to deliver a tailored, multi-dimensional solution for each and every student.

Over the past two decades, Dodelson and her team at Achieve3000® pioneered online differentiated learning, helping millions of kids improve their lives by increasing their Lexile levels. Now, Beable introduces a whole new level of literacy and life-ready success for K-12 students and educators.

Beable is the first multi-dimensional system that intertwines social-emotional growth with literacy acceleration in core content areas, career exposure and ACT/SAT prep. Powered by the proprietary *BeableIQ* engine, it combines data science, automation, artificial intelligence and virtually unlimited scalability to provide a system built anew for the challenges of 2020 and beyond.

Beable is a single, integrated system, which:

- Assesses and addresses the whole child’s passions, strengths, literacy and career goals;
- uses proprietary forecasting to individualize and prescribe the frequency and level of reading sessions and scaffolds, provided in both English and Spanish; provides a uniquely tailored path to lifelong success for all kids, with a ‘just-right’ blend of instructional methodologies for each child, including content differentiation in the classroom and personalized, self-selected reading outside the classroom;
- brings together social-emotional learning with literacy acceleration, core content acquisition, career exposure, and ACT/SAT prep;
- serves the entire student population according to each group’s and each individual’s particular needs – general education, special education, ELL, and gifted and talented;
- enables learning everywhere and every way – from whole class to small group to independent and from in-school to remote to blended.

According to Dodelson, “Every child is unique. Every child has a unique path to lifelong success. All children deserve to graduate with the life-ready skills they need - regardless of their starting points.” Dodelson points to these immutable truths, as well as to Beable’s single, unshakable goal of enabling life-ready success for beyond graduation for every student based on that student’s aspirations and dreams, as the foundation upon which Beable has been built.

“We invested in the most advanced technology available,” Dodelson says, “to create a system that not only accelerates literacy in core content areas, but also has the ability to understand what kids’ aptitudes, strengths and passions are; what their academic and career goals are; what instructional methodologies are best suited for them; when and where they learn the best. Beable is the first digital learning provider that meets the needs of the whole child in a multidimensional way.”

Susan Gertler, Chief Academic Officer, adds: “Kids are multi-dimensional, so it only makes sense that we provide a multi-dimensional way for them to learn and excel. Beable is revolutionary in this regard: it’s the only system that looks at all aspects of the student all the time, combining and re-combining exactly what she needs to advance continually and ultimately achieve success.”

Importantly, Beable enables learning across all settings and times: classroom, pull-out, remote and blended, as well as on weekends, during holiday breaks and over the summer. Dodelson shares, “Beable is a powerful system and also an extremely agile one. As districts seek to diagnose and close the widening literacy and achievement gaps caused by Covid-19, Beable is an ideal summertime solution. And as districts take a phased approach to back-to-school, Beable is an ideal solution as well – providing seamless, uninterrupted, extremely high-quality instruction spanning in-school and at-home.”

The full Beable Life-Ready Literacy System is available for the 2020/21 school year for middle school and high school, followed closely by its elementary school offering. A special Summer *FastStart* remote learning program is available to help districts identify and bridge student gaps. Learn more about Beable and request a product demonstration [here](#).

About Beable

Beable is a woman-owned public-benefit corporation launched by ed-tech visionary Saki Dodelson and the founders of Achieve3000®, which pioneered online differentiated learning, helping millions of kids improve their lives by increasing their Lexile levels. Now, with Beable, Dodelson and her team are pursuing an even more ambitious and essential mission: to enable lifelong success for all learners regardless of their starting points. Beable delivers on its charter by providing K-12’s first Life-Ready Literacy System, a revolutionary, multi-dimensional system that intertwines social-emotional growth with literacy acceleration in core content areas, career exposure, ACT/SAT prep and credit recovery. Powered by the proprietary *BeableIQ* engine, which combines data science, automation, artificial intelligence and virtually unlimited scalability, Beable is a system and approach imagined created especially for the educational challenges of 2020 and beyond. Learn more about Beable [here](#).