

1 SMITH, MCDOWELL & POWELL,
 A LAW CORPORATION
 2 C. Jason Smith, SBN 237966
 Brandon T. Wright, SBN 294305
 3 100 Howe Avenue, Suite 208 South
 Sacramento, CA 95825
 Telephone: (916) 569-8100
 4 Facsimile: (916) 848-3777

5 Attorneys for Plaintiff,
 Hale Bros. Investment Company, LLC

6 Patrick S. Thompson, Bar No. 160804
 7 Jacqueline E. Young, Bar No. 280374
 Donna M. Strain, Bar No. 305599
 8 PERKINS COIE, LLC
 505 Howard Street, Suite 1000
 9 San Francisco, CA 94105-3204
 Telephone: (415) 344-7000
 10 Facsimile: (415) 344-7050

11 Attorneys for Defendants,
 Students First Institute, StudentsFirst and 50CAN, Inc.

12
 13 UNITED STATES DISTRICT COURT
 14 EASTERN DISTRICT OF CALIFORNIA
 15 SACRAMENTO DIVISION

16 HALE BROS. INVESTMENT COMPANY,
 17 LLC, a California limited liability company,

18 Plaintiff,

19 vs.

20
 21 STUDENTSFIRST INSTITUTE, a District of
 Columbia non-profit corporation;
 22 STUDENTSFIRST, a District of Columbia non-
 profit corporation; 50CAN, INC., a Connecticut
 23 corporation; and DOES 1 through 50 inclusive.

24 Defendants.

25
 26 AND RELATED COUNTERCLAIMS
 27
 28

Case No. 2:16-cv-02284-JAM-EFB

**STIPULATED PROTECTIVE ORDER
 [AND PROPOSED ORDER]
 REGARDING LITIGATION
 INVOLVING CONFIDENTIAL
 INFORMATION AND/OR TRADE
 SECRETS**

Amended Complaint Filed: October 13, 2016
 Counterclaim filed: February 24, 2017

Trial Date: April 30, 2018

Hon. John A. Mendez

1 **1. PURPOSES AND LIMITATIONS**

2 Disclosure and discovery activity in this action are likely to involve production of
3 confidential, proprietary, or private information for which special protection from public
4 disclosure and from use for any purpose other than prosecuting this litigation may be
5 warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the
6 following Stipulated Protective Order. The parties acknowledge that this Order does not confer
7 blanket protections on all disclosures or responses to discovery and that the protection it affords
8 from public disclosure and use extends only to the limited information or items that are entitled
9 to confidential treatment under the applicable legal principles. The parties further acknowledge,
10 as set forth in Section 14.4, below, that this Stipulated Protective Order does not entitle them to
11 file confidential information under seal; Local Rule 141 sets forth the procedures that must be
12 followed and the standards that will be applied when a party seeks permission from the court to
13 file material under seal.

14 **2. DEFINITIONS**

15 2.1 Challenging Party: a Party or Non-Party that challenges the designation of
16 information or items under this Order.

17 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is
18 generated, stored or maintained) or tangible things that qualify for protection under Federal
19 Rule of Civil Procedure 26(c).

20 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as
21 well as their support staff).

22 2.4 Designating Party: a Party or Non-Party that designates information or items
23 that it produces in disclosures or in responses to discovery, or information that is uncovered as
24 a result of data mirroring process, as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
25 ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE.”

26 2.5 Disclosure or Discovery Material: all items or information, regardless of the
27 medium or manner in which it is generated, stored, or maintained (including, among other
28 things, testimony, transcripts, and tangible things), that are produced or generated in data

1 mirroring, disclosures or responses to discovery in this matter.

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

7 2.7 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or
8 Items: extremely sensitive “Confidential Information or Items,” disclosure of which to another
9 Party or Non-Party would create a substantial risk of serious harm that could not be avoided by
10 less restrictive means.

11 2.8 “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or Items:
12 extremely sensitive “Confidential Information or Items” representing computer code and
13 associated comments and revision histories, formulas, engineering specifications, or schematics
14 that define or otherwise describe in detail the algorithms or structure of software or hardware
15 designs, disclosure of which to another Party or Non-Party would create a substantial risk of
16 serious harm that could not be avoided by less restrictive means.

17 2.9 House Counsel: attorneys who are employees of a party to this action. House
18 Counsel does not include Outside Counsel of Record or any other outside counsel.

19 2.10 Non-Party: any natural person, partnership, corporation, association, or other
20 legal entity not named as a Party to this action.

21 2.11 Outside Counsel of Record: attorneys who are not employees of a party to this
22 action but are retained to represent or advise a party to this action and have appeared in this
23 action on behalf of that party or are affiliated with a law firm which has appeared on behalf of
24 that party.

25 2.12 Party: any party to this action, including all of its officers, directors, employees,
26 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

27 2.13 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
28 Material in this action.

1 2.14 Professional Vendors: persons or entities that provide litigation support services
2 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and
3 organizing, storing, or retrieving data in any form or medium) and their employees and
4 subcontractors.

5 2.15 Protected Material: any Disclosure or Discovery Material that is designated as
6 “CONFIDENTIAL,” or as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or
7 as “HIGHLY CONFIDENTIAL – SOURCE CODE.”

8 2.16 Receiving Party: a Party that receives Disclosure or Discovery Material from a
9 Producing Party.

10 **3. SCOPE**

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

24 **4. DURATION**

25 Even after final disposition of this litigation, the confidentiality obligations imposed by
26 this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court
27 order otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all
28 claims and defenses in this action, with or without prejudice; and (2) final judgment herein after

1 the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this
2 action, including the time limits for filing any motions or applications for extension of time
3 pursuant to applicable law.

4 **5. DESIGNATING PROTECTED MATERIAL**

5 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each
6 Party or Non-Party that designates information or items for protection under this Order must
7 take care to limit any such designation to specific material that qualifies under the appropriate
8 standards. To the extent it is practical to do so, the Designating Party must designate for
9 protection only those parts of material, documents, items, or oral or written communications
10 that qualify – so that other portions of the material, documents, items, or communications for
11 which protection is not warranted are not swept unjustifiably within the ambit of this Order.

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

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

20 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order
21 (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,
22 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly
23 so designated before the material is disclosed or produced.

24 Designation in conformity with this Order requires:

25 (a) For information in documentary form (e.g., paper or electronic documents,
26 but excluding transcripts of depositions or other pretrial or trial proceedings), that the
27 Producing Party affix the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
28 ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” to each

1 page that contains protected material. If only a portion or portions of the material on a page
2 qualifies for protection, the Producing Party also must clearly identify the protected portion(s)
3 (e.g., by making appropriate markings in the margins) and must specify, for each portion, the
4 level of protection being asserted.

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

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

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

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

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

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

26 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
27 designate qualified information or items does not, standing alone, waive the Designating
28 Party’s right to secure protection under this Order for such material. Upon timely correction of

1 a designation, the Receiving Party must make reasonable efforts to assure that the material is
2 treated in accordance with the provisions of this Order.

3 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

4 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
5 confidentiality at any time. Unless a prompt challenge to a Designating Party's confidentiality
6 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
7 burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to
8 challenge a confidentiality designation by electing not to mount a challenge promptly after the
9 original designation is disclosed.

10 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution
11 process by providing written notice of each designation it is challenging and describing the
12 basis for each challenge. To avoid ambiguity as to whether a challenge has been made, the
13 written notice must recite that the challenge to confidentiality is being made in accordance with
14 this specific paragraph of the Protective Order. The parties shall attempt to resolve each
15 challenge in good faith and must begin the process by conferring within 14 days of the date of
16 service of notice. In conferring, the Challenging Party must explain the basis for its belief that
17 the confidentiality designation was not proper and must give the Designating Party an
18 opportunity to review the designated material, to reconsider the circumstances, and, if no
19 change in designation is offered, to explain the basis for the chosen designation. A Challenging
20 Party may proceed to the next stage of the challenge process only if it has engaged in this meet
21 and confer process first or establishes that the Designating Party is unwilling to participate in
22 the meet and confer process in a timely manner.

23 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
24 intervention, the Designating Party shall file and serve a motion to retain confidentiality under
25 Local Rule 230 (and in compliance with Local Rule 141, if applicable) within 21 days of the
26 initial notice of challenge or within 14 days of the parties agreeing that the meet and confer
27
28

1 process will not resolve their dispute, whichever is earlier.¹ Each such motion must be
2 accompanied by a competent declaration affirming that the movant has complied with the meet
3 and confer requirements imposed in the preceding paragraph. Failure by the Designating Party
4 to make such a motion including the required declaration within 21 days (or 14 days, if
5 applicable) shall automatically waive the confidentiality designation for each challenged
6 designation. In addition, the Challenging Party may file a motion challenging a confidentiality
7 designation at any time if there is good cause for doing so, including a challenge to the
8 designation of a deposition transcript or any portions thereof. Any motion brought pursuant to
9 this provision must be accompanied by a competent declaration affirming that the movant has
10 complied with the meet and confer requirements imposed by the preceding paragraph.

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

18 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

19 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed
20 or produced by another Party or by a Non-Party in connection with this case only for
21 prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be
22 disclosed only to the categories of persons and under the conditions described in this Order.
23 When the litigation has been terminated, a Receiving Party must comply with the provisions of
24 Section 14 below (FINAL DISPOSITION).

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26 _____
27 ¹ Alternative: It may be appropriate in certain circumstances for the parties to agree to shift the
28 burden to move on the Challenging Party after a certain number of challenges are made to
avoid an abuse of the process. The burden of persuasion would remain on the Designating
Party.

1 Protected Material must be stored and maintained by a Receiving Party at a location and
2 in a secure manner² that ensures that access is limited to the persons authorized under this
3 Order.

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

7 (a) The Receiving Party’s Outside Counsel of Record in this action, as well as
8 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose
9 the information for this litigation and who have signed the “Acknowledgment and Agreement
10 to Be Bound” that is attached hereto as Exhibit A;

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

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

17 (d) The court and its personnel;

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

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

27 _____
28 ² It may be appropriate under certain circumstances to require the Receiving Party to store any
electronic Protected Material in password-protected form.

1 except as permitted under this Stipulated Protective Order.

2 (g) The author or recipient of a document containing the information or a
3 custodian or other person who otherwise possessed or knew the information.

4 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
5 and “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or Items. Unless otherwise
6 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may
7 disclose any information or item designated “HIGHLY CONFIDENTIAL – ATTORNEYS’
8 EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” only to:

9 (a) The Receiving Party’s Outside Counsel of Record in this action, as well as
10 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose
11 the information for this litigation and who have signed the “Acknowledgment and Agreement
12 to Be Bound” that is attached hereto as Exhibit A;

13 (b) Experts of the Receiving Party (1) to whom disclosure is reasonably
14 necessary for this litigation, (2) who have signed the “Acknowledgment and Agreement to Be
15 Bound” (Exhibit A), and (3) as to whom the procedures set forth in paragraph 7.4(a)(2), below,
16 have been followed];

17 (c) The court and its personnel;

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

21 (e) The author or recipient of a document containing the information or a
22 custodian or other person who otherwise possessed or knew the information.

23 7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY
24 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL –
25 SOURCE CODE” Information or Items to Designated House Counsel or Experts.

26 (a)(1) Unless otherwise ordered by the court or agreed to in writing by the
27 Designating Party, a Party that seeks to disclose to Designated House Counsel any information
28 or item that has been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES

1 ONLY” pursuant to paragraph 7.3(b) first must make a written request to the Designating Party
2 that (1) sets forth the full name of the Designated House Counsel and the city and state of his or
3 her residence, and (2) describes the Designated House Counsel’s current and reasonably
4 foreseeable future primary job duties and responsibilities in sufficient detail to determine if
5 House Counsel is involved, or may become involved, in any competitive decision-making.

6 (a)(2) Unless otherwise ordered by the court or agreed to in writing by the
7 Designating Party, CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’
8 EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” information or items may
9 be disclosed to an Expert without disclosure of the identity of the Expert as long as the Expert
10 is not a current officer, director, or employee of a competitor of a Party or anticipated to
11 become one.

12 (b) A Party that makes a request and provides the information specified in the
13 preceding respective paragraphs may disclose the subject Protected Material to the identified
14 Designated House Counsel or Expert unless, within 14 days of delivering the request, the Party
15 receives a written objection from the Designating Party. Any such objection must set forth in
16 detail the grounds on which it is based.

17 (c) A Party that receives a timely written objection must meet and confer with
18 the Designating Party to try to resolve the matter by agreement within seven days of the written
19 objection. If no agreement is reached, the Party seeking to make the disclosure to Designated
20 House Counsel or the Expert may file a motion as provided in Local Rule 230 (and in
21 compliance with Local Rule 141, if applicable) seeking permission from the court to do so.
22 Any such motion must describe the circumstances with specificity, set forth in detail the
23 reasons why the disclosure to Designated House Counsel or the Expert is reasonably necessary,
24 assess the risk of harm that the disclosure would entail, and suggest any additional means that
25 could be used to reduce that risk. In addition, any such motion must be accompanied by a
26 competent declaration describing the parties’ efforts to resolve the matter by agreement (i.e.,
27 the extent and the content of the meet and confer discussions) and setting forth the reasons
28 advanced by the Designating Party for its refusal to approve the disclosure.

1 In any such proceeding, the Party opposing disclosure to Designated House Counsel or
2 the Expert shall bear the burden of proving that the risk of harm that the disclosure would entail
3 (under the safeguards proposed) outweighs the Receiving Party's need to disclose the Protected
4 Material to its Designated House Counsel or Expert.

5 **8. SOURCE CODE**

6 (a) To the extent production of source code becomes necessary in this case,
7 a Producing Party may designate source code as "HIGHLY CONFIDENTIAL - SOURCE
8 CODE" if it comprises or includes confidential, proprietary or trade secret source code.

9 (b) Protected Material designated as "HIGHLY CONFIDENTIAL -
10 SOURCE CODE" shall be subject to all of the protections afforded to "HIGHLY
11 CONFIDENTIAL - ATTORNEYS' EYES ONLY" information, and may be disclosed only to
12 the individuals to whom "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY"
13 information may be disclosed, as set forth in Paragraphs 7.3 and 7.4, with the exception of
14 Designated House Counsel.

15 (c) Any source code produced in discovery shall be made available for
16 inspection in a format through which it could be reasonably reviewed and searched during
17 normal business hours or other mutually agreeable times at a location that is reasonably
18 convenient for the Receiving Party and any experts to whom the source code may be disclosed.
19 The source code shall be made available for inspection on a secured computer in a secured
20 room without Internet access or network access to other computers, and the Receiving Party
21 shall not copy, remove, or otherwise transfer any portion of the source code onto any
22 recordable media or recordable device. The Producing Party may visually monitor the activities
23 of the Receiving Party's representatives during any source code review, but only to ensure that
24 there is no unauthorized recording, copying, or transmission of the source code.

25 (d) The Receiving Party may request paper copies of limited portions of
26 source code that are reasonably necessary for the preparation of court filings, pleadings, expert
27 reports, or other papers, or for deposition or trial, but shall not request paper copies for the
28 purposes of reviewing the source code other than electronically as set forth in paragraph (c) in

1 the first instance. The Producing Party shall provide all such source code in paper form
2 including bates numbers and the label “HIGHLY CONFIDENTIAL - SOURCE CODE.” The
3 Producing Party may challenge the amount of source code requested in hard copy form
4 pursuant to the dispute resolution procedure and timeframes set forth in Paragraph 6 whereby
5 the Producing Party is the “Challenging Party” and the Receiving Party is the “Designating
6 Party” for purposes of dispute resolution.

7 (e) The Receiving Party shall maintain a record of any individual who has
8 inspected any portion of the source code in electronic or paper form. The Receiving Party shall
9 maintain all paper copies of any printed portions of the source code in a secured, locked area.
10 The Receiving Party shall not create any electronic or other images of the paper copies and
11 shall not convert any of the information contained in the paper copies into any electronic
12 format. The Receiving Party shall only make additional paper copies if such additional copies
13 are (1) necessary to prepare court filings, pleadings, or other papers (including a testifying
14 expert’s expert report), (2) necessary for deposition, or (3) otherwise necessary for the
15 preparation of its case.

16 **9. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN**
17 **OTHER LITIGATION**

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

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

24 (b) Promptly notify in writing the party who caused the subpoena or order to
25 issue in the other litigation that some or all of the material covered by the subpoena or order is
26 subject to this Protective Order. Such notification shall include a copy of this Stipulated
27 Protective Order; and

28 (c) Cooperate with respect to all reasonable procedures sought to be pursued by

1 the Designating Party whose Protected Material may be affected.

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

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

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

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

22 1. Promptly notify in writing the Requesting Party and the Non-
23 Party that some or all of the information requested is subject to a confidentiality agreement
24 with a Non-Party;

25 2. Promptly provide the Non-Party with a copy of the Stipulated
26 Protective Order in this litigation, the relevant discovery request(s), and a reasonably specific
27 description of the information requested; and

28 3. Make the information requested available for inspection by the

1 Non-Party.

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

10 **11. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

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

18 **12. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
19 **PROTECTED MATERIAL**

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

1 **13. MISCELLANEOUS**

2 13.1 Right to Further Relief. Nothing in this Order abridges the right of any person to
3 seek its modification by the court in the future.

4 13.2 Right to Assert Other Objections. By stipulating to the entry of this Protective
5 Order no Party waives any right it otherwise would have to object to disclosing or producing
6 any information or item on any ground not addressed in this Stipulated Protective Order.
7 Similarly, no Party waives any right to object on any ground to use in evidence of any of the
8 material covered by this Protective Order.

9 13.3 Filing Protected Material. Without written permission from the Designating
10 Party or a court order secured after appropriate notice to all interested persons, a Party may not
11 file in the public record in this action any Protected Material. A Party that seeks to file under
12 seal any Protected Material must comply with Local Rule 141. Protected Material may only be
13 filed under seal pursuant to a court order authorizing the sealing of the specific Protected
14 Material at issue. Pursuant to Local Rule 141, a sealing order will issue only upon a request
15 establishing that the Protected Material at issue is privileged, protectable as a trade secret, or
16 otherwise entitled to protection under the law.

17 **14. FINAL DISPOSITION**

18 Within 60 days after the final disposition of this action, as defined in paragraph 4, each
19 Receiving Party must return all Protected Material to the Producing Party or destroy such
20 material. As used in this subdivision, “all Protected Material” includes all copies, abstracts,
21 compilations, summaries, and any other format reproducing or capturing any of the Protected
22 Material. Whether the Protected Material is returned or destroyed, the Receiving Party must
23 submit a written certification to the Producing Party (and, if not the same person or entity, to
24 the Designating Party) by the 60-day deadline that (1) identifies (by category, where
25 appropriate) all the Protected Material that was returned or destroyed and (2) affirms that the
26 Receiving Party has not retained any copies, abstracts, compilations, summaries or any other
27 format reproducing or capturing any of the Protected Material. Notwithstanding this provision,
28 Counsel are entitled to retain an archival copy of all pleadings, motion papers, trial, deposition,

1 and hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert
2 reports, attorney work product, and consultant and expert work product, even if such materials
3 contain Protected Material. Any such archival copies that contain or constitute Protected
4 Material remain subject to this Protective Order as set forth in Section 4 (DURATION).

5
6
7 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

8 Dated: March 21, 2017

SMITH, McDOWELL & POWELL,
A LAW CORPORATION

9
10 /s/ C. Jason Smith

11 C. Jason Smith
12 Brandon T. Wright
13 Attorneys for Plaintiff,
Hale Bros. Investment Company, LLC

14 Dated: March 21, 2017

PERKINS COIE LLP

15 /s/ Patrick S. Thompson

16 Patrick S. Thompson
17 Jacqueline E. Young
18 Attorneys for Defendants,
StudentsFirst Institute, StudentsFirst
and 50CAN, Inc.

19 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

20 DATED: April 10, 2017.

21 

22 EDMUND F. BRENNAN
23 UNITED STATES MAGISTRATE JUDGE

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EXHIBIT A

Acknowledgment and Agreement to Be Bound

I hereby certify that I have carefully read the Protective Order of the in the action entitled: *Hale Bros. Investment Company, LLC, v. StudentsFirst, et al.*, United States District Court, Eastern District of California Case no. 2:16-cv-02284-JAM-EFB, and I fully understand the terms of the Court’s Protective Order, a copy of which is attached. I recognize that I am bound by the terms of that Protective Order, and I agree to comply with those terms. I agree not to disclose “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” information to anyone who has not signed a copy of this Certificate. I agree to use the protected information only in connection with this litigation, and not for any purpose including, without limitation, business, competitive or governmental purpose or function. I hereby consent to be subject to the personal jurisdiction of the United States District Court, Eastern District of California with respect to any proceedings relative to the enforcement of that Protective Order including, without limitation any proceeding related to contempt of Court.

Executed this ____ day of _____, 20__ at _____, California.

Name: _____

Affiliation: _____

Business Address: _____
(Name of Company)

(Street) (City) (State) (Zip)

Home Address: _____
(Street) (City) (State) (Zip)