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24 **UNITED STATES DISTRICT COURT**
 25 **SOUTHERN DISTRICT OF CALIFORNIA**

26 FEDERAL TRADE COMMISSION,
 27 Plaintiff,
 28 v.
 YOUR BABY CAN, LLC,
 HUGH PENTON, JR.,
 ROBERT TITZER, Ph.D., and
 INFANT LEARNING, INC. d/b/a
 THE INFANT LEARNING
 COMPANY,
 Defendants.

Case No. 12-CV-2114 DMS-BGS

**STIPULATED FINAL
 JUDGMENT AND ORDER FOR
 PERMANENT INJUNCTION
 AND OTHER EQUITABLE
 RELIEF AS TO DEFENDANTS
 ROBERT TITZER, PH.D. AND
 INFANT LEARNING, INC.**

12-CV-2114 DMS-BGS
 Stipulated Final Judgment and Order

1 Plaintiff, the Federal Trade Commission (“FTC” or “Commission”), filed a
2 First Amended Complaint for Permanent Injunctive and Other Equitable Relief
3 against Your Baby Can, LLC; Hugh Penton, Jr.; Robert Titzer, Ph.D.; and Infant
4 Learning Inc. d/b/a/ The Infant Learning Company pursuant to Section 13(b) of the
5 Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b), alleging deceptive
6 acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

7 The Commission and Defendants Robert Titzer, Ph.D., and Infant Learning,
8 Inc., have stipulated to the entry of this Stipulated Final Judgment and Order for
9 Permanent Injunction and Other Equitable Relief (“Order”) in settlement of the
10 Commission’s allegations against these Defendants. The Court, having been
11 presented with this Order, finds as follows:

12 **FINDINGS**

- 13 1. This Court has jurisdiction over the subject matter of this case and over all
14 parties. Venue in the United States District Court for the Southern District of
15 California is proper.
- 16 2. The Complaint states a claim upon which relief can be granted, and the
17 Commission has the authority to seek the relief it has requested.
- 18 3. The activities of Defendants Robert Titzer, Ph.D., and Infant Learning, Inc.
19 for the purposes of this Order, are in or affecting commerce, as defined in Section
20 4 of the FTC Act, 15 U.S.C. § 44.
- 21 4. The parties stipulate and agree to entry of this Order, without trial or final
22 adjudication of any issue of fact or law, to settle and resolve all matters in dispute
23 between the FTC and Defendants Robert Titzer, Ph.D., and Infant Learning, Inc.
24 arising from the conduct alleged in the Complaint to the date of entry of this Order.
25 Defendants Robert Titzer, Ph.D., and Infant Learning, Inc. neither admit nor deny
26 the allegations set forth in the Complaint, other than the jurisdictional facts, by
27 stipulating and agreeing to entry of this Order. This settlement does not settle and
28 resolve any matters not alleged in the Complaint.

1 5. Defendants Robert Titzer, Ph.D., and Infant Learning, Inc. waive all rights to
2 seek judicial review or otherwise challenge or contest the validity of this Order.
3 Defendants Robert Titzer, Ph.D., and Infant Learning, Inc. also waive any claims
4 they may have held under the Equal Access to Justice Act, 28 U.S.C. § 2412,
5 concerning the prosecution of this action through the date of this Order. Each
6 settling party shall bear its own costs and attorneys' fees.

7 6. This action and the relief awarded herein are in addition to, and not in lieu
8 of, other remedies as may be provided by law, including both civil and criminal
9 remedies.

10 7. Entry of this Order is in the public interest.

11 **ORDER**

12 **DEFINITIONS**

13 Unless otherwise specified,

- 14 1. "Defendant Titzer" means Robert Titzer, Ph.D.
15 2. "Defendant ILC" means Infant Learning, Inc. d/b/a Infant Learning
16 Company, and its successors and assigns.
17 3. "Defendants" means Robert Titzer, Ph.D., and Infant Learning, Inc. d/b/a
18 Infant Learning Company, and their successors and assigns.
19 4. "Commerce" means as defined in Section 4 of the FTC Act, 15 U.S.C. § 44.
20 5. "Real Property" means the real property and dwelling located at 31731 Nira
21 Lane, Bonsall, California 92003, together with any other structures, improvements,
22 appurtenances, hereditaments, and other rights appertaining or belonging thereto.
23 6. The term "including" in this Order means "including without limitation."
24 7. The terms "and" and "or" in this Order shall be construed conjunctively or
25 disjunctively as necessary, to make the applicable phrase or sentence inclusive
26 rather than exclusive.
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I.

PROHIBITED REPRESENTATIONS

IT IS ORDERED that Defendants Titzer and ILC, Defendants' officers, agents, servants, and employees, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any product, in or affecting Commerce, are hereby permanently restrained and enjoined from making, or assisting others in making, directly or indirectly, expressly or by implication, including through the use of a product name, endorsement, depiction, or illustration, any representation about the benefits, performance, or efficacy of such product for teaching reading or speech, or enhancing language ability, cognitive ability, school performance, or brain development, including, but not limited to, that such product:

- A. Teaches infants and children to read;
- B. Teaches children as young as three or four years to read books such as Charlotte's Web or Harry Potter;
- C. Gives infants and children an early start on academic learning; or
- D. Helps children perform better in school and later in life than children who did not use the product;

unless the representation is true, non-misleading, and, at the time of making such representation, Defendants Titzer and ILC possess and rely on competent and reliable scientific evidence that is sufficient in quality and quantity based on standards generally accepted in the relevant scientific fields, when considered in light of the entire body of relevant and reliable scientific evidence, to substantiate that the representation is true. For purposes of this Section, competent and reliable scientific evidence means tests, analysis, research, or other studies that have been conducted and evaluated in an objective manner by qualified persons and are generally accepted in the profession to yield accurate and reliable results.

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II.

PROHIBITED USE OF TERM

IT IS FURTHER ORDERED that Defendants Titzer and ILC, Defendants' officers, agents, servants, and employees, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any product, in or affecting Commerce, are hereby permanently restrained and enjoined from employing the term "Your Baby Can Read" in conjunction with or as part of any product name or product logo. Nothing shall prevent the parties from later seeking amendment and/or deletion of this provision of this Order.

III.

PROHIBITED MISREPRESENTATIONS

IT IS FURTHER ORDERED that Defendants Titzer and ILC, Defendants' officers, agents, servants, and employees, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any product, in or affecting Commerce, are hereby permanently restrained and enjoined from misrepresenting in any manner, directly or indirectly, expressly or by implication, including through the use of endorsements:

- A. The existence, contents, validity, results, conclusions, or interpretations of any test, study, or research; or
- B. That the benefits of any product are scientifically proven, including, but not limited to, that scientific studies prove that Your Baby Can Read!® teaches infants and children to read.

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IV.

EXPERT ENDORSEMENTS

IT IS FURTHER ORDERED that Defendant Titzer, Defendant Titzer's officers, agents, servants, and employees, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any product, in or affecting Commerce, is hereby permanently restrained and enjoined from representing in any manner, expressly or by implication, that Defendant Titzer endorses such product unless Defendant Titzer:

- A. possesses the expertise represented by his endorsement;
- B. exercises his purported expertise in the form of an examination or testing of the product at least as extensive as an expert in the field would normally conduct in order to support the conclusions presented in his endorsement; and
- C. has a reasonable basis for the endorsement.

V.

MONETARY JUDGMENT

IT IS FURTHER ORDERED that:

- A. Judgment is hereby entered in favor of the Commission and against Defendant Titzer in the amount of ONE HUNDRED EIGHTY-FIVE MILLION DOLLARS (\$185,000,000), which represents the gross sales of the Your Baby Can Read! product through January 2012; *provided however*, subject to Section VI of this Order, the judgment shall be suspended upon payment to the FTC or its designated agent of THREE HUNDRED THOUSAND DOLLARS (\$300,000) by Defendants Titzer and ILC pursuant to Section V.C of this Order;

1 B. Judgment is hereby entered in favor of the Commission and against
2 Defendants ILC and Titzer, jointly and severally, in the amount of ONE MILLION
3 FOUR HUNDRED THOUSAND DOLLARS (\$1,400,000), which represents
4 ILC's gross sales of the Your Baby Can Read! product since 2012; *provided*
5 *however*, subject to Section VI of this Order, the judgment shall be suspended upon
6 payment to the FTC or its designated agent of \$300,000 by Defendants Titzer and
7 ILC pursuant to Section V.C of this Order.

8 C. Defendants Titzer and ILC shall transfer \$300,000 to the FTC as follows:

- 9 1. Defendants Titzer and ILC shall pay \$120,000 to the FTC no later
10 than fifteen (15) days after entry of the Order pursuant to instructions
11 that the FTC will provide; and
12 2. Defendants Titzer and ILC shall pay \$180,000 to the FTC no later
13 than twelve (12) calendar months after entry of the Order pursuant to
14 instructions that the FTC will provide and the security provisions of
15 Section V.D of this Order.

16 D. To secure performance of Defendants' obligations under Section V.C.2 of
17 this Order:

- 18 1. Defendant Titzer grants to the Commission a voluntary lien on and a
19 security interest in the Real Property.
20 2. Defendant Titzer represents and acknowledges that the Commission is
21 relying on the material representations that Defendant Titzer is the
22 sole owner in fee simple of the Real Property, title to the Real
23 Property is marketable, and the Real Property is not encumbered by
24 any other lien, mortgage, deed of trust, assignment, pledge, security
25 interest, or other interest.
26 3. Defendant Titzer shall cooperate fully with the Commission and be
27 responsible (at his expense) for preparing, executing, and recording
28 the necessary instruments and documents, and undertake all
reasonable efforts to perfect, evidence, continue, and terminate the

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lien and security interest granted herein. Defendant Titzer also shall be responsible for paying all related fees and costs, including attorneys' fees and filing fees.

- 4. Defendant Titzer shall deliver to the Commission copies of the instruments and documents necessary to perfect the lien and security interest granted herein, in form and substance satisfactory to the Commission, no later than twenty (20) days after the date of filing of this Order with the Court. Defendant Titzer shall record these documents and provide counsel for the FTC with proof thereof within thirty (30) calendar days of the date of entry of this Order.
- 5. Within ten (10) days of the full payment of Defendant Titzer's payment obligation under Section V.C.2 of this Order, the Commission will provide whatever documents are necessary to cancel any lien, security interest, or other encumbrances of the Real Property in favor of the Commission.

E. Any funds received by the FTC pursuant to this Section shall be deposited into a fund administered by the FTC or its agent to be used for equitable relief, including but not limited to consumer redress and any attendant expenses for the administration of any redress funds. In the event that direct redress to consumers is wholly or partially impracticable or funds remain after redress is completed, the FTC may apply any remaining funds for such other equitable relief, including, but not limited to, consumer information remedies, as the FTC determines to be reasonably related to the practices alleged in the Complaint. Any funds not used for such equitable relief shall be deposited to the U.S. Treasury as equitable disgorgement. Defendants Titzer and ILC shall have no right to challenge the FTC's choice of remedies or the manner of distribution.

1 F. Defendants Titzer and ILC relinquish all dominion, control, and title to the
2 funds paid to the fullest extent permitted by law. Defendants Titzer and ILC shall
3 make no claim to or demand for return of the funds, directly or indirectly, through
4 counsel or otherwise.

5 G. Defendants Titzer and ILC agree that the facts as alleged in the Complaint
6 filed in this action shall be taken as true without further proof in any bankruptcy
7 case or subsequent civil litigation pursued by the Commission to enforce its rights
8 to any payment or money judgment pursuant to this Order, including but not
9 limited to a nondischargeability complaint in any bankruptcy case. Defendants
10 Titzer and ILC further stipulate and agree that the facts alleged in the Complaint
11 establish all elements necessary to sustain an action by the Commission pursuant to
12 Section 523(a)(2)(A) of the Bankruptcy Code, 11 U.S.C. § 523(a)(2)(A), and that
13 this Order shall have collateral estoppel effect for such purposes.

14 H. In accordance with 31 U.S.C. § 7701, Defendants Titzer and ILC are hereby
15 required, unless they have already done so, to furnish to the FTC their tax
16 identification numbers, which shall be used for the purposes of collecting and
17 reporting on any delinquent amount arising out of this Order.

18 **VI.**

19 **RIGHT TO REOPEN**

20 **IT IS FURTHER ORDERED** that the FTC's agreement to, and the Court's
21 approval of, this Order is expressly premised on the truthfulness, accuracy and
22 completeness of Defendants Titzer and ILC's sworn financial statements
23 previously submitted to the FTC, dated April 28 and 30, 2014, and all addenda
24 thereto. If, upon motion by the FTC, the Court finds that the financial statements
25 of Defendants Titzer or ILC contain any material misrepresentation or omission,
26 the judgment entered in Section V of this Order shall be reinstated and become
27 immediately due and payable as to that Defendant, less any amounts turned over to
28 the FTC or its designated agent pursuant to Sections V and VI of this Order;
provided, however, that in all other respects this Order shall remain in full force

1 and effect unless otherwise ordered by the Court; and, provided further, that
2 proceedings instituted under this provision would be in addition to, and not in lieu
3 of, any other civil or criminal remedies as may be provided by law, including any
4 other proceedings that the FTC may initiate to enforce this Order. For purposes of
5 this Section, Defendants Titzer and ILC waive any right to contest any of the
6 allegations in the Complaint. Notwithstanding anything to the contrary in this
7 Order, Defendants Titzer and ILC expressly retain the right and ability to contest
8 all or any of the facts alleged in the Complaint filed in this action in: (1) any
9 criminal proceeding; and (2) any civil or administrative proceeding to which the
10 FTC is not a party.

11 **VII.**

12 **COMPLIANCE REPORTING**

13 **IT IS FURTHER ORDERED** that Defendants Titzer and ILC make timely
14 submissions to the Commission:

15 A. One-hundred and eighty days (180) after entry of this Order, Defendants
16 Titzer and ILC each must submit a compliance report, sworn under penalty of
17 perjury.

- 18 1. Each Defendant must: (a) designate at least one telephone number
19 and an email, physical, and postal address as points of contact, which
20 representatives of the Commission may use to communicate with
21 Defendant; (b) identify all Defendants' businesses by all of their
22 names, telephone numbers, and physical, postal, email, and Internet
23 addresses; (c) describe the activities of each such business, including
24 the products and services offered, the means of advertising,
25 marketing, and sales, and the involvement of any other current or
26 former defendant, which Defendants Titzer and ILC must describe if
27 they know or should know due to their involvement; (d) describe in
28 detail whether and how that defendant is in compliance with each
Section of this Order; and (e) provide a copy of each Order

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Acknowledgment obtained pursuant to this Order, unless previously submitted;

- 2. Additionally, Defendant Titzer must: (a) identify all his telephone numbers and all his email, Internet, physical, and postal addresses, including all residences; (b) identify all his titles and roles in all business activities, including any business for which Defendant Titzer performs services whether as an employee or otherwise and any entity in which Defendant Titzer has an ownership interest; and (c) describe in detail Defendant Titzer's involvement in each such business, including title, role, responsibilities, participation, authority, control, and any ownership.

B. For twenty (20) years following entry of this Order, Defendants Titzer and ILC each must submit a compliance notice, sworn under penalty of perjury, within fourteen (14) days of any change in the following:

- 1. Each Defendant must report any change in: (a) any designated point of contact; (b) the structure of any entity that either Defendant has any ownership interest in or directly or indirectly controls that may affect compliance obligations arising under this Order, including: creation, merger, sale, or dissolution of the entity or any subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order.
- 2. Additionally, Defendant Titzer must report any change in: (a) name, including aliases or fictitious name, or residence address; or (b) title or role in any business activity, including any business for which Defendant Titzer performs services whether as an employee or otherwise and any entity in which Defendant Titzer has any ownership interest, and identify its name, physical address, and Internet address, if any.

- 1 C. Each Defendant must submit to the Commission notice of the filing of any
2 bankruptcy petition, insolvency proceeding, or any similar proceeding by or
3 against such Defendant within fourteen (14) days of its filing.
- 4 D. Any submission to the Commission required by this Order to be sworn under
5 penalty of perjury must be true and accurate and comply with 28 U.S.C. § 1746,
6 such as by concluding: "I declare under penalty of perjury under the laws of the
7 United States of America that the foregoing is true and correct. Executed on:
8 _____" and supplying the date, signatory's full name, title (if applicable), and
9 signature.
- 10 E. Unless otherwise directed by a Commission representative in writing, all
11 submissions to the Commission pursuant to this Order must be emailed to
12 DEbrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to:
13 Associate Director for Enforcement, Bureau of Consumer Protection, Federal
14 Trade Commission, 600 Pennsylvania Avenue, NW, Washington, DC 20580. The
15 subject line must begin: FTC v. Your Baby Can, LLC, et al.

16 **VIII.**

17 **COMPLIANCE MONITORING**

18 **IT IS FURTHER ORDERED** that, for the purpose of monitoring
19 Defendants Titzer and ILC's compliance with this Order:

- 20 A. Within fourteen (14) days of receipt of a written request from a
21 representative of the Commission, each Defendant must: submit additional
22 compliance reports or other requested information, which must be sworn under
23 penalty of perjury; appear for depositions; and produce documents, for inspection
24 and copying. The Commission is also authorized to obtain discovery, without
25 further leave of court, using any of the procedures prescribed by the Federal Rules
26 of Civil Procedure 29, 30 (including telephonic depositions), 31, 33, 34, 36, 45,
27 and 69.

1 B. For matters concerning this Order, the Commission is authorized to
2 communicate directly with each Defendant. Defendants Titzer and ILC must
3 permit representatives of the Commission to interview any employee or other
4 person affiliated with any Defendant who has agreed to such an interview. The
5 person interviewed may have counsel present.

6 C. The Commission may use all other lawful means, including posing, through
7 its representatives, as consumers, suppliers, or other individuals or entities, to
8 Defendants Titzer and ILC or any individual or entity affiliated with Defendants
9 Titzer and ILC, without the necessity of identification or prior notice. Nothing in
10 this Order limits the Commission's lawful use of compulsory process, pursuant to
11 Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1.

12 **IX.**

13 **RECORDKEEPING**

14 **IT IS FURTHER ORDERED** that Defendants Titzer and ILC must create
15 certain records for twenty (20) years after entry of the Order, and retain each such
16 record for five (5) years. Specifically, for any business that Defendants Titzer and
17 ILC, individually or collectively, are majority owners of or that they individually
18 or collectively directly or indirectly controls, they must maintain the following
19 records:

20 A. Accounting records showing the revenues from all goods or services sold, all
21 costs incurred in generating those revenues, and the resulting net profit or loss;

22 B. Personnel records showing, for each person providing services, whether as
23 an employee or otherwise, that person's: name, addresses, and telephone numbers,
24 job title or position; dates of service; and, if applicable, the reason for termination;

25 C. Complaints and refund requests, whether received directly or indirectly, such
26 as through a third party, and any response;

27 D. A copy of each advertisement or other marketing material; and

28 E. All records necessary to demonstrate full compliance with each provision of
this Order, including all submissions to the Commission.

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X.

ORDER ACKNOWLEDGMENTS

IT IS FURTHER ORDERED that Defendants Titzer and ILC obtain acknowledgments of receipt of this Order:

A. Each Defendant, within seven (7) days of entry of this Order, must submit to the Commission an acknowledgment of receipt of this Order sworn under penalty of perjury.

B. For five (5) years after entry of this Order, Defendant Titzer, as to any business that he, individually or collectively with any other current or former defendant, is the majority owner of or that he directly or indirectly controls, must deliver a copy of this Order to: (1) all principals, officers, directors, and managers; (2) all employees, agents, and representatives who participate in conduct related to the subject matter of this Order; and (3) any business entity resulting from any change in structure as set forth in the Section titled Compliance Reporting. Delivery must occur within seven (7) days of entry of this Order for current personnel. To all others, delivery must occur before they assume their responsibilities.

C. From each individual or entity to which a Defendant delivered a copy of this Order, such Defendant must obtain, within thirty (30) days, a signed and dated acknowledgment of receipt of this Order.

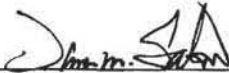
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XI.

RETENTION OF JURISDICTION

IT IS FURTHER ORDERED that this Court retains jurisdiction of this matter for the purposes of construction, modification, and enforcement of this Order.

IT IS SO ORDERED, this 19th day of August, 2014.



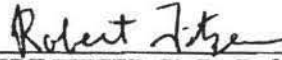
Dana M. Sabraw
UNITED STATES DISTRICT JUDGE

SO STIPULATED:

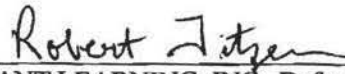


ROBIN ROSEN SPECTOR
ROSEMARY ROSSO
DAVID K. KOEHLER
ELIZABETH JONES SANGER

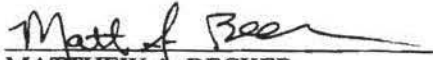
Attorneys for Plaintiff
Federal Trade Commission



ROBERT TITZER, Ph.D., Defendant



INFANT LEARNING, INC., Defendant
By: ROBERT TITZER,
President and Chief Executive Officer



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Infant Learning, Inc. d/b/a
The Infant Learning Company