

JS-6

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

AGE OF LEARNING, INC., a
corporation, also d/b/a ABCmouse and
ABCMouse.com,

Defendant.

Case No. 2:20-cv-7996

**STIPULATED ORDER FOR
PERMANENT INJUNCTION
AND MONETARY
JUDGMENT**

Plaintiff, the Federal Trade Commission (“Commission”), filed its Complaint for Permanent Injunction and Other Equitable Relief (“Complaint”) for a permanent injunction and other equitable relief in this matter, pursuant to Sections 13(b) and 19 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 53(b), 57b, and the Restore Online Shoppers’ Confidence Act

STIPULATED FINAL ORDER

1 (“ROSCA”), 15 U.S.C. § 8404. The Commission and Defendant stipulate to the
2 entry of this Stipulated Order for Permanent Injunction and Monetary Judgment
3 (“Order”) to resolve all matters in dispute in this action between them.
4

5 **THEREFORE, IT IS ORDERED** as follows:

6 **FINDINGS**

7 A. This Court has jurisdiction over this matter.

8 B. The Complaint alleges that Defendant participated in deceptive and
9 unfair acts or practices in violation of Sections 13(b) and 19 of the FTC Act, 15
10 U.S.C. §§ 53(b), 57b, and ROSCA, 15 U.S.C. § 8404, in the advertisement,
11 marketing, distribution, and sale of online educational programs to consumers
12 throughout the United States.

13 C. Defendant neither admits nor denies any of the allegations in the
14 Complaint, except as specifically stated in this Order. Only for purposes of this
15 action, Defendant admits the facts necessary to establish jurisdiction.

16 D. Defendant waives any claim that it may have under the Equal Access
17 to Justice Act, 29 U.S.C. § 2412, concerning the prosecution of this action through
18 the date of this Order, and agrees to bear its own costs and attorney fees.

19 E. Defendant waives all rights to appeal or otherwise challenge or
20 contest the validity of this Order.

21 **DEFINITIONS**

22 For the purpose of this Order, the following definitions apply:

23 A. **“Billing Information”** means any data that enables any person to
24 access a customer’s account, such as a credit card, checking, savings, share or
25 similar account, utility bill, mortgage loan account, or debit card.

26 B. **“Charge,” “Charged,” or “Charging”** means any attempt to collect
27 money or other consideration from a consumer, including causing Billing
28

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1 Information to be submitted for payment, including against the consumer's credit
2 card, debit card, bank account, telephone bill, or other account.

3 C. **“Clear(ly) and Conspicuous(ly)”** means that a required disclosure is
4 difficult to miss (i.e., easily noticeable) and easily understandable by ordinary
5 consumers, including in all of the following ways:

6 1. In any communication that is solely visual or solely audible, the
7 disclosure must be made through the same means through which the
8 communication is presented. In any communication made through both visual and
9 audible means, such as a television advertisement, the disclosure must be presented
10 simultaneously in both the visual and audible portions of the communication even
11 if the representation requiring the disclosure is made in only one means.

12 2. A visual disclosure, by its size, contrast, location, the length of
13 time it appears, and other characteristics, must stand out from any accompanying
14 text or other visual elements so that it is easily noticed, read, and understood.

15 3. An audible disclosure, including by telephone or streaming
16 video, must be delivered in a volume, speed, and cadence sufficient for ordinary
17 consumers to easily hear and understand it.

18 4. In any communication using an interactive electronic medium,
19 such as the Internet or software, the disclosure must be unavoidable.

20 5. The disclosure must use diction and syntax understandable to
21 ordinary consumers and must appear in each language in which the representation
22 that requires the disclosure appears.

23 6. The disclosure must comply with these requirements in each
24 medium through which it is received, including all electronic devices and face-to-
25 face communications.

26 7. The disclosure must not be contradicted or mitigated by, or
27 inconsistent with, anything else in the communication.
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8. When the representation or sales practice targets a specific audience, such as children, the elderly, or the terminally ill, “ordinary consumers” includes reasonable members of that group.

D. **“Defendant”** means Age Of Learning, Inc., a corporation, which also does business as ABCmouse and ABCmouse.com, as well as any successors and assigns.

E. **“Negative Option Feature”** means, in an offer or agreement to sell or provide any good or service, a provision under which the consumer’s silence or failure to take affirmative action to reject a good or service or to cancel the agreement is interpreted by the seller or provider as acceptance or continuing acceptance of the offer.

F. **“Telemarketing”** means any plan, program, or campaign which is conducted to induce the purchase of goods or services by use of one or more telephones, and which involves a telephone call, whether or not covered by the Telemarketing Sales Rule.

ORDER

I. PROHIBITION AGAINST MISREPRESENTATIONS

RELATED TO NEGATIVE OPTIONS

IT IS ORDERED that Defendant, Defendant's officers, agents, employees, and attorneys, 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 promoting or offering for sale any good or service with a Negative Option Feature, are permanently restrained and enjoined from misrepresenting, expressly or by implication:

A. Any cost to the consumer to purchase, receive, use, or return the initial good or service;

B. That the consumer will not be Charged for any good or service;

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1 C. That a good or service is offered on a “free,” “trial,” “sample,”
2 “bonus,” “gift,” “no obligation,” “discounted,” “upgraded” basis, or words of
3 similar import, denoting or implying the absence of an obligation on the part of the
4 recipient of the offer to affirmatively act in order to avoid Charges, including
5 where a Charge will be assessed pursuant to the offer unless the consumer takes
6 affirmative steps to prevent or stop such a Charge;
7

8 D. That the consumer can obtain a good or service for a processing,
9 service, shipping, handling, or administrative fee with no further obligation;

10 E. Any purpose for which the consumer’s Billing Information will be
11 used;

12 F. The date by which the consumer will incur any obligation or be
13 Charged unless the consumer takes an affirmative action on the Negative Option
14 Feature;

15 G. That a transaction has been authorized by the consumer;

16 H. Any material aspect of the nature or terms of a refund, cancellation,
17 exchange, or repurchase policy for the good or service, including whether it is easy
18 for consumers to cancel Defendant’s good or service; or

19 I. Any other material fact.

20 **II. REQUIRED DISCLOSURES RELATING TO NEGATIVE**
21 **OPTION FEATURES**

22 **IT IS FURTHER ORDERED** that Defendant, Defendant’s officers, agents,
23 employees, and attorneys, and all other persons in active concert or participation
24 with any of them, who receive actual notice of this Order, whether acting directly
25 or indirectly, in connection with promoting or offering for sale any good or service
26 with a Negative Option Feature, are permanently restrained and enjoined from:

27 A. Representing directly or indirectly, expressly or by implication, that
28 any good or service that includes a Negative Option Feature is being offered on a

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1 free, trial, no obligation, reduced, upgraded, or discounted basis, or for a specific
2 term, without disclosing Clearly and Conspicuously, and immediately adjacent to,
3 any such representation:

4 1. The extent to which the consumer must take any affirmative
5 action to avoid any Charges: a) for the offered good or service, b) of an increased
6 amount after the trial or promotional period ends, and c) on a recurring basis;

7 2. The total cost (or range of costs) the consumer will be Charged
8 and, if applicable, the frequency of such Charges unless the consumer timely takes
9 steps to prevent or stop such Charges; and

10 3. The deadline(s) (by date or frequency) by which the consumer
11 must affirmatively act in order to stop all recurring Charges.

12 B. Obtaining Billing Information from a consumer for any transaction
13 involving a good or service that includes a Negative Option Feature, without first
14 disclosing Clearly and Conspicuously, and immediately adjacent to where a
15 consumer provides Billing Information:

16 1. The extent to which the consumer must take affirmative action
17 to avoid any Charges: a) for the offered good or service, b) of an increased amount
18 after the trial or promotional period ends, and c) on a recurring basis;

19 2. The total cost (or range of costs) the consumer will be Charged,
20 the date the initial Charge will be submitted for payment, and, if applicable, the
21 frequency of such Charges unless the consumer timely takes affirmative steps to
22 prevent or stop such Charges;

23 3. The deadline(s) (by date or frequency) by which the consumer
24 must affirmatively act in order to stop all recurring Charges;

25 4. The name of the seller or provider of the good or service and, if
26 the name of the seller or provider will not appear on billing statements, the billing
27 descriptor that will appear on such statements;

28
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- 1 5. A description of the good or service;
- 2 6. Any Charge or cost for which the consumer is responsible in
- 3 connection with the cancellation of an order, any service or the return of any good;
- 4 and
- 5 7. The simple cancellation mechanism to stop any recurring
- 6 Charges, as required by Section IV of this Order.
- 7

8 C. Failing to send the consumer:

9 1. Immediately after the consumer's submission of an online

10 order, written confirmation of the transaction by email. The email must Clearly

11 and Conspicuously disclose all the information required by Subsection B, and

12 contain a subject line reading "Order Confirmation" along with the name of the

13 good or service, which may read, "Welcome to ABCmouse! Order confirmation,"

14 and no additional information; or

15 2. Within 2 days after receipt of the consumer's order by mail or

16 telephone, a written confirmation of the transaction, either by email or first class

17 mail. The email or letter must Clearly and Conspicuously disclose all the

18 information required by Subsection B. The subject line of the email must Clearly

19 and Conspicuously state "Order Confirmation" along with the name of the good or

20 service, and nothing else. The outside of the envelope must Clearly and

21 Conspicuously state "Order Confirmation" along with the name of the product or

22 service, and no additional information other than the consumer's address, the

23 Defendant's return address, and postage.

24 **III. OBTAINING EXPRESS INFORMED CONSENT**

25 **FOR A NEGATIVE OPTION**

26 **IT IS FURTHER ORDERED** that Defendant, Defendant's officers, agents,

27 employees, and attorneys, and all other persons in active concert or participation

28 with any of them, who receive actual notice of this Order, whether acting directly

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1 or indirectly, in connection with promoting or offering for sale any good or service
2 with a Negative Option Feature, are permanently restrained and enjoined from
3 using Billing Information to obtain payment from a consumer, unless Defendant
4 first obtains the express informed consent of the consumer to do so. To obtain
5 express informed consent, Defendant must:

6 A. For all written offers (including over the Internet, such as through a
7 web-based application), obtain consent through a check box, signature, or other
8 substantially similar method, which the consumer must affirmatively select or sign
9 to accept the Negative Option Feature, and no other portion of the offer.

10 Defendant shall disclose Clearly and Conspicuously, and immediately adjacent to
11 such check box, signature, or substantially similar method of affirmative consent,
12 only the following, with no additional information:

13 1. The extent to which the consumer must take affirmative action
14 to avoid any Charges: a) for the offered good or service, b) of an increased amount
15 after the trial or promotional period ends, and c) on a recurring basis;

16 2. The total cost (or range of costs) the consumer will be Charged
17 and, if applicable, the frequency of such Charges unless the consumer timely takes
18 affirmative steps to prevent or stop such Charges; and

19 3. The deadline(s) (by date or frequency) by which the consumer
20 must affirmatively act in order to stop all recurring Charges.

21 B. For all oral offers, prior to obtaining any Billing Information from the
22 consumer:

23 1. Clearly and Conspicuously disclose the information contained
24 in Subsection B of the Section titled Required Disclosures Relating To Negative
25 Option Features; and

26 2. Obtain affirmative unambiguous express oral confirmation that
27 the consumer: a) consents to being Charged for any good or service, including
28

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1 providing, at a minimum, the last 4 digits of the consumer's account number to be
2 Charged, b) understands that the transaction includes a Negative Option Feature,
3 and c) understands the specific affirmative steps the consumer must take to prevent
4 or stop further Charges.

5 C. For transactions conducted through Telemarketing, Defendant shall
6 maintain for 3 years from the date of each transaction an unedited voice recording
7 of the entire transaction, including the prescribed statements set out in Subsection
8 B of this Section. Each recording must be retrievable by date and by the
9 consumer's name, telephone number, or Billing Information, and must be provided
10 upon request to the consumer, the consumer's bank, or any law enforcement entity.

11 **IV. SIMPLE MECHANISM TO CANCEL NEGATIVE**
12 **OPTION FEATURE**

13 **IT IS FURTHER ORDERED** that Defendant, Defendant's officers, agents,
14 employees, attorneys, and all other persons in active concert or participation with
15 any of them, who receive actual notice of this Order, whether acting directly or
16 indirectly, in connection with promoting or offering for sale any good or service
17 with a Negative Option Feature, are permanently restrained and enjoined from:

18 A. Failing to provide a simple mechanism for the consumer to: (1) avoid
19 being Charged, or Charged an increased amount, for the good or service and
20 (2) immediately stop any recurring Charges. Such mechanism must not be
21 difficult, costly, confusing, or time consuming, and must be at least as simple as
22 the mechanism the consumer used to initiate the Charge(s).

23 B. For consumers who entered into the agreement to purchase a good or
24 service including a Negative Option Feature over the Internet, such as through a
25 web-based application, Defendant must provide a mechanism, accessible on the
26 same Internet website or through the same web-based application that consumers
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1 can easily use to cancel the product or service and to immediately stop all further
2 Charges.

3 C. For consumers who entered into the agreement to purchase a good or
4 service including a Negative Option Feature through an oral offer and acceptance,
5 Defendant must maintain a telephone number and a postal address that consumers
6 can easily use to cancel the product or service and to immediately stop all further
7 Charges. Defendant must assure that all calls to this telephone number are
8 answered during normal business hours and that mail to the postal address is read
9 regularly.

10 V. MONETARY JUDGMENT

11 A. Judgment in the amount of Ten Million Dollars (\$10,000,000) is
12 entered in favor of the Commission against Defendant, as equitable monetary
13 relief.

14 B. Defendant is ordered to pay the Commission Ten Million Dollars
15 (\$10,000,000), which as Defendant stipulates, its undersigned counsel holds in
16 escrow for no purpose other than payment to the Commission. Such payment must
17 be made within 7 days of entry of this Order by electronic fund transfer in
18 accordance with instructions previously provided by a representative of the
19 Commission.

20 C. Defendant relinquishes dominion and all legal and equitable right,
21 title, and interest in all assets transferred pursuant to this Order and may not seek
22 the return of any assets.

23 D. The facts alleged in the Complaint will be taken as true, without
24 further proof, in any subsequent civil litigation by or on behalf of the Commission,
25 including in a proceeding to enforce its rights to any payment or monetary
26 judgment pursuant to this Order, such as a nondischargeability complaint in any
27 bankruptcy case.
28

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1 E. The facts alleged in the Complaint establish all elements necessary to
2 sustain an action by the Commission pursuant to Section 523(a)(2)(A) of the
3 Bankruptcy Code, 11 U.S.C. § 523(a)(2)(A), and this Order will have collateral
4 estoppel effect for such purposes.
5

6 F. Defendant acknowledges that its Taxpayer Identification Number
7 (Employer Identification Number), which Defendant previously submitted to the
8 Commission, may be used for collecting and reporting on any delinquent amount
9 arising out of this Order, in accordance with 31 U.S.C. §7701.

10 G. All money paid to the Commission pursuant to this Order may be
11 deposited into a fund administered by the Commission or its designee to be used
12 for equitable relief, including consumer redress and any attendant expenses for the
13 administration of any redress fund. If a representative of the Commission decides
14 that direct redress to consumers is wholly or partially impracticable or money
15 remains after redress is completed, the Commission may apply any remaining
16 money for such other equitable relief (including consumer information remedies)
17 as it determines to be reasonably related to Defendant's practices alleged in the
18 Complaint. Any money not used for such equitable relief is to be deposited to the
19 U.S. Treasury as disgorgement. Defendant has no right to challenge any actions
20 the Commission or its representatives may take pursuant to this Subsection.

21 VI. CUSTOMER INFORMATION

22 **IT IS FURTHER ORDERED** that Defendant, Defendant's officers, agents,
23 employees, attorneys, and all other persons in active concert or participation with
24 any of them, who receive actual notice of this Order, whether acting directly or
25 indirectly are permanently restrained and enjoined from directly or indirectly
26 failing to provide sufficient customer information to enable the Commission to
27 efficiently administer consumer redress. If a representative of the Commission
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1 requests in writing any information related to redress, Defendant must provide it,
2 in the form prescribed by the Commission, within 14 days.

3
4 **VII. ORDER ACKNOWLEDGMENTS**

5 **IT IS FURTHER ORDERED** that Defendant obtains acknowledgments of
6 receipt of this Order:

7 A. Defendant, within 7 days of entry of this Order, must submit to the
8 Commission an acknowledgment of receipt of this Order sworn under penalty of
9 perjury.

10 B. For 5 years after entry of this Order, Defendant must deliver a copy of
11 this Order to: (1) all principals, officers, directors, and LLC managers and
12 members; (2) all employees, agents, and representatives having managerial
13 responsibilities for conduct related to the subject matter of the Order; and (3) any
14 business entity resulting from any change in structure as set forth in the Section
15 titled Compliance Reporting. Delivery must occur within 7 days of entry of this
16 Order for current personnel. For all others, delivery must occur before they
17 assume their responsibilities.

18 C. From each individual or entity to which Defendant delivered a copy of
19 this Order, Defendant must obtain, within 30 days, a signed and dated
20 acknowledgment of receipt of this Order.

21 **VIII. COMPLIANCE REPORTING**

22 **IT IS FURTHER ORDERED** that Defendant make timely submissions to
23 the Commission:

24 A. One year after entry of this Order, Defendant must submit a
25 compliance report, sworn under penalty of perjury. Defendant must:

26 1. identify the primary physical, postal, and email address and
27 telephone number, as designated points of contact, which representatives of the
28 Commission may use to communicate with Defendant;

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1 2. identify all of Defendant’s businesses by all of their names,
2 telephone numbers, and physical, postal, email, and Internet addresses;

3 3. describe the activities of each business, including the goods and
4 services offered, the means of advertising, marketing, and sales;

5 4. describe in detail whether and how Defendant is in compliance
6 with each Section of this Order; and

7 5. provide a copy of each Order Acknowledgment obtained
8 pursuant to this Order, unless previously submitted to the Commission.
9

10 B. For 20 years after entry of this Order, Defendant must submit a
11 compliance notice, sworn under penalty of perjury, within 14 days of any change
12 in the following:

13 1. any designated point of contact; or

14 2. the structure of Defendant or any entity that Defendant has any
15 ownership interest in or controls directly or indirectly that may affect compliance
16 obligations arising under this Order, including: creation, merger, sale, or
17 dissolution of the entity or any subsidiary, parent, or affiliate that engages in any
18 acts or practices subject to this Order.

19 C. Defendant must submit to the Commission notice of the filing of any
20 bankruptcy petition, insolvency proceeding, or similar proceeding by or against
21 Defendant within 14 days of its filing.

22 D. Any submission to the Commission required by this Order to be
23 sworn under penalty of perjury must be true and accurate and comply with 28
24 U.S.C. § 1746, such as by concluding: “I declare under penalty of perjury under
25 the laws of the United States of America that the foregoing is true and correct.
26 Executed on: _____” and supplying the date, signatory’s full name, title (if
27 applicable), and signature.
28

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1 E. Unless otherwise directed by a Commission representative in writing,
2 all submissions to the Commission pursuant to this Order must be emailed to
3 DEbrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to:
4 Associate Director for Enforcement, Bureau of Consumer Protection, Federal
5 Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The
6 subject line must begin: *FTC v. Age Of Learning, Inc.*, FTC Matter No. 1723186.
7

8 **IX. RECORDKEEPING**

9 **IT IS FURTHER ORDERED** that Defendant must create certain records
10 for 20 years after entry of the Order, and retain each such record for 5 years.
11 Specifically, Defendant must create and retain the following records:

12 A. Accounting records showing the revenues from all goods or services
13 sold;

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

18 C. Records of all consumer complaints and refund requests, whether
19 received directly or indirectly, such as through a third party, and any response;

20 D. All records necessary to demonstrate full compliance with each
21 provision of this Order, including all submissions to the Commission; and

22 E. A copy of all websites, advertisements and other marketing materials
23 that Defendant has reviewed to ensure compliance with this Order.

24 **X. COMPLIANCE MONITORING**

25 **IT IS FURTHER ORDERED** that, for the purpose of monitoring
26 Defendant's compliance with this Order:

27 A. Within 14 days of receipt of a written request from a representative of
28 the Commission, Defendant must: submit additional compliance reports or other

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1 requested information, which must be sworn under penalty of perjury; appear for
2 depositions; and produce documents for inspection and copying. The Commission
3 is also authorized to obtain discovery, without further leave of court, using any of
4 the procedures prescribed by Federal Rules of Civil Procedure 29, 30 (including
5 telephonic depositions), 31, 33, 34, 36, 45, and 69.

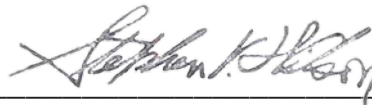
6
7 B. For matters concerning this Order, the Commission is authorized to
8 communicate directly with Defendant. Defendant must permit representatives of
9 the Commission to interview any employee or other person affiliated with
10 Defendant who has agreed to such an interview. The person interviewed may have
11 counsel present.

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

18 **XI. RETENTION OF JURISDICTION**

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

21 **SO ORDERED** this 8th day of September, 20 20.

22
23 

24
25 UNITED STATES DISTRICT JUDGE

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28 STIPULATED FINAL ORDER

1 **SO STIPULATED AND AGREED:**

2
3 **FEDERAL TRADE COMMISSION**

4
5 

Date: September 1, 2020

6 _____
Matthew H. Wernz
7 Joannie T. Wei
8 Federal Trade Commission, Midwest Region
230 South Dearborn Street, Suite 3030
9 Chicago, IL 60604
10 Phone: 312-960-5596 (Wernz)
Phone: 312-960-5607 (Wei)
11 Fax: 312-960-5600
12 mwernz@ftc.gov
jwei@ftc.gov
13 *Attorneys for Plaintiff Federal Trade Commission*

14
15 **FOR DEFENDANT:**

16 

Date: August 10, 2020

17 _____
18 Jacob S. Kreilkamp
19 Munger Tolles & Olson LLP
350 South Grand Avenue
20 Los Angeles, CA 90071
Phone: 213-683-9260
21 Fax: 213-593-2960
22 Jacob.Kreilkamp@mto.com
23 *Attorney for Defendant Age of Learning, Inc.*

24 **DEFENDANT AGE OF LEARNING, INC.:**

25 

Date: August 10, 2020

26 Shannon Castellani
27 General Counsel and Senior Vice President of Compliance, Age of Learning, Inc.
28

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