

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

IVY CAPITAL, INC., *et al.*,

Defendants, and

CHERRYTREE HOLDINGS, LLC, *et al.*,

Relief Defendants.

) Case No. 2:11-cv-00283-JCM-  
) GWF

) **STIPULATED FINAL**  
) **JUDGMENT AND ORDER**  
) **FOR PERMANENT**  
) **INJUNCTION AND**  
) **MONETARY RELIEF**

Plaintiff, the Federal Trade Commission (the "FTC" or the "commission"), filed a complaint for permanent injunction and other equitable relief, including redress to consumers and disgorgement of ill-gotten gains (the "complaint"), pursuant to Sections 13(b) and 19 of the Federal Trade Commission Act (the "FTC Act"), 15 U.S.C. §§ 53(b) and 57b, and the Telemarketing and Consumer Fraud Abuse Prevention Act (the "Telemarketing Act"), 15 U.S.C. §§ 6101-6108. The FTC and defendants Christopher M. Zelig ("Mr. Zelig") and Zyzac Commerce Solutions, Inc. ("Zyzac"), and relief defendant Curva, LLC ("Curva"), by and through their counsel, hereby stipulate to the entry of, and request the court to enter, this stipulated final judgment and order for permanent injunction and monetary relief ("order"), to resolve all matters of dispute between them in this action.

**THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** as follows:

**FINDINGS**

- 1  
2 1. This is an action by the commission instituted under Sections 13(b) and 19 of the  
3 FTC Act, 15 U.S.C. §§ 53(b) and 57b, and the Telemarketing Act, 15 U.S.C. §§  
4 6101-6108. The commission has authority to seek the relief contained herein;
- 5 2. The complaint states a claim upon which relief may be granted under Section 5(a) of  
6 the FTC Act, 15 U.S.C. § 45(a), and the FTC's trade regulation rule entitled the  
7 Telemarketing Sales Rule (the "TSR"), 16 C.F.R. Part 310;
- 8 3. This court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1337(a), and  
9 1345, 15 U.S.C. §§ 45(a), 53(b), 57b, 6102(c), and 6105(b);
- 10 4. Venue is proper in this district under 28 U.S.C. § 1391(b) and (c), and 15 U.S.C. §  
11 53(b);
- 12 5. The activities of Mr. Zelig and Zyzac as alleged in the complaint are in or affecting  
13 commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44;
- 14 6. Mr. Zelig and Zyzac and relief defendant Curva (collectively, the "settling  
15 defendants") have entered into this order freely and without coercion, and they  
16 acknowledge that they have read the provisions of this order, understand them, and  
17 are prepared to abide by them;
- 18 7. The FTC and the settling defendants, by and through their counsel, have agreed that  
19 the entry of this order resolves all matters in dispute between them arising from the  
20 complaint up to the date of entry of this order;
- 21 8. This order is for settlement purposes only and does not constitute and shall not be  
22 interpreted to constitute an admission by the settling defendants or a finding that the  
23 law has been violated as alleged in the complaint, or that the facts alleged in the  
24 complaint, other than the jurisdictional facts, are true;
- 25

- 1 9. The settling defendants waive all rights to seek appellate review or otherwise  
2 challenge or contest the validity of this order. The settling defendants further waive  
3 and release any claim they may have against the FTC, its employees, representatives,  
4 or agents concerning the prosecution of this action to the date of this order;
- 5 10. The settling defendants agree that this order does not entitle them to seek or obtain  
6 attorneys' fees as a prevailing party under the Equal Access to Justice Act, 28 U.S.C.  
7 § 2412, concerning the prosecution of this action to the date of this order. Each  
8 settling party shall bear its own costs and attorneys' fees; and
- 9 11. Entry of this order is in the public interest.

10  
11 **DEFINITIONS**

12 For the purpose of this order, the following definitions shall apply:

- 13 1. **“And”** and **“or”** shall be understood to have both conjunctive and disjunctive  
14 meanings.
- 15 2. **“Asset”** means any legal or equitable interest in, right to, or claim to, any real,  
16 personal, or intellectual property including, but not limited to, chattel, goods,  
17 instruments, equipment, fixtures, general intangibles, effects, leaseholds, contracts,  
18 mail or other deliveries, shares or stock, securities, inventory, checks, notes, accounts,  
19 credits, receivables (as those terms are defined in the Uniform Commercial Code),  
20 cash, trusts, including but not limited to asset protection trusts, and reserve funds or  
21 other accounts associated with any payments processed on behalf of any defendant,  
22 including, but not limited to, such reserve funds held by a payment processor, credit  
23 card processor, or bank.
- 24 3. **“Assisting others”** includes, but is not limited to, providing any of the following  
25 goods or services to another entity: (1) performing customer service functions,

1 including, but not limited to, charging consumers for products or services, or  
2 receiving or responding to consumer complaints; (2) formulating or providing, or  
3 arranging for the formulation or provision of, any promotional material; (3) providing  
4 names of, or assisting in the generation of, potential customers; (4) performing  
5 promotional or marketing services of any kind, including but not limited to, creating,  
6 hosting, or maintaining websites, or recruiting affiliates; or (5) processing credit and  
7 debit card payments.

8 **4. "Business coaching program"** means any program, plan, product, or service,  
9 including, but not limited to, those related to work-at-home-opportunities, that is  
10 represented, expressly or by implication, to train or teach a participant or purchaser  
11 how to establish a business or earn money or other consideration through a business.  
12 "Business coaching" shall not include providing services other than training or  
13 teaching, including, but not limited to, website design and search engine optimization.

14 **5. "Commission" or "FTC"** means the Federal Trade Commission.

15 **6. "Corporate defendant"** means Zyzac and its successors, assigns, affiliates or  
16 subsidiaries.

17 **7. "Defendants"** mean the individual defendant and the corporate defendant,  
18 individually, collectively, or in any combination. The relief defendant is expressly  
19 excluded from this definition.

20 **8. "Document"** is synonymous in meaning and equal in scope to the usage of the term  
21 in the Federal Rules of Civil Procedure 34(a), and includes writing, drawings, graphs,  
22 charts, Internet sites, Web pages, Web sites, electronic correspondence, including e-  
23 mail and instant messages, photographs, audio and video recordings, contracts,  
24 accounting data, advertisements (including, but not limited to, advertisements placed  
25 on the World Wide Web), FTP Logs, Server Access Logs, USENET Newsgroup  
postings, World Wide Web pages, books, written or printed records, handwritten

1 notes, telephone logs, telephone scripts, receipt books, ledgers, personal and business  
2 canceled checks and check registers, bank statements, appointment books, computer  
3 records, and other data compilations from which information can be obtained and  
4 translated, if necessary, through detection devices into reasonably usable form. A  
5 draft or non-identical copy is a separate document within the meaning of the term.

6 **9. "Individual defendant"** means Christopher M. Zelig.

7 **10. "Material"** means likely to affect a person's choice of, or conduct regarding, goods  
8 or services.

9 **11. "Non-Disparagement Agreement"** means any contract or agreement that purports to  
10 prohibit purchasers from providing information, making statements, or otherwise  
11 communicating in any way about their experiences with any business coaching  
12 program or related goods and services, including, but not limited to providing  
13 information to state, federal or non-governmental entities, filing complaints with any  
14 consumer protection entity, and engaging in discussions with other consumers  
15 through online forums or any other means.

16 **12. "Person"** means a natural person, organization, or other legal entity, including a  
17 corporation, partnership, proprietorship, association, cooperative, government or  
18 governmental subdivision or agency, or any other group or combination acting as an  
19 entity.

20 **13. "Relief defendant"** means Curva, LLC.

21 **14. "Representatives"** means defendants' officers, agents, servants, employees, and  
22 attorneys, and any other person or entity in active concert or participation with them  
23 who receives actual notice of this order by personal service or otherwise.

24 **15. "Settling defendants"** mean Christopher M. Zelig, Zyzac Commerce Solutions, Inc.  
25 and Curva, LLC.

1 **16. “Telemarketing”** means any plan, program or campaign (whether or not covered by  
 2 the TSR, 16 C.F.R. Part 310) that is conducted to induce the purchase of goods or  
 3 services by means of the use of one or more telephones.

4  
 5 **ORDER**

6 **I.**

7 **BAN ON MARKETING OR SALE OF  
 8 BUSINESS COACHING PROGRAMS**

9 **IT IS THEREFORE ORDERED** that defendants and their representatives, whether  
 10 acting directly or through any entity, corporation, subsidiary, division, director, manager,  
 11 member, affiliate, independent contractor, accountant, financial advisor, or other device, are  
 12 **hereby permanently restrained and enjoined from:**

- 13 **A.** Advertising, marketing, promoting, offering for sale, or selling any business coaching  
 14 program; and
- 15 **B.** Assisting others engaged in advertising, marketing, promoting, offering for sale, or  
 16 selling any business coaching program.

17 **II.**

18 **PROHIBITED MISREPRESENTATIONS AND OTHER CONDUCT PROHIBITIONS**

19 **IT IS FURTHER ORDERED** that defendants and their representatives, whether acting  
 20 directly or through any entity, corporation, subsidiary, division, director, manager, member,  
 21 affiliate, independent contractor, accountant, financial advisor, or other device, are **hereby**  
 22 **permanently restrained and enjoined from:**

- 23 **A.** Making, or assisting others in making, directly or by implication, any false or misleading  
 24 statement or representation of material fact, including, but not limited to, any false or  
 25 misleading statement that defendants or any other individual or entity will provide a  
 refund to consumers who request one within a specified time period;

1 B. Failing to disclose or to disclose adequately to consumers material aspects of any refund  
2 policy; and

3 C. Requiring consumers to sign a non-disparagement agreement as a condition of receiving  
4 a refund.

5  
6 **III.**

7 **PROHIBITIONS AGAINST DECEPTIVE AND ABUSIVE TELEMARKETING  
8 PRACTICES**

9 **IT IS FURTHER ORDERED** that, in connection with telemarketing, defendants, and  
10 their representatives, whether acting directly or through any entity, corporation, subsidiary,  
11 division, director, manager, member, affiliate, independent contractor, accountant, financial  
12 advisor, or other device, **are hereby permanently restrained and enjoined from** engaging in  
13 or causing or assisting other persons to engage in, violations of any provision of the TSR,  
including, but not limited to, the following:

14 A. Misrepresenting, directly or by implication, in the sale of goods or services, any material  
15 aspect of the performance, efficacy, nature or essential characteristics of their products  
16 and services, in violation of Section 310.3(a)(2)(iii) of the TSR, 16 C.F.R. §  
17 310.3(a)(2)(iii);

18 B. Failing to disclose or to disclose adequately, in a clear and conspicuous manner, all  
19 material terms and conditions of any refund policy, in violation of Section 310.3(a)(1)(iii)  
20 of the TSR, 16 C.F.R. § 310.3(a)(1)(iii), including that consumers must request a refund  
21 within a specified time period after purchase;

22 C. Misrepresenting, directly or by implication, material aspects of the nature and terms of  
23 any refund policy in violation of Section 310.3(a)(2)(iv) of the TSR, 16 C.F.R. §  
24 310.3(a)(2)(iv), including that they will provide refunds to consumers who request one  
25 within a specified time period;

1 **D.** Initiating, or causing others to initiate, outbound telephone calls to telephone numbers on  
2 the National Do Not Call Registry (the “DNC Registry”) in violation of Section  
3 310.4(b)(1)(iii)(B) of the TSR, 16 C.F.R. § 310.4(b)(1)(iii)(B), unless

4 1. the seller has obtained the express agreement, in writing, of such person to  
5 place calls to that person. Such written agreement shall clearly evidence such  
6 person’s authorization that calls made by or on behalf of a specific party may  
7 be placed to that person, and shall include the telephone number to which the  
8 calls may be placed and the signature of that person; or

9 2. the seller has an established business relationship with such person and that  
10 person has not previously stated that he or she does not wish to receive  
11 outbound telemarketing calls made by or on behalf of the defendant or any  
12 other individual or entity; and

13 **E.** Calling numbers on the DNC Registry without paying the annual fee necessary to access  
14 the list of numbers on the DNC Registry in violation of Section 310.8 of the TSR, 16  
15 C.F.R. § 310.8.

16  
17 **IV.**  
**COOPERATION PROVISION**

18 **IT IS FURTHER ORDERED** that the settling defendants shall, in connection with this  
19 action or any subsequent investigations related to, or associated with, the transactions or the  
20 occurrences that are the subject of the complaint, cooperate in good faith with the FTC and any  
21 other governmental agency or entity, and appear at such places and times as the FTC or any other  
22 governmental agency or entity shall reasonably request, after written notice, for interviews,  
23 conferences, pretrial discovery, review of documents, and for such other matters as may be  
24 reasonably requested by the FTC or any other governmental agency or entity. If requested in  
25 writing by the FTC or any other governmental agency or entity, Settling defendants shall appear



1 and provide truthful testimony in any trial, deposition, or other proceeding related to, or  
2 associated with, the transactions or the occurrences that are the subject of the complaint, without  
3 the service of a subpoena upon them.

4  
5 **V.**  
6 **MONETARY RELIEF**

7 **IT IS FURTHER ORDERED** that judgment is hereby entered in favor of the  
8 commission and against defendants, jointly and severally with all other defendants found liable  
9 in this case, in the amount of one hundred thirty million dollars (\$130,000,000) as equitable  
10 monetary relief for consumer injury; provided, however, that subject to the provisions of Section  
11 VI, this judgment shall be suspended upon the corporate defendant's completion of the  
12 requirements stated in subsections A and B of this section.

13 Judgment is further entered in favor of the commission and against the relief defendant in  
14 the amount of six hundred seventy-nine thousand, four hundred fifty-four dollars and eighty-one  
15 cents (\$679,454.81); provided, however, that subject to the provisions of Section VI, this  
16 judgment shall be suspended.

17 **A.** Effective upon the entry of this order, the corporate defendant shall surrender to the FTC  
18 all control, title, dominion, and interest in the following assets:

- 19 1. All assets of the corporate defendant;
- 20 2. All funds of the corporate defendant in the possession of the receiver.

21 **B.** To effect the surrender of the funds identified in subsection V.A.2, the court directs that  
22 the entities holding the funds or their successors shall, within ten (10) business days of  
23 the date of entry of this order, remit the funds to the commission by certified check(s) or  
24 other guaranteed funds payable to the FTC, Financial Management Office, or by wire  
25 transfer in accordance with directions provided by counsel for the commission. To the  
extent any identified nonparty cannot comply with this subsection without the assistance

1 of the corporate defendant, such party must, within three (3) business days of receiving  
2 this order, notify the corporate defendant and counsel for the commission of its inability  
3 to comply. Such notification shall specify the actions by the corporate defendant that are  
4 necessary to comply with this order. The corporate defendant shall immediately  
5 complete any action necessary to facilitate the identified nonparty's ability to timely  
6 comply with this subsection, and the failure of corporate defendant to complete such  
7 action within ten (10) days shall be deemed a violation of the order and interest at the rate  
8 prescribed in 28 U.S.C. § 1961(a) shall immediately begin to accrue.

9 **C.** In the event of default on any obligation to make payment under this order, interest,  
10 computed pursuant to 28 U.S.C. § 1961(a), shall accrue from the date of default to the  
11 date of payment. In the event such default continues for ten (10) calendar days beyond  
12 the date the payment is due, the entire amount of the judgment, less any amounts  
13 previously paid pursuant to this order, together with interest, shall immediately become  
14 due and payable. The corporate defendant shall be liable for all payments required by  
15 this order and any interest on such payments.

16 **D.** All funds paid pursuant to this order shall be deposited into a fund administered by the  
17 commission or its agents to be used for equitable relief, including, but not limited to,  
18 redress to consumers, and any attendant expenses for the administration of such equitable  
19 relief. In the event that direct redress to consumers is wholly or partially impracticable or  
20 funds remain after the redress is completed, the commission may apply any remaining  
21 funds for such other equitable relief (including consumer information remedies) as it  
22 determines to be reasonably related to the defendants' practices alleged in the complaint.  
23 Any funds not used for such equitable relief shall be deposited to the United States  
24 Treasury as disgorgement. The corporate defendant shall have no right to challenge the  
25 commission's choice of remedies or the manner of distribution under this subsection.

1 E. No portion of any payment under the judgment herein shall be deemed a payment of any  
2 fine, penalty, or punitive assessment.

3 F. The corporate defendant relinquishes all dominion, control, and title to the funds paid to  
4 the fullest extent permitted by law. The corporate defendant shall make no claim to or  
5 demand for return of the funds, directly or indirectly, through counsel or otherwise.

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

14 H. In accordance with 31 U.S.C. § 7701, the corporate defendant is hereby required, unless  
15 it has done so already, to furnish to the commission its taxpayer identifying number,  
16 which shall be used for the purposes of collecting and reporting on any delinquent  
17 amount arising out of the corporate defendant's relationship with the government.

18 I. The corporate defendant agrees that it will not, whether acting directly or through any  
19 corporation, partnership, subsidiary, division, agent, or other device, submit to any  
20 federal or state tax authority any return, amended return, or other official document that  
21 takes a deduction for, or seeks a tax refund or other favorable treatment for, any payment  
22 made by the corporate defendant pursuant to this order.

23  
24 **VI.**  
**RIGHT TO REOPEN**

25 **IT IS FURTHER ORDERED** that:

1       **A.** The commission’s agreement to, and the court’s approval of, this order are expressly  
2       premiered upon the truthfulness, accuracy, and completeness of the settling defendants’  
3       financial statements dated March 11, 2011, April 14, 2011, May 1, 2012 and May 25,  
4       2012 (“financial statements”), all of which the settling defendants assert are truthful,  
5       accurate, and complete. The settling defendants and the commission stipulate that the  
6       settling defendants’ financial statements provide the basis for the monetary judgment in  
7       Section V of this order and that the commission has relied on the truthfulness, accuracy,  
8       and completeness of the settling defendants’ financial statements.

9       **B.** If, upon motion by the commission, this court finds that the settling defendants have: (1)  
10       materially misstated in their financial statements the value of any asset; (2) made any  
11       material misrepresentation or omitted material information concerning their financial  
12       condition by failing to disclose any asset that should have been disclosed in their  
13       financial statements; or (3) made any other material misstatement or omission in their  
14       financial statements, the court shall terminate the suspension of the monetary judgment  
15       entered in Section V. The court, without further adjudication, shall enter a modified  
16       judgment holding defendants liable to the commission in the amount of one hundred  
17       thirty million dollars (\$130,000,000), and the relief defendant liable in the amount of six  
18       hundred seventy-nine thousand, four hundred fifty-four dollars and eighty-one cents  
19       (\$679,454.81) for equitable monetary relief, less any amounts turned over to the FTC  
20       pursuant to Section V of this order. Upon such reinstatement of the monetary judgment,  
21       the court shall make an express determination that the judgment shall become  
22       immediately due and payable by the settling defendants and the commission shall be  
23       entitled to interest computed from the day of entry of this order at the rate prescribed  
24       under 28 U.S.C. § 1961, as amended, on the unpaid balance. The commission shall be  
25

1 permitted to execute on the judgment immediately after the suspension is lifted and  
2 engage in discovery in aid of execution.

3 C. The settling defendants acknowledge and agree that: (1) this monetary judgment is  
4 equitable monetary relief, solely remedial in nature, and not a fine, penalty, punitive  
5 assessment, or forfeiture; (2) any proceedings instituted under this section would be in  
6 addition to, and not in lieu of, any other civil or criminal remedies as may be provided by  
7 law, including any other proceedings that the FTC may initiate to enforce this order; and  
8 (3) all money paid to satisfy the monetary judgment is irrevocably paid for purposes of  
9 settlement between the parties.

10 D. Should this order be modified pursuant to this section, this order, in all other respects,  
11 shall remain in full force and effect unless otherwise ordered by the court.

12  
13 **VII.**

14 **PROHIBITION ON RELEASE OF CUSTOMER INFORMATION OR  
15 CUSTOMER LISTS**

16 **IT IS FURTHER ORDERED** that the defendants and their representatives, whether  
17 acting directly or through any corporation, partnership, subsidiary, division, agent, or other  
18 device, are permanently restrained and enjoined from:

- 19 A. Disclosing, using, or benefitting from customer information, including the name, address,  
20 telephone number, e-mail address, social security number, other identifying information,  
21 or any data that enables access to a customer's account (including a credit card, bank  
22 account, or other financial account), of any person that the defendants obtained prior to  
23 entry of this order in connection with the advertisement, marketing, promotion, offering  
24 for sale, or sale of any business coaching program; and  
25 B. Failing to dispose of such customer information in all forms in their possession, custody,  
or control within thirty (30) days after entry of this order. Disposal shall be by means

1 that protect against unauthorized access to the customer information, such as by burning,  
2 pulverizing, or shredding any papers, and by erasing or destroying any electronic media,  
3 to ensure that the customer information cannot practicably be read or reconstructed.

4 *Provided, however,* that customer information need not be disposed of if currently under the  
5 control of the commission or the court-appointed receiver. Further, such information may be  
6 disclosed, to the extent requested by a government agency or required by a law, regulation, or  
7 court order.

8  
9 **VIII.**  
**LIFTING OF ASSET FREEZE**

10 **IT IS FURTHER ORDERED** that the freeze of the settling defendants' assets set forth  
11 in the preliminary injunction, entered by this court on March 25, 2011, shall be lifted to the  
12 extent necessary to turn over the settling defendants' assets as required by Section V of this  
13 order.

14  
15 **IX.**  
**APPOINTMENT OF RECEIVER TO WIND DOWN**  
**CORPORATE DEFENDANT AND LIQUIDATE ASSETS**

16  
17 **IT IS FURTHER ORDERED** that Robb Evans & Associates, LLC, the receiver  
18 appointed by prior orders of this court, is hereby appointed receiver for the purpose of taking the  
19 necessary steps to wind down the business of the corporate defendant, liquidate its assets, and  
20 pay any net proceeds to the FTC to satisfy the monetary judgment in this order. In carrying out  
21 these duties, the receiver shall be the agent of this court, shall be accountable directly to this  
22 court, and is authorized and directed to:

- 23 **A.** Take any and all steps that the receiver concludes are appropriate to wind down the  
24 corporate defendant;  
25

- 1     **B.** Continue to exercise full control over the Corporate Defendants and continue to collect,  
2     marshal, and take custody, control, and possession of all the funds, property, premises,  
3     accounts, documents, mail, and other assets of, or in the possession or under the control  
4     of the Corporate Defendants, wherever situated, the income and profits therefrom, and all  
5     sums of money now or hereafter due or owing to the Corporate Defendants, with full  
6     power to collect, receive, and take possession of all goods, chattels, rights, credits,  
7     monies, effects, lands, leases, books and records, limited partnership records, work  
8     papers, and records of accounts, including computer-maintained information, contracts,  
9     financial records, monies on hand in banks and other financial institutions, and other  
10    papers and documents of other individuals, partnerships, or corporations whose interests  
11    are now held by or under the direction, possession, custody, or control of the Corporate  
12    Defendants (“Receivership Estate”);
- 13    **C.** Continue to have full control over the management and personnel of the Corporate  
14    Defendants, including the authority to remove, as the receiver deems necessary or  
15    advisable, any director, officer, independent contractor, employee, or agent of the  
16    defendant from control of, management of, or participation in, the affairs of this  
17    defendant;
- 18    **D.** Take all steps necessary or advisable, including issuing subpoenas, to locate and liquidate  
19    all other assets of the Corporate Defendants, cancel the Corporate Defendants’ contracts,  
20    collect on amounts owed to the Corporate Defendants, and take such other steps as may  
21    be necessary to wind-down, terminate, and dissolve the Corporate Defendants efficiently;
- 22    **E.** Take all steps necessary or advisable, including issuing subpoenas, to identify the name,  
23    address, telephone number, date of purchase, program or product purchased, total amount  
24    paid, amount of any full or partial refund or chargeback, and payment information for  
25

1 consumers who were charged by the corporate defendant, and provide the FTC, upon  
2 request, with any customer records or other business records of the corporate defendant;

3 **F.** Make payments and disbursements from the receivership estate that are necessary or  
4 advisable for carrying out the directions of, or exercising the authority granted by, this  
5 order. The receiver shall apply to the court for prior approval of any payment of any debt  
6 or obligation incurred by the corporate defendant prior to the date of entry of the  
7 temporary restraining order in this action, except payments that the receiver deems  
8 necessary or advisable to secure and liquidate assets of the corporate defendant, such as  
9 rental payments or payment of liens;

10 **G.** Continue to perform all acts necessary or advisable to complete an accounting of the  
11 receivership assets, and prevent unauthorized transfer, withdrawal, or misapplication of  
12 assets;

13 **H.** Continue to maintain accurate records of all receipts and expenditures that the firm makes  
14 as receiver;

15 **I.** Enter into contracts and purchase insurance as advisable or necessary;

16 **J.** Continue to defend, compromise, adjust, or otherwise dispose of any or all actions or  
17 proceedings instituted in the past or in the future against the receiver in the firm's role as  
18 receiver, or against the corporate defendant, as the receiver deems necessary and  
19 advisable to carry out the receiver's mandate under this order;

20 **K.** Continue to institute, compromise, adjust, appear in, intervene in, or become party-to  
21 such actions or proceedings in state, federal, or foreign courts or arbitration proceedings  
22 as the receiver deems necessary and advisable to carry out the receiver's mandate under  
23 this order;



1 L. Continue to maintain bank accounts created as designated depositories for funds of the  
2 corporate defendant, and make all payments and disbursements from the receivership  
3 estate from such an account;

4 M. Continue to perform all incidental acts that the receiver deems to be advisable or  
5 necessary, which includes retaining, hiring, or dismissing any employees, independent  
6 contractors, or agents;

7 N. Continue to cooperate with reasonable requests for information or assistance from any  
8 state or federal law enforcement agency;

9 O. Dispose of, or arrange for the disposal of, the records of the corporate defendant no later  
10 than six months after the court's approval of the receiver's final report as to the  
11 receivership estate, except that:

- 12 1. to the extent that such records are reasonably available, the receiver shall arrange  
13 for records sufficient to ascertain the funds that an individual consumer paid to  
14 the corporate defendant and any refunds provided to individual consumers, to be  
15 retained for a minimum of one year from the entry of this order, and
- 16 2. if state or local law regulating the corporate defendant's business requires the  
17 retention of particular records for a specified period, the receiver shall arrange for  
18 such records to be disposed of after the specified period has expired.

19 To safeguard the privacy of consumers, records containing personal financial information  
20 shall be shredded, incinerated, or otherwise disposed of in a secure manner. For records  
21 that must be retained, the receiver may elect to retain records in their original form or to  
22 retain photographic or electronic copies;

23 P. Perform all acts necessary to protect, conserve, preserve, and prevent waste or dissipation  
24 of the corporate defendant's assets until their sale;

25 Q. Sell the corporate defendant's assets without further order of the court;

1 R. Enter into agreements in connection with the reasonable and necessary performance of  
2 the receiver's duty to sell the corporate defendant's assets, including, but not limited to,  
3 the retention of assistants, agents, or other professionals to assist in the sale of these  
4 assets; and

5 S. Distribute to the commission, without further order of the court, the funds received from  
6 the sale of the corporate defendant's assets.

7  
8 **X.**  
**COMPENSATION OF RECEIVER**

9 **IT IS FURTHER ORDERED** that the receiver and all personnel hired by the receiver,  
10 including counsel to the receiver and accountants, are entitled to reasonable compensation for the  
11 performance of duties pursuant to this order from the assets now held by, in the possession or  
12 control of, or which may be received by, the corporate defendant. The receiver shall apply to the  
13 court for approval of specific amounts of compensation and expenses, and must not increase the  
14 hourly rates used as the bases for such fee applications without prior approval of the court.

15  
16 **XI.**  
**RECEIVER'S FINAL REPORT AND DISBURSEMENT**

17 **IT IS FURTHER ORDERED** that:

18 A. The receiver shall, as directed in Section V of this order, liquidate the assets of the  
19 corporate defendant as soon as practicable. No later than sixty (60) days from the date of  
20 the entry of this order, the receiver shall file and serve on the parties a report (the "final  
21 report") to the court that details the steps taken to dissolve the receivership estate. The  
22 final report must include an accounting of the receivership estate's finances and total  
23 assets and a description of what other actions, if any, must be taken to wind down the  
24 corporate defendant.

1 **B.** The receiver shall mail copies of the final report to all known creditors of the corporate  
2 defendant with a notice stating that any objections to paying any assets of the corporate  
3 defendant to satisfy the receiver's costs and expenses and the monetary judgment set  
4 forth in this order must be submitted to the court and served by mail upon the receiver  
5 and the parties within thirty (30) days of the mailing of the final report.

6 **C.** No later than thirty (30) days after submission of the final report, the receiver shall file an  
7 application for payment of compensation and expenses associated with his performance  
8 of his duties as receiver.

9 **D.** The court will review the final report and any objections to the report and, absent a valid  
10 objection, will issue an order directing that the receiver:

- 11 1. pay the reasonable costs and expenses of administering the receivership estate,  
12 including compensation of the receiver and the receiver's personnel authorized by  
13 Section X of this order or other orders of this court and the actual out-of-pocket  
14 costs incurred by the receiver in carrying out his duties; and
- 15 2. pay all remaining funds to the FTC or its designated agent to reduce the monetary  
16 judgment in Section V.

17 **E.** If subsequent action (such as the completion of tax returns or further actions to recover  
18 funds for the receivership estate) is appropriate, the receiver shall file an additional report  
19 (a "supplemental report") describing the subsequent action and a subsequent application  
20 for the payment of fees and expenses related to the subsequent action.

21 **F.** With court approval, the receiver may hold back funds for a specified period as a reserve  
22 to cover additional fees and costs related to actions to be addressed in a supplemental  
23 report. If the receiver does not make a supplemental application for fees and expenses  
24 within the specified period, or if funds remain in the reserve fund after the payment of  
25 fees and expenses approved by the court in response to such a supplemental application,

1 all funds in the reserve funds shall be immediately paid to the FTC or its designated  
2 agent.

3  
4 **XII.**  
**ORDER ACKNOWLEDGMENTS**

5 **IT IS FURTHER ORDERED** that the settling defendants obtain acknowledgments of  
6 receipt of this order:

- 7 **A.** Within seven (7) days of entry of this order, each settling defendant must submit to the  
8 commission an acknowledgment of receipt of this order sworn under penalty of perjury.
- 9 **B.** For five (5) years after entry of this order, Mr. Zelig for any business that he, individually  
10 or collectively with any other defendant named in the complaint, is the majority owner or  
11 directly or indirectly controls, and Zyzac, must deliver a copy of this order to: (1) all  
12 principals, officers, directors, and managers; (2) all employees, agents, and  
13 representatives who participate in telemarketing; and (3) any business entity resulting  
14 from any change in structure as set forth in XIII below. Delivery must occur within  
15 seven (7) days of entry of this order for current personnel. To all others, delivery must  
16 occur before they assume their responsibilities.
- 17 **C.** From each individual or entity to which a defendant delivered a copy of this order, that  
18 defendant must obtain, within thirty (30) days, a signed and dated acknowledgement of  
19 receipt of this order.

20  
21 **XIII.**  
**COMPLIANCE REPORTING**

22 **IT IS FURTHER ORDERED** that the defendants make timely submissions to the  
23 commission:  
24  
25

1           **A.** One (1) year after entry of this order, the corporate defendant must submit a  
2           compliance report, sworn under penalty of perjury.

3                 **1.** Zyzac must: (a) designate at least one telephone number and an e-mail,  
4                 physical, and postal address as points of contact, which representatives of the  
5                 commission may use to communicate with Zyzac; (b) identify all of Zyzac's  
6                 businesses by all of their names, telephone numbers, and physical, postal,  
7                 email, and Internet addresses; (c) describe the activities of each business,  
8                 including the products and services offered, the means of advertising,  
9                 marketing, and sales, and the involvement of any other defendant (which the  
10                individual defendant must describe if he knows or should know due to his  
11                own involvement); (d) describe in detail whether and how that defendant is in  
12                compliance with each section of this order; and (e) provide a copy of each  
13                order acknowledgment obtained pursuant to this order, unless previously  
14                submitted to the commission;

15               **2.** Additionally, Mr. Zelig must: (a) identify all telephone numbers and all e-  
16                mail, Internet, physical, and postal addresses, including all residences; (b)  
17                identify all titles and roles in all business activities, including any business for  
18                which he performs services whether as an employee or otherwise and any  
19                entity in which he has any ownership interest; and (c) describe in detail his  
20                involvement in each such business, including title, role, responsibilities,  
21                participation, authority, control, and any ownership.

22           **B.** For ten (10) years following entry of this order, the corporate defendant must submit  
23           a compliance notice, sworn under penalty of perjury, within fourteen (14) days of any  
24           change in the following:  
25

1           **1.** Zyzac must report any change in: (a) any designated point of contact; or (b)  
2           the structure of the corporate defendant or any entity that defendant has any  
3           ownership interest in or directly or indirectly controls that may affect  
4           compliance obligations arising under this order, including: creation, merger,  
5           sale, or dissolution of the entity or any subsidiary, parent, or affiliate that  
6           engages in any acts or practices subject to this order.

7           **2.** Additionally, Mr. Zelig must report any change in: (a) name, including  
8           aliases or fictitious names, or residence address; or (b) title or role in any  
9           business activity, including any business for which he performs services  
10          whether as an employee or otherwise and any entity in which he has any  
11          ownership interest, and identify its name, physical address, and Internet  
12          address, if any.

13          **C.** Each defendant must submit to the commission notice of the filing of any bankruptcy  
14          petition, insolvency proceeding, or any similar proceeding by or against such  
15          defendant within fourteen (14) days of its filing.

16          **D.** Any submission to the commission required by this order to be sworn under penalty  
17          of perjury must be true and accurate and comply with 18 U.S.C. § 1746, such as by  
18          concluding: “I declare under penalty of perjury under the laws of the United States of  
19          America that the foregoing is true and correct. Executed on: \_\_\_\_\_” and supplying  
20          the date, signatory’s full name, title (if applicable), and signature.

21          **E.** Unless otherwise directed by a commission representative in writing, all submissions  
22          to the commission pursuant to this order must be e-mailed to DEbrief@ftc.gov or sent  
23          by overnight courier (not the U.S. Postal Service) to: Associate Director for  
24          Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600  
25          Pennsylvania Avenue NW, Washington, DC 20580. The subject line must begin:

1           FTC v. Christopher M. Zelig, Zyzac Commerce Solutions, Inc. and Curva, LLC  
2           (X110017).

3  
4                                 **XIV.**  
5                                 **RECORDKEEPING**

6           **IT IS FURTHER ORDERED** that the defendants must create certain records for ten  
7 (10) years after entry of this order, and retain each such record for five (5) years. Specifically,  
8 for any business in which the corporate defendant or the individual defendant, individually or  
9 collectively with any other defendant named in the complaint, is a majority owner or directly or  
indirectly controls, must maintain the following records:

- 10           **A.** Accounting records showing the revenues from all goods or services sold, all costs  
11           incurred in generating those revenues, and the resulting net profit or loss;
- 12           **B.** Personnel records showing, for each person providing services, whether as an employee  
13           or otherwise, that person's: name, addresses, and telephone numbers; job title or  
14           position; dates of service; and, if applicable, the reason for termination;
- 15           **C.** Customer files showing the names, addresses, telephone numbers, dollar amounts paid,  
16           and the quantity and description of goods or services purchased;
- 17           **D.** Complaints and refund requests, whether received directly or indirectly, such as through a  
18           third party, and any response;
- 19           **E.** All records necessary to demonstrate full compliance with each provision of this order,  
20           including all submissions to the commission; and
- 21           **F.** A copy of each advertisement or other marketing material.
- 22  
23  
24  
25

**XV.  
COMPLIANCE MONITORING**

**IT IS FURTHER ORDERED** that, for the purpose of monitoring the defendants' compliance with this order, including the financial representations upon which part of the judgment was suspended and any failure to transfer any assets as required by this order:

- A. Within fourteen (14) days of receipt of a written request from a representative of the commission, each defendant must: submit additional compliance reports or other requested information, which must be sworn under penalty of perjury; appear for depositions; and produce documents, for inspection and copying. The commission is also authorized to obtain discovery, without further leave of court, using any of the procedures prescribed by Federal Rules of Civil Procedure 29, 30 (including telephonic depositions), 31, 33, 34, 36, 45, and 69, provided that the defendants, after attempting to resolve a dispute without court action and for good cause shown, may file a motion with this court seeking an order including one or more of the protections set forth in Rule 26(c).
- B. For matters concerning this order, the commission is authorized to communicate directly with each defendant. The defendants must permit representatives of the commission to interview any employee or other person affiliated with any defendant who has agreed to such an interview. The person interviewed may have counsel present.
- C. The commission may use all other lawful means, including posing, through its representatives, as consumers, suppliers, or other individuals or entities, to the defendants or any individual or entity affiliated with the defendants, without the necessity of identification or prior notice. Nothing in this order limits the commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1.

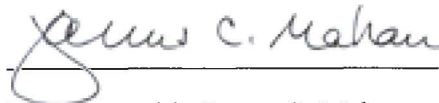


XVI.

RETENTION OF JURISDICTION

IT IS FURTHER ORDERED that this court retains jurisdiction of this matter for purposes of construction, modification, and enforcement of this order.

IT IS SO ORDERED:




The Honorable James C. Mahan

UNITED STATES DISTRICT JUDGE

DATED: December 20, 2012

1 The parties consent to the terms and conditions set forth above and consent to entry of this  
2 stipulated final judgment and order for permanent injunction and monetary relief at the court's  
3 convenience and without further notice to the parties.

4  
5 **FOR THE PLAINTIFF:**

6  
7  
8  Dated: 12/18/12

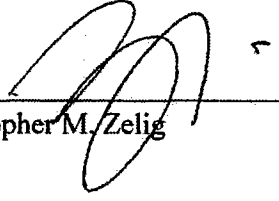
9 SHAMEKA L. GAINNEY  
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10 ROSS A. FELDMANN  
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11 Federal Trade commission  
600 Pennsylvania Avenue, NW, H-286  
12 Washington, DC 20580  
202-326-2570 (Gainey)  
13 202-326-2207 (Feldmann)  
14 202-326-3395 (Fax)

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17 333 Las Vegas Blvd. South, Suite 5000  
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19 702-388-6787 (Fax)

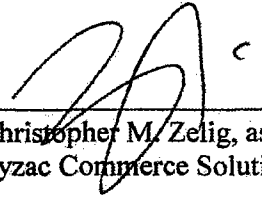
20 Attorneys for Plaintiff  
21 FEDERAL TRADE COMMISSION

22  
23  
24  
25

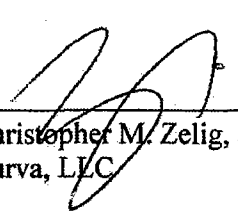
1 **FOR DEFENDANT ZELIG:**

2  
3  Dated: 7/27/2012  
4 Christopher M. Zelig

6 **FOR DEFENDANT ZYZAC:**

7  
8  Dated: 7/27/2012  
9 Christopher M. Zelig, as an officer of  
10 Zyzac Commerce Solutions, Inc.

13 **FOR DEFENDANT CURVA:**

14  
15  Dated: 7/27/2012  
16 Christopher M. Zelig, as sole officer of  
17 Curva, LLC

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**COUNSEL FOR DEFENDANTS:**

Steven Zelig /KS Dated: 7/31/12  
STEVEN ZELIG  
BRENTWOOD LEGAL SERVICES, LLP  
11601 SAN VICENTE BLVD., SUITE 1015  
LOS ANGELES, CA 90049

**Certificate of Service**

I hereby certify that on December 18, 2012, I electronically filed the foregoing document with the clerk of the court using CM/ECF, which will send a notice of electronic filing to all counsel of record.

/s/ Shameka L. Gainey  
Shameka L. Gainey