

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

<p>DISTRICT OF COLUMBIA,</p> <p style="text-align:center"><i>Plaintiff,</i></p> <p style="text-align:center">v.</p> <p>Curbio, Inc.</p> <p style="text-align:center"><i>Defendant.</i></p>	<p>Case No.: 2023 CAB 007090 Judge Ebony M. Scott</p>
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CONSENT JUDGMENT AND ORDER

This matter comes before the Court on the joint motion of Plaintiff the District of Columbia (“District”) and Defendant Curbio, Inc. (“Curbio”) (collectively, the “Parties”) pursuant to SCR-Civil 68-I, for entry of this Consent Order. The Parties agree to the relief set forth in this Consent Order, and the Court further finds that the entry of the Consent Order (“Order”) is in the public interest. This Consent Order, which shall become effective upon entry by the Court (“Effective Date”), resolves the District’s claims in this action against all Parties to this Consent Order.

PARTIES

1. The District, a municipal corporation, is the local government for the territory constituting the permanent seat of the government of the United States. The District is represented by and through its chief legal officer, the Attorney General for the District of Columbia (“OAG”). The Attorney General has general charge and conduct of all legal business of the District and all suits initiated by and against the District and is responsible for upholding the public interest. D.C. Code § 1-301.81(a)(1). The Attorney General has authority to enforce the District’s consumer protection laws, including the Consumer Protection Procedures Act (“CPPA”), D.C. Code §§ 28-3901, *et seq.*, pursuant to D.C. Code § 28-3909. The Attorney General has authority to enforce the

Abuse, Neglect and Financial Exploitation of Vulnerable Adults and the Elderly Act (“Financial Exploitation Act”), D.C. Code §§ 22-933.01 and 22-937, pursuant to D.C. Code § 22-937(a).

2. Defendant Curbio, a Delaware corporation, is a home improvement company that works with homeowners in the District to complete pre-sale improvements, and permits homeowners to delay payment for these improvements until the home is sold. Curbio is headquartered and has its principal place of business at 11325 Seven Locks Road, Suite 290, Potomac, MD 20854.

RECITALS

3. The District filed its Complaint in *District of Columbia v. Curbio, Inc.* on November 19, 2023, in the Superior Court for the District of Columbia.

4. The court has jurisdiction over this matter.

5. The District’s Complaint alleges that Curbio engaged in deceptive practices in violation of the District’s CPPA, including as set forth in D.C. Code § 28-3904(d), (e), (f), (j), (r), (dd), (hh), (ff), and that its practices violated the Financial Exploitation Act.

6. Curbio denies any and all allegations in the Complaint and denies that it has violated any law or engaged in any deceptive or unfair practices.

7. The parties wish to resolve this dispute amicably, without the time, cost, and inconvenience of litigation and so have agreed to the relief set forth in this Consent Order to fully resolve this matter.

8. In entering into this Consent Order, the parties are neither extinguishing any rights otherwise available to consumers, nor creating any right not otherwise available under the laws of the District of Columbia.

PAYMENT TERMS

9. Curbio shall pay a total payment of \$7,500,000 (the “Payment”) to the District to resolve the District’s claims in this matter. Of that total, \$2,580,000 (the “Consumer Payments”) will be distributed directly to consumers who contracted with Curbio for home improvement projects (excluding staging and inspection projects valued at \$10,000 or less) between Curbio’s inception and the filing of the District’s Complaint in this matter (the “Affected Consumers”). An additional \$920,000 of the Payment (the “Consumer Offsets”) shall be made in the form of a pro rata balance reduction for Affected Consumers who owe Curbio outstanding but as yet uncollected amounts. A final payment of \$4,000,000 will be paid to the District on or before October 15, 2025 (the “Final Payment”). The payments and offsets shall be made and distributed as follows:

- a. Consumer Payments. Within thirty (30) days of the Effective Date, Curbio shall attempt to notify each Affected Consumer that they are entitled to relief pursuant to this Order via letter, phone call, or email, as applicable, by utilizing all last known contact information in Curbio’s possession, custody or control. Curbio will directly distribute the Consumer Payments to each Affected Consumer who is successfully notified. Consumer Payments will be made in accordance with the individual restitution amounts specified in a spreadsheet (the “Claims Ledger”) created by the Parties. Each successful Consumer Payment will be logged by Curbio in the Claims Ledger, including the date on which the funds were transferred, or the check was deposited by the consumer. After one hundred and twenty (120) days, Curbio will provide OAG with an updated Claims Ledger and any undistributed portion of the \$2,580,000

Consumer Payments shall be remitted to the District according to payment instructions to be provided by OAG.

- b. Consumer Offsets. Within thirty (30) days of the Effective Date of this Consent Order, Curbio will notify each Affected Customer with an outstanding but as yet uncollected balance that they are entitled to a pro rata reduction in the amount owed to Curbio pursuant to this Order. Each Consumer Offset will be in accordance with the amount specified in the Claims Ledger, and shall total \$920,000. Curbio shall log the date and method by which each Affected Consumer was successfully notified of the Consumer Offset amount and modify any existing mechanics lien accordingly.
- c. Final Payment. The Final Payment in the amount of \$4,000,000 shall be paid on or before October 15, 2025, according to payment instructions to be provided by OAG. The District may use the Final Payment, and the remainder of any Consumer Payments not directly distributed by Curbio to Affected Consumers, for any lawful purposes, including, but not limited to, additional restitution to homeowners or homebuyers, attorneys' fees, and other costs of investigation and litigation, and/or may be placed in, or applied to, the District's restitution fund or litigation support fund, used to defray the costs of the inquiry leading hereto, or for other uses permitted by District law, at the sole discretion of the Attorney General for the District of Columbia.

10. Curbio agrees to cooperate with the District in obtaining any modification to the language of the payment terms needed to facilitate the administration of the District's payment under this section.

11. In the event that Curbio fails to make any of the required payments when due and such payment remains unpaid for fifteen (15) calendar days (a “Payment Default”), Curbio authorizes any attorney admitted to practice in the District to appear on its behalf before any court in the District or before any clerk, and to confess judgment against Curbio in favor of the District for the full \$7,500,000 less a credit for any payments received.

INJUNCTIVE TERMS

12. Within sixty (60) business days of the Effective Date, Curbio will begin consulting with the District of Columbia Department of Insurance, Securities, and Banking (“DISB”) to determine if it is required to have a lending license based on its activities in the District. If DISB determines that Curbio is required to have a lending license, then after exhausting any appeal process at Curbio’s option, Curbio shall follow DISB’s recommendation to obtain a lending license or shall otherwise modify its business practices to follow any DISB requirements.

13. Within fourteen (14) days of the Effective Date, Curbio will release any deeds of trust in the District of Columbia that have not yet been released.

14. Within sixty (60) business days of the Effective Date, Curbio will create a published process for resolving disputes concerning the adequacy and/or completion of work, which will include designating a salaried employee of Curbio to serve as a consumer advocate, and referring unresolved disputes between homeowners and Curbio to a third party consumer home improvement inspection and mediation company whose decision regarding the completion of work and related issues will be binding on Curbio and the homeowner.

15. Curbio represents and warrants that its standard home improvement contract no longer includes the following terms and covenants and that its home improvement contract in the District will not include such terms going forward:

- a. One-way fee-shifting of attorneys' fees to customers in the event of litigation concerning a breach of the contract; provided this will not prohibit Curbio from including, in its home improvement contract in the District, fee shifting in favor of the prevailing party;
- b. Provisions disclaiming timeliness of performance as a material term;
- c. Agreement that Curbio is not liable for defects not noticed by the consumer within thirty (30) days;
- d. Agreement disclaiming consumer reliance on marketing claims made by Curbio related to value, selling price, or days on the market;
- e. Charges upon cancellation for materials or services that have not been delivered;
- f. Waiver of a consumer's right to contest a mechanics' lien, if one is filed;
- g. Agreement that any improvements on the home by homeowner during the term of the home improvement contract constitutes a material breach of the contract;
- h. Agreement that any direct communications with subcontractors by the homeowner constitutes a material breach; provided that this Agreement will not limit Curbio's right to prohibit the homeowner from retaining such subcontractors for the completion of any work contemplated by the Curbio contract.
- i. Agreement that default occurs upon any customer breach, without regard to materiality; provided that this Agreement will not limit Curbio's right to treat material breaches as defaults, including, but not limited to, nonpayment, failure

to list the home on substantial completion as required by contract, or failure to act in good faith to list and sell the home.

16. Curbio represents and warrants that Curbio will not do the following in the District:
 - a. file deeds of trust in connection with a home improvement contract;
 - b. file mechanic's liens for work that has not been completed to the satisfaction of the consumer, subject to the dispute resolution procedures established pursuant to ¶14 of this Order;
 - c. file mechanic's liens that include claims for any funds not directly associated with home improvement labor and materials costs;
 - d. charge any undisclosed fees;
 - e. after exercising reasonable diligence to ensure that all subcontractors are properly licensed, knowingly use unlicensed subcontractors;
 - f. make the following representations (or equivalent representations) in its marketing materials or on its website distributed or posted after the Effective Date:
 - i. "No Risk. All Reward"
 - ii. "No interest, no fees"
 - iii. "No . . . hidden fees, interest charges, liens, premiums"
 - iv. "Renovates 65% faster than general contractors."
 - v. "Renovate in Weeks, Not Months."
 - vi. "50% faster than the national average."
 - vii. Properties sell "50% faster than homes sold as-is."

viii. That its subcontractors are “hand-picked and put through a rigorous vetting process;”

ix. Expected or average Return on Investment (ROI).

17. Curbio represents and warrants that it will make appropriate disclosures to consumers of any revenue-sharing arrangements with real estate agents or real estate brokerages.

18. Curbio represents and warrants that it will provide to homeowners a written contract with the detailed scope of services requested by the homeowner along with the associated cost. The price will be fixed for the services requested and can only be modified by a written change order mutually approved and signed by both the homeowner and Curbio. Curbio will also provide an estimate of the time required to complete the project once any required permits are received, and such estimate may be increased for any additional time related to: 1) changes in work scope mutually approved in writing by the homeowner and Curbio; 2) delays caused directly or indirectly by the homeowner; and 3) delays caused by weather or other force majeure events. In addition, Curbio will disclose to homeowners a reasonable estimate of the average number of change orders Curbio’s customers approve in the District and a reasonable estimate of the average percentage increase to the original cost and completion time estimates that change orders and delays add to projects in the District.

19. Within sixty (60) business days of the Effective Date, Curbio will review its business practices and make any modifications necessary, if any, to bring its business practices into compliance with the District of Columbia’s wage and hour laws: the Workplace Fraud Act (“WFA”), D.C. Code § 32-1331.01 *et seq.*, the District’s Minimum Wage Revision Act (“MWRA”), D.C. Code § 32-1001, *et seq.*, the Wage Payment and Collection Act (“WPCL”), D.C.

Code § 32-1301, *et seq.*, and the Sick and Safe Leave Act (“SSLA”), D.C. Code § 32-531.01, *et seq.*

- a. Curbio shall submit an annual report (“Report”) to the District, through the Office of the Attorney General, on the date upon which it is obligated to make the Final Payment to the District. The Report shall identify all subcontractors who performed work for Curbio in the District of Columbia during the previous twelve months and include a signed certification from Curbio and each subcontractor covenanting to compliance with the WFA, MWRA, WPCL, and SSLA.
- b. The Report shall identify all workers who performed construction work on behalf of Curbio through its subcontractors in the District of Columbia during the previous twelve months and include, to the best of Curbio’s knowledge after exercising reasonable diligence to collect such information:
 - i. the classification of each worker (e.g. employee or independent contractor);
 - ii. pay records for each worker for the covered period; and
 - iii. records of any leave accrued or used during the covered period.

RELEASES

20. Upon complete satisfaction of the full Payment amount, the District shall release Curbio from all claims that the Office of the Attorney General asserted, or could have asserted, under the D.C. Consumer Protection Procedures Act, D.C. Code §§ 28-3901 *et seq.* based on the conduct and time period alleged in the Complaint in this lawsuit.

21. Upon complete satisfaction of the full Payment amount, the District shall release Curbio from all claims that the Office of the Attorney General asserted, or could have asserted, under the Abuse, Neglect and Financial Exploitation of Vulnerable Adults and the Elderly Act, D.C. Code §§ 22-933.01 and 22-937 based on the conduct and time period alleged in the Complaint in this lawsuit.

22. Curbio shall release the District from all claims that Curbio raised, or could have raised, in this lawsuit.

ADDITIONAL TERMS

23. This Court retains jurisdiction of this Consent Order and the Parties for the purpose of enforcing this Consent Order and for the purpose of granting such additional relief as may be necessary and appropriate. The Parties may agree in writing, through their counsel, to an extension of any time period in this Consent Order without need for a new court order.

24. The Parties agree to take all reasonable steps necessary to effectuate the terms of this Consent Order, including, but not limited to, executing such other and further documents (including duplicate or replacement documents) to accomplish the goals of this Consent Order.

25. This Consent Order will not be admissible in any proceeding, except one to enforce the terms of this Consent Order or one in which one of the Parties elects to use this Consent Order as a defense to any claim.

26. Except as described herein, the Office of Attorney General warrants and represents that, to its knowledge, the District has not filed any other complaints, claims, charges, demands, petitions, or actions against Curbio, and/or its past or present officers, directors, shareholders, owners, subsidiaries, divisions, affiliates, joint ventures, insurers, reinsurers, predecessors, successors, assigns, agents, employees, attorneys and representatives, and all other persons and

entities acting by, through, under, or in concert with any of them or on their behalf (together, “Curbio Parties”), with any federal, state, or local agency or court or with any other forum.

27. The Office of Attorney General warrants and represents that, subject to Curbio’s prospective compliance with the requirements of the WFA, MWRA, WPCL, SSLA, and the terms of this Order, OAG will not file any complaints, claims, charges, demands, petitions, or actions against Curbio or any Curbio Parties, for any alleged failure to comply with the District’s wage and hour laws prior to the Effective Date.

28. This Consent Order may be executed in counterparts, which together shall constitute one agreement binding on the Parties. Counterparts may be delivered via electronic mail (including pdf or any electronic signature complying with the U.S. federal ESIGN Act of 2000, e.g., www.docusign.com) or other transmission method and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes.

29. This Order shall be construed in accordance with, and all disputes hereunder shall be controlled by, the laws of the District of Columbia without regard to its choice of law rules.

30. The terms of this Order shall not be construed against either Party as the drafter, under *contra proferentem* or any other doctrine. Each Party has had the opportunity to consult with counsel or other advisors and has either taken such counsel or has elected not to do so before signing this Order.

31. Unless otherwise specified in this Order, if any provision of this Order is held invalid, the Parties agree that the remainder of the Order which can be given effect shall remain in force.

32. Each Party represents, warrants, and covenants that: (i) execution, delivery and performance hereof has been duly authorized by all necessary corporate or government action and

shall not contravene any law or the provisions of any agreement; (ii) the individual(s) executing such was duly authorized to do so; and (iii) this Order is a legal, valid and binding agreement and enforceable in accordance with its terms.

33. All notices that are required to be given under this Order shall be in writing and shall be sent to the attention of the persons listed below, or to such other addresses or persons as each Party may designate by notice given in accordance with this section. Any such notice may be delivered by hand, by overnight courier, or by first class pre-paid letter, and shall be deemed to have been received: (i) by hand delivery, at the time of delivery; (ii) by overnight courier, on the succeeding business day; and (iii) by first class mail, two business days after the date of mailing. As a courtesy, when practicable, the Parties shall send a copy of any notice by email.

For the District:

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For Defendant Curbio:

Jeff Sim
Chief Financial Officer
Curbio, Inc.
11325 Seven Locks Road, Suite 290
Potomac, MD 20854

With a copy which shall not constitute service to:

Venable LLP
600 Massachusetts Avenue, N.W.
Washington, D.C. 20001
Attn: Alexander Koff and Nicholas DePalma
akoff@venable.com and nmdpalma@venable.com

34. This is the entire agreement between the District and Curbio and takes the place of any prior agreement, representation, or promise. This Order shall not be altered, amended, or modified by oral representation made before or after the Effective Date of this Order. The Parties may apply to the Court to modify this Consent Order by agreement at any time.

CONSENTED TO FOR PLAINTIFF DISTRICT OF COLUMBIA

BRIAN L. SCHWALB
Attorney General for the District of Columbia

JENNIFER C. JONES
Deputy Attorney General
Public Advocacy Division




ALICIA M. LENDON, Bar #1765057
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CONSENTED TO FOR DEFENDANTS CURBIO, INC.



JEFF SIM
Chief Financial Officer
Curbio, Inc.
11325 Seven Locks Road, Suite 290
Potomac, MD 20854

IT IS SO ORDERED, ADJUDGED, AND DECREED.

Date: _____

Judge Ebony M. Scott
Superior Court for the District of Columbia

For service via Odyssey:
All counsel of record