

FILED

THE STATE OF WASHINGTON
OFFICE OF THE INSURANCE COMMISSIONER 2014 NOV 3 A 9:40
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In the Matter of

DIGITAL LEASH, L.L.C. d/b/a/
PROTECTCELL, d/b/a www.protectcell.com;
FORTEGRA FINANCIAL CORPORATION;
LOTS INTERMEDIATE COMPANY; and
SCOTT McLAREN, ROBERT EMERY,
BRYAN FINNERTY and CHRISTOPHER P.
BEYERSDORFF,

Respondents

OIC ORDER NO. 14-0204

RESPONDENTS' OBJECTION TO OIC
ORDER TO CEASE AND DESIST;
DEMAND FOR HEARING; REQUEST
TO VACATE AND QUASH ORDER TO
CEASE AND DESIST, AND FOR
OTHER RELIEF

COME NOW DIGITAL LEASH, L.L.C. d/b/a/ PROTECTCELL, d/b/a www.protectcell.com; FORTEGRA FINANCIAL CORPORATION; LOTS INTERMEDIATE COMPANY; and SCOTT McLAREN, ROBERT EMERY, BRYAN FINNERTY and CHRISTOPHER P. BEYERSDORFF, (collectively, "Respondents"), by and through their attorney of record, and hereby file their OBJECTION TO OIC ORDER TO CEASE AND DESIST; DEMAND FOR HEARING; REQUEST TO VACATE AND QUASH ORDER TO CEASE AND DESIST, AND FOR OTHER RELIEF (referred to hereafter as "Demand") in the above Matter pursuant to RCW 48.04.010.

Respondents are aggrieved by the acts and threatened acts of the Insurance Commissioner and the Office of the Insurance Commissioner (together, OIC) and by the OIC's Order to Cease and Desist ("Order") and the OIC's allegations contained in the OIC's Order. Accordingly, Respondents' Demand is based on the following:

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Demand for Hearing, and Request
for Relief - 1

1. The Order to Cease and Desist issued by the Insurance Commissioner and the Office of the Insurance Commissioner to the Respondents, and the acts and threatened acts of the OIC against the Respondents expressed in the OIC's Order, are an attempt by the OIC to deprive Respondents of their property and property rights without due process in violation of the Constitution of the United States of America and of the Washington State Constitution.

2. The OIC does not have the authority to order the Respondents to cease and desist engaging in business activities that are not regulated under the Insurance Code of the State of Washington. Furthermore, whereas Respondents are engaging in lawful business activities in the State of Washington, the OIC is exceeding its authority by issuing its Order in this Matter seeking to restrain Respondents from carrying on their lawful business.

3. The OIC does not have jurisdiction over Respondents, individually or corporately, and, therefore, the OIC's Order and the acts and threatened acts of the OIC against the Respondents thereunder constitute a deprivation of Respondents' liberty and property in violation of the Due Process Clause of the Constitution of the United States of America and in violation of the Constitution and laws of the State of Washington.

4. The OIC's Order contains allegations that are untrue or unsupported as they purport to relate to the business activities of the Respondents; the OIC's Order also contains allegations of illegal acts conducted by Respondents based laws of the State of Washington referenced by the OIC that do not have any applicability or relevance to the business activities of the Respondents. Furthermore, the OIC has knowingly and intentionally made false allegations and accusations in the OIC's Order regarding Respondents disclosure of facts relating to the organizational structure of ProtectCell. By intentionally making these false accusations and publishing the Order, the OIC knew, or should have known, that these allegations and accusations set forth by the OIC in the Order were designed to cause, and have caused, personal, professional, and reputational harm

Objection to Cease and Desist,
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to Respondents. The acts and threatened acts of the OIC in this regard are intentional and without just cause and are continuing in nature and the OIC should be held accountable for the intentional harm the OIC has caused Respondents.

5. The OIC's Order is illegal and in violation of the Insurance Code of the State of Washington in that the OIC seeks to compel Respondents to comply with specific enforcement orders, demands, and directives of the OIC without any adjudicative or evidentiary hearing having been conducted by a duly-authorized judicial officer and without any findings in accordance with such legal proceedings. The OIC's acts and threatened acts against the Respondents in this regard are the unilateral and illegal acts of a state agency taken in violation of constitutional and procedural due process and in violation of and with disregard for Respondents' civil rights.

6. The OIC's Order is untimely and the above-referenced matter has been brought beyond the applicable limitation period for commencing such actions.

7. The OIC has been aware of Respondents and Respondents' business activities for a considerable period of time. Respondents have always replied to all the OIC's inquiries at such prior occasions and have acted in good faith in their dealings with the OIC to the point of engaging in personal meetings with the OIC to discuss all the issues raised by the OIC. The Respondents have repeatedly requested ongoing dialog with the OIC to resolve all differences, but the OIC has refused to continue. Rather, the OIC determined to initiate a proceeding against Respondents under an earlier OIC matter based on exactly the same allegations and accusations as set forth in the OIC's Order in this Matter. Respondents acted promptly then by responding to the OIC's previous action and again requested the opportunity to engage in good faith discussions with the OIC to resolve any issues relating to Respondents' business activities. The OIC has refused to act in good faith with the Respondents.

Objection to Cease and Desist,
Demand for Hearing, and Request
for Relief - 3

8. One or more of the Respondents holds a valid and active license issued by the Washington Office of the Insurance Commissioner, and, as such a licensee, shall be entitled to all the protections and privileges afforded under the laws of the State of Washington. Accordingly, pursuant to RCW 48.04.010(5), the Respondents request that this Matter, above-captioned, be presided over by an administrative law judge assigned under chapter 34.12. RCW.

9. The OIC's Order continues as a threat to the Respondents. In accordance with the provisions of RCW 48.04.020, the Respondents are entitled to a stay of the OIC's Order, and any action, directive, or demand taken or imposed, or threatened to be taken or imposed, by the OIC against the Respondents under the OIC's Order pending a hearing and final adjudication of this Matter.

WHEREFORE, Respondents seek and request the following:

1. That, in accordance with RCW 48.04.010(5), this Matter, above-captioned, be assigned to the Washington Office of Administrative Hearings and that this Matter be presided over by an administrative law judge assigned under chapter 34.12. RCW.

2. That a full evidentiary Hearing on this Matter be conducted in accordance with applicable provisions of Chapter 48.04, Revised Code of Washington and Chapter 34.05 Revised Code of Washington and that the OIC be put to its proof upon clear, cogent, and convincing evidence.

3. That the OIC's Order to Cease and Desist, and any action, directive, or demand taken or imposed, or threatened to be taken or imposed, by the OIC against the Respondents thereunder, be stayed pending a full evidentiary hearing and final adjudication in this Matter.

Objection to Cease and Desist,
Demand for Hearing, and Request
for Relief - 4

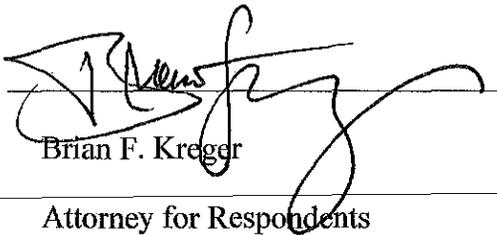
4. That the OIC's Order to Cease and Desist be vacated and quashed, and that such an order vacating and/or quashing the OIC's Order to Cease and Desist be entered by a duly-authorized hearing officer, administrative law judge, or other judicial officer or tribunal.

5. That the OIC be held accountable for the unlawful and untruthful allegations, accusations, and actions with respect to the OIC's Order to Cease and Desist, and that Respondents recover their costs and expenses incurred in defending this improper, illegal, untruthful, and unconstitutional action brought against the Respondents by the OIC.

6. That Respondents recover and receive such other and further relief as shall be requested and presented by the Respondents at the Hearing on this Matter.

DATED THIS 31st, day of October, 2014.

By:


Brian F. Kreger
Attorney for Respondents

WSBA No. 10670

CERTIFICATE OF SERVICE

I, Brian F. Kreger, under penalty of perjury under the laws of the State of Washington do hereby declare and certify that I personally served and caused to be delivered by Electronic (e-mail) Delivery and regular United States Postal Service Delivery, the foregoing Respondents' Objection to OIC Order to Cease and Desist, Demand for Hearing, Request to Vacate and Quash Order to Cease and Desist, and for Other Relief on the following parties or persons at the last known addresses given below:

Hearings Unit
Office of the Insurance Commissioner
5000 Capitol Boulevard
Tumwater, WA 98501

Mr. Darryl E. Colman
Office of the Insurance Commissioner
5000 Capitol Boulevard
Tumwater, WA 98501

Mailed and e-Mailed To:
Hearings Unit
Office of the Insurance Commissioner
P.O. Box 40255
Olympia, WA 98504-0255

Mailed and e-Mailed To:
Mr. Darryl E. Colman
Office of the Insurance Commissioner
P.O. Box 40255
Olympia, WA 98504-0255
DarrylC@oic.wa.gov

Attention: Kelly Cairns
KellyC@oic.wa.gov

Executed on this 3rd day of October, 2014 in Seattle, Washington.


Brian F. Kreger

**STATE OF WASHINGTON
OFFICE OF THE INSURANCE COMMISSIONER**

In the Matter of

DIGITAL LEASH, L.L.C.
d/b/a PROTECTCELL, d/b/a
www.protectcell.com; FORTEGRA
FINANCIAL CORPORATION; LOTS
INTERMEDIATE COMPANY; and
SCOTT McLAREN, ROBERT
EMERY, BRYAN FINNERTY and
CHRISTOPHER P. BEYERSDORFF;

Unauthorized Entities/Individuals.

Order No. 14-0204

ORDER TO CEASE AND
DESIST

Pursuant to RCW 48.02.080, RCW 48.15.020, RCW 48.15.023, RCW 48.17.063, and RCW 48.110.120, the Insurance Commissioner of the state of Washington ("Insurance Commissioner") orders the above-named parties, and their officers, directors, trustees, employees, agents, and affiliates to immediately cease and desist from:

- A. Engaging in or transacting the unauthorized business of insurance or acting as an unregistered service contract provider in the state of Washington;
- B. Seeking, pursuing and obtaining any insurance or service contract business in the state of Washington;
- C. Soliciting Washington residents to sell any insurance or service contract issued or to be issued by an unauthorized insurer or unregistered service contract provider;
- D. Soliciting Washington residents to induce them to purchase any insurance contract or service contract.

BASIS:

1. DIGITAL LEASH, L.L.C. d/b/a ProtectCELL ("Protect Cell") is a Florida Limited Liability Company with a principal place of business at 39500 High Pointe Blvd.,

ORDER TO CEASE AND DESIST
ORDER NO. 14-0204

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State of Washington
Office of Insurance Commissioner
Insurance 5000 Building
PO Box 40255
Olympia, WA 98504-0255

Suite 250, Novi, Michigan 48375. Protect Cell does business as www.protectcell.com, which is registered to BRYAN FINNERTY and DIGITAL LEASH.

2. Protect Cell has represented to the Insurance Commissioner that it is organized and owned as follows: that SCOTT MCLAREN ("McLaren") is Protect Cell's President; ROBERT EMERY ("Emery") is Protect Cell's COO, Manager, 47.50% owner, and a member; BRYAN FINNERTY ("Finnerty") is Protect Cell's CEO, 47.50% owner, and a member; and CHRISTOPHER P. BEYERSDORFF ("Beyersdorff") is Protect Cell's CFO and a member.

3. FORTEGRA FINANCIAL CORPORATION ("Fortegra") is a Delaware "insurance services" holding company headquartered in Jacksonville, Florida. On or about March 14, 2014, Fortegra filed its annual report with the United States Securities Exchange Commission ("SEC"), stating that Fortegra had acquired a 62.4% ownership interest of Protect Cell for \$20 million on or about December 31, 2012. According to the SEC filing, Fortegra also has an option to acquire the remaining 37.6% interest in Protect Cell after 2014. Fortegra holds Protect Cell through its wholly-owned subsidiary LOTS INTERMEDIATE COMPANY ("Lots"), a Delaware corporation. In Protect Cell's January 8, 2014, Florida Limited Liability Company Annual Report, Emery is listed as President and Beyersdorff, McLaren, and Finnerty are all listed as Vice Presidents of Protect Cell. Neither Fortegra nor Protect Cell disclosed these facts or the overall transaction to Insurance Commissioner.

4. Based on Fortegra's SEC filing, the ownership and management information set forth in Paragraph 2, above, pertains to Protect Cell up until December 31, 2012, and that set forth in Paragraph 3 pertains to Protect Cell thereafter.

5. The entities and individuals identified herein are not licensed or authorized to transact insurance in Washington, and they are not registered service contract providers in Washington.

6. Protect Cell has marketed, solicited, administered, and sold service contracts for cell phones and mobile devices, often styled as "membership plans," in Washington. These plans, and Protect Cell's marketing, promise to replace mobile electronic devices such as cell phones and tablets upon the contract or policy holder's request when the devices fail or suffer damage.

7. In particular, the Protect Cell website advertises a variety of cell phone and mobile device service contracts, claiming that "physical damage," "liquid damage," and "mechanical failure" are covered and that "ProtectCELL will be there to make it right" if such devices become damaged and need to be replaced. The website promises that "[w]ith

ProtectCELL DEVICE, we'll get you another device fast—no matter how you damaged it” and that customers will be “laid back about your mobile device turning to toast because you know ProtectCELL COMPLETE will replace it fast, no matter what.”

8. These contracts constitute both a service contract under RCW Chapter 48.110 et seq. and also a contract to indemnify another or pay a specified amount upon determinable contingencies -- “insurance” under RCW 48.01.040. Under many of the service contracts referred to herein, Protect Cell is the obligor. In the others, Protect Cell is the administrator. Protect Cell has paid no Washington premium taxes for any of the contracts it has sold.

9. Protect Cell has also marketed, solicited, and/or transacted the sale of “ID theft support powered by LifeLock” contracts, which provide identity theft insurance through LifeLock, Inc., a company based in Tempe, Arizona. LifeLock, Inc. is not licensed or authorized to solicit, sell, or transact insurance in Washington.

10. Protect Cell’s actions described herein violate Insurance Code provisions that include RCW 48.05.030 (certificate of authority required), RCW 48.15.020 (solicitation by unauthorized insurer prohibited), RCW 48.17.060 (license required), RCW 48.110.030 (service contract provider registration required), and RCW 48.110.140 (violation of Chapter 48.110 RCW is a violation of Washington’s Consumer Protection Act, Chapter 19.86 RCW). Protect Cell has also violated RCW 48.14.020 by failing to timely pay 2% premium taxes.

11. As officers and owners of Protect Cell, McLaren, Emery, Finnerty, and Beyersdorff are legally responsible for Protect Cell’s violations of the Insurance Code.

IT IS FURTHER ORDERED That Protect Cell, McLaren, Emery, Finnerty, and Beyersdorff, within ten (10) days of the date of this Order, shall (1) provide written notice to each Washington resident to whom Protect Cell, McLaren, Emery, Finnerty, and Beyersdorff have sold a service or insurance contract, advising them of their right to void their service contract and receive a refund of monies paid for it, (2) mail a copy of this Order to each dealer or distributor who sells or assists in selling Protect Cell service contracts in Washington, (3) provide the Insurance Commissioner with a list of all Washington purchasers’ names, addresses, and telephone numbers, to the extent not done so already, and (4) report to the Insurance Commissioner all premiums collected or charged for policies they sold covering Washington risks, to the extent not done so already.

IT IS FURTHER ORDERED That nothing herein shall prevent Protect Cell, McLaren, Emery, Finnerty, and Beyersdorff from fulfilling the terms of contracts formed prior to the effective date of this Order pursuant to RCW 48.15.020(2)(b), from providing a refund when

requested by a Washington consumer pursuant to RCW 48.15.030, or, upon request of the Insurance Commissioner, further ordering the replacement of Protect Cell Washington contracts with an authorized insurer pursuant to RCW 48.15.020(3).

Any violation of the terms of this Order by Protect Cell, McLaren, Emery, Finnerty, and Beyersdorff, or their officers, directors, agents, or employees, or affiliates, will render the violator(s) subject to the full penalties authorized by RCW 48.02.080, 48.15.023, and other applicable sections of the Insurance Code of the state of Washington.

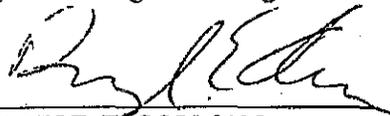
Protect Cell, McLaren, Emery, Finnerty, and Beyersdorff have the right to demand a hearing pursuant to RCW Chapters 48.04 and 34.05. This Order shall remain in effect subject to the further order of the Insurance Commissioner.

THIS ORDER IS EFFECTIVE IMMEDIATELY AND IS ENTERED at Tumwater, Washington, this 23RD day of October, 2014.



MIKE KREIDLER
Insurance Commissioner

By and through his designee



DARRYL E. COLMAN
Insurance Enforcement Specialist
Legal Affairs Division

CERTIFICATE OF MAILING

The undersigned certifies under the penalty of perjury under the laws of the state of Washington that I am now and at all times herein mentioned, a citizen of the United States, a resident of the state of Washington, over the age of eighteen years, not a party to or interested in the above-entitled action, and competent to be a witness herein.

On the date given below I caused to be served the foregoing Order to Cease and Desist on the following individual(s) via US Mail at the below indicated addresses:

Digital Leash LLC
10151 Deerwood Park Blvd Bldg 100 Suite 330
Jacksonville FL 32256

Fortegra Financial Corporation
10151 Deerwood Park Blvd Bldg 100 Suite 330
Jacksonville FL 32256

LOTS Intermediate Company
100 West Bay Street
Jacksonville FL 32202

Scott McLaren
Digital Leash LLC/ProtectCell
39500 High Pointe Blvd Suite 250
Novi MI 48375

Robert Emery
Digital Leash LLC/ProtectCell
39500 High Pointe Blvd Suite 250
Novi MI 48375

Bryan Finnerty
Digital Leash LLC/ProtectCell
39500 High Pointe Blvd Suite 250
Novi MI 48375

Christopher Beyersdorff
Digital Leash LLC/ProtectCell
39500 High Pointe Blvd Suite 250
Novi MI 48375

Counsel
Brian Kreger
Kreger Beechly PLLC
999 Third Avenue Suite 3000
Seattle WA 98104-4088

Signed this 23rd day of October, 2014, at Tumwater, Washington.

Renee Molnes
Renee Molnes

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ORDER NO. 14-0204

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