

ORDER TERMINATING PROCEEDINGS

14-0204

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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

Brian Kreger, Esq.
Kreger Beeghly, PLLC
999 Third Ave., Suite 3000
Seattle, WA 98104-4088

COPY TO: Mike Kreidler, Insurance Commissioner
James T. Odiorne, J.D., CPA, Chief Deputy Insurance Commissioner
John F. Hamje, Deputy Commissioner, Consumer Protection Division
Darryl Colman, Esq., Insurance Enforcement Specialist, Legal Affairs Division
AnnaLisa Gellermann, Deputy Commissioner, Legal Affairs Division
Office of the Insurance Commissioner
PO Box 40255
Olympia, WA 98504-0255

On October 23, 2014, the Office of the Insurance Commissioner ("OIC") issued an Order to Cease and Desist to Digital Leash, LLC dba ProtectCELL, Fortegra Financial Corporation, Lots Intermediate Company, and Scott McLaren, Robert Emery, Bryan Finnerty and Christopher P. Beyersdorff ("Respondents") ordering them to immediately cease and desist from engaging in or transacting the unauthorized business of insurance.

On October 31, 2014, Respondents, through their attorney Brian F. Kreger, filed an Objection to OIC's Order to Cease and Desist; Demand for Hearing; Request to Vacate and Quash Order to Cease and Desist, and for Other Relief ("Demand for Hearing").

On December 9, 2014, I issued an Order on Request to Transfer to OAH and for Stay; Notice of Hearing, wherein I granted the Respondents' request to transfer to OAH only for Mr. Beyersdorff; denied their stay request; and set the evidentiary hearing for June 15, 2015.

On June 4, 2015, I issued an Order on Request for Continuance, continuing the hearing to July 20, 2015.

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On July 15, 2015, Respondents filed a Withdrawal of Demand for Hearing and Amended Demand for Hearing, which stated that the Respondents and OIC had agreed to a settlement and final resolution of this Matter.

On October 16, 2015, the OIC filed with the Hearings Unit a copy of Consent Order Levying a Fine and Rescinding Order to Cease and Desist, No. 14-0204, which had been executed by Respondents Digital Leash, L.L.C. dba ProtectCell, Fortegra Financial Corporation and LOTS Intermediate Company on October 6, 2015, and by the OIC on October 14, 2015. A copy of the Consent Order, which includes as Exhibit 1 a copy of a separately executed Settlement Agreement between the parties of the same dates, is attached hereto.

Now, therefore,

ORDER.

By execution of the Consent Order and Settlement Agreement, the parties have fully settled this Matter. This Matter is dismissed with prejudice.

Dated: November 2, 2015



JUDGE GEORGE FINKLE (Ret.)

Presiding Officer

Declaration of Mailing

I declare under penalty of perjury under the laws of the State of Washington that on the date listed below, I mailed or caused delivery through normal office mailing custom, a true copy of this document to the following people at their addresses listed above: Digital Leash/ProtectCELL, Fortegra Financial Corporation, Lots Intermediate Company, Scott McLaren, Robert Emery, Bryan Finnerty, Christopher Beyersdorff, Brian F. Kreger, Esq., Mike Kreidler, James T. Odiorne, J.D., CPA, John F. Hamje, Esq., Darryl Colman, Esq., and AnnaLisa Gellermann, Esq.,

DATED this 2nd ^{November} day of ~~October~~, 2015.


KELLY A. CAIRNS

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

In the Matter of

**DIGITAL LEASH, L.L.C. d/b/a/
PROTECTCELL; FORTEGRA
FINANCIAL CORPORATION; and
LOTS INTERMEDIATE
COMPANY,**

Respondents.

Order No. 15-0231

**CONSENT ORDER LEVYING
A FINE AND RESCINDING
ORDER TO CEASE AND
DESIST, NO. 14-0204**

This Consent Order Levying a Fine and Rescinding Order to Cease and Desist, No. 14-0204 ("Order") is entered into by the Insurance Commissioner of the state of Washington ("Insurance Commissioner"), acting pursuant to the authority set forth in RCW 48.02.060, RCW 48.05.140 and RCW 48.05.185, and Respondents Digital Leash, L.L.C., d/b/a ProtectCell, Fortegra Financial Corporation, and LOTS Intermediate Company. This Order is a public record and will be disseminated pursuant to Title 48 RCW and the Insurance Commissioner's policies and procedures.

BASIS:

1. Respondents Digital Leash, L.L.C., d/b/a ProtectCell, Fortegra Financial Corporation, and LOTS Intermediate Company (hereinafter collectively referred to as "Respondents") are foreign companies organized under the laws of other states. Respondents are not authorized to transact insurance in Washington and are not registered service contract providers in Washington.

2. During the time period that is the subject of this Settlement and Order, Respondent Digital Leash d/b/a ProtectCell marketed, solicited, and sold membership plans for cell phones and other mobile devices to Washington residents which included an assurance to purchasers of membership plans that the purchaser's cell phone or mobile device would be replaced or that a purchaser would be entitled to the use of a rental cell phone or mobile device for a temporary period of time upon the purchaser's request when the cell phone or mobile device failed or suffered damage.

CONSENT ORDER LEVYING A FINE
ORDER NO. 15-0231

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PO Box 40255
Olympia, WA 98504-0255

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3. The Insurance Commissioner determined that the membership plans sold by Respondent Digital Leash d/b/a ProtectCell constituted both a service contract under RCW Chapter 48.110 and also a contract of insurance as defined in RCW 48.01.040. Assuming, for purposes of settlement, that the membership plans constituted contracts of insurance, Respondents failed to timely pay premium taxes on the amount of membership plan fees paid to the Respondents during the time period subject to this Agreement and Settlement.

4. Because, during the time period subject to this Settlement and Order, Respondents were not registered with the Insurance Commissioner as service contract providers in violation of RCW 48.110.030, and, because Respondent Digital Leash d/b/a ProtectCell did not hold a certificate of authority to transact insurance in violation of RCW 48.05.030, on October 23, 2014, the Insurance Commissioner issued an Order to Cease and Desist against the Respondents and other named individuals no longer subject to this Matter directing Respondents to cease and desist engaging in or transacting the unauthorized business of insurance or acting as an unregistered service contract provider in the state of Washington.

5. Respondents disputed the Insurance Commissioner's determination regarding the membership plans and timely filed their Objection to Order to Cease and Desist and Demand for Hearing on October 31, 2014, and, subsequently, this Matter was scheduled for administrative hearing before presiding hearing officer George Finkle commencing on June 20, 2015.

6. At all times after receiving the Order to Cease and Desist, Respondents cooperated with the Insurance Commissioner's staff and acted in good faith in such dealings and in attempting to undertake reasonable measures to correct any actual or perceived problems with the membership plans in order to bring their business activities into compliance with applicable Washington law. As of the time of this Settlement and Order, Respondents no longer offer the membership plans that were the subject of the Insurance Commissioner's administrative action against Respondents in this Matter, and Respondents have modified the products and services which are subject of this Order to be in compliance with applicable law.

7. In the months following the Order to Cease and Desist and Respondents' Demand for Hearing, the Respondents and the Insurance Commissioner's staff engaged in candid and sincere dialogue to determine if this Matter could be settled on terms agreeable to both sides. Ultimately, the Insurance Commissioner and the Respondents agreed to terms of settlement as set forth herein and in the Settlement Agreement ("Settlement") attached as Exhibit 1 hereto.

8. In accord with the Settlement attached hereto, the Insurance Commissioner has agreed to rescind the Order to Cease and Desist, No. 14-0204, issued against the Respondents, and the Respondents have agreed to withdraw their Demand for Hearing and not pursue further administrative review on this Matter.

9. Respondents concede that the Insurance Commissioner has authority under RCW 48.05.185 to impose a fine against the Respondents either after an evidentiary hearing finding that Respondents had committed violations of the Insurance Code, or upon consent. Accordingly, as a condition of settlement, Respondents have consented to the Insurance Commissioner's imposition of a fine against Respondents in the amount of \$55,000, with half of such fine (\$27,500) suspended on the condition that Respondents do not violate the provisions of the Insurance Code that are the subject of this Settlement and Order for a period of two years from the date this Order is entered.

10. In agreeing to withdraw their Demand for Hearing and to not seek further administrative review of the Insurance Commissioner's allegations in this Matter, and as a condition of settlement, Respondents have agreed to the payment to the Insurance Commissioner in the amount of \$65,000 representing Washington State's two percent premium tax that would have been owing on the membership plan fees paid by Washington residents to Respondents for the purchase of such membership plans.

11. The Insurance Commissioner and the Respondents agree that the best interest of the public will be served by entering into this Order.

12. RCW 48.05.140(1) provides the Insurance Commissioner authority to refuse, suspend, or revoke an insurer's certificate of authority, in addition to other grounds therefor in this code, if the insurer fails to comply with any provision of this code other than those for violation of which refusal, suspension, or revocation is mandatory, or fails to comply with any proper order or regulation of the Insurance Commissioner.

13. RCW 48.05.185 provides that after hearing or with the consent of the insurer and in addition to or in lieu of the suspension, revocation, or refusal to renew any certificate of authority the Insurance Commissioner may levy a fine upon the insurer in an amount not less than two hundred fifty dollars and not more than ten thousand dollars.

CONSENT TO ORDER:

The Insurance Commissioner of the state of Washington and Respondents agree that the best interest of the public will be served by entering into this Order. NOW, THEREFORE, Respondents consent to the following in consideration of their desire to resolve this matter without further administrative or judicial proceedings. The Insurance Commissioner consents to settle this matter in consideration of the Respondents' payment of a fine, and upon such terms and conditions as are set forth below:

1. Respondents acknowledge their duty to comply fully with the applicable laws of the state of Washington.

2. Respondents consent to the entry of this Order, waive any and all hearing or other procedural rights, and further administrative or judicial challenges to this Order.

3. By agreement of the parties, the Insurance Commissioner will impose a fine of \$55,000.00 (Fifty Five Thousand dollars) and suspend \$27,500.00 (Twenty Seven Thousand Five Hundred Dollars) of that, on the conditions that:

4. Respondents pay \$27,500.00 (Twenty Seven Thousand Five Hundred Dollars) by October 26, 2015; and

a. Respondents commit no violations of the statutes that are the subject of this Order for a period of two years from the date this Order is entered;

5. The suspended portion of this fine will be imposed at the sole discretion of the Insurance Commissioner according to the condition as set forth above in paragraph 4.a., without any right to hearing, appeal or advance notice if the Insurance Commissioner makes a good faith determination that the Respondents have failed to satisfy such condition. The suspended portion of the fine will be paid within thirty (30) days of the entry of an Order imposing it. Failure to pay the suspended portion of the fine when imposed shall constitute grounds for revocation of the Company's certificate of authority or registration as service contract provider, as applicable.

6. Respondents understand and agree that any further failure of the Respondents to comply with the statutes that are the subject of this Order constitutes grounds for further penalties, which may be imposed in direct response to further violations in addition to the imposition of the suspended portion of the fine.

7. The Insurance Commissioner will rescind OIC Order to Cease and Desist (OIC Order No. 14-0204) issued against Respondents (including all entities and individuals named in such Order) on or about October 23, 2014, and hereby acknowledges that such Order is void and of no effect.

8. By agreement of the Respondents and the Insurance Commissioner, the Insurance Commissioner will impose a fine of \$55,000, of which one half will be due and owing within thirty days of the final execution and entry of this Order, and one half will be suspended provided that the Respondents commit no further violations of Washington law that are the subject of this Settlement and Order for a period of two years.

9. By agreement of the Respondents and the Insurance Commissioner, the Respondents will pay an assessment of \$65,000 representing the amount of Washington State's two percent premium tax on the stipulated gross sales revenue from the discontinued membership plans that had been offered and sold by the Respondents. The Insurance Commissioner hereby waives all statutory penalties and interest assessments on these premium taxes. The amount assessed hereunder as premium taxes will be due and owing by October 26, 2015.

10. This Order and the violations set forth herein constitute admissible evidence that may be considered in any future action by the Insurance Commissioner involving Respondents. However, the facts of this Order, and any provision, finding or conclusion contained herein does not, and is not intended to, determine any factual or legal issue or have any preclusive or collateral estoppel effects in any lawsuit by any party other than the Insurance Commissioner.

EXECUTED this 6th day of October, 2015.

DIGITAL LEASH, L.L.C. d/b/a/ PROTECTCELL; FORTEGRA FINANCIAL CORPORATION; and LOTS INTERMEDIATE COMPANY

By: Chris Romaine

Printed Name: Christopher Romaine

Printed Corporate Title: Secretary

AGREED ORDER:

Pursuant to the foregoing factual Basis and Consent to Order, the Insurance Commissioner of the state of Washington hereby Orders as follows:

1. Respondents shall pay a fine in the amount of \$55,000.00 (Fifty Five Thousand Dollars), of which \$27,500.00 (Twenty Seven Thousand Five Hundred Dollars) is due by October 26, 2015, and of which amount the sum of \$27,500.00 (Twenty Seven Thousand Five Hundred Dollars) is suspended on the condition that Respondents commit no violations of the statutes of the state of Washington which are the subject of this Order for the next two years.

2. Respondents shall pay an assessment of \$65,000.00 (Sixty Five Thousand Dollars) representing the amount of Washington State's two percent premium tax on the stipulated gross sales revenue from the discontinued membership plans that had been sold by the Respondents. The Insurance Commissioner hereby waives all statutory penalties and interest assessments on these premium taxes. The amount assessed hereunder as premium taxes is due and owing by October 26, 2015.

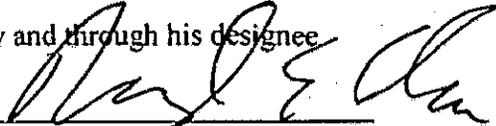
3. The Insurance Commissioner hereby rescinds Order to Cease and Desist, No. 14-0204 issued against Respondents (including all entities and individuals named in such Order) on or about October 23, 2014. Such Order is void and of no effect.

4. This Order and the violations set forth herein constitute admissible evidence that may be considered in any future action by the Insurance Commissioner involving Respondents. However, the facts of this Order, and any provision, finding or conclusion contained herein does not, and is not intended to, determine any factual or legal issue or have any preclusive or collateral estoppel effects in any lawsuit by any party other than the Insurance Commissioner.

Entered at Tumwater, Washington, this 14th day of October 2015.



MIKE KREIDLER
Insurance Commissioner

By and through his designee 

DARRYL E. COLMAN
Insurance Enforcement Specialist
Legal Affairs Division

EXHIBIT 1

PREAMBLE

This Settlement Agreement ("Settlement") is agreed to and entered into by and among the Washington State Office of the Insurance Commissioner ("OIC") and Digital Leash, L.L.C., d/b/a ProtectCell, Fortegra Financial Corporation, and LOTS Intermediate Company ("Respondents") as of the date below written.

On October 23, 2014, the OIC issued Order to Cease and Desist No. 14-0204 against Respondents, and four individuals. All named Respondents, including the named individuals, filed their Objection to OIC Order to Cease and Desist, Demand for Hearing, and Request to Vacate and Quash Order to Cease and Desist and For Other Relief. Following a prehearing conference on December 8, 2014, Judge George Finkle, Presiding Officer, issued an order denying Respondents' Request for a Stay of the Order to Cease and Desist and setting a date for the evidentiary hearing on Respondents' Objection to commence on June 15, 2015. Subsequently, the hearing date was continued to July 20, 2015.

The OIC and Respondents have agreed to settle this Matter pursuant to the terms and conditions set forth in this Settlement and attached Consent Order, and have further agreed that, upon satisfaction of all such terms and conditions, this Matter shall be terminated as evidenced upon such further order determined to be reasonable and necessary by the presiding officer and entered herein.

The OIC and the Respondents confirm their agreement to be bound by and comply with the terms and conditions of the Settlement, set forth below and contained herein, and the attached Consent Order.

SETTLEMENT AGREEMENT

In the time following the order setting the date for an evidentiary hearing until shortly before the scheduled commencement of the evidentiary hearing, the Respondents and the OIC engaged in continuous and diligent discussions to determine if the parties could come to an

agreement to settle this Matter in order to avoid the expense and inconvenience associated with an administrative hearing expected to take several days to complete.

Respondents and the OIC acknowledge and confirm that the parties, through representatives of the Respondents and representatives of the OIC, conducted their discussions in good faith and a spirit of cooperation throughout.

On July 15, 2015, the Respondents and the OIC agreed to a Settlement of this Matter, without a hearing. The terms and conditions of the Settlement include the following:

1. The Respondents agree to withdraw their demand for hearing, and do hereby confirm their Withdrawal of Demand for Hearing, filed on July 15, 2015.
2. The OIC agrees to rescind the Order to Cease and Desist, and the OIC does hereby declare and confirm that the OIC has rescinded the OIC's Order To Cease and Desist (Order No. 14-0204), and that such Order to Cease and Desist is of no effect as of the date of this Settlement and Order, given below.
3. The Respondents and the OIC will prepare and execute a Consent Order that sets forth the Basis for the Order, identifying the pertinent facts alleged by the OIC and applicable law for the entry of such Consent Order. However, because there has been no final adjudicative hearing, the Consent Order will not set forth Findings of Fact and Conclusions of Law.
4. The Consent Order will not use or contain condemning language against the Respondents, but may include language as necessary to establish a legally sufficient final order.
5. The Consent Order will contain a statement recognizing the Respondents' cooperation and good faith in this Matter.
6. The Consent Order will identify only the appropriate corporate entities as the Respondent parties subject to the Consent Order and will not name any individuals.
7. The Respondents subject to the Consent Order shall be assessed a fine in the amount of \$55,000, of which one half (\$27,500) shall be suspended, provided that the Respondents do not violate the provisions of the Insurance Code that are the subject of the Settlement and Consent Order for a period of two years.
8. The Respondents subject to the Consent Order shall pay an assessment of \$65,000 representing the amount of premium tax that would be owed on certain contracts

previously sold by Respondents if there had been a finding, upon hearing, that those contracts constituted insurance.

9. The OIC agrees that the OIC will not take any further action against Respondents with regard to any of the allegations originally set forth in the OIC's Order to Cease and Desist or the statements set forth in this Settlement. The Respondents agree that they will not seek any further remedy or administrative review regarding the allegations originally set forth in the OIC's Order to Cease and Desist or the statements set forth in this Settlement.

10. The OIC and the Respondents agree that the Presiding Hearing Officer shall be authorized, and hereby is requested, to enter an Order Terminating the proceedings in this Matter, OIC Docket No. 14-0204.

EXECUTED, this 6th day of October 2015.

DIGITAL LEASH, L.L.C. d/b/a/ PROTECTCELL;
FORTEGRA FINANCIAL CORPORATION; and
LOTS INTERMEDIATE COMPANY

By: Chris R.
Printed Name: Christopher Romaine
Title: Secretary

Executed and Entered at Tumwater, Washington, this 14th day of October 2015.

Mike Kreidler

MIKE KREIDLER
Insurance Commissioner

By and through his designee

Darryl E. Colman

DARRYL E. COLMAN
Insurance Enforcement Specialist
Legal Affairs Division

