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THE 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,

Respondents

OIC ORDER NO. 14-0204

RESPONDENTS' POSITION
STATEMENT REGARDING:
PROCEDURE FOR REQUEST FOR
STAY; AND,
APPROPRIATE FORUM TO HEAR
MATTER

On October 31, 2014, Respondents filed and served 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 (hereafter, "Objection") in response to the Order to Cease and Desist ("Order") issued by the Office of the Insurance Commissioner ("OIC").

Included in the relief sought by the Respondents in their Objection are the following: a request that this matter be presided over by an administrative law judge in accordance with RCW 48.04.010(5), and; a request that the OIC's Order be stayed pending a full evidentiary hearing in this Matter. Both requests are appropriate and specifically authorized under the Revised Code of Washington, and both requests should be granted.

1 RCW 48.04.010(5) specifically provides that “A licensee under this title may
2 request that a hearing authorized under this section be presided over by an administrative
3 law judge assigned under chapter 34.12 RCW. Any such request shall not be denied.”
4 (Emphasis added).

5 As Respondents noted in their Objection, the OIC’s Order includes allegations of
6 wrongdoing by the Respondents one or more of whom hold a license issued by the OIC.
7 The OIC’s allegations of wrongdoing with respect to the individual Respondents are
8 broad and general and fail to identify which alleged acts are peculiar to any one of these
9 Respondents. The OIC also fails to demonstrate how the individual Respondents have
10 purportedly violated any law. Rather, the OIC alleges merely that “. . . McLaren,
11 Emery, Finnerty, and Beyersdorff are legally responsible for Protect Cell’s violations of
12 the Insurance Code.” In making such broad and sweeping allegations that all these
13 Respondents are legally responsible, the OIC apparently claims that the alleged acts of
14 even one of these Respondents are sufficient to establish the legal liability of all these
15 Respondents. And, as noted previously, at least one of these Respondents holds a license
16 issued by the Office of the Insurance Commissioner, and, thereby, is recognized as a
17 licensee under the Insurance Code with all rights afforded thereunder.

18 The OIC’s broad and sweeping allegations of wrongdoing by and liability of all
19 these Respondents, both licensee and non-licensed person alike, and the inability to
20 distinguish the alleged acts of a licensee-Respondent from those of a non-licensed
21 Respondent, make this Matter appropriate for transfer, in its entirety, to an administrative
22 law judge as authorized and required under RCW 48.04.010 (5), and as a matter of legal
23 right afforded a Washington licensee.
24

1 The OIC's Order, while captioned an Order to Cease and Desist, is, in reality, a
2 directive to the Respondents to comply with specific orders, demands, and directives of
3 the OIC within a specified timeframe. In their Objection, the Respondents have already
4 asserted the illegality of the OIC's Order, specifically with respect to the OIC's attempt
5 to compel the Respondents to comply with enforcement orders and demands without
6 having presented any proof of any alleged wrong and, more importantly, absent an order
7 issued by a duly-authorized judicial officer after a full evidentiary hearing affording
8 Respondents their due process rights.

9 The OIC orders and demands – unilaterally and without legal authority – that the
10 Respondents undertake no fewer than four specific and detailed activities “within ten (10)
11 days of the date of this Order” the failure of which apparently would create a threat of
12 additional sanctions imposed by the OIC. The OIC's Order was dated October 23, 2014.

13 Notwithstanding the illegality of such an Order that attempts to impose such
14 unauthorized demands, the Respondents timely filed their Objection, which included a
15 Demand for Hearing under RCW 48.04.010, contesting the OIC's Order. The
16 Respondents' Objection was dated, served, and filed on October 31, 2014, well within the
17 ten-day time limit the OIC seeks to impose against the Respondents.

18 RCW 48.04.020 contains a specific directive that the OIC's Order, in its entirety,
19 must be stayed: “Such demand for a hearing received by the commissioner prior to the
20 effective date of action taken or proposed to be taken by him or her shall stay such action
21 pending the hearing . . .” (emphasis added), except as to certain enumerated actions that
22 do not apply in this Matter. By law, a stay of the OIC's Order in this Matter is
23 mandatory. The Respondents' timely Demand for Hearing pursuant to RCW 48.04.010
24 has stayed the OIC's Order, as well as any and all purported action of the Insurance

1 Commissioner noted in the Order, as a matter of law under RCW 48.04.020, pending the
2 final hearing on this Matter.

3
4 A year ago, the Insurance Commissioner made the same claims against the
5 Respondents that now appear in the OIC's Order. Over the ensuing months since then,
6 the Respondents have made numerous good faith efforts to address and correct any
7 perceived wrongdoing and to accommodate and comply with all the legal requirements
8 that the OIC alleges the Respondents may have violated. Rather than work with the
9 Respondents and issue the registration they have requested and to which they are entitled
10 – and, in so doing, correct any perceived problem – the Insurance Commissioner has
11 chosen both to ignore the good faith efforts of the Respondents, and also to disregard a
12 simple regulatory resolution. Instead, preferring punishment to regulation, the Insurance
13 Commissioner has issued his Cease and Desist Order and this Matter now follows.

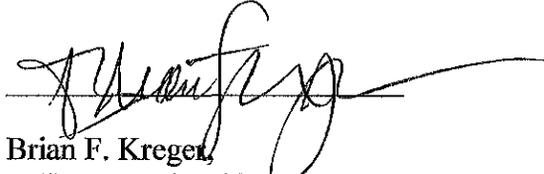
14
15 This Matter should be transferred to an administrative law judge under RCW
16 48.04.010(5) because the collective Respondents alleged to be involved in the same facts
17 and circumstances include a Washington-approved licensee and the Insurance Code
18 specifically affords a Washington licensee the legal right to a hearing before an
19 administrative law judge.

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21 The OIC's Order on which this Matter is predicated should be stayed in
22 accordance with the mandate of RCW 48.04.020.

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DATED this 4th day of December, 2014

KREGER BEEGHLY, PLLC



Brian F. Kreger,
WSBA Number 10670
Attorney for Respondents

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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' POSITION STATEMENT REGARDING: PROCEDURE FOR REQUEST FOR STAY; AND, APPROPRIATE FORUM TO HEAR MATTER 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

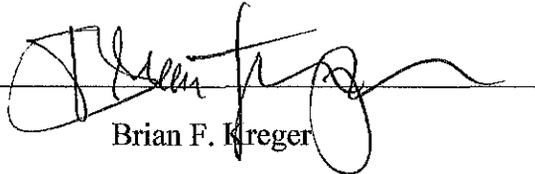
Mr. Darryl E. Colman
Office of the Insurance Commissioner
5000 Capitol Boulevard
Tumwater, WA 98501

Mailed and e-Mailed To:
Hearings Unit
Office of the Insurance Commissioner
P.O. Box 40255
Olympia, WA 98504-0255
Attention: Hon. George Finkle,
Hearing Officer
gfinkle@jdrllc.com

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 4th day of December, 2014 in Seattle, Washington.


Brian F. Kreger