

**FILED**

**AUG 22 2007**

**INSURANCE COMMISSIONER  
OKLAHOMA**

**BEFORE THE INSURANCE COMMISSIONER OF THE  
STATE OF OKLAHOMA**

<b>STATE OF OKLAHOMA, <i>ex rel.</i> KIM</b>	)	
<b>HOLLAND, Insurance Commissioner,</b>	)	
	)	
<b>Petitioner,</b>	)	
<b>v.</b>	)	
	)	
<b>LIFELOCK, INC.</b>	)	
	)	
<b>Respondent.</b>	)	

**Case No. 06-0990-UNI**

**CONSENT ORDER**

COMES NOW the State of Oklahoma, ex rel. Kim Holland, Insurance Commissioner, through her General Counsel Michael Ridgeway and the Respondent through its General Counsel Brad Greer and enters into this Consent Order.

**JURISDICTION**

1. The Insurance Commissioner has jurisdiction of this cause, pursuant to the OKLAHOMA CONSTITUTION ARTICLE 6 § 22, the Oklahoma Insurance Code generally, 36 O.S. §§ 101 through 7004, and specifically pursuant to Article 6 of the Insurance Code (Authorization of Insurers), 36 O.S. §§ 601, et seq.; the Oklahoma Producer Licensing Act, 36 O.S. §§ 1435.1, et seq.; the Unauthorized Insurance Business Act, 36 O.S. §§ 6103.1, et seq.; Oklahoma Administrative Code Title 365: 10-3 et seq..

2. Respondent has been apprised of its rights including the right to a public hearing and has knowingly and freely waived said rights and enters into this Consent Order as a voluntary settlement to the issues and questions raised in the above captioned case.

## AGREED FINDINGS OF FACT

1. Kim Holland is the Insurance Commissioner of the State of Oklahoma and as such is charged with the duty of administering and enforcing all provisions of the Oklahoma Insurance Code, Okla. Stat. Tit. 36, § 101-7004.

2. Respondent is a corporation organized under the laws of the State of Delaware listing an address of 101 N. Fairfield Dr., Dover, Delaware 19901. Respondent is based in Tempe, Arizona and lists an address of 6515 S. Rural Rd., Suite 104, Tempe, AZ 85285.

3. Respondent marketed and sold identity theft prevention services within the State of Oklahoma and guaranteed to indemnify its customers for losses sustained as a result of identity theft, including “lost wages, long-distance calls, postage and other miscellaneous costs in addition to any funds that are actually stolen.”

4. On July 25, 2007, the Petitioner issued an Emergency Cease and Desist Order against Respondent.

5. Respondent continued to advertise its service to Oklahoma residents and to accept applications via its website from Oklahoma residents after Petitioner issued the July 25, 2007, Emergency Cease and Desist Order. Petitioner has not verified Respondent’s contentions that Respondent did not retain billing information from post-July 25<sup>th</sup> applicants, and that Respondent will have to follow up with those applicants to obtain such information before those memberships can be processed.

6. Respondent has adopted and implemented revised Terms and Conditions as detailed in the attached Exhibit A. The revised Terms and Conditions will be applicable to all Oklahoma residents.

### **AGREED CONCLUSIONS OF LAW**

1. Respondent's actions described in Findings of Fact 3 and 5 may have fallen within the definition of "doing an insurance business in this state," 36 O.S. § 6103.2. Respondent's conduct described in those paragraphs may have been in violation of 36 O.S. §§ 6103.2 and 6103.3.

2. The revised Terms and Conditions contained in the attached Exhibit A, and the marketing thereof to Oklahoma residents, does not constitute the business of insurance, and does not violate 36 O.S. §§ 6103.2 and 6103.3.

3. Respondent's actions described in Findings of Fact 3 and 5 may have constituted acting as an insurance company without having a certificate of authority and without complying with specific requirements for authorized insurers, which may have been in violation of 36 O.S. § 606 and Article 6 of the Insurance Code, generally.

### **ORDER AND CONSENT**

IT IS THEREFORE ORDERED by the Insurance Commissioner and CONSENTED to by the Respondent that:

1. Respondent will amend its Terms and Conditions in addition to its product Guarantee/Warranty as detailed in Exhibit A.

2. Respondent will not advertise, publicize or make a guarantee to indemnify or reimburse a an Oklahoma customer for any expenses in a manner inconsistent with O.S. §36-102, including but not limited to reimbursement for lost wages, long-distance calls, postage, stolen funds, or any other costs.

3. Respondent will notify all current Oklahoma customers that the Guarantee/Warranty

has changed. A copy of the new Terms and Conditions agreement will be provided to each customer and the changes will be specifically summarized in a cover letter.

4. Respondent will notify all Oklahoma residents who have inquired or enrolled since July 25, 2007, but whose applications have not yet been finally processed for membership, that the Guarantee/Warranty and Terms and Conditions have changed. A copy of the new Terms and Conditions agreement will be provided to each customer and the changes will be specifically summarized in a cover letter. Each such Oklahoma resident will be given an opportunity to accept or reject the revised offer before Respondent processes their payment.

5. Respondent will modify all current marketing efforts to reflect this agreement no later than two weeks from the execution of this agreement.

6. Respondent will modify its company website to conform to each agreed item in this order no later than August 27, 2007.

7. Respondent will provide confirmation to the Oklahoma Insurance Department that each agreed to item in this order has been fully completed.

8. Respondent will pay a civil penalty in the amount of Thirty Thousand Dollars.

9. Upon execution of this Consent Order and payment of the civil penalty, and contingent upon continued compliance with this Consent Order, the Emergency Cease and Desist Order entered herein on July 25, 2007 is withdrawn.

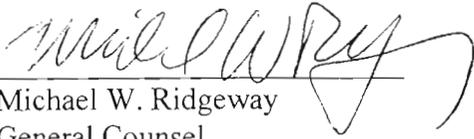
WITNESS My Hand and Official Seal this 22<sup>nd</sup> day of August, 2007.



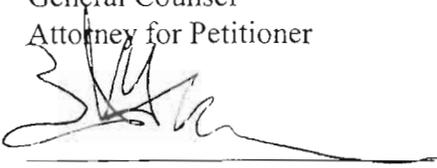
Frank P. Stone

KIM HOLLAND  
INSURANCE COMMISSIONER  
STATE OF OKLAHOMA

APPROVED:



Michael W. Ridgeway  
General Counsel  
Attorney for Petitioner



Brad Greer  
Attorney for Respondent

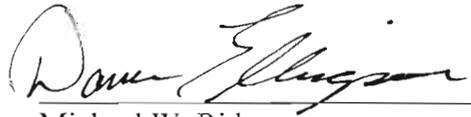
**CERTIFICATE OF MAILING**

I, Michael W. Ridgeway, hereby certify that a true and correct copy of the attached Consent Order was mailed certified mail, return receipt requested on the 22 day of AUGUST, 2007 to:

Brad Greer  
6515 South Rural Road  
Suite 104  
Tempe, AZ 85283

and that notification was provided to:

NAIC/RIRS



Michael W. Ridgeway  
Darren T. Ellingson



## LIFELOCK TERMS AND CONDITIONS AGREEMENT

THESE ARE THE TERMS OF OUR AGREEMENT WITH EACH OTHER. WHILE WE TRIED TO MAKE IT NOT TOO FULL OF LEGALESE, ALL OF IT IS IMPORTANT SO TAKE A FEW MOMENTS TO READ IT. BY ACCEPTING LIFELOCK'S SERVICE, YOU ACKNOWLEDGE THAT YOU HAVE READ, UNDERSTOOD, AND AGREE TO THESE TERMS AND CONDITIONS.

This Terms and Conditions Agreement ("Agreement") identifies what you can expect from LifeLock, Inc. and its subsidiaries ("LifeLock") and what LifeLock expects from you. These terms and conditions apply to your purchase of any service offered by LifeLock.

If you do not agree, we can not allow you to subscribe or continue to use our service.

### 1. Description of our Service ("Service"):

#### A. For individuals sixteen (16) years of age or older, we will:

(i) request that Equifax, Experian and TransUnion place fraud alerts on your consumer reports to the extent permitted by 15 U.S.C. § 1681c-1. Your fraud alert will include a telephone number provided by you. While you are our client, we will attempt to renew these alerts as often as required to keep them active until such time that you notify us that you no longer have a good faith suspicion that you have been or are about to become a victim of fraud or related crime, including identity theft;

(ii) request, to the extent permitted by 15 U.S.C. § 1681b(e), that your name be removed from pre-approved credit card mailing lists;

(iii) request that your name be removed from junk-mail lists by using the opt-out options established by the Direct Marketing Association;

(iv) order, upon enrollment and once a year thereafter, your free annual credit reports from TransUnion, Experian, and Equifax as permitted by 15 U.S.C. § 1681j(a).

#### B. For individuals fifteen (15) years of age or younger, we will:

(i) request that Equifax, Experian and TransUnion place fraud alerts on their consumer reports to the extent permitted by 15 U.S.C. § 1681c-1. If a consumer report is found to match, we will attempt to renew these alerts as often as required, while you subscribe for this particular service, to keep them active until such time that you, or the particular individual, notify us that there is no longer a good faith suspicion that the individual has been or is about to become a victim of fraud or related crime, including identity theft. If a consumer report is not found to match for the individual, LifeLock will confirm every one hundred, eighty (180) days that no matching consumer report has been created;

(ii) order, upon enrollment and once a year thereafter, the individual's free credit reports, to the extent they exist, from TransUnion, Experian, and Equifax as permitted by 15 U.S.C. § 1681j(a), to the extent that they exist and to the extent that the information provided to us matches such a report;

(iii) annually prepare a request to the Social Security Administration for a copy of the individual's Social Security Earnings Report. This request will be forwarded to the individual's parent or guardian who will then be responsible for its submission to the Social Security Administration.

C. Specifically note that individuals under eighteen (18) years of age must have our Service administered by a parent or legal guardian.

### 2. Our Service Guarantee (Warranty) is in support of our Service under this Agreement and is provided without additional charge:

A. If you are our client when someone misuses your personal identifying information and subsequently uses it without your authorization, due to a failure or defect in our Service, and you have complied with this Agreement, we will act as your attorney in fact, on your behalf, to restore your identity to its state prior to the misuse, provided however that the maximum limit of our Guarantee is \$1 (one) million per person, per lifetime.

B. You must be truthful with us and you must tell us of the misuse of your personal identifying information within 30 days of first learning of it. You agree to cooperate with those we hire to help you and we reserve the right to determine such cooperativeness in our sole and absolute discretion. If we determine while attempting to provide our Service that you are not cooperating with us or those we hire to help you, we will automatically cancel Service to you fifteen (15) calendar days after transmitting you such Notice of Intent to Cancel to the email address or mailing address associated with your account.

C. If you need professional assistance, such as that of an attorney or credit counselor, to help remediate damages caused by the failure or defect in our Service, we will arrange for, and cover the expense of, that assistance to be provided to you through persons or firms we select, and manage the grievance on your behalf; we will not reimburse fees of professionals or other service providers unless we choose those providers for your particular matter.

D. We will cure any failure or defect in our Service, resulting in damages you incur, subject to the terms of this Agreement as follows:

(i) Usually, we will pay these expenses on your behalf. If we cover any expense for you, you must assign to us any right you have to be reimbursed for that expense from any other party.

(ii) If the amount involved is over \$1,000, we reserve the right to investigate the Guarantee request in order to determine whether the request is valid before we do anything else. We will perform our investigation as promptly as we can. If our investigation shows that a reasonable person would conclude that your personal identifying information was misused and misused without your authorization while you were our client and you have complied with all this Agreement, we will perform as described herein.

E. If we find that you misrepresented damages or misrepresented that you were our client when your information was misused, you agree to pay us back upon demand any amount we have paid in connection with your claim, including any costs we incur to collect the money from you. Being found guilty of a crime related to the loss which you attributed to identity theft is sufficient evidence to conclude that we are entitled to recover all amounts paid on your behalf as described above, but it is not the only basis upon which we may so conclude.

F. Similarly, should we decline your Guarantee request following our investigation and that decision subsequently is determined to have been wrong, we will honor our Guarantee.

G. OUR GUARANTEE IS SIMPLE, BUT IT IS LIMITED. WE WON'T PAY MORE THAN \$1,000,000 TO CURE THE FAILURE OR DEFECT IN OUR SERVICE, PER CLIENT, PER LIFETIME, REGARDLESS OF CIRCUMSTANCE. WE WILL NOT REIMBURSE SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES, SUCH AS LOST WAGES OR PROFITS, LOSS OF BUSINESS, OR LOST OPPORTUNITIES. OTHER THAN OUR GUARANTEE, WE MAKE NO REPRESENTATION OR WARRANTY ABOUT OUR SERVICE OF ANY KIND, AND WE DISCLAIM ANY IMPLIED WARRANTIES OUTSIDE OF OUR GUARANTEE, SUCH AS A WARRANTY OF MERCHANTABILITY OR FITNESS OF OUR SERVICE FOR ANY PARTICULAR PURPOSE.

3. Renewal: Your account will be automatically renewed for one month or one year, depending on the term you initially select, on the anniversary date of your enrollment.

4. Cancellation: There is no long-term commitment with LifeLock. You can cancel at any time by calling us at 877 LIFELOCK (543-3562) and notifying us of your intention to cancel. If you have pre-paid, we will refund any unused amount.

5. Privacy Policy: We respect your privacy. Please see on <http://www.LifeLock.com/privacy> or on the "TrustE" button on the home page of our website to review our Privacy Policy, the terms and conditions of which are incorporated into this Agreement. You agree to accept the terms of the Privacy Policy.

6. Information Sharing: In order to request your fraud alerts and credit reports on your behalf, LifeLock must provide your personal identifying information with third parties including, but not limited to: TransUnion, Experian and Equifax. You agree that LifeLock may provide your information to these third parties. Therefore, you waive any and all claims against LifeLock for the acts and omissions of these companies with regard to the use or disclosure of such information. However, LifeLock will cover any resulting failures that arise from any misuse of your information whether or not attributable to acts of such third parties to the extent covered by the terms set forth in our Guarantee.

7. Refusal of Service: We will determine whether or not to accept you as a client and provide to you the Service, and we may refuse to provide to you our Service for any reason. These reasons include, but are not limited to, credit review, the unavailability of the Service, and errors in the prices and descriptions pertaining to the Service.

8. Payment Terms/Taxes: Payment for the Service may be made by bank cards or other mutually agreed instrument. You are personally responsible for any applicable state and/or federal sales or other taxes that may be associated with the purchase of our Service.

9. Limited Power of Attorney: By accepting these terms and conditions, you expressly grant LifeLock, and its authorized employees, a limited power of attorney to: complete and execute on your behalf documents required to provide the Service; speak to parties on your behalf as required to provide the Service; and, act as your personal representative under 15 U.S.C. § 1681c-1, under which consumers or their authorized representatives have the right to obtain fraud alerts. This limited power of attorney may be revoked by you at any time by canceling our Service.

10. Disclaimers and Limitation of Liability: LifeLock assumes no responsibility for errors or omissions in the information or other documents which are referenced by or linked to Lifelock's web site. As noted above, we will not be liable for any special, incidental, indirect or consequential damages of any kind, nor any damages whatsoever other than as set forth in our service Guarantee.

LifeLock will not be liable for any failure or delay resulting from fire, explosion, flood, storm, act of God, government acts, orders or regulations, hostilities, civil disturbance, strike, labor difficulties, machinery breakdown, Internet or telecommunications failure, or any other similar event beyond the reasonable commercial control of LifeLock.

11. Governing Law: This agreement and any Service provided hereunder will be governed by the laws of the state of Arizona, without regard to any Arizona laws that would direct the choice of another state's laws and, where applicable, to be governed by the federal laws of the United States. Subject to paragraph 12 (which provides for arbitration of claims between us to the maximum extent possible), you irrevocably and unconditionally consent to submit to the exclusive jurisdiction of the federal or state courts in the State of Arizona for any dispute or litigation arising out of, or relating to, the use or purchase of any Service from LifeLock, and waive any objection to the laying of venue of any such litigation in Arizona courts and agree not to claim that such litigation brought therein has been brought in an inconvenient forum; in other words, if we have a dispute, you agree to resolve it in an Arizona court.

12. Arbitration: Both you and we agree that any dispute, controversy or claim arising out of, or relating to, any interpretation, construction, performance or breach of this Agreement or the Service shall be settled by confidential arbitration to be held in Phoenix, Arizona, in accordance with the American Arbitration Association's ("AAA") Commercial Arbitration Rules (including without limitation the Supplementary Procedures for Consumer-Related Disputes) then in effect. The arbitrator may grant injunctions or other relief in such dispute or controversy. A single arbitrator with knowledge of electronic commerce will conduct the arbitration and the parties will mutually agree upon such arbitrator. In the event that the parties have not agreed on an arbitrator within thirty (30) days of the date of the notice of intention to arbitrate, the arbitrator will be selected by AAA from its list of commercial arbitrators. The arbitrator will conduct a single hearing no longer than one day in duration for the purpose of receiving evidence and will render a decision within fifteen days after the conclusion of the hearing. The decision of the arbitrator will be final, conclusive and binding on the parties to the arbitration. Judgment may be entered on the arbitrator's decision in any state or federal court in Arizona. Although the cost of the arbitrator will be borne by LifeLock, all other expenses of arbitration will be paid by the party who incurred them. These expenses are not part of our guarantee. In addition to, and separate and apart from, the above agreement to arbitrate any dispute, controversy or claim arising out of, or relating to, any interpretation, construction, performance or breach of this Agreement or the Service, you also agree that you will not participate in any way in any class action in connection with any such dispute, controversy or claim, either as a class representative plaintiff or as a member of a putative class.

13. Change of Terms: We may revise this Agreement at any time. However, we may not make any changes retroactive. We will notify you at the phone, e-mail address, or mailing address associated with your account of any changes. If you do not contact LifeLock and express your objection to our changes within seven (7) days of receiving this notice, you shall be deemed a continuing use client and agree to be bound by any such revisions.

If you fail to comply with any of these terms and conditions, we may at any time terminate your rights under this Agreement at our sole discretion and without prior notice. However, we may not void our responsibilities under our Guarantee for damages that arise prior to any termination by us of the Guarantee.

14. Indemnification: You agree to indemnify, defend and hold LifeLock and any of its affiliates and all of their agents, directors, employees, information providers and licensors and licensees harmless from and against any and all liability and costs (including attorneys' fees and costs) incurred by any of these parties in connection with any claim arising out of any breach by you of these terms and conditions. In the event that either (a) you are the subject of claims for which you properly seek damages from us under these terms and conditions, or (b) we are subject to any claim for which we have the right to be indemnified by you, we reserve the right at

our expense in the case of claims in clause (a) and at your expense in the case of claims in clause (b), to assume the exclusive defense and control of any such claim, and you will not in any event settle any such claim without our written consent.

15. Trademarks, Copyrights and Restrictions: The LifeLock logo is a registered trademark or service mark of LifeLock. Everything you see in any promotional materials is copyrighted by LifeLock unless otherwise specified. All other product names and company logos found on promotional materials are the trademarks of their respective owners. All promotional materials are protected by copyrights, which are owned or licensed by LifeLock. You may not reproduce, perform, create derivative works from, republish, upload, post, transmit, or distribute in any way whatsoever any LifeLock information without the express, written consent of LifeLock.

16. Credit Repair and Insurance: LifeLock is not a credit repair organization. LifeLock cannot improve your credit history or credit rating. LifeLock will not provide you with advice or assistance in improving your credit history or credit rating.

LifeLock is neither an insurance company nor an agent for any insurance company and does not sell, solicit or negotiate insurance.

17. Miscellaneous: These terms and conditions may not be altered, supplemented, or amended by you by the use of any other document(s). Any attempt to alter, supplement or amend this document or to enter an order for the Service which is subject to additional or altered terms and conditions will be null and void, unless agreed to in writing and signed by you and LifeLock. The section headings used herein are for convenience of reference only and do not form a part of these terms and conditions, and no construction or inference will be derived therefrom. If any provision of this Agreement is held to be unenforceable for any reason, such provision shall be reformed only to the extent necessary to make it enforceable and shall not affect the enforceability of any other provision.

18. Description of your obligations: You agree that you are only providing your own personal information and not the information of any other individual. You agree that the information you provide during the registration process and any subsequent information you provide to LifeLock will be true, accurate, and current. You are obligated to contact LifeLock Client Services in the event that any information you provided LifeLock during Registration has changed. In addition, you agree that you will not purposely engage in behavior that will put your personal information at unnecessary risk, such as leaving your PIN or passwords in obvious places or publishing your Social Security Number. You additionally agree that you have a good faith suspicion that you have been or are about to become a victim of fraud or related crime, including identity theft, that you want to obtain fraud alerts under 15 U.S.C. § 1681c-1, and that you will notify LifeLock immediately if and when you no longer have such a good faith suspicion. You agree to comply with all applicable laws and regulations and that you are buying the Service for your own use only. You agree that you are eighteen (18) years of age or older.

You agree to pay us the fee we publish for our Service, less any discounts to which you may be entitled.

19. Electronic Agreement: YOU AND LIFELOCK HAVE ENTERED INTO THIS AGREEMENT INTENDING TO BE BOUND BY YOUR ELECTRONIC ACCEPTANCE OF THE AGREEMENT. IN THE FUTURE, YOU AGREE TO BE BOUND TO THESE SPECIFIC TERMS AND CONDITIONS OF SALES, AND MODIFICATIONS TO THIS AGREEMENT BY CONTINUING TO USE OUR SERVICE AFTER WE HAVE NOTIFIED YOU OF THOSE TERMS AND CONDITIONS, NOTIFICATIONS, OR ANY OTHER COMMUNICATIONS, INCLUDING BILLING, PAYMENT, AND/OR DISCLOSURES WILL BE MADE VIA THE MAIL, TELEPHONE, OR EMAIL ADDRESS ASSOCIATED WITH YOUR ACCOUNT. THIS AGREEMENT MAY BE PRINTED AND RETAINED BY YOU FOR FUTURE REFERENCE. YOU MAY WITHDRAW YOUR ACCEPTANCE OF THIS AGREEMENT AT ANY TIME PRIOR TO PURCHASING THE SERVICE BY NOTIFYING LIFELOCK CLIENT SERVICES IN WRITING, HOWEVER, IN THAT EVENT, YOU WILL NOT BE ABLE TO PURCHASE THE SERVICE. YOU ARE OBLIGATED TO CONTACT LIFELOCK CLIENT SERVICES IN THE EVENT THAT ANY INFORMATION YOU HAVE PROVIDED LIFELOCK HAS CHANGED.

20. You may withdraw your acceptance of this agreement at any time by notifying LifeLock Client Services in writing. Upon notification of your withdrawal of acceptance, LifeLock will cancel your service.

21. Acknowledgment: The Agreement, including all documents referred to herein, represents the entire understanding between you and LifeLock regarding your relationship with LifeLock and supersedes any prior statements or representations. When using or purchasing the LifeLock Service, you agree to be bound by these terms and conditions.