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5 Department of Business Oversight
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10 BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT
11 OF THE STATE OF CALIFORNIA

12 In the Matter of:

13 THE COMMISSIONER OF BUSINESS
14 OVERSIGHT,

CONSENT ORDER

15 Complainant,

16 v.
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18 CONESTOGA SETTLEMENT SERVICES,
19 LLC, CONESTOGA INTERNATIONAL, LLC
AND MICHAEL C. MCDERMOTT,

20 Respondents.
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22 The Commissioner of Business Oversight (Commissioner) of the Department of Business
23 Oversight and Conestoga Settlement Services, LLC (Conestoga Settlement Services), Conestoga
24 International, LLC (Conestoga International) and Michael C. McDermott (McDermott) (collectively
25 referred to as "Conestoga") enter this Consent Order with respect to the following facts:

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I.

RECITALS

A. The Commissioner has jurisdiction over the licensing and regulation of persons and entities involved in the offer and sale of securities and issuer transactions under the Corporate Securities Law of 1968 (Corporations Code section 25000 et seq.).

B. At all relevant times Conestoga Settlement Services is and was a Delaware limited liability company and Conestoga International is and was a Puerto Rican limited liability company. At all relevant times Michael C. McDermott is and was the sole manager and control person of Conestoga Settlement Services.

C. Conestoga engaged in the business of offering and selling securities in California in the form of life settlement contracts, an agreement for the sale of an existing life insurance policy by its owner for more than its cash surrender, but less than its net death benefit.

D. The Department of Business Oversight (Department) has not issued a permit or other form of qualification authorizing Conestoga to offer or sell the above-described securities in this state.

E. Beginning in at least as early as 2013, Conestoga paid independent contractor sales agents commissions to offer and sell its life settlement contracts in California. Conestoga was not licensed as a broker-dealer nor were its independent contractor sales agents authorized to sell securities in California.

F. In connection with the offer and sale of life settlement contracts to California investors, Conestoga and/or Conestoga's independent contractor sales agents made, or caused to be made, misrepresentations of material fact or omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading. These misrepresentations and omissions included, but are not limited to, the following:

1. Failing to disclose that multiple state agencies had issued orders related to Conestoga for securities law violations including but not limited to the Arkansas Securities Division, California Department of Business Oversight, and the Utah Division of Securities.

1 b. Pursuant to Corporations Code section 25210, the offer or sale of securities by
2 independent contractors or sales agents, operating as broker-dealers, unless and until having first
3 applied for and securing from the Commissioner a certificate authorizing them to act in that capacity
4 under the Corporate Securities Law of 1968.

5 c. Pursuant to Corporations Code section 25401, the offer or sale of any security
6 in the State of California, including but not limited to life settlement contracts, by means of any
7 written or oral communication which includes an untrue statement of a material fact or omits to state
8 a material fact necessary in order to make the statements made, in light of the circumstances under
9 which they were made, not misleading.

10 3. Order to Levy Administrative Penalties. Conestoga shall pay an administrative
11 penalty of \$90,000.00 no later than 180 days after the Effective Date of this Consent Order as
12 defined in paragraph 24. The penalty shall be made payable in the form of a cashier's check or
13 Automated Clearing House deposit to the Department of Business Oversight and transmitted to the
14 attention of Accounting – Litigation, at the Department of Business Oversight, 1515 K Street, Suite
15 200, Sacramento, California 95814. Notice of the payment shall be concurrently sent via email to
16 Taylor.Herrlinger@dbo.ca.gov or via mail to Taylor Herrlinger, Counsel, Department of Business
17 Oversight, 1515 K Street, Suite 200, Sacramento, California 95814.

18 4. Waiver of Hearing Rights. Conestoga acknowledges the Commissioner is ready,
19 willing, and able to proceed with the filing of an administrative enforcement action on the charges
20 contained in this Consent Order. Conestoga hereby waives the right to any hearings, and to any
21 reconsideration, appeal, or other right to review which may be afforded pursuant to the Corporate
22 Securities Law of 1968, the California Administrative Procedure Act (APA), the California Code of
23 Civil Procedure (CCP), or any other provision of law. Conestoga further expressly waives any
24 requirement for the filing of an Accusation pursuant to Government Code section 11415.60,
25 subdivision (b). By waiving such rights, Conestoga effectively consents to this Consent Order,
26 Desist and Refrain Order, and Order to Levy Administrative Penalties becoming final.

27 5. Full and Final Resolution. The Parties hereby acknowledge and agree that this
28 Consent Order is intended to constitute a full, final, and complete resolution of any violations related

1 to the Conestoga Life Settlement Contracts, and that no further proceedings or actions will be
2 brought by the Commissioner in connection with these matters under the Corporate Securities Law
3 of 1968 or any other provision of law, excepting therefrom any proceeding to enforce compliance
4 with the terms of this Consent Order.

5 6. Failure to Comply with Consent Order. Conestoga agrees that if it fails to comply
6 with the terms of this Consent Order, specifically paragraphs 2 and 3, the following will occur:

7 a. If Conestoga fails to fully complete payment of the \$90,000.00 administrative
8 penalty within 180 days of the Effective Date of this Consent Order as defined in paragraph 24, the
9 entire \$90,000.00 administrative penalty, (less any payments previously made towards the
10 \$90,000.00, already received by the Department), shall be immediately due and payable. Conestoga
11 hereby agrees and stipulates that the Department may immediately apply to the appropriate Superior
12 Court, without exhaustion of the review procedures of the APA, to convert the remaining unpaid
13 administrative penalty imposed under this Consent Order into a civil judgment pursuant to
14 Corporations Code section 25252, subdivision (e). Conestoga Settlement Services, Conestoga
15 International, and McDermott, hereby agree that they are jointly and severally liable for payment of
16 the administrative penalty under the civil judgment. Conestoga hereby waives any notice, hearing,
17 and appeal rights to contest the conversion of \$90,000.00 administrative penalty into a \$90,000.00
18 civil judgment, (less any payments previously made towards the \$90,000.00, already received by the
19 Department), which may be afforded under Corporations Code section 25252 subdivision (e).
20 Additionally, Conestoga hereby waives any other notice, hearing, and appeal rights under the
21 Corporate Securities Law of 1968, including section 25233, the APA, CCP, or any other provision of
22 law in connection therewith.

23 b. If Conestoga violates the Desist and Refrain Order terms as outlined above in
24 paragraph 2, after written notice to Conestoga, and failure to cure within 7 days, Conestoga shall pay
25 an administrative penalty of \$250,000.00 to the Department pursuant to Corporations Code section
26 25252, in the same manner as described above in paragraph 3, no later than 12 days after notice from
27 the Department of Conestoga's failure to comply with the Desist and Refrain Order terms.
28 Conestoga agrees that the Department may immediately apply to the appropriate Superior Court,

1 without exhaustion of the review procedures of the APA, to convert the \$250,000.00 administrative
2 penalty imposed under this Consent Order, for failure to comply with the Consent Order, into a civil
3 judgment pursuant to Corporations Code section 25252, subdivision (e). Conestoga Settlement
4 Services, Conestoga International, and McDermott, hereby agree that they are jointly and severally
5 liable for payment of the \$250,000.00 under the civil judgment. Conestoga hereby waives any
6 notice, hearing, and appeal rights to contest the conversion of \$250,000.00 administrative penalty
7 into a \$250,000.00 civil judgment, which may be afforded under Corporation Code section 25252
8 subdivision (e). Additionally, Conestoga hereby waives any other notice, hearing, and appeal rights
9 under the Corporate Securities Law of 1968, including section 25233, the APA, CCP, or any other
10 provision of law in connection therewith; and

11 c. Conestoga hereby agrees to not offer or sell securities in California unless
12 and until Conestoga has filed a qualification application with the Department and received an order
13 from the Commissioner granting authority to offer and sell securities. By so agreeing, Conestoga
14 acknowledges and agrees that upon the Effective Date of this order, any securities offered or sales by
15 Conestoga are not eligible for an exemption from the securities qualification requirement of
16 Corporations Code section 25110.

17 d. The Commissioner may invoke any and all other remedies under the
18 Corporate Securities Law of 1968.

19 7. Information Willfully Withheld or Misrepresented. This Consent Order may be
20 revoked, and the Commissioner may pursue any and all remedies available under law against
21 Conestoga if the Commissioner discovers that Conestoga knowingly or willfully withheld
22 information used for and relied upon in this Consent Order.

23 8. Future Actions by Commissioner. If Conestoga fails to comply with any terms of the
24 Consent Order, the Commissioner may institute proceedings for any and all violations otherwise
25 resolved under this Consent Order. The Commissioner reserves the right to bring any future actions
26 against Conestoga, or any of its partners, owners, officers, shareholders, directors, employees, or
27 successors for any and all unknown violations of the Corporate Securities Law of 1968.
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1 9. Assisting Other Agencies. Nothing in this Consent Order limits the Commissioner’s
2 ability to assist any other government agency (city, county, state, or federal) with any prosecution,
3 administrative, civil or criminal brought by that agency against Conestoga or any other person based
4 upon any of the activities alleged in this matter or otherwise.

5 10. Independent Legal Advice. Each of the parties represents, warrants, and agrees that it
6 has had an opportunity to seek independent advice from its attorney(s) and/or representatives with
7 respect to the advisability of executing this Consent Order.

8 11. No Presumption Against Drafter. Each party acknowledges that it has had the
9 opportunity to draft, review, and edit the language of this Consent Order. Accordingly, the parties
10 intend no presumption for or against the drafting party will apply in construing any part of this
11 Consent Order. The parties waive the benefit of Civil Code section 1654 as amended or
12 corresponding provisions of any successor statute, which provide that in cases of uncertainty,
13 language of a contract should be interpreted most strongly against the party who caused the
14 uncertainty to exist.

15 12. Headings. The headings to the paragraphs of this Consent Order are inserted for
16 convenience only and will not be deemed a part hereof or affect the construction or interpretation of
17 the provisions hereof.

18 13. Binding. This Consent Order is binding on all heirs, assigns, and/or successors in
19 interest.

20 14. Reliance. Each of the parties represents, warrants, and agrees that in executing this
21 Consent Order it has relied solely on the statements set forth herein and has had the opportunity to
22 seek the legal advice of its own counsel. Each of the parties further represents, warrants, and agrees
23 that in executing this Consent Order it has placed no reliance on any statement, representation, or
24 promise of any other party, or any other person or entity not expressly set forth herein, or upon the
25 failure of any party or any other person or entity to make any statement, representation, or disclosure
26 of anything whatsoever. The parties have included this clause: (1) to preclude any claim that any
27 party was in any way fraudulently induced to execute this Consent Order; and (2) to preclude the
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1 introduction of parol evidence to vary, interpret, supplement, or contradict the terms of this Consent
2 Order.

3 15. Waiver, Amendments, and Modifications. No waiver, amendment, or modification of
4 this Consent Order will be valid or binding unless it is in writing and signed by each of the parties.
5 The waiver of any provision of this Consent Order will not be deemed a waiver of any other
6 provision. No waiver by either party of any breach of, or of compliance with, any condition or
7 provision of this Consent Order by the other party will be considered a waiver of any other condition
8 or provision or of the same condition or provision at another time.

9 16. Full Integration. This Consent Order is the final written expression and the complete
10 and exclusive statement of all the agreements, conditions, promises, representations, and covenants
11 between the parties with respect to the subject matter hereof, and supersedes all prior or
12 contemporaneous agreements, negotiations, representations, understandings, and discussions
13 between and among the parties, their respective representatives, and any other person or entity, with
14 respect to the subject matter covered hereby. The parties have included this clause to preclude the
15 introduction of parol evidence to vary, interpret, supplement, or contradict the terms of this Order.

16 17. Governing Law. This Consent Order will be governed by and construed in
17 accordance with California law. Each of the parties hereto consents to the jurisdiction of such court
18 and thereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient
19 forum to the maintenance of such action or proceeding in such court.

20 18. Counterparts. This Consent Order may be executed in one or more separate
21 counterparts, each of which when so executed, shall be deemed an original. Such counterparts shall
22 together constitute a single document.

23 19. Effect Upon Future Proceedings. If Conestoga applies for any license, permit or
24 qualification under the Commissioner's current jurisdiction, or are the subject of any future action by
25 the Commissioner to enforce this Consent Order, then the subject matter hereof shall be admitted for
26 the purpose of such application(s) or enforcement proceeding(s).

27 20. Voluntary Agreement. Conestoga hereby enters in this Consent Order voluntarily and
28 without coercion and acknowledges that no promises, threats, or assurances have been made by the

1 Commissioner or any officer, or agent thereof, about this Consent Order. The parties each represent
2 and acknowledge that he, she, or it is executing this Consent Order completely voluntarily and
3 without any duress or undue influence of any kind from any source.

4 21. Notice. Any notice required under this Consent Order shall be provided to each party
5 at the following addresses:

6 To Conestoga Settlement Services, LLC,
7 Conestoga International, LLC and
8 Michael C. McDermott:

Conestoga Settlement Services, LLC
Conestoga International, LLC
Michael C. McDermott
644 Avenue Fernando Juncos, Suite 301
San Juan, Puerto Rico 00907
mike@myconestoga.com

12 To Attorney for Respondents:

James Craig Orr, Jr.
Heygood, Orr & Pearson
6363 North State Highway 161, Suite 450
Irving, Texas 75038
jim@hop-law.com
www.hop-law.com

17 To the Commissioner:

Taylor Herrlinger, Counsel
Department of Business Oversight
1515 K Street, Suite 200
Sacramento, California 95814
Taylor.Herrlinger@dbo.ca.gov

21 22. Signatures. A fax or electronic mail signature shall be deemed the same as an
22 original signature.

23 23. Public Record. Conestoga hereby acknowledges that the Consent Order is and will be
24 a matter of public record.

25 24. Effective Date. This Consent Order will become final and effective on the date it is
26 signed by all parties and delivered by the Commissioner's agent to Conestoga and Conestoga's
27 Attorney of Record by electronic mail at the following email addresses: mike@myconestoga.com
28 and jim@hop-law.com.

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25. Authority to Sign. Each signatory hereto covenants that he/she possesses all necessary capacity and authority to sign and enter into this Consent Order and undertake the obligations set forth herein.

IN WITNESS WHEREOF, the parties hereto have approved and executed the Consent Order on the dates set forth opposite their respective signatures.

Dated: August 21, 2020

MANUEL P. ALVAREZ
Commissioner of Business Oversight

By _____

MARY ANN SMITH
Deputy Commissioner
Enforcement Division

CONESTOGA SETTLEMENT SERVICES, LLC,
CONESTOGA INTERNATIONAL, LLC AND
MICHAEL C. MCDERMOTT

Dated: August 21, 2020

By _____

MICHAEL C. MCDERMOTT
Manager

APPROVED AS TO FORM

JAMES CRAIG ORR, JR.
HEYGOOD, ORR & PEARSON
Attorneys for Respondents