

1 **STATE OF WASHINGTON**
2 **DEPARTMENT OF FINANCIAL INSTITUTIONS**
3 **SECURITIES DIVISION**

4 IN THE MATTER OF DETERMINING
5 Whether there has been a violation of the
6 Securities Act of Washington by:

7 Guardian Data Systems, LLC,
8 Lance J. Ott,
9 Brett B. Taylor,
10 Richard D. Gilchrist,

11 Respondents.

Order No. S-18-2496-20-SC01

STATEMENT OF CHARGES AND NOTICE OF
INTENT TO ENTER ORDER TO CEASE AND
DESIST, TO IMPOSE FINES, AND TO CHARGE
COSTS

12 THE STATE OF WASHINGTON TO:

Guardian Data Systems, LLC
Lance J. Ott
Brett B. Taylor
Richard D. Gilchrist

13 **STATEMENT OF CHARGES**

14 Please take notice that the Securities Administrator of the state of Washington has reason to believe
15 that Respondents Guardian Data Systems, LLC, Lance J. Ott, Brett B. Taylor, and Richard D. Gilchrist have
16 each violated the Securities Act of Washington. The Securities Administrator believes that these violations
17 justify the entry of an order against Respondents to cease and desist from such violations and to charge costs
18 pursuant to RCW 21.20.390, and to impose a fine under RCW 21.20.395. The Securities Administrator finds
19 as follows:

20 **TENTATIVE FINDINGS OF FACT**

21 **Respondents**

22 1. Guardian Data Systems, LLC (“GDS”) was a Washington limited liability company with its
23 principal place of business in Vancouver, Washington. It was formed on December 23, 2015 and became
inactive on May 3, 2018. GDS was in the business of developing and implementing cloud-based enterprise
resource planning (“ERP”) software for its customers in the cannabis industry.

1 8. In or around December 2015, GDS entered into an agreement with a software company to
2 develop GDS's ERP platform, which it called ROAR. ROAR was advertised as an integrated business
3 management program that was customized to the needs of cannabis companies. In October 2016, GDS entered
4 into an agreement, which was retroactively effective to December 2015, with the software company. In the
5 agreement, the software company transferred all rights to and ownership in the software that it would develop
6 for GDS specific to the cannabis industry. Ownership of this intellectual property would be assigned back to
7 the software company if GDS defaulted on the agreement by, among other things, admitting in writing that
8 GDS was unable to pay its debts as they became due.

9 9. In December 2015, GDS entered into a Revolving Line of Credit Promissory Note with an
10 affiliated company, Bankcard Direct NW, LLC (Bankcard). In the promissory note, Bankcard agreed to
11 advance GDS up to \$500,000, and GDS agreed to repay the advanced funds to Bankcard beginning in January
12 2017. Interest would begin accruing in mid-January 2017 at a rate of Wall Street Prime (3.75%).

13 10. In early 2016, GDS began advertising ROAR to companies in the cannabis industry, attending
14 cannabis trade fairs, and entering into implementation agreements with new customers. While GDS was able
15 to sell its product to businesses in the cannabis industry, the revenue GDS made from these sales was not
16 enough to cover the costs of developing and customizing ROAR for its customers.

17 11. No later than February 2016, Bankcard began advancing funds to GDS under the line of credit
18 by paying company expenses for purposes such as travel, meals, marketing, and utilities. GDS began repaying
19 some of these advanced funds in or around March 2016. In August 2016, GDS and Bankcard modified the
20 promissory note agreement by reducing the line of credit to \$250,000. In January 2017, GDS and Bankcard
21 modified the agreement to acknowledge that GDS owed Bankcard \$231,683.50, and to agree that Bankcard
22 would not make any additional advances to GDS without a new agreement. Under the modification, GDS was
23 to repay its debt to Bankcard with monthly payments from January 2017 to December 2018.

1 customers and dozens more prospective customers. Respondents represented to investors that investment
2 funds were needed to develop, customize, and implement ROAR to GDS's customers.

3 15. Prior to investing, each investor received a Subscription Agreement. Respondents also
4 provided investors with a variety of additional offering documents, with different investors receiving different
5 offering documents, including a Private Placement Memorandum ("PPM"), which primarily disclosed the
6 risks of investing, profit projections, financial statements, an executive summary, and an investor deck.
7 Investors invested in GDS because they wanted to be involved in what they believed was a growth industry,
8 and ROAR seemed to be meeting a need in the cannabis industry.

9 16. Between November 2016 and June 2017, Respondents sold at least \$1,225,000 in convertible
10 promissory notes to eight investors. Respondents did not have a substantive, preexisting relationship with at
11 least four investors at the time that Respondents offered and sold them the investments. At least two of the
12 investors were not accredited investors at the time that Respondents offered and sold them the investments.

13 17. In July and August 2017, GDS solicited its investors for additional investments, but the
14 investors declined. On August 9, 2017, one investor expressed disappointment to GDS that "the current state
15 of things [was] out of alignment with the last pitch in June."

16 18. On August 17, 2017, about two months after GDS received investment funds from its final two
17 investors, Ott notified investors in writing that GDS did not have sufficient funds to meet its payroll and other
18 obligations. Ott noted that the company was unable to continue because it had not closed on an equity round
19 of financing that Respondents had been pursuing. Ott also stated that it was unlikely that GDS would repay
20 any of the convertible promissory notes.

21 19. On December 15, 2017, the software company notified GDS that its agreements with GDS,
22 including the intellectual property ownership agreement, were terminated based upon GDS's admission to
23 investors on August 17, 2017 that it could not pay its debts as they became due. As a result, GDS would assign

1 its rights to the intellectual property back to the software company. Ott subsequently notified investors that
2 all GDS business had been shut down.

3 *Misrepresentations and Omissions*

4 20. Respondents misrepresented the security of the investment to investors. Respondents told at
5 least two investors that GDS owned the ERP software, and that their investments would be secured by this
6 intellectual property. Respondents told a third investor that GDS would enter into an agreement to transfer
7 ownership of ROAR to the investor in the event that GDS went out of business, but the agreement was never
8 finalized. In reality, GDS owned the intellectual property only so long as GDS remained solvent and didn't
9 admit in writing that it couldn't pay its debts as they came due. Respondents failed to disclose that, if GDS
10 became insolvent, the intellectual property would not remain a company asset because it would be assigned
11 back to the software company.

12 21. Respondents failed to disclose material information to investors related to Ott's financial
13 history. While most investors received an investor deck that described Ott's experience in the cannabis
14 industry, Respondents failed to disclose that Ott had filed for bankruptcy and received a discharge of his debts
15 in 2010.

16 22. Respondents failed to disclose material information related to the financial condition of GDS.
17 Respondents failed to disclose to at least four investors that, as of January 1, 2017, GDS was indebted to
18 Bankcard and the software company for a combined total of approximately \$670,000. While some investors
19 received financial statements that disclosed the Bankcard and software company debt, Respondents failed to
20 disclose to these investors that Bankcard was an affiliated company and that GDS was obligated to make
21 monthly payments on the debt beginning in January 2017. In addition, Respondents failed to disclose that, in
22 January 2017, GDS agreed that it would not receive any additional advancements under its current lines of
23 credit with Bankcard and the software company.

1 Brett B. Taylor, and Richard D. Gilchrist, their agents and employees, shall each cease and desist from
2 violations of RCW 21.20.010 and RCW 21.20.140, and that Lance J. Ott, Brett B. Taylor, and Richard D.
3 Gilchrist, their agents and employees, shall each cease and desist from violations of RCW 21.20.040.

4 **NOTICE OF INTENT TO IMPOSE FINES**

5 Based upon the above Tentative Findings of Fact and Conclusions of Law, and pursuant to RCW
6 21.20.395, the Securities Administrator intends to order that:

- 7 a. Respondent Guardian Data Systems, LLC shall be liable for and shall pay a fine of \$10,000;
- 8 b. Respondent Lance J. Ott shall be liable for and shall pay a fine of \$10,000;
- 9 c. Respondent Brett B. Taylor shall be liable for and shall pay a fine of \$10,000; and
- 10 d. Respondent Richard D. Gilchrist shall be liable for and shall pay a fine of \$5,000.

11 **NOTICE OF INTENT TO CHARGE COSTS**

12 Based upon the above Tentative Findings of Fact and Conclusions of Law, and pursuant to RCW
13 21.20.390, the Securities Administrator intends to order that Respondents shall be liable for and shall pay the
14 costs, fees, and other expenses incurred in the administrative investigation and hearing of this matter as
15 follows:

- 16 a. Respondent Guardian Data Systems, LLC shall be liable for and shall pay costs of not less than
17 \$5,000;
- 18 b. Respondent Lance J. Ott shall be liable for and shall pay costs of not less than \$5,000;
- 19 c. Respondent Brett B. Taylor shall be liable for and shall pay costs of not less than \$5,000; and
- 20 d. Respondent Richard D. Gilchrist shall be liable for and shall pay costs of not less than \$2,500.

21 **AUTHORITY AND PROCEDURE**

22 This Statement of Charges is entered pursuant to the provisions of Chapter 21.20 RCW and is subject
23 to the provisions of Chapter 34.05 RCW. Respondents Guardian Data Systems, LLC, Lance J. Ott, Brett B.

1 Taylor, and Richard D. Gilchrist may each make a written request for a hearing as set forth in the Notice of
2 Opportunity for Hearing accompanying this Order. If a respondent does not make a hearing request in the
3 time allowed, the Securities Administrator intends to adopt the above Tentative Findings of Fact and
4 Conclusions of Law as final and to enter a permanent order to cease and desist as to that respondent, to impose
5 any fines sought against that respondent, and to charge any costs sought against that respondent.

6 Signed and Entered this 2nd day of October 2020.

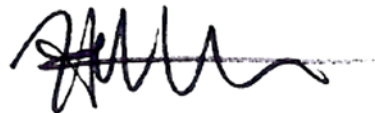
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10 _____
11 William M. Beatty
12 Securities Administrator

13 Approved by:

14 Presented by:

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17 _____
18 Suzanne Sarason
19 Chief of Enforcement

20 _____
21 Holly Mack-Kretzler
22 Financial Legal Examiner

23 Reviewed by:



Brian Guerard
Financial Legal Examiner Supervisor