# STATE OF WASHINGTON DEPARTMENT OF FINANCIAL INSTITUTIONS SECURITIES DIVISION

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

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

Guardian Data Systems, LLC,

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

Lance J. Ott,

COSTS

Brett B. Taylor, Richard D. Gilchrist,

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THE STATE OF WASHINGTON TO:

Respondents.

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Guardian Data Systems, LLC

Lance J. Ott Brett B. Taylor Richard D. Gilchrist

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#### STATEMENT OF CHARGES

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

#### TENTATIVE FINDINGS OF FACT

# Respondents

1. Guardian Data Systems, LLC ("GDS") was a Washington limited liability company with its 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.

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- 2. Lance J. Ott ("Ott") is a resident of California. He was a resident of Vancouver, Washington between approximately January 2017 and July 2017. Ott was Co-President of GDS.
- 3. Brett B. Taylor ("Taylor") is a resident of Clark County, Washington. Taylor was Co-President of GDS.
- 4. Richard D. Gilchrist ("Gilchrist") is a resident of Virginia. Between about May 2016 and June 2017, Gilchrist was an employee of GDS and held the title of Chief Revenue Officer. Gilchrist was hired to offer and sell investments in GDS.

## **Related Party**

5. Bankcard Direct NW, Inc. is a Washington State company that was incorporated by Taylor on August 16, 2007. In or around February 2012, Ott became involved in the company, and Taylor and Ott were named co-Presidents. Bankcard Direct NW, Inc. is in the business of providing merchant services related to processing debit and credit cards.

#### **Nature of the Conduct**

#### Overview

6. Between June 2016 and June 2017, GDS, Ott, Taylor, and Gilchrist offered and sold at least \$1,225,000 of unregistered investments in GDS to eight investors. Respondents failed to disclose to the investors material information related to the investment, including the security of the investment, Ott's financial background, GDS's financial condition, Ott and Taylor's receipt of compensation, and the use of investor funds.

#### **Background**

7. In October 2009, Ott filed for Chapter 7 Bankruptcy in the Central District of California. He received a discharge of his debts in March 2010.

- 8. In or around December 2015, GDS entered into an agreement with a software company to develop GDS's ERP platform, which it called ROAR. ROAR was advertised as an integrated business management program that was customized to the needs of cannabis companies. In October 2016, GDS entered into an agreement, which was retroactively effective to December 2015, with the software company. In the agreement, the software company transferred all rights to and ownership in the software that it would develop for GDS specific to the cannabis industry. Ownership of this intellectual property would be assigned back to the software company if GDS defaulted on the agreement by, among other things, admitting in writing that GDS was unable to pay its debts as they became due.
- 9. In December 2015, GDS entered into a Revolving Line of Credit Promissory Note with an affiliated company, Bankcard Direct NW, LLC (Bankcard). In the promissory note, Bankcard agreed to advance GDS up to \$500,000, and GDS agreed to repay the advanced funds to Bankcard beginning in January 2017. Interest would begin accruing in mid-January 2017 at a rate of Wall Street Prime (3.75%).
- 10. In early 2016, GDS began advertising ROAR to companies in the cannabis industry, attending cannabis trade fairs, and entering into implementation agreements with new customers. While GDS was able to sell its product to businesses in the cannabis industry, the revenue GDS made from these sales was not enough to cover the costs of developing and customizing ROAR for its customers.
- 11. No later than February 2016, Bankcard began advancing funds to GDS under the line of credit by paying company expenses for purposes such as travel, meals, marketing, and utilities. GDS began repaying some of these advanced funds in or around March 2016. In August 2016, GDS and Bankcard modified the promissory note agreement by reducing the line of credit to \$250,000. In January 2017, GDS and Bankcard modified the agreement to acknowledge that GDS owed Bankcard \$231,683.50, and to agree that Bankcard would not make any additional advances to GDS without a new agreement. Under the modification, GDS was to repay its debt to Bankcard with monthly payments from January 2017 to December 2018.

12. In August 2016, GDS entered into a \$250,000 Revolving Line of Credit Promissory Note with the software company that was developing, customizing, implementing, and supporting ROAR for GDS's customers. Under the agreement, the software company agreed to roll the approximately \$250,000 that GDS already owed it for services provided prior to August 2016 into the line of credit. In January 2017, GDS entered into a Note Modification Agreement with the software company. Under the agreement, the parties agreed that GDS owed the software company about \$440,000 for services provided to GDS prior to January 2017, and that the software company would not allow any additional advances under the current agreement. GDS agreed to pay the entirety of the note on or before December 2018, with monthly payments on the note beginning in January 2017.

### The Offering

- 13. In or around June 2016, GDS, Gilchrist, Ott, and Taylor began offering unregistered securities in the form of convertible promissory notes to investors. The notes had a two year term and an interest rate of 8%. The notes could be converted to Preferred A Units of Membership Interest if GDS closed on an equity offering totaling at least \$1 million, or if GDS experienced a change of control. Respondents offered the convertible notes to at least one attendee of a cannabis trade fair, to Gilchrist's friends and family, to investment firms and angel investors, and to Taylor's Facebook friends.
- 14. Respondents explained to investors that GDS had developed ROAR, its ERP software, specifically for customers in the legal cannabis industry. In states where cannabis had been legalized, there were strict rules around tracking the cannabis "from seed to sale." Respondents told investors that ROAR was developed on an existing ERP platform, so it integrated cannabis tracking capabilities with traditional business management tools. ROAR would also be customized for each customer's specific needs. Respondents represented to investors that ROAR had been well received in the industry, and that GDS had dozens of

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

- 15. Prior to investing, each investor received a Subscription Agreement. Respondents also provided investors with a variety of additional offering documents, with different investors receiving different offering documents, including a Private Placement Memorandum ("PPM"), which primarily disclosed the risks of investing, profit projections, financial statements, an executive summary, and an investor deck. Investors invested in GDS because they wanted to be involved in what they believed was a growth industry, and ROAR seemed to be meeting a need in the cannabis industry.
- 16. Between November 2016 and June 2017, Respondents sold at least \$1,225,000 in convertible promissory notes to eight investors. Respondents did not have a substantive, preexisting relationship with at least four investors at the time that Respondents offered and sold them the investments. At least two of the investors were not accredited investors at the time that Respondents offered and sold them the investments.
- 17. In July and August 2017, GDS solicited its investors for additional investments, but the investors declined. On August 9, 2017, one investor expressed disappointment to GDS that "the current state of things [was] out of alignment with the last pitch in June."
- 18. On August 17, 2017, about two months after GDS received investment funds from its final two investors, Ott notified investors in writing that GDS did not have sufficient funds to meet its payroll and other obligations. Ott noted that the company was unable to continue because it had not closed on an equity round of financing that Respondents had been pursuing. Ott also stated that it was unlikely that GDS would repay any of the convertible promissory notes.
- 19. On December 15, 2017, the software company notified GDS that its agreements with GDS, including the intellectual property ownership agreement, were terminated based upon GDS's admission to investors on August 17, 2017 that it could not pay its debts as they became due. As a result, GDS would assign

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

## Misrepresentations and Omissions

- 20. Respondents misrepresented the security of the investment to investors. Respondents told at least two investors that GDS owned the ERP software, and that their investments would be secured by this intellectual property. Respondents told a third investor that GDS would enter into an agreement to transfer ownership of ROAR to the investor in the event that GDS went out of business, but the agreement was never finalized. In reality, GDS owned the intellectual property only so long as GDS remained solvent and didn't admit in writing that it couldn't pay its debts as they came due. Respondents failed to disclose that, if GDS became insolvent, the intellectual property would not remain a company asset because it would be assigned back to the software company.
- 21. Respondents failed to disclose material information to investors related to Ott's financial history. While most investors received an investor deck that described Ott's experience in the cannabis industry, Respondents failed to disclose that Ott had filed for bankruptcy and received a discharge of his debts in 2010.
- 22. Respondents failed to disclose material information related to the financial condition of GDS. Respondents failed to disclose to at least four investors that, as of January 1, 2017, GDS was indebted to Bankcard and the software company for a combined total of approximately \$670,000. While some investors received financial statements that disclosed the Bankcard and software company debt, Respondents failed to disclose to these investors that Bankcard was an affiliated company and that GDS was obligated to make monthly payments on the debt beginning in January 2017. In addition, Respondents failed to disclose that, in January 2017, GDS agreed that it would not receive any additional advancements under its current lines of credit with Bankcard and the software company.

23. Respondents failed to disclose material information related to Ott and Taylor's investment in the company. Respondents represented to at least two investors that Ott and Taylor had invested significant funds into GDS. Respondents failed to disclose to investors that Ott and Taylor's investment in GDS was in the form of a loan from Bankcard, an affiliated company. Respondents also failed to disclose that the Bankcard

loan would be repaid before the investors' convertible promissory notes.

24. Respondents failed to disclose material information related to Ott and Taylor's receipt of compensation. Respondents represented to at least four investors that GDS's principals were not receiving a salary from GDS. Ott told these investors that Ott and Taylor were not receiving paychecks because the company needed funding, and that they were deferring their salary. In the PPM, GDS, Ott, and Taylor represented that GDS members were not currently taking salaried compensation and had not received any distributions. While financial statements received by some investors disclosed a debt to Bankcard, Respondents did not disclose that Bankcard was an affiliated company. Respondents also failed to disclose that Ott and Taylor were receiving compensation from GDS in the form of repayments under the Bankcard line of credit.

25. Respondents failed to disclose material information related to GDS's use of funds. Respondents represented to investors that investment funds would be used to develop, customize, and implement ROAR to GDS's customers. Respondents told investors that GDS was successfully selling ROAR to its customers, but GDS needed additional funds to customize and implement the platform for specific customers. Respondents failed to disclose to investors that a substantial amount of investor funds would be used to make payroll payments for purposes other than software development and implementation of ROAR.

#### **Registration Status**

26. Guardian Data Systems, LLC is not currently registered to sell its securities in the state of Washington and has not previously been so registered, nor has it filed a claim of exemption from registration.

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- 27. Lance J. Ott is not currently registered as a securities salesperson or broker-dealer in the state of Washington and has not previously been so registered.
- 28. Brett B. Taylor is not currently registered as a securities salesperson or broker-dealer in the state of Washington and has not previously been so registered.
- 29. Richard D. Gilchrist is not currently registered as a securities salesperson or broker-dealer in the state of Washington and has not previously been so registered.

Based upon the above Tentative Findings of Fact, the following Conclusions of Law are made:

# **CONCLUSIONS OF LAW**

- 1. The offer and sale of the convertible promissory notes described above constitutes the offer and sale of a security as defined in RCW 21.20.005(14) and RCW 21.20.005(17).
- 2. Guardian Data Systems, LLC, Lance J. Ott, Brett B. Taylor, and Richard D. Gilchrist have each violated RCW 21.20.140 because, as set forth in the Tentative Findings of Fact, Respondents offered and sold securities for which no registration is on file with the Securities Administrator.
- 3. Lance J. Ott, Brett B. Taylor, and Richard D. Gilchrist have each violated RCW 21.20.040 because, as set forth in the Tentative Findings of Fact, Ott, Taylor, and Gilchrist offered and sold securities while not being registered as a securities salesperson or broker-dealer in the state of Washington.
- 4. Guardian Data Systems, LLC, Lance J. Ott, Brett B. Taylor, and Richard D. Gilchrist have each violated RCW 21.20.010 because, as set forth in the Tentative Findings of Fact, Respondents made untrue statements of material fact or omitted to state material facts necessary to make the statements made, in light of the circumstances in which they were made, not misleading.

#### NOTICE OF INTENT TO ORDER RESPONDENTS TO CEASE AND DESIST

Based upon the above Tentative Findings of Fact and Conclusions of Law, and pursuant to RCW 21.20.390(1), the Securities Administrator intends to order that Guardian Data Systems, LLC, Lance J. Ott,

	Brett B. Taylor, and Richard D. Gilchrist, their agents and employees, shall each cease and desist from
	violations of RCW 21.20.010 and RCW 21.20.140, and that Lance J. Ott, Brett B. Taylor, and Richard D
	Gilchrist, their agents and employees, shall each cease and desist from violations of RCW 21.20.040.
	NOTICE OF INTENT TO IMPOSE FINES
	Based upon the above Tentative Findings of Fact and Conclusions of Law, and pursuant to RCW
	21.20.395, the Securities Administrator intends to order that:
	a. Respondent Guardian Data Systems, LLC shall be liable for and shall pay a fine of \$10,000;
	b. Respondent Lance J. Ott shall be liable for and shall pay a fine of \$10,000;
	c. Respondent Brett B. Taylor shall be liable for and shall pay a fine of \$10,000; and
	d. Respondent Richard D. Gilchrist shall be liable for and shall pay a fine of \$5,000.
	NOTICE OF INTENT TO CHARGE COSTS
	Based upon the above Tentative Findings of Fact and Conclusions of Law, and pursuant to RCW
	21.20.390, the Securities Administrator intends to order that Respondents shall be liable for and shall pay the
	costs, fees, and other expenses incurred in the administrative investigation and hearing of this matter as
	follows:
	a. Respondent Guardian Data Systems, LLC shall be liable for and shall pay costs of not less than
	\$5,000;
	b. Respondent Lance J. Ott shall be liable for and shall pay costs of not less than \$5,000;
	c. Respondent Brett B. Taylor shall be liable for and shall pay costs of not less than \$5,000; and
	d. Respondent Richard D. Gilchrist shall be liable for and shall pay costs of not less than \$2,500.
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## AUTHORITY AND PROCEDURE

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

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	Taylor, and Richard D. Gilchrist may each make a written request for a hearing as set forth in the Notice of
	Opportunity for Hearing accompanying this Order. If a respondent does not make a hearing request in the
	time allowed, the Securities Administrator intends to adopt the above Tentative Findings of Fact and
	Conclusions of Law as final and to enter a permanent order to cease and desist as to that respondent, to impos
	any fines sought against that respondent, and to charge any costs sought against that respondent.
	Signed and Entered this <u>2nd</u> day of <u>October</u> 2020.
	Millian Seats
	William M. Beatty Securities Administrator
	Approved by:  Presented by:
	an Edm
	Suzanne Sarason  Chief of Enforcement  Holly Mack-Kretzler Financial Legal Examiner
	Reviewed by:
	Brian Guerard Financial Legal Examiner Supervisor
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