

DEPT. OF COMMERCE  
AND CONSUMER AFFAIRS

DENISE P. BALANAY 5526-0  
Regulated Industries Complaints Office  
Department of Commerce and Consumer Affairs  
State of Hawaii  
Leiopapa A Kamehameha Building  
235 South Beretania Street, Suite 900  
Honolulu, Hawaii 96813  
Telephone: (808) 586-2660

2014 JUL 11 P 1:48

HEARINGS OFFICE

Attorney for Department of Commerce  
and Consumer Affairs

BOARD OF PRIVATE DETECTIVES AND GUARDS  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
STATE OF HAWAII

In the Matter of the Guard Agency	)	PDG 2013-1-L
License of	)	
	)	SETTLEMENT AGREEMENT PRIOR TO
GUARDSMARK, LLC fka	)	FILING OF PETITION FOR DISCIPLINARY
GUARDSMARK, INC.,	)	ACTION AND BOARD'S FINAL ORDER;
	)	EXHIBITS "1" AND "2"
Respondent.	)	
	)	

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SETTLEMENT AGREEMENT PRIOR TO FILING OF PETITION  
FOR DISCIPLINARY ACTION AND BOARD'S FINAL ORDER

Petitioner, DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS'

REGULATED INDUSTRIES COMPLAINTS OFFICE (hereinafter "RICO" or "Petitioner"),  
through its undersigned attorney(s), and Respondent GUARDSMARK, LLC fka  
GUARDSMARK, INC. (hereinafter "Respondent"), enter into this Settlement Agreement on the  
terms and conditions set forth below.

A. UNCONTESTED FACTS:

1. At all relevant times herein, Respondent was licensed by the Board of Private  
Detectives and Guards (hereinafter the "Board") as a guard agency under license number GDA

578. The license was issued on or about December 23, 1996. The license will expire or forfeit on or about June 30, 2014.

2. Respondent's mailing address for purposes of this action is 900 Fort Street Mall, #1650, Honolulu, Hawaii 96813.

3. RICO received a complaint alleging that, on or about March 20, 2012, Respondent entered into a Consent Agreement with the North Carolina Private Protective Services Board whereby Respondent paid fines and fees totaling \$3,570.00 for alleged licensing violations including failing to properly register guards in its agency ("North Carolina Consent Agreement"). The North Carolina Consent Agreement is attached hereto as Exhibit "1."

4. Respondent failed to inform the Board of the North Carolina Consent Agreement within thirty days of its issuance or effective date.

5. RICO received a complaint alleging that, on or about September 10, 2010, Respondent entered into a Settlement Agreement with the State of Ohio, Ohio Department of Public Safety whereby Respondent paid fines and fees totaling \$4,890.00 for alleged licensing violations including failing to properly register guards in its agency ("Ohio Settlement Agreement"). The Ohio Settlement Agreement is attached hereto as Exhibit "2."

6. Respondent failed to inform the Board of the Ohio Settlement Agreement within thirty days of its issuance or effective date.

7. The foregoing allegations, if proven at an administrative hearing before the Board, would constitute violations of the following statute(s) and/or rule(s): Hawaii Revised Statutes ("HRS") § 436B-19(15) (failure to report disciplinary action in another jurisdiction within thirty days).

8. The Board has jurisdiction over the subject matter herein and over the parties hereto.

B. REPRESENTATIONS BY RESPONDENT:

1. Respondent is fully aware that Respondent has the right to be represented by an attorney and voluntarily waives that right.

2. Respondent enters into this Settlement Agreement freely, knowingly, voluntarily, and under no coercion or duress.

3. Respondent is aware of the right to have a hearing to adjudicate the issues in the case. Pursuant to HRS § 91-9(d), Respondent freely, knowingly, and voluntarily waives the right to a hearing and agrees to dispose of this case in accordance with the terms and conditions of this Settlement Agreement.

4. Respondent being at all times relevant herein licensed as a guard agency by the Board acknowledges that Respondent is subject to penalties including but not limited to, revocation, suspension or limitation of the license and administrative fines, if the foregoing allegations are proven at hearing.

5. Respondent does not admit to violating any law or rule, but acknowledges that RICO has sufficient cause to file a Petition for Disciplinary Action against Respondent's license. Respondent further understands that this Settlement Agreement does not constitute a finding of a breach of any statute, law or rule.

6. Respondent enters into this Settlement Agreement as a compromise of the claims and to conserve on the expenses of proceeding with an administrative hearing on this matter.

7. Respondent agrees that this Settlement Agreement is intended to resolve the issues raised in RICO's investigation in RICO Case No. PDG 2013-1-L.

8. Respondent understands this Settlement Agreement is public record pursuant to Hawaii Revised Statutes chapter 92F.

C. TERMS OF SETTLEMENT:

1. Administrative Fine. Respondent agrees to pay a fine in the amount of ONE THOUSAND FIVE HUNDRED AND NO/100 DOLLARS (\$1,500.00). Payment shall be made by **cashier's check or money order made payable to "DCCA - Compliance Resolution Fund"** and mailed to the Regulated Industries Complaints Office, Attn: Denise P. Balanay, Esq., 235 S. Beretania Street, 9<sup>th</sup> Floor, Honolulu, Hawaii 96813. Payment of the fine shall be due at the time this Settlement Agreement is returned to RICO.

2. Failure to Comply with Settlement Agreement. If Respondent fails to fully and timely comply with the terms of this Settlement Agreement as set forth in paragraph C.1 above, Respondent's license shall be automatically revoked upon RICO's filing of an affidavit with the Board attesting to such failure. In case of such revocation, Respondent shall turn in all indicia of the license to the Executive Officer of the Board within ten (10) days after receipt of notice of the revocation. In case of such revocation, Respondent understands Respondent cannot apply for a new license until the expiration of at least five (5) years after the effective date of the revocation. Respondent understands that if Respondent desires to become licensed again, Respondent must apply to the Board for a new license pursuant to and subject to HRS §§ 92-17, 436B-21, and all other applicable laws and rules in effect at the time.

3. Possible Further Sanction. The Board, at its discretion, may pursue additional disciplinary action as provided by law to include further fines and other sanctions as the Board may deem appropriate if Respondent violates any provision of the statutes or rules governing the

conduct of guard agencies in the State of Hawaii, or if Respondent fails to abide by the terms of this Settlement Agreement.

4. Approval of the Board. Respondent agrees that, except for the representations, agreements and covenants contained in Paragraphs C.5, C.6, C.7 and C.8 below, this Settlement Agreement shall not be binding on any of the parties unless and until it is approved by the Board.

5. No Objection if Board Fails to Approve. If the Board does not approve this Settlement Agreement, does not issue an order pursuant thereto, or does not approve a lesser remedy, but instead an administrative hearing is conducted against Respondent in the Board's usual and customary fashion pursuant to the Administrative Procedure Act, Respondent agrees that neither Respondent nor any attorney that Respondent may retain, will raise as an objection in any administrative proceeding or in any judicial action, to the Board's proceeding against Respondent on the basis that the Board has become disqualified to consider the case because of its review and consideration of this Settlement Agreement.

6. Any Ambiguities Shall be Construed to Protect the Consuming Public. It is agreed that any ambiguity in this Settlement Agreement is to be read in the manner that most completely protects the interests of the consuming public.

7. No Reliance on Representations by RICO. Other than the matters specifically stated in this Settlement Agreement, neither RICO nor anyone acting on its behalf has made any representation of fact, opinion or promise to Respondent to induce entry into this Settlement Agreement, and Respondent is not relying upon any statement, representation or opinion or promise made by RICO or any of its agents, employees, representatives or attorneys concerning the nature, extent or duration of exposure to legal liability arising from the subject matter of this Settlement Agreement or concerning any other matter.

8. Complete Agreement. This Settlement Agreement is a complete settlement of the rights, responsibilities and liabilities of the parties hereto with respect to the subject matter hereof; contains the entire agreement of the parties; and may only be modified, changed or amended by written instrument duly executed by all parties hereto.

IN WITNESS WHEREOF, the parties have signed this Settlement Agreement on the date(s) set forth below.

DATED: Memphis, Tennessee, July 30, 2013.  
(City) (State) (Date)

GUARDSMARK, LLC fka GUARDSMARK, INC.  
Respondent

By: Gareth C. Leviton  
Its **GARETH C. LEVITON, VICE PRESIDENT**

DATED: Honolulu, Hawaii, AUG 13 2013.

Denise P. Balanay

DENISE P. BALANAY  
Attorney for Department of  
Commerce and Consumer Affairs

IN THE MATTER OF THE GUARD AGENCY LICENSE OF GUARDSMARK, LLC fka  
GUARDSMARK, INC.; SETTLEMENT AGREEMENT PRIOR TO FILING OF PETITION  
FOR DISCIPLINARY ACTION AND BOARD'S FINAL ORDER  
RICO CASE NO(S). PDG 2013-1-L

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APPROVED AND SO ORDERED:  
BOARD OF PRIVATE DETECTIVES AND GUARDS  
STATE OF HAWAII

  
\_\_\_\_\_  
DOUGLAS H. INOUE  
Chairperson

June 26, 2014  
\_\_\_\_\_  
DATE

\_\_\_\_\_  
CHIEF GARY YABUTA  
Vice Chairperson

  
\_\_\_\_\_  
EDWARD AK.IONA

  
\_\_\_\_\_  
RAY GALAS

  
\_\_\_\_\_  
CHIEF DARRYL PERRY

  
\_\_\_\_\_  
KENNETH CHANG

PVL 05/15/13

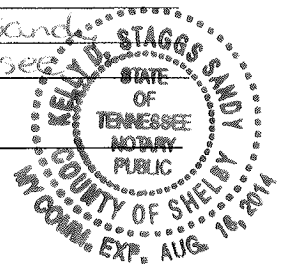
STATE OF Tennessee )  
COUNTY OF Shelby ) SS.

On this 30<sup>th</sup> day of July, 2013, before me personally appeared Gareth C. Leviton, to me known to be the person described, and who executed the foregoing instrument on behalf of GUARDSMARK, LLC fka GUARDSMARK, INC. as its Vice President, and acknowledged that he/she executed the same as his/her free act and deed.

This 6-page Settlement Agreement document dated July 30, 2013 was acknowledged before me by \_\_\_\_\_ this 30<sup>th</sup> day of July, 2013, in the City of Memphis, in the County of Shelby, in the State of Tennessee.

Name: Kelly D. Staggs Sande  
Notary Public, State of Tennessee

My Commission expires: \_\_\_\_\_





## MEMORANDUM OF CONSENT AGREEMENT

*THIS AGREEMENT, made by and between the North Carolina Private Protective Services Board, (hereinafter "Board"), and Barry Samuel Echols, (hereinafter "Mr. Echols"), Licensee of Guardsmark, LLC, (hereinafter "Guardsmark"):*

### WITNESSETH

*WHEREAS, the private protective services industry is regulated by Chapter 74C of the General Statutes of North Carolina and the rules promulgated thereunder; and WHEREAS, G.S. 74C-2 requires any person, firm, association, or corporation engaging in or holding itself out as engaging in the private protective services business in the State of North Carolina to first be licensed in accordance with the Private Protective Services Act (hereinafter "the Act"); and*

*WHEREAS, pursuant to G.S. 74C-17, the Board is empowered to initiate enforcement action for compliance with Chapter 74C and the rules promulgated thereunder; and*

*WHEREAS, pursuant to G.S. 74C-12 the Board may suspend or revoke a private protective services business license if there has been a violation of the Act or the rules promulgated thereunder; and*

*WHEREAS, the Board is specifically authorized to institute civil and/or criminal action against any person, firm, association or corporation or their agents and employees for any violation of Chapter 74C; and*

*WHEREAS, pursuant to G.S. 74C-11, an individual engaged in the security guard and patrol profession as an unarmed security guard is required to be properly registered; and*

*WHEREAS, pursuant to 12 NCAC 07D .0702, an individual registered as an unarmed security guard is required to submit a twenty-five dollar (\$25.00) non-refundable registration fee; and*

*WHEREAS, Guardsmark did allow seventeen (17) employees to work as unarmed guards without being properly registered during the period of January 1, 2006 - December 31, 2006; and*

*WHEREAS, Guardsmark did allow ten (10) employees to work as unarmed guards without being properly registered during the period of January 1, 2007 - December 31, 2007; and*

*WHEREAS, Guardsmark did allow eight (8) employees to work as unarmed guards without being properly registered during the period of January 1, 2008 - December 31, 2008.*

EXHIBIT 1

RECEIVED  
OFFICE OF THE  
ATTORNEY GENERAL  
JAN 10 2009

NOW THEREFORE, in consideration of the above recitals, it is AGREED as follows:

1. Guardsmark and Mr. Echols hereby promise and agree to pay the back registration fees in the amount of \$875.00 for thirty-five (35) unarmed security guards that were not properly registered.

2. Guardsmark and Mr. Echols hereby promise and agree to pay the Board interest at the legal rate of 8% per annum as set forth in G.S. 24-1, calculated on the total amount of the back registration fees, said interest to be in the amount of \$70.00.

3. Guardsmark and Mr. Echols hereby promise and agree to pay to the Board a fee for reimbursement of administrative and investigative costs accrued in this matter in the amount of \$2,625.00.

4. Guardsmark and Mr. Echols hereby promise and agree to pay the Board the total amount of \$3,570.00 within thirty (30) days of the full execution of this document.

5. In exchange for Guardsmark and Mr. Echols agreements stated above, the Board agrees to accept this agreement in satisfaction of the violations outlined herein. Guardsmark and Mr. Echols do acknowledge and agree that this agreement will be maintained in their licensing files and recognize that the Board in no way waives the right to use these violations in any further administrative proceeding.

NOW, THEREFORE, in consideration of the benefits accruing to the Board, Barry Samuel Echols and Guardsmark, LLC, same do hereby set down their signatures:

**GUARDSMARK, LLC**

Gareth C. Leviton

3/20/12  
DATE

GARETH C. LEVITON, VICE PRESIDENT

Richard Allen, Chairman  
N.C. Private Protective Services Board

DATE

PPSB File Number: 2009-PPS-038

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STATE OF OHIO  
DEPARTMENT OF PUBLIC SAFETY,  
DIVISION OF HOMELAND SECURITY

IN THE MATTER OF:

GUARDSMARK  
6300 Rockside Road  
Independence, Ohio

CASE NO. 2009-325

**SETTLEMENT AGREEMENT**

This Settlement Agreement is entered into by and between the State of Ohio, acting by and through the Ohio Department of Public Safety, Division of Homeland Security (hereinafter the "Division") and Guardsmark (hereinafter "Respondent"). Where applicable in this Settlement Agreement the term "the Parties" means both the Division and Respondent.

**RECITALS**

A. The Division, as a result of an audit review it conducted on May 6, 2009, notified Respondent via Notice of Opportunity for Hearing dated June 28, 2010, that the Division was proposing to take action against Respondent's Private Investigator Security Guard Provider License(s) for failing to register or timely register two (2) private investigator security guard employees.

B. The Parties agreed that this matter could be resolved to the satisfaction of all Parties without a formal hearing and with considerable savings in terms of both time and monetary expense, and therefore, wish to enter into an agreement memorializing such resolution upon which the Parties can rely for all purposes.

NOW, THEREFORE, in consideration of the mutual promises, covenants, and agreements set forth herein, the Parties hereto agree as follows:

EXHIBIT 2

12 MAY 17 10:31  
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PROB & VOCATION  
INVESTIGATOR

1. This Settlement Agreement is made as a compromise between the Parties for the complete and final settlement of their claims, differences, and causes of action with respect to the allegations of Respondent's failure to register or timely register two (2) private investigator security guard employees with the Division.

2. The Parties hereby agree that the terms set forth in this Settlement Agreement are binding on the Parties hereto, their agents, employees, assignees and successors in interest.

3. This Settlement Agreement constitutes the entire agreement between the Parties and it is understood and agreed that no promises, conditions or obligations whatsoever, either expressed or implied, other than those set forth herein, shall be binding on the Parties.

4. Respondent stipulates to the jurisdiction of the Division in this matter.

5. For purposes of these administrative proceedings only, Respondent admits, consents to, and stipulates to the Facts as set forth below:

As a result of the reviews, it was found that Guardsmark failed to timely register two (2) employees, in violation of **Ohio Revised Code 4749.06 and Ohio Administrative Code Rule 4501:5-1-09** which requires employees to be registered no sooner than three days nor later than seven days after the day on which the employee was hired. Therefore, Guardsmark is in violation of **Ohio Revised Code 4749.06 and Ohio Administrative Code Rule 4501:5-1-09**.

**The total number of days of violation for failure to register or timely register these employees is six hundred thirty-seven 637.**

It was also found that Guardsmark failed to renew the registration(s) of two (2) employee(s) in violation of **Ohio Revised Code Section 4749.06 and Ohio Administrative Code Rule 4501:5-1-20**, which requires annual renewal of registrations on or prior to the expiration date shown on employee identification cards. Therefore, Guardsmark is in violation of **Ohio Revised Code Section 4749.06 and Ohio Administrative Code Rule 4501:5-1-09**.

**The total number of days of violation for failure to register these employees after the expiration of their registrations is 341.**

6. Respondent admits that its conduct as set forth above constitutes violation of Ohio Revised Code 4749.06, Ohio Administrative Code Rule 4501:5-1-09, and Ohio Administrative Code Rule 4501:5-1-20.

7. In consideration of the mutual promises set forth herein, and for purposes of settlement only, Respondent agrees to the following:

(a) Pay, by certified check, a civil penalty in the amount of Four Thousand Eight Hundred Ninety dollars and 00/100 (\$4,890.00) within thirty days from Respondent's signature of this Settlement Agreement.

(b) Within ninety (90) days of the execution of this Settlement Agreement by the Director of Public Safety, Respondent's Qualifying Agent shall complete a training program offered by the Division regarding registration of security guards and R.C. Chapter 4749. The Qualifying Agent shall contact the Division at (614) 466-4130 to schedule the training. Further, any person designated by Respondent may also attend the training.

(c) In the event that Respondent fails to pay the civil penalty as set forth above or is thirty (30) days in arrearages, Respondent agrees that the Division shall immediately issue a Notice of Default via certified mail to the Qualifying Agent listed in the records of the Division. If the certified mail is returned, the Division shall resend the Notice of Default via first class mail, certificate of mailing. Respondent may cure the default within fifteen (15) days from receipt of the Notice of Default by submitting all arrearages and any current payment owed under this Agreement to the Division. If Respondent fails to cure the default as set forth above, the Division shall automatically and without further notice, suspend Respondent's Class C Security Guard Provider license until Respondent's payments are in compliance with this Agreement.

(d) Respondent shall comply with the applicable registration requirements as set forth in R.C. Chapter 4749 and its companion administrative rules regarding the employment, registration and renewal of security guards, the registration of employees who are firearms bearers and the preparation and maintenance of records.

(e) The certified check for the civil penalty in paragraph 7(a) above should be made payable to the "Treasurer, State of Ohio" and shall be mailed to the Division along with a copy of the Settlement Agreement to: DPS, Legal Section, Attention Pam Bolton, P.O. Box 182081, Columbus, Ohio 43218-2081. The original Settlement Agreement shall be sent to Keith A. McCarthy, Executive Agencies Section, 30 East Broad Street, 26th Floor, Columbus, Ohio 43215.

8. Respondent hereby agrees to forego its administrative remedies, and waive any and all rights to administrative hearings and/or appeal this matter to any judicial body in the State of Ohio having jurisdiction over this matter pursuant to R.C. Chapters 119 and 4749. After being fully advised of the right to appeal pursuant to R.C. 119.12 Respondent knowingly, intelligently, and voluntarily waives these rights.

9. Respondent understands that the Director of Public Safety may accept or reject this Settlement Agreement. Respondent further understands that if the Director rejects this Settlement Agreement, this matter will be rescheduled for a hearing pursuant to R.C. 119.07.

10. Respondent and the Division acknowledge that this Settlement Agreement upon execution by the Director of Public Safety shall become an immediate final order.

11. This Settlement Agreement constitutes the Parties' entire agreement and understanding, and shall supersede all prior agreements, representations, and communications, if any, which shall be considered, merged herein and shall not survive.

12. This Settlement Agreement may not be modified or altered in any respect, unless signed in writing by all Parties.

13. This Settlement Agreement and the rights of the Parties hereunder shall be governed, construed, and interpreted in accordance with the laws of the State of Ohio. Respondent consents to jurisdiction in a court of proper jurisdiction in Franklin County, Ohio.

14. Unless otherwise noted, the individuals signing this Settlement Agreement expressly represent and warrant that they are duly authorized and empowered to bind the Division and Respondent, respectively.

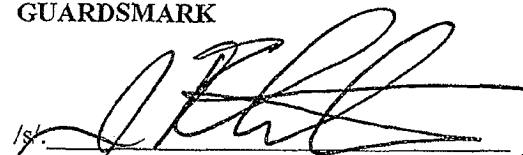
15. The Parties, by signing this Settlement Agreement, represent and warrant that they have full knowledge of all their rights, they are not relying on any representation to this Settlement Agreement that is not set forth herein, they have conducted whatever investigation they deem necessary to ascertain all matters related to this Settlement Agreement, they have

carefully read and fully understand this Settlement Agreement and its final and binding effect, they have been afforded sufficient time and opportunity to review this Settlement Agreement with advisors of their choice, they have had an opportunity to negotiate with regard to the terms of this Settlement Agreement, they are fully competent to manage their business affairs and to enter into this Settlement Agreement, and they have signed this Settlement Agreement knowingly, freely, and voluntarily.

16. This Settlement Agreement may be signed in counterparts.

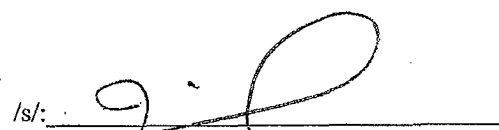
IN WITNESS WHEREOF, the Parties and their respective attorneys have executed their complete signatures as set forth below.

**RESPONDENT  
GUARDSMARK**

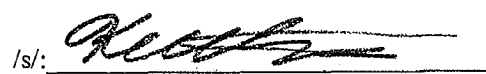
  
/s/ Judd F. Osten  
Vice President and Associate General Counsel  
Guardsmark, LLC  
22 South Second Street  
Memphis, TN 38103  
Tel.: (901) 522-7972  
Fax: (901) 522-7911  
[OstenJuddf@guardsmark.com](mailto:OstenJuddf@guardsmark.com)

Date: 9/10/2010

**OHIO DEPARTMENT OF PUBLIC SAFETY  
DIVISION OF HOMELAND SECURITY**

  
/s/ THOMAS J. STICKRATH  
Director, Ohio Department of Public Safety

Date: 9/20/10

  
/s/ KEITH A. MCCARTHY (0084087)  
Assistant Attorney General  
Executive Agencies Section  
30 East Broad Street, 26th Floor  
Columbus, Ohio 43215-3428  
Tel.: (614) 752-4332  
Fax: (866) 742-8015  
[keithmccarthy@ohioattorneygeneral.gov](mailto:keithmccarthy@ohioattorneygeneral.gov)  
Counsel for the Ohio Department of Public  
Safety, Division of Homeland Security

Date: 9/13/2010