CITY OF NEW YORK
DEPARTMENT OF CONSUMER AFFAIRS

DEPARTMENT OF CONSUMER AFFAIRS, Complainant, -against- BEIRNE ASSOCIATES, INC. Respondent.	**CONSENT ORDER** Violation No. 05393876 License No. 1385391 (Process Serving Agency)

RECEIVED
COUNSEL
DEPT. OF CONSUMER AFFAIRS
15 MAY 10 AM 10: 51

1. Beirne Associates, Inc ("Respondent") enters into this Consent Order ("CO") with the New York City Department of Consumer Affairs ("DCA" or "the Department") to resolve allegations and/or charges that Respondent violated sections 2-234a(b), 2-233a(b), and 2-234a(a)(4) of Title 6 of the Rules of the City of New York ("6 RCNY" or the "Rules"), and waives any right to a hearing, appeal of or challenge of the allegations, facts or charges alleged by the Department in any forum.

2. This CO shall apply to Respondent and all directors, officers, employees, agents, assignees, successors, subsidiaries, affiliates, or other business entities, whose acts, practices, or policies are directed, formulated, or controlled by Respondent.

3. Respondent shall continue to be bound by the terms of prior Consent Orders it entered into with the Department. To the extent that there is a conflict between this Consent Order and a prior Consent Order, the terms of this Consent Order shall apply.

4. The acceptance of this Consent Order by the Department shall not be deemed approval by the Department of any of Respondent's business practices, and Respondent shall make no representations to the contrary. In addition, nothing in this Consent Order shall be construed to limit in any way the authority of the Department to exercise its regulatory or enforcement powers under Sections 20-104 or 20-409 of the Administrative Code of the City of New York (the "Code").

5. This Consent Order shall constitute an Order of the Commissioner pursuant to Code §§ 20-104, 20-409(a).

INJUNCTIVE RELIEF

6. Respondent shall ensure that its process servers serve process in compliance with all laws, rules, regulations and requirements of the federal, state and municipal authorities pertaining to process servers and the service of process, including Code §§ 20-403 through 20-410 and 6 RCNY §§ 2-233 through 2-238

7. Respondent shall not assign, distribute, or deliver process for service in New York City to any individual process server that does not maintain an active DCA process server license.

8. Respondent shall, in accordance with 6 RCNY § 2-234a(b), develop and implement policies and procedures to ensure that individual process servers to whom it assigns, distributes or delivers process for service in New York City act with integrity and honesty, and comply with the recordkeeping requirements applicable to process servers and any applicable Consent Orders. Such policies and procedures shall be memorialized in a written Compliance Plan.

Affidavits of Service

9. Respondent shall ensure that no process server to whom it has assigned, distributed or delivered process to be served in New York City signs an affidavit of service unless the process server created a Global Positioning System Record ("GPS record") for the service, as required by 6 RCNY § 2-233b.

10. Respondent shall ensure that every affidavit of service concerning process that it assigned, distributed or delivered to an individual for service in New York City is truthful and contains the following information:
    - The process server's license number;
    - Respondent's name, address and license number;
    - A detailed description of the process server's efforts to effectuate personal service;
    - The date and time that service of process was effectuated;
    - A description of the gender, age, height, weight, skin color, hair color, and all other identifying features of the person to whom papers were delivered;
    - Where service of process is accomplished by personal service, all information confirming that the process server knew the person to whom process was delivered was the actual intended recipient of the process;
    - Where service of process is accomplished by substitute service, all information confirming that the process server knew the person to whom process was delivered was a relative or co-occupant of the intended recipient;
    - For all services, the location and detailed description of the place where service was effectuated, including (i) the color of the door, walls adjacent to the door, and floor or doorstep adjacent to the door, and (ii) the location of the door in relation to stairs, elevators or entranceways; and
    - The GPS location, time and date of the service that the process server created pursuant to 6 RCNY § 2-233b (The GPS location shall be expressed in latitude/longitude format and the GPS date and time shall be the date and time as determined by global positioning system or assisted-global positioning system technology).

11. Within sixty days after this Consent Order is signed by the Department ("Effective Date"), Respondent shall submit to the Department ten affidavits of service relating to process that it assigned, distributed or delivered to an individual for service in New York City. The affidavits shall be sent via e-mail to **Process_Server@dca.nyc.gov** and contain the subject line "PSA Affidavits."

Monthly Record Reviews

12. At least once each month, Respondent shall review the records of each individual process server to whom it assigns or distributes process for service in New York City for completeness and accuracy, including records that each process server maintains pursuant to 6 RCNY § 2-233 ("log book records"), 6 RCNY § 2-233a ("233a records"), and 6 RCNY § 2-233b ("GPS records").

13. Respondent shall prepare a monthly report of its review of the records maintained pursuant to 6 RCNY §§ 2-233, 2-233a, 2-233b by each individual process server to whom it assigns or distributes

process using the "Monthly Compliance Report" available on the DCA Process Server Website (nyc.gov/ProcessServers). Respondent shall submit its Monthly Compliance Reports to the Department on a monthly basis for six months, to **Process_Server@dca.nyc.gov**, with the subject line "Monthly Compliance Reports," thereafter continuing to prepare the reports in compliance with this paragraph.

14. Respondent shall answer each and every question contained in the Monthly Compliance Report, truthfully, accurately and completely. This shall include identifying all record entries that are non-compliant. Respondent shall maintain its Monthly Compliance Reports as Microsoft Excel files for at least seven (7) years.

15. Each month, Respondent shall, for each individual process server to whom it assigns or distributes process for service in New York City, prepare a "GPS Investigation Report" using the current review instrument available on the DCA Process Server Website. Respondent shall submit its GPS Investigation Reports to the Department on a monthly basis for six months, to **Process_Server@dca.nyc.gov**, with the subject line "GPS Investigation Reports," thereafter continuing to prepare the reports in compliance with this paragraph.

16. Respondent shall follow each and every instruction contained in the GPS Investigation Report and shall complete the report truthfully, accurately and completely. Respondent shall maintain its GPS Investigation Reports as Microsoft Excel files for at least seven (7) years.

Disciplinary Actions

17. Respondent shall report to the Department in writing all process servers against whom it has taken disciplinary action within ten (10) days of taking such action using the current "Disciplinary Actions and Non-Compliance Report" available on the DCA Process Server Website. "Disciplinary actions" include, but are not limited to, written or oral warnings or reprimands, probation, monetary penalties, suspensions or terminations of employment, and decisions to give a process server less work or no work at all because of their conduct or performance. The report to the Department shall be sent via e-mail to **Process_Server@dca.nyc.gov** in Microsoft Excel format.

18. Respondent shall report to the Department in writing the name and license number of each individual licensed process server who does not comply with the rules or law governing process servers within ten (10) days of learning of such non-compliance using the current "Disciplinary Actions and Non-Compliance Report." This includes reporting any failure to comply with the requirements of 6 RCNY § 2-233 (concerning bound logbooks), the requirements of 6 RCNY § 2-233a (concerning electronic logbooks), the requirements of 6 RCNY § 2-233b (concerning GPS), the requirements of 6 RCNY § 2-235 (concerning affidavits of service), the requirements of 6 RCNY § 2-236 (concerning traverse hearings). The report to the Department shall be sent via e-mail to **Process_Server@dca.nyc.gov** in Microsoft Excel format.

19. Respondent shall immediately terminate its relationship with and cease distributing process to any process server who fails to make his or her log book (or a copy of the log book) available to Respondent for the Respondent's monthly record review within thirty (30) days of Respondent's request to review the log book.

Reporting of Traverse Hearings and Results

20. Whenever Respondent receives any type of notice, including an oral communication, that a court has scheduled a hearing to determine whether service of process assigned by Respondent to a licensed individual process server was effective (a.k.a. a "traverse hearing"), Respondent shall:
    (i) inform in writing, within two (2) business days, the individual process server whose service is being challenged of the scheduling of the hearing, the date and time of the hearing, the title and index number of the action, and the court and judge before whom the hearing is scheduled; and
    (ii) submit a report to the Department, within ten (10) days of receiving such notice, using the current "Traverse Report Form for Process Servers/Agencies Who Signed a Consent Order" available on the DCA Process Server Website. Respondent shall submit the completed traverse report form by e-mail to TraverseReports@dca.nyc.gov. Respondent shall include a copy of all written communications made pursuant to this paragraph with the traverse reports it submits to the Department, as well as all responses received from the individual process server.

21. Respondent shall learn the final result of each **scheduled** traverse hearing that concerns service of process by Respondent, including any judicial order, cancellation of the hearing, or settlement resolving the challenge to service of process. Respondent shall also obtain a copy of the court's decision on any traverse hearings that actually occur, including any stipulation or court file jacket setting forth the court's decision.

22. Within ten days of learning of the final result of a traverse hearing, Respondent shall notify the Department of the result by submitting a traverse report to the Department using the current traverse report form titled "Traverse Report Form For Process Servers/Agencies Who Signed A Consent Order," available on the DCA Process Server Website. Respondent shall submit the completed traverse report form by e-mail to **TraverseReports@dca.nyc.gov** and shall append a copy of the court's decision for any traverse hearings that actually occur.

23. If Respondent fails to learn the final result of a traverse hearing and obtain a copy of the court's traverse decision within thirty (30) days of the scheduled hearing date, Respondent shall send a written communication to the plaintiff/petitioner or the plaintiff/petitioner's attorney to obtain the final result and a copy of the court's decision. If Respondent fails to learn the final result and obtain a copy of the court's traverse decision within sixty (60) days of the scheduled hearing date, Respondent shall search the court file for such information. If Respondent fails to learn the final result and obtain a copy of the court's decision within ninety (90) days of the scheduled hearing date, Respondent shall search the court file again for such information.

24. Within 100 days of the scheduled hearing date, Respondent must submit to the Department, by e-mail to **TraverseReports@dca.nyc.gov** either (a) the final result of the hearing and a copy of the court's decision; or (b) a written explanation of why Respondent was unable to learn the final result of the hearing or obtain a copy of the court's decision.

25. Respondent shall continue to search the court file every thirty (30) days until it learns the final result of the traverse hearing and is able to obtain a copy of the court's decision.

26. Respondent and the individual process server whose service is being challenged must each submit a completed Traverse Report Form upon learning of the scheduling of a traverse hearing and learning the result of a traverse hearing. Process serving agencies may not submit traverse reports on an individual process server's behalf.

Traverse Hearing Service Investigations

27. For every traverse hearing scheduled relating to process that was assigned or distributed by Respondent for service in New York City, regardless of whether or not the hearing was actually held, Respondent shall conduct an investigation into whether service of process was proper. The investigation shall be conducted within ten (10) days of learning of the scheduled traverse hearing, and shall be conducted in accordance with the instructions contained in the current "Service Investigation Report" available on the DCA Process Server Website.

28. Respondent shall follow every instruction contained in the Service Investigation Report and shall complete the report, truthfully, accurately and completely.

29. Respondent shall maintain electronically, for seven (7) years, its Service Investigation Reports and electronic copies of all documents gathered or created pursuant to its service investigations, including all written communications with individual process servers and notes concerning communications with individual process servers.

Electronic Records

30. Respondent shall maintain electronic records in accordance with 6 RCNY § 2-233(c)(1)(i)-(vii) and 6 RCNY § 2-233a(b), including electronic records of daily activity and electronic copies of affidavits of service, work orders, routing sheets, process server log books, instructions to individual process servers and notes submitted by individual process servers.

FINES

31. Respondent shall pay a fine of $1,000 in settlement of all the violations to date in the above-referenced matter by bank cashier's check or money order payable to "NYC Department of Consumer Affairs." Payment is due upon execution of this Consent Order.

MISCELLANEOUS

32. If the Department conducts a training on process server laws/regulations in the future and requests in writing that Respondent attend such training, an employee of Respondent with management responsibility shall attend the training, on a date and time set forth by the Department.

33. Upon request from the Department, Respondent shall produce, within fourteen (14) days, any records that it is required to maintain pursuant to this Consent Order, the Code, or the Rules.

34. Respondent shall make all possible efforts in good faith to resolve all consumer complaints filed with the Department within ten (10) days of receipt of copies of those complaints, but in all instances, Respondent shall respond in writing to the Department regarding those consumer complaints within ten (10) days of receipt of any complaints.

35. The acceptance of this Consent Order does not limit the Department's ability, nor the Respondent's obligation, to respond to consumer complaints that arose prior to the date of this Consent Order.

36. This Consent Order contains the entire agreement of the parties with respect to the subject matter of the Consent Order. This Consent Order supersedes any understandings or negotiations, whether

written or oral, between the parties, and it can only be amended through a written document formally executed by all parties.

37. The Respondent agrees and affirms that it has read and understands this Consent Order, it accurately states the agreement between itself and with the Department, and it enters into and is bound by the terms and conditions stated herein.

BREACH OF THIS CONSENT ORDER

38. Respondent's failure to produce any of the documents required by this Consent Order, the Code, or the Rules shall constitute prima facie evidence that Respondent has failed to maintain those records and is not in compliance with the underlying terms of the Consent Order, law, or rule for which such documents are required to be maintained.

39. Specific violations of this Consent Order shall, in addition to a breach of this Consent Order, constitute independent and separate violations of any applicable law, regulation or rule.

40. Nothing in this Consent Order shall prevent or otherwise affect the Department's authority to seek any and all available remedies for a breach of this Consent Order, or for a violation of a law or rule, as permitted by the New York City Charter, the Code, or the Rules, including the Department's authority to deny a license application or license renewal application without a hearing.

Agreed to by Beirne Associates, Inc.

By: JAMES J. BEIRNE, PRESIDENT BEIRNE ASSOCIATES INC.

James J Beirne 5/6/16

Signature Date

Accepted for the Department of Consumer Affairs

By: [redacted]

Title [redacted]

[redacted] 5/10/16

Signature Date