DEPARTMENT OF CONSUMER AFFAIRS
CITY OF NEW YORK

DEPARTMENT OF CONSUMER AFFAIRS, Complainant, -against- CAPITAL MANAGEMENT SERVICES, L.P., Respondent.	Superseding Settlement Agreement Violation No.: 005332088 License No.: 1242722

1. Respondent Capital Management Services, L.P. ("CMS" or "Respondent") has been licensed by the New York City Department of Consumer Affairs (the "Department") as a debt collection agency pursuant to Section 20-490 of the New York City Administrative Code ("Admin. Code") since 2003.

2. This Superseding Settlement Agreement supersedes any prior settlement agreement(s) between the Respondent and the Department regarding relevant laws and rules related to debt collection from New York City consumers.

3. Respondent seeks renewal of its debt collection agency license, No. 1242722.

4. The Department has reviewed Respondent's license renewal application, public records and records maintained by the Department, Respondent's 2013 Renewal Information and Documentation Form, and information provided to the Department by Respondent.

5. The Department found that Respondent: failed to provide complete information in response to several questions on its 2013 Renewal Information and Documentation Form; sent collection letters to consumers that did not fully comply with Admin. Code § 20-493.1(a); failed to comply with all requirements for sending written confirmations of debt payment schedules to New York City consumers; failed to comply with all requirements for sending written confirmations of debt settlement agreements to New York City consumers; and therefore failed to comply with all relevant laws and rules related to debt collection in New York City (collectively, the "Findings"). The Findings only encompass Respondent's debt collection activity through March 3, 2013.

6. Respondent represents that any omissions on its 2013 Renewal Information and Documentation Form (the "Form") were inadvertent and were not willful, flagrant, nor intentional. Respondent further represents that the violations of Admin. Code § 20-493.1(a) and § 20-493.1(b) were inadvertent and have subsequently been remedied. Respondent has revised written communications to include all information required by §

20-493.1(a), including, without limitation, the name of a person to call back, a call-back number to a phone answered by a natural person, the name of the agency, the originating creditor, and the amount of the debt at the time of the communication. Respondent has also taken measures to ensure that it provides confirmation, within five business days, of any debt payment schedule or settlement agreement reached regarding the debt to each New York City consumer, as required by § 20-493.1(b).

7. Respondent does not admit to the Department's Findings, but consents to a Superseding Settlement Agreement with the Department in furtherance of its license renewal application and in order to avoid further investigation and litigation.

8. Mr. Larry Costa, as President, represents and warrants that he is authorized to enter into this Superseding Settlement Agreement on behalf of Respondent.

9. This Superseding Settlement Agreement shall apply to Respondent, its directors, officers, employees, representative agents, assignees, and successors. For the purposes of this Superseding Settlement Agreement, "employee" means any person employed for hire or permitted to work by Respondent including, but not limited to, any person who manages or oversees the work of another and any person whose earnings are based in whole or in part on commission for work performed for Respondent.

10. Respondent agrees to comply fully with all relevant laws and rules related to debt collection from New York City consumers including, but not limited to: (a) the Licensing Law and Rules, Admin. Code § 20-101 *et seq.* and Title 6 of the Rules of the City of New York ("6 RCNY") §§ 1-01 *et seq.*; (b) the Debt Collection Agencies Licensing Law and Rules, Admin. Code §§ 20-488 *et seq.* and 6 R.C.N.Y. §§ 2-190 *et seq.*; and (c) the Consumer Protection Law and Rules, Admin. Code §§ 20-700 *et seq.* and 6 RCNY §§ 5-76 *et seq.*

11. Paragraphs 12 through 20 impose general obligations on all debt collection agencies and are not based on findings that Respondent, in any way, engages in unlicensed activity, or activities requiring or related to process servers, payday lending, credit reporting, or debt buying.

LICENSING

12. Respondent shall not act as a debt collection agency as defined in Section 20-489 of the Admin. Code at any time without holding a valid license from the Department.

13. Respondent shall provide truthful, accurate and complete information in its license applications and renewal documents and in all communications with the Department.

14. Respondent shall ensure that process server individuals and agencies used in furtherance of its work as a debt collection agency licensed by the Department are licensed by the Department when required by subchapter 23 of the Admin. Code.

15. Upon the termination of Respondent's license by revocation, suspension, expiration, denial, surrender, cancellation, or operation of law, Respondent shall immediately cease its debt collection activities with respect to New York City consumers and return its license(s) to the Department.

PAYDAY LOANS; USURIOUS LOANS

16. Respondent shall not purchase, collect, or attempt to collect debts from New York City consumers if those debts arise from usurious loans, including payday loans.

17. "Usurious loan" is a loan with an initial principal of less than $250,000, for which the annual percentage rate of interest exceeds the rate specified by Section 14-a of the New York Banking Law, that is void under Section 5-511 of the New York General Obligations Law.

18. Respondent shall implement policies and procedures corresponding to paragraph 16 that include, but are not limited to, a screening process for debts which are likely to be usurious payday loans, such as those for which the original creditor's name contains the terms "Payday," "Cash," "Check," "Instant," "Advance," "Fast," "Now," or "Quick."

19. With regard to any New York City consumer's debt that arises from a usurious loan, Respondent shall close the account, permanently terminate collection efforts with respect to the specific debt, and submit to any consumer reporting agency to which Respondent furnishes information, a request for deletion of any negative information from the consumer's credit report.

DISPUTED DEBT; CREDIT REPORTING

20. In addition to the requirements in Section 20-493.2 of the Admin Code and Sections 2-190 and 5-77(f) of 6 RCNY, Respondent shall engage in the following practices:

    a. Whenever a New York City consumer questions, disputes, or challenges the information on which Respondent is relying to collect or attempt to collect a debt, Respondent shall:

        i. Close the account, permanently terminate collection efforts with respect to the specific debt, and request deletion of that item of information from the consumer's credit reporting file; or

        ii. Report that item of information as disputed to any consumer reporting agency to which the information was previously reported and conduct a reasonable and truthful investigation into the accuracy or completeness of such information. If Respondent does not complete its reasonable investigation within thirty (30) days from receipt of the dispute, Respondent shall request deletion of that item from the consumer's credit reporting file and cease collection activities until the reasonable investigation is complete. If after the investigation the Respondent cannot substantiate that the

consumer owes the debt, Respondent shall not sell the debt or provide it to any other entity for the purpose of collection.

b. With regard to any New York City consumer's debt that has been paid in full or settled pursuant to an verbal or written agreement, Respondent shall close the account, permanently terminate collection efforts with respect to the specific debt, and submit to any consumer reporting agency to which Respondent furnishes information, a request for deletion of any negative information from the consumer's credit report.

POLICIES, PROCEDURES AND TRAINING

21. Within thirty (30) days of execution of this Superseding Settlement Agreement, Respondent shall:

a. Continue to dedicate resources to instruct employees the fundamentals of compliant recovery processes.

b. Implement and disseminate policies and procedures, to officers and any agent or employee having responsibility with respect to the collection of consumer debts from New York City consumers, to ensure compliance with the terms of this Superseding Settlement Agreement and the requirements of all New York City Laws and Rules related to debt collection.

c. Provide training, to officers and any agent or employee having responsibility with respect to the collection of consumer debts, on the requirements of this Superseding Settlement Agreement and the requirements of all New York City Laws and Rules related to debt collection.

d. Provide periodic refresher training, to officers and any agent or employee having responsibility with respect to the collection of consumer debts, no less frequently than once each year and more frequently if any New York City Laws and Rules are amended.

e. Provide periodic refresher training, to all new officers and any agent or employee, no later than five (5) business days from the time the employee assumes responsibility with respect to the collection of debts.

f. Take and document appropriate disciplinary action against any employee who fails to comply with this Superseding Settlement Agreement and the requirements of all New York City Laws and Rules related to debt collection.

22. Respondent represents that the Findings herein reflect past practices and hereby affirms that it has implemented and disseminated rigorous, comprehensive company-wide policies, procedures and safeguards to ensure on-going internal compliance with terms of any prior settlement agreement(s), as well as compliance with federal, state and New York City laws and rules related to debt collection, including, but not limited

to the Fair Debt Collections Practices Act; the Licensing Law and Rules, Admin. Code § 20-101 *et seq.* and Title 6 of the Rules of the City of New York ("6 RCNY") §§ 1-01 *et seq.*; the Debt Collection Agencies Licensing Law and Rules, Admin. Code §§ 20-488 *et seq.* and 6 R.C.N.Y. §§ 2-190 *et seq.*; and the Consumer Protection Law and Rules, Admin. Code §§ 20-700 *et seq.* and 6 RCNY §§ 5-76 *et seq.* Respondent further represents that it has significantly invested, and continues to significantly invest, in technologies, practices and procedures that will ensure such on-going compliance procedure enhancements, including, but not limited to, the appointment of a Director of Compliance, a Complaint Resolution Officer and a Chief Risk Management Officer; the appointment of a dedicated compliance team comprised of, without limitation, Unit Manager, Directors, Quality Representatives, Call Monitors and Customer Advocates; the designation of call monitoring personnel; the development of compliance committees; the placement of federal, state and local compliance controls across frequently updated company training manuals and internal memoranda; the provision of employee compliance controls in conjunction with Respondent's yearly recovery fundamentals recertification process; the implementation of and investment in cutting-edge consumer-centric compliance technologies, customer treatment improvement processes, preventative controls and risk management technologies to bolster information security infrastructure; and the implementation of progressive employee disciplinary procedures for non-compliance.

COMPLIANCE MONITORING AND REPORTING

23. Mr. [redacted], who is a senior executive, will continue to serve as the Compliance Officer responsible for ensuring adherence to the terms of this Superseding Settlement Agreement. The Compliance Officer has the following title: General Counsel.

    a. The telephone number of the Compliance Officer is: [redacted]

    b. The address of the Compliance Officer is: [redacted]

    c. The email address of the Compliance Officer is: [redacted]

24. If the identity of the Compliance Officer changes at any time, Respondent shall provide to the Department the name, title, telephone number, address, and email address of the replacing Compliance Officer within five (5) business days of such change.

25. Within thirty (30) days of execution of this Superseding Settlement Agreement, Respondent shall:

a. Provide respective templates and three (3) examples of each type of written communication that Respondent sends to New York City consumers, including, but not limited to the following five types of written communications:

   i. dunning letters,

   ii. responses to New York City consumers' verification requests,

   iii. written confirmations of debt payment schedules,

   iv. written confirmations of settlement agreements, and

   v. written confirmations of satisfaction of indebtedness.

b. Include with the documents produced pursuant to paragraph 25(a), an affidavit sworn to by the Compliance Officer, identifying each of the implemented templates according to the type of written communication, stating the date of implementation for each and that each communication complies strictly with the requirements in the Code and the Rules.

c. Produce the templates and examples in the following manner:

   i. For each type of communication, append a cover sheet identifying the type of written communication, the date of implementation, and the number of pages of the communication inclusive of front and back pages (e.g., "NYC Response to Verification; implemented 12.30.31; 2 pages").

   ii. For each type of communication, scan and send the cover sheet, the front and back of each template, followed by three examples of the communication by separate email to legaldebtcoll@dca.nyc.gov.

   iii. When sending each template and example, state in the subject line: "Re: 2013 Superseding Settlement Agreement, Paragraph (25), subparagraph (a)."

26. Within ten (10) business days of actual receipt of written notice from the Department, Respondent shall produce the following, electronically or in the format indicated by the Department, which are true and accurate and sworn to under the penalty of perjury:

a. Non-privileged documents related to any provision of this Superseding Settlement Agreement, including but not limited to:

   i. Copies of any complaints Respondent received regarding Respondent's attempts to collect debt purportedly owed by New York City consumers.

   ii. Transcripts of the recordings required by Section 2-193(b)(2) of the Rules.

iii. Documents sufficient to identify the manner in which Respondent maintains its records.

iv. Examples of actual written communications sent to New York City consumers based on a sampling of consumers, at the Department's direction.

27. Respondent shall respond to all subpoenas and document requests issued to it by the Department. Nothing in this section shall be construed as a waiver of Respondent's rights to move to quash or otherwise attempt to limit the scope of such a subpoena, or document request.

28. Nothing in this section shall be construed to obviate Respondent's responsibilities pursuant to Admin. Code § 20-493(b); 6 R.C.N.Y. §§ 1-14, 1-16; and 2-193.

29. Respondent shall notify the Department of all pending actions or proceedings by government agencies against it relating to debt collection activities within ten (10) business days of receiving service or written notification of such action, proceeding, or subpoenas, civil investigatory demands or other such documents.

30. Respondent shall undertake good faith, commercially reasonable efforts to resolve all consumer complaints filed with the Department within twenty (20) days of actual receipt of copies of those complaints, but in all instances, Respondent shall respond in writing to the Department regarding those consumer complaints within twenty (20) days of receipt of any complaints.

31. For the purposes of this Superseding Settlement Agreement, Respondent shall, unless otherwise directed by the Department, send to the Department by first class mail to the address below, and contemporaneously by email to legaldebtcoll@dca.nyc.gov, all notifications required by this Superseding Settlement Agreement.

LEGAL DIVISION
NYC Department of Consumer Affairs
42 Broadway, 9th Floor
New York, NY 10004

32. For purposes of the compliance reporting and monitoring required by this Superseding Settlement Agreement, the Department is authorized to communicate directly with the undersigned Attorney for Respondent.

CONSEQUENCES OF BREACH OF SUPERSEDING SETTLEMENT AGREEMENT

33. Upon a finding, after notice and hearing, that Respondent has breached a term of this Superseding Settlement Agreement, Respondent shall potentially be subject to a fine of $500 to $1,000 for each breach as well as the Department's costs for investigation and litigation.

34. Respondent's failure to produce any of the documents required by this Superseding Settlement Agreement, the Admin. Code, or the Rules shall constitute prima facie evidence that Respondent has failed to maintain that record/those records and is not in compliance with the underlying terms of the Superseding Settlement Agreement, Law, or Rule under which the specific records are required to be maintained.

35. Specific breaches of this Superseding Settlement Agreement shall, in addition to a breach of this Superseding Settlement Agreement, constitute independent and separate violations of any applicable Law or Rule. If the same conduct gives rise to both a breach of this Superseding Settlement Agreement and a breach of the Licensing Law or Rules, the Debt Collection Agency Law or Rules, or the Consumer Protection Law or Rules, Respondent shall potentially be subject to two penalties as set forth in Paragraph 33: one penalty for breach of the Superseding Settlement Agreement and one penalty for the breach of the applicable Law or Rule.

PENALTIES AND OTHER TERMS AND CONDITIONS

36. Respondent shall pay a total sum of one hundred seventy-five thousand dollars ($175,000) to the Department as provided in paragraphs 37 and 38 of this Superseding Settlement Agreement.

37. Each payment shall be made by bank check, certified check, or money order in the full amount made payable to the New York City Department of Consumer Affairs, and delivered to the New York City Department of Consumer Affairs, Legal Division, Attn: 2013 Debt Collection Renewal, 42 Broadway, 9th Floor, New York, New York 10004, according to the following schedule:

    a. Respondent shall pay to the Department fifty thousand dollars ($50,000) due at the time that Respondent executes this Superseding Settlement Agreement;

    b. Respondent shall pay to the Department one hundred twenty-five thousand dollars ($125,000) within thirty (30) days of the Agreement Date of the Superseding Settlement Agreement.

38. If any of Respondent's payments provided in paragraph 37 is more than ten (10) business days late, and is not cured within ten (10) days after actual receipt of prior written notice, then the full amount due in paragraph 36, less any payments already made under paragraph 37, shall be due immediately. Respondent's failure to immediately submit the entire balance due shall result in suspension of Respondent's license, No. 1242722, pending payment, or automatic revocation of Respondent's license, No. 1242722, and Respondent will continue to owe the balance due.

39. This Superseding Settlement Agreement shall constitute a final order pursuant to Section 6-42(c) of the Rules.

WAIVER OF APPEALS

40. Respondent waives Respondent's right to a hearing on, appeal of and/or any challenge to, in any forum the Department's Findings, under Section 20-104 of the Admin. Code or under Article 78 of the New York State Civil Practice Law and Rules.

MISCELLANEOUS

41. The acceptance of this Superseding Settlement Agreement by the Department shall not be deemed approval by the Department of any of Respondent's business practices, and Respondent shall make no representation to the contrary.

42. The acceptance of this Superseding Settlement Agreement resolves all of the Findings made by the Department and constitutes a final disposition of this matter. This Superseding Settlement Agreement does not limit the Department's ability to bring charges for violations outside the time period covered by these Findings. The Department fully releases the Respondent from any and all claims, demands and actions arising out of the Findings through March 3, 2013, unless the Department learns that information provided by Respondent with regard to the Findings was materially false.

43. The acceptance of this Superseding Settlement Agreement does not limit the Department's ability, nor Respondent's obligation to respond to consumer complaints that arose prior to the date of this Superseding Settlement Agreement as set forth in the "Agreement Dated" field below.

44. Nothing in this Superseding Settlement Agreement shall be construed to limit in any way the authority of the Department to exercise its enforcement powers under Chapter 1, Title 20 or under Chapter 2, Title 20 of the Admin. Code.

Agreed to for the Respondent by:

Larry Costa

Larry Costa
President

Signature

11-18-2015

Date

Agreed to for New York City Department of Consumer Affairs by:

[redacted]

Print Name

Staff Attorney

Title

[redacted]

Si

11/19/15

Date

Agreement Date: 11/19/20