CITY OF NEW YORK
DEPARTMENT OF CONSUMER AFFAIRS

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DEPARTMENT OF CONSUMER AFFAIRS

Complainant,

-against-

DAMARIS DE LOS SANTOS

Licensee/Respondent.

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CONSENT ORDER

NOH # 05349371

License # 1223225

(Process Server Individual)

RECEIVED
COUNSEL
DEPT. OF CONSUMER AFFAIRS
15 MAR -9 AM 9:51

1. The Department of Consumer Affairs ("DCA" or "the Department") and DAMARIS DE LOS SANTOS ("Respondent") enter into this Consent Order ("CO") to resolve charges that Respondent committed violations of the following rule: 6 RCNY § 2-233b(a)(2)(i).

2. Respondent enters into this Consent Order ("CO") with the Department to resolve these charges without the necessity of a notice of violation or hearing, and waives any right to a hearing, appeal of or any challenge of the facts alleged by the above-referenced violation under Section 20-104 of the New York City Administrative Code or under Article 78 of the New York State Civil Practice Law and Rules, Sections 7801-7806, in any forum.

3. 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, and 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 Code.

4. This Consent Order shall in no respect reduce any of Respondent's obligations under any other Consent Order Respondent has entered into with the Department.

DEFINITIONS

5. A "contest to service of process" means a challenge to the service of process effectuated by a process server alleged in an answer, motion, or other pleading submitted in a judicial, administrative or other legal proceeding on the ground that the service did not comply with the requirements of New York State or other applicable law, including a hearing commonly known as a "traverse hearing," regardless of whether such challenge is waived, settled by stipulation or decided by court order after a hearing.

6. "CPLR" means the New York Civil Practice Law and Rules.

7. "Logbook" means the bound and paginated volume in which a process server maintains records of all attempted and effected services of process, as prescribed by 6 RCNY § 2-233.

8. "Process" means <u>any</u> one of the following: (a) a summons; (b) a notice of petition; (c) an order to show cause; (d) a subpoena; (e) a notice; (f) a citation; or (g) any legal paper issued under the laws of the State of New York directing an appearance or response to a legal action, legal proceeding or administrative proceeding. However, if under the laws of the State of New York the mailing of such

a paper listed above is sufficient to effect service, it shall not be considered process by the Department.

9. Other terms are defined in 6 RCNY § 2-231.

INJUNCTIVE RELIEF

Duty to Comply With Law

10. Respondent shall strictly and promptly comply with all laws, rules, regulations and requirements of the federal, state and municipal authorities pertaining to process servers and the service of process.

11. Respondent shall not serve process in New York City for an unlicensed process serving agency.

Duties When Effectuating Service on a Natural Person

12. Respondent shall make reasonable efforts to confirm whether the address at which service is attempted is the actual place of business, dwelling place or usual place of abode of the person to be served. Respondent shall make and maintain a written or electronic record of those efforts and the results of those efforts, which shall include, but not be limited to, at least one of the following: inquiring of neighbors and other persons present at those locations, checking public and commercial databases, and requesting information from the owner of the premises, if different from the person to be served.

13. Prior to performing service under CPLR § 308 by affixing process to the door of an actual dwelling place or usual place of abode within the state of the person to be served, sometimes known as "conspicuous" or "nail and mail" service, Respondent shall make reasonable efforts to ascertain if the intended recipient of process is employed and the location of the intended recipient's place of employment. If the intended recipient is employed, Respondent shall attempt to effectuate service by delivering the process personally to the intended recipient at the intended recipient's place of employment.

Duty to Maintain Proper Records

14. Respondent shall maintain complete and accurate records of all services and attempted services made by Respondent in and outside of New York City. Such records must be maintained in accordance with the requirements of Section 89-cc of the New York General Business Law and 6 RCNY §§ 2-233, 2-233a, 2-233b, 2-235.

Logbooks

15. Respondent shall maintain complete and accurate records of all services and attempted services made by Respondent in and outside of New York City in a bound and paginated paper logbook. Such records shall be legible, meaning easily read and discernible in all of its details, and in no way obscured.

16. Respondent shall (a) record separate entries in his or her logbook for each attempted and effected service of process; (b) record all entries contemporaneously; (c) record entries in a single logbook until it is complete; and (d) record all entries in chronological order, which means that each entry must be entered sequentially according to the time and date of the activity recorded, without leaving any blank spaces between each entry that would allow for the insertion of any additional notation.

17. Respondent shall ensure that each page in Respondent's logbook, at the time of purchase, is sequentially numbered starting with the number "1" or contains an indelible label stating the number of pages the volume originally contained.

18. Corrections shall be made only by drawing a straight line through the inaccurate entry and clearly printing the accurate information directly above the inaccurate entry. All other methods of correction, including but not limited to, erasing, opaquing, obliterating, or redacting, are prohibited.

19. Respondent shall maintain the following information in his or her logbook:
    a. the name and license number of the process serving agency from whom the process was received, or, if not received from a process serving agency, of such other law firm, government agency, person or organization from whom the process was received;
    b. the title of the action or a reasonable abbreviation thereof;
    c. the name of the individual, company or organization served;
    d. the date and approximate time of service or attempted service;
    e. the address of service or attempted service;
    f. the nature of the papers;
    g. the court in which the action has been commenced;
    h. the index number of the action;
    i. a description of the individual served (including gender, height, weight, age, skin color, hair color, and any other identifying features);
    j. the type of service effected (personal, substituted, conspicuous, or corporate);
    k. for service of process effected by conspicuous service: (i) the color <u>and</u> composition of hallway walls adjacent to the door to which process was affixed, (ii) the color <u>and</u> composition of the hallway floor or doorstep, and (iii) the location of the premises in relation to stairs, elevators or entranceways;
    l. for service of process made pursuant to RPAPL § 735(1) using registered or certified mail, the postal receipt number of the registered or certified mail; and
    m. if an affidavit of service is filed with the court by the process server, the date of such filing.

Electronic Records and GPS

20. Respondent shall maintain complete and accurate records of all services and attempted services made by Respondent in and outside of New York City in an electronic format that is resistant to tampering, as prescribed by 6 RCNY § 2-233a(a) ("233a records").

21. Respondent shall maintain 233a records by using at least one of the following methods:

    <u>Method 1</u>: Scanning logbooks into image files (*e.g.*, .PDF or .TIFF) and backing up the files to a portable media device in accordance with 6 RCNY § 2-233a(a)(1).

    <u>Method 2</u>: Inputting information into the DCA-created Excel spreadsheet (available on the DCA website) and backing up the file to portable media devices in accordance with 6 RCNY § 2-233a(b)(1).

    <u>Method 3</u>: Uploading the required data to a third party service provider in accordance with 6 RCNY § 2-233a(b)(1).

22. If Respondent chooses to maintain 233a records by using either Method 2 or Method 3, Respondent shall ensure that the following information is contained in each entry:
    a. the name of the individual process server to whom service was assigned, entered in two fields (last name, first name);
    b. the license number of the individual process server to whom service was assigned, entered as a seven digit number, where the first number is zero if the process server's license number is less than seven digits;
    c. the title of the action or proceeding, if any;
    d. the name of the individual, company or organization served, if known;
    e. the date that service was effected, entered as MM/DD/YYYY;
    f. the time that service was effected, entered as military time;
    g. the address where service was effected, entered as three different fields such that one field will be for the street address and any apartment number, the second field will be for the city or borough, and the third field will be for zip code;
    h. the nature of the papers served;
    i. the court in which the action was commenced, entered as either Civil Court NYC, Civil Supreme, Criminal, Housing(L/T), or District Court, followed by the county of the court, the judicial department if appellate, or the federal district;
    j. the full index number, entered with all information necessary to identify the case, such as XXXXX/XX, unless the case is a Civil Local matter, in which case, it will include the prefix of CV, CC, LT, MI, NC, RE, SC, or TS;
    k. if service was effected pursuant to subdivisions (1) through (3) of CPLR § 308, a description of the person served, consisting of six fields, including sex, hair color, approximate age, height, weight, and any other identifying features provided by the process server;
    l. whether service was delivered, as indicated by a Y or N;
    m. the type of service effected, entered as a P for personal service, an S for substitute service, a C for conspicuous service, or a CO for corporate service; and
    n. if service was effected pursuant to subdivision (4) of CPLR § 308 or subdivision one of RPAPL § 735, a description of the door and the area adjacent.

23. In every instance in which Respondent attempts or effects service of process in and outside of New York City, Respondent shall, immediately after attempting or effecting service, create an electronic record of the location, time and date of the attempted or effected service, as determined by Global Positioning System ("GPS") technology or, in the event that no GPS signal is available at the time of attempted or effected service of process, as determined by triangulated cell tower signals. Respondent shall ensure that the information contained in such records is accurate and complete.

24. Except when Respondent cannot obtain a GPS or cellular signal, or attempts or effects service of process at multiple apartments or offices within the same building, in every instance in which Respondent attempts or effects service of process in or outside of New York City, Respondent shall ensure that Respondent's GPS record include a photograph of the outside of the building where Respondent attempted or effected service of process. The photograph must include the front entrance door to the building and, if possible, the number of the building. If Respondent attempts or effects service of process at multiple apartments or offices within the same building, only the GPS record corresponding to the last attempted or effected service of process within the building must include a photograph of the outside of the building. Where Respondent is unable to obtain a GPS or cellular

signal in the direct vicinity of the building where Respondent served or attempted to serve process, Respondent shall, as soon as a GPS or cellular signal becomes available: (a) take a photograph of the outside of the nearest building in accordance with the instructions above; and (b) input in the GPS record the address of the photographed building or the nearest cross-section.

25. Prior to signing this Consent Order, Respondent shall enter into a contract with an independent third party ("the Contractor") pursuant to which the Contractor will provide services and perform functions described below that enable Respondent to meet the data storage and retrieval requirements set forth below, provided, however, that if Respondent performs process serving activities distributed to him or her by a licensed process serving agency, the process server may utilize the device and facilities for the electronic record of service that the process serving agency obtains under a contract with a Contractor. Respondent shall ensure that the Contractor store each electronic record of service according to the following terms:
    a. the original digital file must be maintained by the Contractor unaltered for a period of not less than seven years;
    b. neither Respondent nor the process serving agency will be permitted to alter the original data, but may obtain copies of the original data file;
    c. the Contractor must maintain the records in a manner that will permit retrieval by the DCA license number of the process server, the DCA license number of the process serving agency that has distributed the process for service, the name of the plaintiff or petitioner, the name of the defendant or respondent, the docket number (if any), the name of the person to whom process is delivered and a unique file identifier of the process being served;
    d. the Contractor must maintain the records in a manner that will ensure that their integrity is adequate for admissibility in a judicial proceeding under the rules of evidence applicable in the state of New York;
    e. the Contractor must produce upon request by the Department, and to any other party according to an appropriate order or subpoena, a copy of the electronic records, or any reasonably described part involved, certified to be true and accurate;
    f. the Contractor must provide to the Department upon request a street map in hard copy format and access to an interactive electronic street map that display the locations where the digital records were recorded with a date and time provided by GPS or cellular date and time; and
    g. the Contractor must provide to the Department upon request, and to any other party according to an appropriate order or subpoena, such software as may be necessary to display the electronic records in an MS Excel spreadsheet, 2003 version or later, with the following fields and in the following data formats:
        - a unique file identifier of the process being served;
        - the process server's license number;
        - the process serving agency's license number;
        - plaintiff or petitioner, which must be specified by the last name of the first plaintiff, or, if not a natural person, the name of the entity, except that the field may contain the name of every plaintiff or petitioner in the case, provided that the entire record is searchable by a wildcard search of the name of any plaintiff or petitioner;
        - defendant or respondent, which must be specified by the last name of the first defendant, or, if not a natural person, the name of the entity, except that the field may contain the name of every defendant or respondent in the case, provided that the entire record is searchable by a wildcard search of the name of any defendant or respondent;
        - the full docket/index number, which must be entered with all information necessary to identify the case, such as XXXXXX/XX, unless the case is a Civil Local matter, in which case, it will include the prefix of CV, CC, LT, MI, NC, RE, SC, or TS;

- the date that service was effected or attempted according to the device, which must be entered as MM/DD/YYYY;
- the time that service was effected or attempted according to the device, which must be entered in military time;
- the date that service was effected or attempted according to GPS or cellular signals, which must be entered as MM/DD/YYYY;
- the time that service was effected or attempted according to GPS or cellular signals, which must be entered as military time;
- the address where service was effected or attempted, which must consist of four fields in the following order: building number, street name, city, and zip code, which must be five digits. All address information must be CASS (Coding Accuracy Support System) processed to insure its accuracy with software graded to be CASS Certified by the National Customer Support Center of the United States Postal Service;
- the name of the intended recipient of the process, which must be entered in two data fields such that the first data field is the last name of the intended recipient, or, if not a natural person, the name of the entity, and the second data field is the first name of the intended recipient if a natural person; and
- the name of the person to whom process was delivered, which must be entered in two data fields such that the first data field is the last name of the person, and the second data field is the first name of the person.

Affidavits and Other Proofs of Service

26. Respondent shall maintain electronic copies of all affidavits of service signed by Respondent, independent of the records maintained by any process serving agencies, and shall produce such records, upon request by the Department, in chronological order.

27. Respondent's affidavits of service shall be truthful, contain all information required by law, and contain the following facts, where applicable:
    a. Respondent's license number;
    b. Except where the process effectuated was not received from a process serving agency, the name and address of the process serving agency from whom the process served was received;
    c. A detailed description of Respondent's efforts to effectuate personal delivery within the State;
    d. Respondent's source of the information about the whereabouts of the person to be served;
    e. A description of Respondent's efforts to confirm the information about the whereabouts of the person to be served;
    f. The location and detailed description of the place where delivery was effectuated;
    g. The date and time that process was effectuated;
    h. A description of the gender, age, height, weight, skin color, hair color, and other identifying features of the person to whom papers were delivered;
    i. A separate statement indicating whether Respondent knows or does not know the name of the person to whom process was delivered;
    j. Where service of process is accomplished by personal service, all information confirming that Respondent knew the person to whom process was delivered was the actual intended recipient of the process; and
    k. Where service of process is accomplished by substitute service, all information confirming that Respondent knew the person to whom process was delivered was a relative or co-occupant of the intended recipient.

28. Any affidavit signed by Respondent that has the capacity, tendency or effect of misleading a reader of the affidavit shall be considered intentional if there are repeated similar acts because of Respondent's or Respondent's agent's use of canned or form language. It shall be the Respondent's burden to show that he or she did not intend the affidavit to be misleading.

29. Respondent shall not use fictitious names in his or her affidavits of service to refer to defendants or persons, except when Respondent is unable to obtain the name of the person. Where Respondent is unable to obtain the first name of the person, Respondent shall use either "John" (for a male) or "Jane" (for a female) to represent the first name of the person. When Respondent is unable to obtain the last name of the person, Respondent shall use "Doe" to represent the last name of the person.

Duty to Report Contests to Service of Process

30. Whenever Respondent receives any type of notice, including an oral communication, that a court has scheduled a hearing concerning a contest to service of process by Respondent (known as a "traverse hearing"), Respondent shall, within ten (10) days of receiving such notice, fill out and submit to the Department the "Traverse Report Form For Process Servers/Agencies Who Signed A Consent Order," available on the DCA Process Server Website (nyc.gov/processserver). Respondent shall submit the completed traverse report form by e-mail to **TraverseReports@dca.nyc.gov**.

31. Each traverse report form notifying the Department of a scheduled traverse hearing shall include at least the following information:
    a. The date of the hearing;
    b. The name of the court, county, and judge before whom the hearing is scheduled;
    c. The index number of the action or proceeding;
    d. The name of the petitioner or plaintiff;
    e. The name of the respondent or defendant;
    f. The process server's name;
    g. The process server's license number; and
    h. The name of the process serving agency on behalf of whom service was effectuated.

32. 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 order or decision on any traverse hearings that actually occur, including any stipulation or court file jacket setting forth the final result of the matter. "Decision reserved" is not a final result.

33. Within ten days of learning 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 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 also append a copy of the court's order or decision on any traverse hearings that actually occur to Respondent's traverse report, including any court file jacket setting forth the final result of the matter. Respondent shall submit the completed traverse report form and court decision by e-mail to **TraverseReports@dca.nyc.gov**.

34. If Respondent fails to learn the final result of the traverse hearing and obtain a copy of the court's 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 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.
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.

35. 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 has been unable, so far, to learn the final result of the hearing or obtain a copy of the court's decision.

36. Respondent and the process serving agency for whom he or she serves process 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 Respondent's behalf.

37. Respondent shall maintain, in one Microsoft Excel file, an electronic record of every traverse hearing scheduled concerning service of process by Respondent. This shall be done by using the Excel spreadsheet titled "Record of Scheduled Traverse Hearings," available on the DCA Process Server Website.

Training and Exams

38. Respondent shall attend any future training about the laws and regulations that relate to and govern the service of process in the City of New York upon notice from the Department that it has determined that there is available within the City of New York one or more programs that provide such training in a satisfactory manner. Respondent's failure to provide proof of having attended such training, after notice has been issued that such training is available, shall be sufficient grounds for the revocation of his or her license or denial of his or her license renewal application until such time as this requirement is met

Additional Duties

39. Respondent shall provide to the Department a reply to all consumer complaints to the Department relating to Respondent's process serving activity within ten (10) business days of receiving the complaint and shall respond to any subsequent communications from the Department concerning the complaint within five (5) business days. Respondent shall also notify the Department within ten (10) days of receipt of any (i) complaints, actions or proceedings filed against Respondent by consumers in any forum, including state and federal courts, the Better Business Bureau, the Office of the Attorney General of the State of New York, or any other agency or association, (ii) actions, proceedings or investigations by any government agency against Respondent; and (iii) results of any actions, proceedings or investigations against Respondent that resulted in the revocation or suspension of a license, the imposition of fines or restitution, a voluntary settlement, a court order, a criminal guilty plea, or a conviction.

40. Respondent shall notify the Department when his or her address, telephone number or e-mail address changes, in writing, within ten (10) days of such change. Respondent shall provide such notification in writing to the Department's Licensing Division at 42 Broadway, 5th Floor, NY, NY 10004.

41. Respondent will respond within the time required to any correspondence from the Department requesting further information on the status or disposition of any criminal complaints or arrests of Respondent. Respondent's failure to respond within the time required to any correspondence from the Department regarding the status or disposition of any criminal complaint or arrest of Respondent will be considered a breach of this Agreement and shall be sufficient grounds for the suspension of Respondent's license, upon proof of such failure and an opportunity to be heard.

42. 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 Rules of the City of New York or the New York City Administrative Code.

FINES

43. Respondent shall pay a fine of $250 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 CO.

BREACH OF THIS AGREEMENT

44. A finding, after notice and a hearing, that Respondent has committed a material breach of the terms of this Agreement shall be sufficient grounds for the revocation of Respondent's license. This provision shall not apply to the Department's consideration of any license or renewal applications.

45. Specific violations of this Agreement shall constitute independent and separate violations of any applicable law, regulation or rule.

Agreed to by Respondent

By: Damaris De Los Santos

Signature Date

Accepted for the NYC Department of Consumer Affairs

By: [redacted], Regulatory Compliance Division

[redacted]

Signature 3/9/2015 Date

Process server individuals licensed by the Department of Consumer Affairs (DCA) must comply with all relevant local, state and federal laws. Copies of New York City licensing and consumer protection laws are available in person at DCA's Licensing Center, located at 42 Broadway, 5th Floor, New York, NY, by calling 311, New York City's 24-hour Citizen Service Hotline, or by going online to www.nyc.gov/ProcessServers.