CITY OF NEW YORK
DEPARTMENT OF CONSUMER AFFAIRS

----------x **CONSENT ORDER**

DEPARTMENT OF CONSUMER AFFAIRS

Complainant,

-against- Violation # LL005324953

MELVIN G ESSER License # 0947369

[redacted]

Licensee/Respondent. (Process Server Individual)

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1. Melvin G. Esser ("Respondent") acknowledges that the New York City Department of Consumer Affairs ("DCA" or "the Department") duly served Respondent with a Notice of Hearing charging Respondent with violations of the following rules: 6 RCNY §§ 2-236(a), 2-236(c)(1), 2-236(c)(2).

2. Respondent enters into this Consent Order ("CO") with the Department to resolve these charges without the necessity of a hearing.

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

4. This Consent Order will take effect upon notification to both parties that the December 30, 2013 Decision in this matter has been vacated.

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. "Person" shall mean any individual, firm, company, partnership, corporation, association or other organization.

7. "Process" means a summons, notice of petition, order to show cause, subpoena, notice, citation or other 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; provided, however, that if under the laws of the State of New York the mailing of such legal paper is sufficient to effect service, such legal paper shall not be process for the purpose of this Agreement.

8. "Serve" or "service" shall mean the delivery of process in a manner prescribed by the laws of the State of New York.

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

INJUNCTIVE RELIEF

Duty to Report Contested Service of Process

10. 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 submit a report to the Department, within ten (10) days of receiving such notice, using 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**.

11. 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.

12. 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.

13. 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 submit the completed traverse report form by e-mail to **TraverseReports@dca.nyc.gov**.

14. Respondent shall append a copy of the court's order or decision on any traverse hearings that actually occur to Respondent's traverse report, including any stipulation or court file jacket setting forth the final result of the matter.

15. 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.

16. 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.

17. 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.

18. 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.

19. 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.

20. 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.

21. 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

22. 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.

23. 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.

RESPONDENT'S DUTY TO REPORT CHANGES OF ADDRESS TO THE DEPARTMENT

24. Respondent affirms that the address and telephone number listed with the Department are current and correct.

25. Respondent represents that the following is his or her e-mail address:

[redacted]

26. Respondent acknowledges that the Department intends to use this e-mail address to communicate official matters to Respondent and Respondent agrees to accept such communications and respond to them in a timely manner.

FINES

27. Respondent has paid a fine of **$500** in settlement of all the violations to date in the above-referenced matter.

BREACH OF THIS AGREEMENT

28. A finding, after notice and an opportunity to be heard, that Respondent has committed a breach of the terms of this Agreement shall be sufficient grounds for the revocation of Respondent's license.

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

30. Violations of laws, violations of Department rules and violations of this Agreement shall be assessed as separate fines, with a maximum penalty of $1,000.00 each.

WAIVER OF APPEALS

31. Respondent 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.

DEPARTMENT'S AUTHORITY

32. 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.

Agreed to by Respondent	Accepted for the NYC Department of Consumer Affairs
By: Melvin G. Esser	By: [redacted] Legal Division
Signature 3/19/2014 Date	[redacted] 3/20/14 Signature Date

Businesses 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/consumers.

CITY OF NEW YORK
DEPARTMENT OF CONSUMER AFFAIRS

----------x **NOTICE OF HEARING**

DEPARTMENT OF CONSUMER AFFAIRS

Complainant,

-against- Violation # LL005324953

MELVIN G ESSER License # 0947369

Licensee/Respondent. (Process Server Individual)

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In accordance with the powers of the Commissioner of the New York City Department of Consumer Affairs ("the Department") set forth in Section 2203(e) of Chapter 64 of the Charter of the City of New York and Section 20-104 of the Administrative Code of the City of New York ("the Code"), **YOU ARE HEREBY ORDERED TO APPEAR FOR A HEARING AT THE DEPARTMENT'S ADJUDICATION TRIBUNAL AT 66 JOHN STREET, 11TH FLOOR, NEW YORK, NEW YORK AT 9:30 A.M. ON THURSDAY, NOVEMBER 14, 2013;**

AND SHOW CAUSE why your license to operate as an individual process server should not be suspended or revoked and why monetary penalties should not be imposed on you:

APPLICABLE LAW

1. Pursuant to Title 6 of the Rules of the City of New York ("6 RCNY") § 2-236(a), whenever an individual process server receives notice that a court has scheduled a hearing to determine whether service of process made by the process server was effective (known as a "traverse hearing"), the process server must submit, by certified mail or e-mail, a written report to the Department within ten (10) days of receiving such notice. The written report must include the title and index number of the action,

the court and the judge before whom the hearing is scheduled, the date(s) of the hearing, and the name and license number of every licensee who effected service or assigned or distributed the process for service.

2. Pursuant to 6 RCNY § 2-236(c)(1), an individual process server must attempt to learn the results of his or her traverse hearings by following specific procedures, including searching court files sixty (60) and ninety (90) days after the hearing.

3. Pursuant to 6 RCNY § 2-236(c)(2), an individual process server must submit a written report to the Department, by certified mail or e-mail, stating:

   (a) the result of the traverse hearing (including any judicial order or voluntary settlement resolving the challenge to service of process), within ten (10) days of learning the result; or

   (b) that he or she made attempts to learn the result of the traverse hearing but was unable to do so, within one hundred (100) days of the hearing.

FACTS

4. Respondent is licensed by the Department as an individual process server under license number 0947369.

Loadstone Corp. v. [redacted]

5. In or about 2012, process was distributed to Respondent for service in the matter of Loadstone Corp. v. [redacted] ("Loadstone") and thereafter an affidavit of service executed by Respondent in which he attested that he had served such process in Loadstone was filed with the clerk of the court.

6. The court in Loadstone scheduled a traverse hearing for February 28, 2013 concerning the service of process allegedly made by Respondent.

7. Respondent received notice of the scheduling of the traverse hearing in Loadstone.

8. Respondent did not submit a written report to the Department, by certified mail or e-mail, that a traverse hearing had been scheduled in Loadstone within ten (10) days of receiving notice of the scheduled hearing.
9. Respondent did not attempt to learn the result of the traverse hearing in Loadstone in accordance with the procedures specified in 6 RCNY § 2-236(c)(1).
10. Respondent did not submit a written report to the Department, by certified mail or e-mail, the result of the traverse hearing in Loadstone or that Respondent made attempts to learn the result of the hearing but was unable to do so, within one hundred (100) days of the hearing.

CHARGES

1. Respondent violated 6 RCNY § 2-236(a) by failing to report to the Department the scheduling of a traverse hearing within ten (10) days of receiving notice of the scheduled hearing. [1 count]
2. Respondent violated 6 RCNY § 2-236(c)(1) by failing to attempt to learn the result of a traverse hearing in accordance with the procedures specified in 6 RCNY § 2-236(c)(1). [1 count]
3. Respondent violated 6 RCNY § 2-236(c)(2) by failing to, within one hundred (100) days after the scheduled date of a traverse hearing, report to the Department either: (a) the final result of the hearing; or (b) that Respondent made attempts to learn the final result of the hearing but was unable to do so. [1 count]

WHEREFORE, the Department demands that an order issue: 1) imposing maximum fines on Respondent for each and every charge set forth herein; 2) suspending or revoking Respondent's license; 3) ordering Respondent to report to the Department,

within 10 days, the results of any traverse hearings cited in this Notice of Hearing that Respondent has not reported to the Department; and 4) granting such other relief as is deemed just and proper.

Dated: September 20, 2013
New York, New York

For: **Jonathan Mintz**
Commissioner

By: [redacted]
Senior Staff Attorney
Legal Division

IMPORTANT INFORMATION FOR RESPONDENTS

You have been charged with violating Laws and Rules of the New York City Department of Consumer Affairs.

FAILURE TO APPEAR AT THE HEARING: If you do not appear at the DCA Adjudication Tribunal on the scheduled hearing date, you will be found guilty of the charges, you will be ordered to pay a fine, and your DCA license(s) may be revoked.

ADJOURNMENTS: Requests for adjournments must be received at least three (3) business days prior to the hearing date. **You may submit your request by e-mail to adjournmentrequests@dca.nyc.gov (preferred method)** or by mail to DCA Adjudication Tribunal, 66 John Street, 11th Floor, New York, NY 10038. Make sure to include the violation number in your request. In addition, you must send a copy of your request to process_server@dca.nyc.gov or by mail to David Cho, DCA Legal Division, 42 Broadway, 9th Floor, New York, NY 10004.

REPRESENTATION: Although it is not required, you may choose to bring a lawyer or authorized representative to the hearing.

TRANSLATION SERVICES: DCA will provide translation services at the hearing for you and your witnesses. You may not use your own interpreter at the hearing.

REASONABLE ACCOMMODATION: If you have a disability and require a reasonable accommodation on the day of the hearing, you must send a request, with proof, before the hearing date to the Adjudication Tribunal at **mycase@dca.nyc.gov** or call 311 (212-NEW-YORK outside NYC) and ask for "Consumer Affairs Hearing - Reasonable Accommodation."

SETTLEMENTS: If you wish to settle the charges in this Notice of Hearing, you **must sign** the enclosed Consent Order and mail it to Shannon Bermingham, NYC Department of Consumer Affairs, 42 Broadway, 9th Floor, New York, New York 10004 by **October 9, 2013**. You must enclose, with the signed Consent Order, a bank check or money order made payable to the "NYC Department of Consumer Affairs" for **$500**.

For additional information, visit DCA's website at www.nyc.gov/consumers or call 311.