CITY OF NEW YORK
DEPARTMENT OF CONSUMER AFFAIRS

DEPARTMENT OF CONSUMER AFFAIRS, **Complainant,** **-against-** **CYBERPROPH, INC.** **56 TRAVIS AVENUE** **STATEN ISLAND, NY 10314** **Respondent.**	**CONSENT ORDER** PROCESS SERVER AGENCY License No. **1165688** Violation No. **LL 005287435**

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COUNSEL
DEPT. OF CONSUMER AFFAIRS

CYBERPROPH, INC. ("Respondent") consents to this Consent Order ("CO") to settle the above-captioned violation with the Department of Consumer Affairs ("DCA" or "the Department") and agrees as follows:

ACKNOWLEDGMENT OF SERVICE

Respondent acknowledges receipt of the Notice of Hearing in the above-captioned matter, which charged it with violating Sections 2-234a(b) and 2-234a(c) of Title 6 of the Rules of the City of New York.

I. DEFINITIONS

KK. Terms are defined in 6 RCNY § 2-231.

LL. "Material breach" means the failure to comply with this CO in whole or in part by commission or omission.

MM. "Report to the Department" means directing a written communication to the New York City Department of Consumer Affairs, Attn.: Legal Division, 42 Broadway, 9th Floor, NY, NY 10004, or as specifically indicated in this CO.

II. INJUNCTIVE RELIEF

61) Respondent shall, in accordance with 6 RCNY § 2-234a(b), develop and implement policies and procedures set forth in a written Compliance Plan to ensure that individual process servers to whom it distributes process for service act with integrity and honesty and comply with the recordkeeping requirements applicable to process servers.

62) Respondent's written Compliance Plan shall require that it:

uuu. at least once each month, review for completeness and accuracy the records of each individual process server to whom it assigns or distributes process;

vvv. prepare a monthly written report of its review of the records maintained pursuant to 6 RCNY § 2-233 of each individual process server to whom it assigns or distributes process during that month using the review instrument annexed as Attachment A;

www. maintain each monthly report for at least seven (7) years;

xxx. maintain records of any disciplinary actions taken against the individual licensed process server;

yyy. report to the Department in writing the name and license number of each individual licensed process server who does not comply with the law governing process servers within ten (10) days of learning of such non-compliance; and

zzz. make available, upon request, to the Department a copy of its record review procedures, any written reports of the reviews it maintains, and copies of any referrals of individual process servers to the Department.

63) Respondent shall take appropriate disciplinary action against an individual process server who fails to comply with the law, including, but not limited to, suspending or terminating its employment, agency or other relationship with the individual process server.

64) Respondent shall submit an affirmation to the Department that it has developed and implemented a written Compliance Plan within fourteen (14) days of the execution of this CO. Respondent acknowledges and agrees that its license will not be renewed unless it submits an affirmation to the Department that it has adopted a written Compliance Plan. The affirmation should be sent to:

Legal Division
New York City Department of Consumer Affairs
42 Broadway, 9th Floor
New York, NY 10004

65) Upon notification from the Department, a principal of Respondent shall appear at the Department within sixty (60) days for a review of Respondent's implementation of its Compliance Plan, compliance with the terms of this Order and such other issues as the Department, in its discretion, deems appropriate. Respondent shall produce such records as the Department may request at the scheduled meeting. Failure to appear at a scheduled meeting or produce requested documents will constitute a violation of this Order.

III. MISCELLANEOUS

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

50) Respondent appoints _____ as its designated agent who may be contacted regarding this CO and any consumer complaints and represents that the following is his/her e-mail address:

_____@_____

51) 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.

52) Respondent shall notify the Department in writing when its address, telephone number and/or e-mail address change within 10 days of such change.

IV. NON-COMPLIANCE WITH THIS ORDER

37) A finding, after notice and hearing, that Respondent has committed a material breach of the terms of this Order shall be sufficient grounds for the revocation of Respondent's license and for ineligibility to be licensed for a period of five years.

38) Specific violations of this Order shall constitute independent and separate violations of any applicable law, regulation or rule.

39) Violations of law and violations of this Order shall be assessed as separate fines, with a maximum penalty of $1,000.00 for each violation.

V. WAIVER OF APPEALS

13) Respondent waives any right to a hearing, appeal of and/or any challenge of the facts alleged by the above-referenced violation under Code § 20-104 or under Article 78 of the New York State Civil Practice Law and Rules (CPLR), §§ 7801–7806, in any forum.

VI. DEPARTMENT'S AUTHORITY

13) Nothing in this Order shall be construed to limit in any way the authority of the Department to exercise its regulatory or enforcement powers under Code §§ 20-104 or 20-409.

Agreed to by **CYBERPROPH, INC.**

By:

12/21/11

Signature Date

Accepted for the Department of Consumer Affairs

By: [redacted]

Staff Counsel

[redacted] 12/22/11

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 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 at www.nyc.gov/consumers.

ATTACHMENT A

PROCESS SERVING AGENCY MONTHLY COMPLIANCE REPORT

Process Serving Agency Name (the "Agency"):

Process Serving Agency's DCA License Number

Business Address:

Name of Process Server Whose Records Were Reviewed: **Does This Individual Serve Process Exclusively For The Agency?**

IF YOUR ANSWER IS NO TO ANY OF THESE QUESTIONS, PLEASE PROVIDE THE FOLLOWING INFORMATION FOR EACH RECORD OR ENTRY THAT WAS NON-COMPLIANT:

Item	Description	Yes	No	Time of Service	Date of Service	Person Served	Type of Service	Address of Service	Title of Action	Court	For Each Entry, Record or Event Listed Below, State Specifically Why The Answer To This Question Is No	State Any Corrective/Disciplinary Action Taken By The Agency
1	Is every logbook entry legible?											
2	Does every logbook contain the title of the action?											
3	Does every logbook entry contain the name of the person or entity served or upon whom service was attempted?											
4	Does every logbook entry contain the date and time of service or attempted service?											
5	Does every logbook entry contain the address of service or attempted service?											

ATTACHMENT A

6	Does every logbook entry contain the nature of the papers served or attempted to be served?											
7	Does every logbook entry contain the court name?											
8	Does every lobgook entry contain the the index number of the action?											
9	For service made in-person, does every logbook entry include a description of the person served, including sex, skin color, hair color, approximate age, height and weight?											
10	For service not made in-person, does every logbook entry include the dates, addresses and times of attempted personal service in a separate, chronological entry?											

ATTACHMENT A

11	Does every logbook entry contain the date of filing of the affidavit of service when the process server filed an affidavit of service with a court ?											
12	Is there a separate and contemporaneous entry for every attempted and effected service?											
13	Is every record of attempted and effected service contained in a bound, paginated volume?											
14	Was every record of attempted or effected service entered in only one volume at a time until all of the available space in the volume was filled?											
15	Does every logbook entry recording a completed service contain the type of service effected (i.e. personal, substituted, conspicuous, or corporate)?											

ATTACHMENT A

16	For all service not made in-person, does every record of that service include a description of the area adjacent to the door to which process was affixed (including the color and composition of hallway walls, color and composition of hallway floor or doorstep, and location of premises in relatio to stairs, elevator or entranceway)?											
17	Does every logbook entry contain the name and license number of the process server organization from whom the process served was received or such other person or firm from whom the process served was received?											
18	For all service made pursuant to RPAPL § 735(1) using registered or certified mail, does every logbook entry include the postal receipt number of registered or certified mail for each service that the process server completed using registered or certified mail?											
19	Were corrections only made by drawing a straight line through the inaccurate entry and clearly printing the accurate information directly above the inaccurate entry?											

ATTACHMENT A

20	Did the process server scan all of their logbooks into electronic image files? **Please write N/A in the Yes column if, instead of scanning logbooks, the process server chose to enter records into an electronic record-keeping system.*											
21	Is there a separate electronic image file for every date that process was served? **For questions 21-26, please write "N/A" in the Yes column if, instead of scanning logbooks, the process server chose to enter records into an electronic record-keeping system.*											
22	Is every electronic image file named with the date of the service recorded in the logbook and the process server's license number?											
23	Was every scan of the logbooks completed within one business day?											
24	Are all of the process server's scanned image files saved to a portable media device?											
25	Is the process server's portable media device kept it in a separate location from the original image files?											

ATTACHMENT A

26	Is each portable media device labeled with the process server's last name, license number, and the date range of the records?											
27	Did the process serve input every logbook entry into an electronic record-keeping system? **For questions 27-29, please write "N/A" in the Yes column if, instead of inputting entries into an electronic record-keeping system, the process server chose to scan records into electronic image files.*											
28	Does the process server's electronic record-keeping system contain a backup support system?											
29	Is the process server's electronic record-keeping system in the format provided by the Department or uploaded to a third-party data provider?											

ATTACHMENT A

30	On the Department's randomly-selected audit date, is the information contained in the process server's affidavits of service consistent with the GPS data provided by the process server's data storage contractor? **Agencies will be notified of the Department's randomly-selected audit date in the first week of the following month.*											
31	On the Department's randomly-selected audit date, is the information contained in the process server's affidavits of service consistent with the process server's logbook entries?											
32	On the Department's randomly-selected audit date, is the information contained in the process server's logbooks consistent with the GPS data provided by the process server's data storage contractor?											
33	Please list all traverse hearings involving this process server which the Agency became aware of this month.	→										
34	For all traverse hearings listed in response to Question 30, is the information contained in the process server's logbooks consistent with the GPS data provided by the process server's data storage contractor?											

ATTACHMENT A

35	For all traverse hearings listed in response to Question 30, is the information contained in the process server's affidavits of service consistent with the GPS data provided by the process server's data storage contractor?											
36	For all traverse hearings listed in response to Question 30, is the information contained in the process server's affidavits of service consistent with the process server's logbook entries?											

CITY OF NEW YORK
DEPARTMENT OF CONSUMER AFFAIRS

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DEPARTMENT OF CONSUMER AFFAIRS, Complainant, -against- **CYBERPROPH, INC.** 56 TRAVIS AVE STATEN ISLAND, NY 10314 Licensee/Respondent.	**NOTICE OF HEARING** **Violation No. LL 005287435** **License # 1165688** **(Process Server Agency)**

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TO THE ABOVE NAMED LICENSEE:

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 ADJUDICATION DIVISION OF THE DEPARTMENT OF CONSUMER AFFAIRS, 11TH FLOOR, 66 JOHN STREET, BOROUGH OF MANHATTAN, NEW YORK, NEW YORK 10038 ON WEDNESDAY, DECEMBER 28, 2011 AT 8:30 AM** to: have charges against you heard concerning violations of the Code, found in Chapter 1 of the Code, beginning at Section 20-101 (known as the License Enforcement Law), Chapter 2 of the Code, Subchapter 23, beginning at Section 20-403 (known as the Process Servers Law), Title 6 of the Rules of the City of New York ("6 RCNY"), beginning at Section 1-01 (known as the License Enforcement Rules), and Title 6 of the Rules of the City of New York, beginning at Section 2-231 (known as the Process Servers Rules);

AND SHOW CAUSE why your license to operate as a Process Server Agency ("PSA") should not be suspended or revoked, why monetary penalties should not be imposed on you and why you should not be prohibited, based on lack of fitness, from holding any license issued by the Department on the grounds specified herein.

Complainant, The City of New York Department of Consumer Affairs, by its attorney, Alvin A. Liu, Esq., as and for its complaint upon information and belief alleges the following:

APPLICABLE LAW

1. 6 RCNY Section 2-234a became effective on March 21, 2011.
2. Pursuant to 6 RCNY Section 2-234a(b), a Process Server Agency ("PSA") licensed by the Department must develop and implement policies and procedures set forth in a written Compliance Plan to ensure that an individual process server acts with integrity and honesty and complies with the recordkeeping requirements applicable to process servers.
3. Pursuant to 6 RCNY Section 2-234a(c), every PSA licensed by the Department on the effective date of the rule was required to submit to the Department within sixty (60) days of the effective date of the rule (i.e., by May 20, 2011) an affirmation that it has adopted a written Compliance Plan.

FACTS

1. Respondent, CYBERPROPH, INC. , holds a current PSA license issued by the Department and was licensed by the Department prior to March 21, 2011.
4. Respondent has not submitted to the Department an affirmation that it has adopted a written Compliance Plan.

5. Upon information and belief, Respondent has not developed and implemented policies and procedures set forth in a written Compliance Plan as required by 6 RCNY Section 2-234a(b).

CHARGES

FAILURE TO SUBMIT COMPLIANCE PLAN AFFIRMATION

Count #1

1. Respondent failed to submit an affirmation that it has adopted a Compliance Plan within 60 days of the effective date of the Rule, in violation of 6 RCNY § 2-234a(c).

FAILURE TO DEVELOP AND IMPLEMENT PSA COMPLIANCE PLAN

Count #2

2. Respondent has failed to develop and implement a PSA Compliance Plan in violation of the 6 RCNY § 2-234a(b).

WHEREFORE, the Department demands that an order issue: (1) imposing maximum fines on Respondent for each and every charge set forth herein; (2) directing Respondent to adopt a written Compliance Plan in conformance with 6 RCNY § 2-234a(b) and submit it, together with an affirmation in conformance with 6 RCNY § 2-234a(c), to the Department within fifteen (15) days of the date of the order; and (3) granting such other relief as is deemed just and proper.

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 on the scheduled hearing date, a default decision will be issued in which you will be found guilty of the charges and 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**); by fax to 212-361-7766; or by mail to: DCA Administrative 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 aliu@dca.nyc.gov; by fax to (212) 487-4390; or by mail to Alvin A. Liu, Esq., 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.

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

Dated: November 2, 2011
New York, New York

For: **Jonathan Mintz**
Commissioner

[redacted]
Staff Counsel
Legal Division