CITY OF NEW YORK
DEPARTMENT OF CONSUMER AFFAIRS

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DEPARTMENT OF CONSUMER AFFAIRS,

Complainant,

-against-

R & A PROCESS SERVING, INC.

Respondent.

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CONSENT ORDER

PROCESS SERVING AGENCY
License No. 1257131

Violation No. LL005324077 ,

1. The Department of Consumer Affairs ("DCA" or "the Department") and R & A PROCESS SERVING, INC. ("Respondent") enter into this Consent Order ("CO") to resolve charges that Respondent engaged in violations of the following laws and rules: Title 6 of the Rules of the City of New York ("6 RCNY"), Sections 2-233a(b)(3), 2-234, 2-234a(a)(4), 2-234a(b), 2-234a(b)(2)(ii), 2-234a(b)(2)(iii), 2-234a(b)(2)(iv), 2-234a(b)(2)(v), 2-234a(b)(2)(vi), 2-234a(b)(3), 2-234a(d)(2), 2-234a(d)(3), 2-236(a), 2-236(c)(1), 2-236(c)(2) and The New York City Administrative Code, Section 20-406.2(b).

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

3. Respondent enters into this CO to resolve these charges without the necessity of a Notice of Violation or a hearing.

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.

INJUNCTIVE RELIEF

5. 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. This includes adopting and implementing the following policies:

Confirmation of Process Servers' License Status

A. Respondent shall check the Department's website at least once each month to ensure that all individuals to whom it assigns or distributes process for service in New York City have an active individual process server license.

Screening of New Process Servers

B. Prior to assigning or distributing process to an individual process server who has not attempted or effected service of process on Respondent's behalf previously, Respondent shall use the Process Server Screening Protocol available on the DCA Process Server Website (nyc.gov/processserver) as a guide to determine whether the process server is fit to serve process in New York City.

C. Respondent shall attach a copy of the completed Process Server Screening Protocol with each updated roster of process servers that it submits to the Department pursuant to Title 6 of the Rules of the City of New York, Section 2-234a(d)(2). The roster and screening protocol shall be e-mailed to process_server@dca.nyc.gov **and** mailed to the following address:

NYC Department of Consumer Affairs
42 Broadway, 5th Floor
New York, NY 1000
Attention: Licensing Division

Confirmation of Integrity of Affidavits of Service

D. Respondent shall ensure that each affidavit of service signed by a process server who attempted or effected service of process on Respondent's behalf in New York City is accurate and includes the case caption and index number (if they exist), the name and license number of the process server, and the name, license number and address of the process serving agency.

E. Respondent shall ensure that no affidavit of service will be signed by a process server who effected service of process on Respondent's behalf in New York City, notarized, or filed with a court unless the process server has created an electronic record of the location, date and time of service as determined by Global Positioning System ("GPS") technology or Assisted-Global Positioning System ("A-GPS") technology.

F. Respondent shall maintain electronic copies of all signed affidavits of service relating to service of process that Respondent assigned or distributed to an individual process server for service in New York City for at least seven (7) years. Each affidavit of service shall be maintained as a separate electronic file and the electronic files shall be maintained chronologically and named in the following manner:

> *Process Server Last Name and First Initial (no spaces)-*
> *Date of Service (YYYYMMDD)-*
> *Unique Identifying Number (to distinguish between multiple services on the same date).*
>
> Example: smithj-20120101-1

Conducting of Record Reviews

G. 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.

H. Respondent shall prepare a monthly report of its review of the records maintained pursuant to 6 RCNY § 2-233 (concerning bound logbooks), 6 RCNY § 2-233a (concerning electronic logbooks), 6 RCNY § 2-233b (concerning GPS), and 6 RCNY § 2-235 (concerning affidavits of service), of each individual process server to whom it assigns or distributes process using the "Monthly Compliance Report" available on the DCA Process Server Website. Respondent shall maintain the monthly report as a Microsoft Excel file for at least seven (7) years.

I. Respondent shall answer each and every question contained in the Monthly Compliance Report, including all subsequent updates to the report, truthfully, accurately and completely. This shall include identifying all record entries that are non-compliant.

J. 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 review instrument available on the DCA Process Server Website. Respondent shall maintain the monthly report as a Microsoft Excel file for at least seven (7) years.

K. Respondent shall follow each and every instruction contained in the GPS Investigation Report and shall complete the report, including all subsequent updates to the report, truthfully, accurately and completely.

L. Respondent understands that the Department may, from time to time, notify Respondent of GPS records showing that a process server was not at an address that he or she claimed to have attempted or effected service of process. When such a notification is sent to Respondent by the Department, Respondent shall investigate the service in accordance with Instructions 3 and 4 of the "GPS Investigation Report" and submit the completed report to the Department within thirty (30) days of receiving the notification.

Conducting Trainings

M. At least once a year, Respondent shall meet with each process server to whom it assigns or distributes process for service in New York City to conduct a training on the following process server laws and rules:

Title 6 of the Rules of the City of New York, Section 2-231
Title 6 of the Rules of the City of New York, Section 2-232
Title 6 of the Rules of the City of New York, Section 2-232a
Title 6 of the Rules of the City of New York, Section 2-232b
Title 6 of the Rules of the City of New York, Section 2-232c
Title 6 of the Rules of the City of New York, Section 2-232d
Title 6 of the Rules of the City of New York, Section 2-233
Title 6 of the Rules of the City of New York, Section 2-233a
Title 6 of the Rules of the City of New York, Section 2-233b
Title 6 of the Rules of the City of New York, Section 2-234
Title 6 of the Rules of the City of New York, Section 2-234b
Title 6 of the Rules of the City of New York, Section 2-235
Title 6 of the Rules of the City of New York, Section 2-236
Title 6 of the Rules of the City of New York, Section 2-237
Title 6 of the Rules of the City of New York, Section 2-238
New York General Business Law, Section 89-ff
New York Civil Practice Law and Rules, Section 307
New York Civil Practice Law and Rules, Section 308
New York Civil Practice Law and Rules, Section 309
New York Civil Practice Law and Rules, Section 310
New York Civil Practice Law and Rules, Section 310-a
New York Civil Practice Law and Rules, Section 311
New York Civil Practice Law and Rules, Section 311-a
New York Civil Practice Law and Rules, Section 312
New York Business Corporation Law, Section 306

N. Respondent shall also conduct a training prior to assigning or distributing process to an individual process server who has not attempted or effected service of process on Respondent's behalf previously.

O. The training shall also consist of a review of the three (3) most recent Monthly Compliance Reports completed for the process server undergoing the training, except with respect to new process servers to whom the Respondent had not previously assigned or distributed service.

P. At the conclusion of each training, Respondent shall ensure that the process server sign the "Training Acknowledgement Form" available on the DCA Process Server Website.

Q. Respondent shall maintain electronic copies of the Training Acknowledgment Form for each training it conducts for a period of seven (7) years.

Implementing Disciplinary Actions

R. Respondent shall take appropriate disciplinary action against all individual process servers who fail to comply with the process server rules and laws, including, but not limited to, suspending or terminating the process server's employment, agency or other relationship with Respondent.

S. Respondent shall document all disciplinary actions taken against individual process servers contemporaneously with the actions.

T. Records of disciplinary actions shall include:

(i) all underlying records leading to or supporting the disciplinary action;
(ii) all written communications with individual process servers relating or referring to the disciplinary action or the underlying reasons for the discipline; and
(iii) notes of any oral communications with individual process servers relating or referring to disciplinary actions or the underlying reasons for the discipline, including the types (interview, phone call, etc.) and dates of the communications.

U. If no written communications or notes exist relating to a disciplinary action, Respondent shall create a contemporaneous summary of the disciplinary action, its reasons for taking disciplinary action and all communications with the process server relating or referring to the discipline or the underlying reason for the discipline, including the types (interview, phone call, etc.) and dates of the communications.

V. Respondent shall report to the Department in writing all individual process servers against whom it has taken disciplinary action within ten (10) days of taking the action using the "Disciplinary Actions and Non-Compliance Report" available on the DCA Process Server Website. The term "disciplinary action"

includes, but is 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.

W. 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 "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), or 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.

X. Respondent shall maintain electronic records of any disciplinary actions taken against individual process servers and reports of non-compliance with the process server rules and laws for at least seven (7) years.

Traverse Hearings

Y. 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 "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.

Z. Each traverse report form notifying the Department of a scheduled traverse hearing shall minimally include the following information:

(i) The date(s) of the hearing;
(ii) The name of the court, county, and judge before whom the hearing is scheduled;
(iii) The index number of the action or proceeding;
(iv) The name of the petitioner or plaintiff;
(v) The name of the respondent or defendant;
(vi) The process server's name;
(vii) The process server's license number;
(viii) The name of the process serving agency on behalf of whom service was effectuated; and
(ix) The name and license number of every individual process server that you notified of the hearing and date of the notification(s).

AA. 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 disposition of the matter. "Decision reserved" is not a final result.

BB. 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**.

CC. 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 disposition of the matter.

DD. 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.

EE. 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.

FF. 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.

GG. 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.

HH. 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.

II. 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.

JJ. Respondent shall conduct an investigation into every traverse hearing scheduled since January 1, 2012, whether or not held, relating to process that was assigned or distributed by Respondent for service in New York City within one (1) month from the Effective Date of this Consent Order. The investigation shall, to the extent possible, be conducted in accordance with the instructions contained in the "Service Investigation Report" available on the DCA Process Server Website.

KK. Respondent shall also conduct an investigation into every traverse hearing scheduled in the future, whether or not held, relating to process that was assigned or distributed by Respondent for service in New York City within ten (10) days of learning of such hearing in accordance with the instructions contained in the Service Investigation Report.

LL. Respondent shall follow every instruction contained in the Service Investigation Report and shall complete the report, including all subsequent updates to the report, truthfully, accurately and completely.

MM. Respondent shall maintain, for seven (7) years, a single report concerning all traverse hearings that Respondent investigated and electronic copies of all documents gathered or created pursuant to its investigations into traverse hearings, including all written communications with individual process servers and notes concerning communications with individual process servers.

Investigating Default Judgments

NN. Respondent understands that the Department may, from time to time, notify Respondent of individual process servers whose assigned service of process resulted in a substantial number of defaults, and will provide Respondent a list of such defaults. When such a notification is sent to Respondent by the Department, Respondent shall investigate the services in accordance with the instructions contained in the "Service Investigation Report" and submit the completed report to the Department within thirty (30) days of receiving the notification.

Maintaining Electronic Records

OO. 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 all affidavits of service, work orders, routing sheets, instructions to individual process servers and notes submitted by individual process servers.

PP. Respondent shall maintain for seven (7) years electronic image files of the logbooks of each individual process server to whom Respondent has assigned or distributed process for service in New York City.

6. Respondent shall memorialize, in writing, the policies and procedures described in Paragraphs 5(A)-(PP) of this Consent Order in Respondent's compliance plan.

7. Respondent shall maintain all records that it is required to maintain pursuant to the Department's rules and this Consent Order at the address where Respondent is licensed to conduct business as a process serving agency.

8. Respondent shall make all records that it is required to maintain pursuant to the Department's rules and this Consent Order immediately available to the Department's inspectors, upon request, between the hours of 9 a.m. and 5 p.m., Monday through Friday, excluding holidays.

9. Upon written demand or subpoena by the Department, Respondent shall:

   (i) provide to the Department, within ten (10) days of the demand, any documents or records that the Department deems necessary to ascertain compliance with this Consent Order; and

   (ii) provide a written response to each specific demand for records, including the identification of the records produced in response to each numbered demand

and, if no records are submitted in response to a particular numbered demand, a detailed explanation of why such records are not being produced.

10. 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.

MISCELLANEOUS

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

12. Respondent appoints Nestor Romod 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: [redacted].

13. 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.

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

15. Respondent shall 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.

FINES

16. Respondent shall pay a fine of $30,000.00 in settlement of all the violations to date in the above-referenced matter. Respondent shall make a payment of $10,000.00 upon execution of this Consent Order and shall pay the balance plus 1.5% monthly interest over six (6) months in accordance with a payment plan to be signed by Respondent (the "Payment Plan"). The terms of the Payment Plan shall be incorporated into this Consent Order.

NON-COMPLIANCE WITH THIS ORDER

17. Any violation of federal, city or state process server laws or rules shall constitute a violation of this Consent Order.

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

19. Violations of laws and rules and violations of this Consent Order shall be assessed as separate violations with separate fines, with a maximum penalty of $1,000.00 for each violation.

20. Respondent's breach of the terms of this Consent Order shall be sufficient grounds for the revocation of Respondent's license and for ineligibility to be licensed for a period of five years.

WAIVER OF APPEALS

21. 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.

EFFECTIVE DATE OF CONSENT ORDER

22. The Effective Date of this Consent Order shall be the date that it is signed by the Department.

EXPIRATION OF CONSENT ORDER

23. This Consent Order shall expire two (2) years from the Effective Date of this Consent Order.

DEPARTMENT'S AUTHORITY

24. 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 Code §§ 20-104 or 20-409.

Agreed to by R & A Process Serving, Inc.

X By: ALAN ABOOD

X Signature 11/22/13 Date

Accepted for the Department of Consumer Affairs

By: [redacted]

Title: Settlement Associate

[redacted] 11/22/13

X 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.