

IN THE COUNTY COURT OF THE TWELFTH JUDICIAL CIRCUIT
IN AND FOR MANATEE COUNTY, FLORIDA

STATE OF FLORIDA, :
 :
 Plaintiff, :
 :
 Vs. : CASE NO. 41 2005 CT 005586
 :
 ISMAEL ALMARAZ ET AL., :
 :
 Defendant. :
 _____/

MOTION FOR RECONSIDERATION

COMES NOW, Ismael Almaraz et al., Defendant, by and through his undersigned Attorney, and files this Motion for Reconsideration, in support of said Motion would show:

1. On May 5, 2006, this Court entered an Order on The Defendants' Motion to Compel Production of Source Code.
2. In this Order, the Court declined to enforce a Subpoena Duces Tecum served upon CMI, Inc. (hereinafter CMI) to produce the Intoxilyzer Source Code at the Motion Hearing.
3. This Court ruled that in order to issue a subpoena, the Defendants had to follow the procedure set forth in Section 942.01, Florida Statutes.
4. The decision not to enforce the subpoena duces tecum was in error, for Section 942.01, Florida Statutes merely provides a method to subpoena

information; this Statute is not the exclusive method for the issuance of a subpoena. See *Forbes v. Indiana*, Case No. 59S01-0312-CR-608 (Ind. 2004) holding “the Uniform Act is permissive legislation. It is not the exclusive method to share information”.

5. On November 25, 2002 CMI registered with the Florida Secretary of State to transact business in the State of Florida using the name “CMI Inc of Kentucky” with the stated purpose to sell breath alcohol testing equipment.

6. Since 2002, CMI has filed annual reports with the Florida Secretary of State to continue transacting business in the State of Florida, the most recent filing occurring on February 23, 2007.

7. CMI, not only registered to transact business in the State of Florida, but actually did transact business in State of Florida by selling breath alcohol testing equipment.

8. As a foreign corporation registered to transact business in the State of Florida, CMI is subject to the same duties, restrictions, penalties, and liabilities imposed on a domestic corporation of like character. §607.1505(2), Florida Statutes.

9. Due to the fact CMI has registered to transact business in the State of Florida, this Court had the jurisdiction to issue a subpoena duces tecum for the production of evidence in possession of CMI without being required to utilize the

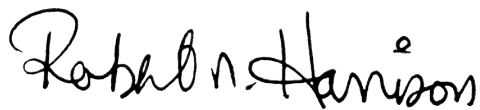
Uniform Law to Secure the Attendance of Witnesses from Within or Without a State in Criminal Proceedings, Chapter 942 Florida Statutes. See *General Motors Corp. v. State*, 357 So.2d 1045 (Fla. 1978).

10. In the Case of *Udice v. CMI Inc. of Kentucky*, Case No. 2007 CC 009705 SC (Sarasota Ct. Court, June 20, 2007), a declaratory judgment was entered against CMI holding that CMI could be subpoenaed without being required to utilize the Uniform Law to Secure the Attendance of Witnesses from Within or Without a State in Criminal Proceedings, Chapter 942 Florida Statutes.

11. Both the Florida and Federal Constitutions grant the Defendants the right of compulsory process. Article I, Section 16 Florida Constitution; 6th Amendment to U.S. Constitution. This right includes both the issuance and enforcement of a subpoena duces tecum. *Green v. State*, 377 So.2d 193 (Fla. 3rd DCA 1979); affirmed 395 So.2d 532 (Fla. 1981). The failure to enforce the subpoena duces tecum violated the Defendants Constitutional Right to compulsory process.

WHEREFORE, the Defendants requests this Court to rule that the Subpoena served upon CMI for production of the Source Code at the April 11, 2006 hearing was lawfully served and further rule that this subpoena should be enforced (upon remand or other relinquishment of jurisdiction from the District Court of Appeal) by the issuance of an Order to Show Cause to CMI as to why it should not be held in contempt for failing to comply with the subpoena duces tecum. Additionally,

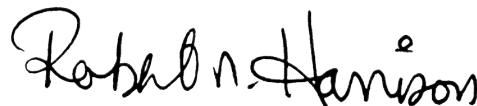
this Court should certify to the District Court of Appeal as a question of Great Public Importance whether the Uniform Law to Secure the Attendance of Witnesses from Within or Without a State in Criminal Proceedings, Chapter 942 Florida Statutes is the exclusive lawful manner to serve a subpoena upon a foreign corporation registered to transact business in the State of Florida.



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been furnished by regular U.S. mail to Earl Varn, State Attorney's Office, 2071 Ringling Boulevard, Fourth Floor, Sarasota, Florida 34237, this 2nd day of July, 2007.



Robert N. Harrison