

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

STATE OF FLORIDA, :
 :
 Plaintiff, :
 :
 Vs. : CASE NO. 2006 CT 009733 NC
 :
 JOHN C. FABIAN, ET. AL., :
 :
 Defendant. :
 _____/

MOTION FOR ORDER TO SHOW CAUSE

COMES NOW the Defendant, John C. Fabian, et. al., by and through their undersigned attorney, and pursuant to Rules 3.220 and 3.840, Florida Rules of Criminal Procedure, hereby moves this Honorable Court to issue an Order requiring CMI Inc. of Kentucky, to appear before the Court to show cause why it should not be held in Contempt of Court. In support of this Motion, the undersigned would show unto the Court the following facts and grounds:

1. On March 27, 2007 this Court entered an Order Directing Clerk to Issue Subpoena Duces Tecum directed to CMI Inc. of Kentucky:
2. This Subpoena Duces Tecum directed to CMI Inc. of Kentucky to:
 - a. Appear at the State Attorney's Office on May 16, 2007 at 9:00 A.M. with the Intoxilyzer 8000 Source Code, EPROM Versions 8100.24, 8100.25, 8100.26 and 8100.27.

- b. Furnish the records instead of appearing, or
- c. Object to the subpoena.

3. On April 2, 2007 CMI Inc. of Kentucky was lawfully served with the subpoena approved by this Court, a copy of the subpoena and the proof of service are attached marked Exhibit "A".

4. Prior to the production date, CMI Inc. of Kentucky obtained an Order from the Daviess District Court in Kentucky Quashing this subpoena; the Defendants do not believe the Kentucky Court had jurisdiction to enter this order and believe this order has no legal effect.

5. Allen Holbrook, Counsel for CMI Inc. of Kentucky contacted the undersigned's office on May 11, 2007 and left a voice mail that CMI, Inc. of Kentucky would not be producing the requested material on May 16, 2007, a copy of the confirming letter is attached marked Exhibit "B".

6. Additionally, CMI Inc. of Kentucky did not produce the requested material in lieu of appearance on May 16, 2007.

7. CMI Inc. of Kentucky has not filed an Objection to this subpoena with this Court.

WHEREFORE, the Defendant respectfully requests this Honorable Court issue an Order requiring CMI Inc. of Kentucky to appear before the Court to Show

Cause why it should not be held in Contempt of Court as a result of its failure to comply with this court's subpoena.

To the best of my knowledge, the above facts are true and correct.

Robert N. Harrison

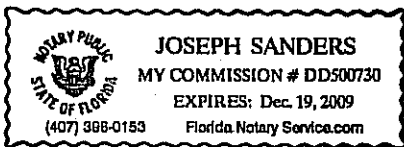
Robert N. Harrison
825 S. Tamiami Trail, Suite 2
Venice, Florida 34285
(941) 485-8551
(941) 488-8932 Facsimile
Robert@HarrisonLawOffice.com
Florida Bar No. 0612545
Counsel for Defendant

**STATE OF FLORIDA
COUNTY OF SARASOTA**

The foregoing instrument was acknowledged before me this 16th day of May, 2007, by Robert N. Harrison, who is personally known to me, and who did take an oath.

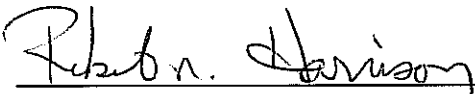
Joseph Sanders

Notary Public
Print Name: _____
Commission No: _____



CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been furnished by regular U.S. mail to Jason Chapman, State Attorney's Office, 2071 Ringling Blvd, Sarasota FL 34237 and CMI Inc. Of Kentucky, c/o NRAI Services, Inc. 2731 Executive Park Drive, Suite 4, Weston, FL 33331 this 16th day of May, 2007.



Robert N. Harrison

<input type="checkbox"/> IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT IN AND FOR SARASOTA COUNTY, FLORIDA <input checked="" type="checkbox"/> IN THE COUNTY COURT IN AND FOR SARASOTA COUNTY, FLORIDA	
DIVISION: Criminal	CASE NUMBER: 2006 CT 009733 NC
PLAINTIFF State of Florida	VS. DEFENDANT John C. Fabian, et. al.

SUBPOENA DUCES TECUM WITHOUT DEPOSITION

THE STATE OF FLORIDA:

TO: CMI INC of Kentucky
 BY SERVING: NRAI Services, Inc., Its Registered Agent
 2731 Executive Park Drive, Suite 4
 Weston, Fl. 33331

State Attorney's Office
 2071 Ringling Boulevard, in Sarasota, Florida, on
May 16, 2007, at 9:00 A.M., and to have with you at that time and place the following: Any and all evidence existing in paper, electronic or other form of any and all source

code(s) used in the Intoxilyzer 8000, software versions 8100.24, 8100.25, 8100.26 & 8100.27. These items will be inspected and may be copied at that time. You will not be required to surrender the original items. You may comply with this subpoena by providing legible copies of the items to be produced to the attorney whose name appears on this subpoena on or before the scheduled date of production. You may condition the preparation of the copies upon the payment in advance of the reasonable cost of preparation. You may mail or deliver the copies to the attorney whose name appears on this subpoena and thereby eliminate your appearance at the time and place specified above. You have the right to object to the production pursuant to this subpoena at any time before production by giving written notice to the attorney whose name appears on this subpoena. **THIS WILL NOT BE A DEPOSITION; NO TESTIMONY WILL BE TAKEN.**

If you fail to: (1) appear as specified; or (2) furnish the records instead of appearing as provided above; or (3) object to this subpoena, you may be in contempt of court. You are subpoenaed by the attorneys whose names appear on this subpoena and unless excused from this subpoena by the attorneys or the Court, you shall respond to this subpoena as directed.

DATED ON March 30, 2007.
Robert N. Harrison

ATTORNEY FOR: Defendants
 ADDRESS: Robert N. Harrison
825 Tamiami Trail S., Suite 2 Venice, Florida 34285

If you cannot afford to pay an attorney, call the Bar Association Legal Aid Society at (941) 366-0038. The mailing address is 1900 Main Street, Suite 311, Sarasota, Florida 34238-5921. An individual not eligible for free legal assistance may obtain a referral to an attorney by calling The Florida Bar Referral Service at (800) 342-8011. The mailing address for the Florida Bar Referral Service is 650 Apalachee Parkway, Tallahassee, Florida 32399-2300.

If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact the Sarasota County Jury Office, 2002 Ringling Blvd., Sarasota, Florida 34237, (941) 951-5785, within two (2) working days of your receipt of this Subpoena; if you are hearing impaired, call 1-800-955-8771; if you are voice impaired, call 1-800-955-8770.

FILED FOR RECORD STAMP



KAREN E. RUSHING
 CLERK OF THE CIRCUIT COURT

BY: [Signature] DATE:
3/30/07
 Deputy Clerk

Civil/Duceswo.doc
 Revised 12/99

EXHIBIT A

VERIFIED RETURN OF SERVICE

Insert name of court, judicial district or branch court, if any: County Court, Sarasota County, Florida	
DEPOSITION/COURT DATE: 05/16/2007 - 9:00 AM	CASE NUMBER: 2006-CT-9733-NC
PLAINTIFF/PETITIONER: State of Florida	
DEFENDANT/RESPONDENT: John C. Fabian, et al	
DOCUMENTS SERVED: Subpoena Duces Tecum Without Deposition	

Received on 03/30/2007 at 4:00 PM to be served on:

CMI Inc. of Kentucky c/o NRAI Services, Inc. - RA

I do hereby affirm that on 4-2-07 at 2:00PM I served this process by:

CORPORATE SERVICE: By leaving a true copy of this process with the date and hour of service endorsed thereon by me, a copy of the complaint, petition, or other initial pleading or paper (if any) and informing the person of the contents:

NAME: Karen Redman TITLE: secretary for NRAI

OTHER: By delivering a true copy of this process to _____ and informing him/her of the contents.

NON-SERVICE: For the reason(s) listed in the comments below:

LOCATION OF SERVICE: 2731 Executive Park Drive, Suite 4 Weston, FL 33311	FOR (Client): Robert N. Harrison, Esq. Robert N. Harrison 825 Tamiami Trail South, Suite 2 Venice, FL 34285 941-485-8551
COMMENTS:	
AUTHORIZATION: I AM APPOINTED IN GOOD STANDING IN THE JUDICIAL CIRCUIT WHEREIN THIS PROCESS WAS SERVED AND HAVE NO INTEREST IN THE ABOVE ACTION.	
DECLARATION: UNDER PENALTIES OF PERJURY I DECLARE THAT I HAVE READ THE FOREGOING VERIFIED RETURN OF SERVICE AND THAT THE FACTS STATED IN IT ARE TRUE. NOTARY NOT REQUIRED PURSUANT TO F.S. 92.525(2).	SIGNATURE: X <u>Ronald L. Harper</u> Ronald L. Harper - Cert/Appt#: 541 - Broward State Service Corporation 4030 Powerline Rd. Ft. Lauderdale, FL 33309 OUR FILE#: 83477

ROBERT N. HARRISON
ATTORNEY AT LAW

825 TAMiami TRAIL SOUTH
SUITE 2
VENICE, FLORIDA 34285

TELEPHONE: (941) 485-8551
E-MAIL: Robert@HarrisonLawOffice.com

FACSIMILE: (941) 488-8932
TOLL FREE: (877) 485-8551

May 14, 2007

VIA FACSIMILE
(270) 683-6694

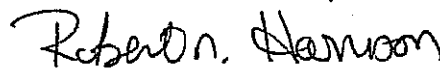
Allen W. Holbrook
Sullivan, Mountjoy, Stainback & Miller, PSC
100 St. Ann St.
Owensboro, KY 42303

***RE: State of Florida Vs. John C. Fabian, et. al.
State of Florida Vs. Catherine C. Marsh
State of Florida Vs. Sara Penney
State of Florida Vs. Morley J. Parent***

Dear Mr. Holbrook:

This letter confirms CMI will not be producing the Intoxilyzer Source Codes at the State Attorney's Office in Sarasota on May 16, 2007 pursuant to the subpoenas served upon them on April 2, 2007. Based upon representations made in your voice mail of May 11, 2007, I will not appear at the State Attorney's Office at the designated production time. Thank you for your cooperation in apprising me in advance of CMI's intention not to produce at the scheduled time, thus allowing me to avoid an unnecessary trip to the State Attorney's Office. In the event I have misunderstood your message, please contact my office immediately.

Very truly yours,



Robert N. Harrison

RNH/jps

cc: Jason Chapman, Assistant State Attorney, via facsimile

EXHIBIT B