

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
SECOND DISTRICT

CMI, INC. OF KENTUCKY,

Petitioner,

vs.

Case No. 2D08-3043

Circuit Court Appeal No. 08-5961-NC

KYLE R. WOODS ET AL.,
and THE STATE OF FLORIDA,

County Case No. 2006 CT 12017 NC

Respondents.

RESPONSE TO ORDER TO SHOW CAUSE

Petitioner, CMI, Inc. of Kentucky, through its undersigned attorneys, hereby responds to this Court's Order to Show Cause and states as follows:

The Petition should not be dismissed as untimely because an identical companion case with identical issues was timely filed, and this case was already before this Court on the same issue.

First, the Circuit Court order was rendered on May 20, 2008. As this Court can see from the Affidavit attached as Exhibit "A", the appellate deadline of 30 days was improperly calendared for June 20, 2008. On first glance, May 20 to June 20 appears to be 30 days but in actuality is 31. Thus, the Petition was filed one day late.

However, the instant case of *Woods, et al.* before this Court is a consolidation of *Kyle Woods et al., Kenneth Baker et al., Stephen Udice et al., Jack*

Irish et al., and *John Fabian et al.* Each of these cases is in itself a consolidation of hundreds of other cases. Also filed with this Court on July 1, 2008 is *CMI, Inc. v. Almaraz*, Case No. 2D08-3230. ~~*Almaraz* was consolidated at the County Court level with *Irish et al.* and *Woods et al.* for purposes of the determination of materiality and reasonable necessity, respectively, which is at issue in these appeals. Thus, the identical issue in a companion case was timely filed and *Woods* should be consolidated with *Almaraz*.~~

Further, and more importantly, *Woods et al.* is already before this Court in *John Fabian et al.*, Case No. 2D08-2134. *Fabian et al.* is a consolidation of cases including *John Fabian et al.* and *Kenneth Baker et al.* Both *John Fabian et al.* and *Kenneth Baker et al.* are part of the *Woods et al.* Petition, and in fact the exact same issues are being appealed.

What happened is that when the County Court found the source code to the Intoxilyzer was material, they issued subpoenas to non-party CMI's statutory registered agent in Florida, despite the fact that CMI does not have and never has had any presence in Florida. CMI quashed the subpoenas in Kentucky because the County Court failed to follow the Uniform Act for production of out-of-state witnesses. Then, when CMI failed to produce the source code, the County Court held CMI in contempt, fining it a daily compounding fine of over six thousand dollars a day that has now reached over a million dollars.

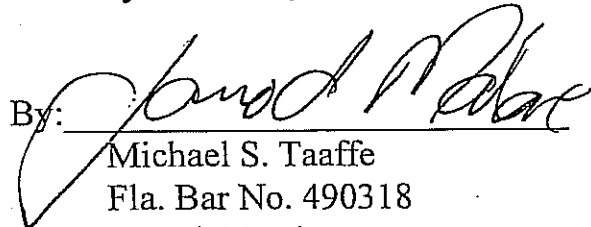
In *Fabian et al.* before this Court, CMI appealed the jurisdiction of the County Court over it, its determination of contempt, and the finding of materiality. ~~During this appeal process through the Circuit Court to the Second District, the~~ County Court refused to stay the fines or case. During this process, the County Court realized that because the source code was a trade secret, before it orders production of that trade secret, it must specifically find that the source code was both material and reasonably necessary, and enter a protective order to protect that trade secret.

A protective order was thus entered in every case, including *Fabian et al.* and *Baker et al.*, finding that the source code was material and reasonably necessary, and CMI appealed. They all were consolidated in the Circuit Court for convenience, but the reality is that *Fabian et al.* and *Baker et al.* were already in this Court in Case No. 2D08-2134. Since *Fabian et al.* and *Baker et al.* are already before this Court on the issue of materiality, and *Woods et al.* is a consolidation of *Fabian et al.* and *Baker et al.* and is an appeal over the materiality of the source code, CMI did not necessarily have to file a new Petition because the identical case and identical issue was already before this Court. Thus, the untimely filing is not fatal because this Court already has jurisdiction, and CMI in a separate motion has moved to consolidate *Woods et al.* and *Almaraz* with *Fabian et al.*

DATED: July 10, 2008.

Respectfully submitted,

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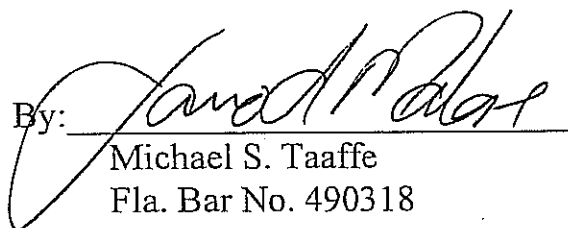
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by ordinary U.S. Mail to:

Cliff Ramey, Assistant State Attorney
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Robert Harrison, Esq.
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this 10th day of July, 2008.

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