## IN THE COUNT'S COURT OF THE TWELFTH JUDICAL CIRCUIT IN AND FOR SARASOTA COUNTY, FLORIDA

STATE OF FLORIDA, Plaintiff,

VS.

CASE NO.: 2008 CT 004176SC

SHAWN G. WITTE,

Defendant,

#### <u>DEFENDANTS MOTION TO ENFORCE</u> SUBPOENA DUCES TECUM WITHOUT DEPOSITION

The Defendant, SHWAN G. WITTE, by and through his undersigned attorney, hereby moves this Honorable Court to enforce the Subpoena Duces Tecum without Deposition, previously served on CMI Inc. of Kentucky, through its registered agent in this State, and in support of this Motion says the following:

- 1. On July 18, 2008 this Court granted the Defendant's Motion for Issuance of Subpoena Duces Tecum directed to CMI Inc. of Kentucky.
- 2. On August 12, 2008 the Clerk of Court in Sarasota County (Venice) issued the Subpoena Duces Tecum without Deposition, directed to CMI Inc. of Kentucky, through its registered agent in this State, NRAI Services, Inc. (copy attached as Exhibit "A").
- 3. Said Subpoena was served on NRAI Services, Inc. on August 18, 2008 (copy of Verified Return of Service attached as Exhibit "B").
- 4. The Subpoena commanded an appearance on September 11, 2008 and production of the information/documentation as outlined within the Subpoena.
- 5. The information sought is vital to this Defendant's case, as well as multiple other Defendants within this jurisdiction.
- 6. To date, there has been no response to the Subpoena.

WHEREFORE, Defendant prays this Honorable Court enforce the Subpoena Duces

Tecum without Deposition, directed to CMI Inc. of Kentucky in these proceedings.

Kerry E. Mack, Esquire

#### MACK LAW FIRM CHARTERED

2022 Placida Road Englewood, Florida 34224 (941) 475-7966 Attorney for Defendant

Florida Bar No.: 0337897

#### **CERTIFICATE OF SERVICE**

Keny E. Mack, Esquire

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

STATE OF FLORIDA, Plaintiff,

VS.

CASE NO. 2008 CT 004176 SC

SHAWN G. WITTE Defendants,

#### SUBPOENA DUCES TECUM WITHOUT DEPOSITION

THE STATE OF FLORIDA:

TO:

Records Custodian CMI INC of Kentucky

also known as CMI, INC.

BY SERVING:

NRAI Services, Inc., Its Registered Agent

2731 Executive Park Drive, Suite 4

Weston, FL 33331

YOU ARE COMMANDED to appear at the South County Administration Center, 4000 S. Tamiami Trail, Venice, FL on September 11 2008 and to produce the following:

## Any and all information in any form whatsoever as to Intoxilyzer 8000 SN 80-001723 in February, 2008, that relates to the following:

- a. The reason or reasons the subject Intoxilyzer 80-001723 failed to upload the data to Tallahassee to the main computer of the Florida Department of Law Enforcement (FDLE); and,
- b. The steps taken by CMI, Inc., after the failure set forth in paragraph a. of this subpoena was reported to it; and,
- c. Identity of the components of Intoxilyzer 80-001723 that caused the failure set forth in paragraph a.; and,
- d. Identity of the components of Intoxilyzer 80-001723 that were impacted and/or utilitzed in any steps taken by CMI, Inc. as a result of the failure set forth in paragraph a.
- e. The name and identity by occupation of the person or persons involved in the subject contact with Intoxilyzer SN 80-001723 in February, 2008; and,



f. The identification of any written documents used during the contact with Intoxilyzer SN 80-001723 in February, 2008, in order to resolve said instruments inability to upload the data from an agency inspection to Tallahassee, FL, main computer of the Florida Department of Law Enforcement (FDLE).

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 as provided in s.92.605 F.S. 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 following attorney and unless excused from this subpoena by the attorney or the Court, you shall respond to this subpoena as directed.

Dated on: Hagust 4

Attorney for: Defendant

Address: Kerry E. Mack

2022 Placida Road, Englewood, FL 34224-5204

If you can not afford to pay an attorney, call Legal Aid of Manasota, 941 366 0038 whose mailing address is 1900 Main Street, Suite 302, Sarasota, FL 34236. 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, FL 32399-2300.

In accordance with the Americans with Disabilities Act of 1990 (ADA), persons with a disability who need a special accommodation to participate in this proceeding should contact the attorney listed above (or TDD/800-955-8771 or V/800-955-8770, via Florida Relay Service), at least five (5) business days prior to the above proceeding.

Karen Rushing

Clerk of the Court

CC: Office of State attances 4000 S. Januaris Frail Cence FZ34793

CULT Inc. 316 8. 9THST. (Owens La )

## EXMIBET "S"

### VEA ( LED RETURN OF SERVICE

nsert name of court, judicial district or branch court, if any:	
County Court, Sarasota County, Florida	
DEPOSITIONICOURT DATE:	CASE NUMBER:
)9/11/2008 - 9:00 AM *LAINTIFF/PETITIONER:	2008-CT-4176-SC
State of Florida	
DEFENDANT/RESPONDENT:	
Shawn G. Witte	
OCUMENTS SERVED:	
Subpoena Duces Tecum Without Deposition	
Received on 08/15/2008 at 4:05 PM to be served on:	
MI Inc. of Kentucky a/k/a CMI, Inc. c/o NRAI Services, Inc RA	
do hereby affirm that on 8-18-08 at 10:45AM I served the	nie procese by:
/	
CORPORATE SERVICE: By leaving a true copy of this process with the date an itial pleading or paper (if any) and informing the person of the contents:	nd hour of service endorsed thereon by me, a copy of the complaint, petition, or other
IAME: Unica Brown TITLE: Secretary	_
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:	
,	
OCATION OF SERVICE:	FOR(Client):
724 Eventualities David Dating Childs 4	Kerry E. Mack, Esq. Mack Law Firm Chartered - SSC
731 Executive Park Drive, Suite 4 Veston, FL 33331	2022 Placida Road
	Englewood, FL 34224 941-475-7966
OMMENTS:	
JTHORIZATION:	
	WHEREIN THIS PROCESS WAS SERVED AND HAVE NO INTEREST
1 THE ABOVE ACTION.	
ECLARATION:	SIGNATURE:
UNDER PENALTIES OF PERJURY I DECLARE THAT I HAVE READ THE FOREGOING VERIFIED RETURN OF SERVICE	Amy G. Roby - Cert/Appt#: #448 - Broward County
AND THAT THE FACTS STATED IN IT ARE TRUE.	State Service Corporation
NOTARY NOT REQUIRED PURSUANT TO F.S. 92.525(2).	4030 Powerline Rd. Ft. Lauderdale, FL 33309
(100 MM) (100 ME GOINED 1 01/00/M1 10 1.0. 02.020(2).	OUR FILE#: 100623
	1

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

STATE OF FLORIDA, Plaintiff.

.,	•	
v	S	٠

CASE NO.: 2008 CT 004176SC

SHAWN G. WITTE,

Defendant,

#### AMENDED ORDER TO SHOW CAUSE

(as to service on CMI, Inc. only)

THIS CAUSE, having come before the Court on October 6, 2008 on the Defendant's Motion to Enforce Subpoena Duces Tecum without Deposition, directed to CMI Inc., of Kentucky, and the Court being otherwise fully advised in the premises, it is hereby

DONE AND ORDERED in Venice, Sarasota County, Florida on the Total of t

#### **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY, that a true and correct copy of the foregoing was sent to Dave Ganderton, Esquire, c/o Office of the State Attorney, 4000 South Tamiami Trail, Venice, FL 34293, CMI Inc., of Kentucky, c/o its Registered Agent, NRAI Services, Inc. 2731 Executive Park Drive, Suite 4, Weston, LF 33331, CMI, Inc. 316 E. 9<sup>th</sup> Street, Owensboro, KY, Allen W. Holbrook, Esq., Attorney for CMI, Inc., P. O. box 727, Owensboro, KY 42302-0727 and Kerry

E. Mack, Esquire, 2022 Placida Road, Englewood, FL 34224 by U.S.	Mail on this	day
of, 2008.	ORIGINAL SIG	NED *
	DEC 3 0 20	08
Judicial Assistan		INSK

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

STATE OF FLORIDA, Plaintiff,

vs.

SHAWN G. WITTE LINDSAY S. DACKO Defendants, CASE NO.: 2008 CT 004176 SC CASE NO.: 2008 CT 008289 SC

#### **CONTEMPT ORDER**

THIS CAUSE, having come before the Court on February 11, 2009 on the Court's Amended Order to Show Cause entered on December 30, 2008, directed to CMI Inc., of Kentucky, and the Court being otherwise fully advised in the premises, it is hereby

ORDERED AND ADJUDGED that CMI Inc., of Kentucky failed to be present before The Honorable Kimberly C. Bonner, County Judge, Sarasota County, Florida, on February 11, 2009 at the Sarasota South County Courthouse, 4000 South Tamiami Trail, Venice, FL 34293 to Show Cause why it should not be held in Contempt of Court for failure to appear and/or respond to the Subpoena Duces Tecum without Deposition on September 11, 2008, as directed to, in said Subpoena. The Court finds that there has been no good cause shown for CMI's failure to comply with said Subpoena Duces Tecum. The Court further finds that CMI's Supplemental Motion to Quash, attached as Exhibit "A", is insufficient and the Memo from CMI does not constitute compliance with this Court's Subpoena. The Court imposes a \$5,000 per day fine upon CMI Inc. of Kentucky until it complies with the Subpoena Duces Tecum. If CMI Inc. of Kentucky complies within twenty days of this Order, it can have the fine purged. If CMI complies after said twenty days has expired, it shall be responsible for all fines accruing until, and if, it complies.

DONE AND ORDERED in Venice, Sarasota County, ORIGINAL SIGNED day of February, 2009.

FEB 1 8 2009

The Honorable KWRSERLYCC BROWN COUNTY JUDGE County Judge, Sarasota County

#### **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY, that a true and correct copy of the foregoing was sent to David Ganderton, Esquire, c/o Office of the State Attorney, 4000 South Tamiami Trail, Venice, FL 34293 and CMI Inc. of Kentucky, 316 East 9<sup>th</sup> Street, Owensboro, KY 43202 and Allen W. Holbrook, Esquire, 100 St. Ann Building, P.O. Box 727, Owensboro, KY 43202-0727 and Kerry E. Mack, Esquire, 2022 Placida Road, Englewood, FL 34224 by U.S. Mail on this \_\_\_\_\_\_ day of February, 2009.

Indicial Assistant

# COMMONWEALTH OF KENTUCKY DAVIESS DISTRICT COURT DIV. III CASE NO. 06-C-01500

IN RE:

State of Florida v. Christine Adkins (# 05-2043 T)
State of Florida v. William J. Sutton (# 04-1146 T)
(Charlotte County, Florida)

And

State of Florida v. Witte (Sarasota County, Florida)

(# 2008-CT-004176-SC)

#### CMI'S SUPPLEMENTAL MOTION TO QUASH

CMI, Inc., by counsel, files this Supplemental Motion to quash an additional purported subpoena to CMI, issued by the same Florida defense counsel, and her firm, in two additional cases. The basis for the current Motion is this Court's Order, of September 28, 2006, with regard to any further efforts by Florida defense counsel to serve CMI with a subpoena to appear, or produce anything, in Florida.

Pursuant to that Order in the <u>Adkins/Sutton</u> cases, the Court directed that "no subpoena issued by or on behalf of these Florida defendants shall be honored by CMI unless and until the Uniform Act respecting subpoenas for out-of-state defendants be complied with." See attached Exhibit "1". Subsequent to this calendar Order, this Court, in a separate Order entered February 8, 2007, then denied the Florida "Certificate" that Florida

defense counsel Mack had presented to this Court.

This same Florida defense lawyer has now, nonetheless, issued a subpoena/subpoena duces tecum to CMI, to appear and produce documents in Florida. The subpoena issued without compliance with the applicable procedures of the Uniform Act, either in Florida or in Kentucky. This subpoena in <a href="State v.">State v.</a> Witte is at Exhibit "2".

The subpoena was apparently premised on the idea that CMI has, as is required by Florida law, a statutorily-appointed agent in Florida, NRAI. However, CMI has no offices, employees, or documents in the state of Florida. See: Reader's Digest

Association, Inc. v. Dauphinot, 749 S.W.2d 608 (Tx. App. 1990) (defense subpoenas continually issued to registered agent for non-resident corporation invalid as outside Uniform Act); and Syngenta Crop Protection, Inc. v. Monsanto, 908 So.2d 121 (Miss. 2005) (trial court lacked authority to issue subpoena duces tecum, and serve it on registered agent, for non-resident non-party corporation).

The subpoena represents a patent fishing expedition by

Florida defense counsel. If defense counsel thinks that the

particular issue is worthy enough of proceeding through the

Uniform Act, then she is certainly welcome to take that course of

action. But, otherwise, CMI respectfully moves to quash the

subpoena issued here retroactive to the date the subpoena was

received here in Kentucky, which was August 19, 2008.

This >/ day of October, 2008.

Respectfully submitted,

Alle Colland Allen W. Holbrook SULLIVAN, MOUNTJOY, STAINBACK, & MILLER, P.S.C. 100 St. Ann Street P.O. Box 727

Owensboro, Kentucky 42302-0727 (270) 926-4000

Counsel for CMI, Inc.

#### NOTICE

CMI will bring on for a hearing the foregoing Supplemental Motion to Quash before the Daviess District Court, Division III, Judicial Center, 2<sup>nd</sup> Floor Courtroom, 100 E. 2<sup>nd</sup> Street, Owensboro, Kentucky, on the 20 day of Nov 2008 at the hour of 9 A 77 or as soon thereafter as counsel may be heard.

#### CERTIFICATE OF SERVICE

I mailed a copy of the foregoing Supplemental Motion to: Kerry Mack, Esq., Mack Law Firm Chartered-SSC, 2022 Placida Road, Englewood, FL 34224-5204 on this  $\geq$  day of October, 2008.

> Allelles Allen W. Holbrook

Attorney for CMI, Inc.

## EXHIBIT "1"

2:00 PM

**DAVIESS** 

Run Date: 09/25/2006 | 1:21:32PM |

Docket List Rpt

COURTROOM 2 - 2ND FLOOR

Prep Info @00000017480 09/25/2006 1:48:44PR

09/26/2006 Court Docket Page 1 of 1

Start of docket 1

Court

Judge

DI 06-C-01500

HON. JOSEPH W. CASTLEN III

STATE OF FLORIDA, VS. ADKINS, KRISTINE A, ET AL

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MACK, KERRY E SAFREED, CHRISTOPHER G

ADKINS, KRISTINE A

☐ CHAMBERS, STEVEN D

☐ ELMY, TERRI W

SUTTON, WILLIAM I TAYLOR GINA L

☐ CMI, INC.

HOLBROOK, ALLEN W,

☐ STATE OF FLORIDA,

Bail Set:

ATTORNEY FOR DEFENDANT (CIVIL)

ATTORNEY FOR DEFENDANT (CIVIL)

DEFENDANT / RESPONDENT

DEFENDANT / RESPONDENT

**DEFENDANT / RESPONDENT** DEFENDANT / RESPONDENT

DEFENDANT / RESPONDENT

OTHER PARTY

OTHER PARTY

PLAINTIFF / PETITIONER

Posted:

HOLBAW

SAFRCG

MOTION HOUR

MOTION TO QUASH ...



End		

# of Cases

OM/3 Motion to quash GRANTED prouded that this Order Shalf he set aside upon proper authentication of Judge Woodward 8/21/0 & Floreda Order, in which La ction andered that the Florda Defendet provide suffert notice of the feling of the authentication to allow CMI to inspirit and respond to same; to file a hief in opporation to CMI's brief heretofore filed; and to sehedule an appropriate time with approxima commit for a hearing before this Court; and no subground issued by or on behalf of these therida defendants shall be honored by CSI center and centre the Uniform act respecting subground for out-of-state defendants becompled with.

09/26/2006

Page 1 of 1

Judge Signature:

## EXHIBIT "2"

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

STATE OF FLORIDA, Plaintiff,

vs.

CASE NO. 2008 CT 004176 SC

SHAWN G. WITTE Defendants,

#### SUBPOENA DUCES TECUM WITHOUT DEPOSITION

THE STATE OF FLORIDA:

TO:

Records Custodian
CMI INC of Kentucky

also known as CMI, INC.

BY SERVING:

NRAI Services, Inc., Its Registered Agent

2731 Executive Park Drive, Suite 4

Weston, FL 33331

YOU ARE COMMANDED to appear at the South County Administration Center, 4000 S. Tamiami Trail, Venice, FL on Stationers II, WK and to produce the following:

Any and all information in any form whatsoever as to Intoxilyzer 8000 SN 80-001723 in February, 2008, that relates to the following:

- a. The reason or reasons the subject Intoxilyzer 80-001723 failed to upload the data to Tallahassee to the main computer of the Florida Department of Law Enforcement (FDLE); and,
- b. The steps taken by CMI, Inc., after the failure set forth in paragraph a. of this subpoena was reported to it; and,
- c. Identity of the components of Intoxilyzer 80-001723 that caused the failure set forth in paragraph a.; and,
- d. Identity of the components of Intoxilyzer 80-001723 that were impacted and/or utilitzed in any steps taken by CMI, Inc. as a result of the failure set forth in paragraph a.
- e. The name and identity by occupation of the person or persons involved in the subject contact with Intoxilyzer SN 80-001723 in February, 2008; and,



f. The identification of any written documents used during the contact with Intoxilyzer SN 80-001723 in February, 2008, in order to resolve said instruments inability to upload the data from an agency inspection to Tallahassee, FL, main computer of the Florida Department of Law Enforcement (FDLE).

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 as provided in s.92.605 F.S. THIS WILL NOT BE A DEPOSITION; NO TESTIMONY WILL BE TAKEN.

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Dated on: Aggust 1 3008

Attorney for: Defendant

Address: Kerry E. Mack

2022 Placida Road, Englewood, FL 34224-5204

If you can not afford to pay an attorney, call Legal Aid of Manasota, 941 366 0038 whose mailing address is 1900 Main Street, Suite 302, Sarasota, FL 34236. 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, FL 32399-2300.

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Karen Rushing Clerk of the Court

By Shuran

Lack Date 8/12/08

Lack Reuse FL3493

c: Office y stated

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EXLLIBET S

#### VE. FIED RETURN OF SERVICE

HIERT Name of Court, judicial district or branch count, it any:	
County Court, Sarasola County, Florida	
DEPOSITION/COURT DATE:	CASE NUMBER:
9/11/2008 - 9:00 AM	2008-CT-4176-SC
State of Florida DEFENDANTIRESPONDENT:	
Shawn G. Witte	
Subpoena Duces Tecum Without Deposition	
Suppoens Duces Tecum Million Deposition	
Received on 08/15/2008 at 4:05 PM to be served on:	
CMI Inc. of Kentucky a/k/a CMI, Inc. c/o NRAI Services, Inc RA	
do hereby affirm that on 8-18-08 at 10:45411 I served In	is process by:
initial pleading or paper (if any) and informing the person of the contents:	nd hour of service endorsed thereon by me, a copy of the complaint, pelition, or othe
NAME: UNICA DYOUN TITLE SCHOOLY	_
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:	
•	
OCATION OF SERVICE:	FOR(Client):
2731 Executive Park Drive, Suite 4 Weston, FL 33331	Kerry E. Mack, Esq. Mack Law Firm Chartered - SSC 2022 Placida Road Englewood, FL 34224 941-475-7966
COMMENTS: .	
AUTHORIZATION: I AM CERTIFIED IN GOOD STANDING IN THE JUDICIAL CIRCUIT IN THE ABOVE ACTION.	WHEREIN THIS PROCESS WAS SERVED AND HAVE NO INTERES
DECLARATION:	SIGNATURE:
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.	X Amy G. Roby - CerVAppt#: #442 - Broward County State Service Corporation
NOTARY NOT REQUIRED PURSUANT TO F.S. 92.525(2).	4030 Powerline Rd. Ft. Lauderdale, FL 33309 OUR FILE#: 100623