## UNITED STATES DISTRICT COURT DISTRICT OF MINNESOTA

State of Minnesota, by Michael Campion, its Commissioner of Public Safety, File No. 08-CV-603 (DWF/AJB)

Plaintiff,

v.

CMI of Kentucky, Inc., a Kentucky corporation,

Defendant,

and

Robert J. Bergstrom, Craig A. Zenobian, Shane M. Steffensen, and Christopher D. Jacobsen,

Plaintiff-Intervenors.

## AFFIDAVIT OF WILLIAM A. MCNAB IN SUPPORT OF DEFENDANT'S MOTION FOR JUDGMENT ON THE PLEADINGS, OR IN THE ALTERNATIVE, PARTIAL SUMMARY JUDGMENT

STATE OF MINNESOTA )
) ss:
COUNTY OF HENNEPIN)

William A. McNab, having been duly sworn upon oath, states as follows:

1. I am an attorney duly licensed to practice law in the State of Minnesota and admitted to practice before this Honorable Court. I am a shareholder with the law firm of Winthrop & Weinstine, P.A., 225 South Sixth Street, Suite 3500, Minneapolis,

Minnesota 55402, and represent the Defendant in the above-captioned matter.

respectfully submit this affidavit upon personal knowledge.

- 2. Attached hereto as Exhibit 1 is a true and correct copy of page 22 of the State's Request for Proposal ("RFP").
- 3. Attached hereto as <u>Exhibit 2</u> are true and correct copies of CMI's required Confidentiality Agreement and Affidavit, submitted as Exhibit E to CMI's Proposal in Response to the State's RFP.
- 4. Attached hereto as <u>Exhibit 3</u> is a true and correct copy of the Pricing Sheet submitted by CMI as part of its Proposal in response to the State's RFP.
- 5. Attached hereto as <u>Exhibit 4</u> is a true and correct copy of page 18 of CMI's Proposal in Response to the State's RFP.
- 6. Attached hereto as <u>Exhibit 5</u> is a true and correct copy of page 2 of the State's RFP.
- 7. Attached hereto as Exhibit 6 is a true and correct copy of the Notification of Contract Award.
- 8. Attached hereto as <u>Exhibit 7</u> is a true and correct copy of page 7 of the State's RFP.
- 9. Attached hereto as Exhibit 8 is a true and correct copy of page 3 of the State's RFP.
- 10. Attached hereto as Exhibit 9 is a true and correct copy of page 4 of the State's RFP.

- 11. Attached hereto as Exhibit 10 is a true and correct copy of page 5 of the State's RFP.
- 12. Attached hereto as Exhibit 11 is true and correct copy of a December 10, 1996 letter from the State of Minnesota to CMI, Inc., requesting clarification regarding CMI's Proposal in response to the State's RFP.
- 13. Attached hereto as Exhibit 12 is a true and correct copy of CMI's December 11, 1996 Response to the State's Letter Requesting Clarification.
- 14. Attached hereto as <u>Exhibit 13</u> is a true and correct copy of Amendment No.4 to the State's and CMI's Contract No. 414329.
- 15. Attached hereto as Exhibit 14 is a true and correct copy of an October 24, 1997 letter from Gloria O'Connell Sonnen, the State's Acquisition Management Specialist, to Greg Miller, Director of Sales, National Draeger Inc.
- 16. Attached hereto as <u>Exhibit 15</u> is a true and correct copy of handwritten notes reflecting a meeting between State employees Eldon Ukestad, Bob Mooney, Al Becika, and possibly Gloria O'Connell Sonnen, at which the RFP, proposal, and evaluation process for the breath alcohol test instruments was discussed.
- 17. Attached here as Exhibit 16 is a true and correct copy of the State's Memorandum Opposing Petitioner's Motion for Additional Discovery in the matter captioned *Derheim v. Commissioner*, File No. 66-CV-07-3323, Rice County, Minnesota District Court.
- 18. Attached here as <u>Exhibit 17</u> is a true and correct copy of the State's Memorandum Opposing Petitioner's Motion for Additional Discovery in the matter

captioned *Zulpo v. Commissioner*, File No. 70-CV-08-5244, Scott County, Minnesota District Court.

19. Attached hereto as Exhibit 18 is a true and correct copy of page 2 of the Pricing Sheet.

FURTHER YOUR AFFIANT SAYETH NOT.

s/William A. McNab William A. McNab

Subscribed and sworn to before me this 21st day of May, 2009.

s/Linda Margot MagieraLinda M. MagieraNOTARY PUBLIC-MINNESOTAMy Commission Expires January 31, 2014

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