

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals  
No. 2016-001105

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**AUG 22 2016**

**SC Court of Appeals**

APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas  
Letitia H. Verdin, Circuit Court Judge

EMDI, LLC and FLASR, Inc. ....Appellants,

v.

InMotion Consulting Group, Inc. ....Respondent.

**RESPONDENT'S REQUEST TO DEEM APPELLANTS' FAILURE  
TO TIMELY FILE A RETURN A CONSENT TO RESPONDENT'S  
MOTION TO DISMISS AND TO GRANT THE RELIEF SOUGHT  
IN RESPONDENT'S MOTION TO DISMISS**

Michael S. Cashman (SC Bar No. 79523)  
Womble, Carlyle, Sandridge & Rice, LLP  
550 South Main Street, Suite 400  
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(864) 255-5430  
*Attorney for Appellants*

Allen L. West (SC Bar No. 15674)  
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201 South College Street, Suite 2020  
Charlotte, North Carolina 28244-2020  
(704) 344-1117  
*Attorney for Respondent*

NOW COMES Plaintiff-Respondent InMotion Consulting Group, LLC (“Respondent”) and notifies this Honorable Court that Appellants EMDI, LLC and FLASR, LLC (collectively, “Appellants”) have failed to timely file a return to Respondent’s Motion to Dismiss Appeal (“Motion to Dismiss”). Respondent respectfully requests that this Court deem Appellants’ failure to timely file a return a consent by Appellants to the request for dismissal contained in the Motion to Dismiss. Respondent further respectfully requests that this Court grant the relief requested in Respondent’s Motion to Dismiss.

In support of this request, Respondent shows the Court as follows:

1. On August 3, 2016, Respondent served its Motion to Dismiss Appeal and Memorandum in Support of Respondent’s Motion to Dismiss Appeal upon Appellants, via their attorney, by depositing a copy, enclosed in a first-class postage-paid, properly addressed wrapper, into a depository under the exclusive custody of the United States Postal Service. See August 3, 2016 Certificate of Service.

2. Pursuant to Rule 240(e) of the South Carolina Appellate Court Rules, Appellants were permitted ten (10) days from the date of service of the Motion to Dismiss to file an original and six (6) copies of their return with the clerk and to serve on all parties a copy of the return.

3. Pursuant to Rule 263(a) of the South Carolina Appellate Court Rules, no additional time was allowed after service by mail.

4. The deadline for Appellants to file and serve any return to the Motion to Dismiss was therefore August 15, 2016. See Rule 240(e), SCACR; Rule 263(a), SCACR.

5. Appellants have failed to timely file and serve any return to the Motion to Dismiss.

6. Pursuant to Rule 240(e) of the South Carolina Appellate Court Rules, “[f]ailure of a party to timely file a return may be deemed a consent by that party to the relief sought in the motion or petition.”

7. Wherefore, Respondent respectfully requests that this Court (a) deem Appellants’ failure to timely file a return a consent by Appellants to the request for dismissal contained in the Motion to Dismiss and (b) dismiss Appellants’ appeal in its entirety.

Respectfully submitted, this the 19<sup>th</sup> day of August, 2016.

HAMILTON STEPHENS  
STEELE + MARTIN, PLLC

By: \_\_\_\_\_

Allen L. West (SC Bar No. 15674)  
201 South College Street, Suite 2020  
Charlotte, North Carolina 28244-2020  
(704) 344-1117  
*Attorney for Respondent*

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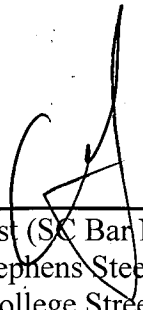
**CERTIFICATE OF SERVICE**

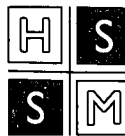
I hereby certify that a copy of the foregoing *Respondent's Request To Deem Appellants' Failure to Timely File a Return a Consent to Respondent's Motion to Dismiss and to Grant the Relief Sought in Respondent's Motion to Dismiss* was served upon all parties and/or counsel of record by depositing a copy, enclosed in a first-class postage-paid, properly addressed wrapper, into a depository under the exclusive custody of the United States Postal Service on the date hereof, addressed as follows:

Michael S. Cashman (SC Bar No. 79523)  
Womble, Carlyle, Sandridge & Rice, LLP  
550 South Main Street, Suite 400  
Greenville, SC 29601  
(864) 255-5430  
*Attorney for Appellants*

This the 19<sup>th</sup> day of August, 2016.

By:

  
\_\_\_\_\_  
Allen L. West (SC Bar No. 15674)  
Hamilton Stephens Steele + Martin, PLLC  
201 South College Street, Suite 2020  
Charlotte, North Carolina 28244-2020  
(704) 344-1117  
*Attorney for Respondent*



HAMILTON STEPHENS  
STEELE + MARTIN, PLLC  
ATTORNEYS AT LAW

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704-227-1046

August 19, 2016

RECEIVED  
AUG 22 2016  
SC Court of Appeals

**VIA FEDERAL EXPRESS**

Jenny Abbott Kitchings  
Clerk of Court  
South Carolina Court of Appeals  
1220 Senate Street  
Columbia, SC 29201

**Re: EMDI, LLC and FLASR, Inc. v. InMotion Consulting Group, LLC**  
**Appeal from Greenville County Court of Common Pleas**  
**Appellate Case No. 2016-001105**

Dear Ms. Kitchings:

Pursuant to Appellate Court Rule 240, please find enclosed for filing an original and six (6) copies of the following: (1) *Respondent's Request To Deem Appellants' Failure to Timely File a Return a Consent to Respondent's Motion to Dismiss and to Grant the Relief Sought in Respondent's Motion to Dismiss*; and (2) *Certificate of Service*. I am also enclosing a seventh copy of these documents so that you may return a file-stamped copy to us in the enclosed stamped, self-addressed envelope.

By copy of this letter to Michael S. Cashman, we are serving him a copy of the same.

If you have any questions or need anything further, please do not hesitate to contact me.  
Thank you for your help.

Sincerely,

  
Allen L. West

Enclosures

cc: Michael S. Cashman

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City CHARLOTTE State NC ZIP 28244-0028

**2 Your Internal Billing Reference** I 047. 22233

**3 To**  
Recipient's Name Jenny Abbott Kitchings Phone 803 734-1890  
Company Clerk of Court  
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