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FRANK KASTELL

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

GARY ARDEN,

Plaintiff,

vs.

FRANK KASTELL, et al.,

Defendants.

Case No. C 10-0436 NC

**DECLARATION OF LARRY
NEEDHAM IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT**

Date: November 30, 2011
Time: 9:00 a.m.
Courtroom: A, 15th Floor

Larry Needham, declares:

1. I am employed by Smarte Carte, Inc. as Senior Director of Operations – West Region, which includes responsibility over the company's operations at San Francisco International Airport (SFO). I am generally familiar with the allegations in this lawsuit, as Smarte Carte was a defendant in this case until nearly a year ago. In particular, I am familiar with the job duties assigned to plaintiff Gary Arden in February 2009, and during the course of the case I have reviewed information contained in the Smarte Carte files regarding this incident, transcripts of Mr. Arden's deposition and videos from SFO depicting the area near Smarte Carte's vending unit #30 (on the upper/ departure curbside area of the International Terminal) for both February 2nd and 3rd, 2009. Each video generally depicted the time between 4:30 p.m. until after 6:30 p.m. Mr. Arden appeared in each video approximately two hours each day.

2. I am familiar with the job responsibilities of all Smarte Carte employees at SFO. Mr. Arden's job during those two days was that of an Assistant Terminal Manager. He was the only Assistant

1 Terminal Manager at SFO during the late afternoon and evening. His responsibility was to walk through
2 the entire airport, and check on as many of the Smarte Carte Associates as possible. In February 2009
3 there were approximately 120 cart dispensing vending units located throughout SFO, on both the arrival
4 and departure levels by the curb of all three terminals, as well as vending units in the various parking
5 garages (located on various floors) as well as inside the terminals. The units are automated and designed
6 to be used without an attendant. The Smarte Carte Associates were posted throughout the airport, and
7 each was responsible for several units. The Associates were responsible for moving between the units,
8 taking loose carts and putting them into the cart dispensing units, and in the event that one of the units
9 was running low on carts, to move extra carts into that unit. There were Associates working on the upper
10 (arrival) curbside area of the SFO International Terminal on each evening, some of whom are visible at
11 various points on the videos.

12 3. The units work pretty simply: a customer inserts either a credit card or currency (in February
13 2009 it cost \$4.00 to rent a cart), and the unit automatically releases a single cart. If payment is by credit
14 card, the machine does not print out a receipt; if four-\$1 bills are inserted, no change is returned, and if a
15 larger bill is inserted, the machine returns change in quarters. The Associates and Assistant Terminal
16 Manager also have a special key, or a plastic card (similar to a credit card – we refer to it as a “gold
17 card”) which enables the Smarte Carte employee to bypass the normal payment-cart release procedure
18 described above, and to release carts. This normally occurs if there is either a surplus of carts or a
19 shortage of carts at a unit, so that an employee can ensure that each unit has sufficient carts to dispense to
20 potential customers. Prior to February 2009 Assistant Terminal Managers had keys to access the
21 cashbox in each unit. That changed when, approximately a month before the events giving rise to this
22 lawsuit, three Assistant Terminal Managers were caught using their keys and removing cash from unit
23 #30. As a result, only the most senior staff at SFO had direct access to the units’ cashboxes, although
24 employees could still release carts in the manner described above.

25 4. Review of the video for those two evenings shows a very serious discrepancy between
26 Mr. Arden’s job duties, and what he actually was doing. He spent two hours (each evening) at or near
27 unit #30, on occasion, leaning on the vending unit; he would not be expected to spend more than a
28 minute or two by each unit. If I had been made aware of this prior to his detention by the detectives, I

1 would likely have recommended some form of discipline for that fact alone.

2 5. However, there were even more serious breaches of his employment duties visible on the
 3 February 3, 2009 video (while I generally reviewed the February 2 video, I concentrated on the February
 4 3 video, since I understand that is the conduct for which he was detained by the detectives.) First, Smarte
 5 Carte employees are not supposed to handle customers' money; if an employee happens by while a
 6 customer is struggling to insert a bill into the vending unit, he/she might assist the customer put a bill into
 7 the unit, but under no circumstances are employees supposed to make change (because the units do that
 8 on their own), or to put customers' money into their own pockets. I observed Mr. Arden take what
 9 appeared to be money from customers, and place it into his left pocket on approximately 12 occasions
 10 (video time stamp; I list what appears to be the closest second, but on some instances, one could debate
 11 whether it should be referenced one or two seconds earlier or later):

<u>Time on video:</u>	<u>Description:</u>
16:39:44	Lady, blue pantsuit gives money to Arden, placed in his pocket
16:49:01	Man, dark shirt gives money to Arden, placed in his pocket
17:00:05	Lady, pink dress, gives money to Arden
17:27:02	Man gives money to Arden at unit#31(behind unit #30), Arden runs up to unit # 30 and dispenses cart, brings it back to customer, and puts hand in pocket (17:27:40)
17:34:38	Lady, dark jacket gives something to Arden, puts hand in his left pocket
17:44:21	Lady, white jacket, gives something to Arden
17:48:22	2 customers, male gives Arden money
17:50:54	Man, blue jacket, white cap gives money to Arden
17:51:05	Same customer gives more money to Arden, appears to put something into his pocket (17:51:50), and appears to transfer something from right pocket to left hand and then into left pocket (17:52:15)
17:57:38	Man, yellow jacket, gives money to Arden, who takes money from his own left pocket and gives it to man (17:57:41) and then Arden puts something in left pocket (17:58:16)

1 18:09:54 Lady, white pants, puts something in Arden's right hand, he walks to unit
2 #31 (behind unit #30) and procures a cart; Arden's hand into his left front
3 pocket (18:10:41)

4 18:15:21 Arden removes a cart from unit # 30 with no customer (no money in unit)

5 18:15:28 Arden walks over to curb with cart and begins talking with customer with
6 whom he has not had contact, and Arden appears to be negotiating or
7 otherwise attempting to rent the cart to him; no transaction appears to have
8 taken place, Arden walks away with cart (18:17:43)

9 18:17:43 Arden walks with the cart over to the curb and starts talking with several
10 customers

11 18:17:59 Lady, dark coat, gives money to Arden

12 6. There were several other odd occurrences, such as Arden moving carts from unit # 31 to unit
13 #30, or lingering behind the front of unit # 30, as if he were inserting or removing the special key from
14 behind the front part of the unit (which releases the locking mechanism for the carts.) At one point, his
15 jacket was draped behind unit #30, where a key would be placed if the locking mechanism were to be
16 released, and his hand was below his jacket for 8 seconds, and then he removes his jacket; it would only
17 take about a second to grab one's jacket draped over the back of the vending unit, if that is all he was
18 doing. (17:49:16 – 17:49:24.) Later on, he put his hand behind the front of unit #30 for more than 10
19 seconds (18:14:05 – 18:14:17); there is nothing behind the front of the unit there other than the slot to
20 insert the special key referenced above. I find both of these actions suspicious, given all of the other
21 activities I observed, especially for an employee who should have been in camera range no more than a
22 minute or two.

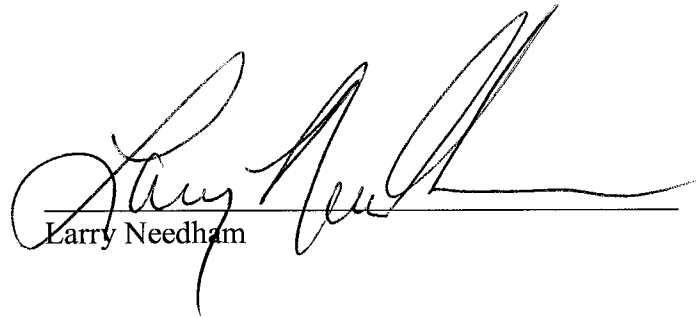
23 7. I understand that unit #30 was *not* reported as being out of order, or otherwise not operating
24 properly that day. In the event that unit #30 was not properly dispensing Smarte Cartes, the procedure is
25 to remove the carts from the vending unit, put up a sign indicating the unit is out of order, and to use one
26 of the adjacent vending units. One can clearly see from the video that unit #31 is located a relatively few
27 feet away from unit #30; I haven't measured it, but I would estimate the front of unit #31 is 10-15 yards
28 from the front of unit #30.

1 8. Alla Serdyuchenko was the SFO Smarte Carte Manager in February 2009. During the evening
2 of February 2nd (or the early morning hours of February 3rd) Ms. Serdyuchenko advised my colleague,
3 Ron Brigham, that she had been told that an individual who worked at SFO (a non-Smart Carte
4 employee) had expressed suspicion that Mr. Arden was pocketing customers' money earmarked for
5 Smarte Carte (we often use the slang term "selling carts" to describe that activity.) I learned of this in an
6 email I received early on the morning of February 3rd. Mr. Brigham asked Ms. Serdyuchenko to contact
7 "Frank" at the police department and request that he investigate the matter.

8 9. In summary, Mr. Arden had no legitimate employment reason to be lingering by unit #30 for
9 more than two hours each of the two days of video that I reviewed. He had no legitimate basis for taking
10 money from customers on a dozen occasions over that period. His behavior was quite suspicious, as
11 noted above, and it appears to me that he was, in fact, taking customers' money, and putting it into his
12 pocket on numerous instances during the late afternoon/early evening of February 3, 2009. In any event,
13 his behavior was not in keeping with Smarte Carte's policies. His conduct was generally similar on
14 February 2nd, but I have not analyzed it in the level of detail I applied to the February 3rd video.

15 I declare under penalty of perjury that the foregoing is true and correct and executed on
16 October 17, 2011 in St. Paul, Minnesota.

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Larry Needham