

United States District Court  
For the Northern District of California

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

No.C06-5528 MHP (BZ)

E-SMART TECHNOLOGIES INC.,

Plaintiff(s),

vs.

WAYNE DRIZEN, et al.,

Defendant(s).

**ORDER TO SHOW  
CAUSE RE  
CONTEMPT AND  
DISMISSAL OF  
ACTION**

TO: E-SMART TECHNOLOGIES, INC.  
MARY GRACE  
TAMIO SAITO  
MARCELLO SOLIVEN  
ANANTH KRISHNAN

You are hereby ordered to appear before this Court, Courtroom 15, 18<sup>th</sup> Floor, 450 Golden Gate Avenue, San Francisco, California, on 1<sup>st</sup> day of November, 2010, at 2:00 p.m. to show cause why you should not be adjudged guilty of criminal contempt and/or liable for civil contempt and this action be dismissed with prejudice on the grounds certified to this Court by Magistrate Judge Bernard Zimmerman and set forth in the attached Order Certifying Facts Re Contempt.

If this matter is set down for criminal contempt proceedings, a trial date will be set and an opportunity to obtain counsel will be afforded.

FAILURE TO COMPLY WITH THIS ORDER AND APPEAR AT THE ABOVE DATE AND TIME WILL RESULT IN THE ISSUANCE OF A WARRANT FOR YOUR ARREST AND PUNISHMENT FOR CONTEMPT OF COURT.

IT IS SO ORDERED.

Dated: this 24<sup>th</sup> of September, 2010 at San Francisco, California.

  
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MARILYN HALL PATEL  
United States District Judge

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

E-SMART TECHNOLOGIES INC., )  
et al. )  
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Plaintiff(s), )  
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v. )  
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WAYNE DRIZEN, et al. )  
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Defendant(s). )  
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No. C06-5528 MHP (BZ)  
**ORDER CERTIFYING FACTS  
RE CONTEMPT**

The undersigned hereby certifies the following facts pursuant to 28 U.S.C. § 636(e)(6)(B)(iii) to the Honorable Marilyn Hall Patel in support of the entry of a judgment of civil contempt<sup>1</sup> against plaintiff e-Smart or one or more of

<sup>1</sup> A magistrate judge has the power to certify to a district judge facts supporting the entry of a judgment of contempt for misbehavior, such as disobeying a lawful order, which is serious or occurs outside the presence of the magistrate judge. 28 U.S.C. § 636(e)(6)(B)(iii). In that event, the magistrate judge

"shall forthwith certify the facts to a district judge and may serve or cause to be served, upon any person whose behavior is brought into question under this

1 its representatives.

2 1. Pursuant to a referral from Judge Patel, on July 16,  
3 2010, I ordered that a settlement conference take place on  
4 August 12, 2010.

5 2. The following people were present at the settlement  
6 conference: attorney for plaintiff: Christopher Lilly;  
7 representatives for plaintiff: Mary Grace, Tamio Saito,  
8 Marcello Soliven, and Ananth Krishnan; and defendants: Wayne  
9 Drizin, and Michael Gardiner.

10 3. During the settlement conference, Mr. Gardiner, in one  
11 room, produced a smart card that he said was manufactured by a  
12 company whose name began with an "F" and contained the  
13 features e-Smart claimed were trade secrets. I took the card  
14 to plaintiff's representatives in another room, explained  
15 defendants' position, and showed them the card. Ms. Grace  
16 took the card and handed it to Mr. Saito who was sitting to  
17 her left. Mr. Saito took it, turned it over as if to examine  
18 it and showed it to Mr. Soliven who was sitting to his left.  
19 The last time I saw the card, it was in the hand of Mr. Saito.

20 4. At the conclusion of the conference, Mr. Gardiner  
21 stated to me that the card had not been returned to him. We

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22 paragraph, an order requiring such person to appear  
23 before a district judge upon a day certain to show cause  
24 why that person should not be adjudged in contempt by  
25 reason of the facts so certified. The district judge  
26 shall thereupon hear the evidence as to the act or  
27 conduct complained of and, if it is such as to warrant  
28 punishment, punish such person in the same manner and to  
the same extent as for a contempt committed before a  
district judge."

28 U.S.C. § 636(e)(6).

1 went to the other room and requested the card from plaintiff's  
2 representatives. They searched their personal effects, and  
3 stated they could not locate the missing smart card.

4 5. On August 13, 2010, I ordered that everyone present  
5 at the settlement conference make every effort to locate the  
6 missing smart card and return it to the Court by August 20,  
7 2010. That has not occurred.

8 6. Based on this conduct, I have reason to believe that  
9 e-Smart, through one or more of its representatives, still has  
10 the missing card, or disposed of it, to prevent it from being  
11 used as evidence by defendants.

12 For the foregoing reasons, **IT IS HEREBY ORDERED** that  
13 plaintiff e-Smart or such of its representatives as Judge  
14 Patel may order shall appear before Judge Patel at the time  
15 she schedules to show cause why one or more of them should not  
16 be adjudged in contempt of court or otherwise sanctioned for  
17 their conduct as specified herein.

18 Dated: September 22, 2010

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21 Bernard Zimmerman  
22 United States Magistrate Judge

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