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10 Attorneys for Defendants SMARTE CARTE, INC.,
 11 ALLA SERDYUCHENKO and RON BRIGHAM

12 UNITED STATES DISTRICT COURT
 13 NORTHERN DISTRICT OF CALIFORNIA

14 GARY ARDEN,

15 Plaintiff,

16 v.

17 FRANK KASTELL, LINARD DAVIS,
 18 AIRPORT TRAVEL AGENCY, INC.,
 19 ALLA SERDYUCHENKO, RON
 20 BRIGHAM, SMARTE CARTE, INC., and
 21 DOES 1-10,

22 Defendants.

Case No. 3:10-CV-00436 JL

~~PROPOSED~~ STIPULATED
 PROTECTIVE ORDER

23 **1. PURPOSES AND LIMITATIONS**

24 Disclosure and discovery activity in this Action are likely to involve production of
 25 Confidential, proprietary, or private information by the parties for which special protection from
 26 public disclosure and from use for any purpose other than prosecuting this Action would be
 27 warranted. Accordingly, the parties hereto stipulate to and petition the Court to enter the following
 28 Stipulated Protective Order in this Action. The parties hereto acknowledge that this Stipulated
 Protective Order does not confer blanket protections on all disclosures or responses to discovery or
 an appropriately served subpoena and that the protection it affords extends only to information or
 items that are entitled under the applicable legal principles to treatment as Confidential.

Case No. 3:10-CV-00436 JL

[PROPOSED] STIPULATED PROTECTIVE ORDER

1 **2. DEFINITIONS**

2 **2.1 PARTIES:** Any party to this action, including all of her, his or its officers, directors,
3 employees, consultants, retained experts, general counsel, outside counsel and their support staff.

4 **2.2 DISCLOSURE OR DISCOVERY MATERIAL:** All items or information,
5 regardless of the medium or manner generated, stored, or maintained (including, among other things,
6 testimony, transcripts, or tangible things) that are produced or generated in disclosures or responses
7 to discovery in this matter.

8 **2.3 "CONFIDENTIAL" INFORMATION OR ITEMS:** Information (regardless of
9 how generated, stored or maintained) or tangible things that are treated as Confidential by a party or
10 to this Action.

11 **2.4 "HIGHLY CONFIDENTIAL" INFORMATION OR ITEMS:** Attorneys' Eyes
12 Only ("AEO") Information is Confidential Information whose disclosure to another Party or non-
13 party would create a substantial risk of serious injury that could not be avoided by less restrictive
14 means.

15 **2.5 RECEIVING PARTY:** A Party that receives Disclosure or Discovery Material from
16 a Producing Party.

17 **2.6 PRODUCING PARTY:** A Party that produces Disclosure or Discovery Material in
18 this Action.

19 **2.7 DESIGNATING PARTY:** A Party that designates information or items that it
20 produces in disclosures or in responses to discovery as "Confidential."

21 **2.8 PROTECTED MATERIAL:** Any Disclosure or Discovery Material that is
22 designated as "Confidential."

23 **2.9 EXPERT:** A person with specialized knowledge or experience in a matter pertinent
24 to the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a
25 consultant in this Action and who is not a past or a current employee of a Party or of a competitor of
26 a Party and who, at the time of retention, is not anticipated to become an employee of a Party or a
27 competitor of a Party.

28 **3. SCOPE**

1 The protections conferred by this Stipulated Protective Order cover not only
2 Protected Material (as defined above), but also any information copied or extracted therefrom, as
3 well as all copies, excerpts, summaries, or compilations thereof, plus testimony, conversations, or
4 presentations by parties or counsel to or in Court proceedings or in other settings that might reveal
5 Protected Material.

6 **4. DURATION**

7 Even after the termination of this Action, the confidentiality obligations imposed by
8 this Stipulated Protective Order shall remain in effect until a Designating Party agrees otherwise in
9 writing or the Court's order otherwise directs.

10 **5. DESIGNATING PROTECTED MATERIAL**

11 **5.1 Manner and Timing of Designations.** Except as otherwise provided in this
12 Stipulated Protective Order (*see, e.g.*, second paragraph of section 5.2(a), below), or as otherwise
13 stipulated or ordered, material that qualifies for protection under this Stipulated Protective Order
14 must be clearly so designated before the material is disclosed or produced. Any party, and anyone
15 who produces documents or computer media or gives testimony in this action, may designate
16 information as Confidential Information or Highly Confidential – AEO Information if it meets the
17 respective definitions set forth in Paragraphs 2.3 and 2.4, above.

18 Designation in conformity with this Stipulated Protective Order requires:

19 (a) Information in documentary form (apart from transcripts of pretrial or trial
20 proceedings): Any “document” (defined herein as including, but not necessarily limited to: exhibits,
21 documents and things, including prototypes and samples, answers to discovery such as
22 interrogatories and responses to requests for admissions, motions, briefs, memoranda, deposition or
23 hearing transcripts and oral answers to deposition questions, and copies of any of the foregoing)
24 produced or given by any party or person during discovery, hearings or trial in this case which sets
25 forth or contains any Confidential Information (as defined above) may be designated by a party or
26 other producing person with the notation that it is “Confidential.” Only that portion of the document
27 containing Confidential Information may be designated as “Confidential” and the designating party
28 will restrict its designation to the smallest portion of the document necessary to protect the

1 Confidential Information. The Producing Party shall affix the legend “CONFIDENTIAL” or
2 “HIGHLY CONFIDENTIAL- AEO” at the top or bottom of each page that contains protected
3 material.

4 (b) Testimony given in pretrial or trial proceedings: The Party offering or
5 sponsoring the testimony shall identify on the record, before the close of the hearing, or other
6 proceeding, all protected testimony. When it is impractical to identify separately each portion of
7 testimony that is entitled to protection, and when it appears that substantial portions of the testimony
8 may qualify for protection, the Party that sponsors, offers, or gives the testimony may invoke on the
9 record (before the proceeding is concluded) a right to have up to fourteen (14) calendar days
10 following mailing of the transcript by the court reporter to identify the specific portions of the
11 testimony as to which protection is sought. Only those portions of the testimony that are
12 appropriately designated for protection within the fourteen (14) calendar days following mailing of
13 the transcript by the court reporter shall be covered by the provisions of this Stipulated Protective
14 Order. Transcript pages containing Protected Material must be separately bound by the court
15 reporter, who must affix to the top of each such page the legend “CONFIDENTIAL” or “HIGHLY
16 CONFIDENTIAL- AEO” as instructed by the Party offering or sponsoring the witness or presenting
17 the testimony.

18 (c) Information produced in some form other than documentary, and for any other
19 tangible items: The Producing Party shall affix in a prominent place on the exterior of the container
20 or containers in which the information or item is stored, the legend “CONFIDENTIAL” or
21 “HIGHLY CONFIDENTIAL- AEO.” If only portions of the information or item warrant protection,
22 the Producing Party, to the extent practicable, shall identify the protected portions, specifying
23 whether they qualify as “Confidential.”

24 **5.2 Inadvertent Failure to Designate.** If corrected within thirty (30) calendar days from
25 the date of production, an inadvertent failure to designate qualified information or items as
26 “Confidential” does not, standing alone, waive the Designating Party’s right to secure protection
27 under this Stipulated Protective Order for such material. If material is appropriately designated as
28 “Confidential” after the material was initially produced, the Receiving Party, on timely notification

1 of the designation, must make reasonable efforts to assure that the material is treated in accordance
2 with the provisions of this Stipulated Protective Order.

3 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

4 **6.1 Timing of Challenges.** Unless a prompt challenge to a Designating Party's
5 Confidentiality designation is necessary to avoid foreseeable substantial unfairness, unnecessary
6 economic burdens, or a later significant disruption or delay of the litigation, a Party hereto does not
7 waive its right to challenge a Confidentiality designation by electing not to mount a challenge
8 promptly after the original designation is disclosed.

9 **6.2 Meet and Confer.** A Party hereto that elects to initiate a challenge to a Designating
10 Party's Confidentiality designation must do so in good faith and must begin the process by
11 conferring directly (in voice to voice dialogue or by written communication) with counsel for the
12 Designating Party. In conferring, the challenging Party must explain the basis for its belief that the
13 Confidentiality designation was not proper and must give the Designating Party an opportunity to
14 review the designated material, to reconsider the circumstances, and, if no change in designation is
15 offered, to explain the basis for the chosen designation. A challenging party may proceed to the next
16 stage of the challenge process only if it has first engaged in this meet and confer process.

17 **6.3 Court Intervention.** A Party hereto that elects to press a challenge to a
18 Confidentiality designation after considering the justification offered by the Designating Party may
19 file and serve a motion that identifies the challenged material and sets forth in detail the basis for the
20 challenge. Each such motion must be accompanied by a competent declaration that affirms that the
21 movant has complied with the meet and confer requirements imposed in the preceding paragraph and
22 that sets forth with specificity the justification for the Confidentiality designation that was given by
23 the Designating Party in the meet and confer dialogue. Until the Court rules on the challenge, all
24 parties shall continue to afford the material in question the level of protection to which it is entitled
25 under the Producing Party's designation.

26 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

27 **7.1 Basic Principles.** A Receiving Party may use Protected Material disclosed or
28 produced by another Party in connection with this case *only for prosecuting, defending, or*

1 *attempting to settle this Action.* Such Protected Material may be disclosed only to the categories of
 2 persons and under the conditions described in this Stipulated Protective Order. When the Action has
 3 been terminated, a Receiving Party must return all Confidential material to the Producing party, or
 4 provide a certification, under penalty of perjury, that the material has been destroyed. Protected
 5 Material must be stored and maintained by a Receiving Party at a location and in a secure manner
 6 that ensures its confidentiality.

7 **7.2 Disclosure of “CONFIDENTIAL” Information or Items.** Unless otherwise
 8 ordered by the Court or permitted in writing by the Designating Party, a Receiving Party may
 9 disclose any information or item designated CONFIDENTIAL only to:

10 (a) the Receiving Party’s Counsel of record in this Action (including Outside
 11 Counsel), as well as employees of said counsel to whom it is reasonably necessary to disclose the
 12 information for this litigation and who have signed the “Agreement to Be Bound by Stipulated
 13 Protective Order” attached hereto as Exhibit A;

14 (b) experts or consultants (as defined in this Stipulated Protective Order) of the
 15 Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed
 16 the “Agreement to Be Bound by Stipulated Protective Order” attached hereto as Exhibit A;

17 (c) the Court and its personnel;

18 (d) court reporters, their staffs, and professional vendors to whom disclosure is
 19 reasonably necessary for this litigation;

20 (e) during their testimony, witnesses in the action to whom disclosure is
 21 reasonably necessary and who have signed the “Agreement to Be Bound by Stipulated Protective
 22 Order” attached hereto as Exhibit A. Pages of transcribed testimony or exhibits that reveal Protected
 23 Material must be separately bound by the court reporter and may not be disclosed to anyone except
 24 as permitted under this Stipulated Protective Order.

25 (f) the author of the document or the original source of the information.

26 **8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

27 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
 28 Protected Material to any person or in any circumstance not authorized under this Stipulated

1 Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party
2 of the unauthorized disclosures, (b) use its best efforts to retrieve all copies of the Protected Material,
3 (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this
4 Stipulated Protective Order, and (d) request such person or persons to execute the “Acknowledgment
5 and Agreement to Be Bound” attached hereto as Exhibit A.

6 **9. FILING PROTECTED MATERIAL**

7 All documents designated as Confidential shall be filed under seal unless exempted
8 by the designating party and the burden to retain the Confidentiality under Northern District local
9 rules and court rules shall be placed on the designating party. Nothing in this Order shall limit the
10 use of Confidential documents at trial.

11 **10. MISCELLANEOUS**

12 **10.1 Right to Further Relief.** Nothing in this Stipulated Protective Order abridges the
13 right of any person to seek its modification by the Court in the future.

14 **10.2 Attorney-client Privilege.** Nothing contained in this Protective Order is intended to
15 pertain to, or dilute any information protected by the attorney-client privilege or the attorney work-
16 product doctrine.

17 **10.2 Right to Assert Other Objections.** By stipulating to the entry of this Protective
18 Order no Party waives any right it otherwise would have to object to disclosing or producing any
19 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no
20 Party hereto waives any right to object on any ground to use in evidence of any of the material
21 covered by this Protective Order.

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IT IS SO STIPULATED, THROUGH THE PARTIES' COUNSEL OF RECORD.

Dated: September __, 2010

CONSTANCE E. NORTON
LITTLER MENDELSON
A Professional Corporation
Attorneys for Defendants
SMARTE CARTE, INC.,
ALLA SERDYUCHENKO and RON
BRIGHAM

Dated: September __, 2010

DAVID A. LEVY
COUNTY COUNSEL
Attorney for Defendants
FRANK KASTELL

Dated: September __, 2010

MARC R. SEIDENFELD
LAW OFFICE OF MARC SEIDENFELD
Attorney for Defendants
LINARD DAVIS AND AIRPORT TRAVEL
AGENCY, INC.

Dated: September 22, 2010



CHARLES CARREON
ONLINE MEDIA LAW, PLLC
Attorneys for Plaintiff
GARY A. ARDEN

1 **IT IS SO STIPULATED, THROUGH THE PARTIES' COUNSEL OF RECORD.**

2 Dated: December 9, 2010

3
4 /s/ Constance E. Norton
5 CONSTANCE E. NORTON
6 LITTLER MENDELSON
7 A Professional Corporation
8 Attorneys for Defendants
9 SMARTE CARTE, INC.,
10 ALLA SERDYUCHENKO and RON
11 BRIGHAM

8 Dated: December 9, 2010

9
10 /s/ David A. Levy
11 DAVID A. LEVY
12 COUNTY COUNSEL
13 Attorney for Defendants
14 FRANK KASTELL

13 Dated: December 9, 2010

14
15 /s/ E. Forrest Shryock, Jr.
16 E. FORREST SHRYOCK, JR.
17 WILLIS DEPASQUALE, LLP
18 Attorney for Defendants
19 LINARD DAVIS AND AIRPORT TRAVEL
20 AGENCY, INC.

19 I certify that the content of the foregoing document is acceptable to all persons
20 required to sign the document and authorization to electronically sign this document has been
21 obtained.

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ORDER

For good cause shown, it is hereby ORDERED that this STIPULATED PROTECTIVE ORDER is entered in this Action in accordance with the above Stipulation of the Parties thereto.

Dated: December 15, 2010


Magistrate James Larson

EXHIBIT A

ACKNOWLEDGEMENT AND AGREEMENT TO BE BOUND

Case: *Gary A. Arden v. Frank Kastell, Linard Davis, Airport Travel Agency, Inc., Alla Serdyuchenko, Ron Brigham, Smarte Carte, Inc. and Does 1-10*

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
CASE NO.: 3:10-CV-00436 JL

I, _____, declare under penalty of perjury under the laws of the State of California that I have read in its entirety the Stipulated Protective Order in the above-referenced lawsuit, and agree to adhere to and be bound by its terms. I hereby submit to the jurisdiction of the Superior Court of the State of California for the County of San Mateo in the above entitled action for the purpose of enforcement of the Stipulated Protective Order.

I hereby appoint _____ [print or type full name] of _____ [print or type full address and telephone number] as my California agent for service of process in connection with this Action or any proceedings related to enforcement of this Stipulated Protective Order.

SIGNED: _____

DATED: _____

CITY/STATE: _____

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