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CLERK, U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

*J. He* DEPUTY *JF*

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9 UNITED STATES DISTRICT COURT  
 10 SOUTHERN DISTRICT OF CALIFORNIA

ORIGINAL

12 SECURITIES AND EXCHANGE  
 COMMISSION,  
 13 Plaintiff,  
 14 v.  
 15 PRESTO TELECOMMUNICATIONS, INC.;  
 16 ALFRED LOUIS VASSALLO, JR. aka  
 BOBBY VASSALLO,  
 17 Defendants.

Case No. 04 CV 00163 IEG  
(WMc)

CONSENT OF DEFENDANT  
PRESTO  
TELECOMMUNICATIONS,  
INC. TO ENTRY OF FINAL  
JUDGMENT OF  
PERMANENT INJUNCTION  
AND OTHER EQUITABLE  
AND LEGAL RELIEF

20 1. Defendant Presto Telecommunications, Inc. ("Presto") acknowledges  
 21 having been served with the complaint in this action, enters a general appearance, and  
 22 admits the Court's jurisdiction over it and over the subject matter of this action.

23 2. Without admitting or denying the allegations of the complaint (except as to  
 24 personal and subject matter jurisdiction, which Presto admits), Presto hereby consents to  
 25 the entry of the Final Judgment in the form attached hereto (the "Final Judgment") and  
 26 incorporated by reference herein, which, among other things:

27 (a) permanently restrains and enjoins Presto from violation of Sections  
 28 5(a), 5(c), 17(a) of the Securities Act of 1933 ("Securities Act"), 15 U.S.C. § §

799

1 77e(a),77e(c), and 77q(a), and Section 10(b) of the Securities Exchange Act of 1934  
2 (“Exchange Act”), 15 U.S.C. 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5;  
3 and

4 (b) orders Presto to disgorge all of the funds and assets of the  
5 receivership estate, less Court-approved fees and expenses, to the Court-appointed  
6 receiver, Thomas F. Lennon, pursuant to one or more plans of distribution to be submitted  
7 by the Court-appointed receiver.

8 3. Presto acknowledges having been fully advised and informed of its right to  
9 a judicial determination of this matter, and waives its rights, if any, to a jury trial and to  
10 appeal from the entry of the Final Judgment.

11 4. Presto waives the entry of findings of fact and conclusions of law under  
12 Rule 52 of the Federal Rules of Civil Procedure.

13 5. Presto voluntarily consents to the entry of the Final Judgment and represent  
14 that no threats, offers, promises or inducements of any kind have been made by the  
15 Securities and Exchange Commission (“Commission”) or any member, officer, agent, or  
16 representative of the Commission to induce them to so consent.

17 6. Presto acknowledges that it remains a party to this action subject to the  
18 discovery provisions of the Federal Rules of Civil Procedure that relate to parties.

19 7. Consistent with the provisions of 17 C.F.R. Section 202.5(f), this Consent  
20 resolves only the claims asserted against Presto in this civil proceeding. Presto waives  
21 any claim of Double Jeopardy based upon the settlement of this proceeding, including the  
22 imposition of any remedy or civil penalties herein. Presto further acknowledges that the  
23 Court’s entry of a permanent injunction may have collateral consequences under federal  
24 or state law and the rules and regulations of self-regulatory organizations, licensing  
25 boards, and other regulatory organizations. Such collateral consequences include, but are  
26 not limited to, a statutory disqualification with respect to membership or participation in,  
27 or association with a member of, a self-regulatory organization. This statutory  
28

1 disqualification has consequences that are separate from any sanction imposed in an  
2 administrative proceeding. In addition, in any disciplinary proceeding before the  
3 Commission based on the entry of the injunction in this action, Presto understands that it  
4 shall not be permitted to contest the factual allegations of the complaint in this action.

5 8. Presto will not oppose the enforcement of the Final Judgment on the  
6 grounds, if any exist, that it fails to comply with Rule 65(d) of the Federal Rules of Civil  
7 Procedure, and hereby waives any objection based thereon.

8 9. Presto understands and agrees to comply with the Commission's policy "not  
9 to permit a defendant or respondent to consent to a judgment or order that imposes a  
10 sanction while denying the allegations in the complaint or order for proceedings." (17  
11 C.F.R. § 202.5(e)). In compliance with this policy, Presto agrees: (i) not to take any  
12 action or to make or permit to be made any public statement denying, directly or  
13 indirectly, any allegation in the Complaint or creating the impression that the Complaint  
14 is without factual basis; and (ii) that upon filing of this Consent, Presto hereby withdraws  
15 any papers filed in this action to the extent that it denies any allegation in the Complaint.  
16 If Presto breaches this agreement, the Commission may petition the Court to vacate the  
17 Final Judgment and restore this action to its active docket. Nothing in this provision  
18 affects Presto's: (i) testimonial obligations; or (ii) right to take legal positions in litigation  
19 in which the Commission is not a party.

20 10. Presto hereby agrees that the Final Judgment in the form attached hereto as  
21 Exhibit 1, and incorporated herein by reference, may be presented by the Commission to  
22 the Court for signature and entry forthwith and without further notice.

23 11. Presto hereby acknowledges that it will accept service of a copy of the Final  
24 Judgment and will acknowledge receipt thereof in writing.

25 12. Presto hereby agrees that this Court shall retain jurisdiction over this action  
26 for all purposes including implementing and carrying out the terms of the Final Judgment  
27 and all other orders and decrees which have been and may be entered herein and to  
28

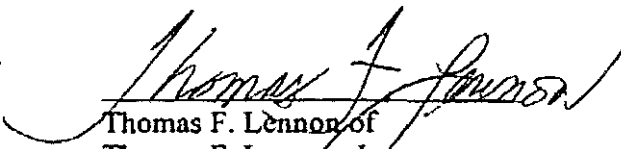
1 entertain any suitable application or motion for additional relief within the jurisdiction of  
2 this Court. Presto waives any rights under the Equal Access to Justice Act, the Small  
3 Business Regulatory Enforcement Fairness Act of 1996 or any other provision of law to  
4 pursue reimbursement of attorney's fees or other fees, expenses or costs expended by  
5 Presto to defend against this action. For these purposes, Presto agrees that Presto is not  
6 the prevailing party in this action since the parties have reached a good faith settlement.

7 13. Presto waives service of the Final Judgment and agree that entry of the  
8 Final Judgment by the Court and filing with the Clerk will constitute notice to Presto of  
9 its terms and conditions. Presto further agrees to provide counsel for the Commission,  
10 within thirty days after entry of the Final Judgment is filed with the Clerk if the Court,  
11 with an affidavit or declaration stating that Presto has received and read a copy of the  
12 Final Judgment. Presto acknowledges that no promise or representation has been made  
13 by the Commission or any member, officer, employee, agent, or representative of the  
14 Commission with regard to any criminal liability that may have arisen or may arise from  
15 the facts underlying this action or immunity from any such criminal liability.

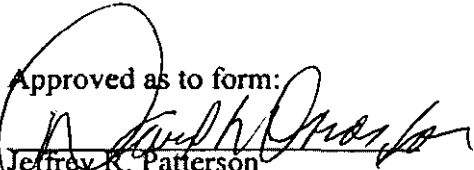
16 14. Presto agrees that this Consent may be annexed to, and made a part of, the  
17 Final Judgment filed simultaneously herewith.

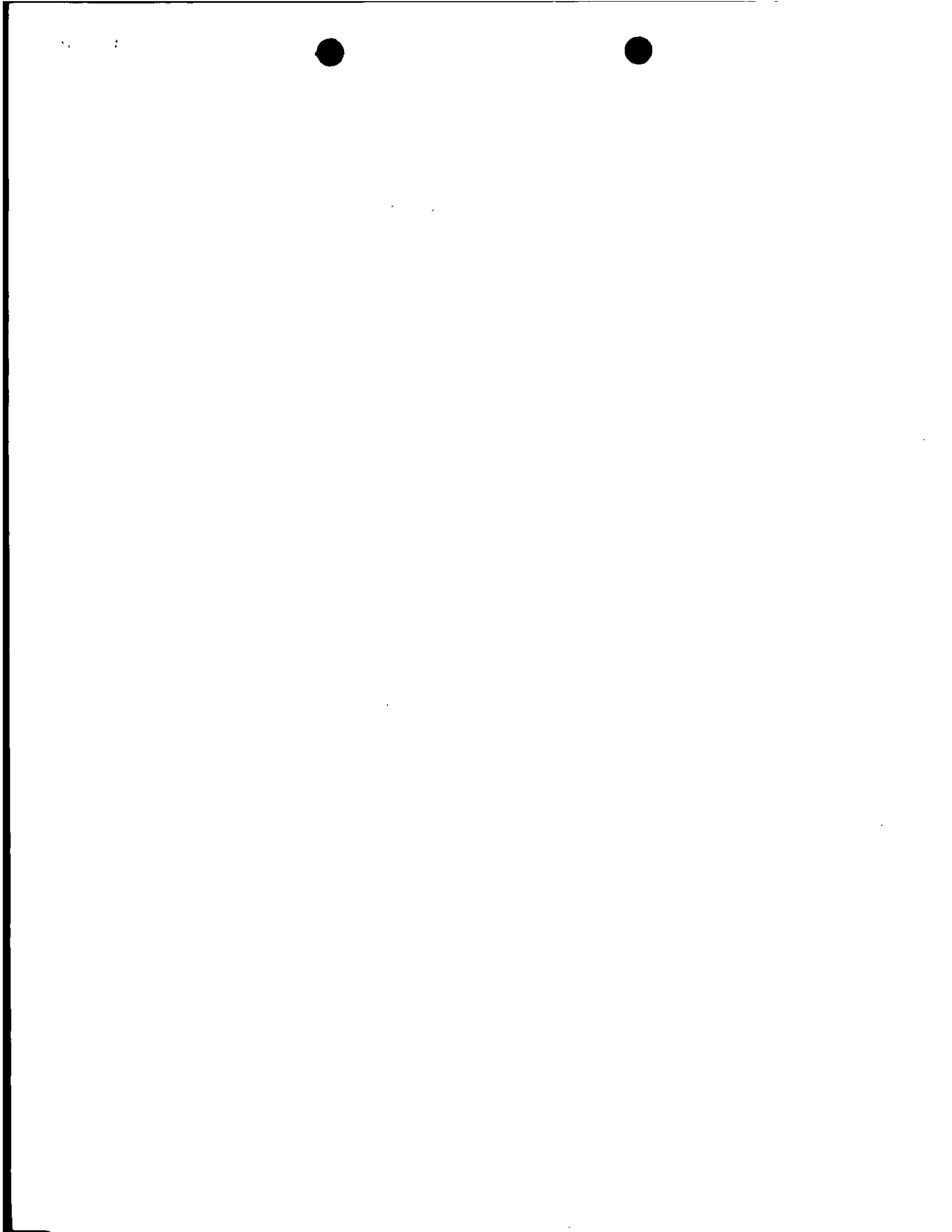
18 15. Presto represents that its Court-appointed Receiver, Thomas F. Lennon, has  
19 read this Consent before signing it.

20 Dated: July 22, 2005

  
Thomas F. Lennon of  
Thomas F, Lennon, Inc.  
Court-Appointed Receiver for  
Defendant Presto Telecommunications,  
Inc.

23  
24 Approved as to form:

  
Jeffrey R. Patterson  
Allen Matkins Leck Gamble & Mallory LLP  
Attorneys for Receiver, Thomas F. Lennon  
of Thomas F. Lennon, Inc.,  
for Defendant Presto Telecommunications, Inc.



1 MICHAEL A. PIAZZA, Cal. Bar No. 235881  
GREGORY C. GLYNN, Cal. Bar No. 039999  
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3 Attorneys for Plaintiff  
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8  
9 **UNITED STATES DISTRICT COURT**  
10 **SOUTHERN DISTRICT OF CALIFORNIA**

11  
12 **SECURITIES AND EXCHANGE**  
**COMMISSION,**

13 **Plaintiff,**

14 **v.**

15 **PRESTO TELECOMMUNICATIONS, INC.;**  
16 **ALFRED LOUIS VASSALLO, JR. aka**  
**BOBBY VASSALLO,**

17 **Defendants.**

Case No. 04 CV 00163 IEG  
(WMc)

[PROPOSED] FINAL  
JUDGMENT OF  
PERMANENT INJUNCTION  
AND OTHER EQUITABLE  
AND LEGAL RELIEF  
AGAINST DEFENDANT  
PRESTO  
TELECOMMUNICATIONS,  
INC.

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21  
22 Plaintiff Securities and Exchange Commission ("Commission"), having filed and  
23 served a Summons and Complaint upon defendant Presto Telecommunications, Inc.  
24 ("Presto"), and Presto having admitted service of the Summons and Complaint; consented  
25 to the Court's jurisdiction over Presto and the subject matter of this action; consented to  
26 entry of this Final Judgment without admitting or denying the allegations of the  
27 Complaint (except as to jurisdiction); waived findings of fact and conclusions of law; and  
28 waived any right to appeal from this Final Judgment:

I.

1  
2 IT IS ORDERED, ADJUDGED AND DECREED that Presto and its agents,  
3 servants, employees, attorneys, and all persons in active concert or participation with  
4 them who receive actual notice of this Final Judgment by personal service or otherwise  
5 are permanently restrained and enjoined from violating, directly or indirectly, Section  
6 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act"), 15 U.S.C. § 78j(b),  
7 and Rule 10b-5 promulgated thereunder, 17 C.F.R. § 240.10b-5, by using any means or  
8 instrumentality of interstate commerce, or of the mails, or of any facility of any national  
9 securities exchange, in connection with the purchase or sale of any security:

- 10 (a) to employ any device, scheme, or artifice to defraud;  
11 (b) to make any untrue statement of a material fact or to omit to state a material  
12 fact necessary in order to make the statements made, in the light of the  
13 circumstances under which they were made, not misleading; or  
14 (c) to engage in any act, practice, or course of business which operates or  
15 would operate as a fraud or deceit upon any person.

16 II.

17 IT IS ORDERED, ADJUDGED AND DECREED that Presto and its agents,  
18 servants, employees, attorneys, and all persons in active concert or participation with  
19 them who receive actual notice of this Final Judgment by personal service or otherwise  
20 are permanently restrained and enjoined from violating Section 17(a) of the Securities Act  
21 of 1933 (the "Securities Act"), 15 U.S.C. § 77q(a), in the offer or sale of any security by  
22 the use of any means or instruments of transportation or communication in interstate  
23 commerce or by use of the mails, directly or indirectly:

- 24 (a) to employ any device, scheme, or artifice to defraud;  
25 (b) to obtain money or property by means of any untrue statement of a material  
26 fact or any omission of a material fact necessary in order to make the  
27 statements made, in light of the circumstances under which they were made,  
28 not misleading; or

- 1 (c) to engage in any transaction, practice, or course of business which operates  
2 or would operate as a fraud or deceit upon the purchaser.

3 III.

4 IT IS ORDERED, ADJUDGED AND DECREED that Presto and its agents,  
5 servants, employees, attorneys, and all persons in active concert or participation with  
6 them who receive actual notice of this Final Judgment by personal service or otherwise  
7 are permanently restrained and enjoined from violating Section 5 of the Securities Act, 15  
8 U.S.C. § 77e, by, directly or indirectly, in the absence of any applicable exemption:

- 9 (a) Unless a registration statement is in effect as to a security, making use of  
10 any means or instruments of transportation or communication in interstate  
11 commerce or of the mails to sell such security through the use or medium of  
12 any prospectus or otherwise;
- 13 (b) Unless a registration statement is in effect as to a security, carrying or  
14 causing to be carried through the mails or in interstate commerce, by any  
15 means or instruments of transportation, any such security for the purpose of  
16 sale or for delivery after sale; or
- 17 (c) Making use of any means or instruments of transportation or  
18 communication in interstate commerce or of the mails to offer to sell or  
19 offer to buy through the use or medium of any prospectus or otherwise any  
20 security, unless a registration statement has been filed with the Commission  
21 as to such security, or while the registration statement is the subject of a  
22 refusal order or stop order or (prior to the effective date of the registration  
23 statement) any public proceeding of examination under Section 8 of the  
24 Securities Act, 15 U.S.C. § 77h.

25 IV.

26 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Presto and its  
27 subsidiaries and affiliates, shall disgorge pursuant to one or more plans of distribution to  
28 be submitted by the Court-appointed Receiver for Presto, Thomas F. Lennon of Thomas

1 F. Lennon, Inc., served on the Commission, and approved by the Court, all of the funds  
2 and assets of receivership estate, less Court-approved fees and expenses of his counsel  
3 and other professionals.

4 V.

5 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Presto shall  
6 provide all documents in its possession, custody or control to the Commission and  
7 disclose under oath all information with respect to its activities and the activities of others  
8 about which the Commission or its staff may inquire or request. Such production of  
9 documents and disclosure of information by Presto shall be made upon reasonable notice  
10 in writing and without service of a subpoena and subject only to the good faith assertion  
11 of any privileges recognizable pursuant to the provisions of Rule 501 of the Federal Rules  
12 of Evidence or the United States Constitution and amendments thereto. Failure to comply  
13 with the foregoing will subject Presto to the sanctions set forth in Rule 37 of the Federal  
14 Rules of Civil Procedure and all other available remedies.

15 VI.

16 IT IS HEREBY FURTHER ORDERED that all Orders freezing assets of Presto  
17 issued by this Court at the time of the Temporary Restraining Order and continued in  
18 effect by the Preliminary Injunction issued on March 1, 2004 shall remain in full force  
19 and effect pending further Order of this Court.

20 VII.

21 IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that the  
22 Consent is incorporated herein with the same force and effect as if fully set forth herein,  
23 and that Presto shall comply with all of the undertakings and agreements set forth therein.

24 VIII.

25 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this Court shall  
26 retain jurisdiction over this action for all purposes, including to determine the liability of  
27 any remaining defendants in this action, to implement and enforce the terms of this Final  
28 Judgment and other orders and decrees which may be entered, and to grant such other

1 relief as this Court may deem necessary and just.

2 IX.

3 There being no just reason for delay, pursuant to Rule 54(b) of the Federal Rules  
4 of Civil Procedure, the Clerk is ordered to enter this Final Judgment forthwith and  
5 without further notice.

6

7 DATED: \_\_\_\_\_

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HONORABLE IRMA E. GONZALEZ  
UNITED STATES DISTRICT JUDGE

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