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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

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11 SECURITIES AND EXCHANGE
COMMISSION,
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13 Plaintiffs,
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15 vs.
16 PRESTO TELECOMMUNICATIONS, INC.;
ALFRED LOUIS VASSALLO, JR. aka
BOBBY VASSALLO,
17
18 Defendants.

Case No. 04cv00163 IEG (WMC)
FIRST INTERIM APPLICATION FOR
APPROVAL AND PAYMENT OF FEES AND
COSTS TO THOMAS F. LENNON,
RECEIVER
Date: May 2, 2005
Time: 10:30 a.m.
Ctrm: 13
Judge: Hon. Irma E. Gonzalez

18 Thomas F. Lennon (the "Receiver"), the Court-appointed permanent receiver for Presto
19 Telecommunications, Inc. ("Presto"), submits his first interim application for payment of fees and
20 reimbursement of costs for the period January 23, 2004, to December 31, 2004.

21 The Receiver has incurred \$223,435 in fees and \$4,314.81 in costs during the period of this
22 application. Detailed time descriptions of the services rendered by the Receiver and his staff are
23 contained in Exhibit A attached hereto. Exhibit B is a chart reflecting the hours and fees billed to
24 each category of services by month. Exhibit C is a summary of hours by month by timekeeper.
25 Exhibit D is a breakdown of the out-of-pocket costs by category and month. Exhibit E is a
26 summary of the hours/fees and costs incurred by month.

27 The Receiver and his professionals bring their fee and cost applications before the Court at
28 this time notwithstanding that there is insufficient cash to pay all of the requested sums. The

1 Receiver believes it will be helpful for the Court to be informed of the costs to date of
2 administering the receivership estate. The receivership estate had only \$343,0000 in cash on hand
3 at the outset. The Receiver was able to utilize these funds to continue operating Presto and Presto
4 Mexico for approximately six months. The Receiver's operations were similar to the pre-
5 receivership operations from a revenue-generating perspective; only "test-level" operations were
6 being conducted, causing a negative operating revenue of approximately \$50,000 per month.

7 The Receiver operated despite the negative cash flow because of representations by
8 Vassallo that major contracts were imminent or a sale of the Mexican subsidiary was possible, and
9 in order to preserve the Mexico telecommunications Concession, which the Receiver understood
10 to be the only significant asset which could generate any return for investors and creditors.
11 However, serious purchasers or other sources of operating capital were not forthcoming.

12 Due to the lack of operating capital, the Receiver was ultimately forced to close the
13 business offices of Presto U.S. and ceased its "test-level" operations in July 2004. The Receiver
14 was also unable to continue funding the operating expenses of Presto Mexico. After payment of
15 certain operating expenses for Presto and Presto Mexico, the Receiver has approximately \$48,500
16 in cash remaining, which includes the Vassallo contempt sanction of \$13,228 earmarked to pay
17 receivership legal fees incurred as a result of Vassallo's actions.

18 Under this Court's preliminary injunction order, Presto and Vassallo are obligated to pay
19 the costs, fees and expenses incurred in connection with the Receiver's duties, and the Court has
20 confirmed that such obligation exists regardless of the outcome of the case. See Order Denying
21 Defendant's Motion for Reconsideration dated November 16, 2004, p.5-6. The Receiver already
22 obtained an order from the Court authorizing the sale of Vassallo's house. See Order Authorizing
23 Receiver to Sell Defendant's House, dated October 19, 2004. Vassallo forestalled that sale by
24 paying the contempt fine levied by the Court.¹ In conjunction with the Receiver's applications for
25 professional fees and expenses, the Receiver is filing a motion to reconfirm the Receiver's
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28 ¹ The contempt fine was actually paid on Vassallo's behalf by junior lienholder Robert Wells.

1 authority to sell the house in order to satisfy (at least in part) Vassallo's obligation to pay
2 receivership expenses.

3 **I. OVERVIEW**

4 **A. Appointment of the Receiver**

5 On January 27, 2004, the SEC filed the within action against Presto and Vassallo.
6 Pursuant to an ex parte application by the SEC on January 27, 2004, the U.S. District Court issued
7 a Temporary Restraining Order and Orders: (1) Freezing Assets; (2) Appointing a Temporary
8 Receiver; (3) Prohibiting the Destruction of Documents; (4) For Accountings; and Order To Show
9 Cause re Preliminary Injunction and Appointment of a Permanent Receiver over Presto
10 Telecommunications, Inc. On March 1, 2004, after an extended hearing in open court, the Court
11 entered its Preliminary Injunction Order and Orders: (1) Freezing Assets; (2) Appointing a
12 Permanent Receiver Over Presto Telecommunications, Inc.; (3) Prohibiting the Destruction of
13 Documents; and (4) for Accountings ("Preliminary Injunction Order").

14 On or about March 30, 2004, Vassallo through his counsel (and former counsel for Presto),
15 Donald McInnis, filed a Notice of Appeal of the Preliminary Injunction Order. No stay of the
16 Preliminary Injunction Order has been sought or granted and it remains in full effect pending the
17 outcome of the appeal. McInnis subsequently withdrew as counsel for Presto and Vassallo.
18 Vassallo engaged new appellate counsel and another extension of the deadline for his opening
19 brief was recently gra
20 nted.

21 **B. Engagement of Professionals to Assist the Receiver**

22 Pursuant to the authority in paragraph VII(G) of the order appointing the Receiver, the
23 Receiver engaged the following professionals to assist him in this Receivership case:

24 *Allen Matkins Leck Gamble & Mallory LLP*, as general receivership counsel

25 *Gutierrez & Diaz*, as Mexican counsel

26 *Steve Konecny*, forensic computer expert

27 *Alex Dresser/Media Partners*, telecommunications business consultant
28

1 The description of services these professionals performed for the Receiver are set out in
2 their individual applications filed concurrently herewith.

3 **C. The Presto Mexico Telecommunications Concession**

4 Presto U.S.'s primary asset is its 49% interest in Presto Telecomunicaciones, SA. de C.V.
5 ("Presto Mexico"). Presto Mexico, in turn, held a telecommunications concession (the
6 "Concession") issued by the Mexican Secretariat of Communications and Transport ("SCT").
7 Upon his appointment, the Receiver learned that the SCT had commenced proceedings to revoke
8 the Concession in 2001 due to Presto Mexico's failure to fulfill conditions of the Concession,
9 including timely completion of the technical plan for build-out of its planned telecommunication
10 network. The Receiver's goal was to recapitalize Presto Mexico and/or find a buyer for some or
11 all of Presto Mexico's assets, or Presto U.S.'s 49% interest in Presto Mexico, thereby facilitating a
12 favorable conclusion of the SCT revocation proceedings.

13 Although displaced by the Receiver, Vassallo continued to serve as Presto Mexico's
14 president and legal representative and, despite orders from the Court to aid the Receiver in
15 obtaining control over Presto Mexico, the Receiver encountered continued obstruction in his
16 dealings with Vassallo and those involved with the Presto Mexico operations and Concession.
17 The Receiver did all he could to gain control of the 49% interest in Presto Mexico and preserve the
18 Concession, but was unsuccessful. The Receiver was unable to obtain any records or any
19 information from Presto Mexico's board of directors or shareholders. The Receiver was also
20 unable to obtain the cooperation of Presto Mexico's counsel in Tijuana, Francisco J. Sánchez
21 Gonzalez, (also a 4 % owner of Presto Mexico and the trustee of the Vassallo trust that holds title
22 to Vassallo's La Jolla residence), with respect to turnover of Presto Mexico's corporate formation
23 documents, operating records, or keys to the Tijuana office facility. The Receiver's lack of status
24 as "legal representative" for Presto Mexico, hamstrung his ability to contract on behalf of Presto
25 Mexico, to pursue a favorable termination of the SCT revocation proceedings, or to negotiate with
26 potential new investors for Presto Mexico.

27 On March 4, 2004, the Receiver sought the assistance of the Court in the form of an order
28 compelling Vassallo to assign to the Receiver his powers of attorney and position as legal

1 representative for Presto Mexico given that Vassallo held such positions only by virtue of the fact
2 that Presto U.S. was by far and away the largest shareholder and provided 100% of Presto
3 Mexico's financial support. On March 9, 2004, Vassallo's (and Presto's former) counsel argued to
4 the Court that either (i) the Court did not have the authority to order Vassallo to assign his powers
5 with respect to Presto Mexico, or (ii) Vassallo had already transferred those powers to someone
6 else. The Court granted the Receiver's motion and ordered Vassallo to sign a series of documents
7 which are necessary under Mexican law to cause Vassallo to be removed and transfer power of
8 attorney and legal representative status to the Receiver. In the event that Vassallo had truly
9 assigned these powers to another individual at an earlier date, the Court ordered Vassallo to
10 disclose to the Court and the Receiver all information regarding such transfer. Vassallo refused to
11 comply with either order. Eventually, the Court found Vassallo in contempt and ordered him to
12 pay a fine of \$13,228 to partially reimburse the receivership estate for the cost of compelling
13 Vassallo's compliance with Court orders.

14 The Receiver learned that in April 2004, the SCT gave notice that the Concession had been
15 revoked. The Receiver was subsequently contacted by Mr. Sanchez who requested certain
16 documents in the possession of the Receiver which Presto Mexico purportedly needed to appeal
17 the revocation. The Receiver promptly provided Mr. Sanchez with all of the documentation he
18 requested. The Receiver is informed that an appeal was filed by Presto Mexico through Mexican
19 counsel, but the Receiver has not been advised of any further action taken with respect to the
20 revocation of the Concession or any response to the appeal.

21 **D. Receivership Case Status and Targeted Activities**

22 The Receiver sought and obtained an order setting a claims procedure and bar date of
23 August 15, 2004. The Receiver has received many proofs of claim with varying degrees of
24 supporting documentation. Where essential information was missing, the Receiver sent letters to
25 the creditor requesting additional information. The Receiver continues to receive and process
26 claim information. To date, the Receiver has received claims from alleged stockholders with an
27 aggregate face amount totaling over \$25 million. The Receiver has received proofs of claim from
28 other creditors totaling over \$5 million. The claims-procedure order also established a deadline

1 for objecting to claims, which was February 15, 2005, but since the receivership estate has
2 insufficient cash to pay claims at this time, the Receiver requested and obtained an extension to
3 May 12, 2005, rather than incur significant expense in the claims objection process.

4 The Receiver brought a motion for authority to sell Vassallo's house in order to recover for
5 the benefit of creditors any equity that may exist in the property. As noted above, Vassallo
6 forestalled the sale by paying the Court's contempt sanction order through a check obtained from a
7 junior lienholder. Once a certain amount of receivership fees and costs have been approved for
8 payment, the Receiver will renew his motion to sell the house in order to defray same.

9 The Receiver and his counsel have put Presto's D&O insurance carrier on notice that
10 claims have been asserted against Presto far in excess of policy limits, but the carrier has denied
11 coverage for any such claims. In addition, the Receiver and his counsel are evaluating the pursuit
12 of potential claims against former attorneys, officer, directors of Presto and Presto Mexico, and the
13 liquidation of Vassallo's assets and those of related family trusts.

14 The SEC is continuing to pursue the underlying litigation against Vassallo, and trial is
15 anticipated to take place in August or September 2005. In the interim, should a sale of assets
16 occur or settlement be reached that brings value to the estate, the Receiver will propose a plan of
17 distribution and will proceed with the claims administration process.

18 **E. The Receiver's Reports**

19 The Receiver previously filed two interim reports that detail his activities, discoveries,
20 conclusions and recommendations. Interested parties are referred to those reports for specific
21 information. The reports are also available for review on the Receiver's website at
22 www.tflinc.com.

23 **II. FEE APPLICATION**

24 The Receiver has recorded his and his staff's time in the following categories:

25 **Accounting/Auditing** – Services in this category involved review of accounting and
26 computer files at Presto's office; seizure of bank accounts; establishment of receivership accounts;
27 reconciliation of Presto bank accounts; review and approval of accounts payables;
28 communications with financial institutions; preparation of 1099's for employees and vendors;

1 maintenance of accruing administrative expenses for cash-flow analysis purposes. This category
2 also included the analysis of historic company ledgers, books, balance sheets and financial
3 statements for use by Receiver in reporting to the Court. (267 hours, \$51,632.50 in fees).

4 **Business Operations**– Included in this category (which covers both the temporary and
5 permanent receiver) are the tasks implemented to take possession and control of Presto and its
6 business including review of files, interview with staff, computer downloading, changing locks,
7 etc.; review of FBI-seized company records and files; processing of Presto's mail and email;
8 supervision of staff; shutdown of computers at Verio co-location site; relocating of company
9 equipment, closure of company offices and termination of remaining employees; server shutdown;
10 establishment of Presto receivership website and maintenance; meeting with shareholders; review
11 and analysis of documents relating to Presto Mexico and the concession license; preparation of
12 lists of shareholders and employees gleaned from company records; (87.3 hours, \$17,485.00 in
13 fees).

14 **Claims Administration (Creditors)** – This category includes the Receiver's and/or his
15 staff's communications with trade creditors regarding claims (3.5 hours, \$787.50 in fees).

16 **Claims Administrator (Investors)** – This category includes the Receiver's and/or his
17 staff's communications with Presto investors regarding claims (2.9 hours, \$652.50 in fees).

18 **Employee Creditors** – Services related to the contract relationship with M. Vildosola, a
19 former Presto employee (.5 hours; \$112.50 in fees).

20 **Fee Applications** – Preparation of the Receiver's interim fee applications (6.6 hours;
21 \$660).

22 **General Receivership Matters** – Services in this category include turnover of operations
23 to the Receiver and communications with vendors and others to accomplish same; inventory of
24 company assets in offsite storage; investigation of company financial records including offshore
25 banking activities; trips to Mexico (including Mexico City) to meet with Mexican counsel, SCT
26 representatives, and others regarding the Presto Mexico's Tijuana offices and Concession;
27 investigation into company operations in U.S. and Mexico; discussions regarding the Global
28 Crossings contract and value-added proposal; review and analyze several proposed business plans;

1 prepare reports and attend necessary hearings before the Court and Magistrate Judge (592.1 hours,
2 \$144,695 in fees).

3 **Investor Creditors** – This category includes the Receiver's and/or his staff's
4 communications with Presto investors creditors on inquiries other than related to their claims (28.6
5 hours, \$6,262.50 in fees).

6 **Sale of Assets** – Included in this category are services relating to the sale of company
7 equipment and Vassallo's residence (2.3 hours, \$547.50 in fees).

8 **SEC Litigation** – Services in this category included communications with SEC counsel
9 about the status of the receivership and investigation (.6 hours, \$135 in fees).

10 **Tax Issues** – Services in this category included communications with the IRS and State of
11 Delaware regarding taxes (2.0 hours, \$465.00 in fees).

12 The Receiver's hours and that of his staff have been billed at the customary rates and
13 represents an average hourly billing rate of \$225. Exhibit B lists both the number of hours and the
14 amount of fees incurred in each month, broken down by category. Exhibit C reflects the total
15 hours billed by the Receiver and his staff, broken down by timekeeper and month. Exhibit D
16 reflects the Receiver's expenses by type and by month. Photocopies are charged at \$.20 per copy
17 and all other expenses are billed at cost. Travel expenses reflect coach air fare in all instances.
18 Finally, Exhibit A contains the detailed billing statement by month and by category. The Receiver
19 believes the attached exhibits provide sufficient detail and information to permit the Court and
20 interested parties to evaluate the reasonableness of the work performed.

21 **III. CONCLUSION**

22 The Receiver requests an order approving interim fees and costs as follows:

- 23 1. Approving and allowing fees and costs for this application period of \$223,435 and
24 \$4,314.81 respectively.
- 25 2. Authorizing the Receiver to pay 80% of the allowed fees on an interim basis, and
26 100% of the requested costs from available sources of Receivership estate assets.

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3. For such other and further relief as is appropriate.

Dated: March __, 2005

ALLEN MATKINS LECK GAMBLE &
MALLORY LLP

By: _____
JEFFREY R. PATTERSON
Attorneys for Thomas F. Lennon, Receiver