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SOUTHERN DISTRICT OF CALIFORNIA

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8 **UNITED STATES DISTRICT COURT**
9 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

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

13 Plaintiff,

14 vs.

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

18 Defendants.

Case No. 04 CV 00163 IEG (WMc)

**FINAL JUDGMENT OF
PERMANENT INJUNCTION
AND OTHER RELIEF AGAINST
DEFENDANT ALFRED LOUIS
VASSALLO, JR.**

18 The motion of plaintiff, Securities and Exchange Commission
19 (“Commission”), pursuant to Rule 56, Fed. R. Civ. P., for summary judgment
20 against defendant Alfred Louis Vassallo, Jr. (“Vassallo”), came before the Court
21 for hearing on May 9, 2005. Thereafter the Commission filed a motion for
22 summary adjudication against Vassallo on the amount of disgorgement and civil
23 penalties to be paid by Vassallo. That motion came on for hearing before the
24 Court on July 25, 2005. The Court, having considered the Commission’s motions,
25 the Memoranda of Points and Authorities, the declarations including exhibits
26 relating thereto, the Statements of Uncontroverted Facts and Conclusions of Law,
27 and other documents filed in support of the motions, and all other evidence and
28 argument presented regarding the motions, finds as follows:

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04 CV 00163 IEG (FOR)

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1 **I.**

2 IT IS HEREBY ORDERED that the Commission's motions for summary
3 judgment and summary adjudication against Vassallo are GRANTED.

4 **II.**

5 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Vassallo
6 and his agents, servants, employees, attorneys, and all persons in active concert or
7 participation with them who receive actual notice of this Final Judgment, by
8 personal service or otherwise, are permanently restrained and enjoined from
9 violating Section 5 of the Securities Act of 1933 (the "Securities Act"), 15 U.S.C.
10 § 77e, by, directly or indirectly, in the absence of any applicable exemption:

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

27 **III.**

28 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Vassallo

1 and his agents, servants, employees, attorneys, all persons in active concert or
2 participation with them, who receive actual notice of this Final Judgment by
3 personal service or otherwise, are permanently restrained and enjoined from
4 violating Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a), in the offer or
5 sale of any security by the use of any means or instruments of transportation or
6 communication in interstate commerce or by use of the mails, directly or
7 indirectly:

- 8 (a) to employ with scienter any device, scheme, or artifice to defraud;
- 9 (b) to obtain money or property by means of any untrue statement of a
10 material fact or any omission of a material fact necessary in order to
11 make the statements made, in light of the circumstances under which
12 they were made, not misleading; or
- 13 (c) to engage in any transaction, practice, or course of business which
14 operates or would operate as a fraud or deceit upon the purchaser.

15 IV.

16 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Vassallo
17 and his agents, servants, employees, attorneys, and all persons in active concert or
18 participation with them who receive actual notice of this Final Judgment by
19 personal service or otherwise are permanently restrained and enjoined from
20 violating, directly or indirectly, Section 10(b) of the Securities Exchange Act of
21 1934 (the "Exchange Act"), 15 U.S.C. § 78j(b), and Rule 10b-5 promulgated
22 thereunder, 17 C.F.R. § 240.10b-5, by using any means or instrumentality of
23 interstate commerce, or of the mails, or of any facility of any national securities
24 exchange, in connection with the purchase or sale of any security:

- 25 (a) to employ any device, scheme, or artifice to defraud;
- 26 (b) to make any untrue statement of a material fact or to omit to state a
27 material fact necessary in order to make the statements made, in the
28 light of the circumstances under which they were made, not

1 misleading; or

2 (c) to engage in any act, practice, or course of business which operates or
3 would operate as a fraud or deceit upon any person.

4 **V.**

5 IT IS ORDERED, ADJUDGED AND DECREED that Vassallo, within 30
6 days of this Final Judgment, disgorge to Thomas F. Lennon, the Court-appointed
7 Receiver for Presto Telecommunications, Inc., the sum of \$1,263,658.79 in cash,
8 that was received by Vassallo as a consequence of the conduct alleged in the
9 Complaint, plus prejudgment interest thereon of \$23,638.97 from January 27,
10 2004 through July 25, calculated pursuant to 28 U.S.C. § 1961. This
11 disgorgement payment shall be transmitted to Thomas F. Lennon, 7777 Alvarado
12 Road, Suite 712, La Mesa, California 91941, under cover of a letter that identifies
13 the defendant, the name and case number of this litigation, and the court. Copies
14 of this cover letter and the means of payment shall be simultaneously transmitted
15 to counsel for the Commission in this action at its Pacific Regional Office.

16 **VII.**

17 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Vassallo
18 shall pay a third tier civil penalty in the amount of \$120,000 pursuant to Section
19 20(d) of the Securities Act and Section 21(d)(3) of the Exchange Act. Pursuant to
20 Section 308 of the Sarbanes-Oxley Act of 2002 and upon application of the
21 Commission and approval of the Court, Vassallo shall make this payment within
22 ten (10) business days after entry of this Final Judgment by certified check, bank
23 cashier's check, or United States postal money order payable to the Receiver, and
24 shall be transmitted to Thomas F. Lennon, 7777 Alvarado Road, Suite 712, La
25 Mesa, California 91941, under cover of a letter that identifies the defendant, the
26 name and case number of this litigation, and the court. Copies of this cover letter
27 and the means of payment shall be simultaneously transmitted to counsel for the
28 Commission in this action at its Pacific Regional Office.

1 **VIII.**

2 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that
3 Vassallo, within 30 days of this Final Judgment, shall pay to Thomas F. Lennon,
4 the Court-appointed Receiver for Presto Telecommunications, Inc., the sum of
5 \$601,784.77 for the costs, fees, and expenses incurred by Thomas F. Lennon and
6 his professionals in this case. Vassallo shall make this payment by certified check,
7 bank cashier's check, or United States postal money order payable to the Receiver,
8 and shall be transmitted to Thomas F. Lennon, 7777 Alvarado Road, Suite 712, La
9 Mesa, California 91941, under cover of a letter that identifies the defendant, the
10 name and case number of this litigation, and the court. Copies of this cover letter
11 and the means of payment shall be simultaneously transmitted to counsel for the
12 Commission in this action at its Pacific Regional Office.

13 **IX.**

14 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Vassallo
15 shall provide all documents in his possession, custody or control to the
16 Commission and disclose under oath all information with respect to his activities
17 and the activities of others about which the Commission or its staff may inquire or
18 request. Such production of documents and disclosure of information by Vassallo
19 shall be made upon reasonable notice in writing and without service of a subpoena
20 and subject only to the good faith assertion of any privileges recognizable
21 pursuant to the provisions of Rule 501 of the Federal Rules of Evidence or the
22 United States Constitution and amendments thereto. Failure to comply with the
23 foregoing will subject these defendants to the sanctions set forth in Rule 37 of the
24 Federal Rules of Civil Procedure and all other available remedies.

25 **X.**

26 IT IS HEREBY FURTHER ORDERED that all Orders freezing assets of the
27 defendants herein, or any of them, issued by this Court at the time of the
28 Temporary Restraining Order and continued in effect by the Preliminary

1 Injunction issued on March 2, 2004 shall remain in full force and effect pending
2 further Order of this Court.

3 **XI.**

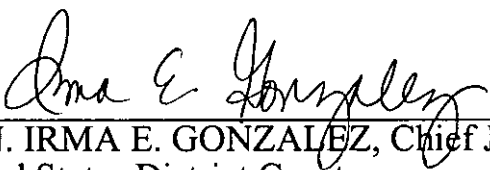
4 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this
5 Court shall retain jurisdiction over this action for all purposes, including to
6 determine the liability of any remaining defendants in this action, to implement
7 and enforce the terms of this Final Judgment and other orders and decrees which
8 may be entered, and to grant such other relief as this Court may deem necessary
9 and just.

10 **XII.**

11 There being no just reason for delay, the Clerk of the Court is hereby
12 directed, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, to enter
13 this Final Judgment.

14 IT IS SO ORDERED.

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17 DATED: 8/19/05


HON. IRMA E. GONZALEZ, Chief Judge
United States District Court
Southern District of California

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20 cc: Magistrate Judge McCurine
21 Counsel of Record
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