

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	File No.: EB-TCD-12-00000223 ¹
)	
Laser Technologies)	NAL/Acct. No.: 201132170028
dba Laser Tech,)	
and Joseph Mistretta)	FRN: 0011158425

ORDER

Adopted: March 13, 2014

Released: March 21, 2014

By the Chief, Enforcement Bureau:

1. In this Order, we adopt the attached Consent Decree entered into between the Enforcement Bureau (Bureau) of the Federal Communications Commission (Commission) and Laser Technologies dba Laser Tech (Laser Technologies), and Joseph Mistretta. The Consent Decree resolves and terminates the Bureau’s investigation regarding Laser Technologies’ compliance with Section 227(b)(1)(C) of the Communications Act of 1934, as amended² (Act), and Section 64.1200(a)(4)³ of the Commission’s rules pertaining to delivery of unsolicited advertisements to the telephone facsimile machines of consumers.

2. The Bureau and Laser Technologies have negotiated the Consent Decree that resolves this matter. A copy of the Consent Decree is attached hereto and incorporated by reference.

3. After reviewing the terms of the Consent Decree and evaluating the facts before us, we find that the public interest will be served by adopting the Consent Decree and terminating the investigation.

4. Accordingly, **IT IS ORDERED** that, pursuant to Sections 4(i) and 503(b) of the Act,⁴ and Sections 0.111 and 0.311 of the Commission’s rules,⁵ the Consent Decree attached to this Order **IS ADOPTED**.

5. **IT IS FURTHER ORDERED** that the above-captioned investigation **IS TERMINATED**.

¹ This case was formerly assigned the file number EB-06-TC-2630. In January 2012, it was reassigned the above-captioned number. Any future correspondence with the Commission concerning this matter should reference the new case number.

² 47 U.S.C. § 227(b)(1)(C).

³ 47 C.F.R. § 64.1200(a)(4).

⁴ 47 U.S.C. §§ 154(i), 503(b).

⁵ 47 C.F.R. §§ 0.111, 0.311.

6. **IT IS FURTHER ORDERED** that a copy of this Order and Consent Decree shall be sent by first class mail and certified mail to Laser Technologies dba Laser Tech, Attention: Joseph Mistretta, 11693 San Vicente Boulevard, Suite 388, Los Angeles, CA 90049, and to Edward Maldonado, Maldonado Law Group, 800 Douglas Road, Suite 149, Coral Gables FL 33134.

FEDERAL COMMUNICATIONS COMMISSION

P. Michele Ellison
Chief, Enforcement Bureau

**Before the
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and Joseph Mistretta)	
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CONSENT DECREE

I. INTRODUCTION

1. The Enforcement Bureau of the Federal Communications Commission, Laser Technologies dba Laser Tech, and Joseph Mistretta hereby enter into this Consent Decree for the purpose of terminating the Enforcement Bureau's investigation into whether Laser Technologies dba Laser Tech and Joseph Mistretta violated Section 227(b)(1)(C) of the Communications Act of 1934, as amended,² and Section 64.1200(a)(4) of the Commission's rules³ with respect to delivery of unsolicited advertisements to the telephone facsimile machines of consumers.

II. DEFINITIONS

2. For the purposes of this Consent Decree, the following definitions shall apply:
- (a) "Act" means the Communications Act of 1934, as amended, 47 U.S.C. § 151 *et seq.*
 - (b) "Adopting Order" means an order of the Bureau adopting the terms of this Consent Decree without change, addition, deletion, or modification.
 - (c) "Advertisement" shall have the meaning set forth in 47 C.F.R. § 64.1200(f)(1).
 - (d) "Bureau" means the Enforcement Bureau of the Federal Communications Commission.
 - (e) "Commission" and "FCC" mean the Federal Communications Commission and all of its bureaus and offices.
 - (f) "Communications Laws" means collectively, the Act, the Rules, and the published and promulgated orders and decisions of the Commission to which Laser Technologies and Joseph Mistretta are subject by virtue of their business activities, including but not limited to the Unsolicited Facsimile Rules.

¹ This case was formerly assigned the file number EB-06-TC-2630. In January 2012, it was reassigned the above-captioned number. Any future correspondence with the Commission concerning this matter should reference the new case number.

² 47 U.S.C. § 227(b)(1)(C).

³ 47 C.F.R. § 64.1120(a)(4).

- (g) “Complaint” means any complaint that Joseph Mistretta, or any business he controls, receives directly or from a third party, a federal or state regulatory agency (including the FCC) or any other Person, relating to his or its facsimile marketing activities.
- (h) “Compliance Plan” means the compliance obligations, program, and procedures described in this Consent Decree at paragraph 10.
- (i) “Contractor” means any Person whom Joseph Mistretta, or any business he controls, engages, whether as an independent contractor, vendor, service provider, or otherwise, that uses any telephone facsimile machine, computer, or other device, to transmit or send any Advertisement to a telephone facsimile machine to the benefit of or on behalf of Joseph Mistretta or any business he controls.
- (j) “Covered Employees” means all employees, Contractors, and agents of Joseph Mistretta, or of any business he controls, who perform duties, or who supervise, oversee, or manage the performance of duties that relate to Joseph Mistretta’s responsibilities or any business he controls under this Consent Decree and the Unsolicited Facsimile Rules.
- (k) “Effective Date” means the date on which the Bureau releases the Adopting Order.
- (l) “Established Business Relationship” and “EBR” shall have the meaning set forth in 47 C.F.R. § 64.1200(f)(6).
- (m) “Investigation” means the investigation commenced by the Bureau regarding whether Laser Technologies or Joseph Mistretta violated 47 U.S.C. § 227 and 47 C.F.R. § 64.1200(a)(4).
- (n) “Laser Technologies” means the sole proprietorship of Joseph Mistretta known as Laser Technologies or Laser Tech, and its predecessors-in-interest and successors-in-interest.
- (o) “Operating Procedures” means the standard, internal operating procedures and compliance policies established by Joseph Mistretta, or any business he controls, to implement the Compliance Plan.
- (p) “Parties” means Laser Technologies, Joseph Mistretta, and the Bureau, each of which is a “Party.”
- (q) “Person” shall have the meaning set forth in 47 U.S.C. § 153(39).
- (r) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.
- (s) “United States” shall have the meaning set forth in 47 U.S.C. § 153(58).
- (t) “Unsolicited Advertisement” shall have the meaning set forth in 47 U.S.C. § 227(a)(5).
- (u) “Unsolicited Facsimile Rules” means Section 227 of the Act, 47 U.S.C. § 227, Section 64.1200 of the Rules, 47 C.F.R. § 64.1200, and other Communications Laws governing Unsolicited Advertisements.

III. BACKGROUND

3. Congress enacted the Telephone Consumer Protection Act of 1991 to address problems of abusive telemarketing, including junk faxes.⁴ Unsolicited faxes often impose unwanted burdens on the recipient, including costs of paper and ink, and make fax machines unavailable for legitimate business messages. Section 227(b)(1)(C) of the Act thus makes it “unlawful for any person within the United States, or any person outside the United States if the recipient is within the United States . . . to use any telephone facsimile machine, computer, or other device to send, to a telephone facsimile machine, an unsolicited advertisement.”⁵

4. On December 28, 2006, in response to a consumer complaint alleging that Laser Technologies had faxed Unsolicited Advertisements, the Bureau issued a citation to Laser Technologies for using a telephone facsimile machine, computer, or other device to send Unsolicited Advertisements to telephone facsimile machines.⁶ On July 18, 2011, based on additional complaints, the Commission released a Notice of Apparent Liability for forfeiture (NAL) against Laser Technologies, finding that it apparently willfully and repeatedly violated Section 227 of the Act and Section 64.1200(a)(4) of the Rules, and proposing a forfeiture of \$252,000.⁷ On August 16, 2011, Laser Technologies filed a response requesting a cancellation or reduction of the Commission’s proposed forfeiture, claiming it was unable to pay the proposed forfeiture, and that the alleged violations were committed by a fax broadcaster, Absolute Fax.⁸ On September 11, 2011, Laser Technologies filed another response with additional information to support its claimed inability to pay the proposed forfeiture.⁹ This information included the tax returns of Joseph Mistretta and identified him as the proprietor of Laser Technologies. Subsequently, counsel for Joseph Mistretta and Laser Technologies submitted supplemental financial information that included reliable and objective documentation reflecting Joseph Mistretta’s income and Laser Technologies’ current financial status.¹⁰

⁴ Telephone Consumer Protection Act of 1991, Pub. L. No. 102-243, 105 Stat. 2394 (1991) (codified at 47 U.S.C. § 227). *See also* Junk Fax Prevention Act of 2005, Pub. L. No. 109-21, 119 Stat. 359 (2005).

⁵ 47 U.S.C. § 227(b)(1)(C). The prohibition is subject to certain exceptions, such as if (1) the sender has an Established Business Relationship or EBR with the recipient and (2) the sender obtained the facsimile number to which it directed an advertisement from the recipient through voluntary communication in the context of an EBR, or from a directory, advertisement, or website through which the recipient voluntarily agreed to make its facsimile number available for public distribution. In addition, the Unsolicited Advertisement must notify the recipient how to opt out of receiving future facsimile Advertisements, subject to certain requirements. The Commission has adopted implementing rules. 47 C.F.R. § 64.1200(a)(4).

⁶ Citation from Kurt Schroeder, Deputy Chief, Telecommunications Consumers Division, Enforcement Bureau, to Laser Technologies (Dec. 28, 2006) (on file in EB-TCD-12-00000223); *see also* 47 U.S.C. § 503(b)(5).

⁷ *Laser Technologies dba Laser Tech*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 10792 (2011).

⁸ *See* Letter from Edward A. Maldonado, Esq., counsel for Laser Technologies, to Richard A. Hindman, Chief, Telecommunications Consumers Division, Federal Communications Commission (Aug. 16, 2011) (on file in EB-TCD-12-00000223).

⁹ *See* E-mail from Edward A. Maldonado, Esq., counsel for Laser Technologies, to Rosemary Cabral, Staff Attorney, Telecommunications Consumers Division, Enforcement Bureau (Sept. 11, 2011, 7:13 p.m. EDT) (on file in EB-TCD-12-00000223).

¹⁰ E-mails from Edward A. Maldonado, Esq., counsel for Laser Technologies, to Rosemary Cabral, Staff Attorney, Telecommunications Consumers Division, Enforcement Bureau, dated Oct. 3, 2011, Oct. 11, 2011, Oct. 27, 2011, Oct. 31, 2011, and Jan. 6, 2012 (on file in EB-TCD-12-00000223).

IV. TERMS OF AGREEMENT

5. **Adopting Order.** The Parties agree that the provisions of this Consent Decree shall be subject to final approval by the Bureau by incorporation of such provisions by reference in the Adopting Order.

6. **Jurisdiction.** Joseph Mistretta and Laser Technologies agree that the Bureau has jurisdiction over him and Laser Technologies and the matters contained in this Consent Decree and that the Bureau has the authority to enter into and adopt this Consent Decree.

7. **Effective Date; Violations.** The Parties agree that this Consent Decree shall become effective on the Effective Date as defined herein. As of Effective Date, the Adopting Order and this Consent Decree shall have the same force and effect as any other order of the Commission. Any violation of the Adopting Order or of the terms of this Consent Decree shall constitute a separate violation of a Commission order, entitling the Commission to exercise any rights and remedies attendant to the enforcement of a Commission order.

8. **Termination of Investigation.** In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Bureau agrees to terminate the Investigation. In consideration for terminating the Investigation, Joseph Mistretta and Laser Technologies agree to the terms, conditions, and procedures contained herein. The Bureau further agrees that in the absence of new material evidence, the Bureau will not use the facts developed in this Investigation through the Effective Date, or the existence of this Consent Decree, to institute on its own motion any new proceeding, formal or informal, or take any action on its own motion against Joseph Mistretta and Laser Technologies concerning the matters that were the subject of the Investigation.

9. **Compliance Officer.** Joseph Mistretta represents that Laser Technologies is his own sole proprietorship and that he exercises control over its daily operations and is personally responsible for compliance with the Communications Laws and this Consent Decree, including the discharge of the duties set forth below. Joseph Mistretta shall be responsible for developing, implementing, and administering the Compliance Plan and ensuring that he, and any business that he controls, complies with the terms and conditions of the Compliance Plan and this Consent Decree. In addition to the general knowledge of the Communications Laws necessary to discharge his duties under this Consent Decree, Joseph Mistretta shall have, or acquire, specific knowledge of the Unsolicited Facsimile Rules.

10. **Compliance Plan.** For purposes of settling the matters set forth herein, Joseph Mistretta represents that, prior to the Effective Date, he, and any business he controls, have ceased sending, or causing to be sent, all Advertisements by facsimile to Persons located in the United States, and have advised all Covered Employees of the provisions of this Consent Decree. Further, Joseph Mistretta agrees that, after the Effective Date, neither he nor any business he controls, shall send, or cause to be sent, any Advertisements by facsimile in the United States except under the following conditions:

- (a) **Implementation.** Not less than ninety (90) calendar days before Joseph Mistretta, or any business he controls, sends, or causes to be sent, any Advertisement by facsimile (including Unsolicited Advertisements), Joseph Mistretta shall (i) develop and implement a Compliance Plan designed to ensure future compliance with the Communications Laws and with the terms and conditions of this Consent Decree, and (ii) notify the Commission that such Compliance Plan has been implemented. The notification shall be sent to Rosemary.Cabral@fcc.gov and to Phillip.Priesman@fcc.gov. The Compliance Plan shall include, without limitation, the components set forth in subparagraphs 10(b)-(i).
- (b) **Operating Procedures on Unsolicited Advertisements.** Joseph Mistretta shall establish Operating Procedures that he and all other Covered Employees shall follow to ensure compliance with the Unsolicited Facsimile Rules and the Communications Laws. These Operating Procedures shall include, without limitation:

- (i) A “Compliance Checklist” that describes the steps that Joseph Mistretta and all other Covered Employees must follow to ensure compliance with this Consent Decree, the Unsolicited Facsimile Rules, and the appropriate reporting of noncompliance pursuant to paragraph 12;
 - (ii) Procedures for keeping, managing, and updating the “EBR List,” “No-Fax List,” and any “Fax Lists,” as those terms are used below;
 - (iii) Procedures for promptly investigating and resolving Complaints; and
 - (iv) A requirement that the Joseph Mistretta monitor all facsimile marketing activities of any business he controls for compliance and reporting noncompliance purposes.
- (c) **EBR List**. Joseph Mistretta shall create an “EBR List” that includes (i) the name of each Person with whom he, or any business he controls, has an EBR and whose facsimile number he, or any business he controls, has obtained consistent with the Unsolicited Facsimile Rules; and (ii) the facsimile number for each such Person. Joseph Mistretta shall update and maintain the EBR List periodically and otherwise as needed to ensure that at all times it is accurate, current, and consistent with the Unsolicited Facsimile Rules.
- (d) **No-Fax List**. Joseph Mistretta shall create a “No-Fax List” containing (i) the name of each Person who has requested that he, or any business he controls, not send any additional Advertisements; and (ii) the facsimile number for each such Person. Joseph Mistretta shall update and maintain the No-Fax List periodically and otherwise as needed to ensure that at all times it is accurate, current, and consistent with the Unsolicited Facsimile Rules. Neither Joseph Mistretta nor any business he controls, shall send, or cause to be sent, any Advertisement to the facsimile number of any Person on the No-Fax List.
- (e) **Fax List**. Joseph Mistretta shall create a “Fax List.” The Fax List shall contain the names of (i) Persons who have given Joseph Mistretta, or any business he controls, prior express invitation or permission to send them Advertisements; (ii) Persons on the EBR List; and (iii) the facsimile number for each such Person. Joseph Mistretta shall ensure that no Person on the No-Fax List appears on the Fax List. Furthermore, neither Joseph Mistretta nor any business he controls, shall send, or cause to be sent, any Advertisement to the facsimile machine of any Person or to any facsimile number that is not identified on the Fax List.
- (f) **Compliance Manual**. Joseph Mistretta shall develop and distribute a Compliance Manual to all Covered Employees. The Compliance Manual shall explain the Unsolicited Facsimile Rules and set forth the Operating Procedures that all Covered Employees must follow to help ensure compliance with this Consent Decree and with the Unsolicited Facsimile Rules. The Compliance Manual shall memorialize, without limitation, the Operating Procedures listed in subparagraph (b) above. Joseph Mistretta shall periodically review and revise the Compliance Manual as necessary to ensure that the information set forth therein remains current and complete. Joseph Mistretta shall distribute any revisions to the Compliance Manual promptly to all Covered Employees.
- (g) **Contractor Agreements**. Joseph Mistretta, and any business he controls, shall include in every contract with every Contractor entered into after the Effective Date a binding obligation on the part of such Covered Employee to:
- (i) Comply with the Unsolicited Facsimile Rules;

- (ii) Comply with the Operating Procedures and all supplemental instructions from Joseph Mistretta and any business he controls;
 - (iii) Transmit to Joseph Mistretta, on a daily basis, reports that identify and provide data for each Complaint or “Do-Not-Fax” request relating to unsolicited facsimiles; and
 - (iv) Permit Joseph Mistretta, and any business he controls, to take appropriate action, including immediately terminating the agreement, if the Contractor fails to follow the Operating Procedures or to comply with its legal obligations under this Consent Decree or with the Unsolicited Facsimile Rules.
- (h) **Disciplinary Action.** Joseph Mistretta shall take appropriate disciplinary action if he discovers that any Covered Employee has failed to follow the Operating Procedures or to comply with the legal obligations of Joseph Mistretta, or any business he controls, under this Consent Decree or with the Unsolicited Facsimile Rules.
- (i) **Compliance with Bureau Requests.** Joseph Mistretta shall maintain and make available to the Bureau, within fourteen (14) days of receipt of any specific request from the Bureau, business records documenting compliance with the terms and provisions of this Consent Decree.

11. **Compliance Reports.** Joseph Mistretta shall submit Compliance Reports to the Bureau for three (3) years after the Effective Date. Such reports shall be due every three (3) months for the first two years after the Effective Date, and every six (6) months during the third year after the Effective Date. Such reports shall be due on the first day of each reporting period.

- (a) Each Compliance Report shall include a certification by Joseph Mistretta stating whether, he, or any business he controls, has sent, or caused to be sent, Advertisements by facsimile during the reporting period. If Joseph Mistretta, or any business he controls, has sent, or caused to be sent, any Advertisement by facsimile during the reporting period, the certification shall also state that Joseph Mistretta, in his personal capacity and on behalf of any business he controls, has (i) implemented the Compliance Plan and so notified the Commission as required by paragraph 10; (ii) has utilized the Operating Procedures since implementing the Compliance Plan; and (iii) is not aware of any instances of noncompliance with the terms and conditions of this Consent Decree, including the reporting obligations set forth in paragraph 12 hereof.
- (b) Each Compliance Report shall also include the number of telephone line accounts billed to Joseph Mistretta and any business he controls, including the contact numbers, billing contact, and billing addresses for each telephone line identified as belonging to Mr. Mistretta or any business he controls.
- (c) Joseph Mistretta’s certification shall be accompanied by a statement explaining the basis for such certification and must be in the form set forth in Section 1.16 of the Rules¹¹ and be subscribed to as true under penalty of perjury substantially in the form set forth therein.
- (d) If Joseph Mistretta cannot provide the requisite certification, he shall provide the Commission with a detailed explanation of the reason(s) why and describe fully (i) each instance of noncompliance; (ii) the steps that he has taken or will take to remedy such noncompliance, including the schedule on which proposed remedial actions will

¹¹ 47 C.F.R. § 1.16.

be taken; and (iii) the steps that he has taken or will take to prevent the recurrence of any such noncompliance, including the schedule on which such preventive action will be taken.

- (e) All Compliance Reports shall be submitted to the Chief, Telecommunications Consumers Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554. Joseph Mistretta shall also send an electronic copy of his Compliance Report and certification to Rosemary.Cabral@fcc.gov, and to Phillip.Priesman@fcc.gov.

12. **Reporting Noncompliance.** Joseph Mistretta, and any business he controls, shall disclose any failure to comply with the Unsolicited Facsimile Rules and the terms and conditions of this Consent Decree within fifteen (15) days after discovery of such failure to comply. Such reports shall include a detailed explanation of (i) each instance of noncompliance; (ii) the steps that Joseph Mistretta, and any business he controls, have taken or will take to remedy such noncompliance; (iii) the schedule on which such proposed remedial actions will be taken; and (iv) the steps that Joseph Mistretta, and any business he controls, have taken or will take to prevent the recurrence of any such noncompliance. All reports of noncompliance shall be submitted to the Chief, Telecommunications Consumers Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Rm. 4C-224, Washington, D.C. 20554, with copies submitted electronically to Rosemary.Cabral@fcc.gov, and to Phillip.Priesman@fcc.gov.

13. **Termination Date.** Unless stated otherwise, the obligations set forth in paragraphs 10 through 12 of this Consent Decree shall expire thirty-six (36) months after the Effective Date.

14. **Voluntary Contribution.** Joseph Mistretta agrees to make a voluntary contribution to the United States Treasury in the amount of twenty thousand dollars (\$20,000) (Voluntary Contribution), and such Voluntary Contribution shall be made in installments (each an Installment Payment). The first Installment Payment in the amount of seven thousand dollars (\$7,000) shall be made within thirty (30) days after the Effective Date. Thereafter, subsequent Installment Payments of four thousand three hundred and thirty-three dollars and thirty-three cents (\$4,333.33) each will be due no later than the first day of the month on the sixth (6th) month, twelfth (12th) month, and eighteenth (18th) month after the Effective Date. If such date is a non-business day, payment must be received by the prior business day. Joseph Mistretta acknowledges and agrees that upon executing this Consent Decree, the Voluntary Contribution and each Installment Payment shall become a "Claim" or "Debt" as defined in 31 U.S.C. § 3701(b)(1).¹² Upon an Event of Default by Nonpayment, as described below in paragraph 15, all procedures for collection permitted by law may, at the Commission's discretion, be initiated. In addition, Joseph Mistretta agrees that he will make the first and subsequent installment payments in United States dollars without further demand or notice, and the same must be received as set forth below by the dates specified above. Joseph Mistretta shall also send electronic notification of payment to Johnny Drake at Johnny.Drake@fcc.gov and Rosemary Cabral at Rosemary.Cabral@fcc.gov, with a copy to Phillip.Priesman@fcc.gov, on the date said payment is made. The payment must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account Number and FRN referenced above. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.¹³ When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters "FORF" in block number 24A (payment type code). Below are additional instructions Joseph Mistretta should follow based on the form of payment he selects:

- Payment by check or money order must be made payable to the order of the Federal

¹² Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321, 1358 (Apr. 26, 1996).

¹³ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

If Joseph Mistretta has questions regarding payment procedures, he should contact the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

15. **Event of Default by Nonpayment**. Joseph Mistretta agrees that an Event of Default by Nonpayment shall occur upon the failure by Joseph Mistretta to pay the full amount of the Voluntary Contribution or any Installment Payment on or before the due date specified in this Consent Decree. Joseph Mistretta further agrees to toll and/or revive any applicable statutes of limitations for any and all possible violations that form the basis of the Investigation such that, upon an Event of Default by Nonpayment, the statutes of limitations shall expire six (6) months after the date of default by nonpayment. Further, upon an Event of Default for Nonpayment, the provisions of paragraph 8 shall be null and void.

16. **Interest and Charges for Collection**. Upon an Event of Default by Nonpayment under this Consent Decree, the then unpaid amount of the Voluntary Contribution shall accrue interest, computed using the U.S. Prime Rate in effect on the date of the Event of Default by Nonpayment plus 4.75%, from the date of the Event of Default by Nonpayment until payment in full. Upon an Event of Default by Nonpayment, the then unpaid amount of the Voluntary Contribution together with any accrued but unpaid interest is accelerated and shall become immediately due and payable, plus interest, as aforesaid, and any additional penalties permitted and/or required by the law, including but not limited to 31 U.S.C. § 3717, and administrative charge(s), plus the costs of collection, litigation, and attorneys' fees are due, without notice, presentment, demand, protest, or notice of protest of any kind, all of which are waived by Joseph Mistretta.

17. **Representations**. Joseph Mistretta represents that neither he nor any business he controls is engaged in any activity that is subject to oversight by the Commission, including activities involving faxing Advertisements. Joseph Mistretta acknowledges that sending Advertisements by facsimile is unlawful, unless the sender has an EBR with the recipient and obtained the facsimile number to which an Advertisement is sent from the recipient through voluntary communication in the context of an EBR, or from a directory, advertisement, or website through which the recipient voluntarily agreed to make its facsimile number available for public distribution; and, the facsimile Advertisement notifies the recipient in accordance with the Unsolicited Facsimile Rules of how to opt out of receiving future such Advertisements. Joseph Mistretta hereby waives any right he, or any business he controls, has to send Advertisements by facsimile unless he, and any business he controls, first satisfy the requirements of the Unsolicited Facsimile Rules and this Consent Decree, including the adoption of the Compliance Plan.

18. **Waivers**. Joseph Mistretta waives any and all rights he, or any business he controls, may have to seek administrative or judicial reconsideration, review, appeal, or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Adopting Order, provided the Bureau issues an Adopting Order as defined herein. If either Party (or the United States on behalf of the Commission)

brings a judicial action to enforce the terms of the Adopting Order or Consent Decree, neither Joseph Mistretta, nor any business he controls, nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and Joseph Mistretta and any business he controls, shall waive any statutory right to a trial *de novo*. Joseph Mistretta, and any business he controls, hereby waive any claims they may otherwise have under the Equal Access to Justice Act, 5 U.S.C. § 504 and 47 C.F.R. § 1.1501 *et seq.*, relating to the matters addressed in this Consent Decree.

19. **Severability**. The Parties agree that if a court of competent jurisdiction renders any of the provisions of the Adopting Order or the Consent Decree invalid or unenforceable, such invalidity or unenforceability shall not invalidate or render unenforceable the entire Adopting Order or Consent Decree, but rather the entire Adopting Order or Consent Decree shall be construed as if not containing the particular invalid or unenforceable provision or provisions, and the rights and obligations of the Parties shall be construed and enforced accordingly.

20. **Invalidity**. In the event that this Consent Decree in its entirety is rendered invalid by any court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.

21. **Subsequent Rule or Order**. The Parties agree that if any provision of this Consent Decree conflicts with any subsequent Rule or order adopted by the Commission (except an order specifically intended to revise the terms of this Consent Decree to which Joseph Mistretta does not expressly consent), that provision shall be superseded by such Commission Rule or order.

22. **Successors and Assigns**. Joseph Mistretta agrees that the provisions of this Consent Decree shall be binding on him and any business he controls, and its successors, assigns, and transferees.

23. **Final Settlement**. The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties. The Parties further agree that this Consent Decree does not constitute either an adjudication on the merits or a factual or legal finding or determination regarding any compliance or noncompliance with the Communications Laws.

24. **Modifications**. This Consent Decree cannot be modified or amended without the advance written consent of both Parties.

25. **Paragraph Headings**. The headings of the paragraphs in this Consent Decree are inserted for convenience only and are not intended to affect the meaning or interpretation of this Consent Decree.

26. **Authorized Representative**. Joseph Mistretta represents and agrees that he is signing this Consent Decree in his personal capacity and on behalf of Laser Technologies and represents and warrants that he is authorized by Laser Technologies to execute this Consent Decree and to bind Laser Technologies to the obligations this Consent Decree imposes in it. The FCC signatory represents that she is signing this Consent Decree in her official capacity and that she is authorized to execute this Consent Decree.

27. **Counterparts.** This Consent Decree may be signed in any number of counterparts (including by facsimile), each of which, when executed and delivered, shall be an original, and all of which counterparts together shall constitute one and the same fully executed instrument.

P. Michele Ellison
Chief
Enforcement Bureau

Date

Joseph Mistretta
Owner
Laser Technologies

Date