

NATIONAL SCIENCE FOUNDATION
OFFICE OF INSPECTOR GENERAL
OFFICE OF INVESTIGATIONS

ACTION MEMORANDUM

TO: AIGI

File Number: I-95110043

Date: 12/19/01

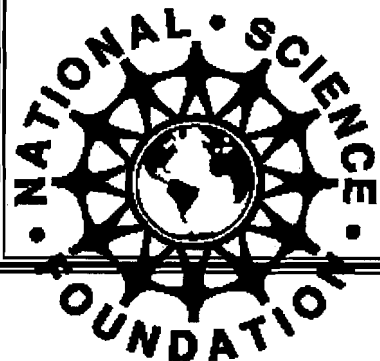
SUBJECT: Dr. Richard Schlecht &
LaserGenics Corporation

Action:

-C-

1. This case was opened in November 1995, when investigators conducting a review of SBIR proposals and awards noticed similar or identical submissions by LaserGenics Corporation to different federal agencies.
2. NSF-OIG initiated an investigation, which concluded in May 1996, and found that identical research results in the final reports were submitted to both NASA and NSF. LaserGenics was responsible for submitting three false claims: one false claim for each 1/3 payment made by NSF for the SBIR Phase I grant. These false claims allowed LaserGenics to receive a duplicate grant from NSF in the amount of \$49,618.00 (NSF Grant #8961005). Additionally, LaserGenics made twelve false statements to DOD, NASA, DOE and NSF.
3. The case was referred to the AUSA's Office in San Francisco, and has been settled. The Defendants agreed to pay the United States the sum of \$25,000.00, and agreed to the terms and conditions outlined in the attached settlement agreement. This case is closed.

Name:	Prepared by:	Cleared by:		
	Agent: KLM	Attorney: MKF	Supervisor:	AIGI
Signature & date:				



United States Attorney's Office Northern District Of California

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U.S. Department of Justice

*United States Attorney
Northern District of California*

Tel: (415) 436-7200
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FOR IMMEDIATE RELEASE

February 22, 2002

The United States Attorney's Office for the Northern District of California announced that Richard G. Schlecht and his privately owned corporation, LaserGenics Corporation, have agreed to pay to the United States \$25,000 to settle a lawsuit which alleged they knowingly made false statements and certifications to various federal governmental agencies in an attempt to receive duplicate research grants under the Small Business Innovation Research Program, in violation of the False Claims Act.

This settlement resolves a lawsuit, *United States v. LaserGenics Corporation and Richard G. Schlecht*, Case No. C-97-20900-JF, filed against Schlecht and LaserGenics under the False Claims Act, 31 U.S.C. 3729-33. The underlying lawsuit alleged that the defendants who were engaged in the business of conducting laser research utilizing different scientific methods of fiber growth, submitted substantially similar or essentially equivalent grant proposals to the National Science Foundation and NASA, and obtained funding from each agency to conduct the same research; at the conclusion of the research, the defendants submitted virtually identical final reports in order to receive final grant payments. The lawsuit further alleged that the defendants also submitted to several government agencies at least twelve other grant proposals on five different research projects that were substantially similar or essentially equivalent to previously submitted proposals that were either pending with or funded by other agencies, including the National Science Foundation, NASA, the Department of Energy, the Strategic Defense Initiative Organization, the Department of Defense, the United States Air Force, the United

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States Army, and the Advanced Research Projects Agency. The lawsuit also alleged that in their grant proposals, the defendants failed to reveal and/or affirmatively denied the existence of the substantial similar or essentially equivalent grants already funded by or pending with the other agencies.

In addition to the \$25,000 payment, the Settlement Agreement filed in district court also provided that in all proposals for Federal grants and contracts, the defendants shall fully and truthfully provide information to the funding agency about similar or overlapping proposals submitted and awards received, and shall ensure that they do not receive funds for essentially equivalent or substantially similar work.

The case was handled by Assistant United States Attorney Emily J. Kingston at the U.S. Attorney's Office; Montgomery Fisher, Senior Counsel for the Office of the Inspector General for the National Science Foundation; and Paul Coleman and Dixon Robin, Investigators for the Office of Inspector General for the National Science Foundation.

Copies of this press release, the settlement agreement, and the Complaint in the case may be found on the U.S. Attorney's Office's website at www.usdoj.gov/usao/can.

All press inquiries to the U.S. Attorney's Office should be directed to Assistant U.S. Attorney Matthew J. Jacobs at (415) 436-7181.

A handwritten signature in black ink, appearing to read "Matthew J. Jacobs", is located in the lower right portion of the document.

DAVID L. SHAW (415) 436-7000

United States Attorney

Chief, Civil Division

Assistant United States Attorney

450 Golden Gate Avenue, Box 36055
San Francisco, California 94102
Telephone: (415) 436-7000

Attorneys for Plaintiff
UNITED STATES OF AMERICA

LAW OFFICES

One Almaden Boulevard, Suite 800
San Jose, California 95113
Telephone: (408) 298-7482

Attorneys for the Defendants LaserGenics
Corporation and Richard G. Schlecht

RECEIVED

UNITED STATES DISTRICT COURT

FEB 14 2002 NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE

UNITED STATES OF AMERICA,

Plaintiff,

v.

LASERGENICS CORPORATION and
RICHARD G. SCHLECHT,

Defendants.

Case No. C-97-20900-JF

**STIPULATION TO DISMISS
ACTION WITH PREJUDICE
AND [PROPOSED] ORDER**

Pursuant to the Settlement Agreement entered into by the plaintiff, the United States of America, and the defendants, LaserGenics Corporation and Richard G. Schlecht, on December 14, 2001, a copy of which is attached hereto as Exhibit A, as evidenced by the signatures of the parties' respective counsel set forth below, and in accordance with Federal Rule of Civil Procedure 41(a),

Parties' Stipulation to Dismiss Action with Prejudice
and [Proposed] Order
C-97-20900-JF

1 IT IS HEREBY STIPULATED AND AGREED, that the above-captioned matter, may and
2 should be dismissed with prejudice, with each party to bear its own costs and attorneys' fees.

3 IT IS SO STIPULATED.

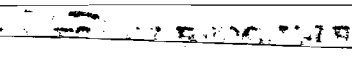
4 Respectfully submitted,

5 
United States Attorney

6
7 Dated: 2/13/02

8 By: 
Assistant United States Attorney

9 Attorneys for the United States of America

10 LAW OFFICE OF 

11 Dated: 2/11/02

12 By: 
13 Attorney for the Defendants

14 **ORDER**

15 Pursuant to the Settlement Agreement entered into by the parties to this action, and the
16 Stipulation to Dismiss this Action,

17 IT IS HEREBY ORDERED that this action is dismissed with prejudice, with each side to
18 bear its own costs and attorneys' fees. The Clerk is ordered to close the file.

19 IT IS SO ORDERED.

20
21 Dated: _____

22 
United States District Judge

23
24
25
26
27 Parties' Stipulation to Dismiss Action with Prejudice
and [Proposed] Order

EXHIBIT A

SETTLEMENT AGREEMENT

I. PARTIES

This Settlement Agreement (Agreement) is entered into this 14th day of December, 2001 (the effective date of the Agreement), by and between the United States of America, acting through the United States Department of Justice and on behalf of the National Science Foundation (NSF) (collectively the "United States"), and Richard G. Schlecht (Schlecht) and LaserGenics Corporation (LaserGenics) (collectively the "Defendants"), (all of whom are hereafter referred to as "the Parties"), through their authorized representatives.

II. PREAMBLE

As a preamble to this Agreement, the Parties agree to the following:

A. Eleven federal agencies offer the Small Business Innovation Research ("SBIR") program, which funds research grants to the private sector.

B. Under the SBIR program, applicants are informed that agencies will not fund duplicate proposals for essentially equivalent or substantially similar work. Although applicants are allowed to submit duplicate proposals to different agencies, they are required to advise prospective agencies of any current, pending, or funded research projects that propose substantially similar or essentially equivalent research to that in the proposal being submitted.

C. LaserGenics is a privately owned corporation created in 1985 by its president, Schlecht. Since 1988, the Defendants presented more than one hundred proposals for SBIR funding to ten different federal agencies, and received more than \$1,700,000.00 in SBIR funds from twenty-one different awards.

D. On October 10, 1997, the United States filed *United States v. LaserGenics Corporation and Richard G. Schlecht*, Case No. C-97-20900-JF, in the United States District Court for the Northern District of California, San Jose Division (hereinafter "the Civil Action"). This case involves proposals funded or submitted by the Defendants for Phase I projects to seven government agencies or their subdivisions, including the National Science Foundation ("NSF"), the National Aeronautics and Space Administration ("NASA"), the Department of Energy ("DOE"), the Strategic Defense Initiative Organization ("SDIO") (a component of the Department of Defense ("DOD")), the United States Air Force ("USAF") (a component of DOD), the Army (a component of DOD), and the Advanced Research Projects Agency ("ARPA") (also sometimes referred to as the Defense Advanced Research Projects Agency ("DARPA")) (a component of DOD).

E. The United States contends that the Defendants knowingly made numerous false statements and certifications in an attempt to receive multiple SBIR awards, which duplicated projects either previously funded by, or proposed to, other government agencies. Specifically, the United States alleges that the Defendants received a duplicate grant from NSF in the amount of \$49,618.00 (NSF Grant # 8961005) (the "NSF grant"), after the same proposal had already been funded by NASA (NASA Contract # 3-25568) (the "NASA contract"), and made three false statements or certifications relative to the receipt of the three SBIR Phase I payments for the NSF grant. In addition, the United States contends

that the Defendants made twelve false statements or certifications in attempting to obtain funding for duplicative projects in the following proposals: Army ## 91-171 and 92-133; ARPA # 93-046; DOE ## 8591-89-I and 10928-90-I; NASA # 3-25568; NSF ## 89-60125, 89-61005, and 91-61287; SDIO ## 91-015 and 92-003; and USAF # 95-026.

F. The United States contends that the grant proposals submitted by the Defendants, referenced in Paragraph E, above, were substantially similar or essentially equivalent to other proposals pending with or funded by other government agencies. The Defendants routinely certified on the cover pages of the proposals that they had no essentially equivalent proposals submitted, pending with, or funded by other government agencies, and further the Defendants did not reveal the existence of such other proposals in the prior, current or pending support sections of their grant proposals.

G. The United States contends that it has certain civil claims against the Defendants under the False Claims Act, 31 U.S.C. §§ 3729-3733, for their submission of the essentially equivalent or substantially similar grant proposals referenced in Paragraph E, above, to the federal agencies through the SBIR program, and soliciting and receiving payments on the NSF grant after the NASA grant had already been awarded, which conduct is more specifically and fully described in the complaint filed in the Civil Action and is hereinafter referred to as the "Covered Conduct," and that it is entitled to relief therefor.

H. The United States also contends that it has certain administrative claims against the Defendants for engaging in the Covered Conduct, as specified in Paragraph G, above.

I. The Defendants, and each of them, deny the United States' contentions and allegations

and assert that the claims made in the Civil Action were without merit.

J. The Parties hereto stipulate and agree that this Agreement, or any subsection therein, constitutes neither an admission of liability by the Defendants, nor a concession by the United States that its claims were not well-founded.

K. To avoid the delay, uncertainty, inconvenience, and expense of litigation of the above-claims, the Parties reach a full and final settlement pursuant to the Terms and Conditions set forth below.

III. TERMS AND CONDITIONS

1. **Payments:** The Defendants agree to pay to the United States the sum of Twenty-Five Thousand Dollars and No Cents (\$25,000.00) (the "Settlement Amount"). Payment of the Settlement Amount has been and shall be made as follows:

a. On or about December 7, 2000, the Defendants forwarded to the United States of America, through the United States Attorney's Office for the Northern District of California, a check in the amount of Fifteen Thousand Dollars and No Cents (\$15,000.00), as a show of good faith in anticipation of the execution of this Agreement. The United States has retained this check in a safe within the United States Attorney's Office since its receipt. Upon the execution of this Agreement, the United States shall negotiate the check and apply the funds in accordance with this Agreement. If the check is not honored for whatever reason by the drawer financial institution reflected on the check upon the United States' negotiation of the check, the Defendants shall be in default of this Agreement.

b. On or before sixty (60) days from the date of the last signature of this Agreement, the Defendants shall pay to the United States of America, through the United States Attorney's Office for the Northern District of California, the sum of Ten Thousand Dollars and No Cents (\$10,000.00). Failure to deliver full payment of the Ten Thousand Dollars and No Cents (\$10,000.00) on or before sixty (60) days from the date of the last signature of this Agreement, shall constitute a default of this Agreement.

2. Compliance: In all proposals for Federal grants and contracts, the Defendants shall fully and truthfully provide information to the funding agency about similar or overlapping proposals submitted and awards received, and shall ensure that the Defendants do not receive funding for essentially equivalent or substantially similar work.

3. Releases:

a. Defendants fully and finally release the United States, its agencies, employees, servants, and agents from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) which the Defendants have asserted, could have asserted, or may assert in the future against the United States, its agencies, employees, servants, and agents, related to the Covered Conduct and the United States' investigation and prosecution thereof.

b. Subject to the exceptions in Paragraph 4 below, in consideration of the obligations of the Defendants set forth in this Agreement, conditioned upon the Defendants' full payment of the Settlement Amount, the United States (on behalf of itself, its officers, agents, agencies, and departments) agrees to release the Defendants and their current and former directors, officers,

shareholders, employees, agents, successors and assigns (collectively the "Released Parties") from any civil monetary claim or administrative action the United States has or may have under the False Claims Act, 31 U.S.C. §§ 3729-3733; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; or under common law theories of payment by mistake, unjust enrichment, breach of contract, and fraud, for the Covered Conduct.

c. In consideration of the obligations of the Defendants set forth in this Agreement, and conditioned upon the Defendants' payment in full of the Settlement Amount and adherence to the compliance provisions described in Paragraph 2, above, NSF agrees to release and refrain from instituting, directing, or maintaining any administrative claim or any action seeking exclusion from Federal funding against the Defendants for the Covered Conduct. NSF acknowledges that the terms of this Agreement do not result in a mandatory exclusion of the released parties. Nothing in this Paragraph precludes NSF from taking action against the defendants, or other persons or entities, for conduct and practices for which civil claims have been reserved in Paragraph 4, below, or as provided in the Default provisions set forth in Paragraph 11, below.

d. The releases contained herein are subject to the qualifications set forth in Paragraph 4, below, and shall become fully operative upon the full payment as contemplated in paragraph 1.a., above. The United States agrees to file its dismissal with prejudice of the civil Action within ten (10) days from the date of full payment as contemplated in Paragraphs 1.a. and 1.b, above. Notwithstanding the dismissal of the Civil Action, the Parties stipulate and agree that

any subsequent action to enforce the provisions of this Agreement may be brought by petition before the Court in which the Civil Action was filed.

4. **Exclusions:** Notwithstanding any term of this Agreement, specifically reserved and excluded from the scope and terms of this Agreement as to any entity or person (including the Defendants) are the following claims of the United States:

a. Any civil, criminal or administrative liability to the United States arising under Title 26, U.S. Code (Internal Revenue Code);

b. Any criminal liability;

c. Except as explicitly stated in this Agreement, any administrative liability, including mandatory exclusion from Federal funding, arising from a breach and/or default of this Agreement;

d. Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;

e. Any claims of the United States based upon such obligations as are created by this Agreement;

f. Any claims of the United States for personal injury or for other consequential damages suffered by third parties arising from the Covered Conduct;

g. Any civil and administrative claims against individuals, including current or former directors, officers, employees, agents or shareholders of the Defendants in the event, and only in the event that such individuals are criminally indicted or charged, or are convicted or who

enter into a criminal plea agreement for the Covered Conduct; and

h. Any disputes or claims which may arise out of research conducted by the Defendants under any Federal funding.

5. Waiver of Defenses: In connection with the execution and performance of this Agreement, the Defendants waive and will not assert, in any criminal prosecution relating to the Covered Conduct, any defenses that may be based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the Constitution, this Settlement bars a remedy sought in such criminal prosecution. The Defendants agree that this settlement is not punitive in purpose or effect. Nothing in this paragraph or any other provision of this Agreement constitutes an agreement by the United States concerning the characterization of the Settlement Amount for purposes of the Internal Revenue Laws, Title 26 of the United States Code.

6. Beneficiaries to Agreement: This Agreement is intended to be for the express benefit of the United States and the Defendants in the Civil Action and the Released Parties, only. No third party beneficiary rights are created or intended to be created by this Agreement. The Parties do not release any claims against any other persons or entities.

7. Dismissal of Civil Action and Court's Retention of Jurisdiction: Upon receipt of the full payment described in Paragraphs 1.a. and 1.b., above, the United States shall promptly sign and file in the Civil Action a Stipulation of Dismissal with prejudice of the Civil Action pursuant to the terms of the Agreement. The Court shall retain jurisdiction over the Civil Action so that the Civil Action can be

reopened in the event of a breach and/or default of this Agreement, for the limited purpose of enforcing this Agreement or determining a breach of this Agreement.

8. Costs: Except as expressly provided to the contrary in this Agreement, each Party to this Agreement will bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

9. Governing Law and Jurisdiction: This Agreement is governed by the laws of the United States. The Parties agree that the exclusive jurisdiction and venue for any dispute arising between and among the Parties under this Agreement will be the United States District Court for the Northern District of California.

10. Breach and/or Default: In the event of breach and/or default by the Defendants, or either of them, of the terms of this Agreement, the Defendants shall be:

a. Liable to the United States for liquidated damages in the amount of Seventy-Five Thousand Dollars and No Cents (\$75,000.00) (Liquidated Damages Amount); and

b. Subject to suspension and/or debarment for three years by any SBIR agency under the agency's suspension and debarment regulations.

The Liquidated Damages Amount provided in Subparagraph (a), above, shall be in addition to the payment of the Twenty-Five Thousand Dollars and No Cents (\$25,000.00) Settlement Amount provided for in Paragraph 1, above, of this Agreement. In the event of breach and/or default, the United States may seek by petition to reopen the Civil Action in the District Court for the Northern District of California for a determination of default, to enforce the terms of this Agreement, to seek relief for the breach and/or

default of this Agreement, to collect the Liquidated Damages Amount, and to impose a suspension or debarment of the Defendants by any SBIR agency. If awarded by the Court, the Liquidated Damages Amount shall not be subject to the automatic stay provisions of the United States Bankruptcy Code, nor shall it be discharged through any bankruptcy action filed by the Defendants or either of them. Upon receipt of an Order by the Court awarding the Liquidated Damages Amount to the United States, the Liquidated Damages Amount shall be a judgment lien upon all property and rights to property of LaserGenics and/or Schlecht, and the United States may seek to satisfy the liability and/or collect on the judgment lien through the ordinary collection means available to secured creditors. Should the United States need to seek enforcement of this Agreement in District Court, the Defendants agree to pay all reasonable attorneys' fees and costs incurred by the United States in furtherance of that action in the event the United States is the prevailing party. Should the Defendants default on this Agreement, they will waive any statute of limitations, laches, estoppel or other similar defenses to any civil or administrative action relating to the matters described herein.

11. Complete Agreement: This Agreement constitutes the complete agreement between the Parties. This Agreement may not be amended except by written consent of the Parties.

12. Authorized Signatures: The individuals signing this Agreement on behalf of the Defendants represent and warrant that they are authorized by the Defendants to execute this Agreement. The United States signatories represent that they are signing this Agreement in their official capacities and that they are authorized to execute this Agreement.

13. Counterparts: This Agreement may be executed in counterparts, each of which constitutes

an original and all of which constitute one and the same agreement.

14. Binding Nature of Agreement: This Agreement is binding on the Defendants' successors, transferees, heirs and assigns.

15. Effective Date: This Agreement is effective on the date of signature of the last signatory to the Agreement. Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

THE UNITED STATES OF AMERICA

DAVID W. SHAPIRO
United States Attorney
Northern District of California


DATED: 12/13/01

By:


EMILY J. KINGSTON
Assistant U.S. Attorney

DATED: 12/14/01

By:


ANITA EISENSTADT
Assistant General Counsel
Office of General Counsel
National Science Foundation

LASERGENICS CORPORATION AND RICHARD G. SCHLECHT - DEFENDANTS

DATED: 11/21/01

By:


RICHARD G. SCHLECHT, in his individual capacity and in his capacity as president and owner of LaserGenics Corporation

DATED: 12/3/01

By:


J. BYRON FLECK
Law Offices of J. Byron Fleck