NEWS RELEASE

OFFICE OF THE UNITED STATES ATTORNEY
SOUTHERN DISTRICT OF CALIFORNIA

San Diego, California

United States Attorney
Carol C. Lam

For Further Information, Contact:

Assistant U.S. Attorney Steven A. Peak 619-557-6932

For Immediate Release

NEWS RELEASE SUMMARY - San Diego, California - July 24, 2003

United States Attorney Carol C. Lam today announced the unsealing of a federal grand jury indictment in San Diego yesterday which charges four former members of Commercial Express, LLC, an organization headquartered in Los Angeles, with Conspiracy to Commit Securities, Mail and Wire Fraud (1 count); Securities Fraud (1 count); Mail Fraud (8 counts); Wire Fraud (4 counts); Conspiracy to Commit Money Laundering (one count); and Money Laundering (Promotion) (4 counts).

United States Attorney Lam said that based on allegations in the 22-count Indictment unsealed yesterday, documents filed with the court in related cases and through admissions made by cooperating defendants during their guilty pleas, Commercial Express, which had telemarketing boiler rooms in several U.S. cities, including San Diego, defrauded over 700 victims nationwide of over $18,000,000 through a sophisticated "Ponzi scheme" which involved investments purportedly to be used to buy television time for commercials advertising and selling a number of different products.

According to United States Attorney Lam, the defendants charged in the Indictment unsealed yesterday included Mark Darren McClafferty, 37, of Bournemouth, England, Linda Selick York, 53, of Santa Monica, California, Francine Bergman, 53, of Los Angeles, California, and Randolph Scott Ross, 46, of Delray Beach, Florida. United States Attorney Lam said that defendant McClafferty is also under indictment in another case in this District on similar charges arising out of his alleged involvement in a telemarketing scheme which defrauded over 3,000 victims nationwide of almost $50,000,000 through its design, development and marketing of a series of "high-tech," telecommunications-related securities, including 900-number, pay-per-call services, virtual shopping malls and Internet service providers in various U.S. cities.

According to Assistant United States Attorney Steven A. Peak, the lead prosecutor in the case, six former members of Commercial Express have pleaded guilty and are cooperating with the investigation. Assistant United States Attorney Peak said that those defendants included Joel Alan Fein, 51, of Lafayette, Colorado, Timothy McNeill Hazzard, 46, of Pinehurst, North Carolina, Grace Na, 42, of Northridge, California, Bill Wayne Whitely, 54, of Thousand Oaks, California, Susan Marie Hogan, 54, of Stuart, Florida and Emmett Ellsworth Moore, Jr., 32, of Encinitas, California. According to Peak, defendant McClafftery, Fein and Hazzard were the promoters of Commercial Express; Na was the Controller of Progressive Financial, Commercial Express' sales arm; defendants York and Bergman were partners in Creative Entertainment Group, which was responsible with Progressive Financial for the purchase of media air time, the selection of products for advertisement for sale on the media air time, the selection of territories, the establishment of merchandise sale accounts, the production of product commercials, the determination of product pricing, and the arrangements with product owners, fulfillment companies and shipping services. According to Peak, Whitely and Hogan were the operators of the boiler room "Nexgen Financial Corporation," which had offices in the San Fernando Valley area of Los Angeles and in Delray Beach, Florida, and defendant Ross was the sales manager of the Delray Beach office. Assistant U.S. Attorney Peak said that Moore operated a boiler

room in San Diego called "Top Broker."

Assistant United States Attorney Peak said that based on allegations in yesterday's Indictment, documents filed with the court in related cases and admissions made by cooperating defendants during their guilty pleas, Commercial Express paid only a fraction of the money received from investors from the sale of Media Units to buy television time to air direct response commercials to advertise and sell a number of different products, and Commercial Express promised to share the profits from the sale of these products with the purchasers of the Media Units and Equity Participations. In addition, Commercial Express and its telemarketers falsely claimed that an investor would receive a return of up to twenty-six percent (26%) per quarter from the sale of products. They also claimed that the money received from the sale of the Equity Participations would give investors an ownership interest in Commercial Express, and misled investors into believing that there were adequate revenues to make future distributions.

Assistant U.S. Attorney Peak said that Commercial Express and its boiler rooms marketed the Media Units and Equity Participations as legitimate business investments when in fact the defendants and their coconspirators were operating a Ponzi scheme. According to Peak, the Ponzi scheme operated by Commercial Express involved selling Media Units and Equity Participations while falsely representing that the money received from those sales would be used to buy television time to air direct response commercials to advertise and sell products that would generate profits for the investors. In reality, Commercial Express had only minimal product sales and no profits, and was using the money received from later investors to pay earlier investors and its own overhead and expenses, including the exorbitant, undisclosed commissions paid to the boiler rooms. According to Peak, up to 50% of all funds invested were paid out in such commissions.

United States Attorney Lam said that the San Diego Boiler Room Task Force, an organization made up of representatives from the United States Attorney's Office, the Federal Bureau of Investigation (FBI), the Internal Revenue Service Criminal Investigations (IRS-CI), the United States Postal Inspection Service

(USPIS), the California Attorney General's Office and other federal, state, and local agencies in San Diego and Southern California, had investigated this telemarketing organization for over three years. These law enforcement agencies worked closely with the U.S. Securities and Exchange Commission (SEC) and the Federal Trade Commission (FTC), both of which had investigated Commercial Express for regulatory violations. According to United States Attorney Lam, prosecutors from three Department of Justice components also participated in the investigation, including the Fraud Section, Criminal Division, the Antitrust Division, and the Tax Division. The Special Crimes Unit of the California Attorney General's Office was a critical component of the federal-state investigative team and that, among other things, it provided a thorough financial analysis of Commercial Express's operations. United States Attorney Lam praised the Boiler Room Task Force for its investigative efforts in connection with this prosecution and commended the heads of the local offices of the FBI, IRS-CI and the Postal Inspectors for the exemplary work of their agents.

Special Assistant U.S. Attorney Ronald D. Smetana, a Supervising Deputy Attorney General for the State of California, headed the California Department of Justice team working on the investigation. Special Assistant U.S. Attorney Smetana said that the scheme employed by Commercial Express to defraud investors focused on misleading victims by means of intentional misrepresentations and concealment and omission of material facts. According to Smetana, the key false and fraudulent pretenses, representations, and promises employed by Commercial Express included that Commercial Express: (1) was a successful company that had been in the business of creating commercials and sales campaigns for products for several years; (2) would consult with each investor to choose products and buy media time to promote and induce the sale of products through direct response commercials and media; (3) had met its projections and had made distributions to earlier investors from the profit on its product sales. According to Smetana, Commercial Express falsely claimed further that each investor would be provided a separate, third party accounting of the products sold

and revenues received in their chosen market and that successful sales tests had been conducted on its products.

Special Assistant U.S. Attorney Smetana said that in carrying out the scheme, Commercial Express also knowingly and intentionally concealed and omitted the following material facts from its investors: (a) that it relied on the continued recruitment of new investors to generate the money paid to earlier investors; (b) that the majority of the funds invested were used to pay commissions and overhead; (c) that its boiler rooms were paid up to 50% commission for the sale of each Media Unit or Equity Participation; (d) that it was obligated to sell a minimum number of products to keep the rights to sell the products and had failed to sell a sufficient number of products to keep the rights to sell them; (e) that only minimal products had actually been sold as a result of television advertising; (f) that it was the subject of Cease and Desist Orders issued by various state regulatory agencies; (g) that its operations were being investigated by the SEC and the FTC; (h) that one or more of the promoters of Commercial Express had been subject to adverse federal and state regulatory action for the sale of unregistered securities and fraud; and (i) that Media Units and Equity Participations, as investments granting the purchaser the right to earn income from the efforts of others, constituted securities under federal and state law and had not been registered with the SEC or the State of California.

Assistant U.S. Attorney Peak said that Commercial Express sent investors and potential investors eight newsletters that falsely represented, among other things, that Commercial Express was meeting or exceeding its projected product sales. According to Peak, to facilitate the scheme to defraud, Commercial Express mailed sums of money which they called "distributions" to certain purchasers of Commercial Express Media Units and Equity Participations, thereby creating the impression that the "distribution" was profit generated from product sales, when in fact, the money had been generated from the sales of Media Units and Equity Participations to later investors.

Finally, United States Attorney Lam said that despite this Indictment, the government's investigation into the fraudulent telemarketing activities of Commercial Express and its members is continuing.

DEFENDANTS

Mark Darren McClafferty
Linda Selick York
Francine Bergman
Randolph Scott Ross

SUMMARY OF CHARGES

All Defendants

Title 18, U.S.C., Sec. 371 - Conspiracy to Commit Securities, Mail and Wire Fraud (1 count)
Maximum penalty per count: five years; fine of $250,000 (or twice the gain)

Title 15, U.S.C., Sec. 78j(b) and 78ff - Securities Fraud (1 count)
Maximum penalty per count: ten years; fine of $1,000,000

Title 18, U.S.C., Sec. 1341 - Mail Fraud (8 counts)
Maximum penalty per count: five years; fine of $250,000 (or twice the gain)

Title 18, U.S.C., Sec. 1343 - Wire Fraud (4 counts)
Maximum penalty per count: five years; fine of $250,000 (or twice the gain)

Title 18, U.S.C., Sec. 1956(h) - Conspiracy to Commit Money Laundering (one count)
Maximum penalty per count: twenty years; fine of $500,000 (or twice the involved funds)

Title 18, U.S.C., Sec. 1956(a)(1)(A)(i) - Money Laundering (Promotion) (4 counts)
Maximum penalty per count: twenty years; fine of $500,000 (or twice the involved funds)

Criminal Forfeiture Allegation 1
Title 18, U.S.C., Sec. 982(a)(1) and Title 18, U.S.C., Sec. 1956(h)

Criminal Forfeiture Allegation 2
Title 18, U.S.C., Sec. 982(a)(1) and Title 18, U.S.C., Sec. 1956(a)(1)(A)(i)

Criminal Forfeiture Allegation 3
Title 18, U.S.C., Sec. 982(a)(1) and Title 18, U.S.C., Sec. 1957

AGENCIES

San Diego Boiler Room Task Force
Federal Bureau of Investigation, San Diego Division

Internal Revenue Service, Criminal Investigations
United States Postal Inspection Service
California Attorney General's Office/California Department of Justice
Fraud Section, Criminal Division, United States Department of Justice
Antitrust Division, United States Department of Justice
Tax Division, United States Department of Justice

An indictment itself is not evidence that the defendants committed the crimes charged. The defendants are presumed innocent until the Government meets its burden in court of proving guilt beyond a reasonable doubt.