UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

05-60036CR-MARRA

MAGISTRATE JUDGE SELTZER

CASE NO. _____

18 U.S.C. § 1341
18 U.S.C. § 2

UNITED STATES OF AMERICA

vs.

DAVID ROSS,

Defendant.

_____/

INFORMATION

The United States Attorney charges that:

GENERAL ALLEGATIONS

At various times relevant to this Indictment:

1. AmeriP.O.S. Inc. ("AmeriP.O.S.") was a Florida corporation incorporated in or around August 2002. AmeriP.O.S.'s principal place of business was located in Broward County at 1250 E. Hallandale Beach Boulevard, Suite 505, Hallandale, Florida.

2. AmeriP.O.S. engaged in the sale of point-of-sale ("P.O.S.") terminal business opportunities. For a minimum purchase price of approximately $12,000, potential purchasers were told they would receive several P.O.S. terminals, along with assistance in establishing, maintaining, and operating a P.O.S. terminal business. According to AmeriP.O.S, a business opportunity purchaser, known as a

"distributor," would earn substantial profits when members of the public purchased products, such as pre-paid debit cards, pre-paid phone cards, and pre-paid Internet services, from the distributor's P.O.S. terminals.

3. Defendant **DAVID ROSS** was an AmeriP.O.S. salesman who worked as a "closer," as more fully described below.

COUNT 1
(Mail Fraud: 18 U.S.C. §§ 1341 and 2)

1. Paragraphs 1 through 3 of the General Allegations section of this Information are re-alleged and incorporated by reference as though fully set forth herein.

2. From in or around September 2002, through in or around May 2004, in Broward County, in the Southern District of Florida, and elsewhere, the defendant,

DAVID ROSS

did knowingly and willfully devise and intend to devise a scheme and artifice to defraud and to obtain money and property from others by means of materially false and fraudulent pretenses, representations, and promises, knowing that the pretenses, representations, and promises were false and fraudulent when made, and attempting to do so, did knowingly cause to be delivered certain mail matter by a private and commercial interstate carrier, according to the directions thereon.

PURPOSE OF THE SCHEME AND ARTIFICE

3. It was the purpose of the scheme and artifice for **DAVID ROSS** and his accomplices to unlawfully enrich themselves by misappropriating monies from business opportunity purchasers by making

materially false representations concerning, among other things, expected profits, the services provided to distributors, and the authenticity of AmeriP.O.S. references.

MANNER AND MEANS OF THE SCHEME AND ARTIFICE

The manner and means by which **DAVID ROSS** and his accomplices sought to accomplish the purpose of the scheme and artifice included, among other things, the following:

4. AmeriP.O.S. placed advertisements on television, on the Internet, and in other media across the country, misrepresenting the profits that could be earned by purchasing an AmeriP.O.S. distributorship, and urging consumers to telephone a number that appeared in the advertisements.

5. Individuals who telephoned AmeriP.O.S. in response to its advertisements ("potential purchasers") were placed in touch with salesmen. AmeriP.O.S. used salesmen called "fronters" as the first point of contact with potential purchasers. AmeriP.O.S. instructed fronters on what to say to potential purchasers, as described below.

6. Fronters outlined the opportunity and determined whether the potential purchaser "qualified" to purchase an AmeriP.O.S. business opportunity and thereby become a "distributor." Fronters claimed that AmeriP.O.S. previously placed P.O.S. terminals in tremendously successful locations. Fronters said that AmeriP.O.S. wanted to set up terminals across the country with the help of distributors. Fronters further explained that purchasers would receive several P.O.S. terminals.

7. According to the fronters, AmeriP.O.S. found store locations in the purchaser's geographic area to place the terminals. The machines would then sell prepaid debit cards, pre-paid phone cards, pre-paid Internet services, and many other products and services. The AmeriP.O.S. distributor would receive commissions based upon sales from those terminals.

8. "Qualified" potential purchasers were transferred to another AmeriP.O.S. salesperson known to **DAVID ROSS** as a "closer." **ROSS** was one such closer.

9. **DAVID ROSS** and other closers generally identified themselves to potential purchasers as "Territory Directors" who were responsible for setting up distributors in the potential purchasers' geographic area. In reality, a closer did not specialize in any particular area of the country and took calls from any place in the United States. The closer and potential purchaser scheduled an appointment to speak at a time after the potential purchaser received the AmeriP.O.S. brochure and spoke with AmeriP.O.S.'s references, as described below.

10. Using Fedex, accomplices of **DAVID ROSS** sent potential purchasers professional-looking, glossy brochures. The brochures represented that, in addition to the terminals themselves, AmeriP.O.S. "provid[es] our distributors with many retail outlets to sell a variety of pre-paid products at no additional cost."

11. Enclosed in the brochures was a document entitled "Business Forecast/Daily Statistics." This document, which changed over time, purportedly described the performance of AmeriP.O.S. terminals. From in or around October 2002, through in or around September 2003, this document purported to state what a "Below Average Performing Terminal" earned, and what an "Average Performing Terminal" earned. In or around October 2003, AmeriP.O.S. changed the "Business Forecast/Daily Statistics" page of the brochure to state that the forecasts were "examples." AmeriP.O.S. salesmen, however, continued to represent that the examples were typical of actual terminal performance.

12. **DAVID ROSS** and other closers provided potential purchasers with the names of references who claimed both to have had success operating AmeriP.O.S. terminals and who vouched for

the support and assistance that AmeriP.O.S. provided. After the potential purchaser received the brochure by Fedex and spoke with references, the AmeriP.O.S. closer made an extended sales pitch to the potential purchaser. During this sales pitch, **DAVID ROSS** and other closers made a number of representations about the AmeriP.O.S. business opportunity, earnings projections, earnings of prior purchasers, and the help and support AmeriP.O.S. provided.

13. **DAVID ROSS** and other closers used a transaction called "Back-from-the-Dead," or "BFD," to attempt to resurrect any deal he failed to close. If a closer was unsuccessful, another salesman called the potential purchaser back within a few days or weeks in an attempt to resurrect the deal. This BFD salesman falsely represented that another person had cancelled a large order of terminals for personal reasons and that, as a result, AmeriP.O.S. could offer these terminals to the purchaser for a substantially reduced rate.

14. **DAVID ROSS** and others used a transaction called a "load" to induce individuals who purchased the AmeriP.O.S. business opportunity to purchase more. If **ROSS** was successful at closing a sale, another salesperson, known to **ROSS** as a "loader," would contact the distributor within a few days or weeks for the purpose of soliciting an additional investment. Like the BFD salesman, the loader falsely claimed that another person had cancelled a large order of terminals for personal reasons and that, as a result, AmeriP.O.S. could offer these terminals to the purchaser for a substantially reduced rate.

15. To fraudulently induce others to purchase business opportunities, **DAVID ROSS** made numerous materially false statements to potential purchasers, including, among others, the following:

Materially False Statements

a. That, after making their investment, the only thing distributors needed to do was plug in the terminals and put up posters and that AmeriP.O.S. performed all the legwork of the business when, in truth and in fact, the most difficult and time consuming part of the business, securing viable locations in which to place the terminals, was largely the distributor's responsibility because of AmeriP.O.S.'s inability and unwillingness to do so;

b. That AmeriP.O.S. would secure high-traffic, profitable locations for distributors to place their terminals in the distributor's respective local areas, when, in truth and in fact, AmeriP.O.S. was frequently unsuccessful at providing its distributors with local terminal locations, much less high-traffic locations;

c. That AmeriP.O.S. had already found locations for placement of distributors' terminals that would be available to a distributor as soon as he or she paid the initial investment when, in truth and in fact, AmeriP.O.S. did not have locations for the purchaser's terminals at the time he or she invested;

d. That if a terminal underperformed in a given location, AmeriP.O.S. would relocate the terminal for free when, in truth and fact, AmeriP.O.S. locators were so far behind in finding initial locations for distributors' terminals that they did not have time to relocate underperforming machines;

e. That the tables listed on the "Business Forecast" sheet of AmeriP.O.S. brochures accurately represented the commissions earned by a below-average and an average AmeriP.O.S. terminal

when, in truth and in fact, below-average and average AmeriP.O.S. terminals, respectively, earned substantially less money than the amounts shown in the brochures;

f. That a distributor should expect to earn back the cost of his or her investment in the AmeriP.O.S. business opportunity in 12 months or less when, in truth and in fact, not a single distributor had earned back his or her investment in 12 months or less; and

g. That one of the individuals he gave out as a reference to potential purchasers used a false name when speaking to potential purchasers and was paid to materially misrepresent his success with AmeriP.O.S.

USE OF THE MAILS

16. In or around January 2004, for the purpose of executing and in furtherance of the aforesaid scheme and artifice to defraud and to obtain money and property by means of materially false and fraudulent pretenses, representations, and promises, and attempting to do so, **DAVID ROSS** did knowingly cause to be delivered by a private and commercial interstate carrier, a package from a consumer in Spring Valley, California, to AmeriP.O.S. in Hallandale, Florida.

In violation of Title 18, United States Code, Sections 1341 and 2.

MARCOS DANIEL JIMENEZ
UNITED STATES ATTORNEY

RICHARD N. GOLDBERG
TRIAL ATTORNEY
U.S. DEPARTMENT OF JUSTICE

STEPHEN GURWITZ
SPECIAL ASSISTANT UNITED STATES ATTORNEY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

05-60036

UNITED STATES OF AMERICA

CASE NO. CR-MARRA

vs.

MAGISTRATE JUDGE SELTZER

CERTIFICATE OF TRIAL ATTORNEY*

David Ross,

Defendant.

_____/

Superseding Case Information:

New Defendant(s) Yes ____ No ____
Number of New Defendants ____
Total number of counts ____

Court Division: (Select One)

___ Miami ___ Key West
_X_ FTL ___ WPB ___ FTP

I do hereby certify that:

1. I have carefully considered the allegations of the indictment, the number of defendants, the number of probable witnesses and the legal complexities of the Indictment/Information attached hereto.

2. I am aware that the information supplied on this statement will be relied upon by the Judges of this Court in setting their calendars and scheduling criminal trials under the mandate of the Speedy Trial Act, Title 28 U.S.C. Section 3161.

3. Interpreter: (Yes or No) _No_
List language and/or dialect _____

4. This case will take _0_ days for the parties to try.

5. Please check appropriate category and type of offense listed below:

(Check only one)			(Check only one)	
I	0 to 5 days	_X_	Petty	____
II	6 to 10 days	____	Minor	____
III	11 to 20 days	____	Misdem.	____
IV	21 to 60 days	____	Felony	_X_
V	61 days and over	____		

6. Has this case been previously filed in this District Court? (Yes or No) _No_
If yes:
Judge: _____ Case No. _____
(Attach copy of dispositive order)
Has a complaint been filed in this matter? (Yes or No) _No_
If yes:
Magistrate Case No. _____
Related Miscellaneous numbers: _____
Defendant(s) in federal custody as of _____
Defendant(s) in state custody as of _____
Rule 20 from the _____ District of _____

Is this a potential death penalty case? (Yes or No) _No_

7. Does this case originate from a matter pending in the U.S. Attorney's Office prior to April 1, 2003? ____ Yes _X_ No

8. Does this case originate from a matter pending in the U. S. Attorney's Office prior to April 1, 1999? ____ Yes _X_ No
If yes, was it pending in the Central Region? ____ Yes ____ No

9. Does this case originate from a matter pending in the Northern Region of the U.S. Attorney's Office prior to October 14, 2003? ____ Yes _X_ No

10. Does this case originate from a matter pending in the Narcotics Section (Miami) prior to May 18, 2003? ____ Yes _X_ No

Stephen Gurwitz
Special Assistant United States Attorney
Court No. A550379

*Penalty Sheet(s) attached

REV.1/14/04

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

PENALTY SHEET

05-60036 CR-MARRA

Defendant's Name: DAVID ROSS **Case No:** MAGISTRATE JUDGE SELTZER

Count #: 1

Mail Fraud

18 U.S.C. § 1341

***Max Penalty:** 20 years' imprisonment

Count #:

***Max Penalty:**

Count #:

***Max Penalty:**

Count #:

***Max Penalty:**

***Refers only to possible term of incarceration, does not include possible fines, restitution, special assessments, parole terms, or forfeitures that may be applicable.**