

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
CRIMINAL NO. 11-381 (SRN/JJG)

UNITED STATES OF AMERICA,)	SECOND SUPERSEDING
)	INDICTMENT
Plaintiff,)	
)	
v.)	
)	(18 U.S.C. § 1341)
ROBERT ALLEN WALKER,)	(18 U.S.C. § 1343)
)	(18 U.S.C. § 1349)
)	(18 U.S.C. § 2)
Defendant.)	(26 U.S.C. § 7201)

THE UNITED STATES GRAND JURY CHARGES:

INTRODUCTION

At times relevant to this Second Superseding Indictment:

1. Defendant ROBERT ALLEN WALKER (hereinafter “WALKER”), a Minnesota resident, was the President, Chief Executive Officer, and Chairman of the Board of Directors of Bixby Energy Systems, Inc. (“Bixby”).
2. Bixby was a privately-held Delaware corporation with its principal places of business in Minnesota owned by approximately 1,800 shareholders located throughout the United States.
3. Bixby’s primary business was the development of alternative energy projects, including a biomass stove whose primary fuel was corn, and a coal gasification system.
4. Dennis Desender, acting in concert with WALKER and others, raised money from investors on behalf of Bixby. At various times, Desender described himself or was

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U.S. DISTRICT COURT ST. PAUL

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described by Bixby employees as the Chief Financial Officer of Bixby and an Independent Financial Consultant to Bixby.

5. Global Partners United, LLC (“GPU”), was a limited liability company that contracted with Bixby to sell and distribute Bixby’s coal gasification system to certain Chinese State-Owned Enterprises, quasi-governmental energy-related organizations located in the People’s Republic of China, which provided funding to Bixby to produce a coal gasification system WALKER represented had already been developed.

COUNTS 1 - 12

(Mail Fraud (Counts 1-7) and Wire Fraud (Counts 8-12))

18 U.S.C. § § 1341 and 1343

6. From in or about 2001 through in or about May 2011, in the State and District of Minnesota, the defendant,

ROBERT ALLEN WALKER,

aiding and abetting and aided and abetted by Dennis Desender and others known and unknown to the Grand Jury, engaged in mail fraud and wire fraud by devising and intending to devise a scheme and artifice to defraud and to obtain money and property by means of materially false and fraudulent pretenses, representations and promises and concealment and omission of material facts, and knowingly:

- a. caused the sending, delivering, and moving by the United States Postal Service and interstate commercial carrier of various mailings for the

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purpose of executing such scheme and artifice, in violation of Title 18, United States Code, Sections 2 and 1341; and

- b. transmitted and caused the transmission in interstate commerce, by means of wire communications, certain signals and sounds, for the purpose of executing such scheme and artifice, in violation of Title 18, United States Code, Sections 2 and 1343.

SCHEME AND ARTIFICE TO DEFRAUD

7. Between 2001 and May 2011, WALKER and others raised more than \$40 million from approximately 1,800 victim-investors and approximately \$5 million from Chinese State-Owned Enterprises (mediately through GPU) by making repeated, material misrepresentations of facts and by omitting and concealing material facts, as described below.

8. It was part of the scheme and artifice to defraud that WALKER greatly exaggerated his business acumen and expertise, and gained the confidence of the victim-investors, by asserting that he founded Select Comfort and invented its signature product, the Sleep Number bed, but then falsely claiming credit for the financial success and the public offering of Select Comfort stock by misleadingly concealing from the victim-shareholders that venture capitalists assumed control over Select Comfort and took the company public many years after WALKER had left Select Comfort.

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9. It was part of the scheme and artifice to defraud that WALKER concealed from the victim-investors that he intended to and did treat Bixby as though it were his own private asset – in effect, as though Bixby’s funds were his own funds, to spend on himself and members of his family as he saw fit – and that WALKER intended to and did marginalize, manipulate, withhold information from, and ultimately inappropriately control the Bixby Board of Directors, which WALKER knew had a fiduciary duty to represent and protect the interests of the victim-shareholders he and his accomplices tricked into capitalizing Bixby.

10. It was part of the scheme and artifice that, although WALKER knew that Desender had a significant criminal history, WALKER concealed this material fact from Bixby’s prospective shareholders and from Bixby’s Board of Directors because of Desender’s considerable talent at raising money for Bixby; his willingness to raise money for Bixby using materially false information about Bixby’s business prospects; and his willingness to tolerate WALKER’s misuse of Bixby’s funds for his own benefit and for the benefit of the Walker family.

2001 - 2006

11. In about 2001, WALKER and others formed Bixby to develop and market a corn-burning stove. In or about July of 2001, Bixby established a Board of Directors which had a fiduciary responsibility to Bixby shareholders to oversee the business operations of Bixby and to protect shareholders’ equity in Bixby.

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12. Shortly after Bixby was founded, WALKER and others working in concert with WALKER began raising money on behalf of Bixby.

13. WALKER and other Bixby representatives, including Desender, met with potential investors and, in order to convince them to invest money in Bixby, described Bixby's business and its future prospects. Bixby raised money through numerous investment "offerings," each described in a "private placement memorandum" distributed to some, but not all, of the prospective investors.

14. Beginning in about 2001 and continuing until about 2011, Bixby offered and paid commissions to "finders" and/or "broker/dealers," individuals who introduced potential investors to Bixby and/or solicited investments on behalf of Bixby. During this period, Desender was Bixby's principal "finder."

15. Desender started working for Bixby in about 2001, and except for the period of in or about July 2006 (when WALKER "fired" Desender after Desender's criminal past had become known to the Bixby Board of Directors) through in or about December 2006 (when, after removing the Bixby Board of Directors, WALKER brought Desender back into Bixby), Desender continued working for Bixby in various capacities until about 2011. Desender's primary responsibilities included introducing potential investors to Bixby, soliciting potential investors on behalf of Bixby, and acting as the Chief Financial Officer of Bixby.

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Misrepresentations and Omissions Regarding Commission Payments

16. The private placement memoranda misrepresented to potential investors that Bixby's officers and directors, which included WALKER and his daughter, MB, would not receive a sales commission from the sale of Bixby stock.

17. Beginning in about 2001 and continuing until about 2006, in addition to a monthly fee, Bixby agreed to pay Desender a commission equal to approximately 10 percent of the amount invested by individuals who were purportedly introduced to Bixby by Desender. In total, Bixby paid Desender more than \$2.4 million in commission payments between 2001 and 2006.

18. Beginning in about 2004 and continuing until about 2006, WALKER solicited and received more than \$600,000 from Desender in secret, commission-sharing kickback payments. WALKER concealed his receipt of these payments from victim-shareholders and from the Bixby Board of Directors because he knew that he was prohibited from receiving them under the terms of the private placement memoranda through which he had solicited investor funds and because he never intended to and never did pay income tax on this income.

Commercially Unreasonable Nepotistic Remuneration to Walker Family Members

19. From 2001 through 2006, WALKER caused Bixby to employ several members of his family, including his wife, JW; his daughter, MB; and his son-in-law, JB; in capacities

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for which they were not qualified, and to perform services not genuinely needed by Bixby, and caused Bixby to pay these Walker family members victim-shareholder funds in commercially unreasonable amounts despite objections lodged with WALKER from time to time by certain Bixby shareholders, directors, employees, Desender and others. In addition, WALKER's daughter, MB, who was in charge of Bixby's payroll, materially overpaid herself and sometimes paid herself more than once for a given pay period.

20. Similarly, WALKER's daughter, MB, at times an officer or employee of Bixby, received an aggregate of at least \$287,000 in commissions for selling Bixby stock, some of which WALKER concealed from the victim-shareholders as "bonuses." In addition, WALKER caused Bixby to pay JB, MB's husband, \$338,000 in commissions concealed from the victim-shareholders as "consultant fees."

21. In addition, from 2001 through 2006, WALKER caused Bixby to issue "warrants" – essentially options to purchase stock in Bixby – to his daughter MB and to her husband, JB, for purported "services" from which MB and JB derived hundreds of thousands of dollars of financial benefit, even though neither MB nor JB were professionals in any of the roles in which they performed purported services for Bixby and even though MB had health problems and attendance issues which effectively prevented her from discharging the duties for which she was purportedly paid.

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22. WALKER also provided MB with sick leave benefits which he knew she had not earned and with a “noncompete” agreement from which MB derived significant benefit, even though MB had no ability to compete with Bixby.

23. From 2001 through 2011, WALKER caused Bixby and victim-shareholders to pay himself and members of his family more than \$7 million, enabling WALKER and his daughter MB to maintain expensive lifestyles and large residences in Ramsey, Minnesota. In total, WALKER and his accomplices received more than 25 percent of the more than \$40 million raised pursuant to the scheme.

The 2006 Audit

24. In about 2006, and over WALKER’s objections, the Bixby Board of Directors, after discovering the inappropriate payments made by Bixby to WALKER and his accomplices, retained a forensic auditing firm and a prestigious Minneapolis law firm to examine the extent of the financial improprieties that had occurred under WALKER’s tenure from 2001 through 2006. During the ensuing audit process, the auditors discovered, among other improprieties, the kickback payments made by Desender to WALKER; the inappropriate payments and other unreasonable remuneration paid to members of WALKER’s family; and further discovered that Bixby had paid Desender approximately \$700,000 more than Desender was owed based on a 10 percent commission rate.

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25. On or about December 28, 2006, when confronted by the attorneys hired by the Bixby Board of Directors regarding the kickback payments, WALKER falsely characterized the kickback payments as loans from Desender to WALKER.

26. In or about late 2006, in order to conceal from the victim-shareholders, the Bixby Board of Directors, and the Internal Revenue Service, that he had illicitly received victim-shareholder funds of approximately \$600,000 in violation of the terms of the private placement memoranda, WALKER fabricated and backdated documents, including a purported loan agreement, in an attempt to substantiate his false claim that the payments were loans from Desender to WALKER.

27. In or about late December 2006, WALKER informed Desender that the Bixby Board of Directors was "closing in" on them regarding their illicit kick-back arrangement. In order to prevent his improprieties from being further documented, substantiated and disclosed to the victim-shareholders, and to prevent his ouster from Bixby, which WALKER knew was imminent, WALKER, Desender and others working in concert with them obtained proxy votes from more than 50 percent of Bixby's victim-shareholders authorizing the removal of AA and WK from the Bixby Board of Directors, whom WALKER replaced with directors who were not aware of the negative audit findings.

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2007- May 2011

28. Shortly thereafter, with the Bixby Board of Directors dismantled, WALKER terminated the forensic audit of Bixby, although it had already resulted in a draft report describing serious misuse of victim-investor funds by WALKER, and never disclosed such findings to the then-current Bixby victim-shareholders or to any of the many victim-shareholders of Bixby that WALKER and his accomplices solicited from 2007 through May 2011.

29. In or about 2007, WALKER recruited KC, JB and GG to serve on the Bixby Board of Directors but withheld material information from them about his abuses of Bixby funds, thus undermining its independence and its ability to discharge its fiduciary duties to the victim-shareholders and allowing WALKER to continue to use Bixby to enrich himself and his family.

**Misrepresentations and Omissions To Investors
Regarding the Coal Gasification System**

30. In or about 2007, WALKER, now deprived of the kickbacks from Desender, solicited and received from the new Board of Directors a substantial salary increase to over \$300,000 annually, an amount he justified based upon revenues generated by the sales of corn-burning stoves which were materially inflated and never resulted in net profits to Bixby. Furthermore, after securing his salary increase based upon sales of the corn-burning stoves, WALKER caused Bixby to abandon the corn-burning stove business and converted

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Bixby into a research and development company to develop the purported coal-gasification technology discussed below.

31. Beginning in or about 2007 and continuing until about 2011, WALKER began making serial, material misrepresentations in numerous media (including in in-person meetings with prospective investors) about a “coal gasification” technology which Bixby was attempting to develop to attract new investors to Bixby and to lull Bixby’s existing investors into keeping their money invested in order to protect his substantial salary and his continued use of Bixby victim-shareholder funds to enrich his family members. These media included private placement memoranda, a shareholder newsletter called “The Bixby Blaze,” which contained materials written principally by WALKER, and letters to shareholders written and approved by WALKER. In general, in all of these media, WALKER repeatedly misrepresented that Bixby had *already accomplished* what he well knew were merely Bixby’s and WALKER’s aspirations and hopes regarding the coal gasification technology, which had not been and never were realized.

32. Bixby’s “coal gasification” system purportedly consisted of two separate technological processes. First, a process called “devolitization” purportedly involved heating (but not burning) coal in order to produce natural gas. The devolitization process generated a carbon, or coke, byproduct. Second, a process called “liquefaction” purportedly involved

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using hydrogen to convert the carbon/coke byproduct of the devolittization process into sweet, light crude oil or jet fuel.

33. Between 2007 and May 2011, WALKER knowingly and repeatedly made false material statements regarding the “devolittization” process, as follows:

- WALKER represented, knowingly and repeatedly, that the devolittization process produced natural syngas of “pipeline quality” when, in fact, the Bixby devolittization process, even only on the small scale to which it was developed, never produced gas of such quality;
- WALKER represented, knowingly and repeatedly, that the devolittization process produced carbon that was “fully activated” and thus highly marketable for its filtration properties when, in fact, the devolittization never produced fully-activated carbon; and
- WALKER represented, knowingly and repeatedly, that Bixby had a commercially viable devolittization process and was capable, with funding, of creating a commercially viable, commercial-scale devolittization machine which would revolutionize the alternative-energy market when, in fact, Bixby had only produced a small, noncommercial unit referred to as “Coal Jr.” and was not capable of scaling the machine up to commercial functionality.

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34. Between 2007 and May 2011, WALKER knowingly and repeatedly misrepresented that Bixby had developed a proven “liquefaction” process when, in fact, Bixby had no proven liquefaction process and never produced a commercially-viable liquefaction machine.

35. In soliciting money from investors during the period 2007 through 2011, WALKER concealed the material fact that his continuing misuse of Bixby funds made it impossible at times to pay the engineers and fabricators Bixby hired to try to develop the coal-gasification system and that by approximately early October 2010, the primary engineers and fabricators working on the purported Bixby coal-gasification system had suspended their work for nonpayment.

36. From at least as early as 2004 through May of 2011, and to catalyze investor interest in investing in Bixby, WALKER repeatedly misrepresented to shareholders and prospective shareholders alike that Bixby was on the cusp of “going public” – that is, that its stock would soon be traded on a public exchange, an event that would be wealth-creating for Bixby shareholders – even though he knew that “taking Bixby public” would have required victimizing the investing public with the same fraudulent information WALKER used to induce individual investors to invest in Bixby and that “taking Bixby public” without committing a massive fraud on the investing public was flatly impossible. Further,

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WALKER continued to conceal Desender's criminal history and the negative audit findings from prospective victim-shareholders.

37. For example, as part of an effort to "take Bixby public" on the London-based Alternative Investment Market, WALKER gave a speech in approximately April of 2010 at the OilBarrel conference in England at which he falsely claimed that Bixby had secured billions of dollars in actual orders from Chinese State-Owned Enterprises for Bixby's coal-gasification machines and an additional \$1.3 billion order for coal-gasification machines from a purported Canadian customer. He further represented that Bixby's devolitzation machines had been commercially functional for "several" years, when he well knew that the machines suffered from major defects which prevented them from working.

38. In approximately late August 2008, WALKER began using a high-quality, high-production-value video (for which WALKER caused Bixby to pay over \$200,000 in victim-investor funds) which claimed that Bixby's coal gasification system was ready "now" to revolutionize the alternative energy industry both to lull the then-existing Bixby victim-investors into remaining invested in Bixby and to attract new victim-investors to Bixby, even though counsel to Bixby warned him not to do so and even though he well knew that the video presented as having already been accomplished merely what Bixby aspired to but never did accomplish with respect to the Bixby coal-gasification system.

U.S. v. Robert Allen WalkerCriminal No. 11-381 (SRN/JJG)**Misrepresentations To Chinese State-Owned Enterprises**

39. In order to raise more money for Bixby, and to protect WALKER's salary and the continuing largesse flowing from Bixby to his family, WALKER made repeated, material misrepresentations to the Chinese State-Owned Enterprises mediately through GPU. By way of example but not of limitation, in August of 2009, WALKER traveled to China at GPU's behest and gave a speech to representatives of various Chinese State-Owned Enterprises in which he made the following representations, all of which he well knew were materially false when made:

- WALKER represented that Bixby's devolitization process was a "fully developed technology" that had been operating for "several years" and that Bixby could have fully-scaled up, functional, commercial devolitization machines in boats headed to China within 60 days, even though Bixby had not and never did develop a commercial-scale devolitization machine that worked;
- WALKER represented that the devolitization process produced fully-activated carbon, whose porosity could be "dialed in" using Bixby's technology, even though WALKER knew that Bixby's process produced, at best, semi-activated carbon; and
- WALKER represented that Bixby's liquefaction process would be made available to the Chinese State-Owned Enterprises within a short period of time

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after receiving the devolitzation machines, even though Bixby had not developed a proven liquefaction technology capable of commercial functionality.

Marginalizing Bixby's New Board of Directors

40. In 2011, WALKER attempted to control the Bixby Board of Directors by withholding material information from the Bixby Board of Directors about his abuse of Bixby funds and his misrepresentations regarding Bixby's technology. However, two members of the Bixby Board of Directors – GG and JB – learned of WALKER's misrepresentations to Bixby's victim-shareholders and to the Chinese State-Owned Enterprises and began to take steps to control WALKER; end his abuse of Bixby; and ultimately oust him.

41. WALKER responded by withholding information directly requested by GG and JB, including the identities of Bixby's shareholders; by routinely cancelling meetings of the Board of Directors; by accusing the Bixby Board of Directors of "meddling" with Bixby's affairs; and by declining to hold shareholders' meetings at which the membership of the Bixby Board of Directors should have been determined.

42. In or about April and May 2011, under tremendous pressure resulting from a lawsuit brought by GG and JB against WALKER in Minnesota effectively calling for his ouster from Bixby, WALKER engaged in a fraudulent scheme to remove GG and JB from

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the Board of Directors, an action that could legitimately be undertaken only by the victim-investors, which involved the following steps:

- On or about April 15, 2011, WALKER caused a sham Filipino entity called Manna Assets management LTD (“Manna”) to subscribe to the purchase of \$100,000,000 worth of Bixby “Class C preferred stock”. The only consideration provided by Manna was three promissory notes in the aggregate amount of \$100,000,000, the first of which was purportedly due on May 7, 2011, and none of which was ever paid;
- On or about April 21, 2011, WALKER caused the Bixby Board of Directors to retroactively authorize the issuance of the “Class C preferred stock” in a “Written Action of the Board of Directors of Bixby Energy Systems” signed by WALKER, KC and PW; and
- On or about April 21, 2011, WALKER caused Manna to vote its stock to oust GG and JB without consulting with or notifying any of the Bixby victim-shareholders.

43. On or about May 11, 2011, when the fraudulent effort to oust GG and JB failed, WALKER resigned from Bixby.

44. As a result of the scheme alleged above, Bixby’s victim-shareholders sustained actual losses exceeding \$42 million.

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COUNTS 1-7
(Mail Fraud)
18 U.S.C. § 1341

45. The Grand Jury hereby re-alleges and incorporates paragraphs 1 through 44 of this Indictment as though fully restated herein for the purpose of alleging the substantive mail fraud counts set forth below.

46. For the purpose of executing and attempting to execute the scheme and artifice described above, the defendant knowingly caused to be sent, delivered, and moved by the United States Postal Service and interstate commercial carrier various mailings, items and things, as described below:

COUNT	DATE (on or about)	MAILING
1	August 27, 2008	\$24,000 investment check payment mailed by E.B. from Quincy, Washington to Bixby Energy Systems Inc., Ramsey, MN
2	September 19, 2008	Document Styled "Receipt of Shares and Acknowledgment" mailed from Bixby Energy Systems, Inc., Ramsey, MN to E.B., Quincy WA
3	June 22, 2009	\$15,000 investment check payment mailed by E.B. from Quincy, WA to Bixby Energy Systems, Inc, Ramsey, MN
4	July 31, 2009	\$14,116 investment check payment mailed by D.B. from Tekamaah, NE to Bixby Energy Systems, Inc, Ramsey, MN
5	December 10, 2009	\$20,000 investment check payment mailed by D.B. from Tekamaah, NE to Bixby Energy Systems, Inc, Ramsey, MN

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COUNT	DATE (on or about)	MAILING
6	December 22, 2009	\$87,500 investment check payment mailed by R.W. from Kirkland, WA to Bixby Energy Systems, Inc., Ramsey, MN and deposited into a bank account of MB, WALKER's daughter
7	March 31, 2010	\$15,010 investment check payment mailed by D.B. from Tekamaah, NE to Bixby Energy Systems, Inc, Ramsey, MN

All in violation of Title 18 United States Code, Section 1341 and 2.

COUNTS 8-12
(Wire Fraud)
18 U.S.C. § 1343

47. The Grand Jury hereby re-alleges and incorporates paragraphs 1 through 44 of this Second Superseding Indictment for the purpose of alleging the substantive wire fraud counts set forth below.

48. For the purpose of executing and attempting to execute the scheme and artifice described above, the defendant knowingly caused to be transmitted in interstate commerce numerous writings, signals and sounds, including the interstate wire communications described below:

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COUNT	DATE (on or about)	WIRE DETAILS
8	June 29, 2009	Document Styled "Full Subscription Form for Warrant Exercise" for 15,000 shares of Bixby common stock faxed by E.B. from Quincy, WA to Bixby Energy Systems, Inc, Ramsey, MN
9	December 1, 2009	Email correspondence between WALKER and victim-investor E.J. in which Walker falsely claims that Bixby had \$12 billion in orders
10	November 3, 2010	\$100,000 wire by E.B. from Quincy, WA to Bixby Energy Systems, Inc, Crown Bank, account #xxx9605, Minneapolis, MN
11	May 18, 2010	WALKER email correspondence with victim-investor L.L. regarding investment in Bixby
12	April 25, 2011	Fax sent by attorney P.D. from Minnesota to the Delaware Division of Corporations to authorize \$100,000,000 in Bixby Class C Preferred Shares for the sham entity Manna Assets Management, Inc.

All in violation of Title 18 United States Code, Sections 1343 and 2.

COUNT 13
(Conspiracy To Commit Mail and Wire Fraud)
18 U.S.C. § 1349

49. The grand jury realleges and incorporates by reference the allegations stated in paragraphs 1 through 44 of this Second Superseding Indictment for the purpose of alleging the conspiracy count set forth below.

50. From in or about 2001 through in or about 2011, in the State and District of Minnesota, the defendant,

ROBERT ALLEN WALKER,

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did knowingly combine, conspire and agree with Dennis Desender and other persons known and unknown to the Grand Jury to commit the offenses of mail fraud and wire fraud against the United States by engaging in a scheme and artifice to defraud approximately 1,800 investors located throughout the United States by inducing them to invest approximately \$42 million in Bixby by making repeated, false and misleading material representations of fact regarding the business of Bixby and by concealing from the investors that a substantial portion of the money raised was used to enrich the conspirators, and by causing the transmission in interstate commerce, by means of wire communications, certain signals and sounds, for the purpose of executing such scheme and artifice, and by causing the delivery by the United States Postal Service and interstate commercial carrier of various mailings for the purpose of executing such scheme and artifice.

All in violation of Title 18, United States Code, Section 1349.

COUNT 14
(Tax Evasion 2004)
26 U.S.C. § 7201

49. During the calendar year 2004, defendant WALKER received kickback payments from Desender in the amount of \$150,100, and upon said income there was owing to the United States of America income taxes exceeding \$45,000.

50. Well knowing and believing the facts set forth in the preceding paragraph, the defendant,

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ROBERT ALLEN WALKER,

in the State and District of Minnesota and elsewhere, did willfully attempt to evade and defeat the assessment of the income tax due and owing by him to the United States of America on such income by the following affirmative actions:

A. On or about April 16, 2005, WALKER filed with the Internal Revenue Service a false and fraudulent United States Amended Income Tax Return, Form 1040X, on behalf of himself and his wife for the year 2004 (the "2004 Return"), wherein line 1 reported adjusted gross income of 174,189; line 10 reported a total federal income tax liability of \$8,902; and line 22 claimed entitlement to a refund in the amount of \$763; whereas, as he then and there well knew and believed, their adjusted gross income was substantially in excess of \$174,189; a substantial tax was due and owing to the United States of America upon said additional adjusted gross income, and they were not entitled to any refund.

B. WALKER failed to disclose, and, in fact, affirmatively concealed from the tax return preparer who prepared the 2004 Return, his receipt of the \$150,100 in kickback payments during 2004, despite questions put to WALKER by the preparer designed to elicit information about such income.

C. On or about March 28, 2007, when questioned by a revenue agent examining another taxpayer about the nature of the payments WALKER received from Desender, WALKER falsely claimed that the money WALKER received from Mr. Desender was a loan

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and showed the revenue agent a fictitious document purporting to substantiate his claim that the monies he received from Desender were pursuant to a "line of credit" with Mr. Desender.

D. On or about March 28, 2007, WALKER provided the Internal Revenue Service with a fictitious loan agreement purportedly between WALKER, or borrower, and or entity owned by Desender as lender, which he created in 2006 but backdated to December 20, 2003, in order falsely to substantiate WALKER's bogus claim that the money he had received from Desender was proceeds of a loan.

All in violation of Title 26, United States Code, Section 7201.

COUNT 15

(Tax Evasion 2005)

26 U.S.C. § 7201

51. During the calendar year 2005, defendant WALKER received kickback payments from Desender in the amount of \$255,606, and upon said income there was owing to the United States of America income taxes exceeding \$79,000.

52. Well knowing and believing the facts set forth in the preceding paragraph, the defendant,

ROBERT ALLEN WALKER,

in the State and District of Minnesota and elsewhere, did willfully attempt to evade and defeat the assessment of the income tax due and owing by him to the United States of America on such income by the following affirmative actions:

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A. On or about April 15, 2006, WALKER filed with the Internal Revenue Service a false and fraudulent United States Income Tax Return, Form 1040, for the year 2005 on behalf of himself and his wife (the "2005 Return"), wherein line 22 reported total income of 181,052; line 63 reported a total federal income tax liability for 2005 of \$6,661, and line 72 claimed entitlement to a refund of \$16,331, whereas, as he then and there well knew and believed, their total income substantially exceeded \$181,052; a substantial tax was due and owing to the United States of America upon said additional taxable income, and they were not entitled to any refund.

B. WALKER failed to disclose, and, in fact, affirmatively concealed from the tax return preparer who prepared the 2005 Return, his receipt of the \$255,606 in kickback payments from Desender during 2005, despite questions put to WALKER by the preparer designed to elicit information about such income.

C. On or about March 28, 2007, when questioned by a revenue agent examining another taxpayer about the nature of the payments WALKER received from Desender, WALKER falsely claimed that the money WALKER received from Mr. Desender was a loan and showed the revenue agent a fictitious document purporting to substantiate his claim that the monies he received from Desender during 2005 were pursuant to a "line" of credit with Mr. Desender.

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D. On or about March 28, 2007, WALKER provided the Internal Revenue Service with a fictitious loan agreement purportedly between WALKER, or borrower, and an entity owned by Desender as lender, which he created in 2006 but backdated to December 20, 2003, in order falsely to substantiate WALKER's bogus claim that the money he had received from Desender in 2005 was proceeds of a loan.

All in violation of Title 26, United States Code, Section 7201.

COUNT 16
(Tax Evasion 2006)
26 U.S.C. § 7201

53. During the calendar year 2006, defendant WALKER received kickback payments from Desender in the amount of \$219,583, and upon said income there was owing to the United States of America income taxes exceeding \$74,000.

54. Well knowing and believing the facts set forth in the preceding paragraph, the defendant,

ROBERT ALLEN WALKER,

in the State and District of Minnesota and elsewhere, did willfully attempt to evade and defeat the assessment of the income tax due and owing by him to the United States of America on such income by the following affirmative actions:

A. On or about April 15, 2007, WALKER filed with the Internal Revenue Service a false and fraudulent United States Income Tax Return, Form 1040, for the year 2006 on

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behalf of himself and his wife (the "2006 Return"), wherein line 22 reported total income of 192,314; line 63 (which amount was inadvertently printed in line 66a) reported a total federal income tax liability for 2006 of \$17,315, and line 73 claimed entitlement to a refund of \$10,421, whereas, as he then and there well knew and believed, their total income substantially exceeded of \$192,314; a substantial tax was due and owing to the United States of America upon said additional taxable income, and they were not entitled to any refund.

B. WALKER failed to disclose, and, in fact, affirmatively concealed from the tax return preparer who prepared the 2006 Return, his receipt of the \$219,583 in kickback payments from Desender during 2006, despite questions put to WALKER by the preparer designed to elicit information about such income.

C. On or about March 28, 2007, when questioned by a revenue agent examining another taxpayer about the nature of the payments WALKER received from Desender in 2006, WALKER falsely claimed that the money WALKER received from Mr. Desender was a loan and showed the revenue agent a fictitious document purporting to substantiate his claim that the monies he received from Desender during 2006 were pursuant to a "line of credit" with Mr. Desender.

D. On or about March 28, 2007, WALKER provided the Internal Revenue Service with a fictitious loan agreement purportedly between WALKER, as borrower, and an entity owned by Desender, as lender, which he created in 2006 but backdated to December 20,

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2003, in order falsely to substantiate WALKER's bogus claim that the money he had received from Desender in 2006 was proceeds of a loan.

All in violation of Title 26, United States Code, Section 7201.

FORFEITURE ALLEGATIONS

1. Counts 1 through 13 of this Second Superseding Indictment are hereby re-alleged and incorporated as if fully set forth herein by reference, for the purpose of alleging forfeitures pursuant to Title 18, United States Code, Section 981(a)(1)(C), and Title 28, United States Code, Section 2461(c).

2. As the result of the offenses alleged in Counts 1 through 13 of this Second Superseding Indictment, the defendant,

ROBERT ALLEN WALKER,

shall forfeit to the United States pursuant to Title 18, United States Code, Section 981(a)(1)(C), and Title 28, United States Code, Section 2461(c), any property, real or personal, which constitutes or is derived from proceeds traceable to the violations alleged in Counts 1 through 13 of this Superseding Indictment.

3. If any of the above-described forfeitable property is unavailable for forfeiture, the United States intends to seek the forfeiture of substitute property as provided for in Title

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21, United States Code, Section 853(p), as incorporated by Title 28, United States Code,
Section 2461(c).

A TRUE BILL

UNITED STATES ATTORNEY

FOREPERSON