

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

UNITED STATES OF AMERICA

VS.

**RICHARD M. PLATO
MICHAEL DEREK WALKER
TAMMY RENEE NORRIS**

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CRIMINAL NO. H-11-263

United States District Court
Southern District of Texas
FILED

OCT 25 2011

David J. Bradley, Clerk of Court

SUPERCEDING INDICTMENT

The United States Grand Jury charges:

INTRODUCTION

At all times material herein:

1. Momentum Production Corp., hereinafter referred to a “MPC,” was a Texas Corporation with its principal place of business at 1001 W. Baker Road, Suite 200, Baytown, Texas 77521. MPC advertised itself as a company engaged in the exploration and development of oil and gas properties.

2. Defendant **RICHARD M. PLATO (“PLATO”)**, a Texas resident, was the President and Chief Executive Officer (CEO) of MPC. **PLATO** managed the day-to-day operations of MPC and, in his sole discretion, made all financial decisions affecting the company.

3. Defendant **MICHAEL DEREK WALKER (“WALKER”)**, a Florida

resident, was the Chief Investment Officer (CIO) and a member of the Board of Directors of MPC.

4. Defendant **TAMMY RENEE NORRIS** (“**NORRIS**”) lived in Spring, Texas, and was a long-time mistress of **PLATO**’s.

5. TRN Investments LLC, was an entity that **PLATO** caused to be organized under the Texas Limited Liability Company Act and used for the purpose of diverting MPC company funds to **NORRIS**.

6. Beginning in the spring of 2005, **WALKER, PLATO**, and other associates of MPC solicited persons throughout the United States to invest with MPC. Investors were told that their money would be used for operational expenses on currently producing wells and to improve production on existing wells owned by MPC.

7. The investments were designated as Promissory Notes or Net Profits Interest Promissory Notes payable by MPC (“the Notes”). MPC accepted Subscription Agreements from investors and thereafter issued the Notes, which were secured by a Security Agreement and Assignment of Production covering, among other collateral, MPC’s purported interest in oil and gas leases.

8. Between July 2005 and December 2006, approximately forty investors purchased over five million dollars worth of Notes in the following funds:

MPC Robinette Fund 1, MPC Robinette Fund 1-A, MPC Sullivan City Fund 2, and the MPC Febronio Flores Fund 3. Each of the funds was purportedly secured by MPC's interest in different oil and gas leases.

9. The Notes promised a high rate of return and required MPC to make monthly principal and interest "profit" payments to investors, typically over a period of between 24 and 48 months.

10. In or about November 2006, MPC defaulted on the Notes by, among other actions, failing to meet its monthly payment obligations.

COUNT 1

(Conspiracy to Commit Mail and Wire Fraud – Title 18 U.S.C. § 1349)

A. INTRODUCTION

1. The allegations in paragraphs 1 - 10 of the Introduction of this Superseding Indictment are hereby adopted, realleged and incorporated as if set out fully herein.

B. THE CONSPIRACY AND ITS OBJECTS

2. Beginning in or about April 2005, and continuing to at least January 2011, in the Houston Division of the Southern District of Texas, and elsewhere,

**RICHARD M. PLATO and
MICHAEL DEREK WALKER**

defendants herein, did knowingly combine, conspire, confederate, and agree with each other and with other persons known and unknown to the grand jury to commit offenses in violation of Title 18, United States Code, Sections 1341 and 1343, that is:

i. to knowingly and with intent to defraud 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 they were false and fraudulent when made, and causing to be delivered certain mail matter by any private and commercial interstate carrier, according to the directions thereon, for the purpose of executing the scheme, in violation of Title 18, United States Code, Section 1341.

ii. to knowingly and with intent to defraud 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 they were false and fraudulent when made, and transmitting and causing to be transmitted by means of wire communications in interstate and foreign commerce, certain signs, signals, and sounds, for the purpose of executing the scheme, in violation of Title 18, United States Code, Section 1343.

C. THE MANNER AND MEANS OF THE CONSPIRACY

3. It was part of the conspiracy that **PLATO** and **WALKER** would and did inform investors that their monies would be used for the operational expenses on currently producing wells and to improve production on dormant wells owned by MPC. Instead of using the investor funds for the represented purposes and for the benefit of MPC, **PLATO** would and did divert investor monies to personally

benefit himself and his associates—including his wife, brother, mistresses, and **WALKER**. The defendants would and did fail to disclose to investors that their monies would be used for these purposes.

4. It was further a part of the conspiracy that **PLATO** would and did divert significant sums of investor money to NORRIS through TRN Investments LLC, an entity that provided nothing of benefit to MPC. **PLATO** also would and did arrange for the issuance of a Form W-2 to make it appear that NORRIS worked for MPC when, in fact, she did not.

5. It was further a part of the conspiracy that **PLATO** would and did arrange for the issuance of a regular paycheck and Form W-2 to his wife, even though she was not actually employed by MPC.

6. It was further a part of the conspiracy that **PLATO** and **WALKER** would and did fail to inform investors of **PLATO**'s prior criminal record, namely his three prior federal convictions for fraud-related offenses and outstanding restitution obligations of over \$30 million.

7. It was further a part of the conspiracy that **PLATO** and **WALKER** would and did fail to inform investors that MPC was over one million dollars in debt at the time of the initial issuance of the Notes.

8. It was further a part of the conspiracy that **PLATO** and **WALKER**

would and did knowingly present investors with investment documents containing various material misrepresentations, and failed to take steps to correct such misrepresentations, including but not limited to:

- a. the representation that only one million dollars worth of Notes were being offered in connection with the MPC Robinette Fund 1 and, later, an additional \$500,000 worth of notes in the MPC Robinette Fund 1-A, with both funds being secured by the same collateral;
- b. the representation that collateral supporting the Notes was held by MPC “free and clear of any lien, security interest, or claim of any kind other than the security interest” granted to the investor;
- c. the representation that Stratco Operating Co., Inc., a company that held interest in the Hawkins Ranch lease which was used as a collateral for certain Notes associated with the MPC Febronio Flores Fund 3, was a wholly-owned subsidiary of MPC.

9. It was further a part of the conspiracy that **PLATO** used funds received from later investors to make monthly payments towards the principal and interest owed to earlier investors, effectively operating a Ponzi Scheme. This practice continued until approximately November 2006 when MPC became unable to satisfy its monthly principal and interest obligations under the Notes.

10. It was further a part of the conspiracy that **PLATO** and **WALKER** prevented investors from gaining access to inspect MPC's financial records.

11. It was further a part of the conspiracy that, after November 2006, **PLATO** and **WALKER** dissuaded investors from seeking rescission of the Notes or taking legal action against MPC by making misleading representations concerning MPC's financial condition and future prospects for honoring its obligations under the Notes, and also by making periodic "lulling" payments to investors based upon the investors likelihood to enforce his or her rights under the Notes.

12. It was further a part of the conspiracy that **WALKER**, at **PLATO's** direction after learning that he was under investigation by the Texas State Securities Board , presented investor G.L. with a letter seeking acquiescence to the belated disclosure of certain material facts, including **PLATO's** prior criminal convictions.

D. OVERT ACTS

13. On or about the dates below, the defendants committed the following overt acts in furtherance of the conspiracy in the Southern District of Texas and elsewhere:

a. On April 19, 2005, **PLATO** sent an e-mail to **WALKER** addressing

WALKER'S proposed compensation “for raising money for MPC.”

b. On July 17, 2005, **PLATO** sent an e-mail to **WALKER** attaching a financial statement for MPC, and stating, “[a]s I stated we really don’t give out financials, and in as much as the deal on the notes is property specific, I think we should not get into the business of providing financials on the company”

c. On August 24, 2005, **PLATO** caused a check for \$3000 to be written from one of MPC’s bank accounts to TRN Investments LLC.

d. On September 2, 2005, **PLATO** caused a check for \$6000 to be written from one of MPC’s bank accounts to TRN Investments LLC.

e. On September 2, 2005, **PLATO** caused a wire transfer for \$52,515 to be sent from one of MPC’s bank accounts to **WALKER**.

f. On November 3, 2005, **PLATO** caused a wire transfer of \$15,000 to be sent from one of MPC’s bank accounts to TRN Investments, LLC.

g. On or about December 15-16, 2005, **PLATO** used a \$150,000 investment from J.B. to fund payments to several investors.

h. On March 6, 2006, **PLATO** caused a wire transfer of \$5000 to be sent from one of MPC’s bank accounts to his wife’s account at another bank.

i. On April 11, 2006, **PLATO** used a \$100,000 investment from D.S. to fund payments to several investors.

j. On May 11-12, 2006, **PLATO** used \$25,000 investment from D.R. and a \$20,000 investment from M.C. to fund payments to several investors.

k. On June 20, 2006, **WALKER** sent **PLATO** an e-mail stating, “[i]f you feel compelled to show [your brother] gratitude for his support of you and Momentum, have you thought of granting him shares of Momentum Production Corp. instead of paying his monthly American Express bill?”

l. On November 22, 2006, **PLATO** caused a check for \$3000 to be written from one of MPC’s bank accounts to TRN Investments LLC.

m. On December 18, 2006, **PLATO** caused a check for \$2500 to be written from one of MPC’s bank account to a mistress with the initials C.D.

n. On March 20, 2007, **PLATO** sent an e-mail to **WALKER** discussing how MPC should spend incoming funds: “My thoughts are after paying off your car at the bank and paying several past due vendors and the Am Ex cards, we should have about \$100,000 left to put towards our needs”

o. On June 28, 2007, **WALKER** met with a group of investors at the Galleria Mall in Ft. Lauderdale, Florida.

p. On September 14, 2007, **WALKER** sent an e-mail to an investor with the initials O.D.F. rebuffing the investor’s request to visit MPC’s offices to review its books and records.

q. On October 18, 2007, **PLATO** sent **WALKER** an e-mail stating, “as you know MPC has paid to you and yours some \$45,000 or so in the last month as well as having paid for the AMEX bills recently and in the past, as well as having paid off this year about \$40,000 on your car, as well as having paid the insurance (\$approx. \$5000) for the year on your car, as well as having paid in the last 60 days about \$335,000 in past due bills.”

r. On November 1, 2007, **WALKER** sent an e-mail to investors stating that, “[a]s oil and gas prices reach new highs, Momentum is reaching new highs as well.”

s. On November 20, 2007, **PLATO** caused \$10,215 to be wired to **WALKER’S** personal bank account.

t. On November 30, 2007, **WALKER** sent an e-mail to **PLATO** stating, in regards to a proposed payment to an investor with the initials D.S., “I feel confident that this demonstration will avoid further [investor with the initials S.S.] influenced litigation for at least three more months.”

u. On December 17, 2007, **WALKER** sent an e-mail to **PLATO** containing a report of his recent communications with investors concerning their requests for payment.

v. On December 19, 2007, **WALKER** sent an e-mail to **PLATO** with

recommendations concerning the names of investors who should be paid in December 2007, as well as a recommended amount of payment.

w. On February 7, 2008, **WALKER** sent an e-mail to **PLATO** recommending payments to three particular investors in order “to avoid litigation.”

x. On April 2, 2008, **WALKER** deposited a check for \$3513.49 drawn off of one of MPC’s bank accounts into his personal bank account.

y. On December 12, 2008, **PLATO** caused a check for \$8425.61 to be written from one of MPC’s bank accounts to Countrywide for the payment of **NORRIS**’s mortgage.

z. On March 29, 2010, **PLATO** sent **WALKER** an e-mail stating, in regards to the payments owed an investor with the initials A.N. who had retained a lawyer to sue MPC, that, “I don’t want you getting on a guilt trip and trying to talk me into doing any more than we have to do as a result of . . . lawyer’s negotiations.”

aa. In July 2010, **WALKER** presented an investor with the initials G.L. with a letter signed by **PLATO** seeking approval for the belated disclosure of certain facts related to the investment, including **PLATO**’s prior criminal convictions and restitution obligations.

COUNTS 2 - 8

(Mail Fraud Affecting a Financial Institution – Title 18 U.S.C. § 1341)

1. The allegations in paragraphs 1 - 10 of the Introduction of this Superseding Indictment are hereby adopted, realleged and incorporated as if set out fully herein.

A. THE SCHEME AND ARTIFICE TO DEFRAUD

2. From in or about April 2005, through in or about January 2011, in the Houston Division of the Southern District of Texas, and elsewhere,

**RICHARD M. PLATO and
MICHAEL DEREK WALKER**

defendants herein, aided and abetted by one another and others known and unknown to the Grand Jury, did knowingly and with intent to defraud devise and intend 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, knowing that the pretenses, representations, and promises were false and fraudulent when made, and further in doing so, affecting Pensco Trust Company, a financial institution.

B. THE MANNER AND MEANS OF THE SCHEME TO DEFRAUD

3. Among the manner and means by which the defendants sought to accomplish and did accomplish the purpose of the scheme to defraud were the acts

set forth in paragraphs 1 - 12 of Count One of the Superceding Indictment, hereby re-alleged and incorporated as if fully set forth in these Counts of the Superceding Indictment.

C. EXECUTION OF THE SCHEME TO DEFRAUD

4. On or about the dates specified as to each count below, the defendants, for the purpose of executing the aforesaid scheme and artifice to defraud, and attempting to do so, knowingly deposited and caused to be deposited the matters and things listed below, and caused the matters and things to be sent and delivered, by private and commercial interstate carrier and by the United States Postal Service:

COUNT	APPROX. DATE	DESCRIPTION
2	May 11, 2006	Investment documents sent from Momentum's office in Baytown, Texas to an investor in Randolph, New Jersey with the initials J.B. concerning J.B.'s \$50,000 investment in the Sullivan City Fund 2
3	June 26, 2006	Investment documents sent from Momentum's office in Baytown, Texas to WALKER in Fort Lauderdale, Florida concerning \$100,000 and \$140,000 investments in the Febronio Flores Fund 3 made by investors with the initials O.D.F. and M.C., respectively
4	August 3, 2006	Investment documents sent from Humble, Texas by an investor with the initials G.L. to Momentum's office in Baytown, Texas concerning G.L.'s \$100,000 investment in the

		Febronio Flores Fund 3
5	August 7, 2006	Investment documents sent from West Nyack, New York by an investor with the initials J.A. to Momentum's office in Baytown, Texas concerning J.A.'s \$100,000 investment in the Febronio Flores Fund 3
6	August 24, 2006	Investment documents sent from Momentum's office in Baytown, Texas to WALKER in Fort Lauderdale, Florida concerning a \$50,000 investment in the Febronio Flores Fund 3 made by investors with the initials of J.S. and C.S.
7	September 28, 2006	Investment documents sent from Momentum's office in Baytown, Texas to WALKER in Fort Lauderdale, Florida concerning a \$200,000 investment in the Febronio Flores Fund 3 made by an investor with the initials of C.V.
8	December 26, 2006	Investment documents sent from San Jose, California by an investor with the initials V.M. to Momentum's office in Baytown, Texas concerning V.M.'s \$100,000 investment in the Febronio Flores Fund 3

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

COUNT 9

(Conspiracy to Launder Funds – Title 18 U.S.C. § 1956(h))

A. INTRODUCTION

1. The allegations in paragraphs 1 - 10 of the Introduction of this Superceding Indictment are hereby adopted, realleged and incorporated as if set out

fully herein.

B. THE CONSPIRACY AND ITS OBJECTS

2. From in or about April 2005, through in or about January 2011, in the Houston Division of the Southern District of Texas, and elsewhere,

**RICHARD M. PLATO
MICHAEL DEREK WALKER and
TAMMY RENEE NORRIS**

defendants herein, together with other persons known and unknown to the grand jury, did unlawfully and knowingly conspire, confederate, and agree, among themselves and with others, to conduct financial transactions which involved proceeds of specified unlawful activity, that is: bank and/or mail fraud, and knowing that the transactions were designed in whole or in part to promote the carrying on of such specified unlawful activity, and to conceal and disguise the nature, source, source, ownership and control of the proceeds of specified unlawful activity, all in violation of Title 18, United States Code, Section 1956(a)(1)(A)(I) and (B)(I).

C. THE MANNER AND MEANS OF THE CONSPIRACY

3. Among the deceitful and dishonest means by which the defendants and their co-conspirators sought to accomplish and did accomplish the purpose of the conspiracy were the acts set forth in paragraphs 3 – 12 of the manner and means

contained in Count One of the Superseding Indictment, hereby re-alleged and incorporated as if fully set forth in this Count of the Superseding Indictment.

D. OVERT ACTS

4. In furtherance of the conspiracy, and to effect the objects thereof, the defendants performed and caused to be performed, among others, the overt acts set forth in Count One of this Superseding Indictment, hereby re-alleged and incorporated as if fully set forth in this Count of the Superseding Indictment.

In violation of Title 18, United States Code, Section 1956(h).

COUNTS 10 - 11

(Securities Fraud – Title 15 U.S.C. §§ 77q(a) and 77(x))

1. The allegations in paragraphs 1 – 10 of the Introduction and paragraphs 1 – 12 of Count One of this Superseding Indictment are hereby adopted, realleged and incorporated as if set out fully herein.

2. On or about the respective dates shown below, each such date constituting a separate count of this Superseding Indictment, within the Houston Division of the Southern District of Texas and elsewhere, the defendants

**RICHARD M. PLATO and
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and other persons, known and unknown to the grand jury, willfully and knowingly, in connection with the offer and sale of a security, that is investments in MPC's

Promissory Notes and Net Profits Interest Promissory Notes, by the use of a means of transportation and communication in interstate commerce and by the use of the mails, directly and indirectly: (a) employed a device, scheme, and artifice to defraud; (b) obtained money by means of untrue statements of material fact and omissions to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and (c) engaged in transactions, practices, and courses of business which operated as a fraud and deceit upon investors.

COUNT	APPROX. DATE	DESCRIPTION
10	August 2005 through June 2006	Sale of MPC Notes in the Sullivan City Fund 2
11	June 2006 through December 2006	Sale of MPC Notes in the Febronio Flores Fund 3

In violation of Title 15, United States Code Sections 77q(a) and 77x and Title 18, United States Code Section 2.

COUNT 12

(False Statement to a Mortgage Lending Business – Title 18 U.S.C. § 1014)

On or about November 20, 2009, in the Houston Division of the Southern

District of Texas, defendant

TAMMY RENEE NORRIS

knowingly made a material false statement and report for the purpose of influencing the action of BAC Home Loan Servicing, L.P., a mortgage lending business, in connection with an application for a home loan modification in that the defendant represented that she had “worked for a small independent oil & gas company,” had earned income from investments in oil and gas wells, and would be put “back onto the ‘full time’ payroll in January 2010,” when, in fact, as the defendant well knew, this information was not true.

All in violation of Title 18, United States Code, Section 1014.

A TRUE BILL

ORIGINAL SIGNATURE ON FILE

 FOREPERSON OF THE GRAND JURY

KENNETH MAGIDSON
United States Attorney

By:



David C. Searle
Assistant United States Attorney
(713) 567-9663