MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT SENTENCE BY A PERSON IN FEDERAL CUSTODY

United States District Court	District Eastern District of Virginia
Name (under which you were convicted): JEFFREY A. MARTINOVICH	Docket or Case No.: 4:12cr101
Place of Confinement: FCI Ft. Dix, New Jersey, USA	Prisoner No.: 81091-083
UNITED STATES OF AMERICA V.	Movant (include name under which convicted) JEFFREY A. MARTINOVICH

MOTION

1. (a) Name and location of court which entered the judgment of conviction you are challenging: United States District Court for the Eastern District of Virginia - Newport News - Norfolk

   (b) Criminal docket or case number (if you know): 4:12cr101

2. (a) Date of the judgment of conviction (if you know): August 4, 2017

   (b) Date of sentencing: September 29, 2016

3. Length of sentence: 140 Months

4. Nature of crime (all counts):

18 U.S.C. § 1349 Conspiracy to Commit Mail and Wire Fraud	Count 1
18 U.S.C. § 1343 and 2 Wire Fraud	Counts 6-9
18 U.S.C. § 1341 and 2 Mail Fraud	Counts 10-14
18 U.S.C. § 1957 and 2 Monetary Transactions	Counts 17-18,20-23

5. (a) What was your plea? (Check one)

   (1) Not guilty [X] (2) Guilty [ ] (3) Nolo contendere (no contest) [ ]

   (b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or what did you plead guilty to and what did you plead not guilty to?

6. If you went to trial, what kind of trial did you have? (Check one) Jury [X] Judge only [ ]

7. Did you testify at a pretrial hearing, trial, or post-trial hearing? Yes [X] No [ ]

8. Did you appeal from the judgment of conviction? Yes [X] No [ ]

9. If you did appeal, answer the following:

(a) Name of court: Fourth Circuit Court of Appeals

(b) Docket or case number (if you know): 13-4828

(c) Result: Sentence Vacated, Conviction Affirmed, Judge Removed, Remanded

(d) Date of result (if you know): January 7, 2016

(e) Citation to the case (if you know): 810 F. 3d 232 (4th Cir. 2016)

(f) Grounds raised: 1) Illegal Court Conduct, 2) Insufficient Evidence, 3) No Loss, 4) Guidelines Not Mandatory, 5) Sentencing Loss Calculation Errors, 6) Curative Jury Instruction Error - Rule 33 Denial Error, 7) Money Laundering Count Erroneous, 8) Erred By Not Excluding 404(b) Evidence, 9) Erroneous Restitution and Forfeiture Orders, 10) Erroneous Obstruction of Justice Enhancement.

(g) Did you file a petition for certiorari in the United States Supreme Court? Yes [X] (Second) No [X] (First)

If "Yes," answer the following:

(1) Docket or case number (if you know): 17-5643 (Second Round of Appeal)

(2) Result: Declined Certiorari

(3) Date of result (if you know): August 4, 2017

(4) Citation to the case (if you know):

(5) Grounds raised: WHETHER AN INDIGENT APPELLANT WHOM IS REFUSED SELF-REPRESENTATION AND PERMISSION TO SUBMIT A PRO SE SUPPLEMENTAL BRIEF IS DENIED HIS DUE PROCESS AND EQUAL PROTECTION RIGHTS, PARTICULARLY IN COMPARISON TO AN INDIGENT APPELLANT WHOSE COUNSEL FILES A BRIEF PURSUANT TO ANDERS V. CALIFORNIA.

10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications, concerning this judgment of conviction in any court?

Yes [X] No [ ]

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court: Fourth Circuit Court of Appeals

(2) Docket or case number (if you know): 16-4644

(3) Date of filing (if you know): January 26, 2017

(4) Nature of the proceeding: Direct Appeal

(5) Grounds raised: 1) Illegal consecutive sentence, 2) Trial counsel ineffective assistance on the record for not objecting to court interference and bias, 3) Resentencing court violated due process rights in regard to mental disease or defect, 4) Loss, Restitution, Forfeiture, and Obstruction of Justice are illegal and were not addressed pursuant to Fourth Circuit's remand and directive.

(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes ☐ No ☒

(7) Result: Counsel Brief Denied per Waiver, Pro Se Supp. Brief not Considered

(8) Date of result (if you know): April 19, 2017

(b) If you filed any second motion, petition, or application, give the same information:

(1) Name of court: U.S. District Court, Eastern District of Virginia

(2) Docket of case number (if you know): 4:12cr101

(3) Date of filing (if you know): January 13, 2017

(4) Nature of the proceeding: F.R.Crim.P. 35 Clear Error - Fraud

(5) Grounds raised: Delievery to the Court of evidence of fraud in bringing Case 4:15cr50, which activity and plea severely prejudiced Case 4:12cr101 sentencing calculus, and documenting delivery of fraud evidence to Officers of the Court, and Fraud on the Court.

Also, 1) F.R.Civ.P. 60(b)(3) Government Breach of Contract: Denied 11/21/17, ED Va, 2) Multiple Motions to proceed Pro Se and Supplemental Briefs: Denied, 4th Cir., 3) Object to Modify Restitution Orders: Denied, ED Va, 4) 28 U.S.C. § 455 Motion for Disqualification of Dist. Judge: Denied 11/21/17 ED Va.

(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes ☐ No ☒

(7) Result: Denied

(8) Date of result (if you know): November 21, 2017

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?

(1) First petition: Yes ☐ No ☒

(2) Second petition: Yes ☐ No ☒

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not:

Proceeding with 28 U.S.C. § 2255

12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

GROUND ONE: TRIAL COUNSEL WAS INEFFECTIVE FOR NOT OBJECTING TO THE DISTRICT COURT'S INTERFERENCE AND BIAS THEREFORE PREVENTING A FAIR TRIAL AND RELIEF ON APPEAL.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

See Memorandum in Support.

(b) **Direct Appeal of Ground One:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why: Claims of Ineffective Assistance should be raised in a motion brought pursuant to 28 U.S.C. § 2255 (2012). [U.S. v. Baptiste, 596 F. 3d 214, 216 n.1 (4th Cir. 2010)].

(c) **Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

GROUND TWO: APPEAL COUNSEL WAS INEFFECTIVE BY NOT SUBMITTING STRUCTURAL ERROR ON APPEAL FOR THE DISTRICT COURT'S INTERFERENCE AND BIAS IN MARTINOVICH'S TRIAL.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

See Memorandum in Support.

(b) **Direct Appeal of Ground Two:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why: Claims of Ineffective Assistance should be raised in a motion brought pursuant to 28 U.S.C. § 2255 (2012). [U.S. v. Baptiste, 596 F. 3d 214, 216 n.1 (4th Cir. 2010)].

(c) **Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

_____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

_____

_____

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

_____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

_____

_____

_____

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

GROUND THREE: APPEAL COUNSEL WAS INEFFECTIVE FOR ABANDONING APPEAL AND NOT FILING A PETITION FOR WRIT OF CERTIORARI.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

See Memorandum in Support.

(b) **Direct Appeal of Ground Three:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why: Claims of Ineffective Assistance should be raised in a motion brought pursuant to 28 U.S.C. § 2255 (2012). [U.S. v. Baptiste, 596 F. 3d 214, 216 n.1 (4th Cir. 2010)].

(c) **Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

GROUND FOUR: COUNSEL WAS INEFFECTIVE FOR FAILING TO OBJECT AND INTERVENE AGAINST THE VIOLATION OF MARTINOVICH'S FIFTH AMENDMENT RIGHT OF DUE PROCESS IN REGARDS TO MENTAL DISEASE OR DEFECT.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

See Memorandum in Support.

(b) **Direct Appeal of Ground Four:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why: Claims of Ineffective Assistance should be raised in a motion brought pursuant to 28 U.S.C. § 2255 (2012). [U.S. v. Baptiste, 596 F. 3d 214, 216 n.1 (4th Cir. 2010)].

(c) **Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

_____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

_____

_____

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

_____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

_____

_____

12. Continued: (Case No. 4:12cr101)

GROUND FIVE: APPEAL COUNSEL WAS INEFFECTIVE FOR FAILING TO INCLUDE IN THE DIRECT APPEAL THE DISTRICT COURT'S VIOLATION OF MARTINOVICH'S FIFTH AMENDMENT RIGHT OF DUE PROCESS IN REGARDS TO MENTAL DISEASE OR DEFECT.

(a) Supporting facts: See Memorandum in Support.

(b) Direct Appeal of Ground Five:

(1) If you appealed from the judgment of conviction, did you raise this issue? NO

(2) If you did not raise this issue in your direct appeal, explain why:

Claims of Ineffective Assistance should be raised in a motion brought pursuant to 28 U.S.C. § 2255 (2012). [United States v. Baptiste, 596 F. 3d 214, 216 n.1 (4th Cir. 2010)].

Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application? NO

GROUND SIX: TRIAL COUNSEL WAS INEFFECTIVE FOR FAILING TO PROVIDE AN AFFIRMATIVE DEFENSE THAT MARTINOVICH WAS MENTALLY UNFIT TO STAND TRIAL OR TO MOVE THE COURT TO PROVIDE A PSYCHOLOGICAL EXAMINATION AND COMPETENCY HEARING BEFORE PROCEEDING AT TRIAL.

(a) Supporting facts: See Memorandum in Support.

(b) Direct Appeal of Ground Six:

(1) If you appealed from the judgment of conviction, did you raise this issue? NO

(2) If you did not raise this issue in your direct appeal, explain why:

Claims of Ineffective Assistance should be raised in a motion brought pursuant to 28 U.S.C. § 2255 (2012). [United States v. Baptiste, 596 F. 3d 214, 216 n.1 (4th Cir. 2010)].

Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application? NO

GROUND SEVEN: SENTENCING COUNSEL WAS INEFFECTIVE FOR NOT OBJECTING TO THE DISTRICT

COURT'S ERRONEOUS DECISION TO IMPOSE A PARTIALLY CONCURRENT SENTENCE.

(a) Supporting facts: See Memorandum in Support.

(b) Direct Appeal of Ground Seven:

(1) If you appealed from the judgment of conviction, did you raise this issue? NO

(2) If you did not raise this issue in your direct appeal, explain why:

Claims of Ineffective Assistance should be raised in a motion brought pursuant to 28 U.S.C. § 2255 (2012). [United States v. Baptiste, 596 F. 3d 214, 216 n.1 (4th Cir. 2010)].

Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application? NO

GROUND EIGHT: SENTENCING COUNSEL WAS INEFFECTIVE FOR NOT OBJECTING TO THE ERRONEOUS PLACEMENT IN CRIMINAL HISTORY CATEGORY II FOR CASE NO. 4:15CR50.

(a) Supporting facts: See Memorandum in Support.

(b) Direct Appeal of Ground Eight:

(1) If you appealed from the judgment of conviction, did you raise this issue? NO

(2) If you did not raise this issue in your direct appeal, explain why:

Claims of Ineffective Assistance should be raised in a motion brought pursuant to 28 U.S.C. § 2255 (2012). [United States v. Baptiste, 596 F. 3d 214, 216 n.1 (4th Cir. 2010)].

Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application? NO

GROUND NINE: COUNSEL WAS INEFFECTIVE FOR FAILING TO PURSUE A DEFENSE OF INNOCENCE AT TRIAL AND INSTEAD COERCED MARTINOVICH INTO ACCEPTING A DETRIMENTAL PLEA CONTRACT.

(a) Supporting facts: See Memorandum in Support.

(b) Direct Appeal of Ground Nine:

(1) If you appealed from the judgment of conviction, did you raise this

issue? NO

(2) If you did not raise this issue in your direct appeal, explain why:

Claims of Ineffective Assistance should be raised in a motion brought pursuant to 28 U.S.C. § 2255 (2012). [United States v. Baptiste, 596 F. 3d 214, 216 n.1 (4th Cir. 2010)].

Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application? NO

GROUND TEN: COUNSEL WAS INEFFECTIVE FOR FAILING TO CHALLENGE TAINTED INDICTMENT AND COUNT EXCEEDING STATUTE OF LIMITATIONS.

(a) Supporting facts: See Memorandum in Support.

(b) Direct Appeal of Ground Ten:

(1) If you appealed from the judgment of conviction, did you raise this issue? NO

(2) If you did not raise this issue in your direct appeal, explain why:

Claims of Ineffective Assistance should be raised in a motion brought pursuant to 28 U.S.C. § 2255 (2012). [United States v. Baptiste, 596 F. 3d 214, 216 n.1 (4th Cir. 2010)].

Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application? NO

GROUND ELEVEN: COUNSEL WAS INEFFECTIVE FOR FAILING TO OBJECT TO MATERIALLY FALSE PRESENTENCE INFORMATION WHICH WAS DEMONSTRABLY RELIED UPON AT SENTENCING AS WELL AS NOT OBJECTING TO THE SENTENCING COURT'S OPEN REFUSAL TO CONSIDER THE POSITIVE 3553(a) FACTORS.

(a) Supporting facts: See Memorandum in Support.

(b) Direct Appeal of Ground Eleven:

(1) If you appealed from the judgment of conviction, did you raise this issue? NO

(2) If you did not raise this issue in your direct appeal, explain why:

Claims of Ineffective Assistance should be raised in a motion brought

pursuant to 28 U.S.C. § 2255 (2012). [United States v. Baptiste, 596 F. 3d 214, 216 n.1 (4th Cir. 2010)].

Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application? NO

GROUND TWELVE: TRIAL COUNSEL WAS INEFFECTIVE FOR VIOLATING STIPULATION AGREEMENT, FAILING TO TIMELY OBJECT AND MOVE FOR MISTRIAL, AND FOR CAUSING FAILURE OF RULE 33 MOTION FOR NEW TRIAL.

(a) Supporting facts: See Memorandum in Support.

(b) Direct Appeal of Ground Twelve:

(1) If you appealed from the judgment of conviction, did you raise this issue? NO

(2) If you did not raise this issue in your direct appeal, explain why:

Claims of Ineffective Assistance should be raised in a motion brought pursuant to 28 U.S.C. § 2255 (2012). [United States v. Baptiste, 596 F. 3d 214, 216 n.1 (4th Cir. 2010)].

Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application? NO

GROUND THIRTEEN: SENTENCING COUNSEL WAS INEFFECTIVE FOR AGREEING TO THE HIGH END OF THE GUIDELINES RANGE OR FOR NOT CHALLENGING THE COURT'S RELIANCE ON MATERIALLY FALSE INFORMATION CLAIMING COUNSEL AGREED TO THE HIGH END.

a) Supporting facts: See Memorandum in Support.

(b) Direct Appeal of Ground Thirteen:

(1) If you appealed from the judgment of conviction, did you raise this issue? NO

(2) If you did not raise this issue in your direct appeal, explain why:

Claims of Ineffective Assistance should be raised in a motion brought pursuant to 28 U.S.C. § 2255 (2012). [United States v. Baptiste, 596 F. 3d 214, 216 n.1 (4th Cir. 2010)].

Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application? NO

GROUND FOURTEEN: APPEAL COUNSEL WAS INEFFECTIVE FOR FAILING TO ARGUE THAT THE GOVERNMENT'S OBJECTION PRESERVED THE COURT'S ABUSE OF DISCRETION FOR REVIEW ON APPEAL.

(a) Supporting facts: See Memorandum in Support.

(b) Direct Appeal of Ground Fourteen:

(1) If you appealed from the judgment of conviction, did you raise this issue? NO

(2) If you did not raise this issue in your direct appeal, explain why:

Claims of Ineffective Assistance should be raised in a motion brought pursuant to 28 U.S.C. § 2255 (2012). [United States v. Baptiste, 596 F. 3d 214, 216 n.1 (4th Cir. 2010)].

Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application? NO

GROUND FIFTEEN: THE GOVERNMENT BREACHED THE PLEA CONTRACT MAKING IT NULL AND VOID BY FAILING TO ADHERE TO ITS TERMS.

(a) Supporting facts: See Memorandum in Support.

(b) Direct Appeal of Ground Fifteen:

(1) If you appealed from the judgment of conviction, did you raise this issue? NO

(2) If you did not raise this issue in your direct appeal, explain why:

This breach did not occur until after the filing of the Direct Appeal.

Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application? YES

(2) If your answer to Question (c)(1) is "yes" state:

Type of motion or petition: F.R.Civ.P. 60(b)(3)

Docket or case number: 4:12cr101

Date of court's decision: November 21, 2017

Result: Denied

(3) Did you receive a hearing on your motion, petition, or application? NO

(4) Did you appeal from the denial of your motion, petition, or application? NO

(5) n/a

(6) n/a

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: This Motion preserved the issue in District Court and is included in this instant brief.

GROUND SIXTEEN: SENTENCING COUNSEL WAS INEFFECTIVE FOR ADVISING DEFENDANT TO ENTER ILLEGAL PLEA CONTRACT AND FOR NOT OBJECTING TO ILLEGAL PROCEEDINGS VOIDING CONTRACT.

(a) Supporting facts: See Memorandum in Support.

(b) Direct Appeal of Ground Sixteen:

(1) If you appealed from the judgment of conviction, did you raise this issue? NO

(2) If you did not raise this issue in your direct appeal, explain why:

Claims of Ineffective Assistance should be raised in a motion brought pursuant to 28 U.S.C. § 2255 (2012). [United States v. Baptiste, 596 F. 3d 214, 216 n.1 (4th Cir. 2010)].

Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application? NO

GROUND XVII: TRIAL COUNSEL WAS INEFFECTIVE FOR FAILING TO MOVE TO EXCLUDE, TO OBJECT, AND MOVE FOR MISTRIAL BASED UPON EVIDENCE OF INFLAMMATORY AND PREJUDICIAL NATURE WHICH OUTWEIGHED THE PROBATIVE VALUE.

(a) Supporting Facts: See Memorandum in Support.

(b) Direct Appeal of Ground Seventeen:

(1) If you appealed from the judgment of conviction, did you raise this issue? NO

(2) If you did not raise this issue in your direct appeal, explain why:

Claims of Ineffective Assistance should be raised in a motion brought pursuant to 28 U.S.C. § 2255 (2012). [United States v. Baptiste, 596 F. 3d 214, 216 n.1 (4th Cir. 2010)].

Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application? NO

GROUND XVIII: APPEAL COUNSEL WAS INEFFECTIVE FOR FAILING TO ARGUE THAT THE PROSECUTION ERRED BY PRESENTING EVIDENCE OF INFLAMMATORY AND PREJUDICIAL NATURE WHICH OUTWEIGHED ITS PROBATIVE VALUE AND THAT THE DISTRICT COURT ABUSED ITS DISCRETION BY PERMITTING SAID EVIDENCE AND DENYING MOTIONS PURSUANT TO RULE 29 AND RULE 33.

(a) Supporting Facts: See Memorandum in Support.

s(b) Direct Appeal of Ground Eighteen:

(1) If you appealed from the judgment of conviction, did you raise this issue? NO

(2) If you did not raise this issue in your direct appeal, explain why:

Claims of Ineffective Assistance should be raised in a motion brought pursuant to 28 U.S.C. § 2255 (2012). [United States v. Baptiste, 596 F. 3d 214, 216 n.1 (4th Cir. 2010)].

Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application? NO

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(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

13. Is there any ground in this motion that you have not previously presented in some federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them:

Yes. Grounds 1-14, and 16-18 have not previously been presented in some federal court. Claims of Ineffective Assistance should be raised in a motion brought pursuant to 28 U.S.C. § 2255 (2012), in order to permit sufficient development of the record. [United States v. Baptiste, 596 F. 3d 214, 216 n.1 (4th Cir. 2016)].

14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the judgment you are challenging? Yes ☐ No ☒

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised.

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At the preliminary hearing: Mr. James Broccoletti, Norfolk, Virginia

(b) At the arraignment and plea: Mr. James Broccoletti, Norfolk, Virginia

(c) At the trial: Mr. James Broccoletti, Norfolk, Virginia

(d) At sentencing: Mr. Lawrence Woodward, Virginia Beach, Virginia

(e) On appeal: Mr. Matthew Greene, Alexandria, Virginia. Mr. Lawrence Woodward, Virginia Beach, Virginia. Mr. Edwin Brooks, Richmond, Virginia.

(f) In any post-conviction proceeding: n/a

(g) On appeal from any ruling against you in a post-conviction proceeding: n/a

16. Were you sentenced on more than one court of an indictment, or on more than one indictment, in the same court and at the same time? Yes [X] No [ ]

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes [X] No [ ]

(a) If so, give name and location of court that imposed the other sentence you will serve in the future: U.S. District Court, Eastern District of Virginia, Norfolk, Virginia.

(b) Give the date the other sentence was imposed: September 29, 2016

(c) Give the length of the other sentence: 63 Months

(d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes [X] No [ ]

18. TIMELINESS OF MOTION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2255 does not bar your motion.*

n/a

* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2255, paragraph 6, provides in part that:

A one-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of –

(1) the date on which the judgment of conviction became final;

(2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;

(3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or

(4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

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Therefore, movant asks that the Court grant the following relief: Vacate the Full Judgment to include the Conviction, Sentence, Forfeiture, and Restitution.

or any other relief to which movant may be entitled.

n/a
Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Motion under 28 U.S.C. § 2255 was placed in the prison mailing system on _____
(month, date, year)

Executed (signed) on _____ (date).

_____
Signature of Movant

If the person signing is not movant, state relationship to movant and explain why movant is not signing this motion.

THE UNITED STATES DISTRICT COURT
IN THE EASTERN DISTRICT OF VIRGINIA

UNITED STATES,

Plaintiff,

v.

Case No. 4:12cr101

JEFFREY A. MARTINOVICH,

Defendant.

MEMORANDUM IN SUPPORT OF MOTION TO VACATE, SET ASIDE, OR CORRECT A SENTENCE PURSUANT TO 28 U.S.C. § 2255

NOW HERE COMES Jeffrey A. Martinovich, proceeding pro se, in a Motion to Vacate, Set Aside, or Correct a Sentence Pursuant to 28 U.S.C. § 2255.

LEGAL STANDARD

"The United States Supreme Court holds allegations of a pro se complaint to less stringent standards than formal pleadings drafted by lawyers. A complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him relief." [Haines v. Kerner, 404 U.S. 519, 520-21, 92 S. Ct. 594, 30 L. Ed 2d 652 (1972)].

Mr. Martinovich presents this Motion pursuant to 28 U.S.C. § 2255(a) which permits that "(a) prisoner in custody under sentence of a court established by Act of Congress claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the United

States...or is otherwise subject to collateral attack, may move the court which imposed the sentence to vacate, set aside or correct the sentence."

Pursuant to 28 U.S.C. § 2255(b), if this Court finds the judgment of Case 4:12cr101 unlawful, the Court shall grant an appropriate remedy, to include (1) "discharge," (2) "grant a new trial," (3) "resentence," or (4) "correct the sentence.

Mr. Martinovich's Motion submits claims of counsel ineffective assistance. In this Court, "(t)o prevail on a claim of ineffective assistance of counsel, a petitioner ordinarily must satisfy both parts of the two-part test set forth in Strickland. The petitioner first must show that counsel's representation fell below an objective standard of reasonableness. In making this determination, a court considering the habeas corpus petition must indulge a strong presumption that counsel's conduct falls within a wide range of reasonable professional assistance. If counsel's performance is found to have been deficient under the first part of the Strickland standard, to obtain relief the petitioner must also show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceedings would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome, and the likelihood of a different result must be substantial, not just conceivable." [Richardson v. Branker, 668 F. 3d 128 (4th Cir. 2011); citing Strickland v. Washington, 466 U.S. 668 687, 104 S. Ct. 2052, 80 L. Ed 2d 674 (1984)].

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STATEMENT OF THE CASE

Mr. Martinovich grew up in Dayton, Ohio, with his father working in Government Civil Service and his mother working as a secretary in the Sears Service Department. Martinovich excelled in academics and sports and received a Congressional Appointment to the United States Air Force Academy from Ohio Representative Honorable Tony Hall.

At the Academy, Mr. Martinovich was a member of the basketball team and the rugby team, and he graudated with a B.S. in Business Management in 1988. He served his country in The First Gulf War in the F-117 Stealth Fighter Program at Tactical Air Command Headquarters, Langley Air Force Base, Virginia. While serving in the Air Force, Mr. Martinovich also attended night school, earning an MBA from The College of William and Mary in 1992.

With an Honorable Discharge in 1992, Mr. Martinovich began a second career in the investment industry. Building upon early success, Martinovich became Founder and CEO of MICG Investment Management, LLC. MICG grew rapidly and earned a national reputation as a successful wealth management firm.

By 2007, MICG employed fifty employees and fifty independent agents with eight retail branches in Virginia, Washington D.C., and New York City. MICG served over 3,000 clients in 42 states and 5 countries while offering financial planning, insurance, investment banking, hedge funds, real estate, mortgages, lending and trust services. MICG managed $1 billion in client assets

spread among a highly-diverse allocation of over 1,000 direct investments.[AFF.#1]. Although MICG's revenue increased an average of 36% per year for over fifteen years, Mr. Martinovich had not increased his personal salary since 1998, choosing instead to allocate the increased yearly revenue to MICG's significant growth.[AFF.#2].

Under Mr. Martinovich's leadership, MICG also earned the reputation of a top community and charity supporter everywhere a new branch office was opened. Every MICG teammate, and their family, committed a great deal of time, and fortunate financial resources, in support of local charities and community missions. Martinovich, himself, became President of Big Brothers Big Sisters, Chairman of the Childrens Village, Board Director for the Christopher Newport University Luter School of Business, Board Director for the United Service Oranizations (USO), Chairman of Virginia for the Young President's Organization (YPO), and deeply involved with numerous other civic organizations. Multiplying this charitable commitment amongst the members of the MICG team generated a tremendous positive social impact, with so many communities relying on MICG's success.[AFF.#3].

In 2008, based on its exemplary regulatory history, MICG was selected as a beta test client for the new joint regulatory examination created by the SEC and FINRA for advanced firms operating as both Broker-Dealers (B/D) regulated by FINRA, as well as Registered Investment Advisors (RIA) regulated by the SEC.[AFF.#4]. This experiment had many political and public opinion struggles as the 2008 Financial Crisis perfect storm came

ashore. [See "The Fall of MICG," Ash Press 2017, Amazon Books].[AFF.#5].

Following the outing of Bernie Madoff's $50 billion hedge fund ponzi scheme, the examination turned its focus to MICG's three proprietary hedge funds. MICG provided a broad array of alternative investments for client portfolios to include managed futures funds, real estate investment trusts, private equity, and hedge funds. Beginning in 2001, clients invested in the MICG Partners fund, followed by the MICG Anchor Strategies Fund, and finally the MICG Venture Strategies Fund. These MICG platforms provided clients access to institutional money managers and investment vehicles previously not accessible to this investor base. These funds invested in a wide array of equity, debt, private, and public fund allocations.

Although not legally mandated, or required by industry regulators, Mr. Martinovich elected to employ external valuation experts, as well as independent fund auditors, to execute pricing and valuation metrics for each private investment. These extra regulatory processes, in addition to MICG's robust internal Compliance Division, were employed to ensure fund transparency and independent performance evaluations for MICG clients.

The Partners Fund operated primarily as a fund-of-funds platform which diversifed assets among multiple hedge funds and targeted a consistent, positive return, regardless of up or down public markets. Through 2007, Partners had successfully accomplished this objective.

The Anchor Strategies Fund was employed to invest directly into Tiptree Financial, a private fixed-income investment fund

headquartered in New York City which normally required higher minimum client investments. This fund performed well, even during the mortgage-bond market collapse, posting a positive 4% annual return when many well-known bond funds posted shocking negative 20-30% returns. Tiptree would later participate in a public transaction providing a significant total return of over $4 million to MICG investors. These positions were fortunately held in both the MICG Anchor Strategies Fund, as well as the MICG Partners Fund.[AFF.#6].

As FINRA and the SEC began their beta test examination in 2008, the regulators primarily focused on MICG's newest fund, Venture Strategies. This fund was designed to be primarily a private equity portfolio which, when fully invested, would hold twelve to fifteen positions in private company debt and equity positions. The private equity sector had been the top performing category for the previous twenty-five years, with liquidity events realized longer term when sub-investments achieved public transactions, or were eventually acquired by other companies or investment vehicles. When the regulators' examination, and eventual allegations, halted the operations of these funds, MICG Venture Strategies had so far placed four investment positions: a short-term fixed income allocation, an industrial bond position (Solaia Capital) underwritten by Deutschebank, an interest in GSDP which held a majority ownership stake in a British football team and real estate properties, and a private solar industry corporation (EPV Solar) currently preparing for an Initial Public Offering (IPO).[AFF.#6].

At the close of 2008, FINRA informed MICG that, for the

first time, due to joint ownerships between the hedge funds and the Broker-Dealer (B/D), MICG must estimate asset pricings, fund performance, and management fees prior to the December 31, 2008, closing date. Based on these estimates, MICG must journal account balances, management fees, and expenses. Otherwise, these receivables and liabilities would now be non-allowable transactions, and would generate an incorrect FINRA Net Capital computation. Based on this FINRA directive, MICG reached out to fund managers and private direct investments to obtain valuation estimates for the end of year tentative accounting. Martinovich directed the firm to simply do their best, as they were aware that the valuations, fees, and performance calculations would likely change significantly once the auditors' actual valuations were conducted following year end. In the private equity industry, fund managers are constantly dealing with estimates as FASB accounting and IRS tax calculations are reported on different schedules, with many private corporations not filing final tax numbers until the following October 15th.[AFF.#7].

[Footnote 1: Based on the fluctuations in the final pricing from the external valuation experts' reports, and the adjustments made by the hedge fund auditors, FINRA and the Government attempted to retroactively claim the valuations were fraudulently manipulated. Later, at trial, Mr. Martinovich, multiple MICG managers, the fund auditors, and the solar valuation expert would all supply consistent testimony to these compliant and transparent pricing actions. (See Trial Test. Lynch, Martinovich, Cadieux, Monroe, Umscheid)].

[Footnote 2: Addressing the MICG Venture Strategies investment in EPV Solar, which later became the focus of the government's indictment, Mr. Martinovich, the MICG management team, the fund auditors, and the solar valuation expert (a government witness) all, again, later testified congruently as to who prepared the valuations, what was the correct pricing, that the expert was vetted by the auditors, and that Mr. Martinovich and MICG never relied on any fraudulent representations.]

MICG Venture Strategies first purchased shares of EPV Solar in 2007 when this investment opportunity was introduced by Mr. Bruce Glasser, an investment banker in MICG's New York City office. After significant due diligence, Venture Strategies purchased an eventual 1,805,000 shares at the initial price of $1.15 per share. Mr. Glasser conducted the analysis and the communications with EPV Solar valuation experts, and he kept the MICG management team well informed of EPV's progress. Solar expert, Mr. J. Peter Lynch, would later testify that he had never met or communicated with Mr. Martinovich.[AFF.#8,#9].

At the inception of the Venture Strategies Fund, MICG priced all sub-investments at their acquisition price for ease of reporting, and the fund would only change pricing at liquidity events - actual sales or future acquisitions. Yet, the licensed auditors, Harbinger PLC, directed MICG that it must evaluate the positions and hold these investments at Fair Market Value (FMV) to be in compliance with FASB and AICPA accounting and valuation standards. At this point, Mr. Martinovich directed the firm to employ external, independent valuations and audits, as opposed to executing this compliance function internally. The term "mark to market" is commonly used in the industry for this function.[AFF.#10].

MICG acquired small lots of equity shares or odd bond lots at prices below FMV on numerous occassions as was, of course, the goal of the fund managers. Addressing EPV Solar, a subsequent small lot purchase from an individual stockholder was executed for the same $1.15 initial purchase price during the same

calendar year in which the valuation expert, Mr. Lynch, had determined the FMV price to be $2.88, based primarily on the $2.88 per share valuation used for a $77 million investment into EPV Solar by Wall Street firm, Jefferies & Co. This $2.88 valuation was also vetted and approved by the fund auditors, Harbinger PLC, who oversaw the valuation process and held the final decision each year on which values to apply or adjust.[AFF.#11].

In the MICG hedge funds, the underlying asset values, comprising the total fund Net Asset Value (NAV) (the price), were adjusted at the close of each quarter, with the subsequent investors entering the fund at this cost basis. The great majority of the investors noted by the government invested into the MICG Venture Strategies Fund prior to December 31, 2008, and therefore, their purchase price was never at the disputed $2.88, but was at $2.13, the previous year's reported FMV price by Mr. Lynch.[AFF.#12].

[Footnote 3: At trial, District Court Judge Doumar would state that he believed the $2.13 prior valuation price to be valid, stating, "Peter Lynch made a valuation. It was unequivocal. There were no ifs or buts about it, other than it was requiring the matter to go public in the future...so I don't have any problem with it." (Tr. p. 3229). Therefore, even if the $2.88 price was inflated, nearly no investor actually paid this price. Also, in spite of the Court-approved value for the EPV Solar position, the entire investment was deemed fraudulent for purposes of the loss calculation at Mr. Martinovich's sentencing, and re-sentencing, with this mathematical error adding approximately eight years to his sentence].[AFF.#12].

During this 2008-2009 time frame, the period of the government's review, Mr. Martinovich and MICG distributed over $4.6 million back to investors from the MICG hedge funds through

redemptions and earnings distributions. The Financial Crisis and the Madoff hysteria had prompted a good number of MICG investors to request redemptions from any slice of their portfolio titled a "hedge fund." These returns were distributed to 44 investors, with specific totals of $2,906,313 redeemed in 2008, and $1,699,908 redeemed in 2009, not including distributions to employees and owners. [See Atch. 35][AFF.#13]. These returns of capital and earnings would later not be rebated against any loss calculation by the government or the District Court at the initial sentencing, or the re-sentencing.

Again specific to EPV Solar, at the close of 2008, MICG Venture Strategies Fund paid the quarterly management fee and yearly incentive fee to the MICG Broker-Dealer. The EPV Solar valuation increase from the District Court-approved $2.13 per share to the $2.88 per share report valuation accounted for an increase in fees of $140,062.64 paid to MICG. This increase accounted for 1.8% of the approximate $8,000,000 in MICG total fees during this period. [See Atch. 34][AFF.#14]. Also during this period under review, the government asserted that MICG fraudulently induced 14 new investors to invest in the Venture Strategies Fund. These 14 investors would be among the over 3,000 investors MICG served during this period.[AFF.#15].

At the end of 2008 and well through 2009, Mr. Martinovich and MICG's executive team strongly believed in the future success of the Venture Strategies Fund, as well as the prospects for EPV Solar's eventual public offering. Mr. Martinovich's actions and

communications were fully congruent with his belief in these investments. MICG promoted these non-public market allocations during this volatile period as alternatives to the suffering stock and bond markets. MICG representatives also rebalanced to other non-correlated asset categories, such as managed futures, real estate trusts, and annuitized fixed rates. Consistent with his beliefs, Mr. Martinovich allocated new investments into the Venture Strategies Fund for close friends, MICG family members, and close business associates. [See Shareholder Ltrs. Goldberg, Cadieux, Wassmer].[AFF.#16].

In 2009, well after the contested valuations, Mr. Martinovich traveled to EPV Solar Headquarters with a close business associate, Mr. Biagas, who owned a successful Virginia electrical contractor and was a member of the global Young President's Organization (YPO) with Mr. Martinovich. After Mr. Biagas' management team toured the EPV Solar factory in New Jersey, as well as met with EPV's management team, Mr. Biagas, and a fellow YPO member, Mr. Gadams, made substantial investments into EPV. Mr. Biagas also began negotiations to initiate an EPV Solar Distributorship Agreement in Virginia. Throughout 2008 and 2009, the period under review, Mr. Martinovich's communications and actions identified only his full belief in the soundness of the EPV Solar investment for MICG Venture Strategies' clients, and for MICG.[AFF.#17].

Throughout the Financial Crisis and the ensuing slow recovery, Martinovich and MICG believed that their comprehensive wealth management business model, and their boutique size, was the best-positioned formula for the next phase of the investment

advice industry. And, many successful financial advisors at the large Wall Street firms agreed. Mr. Martinovich took advantage of the current market dislocation, as well as MICG's relatively well-capitalized position, to acquire investment practices for expansion. Mr. Martinovich acquired businesses from Merrill Lynch, UBS Securities, Davenport Securities, Morgan Stanley, and other banks and investment companies. Mr. Martinovich personally injected over a million dollars in new capital, along with contributions from other MICG shareholders, to fund acquisitions and expansion.[AFF.#18].

Eventually, Mr. Martinovich had a conference call with MICG's SEC contacts in which the SEC explained that they had provided the MICG Compliance and Operations Departments its list of fixes and recommendations to finish their regulatory examination. At this point, MICG had participated in over fifty regulatory exams and understood the process. But, the SEC explained that FINRA was now focusing on hedge funds and would be continuing this beta test examination.

FINRA greatly intensified their audit with a tremendous volume of discovery requests, to include copies of 88,000 MICG emails and dozens of boxes of document requests. FINRA also summoned Mr. Martinovich, along with other MICG management personnel, to the Philadelphia Regional Office to provide sworn testimony focused on the operations of MICG's three hedge funds. Following these independent testimonies, and the subsequent review of the transcripts, MICG's securities attorneys determined that the executive team, as well as the investment bankers, had

followed correct regulatory and securities practices, as well as provided consistent testimony among the executive group.[AFF.#19]. Yet, the beta test examination continued.

In the second half of 2009 and into 2010, the U.S. domestic solar power market began to collapse under delays in financing and cancellation of tax credit programs due to the protracted recovery from the Financial Crisis, as well as a tremendous supply of solar panels infused by China, which panels were priced below the cost of production (dumping). Eventually, hundreds of U.S. solar companies would declare bankruptcy and close their doors. [See Atch. 36]. The United States Government lost nearly $2 billion of taxpayer dollars on solar company financing and investments during this period. Possibly receiving the most exposure, the U.S. Department of Energy lost $535 million on its investment in Solyndra, LLC. On February 24, 2010, MICG Venture Strategies Fund unfortunately received news that EPV Solar had also declared Chapter 11 Bankruptcy, with the senior debt holders seizing the assets of the company and leaving the common equity shareholders, such as MICG, at the back of the line. This EPV Solar investment represented point-two-percent (.2%) of MICG's assets under management, as well as one-point-two-percent (1.2%) of the average MICG client's portfolio which held EPV Solar.[AFF.#20].

The bankruptcy of EPV Solar in 2010 provided FINRA regulators a "smoking gun" with which they now determined that the MICG Venture Strategies Fund must have over-priced this security back in 2008, and Mr. Martinovich and the executive team

must have known that EPV Solar was not a sound investment, even potentially filing bankruptcy two years later. In March of 2010, FINRA released a public notice of allegations of improper practices in the MICG Hedge Funds. This public press release created great strain on the firm, the financial advisors, and the MICG clients. During this post-crisis period of mortgage failures and collapsed 401k plans, the regional media created further panic and strain with consistent coverage of Martinovich and MICG on the front page.

[Footnote 4: This use of the press to achieve regulatory objectives was occurring across the country. For example, during this same period, the government tipped the "Wall Street Journal" to cover the raid on Level Global's $4 billion hedge fund, resulting in the collapse of the firm without any eventual indictment or opportunity for redress (Ganek v. Leibowitz, 167 F. Supp. 3d 623 (2nd Cir. 2016))].

MICG's securities attorneys, Wilson Elser of New York City, and MICG's Broker-Dealer auditors, Harbinger PLC, conducted numerous negotiations with FINRA agents and counsel. FINRA demanded significant, public remedies during this period of regulatory spotlight from Capitol Hill following the regulators' failures to discover the prior massive trading and mortgage frauds. Mr. Martinovich and the MICG executive team refuted any claims of wrongdoing, and Mr. Martinovich repeatedly demanded a FINRA Arbitration Hearing be scheduled in order to defend MICG and its employees.[AFF.21].

On Friday, May 7, 2010, at 4:00 PM, Mr. Martinovich received a phone call from FINRA agents who stated that the beta test exam had "switched gears" and the regulators had now "re-audited" the previous five years of MICG's financial reports. FINRA stated

that they had now "reclassified equity as debt," thus disallowing millions of dollars of MICG shareholder equity investments in the current Broker-Dealer Net Capital computations. FINRA stated that, pursuant to FINRA regulations, MICG could not operate with this deficiency. These same financials had been examined and audited quarterly and annually for the previous five years by the SEC, the CFTC, the SCC, the Broker-Dealer licensed auditors, and by FINRA, themselves. Now, MICG was mysteriously out of compliance.[AFF.#22].

Following the Financial Crisis, MICG's regional and national competitors had participated in the taxpayer-funded Goverment TARP program, accepting billions of dollars of citizens' taxes to shore up their balance sheets and capital requirements. MICG had not required, nor participated in, this taxpayer bailout, and had argued strongly against the program.[AFF.#23]. Yet, now MICG was not permitted to operate. For days, MICG's attorneys and auditors argued with FINRA, but to no avail. On May 12, 2010, MICG's Broker-Dealer license was withdrawn, without a hearing, without redress, without due process.[AFF.#24].

The sudden closure of MICG Investment Management created a fantastic ripple effect for clients, employees, shareholders, bondholders, fundowners, vendors, and civic and charitable organizations, all of whom relied on MICG's success. Lawsuits and bankruptcies followed. One hundred associates searched for new employment. Over 9,000 accounts were transferred, and eight retail branches were closed.

Two days later, on May 14, 2010, FINRA regulators released

Disciplinary Proceeding No. 2009016230501, Department of Enforcement v. MICG Investment Management, LLC and Jeffrey A. Martinovich. This Complaint alleged that in the MICG Venture Strategies Fund, "in order to inflate the fees, the Respondents assigned unjustifiably high values to the assets, never relying on independent or legitimate valuations or valuation methods." This year-long audit and subsequent closure of MICG resulted in a complaint addressing less than 1% of MICG's investment assets and operations.[AFF.#25]. Although EPV Solar accounted for only point-two-percent (.2%) of MICG's investments, the sudden closure of MICG greatly affected the private shareholders who had made equity investments into MICG Wealth Management, the holding company which owned the majority stake of the MICG Broker-Dealer. These private shareholders were typically affluent, long-term clients who had wished to also participate in the fortunate success of MICG. Also, this closure affected private investors in the MICG Convertible Subordinated Debt Offering (Bond) which provided an attractive fixed return, with this capital designated for the multiple acquisitions of practices from Wall Street brokerage firms. Finally, this regulatory examination and closure froze the assets and operations of the multiple MICG hedge funds, severely affecting participation in capital calls and liquidation opportunities, gravely harming the eventual performance of the previously-successful funds.[AFF.#26].

[Footnote 5: The alleged price inflations and higher management fees, the foundation of the government indictment, were actually minor losses per client, relative to their total investment portfolio. In the following trial, sentencing, and re-sentencing, the investor losses from the regulatory action, not from the loss of EPV Solar, were consistently substituted when

presenting stories of loss and cause and effect. At trial, the government presented witness after witness with significant losses from the FINRA action, not from the EPV Solar actions of the indictment. The jury certainly could not discern the delineation of these losses from the relatively minor, unfortunate results of EPV Solar. The initial sentencing Court included these significant numbers in the sentencing calculation although there had never been one allegation of fraudulent activity in the MICG Stock or Bond Offerings. Even at the eventual re-sentencing, the government supplied, and greatly affected, the sentencing Court with letters of financial loss - from the FINRA illegal closure, not from the activities of the indictment. Also, the government presented three witnesses, again, at re-sentencing to speak of the effects of the FINRA closure, although presented as the effects of Mr. Martinovich's actions of the indictment. This bait and switch, from the beginning has greatly affected the Court's understanding of the loss and nexus of causation.[AFF.#27]].

For the following months, Mr. Martinovich wrestled with the imbroglio of lawsuits, bankruptcies, displaced clients, and angry shareholders, all the while demanding a FINRA Arbitration Hearing. In January 2011, FINRA, in lieu of arbitration, proposed an Offer of Settlement to MICG's lead securities attorney, Benjamin Biard of Wilson, Elser, New York. FINRA stated that if Mr. Martinovich followed through with Arbitration, FINRA would pursue the Broker-Dealer licenses of multiple members of MICG's executive team, and would fine MICG and Martinovich an extra $1 million. FINRA proposed that if Mr. Martinovich, as CEO, forfeited his significant number of Broker-Dealer licenses for life, as well as the MICG license, the regulators would withhold the fine and not pursue the other members.[AFF.#28].

This Offer of Settlement stated, "Respondents submit this offer to resolve this proceeding and do not admit or deny the allegations of the Complaint. Respondents also submit this offer upon the condition that FINRA shall not institute or entertain, at any time, any further proceeding as to Respondents based on

the allegations of the Complaint, and upon further condition that it will not be used in this proceeding, in any other proceeding, or otherwise, unless it is accepted by the National Adjudicatory Council (NAC) Review Subcommittee, pursuant to FINRA Rule 9270.[Atch. 39][AFF.#29].

On February 1, 2011, Mr. Martinovich signed the Offer of Settlement, and has "regretted it every day since." ["Fall of MICG," Ash Press 2017, Amazon Books].

On October 10, 2012, Mr. Martinovich was arrested and served a federal indictment in the United States District Court, Eastern District of Virginia, Case No. 4:12cr101, before the Honorable Judge Robert A. Doumar. The indictment contained 26 Counts, to include 18 U.S.C. § 1349 Conspiracy to Commit Mail and Wire Fraud, 18 U.S.C.§ 1343 and 2 Wire Fraud, 18 U.S.C. § 1341 and 2 Mail Fraud, and 18 U.S.C. § 1957 and 2 Engaging in monetary Transactions in Property Derived from Specific Unlawful Activity.

The allegations of the indictment, as well as the discovery evidence to include the 88,000 emails, were identical to the Complaint settled by the previous FINRA Offer of Settlement, which contained the non-release and non-action provisions.[AFF.#30].

The government alleged, "(T)he defendant executed a lengthy and complex fraud by enticing investors to put their money into a hedge fund he solely controlled through the use of false representations and ommissions; falsely inflating the value of the assets in the hedge fund to serve his own ends...Martinovich developed a lavish exorbitant lifestyle...Rather than obtain

independent valuations of the Venture fund's assets...Martinovich doubled the value of the EPV Solar shares...because Martinovich wanted to take a substantial fund management fee, Martinovich denied redemption requests...He did not disclose the negative impact the market crash had on EPV...the incentive fee served as a needed injection of cash...increases that were rubber stamped by the so-called valuation expert..."

MICG lead business attorney, Mr. Todd Lynn of Patten Wornom Hatten and Diamonstein (PWHD), Newport News, Virginia engaged federal criminal counsel, Mr. James Broccoletti of Zoby, Broccoletti, PLC, Norfolk, Virginia. After an opportunity to independently review the discovery evidence, Mr. Broccoletti asked for an initial meeting. Mr. Broccoletti stated that it appeared Mr. Martinovich "had done nothing wrong, and if someone had done anything wrong, it would have to be the crowd in New York (EPV)." When pressed by Mr. Martinovich for, "What are our chances?" Mr. Broccoletti responded that he believed, "We have a 90% chance of winning, because there is nothing here, but I reserve 10% just in case they parade 25 grandmothers onto the stand to say that you stole all their money." Mr. Broccoletti would repeat this identical belief in a second meeting closer to the trial date, both meetings with his paralegal Shannon in attendance.[Atch. 31][AFF.#31].

Mr. Broccoletti also stated that the government, AUSA Mr. Brian Samuels and AUSA Ms. Katherine Dougherty, had already offered a plea bargain for seven years imprisonment, and that Mr. Broccoletti had already responded, "We are not interested."[AFF.#32].

As Martinovich and the team prepared for trial, Mr. Broccoletti stated that the government had offered a second plea agreement for five years imprisonment which, following a meeting confirming that no one had found anything illegal or even unethical, was again rejected.[AFF.#33].

Finally, shortly before the trial date, Mr. Broccoletti stated, "Samuels (AUSA) has offered three years as his final offer, but he won't put it in writing unless you first agree to accept it, since you rejected the two previous offers." Following one final meeting in which Mr. Broccoletti and his paralegal confirmed their previous findings, Mr. Martinovich made the decision to proceed to trial, and defend his employees and himself. [Atch. 31][AFF.#34].

The trial began on April 10, 2013. The prosecution presented a well-constructed narrative of a wealthy, successful businessman and civic leader who turned to fraud and greed to support his lavish lifestyle following the Financial Crisis. Over the course of the four-week trial, the courtroom monitors repeatedly displayed pictures of Mr. Martinovich's homes and automobiles, and the Director of The Bellagio VIP Host Services personally testified to describe Mr. Martinovich's trips to Las Vegas. The prosecution skillfully presented witnesses who described their lack of understanding of their investments, their belief that all of their investments were liquid and available at any time, and that they never understood the Private Placement Memorandums, the Subscription Agreements, or the Comprehensive Financial Plans prepared by MICG. Key to the conspiracy

narrative was the belief that Mr. Martinovich had personally tricked his executive team, the investment bankers, the solar valuation expert, and the independent auditors, who all fraudulently raised the price of EPV Solar in order for Mr. Martinovich to ultimately earn more management fees.

Mr. Broccoletti, in turn, attempted to unwrap this fantastic narrative for the layman jury with factual compliance policies, hedge fund industry practices, and private equity valuation standards. Yet, Mr. Broccoletti miscalculated the degree of bias and interference presented by District Court Judge Doumar.[See GROUNDS I,II,II No. 4:12cr101]. From the first moments, Judge Doumar interrupted, interfered with, degraded, and showed great bias against defense counsel, defense witnesses, and Mr. Martinovich. Judge Doumar's egregious actions were subsequently documented by the Fourth Circuit Court of Appeals. "(I)n light of the district court's demeanor at trial and its statements during sentencing...it is necessary for a different judge to be assigned to this matter...the district court's actions were in error...interference in this case went beyond the pale...the district court became so disruptive that it impermissibly interfered with the manner in which the appellant sought to present his evidence...such conduct tends to undermine the public's confidence in the integrity of the judiciary." [United States v. Martinovich, 810 F. 3d 232 (4th Cir. 2016)].

At one point in the trial following Judge Doumar's delivery of a curative jury instruction exactly opposite of the instruction just agreed upon by the prosecution and the defense, defense counsel Mr. Broccoletti leaned over to Mr. Martinovich

and stated, "Well, at least you just won your appeal."[AFF.#35].

The government's own witness, solar valuation expert Mr. Lynch, strongly defended his reports stating, "(I)t is my conclusion that the share value of $2.88 and the overall company valuation of approximately $500 million arrived at earlier in this memo is conservative." Mr. Lynch stood behind his work repeatedly confirming that he prepared the reports, that it was his signature, that the price was highlighted, and that his valuations were conservative. [Tr. p.445-485].

The other cornerstone of the compliance function, independent auditor Mr. Umscheid, testified, "(B)ecause of the bond raise (Jefferies & Co. $77 million raise for EPV) there was an intrinsic value to the stock of $2.88 per share, based on the bond raise...Yes, I -- I approved -- I gave my opinion that the asset value that they put at $2.88 was reasonable, yes." [Tr. p.2453-2542].

After four weeks of trial and multiple days of jury deliberation, the jury forewoman declared there was a hung jury. Yet, Judge Doumar insisted the jury return the following week, and at this point, the lavish lifestyle narrative and Judge Doumar's egregious influence won out over the defense's attempts to explain hedge fund accounting. Mr. Martinovich was convicted on 1 Count of Conspiracy, 4 Counts of Wire fraud, 5 Counts of Mail Fraud, and 6 Counts of Money Laundering.

At sentencing, the prosecution asserted that the calculated loss was $1.45 million, the defense proposed that any loss determined must be below $400,000, and Judge Doumar inexplicably settled on a loss of $1.75 million. The Court determined the

Offense Level of 33 with a Guidelines range of 135-168 months. Judge Doumar repeatedly asserted that the Guidelines were mandatory, not advisory. The Court stated, "I will follow the guidelines only because I have to," while also repeating that the Guidelines did not give enough weight to all the good Martinovich had done in his life. [Sent. Tr. p.6,7,15,75,91,94]. Mr. Martinovich was sentenced to 140 months incarceration.

Mr. Broccoletti filed a Rule 29 Motion for Acquittal and a Rule 33 Motion for New trial, yet these actions were denied with the District Court explicitly faulting defense counsel for not timely objecting and for violating primary trial stipulations. [United States v. Martinovich, 971 F. Supp. 2d 553 (E.D. Va, 2013)].

Although the Court recommended a Minimum Security Facility closest to home, and Martinovich's custody classification demands this level, Mr. Martinovich was incarcerated at FCI Fort Dix, New Jersey, a higher security prison in which he still remains. Mr. Martinovich's formal Motions to be transferred to an institution commensurate with his Security Level Classification have been repeatedly denied by the Bureau of Prisons.

Mr. Martinovich was denied the right of self-representation on appeal in contravention of Fourth Circuit Rule 46(f), and was eventually assigned court-appointed appeal counsel, Mr. Lawrence Woodward, of Virginia Beach, Virginia. Mr. Martinovich was permitted to submit a Pro Se Supplemental Brief along with Mr. Woodward's brief on the Merits. Martinovich's appeal submissions argued that there was insufficient evidence for a conviction, the Court's conduct was reversible error, the loss determination was

in error, the Court's sentencing was reversible error, the perjury enhancement was error, the money laundering charge was error, the Court's jury instruction was error, and the forfeiture and restitution calculations were invalid. [Case No. 13-4828].

On January 7, 2016, the Fourth Circuit Court of Appeals released the Order and Opinion vacating Martinovich's sentence and replacing Judge Doumar pursuant to the earlier-noted critiques of the trial and sentencing. Yet, the Appeals Court went to great lengths, including a second concurring opinion, to note that defense counsel Mr. Broccoletti's failure to object one time to the Court's hundreds of errors failed to preserve this over-arching determinant of the verdict for review on appeal. As opposed to the lower bar of harmlessness and abuse of discretion standards of review, Mr. Broccoletti's ineffective assistance forced the Appeals Panel to be restricted to the extremely high bar of Plain Error Review, at which level the panel believed it could not overturn the conviction. The Appeals Court stated, "In light of the plain error standard of review...we may not intervene...Accordingly we must uphold the jury's verdict...Again, however, we were constrained by plain error." [United States v. Martinovich, 810 F. 3d 232 (4th Cir. 2016)]. The case was not remanded for a new, fair trial due to the inexplicable lack of even one fifteen-second objection.

Mr. Woodward filed a Petition for Rehearing and Rehearing En Banc, which were denied, and the Judgment Order and Mandate were issued: Affirmed in part, Vacated in part, and Remanded [No. 13-4828, Doc. Nos. 123, 125, 127, 132]. Mr. Woodward did not file a Petition for Writ of Certiorari to the Supreme Court.

Mr. Martinovich next petitioned District Court Judge Jackson for the right of self-representation for the upcoming re-sentencing, but Martinovich was then returned to Norfolk, Virginia, where he was served with a Superseding Indictment by, once again, court-appointed attorney Mr. Lawrence Woodward. There, Mr. Martinovich complained to Mr. Woodward about the unfair standard of plain error review, and Mr. Woodward responded, "The only reason you lost your conviction appeal is because your attorney never objected! It's as simple as that!" [Atch. 16][AFF.#106]. The Superseding Indictment alleged that Martinovich had, once again, tricked multiple law firms into fraudulently authorizing the MICG Hedge Funds to pay for the criminal defense and expert fees pursuant to the Indemnification Provision of the funds' Operating Agreements and Private Placement Memorandums - more Counts of Mail Fraud, Wire Fraud, Money Laundering, and Conspiracy. Mr. Martinovich, once again, provided overwhelming documentation of four separate law firms involved in these transparent and compliant transactions. As documented in Mr. Martinovich's contemporaneous notes and email communications, Mr. Woodward then initiated his coercion to ensure Martinovich 1) accepted counsel, 2) gave up his demands for a second trial, and 3) eventually acquiesced to a fictitious plea agreement inconsistent with the government's written contract and the shocking re-sentencing. [Atchs. 1-32].

As this instant brief thoroughly documents, Mr. Martinovich was held for eight months in the Western Tidewater Regional Jail where Mr. Woodward repeatedly refused to pursue a defense at

trial for the Superseding Indictment, even though Mr. Martinovich provided counsel voluminous documentation of his innocence, as well as verification of fraud on the Court for claims of illegal, fraudulent, or unauthorized transactions. Second, as Martinovich's contemporaneous documentation identifies, Mr. Woodward repeatedly attempted to convince Martinovich that if he stopped his "scorched earth strategy" Martinovich would receive a total, combined sentence of "5-6 years," with Woodward even submitting a Defense Position Paper (DPP) to the Court requesting "3-5 years." Mr. Woodward repeated that this final comprehensive sentence would be the result of a substantial downward variance provided on the first case by, now, Judge Allen for "winning the appeal" and "accepting responsibility," and the plea contract confirmed that the second case must be no longer than the first case, as well as it must run concurrently. [DPP, Atchs. 24,27,28,29]. Mr. Woodward solidified his coercion by personally telling Mr. Martinovich's fiance, Ms. Ashleigh Amburn, "Worst case scenario is six years, so don't let him do anything crazy." [Amburn AFF.]. This agreement would have allowed Mr. Martinovich to receive "time served" or a short amount of time left to serve.

On September 29, 2016, the District Court conducted a joint re-sentencing for Case 4:12cr101 and sentencing for Case 4:15cr50. The government presented three more witnesses to testify of their financial losses across the initial case and the allegations of the second case, Judge Allen read victim impact letters from numerous shareholders relevant to both cases, and

the conduct, effects, and causations were intertwined across each case and sentencing calculus.

At Mr. Woodward's request, four corporate Presidents and CEO's were in attendance in support of the defense to re-affirm to the Court their separate employment offers for Mr. Martinovich, as well as their proposals to immediately begin restitution payments to the shareholders-victims. [AFF.#102].

Mr. Martinovich, and the packed courtroom for the defense, quickly figured out that Mr. Woodward's "5-6 year deal" was not the plan of action for the day. Judge Allen spent a great deal of time asserting her belief beyond a reasonable doubt that Mr. Martinovich must be suffering from a mental disease or defect. Judge Allen stated, "It's something wrong with his brain...we're going to get you mental health treatment...I'm not a doctor, we're going to get you mental health treatment...it's complex and sophisticated...you've got a very deep problem...I'm going to recommend mental health treatment." [Tr. p.92-106].

Judge Allen re-sentenced Mr. Martinovich to, again, 140 months for Case 4:12cr101, and 63 months for Case 4:15cr50 with 39 months to run concurrently and 24 months to run consecutively. Not only did the Court not follow Mr. Woodward's deal, the Court also did not follow the plea contract. Now, Mr. Martinovich had rejected a 3-year plea offer, gone to trial and received 12 years, then "won his appeal" and increased his sentence to 14 years. Mr. Woodward quickly exited the back of the courtroom, and Martinovich's fiance ran after him. From the top of the stairs, she yelled, "Larry, what the hell happened?" Mr. Woodward yelled back from the bottom of the staircase, "He's

lucky he didn't get twenty!" and exited the building. [Amburn AFF.].

Following the September 29, 2016, sentencing-resentencing, Mr. Martinovich filed a timely Motion in the District Court, "Motion For Sentencing Modification To Vacate Fraudulent Sentences, Plea Contract and Plea Acceptance Per F.R.Crim.P. 35(a) Clear Error." This Motion and this instant brief's Grounds thoroughly document the erroneous allegations of the Superseding Indictment and the corollary details of fraud and fraud on the Court in bringing these allegations, and not rescinding said indictment when noticed of fraud evidence. [Atchs. 1-9][AFF.#52,#56].

Following Mr. Martinovich's indictment in Case 4:12cr101, he met with his lead MICG attorney, Mr. Todd Lynn of PWHD in Newport News, Virginia. Mr. Lynn initiated the procedures to invoke the hedge funds' Indemnification Provisions for funding the defense. Mr. Lynn worked closely with Mr. Benjamin Biard of Wilson Elser in New York who represented MICG entities in numerous compliance and securities matters. He coordinated with Mr. Andrew Shilling of Shilling, Pass & Barlow in Chesapeake, Virginia, who represented the independent interests of the MICG Venture Strategies Fund which invested in EPV Solar. He worked with Ms. Katherine Klocke of Akerman & Co. in Maimi, Flordia, who represented the independent interests of the MICG Partners Fund which funded certain venture fund liabilities. And, he communicated with Mr. E.D. David of David Kamp & Frank in Newport News, Virginia, who represented MICG Anchor Strategies Fund.

Consistent with industry practices, securities laws, and MICG's Private Placement Memorandums, Mr. Lynn orchestrated the multiple opinion letters, collateral agreements, and significant documentation to pay these expenses. [XL Specialty Ins. Co. v. Level Global Investors (2nd Cir. 2012)]. [Atchs. 1,5,21] [AFF.#59].

Harbinger PLC, the Funds' auditors, fully accounted for the liabilities and tax recordings, to include management fees, expert payments, and the comprehensive list of other fund expenses. [Atch. 4,8][AFF.#62]. When confronted with Mr. Shilling's apparently less-than-truthful answers to the federal agents investigating the payment process, lead attorney Mr. Lynn responded, "He's lying. He's scared. He misspoke talking to The Feds and now he's scared to change his story!" [Instant Ground, Rule 35, Atchs. 3,6,9, AFF.#58].

Following the September 29, 2016, sentencing-resentencing, in one final meeting together, Mr. Martinovich instructed Mr. Woodward to file timely appeal notices in Case Nos. 4:12cr101 and 4:15cr50, initiating Fourth Circuit Joined Appeal Nos. 16-4644 and 16-4648. At the close of the meeting, Mr. Wodoward stated, "Two things I need you to know. If you end up filing a 2255, everything must be in the original filing. Otherwise, it cannot be considered. And, remember, you have never pled guilty to any Counts in your big case. You have only pled guilty to one Count on the second case, which really doesn't matter. The government tried to put in your plea that you now pled guilty to the Counts of the first case, and I wouldn't let them. You need to know that." [Atch. 32][AFF.#36].

Mr. Martinovich again petitioned the Fourth Circuit to proceed pro se, but was again denied this right in contravention to Fourth Circuit Rule 46(f). Also, this time, after all brief submissions were filed, the Fourth Circuit declined to consider Mr. Martinovich's Pro Se Supplemental Brief. The Fourth Circuit appointed appeals counsel, Mr. Edwin Brooks of Richmond, Virginia. Following zero interviews or conferences with his client Martinovich, Mr. Brooks submitted a Brief on the Merits including only one sentencing error issue, which issue was not outside the scope of the plea agreement waiver, and therefore dismissed by the Appeals Court.[Atch. #37]. Mr. Martinovich's Pro Se Supplemental Brief contained multiple Constitutional violations which were allowable as outside the scope of the waiver provision pursuant to Fourth Circuit precedent, and were also specifically permitted pursuant to the plain language of the plea agreement. Once the Fourth Circuit reviewed both briefs, the Court denied counsel's brief as to the waiver provision, and declined to even consider the Pro Se Supplemental Brief. [Nos. 16-4644/16-4648, Doc. 77].

Mr. Brooks and Mr. Martinovich each filed Petitions to Review En Banc pursuant to Local Rule 40(b)(i) noting "a material fact was overlooked in the decision" reference the denial to consider Martinovich's Pro Se Brief, yet these petitions were also denied. [Doc. 80].

Proceeding pro se, Mr. Martinovich filed a Petition for Writ of Certiorari to the Supreme Court with the question, "Whether an Indigent Appellant Whom is Refused Self-Representation and Permission to Submit a Pro Se Supplemental Brief is Denied His

Due Process and Equal Protection Rights, Particularly in Comparison to an Indigent Appellant Whose Counsel files a Brief Pursuant to Anders v. California." The Supreme Court declined to hear the case. [No. 17-5643, 8/4/17].

Following the September 29, 2016, sentencing-resentencing and the subsequent filing of appeal, the government unilaterally moved the District Court to modify the Restitution Orders for Case Nos. 4:12cr101 and 4:15cr50. Pursuant to M.V.R.A. and relevant statutes, Mr. Martinovich objected to the modifications. The District Court granted the government's motions, sua sponte in the first instance and then construed as a Rule 36 modification in the second instance. Martinovich timely appealed the Orders to the Fourth Circuit, yet was again denied. [Nos. 17-6651/17-6652]. Mr. Martinovich also filed a Motion Pursuant to FRCP 60 (b)(3) to Object to Government Breach of Contract in Case 4:12cr101 and 4:15cr50, where the government had promised "restitution would be determined at sentencing." Said Motion timely preserved in the District Court the objection to this breach. [Doc. 60].

On June 22, 2017, Mr. Martinovich filed in the District Court a Motion for Disqualification of District Court Judge Allen pursuant to 28 U.S.C. § 455. This Motion was denied and Mr. Martinovich filed a Writ of Mandamus with the Fourth Circuit Court of Appeals. [No. 17-2457].

These Motions respectfully request Judge Allen's recusal in light of her strongly asserted beliefs that (1) Martinovich requires deep and complex mental health treatment without having

ordered a psychological examination or competency hearing, (2) in reference to trial counsel, Mr. James Broccoletti, a primary subject of the § 2255 Motion's claims of ineffective assistance, Judge Allen asserted, "For those of you who don't know Mr. Broccoletti, if he's not the best attorney in Virginia, he's one of the best...and I would venture to say across the United States of America," and (3) in reference to resentencing counsel, Mr. Lawrence Woodward, also a primary subject of the § 2255 Motion's claims of ineffective assistance, Judge Allen asserted, "Mr. Woodward is right there shoulder to shoulder...toe to toe...with the best attorney in Virginia...and I would venture to say across the United States of America." [Sent. Tr. p.90-91].

On January 3, 2018, Mr. Martinovich filed a Motion to Recall the Mandate in Fourth Circuit Court of Appeals Case No. 13-4828, which Order previously vacated the sentence and replaced the judge in Case No. 4:12cr101, yet upheld the conviction primarily based upon the plain error standard of review restrictions. Subsequent to this decision, the Fourth Circuit vacated the conviction in United States v. Lefsih and the Seventh Circuit vacated the conviction in United States v. El-Bey, with both cases possessing nearly indistinguishable legal factors with United States v. Martinovich, only diverging with the final decision. All three cases included egregious interference and bias by the district judge at trial, exacerbating jury instruction errors, the government themselves feeling compelled to intercede at trial to protect the record, the Appeals Court determining there was sufficient evidence, and the trial court

errors not being preserved at trial therefore forcing plain error review by the Appeals Court. Yet, Messrs. Lefsih and El-Bey's convictions were overturned with the Court stating, "(t)he unfairness of the trial require(d) reversal. Any other holding would constitute the adoption of the principle that a defendant the court thinks is obviously guilty is not entitled to a fair trial." But, Mr. Martinovich's conviction was upheld despite the Court stating, "More importantly, such conduct challenges the fairness of the proceedings...such conduct tends to undermine the public's confidence in the integrity of the judiciary." Following a substantial government response requested by the Fourth Circuit, and a Martinovich Reply, Mr. Martinovich's Recall the Mandate was Denied on January 29, 2018.

Mr. Martinovich herein respectfully presents the following Grounds for this Court's consideration.

GROUND I: TRIAL COUNSEL WAS INEFFECTIVE FOR NOT OBJECTING TO THE DISTRICT COURT'S INTERFERENCE AND BIAS THEREFORE PREVENTING A FAIR TRIAL AND RELIEF ON APPEAL

Over the course of the four-week trial, District Court Judge Doumar interrupted, interfered with, degraded, and showed great bias against defense counsel, Mr. Broccoletti, defense witnesses, and the defendant Mr. Martinovich. Yet, over the course of the entire trial, encapsulating hundreds of errors, defense counsel Mr. Broccoletti stood silent and never once objected to the interference of the Court. Mr. Broccoletti never once attempted to protect and preserve Mr. Martinovich's rights at trial, or with subsequent appeal proceedings. This ineffectiveness prejudiced Mr. Martinovich by failing to protect his rights at trial while also forcing the appeals court to raise its standard of review to the extremely high bar of plain error review. This inexplicable performance by defense counsel fell well below professional norms for minimum effective assistance, as well as greatly prejudiced Martinovich in the eyes of the jury and in his right for the Fourth Circuit to vacate his conviction on appeal. Recently, in United States v. Carthorne, the Fourth Circuit clarified the necessity of counsel to make timely, preserving objections, as well as explained that even though the Appeals Panel may not find that an error eclipses the high bar of plain error review, counsel may still be deemed ineffective for not objecting to that error. [United States v. Carthorne, US App LEXIS 26118 (4th Cir. 2017)].

FOURTH CIRCUIT OPINION

To synopsize the severity of Mr. Broccoletti's failure to object, Mr. Martinovich first provides the direct opinions of the Fourth Circuit Court of Appeals. In the January 7, 2016 Opinion, Judges Floyd, Thacker, and Wynn wrote:

1) "(I)n light of the district court's demeanor at trial and its statements during sentencing regarding the nature of the guidelines, it is necessary for a different judge to be assigned to this matter."

2) "(T)he district court's actions were in error."

3) "(I)nterference in this case went beyond the pale."

4) "(T)he district court became so disruptive that it impermissibly interfered with the manner in which appellant sought to present his evidence."

5) "We agree that the district court crossed the line and was in error."

6) "More importantly, such conduct challenges the fairness of the proceedings."

7) "(T)he district court unnecessarily interrupted defense counsel's presentation of the defense at trial."

8) "The district court's general interference in defendant's trial -- which included examining witnesses, interrupting counsel, and controlling the presentation -- strayed too far."

9) "Here, there was much more than an appearance of improper interference."

10) "At its core, such conduct tends to undermine the public's confidence in the integrity of the judiciary."

11) "At some point, repeated injudicious conduct must be recognized by this Court as a compelling basis for finding plain error."

12) "Here we are once again presented with a case replete with the district court's ill-advised comments and interferences."

13) "We agree that the district court crossed the line and was in error."

14) "The district court's repeated comments were imprudent and

poorly conveyed."

15) "Considering the breadth of the district court's actions, from questioning witnesses and counsel to interrupting unnecessarily, we find the district court strayed too far from convention."

[United States v. Martinovich, 810 F. 3d 232 (4th Cir. 2016)].

The Fourth Circuit has rarely reprimanded a District Judge with such direct and expressive language. Obviously, the Appeals Panel wanted to ensure their dissatisfaction with the egregious and unacceptable behavior was clear and unambiguous. Yet, due to Mr. Broccoletti's inexplicable actions to never once object to Judge Doumar's voluminous errors, the Fourth Circuit panel of review was then constrained with the extreme bar of plain error review, as opposed to the much lower harmlessness standard of review which would have yielded a reversal of Martinovich's conviction. The Panel continued:

16) "(I)n light of the plain error standard of review."

17) "(W)e may not intervene."

18) "Accordingly we must uphold the jury's verdict."

19) "Again, however, we were constrained by plain error."

[United States v. Martinovich, 810 F. 3d 232 (4th Cir. 2016)].

At the harmlessness standard of review, there is a reasonable probability that the Court of Appeals would have overturned Martinovich's conviction.

STRICKLAND FIRST PRONG

Mr. Broccoletti's "representation fell below an objective standard of reasonableness [Strickland v. Washington, 104 S. Ct. 2052, 80 L. Ed 2d 674 (1984)]. Mr. Broccoletti's performance,

actually lack thereof, fell well below a minimum professional norm of effective assistance.

When the critical defense witness, independent hedge fund auditor Mr. Umscheid, asserted that he had vetted the stock valuation reports and valuation expert, as well as personally approved and supported the questioned $2.88 stock price, Judge Doumar rose from his chair, ordered the jury out of the courtroom, and berated Mr. Umscheid on the perils of perjury. When the jury returned, the key witness was clearly intimidated and discredited in the eyes of the jury. Mr. Broccoletti stood silent and did not object. [Tr. p.2453]. "The district court's actions were in error." [Martinvoich].

When key government witness, independent solar valuation expert Mr. Lynch, asserted that he had prepared the valuation reports, he had placed his signature directly below the questioned $2.88 stock price, and he believed that at that time it was a conservative valuation price, Judge Doumar attempted to now discredit the failed government witness by yelling in front of the jury, "So your appraisal is absolutely worthless." [Tr. p.487]. Mr. Broccoletti, again, did not object. "Interference in this case went beyond the pale." [Martinovich].

Prior to deliberation, with the non-sequestered jury having access to the "The Daily Press," the local newspaper provided the jurors with Judge Doumar's statements in front of the media, "There isn't a scintilla -- a scintilla -- of evidence that there was any reason to raise the value $2.15 to $2.88, not a single thing." [Tr. p.3237, Daily Press Art.]. Mr. Broccoletti did not object. "More importantly, such conduct challenges the fairness

of the proceedings." [Martinovich].

Court-appointed appeal counsel, Mr. Woodward, submitted that Judge Doumar interrupted and interfered with Mr. Martinovich's personal testimony a shocking 168 times. Mr. Broccoletti never once objected. [No. 13-4828, Brief]. "At its core, such conduct tends to undermine the public's confidence in the integrity of the judiciary." [Martinovich].

Judge Doumar, in front of the jury, objected to defense counsel's litigation tactics, accusing Mr. Broccoletti of going outside trial court procedures and conducting discovery depositions with the witness. Mr. Broccoletti did not object. [Tr. p.1946]. "The district court became so disruptive that it impermissibly interfered with the manner in which appellant sought to present his evidence." [Martinovich].

When Judge Doumar interfered over fifty times in defense counsel's examination of the external fund auditor, even consuming over eight continuous transcript pages before relinquishing the floor back to counsel, Mr. Broccoletti failed to submit one objection to protect his client or even to allow the fund auditor to properly address the facts of the case. [Tr. p.2532]. "We agree that the district court crossed the line and was in error." [Martinovich].

The government, itself, was so mystified by Mr. Broccoletti's failure to object and protect the defense that AUSA Mr. Samuels, himself, counseled Judge Doumar to hopefully prevent a mistrial. Mr. Samuels stated, "Judge, given the court's comments and concerns...I just want to be certain that the record is clear that we will raise and object to the concerns...I just

don't want there to be any issue with this down the road, so I dont' feel it's incumbent on us as the government to attempt to protect the record." [Tr. p.2529]. The government knew Judge Doumar was totally out of control and that not only should have Mr. Broccoletti objected and preserved these errors for appeal, but that he should have moved for a mistrial on numerous occasions. AUSA Samuels plainly stated that it was not his job to protect Mr. Broccoletti's client. Again, Mr. Broccoletti stood silent and failed to file any objection to protect and preserve for Mr. Martinovich. [Tr. p.2529].

During counsel's quetioning of defense witness Mr. Umscheid, Judge Doumar, totally usurped the role of the prosecutor:

BROCCOLETTI: "Did you consider the stock market crash of just a couple months before that?"

UMSCHEID: "Well, remember the reason -- "

COURT: "Objection(!)"

Judge Doumar surprisingly objected in place of AUSA Samuels, and Mr. Broccoletti, again, failed to object. [Tr. p.2536]. Could there have been any question in the eyes of the jury of whose side the preeminent judge was on? "Here, there was much more than an appearance of improper interference." [Martinovich].

Any attempt by the government to claim that Mr. Broccoletti's performance was a strategic or tactical strategy instead of ineffective assistance fails on all counts. Not only did the performance failure greatly harm Mr. Martinovich's defense at trial, but Mr. Broccoletti's lack of error preservation was lethal to Mr. Martinovich's case on appeal. "In

light of plain error standard of review...we may not intervene." [Martinovich].

Supreme Court Justice Marshall stated, "I agree that counsel must be afforded 'wide lattitude' when making 'tactical decisions,' but many aspects of the job of a criminal defense attorney are more amenable to judicial oversight. For example...making timely objections." [Strickland].

"Defense counsel's decision not to object could not be called strategic, the court further observed, insofar as there was no apparent cost to objecting...and only a significant benefit to be gained." [Jones v. Clarke, 783 F. 3d 987 (4th Cir. 2015) Gregory].

When AUSA Samuels counseled Judge Doumar to reduce his interruptions and abuse, the trial transcripts clearly show that Judge Doumar, for a couple of hours, assumed the role of an unbiased, preeminent administrator. Judge Doumar did not react aggressively, or increase his egregious behavior, but instead this action had a calming and thoughtful effect on the Court. This in-trial case study was provided for Mr. Broccoletti to see that, if he would have objected, he would have received a positive effect in protecting his client in the eyes of the jury, not to mention the concern of preserving the error for appeal. Any argument to claim an objection would have increased the Court's abuse fails by direct and contemporaneous example. "However, Appellant did not object to the district court's interference. Although counsel may be reticent to object to such interference by the Court, failing to do so creates a high bar for appellate review." [Martinovich; citing United States v.

Smith, 452 F. 3d 323 (4th Cir. 2006)("Failing to bring even a single alleged error (of judicial interference) to the district court's attention during trial (does not) preserve the issue for appeal.")].

"It is therefore apparent to the Court that counsel's decision not to object was deficient performance under the first prong of Strickland...It bears repeating that a functioning adversarial system requires actual adversaries, not placeholders." [Jones; citing United States v. Cronic, 104 S. Ct. 2039, 80 L. Ed 2d 657 (1984)(The adversarial process protected by the Sixth Amendment requires that the accused have counsel acting the role of an advocate)].

Recently, in United States v. Carthorne the Fourth Circuit confirmed the necessity of effective counsel to make timely and preserving objections, as well as to vigorously represent the defendant. The Fourth Circuit stated, "If counsel fails to raise a contemporaneous objection to a potential issue or error, the authority of an appellate court to remedy that problem is 'strictly circumscribed'...A litigant failing to object to an error generally forfeits his claim to relief on account of that error...'When a defendant's lawyer is confronted with error during a judicial proceeding, he has the responsibility to object contemporaneously, calling the question to the court's attention and preserving the issue for appellate review.'" [Carthorne; citing Puckett v. United States, 556 U.S. S. Ct. 129, 134 (2009)].

The Fourth Circuit continued, "Counsel must demonstrate a

basic level of competence...counsel may be constitutionally required to object." [Carthorne]. "(T)he failure to raise an objection that would be apparent...is a significant factor in evaluating counsel's performance." [Carthorne; citing Strickland 466 US at 690]. "(W)e do not regard a decision as 'tactical'...if it made no sense or was unreasonable." [Carthorne; citing Vinson v. True, 436 F. 3d 412 (4th Cir. 2006)]. "(W)e hold that the defendant's trial counsel rendered ineffective assistance...by failing to make an obvious objection." [Carthorne].

Respectfully, Mr. Martinovich asserts that Strickland's first prong is satisfied.

STRICKLAND SECOND PRONG

"The test for prejudice resulting from the ineffectiveness of criminal defense counsel requires the defendant to show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." [Strickland].

PREJUDICE ON APPEAL

Mr. Martinovich first addresses the severe prejudice on appeal created by Mr. Broccoletti's ineffective assistance. Mr. Martinovich asserts that if Mr. Broccoletti would have objected one time and preserved the confirmed District Court errors, the Fourth Circuit Court of Appeals would not have been "constrained by plain error" and would have overturned Mr. Martinovich's conviction. Mr. Broccoletti's ineffective assistance, and only this failure, raised the standard of review from harmlessness to

the extremely high bar of plain error review. This failure caused the Fourth Circuit to assert, "Accordingly we must uphold the jury's verdict...in light of plain error...we may not intervene." [Martinovich].

The Fourth Circuit conducts the second Strickland prong analysis when reviewing whether counsel's lack of objection prejudiced the defendant at trial, as well as on appeal. "We agree...there is not a reasonable probability that either the outcome of the trial, or the direct appeal, would have been different had Ngo's trial counsel objected to the admission of Detective Ellis' testimony." [Ngo v. Holloway, 551 Fed. Appx. 713 (4th Cir. 2014)].

The Third Circuit supports this prejudice analysis on appeal. "The court reversed the decision of the district court denying defendant's request for habeas corpus relief because his trial attorney's constitutionally ineffective assistance in failing to object to the prosecutor's discriminatory use of preremptory challenges prejudiced his direct appeal," and, "The principles regarding constitutionally inadequate representation are applicable when the defendant was denied a just result on appeal because of the ineffectiveness of his attorney at the trial." [Govt. of the Virgin Islands v. Forte, 865 F. 2d 59 (3rd Cir. 1989)].

The Second Circuit also supports this prejudice review on the merits. "(T)o satisfy the second prong of the Strickland test, Parker must show that, but for his counsel's failure to preserve the sufficiency claim, there is a reasonable probability that the claim would have been considered on appeal and, as a

result, his conviction would have been reversed." [Parker v. Ercole, 666 F. 3d 830 (2nd Cir. 2012)].

If Mr. Broccoletti had preserved the errors, the appeals panel would have reviewed Judge Doumar's hundreds of errors under the standard of harmlessness. The Fourth Circuit explains this process as, "In determining whether a constitutional error is harmless, we consider whether it appears 'beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained. [United States v. Hagar, 721 F. 3d 167 (4th Cir. 2013); citing Chapman v. California, 386 U.S. 18, 87 S. Ct. 824, 17 L. Ed. 2d 705 (1967)]. The Fourth Circuit also describes this standard as, "under harmless review, the judgment 'may stand only if there is no reasonable possibility that the practice complained of might have contributed to the conviction.'" [United States v. Camacho, 955 F. 2d 950 (4th Cir. 1992); citing United States v. Hasting, 461 U.S. 499, 103 S. Ct. 1974, 76 L. Ed. 96 (1983)].

Martinovich asserts that a fair and objective review of the record concludes there has to be a "reasonable possibility" that Judge Doumar's hundreds of errors "might have contributed to the conviction." Regardless of other variables, by definition, the Fourth Circuit would have reached this conclusion. Any other conclusion commits violence against common sense.

Unfortunately, Mr. Broccoletti's ineffective assistance raised the bar to the plain error standard of review, the bar implemented by the courts of review to correct errors only in the most egregious and broad-reaching circumstances. Fourth Circuit Justice Wynn described this lethal increase to plain error as,

"When a defendant raises a timely objection to judicial interference, an appeallate court reviews for harmless error. But, when a defendant fails to object at trial, the appellate court reviews only for plain error. Under plain error review, a trial judge's comments must be so prejudicial as to deny a party an opportunity for a fair and impartial trial." [United States v. Ecklin, 528 F. Appx. 357 (4th Cir. 2013)].

Review courts claim that a plain error must be so extreme that a failure to correct actually damages the integrity of the judicial process [Anderson Law Dict. 2002 Ed.]. But, even on top of this increased standard, the Courts impose another mountainous hurdle. "The primary difference between harmless-error review and plain-error review, of course, is the allocation of the burden of persuasion. Under harmless-error review, the government bears the burden of establishing the error was not prejudicial; under plain-error review, the defendant bears the burden establishing that he was prejudiced by the complained-of error." [United States v. Pitt, 482 Fed Appx. 787 (4th Cir. 2011); citing United States v. Olano, 507 U.S. 725, 113 S. Ct. 1770, 12 L. Ed 2d 508 (1993)].

Recently in United States v. Carthorne, the Fourth Circuit clarified that on appeal, even though they may not find that an error eclipses the high bar of plain error review, counsel may still be deemed ineffective for not objecting to that error. The Fourth Circuit stated, "Upon our review, we conclude that the standards for plain error and ineffective assistance of counsel are distinct and do not necessarily result in equivalent outcomes for the defendant." [Carthorne].

Also in Carthorne, "(t)he magistrate judge acknowledged that counsel's alleged error satisfied the prejudice prong of Strickland because, if Carthorne's attorney had challenged the ABPO predicate offense, this Court (of Appeals) would have remanded for resentencing." [Carthorne]. If the attorney would have objected, the Appeals Court would not have been constrained by plain error and would have vacated the judgment.

"These differences, considered collectively, demonstrate why claims of ineffective assistance of counsel are not limited by an appellate court's analysis whether a trial court plainly erred." [Carthorne].

The Fourth Circuit continued, "The plain error standard therefore reflects the view that the primary responsibility for protecting a defendant's interests at trial lies with his attorney, not with the court...These failures by counsel resulted in prejudice to the defendant...VACATED AND REMANDED." [Carthorne].

Just as it is impossible to retrospectively determine what was actually occurring inside the minds of a jury when presented with extreme errors, we now cannot definitely determine which variables in the equation were given more or less weight by the Appeals Court, and which variables would have tipped the conclusion to the left or to the right. Martinovich was prejudiced.

Respectfully, Mr. Martinovich asserts that Strickland's second prong is satisfied.

PREJUDICE AT TRIAL

Mr. Martinovich, secondly, addresses the severe prejudice endured at trial due to Mr. Broccoletti's failures to object to Judge Doumar's egregious behavior and to not vigorously defend Martinovich and critical defense witnesses in the eyes of the jury.

Mr. Broccoletti's refusal to stop Judge Doumar's month-long barrage of interruptions, interference, and bias against the defense severely impacted Martinovich's constitutional rights of due process, equal protection, and right to present his defense to a jury of his peers. Martinovich had rejected three separate government plea offers in the belief that a fair and unbiased trial would serve the greater good. Yet, a fair and objective review of the record can only conclude that the trial "undermine(d) the public's confidence in the integrity of the judiciary," and that Broccoletti's failures to object violated Martinovich's rights from beginning to end. [Martinovich].

Even in the Fourth Circuit's restrained Opinion, the Judges replaced Judge Doumar and declared he "impermissibly interfered with the manner in which appellant sought to present his evidence," "went beyond the pale," and "challenge(d) the fairness of the proceedings." Yet, Mr. Broccoletti never once objected or attempted to restrain, or influence, the judge's behavior.

To even entertain a discussion that there is not a reasonable probability that Broccoletti's lack of objections might have contributed to the conviction, would violate all precedent concerning the preeminent role and tremendous persuasion held by a federal judge, the precedent confirming the importance of a vigorous defense by counsel, and simply just

common sense.

"Despite the broad discretion given, a trial judge occupies a position of preeminance and special persuasiveness in the eyes of the jury and must ensure that his participation during trial - whether it takes the form of interrogating witnesses, addressing counsel, or some other conduct - never reaches the point at which it appears clear to the jury that the court believes the accused is guilty. For example, when a judge cross-examines a defendant and his witnesses extensively and vigorously, he may present to others an appearance of partisanship and, in the minds of the jurors, so identify his high office with the prosecution as to impair the jury's impartiality. A judge's apparent disbelief of a witness is potentially fatal to the witness's credibility. And the credibility of a testifying defendant is often of crucial importance in a criminal trial." [United States v. Ecklin, 528 Fed Appx. 357 (4th Cir. 2013)].

Respectfully, this court, the government, Mr. Broccoletti, or Mr. Martinovich could not read the minds of the jurors during trial, and still cannot years later. Regardless of any other variables in the equation, by Fourth Circuit definition, it is impossible to state that there is not a reasonable probability that Broccoletti's lack of objections might have contributed to the jury's final decision. Any attempt to state otherwise breaks all accepted curriculum of psychology, group psychology, and evidence interpretation. Without question, Mr. Martinovich's jurors were never exposed to a fair trial, and due to their inexperience, as with most all jurors, they likely never even knew how constitutionally-deficient were the proceedings. A few examples are provided for consideration:

1) As the transcripts confirm that the government's own counseling to Judge Doumar greatly deterred his interference for a period of time, what would the jury verdict have been had Mr. Broccoletti once, or multiple times, objected and reduced Judge Doumar's abuse of the defense?

2) What would the jury verdict have been if the critical defense witness, the independent auditor Mr. Umscheid, had been respectfully permitted to explain to the jury that he had thoroughly vetted the valuation expert, the valuation reports, and the other supporting Wall Street data, by which he concluded the $2.88 price was reasonable and procedurally correct? What if this testimony was presented for the jury to objectively analyze instead of the jury being thrown out of the courtroom and witnessing the belittling and discrediting of this critical defense witness? [No. 13-4828, Brief].

3) What would the jury verdicat have been if once the government key witness, solar valuation expert Mr. Lynch, confirmed that he authorized and supported the critical $2.88 stock price, that Mr. Broccoletti had prevented Judge Doumar from interjecting himself to discredit the expert? What if Judge Doumar had not said in front of the jury, "So, your appraisal is absolutely worthless," or that Mr. Broccoletti had then objected and defended the appraisal, or asked for a mistrial? Mr. Broccoletti knew Mr. Lynch's own testimony had destroyed the government's case, and then he allowed Judge Doumar to discredit Mr. Lynch in the eyes of the jury, not only discrediting his work, but even allowing

Judge Doumar to refer to Mr. Lynch as a "rubber stamp." [No. 13-4828, Brief, Pro Se Brief].

4) What would have been the outcome if Mr. Broccoletti had not only objected to Judge Doumar's abuse, but had timely motioned for mistrial, as was required of effective assistance, multiple times throughout the trial? If Judge Doumar had been removed from the case at this point instead of by the Fourth Circuit after the damage was already inflicted, or if a new jury was never exposed to this bias, a fair proceeding may have been possible. If Judge Doumar had denied the timely motion for mistrial, Mr. Broccoletti could have objected and preserved this error, and based on the language of the Fourth Circuit's Order, the Appeals Court would have reviewed this denial under the abuse of discretion standard and overturned Martinovich's conviction. [FRCP 33, 4:12cr101].

5) What would have been the jury verdict if Mr. Broccoletti had objected to Judge Doumar's abuse and deterred the judge from interrupting Martinovich's testimony 168 times, or at least defended Mr. Martinovich in the eyes of the jury? How could Mr. Martinovich explain the intricacies of hedge fund valuations to a layman jury while being interfered with 168 times? How could Mr. Martinovich possibly present a cogent, understandable, and believable explanation? [No. 13-4828, Brief].

6) After multiple days of deliberation, there was a hung jury. Reportedly, nearly a third of jurors were still convinced of Mr. Martinovich's innocence even after the egregious onslaught and

lack of objections. Directed by Judge Doumar to return again the next week, after an exhausting month, the jurors capitulated with a guilty verdict and were able to return to their normal lives. What would have possibly been the outcome if these jurors on the edge were not so heavily influenced by the preeminent ruler of the proceedings? Any argument to contend that their split decision shows a lack of coercive influence runs contrary to all organizational behavior research. Group think and behavioral economics studies prove the opposite conclusion. The government earlier referred to United States v. Cornell, 4th Cir. 2015, as an example where split verdicts communicate a lack of coercion, yet, respectfully, Cornell is comparing apples and oranges with Martinovich. Cornell decides whether multiple Allen Charges (directions to continue deliberations) are coercive to a jury's opinion. This scenario is incomparable to four weeks of interference and bias against the defense conducted by the persuasive judge before the jury even thought to begin formulating a verdict opinion. Cornell addressed the process at the very end while Mr. Martinovich has proven that the lens through which the trial was presented to the jury was tainted from beginning to end. The input was corrupted. Judge Doumar "impermissibly interfered," just as Cornell states the instruction cannot be "impermissibly coercive." The Fourth Circuit states "it must be fair, neutral, and balanced." [United States v. Cropp, 127 F. 3d 354 (4th Cir. 1997)]. How many more of the jurors would have agreed with the initial not guilty conclusions if the lens had been fair, neutral, and balanced? "(B)ecause we do not know what the jury would have concluded had

there been no instructional error, a new trial on the counts of conviction is in order." [Bravo-Fernandez v. United States, 196 LED 2d 242, 137 S. Ct. (2016)].

Just as it is impossible to retroactively determine the thought process inside the minds of the Appeals Panel, we now cannot definitely determine which variables in the equation were given more or less weight by the impressionable jurors, and which variables would have tipped the conclusion to the left or to the right. An objective review of the record determines, without question, that there is a reasonable probability that, but for Mr. Broccoletti's ineffective assistance, the result of the trial proceedings would have been different. [Strickland].

Finally, for the purpose of a comprehensive Ground One argument, Mr. Martinovich addresses the issues of the jury instruction and the evidence in relation to Mr. Broccoletti's ineffective assistance. Even though Judge Doumar's behavior was determined error, Mr. Broccoletti's failure was ineffective assistance, the Appeals Panel was constrained by plain error, and there was a reasonable possibility that the failure might have contributed to the jury verdict, the government has attempted to convince the Courts that these errors are harmless.

JURY INSTRUCTION

The government has claimed that an instruction to the jury at the end of Mr. Martinovich's trial cures the hundreds of errors committed by Judge Doumar.

At the end of the four-week barrage against the defense, as detailed in this Ground One, Judge Doumar addressed the jury and stated, to paraphrase, "But, don't listen to me. I'm just the Judge." Any attempt by the government to call this a curative jury instruction, simply propagates this "conduct (which) tends to undermine the public's confidence in the integrity of the judiciary." If Pepsi steals Coke's secret formula, but later apologizes, is it cured? If the wife beater takes his wife out to a nice dinner after each time he assaults her, is this abuse cured?

This reasoning would not stand in any court of law, or

certainly not in a court of public opinion. This tortured logic flies in the face of all group pyschology and organizational behavior dynamics related to a judge's influence on a jury. "Moreover, the district court's jury instructions could not cure the fatal defect." [United States v. Kingrea, 573 F. 3d 186 (4th Cir. 2009)].

Admirably, the Fourth Circuit's Opinion stated, "We recognize that one curative instruction at the end of an extensive trial may not undo the court's actions throughout the entire trial." The Fourth Circuit then even wanted to, again, stress the dire impact of Mr. Broccoletti's ineffective assistance by adding, "but we are also cognizant that Appellant failed to alert the district court of what Appellant now perceives as improper." [Martinovich]. "A trial judge occupies a position of preeminence and special persuasiveness in the eyes of the jury and must thus ensure that his participation during trial never reaches the point at which it appears clear to the jury that the court believes the accused is guilty." [United States v. Parodi, 703 F. 2d 768 (4th Cir. 1983)]. A curative instruction argument is impossible.

EVIDENCE

Throughout the government motions, the number of witnesses and documents presented have been referred to as "overwhelming evidence." Mr. Martinovich asserts that high volume presentations are consistently the prosecutorial strategy when actual evidence is lacking, or simply not available. To combat

Judge Doumar's statement during the pre-trial hearing that this was a weak case against Martinovich to begin with, the government piled on the volume, not to be confused with actual evidence. The government has consistently presented "28 witnesses and 250 exhibits" as a metaphor for overwhelming evidence. Mr. Martinovich asserts this mis-characterization stems from the following strategy: If there is not one condemning witness, then provide 28, and if there is not one damning piece of evidence, then present 250.

The government's continued use of the word "overwhelming" is an attempt to persuade an overworked judiciary, unable to actually review 3,300 pages of the trial record and a tremendous Appendix of Exhibits, that volume equals evidence. There is no overwhelming evidence. There is underwhelming evidence presented skillfully through a timely narrative of greed and luxury, and then aided by a complacent placeholder defense counsel and the outrageous judge behavior necessary to ensure a conviction.

First, the case against Martinovich alleges conspiracy, mail fraud, and wire fraud which are founded on false and fraudulent representations made by Mr. Martinovich. According to the trial jury instructions, "false or fraudulent...is defined as a statement known to be untrue at the time it is made or used with reckless indifference as to whether it was true or not." Also, "To convict a person of mail fraud or wire fraud...the government must prove that the defendant acted with specific intent." [United States v. Wynn, 684 F.3d 473 (4th Cir. 2012)]. Mr. Martinovich asserts that clearing away the prosecution's well-worn narrative of greed after the Financial Crisis, there were

zero representations made that were known to be untrue, and there was zero evidence of any specific intent to defraud.

Second, the government can rise no higher than the evidence and sworn testimony presented by its key prosecution witness, Mr. Lynch. Mr. Lynch, the solar valuation expert, was called by the government, was not given immunity, and was the only witness to testify that he performed the EPV Solar valuations and set the per share pricing. Mr. Lynch adamantly continued to stand behind the accuracy of his valuation and the specific $2.88 per share price. Note a sample of Mr. Lynch's testimony:

QUESTION: "When you fixed it on the last amount of $2.88, you felt that also was a reasonable figure based upon the value of the company?"

LYNCH: "Correct." [Tr. p. 445].

QUESTION: "And in the attachment you say 'consequently it is my conclusion that the share value of $2.88 and the overall company valuation of approximately $500 million arrived at earlier in this memo is conservative,' correct?"

LYNCH: "Yes."

QUESTION: "And the share value of $2.88 is highlighted, correct?"

LYNCH: "Correct."

QUESTION: "And by signing this you are representing the contents of that valuation under your signature, correct?"

LYNCH: "Correct." [Tr. p. 479].

JUDGE DOUMAR QUESTION: "And yet your value went to $2.88 after the crash?"

LYNCH: "Well, because the market crashes doesn't mean all the stocks in it crash." [Tr. p. 485].

There is no false or fraudulent representation, nor specific intent, upon which to legally base a conspiracy, mail fraud, or wire fraud.

Third, the testimony of the independent, external hedge fund auditor, Mr. Umscheid, who was also a member of the AICPA

Auditing Standards Board, also refuted the government's narrative. Note a sample of Mr. Umscheid's testimony:

> UMSCHEID: "(S)o my audit was focused on the cash transactions in and out and the valuations of the companies that the hedge fund held...because of the bond raise (Jefferies & Co. $77 million raise for EPV) there was an intrinsic value to the stock of $2.88 per share, based on the bond raise...Yes, I -- I approved -- I gave my opinion that the asset value that they put at $2.88 was reasonable, yes." [Tr. p. 2453, 2532, 2542].

Plainly based on the testimony of the government's own expert witness, as well as the testimony of the independent auditor, there cannot legally be a false or fraudulent representation, or reckless indifference, by Mr. Martinovich when he represented the $2.88 value of EPV Solar. There is no legal foundation, no evidence.

Fourth, government allegations that Mr. Martinovich was the driving force behind valuation increases, and that he was involved in a scheme to do whatever was necessary to inflate the value, are simply conclusory accusations relying on a greed narrative at a time when concerned jurors had just experienced their 401k's cut in half and their home mortgages in jeopardy. EPV Solar was point-two-percent (.2%) of Martinovich's $1 billion under management, was one of 1,000 direct investments managed under Martinovich, with 100 associates and seven separate lines of investment services. As Mr. Lynch confirmed at trial, Mr. Martinovich had zero contact or communication with the valuation expert. The fantastic conspiracy theory that Mr. Martinovich tricked his entire management team, tricked the valuation experts, and tricked the licensed auditors to all prepare and approve a fraudulent $2.88 price on an asset representing only

.2% of his firm's investments commits violence against common sense. There is no overwhelming evidence. [No. 13-4828, Arg. 1, 2].

Fifth, allegations that Mr. Martinovich promoted the MICG Venture Fund and the underlying investments, as well as believed the EPV Solar price was rising while a public offering was imminent, are all addressing legal, industry practice, and were fully supported with the investment analyses received by MICG's Investment Banking Division. Legally, all valuations and accounting could have simply been conducted internally under relevant securities and accounting guidelines, as most firms operate. Yet, Mr. Martinovich chose to incorporate external valuation experts and independent, licensed auditors in order to increase transparency and compliance redundancy. [No. 13-4828, Arg. 1, 2].

Sixth, after 88,000 seized emails and hundreds of ducuments were analyzed, the only alleged link to Mr. Martinovich desiring a higher stock price was the testimony of one banker, Mr. Glasser in New York, who was given immunity in exchange for completely reversing his previous under-oath testimony. Ironically, even if the admitted perjurer was correct, Martinovich desiring a higher price for his firm's investment would be legal and compliant with SEC and FINRA securities regulations, as well as FASB and AICPA accounting guidelines. To borrow from Judge Doumar, there is not "a scintilla of evidence" that Mr. Martinovich believed EPV Solar was not a sound investment, or that the initial public stock offering was not going to occur. Also, out of 88,000 communications reviewed, there was not one piece of evidence

identifying Mr. Martinovich even requesting a higher price. There is no overwhelming evidence.

Seventh, the government's allegation that Mr. Lynch was not qualified to perform a valuation of EPV Solar was quickly repudiated by trial testimony:

LYNCH: "I've been involved in and around the solar industry since 1977...My experience was in analyzing various solar companies and in performing work as an equity analyst on public solar companies and in assisting solar companies to raise financing...I was considered to be an expert in the segment of the solar industry that involved technology." [Tr. p. 446].

GLASSER: "I think this will be the absolutely best, most valued analysis that we could ever get...(Lynch) is a brilliant technology analyst and investor and focuses almost entirely on solar." [Tr. p. 717].

QUESTION: "Now, based upon the questions and answers that you received, did you make a determination about Mr. Lynch being competent and objective?

AUDITOR: "I did."

QUESTION: "And what was that decision?"

AUDITOR: "I believed he was competent and objective to do the job." [Tr. p. 2462].

There is no overwhelming evidence.

Eighth, the government alleged the valuation was fraudulent because Mr. Lynch reportedly didn't know MICG was also using the report. Again, this allegation shows a lack of understanding of industry regulation and both FASB and AICPA Valuation Standards. Note the testimony which proves the valuation met the auditor's requirements:

GIFIS: "The auditor looked at (the report) and wanted some improvement in its presentation, some refernce to FASB standards, some information about Mr. Lynch's background and qualifications as an appraiser. And he had seven points he was raising."

QUESTION: "Is there any qualification for what the purpose of the opinion letter was?"

AUDITOR: "No, there is no qualification on this whatsoever at all."

QUESTION: "Did you ever see any qualifications on any of the valuations from Mr. Lynch as to the purpose of the valuation?"

AUDITOR: "Mr. Lynch never qualified his valuation in any of the valuations I saw."

JUDGE DOUMAR QUESTION: "He never qualified any of the valuations?"

AUDITOR: "No, Your Honor, they were all open valuations which means -- (interrupted by Court)." [Tr. p. 636, 2549].

For the Court, an open valuation is the most common form which denotes the valuation is suitable for multiple purposes and may be taken at face value. There is no overwhelming evidence.

Ninth, the government allegation that Mr. Martinovich authored valuations for his personal benefit and transmitted for Mr. Lynch 's approval is totally unfounded. Note the testimony:

Government-witness Glasser, testified that he made any changes to the valuations with Mr. Lynch in New York.

QUESTION: "Did you make those changes on that (valuation report)?"

GLASSER: "I did." [Tr. p. 834].

Judge Doumar asked the fund auditor directly.

JUDGE DOUMAR: "So Mr. Martinovich really had nothing to do with the value; it was only Glasser. Is that correct?"

AUDITOR: "That would be my assumption, yes, Your Honor." [Tr. p. 2523].

And, the MICG Chief Operation Officer, Mr. Cadieux, confirmed.

QUESTION: "Were you part of that meeting?"

CADIEUX: "I was."

QUESTION: "Did you know what the number was at that time?"

CADIEUX: "I think there was a discussion of it being around $2.88."

QUESTION: "And how did that discussion come to play?"

CADIEUX: "Bruce (Glasser) said that that was a valid number for the funds."

QUESTION: "Do you know how he arrived at that number?"

CADIEUX: "I assumed he got it from Gifis and/or Lynch." [Tr. p. 2362].

There is no overwhelming evidence.

Tenth, the government allegations that Mr. Martinovich invested in front of clients or received priority in redemptions or distributions, again, does not comply with the strict compliance protocols administered by MICG's Finance and Compliance Divisions. Mr. Martinovich had personally seeded multiple MICG hedge funds, and had also liquidated partial positions which were, in turn, re-deposited directly back into MICG to fund the acquisitions of multiple investment practices from Wall Street firms under duress during the Financial Crisis. [Tr. CFO, Feldman]. Multiple MICG management members testified to the proper documentation, priorities, front-running regulations, and audit reviews. [Tr. p.2259, Russel]. The government also failed to include the significant client distributions which were incongruent with their false narrative, to include the $4,606,221 returned to investors, outside of owners and employees, in the 2008-2009 period cited by the government for fraudulent conduct. [Exhibit - Hedge Fund Redemptions 2008-2009, No. 13-4828, Brief]. There is no overwhelming evidence.

Finally, in relation to evidence claims, with Mr.

Martinovich's above repudiations aside, it is important to note that the Supreme Court has determined that the prejudice calculus does not involve an inquiry into the strength of the evidence against the defendant. When the lower Court in Supreme Court Case Strickler found no prejudice because "the record contained ample, independent evidence of guilt," the Supreme Court stated, "The standard used by that court was incorrect." [Strickler v. Greene, 527 US, at 290, 144 L. Ed 286, 119 S. Ct. 1936 (1999)].

The Supreme Court emphasized that it is not for this Court to determine that without Mr. Broccoletti's ineffective assistance, whether Mr. Martinovich would have received a different verdict based on ample evidence. That is the wrong question. The Supreme Court states that the question is whether with Mr. Broccoletti's ineffective assistance did Mr. Martinovich receive a fair trial.

"The question is not whether (Martinovich) would more likely than not have received a different verdict with (effective assistance), but whether in its abscence he received a fair trial, understood as a trial resulting in a verdict worthy of confidence. On the record before us, one could not plausibly deny the existence of the requisite 'reasonable probability of a different result' had the (ineffective assistance not been present)." [Banks v. Dretke, 540 US 668, 157 L. Ed 2d 1166, 124 S. Ct. 1256 (2004); citing Kyles v. Whitley, 131 LED 2d 490, 115 S. Ct. 1555 (1995); Stickler].

Also, the recent Fourth Circuit decision in United States v. Lefsih and the Seventh Circuit decision in United States v. El-

Bey have re-confirmed that even with substantial evidence determinations by the Court, all defendants who elect to defend themselves at trial are, at least, guaranteed a fair trial in the United States of America. [5th Am., 6th Am., 14th Am. U.S. Const., United States v. Lefsih, 867 F. 3d 459 (4th Cir. 2017); United States v. El-Bey, 873 F. 3d 1015 (7th Cir. 2017)]. Lefsih, El-Bey, and Martinovich are nearly indistinguishable in regards to legal factors. All three cases contained egregious Court interference and bias, exacerbating errors with curative jury instructions, government intervention to protect the record, Court determination of substantial evidence, and a lack of preserving objections creating a plain error standard of review on appeal. The Courts stated, "Lefsih cannot prevail on his claim of insufficient evidence...(w)here the case against a defendant is 'compelling and overwhelming,' the court has been prepared to infer that a jury did not convict because of a court's erroneous interventions." [Lefsih]. And, the Court stated, "Although there is more than enough evidence of El-Bey's guilt." [El-Bey].

Yet, the Appeals Courts overturned these convictions, stating, "(W)e must...conclude that the unfairness of the trial requires reversal. Any other holding would constitute the adoption of the principle that a defendant the Court thinks is obviously guilty is not entitled to a fair trial." [El-Bey]. And, "Because the error was of the kind that could seriously affect the fairness, integrity, or public reputation of judicial proceedings, the court corrected it by vacating defendant's conviction." [Lefsih]. In lock step, the Appeals Court in

Martinovich stated, "More importantly, such conduct challenges the fairness of the proceedings...such conduct tends to undermine the public's confidence in the integrity of the judiciary." [Martinovich].

Mr. Martinovich respectfully asserts that both prongs of Strickland are satisfied, whether following the recent Fourth Circuit clarification set in Carthorne that "the standards for plain error and ineffective assistance of counsel are distinct and do not necessarily result in equivalent outcomes for the defendant," or following recent Fourth Circuit clarification in Lefsih confirming that although "(a)t no point did Lefsih object to the district court's questions or comments, (and)...Lefsih cannot prevail on his claim of insufficient evidence...the district court's interventions were not only plainly erroneous but also so prejudicial as to deny defendant an opportunity for a fair trial."

Based on the plain language of the Fourth Circuit in United States v. Martinovich, Mr. Martinovich must prevail based on the confirmations set in Lefsih and El-Bey. And, at a minimum, Mr. Martinovich must prevail at the harmlessness standard of review invoked with the distinction set by the clarification of Carthorne.

REMEDY

Mr. Martinovich respectfully asserts that he has proven that trial counsel, Mr. Broccoletti, provided ineffective assistance and that Mr. Martinovich was prejudiced by this failure. Both Strickland prongs have been thoroughly satisfied, while any

arguments of harmlessness have been disproven. Without question, there is a reasonable probability that, but for Mr. Broccoletti's ineffective assistance, the results of the proceedings would have been different. Mr. Martinovich respectfully requests this Court Vacate the Case No. 4:12cr101 Full Judgment, to include conviction, sentence, restitution, and forfeiture.

GROUND II: APPEAL COUNSEL WAS INEFFECTIVE BY NOT SUBMITTING STRUCTURAL ERROR ON APPEAL FOR THE DISTRICT COURT'S INTERFERENCE AND BIAS IN MARTINOVICH'S TRIAL

In order to reduce duplication in this instant brief, Mr. Martinovich respectfully asks the Court to incorporate Ground One facts and arguments into the consideration of this Ground Two argument.

Appeal counsel, Mr. Woodward, was ineffective for failing to argue on direct appeal that District Judge Doumar's interference and bias created structural error in Mr. Martinovich's trial, as the Fourth Circuit determined "(t)he district court's actions were in error," the "conduct challenge(d) the fairness of the proceedings," and it "undermine(d) the public's confidence in the integrity of the judiciary." [United States v. Martinovich, 810 F.3d 232 (4th Cir. 2016)].

Clearly, in Mr. Martinovich's trial, the District Court committed structural error. Structural error is reversible error regardless of whether counsel has preserved the error, or whether the defendant can show actual prejudice. In Martinovich, the Appeals Court determined error, but was not able to overturn the conviction due to the high prejudice bar of plain error. Now, the Court may only review the question asked, and even though Mr. Woodward was presented with overwhelming evidence of structural error, along with clear Fourth Circuit and Supreme Court precedence on structural error, Mr. Woodward failed to present this argument on appeal. There is a reasonable probability that,

but for Mr. Woodward's ineffective assistance, the Appeals Court would have overturned Mr. Martinovich's conviction regardless of whether Martinovich showed actual prejudice.

LEGAL STANDARD

The Fourth Circuit states, "When the trial judge unmistakably adopts the role of prosecutor, there is a 'special category' error that affects substantial rights regardless of whether the defendant can show actual prejudice." [United States v. Neal, 101 F. 3d 993 (4th Cir. 1996)].

"Absent structural error (and no party contends that the errors at issue here are structural), the Supreme Court has generally held that appellate courts can review unpreserved claims only for plain error." [United States v. Lynn, 592 F. 3d 572 (4th Cir. 2009); citing United States v. Olano, 507 U.S. 725, 113 S. Ct. 1770 (1993)]. [Parenthesis in Orig.].

"However, there may be a special category of forfeited errors that can be corrected regardless of their effect on the outcome. This language refers to 'structural errors.' Although the U.S. Supreme Court has expressly reserved the question of whether structural errors automatically satisfy the third prong of United States v. Olano, the United States Court of Appeals for the Fourth Circuit has held that such errors necessarily affect substantial rights, satisfying Olano's third prong." [United States v. Ramirez-Castillo, 748 F. 3d 205 (4th Cir. 2014)].

A structural error is a "defect affecting the framework within which the trial proceeds, rather than simply an error in

the trial process itself." [Arizona v. Fulminante, 499 U.S. 279, 11 S. Ct. 1246 (1991)].

"While the appellate court employs the abuse of discretion standard in determining if the district court's conduct was hostile or biased, once the appellate court has concluded that judicial misconduct did occur, reversal is automatic due to the structural nature of the error." [Mcmillan v. Castro, 405 F. 3d 405 (6th Cir. 2005)]

FOURTH CIRCUIT STRUCTURAL ERROR

The following case comparisons are emblematic of the Fourth Circuit and Supreme Court's positions on structural error correlated to the determinations in Mr. Martinovich's case:

1) Such errors "deprive defendants of 'basic protections' without which 'a criminal trial cannot reliably serve its function as a vehicle for determination of guilt or innocence...and no criminal punishment may be regarded as fundamentally fair. [Neder v. United States, 527 U.S. 1, 119 S. Ct. 1827 (1999); quoting Rose v. Clark, 478 U.S. 570, 106 S. Ct. 3101 (1986) emp. add.]. In comparison, "Such conduct challenges the fairness of the proceedings." [**United States v. Martinovich**, 810 F. 3d 232 (4th Cir. 2016) emp. add.].

The judge "rehabilitated prosecution witnesses who had been impeached under defense questioning." [United States v. Godwin, 272 F. 3d 659 (4th Cir. 2001)]. In comparison, Judge Doumar discredited key government witnesses who adamantly supported the defense's position, "The Court: So your appraisal is absolutely

worthless." [**Martinovich**].

"A few numbers illustrate how pervasively the judge conveyed her skepticism of the defendant's case: When the defendant Curry-Robinson took the stand for direct testimony...the judge asked questions that cover the next eight pages of transcripts." [Godwin, emp. add.]. In comparison, "The Court interrupted counsel or questioned Mr. Martinovich on 168 occassions during Mr. Martinovich's testimony...the Court interfered into defense counsel's questioning (over 50 times) during the testimony (of defense witness Mr. Umscheid), at one point consuming eight consecutive transcript pages before allowing counselors to continue, with nearly every leading question or statement to the detriment of Mr. Martinovich's defense." [**Martinovich**, No. 13-4828 Brief].

"A defendant, in sum, has a right to an impartial judge -- one who takes care not to signal to the jury that she believes the defendant is guilty. This right to an impartial judge cannot be trampled, not even by overwhelming evidence of guilt." [United States v. Godwin, 272 F. 3d 659 (4th Cir. 2001); citing Tumey v. Ohio, 273 U.S. 510, 47 S. Ct. 437 (1927)("No matter what the evidence against [the defendant], he had the right to have an impartial judge.") emp. add.].

Mr. Woodward failed to submit the argument that the District Court committed structural error, even though he was presented with overwhelming evidence, as well as clear Fourth Circuit citations and definitions. Mr. Martinovich's case reached the level of structural error-special category by any fair and objective review of the record.

STRICKLAND FIRST PRONG

Mr. Woodward's "representation fell below an objective standard of reasonableness." [Strickland]:

1) Mr. Woodward failed to present the specific question of stuctural error even though he was aware that the Appeals Court may review "the only question before us." [Morva v. Zook, 821 F. 3d 517 (4th Cir. 2016) emp. in orig.].

2) Mr. Woodward failed to "contend that the errors at issue here are structural," thus precluding Martinovich from an objective review of clear structural error. [Lynn; citing Olano].

3) Mr. Woodward was aware that as appointed counsel he must present a specific question, as he was not proceeding pro se where the court "construe(s) the pleading in the light most favorable to the defendant because he was proceeding pro se," and "as a pro se litigant, however, the defendant is entitled to liberal construction of his pleadings." [Marlar v. Warden, 432 Fed. App. 182 (4th Cir. 2011), Bala v. Vir. Dept. Cons., 532 Fed Appx. 332 (4th Cir. 2013); citing Haines v. Kerner, 404 U.S. 519, 92 S. Ct. 594 (1972)].

4) Mr. Woodward failed to present the specific argument that the District Court committed structural error, while he knew, or should have known, these errors were structural, and that the special category classification removed the reviewing Court's prejudice requirement pursuant to Olano's third prong.[Olano].

STRICKLAND SECOND PRONG

There is a reasonable probability that, but for Mr. Woodward's unprofessional errors, the result of the proceeding would have been different. [Strickland].

1) Mr. Woodward's failure to present the structural error argument precluded the review Court from addressing this specific question. As the Fourth Circuit clarified in Morva, "(W)hen the Supreme Court has not yet 'confront(ed) the specific question presented by (a particular) case,' the state court's decision (cannot) be 'contrary to' any holding 'of the Supreme Court.' [Morva].

2) Mr. Woodward's failure precluded the Fourth Circuit from conducting the Olano 3-prong analysis with which the Appeals Court would have overturned Mr. Martinovich's conviction. Following Olano's first prong, the Fourth Circuit has alrady stated, "(T)he district court's actions were in error." [Martinovich]. Following Olano's second prong, "an error is plain when the law at the time is settled. See Hastings 134 F. 3d 239. As we recognize, the legal principles governing judicial interference claims have been long settled. See Supra Part III, D." [Godwin]. Following Olano's third prong, "the United States Court of Appeals for the Fourth Circuit has held that such errors necessarily affect substantial rights, satisfying Olano's third prong." [Ramirez-Castillo].

Proceeding even further, the Court stated, "(E)ven if all three prongs are met, it is within our discretion whether to

remedy the error, and we should refrain from intervening unless the error 'seriously affects the fairness, integrity, or public reputation of judicial proceedings." [Godwin; citing Olano emp. add.]. Again, Martinovich's case also met these final standards. "(S)uch conduct challene(d) the fairness of the proceedings." [Martinovich emp. add.]. "At its core, such conduct tends to undermine the public's confidence in the integrity of the judiciary." [Martinovich emp. add.].

3) Without question, the Fourth Circuit specifically, with congruent language, determined that Mr. Martinovich's trial was clear structural error. Mr. Woodward's failure to present this specific question precluded the Court of Review from overturning Martinovich's conviction founded on the exact correlation of Martinovich's case with Fourth Circuit settled law.

REMEDY

Mr. Woodward's ineffective assistance satisfied both Strickland prongs and prejudiced Mr. Martinovich. Mr. Martinovich respectfully requests this Court Vacate the conviction and sentence for Case No. 4:12cr101, or in the alternative grant the relief this Court deems just and appropriate.

GROUND III: APPEAL COUNSEL WAS INEFFECTIVE FOR ABANDONING APPEAL AND NOT FILING A PETITION FOR WRIT OF CERTIORARI :

In order to reduce duplication in this instant brief, Mr. Martinovich respectfully asks the Court to incorporate the facts and argument of Ground One and Ground Two in consideration of this Ground Three Argument.

Appeal counsel, Mr. Woodward, was ineffective for abandoning Mr. Martinovich's appeal in Case No. 4:12cr101 (Appeal Case No. 13-4828) and for failing to submit a Petition for Writ of Certiorari to the U.S. Supreme Court.

The Fourth Circuit's CJA Plan provides as follows at § 5, para. 2: "Every attorney, including retained counsel, who represents a defendant in this court shall continue to represent his client after termination of the appeal unless relieved of further responsibility by this court or the Supreme Court."

Following the January 7, 2016, Fourth Circuit Order replacing District Judge Doumar, vacating the sentence, and upholding the conviction based upon plain error review, Mr. Martinovich spoke briefly to counsel, Mr. Woodward, through the prison 15-minute phone system. [AFF. #37]. Mr. Martinovich, a novice in judicial proceedings, questioned Mr. Woodward on the next steps to get to the Supreme Court. Mr. Woodward asserted that Martinovich had no issues for the Supreme Court. Moreover, Mr. Woodward stated that any other actions would delay Martinovich's upcoming re-sentencing, which likely would provide

substantial relief. [AFF.#41] Mr. Martinovich at this time was not educated in interpreting the Fourth Circuit's ruling which delineated trial counsel's ineffective assistance, as well as the structural error implications, as addressed in Grounds One and Two. [AFF. #38].

Without discussion or consultation, Mr. Martinovich did not know to contest Mr. Woodward's directive to not pursue a Writ of Certiorari. Mr. Woodward did not discuss the advantages or disadvantages to presenting these issues, or any other arguments, on Certiorari. Mr. Woodward refused to communicate over the prison Trulincs email system, or to provide in-person counsel. [AFF.#39,#4

Mr. Martinovich's later pro se research would discover that substantial issues remained in his appeal, to include the eclipsing of plain error review and the structural error doctrine, both issues which, arguably, the Supreme Court would have viewed in Martinovich's favor. There is a reasonable probability that the Supreme Court would have directed the Appeals Court to overturn the conviction in Case 4:12cr101. [AFF.#42].

Subsequent court-appointed appeal counsel, Mr. Brooks, would later write about Mr. Woodward's lack of effective assistance. "Mr. Martinovich's first trial was rife with structural error and he was denied relief from them due to the rigors of the plain error doctrine. His direct appeal in that case was then abandoned by formal counsel (Woodward)." [Petition for Rehearing (16-4644/4648)].

Following the Appeals Court's Order, Mr. Woodward was still representing Mr. Martinovich and bound to provide effective assistance of counsel, pursuant to the Fourth Circuit CJA Plan

and The Criminal Justice Act, 18 U.S.C.S. 3006A.

"Where a petitioner never explicitly requests an appeal, that petitioner can still establish deficient performance by showing that counsel failed to consult with petitioner, and that a reasonable attorney would have done so under the circumstances. For an attorney to 'consult,' that attorney must advise the client about the advantages and disadvantages of an appeal and make reasonable efforts to ascertain the client's wishes." [Bostick v. Stevenson, 589 F. 3d 160 (4th Cir. 2009); citing United States v. Witherspoon, 231 F. 3d 923 (4th Cir. 2000)].

"Simply asserting the view that an appeal would not be successful does not constitute 'consultation' in any meaningful sense." [Bostick; citing Thompson v. United States, 504 F. 3d 1203 (11th Cir. 2007)].

"While not dispositive, the short duration of the exchange is a relevant factor in determining whether there was adequate consultation about an appeal as a matter of law." [Thompson]. With Martinovich not knowing what he did not know at this time, as well as not being provided 'consultation' on the issues, Mr. Woodward did not ensure this critical step was "knowing and voluntary." [Thompson].

"The U.S. Const. ammend. VI requires counsel to consult with the defendant concerning whether to appeal when counsel has reason to believe either (1) that a rational defendant would want to appeal or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing." [Witherspoon].

"Although a defendant does not have a constitutional right

to counsel while seeking certiorari, he does have a statutory right based on the Criminal Justice Act, 18 U.S.C.S. 3006A...The court held that pursuant to the Criminal Justice Act, 18 U.S.C.S. 3006A, and the Seventh Circuit Criminal Justice Act Plan (Plan), defendant had a statutory right to counsel while seeking certiorari...Defendant's prior counsel did not comply with his obligations under the Plan...A motion to recall mandate was issued in defendant's direct criminal appeal and for appointment of counsel to assist him in filing certiorari petition was granted." [United States v. Price, 491 F. 3d 613 (7th Cir. 2007).

STRICKLAND FIRST PRONG

"(I)n order to establish a U.S. Const. amend. VI violation based on counsel's failure to appeal, a party must prove that (1) counsel was ineffective and (2) but for counsel's ineffectiveness, an appeal would have been filed." [Witherspoon].

Mr. Woodward's "representation fell below an objective standard of reasonableness." [Strickland].

1) Mr. Woodward failed to consult with Mr. Martinovich and explain the advantages and disadvantages of submitting Martinovich's issues on Certiorari.

2) Mr. Woodward failed to advise Mr. Martinovich that the Supreme Court may have likely determined that the egregious nature of his trial eclipsed the plain error standard of review, per the details of Ground One.

3) Mr. Woodward failed to advise Mr. Martinovich that the Supreme

Court may have likely determined that the egregious nature of his trial eclipsed the plain error standard of review, per the details of Ground One.

3) Mr. Woodward failed to advise Mr. Martinovich that the Supreme Court may have likely determined that the egregious nature of the trial judge's behavior met the standard of structural error and, therefore, eclipsed any Fourth Circuit prejudice prong, per the details of Ground Two.

4) Mr. Woodward was ineffective for abandoning Mr. Martinovich's appeal and not recommending and advising Martinovich to petition the Supreme Court for Writ of Certiorari.

5) Following the January 7, 2016, Fourth Circuit decision to uphold the conviction, without consulting with Martinovich on the "advantages and disadvantages," Mr. Woodward asserted "that an appeal would not be successful" and began his coercion of Martinovich to accept a plea agreement for the professed "5-6 year deal." [See Ground Yet, on February 10, 2016, the government released a superseding indictment which should have greatly changed Mr. Woodward's sentencing calculus, and moved Mr. Woodward to prudently assist his client to file with the Supreme Court, still being within the 90-day window to file the Writ of Certiorari. Mr. Woodward abandoned a zealous representation of Mr. Martinovich's appeal.

6) Mr. Woodward coerced Mr. Martinovich by abandoning the certiorari and attempting to convince Mr. Martinovich that

"accepting responsibility" and "not continuing to fight" would yield a significantly lower sentence, possibly even time served and even likely released on bond before resentencing. Mr. Woodward coerced Mr. Martinovich into unknowingly and involuntarily giving up his rights, as Mr. Woodward stated the resentencing Court would view further contestation as a "scorched earth policy." The advantages of pursuing the eclipse of plain error or presenting structural error, or any other possibilities, were never discussed in the 15-minute prison phone call.

STRICKLAND SECOND PRONG

There is a reasonable probability that, but for Mr. Woodward's unprofessional errors, the result of the proceeding would have been different. [Strickland].

1) "If counsel fails to consult, the defendant may demonstrate prejudice by showing that a rational defendant would want to appeal. The defendant may do this by demonstrating either a) there were non-frivolous issues for appeal, or b) he had adquately indicated interest in appealing. However, in demonstrating prejudice, the defendant is under no obligation to demonstrate that his hypothetical appeal might have had merit." [United States v. Gonzalez, 570 Fed. Appx. 330 (4th Cir. 2014)].

2) "(E)ven when a defendant agrees to an appeal waiver, his counsel still owes him effective representation with respect to a potential appeal. Specifically, effective representation in this circumstance includes: (1) filing a timely notice of appeal if requested to do so, and (2) consultation regarding an appeal

whether or not instructed to file an appeal when there are nonfrivolous grounds for appeal or when the defendant demonstrates a mere interest in appealing." [Gonzalez].

3) Martinovich rejected three separate plea offers and was part of the rare percentage of defendants whom believed a trial would have provided a fair and equitable resolution. "Although not the determinative factor, 'a highly relevant factor in this inquiry will be whether the conviction follows a trial or guilty plea,' both because a guilty plea reduces the scope of potentially appealable issues and because such a plea may indicate that the defense seeks an end to judicial proceedings." [Flores-Ortega].

4) The exchange between the attorney and the inmate did not constitute adquate consultation...and the inmate made the requisite showing of prejudice." [Thompson].

5) If the Writ of Certiorari had been filed, there is a reasonable probability that the Supreme Court would have overturned the Appeals Court decision that Judge Doumar's errors did not eclipse plain error review.

6) If the Writ of Certiorari had been filed, there is a reasonable probability that the Supreme Court would have overturned the Appeals Court decision, finding that Judge Doumar's errors created structural error, and directed the Appeals Court to reconsider overturning the conviction with the prejudice prong fully satisfied.

As thoroughly presented in this instant brief's Ground One

and Ground Two, as well as asserted by subsequent appeal counsel, Martinovich was severely prejudiced by Mr. Woodward's decision to abandon the appeal and to not properly consult with Martinovich. There is a reasonable probability that the result of the proceeding would have been different. [AFF. #43].

REMEDY

Mr. Woodward's ineffective assistance satisfied both Strickland prongs and prejudiced Mr. Martinovich. Mr. Martinovich respectfully requests this Court vacate the conviction and sentence for Case No. 4:12cr101, or in the alternative grant relief this Court deems just and appropriate.

GROUND IV: COUNSEL WAS INEFFECTIVE FOR FAILING TO OBJECT AND INTERVENE AGAINST THE VIOLATION OF MARTINOVICH'S FIFTH AMENDMENT RIGHT OF DUE PROCESS IN REGARDS TO MENTAL DISEASE OR DEFECT

Sentencing counsel, Mr. Woodward, provided ineffective assistance as the Honorable Judge Allen pronounced, repeatedly, her unambiguous determination that she had a reasonable cause to believe Mr. Martinovich suffered from a mental disease or defect and possibly was mentally incompetent, not of legal mental capacity, insane, or of diminished capacity. The Court's incontrovertible determination applied to the time span beginning with Mr. Martinovich's trial, and continuing through September 29, 2016, along with specific assertions that this degraded mental state had "not been fixed."

Counsel failed to provide Sixth Amendment effective assistance and enabled the violation of Martinovich's right to due process as guaranteed by the Fifth Amendment. Martinovich's rights in relation to the plea agreement, sentences, and conviction were violated. "The conviction of a defendant when he is legally incompetent is a violation of due process." [United States v. Broaddus, 45 Fed Appx. 219 (4th Cir. 2002); citing Drope v. Missouri, 420 U.S. 162, 180, 95 S. Ct. 896, 43 L. Ed 2d 103 (1975)].

DISTRICT COURT DETERMINATION

Mr. Martinovich first points this Court to the statements and directions of the District Court on September 29, 2016 [See Sent.

Tr.]:

1) "It's something wrong with his brain." (p. 92)

2) "There's something wrong, and I don't know what's wrong." (p. 92)

3) "But there's something wrong, and we're going to get you mental health treatment under my case, because there's something wrong, and it's not been fixed." (p. 92)

4) "It's breaking my heart not to be able to figure out what's wrong." (p. 92)

5) "(I)t's not been fixed." (p. 92)

6) "I know you're not polluting your brain with poison." (p. 92)

7) "There's something wrong. I'm not a doctor, we're going to get mental health treatment, but there's something wrong." (p. 102)

8) "So I don't know what's wrong. I don't. It's complex and sophisticated." (p. 102)

9) "And I'm hoping you get some help to fix that, because you've got a very deep problem." (p. 102)

10) "I'm going to recommend mental health treatment as well." (p. 106).

BURDEN

Mr. Martinovich notes the clear and specific determination by the District Court of Martinovich's mental degradation and the dearth of counsel intervention at sentencing, or in previous negotiations and hearings. Mr. Martinovich did not voluntarily assert a defense of insanity or consideration of diminished capacity, yet the Court, itself, determined the mental degradation of the defendant Martinovich. The initial burden of proof does not rest upon the defendant, as "the court shall grant the motion, or shall order such a hearing on its own motion if

there is a reasonable cause to believe." [18 U.S.C. § 4241].

The Supreme Court has determined that the "question of defendant's competency is question of fact as opposed to mixed question of law and fact or question of law." [United States v. Williams, 819 F. 2d 605 (CA5, Tex)(1988)].

Given that competency is a question of fact, "if a meaningful hearing was no longer possible, defendant's conviction would have to be overturned and a new trial granted when defendant was competent to stand trial." [United States v. Mason, 52 F. 3d 1286 (4th Cir. 1994); citing United States v. Renfroe, 825 F. 2d 763 (3rd Cir. 1987)], and, "Given the inherent difficulties in retropspective competency determinations, such nunc pro tunc (now for then) evaluations are not favored." [Mason; Renfroe].

Without question, counsel's effective assistance duty was to move for vacation of conviction, plea, and sentences regardless of the Court's own failure to move for same actions. After repeated Court assertions of its mental determination, Mr. Woodward's failure fell below the minimum professional norm. By statute and precedent, the plea, convictions, and sentences for Case 4:12cr101 and 4:15cr50 must be vacated, and once current competency is determined, a new trial and proceedings may be performed.

LEGAL STANDARD

Mr. Martinovich notes the controlling rules, statutes, rights, and immunities applicable to be the Fifth and Sixth Amendments of the Constitution of the United States, 18 U.S.C. § 4241 Determination Of Mental Competency To Stand Trial Or To Undergo

Postrelease Proceedings, U.S.S.G. § 5k2.13 Diminished Capacity, F.R.Crim.P. 11 Pleas, 18 U.S.C. § 4242 Determination Of The Existence Of Insanity At The Time Of Offense, 18 U.S.C. § 4247 Offenders With Mental Disease Or Defect, and F.R.Crim.P. 12.2 Notice Of An Insanity Defense; Mental Examination.

PROCEDURAL

18 U.S.C. § 4241 states, "The court shall grant the motion, or shall order such a hearing on its own motion, if there is reasonable cause to believe that the defendant may be presently suffering from a mental disease or defect rendering him mentally incompetent to the extent that he is unable to understand the nature and consequences of the proceedings against him or to assist properly in his defense."

Without question, the District Court surpassed the standard of review that the defendant may be suffering from a defect. The Court's specific comments questioning the mental competency of Martinovich in 2012 and 2013 when he allegedly accessed "dirty money" during his trial, combined with the assertion that the Court was now ordering "mental health treatment" would clearly identify that the Court had "reasonable cause to believe" that Mr. Martinovich may have been suffering from "mental disease or defect" during this continuous period. Counsel, and the government, were duly noticed of the Court's determination, without any ambiguity.

It is not clear at which point in time did the District Court finalize its emphatic determination that Martinovich may be

suffering from a mental disease or defect, whether on September 29, 2016, or at the plea acceptance hearing, or at any moment during this interim period, or prior to. Yet, during sentencing-resentencing the District Court violated Martinovich's right to due process, and counsel violated Martinovich's right to effective assistance, by not motioning for and ordering a cessation of actions against Martinovich and requesting and ordering a competency hearing and possible psychiatric or psychological examination and report [18 U.S.C. § 4241(a)(b)].

"A defendant may make a procedural competency claim by alleging that the court failed to hold a competency hearing after the defendant's mental capacity was put in issue. Although there are no immutable signs which invariably indicate the need for further inquiry to determine fitness to proceed, proof of a defendant's irrational behavior (is) relevant." [Walton v. Angelone, 321 F. 3d 442 (4th Cir. 2003)].

"A person has a procedural right to a competency hearing if there is a reasonable cause to believe that a defendant may be presently suffering from a mental disease or defect rendering him mentally incompetent." [Broaddus].

"Due process requires that a hearing be held whenever the evidence raises a sufficient doubt about the accused's mental competency to stand trial." [United States v. Smart, 98 F. 3d 1379 (DC Cir. 1996); citing Drope].

"An examination regarding the defendant's sanity at the time of the offense was therefore required by statute; thus, we need only decide whether the district court properly ordered the examination be conducted." [United States v. Song, 530 Fed Appx.

255 (4th Cir. 2013)].

Counsel failed to protect Mr. Martinovich's rights, and the Court "on its own motion" failed to adhere to statutes and Fourth Circuit precedence.

MENS REA

An act does not make a man guilty, unless he be so in intention. The District court's emphatic determination that there was reasonable cause to believe Mr. Martinovich was suffering from, and is still suffering from, a mental disease or defect, voids the express ability for the Court to, without hearing and/or examination, convict and sentence, and uphold conviction, for crimes requiring specific intent to commit a criminal act. Sentencing counsel, Mr. Woodward, failed to raise the objection that specific intent is mutually exclusive with the Court's determination.

In Case 4:12cr101, Mr. Martinovich was convicted of, and resentenced for, Conspiracy 18 U.S.C. § 1349, Wire Fraud 18 U.S.C. § 1343, and Mail Fraud 18 U.S.C. § 1341, all which require "specific intent." In Case 4:15cr50, Mr. Martinovich pled guilty and was sentenced to Concealment of Money Laundering 18 U.S.C. § 1956(a)(1)(B)(i) which requires "knowing to conceal or disguise."

"To convict a person of mail fraud or wire fraud, the government must show that the defendant (1) devised or intended to devise a specific scheme to defraud...And the element "to defraud" has the common understanding of wronging one in his property rights by dishonest methods of schemes and usually signifying the deprivation of something of value by trick,

deceit, chicane, or overreaching. To establish a scheme to defraud, the government must prove that the defendant acted with the specific intent to defraud." [United States v. Wynn, 684 F. 3d 473 (4th Cir. 2012)].

"Defenses such as diminished capacity and voluntary intoxication are viable only for specific intent crimes, because such defenses directly negate the required intent element of those crimes." [United States v. Jackson, 554 Fed Appx. 156 (4th Cir. 2013)].

Again, counsel fell silent and failed to provide effective assistance to move that Mr. Martinovich's conviction, plea, and sentences must be vacated, by definition.

DIMINISHED CAPACITY

United States Sentencing Guidelines (U.S.S.G.) § 5k2.13 controls the District Court's consideration for sentencing in reference to diminished capacity. "(The) Court has discretion to downward depart if '(1) the defendant committed the offense while suffering from a significantly reduced mental capacity; and (2) the significantly reduced mental capacity contributed substantially to the commission of the offense.' U.S.S.G. § 5k2.13. However, '(w)e lack authority to review a sentencing court's denial of a downward departure unless the court failed to understand its authority to do so.'" [United States v. Brewer, 520 F. 3d 367 (4th Cir. 2008)]. "Our review of the record discloses that the district court did not fail to recognize its authority to depart. Thus Brown's claim is not reviewable on

Appeal." [United States v. Brown, 459 Fed Appx. 253 (4th Cir. 2011)].

"A significantly reduced mental capacity means that a defendant, although convicted, has a significantly impaired ability to (1) understand the wrongfulness of the behavior comprising the offense or to exercise the power of reason; or (2) control behavior that the defendant knows is wrongful. U.S.S.G. Manual § 5k2.13 cmt. app. n. 1." [Brewer]. Brewer's language exactly correlates to Judge Allen's repeated description of Mr. Martinovich's mentally-deficient behavior, all noticed to Mr. Woodward with zero subsequent intervention or defense.

Mr. Woodward provided ineffective assistance by failing to, at a minimum, motion for the Court to consider a § 5k2.13 downward departure in Case 4:12cr101 and 4:15cr50. Based on the Court's emphatic determination of mental defect, it is not in question whether the District Court determined that a downward departure was not warranted, but that the District Court failed to understand its authority to do so.

Clearly, the District Court determined, and counsel was noticed, that the Court had reasonable cause to believe that Mr. Martinovich suffered from diminished capacity at the time of sentencing, at the plea negotiations and acceptance hearing, and during the trial and indemnification payments. "Diminished capacity differs from the insanity defense in that it may be raised by a defendant who has conceded to be legally sane." [Goins v. Warden, Perry Corr., 576 Fed Appx. 167 (4th Cir. 2014)].

TIME PERIOD

On September 29, 2016, the district Court clearly communicated its determination to counsel and the government that Mr. Martinovich's mental degradation was present, at a minimum, from the time period of Mr. Martinovich's trial in Case 4:12cr101, throughout his subsequent plea contract negotiations and acceptance hearing, and through the September 29, 2016, sentencing of Case 4:15cr50 and resentencing of Case 4:12cr101. Mr. Martinovich points this Court to District Court statements confirming this extended and continuous time period [See Sent. Tr.]:

During Trial:

1) **"I just can't imagine sitting in front of Judge Doumar...knowing that it's dirty money." (p. 91)**
2) **"(G)oing to trial, which is his right, but threading criminal proceeds throughout that trial." (p. 92)**
3) **"(A)nd when he was doing this he was on bond." (p. 92)**
4) **"He sucked in James Broccoletti into this drama." (p. 92)**

Continuing through September 29, 2016:

5) **"It's not been fixed." (p. 92)**
6) **"And I'm hoping you get some help to fix that." (p. 102)**
7) **"(W)hen you do get the mental health treatment." (p. 96)**

PLEA AGREEMENT CONTROLLING 4:12CR101 AND 4:15CR50 SENTENCES

Mr. Woodward was ineffective for not objecting, intervening, or protecting Mr. Martinovich's right of due process by allowing the Court to accept said plea agreement and guilty plea, along

with executing a resentencing-sentencing, all without an examination or hearing, once being fully noticed that the Court had determined, at a minimum, that there was a reasonable cause to believe Mr. Martinovich suffered from a mental disease or defect.

When mental competency and capacity is even questioned, the Fourth Circuit has explained the critical and thorough review required by counsel and the Court in regards to plea agreements. "(T)here is no evidence in the record to suggest that Walton's guilty pleas were rendered involuntary on account of incompetence. Walton's competency was fully explored by Dr. Samenow and Dr. Ryans and these experts never gave any indication that a mental illness or disturbance impeded Walton's ability to knowingly, intelligently, and voluntarily plead guilty." [Walton].

As opposed to Mr. Martinovich's case, when Walton's mental state came under reasonable doubt, counsel and the Court ensured two separate medical experts explored his capacity and competency in relation to pleas and ability to continue with sentencing. Based on Judge Allen's undeniable determination of Mr. Martinovich's impaired mental state, counsel was required to move, and the Court to grant, that Martinovich's plea agreement was not knowingly, intelligently, and voluntarily considered and entered into.

In conjunction, Mr. Woodward was required to move that the sentencing be halted in order for an evaluation, per Walton, to be performed before proceeding. The Fourth Circuit has also asserted the inability of the Court, counsel, or even the

defendant himself to make an expert judgment without an expert hearing or exam once the defendant's mental state comes under reasonable doubt. "Walker himself demonstrated an over-rating of his abilities and an unawareness of the extent of his cognitive deficits...because Walker's verbal abilities are better developed he superficially appears to others as being far more capable socially than he is able to demonstrate. [Walker v. True, 399 F. 3d 315 (4th Cir. 2005)].

Finally, the Fourth Circuit stressed, "(A) criminal defendant may not plead guilty unless he does so 'competently and intelligently.'" [United States v. Frazier, 576 Fed Appx. 184 (4th Cir. 2014); citing Godinez v. Moran, 509 U.S. 389, 113 S. Ct. 2680, 125 L. Ed 2d 321 (1993)].

After the fact, counsel's ineffective assistance cannot be cured by a retroactive, or nunc pro tunc, evaluation. [Williams; Renfroe; Mason].

SENTENCES FOR CASE 4:12CR101 AND 4:15CR50

Mr. Martinovich asks this Court to notice Ground VII of this instant brief, Section "CASE 4:12CR101 AND CASE 4:15CR50 ARE RECIPROCAL RELEVANT CONDUCT" for an itemized summary of the overlap with these intertwined sentencings, and cases. Mr. Woodward's ineffective assistance, and the Court's determinations, encompass both sentences, to include all joint negotiations prior, as well as the joint proceedings of September 29, 2016. The relevant conduct was considered across the sentencings, the joint plea agreement controlled both sentencings, both parties and the Court stated the sentencings

overlapped, the victims overlapped, the letters and witnesses at the joint sentencing were intertwined, and much more. On the morning of September 29, 2016, the Honorable Judge Allen repeatedly asserted her determination of Mr. Martinovich's mental degradation as far back as during trial, and continuing as it had not been fixed. Counsel was ineffective for not protecting Mr. Martinovich's rights on September 29, 2016, and before, to fail to object, intervene, move for an exam and hearing, and to move that the sentences for 4:12cr101 and 4:15cr50 be halted and vacated.

CONVICTION CASE NO. 4:12CR101

The District Court's determination of Mr. Martinovich's mental degradation encompasses, at a minimum, the period including paying for his legal defense during his trial, and continuing through today [See Sec. "TIME PERIOD"]. The time of offense of Case No. 4:15cr50 is identical to the time of Mr. Martinovich's trial for Case 4:12cr101.

"A person whose mental condition is such that he lacks the capacity to understand the nature and object of the proceedings against him, to consult with counsel, and to assist in preparing his defense may not be subjected to a trial; such prohibition is fundamental to an adversary system of justice." [Drope].

The District Court emphatically determined there is a reasonable cause to believe that Mr. Martinovich was likely mentally incompetent or operating under diminished capacity or possibly even temporarily insane at the time of his trial. Mr.

Woodward's tenure certainly should have understood that, by definition, this conviction must have been vacated, and if the defendant was then determined competent, the government was free to retry the defendant.

STRICKLAND FIRST PRONG

Mr. Woodward's "representation fell below an objective standard of reasonableness." [Strickland]. Mr. Woodward had a duty to protect the due process rights of Mr. Martinovich. Once Judge Allen asserted her determination beyond a reasonable doubt of Martinovich's disease or defect, Mr. Woodward's performance fell below the minimum norm for professional conduct:

1) Mr. Woodward failed to object to the Court's violation of his client's due process rights. "(M)any aspects of the job of a criminal defense attorney are more amenable to judicial oversight. For example...making timely objections." [Strickland].

2) Mr. Woodward failed to move that the sentence for Case 4:12cr101 and Case 4:15cr50 be halted and vacated based on the Court's determinations and violations [18 U.S.C. § 4241].

3) Mr. Woodward failed to move the Court to vacate the plea agreement controlling Case 4:12cr101 and 4:15cr50. "This information should have raised a red flag for the district court as to Damon's competence to plead guilty...(T)he usual remedy for a Rule 11 violation involving a question of competence or

voluntariness is to vacate the defendant's guilty plea. This is because the difficulty in conducting a retrospective examination of a defendant's state of mind when he entered his plea. [United States v. Damon, 191 F. 3d 561 (4th Cir. 1999); citing McCarthy v. United States, 394 U.S. 459, 89 S. Ct. 1166 (1969)].

4) Mr. Woodward failed to move the Court to vacate the conviction for Case 4:12cr101 based on the Court's determination. "(S)ince it was too late for the District Court to conduct a meaningful hearing on that issue, the case would be remanded to the District Court with directions that it order the respondent discharged after affording the state an opportunity to try him again within a reasonable time." [Pate v. Robinson, 15 LED 2D 815, 383 US 375 (1966)].

5) Mr. Woodward failed to move the Court to order a psychiatric or psychological exam and report for Mr. Martinovich, followed by a competency hearing. [18 U.S.C. § 4241][Mason].

6) Mr. Woodward failed to motion the Court that a current competency determination will not cure a previous proceeding, action, or contract in which the Court has already determined a reasonable doubt of mental disease or defect existed, and that a current result may not be applied nunc pro tunc. [Williams; Renfroe; Mason; Drope].

7) Mr. Woodward failed to move the Court that Case 4:12cr101 and 4:15cr50 specific intent and knowing to conceal requirements were violated by the Court's determination, and that the conviction and guilty plea are void for actual innocence. [United States v. Campbell, 977 F. 2d 854 (4th Cir. 1992)].

8) Mr. Woodward failed to move the Court to consider a downward departure pursuant to U.S.S.G. § 5k2.13 in Case 4:12cr101 and 4:15cr50 if cases were not also halted and vacated. "The duty of a lawyer, both to his client and to the legal system, is to represent his client zealously within the bounds of the law." [Am. Bar. Assoc. Eth. Con. 7-1].

STRICKLAND SECOND PRONG

Without question, "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." [Strickland]:

1) If Mr. Woodward would have vigorously defended his client and objected and intervened on September 29, 2016, the results of the sentencing and resentencing would have been undeniably different. Mr. Woodward's failure to object to Judge Allen's violations of Mr. Martinovich's due process rights, and failure to motion the Court to follow 18 U.S.C. § 4241 and conduct a psychiatric or psychological exam along with a competency hearing, by statute and Fourth Circuit precedence guaranteed the results would be different.

2) Potentially, Mr. Martinovich would have been found to be "mentally incompetent to the extent that he (was) unable to understand the nature and consequences of the proceedings against him or to assist properly in his defense." At this point, Mr. Martinovich's sentencings must have been halted, any sentence

conclusions vacated, the plea acceptance and agreement voided based on the time periods determined by the Court, and the results of Mr. Martinovich's trial voided based on the Court's determination of time of degradation. [Damon; McCarthy; Pate].

3) Potentially, Mr. Martinovich would have been found to be mentally competent and without mental disease or defect at that point in time. Regardless, "the question of defendant's competency is a quesiton of fact," and "the defendant's due process rights cannot be adquately protected" by applying a determination retroactively to the time of plea acceptance, plea negotiations, and trial. There is a reasonable probability that these would have been vacated. [Williams; Renfroe; Mason; Drope].

4) If the District Court would have overruled Mr. Woodward's objection and motion, then the due process violations would have been presented to the Fourth Circuit Court of Appeals, with the error preserved for harmlessness standard of review, and as a constitutional violation which is outside the scope of the plea agreement waiver provision. The Appeals Court would have considered the Fifth Amendment due process violation, and at the harmlessness-abuse of discretion standard of review would have vacated Martinovich's sentences, plea agreement, and trial conviction. [Martinovich].

5) Mr. Woodward's failure to provide effective assistance by not vigorously motioning the Court to vacate the sentences along with the plea agreement and conviction based on lack of retroactivity caused the Court to fail to realize its determinations and the statutory requirements on the Court's subsequent actions.

Without Mr. Woodward's failure, the Court would have ordered exams and hearings, would have realized its inability for retroactive application and the requirement for specific intent, and would have followed aforementioned precedent to vacate not only the current sentencings, but also the plea agreement and acceptance, and Martinovich's conviction. [Pate].

6) Mr. Woodward's failure to motion the Court for a U.S.S.G. § 5k2.13 downward departure for diminished capacity based on the Court's determination prejudiced Martinovich by not having the departure considered, or the Court even understanding its authority to consider this departure. [Brewer].

REMEDY

Mr. Woodward's ineffective assistance satisfied both Strickland prongs and prejudiced Mr. Martinovich. Mr. Martinovich respectfully requests this Court Vacate the plea agreement along with Cases 4:12cr101 and 4:15cr50 sentences and convictions.

GROUND V: APPEAL COUNSEL WAS INEFFECTIVE FOR FAILING TO INCLUDE IN THE DIRECT APPEAL THE DISTRICT COURT'S VIOLATION OF MARTINOVICH'S FIFTH AMENDMENT RIGHT OF DUE PROCESS IN REGARDS TO MENTAL DISEASE OR DEFECT

In order to reduce duplication in this instant brief, Mr. Martinovich respectfully asks the Court to fully incorporate Ground IV facts and argument into the consideration of this Ground V Argument.

STRICKLAND FIRST PRONG

Appeal counsel Mr. Brooks' "representation fell below an objective standard of reasonableness." [Strickland]. Mr. Brooks, while fully noticed, failed to submit District Court Judge Allen's violations of Mr. Martinovich's Fifth Amendment right to due process in Appellant's Appeal Brief to the Fourth Circuit Court of Appeals:

1) Mr. Brooks was fully aware and noticed of the documented constitutional violations, as Mr. Brooks was provided the full sentencing record as well as detailed written argument supplied by Mr. Martinovich. [Email verifications, Atch. 37][AFF. #44].

2) Mr. Brooks was fully aware and noticed that a constitutional violation was outside the scope of the relevant plea agreement appeal waiver provision, and that the Appeals Court, per precedent, would have likely reviewed the issue on the merits. [United States v. Attar, US App LEXIS 29941 (4th Cir.

1994)][Atch. 37][AFF. #45].

3) Mr. Brooks was fully aware and noticed that the relevant appeal waiver provision was not applicable to constitutional violations, or illegal sentencings, that occurred after signing the plea contract. [Attar; United States v. Marin, 961 F. 2d 493 (4th Cir. 1991)][Atch. 37][AFF. #46].

4) Mr. Brooks, after repeated urging by Mr. Marinovich to include this argument, never once replied that the ground was invalid or frivolous. [Anders v. California, 386 US 738, 87 S. Ct. 1396 (1067)]. Mr. Brooks ineffectively inserted one insufficient sentence in the opening brief stating, "The District Court asserted that Mr. Martinovich had a mental health problem yet never ordered a psychological evaluation or have the probation officer investigate Mr. Martinovich's mental health." The government and the Appeals Court failed to even consider or respond to this insufficient, collateral sentence. [No. 16-4644/4648] [AFF. #47].

5) Mr. Brooks failed to provide a vigorous defense by not submitting a constitutional violation, which did not allow the Appeals Court to rule on the merits of the argument. Mr. Brooks was fully noticed that the Appeals Court may not consider the pro se brief, within which Martinovich had included this argument. Mr. Martinovich was unsuccessful in persuading the Court to accept the pro se brief. [AFF. #48].

STRICKLAND SECOND PRONG

There is a reasonable probability that but for counsel's unprofessional errors, the result of the proceeding would have been different." [Strickland].

1) Mr. Brooks' ineffective assistance failed to allow this cognizable argument to be considered by the Appeals Court. This refusal, or incorrect belief that it would be addressed on the pro se brief, fell below a minimum professional norm and greatly prejudiced Mr. Martinovich by precluding this constitutional violation for redress. Mr. Brooks was noticed by the Appeals Court that it may not accept and consider the pro se brief [Cer. 17-5643].

2) Mr. Brooks' insistence to include only one failing argument, Grouping Violation, in the Appellant Brief precluded this cognizable constitutional violation from being considered by the Court. Mr. Brooks' grouping argument which he insisted created an illegal sentence and was outside the scope of the waiver, was ruled only as erroneous by the Appeals Court, and not outside the scope. Brooks' insistence to only submit his one argument, which he falsely claimed would vacate Martinovich's sentence, blinded him to his professional duty and required competency, and violated Martinovich's right of redress and effective assistance as grounded in due process rights on appeal. [ABA, EC 6-5][Morva v. Zook, 821 F. 3d 517 (4th Cir. 2016)].

3) Further, if the Appeals Court would have considered this constitutional violation, it would have reviewed this violation at the level of harmlessness review and/or structural error, not

plain error, and vacated Martinovich's plea agreement, sentences, and conviction. Although preferable that sentencing counsel Mr. Woodward had objected to these violations, 18 U.S.C. § 4241 clearly states that the Court "shall order such a hearing on its own motion, if there is a reasonable cause to believe." The District Court's egregious actions and violations of Martinovich's due process rights would have been ruled clear and reversible error. Even beyond this determination of standard of review, the repeated and far-reaching violation of Martinovich's due process rights would have vacated the plea agreement, Case 4:12cr101 sentence and conviction, and Case 4:15cr50 acceptance of guilt and sentence. "The defendant need not demonstrate on appeal that he was in fact competent, but merely that the district court should have ordered a hearing to determine the ultimate fact of competency. [United States v. Banks, 482 F. 3d 733 (4th Cit. 2007)].

REMEDY

Mr. Brooks' ineffective assistance satisfied both Strickland prongs and prejudiced Martinovich. Mr. Martinovich respectfully requests this Court Vacate the plea agreement and Cases 4:12cr101 and 4:15cr50 sentences and convictions, or in the alternative grant whatever relief this Court deems just and appropriate.

GROUND VI: TRIAL COUNSEL WAS INEFFECTIVE FOR FAILING TO PROVIDE AN AFFIRMATIVE DEFENSE THAT MARTINOVICH WAS MENTALLY UNFIT TO STAND TRIAL OR TO MOVE THE COURT TO PROVIDE A PSYCHOLOGICAL EXAMINATION AND COMPETENCY HEARING BEFORE PROCEEDING AT TRIAL

In order to reduce duplication in this instant brief, Mr. Martinovich respectfully asks this Court to fully incorporate Ground IV facts and argument into the consideration of this Ground VI Argument.

LEGAL STANDARD

"Anderson alleged that he was incompetent when he pled guilty and that his counsel was ineffective for failing to request a competency hearing. The record does not refute this allegation; in fact, the little information in the record indicates that the allegation is not frivolous...Taken as true, Anderson's allegations of incompetence, as well as his other allegations of ineffective assistance of counsel, would entitle him to relief. We hold, therefore, that the district court erred in failing to hold an evidentiary hearing." [Anderson v. United States, 948 F. 2d 704 (11th Cir. 1991)].

"The court reversed the denial of appellant's habeas corpus motion because the record did not show that the trial attorney investigated a possible mental state defense, or why he failed to investigate...The attorney's performance could not be deemed effective without an evidentiary hearing, which was also necessary to determine whether psychiatric evidence would have

changed the result...the judge did not conclusively find, and the record did not conclusively show, that appellant would not have been acquitted." [United States v. Burrows, 872 F. 2d 915 (9th Cir. 1989)].

STRICKLAND FIRST PRONG

As determined by District Court Judge Allen, trial counsel Mr. Broccoletti's "representation fell below an objective standard of reasonableness." [Strickland]. Mr. Broccoletti was ineffective for failing to protect his client from the violation of his due process rights, as specifically concluded by the Court:

1) Mr. Broccoletti failed to motion the Court per 18 U.S.C. § 4241 for a psychiatric or psychological exam and competency hearing to be performed in Case No. 4:12cr101, as was undoubtedly necessary per Judge Allen's determination (See Dist. Ct. Determination, Time Period)[18 U.S.C. § 4241].

2) Mr. Broccoletti failed to ensure the Court and government proceeded consistent with 18 U.S.C. § 4242 Determination of the Existence of Insanity at the Time of Offense, as was undoubtedly necessary per Judge Allen's determinations. (See Dist. Ct. Determination).

3) Mr. Broccoletti failed to Notice the Court and to provide a vigorous defense consistent with F.R.Crim.P. 12.2 Notice of an Insanity Defense, per Judge Allen's determinations.

4) Mr. Broccoletti failed to move the sentencing court in Case No. 4:12cr101 for consideration of a downward departure per U.S.S.G. § 5k2.13, consistent with Judge Allen's determinations.

STRICKLAND SECOND PRONG

There is a reasonable probability that, but for Mr. Broccoletti's errors, the result of the proceeding would have been different. [Strickland].

1) Had Mr. Broccoletti not failed to move for a psychological exam and competency hearing, Mr. Martinovich's right of due process would not have been violated, by definition from Judge Allen's determination. [United States v. Banks, 482 F. 3d 733 (4th Cir. 2007)].

2) Had Mr. Martinovich's exams and competency hearing determined he was "mentally incompetent to the extent he (was) unable to understand the nature and consequences of the proceedings against him or to assist properly in his defense," he would not have been convicted by a jury. [United States v. Barefoot, 326 Fed. Appx. 199 (4th Cir. 2009)].

3) Had Mr. Broccoletti presented an affirmative defense of not guilty by reason of insanity, per Judge Allen's determination, there is a reasonable probability that the jury would have agreed with the affirmative defense, based on Judge Allen's repeated determinations. [United States v. Tucker, 153 Fed. Appx. 173 (4th Cir. 2005)].

4) Had Mr. Broccoletti moved the Court to consider a downward

departure at sentencing per U.S.S.G. § 5k2.13, per Judge Allen's determination, there is a reasonable probability that the Court would have granted a downward departure. [United States v. Moore, 404 Fed. Appx. 786 (4th Cir. 2010)].

5) Once the District Court determined there was reasonable cause to believe that Mr. Martinovich suffered from a mental disease or defect during the time period of his trial, by definition Mr. Broccoletti was ineffective for not recognizing the client's mental degradation and for moving forward without protecting his client's due process rights, all resulting in the severe prejudice of conviction.

6) "(B)ecause we do not know what the jury would have concluded had there been no instructional error, a new trial on the counts of conviction is in order." [Bravo-Fernandez v. United States, 196 LED 2D 242, 137 S. Ct. (2016)].

REMEDY

Mr. Broccoletti's ineffective assistance satisfied both Strickland prongs and prejudiced Mr. Martinovich. Mr. Martinovich respectfully requests this Court vacate Case No. 4:12cr101 conviction and sentence, and in the alternative grant relief this Court deems just and appropriate.

GROUND VII: SENTENCING COUNSEL WAS INEFFECTIVE FOR NOT OBJECTING TO THE DISTRICT COURT'S ERRONEOUS DECISION TO IMPOSE A PARTIALLY CONCURRENT SENTENCE

Sentencing counsel, Mr. Woodward was ineffective for failing to request the District Court apply U.S.S.G. § 5G1.3(b)(1)and(2) to adjust Mr. Martinovich's 4:12cr50 sentence and run concurrent with the 4:12cr101 sentence, as well as for failing to object to the Court's erroneous application of the Guidelines. Mr. Woodward's silence fell below an objective standard of reasonableness. [Strickland].

On September 29, 2016, District Court Judge Allen conducted the Case No. 4:12cr101 re-sentencing following Martinovich's successful vacation of his sentence on appeal. In conjunction with this re-sentencing, Judge Allen conducted the sentencing for Case No. 4:15cr50. The applied plea agreement jointly controlled the re-sentencing of Case 4:12cr101 and the sentencing of Case No. 4:15cr50.

At sentencing, addressing the 4:12cr101 sentence, Judge Allen stated, "Jeffrey A. Martinovich, is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 140 months. The term consists of 140 months on Count One and Count Six through Count Fourteen and a term of 120 months on Count Seventeen, Count Eighteen, and Count Twenty through Count Twenty-Three, all to be served concurrently." Addressing the 4:15cr50 sentence, Judge Allen then stated, "Jeffrey A. Martinovich, is hereby committed to the custody of

the United States Bureau of Prisons to be imprisoned for a term of 63 months, 24 of it to run consecutive to Docket No. 4:12cr101-001." At no point did Judge Allen mention the Guideline applications of U.S.S.G. § 5G1.3 or § 3D1.2, or any consideration of the sentencing implications of the clear and acknowledged relevant conduct.

LEGAL STANDARD

U.S.S.G. § 5G1.3 is titled Imposition of a Sentence on a Defendant Subject to an Undischarged Term of Imprisonment or Anticipated State Term of Imprisonment. Subsections (b)(1) and (b)(2) apply to Mr. Martinovich's sentence.

"(b) If subsection (a) does not apply, and a term of imprisonment resulted from another offense that is relevant conduct to the instant offense of conviction under the provisions of subsections (1)(1), (a)(2), or (a)(3) of § 1B1.3 (Relevant Conduct), the sentence for the instant offense shall be imposed as follows:

(1) the court shall adjust the sentence for any period of imprisonment already served on the undischarged term of imprisonment if the court determines that such period of imprisonment will not be credited to the federal sentence by the Bureau of Prisons; and

(2) the sentence for the instant offense shall be imposed to run concurrently to the remainder of the undischarged term of imprisonment."

As § 1B1.3 also includes the characterizations of § 3D1.2 Grouping for classification, this section directs the Court to identify and group "counts involving substantially the same harm." (cmt. n.2). "Counts that are part of a single course of conduct with a single criminal objective and represent essentially one composite harm to the same victim are to be grouped together, even if they constitute legally distinct offenses occurring at different times." (cmt. app. n.4). The Fourth Circuit confirms this application by "see USSG § 5G1.3 n.2(A)(providing that § 5G1.3(b) applies and concurrent sentence is appropriate when 'all of the prior offenses are relevant conduct to the instant offense.')"[United States v. Arnold, US App. LEXIS 21839 (4th Cir. 2016)].

CASE 4:12CR101 AND CASE 4:15CR50 ARE RECIPROCAL RELEVANT CONDUCT

1) Case 4:15cr50 conduct was repeatedly confirmed and considered in the Case 4:12cr101 sentencing by the government, and by sentencing Judge Allen.

2) The one plea agreement controlled the sentencing for both cases and specifically stated, "The parties further agree that the conduct constituting the offense of conviction on Count 10 and associate relevant conduct may be considered in conjunction with the defendant's offenses of conviction in Criminal Case No. 4:12cr101, for which the defendant will be re-sentenced." [Plea, p. 3, para. 4].

3) At the joint sentencing session held September 29, 2016, for

Case 4:12cr101 and Case 4:15cr50, AUSA Mr. Samuels stated, "I will just say also for the record that we did contemplate in our agreement that the Court could consider the second offense conduct when deciding the resentencing on the first case." [Sent Tr. p. 29].

4) Cases 4:12cr101 and 4:15cr50 are both founded on allegations of Martinovich fraudulently accessing the MICG Hedge Fund assets to include money laundering, fraud, conspiracy, and concealment.

5) The supersets and subsets of victims are the same investors and shareholders which invested across the three hedge funds operated by MICG and Martinovich. MICG Venture Strategies Fund, MICG Partners Fund, and MICG Anchor Strategies Fund have significant crossover in investors, timeframes, liquidation requests, and full and partial distributions encompassing the relevant conduct of Cases 4:12cr101 and 4:15cr50.

6) The same victims and shareholders in the Venture Strategies Fund and Partners fund submitted victim impact letters in both Case 4:12cr101 and 4:15cr50 trial and sentencings. Judge Allen verbally expressed tremendous weight and consideration from these crossover letters in her sentencing calculus for both sentencings. [Tr. p. 68-72, 94-96]. At the September 29, 2016, joint sentencing, the government, Judge Allen, and the defense counsel all addressed and clarified their intents to jointly consider the letters of the crossover clients involved in both cases.

7) The same victims and shareholders in the Venture Strategies

Fund and Partners Fund testified at the trial for Case 4:12cr101 and then again testified at the September 29, 2016, sentencing for Case 4:15cr50. By specific example, Mr. Carper, Dr. Dreelin, and Dr. Gross were victims in the first case and then testified in the sentencing of the second case:

AUSA DOUGHERTY: "And as Dr. Gross is being brought in, I wanted to let the Court know that all three of these witnesses did submit victim witness statements in the first case (and Carper testified), and so I've counseled them that their testimony should be focused on the second case, the impact of the second case, as not to be repetitive." [Tr. p. 10-11]. and,

COURT: "It's my understanding that you have testimony that overlaps both." and,

MR. WOODWARD: "And it's my understanding the witnesses are going to be called once but considered in --"

THE COURT: "For both. I can do that."

8) All of the funds accessed among Case 4:12cr101 and 4:15cr50 were held in the same financial institution, with the same ownership titling, with the same account control, with consistent authorizations.

9) All of the fund transactions in both Case Nos. 4:12cr101 and 4:15cr50 were documented and authorized by the same legal firms and specific individuals as itemized in this instant brief, as well as all accounting authorizations and tax reporting for all transactions in question were conducted by the same audit and tax firm, as detailed in this instant brief.

10) The conduct of Case 4:15cr50 was well known to Judge Doumar when first sentencing Mr. Martinovich in Case 4:12cr101. It was

reflected in the first pre-sentence report [PSR para. 146] and was the subject of extensive litigation between the date of Martinovich's conviction and the sentencing [See Doc. #'s 106, 106-1, 109, 115, and 117]. Thus, Judge Doumar had fully considered this conduct, had considered its full relevant conduct classification, and had factored this activity into the September 30, 2013, sentencing. The government's future superseding indictment and plea agreement Statement of Facts added nothing material to what relevant conduct was already fully considered by Judge Doumar. Only after Martinovich was successful in having his sentence reversed on appeal was this same conduct re-introduced in an effort to, hopefully, preclude the Court from, at a minimum, reducing Mr. Martinovich's sentence.

11) Judge Allen further solidified her views on the crossover relevant conduct, "(S)o the factors for this sentencing are the same factors via Congress and the Sentencing Commission, so I'm not going to go over all that again." [Tr. p. 91].

12) As the government repeatedly asserted that Case 4:15cr50 is relevant conduct in Case 4:12cr101, through the plea agreement and at sentencing, and Judge Allen repeatedly confirmed her acceptance of this consideration, and Case 4:15cr50 activity occurred after Case 4:12cr101 activity, by transitive property, Case 4:12cr101 is also relevant conduct for Case 4:15cr50, and pursuant to the Guidelines must be considered as such.

13) On appeal, the Court, with the government's agreement, joined Cases 4:12cr101 and 4:15cr50 into a Joined Appeal, Appeal No. 16-

4644 / 4648. On a Petition for Writ of Certiorari to the U.S. Supreme Court, both cases were again joined and received as one intertwined Case No. 17-5643.

STRICKLAND FIRST PRONG

Mr. Woodward's "representation fell below an objective standard of reasonableness." [Strickland]. Mr. Woodward's ineffective assistance included:

1) Not objecting to the Case 4:15cr50 and 4:12cr101 PSR's not including a recommendation for the sentences to run fully concurrent and with credit adjustment pursuant to USSG § 5G1.3(b)(1)and(2). [United States v. Rineholts, 268 Fed Appx 206 (4th Cir. 2008)].

2) Not objecting to, and asking clarification for, Judge Allen not assigning a 4:15cr50 sentence fully concurrent with Case 4:12cr101, and for departing from the Guidelines.

3) Not objecting to, and asking clarification for, Judge Allen not reducing the 4:15cr50 sentence pursuant to USSG § 5G1.3(b)(1), and for departing from the Guidelines.

4) Not objecting to, and asking clarification for, Judge Allen upward departing from the plea agreement negotiated and signed between Martinovich and the United States, the agreement which underlined the word "concurrent."

STRICKLAND SECOND PRONG

"There is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." [Strickland].

Mr. Woodward's ineffective assistance resulted in a non-Guideline sentence for for Case 4:15cr50, and Mr. Woodward never objected or brought this to the Court's attention, or moved for the Court to consider U.S.S.G. § 5G1.3(b) and/or explain its appropriate reasoning in not accounting for it. "In calculating Defendant's advisory range, § 1B1.3(a)(1)(A) and (2) required the court to consider that prior offense as part of his relevant conduct rather than the resulting sentence as part of his criminal history (See Martinovich Ground 8 Category II). This, in turn, required the court to account for USSG § 5G1.3(b)(2) and, absent a variance based on § 3553(a) factors, impose a concurrent term of imprisonment on Defendant as part of any sentence within the applicable guideline range." [United States v. Kieffer, 681 F. 3d 1143 (10th Cir. 2012)].

In Kieffer, the government argued that the court's "thorough and individualized analysis of the [§] 3553(a) [factors] and why they support a consecutive sentence...does not cause a 'non-Guideline sentence' and thus no procedural error occurs." Yet, the Court stated, "The Government cites no pertinent § 5G1.3 authority for this proposition and we have found none...the

district court committed procedural error when it purported to impose a within-guideline sentence on Defendant without accounting for subsection § 5G1.3(b)." [Kieffer].

The Fifth Circuit clearly states, "The district court generally has broad discretion in choosing to sentence a defendant to a consecutive or concurrent sentence citing USC §§ 3553(a), 3584(a), and 3584(b)). This discretion, however, is limited by § 5G1.3 of the United States Sentencing Guidelines when the court seeks to impose a sentence upon a defendant who is subject to an undischarged term of imprisonment." [Hill v. Maye, US Dist. LEXIS 38192 (5th Cir. 2009)]. Confirming this requirement, "Both sides acknowledged that although the 2009 Guidelines, including § 5G1.3, were advisory, the law required the district court to adhere to proper sentencing procedures in determining Defendant's applicable guideline range." [Kieffer].

Mr. Martinovich was indicted for Case 4:15cr50 on July 15, 2015, while Martinovich was currently serving an undischarged term and the indictment was unsealed on February 10, 2016, after the inexplicable replacement of multiple magistrate judges and illegal sealed extensions. [See Ground X]. Mr. Woodward failed to submit these timelines for the appropriate sentencing credit pursuant to § 5G1.3(b)(1), and the court did not consider such credit. Sentencing was performed September 29, 2016. "Here, after calculating the Guidelines range, the district court did not consider § 5G1.3(b)(1) contrary to the express direction in § 1B1.1(h). Section 5G1.3(b)(1)'s language is mandatory...The district Court erred in not including this adjustment in its Guideline calculation as 'the starting point' of the sentencing

proceeding." [United States v. Armstead, 552 F. 3d 769 (9th Cir. 2008)].

"(I)n failing to give the § 5G1.3(b)(1) credit and in also failing to explain or justify its action is plain error...we conclude that the error is plain. We further conclude that the error affected Armstead's substantial rights, given that the starting point for consideration of the 3553(a) factors was five months higher than it should have been...(and) we hold that the error 'seriously affect(ed) the fairness, integrity or public reputation of judicial proceedings." [Armstead; citing United States v. Olano, 113 S. Ct. 1770 (1993)].

But for Mr. Woodward's ineffective assistance, the results of the proceeding would have been different. [Strickland]:

1) In Molina-Martinez, the Supreme Court clarified that a defendant seeking appellate review of an unpreserved USSG error need not make a further showing of prejudice beyond the fact that the erroneous, and higher, Guideline range set the wrong framework for the sentencing proceedings, even if the ultimate sentence fell within the correct range. [Molina-Martinez v. United States, 136 S. Ct. 1338 (2016)]. The Court continued, "(T)he error itself can, and most often will, be sufficient to show a reasonable probability of a different outcome absent the error...(and) (w)here the record is silent as to what the District Court might have done had it considered the correct United States Sentencing Guidelines range, the court's reliance on an incorrect range in most instances will suffice to show an

effect on the defendant's substantial rights. [Molina-Martinez].

2) Mr. Woodward failed to ensure the PSR contained the correct § 5G1.3 guidance with which there was a reasonable probability the Court would have applied a fully-concurrent, and/or shorter with credit, sentence.

3) Mr. Woodward failed to ensure the District Court properly considered the correct § 5G1.3 guidance with which there was a reasonable probability the Court applied a fully-concurrent, and/or shorter with credit, sentence.

4) Mr. Woodward failed to ensure the District Court considered the substantial relevant conduct and evidence, with which there was reasonable probability the Court would have a applied a fully-concurrent, and/or shorter with credit, sentence.

5) Mr. Woodward failed to ensure the Court initiated its sentencing at the correct "starting point" with which the Court would have applied a sentence resulting in an overall lower total sentence for Mr. Martinovich.

6) Mr. Woodward failed to ensure Mr. Martinovich was not subject to plain error review.

7) Mr. Woodward failed to object, thus permitting the District Court to provide a higher-than-otherwise sentence in Case 4:12cr101 due to the inclusion of 4:15cr50 relevant conduct, and then to, again, penalize Mr. Martinovich for this same conduct by varying from the Guidelines and running the 4:15cr50 sentence consecutive to 4:12cr101. Mr. Woodward's failure prejudiced Mr.

Martinovich with a total, longer sentence.

REMEDY

Mr. Martinovich respectfully asserts that both Strickland prongs have been satisfied. Mr. Martinovich requests this Court Vacate the Case No. 4:15cr50 sentence, and/or the Case No. 4:12cr101 sentence for the same conduct, and any other relief this Court deems just and appropriate.

GROUND VIII: SENTENCING COUNSEL WAS INEFFECTIVE FOR NOT OBJECTING TO THE ERRONEOUS PLACEMENT IN CRIMINAL HISTORY CATEGORY II FOR CASE NO. 4:15CR50

Sentencing counsel, Mr. Lawrence Woodward was ineffective for failing to object to and correct the erroneous placement in Criminal History Category II in the Case No. 4:15cr50 PSR, as well as when adopted by District Court Judge Allen during Martinovich's September 29, 2016, joint sentencing. Mr. Woodward's silence fell below an objective standard of reasonableness. [Strickland].

In Case No. 4:15cr50, the PSR recommended a sentencing advisory Guideline Offense Level 23, Category II, 51-63 months, and this range was adopted by the Court.

> The Court: "(T)he Court is going to adopt the factual statements as contained in the PSR as its finding of fact...That means that your offense level is 23...Your Criminal History Category is now a II, and your guidelines for this is 51-63 months of imprisonment." [Sent. Tr. p. 83].

Per USSG §§ 4A1.1 and 4A1.2 Criminal History, as well as § 1B1.3 Relevant Conduct, Mr. Martinovich should have been appropriately classified in Criminal History Category I.

Case 4:15cr50's offense conduct occurred prior to, and during, Martinovich's trial for Case No. 4:12cr101. Martinovich's sentence in Case No. 4:12cr101 was vacated January 7, 2016. The government executed a superseding indictment for Case No. 4:15cr50 on February 10, 2016. Mr. Martinovich was sentenced for Case No. 4:12cr101 and Case No. 4:15cr50 in a joint

sentencing on September 29, 2016.

Martinovich's offense conduct for Case 4:15cr50 was prior to adjudication of guilt in Case 4:12cr101. Martinovich's sentence was vacated prior to a 4:15cr50 sentencing or 4:12cr101 sentencing. "Where a court vacates a sentence, that sentence becomes void in its entirety." [United States v. Burke, BL 248620 (11th Cir. 2017)].

On the day of Martinovich's 4:15cr50 sentencing, and at the preparation of the 4:15cr50 PSR, Martinovich had no prior sentence due to vacation and had not actually served a period of imprisonment on Case 4:12cr101.

Pursuant to the Sentencing Guidelines and Fourth Circuit precedence, Mr. Woodward's multiple failures of ineffective assistance precluded Mr. Martinovich's 4:15cr50 sentencing from beginning with the correct "starting point."

"Where there are two plausible readings of a guideline provision, courts apply the rule of lenity and give a defendant the benefit of the reading that results in a shorter sentence." [Johnnie King v. United States, 595 F. 3d 844 (8th Cir. 2010)].

LEGAL STANDARD

USSG Sentencing Table Category I is appropriate for 0 and 1 Criminal History Points, while Category II is applied for defendants with 2 and 3 Criminal History Points.

USSG § 4A1.1(a) imposes 3 criminal history points for each prior sentence of imprisonment exceeding one year and one month.

USSG § 4A1.2(a)(1) defines a prior sentence as any sentence

previously imposed upon adjudication of guilt...for conduct not part of the instant offense.

USSG § 4A1.2 cmt. app. n.1 states that to qualify as a sentence of imprisonment, the defendant must have actually served a period of imprisonment on such sentence.

USSG § 4A1.1 states, "Therefore §§ 4A1.1 and 4A1.2 must be read together."

"(D)efendant's motion to vacate, set aside, or correct sentence was improperly denied when criminal history category was (calculated erroneously). Defendant's sentence should have been reopened." [United States v. Cox, 83 F. 3d 336 (10th Cir. 1996)].

The Third Circuit in United States v. Cordero clarifies this rule in the following exchange:

Court: So, now the next question that I have for Mr. Hassinger is on the three adult convictions it shows zero points.

Probation Officer: That is correct, Your Honor. The reason being because the three convictions that occurred in State Court are related to this instant offense so you can't give him criminal history points for that because it is conduct which is already factored into the offense part of this.

Court: Okay. All right."

[United States v. Cordero, US Dist. LEXIS 16367 (3rd Cir. 2013)]

RELEVANT CONDUCT

USSG § 4A1.2 is clear that relevant conduct offsets the application of additional criminal history points and the subsequent enhancement in sentencing category. § 4A1.2 cmt. app. n. 1 applies for sentences "other than a sentence for conduct that is part of the instant offense," and notes, "Conduct that is

part of the instant offense means conduct that is relevant conduct to the instant offense under the provisions of § 1B1.3 (Relevant Conduct)."

In order to reduce duplication in this instant brief, Mr. Martinovich respectfully asks this Court to refer to Ground VII in this instant Brief for the Section titled "CASE 4:12CR101 AND CASE 4:15CR50 ARE RECIPROCAL RELEVANT CONDUCT" with supporting data numbered 1-13.

STRICKLAND FIRST PRONG

Mr. Woodward's "representation fell below an objective standard of reasonableness." [Strickland]. Mr. Woodward's ineffective assistance included:

1) Not objecting to the Case 4:15cr50 PSR erroneously categorizing this case as Category II.

2) Not objecting during sentencing and motioning the District Court that Martinovich should have been categorized in Category I, and that the Guidelines range set the wrong framework.

3) Not objecting to and motioning the District Court that the sentencing was not properly following the Guidelines to begin at the correct starting point.

4) Not objecting to and motioning the Court that it had not properly expressed reasoning on why it was departing from the Guidelines.

STRICKLAND SECOND PRONG

There is a reasonable probability that but for Mr. Woodward's unprofessional errors, the result of the proceeding would have been different. [Strickland].

1) In Molina-Martinez, the Supreme Court clarified that a defendant seeking appellate review of an unpreserved USSG error need not make a further showing of prejudice beyond the fact that the erroneous, and higher, Guideline range set the wrong framework for the sentencing proceedings, even if the ultimate sentence fell within the correct range. [Molina-Martinez v. United States, 136 S. Ct. 1338 (2016)]. The Court continued, "(T)he error itself can, and most often will, be sufficient to show a reasonable probability of a different outcome absent the error...(and) (w)here the record is silent as to what the District Court might have done had it considered the correct United States Sentencing Guidelines range, the court's reliance on an incorrect range in most instances will suffice to show an effect on the defendant's substantial rights." [Molina-Martinez].

2) Beyond Molina-Martinez, without Mr. Woodward's failures, Mr. Martinovich would have been sentenced in Category I, whether by proper application of the USSG §§ 4A1.1 and 4A1.2 points system or by the proper application of USSG § 1B1.3 relevant conduct, resulting in a lower overall sentence.

3) Offense level 23 at Category II provides a range of 51-63

months, while Category I provides a range of 46-57 months. As Judge Allen sentenced Martinovich at the high end of the range for 63 months, proportionate sentencing would have sentenced Martinovich to the high end of the proper range for 57 months.

4) Even more impactful, congruent with Ground VII of this instant brief, if Mr. Woodward would have provided effective assistance alerting the Probation Officer and the District Court to the multiple errors pursuant to USSG §§§§ 5G1.3, 4A1.1, 4A1.2, and 1B1.3, Mr. Martinovich would have likely not been subject to double counting and duplicity across Cases 4:15cr50 and 4:12cr101. Without these failures, Martinovich would have likely been sentenced to a significantly lower sentence, with a lower Case 4:12cr101 sentence due to the lack of penalty for relevant conduct, or from a lower sentence result in Case 4:15cr50 so as to not penalize for same conduct, or with both.

The Supreme Court has held that prejudice has resulted from one unasserted error that added six to twenty-one months to the defendant's sentence. [Lee v. Clarke, 781 F. 3d.. 114 (4th Cir. 2014); citing United States v. Glover, 531 US 121 S. Ct. 696 (2001)].

REMEDY

Mr. Martinovich asserts that both Strickland prongs have been satisfied and that he was prejudiced. Mr. Martinovich respectfully requests this Court Vacate the Case 4:15cr50 sentence and/or the Case 4:12cr101 sentence, and in the alternative grant relief this Court deems just and appropriate.

GROUND IX: COUNSEL WAS INEFFECTIVE FOR FAILING TO PURSUE A DEFENSE OF INNOCENCE AT TRIAL AND INSTEAD COERCED MARTINOVICH INTO ACCEPTING A DETRIMENTAL PLEA CONTRACT

Court-appointed sentencing counsel, Mr. Woodward, was ineffective for failing to pursue the defense of innocence at trial for Case No. 4:15cr50, and instead coerced and manipulated Mr. Martinovich into accepting a detrimental government plea contract.

Mr. Martinovich provided Mr. Woodward voluminous documentation detailing Mr. Martinovich's innocence, as well as asserting that any contrary information provided to the government by hedge fund attorneys Mr. Andrew Shilling and Mr. Todd Lynn constituted fraud, lying to federal agents, and possibly perjury in front of a grand jury. [Note: Mr. Martinovich provided detailed evidence of fraud and fraud on the court in the Motion For Sentencing Modification to Vacate Fraudulent Sentences, Plea Contract and Plea Acceptance per F.R.Crim.P. 35(a) Clear Error, including nine noted attachments of legal documentation in support, filed timely in Case 4:12cr101 and 4:15cr50].

Yet, Mr. Woodward adamantly refused to pursue or research this defense, as well as refused to pursue bringing Martinovich's claims of clear fraud to the Court. Mr. Woodward claimed that he had presented this information and evidence to Mr. Brian Samuels, AUSA, but that the government had no interest in pursuing. Of course, the government had no interest in pursuing, because the

documents and evidence presented fully vindicated Mr. Martinovich and fully impeached two likely planned witnesses. According to Mr. Woodward, AUSA Samuels and AUSA Ms. Kathleeen Dougherty, Officers of the Court, were fully-noticed of this evidence of fraud and fraud on the Court.

Mr. Martinovich re-asserts his claim of complete innocence of the charges of Case No. 4:15cr50 and Case No. 4:12cr101. The following Ground provides 1) A summary of the Case 4:15cr50 allegations, 2) A summary of the evidence provided to Mr. Woodward asserting Martinovich's innocence, as well as the alleged fraud on the Court, 3) Excerpts of Martinovich's demands to take the case to trial, and 4) Excerpts of Mr. Woodward's coercion and manipulation to have Mr. Martinovich eventually acquiesce to the government's plea offer. [Please see Atchs. for copies of information presented to Mr. Woodward (Email Documentation as well as the contemporaneous notes taken from each in-person meeting)].

Finally, this Ground summarizes Mr. Woodward's ineffective assistance pursuant to Strickland's First Prong, and the prejudice incurred by Mr. Martinovich pursuant to Strickland's Second Prong.

CASE 4:15CR50 ALLEGATIONS

In Case 4:15cr50, the government alleged that Martinovich unilaterally accessed MICG Hedge Fund accounts to fund unauthorized legal fees pursuant to the Funds' Indemnification Provisions, as well as management and expert fees. The government further alleged that Martinovich had tricked and

manipulated the law firms which were hired to independently represent the Funds and shareholders, as well as to conceal from trial defense attorneys the source of the legal fee payments. The government alleged Martinovich acted on his own, illegally accessed funds, tricked attorneys, and "papered over" his illegal trail.

EVIDENCE PROVIDED TO MR. WOODWARD

The following information was provided to Mr. Woodward, as well as the attached email correspondence. Also, the following paragraphs summarize the evidence provided to Mr. Woodward through meetings, documents, and email correspondence:

1) Attorney Andrew Shilling Opinion Letter, representing MICG Venture Fund

2) Attorney Katherine Klocke Opinion Letter, representing MICG Partners Fund

3) Consulting Engagement Contract - Indemnification Collateral

4) Assignment of Consulting Revenue Agreement - Indemnification Collateral

5) Wells Fargo MICG Hedge Fund Check Copies

6) MICG Partners Fund to MICG Venture Fund Payments Tax Ledger, Harbinger PLC Tax Accountants

7) Tax Ledger of Attorney Payments from MICG Venture and Partners Funds, Harbinger PLC Tax Accountants

8) Martinovich Letter to David, Kamp & Frank Law Firm, Documenting Liability to Partners Fund

[Atchs. 1-9][AFF. #56].

BEGINNING OF ISSUE

Mr. James Broccoletti, trial defense counsel, called Mr.

Martinovich prior to sentencing to let him know there was a problem with the indemnification payments for Mr. Broccoletti's fees. The federal agents had visited Mr. Andrew Shilling, the attorney representing MICG Venture Strategies Fund, and Mr. Shilling had for unknown reasons told the agents that he wasn't aware of exactly how the legal fees were paid, or how the proper documentation was executed. [Atchs. 3,6,9][AFF. #57].

Martinovich drove straight to Mr. Todd Lynn's office, MICG's lead business attorney at Patten Wornom Hatten & Diamonstein (PWHD). After Martinovich relayed the message, Mr. Lynn led Martinovich to PWHD's large conference room and phoned Mr. Shilling. Mr. Lynn questioned Mr. Shilling about the encounter, then became agitated and asked him why he hadn't just told the agents the truth, that all the documentation and authorizations were in place. He continued, "Of course, you knew the arrangement. That's the whole reason you were hired!" Mr. Lynn ended the call, looked at Martinovich across the conference table and said, "He's lying. He's scared. He misspoke talking to The Feds and now he's scared to change his story!" Martinovich responded with a great number of expletives to be translated as, "What more could go wrong now?!" Mr. Lynn stated that he would follow up with Mr. Shilling and fix the error. [Atch. 3,6,9][AFF.#58].

Back to the beginning. Following Martinovich's initial arrest, Martinovich was released on bond and traveled to the offices of PWHD in Newport News, Virginia, to meet with his lead legal counsel, Mr. Todd Lynn. Mr. Lynn had provided legal counsel for the MICG funds for many years, including handling client claims, errors and omissions insurance procedures,

indemnification clauses, documentation, and regulatory issues.

Mr. Lynn set in motion the procedures and paperwork to invoke the indemnification clause for payment of legal expenses and coordination among the MICG funds for coverage of expenses. This had been completed numerous times before, involving standard fund expenses as well as errors and omissions claims, client suits, significant attorney fees, and accounting and audit fees.

INDEMNIFICATION

The MICG hedge funds operated with the industry-standard indemnification clause as detailed in the Private Placement Memorandums (PPM) provided to investors and regulators. This legal protection is implemented by most every hedge fund and mutual fund operated in the United States. This legal structure, among other provisions, authorizes the fund to pay for the defense of claims and procedures against individuals managing or operating the fund, unless there is a final conviction of fraud against said individual, at which point those expenses are then due back to the fund. Due to non-stop legal actions in the investment industry, no individual could ever personally assume the legal liability to manage any investment fund without the indemnification structure. This legal clause was written and implemented for MICG by the International Law Firm of Troutman Sanders, with offices in Virginia Beach, Virginia.

LAW FIRMS

Mr. Lynn worked closely with Mr. Benjamin Biard, Esquire, of

Wilson Elser Moskowitz & Dicker Law Firm in New York to provide enhanced expertise in securities law for operations, errors and omissions, legal claims, indemnification, and regulatory work. To ensure all MICG funds, entities, and individuals received independent representation and that no conflicts of interests were permitted, Mr. Lynn and Mr. Biard further engaged two more legal firms. Mr. Andrew Shilling, of Shilling, Pass & Barlow, Chesapeake, Virginia, was engaged to independently represent the MICG Venture Strategies Fund. Mr. Shilling had been Mr. Lynn's roommate at the University of Richmond Law School. Ms. Katherine Klocke, of law firm Akerman, Florida, was engaged to independently represent the MICG Partners Fund. Mr. E.D. David, of Law Firm David Kamp & Frank, Newport News, Virginia, provided representation for MICG Anchor Strategies Fund at this time. Mr. Lynn orchestrated most procedures among these law firms and was the primary contact for Martinovich. [Atchs. 1,5,21][AFF.#59].

FUND TRANSACTIONS

Venture Strategies Fund was a mostly illiquid fund with anticipated future, substantial capital gains. Partners Fund had significant cash reserves due to earlier liquidity events and had invested approximately a 23% investment position in the Venture Fund in order to capitalize on Venture's upcoming events. Partners Fund was also to soon receive a significant investment return from its earlier investment in Tiptree Financial, now in a public transaction. The Anchor Strategies Fund had also taken a substantial position in Tiptree Financial. Partners and Anchor were processing an approximate $4 million return of funds and

as tax accountant for the Venture and Partners Funds. Mr. Umscheid kept a running "Due to - Due from" ledger for these payments and fully documented the liability in the tax preparation for both funds (See Documentation). [Atchs. 4,8][AFF.#62].

FURTHER DOCUMENTATION

Mr. Shilling then asked Mr. Lynn and Mr. Martinovich to provide further assurance that, in case of a negative legal outcome, there be written documentation of collateral or future income which would be assigned to repay the legal fees, per the indemnification provision. Mr. Shilling reviewed the current business activities of Mr. Martinovich and his small staff and selected the assignment of a potential future commission from the marketing and sales engagement of a hotel business in Virginia Beach, Virginia. One of Mr. Lynn's law partners at PWHD was also an owner in the hotel property, and together the two attorneys edited the engagement contract. Also, once the legal administration of the MICG Partners Fund had transitioned to Mr. E.D. David of David, Kamp & Frank, Mr. Martinovich personally sent documentation to Mr. David to explain that, in the event of a fraud conviction, Martinovich would need to reimburse the fees back to the MICG Partners Fund [Atchs. 3,9][AFF.#64]. This detailed documentation and involvement of six law firms could only be interpreted as full transparency with an overwhelming effort of compliance and disclosure. [Atchs. 2,6][AFF.#63].

HEARING

When Mr. Broccoletti, trial defense counsel, told Mr. Martinovich that the government was upset that the funds were still available for the defense and that Mr. Shilling was having these conversations with the agents, Martinovich drove to Mr. Lynn's office for the telephone conference noted at the beginning of this Ground. Subsequently, a hearing was scheduled before trial Judge Doumar. When the government claimed that Martinovich secretly and illegally gained control of the Partners Fund cash account, Broccoletti simply presented evidence that the previous custodian, First Clearing Corp's, contract had terminated with MICG, and at their request the account was transferred to Wells Fargo Bank. This account retained the same titling, the same control provisions, and the same checkwriting authorizations. Later, Martinovich's assistant was added to the account authorizations list for simple efficiency of administration. All the same procedures occurred with the MICG Venture Strategies cash account. [Atchs. 3,9,21][AFF.#65].

The government then presented a Director of Wells Fargo's Fraud Department who, under oath, described to Judge Doumar that Martinovich had withdrawn large amounts of cash from the hedge fund money market accounts, sometimes $50,000 or $75,000, per withdrawal. This preposterous allegation was explained using the Wells Fargo system of journal entries and Professional Checks. This Director of Fraud claimed they could not locate corresponding check copies in their system which meant Martinovich must have withdrawn the amounts in cash. Fortunately, Mr. Martinovich's small consulting team had kept perfect records, and now Mr. Broccoletti presented the "missing

check copies" to the court. He stated, paraphrasing, "Please tell me, why Mr. Martinovich has copies of every authorized payment in question and a Director of Wells Fargo cannot find these same copies? How is that possible?" Despite the facts, all accounts were frozen and this relevant conduct was added to Judge Doumar's sentencing consideration [See Relevant Conduct Grounds].

MANAGEMENT FEES

All management fees were authorized by the team of attorneys, and over three years the actual fees paid were approximately one-third of what was legally authorized. Following the 2008 Financial Crisis and regulatory aftermath, Martinovich notified the fund investors, with the authorization of Mr. Lynn and Mr. Biard, that MICG would suspend the management fee for Venture and Partners funds during this period, and that MICG would allocate its significant infrastructure and personnel to cover these duties and responsibilities. After the closure of MICG and the fallout effects to Martinovich, he personally could no longer fund this administration and management in total, and he informed Mr. Lynn of the situation. Mr. Lynn scheduled a conference call with Mr. Lynn, Mr. Biard, Ms. Klocke, and Martinovich to address the issue. Ms. Klocke, Partners Fund counsel, authorized the payment of fees and expense reimbursement, and stated that she did not need to provide any further opinion letters, reiterating that all valid expenses of Venture or Partners Fund were to be covered by Partners. Also, due to the unpredictability of the current MICG Limited Liability

Company entities, these payments were directed to be paid to Martinovich and for Martinovich to pay the assistant directly, which is exactly how these expenses were administered, with 1099 documentation included [See Documentation, Atchs. 1,2,4,8] [AFF.#66]. During this same period, attorneys Mr. Lynn, Mr. Biard, Mr. Shilling, and Ms. Klocke continued to receive substantial legal fee payments from the MICG Funds. [Atch. 5] [AFF.#67]. Following the above attorney conference call, Mr. Martinovich subsequently called attorney Ms. Klocke, himself, to double check if he needed more letters of authorization. Ms. Klocke re-confirmed that no further documentation was required, but she claimed the Fund had not paid her recent bill. Mr. Martinovich told her that he thought her check had already cleared, and after confirming this was correct, his assistant, Brooke Stafford, called Ms. Klocke back to confirm with her. [Atch. 8][AFF.#105].

When the drama was initiated by attorney Mr. Shilling allegedly giving federal agents the incorrect information regarding the attorneys' indemnification procedures, Mr. Martinovich participated in a conference call with attorneys Mr. Lynn and Mr. Biard. Mr. Biard, who had first arranged for attorney Ms. Klocke to represent the MICG Partners Fund, stated on the call, "Don't worry. I know Kathy well. She will step up and stand behind her authorizations." [Atch. 7][AFF.#104].

EXPERT FEES

Mr. Broccoletti stated that Mr. Shilling also advised federal agents that he did not authorize the payments to the

legal experts requested by Mr. Broccoletti. Mr. Broccoletti had called Martinovich at his condo office, with two assistants present, to request payments for the trial legal experts he had engaged. Mr. Martinovich had then phoned Mr. Shilling to confirm these were covered by the indemnification and to ask if any further paperwork or opinion letters were necessary. Mr. Shilling clearly confirmed the authorization and stated that he did not need to provide further paperwork. That same afternoon, Martinovich's assistant processed the checks and traveled to Wells Fargo to pick up each payment for Mr. Broccoletti. (See phone records and required testimony verification). [Atchs. 2,6,9][AFF.#68].

DISTRICT COURT MISLED BY FRAUD

District Court Judge Allen was clearly misled about the facts, the nature, the actions, the authorizations, and the intent involved in the issue of indemnification payments for Case No. 4:15cr50. The conspiracy, lying to federal agents, and likely lying to a grand jury by Mr. Shilling, along with dismissal and quashing by officers of the court, prejudiced the Court and committed fraud on the Court, while Mr. Woodward refused to bring this fraud to light.

The Court was not made aware of the numerous transactions, multiple parties, and substantial documentation presented to the officers of the Court (See Sent. Tr.). At sentencing, the government stated to the Court, "The layers of fraud that are involved in that criminal legal defense payment are just shocking. Not only do you have him deceiving Mr. Broccoletti,

you have him deceiving another attorney, Andrew Shilling...Martinovich tried to paper over his use of these funds by getting opinion letters from attorneys, saying, "It's all okay." (p. 86). "Mr. Shilling is relying on representations by Mr. Martinovich." (p. 87). "We hadn't pulled those cashier's checks, talked to Mr. Broccoletti." (p. 89).

The Court stated, "You poured dirty money in this federal court...threading criminal proceeds throughout that trial...When the Feds roll up on somebody, people stop breaking the law." (p. 91). "He sucked in James Broccoletti into this drama. For those of you who don't know Mr. Broccoletti, if he's not the best attorney in Virginia, he's one of the best -- and I would venture to say across the United States of America." (p. 92). "He had to testify in a Federal Grand Jury. Honorable public servants, or retained, for that matter, should not be in front of a Federal Grand Jury so they can ferrett out whether or not Mr. Broccoletti knew that these moneys were dirty." (p. 93). "I didn't know about Mr. Shilling. If it was in the materials, I missed it. Mr. Shilling." (p. 94).

Certainly, Mr. Woodward and the government had not delivered an ounce of the voluminous evidence provided by Mr. Martinovich detailing and verifying the conspiracy and fraud by Mr. Lynn and Mr. Shilling, and fully vindicating Mr. Martinovich from any criminal liability. [AFF.#53]. Mr. Woodward and the government had misled Judge Allen and left her to beliefs and assertions one hundred percent contrary to the truth. The preposterous, simplistic allegations of tricking six law firms and "papering over" transactions manipulated Judge Allen, severely affecting

sentencing for Case 4:15cr50, as well as sentencing for Case 4:12cr101 which fully considered the conduct of these events.

MARTINOVICH DEMANDS FOR TRIAL

Mr. Martinovich, while providing the aforenoted evidence to Mr. Woodward, strongly asserted his desire to go to trial to prove his innocence, as well as to convince Mr. Woodward to present the evidence of fraud to District Court Judge Allen:

1) Mr. Martinovich urged Mr. Woodward to conduct his own research for his defense. "Not accepting Govt-controlled attorney statements - conduct own interrogatories, depositions, discovery with factual chronology & documents - under oath." [Atch. 5][AFF.#69].

2) Mr. Martinovich urged Mr. Woodward to take the case to trial and tell the truth. "(Trial) Theme: The attorneys authorized all, created all, to get their $1,000,000+ in fees & then when Feds step in they scatter like cockroaches in the light & can't seem to remember - juries don't like attorneys - Great theme for motivated attorney." [Atch. 5][AFF.#69].

3) Mr. Martinovich wanted to ensure Mr. Woodward read all the supporting documentation to show likely trial victory. "Get copy of Jeff 'Indemnification Documentation' Folder - Broc & Ash have. [Atch 1,5][AFF.#54,#69].

4) Mr. Martinovich's temper boiled over as he begged Mr. Woodward to take his case to trial. "Wouldn't an attorney be able to show a jury of at least 8th grade education how with 4 law firms and accountants so intimately involved in handling every step - how would or could Horrible Martinovich take cash out of hedge fund accounts (Ridiculous), take expense reimbursements unauthorized (Ridiculous), and trick and manipulate 4 law firms in a magic act to not let them know where the money was coming from (Ridiculous!) - Just as Martinovich secretly manipulated in a wild conspiracy his Mgt. Team, the Valuation Expert, and the Auditors...Again, commits violence against common sense." [Atch. 7][AFF.#69].

5) Mr. Martinovich wrote in his submission to Mr. Woodward: "Second Indictment Trial Defense Support...Trial Defense Support - I will nto let lawyers 'off the hook' if we go through whole process like I did first time around...Trial Defense Support - No Intent/Will/Mens Rea, etc. Issue...Trial Defense Support - Theme: Factual & Authorized & Legal." [Atch. 4,5][AFF.#109].

MR. WOODWARD'S COERCION

Yet, Mr. Woodward continuously refused to proceed with preparing for trial or with unveiling the obvious fraud to the District Court [AFF.#70]. From the moment Mr. Woodward was appointed as representation by the Court, his mission was to get Martinovich to accept a plea agreement and perform as the government desired. He would stonewall all efforts to go to trial, and invoke coercion and manipulation to guarantee Martinovich eventually acquiesced to sign a plea agreement, to Martinovich's great detriment. [Atch. 25,29][AFF.#55]. Mr. Woodward was ineffective for not pursuing the defense of innocence, for unethically coercing Martinovich to plea, and for manipulating Martinovich to plea with incompetent, unprofessional advice, fully documented by Martinovich. Eventually, Mr. Woodward convinced Martinovich that he would not take the case to trial, and that Woodward had arranged a deal resulting in a "5-6 years total sentence" for Martinovich, at least sending Martinovich home after re-sentencing, or shortly thereafter. Please review the following selection of Mr. Woodward's statements and guidance:

1) "Will get better Jackson sentence (on 1st Case) if admitting guilt on 2nd Indictment" [Atch.25] [AFF.#71].

2) "Larry believes sentencing will start with 3 points Acceptance and then the work is to get downward variance to '5-6 years'" [Atch.24,27,28] [AFF.#71] (But, the Court gave 14 years instead of 5-6 years).

3) "Larry 97-121 '30' - Starting Point [Atch.27,28] [AFF.#71] (But, the Starting Point was 140 Mos. and Ending Point was 164 Months).

4) "Guess 121 months ask by Government" [Atch.28] [AFF.#71](But, the govt. asked for 140 mos. then argued for much higher).

5) "5-6 years is target" [Atchs.24,27,28,29] [AFF.#71](But, 14 years was the target).

6) "Larry says no chance Allen & Jackson go outside the Agreement." [Atchs.10,20,29] [AFF.#71](But, they greatly exceeded the "Agreement").

7) "Larry doesn't think Govt. will have letters or witnesses (at resentencing)" [Atch.27](But, the govt. presented more witnesses and letters to further sway the Court).

8) "Larry thinks even though stipulating 33 that the Govt. will have to ask for 30-31 as starting point due to all acceptance (30 = 97-121)" [Atchs.27,28] [AFF.#71](But, the govt. asked for 33 and argued much higher).

9. "Larry attempting to shift everything to Judge Allen - known her 25 years, she assisted him on cases - she is #1, Jackson is #1A, and rest are 10 levels down" [Atch.27] [AFF.#71](Larry successfuly changed both sentencings to the Judge he wanted, but she upward departed from even the plea agreement).

10) "Just getting the win on Appeal adds to the acceptance in lowering" [Atch.27,28,29] [AFF.#71](It was not lowered, but raised).

11) "Larry thinks they will ask for lower because of the win & acceptance" [Atch.12,25,27] [AFF.#71](But the govt. did not ask for lower).

12) "(Larry) thinks 4 years too Aggressive...Thinks 6 years is doable good deal." [Atch.24] [AFF.#71](But 14 years was the "good deal").

13) "63-R= 53-6 hh= 47-29 curr.= 6 yrs = 1.5 yrs."
"73-1 = 63hh = 57-29 curr.= 28 mos. 7yr. deal= 2.2 yrs."
"84-1= 73-6hh= 67-29 curr.= 38 mos. 8 yr. deal = 3 yrs."
[Atch.24] [AFF.#71].
(Clearly, Martinovich believed Mr. Woodward's calculations).

14) "Don't overanalyze Govt. on why erasing 2nd Indictment" [Atch.25] [AFF.#71].

15) "Larry thinks (Congress) Bill giving 35% Goodtime will pass this year - Huge" [Atch.29] [AFF.#71].

8yrs with 87.5% = 2 1/2 years left with 65% = 1 year
7yrs 2 Years left 9 mos. (RDAP)
6yrs 1 Year (RDAP) 8 Mos.
5yrs. 9 Mos. (RDAP) 3 Mos. (No RDAP)
(Clearly, Martinovich believed Mr. Woodward's calculations).

16) "Larry says they will propose a sentence below it since won appeal & cooperated - then Larry is targeting 5-6 years as final total." [Atch.29] [AFF.#71] (But, 14 yrs. was final total).

17) "Larry said he is going 'to play hardball' to get the sentencing for both in front of Judge Allen" [Atch.29] [AFF.#71] (He succeeded).

18) "Larry says 0 chance that Allen or Jackson do not comply with plea Agreement constraints proposed by Govt. [Atch.10,20,29] [AFF.#71] (But, not only did Judge Allen not follow Larry's "deal," she upward departed from even the plea agreement).

Larry told Martinovich that he will be out of prison now, or very soon "rebuidling his fortune" if he would just sign the plea and cooperate with the re-sentencing deal. Mr. Martinovich recorded his guidance:

19) "Finance industries, etc. restrictions only in place for Supervised Release Period." [Atch.38] [AFF.#72].

20) "Travel, including International, no problem while on Supervised Release." [Atch.38] [AFF.#72].

21) "Moving to NYC or anywhere is no problem while on SR" [Atch.38] [AFF.#72].

STRICKLAND FIRST PRONG

Defendants have a Sixth Amendment right to counsel, a right that extends to the plea bargaining process. During plea negotiations defendants are entitled to the effective assistance of competent counsel. A two-part test applies to challenges to guilty pleas based on ineffective assistance of counsel. The performance prong of the test requires a defendant to show that

counsel's representation fell below an objective standard of reasonableness." Also, "There exists a right to counsel during sentencing." [Lafler v. Cooper, 32 S. Ct. 1376 (2012)].

This Ground thoroughly identifies how Mr. Woodward's actions fell below a minimum professional norm for reasonableness and competency:

1) Mr. Woodward failed to thoroughly research and vet Martinovich's evidence and claims of innocence, along with claims of fraud in the government allegations. Instead, Mr. Woodward pushed for a plea agreement from day one.

2) Mr. Woodward, failed to, at a minimum, present to the District Court the evidence of Martinovich's clear innocence and the evidence of attorney fraud in order for the Court to be informed of the total information available. Whether by presenting this abundant evidence at trial, or even as mitigating factors for dismissal or agreement, very likely this information would have substantially altered the Court's understanding of the circumstances. The Court's own comments, for example not even being aware of the independent attorneys representing the hedge funds, showed that the Court was operating under material misinformation and with only a fraction of the knowledge of the complexity and transparency of these transactions.

3) Mr. Woodward's repeated threat, "You want to go to trial against four law firms? You don't have a chance in hell of winning! Didn't you learn from your first trial?" failed to provide Martinovich effective assistance by summarily dismissing

Martinovich's demands for a trial from day one. [AFF.#55].

4) Mr. Woodward's inaccurate and irresponsible promises to Martinovich, manipulated Martinovich into eventually giving up hope for a trial and accepting that, at least, he would be out of prison after sentencing, or soon thereafter.

5) On day one, Mr. Woodward tricked Martinovich into dropping his request and documentation to proceed pro se for Case 4:12cr101 resentening and for self-representation in Case 4:15cr50, by telling Martinovich that he would likely receive 90 days of Bond if Martinovich allowed Mr. Woodward to handle his representation. Mr. Woodward stated that the Court would not allow bond if Martinovich insisted on handling these cases pro se. Martinovich agreed to rescind his pro se motions, believing that three months of bond would allow him to thoroughly prepare for a successful resentencing and a successful trial for Case 4:15cr50. Yet, Mr. Martinovich, once rescinding his requests, was quickly denied bond. Mr. Woodward had accomplished his first demand from the government, to not let Martinovich represent himself. [Atch. 31][AFF.#73].

6) Martinovich had shown the propensity to be in the small percentage of defendants who would reject the plea offers and proceed to trial, as he had rejected three plea offers in Case 4:12cr101 and proceeded to a four-week trial. Therefore, Mr. Woodward initiated his coercion immediately. Before walking into the initial detention hearing, Mr. Woodward counseled with Martinovich in the small meeting room, stating, "I just got off the phone in my car with Samuels (AUSA Brian Samuels), and he

just wants to put an end to all of this and stop you from sending in motions. The prosecutors, the judges, and even the clerks say that if they don't agree with you, you believe they are either corrupt or stupid! All they want you to do is admit to something, and then you're looking at 4-6 years. That means you go home now or very soon." [See Atch. 24 and 25 contemporaneous notes, correspondence][AFF.#74].

7) Mr. Woodward even called Mr. Martinovich's fiance, Ms. Ashleigh Amburn, and told her that Mr. Martinovich would not receive any more than six years total if he "went along," so "don't let him do anything crazy." [Amburn AFF., Atch. 40].

8) The long list of statements and documentation provided in this Ground are emblematic of Mr. Woodward's manipulation and coercive actions in Mr. Martinovich's case, to include:

a) Refusing over and over to proceed to trial and present the tremendouns volume of documentation proving Martinovich's innocence and attorney fraud.

b) Telling Martinovich over and over to expect five to six years if he accepts a plea agreement, even submitting the **recommendation of three to five years** in the Defense Position Paper to sentencing Judge Allen. [See DPP].

c) Telling Martinovich over and over that Case 4:12cr101 sentencing will be very low and Case 4:15cr50 will be concurrent, if Martinovich just stood up in front of Judge Allen and admitted to crimes Mr. Woodward was fully-noticed that Martinovich did not commit. [Atchs. 12,27,28][AFF.#75].

"Courts should not upset a plea solely because of past hoc assertions from a defendant...Judges should look to contemporaneous evidence to substantiate a defendant's expressed preferences." [Lee v. United States, 2017 U.S. LEXIS 4045, S. Ct. (2017)]. The substantial contemporaneous evidence supplied by Mr. Martinovich substantiates his desire to prove his innocence at trial and to unveil serious fraud for the Court. This contemporaneous evidence also clearly identifies the coercion, misinformation, and unprofessional conduct exhibited by Mr. Woodward in order to control Mr. Martinovich's actions.

Mr. Martinovich eventually gave up his battle to take his case to trial when he finally realized Mr. Woodward would not proceed on his behalf, and when he finally believed that Mr. Woodward had negotiated a deal for Martinovich to receive no more than a total of six years in total between the two cases, and that he would be released at sentencing, or soon thereafter [AFF.#78]. Mr Martinovich would have never agreed to a negotiated deal to receive 140 months again, after three years of non-stop battle to defeat this conviction and sentence, especially when coupled with a five-year second sentence that might have been run consecutively to the first. These assumptions and acceptances are 100% incongruent with Mr. Martinovich's previous refusal of three government plea offers, as well as his relentless pursuit to prove his innocence on appeal. Only Mr. Woodward's coercion and manipulation tricked Martinovich into not proceeding to trial and eventually accepting a plea agreement in which he believed the "shoulder-to-shoulder and toe-to-toe" fantastic attorney had

negotiated the special deal which Woodward claimed he had. [AFF.#76,#78].

STRICKLAND SECOND PRONG

"In the context of pleas a defendant must show that the outcome of the plea process would have been different with competent advice." Also, "Ineffective assistance of counsel during a sentencing hearing can result in prejudice because any amount of additional jail time has Sixth Amendment significant." [Lafler].

There was a reasonable probablility that, but for Mr. Woodward's erroneous advice, defendant would have rejected a guilty plea. [Lee].

"When a defendant alleges his counsel's deficient performance led him to accept a guilty plea rather than go to trial, courts do not ask whether, had he gone to trial, the result of that trial would have been different than the result of the plea bargain. That is because, while courts ordinarily apply a strong presumption of reliability to judicial proceedings, they cannot accord any such presumption to judicial proceedings that never took place." [Lee].

Mr. Woodward created severe prejudice by not moving forward with Martinovich's substantial evidence of innocence and significant documentation of fraud on the Court. Mr. Woodward further exasperated the prejudice to Martinovich by providing coercion and unprofessional manipulation to influence his client's ultimate behavior, as the substantial contemporaneous documentation verifies.

Martinovich would have never accepted a twelve-year plea offer, and certainly not one with a potential fourteen years and even to seventeen years, after fighting day and night to finally achieve a "win" against his twelve-year sentence. "We cannot agree that it would be irrational for a defendant in Lee's position to reject the plea offer in favor of trial." [Lee].

Throughout this involved Ground, Martinovich has fully demonstrated "a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." [Hill]. Moreover, Martinovich has respectfully "convince(d) the Court that such a decision would have been rational under the circumstances." [United States v. Fugit, 703 F. 3d 248 (4th Cir. 2012)].

COLLOQUY DOES NOT CURE MR. WOODWARD'S FRAUD

Any assertions that the language agreed to in the Rule 11 colloquy and sentencing hearing cure Mr. Woodward's ineffective assistance run contrary to Supreme Court and Fourth Circuit precedence in cases which document credible evidence. These Courts have held that sworn statements during the Rule 11 colloquy "constitute a formidable barrier in any subsequent collateral proceedings."[Blackledge v. Allison, 431 U.S. 63, 97 S. Ct. 1621, L. Ed. 2d 136 (1977)]. "Absent clear and convincing evidence to the contrary, [a petitioner] is bound by the representations he made during the plea colloquy." [Beck v. Angelone, 261 F. 3d 377 (4th Cir. 2001)]. "Reviewing courts have

no obligation to entertain allegations which are conclusory or palpably incredible in nature." [Machibroda v. United States, 368 US 487, 82 S. Ct. 510, 7 L. Ed. 2d. 473 (1962)]. "Dennis's sworn statements at his plea colloquy expressly contradict the factual allegations supporting his ineffective assistance of counsel claim. No extraordinary circumstances explain that contradiction." [Dennis v. United States, US Dist. LEXIS 68737 (Md., 4th Cir. 2017)]. And, finally, "Petitioner has advanced no credible evidence to support his unadorned claims of ineffective assistance of counsel." [United States v. Amezquita-Franco, US Dist. LEXIS 18062 (ED Va. 4th Cir. 2015)].

Mr. Martinovich asserts that this thoroughly documented Memorandum, the substantial Affidavits, and the detailed Exhibits exceed all historical and intended Supreme Court and Fourth Circuit standards of "clear and convincing evidence," evidence "not conclusory or palpably incredible in nature," "extraordinary circumstances," "clear and convincing evidence to the contrary," and "credible evidence."[See Atch. 1-41, Atch. 42 Email Ledger].

1. First, Mr. Martinovich, who is not an attorney, repeatedly questioned Mr. Woodward to explain the discrepancies between his "deal" and the language of the plea and Judge Allen's hearing. In the contemporaneous notes and communications, Martinovich wrote: [See AFF. #108]

a) "Just asking for contract to say what I'm told it's meant to say." [Atch. 14].

b) "If stipulating to number than how getting 3 for responsibility? Figuratively? [Atch 12]

c) "Plea doesn't say that." [Atch. 29].

d) "There is no language to say 2nd sentence no higher than 1st, including SR, & is concurrent." [Atch. 11].

e) "How does he know?" [Atch. 31].

f) "(On plea) says not seek more than 140 mos. total for both - not 1st Max is Max & Not is what Govt. seeks must be will not be." [Atch. 11].

g) "(On concurrency) confirm Larry's previous statement of no chance Judge Allen exceeds 'recommended.'" [Atch. 20].

h) "Forfeiture - Nowhere says we can oppose or Court determines." [Atch. 10].

i) "How get 3 pts Acceptance if Stipulating to Guidelines (?)" [Atch. 28].

2. Second, Mr. Martinovich's meeting notes and communications with Mr. Woodward repeatedly document that, despite the agreement language and Judge Allen's template questions, Mr. Woodward explained that the government would ask for two points off the first case Offense Level as acquiescence for "winning the appeal" to "put and end" to everything, then the Court would grant three points off the joint sentence for "accepting responsibility" since Martinovich is not taking the second case to trial, and then Judge Allen would implement a small downward variance of two points which would bring Mr. Martinovich to an Offense Level of twenty-six, which with the RDAP program would send Mr. Martinovich home in nine-to-twelve months, "worst case."

"They just knock off 2 pts...3 pts off for Acceptance of Responsibility...

2 pts + 3 pts = 5 pts off before looking at downward variance...

down to 6 1/2...28 = 78 - 97 (6 1/2)

26 after Downard Variance = 63 - 78 (5 1/2)

9-12 months with RDAP." [Atch. 12][AFF. #107].

With Mr. Woodward's relentless delivery of detailed information "to the contrary" of the agreement and colloquy, as

documented in over forty exhibits, it would not be irrational to believe that Mr. Martinovich eventually believed Mr. Woodward's claims that this would be the result. [Lee v. United States, 2017 U.S. LEXIS 4045, S. Ct. (2017)].

3. Third, Mr. Martinovich's silence and cooperation during the plea colloquy and sentencing hearing is explained and corroborated by not only the documentation of the professed arrangement, but also by the documentation of Mr. Woodward's manipulation to change Martinovich's behavior to "accepting," "cooperative," and "remorseful" in order for the government and the Court to follow through on the arrangement.

For example, instead of zealously arguing the erroneous loss calculation, as instructed by the Fourth Circuit, allowed by the plea, and which greatly affected the sentencing calculus, Mr. Woodward deleted Mr. Martinovich's detailed Position Paper submissions [Atch. 26] and told the Court, "The amount of loss...is likely impossible to calculate...such complex legal and factual disputes normally present...different analytical tasks for trial and appellate courts...Martinovich through his actions is agreeing to end this litigation." Mr. Woodward claimed that Mr. Martinovich's argument of the loss would cause Judge Allen to believe that he wasn't thoroughly "remorseful." [DPP][AFF. #76].

Another example, Mr. Woodward slid two restitution orders in front of Mr. Martinovich seconds before Judge Allen entered the courtroom, and he stated, "Quick, before Judge Allen walks in, sign these two orders so she knows you are remorseful and cooperating." Mr. Martinovich protested that 1) he had not

reviewed the paperwork, and 2) that the amounts were incorrect. Mr. Woodward then said, "Look, she's going to walk in any second. I talked to Samuels and he agreed that you will be given credit for any of the Partners hedge fund money not spent on you or the defense." [Atch. 31][AFF. #77]. In hindsight, Mr. Martinovich realizes how absurd those comments were, but at that moment with his liberty in the balance, it was another threat to not say anything during the hearing which was contrary to the script.

Another example, after Martinovich's first allocution in which he followed Mr. Woodward's directive to take responsibility and express great remorse at the re-sentencing, Judge Allen re-affirmed the 140-month sentence, shocking Martinovich and his family seated behind him. Then, when asked if he would like to provide a second allocution, Mr. Martinovich started to the podium, but in fear that Martinovich would go off script, Mr. Woodward placed his hand on Martinovich's arm and said, "You don't need to say anything more." Mr. Martinovich again followed orders, and thinking somehow this was all going to come together like he was told, replied "No, thank you ma'am." [Tr. p. 265][AFF. #76].

4. Fourth, Mr. Martinovich is the first one to state that he affirmatively answered the Court's standard colloquy questions of whether he understood the plea language and the colloquy language, as he believed he was supposed to do. Also, this language did not create a contractual barrier to Mr. Woodward's professed result. Mr. Martinovich is the first one to state that he signed an agreement which did not itemize Mr. Woodward's

stated agreement, yet it also did not contractually disallow Mr. Woodward's professed outcome. Mr. Martinovich agrees that he possesses a high level of education and business experience. Mr. Martinovich is the first to state that Judge Allen provided colloquies which are referenced as "formidable barriers in any subsequent collateral proceedings," yet he also asserts that this language is not inconsistent with, or a barrier to, Mr. Woodward's asserted outcome.

THE COURT: "And your attorney has fully explained (the plea agreement) to you?"

DEFENDANT: "Yes, Your Honor."

THE COURT: "Did you understand it?"

THE DEFENDANT: "Yes, Ma'am."

THE COURT: "Do you believe it's in your best interest for the Court to accept your plea agreement?"

THE DEFENDANT: "Yes, Ma'am." [Tr. p. 90].

THE COURT: "(L)evel of 33 and a Criminal History Category I, and your guideline range for that case is 135 to 168 months...do you understand what I just said?"

THE DEFENDANT: "Yes, Ma'am." [Tr. p. 183].

THE COURT: "And the report is an accurate reflection of your history and characteristics as it pertains to this offense. Is that correct?"

THE DEFENDANT: "Yes, Ma'am." [Tr. p. 258].

THE COURT: "The statutory max, 20 years for the Count Ten, supervised release, not more than three years...do you understand what I just said?"

THE DEFENDANT: "Yes, Ma'am." [Tr. p. 259].

And, with these acknowledgements, Mr. Martinovich strongly

asserts that within this thorough Memorandum, substantial affidavits, and forty exhibits encompassing more than 700 contemporaneous notes and communications, he has fully documented Mr. Woodward's ineffective assistance with "clear and convicing evidence," "credible evidence," and "extraordinary circumstances." [Beck; Amezquita-Franco; Dennis].

After participating in a trial of which the Fourth Circuit, itself, stated, "At its core, such conduct tends to undermine the public's confidence in the integrity of the judiciary," and now presenting over 700 contemporaneous citations of fraudulent behavior and reckless ineffective assistance, Mr. Martinovich asks, "if this is not an extraordinary circumstance, then, respectfully, what is?

Mr. Martinovich clearly, eventually, believed Mr. Woodward. Mr. Martinovich's successful business experience actually fostered his belief in Mr. Woodward's agreement that enabled the government to get their objective accomplished while presenting harsher documentation for the public. Mr. Martinovich's significant education actually helped him understand how Mr. Woodward's agreement enabled the government and the Court to tactfully correct the previous errors in the most credible way possible. Mr. Woodward's more than thirty years of practicing law in this Court led Mr. Martinovich to eventually believe that there was no possibilty that Mr. Woodward would either unethically connive at Martinovich's defeat, or be so reckless as to submit a Defense Position Paper request for three-five years when the actual sentence could actually be fourteen years, or more. The Court even confirmed this reputation of Mr. Woodward,

stating "Mr. Broccoletti, if he's not the best attorney in Virginia, he's one of the best -- Mr. Woodward is right there shoulder to shoulder, toe to toe -- and I would venture to say across the United States of America." [Tr. p. 93]. Just as the government has claimed that Martinovich's superior investment knowledge manipulated intelligent CEO's into investing in a fraudulent solar company, Mr. Woodward's superior legal knowledge manipulated Mr. Martinovich into believing "5-6 years" was the arrangement. It was an unfair and fraudulent contest, creating a miscarriage of justice.

REMEDY

Mr. Martinovich asserts that Mr. Woodward's ineffective assistance satisfies both Strickland prongs and severely prejudiced Martinovich. Mr. Martinovich respectfully requests this Court Vacate Mr. Martinovich's plea agreement and sentence for Case No. 4:15cr50, and Vacate Mr. Martinovich's sentence for Case No. 4:12cr101, as it fully considered and included Case 4:15cr50 per plea agreement, plea acceptance hearing, and sentencing hearing.

GROUND X: COUNSEL WAS INEFFECTIVE FOR FAILING TO CHALLENGE TAINTED INDICTMENT AND COUNT EXCEEDING STATUTE OF LIMITATIONS

Court-appointed counsel, Mr. Woodward, was ineffective during Case 4:15cr50 / 4:12cr101 plea negotiations and sentencing-resentencing for failing to challenge a tainted indictment and Count One exceeding the statute of limitations.

In Case 4:15cr50, the government moved for an initial indictment to be sealed on illegal grounds and then moved to extend this seal, again on illegal grounds. The government allowed the indictment to expire-unseal and subsequently moved for a further, illegal extension. Said illegal actions allowed Count One, Mail Fraud, which was illegally tolling, to expire, and the government knowingly moved to extend and include said Count after the statute of limitation had passed. The government apparently "referred" the questionable indictment from Magistrate Judge Miller to Magistrate Judge Krask to Magistrate Judge Leonard and back to Judge Miller before a Judge eventually signed the improper motion to extend the sealing.

Once Mr. Martinovich "won" his direct appeal for Case 4:12cr101 and the Fourth Circuit vacated his sentence, this indictment was "coincidentally" unsealed and served upon Mr. Martinovich.

Mr. Woodward was ineffective for failing to challenge the initial sealing on illegal grounds, challenge the illegal extension, identify the obvious expiration-automatic unsealing of the indictment, and challenge the inclusion of Count One in the

Indictment even after the statute of limitations had expired. This ineffective assistance was not harmless, was not cured, and did severely prejudice Mr. Martinovich as this Ground illustrates.

INITIAL SEAL

Initially on July 15, 2015, the government based its Motion to Seal on United States v. Ramey, 791 F. 2d 317 (4th Cir. 1986), yet the government misquotes and mis-applies this thirty-year old case, while Ramey, itself, also misquoted Fed. R. Crim. P. 6(e)(4). Ramey states, "Under Fed. R. Crim. P. 6(e)(4) an indictment could be sealed for any prosecutorial need and not simply for purpose of taking a defendant into custody." Except, Rule 6(e)(4) does not say this. Rule 6(e)(4) explicitly states, "may direct that the indictment be kept secret until a defendant is in custody or has been released pending trial." That is all.

This misquote and mis-application of Rule 6(e)(4) finds its genesis in a 1949 collateral comment by Third Circuit Judge Maris in United States v. Michael, 180 F. 2d 55 (3rd Cir. 1949), "(W)e see nothing unlawful in the court imposing secrecy in other circumstances which in the exercise of sound discretion it finds call for such action." This seventy-year-old overreach of the Rule, and the misquote in Ramey are rarely cited, including in the Fourth Circuit, as conscientious prosecutors likely are aware of the failings.

Similarly, the government's Motion to Seal incorrectly asserts that the indictment may be sealed "solely to toll the statute of limitation on a certain charge" quoting United States

v. Mitchell, 769 F. 2d 1544 (11th Cir. 1985). Again, this citation does not say this. As many cases cite, tolling of a statute of limitations has been accepted as a collateral benefit for the government when a "rules-based" decision to seal has been approved. As in Mitchell, the court actually states, "and can toll the statute."

The true application of Rule 6(e)(4) is for, and having been narrowly interpreted by the Courts, apprehending dangerous defendants, stopping defendants from fleeing, protecting cooperating witnesses, and for rare, explicit prosecutorial steps. Mr. Martinovich was securely incarcerated at Fort Dix Federal Correctional Institution on July 15, 2015. The government had initiated grand jury investigations in 2013, after thoroughly investigating Martinovich for even three years prior. In Ramey, the indictment was truly "sealed to protect persons cooperating" in the government's case. The sealing protected "endangered witnesses" because the government was "securing admission to the Witness Security Program" and the unsealing "might cause Ross and Ramey to flee." [Ramey]. This, of course, is inapplicable to Mr. Martinovich's case.

In Mitchell, the Court actually dismissed the Indictment Counts "because the government failed to make any meaningful effort to find the defendants." [Mitchell].

Without question, after six years of investigating Mr. Martinovich, the only "prosecutorial need" for sealing the Case 4:15cr50 Indictment was to wait and see if Martinovich, by chance, won his Appeal for Case 4:12cr101 and was potentially walking out the door. And, that is exactly what happened, and

the prosecutors executed their scheme perfectly. "Delay in unsealing an indictment is unreasonable if there is no legitimate prosecutorial need for it...(and) An improperly sealed indictment does not toll the statute of limitations. There is no tolling of the statute of limitations where there was no factual basis for sealing the indictment." [United States v. Upton, 339 F. Supp. 190 (1st Dist. 2004)].

FAULTY SEAL EXTENSION

On January 15, 2016, the government's seal of Mr. Martinovich's indictment expired. The authority to seal the indictment expired. Count One, Mail Fraud, for which the original statute of limitation ended July 30, 2015, had been, although illegally, tolling under a sealed indictment, but now was by law unsealed and expired. As the government stated that tolling this Count was its purpose for initially bringing and sealing the indictment, it was certainly aware that now this charge was expired.

"Where the government is required to take certain steps for the statute of limitations to be tolled, tolling may be disallowed if those requirements are not strictly fulfilled. The fact that the delay in unsealing the indictment was unintentional does not, however, affect this Court's ruling. In Spector, the First Circuit did not overlook the government's mistake even though it was 'likely the result of some unintended clerical error.'" [Upton; citing United States v. Spector, 55 F. 3d 22 (1st Cir. 1999)].

On January 25, 2016, once the seal of this indictment was no longer in effect, and the statute of limitations was no longer tolled, the government appeared to have great difficulty in gaining a judge's signature on another extension. AUSA Brian Samuels also signed this Motion "For AUSA Kathleen Dougherty." Case 4:15cr50 Docket identifies this Motion switching from Judge Douglas E. Miller to Judge Robert J. Krask, and then "REFERRED" to Judge Lawrence R. Leonard. Then, eventually, on January 26th, eleven days after expiration, this invalid extension was signed by Magistrate Judge Douglas E. Miller, and not signed as nunc pro tunc.

"When the government failed to file a status report or to request a continuance after the 30 days had passed, the authority to seal the indictment expired, and the statute of limitations began to run, therefore the changes were time barred...Thus, no prejudice need be shown in this case because the seal of the indictment was no longer in effect and the statute of limitations was no longer tolled when the thirty-day period ended." [Upton].

"Finding no tolling of statute of limitations where the government made an implicit false representation in requesting sealing of indictment." [United States v. Maroun, 699 F. Supp. 5 (D. Mass 1988)]. The Supreme Court has instructed that "evidence of bad faith on part of the Government...supports dismissal with prejudice." [United States v. Taylor, 487 U.S. 326, 108 S. Ct. 2413 (1988)].

STRICKLAND FIRST PRONG

During plea negotiations, defendants are entitled to the effective assistance of competent counsel. Also, there exists a right to counsel during sentencing. [Lafler]. Mr. Woodward's representation fell below an objective standard of reasonableness. [Strickland]:

1) Mr. Woodward failed to challenge the sealing of the indictment for a legitimate prosecutorial need, while initial research of the indictment, counsel's first action, would have revealed this error.

2) Mr. Woodward failed to challenge the expiration of the sealing of the indictment on January 15, 2016, and the questionable re-sealing, which effective due diligence would have uncovered.

3) Mr. Woodward failed to challenge the inclusion of Count One, Mail Fraud, in the Case 4:15cr50 Indictment following the expiration of the statute of limitation.

4) Mr. Woodward allowed Count One to improperly be an integral factor in Martinovich's decision to go to trial or to accept a plea offer.

5) Mr. Woodward failed to eliminate Count One from Martinovich's considered plea negotiations and decision to go to trial, severely prejudicing Martinovich.

STRICKLAND SECOND PRONG

The outcome of the plea process would have been different with competent assistance from Mr. Woodward. Ineffective assistance of counsel during a sentencing hearing can result in prejudice because any amount of additional jail time has Sixth Amendment significance. [Lafler]. There was a reasonable probability, that but for Mr. Woodward's failures and erroneous advice, Martinovich would have rejected a guilty plea. [Lee].

As thoroughly described in Ground IX, Mr. Martinovich supplied Mr. Woodward with voluminous documentation proving Martinovich's innocence to the allegations of Case 4:15cr50, yet one "weakness" greatly concerned Mr. Martinovich - the previous letter Martinovich had sent to MICG Hedge Fund clients stating that he will not take any more Management Fees while all of the turmoil in the markets, and with MICG, continued. Although Ground IX thoroughly addresses the legal authorizations for the later management fees distributed, Mr. Martinovich knew it was one of those items "that just looked bad." Mr. Martinovich was sure the prosecutors would exploit this letter against Martinovich, just as they had skillfully exploited Ferraris, Bentleys, and beachhouses against Martinovich in the first trial. Therefore, in the voluminous notes provided to Mr. Woodward detailing Martinovich's innocence and plan to go to trial, on page one, the first item, Mr. Martinovich wrote, "Weakness - earlier letter to not take Mgt. Fee - Don't remember any conversation addressing later - except services v. Mgt Fee Issue. Weakness - taking Mgt. Fee - Legal but 'View' (like 1st trial cars & Houses pictures for 4 weeks)" [Atch. 1][AFF. #79, #78A].

And, what was this letter? It was Count One of the

government's indictment, "a letter from MARTINOVICH to Partners fund investor W.C. regarding the status of the Partners fund (In violation of Title 18, United States Code, Sections 1341 and 2)."

When Martinovich first met with counsel Mr. Woodward in the Western Tidewater Regional Jail, Martinovich professed his innocence and demanded to go to trial. Yet, to exacerbate Martinovich's fears, Mr. Woodward pulled out a copy of the Count One Mail Fraud letter to Mr. William Carper (W.C.), and said, "But how are you going to defend that? You said right here in the letter. You think a jury cares if three attorneys later authorized everything?" [AFF. #80].

Count One controlled Martinovich's tactical and strategic decision process [See contemporaneous notes and emails provided to counsel, Atchs.1-9]. Mr. Martinovich felt extremely comfortable with Count Two, communications with Katherine Klocke (K.K.), the independent attorney representing MICG Partners Fund as her information had to be one-hundred-percent congruent with Martinovich's explanation and documentation. Martinovich felt extremely comfortable with Count Three, transfers of accounts from FCC to Wells Fargo, as Martinovich explains in detail in Ground IX. Finally, Martinovich felt most comfortable with Counts Four through Thirteen which covered the Concealment of Money Laundering, as the bank statements, tax ledgers, Harbinger PLC ledgers, tax filings, and contract documentation fully supported the overly-compliant operations. [AFF. #81]. The government knew this letter was the critical, damning piece of evidence they could manipulate, and without this Count One, the facts of the case would clearly override the emotions. This is

why they broke the law to ensure Count One was included in the Superseding Indictment. They knew the odds were that Mr. Woodward would be ineffective and not pick up on this fraud.

At this time, when making these life-altering decisions, Martinovich had no idea that Count One was actually illegal, the indictment was void, and that fraudulent activity had occurred. Martinovich had no idea at this time just how ineffective Mr. Woodward's assistance had been and how lethal these failures would be for Martinovich.

After extended heated debates with Mr. Woodward on attempting to go to trial, Mr. Martinovich eventually acquiesced to accept a plea offer. As Mr. Martinovich's contemporaneous paperwork clarifies, top of page one, it was only Count One that concerned Martinovich and eventually forced him to not take the case to trial, and to go along with Mr. Woodward's infamous "5-6 years" deal [AFF. #71]. Mr. Martinovich had already experienced the lethal effects of something that just looked bad and how the prosecutors took advantage of juror's subjective emotions versus analytical logic. If Count One had been removed from the beginning of negotiations and strategic analysis, without question Mr. Martinovich would have proceeded to trial, as the contemporaneous paperwork clearly identifies. [AFF. #82].

Also, of extreme importance, as Martinovich had experienced, if things went badly at trial, Count One added up to twenty years more sentencing exposure with a guilty verdict.

At the future plea acceptance hearing, Martinovich was still fully-unaware of the lethal ineffective assistance greatly manipulating his decision making. By the time of Martinovich's

future plea acceptance hearing and even later sentencing, the illegal inclusion of Count One in the indictment and in the plea negotiations, along with Woodward's extreme failures, had already severely prejudiced Martinovich to not go to trial, to negotiate on a plea, to consider Woodward's coercion, and to follow a much more detrimental path.

The language of the plea colloquy, plea acceptance hearing, and sentencing hearings are irrelevant to Martinovich's state of mind and decision tree which he was forced to analyze much earlier.

At these hearings, this illegal variable in the decision algorithm had been now removed, and Martinovich's responses of knowing and voluntary and intelligently were not relevant to the previous fraud. The eventual dismissal of the Count One also failed to cure the ineffective assistance, for the same reasons, as it was a significant factor in the decision to accept the plea.

As similarly addressed in United States v. Vaughn, the Court clarified the inability to retroactively cure this failure, "But those statements were made at the hearing that concerned the plea offer that Vaughn actually accepted, not the 60-month offer that he turned down. At the hearing, Vaughn was not asked, and did not testify, about his conversation with (the attorney) about the earlier 60-month offer, which by that point was no longer relevant." [United States v. Vaughn, No. 16-3138 (3rd Cir. 2017)]. As such, Martinovich was never asked to consider an indictment without illegal Count One, which the contemporaneous documentation confirms was a significant factor, actually the

most significant factor.

"Even if the court engages in a complete plea colloquy, a waiver of the right to appeal may not be knowing and voluntary if tainted by the advice of constitutionally ineffective trial counsel." [United States v. Johnson, 410 F. 3d 137 (4th Cir. 2005); citing United States v. Craig, 985 F. 2d 175 (4th Cir. 1993)]. This is because "[a] decision to enter into a plea agreement cannot be knowing and voluntary when the plea agreement itself is the result of advice outside 'the range of competence demanded of attorneys in criminal cases." [Johnson; citing DeRoo v. United States, 223 F. 3d 919 (8th Cir. 2000)(quoting Hill v. Lockhart, 474 U.S. 52, 88 L. Ed 2d 203, 106 S. Ct. 366 (1985))].

REMEDY

Mr. Martinovich asserts that Mr. Woodward's ineffective assistance satisfies both Strickland prongs and severely prejudiced Martinovich. Mr. Martinovich respectfully requests this Court vacate Mr. Martinovich's plea agreement and sentence for Case No. 4:15cr50, and vacate the sentence for Case No. 4:12cr101 as it was fully controlled by said plea agreement. Case 4:12cr101 fully considered and included Case 4:15cr50 per plea agreement, plea acceptance hearing, and sentencing hearing.

GROUND XI: COUNSEL WAS INEFFECTIVE FOR FAILING TO OBJECT TO MATERIALLY FALSE PRESENTENCE INFORMATION WHICH WAS DEMONSTRABLY RELIED UPON AT SENTENCING AS WELL AS NOT OBJECTING TO THE SENTENCING COURT'S OPEN REFUSAL TO CONSIDER THE POSITIVE 3553(a) FACTORS

Sentencing counsel, Mr. Woodward, was present for the first five minutes of the Presentence Interview between Mr. Martinovich and Probation Officer Mr. Noll, and then left the meeting, allowing Mr. Noll to cover the substantive portions of the interview independently. [AFF. #83]. This interview, as to Court instruction, was relevant to the Case 4:12cr101 Amended PSR and the Case 4:15cr50 Initial PSR.

Subsequently, Mr. Martinovich was presented with two presentence reports containing materially inaccurate information. Mr. Martinovich submitted PSR Objections to Mr. Woodward, verbally and in writing. [See Atchs. 17-23, AFF. #84]. Mr. Woodward initially agreed to submit Martinovich's objections, but failed to include said objections in a Motion to the Court, as a Motion during sentencing or re-sentencing, or in the Defense Position Paper. [Atch. 13, 17, 18][AFF. #85, #86].

District Court Judge Allen proactively, verbally asserted during sentencing-resentencing how these inaccuracies and mis-characterizations were material to her sentencing calculus. As Judge Allen emphasized how these mistakes and this derogatory information, which was materially false, affected her opinion and sentencing determinations, Mr. Woodward stood silent. Mr.

Woodward did not object to the PSR mistakes, did not object to Judge Allen's material mis-statements, even though he was fully noticed of their false nature, and he never once attempted to challenge or correct Judge Allen's understanding of what was true and what was false.

LEGAL STANDARD

Due process requires that a defendant be "afforded the opportunity of rebutting derogatory information demonstrably relied upon by the sentencing judge, if such information can in fact be shown to have been materially false." [Collins v. Buchkoe, 493 F. 2d 343 (6th Cir. 1974)]. "To prevail on such a claim, the petitioner must show, at a minimum, (1) that the information before the sentencing court was materially false, and (2) that the court relied on the false information in imposing the sentence." [United states v. Tucker, 404 U.S. 92 S. Ct. 589, 30 L. Ed. 2d 592 (1972)].

"Reliance on a clearly erroneous material fact itself constitutes an abuse of discretion." [United States v. Zayyad, 741 F. 3d 452 (4th Cir. 2014)].

"The court relied upon incorrect facts as the basis for its ruling." [Bodkin v. Town of Strasburg, 386 Fed Appx. 411 (4th Cir. 2010)].

"A report is inaccurate when it is 'patently incorrect' or when it is 'misleading in such a way and to such an extent that it can be expected to [have an] adverse' effect." [Dalton v. Capital Associated, 257 F. 3d 409 (4th Cir. 2001); citing Sepulvado v. CSC Credit Svcs, 158 F. 3d 890 (5th Cir. 1998)].

While the Fourth Circuit has asserted that the defendant's presentence report interview is not a critical stage, and therefore does not invoke counsel constitutional effective assistance, the sister Circuits have endorsed analysis for prejudice or harmful error which may have derived from the relevant interview, and of course errors subsequently included in the presentence report and materially relied upon by the Court. "Hoffman's Sixth Amendment right had been violated by the use of uncounseled statements made in a presentence interview, we remanded the question of whether the violation constituted harmless error." [Pizzuto v. Arave, 385 F. 3d 1247 (9th Cir. 2004)]. "Garcia cites his lawyer's absence from a meeting with the U.S. Probation Office, but he fails to show why this absence constituted ineffective assistance or how he was prejudiced by it." [Garcia v. United States, 340 Fed. Appx. 721 (2nd Cir. 2009)].

The Fourth Circuit has emphasized that Supreme Court precedents "recognize a due process right to be sentenced only on information which is accurate." [United States v. Lee, 540 F. 2d 1205, 1211 (4th Cir. 1976); citing United States v. Tucker, 404 U.S. 443, US 736, 68 S. Ct. 1251 (1972)].

"Where...the trial judge relies on materially false or unreliable information, there is a violation of defendant's due process rights." [United States v. Williams, 668 F. 2d 1064 (9th Cir. 1981)].

EDUCATION TUTOR

Court: "You said that since you've been in the BOP, the Bureau of

Prisons, you said that since being incarcerated that you've been a GED tutor." [Sent. Tr. p. 97].

Court: "So that's what Mr. Martinovich told the probation officer, Mr. Noll." [p. 97].

Court: "But then Mr. Noll contacts the Bureau of Prisons, because the Bureau of Prisons keeps records, obviously, on everything that happens to somebody being housed there, and the records reveal something different." [p. 98].

Court: "The records reveal that he was an education orderly for two days, and that he was an education tutor since July -- I mean January of 2014 versus November 2013." [p. 98].

Court: "I've mentioned your BOP conduct." [p. 99].

Court: "You're inflating what your doing in the BOP." [p. 99].

When Mr. Noll asked Mr. Martinovich to tell him about his activities at FCI Ft. Dix, Mr. Martinovich stated, "My first job at Ft. Dix when I got there was as a math and reading GED tutor. I did that for a couple years. I felt it was a good way to give back and help other inmates." [Atch. 23, Work Hist. Atch.33][AFF. #87].

Mr. Martinovich actually arrived at FCI Ft. Dix in December 2013 and began his tutor employment immediately. The Ft. Dix record system simply recorded this as January 2014 [See Atchs. 23, 33].

Sadly, the Probation Officer Mr. Noll turned this two-year effort of working every weekday with inmates into a negative. Mr. Martinovich worked with inmates to teach them basic math and reading in order that they may pass the GED exam and possibly have better opportunities in life when released.

Mr. Noll's offensive mis-characterization, and then attempt to create a fraudulent or "inflated" statement, greatly influenced Judge Allen and her view of Martinovich, and most certainly influenced her sentencing calculus for both Cases 4:15cr50 and 4:12cr101, as she emphatically stated her anger.

Mr. Woodward failed to object to the PSR, and then, even more astonishing, stood silent as Judge Allen verbalized these material errors, these mis-characterizations, and the great influence they had on her sentencing opinion for Martinovich. Mr. Woodward, with effective assistance, should have at a minimum challenged Mr. Noll's errors and mis-characterizations during sentencing and explained that the more than two years of contribution by Martinovich was true, and in no way was Mr. Martinovich inflating his BOP conduct. Mr. Martinovich should have received credit as a positive 3553 factor for his work with other inmates.

"There is no doubt that a criminal defendant has a due process right to have the court consider only accurate information when imposing sentence." [United States v. Pileggi, 361 Fed. Appx. 475 (4th Cir. 2009); citing United States v. Clanton, 538 F. 3d 652 (7th Cir. 2008)].

LAW LIBRARY ASSISTANT

Court: "You said that since being incarcerated that you've...also worked in the law library as an assistant." [Sent. Tr. p. 97].

Court: "(T)here were no other records pertaining to working in the law library." [p. 98].

Court: "I've mentioned your BOP conduct." [p. 99].

Court: "You're inflating what you're doing in the BOP." [p. 99].

As Mr. Martinovich continued his interview with Mr. Noll, he stated, "I've also helped out a clerk in the Law Library helping inmates with their legal challenges."

In fact, as noted in the attached Affidavit from Mr. Gary Vaughn [Atch. 41], Mr. Martinovich assisted Mr. Vaughn, who worked as a registered Law Library Clerk at FCI Ft. Dix. Pursuant to the Affidavit, Mr. Martinovich assisted over fifty fellow inmates in researching and preparing legal motions, to include § 3582 sentence reduction motions, direct appeals, § 2255 actions, § 2241 motions, and multiple administrative remedies.

Once Mr. Martinovich reviewed Mr. Noll's PSR submission, Mr. Martinovich, verbally and in writing, alerted Mr. Woodward to the technical error concerning Martinovich's Law Library work description. [See Atch. 23][AFF. #88]. Mr. Martinovich stressed the importance of truth and proficiency in the report as he was already battling against so many incorrect allegations. Mr. Woodward agreed that he would submit the list of Martinovich's PSR objections, but again failed to include these in his final Defense Position Paper, or presentation at sentencing and re-sentencing.

To exacerbate his ineffectiveness, once Judge Allen verbalized her interpretation of this BOP conduct mis-characterization and the material nature to her, and although Mr. Woodward had been urged verbally and in writing to object and clarify this issue, he again stood silent.

This error, sadly again, converted what should have been a positive 3553 support factor for Martinovich into a material negative in Judge Allen's sentencing calculus, stating, "You're inflating what you're doing in the BOP."

"There is 'no due process right to have a PSR free of (materially untrue, inaccurate information)' and there is no

error unless 'the judge...(relied) on the allegedly inaccurate information." [Pileggi; citing Clanton].

EDUCATION ASSISTANT - BUSINESS COURSE

Court: "You said that since being incarcerated that you've...been an assistant to the Director of Education...and that you also created an adult education business course for inmates reentering the job force." [Sent. Tr. p. 97].

Court: "The records reveal that he was an education orderly for two days...and no other records regarding the adult education course." [p. 98].

Court: "You're inflating what your doing in the BOP." [p. 99].

Finally, continuing his interview with Mr. Noll, Mr. Martinovich offered that he also worked as an assistant to the Director of Education, and that he had created and submitted a Cont. Education Course (ACE) to help out inmates reentering the workforce.

In fact, as noted in the attached documentation, Mr. Martinovich had truthfully reported that he had worked as an assistant to Ms. Sally Yi, Education Specialist, and had submitted a Continuing Education Course based on his book, "Building Special Companies." [Attach. 23][AFF.#89][Atch. 43].

Again, Mr. Martinovich had submitted objections, verbally and in writing [Atch. 23][AFF. #89], correcting Mr. Noll's mistakes, as well as explaining these good works in order for Mr. Woodward to submit for positive 3553 factors, which he did not.

Also again, to further exacerbate his ineffectiveness, once Judge Allen verbalized her strong feelings regarding these PSR errors and mis-characterizations, instead of correcting the Court and explaining these good deeds by Mr. Martinovich, Mr. Woodward

stood silent.

Mr. Woodward was well-noticed that these PSR failures were prejudicial and that Judge Allen even felt strongly enough to lash out at Martinovich during sentencing for attempting to deceive her. Ironically, again, Mr. Woodward's ineffective assistance turned what should have been a positive 3553 factor into a prejudicial, material, inaccurate piece of information upon which the Court relied.

"Explaining defendant's obligation to object to presentence report." [United States v. Carr, 665 Fed. Appx. 245 (4th Cir. 2016); citing United States v. Revels, 455 F. 3d 448 n.2 (4th Cir. 2006)].

"Recognizing defendant's obligation to affirmatively show that information in presentence report is inaccurate." [Carr; citing United States v. Love, 134 F. 3d 595 (4th Cir. 1998)].

Court: "Mr. Woodward, did you review the PSR with your client, and did you have adequate time to do so?"

Woodward: "Yes, Ma'am."

Court: "And as far as you know, there are no errors in the report?"

Woodward: "No, Ma'am."

[AFF. #86].

NOT CONSIDERING THE POSITIVE

Court: "The Court: All right. And, so, the factors for this sentencing are the same factors via Congress and the Sentencing Commission, so I'm not going to go over all that again." [Sent. Tr. p. 90].

Court: "I'm not considering any of the positive things you did with the community because that was all presented to Judge Doumar." [p. 97].

Court: "And those are all the factors that the Court is looking at under 3553(a)." [p. 103].

During Mr. Martinovich's sentencing for Case 4:15cr50, Judge Allen openly, verbally asserted her refusal to consider Martinovich's positive 3553(a) factors in her sentencing calculus. Judge Allen's further statement that her actions were justified because a judge in a separate, and vacated, case had been presented "positive things" fails on multiple grounds.

Counsel Mr. Lawrence Woodward was ineffective when failing, at multiple opportunities, to object to and challenge the Court's refusal to properly consider 3553(a) factors.

"In determining the appropriate sentence, a court should consider...the history and characteristics of the defendant." [Kimbrough v. United States, 552 U.S. 85, 128 S. Ct. 558 (2007)].

"18 USCS § 3553(a) tells a sentencing judge to consider...offender characteristics." [Rita v. United States, 551 U.S. 338, 127 S. Ct. 246 (2007)].

The Court was required to provide this sentencing, and the resentencing, de novo.

"In cases involving a general remand, the resentencing is de novo." [United States v. Pileggi, 703 F. 3d 675 (4th Cir. 2012)]. "At a resentencing, unless the court of appeals' mandate specifically limits the district court to specific issues, a resentencing is de novo." [United States v. Randall, U.S. App. LEXIS 10379 (4th Cir. 2000)].

Ironically, to compound these errors, previous Judge Doumar had openly stated numerous times that he was constrained by

Guidelines which did not properly give credit for positive things, and therefore could not provide this benefit for Martinovich. Therefore, Mr. Martinovich was not given credit for the "positive things" at his first sentencing, and then denied again at his sentencing-resentencing.

The one Defense Position Paper submitted for the joint 4:12cr101 and 4:15cr50 sentencing stated, "The District Court in sentencing Martinovich to 140 months (in Case 4:12cr101) initially said that sentence was a result of 'I will follow the guidelines only because I have to.' The Court also stated at the hearing that the Court in the previous sentence made numerous comments about how the guidelines had to be followed and were mandatory while also commenting about the variety of charitable and community service work that was done by Martinovich [Tr. p. 6, 7, 15, 75, 91, and 94]. The Court plainly stated that the Guidelines did not give enough weight to the good that the defendant had done in his life...A fair reading of the prior sentencing indicates that the Court would have sentenced Martinovich substantially below the Guidelines had the Court understood it could do so." [DSM p. 4-5].

Mr. Woodward's failures allowed errors to compound upon previous errors.

"When rendering a sentence, the district court must make an individualized assessment based on the facts presented,' applying the 'relevant § 3553(a) factors to the specifice circumstances of the case before it.'" [United States v. Slayton, 629 Fed. Appx. 475 (4th Cir. 2015); citing United States v. Carter, 564 F. 3d 325 (4th Cir. 2009)].

STRICKLAND FIRST PRONG

The performance prong of the test requires a defendant to show that counsel's representation fell below an objective standard of reasonableness." "There exists a right to counsel during sentencing." [Lafler]. Mr. Woodward's performance fell below even the minimum professional norm for counsel effective assistance:

1) Mr. Woodward failed to object to the Presentence Report errors which Martinovich alerted him to verbally and in writing, and which were material in nature as proven by the Court's sentencing soliloquy. [Atchs. 17-23][AFF. #87-89].

2) Mr. Woodward failed to object, challenge, or clarify the Presentence Report errors when noticed by sentencing Judge Allen of her misunderstanding, of their materiality, and of her clear intention to rely on the false information and derogatory mis-characterizations in imposing the sentences for Case 4:15cr50 and 4:12cr101.

3) Mr. Woodward failed to be present for Mr. Martinovich's Presentence Report Interview for Case 4:12cr101 and for Case 4:15cr50, while fully noticed on the complexities and contentious nature of both cases, resulting in numerous Presentence Report material errors to which he refused to object or mitigate. [AFF. #83].

4) Mr. Woodward failed to object to and challenge sentencing Judge Allen's clear assertion that she was not considering any positive factors in the history and characteristics of the

defendant, Martinovich.

5) Mr. Woodward failed to object to and challenge Judge Allen's misunderstanding that Case 4:15cr50 was not a de novo initial sentencing and that Case 4:12cr101 was not a de novo resentencing.

STRICKLAND SECOND PRONG

"Ineffective assistance of counsel during a sentencing hearing can result in prejudice because any amount of additional jail time has Sixth Amendment significance." [Lafler]:

1) Mr. Woodward's ineffective assistance allowed Judge Allen to believe, unchallenged, that Martinovich had "inflat(ed) what (he was) doing in the BOP." In this contentious fraud case, the Court's perception of continuing deceit and lack of honesty by Martinovich was fatal to the ultimate sentencing and resentencing.

2) Mr. Edwin Brooks, court-appointed appeal counsel, wrote of the results of Mr. Woodward's ineffective assistance, "It is clear that the District Court was angered by Mr. Martinovich's conduct in the 2015 case, but the Court's response to it was an abuse of discretion." [Brief, 16-4644/4648]. Mr. Woodward's failure to provide assistance clearly exacerbated Judge Allen's misunderstandings of the facts of each case and the conduct in the BOP. As stated by counsel, Judge Allen's "anger" clearly increased the final sentencing for Case 4:15cr50 and 4:12cr101,

as this conduct was fully considered and intertwined with both cases.

3) Mr. Woodward's failures, which the sentencing Court clearly relied upon by proof of her own emphatic assertions, contributed to Judge Allen's significant departure from the government plea agreement which recommended a Case 4:15cr50 sentence to run concurrent to the 4:12cr101 sentence. Judge Allen's "anger" caused her to order a two year consecutive sentence on top of the 4:12cr101 sentence, in contravention to the contract and Mr. Woodward's promises that, regarding concurrency, Judge Allen would "never go outside the plea agreement." [Atchs. 10, 20, 29][AFF. #71].

4) Mr. Woodward's failures, contributed to Judge Allen's application of a 140 months sentence for Case 4:12cr101 after counsel Mr. Woodward had assured Mr. Martinovich that his acceptance of Case 4:15cr50 and "win" of his appeal would receive a significant downward departure to the infamous "5-6 years total."[Atch. 24, 27, 28][AFF. #71].

A sentence must be set aside where the defendant can demonstrate that false information formed part of the basis for the sentence. [Koras v. Robinson, 123 Fed Appx 207 (6th Cir. 2005)].

"A sentencing court demonstrates reliance on misinformation when the court gives 'explicit attention' to it, 'found(s)' its sentence 'at least in part' on it, or gives 'specific consideration' to the information before imposing sentence." [Lechner v. Frank, 341 F. 3d 635 (7th Cir. 2003)].

5) Mr. Woodward's failures caused Judge Allen to falsely believe

that Martinovich was "inflating" and defrauding the Court when Martinovich's behavior, if presented by effective counsel, would have gained significant positive 3553 consideration for sentencing. Mr. Woodward's failures deprived Martinovich of significant positive sentencing consideration based upon his exemplary business, charitable, and community contributions, as well as his rehabilitation work for himself and other prison inmates over three years.

"When a defendant's sentence has been set aside on appeal, a district court at resentencing may consider evidence of the defendant's post sentencing rehabilitation and such evidence may, in appropriate cases, support a downward variance from the advisory Federal Sentencing Guidelines range." [Pepper v. United States, 179 LED 2D 196, 562 US 476 (2011)].

"(H)ighly relevant - if not essential - to the selection of an appropriate sentence is the possession of the fullest information possible concerning the defendant's life and characteristics." [Pepper].

"A defendant's post sentencing conduct may be taken as the most accurate indicator of his present purposes and tendencies and significantly to suggest the period of restraint and the kind of discipline that ought to be imposed upon him." [Pepper].

REMEDY

Mr. Woodward's ineffective assistance satisfies both Strickland prongs and severely prejudiced Mr. Martinovich. Mr. Martinovich respectfully requests this Court Vacate the Case

4:15cr50 sentence, as well as the Case 4:12cr101 sentence as it fully considered and included Case 4:15cr50 conduct per the plea agreement, plea acceptance hearing transcript, and sentencing hearing transcript.

GROUND XII TRIAL COUNSEL WAS INEFFECTIVE FOR VIOLATING STIPULATION AGREEMENT, FAILING TO TIMELY OBJECT AND MOVE FOR MISTRIAL, AND FOR CAUSING FAILURE OF RULE 33 MOTION FOR NEW TRIAL

On February 1, 2011, Mr. Martinovich agreed, in his personal capacity and as Chief Executive Officer of MICG Investment Management, LLC, to a Settlement Agreement with the Financial Industry Regulatory Authority (FINRA), in which Mr. Martinovich did "not admit or deny the allegations of the Complaint." [See FINRA Sett. Atch. 39].

In exchange for rescinding his demand for arbitration hearings to defend his firm and for surrendering his personal and corporate industry licenses, FINRA agreed not to impose a $1 million fine and not to pursue forfeiture of MICG Management Team's industry licenses [See "Fall of MICG, Vol. I, Ash Press 2017, Amazon Books].

Further, the Settlement Agreement stated, "Respondents also submit this offer upon the condition that FINRA shall not institute or entertain, at any time, any further proceeding as to Respondents based on the allegation of the Complaint, and upon further condition that it will not be used in this proceeding, in any other proceeding, or otherwise, unless it is accepted by the National Adjudicatory Council (NAC) Review Subcommittee, pursuant to FINRA Rule 9270." [See Sett. Ag. Atch. 39].

Trial counsel Mr. James Broccoletti entered into a Stipulation Agreement with the government to classify this agreement as inadmissible evidence. As the District Court

stated, "That agreement was based on uncertainty as to the FINRA settlement's admissibility under Rule 408(a)(1) of the Federal Rules of Evidence." [R. 33 Den.]. Not only was the settlement's details in question, but the derivation of the evidence, statements, admissions, and allegations were in question per all parties' acknowledgement of Rule 408.

Rule 408(a)(1) states that "Evidence of the following is not admissible - on behalf of either party - either to prove or disprove the validity or amount of a disputed claim or to impeach by a prior inconsistent statement or a contradiction: furnishing, promising, or offering - or accepting, promising to accept, or offering to accept - a valuable consideration in compromising or attempting to compromise the claim." [F.R.Ev. 408].

Without question, all issues, details, and information regarding the FINRA settlement were inadmissible evidence pursuant to Rule 408, and further protected by the joint Stipulation Agreement.

Trial counsel Mr. Broccoletti was ineffective for failing to abide by Rule 408 and the Stipulation Agreement. Mr. Broccoletti's failures caused extreme prejudice to Martinovich. As Mr. Broccoletti, himself, stated, "The introduction of the FINRA results so compromised the defendant's right to be tried upon the evidence presented in the courtroom...as to preclude his rights to a fair trial. [Def. Mot. J. Acq. & New Tr.]. Mr. Broccoletti's failures not only compromised the defense, but also opened the door for the government to also violate said Rules and Agreements, as well as permit the Court to allow the extreme

prejudice against Martinovich.

The District Court listed Mr. Broccoletti's ineffective assistance. "Defendant is as much responsible for the introduction of testimony concerning the closing of Defendant's investment firm and the loss of his brokerage license as the Government. In his opening statement, defense counsel acknowledged that Defendant's investment firm had to close its doors. Defendant's counsel further claimed that Defendant's investment firm flourished and, 'but for the significant financial downturns in the market in 2008,' would have continued flourishing. The opening statement was consistent with Defendant's strategy throughout trial." [R. 33 Den. p. 19].

The District Court continued to itemize Mr. Broccoletti's failures. "Defendant's counsel continued to make reference to the results of the FINRA investigation in his closing argument, emphasizing to jurors that neither 'the fact that his [Defendant's] business closed' nor 'the fact that he [Defendant] no longer has a license' is evidence of criminal conduct. Defendant, therefore, made the reason for his firm's closure a central theme and repeatedly brought up the 'results' of the FINRA investigation throughout trial." [R. 33 Den. p.19].

The District Court furthered its itemization of Mr. Broccoletti's ineffective assistance as it addressed Mr. Broccoletti's post-trial complaint of a government witness being allowed to violate the Stipulation Agreement. "Defendant's counsel did not object to any of those questions when they were asked. Defendant's counsel did not object to that line of

questioning prior to engaging the witness in cross-examination. In fact, Defendant's counsel did not object to that line of questioning on the day it occurred...Defendant did not move for a mistrial...Defendant's (later) objection to the testimony was untimely...Defendant repeatedly failed to raise timely objections to that testimony." [R. 33 Den. p. 20].

The District Court also pointed out, "The Court stated that it was providing a copy of the indictment to the jury for use during its deliberations. Defendant's counsel did not object to the jury's review of the indictment (which)...makes express reference to those results." [R. 33 Den. p. 20].

Finally, the District Court emphasized that, in direct contravention to Rule 408's explicit directions, "Defendant's counsel also saw fit to introduce dozens of pages of sworn testimony before FINRA investigators in an effort to discredit a key Government witness...more often than not, defense counsel was responsible for the results being referenced." [R. 33 Den. p. 20].

LEGAL STANDARDS

"The individual can seek to protect against subsequent disclosure through negotiation and agreement with the civil regulator or an attorney for the government." [F.R. Evidence 408, Notes of Advisory Committee on 2006 Amendments].

"A target of a potential criminal investigation may be

unwilling to settle civil claims against him if by doing so he increases the risk of prosecution and conviction." [Fishman, Jones on Evidence, Civil & Criminal, Sec. 22:16 at 199, n. 83 (7th ed. 2000)].

"Statements made in negotiations cannot be used to impeach by prior inconsistent statement or through contradiction." [McCormick on Evidence at 186 (5th ed. 1999)].

"Settlement offers are excluded under Rule 408 even if it is the offeror who seeks to admit them." [Pierce v. F.R. Triples & Co., 955 F. 2d 820 (2nd Cir. 1992)].

STRICKLAND FIRST PRONG

1) Mr. Broccoletti violated F.R.Ev. 408 and the relevant Stipulation Agreement by introducing facts and issues of Martinovich's FINRA settlement in his opening and closing statements, as determined by the District Court.

2) Mr. Broccoletti repeatedly failed to timely object to the government's questioning which violated Rule 408 and the relevant Stipulation Agreement, as determined by the District Court.

3) Mr. Broccoletti failed to move for a mistrial when appropriate as the government violated Rule 408 and the relevant Stipulation Agreement, as determined by the District Court.

4) Mr. Broccoletti failed to object to the Court providing a copy of the indictment to the jury which violated Rule 408 and the relevant Stipulation Agreement, as determined by the District Court.

5) Mr. Broccoletti violated Rule 408 and relevant Stipulation Agreement by introducing dozens of pages of sworn testimony before FINRA investigators in an attempt to impeach by a prior inconsistent statement or a contradiction, as determined by the District Court.

STRICKLAND SECOND PRONG

There is a reasonable probability that, but for Mr. Broccoletti's unprofessional errors, the result of Mr. Martinovich's trial and Motion for New Trial would have been different. [Strickland].

1) Mr. Broccoletti, himself, stated, "The introduction of the FINRA results so compromised the defendant's right to be tried upon the evidence presented in the courtroom, and not on some other investigation by another body, as to preclude his rights to a fair trial.". [Mot. FRCP 33]. Mr. Broccoletti continued, "All of the information undoubtedly left the jury with the impression that a high ranking official with likely more experience in the field of securities had already found Martinovich guilty of the

fraudulent activities. See, United States v. Root, 103 F. 3d 823 (5th Cir. 1997)...Would evidence that a former jury determined guilt be admissible if that judgment was reversed on appeal? The defendant thinks not, therefore the introduction of this evidence is irrelevant and prejudicial to the extent it warrants a new trial." [FRCP 33].

2) As Mr. Broccoletti continued to open the door and violate this Stipulation, even District Court Judge Doumar believed the errors were so prejudicial that he determined a curative jury instruction was in order. Judge Doumar stated, "I'll tell them they're not to consider any investigation of any kind." Unfortunately, the debacle initiated by Mr. Broccoletti kept degrading as Judge Doumar became confused and adlibbed, stating the exact opposite instruction, "the defendant's organization was put out of business(!)" [Tr. p. 1106]. "(B)ecause we do not know what the jury would have concluded had there been no instructional error, a new trial on the counts of conviction is in order." [Bravo-Fernandez v. United States, 196 LED 2d 242, 137 S. Ct. (2016)].

3) Mr. Broccoletti's repeated failures severely prejudiced Mr. Martinovich in the eyes of the jury, against the protections of FRE 408, against the protections of FRE 403 providing that the court may exclude relevant evidence if its value is substantially outweighed by a danger of unfair prejudice, and against the specifice protection of the Stipulation Agreement.

4) Mr. Broccoletti permitted the jurors during deliberation to review the indictment which included prejudicial information meant to be precluded by the Stipulation Agreement, FRE 408, and FRE 403.

5) Mr. Broccoletti severely prejudiced Mr. Martinovich during trial by not timely moving for a mistrial when, per the Court's order, it would have been properly considered and had a reasonable probability of being granted [Order, FRCP 33].

6) Mr. Broccoletti severely prejudiced Mr. Martinovich on Motion for Acquittal per FRCP 29 and New Trial per FRCP 33 by his repeated failures and ineffective assistance causing both Motions to be denied even though the District Court repeatedly did not deny the errors and substantial prejudice to the defendant Martinovich.

Mr. Broccoletti, himself, stated repeatedly that these violations against Martinovich were so prejudicial that they warrant a New Trial, and the District Court, itself, stated repeatedly that Mr. Broccoletti is solely responsible for these prejudicial violations. Herein lies, by definition, the satisfaction of Strickland's first and second prongs.

REMEDY

Mr. Martinovich respectfully requests the court Vacate the Conviction and Sentence of Case No. 4:12cr101.

GROUND XIII: SENTENCING COUNSEL WAS INEFFECTIVE FOR AGREEING TO THE HIGH END OF THE GUIDELINES RANGE OR FOR NOT CHALLENGING THE COURT'S RELIANCE ON MATERIALLY FALSE INFORMATION CLAIMING COUNSEL AGREED TO THE HIGH END.

On September 29, 2016, during Mr. Martinovich's resentencing of Case 4:12cr101 and sentencing for Case 4:15cr50, District Court Judge Allen declared, "(A)nd the guideline range in this instance is 51 to 63 months. And the government has asked for 63 months to run concurrent with the sentence I imposed on the 2012 case, and Mr. Woodward has agreed with that." [Sent. Tr. p. 91 emp. add.].

Sentencing counsel Mr. Lawrence Woodward, again, stood silent. Mr. Woodward provided harmful ineffective assistance by either secretly, without Martinovich's knowledge, having agreed to the top end of the plea agreement's recommended 51-63 months Guidelines range, or by failing to object and challenge the Court's open reliance on materially false information claiming he had endorsed this high-end sentence.

The relevant Plea Agreement states, "In accordance with Rule 11(C)(1)(B) of the Federal Rules of Criminal Procedure, the United States and the defendant will recommend to the Court that the sentence imposed on Count 10 run concurrent to any sentence imposed for the defendant's convictions in Criminal Case No. 4:12cr101." [Plea Agr. Emphasis in Orig.].

At sentencing, the government stated, "We're asking the court to impose 63 months on the second case, and we've asked for

it to run concurrently." [p. 88].

At sentencing, Mr. Woodward stated, "I agree that the sentence that is contemplated by the plea agreement, although not binding but certainly arrived at after much negotiation and significant concessions by Mr. Martinovich -- that it run concurrent...I would ask that you follow the recommendations of the plea agreement." [p. 89-90].

The Defense Position Paper states, "The defense requests that the Defendant, Jeffrey A. Martinovich, be sentenced substantially below the agreed guideline range and that the sentence imposed on Count 10 in Case 4:15cr50 run concurrent as contemplated by the plea agreement and agreed to by the United States." [DPP, p. 2].

Martinovich at no time agreed to the top end of the Guidelines range, nor did he authorize Mr. Woodward to agree to the top end of the Guidelines range. Mr. Woodward at no time communicated to Mr. Martinovich that he desired to, intended to, or had agreed to the top end of the Guidelines range. [AFF. #91].

Also, if Mr. Woodward had not secretly agreed, he failed to object to, or clarify, Judge Allen's materially false statement that the defense had agreed to a 63-month, top of the Guidelines range sentence.

LEGAL STANDARD

The defendant establishes prejudice to the defense - for purposes of asserting a violation of the right to effective counsel under the Federal Constitution's Sixth Amendment - where the determination, about which defense counsel failed to argue,

allegedly increased the defendant's prison sentence by at least 6 months and perhaps by 21 months." [Glover v. United States, 531 US 198, 148 L Ed 2d 604, 121 S. Ct. 696 (2001)].

"To prevail on such a claim, the petitioner must show, at a minimum, (1) that the information before the sentencing court was materially false, and (2) that the court relied on the false information in imposing the sentence." [United States v. Tucker, 404 UA 92 S. Ct. 589, 30 L Ed 2d 592 (1972)].

"The court relied upon incorrect facts as the basis for its ruling." [Bodkin v. Town of Strasburg, 386 Fed Appx. 411 (4th Cir. 2010)].

"We ordinarily interpret a plea agreement according to the agreement's plain language." [United States v. Holbrook, 368 F. 3d 415 (4th Cir. 2004)]. "To examine this statute, we begin by examining its plain language." [Ramey v. Director, 326 F. 3d 474 (4th Cir. 2003)].

"(A)ny ambiguity must be resolved in favor of the defendant under the rule of lenity." [United States v. Schrader, 675 F. 3d 300 (4th Cir. 2011)].

STRICKLAND FIRST PRONG

The performance prong of the test requires a defendant to show that counsel's representation fell below an objective standard of reasonableness." [Lafler]. "There exists a right to counsel during sentencing." [Lafler]. Mr. Woodward's performance fell below even the minimum professional norm for counsel effective assistance:

1) If Mr. Woodward secretly agreed to the 63-month sentence, his performance fell below a professional norm and violated the plea agreement, the Defense Position Paper, and his duty to provide an honest, vigorous defense for Mr. Martinovich.

2) If Mr. Woodward had not secretly agreed, he failed to object and challenge Judge Allen's spoken understanding that Mr. Woodward had agreed to a 63-month sentence.

3) Mr. Woodward failed to provide a vigorous defense for his client and, at a minimum, move the Court to provide a 51-month sentence at the low end of the Guidelines range, consistent with the plea agreement, the Defense Position Paper, and Mr. Martinovich's 3553(a) factors.

4) Mr. Woodward failed to object and clarify that the sentencing Court provide and operate under the correct plain language consistent with the parties' agreements and consistent with his client's best interests.

STRICKLAND SECOND PRONG

"Ineffective assistance of counsel during a sentencing hearing can result in prejudice because any amount of additional jail time has Sixth Amendment significance." [Lafler]:

1) There is a reasonable probability that if Mr. Woodward had objected and corrected Judge Allen that he did not agree with a 63-month sentence, and if he had vigorously argued for a bottom

of the Guidelines range sentence, that Judge Allen would have reconsidered her automatic determination, as she was clearly under the belief that all parties had agreed to 63 months. [Tucker].

2) In relevance to the concurrence with the Case 4:12cr101 sentence, this sentencing error cannot be held harmless due to its shorter duration than the eventual 4:12cr101 sentence. Case 4:12cr101 is a separate case, separate sentence, which Mr. Woodward knew or should have known would be challenged by, at a minimum, a Motion pursuant to 28 U.S.C. § 2255, being outside any waiver provisions, and very possibly having the conviction and sentence overturned as supported by the Fourth Circuit.

3) This Court cannot determine the full innerworkings of Judge Allen's sentencing calculus on September 29, 2016, even herself attempting to reconstruct her logic and motivation on this complex day with a plethora of errors and irregularities, and respectfully must follow the plain language with any ambiguity resolved in favor of Mr. Martinovich. [Schrader].

4) Mr. Woodward's failures did not allow the sentencing Court to properly consider that possibly the 51-month sentence at the bottom of the Guidelines range was more appropriate and instead "allegedly increased the defendant's prison sentence by (12 months)." [Glover]. Judge Allen's decision to run two years consecutive, instead of concurrent, is mathematically irrelevant in relation to the ultimate time to be served, or potentially served per issue #2 above.

REMEDY

Mr. Woodward's ineffective assistance satisfied both Strickland prongs and severely prejudiced Mr. Martinovich. Mr. Martinovich respectfully requests this Court vacate the Case 4:15cr50 sentence as well as the Case 4:12cr101 sentence as it fully considered and included Case 4:15cr50 per plea agreement, plea acceptance hearing, and sentencing hearing.

GROUND XIV: APPEAL COUNSEL WAS INEFFECTIVE FOR FAILING TO ARGUE THAT THE GOVERNMENT'S OBJECTION PRESERVED THE COURT'S ABUSE OF DISCRETION FOR REVIEW ON APPEAL.

As addressed in Ground I, II, & III, District Court Judge Doumar was severely biased against the defense and interfered with the defense "beyond the pale," as confirmed by the Fourth Circuit. Appeal counsel Mr. Woodward presented this argument to the appeals panel, stating that these errors had not been properly objected to, or preserved, at trial and therefore were to be reviewed only at the extremely high bar of plain error review, as opposed to the much lower standard of harmlessness review. As confirmed by the Fourth Circuit Judges, this high bar constrained the panel from most likely overturning Martinovich's conviction.

At trial, during the abusive interference in defense counsel's questioning of the key defense witness, Auditor Mr. Umscheid, District Judge Doumar rose to his feet, removed the jury from the courtroom, and further berated Mr. Umscheid on the perils of perjury.

Following the ensuing break in proceedings, trial counsel Mr. Broccoletti returned from an impromptu conference with Mr. Brian Samuels, AUSA, and Ms. Kathleen Dougherty, AUSA. Mr. Broccoletti pulled Mr. Martinovich aside and stated, "Samuels is worried that there is going to be a mistrial. Doumar is out of control. He's going to take care of it after the break." [AFF. #92].

Before the jury was called back into the courtroom, AUSA

Samuels motioned the Court for both the government and defense counsel to hold a sidebar at the bench. With all parties present, Mr. Samuels stated, "Judge, I did want to raise something. I'd like to do it out of the hearing of the witness if we could. Could we come up to the sidebar...Judge, given the court's comments and concerns...I just want to be certain that the record is clear that we will raise these and object to those concerns when we feel they are appropriate and raise it during cross-examination. I just don't want there to be an issue with this down the road, so I don't feel its incumbent on us as the government to protect the record and just bring this up now in terms of the court's concerns." [Tr. p. 2529].

Following this counseling session provided by Mr. Samuels, Judge Doumar was remarkably controlled and respectful, as documented in the trial transcripts and Martinovich's Pro Se Supplemental Briefs. Clearly, Judge Doumar had understood this objection to his egregious behavior, and, clearly, he had taken this motion under consideration and, at least for a time period, reduced his interference of counsel to present a defense.

As recent as 2014, the Fourth Circuit has left undecided the issue of whether an "objection of argument made by the government could be sufficient to preserve

an appellate issue for a criminal defendant." [United States v. Isdell, 598 Fed Appx 139 (4th Cir. 2014)]. A critical function in Mr. Woodward's effective assistance on appeal is to be knowledgeable of which case-critical issues have favorable Circuit precedence rulings, and which issues remain undecided. This issue, the gravamen of Mr. Martinovich's argument to overturn his conviction, could not have been more critical.

For Fourth Circuit Direct Appeal Case No. 13-4828, from District Court Case No. 4:12cr101, court-appointed appeals counsel Mr. Woodward received Mr. Martinovich's Pro Se Supplemental Appeal Brief and in his words "narrowed it down to the four strongest arguments" for the Appeal Opening Brief. [AFF. #93]. Against Mr. Martinovich's repeated protest, Mr. Woodward inserted in the Court Conduct argument, "The comments and conduct of the trial court were not objected to by defense counsel. Thus the court reviews it for plain error to determine if it impinged on defendant's substantial rights and affected the outcome of the proceeding." Mr. Martinovich disagreed with Mr. Woodward's assumption, and at a minimum, believed that this issue should have been presented to the Court of Review to determine if these egregious errors had been properly preserved. Although Mr. Woodward was in possession of Mr. Martinovich's Brief and was properly noticed of the occurrences documented in this Ground, Mr. Woodward refused to address the issue with the Appeals Court.[AFF.#9

The overarching purpose for the Appeals Court requiring objection and preservation of errors at the District Court level is to give the lower Court the opportunity to correct errors and to protect the efficiency of the Courts while protecting the

rights of the parties in the instant sense. As the Ninth Circuit summarized, "Where trial court is not given opportunity to correct error, appellate court will not ordinarily consider point." [Barnes v. United States, 215 F. 2d 91 (1954, CA9 Ariz)]. And, in this instant case, Judge Doumar was provided a sidebar conference with both parties which communicated in no unceertain terms the parties' objections to his behavior and which documented this for the record. The parties provided Judge Doumar every opportunity to correct his errors, yet, unfortunately after the objection wore off, he resumed his egregious abuse and interference.

Fed. Rules Crim. P. 51 states, "Party may preserve a claim of error by informing the court...of the action the party wishes the court to take, or the party's objection to the court's action and the grounds for that objection." [FRCP 51]. Following their discussion during the break in trial, this is exactly what Mr. Samuels did in the sidebar conference with Judge Doumar. As he showed great respect for the tenured 83-year old judge by holding a sidebar out of hearing of the jury and the witness, Martinovich should not be penalized for Mr. Samuels' respect and discretion.

"Colloquy between defense counsel and judge about proper test of insanity sufficiently enlightened court as to point being raised that Court of Appeals can consider issue, where at trial Government objected to questioning of defendant's psychiatrist as inadquately defining standard of responsibility and court, without ruling directly on objection declared that it was using strict standard, and defense counsel answered that he would so confine his questions." [United States v. Freeman, 357 F. 2d 606

(1966, CA2NY)]. Freeman exemplifies the Appeals Court's desire to respect the spirit of the rule. The Government is the party which "officially" objected, the Judge was "sufficiently enlightened," and the court did not rule "directly on objection" yet its actions documented that it was noted and considered. This was preserved for appeal review. Again, this is exactly what occurred in Mr. Martinovich's trial.

"Rule 51, which requires that party make known to court action which he desires court to take or his objection and grounds therefore, ought not to be applied in a ritualistic fashion and where problem has been brought to court's attention and court has indicated in no uncertain terms what its views are, to require further objection would exalt form over substance." [United States v. Williams, 128 US App DC 410, 561 F. 2d 859 (1977, App. DC)].

Clearly, Mr. Woodward did not appreciate the prior precedence and currently open Fourth Circuit opinion on the subject. In Martinovich's case, form has been exalted over substance. To reconstitute the words of the Honorable Judge Allen of the Eastern District of Virginia, Mr. Woodward "threw Mr. Broccoletti under the bus." Mr. Woodward should have left this decision for the Appeals Court to decide as in providing Martinovich effective and vigorous assistance.

Finally, Mr. Woodward multiplied his ineffective assistance and the prejudice against Martinovich by specifically, proactively requesting plain error review instead of allowing a beneficial interpretation by the much more learned legal scholars of the Fourth Circuit.

"Successive panels of this court have stated that 'we do not apply plain-error review unless a party asks." [United States v. Martinez, 432 Fed. App. 526 (6th Cir. 2011); citing United States v. Escalon-Velasquez, 371 F. Appx 622 (6th Cir. 2010)]. "Because the government has not asked for plain-error review, we review Cribb's claims using an abuse of discretion standard, despite the fact that he did not object." [United States v. Cribbs, 522 Fed Appx. 280 (6th Cir. 2013)]. "We review Graves's procedural challenge for an abuse of discretion, rather than for plain error (given his failure to properly preserve it at sentencing), because the government has not asked for plain-error review." [United States v. Taylor, 696 F. 3d 628 (6th Cir. 2012)].

As a respectful reminder to the Court, the Fourth Circuit on review of Judge Doumar's egregious abuse and interference repeatedly stated, "(I)n light of plain error standard of review," "(w)e may not intervene," "Accordingly we must uphold the jury's verdict," and "Again, however, we were constrained by plain error." [United States v. Martinovich, 810 F. 3d 232 (4th Cir. 2016)].

STRICKLAND FIRST PRONG

Mr. Woodward's "representation fell below an objective standard of reasonsableness:" [Strickland].

1) Mr. Woodward failed to argue to the Fourth Circuit that the egregious errors of Judge Doumar were properly preserved for review by the Appeals Court. Or, at a minimum, Mr. Woodward failed to assert that this issue has remained undecided in the

Fourth Circuit and has been decided favorably to Mr. Martinovich in sister Circuits, in order for the Appeals Court to review the specific question asked.

2) Mr. Woodward failed to thoroughly research the case, the record, or even interview trial counsel in regards to this most-lethal error for Mr. Martinovich's defense, in order to understand the applied legal strategy, or the Fourth Circuit precendence.

3) Mr. Woodward multiplied his failures by specifically, proactively requesting the Court of Appeals review Judge Doumar's errors only at the extremely high bar of plain-error standard of review, further damaging Mr. Martinovich's ability for the Court to review these egregious errors at a more favorable standard of review.

STRICKLAND SECOND PRONG

"There is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." [Strickland]:

1) Mr. Woodward's failures did not allow or encourage the Court of Review to analyze the occurrences of trial and to, at a minimum, reach their own conclusion to the noted objection and preservation, given the historical precedence of an undecided position, as well as sister Circuit positions favorable to Mr. Martinovich. [Martinez; Escalon-Valasquez; Cribbs; Taylor].

2) There is a reasonable probability that Mr. Woodward's vigorous defense and explanation of the government's actions would have allowed the Court of Appeals Panel to conclude that Judge Doumar's errors should be reviewed as abuse of discretion and for harmlessness review. [Williams; Freeman].

3) Although conflicting information may have been provided, there is most definitely a reasonable probability that but for the constraint of plain error review, the Court of Appeals would have overturned Mr. Martinovich's conviction. Based on the language of the Opinion, as well as the Concurring Opinion, respectfully, this Court must reach this reasonable probability. [Martinovich].

REMEDY

Mr. Woodward's ineffective assistance satisfied both Strickland prongs, and Mr. Martinovich was severely prejudiced. Mr. Martinovich respectfully requests that the Fourth Circuit Order of Case 13-4828 be vacated and the conviction and sentence of Case 4:12cr101 be vacated, and in the alternative for this Court to grant the relief it deems just and appropriate.

GROUND XV: THE GOVERNMENT BREACHED THE PLEA CONTRACT MAKING IT NULL AND VOID BY FAILING TO ADHERE TO ITS TERMS

The government promised in the plea contract in plain language, "The parties agree that restitution will be determined by the Court at sentencing." This significant inducement for Martinovich to sign the proposed contract was later breached by the government's motions to unilaterally modify the restitution contracts against the objection of Mr. Martinovich. The plea contract specifically controlled the Case 4:12cr101 sentence, as well as the Case 4:15cr50 guilty plea and sentence.

PROCEDURAL HISTORY

1) On January 7, 2016, the Fourth Circuit vacated Martinovich's sentence, which Order directed the District Court to reconsider Loss and Restitution based upon Martinovich's Appeal arguments.

2) On April 27, 2016, Mr. Martinovich signed a Plea Contract promising "restitution will be determined by the Court at sentencing."

3) On September 29, 2016, Restitution Orders were determined by the Court, finalized, and signed by Martinovich for Case No. 4:12cr101 and No. 4:15cr50, as the plain language promised in the plea contract.

4) On February 13, 2017, the government breached the plea contract and unilaterally motioned the District Court to now

modify restitution orders in Case Nos. 4:12cr101 and 4:15cr50, Documents #51 and #251 respectively. Mr. Martinovich received notice on February 21, 2017.

5) Mr. Martinovich timely filed Motion to Object to modification of restitution orders and noted requirement to vacate sentences and judgments, Documents #52 and #255, docketed by the District Clerk on March 3, 2017.

6) Mr. Martinovich received notice of Order granting the government's breach, Document #53, in Case No. 4:15cr50, on April 10, 2017.

7) Third-party review of the Case No. 4:12cr101 docket noted the District Court granted the same breach, Document #253, in Case 4:12cr101 sua sponte on February 14, 2017, one day after the government's submission and a week prior to Martinovich receiving notice of the government's proposed changes to the Contract, of which Martinovich is party. Martinovich received no notice of this Order.

8) Mr. Martinovich timely filed a notice of appeal for Case Nos. 4:12cr101 and 4:15cr50 on April 11, 2017.

9) Mr. Martinovich submitted Appeal Opening Briefs in Case No. 17-6651 and No. 17-6652 on June 9, 2017.

10) The UNITED STATES declined to file a timely Reply.

11) Mr. Martinovich filed a timely Motion Pursuant to F.R.Civ.P. 60(b)(3) to Object to Government Breach of Contract on July 11, 2017, preserving this Objection to Breach in the District Court.

LEGAL STANDARD

It is well-established that the interpretation of plea agreements is rooted in contract law, United States v. Dawson 587 F. 3d 640 (4th Cir. 2009). The Government breaches a plea agreement when a promise it made to induce the plea goes unfilled, Santobello v. New York, 404 U.S. 257, 92 S. Ct. 495, 30 L. Ed 2d 427 (1971). When interpreting a plea agreement, we enforce the agreement's plain language in its ordinary sense, United States v. Jordan, 509 F. 3d 191, 195 (4th Cir. 2007). Where the terms of an agreement are ambiguous, they must be construed against the Government, United States v. Harvey, 791 F. 2d 294, 404 (4th Cir. 1986). (Martinovich) bears the burden of establishing a breach of his plea agreement by a preponderance of the evidence, United States v. Snow, 234 F. 3d 187, 189 (4th Cir. 2000).

"A government breach of such a promise violates due process," [United States v. O'Brien, US App LEXIS 899 (4th Cir. 1997)]. "The appeals court found that the government's breach of the plea agreement released Gonzalez from his promise not to appeal." [United States v. Thomas, US App LEXIS 4277 (4th Cir. 1996); noting United States v. Gonzalez, 16 F. 3d 985 (9th Cir. 1993)]. "Although the court employs traditional principles of contract law as a guide, it nonetheless gives plea agreements greater scrutiny than it would apply to a commercial contract because a defendant's fundamental and constitutional rights are implicated when he is induced to plead guilty by reason of a plea agreement." [United States v. Warner, 820 F. 3d 678 (4th Cir.

2016)].

A defendant's waiver of appellate rights cannot foreclose an argument that the government breached its obligations under the plea agreement. The court may review that claim; it is not barred by the appeal waiver. [United States v. Dawson, 587 F. 3d 640 n.4 (4th Cir. 2006); citing United States v. Cohen, 459 F. 3d 490 (4th Cir. 2006)].

"We must apply fundamental contract and agency principles to plea bargains as the best means to fair enforcement of the parties agreed obligations." [United States v. McIntosh, 612 F. 2d 835 (4th Cir. 1979)].

"When a plea rests in any significant degree on a promise or agreement of the prosecutor, so that it can be said to be part of the inducement or consideration, such promise must be fulfilled." [United States v. warner, 820 F. 3d 678 (4th Cir. 2016); citing Santobello, 404 U.S. at 262].

"As a result when the (sentencing judge) reached a decision contrary to that anticipated by the plea agreement, the purpose of the plea agreement was never fulfilled. Regardless of the reasons for the frustration of the bargain, that frustration calls into question the validity of the plea." [United States v. Jureidini, 846 F. 2d 964 (4th Cir. 1988)].

"(A) defendant's plea of guilty can truly be said to be voluntary only when the bargain represented by the plea agreement is not frustrated." [United States v. Holbrook, 368 F. 3d 415 (4th Cir. 2004)].

"(T)he fact that the breach of agreement was inadvertent not being material and not lessening the impact of the breach."

[Santobello].

"Under law of the U.S. Court of Appeals for the Fourth Circuit, where the bargain represented by the plea agreement is frustrated, the district court is best positioned to determine whether specific performance, other equitable relief, or plea withdrawal is called for." [United States v. Bowe, 257 F. 3d 336 (4th Cir. 2001)].

"Santobello did hold that automatic reversal is warranted when objection to the Government's breach of a plea agreement has been preserved...that holding rested...upon a policy interest in establishing the trust between defendants and prosecutors that is necessary to sustain plea bargaining - an 'essential' and 'highly desirable' part of the criminal process." [Puckett v. United States, 173 LED 2D 266, 556 U.S. 129 (2009); citing Santobello].

ARGUMENT

On April 27, 2016, Mr. Martinovich was induced to sign the plea contract for Case No. 15cr50, which also inter-joined and controlled re-sentencing for Case No. 4:12cr101. Page five of this contract states in plain language in its ordinary sense, "The parties agree that restitution will be determined by the Court at sentencing." [p. 5, para. 8].

This bargain presented by the government was a significant inducement and consideration in the mind of Martinovich prompting his acceptance of this contractual offer. Martinovich had diligently fought for the District Court and the Appeals Court to finally recognize and reconsider the previously-applied

restitution, and its corresponding loss assumption, along with the newly-proposed restitution calculation by the government. [AFF. #95].

Based on Martinovich's Appeal Brief and Pro Se Supplemental Brief, the Fourth Circuit addressed the "restitution, forfeiture, and loss amount" by instructing, "Because we vacate Appellant's sentence on other grounds, we need not reach these issues, but leave those for the re-sentencing court to decide in the first instance."

Mr. Martinovich put great value on this bargain that, finally after his substantial input to the Appeals Court, plus the tremendous amount of restitution and loss evidence presented to sentencing counsel Mr. Woodward, his "restitution (would) be determined by the Court at sentencing." Mr. Martinovich also put great value on the finality of this determination as Mr. Woodward, prior to the April 27, 2016, signing, advised Mr. Martinovich that although he may be agreeing to a recommended guidelines range, Judge Allen's reconsideration and determination of loss and restitution would be a significant factor in her downward variance calculation for Case No. 4:12cr101 and low, concurrent sentencing for Case No. 4:15cr50. [Atchs. 20, 26][AFF. #96]. Prior to signing the plea contract, Mr. Woodward spent a great deal of time with Mr. Martinovich to understand the proper loss and restitution calculations for both cases [See Mtg. Notes Atch.10,11,. According to Mr. Woodward, this determination and finality to lock in a now-correct number was key in order to achieve the now infamous "5-6 years total deal" which Martinovich was led to believe had been negotiated. [AFF. #97].

Proper closure on the restitution issue played a key role in

Martinovich's decision to agree to the plea contract and sentencing. Martinovich's contemporaneous meeting notes with Mr. Woodward in the Western Tidewater Regional Jail confirm his focus on restitution being determined at sentencing:

1) "Restitution is determined at sentencing so we have to ensure not stupid." [Atch. 10][AFF. #98].

2) "Restitution clarification is needed." [Atch. 11][AFF.#98].

3) "Noted Govt. restitution order request $2.5 million @ 25% of all net income at back of Govt. position paper." [Atch.31][AFF.#92].

4) "Larry says I will 'be given credit for any of the Partners hedge Fund money not spent on me/defense' ($300k-$400k on fund expenses) - How does he know?" [Atch.31][AFF.#98].

5) "$721k number incorrect and you/we need this % calculations - couple #'s look too large - Do not believe anyone owned 12% of Partners Fund (unless MICG, LLC)" [Atch.21][AFF.#98].

6) "Restitution for Case #2 - $100k to $700k = 6 points on new table." [Atch.20][AFF.#98].

7) "Larry reiterated both restitution and forfeiture have hearings if I don't agree with the number - plea doesn't say that on forfeiture." [Atch.29][AFF.#98].

8) "Forfeiture $700k is crazy - Can't just blackmail a #" [Atch.14][AFF.#98].

9) "Maybe show plan beyond restitution # for shareholders." [Atch.30][AFF.#98].

10) "Restitution Proposed Schedule" [Chart Atch.15][AFF.#98].

"Judges should look to contemporaneous evidence to substantiate a defendant's expressed preferences." [Lee v. United States, 2017, U.S. LEXIS 4045 S. Ct. (2017)]. Had the Government not contractually promised to have restitution determined at sentencing, and contrarily be left as an open item to be unilaterally modified at a later date, Martinovich would

definitely not have signed the proposed plea contract. The Court may not accord any prejudice or results of possible future judicial proceedings or outcomes that never took place. [Lee]. "We cannot agree that it would be irrational for a defendant in Lee's position to reject the plea offer." [Lee].[AFF. #99].

Martinovich has above confirmed how this inducement and promise was a significant part of the consideration and how this inducement cannot be held to be harmless or immaterial. Yet, even beyond this fact, Santobello holds that automatic reversal in these instant two cases is warranted, regardless of any interpreted materiality. "(A)utomatic reversal is warranted when objection to the Government's breach of a plea agreement has been preserved," as Martinovich properly preserved in the District Court. [Santobello].

This plea contract is to be interpreted under contract law with greater scrutiny than would even apply to commercial contracts as Martinovich's fundamental and constitutional rights were implicated, as well as with any ambiguities being construed against the government.

Respectfully, this District Court may not remedy this breach through specific performance or other equitable relief, but only by the withdrawal of the plea contract. Subsequent actions, with numerous variables decided and disclosed have frustrated the contract and the bargain considered. Martinovich cannot be placed in the same factual or strategic position as when previously accepting the plain consideration proposed by the government. Implementing a subsequent action founded upon this frustrated, breached contract would seriously violate

Martinovich's contractual, due process, and equal protection rights. Only a full rescission of this contract remedies the government's breach in a manner that does not further diminish the rights of Martinovich.

REMEDY

Mr. Martinovich respectfully requests this Court vacate the relevant Plea Agreement and vacate the sentence and conviction of Case 4:15cr50 controlled by this Agreement, as well as the sentence of Case 4:12cr101 controlled by this Agreement, and in the alternative to grant relief this Court deems just and appropriate to include appeals and waivers.

GROUND XVI: SENTENCING COUNSEL WAS INEFFECTIVE FOR ADVISING DEFENDANT TO ENTER ILLEGAL PLEA CONTRACT AND FOR NOT OBJECTING TO ILLEGAL PROCEEDINGS VOIDING CONTRACT.

Sentencing counsel Mr. Woodward was ineffective for advising Mr. Martinovich to enter an illegal and void contract with the United States, as well as failing to object to and challenge illegal proceedings which voided any contractual agreement. Mr. Woodward advised Mr. Martinovich to enter a proposed contract (1) with an illegal provision creating a conflict of interest between counsel and defendant, (2) with an illegal provision denying defendant's requests under the Freedom of Information Act (FOIA), (3) negotiated and accepted in the period which the District Court asserted and noticed all parties of its determination beyond a reasonable doubt that Martinovich was suffering from a mental disease or defect, and (4) which is an unconscionable and ultra vires agreement as negotiated by Mr. Woodward. Mr. Woodward's assistance fell below even the minimum professional norm required of counsel.

1. Mr. Woodward was ineffective for advising Mr. Martinovich to agree to the plea contract which states, "The defendant is satisfied that the defendant's attorney has rendered effective assistance." [Plea, p.2, para.3]. This fraudulent attempt at creating a future waiver against Martinovich bringing redress against the counsel who was negotiating a contract on Martinovich's behalf is clearly Conflict of Interest 101. Court-

appointed appeals attorney, Mr. Edwin Brooks, stated, "(P)rior counsel negotiated the Plea Agreement and advised Mr. Martinovich to execute it without advising Mr. Martinovich that counsel had a conflict of interest created by the inclusion of the language that appears to be aimed at insulating trial counsel from a Motion to Vacate pursuant to 28 U.S.C. § 2255." [Resp. Mot. Dis. 2/28/17].

The Fourth Circuit has held that the Sixth Amendment right to effective assistance of counsel includes a duty of loyalty by counsel "that requires the attorney to remain free from conflicts of interest." [Stephens v. Branker, 570 F. 3d 198 (4th Cir. 2009)]. This advice to Martinovich occurred during the plea stage of this case which is recognized as a "critical stage" in criminal representation for Sixth Amendment ineffective assistance of counsel purposes. [Missouri v. Frye, 132 S. Ct. (2012)].

These proactive, fraudulent attempts to put counsel's interests ahead of defendant's "create a non-waivable conflict of interest between the defendant and his attorney." [United States v. Ky. State Bar, 20013-sc, 270-kb (Ky. 2014)]. Also, the U.S. Supreme Court has confirmed that if a petitioner can show counsel operated under a conflict of interest, he does not even have to show he was prejudiced. [Cuyler v. Sullivan, 446 U.S. 335, 350 (1980)].

Now, plea agreements are contracts [Santobello], and if either party commits fraud while negotiating the contract, the entire contract is void as if it never existed. [United States v. Throckmorton, 25 LED 93 U.S. 61 (1878)("There is no question of

the general doctrine that fraud vitiates the most solemn contracts, documents and even judgments.")].

Mr. Woodward failed to say anything about this conflict before entering the contract and then proceeded to, again, stand silent while Martinovich's constitutional right of due process was violated at sentencing. [See Ground IV]. Mr. Woodward was also attempting to protect himself from claims of his prior ineffective assistance to coerce Martinovich into signing a fraudulent plea instead of pursuing a defense at trial. [See Ground IX]. The defendant has an underlying right to be correctly informed of the facts. Mr. Woodward provided ineffective assistance and committed fraud by not disclosing the whole truth. [AFF. #100].

The Sixth Amendment right to counsel includes the "right to representation that is free from conflict of interest." [Wood v. Georgia, 450 U.S. 261 (1981)].

2. Mr. Woodward was ineffective for advising Mr. Martinovich to enter a plea contract which states, "The defendant also hereby waives all rights, whether asserted directly of by a representative, to request or receive from any department or agency of the United States any records pertaining to the investigation or prosecution of this case, including without limitation any records that may be sought under the Freedom of Information Act, 5 U.S.C. § 552, or the Privacy Act, 5 U.S.C. § 552a." [Plea, p.4, para.5].

Setting aside the question of why the government of the people would even believe it correct to withhold public

information on the government's activities, Mr. Woodward advised Mr. Martinovich to enter this illegal agreement. The Washington D.C. Court of Appeals has stated, the "prosecutor is permitted to consider only legitimate criminal justice concerns in striking a plea bargain (to include) concerns such as rehabilitation, allocation of criminal justice resources, the strength of the evidence against the defendant, and the extent of a defendant's cooperation with the authorities. This set of legitimate interests places boundaries on the rights that can be bargained away in plea negotiations." [Price v. USDOJ, 15-5314 (DC Cir. 2017)].

Mr. Woodward provided ineffective assistance counseling Martinovich to enter an agreement which denied FOIA requests and even further constrained Martinovich to pursue claims of ineffective assistance against Mr. Woodward. This further conflict of interest was explained by the D.C. Circuit, "(Banning FOIA suits) may occasionally promote the government's legitimate interest in finality, (but) they only do so by making it more difficult for criminal defendants to uncover exculpatory information or material showing that their counsel provided ineffective assistance...FOIA plays a significant role in uncovering undisclosed Brady material and evidence of ineffective assistance of counsel, and in practice has led to uncovering records relevant to ineffective-assistance-of-counsel claims." [Price].

Again, Martinovich had an underlying right to have been correctly informed of the facts, while also the "right to representation that is free from conflict of interest." [Wood]

Mr. Woodward was ineffective for counseling Mr. Martinovich to agree to this illegal provision which provided another prejudicial conflict of interest, which has been deemed illegal by the Courts, voiding the contract in its entirety.

3. Mr. Martinovich notes that the plea agreement does not contain an Integration Clause. An integration clause is a provision stating that the remainder of the plea agreement should remain in full force and effect should the Court find any portion of the plea agreement unenforceable. A plea agreement is a contract, and if part of the contract is ruled invalid, then the entirety of the contract is invalid, unless there is an integration clause, which there is not.

4. As discussed thoroughly in Ground IV Mr. Woodward was ineffective for allowing the plea contract to remain in force, and to be accepted by the Court, once District Court Judge Allen adamantly professed her belief that Mr. Martinovich's legal capacity to enter a contractual relationship was in question. It is impossible to conclude that Mr. Woodward provided effective assistance, as he never once challenged that this plea agreement was entered into "knowingly, intelligently, and voluntarily." [United States v. DeFusco, 949 F. 2d 114 (4th Cir. 1991)].

5. Mr. Woodward was ineffective for advising Mr. Martinovich to enter an unconscionable and ultra vires contract. An unconscionable contract is an agreement that no promisor with any sense, and not under a delusion, would make, and that no honest

or fair promisee would accept. An ultra vires contract is one constructed by a party in which they promise consideration beyond their powers, or in which the party exceeds its granted authority in restricting the other party's performance.

Mr. Woodward coerced Mr. Martinovich into accepting a promise beyond the government's powers. The government agreement stated, "(T)he United States and the defendant will recommend to the Court that the sentence imposed on Count 10 run concurrent to any sentence imposed for the defendant's convictions in Criminal Case No. 4:12cr101." [Plea, p.3, para.4, Emphasis in Original]. The government underlined the word "concurrent" in order to contextually manipulate Martinovich, who is not an attorney-esquire, into accepting and believing the authority and persuasive power of the Officers of the Court to deliver their promise. Mr. Woodward solidified this persuasion when Mr. Martinovich asked him if there was any possibility that the judge would not honor the "concurrent" provision. As documented in Mr. Martinovich's contemporaneous notes, Mr. Woodward stated, "Don't over-analyze Govt. on why erasing 2nd Indictment," and "Larry says 0 chance that (Judge) Allen or (Judge) Jackson do not comply with Plea Agreement constraints proposed by Govt.," [Atch 10,20,25,29].

Then, acting in bad faith, the government presented multiple witnesses at resentencing (against Mr. Woodward's assurance they would not, see AFF. #102) and urged the Court to provide as maximum a sentence as possible while tacitly maintaining a facade of adhering to the constraints of the plea agreement. And, again, Mr. Woodward stood silent.

Mr. Woodward coerced Mr. Martinovich into believing promised

considerations beyond the party's powers and into accepting an agreement that no promissor, not under a delusion, would accept. Martinovich's contemporaneous notes are replete with Mr. Woodward's promises and assurances, which are in stark contrast to the written plea agreement, and even more so with the eventual sentencing beyond the plea parameters. Mr. Woodward's continuous urgings to sign the plea and receive "5-6 years total" and a significant downward variance for acceptance of responsibility and "winning the appeal" flew in the face of what was honest, reasonable, and within the parties' powers. [AFF. #71]. Even the Defense Position Paper, written fully by Mr. Woodward, requested to the Court a total combined sentence of 3-5 years, while the actual sentence imposed, much more consistent with written agreements, was 14 years. [DPP]. Shocking in its disparity.

STICKLAND FIRST PRONG

"Defendants have a Sixth Amendment right to counsel, a right that extends to the plea bargaining process. During plea negotiations defendants are entitled to the effective assistance of competent counsel. A two-part test applies to challenges to guilty pleas based on ineffective assistance of counsel. The performance prong of the test requires a defendant to show that counsel's representation fell below an objective standard of reasonableness." [Lafler v. Cooper, 32 S. Ct. 1376 (2012)].

1) Mr. Woodward advised Mr. Martinovich to enter into a contract containing a conflict of interest provision intended to protect

himself from complaints of ineffective assistance which had already occurred and which would occur again at sentencing, perpetrating fraud and violating Martinovich's constitutional rights of effective assistance and due process.

2) Mr. Woodward advised Mr. Martinovich to enter into a contract containing a provision to illegally restrict Mr. Martinovich's Freedom of Information Access in order to further endanger Mr. Martinovich's ability to redress violations of his constitutional right of effective assistance.

3) Mr. Woodward's representation was below the minimum professional norm as he stood silent and never objected to, or challenged, the District Court's violations of Martinovich's due process rights. Mr. Woodward failed to move that, based on the Court's determinations, the plea agreement and acceptance were void, as Mr. Martinovich's legal capacity to enter a contractual relationship was in question.

4) Mr. Woodward was ineffective for advising Mr. Martinovich to enter one written contract while verbally offering a significantly different contract, creating an unconscionable and ultra vires agreement to manipulate Martinovich. Counsel manipulated defendant into signing a contract with a significant prison term and open-ended risks while promising deals and agreements for a greatly-reduced prison sentence. [See Attached contemporaneous notes and communications, See Ground IX See Defense Position Paper]. Mr. Woodward then attempted to cover

his personal exposure by endorsing multiple provisions which protected his personal interests.

STRICKLAND SECOND PRONG

"In the context of pleas a defendant must show that the outcome of the plea process would have been different with competent advice." [Lafler].

1) After being exposed to significant ineffective assistance of counsel and severe abuse of discretion by the Court at trial, as confirmed by the Fourth Circuit, Martinovich would have never knowingly, intelligently, and voluntarily entered a contract with multiple provisions designed to constrain redress against the one person, reportedly, negotiating in his favor. [AFF. #100].

2) If Mr. Woodward would have provided even the minimum level of effective assistance, there is more than a reasonable probability that the outcome of the sentencing proceedings would have been different once the Court expressed its determination of mental degradation. With proper professional conduct, the plea agreement would have been withdrawn or stricken, and the plea and guilt acceptance would have been stricken, with multiple stages implemented before Mr. Martinovich potentially entered into any further contracts.

3) If Mr. Woodward would have provided honest, non-manipulative effective assistance, without question, Mr. Martinovich would have never signed the government's plea contract, and apparently

Mr. Woodward was convinced of this himself. After fighting for three years to overturn his conviction and sentence, Martinovich would not have signed a contract which at a minimum re-instituted his prison term and very possibly added a great many more years. After providing counsel voluminous documentation of Mr. Martinovich's innocence of the Case 15cr50 Indictment [See Atchs. 1 - 9], there is no possibility that Mr. Martinovich would have accepted a longer prison sentence, especially with exposure to six more years on top of the previous twelve. Martinovich's previous behavior in Case 4:12cr101 of rejecting plea agreements of 7 years, then 5 years, then 3 years to go to trial, because he believed himself to be innocent, solidifies that there is no possibility Martinovich would have agreed to this plea contract and these stipulations as written. [AFF. #103].

Without Mr. Woodward's unconscionable manipulations, as documented with contemporaneous communications and meeting notes throughout this instant brief, the Court must conclude that there is zero probability that Martinovich would have agreed to this plea contract. "Courts should not upset a plea solely because of past hoc assertions from a defendant...Judges should look to contemporaneous evidence to substantiate a defendant's expressed preferences." [Lee].

4) Any plea colloquy does not cure this egregious ineffective assistance relevant to the plea contract. As of note, the District Court at plea acceptance or sentencing never verbalized or addressed the conflict of interest provisions claiming defendant believed that counsel had provided effective assistance, or that defendant agreed to illegally waive Freedom

of Information access [Mot. Dis. Brooks 2/28/17]. Martinovich also never waived his future constitutional right to due process at sentencing after entering the void plea contract. "A defendant's agreement to waive appellate review of his sentence is implicitly conditioned on the assumption that the proceedings following entry of the plea will be conducted in accordance with constitutional limitations." [United States v. Attar, US App LEXIS 29941 (4th Cir. 1994)]. Any attempt by the government to assert that colloquy language cures documented, proven fraud and ineffective assistance "would exalt form over substance." [Williams].

REMEDY

Mr. Woodward's ineffective assistance satisfies both Strickland prongs and severely prejudiced Martinovich. Mr. Martinovich respectfully requests this Court vacate Case 4:15cr50 plea agreement, acceptance of guilt, and sentence, as well as Case 4:12cr101 sentence as directly controlled by said plea agreement and stipulations.

GROUND 17: TRIAL COUNSEL WAS INEFFECTIVE FOR FAILING TO MOVE TO EXCLUDE, TO OBJECT, AND MOVE FOR MISTRIAL BASED UPON EVIDENCE OF INFLAMMATORY AND PREJUDICIAL NATURE WHICH OUTWEIGHED THE PROBATIVE VALUE.

When questioned about Mr. Martinovich's chances of success at trial, Mr. Broccoletti responded that he believed, "We have a 90% chance of winning, because there is nothing here, but I reserve 10% just in case they parade 25 grandmothers onto the stand to say that you stole all their money." [Atch. 31][AFF.#31]. Mr. Broccoletti was well aware that the government had no actual or incriminating evidence, and his pre-trial statement foreshadowed his belief that the government's only strategy would be to assassinate Martinovich's character and provide emotional, prejudicial narratives to sway the perceptions of the jury.

The government had not counted on Mr. Martinovich choosing to be one of the rare three-percent (3%) of federal defendants who would decide to defend themselves and their company at trial. Without any evidence of a basis for fraudulent misrepresentation, communications, or actions discovered in the 88,000 emails and thousands of documents seized, the government was forced to rely on what should have been a disallowed narrative of wealth and lavish lifestyle to invoke moral and class-based bias.

Mr. Broccoletti knew this was to be the government strategy, yet he failed to provide even the minimum level of effective assistance in moving to preclude introduction of this evidence,

to object to the repeated presentation of irrelevant and incorrect evidence, and to move for mistrial when absolutely required on numerous occasions.

As a result, Mr. Broccoletti's failures permitted the prosecution to deliver, and the Court to permit, the presentation of inflammatory evidence whose prejudicial effect and cumulative nature substantially outweighed its probative value.

LEGAL STANDARD

F.R.E. 403. Excluding Relevant Evidence for Prejudice, Confession, Waste of Time, or Other Reasons:

The court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: Unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.

F.R.E. 404(a) Character Evidence.

(1) Prohibited Uses. Evidence of a person's character or character trait is not admissible to prove that on a particular occasion the person acted in accordance with the character or trait.

F.R.E. 404(b)

(1) Prohibited Uses. Evidence of a crime, wrong, or other act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character.

(2) Permitted Uses: Notice in a Criminal Case. This evidence may be admissible for another purpose, such as proving

motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident. On request by a defendant in a criminal case, the prosecutor must:

(A) provide reasonable notice of the general nature of any such evidence that the prosecutor intends to offer at trial; and

(B) do so before trial - or during trial if the court, for good cause, excuses lack of pretrial notice.

"We review evidentiary rulings for abuse of discretion." [United States v. Lighty, 616 F. 3d 321 (4th Cir. 2010)].

"This Court has articulated a four prong test to determine the admissibility of prior-act evidence under Rule 404(b):

(1) The evidence must be relevant to an issue, such as an element of an offense, and must not be offered to establish the general character of the defendant...(2) the act must be necessary in the sense that it is probative of an essential claim or an element of the offense. (3) The evidence must be reliable. And (4) the evidence's probative value must not be substantially outweighed by confusion or unfair prejudice in the sense that it tends to subordinate reason to emotion in the factfinding process. United States v. Queen, 132 F. 3d 991, 997 (4th Cir. 1997)." [United States v. Torrez, U.S. App LEXIS 16411 (4th Cir. 2017)].

"We recognize that the government has a strong case against Johnson and the question of whether the errors at trial were harmless is for us a very close one. Despite the strength of the

prosecution's case, however, we cannot say this inflammatory evidence did not sway the jury in this case." [United States v. Johnson, 600 Fed. Appx. 872 (4th Cir. 2014)].

"Because Titan failed to object at the time the 'inflammatory' evidence was initially offered, we determine that the district court did not abuse its discretion when it denied the Rule 59 motion." [Shaw v. Titan, U.S. App. LEXIS 10080 (4th Cir. 1997)].

"The term 'unfair prejudice' as to a criminal defendant speaks to the capacity of some concededly relevant evidence to lure the factfinder into declaring guilt on a ground different from proof specific to the offense charged." [Old Chief v. United States, 136 LED 2D 574, 519 US 172 (1997)].

"It is therefore apparent to the Court that counsel's decision not to object was deficient performance under the first prong of Strickland...It bears repeating that a functioning adversarial system requires actual adversaries, not placeholders." [Jones v. Clarke, 783 F. 3d 987 (4th Cir. 2015, Gregory); citing United States v. Cronic, 104 S. Ct. 2039, 80 L. Ed 2d 657 (1984)(The adversarial process protected by the Sixth Amendment requires that the accused have counsel acting the role of an advocate)].

INFLAMMATORY

1. Throughout the four-week trial, on the courtroom flat screen monitors the government continuously displayed pictures of what were alleged to be Mr. Martinovich's home on the James River,

beach house in Nags Head, Bentley Continental Flying Spur, and Ferrari 355 Spyder. Mr. Martinovich repeatedly requested that Mr. Broccoletti object to these irrelevant photos and the obvious effect each had on the Newport News, Virginia jury. This inflammatory evidence was not even correct evidence, as Martinovich noted to counsel during trial:

> MARTINOVICH: "That's not even my car."
>
> BROCCOLETTI: "That's not your Ferrari? They said that's your car."
>
> MARTINOVICH: "No, it's some stock photo from a car show."

Mr. Broccoletti made a note, never objected, and allowed this framing characterization tool to be repeatedly implemented throughout the trial. "(T)he prosecutor engaged in a continuous course of conduct that was designed to equate wealth with wrongdoing and appeal to the potential bias of not-so-wealthy jurors against the very wealthy appellant. The court reversed and remanded." [United States v. Stahl, 616 F. 2d 30 (2nd Cir. 1980)].

2. The government called as witnesses two former junior financial advisors who were previously employed to help service Mr. Martinovich's substantial personal client base at MICG Investment Management. This allowed Mr. Martinovich to allocate more time and resources to his roles as Chairman and CEO. By the start of trial, these two junior advisors, Ms. Jennifer Daknis and Ms. Jayne DiVincenzo, had now transferred the majority of Martinovich's personal clients to under their own control at a competitor investment firm and had significantly increased their own personal income and net worth:

GOVERNMENT: "In 2008 did you observe any changes in Mr. Martinovich as a boss or a leader of MICG that were concerning to you?"

DAKNIS: "I lost probably two or three clients around the summer of '08 because of his affair on his wife." [Tr. p.1705].

GOVERNMENT: "And did you notice any changes in Mr. Martinovich during your time at MICG?"

DIVINCENZO: "Sadly, yes...One opportunity I had to express concerns to Mr. Martinovich was at 9:30 in the morning at a Marriott Hotel. He was drinking Sauvignon Blanc at 9:30 in the morning. I mentioned to him I was very concerned that he might have a drinking problem, and he blew up at me...You know, lots of trips to New York, Vegas. He would disappear for days. I heard he had left his spouse --" [Tr. p.1359].

Mr. Broccoletti, again, never objected or moved for mistrial. As noted repeatedly throughout this instant Memorandum, even the government and Judge Doumar, themselves, have continuously questioned why Mr. Broccoletti never attempted to defend Mr. Martinovich in the eyes of the jury, or at least preserve these errors for review on appeal. Following Ms. Daknis' testimony, Judge Doumar again scolded Mr. Broccoletti:

THE COURT: "All you had to do was object." [Tr. p.1706].

"In a federal criminal prosecution the (attorney) may cross-examine the (witness) as to the extent of any 'coaching.'" [Geders v. United States, 47 LED 2D 592, 425 U.S. 80, 96 U.S. S. ct. 1330 (1976)]. "(The prosecutor) may have conversations with his witness. He may not coach the witness." [United States v. Guthrie, 537 F. 3d 243 (6th Cir. 2009)]. "(T)he prosecuting attorney went out of his way to refer, or have witnesses refer,

to 'Park Avenue offices' of the various participants in this drama, an emphasis that had nothing whatever to do with defendant's guilt or innocence." [Stahl].

3. The government flew in Diana Hewitt, Director of Pit Clerk Operations at the Bellagio Casino and Hotel in Las Vegas, Nevada, to testify about Mr. Martinovich's trips to Las Vegas for the Newport News, Virginia jury comprised of honorable shipyard workers, nurses, housewives, and a Baptist Minister. Ms. Hewitt answered the prosecution's specific questions:

> HEWITT: "(O)f course, we have high-end gambling at the Bellagio...Oh yes, hotel rooms, spa, a whole resort facility."
>
> PROSECUTOR: "Your Honor, at this time I'd move into evidence Government's Exhibits C10 through C211 (Martinovich's Bellagio Perks Records)."
>
> THE COURT: "If there's no objection, then they're received in evidence." (Of course, no objection by Mr. Broccoletti)
>
> HEWITT: "It's a breakdown of his play, his comps (since 2002)...he's played 145 hours and 38 minutes...each hand of like black jack that he played, the average throughout his time of playing was $273...so his rooms were generally free."
>
> GOVERNMENT: "And the same thing with food and beverage."

"The court held that the prosecutor did intend to arouse the prejudices of jurors against appellant because of his wealth and engaged in calculated and persistent efforts to arouse that prejudice throughout the trial...A conviction was reversed and remanded because the prosecutor's statements impermissibly equated economic success with greed and corruption...A prosecutor's trial strategy that obviously includes a persistent

appeal to class prejudice (is) improper and has no place in a court room." [Stahl].

And, Mr. Broccoletti never objected or moved for mistrial.

4. The prosecution attempted, without correct evidence, to claim that, due to the stock market correction, Mr. Martinovich was suddenly "poor" and now needed to commit a crime to support his "lavish lifestyle." Not only was this evidence incorrect (Martinovich had recently invested over $500,000 personally to fund multiple acquisitions), it's probative value was greatly outweighed by its prejudicial effect.

"In order to strengthen the case, the prosecutor sought to introduce evidence of defendant's poverty and evidence that he suddenly was able to pay his rent and child support after the bank robbery...The appellate court held that the danger of unfair prejudice outweighed any probative value with respect to this evidence and reversed defendant's conviction and remanded for a new trial." [United States v. Mitchell, 172 F. 3d 1104 (9th Cir. 1999)].

The prosecution's narrative attempted to, incorrectly, persuade the jury that Mr. Martinovich had needed to commit a crime to meet his company's capital requirements and support his increasingly "lavish lifestyle." This instant Memorandum has documented how Martinovich had exceeded capital requirements in all of the previous sixteen years (64 quarters), had the continual means to make capital additions personally and through a long list of investors desiring to be MICG shareholders, had not accepted any taxpayer-funded TARP or government assistance,

had returned over $4.6 million to hedge fund investors in 2008 and 2009, and had not increased his personal salary from MICG since 1998 even though MICG cash flow had increased over eight-hundred-percent (800%). [Atchs. 34,35][AFFS.#2,#13,#14].

"The court noted that the prosecutor's statements about appellant's wealth were unsupported by the evidence and were often intentionally misleading." [Stahl]. The prosecution needed inflammatory and prejudicial accusations to sway the jury that this business, civic, and charitable leader had suddenly thrown it all away to commit a crime. And, any "government characterization of the evidence as admissible under Federal Rules of Evidence 404(b) to show motive is meritless" because even if it was true, "Being poor is not a crime, wrong, or act. Rule 404(b) therefore has no application." [Mitchell]. "The practical result of such doctrine would be to put a poor person under so much unfair suspicion and at such a relative disadvantage that for reasons of fairness this argument has seldom been countenance as evidence of the graver crimes." [Wigmore, Evidence § 392 (Chadbourne rev. 1979)].

Finally, "The poverty evidence was not only of negligible probate value, but also produced a high 'danger of unfair prejudice'...The district court's discretion was not broad enough to allow admission of the evidence of Mitchell's impecunious financial circumstances...we REVERSE and REMAND for a new trial." [Mitchell].

STRICKLAND FIRST PRONG

Mr. Broccoletti's "representation fell below an objective

standard of reasonableness." [Strickland].

1. Mr. Broccoletti failed to submit motions in limine to restrict the prosecution's efforts to introduce highly prejudicial evidence which substantially outweighed its probative value in reference to Mr. Martinovich's wealth, lifestyle, and travel. Mr. Broccoletti was fully noticed of the government's witness list and even foreshadowed the prosecution's strategy due to the dearth of actual evidence.

2. Mr. Broccoletti failed to object to the numerous prosecutorial overreaches and the Court's abuse of discretion throughout the trial, thus allowing repeated introduction of inflammatory, irrelevant, prejudicial, and incorrect evidence to severely prejudice Mr. Martinovich in the eyes of the jury, and in the mind of Judge Doumar, who ultimately controlled Mr. Martinovich's sentencing.

Recently in United States v. Carthorne, the Fourth Circuit confirmed the necessity of effective counsel to make timely and preserving objections, as well as to vigorously represent the defendant. The Fourth Circuit stated, "When a defendant's lawyer is confronted with error during a judicial proceeding, he has the responsibility to object contemporaneously, calling the question to the court's attention and preserving the issue for appellate review...counsel must demonstrate a basic level of competence...counsel may be constitutionally required to object...the failure to raise an objection that would be apparent...is a significant factor in evaluating counsel's performance...we do not regard a decision as 'tactical'...if it made no sense or was unreasonable...we hold that the defendant's

trial counsel rendered ineffective assistance...by failing to make an obvious objection." [United States v. Carthorne, US App LEXIS 26118 (4th Cir. 2017); citing Puckett v. United States; 556 U.S. S. Ct. 129, 134 (2009); Strickland, 466 at 690; Vinsons v. True, 436 F. 3d 412 (4th Cir. 2006)].

3. Mr. Broccoletti failed to move for a mistrial when the repeated inflammatory evidence created such a cumulative prejudice to disallow Mr. Martinovich a fair trial. Mr. Broccoletti later stated that introduction of certain evidence "compromised the defendant's right...as to preclude his rights to a fair trial." [R. 29, R. 33 Mot.]. But, why in trial would he never object or move for a mistrial? Judge Doumar, himself, stated "Defendant did not move for a mistrial...defendant repeatedly failed to raise timely objections." [R. 33 Den.]. Mr. Broccoletti failed to move to limit or exclude this inflammatory evidence, or to protect Mr. Martinovich from its ultimate prejudice, neither at trial, nor in a Rule 29 Motion for Judgment of Acquittal, nor in a Rule 33 Motion for a New Trial.

STRICKLAND SECOND PRONG

"There is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." [Strickland].

1. Mr. Broccoletti's ineffective assistance greatly prejudiced Mr. Martinovich in the eyes of the jury. "(T)he evidence was irrelevant and unduly prejudicial because it invited the jury to engage in class-based bias against him." [United Statev v. Quattrone, 441 F. 3d 153 (2nd Cir. 2006)]. Mr. Broccoletti's

failure invited the jury to "impermissibly equate success, affluence, and a single minded occupation with one's business affairs with greed and corruption." [Stahl]. Mr. Broccoletti's failures permitted "the prosecutor's trial strategy, a strategy that obviously included a persistent appeal to class prejudice. Because such appeals are improper and have no place in a courtroom, we are compelled to reverse." [United States v. Socony-Vacuum Oil Co., 310 U.S. 150, 60 S. Ct. 811, 84 L. Ed 2219 (1940); New York Central R. Co. v. Johnson, 279 US 310, 49 S. Ct. 300, 73 L. Ed 706 (1929); Koufakis v. Carvel, 425 F. 2d 892 (2nd Cir. 1970); Benham v. United States, 215 F. 2d 472 (5th Cir. 1954); Drasner v. Thomson McKinnon Securities Inc., 433 F. Supp. 485 (SDNY, 1977)].

2. Mr. Broccoletti's ineffective assistance allowed the conservative Virginia jury to be swayed by moral and lifestyle characterizations which greatly prejudiced the jury's conclusions of guilt and/or belief in the predisposition to commit a crime. In Weir, the Eighth Circuit reversed the conviction because the government had introduced prejudicial, non-related evidence to sway the jury. The Appeals Court reversed, concluding that the evidence prejudicially invited a guilty verdict, because it tended to show "the defendants were 'bad' men and should be convicted because they were 'bad.'" [United States v. Weir, 575 F. 2d 688 (8th Cir. 1978)].

At the close of Mr. Martinovich's trial, the Jury Forewoman, Ms. Margaret Corbin Hines, the most influential member of the jury, stated to The Daily Press, "Hotel bills from the Bellagio

showed spa treatments, room service, and two different female guests who were not Mrs. Martinovich. That didn't sit well with us, certainly not me." [The Daily Press, 7/21/2013, Rep. Dujardin]. Clearly, based solely on this inflammatory, prejudicial evidence presented, the Jury Forewoman and "us" thought Mr. Martinovich was a "bad man." Incontrovertible evidence of prejudice.

3. Mr. Broccoletti's ineffective assistance allowed Judge Doumar, the ultimate determiner of the length of Mr. Martinovich's sentence, to be tremendously influenced by the introduction of, and lack of objection to, inflammatory wealth and lifestyle evidence whose prejudicial effect and cumulative nature substantially outweighed its probative value. At sentencing, Judge Doumar's emphatic statements confirmed that he demonstrably relied on this inflammatory, irrelevant, and incorrect evidence in his sentencing calculus:

> THE COURT: "He drove that Bentley around...He drove a Maserati...It was all to impress people. Who was he impressing? He was impressing gullible stockholders who would invest with him because they thought somebody who had both Bentleys and Maseratis and expensive homes and apartments were absolutely wonderfully successful." [Tr. p. 3651].

Clearly, the Sentencing Judge was tremendously impacted.

Judge Doumar continued:

> THE COURT: "(H)e didn't slow down his living. He just didn't...He couldn't stand not to drive the Bentley. Everybody would love to drive a car that costs over $200,000. A Maserati? How many of you have ever seen a Maserati? I don't know that I've seen but only one in this area that I've ever seen. I've seen some Rolls Royces, but its companion the Bentley -- I don't know that I've ever seen a Bentley. I've seen lots of Rolls Royces.

> "So Mr. Martinovich -- I've never seen him drive around that Bentley. I don't know where he was renting it from, but I don't think I've ever seen a Bentley. It's always nice to see someone who could afford both of them. I don't think Frank Batten, who was the richest man in this area, ever drove a Bentley or a Maserati, at least not one that anybody around here ever saw." [Tr. p. 3653].

Obviously, Judge Doumar's soliloquy confirms that the daily pictures and repeated class warfare had a tremendous impact on the Honorable Government Servant and was definitely factored into Mr. Martinovich's length of sentence. One can only also imagine how drastically this repeated prejudice affected certain members of the jury. "We are confident that, upon retrial, the able district judge will again give this matter careful consideration, bearing in mind our misgivings as expressed herein." [Stahl].

4. Mr. Broccoletti's failures precluded the jury from receiving a curative or limiting instruction in regards to Mr. Martinovich's wealth, as well as precluded the government from agreeing to, or being ordered to, implement restrictions on their prosecutorial strategy in regards to Mr. Martinovich's wealth. "The court concluded...the jury had been given curative instructions against drawing adverse inferences from the defendant's wealth." [Stahl]. "While evidence of compensation, wealth, or lack thereof can unduly prejudice jury deliberations, that evidence may be admitted where other safeguards are employed such as limiting instructions or restrictions confining the government's references to that wealth." [Quattrone].

Even beyond these possible instructions, the daily

presentation over four weeks would have rendered any instructions to the jury meaningless. The prosecution's case exceeded any safeguards. As the Fourth Circuit has already asserted in Mr. Martinovich's case, "We recognize that one curative instruction at the end of an extensive trial may not undo the court's actions throughout the entire trial." [United States v. Martinovich, 810 F. 3d 232 (4th Cir. 2016)]. "(W)e have also recognized that instructions will not always be enough to 'undo' the effects...even under plain error review (See Martinovich)." [United States v. Lefsih, 867 F. 3d 459 (4th Cir. 2017)].

5. Mr. Broccoletti's failures permitted the inflammatory and prejudicial evidence to even cloud the jury's understanding of simple contract law, testimony, and evidence. The Jury Forewoman, Ms. Margaret Corbin Hines, the most influential juror with the rest of the jury, was again quoted by The Daily Press in reference to all of the contracts, risk profiles, and personal financial plans each investor had signed:

> "But Hines asserted that hardly anyone reads every word of such documents before they sign on the dotted line, for, say, a car or house. At hospitals, she said, parents sign documents on a newborn's treatment. 'They listen to what we say and they sign it, but that's OK because we are honest.'"
>
> Next, Ms. Hines "said Martinovich didn't seem sorry...'He should have looked very humble...I never saw any remorse.'" (Mr. Martinovich was at trial because he claimed he was not guilty). [The Daily Press, 7/21/2013, Dujardin].

Clearly, Las Vegas, women, cars, and drinking so severely prejudiced the Jury Forewoman that there could have been no contract or transaction or proper investment which Mr. Martinovich could have executed which Ms. Hines felt was legal or

moral. What would happen to Ms. Hines if she decided to not make her car payment or her mortgage payment to Wells Fargo Bank because "hardly anyone reads every word of such documents?" Mr. Broccoletti's failures foreclosed the possibility for a jury of objective factfinders. Incontrovertible evidence of prejudice.

CONCLUSION AND REMEDY

"The public interest requires that the court of its own motion protect suitors in their right to a verdict uninfluenced by the appeals of counsel to passion or prejudice." [New York C.R. Co. v. Johnson, 73 LED 706, 279 US 310 (1929)]. Mr. Martinovich has proven the requirements of Strickland's first and second prongs.

Any government claim of admissibility for proving motive has been thoroughly disproven in this instant Ground, and throughout this brief, and Mr. Broccoletti was ineffective for allowing this inflammatory, irrelevant information to appeal to the passion and prejudice of the jury. The price of EPV Solar was inconsequential to MICG's cash flow, earnings, or capital. The price of EPV Solar had zero nexus to Mr. Martinovich's paycheck, previous cash purchases of automobiles, homes, travel plans, friends, or selections of sauvignon blanc. The inflammatory nature of this evidence, on top of the egregious interference and bias of the Court already determined to be error by the Fourth Circuit, severely prejudiced Mr. Martinovich.

Mr. Broccoletti was ineffective, and there is a reasonable probability that the results of the proceedings would have been different without his failures. Mr. Martinovich respectuflly requests this Court vacate Case 4:12cr101 Full Judgment to include conviction, sentence, restitution, and forfeiture.

GROUND XVIII: APPEAL COUNSEL WAS INEFFECTIVE FOR FAILING TO ARGUE THAT THE PROSECUTION ERRED BY PRESENTING EVIDENCE OF INFLAMMATORY AND PREJUDICIAL NATURE WHICH OUTWEIGHED ITS PROBATIVE VALUE AND THAT THE DISTRICT COURT ABUSED ITS DISCRETION BY PERMITTING SAID EVIDENCE AND DENYING MOTIONS PURSUANT TO RULE 29 AND RULE 33.

In order to reduce duplication, Mr. Martinovich respectfully requests this Court take notice of, and incorporate in this instant Ground, all facts, evidence, and assertions presented in Ground XVII.

STRICKLAND FIRST PRONG

Mr. Woodward's "representation fell below an objective standard of reasonableness." [Strickland].

1. Mr. Woodward failed to argue on direct appeal, Case No. 13-4828, that the government presented a malicious prosecution, repeatedly presenting irrelevant evidence of an inflammatory and prejudicial nature which outweighed its probative value.

2. Mr. Woodward failed to argue that the District Court, of its own motion, failed to protect Mr. Martinovich's right to a verdict uninfluenced by the appeals of counsel to passion or prejudice in regards to said inflammatory evidence. [New York C.R. Co.].

3. Mr. Woodward failed to appeal and argue that the District Court abused its discretion in denying the Rule 29 and Rule 33 Motions and should have moved on its own motion for judgment and acquittal or a new trial.

STRICKLAND SECOND PRONG

"There is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." [Strickland].

1. Mr. Woodward's failure prejudiced Mr. Martinovich by precluding the Fourth Circuit from ruling on this plain error commited by the prosecution and thus vacating Mr. Martinovich's conviction.

2. Mr. Woodward's failure prejudiced Mr. Martinovich by precluding the Fourth Circuit from ruling on these plain errors comitted by the District Court and thus vacating Mr. Martinovich's conviction and possibly remanding for a new trial.

3. If this Court determined that trial counsel Mr. Broccoletti's previous ineffective assistance created the enhanced standard of plain error review, Mr. Martinovich notes the recent Fourth Circuit decision in Carthorne re-confirming that ineffective assistance and plain error are two distinct standards, and which are not equally applicable. [United States v. Carthorne, US App LEXIS 26118 (4th Cir. 2017)].

REMEDY

Mr. Woodward was ineffective, and his failures prejudiced Mr. Martinovich. Mr. Martinovich respectfully requests this Court vacate the Full Judgment of Case 4:12cr101, or in the alternative provide the relief deemed appropriate.

CONCLUSION

As detailed in this instant Memorandum, Mr. Martinovich asks this Court to take notice of the severe structural errors which have occurred from beginning to end in this inherently flawed case, a case which the Fourth Circuit Judges described as, "At its core, such conduct tends to undermine the public's confidence in the integrity of the judiciary." These Judges documented severe trial errors, inexplicable sentencing errors, and defense counsel's reckless ineffective assistance, all producing great prejudice against the liberty of Mr. Martinovich and the economic recovery of MICG shareholders. Further exacerbating these failures, a subsequent indictment was served once Mr. Martinovich succeeded in overturning his sentence, the court-appointed counsel coerced a fraudulent re-sentencing agreement, and the actual re-sentence was three-times (3x) the length of the sentence Mr. Martinovich believed he had accepted. To again quote the Justices, "The interference in this case went beyond the pale."

In brief summary, Mr. Martinovich's trial counsel failed to object even one time to the egregious interference and bias exhibited by the Court, thus not providing a zealous defense in the eyes of the jury, as well as not preserving this issue for a likely vacation of the conviction on appeal. Subsequently, appeal counsel abandoned this most-crucial issue of Martinovich's case by proactively requesting plain error review, by failing to argue that potentially the government's own objection preserved

this error, by failing to submit an argument for obvious structural error, and by refusing to petition for a writ of certiorari.

Sentencing counsel failed to protect Mr. Martinovich against clear violations of his due process and contractual rights as the District Court repeatedly declared its belief of the defective mental capacity of Mr. Martinovich, with subsequent appeal counsel then failing to submit this clear constitutional violation, and with the initial trial counsel, by definition, failing to move to protect Mr. Martinovich with an affirmative mental defense.

Sentencing counsel's performance fell below all professional norms of even minimum competency by permitting the illegal sealing of the indictment, an indictment which also included charges exceeding the statute of limitations, by not objecting to clear sentencing guidelines errors resulting in consecutive sentences and inflated criminal history categories, and by allowing the court to rely on materially false presentence information, refuse to consider any positive characteristics and history of Martinovich, and to falsely believe that counsel had agreed to the high end of the sentencing range. This abundance of ineffective assistance yielded a substantially longer sentence for Mr. Martinovich.

Sentencing counsel also coerced Mr. Martinovich into entering a void and unconscionable contract filled with conflicts of interest and illegal provisions. This invalid contract was then breached by the motion of the government to unilaterally violate the principal of finality. Beyond the void contract,

sentencing counsel coerced Mr. Martinovich with a fabricated proposal and reckless assistance into accepting an agreement eventually exposed to be founded on fraud.

Finally, not only did trial counsel fail to preserve and protect Mr. Martinovich's right to a fair trial, counsel even violated the primary Stipulation Agreement central to providing a neutral and unbiased trial. This fatal mistake forced the District Court, itself, to assert that defense counsel was responsible for violating the agreement, for not objecting, for not motioning for mistrial, and for the subsequent denial of Martinovich's Rule 29 Motion for Acquittal and Rule 33 Motion for New Trial.

It's hard to imagine a series of proceedings replete with more errors and more layers of ineffective assistance. Mr. Martinovich posits that this imbroglio of errors and questionable behaviors is the result of an initial illegal action, the egregious closure of MICG, which the government then attempted to rationalize by confirmation bias in a series of failed proceedings. Yet, these mistakes and problematic behaviors have only compounded the fundamentally illegal actions. The vacation of Mr. Martinovich's conviction and sentence will begin to re-balance the equation and allow Mr. Martinovich to finally restore the MICG shareholders, his family, and himself.

The Fourth Circuit consistently states that, "To prevail on his ineffective assistance of counsel claims, (the defendant) 'must show that counsel's performance was deficient' and 'that the deficient performance prejudiced the defense.'" [United

States v. Gooch, 2017 US App. LEXIS 12184 (4th Cir. 2017); citing Strickland v. Washington, 466 US 688, 687, 104 S. Ct. 2052, 80 L. Ed 2d (1985)].

Mr. Martinovich asserts that, without question, throughout this instant Memorandum, Application, Affidavits, and Attachments, he has satisfied both Strickland prongs thus requiring the vacation of conviction and sentence.

The Supreme Court summarized the issues of competency and fairness when they concluded, "In adjudicating a claim of actual ineffectiveness of criminal defense counsel, the ultimate focus of inquiry must be on the fundamental fairness of the proceedings whose result is being challenged and on whether, despite the strong presumption of reliability, the result of the particular proceeding is unreliable because of a breakdown in the adversarial process that our system counts on to produce just results." [Strickland].

Clearly, any fair and objective review concludes a breakdown in the process which severely prejudiced the results of the proceedings.

Mr. Martinovich respectfully requests this Court vacate the full judgment, conviction, and sentence, or in the alternative for this Court to provide an Evidentiary Hearing as soon as practicable pursuant to Rules for 2255 Proceedings 8(a)&(c).

Respectfully,

Date: 2-26-18

Jeffrey A. Martinovich

I, Jeffrey A. Martinovich, hereby attest under the penalty of perjury that everything provided in this comprehensive Memorandum is true and correct to the best of my knowledge, pursuant to Title 28 U.S.C. 1746.

Date: 2-26-18

Jeffrey A. Martinovich

THE UNITED STATES DISTRICT COURT
IN THE EASTERN DISTRICT OF VIRGINIA

UNITED STATES,

Plaintiff,

v.

Case No. 4:12cr101

JEFFREY A. MARTINOVICH,

Defendant.

AFFIDAVIT OF JEFFREY A. MARTINOVICH IN SUPPORT OF MOTION TO VACATE, SET ASIDE, OR CORRECT A SENTENCE PURSUANT TO 28 U.S.C. 2255

I, Jeffrey A. Martinovich, under the penalty of perjury, assert that every argument, fact, assertion and observation included in the Memorandum In Support of the Application to Vacate, Set Aside, or Correct a Sentence Pursuant to 28 U.S.C. 2255 are correct to the best of my knowledge.

As the majority of assertions are captured in the Court's record, to include transcripts, motions, orders, and opinions, I have not reiterated those claims in this Affidavit. Yet, this Affidavit attempts to be comprehensive and inclusive of every assertion which has not been first captured on the Court's record.

Pertaining to the large volume of contemporaneous notes and communications which I have provided as attachments in support of the Memorandum and the Affidavit, I swear that those writings were created during the time of my incarceration in the Western Tidewater Regional Jail from March 2016 to November 2016. These notes and communications were generated in an attempt to understand and organize the great deal of information which I was being provided, as well as the great deal of information which I was providing. These writings pertaining to the details of Case 4:12cr101 and Case 4:15cr50 were presented personally to counselor Mr. Woodward or sent directly to Ms. Ashleigh Amburn with specific instructions to forward to Mr. Woodward. These writings

listing meeting notes created in the meeting with Mr. Woodward, or immediately after, were sent to Ms. Amburn to hold for me until I retrieved the information once moved to my next location, being home or another facility. There has been no addition, deletion, or edit to these writings subsequent to this time period except for extraneous, non-substantive markings.

1. I was Founder and CEO of MICG Investment Management, which by 2007 employed fifty employees and fifty independent agents with eight retail branches in Virginia, Washington D.C., and New York City. MICG served 3,000 clients in 42 states and 5 countries while offering financial planning, insurance, investment banking, hedge funds, real estate, mortgages, lending and trust services. MICG managed $1 billion in client assets spread among a highly-diverse allocation of over 1,000 direct investments.

2. Although MICG's revenue increased an average of 36% per year for over fifteen years, I did not increase my personal salary after I set the amount in 1998, choosing instead to allocate the increased yearly revenue to MICG's significant growth.

3. I served the community as President of Brothers Big Sisters, Chairman of the Children's Village, Board Director of Christopher Newport University Luter School of Business, Board Director of the USO, Board Director of United Way Finance, Chairman of the State of Virginia for Young President's Organization (YPO), Board Director of SIFMA Smalls Firms Committee, and as a significant contributor to The Boys and Girls Club and The Achievable Dream Schools, among numerous other charitable and civic causes.

4. In 2008, based on our exemplary regulatory history, MICG was selected by the Securities & Exchange Commission (SEC) and the Financial Industry Regulatory Agency (FINRA) to participate in the beta test program for combined regulatory examinations for companies which operated Broker-Dealers as well as Registered Investment Advisors.

5. I authored a book titled, "The Fall of MICG," published by Ash Press and sold on Amazon.com, to provide MICG stakeholders and interested parties with a correct rendition of the occurrences preceeding the

closure of MICG Investment Managemet.

6. MICG offered a broad array of alternative investments for clients beginning in 1992 to include hedge funds, managed futures funds, private REITS, and private equity. We introduced the first MICG proprietary hedge fund in 2001, eventually increasing this offering to three funds: MICG Partners Fund, MICG Anchor Strategies Fund, and MICG Venture Strategies Fund. Partners Fund was a fund-of-funds vehicle with an objective of a conservative, positive return regardless of public markets performance. Anchor Strategies Fund invested directly into Tiptree Financial, a debt fund out of New York which eventually completed a public transaction creating a liquidity event for MICG investors in excess of $4 million in the Anchor and Partners Fund. Venture Strategies was designed to hold 12-15 private equity investments, and at the time of the government's interruption held four separate positions: Short-term fixed income, Solaia Capital, GDSP Sports, and EPV Solar.

7. In December of 2008, FINRA directed MICG for the first time, due to the joint ownership between the hedge funds and the Broker-Dealer, to have the fund managers and direct investments provide asset pricings, fund performance, and management fees prior to the December 31, 2008, closing date. MICG had to journal account balances, management fees, and expenses or these receivables and liabilities would be classified as non-allowable transactions, creating an incorrect FINRA Net Capital computation. I directed the firm to comply with this new regulatory order.

8. Mr. Bruce Glasser, MICG Investment Banker in the MICG New York City Office, introduced the EPV Solar private equity investment to MICG. After significant due diligence, MICG Venture Strategies purchased 1,805,000 shares of EPV Solar at a price of $1.15 per share.

9. Mr. Glasser was the point of contact for the EPV Solar investment. I, personally, never spoke with, emailed, met, or communicated in any manner with Mr. J. Peter Lynch, the solar valuation expert who executed the multiple equity valuations.

10. Harbinger PLC, the hedge fund auditors, directed me and the MICG managers that we could not hold private equity investments in the hedge funds at cost valuations. We must periodically apply Fair Market

Valuations (FMV) or Mark-to-Market in accordance with AICPA and FASB valuation standards. Legally and for securities regulations, this function could be executed internally, as most firms applied at the time, or externally. Following this auditor opinion, I directed MICG personnel to acquire external, independent valuations and audits.

11. MICG Funds purchased multiple small lots or odd lots of equity and debt positions, many times below FMV. Auditors Harbinger PLC specifically directed MICG managers to not apply these valuations, yet apply the FMV reported valuations in the alternative funds per accounting standards. Regarding EPV solar, MICG acquired another small lot of equity shares at the original price from an individual investor in the same time period under the government review, and this price was not substituted in the MICG Venture Strategies Fund in place of the solar valuation expert's FMV calculation.

12. MICG fund auditors calculated underlying asset values and the total Net Asset Value (NAV) (Fund Price) at the close of each quarter, with the subsequent investors entering the fund at this cost basis. Over 70% of the investors selected by the government in their allegation invested into the MICG Venture Strategies Fund prior to December 31, 2008. Therefore, these investors' purchase price was never at the disputed $2.88 per share, but was at the $2.13 per share from the previous year's reported FMV price by Mr. J. Peter Lynch. This is the price that Judge Doumar stated to be a valid price, "Peter Lynch made a valuation. It was unequivocal. There were no ifs or buts about it, other than it was requiring the matter to go public in the future...so I don't have any problem with it." (Tr. p. 3229).

13. During the 2008-2009 time frame, the period of the government's review, I directed MICG to distribute over $4.6 million back to investors from the MICG hedge funds through redemptions and earnings distributions. These returns were distributed to 44 investors, with specific totals of $2,906,313 redeemed in 2008, and $1,699,908 redeemed in 2009, not including distributions to employees and owners. [See Atch. 35].

14. The EPV Solar Valuation increase from the District Court-approved $2.13 per share value to the $2.88 per share report valuation accounted

for an increase in fees to MICG of $140,062.64. This increase accounted for 1.8% of the approximate $8,000,000 in MICG total fees earned during this period. [See Atch. 34].

15. The 14 investors included in the government allegations were among over 3,000 MICG clients serviced during this period.

16. Throughout 2007, 2008, and 2009 (a year after the contested valuation), I strongly believed in the future success of EPV Solar, EPV Solar's public offering, and the MICG Venture Fund. All of my statements and actions were fully-congruent with this belief. During this period, I, personally, along with our team of advisors, recommended investments into the Venture Strategies Fund to close friends, MICG family members and close business associates. I personally recommended an investment into the Fund by my long-time, close military associate and close friend, Mr. David Goldberg. I, personally, recommended an investment into the fund by Dr. Roger Cadieux, the father of my Academy alumni, best friend, and MICG COO, Mr. Kevin Cadieux. [See Shareholder letters].

17. In 2009, well after the contested valuations, I traveled to EPV Solar Headquarters in New Jersey with Mr. John Biagas, a fellow YPO member, and his management team to conduct due diligence on EPV. After touring the factory and meeting with management, Mr. Biagas made a substantial investment into EPV, as did another fellow YPO CEO on the basis of Mr. Biagas' recommendation. Mr. Biagas also entered into talks with EPV in order to secure a possible EPV Solar Distributorship agreement.

18. During the government's period of review and consistent with my belief that MICG was the correct wealth management business model for the industry future, I acquired experienced financial advisors and hundreds of millions of dollars in new client assets from Wall Street firms such as Merrill Lynch, UBS Securities, Morgan Stanley, and Davenport Securities. I personally injected over a million dollars in new capital, along with contributions from other MICG shareholders, to fund acquisitions and expansion. I fully believed that MICG Investment Management would greatly benefit from the pain and dislocation of the Financial Crisis, and that we were positioned well to execute this

opportunity.

19. FINRA summoned me, and other MICG investment bankers and managers, to Philadelphia in order to provide under-oath testimony addressing the operations of the MICG Hedge Funds. Following the testimonies, MICG's securities attorneys told us that all personnel had testified consistently with correct regulatory and securities practices, as well as provided consistent testimony with each other.

20. The EPV Solar investment, eventually filing Chapter 11 Bankruptcy, represented point-two-percent (.2%) of MICG's assets under management, as well as one-point-two-percent (1.2%) of the average MICG client's portfolio which actually held EPV Solar.

21. Following EPV and the solar industry's collapse, my MICG auditors and attorneys conducted numerous negotiations with FINRA regulators. In response to FINRA allegations, I demanded Arbitration Hearings be conducted in order for me to defend MICG and our employees. I held numerous meetings with MICG's Compliance, Operations, and Finance Divisions, along with outside auditors and securities attorneys, all which resulted in a strong belief that our personnel had all performed ethically and admirably. I then reiterated my demands to FINRA for Arbitration Hearings.

22. On Friday, May 7, 2010, at 4:00 PM, I received a phone call from FINRA agents who stated that the beta test exam had "switched gears" and the regulators had now "re-audited" the previous five years of MICG's financial reports. FINRA stated that they had "reclassified equity as debt," thus disallowing millions of dollars of MICG shareholder equity investments in the current Broker-Dealer Net Capital computations. FINRA stated that, pursuant to FINRA regulations, MICG could not operate with this deficiency. These same financials had been examined and audited quarterly and annually for the previous five years by the SEC, the Commodities & Futures Trading Commission (CFTC), the State Corporation Commission (SCC), the Broker-Dealer licensed auditors, and by FINRA, themselves.

23. I, and MICG, never accepted taxpayer-funded government bailouts.

24. On May 12, 2010, MICG withdrew its Broker-Dealer license without a hearing, without arbitration.

25. Two days following the withdrawal of MICG's Broker-Dealer license, FINRA released Disciplinary Proceeding No. 2009016230501, Department of Enforcement v. MICG Investment Management, LLC and Jeffrey A. Martinovich, alleging "in order to inflate the fees, the Respondents assigned unjustifiably high values to the assets, never relying on independent or legitimate valuations or valuation methods." The year-long FINRA examination and investigation resulted in a complaint addressing less than 1% of MICG's investment assets and operations.

26. The closure of MICG, the result of FINRA's investigation into less than 1% of MICG's investments, created the collapse of the value of the shareholder's stock in MICG Wealth Management (MICG's Holding Company), the collapse of the MICG Bond Offering, and the shuttering of the MICG Hedge Funds' participation in capital calls, liquidation opportunities, and ultimate performance.

27. At trial, sentencing, and re-sentencing, the investor losses from the regulatory action have been substituted for the loss of EPV Solar when presenting the cause and effect of loss, and the effect on shareholders. The government presented numerous witnesses and witness letters with significant losses derived from the FINRA action, not from the EPV Solar investment, yet these losses have been categorized as losses derived from this investment, the gravamen of the indictment.

28. I was told by MICG's securities attorneys that if I continued to demand a FINRA Arbitration Hearing, and if I did not accept FINRA's Offer of Settlement, FINRA would impose a $1 million fine and pursue forfeiture of MICG management team members' industry licenses.

29. The Offer of Settlement, which I signed on February 1, 2011, states, "Respondents submit this offer to resolve this proceeding and do not admit or deny the allegations of the Complaint. Respondents also submit this offer upon the condition that FINRA shall not institute or entertain, at any time, any further proceeding as to Respondents based on the allegations of the Complaint, and upon further condition that it will not be used in this proceeding, in any other proceeding, or otherwise, unless it is accepted by the national Adjudicatory Council (NAC) Review Subcommitte, pursuant to FINRA Rule 9270." [Atch. 39].

30. The allegations of the indictment of Case 4:12cr101, as well as the discovery evidence to include the 88,000 emails, is identical to the Complaint settled by the FINRA Offer of Settlement, which contained the non-release and non-action provisions.

31. When I first met with trial counsel Mr. Broccoletti after his independent review of the evidence, he stated that I "had done nothing wrong, and if someone had done anything wrong, it would have to be the crowd in New York (EPV)." When I asked Mr. Broccoletti to tell me what our chances were to present the truth and to win at trial, he stated, "We have a 90% chance of winning, because there is nothing here, but I reserve 10% just in case they parade 25 grandmothers onto the stand to say that you stole all their money." When I asked him this same question closer to the trial date, he re-confirmed his belief. Both meetings included Mr. Broccoletti's paralegal, Shannon.[Atch.3:

32. Also, at my initial meeting with Mr. Broccoletti, he stated that the government, AUSA Mr. Brian Samuels and AUSA Ms. Katherine Dougherty, had already offered a plea bargain for seven years imprisonment, and that Mr. Broccoletti had already responded, "We are not interested."

33. After many weeks of due diligence and trial preparation, Mr. Broccoletti told me that the government had now offered a plea agreement for five years imprisonment which, following another review in which his firm reiterated that I had done nothing illegal, we again rejected.

34. Shortly before the trial date, Mr. Broccoletti stated, "Samuels (AUSA) has offered three years as his final offer, but he won't put it in writing unless you first agree to accept it, since you rejected the two previous offers." Following one final meeting in which Mr. Broccoletti confirmed his previous findings, I made the decision to proceed to trial and defend my employees and myself.

35. At one point in the trial, following Judge Doumar's delivery of a curative instruction to the jury which was the exact opposite instruction as the one agreed upon by the prosecution and the defense just moments prior, trial counsel Mr. Broccoletti leaned over to me at the defense table and stated, "Well, at least you just won your

appeal."

36. Following the September 29, 2016, sentencing-resentencing, Mr. Woodward met with me briefly one final time at Western Tidewater Regional Jail. I instructed Mr. Woodward to file timely Notices of Appeal for both Case Nos. 4:12cr101 and 4:15cr50. In closing, Mr. Woodward stated, "Two things I need you to know. If you end up filing a 2255, everything must be in the original filing. Otherwise it cannot be considered. And, remember, you have never pled guilty to any Count on your big case. You have only pled guilty to one Count on the second case, which really doesn't matter. The government tried to put in your plea that you now pled guilty to the Counts of the first case, and I wouldn't let them. You need to know that." He hung up the visitor phone and called the guard to take me back to my cell. [Atch. 32].

37. I spoke briefly to Mr. Woodward through the prison 15-minute phone system following the release of the Case 4:12cr101 Appeal Opinion.

38. I questioned Mr. Woodward on the next steps to get to the Supreme Court, and Mr. Woodward asserted that I had no issues for the Supreme Court, and that any other actions on my part would delay and jeopardize the likely substantial relief from re-sentencing.

39. Mr. Woodward did not discuss the advantages or disadvantages of the issues available for Certiorari, to include structural error, overcoming plain error, or any other issues.

40. Mr. Woodward refused to communicate over the prison Trulincs system and to participate in a consultation addressing the issues for Certiorari.

41. As opposed to this consultation, Mr. Woodward began his coercion to stop me from pursuing the vacation of my conviction by convincing me that if I stopped fighting the case and "accepted responsibility" and stopped my "scorched earth policy," I would receive a significantly-reduced sentence, and even likely be released on bond in the interim.

42. As I was subsequently able to conduct my own research and understand the Fourth Circuit's Opinion, I realized that I should not have let Mr. Woodward talk me out of continuing to pursue overturning

my conviction with the Supreme Court.

43. If I would have had effective assistance at this critical juncture, I would have filed these issues with the Supreme Court.

44. I sent Mr. Brooks the full argument detailing the District Court's violation of my due process right and urged him to include in his Appeal Brief for 16-4644 and 16-4648. [Atch. 37].

45. I repeated to Mr. Brooks that this due process violation was outside the scope of the plea agreement waiver provision, and therefore would be reviewed on the merits by the appeals panel. [See Atch. 37].

46. I informed Mr. Brooks that the appeal waiver provision was not applicable to consituttional violations which occurred after the execution of the plea agreement, per Fourth Circuit precedence [Attar; Marin][See Atch. 37].

47. Mr. Brooks never once replied that this due process violation Ground was invalid or frivolous [Anders v. California]. Yet, Mr. Brooks ignored my requests and did not include the arguments.

48. Mr. Brooks was noticed that the Fourth Circuit may not accept my Pro Se Supplemental Brief, and therefore may not consider this due process violation unless he included in his Brief on the Merits. [Doc No. 31, No. 16-4644 / 16-4648].

49. As further clarified in this instant Memorandum Mr. Woodward fraudulently, and with extreme recklessness, coerced me into believing that he had negotiated a "5-6 years" deal with the government prosecutors, as well as with the understanding of the Judge's intentions. [See Atchs. 24,27,28,29].

50. When considering whether to accept the government plea agreement, I questioned Mr. Woodward whether there was any possibility that the sentencing judge would not follow the plea agreement constraints to ensure the 4:15cr50 sentence would be concurrent with, and less than, the expected significantly-reduced Case 4:12cr101 sentence. Mr. Woodward replied that there was "no chance (Judge) Allen & (Judge) Jackson go outside the Agreement." [Atchs. 10,20,29].

51. I provided Mr. Woodward significant documentation of my complete innocence to the allegations of the Superseding Indictment, verbally

and in written correspondence delivered in-person and by email. [See Contemporaneous Notes and Communications, Atchs. 1-9].

52. I provided Mr. Woodward significant documentation proving that any assertions by hedge fund attorneys Mr. Andrew Shilling and Mr. Todd Lynn, or any others, contrary to my assertions must constitute fraudulent statements and/or actions. [Atchs. 1-9].

53. Mr. Woodward told me repeatedly that he had presented my significant documentation of innocence, as well as proof that any assertions to the contrary were fraudulent statements to federal agents and/or a grand jury, but Mr. Woodward stated that AUSA Mr. Brian Samuels and AUSA Ms. Kathleen Dougherty, Officers of the Court, were "not interested" in my evidence.

54. I repeatedly asked Mr. Woodward to retrieve the "Indemnification Folder" from trial counsel Mr. James Broccoletti, and if any problem then to retrieve these documents from my fiance Ms. Ashleigh Amburn who also held a box of this evidence, but Mr. Woodward repeatedly stated that he had all of the documents. I further annotated this documentation of my complete innocence to the allegations of the Superseding Indictment, as well as proof of fraud for any statements to the contrary, on the thorough documentation provided to Mr. Woodward at Western Tidewater Regional Jail, and by email. [Atchs. 1,5].

55. Mr. Woodward threatened, "You want to go to trial against four law firms? You don't have a chance in hell of winning! Didn't you learn from your first trial?" Mr. Woodward repeatedly refused to investigate my defense or even discuss all the documentation I provided. He would simply respond, "If you go to trial you're going to get 25 years!" On multiple occassions he stated, "Do you want to look Ashleigh, your mother, and Cole in the eyes and tell them you didn't take the deal and come home to take care of them because of principle?" He referred to my family continually to drive home the message that my responsibility was to "take the deal" and go home to my responsibilities instead of fighting for the truth and standing on principle. And, once I truly believed that he would not allow, or would sabotage, moving forward with trial, and that the "deal" was for me to "put this all behind us," I acquiesced to his coercion. [Atch. 25,29].

56. The following documents, identifying the transparent and compliant transactions and involvement of numerous law firms and accountants, were itemized in my communications to Mr. Woodward, and he repeatedly stated that he had them in his possession:

a) Attorney Andrew Shilling Opinion Letter, representing MICG Venture Fund.

b) Attorney Katherine Klocke Opinion Letter, representing MICG Partners Fund

c) Consulting Engagement Contract - Indemnification Collateral

d) Assignment of Consulting Revenue Agreement - Indemnification Collateral

e) Wells Fargo MICG Hedge Fund Check Copies

f) MICG Partners Fund to MICG Venture Fund Payments Tax Ledger, Harbinger PLC Tax Accountants

g) Tax Ledger of Attorney Payments from MICG Venture and Partners Funds, Harbinger PLC Tax Accountants

h) Martinovich Letter to David, Kamp & Frank Law Firm, documenting liability to Partners Fund.
[Atchs. 1-9].

57. Mr. Broccoletti called me and told me that attorney Mr. Andrew Shilling, Mr. Lynn's law school roommate, who was hired to represent the independent interests of the MICG Venture Strategies Fund's shareholders, had told federal agents, erroneously, that he wasn't aware of exactly how Mr. Broccoletti's legal fees were being handled. [Atch. 3,6,9].

58. Following Mr. Broccoletti's phone call, I drove to Mr. Lynn's office at Patten Wornom Hatten & Diamonstein (PWHD). After I relayed the message, Mr. Lynn led me to PWHD's large conference room and phoned Mr. Shilling. Mr. Lynn questioned Mr. Shilling about the encounter, then became agitated and asked him why he hadn't just told the agents the truth, that all the documentation and authorizations were in place. He continued, "Of course, you knew the arrangement. That's the whole reason you were hired!" Mr. Lynn ended the call, looked at me across the conference table and said, "He's lying. He's scared. He misspoke

talking to The Feds and now he's scared to change his story!" I responded with a great number of expletives. Mr. Lynn assured me that he would follow up with Mr. Shilling and fix the error. [Atch. 3,6,9].

59. Attorney Mr. Lynn orchestrated the hedge funds' independent representations and indemnification documentation with attorneys Mr. Benjamin Biard, Mr. Andrew Shilling, Ms. Katherin Klocke, and Mr. E.D. David. Mr. Biard, of Wilson Elser Moskowitz & Dicker Law Firm in New York provided expertise in securities law for MICG operations, errors and omissions, legal claims, indemnification, and regulatory work. Mr. Shilling of Shilling, Pass & Barlow of Chesapeake, Virginia, was engaged to independently represent the MICG Venture Strategies Fund. Ms. Klocke of Akerman, Miami, Florida, was engaged to independently represent the MICG Partners Fund. Mr. E.D. David, of Law Firm David Kamp & Frank, Newport News, Virginia, provided representation for MICG Anchor Strategies Fund at this time. Mr. Lynn orchestrated most procedures among these law firms and was my primary contact. [Atch. 1,5,21].

60. Attorney Mr. Lynn talked on multiple occassions with trial defense counsel Mr. Broccoletti prior to legal fee payments and prior to trial. Mr. Lynn coordinated with Mr. Shilling to provide opinion letters and authorizations for the payments to Mr. Broccoletti. [Atch. 6].

61. I and my assistant were present with Mr. Lynn at PWHD's offices for a conference call on speaker phone with Mr. Shilling. Mr. Lynn and Mr. Shilling discussed that they had not yet also created a Promissory Note document for these payments between Partners Fund and Venture Fund. Mr. Lynn asked Mr. Shilling to prepare this Note since Mr. Lynn had multiple conflicts due to his representation of MICG. Mr. Shilling asked Mr. Lynn to have Mr. Biard or Ms. Klocke prepare this Note since his fund was the actual recipient of these transfers. [Atch. 3].

62. Mr. Michael Umscheid of Harbinger PLC was the tax accountant for the MICG Venture Strategies and MICG Partners Fund, and he kept a running "Due to - Due from" ledger for the payments between Venture and Partners and fully documented the liability in the tax preparation for both funds. [Atchs. 4,8].

63. Mr. Shilling asked Mr. Lynn and myself to then provide further assurance that, in case of a negative legal outcome, there be written

documentation of collateral or future income which would be assigned to repay the legal fees, per the indemnification provision. Mr. Shilling reviewed the current consulting assignments I and my small team were currently working on and selected the assignment of a potential future commission from the marketing and sales engagement of a hotel business in Virginia Beach, Virginia. One of Mr. Lynn's law partners at PWHD was also an owner in the hotel property, and together the two attorneys edited the engagement contract to Mr. Shilling's satisfaction. [Atch. 2,6].

64. Once the administration of the MICG Partners Fund had transferred to attorney Mr. E.D. David of David, Kamp & Frank, I personally sent documentation to Mr. David to explain that, in the event of a final fraud conviction, I would need to reimburse the fees back to the MICG Partners, pursuant to the Indemnification Provision. [Atchs. 3,9].

65. Following the withdrawal of MICG's Broker-Dealer license and the termination of the FCC Clearing (a Division of Wells Fargo) contract, at FCC's request the cash management accounts for MICG Venture Strategies and MICG Partners Fund were transferred to the Wells Fargo Retail Banking Division. These accounts retained the same control, authority, titling, and check writing provisions. [Atch. 3,9,21].

66. Following the closure of the MICG Broker-Dealer, I participated in a conference call with attorneys Mr. Lynn, Mr. Biard, and Ms. Klocke in which Ms. Klocke re-confirmed that all valid expenses for MICG Venture Fund and MICG Partners Fund were to be paid by MICG Partners Fund, with the accounting firm tracking the liabilities as a "Due to - Due From" ledger. Ms. Klocke asserted that she did not have to provide any further documentation, and all valid expenses were to be satisfied in this manner. Regarding the management expenses, Mr. Lynn and Mr. Biard explained the current uncertainty with the MICG holding company entities, and Ms. Klocke directed for these payments to be paid to me, and for me to pay the assistants directly. This is exactly how the transactions were handled with 1099 tax documentation provided to the administrative assistants and Harbinger PLC completing the fund's tax reporting. [Atchs. 1,2,4,8].

67. During the period in question for indemnification payments and invocation of the errors and omissions insurance, significant legal

fees were also paid to attorneys Mr. Lynn, Mr. Biard, Mr. Shilling, and Ms. Klocke, and other attorneys at their direction. Accountant Harbinger PLC also tracked and documented these fees paid by MICG Partners Fund in the "Due to - Due from" ledgers. Yet, attorneys AUSA Mr. Samuels and AUSA Ms. Dougherty have not documented for the record or alleged any wrongdoing with these payments, which total a significantly greater value than the payments attributed for the management and legal defense. [See Harbinger PLC Tax Ledgers]. I wrote to Mr. Woodward, "The attorneys authorized all, created all, to get their $1,000,000+ in fees & then when Feds step in they scatter like cockroaches in the light & can't seem to remember." [Atch. 5].

68. Mr. Broccoletti phoned me at my condo office, with two assistants present, to request payments for the trial legal experts he had engaged. I then phoned attorney Mr. Shilling to confirm these payments were covered by the indemnification and to ask if any further paperwork or opinion letters were necessary. Mr. Shilling clearly confirmed the authorization and stated that he did not need to provide further paperwork. Following this phone call, my assistant processed the expert payments and traveled to Wells Fargo to pick up the Professional Checks which were then mailed to the experts. [See Rule 35, Phone record - Process Date]. Subsequently, Mr. Broccoletti informed me that Mr. Shilling had also told the federal agents, inexplicably, that he had not authorized the payments to the legal experts. [Atch. 2,6,9].

69. I continually pushed Mr. Woodward to conduct his own research into the Superseding Indictment and to prepare a defense for trial. My contemporaneous notes and communications to Mr. Woodward include the following:

a) "Not accepting Govt-controlled attorney statements - conduct own interrogatories, depositions, discovery with factual chronology & documents - under oath." [Atch. 5].

b) "(Trial) Theme: The attorneys authorized all, created all, to get their $1,000,000+ in fees & then when Feds step in they scatter like cockroaches in the light & can't seem to remember - juries don't like attorneys - Great theme for motivated attorney." [Atch. 5].

c) "Get copy of Jeff 'Indemnification Documentation' Folder - Broc & Ash have." [Atch. 1,5].

d) "Wouldn't an attorney be able to show a jury of at least 8th grade education how with 4 law firms and accountants so intimately involved in handling every step - how would or could Horrible Martinovich take cash out of hedge fund accounts (Ridiculous), take expense reimbursements unauthorized (Ridiculous), and trick and manipulate 4 law firms in a magic act to not let them know where the money was coming from (Ridiculous!) - Just as Martinovich secretly manipulated in a wild conspiracy his Mgt. Team, the Valuation Expert, and the Auditors...Again, commits violence against common sense." [Atch. 7].

70. Yet, Mr. Woodward continuously refused to proceed with preparing for trial or with unveiling the obvious attorney fraud to the Court.

71. Mr. Woodward, instead of researching and preparing my case for trial, continuously manipulated and coerced me to sign a plea agreement by asserting false and fraudulent statements, and exhibiting reckless behavior below the minimum professional norm, to convince me that I could not win at trial regardless of the truth, and that I would receive a substantial downward variance on the Case 4:12cr101 sentence and a concurrent sentence on Case 4:15cr50. Mr. Woodward, recklessly, convinced me that regardless of the language of the plea agreement, or the colloquy language with the Court, he had negotiated this significant reduction with the prosecution, which was also congruent with the Court's intentions, in exchange for me finally "accepting responsibility," "Standing up there and admitting to something," and committing to "stop my appeals to overturn my conviction." This bargain allowed the United States to retain their convictions, with me giving up the "scorched earth policy" on principle, and to go home to "take care of my family." My contemporaneous notes and communications to Mr. Woodward include the following:

a) "Will get better Jackson sentence (on 1st case) if admitting guilt on 2nd Indictment." [Atch. 25].

b) "Larry believes sentencing will start with 3 points Acceptance and then the work is to get downward variance to '5-6 years'" [Atch. 24,27,2

c) "Larry 97-121 '30' - Starting Point" [Atch. 27,28].

d) "Guess 121 months ask by Government" [Atch. 28].

e) "5-6 years is target." [Atchs. 24,27,28,29].

f) "Larry says no chance Allen & Jackson go outside the Agreement." [Atch. 10,20,29].

g) "Larry doesn't think Govt. will have letters or witnesses (at resentencing)." [Atch. 27].

h) "Larry thinks even though stipulating 33 that the Govt. will have to ask for 30-31 as starting point due to all acceptance (30 = 97-121)." [Atch. 27,28].

i) "Larry attempting to shift everything to Judge Allen - known her 25 years, she asssisted him on cases - she is #1, Jackson is #1A, and rest are 10 levels down." [Atch. 27].

j) "Just getting the win on Appeal adds to the acceptance in lowering." [Atch. 27,28,29].

k) "Larry thinks they will ask for lower because of the win & acceptance." [Atch. 12,25,27].

l) "Thinks 4 years too Aggressive...Thinks 6 years is doable good deal." [Atch. 24].

m) "63-R= 53-6 hh+ 47-29 curr. = 6 yrs = 1.5 yrs."
"73-1 = 63hh = 57-29 curr.= 28 mos. 7yr. deal= 2.2 yrs."
"84-1= 73-6hh= 67-29 curr.= 38 mos. 8 yr. deal = 3 yrs."
[Atch. 24].

n) "Don't overanalyze Govt. on why erasing 2nd indictment." [Atch. 25].

o) "Larry thinks (Congress) Bill giving 35% Goodtime will pass this year - Huge"

8yrs with 87.5% = 2 1/2 years left with 65% = 1 year
7yrs 2 Years left 9 mos. (RDAP)
6yrs 1 Year (RDAP) 8 Mos.
5yrs. 9 Mos. (RDAP) 3 Mos. (No RDAP)
[Atch. 29].

p) "Larry says they will propose a sentence below it since won appeal & cooperated - then Larry is targeting 5-6 years as final

total." [Atch. 29].

q) "Larry said he is going 'to play hardball' to get the sentencing for both in front of Judge Allen" [Atch. 29].

r) "Larry says 0 (zero) chance that Allen or Jackson do not comply with plea Agreement constraints proposed by Govt. [Atch. 10,20,29].

72. In Mr. Woodward's final push to get me to agree to the plea and sentencing and go along with "the deal," he repeatedly promoted the point that the Court just wanted me to be out and quickly make as much money as possible to pay off the restitution. He urged me to understand that if I went along, I would quickly be moving to New York City and traveling the globe rebuilding my consulting practice. My contemporaneous notes and communications with Mr. Woodward include the following:

a) Finance industries, etc. restrictions only in place for Supervised Release Period." [Atch. 38].

b) "Travel, including International, no problem while on Supervised Release." [Atch. 38].

c) "Moving to NYC or anywhere is no problem while on SR." [Atch. 38].

73. When initially coercing me to drop my demands of self-representation for resentencing and trial against the allegations of the Superseding Indictment, Mr. Woodward told me that I would get ninety days out on bond if I allowed him to represent me since my total sentencing had been vacated, and I would be absolutely refused bond if I remained pro se. This was a tremendous factor in my calculus, as I believed I would have a beneficial result at resentencing, and I would definitely win at trial against the indictment, if I was able to prepare on the outside with documents, hard drives, and witnesses. Mr. Woodward even directly told my fiance, Ms. Ashleigh Amburn, to bring my civilian clothing to the bond hearing, because I would "likely be released straight from the courthouse." And, in order to get me to agree, Mr. Woodward told me that he had told Ms. Amburn this. To which I finally accepted his coercion as facts, rescinded my demand for self-representation, and Ms. Amburn brought my clothes to the courthouse. Bond was denied, and by the judge's comments it was clear that this was

the plan all along. Again, without Mr. Woodward's fraudulent representations, I would have represented myself through these proceedings (as my previous assertions to proceed pro se support) which I believe would have resulted in a significantly improved position, as I would have been negotiating from a position of truth. I would have definitely gone to trial, and I would have argued for a significant sentence reduction based on the Fourth Circuit's Opinion and Order directing the District Court to reconsider loss, perjury, restitution, and forfeiture. I would have definitely not signed a plea contract which agreed to 140 months again on Case 4:12cr101, and which allowed the Court to possibly stack even more years on top of this - not after I rejected three previous government plea offers and then spent three years fighting day and night to overturn my conviction and sentence. [Atch. 31].

74. Before entering the bond-detention hearing, Mr. Woodward brought me into the small meeting room and stated, "I just got off the phone in my car with Samuels (AUSA Brian Samuels), and he just wants to put an end to all of this and stop you from sending in motions. The prosecutors, the judges, and even the clerks say that if they don't agree with you, you believe they are either corrupt or stupid! All they want you to do is admit to something, and then you're looking at 4-6 years. That means you go home now or very soon." Mr. Woodward later corrected his statement on the time frame and repeatedly told me "5-6 years" was the correct range, as the notes and communications document. [Atch. 24,25].

75. Throughout this entire fraudulent process, I continually addressed the inconsistencies between his directives and the specific language of the plea contract and the language of the plea colloquy with Judge Allen. See "How does he know that?" [Atch. 31]. See "The plea doesn't say that." [Atch. 29]. Mr. Woodward repeatedly stated that the plea paperwork had to stipulate to the previous Guidelines or the prosecution would have had to create a much larger process and paperwork, yet they will motion the Court at the beginning for a lower "starting point" just based on "winning the appeal" and "accepting responsibility to put an end to this." Then from this lowered starting point, the Court would implement a significant

downward variance based on my "acceptance" and ending the "scorched earth policy." [Atchs. 12,27].

76. Mr. Woodward refused to fight the indictment or to include the tremendous volume of arguments I presented him, because he stated that all the Judges cared about was my "remorse" and me getting out there to "make it right." Mr. Woodward repeatedly told me not to say anything during the plea acceptance, and later sentencings, which would be contrary to his deal of acceptance, and to not argue any points, even the directives from the Fourth Circuit, because then the Judge would not believe I am remorseful, and she would not follow through on the deal.

77. Right before the sentencing-resentencing began, Mr. Woodward slid two Restitution Orders in front of me in the courtroom and stated, "Quick, before Judge Allen walks in, sign these two orders so she knows you are remorseful and cooperating." I protested that 1) I had not reviewed the paperwork and 2) the amounts were incorrect. Mr. Woodward then said, "Look, she's going to walk in here any second. I talked to Samuels and he agreed that you will be given credit for any of the Partners hedge fund money not spent on you or the defense."

78. As a result of hundreds of statements and directives presented to me by Mr. Woodward, I eventually acquiesced to his coercion and truly believed that his orders overrode the written language of the plea contract and the template colloquy by the Court. It was not a few comments here or there, but as the voluminous documentation proves, it was a never-ending coercion to achieve an objective, with hundreds of statements and actions to control my behavior, or as Mr. Woodward stated to Ms. Amburn, to not let me "do anything crazy."

78A. I supplied Mr. Woodward the voluminous documentation detailed in this instant Memorandum, and I repeatedly discussed with Mr. Woodward the one "weakness" being the letter to the hedge fund clients (Count One), which deterred me from standing up to his coercion and proceeding to trial. [Atch. 1].

79. In my contemporaneous notes and communications to Mr. Woodward, on page one, first item, I wrote "Weakness - earlier letter to not take Mgt. Fee - Don't remember any conversation addressing later - except

services v. Mgt Fee Issue. Weakness - taking Mgt. Fee - Legal but 'View' (like 1st trial cars and houses pictures for 4 weeks)" [Atch. 1].

This letter is Count One of the Superseding Indictment.

80. When I first met with Mr. Woodward in the Western Tidewater Regional Jail, I professed my innocence and demanded to go to trial. But, to exacerbate my fears, Mr. Woodward pulled out a copy of the Count One mail Fraud letter to Mr. William Carper (W.C.), and said, "But how are you going to defend that? You said right here in the letter. You think a jury cares if three attorneys later authorized everything?"

81. I told Mr. Woodward in our meetings that I felt totally comfortable overcoming Count 2, Count 3, and Counts 4-13. It was only Count One, along with Mr. Woodward's coercion, which influenced me to finally give up my demands for trial and accept the plea agreement. [Atch. 1].

82. If Count One had been removed from the beginning of negotiations and strategic analysis, I would have overcome Mr. Woodward's intense coercion and would have proceeded to trial. The contemporaneous notes confirm this.

83. Mr. Woodward was present for the first five minutes of the presentence interview for Case 4:12cr101 and Case 4:15cr50, and then left the meeting.

84. I presented Mr. Woodward with the PSR objections, both verbally and in writing, which specifically addressed the issues of B.O.P. activities and the materiality addressed in this instant Memorandum. [See Atch. 17-23].

85. Mr. Woodward told me he would include my objections and submit them to the Court along with also re-submitting Mr. Broccoletti's original list of PSR objections, to preserve. When I read that the Defense Position Paper stated that there are no further objections to the two pre-sentence reports, I naturally assumed Mr. Woodward had already submitted my PSR objections, plus previous objections, per our conversations, the documentation provided, and Mr. Woodward's statements that everything was handled. [Atchs. 13,17,18].

86. During sentencing-resentencing, when the Court asked Mr. Woodward,

"And as far as you know, there are no errors in the report?", I logically assumed Mr. Woodward had already submitted in his motions the PSR objections I forwarded, plus the previous PSR objections, pursuant to his repeated statements that he was handling this. [Atchs. 13, 17-23].

87. When speaking to Mr. Noll, I stated, "My first job at Ft. Dix when I got there was as a math and reading GED tutor. I did that for a couple years. I felt it was a good way to give back and help other inmates." [See Work History, Atch. 33].

88. I stated to Mr. Noll, "I've also helped out a clerk in the Law Library helping inmates with their legal challenges." [See Mr. Gary Vaughn Affidavit in support; also see PSR Objections to Mr. Woodward Atch. 23].

89. I explained to Mr. Noll that I had also worked as an assistant to the Director of Education, and that I had created and submitted an Adult Continuing Education (ACE) Course to help out inmates re-entering the workforce [Atch. 23].

90. MICG Securities attorneys stated to me that if I did not accept FINRA's Offer of Settlement, FINRA would impose a $1 million fine and pursue forfeiture of MICG management team members' industry licenses.

91. I at no time agreed to the top end of the Guidelines range, nor did I authorize Mr. Woodward to agree to the top end of the Guidelines range.

92. Following the break in the trial proceedings when Judge Doumar was berating defense witness, Michael Umscheid, Mr. Broccoletti pulled me aside and stated, "Samuels (AUSA) is worried that there is going to be a mistrial. Doumar is out of control. He's going to take care of it after the break."

93. Mr. Woodward told me after I gave him my Pro Se Supplemental Brief that he "narrowed it down to the four strongest arguments" for his Appeal Brief.

94. I objected to Mr. Woodward about his inclusion that the "court reviews it for plain error," yet he overrode my objection.

95. The bargain of restitution being finalized at sentencing was a significant inducement and consideration in my mind prompting my final acceptance of this contractual offer, as documented in my contemporaneous notes and communications with Mr. Woodward, as well as in this instant Memorandum. [See Atchs. 10,11,15,19,27,30,31].

96. Prior to the April 27, 2016, signing of the plea agreement, Mr. Woodward advised me that the re-consideration of the loss and restitution, per the Fourth Circuit's Opinion directive, would be a significant factor in the Judge's downward variance calculation for Case No. 4:12cr101 and for ensuring the low, concurrent sentence for Case No. 4:15cr50. [See Atch. 20,26].

97. Prior to signing the plea agreement, Mr. Woodward spent a great deal of time with me, attempting to understand the correct loss and restitution calculations for both case numbers. It was a very important factor, as my contemporaneous notes and communications confirm. [Atch. 10,11,15].

98. Proper closure on the restitution issue played a key role in my decision to finally agree to the plea contract, as I documented in my notes and communications with Mr. Woodward in the Western Tidewater Regional Jail. I wrote then:

a) "Restitution is determined at sentencing so we have to ensure not stupid." [Atch. 10].

b) "Restitution clarification is needed." [Atch. 11].

c) "Noted Govt. restitution order request $2.5 million @ 25% of all net income at back of Govt. position paper." [Atch. 31].

d) "Larry says I will 'be given credit for any of the Partners hedge Fund money not spent on me/defense' ($300k-$400k on fund expenses) - How does he know?" [Atch. 31].

e) "$721k number incorrect and you/we need this % calculations - couple #'s look too large - Do not believe anyone owned 12% of Partners Fund (unless MICG, LLC)" [Atch. 21].

f) "Restitution for Case #2 - $100k to $700k = 6 points on new table." [Atch. 20].

g) "Larry reiterated both restitution and forfeiture have hearings if I don't agree with the number - plea doesn't say that on forfeiture." [Atch. 29].

h) "Forfeiture $700k is crazy - Can't just blackmail a #" [Atch. 14].

i) "Maybe show plan beyond restitution # for shareholders." [Atch. 30].

j) "Restitution Proposed Schedule" [Chart Atch. 15].

99. Had the Government not contractually promised to have restitution determined at sentencing, and on the contrary have left as an open item to be unilaterally modified at a later date, I would definitely not have signed the proposed plea contract, as my notes document the significance of this issue.

100. Mr. Woodward failed to notify me, or explain to me, that the Plea Agreement p. 2 para. 3, contained an inherent conflict of interest in that I was signing a document stating he had rendered effective assistance in this contract negotiation while he contemporaneously was negotiating this contract as my representative.

101. When I asked Mr. Woodward if there was any possibility that the judge would not honor the "concurrent" provisions in the plea agreement, Mr. Woodward stated, "Don't over-analyze (the) Govt. on why erasing 2nd Indictment" and also that there was "0 (zero) chance that (Judge) Allen or (Judge) Jackson do not comply with the plea agreement constraints proposed by Govt." [Atchs. 10,20,25,29].

102. As the re-sentencing date approached, Mr. Woodward reversed his previous advice for me to provide witnesses for the hearing since the government was providing witnesses, and then claimed the government would not be providing any witnesses, so to cancel the defense witnesses. Then, at resentencing, the government provided three witnesses who greatly affected the Court's sentencing calculus, exemplified by her statements. Mr. Woodward refused to present my witnesses, even though in attendance, to include the four corporate Presidents who had submitted offers for my immediate employement, as well as immediate restitution payments initiated for the shareholders-victims in the courtroom.

103. Mr. Woodward coerced and manipulated me into believing that by the underlined language of the plea contract, and his statements, that there was no possibility the second case would not be run concurrent. Without his coercion, I would have never signed the plea contract.

104. When the drama occurred from attorney Mr. Shilling allegedly giving federal agents the incorrect information reference our indemnification procedures, I participated in a conference call with attorneys Mr. Lynn and Mr. Biard. Mr. Biard, who had first arranged for his associate attorney Ms. Katherine Klocke to represent the MICG Partners Fund, stated on the call, "Don't worry. I know Kathy well. She will step up and stand behind her authorizations." [Atch. 7].

105. Regarding MICG Partners Funds' authorizations to cover the MICG Venture Fund's expenses, after the attorney conference call noted in Item 104 above, I later called attorney Ms. Klocke, myself, and double checked if we needed more letters of authorization. She confirmed no further documentation was required, but she claimed the Fund had not paid her recent bill. I told her that I thought her check had cleared, and after confirming, my assistant called back Ms. Klocke to confirm with her. [Atch. 8].

106. Following my Appeal Order vacating my sentence but not my conviction, I complained to attorney Mr. Woodward about the unfair standard of plain error review at our second meeting in Western Tidewater Regional Jail. Mr. Woodward responded, "The only reason you lost your conviction appeal is because your attorney never objected! It's as simple as that!" [Atch. 16].

107. Mr. Woodward repeatedly asserted that if I "accepted responsibility" and agreed to a plea offer, instead of insisting on trial for the Superseding Indictment and continuing to pursue overturning my first case conviction, that I would receive a substantially less sentence and anything on the second case would run concurrent, so "zero." He stated, and I wrote in my notes, that the government would requests 2 points off "just for winning the appeal." Then, we would receive 3 points off for Acceptance of Responsibility, which would reduce my 33 to 28. Then, the Judge's minor 2 point downward variance would equal 26 points, which is a Guidelines range of 63-78 months, which would be only 9-12 more months since I was eligible for the RDAP Drug Program sentence reduction also. This "deal" and outcome was repeated continuously in response to my demands for trial. See Notes:

"They just knock off 2 pts...3 pts off for Acceptance of Responsibility...
2 pts + 3 pts = 5 pts off before looking at downward variance...
down to 6 1/2...28 = 78-97 (6 1/2)
26 after Downward Variance = 63-78 (5 1/2)
9-12 months with RDAP." [Atch. 12].

108. I continuously asked Mr. Woodward why his resentencing deal including the government's lower demands and the Court's downward variance was not congruent with the plea paperwork being proposed, or the language from Judge Allen during our hearing. In my communications with Mr. Woodward and in my contemporaneous meeting notes, I wrote:

a) "Just asking for contract to say what I'm told it's meant to say." [Atch. 14].

b) "If stipulating to number than how getting 3 for responsibility? Figuratively? [Atch 12]

c) "Plea doesn't say that." [Atch. 29].

d) "There is no language to say 2nd sentence no higher than 1st, including SR, & is concurrent." [Atch. 11].

e) "How does he know?" [Atch. 31].

f) "(On plea) says not seek more than 140 mos. total for both - not 1st Max is Max & Not is what Govt. seeks must be will not be." [Atch. 11].

g) "(On concurrency) confirm Larry's previous statement of no chance Judge Allen exceeds 'recommended.'" [Atch. 20].

h) "Forfeiture - Nowhere says we can oppose or Court determines." [Atch. 10].

i) "How get 3 pts Acceptance if Stipulating to Guidelines (?)" [Atch. 28].

109. In urging Mr. Woodward to proceed to trial in Case 4:15cr50, I also submitted the following notes and points:

a) Title: "Second Indictment Trial Defense Support." [Atch. 5].

b) "Trial Defense Support: No Intent/Will/Mens Rea, etc. Issue." [Atch. 4].

c) "Trial Defense Support: I will not let lawyers 'off the hook' if we go through whole process like I did first time around." [Atch. 4].

d) "Trial Defense Suppport: Theme: Factual & Authorized & Legal." [Atch. 5].

I Jeffrey A. Martinovich, hereby attest under the penalty of perjury that the foregoing is true and correct to the best of my knowledge, pursuant to Title 28 U.S.C. 1746.

Date: 2-26-18

Jeffrey A. Martinovich

Indictment: (Check names & Chronology against file prepared 2 yrs ago with better memory & files)

Weakness - earlier letter to not take Mgt Fee - Don't remember any conversation Addressing later - except services v. Mgt Fee.

Weakness - taking Mgt Fee / Defense Expense while Redemption requests not get filled until Holdings liquidations

- Legal beat "new" (Like 1st trial of Cars & Houses pictures for 4 weeks)

Email to K.K. in Indictment? Not sure if incriminating or just an email to note wire fraud

- Ashleigh has File & Broccolette has file
- Brook, Jamie, & Rebecca Lawlor ~~Started~~ worked with me in "rebuilding phase"
  - Software Sales Engagement
  - Lighting Sales Team
  - Dr. Dispense Distribution — FBI grabbed her since name on MF account - She 100% "not want to them"

Plus Hedge Funds, etc. in Jeff's World

Note: After Trial, Brooke suddenly quit one day and wouldn't return our phone calls. She handled a lot of the Administration, including the Hedge Fund Checks. I then received a phone call that Brooke was "cooperating with the feds" - I couldn't understand on what/why but was still Naive - FBI.

After Released from 5 days Kidnapping I went to Todd Lynn's office (PWHD) & he started the process for the Indemnification

FOUR LAW FIRMS Handled to ensure the Funds were Represented & MICG did not Manipulate or Conflict of Interest

- Todd Lynn - PWHD - MICG Bariners Overall Attorney
- Ben Biard - Wilson Elser but now other Firm NYC → Miami — MICG Securities Attorney
- Andy Shilling (Sp.?) - Todd's Richmond law school Roommate - Hampton Roads Firm, Shilling, etc. - Venture Strategies Fund
- _____ - Woman Securities Atty, Florida, Ben Referral - Partners Fund - Katherine Klock (Ackerman) Miami

Prior to Indemnification issue this group set up for Partners to cover Venture expenses since '20% investment in Venture, Venture future liquidity but no cash since FTX Debacle stopped it, & Partners large Cash Positions.

Paperwork & Documentation authorizing all

We stopped the Partners & Venture Mgt Fees for approx year & half & MICG covered all the MICG Administration, Service, expenses, etc while Battling FTX.

After MICG Personnel Gone, I & the gals took on all the work - I paid the gals

I went to Todd to OK us Receiving the Mgt Fee & we called the Partners Fund Attorney & She Approved & said She did not need to provide further Documentation & that all Future expenses of Venture were authorized to be covered by Partners Until Both Liquidations, liquidity events. I remember later calling her Firm for Documentation & She was "Annoyed" & said we are covered. Also, there was a call or two because She thought She never got paid but the girls found her check had cleared & her Assistant

Don't think Todd called her again for Indem specifically.

2nd Indictment Cont'd:

- Thought? Better to ask for Trial By Judge since housewives & Shipyard workers will never believe the guy with the Bentley & Ferrari? Or is only cynicism of the Judges all in the game with the Prosecutors to get as Many Years incarceration as possible correct? Which is less Bad Option?
- The lawyers asked the Partners Fund Attorney how to Fund to MICG for the Mgt Fee since MICG "insolvent/fs" She said take the fee directly - not through MICG LLC (or MICG Wealth, LLC) for services rendered.

The Fee is 1% & I also kept a running log informally of activities & would type up periodically with goals to have in Consultant-Attorney Format & gave to Harbinger, PLC (Unscheid) when doing year end taxes

- Weakness - 2011-2013 (or Maybe just 2013) Taxes are not "tight" with the different entities & new LLC's since World got turned upside down. MICG Funds should all be good. - just new Consulting LLC's Maybe not We can get all from Unscheid - I remember the gals doing 1099's etc. so maybe all correct. If fixing Sentence, taxes all back up to speed on the IRS - no income last few years of course but need straight.
- For Indemnification, Todd Lynn worked with Andy Skilling & Andy prepared paperwork (in File) then wanted an extra "Conservative" Backup for Revenue of deals/Work we were working on to "collateralize" for future so we used the listing we were doing to sell Rebecca & Seward Lawlors Hotel (In File). Todd Lynn & Seward Lawlor (Asbestos lawyer in PWHD) prepared together & submitted for Andy Skilling - I added in the investment banking language from the engagement agreement for the sale. Later 3-6 mos., Seward decided to postpone the sale after our analysis & initial marketing didn't hit the # he wanted. He decided to keep another Season to have better Revenue Comps & Financials.

Later, after Broccoletti was all paid, I called Andy Skilling to ask if any more documentation was necessary for the Checks to the experts & Consultants. He said the Opinion Letter covers that & doesn't need anything more. In same call I asked him to also review & sign off the Ledger for expenses for the year before the girls give to Unscheid for taxes. But that never happened during the drama & off to prison. Later ~~Todd Lynn~~ Broccoletti tells me that Andy told "the Feds" he didn't remember approving the other checks - Brooke & Nannie were with me when I called him because Brooke had to go to Wells Fargo to cut some Checks & was waiting for Andy's OK. We could figure out the date & phone records. Broccoletti also tells me that Skilling told the Feds he didn't realize the Funds were coming from Partners for the Checks, which made zero sense since he & Todd handled it... so,

(If out, I have File of Documents with Ashleigh - Broccoletti has other - If in, I please need a copy of the File)

2nd Indictment Cont'd:

- ... So I go to Todd Lyons office & tell him Shillings comments to the Feds, and Todd takes me into the Conference Room & calls Shilling (his roommate) on the cell phone & asks him why is he saying this. Todd says "Andy of course you knew how everything was set-you did the paperwork, you did it before also because Venture didn't have the cash, etc." Shilling stumbled through & said he didn't understand, etc.-it was ridiculous. So Todd hangs up the phone & says verbatim, "He's Lying, He's Scared. He misspoke talking to the Feds & now he's scared to change his story". I remember Clear as Day because it was another one of those WTF is going on moments-is everyone lying for Bar
- Todd also said that day that he & Andy had never finished a Promissory Note between the Funds for more documentation - he had asked Andy to do it because he didn't want to do it since representing MICG, but Andy had never got around to doing it.
- FYI, Zero Mgt. Fees were taken in the Funds after the Indictment
- The Indictment issue about transferring First Clearing Corp (FCC) Bank Accounts to Wells Fargo makes no sense. FCC was the clearing firm for MICG & contacted me to switch the Accounts after MICG closed & our Contract with FCC was over. I controlled the accounts at FCC just like at Wells Fargo. At Wells Fargo we also added Brooke to the Wells Fargo Account so I didn't have to be with her to process a check.
- There was also a closed/inactive account at FCC for Partners Fund with $98,000 that I discovered & started going through the process to re-validate the account (paperwork pain) but didn't get completed before off to prison. Tried to get others to get it but I think it very possibly is still sitting there & Buddy David doesn't know.

So the Govt. is upset that we paid for my defense after they froze my small bank accounts so they call a "freeze hearing" & call the head of Wells Fargo Fraud Division to the Stand in front of Doumar. We used Wells Fargo "Professional Checks" to pay the Bills so there was a record, etc. WF's system in their ledger shows it first as a Cashier's Check/Cash Withdrawal & then lists to whom the checks were made out to. If in one day you have them write 4 checks, it shows as a $50K Cashier Check with then 4 checks equaling a total of $50K - that's their system. So the WF Fraud Lady (Former FBI) gets up in front of Doumar & says Martinovich has withdrawn multiple times $50K, $75K, $90K Cash from the Hedge Fund Accounts with no corresponding Checks, we have no record of any checks. So Doumar

2ND Indictment Cont'd:

cont'd... So Doumar says, "You mean to tell me that Martinovich is withdrawing large amounts of cash from the [hedge fund] accounts?!" "Yes, your Honor." So I'm sitting next to Broccoletti and I hand him all the corresponding checks that I have copies of for each line item she cited. Broc says here are copies of the checks - how is it possible Mr. Martinovich has them & Wells Fargo says they never existed & don't have copies. She has no answer. Doumar blows off Broc because he's so excited to think I have withdrawn all this money. He freezes the accounts. Tells more about how horrible Martinovich is, etc. Another WTF is going on moment - everyone is lying for the Govt. Wells Fargo is on my Civil Suit List also. Woodward needs to handle before statute of limitations up - Deep Pockets!

Weakness: Can see the attorneys backtracking, etc to not be involved & get Feds on them - just like happened first time around.

Recalling: Partners Fund Attorney in Florida had us bill Fund as services & valid expenses to cover cost of Team handling everything - that's why kept log (Time Bill estimate) also. Possibly not classifying as Mgt Fee - but was less than also. Over ≈ 4 years, billed Fund ≈ half what would have been Fee (Can calculate all for exact).

During this turmoil time, I drafted 3-4 Investor Update Reports to send out to Shareholders like we did Quarterly as MICG. I would take them to Todd Lynn's office to Approve & he would get on phone with Ben Biard & each time they would nix sending out a report. They didn't want anymore items out in writing while FINRA, Lawsuits, etc. were trying to kill us about everything.

I fielded phone calls, had some meetings with angry clients, etc. but don't think any official update went out.

I will not let lawyers "off the hook" if we go through whole process like I did first time around. [D]efinitely a Challenge with the risk-reward you (Woodward) Discussed.

[...]nburger PLC (Urschel & Accountants) handled allocating the expenses between Venture & Partners Funds & [ke]pt a Debit Balance for what Venture owes Partners at Liquidity Events.

Intent/Will/Mens Rea, etc. - Issue - Attorney Involvement Overkill to ensure all proper.

Atch ...

SECOND INDICTMENT TRIAL DEFENSE SUPPORT 3-19-16

THEMES:
- Factual & Authorized & Legal
- Not accepting Govt-controlled Attorney Statements
  - Conduct own Interrogatories, Depositions, Discovery with Factual Chronology & Documents - Under Oath
- Theme: The Attorneys authorized all, created all, to get their $1,000,000+ in fees & they when FEDS step in they scatter like cockroaches in the light & can't seem to remember. - Juries Don't like Attorneys - Great Theme for Motivated Attorney
- FQT, had $1mm E&O Insurance that also was depleted in payments to Todd, Ben, Kathy, Schilling, & others. The FINRA/Govt ridiculous Action is what cost these Funds.
- Get Copy of Jeff "Indemnification Documentation" Folder - BXC & ASG have

CHRONOLOGY OF FACTS:
After MICG personnel all gone, went to Todd Lynn (STOP-BACK TO BEGINNING)
Partners Fund liquidated some positions, had large cash position, Mgt Team decided to take position in Venture Fund prior to the EPV IPO for Partners Investors to get this reward also. When FINRA started their problems with all the Hedge Funds, the Attorneys set up the Structure to have Partners cover Venture's expenses and parts of legal fees so that Attorneys could be hired & paid to defend the funds and MICG. There was also a $1 million Errors & Omissions (E&O) policy backing up the Indemnification Clauses of the Funds. FQT, standard clauses for all funds - without no one could manage any fund with all the constant legal issues.
Todd Lynn handled all MICG Issues & Ben Baird handled MICG Securities-Regulatory
Todd & Ben orchestrated getting Andy Shellens (Todd's Richmond Law Roommate) to represent Venture & Kathy Klock (Ben's relation) to represent Partners (Documentation)

SECOND INDICTMENT NOTES CONT'D

TIMELINE CONT'D:

1. Then Indictment
2. There were no more Administrative Expenses after Indictment
3. After 5 days of Jail, he went to Todd Lynn's Office
4. Todd and Ben communicated with Andy Shilling to organize (what was) is necessary for the indemnification process. I don't believe they required anything again from Kathy Kloche as she reiterated all valid expenses of Venture are to be covered. I did not talk again with Kathy - I'm not sure of Todd or Ben did as they handled this paperwork.
5. I'm in Todd's Small Conference Room when he calls Andy Shilling and discusses the paperwork, including a Promissory note between Venture & Partners Fund. They have been meaning to get done. They discuss that Unsahid is keeping track of the Accounting & liability but they should also do a Promissory Note. Andy wants Todd to do it since he represents Venture and Todd doesn't want to do it because he represents MIC. I believe they procrastinated and never finalized one. Todd later references this discussion to Andy w/ Jim in the room because it was irrelevant for Andy to say he didn't know the funds were coming from Partners.

After initial Indemnification paperwork prepared, Andy asked that we pledge some future earnings as a type of collateral just to be extra conservative. I told Andy of our project & he pushed the Hotel Sale engagement we were putting together for Rebecca & Seward Lawlor. Seward is attorney in Todd's Office & those two worked together to finish that engagement agreement & pledge that document (in File). Later, Seward decided to pull off market & try to get better occupancy numbers that year to get a higher sales price the next season.

All paperwork was Finalized & Brooke sent $125,000 check to Broccoletti.

I believe Todd & Broccoletti spoke a few times during the process.

Then Broccoletti tells us the Experts & Consultants need to be paid not out of his Fee.

With Brooke in room I call Shilling to see if anything more needs to be done for this. He states that his paperwork already covers it & doesn't need to provide anything else. Also, I asked him to talk w/ Lauren & sign off on fraud expenses with the

SECOND INDICTMENT NOTES CONT'D:

- Tiptree Investment Liquidation:
  - In this time period I was able to negotiate with Tiptree's President and of Capital Partners Tiptree shares part of a public buyout - we structured the deal so all of Partners shares were able to be included but only part of Andover Strategies Tiptree shares because of the size (by this time Andover Strategies was being handled by Buddy David & Gang). This deal gave us ≈ 100-80% total return I think (I don't have #'s) - & Liquidity for Distributions - I estimate ≈ $1.3 million in Partners and $5 million in Andover. (that may include prior Distros).

NOTES:

- When all Indemnification drama came up & we reiterated how everything was done legally, correctly, Ben told Todd & I on the phone, "Don't worry I know Kathy well, she will step up and stand behind her authorizations." (Incredibly, Ben said, "Sign this FINRA settlement - there is no possible way anything criminal could ever come of this").

Step Back & Take an Outsiders View: Wouldn't an Attorney be able to show a jury of at least 8th grade education how with 4 Law Firms + Accountants so intimately involved in handling every step - how would or could Horrible Martinez fairly take cash out of hedge fund accounts (Ridiculous), take expense reimbursements unauthorized (Ridiculous), and Trick & Manipulate 4 Law Firms in a Magic Act to not let them know where the Money was coming from (Ridiculous!) - Just as Martinez Secretly Manipulated in a Lucid Conspiracy his M of Team, The Valuation Expert, & The Auditors - Do we speculate, lay down, collapse to an evil Government establishment because people are so Uneducated, too jealous of success, to blind to the Justice Dept. to have any common sense? Again this Convicts Violence Against Common Sense.

. Through the Meltdown, The E & C plus Partners covered all the attorney's payments plus a lawsuit settlement. Also, Harbinger PLC (insolvent) kept track of allocating the payments & expenses among Venture & Partners & the liability between the two. While billing the Management Fee, I had the MICE Compliance & Operations Team handle all the Administration & Client Service, and the Mgt Team handled the coordination of investments, Managers, Client Meetings & Communications.

After all MICE personnel and infrastructure was gone, I went to Todd to ask if able to pay for expenses & personnel, just as the attorneys were being paid for their work & people. Todd got on the phone with Bey, as always and set up call with Kathy Hoche.

Kathy & Bey authorize & advise for the reimbursement/expense payments to be taken directly for time expense, payments as opposed to a Management fee flowing through MICE, LLC due all the issues of Harbinger, clawing, etc while they figured out what to do with these entities

As a follow up, I later called Kathy Hoche & asked her if we needed another letter of authorization. She was actually "grouchy" and stated the initial Documentation covers all authorized expenses and these are valid expenses & no further documentation is needed. On this call, Kathy also claimed we had not paid [illegible] and I told her I thought the check had cleared. I gave the task to Brooke (Brooke & [illegible] worked with [illegible]) & Brooke followed up with her & confirmed all cleared.

- I had Brooke & [illegible] working with me as I attempted to rebuild - handling 3 Consulting assignments - Software sales, Lighting sales, & Drug Rep practice - plus the MICE Hedge Funds and LLC other issues - paid 1099.

Since not taking a Mgt Fee, per Attorneys advice, we kept a running log of activities and expenses & summarized at year-end applying hourly rates, discounts, etc - all given to Harbinger PLC - Documentation in Folder.

→

Atch. 8

for tax preparers later when ready. After hanging up Brooke cut the checks for the experts requested by Broccoletti. The phone rings and the Date checks out at Wells Fargo will come in.

2. Then Broccoletti tells me Stalling told Feds he didn't know how the fees were being paid and that the experts were covered. He assures they are upset & was able to found a defense.

3. I head to Todd Lyons office. He takes me into the large Conference Room and calls Andy with his cell phone. He argues with Andy and asks why he would say that to the Feds - He says that Andy knows because that was the whole reason from the beginning, plus to do the promissory note. Todd hangs up and says, "Andy is Lying. He said something wrong to the Feds and now he is scared not to go back on what he said" (So Mr Stalling you could rather send a man to prison rather than correct something you said to the Feds?)

4. Then there is a hearing - Govt puts Lady from Wells Fargo Fraud Dept who says I am taking large Cash withdrawals from the Heroic Accounts. Ludicrous! When Brooke would cut Professional Checks at the Branch, WF's system totals it as a Cash/Cashiers Check withdrawal then correlates that amount against the total checks written, they have copy & we made copies. She says we withdrew Cash but they have no corresponding checks. I hand all the (In Court) checks to Broccoletti & he asks why I have copies but Wells Fargo has no record - How is that Possible?! Here Lying Again. Judge Doman of course buys this Theatre because that is the plan.

Issue of transferring $700K from FCC Accounts to Wells Fargo Under My Control also Ludicrous

1. The Accounts at FCC were only for My Signature also
2. FCC insisted we shifted the accounts because were closing out all MICE Accounts.
3. There was still another account with $95K that needed some paperwork completed which didn't get completed prior to heading to Prison. Tried to get Todd & Unsolicited to follow up after but nobody would help because of Feds. It is possibly still sitting there in abandoned account.

Larry Mtg

Important - Strong From Credible, Objective Larry

1. Worried about Rush on Position Paper & time squeezed to get in before June 1
2. Need Jeff 3553 list re-iterated in this Paper even though not new
3. Larry Wrote Down items?
4. Reviewed What's New List? & 2nd Indictment "touch upon"
5. Jeff letter & other letter reveals now - how Jeff not humble, Kevin 2 sentences, Say to "Judge Allen" investors
6. Rule 11, 18 USC 1956, Disk, Video,
7. Fine Force the Amount! 500k Cap -, Special Assessment
8. ? Reality of Supervised Release 3 years? Off after 1 year - but not with Restitution still out?
9. Stipulation of facts per 1B1.2(c) of Sentencing Guidelines
10. ? Larry says no Chance Allen & Jackson go outside this Agreement — Larry *
11. How sure US will not appeal if Larry does well — Clearly states Can - Later [redacted]
    Request 4 to 6 yrs in Position Paper
12. Restitution is determined at Sentencing so we have to be prepared to ensure not stupid - Larry
13. Immunity - just as in Eastern District - what about State, etc.
    Forfeiture - No where says we can oppose or Court Determines.
    I Need Statement of Facts & Decision on 7 & 12
    Strategy to subtlely let Allen know loss could be much lower, McDaniel on Obstruction, etc.?
    TIME Calculations to Larry

Ltrs

addings as letter, Kevin edit

1. Kevin - edit
2. Ken
3. Judson
4. Goldberg - edit
5. Atty

6. Glenn
7. Sean
8. Cole
9. Mom

19. Larry not aware of Govt. Stipulation that "wraps up anything on the books" (Rule 20?)
20. Be careful on Rule 11 so protected Judge doesn't go higher
?21. Be prepared
22. Larry said would order video
23. Larry said will give Ashleigh Copy of 2nd Discovery (Disk)
24. Larry said to write Boccoletti for Copy of 1st Discovery
25. Says Grand Jury III-session issue is BS
26. Larry not aware of Bobby Scott relationship with Jackson but assumes so - Larry more Said "hope you are not relying on any words from Bobby Scott to intervene in your case because it ain't happening - does not have high opinion of Scott" - Larry
27. Larry says 2nd Arraignment was Judge Leonard (was in Writs! No order no Bond!)
28. Have to Counter Act Tactfully the 2nd Indictment Behavior Addition

PLEA's

1. Special Assessment?
2. There is no Language to Say 2nd Sentence no higher than 1st, including SR, & is concurrent - only Standard - not finite, only may be considered in conjunction
   - needs run concurrent & will not exceed - Larry
3. Says Conduct will be considered in 1st
4. "See Agreed Stipulation as to Sentencing Factor ECF No. XXX"
5. All Cap Letters Everywhere - The Scam - even in footnotes
6. Says not seek More than 140 mos total for both - not 1st Max is Max
   - & Not is What Court Seeks must be it will not be -
7. Says waive Appeal of any sentence w/in Statutory Maximum
8. Waiver of Appeal not affect Govt rights in 18 USC 3742(b) → need to see all 18 USC 3742
9. Waiving any records including FOIA - investigation or prosecution?
10. Restitution Clarification is needed - Larry
11. Civil Liability on top of this? Indemnification to Ford - more

LARRY MTG NOTES – TUESDAY,

Reviewed plea agreement for 2nd – I will prepare comments
Main Plea issue is Stipulating to Previous Guidelines Range
Larry calling Samuels today and to meeting with him Thursday – Larry
– Suggesting 1) We can argue points but have Cap
2) We can argue just Loss & Obstruction but they have Cap – what 4th Circ. Noted
3) They just knock off 2 pts
Larry's Plan is to argue for 3 pts off for Acceptance of Responsibility – Larry
2 pts + 3 pts = 5 pts off before looking at Downward Variance – Down to 6½ – Larry
→ 28 = 78-97 (6½) – Larry
26 after Downward Variance = 63-78 (5½) → 9-12 Mos with RDAP – Larry
Larry has room reserved for Friday
If sign plea, a week later would be in front of Judge to accept
Didn't Discuss 2255 – says OK in plea – Larry
Larry doesn't want "all Open" resentencing because of PSI 270 months request plus enhancements won – especially Bankruptcy enhancement.
– 401 Money is the risk
They did not give him a deadline on plea
Pull Transcripts
Larry will stress the Indictment/2nd Indictment is not new – included in Submissions before Dennos – so not extra consideration – Larry
We are Focusing on What is New: – JEFF HELP
– Acceptance, Ft. Dix Behavior, Guidelines – Intent/Chart, McDonnell Obstruction
Ask Larry – if Stipulating to Number than how getting 3 for Responsibility? Figuratively?
Per Larry, only Submit Bond if "to work on other"
Is Govt Submitting letters on witnesses?
Could possibly get time served if wrote $1 million Check for Restitution now. – Larry
Ensure language includes 2nd can't exceed 1st – including Sup. Release – Larry

Larry Mtg

1. Plea Agreement for 2nd logistics
2. Bond
3. Plea for 1st
4. Position Paper input pages (last round)
5. Position Paper Rough Draft Date? -- Relieve Conflict / Heart Attack
6. Doesn't Jackson have to rule on everything Again?
   - 2 enhancements won? - Sophisticated & with Bankruptcy & abuse of trust (they forgot)
   - PSI Objections - DSM - How Handled
7. My letter - Edits, Typed on Nice paper? - Others - logistics
8. Video Ordered?
9. Copies of Discovery, etc Okay?
10. Grand Jury in Sexion Issue?
11. Jackson relationship with Bobby Scott? Larry's?
12. 2nd Arraignment Judge Name - Leonard
13. In process of attempting Action on Other Issue
14. Previous DSM - good argument only other Stock & Bond losses to not be involved - preponderance of evidence
   - Stipulation said not allegiance a loss amount
15. Rule 20/11C

Larry Meeting Cont'd

12. #9 immunity from further U.S. Prosecution - State? - other U.S. issues?
13. #10 will be dismissed - not will move to dismiss
: just asking for contract to say what I'm told it's meant to say
14. #11 - Forfeiture Clarification - Wide Open [redacted] - just say - & Restitution offsets & Paid 1st
- House Amount on Forfeiture 3 Sets Open ended Checkbook
- Polygraph - Tax Returns → All About Money for Eric Lecis Character
5. #14 - Attempts to commit other crime makes this plea void or violates
then they are released of contract but I am held to contract - Ridiculous
6. I'm agreeing to all 3553 - can I read a copy
7. $100 prepayment - Forma Pauperis
"Defendant is aware Stipulation is estimate & not binding"
Forfeiture $700k is Crazy - Can't put blackmail # - Shifting banks, other 1800k Account, - Jeff to Larry

RESTITUTION PROPOSED SCHEDULE

~~AFTER-TAX INCOME AGI~~	RESTITUTION PAY
< $75,000	$1,000/mo.
$75K – $250K	30%
$250K – $1MM	40%
> $1MM	50%

SPOUSAL CONTRACT SCHEDULE

~~AFTER-TAX INCOME AGI~~	SPOUSAL PAY
< $75,000	$1,000/mo.
$75K – $250K	$3,000/mo.
> $250K	$5,000/mo.

* After Restitution Fulfilled 30% until Backpay Satisfied

SAMPLE SCHEDULE

YEAR	~~AFTER-TAX INCOME AGI~~	RESTITUTION	SPOUSAL	MARTINOVICH PAY	EST. TAXES PAID
2017	175K	12K	12K	51K	30K
2018	150K	45K	36K	69K	60K
2019	300K	120K	60K	120K	120K
2020	600K	240K	60K	300K	240K
2021	1MM	500K	60K	440K	400K
2022	1MM	500K	60K	440K	400K
2023	1MM	500K	60K	440K	400K
	$4,125,000	$1,917,000	$348,000	$1,860,000	$1,650,000

NOTES:

1. WNM Enterprise is LLC, therefore taxes at individual rate
2. AGI – Taxes Paid = After-tax income (Realized)
3. Spousal Contract payment is After Tax per Contract
4. Schedule Starts 90 Days post Release
5. Realized Income = Salary, Fees, Cap Gains, Dividends, Bonus, exercised cash options
6. Restitution paid Quarterly based on Trailing 3 months annualized income
7. Defendant has option to satisfy early.

2255

3091083

- Form - Template Fill out - 1 Argument - Doumar
- Send Copies to Law Firms / Papers / Schools
- Include:
  - 4th Circuit Exact Language
  - Concurring Opinion Language
  - Larry en banc Language
  - Larry Appeal & Reply Language
  - Supplemental Examples

- Replaced the Judge - Rare
- Reach out to Schools for assistance & insight

Larry Quote "The only reason you lost your conviction appeal is because your Attorney never objected! It's as Simple as that!" Larry mini Bio & Credibility with Court.

Combat "Evidence Overwhelming" [redacted] Comments → volume is not Evidence
- Cases Showing Blatant Ineffective Assistance trumps all

2255 Book - Cases Supporting

Check "who" this 2255 goes to & Manage

Issue of Appeals Court wouldn't overturn Plain Error because flood, precedent, etc-
- Cases Showing Resolve not to overturn Plain Error

Complaint to Virginia & National? Bar (Include w/ 2255)
- How could this Shocking Behavior never be objected once when the Community is Shocked at the Sheer Volume of Abuses by the Court
- Throckmorton - Was he conniving at my defeat? Only logical answer
  - Was there an agreement? Urge investigation
- Add $25k Never Returned - Consistent Behavior

Jeremy Gordon or Craig Pasquarelli - Proposal from each
- Ask get Josh Mom for info to Contact - 13-4828 4th Cir. Appeals
  - 4 Documents Submitted & Court Opinion & Concurring Opinion
  - Ask For their Common-Fair Look - For we then [illegible] Continued but believe Conviction

Atch 1[illegible]

"Larry,

I have pardon my CEO OCD but I wanted to make sure you have everything humanly possible from Ashleigh & me, as well as to make sure we are on the correct page. We are both forever grateful for your expertise and hard work.

May I ask that I soon please have an opportunity to sit down with you to review strategy and papers? I am anxious about rushing at the end due to the logistical-time challenges of receiving paperwork & communicating from this dungeon. Per Judge Allen's comments at the hearing about wanting to review everything early, I am assuming we are shooting for appx. 3 weeks before, so appx. Sep. 8th?

I will do my best not to drive you crazy these last 40 days. Please let me know what I can do to help!

Tools: (Sent to Judge Allen)

1. Position Paper
2. PSR Objections
3. Business Plan
4. Character Letters
5. Business Potential Support Ltrs.
6. Shareholder Support Ltrs.
7. J-O-B Letter & Testify (2)
8. Resentencing Attendees
9. Restitution Plan

Position Paper Subjects (plus above Separate Pieces):

1. Acceptance & Responsibility
2. Deterrence "Already" plus Sentence Examples
3. 2nd Indictment Reevaluation – nothing new
4. Loss – Less Points Reevaluation
5. Perjury – 2 points question
6. What's New – Activities Since 1st Sentencing
7. Charity & Community Stressed
8. Last Sentencing – Downward Downward desire

Atch. 17

Case #1 p.1
Please Copy & send back to Jeff & Copy to Ashleigh - Thank You

COMMENTS/OBJECTIONS - PSR Case # 4:12 cr 101 (Case #1)

1. P. A-7, P.41 — UNRESOLVED OBJECTIONS
— To save Larry a heart attack, I am comfortable with us submitting "Defense Counsel, for the record, reiterates its objection to inclusion of numerous paragraphs in the presentence report which he argues they are either inaccurate or inconsistent with trial testimony, per details submitted prior as Unresolved Objections by the Defendant, to include Paragraphs: 6, 11-13, 19, 24, 27, 32, 33, 36-38, 40-43, 45-48, 50, 52-54, 56-60, 71-73, and 77-86; as well as the following specific Objections —

Para. 75 Wks A & D: Objection to the loss amount
— Larry's Synopsis of EPV Loss at Merl lower # per simplistic understanding of the Fund, when invested, prior appraisals, etc. — per Jeff 100 pages Submitted — Please review Paragraph with Jeff prior — Argument Theory of Acceptance & Cooperation but submitting simple logic to reduce Loss Amount to reduce 2, 4, 6 pts to enable Judge Allen less Downward Departure necessary — carry with her opinion of Downward, pencil wrote.

Para. 75-79 — Have to also be strong on Stock & Bond Offerings — never discussed, never alleged fraudulent, could include $1 Billion if want to include entire Business — Please include Bocobetti DSM explanation here and/or in PP. & review w/ Jeff

Para 92 - Obstruction of Justice —
— Larry synopsis to help Judge Allen by covering these 2 points. Governor McDonnell win + Supplental Appeal Brief for any details you want to use. Please review w/ Jeff.

1

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Atch 18

- Note: Worksheet D #10
  - States Probation of 1-5 years if applicable? But not on Case #2
    - Down in the Dose but if creative solution is desired to have Jeff out working to rebuild for restitution while still "under the thumb."
  - Jeff address reducing Supervised Release After — not now I assume
- Forfeiture toward Restitution first issue as ordered by Doumar — ensure also.

* Please Copy & Send Back to Jeff & Copy to Ashleigh. Thank You-!

COMMENTS/OBJECTIONS TO PSR - CASE 4:15 cr 00050-001 (Case #2)

1. 1st pg. - "unrelated charges", "Related Cases: None"
   - Objection - Purpose to receive 3pts - Category II Criminal History
     - Indictment July 2015 then superseding Feb. 2016
       - Grand Jury called 2013
   - Ensure Jeff Understands issue of 1st & Superseding Indictments with Plea & Sentencing.

P. 3 #4 - Ensure Jeff on exact same page w/ Larry on understanding concurrent/no sentence in excess
   - & confirm Larry's previous statement of no chance Judge Allen exceeds "recommended"

P. 3 #4 - U.S. will be hammering Count 10 Relevant Considered to Keep Case #1 Sentence as close as possible to 140 months. Position Paper must be strong, even if factful, to mitigate - ø intent because 4 attorneys & $100-200k vs. $700k, etc.
   - Please have in PP since if # is not already set, it will be set before the actual resentencing performance.

P. 4 #5 - Restitution for Case #2 - $100k to $700k = 6 points on new table
   - possibly irrelevant in Case #2 not [illegible] [illegible] [illegible] Impact, but can be 2-4 points translated impact to Case #1 Total Loss - Restitution creating less proactive Judge Allen Downward Departure necessary.
   - Broccoletti & Jeff Case #2 Files have Actual Expense Ledgers showing at least Tax Bills, 2 File Storage Facilities, other Fund Expenses, Lawyer Bills irrelevant to Jeff Case → all outside of "Jeff Mgt Fee" and "Case Expenses" covered by Indemnification. Estimate these other expenses to be $250k to 300k = at least 2 pts (2 yrs in Translation)

5. P.4 #6 – Double checking includes dismissing counts of Initial July 2015 Indictment.

6. P.4 #8 (also w/ Restitution) – For PP, Include verbiage of $721,000 Transfer from First Clearing Corp. to Wells Fargo was at direction of First Clearing due to Clearing B/D Business discontinued. Also, Jeff Signature authorization to same Jeff Signature authorization.

7. P.6 #8 – Per Larry, not disputing facts yet disputing legality / authorization
– "Although Mr. M has agreed to... in substantial acceptance & cooperation, for determination of sentencing & loss we offer these Mitigating Facts for Judge Allen's consideration – 4 law firms representing 4 entities, these 5 Documents prepared, these Fund expenses paid — MOST — or "Jeff Stole More Money"
– P.6 Confirms did not pay Mgt Fees after Indictment contrary to Larry's initial comment – Confirm

8. P.6 #8 – Last Paragraph – Confirms Indemnification is Not in Question – ensure in Position Paper for Allen – only fact that came from Partners –
– Plus, do we have document in Broc/Jeff file that shows Todd Lynn, Andy Skelling, Brandette acknowledging
– Sure I do (Again not arguing Plea – just letting Judge Allen know how ridiculous to all Downward on Case 1)

9. P.7 #12 – OBJECT – $721K Number incorrect and You/We need their % calculations – Couple #'s look too large – Do not believe anyone owned 12% of Partners Fund (unless MICG, LLC) (#5, #16 Supervisors)
– Did MICG, LLC also sell own position?
– Montemorich is actually Half Missy per Documents but I will address later

PSR Comments/OBJECTIONS - CASE 4:15cr00050-01 (Case #2)

Cont'd #9 - P.7 #12

- Also important to have "victims" correct so not legally filed cause I am going to make good on all investments (Tell Allen why we are being meticulous)
  - 39 Case #1 Victims + 40 Case #2 = 79 Restitution minus Crossovers
    - estimate 50-60 Total

10. P.9 #18 - OBJECT - Plea Count 10 = $100K Strategy per Larry.
  - $100K = 8 (minus 6 pts)
    - > $150K = 10
    - > $250K = 12
    - > $550K = 14

11. P.9 # 19/21 - 10 or More Victims = 2 pts vs. New Amendment
  - Any Larry thought or Desire?

12. P.10 # 23 Advisory Guidelines Cat. II = 51-63 (Cat. I = 46-57)
  - Cat. II #21 = 46-57
  - Cat I #19 = 41-51 (Cat. I = 30-37)

* Procedurally, how going to Work?
  - Case #2 First? - If so, then Brady potential - What is Chronology/Brady?

13. P.10 #30 - OBJECT to Category II

14. P. 15 Counts 24 & 26 Mistrial Bankruptcy Charges - What is plan?

→

15. P. 15/16 Statement of Previous Trial – OBJECT – 6 objections per Case #1 PSR Objections

16. p. 17 #38. "Started Academy in 1984 – graduated 1988"

17. p. 18 #41 "1996 Cancer Survivor – Surgery & Radiation"

18. p. 18 # 44 – Make congruent with Case #1 Addendum to ensure RDAP of more time.
– & "attributed to mimosa w/ Brunch that morning – of matters"

19. p. 19 #49 – "General Education Degree", delete law library asst. (said arrested other clerk), – Yes Asst. to Director & Yes – Education Program of Matters

20. p. 20 #54 – "And served in the First Gulf War in the F-117 Stealth Fighter Program"
– Vet?

21. p. 21 # 57 – Back taxes Issues – 2008 Audit on Appeal – Refutes Numbers

22. p. 21 # 63 – OBJECT – Incorrect, Delete, Mistrial, not instant Offense

23. p. 22 # 67 – OBJECT – Cat. II, Restitution #, Issue w/ $100 Contract Consideration?

Atch. 23

Larry Meeting 3-15
- Cap @ 10!
- Deal on Both Before resentence
  - 2nd - Sentence not exceed & will run concurrent.
- If no deal, 2 cases run Consecutive - Not Concurrent
- Reviewed Variables to get the #
  - 27%
  - Derby devalue not because Fraud
  - 2.13 is entry Price
  - Add $740 extra Mgt Fee
- Thinks 4 yrs too Aggressive - Larry
← - Thinks 6 yrs is doable good deal - Larry
- Told Larry - Other Agreement in the Mix hoping will come into play but don't Know
  - Larry Peeved I won't tell him anything about it - said would ask.

7 mos = 4 yr
9 mos = 5 yr

72 × .87 = 504 / 5760 / 6264 = 63 Mos	63-1 Rdcp = 53 - 6 halfway = 47 - 29 current = 18 mos	6 yr deal	1.5 yrs
84 × .87 = 588 / 6720 / 73.08	~~73-1 = 63 - 6 HH = 57 - 29 current = 28 mos~~	~~7 yr deal~~	~~2.2 yrs~~
96 × .87 = 672 / 680 / 352	84-1 = 73 - 6 HH = 67 - 29 current = 38 mos	8 yr deal	3 yrs

In 2008 Derby Rams is at Least $5 mil Value, Ø Fraud, Subsequent dilutions not fraudulent, Forgot to tell Mr Prince Championship Team $250 mm,
- Said Judge Can't Order Camp - but BOP System says yes.
? Can't give Up 2255? - So would still have

Atch. 24

LARRY MEETING 3-25-16 WTRJ

1. "Will get better Jackson Sentence if admitting guilt on 2nd Indictment" – Larry statement
2. "Don't over analyze Govt on why erasing 2nd Indictment" – Larry statement
3. "Larry didn't know about 2nd Indictment" – Larry statement
4. "Govt sealed 2nd indictment before I was Appd & decided to bring it as leverage vs. Dismiss it" – Larry
5. "Deal is plea on 2nd, no time more than resentence, agree no more appeals, guarantee no more on resentence than already have" "Including 2255" – Larry
6. "Could theoretically get 3 pts for acceptance of responsibility" – Larry
7. "Still have same Conduct & Money has not come back to investors" – Larry
8. "Jackson is more practical (less technical) than Downar" – Larry
9. "Their view is they are already giving away 6-7 yrs by erasing 2nd Indictment" – Larry
10. "Jackson has no idea about what you are all about except the documents" – Larry
11. Ensure deal/re-sentencing includes RDAP, Rule 20, Bitner, SR Specifics, Future Specifics – Jeff statement
12. "It is possible to move up the date, plus 2nd will roll into 1st" – Jeff Question
13. Larry frustrated I am not giving him anything on "other agreement" – says I need to use whatever available now for leverage & after resentence is too late" – Larry
14. "If there is some other agreement, Samuels doesn't know anything about it, certain" – Larry
15. "After Sentence, only clemency or 1yr to do Rule 35 can happen" – Larry
16. "Witness letters better than witnesses at Sentencing" (Opposite previously told) – Larry
17. Larry advice for letters: Had different lawyer, different advice, be humble, My Mother needs me, etc not "If you disagree with Jeff you are Stupid or corrupt", I made mistakes, trying to save my firm, Sorry, got this behind us get out & make it right, a new day, – Larry

Supplemental Brief Argument #5 Compressed to a Simple 1-Pager.

LOSS EXACT CALCULATION - MATH/LAW 4-11-16

Notes/Explanation:
1. $1.45mm is Govt. total Amount invested by Victims
2. 27% is the Auditor's Documentation of How Much Allocated to EPV SOLAR
3. 32% is Percentage of Victim's investment invested after Dec. 31, 2008 - therefore at $2.88 price allocation
4. 35% is Percentage that Investors paid "too much" at $2.88 if $2.13 was prior Accepted Value
5. 60% is Percentage that Investors paid "too much" at $2.88 if $1.15 was prior Accepted Value

$2.88 over $2.13		$2.88 over $1.15	
$1,450,000	Investment Total	$1,450,000	Investment Total
391,500	27% into EPV	391,500	27% into EPV
125,280	32% Invested after Dec. 31	125,280	32% after Dec. 31
$43,848	35% Part invested too Much (The Loss)	$75,168	60% Part (The Loss)

* Either True Number is below $95,000 so Equals 8 Points OFF (Approx. 8 years ~~OFF~~

OR, NOT AND (Per 2B1.1 (b)(a) comment n. 3 (B))
"gain may be used only if there is a loss, and it cannot be reasonably determined"

GAIN: Exhibit "Performance Gain-Fee" p. 86 of 92
Pro Se Supplemental Brief

2008 Performance & Mgt. Fee Attributable to Rise in Price = $140,062.64
(The Gain to MICG, or "Martinovich")

* below $150,000 Equals 6 Points OFF (Approx. 6 years ~~OFF~~

LARRY NOTES FROM APRIL 22, 2016 MEETING:

1. Govt is changing language for 1st Case Sentence to rule all
2. Working to get Plea Signed asap & accepted by Judge Allen so finite - but not sentenced - Larry
3. If Govt. Agreed to lower Guidelines Range they would have to prepare documents to propose 140 mos. (Niches) - more work - Larry
4. Larry thinks even though stipulating 33, that the Court will have to ask for 30-31 as starting point due to all Acceptance. (30 = 97-121). - Larry
5. Larry will stress Martinovich was in control & has made all easy & final - Larry
6. Larry going to have "casual conversation" with Samuels about getting a couple more points but not to mess up the plea - not an official counter offer. - Larry
7. Larry must have tweaks to My letter to be "more humble & less self-serving"
8. Larry believes sentencing will start with 3 points Acceptance then the work is to get downward variance to "5-6 yrs" - Larry
9. Larry getting me Rule 11 & 18 USC 1956
10. Larry doesn't think Court will have letters or witnesses - Larry
11. Larry attempting to shift everything to Judge Allen - Knows her 25 years, she assisted him on cases - She is #1, Jackson is #1A, & Rest are 10 levels down. - Larry
12. Katy Doughtry is preparing for trial because she thinks I am bluffing & will not sign & trying to get them not to prepare. - Larry
13. Judge Allen's Asst. was surprised I am not challenging everything
14. Strategy "Doumas clearly wanted to give a lower sentence" & that was with Ø Acceptance - Larry
15. Also "just getting the Win on the Appeal" adds to the Acceptance in lowering - Larry
16. Jeff write up Larry Help on What's New & Diffuse 2nd Case
17. Larry Says we have to agree to Restitution & Forfeiture or There is a hearing to determine the Number - Ensure somewhere In writing. - Larry

Larry Mtg Friday April 22, 2016

1. ~~Copies Back~~ — Later
2. Parties & Venture Fund Update
3. Plea Details
4. Procedural - can it be before?
5. Plan to Combat "Plea Behavior" in 1st Resentencing
6. How get 3 pts Acceptance if Stipulating to Guidelines
7. Change in Semantics per deal & Change in Guidelines Stipulation
8. Previous Meeting Notes Questions
9. Date of Position Paper Draft
10. Jeff Send Larry thoughts on What is New & Indemnification Not New

- Language working
Put into 1
1st plea Acceptance by Allen to ensure - but not sentencing
If they agree to lower Range - they have to do
Larry thinks they will ask for ~~Rule~~ lower because of the win & Acceptance
M was in control
Have "gentle conversation" about argue couple points or get 2 point
Larry 97-121 "30" - starting Point - Larry
Evens 121 Months ask by Government - Larry
5-6 years is target - Larry
The letter, the PP, the letters is the theme
III B - III C
Katie thinks screwing — Secy Surprised

NOTES OVER

- Whole time to Allen
- Other Needle
- Drummon would have given less even before Acceptance
- "More in my character than humble"

LARRY MTG 4-27-16 NOTES

1. Need Copy of Statement of Facts & 11 12 Decision
2. Larry thinks Bill giving 35% Good time will pass this Year - Huge - Checkout - Larry
3. Larry said Sign Plea today but I can withdraw anytime before Judge Allen Hearing - Larry
4. Larry reiterated that will get Lower Sentence by agreeing to plea & cooperating/accepting vs. arguing about Advisory Guidelines & getting the # lower - Larry
   - also Larry said Govt will not give Plea for #2 unless stipulating to Guideline 33 - Larry
   - Larry says they will propose a sentence below it since won appeal & cooperated → Allen - Larry
   Larry is targeting 5-6 years as final total. - Larry
5. Judge Jackson now can't do May 26th - so Larry said he is going "to play handball" to get the sentencing for both in front of Judge Allen. - Larry
   - May 13th is plea acceptance with Allen (Larry emailed after) & Larry's plan is to there get Allen to agree to handle both. - Larry also told Ashleigh he will see me again next Tues or Wed.

I stressed with Larry about getting Position Paper draft as soon as possible so not to be scrambling at end.
I gave Larry My Sheet for "What's New" & Points to Combat 2nd Indictment conduct - Larry
Larry reiterated both Restitution & Forfeiture have Hearings if I don't agree with Number - Larry
   - Plea doesn't say that on Forfeiture
Larry says 0 Chance that Allen or Jackson do not comply with Plea Agreement constraints proposed by Govt. - Larry
Said can only request Bond if giving reason I can get other options

2 yrs with 87.5% = 2½ yrs left → with 65% = 1 year

1 yrs	2 yrs left	9 mos (COMP)
6 yrs	1 Year (COMP)	8 mos
5 yrs	8 mos. (COMP)	3 mos (NO COMP)

Larry Said will send Ashleigh a Copy of 2nd Case Discovery Disk on the Original

LARRY MTG. NOTES 5-28-16

- Plan to present Judge Allen with detailed plan of paying investors – Larry
- Create CV for hiring purpose – Larry
- Actual "Jobs" then "Books & Speaking"
- % Sliding scale – Larry
- Issue of Missy Payment – Get Contract – Factor in
- Idea of Buyout by Investor – take over debt – come from them
- Martinovich really was making close to 2mm/year – just reinvesting for IPO/100mm
- Tom, Transportation – Consult Gig
- Restitution is after Tax
- Prison vs. Payback – What are we trying to accomplish?
- Victims want the check more – Larry
- X/Month or % – whatever is greater (1st was $1k/mo. starting in 90 days)
- The better I do, they do – Larry
- Show 3 Initial Consulting Jobs – Larry
- Must show me living modestly until all paid back – Larry
- Greg Garrett?
- Someone(s): not Close Friend
- Stories from Business Leader how he will make $ off me – not help me but take advantage of my situation
  - "I would never have been able to get or afford this guy before"
- Judge Allen has a window now – Each day it closes a little (Rolodex, Relevance
- Larry says should have been presented at first sentencing & at 1yr point & at 2yr. Point. – Larry
- Maybe show plan beyond Restitution # for Shareholders
- Larry will interview Guys about coming
- Send him Email on Specific Questions
- PSR will be complete 6-8 weeks in advance – Will Discuss Previous Objections
- Larry believes we have to Help Judge Allen be able to concretely say its insane to keep M in Prison 1 more day. – Larry

RECAP LARRY MTG Sep. 28, 2016

- Delivered Govt. Position Paper – Lovely
- Noted Govt. Restitution order Request $2.5 million @ 25% of all Net Income at back of Govt. Position Paper.
- Larry Said "I will" be given credit for any of the Partners Hedge Fund money - Larry not spent on me/defense" ($300K – $400K on Fund expenses). – How does he know?"
- Larry said will ensure 3 Bankruptcy Charges still around from Hung Jury will be erased.
- Larry has Case in VB right after our resentencing so will be leaving immediately & wants to ensure Ashleigh & I do not infer anything if he is not around for "high fives or if it goes badly." – Larry
- Larry's housing question he believes Judge Allen may ask him is "Why Didn't Martinworld take 3 yrs & home already?" – Told him "my Responsibility & Choice" but Brac told 90% probability of victory during 2 Meetings, etc. He asked if offered separate prices for trial or plea & told no. (7-5-3 pleas) – Larry Asked Larry to mention at least the 3 law firms handling Case #2 since Govt. PP focusing on horrible behavior here. – Jeff

*Please send copy back when settled - Love
↳ Read carefully please.

NOTES - Larry Mtg. Oct 4, 2016

1. Larry is filing My appeals for case 1 & case 2. I can always withdraw the Appeal. Appealing Violates the plea but "they don't care about your plea now." If successful then address all that. - Larry
2. Larry is now required to withdraw - the court will appoint me new counsel. Larry says the 4th Circuit will never let me represent myself. - Larry
3. Larry says my Appeals will be decided by March 2017. If dismissed I can then file the 2255. - Larry
4. I asked about technical timing issue that I should check on 2255 for 1st Case for the conviction being due Jan. 7th since conviction affirmed then. I will submit ~~rule~~ motion to clarify so I can file Proc 2255 now.
5. Strange - Larry emphasized, "Remember, you have Never pled Guilty to any count on your Big Case. You have only pled guilty to one count on the 2nd Case which really doesn't matter. The Govt. tried to put in your plea that you now pled Guilty to the counts of the first case & I would not let them." Figure Out What this Means. - Larry
6. Larry stressed, "If I file a 2255, remember Everything must be in the original Filing - otherwise it cannot be considered - Larry
7. Other Deal(s):
   - I can write letter directly to prosecutors but he doesn't recommend - he has seen them many times go convict the new [redacted] "the inmate.
   - Must give to an attorney to represent - Govt. does not appoint for this. Work Deal with Tony to provide if I'm still in & do. - Larry says I need Atty "to not deal ahead of time"
   - Larry said "as a human he will recuse for me" but I'm not doing that.
   - Said must be very compelling since I didn't bring forward before the sentencing - not valid if I didn't tell the lawyers - But I did tell the lawyers & he would not pursue it because it would mess up the plea. - Larry - Rule 35 Fraud

→

FTDMK 531.01 * INMATE HISTORY * 11-23-2016
PAGE 001 OF 001 * WRK DETAIL * 09:29:05

REG NO..: 81091-083 NAME....: MARTINOVICH, JEFFREY A
CATEGORY: WRK FUNCTION: PRT FORMAT:

FCL	ASSIGNMENT	DESCRIPTION	START DATE/TIME	STOP DATE/TIME
FTD	A&O CMP W	A&O COMPLT-PND WRK ASSIGN WEST	11-08-2016 0835	CURRENT
FTD	5842LM-FAM	5842 LIBRARY M-F 7:30 - 10:30	11-09-2016 0001	CURRENT
FTD	A&O WEST	ADMISSION & ORIENTATION - WEST	11-01-2016 1000	11-08-2016 0835
PHL	6S UNASSG	6S UNASSIGNED INMATE	10-27-2016 1408	11-01-2016 0914
PEM	UNASSG	UNASSIGNED TO WORK DETAIL	10-19-2016 1002	10-27-2016 0516
PHL	3N UNASSG	3N UNASSIGNED INMATE	02-23-2016 1632	02-29-2016 0751
FTD	TUTOR W	EDUCATION TUTOR - FCI WEST	01-09-2014 1302	02-23-2016 0930
FTD	UNASSG WES	UNASSIGNED - FCI WEST	01-09-2014 0001	01-09-2014 1302
FTD	EDUC ORD W	EDUCATION ORDERLY - FCI WEST	01-08-2014 0001	01-09-2014 0001
FTD	A&O CMP W	A&O COMPLT-PND WRK ASSIGN WEST	12-31-2013 0737	01-08-2014 0001
FTD	A&O WEST	ADMISSION & ORIENTATION - WEST	12-17-2013 1452	12-31-2013 0737
BRO	UNASSG	UNASSIGNED WORK ASSIGNMENT	12-16-2013 1826	12-17-2013 1223
MRG	SHU	SHU - UNASSIGNED	11-15-2013 1321	12-16-2013 0847
MRG	A&O	A&O	11-13-2013 1150	11-15-2013 1321

G0000 TRANSACTION SUCCESSFULLY COMPLETED

Attachment 1

Actual Fair Values used for Venture Strategies Gain for 2008

INCENTIVE FEE

	Shares	Estimated Value	FMV	Prior year value
EPV Solar	1800050	2.88	5184144	$ 3,834,107

	Estimated Fair Value (Pounds)	Discounted value (Pounds)	Conversion rate	Discounted Value (dollars)	Ownership percentage	Venture Fair Value	Cost
Derby Rams	55,000,000	30,000,000	1.43	$ 42,900,000	14%	$ 6,006,000	$ 5,000,000
Discount rate		45%					

	Face Value	Estimated Fair Value/Par	Fair Value	Cost
Solaia Note	$ 500,000	0.68	$ 340,000	$ 338,924

	Actual per audit	Estimated original by Jeff Email for Check	EPV stay @ 2.13	From EPV @2.42 2.42
	Gain	Gain		
EPV Solar	1,350,037.50	54,001.50	-	522,014.50
Derby Rams	1,000,000.00	2,595,000.00	1,000,000.00	1,000,000.00
Solaia Note	-	41,076.00	-	-
Total Gain	2,350,037.50	2,690,077.50	1,000,000.00	1,522,014.50
Less expenses for year estimated	200,000.00	200,000.00	200,000.00	200,000.00
Adjusted Gain	2,150,037.50	2,490,077.50	800,000.00	1,322,014.50
Incentive Percentage	0.20	0.20	0.20	0.20
Estimated incentive fee	430,007.50	498,015.50	160,000.00	264,402.90
Actual paid	450,000.00	450,000.00	450,000.00	450,000.00
Less $20,000 settled up in 1st Quarter			20,000.00	20,000.00
Variance			270,000.00	165,597.10

MANAGEMENT FEE
1% Annually Paid Quarterly

* So it is 1% of Total Values delta because of EPV bump up divided by .75 to represent 4th Quarter 2008 - Jun 2009 $10,125.28 $3,915.11

TOTAL FEES VAIRANCE	**Before All Else**	**$280,125.28**	**169,512.21**
	After 50% to Brokers	**$140,062.64**	**$84,756.10**
	After 85% Jeff Ultimate Ownership	**$119,053.24**	**$72,042.69**
2008 Additional E&O Insurance for funds		$16,212.00	$16,212.00
2008 Additional Personnel Expense - Compliance, Accounting, Hinson		$42,617.00	$42,617.00
2008 Additional Legal Expense for funds		$13,492.00	$13,492.00
	After Hedge Fund Business Expense:	**$46,732.24**	**($278.31)**
Martinovich, LLC 2008 Annual MICG Debt Coverage Payments		($272,609.52)	($272,609 52)
	Net Martinovich In Pocket	**($225,877.28)**	**($272,887.83)**

MICG HEDGE FUNDS REDEMPTIONS - DISTRIBUTIONS

2008 - 2009

MICG Partners Fund 2008		MICG Venture Strategies 2008	
C. Bradshaw	$109,427	A. Casey	$145,485
R. Duester	$103,331	J. Oneil	$ 72,745
C. Frohman	$ 16,600	M. Deluca	$148,308
J. Merritt	$108,652	K. Taylor	$ 75,000
W. Sharrett	$109,128		
F. Teller	$210,087		
S. Osbourne	$ 94,996		
J. Stevenson	$ 52,148		
J. Gisvold	$135,535		
H. Stemple	$607,187		
D. Berry	$ 90,378		
M. Jung	$208,889		
W. Mullins	$208,898		
D. Berry	$273,992		
TOTAL	$2,464,775	TOTAL	$441,538

MICG Partners Fund 2009		MICG Venture Strategies 2009	
B. Feinstein	$ 43,587	H. Trieshmann	$ 80,000
W. Fenske	$215,050	L. Cowling	$ 23,346
C. Frohman	$ 74,000	T. Stiles	$ 35,293
B. Gross	$ 78,597	T. Richman	$ 17,533
M. Huges	$185,518	M. Hughes	$ 48,939
V. Moore	$ 68,545	K. Taylor	$ 56,249
T. Stiles	$199,954	R. Rice	$ 5,813
W. Swain	$ 69,274	O. Shumaker	$ 11,652
J. Mrazik	$ 63,732	V. Moore	$ 11,652
J. Coleman	$ 21,480	R. Stitzer	$ 5,837
L. Cowling	$ 84,246	B. Wassmer	$ 23,495
K. Crockett	$179,640		
J. Mitchell	$ 20,575		
J. Wassmer	$ 32,501		
R. Cadieux	$ 43,426		
TOTAL	$1,380,125	TOTAL	$319,783

* Accounting Prepared by Harbinger, PLC, MICG Hedge Funds Independent Auditors.

Capacity coming offline means less-efficient companies closing down. Of course there's another long list of relatively unknown Chinese companies closing down as well. Here's an *incomplete* list of the solar firms that have left the building -- either by closure, bankruptcy, or fire-sale acquisition:

2009 to 2010

Bankrupt, closed, acquired

- Advent Solar (emitter wrap-through Si) acquired by Applied Materials
- Applied Solar (solar roofing) acquired by Quercus Trust
- OptiSolar (a-Si on a grand scale) closed
- Ready Solar (PV installation) acquired by SunEdison
- Solasta (nano-coaxial solar) closed
- SV Solar (low-concentration PV) closed
- Senergen (depositing silane onto free-form metallurgical-grade Si substrates) closed
- Signet Solar (a-Si) bankrupt
- Sunfilm (a-Si) bankrupt
- Wakonda (GaAs) closed

2011

Bankrupt, closed

- EPV Solar (a-Si) bankrupt
- Evergreen (drawn Si) bankrupt
- Solyndra (CIGS) bankrupt
- SpectraWatt (c-Si) bankrupt
- Stirling Energy Systems (dish engine) bankrupt

Acquisition, sale

- Ascent Solar (CIGS) acquired by TFG Radiant
- Calyxo (CdTe) acquired by Solar Fields from Q.cells
- HelioVolt (CIGS) acquired by Korea's SK Innovation
- National Semiconductor Solar Magic (panel optimizers) exited systems business
- NetCrystal (silicon on flexible substrate) acquired by Solar Semiconductor

- Soliant (CPV) acquired by Emcore

2012

Bankrupt, closed

- Abound Solar (CdTe) bankrupt
- AQT (CIGS) closed
- Ampulse (thin silicon) closed
- Arise Technology (PV modules) bankrupt
- Azuray (microinverters) closed
- BP (c-Si panels) exits solar business
- Centrotherm (PV manufacturing equipment) bankrupt
- CSG (c-Si on glass) closed by Suntech
- Day4 Energy (cell interconnects) delisted from TSX exchange
- ECD (a-Si) bankrupt
- Energy Innovations (CPV) bankrupt
- Flexcell (a-Si roll-roll BIPV) closed
- GlobalWatt (solar) closed
- GreenVolts (CPV) closed
- Global Solar Energy (CIGS) closed
- G24i (DSCs) bankrupt in 2012, re-emerged as G24i Power with new investors
- Hoku (polysilicon) shut down its Idaho polysilicon production facility
- Inventux (a-Si) bankrupt
- Konarka (OSCs) bankrupt
- Odersun (CIGS) bankrupt
- Pramac (a-Si panels built with equipment from Oerlikon) insolvent
- Pairan (Germany inverters) insolvent
- Ralos (developer) bankrupt
- REC Wafer (c-Si) bankrupt
- Satcon (BoS) bankrupt
- Schott (c-Si) exits c-Si business
- Schuco (a-Si) shutting down its a-Si business
- Sencera (a-Si) closed
- Siliken (c-Si modules) closed
- Skyline Solar (LCPV) closed
- Siemens (CSP, inverters, BOS) divestment from solar
- Solar Millennium (developer) insolvent
- Solarhybrid (developer) insolvent
- Sovello (Q.cells, Evergreen, REC JV) bankrupt
- SolarDay (c-Si modules) insolvent

- Solar Power Industries (PV modules) bankrupt
- Soltecture (CIGS BIPV) bankrupt
- Sun Concept (developer) bankrupt

Acquisition, fire sale, restructuring

- Oelmaier (Germany inverters) insolvent, bought by agricultural supplier Lehner Agrar
- Q.Cells (c-Si) insolvent, acquired by South Korea's Hanwha
- Sharp (a-Si) backing away from a-Si, retiring 160 of its 320 megawatts in Japan
- Solibro (CIGS) Q-Cells unit acquired by China's Hanergy
- Solon (c-Si) acquired by UAE's Microsol
- Scheuten Solar (BIPV) bankrupt, then acquired by Aikosolar
- SolFocus (CPV) layoffs, restructuring for sale
- Sunways (c-Si, inverters) bought by LDK, restructuring to focus on BIPV and storage

2013

Bankrupt, closed

- Bosch (c-Si PV module) exits module business
- Concentrator Optics (CPV) bankrupt
- Suntech Wuxi (c-Si) bankrupt

Acquisition, sale, restructuring

- Diehl (Germany inverters) inverter division sold to PE firm mutares AG
- ISET (CIGS) moving into "microsolar"
- MiaSolé (CIGS) acquired by China's Hanergy
- Nanosolar (CIGS) restructuring for sale
- NuvoSun (CIGS) acquired by Dow
- Twin Creeks (kerfless Si) acquired by GT Advanced Technology
- Wuerth Solar (installer) business turned over to BayWa

If we missed a firm, please, dear reader, let us know, and we'll amend the list.

- Centrotherm (PV manufacturing equipment) bankrupt and restructured
- CSG (c-Si on glass) closed by Suntech
- Day4 Energy (cell interconnects) delisted from TSX exchange
- ECD (a-Si) bankrupt
- Energy Innovations (CPV) bankrupt
- Flexcell (a-Si roll-roll BIPV) closed
- GlobalWatt (solar) closed
- GreenVolts (CPV) closed
- G24i (DSCs) bankrupt in 2012, re-emerged as G24i Power with new investors
- Hoku (polysilicon) shut down its Idaho polysilicon production facility
- Inventux (a-Si) bankrupt
- Konarka (OSCs) bankrupt
- Odersun (CIGS) bankrupt
- Pramac (a-Si panels built with equipment from Oerlikon) insolvent
- Pairan (Germany inverters) insolvent
- Ralos (developer) bankrupt
- REC Wafer (c-Si) bankrupt
- Satcon (BoS) bankrupt
- Schott (c-Si) exits c-Si business
- Schuco (a-Si) shutting down its a-Si business
- Sencera (a-Si) closed
- Siliken (c-Si modules) closed
- Skyline Solar (LCPV) closed
- Siemens (CSP, inverters, BOS) divestment from solar
- Solar Millennium (developer) insolvent
- Solarhybrid (developer) insolvent
- Sovello (Q-Cells, Evergreen, REC JV) bankrupt
- SolarDay (c-Si modules) insolvent
- Solar Power Industries (PV modules) bankrupt
- Soltecture (CIGS BIPV) bankrupt
- Sun Concept (developer) bankrupt

Acquisition, fire sale, restructuring

- Oelmaier (Germany inverters) insolvent, bought by agricultural supplier Lehner Agrar
- Q-Cells (c-Si) insolvent, acquired by South Korea's Hanwha

- Sharp (a-Si) backing away from a-Si, retiring 160 of its 320 megawatts in Japan
- Solibro (CIGS) Q-Cells unit acquired by China's Hanergy
- Solon (c-Si) acquired by UAE's Microsol
- Scheuten Solar (BIPV) bankrupt, then acquired by Aikosolar
- Sunways (c-Si, inverters) bought by LDK, restructuring to focus on BIPV and storage

2013

Bankrupt, closed

- Array Converter (Module-level power electronics) bankrupt, IP to VC investor
- Avancis (CIGS) discontinuing production
- Bosch (c-Si PV module) exits module business
- Concentrator Optics (CPV) bankrupt
- Cyrium (CPV semiconductors) closed
- Direct Grid (microinverters) closed
- EiQ (Module-level power electronics) closed
- GreenRay (microinverters) closed
- Helios Solar (c-Si modules) bankrupt
- Hoku Solar (silicon) bankrupt
- Honda Soltec (CIGS thin-film modules) closing
- Infinia (Stirling engine CSP) bankrupt
- Nanosolar (CIGS) closed
- Pythagoras Solar (BIPV) closed
- Solarion (CIGS) went bankrupt but restructured and in limited production
- SolFocus (CPV) bankrupt
- Sunsil (module level electronics) closed
- Suntech Wuxi (c-Si) bankrupt
- Tioga (project developer) closed
- Willard & Kelsey (CdTe panels) bankrupt
- ZenithSolar (CHP) bankrupt

Acquired

- Agile Energy (project developer) acquired by RES Americas
- Bosch (c-Si PV module) acquired by SolarWorld
- Diehl (Germany inverters) inverter division sold to PE firm mutares AG
- Conergy (c-Si module) Astronergy, a part of China's Chint Group, acquired Conergy's PV module group
- GE-Primestar (CdTe technology acquired from PrimeStar) First Solar acquired

JEFFREY A MARTINOVICH on 1/16/2017 7:20:21 PM wrote
Kevin (Ash copied) - please forward to Brooks and attach the Argument One - Mental Defect document and the Argument Two - Ineffective Assistance document. Ashleigh should get 3 more small ones tomorrow in the mail and can scan to you to forward in a second email please. Thank you sir - please copy Ash so we can have our records. Thanks. It should be more interesting dialogue to see your responses this week....did you call it comedy of insanity? something like that.....

Mr. Brooks (1-16-17),

Hope you had a good holiday weekend. I have not heard back from my Corrlinks email sent, so I wanted Kevin to forward you an email in case the Corrlinks is not yet set up to give you notifications.

Please let me know at your earliest convenience if you have received confirmation for our authorization to file the Supplemental Brief along with yours, per your communication with Kevin.

Also, attached to this email are two main arguments I respectfully request you include in your Appeal Brief Submission, as they explain two significant, constitutional violations which are cognizable on this Appeal. These arguments contain analysis of the record along with supporting statutes and Fourth Circuit citations for your convenience and expertise to edit and supplement.

The first argument details the Due Process Violation, along with procedural and substantive errors, committed by the District Court once it determined beyond a reasonable doubt that Martinovich may be suffering from a mental defect or disease, or diminished capacity, or more. Please see the record replete with emphatic statements such as, "It's something wrong with his brain" and "there's something wrong, and we're going to get you mental health treatment" and much more.

The second argument presents the inexplicable ineffective assistance of Mr. Broccoletti never objecting once over the 4-week trial to the egregious errors of Judge Doumar (determined as Error by the 4th Circuit). This is 100% captured on the record and is congruent with the Appeal waiver language allowing this submission. I want to ensure it is presented on direct appeal. The Appeals Court Order identifies the error and the clear prejudice due to this inaction. This analysis of the record and supporting Supreme Court precedence and 4th Circuit citations clearly show this case meets both prongs of the Strickland analysis.

Tomorrow, Kevin will also forward arguments and analysis, which I respectfully request you include, explaining that the plea agreement appeals-waiver provision is void and/or inapplicable, the plea contract itself is void ab initio, and the District Court failed to consider the Loss Calculation and the Obstruction of Justice Enhancement per direction from the Fourth Circuit Order vacating the sentence.

The Waiver argument explains 1) the waiver language directly allows the ineffective assistance cognizable on appeal argument, 2) the constitutional violations alleged are "outside the scope" of the waiver, 3) the waiver was signed PRIOR to the unforeseen and not-voluntarily-forfeited constitutional rights violations, and 4) the waiver is void as the plea contract is void per Argument submitted.

The plea contract is void because 1) the collateral attack waiver creates an inherent conflict of interest between defendant and counsel which is not disclosed and therefore fraud, 2) the mental infirmity determined by the District Court creates a question of Martinovich's Capacity to enter a contractual relationship and the government's liability for not withdrawing the contract once put on notice by the Court, 3) Fraud in Construction as detailed in the recent Rule 35(a) Clear Error (Fraud) motion submitted to the District Court, and 4) the plea contract is unconscionable and ultra vires as the government has attempted to restrict performance beyond their authority, and has promised execution and consideration beyond their control.

I submit the above arguments and attachments and respectfully ask that you include them in your Appeal Brief along with other issues I am sure you have discovered. I believe these arguments, in total, require the vacating of Case 4:12CR101 Conviction and Sentence, as well as Case No. 4:15cr50 Plea of Guilt, Plea Contract and Acceptance, and Sentence.

Finally, I assume there are no issues with the Appendix, but please let me know if I may help. Also, do we need to include anything in these Briefs to ensure the previous appeal arguments (Counsel & Supplemental) are preserved for future purposes if required, i.e. 2255, etc.?

Again, please let me know if I may be of assistance with your brief, and if we can speak and address issues, and the status of the supplemental. Thank you very much - Jeff Martinovich.

Lonny Notes from 6-24-11e Meeting (Reverse Side) :

- Friend gave him a job & I'm going to watch him.
  - I know everything about all this
  - I have path
  - I have the job

- Restriction is access to other money

- Someone fund Real Job (Tom)
  - help them make money

- Very Practical - not just doing this as a favor - will profit "My" business

- Finance Industries, etc Restrictions only in place for Supervised Release Period
- Travel, including International, no problem while on Supervised Release
- Moving to NYC or anywhere is no problem while on SR

Atch. 38

FINANCIAL INDUSTRY REGULATORY AUTHORITY

OFFICE OF HEARING OFFICERS

Department of Enforcement, Complainant, v. MICG Investment Management, LLC CRD No. 104028, and Jeffrey A. Martinovich CRD No. 2258793, Respondents.	DISCIPLINARY PROCEEDING No. 2009016230501 Hearing Officer: MC

OFFER OF SETTLEMENT

I.

Respondents MICG Investment Management, LLC (MICG) and Jeffrey A. Martinovich (Martinovich) (collectively, Respondents) make this Offer of Settlement (Offer) to the Financial Industry Regulatory Authority (FINRA), with respect to the matters alleged by FINRA in Disciplinary Proceeding No. 2009016230501 filed on May 14, 2010 (Complaint).

Respondents submit this offer to resolve this proceeding and do not admit or deny the allegations of the Complaint. Respondents also submit this offer upon the condition that FINRA shall not institute or entertain, at any time, any further proceeding as to Respondents based on the allegations of the Complaint, and upon further condition that it will not be used in this proceeding, in any other proceeding, or otherwise, unless it is accepted by the National Adjudicatory Council (NAC) Review Subcommittee, pursuant to FINRA Rule 9270.

THE UNITED STATES DISTRICT COURT
IN THE EASTERN DISTRICT OF VIRGINIA

UNITED STATES,

Plaintiff,

v.

Case No. 4:12cr101
Case No. 4:15cr50

JEFFREY A. MARTINOVICH,

Defendant.

AFFIDAVIT OF ASHLEIGH L. AMBURN IN SUPPORT OF
JEFFREY A. MARTINOVICH'S MOTION TO VACATE, SET ASIDE, OR CORRECT
A SENTENCE PURSUANT TO 28 U.S.C. 2255

1. I am Ashleigh L. Amburn, born November 29, 1982.

2. I have known Jeffrey A. Martinovich for over ten years, and we are currently engaged to be married.

3. I live in Yorktown, Virginia.

4. I spoke on the phone numerous times with attorney Mr. Lawrence Woodard and his assistant Ms. Tina Heath during 2016 helping to facilitate communications between Mr. Woodward and Mr. Jeffrey A. Martinovich.

5. I exchanged emails with Mr. Woodward and his assistant Ms. Heath repeatedly between March 2016 and October 2016 while Jeffrey A. Martinovich was being held in Western Tidewater Regional Jail. I sent approximately fifty-nine (59) communications, with numerous emails including Jeff's notes and communications in the body of the emails or as attachments.

6. I facilitated messages and communications between Jeffrey A. Martinovich and Mr. Lawrence Woodward. Jeffrey A. Martinovich would provide his notes and communications to me by phone or by mail, which I scanned and forwarded to Mr. Woodward and Ms. Heath.

7. Once Jeff returned to FCI Ft. Dix, New Jersey, I sent him copies of all the notes and communications he sent to me while he was housed in Western Tidewater Regional Jail.

8. Mr. Woodward told me to bring clothes for Jeffrey A. Martinovich to the bond hearing since it was likely he would be released on 90 days bond. I brought Jeffrey A. Martinovich's clothes to the hearing, he was not released.

9. When Jeffrey A. Martinovich was considering Mr. Lawrence Woodward's urging to take a plea offer instead of going to trial on the new case, Mr. Lawrence Woodward told me that if Jeffrey A. Martinovich went along with the plea deal and stopped sending in motions, he would not receive any more than six years (6) on the total resentencing. Despite Jeffrey A. Martinovich, telling me that he wanted to do to trial to prove his innocence and uncover fraud by the hedge fund attorneys, but Mr. Lawrence Woodward wanted him to take the plea deal. Mr. Lawrence Woodward told me that if Jeffrey A. Martinovich went along with the plan he would come home soon so, "don't let him do anything crazy."

10. I urged Jeffrey A. Martinovich to take the plea deal because I believed it would bring him home sooner. He was hesitant and told me this would be the first time in this entire tragedy that he did not tell the truth. I again urged him to take the deal as I was under the impression it would bring him home to myself, his son and his mother.

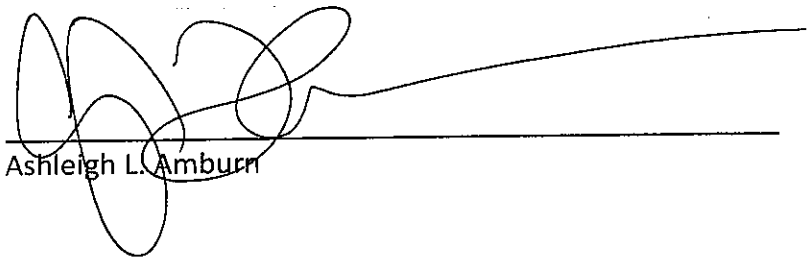
11. Jeffrey A. Martinovich shared with me that he was concerned that only the attorneys and the judge understood the arrangement and that others there on his behalf wouldn't know what was in the shadows. He told me that he had to at some point trust Lawrence Woodward's deal as he couldn't face his family if he didn't take the opportunity to come home now.

12. Following the resentencing on September 29, 2016, of fourteen (14) years instead of six (6) years Mr. Lawrence Woodward told me, Mr. Woodward quickly exited the back of the courtroom. I ran out the door to ask him how this could even be possible. He was already at the bottom of the staircase. I yelled to him, "Larry, what the hell happened?" he yelled back, "He's lucky he didn't get twenty" (20).

13. After Jeffrey A. Martinovich was taken back to FCI Ft. Dix, I went to Mr. Lawrence Woodward's office to pick up discovery disks related to the case to send to Jeffrey A. Martinovich. Mr. Woodward insisted on walking me out to my car where he then proceeded to urge me to get Jeffrey A. Martinovich to stop appealing his case. I told Mr. Lawrence Woodward he would not stop appealing his case. Mr. Lawrence Woodward told me, "You have to convince him to stop appealing and just serve his time."

I, Ashleigh L. Amburn, hereby attest under the penalty of perjury that the foregoing is true and correct to the best of my knowledge, pursuant to Title 28 U.S.C. 1746.

Date: 2/6/18



Ashleigh L. Amburn

Signed and sworn before me, Kara Kinney, a Notary Public on 6 day of February, 2018.

Virginia
State

Chesapeake
City

KARA SUE KINNEY
NOTARY PUBLIC 7707333
COMMONWEALTH OF VIRGINIA
MY COMM. EXPIRES JANUARY 31, 2020

Kara Sue Kinney
Notary Public

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION

United States of America, Plaintiff	
v.	Case Nos: 4:12-CR-101 4:15-CR-050
Jeffrey A. Martinovich, Defendant	

AFFIDAVIT OF GARY E. VAUGHN, JR. IN SUPPORT OF JEFFREY A. MARTINOVICH'S MOTION UNDER TITLE 28 U.S.C. § 2255

NOW COMES, Gary E. Vaughn, Jr., providing this Affidavit in Support of Jeffrey A. Martinovich's Motion Under Title 28 U.S.C. § 2255, and presents the following information to this Court for its review and consideration.

1. I am Gary E. Vaughn, Jr., date of birth - March 11, 1974.

2. I am currently serving an aggregated sentence of 87 months at the Fort Dix Federal Corrrectional Institution located at Joint Base MDL, New Jersey.

3. I began serving my sentence on August 27, 2012, and arrived at F.C.I. Fort Dix on February 24, 2014.

4. I have personally known the defendant in this case, Mr. Martinovich, since February 24, 2014.

5. I was employed at F.C.I. Fort Dix as a Law Clerk in the law library from March 18, 2014, until June 30, 2015.

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6. On July 1, 2015, I was transferred to a county holding facility in Ebensburg, Pennsylvania by writ of ad prosequendum and remained on that writ until April 21, 2017, at which point, I was brought back to F.C.I. Fort Dix.

7. Since returning to F.C.I. Fort Dix and to present, I am again re-employed as Law Clerk in the law library.

8. My duties as Law Clerk include assisting other inmates with preparing legal documents, motions, petitions, and writs, with legal research, by providing technical assistance with the computer equipment and software, and with daily distribution of inmate typewriters.

9. At all times during my employment as Law Clerk at F.C.I. Fort Dix, Mr. Martinovich provided me with many hours of voluntary assistance with my duties. Mr. Martinovich has assisted me in preparing other inmate's documents to include reductions of sentence under § 3582, motions to correct sentence under § 2255, direct appeals, and prison administrative remedies.

10. Prior to my being transferred to writ, Mr. Martinovich's assigned job detail was as a G.E.D. Tutor with additional duties as assistant to Educational Specialist S. Yi. Mr. Martinovich performed his assigned duties as a tutor and administrative assistant on the second floor of the education building and to my knowledge was a tutor and assistant prior to my arrival at F.C.I. Fort Dix and continued after my transfer to writ.

11. Mr. Martinovich provided assistance to me and other inmates during his non-work hours which were primarily in the evenings and on weekends.

12. It would be reasonable to estimate that from March of 2014 through June of 2015, I assisted over 100 inmates in preparing legal documents and letters. Mr. Martinovich volunteered and

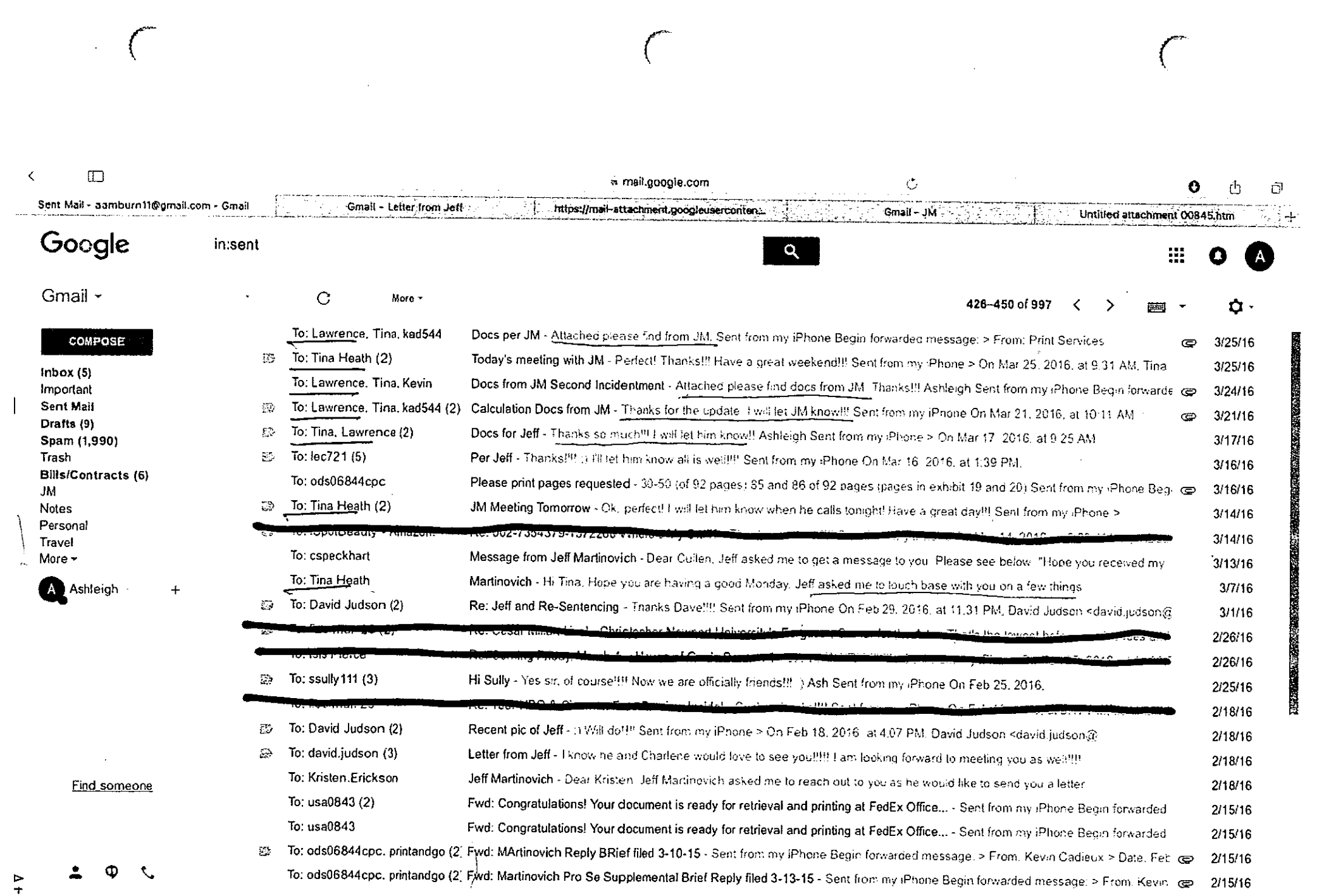
assisted in at least 75% of those individual cases.

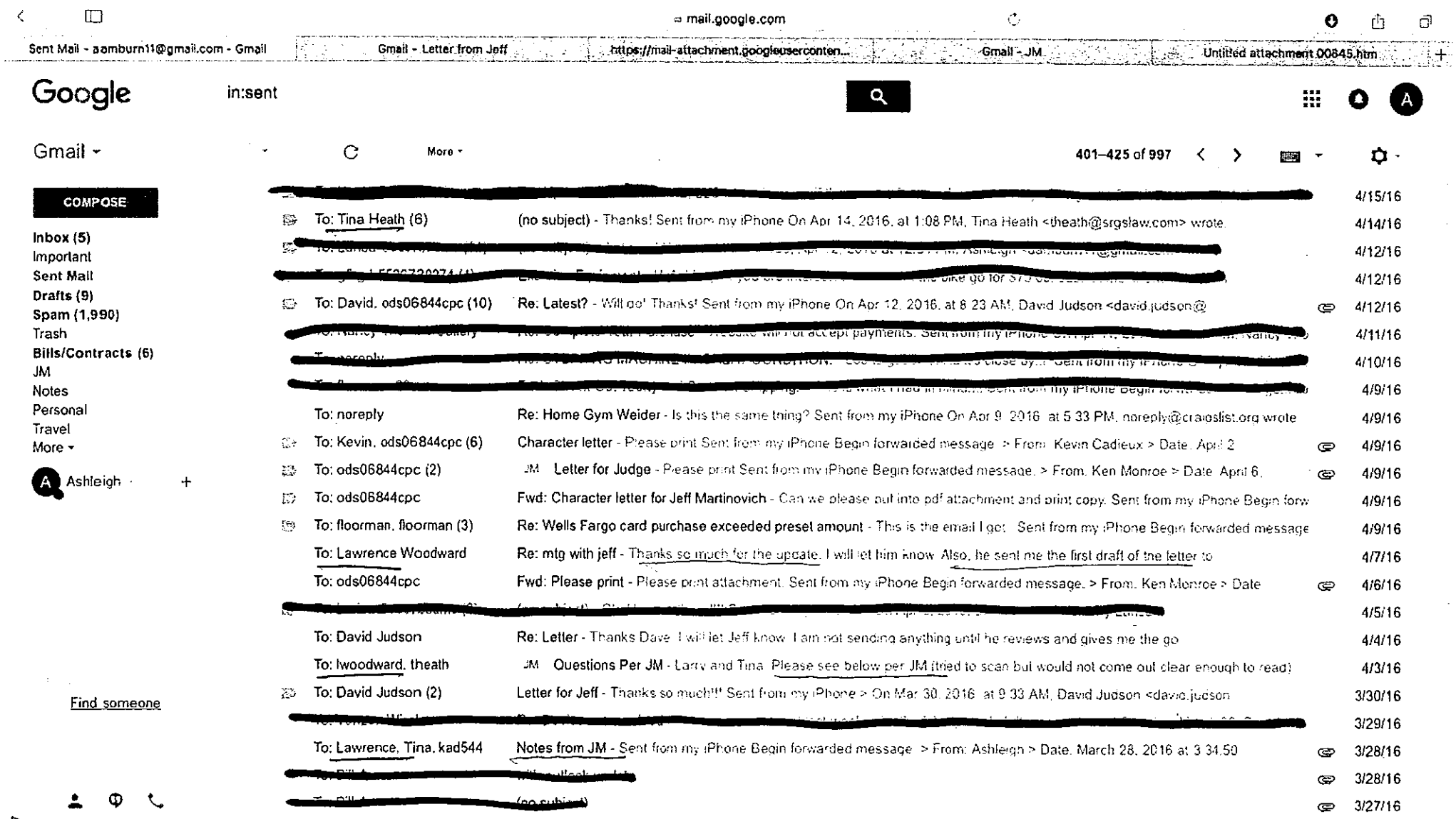
I, Gary E. Vaughn, Jr., certify under penalty of perjury and Title 28 U.S.C. § 1746 that the foregoing is true and correct to the best of my knowledge and belief.

Executed this 2nd day of January in the year of 2018.

Respectfully Submitted,

Gary E. Vaughn, Jr. 16373-067
F.C.I. Fort Dix
P.O. Box 2000
Joint Base MDL, NJ 08640


mail.google.com
Sent Mail - aamburn11@gmail.com - Gmail
Gmail - Letter from Jeff
https://mail-attachment.googleuserconten...
Gmail - JM
Untitled attachment 00845.htm
Google
in:sent
Gmail
More
426–450 of 997
COMPOSE
Inbox (5)
Important
Sent Mail
Drafts (9)
Spam (1,990)
Trash
Bills/Contracts (6)
JM
Notes
Personal
Travel
More
Ashleigh
Find someone
To: Lawrence, Tina, kad544 Docs per JM - Attached please find from JM. Sent from my iPhone Begin forwarded message: > From: Print Services 3/25/16
To: Tina Heath (2) Today's meeting with JM - Perfect! Thanks!!! Have a great weekend!!! Sent from my iPhone > On Mar 25, 2016, at 9:31 AM, Tina 3/25/16
To: Lawrence, Tina, Kevin Docs from JM Second Incidentment - Attached please find docs from JM. Thanks!!! Ashleigh Sent from my iPhone Begin forwarde 3/24/16
To: Lawrence, Tina, kad544 (2) Calculation Docs from JM - Thanks for the update. I will let JM know!!! Sent from my iPhone On Mar 21, 2016, at 10:11 AM 3/21/16
To: Tina, Lawrence (2) Docs for Jeff - Thanks so much!!! I will let him know!! Ashleigh Sent from my iPhone > On Mar 17, 2016, at 9:25 AM 3/17/16
To: lec721 (5) Per Jeff - Thanks!!! :) I'll let him know all is well!!! Sent from my iPhone On Mar 16, 2016, at 1:39 PM. 3/16/16
To: ods06844cpc Please print pages requested - 30-50 (of 92 pages; 85 and 86 of 92 pages (pages in exhibit 19 and 20) Sent from my iPhone Beg 3/16/16
To: Tina Heath (2) JM Meeting Tomorrow - Ok, perfect! I will let him know when he calls tonight! Have a great day!!! Sent from my iPhone > 3/14/16
[redacted] 3/14/16
To: cspeckhart Message from Jeff Martinovich - Dear Cullen, Jeff asked me to get a message to you. Please see below. "Hope you received my 3/13/16
To: Tina Heath Martinovich - Hi Tina, Hope you are having a good Monday. Jeff asked me to touch base with you on a few things 3/7/16
To: David Judson (2) Re: Jeff and Re-Sentencing - Thanks Dave!!! Sent from my iPhone On Feb 29, 2016, at 11:31 PM, David Judson <david.judson@ 3/1/16
[redacted] 2/26/16
[redacted] 2/26/16
To: ssully111 (3) Hi Sully - Yes sir, of course!!! Now we are officially friends!!! :) Ash Sent from my iPhone On Feb 25, 2016, 2/25/16
[redacted] 2/18/16
To: David Judson (2) Recent pic of Jeff - :) Will do!!! Sent from my iPhone > On Feb 18, 2016, at 4:07 PM, David Judson <david.judson@ 2/18/16
To: david.judson (3) Letter from Jeff - I know he and Charlene would love to see you!!!!! I am looking forward to meeting you as well!!!! 2/18/16
To: Kristen.Erickson Jeff Martinovich - Dear Kristen, Jeff Martinovich asked me to reach out to you as he would like to send you a letter 2/18/16
To: usa0843 (2) Fwd: Congratulations! Your document is ready for retrieval and printing at FedEx Office... - Sent from my iPhone Begin forwarded 2/15/16
To: usa0843 Fwd: Congratulations! Your document is ready for retrieval and printing at FedEx Office... - Sent from my iPhone Begin forwarded 2/15/16
To: ods06844cpc, printandgo (2 Fwd: MArtinovich Reply BRief filed 3-10-15 - Sent from my iPhone Begin forwarded message: > From: Kevin Cadieux > Date: Feb 2/15/16
To: ods06844cpc, printandgo (2 Fwd: Martinovich Pro Se Supplemental Brief Reply filed 3-13-15 - Sent from my iPhone Begin forwarded message: > From: Kevin 2/15/16


mail.google.com
Sent Mail - aamburn11@gmail.com - Gmail
Gmail - Letter from Jeff
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Gmail - JM
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Google
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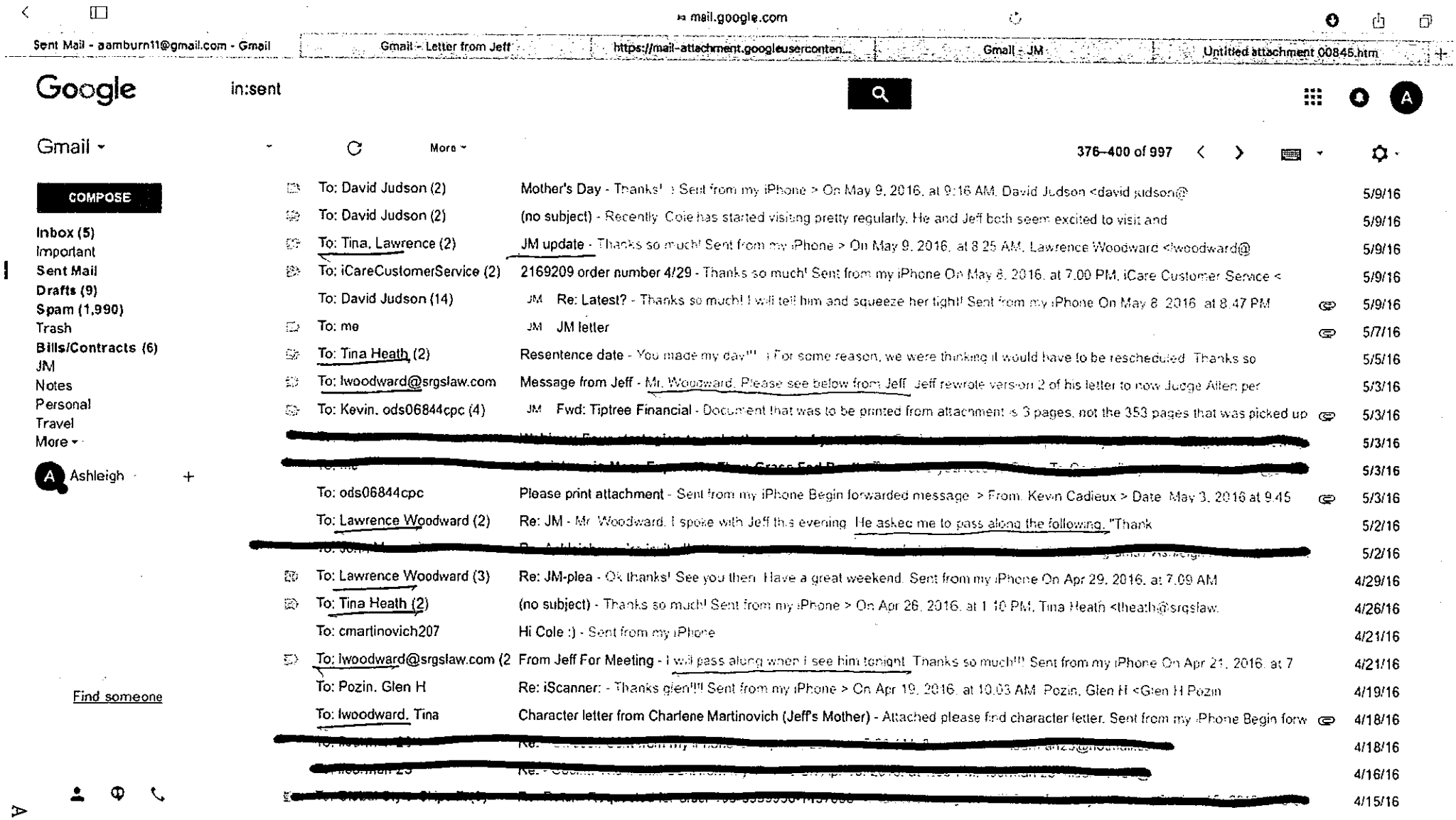
Gmail
More
401–425 of 997
COMPOSE
Inbox (5)
Important
Sent Mail
Drafts (9)
Spam (1,990)
Trash
Bills/Contracts (6)
JM
Notes
Personal
Travel
More
Ashleigh
Find someone
To: Tina Heath (6) (no subject) - Thanks! Sent from my iPhone On Apr 14, 2016, at 1:08 PM, Tina Heath <theath@srgslaw.com> wrote: 4/14/16
To: David, ods06844cpc (10) Re: Latest? - Will do! Thanks! Sent from my iPhone On Apr 12, 2016, at 8:23 AM, David Judson <david.judson@ 4/12/16
To: noreply Re: Home Gym Weider - Is this the same thing? Sent from my iPhone On Apr 9, 2016 at 5:33 PM, noreply@craigslist.org wrote 4/9/16
To: Kevin, ods06844cpc (6) Character letter - Please print Sent from my iPhone Begin forwarded message: > From: Kevin Cadieux > Date: April 2 4/9/16
To: ods06844cpc (2) JM Letter for Judge - Please print Sent from my iPhone Begin forwarded message: > From: Ken Monroe > Date: April 6, 4/9/16
To: ods06844cpc Fwd: Character letter for Jeff Martinovich - Can we please put into pdf attachment and print copy. Sent from my iPhone Begin forw 4/9/16
To: floorman, floorman (3) Re: Wells Fargo card purchase exceeded preset amount - This is the email I got: Sent from my iPhone Begin forwarded message 4/9/16
To: Lawrence Woodward Re: mtg with jeff - Thanks so much for the update. I will let him know. Also, he sent me the first draft of the letter to 4/7/16
To: ods06844cpc Fwd: Please print - Please print attachment. Sent from my iPhone Begin forwarded message: > From: Ken Monroe > Date 4/6/16
To: David Judson Re: Letter - Thanks Dave. I will let Jeff know. I am not sending anything until he reviews and gives me the go 4/4/16
To: lwoodward, theath JM Questions Per JM - Larry and Tina: Please see below per JM (tried to scan but would not come out clear enough to read) 4/3/16
To: David Judson (2) Letter for Jeff - Thanks so much!!! Sent from my iPhone > On Mar 30, 2016, at 9:33 AM, David Judson <davic.judson 3/30/16
To: Lawrence, Tina, kad544 Notes from JM - Sent from my iPhone Begin forwarded message: > From: Ashleigh > Date: March 28, 2016 at 3:34:50 3/28/16
3/28/16
(no subject) 3/27/16

Atch. 42-2


mail.google.com
Sent Mail - aamburn11@gmail.com - Gmail
Gmail - Letter from Jeff
https://mail-attachment.googleuserconten...
Gmail - JM
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Google
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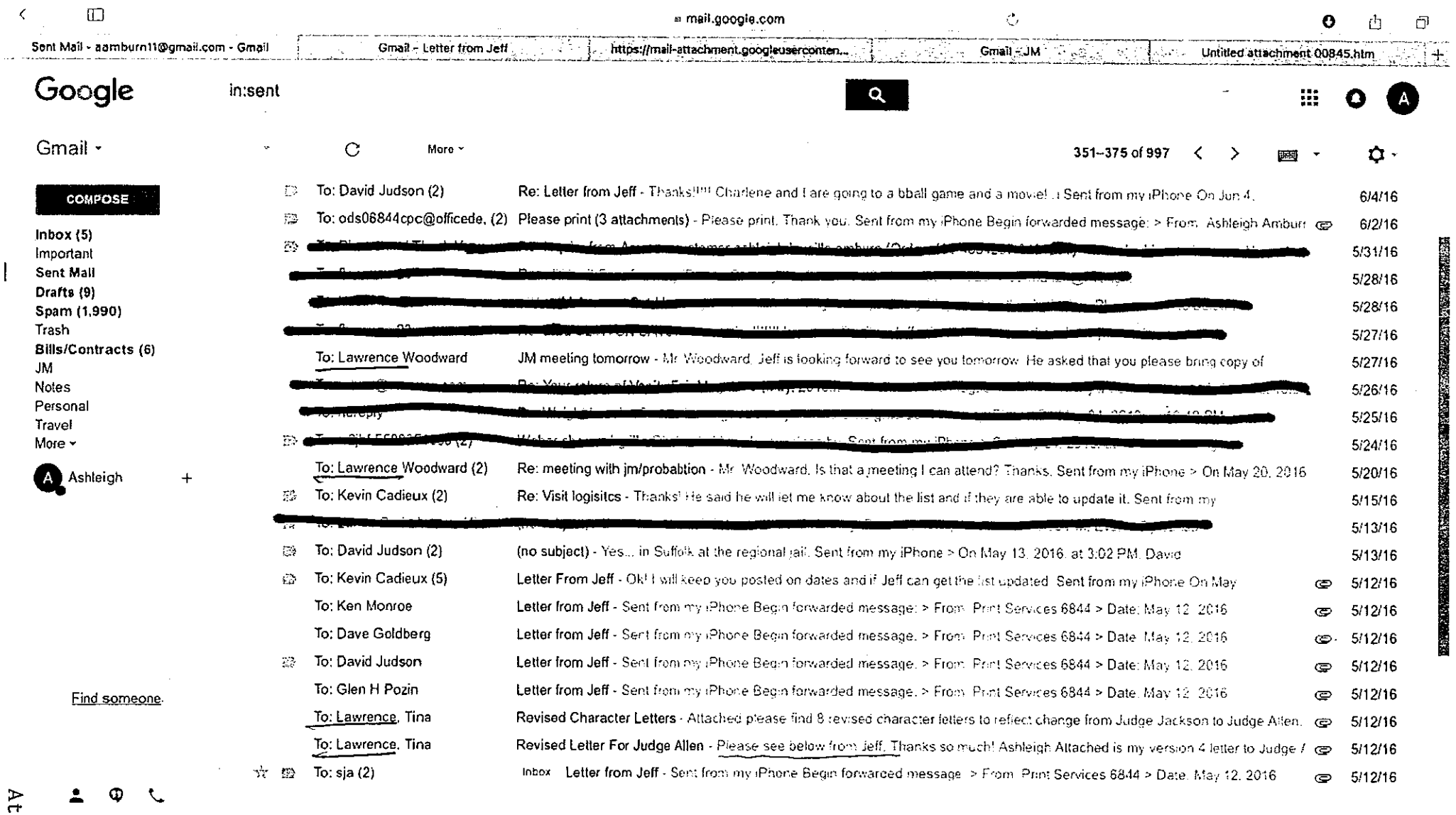
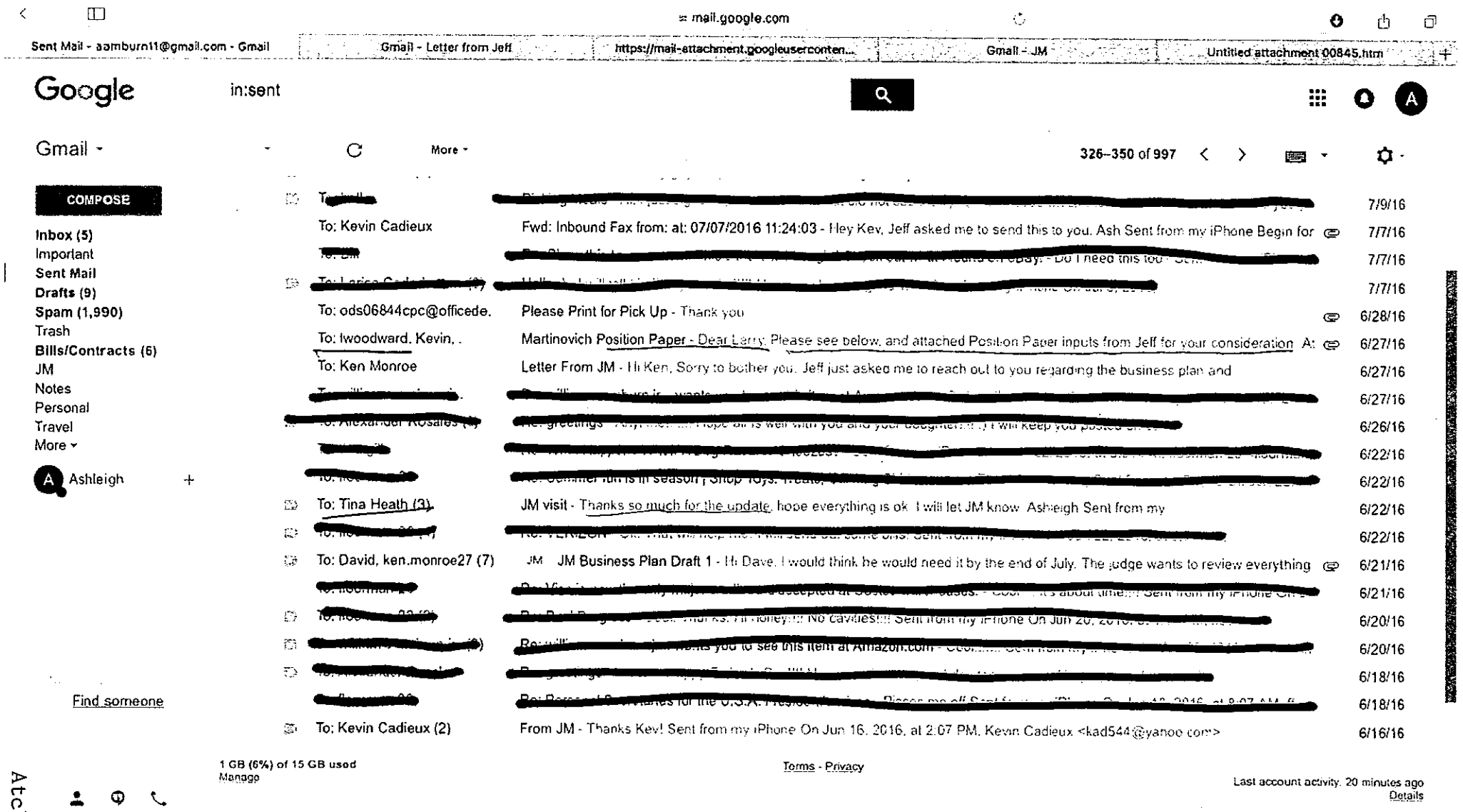
Gmail
More
376–400 of 997
COMPOSE
Inbox (5)
Important
Sent Mail
Drafts (9)
Spam (1,990)
Trash
Bills/Contracts (6)
JM
Notes
Personal
Travel
More
Ashleigh
Find someone
To: David Judson (2) Mother's Day - Thanks! Sent from my iPhone > On May 9, 2016, at 9:16 AM, David Judson <david judson@ 5/9/16
To: David Judson (2) (no subject) - Recently Cole has started visiting pretty regularly. He and Jeff both seem excited to visit and 5/9/16
To: Tina, Lawrence (2) JM update - Thanks so much! Sent from my iPhone > On May 9, 2016, at 8:25 AM, Lawrence Woodward <lwoodward@ 5/9/16
To: iCareCustomerService (2) 2169209 order number 4/29 - Thanks so much! Sent from my iPhone On May 8, 2016, at 7:00 PM, iCare Customer Service < 5/9/16
To: David Judson (14) JM Re: Latest? - Thanks so much! I will tell him and squeeze her tight! Sent from my iPhone On May 8, 2016, at 8:47 PM 5/9/16
To: me JM JM letter 5/7/16
To: Tina Heath (2) Resentence date - You made my day!!! :) For some reason, we were thinking it would have to be rescheduled. Thanks so 5/5/16
To: lwoodward@srgslaw.com Message from Jeff - Mr. Woodward, Please see below from Jeff. Jeff rewrote version 2 of his letter to now Judge Allen per 5/3/16
To: Kevin, ods06844cpc (4) JM Fwd: Tiptree Financial - Document that was to be printed from attachment is 3 pages, not the 353 pages that was picked up 5/3/16
5/3/16
5/3/16
To: ods06844cpc Please print attachment - Sent from my iPhone Begin forwarded message: > From: Kevin Cadieux > Date: May 3, 2016 at 9:45 5/3/16
To: Lawrence Woodward (2) Re: JM - Mr. Woodward, I spoke with Jeff this evening. He asked me to pass along the following: "Thank 5/2/16
5/2/16
To: Lawrence Woodward (3) Re: JM-plea - Ok thanks! See you then. Have a great weekend. Sent from my iPhone On Apr 29, 2016, at 7:09 AM 4/29/16
To: Tina Heath (2) (no subject) - Thanks so much! Sent from my iPhone > On Apr 26, 2016, at 1:10 PM, Tina Heath <theath@srgslaw. 4/26/16
To: cmartinovich207 Hi Cole :) - Sent from my iPhone 4/21/16
To: lwoodward@srgslaw.com (2 From Jeff For Meeting - I will pass along when I see him tonight. Thanks so much!!! Sent from my iPhone On Apr 21, 2016, at 7 4/21/16
To: Pozin, Glen H Re: iScanner: - Thanks glen!!! Sent from my iPhone > On Apr 19, 2016, at 10:03 AM, Pozin, Glen H <Glen H Pozin 4/19/16
To: lwoodward, Tina Character letter from Charlene Martinovich (Jeff's Mother) - Attached please find character letter. Sent from my iPhone Begin forw 4/18/16
4/18/16
4/16/16
4/15/16

Atch. 42-3


mail.google.com
Sent Mail - aamburn11@gmail.com - Gmail
Gmail - Letter from Jeff
https://mail-attachment.googleuserconten...
Gmail - JM
Untitled attachment 00845.htm
Google
in:sent
Gmail
More
351–375 of 997
COMPOSE
Inbox (5)
Important
Sent Mail
Drafts (9)
Spam (1,990)
Trash
Bills/Contracts (6)
JM
Notes
Personal
Travel
More
Ashleigh
Find someone.
To: David Judson (2) Re: Letter from Jeff - Thanks!!!! Charlene and I are going to a bball game and a movie! :) Sent from my iPhone On Jun 4, 6/4/16
To: ods06844cpc@officede, (2) Please print (3 attachments) - Please print. Thank you. Sent from my iPhone Begin forwarded message: > From: Ashleigh Amburn 6/2/16
5/31/16
5/28/16
5/28/16
5/27/16
To: Lawrence Woodward JM meeting tomorrow - Mr. Woodward, Jeff is looking forward to see you tomorrow. He asked that you please bring copy of 5/27/16
5/26/16
5/25/16
5/24/16
To: Lawrence Woodward (2) Re: meeting with jm/probabtion - Mr. Woodward, Is that a meeting I can attend? Thanks. Sent from my iPhone > On May 20, 2016 5/20/16
To: Kevin Cadieux (2) Re: Visit logisitcs - Thanks! He said he will let me know about the list and if they are able to update it. Sent from my 5/15/16
5/13/16
To: David Judson (2) (no subject) - Yes... in Suffolk at the regional jail. Sent from my iPhone > On May 13, 2016, at 3:02 PM, David 5/13/16
To: Kevin Cadieux (5) Letter From Jeff - Ok! I will keep you posted on dates and if Jeff can get the list updated. Sent from my iPhone On May 5/12/16
To: Ken Monroe Letter from Jeff - Sent from my iPhone Begin forwarded message: > From: Print Services 6844 > Date: May 12, 2016 5/12/16
To: Dave Goldberg Letter from Jeff - Sent from my iPhone Begin forwarded message: > From: Print Services 6844 > Date: May 12, 2016 5/12/16
To: David Judson Letter from Jeff - Sent from my iPhone Begin forwarded message: > From: Print Services 6844 > Date: May 12, 2016 5/12/16
To: Glen H Pozin Letter from Jeff - Sent from my iPhone Begin forwarded message: > From: Print Services 6844 > Date: May 12, 2016 5/12/16
To: Lawrence, Tina Revised Character Letters - Attached please find 8 revised character letters to reflect change from Judge Jackson to Judge Allen. 5/12/16
To: Lawrence, Tina Revised Letter For Judge Allen - Please see below from Jeff. Thanks so much! Ashleigh Attached is my version 4 letter to Judge / 5/12/16
To: sja (2) Inbox Letter from Jeff - Sent from my iPhone Begin forwarded message: > From: Print Services 6844 > Date: May 12, 2016 5/12/16

Atch. 42-4


mail.google.com
Sent Mail - aamburn11@gmail.com - Gmail
Gmail - Letter from Jeff
https://mail-attachment.googleuserconten...
Gmail - JM
Untitled attachment 00845.htm
Google
in:sent
Gmail
More
326–350 of 997
COMPOSE
Inbox (5)
Important
Sent Mail
Drafts (9)
Spam (1,990)
Trash
Bills/Contracts (6)
JM
Notes
Personal
Travel
More
Ashleigh
Find someone
To: Kevin Cadieux
Fwd: Inbound Fax from: at: 07/07/2016 11:24:03 - Hey Kev, Jeff asked me to send this to you. Ash Sent from my iPhone Begin for
7/7/16
To: ods06844cpc@officede.
Please Print for Pick Up - Thank you
6/28/16
To: lwoodward, Kevin, .
Martinovich Position Paper - Dear Larry: Please see below, and attached Position Paper inputs from Jeff for your consideration A:
6/27/16
To: Ken Monroe
Letter From JM - Hi Ken, Sorry to bother you. Jeff just asked me to reach out to you regarding the business plan and
6/27/16
To: Tina Heath (3)
JM visit - Thanks so much for the update, hope everything is ok I will let JM know Ashleigh Sent from my
6/22/16
To: David, ken.monroe27 (7)
JM JM Business Plan Draft 1 - Hi Dave, I would think he would need it by the end of July. The judge wants to review everything
6/21/16
6/20/16
6/18/16
To: Kevin Cadieux (2)
From JM - Thanks Kev! Sent from my iPhone On Jun 16, 2016, at 2:07 PM, Kevin Cadieux
6/16/16
1 GB (6%) of 15 GB used
Manage
Terms - Privacy
Last account activity: 20 minutes ago
Details

Atch. 42-5

Sent Mail - aamburn11@gmail.com - Gmail | Gmail - Letter from Jeff | https://mail-attachment.googleusercontent... | Gmail - JM | Untitled attachment 00845.htm

mail.google.com

Google in:sent

Gmail ▾

COMPOSE

Inbox (5)
Important
Sent Mail
Drafts (9)
Spam (1,990)
Trash
Bills/Contracts (6)
JM
Notes
Personal
Travel
More ▾

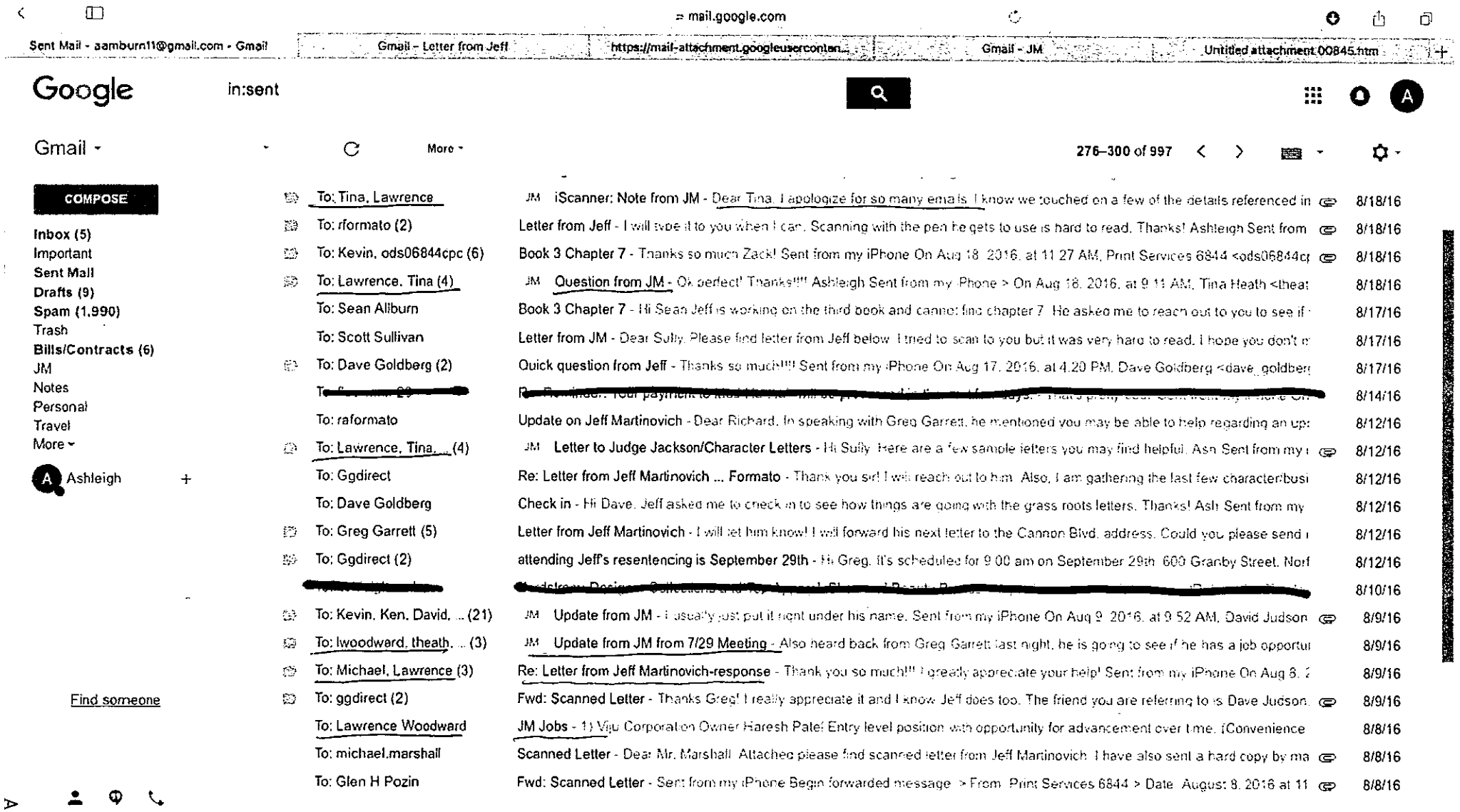
Ashleigh +

Find someone

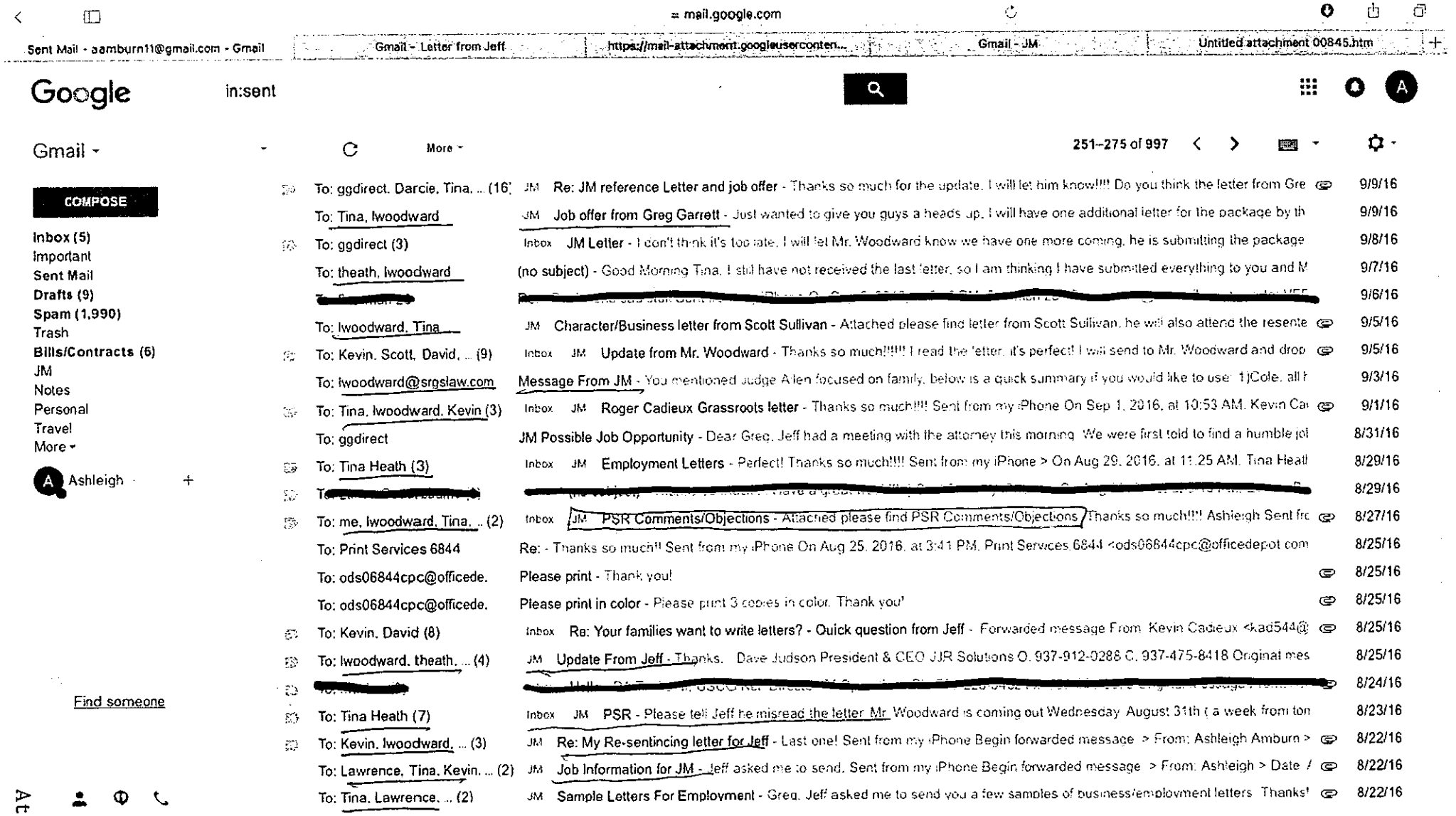
More ▾ 301–325 of 997

To	Label	Subject / Snippet	Date
To: Print Services 6844 (2)		Re: Scanned Letters - Thank you so much!!! Sent from my iPhone On Aug 8, 2016 at 11:48 AM, Print Services 6844 <ods06844c	8/8/16
To: Greg Garrett (4)		Letter from JM - Jeff's address is below in case you would like to send him a note. Jeffrey Martinovich Section E Block 3 Western	8/8/16
To: David, David, Kevin (4)		Phone Call with Mr. Woodard - Yes sir!!! I will touch base with him to get w few dates and times Thanks Kev!!! Sent from my iPho	8/8/16
To: stephen.sigmon		(no subject) - Hi Steve, Hope all is well!!! I have a quick question for you when you get a chance in regards to an upcoming event i	8/4/16
To: David Judson (10)	JM	Re: Letter for Judge Allen - I spoke to one of my customers who is an attorney that knows the judge well, he will be there to	7/29/16
To: Lawrence, Tina	JM	Letter to Judge Allen - Mr. Woodward, Attached please find letter for Judge Allen from Jeff's son, Cole Thanks! Ashleigh Se	7/28/16
To: Tina Heath (2)	JM	(no subject) - Thanks so much! I will let him know! Sent from my iPhone > On Jul 26, 2016, at 11:53 AM, Tina Heath <theath	7/26/16
To: lwoodward, theath		Note from JM - Dear Mr. Woodward, Jeff asked me to pass along to please also include the new information below in the Position	7/23/16
To: David Goldberg		Shareholder Letter - Hi Mike, Resending just in case I didn't attach with docs from last week. Thanks!	7/20/16
To: Kevin Cadieux		Grassroots Letters - Kev, Jeff asked me to send the grassroots letters. Also, he asked me to let you know that I can print and mail	7/20/16
To: Tina Heath (2)	JM	Meeting with JM - Thanks so much!!! Only 72 days until resentencing, but who's counting!!! :) Sent from my iPhone > On Ju	7/19/16
To: Ken, Kevin, David (3)		Letter from Jeff - Hey Kev, Jeff is going to give you a call Sent from my iPhone On Jul 18, 2016, at 12:32 PM, Kevin Cadieux <kac	7/18/16
To: lwoodward, theath, ... (6)	JM	Grassroots documents and JM business plan document - There should have been attachments The grassroots letters were	7/18/16
To: Dave Goldberg		Letter from Jeff - Hi Mike, Attached please find letter from Jeff. Also I will be sending another attachment referencing letters and r	7/15/16
To: ods06844cpc		Fwd: Just One More Then I Gotta Go - Please print Sent from my iPhone Begin forwarded message: From: Ashleigh <aamburn11	7/15/16
To: ods06844cpc		Fwd: Just One More Then I've got to Go - Please print Sent from my iPhone Begin forwarded message From: Ashleigh <aamburn	7/15/16
To: ods06844cpc		Fwd: Wow - now that Really is the best email I've received Aug 1, 2014 - Please print Sent from my iPhone Begin forwarded mess	7/15/16
To: ods06844cpc		Fwd: Just One More Then I've Got to Go - Please print Sent from my iPhone Begin forwarded message From: Ashleigh <aamburn	7/15/16
To: ods06844cpc		Fwd: Just One More Then I've Got to Go - Please print Sent from my iPhone Begin forwarded message. From: Ashleigh <aamburn	7/15/16
To: ods06844cpc		Fwd: Just One More Then I've Got to Go - Please print Sent from my iPhone Begin forwarded message From: Ashleigh <aamburn	7/15/16
To: ods06844cpc		Fwd: Just One More Then I've Got to Go - Please print Sent from my iPhone Begin forwarded message. From: Ashleigh <aamburn	7/15/16
To: ods06844cpc		Fwd: Just One More Then I've Got to Go - Please print Sent from my iPhone Begin forwarded message. From: Ashleigh <aamburn	7/15/16
To: ods06844cpc		Fwd: Just One More Then I've Got to Go - Please print Sent from my iPhone Begin forwarded message. From: Ashleigh <aamburn	7/15/16

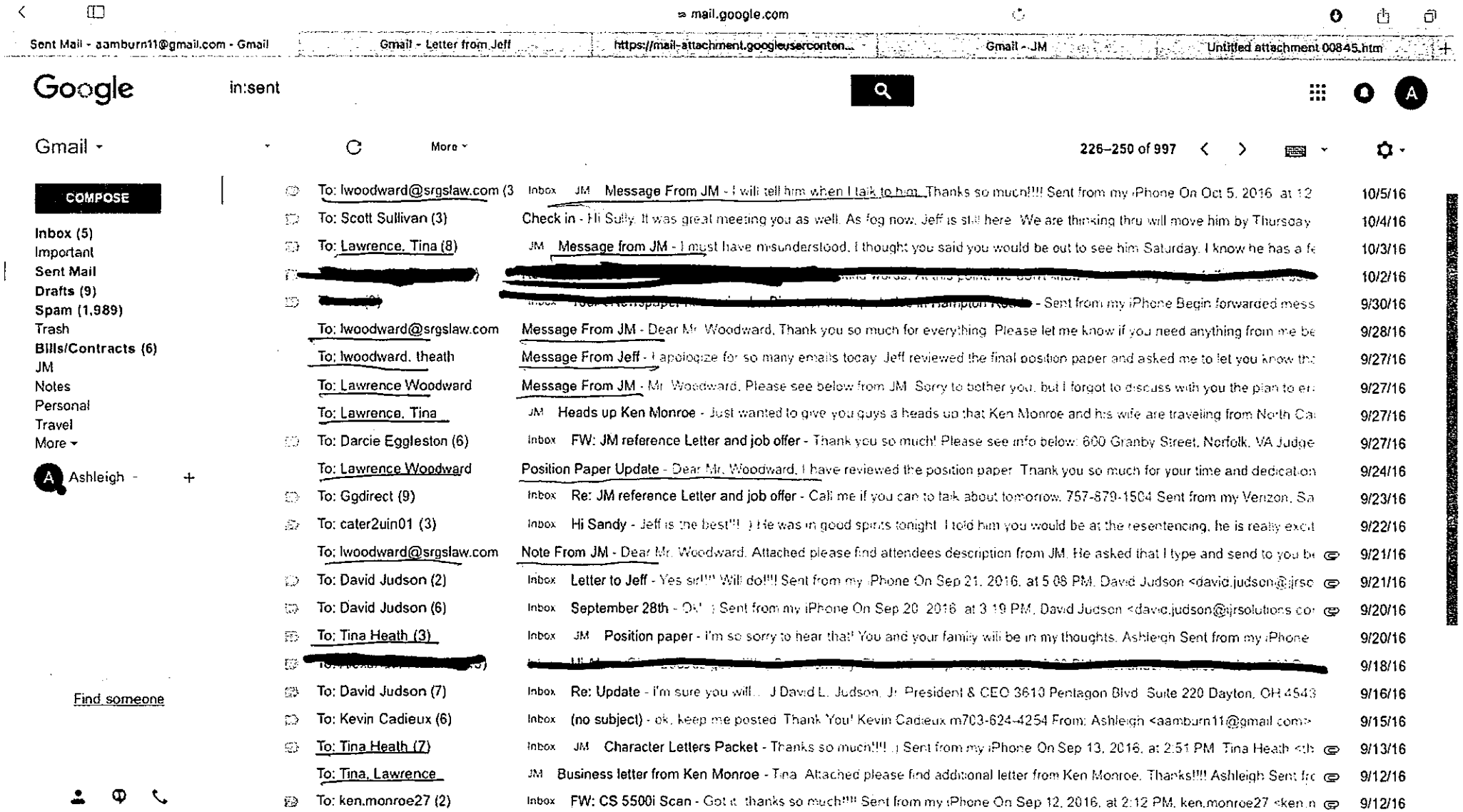
Atch. 42-6


mail.google.com
Sent Mail - aamburn11@gmail.com - Gmail
Gmail - Letter from Jeff
https://mail-attachment.googleusercontent...
Gmail - JM
Untitled attachment 00845.htm
Google
in:sent
Gmail
More
276–300 of 997
COMPOSE
Inbox (5)
Important
Sent Mail
Drafts (9)
Spam (1,990)
Trash
Bills/Contracts (6)
JM
Notes
Personal
Travel
More
Ashleigh
Find someone
To: Tina, Lawrence
iScanner: Note from JM - Dear Tina, I apologize for so many emails. I know we touched on a few of the details referenced in 8/18/16
To: rformato (2)
Letter from Jeff - I will type it to you when I can. Scanning with the pen he gets to use is hard to read. Thanks! Ashleigh Sent from 8/18/16
To: Kevin, ods06844cpc (6)
Book 3 Chapter 7 - Thanks so much Zack! Sent from my iPhone On Aug 18, 2016, at 11:27 AM, Print Services 6844 <ods06844cp 8/18/16
To: Lawrence, Tina (4)
Question from JM - Ok perfect! Thanks!!!! Ashleigh Sent from my iPhone > On Aug 18, 2016, at 9:11 AM, Tina Heath <theat 8/18/16
To: Sean Allburn
Book 3 Chapter 7 - Hi Sean Jeff is working on the third book and cannot find chapter 7. He asked me to reach out to you to see if 8/17/16
To: Scott Sullivan
Letter from JM - Dear Sully, Please find letter from Jeff below. I tried to scan to you but it was very hard to read. I hope you don't m 8/17/16
To: Dave Goldberg (2)
Quick question from Jeff - Thanks so much!!!! Sent from my iPhone On Aug 17, 2016, at 4:20 PM, Dave Goldberg <dave_goldberg 8/17/16
[redacted] 8/14/16
To: raformato
Update on Jeff Martinovich - Dear Richard, In speaking with Greg Garrett, he mentioned you may be able to help regarding an up 8/12/16
To: Lawrence, Tina, ... (4)
Letter to Judge Jackson/Character Letters - Hi Sully. Here are a few sample letters you may find helpful. Ash Sent from my i 8/12/16
To: Ggdirect
Re: Letter from Jeff Martinovich ... Formato - Thank you sir! I will reach out to him. Also, I am gathering the last few character/busi 8/12/16
To: Dave Goldberg
Check in - Hi Dave, Jeff asked me to check in to see how things are going with the grass roots letters. Thanks! Ash Sent from my 8/12/16
To: Greg Garrett (5)
Letter from Jeff Martinovich - I will let him know! I will forward his next letter to the Cannon Blvd. address. Could you please send i 8/12/16
To: Ggdirect (2)
attending Jeff's resentencing is September 29th - Hi Greg, it's scheduled for 9:00 am on September 29th, 600 Granby Street, Norf 8/12/16
[redacted] 8/10/16
To: Kevin, Ken, David, ... (21)
Update from JM - I usually just put it right under his name. Sent from my iPhone On Aug 9, 2016, at 9:52 AM, David Judson 8/9/16
To: lwoodward, theath, ... (3)
Update from JM from 7/29 Meeting - Also heard back from Greg Garrett last night, he is going to see if he has a job opportu 8/9/16
To: Michael, Lawrence (3)
Re: Letter from Jeff Martinovich-response - Thank you so much!!! I greatly appreciate your help! Sent from my iPhone On Aug 8, 2 8/9/16
To: ggdirect (2)
Fwd: Scanned Letter - Thanks Greg! I really appreciate it and I know Jeff does too. The friend you are referring to is Dave Judson. 8/9/16
To: Lawrence Woodward
JM Jobs - 1) Viju Corporation Owner Haresh Patel Entry level position with opportunity for advancement over time. iConvenience 8/8/16
To: michael.marshall
Scanned Letter - Dear Mr. Marshall, Attached please find scanned letter from Jeff Martinovich. I have also sent a hard copy by ma 8/8/16
To: Glen H Pozin
Fwd: Scanned Letter - Sent from my iPhone Begin forwarded message: > From: Print Services 6844 > Date: August 8, 2016 at 11 8/8/16

Atch. 42-7

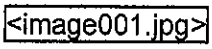

mail.google.com
Sent Mail - aamburn11@gmail.com - Gmail
Gmail - Letter from Jeff
https://mail-attachment.googleuserconten...
Gmail - JM
Untitled attachment 00845.htm
Google
in:sent
Gmail
More
251–275 of 997
COMPOSE
Inbox (5)
Important
Sent Mail
Drafts (9)
Spam (1,990)
Trash
Bills/Contracts (6)
JM
Notes
Personal
Travel
More
Ashleigh
Find someone
To: ggdirect, Darcie, Tina, ... (16) JM Re: JM reference Letter and job offer - Thanks so much for the update. I will let him know!!!! Do you think the letter from Gre 9/9/16
To: Tina, lwoodward JM Job offer from Greg Garrett - Just wanted to give you guys a heads up. I will have one additional letter for the package by th 9/9/16
To: ggdirect (3) Inbox JM Letter - I don't think it's too late. I will let Mr. Woodward know we have one more coming, he is submitting the package 9/8/16
To: theath, lwoodward (no subject) - Good Morning Tina, I still have not received the last letter, so I am thinking I have submitted everything to you and M 9/7/16
[redacted] 9/6/16
To: lwoodward, Tina JM Character/Business letter from Scott Sullivan - Attached please find letter from Scott Sullivan, he will also attend the resente 9/5/16
To: Kevin, Scott, David, ... (9) Inbox JM Update from Mr. Woodward - Thanks so much!!!!!! I read the letter, it's perfect! I will send to Mr. Woodward and drop 9/5/16
To: lwoodward@srgslaw.com Message From JM - You mentioned judge Allen focused on family, below is a quick summary if you would like to use: 1)Cole, all h 9/3/16
To: Tina, lwoodward, Kevin (3) Inbox JM Roger Cadieux Grassroots letter - Thanks so much!!!! Sent from my iPhone On Sep 1, 2016, at 10:53 AM, Kevin Ca 9/1/16
To: ggdirect JM Possible Job Opportunity - Dear Greg, Jeff had a meeting with the attorney this morning. We were first told to find a humble jol 8/31/16
To: Tina Heath (3) Inbox JM Employment Letters - Perfect! Thanks so much!!!! Sent from my iPhone > On Aug 29, 2016, at 11:25 AM, Tina Heatl 8/29/16
[redacted] 8/29/16
To: me, lwoodward, Tina, ... (2) Inbox JM PSR Comments/Objections - Attached please find PSR Comments/Objections Thanks so much!!!! Ashleigh Sent fro 8/27/16
To: Print Services 6844 Re: - Thanks so much!! Sent from my iPhone On Aug 25, 2016, at 3:41 PM, Print Services 6844 <ods06844cpc@officedepot.com 8/25/16
To: ods06844cpc@officede. Please print - Thank you! 8/25/16
To: ods06844cpc@officede. Please print in color - Please print 3 copies in color. Thank you! 8/25/16
To: Kevin, David (8) Inbox Re: Your families want to write letters? - Quick question from Jeff - Forwarded message From: Kevin Cadieux <kad544@ 8/25/16
To: lwoodward, theath, ... (4) JM Update From Jeff - Thanks. Dave Judson President & CEO JJR Solutions O. 937-912-0288 C. 937-475-8418 Original mes 8/25/16
[redacted] 8/24/16
To: Tina Heath (7) Inbox JM PSR - Please tell Jeff he misread the letter. Mr. Woodward is coming out Wednesday August 31th (a week from ton 8/23/16
To: Kevin, lwoodward, ... (3) JM Re: My Re-sentincing letter for Jeff - Last one! Sent from my iPhone Begin forwarded message > From: Ashleigh Amburn > 8/22/16
To: Lawrence, Tina, Kevin, ... (2) JM Job Information for JM - Jeff asked me to send. Sent from my iPhone Begin forwarded message > From: Ashleigh > Date / 8/22/16
To: Tina, Lawrence, ... (2) JM Sample Letters For Employment - Greg, Jeff asked me to send you a few samples of business/employment letters. Thanks! 8/22/16

Atch. 42-8


mail.google.com
Sent Mail - aamburn11@gmail.com - Gmail
Gmail - Letter from Jeff
https://mail-attachment.googleuserconten...
Gmail - JM
Untitled attachment 00845.htm
Google
in:sent
Gmail
More
226–250 of 997
COMPOSE
Inbox (5)
Important
Sent Mail
Drafts (9)
Spam (1,989)
Trash
Bills/Contracts (6)
JM
Notes
Personal
Travel
More
Ashleigh
Find someone
To: lwoodward@srgslaw.com (3 Inbox JM Message From JM - I will tell him when I talk to him. Thanks so much!!!! Sent from my iPhone On Oct 5, 2016, at 12 10/5/16
To: Scott Sullivan (3) Check in - Hi Sully. It was great meeting you as well. As fog now, Jeff is still here. We are thinking thru will move him by Thursday 10/4/16
To: Lawrence, Tina (8) JM Message from JM - I must have misunderstood. I thought you said you would be out to see him Saturday. I know he has a fe 10/3/16
[redacted] 10/2/16
[redacted] - Sent from my iPhone Begin forwarded mess 9/30/16
To: lwoodward@srgslaw.com Message From JM - Dear Mr. Woodward, Thank you so much for everything. Please let me know if you need anything from me be 9/28/16
To: lwoodward, theath Message From Jeff - I apologize for so many emails today. Jeff reviewed the final position paper and asked me to let you know tha 9/27/16
To: Lawrence Woodward Message From JM - Mr. Woodward, Please see below from JM. Sorry to bother you, but I forgot to discuss with you the plan to en 9/27/16
To: Lawrence, Tina JM Heads up Ken Monroe - Just wanted to give you guys a heads up that Ken Monroe and his wife are traveling from North Ca 9/27/16
To: Darcie Eggleston (6) Inbox FW: JM reference Letter and job offer - Thank you so much! Please see info below: 600 Granby Street, Norfolk, VA Judge 9/27/16
To: Lawrence Woodward Position Paper Update - Dear Mr. Woodward, I have reviewed the position paper. Thank you so much for your time and dedication 9/24/16
To: Ggdirect (9) Inbox Re: JM reference Letter and job offer - Call me if you can to talk about tomorrow. 757-879-1504 Sent from my Verizon, Sa 9/23/16
To: cater2uin01 (3) Inbox Hi Sandy - Jeff is the best!!! :) He was in good spirits tonight. I told him you would be at the resentencing, he is really excit 9/22/16
To: lwoodward@srgslaw.com Note From JM - Dear Mr. Woodward, Attached please find attendees description from JM. He asked that I type and send to you be 9/21/16
To: David Judson (2) Inbox Letter to Jeff - Yes sir!!!! Will do!!!! Sent from my iPhone On Sep 21, 2016, at 5:08 PM, David Judson <david.judson@jrsc 9/21/16
To: David Judson (6) Inbox September 28th - Ok! :) Sent from my iPhone On Sep 20, 2016, at 3:19 PM, David Judson <david.judson@jrsolutions.com> 9/20/16
To: Tina Heath (3) Inbox JM Position paper - I'm so sorry to hear that! You and your family will be in my thoughts. Ashleigh Sent from my iPhone 9/20/16
[redacted] 9/18/16
To: David Judson (7) Inbox Re: Update - I'm sure you will... J David L. Judson, Jr. President & CEO 3610 Pentagon Blvd. Suite 220 Dayton, OH 4543 9/16/16
To: Kevin Cadieux (6) Inbox (no subject) - ok, keep me posted. Thank You! Kevin Cadieux m703-624-4254 From: Ashleigh <aamburn11@gmail.com> 9/15/16
To: Tina Heath (7) Inbox JM Character Letters Packet - Thanks so much!!!! :) Sent from my iPhone On Sep 13, 2016, at 2:51 PM, Tina Heath <th 9/13/16
To: Tina, Lawrence JM Business letter from Ken Monroe - Tina: Attached please find additional letter from Ken Monroe. Thanks!!!! Ashleigh Sent fro 9/12/16
To: ken.monroe27 (2) Inbox FW: CS 5500i Scan - Got it, thanks so much!!!! Sent from my iPhone On Sep 12, 2016, at 2:12 PM, ken.monroe27 <ken.m 9/12/16

Atch. 42-9

6253 College Drive Suite 400 | Suffolk, Virginia 23435
Tel: 757.483.0654 | ods06844cpc@officedepot.com



Please Note Our New Email

Ashleigh <aamburn11@gmail.com>
To: ggdirect@aol.com

Fri, Aug 12, 2016 at 9:16 AM

Hope this helps!

Sent from my iPhone

Begin forwarded message:

From: Ashleigh <aamburn11@gmail.com>
Date: April 9, 2016 at 10:14:39 AM EDT
To: Lawrence Woodward <lwoodward@srgslaw.com>
Cc: Tina Heath <theath@srgslaw.com>
Subject: Letter to Judge Jackson/Character Letters

[Quoted text hidden]
[Quoted text hidden]

---

2 attachments

DOC002.pdf 1678K

DOC001.pdf 3319K

Atch 42-10

Gmail

JM

Lawrence Woodward <lwoodward@srgslaw.com> Thu, Oct 6, 2016 at 9:11 AM
To: Ashleigh Amburn <aamburn11@gmail.com>
Cc: Tina Heath <theath@srgslaw.com>

I have filed and attached a copy of the notice of appeal in each case- per JM instruction I filed these even though he waived his appeal rights. This completes my representation -he will be given new counsel who will have the responsibility to request transcripts etc. Per my previous e-mail if I get a written signed request to turn file over to you I will honor it otherwise I will get file to new attorney when one is selected-lhw

From the desk of . . .
Lawrence "Woody" H. Woodward, Jr., Esq.
Shuttleworth, Ruloff, Swain,
Haddad & Morecock, P.C.
317 30th Street
Virginia Beach, Virginia 23451
(757) 671-6047/direct dial
(757) 671-6000/main number
(757) 671-6004/fax number

-----Original Message-----
From: copier@rgslaw.com [mailto:copier@rgslaw.com]
Sent: Thursday, October 6, 2016 9:10 AM
To: Lawrence Woodward <lwoodward@srgslaw.com>
Subject: Message from "RNP0026738605C7"

This E-mail was sent from "RNP0026738605C7" (MP C6502).

Scan Date: 10.06.2016 09:09:40 (-0400)
Queries to: copier@rgslaw.com

20161006090940266.pdf
170K

Ashleigh <aamburn11@gmail.com> Thu, Oct 6, 2016 at 3:21 PM
To: Lawrence Woodward <lwoodward@srgslaw.com>

Thanks

Atch. 42-11

Gmail

JM

Lawrence Woodward <lwoodward@srgslaw.com> Thu, Oct 6, 2016 at 9:11 AM
To: Ashleigh Amburn <aamburn11@gmail.com>
Cc: Tina Heath <theath@srgslaw.com>

I have filed and attached a copy of the notice of appeal in each case- per JM instruction I filed these even though he waived his appeal rights. This completes my representation -he will be given new counsel who will have the responsibility to request transcripts etc. Per my previous e-mail if I get a written signed request to turn file over to you I will honor it otherwise I will get file to new attorney when one is selected-lhw

From the desk of . . .
Lawrence "Woody" H. Woodward, Jr., Esq.
Shuttleworth, Ruloff, Swain,
Haddad & Morecock, P.C.
317 30th Street
Virginia Beach, Virginia 23451
(757) 671-6047/direct dial
(757) 671-6000/main number
(757) 671-6004/fax number

-----Original Message-----
From: copier@rgslaw.com [mailto:copier@rgslaw.com]
Sent: Thursday, October 6, 2016 9:10 AM
To: Lawrence Woodward <lwoodward@srgslaw.com>
Subject: Message from "RNP0026738605C7"

This E-mail was sent from "RNP0026738605C7" (MP C6502).

Scan Date: 10.06.2016 09:09:40 (-0400)
Queries to: copier@rgslaw.com

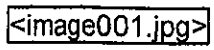
20161006090940266.pdf
170K

Ashleigh <aamburn11@gmail.com> Thu, Oct 6, 2016 at 3:21 PM
To: Lawrence Woodward <lwoodward@srgslaw.com>

Thanks

Atch. 42-11

6253 College Drive Suite 400 I Suffolk, Virginia 23435
Tel: 757.483.0654 I ods06844cpc@officedepot.com



Please Note Our New Email

Ashleigh <aamburn11@gmail.com> Fri, Aug 12, 2016 at 9:16 AM
To: ggdirect@aol.com

Hope this helps!

Sent from my iPhone

Begin forwarded message:

From: Ashleigh <aamburn11@gmail.com>
Date: April 9, 2016 at 10:14:39 AM EDT
To: Lawrence Woodward <lwoodward@srgslaw.com>
Cc: Tina Heath <theath@srgslaw.com>
Subject: Letter to Judge Jackson/Character Letters

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[Quoted text hidden]

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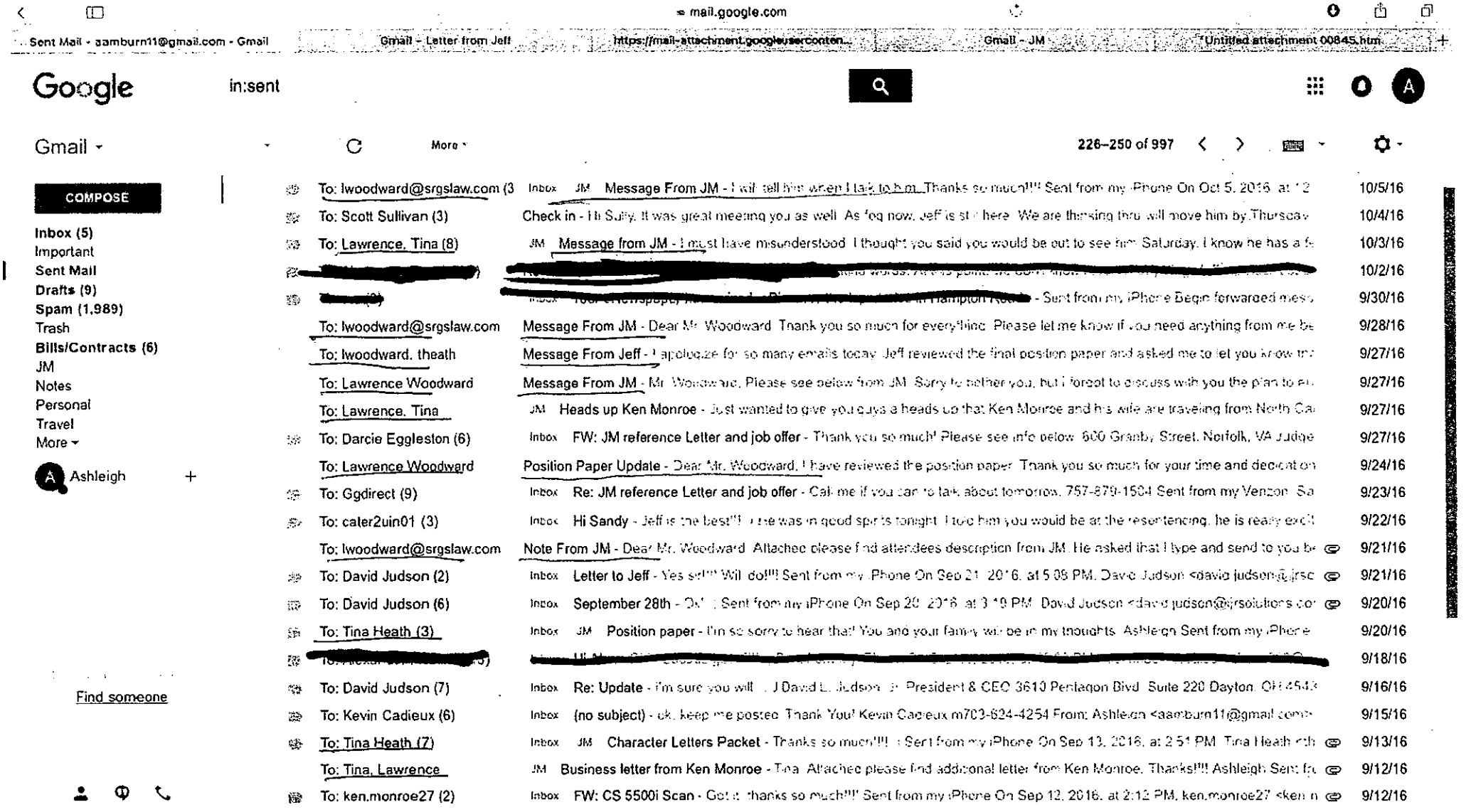
2 attachments

DOC002.pdf 1678K

DOC001.pdf 3319K

Atch. 42-1(


mail.google.com
Sent Mail - aamburn11@gmail.com - Gmail
Gmail - Letter from Jeff
https://mail-attachment.googleuserconten...
Gmail - JM
"Untitled attachment 00845.htm
Google
in:sent
Gmail
More
226–250 of 997
COMPOSE
Inbox (5)
Important
Sent Mail
Drafts (9)
Spam (1,989)
Trash
Bills/Contracts (6)
JM
Notes
Personal
Travel
More
Ashleigh
Find someone
To: lwoodward@srgslaw.com (3 Inbox JM Message From JM - I will tell him when I talk to him. Thanks so much!!!! Sent from my iPhone On Oct 5, 2016, at 12 10/5/16
To: Scott Sullivan (3) Check in - Hi Sully, It was great meeting you as well. As of now, Jeff is still here. We are thinking thru will move him by Thursday 10/4/16
To: Lawrence, Tina (8) JM Message from JM - I must have misunderstood. I thought you said you would be out to see him Saturday. I know he has a fe 10/3/16
[redacted] 10/2/16
[redacted] - Sent from my iPhone Begin forwarded messa 9/30/16
To: lwoodward@srgslaw.com Message From JM - Dear Mr. Woodward, Thank you so much for everything. Please let me know if you need anything from me be 9/28/16
To: lwoodward, theath Message From Jeff - I apologize for so many emails today. Jeff reviewed the final position paper and asked me to let you know the 9/27/16
To: Lawrence Woodward Message From JM - Mr. Woodward, Please see below from JM. Sorry to bother you, but I forgot to discuss with you the plan to ex 9/27/16
To: Lawrence, Tina JM Heads up Ken Monroe - Just wanted to give you guys a heads up that Ken Monroe and his wife are traveling from North Ca 9/27/16
To: Darcie Eggleston (6) Inbox FW: JM reference Letter and job offer - Thank you so much! Please see info below. 600 Granby Street, Norfolk, VA Judge 9/27/16
To: Lawrence Woodward Position Paper Update - Dear Mr. Woodward, I have reviewed the position paper. Thank you so much for your time and dedication on 9/24/16
To: Ggdirect (9) Inbox Re: JM reference Letter and job offer - Call me if you can to talk about tomorrow. 757-879-1504 Sent from my Verizon Sa 9/23/16
To: cater2uin01 (3) Inbox Hi Sandy - Jeff is the best!!! Jane was in good spirits tonight. I told him you would be at the resentencing, he is really excit 9/22/16
To: lwoodward@srgslaw.com Note From JM - Dear Mr. Woodward, Attached please find attendees description from JM. He asked that I type and send to you be 9/21/16
To: David Judson (2) Inbox Letter to Jeff - Yes sir!!! Will do!!!! Sent from my iPhone On Sep 21, 2016, at 5:05 PM, David Judson <david.judson@jrsc 9/21/16
To: David Judson (6) Inbox September 28th - Ok!! Sent from my iPhone On Sep 20, 2016, at 3:19 PM, David Judson <david.judson@jrsolutions.com 9/20/16
To: Tina Heath (3) Inbox JM Position paper - I'm so sorry to hear that! You and your family will be in my thoughts. Ashleigh Sent from my iPhone 9/20/16
[redacted] 9/18/16
To: David Judson (7) Inbox Re: Update - I'm sure you will. J David L. Judson, Jr. President & CEO 3610 Pentagon Blvd. Suite 220 Dayton, OH 4543 9/16/16
To: Kevin Cadieux (6) Inbox (no subject) - ok, keep me posted. Thank You! Kevin Cadieux m703-624-4254 From: Ashleigh <aamburn11@gmail.com> 9/15/16
To: Tina Heath (7) Inbox JM Character Letters Packet - Thanks so much!!!! Sent from my iPhone On Sep 13, 2016, at 2:51 PM, Tina Heath <th 9/13/16
To: Tina, Lawrence JM Business letter from Ken Monroe - Tina, Attached please find additional letter from Ken Monroe. Thanks!!!! Ashleigh Sent fro 9/12/16
To: ken.monroe27 (2) Inbox FW: CS 5500i Scan - Got it, thanks so much!!!! Sent from my iPhone On Sep 12, 2016, at 2:12 PM, ken.monroe27 <ken.m 9/12/16

Atch. 42

mail.google.com

Sent Mail - aamburn11@gmail.com - Gmail | Gmail - Letter from Jeff | https://mail-attachment.googleuserconten... | Gmail - JM | Untitled attachment 00845.htm

Google in:sent

Gmail More 251–275 of 997

COMPOSE

Inbox (5)
Important
Sent Mail
Drafts (9)
Spam (1,990)
Trash
Bills/Contracts (6)
JM
Notes
Personal
Travel
More

Ashleigh

Find someone

To: ggdirect, Darcie, Tina, ... (16)	JM	Re: JM reference Letter and job offer - Thanks so much for the update. I will let him know!!!" Do you think the letter from Gre	9/9/16
To: Tina, lwoodward	JM	Job offer from Greg Garrett - Just wanted to give you guys a heads up, I will have one additional letter for the package by th	9/9/16
To: ggdirect (3)	Inbox	JM Letter - I don't think it's too late. I will let Mr. Woodward know we have one more coming, he is submitting the package	9/8/16
To: theath, lwoodward		(no subject) - Good Morning Tina, I still have not received the last letter, so I am thinking I have submitted everything to you and M	9/7/16
[redacted]		[redacted]	9/6/16
To: lwoodward, Tina	JM	Character/Business letter from Scott Sullivan - Attached please find letter from Scott Sullivan he will also attend the resente	9/5/16
To: Kevin, Scott, David, . (9)	Inbox	JM Update from Mr. Woodward - Thanks so much!!!" I read the letter, it's perfect! I will send to Mr. Woodward and drop	9/5/16
To: lwoodward@srgslaw.com		Message From JM - You mentioned Judge Allen focused on family. Below is a quick summary if you would like to use. 1)Cole all f	9/3/16
To: Tina, lwoodward, Kevin (3)	Inbox	JM Roger Cadieux Grassroots letter - Thanks so much!!! Sent from my iPhone On Sep 1, 2016, at 10:53 AM, Kevin Cad	9/1/16
To: ggdirect		JM Possible Job Opportunity - Dear Greg, Jeff had a meeting with the attorney this morning. We were first told to find a humble jol	8/31/16
To: Tina Heath (3)	Inbox	JM Employment Letters - Perfect! Thanks so much!!!" Sent from my iPhone > On Aug 29, 2016, at 11:25 AM, Tina Heat	8/29/16
[redacted]		[redacted]	8/29/16
To: me, lwoodward, Tina, .. (2)	Inbox	JM PSR Comments/Objections - Attached please find PSR Comments/Objections Thanks so much!!!" Ashleigh Sent fr	8/27/16
To: Print Services 6844		Re: - Thanks so much!! Sent from my iPhone On Aug 25, 2016, at 3:41 PM, Print Services 6844 <ods06844cpc@officedepot.com	8/25/16
To: ods06844cpc@officede.		Please print - Thank you!	8/25/16
To: ods06844cpc@officede.		Please print in color - Please print 3 copies in color. Thank you!	8/25/16
To: Kevin, David (8)	Inbox	Re: Your families want to write letters? - Quick question from Jeff - Forwarded message From: Kevin Cadieux <kcad544@	8/25/16
To: lwoodward, theath, ... (4)	JM	Update From Jeff - Thanks. Dave Judson President & CEO JJR Solutions O: 937-912-0288 C: 937-475-8415 Original mes	8/25/16
[redacted]		[redacted]	8/24/16
To: Tina Heath (7)	Inbox	JM PSR - Please tell Jeff he misread the letter. Mr. Woodward is coming out Wednesday August 31th a week from tom	8/23/16
To: Kevin, lwoodward, ... (3)	JM	Re: My Re-sentincing letter for Jeff - Last one! Sent from my iPhone Begin forwarded message > From: Ashleigh Amburn >	8/22/16
To: Lawrence, Tina, Kevin, ... (2)	JM	Job Information for JM - Jeff asked me to send. Sent from my iPhone Begin forwarded message > From: Ashleigh > Date /	8/22/16
To: Tina, Lawrence, .. (2)	JM	Sample Letters For Employment - Greg, Jeff asked me to send you a few samples of business/employment letters. Thanks!	8/22/16

Atch. 42-8

mail.google.com

Sent Mail - aamburn11@gmail.com - Gmail | Gmail - Letter from Jeff | https://mail-attachment.googleusercontent... | Gmail - JM | Untitled attachment 00845.htm

Google in:sent

Gmail More 276–300 of 997

COMPOSE

Inbox (5)
Important
Sent Mail
Drafts (9)
Spam (1,990)
Trash
Bills/Contracts (6)
JM
Notes
Personal
Travel
More

Ashleigh

Find someone

To: Tina, Lawrence	JM iScanner; Note from JM - Dear Tina, I apologize for so many emails. I know we touched on a few of the details referenced in	8/18/16
To: rformato (2)	Letter from Jeff - I will type it to you when I can. Scanning with the pen he gets to use is hard to read. Thanks! Ashleigh Sent from	8/18/16
To: Kevin, ods06844cpc (6)	Book 3 Chapter 7 - Thanks so much Zack! Sent from my iPhone On Aug 18, 2016, at 11:27 AM, Print Services 6844 <ods06844cp	8/18/16
To: Lawrence, Tina (4)	JM Question from JM - Ok perfect! Thanks!!! Ashleigh Sent from my iPhone > On Aug 18, 2016, at 9:11 AM, Tina Heath <theat	8/18/16
To: Sean Allburn	Book 3 Chapter 7 - Hi Sean Jeff is working on the third book and cannot find chapter 7. He asked me to reach out to you to see if	8/17/16
To: Scott Sullivan	Letter from JM - Dear Sully, Please find letter from Jeff below. I tried to scan to you but it was very hard to read. I hope you don't	8/17/16
To: Dave Goldberg (2)	Quick question from Jeff - Thanks so much!!! Sent from my iPhone On Aug 17, 2016, at 4:20 PM, Dave Goldberg <dave.goldberg	8/17/16
[redacted]	[redacted]	8/14/16
To: raformato	Update on Jeff Martinovich - Dear Richard, In speaking with Greg Garrett, he mentioned you may be able to help regarding an up	8/12/16
To: Lawrence, Tina, ... (4)	JM Letter to Judge Jackson/Character Letters - Hi Sully, Here are a few sample letters you may find helpful. Ash Sent from my i	8/12/16
To: Ggdirect	Re: Letter from Jeff Martinovich ... Formato - Thank you so much. I will reach out to him. Also, I am gathering the last few character/busi	8/12/16
To: Dave Goldberg	Check in - Hi Dave, Jeff asked me to check in to see how things are going with the grass roots letters. Thanks! Ash Sent from my	8/12/16
To: Greg Garrett (5)	Letter from Jeff Martinovich - I will let him know! I will forward his next letter to the Cannon Blvd. address. Could you please send r	8/12/16
To: Ggdirect (2)	attending Jeff's resentencing is September 29th - Hi Greg, It's scheduled for 9:00 am on September 29th, 600 Granby Street, Norf	8/12/16
[redacted]	[redacted]	8/10/16
To: Kevin, Ken, David, ... (21)	JM Update from JM - I absently just put it right under his name. Sent from my iPhone On Aug 9, 2016, at 9:52 AM, Davic Judson	8/9/16
To: lwoodward, theath, ... (3)	JM Update from JM from 7/29 Meeting - Also heard back from Greg Garrett last night. He is going to see if he has a job opportu	8/9/16
To: Michael, Lawrence (3)	Re: Letter from Jeff Martinovich-response - Thank you so much!!! I read, appreciate your help! Sent from my iPhone On Aug 9, 2	8/9/16
To: ggdirect (2)	Fwd: Scanned Letter - Thanks Greg! I really appreciate it and I know Jeff does too. The friend you are referring to is Dave Judson	8/9/16
To: Lawrence Woodward	JM Jobs - Hi Vic, Corporation Owner Hareesh Patel. Entry level position with opportunity for advancement over time. Convenience	8/8/16
To: michael.marshall	Scanned Letter - Dear Mr. Marshall, Attached please find scanned letter from Jeff Martinovich. I have also sent a hard copy by ma	8/8/16
To: Glen H Pozin	Fwd: Scanned Letter - Sent from my iPhone Begin forwarded message: > From: Print Services 6844 > Date: August 8, 2016 at 11	8/8/16

Atch. 42-7

mail.google.com

Sent Mail - aamburn11@gmail.com - Gmail | Gmail - Letter from Jeff | https://mail-attachment.googleusercontent... | Gmail - JM | Untitled attachment 00845.htm

Google in:sent

Gmail

COMPOSE

Inbox (5)
Important
Sent Mail
Drafts (9)
Spam (1,990)
Trash
Bills/Contracts (6)
JM
Notes
Personal
Travel
More

Ashleigh

Find someone

More — 301–325 of 997

To: Print Services 6844 (2)	Re: Scanned Letters - Thank you so much!! Sent from my iPhone On Aug 8, 2016, at 11:48 AM, Print Services 6844 <ods06844c	8/8/16
To: Greg Garrett (4)	Letter from JM - Jeff's address is below in case you would like to send him a note. Jeffrey Martinovich Section E Block 3 Western	8/8/16
To: David, David, Kevin (4)	Phone Call with Mr. Woodard - Yes sir!!! I will touch base with him to get a few dates and times. Thanks Kev!!! Sent from my iPho	8/8/16
To: stephen.sigmon	(no subject) - Hi Steve, Hope all is well!!! I have a quick question for you when you get a chance in regards to an upcoming event i	8/4/16
To: David Judson (10)	JM Re: Letter for Judge Allen - I spoke to one of my customers who is an attorney that knows the judge well, he will be there to	7/29/16
To: Lawrence, Tina	JM Letter to Judge Allen - Mr. Woodward, Attached please find letter for Judge Allen from Jeff's son, Cole. Thanks! Ashleigh Se	7/28/16
To: Tina Heath (2)	JM (no subject) - Thanks so much!! I will let him know! Sent from my iPhone > On Jul 26, 2016, at 11:53 AM, Tina Heath <theath	7/26/16
To: lwoodward, theath	Note from JM - Dear Mr. Woodward, Jeff asked me to pass along to please also include the new information below in the Position	7/23/16
To: David Goldberg	Shareholder Letter - Hi Mike, Resending just in case I didn't attach with docs from last week. Thanks!	7/20/16
To: Kevin Cadieux	Grassroots Letters - Kev, Jeff asked me to send the grassroots letters. Also, he asked me to let you know that I can print and mail	7/20/16
To: Tina Heath (2)	JM Meeting with JM - Thanks so much!!! Only 72 days until resentencing, but who's counting!!! :) Sent from my iPhone > On Ju	7/19/16
To: Ken, Kevin, David (3)	Letter from Jeff - Hey Kev, Jeff is going to give you a call. Sent from my iPhone On Jul 18, 2016, at 12:32 PM, Kevin Cadieux <kac	7/18/16
To: lwoodward, theath, ... (6)	JM Grassroots documents and JM business plan document - There should have been attachments. The grassroots letters were	7/18/16
To: Dave Goldberg	Letter from Jeff - Hi Mike, Attached please find letter from Jeff. Also, I will be sending another attachment referencing letters and r	7/15/16
To: ods06844cpc	Fwd: Just One More Then I Gotta Go - Please print Sent from my iPhone Begin forwarded message. From: Ashleigh <aamburn11	7/15/16
To: ods06844cpc	Fwd: Just One More Then I've got to Go - Please print Sent from my iPhone Begin forwarded message. From: Ashleigh <aamburr	7/15/16
To: ods06844cpc	Fwd: Wow - now that Really is the best email I've received Aug 1, 2014 - Please print Sent from my iPhone Begin forwarded mess	7/15/16
To: ods06844cpc	Fwd: Just One More Then I've Got to Go - Please print Sent from my iPhone Begin forwarded message. From: Ashleigh <aamburn	7/15/16
To: ods06844cpc	Fwd: Just One More Then I've Got to Go - Please print Sent from my iPhone Begin forwarded message. From: Ashleigh <aamburn	7/15/16
To: ods06844cpc	Fwd: Just One More Then I've Got to Go - Please print Sent from my iPhone Begin forwarded message. From: Ashleigh <aamburn	7/15/16
To: ods06844cpc	Fwd: Just One More Then I've Got to Go - Please print Sent from my iPhone Begin forwarded message. From: Ashleigh <aamburn	7/15/16
To: ods06844cpc	Fwd: Just One More Then I've Got to Go - Please print Sent from my iPhone Begin forwarded message. From: Ashleigh <aamburn	7/15/16
To: ods06844cpc	Fwd: Just One More Then I've Got to Go - Please print Sent from my iPhone Begin forwarded message. From: Ashleigh <aamburn	7/15/16

Atch. 42-6

Memorandum For Work History

To Whom it May Concern:

While working in the FCI Ft. Dix Education as a G.E.D. tutor for reading and math, Mr. Martinovich also worked as an administrative assistant. Mr. Martinovich also submitted an Adult Continuing Education Course (ACE) for the inmate continuing education studies.

Date: 2/20/19

Ms. Sally Yi
Education Specialist
FCI Ft. Dix