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, I know that during sentencing-resentencing the District Court violated my right to due process, and counsel violated my right to effective assistance, by not motioning for and ordering a cessation of actions against me and requesting and ordering a competency hearing and possible psychiatric or psychological examination and report [18 USC § 4241(a)(b)].

162. The District Court's emphatic determination that there was reasonable cause to believe that I was suffering from, and is still suffering from, a mental disease or defect I believe 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, and sentencing counsel, Mr. Woodward, failed to raise the objection that specific intent is mutually exclusive with the Court's determination of my mental defects.

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

164. Mr. Woodward provided ineffective assistance for me 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 Mr. Woodward was noticed, that the Court had reasonable cause to believe that I suffered from diminished capacity at the time of sentencing, at the plea negotiations and acceptance hearing, and during the trial and indemnification payments.

165. On September 29, 2016, the District Court clearly communicated its determination to Mr. Woodward and the government that my mental degradation was present, at a minimum, from the time period of my trial in Case 4:12cr101, throughout my subsequent plea contract negotiations and acceptance hearing, and through the September 29, 2016, sentencing of Case 4:15cr50 and resentencing of Case 4:12cr101. Solidifying this belief, the Court said to me about my mental issues during trial:

a) "I just can't imagine sitting in front of Judge Doumar... knowing that it's dirty money."

b) "(G)oing to trial, which is his right, but threading criminal proceeds throughout that trial."

c) "(A)nd when he was doing this he was on bond."

d) "He sucked in James Broccoletti into this drama."

and my issues continuing through September 29, 2016:

e) "It's not been fixed."

f) "And I'm hoping you get some help to fix that."

g) "(W)hen you do get the mental health treatment."

166. Mr. Woodward did not object, intervene, or protect my right of due process when he allowed the Court to accept my 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 that I suffered from a mental disease or defect.

167. As opposed to other Fourth Circuit Cases where the defendant's mental state came under reasonable doubt and counsel and the Court ensured multiple medical experts explored the defendant's capacity and competency in relation to pleas and ability to continue with sentencing, even after Judge Allen's undeniable determination of my impaired mental state, Mr. Woodward never moved, and the Court never granted, that my plea agreement was not knowingly, intelligently, and voluntarily considered and entered into.

168. Mr. Woodward never moved that the sentencing be halted in order for an evaluation to be performed before proceeding per Fourth Circuit precedent.

169. I am concerned that Mr. Woodward and the Court allowed me to continue without an expert hearing or exam once my mental state came under reasonable doubt because the Fourth Circuit has determined that defendant's may demonstrate an over-rating of their abilities and an unawareness of the extent of their cognitive deficits because their verbal abilities are better developed and they superficially appear to others as being far more capable socially than they are able to demonstrate.

170. Because of the intertwined cases and relative conduct, I believe that Mr. Woodward's ineffective assistance, and the Court's determinations of my mental state, encompass both sentences, to include all joint negotiations prior, as well as the joint proceedings of September 29, 2016, as 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.

171. The District Court emphatically determined there is a reasonable cause to believe that I was likely mentally incompetent or perating under diminished capacity or possibly even temporarily insane at the time of my trial, and Mr. Woodward never moved that, by definition, my conviction must have been vacated, and if I was then determined competent, the government was free to retry me.

172. Mr. Woodward failed to object to the Court's violations of my due process rights in regards to mental defect even though the Courts say that the job of a criminal defense attorney is amenable to judicial oversight, especially for making timely objections.

173. 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 of my mental disease and defect.

174. Mr. Woodward failed to move the Court to vacate my plea agreement controlling Case 4:12cr101 and 4:15cr50 after the

Court's determination of my mental disease and defects even though he had to know that the Fourth Circuit demanded that the usual remedy for a Rule 11 violation involving a question of competence or voluntariness was to vacate the defendant's guilty plea because of the difficulty in conducting a retrospective examination of a defendant's state of mind when he entered his plea.

175. Mr. Woodward failed to move the Court to vacate my conviction for Case 4:12cr101 based on the Court's determination of my mental disease and defect even though he had to know that the U.S. Supreme Court demands that after the fact it is too late to conduct meaningful hearing on the issue, and the case must be remanded to the District Court with instructions that it order the respondent discharged after affording the government to try him again within a reasonable time.

176. Mr. Woodward failed to move the Court to order a psychiatric or psychological exam and report for me, folowed by a competency hearing after the Court emphatically expressed its belief beyond a reasonable doubt that I suffered from a mental disease or defect.

177. Mr. Woodward failed to motion the Court that a current competency determination would not cure a previous proceeding, action or contract in which the Court had already determined a reasonable doubt of mental disease or defect existed, and that current result may not be applied nunc pro tunc, as he must know the Supreme Court and Fourth Circuit demand.

178. 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 of my mental disease and defect, and that the conviction and guilty plea were void for actual innocence as he must have known the Fourth Circuit demands.

179. If Mr. Woodward would have vigorously defended me 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

my due process rights, and failure to motion the Court to follow 18 USC § 4241 and conduct a psychiatric or psychological exam along with a competency hearing, by statute and Fourth Circuit precedent guaranteed the results would be different for me.

180. If Mr. Woodward provided effective assistance, potentially I would have been found to be mentally incompetent to the extent that I was unable to understand the nature and consequences of the proceedings against me or to assist properly in my defense, and at that point my sentencings must have been halted, any sentence conclusions vacated, the plea acceptance and agreement voided based on the time periods determined by the Court, as well as the results of my trial voided based on the Court's determination of time of degradation.

181. If Mr. Woodward would have provided effective assistance, potentially I would have been found to be mentally competent and without mental disease or defect at that point in time, but since the question of my competency is a question of fact and my due process rights cannot be adequately 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.

182. I know that if the District Court would have overruled Mr. Woodward's objection and motion reference my mental state, then the due process violation 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 my sentences, plea agreement, and trial conviction.

183. Mr. Woodward's failure to motion the Court for a USSG § 5k2.13 downward departure for diminished capacity based on the Court's determinations prejudiced me by not having the departure considered, or the Court even understanding its authority to consider this departure.

184. Mr. Edwin Brooks, Appeal Counsel, ineffectively inserted one insufficient sentence in the opening brief for my appeal, 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].

185. Mr. Brooks failed to provide a vigorous defense by not submitting a constitutional violation of the Court's violation of my due process rights in regards to mental disease or defect, 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 supplemental brief, within which I had included this argument. I was unsuccessful in persuading the Appeals Court to accept the pro se brief.

186. Mr. Brooks' ineffective assistance failed to allow the due process 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 me by precluding this constitutional violation for redress.

187. Mr. Brooks' insistence to include only one failing argument, Grouping Violation, in the Appellant Brief precluded the cognizable constitutional violation from being considered. 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 my sentence, blinded him to his professional duty and required competency, and violated my right of redress and effective assistance as grounded in due process rights on appeal.

188. If the Appeals Court would have considered the District Court's due process violation in regards to mental state, it would have reviewed this violation at the level of harmlessness review and/or structural error, not at plain error, and vacated

my plea agreement, sentences, and conviction. Although preferable that Mr. Woodward had objected to these violations, 18 USC § 4241 clearly states that the Court shall order such hearing if there is a reasonable cause to believe. The District Court's egregious actions and violations of my due process rights would have been ruled clear and reversible error.

189. Mr. Broccoletti failed to motion the Court at my trial per 18 USC § 4241 for a psychiatric or psychological exam and competency hearing to be performed in Case 4:12cr101, as was undoubtedly necessary per Judge Allen's determination of mental disease or defect beyond a reasonable doubt.

190. Mr. Broccoletti failed to ensure the Court and government rpoceeded consistently with 18 USC § 4242 Determination of the Existence of Insanity at the Time of Offense, as was undoubtedly necessary at trial per Judge Allen's determination of mental disease or defect beyond a reasonable doubt.

191. Mr. Broccoletti failed to Notice the Court and to provide a vigorous defense at trial consistent with F.R.C.P. 12.2 Notice of an Insanity Defense, pursuant to Judge Allen's determination of mental disease or defect beyond a reasonable doubt.

192. Mr. Broccoletti failed to move the sentencing court in Case No. 4:12cr101 for consideration of a downward departure per USSG § 5k2.13, undoubtedly necessary per Judge Allen's determation of mental disease or defect beyond a reasonable doubt.

193. Had Mr. Broccoletti not failed to move for a psychological exam and competency hearing, my right of due process at trial would not have been violated, by definition from Judge Allen's determination.

194. Had my exams and competency hearing at trial determined that I was mentally incompetent to the extent I was unable to understand the nature and consequences of the proceedings against me or to assist properly in my defense, I would not have been convicted by a jury.

195. Had Mr. Broccoletti presented an affirmative defense of not guilty by reason of insanity at my trial, 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.

196. Had Mr. Broccoletti moved the Court to consider a downward departure at sentencing per USSG § 5k2.13 per Judge Allen's determination, there is a reasonable probability that the Court would have granted a downward departure.

197. Once Judge Allen determined there was reasonable cause to believe that I suffered from a mental disease or defect during the time period of my trial, by definition Mr. Broccoletti was ineffective for not recognizing my mental degradation and for moving forward without protecting my due process rights, all resulting in the severe prejudice of conviction.

198. On September 29, 2106, District Court Judge Allen conducted the Case No. 4:12cr101 re-sentencing following my successful vacation of my sentence on appeal. In conjunction with this re-sentencing, Judge Allen also conducted the sentencing for Case No. 4:15cr50. The applied plea agreement jointly controlled both the re-sentencing and the sentencing.

199. At this joint 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 USSG § 5G1.3 or § 3D1.2, or any consideration of the sentencing implications of the clear and acknowledged relevant conduct.

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

201. Reference relevant conduct, my plea agreement controlled the sentencing for both Case Nos. 4:12cr101 and 4:15cr50 and specifically stated, "The parties further agree that the conduct constituting the offense of conviction on Count 10 and associate relevant conduct my 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."

202. Reference relevant conduct, at the joint sentencing session held September 29, 2016, for Case 4:12cr101 and 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." [p. 29]

203. Reference relevant conduct, Cases 4:12cr101 and 4:15cr50 are both founded on allegations that I fraudulently accessed the MICG Hedge Fund assets to include money laundering, fraud, conspiracy, and concealment.

204. Reference relevant conduct, the subsets and supersets of victims are the same investors and shareholders which invested across the three hedge funds operated by MICG and myself. 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.

205. Reference relevant conduct, 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 claculus for both sentencings [p. 68-72, 94-96]. At the 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.

206. Reference relevant conduct, 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." [p. 10-11], and,

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

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

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

207. Reference relevant conduct, 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.

208. Reference relevant conduct, all of the fund transaction 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 Affidavit and Memorandum, 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 Affidavit and Memorandum.

209. Reference relevant conduct, the conduct of Case 4:15cr50 was well known to Judge Doumar when first sentencing me 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 my conviction and the sentencing [Docs. 106, 106-1, 109, 115, 117]. 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 I was successful in having my sentence reversed on appeal was this same conduct re-introduced in an effort to preclude the Court from, at a minimum, reducing my sentence.

210. At my joint sentencing, 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."

211. 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, I know that by transitive property Case 4:12cr101 is also relevant conduct for Case 4:15cr50, and pursuant to the Guidelines must be considered as such.

212. Reference relevant conduct, 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 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.

213. Mr. Woodward did not object to the Case 4:15cr50 and 4:12cr1101 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). With his objectio, there was a reasonable probability that the Court would have applied a fully-concurrent, and/or shorter with the proper credit, sentence.

214. Mr. Woodward did not object to, and ask clarification for, Judge Allen not assigning a 4:15cr50 sentence fully concurrent with Case 4:12cr101, and for departing from the Guidelines.

215. Mr. Woodward di not object to and ask clarification fo Judge Allen not reducing the 4:15cr50 sentence to USSG § 5G1.3(b)(1) and for departing from the Guidelines.

216. Mr. Woodward did not object to and ask clarification for Judge Allen upward departing from the plea agreement negotiated

and signed between me and the United States, the agreement which underlined the "concurrent."

217. Mr. Woodward's ineffective assistance resulted in a non-Guideline sentence for Case 4:15cr50, and Mr. Woodward never objected or brought this to the Court's attention, or moved for the Court to consider USSG § 5G1.3(b) and/or explain its appropriate reasoning in not accounting for it.

218. I was indicted for Case 4:15cr50 on July 15, 2015, while I 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. 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.

219. 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.

220. Mr. Woodward failed to ensure the District Court, reference relative conduct, 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 me.

221. Reference concurrency, Mr. Woodward failed to ensure I was not subject to plain error review.

222. Reference concurrency, 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 me for this same conduct by varying from the Guidelines and running the 4:15cr50 sentence consecutive to 4:12cr101. Mr. Woodward's failure prejudiced me with a total, longer sentence.

223. 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 District Court Judge Allen:

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." [p. 83]

224. Reference criminal History, Case 4:15cr50's offense conduct occurred prior to, and during, my trial for Case No. 4:12cr101. My sentence in Case No. 4:12cr101 was vacated January 7, 2016. The government executed a superseding indictment for Case No. 4:15cr50 on Fegruary 10, 2016. I was sentenced for Case No. 4:12cr101 and Case No. 4:15cr50 in a joint setnencing on September 29, 2016. My offense conduct for Case 4:15cr50 was prior to adjudication of guilt in Case 4:12cr101. My sentence was vacated prior to a 4:15cr50 sentencing or 4:12cr101 sentencing, and when a court vacates a sentence, that sentence becomes void in its entirety. On the day of my 4:15cr50 sentencing, and at the preparation of the 4:15cr50 PSR, I had no prior sentence due to vacation and had not actually served a period of imprisonment on Case 4:12cr101.

225. Reference Criminal History, pursuant to the Sentencing Guidelines and Fourth Circuit precedent, Mr. Woodward's multiple failures of ineffective assistance precluded my 4:15cr50 sentencing from beginning with the correct "starting point."

226. Molina-Martinez v. US confirms that 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, and beyond Molina-Martinez, without Mr. Woodward's failures I 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.

227. Mr. Woodward's failures caused me to be sentenced at Offense Level 23 at Category II which provides a range of 51-63 months, while Category I provides a range of 46-57 months. As Judge Allen sentenced me at the high end of the range for 63 months, proportionate sentencing would have sentenced me to the high end of the proper range for 57 months.

228. Reference relative conduct and criminal history points, 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, I would have likely not been subject to double counting and duplicity across Cases 4:15cr50 and 4:12cr101. Without these failures, I 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 panelize for same conduct, or with both.

229. Reference Criminal History points, I submitted objections to the PSR objecting multiple times to inclusion in Category II to Mr. Woodward [Atch. 22, 23]. Pursuant to Affidavit Nos. 84, 85, and 86, I submitted these objections to Mr. Woodward, he claimed they were submitted, and during colloquy with Judge Allen I assumed Mr. Woodward was not lying reference his submission of PSR objections.

230. 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 would be 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 Internation Law Firm of Troutman Sanders, with offices in Virginia Beach, Virginia.

231. Venture Strategies Fund was 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 [Atchs. 4,8].

232. At post-trial hearing, the government presented a Director of Wells fargo's Fraud Department who, under oath, described to Judge Doumar that I 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 claimed they could not locate corresponding check copies in their system which meant I must have withdrawn the amounts in cash. Fortunately, my small consulting team had kept perfect records, and now Mr. Broccoletti presented the "missing check copes" to the court. He stated, paraphrasing, "Please tell me, why Mr. Martinovich has copies of every 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.

233. Reference Mr. Woodward's failure with Case 4:15cr50, the sentencing-resentencing Court was not made aware of the numerous transactions, multiple parties, and substantial documentation presented to the officers of the Court. 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." "Mr. Shilling is relying on representations by Mr. Martinovich." "We hadn't pulled those cashier's checks, talked to Mr. Broccoletti."

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." "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." "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." "I didn't know about Mr. Shilling. If it was in the materials, I missed it. Mr. Shilling."

Clearly, Mr. Woodward and the government had not delivered an ounce of the voluminous evidence provided by me detailing and verifying the conspiracy and fraud by Mr. Lynn and Mr. Shilling, and fully vindicating me from any criminal liability. Mr. Woodward and the government misled Mudge Allen and left her to beliefs and assertions one hundred percent contrary to the truth. The preposterous, simplistic allegations of me tricking six law firms and "papering over" transactions manipulated Judge Allen, severely affecting her sentencing for Case 4:15cr50, as well as sentencing for Case 4:12cr101 which fully considered the conduct of these events.

234. During the time of my plea negotiations being represented by Mr. Woodward, my fiance, Ms. Ashleigh Amburn, told me that Mr. Woodward called her and told her that I would be home soon because of his deal if just "went along," so "don't let him do anything crazy." [Amburn Aff., Atch. 40].

235. As stated in this instant Affidavit, during plea negotiations, Mr. Woodward told me over and over that I would receive "5 or 6 years." He even submitted the Defense Position Paper recommendation of 3 to 5 years. I have struggled every day since trying to decipher if his outrageous behavior was practive fraud or incredibly ineffective assistance throughout the entire process.

235. I would have never agreed to a negotiated deal to receive 140 months again, after three years of non-stop battle to defeat

this wrongful 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 totally incongruent with my previous refusal of three government plea offers, as well as my relentless pursuit to prove my innocence on appeal. Only Mr. Woodward's coercion and manipulation tricked me into not proceeding to trial and eventually accepting a plea agreement in which I believed the "shoulder-to-shoulder and toe-to-toe" fantastic attorney had negotiated the special deal which Mr. Woodward claimed he had.

236. My silence and cooperation during the plea colloquy and sentencing hearing is explained and corroborated by not only the documentation of Mr. Woodward's manipulation to change my behavior to "accepting," "cooperative," and "remorseful" in order for the government and the Court to follow through on the arrangemet. 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 my detailed Position Paper submissions [Atch. 26] and told the Court, "The amount of loss...is likely impssible to alculate...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 my argument of the loss would cause Judge Allen to believe that I wasn't thoroughly "remorseful" and "going along with the deal." [DPP].

237. At the resentencing, after my first allocution in which I 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 me and my family seated behind me. Then, when asked if I would like to provide a second allocution, I started to the podium, but in fear that I would go off script, Mr. Woodward placed his hand on my arm and said, "You don't need to say anything more." I again followed orders, and thinking somehow this was all going to come together like I was told, replied, "No, thank you ma'am." [p. 265].

238. I am the first one to state that I affirmatively answered the Court's standard colloquy questions at my resentencing of whether I understood the plea language and the colloquy language, as I believed I was supposed to do. Also, this language did not create a contractual barrier to Mr. Woodward's professed result. It made sense. I am the first one to state that I signed an agreement which did not itemize Mr. Woodward's stated agreement, yet it also did not contractually disallow Mr. Woodward's professed outcome. It also made sense. I agree that I possess a high level of education and business experience. I am the first to state that Judge Allen provided colloquies which are referenced as formidable barriers in any subsequent collateral proceeding, yet I also assert that this language was not inconsistent with, or a barrier to, Mr. Woodward's asserted outcome, and this is why I "went along." I heard the Court state:

COURT: "And your attorney has fully explained (the plea agreement) to you?"

MARTINOVICH: "Yes, Your Honor."

COURT: "Did you understand it?"

MARTINOVICH: "Yes, Ma'am."

COURT: "Do you believe it's in your best interest for the Court to accept your plea agreement?"

MARTINOVICH: "yes, Ma'am."

COURT: "(L)evel of 33 and a Criminal History Category I, and your guidline range for that case is 135 to 168 months... do you understand what I just said?"

MARTINOVICH: "Yes, Ma'am."

COURT: "And the report is an accurate reflection of your history and characteristics as it pertains to this offense. Is that correct?"

MARTINOVICH: "Yes, Ma'am."

COURT: "The statutory max, 20 years for the Count Ten, supervised release, not more than three years...do you understand what I just said?"

MARTINOVICH: "Yes, Ma'am."

I believed nothing in these statements to be mutually exclusive with Mr. Woodward's negotiated arrangement for me to go along and be release to start rebuilding for our shareholders. I clearly, eventually believed Mr. Woodward. My successful business experience actually fostered my belief in Mr. Woodward's agreement which enabled the government to attain their objective while presenting harsher documentation for the public. My significant education actually helped me 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 me to eventually believe that there was no possibility that Mr. Woodward would either unethically connive at my defeat, or be so reckless as to submit a Defense Position Paper request for three to five years when the actual sentence could possibly be fourteen years. The District Court's glowing praise of Mr. Woodward even re-confirmed my belief that he had negotiated the deal, "shoulder-to-shoulder and toe-to-toe."

239. 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. These 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 I "won" my direct appeal for Case 4:12cr101 and the Fourth Circuit vacated my sentence, this indictment was coincidentally unsealed and served upon me.

240. Mr. Woodward failed to challenge the sealing of the 4:15cr50 indictment for a legitimate prosecutorial need, while initial research of the indictment, counsel's first action, would have revealed this error. Mr. Woodward filed 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. 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. Mr. Woodward allowed Count One to improperly be an integral factor in my decision to go to trial or to accept a plea offer. Mr. Woodward failed to eliminate Count One from my considered plea negotiations and decision to go to trial, severely prejudicing me.

241. Initially, on July 15, 2015, the government based its Motion to Seal my 4:15cr50 indictment on US v. Ramey, yet the government misquoted and mis-applied this thirty-year old case, while Ramey, itself, also misquoted F.R.C.P. 6(e)(4). Ramey stated that an indictment could be sealed for any prosecutorial needs, based on Rule 6(e)(4), but this rule explicitly states otherwise that the indictment may be kept secret only until a defendant is in custody or has been released pending trial. That is all.

242. In my case I researched and found that the government's misquote and mis-application of Rule 6(e)(4) finds it genesis in a 1949 collateral comment by Third Circuit Judge Maris in US v. Michael, but this seventy-year-old overreach of the Rule, and the misquote in Ramey are rarely cited, especially in the Fourth Circuit, as conscientious prosecutors are likely aware of the mistake. It appears that the government possibly manipulated the Court on this issue.

243. In my case, the government's Motion to Seal incorrectly asserted that the indictment may be sealed solely to toll the statue of limitation on a certain charge by citing US v. Mitchell, but, again, this citation does not say this. Tolling of a statute of limitations has been accepted as a collateral benefit for the government only when a "rules-based" decision to seal has been approved. The Mitchell Court actually states, "and can toll." Again, it appears the government possibly manipulated

the Court on this issue.

244. Reference my indictment seal, I found that the true application of Rule 6(e)(4) is for, and narrowly interpreted by the Courts, apprehending dangerous defendants, stopping defendants from fleeing, protecting cooperating witnesses, and for rare, explicit prsoecutorial steps. I, though, was securely incarcerated at Fort Dix Federal Correctional Instituton on July 15, 2015. The government had initiated grand jury investigations in 2013, after thoroughly investigating me for even three years prior, as opposed to Ramey where the indictment was truly sealed to protect persons cooperating, and the sealing protected endangered witnesses, and the unsealing might cause Ross and Ramey to flee, all of this, of course, inapplciable to me. In Mitchell, the Court actually dismissed the Indictment because the government failed to make meaningful effort to find the defendants.

245. Reference my indictment seal, I know that after six years of investigating me, the only prosecutorial need for sealing and re-sealing the Case 4:15cr50 indictment was to wait and see if I, by chance, won my Appeal for Case 4:12cr101 and was potentially walking out the door. And, that is exactly what happened, and the prosecutors executed their scheme against me perfectly.

246. On January 15, 2016, the government's seal of my 4:15cr50 indictment expired, and 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.

247. On January 25, 2016, once the seal of the 4:15cr50 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 identified this Motion switching from Judge Douglas E. Miller to Judge Robert J. Krask, and the "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.

248. Reference illegal Count One, although this instant Affidavit and memorandum thoroughly addresses the legal authorizations for the later management fees distributed, I knew that the previous letter (Count One) was one of those items "that just looked bad." I was sure the prosecutors would exploit this letter against me, just as they had skillfully exploited Ferraris, Bentleys, and beach houses against me in the first trial. Count One controlled my tactical and strategic decision process [See contemporaneous notes and emails provided to counsel, Atchs. 1-9]. I 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 my explanation and documentation. I felt extremely comfortable with Count Three, transfers of accounts from FCC to Wells Fargo, as I explain in detail in this Affidavit. Finally, I 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. 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 the prosecutors 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.

249. When considering the 4:15cr50 indictment in reference to trial or plea, when making these life-altering decisions, I had no idea that Count One was actually illegal, the indictment was void, and that fraudulent activity had occurred. I had no idea at this time just how ineffective Mr. Woodward's assistance had been and how lethal these failures would be for me. After

extended heated debates with Mr. Woodward on attempting to go to trial, I eventually acquiesced to accept a plea offer, and as my conemporaneous paperwork clarifies, top of page one, it was only Count One that concerned me and eventually forced me to not take the case to trial, and to go along with Mr. Woodward's now infamous "5-6 years deal." [See Atch. 1, Aff. #78A, 80]. Also of extreme importance, as I had experienced, if things went badly at trial, Count One added up to twenty years more sentencing exposure with a guilty verdict.

250. At the plea acceptance hearing, I was still fully-unaware of the lethal ineffective assistance of illegal Count One and illegal sealing greatly manipulating my decision making. By the time of my 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 me 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 my state of mind and decision tree which I was forced to analyze much earlier. At these hearings, this illegal variable in the decision algorithm had been now removed, and my 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 my decision to accept the plea. I 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.

251. On September 29, 2016, Judge Allen proactively, verbally asserted during sentencing-resentencing how PSR inaccuracies and mis-characterizations which corrections I had submitted to Mr. Woodward 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 teh 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.

252. During my setencing-resentencing, I heard the Court state:

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."

COURT: "So that's what Mr. Martinovich told the probation officer Mr. Noll."

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."

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."

COURT: "I've mentioned your BOP conduct."

COURT: "You're inflating what your doing in the BOP."

253. Reference my work as a GED tutor for multiple years, I actually arrived at FCI Ft. Dix in December 2013 and began my tutor employment immediately. The Ft. Dix record system simply recorded this as January 2014 [Atchs. 23, 33]. Sadly, the Probation Officer Mr. Noll turned this two-year effort of working every weekday with inmates into a negative. I 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. The PSR material inaccuracies greatly influenced Judge Allen and her view of me and influenced her sentencing calculus for both Cases 4:15cr50 and 4:12cr101, as she stressed with her emphatic statement.

254. Mr. Woodward failed to object to the PSR, and then to Judge Allen even though he was provided my objections and clarifications to the PSR [Atch. 22, 23]. I should have, at a minimum, received 3553 positive credit for these actions.

255. During my sentencing-resentencing, I heard the Court state:

COURT: "Yousaid that since being incarcerated that you've...also worked in the law library as an assistant."

COURT: "(T)here were no other records pertaining to working in the law library."

COURT: "I've mentioned your BOP conduct."

COURT: "You're inflating what your doing in the BOP."

256. As noted in the attached Affidavit from Mr. Gary Vaughn [Atch. 41], I assisted Mr. Vaughn, who worked as a registered Law Library Clerk at FCI Ft. Dix. Pursuant to the Affidavit, I 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 I reviewed Mr. Noll's PSR submission, I verbally and in writing, alerted Mr. Woodward to the technical error concerning my Law Library work description [Atch. 23, AFF. #88]. I 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 my PSR objections, but again failed to include these in his final Defense Position Paper, or presentation at sentencing and resentencing. 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 me into a material negative in Judge Allen's sentencing calculus, stating, "You're inflating what you're doing in the BOP."

257. At my sentencing-resentencing, I heard the Court state:

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."

COURT: "The records reveal that he was an education orderly for two days...and no other records regarding the adult education course."

COURT: "You're inflating what your doing in the BOP."

258. As noted in the attached documentation, I had truthfully reported that I had worked as an assistant to Ms. Sally Yi,

Education Specialist, and had submitted a Continuing Education Course based on my book, "Building Special Companies." [Atch. 23] [AFF.#89][Atch. 43]. Again, I had submitted objections, verbally and in writing [Atch. 23] 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 of mine, Mr. Woodward stood silent. Mr. Woodward was well-noticed that all of these PSR failures were prejudicial and that Judge Allen even felt strongly enough to lash out at me 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.

259. During my sentencing-resentencing, I heard the Court state:

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."

COURT: "I'm not considering any of the positive things you did with the community because that was all presented to Judge Doumar."

COURT: "And those are all the factors that the Court is looking at under 3553(a)."

260. During my sentencing for Case 4:15cr50, Judge Allen openly, verbally asserted her refusal to consider my 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. Woodward failed at multiple opportunities, to object to and challenge the Court's refusal to properly consider 3553(a) factors. 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 me. Therefore, I was not given credit for

"positive things" at my first sentencing, and then denied credit again at my sentencing-resentencing.

261. Reference refusal to consider the positives, 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. 6,7,15,75,91,94]. 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]. Therefore, Mr. Woodward's failures to object allowed errors to compound upon previous errors.

262. Reference refusal to consider the positives, and relation to the intertwined relevant conduct, 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.

263. Mr. Woodward's multiple failures in regards to the material PSR inaccuracies and the refusal to consider the positives greatly prejudiced me and affected my final sentences beyond any reasonable doubt. Mr. Woodward's failures forced Judge Allen to believe, unchallenged, that I was "inflating" and providing fraudulent information which in this contentious fraud case, force Judge Allen to believe I was continuing deceit and lack of honest, which was fatal to my ultimate sentencing in 4:12cr101 and 4:15cr50. Mr. Woodward's failures contributed to Judge Allen's significant departure from the government plea agreement by adding two more consecutive years to my sentence, even though Mr. Woodward assured me that in regards to concurrency, Judge Allen would "never

go outside the plea agreement." [Atchs. 10,20,29][AFF.#71]. Mr. Woodward's failures contributed to the Judge Allen's application of a 140 months sentence for Case 4:12cr101 after he had assured me that my acceptance of Case 4:15cr50 and the "win" on my appeal would receive a significant downward departure to the infamous "5-6 years deal." [Atch. 24,27,28]. Mr. Woodward's failures caused Judge Allen to falsely believe that I was inflating and deceiving the Court when my true behavior, if presented with effective assistance of counsel, would have gained me significant positive 3553 consideration for sentencing. Mr. Woodward's failures not only precluded Judge Allen from considering my positive BOP work but also my previous significant business, charitable, and community work, all which severely affected my sentencing calculus.

264. On Febrary 1, 2011, I agreed, in my personal capacity and as CEO of MICG Investment Management, LLC, to a Settlement Agreement with the Financial Industry Regulatory Authority (FINRA), in which I did "not admit or deny the allegations of the Complaint." [Atch. 39]. In exchange for rescinding my demand for arbitration hearings to defend my firm and for surrendering my 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 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"

265. Trail counsel Mr. Broccoletti entered into a Stipulation Agreement with the government to classify my FINRA agreement as inadmissible evidence. 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. 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.

266. Trial counsel Mr. Broccoletti failed to abide by Rule 408 and the Stipulation Agreement. Mr. Broccoletti's failures caused extreme prejudice to me, 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." [Mot. Acq.] Mr. Broccoletti's failures not only compromised my defense, but also opened the door for the government to also violate the Rules and Agreements, as well as permit the Court to allow the extreme prejudice against me.

267. The District Court listed Mr. Broccoletti's ineffective assistance as "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.]. 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...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.]. Finally, the District Judge Doumar completed his textbook declaration of Mr. Broccoletti's ineffective assistance of counsel with, "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...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].

268. As so emphatically and eloquently asserted by District Court Judge Doumar, Mr. Broccoletti provided ineffective assistance by violating F.R.E. 408 and the relevant Stipulation Agreement by introducing facts and issues of my FINRA settlement in his opening and closing statements. He failed to timely object to the government's questioning which violated Rule 408 and the relevant Stipulation Agreement. He failed to move for a mistrial when appropriate as the government violated Rule 408 and the relevant Stipulation Agreement. He failed to object to the Court providing a copy of the indictment to the jury which violated Rule 408 and the Stipulation Agreement. He introduced dozens of pages of sworn testimony before FINRA investigators in an attempt to impeach by a prior inconsisten statement or a contradiction and violated Rule 408 and the Stipulation Agreemet as determined by Judge Doumar.

269. Mr. Broccoletti's failures in regards to Rule 408 and the relevant Stipulation Agreement severely prejudiced me and without question affected the outcome of my conviction and sentence beyond a reasonable doubt. Mr. Broccoletti's own words confirmed this prejudice as "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... 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]. I understood Judge Doumar's and Mr. Broccoletti's emphatic statements to be the pure definition of Ineffective Assistance of Counsel which prejudiced the defendant beyond any reasonable doubt. I was prejudiced in the eyes of the jury, against the protections of Rule 408, the Stipulation Agreement, and also Rlue 403 exluding relevant evidence if its probate value is significantly outweighed by its prejudicial nature.

270. Mr. Broccoletti's failures in regards to Rule 408 and the Stipulation Agreement also severely prejudiced me on my Motion fo Acquittal per FRCIP 29 and my Motion for a New Trial per FRCP 33 causing both Motions to be denied even though the District Court repeatedly did not deny the errors and substantial prejudice to me, the defendant.

271. On September 29, 2016, during my resentencign of Case 4:12cr101 and sentencing for Case 4:15cr50, 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 clase, and Mr. Woodward has agreed with that." [p. 91]. Sentencing counsel, again, stood silent, providing harmful ineffective assistance by either secretly, without my 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.

272. My 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. At sentencing the government state, "We're asking the court to impose 63 months on the second case, and we've asked for it to run concurrently." At sentencing, Mr. Woodwsard 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." The Defense Position Paper states, "The defense requests that the Defendant, Jeffrey A. Martinovich, be sentenced substantially below the agreed guidline 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."

273. 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. Mr. Woodward at no time communicated to me that he desired to, intended to, or had agreed to the top end of the Guidelines range. 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.

274. 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 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. Also, this sentencing error cannot be held harmless due to its shorter duration than the eventual 4:12cr101 sentence, because Case 4:12cr101 is a separate case, separate sentence, which Mr. Woodwad knew or should have known would be challenged by, at a minimum, a Motion pursuant to 29 USC § 2255, being outside any waiver provisions, and very possibly having the conviction and sentence

overturned as supported by the Fourth Circuit. Also, we 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 or errors and irregularities, and we must follow the plain language with any ambiguity resolved in favor of me, the defendant. 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 increased my prison sentence by 12 months. 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.

275. At my 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 me 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." 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. 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.

276. Mr. Woodward failed to be knowledgeable of which case-critical issues have favorable Circuit precedent rulings, and which issues remain undecided. The issue of a properly preserved objection to Judge Doumar's abuse, the gravamen of my argument to overturn my conviction, could not have been more critical. In the direct appeal brief, Mr. Woodward inserted in the 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." I disagreed with Mr. Woodward's assumption, and at a minimum, argued 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 Affidavit, Mr. Woodward refused to address the issue with the Appeals Court.

277. Judge Doumar was provided a sidebar conference with both parties which communicated in no uncertain 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.

278. Mr. Samuels followed FRCP 51 properly while also showing great respect for the tenured 83-year old Judge Doumar by holding a sidebar out of the hearing of the jury and the witness.

279. Mr. Woodward did not appreciate the prior precedent and currently open Fourth Circuit opinion on the subject of preserving errors. In my case, form had been exalted over substance. To reconstitute the words of Honorable Judge Allen, Mr. Woodward "threw Mr. Broccoletti under the bus." and did not leave this decision for the Appeals Court to decide, possibly in my favor.

Instead, Mr. Woodward multiplied his failures and the prejudice against me by specifically, proactively requesting plain error review instead of allowing a beneficial interpretation by the much more learned legal scholars of the Fourth Circuit.

280. Mr. failures reference preserving Judge Doumar's errors did not allow the Court of Review to analyze teh 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 me, to include Martinez, Escalon, Cribbs, Taylor. 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 like in Williams and Freeman. 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 could have overturned my conviction.

281. Reference the government's breach of my plea contract, on January 7, 2016, the Fourth Circuit vacated my sentence, which order directed the District Court to reconsider Loss and Restitution based upon my Appeal arguments. On April 27, 2016, I signed a plea contract promising "restitution will be determined by the Court at sentencing." On September, 2016, Restitution Orders were determined by the Court, finalized, and signed by me for Case No. 4:12cr101 and No. 4:15cr50, as the plain language promised in the plea contract. 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. I received notice on February 21, 2017. I 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 Clerk on March 3, 2017. I received notice of Order granting the government's breach, Document #53, in Case No. 4:15cr50, on April 10, 2017. 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 me receiving notice of the government's proposed changes to the Contract, of which I am party. I received no notice of this Order. I timely filed a notice of appeal for Case Nos. 4:12cr101 and 4:15cr50 on April 11, 2017. I submitted Appeal Opening Briefs in Case No. 17-6651 and No. 17-6652 on June 9, 2017. The United States declined to file a timely Reply. I filed a timely Motion Pursuant to FRCP 60(b)(3) to Object to Government Breach of Contract on July 11, 2017, preserving this Objection to Breach in the District Court.

282. On April 27, 2016, I was induced to sign the plea contract for Case No. 15cr50, which also inter-joined and controlled resentencing 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." This bargain presented by the government was a significant inducement and consideration in my mind prompting my acceptance of this contractual offer. I 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. Based on my Appeal Brief and Pro Se Supllemental 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 resentencing court to decide in the first instance."

283. Mr. Woodward failed to provide effective assistance by advising me to agree to a plea contract which states, "The defendant is satisfied that the defendant's attorney has rendered effective assistance." [Plea, p.2]. This fraudulent attempt at creating a future waiver against me bringing redress against the counsel who was simultaneously negotiating a contract on my behalf was clearly a conflict of interest.

284. 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 USC § 2255." [Mot. Dis. 2/28/17].

285. My plea agreement does not contain an Integration Clause, which 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.

286. Mr. Woodward failed to provide effective assistance by allowing the plea contract to remain in force, and to be accepted the Court, once District Court Judge Allen adamantly professed her belief that my legal capacity to enter a contractual relationship was in question. Base on the Court's language, it is impossible to conclude that I entered the plea agreement knowingly, intelligently, and voluntarily.

287. Mr. Woodward coerced me into accepting an ultra vires and unconscionable contract, 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." [Emphasis in Origina]. The government underlined the word "concurrent" in order to contextually manipulate me, as I am not an attorney-esquire, into accepting and believing the authority and persuasive power of the Officers of the Court to deliver their promise, their bargain. Mr. Woodward solidified this persuasion when I asked him if there was any possibility that the judge would not honor the "concurrent" provisions. As documented in my contemporaneous notes, Mr. Woodward stated, "Don't over-analyze Govt. on why erasing 2nd Indictment," and "Larry says 0 chance that Allen or Jackson do not comply with plea agreement constraints proposed

by Govt." [Atchs. 10,20,25,29] 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. Even the DPP, written fully by Mr. Woodward, requested to the Court a total combined sentence of 3-5 years to ensure I "went along," while the actual sentence imposed was a shocking 14 years.

288. Mr. Woodward avised me to enter into a contract containing a provision to illegally restrict my Freedom of Information Access in order to further endanger my ability to redress violations of my constitutional right of effective assistance, not even addressing why the United States Government would believe it correct to withhold public information on the Government's activities.

289. After being exposed to significant ineffective assistance of counsel and sever abuse of discretion by the Court at trial, as confirmed by the Fourth Circuit, I would have never knowingly, intelligently, and voluntarily entered a contract with multiple provisions designed to constrain redress against the one person, reportedly, simultaneously, negotiating in my favor.

290. If Mr. Woodward would have provided honest, effective assistance, without question I 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 my conviction and sentence, I would not have signed a cotnract which at a minimum re-instituted my prison term and very possibly added a great many more years. After providing Mr. Woodward voluminous documentation of my innocence of the Case 15cr50 indictment [Atchs. 1-9], there is no possibility that I would have accepted a longer prison sentence, especially with exposure to six more years on top of the previous twelve. My previous behavior in Case 4:12cr101 of rejecting plea agreements of 7 years, then 5 years, then 3 years to instead go to trial, because I believed myself and my employees to be innocent, solidifies that there is no possibility I would have agreed to this plea contract and these stipulations as written.

291. Any plea colloquy does not cure Mr. Woodward's egregious ineffective assistance relevant to plea negotiations and the plea contract provisions. The District Court at plea acceptance and sentencing never verbalized or addressed the conflict of interest provisions claiming that I believed that counsel had provided effective assistance, or that I agreed to illegally waive Freedom of Information access. I also never waived my future constitutional right to due process at sentencing after entering the void plea contract. Any attempt by the government to assert that colloquy language cures documented, proven fraud and ineffective assistance would exalt form over substance.

292. Throughout the four-week trial, on the courtroom flat screen monitors the government continuously displayed pictures of what were alleged to be my home on the James River, beach house in Nags Head, Bentley Continental Flying Spur, and Ferrari 355 Spyder. I 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 I 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.

293. The government called as witnesses two former junior financial advisors who were previously employed to help service my substantial personal client base at MICG Investment Management. This allowed me to allocate more time and resources to my roles as Chairman and CEO. By the start of trial, these two junior advisors, Ms. Jennifer Daknis and Ms. Jayne DiVincenzo, had no transferred the majority of my personal clients to under their own control at a competitor investment firm and had significantly increased their own personal income and net worth. At trial, they stated:

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." [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 --" [p. 1359]

Mr. Broccoletti, again, never objected or moved for mistrial. Even the government and Judge Doumar continuously questioned why Mr. Broccoletti never attempted to defend me 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:

COURT: "All you had to do was object." [p. 1706].

294. For my trial, the government flew in Ms. Diana Hewitt, Director of Pit Clerk Operations at the Bellagio Casino and Hotel in Las Vegas, Nevada, to testify about my trips to Las Vegas for the Newport News, Virginia jury comprised o 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."

PROSECUTION: "Your Honor, at this time I'd move into evidence Government's Exhibits C10 through C211 (Martinovich's Bellagio Perks Records)."

COURT: "If there's no objection, then they're received in evidence." (No objection from Mr. Roccoletti)

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."

Mr. Broccoletti never objected or moved for mistrial.

295. At my trial, the prosecution attempted, without correct evidence, to claim, due to the stock market correction, that I was suddenly "poor" and now needed to commit a crime to support my "lavish lifestyle." Not only was this evidence incorrect (I had recently

invested over $500,000 personally into MICG to fund multiple acquisitions), it's probative value was greatly outweighed by its prejudicial effect. The prosecution's narrative attempted to, incorrectly, persuade the jury that I had needed to commit a crime to meet my company's capital requirements and support my increasingly "lavish lifestyle." This instant Affidavit and Memorandum have documented how I had exceeded capital requirements in all of the previous sixteen years (64 consecutive 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-fund TARP or government assistance, had returned over $4.6 million to hedge fund investors in 2008 and 2009, and had not increased my personal salary from MICG since 1998 even though MICG cash flow had increased over eight-hundred-percent (800%). [Atchs. 34,35][AFF# 2,13,14].

296. 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 my 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. 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 me in the eyes of the jury, and in the mind of Judge Doumar, who ultimately controlled my sentence. Mr. Broccoletti failed to move for a mistrial when the repeated inflammatory evidence created such a cumulative prejudice to disallow me a fair trial. Mr. Broccoletti, himself, state that the introduction of evidence "compromised the defendant's right...as to preclude his rights to a fair trial." [R. 29]. Yet, inexplicably, he would never object or move for a mistrial, as even Judge Doumar stated, "Defendant did not move for a mistrial...defendant repeatedly failed to raise timely objections." [R. 33]. This harm prejudiced me in trial, in the Rule 29 Motion, and in the Rule 33 Motion.

297. 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.

298. At the close of my 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." [Daily Press, 7/21/2013, Dujardin]. Clearly, based solely on this inflammatory, prejudicial evidence presented, the Jury Forewoman and "us" thought I was a "bad man," which was incontrovertible evidence of prejudice.

299. Mr. Broccoletti's ineffective assistance allowed Judge Doumar, the ultimate determiner of the length of my 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 calculs:

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." [p. 3651]

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 in 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 riches man in this area, ever drove a Bentley or a Maserati, at least not one that anybody around here ever saw." [p. 3653]

Obviously, Judge Doumar's soliloquy confirmed that the daily pictures and repeated class warfare had a tremendous impact on the Honorable Government Servant and was definitely factored into my length of sentence. I can only also imagine how drastically this repeated prejudice affected certain members of the jury.

300. Mr. Broccoletti's failures precluded the jury from receiving a curative or limiting instruction in regards to my wealth, as well as precluded the governmnet from agreeing to, or being ordered to, implement restrictions on their prosecutorial strategy in regards to my wealth. Even beyond these 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 had already asserted in my case that one curative instruction at the end of an extensive trial does not undo the Judge's actions throughout the entire trial, and that instructions will not always be enough to undo the effects, even under plain error review.

301. 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 restof 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.'" (I was at trial because I claimed I was not guilty). [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 I could have executed which Ms. Hines felt was legal or moral, which provides incontrovertible evidence of prejudice.

302. 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 my 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 me.

303. 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. Mr. Woodward also failed to argue on direct appeal that the District Court, of its own motion, failed to protect my right to a verdict uninfluenced by the appeals of counsel to passion or prejudice in regards to said inflammatory evidence. 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 based on this inflammatory evidence.

304. Mr. Woodward's failure prejudiced me by precluding the Fourth Circuit from ruling on this inflammatory evidence plain error committed by the prosecution, and the District Court, and thus vacating my conviction, and even if the Court determined that the enhance standard of plain error review was present then the recent decision in Carthorne re-confirmed that ineffective assistance and plain error are two distinct standards, and not eqully applicable.

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: 6/20/2018

Jeffrey A. Martinovich