

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

UNITED STATES OF AMERICA,

v.
Plaintiff,

) Case No. 4:15cr50

) (4:12cr101)

JEFFREY A. MARTINOVICH,

Plaintiff.

)

MOTION FOR LEAVE TO FILE DEFENSE POSITION PAPER AND POSITION PAPER
OF JEFFREY A. MARTINOVICH WITH RESPECT TO SENTENCING FACTORS

NOW HERE COMES Jeffrey A. Martinovich, proceeding pro se, in a Motion to present this instant Defense Position Paper in support of Mr. Martinovich's position to respectfully request a sentence of zero months in light of the evidence and information and history presented herein, or in the alternative a sentence of time-served with no subsequent supervised release, or within this Court's powers, the vacation of conviction and sentence in the interest of justice.

Mr. Martinovich herein respectfully submits this instant Defense Position Paper for Case No. 4:15cr50 (and applicable to 4:12cr101 which fully considered this instant case) in support of his continuing efforts to bring an expeditious conclusion to these proceedings and sentence, and to finally begin restoring his shareholders and himself. In an effort to be comprehensive, yet as succinct as possible, Mr. Martinovich has delineated this submission into sections addressing:

1. True Statement of the Case
2. Martinovich History and Bureau of Prison (BOP) Conduct
3. Previous Settlement Negotiations
4. Deterrence and Court Objectives

5. Witness Testimonies/Subpoenas Requested
6. Downward Variance
7. Restitution and Forfeiture
8. No Supervised Release Applicable
9. Objections to PSR
10. Restoration for Stakeholders

CASE 4:15CR50 TRUE STATEMENT OF THE CASE

(please see Atch. 1 for Case 4:12cr101 True Statement of the Case)

The government alleged that Mr. Martinovich unilaterally accessed MICG hedge fund accounts pursuant to the funds' indemnification provisions to fund unauthorized legal fees, as well as management and expert fees. The government further alleged that Mr. Martinovich had tricked and manipulated the six law firms which were hired to independently represent the funds and shareholders, as well as conceal from trial defense attorneys the source of the legal fee payments. The government alleged that Mr. Martinovich acted on his own, illegally accessed funds, tricked attorneys, and "papered over" his illegal trail.

When presented with this superseding indictment, the following information, as well as the email correspondence noted in the Attachments, was provided to court-appointed counsel, Mr. Woodward:

- 1) Attorney Andrew Shilling Opinion Letter, representing MICG Venture Strategies Fund, obtained by MICG lead business attorney Mr. Todd Lynn of Patten Wornom Hatten & Diamondstein, Newport News, Virginia.
- 2) Attorney Katherine Klocke Opinion Letter, representing MICG Partners Fund, obtained by MICG securities attorney Mr. Benjamin Biard of Wilson Elser, New York, New York.
- 3) Consulting Engagement Contract listed as the Indemnification Collateral at the request of attorney Mr. Shilling of Shilling, Pass and Barlow,

Chesapeake, Virginia.

- 4) Assignment of Consulting Revenue Agreement listed as Indemnification Collateral at request of attorney Mr. Shilling.
- 5) Wells Fargo MICG Hedge Fund Check Copies previously presented to the District Court by attorney James Broccoletti of Zoby Broccoletti, Virginia Beach, Virginia.
- 6) MICG Partners Fund to MICG Venture fund Payments Tax Ledger prepared and presented by Harbinger PLC accounting and audit firm, Norfolk, Virginia.
- 7) Tax and Accounting Ledger of payments to attorneys from MICG Venture and Partners Funds, prepared and presented by Harbinger PLC.
- 8) Martinovich letter to David, Kamp & Frank Law Firm documenting liability to Partners Fund.

[Atchs. 1-9 Doc. 74, Aff. #56 Doc. 90]

The following paragraphs summarize the additional evidence provided to Mr. Woodward through meetings, documents, and email correspondence with the Affidavit and Attachment references referring to the Case 4:15cr50 Martinovich Amended Affidavit [Doc. 90] and the submitted Exhibits [Doc. 74].

Trial defense counsel, Mr. Broccoletti, called Mr. Martinovich prior to the Case No. 4:12cr101 sentencing to let him know that there was a problem with the indemnification payments for Mr. Broccoletti's fees. The federal agents had visited Mr. Andrew Shilling, the attorney representing MICG Venture Strategies Fund, and Mr. Shilling had for unknown reasons told the agents that he wasn't aware of exactly how the legal fees were paid, or how the proper documentation was executed. [Atchs. 3,6,9, Aff. #57].

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

In the beginning, following Mr. Martinovich's initial arrest in Case 4:12cr101, Martinovich was released on bond and traveled to the offices of PWHD in Newport News, Virginia, to meet with his lead legal counsel, Mr. Todd Lynn. Mr. Lynn had provided legal counsel for MICG funds for many years, including handling client claims, errors and omissions insurance procedures, indemnification clauses, documentation, and regulatory issues. Mr. Lynn set in motion the procedures and paperwork to invoke the indemnification clause for payment of legal expenses and coordination among the MICG funds for coverage of expenses. This had been completed numerous times before, involving standard fund expenses as well as errors and omissions claims, client suits, significant attorney fees, and accounting and audit fees.

The MICG hedge funds operated with the industry-standard indemnification clause as detailed in the Private Placement Memorandums (PPM) provided to investors and regulators. This legal protection is implemented

by most every hedge fund and mutual fund operated in the United States. This legal structure, among other provisions, authorizes the fund to pay for the defense of claims and procedures against individuals managing or operating the fund, unless there is a final conviction of fraud against said individual, at which point those expenses are then due back to the fund [see XL Specialty Ins. Co. v. Level Global Inv., (2nd Cir. 2012)]. Due to non-stop legal actions in the investment industry, no individual could ever personally assume the legal liability to manage any investment fund without the indemnification structure. This legal clause was written and implemented for MICG by the international law firm of Troutman Sanders, with offices in Virginia Beach, Virginia.

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

Venture Strategies Fund was a mostly illiquid fund with anticipated upcoming 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 Fund, 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 shares to MICG investors. With the increased regulatory, legal, and civil expenses after the 2008 Financial Crisis, the noted legal firms provided documentation and legal opinions for the Partners fund to cover the expenses of the Venture Fund in order to preserve, and not dilute, its investment position [see Documentation]. Partners Fund was flush with low-yielding cash while Venture fund awaited a significant return of capital gains. All transactions and documentation were authorized and transparent to independent auditors, independent accountants, and each fund's independent legal representation [see Documentation].

Mr. Lynn coordinated with Mr. Shilling to provide opinion letters and authorizations for the payments to defense counsel, Mr. Broccoletti. During this period, Mr. Lynn had multiple conversations directly with Mr. Broccoletti, and Mr. Shilling provided Mr. Lynn with executed authorizations [Atch. 6, Aff. #60]. During this period, Mr. Martinovich and his assistant were present with Mr. Lynn at PWHD's office for a conference call on speaker phone with Mr. Shilling. Mr. Lynn and Mr. Shilling discussed that they had not yet also created a promissory note document for these payments between the Partners Fund and Venture Fund. Mr. Lynn asked Mr. Shilling to prepare this note since Mr. Lynn had multiple conflicts due to his representation of MICG. Mr. Shilling asked Mr. Lynn to have Mr. Biard or Ms. Klocke prepare this note since his fund was the actual recipient of these transfers [Atch. 3, Aff. #61].

Mr. Michael Umscheid of Harbinger PLC, Norfolk, Virginia, served as tax accountant for the Venture and Partners Funds. Mr. Umscheid kept a running "Due to - Due from" ledger for these payments between Partners and Venture Funds and fully-documented the liability in the tax preparation for both funds [see Doc., Atchs. 4,8, Aff. #62].

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

When trial defense counsel, Mr. Broccoletti, told Mr. Martinovich that the government was upset that the funds were still available for the defense and that Mr. Shilling was having these conversations with the agents, Martinovich drove to Mr. Lynn's office for the telephone conference noted at the beginning of this Statement of the Case, in attorney Mr. Lynn emphatically declared that Mr. Shilling was lying.

Subsequently, a hearing was scheduled before trial Judge Doumar. When the government first claimed that Mr. Martinovich secretly and illegally gained control of the Partners Fund cash account, Mr. Broccoletti simply presented evidence that the previous custodian, First Clearing Corp's, contract had terminated with MICG, and at their request the account was transferred to Wells fargo Bank, their parent company. This account retained the same titling, the same control provisions, and the same checkwriting authorizations. Later, Mr. Martinovich's assistant was added to the account authorizations list for simple efficiency of administration. All of these same procedures occurred with the MICG Venture Strategies cash account [Atchs. 3,9,21, Aff. #65].

The government then presented a Director of Wells Fargo's Fraud Department who, under oath, described to Judge Doumar that Martinovich had withdrawn large amounts of cash from the hedge fund money market accounts, sometimes \$50,000 or \$75,000 per withdrawal. This preposterous allegation attempted to describe these actions with the Wells Fargo system of journal entries and professional checks. This Director of Fraud claimed that they could not locate corresponding check copies in their system which meant Martinovich must have withdrawn the amounts in cash. Fortunately, Mr. Martinovich's small consulting team had kept perfect records, and now Mr. Broccoletti presented the "missing check copies" to the court. He stated, paraphrasing, "Please tell me why Mr. Martinovich has copies of every authorized payment in question, and a Director of Wells fargo cannot find these same copies? How is that possible?" Clearly, this witness was improperly coached by the prosecution and committed multiple acts of perjury while on the stand, to which Mr. Martinovich has already prepared civil actions. Despite these obvious facts, all accounts were frozen and this alleged relevant conduct was added to Judge Doumar's sentencing calculus.

All management fees were authorized by the team of attorneys, and over three years the actual fees paid were approximately one-third of what was legally authorized. Following the 2008 Financial Crisis and regulatory aftermath, Mr. Martinovich notified the fund investors, with the authorization of Mr. Lynn and Mr. Biard, that MICG would suspend the management fee for Venture and Partners Funds during this period, and that MICG would allocate its significant infrastructure and personnel to cover these duties and responsibilities. After the closure of MICG and the fallout effects to Mr. Martinovich, he personally could no longer fund this administration and management in total, and he informed Mr. Lynn of the circumstances. Mr. Lynn scheduled a conference call with Mr. Lynn, Mr. Biard, Ms. Klocke, and Mr. Martinovich to address the issue. Ms. Klocke, Partners Fund counsel, authorized the payment of fees and expense reimbursement, and stated that she did not need to provide further opinion letters, reiterating that all valid expenses of Venture or Partners Fund were to be covered by Partners. Also, due to the unpredictability of the current MICG Limited Liability Company entities, these payments were directed to be paid to Mr. Martinovich and for Mr. Martinovich to pay the assistants directly with documentation, which is exactly how these expenses were administered, with 1099 documentation included [see Documentation, Atchs. 1,2,4,8, Aff. #66].

During this same period, attorneys Mr. Lynn, Mr. Biard, Mr. Shilling, and Ms. Klocke continued to receive substantial legal fee payments from the MICG Funds, with the Partners Fund openly paying these attorney fees for the Venture Fund at the attorneys' direction and with complete transparency and audit and tax reporting [Atch. 5, Aff. #67]. In a subsequent phone call, Ms. Klocke reconfirmed to Mr. Martinovich

that no further documentation was required yet claimed that the MICG Funds had not paid her most recent bill. After confirming her recent check had already cleared, Martinovich's assistant, Ms. Brooke Stafford, returned the call to Ms. Klocke confirming the check had cleared the Partners Fund [Atch. 8, Aff. #105]. When the drama was initiated by attorney Mr. Shilling allegedly giving federal agents the incorrect information, Mr. Martinovich participated in another conference call with attorneys Mr. Lynn and Mr. Biard. Mr. Biard, who had first arranged for attorney Ms. Klocke to represent the Partners Fund, stated on the call, "Don't worry. I know Kathy well. She will step up and stand behind her authorizations [Atch. 7, Aff. #104].

Mr. Broccoletti stated that Mr. Shilling also advised federal agents that he did not authorize the payments to the legal experts requested by Mr. Broccoletti. Mr. Broccoletti had called Mr. Martinovich at his condo office, with two assistants present, to request payments for the trial legal experts he had engaged. Mr. Martinovich and his assistant then phoned Mr. Shilling to confirm these were covered by the indemnification and to ask if any further paperwork or opinion letters were necessary. Mr. Shilling clearly confirmed the authroization and stated that he did not need to provide further paperwork. That same afternoon, Martinovich's assistant, Ms. Brooke Stafford, then processed the checks and traveled to Wells Fargo to pick up each payment for Mr. Broccoletti [see Phone records, Required testimony verification, Atchs. 2,6,9, Aff. #68].

District Court Judge Wright Allen was clearly misled about the facts, the nature, the actions, the authorizations, and the intent involved in the issue of indemnification payments for Case 4:15cr50. The lying to federal agents, and likely lying to a grand jury, by

Mr. Shilling, along with the dismissal and quashing of a long list of exculpatory evidence by officers of the court, to include court-appointed counsel, severely prejudiced and committed fraud on the Court. Clearly, the Court was not made aware of the numerous transactions, multiple parties, and substantial documentation presented to the officers of the court by Mr. Martinovich [see Sent. tr.]. At the initial sentencing for Case 4:15cr50, 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." [Tr. p. 86]. "Mr. Shilling is relying on representations by Mr. Martinovich." [p. 87]. "We hadn't pulled those cashier's checks, talked to Mr. Broccoletti." [p. 89]. AUSA Mr. Samuel's misleading and manipulation of the Court is a disgrace to our country's Justice Department.

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

processing and authorizing the payments was. How is that even possible?

Obviously, court-appointed attorney Mr. Woodward and the government had not delivered one ounce of the voluminous evidence provided by Mr. Martinovich [Aff. #53]. Mr. Woodward and the government had misled Judge Wright Allen and left her to beliefs and assertions one hundred percent contrary to the truth. The preposterous, simplistic allegations of tricking six law firms and "papering over" transactions manipulated Judge Wright Allen, severely affecting the initial sentencing for Case 4:15cr50, as well as severely affecting the resentencing for Case 4:12cr101 which fully considered the conduct of Case 4:15cr50.

[For the Case 4:12cr101 True Statement of the Case, Mr. Martinovich respectfully points the Court to Atch. 1, as well as "The Fall of MICG," Ash Press, Atch. 2].

MARTINOVICH HISTORY AND BUREAU OF PRISONS (BOP) CONDUCT

"When rendering a sentence, the district court must make an individualized assessment based on the facts presented, applying the 'relevant § 3553(a) factors to the specific circumstances of the case before it.'" [U.S. v. Slayton, 629 Fed. Appx. 475 (4th Cir. 2015); citing U.S. v. Carter, 564 F. 3d 325 (4th Cir. 2009)].

"When a defendant's sentence has been set aside on appeal, a district court at resentencing may consider evidence of the defendant's post-sentencing rehabilitation and such evidence may, in appropriate cases, support a downward variance from the advisory federal Sentencing Guidelines range...A defendant's post sentencing conduct may be taken as the most accurate indicator of his present purposes and tendencies and significantly to suggest the period of restraint and the kind of discipline that ought to be imposed upon him." [Pepper v. U.S., 179 LED 2D 196, 562 US 476 (2011)].

Mr. Martinovich is the product of Ohio Midwestern roots, his father spent his life in civil service with U.S. Air Force Intelligence,

and his mother worked as a secretary in the Sears Service Department. Mr. Martinovich received a Congressional Appointment to the United States Air Force Academy where he was a member of the basketball and rugby teams, soloed in glider aircraft, and completed Survival Escape Reconnaissance & Evacuation (SERE) training. He graduated in 1988 with a bachelor of Science in Business Management and was commissioned as a First Lieutenant serving in the 1912th Computer Services Group and 480th Intelligence Group at Langley Air Force Base, Virginia. He was then promoted to Captain and served on the Tactical Air Command Staff (TAC/HQ) under General Loh during the First Gulf War developing mapping and targeting for the F-117 Stealth Fighter missions which disabled Iraq's Command and Control infrastructure, saving a great number of American and Allies lives in the invasion of Baghdad. During this period, Mr. Martinovich also attended night school earning an MBA with concentration in finance from The College of William and Mary in Williamsburg, Virginia.

In 1992, Mr. Martinovich received an Honorable Discharge from the Air Force and began his second career in financial services with Wheat First Securities in Newport News, Virginia. Mr. Martinovich quickly rose to the top ranks of advisors and was presented with an opportunity by senior management to develop his own firm, MICG Investment Management, LLC. MICG grew rapidly with a reputaiton for sophisticated investment management and "knock your socks off service." For nearly two decades, MICG achieved a +36% average annualized company growth rate, was extremely proud of a more than 99% client retention rate, and became a substantial partner with the civic and charitable community of Hampton Road, Virginia, as well as each new community where MICG branches opened.

Mr. Martinovich achieved an impressive portfolio of personal licensing, accreditations and honors to include Broker-Dealer (B/D) Principal, Registered Investment Advisor (RIA) Principal, Financial and Operations Principal, SIFMA Small Firms Board, Luter School of Business Board, and Chairman of Virginia for the Young President's Organization (YPO).

In the community, Mr. Martinovich was honored to participate as President of Big Brothers Big Sisters, Chairman of the Children's Village of Hampton Roads, Board Director for the USO and United Way Committees, and significant partner of the Boys & Girls Club and Achievable Dream Academy. He coached youth basketball for the YMCA, St. Andrews Episcopal Church, Newport News Parks & Recreation, and Hampton Roads Academy, along with funding the Academy's new baseball stadium, MICG Park.

By 2007, MICG employed fifty employees and fifty independent agents among eight retail branches in Virginia, Washington D.C., and New York. MICG served over 3,000 clients in 42 states and 5 countries, offering financial planning, insurance, investment banking, hedge funds, real estate, mortgages, lending and trust services. MICG managed \$1 billion in client assets spread among a highly-diverse allocation of over 1,000 direct investments [Aff. #1]. Although MICG's revenue increased over 800% since 1998, Mr. Martinovich had not increased his personal salary since then, instead choosing to allocate the increased fees to MICG's significant growth and support of its employees' communities [Aff. #2, Trial Tr.].

While incarcerated, Mr. Martinovich has worked day and night to bring to light the truth and reverse this legal imroglio, all in an effort to get back to work restoring MICG stakeholders and himself.

Yet, he has also made a substantial commitment to abide by the system, to educate and better himself, and to give back by substantially aiding and supporting fellow inmates. Mr. Martinovich has maintained zero points and zero infractions for nearly six years, an almost impossible feat in a volatile prison system for even the most straight and narrow. Mr. Martinovich spent over four years housed in a higher-security facility, FCI Ft. Dix, labeled with an erroneous Greater Security Management Variable at a facility not designed for his classification, all orchestrated in coordination with the U.S. Attorneys Office of Norfolk, Virginia, as FOIA request disclosures revealed [4:2018cv27, 18-7061]. Here, Mr. Martinovich was subjected to an environment of continuous assaults, stabbings, and sexual assaults which he may detail for this Court if desired.

Rising above the violence, Mr. Martinovich committed to work as a GED tutor teaching math and reading to inmates in order to help them pass the GED Exams. He worked in the prison Law Library as a Law Clerk in helping inmates navigate their complex legal and administrative challenges. Mr. Martinovich also worked as an assistant to Education Specialist Ms. Yi, as well as submitted an Adult Continuing Education (ACE) course for helping inmates reentering the workforce, or entering it for the first time. Finally while at FCI Ft. Dix, Mr. Martinovich represented his unit as centerfielder on the softball team and point-guard on the basketball team, remarkably being selected to the league All-Star Team, and completed courses in Legal Research, Economics, and Guitar [see Work Hist., Educ. Hist., Appendix].

After being transferred to FPC-Beckley, Mr. Martinovich has continued to maintain perfect conduct. He has worked in the Law and Leisure Library, being promoted to grade 1 Head Clerk. He oversees the leisure library operations and compliance, the law library computer

system and administration, the compliance for GED Education, and the technical training and classical literature ACE programs. Mr. Martinovich has also facilitated the Job Skills and Parenting Workshops for inmates, as well as taught a 25-lesson ACE course, "Building Special Companies," based on his book "Zero to a Billion to Zero." Finally at FPC Beckley, Mr. Martinovich has personally completed numerous technical training and classic literature ACE programs to include Reading Blueprints, Plant Operations, Measurements and Schematics, Creative Writing, "The Count of Monte Cristo," and "Atlas Shrugged." Also, Mr. Martinovich has applied 100% of his pay to restitution through the FRP payment system. [see Reference Letter Mr. Stevens, Dir. of Educ., Work Hist., Educ. Hist., Appendix, Mr. Clevenger Affidavit].

Over these six years of incarceration, Mr. Martinovich has maintained close ties with his family, friends and business associates. He has also written three books now prepared for publishing, to include "The Fall of MICG," a booklet for MICG shareholders in which we all hope to finally write a successful final chapter, "Just One More: The Wisdom of Bob Vukovich," a contemporary parable with life lessons hopefully beneficial for many, and "Zero to a Billion to Zero," a business advisory narrative to help others learn from the great success of MICG, and more importantly learn from the list of mistakes which he personally made.

Mr. Martinovich respectfully submits that he has channeled his energies into everything the Justice System would ask of him, plus much, much more.

PREVIOUS SETTLEMENT NEGOTIATIONS

Mr. Martinovich respectfully submits the below information to help this Court understand the debacle of the previous negotiations,

plea agreement and resentencing. Obviously, the plea agreement eventually signed by Mr. Martinovich, which encompasses Case 4:12cr101 and Case 4:15cr50, is not congruent with the previous section, True statement of the Case, or the "settlement" previously presented to Mr. Martinovich by court-appointed attorney, Mr. Lawrence Woodward. As the Statement of the Case confirms in detailed evidence and documentation, Mr. Martinovich is not guilty of Count 10 Concealment Money Laundering, and the plea agreement Statement of Facts is an erroneous narrative. Also, as Case 4:15cr50 § 2255 Petition Ground Six details, the superseding indictment for this case was fraudulent ab initio with an illegal sealing, illegal resealing after expiration and unsealing, and with concealed expired statutes of limitation which were recorded as the underlying reason to obtain the indictment in the first place.

In an effort to help this Court understand how we ended up where we did, Mr. Martinovich respectfully points to Ground Five of the Case 4:15cr50 § 2255 Petition which details the plethora of evidence and contemporaneous communications proving how counselor Mr. Woodward thwarted at every turn Mr. Martinovich's efforts to bring this instant case to trial [Atchs. 1,4,5,25,29, Aff. #55,69]. Then, in a last-ditch effort to stop Mr. Martinovich, Mr. Woodward presented a purportedly-negotiated settlement among the prosecution, the Court, and Mr. Woodward, in order for Martinovich to be able to begin restoring his stakeholders and his family, all in return for Mr. Martinovich ending his "scorched-earth" defense. To convince Martinovich, the supplied written documentation confirms how:

- 1) Mr. Woodward stated that Martinovich "will get better Jackson sentence (on 1st case) if admitting guilt on 2nd indictment." [Atch. 25, Aff. #71].
- 2) Mr. Woodward then claimed he would "play hardball" to consolidate both cases under Judge Wright Allen who had previously "assisted

him on cases - she is #1, Jackson is #1A, and rest are 10 levels down." [Atchs. 27,29, Aff. #71].

- 3) Then Mr. Woodward addressing Case 4:12cr101 stated "even though stipulating 33 that the Govt. will have to ask for 30-31 as starting point due to all acceptance (30 = 97-121)" and "sentencing will start with 3 points acceptance." [Atchs. 24,27,28 Aff. #71].
- 4) Mr. Woodward then continuously reiterated that a combined final sentence of "4 years was too aggressive...(but) 6 years is doable good deal," and Martinovich will receive combined "downward variance to 5-6 years...5-6 years a final total," all which would have enabled Mr. Martinovich to be released at sentencing, or shortly thereafter. [Atchs. 24,27,28, Aff. #71].
- 5) Mr. Woodward claimed that the Case 4:15cr50 meant nothing and was a "zero" because the Agreement ensured it would a) run concurrently with the Case 4:12cr101 sentence, and b) be less than Case 4:12cr101. He lectured, "Don't overanalyze Govt. on why erasing 2nd Indictment." [Atch. 25, Aff. #71].
- 6) Mr. Woodward ensured Mr. Martinovich that he would not be restricted getting immediately back to work rebuilding for his shareholders. "Travel, including international, no problem while on Supervised Release," and "Moving to NYC or anywhere is no problem while on SR." [Atch. 38, Aff. #72].

And, that's how it happened [please see Ground V for substantial documentation]. Before Mr. Martinovich would finally agree to the "negotiated settlement," Mr. Woodward phoned Martinovich's fiance, Ms. Ashleigh Amburn, and told her that if Mr. Martinovich "went along with the plea deal and stopped sending in motions, he would not receive any more than six (6) years on the total resentencing...(and if he) went along with the plan he would come home soon so, 'don't let him do anything crazy.'" [Amburn Aff., Atch. 40]. Unfortunately, instead of being released, the sentence was now increased to fourteen years.

DETERRENCE AND COURT OBJECTIVES

"Federal sentencing law requires the district judge in every case to impose 'a sentence sufficient, but not greater than necessary, to comply with' the purposes of federal sentencing, in light of the Guidelines and other [sentencing] factors." [U.S. v. Boyd, U.S. App. LEXIS 36478 (4th Cir. 2018); citing Freeman v. U.S., 564 U.S. 522,

18 U.S.C. § 3553(a)].

"The court also properly stressed the need for both individual and general deterrence." [U.S. v. Macias-Maldonado, U.S. App. LEXIS 28662 (4th Cir. 2018)].

In assessing the need for punishment and deterrence, both individual and general, Mr. Martinovich respectfully requests this Court consider the enclosed Statement of the Case as true and factual along with all supporting documentation, as these statements are not "contradicted by the record, inherently incredible, or conclusions rather than statements of fact." [Arredondo v. U.S., 178 F. 3d (6th Cir. 1999)]. The government has never refuted the voluminous, specific facts Mr. Martinovich has previously presented to the officers of the court, as well as included in this Position Paper, as this detailed recount of the occurrences is truthful, accurate and irrefutable.

With this premise, Mr. Martinovich respectfully submits that the Department of Justice and the U.S. District Court have already achieved their objectives of punishment and deterrence, and any further incarceration only delays, and likely nullifies, their final objective of restitution for the victims. Further incarceration would only support the government budgets at substantial expense to citizen tax payers, as well as imperil the victims' current restoration.

Addressing punishment, Mr. Martinovich has lost his billion-dollar business which he started from zero, his long list of corporate licenses and accreditations, his pristine business and community reputation, his multiple board seats and charities he founded, and his home and every property and investment he accumulated over thirty years. He has been publicly humiliated in the local and regional newspapers, repeatedly on the front page. His family has lost everything and has battled against the stigma of lawsuits, liabilities, and community

ostracism.¹⁴ An only child, he has been removed from caring for his elderly mother, as his father passed during his trial proceedings, as well as supporting his only son. And as noted previously, Mr. Martinovich has served nearly six years in prison, with the majority of time in a higher-security, violent facility, even personally being enveloped in one of many gang riots in which ten inmates were stabbed in the melee surrounding him, along with so many other assaults and incidents.

Addressing individual deterrence, Mr. Martinovich has never been in trouble with local, state, or federal authorities outside of traffic violations. To the amusement of many members in our community, Mr. Martinovich even paid taxes on domestic workers and informal childcare help, as well as paid for unnecessary flood insurance just to be doubly-safe. He is a person who truly instilled the Air Force Academy Honor Code and has always excelled in sports, business and the community by playing within the rules. Mr. Martinovich personally instructed the MICG Rookie Broker Training Program course titled "Don't Lose a Million to Make a Thousand," in which he taught his new employees that great success was obtainable without taking shortcuts and without taking advantage of others in the investment industry. Mr. Martinovich's extraordinary work in prison and support of his fellow inmates, the Pepper Factors, again display his deeds, not words.

This long, consistent history of doing the right thing is why, previously, Judge Wright Allen was so shocked and offended with the allegations of Case 4:15cr50 and 4:12cr101, all which are completely incongruent with Mr. Martinovich's history and character, of which she called him a "water-walker." Judge Wright Allen could only conclude that there must have been a complete mental breakdown which was "deep and complex" and now required serious "mental health treatment."

[see Ground I, § 2255]. Of course, the simple and correct answer is that the fantastical allegations are completely false, and Mr. Martinovich's fifty-three-year consistent history is the truth. Occam's razor.

Finally addressing general deterrence, Mr. Martinovich submits that this Honorable Court must conclude that 100% of all CEO's, financial advisors, and hedge fund managers will be deterred when provided the details of Mr. Martinovich's experience of losing his business, home, reputation, and everything he owned and was, along with the pain to his family and shareholders, who were all personal friends, and six years in a dangerous prison environment. These business leaders would not only never again run a hedge fund or invest in a solar company, they would give up the investment business entirely. General deterrence has long been accomplished.

WITNESS TESTIMONIES

Please see Attachments for Motion For Witness Testimonies And Subpoenas Requested [Appendix].

DOWNDWARD VARIANCE

Please Attachments for Motion For Downward Variance [Appendix].

RESTITUTION AND FORFEITURE

Mr. Martinovich respectfully submits that the calculations and proceedings for restitution and forfeiture, in both Case 4:15cr50 and Case 4:12cr101, were erroneous both factually and legally. Previously documented on the record:

1. At Case 4:12cr101's first sentencing, the government asked for a loss and restitution of \$1.45 million (the entire amount invested in the Venture Fund by the alleged 14 victims, although EPV Solar

represented only 27% of the fund), the defense asked for below \$400,000 (any increased management fee totalled no more than \$140,000, see Auditor Analysis, Exhibit), yet the Honorable Judge Doumar pulled out a No. 2 pencil and staged a calculation resulting in \$1.75 million, to which the government interrupted to note on the record that this was more than they argued for. Restitution may not be ordered for more than a victim's loss, and the claimed victims were full-restored of their entire investment into the entire fund at \$1.45 million. [18 U.S.C. §§ 3663, 3664].

2. At the close of Case 4:12cr101's first sentencing, as documented, the government said, to paraphrase, "Oh, Your Honor, we want forfeiture too." After questioning the validity, Judge Doumar ordered, and recorded in the Judgment, that any restitution paid would also satisfy the forfeiture. There were no proceedings or discussions of Fed.R.Crim.P. 32.2(c)(1), 18 U.S.C. § 982(a)(1), or F.R.Crim.P. 11(b)(1)(J), 32.2, or 43(a).

3. As documented in the Martinovich § 2255 Affidavit and multiple filings to the Fourth Circuit, seconds before the September 29, 2019, sentencing-resentencing hearing began, court-appointed counsel Mr. Lawrence Woodward slid in front of Martinovich two previously-unseen restitution and forfeiture orders stating, "Quickly, sign these before Judge Allen begins, to show her, even more, that you have accepted responsibility."

Martinovich replied, "But Larry, these numbers are totally fabricated!"

Mr. Woodward responded, "I talked to (AUSA) Samuels, and he agreed to credit back all the items that don't apply once you start paying it."

Mr. Martinovich is embarrassed that he fell for this final trick, in a long list of fraudulent proceedings during these negotiations, yet it was clear that AUSA Mr. Samuels and counselor Mr. Woodward all knew these numbers were significantly incorrect. These were all part of the fabricated arrangement to comply and be released, which in truth turned out to only be an orchestrated ambuscade. All Rules and statutes of proceedings, effective assistance of counsel, and voluntarily, knowingly and willingly were violated.

4. Immediately following the September 29, 2016, sentencing Mr. Martinovich submitted a Rule 35 Motion which, inter alia, addressed that at a minimum the Judgment contain the continuing memorialization of Judge Doumar's Order that any restitution satisfied must also satisfy forfeiture, therefore not duplicative. Yet, this issue was ignored by the Court.

Herein Mr. Martinovich respectfully submits these issues for this Court's current consideration. As repeatedly documented on the record, even if the allegations were possibly true the increased fee to MICG was \$140,000 (out of \$8 million annual fees) and the expenses paid by the indemnification provisions were under \$200,000. Yet, Mr. Martinovich reiterates his commitment to rebuild for his previous stakeholders and will most certainly restore his partners far beyond government strictures. If restitution is ordered, he requests a broad and flexible implementation in order that the objectives be achieved as effectively as possible. [Footnote 5 of the 4:12cr101 Statement of the Case describes the genesis of the confusion. The alleged price inflations and higher management fees, the foundation of the government indictment, were actually minor losses per client, relative to their total investment portfolio. In the following trial, sentencing, and resentencing, the investor losses from the regulatory action, not from the loss of EPV Solar, were consistently substituted when presenting stories of loss and cause and effect. At trial, the government presented

witness after witness with losses from the FINRA action, not from the EPV Solar actions of the indictment. The jury certainly could not discern the delineation of these losses from the relatively minor, unfortunate results of EPV Solar. The initial sentencing Court included these numbers in the sentencing calculation although there had never been one allegation of fraudulent activity in the MICG Stock or Bond offerings. Even at the eventual resentencing, the government supplied, and greatly affected, the Sentencing Court with letters of financial loss from the FINRA illegal closure, not from the activities of the indictment. Also, the government presented three witnesses, again, at resentencing to speak of the effects of the FINRA closure, although presented as the effects of Mr. Martinovich's actions of the indictment. This bait and switch, from the beginning has greatly affected the Court's understanding of the loss and nexus of causation. [Footnote 5, Aff. #27].

As for forfeiture, Mr. Martinovich respectfully requests that the U.S. Attorneys Office not be granted a forfeiture allocation, as the record is replete with prosecutor fraud - currently before the FBI, DOJ OPR, and DOJ Executive Office of U.S. Attorneys - and this additional, double-jeopardy seizure is not relevant to these proceedings and only exasperates public opinion against Equitable Sharing and other overzealous government seizure programs. Mr. Martinovich has already forfeited his company, homes, considerable net worth, reputation, licenses, and so much more to the government. The golden goose which supported 100 associates and their families, as well as a multitude of charitable and civic organizations, has already been forfeited. In the alternative, Mr. Martinovich requests this Honorable Court reinstitute the Honorable Judge Doumar's Order for restitution to satisfy forfeiture.

SUPERVISED RELEASE NOT APPLICABLE

Mr. Martinovich respectfully requests this Court not order supervised release as part of this resentence, as this addition is not applicable to Mr. Martinovich's circumstances, and would also significantly deter and obstruct the effective and efficient restoration of stakeholders.

"(T)he purpose of supervised release was to have someone to help

him get situated and provide supervision of his transition to life outside prison." [U.S. v. James, 692 Fed. Appx. 718 (4th Cir. 2017)].

"Because supervised release is not, fundamentally, part of the punishment, the omission of 18 U.S.C.S. § 3553(a)(2)(A) factors accords with the purpose of supervised release, which is to fulfill rehabilitative ends, distinct from those served by incarceration...Congress intended supervised release to assist individuals in their transition to community life...supervised release is not part of the punishment." [U.S. v. Brooks, 889 F. 3d 95 (2nd Cir. 2017); citing U.S. v. Johnson, 529 US 53, 120 S. Ct. 1114 (2000); quoting U.S. v. Grandson, 511 US 39, 114 S. Ct. 1259 (1994)].

Mr. Martinovich respectfully reminds this court that, outside of this imbroglio, he has never had any issues with the law, has had an exemplary business and tax compliance history, and has been a significant, value-added contributor to the Hampton Roads community. Mr. Martinovich's recent compliance, work, and volunteer record in prison has mirrored his contributions to our community, both business and charitable.

The stable and supportive environment of his family and large circle of friends, along with the significant number of business and employment offers, enables Mr. Martinovich to effectively get back to work and make things right. As this Court is well aware, the entry-level, W-2 employment is not the path which optimizes Mr. Martinovich's education and experience in order to create the level of income and equity for restoring stakeholders. Mr. Martinovich's talents of building businesses and creating significant value for his organizations and many other are around-the-clock efforts with continuous travel, credit, investment, and transactions in multiple corporations, which all would require continuous daily reviews by the honorable, hardworking probation

personnel in the standard model. In the interest of success and making things right, Mr. Martinovich respectfully requests this Honorable Court not impose a term of supervised release.

OBJECTIONS TO PSR

Please see Attachments for Motion to Submit Objections to PSR if applicable. [Appendix].

RESOTRATION FOR STAKEHOLDERS

Throughout this unduly extended legal scrummage, the U.S. Attorneys Office has continually attempted to leverage Mr. Martinovich's perceived lack of remorse, and the Court has expressed frustration in the want of an emotional mea culpa, even claiming Mr. Martinovich is "gaming the system."

Mr. Martinovich submits that fighting for the truth and the ability to fix the problem is not mutually exclusive with feelings of great remorse and responsibility for everything that has happened in this terrible peripeteia. Mr. Martinovich agrees that, yes, this horrible process is a game, a very terrible, deadly game which increases the guilt and sentence on a citizen with their own words, or uses their courage to stand against false charges as fodder to penalize further. Mr. Martinovich respectfully requests this Court not misconstrue the above inherent paradox. The debacle of Mr. Martinovich's prior plea negotiations and resentencing is emblematic of this "catch-22."

Mr. Martinovich submitted three client update and explanation letters early on for MICG clients in which he accepted sole responsibility, as CEO, and repeatedly apologized for everything. Yet, MICG attorneys Mr. Lynn and Mr. Biard would never authorize the Compliance Department to approve and distribute these communications, for all of the unfortunately

correct legal realities, as expressed above. Then, once the government and the world "lawyered up," Mr. Martinovich was continuously warned never to contact a client or associated party with the explicit threat of being charged further with obstruction of justice and witness tampering. Yes, it is a very terrible game, one executed without ethics, morality or truth in which all sides play the game to "win at all costs," and shareholders, families and individuals are destroyed in the process.

Mr. Martinovich expresses to this Court that he could write a thousand pages explaining his regret, remorse, and incredible guilt for all of the mistakes he has made, for everything that has happened with MICG's shareholders and employees, and for the hell his own family has been through. His book, "Zero to a Billion to Zero" currently contains forty-five chapters, and he is certain it will eventually hold even more detailing the errors and terrible choices he has made. These regrets have consumed every day of his last nine years. And with this, Mr. Martinovich has also learned in the military and in building businesses that what is most important is making things right. As the District Court is aware of his multiple previous proposals for restoring MICG shareholders, Mr. Martinovich respectfully requests this Court now permit him to get back to work restoring all stakeholders and for all of us to write a successful final act to this play, a couple-peripeteia.

Even though the Honorable Judge Allen first perceived that "the amount of restitution in both cases is to the sky, almost. So, absent a miracle, nobody is getting paid," Mr. Martinovich respectfully submits that the prior-ordered restitution is merely 5% of the equity he created previously, and with the current numerous opportunities presented to Mr. Martinovich, stakeholders would likely be restored well-beyond

orders and expectations. Currently, this successful final chapter has a very high probability of success, while every day of further incarceration jeopardizes and moves to deny the victims' restoration.

Mr. Martinovich respectfully requests the opportunity to do the right thing and fix the problem, all consistent with satisfying this Court's objectives of punishment, deterrence, and restitution.

CONCLUSION AND REMEDY

Mr. Martinovich respectfully requests this Honorable Court, in light of all of the evidence and information submitted to the District Court and submitted herein, vacate the Case 4:15cr50 conviction and sentence, as well as the Case 4:12cr101 sentence as it fully considered Case 4:15cr50. In the alternative, Mr. Martinovich requests this Court order a sentence of zero months or time-served with no supervised release for both Case 4:15cr50 and 4:12cr101.

With great respect,

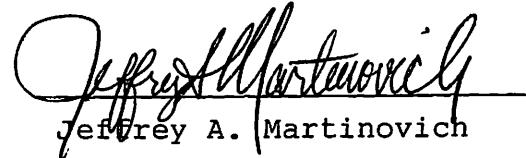
Date: 08/22/2019


Jeffrey A. Martinovich

AFFIDAVIT OF JEFFREY A. MARTINOVICH

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: 08/22/2019


Jeffrey A. Martinovich

Appendix:

1. Case 4:12cr101 True Statement of the Case
2. "The Fall of MICG," Ash Press 2016
3. Dir. of Education Letter, BOP
4. Mr. Clevenger Affidavit
5. Motion for Downward Variance & Exhibits
6. Motion for Witnesses - Subpoenas
7. Objections to PSR (if app.)