EXHIBIT - A

STATEMENT OF THE CASE

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

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

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

By 2007, MICG employed fifty employees and fifty independent agents with eight retail branches in Virginia, Washington D.C., and New York City. MICG served over 3,000 clients in 42 states and 5 countries while offering financial planning, insurance, investment banking, hedge funds, real estate, mortgages, lending and trust services. MICG managed $1 billion in client assets spread among a highly-diverse allocation of over 1,000 direct investments.[AFF.#1]. Although MICG's revenue increased an average of 36% per year for over fifteen years, Mr. Martinovich had not increased his personal salary since 1998, choosing instead to allocate the increased yearly revenue to MICG's significant growth.[AFF.#2].

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

In 2008, based on its exemplary regulatory history, MICG was selected as a beta test client for the new joint regulatory examination created by the SEC and FINRA for advanced firms operating as both Broker-Dealers (B/D) regulated by FINRA, as well as Registered Investment Advisors (RIA) regulated by the SEC.[AFF.#4]. This experiment had many political and public opinion struggles as the 2008 Financial Crisis perfect storm came ashore. [See "The Fall of MICG," Ash Press 2017, Amazon Books].[AFF.#5].

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

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

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

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

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

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

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

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

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

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

MICG acquired small lots of equity shares or odd bond lots at prices below FMV on numerous occassions as was, of course, the goal of the fund managers. Addressing EPV Solar, a subsequent small lot purchase from an individual stockholder was executed for the same $1.15 initial purchase price during the same calendar year in which the valuation expert, Mr. Lynch, had determined the FMV price to be $2.88, based primarily on the $2.88 per share valuation used for a $77 million investment into EPV Solar by Wall Street firm, Jefferies & Co. This $2.88 valuation was also vetted and approved by the fund auditors, Harbinger PLC, who oversaw the valuation process and held the final decision each year on which values to apply or adjust.[AFF.#11].

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

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

During this 2008-2009 time frame, the period of the government's review, Mr. Martinovich and MICG distributed over $4.6 million back to investors from the MICG hedge funds through redemptions and earnings distributions. The Financial Crisis and the Madoff hysteria had prompted a good number of MICG investors to request redemptions from any slice of their portfolio titled a "hedge fund." These returns were distributed to 44 investors, with specific totals of $2,906,313 redeemed in 2008, and $1,699,908 redeemed in 2009, not including distributions to employees and owners. [See Atch. 35][AFF.#13]. These returns of capital and earnings would later not be rebated against any loss calculation by the government or the District Court at the initial sentencing, or the re-sentencing.

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

At the end of 2008 and well through 2009, Mr. Martinovich and MICG's executive team strongly believed in the future success of the Venture Strategies Fund, as well as the prospects for EPV Solar's eventual public offering. Mr. Martinovich's actions and communications were fully congruent with his belief in these investments. MICG promoted these non-public market allocations during this volatile period as alternatives to the suffering stock and bond markets. MICG representatives also rebalanced to other non-correlated asset categories, such as managed futures, real estate trusts, and annuitized fixed rates. Consistent with his beliefs, Mr. Martinovich allocated new investments into the Venture Strategies Fund for close friends, MICG family members, and close business associates. [See Shareholder Ltrs. Goldberg, Cadieux, Wassmer].[AFF.#16].

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

Throughout the Financial Crisis and the ensuing slow recovery, Martinovich and MICG believed that their comprehensive wealth management business model, and their boutique size, was the best-positioned formula for the next phase of the investment advice industry. And, many successful financial advisors at the large Wall Street firms agreed. Mr. Martinovich took advantage of the current market dislocation, as well as MICG's relatively well-capitalized position, to acquire investment practices for expansion. Mr. Martinovich acquired businesses from Merrill Lynch, UBS Securities, Davenport Securities, Morgan Stanley, and other banks and investment companies. Mr. Martinovich personally injected over a million dollars in new capital, along with contributions from other MICG shareholders, to fund acquisitions and expansion.[AFF.#18].

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

FINRA greatly intensified their audit with a tremendous volume of discovery requests, to include copies of 88,000 MICG emails and dozens of boxes of document requests. FINRA also summoned Mr. Martinovich, along with other MICG management personnel, to the Philadelphia Regional Office to provide sworn testimony focused on the operations of MICG's three hedge funds. Following these independent testimonies, and the subsequent review of the transcripts, MICG's securities attorneys determined that the executive team, as well as the investment bankers, had followed correct regulatory and securities practices, as well as provided consistent testimony among the executive group.[AFF.#19]. Yet, the beta test examination continued.

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

The bankruptcy of EPV Solar in 2010 provided FINRA regulators a "smoking gun" with which they now determined that the MICG Venture Strategies Fund must have over-priced this security back in 2008, and Mr. Martinovich and the executive team must have known that EPV Solar was not a sound investment, even potentially filing bankruptcy two years later. In March of 2010, FINRA released a public notice of allegations of improper practices in the MICG Hedge Funds. This public press release created great strain on the firm, the financial advisors, and the MICG clients. During this post-crisis period of mortgage failures and collapsed 401k plans, the regional media created further panic and strain with consistent coverage of Martinovich and MICG on the front page.

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

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

On Friday, May 7, 2010, at 4:00 PM, Mr. Martinovich received a phone call from FINRA agents who stated that the beta test exam had "switched gears" and the regulators had now "re-audited" the previous five years of MICG's financial reports. FINRA stated that they had now "reclassified equity as debt," thus disallowing millions of dollars of MICG shareholder equity investments in the current Broker-Dealer Net Capital computations. FINRA stated that, pursuant to FINRA regulations, MICG could not operate with this deficiency. These same financials had been examined and audited quarterly and annually for the previous five years by the SEC, the CFTC, the SCC, the Broker-Dealer licensed auditors, and by FINRA, themselves. Now, MICG was mysteriously out of compliance.[AFF.#22].

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

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

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

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

[Footnote 5: The alleged price inflations and higher management fees, the foundation of the government indictment, were actually minor losses per client, relative to their total investment portfolio. In the following trial, sentencing, and re-sentencing, the investor losses from the regulatory action, not from the loss of EPV Solar, were consistently substituted when presenting stories of loss and cause and effect. At trial, the government presented witness after witness with significant losses from the FINRA action, not from the EPV Solar actions of the indictment. The jury certainly could not discern the delineation of these losses from the relatively minor, unfortunate results of EPV Solar. The initial sentencing Court included these significant numbers in the sentencing calculation although there had never been one allegation of fraudulent activity in the MICG Stock or Bond Offerings. Even at the eventual re-sentencing, the government supplied, and greatly affected, the sentencing Court with letters of financial loss - from the FINRA illegal closure, not from the activities of the indictment. Also, the government presented three witnesses, again, at re-sentencing to speak of the effects of the FINRA closure, although presented as the effects of Mr. Martinovich's actions of the indictment. This bait and switch, from the beginning has greatly affected the Court's understanding of the loss and nexus of causation.[AFF.#27]].

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

This Offer of Settlement stated, "Respondents submit this offer to resolve this proceeding and do not admit or deny the allegations of the Complaint. Respondents also submit this offer upon the condition that FINRA shall not institute or entertain, at any time, any further proceeding as to Respondents based on the allegations of the Complaint, and upon further condition that it will not be used in this proceeding, in any other proceeding, or otherwise, unless it is accepted by the National Adjudicatory Council (NAC) Review Subcommittee, pursuant to FINRA Rule 9270.[Atch. 39][AFF.#29].

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

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

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

The government alleged, "(T)he defendant executed a lengthy and complex fraud by enticing investors to put their money into a hedge fund he solely controlled through the use of false representations and ommissions; falsely inflating the value of the assets in the hedge fund to serve his own ends...Martinovich developed a lavish exorbitant lifestyle...Rather than obtain independent valuations of the Venture fund's assets...Martinovich doubled the value of the EPV Solar shares...because Martinovich wanted to take a substantial fund management fee, Martinovich denied redemption requests...He did not disclose the negative impact the market crash had on EPV...the incentive fee served as a needed injection of cash...increases that were rubber stamped by the so-called valuation expert..."

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

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

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

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

The trial began on April 10, 2013. The prosecution presented a well-constructed narrative of a wealthy, successful businessman and civic leader who turned to fraud and greed to support his lavish lifestyle following the Financial Crisis. Over the course of the four-week trial, the courtroom monitors repeatedly displayed pictures of Mr. Martinovich's homes and automobiles, and the Director of The Bellagio VIP Host Services personally testified to describe Mr. Martinovich's trips to Las Vegas. The prosecution skillfully presented witnesses who described their lack of understanding of their investments, their belief that all of their investments were liquid and available at any time, and that they never understood the Private Placement Memorandums, the Subscription Agreements, or the Comprehensive Financial Plans prepared by MICG. Key to the conspiracy narrative was the belief that Mr. Martinovich had personally tricked his executive team, the investment bankers, the solar valuation expert, and the independent auditors, who all fraudulently raised the price of EPV Solar in order for Mr. Martinovich to ultimately earn more management fees.

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

At one point in the trial following Judge Doumar's delivery of a curative jury instruction exactly opposite of the instruction just agreed upon by the prosecution and the defense, defense counsel Mr. Broccoletti leaned over to Mr. Martinovich and stated, "Well, at least you just won your appeal."[AFF.#35].

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

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

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

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

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

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

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

Mr. Martinovich was denied the right of self-representation on appeal in contravention of Fourth Circuit Rule 46(f), and was eventually assigned court-appointed appeal counsel, Mr. Lawrence Woodward, of Virginia Beach, Virginia. Mr. Martinovich was permitted to submit a Pro Se Supplemental Brief along with Mr. Woodward's brief on the Merits. Martinovich's appeal submissions argued that there was insufficient evidence for a conviction, the Court's conduct was reversible error, the loss determination was in error, the Court's sentencing was reversible error, the perjury enhancement was error, the money laundering charge was error, the Court's jury instruction was error, and the forfeiture and restitution calculations were invalid. [Case No. 13-4828].

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

These Motions respectfully request Judge Allen's recusal in light of her strongly asserted beliefs that (1) Martinovich requires deep and complex mental health treatment without having ordered a psychological examination or competency hearing, (2) in reference to trial counsel, Mr. James Broccoletti, a primary subject of the § 2255 Motion's claims of ineffective assistance, Judge Allen asserted, "For those of you who don't know Mr. Broccoletti, if he's not the best attorney in Virginia, he's one of the best...and I would venture to say across the United States of America," and (3) in reference to resentencing counsel, Mr. Lawrence Woodward, also a primary subject of the § 2255 Motion's claims of ineffective assistance, Judge Allen asserted, "Mr. Woodward is right there shoulder to shoulder...toe to toe...with the best attorney in Virginia...and I would venture to say across the United States of America." [Sent. Tr. p.90-91].

On January 3, 2018, Mr. Martinovich filed a Motion to Recall the Mandate in Fourth Circuit Court of Appeals Case No. 13-4828, which Order previously vacated the sentence and replaced the judge in Case No. 4:12cr101, yet upheld the conviction primarily based upon the plain error standard of review restrictions. Subsequent to this decision, the Fourth Circuit vacated the conviction in United States v. Lefsih and the Seventh Circuit vacated the conviction in United States v. El-Bey, with both cases possessing nearly indistinguishable legal factors with United States v. Martinovich, only diverging with the final decision. All three cases included egregious interference and bias by the district judge at trial, exacerbating jury instruction errors, the government themselves feeling compelled to intercede at trial to protect the record, the Appeals Court determining there was sufficient evidence, and the trial court errors not being preserved at trial therefore forcing plain error review by the Appeals Court. Yet, Messrs. Lefsih and El-Bey's convictions were overturned with the Court stating, "(t)he unfairness of the trial require(d) reversal. Any other holding would constitute the adoption of the principle that a defendant the court thinks is obviously guilty is not entitled to a fair trial." But, Mr. Martinovich's conviction was upheld despite the Court stating, "More importantly, such conduct challenges the fairness of the proceedings...such conduct tends to undermine the public's confidence in the integrity of the judiciary." Following a substantial government response requested by the Fourth Circuit, and a Martinovich Reply, Mr. Martinovich's Recall the Mandate was Denied on January 29, 2018.

On March 4, 2018, Mr. Martinovich filed two Petitions to vacate his conviction and sentence pursuant to 28 U.S.C. § 2255, one in Case 4:12cr101 (4:18cv28) "Case 1," and one for Case 4:15cr50 (4:18cv27) "Case 2," along with a 304-fact Affidavit in Support, as well as 43 Exhibits of contemporaneous documentation and supporting Affidavits. In Case 2, the District Court dismissed all ten (10) substantial Grounds without an evidentiary hearing and without even permitting the Government to respond to the substantial evidence presented. Currently, Case 2 is before the Fourth Circuit Court of Appeals requesting a certificate of appealability. In Case 1, in contravention to Rule 4 demanding immediate action, the District Court delayed ten (10) months before even ordering the Government to respond to the eighteen (18) non-frivolous, non-conclusory Grounds which demand vacation of conviction and sentence. Currently, responses and replies have been filed, and Mr. Martinovich awaits the District Court's response, five years later.

[see Martinovich Amended Affidavit at Doc. #293 Case 4:12cr101;
43 Exhibits at Doc. #280 Case 4:12cr101]