Dkt. No 24-1381

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

SECURITIES AND EXCHANGE COMMISSION

v.

JOSEPH CAMMARATA,

Defendant-Appellant.

On Appeal from the Court's Order, ECF# 348 in the United States District Court for the Eastern District of Pennsylvania,
Case No. 2:21-cv-4845 and Related Case No. 2:21-cr-427
(Chad F. Kenney, J.)

INFORMAL BRIEF BY PRO SE APPELLANT CAMMARATA

I. Background

Mr. Cammarata, the pro se Appellant, had an impeccable 31-year career on Wall Street, without a single violation, infraction, or compliant, for over three decades, in the most highly regulated industry in the country. During that time, he developed one of the first electronic trading systems in 1992, the world's first market data aggregator and smart order router in 1998, and then created artificial intelligence for trade routing in 2012. These technologies sold for over $2 billion, in which Mr. Cammarata had amassed sizable wealth and was a well-respected venture capital (angel) investor in approximately 30 businesses; when his career was ended and he was charged with, arrested and convicted for a misunderstood non-existent crime. The government never knew or checked to see that the 10 million "trades that Mr. Cammarata's entities filed securities class actions claims on, were owned by him or his entities" (every witness testimony on cross-exam in the criminal trial transcript of 21-cr-427-CFK), that he owned and lawfully assigned to his legal foreign entities to file class action claims for. Every trade filed by Mr. Cammarata were trades that he himself owned, and not his clients as the government later constructively amended the indictment at trial, when they realized their prosecution was fatally flawed. Additionally, these trades were not only assigned to Mr. Cammarata's legal entities, but were fully disclosed as the "beneficial owner" on every claim filing. The government was ignorant, among other things, that assignment of securities class action settlement claims was very common, legal, and verified by the Supreme Court in 2008 with Sprint Communic'ns Co., L.P. v. APCC Servs., Inc., 554 U.S. 269, 128 S. Ct. 2531, 171 L. Ed. 2d 424. Therefore, the government made material misrepresentations to the grand jury to improperly coerce an indictment, falsely stating that any eligible claimants, "were required to show two essential facts in order to qualify for an award of settlement funds.", (see paragraph 11 of the indictment and superseding indictment in 21-cv-427-CFK). These proven false "essential facts" were the entire case-in-chief and were verified as completely untrue by the testimony of every claims administrator witness at trial; the government and judge was required to dismiss the indictment sua sponte. Throughout this brief the Appellant will identify docketed items as ECF#'s referencing the SEC civil case, 21-cv-4845-CFK, unless, otherwise stated.

Mr. Cammarata, has argued since November 3rd, 2024 that he was wrongfully charged with a crime that never existed or was possible, and there has been a terrible miscarriage of Justice that remains ignored. There have been three (3) federal prosecutions against him, including two criminal trials (a fraud case, 21-cr-427-CFK and a resultant tax evasion case 22-cr-639-PGS) that ended in convictions and a known frivolous civil action by the Securities and Exchange Commission ("SEC") charging securities fraud (21-cv-4845-CFK). The SEC case is the center of the issues, that gave rise to the criminal convictions and a final judgment, on the basis of collateral estoppel. There exists a well-established record demonstrating that Cammarata was charged with crimes, immediately stripped of Constitutional rights and due process, to prejudice him in his criminal trials.

The court had an impermissible objective from the start, to freeze over $78 million from Mr. Cammarata to repeatedly deny him criminal defense counsel of his choosing (from over $30 million of untainted assets), and make sure he, his family, former employees, and public shareholders were all punished. The record will confirm that the court engaged in numerous Constitutional violations that are immutable and often unchallenged. They prejudiced Mr. Cammarata in the criminal trials, allowing the court to restrain all of Mr. Cammarata's life work and hard earned assets, for the government and court's objective of a per se taking, excessive fine, and denying Mr. Cammarata and his family their assets, causing him to suffer massive damage, to his estate, and imprison him to make a fair defense impossible. The Appellant will demonstrate throughout this brief, that there were not only statutory and federal rule violations, the denial of Constitutional rights and protections, such as due process, but also a right to criminal defense counsel of his choosing from many millions of untainted dollars, frozen the day after his arrest, through a "parallel" SEC civil action of the same criminal judge.

As a result of the court's demeanor and actions, there is undeniable evidence that any man, knowing all the facts, would conclude that the judge's impartiality might reasonably be questioned. Many relevant determinations of law have already been decided by this Court for some of the same judicial actions against Mr. Cammarata. While there are numerous precedential cases, the specific Third Circuit cases of United States v. Antar (Antar II), 53 F.3d 568 (1995), SEC v. Antar, civil case No. 93-3988 (D.N.J) and the granted Writ of

Mandamus In re: Antar, 71 F.3d 97, loom very large over the requisite disqualification of the district court judge. In Antar, the judge had nowhere near the deplorable conduct and abuses of discretion herein, but that judge did order a freeze of defendant assets, ordered repatriation, had hearings on back to back days between the criminal and civil cases (not the same day and time, 1,000 miles apart), and at sentencing, stated that his goal was to give back the proceeds recovered, to the public.

As Mr. Cammarata has been forced to defend himself pro se, he has tried to detach emotion and base this brief for disqualification of the judge, on the statutes, facts, the record, and the law. That notwithstanding, the Supreme Court and Circuit have held that, "judges [are] to hold pro se complaints 'to less stringent standards than formal pleadings drafted by lawyers.'" Mala v. Crown Bay Marina, Inc., 704 F.3d 239, 244, 58 V.I. 691 (3d Cir. 2013) (quoting Haines v. Kerner, 404 U.S. 519, 520, 92 S. Ct. 594, 30 L. Ed. 2d 652 (1972)). There are obligations of the Courts, "driven by the understanding that '[i]mplicit in the right of self-representation is an obligation on the *part of the court to make reasonable allowances to protect pro se litigants from inadvertent forfeiture of important rights because of their lack of legal training*.'" Higgs v. AG of the United States, 655 F.3d 333, 339 (3d Cir. 2011) (quoting Triestman v. Fed. Bureau of Prisons, 470 F.3d 471, 475 (2d Cir. 2006)). Just "because it is difficult to interpret a pro se litigant's pleadings" does not mean "it is not necessary to do so." Id.

II. Scope of Review

Under 28 U.S.C.S. § 455(a), "recusal is required when a reasonable person, with knowledge of all the facts, would conclude that the judge's impartiality might reasonably be questioned. In this regard, a party's displeasure with legal rulings does not form an adequate basis for recusal".

"A federal judge must recuse when her "impartiality might reasonably be questioned." 28 U.S.C. § 455(a); see also Butt v. United Bhd. of Carpenters & Joiners of Am., 999 F.3d 882, 891 (3d Cir. 2021). "A party seeking recusal need not show actual bias on the part of the court, only the possibility of bias. . .. Under 455(a),

if a reasonable man, were he to know all the circumstances, would harbor doubts about the judge's impartiality under the applicable standard, then the judge must recuse.", Krell v. Prudential Ins. Co. of Am. (In re Prudential Ins. Co. Am. Sales Practice Litig. Agent Actions), 148 F.3d 283, 343 (3d Cir. 1998) ("The standard for recusal is whether an objective observer reasonably might question the judge's impartiality.")

"The judge does not have to be subjectively biased or prejudiced, so long as he appears to be so.", quoting Liteky, U.S. at ____, 114 S. Ct. at 1156 n.2); Alexander v. Primerica Holdings, Inc., 10 F.3d 155, 162 (3d Cir. 1993) ("The public's confidence in the judiciary, which may be irreparably harmed if a case is allowed to proceed before a judge who appears to be tainted", requires that "justice must satisfy the appearance of justice.") (quoting In re Asbestos Litig., 977 F.2d 764, 776 (3d Cir. 1992)); Therefore, if a "reasonable man, were he to know all the circumstances, would harbor doubts about the judge's impartiality" under the applicable standard, then the judge must recuse", Potashnick v. Port City Constr. Co., 449 U.S. 820, 101 S. Ct. 78, 66 L. Ed. 2d 22 (1980)).

"In determining whether a judge had the duty to disqualify him or herself, our focus must be on the reaction of the reasonable observer. *If there is an appearance of partiality, that ends the matter*.", Haines v. Liggett Group Inc., 975 F.2d 81, 98 (3d Cir. 1992); Lewis v. Curtis, 671 F.2d 779, 789 (3d Cir.) ("Impartiality and the appearance of impartiality in a judicial officer are the sine qua non of the American legal system."), Atari v. North American, 459 U.S. 880, 103 S. Ct. 176, 74 L. Ed. 2d 144 (1982).

III. Procedural History

On October 28th, 2021, the Assistant U.S. Attorneys made material misrepresentations to the grand jury of the EDPA, that there were "two essential facts required for a claimant to show, in order to qualify for an award of settlement funds" (21-cr-427-CFK, paragraph 11), which the grand jury relied upon to indict. Those "two essential facts required" were not only completely false, but were proven to be so at the criminal trial by every government witness, and forced a constructive amendment to the indictment at trial. Armed with a defective one

count indictment for conspiracy to commit wire and mail fraud, the FBI arrested Mr. Cammarata on November 3rd, 2021, at the Miami International Airport, where he had business meetings in Florida that week. Mr. Cammarata was detained at FDC Miami from November 3rd, through November 17th, 2021, after the government denied bail, and the Honorable Miami judge later approved bail on the government's requirement of a $20 million (excessive) bail package.

The same day as his arrest, November 3rd, the Securities and Exchange Commission ("SEC") filed a "parallel" civil complaint alleging securities fraud. The SEC complaint was immediately assigned to the same district court judge as the criminal indictment, so that he had always presided over both actions at all times. Cammarata is on the record since the start of that action, that the SEC had never stated a valid claim for which relief could be granted (ECF# 142) and that the district court did not and never has possessed subject matter jurisdiction, described in a summary judgment motion (ECF# 183), filed December 12th, 2022, was never ruled on or provided an appealable order.

IV. Arguments

1. The Ex-Parte TRO and Injunction Had Been Unlawfully Granted and Enforced for over Two Years, without Adjudicatory Authority

A. Improperly Granted Ex-parte TRO

That same day that Appellant was arrested for the "fraud" case, November 3rd, 2021, the SEC also filed their civil complaint (ECF# 1) and an ex-parte temporary restraining order ("TRO"), (ECF# 2), to freeze over $78 million of his assets, without any valuation or tainted analysis. This was for an alleged $16 million "ill-gotten" gain, where after almost five (5) years, the government cannot so much as identify a single "victim" or anyone that suffered any loss. The court then granted the TRO and related asset freeze against Mr. Cammarata, on November 4th, 2021 at 9am (ECF# 4), in violation of many Constitutional requirements. The court agreed with the SEC's purported showing of "ongoing and continued" securities violations and within hours, reviewed the

complaint and ex-parte TRO application; then considered, granted, and ordered the Ex-parte TRO from the over 738 pages (ECF# 1 through ECF# 4), all in considerably less than 24 hours. The court failed to satisfy any of the required elements or conditions of 15 USC 78u(d)(1), Fed. R. Civ. P. 65 ("Rule 65"), and law mandated by the Third Circuit and Supreme Court to obtain and extend the TRO. In the interest of brevity, this brief will only highlight some of the arguments detailed in the Appellant's Petition for a Writ of Mandamus to dismiss the TRO/Injunction, (In Re: Cammarata, Case # 24-2019)

The Supreme Court has instructed that TRO's are a "drastic and extraordinary remedy, which should not be granted as a matter of course." Monsanto Co. v. Geertson Seed Farms, 561 U.S. 139, 165, 130 S. Ct. 2743, 177 L. Ed. 2d 461 (2010). The Courts have earnestly warned against the damage and high burden required to show (future) "threatened harm" in granting an ex-parte TRO. "For a time, courts were too quick to issue injunctions on modest showings of threatened harm". Commonwealth Chem., 574 F.2d at 99 ("It is fair to say that the current judicial attitude toward the issuance of injunctions on the basis of past violations at the SEC's request has become more circumspect than in earlier days."); "And courts have consistently explained that SEC injunctions must be intended to deter the violator from further infractions (and thereby protect the public), not punish past misconduct". See, e.g., Bonastia, 614 F.2d at 912.

With those strict standards in mind, the issuing of a TRO is only warranted if a Plaintiff has demonstrated the following four (4) elements: "(1) a reasonable probability of eventual success in the litigation, and (2) that [they] will be irreparably injured . . . if relief is not granted . . .. [In addition,] the district court, in considering whether to grant a preliminary injunction, should take into account, when they are relevant, (3) the possibility of harm to other interested persons from the grant or denial of the injunction, and (4) the public interest." Reilly v. City of Harrisburg, 858 F.3d 173, 176 (3d Cir. 2017), as amended (June 26, 2017) (citing Del. River Port Auth. v. Transamerican Trailer Transport, Inc., 501 F.2d 917, 919-20 (3d Cir. 1974)). "The failure to establish any of these elements, however, renders the issuance of an injunction inappropriate". See QVC, Inc. v. Resultly, LLC, 99 F. Supp. 3d 525, 532 (E.D. Pa. 2015). "The first two factors - likelihood of success and irreparable harm -

are the most critical, and a plaintiff's failure to meet *either one is dispositive*". Reilly v. City of Harrisburg, 858 F.3d 173, 179 (3d Cir. 2017).

The district court never met any requirements of these well-established elements for the TRO, and froze all of Mr. Cammarata's assets to impermissibly protect the court's ability to satisfy a premature civil judgment and criminal restitution. "Of particular importance is that the plaintiff must have some claimed 'lien or equitable interest' in a defendant's assets *beyond that of a possible money judgment*." Bradley v. Amazon.com, Inc., 2023 U.S. Dist. LEXIS 46056, 2023 WL 2574572 (E.D. Pa., Mar. 17, 2023), citing, U.S. ex rel. Rahman v. Oncology Assocs., 198 F.3d 489, 496 (4th Cir. 1999) ([T]he general equitable powers of the federal courts do not include authority to issue preliminary injunctions [preventing the defendant from transferring unencumbered assets] in actions solely at law[.])". The TRO froze over $78 million dollars of assets, most of which was untainted (from the $16 million allegation), while the SEC could suffer no damages (past, present, or future), certainly not irreparable harm, and neither the DOJ nor the SEC have ever identified even a single "victim" or loss to anyone (as required for disgorgement, restitution, and the 22-point "loss" enhancement the judge improperly sentenced Cammarata with in the criminal "fraud" case). This brief will also demonstrate that the court was very clear in its purpose for the asset freeze, and it was improper as described by the aforementioned law.

There was no doubt what the court's goal was from the start, it was always stated right in the TRO order [1] (ECF# 4, page 2), "to protect this Court's ability to award relief in the form of disgorgement of the alleged illegal profits from the violations, prejudgment interest, and civil penalties", that was not only improper prior to any trial, verdict, or judgement, but also did not qualify as irreparable "harm". Significantly, please see the

[1] This impermissible purpose along with almost every other order, was drafted by the SEC. Remarkably, the court blindly accepts the SEC's "proposed orders" almost verbatim as the SEC drafts them, often with the same typographical, format, and font errors, validating the court's lack of autonomous legal review. Please see the SEC proposed orders and then the actual "court's" order, including the SEC proposed ECF# 14 and "court's" verbatim order ECF# 16 and 17 (unlawfully extending the TRO), the SEC's TRO Order ECF# 2-3 vs the "court's" ordered TRO (ECF #4), less than 24 hours, with over 738 pages to "review". Most importantly, in the SEC's court's order (ECF# 4), where the court simply deleted a few sections (which it is experienced in doing for hearing transcripts), the rest of the order and problematic reason for the TRO, "to freeze a defendant's funds to help ensure satisfaction of a judgment" was unlawful and written by the SEC. Look at the page numbers in ECF# 4, they are all either 5, 9, or 16, and have the same formatting errors, validating it was a mere copy and paste order. Here, like in Antar, the judge is evidenced to have engaged in the appearance of bias and depravation of rights, to achieve his improper objective from the start.

additional guidance by the Supreme Court and Circuit, “For a plaintiff who specifically seeks a prejudgment freeze of a defendant's assets, he must overcome the general rule that, a federal court has no authority to freeze a defendant's funds to help ensure satisfaction of a judgment should the plaintiff prevail on an underlying legal claim." See Symphony FS Ltd. v. Thompson, No. 5:18-CV-3904, 2018 U.S. Dist. LEXIS 214641, 2018 WL 6715894, at *8 (E.D. Pa. Dec. 20, 2018) (citing Grupo Mexicano de Desarrollo v. Alliance Bond Fund, Inc., 527 U.S. 308, 333, 119 S. Ct. 1961, 144 L. Ed. 2d 319 (1999)).

This unlawful and biased objective, was the same goal of the judge in the precedential case from this Circuit of, U.S. v Antar, 53 F.3d 576 (1995). As seen above, there is no disputing that the court’s order was clearly stated for that explicit purpose and was unquestionably, impermissible. This Court had declared, “This is a case where the district judge, in stark, plain and unambiguous language, told the parties that his goal in the criminal case [and civil case’s TRO], from the beginning, was something other than what it should have been and, indeed, was improper.”, U.S. v Antar, 53 F.3d 576.

B. Failure of Proper Notice and Opportunity to Be Heard

The TRO was granted on November 4th, 2021 at 9am according to the court’s order (ECF# 4), and at the same time, Mr. Cammarata was in an initial criminal bail hearing in Miami, which the government denied, citing a flight risk. Since the bail hearing was held out of the district, the Honorable Jonathan Goodman of Miami, was precluded from granting bail, and there was a three-day waiting requirement, which scheduled the next bail hearing to be November 9th, 2021 at 8:30am in the Miami federal court, while Cammarata was still detained at FDC Miami. Unbeknownst to Mr. Cammarata, the Philadelphia district court judge also scheduled the Constitutionally Mandated Rule 65(b)(2) show cause hearing to occur on, none other than November 9th, 2021 at 9am, in his Philadelphia Courtroom, and never noticed Mr. Cammarata.

The Supreme Court has stated that, “our entire jurisprudence runs counter to the notion of court action taken before reasonable notice and an opportunity to be heard has been granted [to] both sides of a dispute.'" Hope I,

956 F.3d at 160 (quoting Granny Goose Foods Inc. v. Bhd. of Teamsters, 415 U.S. 423, 439, 94 S. Ct. 1113, 39 L. Ed. 2d 435 (1974)). These same Courts have already resolved these precise issues, such as, “Parties whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right they must first be notified. It is equally fundamental that the right to notice and an opportunity to be heard must be granted at a meaningful time and in a meaningful manner”. Fuentes v. Shevin, 407 U.S. 67, 80, 92 S. Ct. 1983, 32 L. Ed. 2d 556 (1972). Cammarata was not timely or reasonably noticed of the hearing, had no way to attend or be represented, and certainly denied “the fundamental requirement of [procedural] due process is the opportunity to be heard at a meaningful time and in a meaningful manner.", Mulholland v. Government County of Berks, 706 F.3d 227, 241 (3d Cir. 2013), (explaining that to state a substantive due process claim, a plaintiff must allege facts raising the inference that defendants' actions were so arbitrary, ill-conceived or malicious as to shock the conscience)”. Both simultaneous November 9th hearing transcripts are publicly available, the SEC’s civil ex-parte TRO show hearing in EDPA is listed as Case # 2:21-cv-04845-CFK, Document 46 and the criminal bail hearing in Miami is listed under case # 1:21-mj-04176-EGT, Document 17.

The court had already ordered an ex-parte TRO in violation of the statutes, rules, and law, but then held a simultaneous hearing (required to show cause) in Philadelphia, without notice to the Defendant after freezing over $78 million of his assets, without a valuation or tainted analysis, while he was detained in Miami. The next day, November 10th, 2021, the court unconscionably extended the terms of the overly broad, unvalued, and already unlawfully obtained TRO in his order (ECF# 16, and 17) and stated, “Having reviewed the Complaint and SEC’s Motion for a Temporary Restraining Order and supporting documents (Dkt. Nos. 1-3), and having heard from those parties who appeared at the Hearing, the Court finds that good cause exists, and that those parties who appeared for the Hearing consented, to extend the relief provided in the TRO Order”. That admission alone demonstrated that the court had not found “good cause” or “consent” to extend the TRO for Mr. Cammarata. About the only requirement of Rule 65(b)(2) that the court complied with was having the hearing within 14 days, and that indeed was the same day and time as Cammarata’s bail hearing, while the government knowingly participated in both hearings.

The court failed to describe the injury and state any "irreparable" harm; how, for good cause it was extended for Cammarata; when the adverse party (Cammarata) did not consent to an extension. Notably, the district court has never addressed or disputed these documented facts and Constitutional violations. There is no dispute that the unnoticed and simultaneous TRO hearing denied Cammarata of Constitutional Rights, due process, and prejudiced him in the criminal trials by constantly denying 6th amendment legal resources, lacked jurisdiction. Cammarata has also argued that at the November 9th, 2021 TRO hearing, the court lacked tribunal jurisdiction and personal jurisdiction over him and his assets, while he was detained in Miami and his assets were frozen in New Jersey. Personal jurisdiction is established by a "defendant's physical presence before the court," State v. Korotki, 418 A.2d 1008, 1012 (Del. Super. Ct. 1980); cf. Holloway v. Brush, 220 F.3d 767, 773 (6th Cir. 2000)

C. The TRO Expired Several Times

"Every temporary restraining order issued without notice must state the date and hour it was issued; describe the injury and state *why it is irreparable*; state why the order was issued without notice; and … *The order expires at the time after entry not to exceed 14 days* that the court sets, unless before that time the court, for good cause, extends it for a like period or the adverse party consents to a longer extension. The reasons for an extension must be entered in the record", Fed. R. Civ. P. 65(b)(2) and none of this was complied with and is satisfactorily documented.

On December 3rd, 2021 an alleged "stipulation" that the court tries to claim was Cammarata's consent, was unauthorized and also moot, as the TRO had already expired on November 18th, 2021, which was 14 days after issuance. If the court wanted to continue disregarding due process and claim the unnoticed and simultaneous Nov 9th, 2021 hearing was valid, then the TRO still expired 14 days after that on November 23rd, or even 14 days after the courts November 10th order which would have been November 24th, 2021. All of these facts are on the record and never addressed or disputed by the court. Fed. R. Civ. 65(b)(2) states, "Absent good cause or consent to extend, [which there was neither] a TRO must expire within fourteen (14) days". The TRO

indisputably expired in November 2021, and the court has acted without adjudicatory authority, or a valid injunction for over two and a half years, and has never refuted any of this, for good reason. "A favorable or unfavorable predisposition can . . . deserve to be characterized as 'bias' or 'prejudice' [when] even though it springs from the facts adduced or the events occurring at trial, it is so extreme as to display clear inability to render fair judgment." Liteky, U.S. at , 114 S. Ct. at 1155.

2. <u>First Amendment Violations, Deep-Seated Antagonism, and Personal Conflicts</u>

There have been sections of hearing transcripts in which the court has modified or deleted, that are incriminating and troubling for the court to have on the record. Equally concerning, is the court's failure to docket legal petitions filed with the court, and an ongoing refusal to address the on the record challenges of denied due process, regarding the invalid injunction, and the Appellant's still undisposed summary judgment motion filed on December 12th, 2022. This Court has also previously reviewed these issues for First Amendment concerns and abuses of discretion.

> "We exercise plenary review over whether the First Amendment or the common law creates a presumptive right of access to judicial documents or proceedings." Smith, 123 F.3d at 146. In considering a First Amendment right of access claim, "we exercise independent appellate review of the record"; our scope of review of factual findings is therefore "substantially broader than that for abuse of discretion." Id. (quoting United States v. Antar, 38 F.3d 1348, 1357 (3d Cir. 1994)). With respect to the common law right of access claim, we review for abuse of discretion. Id.

> See, Press-Enterprise Co. v. Superior Court, 478 U.S. 1, 106 S. Ct. 2735, 92 L. Ed. 2d 1 (1986). "In Antar, we held that, assuming there are transcripts of a proceeding, the First Amendment right of access extends equally to the transcripts as well as the courtroom proceedings giving rise to those transcripts". See 38 F.3d at 1361. In Press-Enterprise, the Supreme Court similarly determined that the district court erred in sealing the transcript of a criminal preliminary hearing.", See 478 U.S. at 13, 106 S. Ct. at 2743.

Mr. Cammarata has provided that the district court revealed his tell-tale heart and objective, in his November 4th, 2021 order (ECF# 4) and at the November 9th, 2021 Philadelphia TRO show cause hearing (and order, ECF# 16) when Mr. Cammarata was not noticed, able to attend or represented, while being held on the same day and time as his criminal bail hearing (he was in 1,000 miles away). At the November 9th TRO hearing, the SEC had admitted that it had not done any valuation or untainted analysis, so the attorney for Ms. Nina Cammarata, tried to obtain immediate living expenses for her and Mr. Cammarata's son, and asked to be heard. The court was excited and started toward Mr. Hughes with what a heinous act they were discussing and went on to say, "I consider this a crime against the courts!". The transcript now simply states that everything the court said was, "No audible response" (ECF# 46 page 7). The audio can be reviewed and the court has recently not denied making the comment, but rather states, "This comment does not appear in the transcript of this hearing. See ECF No. 41." (ECF# 347 footnote #2), but it would not, because it was deleted.

One possible explanation for this antagonism and personal offense taken, may be an undisclosed relationship with a Jeannine M. Kenney. Upon information and belief, Jeannine M. Kenney, is a senior attorney at Hausfeld LLP law firm in Philadelphia, who is similar aged to the judge. While Appellant admits that this is speculation, the fact that she specializes precisely in class action cases, a relationship would explain why the judge felt so passionate, that there is "a crime against the courts". If there is in fact a relationship, it would certainly qualify as a breach of 28 U.S.C. 455(b)(1) and would needed to have been disclosed at a minimum.

There are also undeniable deleted segments of the transcript, from the criminal fraud sentencing hearing (21-cr-427-CFK, ECF# 310). While this Court can see these few examples of heated, sarcastic, and belittling comments, there are several other sections that the court has deleted parts of the transcript as well. They either stated allegations of Constitutional and rights violations or a deep-seated antagonism. The most egregious and easy to find from the audio records of the sentencing hearing are from page 78 and 79.

THE COURT: All right.

MR. CAMMARATA: I was one of the largest traders on Wall Street for ten years. And the Court -- the Court missed that.

THE COURT: You were -- I'm telling you, you're right. You were a lot of things.

MR. CAMMARATA: The Court missed that.

THE COURT: And you were very, very good at what you did.

MR. CAMMARATA: Well, I look forward to –

The parts of this section spoke about direct appeals, Constitutional violations and reversals, and it was deleted. Mr. Cammarata was tired of being belittled by an unsavory judge saying he was good at a lot of things and did them “very very well”, insinuating a crime, who clearly did not understand the case, trading technology, brokerage, or business entities. Mr. Cammarata said, “I look forward to serving notice of appeal to the Third Circuit, to see the prejudice, structural errors and violation of due process”. This was removed from the transcript, and the court was obviously jousting with Mr. Cammarata and did not want it on the record, but then it got worse.

THE COURT: There's no doubt about it.

MR. CAMMARATA: I look forward to serving

THE COURT: And I --

MR. CAMMARATA: -- with honor and integrity.

This is completely tampered and removed a dialogue between Mr. Cammarata and the court. Mr. Cammarata went on to say, “I look forward to serving the direct appeal to a Court with honor and integrity, which will reverse you”. The court became irate and said, “Honor and integrity, don’t tell me about honor and integrity, you stole $40 million, so don’t tell me about honor and integrity!”. Notice, how all of this is conveniently

removed from the transcript. This can all be validated by listening to the audio recording and clearly below the court, referred back to Mr. Cammarata's now cropped statements of the court's lack of honor and integrity.

> THE COURT: -- and I -- I -- I've read -- I've read all the -- I've read all of the -- the letters that came in and they absolutely showed another side to you. And they also absolutely sort of indicated in there between the lines, this side of you. Where you can sit there and say, Judge, you have no clue. And you can sit there and say, the jury had no clue, and nobody has no clue. And you can sit there and tell me about honor and integrity. I get that.

While the court was angry, and offensive, there were antagonistic comments that were clear, and the court removed all references to the Third Circuit, direct appeal, and statements that the district court acted in violation of the Constitution, due process, was biased and will necessitate a reversal. There was another documented example from the fraud criminal sentencing hearing (21-cr-427-CFK, ECF# 310, page 75), where the Appellant's statements were again blatantly removed from the transcript.

> MR. CAMMARATA: No, they were all my trades, Your Honor. I owned them. It was clear that we showed the D.L.A. the -- calling them a hedge fund was stupid, completely immaterial. There was never a single claims administrator asked what type of firm this is. The Court made a -- a -- a -- an error. They believed the prosecution from the beginning. I realized the first statement you made.

Mr. Cammarata, finished that sentence with a diatribe containing accusations of prejudicial bias and misconduct. The rest of that sentence was, "I realized the first statement you made, was, 'I consider this a crime against the courts', that I was never afforded a fair criminal trial" … and went on to say that the court froze all of his assets without a valuation or tainted analysis, to repeatedly deny him criminal defense counsel of his choosing, which prejudiced him terribly by denying him from retaining defense counsel until less than five weeks before trial, improper revocation of bail (from documented perjury by FBI agents), all of the evidence

being produced by the cooperating witness with no chain of custody and much being noticeably tampered, and the failing to rule on valid civil case motions. Once more, all of that was deleted from the transcript and the judge again responded to more than is shown.

> THE COURT: Mister, I can guarantee to you from the beginning, I withheld my judgment, not that my judgment mattered at all throughout this entire case. The evidence spoke for itself.

Despite the modified transcript, and now ending with an indecipherable statement by Mr. Cammarata, the court's response makes it crystal clear that its answer was responding to much more than "I realized the first statement you made."

Another, glaring example of the court's whitewashing and willful obstruction of a proper record, is demonstrated by not docketing the April 6th, 2023 Petition for 6th Amendment Criminal Defense Fees from the law firm of Ballard Spahr. Mr. Cammarata had been requesting criminal defense fees for Ballard Spahr since December of 2022, when the law firm of Cohen-Williams stated on the record that there were no more funds available and that they refused to file any post-trial motions or make the restitution and loss arguments that Mr. Cammarata presented to them, as there were irreconcilable "strategic differences". Nonetheless the court repeatedly refused Mr. Cammarata's motions and petitions to the court for criminal defense fees.

When, Ballard Spahr, themselves sent a petition, for legal fees, to the court on April 6th, 2023 and described Constitutional violations, failure to have jurisdiction, and the ongoing denial of due process, the court never docketed the filing or responded. Mr. Cammarata has attempted to docket it multiple times, including filing a "Notice and Update to the Record of Undocketed Filings" mailed to the district court on May 30th, 2024, to have it on the record for this brief, and it has still not been docketed(Appx-1-7). The court's evasion of his responsibilities cannot be overlooked, but rather should lead to a more skeptical assessment of the appearance

of bias and a deep-seated antagonism. Please see Appendix, which is the recently filed "Notice" that attaches the petition. The petition by a reputable law firm, was not ambiguous when it explained to the court that,

> "there is no basis for the SEC's asset freeze or its entire lawsuit against Mr. Cammarata"(Appx4). It further stated that "the SEC cannot and will not be able to prevail on its claim because it cannot prove this necessary 'in connection' element. Indeed, the SEC's complaint is threadbare and illogical" (Appx5).
>
> It then provided additional reasons why there could be no claim stated and the court did not have subject matter jurisdiction. In closing the petition requested 6th amendment funding, "so Mr. Cammarata may exercise his Constitutional right and not be trampled by the power of the federal government. Given that the government has conceded that there are untainted funds, its objection to Mr. Cammarata's request to access the funds to provide for his own defense – both in his criminal proceedings and the civil action – is without basis" (Appx6). Indeed, given that Mr. Cammarata's access to his funds were limited without his ability to truly contribute to discussions regarding strategy and defense, ensuring that he has access to these funds now is imperative to prevent any further due process violations" (Appx7).

This legal petition, in addition to requesting Constitutionally mandated defense funds, clearly put the court on notice that Mr. Cammarata's rights to legal fees and a fair trial had already been trampled, the freeze was without legal basis, and barring resolutions and legal funding, there was a continuation of "further due process violations". The court was also told in no uncertain terms that it did not have subject matter jurisdiction over the SEC action; it was prejudicial and legally problematic for many reasons. The fact that the court refuses to address or docket that petition after multiple attempts, like the omitted transcript dialogues, unquestionably demonstrates the ongoing misconduct of the court in "preventing the compilation of an 'accurate' and 'comprehensive record'".

> "This troubling result reflects a fundamental misunderstanding of the First Amendment: Access means more than the ability to "squeeze through the [courthouse] door." United States v. Antar, 38 F.3d 1348, 1360 (3d Cir. 1994). It means the public's right of "access to information" about "what occur[s]"

in the halls of justice, "not only by witnessing a proceeding firsthand, but also by learning about it through a secondary source." Id. And where a restriction "meaningfully interferes with the public's ability to inform itself of the proceeding" by preventing the compilation of an "accurate" and "comprehensive record," Whiteland Woods, L.P. v. Township of West Whiteland, 193 F.3d 177, 183 (3d Cir. 1999), it is unconstitutional unless narrowly tailored to serve an overriding interest".

To put the issue into harsh relief, Antar made clear that "[i]t is access to the content of the proceeding . . . that matters." Antar, 38 F.3d at 1359-60 (emphasis added); see also id. at 1360 n.14 (emphasizing that the right of access is "concerned with information, not with a particular means of communication"). Thus, "the right of access protected by the First Amendment can involve various 'form[s] of documentation,'" id. at 1360. See also Weaver, 137 S. Ct. at 1913; Press-Enterprise, 464 U.S. at 513. And as our Court has said, "[i]t is access to the content of the proceeding-whether in person, or via some form of documentation-that matters." United States v. Antar, 38 F.3d 1348, 1359-60 (3d Cir. 1994) (emphasis omitted). Moreover, knowledge both of the media's attention to the trial and of the transcript's production (which ensures publicity in perpetuity) may have had a similar effect on the proceedings' participants as real-time public access would have had, keeping them "keenly alive to a sense of their responsibility and to the importance of their functions." Waller, 467 U.S. at 46 (quoting Gannett, 443 U.S. at 380).

3. Appearances of Prejudgment, Bias, and Further Antagonism (from comments and actions)

Antagonism of Defendant and His Family

There were also many exhibitions of a deep-seated antagonism against Appellant and favoritism toward the government by the court, throughout both the criminal and SEC civil actions. Even without displaying, "a *deep-seated favoritism or antagonism* that would make fair judgment impossible", there is still a duty to recuse if there is even the appearance of bias (Liteky v. United States, 510 U.S. 540, 555, 114 S. Ct. 1147, 127 L. Ed. 2d

474 (1994)). The statutes and judicial standard of this Court, requires recusal if a judge's "impartiality might reasonably be questioned.", 28 U.S.C. 455(a). “This language suggests that the *judicial inquiry focuses on appearances-"not on whether the judge actually harbored subjective bias*.", In re Antar, 71 F.3d 97, 101 (3d Cir. 1995).

Below are only a few questionable comments from the January 11th, 2022 TRO hearing, where the court appeared to exhibit a prejudgment of guilt, unwarranted punishment of Mr. Cammarata and his family, a per se taking and excessive fine, violation of 6th amendment rights, denial of status quo, and a display of the court’s disposition.

Please see ECF# 345 pages 2-5:

> Court: “So I don’t see where anything is coming out to Mrs. Cammarata until this whole thing is done”
>
> Court: [pointing an angry finger at Mr. Cammarata’s wife in the courtroom] “And you, - - you were supported by his illegal doings all these years, allegedly.”
>
> Court: “I have a lot of other people in this courtroom, believe me, who have been making money by illegal means. They’re arrested! They have federal defenders, not – not people like Mr. Pozos representing them, and their families are starving, believe me.”
>
> Court: “So Mrs. Cammarata, unfortunately, may have to get a job for now… And it’s a good market to be looking for a job.”
>
> Court: “Given the fact that we’re dealing with a criminal aspect, that given the nature of the allegation that, that $40 Million, you know Mrs. Cammarata may be sitting on zero or minus zero.”

Court: "***That money was derived directly as a result of illegal activity*** because that house was funded since 2013, those mortgage payments were made since 2013, on that house, ***from money derived from an illegal business***."

While the Court may fancy a posture that those comments were perfectly appropriate, not prejudicial, did not demonstrate bias, they would nonetheless, cause any reasonable person to question the judge's partiality, as required under 28 USC 455(a). "[A]ny justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned." We are told, "the test for recusal under 455(a) is whether a reasonable person who is aware of all of the facts might reasonably question a judge's impartiality". See In re Kensington Int'l Ltd., 368 F.3d 289, 302 (3d Cir. 2004).

It is important to note that, there was a previous divorce proceeding that was initiated in early 2019, well before the investigation of the allegations against Mr. Cammarata. The divorce decree was finalized and docketed prior to the sentencing hearing, where the court acknowledged that Mr. Cammarata's ex-wife (and son) were to be paid the agreed upon share, from the frozen funds. Yet for over two and a half years the government and the court still refuse to pay the entitled portion of her assets from the always illegal injunction. As seen from the comments above, the court appeared to revel at financially destroying Mr. Cammarata, his wife, family, former employees and shareholders. To further show the bias against Mr. Cammarata and everyone associated with him, the health insurance for his family and many of his employees was terminated October 31st, 2021, before any arrest or unsealing of the indictment (to anyone more than Erik Cohen, the cooperating defendant). This left not only Mr. Cammarata and his family, but all the other employees that had health insurance (which included a pregnant family, two families with newborn babies, and a cancer patient), without health insurance. This despicable act terminated everyone's health insurance without any notice, until they went to a doctor or realized it the next month. It left everyone with a lapse of coverage and they could not renew until the new year, which was malicious and illustrative of the categorical deep-seated antagonism.

Mr. Cammarata has also been requesting that the court reimburse his family for the approximately $300,000 that they paid for initial criminal attorneys (see ECF# 89,127,129,132, etc.). Mr. Cammarata's elderly parents had to refinance the house they lived in for 50 years to get some kind of representation for their son, as the court refused to release any money from the $78 million asset freeze for the first ten months. Remarkably, the court has paid back both cooperating defendant's parents, a similar amount that they paid out to attorneys, but curiously not Mr. Cammarata. His retired parents now continue to struggle making high interest payments, while the court has held "joint and several" restitution, forfeiture, and disgorgement of over $35 million, since November 4th, 2021. Mr. Cammarata's estate has suffered documented damages of over $55 million and the court has also never paid Mr. Cammarata a penny of living expenses. This was all undeniable antagonism.

The court has also always failed to maintain the "status quo" not only for Mr. Cammarata's ex-wife and son, but had immediately stopped all maintenance payments on some of his largest assets, including two business aircraft, eight boats, and a private island resort business that have all been drastically devalued. The court was only allowing insurance and real estate taxes on the island property, and has recently declined that as well (ECF# 385), as we move into hurricane season, demonstrating a further deep-seated antagonism. The most recent denial of maintaining the status quo, appears to be a direct result of a judicial misconduct complaint (J.C. No. 03-24-90020) against the judge and a civil lawsuit (24-cv-1000-ZNQ), where he is a defendant charged with well documented violations of law, constitutional infractions, denial of due process, and a potential criminal indictment for Hobbs Act Extortion, securities fraud, and obstruction of justice. Certainly, the over one-hundred pages of the, detailed judicial misconduct complaint, supplement, and petition for review, describing at least twenty-four acts of judicial misconduct, and the valid civil complaint against him, cannot be ignored as influencing a judge's impartiality. Looking at the totality of events, circumstances, facts, comments, actions, and considering the complaints and lawsuit against the judge, this Court has stated, "we need not debate alternative characterizations of the judge's comments nor quibble over whether his opinions were based on extrajudicial or judicial sources. Taken together, his statement of purpose in [the SEC' civil TRO, the sentencing hearing and his comments, lack of due process, and failure to rule on motions] create an appearance

of bias that meets the required thresholds in both character and degree. It suffices to say that on the facts before us, our precedents require recusal." SEC v. Antar (In Re Antar), 71 F.3d 97 (1995) [brackets replaced with the relevance from this case].

Joint and Several (for One)

Furthermore, the court has in both actions against Mr. Cammarata, ordered that all purported liabilities of restitution, disgorgement, and prejudgment interest between the criminal conviction and the SEC judgment's outrageous calculation of over $50 million "joint and several", between all of the defendants (See the court's "final judgment" against Cammarata, ECF# 352, page 3). There was no dispute that the two cooperating defendants, received over $27 million from the class action claims of Mr. Cammarata's trades, and he received approximately $16 million (as documented and testified to). However, despite the two cooperating defendants pleading guilty over a year ago, to a crime that did not exist and cannot identify a single victim, the court has not reduced Mr. Cammarata's ordered liability by a penny. The two defendants that pled guilty, have ended up with, one being promised prison immunity by the government (and has yet to spend a day in jail, while Mr. Cammarata has done over 27 months), and the other to ultimately serve less than 6 months (with first step act, necessary drug abuse programs, and half-way house eligibility) and they will both keep almost all of their "ill-gotten" gains because the court illegally froze $78 million from Mr. Cammarata and has ordered him to pay all the liabilities as joint and several, first. Therefore, making sure the two cooperators who collected over $27 million and ran the operation as CEO and COO, will pay nearly nothing back because the court illegally froze all of Cammarata's assets and has made sure he satisfies all the liabilities, charged joint and several, but all paid by him.

Restitution, Loss Enhancement, and Lack of "Victims"

As this Court considers the scope of review and the overwhelming law that requires the subject judge be disqualified, there is the critical lack of any victims or loss amount, as raised in this brief, many motions, the sentencing hearing (21-cr-427-CFK, ECF# 310) and the direct appeal (23-2110). This irrefutable fact, shall

mandate that the fraud criminal conviction be reversed, and if not completely, then the 22-point loss enhancement must be removed as it was also improperly applied. Mr. Cammarata had previously filed a pro se motion to "Eliminate Any Restitution Requirement Pursuant to 18 USC 3663A(c)(3)", in 21-cr-427-CFK, ECF# 275. That motion satisfied both independent requirements of 3663A(c)(3), when only one was required. Mr. Cammarata demonstrated that (A) "the number of identifiable victims is so large as to make restitution impracticable" and (B) that the "determining complex issues of fact related to the cause or amount of the victim's losses would complicate or prolong the sentencing process to a degree that the need to provide restitution to any victim is outweighed by the burden on the sentencing process". The government kept telling the court that there were tens of thousands of victims, which certainly would make restitution impracticable, and the court admitted such, in his May 9th, 2023 denial of that motion "without prejudice" (21-cr-427-CFK, ECF# 281). The court in its denial, did not address the (B) argument that the sentencing hearing was prolonged over 8 months since the verdict, as the court has kept moving out the sentencing date, since the "Government is working with claims administrators to identify settlement funds to which a restitution payment would be economically feasible and expects to have a list for the Court prior to the sentencing hearing" (21-cr-427-CFK, ECF# 281, footnote).

Notwithstanding the failure to address the complexities that burdened the sentencing process for over eight months and still never identified a victim, we will focus on the court's conceding that although Mr. Cammarata's arguments were valid, he was relying on the governments representation from its November 29th, 2022 "Status Report on Restitution Plans", 21-cr-427-CFK, ECF# 224) that they would identify the required victims, prior to the sentencing hearing. Therefore, the court stated that, "Mr. Cammarata's Motion to Eliminate Any Restitution (ECF# 275) is premature at this juncture and, therefore will deny the motion without prejudice", giving the government a pass on the complicated and prolonged sentencing, but also allowing them another eight months, from the conviction to "find" or even identify a single "victim", despite the investigation beginning in November of 2019. The government, did not address, identify the victims, or comply with the courts order (21-cr-427-CFK, ECF# 281 #2) that required the government identify the victims, in the sentencing

memoranda, that, "**must be filed seven (7) days prior to the sentencing date.**" (the bold font is in the order). The government did not provide any "list for the Court prior to the sentencing hearing", did not identify a single "victim" or any loss (actual, intended, or otherwise). It could not identify any victim "seven (7) days prior to the sentencing date" and not even the day of sentencing. The government has had almost five years to identify these alleged "victims" and provide an actual loss amount suffered by them, and completely failed to so much as identify one. As expressive as this is to demonstrate the lack of any crime, it further demonstrates the abuses of discretion and deep-seated antagonism, to not only order over $35 million of "joint and several" liabilities to Mr. Cammarata, but to also add the 22-point "loss" enhancement (that required an identifiable victim, and also an "actual loss").

The Third Circuit was very clear, that for sentencing on a crime of fraud, there not only needs to be the victims and actual loss identified, but they must be provided in the presentencing report ("PSR") or sentence memoranda, provided at least a week before the sentencing hearing, as the ordered by the court. In, United States v. Frederick H. Banks (appeal), 55 F.4th 246; Nos. 19-3812 & 20-2235, Opinion Filed of December 2022, it was held that Defendant, "was entitled to be resentenced without the 12-point intended-loss enhancement in U.S. Sentencing Guidelines Manual § 2B1.1 "because the ordinary meaning of the word 'loss' was the loss the victim actually suffered". The court's "loss enhancement" is further unsupported, because there was not ANY loss ever identified (actual loss, unrealized, or even intended loss), but there was also not any victim identified that could have suffered any actual loss. The Banks case, made the distinction that for a crime of fraud, the loss enhancement in U.S. Sentencing Guidelines Manual § 2B1.1 could no longer utilize an "intended loss" and must only be "actual loss", that *the victim actually suffered*. To further illustrate the perilous nature of the loss enhancement and restitution order, the government failed to identify any "victim" or loss, seven days prior to the sentencing hearing, in the sentencing memoranda, or at sentencing, and the court attempted to justify its actions with his own self-serving view, in spite of the contradictions of law. Please see sentencing hearing transcript Sentencing (21-cr-427-CFK, ECF# 310, page 65, where the court is woefully

aware that the government had failed to provide or identify any "victims" or "actual loss", as they represented to the court would be available by sentencing.

> THE COURT: Well, I -- I -- I -- I – my statement will speak to itself.
>
> MR. COHEN: Yeah.
>
> THE COURT: The arguments will speak to itself. I think there are a lot of victims here. *I think the claims administrators are victims* here. There are thirty, not three hundred and ninety-seven funds. There are mul -- at least one individual in each individual victim at least. They -- they claims administrators can identify each of those victims. So I don't want to extrapolate, but I also don't want to be pushed into a corner telling me who I decided the victims were. The victims are every one of those individuals in those three hundred and ninety-seven funds that would've gotten more money if the forty million dollars was not stolen. So now you can proceed.

Here the court, in addition to showing frustration and stuttering, *thinks* "there are a lot of victims here", yet not one came forward or can be identified. The court was in fact cornered, stammering, and even conceded that "victims" could be the individuals of the claims administrators, again proving that the claims administrators cannot be victims, nor were either identified or demonstrated a loss, as required. Throughout the trial and the SEC's complaint, the government told the jury and the court that the alleged "victims" were individual claimants that received settlement rewards, that may have potentially received more, if there were actually fraudulent claims and there was enough money left to justify an additional distribution. [2] The court also stated that "the claims administrators can identify each of those victims", yet they nor the government has been able to identify even one of the "individual victims" after almost five years.

[2] It should be noted that many securities class action settlement funds are left with excess funds, due to uncashed or expired checks, or other reasons that the claimants later decide they do not want to participate. The distribution fund will not make another distribution, if it is cost prohibitive and will donate the remaining funds to charity, as the claims administrators cannot retain anything more than their allocation and therefore cannot suffer damages either.

Likewise, in addition to the Third Circuit guidance in United States v. Banks, 18 U.S.C. 3663A, further clarifies, "the term 'victim' means a person directly *and* proximately harmed as a result of the commission of an offense for which restitution may be ordered including, in the case of an offense that involves as an element a scheme, conspiracy, or pattern of criminal activity, any person directly harmed by the defendant's criminal conduct in the course of the scheme, conspiracy, or pattern". We now see why the court knew he backed himself "into a corner" that there were no identified "victims", so he attempted to classify the claims administrators as "victims" despite the fact that they did not and could not have suffered any damage or harm (never mind direct and proximate) from any alleged "fraudulent" claims filings. There was no possibility that restitution and the loss enhancement was valid, but the court was indeed backed into a corner and simply *thought* "there are a lot of victims here" without any being identified, or suffering any loss. That is not how the statutes or sentencing guidelines work. Without the unlawful 22-point "loss" enhancement, Mr. Cammarata should have been released at sentencing, with time served. But when the flawed restitution order was also issued in an obvious abuse of discretion, the court once again demonstrated not only its deep-seated antagonism, but also its improper goal "to protect this Court's ability to award relief in the form of disgorgement of the alleged illegal profits from the violations, prejudgment interest, and civil penalties", similar to the judge in the Antar case.

Structural Error and Denial of Rights

Please recall that at the February 6th, 2023 hearing in which the court denied (the first two) requests to hire Ballard Spahr for post-trial motions and sentencing, because Cohen-Williams was out of funds by trial and therefore refused to file any post-trial motions, and make the "no loss" sentencing arguments of Cammarata, due to "strategic differences". The court instead, of providing the 6th amendment funds, from the proven untainted frozen assets, denied new counsel or any additional legal funds and forced Mr. Cammarata to file his own pro se post-trial motions; *and* then represent *himself* in a hybrid capacity at sentencing for the most critical arguments of restitution, forfeiture, and loss calculation (please see that order, as ECF# 273, as structural error itself). While Mr. Cammarata is/was an incarcerated criminal defendant, in which the court froze over $78

million in the problematic TRO, the court not only denied him criminal defense fees from his (admitted) untainted funds, but forced him to file his own post-trial motions. Mr. Cammarata struggled through these motions with no legal experience and made terminology mistakes, in which the government capitalized on to deflect from a constructive amendment and ignored the most critical arguments of the post-trial motions, such as, again failing to address the TRO and November 9th, 2021 simultaneous hearing. Later, at criminal sentencing, where again Mr. Cammarata was forced to make his own arguments, the court was defeated by even the pro se, (what he called "hybrid") defendant, and was deflecting and floundering around the law. The immediate next comment by the court, from sentencing was antagonistic and inappropriate when he condescendingly referenced Mr. Cammarata as "Mr. Hybrid", after he denied him legal fees and forced him to be "hybrid".

> MR. COHEN: Sure. And -- and Your Honor, I apologize.
>
> THE COURT: And you're -- and Mr. Hybrid (ph.), Mr. Hybrid, Mr. Cammarata wants to -- to say something now.
>
> MR. COHEN: All right. If -- if I may, Joe.
>
> MR. CAMMARATA: Yeah. That's a gross mischaracterization.
>
> MR. COHEN: Your Honor, I -- I apologize. I don't -- I have no intention of putting the Court in a corner. My -- my -- my position with respect to the victims is -- is, and I hear what the Court is saying, and I appreciate the Court's position on that. I'm referencing the Government's argument. Well, two.

This was after the judge repeatedly yelling at Mr. Cammarata at the sentencing hearing about "You stole forty million dollars. What part of that do you not understand?", see 21-cr-427-CFK, ECF# 310 pages 74,66,69,71,72, and 143, excluding the times the court deleted it when he told Mr. Cammarata to not tell him about honor and integrity. It cannot be denied that the district court was angry and told Mr. Cammarata that he was a reprehensible person who "stole $40 million dollars" and when a court, "acquires a passionate hatred for

all its adherents," the fact that the beliefs arose through a judicial proceeding does not negate the duty to recuse". Liteky, 114 S. Ct. at 1154; see also Bertoli, 40 F.3d at 1412.

Repatriation of Extorted Assets

By February 2023, Mr. Cammarata was still unsuccessful at getting any additional criminal defense counsel funds from the many millions of untainted assets frozen, and needed a criminal appeal counsel to appeal the criminal "fraud" conviction. On February 1st, 2023, Mr. Peter Goldberger had submitted a letter to the court requesting $255,000 to file the direct appeal (ECF# 201). The court did its usual back and forth, to then hold a hearing on February 22nd, 2023 after the SEC and the DOJ once again vehemently denied Mr. Cammarata his rights to have appeal counsel of his choice, from his untainted assets. At this hearing the SEC and the DOJ were both arguing and refused to provide the $255,000 from the frozen assets, stating that they are no longer Mr. Cammarata's assets, since he was convicted. Mr. Goldberger argued that a criminal defendant still has rights after a conviction, and Mr. Cammarata explained to the court that there were over $5 million of untainted assets immediately available in his Merrill Lynch account. The court ignored this fact and the DOJ, then demanded that if Cammarata wants the $255,000 (6th amendment) appeal funds, they would agree to unfreeze those funds, only if he immediately repatriated his multimillion dollar private island resort in the Bahamas, to the United States government. Cammarata explained, to his counsel that it was, not only extortion, but they had frozen over $78 million, lost over $55 million (in documented damages), and there was still $5 million of untainted assets, liquid at Merrill Lynch. Mr. Goldberger told the court that there were sufficient untainted assets available, and when the court asked the SEC if that was correct, they agreed that there were more than enough untainted funds to pay the criminal appeal counsel. What happened next was inconceivable.

Now the SEC and DOJ ignored that fact, and then told the court that they had discovered a brokerage account owned by Mr. Cammarata's life insurance policy in the Bahamas, that contained about $2.6 million in stock holdings, and if he agreed to repatriate that entire brokerage account (legally protected by a life insurance policy), to the United States government, they will then provide him $255,000 for criminal appeal counsel from

that. Mr. Cammarata remonstrated, objected, and refused, stating that the government admittedly to the court that there were sufficient untainted funds at Merrill Lynch that the court completely ignored, and ordered to extort $2.6 million to the court's registry to later pay $255,000 for a criminal appeal. Let that sink in, as this Court considers if the court's actions, violations of the Constitution, depravations of rights, due process, and now repatriating another $2.6 million from a life insurance policy, give the appearance of bias or allow a reasonable person with these facts to question the judge's partiality. The court ordered that an international brokerage account owned by a life insurance policy, be completely liquidated of all the stock positions in that account, which was over $2.6 million, then be repatriated to the Registry of the Court. The court closed an account that had legally been opened since 2004 and can never be reopened, sold all the securities that it held for many years, all from a protected life insurance policy. That was flagrant Hobbs Act Extortion 18 USC 1951(b)(2).

In addition to Hobbs Act Extortion, the irony is that the court engaged in *actual* securities fraud. The court acted without ever having subject matter jurisdiction or a valid injunction, and made material misrepresentations to the life insurance policy that there was a valid injunction and judgement that would require the liquidation of all the stocks in Mr. Cammarata's life insurance policy's brokerage account (which was not bound by the TRO, even if it were valid). That was the required misrepresentation/omission that caused the elements of securities fraud and its "in connection with the material decision to sell a security". The misrepresentation and lack of any valid restitution or forfeiture order, along with the fact that there are international laws protecting life insurance policies that were not covered, named, or permitted to be frozen in the TRO; allowed the court's material misrepresentations to meet all of the statutory elements for securities fraud required by Section 10(b) of the Securities Exchange Act of 1934 ("Exchange act") [15 USC 78j(b)] and Rule 10b-5. The court's actions, unlawfully liquidated all of Mr. Cammarata's Palantir stock ("PLTR") which was held since about 2017 and sold at about $7.50 (April 2023) and is now trading at approximately $25, causing an additional $7+ million in damages to Mr. Cammarata. We saw, in Liteky, ,114 S. Ct. at 1157, the Supreme

Court said that "the ultimate issue for recusal is the appearance of a wrongful or inappropriate bias or prejudice", can there be any argument of how all of this appears so far?

4. Failure to Ever Have Subject Matter Jurisdiction or provide Judicial notice and

As this Court continues to consider whether any reasonable person with all of the facts, would question the judge's partiality, there are additional acts, that are either not appealable or are so improper that they weigh to the demonstration of perceived bias.

The June 6th, 2023 criminal sentencing hearing (21-cr-427-CFK, ECF# 310) has already demonstrated a judge who not only engaged in incontrovertible violations and misconduct, but also remained fervent toward his declared goal stated in the TRO order (ECF# 4), "to protect this Court's ability to award relief in the form of disgorgement of the alleged illegal profits from the violations, prejudgment interest, and civil penalties". As Mr. Cammarata stated (see 21-cr-427-CFK, ECF# 310, pages 46-47), the Department of Justice ("DOJ") in its indictment could have charged "securities fraud" but did not, for good reason. First, there was not any "in connection" to any securities transaction as required by statute and well-established Circuit and Supreme Court law. Secondly, if the DOJ brought that claim, they could have only frozen $16 million and not have obtained an immediate freeze of over $78 million, to make sure Mr. Cammarata was denied criminal representation of his choosing for over 10 months and damage his estate by over $55 million, to extort and threaten him to take a guilty plea, without an actual crime.

Mr. Cammarata has argued in his recusal motion ECF# 345, and filed various motions that the SEC has never stated a valid claim and the court has never had subject matter jurisdiction. Please see ECF # 142, Motion to Dismiss Complaint Pursuant to Fed. R. Civ. P. 12(b)(6), where there was overwhelming law presented to the court that the SEC failed to state a claim, and the court conceded that in open court, during a hearing for the criminal case. The court asked Mr. Cammarata who drafted the motion and Mr. Cammarata explained that he is pro se and did it himself. The court replied, "that motion was very well written and very compelling. So much

so that I am going to give you a hearing on the motion and think you will do well", see ECF# 143 and 144. After giving the SEC 33 days in which to respond, the SEC filed their response only minutes before the noon deadline, and completely changed their entire "in connection" statement of claim argument. The SEC's ridiculous initial argument of the complaint, was that filing a class action claim on a trade executed 8-10 years earlier, somehow satisfied the "in connection" requirement of the settlement claim filing being "material to a decision . . . to buy or sell a 'covered security.'" There was no possibility that the class action claim filings had any impact, "in connection", coinciding, touching, or "was material to the decision to a security transaction" that happened many years previously. The SEC, filed a baseless case for the sole purpose of the TRO and the securities fraud argument was a red herring, that the court naively accepted. Nevertheless, the SEC was caught without a claim, and had to (also) constructively amended their entire statement of claim of the complaint. Their new and even more absurd argument was that the "in connection" to securities element was *now* met, because some claims administrators may had held the class action funds in an escrow account that held a money market (security if it trades on a U.S. Exchange). Finally, when the administrator had to pay out the whole class of claimants, they liquidated the money market, and that sale, was somehow caused by Mr. Cammarata's class action claim filing in the case.

The court must have realized that it had no subject matter jurisdiction, and with the TRO and his goal to punish Mr. Cammarata was about to unravel, so he cancelled the hearing and denied the motion to dismiss. That curious denial order (ECF# 162) was not supported by law and included nothing more than a self-defeating footnote, that precisely affirmed Mr. Cammarata's legal arguments.

Please see ECF# 162, footnote:

> "A fraudulent misrepresentation is made in connection with the purchase or sale of a covered security when "*it is material to a decision* . . . to buy or sell a 'covered security.'" Chadbourne & Parke LLP v. Troice, 571 U.S. 377, 387-88 (2014) (listing cases where a fraud was found to be "in connection with" a purchase or sale of security and noting that each involved those "who took, who tried to take, who

> divested themselves of, who tried to divest themselves of, or who maintained an ownership interest" in securities); see also Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Dabit, 547 U.S. 71, 85 (2006). Here, the SEC alleges, inter alia, that the targets of Defendants' alleged fraud divested themselves of their ownership interest in securities due to Defendants' misrepresentations. ECF No. 1 ¶ 31–36; 65 ("Distribution fund administrators liquidated money market funds . . . to pay approved distributions, including distributions paid to AlphaPlus by check for the benefit of the Sham Clients, which were premised on Defendants' false claims.")".

The court not only incorrectly believes the fund administrators were victims or allegedly defrauded, but in his own citation, he put on the record, Mr. Cammarata's primary confirmation of the failure to state a claim. The court, nor the SEC can and never will, explain how filing a claim, along with thousands of other claimants, was "material to the administrator's decision to sell the money market security". If they did in fact hold funds in a money market security, they would also need to be in a separate brokerage account to hold "securities". Then, after the administrator decided to pay out the entire class of claimants, it would liquidate the money market from its "brokerage account" and then need to transfer the pool of funds to their checking account to draft checks to the claimants (since it is illegal to pay third parties from a brokerage account), further moving out any possible connection to some possibly alleged securities transaction.

If all of that was not enough to demonstrate a catastrophic failure to state a claim, the SEC's own revised argument backed them into a checkmate, which they could not recover from and the court could never have subject matter jurisdiction. Please see Mr. Cammarata's Motion for Summary Judgment (ECF# 183), filed on December 12th, 2022 and has still not been addressed or ruled on by the district court [3], despite being filed,

[3] From the court's April 2nd, 2024 denial memorandum (ECF# 372), of Mr. Cammarata's Rule 12(h)(3) and 60(b) motion, the court for the first time ever mentioned ECF# 183 in a footnote that admitted to never ruling or addressing it. The court stated, "Cammarata filed a cross-motion for partial summary judgment, which largely reiterated and referred back to his prior summary judgment motion. ECF No. 285. The Court denied that motion on July 28, 2023. ECF No. 294.". This disgraceful deceit of the record, also proves that the court never ruled, acknowledged, referenced, or provided an appealable order for Mr. Cammarata's valid summary judgment (ECF# 183). It should be clear that the court knew that motion was undeniable and stripped it of subject matter jurisdiction, so he simply ignored it and kept it off the record.

responded, and replied to. In that motion, Mr. Cammarata demonstrated that the SEC's worse (money market liquidation) argument for a statement of claim, was even more impossible than the original claim of the complaint. As this Court can see from just the statements above, the possibility of the SEC ever stating a claim, and the court's own citation was despondent. However, once they committed to that new argument, even if the court wanted to accept that theory of some "connection to a securities transaction" with the perverse money market philosophy, it still failed on many other legal, statutory, and elementary bases.

In an accusation of a securities fraud, a plaintiff must allege the following elements to state a claim for a violation of Rule 10b-5: A plaintiff must plead: "(1) a material misrepresentation or omission by the defendant: (2) scienter; (3) a connection between the misrepresentation or omission and the purchase or sale of a security; (4) reliance upon the misrepresentation or omission; (5) economic loss; and (6) loss causation." Matrixx Initiatives, Inc. v. Siracusano, 563 U.S. 27, 37, 131 S. Ct. 1309, 179 L. Ed. 2d 398 (2011).

The SEC's new claim was now, (1) limited to alleged material misrepresentations for only the settlement claims in which the administrators actually held a money market security which are a fraction of the alleged 397 settlement cases that were not listed in the complaint; (2) there was now also no way to have provided the required exhibition of scienter, as the SEC could not demonstrate how Mr. Cammarata allegedly acted with the "mental state [of] intent to deceive, manipulate or defraud." Ernst & Ernst v. Hochfelder, 425 U.S. 185, 193 n. 12, 96 S. Ct. 1375, 47 L. Ed. 2d 668 (1976). A plaintiff must "'state with particularity facts giving rise to a strong inference that the defendant acted with the required state of mind.'" Avaya, 564 F.3d at 267 (quoting 15 U.S.C. § 78u-4(b)(2)). The scienter standard requires a plaintiff to allege facts giving rise to a "strong inference of "either reckless or conscious behavior." Advanta, 180 F.3d at 534-35. The complaint provided none of this, the SEC themselves, did not know which settlements of Mr. Cammarata's filings "may have held money markets", he therefore could not have known them; (3) the SEC's new claim construction (of the utterly changed charge) of securities violations was also now missing the requisite "in connection" between the alleged misrepresentation and the liquidation of the possibly held money market.

With all of those insurmountable hurdles present, before attempting to state a valid claim for relief, it still got worse for the court. When there is an accusation of securities violations based upon an alleged fraudulent representation there are additional elements and pleading standards required.

> "Insofar as actions under Section 10(b) and Rule 10b-5 are inherently based on allegations of fraud, Rule 9(b) imposes a heightened pleading requirement. In re Rockefeller Ctr. Props. Secs. Litig., 311 F.3d 198, 216 (3d Cir. 2002). "Pursuant to Rule 9(b), when "alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake ... [m]alice, intent, knowledge, and other conditions of a person's mind may be alleged generally." Fed. R. Civ. P. 9(b).

This is where, even if the court wanted to represent that the SEC's satisfied the "in connection" argument, despite the statutes, law, and common sense; the newfangled argument of a money market liquidation has none of the scienter or Rule 9(b) specificity required to state a claim. There was no defensible position for the SEC or the court to have claimed subject matter jurisdiction. Perhaps, that is why the court has not still not ruled on or provided an appealable order, for Mr. Cammarata's motion for summary judgment (ECF# 183) to dismiss the SEC action for a lack of subject matter jurisdiction, in which the court always acted, in spite of never having. In the same vein, the court has also refused to provide judicial notice or offer Mr. Cammarata the opportunity to be heard on the matter, see his motion (ECF# 337) requesting judicial notice (Fed R. Evidence. 201(C)(2)) and the opportunity to be heard on judicial notice (Fed R. Evidence. 201(e)).

5. Court Granted the SEC Summary Judgment Based on Fraud Conviction

Court Grants SEC Summary Judgment

While there is no disputing the on the record Constitutional infractions, they can and will be addressed by further appeals and not within the scope of review for this brief. A higher Court will eventually dismiss the civil action and injunction for the court's failure to ever have subject matter jurisdiction, inter alia, however, this

brief continues to proffer the compilation of the documented judicial acts, if not demonstrating bias per se, will certainly call for a reasonable person to question the judge's partiality. This Court has now seen a clear record where Mr. Cammarata has a valid basis for arguing that the court maintained a deep-seated antagonism toward him, however, at the criminal sentencing the judge had a moment of legal competency and declined the government's motion for a Securities Fraud enhancement. The court said, "It's a close case that is better litigated in the S.E.C. case. So as a result of that, I'm going to overrule the objection. And as I said, it's a call that can be better lit -- litigated in the S.E.C. case when that -- when that resumes", 21-cr-427-CFK, Sentencing hearing transcript, ECF# 310, Page 56-57.

It is clearly not at all a close call, and with that, Mr. Cammarata's criminal defense counsel, leaned over and told him that the SEC is over, since the court made a determination of law that there was not securities fraud. That notwithstanding, about twelve hours later, the SEC, on June 7th, 2023 filed an over 900 page "Motion for Summary Judgment" (ECF# 260), in which to date Mr. Cammarata has never received or reviewed. The record shows that Mr. Cammarata advised the court he did not receive it (ECF# 269) and the court ordered the clerk to send it (ECF# 274), but Mr. Cammarata has attested to the fact that he still has not seen the motion, and had to respond blindly, guessing what the SEC may have argued. This can all be validated with the legal mail logs at FDC Philadelphia. Mr. Cammarata has never had access to emails from the court, the government, or any attachments at all, and no email for the previous ten months, so mailing the pro se defendant was the only notice he could have had. Please see evidence from the docket itself of only a few examples that the SEC, court, and clerk had often either "not mailed" or had mailed returned that was for Mr. Cammarata around that time ("Not Mailed", ECF#'s 223,241,245,247,252,255,265,273,274,273,283,284,287,293,294,347,348,372,372 and returned mail ECF#'s 221,224,225,228,229,231,233,234,242,247,357). The district court could clearly see, from the docket alone, that there was a well-documented issue with getting Mr. Cammarata notice, motions, and rulings.

The district court has discounted Mr. Cammarata's attestations and ignores the failure of ever being noticed of the SEC's summary judgment motion (ECF# 260) and did not have a due process right to respond, especially when the court granted the SEC's summary judgment motion in August 2023, while his valid motion was/is still not ruled on or addressed. All of this was not only improper, but assures the appearance of a deep-seated atomism.

SEC's Summary Judgment Based on Misguided Collateral Estoppel

The District court granted the SEC summary judgment based on the premise of collateral estoppel, to deny Mr. Cammarata a civil trial to expose the unlawful injunction, failure to state a claim, lack of subject matter jurisdiction, not to mention judicial and criminal misconduct. The SEC and the court, were both made aware that Mr. Cammarata had not received the summary judgment motion and were aware that, even as a pro se defendant, there was no possibility of the SEC prevailing at trial, as the multi-filed, un-docketed Ballard Spahr petition told the court. Under federal law, the Supreme Court and Third Circuit agree that the following four (4) requirements must be met in order to apply collateral estoppel and thus bar a potential claim, notably, the SEC and court met none of them:

> "1) the issue decided in the prior adjudication must be identical with the one presented in the later action; 2) there must have been a final judgment on the merits; 3) the party against whom collateral estoppel is asserted must have been a party or in privity with the party to the prior adjudication; and 4) the party against whom collateral estoppel is asserted must have had a full and fair opportunity to litigate the issue in question in the prior adjudication." Kelley, 860 F.2d at 1194; Bradley v. Pittsburgh Bd. Of Ed., 913 F.2d 1064, 1073 (3d Cir. 1990) Gregory v. Chehi, 843 F.2d 111, 121 (3d Cir. 1988); Rider v. Commonwealth of Pennsylvania, 850 F.2d 982, 989-90 (3d. Cir.), cert. denied, 488 U.S. 993, 109 S. Ct. 556, 102 L. Ed. 2d 582 (1988).

Based on the memorandum from the court's granting of the SEC's summary judgment motion (ECF# 319), there was no factual or legal basis for the summary judgment, but rather was granted through collateral estoppel of the wire/mail fraud conviction in the criminal "fraud" case. This was as unconscionable as it was an unlawful abuse of discretion, even if the failure to rule on Mr. Cammarata's still pending summary judgment is ignored. In effect, the court completely disregarded the fact that he made a determination of law, in denying the securities fraud enhancement from the criminal fraud sentencing hearing (just hours before the SEC's 900+ page motion was filed). There have been several motions by Mr. Cammarata (ECF# 327, 337, 345, and 353) that have detailed the erroneous and abhorrent application of collateral estoppel, not because the court would prefer it to be applicable, but because the law is unequivocal that it was improperly applied. Without belaboring the details, as they are clearly described in ECF# 353 at pages 12-15, the most important fact is that the court based collateral estoppel on the wire fraud conviction, by suggesting "it is the same as securities fraud". Where Mr. Cammarata's pro se motion has the actual arguments and overwhelming law, the court's denials and memorandums are only supported by his own "beliefs", bias, or previous opinions, that are legally unsupported and preposterous. While, collateral estoppel may have been applicable if wire fraud was being collaterally estopped from a securities fraud conviction, it cannot go the other way. The statute for wire fraud requires the government to show:

> "(1) the defendant's knowing and willful participation in a scheme or artifice to defraud, (2) with the specific intent to defraud, and (3) the use of interstate wire communications in furtherance of the scheme.", United States v. Antico, 275 F.3d 245, 261 (3d Cir. 2001)

If the court wanted to make the incorrect assumption that the government met the elements for wire and mail fraud in the criminal conviction, there still was never any of the required securities violations elements provided, litigated, or even argued, as necessary for collateral estoppel. Other than the use of wire/mail, there are only two required elements for wire/mail fraud, which are a scheme or artifice and a material misrepresentation. To then be charged with securities violations, those statutes are also very clear, and while

they have two of the wire/mail fraud elements, securities fraud has additionally required elements and pleading standards:

> "Section 10(b) of the Exchange Act makes it "unlawful for any person … [t]o use or employ, in connection with the purchase or sale of any security registered on a national securities exchange . . . any manipulative or deceptive device or contrivance in contravention of such rules and regulations as the [SEC] may prescribe …" 15 U.S.C. 78j(b). It is thus, "unlawful for any person . . . [t]o make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading ..." 17 C.F.R. 240.10b-5(b).

To put a finer point on the distinction, the supporting law and statutes not only dispels with any concept of "identical issues being relitigated", but again demonstrates how there was never any claim stated in the SEC case. It is worth repeating that, "to bring an action under Section 10(b) and Rule 10b-5 a plaintiff must plead: "(1) a material misrepresentation or omission by the defendant: (2) scienter; (3) a connection between the misrepresentation or omission and the purchase or sale of a security; (4) reliance upon the misrepresentation or omission; (5) economic loss; and (6) loss causation." Matrixx, 563 U.S. 27, 37, 131 S. Ct. 1309, 179 L. Ed. 2d 398 (2011).

Appellant will leave off the last two elements, as the SEC is of the opinion that they are exempt from these elements, and they are also superfluous to extinguish any valid collateral estoppel argument. Securities fraud has no less than the additional required elements of 2, 3, and 4 (above), and cannot invoke collateral estoppel from wire fraud. What is more, to finally defeat the court's improper application of collateral estoppel, please recall the additional pleading standards, above, where even with the statutory requirements of securities fraud, there needed to be the additional Rule 9(b) specificity, which not only does not exist in the complaint, but was certainly never litigated as required for collateral estoppel.

This Court can see from the district court's denial orders and memorandums from both the recusal motion and the Rule 60(b) and 12(h)(3) motions (ECF# 347 and 372 respectively), the court continually defends its fallacious judgements by simply repeating its own unsupported opinions. The court's memorandum (ECF# 372 page 4) for the denial of the Rule 60(b) motion, is quite telling as well. The court's troubling response was nothing more than a recital of the collateral estoppel elements and only the wire fraud elements. The only relevant statement the court actually made was, his self-serving and unsupported concept that, "The facts and legal elements established upon Cammarata's criminal conviction were sufficient to grant summary judgment on the securities violation claim". The court could point to no law that would support the notion that securities fraud (with its additional elements and heightened pleading standards) "is the same" or could be satisfied by the elements of wire fraud. The only support the court uses, is his own memorandum of support for collateral estoppel (ECF# 319), which again was all based on the wrongful assumption that a wire fraud conviction can satisfy the elements of securities fraud. It is true however, if Mr. Cammarata was criminally convicted of securities fraud, then had a civil case charging wire fraud, then all of the statutory elements of wire fraud would have been satisfied and collateral estoppel would apply, but not vice-versa.

The court had once again failed miserably, abused his discretion and has not directly confronted the arguments made by Cammarata or tried to refute them (ECF# 372), other than with his legally unsupported and self-serving bald assertions from his own previous opinions. The district court's lack of support, clarity, whitewashing the record, denial of ruling on motions, failing to have injunction hearings, provide judicial notice, or address any of the TRO issues, Constitutional and due process violations, should be enough to demonstrate to this Court, that the district court is aware of the obvious record before him. The court needed to grant final judgment to the SEC to end the SEC case, in hopes that the pro se defendant, thorn in his side, just goes away and remains wrongfully imprisoned for another eight years. The district court cannot hide from the fact that this is his the first and only criminal trial since being appointed as a fledgling federal judge, about

seven years ago; and his on the record actions alone, will reflect very poorly on the public's perception of fairness in the federal justice system, which is a relevant consideration for this brief.

V. Conclusion

This pro se brief is not asking this Court to review the court's rulings, abused of discretion, lack of subject matter jurisdiction, denial of due process and other rights, the deletion of transcript hearing sections, failure to file certain petitions and notices to the docket, or to rule on valid motions and provide an appealable order. No, this brief is asking the Court of Appeals to consider the pertinent recusal statute, 28 U.S.C. 455(a), which provides that "a judge must disqualify himself in any proceeding in which his impartiality might reasonably be questioned." See Liteky v. United States, 127 L. Ed. 2d 474, 114 S. Ct. 1147, 1150 (1994); United States v. Bertoli, 40 F.3d 1384, 1412 (3d Cir. 1994).

The record is unassailable in showing the district court's many deceptive actions and the charade of due process and justice, including:

- Troubling, biased and or antagonistic comments from the November 9th, 2021, January 11th, 2022, and June 6th, 2023 criminal sentencing hearing.
- Deletions of transcript portions and failures to docket the Ballard Sparh legal petition, filed with the court multiple time, verified that the district court was aware that he had violated Constitutional rights, due process (and continued to), and was acting without subject matter jurisdiction.
- Failure to rule on Cammarata's Summary Judgment (ECF# 183), which also demonstrated that the SEC had failed to state a claim and the court was required to relinquish adjudicatory authority.
- Granting the SEC's summary judgment motion without Cammarata ever having notice or obtaining the motion to respond. Then the reason for granting it was based on a completely erroneous collateral estoppel.

With those issues and then the always invalid TRO, asset freeze, repatriation of extorted life insurance funds, securities fraud, perpetual lack of jurisdiction, and the goal to give back the proceeds recovered to the public,

was not only wrong on many levels, but it was also eerily similar to Antar, 53 F.3d 575. In this appeal, the acts and appearances of bias and questionable impartiality, are much more egregious and were already addressed by this Court. However, in this case, the district judge *is* accused of being biased in a personal way against a litigant. This a case where a judge's rulings *are* so indefensible that combined with particular comments they arguably demonstrate partiality towards or against a party. It is *also* argued, as in Huntington Commons, 21 F.3d 157, 158 (7th Cir. 1994), that the judge's previous experience with the case may have left him disdainful of one party's position. Conversely, unlike in Antar, where this Court disavowed those issues, the Court still went on state:

> "Rather, this is a case where the district judge, in stark, plain and unambiguous language, told the parties that his goal in the criminal case, from the beginning, was something other than what it should have been and, indeed, was improper. Of course, a trial judge in a criminal proceeding should ensure that a fair and orderly trial takes place in the courtroom. Here, however, the district court told the parties that his goal from the beginning of the criminal proceeding was to enforce a repatriation order and final judgment issued during a concurrent civil proceeding and give back the proceeds recovered to the public. It is difficult to imagine a starker example of when opinions formed during the course of judicial proceedings display a high degree of antagonism against a criminal defendant. After all, the best way to effectuate the district judge's goal would have been to ensure that the government got as free a road as possible towards a conviction, which then would give the judge the requisite leverage to order a large amount of restitution. And it goes without saying that this is an improper role for a district judge during a criminal trial.", Antar, 53 F.3d 576.

While the Appellant understands that Courts prefer to not disqualify a federal judge for the appearance of bias or conduct, that may cause his decisions and behavior, to question the judge's partiality, but the evidence in this brief and the record are devastating to Constitutional justice. "Because we seek to protect the public's confidence in the judiciary, our inquiry focuses not on whether the judge actually harbored subjective bias, but rather on whether the record, viewed objectively, reasonably supports the appearance of prejudice or bias",

Antar II, 53 F.3d at 574; United States v. Bertoli, 40 F.3d 1384, 1412 (3d Cir. 1994); Alexander, 10 F.3d at 162; Haines v. Liggett Group, Inc., 975 F.2d 81, 98, (3d Cir. 1992). Therefore, if a 'reasonable man, were he to know all the circumstances, would harbor doubts about the judge's impartiality' under the applicable standard, then the judge must recuse". In re Larson, 43 F.3d 410, 415 (8th Cir. 1994) (quoting Potashnick v. Port City Constr. Co., 609 F.2d 1101, 1111 (5th Cir.), cert. denied, 449 U.S. 820, 101 S. Ct. 78, 66 L. Ed. 2d 22 (1980)).

There can be no question that the documented record, prosecutions, TRO's declared goals, malicious asset freeze, failure to rule and provide appealable orders, deleting transcript sections and filed petitions from the record, and lack of subject matter jurisdiction, at a minimum, were an unmitigated disaster of justice, law, and Constitutional Rights, that pales in comparison to the events of the Antar cases, in this Circuit. The statutes and justice requires the disqualification of the judge, as "The public's confidence in the judiciary, which may be irreparably harmed if a case is allowed to proceed before a judge who appears to be tainted", requires that "justice must satisfy the appearance of justice", Alexander v. Primerica Holdings, Inc., 10 F.3d 155, 162 (3d Cir. 1993).

Any reasonable person reading the transcript, in light of the facts, record, judge's actions in the civil case, the dialogues during the civil hearings and sentencing, "could not help but wonder if the district judge was seeking to achieve his stated goal of enforcing the repatriation order" and "to give back the proceeds recovered to the public", Antar, 53 F.3d 578.

> "In other words, it cannot be said fairly that in holding that the judge should have disqualified himself we are pulling an isolated statement out of context. To the contrary, a reasonable person reading the transcripts would have found other reasons to believe that the judge in fact was expressing his intention. Being familiar with the judge and his work, we are not prepared to say the district judge actually was biased. But we are constrained to say that a reasonable person could think that the judge's goal during the criminal proceeding -- and the reason behind some of the rulings -- was to enforce orders he issued in a parallel civil case. Because such a goal was entirely improper in a criminal case, we believe that the

judge should sua sponte have recused himself. Inasmuch as the failure to recuse in this context has the appearance of affecting the fairness and integrity of the trial, and because it "seriously affects the . . . public reputation of [the] judicial proceeding[]", Olano, U.S. at, 113 S. Ct. at 1779, we are constrained to exercise our discretion under Fed. R. Crim. P. 52(b) and reverse the convictions and remand the matters for new trials before a different district judge.", the assessment and decision by this Court, in U.S. v. Antar 53 F.3d 579.

Appellant hope that this Court will make a speedy and just determination to disqualify the subject judge and correct ongoing due process and Constitutional violations, lack of subject matter jurisdictions and an almost 3-year gross miscarriage of justice.

Respectfully submitted,

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Dated, June 16th, 2024

Dkt. No 24-1381

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

SECURITIES AND EXCHANGE COMMISSION

v.

JOSEPH CAMMARATA,

Defendant-Appellant.

On Appeal from the Court's Order, ECF# 348 in the United States District Court for the Eastern District of Pennsylvania,
Case No. 2:21-cv-4845 and Related Case No. 2:21-cr-427
(Chad F. Kenney, J.)

CERTIFICATION OF APPELLATE BRIEF BY PRO SE APPELLANT CAMMARATA

Appellant's Brief Notes and Certification

I, Mr. Cammarata, am a pro se Appellant, submitting this appeal brief for the Third Circuit Court of Appeals consideration. While, there is not a full appendix for the brief, I have referenced ECF#'s from the appropriate criminal or civil docket dockets, where the presiding subject judge is being reviewed for recusal. I am presently incarcerated without access to many of the filings, dockets, my legal files, the internet, or computer programs to merge files to publish an appendix, as almost all the files are in PDF format and not possible to work with from here. The only appendix that I have provided is the seven (7) page "Notice and Update to the Record of Undocketed Filings" that included a legal petition from Ballard Spahr LLP that the court has appeared to refuse to docket it. I mailed it to the district court, again, on May 30th, 2024 and has still not been docketed. That petition from Ballard Spahr LLP, has been received by the court multiple times, and has yet to be docketed. The only way I can present it as meaningful evidence in this brief, is to use it as an Appendix. I have done the best appeal brief I can, being an imprisoned pro se defendant without any legal experience. I apologize if things are repetitive or not stylized correctly, but everything is supported by the law available and all facts are documented on the record. I thank the Court for its review and hope the Court considers the helpless position the federal justice system has put me in for the past two and a half years, once the facts and record are finally reviewed by a court other than the presiding district court.

Brief Type-Volume Certification

This brief was prepared by Joseph Cammarata, from the Monmouth County Correctional Institution, on the law library computer using Microsoft Word 2016. The typeface is a 12-point, Times New Roman font. I certify, based on the word-counting function, that the brief itself, contains 15,596 words and 1,062 lines, including the titles, headings and signature block. This is in compliance with the volume word limit extension graciously allowed by the Court's Order to a maximum of 15,600 words.

I declare under penalty of perjury that the foregoing is true and correct (see 28 USC 1746; 18 USC 1621).

/s/ Joseph Cammarata

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Signed June 15th, 2024