

EXHIBIT E

(Docket Entry No. 6)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

IN THE MATTER OF THE SEARCH OF
INFORMATION ASSOCIATED WITH
[REDACTED] AND
[REDACTED], WHICH ARE
STORED AT PREMISES CONTROLLED BY
GOOGLE

FILED EX PARTE

FILED UNDER SEAL

NO. 1:17-MJ-00619

MOTION FOR LEAVE TO FILE DOCUMENTS UNDER SEAL

The United States of America, by and through undersigned counsel, and pursuant to Local Criminal Rule 49(f)(6)(ii), respectfully submits this motion requesting an Order authorizing the filing of this motion and its attachments under seal. Attached to this motion are: (1) a proposed order authorizing the filing of these documents under seal; (2) a substantive motion; and (3) a proposed order related to the substantive motion. As described in more detail in the attached pleadings, the materials being submitted to the Court relate to an ongoing grand jury investigation, and the integrity of that investigation would be seriously jeopardized by the public disclosure of these materials. The Supreme Court “consistently ha[s] recognized that the proper functioning of our grand jury system depends upon the secrecy of grand jury proceedings.” *Douglas Oil Co. of California v. Petrol Stops Northwest*, 441 U.S. 211, 218 (1979).

For this reason, the United States requests that this motion and its attachments, along with any Orders from this Court relating to this motion and its attachments, be sealed until further action by this Court. The United States further requests that this Court limit such sealing to permit the government to disclose the sealed materials to any parties to whom the government believes disclosure is required pursuant to law. Should the Court deny this motion, the United States

requests that the attachments to this motion not be filed, but be returned to the United States, without filing of the attachments or reflection of the name or nature of the attachments on the clerk's public docket.

Respectfully submitted,

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Chief, Money Laundering and Forfeiture Unit,
Money Laundering and Asset Recovery Section

By: /s/ Victor R. Salgado
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Dated: November 3, 2017

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

IN THE MATTER OF THE SEARCH OF
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NO. 1:17-MJ-00619

ORDER AUTHORIZING THE FILING OF DOCUMENTS UNDER SEAL

On motion of Pamela J. Hicks, Chief of the Money Laundering and Forfeiture Unit of the Criminal Division's Money Laundering and Asset Recovery Section, United States Department of Justice, by Victor R. Salgado, Trial Attorney for the Public Integrity Section of the Criminal Division, filed in this matter on November 3, 2017 (the "Motion for Leave to File Documents Under Seal");

And it appearing to the satisfaction of the Court:

1. That the United States' Motion for Leave to File Documents Under Seal and its attachments contain sensitive grand jury material, including the identity of the subjects of an ongoing grand jury investigation, and the overall course of the grand jury investigation, which if revealed publicly would jeopardize the ongoing investigation; and

2. That the information in the Motion for Leave to File Documents Under Seal and its attachments are protected from disclosure due to the ongoing nature of the grand jury proceedings.

NOW, THEREFORE, IT IS ORDERED pursuant to Local Criminal Rule 49(f)(6)(ii) that the United States' Motion for Leave to File Documents Under Seal is GRANTED. The United States' Motion for Leave to File Documents Under Seal and its attachments shall be filed and

maintained under seal and *ex parte*, but such sealing is limited to permit disclosure by the government to any parties to whom the government believes disclosure is required pursuant to law.

IT IS FURTHER ORDERED THAT this Order and any other Order issued in this matter shall be filed and maintained under seal, but such sealing is limited to permit disclosure by the government to any parties to whom the government believes disclosure is required pursuant to law.

SO ORDERED.

Date: _____

UNITED STATES DISTRICT JUDGE

IN CASE OF DENIAL

The United States' Motion for Leave to File Documents Under Seal is DENIED. The Motion and this Order shall be filed under seal, but such sealing is limited to permit disclosure by the government to any parties to whom the government believes disclosure is required pursuant to law. The attachments to the Motion for Leave to File Documents Under Seal shall be returned to the government without filing of the documents or reflection of the name or nature of the documents on the clerk's public docket.

SO ORDERED.

Date: _____

UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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NO. 1:17-MJ-00619

**GOVERNMENT'S EX PARTE, IN CAMERA MOTION SEEKING AUTHORIZATION
TO REVIEW PAST AND FUTURE COMMUNICATIONS BETWEEN GEORGE
HIGGINBOTHAM, ESQ., AND PRAKAZREL SAMUEL MICHEL AND HIS AGENTS**

The United States of America, by and through undersigned counsel, respectfully submits this *ex parte* and *in camera* motion requesting an Order authorizing review of any and all past and future communications between George H. Higginbotham, Esq., and Prakazrel Samuel Michel (hereinafter, “Pras Michel”) and between Higginbotham and Pras Michel’s agents (hereinafter, “the subject communications”).¹

Higginbotham, a licensed attorney who is also an employee of the U.S. Department of Justice (“Department”), has represented to Government investigators² and other third parties that he is Pras Michel’s attorney. For the reasons set forth below, the Government asks this Court to make a finding that Higginbotham’s relationship with Pras Michel does not meet the requisite elements of an attorney-client relationship such that the subject communications are not protected by the attorney-client privilege. In the alternative, the Government asks this Court to find that

¹ As detailed in the Government’s proposed Order, to the extent that the “taint team” encounters any (1) potentially privileged communications that (2) do not pertain to the alleged crimes or scheme discussed herein, these communications will be withheld from the investigative team.

² As explained in more detail below, at other times, Higginbotham has represented to Government investigators that he is not acting as Pras Michel’s attorney.

Higginbotham and Pras Michel entered into a sham attorney-client relationship (1) to facilitate a fraud against the City National Bank (“CNB”) in violation of 18 U.S.C. § 1344, and (2) as part of a conspiracy to [REDACTED] in violation of 18 U.S.C. § 371 and [REDACTED], such that the crime-fraud exception to the attorney-client privilege applies to the subject communications. The Government respectfully requests that the Court resolve this motion *ex parte* and *in camera* to protect grand jury secrecy and to preserve the integrity of the investigation. *See e.g., In re Sealed Case*, 151 F.3d 1059, 1074-1075 (D.C. Circuit 1998).

As detailed below, Higginbotham, Pras Michel, and others are under investigation for probable violations of Title 18 and [REDACTED] of the U.S. Code. This investigation is being conducted by the Department’s Office of the Inspector General (“OIG”), the Federal Bureau of Investigation (“FBI”), and the Department’s Criminal Division. A federal grand jury in the District of Columbia is also investigating this matter.

On August 21, 2017, the Government obtained a search and seizure warrant from this Court for e-mail communications residing in the personal Google accounts of Higginbotham and Pras Michel, and subsequently executed this warrant. Undersigned counsel have been assigned as the “filter team” in this matter and have reviewed most of these communications for the purpose of preparing this *ex parte* and *in camera* motion. Out of an abundance of caution, the investigative team has not had access to the subject communications and has refrained from further contacting Higginbotham and others until this Court rules on the instant motion. Accordingly, the Government hereby seeks this Order so that the investigative team may access the subject communications, confront Higginbotham and others with the facts recited herein, and take any other investigative steps needed to complete its investigation.

I. FACTUAL BACKGROUND

In or about July 2017, Higginbotham became the target of an OIG investigation focusing on whether he had violated sections 371, 203, and 1001 of Title 18 of the U.S. Code. Lidsky Aff. ¶ 5, August 21, 2017 (Exhibit 1). On July 20, 2017, Higginbotham, a licensed attorney with full-time employment at the Department, met with the Ambassador of the People's Republic of China to the United States on embassy premises. *Id.* at ¶ 10. The meeting had been arranged by Pras Michel, who did not attend the meeting, for the purpose of delivering a message to the ambassador on Pras Michel's behalf. *Id.* After this meeting, Government investigators interviewed Higginbotham and obtained his consent to access his personal cell phone. The cell phone contained a digital image of what appeared to be an excerpt of a contract laying out a retainer payment of €19 million and a success fee of €280 million for causing the Department, FBI, and other federal agencies to "drop" civil and criminal investigations against four foreign nationals. *Id.* at ¶ 13; *see also* Exhibit 27. The cell phone also contained e-mail communications with Pras Michel relating to business and financial matters, including matters related to China. *Id.* at ¶ 24. Based on the foregoing facts, the Government secured the August 21, 2017, search and seizure warrant from this Court for e-mail communications residing in the personal Google accounts of Higginbotham and Pras Michel. The subject communications were obtained pursuant to this warrant.

The filter team's review of the subject communications has revealed an ongoing scheme to place hundreds of millions of dollars, seemingly traceable to Low Taek Jho (hereinafter, "Jho Low"),³ into the U.S. banking system while concealing the funds' source and purpose. To date,

³ As set out in more detail below, Jho Low is associated with an alleged embezzlement scheme related to 1Malaysia Development Berhad, an investment and development company wholly owned by the Malaysian Government that is also known as 1MDB. Jho Low was also one

approximately \$61.5 million has been transferred via wire from foreign bank accounts to U.S. bank accounts pursuant to this scheme. A significant portion of these funds, approximately \$9 million, was subsequently transferred to a law firm's bank account in the United States. Of that \$9 million, at least \$338,200 was then transferred to [REDACTED] through intermediaries.⁴ At a minimum, there is probable cause to conclude that Higginbotham, Pras Michel, and others are involved in an ongoing conspiracy to defraud U.S. banks and to [REDACTED]
[REDACTED].

A. RELEVANT ENTITIES AND INDIVIDUALS

1. **1Malaysia Development Berhad ("1MDB")** is a strategic investment and development company that is wholly-owned by the Malaysian Government through the Malaysian Ministry of Finance. *See* Verified Complaint for Forfeiture In Rem at ¶ 19, *United States of America v. Certain Rights to and Interests in the Viceroy Hotel Group*, No. 2:17-CV-04438 (C.D. Cal. June 15, 2017), ECF No. 1 (Exhibit 2).

2. **Jho Low** is a Malaysian national with connections to the Malaysian Prime Minister and his family. Jho Low is allegedly involved in the embezzlement and subsequent laundering of billions of U.S. dollars from 1MDB. *See Id.* at ¶¶ 6-15.

3. **Pras Michel** is a former member of the musical group "The Fugees." FD-302 Report at 1, Federal Bureau of Investigation, August 2, 2017 (Exhibit 3). According to

of the four foreign nationals identified in the digital image of the contract excerpt obtained from Higginbotham's personal cell phone. *See* Exhibit 27.

⁴ The investigative team has secured bank records through the end of August 2017. Accordingly, this amount does not include any [REDACTED] that may have been made in September 2017 or October 2017 with these funds. Moreover, an additional \$35,800 in [REDACTED] were made after [REDACTED] received a \$1 million deposit from an account in Macau, China on May 2, 2017. Whether this transfer of funds is similarly tied to Jho Low is under investigation.

Higginbotham, Pras Michel asked Higginbotham in the early months of 2017 to help him identify a politically-connected attorney who could represent Jho Low in connection with the U.S. Government's seizure of Jho Low's property. *Id.* at 2.

4. **Elliot Broidy** was identified by Higginbotham as an attorney whom he referred to Pras Michel for subsequent recommendation to Jho Low (Exhibit 3, at 2). Broidy is also the Deputy Finance Chairman for the Republican National Committee. *See* [REDACTED]
[REDACTED]
(Exhibit 4, at 1).

5. [REDACTED] is an attorney who is [REDACTED] and who owns the [REDACTED]. *Id.*

6. **George Higginbotham, Esq.**, is a Department employee who is assigned to the Office of Legislative Affairs and who has materially assisted Pras Michel in the matters recited herein.

7. [REDACTED] is the [REDACTED] and [REDACTED] of [REDACTED]
[REDACTED], a New York-based accounting and business firm that, as noted in the company's website, purports to specialize in "providing tax and financial services to high-income and high net worth clients." [REDACTED] became Pras Michel's wealth manager in January 2017 at Higginbotham's recommendation. *See* E-mail from George Higginbotham to [REDACTED]
[REDACTED] and Pras Michel (January 13, 2017, 11:09:51 AM) (Exhibit 5) ("Pras Michel (cc'd – think Fugees) is a long-time friend and client. He has a delicate situation where he needs someone with your skills and experience to determine if certain financial matters were handled appropriately. I told him that you were the best in the business.").

8. **Anicorn LLC** is an entity that [REDACTED] registered on March 20, 2017, in

the State of Delaware on Pras Michel's behalf; Pras Michel is listed as the manager of Anicorn's bank account at CNB. See [REDACTED]

[REDACTED] (Exhibit 6).

9. **Artemus LLC** is an entity that [REDACTED] registered on March 20, 2017, in the State of Delaware on Pras Michel's behalf. Pras Michel is listed as the manager of Artemus's bank account at CNB. See [REDACTED]

[REDACTED] (Exhibit 7).

10. [REDACTED] is a law firm registered to [REDACTED], which corresponds to the residence where [REDACTED] and [REDACTED] spouse, Broidy, live. See [REDACTED]

[REDACTED] (Exhibit 8).

A. HIGGINBOTHAM'S EMPLOYMENT WITH THE U.S. DEPARTMENT OF JUSTICE AND HIS RELATIONSHIP WITH PRAS MICHEL

Although he is a licensed attorney, Higginbotham's employment with the Department is not in an "attorney" position. Attorney positions at the Department are generally classified as job series 905; Higginbotham's position is classified as job series 301 (misc. administration and program series). Regardless of his position, regulations applicable to Department employees specifically prohibit Higginbotham from engaging in any outside employment that involves the practice of law unless "it is uncompensated and in the nature of community service, or unless it is on behalf of himself, his parents, spouse, or children[.]" 5 C.F.R. § 3801.106(b)(1)(i). He is also prohibited from engaging in any outside employment – not just the practice of law – that involves "[l]itigation, investigations, grants or other matters in which the Department of Justice is or represents a party, witness, litigant, investigator or grant-maker." 5 C.F.R. § 3801.106(b)(1)(iii). These restrictions on Department employees are in published regulations easily available on the

internet. *See, e.g.,* <https://www.law.cornell.edu/cfr/text/5/3801.106>.

Notwithstanding these restrictions, Higginbotham received two lump-sum payments on May 10, 2017, and August 11, 2017, totaling \$70,000 from Anicorn's bank account. *See*

[REDACTED]
[REDACTED] (Exhibit 9). These payments have been made with funds traceable to Jho Low.⁵

Based on investigator interviews and a review of the subject communications, Higginbotham worked in the music business before joining the Department and has known Pras Michel for some time. Higginbotham presently has a business relationship with Pras Michel that, at one time, may have encompassed a legitimate attorney-client relationship. Thus, for example, in an e-mail dated March 23, 2017, Higginbotham told Pras Michel: "Honestly I am excited to be working with you again. Even the 2am calls remind me of my music business days – working for the Gov't is boring as fuck – I miss the hustle. We are in a good position to do great things for many years to come. I also appreciate the fact that we have moved from lawyer/client to friends to business partners." E-mail from George Higginbotham to Pras Michel (March 23, 2017, 10:05:59 PM) (Exhibit 11).

During a voluntary interview with a Government investigator on September 11, 2017 (this interview was surreptitiously recorded), Higginbotham claimed to have had an attorney-client

⁵ As set out in more detail below, Anicorn has made numerous payments to third parties, including Higginbotham, with funds received from an entity tied to Jho Low. In addition, in an e-mail to Pras Michel attaching the first invoice for \$20,000, Higginbotham referenced the fact that his compensation would be made with Jho Low's funds. *See* E-mail from George Higginbotham to Pras Michel (May 9, 2017, 11:33:06 AM) (Exhibit 10) ("I attached the Invoice - I don't know how much you can do now b/c Wu is making many many deposits so feel free to change the amount I put in - but not too much though ;) Let me know if I should send it to [REDACTED] also."). Based on communications discussed below, "Wu" appears to be a reference to Jho Low and the "deposits" referenced in the e-mail coincide with the international wire transfers that Anicorn received from the entity tied to Jho Low around the time that Higginbotham sent this e-mail.

relationship with Pras Michel, but then noted that the relationship had changed:

HL: . . . let me just ask you I mean are you like is he your client? Are you his attorney?

GH: I mean for all intense purposes yes.

[. . .]

HL: Cause when we first talk [sic] you describe [sic] this kind of like situation oh he'd throw a contract at you...

GH: ...exactly and that's what it was at that point and time. I mean I'm the thing about it is I have he I mean I don't know that I'm representing him as his attorney per se... what I'm doing is handling a lot of logistics for him.

[. . .]

GH: I mean I'm getting compensated.

HL: ...right but as as counsel or as like just a guy that that doesn't fuck things up.

GH: I'm the guy that doesn't fuck things up.

HL: Okay.

GH: The fact that I'm an attorney helps.

[REDACTED]

[REDACTED] (Exhibit 12).⁶

⁶ This interview took place in downtown Washington, D.C., near Higginbotham's office at the U.S. Department of Justice. Because the interview took place outdoors, the audio quality and resulting transcript are of limited quality. Out of an abundance of caution, prosecutors investigating this matter have not had access to either the audio or transcript of this interview pending resolution of this motion. In addition, any typographical or grammatical errors in the excerpts of the transcript cited in this Motion are from the original transcript attached hereto as Exhibit 12.

During the same interview, Higginbotham also suggested that Pras Michel would likely believe that Higginbotham is his attorney. *See Id.* at 42 (“So yes would he think that I’m his attorney yes of course he tells people I’m his attorney all the time. Ah um but this is not privilege from the perspective that . . .”).

As the above communications make clear, however, Pras Michel knows that Higginbotham is currently employed by the U.S. Government. In fact, one of the subject communications from Higginbotham to Pras Michel contains an attached image of Higginbotham’s business card for the Department, which identifies him as an employee of the Department’s “Office of Justice Programs” who is also affiliated with “Congressional Affairs.” E-mail from George Higginbotham to Pras Michel (April 28, 2017, 11:05:40 PM) (Exhibit 13). Additionally, Higginbotham’s LinkedIn page identifies him as an “Attorney Advisor” with the Department’s Office of Legislative Affairs. *See* Exhibit 14.

B. SCHEME TO DEFRAUD CITY NATIONAL BANK

As described below, Jho Low is allegedly at the center of a multi-billion dollar scheme to embezzle and launder public funds from 1MDB, a state-controlled bank in Malaysia. This scheme is under criminal investigation by U.S. officials and the subject of forfeiture proceedings in the Central District of California. Order Granting Request for Stay, *United States v. “The Wolf of Wall Street” Motion Picture etc. (and related cases)*, No. 2:16-CV-05362 (C.D. Cal. September 13, 2017), ECF No. 128 (Exhibit 15).

As a result of these proceedings, and because of his status as a politically exposed person, financial institutions in the United States are reluctant to engage in business dealings with Jho Low or any companies or individuals acting on his behalf. For example, [REDACTED], a financial institution operating as a casino, followed news reports of Jho Low’s alleged

participation in the unfolding allegations about embezzlement at 1MDB and the aftermath. *See* E-mail from [REDACTED] to [REDACTED], [REDACTED], [REDACTED], and [REDACTED] (February 11, 2015, 8:41 PM) (Exhibit 16) (forwarding links to news articles about Jho Low and 1MDB). On March 27, 2015, [REDACTED], identified as Senior AML⁷ Counsel in [REDACTED]' Compliance Department, sent an email to other [REDACTED]' employees ordering them to ban Jho Low and another individual "using flag # 1 – Not Allowed on Property Per Management Decision, etc." [REDACTED] explained that [REDACTED]' management had decided to discontinue the business relationship with Low and the other individual. *See* Email from [REDACTED] to [REDACTED] and [REDACTED] (March 27, 2015, 3:36 PM) (Exhibit 17). In addition to the [REDACTED] casinos, information obtained from other financial institutions corroborates that some financial institutions were unwilling to do business with individuals associated with 1MDB, including Jho Low. To circumvent these controls and to avail himself of banking services in the United States, Jho Low has relied on Pras Michel, Higginbotham, and others to conceal the source and purpose of his transfers to CNB, thereby escaping the heightened scrutiny that banks must employ for politically exposed persons like Jho Low.

1. Jho Low's Alleged Embezzlement and Laundering of 1MDB Funds

The Government is conducting a large-scale criminal investigation related to the alleged embezzlement of 1MDB funds. Specifically, the Government is investigating allegations that Jho Low and [REDACTED], with the assistance of others, criminally misappropriated public funds from 1MDB and laundered the proceeds of that

⁷ In the world of financial institution compliance, "AML" stands for Anti-Money Laundering.

criminal activity through accounts, real estate property, luxury goods, and other assets in the United States and elsewhere.

The Government is also investigating whether The Goldman Sachs Group, Inc., a U.S.-based company that underwrote bonds for 1MDB through various subsidiaries and affiliates (collectively, “Goldman”), played a role in this scheme. This investigation is focusing, in part, on whether Goldman and its employees (1) knowingly and willfully failed to implement adequate internal controls and keep accurate books and records, and (2) knowingly failed to maintain an effective anti-money laundering program, conduct due diligence, or report suspicious activity.

a) Suspected Criminal Conduct in Connection with 1MDB–
PetroSaudi Joint Venture

The Government has uncovered evidence that, beginning in approximately 2009 and continuing until at least 2011, Jho Low and others affiliated with 1MDB arranged for more than \$1 billion in fraudulent transfers from 1MDB to Good Star Limited (“Good Star”), a Seychelles company that is owned and controlled by Jho Low, under the pretense of investing money in a joint venture between 1MDB and PetroSaudi International (“PetroSaudi”), a private oil services company based in Saudi Arabia (Exhibit 2, ¶¶ 44-50). The name of the joint venture was 1MDB-PetroSaudi (the “Joint Venture”) and Jho Low is believed to have played a critical role in negotiating the Joint Venture deal, purportedly on behalf of 1MDB.

The investigation has revealed that the funds allegedly diverted from 1MDB in connection with the Joint Venture were allegedly laundered through shell companies and financial accounts around the world to conceal the true nature of these illegal transactions. Under the terms of the Joint Venture, 1MDB agreed to invest \$1 billion to obtain a 40 percent equity interest in the Joint Venture. *Id.* at ¶ 57. PetroSaudi agreed to invest certain energy extraction assets it purportedly

owned in exchange for a 60 percent equity interest. On or about September 28, 2009, representatives of 1MDB and PetroSaudi signed the Joint Venture Agreement (“JVA”). *Id.*

On or about September 30, 2009, 1MDB wired \$700 million of the \$1 billion it agreed to invest in the Joint Venture from Deutsche Bank in Malaysia to an account at RBS Coutts Bank AG in Switzerland belonging to Good Star (the “Good Star Account”). *Id.* at ¶¶ 82-88. Jho Low is the beneficial owner of the Good Star Account. *Id.* at ¶ 82. Nothing in the JVA indicates that Good Star is a party to the Joint Venture, in any way involved with the Joint Venture or PetroSaudi, or a party to any loan agreement between PetroSaudi and the Joint Venture. *Id.* at ¶ 93. The Government has also confirmed that Good Star has no Internet presence and appears to conduct no cognizable business activity; its only use appears to have been to open and maintain the Good Star Account.

In or around May 2011, 1MDB sent three additional transfers to the Good Star Account totaling \$205 million. In October 2011, 1MDB sent another payment of \$125 million to the Good Star Account. *Id.* at ¶ 105. Once again, Jho Low is the sole beneficiary of the Good Star Account.

Of the approximately \$1 billion that was diverted from 1MDB through the Good Star Account, approximately \$400 million is believed to have been laundered through the United States over the course of several years. *Id.* at ¶¶ 9, 121-126. Jho Low and Aziz used these funds, among other things, to acquire personal assets and to pay personal expenses. Many of these assets were acquired in the names of various legal entities and involved transfers through various bank accounts, including accounts in the United States. *Id.* at ¶¶ 466-570, 731-758.

b) Suspected Criminal Conduct in Connection with Goldman Bond Issuances

The Government has also uncovered evidence that Jho Low and other individuals associated with 1MDB misappropriated approximately \$2.6 billion of the approximately \$6.5

billion in funds that IMDB raised through a series of bond offerings in 2012 and 2013. *Id.* at ¶¶ 10-12. Even though these funds were intended to be used, among other things, to promote economic development in Malaysia, they were instead used to purchase art, jewelry, and real estate in the United States and elsewhere and to advance the personal business interests of Jho Low, Riza Aziz, and others. *Id.* at ¶¶ 571-730, 759-863, 880-901, 912-941.

2. Higginbotham and Others Conspired to Place Funds Traceable to Jho Low in the U.S. Banking System

Against this backdrop, the Government has identified what appears to be a new scheme, which is the focus of this investigation, to place up to \$300 million of funds traceable to Jho Low in the U.S. banking system with the assistance of Higginbotham, Pras Michel, and others.

Between May 8, 2017, and August 9, 2017, Anicorn's bank account at CNB received approximately \$21.4 million via four international wires from Lucky Mark (HK) Trading Limited, an entity with apparent ties to Jho Low. These four international wires coincided with the timing of wire transfers from Anicorn to [REDACTED]. Specifically, Lucky Mark (HK) Trading Limited sent Anicorn wires for approximately \$2.9 million (May 8, 2017), \$3 million (May 17, 2017), \$2.7 million (May 25, 2017), and \$12.8 million (August 9, 2017). *See* [REDACTED]

[REDACTED] (Exhibit 18). Anicorn, in turn, transferred approximately \$9 million via four separate wires to [REDACTED] either on the same day or the following day that it received the international funds: \$1 million (May 8, 2017),⁸ \$3 million (May 17, 2017), \$2 million (May 26, 2017), and \$3 million (August 9, 2017). *See* Exhibit 4. On August 24, 2017, Artemus's bank account at CNB

⁸ This amount was sent to [REDACTED] in three separate transactions, one of which was made indirectly by a third party who was later reimbursed by Anicorn. *See* Exhibit 4, at 2.

received approximately \$10 million via international wire (Exhibit 7).⁹

A review of the subject communications identified an e-mail communication from Higginbotham to Pras Michel, dated April 10, 2017, in which Higginbotham attached a file labeled “E & P Agreement 1.0.” E-mail from George Higginbotham to Pras Michel (April 10, 2017, 5:41:57 PM) (Exhibit 19). The file consisted of a consulting agreement in draft form between Anicorn and [REDACTED]. In the body of the e-mail, Higginbotham wrote: “Please review and we can discuss tonight.” *Id.* The draft consulting agreement contemplated an \$8 million retainer payment from Anicorn to [REDACTED] and between \$50 million and \$75 million in success fees, contingent upon the timing of performance. The draft agreement also included an attachment entitled “Exhibit A to Agreement between Anicorn, LLC and [REDACTED].” This exhibit consisted of an agreement in draft form between Jho Low and [REDACTED]. Pursuant to this draft agreement, [REDACTED] would provide “all legal services reasonably required to represent [Jho Low] in connection with” the following “Matter”:

1. UNITED STATES OF AMERICA V. “THE WOLF OF WALL STREET” MOTION PICTURE, INCLUDING ANY RIGHTS TO PROFITS, ROYALTIES AND DISTRIBUTION PROCEEDS OWED TO RED GRANITE PICTURES, INC. OR ITS AFFILIATES AND/OR ASSIGNS

Case No. CV 16-16-5362

Filed in the United States District Court for the Central District of California on 7/20/16.

2. All other Forfeiture *In Rem* actions filed by the United States of America that are referred to in the Complaint filed in the case described in Item 1 above which apply to [Jho Low] or any corporation in which [Jho Low] has or is alleged to have an interest.

Id. As previously noted, Anicorn made three wire transfers totaling \$8 million between May 17,

⁹ As discussed below, this transfer was purportedly made pursuant to a consulting agreement that Artemus executed with Lucky Mark (HK) Trading Limited on August 7, 2017.

2017, and August 9, 2017 that were consistent with the retainer clause in the draft agreement that Higginbotham sent to Pras Michel.

On April 28, 2017, Higginbotham e-mailed Pras Michel and attached a file labeled “Anicorn-WuTang 03.docx.” E-mail from George Higginbotham to Pras Michel (April 28, 2017, 11:02:58 PM) (Exhibit 20). In the body of the e-mail, Higginbotham wrote: “Per your request.” The attached file was a consulting agreement in draft form between Anicorn and a party identified as “Client.” *Id.* The draft consulting agreement contemplated services provided by Anicorn to “Client” pertaining to the same “Matter” described in the draft agreement between Jho Low and [REDACTED]. The draft agreement also contemplated a \$25 million retainer payment and a \$300 million success fee that “Client” would pay to Anicorn regardless of the outcome of the services rendered or resolution of the “Matter.” The draft agreement also includes wire transfer instructions, including Anicorn’s bank account and bank routing numbers at CNB, and CNB’s address. Minutes after he sent this draft agreement, Higginbotham sent another e-mail to Pras Michel attaching a digital image of Higginbotham’s official Department of Justice business card (Exhibit 13).

On May 1, 2017, Higginbotham sent an e-mail to Pras Michel attaching an invoice from Anicorn to “The Principal” in the amount of \$3 million or its equivalent in euros. E-mail from George Higginbotham to Pras Michel (May 1, 2017, 05:51:00 PM) (Exhibit 21). The invoice included wire transfer instructions identical to the instructions contemplated in the draft consulting agreement that Higginbotham sent to Pras Michel three days earlier.

On May 3, 2017, Pras Michel, Broidy, and a third individual, Nickie Lum, traveled to Bangkok, Thailand to meet with Jho Low. *See* [REDACTED] (Exhibit 22). Two days earlier,

on Monday, May 1, 2017, Nickie Lum e-mailed Pras Michel to suggest that the parties make hotel reservations at the Shangri-La Hotel in Bangkok, Thailand “for just one night – Wednesday.” Pras Michel responded: “jo is booking our hotel,” in what appears to be a reference to Jho Low. *Id.* at 1 (quoting E-mail from Pras Michel to Nickie Lum (May 1, 2017, 07:15:39 PM) (Exhibit 23)).

Lastly, during an interview with a Government investigator on September 11, 2017, Higginbotham confirmed that the funds being transferred into Anicorn’s account belonged to Jho Low, *see* Exhibit 12, at 70-74, 97-99, and that he expected more funds associated with Jho Low to come in the future. *Id.* at 100.

In sum, the subject communications, bank records, and Higginbotham’s statements to law enforcement show the following: (1) Pras Michel and others traveled to meet with Jho Low in early May 2017; (2) Higginbotham prepared or edited draft agreements involving Jho Low, [REDACTED], and Anicorn shortly before this trip; (3) funds were transferred by wire from Lucky Mark (HK) Trading Limited to Anicorn shortly after this trip and consistent with the terms of these draft agreements; and (4) the funds are traceable to Jho Low.

3. Higginbotham and Others Lied to CNB to Conceal the True Source and Purpose of the Funds

CNB is a U.S. financial institution. As such, CNB is subject to substantial criminal and civil penalties, as well as significant reputational harm, if it fails to adhere to the requirements of the Bank Secrecy Act, 31 U.S.C. §§ 5311 *et seq.*, and other anti-money laundering regulations. These obligations include, among other requirements, the implementation of (1) due diligence policies and procedures for high-risk customers and accounts such as those of politically exposed persons¹⁰ like Jho Low, and (2) internal controls for managing accounts of politically exposed

¹⁰ The Federal Financial Institutions Examination Council’s *Bank Secrecy Act Anti-Money Laundering Act Examinations Manual* defines a “politically exposed person” as including a

persons and companies owned by such persons.

Pursuant to these obligations, CNB, in a communication on July 21, 2017, asked [REDACTED] for more information about Anicorn, Artemus, and Lucky Mark (HK) Trading Limited. See E-mail from [REDACTED] to George Higginbotham (July 21, 2017, 02:05:31 PM) (Exhibit 24) (forwarding inquiry from [REDACTED], [REDACTED] of CNB). Specifically, CNB inquired about (1) Anicorn's and Artemus's primary business activity; (2) the source and purpose of approximately \$8.9 million that had been transferred on July 20, 2017 to Anicorn's account from Lucky Mark (HK) Trading Limited; and (3) the purpose of several cash withdrawals from the Anicorn and Artemus bank accounts. *Id.* About an hour after receiving this inquiry, [REDACTED] forwarded it to Higginbotham with the following note: "Hey George, Please see inquiry below. After you review, please call me." *Id.*

On August 1, 2017, [REDACTED] replied to CNB's inquiry and claimed that the funds were transferred to finance Anicorn's efforts to assist in a pending "trademark infringement" civil suit filed against Lucky Mark (HK) Trading Limited in connection with "some of the software that it developed." E-mail from [REDACTED] to [REDACTED] and [REDACTED] (August 2, 2017, 3:55 PM) (Exhibit 25). According to [REDACTED], "Anicorn's services were engaged [by Lucky Mark (HK) Trading Limited] to spear-head and co-ordinate the legal efforts to prevail in the suit. Pras [Michel] has relationships with some very influential law firms." *Id.* [REDACTED] further explained that "Anicorn makes payment to a law firm in the U.S." and that "[t]he undertaking of this case may cost as much as \$25 Million USD." *Id.* Lastly, [REDACTED] noted that "[s]hould

"current or former senior foreign political figure, their immediate family, and their close associates." Jho Low is an associate of [REDACTED] [REDACTED]. Accordingly, any bank knowingly doing business with Jho Low would have additional due diligence requirements under the Bank Secrecy Act.

Lucky Mark prevail, the success bonus could be very high, depending on the final settlement of the matter.” *Id.* On August 3, 2017, [REDACTED] forwarded his response to CNB to Higginbotham with a note saying “[h]ad meant to put you on copy.” *Id.*

On or about September 20, 2017, Lucky Mark (HK) Trading Limited transferred an additional \$29.9 million to Anicorn’s bank account at CNB, for a running total of approximately \$51.5 million since May 2017. *See* Exhibit 18.

Not satisfied with [REDACTED]’s August 1, 2017, response to CNB’s inquiries, CNB demanded more information about Artemus, Anicorn, and Lucky Mark (HK) Trading Limited. On September 27, 2017, Higginbotham submitted a three-page letter, along with several attachments, in response to CNB’s request for additional information. The letter was submitted on formal letterhead from “Higginbotham Law, P.C.” Letter from George Higginbotham to [REDACTED], [REDACTED] of City National Bank, September 27, 2017 (Exhibit 26).

In the letter, Higginbotham identified himself as counsel to Pras Michel, and advised that “Lucky Mark Trading, LTD” had retained Anicorn to identify counsel “as well as other professionals to resolve a highly complex civil litigation matter.” Higginbotham also did the following: (1) confirmed that the “source of funds is Lucky Mark” (*Id.* at 2, ¶ 2); (2) provided a Certificate of Incorporation showing that Lucky Mark (HK) Trading Limited was incorporated in Hong Kong in July 2016 (*Id.* at 4); and (3) claimed that “Lucky Mark is a souvenirs, gifts and novelty manufacturer and exporter based in HK.” *Id.* Higginbotham also included an executed agreement between Artemus and Lucky Mark (HK) Trading Limited for “Strategic Communications & Crisis Management” as support for the approximately \$10 million that Lucky Mark (HK) Trading Limited transferred by wire to Artemus on August 24, 2017. *Id.* at 18-29.

Neither of the explanations from [REDACTED] and Higginbotham mentioned Jho Low or the

civil forfeiture proceedings for which Jho Low retained Anicorn and [REDACTED]. Although the civil forfeiture proceedings are a matter of public record, Higginbotham claimed that he was “unable to provide particulars related to the litigation matter as it is confidential to the client.” *Id.* at 2, ¶ 6.

Similarly, neither Higginbotham nor [REDACTED] mentioned the services that were laid out in more detail in the screenshot retrieved from Higginbotham’s personal cell phone – that is, to somehow cause the Department, the FBI, and other federal agencies to abandon civil forfeiture proceedings and criminal investigations involving Jho Low, [REDACTED] and others.¹¹

Moreover, Higginbotham’s claim that Lucky Mark (HK) Trading Limited is a souvenir manufacturer is false. Indeed, Government investigators have identified an entity named “Lucky Mark International (HK) Limited” that is in the souvenir manufacturing industry. But this entity was formed in 2014 – not in 2016, as the Certificate of Incorporation that Higginbotham sent to CNB claimed. Tellingly, just as he has done here, Jho Low has in the past created shell entities using similar or slightly modified names of established companies as a strategy to confound banks and financial regulators. *See* Exhibit 2, at ¶ 231. Nor is [REDACTED]’s prior claim that Lucky Mark (HK) Trading Limited is involved in a trademark infringement suit related to the company’s software development activities believable, given that Higginbotham’s subsequent letter of September 27, 2017, demonstrated that this was false.

As further proof of Higginbotham’s material deception to CNB in his September 27, 2017

¹¹ The screenshot identifies Anicorn’s services as follows: “[T]o drop all civil and/or criminal cases and/or cease investigations and/or removal of any INTERPOL Red Notice (or other forms of international notices and/or actions) by 31 September 2017 . . . against Mr. Low Taek Jho and related family, Mr. [REDACTED] and related family, and Mr. [REDACTED] and related family” and any assets or companies “related” to these men and their families. The screenshot further notes that the cases should be dropped with no “admission of guilt” or “forfeiture of any further assets other than previous artworks directly owned by Low Taek Jho” Exhibit 27.

letter, Higginbotham scanned a document on or about September 14, 2017 using a Department scanner that consisted of a purported loan agreement, dated September 13, 2017, stipulating that Lucky Mark (HK) Trading Limited would lend €25 million to Anicorn. Higginbotham personally signed this loan agreement on Anicorn's behalf. See [REDACTED] (Exhibit 28). The purported loan agreement called for disbursement of the loan within five days of the execution of the agreement. *Id.* at 20, ¶ 1.2. As noted, Anicorn's account at CNB received a wire transfer on September 20, 2017 from Lucky Mark (HK) Trading Limited for approximately \$29.9 million, which is the rough equivalent of €25 million at the rate of exchange between the euro and the U.S. dollar as of the day of the transfer. See Exhibit 18, at 1. In other words, Higginbotham's representation in his September 27, 2017 letter to CNB that Lucky Mark (HK) Trading Limited's wire transfers to Anicorn related to the resolution of a "highly complex civil litigation matter" in the souvenir manufacturing business is in all likelihood false in light of the "loan agreement" that he personally signed on September 13, 2017.

Significantly, the "loan agreement" was countersigned on Lucky Mark (HK) Trading Limited's behalf by an individual who is a relative of Jho Low and who has previously represented him in connection with large commercial transactions. See Exhibit 28, at 2. Moreover, this loan agreement was likely executed in early September 2017, when Pras Michel and Higginbotham traveled to Hong Kong. See [REDACTED] (Exhibit 29). Higginbotham has confirmed that he and Pras Michel met with Jho Low during this trip. See Exhibit 12, at 47-48.

Lastly, Higginbotham told a Government investigator that the funds were being transferred to cover several transactions associated with resolving Jho Low's case with the Department. *Id.*

84-88.

The true purpose of the funds that were wire transferred to Anicorn and Artemus and the means by which Pras Michel, Higginbotham, and Broidy would advance Jho Low's interests in the United States are not entirely known and remain a pressing focus of this investigation. Based on the above, however, there is probable cause to conclude that Higginbotham, as purported counsel to Pras Michel, made materially false representations about the source and purpose of these funds, thereby exposing CNB to substantial criminal and civil penalties for potential violations of the Bank Secrecy Act, 31 U.S.C. § 5311 *et seq.*, and federal banking regulations, and to significant reputational harm. As discussed below, there is probable cause to believe that this conduct has risen to the level of bank fraud and other criminal violations, thereby warranting the application of the crime-fraud exception for the attorney-client privilege.

C. SCHEME TO [REDACTED]

As previously noted, Anicorn transferred by wire the following amounts to [REDACTED]: \$1 million (May 8, 2017), \$3 million (May 17, 2017), \$2 million (May 26, 2017), and \$3 million (August 9, 2017). These wire transfers coincided with similar or larger wire transfers from Lucky Mark (HK) Trading Limited to Anicorn. Moreover, three of these wire transfers add up to \$8 million, which appear to correspond to the retainer fee contemplated in the draft agreement between Anicorn and [REDACTED] that Higginbotham sent to Pras Michel on April 10, 2017, approximately twenty days before Pras Michel, Broidy, and Lum traveled to Southeast Asia to meet with Jho Low. [REDACTED] also received two large wire transfers from an entity identified in [REDACTED]'s bank records as "[REDACTED]" on May 2, 2017 and May 15, 2017 for \$1 million and \$1.5 million, respectively. *See Exhibit 4, at 1-2.*

Whether these wire transfers are similarly linked to Jho Low is under investigation.

In sum, [REDACTED]'s bank account received approximately \$11.5 million from foreign sources (*i.e.*, \$9 million from Anicorn and \$2.5 million from the account in Macau, China) between May 2, 2017 and August 9, 2017. In stark contrast, in the entire nine-month period leading up to May 2017, the [REDACTED] bank account received less than \$180,000 in other deposits, and the company's month-end balance during this time period never exceeded \$12,000. *Id.* at 8-9.

As noted above, Broidy, who currently serves as Deputy Finance Chairman for the Republican National Committee, is [REDACTED], whose name is in the draft agreement between [REDACTED] and Jho Low.

Every time a wire transfer was made from a foreign source into the [REDACTED] bank account, a flurry of transfers followed to Broidy's personal and business accounts and to [REDACTED]'s personal account. Funds traceable to Jho Low thus were commingled with non-foreign sources and, from there, transferred to [REDACTED]. In sum, during the period May 9, 2017, to August 22, 2017, Broidy and [REDACTED] transferred at least \$338,200 of commingled funds to [REDACTED] as follows:

Date	Source	Amount	Recipient
05/09/17	Broidy	\$150,000	[REDACTED]
06/02/17	Broidy	\$75,000	[REDACTED]
06/05/17	Broidy	\$10,400	[REDACTED]
06/05/17	Broidy	\$35,000	[REDACTED]
06/30/17	Broidy	\$10,000	[REDACTED]
06/30/17	Broidy	\$10,000	[REDACTED]
06/30/17	Broidy	\$5,400	[REDACTED]
06/30/17	[REDACTED]	\$5,400	[REDACTED]
06/30/17	[REDACTED]	\$10,000	[REDACTED]
06/30/17	[REDACTED]	\$5,400	[REDACTED]

06/30/17	Broidy	\$5,400	
08/04/17		\$2,700	
08/16/17		\$5,400	
08/22/17		\$2,700	
08/22/17	Broidy	\$5,400	

See Exhibit 4, at 1-3.¹²

During his interview with a Government investigator, Higginbotham confirmed that part of the money being paid to Broidy was for “access to someone who can make [a settlement] happen.” See Exhibit 12, at 88-89 (emphasis added). Higginbotham later characterized these efforts as, “[f]or lack of a better word it’s really just lobbying on a whole fucking different fucking level.” *Id.* at 123-24. Lastly, Higginbotham noted the following:

GH: ... if and and I use the lobbying analogy because it’s the same thing. There’s a Senator that’ gonna introduce ah um a piece of legislation that is gonna have an impact on our companies in the Southern part of the country okay.

(Noise in background)

GH: He takes a campaign donation from...

(Voices in background)

GH: ...ya know the...

(Voices in background)

GH: ... [REDACTED] ...

(Noise in background)

GH: ...or the power companies association of (UI). He takes a chunk right. Hand the [REDACTED] ta him to to to the party ta whatever and and blah blah etcetera etcetera etcetera.

Id. at 130. As discussed below, the Government respectfully submits that there is probable cause to conclude that a conspiracy to [REDACTED]

¹² Three additional c [REDACTED] – [REDACTED] for \$25,000 (May 4, 2017), [REDACTED] for \$5,400 (May 5, 2017), and [REDACTED] for \$5,400 (May 5, 2017) – were made following the \$1 million transfer from [REDACTED] on May 2, 2017. See Exhibit 4, at 1-2. Whether this entity is tied to Jho Low is under investigation.

II. ARGUMENT

Based on the facts gathered in this investigation to date, some of which serve as the basis for this motion, Pras Michel and Higginbotham are co-conspirators in a large-scale scheme to place hundreds of millions of dollars traceable to Jho Low in the U.S. financial system. A lawyer – particularly one employed by the Department – should not be allowed to hide behind the attorney-client privilege after engaging in fraudulent and criminal conduct, thereby foreclosing investigators’ access to communications made in furtherance of his frauds and crimes. Similarly, Pras Michel should not be able to corrupt a Department employee to engage in a series of criminal acts aimed at undermining litigation brought by the Department and then claim that the attorney-client privilege applies to his communications with the corrupted employee.

Accordingly, the Government respectfully asks this Court to find that Higginbotham’s relationship with Pras Michel does not meet the requisite elements for an attorney-client relationship, and that the attorney-client privilege accordingly does not apply. If the Court finds that an attorney-client relationship may exist, the Government asks that it find that the crime-fraud exception applies to any past and future communications between the two and their agents.

A. THE ATTORNEY-CLIENT PRIVILEGE IS INAPPLICABLE TO THE SUBJECT COMMUNICATIONS

A prerequisite of the attorney-client privilege is that an attorney-client relationship existed between the parties, and courts have drawn the contours of this privilege quite narrowly. Because the privilege “has the effect of withholding relevant information from the factfinder, it applies only where necessary to achieve [that] purpose.” *United States v. Zolin*, 491 U.S. 554, 562 (1989) (quoting *Fisher v. United States*, 425 U.S. 391, 403 (1976)). “Thus, where there are close calls, the Court will put a thumb on the scales in favor of narrow construction of the elements of the

privilege.” *United States v. Singhal*, 800 F. Supp. 2d 1, 6 (D.D.C. 2011).

In this Circuit, the attorney-privilege applies to communications that (1) relate to a fact conveyed to the attorney by his client, and (2) that are made for the primary purpose of securing (i) an opinion on law, (ii) legal services, or (iii) assistance in a legal proceeding. *See In re Grand Jury*, 475 F.3d 1299, 1304 (D.C. Cir. 2007) (quoting *In re Sealed Case*, 737 F.2d 94, 98-99 (D.C. Cir. 1984)). Critically, such communications must be made with the “expectation of secrecy” and the information must not have been “known or disclosed to any third party” at the time it was communicated. *Mead Dead Central, Inc. v. United States Dep’t of Air Force*, 566 F.2d 242, 254 (D.C. Cir. 1977).

This expectation of secrecy must be “reasonable” such that the communication is either deemed “intrinsically confidential” or the client had a legitimate “subjective intent of confidentiality.” *Cobell v. Norton*, 377 F. Supp. 2d 4, 11 (D.D.C. 2005) (quoting *United States v. Robinson*, 121 F.3d 971, 976 (5th Cir. 1997)). In *Cobell*, the Department was in an attorney-client relationship with the Department of the Interior (“DOI”) regarding a lawsuit brought against the DOI concerning the alleged mishandling of trust data. *Id.* at 7. The court found that the DOI had no reasonable expectation of secrecy in a memorandum to the Department about its IT system because the DOI had a fiduciary duty to engage in broad disclosure of information relating to trusts. *Id.* at 11-12. The court noted that even if the DOI had a subjective expectation of secrecy, the expectation was “manifestly unreasonable.” *Id.* at 14. “To avoid overprotecting client interests at the expense of the competing interests...the law of attorney-client privilege must be narrowly tailored to effectuate its purposes.” *Id.* (internal citation omitted).

As an initial matter, the attorney-client privilege does not apply to the instant case because Higginbotham and Pras Michel do not have an attorney-client relationship. Higginbotham views

Pras Michel as his business partner, *see* Exhibit 11 (“I also appreciate the fact that we have moved from lawyer/client to friends to business partners”), and he views himself as someone who handles “a lot of logistics . . . [and] doesn’t fuck things up” for Pras Michel. Exhibit 12, at 39-40. Accordingly, the Government respectfully submits that because there was no intent to form an attorney-client relationship, at least on the part of Higginbotham, no attorney-client privilege is available for communications between Higginbotham and Pras Michel. *See, e.g., Simpson et al. v. James, et al.*, 903 F.2d 372, 376 (5th Cir. 1990) (holding that, because the formation of an attorney-client relationship turns on principles of contract law – including on the intentions of the parties – the consent of both the attorney and of the putative client are necessary to establish an attorney-client relationship concerning a matter).

Even if, however, the Court were to find that there is potentially an attorney-client relationship between Higginbotham and Pras Michel, their communications are not protected by the privilege because there is no reasonable expectation of secrecy or confidentiality. *Cobell*, 377 F. Supp. 2d at 11-14. Pras Michel knows that Higginbotham works for the Department. *See* Exhibit 14. Pras Michel also received from Higginbotham draft agreements between (1) Anicorn and [REDACTED] and (2) [REDACTED] and Jho Low, both of which contemplate services provided in connection with a pending forfeiture proceeding to which the Department is a party. *See* Exhibit 19. In light of both sets of evidence, Pras Michel cannot reasonably or objectively expect secrecy and confidentiality from Higginbotham, a Department employee. As such, any communications between the two – and their agents – fail to meet the requisite elements of the attorney-client privilege under *Cobell*.

Lastly, assuming Pras Michel intended to retain Higginbotham as counsel, Pras Michel knew that the interests of Higginbotham’s employer were adverse to Jho Low’s. This created an

intractable conflict of interest, which weighs heavily against a finding of privilege. *See e.g., Madanes v. Madanes*, 199 F.R.D. 135, 148 (S.D.N.Y. 2001) (noting that a client who attempts to hire an attorney with the purpose of inducing the attorney to act adversely to another client commits fraud) (quoting 8 J. Wigmore, *Evidence* § 2313). Indeed, as the facts recited herein establish, Pras Michel has induced Higginbotham to engage in a series of illegal acts aimed at severely undermining the interests of his own employer – the Department – in pending forfeiture proceedings in the U.S. District Court for Central District of California.

Based on the foregoing, the Government requests that this Court find that the attorney-client privilege does not apply to the subject communications, thereby allowing the investigative team unfettered access to those communications.

B. *EVEN IF THE COURT WERE TO FIND AN ATTORNEY-CLIENT RELATIONSHIP, ANY ATTENDANT PRIVILEGE IS VITIATED BY THE CRIME-FRAUD EXCEPTION*

Although a bona fide attorney-client relationship between Higginbotham and Pras Michel may render the subject communications privileged, any claim to such a relationship here rests on a faulty foundation given that the communications fall squarely within the crime-fraud exception. The attorney-client privilege encourages “full and frank communication between attorneys and their clients and thereby promote[s] broader public interests in the observance of law and administration of justice.” *Upjohn Co. v. United States*, 449 U.S. 383, 389 (1981). Protecting the privilege, however, comes at a significant cost to the truth-seeking function of the adversarial system. *Zolin*, 491 U.S. at 561-63. Accordingly, when a client abuses the system by consulting an attorney for the purpose of furthering criminal or fraudulent activity, the application of the attorney-client privilege is overcome by the “crime-fraud exception” and such information loses its protected status. *Id.* In such circumstances, the value to society of encouraging attorney-client

communications is outweighed by the “costs of probative evidence foregone.” *In re Grand Jury Proceedings (Gregory P. Violette)*, 183 F.3d 71, 76 (1st Cir. 1991).

Lastly, it is well-settled that when a lawyer becomes a co-conspirator of a client – as Higginbotham has in the instant matter – the attorney-client relationship is vitiated. *See e.g. United States v. Ballard*, 779 F.2d 287, 292 (5th Cir. 1986) (“The privilege for communications between client and attorney ceases when the purpose of the privilege is abused, when the lawyer becomes either the accomplice or the unwitting tool in a continuing or planned wrongful act.”); *Gregory P. Violette*, 183 F.3d at 79.

To establish the crime-fraud exception, the Government must do the following: (1) make a *prima facie* showing of a violation sufficiently serious to defeat the privilege; and (2) establish a relationship between the communication at issue and the *prima facie* showing. *See In re Sealed Case*, 754 F.2d 395, 399 (D.C. Cir. 1985) (*Synanon Case*). Moreover, a *prima facie* violation is established if the client was engaged in or planning a criminal or fraudulent scheme when it sought the advice or representation of counsel to further the scheme. *Id.* (citing *In re Murphy*, 560 F.2d 326, 337 (8th Cir. 1977)). The exception applies not only where the client actually knows that the contemplated activity is illegal, but also where the client “reasonably should have known.” *United States v. Rakes*, 136 F.3d 1, 4 (1st Cir. 1998).

Here, it is apparent from the subject communications that Higginbotham, Pras Michel, and others conspired to place hundreds of millions of dollars traceable to Jho Low in the U.S. baking system, lied about the source and purpose of these funds when asked by CNB, and facilitated illegal [REDACTED]. Higginbotham has been and continues to be an integral participant of the conspiracy. As such, the Government respectfully submits that his role as a co-conspirator so overwhelms any claim of privilege that a complete evisceration of his

purported attorney-client relationship with Pras Michel is not only appropriate but just.

1. Scheme to Defraud City National Bank

As detailed above, CNB is bound to observe and comply with U.S. laws and regulations. These obligations include, among others requirements, to implement due diligence policies and procedures governing high-risk customers and accounts, such as accounts of politically exposed persons like Jho Low, and internal controls for managing accounts of these individuals and the companies that they own. They are also required to report suspicious activity when, like here, the transaction “has no apparent business or apparent lawful purpose or is not the sort in which the particular customer would normally be expected to engage, and the bank knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction.” 31 C.F.R. § 1020.320(a)(2)(iii); 31 U.S.C. § 5318(g). Failure to comply with these obligations carries significant liability exposure, both criminal and civil, 31 U.S.C. §§ 5321-22, and substantial reputational risks.

In its duty-bound effort to comply with these laws, CNB asked [REDACTED] to explain the source and purpose of the funds. CNB did not accept [REDACTED]’s fictionalized explanation, which he likely manufactured with Higginbotham’s assistance (Exhibit 24), about Lucky Mark (HK) Trading Limited’s involvement in software development and the trademark infringement law suit. Thus, CNB asked for more information. But this time, Higginbotham took charge of the matter and presented an even more elaborate fabrication to CNB, and he did so on formal letterhead as counsel for Pras Michel and as an attorney affiliated with a law firm: “Higginbotham Law, P.C.”

Without a doubt, Higginbotham’s representations were false and willfully executed to

deceive CNB into not reporting suspicious activity under the Bank Secrecy Act. 31 C.F.R. § 1020.320(a)(2)(iii); 31 U.S.C. § 5318(g). This conduct has been deemed criminal in a similar context. *See United States v. American Investors of Pittsburgh, Inc.*, 879 F.2d 1087, 1090-1091 (3rd. Cir. 1988) (affirming conviction of a bank customer who willfully caused a bank to fail in its duty to report currency transactions in excess of \$10,000 as required by the Bank Secrecy Act, even though the Act did not impose – at that time – such a duty on the customer).

Higginbotham's conduct also constitutes a fraud on City National Bank. The bank fraud statute, 18 U.S.C. § 1344(1), makes it an offense to knowingly execute, or attempt to execute, a scheme or artifice to defraud a financial institution. Section 1344(1) contains three essential elements: "(1) that there was a scheme to defraud a bank; (2) that the defendant executed or attempted to execute the scheme with the intent to defraud; and (3) that at the time of the execution of the scheme, the bank had its deposits insured by the Federal Deposit Insurance Corporation." 2-44 Modern Federal Jury Instructions-Criminal P 44.02 (2017); *see also United States v. Parkes*, 668 F.3d 295, 301 (6th Cir. 2012); *United States v. Rizk*, 660 F.3d 1125, 1135 (9th Cir. 2011); *United States v. Bowling*, 619 F.3d 1175, 1181 (10th Cir. 2010); *United States v. Renner*, 238 F.3d 810, 813 (7th Cir. 2001); *United States v. Whitehead*, 176 F.3d 1030, 1041 (8th Cir. 1999).

Under Section 1344(1), the majority of circuits addressing this issue have held that the bank fraud statute's "intent" element is satisfied when the defendant's conduct, as here, placed the bank at a "risk of loss." *See, e.g., United States v. Brandon*, 298 F.3d 307, 311-12 (4th Cir. 2002) ("it is sufficient for the Government to show that a financial institution [was] exposed to an actual or potential risk of loss"); *United States v. McCauley*, 253 F.3d 815, 820 (5th Cir. 2001); *United States v. De La Mata*, 266 F.3d 1275, 1298 (11th Cir. 2001); *United States v. Akers*, 215 F.3d 1089, 1101 (10th Cir. 2000) (fact that "bank was put [at] potential risk by the scheme to defraud" was

sufficient); *United States v. Hoglund*, 178 F.3d 410, 413 (6th Cir. 1999); *United States v. Wolfswinkel*, 44 F.3d 782, 783 (9th Cir. 1995) (holding that there may be various ways to prove that a defendant acted with an “intent to defraud,” including demonstrating that the defendant’s conduct exposed the bank to a “risk of loss”); *but see, e.g., United States v. Kenrick*, 221 F.3d 19, 26-27 (1st Cir. 2000) (“intent necessary for a bank fraud conviction is an intent to deceive the bank in order to obtain from it money or other property”).

Although the D.C. Circuit has yet to address the issue directly, at least one district court in this Circuit, albeit in a different procedural posture and context, has held that 18 U.S.C. § 1344 requires neither an actual loss by the bank nor the defendant’s personal benefit from the scheme to defraud. *See BCCI Holdings (Lux.), S.A. v. Khalil*, 56 F. Supp. 2d 14, 55 (D.D.C. 1999), *aff’d in part, rev’d in part on other grounds, BCCI Holdings (Lux.), S.A. v. Khalil*, 214 F.3d 168 (D.C. Cir. 2000).

In sum, Higginbotham, Pras Michel, and [REDACTED] defrauded CNB by exposing it to substantial criminal and civil penalties for potential violations of the Bank Secrecy Act, 31 U.S.C. § 5311, and federal banking regulations, and to significant reputational harm. Higginbotham was an integral part of this scheme, and he used his status as a licensed attorney not to provide legal advice or representation to Pras Michel, but to further criminal activity, on purported law firm letterhead no less, that would benefit Jho Low, Pras Michel, and himself.

2. **Scheme to** [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]. As noted above, between May 4, 2017, and August 22, 2017, Broidy and [REDACTED] made nearly \$338,200 in [REDACTED]

[REDACTED] with funds traceable to Jho Low. These disbursements were made at the same time that Anicorn transferred \$9 million, of which \$8 million coincides with the retainer payments contemplated in the draft agreement between [REDACTED] and Jho Low – a Malaysian citizen and, therefore, [REDACTED]. See [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]).

Higginbotham confirmed to Government investigators that part of Jho Low's funds that he and others conspired to bring into the U.S. banking system would be used for "access" to resolve matters before the Department and, in particular, for "lobbying" and "[REDACTED]." See Exhibit 12, at 89, 124, and 130. In sum, funds tied to Jho Low, a foreign national, are intentionally being used to [REDACTED].

This conduct would amount to a crime if proven beyond a reasonable doubt under 18 U.S.C. § 371 (Klein Conspiracy) and [REDACTED]). The Government respectfully submits to this Court that there is sufficient evidence supporting a finding of probable cause that these crimes have been committed by Higginbotham, Pras Michel, and others, thereby warranting the applicability of the crime-fraud exception of the attorney-client privilege to the subject communications.

III. Conclusion

The United States submits that access to the subject communications is necessary to identify and prosecute several members of an ongoing conspiracy, including a Department employee. Accordingly, the United States requests Court authorization for the investigative team to review the subject communications and to interview the subjects of this investigation in its

continuing investigation of Higginbotham, Pras Michel, Broidy, and others.

IV. Request for Sealing

Because of the sensitive nature of this investigation, the United States requests that this motion and proposed order, along with any Order from this Court relating to this motion, remain sealed until further action by this Court.

Respectfully submitted,

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