

# **KEEPING FOREIGN CORRUPTION OUT OF THE UNITED STATES: FOUR CASE HISTORIES**

This Report examines how politically powerful foreign officials, their relatives, and close associates – referred to in international agreements as “Politically Exposed Persons” or PEPs – have used the services of U.S. professionals and financial institutions to bring large amounts of suspect funds into the United States to advance their interests. Using four case histories, this Report shows how some PEPs have used U.S. lawyers, real estate and escrow agents, lobbyists, bankers, and even university officials, to circumvent U.S. anti-money laundering and anti-corruption safeguards. This Report also offers recommendations to stop the abuses.

## **I. EXECUTIVE SUMMARY**

Combating corruption is a key U.S. value and goal, due to its corrosive effects on the rule of law, economic development, and democratic principles. In 2001, the Patriot Act made the acceptance of foreign corruption proceeds a U.S. money laundering offense for the first time, and required banks to apply enhanced scrutiny to private banking accounts opened for senior foreign political figures, their relatives, and close associates. In 2003, the United States supported the United Nations Convention Against Corruption, now ratified by over 140 countries. Also in 2003, U.S. Immigration and Customs Enforcement (ICE) formed an investigative group dedicated to combating foreign corruption by PEPs. In 2004, President Bush issued Presidential Proclamation 7750 denying U.S. visas to foreign officials involved with corruption, and Congress later enacted supporting legislation. A 2009 study sponsored by the World Bank analyzed PEP controls worldwide and recommended stronger measures to reduce corruption.

The Permanent Subcommittee on Investigations (Subcommittee) initiated this investigation to learn how U.S. laws apply to PEPs utilizing the domestic financial system, and examine how foreign senior political figures, their relatives, and close associates may be circumventing or undermining AML and PEP controls to bring funds that may be the product of foreign corruption into the United States. It is the latest in a series of Subcommittee hearings examining foreign corruption and its U.S. aiders and abettors.

During the course of its investigation, the Subcommittee staff conducted over 100 interviews, including interviews of lawyers, real estate agents, escrow agents, lobbyists, bankers, university professionals, and government officials. The Subcommittee issued over 50 subpoenas and reviewed millions of pages of documents, including bank records, correspondence, contracts, emails, property records, flight records, news articles, and court pleadings. In addition, the Subcommittee consulted with foreign officials, international organizations, financial regulators, and experts in anti-money laundering and anti-corruption efforts.

The Subcommittee has developed four case histories that expose some of the tactics being used by PEPs and their facilitators to bring suspect funds into the United States, and identify some of the legal gaps, poor due diligence practices, and inadequate PEP controls that, at times, have made these tactics possible.

**Obiang Case History.** From 2004 to 2008, Teodoro Nguema Obiang Mangue, son of the President of Equatorial Guinea, has used U.S. lawyers, bankers, real estate agents, and escrow agents to move over \$110 million in suspect funds into the United States. Mr. Obiang is the subject of an ongoing U.S. criminal investigation, has been identified in corruption complaints filed in France, and was a focus of a 2004 Subcommittee hearing showing how Riggs Bank facilitated officials from Equatorial Guinea in opening accounts and engaging in suspect transactions.

Two lawyers, Michael Berger and George Nagler, helped Mr. Obiang circumvent U.S. anti-money laundering (“AML”) and PEP controls at U.S. financial institutions by allowing him to use attorney-client, law office, and shell company accounts as conduits for his funds and without alerting the bank to his use of those accounts. If a bank later uncovered Mr. Obiang’s use of an account and closed it, the lawyers helped him open another. The U.S. shell companies they formed for Mr. Obiang included Beautiful Vision Inc., Unlimited Horizon, Inc., Sweetwater Malibu LLC, Sweetwater Management Inc., and Sweet Pink Inc.

Two real estate agents, Neal Baddin and John Kerrigan, helped Mr. Obiang buy and sell high-end real estate in California including his purchase of a \$30 million Malibu residence with funds wire transferred from Equatorial Guinea, operating without any legal obligation to inquire into the source of his funds. Mr. Obiang also used a U.S. escrow agent to purchase a \$38.5 million U.S.-built Gulfstream jet. When one escrow agent, McAfee & Taft, as a voluntary anti-money laundering precaution, refused to proceed without information about the source of the funds for the purchase, another escrow agent, International Airline Title Services Inc., stepped in and completed the transaction with no questions asked. U.S. law currently exempts both escrow agents and realtors from the Patriot Act’s requirement to establish anti-money laundering programs.

Mr. Obiang also brought large amounts of suspect funds into the United States by taking advantage of banking systems that were not programmed to block wire transfers bearing his name.

**Bongo Case History.** From 2003 through at least 2007, Omar Bongo, President of Gabon for 41 years until his death in June 2009, employed a U.S. lobbyist, Jeffrey Birrell, to purchase six U.S.-built armored vehicles and obtain U.S. government permission to buy six U.S.-built C-130 military cargo aircraft from Saudi Arabia to support his regime. President Omar Bongo was a focus of a 1999 Subcommittee hearing showing how he used offshore shell companies to move over \$100 million in suspect funds through accounts at Citibank Private Bank. He has been mentioned in connection with the ELF oil scandal in France, and has been identified in corruption complaints filed in France.

As part of the armored car and C-130 transactions, over \$18 million was wire transferred from Gabon into U.S. bank accounts held in the name of The Grace Group LLC, a U.S. corporation formed by Mr. Birrell. Mr. Birrell received the funds primarily from President Omar Bongo and an entity called Ayira. He later transferred \$9.2 million of the funds provided by Ayira to a foreign account held in the name of President Omar Bongo in Malta. He also wire transferred over \$4.2 million to foreign bank accounts opened in the name of a senior Bongo adviser, and over \$1 million in payments to foreign bank accounts held in the name of various “consultants.” Mr. Birrell’s corporate accounts served as a conduit for those Bongo funds.

In addition, President Omar Bongo provided large amounts of cash to his daughter, Yamilee Bongo-Astier, who deposited the cash into bank accounts and safe deposit boxes at U.S. financial institutions in New York from 2000 to 2007. Ms. Bongo-Astier made multiple large dollar deposits into her accounts at banks that were unaware of her PEP status, but knew she was an unemployed student. One bank closed her account after receiving an \$183,500 wire transfer from the Republic of Gabon; another did so after discovering she had \$1 million in \$100 shrink-wrapped bills in her safe deposit box, which she said her father had brought into the United States using his diplomatic status and without declaring the cash to U.S. authorities.

Another member of the Bongo family, Inge Lynn Collins Bongo, is the wife of Ali Bongo, the current President of Gabon and its former Minister of Defense. In 2000, she formed a U.S. trust, the Collins Revocable Trust, and opened accounts in the name of that Trust at banks in California. For three years, from 2000 to 2003, Ms. Inge Bongo accepted multiple large offshore wire transfers into the Trust accounts and used the funds to support a lavish lifestyle and move money among a network of bank and securities accounts benefiting her and her husband.

Due to inadequate PEP lists prepared by third party vendors, the financial institutions hosting the Bongo accounts were, more often than not, unaware of their clients' PEP status and did not subject their accounts to enhanced monitoring.

**Abubakar Case History.** From 2000 to 2008, Jennifer Douglas, a U.S. citizen and the fourth wife of Atiku Abubakar, former Vice President and former candidate for President of Nigeria, helped her husband bring over \$40 million in suspect funds into the United States, through wire transfers sent by offshore corporations to U.S. bank accounts. In a 2008 civil complaint, the U.S. Securities and Exchange Commission alleged that Ms. Douglas received over \$2 million in bribe payments in 2001 and 2002, from Siemens AG, a major German corporation. While Ms. Douglas denies wrongdoing, Siemens has already pled guilty to U.S. criminal charges and settled civil charges related to bribery and told the Subcommittee that it sent the payments to one of her U.S. accounts. In 2007, Mr. Abubakar was the subject of corruption allegations in Nigeria related to the Petroleum Technology Development Fund.

Of the \$40 million in suspect funds, \$25 million was wire transferred by offshore corporations into more than 30 U.S. bank accounts opened by Ms. Douglas, primarily by Guernsey Trust Company Nigeria Ltd., LetsGo Ltd. Inc., and Sima Holding Ltd. The U.S. banks maintaining those accounts were, at times, unaware of her PEP status, and they allowed multiple, large offshore wire transfers into her accounts. As each bank began to question the offshore wire transfers, Ms. Douglas indicated that all of the funds came from her husband and professed little familiarity with the offshore corporations actually sending her money. When one bank closed her account due to the offshore wire transfers, her lawyer helped convince other banks to provide a new account.

In addition, two of the offshore corporations wire transferred about \$14 million over five years to American University in Washington, D.C., to pay for consulting services related to the development of a Nigerian university founded by Mr. Abubakar. American University accepted the wire transfers without asking about the identity of the offshore corporations or the source of their funds, because under current law, the University had no legal obligation to inquire.

**Angola Case History.** The final case history examines three Angolan PEP accounts, involving an Angolan arms dealer, an Angolan government official, and a small Angolan private bank that caters to PEP clients, to show how the accountholders gained access to the U.S. financial system and attempted to exploit weak U.S. AML and PEP safeguards.

Pierre Falcone is a notorious arms dealer who supplied weapons during the Angola civil war, a close associate of Angolan President Jose Eduardo Dos Santos, and the target of lengthy criminal investigations resulting in his recent imprisonment in France. He used personal, family, and U.S. shell company accounts at a U.S. bank in Arizona to bring millions of dollars in suspect funds into the United States and move those funds among a worldwide network of accounts. Mr. Falcone was imprisoned in France for one year beginning in 2000, was a fugitive from a 2004 French global arrest warrant, and was convicted in France in 2007 and 2009, on charges related to illegal arms dealing, tax fraud, and money laundering. He is now serving a six-year prison sentence. Bank of America maintained nearly 30 accounts for the Falcone family from 1989 to 2007, did not treat Mr. Falcone as a PEP, and did not consider his accounts to be high risk, even after learning in 2005 that he was an arms dealer and had been imprisoned in the past. In 2007, after receiving a Subcommittee inquiry about the Falcone accounts, the bank conducted a new due diligence review, closed the accounts, and expressed regret at providing Mr. Falcone with banking services for years.

Dr. Aguinaldo Jaime, a senior Angolan government official, was head of Banco Nacional de Angola (BNA), the Angolan Central Bank, when he attempted, on two occasions in 2002, to transfer \$50 million in government funds to a private account in the United States, only to have the transfers reversed by the U.S. financial institutions involved. Dr. Jaime invoked his authority as BNA Governor to wire transfer the funds to a private bank account in California during the first attempt and, during the second attempt, to purchase \$50 million in U.S. Treasury bills for transfer to a private securities account in California. Both transfers were initially allowed, then reversed by bank or securities firm personnel who became suspicious of the transactions. Partly as a result of those transfers and the corruption concerns they raised, in 2003, Citibank closed not only the accounts it had maintained for BNA, but all other Citibank accounts for Angolan government entities, and closed its office in Angola. In contrast, HSBC continues to provide banking services to BNA in the United States and elsewhere, and may be providing the Central Bank with offshore accounts in the Bahamas.

Banco Africano de Investimentos (“BAI”) is a \$7 billion private Angolan bank whose largest shareholder is Sonangol, the Angolan state-owned oil company. It offers banking services to Sonangol, Angolans in the oil and diamond industries, and Angolan government officials. Over the last ten years, BAI gained entry to the U.S. financial system through accounts at HSBC in New York, using HSBC wire transfer services, foreign currency exchange, and U.S. dollar credit cards for BAI clients, despite providing troubling answers about its ownership and failing to provide a copy of its AML procedures to HSBC after repeated requests. Despite the presence of PEPs in BAI’s management and clientele, HSBC decided against designating BAI as a “Special Category of Client” requiring additional oversight until November 2008, years after the account was first opened.

Together, these four case histories demonstrate the need for the United States to strengthen its PEP controls to prevent corrupt foreign officials, their relatives, and close

associates from using U.S. professionals and financial institutions to conceal, protect, and utilize their ill gotten gains.

## A. FINDINGS

This Report makes the following findings of fact.

- (1) **Lawyers.** Two U.S. lawyers helped Teodoro Obiang, son of the President of Equatorial Guinea, circumvent anti-money laundering and PEP controls at U.S. banks by allowing him to secretly use a series of attorney-client, law office, and shell company accounts to be used as conduits for his funds.
- (2) **Realtors.** Two realtors helped Mr. Obiang buy and sell multi-million-dollar residences in California, and a real estate escrow agent facilitated his purchase of a \$30 million property by handling millions of dollars wire transferred from Equatorial Guinea, without verifying the source of the funds, since they had no legal obligation to do so.
- (3) **Escrow Agents.** After one U.S. escrow agent, as an AML precaution, refused to complete the purchase of a Gulfstream jet without obtaining information on the source of \$38.5 million to be paid for the aircraft, another U.S. escrow agent stepped in and completed the transaction with no questions asked. The escrow agents had no legal obligation under current law to inquire about the source of the funds.
- (4) **Lobbyist.** A U.S. lobbyist helped President Omar Bongo of Gabon obtain six U.S.-built armored cars and U.S. government permission to buy six U.S.-built military cargo aircraft from Saudi Arabia to support his regime, while allowing his U.S. bank accounts to be used as a conduit for \$18 million in suspect funds in connection with those transactions, with no questions asked.
- (5) **Offshore Corporations.** Jennifer Douglas, a PEP through her marriage to Atiku Abubakar, former Vice President of Nigeria, used a series of U.S. bank accounts to bring over \$25 million in suspect funds into the United States via wire transfers from offshore corporations.
- (6) **University.** A U.S. university accepted over \$14 million in wire transfers from unfamiliar offshore shell corporations to pay for consulting services related to development of a university in Nigeria founded by Mr. Abubakar.
- (7) **Personal Accounts.** Pierre Falcone, a PEP through his close association with the President of Angola and appointment as an Angolan Ambassador, was able to use personal, family, and U.S. shell company accounts at a U.S. bank in Arizona to bring millions of dollars in suspect funds into the United States and move those funds among a worldwide network of Falcone accounts, despite his status as an arms dealer and a long history of involvement in criminal proceedings in France.

- (8) **Government Accounts.** Dr. Agualdo Jaime, using his authority as head of the Angolan Central Bank, attempted without success, on two occasions in 2002, to transfer \$50 million in government funds to a private account in the United States.
- (9) **Correspondent Accounts.** Banco Africano de Investimentos, a \$7 billion private Angolan bank that caters to PEPs, is not treated as a PEP client subject to enhanced monitoring by its U.S. correspondent bank.
- (10) **Vendor PEP Lists.** Some vendors relied on by U.S. financial institutions to screen clients for PEPs used incomplete and unreliable PEP lists.

## B. RECOMMENDATIONS

This Report makes the following recommendations.

- (1) **World Bank PEP Recommendations.** Congress should enact a law and the U.S. Treasury Department should promulgate rules implementing the key recommendations of a recent World Bank study to strengthen bank controls related to Politically Exposed Persons (“PEPs”), including by requiring banks to use reliable PEP databases to screen clients, use account beneficial ownership forms that ask for PEP information, obtain financial declaration forms filed by PEP clients with their governments, and conduct annual reviews of PEP account activity to detect and stop suspicious transactions.
- (2) **Real Estate and Escrow Agent Exemptions.** Treasury should repeal all of the exemptions it has granted from the Patriot Act requirement for anti-money laundering (AML) programs, including the 2002 exemption given to real estate and escrow agents handling real estate closings, and sellers of vehicles, including escrow agents handling aircraft sales, and use its existing statutory authority to require them to implement AML safeguards and refrain from facilitating transactions involving suspect funds.
- (3) **Attorney-Client and Law Office Accounts.** Treasury should issue an AML rule requiring U.S. financial institutions to obtain a certification for each attorney-client and law office account that it will not be used to circumvent AML or PEP controls, accept suspect funds involving PEPs, conceal PEP activity, or provide banking services for PEPs previously excluded from the bank; and requiring enhanced monitoring of such accounts to detect and report suspicious transactions.
- (4) **U.S. Shell Corporations.** Congress should enact legislation requiring persons forming U.S. corporations to disclose the names of the beneficial owners of those U.S. corporations.
- (5) **Immigration Restriction.** Congress and the Administration should consider making significant acts of foreign corruption a legal basis for designating a PEP and any family member inadmissible to enter, and removable from, the United States.
- (6) **Visa Restriction.** The State Department should strengthen its enforcement of the law and Presidential Proclamation 7750 denying U.S. visas to foreign PEPs

involved with corruption, and law enforcement agencies should increase the assistance they provide to State Department investigations of PEPs under review.

- (7) **Professional Guidelines.** Professional organizations, including the American Bar Association, National Association of Realtors, American League of Lobbyists, and American Council for Education, should issue guidance to their members prohibiting use of any financial account to accept suspect funds involving PEPs, conceal PEP activity, facilitate suspect transactions involving PEPs, or circumvent AML or PEP controls at U.S. financial institutions.
- (8) **FATF Recommendations.** The United States should work with the international Financial Action Task Force on Money Laundering to amend its existing 40+9 Recommendations to strengthen anti-corruption and PEP controls.

## II. FOREIGN CORRUPTION AND MONEY LAUNDERING

Corruption has been increasingly condemned by the United States and the international community for impeding the development of honest government, democratic principles, and the rule of law. It is also blamed for distorting markets, deterring investment, deepening poverty, undermining international aid efforts, and fostering crime.<sup>1</sup> Some have drawn connections between corruption, failed states, and terrorism. Corruption also continues to be a massive problem. The World Bank has estimated that \$1 trillion in bribes alone exchange hands worldwide each year.<sup>2</sup>

Combating corruption has long been an aim of the United States. In 1977, for example, the United States became the first country in the world to prohibit the payment of bribes to foreign public officials.<sup>3</sup> In 1999, the Clinton Administration launched a major anti-corruption initiative, sponsoring an international conference under the leadership of Vice President Gore to increase the visibility of the issue. In 2001, Congress enacted anti-corruption provisions in the Patriot Act, as explained below. In 2004, the Bush Administration issued Presidential Proclamation 7750, providing a legal basis for denying visas to foreign officials involved in corruption.<sup>4</sup> In 2006, President Bush issued a national strategy to convince other nations to do the same.<sup>5</sup> In 2009, Congress enacted legislation requiring the State Department to maintain “a list of officials of foreign governments and their immediate family members who the Secretary has credible evidence have been involved in corruption relating to the extraction of natural resources” and making such persons “ineligible for admission to the United States.”<sup>6</sup>

**Subcommittee Work.** The Permanent Subcommittee on Investigations has contributed to the anti-corruption battle by conducting several investigations over the past ten years into how politically powerful foreign officials, their relatives, and close associates utilize U.S. financial institutions to conceal, transfer, and spend funds suspected to be the proceeds of corruption.

In 1999, for example, the Subcommittee released a report and held a hearing on four case histories of heads of states or their relatives who used Citibank Private Bank to deposit at least

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<sup>1</sup> See, e.g., statement by the World Bank that corruption is “the single greatest obstacle to economic and social development. It undermines development by distorting the rule of law and weakening the institutional foundation on which economic growth depends.” David Chaikin and J.C. Sharman, “Corruption and Money Laundering: A Symbiotic Relationship,” Palgrave, 2009, at 11.

<sup>2</sup> The World Bank, “The Costs of Corruption,” April 4, 2004, <http://web.worldbank.org/WBSITE/EXTERNAL/NEWS/0,,contentMDK:20190187~menuPK:34457~pagePK:34370~piPK:34424~theSitePK:4607,00.html>.

<sup>3</sup> See Foreign Corrupt Practices Act, 15 USC 78dd-1 et seq.

<sup>4</sup> Presidential Proclamation 7750 (January 2004), [www.whitehouse.gov/news/releases/2004/01/20040112-3.html](http://www.whitehouse.gov/news/releases/2004/01/20040112-3.html). Prior to this proclamation, corrupt foreign officials could and still can be denied visas on other grounds, including involvement with organized crime, drug trafficking, money laundering, trafficking in human persons, crimes of moral turpitude, and conduct detrimental to the interests of the United States. See, e.g., Section 212(f) of the Immigration and Naturalization Act, 8 U.S.C. 1182 et seq.

<sup>5</sup> See “U.S. National Strategy to Internationalize Efforts Against Kleptocracy” (August 2006), available at [www.state.gov/p/inl/rls/fs/70365](http://www.state.gov/p/inl/rls/fs/70365).

<sup>6</sup> See Section 7084 of the 2010 Omnibus Appropriations Act.



\$100 million each in suspect funds.<sup>7</sup> In 2001, the Subcommittee Chairman, Senator Carl Levin, working with the Chairman of the Senate Banking, Housing, and Urban Affairs Committee, Senator Paul Sarbanes, won enactment of provisions in the Patriot Act which, for the first time, made the knowing acceptance of foreign corruption proceeds a money laundering offense.<sup>8</sup> They also successfully included Patriot Act provisions which required U.S. financial institutions to exercise enhanced due diligence before opening a private banking account for a senior foreign political figure, immediate relative, or close associate; conduct enhanced monitoring of such accounts; and report suspicious transactions to law enforcement.<sup>9</sup>

In addition, the Patriot Act required a long list of U.S. financial institutions to implement anti-money laundering (“AML”) programs, with written policies, procedures and controls, an AML compliance officer, employee training, and internal audits, unless explicitly exempted by the Treasury Secretary.<sup>10</sup> It also required them to obtain customer identification information for each account opened.<sup>11</sup> Regulations issued by Treasury over the next few years implemented those Patriot Act provisions, requiring U.S. banks, securities firms, insurance companies, futures commission merchants, jewelry businesses, and money service businesses, among others, to develop the specified AML programs. At the same time, however, Treasury exempted several groups from having to establish AML programs, including hedge funds, the real estate industry, and escrow agents.<sup>12</sup>

In 2004, the Subcommittee released a report and held a hearing examining the extent to which U.S. financial institutions were complying with the new Patriot Act provisions, using Riggs Bank in Washington, D.C. as an example.<sup>13</sup> At that time, Riggs Bank provided banking services for most of the foreign embassies in the nation’s capital as well as for many heads of states, foreign government officials, and their relatives. The Subcommittee presented evidence of the Bank’s poor compliance with the Patriot Act provisions, using two case histories.

The first case history found that Riggs Bank had opened over 60 accounts for the government of Equatorial Guinea (EG), the EG President Teodoro Nguema Obiang Mbagasa, senior EG officials, and their relatives; created offshore corporations and opened accounts in the names of those offshore corporations for the President and his sons; accepted millions of dollars in cash deposits from the President, his wife, and other EG officials; and facilitated numerous suspect transactions involving millions of dollars without alerting law enforcement. The second

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<sup>7</sup> “Private Banking and Money Laundering: A Case Study of Opportunities and Vulnerabilities,” U.S. Senate Permanent Subcommittee on Investigations, S.Hrg. 106-428, (Nov. 9 and 10, 1999)(case histories involved Raul Salinas, brother to the President of Mexico; Omar Bongo, President of Gabon; Ali Zadari, husband to the Prime Minister of Pakistan; and two sons of Sani Abacha, then President of Nigeria).

<sup>8</sup> See Section 315 of the Patriot Act, P.L. 107-56 (Oct. 26, 2001), codified at 18 USC §1956(c)(7)(B)(iv)(adds as a predicate offense for a money laundering prosecution “bribery of a public official, or the misappropriation, theft, or embezzlement of public funds by or for the benefit of a public official”).

<sup>9</sup> See Section 312 of the Patriot Act, P.L. 107-56 (Oct. 26, 2001), codified at 31 USC § 5318(i).

<sup>10</sup> See Section 352 of the Patriot Act, P.L. 107-56 (Oct. 26, 2001), codified at 31 USC § 5318(h).

<sup>11</sup> See Section 326 of the Patriot Act, P.L. 107-56 (Oct. 26, 2001), codified at 18 USC § 5318(l).

<sup>12</sup> See, e.g., See 31 CFR § 103.170, as codified by interim final rule published at 67 FR 21110 (April 29, 2002, as amended at 67 FR 67547 (November 6, 2002) and corrected at 67 FR 68935 (November 14, 2002).); Advance Notice of Proposed Rulemaking on Anti-Money Laundering Program Requirements for ‘Persons Involved in Real Estate Closings and Settlements,’ 68 FR 17569 (April 10, 2003).

<sup>13</sup> “Money Laundering and Foreign Corruption: Enforcement and Effectiveness of the Patriot Act,” U.S. Senate Permanent Subcommittee on Investigations, S.Hrg. 108-633 (July 15, 2004).

case history showed that Riggs Bank had secretly opened accounts for the former President of Chile, Augusto Pinochet, created offshore corporations for him, accepted about \$8 million in suspect deposits, and secretly couriered millions of dollars in cashiers checks to him in Chile. In 2005, a supplemental report by the Subcommittee showed that Mr. Pinochet and his family members had opened a secret network of over 125 accounts under a variety of names at financial institutions operating in the United States.<sup>14</sup>

The investigation also determined that U.S. bank regulators, including the Office of the Comptroller of the Currency and the Federal Reserve, had identified serious deficiencies in Riggs' AML procedures, instructed Riggs to improve, but then took no supervisory action when Riggs failed to do so. The investigation showed that the supervisory failures at Riggs were part of a larger pattern of lax AML oversight. In response, beginning in 2005, U.S. bank regulators strengthened their AML oversight efforts and initiated a number of enforcement actions to compel stronger AML programs at U.S. financial institutions.

In 2005, Riggs Bank paid a \$16 million criminal fine and a \$25 million civil fine for failing to report suspicious activities to law enforcement and to correct deficiencies in its AML program.<sup>15</sup> The owners of the bank also paid a \$5 million fine to a Spanish court for failing to observe a court-ordered freeze on assets related to Augusto Pinochet. Later that same year, PNC purchased the bank, and the Riggs name disappeared from U.S. banking.<sup>16</sup>

The Subcommittee's past work and the findings in this Report should be seen in the context, not only of U.S. efforts to combat corruption, but also of the international community's increasing efforts to prevent, detect, and stop corruption. Some highlights of those efforts include the following.

**FATF Anti-Corruption Recommendations.** One key source of international efforts to combat corruption dates back to the 1989 formation of the Financial Action Task Force on Money Laundering ("FATF"), which is the leading international body opposing money laundering. Since its establishment, FATF has focused on exposing money laundering and terrorist financing threats, setting international standards to meet those threats, and conducting peer reviews to encourage compliance with its standards. About 170 jurisdictions have pledged to comply with FATF standards. In 2003, FATF strengthened its longstanding 40 Recommendations to combat money laundering, and issued 9 Special Recommendations to combat terrorist financing.<sup>17</sup> The FATF 40+9 Recommendations include provisions to combat the laundering of corruption proceeds, including Recommendation No. 6 which directs FATF member countries to require their financial institutions to screen clients to identify "Politically Exposed Persons" (PEPs) – defined as individuals entrusted with prominent public functions, their relatives, and close associates -- "take reasonable measures to establish the source of wealth and the source of funds" in PEP transactions, and "conduct enhanced ongoing monitoring of the business relationship."

<sup>14</sup> "Supplemental Staff Report on U.S. Accounts Used by Augusto Pinochet," U.S. Senate Permanent Subcommittee on Investigations, S.Prt. 109-25, (March 16, 2005).

<sup>15</sup> *U.S. v. Riggs Bank*, CR 05-35 (RMU), 2005; *In Re Riggs Bank*, Case 2005-1, May 13, 2004.

<sup>16</sup> See, e.g., Associated Press, "Final Chapter Nears in Riggs Bank Drama," March 29, 2005.

<sup>17</sup> [http://www.fatf-gafi.org/document/28/0,3343,en\\_32250379\\_32236930\\_33658140\\_1\\_1\\_1\\_1,00.html](http://www.fatf-gafi.org/document/28/0,3343,en_32250379_32236930_33658140_1_1_1_1,00.html).

**1997 OECD Anti-Bribery Convention.** Another major development was the 1997 OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, which obligates its signatories to criminalize the bribery of foreign officials.<sup>18</sup> Prior to this convention, payments made to foreign officials to obtain contracts or other goods or services were not always viewed as crimes; some countries even viewed such payments as tax deductible business expenses.<sup>19</sup> The OECD Convention rejected that approach and instead followed the lead of the U.S. Foreign Corrupt Payments Act in outlawing such payments as bribes. To comply with the Anti-Bribery Convention's requirements, signatories must enact domestic laws making the payment of bribes to foreign officials a criminal offense. The OECD concentrated at first on encouraging its member countries to enact those domestic laws. In recent years, the focus of the Anti-Bribery Convention has shifted to encouraging countries to enforce the laws now on the books.<sup>20</sup>

**2001 Basel Directive.** In 2001, the Basel Committee on Banking Supervision, an international body of banking supervisors that formulates banking policy and guidance, brought the corruption issue to the attention of banks worldwide when it issued a statement on "customer due diligence." That statement included strong language on the need for banks to identify PEPs and avoid the acceptance of corrupt proceeds:

"Accepting and managing funds from corrupt PEPs will severely damage the bank's own reputation and can undermine public confidence in the ethical standards of an entire financial centre, since such cases usually receive extensive media attention and strong political reaction. ... [I]t is clearly undesirable, unethical and incompatible with the fit and proper conduct of banking operations to accept or maintain a business relationship if the bank knows or must assume that the funds derive from corruption or misuse of public assets. There is a compelling need for a bank considering a relationship with a person whom it suspects of being a PEP to identify that person fully, as well as people and companies that are clearly related to him/her."<sup>21</sup>

**2003 UN Convention Against Corruption.** Still another key development was the 2003 United Nations Convention Against Corruption (UNCAC). Currently, over 140 countries have signed the UNCAC, which entered into force in 2005.<sup>22</sup> It requires signatories to criminalize a wide range of corrupt acts, including not only bribery and embezzlement, but also influence peddling and money laundering. Among other provisions, the UNCAC directs signatories to require their banks "to verify the identity of customers, to take reasonable steps to determine the identity of beneficial ownership of funds deposited into high-value accounts and to conduct enhanced scrutiny of accounts sought or maintained by or on behalf of individuals who are, or have been, entrusted with prominent public functions and their family members and associates."

<sup>18</sup> See OECD website, [http://www.oecd.org/document/20/0,3343,en\\_2649\\_34859\\_2017813\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/document/20/0,3343,en_2649_34859_2017813_1_1_1_1,00.html).

<sup>19</sup> See, e.g., [http://www.oecdobserver.org/news/fullstory.php/aid/245/Writing\\_off\\_tax\\_deductibility\\_.html](http://www.oecdobserver.org/news/fullstory.php/aid/245/Writing_off_tax_deductibility_.html).

<sup>20</sup> In June 2009, Transparency International found that only Germany, Norway, Switzerland, and the United States were adequately enforcing anti-bribery laws. See [http://www.transparency.org/news\\_room/latest\\_news/press\\_releases/2009/2009\\_06\\_23\\_2009\\_oecd\\_progress\\_report](http://www.transparency.org/news_room/latest_news/press_releases/2009/2009_06_23_2009_oecd_progress_report). In one highly visible case, in 2006, the U.K. Serious Fraud Office scuttled an investigation into alleged bribe payments made by a large company, BAE, to Saudi Arabian officials to secure a large arms contract. <http://www.oecd.org/dataoecd/43/13/38962457.pdf>.

<sup>21</sup> Basel Committee on Banking Supervision, "Customer Due Diligence for Banks," (Bank for International Settlements, October 2001), paragraphs 42-43.

<sup>22</sup> [http://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026\\_E.pdf](http://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf)

In addition, UNCAC strengthened international anti-corruption efforts by requiring signatories to provide mutual legal assistance to extradite and prosecute offenders, including by gathering and providing evidence to the prosecuting country. UNCAC also required signatories to support the tracing, freezing, and seizure of illicit funds, placing a special focus on recovery of assets stolen by corrupt officials. UNCAC was further strengthened at a recent conference in Doha, when the signatories agreed to undergo a peer review process to evaluate their compliance with its provisions.

**StAR Initiative and 2009 PEP Study.** Still another major anti-corruption advance occurred in 2007, when the World Bank and the United Nations Office on Drugs and Crime (UNODC) launched the Stolen Asset Recovery Initiative (StAR). StAR's key mission is to help developing countries recover funds lost due to corruption. On its website, it states: "StAR's objective is to reduce barriers to asset recovery and thereby encourage and facilitate more systematic and timely return of stolen assets."<sup>23</sup> To accomplish this objective, StAR works with countries around the world to build national capacity to detect and respond to corruption, finances training, develops "how to" guides and information systems, and assists with the preparation of reports, legal research, financial analyses, and mutual legal assistance requests.

In November 2009, the StAR Initiative trained a spotlight on PEP issues by releasing a study examining how banks handle PEP accounts and transactions.<sup>24</sup> The report concluded: "The picture today is of an overall failure of effective implementation of international PEP standards" and "surprisingly low compliance" with FATF requirements on PEPs.<sup>25</sup> The report identified a number of problems, including a lack of political will to address PEP issues, the absence of enforceable legal and regulatory frameworks to address PEP issues, limited due diligence requirements, inadequate PEP databases, and use of associates, intermediaries, and legal entities to hide PEP involvement. To "prevent corrupt PEPs from abusing domestic and international financial systems to launder the proceeds of corruption," the report recommends that banks strengthen PEP identification systems and use regulator-approved PEP databases; eliminate artificial limits on how long an individual can be considered a PEP; obtain written beneficial ownership information for each account to detect PEPs using third parties to hide their activities; request public officials to provide any asset and income disclosure forms filed with their government authorities; and conduct at least annual reviews of PEP accounts to get a complete view of the relationship and identify any suspicious transactions.

**G-8 and G-20 Anti-Corruption Efforts.** In addition to the FATF, Basel, OECD, UN, and World Bank efforts, the G-8 and G-20 groups of countries have also undertaken anti-corruption efforts. In 2003, for example, at the Evian Summit, the G-8 group of countries released an action plan entitled, "Fighting Corruption and Improving Transparency."<sup>26</sup> This statement laid out concrete steps aimed at fighting corruption, such as conditioning budgetary support and trade agreements on tackling corruption, encouraging participation in fiscal

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<sup>23</sup> [www.worldbank.org/star](http://www.worldbank.org/star).

<sup>24</sup> The World Bank StAR Initiative, "Politically Exposed Persons: A Policy Paper on Strengthening Preventative Measures" (November 2009), [www.worldbank.org/star](http://www.worldbank.org/star).

<sup>25</sup> *Id.* at XV.

<sup>26</sup> See [http://www.g8.fr/evian/english/navigation/2003\\_g8\\_summit/summit\\_documents/fighting\\_corruption\\_and\\_improving\\_transparency\\_-\\_a\\_g8\\_action\\_plan.html](http://www.g8.fr/evian/english/navigation/2003_g8_summit/summit_documents/fighting_corruption_and_improving_transparency_-_a_g8_action_plan.html).

transparency programs, and passing domestic laws aimed at requiring financial institutions to conduct adequate due diligence to halt suspect transactions. It also stated that the G-8 countries supported requiring financial institutions to establish “procedures and controls to conduct enhanced due diligence on accounts of ‘politically exposed persons,’ and thereby to detect and report transactions that may involve proceeds of foreign official corruption.”<sup>27</sup>

More recently, in March 2009, the G-20 group of nations called for stronger enforcement of anti-corruption measures involving PEPs, in a Working Group on Reinforcing International Cooperation and Promoting Integrity in Financial Markets.<sup>28</sup> In September 2009 at the Pittsburgh summit, the G20 Heads of State issued an official statement asking FATF “to help detect and deter the proceeds of corruption by prioritizing work to strengthen standards on customer due diligence, beneficial ownership, and transparency.”<sup>29</sup> The Heads of State also confirmed their commitment to enforcement of transnational anti-bribery laws, ratification of the UN Convention Against Corruption, and adoption of a mechanism to measure compliance with that Convention.

**2008 Wolfsberg PEP Guidelines.** The financial industry has also contributed to anti-corruption efforts. About ten years ago, eleven of the world’s largest financial institutions formed the Wolfsberg Group as a voluntary private association dedicated to combating money laundering.<sup>30</sup> In May 2008, as part of that effort, the Wolfsberg Group updated its 2003 guidelines on handling PEPs and applied them to all PEP accounts rather than just private banking accounts.<sup>31</sup> The guidelines discuss identification of PEPs, and use of relatives, third parties, and legal entities to disguise PEP activities. It recommends that banks ask potential clients whether they are PEPs, screen clients against PEP databases, and establish a procedure for senior bank officials’ approval of PEP clients. The guidelines also recommend enhanced monitoring of accounts controlled by PEPs, and training employees to increase awareness of the associated risks. The guidelines caution that existing customers may become PEPs in the future, and recommend enhanced due diligence when a PEP controls a corporation that has or is attempting to establish a relationship with the bank.

**Public Interest Organizations.** Many other public interest organizations are also active in the battle against corruption. Transparency International, for example, works with local anti-corruption groups around the world and publishes an annual Corruption Perceptions Index that focuses attention on corruption problems. Global Witness investigates and exposes corruption problems in specific countries. The Extractive Industries Transparency Initiative (EITI), launched in 2002, seeks to curb corruption primarily in the oil, gas, and mining sectors. EITI requires corporations involved in extractive industries to disclose royalty and other payments made to government officials, and then requires the recipient governments to disclose the

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<sup>27</sup> Id. at paragraph 4.2.

<sup>28</sup> G20 Working Group on Reinforcing International Cooperation and Promoting Integrity in Financial Markets (SG2), March 27, 2009, at paragraph 41.

<sup>29</sup> G20, “Leaders’ Statement, The Pittsburgh Summit,” (September 24-25, 2009), at paragraph 42, <http://www.pittsburghsummit.gov/mediacenter/129639.htm>.

<sup>30</sup> The participating banks are Banco Santander, Bank of Tokyo-Mitsubishi, Barclays, Citigroup, Credit Suisse, Deutsche Bank, Goldman Sachs, HSBC, J.P. Morgan Chase, Societe Generale, and UBS.

<sup>31</sup> See “Wolfsberg Frequently Asked Questions (‘FAQs’) on Politically Exposed Persons (‘PEPs’),” <http://www.wolfsberg-principles.com/pdf/PEP-FAQ-052008.pdf>.

revenues produced from those sectors, with the aim of increasing transparency and reducing corruption. Publish What You Pay (PWYP) is another group aimed at holding governments accountable for revenues derived from the oil, gas, and mining sectors. Active in nearly 70 countries, PWYP urges governments to disclose not just company payments and government revenues, but also license agreements and contracts, while supporting a variety of transparency and anti-corruption initiatives. Still other groups, such as the Global Financial Integrity Program, the Tax Justice Network, and Sherpa contribute to anti-corruption efforts in a variety of ways, encouraging academic research, building anti-corruption capabilities, filing legal actions, and adding to the visibility and urgency of the issue.

This Report seeks to contribute to U.S. and international anti-corruption efforts by exposing some of the tactics being used by PEPs to bring suspect funds into the United States and offering recommendations to strengthen U.S. AML and PEP controls. The Subcommittee's investigation shows that, although U.S. financial institutions have become more vigilant over time and less willing to harbor suspect funds, PEPs are still often able to bring millions of dollars into the United States without having to answer questions about the source of their funds. Some of these PEPs escape detection for years at a time due to inadequate screening of potential PEP clients by banks, by using routine bank accounts not subject to enhanced monitoring, or by finding banks with lax due diligence procedures. Other PEPs conceal their transactions by acting through third parties, using shell company, attorney-client, law office, escrow agent, trust, and other accounts to move their funds into the U.S. financial system. Still others exploit weak controls in U.S. wire transfer systems to bypass AML or PEP scrutiny. The Report's four case studies present actual examples of how some foreign officials, their relatives, or close associates have persuaded U.S. lawyers to help them circumvent AML and PEP safeguards at U.S. banks, convinced U.S. real estate and escrow agents to handle suspect funds, used a U.S. lobbyist's bank account to distribute offshore funds, and even convinced U.S. university officials to accept millions of dollars from unknown offshore corporations.

In addition to exposing some of these tactics, the Report offers a range of recommendations to stop the abuses. They include tightening bank procedures for screening PEP clients, requiring written beneficial ownership forms for accounts to detect PEP involvement, and conducting annual reviews of PEP accounts to identify suspicious transactions; eliminating existing AML exemptions for real estate and escrow agents handling millions of dollars in realty and vehicle transactions; cracking down on the misuse of attorney-client and law office accounts to carry out PEP transactions outside of bank AML and PEP controls; urging professional organizations to issue guidance to their members against facilitating suspect transactions for PEPs; calling on the United States to make better use of its visa and immigration systems to deny entry to corrupt foreign officials; and supporting the ongoing international effort to strengthen the anti-corruption and PEP provisions in FATF's 40+9 Recommendations.

Senior foreign officials engaged in large-scale corruption can have a disproportionate impact on a country, a region, even a generation of citizens victimized by a corrupt society. They can export problems by spreading corruption internationally, undermining the rule of law, encouraging crime, and even opening the door to terrorism. In some cases, those engaged in large-scale corruption have sought the services provided by a modern financial system that can store, protect, invest, and transfer their funds efficiently. To keep that corruption out of the

United States, it is time to build stronger legal barriers, not only in our banks, but in a range of U.S. professions.

### **III. OBIANG CASE STUDY: USING U.S. LAWYERS, REAL ESTATE AND ESCROW AGENTS, AND WIRE TRANSFER SYSTEMS TO BRING SUSPECT FUNDS INTO THE UNITED STATES**

Teodoro Nguema Obiang Mangue is the 40-year-old son of Teodoro Nguema Obiang Mbasogo, the President of Equatorial Guinea (“EG”). For more than ten years, he has held the post of EG Minister of Agriculture and Forestry, and has been seen as a likely successor to the EG Presidency. Mr. Obiang and his father have also long been suspected of accumulating substantial wealth from acts of corruption. This case study examines how, from 2004 to 2008, Mr. Obiang employed the services of a variety of U.S. professionals, including attorneys, real estate and escrow agents, insurance brokers, and others, to bring more than \$100 million in suspect funds into the United States to advance his interests. At times, the U.S. professionals he employed acted openly on his behalf; at other times, they hid his involvement in transactions, especially from U.S. banks on guard against handling suspect funds. This case history details how Mr. Obiang employed these U.S. professionals to help him move money through at least six large and small U.S. banks, often by using attorney-client, escrow, or shell company accounts or by using wire transfer systems unequipped to detect or block incoming wire transfers from Obiang accounts abroad.

This case history demonstrates, for example, how Mr. Obiang employed two U.S. attorneys, Michael Berger and George Nagler, to help him bring millions of dollars in suspect funds from Equatorial Guinea into the United States, carry out certain transactions, and pay his bills and expenses. These attorneys, each of whom operated independently of the other, formed U.S. shell companies under California law for Mr. Obiang’s use, including Beautiful Vision Inc., Unlimited Horizon Inc., Sweetwater Malibu LLC, Sweetwater Management Inc., and Sweet Pink Inc. Each attorney helped open U.S. bank accounts for those shell corporations and helped use some of those corporate accounts to pay Mr. Obiang’s bills and expenses. In addition, each allowed his own attorney-client and law office accounts to serve as conduits for Obiang funds, accepting millions of dollars in wire transfers from Equatorial Guinea, moving those funds into other Obiang-related accounts, and using the funds to pay Obiang-related bills and expenses. Each attorney also worked with other U.S. professionals, including bankers, property managers, insurance brokers, and real estate and escrow agents, to advance Mr. Obiang’s interests.

In addition, Mr. Obiang employed two U.S. real estate agents, Neil Baddin and John Kerrigan, to buy and sell high-end California real estate, including a 2006 purchase of a \$30 million residence in Malibu and 2004 sale of a \$7.7 million residence near Los Angeles. A U.S. escrow company, First American Trust, helped Mr. Obiang purchase the Malibu property without using a mortgage, accepting \$30 million in wire transfers from Equatorial Guinea to complete the transaction. Another U.S. escrow company, Insured Aircraft Title Services, Inc. (IATS), facilitated Mr. Obiang’s purchase of a Gulfstream jet, again without a mortgage, by accepting \$38.5 million in wire transfers from Equatorial Guinea and forwarding those funds through U.S. bank accounts for the seller of the aircraft. IATS agreed to handle the Gulfstream transaction after another U.S. escrow company, McAfee & Taft, had declined, as an anti-money laundering precaution, to complete the purchase without information on the source of the \$38.5 million.



Documents also show that, throughout the four years examined by the Subcommittee, Mr. Obiang exploited lax anti-money laundering (“AML”) and PEP controls at U.S. financial institutions. Documents reviewed by the Subcommittee show, for example, that Mr. Obiang surreptitiously used attorney-client, law office, shell company, and other third party accounts to obtain access to the U.S. financial system, even at banks that had previously closed his accounts and declined to do business with him. In addition, from 2004 to 2008, he brought over \$100 million into the United States using wire transfer systems at just two U.S. financial institutions, Wachovia Bank and Citibank. Neither system had been programmed to detect or block wire transfers bearing his name. In 2009, Wachovia took steps for the first time to block wire transfers with Mr. Obiang’s name, while Citibank declined to take the same action due to projections that identifying, freezing, and investigating these wire transfers would generate too much work for its anti-money laundering staff.

Many of the U.S. professionals examined in this case history were under no legal obligation to take anti-money laundering precautions when dealing with a PEP, to evaluate the source of funds supplied by a PEP, or to refrain from handling suspect funds involving a PEP. For example, attorneys are currently not required by U.S. anti-money laundering (AML) statutes to establish AML controls to prevent or detect money laundering, and no U.S. professional rules or voluntary AML guidelines require attorneys to perform due diligence before accepting a client, evaluate the source of client funds, or refrain from using their attorney-client or law office accounts to conceal PEP transactions from the financial institution providing the accounts.<sup>32</sup>

In 2008, for the first time, the Financial Action Task Force on Money Laundering (“FATF”) issued international guidance for members of the legal profession to address many AML issues.<sup>33</sup> The FATF guidance recommends, for example, that attorneys perform due diligence before accepting clients, evaluate the risk posed by particular clients, analyze the

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<sup>32</sup> Attorneys are not subject to the major U.S. AML laws that require banks and other entities to establish AML programs to prevent, detect, and report suspicious transactions to law enforcement. See, e.g., list of covered entities at 31 U.S.C. §5312(a)(2). The American Bar Association does not provide official guidance for U.S. attorneys on how to handle AML issues or establish AML programs, although discussions and work to develop such guidance have been underway since at least 2002. The American Bar Association’s existing Model Rules of Professional Conduct also do not explicitly address AML issues. See American Bar Association Model Rules of Professional Conduct, [http://www.abanet.org/cpr/mrpc/rule\\_1\\_15.html](http://www.abanet.org/cpr/mrpc/rule_1_15.html), (9/16/2009). For example, while the Model Rules require attorneys to track and safeguard client property held in attorney-client accounts, they do not address issues related to using an attorney-client account to conceal a client’s transactions or circumvent AML or PEP controls at a financial institution. The Model Rules do caution attorneys against engaging in criminal or fraudulent conduct. See, e.g., Model Rule 1.2(d) (an attorney “shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent”); Rule 8.4 (it is professional misconduct for an attorney to engage in conduct “involving dishonesty, fraud, deceit or misrepresentation”). Attorneys are also subject to U.S. criminal prohibitions against participating in a money laundering offense, see, e.g., 18 U.S.C. §§ 1956, 1957; and doing business with terrorists, narcotics traffickers, or other criminals identified on lists compiled by the Office of Foreign Assets Control, see OFAC lists, U.S. Dept. of Treasury, <http://www.ustreas.gov/offices/enforcement/ofac/sdn/>. In addition, attorneys engaged in a business are required to file reports, Form 8300, with the Internal Revenue Service if they receive cash payments of \$10,000 or more. (“Each person engaged in a trade or business who, in the course of that trade or business, receives more than \$10,000 in cash in one transaction or in two or more related transactions, must file Form 8300.”) See <http://www.irs.gov/pub/irs-pdf/f8300.pdf>. See also United States v. Moffitt, Zwerling & Kemler, 83 F.3d 660 (4<sup>th</sup> Cir. 1996)(law firm that did not examine the source of its fees can be required to forfeit them as proceeds of narcotics trafficking).

<sup>33</sup> See FATF, “RBA Guidance for Legal Professionals,” October 23, 2008.

source of client funds, and monitor client activity for suspicious transactions. Paragraph 109 of the FATF guidance recommends that attorneys treat PEPs as high risk clients requiring enhanced due diligence and monitoring. In addition, Paragraph 110 recommends that attorneys treat certain services as high risk, including services in which attorneys “handle the receipt and transmission of funds through accounts they actually control.” This guidance, however, was issued after most of the events reviewed in this Report and was never intended to be legally binding on U.S. attorneys.

With respect to real estate and escrow agents, since 1988, U.S. AML laws have identified “persons involved with real estate closings and settlements” and “business[es] engaged in vehicle sales, including automobile, airplane, and boat sales” as vulnerable to money laundering abuses and in need of AML safeguards, due to the large amounts of money involved in their transactions.<sup>34</sup> In 2001, after the 9-11 terrorist attack and as part of its effort to strengthen U.S. AML safeguards, the Patriot Act explicitly required such businesses to establish AML programs, unless exempted by the Treasury Department.<sup>35</sup> Six months later, however, in 2002, the Treasury Department “temporarily” exempted both categories of businesses from having to establish AML programs.<sup>36</sup> In 2003, Treasury solicited comments to develop a proposed AML rule for real estate businesses, but took no further action.<sup>37</sup> Today, eight years after enactment of the Patriot Act, the Treasury Department has yet to propose or finalize a rule requiring businesses engaged in either real estate closings or vehicle sales, including aircraft sales, to establish AML safeguards. In addition, none of the relevant business sectors has developed voluntary AML guidance for their members.<sup>38</sup>

In contrast, since 2001, U.S. financial institutions have been required by law to set up AML programs, with AML policies, procedures, and controls; a compliance officer; employee training; and an internal audit function to ensure compliance.<sup>39</sup> Their AML programs typically require personnel to know their customers, evaluate the source of client funds, identify high risk clients, apply enhanced monitoring to high risk clients, and report suspicious transactions to law enforcement. Despite these requirements, some of the banks handling Obiang-related accounts

<sup>34</sup> See 31 USC § 5312(a)(2)(T) and (U).

<sup>35</sup> See Section 352 of the Patriot Act of 2001, P.L. 107-56 (October 26, 2001), codified at 31 USC § 5318(h).

<sup>36</sup> See 31 CFR § 103.170, as codified by interim final rule published at 67 FR 21110 (April 29, 2002, as amended at 67 FR 67547 (November 6, 2002) and corrected at 67 FR 68935 (November 14, 2002).

<sup>37</sup> See Advance Notice of Proposed Rulemaking on Anti-Money Laundering Program Requirements for ‘Persons Involved in Real Estate Closings and Settlements,’ 68 FR 17569 (April 10, 2003), [http://www.fincen.gov/statutes\\_regs/frn/pdf/352\\_real\\_estate\\_04102003.pdf](http://www.fincen.gov/statutes_regs/frn/pdf/352_real_estate_04102003.pdf).

<sup>38</sup> The National Association of Realtors, for example, has developed a detailed Code of Ethics for real estate agents, but none of the Code provisions addresses AML concerns. See 2010 Code of Ethics and Standards of Practice of the National Association of Realtors, [www.realtor.org](http://www.realtor.org). The Association has instead developed educational materials for its members on money laundering and terrorist financing, without official guidance on how to address the issues. See, e.g., “The Basics, Money Laundering and Terrorist Financing,”

[http://www.realtor.org/government\\_affairs/gapublic/business\\_issues\\_money\\_laundering](http://www.realtor.org/government_affairs/gapublic/business_issues_money_laundering); Subcommittee interview with National Association of Realtors, January 13, 2010. Real estate and escrow agents, like attorneys, are subject to U.S. criminal prohibitions against participating in a money laundering offense, see, e.g., 18 U.S.C. §§ 1956, 1957, and doing business with terrorists, narcotics traffickers, or other criminals identified on lists compiled by the Office of Foreign Assets Control, <http://www.ustreas.gov/offices/enforcement/ofac/sdn/>. Real estate and escrow agents are also required to file Form 8300 reports with the Internal Revenue Service if they receive cash payments of \$10,000 or more.

<sup>39</sup> See Section 352 of the Patriot Act of 2001, P.L. 107-56 (October 26, 2001), codified at 31 USC § 5318(h).

did not designate the accounts as high risk and allowed them to receive suspect funds from Equatorial Guinea.

## A. Background

**Equatorial Guinea.** Equatorial Guinea is a small country of about 600,000 persons located on the west coast of Africa between the countries of Cameroon and Gabon.<sup>40</sup> Its official languages are Spanish and French.<sup>41</sup> Originally a Portuguese colony, Equatorial Guinea was ceded to Spain in 1778, which granted it independence 190 years later in 1968.<sup>42</sup>

Equatorial Guinea (EG) possesses substantial natural resources. Following the discovery of oil in 1996, Equatorial Guinea has become the third largest oil producer in sub-Saharan Africa,<sup>43</sup> generating about 500,000 barrels per day by 2007.<sup>44</sup> In 2007 alone, Equatorial Guinea reportedly sold about 1.8 billion barrels of oil for \$4.3 billion, which comprised about 90 percent of the EG economy.<sup>45</sup> U.S. oil companies help produce roughly 75 percent of Equatorial Guinea's oil,<sup>46</sup> leading to the institution of direct airline flights between Houston, Texas and the EG capital city, Malabo.<sup>47</sup> In addition to oil, Equatorial Guinea has significant timber resources, which provides its second major export commodity.

EG oil and timber resources have done little, however, to raise the living standards of the EG population. Although the country ranks in the top fifth of nations in gross domestic product per capita due largely due to its oil revenues,<sup>48</sup> poverty is widespread. Equatorial Guinea ranks, for example, 115th of 179 nations on the United Nation's Human Development Index.<sup>49</sup> EG citizens have a low life expectancy and suffer from the 17<sup>th</sup> highest infant mortality rate in the world.<sup>50</sup> The World Bank has determined that, between 1995 and 2002, roughly 39 percent of

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<sup>40</sup>2008 World Fact Book, U.S. Central Intelligence Agency.

<sup>41</sup> Id.

<sup>42</sup> U.S. Department of State, Background Notes: Equatorial Guinea, <http://www.state.gov/r/pa/ei/bgn/7221.htm>;

2008 World Fact Book, U.S. Central Intelligence Agency.

<sup>43</sup>The World Bank, Equatorial Guinea,

<http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/AFRICAEXT/EQUATORIALGUINEAEXTN/0,,menuPK:352197~pagePK:141132~piPK:141109~theSitePK:352171,00.html>.

<sup>44</sup> U.S. Department of State, Background Notes: Equatorial Guinea, <http://www.state.gov/r/pa/ei/bgn/7221.htm>.

<sup>45</sup> "Equatorial Guinea; Poverty Rife in Africa's 'Kuwait,'" Africa News (10/6/2008), citing Bank of Central African States. <http://allafrica.com/stories/200810061482.html>.

<sup>46</sup> "Equatorial Guinea; Poverty Rife in Africa's 'Kuwait,'" Africa News (10/6/2008).

<http://allafrica.com/stories/200810061482.html>.

<sup>47</sup> The Independent, "A Murderous Dictator, His Rapper Son and a \$700M-a-Year Oil Boom," March 16, 2004.

<http://www.independent.co.uk/news/world/africa/a-murderous-dictator-his-rapper-son-and-a-700mayear-oil-boom-566494.html>.

<sup>48</sup> 2008 World Fact Book, U.S. Central Intelligence Agency.

<sup>49</sup> The Human Development Index is a product of the United Nations Development Programme (UNDP). It "provides a composite measure of three dimensions of human development: living a long and healthy life (measured by life expectancy), being educated (measured by adult literacy and enrolment at the primary, secondary and tertiary level) and having a decent standard of living (measured by purchasing power parity, PPP, income)." See:

[http://hdrstats.undp.org/en/countries/country\\_fact\\_sheets/cty\\_fs\\_GNQ.html](http://hdrstats.undp.org/en/countries/country_fact_sheets/cty_fs_GNQ.html).

<sup>50</sup> 2008 World Fact Book, U.S. Central Intelligence Agency; See also U.N. Human Development Reports, <http://hdr.undp.org/en/statistics/>.

EG children under the age of five were malnourished, and only 44 percent of the population had access to safe drinking water.<sup>51</sup>

Equatorial Guinea has had only two presidents since gaining independence in 1968. Francisco Macias Nguema was elected the first EG President in 1968. By 1972, he had taken the title of “President-for-Life,”<sup>52</sup> and during ten years of autocratic rule, saw the EG population contract by one-third. In 1979, his nephew, Teodoro Obiang Nguema Mbasogo, led a successful coup, executed his uncle, and assumed the presidency.

Over the next 30 years, President Obiang was declared the winner of five successive elections to seven-year terms, in 1982, 1989, 1996, 2002, and 2009.<sup>53</sup> International observers have criticized the fairness of those elections, questioning vote totals that, for example, in 1996 and 2002, showed President Obiang winning 98% and 97% of the vote, respectively.<sup>54</sup> His vote total in 2009 was announced as 95%.<sup>55</sup> Critics have also condemned his administration for widespread human rights abuses and suppression of political opposition.<sup>56</sup> In its 2008 Human Rights Report, the U.S. State Department noted improvements from past years, but also criticized a host of EG human rights abuses, including “limited ability of citizens to change their government; increased reports of unlawful killings by security forces; government-sanctioned kidnappings; systematic torture of prisoners and detainees by security forces; life threatening conditions in prisons and detention facilities; impunity; arbitrary arrest, detention, and incommunicado detention; harassment and deportation of foreign residents with limited due process; judicial corruption and lack of due process; restrictions on the right to privacy; restrictions on freedom of speech and of the press ... [and] government corruption.”<sup>57</sup>

Transparency International’s Corruptions Perception Index has consistently ranked Equatorial Guinea as having one of the most corrupt images in the world, with the 2008 index ranking it 171 out of the 180 countries evaluated.<sup>58</sup> During the same time period, President Obiang’s personal wealth appears to have increased. In 2006, President Obiang was named by Forbes as one of the world’s ten wealthiest rulers, with an estimated personal wealth of \$600 million.<sup>59</sup> In 2008, Parade Magazine named President Obiang as one of the world’s worst dictators.<sup>60</sup>

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<sup>51</sup>The World Bank, Equatorial Guinea, <http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/AFRICAEXT/EQUINEAEXTN/0,,menuPK:352197~pagePK:141132~piPK:141109~theSitePK:352171,00.html>.

<sup>52</sup> U.S. Department of State, Background Notes: Equatorial Guinea, <http://www.state.gov/r/pa/ei/bgn/7221.htm>.

<sup>53</sup> Id.

<sup>54</sup> Id.

<sup>55</sup> See 12/2/09 statement issued by the EG Ambassador to the United States, Purificacion Angue Ondo, “Republic of Equatorial Guinea Releases Final Presidential Election Results,” available on PRNewsire-USNewsWire.

<sup>56</sup> See, e.g., CBS News: 60 Minutes, “Kuwait of Africa,” July 18, 2004.

<http://www.cbsnews.com/stories/2003/11/14/60minutes/main583700.shtml>.

<sup>57</sup> U.S. Department of State, 2008 Human Rights Report: Equatorial Guinea, February 25, 2009.

<sup>58</sup> Transparency International, “Transparency International 2008 Corruption Perceptions Index.” [http://www.transparency.org/news\\_room/in\\_focus/2008/cpi2008/cpi\\_2008\\_table](http://www.transparency.org/news_room/in_focus/2008/cpi2008/cpi_2008_table).

<sup>59</sup> See Forbes.com, “Fortunes of Kings, Queens, and Dictators,” May 5, 2006, see online at [http://www.forbes.com/2006/05/04/rich-kings-dictators\\_cz\\_lk\\_0504royals.html](http://www.forbes.com/2006/05/04/rich-kings-dictators_cz_lk_0504royals.html).

<sup>60</sup> Parade Magazine, “The World’s Worst Dictators,” 2008 <http://www.parade.com/dictators/2008/index.jsp>.

**Teodorin Obiang.** Teodoro Nguema Obiang Mangue, nicknamed “Teodorin,” is the eldest son of President Obiang and First Lady Constanca Mangue Nsue Okomo.<sup>61</sup> For at least ten years, he has held the post of EG Minister of Agriculture and Forestry. He reportedly collects an official government salary of approximately \$5,000 per month or \$60,000 per year.<sup>62</sup> Despite this modest salary, Mr. Obiang is known to live a lavish lifestyle with multiple real estate holdings, automobiles, and extravagant spending sprees.<sup>63</sup>

In 2004, as part of an investigation into how Riggs Bank was implementing Patriot Act provisions to curb money laundering and foreign corruption, the Subcommittee released documents related to 60 Riggs Bank accounts that had been opened by Equatorial Guinea, EG officials, and their relatives, including Teodorin Obiang. One Riggs Bank analysis evaluated Mr. Obiang’s business activities, noting that in addition to his government position, he was the sole owner of a key EG forestry company, Grupo Sofana, with exclusive rights to export EG timber, and controlled an affiliated EG timber company, Somagui Forestal.<sup>64</sup> The Riggs documentation also showed that, from 1997 through 2003, Mr. Obiang was associated with over a dozen U.S. bank accounts which, at times, received millions of dollars in deposits. The 2004 report released by the Subcommittee summarized these accounts as follows.

“While the E.G. President’s eldest son, Teodoro Nguema Obiang, the E.G. Minister of Forestry, did not have any personal accounts at Riggs, he was the beneficial owner of three accounts opened in the name of companies he controlled. Two of these accounts were opened in the name of his California entertainment company, TNO Entertainment LLC. The first, Account No. 76-889-555, was opened in 2000 and closed in 2001, and

<sup>61</sup> The Scotsman, “Coup Plot Conviction Increases the Pressure on Mark Thatcher,” August 28, 2004. <http://news.scotsman.com/topstories/Coup-plot-conviction-increases-the.2559206.jp>.

<sup>62</sup> See African Development Information Service – People Record: Teodoro Nguema Obiang, [http://www.afdevinfo.com/htmlreports/peo/peo\\_8085.html](http://www.afdevinfo.com/htmlreports/peo/peo_8085.html).

<sup>63</sup> See, e.g., The Times Online, “Playboy Waits for His African Throne,” September 3, 2006, <http://www.timesonline.co.uk/tol/news/world/article626511.ece>; The Star, “African Oil Sheik Goes on South African Spending Spree,” July 20, 2005, page 1. Mr. Obiang’s well-publicized spending sprees include the following.

- According to press reports, on one weekend in 2005, Mr. Obiang purchased two Bentleys, a Lamborghini, and two multi-million dollar luxury houses in Cape Town, South Africa. [http://www.iol.co.za/index.php?set\\_id=1&click\\_id=86&art\\_id=vn20050720063046112C699596](http://www.iol.co.za/index.php?set_id=1&click_id=86&art_id=vn20050720063046112C699596); Times Online “President’s Playboy Son Splashes Out £1M in Luxury Car Spree,” July 21, 2005. <http://www.timesonline.co.uk/tol/news/world/article546244.ece>; The Star, “Playboy’s High Life: Dictator’s Son Spends Millions on Cars, Houses, and Champagne in SA”, July 20, 2005. <http://www.thestar.co.za/index.php?fArticleId=2631945>.
- In 2003, Mr. Obiang was observed traveling around Paris in a Lamborghini and purchasing as many as 30 designer suits in one afternoon while being followed by French media. CBS News: 60 Minutes, “Kuwait of Africa,” July 18, 2004. <http://www.cbsnews.com/stories/2003/11/14/60minutes/main583700.shtml>.
- According to another press report, in 2006, Mr. Obiang spent nearly \$700,000 to rent Microsoft founder Paul Allen’s yacht “Tatoosh” for a Christmas cruise off St. Barts to entertain a former girlfriend. NY Daily News, “Has Eve’s Fling Brought Her a Despot of Gold,” February 20, 2006. [http://www.nydailynews.com/archives/gossip/2006/02/20/2006-02-20\\_has\\_eve\\_s\\_fling\\_brought\\_her\\_.html](http://www.nydailynews.com/archives/gossip/2006/02/20/2006-02-20_has_eve_s_fling_brought_her_.html).

<sup>64</sup> “Money Laundering and Foreign Corruption: Enforcement and Effectiveness of the Patriot Act,” U.S. Senate Permanent Subcommittee on Investigations, July 15, 2004 (hereinafter “2004 Subcommittee Investigation into Riggs Bank”)

the funds were transferred to Account 76-923-450, which was opened in 2001 and remained open in early 2004. From 2001 to 2003, the second account had balances that fluctuated between about \$17,000 and \$11.6 million. The third account, Account No. 25-380-038, was opened in the name of Awake Ltd., a Bahamian offshore shell company that Riggs helped to establish. This money market account, opened in 2002, saw virtually no account activity.<sup>65</sup> ...

“The Subcommittee also identified two other sets of bank accounts associated with the President’s son, opened at JPMorgan Chase and Citigroup. At JPMorgan Chase, four accounts and three CDs were opened in the name of the President’s son, including a savings account and three checking accounts which together held about \$75,000 in 2003. All three CDs had matured in 2002, and at that time had an aggregate value of more than \$1.7 million. At Citigroup, the Subcommittee identified four accounts that had been opened in the name of the son’s company, TNO Entertainment. The earliest of these accounts was opened in 1997, and all four were closed in early 2000. They included a checking account, money market account, CitiGold account, and securities investment account. These accounts were apparently dormant at times, but in mid 1999, received deposits in a relatively short period totaling about \$11.8 million. After noting suspicious account activity, Citigroup closed these accounts in 2000. Riggs Bank apparently identified at least one additional set of accounts held by the E.G. President’s son at City National Bank of Beverly Hills, California.”<sup>66</sup>

Mr. Obiang has admitted in a number of settings that, in addition to his government post, he owns a number of companies. For example, in 2004, when a U.S. bank asked him to explain the source of funds for a substantial wire transfer, he sent an email explaining: “The wire transfer was from one of my companies in Equatorial Guinea. The funds that were transferred to me did not come from any illegal source. It was either from Somagui Forestal or Sofona.”<sup>67</sup> In a 2006 court proceeding examining ownership of two houses in South Africa, Mr. Obiang produced wire transfers showing that he had paid for the houses with funds from an EG account held by Socage. In a sworn and signed affidavit submitted to the court, he wrote: “One of the companies that I own is SOCIEDAD DE CARRETERAS DE GUINEA ECUATORIAL (“SOCAGE”), with a bank account at the CCEI BANK GE, in BATA, the commercial capital of the country.”<sup>68</sup>

Many of the transactions examined in this Report involve wire transfers sent by Somagui Forestal or Socage from bank accounts in Equatorial Guinea; a few involve funding transfers from accounts opened in the name of TNO Entertainment LLC, a California corporation that is associated with Mr. Obiang and was still active in 2009.<sup>69</sup>

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<sup>65</sup> 2004 Subcommittee Investigation into Riggs Bank at 159.

<sup>66</sup> Id. at 160.

<sup>67</sup> 9/30/04 Declaration of Teodoro Ngeuma Obiang, *Obiang v. City National Bank*, Case No. SC 083177, explaining the source of funds for a substantial wire transfer he had sent to the bank, CNB0004068.

<sup>68</sup> 8/8/06 Second Respondent’s Answering Affidavit, *Maseve Investments 7 (PTY) Ltd. v. Equatorial Guinea*, (High Court of South Africa (Cape Provincial Division), Case No. 1407/2006, at 13. (Emphasis in original.)

<sup>69</sup> “TNO” apparently stands for Teodoro Nguema Obiang. Mr. Obiang is also active in the media in Equatorial Guinea, apparently owning the only privately-held radio station, Radio Asonga, and serving as director of the state owned TV Asonga.

During the course of the investigation, Subcommittee staff has communicated with Mr. Obiang's attorneys, raising questions as to the source of his funds. Most recently, in December of 2009, the Subcommittee contacted Mr. Obiang and again offered an opportunity for him to provide information to the Subcommittee. The Embassy of Equatorial Guinea responded and noted that it had passed the Subcommittee's request along to Mr. Obiang. Subcommittee staff then met with Mr. Obiang's attorney who promised to provide information as to the source of Mr. Obiang's funds.

**Corruption Allegations.** Members of the Obiang family have long been suspected of misappropriating Equatorial Guinea's oil and timber wealth for personal gain.<sup>70</sup> In addition to allegations in the media, over the past five years several civil and criminal legal actions have raised corruption concerns involving President Obiang, his son, and other relatives.

In 2004, this Subcommittee charged that Riggs Bank in Washington, D.C. had opened more than 60 accounts and certificates of deposit for the EG government, EG officials, and their relatives and, when administering them, had "turned a blind eye to evidence suggesting the bank was handling the proceeds of foreign corruption, and allowed numerous suspicious transactions to take place without notifying law enforcement." Documents released by the Subcommittee showed that the bank had opened multiple personal accounts for the EG President and his wife, helped establish two offshore corporations controlled by President Obiang, and over a three-year period from 2000 to 2002, had "facilitated nearly \$13 million in cash deposits into Riggs accounts controlled by the E.G. President and his wife."<sup>71</sup> The Subcommittee also released documents showing that about \$35 million had been withdrawn from the country's oil revenue accounts at Riggs Bank and wire transferred to accounts opened in the name of Apexside Trading Ltd. and Kalunga Co., offshore shell corporations associated with EG officials, including President Obiang.<sup>72</sup>

In 2006, a civil complaint was filed in the High Court of South Africa by a South African firm, Maseve Investments, which was attempting to collect on a debt that it claimed the EG government owed in connection with a contract to construct an EG airport. To collect the debt, the plaintiff attempted to seize two luxury Cape Town homes that were owned by Mr. Obiang, but which the plaintiff alleged had been purchased with EG government funds sent from an account at Riggs Bank.<sup>73</sup> Mr. Obiang filed a sworn affidavit in response, producing wire transfers showing that the houses had been purchased with funds from an EG account held in the name of a company he owned, Socage.<sup>74</sup> He stated in the affidavit:

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<sup>70</sup> See, e.g., Washington Post, "Oil Gives African Nation a Chance for Change: Despite Leader's Promises, Many Fear People of Equatorial Guinea Will Not Benefit From Windfall," May 13, 2001; CBS News: 60 Minutes, "Kuwait of Africa," July 18, 2004. <http://www.cbsnews.com/stories/2003/11/14/60minutes/main583700.shtml>.

<sup>71</sup> 2004 Subcommittee Investigation into Riggs Bank at 129.

<sup>72</sup> Id. at 167.

<sup>73</sup> See Maseve Investments 7 (Pty) Ltd. v. Republic of Equatorial Guinea, (High Court of South Africa, Cape Provincial Division), Case No. 1407/2006. See also The Cape Times, "Equatorial Guinea playboy's Cape homes seized," February 16, 2006; The Guardian, "The tiny African State, the President's Playboy Son and the \$35M Malibu Mansion," November 10, 2006.

<sup>74</sup> 8/8/06 Affidavit of Teodoro Nguema Obiang, Second Respondent, Maseve Investments 7 (PTY) Ltd. v. Equatorial Guinea, (High Court of South Africa, Cape Provincial Division), Case No. 1407/2006.

“Cabinet ministers and public servants in Equatorial Guinea are by law allowed to own companies that, in consortium with a foreign company, can bid for government contracts and should the company be successful, then what percentage of the total cost of the contract the company gets, will depend on the terms negotiated between the parties. But in any event, it means that a cabinet minister ends up with a sizeable part of the contract price in his bank account.”<sup>75</sup>

The U.S. Department of Justice later characterized this statement as follows: “Although Teodoro Nguema OBIANG has claimed that this practice was legal, the assertion also suggests that he may be receiving bribes or extortion payments in the form of a percentage of contract revenue.”<sup>76</sup>

In March 2007, three nonprofit anti-corruption organizations, Sherpa, Survie, and the Federation of the Congolese Diaspora, filed a legal complaint before the French Public Prosecutor alleging the ruling families of Equatorial Guinea, Gabon, Angola, Burkina Faso, and Congo owned millions of dollars worth of properties in France “that could not be the fruits of their official salaries ... but would have likely required the use of stolen public assets.”<sup>77</sup> The complaint attached articles and reports with alleged information about property and vehicles owned by the Heads of State and their relatives, including the Obiangs. According to a later legal pleading filed in the case, in June 2007, a police investigation was launched in response to the complaint which confirmed most of the allegations and uncovered additional luxury properties, vehicles, and bank accounts belonging to the cited Heads of State and their relatives.<sup>78</sup> The police allegedly confirmed, for example, that “Teodorin Obiang, son of the President of Equatorial Guinea, acquired at least 5 million Euros worth of luxury cars.”<sup>79</sup> In November 2007, however, the police investigation was halted by the Public Prosecutor.

On July 9, 2008, another nonprofit organization dedicated to combating corruption, Transparency International France (“TI France”), together with two citizens from Gabon and the Congo, re-filed the complaint before the French Public Prosecutor with the goal of asking an investigating judge to reopen the investigation.<sup>80</sup> On December 2, 2008, after the Public

<sup>75</sup> Id. at 12.

<sup>76</sup> 9/4/07 memorandum from the U.S. Department of Justice to the Central Authority of France, MEW:SCR.PJR 182-21407, at 5-6, no bates number. See also The Financial Times, “Taking a Cut Acceptable, Says African Minister,” October 25, 2006. [http://www.ft.com/cms/s/0/98cb7e86-645a-11db-ab21-0000779e2340.html?nclink\\_check=1](http://www.ft.com/cms/s/0/98cb7e86-645a-11db-ab21-0000779e2340.html?nclink_check=1).

<sup>77</sup> Legal memorandum prepared by Sherpa & Transparency International France (“TI France”), Admissibility of TI France’s complaint with civil party petition, (French court of appeals, June 2009), at 1. This memorandum recounts the history of the anti-corruption case filed by the three organizations from 2007 to 2009. The initial 2007 complaint is *Plainte Pres le Tribunal de Grande Instance de Paris*, undated, PSI-OECD-00001-13.

<sup>78</sup> Legal memorandum prepared by Sherpa & TI France, Admissibility of TI France’s complaint with civil party petition, (French court of appeals, June 2009), at 1.

<sup>79</sup> Id. Later, in 2009, a 600-page compilation of documents related to the French police investigation was leaked to the press. Among other information, those documents indicate that the police had identified a luxury Paris apartment owned by Teodorin Obiang as well as eight luxury cars worth a total of \$6.2 million. MWC News, October 30, 2009, “France Halts African Leaders Probe,” [mwcnews.net/content/view/34091/51/](http://mwcnews.net/content/view/34091/51/). See also Agence France, “French Corruption Suit Targets African Leaders,” December 2, 2008.

<sup>80</sup> Legal memorandum prepared by Sherpa & TI France, Admissibility of TI France’s complaint with civil party petition, (French court of appeals, June 2009), at 2.



Prosecutor declined to pursue the case, TI France filed a civil party petition with an investigating judge alleging that the presidents of Equatorial Guinea, Gabon, and Congo had acquired luxury homes and other property in France with embezzled public funds and requesting that an investigation be undertaken.<sup>81</sup> On April 8, 2009, the Public Prosecutor recommended that the TI France petition be ruled inadmissible due to a lack of standing.<sup>82</sup> On May 5, 2009, the Dean of investigating judges rejected that recommendation and instead held that the case could continue.<sup>83</sup> The Public Prosecutor appealed the Dean's decision, and in October 2009, a French appeals court ruled that TI France did not have standing to file the petition and dismissed it.<sup>84</sup> That ruling is now on appeal to France's highest court.<sup>85</sup>

While this lengthy civil proceeding was unfolding in court, in September 2007, the U.S. Department of Justice (DOJ) sent a formal request to the "Central Authority of France" requesting assistance with an ongoing U.S. criminal investigation into Teodorin Obiang and his associates.<sup>86</sup> The 2007 DOJ memorandum making this request was leaked to the press in November 2009.<sup>87</sup> The memorandum stated that Mr. Obiang "has been the subject of various U.S. government inquiries for several years."<sup>88</sup> It stated that DOJ and the U.S. Department of Homeland Security's Immigration and Customs Enforcement (ICE) were "investigating suspected criminal conduct of Teodoro Nguema OBIANG and his associates involving the illicit transfer and laundering of assets believed to be derived from extortion, bribery and/or the misappropriation, theft, or embezzlement of public funds." It continued:

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<sup>81</sup> Plainte Avec Constitution de Partie Civile Pres le Tribunal de Grande Instance de Paris, undated, PSI-OECD-00014-38; legal memorandum prepared by Sherpa & TI France, Admissibility of TI France's complaint with civil party petition, (French court of appeals, June 2009), at 2. The civil party petition was also filed by Gregory Ngbwa Mintsa, a Gabonese citizen.

<sup>82</sup> Legal memorandum prepared by Sherpa & TI France, Admissibility of TI France's complaint with civil party petition, (French court of appeals, June 2009), at 3.

<sup>83</sup> Ordonnance D'Irrecevabilite Partielle De Plainte Avec Constitution De Partie Civile, Tribunal de Grande Instance de Paris, May 5, 2009, PSI-Transparency-USA.org 00001-00005; legal memorandum prepared by Sherpa & TI France, Admissibility of TI France's complaint with civil party petition, (French court of appeals, June 2009), at 5; TI France Press Release, "Corruption case filed by Transparency International France and a Gabonese citizen ruled partially admissible," May 5, 2009. See also BBC News, "Lawsuit on Africa Leaders 'Valid,'" May 6, 2009, <http://news.bbc.co.uk/2/low/africa/8035218.stm>; Connect Africa, "African Leaders to be Tried by French Magistrate," May 6, 2009. <http://connectafrica.wordpress.com/2009/05/06/african-leaders-to-be-tried-by-french-magistrate/>

<sup>84</sup> Cour D'Appel De Paris Pole 7 Deuxieme Chambre De L'Instruction, Appel D'une Ordonnance De Recevabilite De Constitution De Partie Civile Arret, October 29, 2009, PSI-Transparency-usa.org 00006-15. See also TI France Press Release, "Appealing for justice: three African presidents and their French assets," October 29, 2009; MWC News, "France Halts African Leaders Probe," October 30, 2009; Agence France, "French Corruption Suit Targets African Leaders," December 2, 2008; Impunity Watch, "French Court Halts Corruption Probe," October 31, 2009, [http://www.impunitywatch.com/impunity\\_watch\\_europe/2009/10/french-court-halts-corruption-probe.html](http://www.impunitywatch.com/impunity_watch_europe/2009/10/french-court-halts-corruption-probe.html).

<sup>85</sup> TI France Press Release, "Appealing for justice: three African presidents and their French assets," October 29, 2009.

<sup>86</sup> 9/4/07 memorandum from the U.S. Department of Justice to the Central Authority of France, MEW:SCR.PJR 182-21407, no bates number (hereinafter "2007 DOJ memorandum").

<sup>87</sup> The DOJ memorandum was posted on the website of the *New York Times* on November 17, 2009. See *New York Times*, *Taint of Corruption is No Barrier to U.S. Visa*, November 16, 2009, <http://www.nytimes.com/2009/11/17/us/17visa.html>

<sup>88</sup> 2007 DOJ memorandum at 3.

“[S]ources have informed investigators that Teodoro Nguema OBIANG, in his official capacity, has instituted a large ‘revolutionary tax’ on timber, but insisted that the payments be made directly to him, either in cash or through checks to SOMAGUI FORESTAL, a forestry company owned by Teodoro Nguema OBIANG. ... [I]n August 2006, Teodoro Nguema OBIANG filed an affidavit with the High Court of South Africa in a civil matter regarding whether funds held by Teodoro Nguema OBIANG belonged to the Equatorial Guinea government, a contention that Teodoro Nguema OBIANG contested. In his affidavit, Teodoro Nguema OBIANG admitted that cabinet ministers in Equatorial Guinea form private companies which act in consortia with foreign companies when obtaining government contracts and, as a consequence, ‘a cabinet minister ends up with a sizeable part of the contract price in his bank account.’ Although Teodoro Nguema OBIANG has claimed that this practice was legal, the assertion also suggests that he may be receiving bribes or extortion payments in the form of a percentage of contract revenue.”<sup>89</sup>

The memorandum concluded: “The prosecutors suspect that most, if not all, of Teodoro Nguema OBIANG’s assets are derived from extortion, bribery or the misappropriation of public funds.”<sup>90</sup>

A presentation by ICE in support of the 2007 request for assistance provided additional information. It stated that Mr. Obiang “[t]ravels frequently to the United States as an ‘A-1’ diplomat, although he is seldom on official business,” and “[r]outinely travels to the United States with over \$1 million in cash, and fails to declare,” which is a federal crime punishable by up to five years in prison.<sup>91</sup> The ICE presentation also stated that Mr. Obiang was the “[t]arget of multiple [Suspicious Activity Reports] for suspected money laundering from different financial institutions,”<sup>92</sup> and identified multiple assets and bank accounts associated with Mr. Obiang in France, South Africa, and the United States.

The Subcommittee attempted to confirm the 2007 criminal investigation discussed in the DOJ and ICE materials. Neither DOJ nor ICE would confirm the investigation or provide an update of its status. To date, no federal criminal indictment or civil asset forfeiture action involving Mr. Obiang had been made public.

In 2008, a complaint was filed in a Spanish court by the Open Society Institute and Soros Foundation, alleging money laundering of misappropriated oil revenues by EG officials. According to press articles, the complaint alleges that President “Teodoro Obiang has controlled close to 16 billion Euros [roughly US \$22 billion] worth of oil revenues since he took power in 1979.”<sup>93</sup> The complaint also alleges that President Obiang and his relatives purchased more than \$26 million in Spanish real estate with suspect funds. According to press reports, this civil complaint remains active.

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<sup>89</sup> 2007 DOJ memorandum at 5-6. See also Financial Times, “Taking a Cut Acceptable, Says African Minister,” October 25, 2006. [http://www.ft.com/cms/s/0/98cb7e86-645a-11db-ab21-0000779e2340.html?nclick\\_check=1](http://www.ft.com/cms/s/0/98cb7e86-645a-11db-ab21-0000779e2340.html?nclick_check=1)

<sup>90</sup> 2007 DOJ memorandum at 11.

<sup>91</sup> U.S. Immigration and Customs Enforcement powerpoint presentation, undated but likely in 2007, “Teodoro Nguema OBIANG, et al,” slides 9 and 10.

<sup>92</sup> Id. at slide 10.

<sup>93</sup> See El Mundo, “Obiang Lauanders over \$26 Million, Buying Real Estate in Spain,” December 9, 2008.

Together, these investigations and complaints over the past five years have raised substantial public concerns about the Obiang family in general and Mr. Obiang in particular, and suggest that the funds in their possession should be viewed as suspect.

## **B. Obiang Use of Attorneys To Bring Suspect Funds Into the United States**

For the four year period, 2004 to 2008, examined in this case history, Mr. Obiang employed members of the U.S. legal profession to help him bring millions of dollars in suspect funds from Equatorial Guinea into the United States through U.S. bank accounts. Two of the attorneys he employed in those efforts were Michael Berger who worked for him for four years, and George Nagler who worked for him for two years. Both attorneys were aware of the allegations of corruption related to Mr. Obiang, but facilitated his efforts to use shell company, attorney-client, law office, and other third party accounts at six U.S. banks as hidden conduits for his funds.

### **(1) Attorney Michael J. Berger**

Documentation obtained by the Subcommittee shows that, from at least 2004 to 2008, Mr. Obiang employed Michael Jay Berger, a California attorney, to carry out a variety of personal and business transactions. Among other services, Mr. Berger incorporated two U.S. shell companies called Beautiful Vision Inc. and Unlimited Horizon Inc. on behalf of Mr. Obiang; opened bank accounts in the names of those shell companies; and used those shell company accounts, as well as Mr. Berger's own attorney-client and law office accounts, to bring at least \$3 million in suspect funds from Equatorial Guinea into the United States and pay Mr. Obiang's bills and expenses. The documents indicate that Mr. Berger actively assisted Mr. Obiang in using these third party accounts as conduits for his funds, at times helped conceal Mr. Obiang's activities from the banks administering the accounts, and thereby helped Mr. Obiang bypass AML and PEP safeguards designed to detect and analyze high risk transactions. Mr. Berger also assisted Mr. Obiang in the purchase of a \$30 million California residence, as explained later in this section.

The documents indicate that, while working for Mr. Obiang, Mr. Berger was well aware of Mr. Obiang's political status and suspect wealth. Mr. Berger maintained a collection of press articles related to Mr. Obiang, for example, many of which described corruption problems within Equatorial Guinea, alleged that the wealth accumulated by Mr. Obiang's father, the President of Equatorial Guinea, originated as the proceeds of corruption, and criticized Mr. Obiang's lavish lifestyle.<sup>94</sup>

Mr. Berger received hundreds of thousands of dollars in compensation for his services as well as other benefits. Although he provided documents in response to a Subcommittee subpoena, Mr. Berger declined to answer Subcommittee questions regarding his dealings with Mr. Obiang, asserting his Constitutional rights under the Fifth Amendment.

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<sup>94</sup> Various periodicals, SEN000535-84; 11/21/06 email from Mr. Berger to Mr. Obiang, SEN004492; 9/15/07 email from Mr. Berger to Mr. Obiang, SEN004620 ; 10/28/07 email from Mr. Berger to Mr. Obiang, SEN004389.

### (a) Incorporating Shell Companies and Paying Bills

Mr. Berger is a California attorney who, according to his website, specializes in bankruptcy law.<sup>95</sup> He started his own firm in 1983, and his web site describes his clients as ranging from high-profile to working-class.<sup>96</sup> His relationship with Mr. Obiang, which dates back to at least 2004, involved his providing a variety of services to support Mr. Obiang's interests in the United States.

Mr. Berger formed two U.S. corporations for Mr. Obiang. The first was Beautiful Vision, Inc., a California corporation which was formed on October 12, 2004, and whose incorporation papers list Mr. Berger as the company president.<sup>97</sup> Although none of the incorporation documents mentions Mr. Obiang by name, he was the sole signatory on a Beautiful Vision account at Bank of America and, in a later sworn statement in an arbitration case, Mr. Obiang described Beautiful Vision as "my company."<sup>98</sup>

One year later, on October 21, 2005, Mr. Berger formed a second California corporation for Mr. Obiang called Unlimited Horizon Inc. Its incorporation papers identify Mr. Berger as the agent to accept service of process, but do not identify any officers or directors by name.<sup>99</sup> The incorporation documents do not mention Mr. Obiang. Mr. Berger later identified himself in bank account opening documentation as the president of Unlimited Horizon.<sup>100</sup>

From 2004 to 2007, Mr. Berger opened multiple bank accounts in the names of Beautiful Vision Inc. and Unlimited Horizon Inc., and used those accounts to pay bills and expenses associated with Mr. Obiang.

One of the documents reviewed by the Subcommittee illustrates the types of services performed by Mr. Berger for Mr. Obiang in connection with these shell corporations. On July 17, 2006, Mr. Berger entered into a written agreement with Mr. Obiang to perform services related to Unlimited Horizon Inc.<sup>101</sup> The contract identified five services to be provided by Mr. Berger: (1) paying household bills associated with Mr. Obiang's residence at 3620 Sweetwater Mesa Road in Malibu, California; (2) hiring a payroll service company to pay the salaries of the employees of Unlimited Horizon Inc., and compute any taxes owed in connection with these salaries; (3) hiring an accountant to perform that tax work; (4) obtaining worker's compensation insurance for Unlimited Horizon, Inc.; and (5) reviewing and paying Mr. Obiang's personal bills upon request.<sup>102</sup>

<sup>95</sup> Michael Jay Berger, Esq. <http://www.bankruptcypower.com/>.

<sup>96</sup> Id.

<sup>97</sup> See incorporation papers for Beautiful Vision, Wells Box 1, no bates number. See also Coldwell Banker agreement signed by Mr. Berger as president of Beautiful Vision, PSI Coldwell Banker 01-000501.

<sup>98</sup> January 2007 Declaration of Teodoro Nguema Obiang, *Mirzo International, Inc. v. Hyland*, Case No. AB06-15 (Beverly Hills/Greater Los Angeles Association of Realtors Arbitration Complaint Case), SEN007574-76 ("On or about November 1, 2004, I authorized Mr. Berger, as then President of my company, Beautiful Vision, Inc., to sign an Exclusive Retainer Agreement").

<sup>99</sup> See Unlimited Horizon articles of incorporation, PSI-Union\_BK\_Calif-01-000007 to 000012, at 12. C0000016; SEN004292; 8/23/05 Bank of America Investigative File on Unlimited Horizon Inc. account, BAC-PSI-05948.

<sup>100</sup> See, e.g., 8/28/06 account opening documentation for Unlimited Horizon account at Union Bank of California, PSI-Union\_BK\_Calif-01-000007 to 000012.

<sup>101</sup> 7/17/06 agreement between Mr. Berger and Mr. Obiang, SEN000001-5.

<sup>102</sup> Id.

Other documents show that Mr. Berger's tasks included such matters as screening, hiring, and facilitating the payroll of the domestic staff at the \$30 million Malibu residence Mr. Obiang had purchased, including private security guards, butlers, chefs, drivers, and other caretakers.<sup>103</sup> One bill showed, for example, that over the course of seven months in 2007, Mr. Berger paid over \$330,000 for two bodyguards available 24 hours per day at \$38 per hour, and over \$7,400 for "The Fish Physician" to provide services related to Mr. Obiang's fish tank and Koi pond.<sup>104</sup> These funds were disbursed from an Unlimited Horizon account at Union Bank of California.<sup>105</sup>

Mr. Berger also assisted Mr. Obiang in his 2006 purchase of the \$30 million Malibu property, as detailed later in this section. An October 2006 email from Mr. Berger to Mr. Obiang shows that he also helped negotiate contracts with third parties regarding that property. In the message, Mr. Berger describes meeting with an interior decorator to discuss a \$4 million budget for decorating Mr. Obiang's Malibu residence:

"I met for 2 hours today with your designer .... I convinced them to accept 25% commission on all items, not the 30% in their draft contract. ... The job has an approximate budget of \$4,000,000.00. 5% of \$4,000,000.00 is \$200,000.00. I feel good about saving you money .... I enjoy working for you."<sup>106</sup>

### **(b) Bringing In and Moving Suspect Funds**

From at least 2004 to 2008, Mr. Obiang utilized a variety of U.S. bank accounts and wire transfer systems to bring millions of dollars in suspect funds from Equatorial Guinea into the United States to support his U.S. activities. Documents reviewed by the Subcommittee show that Mr. Berger helped Mr. Obiang conceal his U.S. financial activities, primarily by opening and using shell company accounts and his own attorney-client and law office accounts at U.S. banks as conduits for Obiang funds. Mr. Berger does not appear to have taken any steps to ensure that the funds he helped bring into the United States were legitimate.

From 2004 to 2007, Mr. Obiang used accounts at three U.S. banks, Union Bank of California, Bank of America, and Citibank, often with Mr. Berger's assistance, to deposit, transfer and spend nearly \$10 million. Most of these funds were wire transferred from accounts in Equatorial Guinea held in the name of Mr. Obiang or two EG companies he controlled, Somagui Forestal and Socage. The EG wire transfers often deposited funds into attorney-client or law office accounts controlled by Mr. Berger, who then transferred the funds to other Obiang-related accounts. This two-step process helped mask the fact that the other accounts were receiving funds from Equatorial Guinea, which most banks flag as a high risk country due to its weak AML controls and reputation for corruption. Mr. Berger also used the EG funds to pay Obiang-related bills and expenses. Over time, as the three banks discovered the EG wire transfers or Mr. Obiang's use of their accounts, they closed the accounts he was using. The two banks with a Berger attorney-client or law office account also terminated their relationships with him, due to the incoming EG wires and Mr. Obiang's surreptitious use of the accounts. Each

<sup>103</sup> 1/10/08 Fax from Mr. Berger to Mr. Obiang, SEN000008.

<sup>104</sup> Various dates, checks from Unlimited Horizon, Inc. General Account at Union Bank of California, PSI-Union\_Bk\_Calif-01-000048-397 ; See also 10/10/06 Invoice from Saurman Investigative Services, Inc. and 10/28/06 check from Unlimited Horizon, Inc., SEN000874.

<sup>105</sup> Id.

<sup>106</sup> 10/18/06 email from Mr. Berger to Mr. Obiang, SEN003438.

time an account was closed, however, Mr. Obiang responded by finding another U.S. bank account, often with Mr. Berger's assistance, that he could utilize.

Mr. Berger's matter-of-fact reaction to the account closings is instructive. On June 12, 2007, Union Bank of California closed Unlimited Horizon Inc. General Account No. 0720115409, less than a year after it was opened, due to suspicious transactions.<sup>107</sup> Following the account closure, Mr. Berger wrote an email to Mr. Obiang explaining the status of the account, steps he was taking to avoid any complications from the closure, and alternative funding channels that could be used, including an Unlimited Horizon account at Citibank, a Berger attorney-client account at Bank of America, and perhaps a new account at another bank.

"Attached hereto is a copy of the check register of the general account at Union Bank from June 1, 2007 through June 12, 2007, the date it was closed by the bank. There is currently a zero balance in said account. Checks that were written but did not clear before the account was closed are listed. ... Most of these checks have already been replaced with new checks from the Citibank account. I have not yet heard from DMV with respect to replacement of 2 registration checks that did not clear: checks for your 2005 Lamborghini and your 2005 Mercedes. I will replace these checks as soon as I receive a bill from DMV, as I did for your 2005 Porche.

Also attached hereto is a copy of the Check register for the general account at Citibank from its opening on 6/25/07 through today, 7/11/07. The remaining balance in this account is \$19,664.96. I am saving this money for the next payroll which will take place on Friday, July 13.

Also attached hereto is an account of the funds that were deposited by me into my Bank of America Client Trust Account on your behalf, and the checks I wrote on your behalf. You have \$9,727.55 remaining in my Bank of America Client Trust Account. Per our discussion, I will use these funds to open up another bank account at another bank or, if needed, deposit these funds into the existing Citibank account.

... I have prepared and attached an invoice to you requesting a wire transfer of \$200,000.00 to my Bank of America Client Trust Account. I will need these funds to pay additional bills for you. A copy of my Bank of America Client Trust Account Wire Transfer Information is attached hereto.

As always, I appreciate the opportunity to work for you."<sup>108</sup>

As this email and other documents demonstrate, Mr. Berger actively assisted Mr. Obiang in bypassing U.S. AML and PEP safeguards intended to keep foreign corruption out of the United States.

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<sup>107</sup> 06/12/07 Union Bank of California cashier's check to Unlimited Horizon, Inc., SEN004570. See also 8/28/06 Bank- Depositor Agreement of Union Bank of California and Unlimited Horizon, Inc., PSI-Union\_BK\_Calif-01-000007 to 000012.

<sup>108</sup> 7/11/07 email from Mr. Berger to Mr. Obiang, SEN004574.

### (i) Union Bank of California

For more than four years, from 2004 to 2008, Mr. Obiang used accounts at Union Bank of California (UBOC) to bring suspect funds into the United States to support his activities. Using multiple shell company, law office, and other third party accounts, none of which were opened in his own name, Mr. Obiang was able to wire transfer nearly \$8 million in suspect funds into UBOC accounts. Mr. Berger was instrumental in opening the shell company and law office accounts, moving Obiang funds through them, and masking Mr. Obiang's financial activities from the bank.

From 2001 to 2004, Mr. Obiang sent multiple wire transfers from Equatorial Guinea, including one for over \$6.2 million, to UBOC accounts, including one opened in the name of an individual employed by Mr. Obiang and another opened by an Obiang-related shell company, Sweet Pink Inc. After detecting these EG wire transfers in 2004, the bank closed both accounts in 2005. In 2006, Mr. Berger opened two accounts for another Obiang shell company, Unlimited Horizon, as well as a law office account at UBOC, without disclosing that Mr. Obiang would be using them. Over a ten-month period from 2006 to 2007, EG wire transfers totaling more than \$1.7 million were deposited into the new Berger law office account. Over that same time period, Mr. Berger transferred those funds to the two Unlimited Horizon accounts which he then used to pay Mr. Obiang's bills and expenses.

While the \$1.7 million in EG wire transfers triggered internal UBOC AML alerts, UBOC did not review the transactions for about six months, because it was negotiating a deferred prosecution agreement with the U.S. Justice Department over deficiencies in UBOC's AML program. In June 2007, UBOC finally reviewed the transactions. Bank personnel concluded that the EG wire transfers were suspicious, raising both fraud and AML concerns, and UBOC immediately closed all three accounts.

But Mr. Obiang still wasn't done making surreptitious use of UBOC accounts. UBOC later discovered that, in 2008, Mr. Obiang wire transferred nearly \$30,000 to a UBOC account held by the mother of a woman he was dating, and then withdrew the funds via cash withdrawals at ATM machines and casinos in the United States.

**Wire Transfers and Kulungian Account.** UBOC told the Subcommittee that it first became aware of Obiang-related account activity in 2004, after UBOC deemed Equatorial Guinea to be a high-risk country and conducted a search for EG wire transfers.<sup>109</sup> The search identified one large 2001 wire transfer of \$6.2 million and seven smaller wire transfers from 2003 to 2004, totaling about \$18,700, that had been sent from an Obiang account at Riggs Bank, Account No. 76923450, to accounts at UBOC. The \$6.2 million wire transfer had been sent to a UBOC account for Beverly Hills Escrow in connection with Mr. Obiang's purchase of a residence near

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<sup>109</sup> Subcommittee interview with Union Bank, February 25, 2009; 10/21/04 UBOC Case Report, PSI-Union\_Bank\_of\_California-04-0449-52 (providing results of search related to "Equatorial Guinea Government and related officials/family members scrub"). According to UBOC employees, each year UBOC ranked various countries by risk, using recommendations and reports of the Financial Action Task Force (FATF), the U.S. State Department, Transparency International, and other sources. UBOC assigned each country a risk rating of high, medium, or low. UBC's monitoring software then screened wire transfers and other transactions on a monthly basis to identify high risk activity for further review.

Los Angeles as explained below.<sup>110</sup> The remaining wire transfers had been sent to UBOC Account No. 1301073100, held in the name of Carla Kulungian.<sup>111</sup> Still another wire transfer for more than \$14,700 had been sent from an Obiang company, Somagui Forestal, to the Kulungian account.<sup>112</sup> UBOC told the Subcommittee that it was able to determine that Ms. Kulungian worked as a secretary for Mr. Obiang, and had accepted the wire transfers into her account pursuant to her employment.<sup>113</sup> On November 19, 2004, UBOC closed the Kulungian account.<sup>114</sup>

**Sweet Pink Account.** Nearly a year later, on September 29, 2005, a UBOC checking account, Account No. 1300052831, was opened in the name of Sweet Pink, Inc.<sup>115</sup> Sweet Pink, Inc. is a California shell corporation, formed in 2005, by another attorney who worked for Mr. Obiang, George Nagler, as described later in this section. During October 2005, two wire transfers, each for nearly \$30,000, were deposited into the account by Somagui Forestal, Mr. Obiang's EG company.<sup>116</sup> The bank learned of the EG wire transfers and closed the Sweet Pink account on October 27, 2005, less than a month after it had been opened.<sup>117</sup>

**Unlimited Horizon and Law Office Accounts.** Undeterred by the closing of the two accounts, a year later Mr. Obiang struck again, this time using Mr. Berger to open the accounts. In August 2006, Mr. Berger opened two accounts at UBOC for Unlimited Horizon Inc., without mentioning Mr. Obiang's connection to the company. Mr. Berger initially funded the accounts with Obiang funds held in his attorney-client account at Bank of America.<sup>118</sup> Two months later, Mr. Berger opened a law office account at UBOC, and immediately began accepting EG wire transfers into that account. Over a ten-month period from 2006 to 2007, EG wire transfers deposited more than \$1.7 million into the UBOC Berger law office account. During that same period, Mr. Berger transferred the funds via check to the two Unlimited Horizon accounts and then used those accounts to pay Mr. Obiang's bills and expenses. By allowing his law office account to function as a pass-through for the EG funds, Mr. Berger helped Mr. Obiang circumvent UBOC's AML and PEP controls and bring suspect funds into the United States.

Mr. Berger opened the two Unlimited Horizon accounts at Union Bank of California on August 28, 2006, Accounts No. 0720115409 and No. 0720115417.<sup>119</sup> The account opening

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<sup>110</sup> 10/21/04 UBOC Case Report, PSI-Union\_Bank\_of\_California-04-0450, 0452.

<sup>111</sup> Id. at 0450. See also Subcommittee interview of Union Bank, February 25, 2009.

<sup>112</sup> 10/21/04 UBOC Case Report, PSI-Union\_Bank\_of\_California-04-0450.

<sup>113</sup> Subcommittee interview of Union Bank, February 25, 2009.

<sup>114</sup> 10/21/04 UBOC Case Report, PSI-Union\_Bank\_of\_California-04-0177; Subcommittee interview with Union Bank, February 25, 2009.

<sup>115</sup> UBOC Case Report on Sweet Pink Inc. Wire Review, PSI-Union\_Bank\_of\_California-04-0191.

<sup>116</sup> Id.

<sup>117</sup> Id.

<sup>118</sup> 8/28/06 check from the Law Offices of Michael Jay Berger Attorney-Client Trust Account to Unlimited Horizon Inc., PSI-Union\_Bank\_of\_California-01-000026.

<sup>119</sup> 8/28/06 Bank- Depositor Agreement of Union Bank of California and Unlimited Horizon, Inc., PSI-Union\_Bank\_of\_California-01-000007-11. The first account was designated a "general" account for Unlimited Horizon Inc., while the second was designated a "special" account for Unlimited Horizon.



documentation shows that Mr. Berger listed himself as the sole signatory for both accounts.<sup>120</sup> The documentation makes no mention of Mr. Obiang.

An August 28, 2006 email shows that Mr. Berger and Mr. Obiang explicitly agreed from the beginning to channel Obiang funds through the two Unlimited Horizon accounts. The email also makes it clear that both men knew Mr. Berger was using his attorney-client account to transact business and execute funding transfers for Mr. Obiang. Mr. Berger wrote:

“Dear Mr. Nguema:

Attached hereto is proof of my opening two business checking accounts for Unlimited Horizon, Inc. at Union Bank today and wire transfer information for these two accounts. From the funds that I am holding for you in my client trust account, I deposited \$20,000.00 into the general account for Unlimited Horizon, Inc. and \$10,000.00 into the special account for Unlimited Horizon, Inc.”<sup>121</sup>

Two months later, on October 15, 2006, Mr. Berger sent Mr. Obiang the following email:

“As of today, I have spent or transferred to the Unlimited Horizon Accounts all of the funds that you wired to my client trust account. ... Unlike my client trust account [at Bank of America] which is used for many clients, the 2 Unlimited Horizon Accounts are used exclusively for your business. ... [T]he need for the transfer of additional funds is clear. ... By separate email and fax, I am sending you a request for a wire transfer of \$200,000.00.”<sup>122</sup>

The following day, October 16, 2006, Mr. Berger opened a third account at UBOC, the Michael Jay Berger DBA Law Office of Michael Jay Berger, Account No. 0720115581.<sup>123</sup> He was the only authorized signatory on the account.<sup>124</sup> He immediately began using his law office account as a pass-through for EG wire transfers, accepting large wire transfers from Somagui Forestal and Obiang accounts in Equatorial Guinea and forwarding the funds via check to the Unlimited Horizon general account at UBOC.

Two weeks after opening the new account, for example, on November 1, 2006, Mr. Berger sent Mr. Obiang an email asking him to wire \$200,000 to Mr. Berger’s new law office account at UBOC and explaining that he would then transfer the funds to the Unlimited Horizon account and, in turn, pay Mr. Obiang’s bills and expenses.

“Dear Mr. Nguema:

Our July, 2006 agreement requires me to send you an e-mail “whenever the balance in the checking account of Unlimited Horizon, Inc. falls below \$50,000.00.” The balances as of today in the two Unlimited Horizon, Inc. accounts are as follows (after the clearing of all checks that have been written and sent out):

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<sup>120</sup> Id.

<sup>121</sup> 8/28/06 email from Mr. Berger to Mr. Obiang, SEN004449.

<sup>122</sup> 10/15/06 email from Mr. Berger to Mr. Obiang, SEN004465.

<sup>123</sup> 10/16/06 Bank of California Bank-Depositor Agreement, PSI-Union\_BK\_Calif-01-000629-30.

<sup>124</sup> Id.

General Account \$53,354.51  
 Special Account \$ 336.46

Per our in person discussion on October 29, 2006, I suggest that the wire transfer be sent to my new client trust account at Union Bank. I will transfer it from there to the Unlimited Horizon, Inc. General Account. I will send you a separate e-mail and fax requesting a \$200,000 wire transfer and providing wire transfer information for this new account.”<sup>125</sup>

On November 24, 2006, Somagui Forestal wired nearly \$200,000 to Mr. Berger’s new law office account.<sup>126</sup>

From November 24, 2006 through June 6, 2007, eight EG wire transfers from Somagui Forestal or Mr. Obiang, totaling over \$1.7 million, were deposited into the new Berger law office account at UBOC.<sup>127</sup> Bank records indicate that soon after receiving each wire transfer, Mr. Berger transferred the funds received by writing a check to Unlimited Horizon Account No. 0720115409.<sup>128</sup> The funds deposited into the Unlimited Horizon account were then used to pay Mr. Obiang’s bills, including household expenses, parking tickets, car repairs, clothing, home furnishings, and electronics.<sup>129</sup>

In addition, from October 2006 to March 2007, on a monthly basis, Mr. Berger wrote himself a \$5,000 self-endorsed check from the Unlimited Horizon account, presumably as compensation for his services.<sup>130</sup>

The \$1.7 million in EG wire transfers sent to the Berger law office account did not go unnoticed; they triggered several internal UBOC anti-money laundering (“AML”) alerts.<sup>131</sup> The bank’s review of these alerts was delayed, however, due to a deferred prosecution agreement that it was then negotiating with the U.S. Department of Justice arising from deficiencies in UBOC’s AML program.<sup>132</sup> As part of the deferred prosecution agreement, UBOC was required to complete a number of pending compliance matters that delayed its review of the 2006 and 2007 EG wire transfers.<sup>133</sup>

On or about June 11, 2007, Union Bank of California initiated an internal review of the EG wire transfers into the Berger law office account extending back to November 2006, and that

<sup>125</sup> 11/1/06 email from Mr. Berger to Mr. Obiang, SEN004477. Although the account is held in the name of Mr. Berger’s law office, he refers to the account in this email as his “new client trust account.”

<sup>126</sup> 11/24/06 wire transfer from Somagui Forestal, PSI-Union\_Bk\_Calif-01-000642.

<sup>127</sup> Wire transfers from Somagui Forestal, PSI-Union\_BK\_Calif-01-000642 to 000650.

<sup>128</sup> UBOC account statements, PSI-Union\_BK\_Calif-01-000631 to 000641 R 1491; UBOC wire transfer records, PSI-Union\_BK\_Calif-01-000652, 000657, 000660, 000667, 000678, 000686, 000697, 000718.

<sup>129</sup> Various dates, checks from Unlimited Horizon Inc. to a variety of service vendors, PSI-Union\_Bk\_Calif-01-000048 to 000397.

<sup>130</sup> Various dates, checks from Unlimited Horizon Inc. to Mr. Berger, PSI-Union\_Bk\_Calif-01-000391, 000331, 000274, 000239, 000182, 000140.

<sup>131</sup> Union Bank of California wire monitoring software screens every field of wire transfer data for certain names, countries, and dollar amounts. Subcommittee interview with Union Bank, February 25, 2009.

<sup>132</sup> Subcommittee interview with Union Bank, February 25, 2009.

<sup>133</sup> Subcommittee staff interview with Union Bank officials, February 25, 2009.

account's subsequent transfers to the Unlimited Horizon accounts.<sup>134</sup> Bank personnel concluded that the EG wire transfers were suspicious, raising both fraud and AML concerns. The investigative report of the UBOC Financial Intelligence Unit stated the following.

“The investigation found the use of multiple corporate vehicles by Michael Berger, the lawyer of a Politically Exposed Person (PEP), to disguise the identity of the PEP as well as layer and integrate funds derived via international wire transactions from a high risk jurisdiction [Equatorial Guinea], which had the appearance of money laundering activity. ... Several problematic areas were detected in the client's business account activity. ... [S]pecifically, the client (1) received multiple wire transactions from Teodoro Nguema Obiang and his company in Equatorial Guinea (EG), Somagui Forestal, (2) processed 3<sup>rd</sup> party checks payable to Teodoro Nguema Obiang through his IOLTA [law office] account in order to conceal the identity of the listed payee, and (3) operated a California LLC, Sweetwater Malibu LLC, in order to layer and integrate funds which originated in a high-risk jurisdiction. The ultimate benefactor of the transactions was Teodoro Nguema Obiang with the funds being utilized to pay for his estate and living expenses in the United States. ...

The aggregate total of all suspicious credits to the client's IOLTA account was \$1,752,520. ... [T]he total debits from the client's IOLTA account which were deemed suspicious in nature totaled \$1,551,855.00. ... [T]he total of [all debits paid from Ultimate [sic] Horizon accounts deemed suspicious] was \$1,656,359.00. ... [T]he aggregate total of all suspicious activity detected during this investigation was \$4,960,734.00.

This suspicious activity consisted of the use of multiple corporate vehicles by Michael Berger, the lawyer of Politically Exposed Person (PEP) Teodoro Nguema Obiang, in order to disguise the identity of his client as well as to place, layer, and integrate Obiang's funds derived via international wire transactions from Equatorial Guinea, a high risk jurisdiction. Therefore, the detailed actions had the appearance of money laundering activity conducted by a UBOC client on behalf of Obiang.”<sup>135</sup>

On June 12, 2007, UBOC closed the Berger law office account.<sup>136</sup> The bank gave Mr. Berger a cashiers check with the remaining funds, which Mr. Berger deposited into his attorney-client account at Bank of America.<sup>137</sup> UBOC also sent a letter to Unlimited Horizon, addressed to Mr. Berger, stating that “we do not believe it is in the best interest to continue your relationship with Union Bank.”<sup>138</sup> On June 12, 2007, UBOC issued a second cashiers check in the amount of \$250,014.65 to Unlimited Horizon.<sup>139</sup>

**Johnson Account.** Even after the closure of the Unlimited Horizon and Berger accounts, Mr. Obiang did not cease his efforts to make use of UBOC accounts. In 2009, UBOC discovered

<sup>134</sup> 6/15/07 UBOC Case Notes on Berger-Wire Review, PSI-Union\_Bank\_of\_California-04-0272.

<sup>135</sup> 6/15/07 UBOC Case Summary on the Berger Wire Review, PSI-Union\_Bank\_of\_California-04-0269.

<sup>136</sup> 6/12/07 letter from Union Bank of California to Mr. Berger, SEN000998. See also 6/15/07 UBOC Case Notes on Berger-Wire Review, PSI-Union\_Bank\_of\_California-04-0272.

<sup>137</sup> Subcommittee staff interview of UBC officials, February 25, 2009.

<sup>138</sup> 6/12/07 letter from UBOC to Unlimited Horizon Inc. and Mr. Berger, SEN007797.

<sup>139</sup> 6/12/07 cashier's check from UBOC to Unlimited Horizon Inc., SEN004570.

that, on March 28, 2008, Mr. Obiang sent a wire transfer from Equatorial Guinea for nearly \$30,000 to a UBOC account belonging to Rayshonda Johnson for her daughter Roxanna Galbran.<sup>140</sup> It is unclear why the bank did not detect and ask questions about the EG wire transfer at the time, given the prior problems with Mr. Obiang. According to a 2009 internal UBOC investigation, Ms. Johnson explained that her daughter was engaged to an African prince, Mr. Obiang, and that the funds were to be used for her daughter's housing expenses. UBOC told the Subcommittee that it had learned the daughter had already lost her home, possibly to foreclosure, and that the funds appeared to have been withdrawn via large cash withdrawals at ATM machines and casinos in the United States.<sup>141</sup> The bank told the Subcommittee that it had concluded Mr. Obiang had once again used a UBOC customer to receive funds in the United States on his behalf, continuing a multi-year pattern of activity to circumvent UBOC's attempts to restrict his financial activity at the bank.

## (ii) Bank of America

From 2004 to 2007, Mr. Obiang was also able, with the assistance of Mr. Berger, to deposit over \$9.7 million, including over \$2 million in wire transfers from Equatorial Guinea and over \$4 million from the sale of property in Los Angeles, into accounts at Bank of America, none of which were opened in Mr. Obiang's name. The EG wire transfers generally went to an attorney-client account that Mr. Berger had long maintained at the bank. Mr. Berger then transferred some of these funds into two Bank of America accounts opened for an Obiang shell company, Beautiful Vision Inc. Mr. Berger and Mr. Obiang then used the Beautiful Vision accounts to pay Obiang-related bills and expenses, until Bank of America closed them in 2005. After that, Mr. Berger used the EG funds in his attorney-client account to either pay Obiang-related bills directly or transfer funds to the Unlimited Horizon accounts at Union Bank of California or Citibank. By using his attorney-client account as a conduit for the EG funds, Mr. Berger helped disguise the real source of funding for the Beautiful Vision and Unlimited Horizon accounts and enabled Mr. Obiang to utilize those accounts for a substantial period of time. In 2007, after the bank conducted an internal investigation into whether Mr. Obiang was secretly utilizing the Berger attorney-client account, Bank of America closed the account, terminated its relationship with Mr. Berger, and told the Subcommittee that it had taken steps to prevent such tactics in the future.

**Beautiful Vision Accounts.** From 2004 to 2005, Mr. Berger opened several Bank of America accounts in the name of Beautiful Vision, Inc. Those accounts were used to pay millions of dollars in Obiang-related bills as well as supply Mr. Obiang with two cashier's checks totaling in excess of \$3.4 million.

On October 19, 2004, one week after Mr. Berger incorporated Beautiful Vision Inc., he opened two Bank of America accounts in the name of the company, listing himself in the bank records as the company's owner and president.<sup>142</sup> Beautiful Vision Account No. 02137-06466 was set up as a business checking account,<sup>143</sup> while Beautiful Vision Account No. 02139-06465 was designated a "special" checking account.<sup>144</sup> Mr. Berger was designated the sole signatory

<sup>140</sup> Subcommittee interview with Union Bank, February 25, 2009.

<sup>141</sup> Id.

<sup>142</sup> 8/23/05, Bank of America, Master Case Information, BAC-PSI-05948.

<sup>143</sup> Bank of America, Master Agreement: Business Deposit Accounts, BAC-PSI-03036-39.

<sup>144</sup> Id.

for the business checking account,<sup>145</sup> while the sole signatory for the special checking account was Mr. Obiang.<sup>146</sup> Mr. Berger also set up accounts to purchase two CDs in the name of Beautiful Vision, CD Nos. 02135-00057 and 02132-00049.<sup>147</sup> Although Mr. Obiang was the sole signatory on one of the accounts, Bank of America did not perform any due diligence related to him during the account opening process and did not learn of his PEP status.

About two weeks after the accounts were established, on November 1, 2004, Mr. Berger wrote three checks providing \$3.1 million in initial funding to the accounts. All three checks were drawn on his Bank of America attorney-client account, and used Obiang-related funds sent from Equatorial Guinea. One check deposited \$500,000 into the Beautiful Vision business checking account;<sup>148</sup> a second deposited \$1 million into the Beautiful Vision special checking account;<sup>149</sup> and a third provided \$1.6 million to purchase the two CDs.<sup>150</sup> Three weeks later, on November 19, 2004, the Beautiful Vision special checking account received a wire transfer for another \$4 million from D&G Escrow Corporation, the escrow agent that handled the September 2004 sale of a Los Angeles residence owned by Mr. Obiang, as explained further below.<sup>151</sup> Over the next year, Mr. Berger made additional deposits totaling about \$2.5 million.<sup>152</sup> This chart shows the primary deposits into the Beautiful Vision accounts.

<b>Major Deposits into Beautiful Vision Accounts</b>			
<b>Date</b>	<b>"To:"</b>	<b>Amount</b>	<b>Bates</b>
11/1/2004	Beautiful Vision, Inc. 02139-06465 (check from Berger attorney-client account)	\$1,000,000.00	BAC-PSI-02398
11/1/2004	Beautiful Vision, Inc. 02137-06466 (check from Berger attorney-client account)	\$500,000.00	BAC-PSI-02399
11/1/2004	Beautiful Vision, Inc. 02135-00057 (CD) & 02132-00049 (CD) (check from Berger attorney-client account)	\$1,600,000.00	BAC-PSI-02400
11/12/04	Beautiful Vision, Inc. 02139-06465	\$500,000.00	BAC-PSI-02473
11/19/2004	Beautiful Vision, Inc. 02139-06465 (wire transfer from D&G Escrow)	\$4,054,408.33	BAC-PSI-02474
12/2/04	Beautiful Vision, Inc. 02139-06465	\$500,000.00	BAC-PSI-02479
3/4/2005	Beautiful Vision, Inc. 02139-06465	\$605,288.43	BAC-PSI-02492

<sup>145</sup> Id.

<sup>146</sup> 8/23/05 Bank of America, Master Case Information, BAC-PSI-05948.

<sup>147</sup> Id.

<sup>148</sup> BAC-PSI-03067-8.

<sup>149</sup> BAC-PSI-02398.

<sup>150</sup> BAC-PSI-02400.

<sup>151</sup> November 2004 statement for Beautiful Vision special checking account, BAC-PSI-02474. Less than two weeks later, a wire transfer for \$3.5 million was sent from the Beautiful Vision account to an account for Mr. Obiang, but that wire transfer was reversed on 12/10/04, and the funds were returned to the account. Id. at BAC-PSI-02474 and 02479.

<sup>152</sup> See 2004-2005 account statements for Beautiful Vision special checking account, BAC-PSI-02470-515.

7/29/2005	Beautiful Vision, Inc. 02139-06465 (check from Berger attorney-client account after City National Bank closed Obiang account)	\$669,691.02	BAC-PSI-02401
8/8/2005	Beautiful Vision, Inc. 02139-06465 (wire transfer from Teodoro Obiang)	\$299,933.50	BAC-PSI-02510
<b>Source-Bank of America</b>		<b>Total- \$9,729,321.28</b>	

Prepared by Subcommittee

The two Beautiful Vision checking accounts were used to pay bills and expenses associated with Mr. Obiang. The business checking account, for example, issued multiple checks, signed by Mr. Berger, which together totaled about \$532,000. While most were for amounts of less than \$10,000, one large check for \$266,944.45 paid for purchases at a high-end retail store. The special checking account also issued multiple checks, all of which were signed by Mr. Obiang and together exceeded \$7.6 million.<sup>153</sup> The following chart lists the Beautiful Vision checks in excess of \$50,000 that were funded from the Beautiful Vision special checking account for which Mr. Obiang was the sole signatory.

<b>Beautiful Vision Checks in Excess of \$50,000</b>				
<b>Date</b>	<b>Check Amount</b>	<b>"Pay to the Order of"</b>	<b>"For"</b>	<b>Bates</b>
11/1/2004	\$82,900.00	Naurelle	Furniture	BAC-PSI-02564
11/1/2004	\$137,312.71	Ferrari of Beverly Hills	Maserati BVH	BAC-PSI-02565
11/5/2004	\$63,326.25	Soofer Gallery	Carpet	BAC-PSI-02571
11/5/2004	\$332,243.21	Ferrari of Beverly Hills	Ferrari	BAC-PSI-02566
11/8/04	\$66,893.11	Summit	(Illigible)	BAC-PSI-02568
11/12/2004	\$80,287.95	Gucci		BAC-PSI-02572
11/13/2004	\$51,288.00	Dolce & Gabbana		BAC-PSI-02563
11/13/2004	\$121,976.56	Fields Pianos	Piano	BAC-PSI-02575
11/16/2004	\$50,000.00	Ferrari of Beverly Hills	Deposit 6/2 Order	BAC-PSI-02574
11/13/04	\$59,850.00	Soofer Gallery	Rugs	BAC-PSI-02573
11/22/2004	\$280,409.00	Auto Star Signature	Ferrari (Illegible)	BAC-PSI-02567
11/26/2004	\$50,000.00	Lamborghini Beverly Hills		BAC-PSI-02570
11/26/2004	\$288,523.29	Lamborghini Beverly Hills		BAC-PSI-02569
11/26/2004	\$181,265.32	GlobalJet Corp.		BAC-PSI-02578
1/5/2005	\$393,192.90	GlobalJet Corp.		BAC-PSI-02580
1/6/2005	\$55,193.00	Dolce & Gabbana		BAC-PSI-02579
3/4/2005	\$3,300,000.00	Cash		BAC-PSI-02585
3/4/2005	\$285,567.33	GlobalJet Corp.		BAC-PSI-02586
3/5/2005	\$58,500.00	L.A. Audio Video, Inc.	tallation of Bang & Olufsen Home Theatre	BAC-PSI-02587
3/5/2005	\$118,244.66	ADT Security Services	Teodoro Nguema Obiang	BAC-PSI-02591
7/30/2005	\$330,173.96	Gara Coach Company, LLC	Pay off 2005 Lamborghini Roadster	BAC-PSI-02591
8/6/2005	\$102,053.29	ADT Security Services	Teodoro Nguema Obiang	BAC-PSI-02592
8/15/05	\$100,000.00	Beautiful Vision	General Acct. Payroll	BAC-PSI-02593
9/16/2005	\$179,522.54	Cash		BAC-PSI-02595
<b>Total- \$6,968,723.08</b>		<b>Source-Bank of America</b>		

Prepared by Subcommittee

<sup>153</sup> See 2004-2005 account statements for Beautiful Vision special checking account, BAC-PSI-02470-515.

The largest Beautiful Vision check, dated March 4, 2005, and signed by Mr. Obiang, was made out to “cash” in the amount of \$3.3 million. Mr. Obiang used it to purchase a Bank of America cashier’s check on the same day in the same amount, made payable to himself.<sup>154</sup> A little over a week later, on March 15, 2005, the cashier’s check was cashed at CCEI Bank in Equatorial Guinea.<sup>155</sup> Despite the large amount of money and high risk jurisdiction involved in this transaction, it did not trigger a review by Bank of America or direct the bank’s attention to Mr. Obiang.

Bank of America closed the first Beautiful Vision business checking account, Account No. 02137-06466, on or about August 10, 2005,<sup>156</sup> and a week later, on August 18, 2005, replaced it with a new checking account, Beautiful Vision Account No. 02139-41114.<sup>157</sup> This new account was initially funded with a \$100,000 check, signed by Mr. Obiang, drawn on the Beautiful Vision special checking account.<sup>158</sup> A month later, a \$50,000 check, again signed by Mr. Obiang and drawn on the Beautiful Vision special checking account, was also deposited into the new Beautiful Vision account.<sup>159</sup> The account then paid bills related primarily to activities at the Grand Wailea Resort in Hawaii, the Venetian Hotel in Las Vegas, and the L’ermitage Hotel in Beverly Hills, on dates that correspond to travel by Mr. Obiang to those cities.<sup>160</sup> In addition, two large wire transfers from the account, listing Mr. Berger as the originator, sent \$70,000 to the Grand Wailea Resort on August 24, 2005, and \$37,093.55 to the same resort on September 12, 2005.<sup>161</sup>

This activity triggered a review of the new account.<sup>162</sup> During the review, Bank of America immediately discovered Mr. Obiang’s role and immediately closed the account on September 12, 2005, a month after it was opened. The review also led to Bank of America’s discovering that Mr. Obiang was using the second Beautiful Vision account, and the bank closed that account as well, two months later in November 2005.<sup>163</sup> Bank of America told the Subcommittee that it closed both accounts due to Mr. Obiang’s involvement with Beautiful Vision Inc.<sup>164</sup> The bank did not, however, take any action regarding Mr. Berger’s accounts, even though he was the president of Beautiful Vision, had opened both accounts, and had hidden from the bank that Mr. Obiang was the beneficial owner of the company.

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<sup>154</sup> See copy of 3/4/05 check and 3/4/05 cashier’s check from Bank of America, BAC-PSI-06020.

<sup>155</sup> See copy of 3/4/05 cashier’s check, BAC-PSI-07630.

<sup>156</sup> 10/29/04 account statement from Bank of America, BAC-PSI-03040. 08/10/05 account statement from Bank of America, BAC-PSI-03065.

<sup>157</sup> 8/31/05 account statement from Bank of America, BAC-PSI-02516; 9/16/05 account statement from Bank of America, BAC-PSI-02520. The funds in the closed account were transferred to other Beautiful Vision accounts and used to pay Obiang-related bills and expenses. Subcommittee interview of Bank of America, December 18, 2009.

<sup>158</sup> 8/18/05 Bank of America deposit ticket and 8/15/05 check to Beautiful Vision Inc. signed by Mr. Obiang, BAC-PSI-02596-97.

<sup>159</sup> 9/12/05 Bank of America deposit ticket and 9/9/05 check signed to Beautiful Vision Inc. signed by Mr. Obiang, BAC-PSI-02598-99.

<sup>160</sup> 8/31/05 account statement from Bank of America, BAC-PSI-02516. 9/16/05 account statement from Bank of America, BAC-PSI-02520.

<sup>161</sup> Id. at BAC-PSI-02520.

<sup>162</sup> Subcommittee interview with Bank of America, December 18, 2009.

<sup>163</sup> Subcommittee interview with Bank of America, March 25, 2009 and December 18, 2009.

<sup>164</sup> Subcommittee interview with Bank of America, April 22, 2009.

**Berger Attorney-Client Account.** After Bank of America closed the Beautiful Vision accounts in 2005, Mr. Obiang did not withdraw from the bank. Instead, he made greater use of Mr. Berger's attorney-client account to continue to bring suspect funds into the United States through Bank of America.

Mr. Berger first opened his attorney-client account at Bank of America in 1996, under the name of Law Offices of Michael Jay Berger Attorney-Client Trust Account No. 16646-09603.<sup>165</sup> Mr. Berger first began accepting wire transfers from Mr. Obiang in 2004, when he began working for him, and continued to accept them, including wire transfers from Equatorial Guinea, until his account was closed by the bank in 2007. Altogether over three years, the Berger attorney-client account accepted and disbursed over \$4.8 million to pay Obiang-related bills or forward funds to other Obiang-related accounts. By using his attorney-client account as a conduit for Obiang funds, Mr. Berger helped Mr. Obiang conceal his activities at Bank of America and circumvent the bank's AML and PEP controls.

For example, on June 24, 2005, City National Bank sent two checks to the Berger attorney-client account at Bank of America in the amounts of \$500,000 and \$199,691.02, for a total of \$699,691.02.<sup>166</sup> These funds came from an Obiang account that had been closed by the bank. Mr. Obiang had earlier told the bank that the source for these funds was one of his companies in Equatorial Guinea.<sup>167</sup> Mr. Berger deposited both checks in his attorney-client account.<sup>168</sup>

On July 28, 2006, Mr. Berger sent Mr. Obiang instructions for wiring funds to his attorney-client account.<sup>169</sup> A week after those instructions were sent, on August 4, 2006, Mr. Obiang's EG company, Socage, wire transferred nearly \$300,000 to the Berger attorney-client account.<sup>170</sup> It was the first of six large EG wires from Socage or Somagui Forestal, totaling nearly \$1.3 million, sent to the account between August 2006 and September 2007.<sup>171</sup> Each time these EG funds were deposited into the account, Mr. Berger responded by using the money to pay Obiang-related bills or forwarding the funds to other Obiang-related accounts.<sup>172</sup>

On October 20, 2006, for example, the Berger attorney-client account received a wire transfer for \$199,931.17 from Socage.<sup>173</sup> Three days later, on October 23, 2006, Mr. Berger wrote a check from his attorney-client account to "cash" for \$199,931.17, placing a note on the check, "For UHI (illegible) account."<sup>174</sup> "UHI" refers to Unlimited Horizon Inc. which cashed

<sup>165</sup> 8/2/96 SQN scanned signature for account 16646-09603, BAC-PSI-04678.

<sup>166</sup> 7/6/05 City National Bank account statement, CNB0005540.

<sup>167</sup> 9/30/04 Declaration of Teodoro Nguema-Obiang to the Superior Court of California, County of Los Angeles, CNB0004068.

<sup>168</sup> Various dates, wire transfer records from Bank of America, BAC-PSI-02424, 02425.

<sup>169</sup> SEN 004438 (Mr. Berger wrote: "Here is the updated information that you need to wire transfer money to my Attorney Client Trust Account at Bank of America. Name of Account: Law Offices of Michael Jay Berger Attorney-Client Trust Account").

<sup>170</sup> 8/4/06 wire transfer record, BAC-PSI-02445.

<sup>171</sup> Various dates, wire transfer records from Bank of America, BAC-PSI-02442 to 02469. This \$1.3 million is in addition to the \$9.7 million deposited into the Beautiful Vision account from 2004 to 2005.

<sup>172</sup> BAC-PSI-02395-441; See also Citibank account file, C0000003-56.

<sup>173</sup> Various dates, wire transfer records from Bank of America, BAC-PSI-02445-54.

<sup>174</sup> The check amount corresponds to a \$200,000 incoming wire amount, less a \$45 wire transfer fee. 10/31/06 account statement from Bank of America, BAC-PSI-02371.



the check the same day, and deposited the funds into its account at Union Bank of California, Account No. 0720115409.<sup>175</sup> This transaction was described in an email from Mr. Berger to Mr. Obiang as follows:

“Dear Mr. Nguema:

This confirms my receipt of a wire transfer from you in the amount of \$199,941.17 [sic]. This money was received in my attorney client trust account at Bank of America on October 20, 2006. Per our telephone conversation today, I will transfer said funds to the Unlimited Horizon General Checking Account at Union Bank on Monday (when Union Bank opens) and use said funds to pay your bills. ...

Sincerely,  
Michael Berger”<sup>176</sup>

On July 26, 2007, the Berger attorney-client account received another EG wire transfer from Socage for \$199,948.82.<sup>177</sup> The same day, Mr. Berger wrote a check on his account to “cash” for \$199,948.82 with a note “for cashier’s check for client.” The check was deposited into an Unlimited Horizon account at Citibank, Account No. 202018867.<sup>178</sup>

On August 5, 2007, Mr. Berger sent the following email asking Mr. Obiang to send \$200,000 to the Berger attorney-client account at Bank of America so that the money could be used to pay Mr. Obiang’s bills.

“Dear Mr. Nguema:

... All approved check requests have been paid, with the following 4 exceptions:

Hagerty Insurance Agency \$8,165.00 (add on Bentley Azure)  
Gearys \$1,734.17 (2 wine glasses)  
South Coast Water \$3,221.31 (portable car wash machine)  
Xtreme Marine \$8,044.26 (service speed boat)

I did not have enough money to pay these 4 bills[.]

I have prepared and attached an invoice to you requesting a wire transfer of \$200,000.00 to my Bank of America Client Trust Account. I will need these funds to pay additional bills for you. A copy of my Bank of America Client Trust Account Wire Transfer Information is attached hereto. ...

Sincerely,  
Michael Berger”<sup>179</sup>

<sup>175</sup> 9/28/07 account statement from Bank of America, BAC-PSI-02394; 10/23/06 check to UHI, BAC-PSI-02406.

<sup>176</sup> 10/21/06 email from Mr. Berger to Mr. Obiang, SEN012377.

<sup>177</sup> 7/31/07 account statement from Bank of America, BAC-PSI-02390.

<sup>178</sup> 7/31/07 account statement from Citibank, C0000027.

<sup>179</sup> 8/5/07 email from Mr. Berger to Mr. Obiang, BATES SEN004594.

Shortly afterward, on August 16, 2007, Somagui sent a wire transfer from Equatorial Guinea for \$199,908.45 to the Berger attorney-client account.<sup>180</sup> On the same day, Mr. Berger wrote a check on that account to “cash” for \$199,908.45 with a note for “Unlimited Horizon, Inc. Cashier’s Check.” The check was deposited into the Unlimited Horizon account at Citibank, Account No. 202018867.<sup>181</sup>

A final example occurred on September 11, 2007, when Somagui sent an EG wire transfer for \$199,934.10 to the Berger attorney-client account.<sup>182</sup> On the same day, Mr. Berger wrote a check on that account to “cash” for \$199,934.10 with a note for “Cashier’s Check.” As before, the check was deposited into the Unlimited Horizon account at Citibank.<sup>183</sup>

The following chart lists key EG incoming wires to the Berger attorney-client account at Bank of America from 2005 to 2007.

<b>Select Incoming EG Wires to Berger Attorney-Client Account at Bank of America</b>						
<b>Date</b>	<b>Amount</b>	<b>Originator</b>	<b>Ordering Bank</b>	<b>Correspondent</b>	<b>Ultimate Beneficiary</b>	<b>Bates</b>
8/8/2005	\$299,933.50	Teodoro Obiang	Belgolaise Bank in Paris	None specified	Beautiful Vision Account 02139-06465 at Bank of America	BAC-PSI-02914
8/4/2006	\$299,923.68	SOCAGE, BATA	NATEXIS BANQUES	None Specified	Funded multiple checks drawn on Berger Attorney-Client Account 16646-09603 at Bank of America	BAC-PSI-02445
9/26/2006	\$199,975.90	SOCAGE, BATA	CCEI Bank GE	ING Belgium	Funded multiple checks drawn on Berger Attorney-Client Account 16646-09603 at Bank of America	BAC-PSI-02449
10/20/2006	\$199,976.17	SOCAGE, BATA	CCEI Bank GE	ING Belgium	Unlimited Horizon Account 0720115409 at Union Bank of California	BAC-PSI-02454
7/26/2007	\$199,948.82	SOCAGE, BATA	CCEI Bank GE	Northern Trust Int'l Bank	Unlimited Horizon Account 202018867 at Citibank	BAC-PSI-02458
8/14/2007	\$199,933.45	SOMAGUI, BATA	NATEXIS BANQUES	None Specified	Unlimited Horizon Account 202018867 at Citibank	BAC-PSI-02462
9/11/2007	\$199,934.10	SOMAGUI, BATA	CCEI Bank GE	Northern Trust Int'l Bank	Unlimited Horizon Account 202018867at Citibank	BAC-PSI-02466
<b>TOTAL- \$1,599,625.62</b>			<b>SOURCE- Bank of America</b>			

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<sup>180</sup> BATES BAC-PSI-02462 to BAC-PSI-02465.

<sup>181</sup> SEN004605; 8/31/07 account statement from Citibank, C0000030; 6/26/07 Citibank account enrollment form for Unlimited Horizon Inc., C0000018.

<sup>182</sup> 4/26/04 wire transfer, BATES BAC-PSI-02466 to BAC-PSI-02469. This amount was the amount sent by wire transfer less a wire transfer fee.

<sup>183</sup> SEN004605; 9/30/07 account statement from Citibank, C0000033; 6/26/07 Citibank account enrollment form for Unlimited Horizon Inc., C0000018.

By 2006, Bank of America knew that Mr. Berger was working with Mr. Obiang and had established the Beautiful Vision accounts for him, but took no action for more than two years to review the EG wires going into the Berger attorney-client account.

In the meantime, Mr. Berger used his attorney-client account to transfer funds to both the Beautiful Vision and Unlimited Horizon accounts, as well as to pay some Obiang bills and expenses. This chart lists significant disbursements totaling in excess of \$4.8 million from the Berger attorney-client account from 2004 to 2007.

<b>Select Disbursements from Berger Attorney-Client Account at Bank of America</b>			
<b>Date</b>	<b>"To:"</b>	<b>Amount</b>	<b>Bates</b>
11/1/2004	Beautiful Vision Account 02139-06465 at Bank of America	\$1,000,000.00	BAC-PSI-02398
11/1/2004	Beautiful Vision Account 02139-06466 at Bank of America	\$500,000.00	BAC-PSI-02399
11/1/2004	Beautiful Vision Accounts 02135-00057 (CD) & 02132-00049 (CD) at Bank of America	\$1,600,000.00	BAC-PSI-02400
7/29/2005	Beautiful Vision Account 02139-06465 at Bank of America	\$669,691.02	BAC-PSI-02401
8/31/2006	Saurman Investigative Services "For: Sweetwater Malibu, LLC"	\$56,544.00	BAC-PSI-02404
10/4/2006	Saurman Investigative Services "For: Sweetwater Malibu, LLC"	\$54,720.00	BAC-PSI-02405
10/23/2006	Cash ("For: Cashier's Check UHI Gen. Acct.") – Unlimited Horizon Account at Union Bank of California	\$199,931.17	BAC-PSI-02406
7/6/2007	Saurman Investigative Services "For: TNO June 2007"	\$54,720.00	BAC-PSI-02408
7/10/2007	Cash "For Cashier's Check Unlimited Horizons, Inc." / Deposited to Unlimited Horizon Account 202018867 at Citibank	\$100,000.00	BAC-PSI-02409
7/27/2007	Cash "For: Cashier's Check for Client" / Deposited to Unlimited Horizon Account 202018867 at Citibank	\$199,948.82	BAC-PSI-02407
8/16/2007	Cash "For: Unlimited Horizon, Inc. Cashiers Check" / Deposited to Unlimited Horizon Account 202018867 at Citibank	\$199,908.45	BAC-PSI-02410
9/11/2007	Cash "For: Cashier's Check / Deposited to Unlimited Horizon Account 202018867 at Citibank	\$199,934.10	BAC-PSI-02411
<b>Source- Bank of America</b>		<b>Total- \$4,835,397.56</b>	

Prepared by Subcommittee

A comparison of the two charts shows five instances in which an incoming EG wire transfer into the Berger attorney-client account was followed by an outgoing check in the same amount to an Unlimited Horizon account. The timing and amounts of those transfers suggest that the funds were deliberately sent to the attorney-client account first, even though the funds were ultimately intended for an Unlimited Horizon account at another bank. The transfers suggest that Mr. Obiang, with the assistance of Mr. Berger, was making a deliberate effort to conceal the source of funding for the Unlimited Horizon accounts. By routing the funds through the Berger attorney-client account at Bank of America first, the funds deposited into the Unlimited Horizon accounts at UBOC and Citibank were presented as transfers from the account of a U.S. lawyer rather than from a company in Equatorial Guinea. Mr. Berger assisted in this scheme by accepting the EG wire transfers and then transferring the same amount of funds via checks to the Unlimited Horizon accounts. Essentially, Mr. Berger allowed his attorney-client

account to function as a pass-through account and conceal the fact that the Unlimited Horizon accounts at UBOC and Citibank were recipients of suspect funds from Equatorial Guinea.

In June 2008, the Subcommittee contacted the bank and inquired about whether the Berger attorney-client account was being used as a conduit for Obiang funds. Bank of America told the Subcommittee that an analysis performed in response to the Subcommittee's inquiry uncovered the Obiang and EG connections to the Berger attorney-client account.<sup>184</sup> Bank of America told the Subcommittee that it "wasn't comfortable" with the transactions, viewed them as suspicious, and closed the attorney-client account in July 2008.<sup>185</sup>

### (iii) Citibank

Still another U.S. bank account utilized by Mr. Obiang, with the assistance of Mr. Berger, was an account opened by Mr. Berger in the name of Unlimited Horizon Inc. at Citibank in Beverly Hills, California. Beginning in July 2007, more than \$1 million in suspect funds from Equatorial Guinea were transferred from the Berger attorney-client account to this account and used to pay Mr. Obiang's bills and expenses. Citibank closed the account in May 2008, ten months after it was opened.<sup>186</sup>

Mr. Berger opened Citibank Account No. 202018867 in the name of Unlimited Horizon Inc. on June 25, 2007, thirteen days after the closing of the Unlimited Horizon account at Union Bank of California.<sup>187</sup> Mr. Berger was the sole signatory on the account, and apparently actively hid from Citibank the company's connection to Mr. Obiang.<sup>188</sup>

At the time of the account opening, Citibank conducted a due diligence review of Unlimited Horizon, including by reviewing its corporate records, requiring completion of a know-your-customer form, and conducting a physical site inspection of the company using the address provided by Mr. Berger.<sup>189</sup> As part of this due diligence process, Mr. Berger provided a copy of Unlimited Horizon's incorporation documents and identified himself as the company president.<sup>190</sup>

Mr. Berger also filled out a Citibank form entitled, "Senior Public Figure Screening," requesting details on any politically connected signatory or owner of more than a 25% of the company's shares. Mr. Berger indicated on the form that no signatory or account owner was a citizen of a country other than the United States. By answering in the negative, Mr. Berger was not required to and did not answer the following question which asked: "If yes, are any of such owners a Senior Political Figure (for example, a current or former Senior Public Figure or Senior

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<sup>184</sup> Subcommittee interview with Bank of America, April 22, 2009.

<sup>185</sup> Subcommittee interview with Bank of America, March 25, 2009; document disclosing Mr. Berger's accounts, BAC-PSI-07607.

<sup>186</sup> Mr. Obiang also had a Citibank credit card in his own name from June 30, 2005 to March 2008, when the account was closed. The credit card account had been inactive since March 2007. See 3/19/09 letter from Citibank to the Subcommittee, PSI-Citi-34-0001-08, at 0006.

<sup>187</sup> 7/11/07 email from Mr. Berger to Mr. Obiang, C0000006; SEN004574.

<sup>188</sup> 6/26/07 Citibank account enrollment form for Unlimited Horizon Inc., C0000018.

<sup>189</sup> 6/27/07 Citibank Single Stock Holder Checklist, C0000005.

<sup>190</sup> 10/27/05 Articles of Incorporation for Unlimited Horizon Inc. as provided to Citibank, C0000016; Citibank account file for Unlimited Horizon cover sheet, C0000004, R948.

Official in the executive, legislative, administrative, military or judicial branch of government) or a close associate/family member ....”<sup>191</sup>

The final step in Citibank’s due diligence process was a site inspection of the place of business listed on the account opening forms. On June 26, 2007, one day after the account application, a Citibank personal banker toured the address of Unlimited Horizon Inc. provided by Mr. Berger.<sup>192</sup> The banker’s report described the type of business as providing legal accounting services, the number of employees present as three, and other characteristics of the office.<sup>193</sup> Mr. Berger had provided the address for his own law offices. The Citibank report states: “Mr. Berger also owns Law Offices of Michael Jay Berger and D&B verification result showed a confidence code: 6. Same address and phone number.”<sup>194</sup>

Mr. Berger failed to disclose that the beneficial owner of Unlimited Horizon – the true beneficiary of the company – was Mr. Obiang.<sup>195</sup> He also represented that his law offices served as the physical office of Unlimited Horizon, without disclosing that Unlimited Horizon was a shell company with no employees or physical presence of its own. He allowed the Citibank banker to think that Unlimited Horizon provided legal accounting services, when it did not. Mr. Berger also failed to disclose that the company had a direct connection to a senior foreign official, Mr. Obiang, who was then serving as the Minister of Agriculture and Forestry in Equatorial Guinea.

Based upon the information it was provided, Citibank agreed to open the account for Unlimited Horizon on June 25, 2007. Citibank records show that the account was first funded two weeks later, on July 10, 2007, with a \$100,000 cashier’s check from Bank of America.<sup>196</sup> This cashier’s check had been paid for with funds from the Berger attorney-client account. A July 12, 2007 email from Mr. Berger to Mr. Obiang makes it clear that these were Obiang-related funds:

“Dear Mr. Nguema, ... I went to Bank of America, withdrew \$100,000.00 of your money from my Bank of America client trust account, purchased a cashier's check for \$100,000.00 made out to Unlimited Horizon, Inc. and deposited said cashier's check into the new Unlimited Horizon, Inc. account at Citibank.”<sup>197</sup>

Over the next five months, the Unlimited Horizon account received five more large deposits, totaling nearly \$1 million, all of which were secretly linked to Mr. Obiang. On July 27, 2007, for example, following a wire transfer for nearly \$200,000 from “Somagui” in Equatorial Guinea to the Bank of America attorney-client account, Mr. Berger withdrew the same amount from that account and deposited it into the Unlimited Horizon account at Citibank.<sup>198</sup> Three weeks later, on August 16, 2007, Mr. Berger withdrew nearly \$200,000 from his attorney-client

<sup>191</sup> 6/22/07 Citibank: CitiBusiness Deposit Account Application, Senior Public Figure Application, C0000014.

<sup>192</sup> 6/26/07 Citibank, Observations at Place of Business, C0000021.

<sup>193</sup> Id.

<sup>194</sup> Id.

<sup>195</sup> See, e.g., 10/15/06 email from Mr. Berger to Mr. Obiang, SEN004465 (Mr. Berger wrote: “Unlike my client trust account which is used for many clients, the 2 Unlimited Horizon Accounts [at Union Bank of California] are used exclusively for your business.”).

<sup>196</sup> 7/31/07 account statement from Citibank, C0000026; SEN004595.

<sup>197</sup> 7/12/07 email from Mr. Berger to Mr. Obiang, SEN004586.

<sup>198</sup> BAC-PSI-02458; BAC-PSI-02407; SEN004598; 7/31/07 account statement from Citibank, C0000027.

account at Bank of America and deposited the same amount into the Unlimited Horizon account at Citibank.<sup>199</sup> A month after that, on September 11, 2007, he did it again. After receiving a wire transfer for nearly \$200,000 from “Somagui” in Equatorial Guinea to his Bank of America attorney-client account, Mr. Berger withdrew the same amount from that account and deposited it into the Unlimited Horizon account at Citibank.<sup>200</sup> On October 12, 2007, it happened a fourth time. Mr. Berger withdrew nearly \$200,000 from his Bank of America attorney-client account and deposited the same amount into the Unlimited Horizon account at Citibank. Finally, on November, 9, 2007, he withdrew nearly \$170,000 from the same attorney-client account and deposited the same amount into the Unlimited Horizon account at Citibank.<sup>201</sup> These five deposits, in addition to the initial deposit of \$100,000, meant that the Citibank account collected over \$1 million in less than six months.

The funds sent to Mr. Berger’s attorney-client account at Bank of America could have been sent directly to the Unlimited Horizon account at Citibank, but if they had been, Citibank would have been alerted the funds were being wired from Equatorial Guinea. The fact that the funds were routed first through the attorney-client account suggests that Mr. Berger was deliberately assisting Mr. Obiang in hiding his involvement in the funding of the Citibank account.

The Obiang-related funds in the Berger attorney-client account were used to pay Obiang-related bills and expenses, including payroll expenses associated with his Malibu residence. On May 20, 2008, less than one year after the account was opened, Citibank closed the Unlimited Horizon account, because “activity in the account was inconsistent with the account profile.”<sup>202</sup> A little over \$6,000 was in the account when it was closed.<sup>203</sup>

#### **(iv) PayPal**

Mr. Berger used three U.S. banks, Union Bank of California, Bank of America, and Citibank, to help Mr. Obiang bring millions of dollars in suspect funds into the United States, through shell company, attorney-client, and other accounts. He apparently also considered using other payment systems for this purpose. On June 8, 2007, for example, Mr. Obiang’s assistant Suellen Everett wrote to Mr. Berger requesting that he purchase a product called “jumping stilts” for Mr. Obiang:

“The boss saw a guy running down the street in these contraptions and wanted them. In order to get them by Saturday we must pay via the link below ....”<sup>204</sup>

Mr. Berger replied:

“I have set up a PayPal account for Unlimited Horizon, Inc. It will take 2 or three business days to get verified. At that point, I will be able to use PayPal to make payments for Unlimited Horizon in any amount up to the balance of the account. This

<sup>199</sup> 8/31/07 account statement from Citibank, C0000030; BAC-PSI-02410; SEN004605.

<sup>200</sup> BAC-PSI-02411; BAC-PSI-02466; SEN004605; 9/30/07 account statement from Citibank, C0000033.

<sup>201</sup> SEN004652, 004675.

<sup>202</sup> 3/19/09 letter from Citibank to the Subcommittee, PSI-Citi-34-0001-01, at 0007.

<sup>203</sup> 2/29/08 account statement from Citibank, C0000056.

<sup>204</sup> 6/7/07 email from Ms. Everett to Mr. Berger, SEN002185.

will be a good thing for the future and will give Mr. Nguema extra flexibility in ordering and paying for items...”<sup>205</sup>

By setting up a PayPal account in the name of a shell company, Mr. Berger could have enabled Mr. Obiang once more to hide his involvement in making purchases that, while trivial here, could involve a more serious expenditure of suspect funds in the future.

When Paypal was contacted by the Subcommittee, however, it was unable to find any account that had been opened in the name of Unlimited Horizon Inc., Beautiful Vision Inc., or other corporations associated with Mr. Obiang. Nor had any account been opened in the name of Mr. Obiang. The Subcommittee was thus unable to confirm, despite Mr. Berger’s 2007 email, that any PayPal account for Mr. Obiang had actually been established.

### **(c) Compensation**

The total amount and form of the compensation provided by Mr. Obiang to Mr. Berger in return for his services are unclear. Mr. Berger periodically requested wire transfers from Mr. Obiang in amounts ranging from \$200,000 to \$400,000 to be sent to Mr. Berger’s attorney-client accounts to pay for “legal services to be rendered to you and costs to be paid for you pursuant to our July 26, 2006 personal services agreement.”<sup>206</sup> These funds were provided on at least a monthly basis, but it is unclear how much Mr. Berger retained as compensation for his own services.<sup>207</sup> The records also show that, from October 2006 to March 2007, Mr. Berger wrote himself a monthly \$5,000 self-endorsed check from the Unlimited Horizon account at UBOC, for a total of \$30,000 over six months.<sup>208</sup> Still another document indicates that Mr. Berger was paid a \$60,000 fee for referring Mr. Obiang to a California real estate agent who helped him purchase his \$30 million Malibu residence, as explained further below.<sup>209</sup>

In addition to this cash compensation, as a result of his relationship with Mr. Obiang, Mr. Berger was invited to exclusive social events and venues in Southern California. After a party called the “Nguema Summer Bash” on September 14, 2007, for example, Mr. Berger sent the following email to Mr. Obiang:

“Thank you very much for inviting me to your party and for being so nice to me at the party. I appreciate the super VIP treatment that you gave me. I appreciate you telling your friends that I am your attorney. I am proud to work for you. ... The food was

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<sup>205</sup> Mr. Berger previously established an account at Union Bank of California in the name of Unlimited Horizon Inc.; see also 6/7/07 email from Mr. Berger to Ms. Everett, SEN002184.

<sup>206</sup> See, e.g., 8/23/07 invoice from Mr. Berger to Mr. Obiang, SEN007758; 8/5/07 invoice from Mr. Berger to Mr. Obiang, SEN007767; 8/5/07 wire transfer information, SEN007769; 11/29/07 invoice from Mr. Berger to Mr. Obiang, SEN007785; 10/30/07 invoice from Mr. Berger to Mr. Obiang, SEN007786; 9/25/07 invoice from Mr. to Mr. Obiang, SEN007796.

<sup>207</sup> Id.

<sup>208</sup> Various dates, checks from Unlimited Horizon to Mr. Berger, PSI-Union\_Bk\_Calif-01-000391; 000331, 000274, 000239, 000182, 000140.

<sup>209</sup> 3/11/09 legal counsel to Neal Baddin’s written response to Subcommittee questions, PSI-Coldwell Banker-03-0003.

great, the drinks were better than great, the house, the view, the DJ, the white tiger were all SO COOL! Best of all were the people that I met there because of you.”<sup>210</sup>

Mr. Obiang also arranged for Mr. Berger to be invited to the 2007 “Kandy Halloween Bash” at the Playboy Mansion.<sup>211</sup> After the party, Mr. Berger wrote:

“Dear Mr. Nguema:

Thank you very much for inviting me to the Kandy Halloween party @ The Playboy Mansion and getting me the VIP treatment. I had an awesome time. I met many beautiful women, and I have the photos, e-mail addresses and phone numbers to prove it. If the word gets out that you are looking for a bride, women all over the world will go even more crazy for you. ...

Your loyal friend and attorney,  
Michael Berger.”<sup>212</sup>

These documents suggest that, through Mr. Obiang, Mr. Berger gained access to exclusive settings that might otherwise have been inaccessible to him.

## **(2) Attorney George I. Nagler**

For a two-year period from 2005 to 2007, Mr. Obiang employed a second California attorney, George I. Nagler, to advance his interests in the United States. Mr. Nagler helped Mr. Obiang purchase and manage the Malibu property, incorporated shell companies for Mr. Obiang, persuaded others to open accounts in the names of those companies, and for a short time allowed Obiang funds to be funneled through his own attorney-client and law office accounts. Altogether, Mr. Nagler helped Mr. Obiang bring over \$2.1 million in funds from Equatorial Guinea into the United States. In addition, Mr. Nagler worked with a colleague in the insurance industry to help Mr. Obiang obtain insurance for his fleet of 32 cars and motorcycles. Mr. Nagler and Mr. Berger met, but appeared to work independently of each other.

Mr. Nagler is a graduate of Harvard University and has been admitted to practice law in California since 1970.<sup>213</sup> According to his website, his areas of practice include real estate, business law, and limited liability companies, among others.<sup>214</sup> Mr. Nagler provided documents in response to a Subcommittee subpoena and answered written questions from the Subcommittee.

According to Mr. Nagler, he provided legal services to Mr. Obiang for two years, from approximately September 2005 through September 2007.<sup>215</sup> Those services related primarily to Mr. Obiang’s purchase of the \$30 million Malibu residence, and included assisting Mr. Obiang

<sup>210</sup> 9/15/07 email from Mr. Berger to Mr. Obiang, SEN004620. See also copy of photographs of Mr. Berger at the Ngeuma Summer Bash., SEN007698 at 7718.

<sup>211</sup> 10/12/07 email from Mr. Berger to Mr. Obiang accepting the invitation to the Kandy Halloween party, SEN004651.

<sup>212</sup> 10/28/07 email from Mr. Berger to Mr. Obiang, SEN004389.

<sup>213</sup> Lawyers.com, <http://www.lawyers.com/California/Beverly-Hills/George-I.-Nagler-78953-a.html>.

<sup>214</sup> Law Offices of George I. Nagler, <http://www.georgenagler.com/>.

<sup>215</sup> 8/1/08 letter from Mr. Nagler’s legal counsel to the Subcommittee, PSI-Nagler-02-0002.



in the formation of three shell companies, arranging for the purchase and management of his Malibu property, and handling various insurance matters.<sup>216</sup> Mr. Nagler told the Subcommittee that in performing these duties he did “not believe that he ever concealed or mischaracterized the Client’s association with any account.”<sup>217</sup> The documentation also indicates that, like Mr. Berger, Mr. Nagler was well aware of the suspect origins of Mr. Obiang’s funds. Mr. Nagler told the Subcommittee that he was paid fees for his services which, over the two years, totaled about \$196,500.<sup>218</sup>

### **(a) Incorporating Shell Companies**

Mr. Nagler told the Subcommittee that he helped Mr. Obiang establish three California corporations, Sweet Pink Inc., Sweetwater Malibu LLC, and Sweetwater Management Inc.

**Sweet Pink Inc.** According to Mr. Nagler, he began working for Mr. Obiang in September 2005, after being contacted through the Internet by Mr. Obiang’s executive assistant, Rosalina Romo.<sup>219</sup>

Mr. Nagler told the Subcommittee that he was asked at that time to form a corporation “to employ individuals at the home the Client maintained before he purchased the Malibu Property and to handle payroll and other matters related to the employment of those individuals.”<sup>220</sup> In an email dated September 15, 2005, Mr. Nagler asked Ms. Romo to provide him with two or three names for the corporation.<sup>221</sup> Later that same day, he requested articles of incorporation be filed with the California Secretary of State for “Sweet Pink Inc.”<sup>222</sup> The Statement of Information for Sweet Pink Inc. listed Ms. Romo as the company’s Chief Executive Officer, Secretary, and Chief Financial Officer.<sup>223</sup> Mr. Obiang is listed as “assistant treasurer,”<sup>224</sup> but Mr. Nagler told the Subcommittee that it was his understanding that Mr. Obiang “was the sole owner” of the corporation and was the “sole source of funding” for the corporation.<sup>225</sup>

On September 22, 2005, Mr. Nagler faxed an “engagement letter” to Marvin Freedman, a certified public accountant, with instructions to immediately open a bank account for Sweet Pink Inc. and obtain wiring instructions so that Mr. Obiang could fund the account.<sup>226</sup>

“He [Mr. Obiang] wants you to open a bank account as soon as you can forward the wiring instructions so he can wire funds. You should plan to have two or three people in

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<sup>216</sup> Id.

<sup>217</sup> Id. at PSI-Nagler-02-0009.

<sup>218</sup> Id. at PSI-Nagler-02-0002.

<sup>219</sup> Id. at PSI-Nagler-02-0010.

<sup>220</sup> Id. at PSI-Nagler-02-0004.

<sup>221</sup> 9/15/05 email from Mr. Nagler to Ms. Romo, SEN005785.

<sup>222</sup> 9/15/05 fax from Mr. Nagler, SEN005786.

<sup>223</sup> State of California, Statement of Information for a Domestic Stock Corporation, SEN013765.

<sup>224</sup> Id.

<sup>225</sup> 8/1/08 letter from Mr. Nagler’s legal counsel to the Subcommittee, PSI-Nagler-02-0004-05.

<sup>226</sup> 9/22/05 fax from Mr. Nagler to Mr. Freedman, SEN005761.

your office authorized to sign the account. You should add him as the assistant treasurer as able to sign alone. ... He is in Paris and can arrange to wire the funds from there.”<sup>227</sup>

A few days later, Mr. Nagler was told that Eve Jeffers, a hip-hop musician and Mr. Obiang’s then girlfriend, would become the president of the corporation. On September 28, 2005, Mr. Nagler sent the following instructions to Mr. Freedman and Ms. Romo regarding signatory authority for the Sweet Pink account at Union Bank of California:

“I understand that Eve Jeffers, the President, Secretary, and Chief Financial Officer will be coming in to the Encino branch of Union Bank to sign the signature card today. She signing alone will have signing authority, Mr. Obiang will also have signing authority acting alone when he can come in and sign and you will initially be authorized. Three other people from your office will be authorized to sign so long as two of you sign all checks. You expect that the other three will sign the signature card some time this week. In the interim you will be authorized to sign alone.

Lina, by copy [being] sent to you, please ask Eve to call you when she has signed. You should then call or fax Mr. Freedman and tell him that the card has been signed. Mr. Freedman can then open the account and send the complete wiring instructions to you by fax. I understand that the funds will be wired by Mr. Obiang from a bank out of town.”<sup>228</sup>

The next day, September 29, 2005, a checking account in the name of Sweet Pink Inc., Account No. 1300052831, was opened at Union Bank of California. Ms. Jeffers was a signatory along with 4 other persons from Mr. Freedman’s firm. Mr. Obiang was not on the signature card.<sup>229</sup> During October 2005, two wire transfers, each for nearly \$30,000, were deposited into the account from Somagui Forestal, one of Mr. Obiang’s EG companies.<sup>230</sup> Union Bank of California learned of the large wire transfers from Equatorial Guinea, which it had designated as a high-risk jurisdiction. On October 27, 2005, less than one month after the account opening, the bank closed the Sweet Pink account.

**Sweetwater Malibu LLC.** In February 2006, Mr. Nagler formed a second California corporation for Mr. Obiang, Sweetwater Malibu LLC. Mr. Nagler told the Subcommittee that this corporation was formed “to take title to the Malibu Property,”<sup>231</sup> which was then in the process of being purchased. In a memorandum he sent to Mr. Obiang, Mr. Nagler provided this explanation of the company:

“Sweetwater Malibu, LLC. This limited liability company will be the buyer of the Malibu. I had it formed on Tuesday, February 7, 2006, by sending the papers to the Secretary of State. I need you to give me the name of the person who you want to act as

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<sup>227</sup> Id.

<sup>228</sup> 9/28/05 fax from Mr. Nagler to Mr. Freedman, SEN005736.

<sup>229</sup> UBOC signature card, PSI-Union\_Bank\_of\_California-04-0191.

<sup>230</sup> 3/2/09 Union Bank of California Case Report on Sweet Pink Inc., PSI-Union\_Bank\_of\_California-04-0191.

<sup>231</sup> 8/1/08 letter from Mr. Nagler’s legal counsel to the Subcommittee, PSI-Nagler-02-0003. See also 4/3/06 fax from Mr. Nagler to the First American Title Co., SEN006103 (Sweetwater Malibu LLC was formed for the purpose of “purchasing, owning and operating a residence commonly known as 3620 Sweetwater Mesa Road, Malibu, CA 90265.”).

manager. I need someone who is a US taxpayer so that we can apply for a tax identification number for the company. If you do not give me a name, I will show you as the manager.”<sup>232</sup>

The Sweetwater Malibu LLC articles of organization were filed with the California Secretary of State on February 8, 2006.<sup>233</sup> They identified Mr. Nagler as the initial agent for service of process and stated that Sweetwater Malibu LLC would be managed by a single manager who was not named.<sup>234</sup> The articles made no mention of Mr. Obiang, however, a week later, on February 15, 2006, Mr. Obiang signed an “Operating Agreement for Sweetwater Malibu, LLC” identifying him as the “sole member of the company.”<sup>235</sup>

Three weeks after the formation of the corporation, on February 27, 2006, a grant deed was signed and notarized selling the Malibu property to Sweetwater Malibu LLC.<sup>236</sup> The grantor requested that notification of the recording of the deed be sent to “Sweetwater Malibu LLC, care of George Nagler.”<sup>237</sup>

On March 31, 2006, a confidentiality agreement was signed by the realty company that handled the sale, Coldwell Banker, to prohibit disclosure of Mr. Obiang as the purchaser of the property, the terms of the purchase, or the value of the property, for a period of 50 years.<sup>238</sup> According to the agreement, any disclosure made pursuant to legal process required notification to Mr. Nagler and the seller’s attorney.<sup>239</sup> Hilton & Hyland, the seller’s agent, told the Subcommittee that both the seller and Mr. Obiang had wanted the confidentiality agreement.

About six months later, on September 15, 2006, a Statement of Information for Sweetwater Malibu, LLC was filed with the California Secretary of State and listed Mr. Obiang as the sole manager of the corporation.<sup>240</sup> Mr. Nagler told the Subcommittee that Mr. Obiang “was the sole manager” of Sweetwater Malibu LLC “after March 2, 2006.”<sup>241</sup> He said that Sweetwater Malibu LLC “had no employees.”<sup>242</sup>

**Sweetwater Management Inc.** A few weeks after setting up Sweetwater Malibu LLC, Mr. Nagler established a third California corporation for Mr. Obiang called Sweetwater Management Inc. A February 21, 2006, memorandum from Mr. Nagler to Mr. Obiang describes the corporation as follows:

“New Management Company. You asked me to form a new management company to handle the payroll and to employ all the employees that you now have and will have at the Malibu house. You also asked me to prepare a draft of an employment agreement.

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<sup>232</sup> 2/21/06 fax from Mr. Nagler to Mr. Obiang, SEN0011704

<sup>233</sup> 2/8/06 Sweetwater Malibu LLC Articles of Organization, PSI-Pacific\_Mercantile\_Bank-01-0263.

<sup>234</sup> Id.

<sup>235</sup> 2/15/06 Operating Agreement for Sweetwater Malibu LLC, PSI-Pacific\_Mercantile\_Bank-01-0266-73.

<sup>236</sup> 2/27/06 Grant Deed of 3620 Sweetwater Mesa Road, PSI-Coldwell\_Banker-01-000069.

<sup>237</sup> Id.

<sup>238</sup> 3/31/06 Broker Confidentiality Agreement, PSI-Coldwell\_Banker-01-000509.

<sup>239</sup> Id. at PSI-Coldwell\_Banker-01-000510.

<sup>240</sup> 9/25/06 Statement of Information regarding Sweetwater Malibu LLC, signed by Mr. Obiang, PSI-Pacific\_Mercantile\_Bank-01-0262.

<sup>241</sup> 8/1/08 letter from Mr. Nagler’s legal counsel to the Subcommittee, PSI-Nagler-02-0003.

<sup>242</sup> Id.

We talked about using the name Sweetwater Management, Inc. You thought that name was acceptable. Do you want me to form this company?"<sup>243</sup>

On May 16, 2006, Sweetwater Management Inc. was incorporated using Mr. Nagler's business address in Beverly Hills, California.<sup>244</sup> The California "Statement of Information" listed Mr. Obiang as the company's sole director and identified Mr. Nagler as the agent for service of process.<sup>245</sup> Another document filed a week later named Mr. Obiang as the president, chief financial officer, and secretary of Sweetwater Management Inc.<sup>246</sup> An employee contract later described the purpose of Sweetwater Management Inc. as "providing various services to Sweetwater Malibu LLC."<sup>247</sup>

Documentation obtained by the Subcommittee shows that bank accounts that were later opened in the name of Sweetwater Management provided funds for employee and other expenses associated with Mr. Obiang's Malibu property.<sup>248</sup> The documents also show that Mr. Nagler helped manage the domestic staff payroll through Sweetwater Management and paid a number of bills associated with that property as well as other expenses incurred by Mr. Obiang.<sup>249</sup>

### **(b) Bringing In and Moving Suspect Funds**

During the two years that he was employed by Mr. Obiang, from September 2005 to September 2007, Mr. Nagler helped Mr. Obiang open accounts at three small California banks, Cal National Bank, City National Bank, and Pacific Mercantile Bank. These accounts included accounts opened in the name of two Obiang shell companies that Mr. Nagler helped form, Sweetwater Malibu LLC and Sweetwater Management Inc.; Mr. Nagler's own attorney-client and law office accounts; and a personal account in Mr. Obiang's own name which Mr. Nagler helped to open. The shell company and Obiang accounts did not last long; the banks closed each account after it received a single large wire transfer from Equatorial Guinea, but together these accounts managed to bring in over \$1.75 million through EG wire transfers. Mr. Nagler accepted another \$400,000 in Obiang-related funds into his own attorney-client and law firm accounts and used the funds to pay Obiang-related bills and expenses for a three-month period in the summer of 2006, but then stopped doing so. By September 2007, Mr. Obiang stopped using Mr. Nagler's services, and Mr. Nagler ended his efforts to locate bank accounts that Mr. Obiang could use to bring money into the United States from Equatorial Guinea.

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<sup>243</sup> 2/21/06 fax from Mr. Nagler to Mr. Obiang, SEN011704.

<sup>244</sup> See 5/16/06 Sweetwater Management Inc. Articles of Incorporation, PSI-Pacific\_Mercantile\_Bank-01-0215-16; SEN005882.

<sup>245</sup> See 6/21/06 Sweetwater Management Inc. Statement of Information, PSI-Pacific\_Mercantile\_Bank-01-0217; SEN009061-72.

<sup>246</sup> 5/23/06 "Action by Unanimous Written Consent in Lieu of First Meeting of the Incorporator and Board of Directors of Sweetwater Management, Inc.," SEN009183. See also 8/1/08 letter from Mr. Nagler's legal counsel to the Subcommittee, PSI-Nagler-02-0003.

<sup>247</sup> 12/12/06 Employment Agreement of Suellen Everett at Sweetwater Management Inc., SEN004220.

<sup>248</sup> 12/12/06 Employment Agreement of Suellen Everett at Sweetwater Management Inc., SEN004220; 7/30/07 Sweetwater Management Inc. Semi-Monthly Payroll, SEN007509; 6/10/07 Sweetwater Management Inc. Over Time Approval, SEN007510.

<sup>249</sup> 1/26/07 email from Mr. Nagler to Ms. Everett, SEN013560; R 2415.

### (i) Cal National Bank

A few months after Mr. Obiang purchased the Malibu property in April 2006, Mr. Nagler facilitated the opening of Sweetwater Malibu and Sweetwater Management accounts at Cal National Bank in Westwood, California even though Cal National Bank had a policy against doing business with PEPs. Mr. Nagler asked a property management company that was known to the bank to open the accounts without disclosing Mr. Obiang's involvement. The bank initially opened the accounts, but after receiving a \$250,000 wire transfer from Equatorial Guinea and an inquiry from an Obiang employee, the bank learned of Mr. Obiang's ownership of the Malibu property being managed, closed the accounts, and transferred the remaining funds to Mr. Nagler's attorney-client account at City National Bank.

**Opening the Accounts.** During late 2005 and early 2006, Mr. Nagler actively assisted Mr. Obiang in the purchase of the Malibu residence, which was ultimately purchased in the name of Sweetwater Malibu LLC in April 2006. In May 2006, Mr. Obiang, as owner of Sweetwater Malibu LLC, entered into an agreement with Ed Mizrahi of American Equity Properties Inc. to manage the property.<sup>250</sup> In connection with that agreement, Mr. Nagler asked Mr. Mizrahi to open accounts in the name of Sweetwater Malibu LLC and Sweetwater Management Inc. at the bank used by his property management firm, so that those accounts could be used to pay for expenses related to the Malibu property, but not to disclose Mr. Obiang identity or involvement with the property or the corporations.

Cal National Bank officials told the Subcommittee that Mr. Mizrahi was well known to them as a professional property manager who managed multiple properties and maintained numerous accounts for those properties at Cal National Bank.<sup>251</sup> They said that, on or about May 30, 2006, Mr. Mizrahi asked the branch manager to open property management accounts for an individual described as "high profile" who "needed his identity to remain anonymous."<sup>252</sup> The bank agreed to open the shell company accounts without obtaining the identity of the person or determining whether he qualified as a PEP, even though U.S. financial institutions are routinely required to obtain this type of information to prevent money laundering.

In response to Mr. Mizrahi's request, on May 30, 2006, the bank opened Account No. 50317171 in the name of "American Equity Properties, Inc. ITF: Sweetwater Malibu."<sup>253</sup> Mr. Mizrahi was the sole account signatory.<sup>254</sup> As part of the account opening documentation, the bank obtained a copy of the management agreement between American Property Management and Sweetwater Malibu, LLC.<sup>255</sup>

The next day, Mr. Mizrahi, accompanied by Melinda Dehaven, an Obiang employee, opened three additional accounts: Account No. 50317197 for Sweetwater Management, Inc. –

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<sup>250</sup> 5/23/06 Management Agreement, PSI-Cal\_Nat'l\_Bank-01-0020-24; Subcommittee interview with Cal National Bank, February 27, 2009.

<sup>251</sup> Subcommittee interview with Cal National Bank, February 27, 2009.

<sup>252</sup> 7/06 Cal National Bank Account Review and Summary, PSI-Cal\_Nat'l\_Bank-01-0048; Also see Subcommittee interview with Cal National Bank, February 27, 2009.

<sup>253</sup> 5/31/06 Cal National Bank Business Signature Card and Resolution of Corporation, PSI-Cal\_Nat'l\_Bank-01-0091-92. Subcommittee interview with Cal National Bank, February 27, 2009. "ITF" means "in trust for."

<sup>254</sup> Subcommittee interview with Cal National Bank, Nov. 9, 2009.

<sup>255</sup> 5/23/06 Management Agreement, PSI-Cal\_Nat'l\_Bank-01-0020 to 0024.

Payroll; Account No. 50317205 for Sweetwater Management, Inc. – Household; and Account No. 50317254 for Sweetwater Management, Inc. -- Corporate. Ms. Dehaven was a signatory on all three accounts and apparently funded them with money transferred from her personal account at Bank of America.<sup>256</sup> Mr. Mizrahi was also a signatory.<sup>257</sup>

Mr. Nagler sent the following email to Mr. Obiang regarding the opening of the Cal National Bank accounts:

“Mr. Nguema,

Ed [Mizrahi] called me from the bank. He has been able to open the accounts with Melinda in the name of Sweetwater Management, Inc. for both the payroll and the household accounts. To do this, we need to have Melinda elected the Secretary instead of being an assistant secretary. I will change the first minutes to show her as the secretary. You can remove her as secretary any time you wish but it now gives her the authority with the bank to open the bank accounts. It avoids you having to go into the bank and sign the documents.”<sup>258</sup>

The Subcommittee does not know whether Mr. Nagler actually “changed” the minutes dating from the first Sweetwater Management board meeting as suggested in this email.

**Account Activity.** About two weeks later, on June 12, 2006, Cal National Bank received a wire transfer for nearly \$250,000, sent by Socage in Equatorial Guinea, to the American Equity Properties, Inc. ITF: Sweetwater Malibu account.<sup>259</sup> The next day, June 13, 2006, Ms. Dehaven contacted the bank about the wire transfer and apparently asked to have the money moved from the American Equity account, where she was not a signatory, to one of the Sweetwater Management accounts where she was a signatory.<sup>260</sup>

According to bank officials interviewed by the Subcommittee, after receiving her inquiry, the branch manager reviewed the American Equities-Sweetwater agreement it had on file, examined the information provided on ownership of the company, and learned that Mr. Obiang was listed as the sole owner and manager of Sweetwater Malibu LLC.<sup>261</sup> The branch manager then conducted an Internet search, learned that Mr. Obiang was an EG Minister and the son of the EG President, and read about Riggs Bank’s involvement with Equatorial Guinea and the Obiang family.<sup>262</sup> He then contacted a Cal National Bank compliance officer for guidance.<sup>263</sup>

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<sup>256</sup> Subcommittee interview with Cal National Bank, February 27, 2009. See also deposit tickets and checks from Ms. Dehaven, PSI-Cal\_Nat’l\_Bank-01-0089-90. The Subcommittee did not examine her account to determine whether it, too, operated as a conduit for Obiang funds.

<sup>257</sup> 5/31/06 Cal National Bank Business Signature Card and Resolution of Corporation, PSI-Cal\_Nat’l\_Bank-01-0091-2.

<sup>258</sup> 5/31/06 email from Mr. Nagler to Mr. Obiang, SEN011169.

<sup>259</sup> 7/06 Cal National Bank Account Review and Summary, PSI-Cal\_Nat’l\_Bank-01-0055.

<sup>260</sup> SEN010959.

<sup>261</sup> 5/16/06 State of California, Articles of Incorporation for Sweetwater Management Inc., PSI-Cal\_Nat’l\_Bank-01-0024.

<sup>262</sup> 7/06 Cal National Bank Account Review and Summary, PSI-Cal\_Nat’l\_Bank-01-0048.

<sup>263</sup> Id.

The branch manager also contacted Mr. Mizrahi who sent the following email to Ms. Dehaven, with a copy to Mr. Nagler:

“I was just informed by the Manager at Cal National Bank that you were inquiring why the \$249,899.80 wire was transferred into the American Equity Properties, Inc. ITF Sweetwater Malibu account and not the Household account (that you are a signer on) or the payroll account. ... In the future, if you have questions concerning the transfers of monies you should address them with me or George Nagler, and **not the bank manager**.”<sup>264</sup> [Emphasis in original.]

Ms. Dehaven sent the following apology:

“Sorry if I didn’t go about it the correct way. I didn’t realize that speaking with [the branch manager] wasn’t proper.”<sup>265</sup>

Mr. Mizrahi later sent another email to Mr. Nagler:<sup>266</sup>

“Cal National Bank decided to review the files and researched the Owner and Ownership of the property. Upon doing so, the Bank Manager advised me of his finding and said that the Bank’s policy is to have ‘clients that are not politically connected.’ He further informed me that the bank accounts (that were just opened) could potentially be closed by the bank due to their findings.”<sup>267</sup>

**Account Closings.** On June 22, 2006, less than a month after the account was opened, Cal National Bank notified American Equity Properties by letter that it was closing all four Sweetwater accounts.<sup>268</sup> Following the account closure, Cal National Bank placed Mr. Obiang and Melinda Dehaven on its “hot list,” which restricted them from receiving banking services through the bank.<sup>269</sup> The funds remaining in the American Equity Properties, Inc. ITF: Sweetwater Malibu account, totaling about \$203,000, were wire transferred to Mr. Nagler’s attorney-client trust account at City National Bank.<sup>270</sup>

Cal National Bank chose not to take any action against Mr. Mizrahi, the property manager, even though he opened the Sweetwater accounts and hid Mr. Obiang’s involvement from the bank.

## (ii) City National Bank

After the closure of the Cal National Bank accounts in June 2006, for the next three months, Mr. Nagler allowed his attorney-client and law office accounts at City National Bank to

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<sup>264</sup> SEN010959.

<sup>265</sup> SEN010958.

<sup>266</sup> SEN010959.

<sup>267</sup> 6/13/06 email from Mr. Nagler to Mr. Obiang, SEN010943.

<sup>268</sup> 7/06 Cal National Bank Account Review and Summary, PSI-Cal\_Nat’l\_Bank-01-0049.

<sup>269</sup> Subcommittee interview with Cal National Bank, February 27, 2009.

<sup>270</sup> 6/26/06 wire transfer, PSI-Cal\_Nat’l\_Bank-01-0051. See also Subcommittee interview with Cal National Bank, February 27, 2009.

serve as conduits for about \$400,000 in Obiang funds. Mr. Nagler told the Subcommittee that he did not recall using these accounts to pay for Obiang-related expenses at any other time.<sup>271</sup>

Mr. Nagler told the Subcommittee that during the summer of 2006, at Mr. Obiang's request, he accepted a number of Obiang-related wire transfers into his attorney-client and law office accounts at City National Bank, and then used those funds to pay Mr. Obiang's "household and living expenses" while Mr. Obiang made other arrangements.<sup>272</sup> To pay the bills, Mr. Nagler instructed a payroll company to produce checks imprinted with the Sweetwater Management Inc. name at the top and his attorney-client or law office account number at the bottom, and used those checks to pay the Obiang bills.

More than a year later, after the bank received an inquiry from the Subcommittee, City National Bank conducted a search of its records and learned for the first time that, for a three-month period during the summer of 2006, Mr. Obiang had utilized the Nagler attorney-client and law office accounts. Because there was no sign that Mr. Obiang had continued to use them, City National Bank did not close the Nagler accounts, but rated them "high risk" subject to additional monitoring. City National Bank also confirmed that it had earlier maintained personal and corporate accounts for Mr. Obiang, but had closed the last of those accounts in 2004.

**Obiang Accounts.** Mr. Obiang had already had five years of involvement with City National Bank prior to his utilization of the Nagler accounts in 2006. From at least 2001 to 2004, Mr. Obiang had maintained six corporate and personal accounts at the bank. In 2003, City National Bank closed the five corporate accounts. In 2004, the bank opened and then closed a personal account for Mr. Obiang due to suspicious transactions, froze \$700,000 of his funds, and returned those funds to Mr. Obiang only after ordered by a court to do so.

The first set of accounts at the bank were opened in the name of TNO Entertainment LLC, the California company owned by Mr. Obiang.<sup>273</sup> These accounts were:

- Account No. 101-672085 "TNO ENTERTAINMENT, LLC";
- Account No. 101-770427 "TNO ENTERTAINMENT, LLC (PETTY CASH ACCOUNT)";
- Account No. 101-800261 "TNO ENTERTAINMENT, LLC (SPECIAL ACCOUNT)";
- Account No. 101-862860 "TNO ENTERTAINMENT, LLC (PAYROLL ACCOUNT)";
- Account No. 101-862852 "TNO ENTERTAINMENT, LLC (MUSIC DIVISION ACCOUNT)".<sup>274</sup>

In account opening documents for Account No. 101-672085, Mr. Obiang identified himself as the managing member of TNO Entertainment LLC, and listed his occupation as

<sup>271</sup> 8/1/08 letter from Mr. Nagler's legal counsel to the Subcommittee, PSI-Nagler-02-0008. See also See 7/20/06 email from Mr. Nagler to Pacific Mercantile Bank, PSI-Pacific\_Mercantile\_Bank-01-0016 (Mr. Nagler wrote: "Currently, I ... have been paying [the Malibu property] bills out of my trust account.").

<sup>272</sup> Id. at 08-09.

<sup>273</sup> Subcommittee interview with City National Bank, March 9, 2009. "TNO" refers to Teodoro Ngeuma Obiang.

<sup>274</sup> 5/28/04 City National Bank Suspicious Activity Report: Part IV Suspicious Activity Information Explanation/Description, CNB0001067; 5/8/01 Operating Agreement of TNO Entertainment LLC, CNB0004863 to CNB0004868.



“Recording Executive.”<sup>275</sup> Between February and December of 2001, Mr. Obiang made three large deposits to that account totaling \$3.5 million.<sup>276</sup> Those deposits were funded by checks drawn against a Riggs Bank account, numbered 76923450, that had been opened in the name of TNO Entertainment.<sup>277</sup>

Bank records show that numerous checks drawn on Account No. 101-672085 were used to pay for high-end retail purchases. For example, the account was used to pay for a \$25,000 bill from Versace, a \$23,000 bill from Dolce & Gabbana, and a \$14,000 bill from Gucci, three high-end clothiers.<sup>278</sup> Sometime in 2003, the bank initiated an evaluation of the account activity and determined that it was inconsistent with the profile for an entertainment company.<sup>279</sup> At the end of 2003, the bank closed all five TNO Entertainment accounts, because of rapidly diminishing funds in the accounts, account activity inconsistent with other entertainment accounts handled by the bank, and difficulties contacting the accountholder, Mr. Obiang.<sup>280</sup> Although City National Bank closed the accounts, the bank told the Subcommittee that it did not view them as suspicious, and did not place any restrictions on Mr. Obiang’s doing business with the bank in the future.<sup>281</sup>

About three months later, on March 2, 2004, Mr. Obiang opened a personal checking account at City National Bank, Account No. 009-609326, apparently using an invalid Social Security number and an invalid date of birth.<sup>282</sup> At account opening, the bank used a database known as Chex System to verify the Social Security number without receiving any alert of a problem.<sup>283</sup> Mr. Obiang apparently did not alert the bank to his PEP status. Mr. Obiang initially funded the account with a \$300,000 check drawn on a Riggs Bank account, Account No. 25773624, but the check was returned unpaid.<sup>284</sup> On March 15, 2004, Mr. Obiang sent a wire transfer for nearly \$1 million from his account at CCEI Bank Guinea Equatorial.<sup>285</sup> City National Bank allowed the transfer without making any inquiries into the source of the funds.

<sup>275</sup> 12/4/03 City National Bank Business Account Agreement, CNB0001049.

<sup>276</sup> 2/28/01 account statement from City National Bank CNB0000614; 11/30/01 account statement from City National Bank, CNB0000655; 11/30/01 account statement from City National Bank, CNB0000659, R 2589; 5/28/04 City National Bank Suspicious Activity Report: Part IV Suspicious Activity Information Explanation/Description, CNB0001067.

<sup>277</sup> /28/01 account statement from City National Bank CNB0000614; 11/30/01 account statement from City National Bank, CNB0000655; 11/30/01 account statement from City National Bank, CNB0000659; 5/28/04 City National Bank Suspicious Activity Report: Part IV Suspicious Activity Information Explanation/Description, CNB0001067.

<sup>278</sup> 5/16/01 check from TNO Entertainment to Versace, CNB0001200; 5/18/01 check from TNO Entertainment to Dolce & Gabbana, CNB0001201; 8/3/01 check from TNO Entertainment to Gucci, CNB0001229 .

<sup>279</sup> Subcommittee interview with City National Bank, March 9, 2009.

<sup>280</sup> Subcommittee interview with City National Bank, March 9, 2009.

<sup>281</sup> Subcommittee interview with City National Bank, March 9, 2009.

<sup>282</sup> 3/21/04 City National Bank Personal Account Agreement, CNB0001043. Mr. Obiang has been issued a valid Social Security Number, apparently in connection with his California corporation. See 12/10/09 letter from Social Security Administration to the Subcommittee, no bates number.

<sup>283</sup> Subcommittee interview with City National Bank, March 9, 2009. CNB advised the Subcommittee that at time of account opening, the banking center manager may not have been aware of policies respective to screening and banking PEPs, and that bank policies regarding PEPs were not as strong as they are currently as a result of improvements made pursuant to a 2005 Consent Order with the Office of the Comptroller of the Currency (OCC).

<sup>284</sup> 3/31/04 account statement from City National Bank, CNB0000057.

<sup>285</sup> Id.

A few months earlier, in December 2003, the bank had received a Section 314(b) request from Riggs Bank requesting information related to Mr. Obiang.<sup>286</sup> The letter clearly disclosed Mr. Obiang's PEP status. In addition, City National Bank had become aware of adverse media reports concerning Equatorial Guinea and the Obiang family. In response, a City National Bank compliance officer performed a search of the bank records, identified the Obiang checking account, and began to review the account activity.<sup>287</sup> On June 2, 2004, the compliance officer wrote to other bank officials, raising a number of concerns regarding the Obiang account:

"We have identified a number of issues with this client, which should be addressed immediately.

- 1) Your branch is unable to locate the signature card. Account opened on 3-2-2004.
- 2) Public records indicate, the Social Security number used belongs to another individual.
- 3) Opening deposit of \$300,000.00 was returned unpaid by Riggs Bank (own check).
- 4) Discrepancy in date of birth.
- 4) Wire transfer for \$999,950.00 from Equatorial Guinea, which should have been-reported as suspicious and unusual.
- 5) Internet shows that the client is the Minister of State for Forestry, Fishing, & Environment of Equatorial Guinea. It appears, he is related to the President of that country, Obiang Nguema Mbasogo. He may qualify as a political exposed person, requiring enhanced due diligence. Refer to Legal & Compliance Manual.

Since the client provided false information, we should close the account."<sup>288</sup>

On the same day, June 2, 2004, City National Bank sent a letter notifying Mr. Obiang of its intention to terminate its banking relationship with him, asked him to close his account by June 8, and instructed him to cease all banking activity with the bank.<sup>289</sup> City National Bank closed the account on or about June 14, 2004.<sup>290</sup> Following the account closure, the bank placed Mr. Obiang on its "hot list," effectively blocking him from banking through City National Bank in the future.<sup>291</sup> The bank also issued and held two checks with the funds remaining in the account totaling \$669,691.02.<sup>292</sup>

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<sup>286</sup> Subcommittee interview with City National Bank, March 9, 2009. Section 314(b) of the 2001 Patriot Act encourages financial institutions and associations of financial institutions located in the United States to share information in order to identify and report activities that may involve terrorist activity or money laundering.

<sup>287</sup> Subcommittee interview with City National Bank, March 9, 2009.

<sup>288</sup> 6/2/04 internal City National Bank email, CNB0004800.

<sup>289</sup> 6/2/04 letter from City National Bank to Mr. Obiang, CNB0004101.

<sup>290</sup> 11/15/04 City National Bank's Cross-Complaint, Obiang v. City National Bank, Case No. SC 083177, CNB0003931.

<sup>291</sup> Subcommittee interview with City National Bank, March 9, 2009.

<sup>292</sup> 11/15/04 City National Bank's Cross-Complaint, Obiang v. City National Bank, Case No. SC 083177, CNB0003931.

On July 30, 2004, Mr. Obiang called the bank to discuss closure of the account. An email by the bank official who spoke with Mr. Obiang described the conversation as follows:

“In our conversation he asked me why we closed the account. I told him that we were provided with the incorrect social security number and that we had tried to reach him on many occasions and we were unsuccessful. After I told him that, he said, ‘I thought it was due to our country and the oil.’ He then asked me if we could reopen the account if he were to come in and provide us with the correct social. I told him that since we were unable to get a hold of him, the legal department is now involved.”<sup>293</sup>

Earlier the same month that this conversation took place, on July 15, 2004, the Subcommittee held its hearing and released its report on Riggs Bank’s handling of the Equatorial Guinea accounts. The Subcommittee’s report specifically referenced Mr. Obiang’s TNO Entertainment accounts at City National Bank.<sup>294</sup> The bank learned of the Subcommittee report as well as a report issued by the U.S. State Department warning that Equatorial Guinea was mishandling its growing oil wealth.<sup>295</sup> In addition, on August 19, 2004, the bank received a law enforcement subpoena requesting documentation that, among other individuals, related to Mr. Obiang.<sup>296</sup>

In August 2004, Mr. Obiang requested delivery of the \$700,000 from his closed account.<sup>297</sup> In response, City National Bank requested that Mr. Obiang identify the source of the funds. Mr. Obiang provided the following declaration:

“The wire transfer was from one of my companies in Equatorial Guinea. The funds that were transferred to me did not come from any illegal source. It was either from Somagui Forestal or Sofona.”<sup>298</sup>

According to documents reviewed by the Subcommittee, City National Bank learned from press reports that Obiang accounts at Riggs Bank had been frozen by the U.S. Government and believed that law enforcement expected delivery of the remaining funds in the Obiang account at its bank, pursuant to the subpoena served on the bank.<sup>299</sup> City National Bank determined that it should hold onto the funds in expectation of a request from law enforcement.

Mr. Obiang filed suit in the Superior Court of California, County of Los Angeles, to recover the funds.<sup>300</sup> He was represented in that matter by attorney Michael Jay Berger. A federal court had previously determined that the U.S. Government had no interest in the funds.<sup>301</sup> When no other party filed a claim in the suit, the California court ordered the funds paid to Mr.

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<sup>293</sup> 11/30/04 internal City National Bank email CNB0004799.

<sup>294</sup> 2004 Subcommittee Investigation of Riggs Bank at 44, footnote 162.

<sup>295</sup> CNB0003931-32.

<sup>296</sup> 11/15/04 City National Bank’s Cross-Complaint, Obiang v. City National Bank, Case No. SC 083177, CNB0003931.

<sup>297</sup> Id.

<sup>298</sup> Id. at CNB0004068.

<sup>299</sup> Id.

<sup>300</sup> 6/24/05 Teodoro Nguema Obiang’s Ex Parte Application to Approve Judgment, Obiang v. City National Bank, Case No. SC 083177, CNB0005561.

<sup>301</sup> Id.

Obiang.<sup>302</sup> On June 24, 2005, City National Bank issued two checks payable to a Berger attorney-client account at Bank of America in the amounts of \$500,000 and \$199,691.02, for a total of \$699,691.02.<sup>303</sup> Mr. Berger deposited both checks in that account.<sup>304</sup>

**Nagler Attorney-Client and Law Office Accounts.** Despite the actions taken by City National Bank to close the Obiang checking account in June 2004, bar Mr. Obiang from doing business with the bank, and freeze \$700,000 of his funds until the June 2005 court decision, Mr. Obiang did not object when Mr. Nagler suggested using City National Bank accounts during the summer of 2006, to pay Mr. Obiang's bills and expenses. For the three-month period from June to August 2006, Mr. Obiang managed once more, without the bank's knowledge, to funnel money through its accounts, using an account Mr. Nagler had opened years earlier to handle client funds, Account No. [xxx-xxxx]27, and an account opened in the name of "Law Offices of George I. Nagler," Account No. [xxx-xxxx]43.<sup>305</sup>

Mr. Nagler told the Subcommittee that he had maintained an attorney-client account at City National Bank "for many years."<sup>306</sup> In 2005, this account began receiving the first of several wire transfers from Equatorial Guinea, which Mr. Nagler said were sent by Somagui Forestal to pay Mr. Obiang's legal fees. Mr. Nagler told the Subcommittee that he received nearly \$40,000 in this manner, citing an October 19, 2005 wire transfer for nearly \$12,000; a January 18, 2006 wire transfer for nearly \$12,000; and a March 23, 2006 wire transfer for about \$14,200.<sup>307</sup>

In mid-2006, the Nagler attorney-client account received another influx of Obiang-related funds totaling more than \$360,000. All of these funds came from U.S. bank accounts, rather than directly from Equatorial Guinea. On May 2, 2006, First American Title Company wire transferred \$107,581.11 from its U.S. account to the Nagler attorney-client account, marked "FBO Teodoro Nguema Obiang."<sup>308</sup> City National Bank did not block this wire transfer even though, in 2004, it had placed Mr. Obiang on its "hot list" to prevent his doing any more business with the bank.

Mr. Nagler told the Subcommittee that these funds had been left over in the escrow account at the title company after Mr. Obiang's purchase of the Malibu property.<sup>309</sup> He said that he used \$50,000 of the transferred funds to pay Mr. Obiang's legal fees, sent about \$4,400 to the IRS to settle a tax matter involving Mr. Obiang, and set aside the rest in a "subaccount" for Mr. Obiang.<sup>310</sup>

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<sup>302</sup> Id.

<sup>303</sup> 7/1/05 internal legal memorandum from City National Bank, CNB0005553.

<sup>304</sup> BAC-PSI-02424, 02425. Mr. Berger later transferred these funds to one of the Beautiful Vision accounts as explained earlier.

<sup>305</sup> Various dates, variety of checks from Sweetwater Management Inc., CNB0001955 to CNB0001963.

<sup>306</sup> 8/1/08 letter from Mr. Nagler's legal counsel to the Subcommittee, PSI-Nagler-02-0006.

<sup>307</sup> Id. at 08.

<sup>308</sup> 7/7/08 Transaction Detail Report from First American Title Co., CNB0001651. "FBO" typically means "for the benefit of." Mr. Nagler told the Subcommittee that this transfer occurred on May 5, 2006. 8/1/08 letter from Mr. Nagler's legal counsel to the Subcommittee, PSI-Nagler-02-0008.

<sup>309</sup> 8/1/08 letter from Mr. Nagler's legal counsel to the Subcommittee, PSI-Nagler-02-0008.

<sup>310</sup> Id. at 08-09.

On June 26, 2006, another \$213,149.30 was transferred into the Nagler attorney-client account from the closed Sweetwater accounts at Cal National Bank.<sup>311</sup> On July 27, 2006, First American Title Company sent another \$47,500 to the Nagler attorney-client account with instructions “FBO Teodoro Nguema Obiang.”<sup>312</sup> Again, the bank did not block the wire transfer even though Mr. Obiang was on the bank’s internal “hot list.” Mr. Nagler told the Subcommittee that these funds came from rent that had been paid by the seller for occupying the Malibu property after the closing.<sup>313</sup>

After receiving these funds, Mr. Nagler transferred at least \$27,000 to his law office account. On May 6, 2006, for example, Mr. Nagler transferred \$15,052.38 from his attorney-client account into his law office account.<sup>314</sup> On June 30, 2006, Mr. Nagler wrote a \$12,683.05 check drawn against his attorney-client account and deposited it into his law office account with the notation for “Sweetwater Mgt - payroll.”<sup>315</sup>

In addition, he arranged for a payroll company, Paychex Inc., to provide him with checks which were imprinted with Sweetwater Management Inc. at the top and his law office account number, No. [xxx-xxxx]43, at the bottom. Beginning on June 30, 2006, Mr. Nagler began using those checks “to pay wages due to the employees of Sweetwater Management, Inc. and the appropriate payroll tax obligations of the company.”<sup>316</sup> Mr. Nagler told the Subcommittee that he paid these expenses at the direction of Mr. Obiang.<sup>317</sup>

The following chart lists the checks that were imprinted with Sweetwater Management Inc., drawn on the Nagler law office account, and paid to Obiang-related employees during June 30 to July 31, 2006.

<b>Sweetwater Management Checks Drawn on Nagler Law Office Account to Sweetwater Employees</b>			
<b>Date</b>	<b>Check #</b>	<b>Amount</b>	<b>Bates</b>
6/30/2006	11003	\$719.87	CNB0001956
6/30/2006	11008	\$983.50	CNB0001956
6/30/2006	11004	\$2360.63	CNB0001957
6/30/2006	11006	\$731.06	CNB0001957
6/30/2006	11009	\$992.67	CNB0001957
6/30/2006	11007	\$2072.95	CNB0001955
7/14/2006	11013	\$1460.27	CNB0001963
7/14/2006	11012	\$2322.95	CNB0001958
7/14/2006	11011	\$2360.63	CNB0001958
7/14/2006	11010	\$1404.63	CNB0001959
7/31/2006	11018	\$1460.27	CNB0001959
7/31/2006	11015	\$2360.63	CNB0001957

<sup>311</sup> 6/30/06 account statement from City National Bank, CNB00000227; 8/1/08 letter from Mr. Nagler’s legal counsel to the Subcommittee, PSI-Nagler-02-0008.

<sup>312</sup> 7/7/08 Transaction Detail Report from First American Title Co., CNB0001654.

<sup>313</sup> 8/1/08 letter from Mr. Nagler’s legal counsel to the Subcommittee, PSI-Nagler-02-0009.

<sup>314</sup> 5/30/03 account statement from City National Bank, CNB0000153.

<sup>315</sup> 6/30/06 check from Mr. Nagler to himself, CNB0002320.

<sup>316</sup> 8/1/08 letter from Mr. Nagler’s legal counsel to the Subcommittee, PSI-Nagler-02-0004.

<sup>317</sup> Id. at 08.

7/31/2006	11014	\$1442.64	CNB0001962
7/31/2006	11017	\$2115.21	CNB0001961
7/31/2006	11016	\$2322.95	CNB0001961
<b>Source- City National Bank</b>		<b>Total- \$25,110.86</b>	

Prepared by Subcommittee

Mr. Nagler also had checks imprinted with Sweetwater Management Inc. at the top and the number of his attorney-client account, No. [xxx-xxxx]27, at the bottom. In a written response to questions from this Subcommittee, Mr. Nagler's attorney stated that from "June 26, 2006 through August 23, 2006, Mr. Nagler paid certain of Client's household and living expenses from his trust account, at the Client's request and with funds provided by the Client for that purpose."<sup>318</sup> The "Client" referred to is Mr. Obiang. Altogether, his account disbursed more than \$368,000 in Obiang-related funds.<sup>319</sup>

During this period, Mr. Obiang relied heavily on Mr. Nagler to pay his bills. In July 2006, for example, after Mr. Nagler advised Mr. Obiang's assistant, Melinda DeHaven, that he would be out of town for four days,<sup>320</sup> Ms. DeHaven sent him the following email:

"Mr. Nguema left me a message and wanted me to ask you if you go out of town on those dates who will be available to write checks while you are away. ... [T]here are numerous bills that are awaiting his approval along with purchases that he will be making upon his arrival and will need to be paid by check. ... [P]lease advise so I can let him know."<sup>321</sup>

According to Mr. Nagler's attorney, Mr. Nagler stopped paying Mr. Obiang's expenses on or about August 23, 2006.<sup>322</sup> Mr. Berger had already agreed to undertake this task in an agreement he had signed the prior month with Mr. Obiang.<sup>323</sup> Even after Mr. Nagler stopped paying Mr. Obiang's bills, however, he apparently retained some Obiang-related funds in his accounts. An email dated May 10, 2007, for example, sent by Mr. Nagler to Mr. Obiang indicates that he was then holding more than \$4,000 in Obiang funds in his attorney-client account at City National Bank:

"Mr. Nguema, I note that I am still holding \$4,185.10 of your funds in my trust account from last August. This amount was intended to cover check #3039 to Raffles L'Ermitage...to cover 5 nights at the hotel."<sup>324</sup>

**Obiang Connection Uncovered.** In July 2008, the Subcommittee asked City National Bank for records related to Mr. Obiang. In response, the bank conducted a search and learned for the first time that Mr. Obiang had used the Nagler attorney-client and law office accounts to

<sup>318</sup> 8/1/08 letter from Mr. Nagler's legal counsel to the Subcommittee, PSI-Nagler-02-0008.

<sup>319</sup> Id. at 09.

<sup>320</sup> 7/8/06 email from Mr. Nagler to Ms. DeHaven, SEN010356.

<sup>321</sup> 7/9/06 email from Ms. DeHaven to Mr. Nagler, SEN010356.

<sup>322</sup> 8/1/08 letter from Mr. Nagler's legal counsel to the Subcommittee, PSI-Nagler-02-0009.

<sup>323</sup> See 7/17/06 contract between Mr. Berger and Mr. Obiang in which Mr. Berger agreed to assist Unlimited Horizon Inc. in managing Mr. Obiang's Malibu property and to pay Mr. Obiang's personal bills upon request, SEN000001.

<sup>324</sup> 5/10/07 email from Mr. Nagler to Mr. Obiang, SEN004055.

pay his expenses during the summer of 2006.<sup>325</sup> The bank also learned of the checks that Mr. Nagler had created. City National Bank told the Subcommittee that it did not view these transactions as suspicious, but did deem them to be inconsistent with the purposes of the Nagler attorney-client and law office accounts.<sup>326</sup> City National Bank told the Subcommittee that it had determined not to close the Nagler accounts, but rate them as “high risk” subject to enhanced monitoring.<sup>327</sup>

In 2004, City National Bank’s regulator, the Office of the Comptroller of the Currency (OCC), had determined that the bank’s anti-money laundering controls were inadequate. In 2005, the OCC entered into a Consent Agreement with the bank to strengthen its AML and other compliance programs, including by establishing controls to detect and report potential money laundering by immediate family members of senior foreign political figures.<sup>328</sup> Despite this instruction from its regulators to tighten its controls to detect PEP activities, City National Bank did not investigate the EG wire transfers into the Nagler attorney-client and law office accounts, even when the wire transfers explicitly named Mr. Obiang; did not detect Mr. Obiang’s use of those accounts; and did not take any action against Mr. Nagler, even after discovering how he had hidden Mr. Obiang’s utilization of his accounts in 2006.

### (iii) Pacific Mercantile Bank

At the same time that Mr. Nagler was using his City National Bank attorney-client and law office accounts to pay Mr. Obiang’s bills, he was working to help Mr. Obiang open accounts at another bank. In July 2006, Mr. Nagler contacted an acquaintance at Pacific Mercantile Bank (PMB) in Beverly Hills, California, and urged the bank to open accounts for Mr. Obiang. PMB is a small state-chartered bank, with less than ten branches in southern California.<sup>329</sup> The bank agreed to open five accounts in the name of Mr. Obiang and his Sweetwater corporations. For the first three months, the accounts were inactive. Then, after an EG wire transfer deposited nearly \$500,000 into Mr. Obiang’s personal checking account and he disbursed nearly all of the funds over the course of the next month, PMB decided it was ill-equipped to oversee such high risk transactions and closed the accounts.

**Account Opening.** The documents reviewed by the Subcommittee show that, on July 20, 2006, Mr. Nagler sent an email to an acquaintance who worked as an Executive Vice President at the PMB Beverly Hills branch.<sup>330</sup> Mr. Nagler stated in the email that he wanted to introduce Mr. Obiang to the bank, describing him as the son of the EG President, an EG Minister, and someone who wanted to become active in the U.S. entertainment industry. Mr. Nagler described Equatorial Guinea as “an ally of the United States and a major supplier of oil to this country,” and downplayed the negative reports on the country’s interactions with Riggs

<sup>325</sup> Subcommittee staff interview with City National Bank officials, March 9, 2009.

<sup>326</sup> Id.

<sup>327</sup> Id.

<sup>328</sup> See Office of Comptroller of the Currency, Consent Order # 2005-16, In the Matter of City National Bank; Subcommittee staff interview with City National Bank officials, March 9, 2009.

<sup>329</sup> See PMB press release, November 12, 2009, on its website, [www.pmbank.com](http://www.pmbank.com).

<sup>330</sup> 7/20/06 email from Mr. Nagler to PMB, PSI-Pacific\_Mercantile\_Bank-01-0114-15.

Bank. He wrote: “I suggest that Mr. Nguema will become a valued customer of the bank and someone with whom you will be proud to have a business relationship.”<sup>331</sup>

Mr. Nagler also wrote that Mr. Obiang “has formed two entities, a corporation and a limited liability company, to hold and manage his residence here and would like to establish one or more bank accounts for these entities. ... Currently, I am the sole signing officer on his funds and have been paying bills out of my trust account.”<sup>332</sup>

According to Mr. Nagler, on or about September 15, 2006, he accompanied Mr. Obiang to the bank and introduced him to the PMB Executive Vice President.<sup>333</sup> That same day, Mr. Obiang completed paperwork to open five accounts for himself and his companies.<sup>334</sup> Account No. 3109386 was a personal checking account in his name, and was opened with an initial cash deposit of \$3,000.<sup>335</sup> According to PMB, this was the only account of the five that was actually funded.<sup>336</sup>

Account No. 3401130 was a personal savings account in Mr. Obiang’s name.<sup>337</sup> On the account opening form, he indicated that he would be making an initial deposit of \$500,000, but this deposit was not actually made.<sup>338</sup> Account No. 3109378 was opened in the name of Sweetwater Malibu LLC,<sup>339</sup> with the account opening documentation identifying Mr. Obiang as the company’s sole owner and manager.<sup>340</sup> Account No. 3109360 was opened in the name of Sweetwater Management Inc.,<sup>341</sup> with the account opening documentation identifying Mr. Obiang as the company president,<sup>342</sup> chief executive officer, director,<sup>343</sup> and sole owner.<sup>344</sup> According to PMB, despite the completed paperwork, neither of these corporate accounts was ever funded. Mr. Obiang also completed a form to purchase a Certificate of Deposit (CD) at the bank to be funded with a \$1 million wire transfer.<sup>345</sup> Again, however, according to PMB, this CD was never actually purchased.

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<sup>331</sup> Id. at 0115.

<sup>332</sup> Id.

<sup>333</sup> 8/1/08 letter from Mr. Nagler’s legal counsel to the Subcommittee, PSI-Nagler-02-0005.

<sup>334</sup> 9/15/06 PMB account opening documentation, SEN008935-9021. See also handwritten notations regarding these accounts, PSI-Pacific\_Mercantile\_Bank-01-0201; 9/15/06 email from Mr. Nagler to PMB regarding accounts, PSI-Pacific\_Mercantile\_Bank-01-0220.

<sup>335</sup> 9/15/06 PMB cash receipt, PSI-Pacific\_Mercantile\_Bank-01-0016.

<sup>336</sup> Subcommittee interview of Pacific Mercantile Bank, November 16, 2009.

<sup>337</sup> 9/15/06 PMB form, PSI-Pacific\_Mercantile\_Bank-01-0196-98; Subcommittee interview with Pacific Mercantile Bank, Nov. 16, 2009.

<sup>338</sup> 9/15/06 PMB account opening form, SEN008956; Subcommittee interview with Pacific Mercantile Bank, Nov. 16, 2009.

<sup>339</sup> 9/15/06 PMB account opening documentation, PSI-Pacific\_Mercantile\_Bank-01-0256-75.

<sup>340</sup> 9/15/06 PMB account opening documentation, PSI-Pacific\_Mercantile\_Bank-01-0259-60, 262-63, 281, 290, R 2857; 9/15/06 Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding, Substitute Form W-8BEN, PSI-Pacific\_Mercantile\_Bank-01-0223.

<sup>341</sup> 9/15/06 PMB account opening documentation, PSI-Pacific\_Mercantile\_Bank-01-0210-219.

<sup>342</sup> Id. at 213, 222, 232-33, and 242.

<sup>343</sup> Id. at 217.

<sup>344</sup> Id. at 221. See also 9/15/06 Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding, Substitute Form W-8BEN, PSI-Pacific\_Mercantile\_Bank-01-0223.

<sup>345</sup> See 9/15/06 PMB form to purchase a CD, PSI-Pacific\_Mercantile\_Bank-01-0184; 9/18/06 PMB Certificate of Deposit Receipt, PSI-Pacific\_Mercantile\_Bank-01-0188. Despite these documents, PMB told the Subcommittee that the \$1 million wire transfer never arrived, and the CD was never actually purchased. Subcommittee interview



Mr. Obiang provided slightly different information on the various account opening forms. In one, he described his “Employer” as: “Self[;] Minister of Agriculture/Forestry.”<sup>346</sup> In others, he described himself as an “Investor” or “Self Employed.”<sup>347</sup> He gave the Malibu residence as his home address.<sup>348</sup> He also provided a copy of a U.S. social security card in his name.<sup>349</sup>

In addition, Mr. Obiang provided the following memorandum bearing his signature to Pacific Mercantile Bank:

“If Teodoro Nguema Obiang is out of the country and needs to conduct an internal transfer via phone, it is acceptable between personal and business accounts, and vice versa...This internal transfer from business to personal is approved by [the PMB Executive Vice President].”<sup>350</sup>

This document established a clear link between the Obiang personal and corporate accounts.

**Due Diligence Review.** Within a few days after opening the five accounts, PMB initiated a due diligence review of Mr. Obiang. On July 21, 2006, the PMB Vice President sent an email to his colleagues: “This is a prospect who really we need to check his background with regard to all regulatory compliances including OFAC and Bank Secrecy Act/MLA. ... Pat, I would suggest that you check his background thoroughly through all means available and then we can decide if the risk is warranted to have him as a client.”<sup>351</sup> On July 25, 2006, his colleague responded:

“I can relay that the country is not on any government AML watch-list, including the FATF. The individual is not an SDN on OFAC and has no derogatory information in Lexis Nexis. Our main challenge is the BSA [Bank Secrecy Act] monitoring, especially as it relates to an attorney representing a PEP (Professional Front Scheme is a common AML scheme and one the regulators will be right on top of when they monitor our accounts). So it becomes a business risk decision, and keeping in mind that we have a BSA Officer (in contract to a dept that larger banks have to monitor.”<sup>352</sup>

Three weeks later, on September 18, 2006, PMB’s outside vendor, E-Funds, which performed “verification checks” for prospective clients reported that Mr. Obiang was a government official in Equatorial Guinea and a Politically Exposed Person (“PEP”), but also incorrectly stated that he was a U.S. citizen.<sup>353</sup> PMB told the Subcommittee that it found “no

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with Pacific Mercantile Bank, November 17, 2009. See also 8/1/08 letter from Mr. Nagler’s legal counsel to the Subcommittee, PSI-Nagler-02-0005.

<sup>346</sup> 9/15/06 PMB Individual Account Holder form, PSI-Pacific\_Mercantile\_Bank-01-0194-95. See also PMB Individual Account Holder form, PSI-Pacific\_Mercantile\_Bank-01-0280, 01-0177.

<sup>347</sup> PMB new account forms, See PSI-Pacific\_Mercantile\_Bank-01-0184, 198, 210.

<sup>348</sup> See, e.g., 9/15/06 PMB Individual Account Holder form, PSI-Pacific\_Mercantile\_Bank-01-0194.

<sup>349</sup> See copy of social security card, PSI-Pacific\_Mercantile\_Bank-01-0203. Document is under seal. This social security number was assigned to Mr. Obiang by the Social Security Administration, apparently in connection with his California corporation. 12/10/09 letter from the Social Security Administration to the Subcommittee, no bates number.

<sup>350</sup> 9/15/06 memorandum from Mr. Obiang to PMB, SEN008995.

<sup>351</sup> 7/21/06 internal PMB email, PSI-Pacific\_Mercantile\_Bank-01-0114.

<sup>352</sup> 7/25/06 internal PMB email, PSI-Pacific\_Mercantile\_Bank-01-0114.

<sup>353</sup> E-Funds ID Verification Results for Teodoro N Obiang, PSI-Pacific\_Mercantile\_Bank-01-0179-81.

derogatory information in Lexis Nexis” about Mr. Obiang, even though in 2004, the Subcommittee had issued a widely-publicized report and held hearings which raised questions about him.<sup>354</sup> In addition, because Equatorial Guinea was not on any government AML watch-list, PMB decided to rank it as a “low risk” country.<sup>355</sup>

After collecting the due diligence information, PMB used an internal risk scoring model which determined that Mr. Obiang was a high-risk client.<sup>356</sup> Under PMB’s individual scoring model, 0 to 5 points was a low risk client; 6 to 9 points was a moderate risk client; and 10 or more points was a high risk client requiring “enhanced due diligence.”<sup>357</sup> The model automatically assigned a score of 15 to any PEP client.<sup>358</sup> PMB documents indicate that its personnel performed two risk ratings of Mr. Obiang, scoring him at 25 and 34, with his elevated scores due primarily to his PEP status.<sup>359</sup> PMB also told the Subcommittee that Mr. Obiang was the bank’s first and only PEP client. According to PMB, while it concluded in 2006 that it could open an account for Mr. Obiang with enhanced AML monitoring, it said that, under its current policy, it would no longer open an account for him due the difficulty associated with monitoring PEP accounts.<sup>360</sup>

On September 19, 2006, PMB sent a letter to Mr. Obiang stating: “Thank you for choosing Pacific Mercantile Bank and the opportunity to serve you.” It confirmed the opening of his accounts and assigned him a “personal banker.”<sup>361</sup> A copy of the letter was sent to Mr. Nagler.

For the first three months they were open, the accounts were apparently unused. Then on December 14, 2006, Mr. Obiang’s personal checking account received a wire transfer for nearly \$500,000 from Somagui Forestal in Equatorial Guinea.<sup>362</sup> Over the next month, Mr. Obiang wrote eight checks for various purposes, including one to pay for more than \$253,000 in California property taxes. Those disbursements, which exceeded \$446,000, consumed nearly all the available funds in the account. The eight checks were as follows.

<b>Transactions Involving Obiang Account at PMB December 2006-January 2007</b>				
<b>Date</b>	<b>Transaction</b>	<b>Amount</b>	<b>Source or Recipient</b>	<b>Bates</b>
12/14/2006	Wire deposit	\$499,943.53	“Somagui Forestal”	PSI-Pacific_Mercantile_Bank-01-0020
12/18/2006	Check No. 1001	\$5,400.00	“Las Vegas Golf & Tennis”	PSI-Pacific_Mercantile_Bank-01-0023

<sup>354</sup> Subcommittee interview with Pacific Mercantile Bank, November 16, 2009.

<sup>355</sup> See, e.g., PMB Individual Scoring Model, PSI-Pacific\_Mercantile\_Bank-01-0094.

<sup>356</sup> PMB Individual Scoring Model, PSI-Pacific\_Mercantile\_Bank-01-0092-95.

<sup>357</sup> Id. at 93.

<sup>358</sup> Id.

<sup>359</sup> Id. at 92, 95. This is a Sealed Exhibit.

<sup>360</sup> Subcommittee interview with Pacific Mercantile Bank, November 17, 2009.

<sup>361</sup> 9/19/06 letter from PMB to Mr. Obiang, PSI-Pacific\_Mercantile\_Bank-01-0089.

<sup>362</sup> 5/18/06 PMB Wire Original Information Report, PSI-Pacific\_Mercantile\_Bank-01-0020.

12/19/2006	Check No. 1002	\$2,174.00	"DMV" for "Porsche"	PSI-Pacific_Mercantile_Bank-01-0025
12/20/2006	Check No. 1007	\$22,289.00	"Dolce & Gabana"	PSI-Pacific_Mercantile_Bank-01-0027
12/21/2006	Check No. 1008	\$54,720.00	"Saurman Inv. SC"	PSI-Pacific_Mercantile_Bank-01-0029
12/21/2006	Check No. 1009	\$51,903.14	"Starlink Tours"	PSI-Pacific_Mercantile_Bank-01-0031
12/21/2006	Check No. 1010	\$50,000	"Washington Mutual" <sup>363</sup>	PSI-Pacific_Mercantile_Bank-01-0087, 0088
12/21/2006	Check No. 1011	\$253,204.46	"LA County Tax Collector" for "Tax-property 07"	PSI-Pacific_Mercantile_Bank-01-0033
1/04/2007	Check No. 1012	\$56,544.00	"Saurman Inv.Svc"	PSI-Pacific_Mercantile_Bank-02-0001
<b>Source- Pacific Mercantile Bank</b>		<b>Total Deposits - \$499,943.53</b> <b>Total Disbursements - \$496,234.60</b>		

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PMB told the Subcommittee that the \$500,000 wire transfer in mid-December triggered a review of the account.<sup>364</sup> In addition, other documentation indicates that Washington Mutual contacted PMB to inquire about the authenticity of a \$50,000 check drawn on the Obiang checking account, which further directed the bank's attention to the account activity.<sup>365</sup> On February 8, 2007, PMB closed Mr. Obiang's checking account and issued a cashier's check to him for the remaining balance of \$56,693.93.<sup>366</sup> PMB told the Subcommittee that it closed the account, because as a small bank, monitoring the account of a known PEP was too burdensome.<sup>367</sup> According to PMB, it also viewed at least some of the account activity as suspicious.

### (c) Obtaining Insurance for Obiang Assets

In addition to incorporating shell companies, paying his bills, and helping Mr. Obiang open U.S. bank accounts, Mr. Nagler worked with Paul Finestone of Finestone Insurance Agency to obtain insurance for Mr. Obiang's Malibu residence and a fleet of 32 vehicles.<sup>368</sup>

<sup>363</sup> This check apparently was not cashed. An internal PMB email indicated that the check was intended to pay a Washington Mutual credit card bill, but Washington Mutual told PMB that the credit card limit was lower. See PSI-Pacific\_Mercantile\_Bank-01-0087, 0088.

<sup>364</sup> Subcommittee interview with Pacific Mercantile Bank, November 17, 2009.

<sup>365</sup> See 1/11/07 internal PMB email, PSI-Pacific\_Mercantile\_Bank-01-0087; 1/11/07 review of checking account activity, PSI-Pacific\_Mercantile\_Bank-01-0090. See also 2/5/07 review of checking account, PSI-Pacific\_Mercantile\_Bank-01-0096.

<sup>366</sup> 2/8/07 check from PMB to Mr. Obiang, PSI-Pacific\_Mercantile\_Bank-01-0038.

<sup>367</sup> Subcommittee interview with Pacific Mercantile Bank, November 17, 2009.

<sup>368</sup> 12/12/06 email from Mr. Nagler to Mr. Finestone, SEN013561; 6/14/06 email from Mr. Finestone to Ms. DeHaven and Mr. Nagler, SEN010929; 6/14/06 email from Mr. Finestone to Mr. Nagler and Ms. DeHaven, SEN010919.

After several U.S. insurance companies declined to provide either homeowners or automobile insurance to Mr. Obiang, at Mr. Nagler's request, Mr. Finestone undertook an extensive effort to secure insurance for Mr. Obiang's U.S. assets, including by contacting numerous companies, defending Mr. Obiang's reputation, considering leasing arrangements, and utilizing renters and temporary insurance.

**Homeowners Insurance for Malibu Property.** In 2006, Mr. Nagler asked Mr. Finestone to obtain homeowners insurance for Mr. Obiang's newly purchased residence at 3620 Sweetwater, Malibu, California. Initially, Mr. Finestone sought to transfer the coverage maintained by the previous homeowner.<sup>369</sup> Mr. Finestone told Mr. Nagler in an email that given the carrier's history of coverage of the residence, the transfer should be "very easily accomplished" "[a]s long as your client is not 'notorious.'"<sup>370</sup> The existing carrier did not, however, agree to transfer coverage, and in May 2006, Mr. Finestone began contacting other insurance companies.<sup>371</sup> On June 2, 2006, Mr. Finestone notified Mr. Nagler that American International Group, Inc. (AIG) had decided to withdraw an offer after learning more about Mr. Obiang.<sup>372</sup>

"We have very bad news indeed. We have this instant received a fax from the AIG underwriters representative who advises that they have reviewed web sites concerning Teodoro Obiang and that they are withdrawing the written quotations submitted to us for you on all of the coverage for the estate."<sup>373</sup>

Another insurance company submitted five questions to Mr. Finestone seeking additional information about Mr. Obiang, including his occupation and need for armed security guards at the Malibu residence.<sup>374</sup> Mr. Finestone responded that Mr. Obiang was "independently wealthy," an "investor and collector," and required armed security because of the threat of kidnapping and ransom inherent with his wealth.<sup>375</sup> Additionally, Mr. Finestone noted that Equatorial Guinea "is a major supplier of oil to America and a critical interest of American energy needs;" and stated that "the father [President Obiang] is no better and no worse than the Saudi Royal family. ... We insure billions and billions of dollars of Saudi property bought with our oil money here in America and AIG has no problem handling a great deal of that business."

On June 9, 2006, Mr. Finestone advised Mr. Nagler that Homeland Insurance had offered to provide one year of homeowners coverage for about \$85,000.<sup>376</sup> In his email to Mr. Nagler, Mr. Finestone wrote: "WE ARE CERTAIN THAT THE INSURER KNOWS WHO THEY ARE INSURING."<sup>377</sup> On June 14, 2009, Mr. Nagler advised Mr. Obiang to accept the coverage, because it was the only policy available.<sup>378</sup>

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<sup>369</sup> 5/5/05 email from Mr. Finestone to Mr. Nagler, SEN011296.

<sup>370</sup> Id.

<sup>371</sup> 5/24/06 email from Mr. Finestone to Mr. Nagler, SEN011148.

<sup>372</sup> 6/2/06 email from Mr. Finestone to Mr. Nagler, SEN011137.

<sup>373</sup> Id.

<sup>374</sup> 6/7/06 email from Mr. Finestone to Mr. Nagler, SEN011068.

<sup>375</sup> Id at 11069.

<sup>376</sup> Id. at 11069.

<sup>377</sup> 6/9/06 email from Mr. Finestone to Mr. Nagler, SEN011045.

<sup>378</sup> 6/14/06 email from Mr. Nagler to Mr. Obiang, SEN010918.

Mr. Nagler provided Mr. Obiang with a “Homeowner’s Summary” from Mr. Finestone showing that he had contacted eleven insurance agencies and only one had agreed to provide insurance on the Malibu property.<sup>379</sup> The summary prepared by Mr. Finestone showed that two major insurers, Chubb Insurance and AIG Private Client, had declined to provide the homeowners insurance, because “client profile too high” and “will not write due to political exposure.”<sup>380</sup> Although others cited brush fire dangers and a high property value as reasons for the declination, Mr. Finestone noted in his summary that “clearly politics is part of the placement process on this property.”<sup>381</sup> Mr. Finestone characterized one insurer’s decision, presumably that of Homeland Insurance, to provide property damage but not liability insurance, in the following email to Mr. Nagler:

“We had a single market prepared to accept coverage on the homeowners and they refused liability coverage given whom the client is and their perceived exposure to political risk and ‘social’ risk.”<sup>382</sup>

He also wrote that “Farmers Insurance does not fully appreciate whom their client is at this time and we hesitate to trip them into a detailed review given the current automobile savings.”<sup>383</sup> Mr. Finestone was negotiating with Farmers at the time to provide both homeowners and automobile insurance to Mr. Obiang.<sup>384</sup>

Approximately one year later, in August 2007, it appears that, although Homeland Insurance had provided property damage coverage, property liability insurance had still not been obtained.<sup>385</sup> In an email to Mr. Obiang, Mr. Nagler recommended that he create the impression he was leasing the Malibu property to justify rental insurance that would provide added liability protection:

“[Y]ou should have a lease prepared between the limited liability company that owns your Sweetwater home and you individually showing that you are leasing the house from the company. This will support the so called renters policy that provides liability protection for your protection.”<sup>386</sup>

This email suggests that Mr. Nagler, a licensed attorney, was advising his client to create a fictitious lease between himself and Sweetwater Malibu LLC to “support” a renters insurance policy for the Malibu residence when, in fact, Mr. Obiang was the beneficial owner of that company and thus would be leasing the house from himself.

**Automobile Insurance.** Mr. Nagler and Mr. Finestone also worked together to obtain insurance for Mr. Obiang’s fleet of 32 motorcycles and automobiles.

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<sup>379</sup> 6/14/06 email from Mr. Finestone to Mr. Nagler and Ms. DeHaven, SEN010919.

<sup>380</sup> Id.

<sup>381</sup> Id.

<sup>382</sup> 4/29/07 email from Mr. Finestone to Mr. Nagler, SEN013836.

<sup>383</sup> 6/14/06 email from Mr. Finestone to Mr. Nagler and Ms. DeHaven, SEN010919.

<sup>384</sup> 7/26/06 email from Mr. Finestone to Ms. DeHaven and Mr. Nagler, SEN010297.

<sup>385</sup> 8/11/07 email from Mr. Nagler to Mr. Obiang, SEN004091, R.2395.

<sup>386</sup> Id.

On June 12, 2006, Mr. Finestone notified Mr. Nagler that Mr. Obiang's lack of a valid California driver's license was prohibitive to obtaining reasonably priced motorcycle insurance.<sup>387</sup> Apart from recommending that Mr. Obiang obtain a California license, he proposed two alternatives to secure the necessary insurance. First, he proposed that Mr. Obiang lease the motorcycles to Mr. Nagler for \$1 per year to be lent back to Mr. Obiang.<sup>388</sup> Second, he proposed acquiring insurance for the entire fleet of vehicles, using licensed drivers in addition to Mr. Obiang.<sup>389</sup> Mr. Finestone wrote:

“[I]f there were a couple of relatively clean drivers with CA information that the underwriters could verify on the drivers list which forms part of the application, it makes it easier for them to reasonably accept a foreign non California licensed driver as the primary driver. We continue to look for every possibility to best secure and put to bed all of the various problems for Mr. Obiang”<sup>390</sup>

The two alternatives suggested by Mr. Finestone involve creating either a fictitious lease or the misimpression that other California drivers would be using the vehicles owned by Mr. Obiang.

In July 2006, automobile insurance for all of Mr. Obiang's vehicles was still unresolved. It appears that Mr. Obiang was receiving temporary coverage for at least some vehicles through State Farm using a 15-day grace period on pending applications for insurance.<sup>391</sup> However, on July 24, State Farm advised Mr. Finestone that the temporary coverage would expire on July 26.<sup>392</sup> To keep Mr. Obiang covered for an additional 15 days, it appears that Mr. Finestone used his friendship with a State Farm employee to renew the pending applications, as explained in this email he sent to Mr. Nagler.

“We are going to get another 15 days by collapsing the current applications. ... My friend will then re enter all of the data for a second new application in return for an outrageously expensive sushi dinner at his favorite place. ... I think I can only do this once (depending on his appetite for a sushi fix and the risk of doing this if his superiors observe the action – they would not approve) .... [T]hat gives us another 15 days from today to get this done.”<sup>393</sup>

Mr. Finestone openly advised Mr. Nagler of this deceptive scheme to obtain a continuance of automobile insurance for Mr. Obiang in violation of State Farm policy.

Billing records obtained by the Subcommittee indicate that Mr. Obiang was able to obtain automobile and motorcycle insurance for the year 2007 to 2008, from Hagerty Insurance, Essex Insurance, and Progressive Insurance, at a cost of more than \$274,000. These policies appear to have ensured 32 motorcycles and automobiles, including seven Ferraris, five Bentleys, four Rolls

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<sup>387</sup> 6/12/06 email from Mr. Finestone to Ms. DeHaven and Mr. Nagler, SEN010987.

<sup>388</sup> Id.

<sup>389</sup> 6/14/06 email from Mr. Finestone to Ms. DeHaven and Mr. Nagler, SEN010929.

<sup>390</sup> Id. Mr. Finestone also provided Mr. Nagler with a sample letter from the Government of Equatorial Guinea to certify that Mr. Obiang had a clean driving record in that country. 6/13/06 email from Mr. Finestone to Ms. DeHaven and Mr. Nagler, SEN010960-61.

<sup>391</sup> 7/26/06 email from Mr. Finestone to Ms. DeHaven and Mr. Nagler, SEN010297.

<sup>392</sup> 7/25/06 email from Ms. DeHaven to Mr. Finestone, SEN010306.

<sup>393</sup> 7/26/06 email from Mr. Finestone to Ms. DeHaven and Mr. Nagler, SEB010297.

Royces, two Lamborghinis, two Maybachs, two Mercedes, two Porches, one Aston-Martin, and one Bugatti, with a collective insured value of \$9.5 million.<sup>394</sup>

#### **(d) Awareness of the Suspect Origins of Obiang Funds**

During the two years that Mr. Nagler worked for Mr. Obiang, he was well aware of Mr. Obiang's background and the suspect origins of his funds. On August 11, 2005, approximately one month before Mr. Nagler began working for Mr. Obiang, Rosalina Roma, an Obiang assistant, informed Mr. Nagler in an email that his future client "is Teodoro Nguema Obiang from Equatorial Guinea, his father is the president of this country."<sup>395</sup> In July 2006, Mr. Nagler sent a previously-cited email to Pacific Mercantile Bank defending Mr. Obiang's reputation and noting that, "Neither Mr Nguema nor his father has ever been convicted or even charged with violating US law."<sup>396</sup> Throughout 2006, in connection with his work to obtain home and automobile insurance for Mr. Obiang, Mr. Nagler was exposed to insurance company concerns about Mr. Obiang's reputation and source of funds.

In late 2006, Mr. Nagler asked the public relations firm Winner & Associates to propose a strategic communications plan for Mr. Obiang. On November 21, 2006, Winner & Associates sent Mr. Nagler a proposal which stated in part:

"[W]e understand that Mr. Nguema desires to communicate on a range of issues including the progress being made by Equatorial Guinea. Several of the issues that have helped bring about that progress involve positive developmental programs that are unknown or misunderstood by certain non-governmental organizations which have been communicating negatively about Mr. Nguema and the government of Equatorial Guinea. ... [W]e believe that our services in the areas of crisis communication, media relations, third-party advocacy, and strategic positioning can assist in communicating positive information about Mr. Nguema, his government, and his country, while at the same time curtailing what has become a tide of misinformation put into a negative context by Mr. Nguema's adversaries. ... The negative communications we are monitoring seem to be more frequent and the sooner we can intervene, the better."<sup>397</sup>

Approximately one month later on January 19, 2007, Winner & Associates emailed Mr. Nagler an article entitled, "Malibu Bad Neighbor; A Dictator in Training Buys His Way in as Politically Active Superstars Stay Mum."<sup>398</sup> The next month, on February 6, 2007, apparently without an agreement to provide services, Winner & Associates sent Mr. Nagler an article entitled, "Dictator's Son Moves in; Time for Malibu to Speak Out," and warned: "Dear George, The communications context for your client appears to be going further downhill. There will be a point beyond which we will be unable to help."<sup>399</sup>

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<sup>394</sup> 9/17/07 policy statement from Hagerty Insurance, SEN000213 to SEN000221; 10/15/07 invoice from Finestone Insurance Agency, SEN000222; 6/21/07 invoice from Finestone Insurance Agency, SEN000293.

<sup>395</sup> 8/11/05 email from Ms. Romo to Mr. Nagler, SEN005794.

<sup>396</sup> 7/20/06 email from Mr. Nagler to PMB, PSI-Pacific\_Mercantile\_Bank-01-0114-15.

<sup>397</sup> 11/21/06 email from Winner & Associates to Mr. Nagler, SEN008925, R 2380.

<sup>398</sup> 19/19/07 email from Winner & Associates to Mr. Nagler, SEN008895, R 2381.

<sup>399</sup> 2/6/07 07 email from Winner & Associates to Mr. Nagler, SEN008880.

On another occasion in June 2006, when Mr. Obiang had instructed his staff to secure space for a private jet he had just purchased,<sup>400</sup> the owner of an airplane hangar who was an acquaintance of Mr. Nagler sent him the following email:

“I got the feeling when I did not get the material that he was not interested in disclosing his client’s [Mr. Obiang’s] background. I don’t feel comfortable in being responsible for someone I have no idea who he is and on top of that, one who has diplomatic credentials.”<sup>401</sup>

Mr. Nagler responded with a recommendation for Mr. Obiang in which he listed four professional references, two associated with his luxury car collection, one associated with his private jet, and Neil Baddin, a Coldwell Banker realtor who helped arrange Mr. Obiang’s purchase of his Malibu property.<sup>402</sup> Mr. Nagler also disclosed that Mr. Obiang was the EG Minister of Agriculture and Forests, requested that information be kept confidential, and asked the hangar owner to call him directly to discuss his concerns.<sup>403</sup>

Two months later, on August 14, 2007, an Obiang employee, Ms. Romo, sent an email to Mr. Berger stating that Mr. Obiang had terminated his relationship with Mr. Nagler.<sup>404</sup> Mr. Nagler told the Subcommittee that his employment by Mr. Obiang ended in September 2007.

### **(3) Analysis**

The Obiang case history demonstrates how a determined PEP can employ the services of U.S. attorneys to bring millions of dollars in suspect funds into the United States through U.S. financial institutions. Mr. Berger and Mr. Nagler helped Mr. Obiang utilize accounts at six different U.S. banks, both large and small, from 2004 to 2008. Most of these accounts were not opened in Mr. Obiang’s name, but were set up for him to use without alerting the host bank and often without triggering the bank’s AML and PEP controls for months or sometimes years. The tactics used in this case history expose a variety of AML and PEP deficiencies at U.S. banks that ought to be strengthened.

Union Bank of California, for example, had designated Equatorial Guinea as a high-risk country in 2004, and identified and closed an Obiang employee account and a shell company account receiving EG funds. The bank did not know for three years, until 2007, that Mr. Obiang was still using the bank’s services by utilizing two U.S. shell company accounts for Unlimited Horizon as well as Mr. Berger’s law office account at the bank. Mr. Berger opened each of those accounts, but did not disclose that Mr. Obiang was the beneficial owner of Unlimited Horizon or that the law office account would be conducting transactions on Mr. Obiang’s behalf. In 2006, UBOC’s routine monitoring systems flagged high-dollar EG wires that had begun to be sent to the Berger law office account. But UBOC personnel took six months to initiate a review of those wire transfers, ironically because its AML personnel were negotiating a deferred prosecution

<sup>400</sup> 6/7/06 fax from Mr. Nagler SEN011075.

<sup>401</sup> 6/7/06 email to Ms. DeHaven, SEN011096.

<sup>402</sup> 6/7/06 fax from Mr. Nagler to airport hanger contact, SEN011075.

<sup>403</sup> Id.

<sup>404</sup> 8/14/07 email from Ms. Romo to Mr. Berger, SEN000589. Throughout the email, Ms. Romo referred to a “Mr. Smith,” seemingly in place of Mr. Obiang’s name. This practice has been noted in other messages as well. See, e.g, SEN011704 -05; SEN010918; SEN005767; SEN004091.



agreement with the U.S. Justice Department over its inadequate AML program. When the AML department finally reviewed the EG wire transfers, UBOC immediately uncovered Mr. Obiang's use of the shell company and law office accounts, and immediately closed them. The key AML deficiencies that allowed Mr. Obiang to take advantage of UBOC were the absence of beneficial ownership information for Unlimited Horizon and the bank's failure to promptly review the data it had collected on high risk wire transfers.

Bank of America also opened accounts for a U.S. shell company, Beautiful Vision, at the request of Mr. Berger, a longstanding customer of the bank. Mr. Berger did not disclose that Mr. Obiang was the beneficial owner of the company or explain why Mr. Obiang was the sole signatory on one of the Beautiful Vision accounts. From 2004 to 2005, Mr. Obiang made open use of one of the Beautiful Vision accounts by signing numerous, high-dollar checks that together exceeded \$7.6 million in less than a year, but Bank of America did not conduct a due diligence review of him, did not learn of his PEP status, and did not review the account activity, even after Mr. Obiang used Beautiful Vision account funds to purchase a \$3.3 million cashier's check and cashed it in Equatorial Guinea. In 2005, a flurry of wire transfers involving a newly-opened Beautiful Vision account did trigger a review, and Bank of America quickly discovered Mr. Obiang's connection to the company, and closed its accounts. However, the bank took no action against the Berger accounts, even though he had opened the Beautiful Vision accounts in the first place and hidden Mr. Obiang's involvement. Over the next year, Mr. Obiang sent a number of high-dollar EG wire transfers to Mr. Berger's attorney-client account at Bank of America, most of which Mr. Berger transferred within days to other Obiang-related accounts, but the bank did not review the account activity. It was only in 2007, that Bank of America conducted a review, quickly discovered Mr. Obiang's use of the account, and closed it. The AML deficiencies here include the failure to review high-risk wire transfers sent to an attorney-client account; the failure to take action against an attorney who violated bank policy by hiding the beneficial owner behind a shell company account; the failure to examine shell company accounts with multi-million-dollar account activity; and the failure to perform a due diligence of all account signatories.

Like UBOC and Bank of America, Citibank also opened a U.S. shell company account at the request of Mr. Berger, but before doing so, conducted a much more detailed due diligence review of Unlimited Horizon. Citibank asked, for example, for information about the company's beneficial owners, inquired about any PEP involvement, and physically visited the business address of the company. Its oversight efforts, however, were frustrated by Mr. Berger's willingness to provide deceptive information about the company. Mr. Berger was also careful to ensure that no high-dollar EG wire transfers were sent to the Unlimited Horizon account at Citibank that might trigger a bank review, instead providing funding through checks drawn on his attorney-client account at Bank of America. Despite these precautions, Citibank's monitoring of the account activity led the bank to question the transactions taking place, and it closed the account ten months after it opened. Despite its reasonable AML efforts, Citibank was taken advantage of by Mr. Obiang and Mr. Berger. The key problem was Citibank's inability to identify the true owner of Unlimited Horizon, a problem that would have been less difficult if U.S. shell companies were required to identify their beneficial owners, under oath, to the State where the company was formed. That type of incorporation requirement might also have led Mr. Berger to provide accurate beneficial ownership information for the company to protect his law license.

Cal National Bank opened accounts for still another set of U.S. shell companies associated with Mr. Obiang, Sweetwater Malibu and Sweetwater Management. Unlike Citibank, however, Cal National Bank knowingly allowed a property manager, who was a long-time customer of the bank, to open these accounts without disclosing the beneficial owners of the companies. Due to a fortunate series of events, within one month, Cal National Bank discovered Mr. Obiang's connection to the companies and, in light of the bank's policy against opening accounts for PEPs, immediately closed them. It also placed Mr. Obiang on a "hot list" to prevent him from using bank services in the future. The bank took no action, however, against the property manager, even though he was the one who hid Mr. Obiang's involvement from the bank and violated its no-PEP policy. The key AML deficiencies exposed here include the bank's willingness to allow a longstanding customer to skip a basic disclosure requirement and then, after discovering the customer took advantage of the bank, to continue to do business with him.

City National Bank had the longest history with Mr. Obiang of the six banks examined in this case history. From 2001 to 2003, the bank allowed Mr. Obiang to open five accounts for his California company, TNO Entertainment, without learning of his PEP status. In 2004, the bank allowed Mr. Obiang to open a personal checking account, again without learning of his PEP status. When a \$1 million EG wire transfer triggered a review of the account two months later, the bank learned for the first time that Mr. Obiang was an EG official, the son of the EG President, and the subject of corruption allegations. The bank immediately closed the account and put Mr. Obiang on a "hot list" to block his doing business with the bank. Despite this action, during the summer of 2006, Mr. Nagler printed checks with Sweetwater Management Inc. at the top and the account number of his attorney-client or law office account at the bottom and used them to pay Obiang bills and expenses. In 2008, Mr. Obiang sent an EG wire transfer to still another third party account at City National Bank and then withdrew the funds at ATM machines and casinos in the United States.

City National Bank's experiences with Mr. Obiang expose a variety of tactics that can be used to access U.S. bank accounts, even after a PEP is explicitly barred from a bank. Key AML and PEP deficiencies include the bank's poor due diligence efforts that failed to uncover Mr. Obiang's PEP status from 2001 until 2004; and Mr. Nagler's use of his attorney-client and law office accounts as checking accounts for Mr. Obiang's shell companies. In addition, after learning of the checks that Mr. Nagler created, the bank chose not to close the Nagler accounts, but simply designate them as "high risk" warranting enhanced monitoring. That decision, like that of Cal National Bank regarding the property manager, demonstrates banks' reluctance to end relationships with longstanding customers, even when they are discovered to be facilitating a PEP's use of bank services without informing the bank. A final problem is City National Bank's failure to detect and block high risk wire transfers before they deliver funds to an account, including the \$1 million EG wire transfer in 2006, the \$40,000 in EG wire transfers sent to the Nagler attorney-client account, and the \$30,000 in EG wire transfers to the third party account in 2008. City National Bank had added Mr. Obiang's to its internal "hot list" to block his use of bank services, but its interdiction software failed to block wire transfers bearing his name or to flag wire transfers from Equatorial Guinea for further inspection.

Pacific Mercantile Bank is the only one of the six banks that opened an account in the name of Mr. Obiang, while knowing of his PEP status. It did so in 2006, after Mr. Nagler supplied a letter of recommendation, its staff conducted a limited due diligence review that

missed press articles containing negative information about Mr. Obiang, and its staff reached the surprising conclusion that Equatorial Guinea was a low risk country. On the other hand, to the bank's credit, when the Obiang account received a \$500,000 EG wire transfer and disbursed nearly all of the funds within a month, the bank decided that it was ill-equipped to oversee such high risk transactions and immediately closed the account.

Together, these six banks provide evidence that U.S. financial institutions need to strengthen their AML and PEP controls if they are to keep foreign corruption out of the United States. Stronger measures include using better PEP lists to identify PEP clients and obtain accurate information about them; obtaining beneficial ownership information for U.S. shell companies; providing prompt reviews of high-dollar wire transfers from high risk jurisdictions; and strengthening the monitoring of PEP, attorney-client, law office, and shell company accounts by designating them as high risk accounts. Banks should also consider obtaining a written certification from each attorney-client and law office account that the account will not be used to bypass AML or PEP controls at the bank, conceal PEP activity from the bank, bring suspect funds into the bank, or provide services to a PEP who had been excluded from the bank.

### **C. Obiang Use of Real Estate and Escrow Agents to Purchase U.S. Property With Suspect Funds**

In addition to members of the U.S. legal profession, Mr. Obiang employed members of the U.S. real estate industry to help him buy and sell high-end real estate in California, using millions of dollars in suspect funds transferred from Equatorial Guinea. Neal Baddin, a real estate agent at Coldwell Banker, helped Mr. Obiang purchase the \$30 million property in Malibu, while John Kerrigan, a real estate agent with Mirzo International Inc., helped Mr. Obiang sell a Los Angeles area house for \$7.7 million. First American provided key escrow services for the Malibu purchase, accepting \$30 million in wire transfers from Equatorial Guinea to complete the transaction. Neither the real estate agents nor the escrow company asked Mr. Obiang about the source of his funds, even when he made a multi-million-dollar real estate purchase without using a mortgage and wire transferred the needed funds from a country known for corruption, since none had a legal obligation to inquire.

As explained earlier, since 1988, U.S. AML laws have identified “persons involved in real estate closings and settlements” as vulnerable to money laundering abuses due to the large sums of money involved in their transactions.<sup>405</sup> The 2001 Patriot Act required this group to establish AML programs, unless exempted by the Treasury Department.<sup>406</sup> In 2002, the Treasury Department issued a “temporary” exemption for persons involved in real estate closings and settlements from the new requirement; eight years later, the Treasury Department still has not required them to establish AML programs.<sup>407</sup> Nor has the real estate industry issued AML guidance to its members. That means, under current law, U.S. real estate and escrow agents operate without any legal obligation to know their customers, evaluate the source of their funds, or exercise special precautions when dealing with PEPs.

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<sup>405</sup> See 31 USC § 5312(a)(2)(U)(including “persons involved in real estate closings and settlements” in the list of “financial institutions” subject to U.S. AML requirements).

<sup>406</sup> See Section 352 of the Patriot Act of 2001, P.L. 107-56 (October 26, 2001), codified at 31 USC § 5318(h).

<sup>407</sup> See 31 CFR § 103.170, as codified by interim final rule published at 67 FR 21110 (April 29, 2002, as amended at 67 FR 67547 (November 6, 2002) and corrected at 67 FR 68935 (November 14, 2002).

### (1) Real Estate Agent Neil Baddin

Neal Baddin has been involved in the real estate business for 29 years.<sup>408</sup> Originally from Minnesota, he moved to Los Angeles in 1979, and over the years worked at a number of real estate firms. He currently works as an independent contractor in a branch office of Coldwell Banker.

Mr. Baddin's office is located in the Hollywood Hills, and he told the Subcommittee that he works with many people in the entertainment industry.<sup>409</sup> He stated that he usually works with clients seeking property in the \$800,000 to \$2 million price range. Mr. Baddin said he attracts clients through referrals, telephone calls, and advertising. He indicated that the \$30 million purchase of the Malibu property by Mr. Obiang was the largest transaction he has worked on.

**Introduction to Mr. Obiang.** Mr. Baddin stated that he was introduced to Mr. Obiang by Michael Jay Berger, whom he has known since the early 1990s when Mr. Berger moved into Mr. Baddin's neighborhood.<sup>410</sup> Mr. Baddin stated that Mr. Berger called him in August or September 2004, said he was representing a wealthy client who wanted to buy a property, and the client was looking for a new real estate agent. Mr. Baddin wasn't sure if Mr. Berger mentioned the client's name at that time, but understood that it would be a "delicate and intricate sales transaction."

Mr. Baddin said that, in or around October 2004, Mr. Berger arranged a meeting at the Beverly Wilshire Hotel where he introduced Mr. Baddin to Mr. Obiang.<sup>411</sup> Mr. Baddin said the meeting took place in a suite, that Mr. Obiang was accompanied by a woman that may have been his girlfriend, and that his impression was that Mr. Obiang was "bigger than life." Mr. Baddin reported that they spoke very little about real estate, except in general terms. Mr. Baddin said Mr. Berger had told him that Mr. Obiang had a house in mind and had made previous bids on the residence without success. At the end of the meeting, Mr. Baddin said that he did not know if he would ultimately be representing Mr. Obiang.

Mr. Baddin said that, about a month later, Mr. Berger telephoned and told him that Mr. Obiang wanted to work with him.<sup>412</sup> On November 1, 2004, Mr. Baddin entered into an exclusive retainer agreement to locate property for Mr. Obiang. The retainer agreement said that the real estate agent fee for the purchase of a property would comply with the Multiple Listing Service (MLS), and that, "The first and only house for now to be covered by this agreement is

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<sup>408</sup> Subcommittee interview of Mr. Baddin, May 12, 2008.

<sup>409</sup> Id.

<sup>410</sup> Id.

<sup>411</sup> Id. Prior to meeting Mr. Obiang, Mr. Baddin stated that in or around April 2004, he had visited Mr. Obiang's then residence on Antelo Road during an open house. Mr. Baddin wrote: "Regarding my visit to Mr. Ngeuma's house on Antelo, My wife and I saw it advertised as an Open House on a Sunday approximately around 4/04. ... Mr. Kerrigan was holding it open. We were amazed at this round Nautilus shaped house, but what was more amazing was the car collection in the garage that John showed us. We asked John, 'who owns this house?' He said, I shouldn't really say, but he's a minister of a very wealthy country in Africa. ... I did not try to make contact with the Owner. ... By coincidence and by a mutual friend, I was introduced to Mr. Nguema around 10/04." Memorandum from Mr. Berger, PSI-Coldwell\_Banker-01-000502.

<sup>412</sup> Subcommittee interview of Mr. Baddin, May 12, 2008.

3620 Sweetwater Mesa Road, Malibu CA.”<sup>413</sup> The agreement was signed by Mr. Berger as president of Beautiful Vision Inc.<sup>414</sup> Mr. Baddin told the Subcommittee he didn’t know why the retainer agreement was signed by Mr. Berger or what business Beautiful Vision was engaged in, but knew that it was a company that had been created by Mr. Obiang with Mr. Berger, and had no employees.<sup>415</sup>

**Bidding on the Property.** In November 2004, Mr. Baddin and Mr. Berger went to look at the Sweetwater property in an exclusive gated community in Malibu, California. Mr. Baddin said that the property was “one of the most extraordinary pieces of property I’ve ever seen in my life.”<sup>416</sup> He described it as “12 acres of land over looking one of the most famous surfing beaches in California. The main house was 15,000 square feet in a Mediterranean style. There was a 2500 square foot guest house, 2 gate houses, a pool overlooking the ocean, a small putting green, and a tennis court.” The asking price was \$35 million. Mr. Baddin said that an assistant from the listing company, Hilton & Hyland, met them at the property to show it to them.

Over the course of more than a year, he said that Mr. Obiang made five offers on the property. The first, in November, was for \$27 million.<sup>417</sup> Mr. Baddin submitted this offer in person to Hilton & Hyland which countered with an offer of \$32 million.<sup>418</sup> Mr. Obiang responded with an offer of \$27.5 million.<sup>419</sup> Mr. Baddin said that, on November 8, 2004, Hilton & Hyland countered with \$31.5 million.<sup>420</sup>

Mr. Baddin said that about six months then went by without further developments.<sup>421</sup> He said that he ran into Mr. Berger and inquired about the property but received no new information. In September 2005, Mr. Baddin stated that he received a call from either Mr. Obiang or Mr. Berger informing him that Mr. Obiang wanted to make a new offer. Mr. Baddin confirmed that the property was still on the market, and called Mr. Obiang with that information. He said that

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<sup>413</sup> 11/1/04 Exclusive Retainer Agreement to Locate Real Property, PSI-Coldwell\_Banker 01 000501.

<sup>414</sup> Id. This was the only retainer agreement that was signed between Mr. Baddin and Mr. Berger acting as an agent of Mr. Obiang.

<sup>415</sup> In a statement later submitted in connection with an arbitration proceeding, Mr. Obiang described Beautiful Vision as “my company.” January 2007 Declaration of Michael Berger, *Mirzo International, Inc. v. Hyland*, Case No. AB06-15 (Beverly Hills/Greater Los Angeles Association of Realtors Arbitration Complaint Case), SEN007574-76, at 7575.

<sup>416</sup> Subcommittee interview of Mr. Baddin, May 12, 2008.

<sup>417</sup> 3/11/09 legal counsel to Neal Baddin’s written response to Subcommittee questions, PSI-Coldwell\_Banker 03-0002.

<sup>418</sup> Mr. Baddin reported that although he submitted this offer, he understood that another real estate agent, John Kerrigan, had submitted an offer for Obiang prior to the offer Mr. Baddin submitted. In a written statement, Mr. Baddin wrote, “I asked both Mr. Berger and Mr. Ngeuma why they weren’t continuing to work with Mr. Kerrigan. They both explained to me jointly and separately that Mr. Kerrigan had bungled the sale of Mr. Nguema’s property on Antelo. They said he let the Buyer move in to Antelo before the close of escrow without Mr. Nguema’s permission. The Buyer also refused to close the escrow on time and the transaction became litigious.” Memorandum from Mr. Baddin, PSI Coldwell Banker 01 000502.

<sup>419</sup> 3/11/09 legal counsel to Neal Baddin’s written response to Subcommittee questions, PSI Coldwell Banker-03-0002. Mr. Baddin noted that throughout the negotiations, Mr. Obiang was very difficult to reach and didn’t always return Mr. Baddin’s phone calls. He also noted that at times he would have an appointment with Mr. Obiang, and he would spend hours waiting at his house and Mr. Obiang wouldn’t come downstairs or he wouldn’t show up.

<sup>420</sup> 3/11/09 legal counsel to Neal Baddin’s written response to Subcommittee questions, PSI-Coldwell Banker-03-0002.

<sup>421</sup> Subcommittee interview of Mr. Baddin, May 12, 2008.

Mr. Obiang said “Let’s give it another try,” and informed him that another attorney who specialized in real estate, George Nagler, would be involved in the transaction. Mr. Baddin said that he began dealing with Mr. Nagler as well as Mr. Berger, but that Mr. Obiang remained the primary contact.<sup>422</sup> On September 30, 2005, Mr. Obiang submitted a new offer for \$28.5 million.<sup>423</sup>

In November 2005, Mr. Baddin took Mr. Nagler to see the property.<sup>424</sup> On December 21, 2005, Mr. Baddin submitted a fourth offer on behalf of Mr. Obiang to buy the property for \$30 million.<sup>425</sup> The seller countered on December 28 for \$31 million. Mr. Baddin said at that point, the transaction was becoming complicated, and the attorneys began dealing directly with one another.<sup>426</sup> In December 2005, Mr. Obiang contacted Mr. Baddin who presented Hilton & Hyland with a fifth offer for \$30.5 million. In early January 2006, Mr. Nagler called Mr. Baddin and informed him that the seller had accepted the offer. According to Mr. Baddin, the final price was \$30 million for the residence and \$750,000 for specified furnishings in the house.<sup>427</sup>

**Escrow Deposits.** To complete the purchase of the Malibu property, in January 2006, Hilton & Hyland and Coldwell Banker opened an escrow account at First American Title Company.<sup>428</sup> Mr. Baddin stated that the seller chose the escrow agent.<sup>429</sup>

Mr. Baddin told the Subcommittee that, a few months earlier, Hilton & Hyland had asked for funds to be placed in escrow at Coldwell Banker to demonstrate that Mr. Obiang was making a serious bid on the Malibu property. In an email dated October 3, 2005, Hilton & Hyland wrote: “In order for us to present your offer on Sweetwater Mesa to the owner’s attorney, we need verification of funds from your buyer.”<sup>430</sup> Mr. Baddin said that, in response, Mr. Obiang transferred \$500,000 to an escrow account at West Coast Escrow, which was affiliated with Coldwell Banker.<sup>431</sup> On December 22, 2005, Mr. Obiang sent an additional \$900,000 to the escrow account, sending the funds from another U.S. account rather than from Equatorial

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<sup>422</sup> A September 29, 2005, email from Lina Romo, an Obiang assistant, confirms Mr. Nagler’s involvement in the transaction when she asks Mr. Nagler to send the documents for the Malibu property to Mr. Obiang at the Hotel Crillon in Paris. See 11/29/05 email from Ms. Romo to Mr. Baddin, PSI Coldwell Banker 01-000385.

<sup>423</sup> 3/11/09 legal counsel to Neal Baddin’s written response to Subcommittee questions, PSI-Coldwell\_Banker 03-0002.

<sup>424</sup> Subcommittee interview of Mr. Baddin, May 12, 2008.

<sup>425</sup> 3/11/09 legal counsel to Neal Baddin’s written response to Subcommittee questions, PSI-Coldwell\_Banker 03-0002.

<sup>426</sup> According to Mr. Baddin, the complicating factors included whether or not the furniture would remain with the house and the date when the seller would vacate the property.

<sup>427</sup> 3/11/09 legal counsel to Neal Baddin’s written response to Subcommittee questions, PSI-Coldwell\_Banker-03-0002.

<sup>428</sup> California law requires that the real estate buyer place money in escrow. First American Title Company owns First American Trust Company; First American Title Company is, in turn, owned by its parent company, First American Corporation. Subcommittee interview with First American, January 15, 2010.

<sup>429</sup> Subcommittee interview of Mr. Baddin, May 12, 2008.

<sup>430</sup> 10/3/05 email from Hilton & Hyland to Mr. Berger, PSI-Coldwell-Banker-01-000386 R. 1396. In a February 1, 2008 telephone call with the Subcommittee, Alla Furman of Hilton & Hyland stated that she knew something was unusual with this transaction because it was “all confidential” and it “sounded weird to us.”

<sup>431</sup> See fax from Mr. Baddin PSI Coldwell Banker 01-000706-7 (instructions from Mr. Baddin to Mr. Obiang’s attorney, Mat Hsu, to send funds to the West Coast Escrow account at Comerica Bank).

Guinea.<sup>432</sup> On February 2, 2006, West Coast Escrow, on behalf of Mr. Obiang, wire transferred the \$900,000 to First American Title Company as a down payment on the purchase of the Malibu residence. The funds were placed in First American's escrow account at Wachovia Bank.<sup>433</sup>

Mr. Baddin told the Subcommittee that, after the price was agreed on and the escrow deposits made, he spent the next 45 days, from January into February 2006, helping to conduct detailed inspections of the property.<sup>434</sup> He said that Mr. Obiang did not accompany him, and he dealt exclusively with Mr. Nagler. He said that several repairs were needed, and the seller agreed to credit \$80,000 to \$100,000 back to the buyer for the repairs.

**Confidentiality Agreement.** Mr. Baddin told the Subcommittee that, on March 31, 2006, just prior to the purchase of the Malibu property, Coldwell Banker was asked to and did sign a confidentiality agreement regarding the purchase.<sup>435</sup> The agreement stated that the identity of Mr. Obiang was "confidential" and "not to be disclosed to anyone."<sup>436</sup>

Mr. Baddin stated that he had signed a few confidentiality agreements in the past, "usually for a celebrity type of person." Mr. Baddin stated that being asked to sign a confidentiality agreement did not raise a red flag for him, because people are "nosy." Hilton & Hyland told the Subcommittee that both the seller and the buyer wanted a confidentiality agreement.<sup>437</sup>

Mr. Baddin told the Subcommittee that, in addition to signing the confidentiality agreement, he decided not to list his name in the real estate MLS system as the buyer's real estate agent. Mr. Baddin said that he didn't want to be listed in the MLS system, because it was a very high end sale and if he had been listed, he would have been "bombarded" by other agents. Mr. Baddin reported that Hilton & Hyland had asked him if he wanted to be listed as the buyer's agent, and he declined. He said that he usually puts his name in the system, and there have been only a few times when he hasn't. Mr. Baddin noted that he could have been fined \$250 for not putting his name in the system.

**\$30 Million in EG Wire Transfers.** The grant deed for the Malibu property indicates that the seller sold the residence to Sweetwater Malibu LLC on February 27, 2006.<sup>438</sup> According to Mr. Baddin, while the deed was signed and notarized on February 27<sup>th</sup>, the deal was not

<sup>432</sup> See 12/22/05 letter from Sidley Austin to Citibank Private Bank requesting the wire transfer to West Coast Escrow, and accompanying emails showing the transfer was completed, no bates numbers. The \$900,000 was wire transferred by Sidley Austin LLP, a law firm, from its account at Citibank Private Bank to the West Coast Escrow account at Comerica Bank, on behalf of Mr. Obiang. Sidley Austin had received a much larger sum from a U.S. escrow account at Gulfstream Aerospace Corporation, which had been negotiating with Mr. Obiang over the purchase of an aircraft, as explained below. The negotiations were unsuccessful, and Gulfstream had returned Mr. Obiang's escrowed funds, sending them to Sidley Austin at his direction. See 12/17/09 letter from Sidley Austin to the Subcommittee, no bates number.

<sup>433</sup> 2/6/06 receipt for deposit from First American Title Co., SEN011816.

<sup>434</sup> Subcommittee interview of Mr. Baddin, May 12, 2008.

<sup>435</sup> 3/31/06 Broker Confidentiality Agreement, PSI-Coldwell-Banker-01-000509-10.

<sup>436</sup> Id. Mr. Baddin had signed the confidentiality agreement a few days earlier, on March 23, 2006, but the manager of his branch office officially signed it on behalf of Coldwell Banker. 3/23/06 Broker Confidentiality Agreement, SEN012339-41.

<sup>437</sup> Subcommittee interview with Jeffrey Hyland, December 20, 2007.

<sup>438</sup> 2/20/06 Grant Deed from First American Title Co., PSI-Coldwell\_Banker-01-000069-70. The seller sold the property under the name Sweetwater Mesa LLC.

recorded and therefore not finalized until April 27, 2006, because the property was not actually delivered until April.<sup>439</sup>

Mr. Baddin also told the Subcommittee that the original offer for the property had been made in the name of Beautiful Vision Inc., but the final offer had been made in the name of Teodoro Nguema Obiang. During the escrow process, Mr. Baddin said that Mr. Nagler arranged to remove Mr. Obiang's name from the deed and for the title to be recorded in the name of Sweetwater Malibu LLC, a shell company Mr. Nagler had formed two months earlier in February 2006.<sup>440</sup>

In April 2006, Mr. Obiang actually paid for the purchase of the Malibu residence, which Forbes magazine later described as the sixth most expensive residential purchase in the United States that year.<sup>441</sup> In doing so, Mr. Obiang did not use a mortgage. Instead, according to the settlement document, Mr. Obiang paid for the property outright, in six installments, as follows:

- On February 6, 2006, he paid \$900,000.
- On April 5, 2006, he paid \$5,908,400.
- On April 10, 2006, he paid \$5,908,400.
- On April 19, 2006, he paid \$5,908,400.
- On April 21, 2006, he paid \$5,908,400.
- On April 26, 2006, he paid \$5,908,400.<sup>442</sup>

Documentation reviewed by the Subcommittee shows that Mr. Obiang provided the initial payment of \$900,000 from a bank account belonging to a U.S. law firm, as explained earlier.<sup>443</sup> The remaining payments were wire transferred directly from Equatorial Guinea to the First American Trust escrow account at Wachovia Bank. Specifically, the funds originated at Societe General de Banque in Equatorial Guinea where Mr. Obiang had a personal account; passed through correspondent accounts held by the Bank of Central African States and Banque de France; and were deposited with Wachovia Bank in California, where First American Trust had its escrow account. This chart summarizes the five EG wire transfers used to fund the purchase of the Malibu residence.

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<sup>439</sup> Subcommittee interview of Mr. Baddin, May 12, 2008. Mr. Baddin stated in another document that "the deed to the buyer was executed prior to close of the sale. The deed remained in escrow until the Buyer placed sufficient funds into escrow, when the sale closed. During most of this time the buyer's contingencies had not been removed. A supplemental escrow instruction dated April 16, 2006, to the effect that the buyer would release another \$500,000 to the seller to extend the escrow to May 15, 2006, was circulated by the escrow holder." 3/11/09 legal counsel to Neal Baddin's written response to Subcommittee questions, PSI-Coldwell\_Banker-03-0003.

<sup>440</sup> 3/11/09 legal counsel to Neal Baddin's written response to Subcommittee questions, PSI-Coldwell\_Banker-03-0002. See 3/23/06 supplemental escrow instructions submitted by Mr. Nagler to First American Title Company, SEN011514. These instructions stated that Mr. Obiang would take title to the property in the name of Sweetwater Malibu LLC and asked for all documentation to reflect that vesting change.

<sup>441</sup> Forbes Magazine, "Most Expensive Home Sales 2006," December 12, 2006.

[http://www.forbes.com/home/2006/12/11/most-expensive-sales-forbeslife-cx\\_mw\\_1212mostexpensivehomesales\\_slide\\_7.html?thisSpeed=15000](http://www.forbes.com/home/2006/12/11/most-expensive-sales-forbeslife-cx_mw_1212mostexpensivehomesales_slide_7.html?thisSpeed=15000).

<sup>442</sup> 4/28/06 Buyer's Final Settlement Statement from First American Title Co., PSI-Coldwell\_Banker-02-000367.

<sup>443</sup> The U.S. law firm was Sidley Austin Brown & Wood LLP (now Sidley Austin LLP) which sent the \$900,000 to West Coast Escrow in December 2005. On February 6, 2006, West Coast Escrow sent the funds to First American. 2/6/06 receipt for deposit from First American Title Co., SEN011816.



<b>EG Wire Transfers To Purchase Malibu Residence</b>					
<b>Date</b>	<b>Amount</b>	<b>Originating Institution</b>	<b>Through</b>	<b>Beneficiary</b>	<b>Bates</b>
4/05/06	\$5,908,400.00	Obiang Account at Societe Generale de Banque-Equatorial Guinea	Bank of Central African States → Banque De France	First American Trust Account at Wachovia	BF-G-00004
4/10/06	\$5,908,400.00	Obiang Account at Societe Generale de Banque-Equatorial Guinea	Bank of Central African States → Banque De France	First American Trust Account at Wachovia	BF-G-00010
4/19/06	\$5,908,400.00	Obiang Account at Societe Generale de Banque-Equatorial Guinea	Bank of Central African States → Banque De France	First American Trust Account at Wachovia	BF-G-00016
4/21/06	\$5,908,400.00	Obiang Account at Societe Generale de Banque-Equatorial Guinea	Bank of Central African States → Banque De France	First American Trust Account at Wachovia	BF-G-00019
4/26/06	\$5,908,400.00	Obiang Account at Societe Generale de Banque-Equatorial Guinea	Bank of Central African States → Banque De France	First American Trust Account at Wachovia	BF-G-00022
<b>Total- \$29,542,000.00</b>			<b>Source- Wachovia</b>		

Prepared by Subcommittee Staff

Mr. Baddin told the Subcommittee that the Obiang purchase was unique in his experience, not only because of the high price involved, but also because no mortgage was used.<sup>444</sup> When questioned, he stated that none of the parties involved in the transaction had asked how Mr. Obiang would provide the funds needed for the purchase price. Mr. Baddin noted that it is up to the seller to determine whether or not they believe the buyer has the ability to pay for the property.

When questioned about whether Mr. Baddin knew the source of Mr. Obiang's funds, Mr. Baddin responded that he did not. He said that he knew Mr. Obiang was involved in the government in his country, and that Mr. Berger had told him Mr. Obiang was qualified to purchase the property. Mr. Baddin stated that he never asks his clients questions about their finances, since he had no legal obligation to do so and such questions made most clients uncomfortable. He said that, from his viewpoint, there were "no red flags" raised by either the transaction or Mr. Obiang.

First American told the Subcommittee that it had a voluntary AML program and that, among other measures, each time it receives a wire transfer from a foreign account, it checks the name of the originator against lists compiled by OFAC of terrorists, narcotics traffickers, and other criminals, as required by law.<sup>445</sup> It noted that Mr. Obiang was not on the OFAC list. Its

<sup>444</sup> Subcommittee interview of Mr. Baddin, May 12, 2008.

<sup>445</sup> Subcommittee interview of First American, January 11, 2010. All U.S. financial institutions also perform this wire transfer screening, so Wachovia, as First American's bank, would also have performed this function.

other AML controls did not prevent First American from accepting the wire transfers from Mr. Obiang.

First American's bank, Wachovia, told the Subcommittee that its systems automatically screen all incoming wire transfers against the OFAC lists, as required by law.<sup>446</sup> Wachovia indicated that, because the Obiang name is not on the OFAC lists, the wire transfers from Equatorial Guinea did not trigger a review, even though Wachovia had designated Equatorial Guinea as a high risk country. Instead, the \$30 million in EG wire transfers were deposited into the First American escrow account with no questions asked. Wachovia noted that, under current law, it has no legal obligation to perform due diligence on the clients of its client, First American.<sup>447</sup>

**Split Commission.** One last issue related to the purchase of the Malibu residence involves the \$615,000 commission paid to the real estate agent. Mr. Baddin said that, in September 2005, about a year after he began working with Mr. Obiang, Rosalina Romo, an Obiang assistant, telephoned and asked him if he would be willing to credit half of his commission on the Malibu purchase back to Mr. Obiang. Mr. Baddin said that he agreed. While unusual, Mr. Baddin noted that he had split his commission with clients in the past, though not often. He said he agreed to it in this case, because he did not want Mr. Obiang to back out of the deal and knew the commission would be large due the high purchase price.

On September 18, 2005, Mr. Baddin handwrote a letter in which he agreed to split his commission with Mr. Obiang. The letter stated: "This is a letter to confirm the agreement that Neal Baddin of Coldwell Banker will share the commission on 3620 Sweetwater 50/50 with Teodoro Ngeuma Obiang."<sup>448</sup> The letter was signed by both Mr. Baddin and Mr. Obiang. Mr. Baddin said that he was later told by Mr. Obiang's attorney, Matt Hsu, that Mr. Obiang wanted to amend the letter agreement. On December 16, 2005, Mr. Obiang sent Mr. Baddin a more formal letter stating that Mr. Baddin was representing Mr. Obiang as his real estate agent and asking Mr. Baddin to provide Mr. Obiang with 50% of his commission on the Malibu property.<sup>449</sup>

The total commission on the Malibu property was \$615,000.<sup>450</sup> Mr. Obiang received \$305,000, and Mr. Baddin received \$305,000, although after taxes and processing fees, Mr. Baddin ultimately received about \$241,000.<sup>451</sup> The remaining \$5,000 was retained by Coldwell Banker. Mr. Baddin also paid Mr. Berger a referral fee of \$60,000.<sup>452</sup>

**Ongoing Relationship.** Mr. Baddin told the Subcommittee that he continued to work with Mr. Obiang after the closing on the Malibu property.<sup>453</sup> About a month or two after the

<sup>446</sup> 11/21/08 legal counsel to Wachovia's written response to Subcommittee questions, PSI-Wachovia 10-0002.

<sup>447</sup> Id. At 5, 8. Wachovia has since informed the Subcommittee that it has added Mr. Obiang to an internal list within the bank that blocks wire transfers bearing specified names, as explained further below.

<sup>448</sup> 9/18/05 letter from Mr. Baddin to Mr. Obiang, PSI-Coldwell\_Banker-01-000388.

<sup>449</sup> 12/16/05 letter from Obiang to Mr. Baddin, PSI-Coldwell\_Banker-01-000505.

<sup>450</sup> 3/27/06 NRT cash receipt statement, PSI-Coldwell\_Banker-01-000549.

<sup>451</sup> 3/27/06 NRT cash receipt statement, PSI-Coldwell\_Banker-01-000549; 3/11/09 legal counsel to Neal Baddin's written response to Subcommittee questions, PSI-Coldwell\_Banker-03-0003.

<sup>452</sup> 3/11/09 legal counsel to Neal Baddin's written response to Subcommittee questions, PSI-Coldwell\_Banker-03-0003.

<sup>453</sup> Subcommittee interview of Mr. Baddin, May 12, 2008.

closing, Mr. Obiang called Mr. Baddin and asked him if he knew a good interior decorator. Mr. Baddin recommended a decorator, and he and the decorator met with Mr. Obiang at the Pacific Design Center.

In the fall of 2006, Mr. Obiang called Mr. Baddin and told him that he wanted to purchase a condominium. An Obiang assistant, Melinda DeHaven, arranged to view four to six properties with Mr. Baddin, but at the last minute canceled and did not reschedule. In 2007, Mr. Obiang called again and asked Mr. Baddin to show him properties of interest. Mr. Baddin said he took Mr. Obiang to see two or three houses in the Los Angeles area, but Mr. Obiang was not interested in any of them.

Mr. Baddin stated that Mr. Obiang still occasionally calls him. He stated that Mr. Obiang called him in early 2008, and said he was thinking about selling the Malibu property. Mr. Baddin said that he was not surprised since Mr. Obiang did not live there very much and traveled a great deal.

## **(2) Real Estate Agent John Kerrigan**

Prior to Mr. Baddin, Mr. Obiang worked with another California real estate agent, John Kerrigan. Mr. Kerrigan told the Subcommittee that he had been in the real estate business since 1984, and currently worked for Mirzo International Inc.<sup>454</sup> He said that, from 1999 to 2004, he had shown Mr. Obiang a number of properties for sale, but was never selected as the buying agent. In 2004, however, Mr. Kerrigan helped Mr. Obiang sell a Los Angeles residence for \$7.7 million.

Mr. Kerrigan has also filed a complaint against real estate agent Neil Baddin, alleging that he inappropriately lured away his client by offering to split the commission related to the purchase of the Malibu property.<sup>455</sup> That complaint was referred for arbitration, and a number of pleadings were filed in the arbitration case providing information about the Antelo and Malibu properties.

**Introduction to Mr. Obiang.** Mr. Kerrigan said that, in 1999, when he was working at Remax, he received a “cold call” from Mr. Obiang who was looking for properties in the \$10 to \$15 million range.<sup>456</sup> Mr. Kerrigan reported that soon after he received the call, he met Mr. Obiang at the Beverly Hills Hotel and showed him photographs of residences for sale. Mr. Kerrigan stated that, from 1999 to 2003, he showed Mr. Obiang approximately 20 to 30 properties in the \$15 to \$20 million price range and, in 2004, made multiple offers on his behalf to purchase the Malibu property that Mr. Obiang eventually purchased in 2006, using a different real estate agent, Mr. Baddin.<sup>457</sup>

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<sup>454</sup> Subcommittee interview with Mr. Kerrigan, May 15, 2008.

<sup>455</sup> Mirzo International, Inc. v. Hyland, Case No. AB06-15. 11/6/06 email from Mr. Baddin to Mr. Obiang, PSI-Coldwell\_Banker-01-000498-514.

<sup>456</sup> “Exhibit 1A, Detailed Information by John Kerrigan on the Agency Relationship of John Kerrigan with the Buyer, Leading up to the Purchase of the Malibu Property,” (hereinafter “Kerrigan Statement”), Mirzo International v. Hyland, Arbitration Complaint Case Number AB06-15, PSI-Coldwell\_Banker-01-000014; Subcommittee interview of Mr. Kerrigan, May 15, 2008.

<sup>457</sup> Kerrigan Statement, Mirzo International, Inc. v. Hyland, Case No. AB06-15. PSI Coldwell Banker-01-000014.

In a statement submitted in connection with his complaint against Mr. Baddin, Mr. Kerrigan described his relationship with Mr. Obiang in the following manner:

“I have had [an] extensive, continuous, and ongoing real estate agency relationship with the Buyer, Mr. Teodoro Nguema Obiang, for the past seven years, from September 1999 all the way to the present, October 2006. In addition to helping Mr. Ngeuma with his real estate needs, I have been closely connected to helping him adjust to living here in the U.S. over the last seven years. Whenever he came to town I would always make myself available to him, at his request, to run errands, help him out with selecting furniture, finding the best hotels online for him to travel to on vacation, and finding rental apartments for his friends, all with no commission compensation to me. ... I was always willing to help him any way I could in order to build a strong working relationship with this client.”<sup>458</sup>

Mr. Kerrigan also stated that he showed Mr. Obiang:

“a number of condominiums that he wanted to lease or purchase because he was getting tired of staying in hotels. He wanted a condo in addition to a large home and the plan was to let his out of town friends stay in the condo after he purchased a home. He put in offers to purchase with me on two penthouse condos for \$8,000,000 and \$7,500,000 on Wilshire Blvd. Corridor. The offer for \$7,500,000 was accepted and he opened escrow in May 2002. Then, two and a half months later, he abruptly cancelled the escrow for no reason in August 2002 and walked away from most of his deposit. I continued to work with him.”<sup>459</sup>

**Antelo Property Sale.** According to Mr. Kerrigan, in 2001, Mr. Obiang purchased a very contemporary house on Antelo Road, in the Los Angeles area, for \$6.5 million.<sup>460</sup> Mr. Obiang did not use him as his agent when he purchased the Antelo property.<sup>461</sup> Mr. Kerrigan told the Subcommittee that he understood Mr. Obiang had purchased the property in his own name, did not use a mortgage, and provided funds to pay the entire \$6.5 million cost.<sup>462</sup> The Subcommittee subsequently located documentation of a wire transfer sent on March 19, 2001, for \$6.2 million from an Obiang account at Riggs Bank, Account No. 76923450, to a Union Bank of California account for Beverly Hills Escrow in connection with property on Antelo Road in Los Angeles.<sup>463</sup> Mr. Kerrigan told the Subcommittee that he was not aware of and did not ask about the source of Mr. Obiang’s funds.<sup>464</sup>

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<sup>458</sup> Id.

<sup>459</sup> Id. at 15-16.

<sup>460</sup> Id. at 15.

<sup>461</sup> Id. at 15. Mr. Kerrigan told the Subcommittee that he had told Mr. Obiang about the Antelo property, and Mr. Obiang “did not want to see it because it was a contemporary style and he preferred Mediterranean. After all the time and effort I spent I was disappointed that he did not buy it from me but I continued to work with him just the same.”

<sup>462</sup> Subcommittee interview of Mr. Kerrigan, May 15, 2008.

<sup>463</sup> See 10/21/04 UBOC Case Report with information on this wire transfer, PSI-Union\_Bank\_of\_California-04-0452.

<sup>464</sup> Id.

Mr. Kerrigan said that a few years later, in or around March 2004, Mr. Obiang decided to sell the Antelo property, and telephoned him to act as his agent in the sale.<sup>465</sup> Mr. Kerrigan said that Mr. Obiang had never actually moved into the property. He said he originally listed the property for \$10 million at Mr. Obiang's request, even though that was an unrealistically high price. On October 8, 2004, the Antelo property sold for \$7.7 million, which meant that Mr. Obiang had secured a gross profit of more than \$1 million from the \$6.5 million purchase price he had paid in 2001.<sup>466</sup>

On October 19, 2004, the escrow agent who handled the Antelo property sale, D&G Escrow Corp., transferred over \$4 million from the purchase price to a Beautiful Vision Inc. account at Bank of America.<sup>467</sup> Beautiful Vision had been formed the prior week by Mr. Berger, on October 12, 2004. It's not clear where the remainder of the \$7.7 million was sent.

Subsequent to the sale, disagreements apparently arose among Mr. Kerrigan, Mr. Berger, and Mr. Obiang.<sup>468</sup>

**Malibu Property.** Mr. Kerrigan stated that, in 2003, he showed Mr. Obiang the Malibu property that Mr. Obiang eventually purchased in 2006.<sup>469</sup> He said that he showed the property to Mr. Obiang several times from 2003 to 2005, and, at Mr. Obiang's direction, submitted multiple offers for the property, in the range of \$21 to \$29 million, none of which were accepted.<sup>470</sup> Mr. Kerrigan stated that as late as December 2005, he was still communicating with Mr. Obiang about purchasing the Malibu property.

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<sup>465</sup> Id.

<sup>466</sup> See 10/15/04 Grant Deed, signed by Mr. Obiang, from Commonwealth Land Title Co., SEN003674.

<sup>467</sup> November 2004 statement for Beautiful Vision special checking account, BAC-PSI-02474.

<sup>468</sup> Mr. Kerrigan told the Subcommittee that, as part of the Antelo sale, he entered into an agreement with the buyer's representative, R & B Realty, to provide it with 1% of the commission, while Mr. Kerrigan would keep 4%. Mr. Kerrigan said that normally on a 5% commission, the buyer and seller's agent split the commission evenly. Mr. Kerrigan said that Mr. Berger "made an issue" of the commission division and "tried to disrupt the escrow." Mr. Kerrigan stated that, in the end, he received a \$308,000 commission and the buyer's agent received \$77,000 for the Antelo property. Subcommittee interview with Mr. Kerrigan, May 15, 2008.

Mr. Kerrigan also stated that, prior to the sale, the Antelo property needed repair work. Mr. Kerrigan said that a Riggs Bank employee, Simon Kareri, asked him to recommend a construction firm. Mr. Kerrigan recommended Pacific National Construction (PNC) which was selected for the work. He said the repair work ultimately cost \$80,000, and Mr. Berger would not pay the bill. Mr. Kerrigan stated that PNC put a lien on the property and was ultimately paid for its work.

In a written statement, Mr. Baddin wrote: "I asked both Mr. Berger and Mr. Nguema why they weren't continuing to work with Mr. Kerrigan. They both explained to me jointly and separately that Mr. Kerrigan had bungled the sale of Mr. Ngeuma's property on Antelo. They said he let the Buyer move in to Antelo before the close of escrow without Mr. Ngeuma's permission. The Buyer also refused to close the escrow on time and the transaction became litigious." Memorandum by Mr. Baddin, PSI Coldwell Banker 01-000502. According to Mr. Kerrigan, Mr. Berger had authorized the new client moving in early.

<sup>469</sup> Subcommittee interview of Mr. Kerrigan, May 15, 2008.

<sup>470</sup> According to Mr. Kerrigan, Mr. Obiang had authorized him to submit a written offer on the property on October 18, 2003, for \$21 million. 10/18/03 Residential Purchase Agreement, PSI-Coldwell\_Banker-01-000179-190. On January 29, 2004, Mr. Kerrigan submitted a second offer for \$24 million (see 1/29/04 California Residential Purchase Agreement, PSI-Coldwell\_Banker-01-000148-159, Record 1818) and received a counter offer for \$33.9 million (see 2/3/04 counter offer form, PSI-Coldwell\_Banker-01-000144-147). On February 5, 2004, Mr. Obiang submitted a written offer of \$27 million (see 2/5/04 counter offer form, PSI-Coldwell\_Banker-01-000140). On February 9, 2004 the seller sent back a counter offer of \$33.5 million (see 2/9/04 counter offer form, PSI-

Mr. Kerrigan wrote that, in December 2005, “Jeff Hyland reluctantly told me that my client Teodoro Ngeuma had been to the property in the late summer of 2005 with Neal Baddin.”<sup>471</sup> Mr. Kerrigan wrote that he called Mr. Obiang and asked him whether he was working with Mr. Baddin, and Mr. Obiang said that Mr. Baddin “had offered to kick him back 50% of the selling commission if he bought the Malibu property through him.”<sup>472</sup> Mr. Kerrigan later filed suit against Mr. Baddin for allegedly inappropriately luring away his client.

**No Questions.** When asked about the source of Mr. Obiang’s funds, Mr. Kerrigan indicated that he had no legal obligation to ask such questions and didn’t inquire. He told the Subcommittee that he did not know who Mr. Obiang was initially, but ultimately “found out his family was running Equatorial Guinea.” He said he did an Internet search, learned that Mr. Obiang was the son of the EG President whom some people were trying to overthrow. He said he didn’t know how much to believe regarding what he saw on the Internet. He said he had no understanding of where Mr. Obiang’s money came from, but assumed it was legitimate. Mr. Kerrigan stated: “Who am I to question it?”

Mr. Kerrigan said that Mr. Obiang “rolled up to showings in a Bentley,” and he wasn’t about to turn Mr. Obiang away. He told the Subcommittee: “If he said ‘I want to buy a house for \$10 million’ and I said, ‘no,’ he’d go to someone else.” He also noted that clients don’t want to divulge financial information, and he never talked to Mr. Obiang about finances because he didn’t want to “get someone upset.”

When questioned about whether or not real estate agents should conduct due diligence in order to know who their clients are and avoid facilitating real estate purchases with suspect funds, Mr. Kerrigan responded that if those were legal requirements, real estate agents would comply with the law.

### **(3) Analysis**

Real estate agents, Mr. Baddin and Mr. Kerrigan, assisted Mr. Obiang in his efforts to buy and sell high-end real estate in California. They operated, and continue to operate, without any legal obligation to know their customers, analyze the source of their funds, or exercise special precautions when dealing with PEPs. The escrow agents who handled the Malibu purchase, West Coast Escrow and First American, together accepted more than \$30 million in suspect funds wire transferred from Equatorial Guinea. D&G Escrow Corporation, which handled the Antelo property sale, received \$7.7 million from the buyer and transferred the sale proceeds to Obiang-controlled accounts, including \$4 million to a shell company account at Bank of America. Those sale proceeds included a \$1 million profit on the funds that Mr. Obiang had used to buy the property three years earlier. Like their real estate agent counterparts, these escrow agents operated, and continue to operate, without any legal obligation to know their

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Coldwell\_Banker-01-000139). On August 27, 2004, Mr. Kerrigan submitted a written offer for \$28 million (see PSI-Coldwell\_Banker-01-000113-124. R. 1818). On September 1, 2004, the seller countered with a written offer of \$32 million (see PSI-Coldwell\_Banker-01-000109-112) Mr. Kerrigan wrote: “We had not come to an agreement on price yet, but as time went on we were getting closer to making a deal on the Malibu home.” Kerrigan statement, *Mirzo International, Inc. v. Hyland*, Case No. AB06-15, PSI-Coldwell\_Banker-01-000017-18.

<sup>471</sup> Statement of Facts Describing the Controversy, *Mirzo International, Inc. v. Hyland*, Case No. AB06-15, PSI-Coldwell\_Banker-01-000024. Mr. Kerrigan reported that he never signed a retainer agreement with Mr. Obiang.

<sup>472</sup> *Id.*

customers, analyze the source of their funds, or exercise special precautions when dealing with PEPs.

In addition, the banks that housed the escrow agent accounts did not stop the multi-million-dollar wire transfers sent to or from the accounts of the escrow agents, relying on the principle that a bank is not obligated to know the clients of its client. These banks' AML and PEP controls depended upon the escrow agents policing their own clients, but under current law, U.S. escrow agents selling multi-million-dollar real estate are not required to have AML safeguards in place.

Because of these gaps in U.S. AML law, Mr. Obiang was able to buy and sell U.S. real estate without having to account for the source of the funds he used in his transactions. The end result was that he sent millions of dollars in suspect funds into and out of the United States in connection with his real estate transactions. If AML safeguards are to be applied to these types of transactions in the future, real estate and escrow agents should be required to establish AML programs.

#### **D. Obiang Use of a U.S. Escrow Agent to Purchase A Private Jet with Suspect Funds**



In 2006, Mr. Obiang used a shell corporation called Ebony Shine International, Ltd. to purchase a private jet with \$38.5 million wire transferred from Equatorial Guinea to a U.S. escrow agent that facilitated the purchase. After one U.S. escrow agent, McAfee & Taft, learned of Mr. Obiang's involvement in the purchase and refused to complete the transaction without information on the source of the funds being supplied by him, another U.S. escrow agent, Insured Aircraft Title Services Inc. (IATS), stepped in and completed the transaction without questioning the source of the funds. The \$38.5 million was transferred from an Obiang account in Equatorial Guinea to an IATS escrow account at UBS Bank in London, and later to various U.S. bank accounts. Mr. Obiang now routinely uses the jet to travel throughout the United States and around the world.

Like persons involved with real estate closings and settlements, since 1988, "business[es] engaged in vehicle sales, including automobile, airplane, and boat sales," have been identified in

U.S. AML laws as vulnerable to money laundering abuses due to the large sums involved in their transactions.<sup>473</sup> The 2001 Patriot Act required such businesses to establish AML programs, unless exempted by the Treasury Department.<sup>474</sup> In 2002, the Treasury Department provided a “temporary” exemption from the statutory requirement to “seller[s] of vehicles, including automobiles, airplanes, and boats.”<sup>475</sup> Today, eight years after enactment of the Patriot Act, the Treasury Department has yet to propose an AML rule for businesses engaged in vehicle sales. Treasury has also never made it clear whether such an AML rule would extend to escrow agents holding the funds needed to complete the vehicle sales. This business sector has also failed to develop AML guidance for its members. That means, under current law, U.S. escrow agents that handle aircraft sales operate without any legal obligation to know their customers, evaluate the source of funds used to purchase aircraft, or exercise special precautions when dealing with a PEP.

**2005 Purchase Attempt.** In February 2005, Mr. Obiang employed a U.S. law firm, Sidley Austin Brown & Wood LLP (now Sidley Austin LLP), to help him purchase an aircraft from Gulfstream Aerospace Corporation (“Gulfstream”).<sup>476</sup> At some point, Mr. Obiang sent more than \$21 million to an escrow account associated with Gulfstream for the purchase of the aircraft,<sup>477</sup> but according to the law firm, the “negotiations between Gulfstream and Mr. Obiang were unsuccessful.”<sup>478</sup> Sidley Austin agreed to accept a wire transfer of the \$21 million from Gulfstream, after first obtaining a letter from the U.S. Department of Justice that, “at the present time,” it had “no basis for either restraining or seizing proceeds used to finance this proposed sale as potentially forfeitable property” and “no basis for believing that the monies used to purchase the aircraft would violate the U.S. money laundering laws.”<sup>479</sup>

On July 28, 2005, Gulfstream wire transferred the \$21 million to Sidley Austin’s attorney-client account at Citibank Private Bank.<sup>480</sup> According to the law firm, the transfer “was done at the direction of Mr. Obiang with the understanding that the funds would be remitted to Mr. Obiang.”<sup>481</sup> The funds remained at the law firm for more than four months. On December 8, 2005, at Mr. Obiang’s request, Sidley Austin wire transferred \$250,000 of his funds to Aero Records & Title Co. Escrow.<sup>482</sup> Sidley Austin also applied about \$266,000 of the funds to pay Mr. Obiang’s outstanding legal fees and accepted another \$100,000 “as a retainer payment.”<sup>483</sup>

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<sup>473</sup> See 31 USC § 5312(a)(2)(T)(including “a business engaged in vehicle sales, including automobile, airplane, and boat sales; in the list of “financial institutions” subject to U.S. AML requirements).

<sup>474</sup> See Section 352 of the Patriot Act of 2001, P.L. 107-56 (October 26, 2001), codified at 31 USC § 5318(h).

<sup>475</sup> See 31 CFR § 103.170, as codified by interim final rule published at 67 FR 21110 (April 29, 2002, as amended at 67 FR 67547 (November 6, 2002) and corrected at 67 FR 68935 (November 14, 2002).

<sup>476</sup> 12/17/09 letter from Sidley Austin LLP to Subcommittee, no bates number, at 1.

<sup>477</sup> Id.

<sup>478</sup> Id.

<sup>479</sup> 4/18/05 letter from U.S. Department of Justice to Sidley Austin Brown & Wood LLP, no bates number.

<sup>480</sup> See Sidley Austin Trust Transaction Detail Report for 1/1/04 to 1/1/07 For the Republic of Equatorial Guinea and Minister Obiang, no bates number.

<sup>481</sup> 12/17/09 letter from Sidley Austin LLP to Subcommittee, at 1, no bates number.

<sup>482</sup> Id. at 2. This money was placed in escrow and used in Mr. Obiang’s second, ultimately successful attempt to purchase a Gulfstream jet in 2006, as explained below.

<sup>483</sup> Id.



The next day, December 22, 2005, at Mr. Obiang's direction, Sidley Austin wire transferred \$900,000 of his funds to West Coast Escrow.<sup>484</sup>

Sidley Austin attempted to send the remaining funds, about \$19.5 million, to Mr. Obiang's personal bank account in Equatorial Guinea. On December 21, 2005, Sidley Austin sent a wire transfer of the funds to Societe Generale de Banques in Equatorial Guinea for Mr. Obiang's account, but Societe General "did not approve the transfer."<sup>485</sup> A month later, on January 24, 2006, after obtaining a second letter from the U.S. Justice Department that the transfer did not violate U.S. AML laws, Sidley Austin sent a second wire transfer with the \$19.5 million to Societe General in Equatorial Guinea. That time, the bank accepted the transfer and credited the funds to Mr. Obiang's account.<sup>486</sup>

**2006 Purchase Offer.** In 2006, Mr. Obiang made a second attempt to purchase a Gulfstream aircraft, this time from an owner rather than the manufacturer. On February 23, 2006, Ebony Shine International, Ltd., acting on behalf of Mr. Obiang, submitted a purchase offer to Blue Sapphire Services, Ltd. to buy a Gulfstream G-V jet airplane registered in the United States.<sup>487</sup> Ebony Shine International, Ltd. is a British Virgin Islands (BVI) shell company. Mr. Obiang was represented in the transaction by a non-U.S. attorney, Duret Sieraczek-Abilan, also known as Eric Duret.

Blue Sapphire Services, Ltd. is also a BVI shell corporation, that was used to facilitate the sale of the aircraft by the Bakrie family of Indonesia.<sup>488</sup> The Bakrie family was represented in the transaction by a non-U.S. citizen referred to as Dick Brown. At the time of the transaction, the aircraft was registered with the Federal Aviation Administration (FAA) in Oklahoma City, but physically located in Singapore.<sup>489</sup> Because U.S. registered aircraft require a U.S. registered owner, Blue Sapphire employed Wells Fargo Bank Northwest as the aircraft's registered owner.<sup>490</sup>

McAfee & Taft, a U.S. company headquartered in Oklahoma City, initially acted as the escrow agent in the sale. According to McAfee officials, their company was chosen because it

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<sup>484</sup> Id. See also 12/22/05 letter from Sidley Austin to Citibank Private Bank regarding the wire transfer, and several emails of the same date showing the transfer was completed, no bates numbers. The \$900,000 was placed in escrow and later used in Mr. Obiang's purchase of the Malibu residence, as explained earlier.

<sup>485</sup> Id.

<sup>486</sup> Id.

<sup>487</sup> The Gulfstream G-V is a high performance corporate-style jet airplane that seats up to sixteen passengers and crew, and has an ultra-long flight range of 6,500 nautical miles. It is manufactured in the United States by Gulfstream Aerospace Corp., a subsidiary of General Dynamics. The Gulfstream G-V can be used to transport senior government officials or corporate management, and serve military and homeland defense roles. See Gulfstream Aerospace Corp, News Release, November 6, 2008.

<http://www.gulfstream.com/news/releases/2007/070618a.htm>

<sup>488</sup> Subcommittee staff interview with McAfee & Taft officials, 2/20/09. See also 2/23/05 Offer to Purchase from Ebony Shine International LTD, BSSL000001.

<sup>489</sup> As is common with foreign owners of U.S. registered aircraft, Blue Sapphire Services, Ltd. had entered into an owner-trustee relationship with Wells Fargo Bank N.A. to hold title of the aircraft to satisfy domestic ownership requirements for registration purposes. See also 2/23/05 Offer to Purchase from Ebony Shine International LTD, BSSL000001.

<sup>490</sup> See 6/29/06 FAA Aircraft Bill of Sale and 8/16/06 letter from Wells Fargo canceling U.S. registration of the aircraft, PSI-Insured\_Aircraft-01-0159-60.

had assisted in the original purchase of the jet by Blue Sapphire Services, and so was familiar with the unique leasing structure used to finance that purchase.<sup>491</sup>

The February 2006 purchase offer proposed a total purchase price of \$38.5 million payable in three installments to the escrow agent, consisting of an initial payment of \$4.7 million at the time of the offer; a second payment of \$10.3 million due at the pre-purchase inspection of the jet on or about March 25, 2006; and a final payment of \$23.5 million upon delivery of the aircraft.<sup>492</sup> The offer was signed by Mr. Duret on behalf of Ebony Shine International and by Irma Pujiastuti on behalf of Blue Sapphire Services.<sup>493</sup> An escrow agreement, that was drafted but not signed by either party, indicated that all payments would be made to an escrow account at McAfee & Taft in Oklahoma City.<sup>494</sup>

A second U.S. company, Insured Aircraft Title Services (IATS) of Oklahoma City, was selected to serve as the escrow agent for Ebony Shine International. On February 27, 2006, IATS sent an email to Eric Duret, the attorney representing Ebony Shine International, stating that IATS had received a deposit of about €3.9 million from Mr. Obiang to purchase the aircraft.<sup>495</sup> The funds had been deposited into an IATS escrow account at UBS bank in London.

Those funds were supposed to be transferred to the seller's escrow agent, McAfee & Taft, which had its account at Bank of America in Oklahoma City.<sup>496</sup> On March 6, 2006, however, Mr. Duret sent an email to McAfee & Taft, with a copy to Blue Sapphire's representative, Dick Brown, requesting alternate wire arrangements:

“Further to Dick’s correspondence he has noted deposit to be made in a bank in Oklahoma [C]ity.

The future owner of this plane is from an African origin and therefore it is complicated for him to make a wire transfer to the USA instead of Europe or to Asia.

He presently hold[s] an account with UBS London. Would it be possible for you to manage this escrow account in London in order to proceed further with this transaction and guarantee our client interest.”<sup>497</sup>

McAfee & Taft replied the same day, stating: “We cannot manage an account with UBS London. With that said, the parties may choose to use another escrow agent for funds (possibly a London firm/company) and we would simply hold the documents in escrow.”<sup>498</sup> Mr. Brown of Blue Sapphire Services, however, insisted on using McAfee & Taft as the escrow agent for the funds, sending the following email:

“As I advised from the outset of this transaction, the funds have to be in Escrow with MCAFEE & TAFT. We have no way of managing funds in overseas accounts. If your

<sup>491</sup> Subcommittee interview with McAfee & Taft, 2/20/09.

<sup>492</sup> 2/23/06 Offer to Purchase, BSSL000001, 10–11.

<sup>493</sup> Id. at 03.

<sup>494</sup> Id. at 11.

<sup>495</sup> Id. at 04.

<sup>496</sup> Escrow Agreement, BSSL000054.

<sup>497</sup> 3/6/06 email from Mr. Brown BSSL000093.

<sup>498</sup> 3/6/06 email from McAfee & Taft, BSSL000145.

client has an account with UBS in London, he can transfer the funds from Africa to his UBS account in London, and from there it is a simple transaction to move the funds to McAfee & Taft.

If you can't have these funds moved into an Escrow acceptable to McAfee & Taft, then I don't see how we are going to get this deal done."<sup>499</sup>

On March 15, 2006, an internal McAfee & Taft email noted that the company had not received any funds regarding the Gulfstream purchase, and that Ebony Shine must "direct IATS to transfer the \$3,912,504.94 to our escrow account."<sup>500</sup> On March 16, 2006, Mr. Brown emailed Mr. Duret to request the immediate transfer of the funds:

"Eric, we have not received any advice from [McAfee & Taft] that they have received funds into Escrow despite your advice earlier in the week that the funds have been sent. This is very disturbing and it is a long way from your commitment."<sup>501</sup>

Mr. Duret replied:

"[F]unds will arrive on Wednesday. As I told you in my email of March 6<sup>th</sup>, my client is [of] African origin and therefore it is complicated for him to make a wire transfer to the USA. That's the reason why the funds [are] not in your account. Please be patient."<sup>502</sup>

**McAfee & Taft Raises Patriot Act Concerns.** After reviewing the IATS wire transfer documentation, McAfee & Taft became aware of Mr. Obiang's involvement in the transaction.<sup>503</sup> It then researched Mr. Obiang, learned of his political status and reputation, and became concerned about the source of the funds he would be supplying to purchase the aircraft.<sup>504</sup>

Although in 2002, the U.S. Treasury Department exempted U.S. businesses engaged in aircraft sales from requirements in the 2001 Patriot Act to establish AML programs, McAfee & Taft told the Subcommittee that it had voluntarily chosen to implement the Patriot Act's AML safeguards to avoid facilitating transactions involving suspect funds.<sup>505</sup> The 2006 escrow agreement to be used in the Gulfstream purchase, for example, stated that McAfee & Taft "maintains a Customer Identification Program (CIP) in accordance with the Patriot Act."<sup>506</sup> McAfee & Taft told the Subcommittee that its CIP program required it to identify the officers and principals of the purchasing company, Ebony Shine International; to understand the source of the purchaser's funds; and to ensure that the funds were sent from an account held in the name

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<sup>499</sup> 3/6/06 email from Mr. Brown to McAfee & Taft, BSSL000093.

<sup>500</sup> 3/15/06 internal McAfee & Taft email, BSSL000100.

<sup>501</sup> 6/16/06 email from Mr. Brown to Mr. Duret, BSSL000144.

<sup>502</sup> 3/17/06 email from Mr. Duret to Mr. Brown, BSSL000144.

<sup>503</sup> Subcommittee interview with McAfee & Taft, February 20, 2009.

<sup>504</sup> Subcommittee interview with McAfee & Taft, February 20, 2009.

<sup>505</sup> Subcommittee interview with McAfee & Taft, February 20, 2009.

<sup>506</sup> 3/06 Escrow Agreement Draft 46, BSSL000205.

of the purchaser, Ebony Shine International, rather than from a parent, subsidiary, related company, officer, or director.<sup>507</sup>

On March 19, 2006, McAfee & Taft sent an email to Mr. Brown and Mr. Duret stating: “We need some information to assure compliance with the U.S. Patriot Act. Funds must arrive from an account held in the name of Ebony Shine International Ltd. (“Ebony”). We also need copies of Ebony’s formation documents, list of officers and principals and identity of the source of funds.”<sup>508</sup>

On March 23, 2006, IATS wire transferred about \$4.7 million from its UBS account in London to a McAfee & Taft escrow account at Bank of America in Oklahoma City. An email from a McAfee employee stated that the funds were to be held pending further instruction from Teodoro Nguema Obiang.<sup>509</sup>

McAfee & Taft sent an email to Mr. Brown confirming receipt of the funds but also noting: “The funds, until such time as a final escrow agreement is executed by all parties, [are] being held by us and subject to the discretion of the purchaser. We of course will not execute the escrow agreement until we are satisfied that the Patriot Act documentation is sufficient. We have not received any further documentation from Eric, since our last meeting.”<sup>510</sup>

McAfee & Taft and Mr. Brown sent multiple emails to Mr. Duret and his assistant, Christine Nasrallah, in an attempt to obtain the information about Ebony Shine International and the source of its funds to satisfy the company’s compliance with the Patriot Act.<sup>511</sup> On March 30, 2006, Mr. Brown sent the following email to Mr. Duret:

“We are approaching the end of another week, and nothing has been done by you to enable compliance with the Patriot Act. I have sent you several emails on this matter and have not even had the courtesy of a reply.

As explained to you previously, because you have not complied with the requirements of the Patriot Act, we do not have a deposit as required under the Sale and Purchase Agreement. The fact that you have actually transferred the funds to the Escrow Account has no meaning if you are unable to comply with the Patriot Act.

In the absence of a constructive reply from you by return, we will have to assume that you no longer wish to continue with this transaction.”<sup>512</sup>

Ignoring the McAfee & Taft requests for additional customer information, Mr. Obiang wire transferred \$10.3 million from his account in Equatorial Guinea to the McAfee & Taft escrow account at Bank of America in Oklahoma City, in three installments:

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<sup>507</sup> See 3/06 Escrow Agreement Draft 46, BSSL000205; and 3/19/06 email from McAfee & Taft to Mr. Brown and Mr. Duret, BSSL000159.

<sup>508</sup> 3/19/06 email from McAfee & Taft to Mr. Brown and Mr. Duret, BSSL000159.

<sup>509</sup> See 3/23/06 email from McAfee & Taft, BSSL000222; 3/23/06 email from McAfee & Taft to Mr. Brown, BSSL000223; 3/24/06 email from McAfee & Taft to Mr. Brown, BSSL000226.

<sup>510</sup> 3/24/06 email from McAfee & Taft to Mr. Brown, BSSL000226, See also 3/06 Escrow Agreement Draft 46, BSSL000205.

<sup>511</sup> See 3/17/ - 3/28/06 emails between McAfee & Taft, Mr. Brown, and Mr. Duret, BSSL000230-236.

<sup>512</sup> 3/30/06 email from Mr. Brown to Duret, BSSL000238.

On April 4, 2006, Mr. Obiang wired \$2,575,000 to the McAfee & Taft escrow account. The originating institution was Societe Generale De Banque (SGDB) in Equatorial Guinea.<sup>513</sup>

On April 6, 2006, he wired another \$2,575,000 from SGDB to the McAfee & Taft escrow account.<sup>514</sup>

On April 7, 2006, Mr. Obiang wired \$5,150,000 from SCDB to the McAfee & Taft escrow account in Oklahoma City.<sup>515</sup>

In each case, the funds moved from his bank in Equatorial Guinea to a correspondent account at Wachovia Bank which then transferred the funds to Bank of America in Oklahoma City. The plan was that, once the sale of the jet was complete, the funds would move from the McAfee & Taft escrow account at Bank of America to an account for the benefit of the seller, Blue Sapphire.<sup>516</sup>

On April 7, 2006, Mr. Duret's assistant, Ms. Nasrallah, wrote to Mr. Brown about the \$10.3 million that had been transferred to the U.S. escrow account as follows:

“The 1<sup>st</sup> and 2<sup>nd</sup> settlements of \$2,175,000.00 each were transferred to the credit of [McAfee & Taft's] account value April 6<sup>th</sup>, 2006 and the 3<sup>rd</sup> \$5,150,000.00 value April 7<sup>th</sup>. ... We have contacted the Wells Fargo Bank re the compliances of Patriot Act. Taking into account the difficulties linked with their client's political activities, we have decided not to proceed with a U.S. registration but to go for a registration in the Caymand [sic] Islands or Bermuda.”<sup>517</sup>

On April 7, 2006, Mr. Brown responded with an email to Mr. Duret, Ms. Nasrallah, McAfee & Taft, and others:

“We seem to have reached an impass[e] on the Patriot Act compliance. ... The buyer has decided to take the aircraft off the US Register because they feel that complying with the requirements of the Patriot Act for Well[s] Fargo will take too long. ... We are just about at the stage where we will have to either restructure this sale to take it entirely outside the Patriot Act (i.e. we sell it to one of their associates in Singapore, and accept payment there).”<sup>518</sup>

Minutes later, McAfee & Taft replied:

“I just want to make sure everyone is on the same page and aware that for us to continue to hold the funds I must be provided with the Patriot Act due diligence by Monday morning. ... [I]f I don't have the information or if I am in anyway unsure, I will wire the

<sup>513</sup> 4/5/06 wire transfer record, BSSL000254.

<sup>514</sup> Id. at BSSL000255.

<sup>515</sup> 4/6/06 wire transfer record, BSSL000258.

<sup>516</sup> Wells Fargo was the appointed trustee for Blue Sapphire. See 7/26/06 Escrow Agreement, PSI-Insured\_Aircraft-00202.

<sup>517</sup> 4/7/06 email Ms. Nasrallah to Mr. Brown, Mr. Duret, McAfee & Taft, BSSL000259.

<sup>518</sup> 4/7/06 email from Mr. Brown to McAfee & Taft, Mr. Duret, and other others, BSSL000279.

funds back to the account of the party sending said funds to us. Or we can wire the funds back to IATS if they are willing to act as escrow agent.

The parties could use the same form of escrow agreement with IATS.”<sup>519</sup>

Five days later, on April 12, 2006, having received no information from Ebony Shine International, McAfee & Taft cancelled the transaction and returned the funds that had been provided to them to purchase the Gulfstream jet. McAfee & Taft told the Subcommittee that it expected an angry phone call from Mr. Duret, but received no further communication from him.<sup>520</sup> On April 12, 2006, McAfee & Taft sent three wire transfers totaling \$10,299,950.00 to Mr. Obiang in Equatorial Guinea and one wire transfer for \$4,723,262.22 to IATS at UBS in London.<sup>521</sup> These amounts corresponded to the “initial payment” and “second payment” amounts specified in the draft escrow agreement, less fees.

**IATS Steps In.** After McAfee & Taft declined to complete the transaction without information on the source of the \$38.5 million being provided to purchase the Gulfstream jet, IATS stepped in, agreeing to serve as escrow agent for the transaction and to facilitate the purchase of the jet by Mr. Obiang’s company.

On April 20, 2006, Ms. Nasrallah sent an email to IATS noting that “the transaction was cancelled via McAfeetaft” and requesting IATS to open an escrow account in the name of “Blue Sapphire (NGUEMA).”<sup>522</sup> Later that day, IATS sent Mr. Duret a confirmation that it had deposited \$4.7 million into an IATS escrow account at UBS Bank in London for “Blue Sapphire Services LTD (Nguema).”<sup>523</sup> Mr. Duret subsequently provided IATS with a Power of Attorney form, signed by Mr. Obiang, in which Mr. Obiang authorized Mr. Duret to represent him in the purchase of the aircraft.<sup>524</sup>

Two weeks later, on May 4, 2006, Mr. Brown emailed Mr. Duret and Ms. Nasrallah to warn them “if the deposit held by IATS is not made non refundable (in accord with the Purchase Agreement) and confirmed as non refundable by IATS, by close of business tomorrow Friday May 5, then we will have to abort the sale to your client.”<sup>525</sup> The next day, on May 5, 2006, Mr. Brown wrote:

“It is good to hear that your client still wants to buy the aircraft, and we are still interested to sell him the aircraft, but weeks go by and there is no progress and no action from your side. We can understand the problems that have occurred with the banking, but not the long periods on no action by your side were the major contributor to the banking problems.

Your client has indeed sent the US\$4,700,000 back to [IATS] however the funds are still held by IATS for the account of your clients, and not for the escrow account of Blue

<sup>519</sup> 4/7/06 email from McAfee & Taft, BSSL000280.

<sup>520</sup> Subcommittee interview with McAfee & Taft, February 20, 2009.

<sup>521</sup> 4/11/06 internal McAfee & Taft email, BSSL000331; 4/12/06 Bank of America wire transfer record, BSSL000335-38.

<sup>522</sup> 4/19/06 email from Ms. Nasrallah to IATS, PSI-Insured\_Aircraft-01-0222.

<sup>523</sup> 4/20/06 IATS Deposit Confirmation, PSI-Insured\_Aircraft-01-0229.

<sup>524</sup> 4/20/06 Bordreau De Transmission, PSI-Insured\_Aircraft-01-0226 to 0228.

<sup>525</sup> 5/4/06 email from Mr. Brown to Mr. Duret and Ms. Nasrallah, PSI-Insured\_Aircraft-01-00258.

Sapphire in accordance with the Purchase Agreement. Your client still has total control over these funds, we do not have them.

The Pre Purchase inspection can be scheduled as soon as the funds are moved into escrow on a non refundable basis in accordance with the terms of the Purchase Agreement.

Please contact Eric by phone today to get this matter resolved.”<sup>526</sup>

Mr. Brown sent a second email on May 5, 2006, as follows:

“As explained in my earlier email the US\$4,700,000 is in the IATS Escrow Account and is being held for the Credit of your client. ... We can be patient while all the other problems are sorted out, but we must have the US\$4,700,000 made non refundable in accordance with the terms of the Sale and Purchase Agreement. ... I would suggest you contact Fred Weissmann and arrange for Jet Aviation to advise you on this matter and assist you in completing this transaction. They are experts in these matters and can help you get this transaction finalized.”<sup>527</sup>

On May 9, 2006, Ms. Nasrallah sent an email stating: “The management of the aircraft will be done by Jet Aviation in accordance to the instructions of the buyer.”<sup>528</sup>

That same day, Mr. Obiang sent the second installment of \$10.3 million to purchase the aircraft, using three wire transfers to do so. Each transfer was sent from an Obiang account at Societe Generale De Banque in Equatorial Guinea to the IATS account at UBS in London. On May 9, 2006, UBS notified IATS that \$2,574,975 had arrived from Banque De France by order of Mr. Obiang.<sup>529</sup> This email clearly disclosed Mr. Obiang’s involvement in the aircraft sale. On May 10, 2006, UBS received an additional \$5,149,975 from Banque De France by order of Mr. Obiang.<sup>530</sup> And again, on May 11, 2006, another \$2,574,975 was sent from Banque De France by order of Mr. Obiang.<sup>531</sup> At that point, IATS held about \$15 million in its escrow account at UBS in London.

On May 18, 2006, IATS notified Mr. Brown of Blue Sapphire Services and Mr. Duret of Ebony Shine International, among others, that IATS was in possession of the first and second payments specified in the draft escrow agreement for the purchase of the jet.<sup>532</sup>

**Seller Invokes Patriot Act.** On May 23, 2006, Mr. Brown sent an email to Mr. Duret notifying him that the seller of the aircraft, Blue Sapphire, wanted a legal opinion that the proposed purchase was not subject to provisions of the Patriot Act:

<sup>526</sup> 5/5/06 email from Mr. Brown to Ms. Nasrallah and Mr. Duret, PSI-Insured\_Aircraft-01-00257.

<sup>527</sup> 5/5/06 email from Mr. Brown to Mr. Duret and Ms. Nasrallah, PSI-Insured\_Aircraft-01-0250.

<sup>528</sup> 5/9/06 email from Ms. Nasrallah to Mr. Brown, PSI-Insured\_Aircraft 01-0265; see also 5/9/06 email from Ms. Nasrallah to Mr. Brown, PSI-Insured\_Aircraft-01-0268.

<sup>529</sup> 5/5/06 email from UBS to IATS, PSI-Insured\_Aircraft-01-0275.

<sup>530</sup> 5/10/06 email IATS to UBS, PSI-Insured\_Aircraft-01-0264.

<sup>531</sup> 5/11/06 email from UBS to IATS, PSI-Insured\_Aircraft-01-0276.

<sup>532</sup> 5/18/06 email from IATS to Mr. Brown, PSI-Insured\_Aircraft-01-0281.

“The owner of the GV is very concerned that this sale to your client is not in compliance with the Patriot Act. As such he requires a Legal Opinion from IATS’s Counsel that the transaction as structured by IATS is not subject to the provisions of the Patriot Act, or if it is, that all requirements of the Patriot Act have been complied with.”<sup>533</sup>

Wells Fargo Bank Northwest, which acted as Blue Sapphire’s U.S. registered owner of the aircraft, normally complied with the Patriot Act’s AML provisions and wanted a legal determination to whether the \$38.5 million being paid in the sale was subject to a due diligence review to evaluate the source of the funds.

Ms. Nasrallah responded with an email on May 31, 2006, arguing that the Patriot Act was not applicable to the transaction:

“Please allow me to pinpoint the following points: the client is Indonesian, the sale will take place in Singapore between 2 [BVI] companies out of which one is detained by an African, the guarantee is based in London, both intermediaries (you and me) are non US Citizens. Based on the above, could you please explain to me how an American law can be applied to this contract knowing that the plane has already been re-registered at the Cayman Islands?”<sup>534</sup>

Despite this email, the escrow agreement had been revised to require the purchaser to provide a legal opinion that the transaction was exempt from the Patriot Act.<sup>535</sup> On June 9, 2006, William J. Robinson, an Oklahoma City attorney, provided the requested legal opinion to Blue Sapphire, Ebony Shine International, IATS, and Wells Fargo Bank. He wrote in part:

“In accordance with Paragraph 4 of the June 5, 2006 Aircraft Sale and Purchase Amendment Agreement herein relative to the applicability of the Uniting and Strengthening America By Providing Appropriate Tolls Required to Intercept and Obstruct Terrorism (USA Patriot Act) Act Of 2001 thereto, you are advised that while the transaction may not be specifically ‘exempt’ from same, it is my opinion, subject to qualification hereinafter expressed, that nothing in said Act prevents the parties hereto, or their agents, from consummating the purchase and sale or identifies the transaction as a violation of said Act.”<sup>536</sup>

On June 27, 2006, Mr. Robinson provided a supplemental legal opinion further explaining his reasoning. First, he observed that IATS was not a “financial institution” as defined in the Patriot Act.<sup>537</sup> Second, he noted that it was the banks that were wiring funds in connection with the transaction that were subject to the Patriot Act.<sup>538</sup> Finally, he stated that the two banks that would be involved with completing the sale, Wells Fargo Bank and the International Bank of Commerce, were both in compliance with the Patriot Act.<sup>539</sup>

<sup>533</sup> 5/23/06 email from Mr. Brown to Mr. Duret, PSI-Insured\_Aircraft-01-0328.

<sup>534</sup> 5/31/06 email from Ms. Nasrallah to Mr. Brown, PSI-Insured\_Aircraft-01-0327.

<sup>535</sup> See 5/6/06 Escrow Agreement, PSI-Insured\_Aircraft-01-0326.

<sup>536</sup> 6/9/06 legal opinion, PSI-Insured\_Aircraft-01-0299.

<sup>537</sup> 6/27/06 legal opinion, PSI-Insured\_Aircraft-01-0309.

<sup>538</sup> Id.

<sup>539</sup> Id. International Bank of Commerce administered IATS’ escrow accounts in the United States.



Apparently this legal analysis was sufficient for Wells Fargo and International Bank of Commerce to accept the funds supplied by Mr. Obiang in his purchase of the jet.

**Purchase Completed.** On June 26, 2006, Mr. Brown emailed IATS that the “full amount of funds were in escrow with IATS” to complete the sale of the aircraft.<sup>540</sup> On June 27, 2006, Mr. Brown forwarded a revised escrow agreement to IATS. The revisions included identifying IATS instead of McAfee & Taft as the escrow agent for the buyer’s funds, specifying that the escrow account was at UBS London, and deleting the requirement that the escrow agent maintain a Customer Identification Program in compliance with the Patriot Act.<sup>541</sup> On June 28, 2006, Mr. Obiang and Blue Sapphire Services, Ltd. executed a final Escrow Agreement and Instructions to Fund the purchase of the aircraft.<sup>542</sup>

The following charts summarize the source of the \$38.5 million used to purchase the aircraft and what happened to the funds.<sup>543</sup> Essentially, the funds were provided by Mr. Obiang from his personal account in Equatorial Guinea. Because his payments were in U.S. dollars, they went through several correspondent accounts, including Wachovia Bank in the United States, before arriving at the IATS account at UBS in London.<sup>544</sup> Once IATS received the funds, it divided the purchase price among five parties. It wire transferred the largest amount, over \$27 million to PMA Capital Management, an escrow agent based in the Cayman Islands with an affiliate in Hong Kong, which used the funds to pay off an outstanding mortgage on the aircraft.<sup>545</sup> IATS wire transferred the next largest amount, over \$11 million, to a Blue Sapphire account at Credit Suisse in Singapore. Since the funds were in U.S. dollars, they went through Credit Suisse’s U.S. dollar correspondent account at Bank of New York. IATS then transferred about \$22,000 to its U.S. account at International Bank of Commerce in Oklahoma as its escrow fee, and sent additional amounts to two lawyers.<sup>546</sup>

FUNDS SENT TO IATS ACCOUNT AT UBS LONDON IN 2006 AIRCRAFT SALE					
Date	Amount	Originating Institution	Through	Beneficiary	Bates
4/13/2006	\$4,723,262.22	McAfee & Taft Escrow Account at Bank of America (returning Obiang funds)		Insured Aircraft Title Service, Inc.	BSSL0003321, 38
5/9/2006	\$2,574,975.00	Teodoro Obiang	Bank of Central	Insured	BF-G-0025, 26

<sup>540</sup> 6/26/06 email from Mr. Brown to IATS, BSSL000339.

<sup>541</sup> See Escrow Agreement, BSSL000344-353; Escrow Agreement Draft 46, BSSL000204-213; and 6/28/06 Escrow Agreement, PSI-Insured\_Aircraft-01-0313

<sup>542</sup> 6/28/06 Escrow Agreement, BSSL000364-366.

<sup>543</sup> See Escrow Worksheet, PSI-Insured\_Aircraft-01-0182; list of transaction parties, PSI-Insured\_Aircraft-01-0202; 6/16/06 email from UBS to IATS, PSI-Insured\_Aircraft-01-0306; 5/10/06 email from UBS to IATS, PSI-Insured\_Aircraft-01-0264; and 5/11/06 email from UBS to IATS, PSI-Insured\_Aircraft-01-0276.

<sup>544</sup> See chart in next section identifying the transfers.

<sup>545</sup> See, e.g., 6/29/06 FAA Release and Disclaimer, signed by PMA Capital Management Ltd, PSI-Insured\_Aircraft-01-0161.

<sup>546</sup> See 4/20/06 Escrow Report, PSI-Insured\_Aircraft-01-0225; Subcommittee interview of IATS, December 17, 2009.

		Account at Societe Generale de Banque - Equatorial Guinea	African States → Banque De France	Aircraft Title Service, Inc	
5/11/2006	\$5,149,975.00	Teodoro Obiang Account at Societe Generale de Banque - Equatorial Guinea	Bank of Central African States → Banque De France	Insured Aircraft Title Service, Inc	BF-G-0028, 29
5/12/2006	\$2,574,975.00	Teodoro Obiang Account at Societe Generale de Banque - Equatorial Guinea	Bank of Central African States → Banque De France	Insured Aircraft Title Service, Inc	BF-G-0031, 32
6/13/2006	\$7,833,308.33	Teodoro Obiang Account at Societe Generale de Banque - Equatorial Guinea	Bank of Central African States → Banque De France	Insured Aircraft Title Service, Inc	BF-G-0034, 35
6/13/2006	\$7,833,308.33	Teodoro Obiang Account at Societe Generale de Banque - Equatorial Guinea	Bank of Central African States → Banque De France	Insured Aircraft Title Service, Inc	BF-G-0037, 38
6/19/2006	\$7,833,308.33	Teodoro Obiang Account at Societe Generale de Banque - Equatorial Guinea	Bank of Central African States → Banque De France	Insured Aircraft Title Service, Inc	BF-G-0040, 41
<b>Source: Wachovia and McAfee &amp; Taft</b>			<b>TOTAL- \$38,523,112.21</b>		

<b>FUNDS DISBURSED FROM IATS ACCOUNT AT UBS LONDON IN 2006 AIRCRAFT SALE</b>				
<b>Date</b>	<b>Funds Sent To</b>	<b>Account</b>	<b>Amount</b>	<b>Bates</b>
6/29/2006	PMA Capital Management Ltd.	HSBC account in Hong Kong (through a US dollar correspondent account at HSBC in New York)	\$27,238,963.17	BSSL000347
6/29/2006	Blue Sapphire Services, Ltd.	Credit Suisse account in Singapore (through a US dollar correspondent account at Bank of New York)	\$11,232,011.83	BSSL000347
6/29/2006	Insured Aircraft Title Services, Ltd.	International Bank of Commerce account in Oklahoma	\$22,525.00	BSSL000347
6/29/2006	Clifford Chance, LLP	HSBC account in Hong Kong (through a US dollar correspondent account at HSBC in New York)	\$6,500.00	BSSL000347
6/30/2006	WJ Robin	Account information not available	\$4,000.00	PSI-Insured_Aircraft-01-0225
<b>Source: McAfee &amp; Taft</b>			<b>TOTAL- \$38,504,000.00</b>	

Charts prepared by Subcommittee

On June 28, 2006, Mr. Obiang signed a Form of Acceptance acknowledging receipt of the Gulfstream G-V jet airplane, as well as a memorandum verifying completion of the aircraft

inspection.<sup>547</sup> In a subsequent email, Mr. Brown requested a 48 hour hold on the Transfer of Title to allow the jet to be flown from Singapore to Basel, Switzerland.<sup>548</sup> Documents reviewed by the Subcommittee indicate that the jet was registered in the Cayman Islands under the management of a private company, Jet Aviation, using registration Tail No. VP-CES.<sup>549</sup> Other documentation obtained by the Subcommittee indicates that, in June 2006, Mr. Obiang was looking for space in an aircraft hangar in California to house a private jet.<sup>550</sup>

Flight records reviewed by the Subcommittee for Mr. Obiang's Gulfstream V aircraft show that over the last two and a half years, from March 2007 through November 2009, Mr. Obiang's aircraft has arrived and departed from the United States thirty-five times.<sup>551</sup> These flights have originated or departed from a variety of countries, including Bermuda, Brazil, the Dominican Republic, Dubai, France, and Switzerland. Common locations in the United States were airports at Los Angeles, Miami, New Jersey, Tucson, and Yuma, a small airport in Arizona near the Mexican border.

**Analysis.** Mr. Obiang's 2006 purchase of the Gulfstream jet involved multi-million-dollar funding transfers across international lines to and from the escrow agents retained by the buyer and seller. The seller's original escrow agent, McAfee & Taft, as an AML precaution, asked for information on the source of the \$38.5 million sent to its escrow account in the United States. When Mr. Obiang's associates refused to disclose the source of the funds, McAfee & Taft declined to complete the transaction and returned the funds it had been given. In contrast, its competitor IATS chose not to question the source of the funds, but to facilitate the purchase.

In addition, none of the banks who administered accounts for the escrow agents stopped the transfers. The banks were relying on the escrow agents themselves to police their clients, but under current law, U.S. escrow agents selling multi-million-dollar aircraft have no legal obligation to know their customers, evaluate the source of the funds used in aircraft purchases, or take special precautions when dealing with PEPs. Because of this gap in U.S. AML law, Mr. Obiang was able to send \$38.5 million in suspect funds into the United States to purchase the Gulfstream jet. To prevent similar suspect sales of aircraft in the future – as well as sales of luxury automobiles, yachts, and other high-end vehicles using escrow accounts – escrow agents need to be required to establish AML programs.

### **E. Obiang Use of U.S. Wire Transfer Systems To Move Millions of Dollars in Suspect Funds**

In addition to making use of U.S. lawyers, real estate and escrow agents, Mr. Obiang has made frequent use of U.S. wire transfer systems to bring millions of dollars in suspect funds from Equatorial Guinea into the United States. He has used these EG wire transfers to send funds, not only to U.S. bank accounts that he controlled or utilized, but also to purchase U.S.

<sup>547</sup> 6/28/06 inspection memorandum, BSSL000368; 6/28/06 Form of Acceptance Certificate, BSSL000369, R 2260.

<sup>548</sup> 6/28/06 email from Mr. Brown, BSSL000372.

<sup>549</sup> 7/6/06 email from Mr. Brown, PSI-Insured\_Aircraft-01-0184; 10/7/07 email from Jet Aviation to Ms. Romo, SEN006229.

<sup>550</sup> 6/7/06 fax from Mr. Nagler, SEN011075; 6/7/06 email from Ms. DeHaven to Mr. Nagler, SEN011096, R 736.

<sup>551</sup> See 1/6/10 letter from Customs and Border Protection (CBP) to the Subcommittee, with attached flight records, PSI-CBP-01-00001-03. CBP began tracking flight information for private aircraft in 2007.

goods and services and transact other business in the United States. Mr. Obiang has been able to utilize U.S. wire transfer systems, because major U.S. banks that provide correspondent accounts to foreign banks have not established procedures which would allow them routinely to detect, block, and analyze high-dollar wire transfers sent by PEPs from high-risk jurisdictions.

Two examples illustrate the problem: over a two-month period in 2006, Mr. Obiang was able to move \$73 million from Equatorial Guinea into the United States using wire transfer systems operated by Wachovia Bank; and over a four-year period from 2002 to 2006, he was able to move \$37 million through wire transfer systems operated by Citibank.

### **(1) \$73 Million Wired through Wachovia Bank**

In just over two months, from April 5, 2006 to June 19, 2006, Mr. Obiang was able to complete fourteen wire transfers that brought more than \$73 million in suspect funds from Equatorial Guinea into the United States through a Banque de France correspondent account at Wachovia Bank.<sup>552</sup> Mr. Obiang used these funds to complete the purchase of the \$30 million Malibu residence and the \$38.5 million Gulfstream G-V jet airplane described earlier in this section.<sup>553</sup>

This section has already examined the roles of the real estate and escrow agents and their banks in those transactions; this section takes the next step and examines the role of the U.S. banks that provide correspondent accounts that serve as gateways into the U.S. financial system for foreign banks sending wire transfers on behalf of their customers. Such correspondent accounts are not the final destination of the funds sent by wire transfer, but serve as intermediary accounts that link the originator of the wire transfer to its final beneficiary. Normally, U.S. correspondent accounts automatically transmit numerous wire transfers each day, and the funds represented by the wire transfers remain only briefly in the correspondent accounts. However, all U.S. banks are equipped with interdiction software that can detect and block wire transfers bearing particular names or countries to meet the requirements of U.S. law, such as prohibitions against transmitting wire transfers for terrorists, narcotics traffickers, and other criminals specified on OFAC lists or for countries against which the United States has imposed trade sanctions. This interdiction software has rarely been employed, however, in the battle to keep foreign corruption outside of the United States.

The \$73 million in wire transfers sent through Wachovia's correspondent account in the spring of 2006, occurred nearly two years after this Subcommittee held a hearing and released a well-publicized report describing how EG officials including Mr. Obiang, had used accounts at Riggs Bank to move suspect funds. Related criminal and regulatory investigations led to a \$16 million criminal fine, a \$25 million civil fine, and the sale of Riggs Bank.<sup>554</sup> The report also sparked tougher oversight by federal regulators of bank procedures to combat money laundering and foreign corruption, including by PEPs.

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<sup>552</sup> 4/5/06 – 6/19/06 Integrated Funds Transfer System, History Transaction Listings, BF-G-00001 to 56.

<sup>553</sup> \$44,099,999.99 was wired to McAfee & Taft and Insured Aircraft Title Services, Ltd. for escrow and title services related to the purchase of Gulfstream G-V S/N 669; and \$29,542,000.00 was wired to First American Title Company for the purchase of 3620 Sweetwater Blvd., Malibu, CA.

<sup>554</sup> Associated Press, "Final Chapter Nears in Riggs Bank Drama," March 29, 2005.

Wachovia told the Subcommittee that, in response to the Subcommittee’s investigation, in 2005, the bank had designated Equatorial Guinea as a high-risk jurisdiction in its “enterprise-wide list.”<sup>555</sup> Wachovia also told the Subcommittee that it considered Mr. Obiang to be a senior foreign political figure whose financial activities required enhanced due diligence.<sup>556</sup> Nevertheless, Wachovia failed to identify or stop the \$73 million in wire transfers that passed through the bank from April to June 2006. Each of these fourteen wire transfers involved a minimum of \$2 million, referenced Mr. Obiang on the wire transfer documentation, and showed the funds originating from a bank in Equatorial Guinea, but Wachovia’s interdiction software did not block any of the transfers. In each case, Wachovia had relied on its client – Banque De France, the foreign bank transmitting the funds to the United States – to ensure that it was not transmitting suspect funds. This case history shows that reliance was not well placed.

In January 2007, the Foreign Corruption Unit of the U.S. Immigration and Customs Enforcement (ICE) division alerted Wachovia to Mr. Obiang’s wire activity through the bank during the prior year, directing Wachovia’s attention to the Banque De France correspondent account.<sup>557</sup> Even after receiving this warning, however, Wachovia did not place the Banque De France correspondent account under any additional scrutiny, or take steps to restrict wire transfers bearing Mr. Obiang’s name.<sup>558</sup>

After the 2006 wire transfers involving the \$73 million, Mr. Obiang did not openly use the Wachovia wire transfer system for over a year. Then, in 2008, he struck again. In response to a Subcommittee inquiry seeking Obiang-related financial records, Wachovia conducted a search of its wire transfer records and found that, in February and July of 2008, Mr. Obiang had sent two wire transfers totaling about \$145,000 from his personal account at a bank in Equatorial Guinea, through Fortis Bank, a French bank with a correspondent account at Wachovia, to accounts at other banks in the United States.<sup>559</sup> Wachovia had again served as the gateway into the United States for his suspect funds.

This chart summarizes the Obiang wire transfers that were sent through foreign bank correspondent accounts at Wachovia from 2006 to 2008, and enabled Mr. Obiang to bring \$73 million in suspect funds into the United States.

<b>OBIANG WIRE TRANSFERS THROUGH WACHOVIA</b>					
<b>2006-2008</b>					
<b>Date</b>	<b>Amount</b>	<b>Originating Institution</b>	<b>Through</b>	<b>Beneficiary</b>	<b>Bates</b>
4/05/06	\$2,575,000.00	Teodoro Obiang Account at Societe Generale de Banque - Equatorial Guinea	Bank of Central African States → Banque De France → Wachovia	McAfee & Taft account at Bank of America	BF-G-00001-03
4/05/06	\$5,908,400.00	Teodoro Obiang Account at Societe Generale de Banque -	Bank of Central African States → Banque De France	First American Title Company at First American Trust, F.S.B.	BF-G-00004-06

<sup>555</sup> Subcommittee interview with Wachovia Bank, 2/6/09; PSI-WACHOVIA-10-0007.

<sup>556</sup> Subcommittee interview with Wachovia Bank, 2/6/09.

<sup>557</sup> 1/16/07 email from ICE to Wachovia, BF-F00007.

<sup>558</sup> 11/21/08 Wachovia’s written responses to Subcommittee questions, PSI-WACHOVIA-10-0004; Subcommittee interview with Wachovia Bank, 2/6/09.

<sup>559</sup> 2/7/08 -7/31/08 Wachovia Transaction Reports, BF-G-00043-56. Fortis Bank is affiliated with BNP Paribas.

		Equatorial Guinea	→ Wachovia		
4/10/06	\$2,575,000.00	Teodoro Obiang Account at Societe Generale de Banque - Equatorial Guinea	Bank of Central African States → Banque De France → Wachovia	McAfee & Taft account at Bank of America	BF-G-00007-09
4/10/06	\$5,908,400.00	Teodoro Obiang Account at Societe Generale de Banque - Equatorial Guinea	Bank of Central African States → Banque De France → Wachovia	First American Title Company at First American Trust, F.S.B.	BF-G-00010-12
4/10/06	\$5,150,000.00	Teodoro Obiang Account at Societe Generale de Banque - Equatorial Guinea	Bank of Central African States → Banque De France → Wachovia	McAfee & Taft account at Bank of America	BF-G-00013-15
4/19/06	\$5,908,400.00	Teodoro Obiang Account at Societe Generale de Banque - Equatorial Guinea	Bank of Central African States → Banque De France → Wachovia	First American Title Company at First American Trust, F.S.B.	BF-G-00016-18
4/21/06	\$5,908,400.00	Teodoro Obiang Account at Societe Generale de Banque - Equatorial Guinea	Bank of Central African States → Banque De France → Wachovia	First American Title Company at First American Trust, F.S.B.	BF-G-00019-21
4/26/06	\$5,908,400.00	Teodoro Obiang Account at Societe Generale de Banque - Equatorial Guinea	Bank of Central African States → Banque De France → Wachovia	First American Title Company at First American Trust, F.S.B.	BF-G-00022-24
5/09/06	\$2,575,000.00	Teodoro Obiang Account at Societe Generale de Banque - Equatorial Guinea	Bank of Central African States → Banque De France → Wachovia	Insured Aircraft Title Service account at UBS London	BF-G-00025-27
5/11/06	\$5,150,000.00	Teodoro Obiang Account at Societe Generale de Banque - Equatorial Guinea	Bank of Central African States → Banque De France → Wachovia	Insured Aircraft Title Service account at UBS London	BF-G-00028-30
5/12/06	\$2,575,000.00	Teodoro Obiang Account at Societe Generale de Banque - Equatorial Guinea	Bank of Central African States → Banque De France → Wachovia	Insured Aircraft Title Service account at UBS London	BF-G-00031-33
6/13/06	\$7,833,333.33	Teodoro Obiang Account at Societe Generale de Banque - Equatorial Guinea	Bank of Central African States → Banque De France → Wachovia	Insured Aircraft Title Service account at UBS London	BF-G-00034-36
6/13/06	\$7,833,333.33	Teodoro Obiang Account at Societe Generale de Banque - Equatorial Guinea	Bank of Central African States → Banque De France → Wachovia	Insured Aircraft Title Service account at UBS London	BF-G-00037-39
6/19/06	\$7,833,333.33	Teodoro Obiang Account at Societe Generale de Banque - Equatorial Guinea	Bank of Central African States → Banque De France → Wachovia	Insured Aircraft Title Service account at UBS London	BF-G-00040-42
2/06/08	\$144,017.99	Teodoro Obiang Account at CCEI Bank GE	Fortis Bank → Wachovia	Tia Ping Carpets account at Wachovia	BF-G-00050-56
7/30/08	\$1,458.51	Teodoro Obiang Account at CCEI Bank GE	Fortis Bank → Wachovia	Eulalia Salome Obono Nze account at Wachovia	BF-G-00043-49
<b>Total- \$72,687,476.49</b>			<b>Source- Wachovia</b>		

Prepared by Subcommittee

Wachovia has advised the Subcommittee that as of January 2009, it has taken steps for the first time to restrict Mr. Obiang's ability to wire funds through Wachovia's wire transfer system.<sup>560</sup> According to Wachovia, it has added Mr. Obiang and his family members to the bank's pre-execution interdiction filter for wire clearing operations. Wachovia told the Subcommittee that any wires blocked by this software related to Mr. Obiang or his family would be scrutinized by funds transfer specialists for a determination of legitimacy, referred to anti-money laundering specialists where appropriate, and, if necessary, returned to the originating financial institution.<sup>561</sup> Wachovia's actions show that U.S. banks offering correspondent accounts to foreign banks can become powerful guardians of the gateways into the U.S. financial system and provide vital services in the battle to keep foreign corruption outside of the United States.

## (2) \$37 Million Wired Through Citibank

A second example of Mr. Obiang's ability to take advantage of U.S. wire transfer systems involves wire transfers sent through Citibank. Wire transfer records reviewed by the Subcommittee indicate that, over a four-year period from 2002 to 2006, Mr. Obiang benefited from wire transfers sent through Citibank totaling in excess of \$37 million.<sup>562</sup>

Most of these wire transfers sent funds from Equatorial Guinea to the United States, drawing on accounts held by two Obiang companies, Somagui Forestal and Socage, or accounts held in the name of Mr. Obiang personally. Some of these wire transfers appear to have deposited substantial sums into Obiang-related accounts in the United States. For example, on July 11, 2003, \$1.5 million was deposited into an Obiang account at Riggs Bank.<sup>563</sup> On May 21, 2004, \$1 million was deposited into an account held by his company, TNO Entertainment LLC.<sup>564</sup> Other wire transfers appear to have been direct payments to U.S. high-end retail establishments, presumably to pay Obiang-related bills. For example, on September 23, 2004, Somagui Forestal wire transferred \$97,588.05 to a Beverly Hills Porsche Audi dealership.<sup>565</sup> Payments also went to a U.S. yacht company, corporate jet service, high-end automobile dealers, and a luxury vacation retailer. Still other wire transfers, totaling nearly \$2.5 million, appear to have been payments to satisfy American Express credit card charges.<sup>566</sup>

One of the wire transfers, for \$19.5 million in January 2006, was sent by a U.S. law firm, Sidley Austin, to Mr. Obiang in Equatorial Guinea, returning funds that he had sent to an escrow account related to an attempted purchase of a Gulfstream jet, as explained earlier. Before initiating this wire transfer, Sidley Austin obtained a letter from the U.S. Department of Justice confirming that the funds transfer would not violate U.S. AML laws and there was no basis to restrain or freeze such proceeds at the time of transfer.<sup>567</sup>

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<sup>560</sup> Subcommittee interview with Wachovia Bank, 2/6/09.

<sup>561</sup> Subcommittee interview with Wachovia Bank, 2/6/09.

<sup>562</sup> 2002-2006 wire transfer records, C00000065 to 116, R 2718.

<sup>563</sup> 7/11/06 wire transfer record, C00000116.

<sup>564</sup> 5/21/04 wire transfer record, C00000085.

<sup>565</sup> 9/23/04 wire transfer record, C00000105.

<sup>566</sup> 11/12/04 wire transfer record, C00000070; 7/14/04 wire transfer record, C00000075; 7/20/04 wire transfer record, C00000083.

<sup>567</sup> 12/17/09 letter from Sidley Austin to the Subcommittee, PSI Sidley Austin 01-000001.

This chart summarizes the Obiang-related wire transfers that moved through Citibank from 2002 to 2006.

<b>OBIANG WIRE TRANSFERS THROUGH CITIBANK 2002-2006</b>					
<b>Date</b>	<b>Amount</b>	<b>Originator</b>	<b>Through</b>	<b>Beneficiary</b>	<b>BATES</b>
6/19/02	\$150,000.00	SOMAGUI FORESTAL	CCEI BANK GE → CITIBANK → CITY NATIONAL BANK	T.N.O. ENTERTAINMENT LLC	C00000090
7/22/02	\$50,000.00	SOMAGUI FORESTAL	CCEI BANK GE → CITIBANK → CITY NATIONAL BANK	T.N.O. ENTERTAINMENT LLC	C00000089
3/19/03	\$33,638.28	SOMAGUI FORESTAL	CCEI BANK GE → CITIBANK → BANK OF AMERICA	TIMESHARE SPECIALISTS - MEGA YACHT SERVICES	C00000088
3/19/03	\$300,000.00	SOMAGUI FORESTAL	CCEI BANK GE → CITIBANK → RIGGS BANK	T.N.O.	C00000087
7/11/03	\$1,500,000.00	SOMAGUI FORESTAL	CCEI BANK GE → CITIBANK → RIGGS BANK	TEODORO NGUEMA OBIANG	C00000116
9/17/03	\$1,000,000.00	SOMAGUI FORESTAL	CCEI BANK GE → CITIBANK → RIGGS BANK	TEODORO NGUEMA OBIANG	C00000086
3/9/04	\$1,000,000.00	SOCAGE	CCEI BANK GE → CITIBANK → RIGGS BANK	TEODORO NGUEMA OBIANG	C00000068
3/15/04	\$999,975.00	SOCAGE	CCEI BANK GE → CITIBANK → CITY NATIONAL BANK	TEODORO NGUEMA OBIANG	C00000066
3/18/04	\$500,000.00	SOCAGE	CCEI BANK GE → CITIBANK → BANK ONE	GULF STREAM AEROSPACE CORPORATION	C00000067
5/6/04	\$42,595.50	SOMAGUI FORESTAL	CCEI BANK GE → CITIBANK → FIRST ARIZONA SAVINGS	GLOBAL JET CORPORATION	C00000078
5/21/04	\$1,000,000.00	SOMAGUI FORESTAL	CCEI BANK GE → CITIBANK → CITY NATIONAL BANK	TEODORO NGUEMA OBIANG (T.N.O. ENTERTAINMENT LLC)	C00000085
6/24/04	\$1,000,000.00	SOMAGUI FORESTAL	CCEI BANK GE → CITIBANK → RIGGS BANK	TEODORO NGUEMA OBIANG	C00000091
6/29/04	\$30,000.00	SOMAGUI FORESTAL	CCEI BANK GE → CITIBANK → CALIFORNIA BANK AND TRUST	PACIFIC NATIONAL CONSTRUCTION	C00000076
6/29/04	\$50,000.00	SOMAGUI FORESTAL	CCEI BANK GE → CITIBANK → WELLS FARGO BANK	PLATINUM MOTORS, LLC	C00000072
7/7/04	\$182,000.00	SOMAGUI FORESTAL	CCEI BANK GE → CITIBANK → FIRST ARIZONA SAVINGS	GLOBAL JET CORPORATION	C00000073
7/13/04	\$1,000,000.00	SOMAGUI FORESTAL	CCEI BANK GE → CITIBANK → CITY NATIONAL BANK	TEODORO NGUEMA OBIANG	C00000074
7/14/04	\$999,975.00	SOMAGUI FORESTAL	CCEI BANK GE → CITIBANK → AMERICAN EXPRESS	JP MORGAN CHASE AMERICAN EXPRESS	C00000075
7/20/04	\$999,950.00	SOMAGUI FORESTAL	CCEI BANK GE → CITIBANK → AMERICAN EXPRESS	JP MORGAN CHASE AMERICAN EXPRESS	C00000083



8/4/04	\$270,000.00	SOMAGUI FORESTAL	CCEI BANK GE → CITIBANK → FIRST ARIZONA SAVINGS	GLOBAL JET CORPORATION	C00000077
8/24/04	\$421,155.09	SOMAGUI FORESTAL	CCEI BANK GE → CITIBANK → COMERICA BANK	MILLER-DM INC	C00000071
8/24/04	\$1,328,739.00	SOMAGUI FORESTAL	CCEI BANK GE → CITIBANK → WELLS FARGO BANK	JAMES W HARRIS	C00000079
8/31/04	\$397,594.21	SOMAGUI FORESTAL	CCEI BANK GE → CITIBANK → BANK OF AMERICA	O'GARA COACH, LLC	C00000080
9/13/04	\$297,490.00	SOMAGUI FORESTAL	CCEI BANK GE → CITIBANK → FIRST NATIONAL BANK	INVESTMENT CARS (SA)	C00000081
9/13/04	\$250,000.00	SOMAGUI FORESTAL	CCEI BANK GE → CITIBANK → FIRST NATIONAL BANK	PEARL AUTOMOTIVE PTY LTD (SA)	C00000082
9/16/04	\$580,000.00	SOMAGUI FORESTAL	CCEI BANK GE → CITIBANK → WELLS FARGO	JAMES W HARRIS	C00000103
9/20/04	\$230,400.00	SOMAGUI FORESTAL	CCEI BANK GE → CITIBANK → BANK OF AMERICA	SVETLANA SAFIEVA	C00000108
9/22/04	\$27,428.00	SOMAGUI FORESTAL	CCEI BANK GE → CITIBANK → WELLS FARGO BANK	SAVE-ON INSURANCE	C00000107
9/23/04	\$312,473.59	SOMAGUI FORESTAL	CCEI BANK GE → CITIBANK → COMERICA BANK	MILLER-DM INC	C00000106
9/23/04	\$97,588.05	SOMAGUI FORESTAL	CCEI BANK GE → CITIBANK → MERCANTILE BANK	BEVERLY HILLS PORCHE AUDI	C00000105
10/7/04	\$225,986.05	SOMAGUI FORESTAL	CCEI BANK GE → CITIBANK → FIRST ARIZONA SAVINGS	GLOBAL JET CORPORATION	C00000104
10/28/04	\$218,099.00	SOMAGUI FORESTAL	CCEI BANK GE → CITIBANK → FIRST ARIZONA SAVINGS	GLOBAL JET CORPORATION	C00000109
11/12/04	\$500,000.00	CCEIGQGQ	CCEI BANK GE → CITIBANK → JP MORGAN CHASE	AMERICAN EXPRESS	C00000070
11/17/04	\$314,440.65	SOMAGUI FORESTAL	CCEI BANK GE → CITIBANK → FIRST NATIONAL BANK	PEARL AUTOMOTIVE PTY LTD (SA)	C00000102
11/30/04	\$325,000.00	SOMAGUI FORESTAL	CCEI BANK GE → CITIBANK → UBS AG	G5 EXECUTIVE AG	C00000101
12/17/04	\$50,000.00	SOMAGUI FORESTAL	CCEI BANK GE → CITIBANK → FIRST NATIONAL BANK	TEODORO NGUEMA OBIANG	C00000100
1/27/05	\$274,610.00	SOMAGUI FORESTAL	CCEI BANK GE → CITIBANK → FIRST NATIONAL BANK	INVESTMENT CARS (SA)	C00000099
2/11/05	\$75,000.00	SOMAGUI FORESTAL	CCEI BANK GE → CITIBANK → MELLON BANK	ADT SECURITY SERVICES	C00000098
2/28/05	\$74,950.00	SOMAGUI FORESTAL	CCEI BANK GE → CITIBANK → MELLON BANK	ADT SECURITY SERVICES	C00000097
4/13/05	\$599,069.46	SOMAGUI FORESTAL	CCEI BANK GE → CITIBANK → COMERICA BANK	MILLER-DM INC	C00000096
5/9/05	\$79,960.22	SOMAGUI FORESTAL	NATEXIS BANQUES POPULAIRES → CITIBANK → CITI NATIONAL BANK	TJB GEARYS LLC	C00000095

1/24/06	\$19,570,635.18	SIDLEY & AUSTIN	CITIBANK → SOCIETE GENERALE S.A. (NY) → SOCIETE GENERALE DE BANQUE -EQUATORIAL GUINEA	ACCOUNT OF TEODORO NGUEMA OBIANG	C00000112
2/23/06	\$59,970.01	SOMAGUI FORESTAL	NATEXIS BANQUES POPULAIRES → CITIBANK → CITI NATIONAL BANK	ROLAND SANDS DESIGN INC	C00000094
2/23/06	\$69,090.95	SOMAGUI FORESTAL	NATEXIS BANQUES POPULAIRES → CITIBANK → CITI NATIONAL BANK	EVE JEFFERS	C00000093
3/7/06	\$157,794.68	SOMAGUI FORESTAL	NATEXIS BANQUES POPULAIRES → CITIBANK → CITI NATIONAL BANK	PARADISE ISLAND VACATIONS	C00000092
6/16/06	\$68,965.50	SOCAGE	NATEXIS BANQUES POPULAIRES → CITIBANK → CITI NATIONAL BANK	EVE JEFFERS	C00000065
<b>TOTAL: \$37,714,573.42</b>		<b>Source- Citigroup</b>			

Prepared by Subcommittee

The transactions identified in this chart involve wire transfers that moved funds through a foreign bank correspondent account at Citibank on the way to an account at another bank. Citibank is a major provider of U.S. dollar correspondent accounts for foreign financial institutions, and often serves as an intermediary in wire transfers by foreign banks seeking to pay a beneficiary with U.S. dollars. According to Citibank, it screens all of its correspondent wire activity through real-time interdiction filters designed to comply with legal prohibitions on transmitting certain funds, such as funds transmitted by persons on the OFAC lists.<sup>568</sup>

Citibank told the Subcommittee that, although it is aware of Mr. Obiang's PEP status and deliberate use of U.S. wire transfer systems to bring suspect funds into the United States, it currently does not plan to set up procedures to block his wire transfers and automatically refer them for analysis to its AML specialists.<sup>569</sup> Citibank explained that any addition to its current blocking lists could result in thousands of false positives that would delay the completion of the affected wire transfers, and significantly increase the workload of its AML and compliance staff to clear the wire transfers that would be frozen as a result.<sup>570</sup> Citibank also noted that, under existing law, it already conducts careful reviews of the foreign financial institutions for which it opens correspondent accounts and relies on those institutions to adequately screen their own customers. Citibank officials characterized the bank's role in correspondent wire transfer transactions as extremely brief and expressed concern over any expectation that it be required to screen its customers' customers.

**Analysis.** Right now, U.S. banks that provide correspondent accounts to foreign banks do not generally screen the wire transfers that go through these accounts for high-dollar amounts sent by PEPs from high-risk countries. Adding such a requirement to U.S. AML and PEP

<sup>568</sup> Subcommittee interview with Citibank, 4/24/2009.

<sup>569</sup> Id.

<sup>570</sup> Id.

controls would provide a powerful new weapon in the battle to keep foreign corruption out of the United States.

## **F. Conclusion**

This case history shows how a controversial political figure, from the ruling family of a country plagued by corruption, moved vast amounts of wealth into the U.S. financial system, by employing American professionals such as attorneys, real estate and escrow agents to help him bypass U.S. AML and PEP controls, and by taking advantage of U.S. wire systems unequipped to screen out high-dollar transfers sent by PEPs from high-risk countries. Over a four year period, from 2004 to 2008, Teodoro Obiang was able to move over \$100 million in suspect funds into or through the US. financial system. If the United States is to keep foreign corruption outside of its borders, U.S. AML and PEP safeguards have to be further strengthened, not only at U.S. financial institutions, but also at law firms, real estate agencies, and escrow companies.