IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION

UNITED STATES OF AMERICA	)	
	)	
v.	)	CASE NUMBER: CR422-0084
	)	
BERNARD OKOJIE,	)	
Defendant	)	

DEFENDANT BERNARD OKOJIE'S
MOTION TO DISMISS
COUNTS ONE AND THREE OF THE INDICTMENT
AND THE CORRESPONDING PORTIONS OF THE FORFEITURE ALLEGATION

COMES NOW, BERNARD OKOJIE, Defendant, by and through his counsel of record, and files this his Motion to Dismiss Counts One and Three of the Indictment, and the Corresponding Portions of the Forfeiture Allegation, as follows:

Count One of the Indictment charges Mr. Okojie with conspiracy to commit wire and bank fraud in violation of 18 U.S.C. § 1349. Count Three of the Indictment charges him with money laundering conspiracy in violation of 18 U.S.C. § 1956(h).

In paragraph 26 of Count One of the Indictment, it alleges various EIDL applications and it provides the names of the entity for which the applications were submitted. It also alleges Mr. Okojie's ownership and operation of these entities. There are no allegations as to any person other than Mr. Okojie being an owner, shareholder, officer, or otherwise involved with the listed entities. As such, these allegations are insufficient to set out a valid conspiracy to commit wire and bank fraud charges. As when there is only one human actor, acting for himself and for the corporate entity that he controls, the law does not allow a conspiracy conviction. *United States v. Stevens*, 909 F2d 431 (11th Cir. 1990)

An additional defect in the Indictment is that the allegations of conspiracy in Counts One and Three fails to name any co-conspirators as to identify the alleged agreement. The existence of an agreement with another person or entity is required to establish a conspiracy. Paragraph 27 of the Indictment identifies the date of EIDL applications, and the amounts of gross revenue for people who are labeled as Individuals 1 through 8. The residences of Individuals 1 through 8 are also provided. However, no allegation is made that any conspiratorial agreement was made with any of the Individuals 1 through 8 and Mr. Okojie. To the contrary, the discovery materials suggest that these other parties contend that they were unaware of any unlawful activities and did not have an agreement with Mr. Okojie to do either an unlawful act or a lawful act by unlawful means.

As a consequence of the Indictment's failure to identify any agreement or any party or unrelated entity that was a party to any agreement with Mr. Okojie, he is prevented from being sufficiently informed to enable him to prepare a defense without surprise at trial and he is not adequately protected against subsequent prosecution as is required by the law. *United States v. Davis*, 679 F.2d 845 (11th Cir. 1982)

A valid conspiracy charge requires more than one person, and any other person must have sufficient knowledge concerning a transaction that they are agreeing to commit a crime. *United States v. Johnson*, 440 F.3d 1286 (11th Cir. 2006)

The vague allegation of the conspiracy count charged in Counts One and Three are also insufficient to protect Mr. Okojie from the dangers of being prosecuted inappropriately under the conspiracy alleged in the Indictment and for a series of other smaller uncoordinated conspiracies. *United States v. Toler,* 144 F.3d 1423 (11th Cir. 1998); *United States v. Glinton*, 154 F.3d 1245

(11th Cir. 1998)

The allegation in paragraph 29 concerning the PPP application to Lender 1, does not provide any additional information as to either what the alleged agreement was or who it was with.

The allegations in Count 3, the money laundering conspiracy, provide no further information to identify any agreement or other party to the agreement, and as such is subject to the same deficiencies in the Indictment previously discussed.

WHEREFORE, Mr. Okojie respectfully requests that the Court dismiss Counts One and Three of the Indictment, along with the corresponding portions of the Forfeiture Allegation that incorporate and rely on Count One and Count Three in the Indictment.

Respectfully submitted, this 15th day of September, 2022.

/s/John J. Ossick, Jr.
Georgia Bar No. 555150
JOHN J. OSSICK, JR., P.C.
Post Office Box 1087
Kingsland, Georgia 31548
Telephone: 912-729-5864
E-mail: ossick@tds.net

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CERTIFICATE OF SERVICE

This is to certify that I have this day served all parties in this case in accordance with the directives from the Court Notice of Electronic Filing ("NEF"), which was generated as a result of electronic filing.

This 15th day of September, 2022.

/s/John J. Ossick, Jr.
Georgia Bar No. 555150
JOHN J. OSSICK, JR., P.C.
Post Office Box 1087
Kingsland, Georgia 31548
Telephone: 912-729-5864
E-mail: ossick@tds.net