

IN THE UNITED STATES DISTRICT COURT  
FOR THE Southern DISTRICT OF Georgia  
DIVISION

UNITED STATES OF AMERICA,

V.

Bernard Okojie

Defendant.

CRIMINAL INDICTMENT

NO. 1135 422 CR:000841

Bernard Okojie MOTION FOR REDUCTION OF SENTENCE PURSUANT TO U.S.S.G. 4C1.1

Comes now the defendant, Bernard Okojie, by and through Pro Se who moves the Court to modify the previously imposed sentence based on Amendment 821 to the United States Sentencing Guidelines. In support thereof, the defendant shows the Court the following:

1.

on October 3rd, 2023 was sentenced to a custodial term of 64 months following his plea of guilty to Count WIRE FRAUD Conspiracy to commit wire and bank fraud money laundering conspiracy of the Indictment. That sentence was at the low end of the applicable advisory guideline range calculated for an offense level 27 and a Criminal History Category of 1.

1.

2.

Effective November 1, 2023, Amendment 821 to the Sentencing Guidelines will add 4C1.1 to the Guidelines which will have a direct beneficial impact on Okojie. As summarized by the Commission, the new guideline provides:

Part B, Subpart 1 of Amendment 821 creates a new Chapter Four guideline at 4C1.1 (Adjustment for Certain Zero-Point Offenders) providing a decrease of two levels from the offense level determined under Chapters Two and Three for defendants who did not receive any criminal history points under Chapter Four, Part A and whose instant offense did not involve specified aggravating factors.

(See Amendment to the Sentencing Guidelines dated 08/31/2023 and attached exhibit: A and B).

3.

On August 31, 2023, the Commission's proposed supplement to Amendment 821 makes the adjustment in the offense level for Zero-Point Offenders retroactive.

The court shall not order a reduced term of imprisonment based on Part A or Part B Subpart 1 of Amendment 821 unless the effective date of the court's order is February 1, 2024 or later.

(See, Exhibit A-1 at 4-5 Most importantly for Okojie, this special instruction does not preclude the court from conducting sentence reduction proceedings and entering orders before February 1, 2024, provided that any order reducing the defendant's term.

of imprisonment has an effective date no sooner than February 1, 2024 (See, Exhibit

A-1 at 2

4.

Okojie has zero criminal history points. (See PSR 51). He is eligible for a sentence reduction under Amendment 821's addition to Chapter 4 of the Guidelines. The two level decrease of the offense to Level 25 which when combined with Criminal History Category I results in a reduced advisory range from 70-87 months to 57-71 months. Okojie began his 64 month sentence on 11/07/2023 when he reported to the US District Court, of Georgia. A revised sentence would lead to a new presumptive release date that would reflect earned good time under the First Step Act and other relief.

5.

Consideration of the adjustment of Okojie sentence in advance of the effective date of the Amendment is important to allow the Court adequate time to assess the appropriate adjustment, to afford Okojie meaningful and timely relief, and to provide the Bureau of Prisons sufficient time to make the necessary adjustments to Okojie release date and eligibility for half-way house placement. (Reference #1).

(Reference #1) The United States Sentencing Commission estimates that 7,200 defendants are eligible for a lower sentencing range. (See, Exhibits A-1 at 2. Okojie is not aware of an estimate for the number of defendants in Southern District of Georgia nor before this Court who are impacted. Nevertheless, an early assessment of Bernard Okojie case would be beneficial to the Court, the Bureau of Prisons and to him

4:

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Wherefore, the defendant, Bernard Okojie, requests that the previously imposed sentence be reduced pursuant to 4Cl.1 set forth in Amendment 821 to a custodial term of 57 months. All other genral and special conditions are to remain intact.

Respectfully submitted,

Bernard Okojie

FCI Talladega

P.M.B 1000

Talladega AL, 35160 USA

Honorable: LISA Godbey-Wood  
801 Gloucester Street  
Brunswick, Ga 31520

CERTIFICATE OF SERVICE

I hereby certify that have on this day served a true and correct copy of the within and foregoing pleadings upon counsel for the government by mailing addressed as follows:

AUSA  
MATTHEW A. JOSEPHSON  
22 BERNARD STREET, SUITE 300  
SAVANNAH GA, 31401  
PHONE # (912) 652-4422

This 4<sup>th</sup> day of JANUARY, 2024.

Exhibit - A



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# Amendment to the Sentencing Guidelines

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August 31, 2023

**Effective Date**  
**November 1, 2023**

This document contains unofficial text of an amendment to the policy statement at §1B1.10 (Reduction in Term of Imprisonment as a Result of Amended Guideline Range (Policy Statement)) and is provided only for the convenience of the user. Official text of the amendment can be found on the Commission's website at [www.ussc.gov](http://www.ussc.gov) and will appear in a forthcoming edition of the *Federal Register*.

## TABLE OF CONTENTS

| AMENDMENT                                                                     | PAGE NO. |
|-------------------------------------------------------------------------------|----------|
| RETROACTIVE APPLICATION OF PARTS A<br>AND B, SUBPART 1 OF AMENDMENT 821 ..... | 1        |

## SUPPLEMENTARY INFORMATION

The United States Sentencing Commission is an independent agency in the judicial branch of the United States Government. The Commission promulgates sentencing guidelines and policy statements for federal sentencing courts pursuant to 28 U.S.C. § 994(a). The Commission also periodically reviews and revises previously promulgated guidelines pursuant to 28 U.S.C. § 994(o) and generally submits guideline amendments to the Congress not later than the first day of May each year pursuant to 28 U.S.C. § 994(p). Absent action of the Congress to the contrary, submitted amendments become effective by operation of law on the date specified by the Commission (generally November 1 of the year in which the amendments are submitted to Congress).

The Commission specified an effective date of November 1, 2023, for the amendment listed above and included in this document.

## RETROACTIVE APPLICATION OF PARTS A AND B, SUBPART 1 OF AMENDMENT 821

**Reason for Amendment:** The Commission has determined that the targeted changes to the criminal history rules made in Parts A and B, Subpart 1 of Amendment 821 should be applied retroactively. Accordingly, this amendment expands the listing in subsection (d) of §1B1.10 (Reduction in Term of Imprisonment as a Result of Amended Guideline Range (Policy Statement)) to implement the directive in 28 U.S.C. § 994(u) with respect to guideline amendments that may be considered for retroactive application.

Part A of Amendment 821 limits the overall criminal history impact of “status points” (i.e., the additional criminal history points given to defendants for the fact of having committed the instant offense while under a criminal justice sentence, including probation, parole, supervised release, imprisonment, work release, or escape status) under §4A1.1 (Criminal History Category). Part B, Subpart 1 of Amendment 821 creates a new Chapter Four guideline at §4C1.1 (Adjustment for Certain Zero-Point Offenders) providing a decrease of two levels from the offense level determined under Chapters Two and Three for defendants who did not receive any criminal history points under Chapter Four, Part A and whose instant offense did not involve specified aggravating factors.

In making this determination, the Commission considered the following factors, among others: (1) the purpose of the amendment; (2) the magnitude of the change in the guideline range made by the amendment; and (3) the difficulty of applying the amendment retroactively. *See* §1B1.10, comment. (backg’d.). Applying those standards to Amendment 821, the Commission determined that, among other factors:

- (1) The purpose of these targeted amendments is to balance the Commission’s mission of implementing data-driven sentencing policies with its duty to craft penalties that reflect the statutory purposes of sentencing and to reflect “advancement in knowledge of human behavior as it relates to the criminal justice process.” *See* 28 U.S.C. § 991(b). The Commission determined that the policy reasons underlying the prospective application of the amendment apply with equal force to individuals who are already sentenced.

In relation to Part A, the Commission determined that accounting for status on a more limited basis continues to serve the broader purposes of sentencing while also addressing other concerns raised regarding the impact of status points. The Commission also determined that the changes made by Part A reflect updated research suggesting that status points’ ability to predict future recidivism—a core justification for their use—may be less than the original Commission may have expected.

In implementing Part B, Subpart 1, the Commission sought, in part, to fulfill one of its core congressional directives to ensure that “the guidelines reflect the general appropriateness of imposing a sentence other than imprisonment in cases in which the defendant is a first offender who has not been convicted of a crime of violence or an otherwise serious offense.” *See* 28 U.S.C. § 994(j). The Commission further determined that the changes made by Part B, Subpart 1 reflect its statutory mission to provide for penalties that are “sufficient, but not greater than necessary” by

### Retroactive Application of Parts A and B, Subpart 1 of Amendment 821

recognizing that individuals with zero criminal history points have considerably lower recidivism rates than other sentenced individuals, as well as the fact that courts generally depart and vary more often in cases involving individuals with zero criminal history points as compared with other individuals.

- (2) The Commission determined that the changes in Parts A and B, Subpart 1 of Amendment 821 would meaningfully impact the sentence of many currently incarcerated individuals. The Commission estimates that 11,495 currently incarcerated individuals would have a lower guideline range as the result of retroactive application of Part B, Subpart 1 of Amendment 821, with an average sentence reduction of 14 months (or 11.7%). The Commission further estimates that 7,272 currently incarcerated individuals would have a lower guideline range as the result of retroactive application of Part A of Amendment 821, with an average sentence reduction of 15 months (or 17.6%).
- (3) The Commission determined that applying Part A of Amendment 821 retroactively, requiring the recalculation of criminal history points and making the determination as to whether the individual would fall within a lower criminal history category, presents minimal difficulty. While recognizing that consideration of the exclusionary criteria in Part B, Subpart 1 of Amendment 821 could result in an increased administrative burden, the Commission concluded that any such burden is manageable.

The Commission concludes that consideration of these factors supports a policy determination that a reduced guideline range is sufficient to achieve the purposes of sentencing and that, in the sound discretion of the court, a reduction in the term of imprisonment may be appropriate for previously sentenced, qualified defendants. In making this determination, the Commission remains cognizant of the fact that public safety will be considered in every case because §1B1.10 requires the court, in determining whether and to what extent a reduction in the term of imprisonment is warranted, to consider the nature and seriousness of the danger to any person or the community that may be posed by such a reduction. *See* §1B1.10, comment. (n.1(B)(ii)).

At the same time, the Commission also determined that the agencies of the federal criminal justice system responsible for reentry into society need time to prepare, and to help the released individuals prepare, for that reentry. The Commission concluded that a three-month delay in the effective date of any orders granting sentence reductions under Amendment 821 is needed (1) to give courts adequate time to obtain and review the information necessary to make an individualized determination in each case of whether a sentence reduction is appropriate, (2) to ensure that, to the extent practicable, all individuals who are to be released have the opportunity to participate in reentry programs and transitional services, such as placement in halfway houses, while still in the custody of the Bureau of Prisons, which increases their likelihood of successful reentry to society and thereby promotes public safety, and (3) to permit those agencies that will be responsible for individuals after their release to prepare for the increased responsibility.

Therefore, the Commission added a Special Instruction at subsection (e) providing that a reduced term of imprisonment based on retroactive application of Amendment 821 shall not be ordered unless the effective date of the court's order is February 1, 2024, or later. An

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Retroactive Application of Parts A and B, Subpart 1 of Amendment 821

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application note clarifies that this special instruction does not preclude the court from conducting sentence reduction proceedings before February 1, 2024, as long as any order reducing the term of imprisonment has an effective date of February 1, 2024, or later.

### Amendment:

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#### §1B1.10. Reduction in Term of Imprisonment as a Result of Amended Guideline Range (Policy Statement)

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(a) AUTHORITY.—

- (1) IN GENERAL.—In a case in which a defendant is serving a term of imprisonment, and the guideline range applicable to that defendant has subsequently been lowered as a result of an amendment to the Guidelines Manual listed in subsection (d) below, the court may reduce the defendant's term of imprisonment as provided by 18 U.S.C. § 3582(c)(2). As required by 18 U.S.C. § 3582(c)(2), any such reduction in the defendant's term of imprisonment shall be consistent with this policy statement.
- (2) EXCLUSIONS.—A reduction in the defendant's term of imprisonment is not consistent with this policy statement and therefore is not authorized under 18 U.S.C. § 3582(c)(2) if—
  - (A) none of the amendments listed in subsection (d) is applicable to the defendant; or
  - (B) an amendment listed in subsection (d) does not have the effect of lowering the defendant's applicable guideline range.
- (3) LIMITATION.—Consistent with subsection (b), proceedings under 18 U.S.C. § 3582(c)(2) and this policy statement do not constitute a full resentencing of the defendant.

(b) DETERMINATION OF REDUCTION IN TERM OF IMPRISONMENT.—

- (1) IN GENERAL.—In determining whether, and to what extent, a reduction in the defendant's term of imprisonment under 18 U.S.C. § 3582(c)(2) and this policy statement is warranted, the court shall determine the amended guideline range that would have been applicable to the defendant if the amendment(s) to the guidelines listed in subsection (d) had been in effect at the time the defendant was sentenced. In making such determination, the court shall substitute only the amendments listed in subsection (d) for the corresponding guideline provisions that were applied when the

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Retroactive Application of Parts A and B, Subpart 1 of Amendment 821

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defendant was sentenced and shall leave all other guideline application decisions unaffected.

(2) **LIMITATION AND PROHIBITION ON EXTENT OF REDUCTION.—**

(A) **LIMITATION.**—Except as provided in subdivision (B), the court shall not reduce the defendant's term of imprisonment under 18 U.S.C. § 3582(c)(2) and this policy statement to a term that is less than the minimum of the amended guideline range determined under subdivision (1) of this subsection.

(B) **EXCEPTION FOR SUBSTANTIAL ASSISTANCE.**—If the term of imprisonment imposed was less than the term of imprisonment provided by the guideline range applicable to the defendant at the time of sentencing pursuant to a government motion to reflect the defendant's substantial assistance to authorities, a reduction comparably less than the amended guideline range determined under subdivision (1) of this subsection may be appropriate.

(C) **PROHIBITION.**—In no event may the reduced term of imprisonment be less than the term of imprisonment the defendant has already served.

(c) **CASES INVOLVING MANDATORY MINIMUM SENTENCES AND SUBSTANTIAL ASSISTANCE.**—If the case involves a statutorily required minimum sentence and the court had the authority to impose a sentence below the statutorily required minimum sentence pursuant to a government motion to reflect the defendant's substantial assistance to authorities, then for purposes of this policy statement the amended guideline range shall be determined without regard to the operation of §5G1.1 (Sentencing on a Single Count of Conviction) and §5G1.2 (Sentencing on Multiple Counts of Conviction).

(d) **COVERED AMENDMENTS.**—Amendments covered by this policy statement are listed in Appendix C as follows: 126, 130, 156, 176, 269, 329, 341, 371, 379, 380, 433, 454, 461, 484, 488, 490, 499, 505, 506, 516, 591, 599, 606, 657, 702, 706 as amended by 711, 715, 750 (parts A and C only), and 782 (subject to subsection (e)(1)) and 821 (parts A and B, subdivision only, and subject to subsection (e)(2)).

(e) **SPECIAL INSTRUCTION INSTRUCTIONS.—**

(1) The court shall not order a reduced term of imprisonment based on Amendment 782 unless the effective date of the court's order is November 1, 2015, or later.

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Retroactive Application of Parts A and B, Subpart 1 of Amendment 821

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(2) The court shall not order a reduced term of imprisonment based on Part A or Part B, Subpart 1 of Amendment 821 unless the effective date of the court's order is February 1, 2024, or later.

### Commentary

#### Application Notes:

#### 1. Application of Subsection (a).—

(A) **Eligibility.**—Eligibility for consideration under 18 U.S.C. § 3582(c)(2) is triggered only by an amendment listed in subsection (d) that lowers the applicable guideline range (i.e., the guideline range that corresponds to the offense level and criminal history category determined pursuant to §1B1.1(a), which is determined before consideration of any departure provision in the Guidelines Manual or any variance). Accordingly, a reduction in the defendant's term of imprisonment is not authorized under 18 U.S.C. § 3582(c)(2) and is not consistent with this policy statement if: (i) none of the amendments listed in subsection (d) is applicable to the defendant; or (ii) an amendment listed in subsection (d) is applicable to the defendant but the amendment does not have the effect of lowering the defendant's applicable guideline range because of the operation of another guideline or statutory provision (e.g., a statutory mandatory minimum term of imprisonment).

#### (B) Factors for Consideration.—

(i) **In General.**—Consistent with 18 U.S.C. § 3582(c)(2), the court shall consider the factors set forth in 18 U.S.C. § 3553(a) in determining: (I) whether a reduction in the defendant's term of imprisonment is warranted; and (II) the extent of such reduction, but only within the limits described in subsection (b).

(ii) **Public Safety Consideration.**—The court shall consider the nature and seriousness of the danger to any person or the community that may be posed by a reduction in the defendant's term of imprisonment in determining: (I) whether such a reduction is warranted; and (II) the extent of such reduction, but only within the limits described in subsection (b).

(iii) **Post-Sentencing Conduct.**—The court may consider post-sentencing conduct of the defendant that occurred after imposition of the term of imprisonment in determining: (I) whether a reduction in the defendant's term of imprisonment is warranted; and (II) the extent of such reduction, but only within the limits described in subsection (b).

2. **Application of Subsection (b)(1).**—In determining the amended guideline range under subsection (b)(1), the court shall substitute only the amendments listed in subsection (d) for the corresponding guideline provisions that were applied when the defendant was sentenced. All other guideline application decisions remain unaffected.

3. **Application of Subsection (b)(2).**—Under subsection (b)(2), the amended guideline range determined under subsection (b)(1) and the term of imprisonment already served by the defendant limit the extent to which the court may reduce the defendant's term of imprisonment under 18 U.S.C. § 3582(c)(2) and this policy statement. Specifically, as provided in subsection (b)(2)(A), if the term of imprisonment imposed was within the guideline range applicable to the defendant at the time of sentencing, the court may reduce the defendant's term of imprisonment to a term that is no less than the minimum term of imprisonment provided by the amended guideline range determined under subsection (b)(1). For example, in a case in which: (A) the guideline range applicable to the defendant at the time of sentencing was 70 to 87 months; (B)

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Retroactive Application of Parts A and B, Subpart 1 of Amendment 821

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the term of imprisonment imposed was 70 months; and (C) the amended guideline range determined under subsection (b)(1) is 51 to 63 months, the court may reduce the defendant's term of imprisonment, but shall not reduce it to a term less than 51 months.

If the term of imprisonment imposed was outside the guideline range applicable to the defendant at the time of sentencing, the limitation in subsection (b)(2)(A) also applies. Thus, if the term of imprisonment imposed in the example provided above was not a sentence of 70 months (within the guidelines range) but instead was a sentence of 56 months (constituting a downward departure or variance), the court likewise may reduce the defendant's term of imprisonment, but shall not reduce it to a term less than 51 months.

Subsection (b)(2)(B) provides an exception to this limitation, which applies if the term of imprisonment imposed was less than the term of imprisonment provided by the guideline range applicable to the defendant at the time of sentencing pursuant to a government motion to reflect the defendant's substantial assistance to authorities. In such a case, the court may reduce the defendant's term, but the reduction is not limited by subsection (b)(2)(A) to the minimum of the amended guideline range. Instead, as provided in subsection (b)(2)(B), the court may, if appropriate, provide a reduction comparably less than the amended guideline range. Thus, if the term of imprisonment imposed in the example provided above was 56 months pursuant to a government motion to reflect the defendant's substantial assistance to authorities (representing a downward departure of 20 percent below the minimum term of imprisonment provided by the guideline range applicable to the defendant at the time of sentencing), a reduction to a term of imprisonment of 41 months (representing a reduction of approximately 20 percent below the minimum term of imprisonment provided by the amended guideline range) would amount to a comparable reduction and may be appropriate.

The provisions authorizing such a government motion are §5K1.1 (Substantial Assistance to Authorities) (authorizing, upon government motion, a downward departure based on the defendant's substantial assistance); 18 U.S.C. § 3553(e) (authorizing the court, upon government motion, to impose a sentence below a statutory minimum to reflect the defendant's substantial assistance); and Fed. R. Crim. P. 35(b) (authorizing the court, upon government motion, to reduce a sentence to reflect the defendant's substantial assistance).

In no case, however, shall the term of imprisonment be reduced below time served. See subsection (b)(2)(C). Subject to these limitations, the sentencing court has the discretion to determine whether, and to what extent, to reduce a term of imprisonment under this section.

4. **Application of Subsection (c).**—As stated in subsection (c), if the case involves a statutorily required minimum sentence and the court had the authority to impose a sentence below the statutorily required minimum sentence pursuant to a government motion to reflect the defendant's substantial assistance to authorities, then for purposes of this policy statement the amended guideline range shall be determined without regard to the operation of §5G1.1 (Sentencing on a Single Count of Conviction) and §5G1.2 (Sentencing on Multiple Counts of Conviction). For example:

- (A) Defendant A is subject to a mandatory minimum term of imprisonment of 120 months. The original guideline range at the time of sentencing was 135 to 168 months, which is entirely above the mandatory minimum, and the court imposed a sentence of 101 months pursuant to a government motion to reflect the defendant's substantial assistance to authorities. The court determines that the amended guideline range as calculated on the Sentencing Table is 108 to 135 months. Ordinarily, §5G1.1 would operate to restrict the amended guideline range to 120 to 135 months, to reflect the mandatory minimum term of imprisonment. For

Exhibit B

## Ch. 1 Pt. A

|    |         |         |  |         |         |         |         |
|----|---------|---------|--|---------|---------|---------|---------|
| 14 | 15-21   | 18-24   |  | 21-27   | 27-33   | 33-41   | 37-46   |
| 15 | 18-24   | 21-27   |  | 24-30   | 30-37   | 37-46   | 41-51   |
| 16 | 21-27   | 24-30   |  | 27-33   | 33-41   | 41-51   | 46-57   |
| 17 | 24-30   | 27-33   |  | 30-37   | 37-46   | 46-57   | 51-63   |
| 18 | 27-33   | 30-37   |  | 33-41   | 41-51   | 51-63   | 57-71   |
| 19 | 30-37   | 33-41   |  | 37-46   | 46-57   | 57-71   | 63-78   |
| 20 | 33-41   | 37-46   |  | 41-51   | 51-63   | 63-78   | 70-87   |
| 21 | 37-46   | 41-51   |  | 46-57   | 57-71   | 70-87   | 77-96   |
| 22 | 41-51   | 46-57   |  | 51-63   | 63-78   | 77-96   | 84-105  |
| 23 | 46-57   | 51-63   |  | 57-71   | 70-87   | 84-105  | 92-115  |
| 24 | 51-63   | 57-71   |  | 63-78   | 77-96   | 92-115  | 100-125 |
| 25 | 57-71   | 63-78   |  | 70-87   | 84-105  | 100-125 | 110-137 |
| 26 | 63-78   | 70-87   |  | 78-97   | 92-115  | 110-137 | 120-150 |
| 27 | 70-87   | 78-97   |  | 87-108  | 100-125 | 120-150 | 130-162 |
| 28 | 78-97   | 87-108  |  | 97-121  | 110-137 | 130-162 | 140-175 |
| 29 | 87-108  | 97-121  |  | 108-135 | 121-151 | 140-175 | 151-188 |
| 30 | 97-121  | 108-135 |  | 121-151 | 135-168 | 151-188 | 168-210 |
| 31 | 108-135 | 121-151 |  | 135-168 | 151-188 | 168-210 | 188-235 |
| 32 | 121-151 | 135-168 |  | 151-188 | 168-210 | 188-235 | 210-262 |
| 33 | 135-168 | 151-188 |  | 168-210 | 188-235 | 210-262 | 235-293 |
| 34 | 151-188 | 168-210 |  | 188-235 | 210-262 | 235-293 | 262-327 |

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Exhibit - B

## Ch. 1 Pt. A

|    |          |              |             |              |              |             |
|----|----------|--------------|-------------|--------------|--------------|-------------|
| 35 | 168-210  | 188-2<br>35  | 210-26<br>2 | 235-2<br>93  | 262-32<br>7  | 292-36<br>5 |
| 36 | 188-235  | 210-2<br>62  | 235-29<br>3 | 262-3<br>27  | 292-36<br>5  | 324-40<br>5 |
| 37 | 210-262  | 235-2<br>93  | 262-32<br>7 | 292-3<br>65  | 324-40<br>5  | 360-life    |
| 38 | 235-293  | 262-3<br>27  | 292-36<br>5 | 324-4<br>05  | 360-lif<br>e | 360-life    |
| 39 | 262-327  | 292-3<br>65  | 324-40<br>5 | 360-lif<br>e | 360-lif<br>e | 360-life    |
| 40 | 292-365  | 324-4<br>05  | 360-life    | 360-lif<br>e | 360-lif<br>e | 360-life    |
| 41 | 324-405  | 360-lif<br>e | 360-life    | 360-lif<br>e | 360-lif<br>e | 360-life    |
| 42 | 360-life | 360-lif<br>e | 360-life    | 360-lif<br>e | 360-lif<br>e | 360-life    |
| 43 | lif<br>e | life         | lif<br>e    | life         | lif<br>e     | life        |

BERNARD Okoye Reg# 06553510  
CJ Talladega P.M.B 1000  
Talladega AL 35160

RECEIVED  
BRUNSWICK, GA  
JAN 22 2024  
US DISTRICT COURT  
SOUTHERN DISTRICT OF GA

Honorable: LISA Godbey - Wood  
801 Gloucester Street  
Brunswick, Ga 31520

ga

