UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA

CASE NO.: 8:20-cv-00394

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

KINETIC INVESTMENT GROUP, LLC and MICHAEL SCOTT WILLIAMS,

Defendants, and

KINETIC FUNDS I, LLC, KCL SERVICES, LLC d/b/a LENDACY, SCIPIO, LLC, LF42, LLC, EL MORRO FINANCIAL GROUP, LLC, and KIH, INC. f/k/a KINETIC INTERNATIONAL, LLC,

Relief Defendants.

PLAINTIFF SECURITIES AND EXCHANGE COMMISSION'S MOTION FOR ORDER TO SHOW CAUSE WHY DEFENDANT MICHAEL SCOTT WILLIAMS AND HIS COUNSEL SHOULD NOT BE HELD IN CONTEMPT FOR VIOLATION OF ASSET FREEZE ORDER

Plaintiff Securities and Exchange Commission respectfully moves the Court to direct Defendant Michael Scott Williams ("Williams") and his counsel, Greenberg Traurig, P.A. ("Greenberg Traurig"), to show cause why they should not be held in contempt for violating the Court's March 6, 2020 Order Granting the Commission's Emergency Motion for Asset Freeze and Other Relief ("Freeze Order") (ECF No. 33).

Williams and his counsel have depleted frozen assets to fund payment of living expenses and attorneys' fees in flagrant violation of the Freeze Order. They have rejected the

Commission's demands that they return the funds; instead, they have doubled down. They claim entitlement to keep the funds – and to get more. An order to show cause against Williams and his counsel is warranted given their utter disregard for the Freeze Order.[1]

I. Background

On February 20, 2020, the Commission filed its Complaint arising from Defendants'[2] unregistered fraudulent securities offering. ECF No. 1. Instead of employing the investment strategy promised to investors, Defendants misappropriated at least $6.3 million of investor assets to purchase real estate, to cover operating expenses, and to fund other business ventures.

On or about March 3, 2020, Williams directed Obsidian,[3] a company in which he holds a 40% equity interest, to transfer to Greenberg Traurig on Williams' behalf over $3.4 million, representing Williams' share of funds that Obsidian wished to distribute to its members. *See* Distribution Agreement and Mutual Release, ECF No. 49-1. Greenberg Traurig retained $500,000. *See* ECF No. 49 at p. 7.

On March 6, 2020, following oral argument, which Williams and his counsel attended, the Court issued the Freeze Order. The Freeze Order restrains Defendants, Relief Defendants,

[1] The Commission has contemporaneously filed its Opposition to Defendants' and Relief Defendants' motion for clarification or modification of the Freeze Order and Order appointing receiver (the "Opposition"). Given the overlap of issues and in the interest of brevity, the Commission incorporates herein the arguments raised in the Opposition.

[2] The term "Defendants" refers collectively to Kinetic Investment Group, LLC and Williams. The term "Relief Defendants" refers collectively to Kinetic Funds I, LLC, KCL Services, LLC d/b/a Lendacy, Scipio, LLC, LF42, LLC ("LF42"), El Morro Financial Group, LLC, and KIH, Inc. f/k/a Kinetic International, LLC.

[3] The term "Obsidian" refers to Obsidian Technologies, LLC f/k/a Silexx Financial Systems, LLC.

and their attorneys, among others, from disposing of Defendants' and Relief Defendants' assets. It specifically provides in relevant part:

> A. Defendants and Relief Defendants, their directors, officers, agents, servants, employees, attorneys, depositories, banks, insurance companies, and those persons in active concert or participation with any one or more of them, and each of them, who receive notice of this order by personal service, mail, facsimile transmission or otherwise, be and hereby are, restrained from, directly or indirectly, transferring, setting off, receiving, changing, selling, pledging, assigning, liquidating or otherwise disposing of, or withdrawing any assets or property, including but not limited to cash, free credit balances, fully paid for securities, and/or property pledged or hypothecated as collateral for loans, or charging upon or drawing from any lines of credit, owned by, controlled by, or in the possession of Defendants and Relief Defendants.
>
> B. Any financial or brokerage institution or other person or entity holding any such funds or other assets, in the name, for the benefit or under the control of Defendants or Relief Defendants, directly or indirectly, held jointly or singly, and wherever located, and which receives actual notice of this order by personal service, facsimile, or otherwise, shall hold and retain within its control and prohibit the withdrawal, removal, transfer, disposition, pledge, encumbrance, assignment, set off, sale, liquidation, dissipation, concealment, or other disposal of any such funds or other assets, including, but not limited to, the following presently known accounts:

See ECF No. 33.

Despite entry of the Freeze Order over defense objection, Williams and his counsel have accessed frozen funds at will.

II. The Court Should Hold Williams and His Counsel In Contempt For Violating the Freeze Order

It is well-settled that "[c]ourts have inherent power to enforce compliance with their lawful orders through civil contempt." *Citronell-Mobile Gathering, Inc. v. Watkins*, 943 F.2d 1297, 1301 (11th Cir. 1991). A court order binds not only the parties subject to it, but any entity or individual who acts with them. *See NLRB v. Laborers' Int'l Union of N. Am., AFL–*

CIO, 882 F.2d 949, 954 (5th Cir.1989) ("[A]ny party who knowingly aids, abets, or conspires with another to evade an injunction or order of a court is also in contempt of that court.").

To hold Williams and his counsel in civil contempt, the Commission must demonstrate by clear and convincing evidence that: (1) the order at issue "was valid and lawful"; (2) the order was "clear and unambiguous"; and (3) they "had the ability to comply with the order". *FTC v. Leshin*, 618 F.3d 1221, 1232 (11th Cir 2010) (citation and quotation omitted); *FTC v. National Urological Group, Inc.*, 786 Fed.Appx. 947, 954 (11th Cir. 2019). Once the Commission makes this *prima facie* showing, the burden shifts to Williams and his counsel "to produce evidence explaining [their] noncompliance at a 'show cause' hearing." *Leshin*, 618 F.3d at 1232 (citation and quotation omitted).

All three elements for contempt are satisfied here.

A. <u>The Freeze Order Is Valid and Lawful</u>

There is no dispute that the Freeze Order is valid and lawful. An asset freeze is frequently employed to ensure satisfaction of a disgorgement award and to prevent further dissipation of investor funds. *See SEC v. Lauer*, 478 F. App'x 550, 554 (11th Cir. 2012) (unpublished) ("[I]f potential disgorgement is greater than the value of the defendant's assets, the district court can order a full asset freeze."); *SEC v. ETS Payphones, Inc.*, 408 F.3d 727, 735-36 (11th Cir. 2005) (affirming order that "froze all of [defendant's] assets" when estimated disgorgement and value of frozen assets were comparable).

B. The Order Is Clear and Unambiguous

The Freeze Order is plain on its face, specifically restraining "Defendants and Relief Defendants [and] their attorneys [from] setting off . . . or otherwise disposing of, or withdrawing any assets or property, including but not limited to cash, free credit balances . . . or charging upon or drawing from any lines of credit." *See* ECF No. 33. It contains no exception for the source or intended use of the frozen funds.

Williams and his counsel knew all too well the far reach of the Freeze Order. They specifically argued that the Commission's proposed Freeze Order—which is what the court entered—would cut off access to funds for living expenses and attorneys' fees. *See* Opposition to Emergency Motion for Asset Freeze, ECF No. 25 at pp. 2, 15, 17; Declaration of Williams, ECF No. 25-1 at ¶39. Moreover, as discussed in the Opposition at pp. 7-9, Williams and his counsel never motioned the Court to unfreeze assets as the Court directed them to at the March 6, 2020 hearing.

C. Williams and His Counsel Had the Ability to Comply With The Freeze Order, But Chose Not To Do So

Williams and his counsel were obviously capable of complying with the Freeze Order. It required no affirmative conduct on their part, but only that they refrain from dissipating assets. They apparently could not overcome their disdain for the Freeze Order and so chose to flout it. *See Paris v. Guberman PMC, LLC*, No. 8:19-cv-00423-WFJ-SPF (M.D. Fla. Feb. 21, 2020) (ECF No. 109, at 2) (holding defendants in contempt where "once the fully briefed and fully heard personal jurisdiction motions . . . were resolved against them . . . they decided the

ruling was not to their liking, and they started defying orders to participate in the lawsuit."), attached hereto as Exhibit "1".

a. Williams

Williams admits that he has paid for "his monthly living expenses via a combination of $9,000 from the Pyram King Account, credit cards, and rental income of approximately $1,500 that he received from a tenant currently residing in real property he owns." ECF No. 49 at p. 16. Thus, Williams has taken at least $10,500 from the frozen assets, plus made credit card charges in unknown amounts. *See* Freeze Order (prohibiting withdrawal of "any assets or property" regardless of whether "held jointly or singly"; also specifically prohibiting "charging upon or drawing from any lines of credit" or withdrawing any "free credit balances").

b. Greenberg Traurig

Greenberg Traurig admits that it disbursed funds for legal fees after the Freeze Order was entered. ECF No. 49 at 11-12 ("These fees [for legal and investigative services] were applied after entry of the March 6th Order because it was Defendants' and Relief Defendants' position that the [Obsidian] Sale Funds were not intended to be engulfed in the March 6th Orders"). Greenberg Traurig conveniently omits the amount of the funds disbursed post-freeze, but the Commission understands from lead counsel for Williams that it was approximately *$200,000* as of April 21, 2020. Prior to disbursing frozen funds, Greenberg Traurig never sought leave of court to carve out attorneys' fees. They never sought the Commission's opinion on whether the Freeze Order included payment of attorneys' fees.

Rather, the firm made a calculated decision to surreptitiously disperse escrowed funds to pay its fees. *See Levine v. Comcoa Ltd*., 70 F.3d 1191, 1194, n. 9 (11th Cir. 1995) (in holding counsel in contempt for violating asset freeze order by applying retainer funds: "We are heartsick when we observe that [counsel], an officer of the United States' Courts, acted personally and directly in disobeying the straightforward instruction of a United States District Judge and did so just for money, his fee").

It is only now – after Williams and his counsel have been caught dipping into frozen funds – that they claim to be puzzled by the Freeze Order's plain instructions. Their purported confusion is not only incredulous, but irrelevant. An "alleged contemnor may not rely on its own inadvertence or misunderstanding to avoid a finding of contempt". *SEC v. Comcoa, Ltd*., 887 F.Supp. 1521, 1528 (S.D. Fla. 1995); *Leshin*, 618 F.3d at 1232 ("[T]he absence of willfulness is not a defense to a charge of civil contempt.").

There also is no merit to Williams' and his counsel's attempt to exempt from the Freeze Order the funds Williams received from Obsidian. The Freeze Order covers all assets, without regard to their source. Furthermore, their claim that the Obsidian funds "have absolutely nothing to do with Kinetic, Lendacy or the alleged conduct at issue" (ECF No. 49 at p. 12) is factually wrong and legally irrelevant. In fact, Williams used investor assets to pay Obsidian without disclosing his ownership interest in the company, and promised to repay his investor-funded Lendacy "loan" to buy his luxury residence from the payout from the Obsidian sale. *See* Commission's Opposition at p. 9, n. 4.

As noted in the Commission's Opposition at pp. 7-8, Williams and Greenberg Traurig at the March 6 hearing raised with the Court the argument that LF42 should not be included in the Receiver Order and Freeze Order and the Court rejected the argument and "invited the defense to file a motion if there's some reason that some of these companies shouldn't be frozen". Williams and his counsel ignored the Court's Freeze Order and the Court's specific instruction and instead took matters into their own hands.

III. The Court Should Impose Sanctions On Williams And His Counsel

A. Williams And His Counsel Should Be Compelled To Return All Funds

As this Court recently found, the Court has "'wide discretion' to craft a remedy for contempt." *United States v. Harvey*, No. 8:20-cv-00060-WFJ-AAS (M.D. Fla. Mar. 17, 2020) (ECF No. 42, at 2) (quoting *United States v. City of Miami,* 195 F.3d 1292, 1298 (11th Cir. 1999)), attached hereto as Exhibit "2". The Court's "civil contempt power is measured solely by the requirements of full remedial relief." *City of Miami*, 195 F.3d at 1298 (internal quotation marks omitted). This includes ordering disgorgement of ill-gotten gains. *Leshin,* 618 F.3d at 1237. The Commission's "burden for showing the amount of assets subject to disgorgement is light: a reasonable approximation of a defendant's ill-gotten gains" is all that is required. "Exactitude is not a requirement . . . ." *ETS Payphones*, 408 F.3d at 735 (citation and quotation omitted). Furthermore, sanctions can be either coercive or compensatory. *City of Miami,* 195 F.3d at 1298. "[A] court may impose a coercive daily fine, a compensatory fine, attorney's fees and expenses, and coercive

incarceration." *FTC v. RCA Credit Servs., LLC,* No. 8:08-CV-2062-T-27MAP, 2012 WL 11406549, at *1 (M.D. Fla. Mar. 20, 2012).

In the context of contempt, the very act of Williams and his counsel accessing frozen funds "is sufficient to characterize all fees obtained from that contemptuous activity as ill-gotten gains." *Harvey*, No. 8:20-cv-00060, at p.2 citing *Leshin,* 618 F.3d at 1237 (holding, with respect to contempt, that the "district court was not required to find that the defendants had committed fraud before ordering disgorgement"); *see also United States. v. Ireland,* No. 2:11-CV-14068, 2019 WL 3759533, at *2 (E.D. Mich. July 24, 2019) ("Disgorgement is also appropriate because Ireland should not be allowed to profit from her violations of the Order.").

Accordingly, Williams should disgorge at least $10,500, plus the unknown amounts charged on his credit cards post-freeze, and Greenberg Traurig should disgorge all attorneys' fees (approximately $200,000 according to lead counsel), and any other fees, expenses and costs disbursed post-freeze. *See Harvey*, No. 8:20-cv-00060, at p. 3 (finding defendants in contempt for preparing and filing tax returns in violation of injunctions and ordering them to disgorge ill-gotten gains).

B. Williams and Greenberg Traurig Should Be Ordered To Provide An Accounting

To ensure compliance with the Freeze Order, the Court should order Greenberg Traurig to provide an accounting of all amounts they disbursed after entry of the Freeze Order and require Williams to provide an accounting of his current assets and his post-freeze spending,

including but not limited to spending on (1) credit cards, and (2) funds sourced from Obsidian. Despite Fifth Amendment privilege concerns, it has become clear that remedial sanctions are warranted given Williams' defiance of the Freeze Order. *See, e.g.*, *SEC v. Kenton Capital, Ltd.*, 983 F. Supp. 13, 17 (D.D.C. 1997) (ordering that defendant in contempt "file with this Court and serve upon the Commission . . .a sworn accounting of all of their assets, and fully document what has happened to any assets [they] controlled"); *SEC v. Sethi Petroleum*, LLC, No. 15 Civ. 338 (ALM), 2016 WL 4196667, at *16-17 (E.D. Tex. Aug. 9, 2016) (after issuance of Order to Show Cause, ordering defendant in violation of TRO to provide a sworn accounting of assets, to return amounts improperly obtained). Should Williams refuse to provide an accounting based on his Fifth Amendment privilege, then an adverse inference may be drawn against him. *Baxter v. Palmigiano*, 425 U.S. 308, 318-20 (1976).

C. Greenberg Traurig Should Relinquish All Funds It Holds for Defendants and Relief Defendants

Greenberg Traurig not only accessed frozen funds without the Court's permission, but refused to return them. In an effort to resolve this issue, the Commission staff requested that Greenberg Traurig return any funds disbursed after the entry of the Freeze Order, which they rejected. In light of such conduct, Greenberg Traurig should be ordered to return all funds disbursed after entry of the Freeze Order and deposit in an escrow account created by the Court-appointed Receiver the full sum of whatever it holds for Defendants and Relief Defendants.

D. Williams And Greenberg Traurig Should Be Ordered To Pay The Receiver's And the Commission's Reasonable Fees And Costs

Williams and his counsel should be made to pay the reasonable fees and costs of the Receiver and the Commission stemming from their violations of the Freeze Order, including the Receiver's and the Commission's respective oppositions to their motion for clarification, the Commission's instant motion for order to show cause, and any attendant litigation. *See Harvey*, No. 8:20-cv-00060, at p. 2 ("[A] court may impose a coercive daily fine, a compensatory fine, attorney's fees and expenses, and coercive incarceration.") citing *FTC v. RCA Credit Servs., LLC,* No. 8:08-CV-2062-T-27MAP, 2012 WL 11406549, at *1 (M.D. Fla. Mar. 20, 2012). Reimbursement of reasonable fees and costs is warranted not only because Williams and his counsel blatantly violated the Freeze Order, but they refused to return the frozen funds when confronted with their misconduct.

IV. Conclusion

For the foregoing reasons, the Commission respectfully requests that the Court enter the proposed Order to Show Cause attached hereto and grant any other relief the Court deems just and proper.

CERTIFICATE OF CONFERRAL

Pursuant to Local Rule 3.01(g), counsel for the Commission conferred with counsel for Williams in a good faith effort to resolve the issues raised herein without the need for court intervention. Counsel for the Commission proposed that Williams and his counsel account for and return the improperly disbursed funds, but they declined to do so.

April 26, 2020

Respectfully submitted,

By: */s/ Christine Nestor & Stephanie N. Moot*

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on April 26, 2020, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record via transmission of Notices of Electronic Filing generated by CM/ECF.

s/ Stephanie N. Moot

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UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

CHRISTOPHER MARK PARIS
and OXEBRIDGE QUALITY
RESOURCES INTERNATIONAL, LLC,

Plaintiffs,

v. CASE NO. 8:19-cv-423-T-02SPF

GUBERMAN PMC, LLC,
DARYL GUBERMAN,
and DONALD LABELLE,

Defendants.
_____/

ORDER

The Court today finds the Defendants Daryl Guberman, Guberman PMC, LLC, and Donald Labelle in contempt of Court. As sanction therefor, the Court enters a default against them, striking all their pleadings and defenses. Plaintiffs are ordered to submit a motion for judgment with a proposed final judgment in draft form. If Plaintiffs seek money damages, those damages must be proven in appropriate affidavits.

The grounds for these contempts and default judgments entered today are set forth in the Certification of Facts Demonstrating Contempt, found at docket 103, in which the Magistrate Judge sets forth four knowing and willful contempts by these three Defendants. That Certification is attached here as an Appendix. The

EXHIBIT
1

findings of fact and conclusions of law in the Appendix are hereby adopted and ratified by this Court. The Court has been patient with these three Defendants. But once the fully briefed and fully heard personal jurisdiction motions, which they actually filed twice, were resolved against them (*See* Dkts. 8, 9, 32, 47, 48, 57, 81, 82, 83, 84, 85, 86), they decided the ruling was not to their liking, and they started defying orders to participate in the lawsuit. They are not required to participate and defend, so long as they are aware of the consequences. The default judgments entered today are the results of this choice.

After the certification of default was entered by the Magistrate Judge on January 30, 2020 (Appendix to this Order), the undersigned sought to give these Defendants one final opportunity, and issued an Order to Show Cause (one of several given so far in this case to these parties, *e.g*. Dkts. 10, 49, 50, 51, 58, 88) instructing these Defendants to show cause by February 21, 2020 why a contempt sanction of default should not be entered by the undersigned. Dkt. 104.

In response, the Defendants submitted three pleadings. The first was a "Notice to Show Cause" that Mr. LaBelle issued to the Magistrate Judge. Dkt. 106. It states that the Magistrate Judge acted in an unconstitutional manner, and cites various common law sources and case law, including *Miranda v. Arizona*, 384 U.S. 436 (1966), *Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803), and others. The gravamen of this filing is that the Court's prior rulings on personal

jurisdiction are legally insufficient to require these Defendants to participate in this lawsuit, which is outside of their home-state jurisdiction. This filing makes no attempt to cure the contempt or ameliorate it; the filing just defies this Court's authority to adjudicate the matter and states any such ruling is "null and void."

The second response came from Mr. Guberman. Dkt. 107. Mr. Guberman first blames his lawyer for Mr. Guberman's absence at the mediation, but notes that no one at the mediation was surprised by Mr. Guberman's absence because he told everyone beforehand that [despite a plain order] he would not attend mediation as there was no proof of personal jurisdiction to his satisfaction. Although it has been made clear to these Defendants (most recently on January 27, 2020, *see* Dkt. 99, and January 30, 2020, *see* Dkt. 104) that the personal jurisdiction issue has been resolved almost eight months ago (Dkt. 57), that is insufficient in their view. As Mr. Guberman noted in this second response, "Further, the court has failed to show PROOF of jurisdiction when challenged …." Dkt. 107 at 2. In this second response Mr. Guberman appears to propound discovery to the Court and direct the Court to answer several filings. He suggests that if answers are not provided by the Court the discovery responses will be compelled via mandamus to the "United States Court of Appeals and U.S. Supreme Court." Dkt. 107 at 10. Mr. Guberman offers no attempt to cure or ameliorate his defaults.

The final response to the Court's Show Cause Order (Dkt. 104) was filed by Defendant Guberman PMC, LLC, through its counsel. Dkt. 108. This response states that the LLC entity is wholly owned by Mr. Guberman. It states that Mr. Guberman objected to the court-ordered mediation and ordered the lawyer not to participate or attend for the LLC. The response states that the LLC entity should not be held in contempt even though the entity has only one agent and owner (Mr. Guberman) who ordered the LLC not to participate in the mediation.

For the reasons herein and as noted in the Appendix, the three captioned Defendants are in contempt, and the sanction of default is hereby entered. Plaintiffs' motion for contempt (Dkt. 102) is granted to the extent consistent with this Order.

DONE AND ORDERED at Tampa, Florida, on February 21, 2020.

s/William F. Jung
WILLIAM F. JUNG
UNITED STATES DISTRICT JUDGE

COPIES FURNISHED TO:
Counsel of Record and unrepresented parties

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

CHRISTOPHER MARK PARIS
and OXEBRIDGE QUALITY
RESOURCES INTERNATIONAL, LLC,

Plaintiffs,

v. Case No: 8:19-cv-00423-T-02SPF

WILLIAM LEVINSON, LEVINSON
PRODUCTIVITY SYSTEMS, PC,
a Pennsylvania corporation, GUBERMAN PMC,
a Connecticut corporation, DARYL GUBERMAN,
and DONALD LABELLE,

Defendants.

_____/

CERTIFICATION OF FACTS DEMONSTRATING CONTEMPT

Upon the commission of any act that constitutes civil contempt in a civil case over which a district judge presides:

> [T]he magistrate judge shall forthwith certify the facts to a district judge and may serve or cause to be served, upon any person whose behavior is brought into question under this paragraph, an order requiring such person to appear before a district judge upon a day certain to show cause why that person should not be adjudged in contempt by reason of the facts so certified. The district judge shall thereupon hear the evidence as to the act or conduct complained of and, if it is such as to warrant punishment, punish such person in the same manner and to the same extent as for a contempt committed before a district judge.

28 U.S.C. § 636(e)(6)(B)(iii); *see also Melikhov v. Drab*, No. 2:19-CV-248-FtM-38MRM, 2019 WL 4635548, at *3 (M.D. Fla. Sept. 24, 2019). "The duty of the magistrate [judge] under this subsection is simply to investigate whether further contempt proceedings are

warranted, not to issue a contempt order." *Lapinski v. St. Croix Condo. Ass'n., Inc.*, No. 6:16-CV-1418-Orl-40GJK, 2018 WL 4381168, at *2 (M.D. Fla. Aug. 1, 2018). Rather, the "determination of whether a litigant's actions warrant the issuance of contempt sanctions is ultimately left to the discretion of the district court." *Id.*

As set forth below, Defendants Daryl Guberman ("Guberman"), Donald LaBelle ("LaBelle"), and Guberman PMC ("Defendants") committed acts of civil contempt by violating four valid, lawful, clear, and unambiguous orders (Docs. 76, 88, 92, and 93), despite having the ability to comply. *See McGregor v. Chierico,* 206 F.3d 1378, 1383 (11th Cir. 2000) (civil contempt must be shown by clear and convincing proof demonstrating that "1) the allegedly violated order was valid and lawful; 2) the order was clear, definite and unambiguous; and 3) the alleged violator had the ability to comply with the order.").

CERTIFIED FACTS

1. On July 9, 2019, the Court determined that it had personal jurisdiction over Guberman and LaBelle. The Court found "that jurisdiction exists under the state long-arm statute and that exercise of jurisdiction would not violate due process." (Doc. 57 at 4).
2. On December 23, 2019, the Court denied motions filed by Guberman and LaBelle challenging the Court's jurisdiction. (Docs. 84, 85, 86).

Contempt No. 1

3. On July 8, 2019, the Court entered the Case Management and Scheduling Order, which provided: "Mediator Selection/Scheduling due by December 31, 2020." (Doc. 56).

4. On December 4, 2019, the Court entered an order clarifying the dates in the Case Management and Scheduling Order. (Doc. 76). It was clearly and unambiguously stated that "[t]he remaining parties shall take notice that a Notice of Mediator Selection and Scheduling of Mediation shall be filed on or before December 31, 2019, and the mediation must be conducted no later than January 31, 2020." (*Id.*).
5. In violation of the Court's December 4, 2019 Order (Doc. 76), Guberman, LaBelle, and Guberman PMC, did not file a Notice of Mediator Selection and Scheduling of Mediation.
6. On January 1, 2020, Plaintiffs filed a "Motion for Contempt and Order to Show Cause Against Guberman PMC, Daryl Guberman, and Donald LaBelle" (Doc. 87). Plaintiffs assert that their counsel "emailed Labelle and Guberman on several occasions to the email service addresses listed on Pacer/CM ECF, and to email addresses which [their] counsel has previously received correspondence from Guberman and Labelle, in an attempt to coordinate both mediation and deposition dates. Guberman and Labelle never responded to any such requests. . ." (Doc. 87). Neither Guberman nor LaBelle has refuted Plaintiffs' assertions.

Contempt No. 2

7. On January 3, 2020, the Court entered an order setting a telephonic hearing for January 7, 2020. The order clearly and unambiguously stated: "The parties are hereby ordered to appear for a telephonic hearing scheduled on the date and time set forth below [January 7, 2020 at 10:00 a.m.]." (Doc. 88).

8. Courtesy copies of the January 3, 2020 Order were emailed to Guberman and LaBelle. Both Guberman and LaBelle had actual knowledge of the hearing as evidenced by the reply emails sent to the Court.
9. Prior to the hearing, Guberman and LaBelle each emailed a brief to chambers indicating that "personal jurisdiction has been challenged and must be proven before I can proceed." The Court rejected the emails in accordance with Local Rule 3.01(f). Guberman subsequently filed his brief with the Clerk (Doc. 94, docketed Jan. 9, 2020).
10. On January 7, 2020, the Court held a telephonic hearing. Defendant Guberman PMC appeared at the hearing through counsel. Guberman and LaBelle did not appear in violation of the Court's January 3, 2020 Order (Doc. 88).

Contempt No. 3

11. On January 7, 2020, the Court entered the Order Appointing Mediator and Scheduling Mediation (Doc. 92). The order clearly and unambiguously scheduled the mediation for January 27, 2020 and stated that "said mediation shall not be canceled or continued without leave of Court." (*Id.*). The order was entered "in accordance with the rules governing mediation set forth in Chapter None of the Rules of the United States District Court for the Middle District of Florida." (*Id.*).
12. Local Rule 9.05(c) states: "Party Attendance Required: Unless otherwise excused by the presiding judge in writing, all parties, corporate representatives, and any other required claims professionals (insurance adjusters, etc.), shall be present at the Mediation Conference with full authority to negotiate a settlement. Failure to comply

with the attendance or settlement authority requirements may subject a party to sanctions by the Court." M.D. Fla. Loc. R. 9.05(c).

13. On January 7, 2020, the Court also entered an Order to Show Cause (Doc. 93), which stated: "Defendants are specifically cautioned that they must comply with the Court's order (Doc. 92) scheduling mediation. *See Abele v. Hernando Cty.*, 161 F. App'x 809, 813 (11th Cir. 2005) (finding that the district court has the discretion to compel mediation)." (Doc. 93 at 2).

14. Despite the Court's admonition, both Guberman and LaBelle failed to attend the mediation (Doc. 98 at 1). Likewise, no corporate representative of Guberman PMC attended the mediation. Guberman PMC's attorney, Bruce A. Minnick, did call into the mediation but advised the parties that he no settlement authority (Doc. 98-1). As a result, Guberman, LaBelle, and Guberman PMC all violated the Court's Order Appointing Mediator and Scheduling Mediation (Doc. 92).

Contempt No. 4.

15. The January 7, 2020 Order to Show Cause (Doc. 93) also reminded Defendants that the Court had resolved all jurisdictional questions. (*Id.*). Defendants were warned that with "[j]urisdiction having been established, Defendants are not free to disregard this Court's orders without peril." (*Id.*). The order clearly and unambiguously stated:

    a. "Daryl Guberman and Donald LaBelle shall appear before the Court in person on **January 28, 2020, at 10:00 a.m., in Courtroom 11B, Sam Gibbons United States Courthouse, 801 N. Florida Avenue, Tampa, FL 33602**, to SHOW CAUSE why they should not be held in contempt for failure to comply with

the Court's orders (Docs. 79[1] and 88). Guberman PMC shall appear through counsel to SHOW CAUSE why it should not be held in contempt for its failure to comply with the Court's order (Doc. 7[6])"; and

b. "[A]ny any party who fails to attend the January 27, 2020 mediation, shall appear at the hearing on January 28, 2020 to SHOW CAUSE why he or it should not be held in contempt for its failure to comply with the Court's order (Doc. 92)."

(Doc. 93) (emphasis in original).

16. Guberman, LaBelle, and Guberman PMC all failed to appear at the show case hearing on January 28, 2020 in violation of the Court's Show Cause Order (Doc. 93).

CERTIFIED, in Tampa, Florida, on January 30, 2020.

SEAN P. FLYNN
UNITED STATES MAGISTRATE JUDGE

[1] The correct docket entry number is 76.

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. CATHARINE HARVEY, JASEN HARVEY, and HARVEYS TAX SERVICE Defendants.	Case No. 8:20-cv-60-T-02AAS

ORDER

This matter came before the Court on the United States' Motion for an Order to Show Cause (ECF No. 29). After presentation of evidence and hearing argument of counsel, Defendants Jasen Harvey and Harveys Tax Service are found in contempt of this Court's Orders (ECF Nos. 21, 28), and the United States' request for disgorgement and travel costs is granted in full.

The power to find a party in civil contempt for disobeying an injunction stems from the Court's inherent power to enforce compliance with its lawful orders. *Citronelle–Mobile Gathering, Inc. v. Watkins*, 943 F.2d 1297, 1301 (11th Cir. 1991). "A finding of civil contempt must be supported by clear and convincing evidence that 'the allegedly violated order was valid and lawful; . . . the order was clear and unambiguous; and the . . . alleged violator had the ability to comply with the order.'" *FTC v. Leshin*, 618 F.3d 1221, 1232 (11th Cir. 2010) (quoting *Riccard v. Prudential Ins. Co.*, 307 F.3d 1277, 1296 (11th Cir. 2002)).

Here, the Court entered valid and lawful orders—first a preliminary injunction and then a permanent injunction—that unambiguously barred Mr. Harvey and Harveys Tax Service from

EXHIBIT
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preparing and filing returns. The United States has demonstrated by clear and convincing evidence that Mr. Harvey and Harveys Tax Service, despite receiving personal service of these orders and having the ability to comply with them, willfully violated them. The Court finds that Mr. Harvey received personal service of the preliminary injunction on February 19, 2020 and that he received personal service of the permanent injunction on February 28, 2020. The Court further finds that Mr. Harvey and Harveys Tax Service filed at least 92 returns following service of the preliminary injunction on Mr. Harvey. Of those, at least 5 came after he received service of ***both*** the preliminary and permanent injunctions.

The Court has "wide discretion" to craft a remedy for contempt. *United States v. City of Miami*, 195 F.3d 1292, 1298 (11th Cir. 1999). The Court's "civil contempt power is measured solely by the requirements of full remedial relief." *Id.* (internal quotation marks omitted). This includes ordering disgorgement of ill-gotten gains. *Leshin*, 618 F.3d at 1237. Disgorgement requires only a "reasonable approximation of a defendant's ill-gotten gains." *SEC v. Calvo*, 378 F.3d 1211, 1217 (11th Cir. 2004). Moreover, sanctions can be either coercive or compensatory. *City of Miami*, 195 F.3d at 1298. "[A] court may impose a coercive daily fine, a compensatory fine, attorney's fees and expenses, and coercive incarceration." *FTC v. RCA Credit Servs., LLC*, No. 8:08-CV-2062-T-27MAP, 2012 WL 11406549, at *1 (M.D. Fla. Mar. 20, 2012).

In the context of contempt, the United States does not need to establish that the returns filed in violation of the injunction were inaccurate or fraudulent before disgorgement can be ordered. Instead, the very act of filing those returns is sufficient to characterize all fees obtained from that contemptuous activity as ill-gotten gains. *See Leshin*, 618 F.3d at 1237 (holding, in the contempt context, that the "district court was not required to find that the defendants had committed fraud before ordering disgorgement"); *see also United States*

v. Ireland, No. 2:11-CV-14068, 2019 WL 3759533, at *2 (E.D. Mich. July 24, 2019) ("Disgorgement is also appropriate because Ireland should not be allowed to profit from her violations of the Order."); *United States v. Edmond*, No. 2:13-CV-02938, 2016 WL 1312155, at *5 (W.D. Tenn. Apr. 4, 2016).

Here, Mr. Harvey testified that he and Harveys Tax Service charge between $200 and $225 per return. The Court finds that $212.50 is therefore a reasonable approximation of fees per return for purposes of disgorgement. That results in disgorgement of fees for the 92 returns filed after Mr. Harvey and Harveys Tax Service were personally served with the preliminary and/or permanent injunction of $19,550.

On the basis of these findings and the record established during the March 13, 2020 hearing, it is hereby **ORDERED AND ADJUDGED**:

1. Defendants Jasen Harvey and Harveys Tax Service are found to be in willful contempt of this Court's preliminary and permanent injunctions;
2. Defendants Jasen Harvey and Harveys Tax Service are directed to pay to the United States $19,550 in disgorgement within 30 days of the entry of this Order; and
3. Defendants Jasen Harvey and Harveys Tax Service are directed to pay to the United States $631.04 for the travel costs incurred by the United States to attend the hearing on the Motion for the Order to Show Cause, as evidenced by United States' Notice of Filing of Receipts (EFC No. 41).
4. The permanent injunction remains in effect. All persons should be governed accordingly.
5. The Court will sentence Mr. Harvey for his willful contempt. Sentencing is set for 10:00 AM, July 9, 2020 in Courtroom 15 B of the United States Courthouse, 801 North Florida Avenue, Tampa, Florida. Mr. Harvey must attend. The Plaintiff will personally serve this

Order upon Mr. Harvey and Harveys Tax Service, and file proof of same.

IT IS SO ORDERED at Tampa, Florida, on March 17, 2020.

William F. Jung
U.S. District Court Judge

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA

CASE NO.: 8:20-cv-00394

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

KINETIC INVESTMENT GROUP, LLC and MICHAEL SCOTT WILLIAMS,

Defendants, and

KINETIC FUNDS I, LLC, KCL SERVICES, LLC d/b/a LENDACY, SCIPIO, LLC, LF42, LLC, EL MORRO FINANCIAL GROUP, LLC, and KIH, INC. f/k/a KINETIC INTERNATIONAL, LLC,

Relief Defendants.

ORDER TO SHOW CAUSE

This cause comes before the Court upon the motion of Plaintiff Securities and Exchange Commission for an order to show cause why Defendant Michael Scott Williams ("Williams") and his counsel, Greenberg Traurig, P.A. ("Greenberg Traurig"), should not be held in contempt for violating the Court's March 6, 2020 Order Granting the Commission's Emergency Motion for Asset Freeze and Other Relief (ECF No. 33).

For good cause shown, the motion is **GRANTED**.

IT IS FURTHER ORDERED that, on _____, 2020, at _____, Williams and Greenberg Traurig shall appear telephonically before this Court to show cause why an

order of civil contempt should not be issued against them. Any opposition shall be filed and served no later than _____, 2020, and any reply shall be filed and served no later than _____, 2020.

IT IS FURTHER ORDERED that two business days prior to the hearing, (1) Williams shall provide records of (a) his credit and debit card transactions on or after March 6, 2020, (b) all transactions involving the Pyrum King LLC account at Banco Popular, (c) the rental income and expenditures therefrom referred to at pp. 16 and 17 of Defendants' and Relief Defendants' Emergency Motion for Clarification (ECF 49), and (d) any other financial transactions or expenditures on or after March 6, 2020, and (2) Greenberg Traurig shall provide records (a) of its receipt and disbursement of funds transferred to it for the benefit, or on behalf, of Defendants and/or Relief Defendants, including but not limited to those funds transferred by Obsidian Technologies, LLC, and (b) to the extent funds were disbursed to pay legal fees, documents reflecting the date the fees were incurred and the hourly rates charged.

DONE AND ORDERED in Chambers in _____, Florida, this ____ day of _____, 2020.

_____
UNITED STATES DISTRICT JUDGE