

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA**

**SECURITIES AND EXCHANGE COMMISSION,**

**Plaintiff,**

**v.**

**KINETIC INVESTMENT GROUP, LLC and  
MICHAEL SCOTT WILLIAMS,**

**CASE NO.: 8:20-cv-394**

**Defendants, and**

**KINETIC FUNDS I, LLC,  
KCL SERVICES, LLC d/b/a LENDACY,  
SCIPIO, LLC, LF 42, LLC, EL MORRO  
FINANCIAL GROUP, LLC, and KIH, INC.,  
f/k/a KINETIC INTERNATIONAL, LLC,**

**Relief Defendants.**

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**RECEIVER'S OPPOSITION TO DEFENDANT MICHAEL SCOTT WILLIAMS'  
EMERGENCY MOTION FOR CLARIFICATION (DOC. 49)**

Mark A. Kornfeld, as Receiver (the "Receiver"), by and through undersigned counsel, serves his Opposition to Defendant Michael Scott Williams' Emergency Motion for Clarification or, in the Alternative, Partial Modification of the Orders Granting the SEC's Emergency Motions for Asset Freeze and Appointment of Receiver (Doc. 49) (the "Emergency Motion"). The Receiver fully joins and incorporates by reference herein Plaintiff Securities and Exchange Commission's (the "Commission") opposition to the Emergency Motion (Doc. 51). The Receiver also submits this independent opposition to the Emergency Motion in order to clearly set forth what he believes are significant mischaracterizations by Defendant Williams

(“Williams”) of both the evidence surrounding the accounts he seeks to have unfrozen and the Receiver’s legal position hereto. The Receiver respectfully submits that there is no factual, legal or equitable basis upon which this court should re-litigate or otherwise reconsider its prior order. To the contrary, the overwhelming evidence and associated equities, including recent evidence showing transfers directly from the Receivership defendants to several of the accounts now frozen, requires that the asset freeze be left intact and reinforced.

The Emergency Motion apparently concedes Williams’ law firm’s post-freeze dissipation of at least a portion of \$500,000 belonging to Williams based on the self-serving determination that those funds were somehow outside of the Court’s asset freeze on March 6, 2020. It also admits that Williams, on the eve of a hearing he knew could result in the Court’s imposition of an asset freeze and/or appointment of a receiver, orchestrated a complex series of transfers of funds originating from his law firm’s trust account to purportedly pay back a portion of the funds which he misappropriated over the last several years from investors for his own personal gain. But it does not disclose that, of the nearly \$3 million transferred to Defendant Kinetic Investment Group on March 5, 2020, nearly \$500,000 was then transferred to Relief Defendant LF42 which in turn wired funds that same day to Williams, Williams’ wife, Pyram King, LLC and Rex Tenax, LLC. The bank accounts of Pyram King and Rex Tenax are the same accounts Williams is now asking the Court to unfreeze on the basis that “[n]o monies from Kinetic Funds or any Relief Defendant were transferred to or from the Rex Tenax, Pyram King or Personal Accounts.” Doc. 49 p. 21. It would be grossly improper to allow Williams, who is accused of diverting more than \$6 million of investor funds, to somehow use the Receivership Defendants’ bank account as a conduit to conceal and dissipate

funds that should be frozen for the benefit of his victims.

The Receiver's First Interim Report to be filed on or before April 30 will explain that his initial investigation has revealed significant evidence supporting the Commission's allegations that Defendants Williams and Kinetic Investment Group operated a fraudulent investment offering and misappropriated millions of dollars for the benefit of Williams and his related entities. This includes LF42, which received over \$1 million in net transfers from Receivership Defendants in addition to more than \$2 million it purportedly diverted from the Receivership Defendants to fund and operate a variety of businesses in Puerto Rico. Those net transfers also include at least \$70,000 in proceeds from a recent and undisclosed "Consulting Agreement" entered into between LF42 and Kinetic Investment Group in September 2019 that continued until this case was filed.

The Receiver therefore opposes the requests for relief sought by Mr. Williams for all of these reasons, and the additional reasons set forth below.

### **The Court Enters The March 6 Orders**

1. Following a hearing on March 6, 2020, the Court entered its Order Granting Motion for Asset Freeze (Doc. 33) (the "Asset Freeze Order") and the Order granting the Commission's Motion for Appointment of Receiver (Doc. 34) (the "Order Appointing Receiver") (collectively, the "March 6 Orders").

2. Among other things, the Court's Order Appointing Receiver appointed the Receiver over Kinetic Investment Group, LLC and Relief Defendants 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 ("Kinetic International")

(collectively, the “Receivership Defendants”), and directed the Receiver to marshal and preserve all assets (i) belonging to Defendant (“Receivership Assets”); and (ii) of the Relief Defendants attributable, held in trust for Defendant, fraudulently transferred by Defendant, or otherwise includable as estate assets (the “Recoverable Assets”). The Asset Freeze Order contains a separate broad provision instructing any financial institution to hold and retain any funds or assets **“for the benefit or under the control of Defendants or Relief Defendants, directly or indirectly...”** (Doc. 33 p. 3) (emphasis added).

3. The Receiver has been working diligently to execute his duties under the Order Appointing Receiver even in light of the significant disruption caused by the COVID-19 pandemic. As part of these duties, the Receiver sent written correspondence to Williams’ counsel on March 7, 2020, requesting in relevant part to “please identify any institutions or entities, financial or otherwise, that are holding any assets for or for the benefit of any of the Receivership Defendants. At present, we have identified Dash, SolCoop, BMO Harris, and Interactive Brokers.” *See* Declaration of Jordan D. Maglich (“Maglich Decl.”) (Doc. 53) ¶ 3 Ex. 1.

4. In response on March 9, 2020, Williams’ counsel responded and stated that “the list you identify is consistent with Mr. Williams’ recollection.” *Id.* Williams did not disclose that funds had been transferred from the Receivership Defendants on the eve of the hearing to at least two entities associated with him.

5. The Receiver later learned that one or more Receivership Defendants may have opened an account at Banco Popular and sent a copy of the Order Appointing Receiver to Banco Popular.

### **Williams' March 5, 2020 Transfers**

6. Williams represented at the March 6, 2020 hearing that he had made payments totaling approximately \$2.3 million as partial or full repayments of certain loans attributable to him or his entities. In late March 2020, the Receiver learned that the source of the funds transferred to the Receivership Defendants on March 5, 2020 and used to “payoff LF42’s Loan in its entirety” was a transfer of approximately \$2,914,964 that purportedly originated from Williams’ counsel’s trust account (the “March 5th Deposit”).<sup>1</sup>

7. After investigating this information, the Receiver also learned that approximately \$460,564 of that amount was transferred out of the Kinetic Investment Group bank account on March 5, 2020 (the “\$460,564 Transfer”) following the March 5th Deposit and containing the notation “CBOE Pay Remaining.”

8. Williams’ response on March 7, 2020 failed to disclose that Williams’ law firm was holding a significant amount of funds in trust for Williams’ benefit.

9. On April 2, 2020, the Receiver sent written correspondence to Williams (the “April 2nd Letter”) requesting information on several areas of inquiry, including:

The initial \$2,914,964 transfer appears to have originated from a Greenberg Traurig Trust Account. Please identify the source of that money. Is Greenberg Traurig holding any other funds for Mr. Williams (or for his benefit) in its trust account or any other account? Has Greenberg Traurig made any transfers at Mr. Williams’ direction for the period from March 1, 2020 to the present?

In addition to Mr. Williams’ loan repayment transfers totaling \$2,354,399.21,

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<sup>1</sup> The Emergency Motion alleges that Williams’ counsel advised the Court at the March 6, 2020 hearing that Williams’ law firm had received a significant sum of money on Williams’ behalf and that the law firm had transferred a portion of those funds to Kinetic Investment Group. While the Receiver is aware of the evidence proffered demonstrating the transfers between the Receivership Defendants as purported repayment of the LF42 Loans, he does not recall the disclosure that Williams’ law firm was the source of those funds.

there was an additional debit of \$460,564.79 made from the KIG Account on March 5, 2020 with the notation “CBOE Pay Remaining.” Did Mr. Williams make this transfer? Who was the recipient, and what was the purpose, of that transfer? Was this a Kinetic Investment Group debt? Please also provide any supporting documentation.

Maglich Decl. ¶ 4 Ex. 2. The Receiver requested written responses to these and other questions by April 9, 2020. On April 8, 2020, Williams’ counsel indicated that responsive information would not be provided until the following week.

10. On April 16, 2020, the Receiver received correspondence from Banco Popular indicating that several accounts had been frozen including an account belonging to Kinetic International and several accounts attributed to Williams. Doc. 49 Ex. 3.

**The Receiver’s April 16, 2020 Call With Williams’ Counsel**

11. On April 16, 2020, the Receiver, the Receiver’s counsel, and Williams’ counsel participated in a telephone call (the “April 16 call”) for what the Receiver believed would be a discussion regarding the April 2nd Letter. During the April 16 call, Williams’ counsel advocated that certain bank accounts controlled directly or indirectly by Mr. Williams that resided at Banco Popular, as well as accounts held by Relief Defendant LF42, should be immediately unfrozen.

12. Williams’ counsel stated that the funds in those bank accounts were not linked to the scope of the Receivership by virtue of the Order Appointing Receiver and further represented that the monies passing through those accounts were the by product and proceeds from the sale of another wholly unrelated entity (Silexx).

13. Williams counsel further indicated that Mr. Williams needed immediate access to those accounts for basic necessities including for the alleged purpose of “buying groceries.”

14. In response, the Receiver made clear that he was currently in no position to evaluate or investigate the verbal position being advocated for the first time by Williams.<sup>2</sup> The Receiver stated that he and his team were still analyzing and reviewing countless bank and other records and documents, and that the Receiver was also expecting to receive certain documents from the Receivership Defendants' principal bank that had not yet been delivered.

15. The Receiver also indicated that while he had no personal interest in trying to "squeeze" Williams, the Receiver **would not take any position on behalf of Williams**, which the Receiver understood to be the crux of the requests being made by counsel for Williams during the phone call.

16. The Receiver told Williams' counsel that the decision to freeze bank accounts rested with the banks, and that if Williams wished to seek any relief he should speak with the banks, the Commission and as necessary seek relief from the Court.

17. The Emergency Motion is ultimately either inadvertently or deliberately misrepresenting the April 16 call out of context. The Receiver at no point during that conversation or at any time, ever, stated or suggested that he had no objection to any assets being unfrozen. That is simply false. The Receiver asked for Williams' full position in writing so he could review it, along with documents relating to millions of dollars in transfers just before the hearing.

18. After the April 16 call with counsel for Williams, the Receiver comprehensively re-reviewed the record and relevant orders and also conferred with the

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<sup>2</sup> The Receiver, while skeptical then and now, expressed no view as Mr. Williams purported economic and living conditions being stated by counsel. Williams continues to live in a penthouse in San Juan, Puerto Rico that was purchased using investor funds.

Commission to understand its position as to the scope of the orders and Williams' requests.

19. The next day, on April 17, 2020, through counsel, the Receiver directed Williams' counsel to (and provided as a courtesy) the letter it had received from Banco Popular regarding certain frozen accounts. The Receiver also referred Williams to the plain language of the asset freeze language in the Asset Freeze Order. Maglich Decl. ¶5 Ex. 3.

20. The Order Appointing Receiver and the Asset Freeze Order imposing the requisite asset freeze are unmistakably to be taken and applied in tandem. The frozen Williams accounts at issue in this motion are squarely governed by each order.<sup>3</sup>

**Recent Evidence Shows That Several Of The Frozen Accounts Received Transfers From The Receivership Defendants On The Eve Of The March 6, 2020 Hearing**

21. The Emergency Motion represents that the "Rex Tenex[sic], Pyrum [sic] King, and Personal Accounts...have no connection whatsoever to the alleged unlawful conduct at issue.....[and] [n]o monies from Kinetic Funds or any Relief Defendant were transferred to or from [those accounts]." Doc. 49 p. 21. As the Receiver has recently learned, these allegations appear to be false. After Williams' law firm deposited nearly \$3 million into Kinetic Investment Group's bank account on March 5, 2020, Williams then ultimately caused wire transfers of nearly \$400,000 to be made from Relief Defendant LF42 that same day as follows:

- A \$248,000 wire transfer to his personal account at BB&T Bank;
- A \$60,000 wire transfer to his wife.
- A \$25,000 wire transfer to Pyram King LLC's Banco Popular account;
- A \$25,000 wire transfer to a technology vendor that was previously developing software for a receivership entity; and

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<sup>3</sup> There was initially some confusion between the Receiver and Banco Popular concerning the Order Appointing Receiver and the asset freeze, and that confusion was clarified in writing on April 17, 2020 with the Receiver's position that "[a]ll accounts identified in your letter should be frozen pursuant to the asset freeze provision of the order." Maglich Decl. ¶ 6 Ex. 4.



- A \$15,000 wire to Rex Tenax, LLC's account at Banco Popular.

Maglich Decl. ¶ 7 Ex. 5.

22. Williams orchestrated and directed these transfers:

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**From:** Michael Williams <mwilliams@kineticfunds.com>  
**Sent:** Thursday, March 5, 2020 2:47 PM  
**To:** Ashleigh Turner  
**Subject:** Loan wires

Two more wires from LF42.

\$15,000  
Name: Rex Tenax LLC  
Bank: Banco Popular San Juan Branch  
Acc#: 5852  
Routing #: 021502011

\$25,000  
Name: Pyram King LLC  
Bank: Banco Popular San Juan Branch  
Acc#: 5860  
Routing #: 021502011

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**Michael S Williams**  
KINETIC INVESTMENT GROUP

Maglich Decl. ¶ 8 Ex. 6.

23. The next day, just before the hearing on the Commission's motions was scheduled to begin, an individual with a Rex Tenax email address (and believed to be Williams' girlfriend) sent an email (copying Williams) to a Kinetic Investment Group employee appearing to direct an additional transfer to the now-frozen Rex Tenax account. *Id.* ¶ 9 Ex. 7.<sup>4</sup> That transfer does not appear to have taken place.

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<sup>4</sup> The Receiver has also seen indications that Rex Tenax may have operated out of the San Juan, Puerto Rico office rented by El Morro.

**Williams, the Receivership Defendants (Including LF42), and the Corresponding Bank Accounts are all Inextricably Connected**

24. The Receiver's initial observations suggest that corporate formalities were frequently disregarded by the Receivership Defendants in conducting business operations. The operations of several Receivership Defendants were routinely funded by transfers of investor funds to meet ongoing needs.<sup>5</sup>

25. The Receiver's forensic professionals have identified more than \$1 million in net transfers from Receivership Defendants to LF42 from 2015 to 2020 - which is in addition to the over \$2 million transferred from the Receivership Defendants to fund and operate the Puerto Rican operations which purportedly formed the basis of the LF42 Loans. The Receiver continues to investigate the basis for these transfers, which included at least \$70,000 in recent purported "consulting fees" evidenced by a Consulting Agreement signed in September 2019 between LF42 and Kinetic Investment Group. Maglich Decl. ¶ 10 Ex. 8. Williams appears to have signed on behalf of both entities.

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<sup>5</sup> The use of "Credit Facility Agreements" by Williams and his entities as a way to belatedly memorialize or somehow legitimize the diversion of investor funds is also a focal point of the Receiver's current investigation. The "\$2,550,000 credit line from Lendacy" referenced in the Emergency Motion actually consisted of the two Agreements that were signed months (and sometimes years) after the purported underlying expenses were actually incurred. The Receiver is not aware of LF42 having applied for or otherwise being approved for the LF42 Loans. No statements were ever generated for the LF42 Loans. The employee in charge of generating Lendacy statements has stated she was unaware of the LF42 Loans until recently. At a minimum, there remains significant questions about the exact amount that was diverted from investor funds to or for the benefit of LF42. Nor is LF42 somehow absolved of its misappropriation of investor funds by pointing to a self-serving paper trail while ignoring the underlying misconduct.

**The Funds Diverted From The March 5th Deposit Are Receivership Property**

26. The Order Appointing Receiver defines Recoverable Assets as those assets of the Relief Defendants that:

- (a) are attributable to funds derived from investors or clients of the Defendant;
- (b) are held in constructive trust for the Defendant; (c) were fraudulently transferred by the Defendant; and/or (d) may otherwise be includable as assets of the estates of the Defendant.

Doc. 34 p. 2.

27. On March 5, 2020, Williams deposited nearly \$3 million in Kinetic Investment Group. Those funds, once deposited, constituted Receivership Property and thus belonged to investors given allegations that Williams was responsible for misappropriating a much larger sum. Williams then transferred funds from Kinetic Investment Group to LF42 to then be distributed to various third parties (including Williams' personal account) without any justification or benefit to Kinetic Investment Group (or Kinetic Funds investors). Accordingly, the Receiver believes that the March 5th transfers constitute Recoverable Assets pursuant to the Order Appointing Receiver.

28. To the extent the Court takes any action, it should order that the funds transferred out of the Kinetic Investment Group account on March 5, 2020 in anticipation of the potential asset freeze should be returned to the receivership estate.

**CONCLUSION**

**WHEREFORE**, Mark A. Kornfeld, as Receiver, respectfully requests that the Court deny Defendant Michael Williams' Emergency Motion (Doc. 49) in its entirety and grant any further relief that is just and proper.

QUARLES & BRADY LLP

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 26th day of April, 2020, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a Notice of Electronic Filing to the following counsel of record:

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