

**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.)
)

CASE MANAGEMENT REPORT

The parties have agreed on the following dates and discovery plan pursuant to Fed.R.Civ.P. 26(f) and Local Rule 3.05(c):

DEADLINE OR EVENT	Plaintiff's and Receivership Entities' Proposed Date	Mr. Williams' Proposed Date
Mandatory Initial Disclosures (pursuant to Fed.R.Civ.P. 26(a)(1) as amended effective December 1, 2000) [Court recommends 30 days after CMR meeting]	June 5, 2020	June 5, 2020

DEADLINE OR EVENT	Plaintiff's and Receivership Entities' Proposed Date	Mr. Williams' Proposed Date
Certificate of Interested Persons and Corporate Disclosure Statement [Each party who has not previously filed must file immediately]	May 20, 2020	May 20, 2020
Motions to Add Parties or to Amend Pleadings [Court recommends 1 - 2 months after CMR meeting]	July 10, 2020	July 10, 2020
Disclosure of Expert Reports Plaintiff: Defendant: [Court recommends 1 - 2 months before discovery deadline to allow expert depositions and staggered 30 days with the party baring the burden of proof, on the issue for which the expert is proffered, to be designated first]	October 16, 2020 November 13, 2020	April 16, 2021 May 14, 2021
Discovery Deadline [Court recommends 6 months before trial to allow time for dispositive motions to be filed and decided; all discovery must be commenced in time to be completed before this date]	December 14, 2020	June 14, 2021
Dispositive Motions, <i>Daubert</i>, and <i>Markman</i> Motions [Court requires 5 months or more before trial term begins]	January 15, 2021	July 12, 2021
Meeting <i>In Person</i> to Prepare Joint Final Pretrial Statement [10 days before Joint Final Pretrial Statement]	April 23, 2021	October 22, 2021

DEADLINE OR EVENT	Plaintiff's and Receivership Entities' Proposed Date	Mr. Williams' Proposed Date
Joint Final Pretrial Statement (<i>Including</i> a Single Set of Jointly-Proposed Jury Instructions and Verdict Form, Voir Dire Questions, Witness Lists, Exhibit Lists with Objections on Approved Form) [Court recommends 6 weeks before Trial]	May 3, 2021	November 1, 2021
All Other Motions Including Motions <i>In Limine</i> [Court recommends 1 weeks before Final Pre-trial Conference]	May 10, 2021	November 8, 2021
Final Pretrial Conference	If needed, the Court will set a date that is approximately 4 weeks before trial	If needed, the Court will set a date that is approximately 4 weeks before trial
Trial Briefs and Deposition Transcripts [Court recommends 2 weeks before Trial]	May 26, 2021	November 29, 2021
Trial Term Begins [Local Rule 3.05 (c)(2)(E) sets goal of trial within 2 years of filing complaint in all Track Two cases; trial term <i>must not</i> be less than 4 months after dispositive motions deadline (unless filing of such motions is waived); district judge trial terms typically begin on Monday preceding the 1 st day on the month; trials before magistrate judges will be set on a date certain after consultation with the parties]	June 14, 2021	December 13, 2021
Estimated Length of Trial [trial days]	6-8	6-8
Jury / Non-Jury	Jury	Jury

DEADLINE OR EVENT	Plaintiff's and Receivership Entities' Proposed Date	Mr. Williams' Proposed Date
<p>Mediation Deadline:</p> <p>Mediator¹: Peter Grilli</p> <p>Address: 3001 W. Azele Street, Tampa, Florida, 33609</p> <p>Telephone: (813) 874-1002</p> <p>[Absent arbitration, mediation is <i>mandatory</i>; Court recommends either 2 - 3 months after CMR meeting, or just after discovery deadline]</p>	<p>December 16, 2020</p>	<p>December 16, 2020</p>
<p>All Parties Consent to Proceed Before Magistrate Judge</p>	<p>Yes _____ No <input checked="" type="checkbox"/></p> <p>Likely to Agree in Future _____</p>	<p>Yes _____ No <input checked="" type="checkbox"/></p> <p>Likely to Agree in Future _____</p>

I. Meeting of Parties in Person

Lead counsel must meet *in person* and not by telephone absent an order permitting otherwise. Counsel will meet in the Middle District of Florida, unless counsel agree on a different location. Pursuant to Local Rule 3.05(c)(2)(B) or (c)(3)(A) **and in light of the COVID-19 pandemic,**² a meeting was held via telephone on Friday, May 8, 2020, at 2:30 p.m. and was attended by:

<u>Name</u>	<u>Counsel for (if applicable)</u>
Christine Nestor	Plaintiff

¹ A list of Court approved mediators is available from the Clerk and is posted on the website for the Middle District at <http://www.flmd.uscourts.gov>

² A copy of the Local Rules may be viewed at <http://www.flmd.uscourts.gov>.

Stephanie N. Moot	Plaintiff
Steven M. Malina	Defendant Michael S. Williams (“Williams”)
Joseph H. Picone	Williams
Jordan D. Maglich	Receivership Entities³

II. Brief Description of the Case

The following is a brief description of the specific nature and relative complexity of the case:

Plaintiff:

Since at least 2013, Defendants have raised at least \$39 million from at least 30 investors in an unregistered fraudulent securities offering. Defendants solicited investors to invest in Kinetic Funds I, LLC (“Kinetic Funds”), a purported hedge fund with a sub-fund structure that they managed. Instead of employing the investment strategy promised to investors, Williams misappropriated at least \$6.3 million of investor assets to purchase real estate, to cover operating expenses, and to fund other business ventures. Relief Defendants all received Kinetic Funds assets and proceeds of Defendants’ securities violations without any legitimate entitlement to the funds

On March 6, 2020 and upon Plaintiff’s emergency motions, Judge William Jung entered orders freezing all of the assets of Defendants and Relief Defendants (ECF No. 33) and appointing a receiver over Receivership Entities (ECF No. 34).

This is a complex case involving several fraudulent transactions among multiple entities controlled by Williams. There are at least 30 harmed investors primarily located in Florida and Puerto Rico. There are also numerous documents, such as bank records,

³ The term “Receivership Entities” refers collectively to Kinetic Investment Group, LLC, 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.

purported loan agreements, and real estate documents, evidencing Defendants' fraud.

Williams

Contrary to the SEC's allegations, investor funds were not misappropriated, and Mr. Williams did not violate any securities laws. The Lendacy loans identified by the SEC as forming the basis for its misappropriation allegations did not come from investor funds. Instead, Lendacy loans were funded by Lendacy based on Kinetic Funds' use of its portfolio margin capabilities. And Mr. Williams' loans were funded by the exact same source as all other Lendacy loans to other investors. Thus, the SEC's contention that each of the loans identified in its Complaint are a misappropriation of investors' funds is misguided.

The parties agree that this is a complex case involving several entities and innumerable complicated transactions. The SEC has been investigating Mr. Williams regarding alleged securities laws violations since at least May 2019, and, in the course of its investigation, gathered tens of thousands of documents, including ESI, and conducted several investigative depositions. Mr. Williams, however, has only just begun to investigate the SEC's complex and serious allegations, which will involve, among other things, (a) the review of tens of thousands of documents and emails produced by separate counsel in the investigation, (b) deposing potentially dozens of individuals—many of which are believed to be located in Puerto Rico, and (c) engaging in his own forensic accounting and financial analysis to disprove the SEC's allegations. Mr. Williams has also been informed by the United States Department of Justice that there is a pending parallel investigation into matters arising out of the SEC's allegations in its Complaint.

Receivership Entities

On March 6, 2020, Mark A. Kornfeld was appointed as Receiver over Defendant Kinetic Investment Group, LLC and Relief Defendants. Mr. Kornfeld continues to carry out his duties specified by the Order Appointing Receiver, including securing assets for the benefit of defrauded

investors and investigating the business operations. Defendants appear to have operated at least five different (but often intertwined) businesses during the relevant time period, and the Receiver continues to review a significant amount of related documentation and financial records recovered to date.

III. Pre-Discovery Initial Disclosures of Core Information

Fed.R.Civ.P. 26(a)(1)(A) - (D) Disclosures

Fed.R.Civ.P. 26, as amended effective December 1, 2000, provides that these disclosures are mandatory in Track Two and Track Three cases, except as stipulated by the parties or otherwise ordered by the Court (the amendment to Rule 26 supersedes Middle District of Florida Local Rule 3.05, to the extent that Rule 3.05 opts out of the mandatory discovery requirements):

The parties ____ have exchanged agree to exchange (check one) information described in Fed.R.Civ.P. 26(a)(1)(A) - (D) (check one) by **June 5, 2020.**

Below is a description of information disclosed or scheduled for disclosure, including electronically stored information as further described in Section III below.

Plaintiff anticipates the disclosure of witnesses who have knowledge regarding the allegations in the Complaint, including harmed investors. Plaintiff further anticipates the disclosure of documents supporting the allegations in the Complaint, such as bank records, marketing materials, purchase and sale contracts, and testimony transcripts.

Mr. Williams anticipates disclosing witnesses who have knowledge regarding the allegations in the Complaint and facts that support his defenses. Regarding documents, however, Mr. Williams' likely has few, if any, documents to disclose because his access to documents has been severely restricted by the orders freezing all of his assets (ECF No. 33) and appointing a receiver over Receivership Entities (ECF No. 34).

IV. Electronic Discovery

The parties have discussed issues relating to disclosure or discovery of electronically stored information (“ESI”), including Pre-Discovery Initial Disclosures of Core Information in Section II above, and agree that (check one):

No party anticipates the disclosure or discovery of ESI in this case;

One or more of the parties anticipate the disclosure or discovery of ESI in this case.

If disclosure or discovery of ESI is sought by any party from another party, then the following issues shall be discussed:⁴

A. The form or forms in which ESI should be produced.

B. Nature and extent of the contemplated ESI disclosure and discovery, including specification of the topics for such discovery and the time period for which discovery will be sought.

C. Whether the production of metadata is sought for any type of ESI, and if so, what types of metadata.

D. The various sources of ESI within a party’s control that should be searched for ESI, and whether either party has relevant ESI that it contends is not reasonably accessible under Rule 26(b)(2)(B), and if so, the estimated burden or costs of retrieving and reviewing that information.

E. The characteristics of the party’s information systems that may contain relevant ESI, including, where appropriate, the identity of individuals with special knowledge of a party’s computer systems.

F. Any issues relating to preservation of discoverable ESI.

G. Assertions of privilege or of protection as trial-preparation materials, including whether

⁴ See Generally: *Rules Advisory Committee Notes* to the 2006 Amendments to Rule 26 (f) and Rule 16.

the parties can facilitate discovery by agreeing on procedures and, if appropriate, an Order under the Federal Rules of Evidence Rule 502. If the parties agree that a protective order is needed, they shall attach a copy of the proposed order to the Case Management Report. The parties should attempt to agree on protocols that minimize the risk of waiver. Any protective order shall comply with Local Rule 1.09 and Section IV. F. below on Confidentiality Agreements.

H. Whether the discovery of ESI should be conducted in phases, limited, or focused upon particular issues.

Please state if there are any areas of disagreement on these issues and, if so, summarize the parties' position on each:

At this time, there are no areas of disagreement on the above issues.

If there are disputed issues specified above, or elsewhere in this report, then (check one):

One or more of the parties requests that a preliminary pre-trial conference under Rule 16 be scheduled to discuss these issues and explore possible resolutions. Although this will be a non-evidentiary hearing, if technical ESI issues are to be addressed, the parties are encouraged to have their information technology experts with them at the hearing.

If a preliminary pre-trial conference is requested, a motion shall also be filed pursuant to Rule 16(a), Fed. R. Civ. P.

All parties agree that a hearing is not needed at this time because they expect to be able to promptly resolve these disputes without assistance of the Court.

V. Agreed Discovery Plan for Plaintiffs and Defendants

A. Certificate of Interested Persons and Corporate Disclosure Statement —

This Court has previously ordered each party, governmental party, intervenor, non-party movant, and Rule 69 garnishee to file and serve a Certificate of Interested Persons and Corporate Disclosure Statement using a mandatory form. No party may seek discovery from any source

before filing and serving a Certificate of Interested Persons and Corporate Disclosure Statement. A motion, memorandum, response, or other paper — including emergency motion — is subject to being denied or stricken unless the filing party has previously filed and served its Certificate of Interested Persons and Corporate Disclosure Statement. Any party who has not already filed and served the required certificate is required to do so immediately.

Every party that has appeared in this action to date has filed and served a Certificate of Interested Persons and Corporate Disclosure Statement, which remains current:

_____ Yes _____ No Amended Certificate will be filed by
_____ (party) on or before _____ (date).

The parties will file their respective Certificate of Interested Persons and Corporate Disclosure Statement by May 20, 2020, pursuant to the Court’s May 6, 2020 Order (ECF No. 68).

B. Discovery Not Filed —

The parties shall not file discovery materials with the Clerk except as provided in Local Rule 3.03. The Court encourages the exchange of discovery requests on diskette. *See* Local Rule 3.03 (e). The parties further agree as follows:

At this time, the parties do not propose any deviation from the applicable rules.

C. Limits on Discovery —

Absent leave of Court or stipulation of the parties, the parties may take no more than ten depositions per side (not per party). Fed.R.Civ.P. 30(a)(2)(A); Fed.R.Civ.P. 31(a)(2)(A). Absent leave of Court or stipulation of the parties, the parties may serve no more than twenty-five interrogatories, including sub-parts. Fed.R.Civ.P. 33(a); Local Rule 3.03(a). Absent leave of Court or stipulation of the parties each deposition is limited to one day of seven hours. Fed.R.Civ.P. 30(d)(2). The parties may agree by stipulation on other limits on discovery. The

Court will consider the parties' agreed dates, deadlines, and other limits in entering the scheduling order. Fed.R.Civ.P. 29. In addition to the deadlines in the above table, the parties have agreed to further limit discovery as follows:

1. Depositions

At this time, the parties do not propose any deviation from the applicable rules.

2. Interrogatories

At this time, the parties do not propose any deviation from the applicable rules.

3. Document Requests

At this time, the parties do not propose any deviation from the applicable rules.

4. Requests to Admit

At this time, the parties do not propose any deviation from the applicable rules.

5. Supplementation of Discovery

At this time, the parties do not propose any deviation from the applicable rules.

D. Discovery Deadline —

Each party shall timely serve discovery requests so that the rules allow for a response prior to the discovery deadline. The Court may deny as untimely all motions to compel filed after the discovery deadline. In addition, the parties agree as follows:

At this time, the parties do not propose any deviation from the applicable rules.

E. Disclosure of Expert Testimony —

On or before the dates set forth in the above table for the disclosure of expert reports, the parties agree to fully comply with Fed.R.Civ.P. 26(a)(2) and 26(e). Expert testimony on direct examination at trial will be limited to the opinions, basis, reasons, data, and other information disclosed in the written expert report disclosed pursuant to this order. Failure to disclose such information may result in the exclusion of all or part of the testimony of the expert witness. The

parties agree on the following additional matters pertaining to the disclosure of expert testimony:

At this time, the parties do not propose any deviation from the applicable rules.

F. Confidentiality Agreements —

Whether documents filed in a case may be filed under seal is a separate issue from whether the parties may agree that produced documents are confidential. The Court is a public forum, and disfavors motions to file under seal. The Court will permit the parties to file documents under seal only upon a finding of extraordinary circumstances and particularized need. *See Brown v. Advantage Engineering, Inc.*, 960 F.2d 1013 (11th Cir. 1992); *Wilson v. American Motors Corp.*, 759 F.2d 1568 (11th Cir. 1985). A party seeking to file a document under seal must file a motion to file under seal requesting such Court action, together with a memorandum of law in support. The motion, whether granted or denied, will remain in the public record.

The parties may reach their own agreement regarding the designation of materials as “confidential.” There is no need for the Court to endorse the confidentiality agreement. The Court discourages unnecessary stipulated motions for a protective order. The Court will enforce appropriate stipulated and signed confidentiality agreements. *See* Local Rule 4.15. Each confidentiality agreement or order shall provide, or shall be deemed to provide, that “no party shall file a document under seal without first having obtained an order granting leave to file under seal on a showing of particularized need.” With respect to confidentiality agreements, the parties agree as follows:

At this time, the parties do not propose any deviation from the applicable rules.

G. Other Matters Regarding Discovery —

At this time, the parties do not propose any deviation from the applicable rules.

VI. Settlement and Alternative Dispute Resolution.

A. Settlement —

Plaintiff and Williams agree that settlement is ___ likely X unlikely.

Plaintiff and Receivership Entities agree that settlement is X likely ___ unlikely.

The parties request a settlement conference before a United States Magistrate Judge.

yes ___ no X likely to request in future ___

B. Arbitration —

The Local Rules no longer designate cases for automatic arbitration, but the parties may elect arbitration in any case. Do the parties agree to arbitrate?

yes _____ no X likely to agree in future _____

_____ Binding _____ Non-Binding

C. Mediation —

Absent arbitration or a Court order to the contrary, the parties in every case will participate in Court-annexed mediation as detailed in Chapter Nine of the Court's Local Rules. The parties have agreed on a mediator from the Court's approved list of mediators as set forth in the table above, and have agreed to the date stated in the table above as the last date for mediation. The list of mediators is available from the Clerk, and is posted on the Court's web site at <http://www.flmd.uscourts.gov>.

D. Other Alternative Dispute Resolution —

The parties intend to pursue the following other methods of alternative dispute resolution:

The parties are willing to explore the potential for settlement through informal discussions among counsel.

Date: May 11, 2020

Signature of Counsel (with information required by Local Rule 1.05(d)) and Signature of Unrepresented Parties.

<p><i>/s/ Christine Nestor</i></p> <p>Christine Nestor Senior Trial Counsel Fla. Bar No. 597211 Direct Dial: (305) 982-6367 E-mail: nestorc@sec.gov</p> <p>Stephanie N. Moot Trial Counsel Fla. Bar No. 30377 Direct Dial: (305) 982-6313 E-mail: moots@sec.gov</p> <p><i>Counsel for Plaintiff</i> Securities and Exchange Commission 801 Brickell Avenue, Suite 1950 Miami, FL 33131 Facsimile: (305) 536-4154</p>	<p><i>/s/ Joseph H. Picone</i></p> <p>Gregory W. Kehoe, Esq. Joseph H. Picone, Esq. Danielle S. Kemp, Esq. Greenberg Traurig, P.A. 101 East Kennedy Blvd., Suite 1900 Tampa, FL 33602 Telephone: 813-318-5700 Email: kehoeg@gtlaw.com piconej@gtlaw.com kempd@gtlaw.com <i>Counsel for Defendant Williams</i></p> <p>Steven M. Malina, Esq. Greenberg Traurig, P.A. 77 West Wacker Drive, Suite 3100 Chicago, IL 60601 Telephone: 312-456-8400 Email: malinas@gtlaw.com <i>Counsel for Defendant Williams</i></p>
<p><i>/s/ Jordan D. Maglich</i></p> <p>Jordan D. Maglich, Esq. Quarles & Brady LLP 101 E. Kennedy Blvd., Suite 3400 Tampa, FL 33602 Telephone: 813-387-0300 Email: Jordan.maglich@quarles.com <i>Counsel for Receiver, Mark A. Kornfeld</i></p>	