

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

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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**RESPONDENTS THE FOGARTY FAMILY’S *UNOPPOSED* MOTION FOR
EXTENSION OF TIME TO RESPOND TO RECEIVER’S MOTION TO (i) APPROVE
DETERMINATION OF BROKERAGE ACCOUNT MARGIN OBLIGATION; (ii)
PARTIALLY LIQUIDATE INVESTOR ACCOUNTS TO SATISFY MARGIN
OBLIGATIONS; (iii) REPAY REMAINING MARGIN BALANCE; AND (iv)
TRANSFER MAJORITY OF REMAINING RECEIVERSHIP CASH ASSETS TO
FIDUCIARY BANK ACCOUNTS**

Pursuant to Rule (6)(b)(1)(A) of the Federal Rules of Civil Procedure, investors Jonathan Fogarty (“Jon Fogarty”) and The Fogarty Family Revocable Trust dated September 14, 1971 (the “Trust”), (collectively, the “Fogarty Family”), through their counsel, move for an order granting an extension of time to respond to the Receiver’s Motion to (i) Approve

Determination of Brokerage Account Margin Obligation; (ii) Partially Liquidate Investor Accounts to Satisfy Margin Obligations; (iii) Repay Remaining Margin Balance; and (iv) Transfer Majority of Remaining Receivership Cash Assets to Fiduciary Bank Accounts, filed on or about July 22, 2020 (“Receiver’s Motion,” *see* Dkt. No. 108) filed by the Court-appointed receiver, Mark A. Kornfeld, Esq. (“Receiver”) for a period of sixty (60) days, through and including September 21, 2020. All parties, through their counsel, expressly agree to the relief sought herein.

RELEVANT BACKGROUND AND ARGUMENT

On March 6, 2020, the Court entered its order appointing the Receiver in this case (Dkt. No. 34). Since that time, the Fogarty Family has been in discussions with the Receiver about 62,928 shares of Johnson & Johnson (the “JNJ Shares”) owned by the Trust and various other shares owned by Jon Fogarty. While the Fogarty Family had entrusted the shares to Defendant Michael Williams (“Williams”) as their long time stockbroker, unbeknownst to the Fogarty Family, Williams had commingled the JNJ Shares and Jon Fogarty’s shares with the Kinetic Fund’s assets; holding the Fogarty Family shares in “sub-accounts” of the Kinetic Fund. As a result, the initial discussions between the Fogarty Family and the Receiver focused on the actual ownership of the subject shares. That issue, however, appears to be resolved and the Receiver appears to acknowledge that the shares belong to the Fogarty Family.

On July 7, 2020, however, the Receiver disclosed for the first time his belief that there is in excess of \$9 million in margin loans associated with the JNJ shares. He further demanded repayment of the loans before he would release them to the Fogarty Family. Needless to say, the Fogarty Family was completely shocked by the Receiver’s findings and position, as

Williams never disclosed that such an amount was due and owing. Moreover, the amount of the margin loans claimed by the Receiver likely surpasses the entire value of the JNJ Shares, which is another fact that needs to be explored. In any event, given the Receiver's position, the Fogarty Family is now actively trying to determine the validity of the loans and how to respond to the Receiver's \$9 million claim – a task that is extremely difficult given the complex accounting and trading strategies used by Williams that allegedly lead to the multi-million dollar loans. The task is made even more difficult due to the lack of information Williams shared with the Fogarty Family.

Rule (6)(b)(1)(A) of the Federal Rules of Civil Procedure allows the Court to extend the time within which an act must be done upon a showing of good cause if the request for extension of time is made before the time for compliance passes. In addition, even in summary proceedings, due process requires that interested parties be granted a fair opportunity to be heard. *See, e.g., SEC v. Elliott*, 953 F.2d 1560, 1566-67 (11th Cir. 1992).

The Fogarty Family's time to respond to the Receiver's Motion (14 days by Local Rule) has not yet expired. However, the Fogarty Family now requests a 60-day extension of time to respond to the Receiver's Motion in order to have sufficient time to analyze the complex issues raised by the Receiver and sharpen those issues for the Court's resolution. As set forth in the Receiver's moving papers (Dkt. Nos. 108, 109, 110), the accounting and analysis behind these loans is complex, with banking records and correspondence covering over ten years. Tellingly, the Receiver's Motion relies heavily on his forensic accounting expert's declaration (Dkt. No. 110) and corresponding analysis of numerous accounts and records; some of these records the Fogarty Family saw for the first time when the Receiver's Motion was filed.

Until now, the Fogarty Family has not appeared in this case. However, the family has taken steps to appear in this case and protect their interests by associating with local counsel in Florida who will file *pro hac vice* motions for the family's counsel within the next week. Additionally, the Fogarty Family has already retained one expert to analyze the option trading in the various accounts, and is working on retaining additional experts to further understand the validity and nature of the claimed \$9 million in loans. Given the millions of dollars at stake in the Receiver's Motion, as well as the complexity of the Kinetic Fund's accountings and option-trading strategies, combined with the Fogarty Family's limited information relating to Williams' management of their investments, the Fogarty Family requests a sixty (60) day extension of time to respond to the Receiver's Motion. This short extension will not delay the progress of this case, will not prejudice any parties (to the contrary, all parties consent to the motion), and will not affect any pending deadlines. However, this short extension will ensure the Fogarty Family is able to fully analyze and address the issues raised in the Receiver's Motion. Additionally, this will allow the Fogarty Family to continue to work with the Receiver to see if an informal resolution can be reached once the Fogarty Family has a better understanding of the claimed loans.

WHEREFORE, for good cause, the Fogarty Family respectfully requests that the Court grant an extension until September 21, 2020, for the family to respond to the Receiver's Motion.

Local Rule 3.01(g) Certification

Counsel for the movant certify that they have conferred with counsel for all parties and that all parties consent to the extension requested in this Unopposed Motion.

Dated: July 30, 2020.

Respectfully submitted,

/s/ John E. Clabby

John E. Clabby
Florida Bar No. 113664
Nathaniel H. Foell
Florida Bar No. 1010475
CARLTON FIELDS, P.A.
P.O. Box 3239
Tampa, FL 33601-3239

Physical address:

Corporate Center Three at International Plaza
4221 W. Boy Scout Boulevard, Suite 1000
Tampa, Florida 33607

Telephone: (813) 223-7000

Fax: (813) 229-4133

Primary email: jclabby@carltonfields.com

Secondary email: nkapadia@carltonfields.com

Primary email: nfoell@carltonfields.com

Secondary email: devans@carltonfields.com

Maria S. Bellafronto

Jedidiah L. Dooley

HOPKINS & CARLEY

70 S. 1st Street

San Jose, CA 95113

Telephone: (408) 286-9800

Email: mbellafr@hopkinscarley.com

Email: jdooley@hopkinscarley.com

(Pro Hac Vice admissions pending)

Counsel for the Fogarty Family