

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

CASE NO.: 8:20-cv-394

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.

**DEFENDANT WILLIAMS' UNOPPOSED MOTION TO MODIFY THE ASSET
FREEZE ORDER [D.E. 33] TO RETAIN EDISCOVERY VENDOR**

Defendant MICHAEL SCOTT WILLIAMS (“Williams”), moves to modify the Court’s *Order Granting Plaintiff Securities Exchange Commission’s Emergency Motion for Asset Freeze and Other Relief* dated March 6, 2020 (“Asset Freeze Order”) [D.E. 33] to unfreeze a reasonable amount of funds to allow him to retain and pay a third-party document management vendor so that he can review the documents produced by the U.S. Securities and Exchange Commission (“SEC”) and prepare his defenses.

While this is not an emergency motion, time is of the essence as the parties have agreed to mediate their dispute in just two weeks — on August 28, 2020.

Williams' counsel cannot begin to review the 875,583 pages of electronic documents produced by the SEC as part of its Rule 26(a)(1) disclosures ("Rule 26 Production") until Williams retains an eDiscovery vendor to process and host the SEC's production and provide Williams with software that will enable him to conduct "targeted" reviews of the SEC's documents (*e.g.*, by searching sub-sets of the 875,583 pages of documents based on different time frames, key terms, relevant custodians, etc., as opposed to attempting to review all of the documents).¹

In support of this Motion, Williams states as follows:

1. On July 23, 2020, Williams provided the SEC with an estimate prepared by Xact Data Discovery ("XDD"), which summarized: (1) the estimated one-time fees XDD would charge to upload and process the SEC's Rule 26 Production (\$10,393); and (2) the estimated on-going monthly fees XDD would charge to host the SEC's Rule 26 Production and provide data review software (\$3,318/month).² A copy of XDD's estimate is attached hereto as **Exhibit A**. Williams requested whether the SEC had any objections to Williams' retaining XDD.

2. On July 29, 2020, the SEC requested that Williams obtain a second estimate from KL Discovery ("KLD"), which the SEC believed charged lower fees and did not charge a monthly hosting fee.

¹ Williams agreed to the SEC's request for an expedited mediation date on June 19, 2020, before his undersigned counsel was aware that Williams' prior counsel would be providing them with 12,650 pages of potentially relevant documents and hearing transcripts that would need to be reviewed — and nearly a month before the SEC produced an additional 875,583 pages of documents on July 15, 2020.

² In addition, XDD estimated that it would require approximately 4,373 hours to review the entirety of the SEC's Rule 26 Production and offered to provide additional document reviewers at a rate of \$39/hour (for a total estimated cost of \$220,479). Due to the unique circumstances of this case, Williams does not presently intend to use any additional reviewers and, instead, will attempt to use software-assisted "targeted" search to review the relevant documents in as economically as possible.

3. On August 5, 2020, Williams provided the SEC with an estimate prepared by KLD, which summarized: (1) the estimated one-time fees KLD would charge to upload and process the SEC's Rule 26 Production (\$8,198); and (2) the estimated on-going monthly fees KLD would charge to host the SEC's Rule 26 Production and provide data review software (\$2,523/month). A copy of KLD's estimate is attached hereto as **Exhibit B**.

4. In a good faith effort to identify the third-party document management vendor with the lowest fees, Williams informed XDD that he had obtained a lower fee estimate from KLD and invited XDD to provide a revised, more competitive estimate for consideration.

5. On August 5, 2020, Williams provided the SEC with a revised estimate prepared by XDD, which summarized: (1) the estimated one-time fees XDD would charge to upload and process the SEC's Rule 26 Production (\$8,123); and (2) the estimated on-going monthly fees XDD would charge to host the SEC's Rule 26 Production and provide data review software (\$2,523/month). A copy of XDD's revised estimate is attached hereto as **Exhibit C**.

6. Based on the fact that XDD's revised estimated one-time setup fees were \$75 lower than KLD's estimated fees, XDD's revised estimated on-going monthly fees were the same as KLD's estimated fees, and XDD proposed not to charge any fees for project management services whereas KLD proposed to \$150/hour "as incurred," Williams requested whether the SEC had any objections to Williams' retaining XDD.

7. In response, the SEC requested that Williams obtain a third estimate from E-Hounds, Inc. ("E-Hounds").

8. On August 7, 2020, Williams provided the SEC with an estimate prepared by E-Hound, which summarized: (1) the estimated one-time fees E-Hounds would charge to upload and process the SEC's Rule 26 Production (\$2,670); and (2) the estimated on-going monthly fees E-

Hounds would charge to host the SEC's Rule 26 Production and provide data review software (\$1,090/month). A copy of E-Hounds' estimate is attached hereto as **Exhibit D**.

9. E-Hounds' estimated fees are lower than XDD's and KLD's estimated fees primarily because, unlike XDD and KLD, E-Hounds does not provide users with access to Relativity (a cloud-based eDiscovery software that provides a range of tools to organize, review, and manage data sets) and therefore does not have to pay any of Relativity's licensing fees. Instead, E-Hounds offers users access to its own proprietary eDiscovery software.

10. It is undersigned counsels' understanding that E-Hounds' eDiscovery software has a number of tools that are similar to those provided by Relativity. However, while undersigned counsel have used Relativity, they have never used E-Hounds' software.

11. Accordingly, it is anticipated that Williams' counsel will likely incur various Project Management fees and Ongoing Technical Support fees (both of which are charged by E-Hounds at a rate equal to \$195/hour, *see* **Exhibit D**) in the first couple of months as they learn to use E-Hounds' software — which could make the on-going monthly fees more than \$1,090/month in the beginning.

12. Based on E-Hounds' lower estimated fees — and with the proviso that Williams might incur Project Management fees and Ongoing Technical Support fees — Williams requested whether the SEC had any objections to Williams' retaining E-Hounds.

13. Based on Williams' counsels' representations regarding their need to retain an eDiscovery vendor and E-Hounds' fee estimate (attached hereto as **Exhibit D**), the SEC has informed Williams that it does *not* oppose his request to retain E-Hounds. However, the SEC specifically reserves the right to object to the reasonableness of any request for future or ongoing Project Management fees and Ongoing Technical Support fees. The SEC will make a reasonable,

good-faith effort to assert any such objections before such fees are incurred by E-Hounds provided it has reasonable advance notice of the work to be performed.

14. Likewise, the Receiver has similarly informed Williams that he does not oppose Williams' request to retain E-Hounds. However, the Receiver specifically reserves the right to object to the reasonableness of any request for future or ongoing Project Management fees and Ongoing Technical Support fees. The Receiver will make a reasonable, good-faith effort to assert any such objections before such fees are incurred by E-Hounds provided he has reasonable advance notice of the work to be performed.

Conclusion

For all of the reasons discussed above, Williams respectfully requests that the Court enter an Order: (1) approving Williams' engagement of E-Hounds; (2) approving E-Hounds' estimated fees attached hereto as **Exhibit D**; and (3) authorizing Williams' undersigned counsel to submit E-Hounds' monthly bills to the Court for review and, upon approval, issuance of an Order directing the Receiver to unfreeze a sufficient amount of the funds currently frozen pursuant to the Asset Freeze Order [D.E. 33] and to pay E-Hounds' bills from the unfrozen funds. A proposed Order for the Court's consideration is attached hereto as **Exhibit E**.

Respectfully Submitted,

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Co-Trial Counsel for Defendants

By: /s/ Jon A. Jacobson
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 Email: e-service@jlpa.com
Co-Trial Counsel for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 11, 2020, the foregoing document was filed with the Clerk of the Court using the CM/ECF system. I also certify that the foregoing document is being served this day on all counsel of record identified on the attached Service List via transmission of the Notice of Electronic Filing generated by CM/ECF.

By: /s/ Jon A. Jacobson

By: /s/ Timothy W. Schulz

Service List

SECURITIES AND EXCHANGE COMMISSION

v.

KINETIC INVESTMENT GROUP, LLC, et al.

CASE NO.: 8:20-cv-394

United States District Court, Middle District of Florida

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Counsel for Receiver

Christine Nestor, Esq.

Stephanie M. Moot, Esq.

John T. Houchin, Esq.

Barbara Veniegra, Esq.

Securities and Exchange Commission

801 Brickell Avenue, Suite 1950

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Email: houchinj@sec.gov

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Counsel for Plaintiff



EPROD-SEC-OC_20200713	
Data Volume - GB	265
Document Count	218,637
Page Count	875,583

One-Time Setup Fees

Service	Cost	Unit	Volume	Estimate
Relativity Loading Item - Upload EPROD-SEC-OC_20200713-One-time fee for data base creation	\$150.00	Hour	3	\$450.00
Relativity Database Hosting	\$12.00	GB/month	265	\$3,180.00
Relativity User License	\$69.00	User/Month	2	\$138.00
Relativity Analytics and Technology Assisted Review Indexing: (One-time Fee for creation of analytics indexes) Analytics Index Includes: - Concept search - Keyword expansion - Clustering - Categorization - Find Similar/Similarity ranking - Near Dupe Detection - Email Threading - Primary Language Identification - Repeated Content Identification	\$25.00	GB	265	\$6,625.00
				\$10,393.00


On-Going Monthly Fees

Service	Cost	Unit	Volume	Estimate
Relativity Database Hosting	\$12.00	GB/month	265	\$3,180.00
Relativity Database User Licensing	\$69.00	User/month	2	\$138.00
Relativity Training and Folder layout calls	No Charge	No Charge	N/A	No Charge
Project Management (basic services included, custom requests billed at the Tech Time hourly rate)	No Charge	No Charge	Hour	No Charge
				\$3,318.00

Additional Services - Optional

XDD Managed Review - Responsiveness Review @ Average Pace of 50 Documents Per Hour *					
Service	Doc Count	Est. Hours	Unit of Measure	Unit Price	Total Price
XDD Review Attorneys - 1L Review	218,637	4,373	Hour	\$39.00	\$170,547
XDD Review Attorneys - QC Review	21,864	438	Hour	\$39.00	\$17,082
XDD Review Process Manager	NA	438	Hour	\$75.00	\$32,850
					\$220,479

* Based on our experience with similarly sized databases, we estimate it will take approximately 4,811 hours to review all of the documents provided to us. If you were to employ 50 of our managed reviewers, it would take approximately 13 days to review all of the documents.

	Assumptions			
	Source GB	265		
	Users	2		
	Document Count	218,637		
	Page Count	875,583		
Description: 6260798-SEC v. Kinetic Investment Group, LLC				
Any total charges represented in this document are purely estimates and shall not be binding. KLDiscvery shall invoice for services rendered by applying actual data sizes per line item and time spent to the contractually agreed upon unit prices.				
ANTICIPATED SERVICES	Unit	Unit Price	Est. Quantity	Est. Price
ONE-TIME SETUP FEES				
Relativity Loading for Database creation Billable operations or custom development time. Includes but not limited to processing and loading of 3rd party data into KLDiscvery review platform. Support time is rounded up to 30 minute increments. After hours, weekends & holidays billed at standard rate.	Hour	\$125.00	3	\$375.00
Active Hosting (Relativity) Includes, text, native & image access to data in an active state within a KLDiscvery review platforms (Relativity).	GB / Month	\$9.00	265	\$2,385.00
User Access (Relativity) Monthly user fee for Relativity. (To include any contract reviewer accessing the hosted database exclusive of KLD fulltime employees). Nebula users included at no charge.	User / Month	\$69.00	2	\$138.00
KLD Analytics and Predictive Coding Includes KLD predictive coding, message threading, and near-duplicate detection. KLDiscvery technology and index for advanced analytics and predictive coding.	File or MSG	Included	Included	\$0.00
Relativity Analytics Content Analyst technology and indexing for concept searching, clustering, email threading, near-duplicate detection, categorization, and Relativity Assisted Review predictive coding.	GB	\$20.00	265	\$5,300.00
	TOTAL FIRST MONTH FEES			\$8,198.00
ON-GOING MONTHLY FEES				
Active Hosting (Relativity) Includes, text, native & image access to data in an active state within a KLDiscvery review platforms (Relativity).	GB / Month	\$9.00	265	\$2,385.00
User Access (Relativity) Monthly user fee for Relativity. (To include any contract reviewer accessing the hosted database exclusive of KLD fulltime employees). Nebula users included at no charge.	User / Month	\$69.00	2	\$138.00
Professional Services - Project Management Consultative and customized support including but not limited to transmittal and analysis of electronically stored information, customized processing solutions, document review workflow design, document production query design, and quality control customization.	Hour	\$150.00	TBD	As Incurred
Technical Support Billable operations or custom development time. Includes but not limited to processing and loading of 3rd party data into KLDiscvery review platform. Create custom load file production template or special handling for productions. Technical support for review platforms. Support time is rounded up to 30 minute increments. After hours, weekends & holidays billed at standard rate.	Hour	\$125.00	TBD	As Incurred
	TOTAL ON GOING MONTHLY FEES			\$2,523.00
ADDITIONAL SERVICES - OPTIONAL				
KLD 1L Review Attorneys (Team Size 44)	Hour	\$39.00	4549	
KLD Team Lead (TL) / QC (Team Size 5)	Hour	\$55.00	520	
KLD Review Manager (Team Size 1)	Hour	\$125.00	104	
TOTAL CONTRACT REVIEW FEES				\$219,011.00

This document is proprietary and confidential and intended solely for the private and exclusive use of the client only in connection with engagements of KLDiscvery. Any other use is strictly prohibited without the prior written consent of KLDiscvery.



EPROD-SEC-OC_20200713	
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Relativity Loading Item - Upload EPROD-SEC-OC_20200713-One-time fee for data base creation	\$150.00	Hour	2	\$300.00
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Relativity User License	\$69.00	User/Month	2	\$138.00
Relativity Analytics and Technology Assisted Review Indexing: (One-time Fee for creation of analytics indexes) Analytics Index Includes: - Concept search - Keyword expansion - Clustering - Categorization - Find Similar/Similarity ranking - Near Dupe Detection - Email Threading - Primary Language Identification - Repeated Content Identification	\$20.00	GB	265	\$5,300.00
				\$8,123.00


On-Going Monthly Fees

Service	Cost	Unit	Volume	Estimate
Relativity Database Hosting	\$9.00	GB/month	265	\$2,385.00
Relativity Database User Licensing	\$69.00	User/month	2	\$138.00
Relativity Training and Folder layout calls	No Charge	No Charge	N/A	No Charge
Project Management (basic services included, custom requests billed at the Tech Time hourly rate)	No Charge	No Charge	Hour	No Charge
				\$2,523.00

Additional Services - Optional

XDD Managed Review - Responsiveness Review @ Average Pace of 50 Documents Per Hour *					
Service	Doc Count	Est. Hours	Unit of Measure	Unit Price	Total Price
XDD Review Attorneys - 1L Review	218,637	4,373	Hour	\$38.00	\$166,174
XDD Review Attorneys - QC Review	21,864	438	Hour	\$38.00	\$16,644
XDD Review Process Manager	NA	438	Hour	\$75.00	\$32,850
					\$215,668

* Based on our experience with similarly sized databases, we estimate it will take approximately 4,811 to review all of the documents provided to us. If you were employee 50 of our managed reviewers, it would take you approximately 13 days to review all of the documents.

 <div>E-Hounds, Inc. Digital Evidence Services</div> <div>32815 US Hwy 19 North Suite 100 • Palm Harbor, Florida 34684 • (727) 726-8985</div>		EH Review Quote for Jon Jacobson			
		Source GB Uncompressed			
		Users			
		Item Count			
		Page Count			
		Source Data Format (if known)		Load files	
Case: v. Kinetic Investment Group LLC - E-Hounds related case					
E-Hounds fees are atypical of industry standards by design. The goal of our services is to provide a hosted ediscovery platform, using our fully in-house servers, software, and support staff. Our active case load for hosting is kept intentionally low to provide the best experience for our limited user-base. Costs below are fairly consistent, but may escalate quickly depending on unknown data types, load file errors, or added requests. NOTE: The E-Hounds Review system is also capable of loading for review (upon need and request) forensically recovered artifacts such as internet history, call and sms records, even Windows registry artifacts.					
ONE-TIME SETUP FEES					
E-Hounds Review System data intake, logging, identification and preliminary examination prior to load. Security and user access credentials setup. Dedicated case setup. This also includes ongoing data storage and permanent deletion of data at case closure.	Initial setup FLAT RATE	\$995.00	1	\$995.00	
E-Hounds Review System data intake, logging, identification and preliminary examination prior to load. Security and user access credentials setup. Dedicated platform setup. Additional versions of the same platform can be "spun up" for different parties, segregating the work flow or even excluding specific content. An additional monthly fee is required but there is no setup fee other than hours required to setup (usually less than 2 hours). This is often ideal for opposing parties, or multiple counsels.	First month FLAT RATE	\$995.00	1	\$995.00	
Data Load In Includes OCR, Analytics processing (identifying credit card, ssn, phone number, addresses, person names etc), paragraph detection, deduplication, and email threading (ability to instantly reduce results by eliminating earlier versions of the same email chain).	Hourly	\$195.00	3	\$585.00	
Additional Users Monthly user fee in excess of two.	First Month User / Month	\$95.00	1	\$95.00	
TOTAL FIRST MONTH FEES			\$2,670.00		
ON-GOING MONTHLY FEES					
Active Hosting Includes two users and is billed in full month increments	Flat	\$995.00		\$995.00	
Additional Users Monthly user fee in excess of two.	User / Month	\$95.00	1	\$95.00	
Project Management On-demand task based goals. Keyword and concept search formulation and implementation, batching and coding for review, export and production assistance, custom load file creation, etc.	Hourly	\$195.00		As Incurred	
Ongoing Technical Support New data intake and additions, platform specific requests, coordinating Additional services . Platform related issues, such as technical errors, downtime (very rare), and other things that occur on "our end" unrelated to requests and data are never charged to you.	Hourly	\$195.00		As Incurred	
TOTAL ON GOING MONTHLY FEES			\$1,090.00		
ADDITIONAL SERVICES AVAILABLE					
Onsite data collection (anywhere in the US)	Hour	195-250			
Per data source collection	Flat	\$225.00			
Court qualified experts in Data Recovery, eDiscovery, ESI, and IT	Hour	\$300-500			
Mobile, tablet, and computer user data extraction	Hour	\$195.00			
Forensic workup and reporting	Hour	\$195.00			
Triage service (recovery and review of artifacts from a single computer)	Flat	\$1000.00			
Data recovery and deleted file processing	Hour	\$195.00			

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SECURITIES AND EXCHANGE
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Defendants, and

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SCIPIO LLC,
LF42, LLC,
EL MORRO FINANCIAL GROUP, LLC,
and KIH, INC. f/k/a KINETIC INTERNATIONAL, LLC,

Relief Defendants.

ORDER

THIS CAUSE comes before the Court for consideration of the *Unopposed Motion to Modify the Asset Freeze Order [D.E. 33] to Retain eDiscovery Vendor* (“Motion”) [D.E. 125] filed by Defendant Michael Scott Williams (“Williams”). Upon review and consideration of the Motion, being advised that the Motion is unopposed by the U.S. Securities and Exchange Commission (“SEC”) and the Receiver, and being otherwise fully advised, the Court **GRANTS** the Motion under the terms set forth below. Accordingly, it is hereby **ORDERED** that the Asset Freeze Order [D.E. 33] shall be modified as follows:

1. The Court approves the retention of E-Hounds, Inc. (“E-Hounds”) by Williams.

2. The Court approves the fee estimate prepared by E-Hounds and attached to the Motion as Exhibit D [D.E. 125-4].

3. At the end of each month of E-Hounds' engagement, Williams' counsel shall provide the SEC and the Receiver with E-Hounds' monthly invoice related to the services identified in E-Hounds' fee estimate. Within five days, the parties shall submit a proposed order to the Court related to the release of funds to cover E-Hounds' approved fees.

4. The SEC and the Receiver may object to the reasonableness of any request for future or ongoing Project Management fees and Ongoing Technical Support fees; however, they will make a reasonable, good-faith effort to assert any such objections before such fees are incurred by E-Hounds provided they have reasonable advance notice of the work to be performed.

5. All remaining terms of the Asset Freeze Order not modified by this Order shall remain in place.

DONE and **ORDERED** in Tampa, Florida, this _____ day of August 2020.

MARY S. SCRIVEN
UNITED STATES DISTRICT COURT JUDGE

Copies furnished to:
Counsel of Record
Any Unrepresented Person