

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA

CASE NO.: 8:20-cv-00394-MSS-SPF

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’S MOTION FOR LEAVE TO FILE SUR-REPLY
IN OPPOSITION TO SECOND MOTION TO MODIFY
ASSET FREEZE ORDER TO DEFEND THIS CASE

In his reply brief, Defendant Michael Scott Williams (“Williams”) raises new arguments based on his misinterpretation of the Supreme Court’s June 22, 2020 opinion in *Liu v. SEC*, 140 S.Ct. 1936, 1940. Pursuant to Local Rule 3.01(c), Plaintiff Securities and Exchange Commission respectfully moves for leave to file a Sur-Reply to address the new arguments within the proper context of *Liu* and the evidence in this case.

1. In his Reply and for the first time, Williams argues that the Commission has not complied with *Liu* and established the amount of “net profits” for disgorgement. Yet, Williams

has done nothing to rebut his at least \$6,459,959.70 in ill-gotten gains. Williams has not pointed to, or quantified, a single legitimate business expense that would reduce his disgorgement liability. The Commission requests the opportunity to respond to these assertions, which he raised for the first time in his Reply.

2. Williams also asserts for the first time in his Reply that *Liu* holds disgorgement “cannot exceed the difference between the victims’ actual, net losses and the approximately \$32 million so far recovered by the Receiver”. See ECF No. 144 at p. 2. This assertion is unsupported by *Liu* and the Commission requests the opportunity to respond accordingly.

3. Furthermore, Williams raises a new argument in his Reply that under *Liu*, he cannot be held jointly liable for the misappropriated amounts he papered as loans to entities he controlled. Joint-and-several liability, however, can be imposed under *Liu* “for partners engaged in concerted wrongdoing”, among other reasons. *Liu*, 140 S.Ct. at 1949. Williams has already admitted that he “was the managing member of LF42, (c) was the president of Scipio and El Morro, and a shareholder of KIH; and (d) had an ownership interest in the Relief Defendants.” See Answer and Affirmative Defenses, ECF No. 56 at ¶ 8.

4. The Commission has not had an opportunity to address the newly raised arguments in Williams’ reply brief. The Commission respectfully requests leave so that it may respond to Williams’ new arguments and explain why they are inconsistent with *Liu* and the evidence in the record. See *Focus Management Group USA, Inc. v. King*, No. 8:13-cv-01696-MSS-AEP (Oct. 22, 2013) (ECF No. 30) (endorsed Order granting plaintiff’s motion to file sur-reply where defendants raised new arguments in reply brief). If permitted, the

Commission's sur-reply would be no longer than 5 pages and would be filed within 7 days of the Court's order.

CERTIFICATE OF CONFERRAL

Pursuant to Local Rule 3.01(g), the Commission's counsel has conferred with Williams' counsel, who advised that Williams takes no position on this motion and leaves it to the Court's discretion. The Commission's counsel also has conferred with the Receiver's counsel, who advised that the Receiver has no objection to this motion.

October 19, 2020

Respectfully submitted,

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

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 19, 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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