

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

Case No: 8:20-cv-394-T-35SPF

KINETIC INVESTMENT GROUP, LLC,
MICHAEL SCOTT WILLIAMS, KINETIC
FUNDS I, LLC, KCL SERVICES, LLC,
SCPIO, LLC, LF42, LLC, EL MORRO
FINANCIAL GROUP, LLC, KIH, INC.,
and BRANCH BANKING AND TRUST
COMPANY,

Defendants.

JUDGMENT AS TO DEFENDANT KINETIC INVESTMENT GROUP, LLC, AND
RELIEF DEFENDANTS KINETIC FUNDS I, LLC, KCL SERVICES, LLC d/b/a
LENDACY, SCPIO, LLC, LF42, LLC, EL MORRO FINANCIAL GROUP, LLC, AND
KIH, INC. f/k/a KINETIC INTERNATIONAL, LLC

THIS CAUSE comes before the Court for consideration of Plaintiff's Motion for Entry of Judgment of Permanent Injunction and Other Relief against Defendant Kinetic Investment Group, LLC and Relief Defendants. (Dkt. 86) Therein, the Securities and Exchange Commission seeks entry of a Judgment of Permanent Injunction against Defendant Kinetic Investment Group, LLC ("Defendant") and Relief Defendants Kinetic Funds I, LLC, KCL Services, LLC d/b/a Lendacy, Scpio, LLC, LF42, LLC, El Morro Financial Group, LLC, and KIH, Inc. f/k/a Kinetic International, LLC (collectively "Relief Defendants"). (Id.) By the consent of the Defendant and Relief Defendants to the entry of the Judgment of Permanent Injunction and Other Relief ("Consent"), (Dkt. 86-1), who

have entered a general appearance; consented to the Court's jurisdiction over Defendant and Relief Defendants and the subject matter of this action; consented to entry of this Judgment without admitting or denying the allegations of the Complaint (except as to jurisdiction); waived findings of fact and conclusions of law; and waived any right to appeal from this Judgment, the Court hereby **ORDERS** that Plaintiff's Motion, (Dkt. 86), is **GRANTED**. The Court further orders as follows:

I.

PERMANENT INJUNCTIVE RELIEF

A.

SECTION 10(B) AND RULE 10B-5 OF THE SECURITIES EXCHANGE ACT OF 1934

IT IS HEREBY ORDERED AND ADJUDGED that Defendant is permanently restrained and enjoined from violating, directly or indirectly, Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5], by using any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, in connection with the purchase or sale of any security:

- (a) to employ any device, scheme, or artifice to defraud;
- (b) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or
- (c) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person

by, directly or indirectly, (i) creating a false appearance or otherwise deceiving any person, or (ii) disseminating false or misleading documents, materials, or information or making, either orally or in writing, any false or misleading statement in any communication with any investor or prospective investor, about:

- (A) any investment strategy or investment in securities,
- (B) the prospects for success of any product or company,
- (C) the use of investor funds,
- (D) compensation to any person,
- (E) Defendant's qualifications to advise investors, or
- (F) the misappropriation of investor funds or investment proceeds.

IT IS FURTHER ORDERED AND ADJUDGED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Judgment by personal service or otherwise: (a) Defendant's officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Defendant or with anyone described in (a).

B.

SECTION 17(A) OF THE SECURITIES ACT OF 1933

IT IS HEREBY FURTHER ORDERED AND ADJUDGED that Defendant is permanently restrained and enjoined from violating Section 17(a) of the Securities Act of 1933 (the "Securities Act") [15 U.S.C. § 77q(a)] in the offer or sale of any security by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly:

- (a) to employ any device, scheme, or artifice to defraud;

(b) to obtain money or property by means of any untrue statement of a material fact or any omission of a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or

(c) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser

by, directly or indirectly, (i) creating a false appearance or otherwise deceiving any person, or (ii) disseminating false or misleading documents, materials, or information or making, either orally or in writing, any false or misleading statement in any communication with any investor or prospective investor, about:

(A) any investment strategy or investment in securities,

(B) the prospects for success of any product or company,

(C) the use of investor funds,

(D) compensation to any person,

(E) Defendant's qualifications to advise investors; or

(F) the misappropriation of investor funds or investment proceeds.

IT IS FURTHER ORDERED AND ADJUDGED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Judgment by personal service or otherwise: (a) Defendant's officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Defendant or with anyone described in (a).

C.

SECTIONS 206(1) AND (2) OF THE INVESTMENT ADVISERS ACT OF 1940

IT IS HEREBY FURTHER ORDERED AND ADJUDGED that Defendant is permanently restrained and enjoined from violating, directly or indirectly, Section 206(1) or 206(2) of the Advisers Act [15 U.S.C. §80b-6(1), (2)], while acting as an investment adviser or associated person of an investment adviser, by using the mails or instrumentality of interstate commerce:

(a) to employ any device, scheme, or artifice to defraud any client or prospective client; or

(b) to engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client

by, directly or indirectly, (i) creating a false appearance or otherwise deceiving any client or prospective client, or (ii) disseminating false or misleading documents, materials, or information or making, either orally or in writing, any false or misleading statement in any communication with any client or prospective client, about:

(A) any investment strategy or investment in securities,

(B) the prospects for success of any product or company,

(C) the use of client funds,

(D) compensation to any person,

(E) Defendant's qualifications to advise clients; or

(F) the misappropriation of client funds or investment proceeds.

IT IS FURTHER ORDERED AND ADJUDGED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive

actual notice of this Judgment by personal service or otherwise: (a) Defendant's officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Defendant or with anyone described in (a).

D.

SECTION 206(4) OF THE ADVISERS ACT AND RULE 206(4)-8

IT IS FURTHER ORDERED AND ADJUDGED that Defendant is permanently restrained and enjoined from violating, directly or indirectly, Section 206(4) of the Advisers Act [15 U.S.C. §80b-6(4)] and Rule 206(4)-8 thereunder [17 C.F.R. § 275.206(4)-8], while acting as an investment adviser to any pooled investment vehicle, using the mails or any means or instrumentalities of interstate commerce to employ any device, scheme, or artifice to defraud any client or prospective client, to make any untrue statement of a material fact or to omit to state a material fact necessary to make the statements made, in light of the circumstances under which they were made, not misleading, to any investor or prospective investor in the pooled investment vehicle, or otherwise to engage in any act, practice, or course of business that is fraudulent, deceptive, or manipulative with respect to any investor or prospective investor in the pooled investment vehicle by, directly or indirectly, (i) creating a false appearance or otherwise deceiving any client or prospective client, or (ii) disseminating false or misleading documents, materials, or information or making, either orally or in writing, any false or misleading statement in any communication with any client or prospective client, about:

- (A) any investment strategy or investment in securities,
- (B) the prospects for success of any product or company,

- (C) the use of client funds,
- (D) compensation to any person,
- (E) Defendant's qualifications to advise clients; or
- (F) the misappropriation of client funds or investment proceeds.

IT IS FURTHER ORDERED AND ADJUDGED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Judgment by personal service or otherwise: (a) Defendant's officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Defendant or with anyone described in (a).

II.

DISGORGEMENT, PREJUDGMENT INTEREST AND CIVIL PENALTY

Upon motion of the Commission, the Court shall determine whether it is appropriate to order disgorgement of ill-gotten gains against Defendant and Relief Defendants and/or a civil penalty against Defendant pursuant to Section 20(d) of the Securities Act, Section 21(d)(3) of the Exchange Act, and Section 209(e) of the Advisers Act and, if so, the amount(s) of the disgorgement and/or civil penalty. If disgorgement is ordered, Defendant and Relief Defendants shall pay prejudgment interest thereon, calculated from April 1, 2019, based on the rate of interest used by the Internal Revenue Service for the underpayment of federal income tax as set forth in 26 U.S.C. § 6621(a)(2). In connection with the Commission's motion for disgorgement and/or civil penalties, and at any hearing held on such a motion: (a) Defendant and Relief Defendants will be precluded from arguing that they did not violate the federal securities laws as alleged in

the Complaint; (b) Defendant and Relief Defendants may not challenge the validity of the Consent or this Judgment; (c) solely for the purposes of such motion, the allegations of the Complaint shall be accepted as and deemed true by the Court; and (d) the Court may determine the issues raised in the motion on the basis of affidavits, declarations, excerpts of sworn deposition or investigative testimony, and documentary evidence, without regard to the standards for summary judgment contained in Rule 56(c) of the Federal Rules of Civil Procedure. In connection with the Commission's motion for disgorgement and/or civil penalties, the parties may take discovery, including discovery from appropriate non-parties.

III.

INCORPORATION OF CONSENT

IT IS FURTHER ORDERED AND ADJUDGED that the Consent is incorporated herein with the same force and effect as if fully set forth herein, and that Defendant and Relief Defendants shall comply with all of the undertakings and agreements set forth therein.

IV.

RETENTION OF JURISDICTION


IT IS FURTHER ORDERED AND ADJUDGED that this Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Judgment.

V.

RULE 54(b) CERTIFICATION

There being no just reason for delay, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, the Clerk is ordered to enter this Judgment forthwith and without further notice.

DONE and **ORDERED** in Tampa, Florida, this 5th day of November, 2020.



MARY S. SCRIVEN
UNITED STATES DISTRICT JUDGE

Copies furnished to:
Counsel of Record
Any Unrepresented Person