

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,
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.

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ORDER

This cause comes before the Court for consideration of Defendant Williams' Second Motion to Modify the Asset Freeze Order to Defend This Case (Doc. 135) and Williams' Motion for Modification of Case Management Order to Extend Time to Complete Discovery (Doc. 169). The Securities and Exchange Commission filed an Opposition to each motion (Docs. 139 and 171, respectively). As to the Second Motion to Modify the Asset Freeze Order, the Receiver filed a Limited Response (Doc. 140), Williams, with leave of Court, filed a Reply in Support (Doc. 144), and the SEC, with leave of Court, filed a Sur-Reply in Support of Its Opposition (Doc. 149). For the reasons that follow, each motion is granted in part.

As for an extension of time to complete discovery, Williams requests that the current deadline of February 12, 2021 be extended to March 29, 2021 (Doc. 169). The SEC opposes this extension because it would impact other scheduling deadlines. The SEC specifically points to the fact that the extended deadline would fall after the dispositive motion deadline of March 12, 2021 (Doc. 171). The SEC, however, does not oppose a 19-day enlargement of time to March 3, 2021. This Court finds merit in the SEC's argument as all discovery should be concluded and available for use by the dispositive motion deadline. As such, the Court will allow a modified extension of the discovery deadline to March 11, 2021, the eve of the dispositive motion deadline.

In his Second Motion to Modify the Asset Freeze Order, Williams seeks for the Court to approve counsel's reduced hourly rate of \$357.70 per hour, approve Williams' proposed litigation budget to defend this case from August 29, 2020 (the day after the parties' mediation) through and including June 30, 2021 (two months before the start of the trial term)¹ (Doc. 135-1), unfreeze \$214,500 to pay for counsel's fees to defend the case during this time, and authorize counsel to submit their monthly bills to the Court for review and, upon approval, issuance of an order directing the Receiver to pay those bills from the unfrozen funds. Williams has budgeted 600 hours for ten months of legal work to be performed by his defense attorneys Jon A. Jacobson, Esq. and Timothy W. Schulz, Esq. In his Reply, Williams argues, in the alternative, that the Court should unfreeze sufficient funds for three months ($\$214,500 \div 10 \text{ months} = \$21,500/\text{month}$; $\$21,500 \times 3 = \$64,500$) and allow the parties to revisit whether additional funds should be unfrozen after the three months has ended (Doc.

¹ Williams explains that if the parties' dispute remains unresolved on June 30, 2021, Williams will present a third proposed budget for his counsel's fees and costs to defend him at trial (Doc. 135 at 4 n.4).

144 at 5).

The SEC argues that Williams is not entitled to use frozen assets to pay for his attorneys' fees (Doc. 139 at 2-7). The district judge, to the contrary, has held that the Court will "permit a modification of the Asset Freeze Order ... and will enter an Order permitting a reasonable amount to be unfrozen for attorney's fees needed to defend this case (at local rates and with a realization that a showing has been made that the assets in the possession of Williams that are covered by the Asset Freeze Order are likely tainted funds that he can no longer freely use for his personal benefit) after review of a reasonable proposed budget...." (Doc. 69 at 9-10). Because the district judge has already considered this issue and has allowed Williams to use frozen assets to pay for his attorneys' fees (*see, e.g.*, Docs. 69, 104), the undersigned declines the SEC's invitation to revisit the issue.

The SEC also asserts that the proposed budget is excessive and believes that Williams' counsel should not need 600 hours for those enumerated items in Williams' motion, *i.e.*, completing the tasks necessary to fully learn and understand the underlying facts (including, among other things, reviewing the 919,737 pages of documents produced by the parties to date, conducting witness interviews, and taking/defending 10 depositions), researching and analyzing the relevant law, preparing and/or responding to dispositive and non-dispositive motions, responding to the SEC's allegations, preparing Williams' defenses, and fulfilling counsels' ethical and professional obligations and duties to Williams, the Court, and opposing counsel.

Because the relief requested in the Second Motion to Modify the Asset Freeze Order was premised on a ten-month schedule and that time frame has changed substantially, the Court is mindful that the requested budget may have changed substantially as well.

Accordingly, upon consideration of the relevant filings, case law, and being otherwise fully advised, it is **ORDERED**:

(1) Defendant Williams' Second Motion to Modify the Asset Freeze Order to Defend

This Case (Doc. 135) is **GRANTED IN PART**.

- a. The Court finds the proposed rates are reasonable² and the Asset Freeze Order (Doc. 33) should be modified to allow for three months of funds in the amount of \$64,500 to be made available for payment of Williams' attorneys' fees and costs for the time period of January 28, 2021 (the date of this Order) through April 28, 2021.³ The Court notes that this time frame includes the remainder of the discovery period as extended hereby, the current dispositive motion deadline of March 12, 2021, and the corresponding response and automatic reply deadlines (21 days and 14 days, respectively) as set forth in the new Middle District of Florida Local Rules, which become effective on February 1, 2021. Williams may move as needed for additional funds to be unfrozen after the three months has ended.
- b. Within **seven (7) days** of the date of this Order, the SEC shall file a proposed order modifying the Asset Freeze Order to allow for said funds to be

² The district judge has twice previously approved the reduced hourly rate for Williams' counsel of \$357.50/hour (*see* Docs. 104, 123).

³ To the extent Williams incurred attorneys' fees from August 29, 2020 to January 27, 2021, Williams' counsel may provide the SEC and the Receiver with time records showing time billed related to services identified in Williams' litigation budget (Doc. 135-1) and performed between August 29, 2020 and January 27, 2021. Within **seven (7) days** of receipt of those time records, the SEC, the Receiver, and Williams shall confer in good faith regarding whether those attorneys' fees should also be paid by funds currently frozen. Thereafter, Williams may file a motion to release funds to cover those fees.

unfrozen, specifying from which account(s) they shall derive, for payment of Williams' defense costs.

(2) Defendant Williams' Motion for Modification of Case Management Order to Extend Time to Complete Discovery (Doc. 169) is **GRANTED IN PART**. The discovery deadline is extended to March 11, 2021.

ORDERED in Tampa, Florida, this 28th day of January 2021.



SEAN P. FLYNN
UNITED STATES MAGISTRATE JUDGE