

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

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.

**DEFENDANT MICHAEL WILLIAMS' MOTION FOR MODIFICATION OF
CASE MANAGEMENT ORDER TO EXTEND TIME
TO COMPLETE DISCOVERY**

Defendant MICHAEL SCOTT WILLIAMS, through undersigned counsel, and pursuant to Federal Rule of Civil Procedure 16(b)(4), Middle District Local Rule 3.01, and this Court's Case Management Order [DE 88], moves for an extension of time of 45 days to complete discovery in this case and states as follows:

1. Pursuant to this Court's Case Management Order [DE 88], the discovery deadline in this case is February 12, 2021.
2. The trial term in this case is August 30, 2021 through September 2021.

3. Defendant acknowledges and takes clear notice of this Court's statement in Section II.B.2. of its Case Management Order [DE 88] that "motions for an extension of the discovery period[] are disfavored."

4. However, the reason for Defendant's inability to complete discovery by the current discovery deadline lies with his counsel's inability to effectively allocate their time to the various aspects of case preparation not yet knowing if they will be compensated for any of their labors.

5. On September 9, 2020, Defendant filed *Defendant Williams' Second Motion To Modify The Asset Freeze Order To Defend This Case* ("Second Motion to Modify"). [DE 135]

6. As stated in the Second Motion to Modify, Defendant's counsel estimated they will require approximately 600 hours to complete all of the work necessary to represent and defend Defendant through June 30, 2021 (which would be two months before the start of the trial term). [DE 135 at ¶¶4, 6]

7. At the court-approved rate of \$357.50 per hour, Defendant's counsel anticipated that will collectively expend approximately \$214,500 in legal fees through June 30, 2021, which does not include any legal fees for the actual trial. [DE 135 at ¶¶7-8].

8. Defendant's Second Motion to Modify was fully briefed on October 15, 2020 and remains pending.

9. The continual problem faced by Defendant's counsel, both sole practitioners, is that they are unable to know how to allocate their time/work on case preparation not knowing if they are going to be paid for all, some, or none of their work.

10. For example, if the Court determined that Defendant's counsel were to be paid for only a portion of their work, they would have to determine whether to spend the amount of time

necessary to review all of the 919,737 pages produced in discovery or whether their time needs to be allocated differently.¹

11. But at this point, Defendant's counsel do not know if they will be compensated for any of their work, which may result in different decision-making as to how they should proceed with this case.

12. Hopefully, the Court can understand the concern a sole practitioner has when faced with the possibly of expending well over \$100,000 of his own time not knowing if he will be compensated for any of it, and the deleterious financial effect that can have on his law firm.

13. Plaintiff has already scheduled the deposition of Defendant on February 10, 2021, which will necessitate his counsel to prepare for and attend.

14. Defendant has previously propounded written discovery on Plaintiff and the Receiver.

15. Defendant needs additional time to determine whether his counsel will be able to continue to represent him in this case and, if so, what limited discovery he needs to prepare for trial.

16. If the discovery deadline is extended, the only discovery that Defendant will pursue, if any, is interrogatories (capped, together with previously served interrogatories, at a total of 25 interrogatories consistent with FRCP 33) and depositions (capped at no more than four depositions), which discovery Plaintiff and the Receiver reserve the right to object to. Defendant agrees to provide reasonable notice of depositions and to confer with Plaintiff and the Receiver regarding the scheduling of the same.

¹ Defendant's counsel has examined some of the documents produced.

17. Defendant submits that an extension of the discovery deadline will not affect the dispositive motions deadline of March 12, 2021 or the trial period beginning August 30, 2021.

18. Defendant submits that any discovery conducted after the current dispositive motion deadline of March 12, 2021 will not be available to Defendant for summary judgment purposes.

19. Defendant will not use the granting of the requested extension in this motion in support of or to oppose a motion to extend another date or deadline.

20. Based upon the above, Defendant moves this Court for a 45-day extension of the current discovery deadline of February 12, 2021. Such extension would result in a new discovery deadline of March 29, 2021 — which is approximately five months before the scheduled trial period in this case.

21. Plaintiff opposes Defendant's request for a 45-day extension of the current discovery deadline because, among other things, an enlargement until March 29, 2021, would fall after the dispositive motion deadline of March 12, 2021. Plaintiff submits that the proposed enlargement, therefore, would affect the dispositive motion deadline and disrupt the orderly administration of this case.

22. Plaintiff has advised the Defendant, however, that it does not oppose a 19-day extension of the current discovery deadline of February 12, 2021, which would result in a new discovery deadline of March 3, 2021.

Memorandum Of Law

Pursuant to Federal Rule of Civil Procedure 16(b)(4), a scheduling order “may be modified only for good cause and with the judge’s consent.” *Gevinson v. Unum Life Ins. Co. of Am.*, 2011 WL 767414 *1 (M.D. Fla., Feb. 28, 2011). An amendment of a pretrial order should be permitted

where no substantial injury will be occasioned to the opposing party, the refusal to all the amendment might result in injustice to the movant, and the inconvenience to the court is slight. *Id. citing United States v. Varner*, 13 F.3d 1503, 1507 (11th Cir. 1994). Here, the requested extension will not cause any injury or prejudice to Plaintiff as the new discovery deadline would end at least five months before the start of a possible trial. Moreover, any discovery obtained by the parties after the current February 12, 2021 discovery deadline will not affect the dispositive motions deadline and cannot be used for summary judgment purposes. The main reason for Defendant's counsels' inability to timely complete discovery is the above-discussed inability to know how to allocate their time while not yet knowing if they will be paid for any time expended in this case.

WHEREFORE, Defendant MICHAEL SCOTT WILLIAMS moves for an extension of time of 45 days to complete discovery in this case, resulting in a new discovery deadline of March 29, 2021. In the alternative, Defendant moves for an extension of time of 19 days to complete discovery in this case, resulting in a new discovery deadline of March 3, 2021.

LOCAL RULE 3.01(g) CERTIFICATE OF GOOD FAITH CONFERENCE

I HEREBY CERTIFY that, in accordance with Middle District Local Rule 3.01(g), the undersigned has conferred with counsel for the Plaintiff and/or Receiver, via email on January 14, 15, and 21, 2021 and via telephone on January 20, 21, and 22, 2020, in a good faith effort to resolve the issues raised herein, and Plaintiff opposes extending the discovery deadline by 45 days but does not oppose extending the discovery deadline by 19 days.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on January 22, 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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