

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA

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

SECURITIES AND EXCHANGE COMMISSION,	)
	)
<b>Plaintiff,</b>	)
	)
v.	)
	)
KINETIC INVESTMENT GROUP, LLC and	)
MICHAEL SCOTT WILLIAMS,	)
	)
<b>Defendants, and</b>	)
	)
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,	)
	)
<b>Relief Defendants.</b>	)
_____	)

**PLAINTIFF’S OPPOSITION TO DEFENDANT’S FOURTH MOTION TO  
MODIFY ASSET FREEZE ORDER TO DEFEND THIS CASE [DE 235]**

The Court has already ruled that Defendant Michael Scott Williams (“Williams”) is entitled to \$64,500 in defense fees for the three-month period of January 28, 2021 through April 28, 2021 [DE 180]. Unsatisfied, Williams seeks \$112,791.25 in defense fees – nearly double the amount already awarded. The Court made clear when it unfroze \$64,500 that the amount was to cover

Williams' defense fees for the remaining discovery period and dispositive motion deadline [DE 180]. Nothing unexpected occurred during this timeframe to justify Williams incurring another \$48,291.25 in fees. Williams also cannot excuse greatly exceeding the Court's fee limit without first seeking Court approval. Not once during the three-month period did he advise the Court or Plaintiff Securities and Exchange Commission ("SEC") that he required additional funds.

Additionally, his fee invoices include excessive time, self-imposed tasks that did nothing to further the case, and block-billing which obfuscate the amount of time spent on a particular task.

The Court should deny Williams' request for an additional \$48,291.25 which, notably, would be on top of the \$146,010 he has already received in defense fees from otherwise unfrozen funds.<sup>1</sup>

**I. The Court Should Hold Williams To The \$64,500 Fee Limit**

The Court already ordered that \$64,500 be unfrozen to cover Williams' defense fees from January 28, 2021 through April 28, 2021, and previously

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<sup>1</sup> See DE 123 allowing \$40,326 from May 27, 2000 through July 14, 2020; DE 134 allowing \$24,024 from July 15, 2020 through August 28, 2020; DE 238 allowing \$17,160 from August 29, 2020 through January 27, 2021; and DE 237 allowing \$64,500 from January 28, 2021 through April 28, 2021.

determined that this amount was sufficient for Williams to complete discovery and file and respond to dispositive motions. The Court's February 24, 2021 Order modifying the asset freeze expressly provides:

An amount of \$64,500 from the funds held in escrow at ServisFirst Bank (Account No. XXXXXX-0920) is hereby unfrozen for payment of Williams' attorneys' fees and costs for the time period of January 28, 2021 through April 28, 2021. This time frame includes the remainder of the extended discovery deadline of March 11, 2021 (Dkt. 173), the current dispositive motion deadline of March 12, 2021 (Dkt. 88), and the corresponding response and automatic reply deadlines (30 days and 14 days, respectively) as set forth in the Court's Case Management and Scheduling Order. (Dkt. 88 at ¶ 2.H.1).

*See* DE 180 at ¶ 2. Nothing unusual occurred during this time period to warrant almost doubling Williams' defense fees. In fact, Williams has done little to advance this case and his defenses. For example, he conducted no depositions during the discovery term despite budgeting 140 hours for taking and defending ten depositions. DE 135 ¶32.

Although Williams points to discovery disputes, much of the time spent was self-inflicted. For example, Williams ended up withdrawing two of his four 30(b)(6) topics, which were outrageous on their face.<sup>2</sup> He also ended up

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<sup>2</sup> *See* DE 187-1 (Williams' 30(b)(6) topics II and IV frivolously suggesting, among other things, that the SEC leaked this investigation and tipped off an investor to redeem his investment); DE 192 (Order on SEC's motion for protective order).

withdrawing his four motions to compel – stemming from his stunning 239 requests for production and at least 260 interrogatories (including subparts) – after finally coming around to a reasonable amicable resolution [DE 211-212, 230-231].

More importantly, Williams knew he had \$64,500 to work with from January 28, 2021 through April 28, 2021. In fact, he approved the proposed order which set his fees at \$64,500. Yet, he now submits almost twice that amount. He never alerted the Court or the SEC during this time that he was approaching the fee limit and required more funds. Instead, he has come to the Court after-the-fact expecting nearly twice the amount previously authorized for the same tasks for which he was already allotted and paid \$64,500. The Court should reject Williams' tactic. Allowing him to disregard the Court's fee limit will only embolden him to do it again.

**II. Williams' Defense Fees Consist of Ill-Conceived Tasks and Excessive Time**

Williams vaguely describes a litany of tasks that his counsel performed. For example, Williams seeks at least \$6,792.50 (19 hours)<sup>3</sup> for preparing a

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<sup>3</sup> As discussed below, it is not possible to discern the exact amount of time spent on each task because Williams' counsel submitted block-billed invoices. For instance, at least \$12,977.25 (36.3 hours) consists of block-billed time for the tasks addressed in this Section II.

“memo re: Undisputed facts” [DE 235-2] in support of his opposition to the SEC’s motion for summary judgment (the “Opposition”). This “memo,” however, is nothing more than the Opposition re-packaged as a chart and dubbed an “exhibit.” *Compare* DE 221 *with* 221-1. Williams cannot justify the expense of presenting his Opposition in the form of both a memorandum and a chart.

Williams seeks at least \$7,150 (20 hours) [DE 235-2] for preparing his declaration [DE 221-2] attached to his Opposition. The declaration, however, devotes needless space to denying that Williams “presently” plays a role or has an interest in the relevant corporate entities [DE 221-1 at pp. 2-9], as if anyone disputes that the entities have been in receivership since March 6, 2020 [DE 34]. It also repeats statements made in Williams’ prior declaration. *Compare* DE 202-1 at ¶¶ 16-17, 19-23 *with* DE 221-2 at ¶¶ 209, 219-223.

Williams claims at least \$11,082.50 (31 hours) for preparing a motion for judgment on the pleadings. But it is difficult to see the utility of filing a motion challenging the sufficiency of the Complaint – almost 11 months after the close of the pleadings [DE 56 and 201] and on the eve of summary judgment practice – in this case where the Court, based largely on the Complaint, froze

Defendants and Relief Defendants' assets and appointed a receiver over the corporate defendants [DE 33 and 34].

Williams even seeks 0.8 hours toward preparing his untimely third set of interrogatories. DE 235-2, p. 4. The Court's Scheduling Order specifically provides that "[e]ach party shall timely serve discovery requests so that the Rules allow for a response prior to the discovery deadline." *See* DE 88, p. 4, § I.D. Williams, however, failed to timely serve his third set of interrogatories, even after the discovery deadline was extended at his request. DE 173.

### **III. Williams' Fee Invoices Are Opaque**

Williams has impeded oversight of his defense fees by submitting block-billed invoices. As the SEC previously raised with his proposed litigation budget [DE 139 at pp. 9-10], his fee invoices group multiple tasks under a single fee. For instance, on March 11, 2021, counsel billed \$2,145 (6 hours) to "Draft and File Response to Motion to Extend Page Limit; draft Motion for Summary Judgment" [DE 235-2, p. 7]. There is no telling how much time was spent on the response versus the motion. Also puzzling is why Williams expended resources opposing the SEC's request to file additional pages with its summary judgment briefing, much less when he sought leave to do the same thing [DE 217].

Other examples of improper block-billing abound:

- March 5, 2021: 5 hours for “review court order scheduling hearing on SEC’s motion for protection; analyze documents produced by Receiver to SEC; review and make suggested changes to M. Williams’ response to SEC’s motion for protective order and to quash; conduct legal research on whether the fruit of the poisonous tree doctrine applies to SEC” [DE 235-1, p. 2]
- March 12, 2021: 7 hours for “Revise, finalize, and file Motion for Judgment on the Pleadings and exhibits; draft, finalize, and file Motion for Summary Judgment and exhibits; draft Declaration of M. Williams.” [DE 235-2, p. 7]
- March, 31, 2021: 5.5 hours for “Review and analyze C. Mendez transcript; review and analyze documents; review and analyze K. Pufahl transcript; review and analyze M. Rivera transcript.” [DE 235-2, p. 8]
- February 24, 2021: 5.5 hours for “Revise and edit Motion to Compel Production of Non-Privileged Documents; revise and edit Motion to Compel Interrogatory No. 1, draft Motion to Compel Interrogatory No. 2; draft Notice of Rule 30(b)(6) Deposition.” [DE 235-2, p. 5]
- April 1, 2021: 4.8 hours for “Review and analyze M. Rivera transcript; review and analyze A. Guar transcript; review and analyze documents.” [DE 235-2, p. 8]
- April 8, 2021: 5.5 hours for “Draft Third Declaration of M. Williams; draft memo re: Undisputed facts; draft Response to Motion for Summary Judgment; draft Motion for Additional Pages.” [DE 235-2, p. 9]

This mass block-billing obfuscates the amount of time spent on a particular task, thereby making it impossible to fully monitor how Williams is using otherwise frozen assets. Furthermore, Williams cannot possibly establish that

his fees are reasonable when even he cannot demonstrate the amount of time spent on a particular task.

**IV. Conclusion**

For the foregoing reasons, the SEC respectfully requests that the Court deny Williams' fourth motion to modify the Asset Freeze Order to unfreeze additional funds for his defense during the time period of January 28, 2021 through April 28, 2021.

May 24, 2021

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on May 24, 2021 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  
Stephanie N. Moot

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