UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

CASE NO. 8:20-cv-394

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

KINETIC INVESTMENT GROUP, LLC *et al.*,

Defendants,
_____/

DEFENDANT WILLIAMS' REPLY

Defendant MICHAEL SCOTT WILLIAMS ("Williams") submits this reply in support of his *Fourth Motion to Modify Freeze Order* [D.E. 235] and states:

In its Opposition [D.E. 240], the SEC raises four objections to Williams' Motion, all of which are are misplaced, and none of which warrant denying the Motion or the relief sought therein.

First, the SEC argues that Williams' invoices [D.E. 235-1; D.E. 235-2] ("Invoices") include fees spent resolving "self-inflicted" discovery disputes when Williams: (1) sought to depose the SEC regarding its statements to third parties concerning its claims against Williams and regarding its policies and procedures for investigating those claims; and (2) pursued four motions to compel the SEC to comply with its discovery obligations.

The SEC points to the Magistrate's March 8, 2021 Order [D.E. 192] as evidence that Williams' fees related to deposing the SEC were unnecessary. The Magistrate, however, *denied* the SEC's motion for protective order (as moot because the parties had reached a multiple-issue compromise). The SEC also argues that Williams' withdrawal of his motions to compel means they were unnecessary. However, Williams only withdrew his motions because — after countless conferences, emails, and a telephonic hearing — the parties ultimately reached a global compromise that resolved *all* of their discovery issues. In other words, Williams' discovery-related fees were productive and accomplished a substantive result — and, as such, they should be compensated.

Second, the SEC argues that the Invoices include fees for time spent on "ill-conceived" tasks and/or "excessive" time spent preparing: (1) a 75-page table [D.E. 235-2] ("Table") of the undisputed facts listed in the SEC's summary judgment motion ("SJ Motion"); (2) Williams' Declaration [D.E. 235-1] ("Declaration"); and (3) a Motion for Judgment on the Pleadings ("JP Motion").[1]

The SEC argues that the Table unnecessarily repeats information in Williams' response to the SJ Motion. The SEC, however, misses the point. Williams was required to expend considerable time parsing through the SEC's morass of "undisputed" facts, verifying their deficiencies, and identifying rebuttal

[1] The SEC also objected to time relating to Williams' Third Set of Interrogatories, which Williams has already addressed in his Motion. *See* Motion at 5 n.3.

evidence.[2] In nearly every instance, the SEC's so-called facts were demonstrably false or in dispute. Addressing their myriad deficiencies, however, rendered Williams' response ponderous. Accordingly, to aid the Court, Williams prepared the Table to summarize the deficiencies undergirding the SJ Motion. Importantly, the time spent preparing the Table would have had to have been spent anyway — even without the Table — because the work done to prepare the Table was also necessary to prepare the arguments in the body of Williams' response.

The SEC also argues that the Declaration's paragraphs relating to Williams' present role in his entities is unnecessary. That Williams is not presently involved in his entities, however, directly *contradicts* the SEC's purportedly undisputed facts that he "is" involved in each of them. The SEC additionally argues that six (out of 223) paragraphs repeat information in Williams' prior Declaration. Those paragraphs, however, provide useful context for Williams' other statements and the arguments in his response without requiring the Court to search the docket for a submission made 200 filings earlier.

Finally, the SEC argues that the JP Motion was unnecessary because it was filed on the eve of the dispositive motion deadline. The Federal Rules are clear, however, that a party can move for judgment on the pleadings any time after the pleadings are closed (but early enough not to delay trial) and that

[2] The SJ Motion contained 55 paragraphs of allegedly undisputed material facts, which comprised 134 individual undisputed material facts supported by 70 attachments comprising 58 exhibits.

failure to state a claim can be raised in a motion for judgment on the pleadings — or even at trial. *See* FED. R. CIV. P. 12(c), (h)(2)(B)-(C).

Third, the SEC argues that seven (out of 144) entries in the Invoices constitute block-billing ("BB Entries"). Recording related tasks in a single entry, however, is *not* block-billing;[3] nor is combining unrelated tasks if the entries are sufficiently detailed.[4] While the BB Entries include multiple tasks, those tasks are specifically identified, intertwined and related, and involve overlapping issues.[5] Further, Williams presented previous invoices with entries formatted identically to the BB Entries — no less than *four* times — and the SEC never objected that they were block-billed. [D.E. 107; D.E. 133; D.E. 233; D.E. 237]. Indeed, the SEC previously reviewed the *current* Invoices (including the BB Entries) prior to Williams filing the proposed Order to release $64,500, and it did not to object then that any entries were block-billed. [D.E. 234]. As such, the SEC has waived its objections to the format of the Invoices and is estopped from objecting to the BB Entries. Even if the SEC's objections had merit and had not been waived (they do not, and they have been), courts

[3] *See Franklin, D.O. v. Hartford Life Ins. Co.*, 2010 WL 916682 at *3 (M.D. Fla. Mar. 10, 2010) ("[T]he mere fact that an attorney includes more than one task in a single billing entry is not, in itself, evidence of block-billing."); *see also Lamiri v. Audette*, 2015 WL 13741736 at *5 (M.D. Fla. Dec. 22, 2015) (combining related tasks was not block-billing).

[4] *See Miller v. Rose Radiology, Inc.*, 2016 WL 11583123 at *5-6 (M.D. Fla. Oct. 18, 2016) (combining unrelated tasks was not block-billing where sufficiently detailed). As evidenced by the numerous entries singled out and objected to by the SEC, the Invoices are sufficiently detailed.

[5] For example, all of the dispositive motions required researching and presenting argument regarding the same facts, laws, and claims — which meant that any research or drafting done for one motion could be (and often was) used for the other motions.

have consistently held that — rather than striking an invoice outright — a more appropriate remedy is to reduce the fees being sought by 10%.[6]

Fourth, and last, the SEC argues that Williams never gave notice that his fees might exceed $64,500. During the relevant time period, however, Williams' counsel was racing to meeting multiple, successive (and immutable) deadlines regarding three case-dispositive motions.[7] Had Williams realized his fees were increasing and attempted to provide the notice the SEC now contends is missing, the SEC would only have objected (as it has done every other time Williams sought reimbursement of his fees), and Williams would have been drawn into contested — and time consuming — motion practice that would not have resolved the issue before still more fees were incurred and the final deadline had passed.

Respectfully Submitted,

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[6] *See, e.g.*, *Johnson v. Borders*, 2019 WL 8105907 at *7 (M.D. Fla. June 19, 2019) (applying 10% reduction where fees were block-billed); *Gonzalez v. Rainforest Café, Inc.*, 2018 WL 3635110 at *5-6 (M.D. Fla. Apr. 4, 2018) (same); *Yellow Pages Photos, Inc. v. Ziplocal, LP*, 2017 WL 3393569 at *4-5 (M.D. Fla. Aug. 8, 2017) (same).

[7] As of the day before the first deadline, Williams' fees had not yet exceeded $64,500; and after the first deadline, both of Williams' counsel contracted Covid-19 and were required to self-quarantine.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 9, 2021, the foregoing document was filed with the Clerk of the Court using the CM/ECF system and served on all counsel of record.

By: /s/ Timothy W. Schulz

By: /s/ Jon A. Jacobson