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' RESPONSE TO PLAINTIFF'S MOTION TO AMEND THE CASE MANAGEMENT AND SCHEDULEING ORDER

Defendant MICHAEL SCOTT WILLIAMS ("Defendant") submits this response in opposition to *Plaintiff's Motion to Amend Case Management and Schedule Order* ("Motion") [D.E. 251] and states:

1. Defendant objects to Plaintiff's request that this case be removed from the trial calendar and that all pending deadlines be re-set.

2. Defendant has been living in judicial limbo — in near-poverty — for the past 18 months, ever since Plaintiff brought this action.

3. All of Defendant's business have been shut down and placed into receivership, all of his accounts have been frozen and likewise placed into receivership, and most recently the Receiver has indicated that he intends to

evict Defendant from his apartment (and Defendant's rent-paying tenant from Defendant's other apartment)[1] and sell both properties.

4. All of this has occurred without Defendant ever having been found to have committed any actual wrongdoing. Indeed, Defendant has not yet even had an opportunity to respond substantively to Plaintiff's claims.

5. Contrary to Plaintiff's assertion, Defendant *will* be prejudiced if the trial (or this case) is delayed because the result will be that Defendant's life will remain on hold and he will continue be relegated to a judicial limbo where he will be treated as having already been found guilty — subsisting on the crumbs the Receiver allows him, watching his last possessions being sold — while simultaneously not being found guilty.

6. Accordingly, Defendant objects to removing the trial from the calendar or delaying this case in any way. Defendant is eager to have his day in court and to present his evidence to disprove the baseless claims that have been asserted against him.

7. As a practical matter, the parties have already met (on June 17, 2021) to prepare their Joint Final Pretrial Statement.

8. As such, all that is left for the parties to do (other than actually prepare for and attend the trial) is to draft and submit their Joint Final

[1] Defendant's tenant provides Defendant with his only source of income other than the $2,943.12 Receiver has been ordered to pay Defendant each month.

Pretrial Statement, Witness Lists, Exhibit Lists, Jury Instructions, Verdict Forms, and Voire Dire Questions by July 22, 2021; file any motions *in limine* by July 29, 2021; and submit any highlighted deposition designations by August 5, 2021.

9. With regard to the Joint Final Pretrial Statement, Plaintiff has already prepared a draft Statement of Admitted Facts, and Defendant has already provided Plaintiff with his proposed edits to the Statement of Admitted Facts. In addition, Defendant has also already prepared and provided to Plaintiff drafts of the Statement of Facts at Issue, Statement of Agreed Principles of Law, and Statement of Issues of Law. As such, the bulk of the Joint Final Pretrial Statement is well underway (three weeks *before* the July 22 deadline), and the parties should be able to finalize and file the Joint Final Pretrial Statement with time to spare.

10. As for the Jury Instructions, Plaintiff has indicated that it is in the process of drafting the Jury Instruction. In addition, to share the labor, Defendant has already drafted the sections of the Jury Instructions pertaining to the 14 claims asserted by Plaintiff and provided his draft to Plaintiff. As such, the Jury Instructions are likewise in hand, and the parties are on track to have them finalized by the July 22 deadline.

11. That leaves only the Witness Lists, Exhibit Lists, Verdict Forms, and Voire Dire Questions to be completed by the July 22 deadline. While the

Witness Lists, Exhibit Lists, and Voire Dire Questions are certainly important, they are not especially labor-intensive. Indeed, Plaintiff has already provided Defendant with eight pages of proposed Voire Dire Questions. (Presumably, these are standard questions Plaintiff attempts to ask in all its cases.)) And while the Verdict Forms will likely require substantially more effort to draft and finalize, three weeks should be more than sufficient for the parties to complete their work — particularly since Plaintiff has already provided Defendant with an initial draft of the Verdict Forms.

12. As for any motions *in limine* to be filed by July 29, Plaintiff has not yet identified any such motions that it intends to file — and in any case, one month is more than sufficient for the parties prepare and file such motions.

13. Finally, as to the highlighted deposition transcript designations to be submitted by August 5, there is only one such transcript that is conceivably admissible: The deposition transcript of Defendant, who intends to attend the trial and testify at it. Pursuant to the Schedule Order, however, the parties are *not* required to designate transcripts that will be used solely for impeachment. [D.E. 88 at III.B.3].

14. Simply put, there is no need for any of the current deadlines to be stayed, much less for the trial itself to be canceled and rescheduled.

15. To extent the Court's rulings on the pending dispositive motions might resolve one or more the claims asserted by Plaintiff, it would be a

relatively simple matter to amend the Joint Final Pretrial Statement, Witness Lists, Exhibit Lists, Jury Instructions, Verdict Forms, and Voire Dire Questions to account for the claims that are no longer at issue (for example, by deleting the portions of those submissions that pertain to the resolved claims).

16. And on an even more practical level, any delay in this case will only cause Defendant to incur still more expenses in the form legal fees for his defense counsel — which Plaintiff continues to constantly oppose.

17. Finally, as a matter of law, Plaintiff has failed to establish "good cause" sufficient to permit the Court to modify the Schedule Order even if the Court were inclined to do so. *See Whittington v. Whittington*, 2020 WL 8224604, at *2 (M.D. Fla. Oct. 23, 2020) ("Defendant must first satisfy Rule 16(b)(4)'s 'good cause' standard for modifying a scheduling order before the Court can decide whether to freely give leave to amend under Rule 15(a)(2).").[2]

18. While courts enjoy broad discretion in deciding how to manage their cases, the "good cause" standard for modifying a scheduling order "is a rigorous one, focusing not on the good faith of or the potential prejudice to any party, but rather on [the] diligence [of the party seeking to amend] in complying with the Court's scheduling order." *Id.*

[2] *See also* FED. R. CIV. P. 16(b)(4) ("A schedule may be modified only for good cause and with the judge's consent."); *Club Exploria, LLC v. Aaronson, Austin, P.A.*, 2020 WL 686010, at *2 (M.D. Fla. Feb. 11, 2020) ("[W]here . . . a party seeks to amend after the deadline set in the Court's scheduling order, the party must establish 'good cause.'").

19. "This good cause standard precludes modification unless the schedule cannot 'be met despite the diligence of the party seeking the extension.'" *Club Exploria*, 2020 WL 686010 at *2 (quoting *Sosa v. Airprint Sys., Inc.*, 133 F.3d 1417, 1418 (11th Cir. 1998)).

According, for all of the reasons above, Defendant opposes Plaintiff's Motion and requests that the trial remain on the current trial calendar and that none of the remaining deadlines be stayed or re-set.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 2, 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