

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA

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.)
_____)

**PLAINTIFF’S OPPOSITION TO DEFENDANT’S FIFTH MOTION TO
MODIFY ASSET FREEZE ORDER [DE 33] TO
DEFEND THIS CASE [DE 252]**

Plaintiff Securities and Exchange Commission (the “Commission”) maintains its opposition against Defendant Michael Scott Williams’

(“Williams”) use of frozen funds to finance his defense of this litigation for the reasons addressed in its prior Opposition [DE 139].¹

Williams has already received 194,301.25 in attorneys’ fees through April 28, 2021.² His request for an additional \$173,208.75 from April 29, 2021 through the last day of trial [DE 252] will only further diminish the funds available for distribution to investors.

There also is no telling whether Williams will actually stay within his proposed budget. Indeed, without seeking prior Court approval, Williams exceeded the fee limit imposed by the Court for the three-month period of

¹ See *SEC v. Comcoa*, 887 F. Supp. 1521, 1524 (S.D. Fla. 1995) (“In imposing a freeze of assets, there is no requirement that the court exempt sufficient assets for the payment of legal fees.”); *FTC v. RCA Credit Services, LLC*, 2008 WL 5428039, *4 (M.D. Fla. Dec. 31, 2008) (defendants “may not use their victims’ assets to hire counsel to help them retain the fruits of their violations”); see also *FTC v. Simple Health Plans LLC*, 379 F.Supp.3d 1346, 1364 (S.D. Fla. 2019) (denying carve out for attorneys’ fees and living expenses given the “vast disparity between Defendants’ substantial ill-gotten gains and the value of the frozen assets”); *SEC v. Founding Partners Capital Mgmt.*, 2009 WL 10669238, *4 (M.D. Fla. May 7, 2009) (denying carve out to pay attorney’s fees and living expenses because “defendant has provided no factual basis that would allow the Court to make a reasoned decision as to whether any modification should be made, or the amounts that should be exempted.”); *FTC v. Leshin*, 719 F.3d 1227, 1234 (11th Cir. 2013) (“[A] disgorgement order establishes a personal liability, which the defendant must satisfy regardless whether he retains the proceeds of his wrongdoing.”).

² 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; DE 237 allowing \$64,500 from January 28, 2021 through April 28, 2021; DE 250 allowing \$48,291.25 from January 28, 2021 through April 28, 2021.

January 28, 2021 through April 28, 2021 [DE 180] by *almost double* the allotted amount [DE 235].

WHEREFORE, the Commission respectfully requests that the Court deny Williams' fifth motion to modify the Asset Freeze Order to unfreeze additional funds for his defense during the time period of April 29, 2021 through the last date of trial.

July 15, 2021

Respectfully submitted,

By: /s/ Stephanie N. Moot
Christine Nestor
Senior Trial Counsel
Fla. Bar No. 597211
Direct Dial: (305) 982-6367
E-mail: nestorc@sec.gov

Stephanie N. Moot
Senior Trial Counsel
Fla. Bar No. 30377
Direct Dial: (305) 982-6313
E-mail: moots@sec.gov

Attorneys for Plaintiff
Securities and Exchange Commission
801 Brickell Avenue, Suite 1950
Miami, FL 33131
Facsimile: (305) 536-4154

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 15, 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

SERVICE LIST

Timothy W. Schulz, Esq.
TIMOTHY W. SCHULZ, P.A.
224 Datura Street, Suite 815
West Palm Beach, Florida 33401
Telephone: (561) 659-1167
Facsimile: (561) 659-1168
Email: schulzt@twslegal.com
Email: e-service@twslegal.com
Co-Trial Counsel for Williams

Jon A. Jacobson, Esq.
JACOBSON LAW P.A.
224 Datura St., Suite 812
West Palm Beach, FL 33401
Telephone: (561) 880-8900
Facsimile: (561) 880-8910
Email: jjacobson@jlpa.com
Email: e-service@jlpa.com
Co-Trial Counsel for Williams

Jordan D. Maglich, Esq.
Buchanan Ingersoll & Rooney PC
401 E. Jackson St., Suite 2400
Tampa, FL 33602
813-222-2098
Jordan.maglich@bipc.com
Counsel for Receiver, Mark A. Kornfeld