

INTRODUCTION

Kraken seeks leave to file its Second Amended Complaint to reflect what discovery has revealed about the true nature and extent of Defendants' misconduct. When Kraken initiated this action in September of 2025, it knew far less about Etana's operations than it does now and could allege only what was apparent from the outside: that Etana, a custodial trust company, was refusing to return more than \$25 million in assets it held in trust for Kraken; that Etana admitted it could not properly reconcile client balances; and that Etana acknowledged custodial funds may have been used in unauthorized ways.

Since then, Kraken's diligent discovery efforts have uncovered extensive evidence showing that the failure to return Kraken's assets was not the result of mere mismanagement or poor recordkeeping, but rather the product of a sustained course of knowing and intentional misconduct led and directed by Defendant Russell. That evidence shows that Russell and Etana misappropriated Kraken's custodial assets to pay operating expenses and fund risky investments; commingled custodial funds in omnibus accounts without a reliable method to track customer balances; and then intentionally concealed these actions through false monthly account statements, a misleading online dashboard, and other representations that continuously and falsely assured Kraken its assets were safe, secure, and accessible.

The newly discovered facts pled in the SAC supply the "how" and "why" behind Etana's admitted inability to return Kraken's funds, implicate Russell in every stage of the misconduct, and support fraud claims grounded in specific affirmative misrepresentations and material omissions. This timely, unopposed request to amend should therefore be granted.

RELEVANT PROCEDURAL HISTORY

Kraken initiated this action on September 9, 2025 and amended its complaint to add an additional plaintiff on October 15, 2025. (ECF 1; 44).

The claims against Etana Custody, Inc. and Etana Custody Limited (together, “Etana”) are currently stayed, as Etana Custody, Inc. is under the control of a Receiver. (*See* ECF 71, 103).

Defendant Dion Brandon Russell moved to dismiss the Amended Complaint on November 17, 2025. (ECF 76).

On December 2, 2025, the Court held a continued Rule 16 conference and entered a Scheduling Order that had been jointly submitted by the parties. (ECF 85). On January 6, 2026, the Court denied Mr. Russell’s motion to stay discovery. (ECF 90). The Court granted Kraken’s request for a 90-day extension of most discovery deadlines on February 26, 2026. (ECF 101).

The deadline for Joinder of Parties and Amendment of Pleadings is June 1, 2026. (*Id.*).

DESCRIPTION OF AMENDED PLEADING

Kraken is one of the world’s largest, safest, and most popular digital asset exchanges. (SAC ¶ 13). In or around 2018, Kraken established a relationship with Etana, a Colorado trust company, to provide custodial services to Kraken and its customers. (*Id.* ¶¶ 13-15). Through that relationship, Kraken entrusted hundreds of millions of dollars to Etana and its founder and principal, Brandon Russell, which were supposed to be held by Etana for the benefit of Kraken and its customers. (*Id.* ¶ 1). However, when Kraken sought to withdraw the last of the funds deposited on Etana’s platform—approximately \$25 million—Etana refused to return the funds. (*Id.* ¶¶ 38-39). Instead, Russell obfuscated for months before finally admitting that the funds may have been spent in unauthorized ways, including on operating expenses or unauthorized investments. (*Id.* ¶¶ 39, 58).

Based on these facts, Kraken pleaded claims for, among other things, breach of contract, conversion, civil theft, and breach of fiduciary duty.

Since this action was commenced, Kraken has diligently pursued discovery from Etana, Russell, and various third parties. The proposed Second Amended Complaint reflects substantial new evidence and information showing that the reality of Etana's operation was fundamentally different from what Kraken was told, and that Etana and Russell affirmatively lied to and hid the truth from Kraken for years. The SAC adds additional factual allegations to support the existing claims and also adds a new claim for fraud (or, alternatively, for aiding and abetting thereof).

As set forth in the proposed SAC, at Russell's direction, Etana commingled custodial funds belonging to Kraken with funds belonging to other Etana customers without any reliable way of tracking each customer's balance; used those funds to pay Etana's operating expenses and bankroll risky investments; and fraudulently concealed the fact that millions of dollars belonging to Kraken and its customers had been depleted, lost, or endangered. (*Id.* ¶ 2, 70-92). The result was a Ponzi-like enterprise that depended on the continuous flow of new customer deposits to mask the shortfall created by Etana's and Russell's misappropriations. (*Id.* ¶ 2).

Throughout the years that this scheme was taking place, Etana, at Russell's direction, repeatedly misrepresented and/or concealed the truth through false account statements and a client dashboard that continuously represented that Kraken's custodial balances were intact and safely held. (*Id.* ¶ 79). When Kraken—Etana's largest customer—decided to withdraw its funds, the scheme collapsed. (*Id.* ¶ 2).

The SAC also adds new facts relating to Russell's personal participation in the misconduct described above. Russell founded Etana, served as its CEO and director, and owned approximately

90% of the company. (*Id.* ¶ 110). Through discovery, Kraken has learned details about how Russell exercised tight control over every aspect of the company—and especially when it came to Kraken, which was Etana’s largest client. (*Id.* at ¶¶ 111, 116). As detailed in the SAC, Russell was the primary point of contact for Kraken’s high-level employees, had unique knowledge of the facts relating to Kraken’s custodial funds, and retained the final say over all decisions affecting the Kraken relationship. (*Id.* ¶¶ 116-123).

ARGUMENT

A party may amend its complaint after a responsive pleading has been filed with leave of court. *See* Fed. R. Civ. P. 15(a)(2). “The court should freely give leave when justice so requires.” *Id.*; *see also* DDD Civ. P.S. III(H) (“When a party seeks leave to amend a pleading on or before the applicable scheduling-order deadline, the Court will freely grant leave to amend.”). Rule 15’s lenient standard is designed to give parties “the maximum opportunity for each claim to be decided on its merits rather than on procedural niceties.” *Hardin v. Manitowoc–Forsythe Corp.*, 691 F.2d 449, 456 (10th Cir. 1982). “If the underlying facts or circumstances relied upon by a plaintiff” in a timely-filed amended pleading “may be a proper subject of relief, he ought to be afforded an opportunity to test his claim on the merits.” *Minter v. Prime Equip. Co.*, 451 F.3d 1196, 1204 (10th Cir. 2006) (quoting *Foman v. Davis*, 371 U.S. 178, 182 (1962)).

The Court should grant Kraken leave to file the SAC.

First, the request is unopposed. On April 23, 2026, Kraken provided Russell’s counsel with a copy of the proposed SAC and asked whether Russell consents to the amended filing. On April 27, 2026, Russell’s counsel responded:

[W]e do dispute the new allegations, and object on those grounds. We also acknowledge that you are timely filing an

amended pleading. We do not plan on filing a formal objection and you can represent the above to the court. Thanks.

Given this response, Kraken believes that it could have amended pursuant to Local Rule 15.1(a), and it is making this motion solely out of an abundance of caution.

Second, the request to amend is timely. The deadline to amend the pleadings is not until June 1, 2026—more than a month from now. (ECF 101). As just noted, Russell has likewise “acknowledge[d]” that the amendment is “timely.” Because “the instant Motion was filed well within the deadline for the amendment of pleadings,” it should be granted. *Jacquart v. State Auto Ins. Co. of Ohio*, 2020 WL 956428, at *2 (D. Colo. Feb. 27, 2020); *see also Duong v. State Farm Mut. Auto. Ins. Co.*, 2022 WL 1198947, at *1 (D. Colo. Feb. 18, 2022) (granting motion for leave to amend as timely even when it was filed on the day of the amendment deadline).

Third, the amendment is based on new facts that Kraken has learned through discovery, and which Kraken therefore could not have alleged in the prior pleading. Courts routinely grant leave to amend when a party learns, “through discovery or disclosures, information necessary for the assertion of a claim” and amends accordingly. *Pumpco, Inc. v. Schenker Int’l, Inc.*, 204 F.R.D. 667, 668-69 (D. Colo. 2001); *see also Minter*, 451 F.3d at 1207 (reversing trial court’s refusal to permit plaintiff to add new claim based on evidence disclosed by defendants one week after close of discovery). Here, where the request to amend is brought “well within the deadline for the amendment of pleadings” and with months remaining before the close of fact discovery, leave to amend is even more appropriate. *Jacquart*, 2020 WL 956428, at *2.

Finally, the amendment would not unduly prejudice Russell, who, as noted above, does not oppose the amendment. Amendment at this stage will ensure that the case proceeds on pleadings that reflect what the evidence shows, and it will do so without undue delay or prejudice.

CONCLUSION

For the foregoing reasons, Kraken respectfully requests that the Court grant its Motion for Leave to File the Second Amended Complaint.

Dated: May 4, 2026

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE WITH LENGTH LIMITATIONS

I hereby certify that the foregoing Motion complies with the length limitation set forth in
DDD Civ. P.S. III(A)(1).

/s/ Renee Zaytsev
Renee Zaytsev

CERTIFICATE OF CONFERRAL

In accordance with D.C.COLO.LCivR 7.1(a), counsel for Plaintiffs conferred with counsel for Defendant Russell regarding the foregoing Motion on April 23, 2026. On April 27, 2026, counsel replied: “[W]e do dispute the new allegations, and object on those grounds. We also acknowledge that you are timely filing an amended pleading. We do not plan on filing a formal objection and you can represent the above to the court.”

/s/ Renee Zaytsev
Renee Zaytsev

CERTIFICATE OF SERVICE

I hereby certify that, on May 4, 2026, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which serves all counsel of record in this matter.

/s/ Renee Zaytsev
Renee Zaytsev