IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Daniel D. Domenico

Civil Action No. 1:22-cv-03181-DDD-KLM

UNITED STATES SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

REVEN HOLDINGS, INC. d/b/a Reven Pharmaceuticals;
REVEN PHARMACEUTICALS, INC.;
BRIAN D. DENOMME;
PETER B. LANGE; and
MICHAEL A. VOLK,

Defendants, and

REVEN, LLC;
REVEN IP HOLDCO, LLC;
REVEN ONCOLOGY LICENSING, LLC; and
HEALTH ANALYTICS AND RESEARCH SERVICES, LLC,

Relief Defendants.

ORDER LIFTING ASSET FREEZE IN PART

I previously granted Plaintiff U.S. Securities and Exchange Commission's motion for a preliminary injunction (1) prohibiting the defendants from violating the anti-fraud provisions of federal securities laws; (2) prohibiting Defendants Brian D. Denomme, Peter B. Lange, and Michael A. Volk from offering or selling securities; and (3) freezing the defendants' and relief defendants' assets. Doc. 122. Now before me are several motions relating to the asset freeze. Docs. 124, 133, 135, 153. For the following reasons, (1) the motions of non-party investors Leah Schaat and Lee Ann Frost (the "Investor Group") to intervene and appoint a receiver or liquidation agent are denied; (2) the defendants'

motion to lift the asset freeze is granted in part, and the asset freeze is narrowed as set forth below; and (3) the defendants' request to stay the asset freeze pending appeal is denied.

BACKGROUND

Defendant Reven Holdings, Inc. (a successor to Defendant Reven Pharmaceuticals, Inc.) is a privately held biotechnology and pharmaceutical holding company focused on developing and commercializing a cardiovascular and anti-inflammatory drug called Rejuveinix ("RJX"). Doc. 122 at 2. Defendants Denomme, Lange, and Volk (the "Reven Principals") are co-founders, members of the board, and executive officers of Reven Holdings, and they collectively control the majority of Reven Holdings' stock. *Id.* at 2-3. Relief Defendants Reven, LLC; Reven IP Holdco, LLC; Reven Oncology Licensing, LLC; and Health Analytics & Research Services, LLC are related entities (either subsidiaries of Reven Holdings or companies owned by the Reven Principals) that hold Reven intellectual property and other assets. *Id.* at 3.

The Commission contends that the defendants violated the Securities Act of 1933 ("Securities Act") and the Securities Exchange Act of 1934 ("Exchange Act") by making a number of false or misleading statements to prospective investors. *See generally* Doc. 1; Doc. 3. I previously found that the preliminary-injunction evidence clearly shows the Commission is likely to prove violations of the Securities Act and Exchange Act—specifically, that the defendants violated these laws by knowingly, recklessly, or negligently making materially false or misleading statements or omissions to prospective investors regarding (1) executive compensation, (2) Reven's readiness for a public offering, and (3) a separate lawsuit alleging that some of the defendants had committed securities fraud. Doc. 122 at 7-26. I also found that statutory violations were likely to recur if the defendants were not preliminarily

enjoined, and that an asset freeze was appropriate to preserve the defendants' funds to satisfy any future judgment. *Id.* at 27-28.

The parties now agree, however, that a broad asset freeze is not the best way to preserve the value of the defendants' assets pending a final adjudication on the merits. The asset freeze in its current form[1] is causing the value of the defendants' assets to dissipate, rather than preserving it as intended, because the defendants do not have sufficient liquidity to maintain their IP portfolio by paying patent maintenance and prosecution fees, or to proceed with the clinical trials necessary to obtain

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[1] The terms of the asset freeze provide that:

> All assets, funds, or other property of any kind, including without limitation intellectual property, including patents or trademarks, held by, or under the direct control of [the defendants] . . . wherever located or by whomever held, and whether acquired before or after institution of this action, are frozen and will not be sold, transferred, or encumbered in any way . . . [and]
>
> [The defendants] . . . must hold and retain within their control, and otherwise prevent any disposition, transfer, pledge, encumbrance, assignment, dissipation, concealment, or other disposal whatsoever (including the use of any credit cards or other incurring of debt) of any of their funds, property (including money, virtual currency or other digital asset, real or personal property, tangible assets, securities, commodities, choses in action, or other property of any kind whatsoever, in whatever form such assets may exist and wherever located), intellectual property, including patents or trademarks, or other assets or things of value held by them, under their control or over which they exercise actual or apparent investment or other authority, in whatever form such assets may presently exist and wherever located[.]

Doc. 28 at 15-16 (TRO); *see also* Docs. 55, 65, 68, 72, 74, 117 (orders granting requested modifications to and exclusions from asset freeze); Doc. 122 at 28-29 (converting asset freeze in TRO to preliminary injunction with same terms).

FDA approval of RJX before their patents expire. But the parties disagree on the appropriate solution to this problem.

The defendants move to lift the asset freeze in its entirety, arguing that Reven can achieve liquidity and move forward with clinical trials by taking on debt and/or licensing its intellectual property while the defendants remain preliminarily enjoined from raising funds by selling Reven stock. Doc. 124. Alternatively, they request that the asset freeze be lifted in part to (1) permit third parties to pay Reven's operating expenses; (2) permit the Reven Principals to earn new income unrelated to Reven and use that income to pay both personal expenses and Reven's expenses; (3) permit the Reven Principals to incur new individual debt; and (4) unfreeze bank accounts that "do not currently contain funds attributable to the Defendants or Relief Defendants." Doc. 145 at 16-17. The Investor Group moves to intervene in the case and, together with the Commission, argues that the best course of action is to instead appoint a liquidation agent to sell the defendants' intellectual property and then freeze the proceeds of that sale.[2] Docs. 133, 144, 149, 150. The defendants have also appealed my preliminary-injunction order to the Tenth Circuit, Doc. 138, and they move to stay the asset freeze and further proceedings in this Court pending resolution of their appeal. Doc. 153.

DISCUSSION

I. Investor Group's Motion to Intervene

The Investor Group moves to intervene "in a limited capacity solely to seek appointment of a [liquidation agent] to marshal and sell the

[2] The Investor Group previously moved to appoint a general receiver (rather than a liquidation agent) with broader powers to take over Reven's business operations, Doc. 135, but the Group has since narrowed the scope of its original request, Doc. 149 at 2 n.1.

assets of Reven for the benefit of all of the 175 innocent investors who were harmed by [the defendants'] misappropriation and misuse of investor funds." Doc. 133 at 1-2; *see also* Doc. 149 at 2 n.1. The Investor Group argues that it is entitled to intervene as of right pursuant to Federal Rule of Civil Procedure 24(a), Doc. 133 at 5-11, or in the alternative, that it should be allowed to intervene permissively under Rule 24(b), *id.* at 11-14. The defendants oppose intervention, Doc. 145, but the Commission does not, Doc. 133 at 1.

A. Intervention of Right

A court must permit a non-party to intervene as of right if (1) the non-party files a timely motion, (2) the non-party "claims an interest relating to the property or transaction that is the subject of the action," (3) the non-party "is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest," and (4) the existing parties do not "adequately represent that interest." Fed. R. Civ. P. 24(a)(2); *accord W. Energy Alliance v. Zinke*, 877 F.3d 1157, 1164 (10th Cir. 2017). "Failure to satisfy even one of these requirements is sufficient to warrant denial of a motion to intervene as a matter of right." *Maynard v. Colo. Supreme Ct. Office of Att'y Regul. Couns.*, No. 09-cv-02052-WYD-KMT, 2010 WL 2775569, at *3 (D. Colo. July 14, 2010).

Here, the Investor Group is not entitled to intervene as of right because the Commission adequately represents the investors' interests.[3] Although a proposed intervenor's burden to show inadequate

[3] The parties do not dispute whether the Investor Group has satisfied the first three requirements for intervention of right, and I therefore presume without deciding that the Group's motion is timely and that the Group has an interest in Reven's frozen assets that may be impaired or impeded by disposition of this action.

representation by the existing parties is "minimal," adequate representation is presumed when the would-be intervenor's interest is identical to that of one of the parties. *Kane County v. United States* (*Kane IV*), 94 F.4th 1017, 1030 (10th Cir. 2024); *accord San Juan County v. United States*, 503 F.3d 1163, 1204, 1227 & n.1 (10th Cir. 2007) (majority op. & Ebel, J., concurring in part), *abrogated in part on other grounds by Hollingsworth v. Perry*, 570 U.S. 693 (2013). When the presumptively adequate representative is a governmental entity, the presumption can be rebutted if "the public interest the government is obligated to represent may differ from the would-be intervenor's particular interest." *Kane County v. United States* (*Kane III*), 928 F.3d 877, 892 (10th Cir. 2019).

The Investor Group's stated interest in intervention—to prevent dissipation of Reven's assets and diminution of its value, for the benefit of themselves and Reven's other investors, Doc. 133 at 2, 7, 8, 14; Doc. 149 at 7—is identical to the Commission's goal with regard to the asset freeze. *See, e.g.*, *SEC v. Callahan*, 193 F. Supp. 3d 177, 206 (E.D.N.Y. 2016) ("[G]overnment entities, like the SEC, that bring enforcement proceedings are mandated to act in the interest of maximizing the recovery to all defrauded individuals . . . ."). The Commission must therefore be presumed to adequately represent the Investor Group's interest. *See, e.g.*, *id.* (SEC is "often presumed to be adequately representing the interests of non-party investors"); *SEC v. Credit Bancorp, Ltd.*, 194 F.R.D. 457, 467-68 (S.D.N.Y. 2000) (majority of courts deny investor intervention as of right in enforcement actions because SEC or other government agency sufficiently represents investor interests (collecting cases)).

The Group's arguments do not overcome that presumption. This is not a case where "the government . . . has multiple interests to pursue, [and] will not adequately pursue the particular interest of the applicant

for intervention." *San Juan County*, 503 F.3d at 1203-04. It is true that the Commission may have multiple, broader interests at stake in the case as a whole, beyond maximizing the amount of Reven's assets available to compensate investors—for example, protecting the public and deterring future violations of securities laws. But the Investor Group expressly does not seek to "fully intervene" in the case as a whole and "actively participate as full litigants in the proceeding" on behalf of some individualized interest of Ms. Schaat or Ms. Frost. Doc. 149 at 8; *see also* Doc. 133 at 14. The Group instead seeks "minimal intervention" for the specific, limited purpose "of preserving the value of Reven's remaining assets pending the outcome of the litigation." Doc. 149 at 8. With respect to that issue, the Commission shares the identical purpose. *Cf. W. Energy Alliance*, 877 F.3d at 1168-69 (representation may be adequate where government and proposed intervenor share same objective with respect to single issue at stake). And the Group provides no reason to believe that the goal of maximizing the funds ultimately available to all investors is at odds with the particular interests of any individual investor or with the other broader goals the Commission may have with respect to the case as a whole. *See SEC v. BIC Real Est. Dev. Corp.*, No. 1:16-cv-344-LJO-JLT, 2017 WL 85789, at *3 (E.D. Cal. Jan. 10, 2017) ("[C]ourts routinely find that defrauded investors are not entitled under Rule 24 to intervene as of right in SEC enforcement actions . . . . when a defrauded investor has the same ultimate goal as the SEC, such as maximizing the recovery for investors.");[4] *cf. SEC v. Kings Real Est. Inv.*

[4] *Accord SEC v. Santillo*, 327 F.R.D. 49, 51 (S.D.N.Y. 2018) ("The SEC seeks to obtain a judgment on behalf of all injured investors, and to maximize that judgment. Thus, the movant's legitimate interests are adequately protected."); *CFTC v. Linton*, 786 F. Supp. 2d 1374, 1379 (D. Ariz. 2011) ("[T]he CFTC is equally representing all of the victims to the extent it is attempting to maximize the recovery of assets for all of them."); *SEC v. TLC Invs. & Trade Co.*, 147 F. Supp. 2d 1031, 1041 (C.D.

Tr., 222 F.R.D. 660, 669 (D. Kan. 2004) (if SEC or receiver advocates for proportionate distribution of assets that total less than all funds invested, SEC's interest is adverse to that of individual investor who seeks 100% return of investment).

Nor has the Investor Group demonstrated that the Commission may fail to zealously or effectively pursue the parties' shared interest. The Group argues that "the SEC is not in the business of managing intellectual property portfolios and operating pharmaceutical companies," Doc. 149 at 7, and the "preliminary injunction and Asset Freeze are the primary tools the SEC has in its toolbox to prevent dissipation of assets and ongoing harm to investors," Doc. 133 at 10-11. Yet the Group acknowledges that the Commission has a variety of equitable tools at its disposal beyond a simple asset freeze. *See* Doc. 135 at 6-7, 13-14 (asserting that appointment of receivers is a common remedy in SEC enforcement actions); *see also* Doc. 145 at 14 (defendants noting courts may appoint corporate monitor in lieu of general receiver); Doc. 144 (Commission arguing for appointment of liquidation agent); *SEC v. Bartlett*, 422 F.2d 475, 477-78 & n.6 (8th Cir. 1970) (courts have broad equitable power to appoint receivers to maintain status quo and conserve defendants' assets (collecting cases)). Though the Investor Group correctly notes that the Commission's request to appoint a liquidation agent "was not before the Court until the Investor Group filed its motions," Doc. 149

Cal. 2001) ("Here, the Receiver's goal is to maximize distributions to defrauded investors. The Applicants have the same goal."); *SEC v. Byers*, No. 08 Civ. 7104(DC), 2008 WL 5102017, at *1 (S.D.N.Y. Nov. 25, 2008) (SEC and receiver adequately represented investors' interests because "it is in all their interests to maximize the value of the assets under the receivership" and "[t]his is what the Receiver is charged with doing"); *CFTC v. Lofgren*, No. 02 C 6222, 2003 WL 21639118, at *3 (N.D. Ill. 2003) ("[T]he CFTC will adequately represent [the individual investor's] interests insofar as they are primarily concerned with preventing defendants from further dissipating the funds.").

at 7-8, a difference in strategy regarding how to best accomplish the Investor Group's and the Commission's shared goal of preventing dissipation of Reven's assets does not amount to inadequate representation. *BIC*, 2017 WL 85789, at *3 ("[A] mere difference in *how* that goal may be attained . . . [does not] rebut[] the presumption that the SEC . . . adequately represents the investor's interests.").[5] And that the Commission has been receptive to the Investor Group's ideas,[6] and those parties now both request the same relief, only reinforces the conclusion that the Commission is an adequate representative of the Group's interests.[7]

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[5] *Accord Sanguine, Ltd. v. U.S. Dep't of Interior*, 736 F.2d 1416, 1419 (10th Cir. 1984) ("[R]epresentation is not inadequate simply because the applicant and the representative disagree regarding the facts or law of the case."); *SEC v. Am. Pension Servs. Inc.*, No. 2:14-cv-00309-RJS-DBP, 2015 WL 248575, at *5 (D. Utah Jan. 20, 2015) ("Courts have held that '[t]he intervention test is not met when the applicant presents only a difference in strategy.'").

[6] *See* Doc. 135 at 14 ("The Investor Group will continue to work with counsel for the SEC on refinements and revisions to the proposal, as needed, in order to reach a mutually agreeable proposal that achieves both the SEC and the Investor Group's aims."); Doc. 144 at 8 ("The SEC has been conferring with the Intervenor Investor Group about preserving the Reven IP . . . . [and] expects to continue these discussions and agree on a modified proposal to submit to the Court . . . ."); Doc. 149 at 16 ("[C]ounsel for the SEC has continued to confer with counsel for the Intervenor Investor Group on a more limited proposal to preserve the value of Reven's intellectual property assets . . . .").

[7] *Cf. Kane County v. United States* (*Kane I*), 597 F.3d 1129, 1135 (10th Cir. 2010) (government displayed no reluctance to pursue would-be intervenor's shared interest and there was no basis to predict government would fail to present arguments that would-be intervenor would make); *Kane III*, 928 F.3d at 895 (government's opposition to intervention suggested it did not fully intend to represent proposed intervenor's interests); *WildEarth Guardians v. U.S. Forest Serv.*, 573 F.3d 992, 997 (10th Cir. 2009) (finding inadequate representation in part because government objected to any requirement to "coordinate filings with" intervenor); *Utah Ass'n of Counties v. Clinton*, 255 F.3d 1246, 1256 (10th

The Investor Group is not entitled to intervene as of right because the Commission shares its interest in preventing dissipation of Reven's assets, and the Group has not overcome the presumption that its interest is adequately represented by the Commission.

B. Permissive Intervention

A court may permit a non-party who does not meet the test for intervention of right under Rule 24(a) to intervene if (1) the non-party files a timely motion, and (2) the non-party "has a claim or defense that shares with the main action a common question of law or fact." Fed. R. Civ. P. 24(b)(1)(B). "In exercising its discretion, the court must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights." Fed. R. Civ. P. 24(b)(3). A court may also consider whether the non-party's rights are adequately represented by an existing party. *Tri-State Generation & Transmission Ass'n, Inc. v. N.M. Pub. Regul. Comm'n*, 787 F.3d 1068, 1075 (10th Cir. 2015).

Permissive intervention in in cases like this one "has been traditionally disfavored, given courts' hesitation to allow scores of investors and other interested persons from becoming full-fledged parties to governmental enforcement actions." *Credit Bancorp*, 194 F.R.D. at 468; *accord Byers*, 2008 WL 5102017, at *1 ("As a practical matter, it does not make sense to allow individual victims and creditors to intervene as parties."). Though the Investor Group seeks to intervene only in a limited capacity, and it does not appear that permitting intervention would unduly delay the proceedings or prejudice the Commission or the defendants,[8] intervention would unnecessarily complicate the proceedings. *See SEC v.*

Cir. 2001) (government's "silence on any intent to defend the intervenors' special interests is deafening").

[8] I presume without deciding that the Investor Group has a claim that shares a common question with the main action.

Vesco, 58 F.R.D. 182, 183 (S.D.N.Y. 1973) ("This is a complex securities fraud action involving numerous individual and corporate defendants. To permit shareholders to intervene in the proceedings and participate in the fashioning of temporary and permanent relief would only serve to multiply the issues and the parties involved . . . ."). And as discussed above, the Investor Group's stated interest is adequately represented by the Commission at this stage of the proceedings. In my discretion, therefore, I do not find permissive intervention will serve the interests of justice. *See Am. Ass'n of People with Disabilities v. Herrera*, 257 F.R.D. 236, 249 (D.N.M. 2008) ("[A] court's finding that existing parties adequately protect prospective intervenors' interests will support a denial of permissive intervention.").

Because the Investor Group is not entitled to intervention of right and I decline to allow permissive intervention, the Group's motions to intervene and appoint a receiver or liquidation agent are denied.[9] But I will consider the Commission's request to appoint a liquidation agent in connection with the defendants' motion to lift the asset freeze.

II. Defendants' Motion to Lift the Asset Freeze

As noted above, the parties agree that the asset freeze is currently not having its intended effect. It is causing the defendants' most valuable asset—Reven's intellectual property—to decline in value, rather than preserving its value. The defendants cannot currently pay patent maintenance and prosecution fees, nor do they have the funds to proceed with the clinical trials necessary to obtain FDA approval of RJX before their patents expire.

[9] The defendants request that the Investor Group's motions be denied with an award of fees and costs, but they fail to support that request with any authority or argument whatsoever. *See* Doc. 145 at 9, 13-14, 17. The defendants' conclusory request for fees and costs is denied.

The defendants move to lift the asset freeze in its entirety, arguing that Reven can resume its operations by taking on debt or licensing its intellectual property, though they will remain preliminarily enjoined from raising funds by selling Reven stock. Doc. 124. Alternatively, they request that the asset freeze be lifted in part to (1) permit third parties to pay Reven's operating expenses; (2) permit the Reven Principals to earn new income unrelated to Reven and use that income to pay both personal expenses and Reven's expenses; (3) permit the Reven Principals to incur new individual debt; and (4) unfreeze bank accounts that "do not currently contain funds attributable to the Defendants or Relief Defendants." Doc. 145 at 16-17.

The Commission opposes the defendants' motion to lift the asset freeze in its entirety, arguing that the defendants should not be given a "blank check" to deplete the frozen assets and "incur mountains of debt." Doc. 127 at 2. It notes that the Court has granted reasonable carve-outs from the asset freeze in the past when the defendants have come forward with a specific plan regarding the amount of funds or particular assets as to which the asset freeze should be lifted and a description of the planned transaction(s) in which such assets would be used, and it suggests that the parties and the Court could continue using this case-by-case approach (though it argues that the defendants' alternative request to narrow the asset freeze does not provide enough detail to assess the reasonableness of the new proposed carve-outs). *Id.* at 2-5, 8-13 (citing Docs. 55, 65, 72, 74, 117); Doc. 150 at 6-10. The Commission contends, however, that the best path forward is to appoint a liquidation agent to sell the defendants' intellectual property and then freeze the proceeds of that sale. Doc. 144; Doc. 150 at 3.

A. Applicable Law

"The purpose of an asset freeze is 'to preserve the status quo by preventing the dissipation and diversion of assets,'" and "[t]he authority temporarily to freeze a defendant's assets carries with it the 'corollary authority to release frozen . . . assets, or lower the amount frozen.'" *SEC v. Forte*, 598 F. Supp. 2d 689, 692 (E.D. Pa. 2009) (collecting cases). But before a court will unfreeze assets, a defendant must "establish that [the] modification is in the interest of the defrauded investors." *Id.* A modification may be appropriate where "maintaining a freeze 'might thwart the goal of compensating investors if the freeze were to cause such disruption of defendants' business affairs that they would be financially destroyed.'" *Id.* (quoting *SEC v. Manor Nursing Ctrs., Inc.*, 458 F.2d 1082, 1105 (2d Cir. 1972)); *accord SEC v. End of the Rainbow Partners, LLC*, No. 17-cv-02670-MSK-NYW, 2019 WL 8348323, at *4 (D. Colo. Nov. 25, 2019) (R. & R.) ("[T]he disadvantages and possible deleterious effect of a freeze must be weighed against the considerations indicating the need for such relief."), *adopted by* 2020 WL 597527 (D. Colo. Feb. 7, 2020); *SEC v. Traffic Monsoon, LLC*, 245 F. Supp. 3d 1275, 1297 (D. Utah 2017) (asset freeze may be "particularly burdensome" if it would "harm the continuing viability of the enterprise").

In evaluating whether to lift or modify an asset freeze, courts commonly consider a variety of factors, such as:

- The interests of the defrauded investors, including whether the frozen assets fall short of the amount necessary to compensate victims of the alleged fraud scheme, and whether unfreezing the assets would assist in returning funds to their rightful owners;
- The source of the funds to be released, including whether the assets are traceable to the allegedly fraudulent activity;

- The expenses the defendant seeks to pay; and
- The balance of interests.

See, e.g., *Forte*, 598 F. Supp. 2d at 692-94; *SEC v. Abdallah*, No. 1:14 CV 1155, 2017 WL 11680996, at *3 (N.D. Ohio Mar. 24, 2017) (collecting cases).

Aside from an asset freeze, courts have broad equitable power to grant other forms of preliminary relief. *SEC v. Materia*, 745 F.2d 197, 200 (2d Cir. 1984). Such relief "may include appointment of a receiver . . . or any measures that may be needed to make permanent relief possible." *FTC v. Skybiz.com, Inc.*, No. 01-CV-396-K(E), 2001 WL 1673645, at *8 (N.D. Okla. Aug. 31, 2001).

> Although there is no precise formula for determining when a receiver may be appointed, factors typically warranting appointment are a valid claim by the party seeking the appointment; the probability that fraudulent conduct has occurred or will occur to frustrate that claim; imminent danger that property will be concealed, lost, or diminished in value; inadequacy of legal remedies; lack of a less drastic equitable remedy; and likelihood that appointing the receiver will do more good than harm.

Aviation Supply Corp. v. R.S.B.I. Aerospace, Inc., 999 F.2d 314, 316-17 (8th Cir. 1993); *see also SEC v. Current Fin. Servs., Inc.*, 783 F. Supp. 1441, 1443-46 (D.D.C. 1992) (discussing other relevant factors); *SEC v. ABS Manager, LLC*, No. 13cv319-GPC (JMA), 2013 WL 1164413, at *6 (S.D. Cal. Mar. 20, 2013) (same).

Preliminary equitable relief may also include liquidation of a defendant's assets. *See TLC*, 147 F. Supp. 2d at 1035-36; *see also Bartlett*, 422 F.2d at 477-78 & n.6. A court's power to order liquidation, however, should be exercised "sparingly," *Bartlett*, 422 F.2d at 478, and "[i]t is only in rare cases that it is appropriate for a receiver . . . particularly before judgment has been entered, to liquidate, rather than manage, the assets of a receivership," *TLC*, 147 F. Supp. 2d at 1036; *accord Current*

Fin. Servs., 783 F. Supp. at 1445. A court-ordered sale of a particular asset may be appropriate if its value is declining and likely to continue declining over the course of the proceedings such that a sale is the best option to preserve its value, or if the expense of maintaining the asset "is excessive or disproportionate." *Smith v. SEC*, 653 F.3d 121, 126-29 (2d Cir. 2011) (affirming order for interlocutory sale of relief defendant's vacation home "in light of its declining value and the diminishing equity in the property"). But "[w]here an asset sale is sought to preserve the value of the assets, the SEC should be required to make a substantial showing of the likelihood that it will be able to obtain an ultimate sale of the assets in question." *Id.* at 128.

B. Analysis

All parties agree that the value of the defendants' intellectual property is dissipating, and that the situation requires some resolution. *See, e.g.*, Doc. 124 (defendants); Doc. 150 at 3 (Commission); *see also* Doc. 133 (Investor Group). The question before me, then, is not *whether* to modify the asset freeze, but *how* to modify it in order to maximize and preserve the value of the assets at issue: (A) lift the freeze in whole or in part, or (B) appoint a liquidation agent to sell the assets that are currently diminishing in value?

The Commission's request to appoint a liquidation agent is not outlandish. Doing so would immediately realize the value of the defendants' intellectual property assets and preserve that value by freezing the proceeds of the sale. But "district courts must balance the competing concerns quite carefully" when considering whether to authorize liquidation of a defendant's assets. *TLC*, 147 F. Supp. 2d at 1035. I agree with the defendants that, at this stage of the case—based only on preliminary findings and while an appeal of those findings is pending—it is not appropriate to force a sale of the defendants' intellectual property. Though

the Commission presents the appointment of a liquidation agent as a more narrowly tailored remedy than appointment of a general receiver to oversee Reven's business operations, the result of liquidation would actually be quite harsh, as selling Reven's patents and other intellectual property would effectively put it out of business entirely. *Cf. Roederer v. Treister*, 2 F. Supp. 3d 1153, 1161 (D. Or. 2014) (company would be irreparably harmed if its software or related intellectual property was sold or transferred).

It appears to me that appointment of some kind of receiver or corporate monitor may be the wisest path forward at this point, at least until the defendants' appeal has been resolved. And I would entertain a specific proposal for such an appointment from the Commission (or from the defendants, if they believe such an appointment would allow them more flexibility in attempting to resume business operations and preserve their assets than they have under the asset freeze). But no such proposal is currently before me.

That leaves the defendants' request to lift the asset freeze in its entirety, or alternatively, to narrow it in certain ways. I agree with the Commission that lifting the freeze in its entirety is not appropriate. Having found that the Reven Principals made a number of material misstatements or omissions to prospective investors regarding Reven's operations and how millions of dollars of investor funds would be used, I cannot restore them free reign over Reven's assets based only on a vague plan "to avail themselves of options like taking on debt, licensing Reven's intellectual property, and otherwise continuing to work towards the successful deployment of [RJX]," Doc. 124 at 8-9, 10-11. *Cf. Current Fin. Servs.*, 783 F. Supp. at 1444-46 (permitting defendant "to resume operations in the face of the SEC's overwhelming evidence of misguided (if not fraudulent) practices would be reckless").

Authorizing Reven to take on more debt without any more specific plan or proposal would be especially imprudent. By all accounts, Reven would need to raise tens of millions of dollars in order to resume clinical trials. *See* Doc. 124 at 7 (expenses for Phase 2 FDA trials were "at least ***$20 million***, and possibly much more"); Doc. 149 at 12 (remaining clinical trials would be "twenty to fifty million dollars' worth of expense"). Though resuming clinical trials is necessary to realize the value of Reven's patent portfolio, it is speculative whether taking on large debts in order to do so would be in investors' best interests. *Cf. SEC v. Smith*, No. 10-CV-457 (GLS/DRH), 2011 WL 9528138, at *4 (N.D.N.Y. Feb. 1, 2011) (incurring additional debts "might make sense if there existed any reasonable likelihood that the value of the property would appreciate sufficiently in the foreseeable future to compensate for the expenses," but "[n]o such likelihood appears"), *aff'd* 653 F.3d 121 (2d Cir. 2011); *see also SEC v. Int'l Loan Network, Inc.*, 770 F. Supp. 678, 696-97 (D.D.C. 1991) (continuing asset freeze to protect assets for distribution to investors, despite risk that doing so "virtually would put [the defendant] out of business"); *Forte*, 598 F. Supp. 2d at 692 (defendant must establish that proposed asset-freeze modification is in the interest of defrauded investors). Obtaining FDA approval for RJX will take years, if successful, and success is uncertain. Taking on millions in debt could have the effect of leaving Reven worse off and taking its value down to zero. *Cf. Current Fin. Servs.*, 783 F. Supp. at 1444 ("[The defendant's] underlying business involves a high level of risk, and therefore resuming operations would jeopardize whatever assets [it] now has."); *see also Abdallah*, 2017 WL 11680996, at *3 ("[T]he court has a duty to ensure that funds are available to compensate the victims in this case.").

Some of the other relief from the asset freeze that the defendants request, however, is appropriate to allow them to explore alternative

methods of obtaining the financing necessary to preserve Reven's assets and keep the company afloat.[10] The asset freeze is hereby modified as follows:

- To permit third parties to pay expenses on behalf of Reven and its affiliates (including operating expenses, intellectual property maintenance and prosecution expenses, and legal expenses, but expressly excluding payment of compensation to the Reven Principals). The defendants may license their intellectual property, but they must give notice to the Commission before consummating any license agreement; if the Commission objects to the proposed agreement, it must file an objection with the Court within one week of receiving notice; if the Commission files an objection, the defendants must respond within one week and may not consummate the agreement absent Court approval. The defendants may not otherwise encumber their assets or incur new debt absent Court approval upon motion identifying the amount of debt and/or the specific asset(s) sought to be encumbered;
- To permit the Reven Principals to earn new individual income unrelated to Reven and the other defendants and use such income to pay for costs incurred by Reven and its affiliates (including intellectual property maintenance expenses) and legal expenses incurred in connection with this litigation. Use of such income to pay for other personal expenses still requires application to the Court pursuant to Paragraph I(D)(1) of the asset freeze, Doc. 28 at 15-16;
- To permit the Reven Principals to incur new debt on an individual basis, including by using their remaining real or personal property as collateral for such debt, following Court approval upon motion identifying the amount of debt and the specific property sought to be encumbered, and to use such funds to pay for costs incurred by Reven and its affiliates (including intellectual

[10] Though I will not force a sale of the defendants' intellectual property at this stage of the case, it would seem wise for them to seriously consider whether a sale may be in the best interests of the company and its shareholders. Given that, by the defendants' own admission, Reven was already "in dire financial straits" in early October 2022—months before this case was filed and the asset freeze was imposed—it seems that obtaining alternative financing and resuming business operations and clinical trials, though understandably the defendants' preference, may not be particularly realistic. Doc. 145 at 7.

property maintenance expenses) and legal expenses incurred in connection with this litigation; and

- To permit motion to the Court to unfreeze individual bank accounts that do not contain funds attributable to the defendants, after conferral with the Commission to identify such accounts.

The defendants' motion to lift the asset freeze is granted in part as set forth above, and the Commission's request to appoint a liquidation agent to sell the defendants' intellectual property and freeze the proceeds of that sale is denied without prejudice to refiling upon conclusion of the appeal.

III. Defendants' Motion to Stay Pending Appeal

The defendants move to stay the asset freeze pending their appeal of my preliminary-injunction order to the Tenth Circuit.[11] Doc. 153.

A. Applicable Law

In evaluating a motion to stay a preliminary injunction pending interlocutory appeal, a court must consider:

> (1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.

Nken v. Holder, 556 U.S. 418, 434 (2009). The first two of these factors are the most critical; the movant must show more than a possibility of success on appeal, and more than a possibility of irreparable injury in the absence of a stay. *Id.* at 434-35. If a movant satisfies the first two

[11] The defendants also seek to stay further discovery, pretrial deadlines, and trial in this case while their appeal is pending. Doc. 153 at 1, 5-7, 10. That aspect of the defendants' motion is taken under advisement and will be referred to United States Magistrate Judge Susan Prose for resolution.

factors, the court must then assess the potential harm to the opposing party and the public interest. *Id.* at 435. "There is substantial overlap between these and the factors governing preliminary injunctions, not because the two are one and the same, but because similar concerns arise whenever a court order may allow or disallow anticipated action before the legality of that action has been conclusively determined." *Id.* at 434 (citation omitted).

B. Analysis

The defendants have not made a strong showing that they are likely to succeed on the merits of their appeal. Though they acknowledge that a stay pending appeal requires such a showing, they make no argument as to their likelihood of success on appeal, and instead simply incorporate by reference the arguments made in their prior briefs. Doc. 153 at 2. But I have already rejected those arguments. *See Robertson v. REP Processing, LLC*, No. 19-cv-02910-PAB-NYW, 2021 WL 5354713, at*4 (D. Colo. Oct. 12, 2021) ("[A] party seeking a stay pending appeal may not simply 'attempt to re-hash the same argument(s)' that the party made previously, which 'does not demonstrate a likelihood of success on appeal.'"). Contrary to the defendants' repeated and strenuous insistence that the Commission has failed to demonstrate "misappropriation" or otherwise substantiate the allegations in its complaint, I have found that the Commission has made a clear showing it is likely to prove that the defendants violated securities laws by knowingly, recklessly, or negligently making materially false or misleading statements or omissions to prospective investors regarding (1) executive compensation (taking in at least $4.89 to $5.75 million more than they disclosed to investors), (2) Reven's readiness for a public offering, and (3) a lawsuit alleging that some of the defendants had committed securities fraud, and that such violations are likely to recur absent an injunction. Doc. 122 at 7-27.

The defendants have not made the required showing for a stay, particularly on the "critical" merits factor, and their request to stay the narrowed asset freeze pending appeal is therefore denied.[12]

CONCLUSION

It is **ORDERED** that:

Defendants' and Relief Defendants' Motion to Narrow Preliminary Injunction to Lift Asset Freeze, **Doc. 124**, is **GRANTED IN PART** and **DENIED IN PART**;

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[12] At the time of my preliminary-injunction order, governing Tenth Circuit law provided that the traditional equitable factors, including irreparable harm, need not be shown in cases where the Commission seeks preliminary injunctive relief under the Securities Act and Exchange Act. Doc. 122 at 3-4. The Commission notes that that body of law has been called into question by the Supreme Court's recent decision in *Starbucks Corp. v. McKinney*, 144 S. Ct. 1570 (2024). Doc. 155 at 9 n.1 (citing *SEC v. Chappell*, — F.4th —, No. 23-2776, 2024 WL 3335652, at *6 to *10 (3d Cir. July 9, 2024) (citing *Starbucks* and holding that all four traditional preliminary-injunction factors apply in SEC cases)).

To the extent the Commission may now be required to demonstrate the traditional equitable factors—(1) a substantial likelihood of success on the merits, (2) irreparable injury in the absence of an injunction, (3) that its threatened injury without the injunction outweighs the defendants' under it, and (4) that the injunction is not adverse to the public interest—I find that those factors are satisfied in this case. *See* Doc. 122 at 3 (noting traditional factors). As discussed above, the Commission has made a clear showing of its likelihood of success on the merits. *Id.* at 7-26. Absent a prohibition against the offer and sale of securities by the Reven Principals, statutory violations are likely to recur, which could irreparably harm current and prospective investors. *Id.* at 26-28. And absent some kind of asset freeze, dissipation of the defendants' assets could irreparably harm existing investors and the availability of funds to pay any disgorgement or other future judgment. *Id.* at 27-28; Doc. 28 at 13. The partial lifting of the asset freeze as set forth in this Order balances the harm to the defendants of the injunction against the harm to the Commission and investors absent an injunction, and the injunction is not adverse to the public interest. *Cf. Chappell*, 2024 WL 3335652, at *17 to *18; *see also Nken*, 556 U.S. at 435 (government party's interests "merge" with public interest).

The Intervenor Investor Group's Motion to Intervene, **Doc. 133**, and Motion to Appoint General Receiver, **Doc. 135**, are **DENIED**; and

Defendants' and Relief Defendants' Opposed Motion for Stay Pending Appeal, **Doc. 153**, is **DENIED IN PART** as to the request to stay the asset freeze pending appeal, and **TAKEN UNDER ADVISEMENT** and **REFERRED** to Magistrate Judge Susan Prose as to the request to stay discovery and other proceedings pending appeal.

DATED: July 26, 2024

BY THE COURT:

~~Daniel D.~~ Domenico
United States District Judge