IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

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 & RESEARCH SERVICES, LLC,

Relief Defendants

INTERVENOR INVESTOR GROUP'S MOTION TO APPOINT GENERAL RECEIVER

I. INTRODUCTION AND RELIEF REQUESTED

Investors Leah Schaatt and Lee-Ann Frost (collectively "Investor Group")[1], two innocent investors in Reven Pharmaceuticals, Inc. and its successor Reven Holdings, Inc. ("Reven"), seek appointment of a General Receiver to marshal and sell the assets of Reven. The appointment of a General Receiver is necessary for the benefit of all of the 175 innocent investors who were harmed by Brian D. Denomme, Peter B. Lange, and Michael A. Volk's (collectively "Reven Defendants") misappropriation and misuse of investor funds for their personal enrichment at the expense of the operations of Reven.

There is no genuine dispute that Reven's portfolio of assets—chiefly comprised of limited remaining liquid assets, 12 domestic pharmaceutical patents, 21 international pharmaceutical patents, over 100 domestic and international pending patent applications, FDA vendor data, and all associated intellectual property (e.g., formulations, lab notes, clinical data, and test result data) is continuing to diminish in value, with a serious risk of a total loss in value of all its IP assets if certain maintenance obligations and FDA clinical trial work are not funded in a timely manner. There is also no genuine dispute that Reven cannot meet those financial obligations with the asset freeze in place.

However, the Reven Defendants, in their motion to eliminate the asset freeze, propose a poor choice for solving this predicament. The Reven Defendants seek to box the Court into a corner by claiming the only two paths are either return control of Reven and its assets back to the Reven Defendants or allow Reven's assets to collapse in value. The Reven Defendants ignore the third choice that is available to this Court: appointment of a true third-party neutral as a General

[1] The relief sought by the Investor Group is joined by Jeffrey Green. *See* Green Decl.

Receiver, who serves as an officer of this Court, who may then retain all necessary professionals to preserve the value of Reven's assets for the benefit of its *innocent investors*.

The Receiver would have authority to maintain the assets of Reven without fear that the Reven Defendants would further squander the investors' funds and would be able to enter into any contracts on Reven's behalf, including any contract to sell Reven's assets for their present fair market value, and make those funds available to the wronged investors to recoup their investment. Appointment of receivers is a well-recognized and long-standing preliminary remedy in SEC enforcement actions, and would best serve the interests of all parties to this case. The SEC is not opposed to the potential appointment of a receiver, but requires further time to vet this specific proposal and proposed receiver.

The Investor Group respectfully requests their motion to appoint a receiver be granted.

II. STATEMENT OF FACTS

A. Background and Procedural Posture

The relevant facts have already been exhaustively briefed to this Court and will not be restated in full here. Briefly, the Investor Group is comprised of two individuals who, along with the Frost family and Mr. Green, collectively invested approximately $12 million dollars in Reven between 2019 and 2021, representing approximately 25% of $44 million invested in Reven in that time period. Schaatt Decl., ¶7, Frost Decl., ¶7, Green Decl., ¶4**.** During that period, the Reven Defendants made numerous false and misleading statements to the Investor Group and other investors. These statements included severely understating the amount of their compensation by millions of dollars, misrepresenting that Reven was about to have an imminent direct public offering ("DPO"), and was about to complete all necessary audited financial statements which

were a condition precedent to that DPO. Dkt. 9, 11, 12. This also includes a failure on the part of the Reven Defendants to fully and accurately disclose the existence, basis, and details of 2016 lawsuit against Reven and Reven Defendants in the Twelfth Judicial Circuit of Sarasota County, Florida, and the use of investor funds to pay a settlement. *See* Dkt. 7, ¶¶53-55; Dkt. 11; Dkt. 3, p. 21.

Plaintiff, U.S. Securities and Exchange Commission ("Plaintiff" or "SEC"), filed this instant suit against Reven and the Reven Defendants on December 9, 2022. Dkt. 1. Contemporaneous with that complaint, the SEC applied for a Temporary Restraining Order and Asset Freeze, which was granted on January 3, 2023. Dkt. 3, 28.

On March 29, 2024, after briefing from the parties, this Court extended the TRO and Asset Freeze through a preliminary injunction. Dkt. 122. However, the Court allowed the Reven Defendants an opportunity to move to "address[] the scope of the preliminary equitable relief in light of this Order, including whether a more narrow preliminary remedy or lifting of the asset freeze in whole or in part is appropriate pending final resolution of this case." *Id.*, p. 29.

B. Status of Reven's Intellectual Property and Other Assets.

At this time, Reven's remaining assets are as follows: a limited amount of reserve cash, 12 domestic pharmaceutical patents and 28 pending domestic patent applications, 21 international pharmaceutical patents and 98 pending patent applications, FDA vendor data, and all associated intellectual property (e.g., formulations, lab notes, clinical data, and test result data) Wooten Decl., Exh. 1. *See also* Volk Decl., Dkt. 96-2, ¶2.

Both in response to the SEC's motion for a preliminary injunction, and again in response to the Court's order directing supplemental motion practice on the scope of the Asset Freeze, the

Reven Defendants articulated in general terms their concern that the Asset Freeze would have the unintended effect of harming the value of Reven's remaining assets by impairing Reven's ability to make patent maintenance payment, unlock critical clinical trial data, and otherwise continue to advance their pharmaceutical candidates through the FDA approval process. *See, e.g.*, Dkt. 96, 96-2, 124. Specifically, they allege that the Asset Freeze has prevented Reven from raising additional capital from current and/or new investors, which would be used to pay patent prosecution and maintenance expenses, expenses associated with Phase II clinical trials for Reven's most promising pharmaceutical candidate, Rejuvinex ("RJX"), clinical development staff, and the expenses necessary to reconcile and audit its financial records in preparation for a public offering. Volk Decl., Dkt. 96-2, ¶¶26-29. The Reven Defendants have alleged that the costs of the access to the clinical data alone have cost Reven "at least 18 months of time and ***tens of millions of dollars***." *Id.* at ¶27 (emphasis in original).

Though the Reven Defendants do not provide more specificity to explain or justify this position, let alone explain why they ought to be trusted to resume their failed stewardship over those assets, the Investor Group has independently corroborated the Reven Defendants' claims about the risk of diminution in value of Reven's remaining assets. Specifically, they have retained Dr. Alyson Wooten of Berkeley Research Group, a doctor of pharmacy and intellectual property lawyer with over 25 years of relevant experience. Wooten Decl., Exh. 1. She has evaluated Reven's patent portfolio, its progress through the FDA approval process, the status of its clinical trials and delay in accessing and unlocking Reven's clinical trial data, and opined that the delay has caused a measurable decrease in the value of Reven's IP assets. Wooten Decl., Exh. 1 ¶¶ 39-40. In her opinion, Reven is financially constrained from performing the millions of dollars of

necessary work to preserve its patent portfolio by completing all necessary clinical trial work prior to the expiration of its patents, risking a total loss in the value of the company. Wooten Decl., Exh. 1, ¶¶32-41.

III. AUTHORITY AND ARGUMENT

A. Standard.

A district court may appoint a receiver in an SEC enforcement action if necessary "to effectuate the purposes of the federal securities laws." *S.E.C. v. Manor Nursing Centers, Inc.*, 458 F.2d 1082, 1105 (2d. Cir. 1972). A receiver has "broad powers in administering, retrieving, and disposing of assets belonging to the receivership," and a receiver has authority to "protect receivership property, real, personal or mixed, situated in different districts." *S.E.C. v. Ross*, 504 F.3d 1130, 1145 (9th Cir. 2007). *See also S.E.C. v. Vescor Capital Corp.*, 599 F.3d 1189, 1193-94 (10th Cir. 2010) ("the district court has broad powers and wide discretion to determine…relief in an equity receivership."). A receiver must manage and operate property "according to the requirements of the valid laws of the State in which such property is situated." *Vescor Capital Corp.*, 599 F.3d at 1193-94. Receiverships are available before final judgments are entered, and receivers are often appointed along with other preliminary relief, such as an asset freeze and a temporary restraining order. *S.E.C. v. United Financial Group, Inc.*, 474 F.2d 354, 358-59 (9th Cir. 1973).

Federal Rule of Civil Procedure 66 governs appointment of a receiver. The power of a federal district court to appoint a receiver derives from its equity jurisdiction. *See Burnrite Coal Briquette Co. v.* Riggs, 274 U.S. 208, 212 (1927); *Inland Empire Ins. C. v. Freed*, 239 F.2d 289,

292 (10th Cir. 1956). *See also United Financing* Group, 474 F.2d at 358-59. This Court has applied the following factors when evaluating motions to appoint a receiver:

1. [W]hether the party seeking the appointment has a valid claim;
2. [W]hether there is fraudulent conduct or the probability of fraudulent conduct, by the defendant;
3. [W]hether the property is in imminent danger of being lost, concealed, injured, diminished in value, or squandered;
4. [W]hether legal remedies are inadequate;
5. [W]hether the harm to plaintiff by denial of the appointment would outweigh injury to the party opposing appointment;
6. [T]he plaintiff's probable success in the action and the possibility of irreparable injury to plaintiff's interest in the property; and
7. [W]hether the plaintiff's interests sought to be protected will in fact be well-served by receivership.

See Waag v. Hamm, 10 F.Supp.2d 1191, 1193 (D. Colo. July 23 1998) (applying *Aviation Supply Corp. v. R.S.B. I. Aerospace, Inc.*, 999 F.2d 314, 316 (8th Cir. 1993).

B. Equitable Factors All Favor Appointment of a Receiver In this Matter.

First, the Investor Group has a valid claim for the appointment of a receiver in this case. This Court has already entered a preliminary injunction order finding that Plaintiff is likely to prevail on its claims that the Reven Defendants made material misstatements to potential investors, and misappropriated millions of dollars of investor funds, thus violating multiple provisions of the Securities Act of 1933, the Securities Exchange Act of 1934, and Rule 10b-5. Further, "[w]here there is no likelihood that a surplus will exist from the frozen assets in the event the SEC prevails in the underlying action, courts have considered the 'investors, on whose behalf the assets were frozen,' to have a 'heightened interest in having those assets maintained without further diminution pending the outcome of the action.'" *Securities and Exchange Commission v. End of the Rainbow Partners, LLC*, 2019 WL 8348323, *4 (D. Colo. Nov. 25, 2019). This is precisely the sort of

situation where both the SEC, and, by extension, the investors the SEC is charged with protecting, have valid claims against the Reven Defendants as principals of Reven.

Second, this Court has already determined that the Reven Defendants are likely to have violated the anti-fraud provisions of federal securities law, and that "a prohibition against offering or selling Reven Holdings securities will protect existing investors and potential new investors from being subject to *additional fraudulent activities* while the litigation is pending." Dkt. 122, p. 28 (emphasis added). Asset dissipation and a prima facie showing of fraud and mismanagement are grounds for appointment of a receiver in an SEC Enforcement action. *S.E.C. v. Current Financial Services, Inc.*, 783 F.Supp. 1441, 1443 (D.D.C. 1992). Put simply, the fraudulent conduct of Defendants, taken in connection with their sale of securities, is at the heart of this case, and this Court has already determined that the SEC is more likely than not to prevail on proving those claims.

Third, Reven's remaining property is in imminent danger of being lost, concealed, injured, diminished in value, or squandered. All parties seem to agree that Reven's only remaining asset of any real value is its portfolio of pharmaceutical patents and intellectual property, including the RJX patent. However, all of Reven's patents require ongoing patent maintenance payments and associated legal work to retain their patent protection. Should maintenance payments not be made, the patent protection would lapse. Wooten Decl., Exh.1, ¶¶17-26.

Further, the patents themselves are not intrinsically valuable; pharmaceutical companies must spend millions of dollars not only to develop a potential pharmaceutical from those patents, but to advance the patents through the rigorous and expensive FDA approval process. Wooten Decl., Exh. 1 ¶¶27-31. The patent period provides pharmaceutical companies with incentive to

engage in the expensive and intensive process of obtaining FDA approval, knowing that after they have spent tens of millions of dollars and several years to come out the other side of that process, they would have a period of patent exclusivity in which they could recoup their investment. *Id.* at ¶¶17-18.

In this case, even Reven's most promising pharmaceutical candidate, RJX, is still years away from FDA approval. Indeed, RJX has been unable to complete Phase II of the current clinical trials, and, according to industry statistics, Reven may be required to spend in the range of $22 to $53 million to complete the required Phase III clinical trials. *Id.* at 28. Even were Reven's bank accounts not subject to the Asset Freeze, what little remains in those accounts will not prove to be adequate to make basic patent maintenance, let alone continue to spend the significantly greater sums required to continue to advance Reven's pharmaceutical candidates through the FDA approval process. This is significant as Reven's patent portfolio has only five to eight years remaining before the patent protection expires, and the remaining clinical trial timeline is between four and seven years. *Id.* at ¶35.

In short, if the patent holder for a pharmaceutical patent is not actively working towards—and spending considerable financial resources in the process—to advance the pharmaceutical candidate through the FDA process, the value of those assets has a one-way trajectory: Down. *See* Wooten Decl., Exh. 1, ¶40. A receiver is necessary *now* to preserve what value still exists in Reven's IP portfolio.

Fourth, other lesser remedies are inadequate in this case. On the one hand, the Reven Defendants' pending request to eliminate the asset freeze and resume operations of Reven is frankly absurd. By their own fraudulent conduct, the Reven Defendants are the reason that Reven's

assets have been frozen and its investors harmed. Having caused the damage to Reven's assets and investors by misappropriating investment funds for their own personal enrichment, the Reven Defendants should not be allowed to use these exigent circumstances to justify returning to the status quo before the asset freeze was put in place. Further, simply returning the Reven bank accounts to the Reven Defendants' control would be inadequate: the cost of continuing FDA clinical trials far exceeds the funds available in Reven's bank accounts. As the SEC observed, in their opposition to this request, the only plausible way the Reven Defendants could generate the necessary capital to fund this process, short of an outright sale of the company's assets, would require the Reven Defendants to *sell more securities*. The Reven Defendants have been justifiably enjoined from any further sales of securities in order protect "potential new investors from being subject to *additional fraudulent activities* while the litigation is pending." Dkt. 122, p. 28 (emphasis added).

For its part, the SEC properly argues that the asset freeze is necessary to protect investors, as "the Court can supervise the existing assets, and vet any proposed modification to the freeze to ensure that any carve-out will maximize asset value and be in the best interests of investors." Dkt. 127, p. 13. However, the SEC also acknowledges that they "would welcome specific proposals to maximize the value of the intellectual property, such as a specific proposed transaction to license or sell the intellectual property or a detailed plan ***for a third-party entity*** to manage the intellectual property." Dkt. 127, p. 11 (emphasis added). That is *precisely* what the Investor Group proposes: place a third-party general receiver in charge of Reven and its assets, with full operational power over the company, including the power to sell of the assets of the company while they still have value.

The power of sale will be especially critical in this case. As already established, Reven would be required to expend tens of millions dollars in order to meet its ongoing maintenance obligations and clinical trial expenses to preserve what remains of Reven's IP value. As Reven has no other source of revenue, it would normally be required to raise funds through investment or debt financing to fund those operations. Given the present state of this suit and the claims levied against the Reven Defendants, permitting that sort of capital investment is facially ludicrous, and the prospect of finding realistic financing is dubious at best.

However, while the IP still has residual value, other buyers may remain interested in purchasing that IP for its fair market value in an arm's length transaction after a competitive bidding process. Wooten Decl., Exh. 1, ¶¶32-40. A receiver with power of sale can broker and consummate such a transaction, and preserve the funds pending the outcome of this suit. Equally, it is standard for the receiver to be paid from the proceeds of the sale, so any immediate expense to retain the receiver would be minimal. Additionally, the receiver has the ability to advance expenses or obtain loans, which are also repaid from the proceeds of the sale, thereby facilitating a smooth and transparent process.

The Reven Defendants have not put forward a plan, and are presenting this matter as a binary choice: either return control of Reven to the Reven Defendants, or let the company's assets be destroyed as an unintended consequence of the stay. The Investor Group's proposed solution is far more reasonable, and walks the middle ground between maximizing and preserving the value of Reven's remaining assets, while avoiding the inherent dangers of returning control of those assets to the Reven Defendants.

Fifth, any alleged harm to the Reven Defendants by imposition of a receiver is far outweighed by the harm the innocent investors would suffer should a receiver *not* be appointed. It is undisputed in this record that Reven's IP and clinical data assets are continuing to lose value as time passes. The Investor Group has a firm basis for concern that as time passes without disposition of Reven's assets, the value of their investment will ultimately go to zero. On the other hand, the Reven Defendants are not prejudiced by appointment of a receiver. This Court has already determined that the Reven Defendants likely misappropriated millions of dollars of investor funds during their "operation" of Reven in the past. They will likely be required to disgorge many millions of dollars *back* to the innocent investors whom they defrauded. The Reven Defendants are already enjoined from utilizing any of Reven's assets; all of the harm they could allege out of a sale of the assets is already self-inflicted.

Sixth, Plaintiff's likelihood of success in this action against the Reven Defendants has already been established by dint of this Court's Order Granting a Preliminary Injunction. Dkt. 122. Likewise, the record is undisputed that Reven's value continues to irreparably decline with the passage of time unless it is allowed to operate (which, for already articulated and prudent reasons, the Reven Defendants should not be allowed to do) or its assets placed into the charge of a third party who can appropriately dispose of those assets for the benefit of harmed investors. Thus, the Investor Group and all of Reven's other innocent investors stand to suffer irreparable harm if a receiver does not take charge of Reven's assets.

Finally, the interests which Plaintiff and Investor Group seeks to protect would be well-served by appointment of a receiver. Again, the investors have a heightened interest in having Reven's "assets maintained without further diminution pending the outcome of the action."

Rainbow Partners, LLC, 2019 WL 8348323, at *4. Federal district courts have "the equity power to appoint a receiver when necessary to prevent diversion or waste of assets to the detriment of those for whose benefit, in some measure, [an] injunction is brought." *S.E.C. v. American Board of Trade, Inc., et al.*, 645 F.Supp. 1047, 1052 (S.D.N.Y., 1986). A third-party neutral such as a receiver is the only entity capable of performing that function in this case: the SEC is not equipped to (nor has the authority to) directly manage and maintain Reven's assets, and the Reven Defendants have already demonstrated themselves to be poor stewards of Reven's assets.

C. Appointment of a Receiver is a Common Remedy in SEC Enforcement Actions.

Entry of an order appointing a receiver in this case is appropriate for another reason: the historical and regular practice of federal courts commonly includes appointment of receivers over the assets of an entity subject to an SEC enforcement action. Indeed, it is a remedy that often is entered in the *initial* stages of the case. *See, e.g., S.E.C. v. Flight Transp. Corp.*, 699 F.2d 943, 945 (8th Cir. 1983) (noting that the District Court appointed a receiver at the same time as it entered its initial asset freeze and temporary restraining order against the Defendant and its principal for violations of the antifraud, reporting and recordkeeping requirements of federal securities law); *S.E.C. v. Homa*, 17 Fed.Appx. 441, 445-46 (7th Cir. 2001) (noting that a receiver had been appointed in an SEC enforcement action who could adjudicate creditor claims against the entity subject to the SEC enforcement action). *See also, e.g., Wing v. Dockstader*, 482 Fed.Appx. 361, 362 (10th Cir. 2012) (noting that a federal receiver had been appointed over an entity in an SEC enforcement action in the District of Utah).

Indeed, the SEC's website[2] lists approximately 100 active receiverships proceeding inside SEC enforcement actions, including two currently pending in the District of Colorado: *S.E.C. v. Lester*, 1:15-cv-02301-CMA-MLC and *S.E.C. v. Mantria*, 1:09-cv-02676-CMA-MJW. In the *Mantria* case, a receiver was appointed as part of the SEC's requested *preliminary* relief, rather than after entry of a final judgment. *See S.E.C. v. Mantria*, 1:09-cv-02676-CMA-MJW, Dkt. 69 and Dkt. 82. Entry of an order appointing a general receiver in this case would thus be exactly in line with regular, routine practice in similarly situated SEC enforcement cases.

For its part, counsel for the SEC has confirmed that, in concept, the SEC is not opposed to the potential appointment of a receiver, subject to their further vetting of the Investor Group's proposal and proposed receiver. 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.

IV. CONCLUSION

All parties appear to agree that the status quo is untenable, and could lead to catastrophic unintended consequences for Reven's innocent investors. Something must be done to realize what value remains in Reven during the pendency of this case, otherwise, the parties run the real risk that the SEC will prevail only to find no value remains to compensate investors for the harms caused by the Reven Defendants.

However, the solution is *not* to give the Reven Defendants even a modicum of relief from the Asset Freeze, given the peril that approach poses to Reven's innocent investors. Rather, a

[2] U.S. Securities and Exchange Commission, *Receiverships*, https://www.sec.gov/divisions/enforce/receiverships (last visited April 30, 2024).

general receiver is the best path forward. An independent, court-appointed general receiver can take charge of the company and realize the maximum amount of value out of Reven's assets, while minimizing risk that Reven's assets will further lose value, or that the Reven Defendants will further exploit Reven for their personal enrichment.

The Investor Group requests their motion be granted and a General Receiver with power of sale be appointed over all of Reven's assets.

Respectfully submitted,

Dated: May 10, 2024

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CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATIONS

Above-signing counsel hereby certify that the foregoing pleading is comprised of 3,898 words, exclusive of the caption, signature block, and certificate of service, and therefore complies with the type-volume limitations set forth in Judge Domenico's Practice Standard III(A)(1).

CERTIFICATE OF CONFERRAL

Pursuant to D.C.Colo.L.CivR 7.1, On May 7, 2024 and in follow-up on May 8-9, 2024, counsel for the Investor Group conferred with counsel for the SEC, and counsel for the SEC states as follows: the SEC is not opposed to the potential appointment of a receiver, however counsel for the SEC requires additional time and information to vet this specific proposal, including the proposed receiver, and intends to submit a brief stating its position on the Motion in due course if the Reven Investors' Motion to Intervene is granted and the instant Motion is deemed filed.

On May 7, 2024 counsel for the Investor Group conferred with counsel for Defendants about this motion to intervene. Counsel for Defendants indicated that he would need to speak with his clients, but anticipated that the motion would be opposed. Counsel for the Investor Group explained both during the call and in a follow-up email that the Investor Group intended to file the motion on May 9, 2024, and for counsel for the Defendants consider stipulating to the relief requested, otherwise no further response would be confirmation that Defendants opposed the relief requested herein. Counsel for Defendants subsequently confirmed their opposition.

DECLARATION OF SERVICE

I hereby certify that on May 10, 2024, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following e-mail addresses:

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DATED this 10th day of May, 2024.

/s/ Sean V. Small
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