IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No.

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.

PLAINTIFF UNITED STATES SECURITIES AND EXCHANGE COMMISSION'S *EX PARTE* EMERGENCY MOTION FOR A RULE 65(b)(1) TEMPORARY RESTRAINING ORDER, AN ASSET FREEZE, AND OTHER EMERGENCY RELIEF AND BRIEF IN SUPPORT

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1		Declaration of Kim Greer, SEC Senior Counsel
	A	Secretary of State information
	B	Reven website printout with contact information
	C	Reven Holdings Inc. Form D
	D	2018-08-21 Asset Contribution Agreement and Plan of Reorganization
	E	Reven Pharmaceuticals, Inc. Form D
	F	Reven website printout with management information
	G	2018-08-14 Reven Holdings, Inc. Action by Unanimous Consent
	H	2018-08-31 Private Placement Memorandum
	I	2022-05-25 Reven IP Holdco License Agreement
	J	2019-01-13 Reven Oncology Licensing License Agreement
	K	2022-11-17 Brian Denomme transcript excerpts
	L	2018-08-21 Reven Pharmaceuticals Action of Written Consent
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	Q	April 2020 Emails with Attachments

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	U	2017 Employment Agreements
	V	2019 Employment Agreements
	W	Reven Holdings Inc. Bylaws
	X	Document Subpoena
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	B	Reven Consolidated Wells Fargo Accounts, Deposits and Withdrawals, September 13, 2019 to October 3, 2019
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8		Excerpts from November 30, 2022 SEC Investigation Testimony Transcript of Rudy Rudolph, Tax Partner at Accounting Firm Eide Bailly
	A	2021-07-28 Reven Holdings Inc. Trial Balance Report
9		[Proposed] Order Granting Plaintiff's Ex Parte Emergency Motion for a Rule 65(b)(1) Temporary Restraining Order, An Asset Freeze, and Other Emergency Relief

Defendants Reven Holdings, Inc. ("Reven"), Reven Pharmaceuticals, Inc. ("Reven Pharmaceuticals") (collectively, the "Companies"), both start-up pharmaceutical companies, and their co-founders, directors, most-senior executive officers, and, collectively, majority owners, Defendants Brian Denomme, Peter Lange, and Michael Volk (Denomme, Lange, and Volk, collectively, "Reven Principals") (collectively, "Defendants") bilked investors out of over $8.8 million. Starting on or before January 2019 and continuing through the present (the "Relevant Period"), purportedly to develop a drug called Rejuveinix ("RJX"), Defendants raised at least $44 million from approximately 175 investors. During the Relevant Period, Defendants misappropriated at least $8.8 million in investor funds. Defendants misappropriated investor money through a variety of means, including by funneling investor funds from Reven's and Reven Pharmaceuticals' bank accounts through a shell company, Relief Defendant Health Analytics & Research Services, LLC ("Health Analytics"), that the Reven Principals jointly owned, and into the Reven Principals' personal bank accounts. At times, the Reven Principals also paid various personal expenses, including mortgages, personal credit cards, travel for themselves and their family members, Tesla and Mercedes car leases, and expensive jewelry with investor funds.

During the Relevant Period Defendants also made numerous false and misleading statements in connection with the offer and sale of securities to investors, including representations about the amount of compensation they earned (they took millions of dollars of investor funds in addition to the compensation they disclosed), that Reven had or would soon have audited financial statements (it did not and could not given that no auditors had even been retained), that Reven would soon launch a public offering (similarly, it could not because it

needed audited financials, among other things, to do so), the specific use of investors' funds to be used for clinical drug trials or to complete its public offering (it instead used funds to pay off pending litigation and to pay other third parties unrelated to Reven), and that there was no litigation (in fact, Reven and some of its principals had been sued for conduct giving rise to securities fraud).

This fraud is ongoing; Defendants have solicited investors making false and misleading statements as recently *as late this October*. To stop this fraud and preserve the status quo by preventing further fraudulent solicitations and preserving existing investor assets, the United States Securities and Exchange Commission ("SEC") brings this emergency action, under Federal Rule of Civil Procedure 65(b)(1) to request that the Court enter an order:

1) temporarily restraining Defendants from violating Section 17(a) of the Securities Act of 1933 ("Securities Act"), 15 U.S.C. § 77q(a), Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. § 78j(b), and Exchange Act Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5; and, in the alternative, temporarily restraining the Reven Principals from violating Section 20(a) of the Exchange Act for each of Reven's and Reven Pharmaceuticals' violations under the Exchange Act;

2) subject to the asset freeze, *infra*, temporarily restraining the Reven Principals from directly or indirectly, including, but not limited to, through any entity owned or controlled by them, participating in the issuance, purchase, offer, or sale of any security, provided, however, with the exception of any securities issued by Reven or Reven Pharmaceuticals, that such injunction shall not prevent them from purchasing or selling securities for their own personal account;

3) temporarily freezing assets and funds of Defendants and Relief Defendants;

4) prohibiting Defendants and Relief Defendants from the alteration or destruction of documents;

5) requiring an accounting by the Defendants and Relief Defendants;

6) permitting expedited discovery;

7) permitting alternative means of service; and

8) setting a preliminary injunction hearing requiring the Defendants and Relief Defendants to show cause why the order should not continue until resolution of the merits of the litigation.[1]

STATEMENT OF FACTS

I. DEFENDANTS' AND RELIEF DEFENDANTS' BACKGROUND AND THE FORMATION OF REVEN AND THE REVEN PRINCIPALS' CONTROL OF REVEN AND REVEN PHARMACEUTICALS

A. Defendants

Brian Denomme, age 59, is a resident of Northville, Michigan. (Ex. 1, Declaration of Greer, "Greer Decl." ¶ 13.) Denomme is a Reven co-founder, a member of Reven's board, and Reven's president. (*Id.*) He was formerly Reven's chief operating officer ("COO"). (*Id.*) He owns approximately 17% of Reven's shares, as of July 6, 2020, and collectively with Lange and Volk controls the majority of Reven stock. (*Id.* ¶¶38-39, Ex. M at SEC-REVEN-E-0006351.)

[1] D.C.COLO.LCivR 7.1 Certification: As explained in the Rule 65(b)(1) Certification of Kenneth E. Stalzer, filed with this motion, the SEC believes that, if Defendants become aware of this action before the asset freezes are instituted, they will dissipate their assets. Accordingly, the SEC has not conferred with Defendants regarding this *Ex Parte* Emergency Motion.

Peter B. Lange, age 64, is a resident of San Antonio, Texas. (*Id.* ¶ 14.) Lange is a Reven co-founder, a member of Reven's board, and Reven's chief executive officer ("CEO"). (*Id.*) Lange is a dual US and Swiss citizen. (*Id.*) He owns approximately 18% of Reven's shares, as of July 6, 2020, and collectively with Denomme and Volk controls the majority of Reven stock. (*Id.* ¶¶38-39, Ex. M at SEC-REVEN-E-0006351.)

Michael Volk, age 54, is a resident of Broomfield, Colorado. (Ex. 1, Greer Decl. ¶ 15.) Volk is a Reven co-founder, a member of Reven's board, and Reven's chief strategy officer ("CSO"). (*Id*.) Until April 2020, Volk was Reven's chief financial officer ("CFO"). (*Id*.) Despite his current title, Volk is currently Reven's acting CFO. (*Id.*) He owns approximately 16% of Reven's shares, as of July 6, 2020, and collectively with Denomme and Lange controls the majority of Reven shares. (*Id.* ¶¶ 38-39, Ex. M at SEC-REVEN-E-0006351.)

Reven Holdings, Inc. ("Reven") is a Delaware corporation, with its principal place of business in Westminster, Colorado. (Ex. 1, Greer Decl. ¶ 11.) Reven was formed in August 2018 as a privately held biotechnology and pharmaceutical holding company with the purpose of acquiring and commercializing pharmaceutical assets in various stages of clinical development, including a cardiovascular intravenous drug treatment, called RJX, which is a purported treatment for critical limb ischemia, sepsis, cancer, viral illnesses, and COVID-19. (*Id.*) Reven does business as "Reven Pharmaceuticals." (*Id.* ¶ 12, 21.) Denomme, Lange, and Volk are its sole acting directors, are the most senior officers of the company, collectively are the majority owners of Reven's stock, and are signatories on and control Reven's bank accounts. (*Id.* ¶¶ 13-15, 38-39; Ex. 2, Declaration of Donna Walker, "Walker Decl." ¶¶ 6-18.)

Reven Pharmaceuticals, Inc. was a Florida corporation formed in October 1999, located in Golden, Colorado. (Ex. 1, Greer Decl. ¶ 12.) On August 21, 2018, pursuant to an Asset Contribution Agreement and Plan of Reorganization, Reven Pharmaceuticals transferred its assets and liabilities to relief defendant Reven, LLC, a wholly owned subsidiary of Reven, and Reven Pharmaceuticals shareholders became proportionate shareholders of Reven. (*Id*.) In September 2019, Reven Pharmaceuticals was administratively dissolved as a Florida corporation, but presently maintains an active bank account where investor funds are deposited and proceeds are disbursed. (*Id*.) Reven does business as Reven Pharmaceuticals, and the Defendants use the names Reven and Reven Pharmaceuticals interchangeably. (*Id.* ¶ 21; *see also* Ex. 3, Declaration of Leah Schaatt ("Schaatt Decl.") ¶¶ 4, 29, Exs. A at SEC-SchaattL-E-0003887-88, J at SEC-SchaattL-E-0004078.) The Reven Principals are signatories on and control Reven Pharmaceuticals' bank accounts. (Ex. 2, Walker Decl. ¶¶ 6-8, 18.)

B. Relief Defendants

Reven, LLC, a Delaware limited liability company formed in August 2018, with its principal place of business in Westminster, Colorado, is a wholly owned subsidiary of Reven. (Ex. 1, Greer Decl. ¶16.) In its offering materials, Reven describes Reven, LLC as its operating company. (*Id.*) In August 2018, Reven Pharmaceuticals transferred its assets, including its intellectual property ("IP"), to Reven, LLC. As a result, it appears that Reven, LLC owns or controls some or all of the IP relating to RJX. (*Id.* ¶ 16.)

Reven IP Holdco LLC, a Delaware limited liability company formed in June 2020, with its principal place of business in Westminster, Colorado, is a subsidiary of Reven. (*Id.* ¶ 17.)

Reven LLC appears to have transferred some or all of its IP assets, including the IP relating to RJX, to Reven IP in 2020. (*Id.*)

Reven Oncology Licensing, LLC is a Delaware limited liability company formed in November 2018, with an address in Golden, Colorado. (*Id.* ¶ 18.) Reven Oncology is a subsidiary of Reven LLC. A license agreement between Reven Oncology and a third party states that Reven Oncology owns or otherwise controls the IP relating to RJX. (*Id.* ¶ 18, Ex. J at SEC-REVEN-E-0017156.)

Health Analytics & Research Services LLC, a Colorado limited liability company formed in September 2017, with an address in Broomfield, Colorado listed with the Colorado Secretary of State, is a shell company owned by the Reven Principals and principally controlled by Volk (*Id.* ¶ 19.)

C. The Formation of Reven and the Reven Principals' Control of Reven and Reven Pharmaceuticals

1. The Formation of Reven

The Reven entities' corporate history extends back to at least 1999, including two different name changes before adopting the name Reven Pharmaceuticals in 2009. (Ex. 1, Greer Decl. ¶ 20.) Reven operated as Reven Pharmaceuticals from 2009 until the present (*Id.* ¶¶ 20-21.) In August 2018, Reven was formed as a Delaware Corporation through a reorganization of Reven Pharmaceuticals. (*Id.* ¶¶ 11, 22, Ex. D.) Reven is a successor corporation to Reven Pharmaceuticals, but continues to do business as Reven Pharmaceuticals. (*Id.* ¶ 21, Exs. B, D.)

In August 2018, Reven Pharmaceuticals transferred all of its assets and liabilities to Reven LLC, a wholly-owned subsidiary of Reven and its operating company, in exchange for approximately 392 million Reven shares. (*Id.* ¶ 22, Ex. D.) Reven LLC then distributed those

Reven shares to Reven shareholders in amounts proportionate to their prior interests in Reven Pharmaceuticals. (*Id.* ¶23, Ex. D.) Reven Pharmaceuticals was administratively dissolved as a Florida corporation in September 2019. (*Id.* ¶ 12, Ex. E.) During the Relevant Period, Reven investor funds were deposited in two bank accounts; one in the name of Reven, and one in the name of Reven Pharmaceuticals. (Ex. 2, Walker Decl. ¶ 3.) The majority of disbursements to the Reven Principals were made from the bank account in the name of Reven Pharmaceuticals. (*Id.*)

2. The Reven Principals Owned and Controlled Reven and Reven Pharmaceuticals.

Throughout the Relevant Period, Reven's corporate documents, private placement memorandums ("PPMs"), Investor Decks, Employment Agreements, and email signature lines represented Lange was a co-founder, director, and CEO of Reven; Denomme was a co-founder, director, and COO or President of Reven; and Volk was a co-founder, director, and CFO or Chief Strategy Officer of Reven. (Ex. 1, Greer Decl. ¶¶ 13-15, 26, 30, Exs I, M, N, Q, R, S; Ex. 3, Schaatt Decl. ¶¶ 4, 29, Exs. A at SEC-SchaattL-E-0003806, 3890, J at SEC-SchaattL-E-0004075, 4097.) As of July 6, 2020, Denomme owned 80,186,181 Reven shares, Lange owned 84,861,290 Reven shares, and Volk owned Reven 76,952,529 shares out of 470,766,654 shares. (Ex. 1, Greer Decl. ¶¶ 38-39.) Thus, as of July 6, 2020, the Reven Principals owned, collectively, 242,000,000 shares of Reven stock, or 51%. (*Id.* ¶ 39.)

Reven's Bylaws state that board resolutions pass with a majority of the authorized directors, and that a majority vote of the shares present at any stockholders meeting constitutes an act of the stockholders. (Ex. 1, Greer Decl. ¶ 37, Ex. W.) Thus, the Reven Principals had

controlling power over board and shareholder votes.[2] Moreover, in testimony during the SEC's investigation, Denomme testified that he, Lange, and Volk wanted to own at least 51% of Reven's shares in order to control Reven and thus took steps to ensure that they, collectively, had enough shares to be majority owners.[3] (Ex. 4, Denomme Tr. 178:2-14.) Each of the Reven Principals is a signatory on and has authority over the Reven and Reven Pharmaceuticals bank accounts into which investor funds were paid and disbursements were made. (Ex. 2, Walker Decl. ¶¶ 6-8, 18.)

II. DEFENDANTS RAISED AT LEAST $44 MILLION FROM AT LEAST 175 INVESTORS DURING THE RELEVANT PERIOD

On September 18, 2018, Reven filed an SEC Form D, Notice of Exempt Offering of Securities, for a total offering amount of $350 million.[4] (Ex. 1, Greer Decl. ¶ 11, Ex. C.) Thereafter, Reven raised at least $44 million from approximately 175 investors through the sale of Reven securities, including common stock and notes convertible to common stock. (*Id.* ¶ 24.) Reven continues to offer securities to investors and has done so as recently as October 2022. (Ex. 3, Schaatt Decl. ¶ 33.)

[2] Some Reven documents, such as organization charts and a press release, state that a fourth person was appointed to Reven's board of directors in 2019, but Denomme testified that this person only telephonically attended a couple of board meetings and was not an active board member. (Ex. 4, Nov. 17, 2022 Brian Denomme SEC Investigation Test. Tr. "Denomme Tr." 86:21-88:8.)

[3] Denomme also testified that he felt he had be left out of certain decisions more recently, such as the decisions regarding hiring. (Ex. 4 Denomme Tr. 95:23-96:23.)

[4] Reven Pharmaceuticals filed SEC Form Ds Notices of Exempt Offerings of Securities on January 28, 2013 ($1,000,000 offering); March 8, 2013 (same); June 5, 2013 ($2,000,000); January 29, 2014 (offering complete); February 19, 2014 ($7,000,000 offering); and February 18, 2015 (same). (Ex. 1, Greer Decl. ¶ 12.)

During the Relevant Period, Defendants solicited investors by distributing Reven offering documents to investors and prospective investors by email and otherwise. (*Id.* ¶ 25; *E.g.,* Ex. 3, Schaatt Decl. ¶¶ 4, 7, 18, 29 Exs. A, B, F, J; Ex. 4, Denomme Tr. 123:16-124:18; Ex. 5, Declaration of Jeffrey Green "Green Decl." ¶¶ 1, 8, Exs. A, B; Ex. 6, Declaration of Lee-Ann Frost Corry "Frost Decl." ¶ 7, 16, Exs. A, G.) The Reven offering materials included, among other things, PPMs, subscription agreements ("Subscription Agreement"), Investor Decks, flyers, presentations, information about RJX, and wire instructions (collectively, the "Offering Documents"). (*Id.*)

Defendants distributed to investors and prospective investors, via email and otherwise, Reven's August 31, 2018 PPM, July 6, 2020 PPM, and/or January 1, 2021 PPM. (E.g., Ex. 1, Greer Decl. ¶ 26, Ex. H, M, N; Ex. 3, Schaatt Decl. ¶¶ 4, 18, Exs. A, F; Ex. 4, Denomme Tr. 186:16-187:4.) The PPMs were similar and included information about Reven's business, terms of the offering, Reven's drug, RJX, its IP and patents, use of proceeds, management, executive compensation, and litigation involving the company and its directors and officers, among other types of information. (*Id.*) The PPMs state that Reven is offering to sell shares of the company's common stock. (Ex. 1, Greer Decl. ¶ 24; Ex. 3, Schaatt Decl. ¶ 4, 18, Exs. A at SEC-SchaattL-E-0003808, F at SEC-SchaattL-E-0004008.)

In addition to communications via email and by telephone, Defendants held formal and informal meetings to solicit investor at hotels, in homes, and at restaurants in Florida, Michigan, and Colorado, and elsewhere. (Ex. 1, Greer Decl. ¶ 28, Ex. K at 126:16-133:4; Schaatt Decl. ¶¶ 2, 10, 22; Ex. 4, Denomme Tr. 126:20-30, 129:16-131:12.)

Each Reven investor who bought Reven securities did so pursuant to a Subscription Agreement. (*E.g.,* Ex. 3, Schaatt Decl. ¶¶ 7-9, 26, Exs. B, I; Ex. 4, Denomme Tr. 123:16-124:18; Ex. 5, Green Decl. ¶ 8, Ex. B.) The Subscription Agreement that investors signed and submitted specifically incorporated the applicable PPMs by reference. (*Id.*) Volk signed the subscription agreements as CFO of Reven. (Ex. 1, Greer Decl. ¶ 36, Ex. O; Ex. 3, Schaatt Decl. ¶ 8, Ex. B, at SEC-REVEN-E-0187755.)

Versions of a Subscription Agreement, substantially similar and identical in all material respects as they relate to the allegations in this Complaint, were also distributed to investors and prospective investors by Defendants. (Ex. 1, Greer Decl. ¶ 29; Ex. 4, Denomme Tr. 123:16-124:18.)

Once the Subscription Agreement was completed, investors wired money to Reven's Wells Fargo checking account. (Ex. 2, Walker Decl. ¶ 10; Ex. 5, Green Decl. ¶ 8.) Reven and the Reven Principals then typically transferred investor money from the Reven Wells Fargo checking account to Reven Pharmaceuticals' Wells Fargo checking account (ending in x9911), from which the Reven Pharmaceuticals and the Reven Principals disbursed investor funds. (Ex. 2, Walker Decl. ¶ 10.)

III. DEFENDANTS ARE THE MAKERS OF STATEMENTS IN THE OFFERING DOCUMENTS, ORAL REPRESENTATIONS, AND EMAILS.

The statements in the Offering Documents were made by the Defendants as those documents are attributed specifically to Reven, Reven Pharmaceuticals, and their management. (Ex. 1, Greer Decl. ¶¶ 13-15, 26, 30, Exs. H, M, N, Q, R, S; Ex. 3, Schaatt Decl.¶¶ 4, 5, 7-8, 19 29, Exs A, B, F, J; Ex. 5, Green Decl. ¶ 1, Ex. A; Ex. 6, Frost Decl. ¶ 16, Ex. G.) The opening page of the Investor Decks represents they are on behalf of Reven Pharmaceuticals and later

refers to Reven (Ex. 1, Greer Decl. ¶ 30, Exs. Q, R, S; Ex. 3, Schaatt Decl. ¶¶ 4, 29, Exs. A, J.) The Investor Decks list Denomme, Lange, and Volk as Reven's executive management, and specifically state that Lange is a co-founder and CEO or Director and CEO, Denomme is a co-founder and COO or Director and President, and Volk is a co-founder and CFO or Director and Chief Strategy Officer. (*Id.*)

The 2018 PPM lists Reven Pharmaceuticals as the company contact. (Ex. 3, Schaatt Decl. ¶ 4, Ex. A at SEC-SchaattL-E-0003857.) The 2018 PPM directs requests for additional information to Volk. (*Id.*) The 2020 and 2021 PPMs direct requests for additional information to Lange. (Ex. 1, Greer Decl. ¶ 26, Ex. M at SEC-REVEN-E-00057 and Ex. N at SEC-REVEN-E-0001158; Ex. 3, Schaatt Decl. ¶ 18, Ex. F at SEC-SchaattL-E-0004074.)

The signature line in the Subscription Agreements, states, "This SUBSCRIPTION AGREEMENT is agreed to and accepted . . . REVEN HOLDINGS, INC. By: . . . Name: Michael Volk Title: Chief Financial Officer." (Ex. 3, Schaatt Decl. ¶¶ 8, 27, Exs. B at SEC-REVEN-E-017745, I at SEC-SchaattL-E-0000703.)

Each of the Reven Principals sent or caused to be sent the PPMs, Subscription Agreements, and Investor Decks to investors and prospective investors. (Ex. 1, Greer Decl. ¶ 26, Ex. 3, Schaatt ¶¶ 4, 18, 29, Exs. A, F, J; Ex. 4, Denomme Tr. 123:16-124:18; Ex. 5, Green Decl. ¶ 1, Ex. A; Ex. 6, Frost Decl. ¶ 16, Ex. G.) Each of the Reven Principals reviewed and approved the PPMs and Investor Decks. (Ex. 4, Denomme Tr. 167:2-25; 191:8-192:19, 211:9-212:25.)

IV. DEFENDANTS MISAPPROPRIATED OVER $8.8 MILLION OF INVESTOR MONEY.

Defendants, using their control over Reven's and Reven's Pharmaceuticals' bank accounts, misappropriated at least $8.8 million of investor funds through a variety of means,

including making payments directly to the Reven Principals' personal bank accounts, paying personal credit cards, making payments to individuals or entities for the benefit of the Reven Principals, and transferring over $1.8 million to the shell company, Health Analytics. (Ex. 2, Walker Decl. ¶ 18.d.)

V. DEFENDANTS REPEATEDLY MISREPRESENTED AND OMITTED MATERIAL FACTS TO INVESTORS WHEN SOLICITING INVESTMENTS.

A. Defendants Made Materially False and Misleading Statements and Omissions About the Reven Principals' Compensation.

For 2019, 2020, and 2021, Defendants purportedly disclosed the Reven Principals' annual compensation from Reven, but for each of those years they personally took far more investor money than what was disclosed in Reven's PPMs to investors.

1. For 2019, Defendants Disclosed the Reven Principals' Compensation, Collectively, as Between $1.6 Million to $2.3 Million and They Took, Collectively, $5.3 Million.

The August 31, 2018 PPM "Use of Proceeds" section disclosed that general administrative and payroll ("G&A") expenses for 2019, which included payroll for all Reven employees, including the Reven Principals, rent, and other expenses was expected to be $5 million. (Ex. 3, Schaatt Decl. ¶ 5, Ex. A at SEC-SchaattL-E-0003836-37.) Reven's 2019 bank records show approximately $2.7 million in payroll costs for employees other than the Reven Principals and rent for Reven's offices. (Ex. 2, Walker Decl., ¶ 18.) As a result, to be consistent with the 2018 PPM, at the most, the Reven Principals' compensation could be no more than $2.3 million.

The July 6, 2020 PPM was even more specific about 2019 compensation for the Reven Principals. (Ex. 3, Schaatt Decl. ¶ 19, Ex. F at SEC-SchaattL-E-0004066.) That PPM included a

section entitled "Executive Compensation," which disclosed specific salary amounts for the Reven Principals of $540,000 each for 2019, which, collectively totals $1.62 million. (*Id.*)

In 2019, the Reven Principals took, collectively, $5,351,716: Denomme $909,049; Lange $1,575,860; and Volk $2,866,807. (Ex. 2, Walker Decl. ¶ 19.) Thus, using either the $1.6 million or $2.3 million disclosed amounts, Defendants misappropriated at a minimum $3 million of investor money.

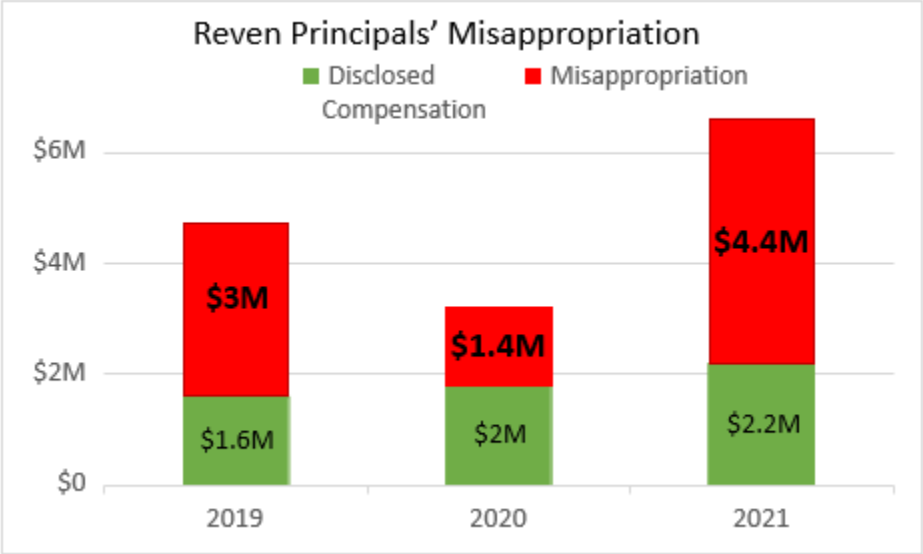
2. For 2020, Defendants Disclosed the Reven Principals' Compensation, Collectively, as $2 Million, and They Took, Collectively, $3.35 Million.

Reven's 2020 PPM represented, in the "Executive Compensation" section, that the Reven Principals' 2020 salary and total compensation was $660,000 each, for a total, collectively, of $1.98 million. (Ex. 3, Schaatt Decl. ¶ 19, Ex. F at SEC-SchaattL-E-0004066.) In 2020, the Reven Principals took, collectively, $3,356,573: Denomme $753,408; Lange $221,333; and Volk $2,381,832. (Ex. 2, Walker Decl. ¶ 19.) Thus, Defendants misappropriated at least $1.4 million of investor money.

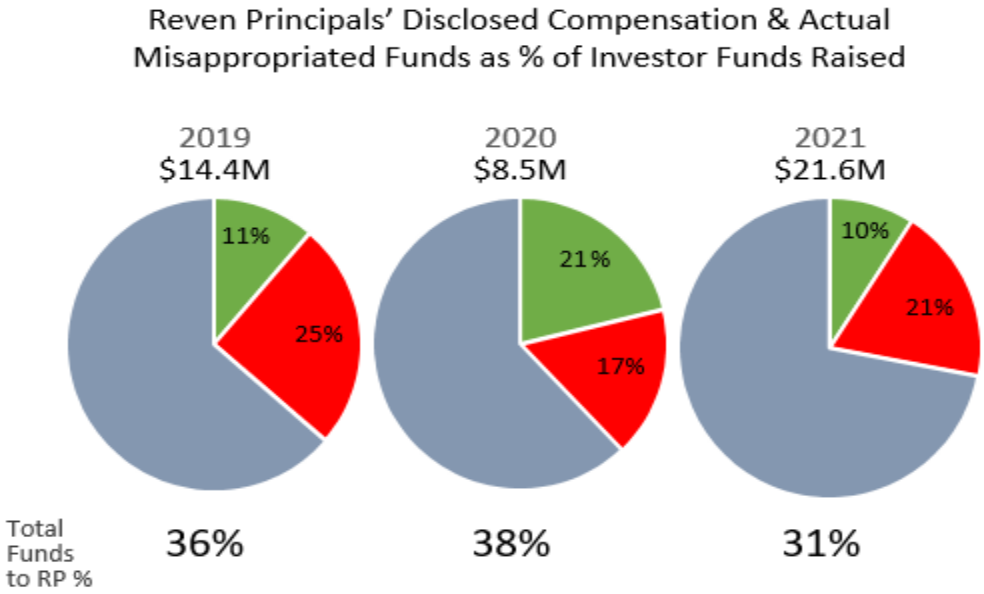
3. For 2021, Defendants Disclosed the Reven Principals' Compensation, Collectively, as $2.16 Million, and They Took, Collectively, $6.65 Million.

The January 1, 2021 PPM also included an "Executive Compensation" section that disclosed the Reven Principals' salary and total compensation of $720,000 each for 2021, for a collective total of $2.16 million. (Ex. 1, Greer Decl. ¶ 26, Ex. N at SEC-REVEN-E-0001150.) In 2020, the Reven Principals took, collectively, $6,648,490: Denomme $909,049; Lange $2,078,036; Volk $3,133,502. (Ex. 2, Walker Decl. ¶ 19.) Thus, Defendants misappropriated at least $4.4 million of investor money.

The chart below shows the Reven Principals' disclosed compensation and misappropriated amounts by year for the Relevant Period:



Defendants misappropriated between 17% and 25% of investor funds each year of the Relevant Period, or 20% of the total amount of investor funds raised over the entire Relevant Period ($8.8 million / $44 million).



(Ex. 2, Walker Decl., ¶ 19.)

B. Defendants Made Materially False and Misleading Statements and Omissions Regarding a Purported Audit of Reven's Financial Statements.

Defendants represented to investors in emails and Investor Decks that Reven either (a) would imminently have two years of audited financial statements (one of the requirements for a public offering) or (b) that Reven *did* have two years of audited financial statements.

In numerous Investor Decks that Defendants sent to investors between September 2019 and August 2021, Defendants represented, in the section titled "Reven Exit Strategies," that Reven "will have the required minimum two years of audited financial statements" ending either September 30, 2020, or August 2021, and that Reven would be "eligible to offer its shares for sale in an Initial Public Offering as early as October 2020" or that Reven would "[o]rganize and execute an [sic] public offering [in early or] late in 2021." (Ex. 1, Greer Decl., ¶ 30, Exs. Q, R, S; Ex. 3, Schaatt Decl. ¶ 4, Exs. A at SEC-SchaattL-E-0003902; Ex. 5, Green Decl. ¶ 1, Ex. A at SEC-GreenJ-E-0000037.)

By November 2021 and going forward, Defendants started representing in Investor Decks in the section titled, "Strategic Paths Forward," and "Going Public," that the "Company *has* the minimum required two years of audited financial statements ending August 2021." (Ex. 3, Schaatt Decl. ¶ 29, Ex. J, at SEC-SchaattL-E-0004094; Ex. 6, Frost Decl. ¶ 16, Ex. G (emphasis added).)

Volk and the Companies also represented in emails to investors in 2019 that "[w]e are currently undergoing our first audit now" to prepare for an IPO hopefully during sometime in 2020. (Ex. 1, Greer Decl. ¶ 30, Exs. Q, R, S.) Lange and the Companies represented in an email to Investor Schaatt in 2020 that "[o]ur audit should be completed in mid-September early

October which will allow us to file our S1 sometime before the end of the year and taking next steps towards and IPO in 2021." (Ex. 3, Schaatt Decl. ¶ 18, Ex. F.)

These representations about imminently having or having audited financial statements, or suggesting that Reven would soon "go public," were false and misleading. During the Relevant Period, Reven never retained any accounting or auditing firm to perform an audit of Reven's financial statements (Ex. 7, Declaration of Jeffrey Halverson "Halverson Decl." ¶ 22; Ex. 8, Nov. 30 Test. Tr. of Rudy Rudolph "Rudolph Tr." 66:20-67:3); Reven never had complete and reconciled accounting and bookkeeping records necessary to generate financial statements capable of being audited—indeed, Reven's external accountants indicated that the Reven records were not "auditable" (Ex. 7, Halverson Decl. ¶ 26; Ex. 8, Rudolph Tr. 61:3-63:1, 66:20-67:3, Ex. A); and, no audit of Reven's financial statements was ever started or completed. (Ex. 7, Halverson Decl. ¶ 22; Ex. 8, Rudolph Tr. 66:20-67:3.)

C. Defendants Made Materially False and Misleading Statements and Omissions About Reven's Purported Direct Public Offering.

A DPO, or direct listing, is where a company offers its securities on a stock exchange, like NYSE or NASDAQ, directly to the public, without financial intermediaries, such as investment banks and underwriters, in order to have lower transaction costs as compared to an IPO. (Ex. 1, Greer Decl. ¶ 51.)

A DPO would require Reven to have at least two years of audited financial statements; prepare and file an S-1 registration statement with the SEC (which requires audited financial statements); meet the stock exchanges' listing rules, including meeting certain financial metrics such as pre-tax income targets for a certain historical period or meeting certain market capitalization targets; and obtain a recent valuation from an independent third party indicating at

least $250 million in aggregate market value of publicly held shares (*i.e.*, held by persons other than directors, officers, and presumed affiliates). (*Id.* ¶ 52.)

In the summer of 2021, Defendants represented to investors that Reven was preparing for a direct public offering ("DPO") of its stock on major stock exchanges, such as NYSE or NASDAQ, by at least October 2021, if not sooner.

On July 14, 2021, Defendants sent Investor Schaatt a document entitled "Reven Holdings Pre-Direct Public Offering Brief and Deal Structure." (Ex. 3, Schaatt Decl. ¶ 23, Ex. H.) In that document, Defendants represented that:

> Reven is currently preparing for a Direct Public Offering of their stock on a major stock exchange to occur September/October 2021. The company intends on filing its S-1 registration statement as early as August as a required final step outlining the specific details of the offering as well as competing [sic] formal registration of the company's authorized and issued capital. *Reven has completed all of the necessary groundwork to accomplish a listing and public offering of its shares with the exception of the completion of its financial audit*. The company intends on selling 5,000,000 newly issued shares in the direct public offering priced at $5.00/share to raise $25 Million for the continued support of its clinical development program. Prior to the offering, Reven is seeking to raise an additional $7.5 million *to complete the current in-process trials and provide the required financial support to complete the public offering*.
>
> This pre-public offering is being is being presented to existing shareholders as a final opportunity to purchase shares prior to the company being listed on a public exchange. There is no obligation for any shareholder to participate in this offering, and everyone will be able to acquire additional shares once the listing is completed and the shares are freely trading on the exchange of choice at whatever the market price may be at the time.
>
> **Number of Pre-Listing Shares being Issued:** 7,500,000
> **Class of Shares:** Common stock (ALL authorized and issued Reven shares are common)
> **Pre-Listing Price Per Share for this Offering:** $1.00
> **Anticipated Listing Price:** $5.00 - $7.00
> **Anticipated Exchange:** NYSE or NASDAQ - NYSE is the exchange of choice for DPO

(Italic emphasis added). (*Id.*) In addition, Defendants represented to Investors Green and Frost that they were going to launch a DPO in September or October, that the DPO was "inevitable," that Reven's S-1 registration statement was essentially finished, except for audited financials, which would be complete in the next few weeks, that the S-1 would be filed with the SEC in the next few weeks to a month, and that money from the pre-DPO raise would be used to complete phase II drug trials, do more phase II drug trials, and to complete the necessary steps to have a DPO. (Ex. 5, Green Decl. ¶¶ 5-6; Ex. 6, Frost Decl. ¶ 9, Ex. B.)

These statements were false and misleading because Reven had not submitted an S-1 registration statement to the SEC and still has not done so. Moreover, Reven could not have submitted an S-1 registration statement because an S-1 registration statement requires audited financial statements. And for the reasons stated above, Reven did not have the accounting books and records capable of being audited, did not have financial statements capable of being audited, never hired an audit firm, no audit was being prepared, and no audit was started, nearly completed, or completed. *See supra* at 16. And Reven's then-CFO was telling the Reven Principals from the spring of 2021 until the fall of 2021 that Reven's financial statements could not be audited and Reven could not go public until the financial records were reconciled. (Ex. 7, Halverson Decl. ¶ 25.) Further, Reven did not meet all the requirements for listing by either exchange they represented to investors they would list on. (Ex. 1, Greer Decl. ¶ 52.)

D. Defendants Made Other Materially False and Misleading Statements and Omissions to Investors About the Specific Use of Their Funds.

1. Defendants Made False and Misleading Statements to Investor Schaatt About How Her 2019 Investment Would be Used.

At a meeting on September 16, 2019, Investor Schaatt discussed with Volk and Lange how her $2 million investment in September 2019 would be used. In response, Lange, copying Volk and Denomme, emailed her on September 17, 2019, with the subject line, "Use of your investment," representing that, among other things, $50,000 would be paid to each of the Reven Principals, for a total of $150,000.

This was a false and misleading statement. Instead, from Schaatt's $2 million 2019 investment (where the Companies' bank accounts had a balance of only $24,912 before her investment), Denomme received $98,396.30; Lange received $290,000; and Volk received $248,714, or collectively, 31% of Schaatt's investment. (Ex. 2, Walker Decl. ¶ 20, Ex. B.)

2. Defendants Made False and Misleading Statements as to How Investors Schaatt's and Green's 2021 Investments Would Be Used.

Defendants Volk and Lange made false and misleading statements to Schaatt and Green that their investments in July, August, and September of 2021, respectively, would be used only to complete clinical trials, start new ones, and pay for completing the steps necessary to list in a DPO. (Ex. 3, Schaatt Decl. ¶ 24, Ex. H; Ex. 5, Green Decl. ¶¶ 5-6.)

Reven used some of Schaatt's $3 million August 27, 2021 investment or Green's $2.5 million September 15, 2021 investment, or some of both, to make an initial $1.5 million payment for an oncology intellectual property license deal with a company owned by Reven's then-chief-medical officer and pay at least $2 million to settle an undisclosed five-year-old Reven shareholder lawsuit (the "Shareholder Lawsuit"), in which the plaintiff, a Reven shareholder, had

alleged that Reven, Reven Pharmaceuticals, Reven, LLC Lange and Volk had committed securities fraud. (Ex. 1, Greer Decl. ¶¶ 53-55; Ex. 2, Walker Decl. ¶¶ 22-23, Ex. C.)

3. Defendants Made False and Misleading Statements as to How Investor Frost's 2021 Investment Would Be Used.

Defendants Lange and Volk made false and misleading statements to Investor Frost that her (or her trust's) and her family members' (or their trusts') September 2021 investments would be used towards the payment of a licensing agreement with Reven's then-chief-medical officer's company to license its oncology intellectual property. (Ex. 6, Frost Decl. ¶¶ 10-13, Exs. C, D, E.) Based on the representations that her and her family members' investments would be used towards the licensing agreement, among others, Frost, through her trust, invested $500,000 on September 24, 2021, and her family members' trusts invested an additional $1,000,000 on that same day. (*Id.* ¶ 14, Ex. F; Ex. 2, Walker Decl. ¶ 24, Ex. C.)

Despite soliciting Frost and her family members' investments specifically for the licensing agreement, Defendants used a portion of the investments to make an additional settlement payment toward the Shareholder Lawsuit, as well as for payments unrelated to the purported oncology licensing transaction. (Ex. 2, Walker Decl. ¶¶ 24-25; Ex. C.) Because an initial payment for the licensing transaction was made on September 16, 2021, none of Frost's or her family members' investments could have gone to pay for the licensing deal because no other payments were made toward the license before the Frost families' funds were fully spent. (*Id.*)

E. Defendants Made Materially False and Misleading Statements and Omissions About the Shareholder Lawsuit.

During the Relevant Period, Defendants represented to investors that Reven, Reven Pharmaceuticals, Lange, and Volk were not the subject of any litigation. For example, the 2018

PPM represented that "[t]he Company is not currently the subject of any litigation." (Ex. 3, Schaatt Decl. ¶ 5.g, Ex. A at SEC-SchaattL-E-0003856.) In a February 13, 2020 email from Lange, copying Volk, to Schaatt, Lange states, "[W]e have no lawsuits from shareholders." (Id. ¶ 16, Ex. E.) The 2020 PPM states: "As of the date of this Memorandum *we are not aware* of potential dispute or *pending litigation* and are not currently involved in a litigation proceeding or governmental actions the outcome of which in management's opinion would be material to our financial condition or results of operations." (Ex. 3, Schaatt Decl. ¶ 19.g, Ex. F at SEC-SchaattL-E-0004061.) These statements were false and misleading because they did not disclose that, in the Shareholder Litigation, Reven Pharmaceuticals and Lange were sued in 2016 and that Reven, Reven, LLC, and Volk were added as Defendants in 2019, where the Plaintiff, a guardian on behalf of a former investor with diminished capacity, sued for securities fraud, among other claims. This litigation was pending from 2016 until September 2021, when the Companies, Lange, and Volk settled for $2.75 million, using investors' money described above. (Ex. 1, Greer Decl. ¶ 56, Ex. X; Ex. 2, Walker Decl. ¶¶ 23, 25, Ex. C.)

VI. DEFENDANTS ENGAGED IN ADDITIONAL FRAUDULENT AND DECEPTIVE CONDUCT BY SETTING UP AND MAKING PAYMENTS TO A PASS-THROUGH SHELL COMPANY TO MISAPPROPRIATE INVESTOR FUNDS.

Defendants were engaged in a scheme to pay the Reven Principals misappropriated investor funds. In furtherance of this scheme, the Reven Principals formed a pass-through or shell company, Relief Defendant Health Analytics, to facilitate the transferring investor money to the Reven Principals. (Ex. 4, Denomme Tr. 14:6-15:19, 16:18-23, 17:17.) Health Analytics provided no goods or services to Reven or Reven Pharmaceuticals. (Ex. 1, Greer Decl. ¶ 19; Ex. 4, Denomme Tr. 14:6-15:19, 16:18-23, 17:17-18:2, 18:9-12, 18:29-19:6.)

The registered agent for Health Analytics is TTSGIW, LLC (which stands for "The Three Smartest Guys in the World"), a company formed by the Reven Principals. (Ex. 1, Greer Decl. ¶19; Ex. 4, Denomme Tr. 114:18-115:6, 15-24.) The addresses for Health Analytics and TTSGIW, LLC is a mailbox store a few miles from Volk's home. (Ex. 1, Greer Decl. ¶ 19.) Bank records indicate Volk is an owner of Health Analytics and that he and Lange had signatory authority over its bank account. (Ex. 2, Walker Decl. ¶ 18.d.i., n.11.) During the Relevant period, the Defendants caused Reven Pharmaceuticals to funnel over $1.8 million of investor funds to Health Analytics, which was then disbursed to the Reven Principals or for their benefit. (Ex. 2, Walker Decl. ¶ 18.d.)

VII. REVEN REFUSED TO COMPLY WITH A SEC INVESTIGATIVE DOCUMENT SUBPOENA, NECESSITATING A SUBPOENA ENFORCEMENT ACTION.

Reven has failed to adequately respond to the SEC's document subpoena in a timely fashion and has repeatedly delayed in providing critical information throughout the SEC's investigation. The SEC subpoenaed Reven documents in November 2021. (Ex. 1, Greer Decl. ¶ 56.) The SEC granted Reven an extension to start producing documents until December 17, 2021, and agreed that Reven could produce the remainder of the documents responsive to the subpoena as part of a rolling production within a reasonable time frame. (*Id*.)

Reven made a limited initial production on December 17, 2021, providing no documents responsive to the overwhelming majority of the document requests. (*Id.* ¶ 57.) Over the next five months, Reven produced some documents in rolling productions, but never produced documents responsive to some requests, including documents related to the use of investor proceeds, meetings with investors, internal communications about press releases, communications with individuals involved in the drug's clinical trials, and did not produce all responsive documents to

other requests, such as a complete set of financial reports and statements and communications with investors. (*Id.* ¶ 58.) Reven categorically refused to produce its bookkeeping records. (*Id*.)

Accordingly, the SEC filed a subpoena enforcement action on June 23, 2022. *SEC v. Reven Holdings, Inc.*, 22-mc-00113-PAB-NRN (D. Colo.). (*Id.* ¶ 59.) The Court granted the SEC's application the next day that the Court set a hearing to show cause. (*Id*.) Since then, the SEC has worked with Reven's counsel to get documents responsive to its subpoena, while continuing any hearing on the subpoena enforcement action while Reven produced documents and the SEC reviewed them. (*Id.* ¶ 60.)

Reven has continued to insufficiently produce investor communications. (*Id.* ¶ 61.) Although Reven said it would produce documents responsive to this request, and did produced some investor communications, the SEC determined from documents produced to the SEC by third parties that Reven had not produced all investor communications requested. (*Id*.)[5]

ARGUMENT

I. LEGAL STANDARD FOR THE SEC TO OBTAIN A TEMPORARY RESTRAINING ORDER AND ASSET FREEZE.

Section 20(b) of the Securities Act, 15 U.S.C. § 77t(b), and Section 21(d) of the Exchange Act, 15 U.S.C. § 78u(d), authorize the SEC to seek, and direct courts to enter, "a permanent or temporary injunction or restraining order" upon a "proper showing" that the

[5] During the process of working with Reven's counsel, Defendant Lange, Reven's CEO, provided a declaration asserting that "*Reven did not conduct "road shows" as that term is commonly understood. Communications with investors were done informally, typically in one-on-one meetings. Among other things, Reven has never created or otherwise maintained a list or other record that discloses the date, location and identity regarding meetings with potential investors*." This is false. As evidenced by numerous emails attached to investor declarations to this brief, there are many emails between the Reven Principals and potential investors regarding meetings they had. ((*Id.* ¶ 62; *See, e.g.,* Ex. 3 Schaatt Decl. ¶ 1, 10, 22.)

defendant "is engaged or is about to engage" in violations of the securities laws. The proper showing is made if the SEC makes "[1] a *prima facie* case that a violation of the securities laws has occurred and [2] that there is a likelihood of future violations."[6] *SEC v. Shields*, No. 11-CV-02121-REB, 2011 WL 3799061, at *1 (D. Colo. Aug. 26, 2011) (granting TRO) (citing *SEC v. Cavanagh*, 155 F.3d 132, 135 (2d Cir. 1975)); *Cell>Point, LLC*, 2022 WL 444397, at *5 (same); *SEC v. Traffic Monsoon, LLC*, 245 F. Supp. 3d 1275, 1296 (D. Utah 2017) (same) (citing *SEC v. Unifund SAL*, 910 F.2d 1028, 1031, 1039 (2d Cir. 1990)), *aff'd sub nom. SEC v. Scoville*, 913 F.3d 1204 (10th Cir. 2019).

The standard for obtaining an asset freeze is lower than for injunctive relief. To obtain an asset freeze, the SEC need only show "that an inference can be drawn that the party has violated the federal securities laws." *SEC v. Byers*, 2009 WL 33434, at *2 (S.D.N.Y. Jan. 7, 2009). Moreover, "the SEC does not need to show a likelihood that the violation will occur again because this injunctive relief maintains the status quo." *Cell>Point, LLC*, 2022 WL 444397, at *5; *see also Traffic Monsoon*, 245 F. Supp. 3d 1275, 1296 n.14 (stating that for an asset freeze "[the SEC] need not show a reasonable likelihood that the wrong will be repeated" (citing *SEC v. Cavanagh*, 155 F.3d 129, 132 (2d Cir. 1998). This is because in SEC actions, an asset freeze is justified "to advance the public interest in ensuring that ill-gotten funds can be secured to satisfy

[6] "In remedial actions such as this case, the Commission appears 'not as an ordinary litigant, but as a statutory guardian charged with safeguarding the public interest in enforcing the securities laws.' Thus, it has long been established that the Commission, unlike private litigants, is not required to show risk of irreparable injury or balance of the equities in its favor to make the statutory 'proper showing' for an injunction." *SEC v. Smart*, No. CIV. 2:09CV00224 DAK, 2011 WL 2297659, at *20 (D. Utah June 8, 2011), *aff'd,* 678 F.3d 850 (10th Cir. 2012); *United States SEC v. Cell>Point, LLC*, No. 21-CV-01574-PAB-KLM, 2022 WL 444397, at *5 (D. Colo. Feb. 14, 2022) ("Courts have not required the SEC to show irreparable injury . . . .").

a potential future judgment." *SEC v. End of Rainbow Partners, LLC*, No. 17-CV-02670-MSK, 2017 WL 5404199, at *2 (D. Colo. Nov. 14, 2017). "A freeze is particularly warranted where" – as here – "the defendant's alleged conduct involves fraud." *SEC v. Credit Bancorp Ltd.*, No. 99-cv-11395, 2010 WL 768944, at *3 (S.D.N.Y. Mar. 8, 2010).

The SEC has made such showings.

II. DEFENDANTS REPEATEDLY VIOLATED THE ANTI-FRAUD PROVISIONS OF THE FEDERAL SECURITIES LAWS.

The antifraud provisions of the federal securities laws are "to be construed 'not technically and restrictively' but flexibly to effectuate their remedial purposes." *Affiliated Ute Citizens v. United States*, 406 U.S. 128, 151 (1972) (internal quotation omitted). "Fundamentally, both § 17(a) and § 10(b) are designed to protect investors from fraudulent practices." *SEC. v. Smart*, 678 F.3d 850, 857 (10th Cir. 2012) (internal quotation marks omitted). Defendants' misappropriation of investor funds, false and misleading statements and omissions, and use of fraudulent and deceptive devices, violate these provisions.

A. Defendants Made Materially False and Misleading Statements and Omissions Violating Section 10(b) and Rule 10b-5(b) of the Exchange Act and Section 17(a)(2) of the Securities Act.

To prove Defendants violated Exchange Act Section 10(b) and Rule 10b-5(b) thereunder, the SEC must show that Defendants, directly or indirectly: (1) made an untrue statement of material fact or omitted to state a material fact; (2) with scienter; (3) in connection with the purchase or sale of a security; (4) using any means of interstate commerce or of the mails. *See* 17 C.F.R. § 240.10b-5(b); *Smart*, 678 F.3d at 856-57 (10th Cir. 2012). Similarly, to prove liability under Securities Act Section 17(a)(2), the SEC must prove that Defendants, directly or indirectly: (1) obtained money or property by means of an untrue statement of material fact or an

omission to state a material fact; (2) with negligence; (3) in the offer or sale of securities; (4) using any means of interstate commerce or of the mails. 15 U.S.C. § 77q(a)(2); *Smart*, 678 F.3d at 857; *SEC v. C. Jones & Co.*, 312 F. Supp. 2d 1375, 1379 (D. Colo. 2004) ("Under Section 17(a)(2)[], the elements are identical [to a Section 10(b) claim] except the SEC need show only negligence instead of scienter."). "The SEC is not required to prove reliance or injury [damages] in enforcement actions." *Geman v. SEC.*, 334 F.3d 1183, 1191 (10th Cir. 2003).

The Reven common stock offered and sold by the Defendants is a security. Section 2(a)(1) of the Securities Act of 1933 ("Securities Act") and Section 3(a)(10) of the Securities Exchange Act of 1934 ("Exchange Act"), define a "security" to include, among other things, "any . . . stock." 15 U.S.C. § 77b(a)(1); 15 U.S.C. § 78c(a)(10).

1. Defendants Made Materially False and Misleading Statements and Omissions and Obtained "Money or Property."

Defendants made numerous material false statements and omissions in the Offering Documents sent to investors and in oral representations made to investors about the Reven Principal's compensation, an audit of Reven's financial statements, about Reven's purported DPO, specific use of investor funds, and about a shareholder lawsuit. *See supra* at 12-21.

a. Defendants Were the Maker of the Statements.

For a court to find a defendant violated Section 10(b) and Rule 10b-5(b) of the Exchange Act, the defendant must be the "maker" of the false statement. *See Janus Capital Grp., Inc. v. First Derivative Traders*, 564 U.S. 135, 142-43 (2011). "The maker" of a statement is "the person or entity with ultimate authority over the statement, including its content and whether and how to communicate it." *Id.* at 142. Corporate entities are properly held responsible for the statements of their agents, particularly where, as here, the entity is closely held. *See In re Merck*

& Co., Inc. Securities, Derivative, & ERISA Litig., No.05-1151, 2011 WL 3444199, at *25 (D.N.J. Aug. 8, 2011) ("*Janus* does not alter the well-established rule that 'a corporation can act only through its employees and agents'") (quoting *Suez Equity Investors, L.P. v. Toronto–Dominion Bank*, 250 F.3d 87, 101 (2d Cir. 2001)). "Moreover, nothing in *Janus* precludes a single statement from having multiple makers." *SEC v. Goldstone*, 233 F. Supp. 3d 1169, 1204 (D.N.M. 2017) (internal quotation marks omitted); *see also SEC v. Kameli*, No. 17 C 4686, 2020 WL 2542154, at *23 (N.D. Ill. May 19, 2020) ("More than one person can be held liable as a control person for a corporation's actions.") (collecting cases); *SEC v. Platforms Wireless Int'l Corp.*, 617 F.3d 1072, 1088 (9th Cir. 2010) ("Ownership is one means of control, but it is not the only means, and multiple persons can exercise control simultaneously.").

Here, Defendants were the "makers" of the false and misleading statements in the Offering Documents they distributed and oral representations made to investors. The statements in the Offering Documents were made by the Defendants as those documents are attributed specifically to Reven, Reven Pharmaceuticals and their management. *See supra* at 10-11. The Reven Principals controlled Reven and Reven Pharmaceuticals as its co-founders, most-senior officers, directors, and, collectively, majority owners, and in these roles the Reven Principals had ultimate authority over the false statements contained in the Offering Documents. (*Id.* at 7-8.) Given that each of the Reven Principals' shares were necessary to maintain majority control, the approval of each was necessary. And the Reven Principals reviewed and approved some of the Offering Documents. (*Id.* at 10-11.) *See, e.g.*, *In re Lehman Bros. Sec. & ERISA Litig.*, No. 09-MD-2017-LAK, 2013 WL 5730020, at *2 (S.D.N.Y. Oct. 22, 2013) (holding defendants were makers of statements in offering memorandum and incorporated documents where they "had

'ultimate authority' over their content as chief executive officer and chief financial officer of LBHI, respectively, and the filings were explicitly attributed to LBHI in the offering memorandum")

Further, the Reven Principals are the "makers" of oral representations they made to investors. *SEC v. McDuffie*, No. 12-CV-02939, 2014 WL 4548723, at *8 (D. Colo. Sept. 15, 2014) ("A defendant is liable for his or her own oral misstatements and omissions.")

Similarly, the Reven Principals are the "makers" of statements in emails they drafted and sent to investors. *SEC v. Watkins*, 317 F. Supp. 3d 1244, 1258 (N.D. Ga. 2018) (holding defendant was maker of statements in emails because he was the person or entity with ultimate authority over the statement, including its content and whether and how to communicate it and that where emails were on behalf of the company, individual's scienter may be imputed to the company), *aff'd sub nom. SEC v. Watkins Pencor, LLC*, 810 F. App'x 823 (11th Cir. 2020)

b. The Statements Were False.

As discussed above, representations about the Reven Principals' compensation, a purported audit of Reven's financial statements, Reven's imminent DPO, specific uses of investors' funds, and the Companies' and Volk's and Lange's involvement in litigation were false and misleading. *See supra* at 12-21.

c. The Statements Were Material.

Information is material when there is a substantial likelihood that a reasonable investor would consider it important in determining whether to buy or sell securities. *See Basic v. Levinson*, 485 U.S. 224, 231-32 (1988); *City of Phila. v. Fleming Companies, Inc.*, 264 F.3d 1245, 1265 (10th Cir. 2001) (same). To be considered material, a false statement or omission

"need not be important enough that it would necessarily cause a reasonable investor to change his investment decision." *SEC v. Meltzer,* 440 F. Supp. 2d 179, 190 (E.D.N.Y. 2006). For omissions, "there must be a substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the 'total mix' of information made available." *TSC Indus. v. Northway*, 426 U.S. 438, 449 (1976); *City of Philadelphia*, 264 F.3d at 1265 (same).

Defendants' misstatements and omissions were material. Reasonable investors would want to know that a) their money was being misappropriated by the Reven Principals' and used to pay for their personal expenses, b) that Defendants did not have and would not imminently have audited financial statements, c) that Defendants were not imminently going to launch a DPO, d) that Defendants would not use investor funds as specifically represented, and e) that Reven, Reven Pharmaceuticals, Lange, and Volk were the subjects of a shareholder securities fraud lawsuit. *See, e.g.*, *Smart*, 678 F.3d at 857 (finding the fact that defendants were not using money as represented and for the payment of personal expenses would be material to a reasonable investor); *Kunz v. SEC*, 64 Fed. App'x 659, 665-666 (10th Cir. 2003) (finding financial condition and litigation history omitted from PPM was important to investors' decisions to purchase investment products); *SEC v. Lottonet Operating Corp.*, No. 17-21033-CIV, 2017 WL 6949289, at **5, 14 (S.D. Fla. Mar. 31, 2017) (holding failure to disclose total amounts taken from investor contributions for compensation were material misrepresentations and omissions), *report and recommendation adopted,* No. 17-21033-CIV, 2017 WL 6989148 (S.D. Fla. Apr. 6, 2017); *SEC v. Conrad*, No. 1:16-CV-2572-LMM, 2017 WL 3485766, at *11 n.5 (N.D. Ga. Feb. 22, 2017) (finding failure to disclose extra compensation and that defendant could "unilaterally

decide he would take more compensation and withdraw assets for himself and his family members" material), *on reconsideration in part,* No. 1:16-CV-02572-LMM, 2017 WL 3500364 (N.D. Ga. May 2, 2017); *SEC v. Helms*, No. A-13-CV-01036 ML, 2015 WL 5010298, at *14 (W.D. Tex. Aug. 21, 2015) (finding failure to disclose pending litigation against Defendants was material).

This common sense conclusion is reinforced by the testimony of defrauded Reven investors. Investors' declarations filed with this motion uniformly state that these investors would have wanted to know before they invested whether the Defendants would use their investments as represented, including for excess compensation, whether Reven would imminently have or did have audited financials, whether was imminently was going to a DPO, whether Defendants would use investor money as specifically represented, and litigation against the company and its officers. (*See* Ex. 3, Schaatt Decl. ¶¶ 13, 31, 43; Ex. 5, Green Decl. ¶ 10; Ex. 6, Frost Decl. ¶ 15.)

d. Defendants Obtained "Money or Property."

Janus's maker requirement does not apply to Section 17(a)(2), which merely requires that a person *use* a misstatement or omission to obtain money or property. *SEC v. Big Apple Consulting USA, Inc.*, 783 F.3d 786, 795-798 (11th Cir. 2015); *SEC v. Stoker*, 865 F. Supp. 2d 457, 464-466 (S.D.N.Y. 2012). Here, Defendants disseminated Offering Documents that contained false and misleading statements, as well as misstatements made by Lange and Volk, to induce investors to send money to Reven's and Reven Pharmaceuticals' bank accounts. Defendants used these false and misleading statements to obtain money or property through misappropriation.

2. Defendants Acted With Scienter and Negligently.

Courts have defined scienter as a state of mind embracing intent to deceive, manipulate or defraud. *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 193 (1976). Scienter can be met by a showing of knowledge or recklessness. *Smart*, 678 F.3d at 856-57. The Tenth Circuit has defined recklessness under the securities laws as "conduct that is an extreme departure from the standards of ordinary care, and which presents a danger of misleading buyers or sellers that is either known to the defendant or is so obvious that the actor must have been aware of it." *City of Phila.*, 264 F.3d at 1260 (internal quotation marks omitted).

As shown above, Defendants acted knowingly or severely recklessly while making the misrepresentations and omissions. *See supra* at 11-18; *SEC v. George*, 426 F.3d 786, 795 (6th Cir. 2005) (finding where defendant "spent investor funds on personal expenses, [is] a fact that itself establishes the requisite state of mind for committing securities fraud"); *see also Smart,* 678 F.3d at 857 (finding defendant acted with scienter where, among other things, defendant used investor funds to pay his wife's personal expenses).

Defendants represented that the Reven Principals would receive only a certain amount of compensation, that Reven would imminently have or did have audited financial statements, that Reven was imminently going to list in a DPO, that investor funds would be used for specific purposes, and that the company and its officers were not involved in securities fraud litigation. The Reven Principals, as co-founders, the most-senior executive officers, directors, and, collectively, as majority shareholders of Reven, exercised control over the management, general operations, and polices of Reven and Reven Pharmaceuticals, as well as the specific activities upon which their violations are based, they were aware of everything that occurred at both

entities. Thus, they knew or were reckless in not knowing that these statements about the use of investor funds, their compensation, an audit of Reven's financial statements, the status of Reven listing in a DPO, specific uses of investor funds, and litigation involving the companies and their officers were false and misleading. Similarly, given Defendants control and authority over Reven's and Reven Pharmaceuticals' bank accounts and their active misappropriation of investor funds from those accounts, they knew or were reckless in not knowing, that investor funds were not being used as represented. *See, e.g.*, *Centra, Inc. v. Chandler Ins. Co., Ltd.*, 2000 WL 1277672, at *14 (10th Cir. 2000) ("[T]he fact that Defendants misappropriated and personally benefitted from Plaintiffs' investment . . . sufficiently established that they had the requisite intent to deceive, manipulate, or defraud.") (internal quotation marks omitted).

The Reven Principals' scienter is imputed to Reven and Reven Pharmaceuticals. *Adams v. Kinder-Morgan, Inc.*, 340 F.3d 1083, 1106 (10th Cir. 2003) ("The scienter of the senior controlling officers of a corporation may be attributed to the corporation itself to establish liability . . . .").

For these same reasons, Defendants also acted negligently since their conduct did not comport with the standard of care of a reasonable person, which they violated while making the false and misleading statements and omissions.

3. Defendants' Misconduct Satisfies the "In Connection With" and "In the Offer or Sale" Requirements; They Used the Instrumentalities of Interstate Commerce.

The SEC is required to show that Defendants' misconduct was "in connection with" (for Section 10(b) violations) or "in the offer or sale" (for Section 17(a) violations) of securities. Courts have broadly construed these provisions. *See SEC v. Zandford*, 535 U.S. 813, 819 (2002);

United States v. Naftalin, 441 U.S. 768, 778 (1979). "The 'in connection with' requirement is broadly interpreted to cover any fraud that 'coincide[s] with a securities transaction.'" *Smart*, 678 F.3d at 857 (quoting *Wolfson*, 539 F.3d at 1262). Indeed, "[the Tenth Circuit has] held 'misrepresentations made to induce a party to purchase a security *or to influence an investment decision* are made in connection with the purchase or sale of a security.'" *Id*. (quoting *Wolfson*, 539 F.3d at 1262) (emphasis in original). "The 'in connection with the purchase or sale of' and 'in the offer or sale of' elements of Rule 10b–5 and § 17(a) can be interchangeable." *SEC v. Radius Capital Corp.*, 653 Fed. Appx. 744, 749 (11th Cir. 2016).

Defendants' unlawful activities and representations were meant to, and did in fact, induce investors to purchase Reven stock and therefore were made in the offer or sale and in connection with the purchase or sale of Reven securities. *SEC v. Merkin,* No. 11-23585-CIV, 2012 WL 5245561, at *8 (S.D. Fla. Oct. 3, 2012) (the "in connection with" requirement is satisfied if the SEC shows that the material misrepresentations were relayed in a way that a reasonable investor would rely on them).

Lastly, Defendants offered and sold Reven securities by using the means and instrumentalities of interstate commerce and the mails. The Defendants disseminated false and misleading statements by email to investors and prospective investors in multiple states and investors wired money across state lines to purchase Reven stock. *See, e.g.*, *SEC v. One or More Unknown Traders in Common Stock of Certain Issuers*, No. 08-CV-1402 (KAM)(JMA), 2009 WL 3233110, at *4 (E.D.N.Y. Oct. 2, 2009) (wire transfers, among other things, established interstate commerce); *SEC v. Milan Cap. Grp., Inc.*, 2000 WL 1682761, at *5 n.3 (S.D.N.Y. Nov. 9, 2000) (stating interstate wire transfers satisfy interstate commerce requirement); *SEC v.*

One or More Unknown Traders in Common Stock of Certain Issuers, 2009 WL 3233110, at *4 (E.D.N.Y. Oct. 2, 2009) (wire transfers, among other things, established interstate commerce); *Commodity Futures Trading Comm'n v. Equity Fin. Grp., LLC*, No. CIV 04-1512 RBK, 2006 WL 3751911, at *7 (D.N.J. Dec. 18, 2006) (distributing PPM by email and use of internet constituted instrumentality of interstate commerce).

For the foregoing reasons, the SEC has made a prima facie showing that the Defendants violated Exchange Act Section 10(b) and Rule 10b-5(b) thereunder and Securities Act Section 17(a)(2).

B. Defendants Violated Section 10(b) and Rule 10b-5(a) and (c) of the Exchange Act and Section 17(a)(1) and (3) of the Securities Act.

Defendants' fraudulent conduct also violated Exchange Act Section 10(b) and Rules 10b-5(a) and (c) thereunder and Sections 17(a)(1) and (3) of the Securities Act by engaging in deceptive conduct. Rules 10b-5(a) and (c) make it unlawful to "employ any device, scheme, or artifice to defraud" or "engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person" in connection with the purchase or sale of securities. 17 C.F.R. § 240.10b-5(a) and (c). Securities Act Sections 17(a)(1) and (3) prohibit similar conduct in the offer or sale of securities. 15 U.S.C. §§ 77q(a)(1) and (3). The SEC must also establish that a defendant acted with scienter, except to show a violation of 17(a)(3), which requires only a showing of negligence. *See Aaron v. SEC*, 446 U.S. 680, 697 (1980); *Smart*, 678 F.3d at 857.

The language of these provisions is "expansive" and they "capture a wide range of conduct." *Lorenzo v. SEC*, 139 S. Ct. 1094, 1101-02 (2019). The Court held in *Lorenzo* that a defendant who knowingly disseminates a false statement to investors with the intent to deceive

can violate Rules 10b-5(a) and (c) and Section 17(a)(1), even if the defendant is not a "maker" of the statement for the purpose of liability under Rule 10b-5(b). *Lorenzo*, 139. S. Ct. at 1104. The Court also noted that there is "considerable overlap among the subsections of" Rule 10b-5 and Section 17(a), and thus the same underlying conduct may establish a violation of more than one subsection. *Id.* at 1102. Thus, a defendant who "makes" a misstatement can violate Rule 10b-5(a) and (c) and Sections 17(a)(1) and 17(a)(3), as well as Rule 10b-5(b) and Section 17(a)(2).

To prove fraud under Rule 10b-5(a) and (c) and Sections 17(a)(1) and (3), the SEC must prove that Defendants, directly or indirectly: (1) committed a deceptive or manipulative act; (2) in furtherance of the alleged scheme to defraud; (3) with scienter or negligence for Section 17(a)(3). *McDuffie*, 2014 WL 4548723, at *10.

The Defendants engaged in multiple deceptive or manipulative acts in furtherance of their scheme to pay the Reven Principals misappropriated investor funds. First, Defendants made or disseminated multiple false and misleading statements, which is a deceptive or manipulative act. *See, e.g., Lorenzo,* 139 S. Ct. at 1099. In addition to false and misleading statements about how investor funds would be used, the Defendants made or distributed, or both, Offering Documents that misrepresented the Reven Principals' compensation, that Reven would imminently have or did have audited financial statements, that Reven imminently would list in a DPO, that investor fund would be used in specific ways, and the fact of litigation involving the companies and its officers to induce investors to send their money to Defendants. This conduct alone constitutes deceptive acts.

Second, Defendants engaged in additional deceptive conduct by misappropriating investors' funds. Among other things, Defendants dissipated large amounts of investor money

through excess transfers to personal accounts and making payments for their benefit. Defendants' instructions to investors to send their investments to Reven's and Reven Pharmaceuticals' bank accounts and their diversion of investor funds from these accounts through these transfers and payments constitute a "fraudulent scheme on the deceived investors." *SEC v. Cooper*, 142 F. Supp. 3d 302, 316 (D.N.J. 2015).

Third, in order to disguise the significant payments being made to themselves and on their behalf, Defendants set up and made payments through a shell pass-through company to pay the Reven Principals.

For the same reasons as above, *see supra* at 31-33, Defendants acted with scienter and used interstate commerce.

The SEC has made a *prima facie* showing that the Defendants violated Exchange Act Section 10(b) and Rules 10b-5(a) and (c) thereunder and Securities Act Sections 17(a)(1) and (3).

III. THE SEC SEEKS EMERGENCY RELIEF TO PROTECT INVESTORS.

A. The Court Should Enter a Temporary Restraining Order to Prohibit Defendants from Violating Securities Laws in the Future and to Prohibit the Reven Principals from Offering or Selling Securities.

The SEC has made a *prima facie* showing that the Defendants are violating Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act, and Rule 10b-5 promulgated thereunder. *See supra* at 25-36.

Further, Defendants' are likely to violate securities laws in the future. Critically, "fraudulent past conduct gives rise to an inference of a reasonable expectation of continued violations." *Manor*, 458 F.2d at 1100; *SEC v. Washington Cnty. Util. Dist.*, 676 F.2d 218, 227

(6th Cir. 1982) ("Proof of past violations of the securities laws serves as a basis for an inference that future violations may occur."). Defendants have perpetrated this fraud for years and did not stop, even after the SEC contacted them. This is not an "isolated occurrence." And they have continued to make misrepresentations to investors as recently as October 2022. Moreover, Defendants acted with a high degree of scienter—they knew all of their representations to investors were false and they misappropriated investors' funds. Defendants, too, are in a position to continue this fraud as nothing stops them from continuing to solicit and misappropriate investor money. All of these factors weigh toward finding that Defendants are likely to violate the securities laws in the future. *See Cavanagh*, 155 F.3d at 132.

Furthermore, and subject to any asset freeze ordered by the Court, the Court should prohibit the Reven Principals from offering or selling securities, except in their own personal accounts. This relief will protect existing investors and potentially new investors from being subject to additional fraudulent activities while this litigation is pending. *See, e.g.*, *Sec. & Exch. Comm'n v. Meta 1 Coin Tr.*, No. 1:20-CV-273-RP, 2020 WL 1931852, at *1 (W.D. Tex. Apr. 21, 2020) (entering this type of specific conduct-based restraining order and noting it prohibits the defendants "from continuing to defraud current and potential investors").

B. The Court Should Immediately Freeze Defendants' Assets to Prevent Further Dissipation of Investor Funds.

The SEC has met its burden to show an inference can be drawn that Defendants violated the securities laws. *See supra* Argument, §§ I, II. The Court has broad equitable powers to prevent violators of the securities laws from enjoying the fruits of their misconduct, including freezing assets. *United States v. First Nat'l City Bank*, 379 U.S. 378, 384 (1965); *see also SEC v. Wencke*, 622 F.2d 1363, 1369 (9th Cir. 1980); *Manor*, 458 F.2d at 1103-1104. In particular,

courts regularly freeze assets in SEC enforcement actions to ensure that defendants do not dissipate assets pending final judgment and to ensure that victims of the securities fraud are compensated. *Manor*, 458 F.2d at 1105-06; *SEC v. End of Rainbow Partners, LLC*, 2017 WL 5404199, at *2 (D. Colo. Nov. 14, 2017) (stating the "purpose in seeking an asset freeze is to advance the public interest in ensuring that ill-gotten funds can be secured to satisfy a potential future judgment").

Upon making the required showing, the SEC is entitled to a freeze of assets "sufficient to preserve its disgorgement remedy as well as assets necessary to pay civil monetary penalties." *SEC v. Maillard*, 2014 WL 1660024, at *4 (S.D.N.Y. April 23, 2014). Because Congress has authorized a civil penalty equal to at least the amount of disgorgement in this matter, it is appropriate for the Court to freeze Defendants' funds sufficient to pay both the disgorgement and penalty amount that may eventually be due.

Defendants' fraud is ongoing and they continue to solicit investors and misappropriate investor funds. Thus, the SEC requests that, in order to maintain the *status quo* and prevent further harm to investors and dissipation of their assets, the Court freeze all of the Defendants' assets, wherever located, that are under their direct or indirect control. Defendants have unlawfully obtained millions of dollars of investor funds and it is likely that any assets currently in their possession are proceeds of their fraud. Moreover, based on the large sums that Defendants have already dissipated, it is improbable that a blanket asset freeze will freeze more than the amount of their likely disgorgement liability, much less additional assets likely required to pay civil penalties.

In addition, the Court's power to freeze assets extends to Relief Defendants. "The plenary powers of a federal court to order an asset freeze are not limited to assets held solely by an alleged wrongdoer, who is sued as a defendant in an enforcement action." *Smith v. SEC*, 653 F.3d 121, 128 (2d Cir. 2011). Those powers extend as well to a person not accused of wrongdoing, "where that person: (1) has received ill-gotten funds; and (2) does not have a legitimate claim to those funds." *SEC v. Cavanagh*, 155 F.3d 129, 136 (2d Cir. 1998). To obtain a freeze over a relief defendant's assets, the SEC "must demonstrate only that [it] is likely ultimately to succeed in disgorging the frozen funds." *CFTC v. Walsh*, 618 F.3d 218, 225 (2d Cir. 2010).

Here, Relief Defendant Health Analytics received approximately $1.8 from Defendants. Health Analytics is under the control of the Reven Principals and the money it received is proceeds of the securities fraud carried out by Defendants. Health Analytics never provided any goods or services for those funds, and thus it does not have any legitimate claim to these funds and all of its assets should be frozen to preserve sufficient funds for the payment of a disgorgement award.

In order to protect investors, the SEC also requests that the Court freeze the assets of Relief Defendants Reven, LLC, Reven Oncology, and Reven IP, each of which may own Reven's critical asset—its intellectual property. These entities are wholly-owned subsidiaries of Defendant Reven (or in the case of Reven Oncology, a subsidiary of Reven, LLC) and, accordingly, the proposed asset freeze requested by the SEC should prevent these assets from being dissipated. However, in an abundance of caution, the SEC asks that the Court also freeze their assets directly as Relief Defendants. In light of the Court's broad equitable powers, such an

asset freeze is appropriate here where the intellectual property has been obtained, maintained, expanded, or exploited with the proceeds of the Defendants' fraud.[7] Moreover, prior to and continuing through the Relevant Period, the intellectual property was transferred to these Relief Defendants for no consideration. Indeed, Reven Oncology and Reven IP have no bank accounts, and Reven, LLC's bank account only had minimal transactions and *de minimis* amounts in it. The Court should use its equitable powers to enter an order freezing the assets of these Relief Defendants, principally preventing the sale of the intellectual property, to protect investors and to preserve assets for the payment of a possible disgorgement award.

C. The Court Should Order a Sworn Accounting From Each Defendant and Relief Defendant to Locate Assets and Determine the Amount Each Obtained From the Fraud.

To accurately determine the scope of a fraud and a defendant's and relief defendant's ability to disgorge illicit proceeds, courts frequently require defendants and relief defendants to provide a verified accounting of all monies or property obtained as a result of the fraudulent activity, as well as their current financial resources or assets. *See, e.g.*, *SEC v. Int'l Swiss Inv. Corp.*, 895 F.2d 1272, 1276 (9th Cir. 1990); *SEC v. Spongetech Delivery Sys., Inc.*, 2011 WL 887940, at *5 (E.D.N.Y. Mar. 14, 2011) (noting that ordering an accounting is "minimally

[7] While these entities are not typical Relief Defendants who have received ill-gotten proceeds directly from Defendants (as in money transfers from bank accounts), courts have "'the authority [under the Exchange Act] to grant the full panoply of equitable remedies so that the plaintiff can obtain complete relief.'" *SEC v. McGee*, 895 F. Supp. 2d 669, 686–89 (E.D. Pa. 2012) (quoting *SEC v. Antar*, 831 F.Supp. 380, 398 (D.N.J. 1993)). And the monies used to obtain or maintain these assets, while needing to be connected to the fraud, do not need to be specifically traceable to the fraudulent proceeds. *See, e.g.*, *SEC v. Rosenthal*, 426 Fed. App'x 1, 3 (2d Cir. 2011) (holding that "[t]he SEC is not required to trace specific funds to their ultimate recipients" where illicit profits were commingled and transferred with legitimate funds); *SEC v. Banner Fund Int'l*, 211 F.3d 602, 617 (D.C. Cir. 2000) (holding that "[b]ecause disgorgement is an equitable obligation to return a sum equal to the amount wrongfully obtained, rather than a requirement to replevy a specific asset," a defendant may not avoid disgorgement by arguing that he does not have access to the specific profits in question.).

intrusive"); *SEC v. Oxford Capita/Secs., Inc.,* 794 F. Supp. 104, 105-06 (S.D.N.Y. 1992); *SEC v. Universal Consulting Res. LLC,* No. 10-CV-02794-JLK-KLM, 2010 WL 4873733, at *4 (D. Colo. Nov. 23, 2010) (granting SEC's ex parte motion for TRO and ordering an accounting by Defendants and Relief Defendants). Consistent with this precedent, the SEC further requests that the Court order Defendants and Relief Defendants to prepare sworn accountings.

D. The Court Should Order Defendants and Relief Defendants Not to Destroy Records.

Courts regularly use their broad equitable authority to order the preservation of evidence in SEC enforcement actions. *Shields*, 2011 WL 3799061, at *2; *SEC. v. Mantria Corp.*, No. 09-CV-02676CMAMJW, 2009 WL 4693893, at *6 (D. Colo. Dec. 2, 2009). Such an order is especially appropriate here, where Defendants have failed to fully produce documents, and where Relief Defendants are owned and controlled by Defendants or some combination thereof.

E. The Court Should Order Expedited Discovery and Alternative Means of Service to Prepare for a Hearing to Show Cause.

The Court should order expedited discovery and permit alternative means of service to enable the parties to gather evidence in advance of the preliminary injunction/hearing to show cause requested by the SEC. Courts routinely order expedited discovery and alternative service in emergency actions filed by the SEC. *See, e.g.*, *Universal Consulting Res.* LLC, 2010 WL 4873733, at *5-6; *Mantria*, 2009 WL 4693893, at *6.

F. Entry of an Order *Ex Parte* is Warranted.

The SEC seeks this relief on an *ex parte* basis. If the Court grants this motion, the SEC intends to serve the asset freeze order on the financial institutions holding the assets of the Defendants and Relief Defendants before serving the Complaint and other documents on the

Defendants. Proceeding in this manner is meant to prevent the Defendants or Relief Defendants from taking steps to make collection difficult or impossible after learning of the SEC's complaint or this motion.

As explained in the Rule 65(b)(1) Certification of Kenneth E. Stalzer, the SEC believes that if the Defendants and Relief Defendants become aware of this action before the asset freezes are instituted, they may immediately move to further dissipate their assets. Accordingly, *ex parte* relief is necessary to prevent Defendants from dissipating funds before their assets can be appropriately secured. *Mantria*, 2009 WL 4693893, at *2; *SEC v. Vaughan*, No. 10-CV-00263-MCA-WPL, 2010 WL 11437637, at *2 (D.N.M. Mar. 24, 2010).

G. The Court Should Order Defendants to Show Cause Why the TRO Relief Should Not be Extended During the Pendency of the Litigation.

Finally, the SEC requests that the Court order Defendants to show cause, at a preliminary injunction hearing, before any temporary restraining order expires, why the asset freeze and other emergency relief in the accompanying proposed order should not be extended for the pendency of the litigation. *Universal Consulting Res.*, 2010 WL 4873733, at *7; *Mantria*, 2009 WL 4693893, at *1.

CONCLUSION

For the foregoing reasons, the SEC respectfully requests the Court grant its motion, the emergency relief requested herein, and any other relief it deems just and proper. A proposed order is attached as Exhibit 9.

Dated: December 8, 2022

Respectfully submitted,

By: *s/ Kenneth E. Stalzer*

Kenneth E. Stalzer
Sharan E. Lieberman
U.S. Securities and Exchange Commission
1961 Stout Street, Suite 1700
Denver, CO 80294-1961
Telephone: 303-844-1055 (Stalzer)
303-844-1036 (Lieberman)
303-844-1000 (Main)
Email: stalzerk@sec.gov
liebermans@sec.gov
Attorneys for Plaintiff
U.S. Securities and Exchange Commission