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

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

UNITED STATES SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

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

Defendants, and

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

Relief Defendants.

ORDER GRANTING PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION AND ASSET FREEZE

Plaintiff U.S. Securities and Exchange Commission previously moved for a temporary restraining order (1) prohibiting the defendants from violating the anti-fraud provisions of federal securities laws; (2) prohibiting Defendants Brian D. Denomme, Peter B. Lange, and Michael A. Volk (the "Reven Principals") from offering or selling securities; (3) freezing the defendants' and relief defendants' assets; and (4) providing other ancillary relief. Doc. 3. I granted that motion, Doc. 28, and the parties agreed to extend the temporary restraining order pending my ruling as to a preliminary injunction, Docs. 35, 36.

Having considered the parties' preliminary-injunction briefing and the evidence of record, and I find that the Commission has made a clear showing that it will likely be successful in proving that the defendants have violated federal securities laws and will likely do so again if they are not enjoined. Accordingly, the Commission's motion for a preliminary injunction is granted, and the terms of the temporary restraining order (as modified, *see* Docs. 55, 65, 68, 72, 74, 117) are extended pending a final adjudication of this case on the merits.

BACKGROUND

Defendant Reven Holdings, Inc. was formed in 2018 as a privately held biotechnology and pharmaceutical holding company. Doc. 96 at 11. According to the defendants, "Reven's primary focus has been developing and commercializing a cardiovascular and anti-inflammatory intravenous drug treatment called Rejuveinix ('RJX')." *Id.* Reven Holdings is a successor to Defendant Reven Pharmaceuticals, Inc., which was formed in 1999. Doc. 7-1 at 2; Doc. 7-4 at 1. Relief Defendant Reven, LLC is a wholly owned subsidiary of Reven Holdings. Doc. 7-4 at 1. In August 2018, Reven Pharmaceuticals transferred all of its assets and liabilities to Reven, LLC. *Id.* Relief Defendants Reven IP Holdco, LLC and Reven Oncology Licensing, LLC also now hold some Reven assets. Doc. 96 at 11; Doc. 7 ¶¶ 17-18.

Defendant Denomme is a co-founder, member of the board, and the current President and former Chief Operating Officer of Reven Holdings. Doc. 96 at 12. Defendant Lange is a co-founder, member of the board, and the current Chief Executive Officer of Reven Holdings. *Id.* Defendant Volk is a co-founder, member of the board, and the current Chief Strategy Officer and former Chief Financial Officer of Reven Holdings. *Id.* Collectively, the Reven Principals control the majority of the

stock of Reven Holdings. Doc. 7 ¶¶ 38-39; Doc. 7-13 at 2; 7-17 at 9. Relief Defendant Health Analytics & Research Services, LLC is another company owned by the Reven Principals. Doc. 7-12 at 2. According to the defendants, this company "provided consulting services to both Reven and other entities," and "was also sometimes used, for tax purposes, to pay the Reven Principals." Doc. 96 at 21.

The defendants state that "[t]ogether, the Reven Principals have brought in thousands of investors to the company." *Id.* at 12. The Commission alleges that the Reven Principals did so by making a number of false or misleading statements to prospective investors in violation of federal securities laws. *See generally* Doc. 1; Doc. 3. Specifically, the Commission contends that the defendants violated the Securities Act of 1933 ("Securities Act") and the Securities Exchange Act of 1934 ("Exchange Act"), and argues that the defendants will continue to do so unless they are preliminarily enjoined.

APPLICABLE LAW

I. Preliminary-Injunction Standard

Ordinarily, a party seeking a preliminary injunction must show: (1) that it is substantially likely to succeed on the merits; (2) that it will suffer irreparable injury if the court denies the requested relief; (3) that its threatened injury without the injunction outweighs the opposing party's under it; and (4) that the requested relief is not adverse to the public interest. *Mrs. Fields Franchising, LLC v. MFGPC*, 941 F.3d 1221, 1232 (10th Cir. 2019); *accord Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008).

But when "defendants are engaged in, or about to be engaged in, [acts] or practices prohibited by a statute which provides for injunctive

relief to prevent such violations," the traditional equitable factors, including irreparable harm, need not be shown. *Mical Commc'ns, Inc. v. Sprint Telemedia, Inc.*, 1 F.3d 1031, 1035 (10th Cir. 1993); *see also Atchison, Topeka & Santa Fe Ry. Co. v. Lennen*, 640 F.2d 255, 259 (10th Cir. 1981) (collecting cases and noting that other courts have applied this rule to Securities Act and Exchange Act); *Commodity Futures Trading Comm'n v. Wall Street Underground, Inc.*, 128 F. App'x 726, 728 (10th Cir. 2005) (applying rule to Commodity Exchange Act). Such is the case here. The Commission seeks injunctive relief pursuant to the Securities Act and the Exchange Act, which provide that:

> Whenever it shall appear to the Commission that any person is engaged or about to engage in any acts or practices which constitute or will constitute a violation of [securities laws], the Commission may . . . bring an action in any district court of the United States . . . to enjoin such acts or practices, and upon a proper showing, a . . . temporary injunction . . . shall be granted without bond.

15 U.S.C. § 77t(b) (Securities Act); *accord* 15 U.S.C. § 78u(d)(1), (5) (Exchange Act). The Commission therefore "need only show that the statutory conditions for the issuance of an injunction [are] met." *Mical*, 1 F.3d at 1036; *accord SEC v. Mgmt. Dynamics, Inc.*, 515 F.2d 801, 808-09 (2d Cir. 1975). The "proper showing" required by the Securities Act and the Exchange Act "include[s], at a minimum, proof that a person is engaged in or is about to engage in a substantive violation of either one of the Acts or of the regulations promulgated thereunder." *Aaron v. SEC*, 446 U.S. 680, 700-01 (1980).

While the traditional four-factor test for a preliminary injunction does not apply here, that does not mean a court should not take equitable considerations into account when deciding whether to grant injunctive relief. *See SEC v. Unifund SAL*, 910 F.2d 1028, 1035-40 (2d Cir. 1990). "[T]he Commission should be obliged to make a more

persuasive showing of its entitlement to [injunctive relief] the more onerous are the burdens of the injunction it seeks." *Id.* at 1039. Where, as here, the Commission seeks injunctive relief that mandates action or alters the status quo, it must make a "clear showing" as to (1) its likelihood of proving the alleged statutory violation, and (2) the likelihood that a violation will occur again in the future. *Id.* at 1039-40; *cf. Mrs. Fields*, 941 F.3d at 1232 (to obtain preliminary relief that mandates action or changes status quo, movant must make "strong showing" of likelihood of success on merits).

II. Securities Act and Exchange Act

The Commission alleges the following statutory violations: (1) the defendants, by making false and misleading statements to prospective investors, violated Exchange Act Section 10(b),[1] Exchange Act

[1] Exchange Act Section 10(b) provides that:

> It shall be unlawful for any person . . . by the use of any means or instrumentality of interstate commerce or of the mails . . . [t]o use or employ, in connection with the purchase or sale of any security registered on a national securities exchange or any security not so registered . . . any manipulative or deceptive device or contrivance in contravention of such rules and regulations as the [Securities and Exchange] Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

15 U.S.C. § 78j(b).

Rule 10b-5(b),[2] and Securities Act Section 17(a)(2),[3] and (2) the defendants, by engaging in deceptive conduct, violated Exchange Act Section 10(b), Exchange Act Rules 10b-5(a) and (c), and Securities Act Sections 17(a)(1) and (3).

To establish a violation under Exchange Act Section 10(b) or Rule 10b-5,[4] the Commission must prove that the defendants (1) made a misrepresentation or omission of material fact, or committed a deceptive or manipulative act, in furtherance of a scheme to defraud, (2) with

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[2] Exchange Act Rule 10b-5 provides that:

> It shall be unlawful for any person . . . by the use of any means or instrumentality of interstate commerce, or of the mails . . . (a) To employ any device, scheme, or artifice to defraud, (b) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or (c) To 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 any security.

17 C.F.R. § 240.10b-5.

[3] Securities Act Section 17(a) provides that:

> It shall be unlawful for any person in the offer or sale of any securities . . . by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails . . . (1) to employ any device, scheme, or artifice to defraud, or (2) to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or (3) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

15 U.S.C. § 77q(a).

[4] The coverage of Rule 10b-5 is coextensive with that of Section 10(b). *SEC v. Smart*, 678 F.3d 850, 856 n.7 (10th Cir. 2012).

scienter, (3) in connection with the purchase or sale of securities, (4) by means of interstate commerce or the mail. *Smart*, 678 F.3d at 856; *SEC v. Wolfson*, 539 F.3d 1249, 1255-66 (10th Cir. 2008); *SEC v. McDuffie*, No. 12-cv-02939, 2014 WL 4548723, at *8, *10 (D. Colo. Sept. 15, 2014). Sections 17(a)(1) to (3) of the Securities Act require substantially similar proof with respect to the offer or sale of securities.[5] *Smart*, 678 F.3d at 857. The primary difference between Section 10(b) and Sections 17(a)(1) to (3) is in the scienter element. *Id.* Section 10(b) and Section 17(a)(1) require the Commission to establish at least recklessness, whereas negligence is sufficient for Sections 17(a)(2) and (3). *Id.*

DISCUSSION

I. Likelihood of Proving a Statutory Violation

I have examined the allegations in the Commission's complaint, Doc. 1; the arguments in the parties' briefs, Docs. 3, 96, 107, 113, 114, 115; and the associated declarations and exhibits in the record, Docs. 7 to 7-30, 8 to 8-3, 9 to 9-15, 10, 11 to 11-2, 12 to 12-8, 13 to 13-11, 14 to 14-1, 96-1 to 96-32, 97-1 to 97-7, 104-1, 107-1 to 107-3, 113-1. The evidence clearly shows that the Commission is likely to prove the alleged statutory violations.

The parties' preliminary-injunction briefing is focused on the defendants' solicitation of investors between 2019 and 2021. *See* Doc. 3 at 26-35; Doc. 96 at 19-25, 29-47. The Commission alleges that during this period, the Reven Principals made false or misleading statements

[5] Although Section 10(b) requires that the fraud be committed "in connection with the purchase or sale of any security," while Section 17(a) requires that the fraud be committed "in the offer or sale of any securities," these phrases are often used interchangeably. *Wolfson*, 539 F.3d at 1263.

to prospective investors regarding (1) executive compensation, Doc. 3 at 26-29; (2) the existence of audited financial statements and Reven's readiness for an initial public offering and/or direct public offering, *id.* at 29-33; and (3) the fact that some of the defendants were the subject of a lawsuit in which a Reven Holdings shareholder alleged they had committed securities fraud, *id.* at 34-35.[6] As noted above, the Commission must prove that the defendants (1) made a misrepresentation or omission of material fact, or committed a deceptive or manipulative act, in furtherance of a scheme to defraud, (2) with scienter, (3) in connection with the purchase or sale of securities, (4) by means of interstate commerce or the mail. The defendants do not contest the third and fourth elements. They dispute, however, whether they made any misrepresentation, whether any alleged misrepresentation or omission was material, and whether they acted with the requisite scienter.

A. Executive Compensation

1. Misrepresentations or Omissions

The Commission has made a clear showing that it is likely to prove the defendants made false and misleading statements or omissions to investors regarding the Reven Principals' annual compensation.

In Private Placement Memoranda ("PPMs") dated August 2018, July 2020, and January 2021, the defendants disclosed the following

[6] The Commission also alleges that the Reven Principals made false or misleading statements regarding how certain investor funds would be used. Doc. 3 at 33-34. I need not address the parties' disputes regarding those allegations, because the other false or misleading statements discussed in this Order are sufficient to support the issuance of a preliminary injunction.

collective total annual compensation for the Reven Principals, while in reality, the Commission says, they took much more:

Year	Disclosed Compensation	Alleged Actual Compensation	Alleged Misappropriation
2019	$1.62 to $2.3 million	$5.35 million	$3.05 to $3.73 million
2020	$1.8 to $1.98 million	$3.36 million	$1.38 to $1.56 million
2021	$2.16 million	$6.65 million	$4.49 million
Total	$5.58 to $6.44 million	$15.36 million	$8.92 to $9.78 million

Doc. 7-8 at 30; 7-17 at 7; Doc. 7-20 at 13; Doc. 8 ¶¶ 18-19 & n.10; Doc. 3 at 27.

The defendants argue that the Commission's alleged "actual compensation" numbers are inflated, because they include payments that were not made for the Reven Principals' personal benefit, specifically: payments made toward Mr. Volk's American Express card that was used for business expenses, payments of an "auto allowance" set forth in the Principals' employment agreements, and payments to Health Analytics & Research Services for marketing services provided to Reven. Doc. 96 at 22-24. According to the defendants, the Reven Principals' collective total compensation for this three-year period was only $11.33 million, not $15.36 million. *See id.* at 24; Doc. 97-1 ¶¶ 7, 10-30. This, however, still means that the Reven Principals took in $4.89 to $5.75 million more than they disclosed to investors.

The defendants argue that they were entitled to the compensation they took (and in fact more) under the terms of their employment agreements, and that they made no misrepresentation or omission to investors because the PPMs expressly gave prospective investors the ability to request and review those employment agreements, which provided for

annual base compensation of $900,000, $1 million, and $1.2 million in 2019, 2020, and 2021, respectively, plus annual bonuses if certain targets were met.[7] Doc. 96 at 13-14, 20-24, 30-31. But the compensation disclosure tables in the July 2020 and January 2021 PPMs specifically included "Bonus" and "All Other Compensation" columns, in which no amounts were disclosed. Doc. 7-17 at 7 (disclosing amounts only in "Salary" column for Reven Principals); Doc. 7-20 at 13 (same). And those PPMs included disclosure of the actual compensation paid to the Reven Principals in past years, not just estimates of future compensation or amounts the Principals might be entitled to under their employment agreements. The disclosed amounts were less than what the Principals had actually received, even under the defendants' own calculations. Those disclosures—which omitted any "bonus" or "other" compensation the Reven Principals had received beyond their base monthly draws—were misrepresentations.

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[7] The defendants also state that the 2020 and 2021 PPMs contain typographical errors, listing incorrect years in the compensation tables. Doc. 96 at 29. But correcting for these alleged errors still results in the defendants having taken in more than was disclosed:

Year	Corrected Disclosed Compensation	Alleged Actual Compensation
2019	$1.8 to $2.3 million	$5.35 million
2020	$2.16 million	$3.36 million
Total	$3.96 to $4.46 million	$8.71 million

See Doc. 7-17 at 7; Doc. 7-20 at 13; Doc. 8 ¶¶ 18-19; Doc. 3 at 27. The defendants' accountant did not break his calculations down by year, *see* Doc. 97-1, but reducing the $8.71 million total compensation alleged by the Commission for 2019-2020 by the same amount the defendants' accountant did for 2019-2021 ($11.33 / $15.36 x $8.71 = $6.42) results in the Reven Principals having taken in roughly $1.96 to $2.46 million more than disclosed for 2019-2020. *See* Doc. 107 at 9 n.2.

2. Materiality

The Commission has also made a clear showing that it is likely to prove the defendants' misrepresentations regarding the Reven Principals' compensation were material.

A statement or omission is material if "a reasonable investor would consider it important in determining whether to buy or sell stock," and if it would have "significantly altered the total mix of information available" to current and potential investors. *City of Phila. v. Fleming Cos.*, 264 F.3d 1245, 1265 (10th Cir. 2001) (quoting *Grossman v. Novell, Inc.*, 120 F.3d 1112, 1119 (10th Cir. 1997)). "A false statement or omission need not be outcome determinative for it to be considered material; rather it simply must be significant to the investor's decision." *SEC v. LottoNet Operating Corp.*, No. 17-21033-CIV-LENARD/GOODMAN, 2017 WL 6949289, at *13 (S.D. Fla. Mar. 31, 2017) (R. & R.), *adopted by* 2017 WL 6989148 (S.D. Fla. Apr. 6, 2017). Misrepresentations regarding the use of investor funds are material. *SEC v. Cell>Point, LLC*, No. 21-cv-01574-PAB-KLM, 2022 WL 444397, at *7 (D. Colo. Feb. 14, 2022); *accord LottoNet*, 2017 WL 6949289, at *13 (collecting cases).

Multiple courts have found that misrepresentations regarding executive compensation like those in this case are material.[8] *See SEC v. Benson*, 657 F. Supp. 1122, 1130-31 (S.D.N.Y. 1997) (failure to disclose amounts misappropriated by corporate officials, including unearned

[8] Both sides have presented declarations from investors stating that knowledge of the Reven Principals' compensation was, or was not, important to their decision to invest. *Compare* Doc. 9 ¶ 43, *with* Doc. 96-13 ¶ 8, *and* Doc. 96-14 ¶ 6. The fact that certain information was or was not important to a particular investor is relevant to, but not dispositive of, whether that information would have been material to a reasonable investor. *SEC v. Trujillo*, No. 09-cv-00403-MSK-KMT, 2010 WL 3790817, at *4 (D. Colo. Sept. 22, 2010).

commissions); *LottoNet*, 2017 WL 6949289, at *6, *11 to *12 (statements (1) in PPM that CEO would receive $10k per month, when in fact he took average of $23.2k per month, and (2) in SEC Form D that total executive compensation was approximately $200k when in fact it was at least $580k); *see also SEC v. Rsch. Automation Corp.*, 585 F.2d 31, 35 (2d Cir. 1978) ("What reasonable investor would not wish to know that the money raised by stock sales would not be used for working capital but be diverted to RAC's officers?"). The defendants argue that their statements regarding executive compensation were not material because they "came with disclaimers about forward-looking expectations and management's discretion regarding the use of funds, and specifically explained that any potential investor could 'obtain additional information and/or documents in connection with making an investment decision.'" Doc. 96 at 31. But as noted above, at least some (or all, if there were typographical errors as the defendants state) of the disclosed compensation in the 2020 and 2021 PPMs was presented as actual compensation for past years, not "forward-looking" estimated compensation. The defendants' arguments regarding a lack of materiality are not persuasive.

3. Scienter

The Commission has shown that it is likely to prove that the misrepresentations in the PPMs regarding the Reven Principals' compensation were made recklessly, and has made a clear showing that those misrepresentations were made at a minimum negligently.[9]

[9] The Reven Principals' scienter can be attributed to Reven Holdings itself. *Adams v. Kinder-Morgan, Inc.*, 340 F.3d 1083, 1106 (10th Cir. 2003) (scienter of senior controlling officers acting within scope of their apparent authority may be attributed to corporation itself).

Recklessness is defined 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 1258. Recklessness may be established by showing a defendant's knowledge of a fact "that was so obviously material that the defendant must have been aware both of its materiality and that its non-disclosure would likely mislead investors." *SEC v. Curshen*, 372 F. App'x 872, 881 (10th Cir. 2010).

The Reven Principals knew their own salaries, the possibility of receiving bonuses, and whether they had met the metrics required to receive a bonus in any given year. *See* Doc. 107-1 at 5-7 (Mr. Denomme). They also knew they received compensation other than their salaries during the relevant time period, and that that other compensation was not disclosed in the PPMs. Doc. 107-1 at 9 (Mr. Denomme, travel and car allowances not disclosed); Doc. 107-2 at 6 (Mr. Lange, same); *see also* Doc. 7-17 at 7 (listing "Salary" amounts but no amounts for "Bonus" or "All Other Compensation"); Doc. 7-20 at 13 (same).

They thus knew or must have known that the PPMs presented a danger of misleading prospective investors as to their compensation. The defendants argue that they "intended the compensation figures in the PPMs . . . to reflect the monthly draws that were then being paid to the Reven Principals, rather than the total amounts the Reven Principals were entitled to earn under their employment agreements," and that "[t]his was not due to any intent to mislead investors about the terms of the Reven Principals' employment agreements or the amounts of compensation actually being paid to the Reven Principals." Doc. 96-2 ¶ 8. But the PPMs expressly state that they "set[] forth the annual and long-term compensation paid to our Chief Executive Officer and the other

executive officers," Doc. 7-17 at 7; Doc. 7-20 at 13, *i.e.*, "the amounts of compensation actually being paid," which only reinforces that the Reven Principals must have known these disclosure tables had the potential to be misleading.

The Commission is also likely to show that the Reven Principals must have known that disclosures regarding their compensation would be material to a reasonable investor. As noted above, even under the defendants' calculations, the Reven Principals took in at least $4.89 million more than they disclosed for 2019-2021. That amount constitutes over 10% of the total investor funds that Reven raised during that period. *See* Doc. 8 ¶ 14. The Reven Principals at the very least should have known that this misrepresentation regarding the use of investor funds was material. But even if the Commission is not successful in proving that the misrepresentations regarding compensation were "so obviously material that the [Reven Principals] must have been aware . . . of [their] materiality," *i.e.*, that they were made recklessly, the Commission is clearly likely to show that the misrepresentations were at a minimum made negligently. The defendants do not even attempt to argue that they were not negligent. *See* Doc. 96 at 10, 32 ("[A]ny purported misstatement or omission . . . was at most the product of simple negligence, not deliberate fraud."; The Commission "does not have evidence reflecting intentional (or even sufficiently reckless) conduct for the purported misstatements.")

B. Audited Financial Statements and Public Offering

1. Misrepresentations or Omissions

The Commission has made a clear showing that it is likely to prove the defendants made false and misleading statements or omissions to

investors regarding the existence of audited financial statements and Reven's readiness for an IPO or DPO.

The parties have submitted the following evidence regarding Reven's progress toward audited financial statements and making a public offering during the 2019 to 2021 time period and what the Reven Principals communicated to prospective investors during that time:

- **2019** – "Reven made several efforts to make progress toward completing an audit, including steps to make the firm easier to audit, such as engaging CARTA to properly document shareholders and communicate with them consistently, and also by formalizing accounting procedures and processes, which Reven engaged Eide Bailly [a CPA and business advisory firm] to assist with." Doc. 96-2 ¶ 11.

- **September 9 2019** – Mr. Lange emailed a prospective investor, Leah Schaatt, a slide deck dated August 2019 that included a slide titled "Pathway to IPO," which projected that an S-1 statement could be filed with five to eight months' preparation time, and a slide listing as one of three possible "exit strategies" for Reven to "Organize and execute a public offering on a major financial exchange after October 1, 2020" and stating that "*[t]he company will have the minimum required two years of audited financial statements ending September 30, 2020* making it eligible to offer its shares for sale in an Initial Public Offering as early as October 2020." Doc. 9-1 at 1, 83, 96 (emphases added). Ms. Schaatt invested in Reven on September 13, 2019. Doc. 9 ¶ 9.

- **December 9, 2019** – Mr. Volk emailed an investor, Sharon Garber, stating that "[w]e are working directly with a very reputable firm for SEC compliance in preparation for an IPO to hopefully happen sometime during 2020—it will NOT be prior to October since we need a minimum of 2 years audited financials which will be at the end of September 2020 due to the restructure we did last year. *We are currently undergoing our first audit now*." Doc. 7-22 at 3 (emphasis added).

- **April 2020** – "Reven hired a new CFO, Jeff Halverson . . . specifically to work on bookkeeping and preparing for an audit. Reven also began working through internal accounting deficiencies that would need to be corrected before a public listing could happen." Doc. 96-2 ¶ 12.

- **April 20, 2020** – Mr. Volk emailed a group of prospective investors a slide deck dated April 2020 that included a slide listing as one of three possible "exit strategies" for Reven to "Organize and execute an initial public offering (IPO) after October 1, 2020" and stating that "*[t]he company will have the minimum required two years of audited financial statements ending September 30, 2020 making it eligible to offer its shares for sale in an Initial Public Offering as early as October 2020*." Doc. 7-23 at 1, 16 (emphases added).

- **Mid-2020** – "Reven . . . contacted a number of additional firms regarding working together on a public offering. . . . Many of these relationships continued through the majority of 2022." Doc. 96-2 ¶ 13.

- **July 8, 2020** – Mr. Lange emailed Ms. Schaatt with the subject line "Reven next 90 day pathway to Covid-19 FDA approval and IPO," stating 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 an IPO in 2021*." Doc. 9-6 at 1 (emphasis added). Mr. Lange and Mr. Volk solicited Ms. Schaatt for additional investments throughout 2020. Doc. 9 ¶ 21.

- **April 6, 2021** – Mr. Halverson engaged Rudy Rudolph of Eide Bailly to prepare tax returns for Reven, LLC and its related entities for the years 2018, 2019, and 2020, which needed to be filed before Reven's financial statements could be audited. Doc. 13 ¶¶ 3, 5, 7.

- **April 6, 2021** – Mr. Volk emailed a prospective investor, Nicholas Shevillo, a slide deck dated December 2020 that included a slide listing as one of three possible "exit strategies" for Reven to "Organize and execute an initial public offering (IPO) early 2021" and stating that "*[t]he company will have the required minimum required [sic] two years of audited financial statements ending 2020*." Doc. 7-24 at 1, 14 (emphases added).

- **June 9, 2021** – Mr. Lange emailed a CPA for a group of investors (the Frost family), stating that

> Our timeline is to launch the DPO in September . . . . It[']s important to know that *our S1 is essentially already finished which requires our audit to be completed which should be finished in the next 45-60 days*. Our projection is July 15th but with summer holidays I really think we will not hit that date. Here is an update with respect to our pursuit of a public listing subsequent to *completion and filing of our S-1 registration statement being filed with the SEC within the next 3-5 weeks*.

Doc. 12-2 at 2 (emphasis added). Thereafter, Mr. Lange solicited Lee-Ann Frost and her family for additional investments. Doc. 12 ¶¶ 10-13. Ms. Frost and her family members made an additional investment on September 24, 2021. *Id.* ¶ 14.

- **July 2021** – "Reven hired 180 Accounting to reconcile its accounting and bookkeeping records in advance of a potential audit." Doc. 96-2 ¶ 14.

- **July 14, 2021** – Mr. Volk emailed Ms. Schaatt a document titled "Pre-Direct Public Offering Brief and Deal Structure" "regarding the shares we are looking to place to raise the final funds prior to our Direct Public Offering." Doc. 9-8. That document stated 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 . . . . *Reven has completed all the necessary groundwork to accomplish a listing and public offering of its shares with the exception of the completion of its financial audit*.

Id. at 2 (emphasis added). The previous day, Mr. Volk and Mr. Lange had solicited Ms. Schaatt for an additional investment. Doc. 9 ¶ 22. Ms. Schaatt made an additional investment on July 16, 2021. *Id.* ¶ 25.

- **July 28, 2021** – Eide Bailly reported to Mr. Halverson and Mr. Volk that Reven had not provided all of the necessary documents needed to complete the tax returns. Doc. 13 ¶ 18. Mr. Halverson communicated this information to Mr. Denomme and Mr. Lange within a week. *Id.* ¶ 24. Eide Bailly did not do any more work on Reven's tax returns after this because Reven still needed to reconcile its bookkeeping entries. *Id.* ¶ 20.

- **September 14, 2021** – Mr. Volk had a conversation with a prospective investor, Jeffrey Green, in which he stated that a DPO was "inevitable" and going to happen in the next month to the next few months. Doc. 11 ¶ 5. Mr. Green invested in Reven on September 15, 2021. *Id.* ¶ 9.

- **November 18, 2021** – Mr. Lange emailed the Frost family a "final draft" slide deck that included a slide listing as one of three "Multiple paths & options going forward" for Reven to "Organize and execute an Initial Public Offering" and stating that "*[t]he Company has the minimum required two years of audited financial statements ending August 2021*." Doc. 12-7 at 1, 22 (emphasis added). Mr. Lange solicited the Frost family for an additional investment in September 2022. Doc. 12 ¶ 17; Doc. 12-8.

- **December 6, 2021** – Mr. Volk emailed an investment advisor, Monica Ryan, a slide deck dated December 1, 2021 that included a slide listing as one of three possible "Strategic Paths Forward" for Reven to "Organize and execute an initial Public Offering" and stating that "*[t]he Company has the minimum required two years of audited financial statements ending August 2021*." Doc. 7-25 at 1, 96 (emphasis added). Ms. Ryan forwarded that slide deck to a group of prospective investors. *Id.* at 1.

- **December 16, 2021** – Mr. Lange emailed Ms. Schaatt a "new deck" that included a slide listing "Going Public" as one of three "Strategic Paths Forward" for Reven and stating that "*[t]he Company has the minimum required two years of audited financial statements ending August 2021*." Doc. 104-1 at 1, 19 (emphasis added). The Reven Principals solicited Ms. Schaatt for an additional investment in September and October 2022. Doc. 9 ¶ 33; *see also* Doc. 9-11 at 1-2, 22 (Sept. 14, 2022 email attaching slide deck with same statement re audited financial statements).

The defendants acknowledge that "[t]o be eligible for a direct public offering ('DPO'), Reven had to file tax returns, obtain audited financial

statements, prepare an S-1 registration statement with the SEC, obtain a third-party valuation, and meet certain market targets, among other things," and that "before Reven could file tax returns or complete an audit, it had several more steps to complete . . . [including] bookkeeping records needed to be reconciled, a considerable undertaking." Doc. 96 at 33. And they do not dispute that Reven never completed or filed its 2018-2020 tax returns and that no firm was ever retained to audit Reven's financial statements. Doc. 13 ¶¶ 21-22. Indeed, they acknowledge that 180 Accounting did not come close to completing the reconciliation of Reven's bookkeeping records, which was a prerequisite to filing tax returns and obtaining audited financial statements, until shortly before the temporary restraining order was issued in this case on January 3, 2023. Doc. 96-2 ¶ 14; Doc. 96 at 34 n.6. According to the Commission, Reven also did not meet the financial metrics required by the listing rules of the stock exchanges it had represented to investors it would list on. Doc. 7 ¶ 52.

The defendants argue that they made no misrepresentations because they made only "forward-looking statements to investors about the steps they were taking, or planning to take, to accomplish the[] goals" of obtaining audited financial statements and preparing for a public offering, which "did not, nor were they intended to, communicate with exact certainty a timeframe for completing certain specific benchmarks." Doc. 96 at 35. It is true that the slide decks distributed to investors and prospective investors contained disclaimers regarding forward-looking statements, and that those decks did not promise a public offering, presenting that as only one of three potential paths forward (the others being licensing and organic growth).

But the November and December 2021 slide decks contained the non-forward-looking statement that "[t]he Company has the minimum

required two years of audited financial statements ending August 2021," which was plainly untrue, and falsely indicated that if the public-offering path was chosen, Reven had completed all the necessary groundwork to file an S-1 statement and accomplish a listing and public offering of its shares. Doc. 12-7 at 22; Doc. 7-25 at 96; Doc. 104-1 at 19. Those decks were sent to prospective investors and to existing investors who the Reven Principals continued to solicit for additional investments. The defendants' argument that the statement that Reven "has" audited financial statements really meant that Reven "will have" such statements is not persuasive, as previous versions of those slide decks expressly used "will have." Changing "will have" to "has," if not an intentional falsehood, was certainly misleading.

Even as to any statements that truly were forward-looking, such opinion statements "must rest on a factual basis that justifies them as accurate, the absence of which renders them misleading." *See Hampton v. root9B Tech., Inc.*, 897 F.3d 1291, 1299 (10th Cir. 2018). As discussed above, the Commission is likely to show that defendants never hired an audit firm or had a reasonable expectation of completing an audit within the time frame relayed in some of their statements. *E.g.*, Doc. 12-2 at 2 (containing Mr. Lange's statement that an audit would be completed in the next 45-60 days). Attempting to cast all statements as mere forward-looking opinions in this context is insufficient given the known lack of a sufficient factual basis to make such statements.

2. Materiality

The Commission has made a clear showing that it is likely to prove the defendants' misrepresentations regarding the existence of audited financial statements and Reven's readiness for a public offering were material. The Commission has provided declarations from investors

stating that the defendants' representations that a public offering was imminent were important to their decision to invest. Doc. 9 ¶ 31; Doc. 11 ¶ 10; Doc. 12 ¶ 15. Though the defendants have provided declarations from investors stating that they understood that a public offering was not guaranteed, Doc. 96-13 ¶ 10; Doc. 96-14 ¶ 7, even one of those investors stated that "[a]n important part of my decision to invest was the potential exit strategy in the form of a Direct Public Offering." Doc. 96-14 ¶ 7. The defendants' misstatements regarding Reven's progress toward a public offering would be material to a reasonable investor. *Cell>Point*, 2022 WL 444397, at *7.

3. Scienter

The Commission has made a clear showing that it is likely to prove that the misrepresentations regarding the existence of audited financial statements and Reven's readiness for a public offering were made recklessly and negligently.

As to the statements regarding audits and a potential public offering, defendants argue that (1) they made statements contradicting the alleged misstatements to investors, as the SEC's own documents show, and (2) Mr. Volk has stated in his declaration that he never intended to misrepresent investors that an independent audit had already begun, stating instead that he "sincerely believed" that what he said was true. Doc. 96 at 40; Doc. 96-2 ¶¶ 16-18. Mr. Volk elaborates that when he stated that Reven was "currently undergoing our first audit now," that he instead meant that Reven was "beginning a process that would ultimately lead to audited financial statements." *Id.* ¶ 18.

These rationalizations are not persuasive. Taking Mr. Volk's statement, for example, that Reven was "currently undergoing our first audit now," the Reven Principals knew that there was no pending audit at

that time. Doc. 7-22 at 3. There is nothing ambiguous about this sort of statement, and it's not reasonable to expect an investor to think that Mr. Volk didn't mean what he said. So, too, for the many other statements listed above, including those stating that Reven "has" the audited financial statements. And as discussed above, these statements were material, and the Reven Principals knew that or recklessly disregarded that fact when making these statements to investors. The SEC therefore has clearly shown that it is likely to prove scienter as to this class of statements as well.

C. Shareholder Lawsuit

1. Misrepresentations or Omissions

The Commission has also made a clear showing that it is likely to prove the defendants made false and misleading statements or omissions to investors regarding a shareholder lawsuit. In 2016, a shareholder filed a securities lawsuit in state court in Florida against Reven Pharmaceuticals and Mr. Lange, alleging that they made false statements regarding the company's inducement of an investor with diminished capacity to invest millions of dollars. Doc. 7 ¶ 53. By 2019, the plaintiff filed a third amended complaint, adding Reven, LLC, Reven Holdings, and Michael Volk as parties. *Id.* ¶ 55. The plaintiff voluntarily dismissed the case on October 5, 2021. *Id.* The defendants in that case, including Mr. Lange and Mr. Volk, settled for $2.75 million, using investors' money to make that payment. Doc. 3 at 21.

The parties have submitted the following evidence regarding Reven's statements regarding this shareholder litigation:

- **February 13, 2020** – Mr. Lange sent Ms. Schaatt an email stating that "we have no lawsuits from shareholders." Doc. 9-5 at 2. Mr. Lange and Mr. Volk solicited Ms. Schaatt for additional investments throughout 2020. Doc. 9 ¶ 21.

- **April 20, 2020** – Mr. Volk emailed a group of prospective investors "our OLD Private Placement Memorandum" from August 2018, noting that a "new one is being worked on," but also that "there is not a whole lot that will change so it will serve as appropriate disclosure for compliance." The attached 2018 PPM states that "The Company [Reven Holdings, Inc.] is not currently the subject of any litigation." Doc. 7-23 at 1, 65.

- **April 6, 2021** – Mr. Volk emailed Mr. Shevillo the July 2020 PPM, noting that it "is definitely outdated," but also that it "gives good history and compliance information." The attached 2020 PPM states that "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 . . . the outcome of which in management's opinion would be material to our financial condition or results of operations." Doc. 7-24 at 1, 110.

- **December 6, 2021** – Mr. Volk emailed Ms. Ryan a draft PPM dated August 2021, which states that "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." Doc. 7-25 at 1, 66. Ms. Ryan forwarded that draft PPM to a group of prospective investors. *Id.* at 1.

The defendants argue that none of these statements amounted to misrepresentations. As to the statement made in the 2018 PPM, they argue that that PPM was issued by Reven Holdings and Reven, LLC, which, at that time, were not parties to the underlying Florida lawsuit. But as Plaintiff points out, 10 days prior to the issuance of the PPM, Reven Pharmaceuticals—a party to that lawsuit—transferred all of its assets and liabilities to Reven Holdings, prompting an amendment to

the complaint in that lawsuit shortly thereafter that added Reven Holdings as a party. Doc. 7 ¶ 12. So Reven Holdings had assumed the liabilities of a party to the lawsuit as of the time of the PPM issuance, and the defendants failed to disclose that litigation. Even under their hyper-literal interpretation of the statement in the PPM, it was likely false, or at least misleading.

Next, the defendants argue that Mr. Lange's statement that, "we have no lawsuits from shareholders" as of February 13, 2020 was literally true. This is so, according to the defendants, because, at least in Mr. Lange's view, the plaintiff in the Florida suit was a "guardian" acting on behalf of a shareholder. That does not appear to be a correct interpretation of the plaintiff's role in the Florida lawsuit, and even if so, the "guardian" was suing on behalf of a shareholder. Rather than absolving Mr. Lange, these suggestions are only further evidence that he was trying to hide the fact of this lawsuit from potential investors with deceiving statements.

Finally, the defendants argue that the July 6, 2020 PPM had a disclaimer stating that there was no pending litigation that, in management's opinion, was material to the companies' financial condition. And because management thought the lawsuit was "baseless" (despite it having gone on for years at this point), there was no misstatement, the argument goes. This, too, is unpersuasive. In fact, the defendants settled the case for millions of dollars shortly thereafter—an amount totaling nearly a third of the money Reven had raised in 2020. Doc. 107 at 17. These were therefore misleading misstatements made to prospective investors.

2. Materiality

As touched on above, the Commission has made a clear showing that it is likely to prove the defendants' misrepresentations regarding the underlying Florida lawsuit were misleading. That lawsuit involved claims of fraud against the companies and management relating to inducement of an incapacitated individual to invest millions of dollars in the companies. And the lawsuit resulted in a nearly $3 million settlement in 2021.

Again, the defendants cite some investor testimony suggesting that this particular lawsuit was not material to their investment decisions, while the Commission cites an investor stating that the Reven Principals' representation that there were no shareholder lawsuits was important to hers. *Compare* Doc. 9 ¶ 17, *with* Doc. 96-13 ¶ 11, *and* Doc. 96-14 ¶ 9. But that is not dispositive, and a pending, multi-million dollar suit for alleged securities fraud was certainly material for a company or group of companies of Reven's size at the time.

3. Scienter

The Commission has also made a clear showing that it is likely to prove that the misrepresentations regarding the Florida litigation were made at a minimum recklessly. The defendants' too-cute-by-half rationalizations for the statements only undermine their argument as to scienter. The attempt to use overly literal (yet still incorrect or misleading) statements to hide the existence of the lawsuit shows that Mr. Lange and others attempted to hide the existence of the lawsuit from investors, as discussed above. And the suggestion that management did not think the case was "material" to the companies' financial condition is dubious given the ultimate settlement amount relative to the size of the

companies. The Commission has therefore met its burden as to this element as to the Florida litigation misstatements.

In sum, the Commission has clearly shown that the defendants violated federal securities laws via their misstatements regarding (1) executive compensation, (2) the audit status of the companies and their potential public offering, and (3) the underlying Florida fraud lawsuit.

II. Likelihood that a Violation Will Recur

The evidence clearly shows that the defendants will likely continue their statutory violations in the future if they are not enjoined.

Determination of the likelihood of future violations "requires analysis of several factors, such as the seriousness of the violation, the degree of scienter, whether [the] defendant's occupation will present opportunities for future violations[,] and whether [the] defendant has recognized his wrongful conduct and gives sincere assurances against future violations." *SEC v. Pros Int'l, Inc.*, 994 F.2d 767, 769 (10th Cir. 1993). The degree of scienter "bears heavily" on the analysis, and a knowing violation of the securities laws will justify an injunction more readily than a reckless or negligent one. *Id.*; *accord SEC v. Haswell*, 654 F.2d 698, 699-700 (10th Cir. 1981) ("An important factor . . . is the degree of intentional wrongdoing evident in a defendant's past conduct. . . . [I]t will almost always be necessary for the Commission to demonstrate that the defendant's past sins have been the result of more than negligence. . . . [D]efendants whose past actions have been in good faith are not likely to be enjoined."). But "if there is a sufficient showing that the violation is likely to recur, an injunction may be justified even for a negligent violation of 17(a)(2) or (3)." *Curshen*, 372 F. App'x at 882 (10th Cir. 2010) (quoting *Pros Int'l*, 994 F.2d at 769). Misstatements made after the filing of the lawsuit may further weigh in favor of an injunction.

See Cell>Point, 2022 WL 444397, at *8 ("These misstatements, made after the filing of the lawsuit, demonstrate that, without further intervention, defendants are likely to continue to violate the law."). And failure to admit to misstatements during the pendency of the lawsuit may further weigh in favor of injunctive relief. *Id.* ("Given that Terry Colip did not admit at the hearing he has made misstatements, the Court finds that Terry Colip, acting on behalf of Cell>Point, refuses to recognize his wrongful conduct," and therefore was likely to commit future violations.).

The evidence indicates that the Reven Principals made material misstatements to potential investors regarding multiple topics over a period of years. The alleged violations here are serious, resulting in millions of dollars of misappropriated investor funds. There is substantial evidence that the various misstatements were made knowingly and with intent to hide material facts from investors to induce them to invest. And the Reven Principals have not recognized their wrongful conduct—they continued to make misrepresentations to investors as recently as September 2022. Doc. 9 ¶¶ 33-36. Given these facts, I find there is a substantial likelihood that the defendants will violate securities laws in the future. I will therefore grant the Commission's request for a preliminary injunction.

III. Scope of Injunctive Relief

The temporary restraining order currently in place (1) prohibits the defendants from violating the anti-fraud provisions of the Securities Act and the Exchange Act; (2) prohibits the Reven Principals from offering or selling securities, except in their own personal accounts; and (3) freezes the defendants' and relief defendants' assets to ensure that

any disgorgement or civil penalties that may become due can be collected, among other things. Doc. 28 at 13-23.

The Commission's clear showing that it will likely prove the alleged statutory violations and that the defendants are likely to continue such violations warrants a prohibition against future violations. 15 U.S.C. § 77t(b); 15 U.S.C. § 78u(d)(1); *Unifund*, 910 F.3d at 1040. 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. And an asset freeze is usually appropriate to facilitate enforcement of any remedy that might be ordered in the event a violation is established on summary judgment or at trial. *Unifund*, 910 F.3d at 1041; *SEC v. End of Rainbow Partners, LLC*, No. 17-cv-02670-MSK-NYW, 2017 WL 5404199, at *2 (D. Colo. Nov. 14, 2017) (purpose of asset freeze is to advance public interest in ensuring ill-gotten funds can be secured to satisfy potential future judgment); *Commodity Futures Trading Comm'n v. Walsh*, 618 F.3d 218, 225 (2d Cir. 2010) (court may freeze assets of relief defendant if plaintiff is likely to succeed in showing that relief defendant possesses ill-gotten funds to which it lacks a legitimate claim).

The parties dispute, however, whether the asset freeze should remain in place. The defendants argue that the asset freeze should be lifted, at least in part, because rather than preserving their assets it is causing them to dissipate due to ongoing harm to their ability to protect their intellectual property, finalize clinical data, and eventually secure approval for their products. Much of the defendants' argument on this point, however, is closely intertwined with their merits arguments and suggestions that a preliminary injunction should not be granted at all. As discussed above, an injunction here is necessary to prevent future violations of the securities laws. But the scope of the asset freeze may

be narrowed if the defendants can show that doing so will help maximize the funds available to satisfy any potential future judgment. *See SEC v. Traffic Monsoon, LLC*, 245 F. Supp. 3d 1275, 1297 (D. Utah 2017) (noting that asset freeze may be "particularly burdensome" if it would "harm the continuing viability of the enterprise" or deny innocent individuals "access to much needed funds").

Given the current state of the briefing on this issue, I will convert the temporary restraining order into a preliminary injunction with the same provisions for now. But the defendants may promptly file a motion addressing 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.

CONCLUSION

It is **ORDERED** that:

Defendants' and Relief Defendants' Opposed Motion to Supplement Opposition to Plaintiff's Motion for Preliminary Injunction, **Doc. 113**, is **GRANTED**. I have considered the supplemental declaration, Doc. 113-1, and the plaintiff's arguments concerning its relevance, Doc. 114, in evaluating the plaintiff's request for a preliminary injunction;

Plaintiff United States Securities and Exchange Commission's Motion for a Rule 65 Preliminary Injunction, an Asset Freeze, and Other Relief, **Doc. 3**, is **GRANTED**. Pursuant to Federal Rule of Civil Procedure 65(a)-(b), 15 U.S.C. § 77t(b), and 15 U.S.C. § 78u(d)(1), the Temporary Restraining Order and Asset Freeze, Doc. 28, as subsequently modified, *see* Docs. 55, 65, 68, 72, 74, 117, is converted into a preliminary injunction, and its terms are extended pending final adjudication of this

case on the merits. Pursuant to Federal Rule of Civil Procedure 65(c), 15 U.S.C. § 77t(b), and 15 U.S.C. § 78u(d)(1), the Commission is not required to give security;

The defendants may file a motion seeking to narrow the scope of the preliminary injunction or asset freeze on or before April 12, 2024. The plaintiff must file a response on or before April 26, 2024. And the defendants may file a reply on or before May 3, 2024. The motion and response must not exceed 5,000 words, and any reply must not exceed 2,500 words; and

The Partially Opposed Motion of Defendants and Relief Defendants to Extend Deadlines, **Doc. 118**, is **GRANTED IN PART**. The deadline for service of interrogatories and requests for production of documents and/or admissions is extended to June 6, 2024; the fact-discovery deadline is extended to July 25, 2024; the deadline to designate experts is extended to September 26, 2024; the deadline to designate rebuttal experts is extended to October 29, 2024; the expert-discovery deadline is extended to December 30, 2024; and the dispositive-motions deadline is extended to February 3, 2025. The request to postpone document production until after the Court's preliminary-injunction ruling is **DENIED AS MOOT**. The parties are directed to jointly contact Magistrate Judge Susan Prose's chambers in accordance with her Practice Standards for Civil Cases regarding any discovery disputes. The Emergency Unopposed Motion of Defendants and Relief Defendants to Extend Deadlines, **Doc. 121**, is **DENIED AS MOOT**.

DATED: March 29, 2024

BY THE COURT:

Daniel D. Domenico
United States District Judge