IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

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

UNITED STATES SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

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

Defendants,

and

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

Relief Defendants.

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**OPPOSITION OF PLAINTIFF SECURITIES EXCHANGE COMMISSION TO DEFENDANTS' MOTION TO SUPPLEMENT ITS OPPOSITION TO SEC MOTION FOR A PRELIMINARY INJUCTION**

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Plaintiff Securities and Exchange Commission ("SEC") opposes Defendants' Motion to Supplement their Opposition to Plaintiff's Motion for Preliminary Injunction, ECF No. 113 ("Motion to Supplement"), because it is irrelevant to the standards this Court uses to assess whether the SEC has met its burden to obtain a preliminary injunction or asset freeze, and merely reasserts arguments already advanced in Defendants' extensively briefed Opposition, ECF No. 96.

**RELEVANT FACTS**

On December 9, 2023, the SEC filed its Complaint, applied for a temporary restraining order, and moved for a preliminary injunction and asset freeze. ECF Nos. 1, 3. This Court granted the SEC's *ex parte* motion for a Temporary Restraining Order and Asset Freeze on January 3, 2023, and unsealed the order. ECF No. 28, 31. The parties exchanged expedited discovery in the ensuing months.

On June 12, 2023, Defendants filed their Opposition to Plaintiff's Motion for Preliminary Injunction ("Opposition"). ECF No. 96. The SEC submitted its reply on August 28, 2023, and briefing closed. ECF No. 107.

Defendants now seek to supplement their Opposition with the Supplemental Declaration of Michael Volk ("Supplemental Declaration") in order to "show[]that the asset freeze in this matter is causing ongoing harm to Defendants and their shareholders." ECF No. 113 ("Motion to Supplement"). The SEC opposes this request because the Supplemental Declaration is wholly irrelevant to whether the Court should grant a preliminary injunction or asset freeze in this case and is duplicative of the points Defendants already raised in their Opposition. *See* Motion to Supplement at ¶ 4.

## I. THE PROPOSED DECLARATION OF MICHAEL A. VOLK IS IRRELEVANT.

"Ordinarily, a party seeking a temporary restraining order [or 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 restraining order outweighs the opposing party's under it; and (4) that the requested relief is not adverse to the public interest." ECF No. 28 ("TRO Order"), 5 (*citing*, *inter alia*, *Nellson v. Barnhart*, 454 F. Supp. 3d 1087, 1091 (D. Colo. 2020) (standard for temporary restraining order is same as that for preliminary injunction). However, "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…need not be shown." TRO Order, 5.

It is well-settled that "in cases involving SEC enforcement action[s], courts have reformulated the traditional requirements for obtaining a preliminary injunction (the 'SEC test')." *SEC v. Cell>Point*, LLC, No. 21-CV-01574-PAB-KLM, 2022 WL 444397, at *5 (D. Colo. Feb. 14, 2022). The SEC test, as formulated by this Court, takes equitable considerations into account by requiring "[w]here, as here, the Commission seeks injunctive relief that mandates action or alters the status quo" that the SEC "make a 'clear showing' as to (1) its likelihood of proving the alleged statutory violations, and (2) the likelihood that a violation will occur again in the near future." TRO Order, 6-7; *see also Cell>Point*, 2022 WL 444397, at *5. An asset freeze requires an even lesser showing than a preliminary injunction because the SEC does not need to show a likelihood of a future violation and 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).

Here, Defendants' proffered Supplemental Declaration is irrelevant to the legal standards for imposing a preliminary injunction and asset freeze in this SEC enforcement action. Volk's Supplemental Declaration does not speak to whether Defendants' actions violated the securities law or whether Defendants are likely to commit violations in the future. ECF No. 113-1. Rather, it dwells on the potential harm that may result if Reven cannot pay certain recurring fees to protect its intellectual property due to the asset freeze. *Id.* Although a party is ordinarily required to show that the "threatened injury outweighs the opposing party's under it" to obtain a preliminary injunction, TRO Order, 5, the SEC is not required to make that showing. TRO Order, 6-7, 12. Moreover, because the SEC need only show "that an inference can be drawn that [Defendants] violated the federal securities laws" *Byers*, 2009 WL 33434, at *2, to obtain an asset freeze, Defendants' claim that they are harmed by the asset freeze is wholly irrelevant.

The two cases Defendants cite do not help their cause. Motion to Supplement at ¶ 7. In *Maehr*, the Court granted Defendant IRS's motion to supplement its response with a declaration describing the thoroughness of its search for documents, finding that the declaration was relevant to a dispute regarding missing tax records. *Maehr v. IRS*, 2021 WL 2636431, at *1 (D. Colo. May 24, 2021). This decision, made in the context of an action to enforce a FOIA request, in no way supports Defendants' argument that the proffered Supplemental Declaration is relevant to the legal standards applicable to a preliminary injunction or asset freeze in an SEC enforcement action. In *Pinson*, the Court denied a motion to submit a supplemental declaration where, as here, the declaration was "not relevant to the motion for injunctive relief." *Pinson v. Kadson*, 2014 WL 503648, at *2 (D. Colo. February 7, 2014).

## II. THE PROPOSED DECLARATION IS DUPLICATIVE OF ARGUMENTS DEFENDANTS RAISE IN THE OPPOSITION.

The Court should deny the Motion to Supplement for yet another reason: it merely re-asserts facts and arguments Defendants already made in their Opposition. Defendants submitted an extensive 11,760-word brief opposing the preliminary injunction and asset freeze, along with a declaration from Michael Volk, that together devoted pages to the irrelevant argument that the asset freeze has caused Defendants harm. *See* ECF No. 96 at 42-43; *see also* ECF No. 96-2, Decl. of Michael A. Volk ¶¶ 26–29. Defendants even acknowledge they are reasserting the same arguments when they state that the SEC will not be prejudiced by the Supplemental Declaration because these arguments were already presented in Defendants' Opposition. Motion to Supplement at ¶¶ 4, 8. In sum, there is no good reason to re-open the record and briefing of the pending motion to allow Defendants to re-assert their irrelevant argument that they are harmed by the asset freeze, especially when they have already submitted a declaration and arguments on this point in the record currently before the Court.

## CONCLUSION

Defendants offer no good reason to supplement their Opposition with the Supplemental Declaration, which is irrelevant to this Court's determination of whether a preliminary injunction and asset freeze are warranted. The Motion to Supplement should be denied.

Dated: December 1, 2023

Respectfully submitted,

By: *s/ Sharan E. Lieberman*

Sharan E. Lieberman
Zachary T. Carlyle
U.S. Securities and Exchange Commission
1961 Stout Street, Suite 1700
Denver, CO 80294-1961
Telephone: 303-844-1036 (Lieberman)
303-844-1044 (Carlyle)
303-844-1000 (Main)
Email: liebermans@sec.gov
carlylez@sec.gov
*Attorneys for Plaintiff*
*U.S. Securities and Exchange Commission*