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.

PLAINTIFF UNITED STATES SECURITIES AND EXCHANGE COMMISSION'S OPPOSITION TO DEFENDANTS' MOTION TO NARROW PRELIMINARY INJUNCTION TO LIFT ASSET FREEZE [DOC. 124]

Plaintiff Securities and Exchange Commission ("SEC") opposes Defendants' and Relief Defendants' (collectively "Defendants") Motion to Narrow Preliminary Injunction to Lift Asset Freeze ("Motion"). Doc. 124. Defendants' Motion seeks to eliminate entirely, rather than narrow, the asset freeze, leaving the Defendants free to spend, sell, or otherwise encumber the assets that have been frozen. Ironically, Defendants claim that lifting the asset freeze would maximize the funds available to satisfy any potential future judgment. *Id.* 124, 124-1. However, granting this extreme request would have the opposite effect. Rather than increasing the value of Reven's remaining assets, Defendants' ill-defined plan would give them a blank check to deplete the frozen assets, incur mountains of debt, and resume paying themselves with investor proceeds without any review by this Court. Such an outcome would lead to the absurd result of Reven having less supervision than it had prior to this Court's Order imposing a Preliminary Injunction and Asset Freeze. Defendants' request to all but return to business as usual is fundamentally inconsistent with this Court's finding that the SEC is likely to prevail at trial on its allegations that Defendants raised approximately $44 million dollars from investors, misappropriated millions of dollars of those funds, and intentionally made materially false statements.

The Court should not give Defendants free rein to dissipate and encumber the currently frozen assets, especially because the Court has already established on at least five prior occasions that it can effectively oversee reasonable carve-outs to the asset freeze. Such a case-by-case approach to narrowing the freeze is a much more reasonable way to maintain the status quo and maximize the funds available to investors than Defendants' request for a blank check.

I. RELEVANT FACTS

On December 9, 2022, the SEC filed its Complaint, applied for a temporary restraining order, and moved for a preliminary injunction and asset freeze. Docs. 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. Docs. 28, 31. The TRO prohibited Defendants from (1) violating the anti-fraud provisions of the Securities Act and the Exchange Act and (2) from offering or selling securities. Doc. 28. The asset freeze, among other things, froze Defendants' assets, preventing Defendants' assets from being dissipated, encumbered, or sold. *Id*.

In the ensuing months, Defendants sought and obtained several modifications of the asset freeze. In early 2023, Defendant Volk requested that his sons' accounts be excluded from the freeze, and Defendant Denomme requested the Court modify the asset freeze so that he could use approximately $9,250 of his consulting salary to pay his basic living expenses. Docs. 52, 63, 69. The SEC did not object to these modifications and the Court quickly carved out Volk's sons' accounts from the freeze and allowed Denomme to pay his living expenses with income unrelated to Reven. Docs. 55, 65, 72.

In late March 27, 2023, Defendants filed an emergency motion seeking to modify the TRO and asset freeze to allow Defendants to spend frozen funds to prevent the dissipation of Reven's assets, specifically, its intellectual property. Doc. 73. In their motion, which the SEC did not oppose, Defendants asked the Court to allow them to use up to $100,000 of frozen funds to pay Reven's patent attorneys to preserve "Family 5" patents and $47,792 to pay legal fees to its patent attorney, Volpe and Koenig, P.C. Doc. 73, ¶¶ 9-11. Defendants also requested the Court allow the asset freeze to be modified so that Fox Rothschild LLP, another patent firm, could

perform work on "Family 3" and "Family 4" patents, in exchange for $15,000 in legal fees and a security interest in those patent families. *Id.* at ¶ 8. The very same day, the Court granted Defendants' motion in its entirety. Doc. 74. Notably, this request included Defendants' arranging for some of the legal fees to be paid to the law firms directly via third parties with "newly earned or obtained funds," to avoid implicating the asset freeze. Doc. 73, ¶ 13.

Most recently, in January of this year, Defendant Volk requested the Court modify the asset freeze to allow him to enter a real estate transaction to potentially redeem his lake house, formerly subject to the asset freeze, but lost in a foreclosure sale. Doc. 116. The SEC did not object to this modification, and the Court, again, expeditiously reviewed and approved this transaction the same day Defendants filed the motion for relief. Doc. 117.

On March 29, 2024, the Court granted the SEC's motion for a preliminary injunction and asset freeze. Doc. 122. In its order, the Court found that: "the evidence indicates that the Reven Principals made material misstatements to potential investors regarding multiple topics over a period of years." Doc. 122 at 27. The Court also found that "[t]he alleged violations here are serious, resulting in millions of dollars of misappropriated investor funds" and that "[t]here is substantial evidence that the various misstatements were made knowingly and with intent to hide material facts from investors to induce them to invest." *Id*. at 27. The Court held that the SEC'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" and, as a result, converted the TRO, Doc. 28, into a preliminary injunction. Doc. 122 at 29. Moreover, it continued the asset freeze, leaving open the possibly for Defendants to argue that the asset freeze

should be narrowed, if "defendants can show that doing so will help maximize the funds available to satisfy any potential future judgment." *Id.*

On April 12, 2024, Defendants filed the instant motion requesting the Court entirely remove the asset freeze provision from the Court's Order and allow Defendants to sell, transfer, encumber, dissipate, and dispose of their assets without any supervision by the Court. Doc. 124; *see also* Doc. 124-1, Proposed Order ("Paragraphs I.D. of the Court's Order…are stricken.").

II. ARGUMENT

A. The SEC Has Already Established that an Asset Freeze is Proper Here.

In its Motion for a Preliminary Injunction and its Reply, over the Defendants' opposition, the SEC established that an asset freeze should be extended through the resolution of this case. Docs. 28 at 12, Doc. 122 at 28. The standard for obtaining an asset freeze is "[a] less stringent standard" than that required for a preliminary injunction and requires the SEC only to "show either a likelihood of success on the merits, or that an inference can be drawn that the party has violated the federal securities laws." *SEC v. Ahmed*, 123 F. Supp. 3d 301, 307-08 (D. Conn. 2015). Here, the Court has already found that the SEC has met the more stringent standard for preliminary injunctive relief by making a "clear showing that it will likely prove the alleged statutory violations and that defendants are likely to continue such violations." Doc. 122 at 28. For example, the Court found that the SEC was likely to prevail its claims that Defendants (1) made false and misleading statements to investors regarding the annual compensation of Reven's Principals, Doc. 122 at 8-4, (2) misappropriated investor funds, *id.* at 9, (3) lied about the existence of audited financial statements and Reven's readiness for an IPO or DPO, *id.* at 14-21, and (4) lied about the existence of the Florida shareholder litigation, *id.* at 22-26. Thus, the

Court's findings establish that the asset freeze should be continued through a resolution of the case on the merits to preserve the status quo.

B. Defendants Have Not Overcome Their Burden to Show that Any Assets Should be Released from the Asset Freeze.

"[T]he primary purpose of freezing assets is to facilitate compensation of defrauded investors in the event a violation is established at trial." *SEC v. End of Rainbow Partners, LLC*, No. 17-cv-02670-MSK-NYW, 2017 WL 5404199, at *4 (D. Colo. Nov. 14, 2017) (internal citation omitted); *SEC v. Forte*, 598 F.Supp.2d 689, 692 (S.D.N.Y. 2009) (finding that the purpose of an asset freeze is "to preserve the status quo by preventing the dissipation and diversion of assets."). In considering whether to impose (or continue) an asset freeze, the Court must weigh "the disadvantages and possible deleterious effect of a freeze . . . against the considerations indicating the need for such relief." *Rainbow Partners*, 2017 WL 5404199, at 4.

"The touchstone of the Court's inquiry is 'equity' and a party seeking to carve out assets from an asset freeze 'must establish that the funds he seeks to release are untainted and that there are sufficient funds to satisfy any disgorgement remedy that might be ordered in the event a violation is established at trial.'" *Id.* (internal citation omitted). Where there is no likelihood that a surplus will exist from the frozen assets in the event the SEC prevails in the underlying action, courts have considered the "investors, on whose behalf the assets were frozen," to have a "heightened interest in having those assets maintained without further diminution pending the outcome of the action." *Id.*

Defendants have not attempted to argue, much less made any showing, that they have met any of the requirements for releasing assets from an asset freeze. First, Defendants have not established that any currently frozen assets are untainted. *Rainbow Partners*, 2017 WL 5404199,

at *4. Indeed, any frozen monies in Reven's bank accounts are likely connected to the fraud. *See* Doc. 3 at 38. As alleged in the Complaint, the vast amount (if not all) of the proceeds Reven received were investor monies. Doc. 1, ¶ 32 (alleging that Defendants are responsible for defrauding investors of at least $44 million dollars from approximately 175 investors). Even Reven's allegedly most valuable assets, RJX and its related patents and intellectual property, are likely to have been obtained, maintained, expanded, or exploited with the proceeds of the Defendants' fraud. *See* Doc. 3 at 39-40.

Second, Defendants fail to address the fact that it is highly unlikely that any surplus funds will exist from the frozen assets to compensate investors in the event the SEC wins the instant action. Indeed, there is very little cash among the frozen assets, and Reven's allegedly "most valuable asset," Doc. 124, ¶ 17, its intellectual property, like most intellectual property assets, is difficult to value. *See e.g.* Taorui Guan, *Investors Perspective on Intellectual Property Financing*, 54 Seton Hall L. Rev. 439, 482 (2023) ("[A]ccurately estimating the value of intellectual property is often difficult.); William, Mary Survey, *Survey: The Treatment of Intellectual Property Interests in Bankruptcy*, 4 J. Bankr. L. & Prac. 391, 404 (1995) ("[W]hile intellectual property is vital to the wellbeing of many business enterprises today, it is difficult to define and value."). Thus, if the SEC should prevail, the only meaningful assets remaining will be Reven's hard-to-value intellectual property. Under these circumstances, where Defendants cannot show that (1) the funds are untainted or (2) there will be assets available to investors should the SEC prevail, there exists a "heightened interest in having those assets maintained without further diminution pending the outcome of the action." *Rainbow Partners*, 2017 WL 5404199, at *4. Defendants cannot overcome even these threshold standards.

C. Defendants Fail to Explain How a Wholesale Removal of the Asset Freeze will "maximize the funds available to satisfy any potential future judgment" and Ignore the Court's Track Record in this Case of Effectively Modifying the Freeze when Defendants have Requested Reasonable Carve-outs.

The Court noted in its order that "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." Doc. 122 at 28. Although the Court found that "[m]uch of the defendants' argument on this point…is closely intertwined with their merits arguments" and that "an injunction here is necessary to prevent future violations of the securities laws," 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." *Id*. at 28-29 (*citing SEC v. Traffic Monsoon, LLC,* 245 F. Supp. 3d 1275, 1297 (D. Utah 2017)). Defendants do not (and cannot) meet this burden.

As an initial matter, Defendants fail to articulate how the asset freeze, rather than their own conduct, has dissipated any of Defendants' assets. Defendants make conclusory assertions that the asset freeze has prevented Defendants from "preserving and protecting Reven's intellectual property and critical clinical data," Doc. 124, ¶ 3, and otherwise diminished the value of Reven's assets. *See also, e.g.*, Doc. 124, ¶¶ 4, 6, 14, 16. However, to the extent that Defendants have sought carve-outs from the asset freeze to use frozen assets to preserve the value of Reven's intellectual property or other of Defendants' assets, the SEC has not opposed these requests and the Court has granted them. If Defendants believed that the asset freeze order was otherwise preventing them from preserving the value of Reven's intellectual property or other Defendant assets, it was incumbent on Defendants to seek additional carve-outs rather than

allow the assets to dissipate. *See* Doc. 28 at 16 (Defendants "must hold and retain within their control, and otherwise prevent any disposition, transfer, pledge, encumbrance, assignment, dissipation, concealment, or other disposal whatsoever…of any of their…intellectual property, including patents or trademarks, or other assets or things of value held by them…"). As demonstrated by the carve-outs previously granted by the Court, the Court's current asset freeze order was, and is, flexible enough to enable Defendants to take steps to preserve the value of their assets.

Defendants also generally complain that the asset freeze has been harming Reven and its investors by "blocking the Company's ability to move forward with critical drug trials," "wasting valuable patent life," and "extinguishing the company's invaluable institutional assets," and that "Reven's substantial growth has been languishing without progress." *See* Doc. 124, ¶¶ 4, 6, 14, 16, 20. Yet, Defendants have not been able to separate this "parade of horribles" from the fall-out that any Defendant would suffer when a Court has found that the SEC is "likely to successfully prove" that the Company and its Principals have engaged in securities fraud, that "[t]he evidence clearly shows that the defendants will likely continue their statutory violations in the future if they are not restrained," and that "[a] prohibition against offering or selling . . . securities will protect existing investors and potential new investors from being subject to additional fraudulent activities." Doc 28 at 9, 10, 12. The Court underscored this point when it stated, "much of the defendants' argument on [the asset freeze], however, is closely intertwined with their merits arguments and suggestions that a preliminary injunction should not be granted at all." Doc. 122 at 28. It is Defendants' fraud, not the asset freeze imposed by the Court to maintain the status quo and preserve Defendants' assets, that has harmed Reven's investors.

Moreover, Defendants fail to establish that the asset freeze order needs to be narrowed now, much less eliminated entirely, to help maximize the funds available to satisfy any potential future judgment. Defendants have argued that the asset freeze must be lifted "to permit Defendants to avail themselves of options like taking on debt [and] licensing intellectual property" to preserve Reven's intellectual property assets. Doc. 124, ¶ 22. In arguing that the Court must lift the asset freeze in its entirety to enable Defendants to take steps to preserve the value of assets, Defendants ignore the precedent the Court has already set for assessing (and granting) reasonable modifications to the freeze when Defendants have come forth with a well-reasoned, concrete plan to preserve assets. For example, Defendants have requested modifications of the asset freeze five times and the Court granted the modifications in all five instances, agreeing to the exact terms Defendants proposed. Prior to the submission of the requests, Defendants conferred with the SEC and the SEC did not object to the relief Defendants sought. In those cases, Reven sought specific relief from the freeze, had a clear plan, including the names of any entities involved in the proposed transactions, the amount of funds or the specific asset involved, and an explanation as to why the proposed carve-out maintained the status quo. This procedure, which has involved the Court's supervision, has resulted in a fair process that has protected the interests of investors.

In the Motion, Defendants argue, without explanation, that the Court must prospectively lift the asset freeze in its entirety to enable Defendants to preserve the value of their assets based on their vague plan to potentially take on debt or license Reven's intellectual property. Doc. 124, ¶ 22. However, there is an established framework for seeking carve-outs from the asset freeze for legitimate transactions to preserve the value of assets. As set forth above, Defendants have

brought the Court well thought-out proposals of how third parties can pay outstanding patent and attorney's fees directly to law firms rather than dipping into frozen assets. They have also proposed unconventional real estate transactions to prevent Defendant Volk from losing all rights to reclaim his lake house (a frozen asset) from being permanently lost. The SEC would welcome specific proposals to maximize the value of the intellectual property, such as a specific proposed transaction to license or sell the intellectual property or a detailed plan for a third-party entity to manage the intellectual property. However, the Motion does not present any such options. Defendants do not suggest a viable lender, an interested licensee, proposed transaction terms, or any explanation of how any specific transaction would maximize the funds available to satisfy any potential future judgment. If Defendants identify an actual transaction that they believe would preserve and maximize the value of assets available to pay a future judgment, they are able to seek a carve-out from the asset freeze under the terms of the current order, as they have on numerous occasions. Defendants offer no justification for a departure from this process, which enables the Court to ensure that any release from the asset freeze actually serves the purpose of preserving assets, rather than enriching the Defendants or otherwise dissipating assets that would otherwise be available to pay a future judgment.

If the Court were to lift the asset freeze in its entirety as Defendants request, it would lose all oversight over the Defendants' activities in raising additional funds through debt, licensing, or other transactions, as well as the disposition of their assets. For instance, if the asset freeze were lifted, Defendants could immediately, without the knowledge of the Court or SEC, sell-off or license Reven's intellectual property, incur mountains of debt, misappropriate and dissipate the proceeds, and leave no assets available to pay a future judgment. There is no justification for

removing the safeguard of the current asset freeze order, especially given that the Court has found that "there is substantial evidence that the various misstatements were made knowingly," the "Reven Principals have not recognized their wrongful conduct," and there is a "substantial likelihood that the defendants will violate securities laws in the future." Doc. 122 at 27.

The cases cited by Reven do not support a different conclusion. Indeed, the only case Reven cites to support "vacating" the asset freeze is an inapposite case involving a private litigant (not even in the securities context) seeking to terminate an injunction (not an asset freeze) preventing it from making certain statements in advertisements about the weight-loss drug it was marketing. *Basic Research, LLC v. Cytodone Tech. Inc.*, No. 2:99–CV–343K, 2000 WL 33363261 at *3 (D. Utah Dec. 20, 2001). Nothing about the circumstances in *Basic* can be applied to support removing the asset freeze here. *Basic* did not involve an asset freeze or risk of dissipation of assets that could be used to repay the aggrieved party (let alone disgorgement or penalties to pay investors).

The other cases Defendants cite are similarly unavailing. For example, in *Traffic Monsoon*, while the court discussed the standard that should be used when considering whether to grant the SEC's request for an asset freeze – noting that a freeze could be "particularly burdensome" if it would "harm the continuing viability of the enterprise" or deny innocent individuals "access to much needed funds" – the Court did not eliminate the asset freeze. *Traffic Monsoon*, 245 F.Supp. 3d at 1297, 1303. Similarly, in *SEC v. Forte*, the court, denied defendant's request to remove the asset freeze even though it acknowledged that in some circumstances, maintaining a freeze "might thwart the goal of compensating investors if the freeze were to cause such disruption of defendants' business affairs that they would be

financially destroyed." *SEC v. Forte*, 598 F.Supp.2d 689, 693 (E.D. Pa. 2009). In *Forte*, the court found that the defendant did not show that the frozen assets will "remotely cover the lost investments" and this fact made a release of the "paltry" assets unwarranted. *Id.*

The only realistic chance for Reven investors to recover proceeds of their investment or for Defendants to "continue the viability of the enterprise" is with the continued imposition of the asset freeze. *Traffic Monsoon*, 245 F.Supp. 3d at 1297. With the freeze in place through the resolution of this case, the Court can supervise the existing assets, and vet any proposed modification to the freeze to ensure that any carve-out will maximize asset value and be in the best interest of investors.

III. CONCLUSION

The Court should maintain the asset freeze here because Defendants have failed to establish that the assets sought to be unfrozen are "untainted and that there are sufficient funds to satisfy any disgorgement remedy that might be ordered in the event a violation is established at trial." *Rainbow Partners*, 2017 WL 5404199, at *4. In addition, Defendants have not established that "the disadvantages and possible deleterious effect of a freeze" outweigh the need for the asset freeze, *id.*, or that lifting the freeze "will help maximize funds available to satisfy any potential future judgment." *Traffic Monsoon*, 245 F.Supp.3d at 1297. Past practice has shown that Defendants have been able to modify the asset freeze for a specific purpose, after they have established that the carve-out would assist in either preserving the status quo or increasing the value of the asset at issue. Indeed, removing the asset freeze would have the absurd consequence of removing all Court supervision over Defendants' assets despite converting the TRO into a

preliminary injunction. Further, eliminating the freeze would not help maximize the value of the Defendants' frozen assets.

Dated: April 26, 2024

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

CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATIONS

Counsel hereby certifies that the foregoing pleading is comprised of 3768 words, exclusive of the caption, signature block, and certificate of service, and therefore complies with the type-volume limitations set forth in Judge Domenico's Practice Standard III(A)(1).