IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 1:22-cv-3181-DDD-SBP

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 REPLY IN SUPPORT OF ITS MOTION FOR PRELIMINARY INJUNCTION

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INTRODUCTION

Defendants Reven Holdings, Inc. ("Reven"), Brian Denomme, Peter Lange, and Michael Volk (collectively, "Defendants"), bilked investors out of millions of dollars based upon false promises that their start-up company, Reven, was just about to go public and lies about how investor money would be spent. As Plaintiff Securities and Exchange Commission ("SEC") established in its motion, the picture Defendants painted – that going public was imminent and that investor funds would be spent on clinical development and to pay specific vendors – was false. *See* Doc. 3, Plaintiff's Motion for an *Ex Parte* Temporary Restraining Order ("Motion" or "Mot."). Defendants Denomme, Lange, and Volk (collectively, the "Reven Principals") misappropriated investor funds by taking millions more in compensation than they disclosed to investors through transfers to their personal bank accounts, and to a shell company, and payments for personal expenses such as mortgages and family travel. From at least January 2019 to December 2022 (the "Relevant Period"), Defendants also made numerous false and misleading statements to investors, including misrepresentations about the Reven Principals' compensation, the status of a purported audit of Reven's financial statements and supposed imminent public offering, the specific uses of investors' funds, and the existence of securities fraud litigation against some Defendants. Expedited discovery has confirmed the SEC's claims and, indeed, they are barely disputed.

Rather than directly attacking these allegations, Defendants seek to distract the Court from key undisputed facts. For example, Defendants admit they took more compensation than they disclosed to investors. To divert attention from this fact, Defendants argue that the Reven Principals were entitled to the undisclosed compensation because their employment agreements

provided for lavish bonuses and other payments. However, whether the Reven Principals had contractual rights to additional compensation is irrelevant to the SEC's claims. Defendants committed securities fraud when they deceived investors about the amount of investor money the Reven Principals were taking for themselves.

Similarly, Defendants concede that, despite making numerous representations to investors that Reven had or would soon have audited financial statements necessary for a supposed imminent public offering, Reven never retained an external auditor and did not have accounting records capable of being audited. Defendants attempt to explain away their misrepresentations by claiming they were typos, mistakes, or non-actionable forward-looking statements. That Defendants made persistent typos over multiple months and years is not credible. Any forward-looking statements by Defendants about the completion of the audit and the public offering were false and misleading because they did not align with the obvious facts in Defendants' possession at the time. Defendants advance similar unavailing arguments regarding their misrepresentations about the planned use of investor funds and an undisclosed shareholder lawsuit.[1]

The SEC has more than met its burden to show that a preliminary injunction is necessary to prevent further violations of the securities laws and that continuation of the asset freeze is necessary to preserve the status quo. For these reasons, the Court should continue the temporary

[1] Defendants also unfairly characterize the investor declarants as "disgruntled" opportunists who have manufactured this enforcement action to "tie up Reven and its Principals in protracted litigation" and steal Reven's intellectual property. Doc. 96, Defendants' and Relief Defendants' Opposition to Plaintiff's Motion for Preliminary Injunction ("Opposition" or "Opp."), 3. This imaginative claim has no bearing on the likelihood of success on its claims, which are supported by Defendants' own statements in emails, offering documents, and under oath.

relief imposed in its Order, Doc. 28 (the "TRO Order"), and impose the requested preliminary injunction, asset freeze, and other relief through the end of the case.

I. The SEC has Shown that 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.

Defendants do not dispute that they "made" the statements at issue, that they "obtained money or property," that their conduct occurred "in connection with" the "offer or sale of securities," or that they "used the instrumentalities of interstate commerce." *See generally* Opp.; Mot.25-26 (reciting elements for these claims). The only elements in dispute are whether Defendants' statements (or omissions) were false or misleading, material, and made with scienter.

A. Defendants Made False and Misleading Statements and Omissions.

1. False and Misleading Statements and Omissions about the Reven Principals' Compensation.

Defendants concede that the Reven Principals took at least $4.8 million more in investor funds than Defendants disclosed to investors, even after making adjustments to the SEC's calculations for purported business expenses. Opp. 14-19. For a securities fraud claim, taking more than disclosed is misappropriation. *See, e.g.*, *SEC v. Lottonet Operating Corp.*, No. 17-21033-CIV, 2017 WL 6949289, at *6 (S.D. Fla. Mar. 31, 2017) (finding Defendant misappropriated investor funds by taking funds in excess what was disclosed in Private Placement Memoranda), *report and recommendation adopted,* No. 17-21033-CIV, 2017 WL 6989148 (S.D. Fla. Apr. 6, 2017).

Defendants dispute the *exact amount* the Reven Principals received in excess of their disclosed compensation, but do not dispute that *they took* millions of investor funds beyond what

they disclosed. Opp.14-19. This dispute may be relevant to the disgorgement amount, but not to whether the SEC is likely to succeed in showing Defendants violated the securities laws. And Defendants' argument that the Reven Principals did not "misappropriate" any investor funds because they were owed additional compensation under their employment agreements is irrelevant because they took more than they disclosed to investors.

a. There is No Dispute Defendants Disclosed No More than $6,440,000 of Compensation to the Reven Principals for the Years 2019 to 2021.

Defendants disclosed their compensation in Reven's 2020 and 2021 PPMs as, collectively, $1.6 million for 2019, $2 million for 2020, and $2.16 million for 2021, for a total of approximately $5,760,000. Mot.12-13; Doc. 9-6 (2020 PPM) at SEC-SchaattL-E-0004066; Doc. 7-20 (2021 PPM) at SEC-REVEN-E-0001150.

Defendants do not claim that these PPMs – or any other PPMs, documents, or disclosures they provided to investors – disclosed that the Reven Principals received any compensation in addition to the $5,760,000 disclosed in the 2020 and 2021 PPMs for 2019 to 2021. *See, e.g.*, Opp.23-26.[2]

The SEC points to Reven's 2018 PPM as an additional source of disclosures related to the Reven Principals' compensation for 2019 and asserts that the Reven Principals' 2019

[2] Defendants' claim that the 2020 and 2021 PPMs contain "typographical errors" in the "sections describing [the Reven Principals'] compensation" that they became aware of "[a]fter the SEC began its investigation." Opp.23. Namely, that compensation disclosed in the 2020 PPM for 2019 and 2020 should have been for 2018 and 2019, and compensation disclosed in the 2021 PPM for 2020 and 2021, should have been for 2019 and 2020. *Id*. While there is no "typo exception" to the securities laws, the purported "typographical errors" are irrelevant. Reven Principals took investor funds in excess of their disclosed compensation for 2019 and 2020, even if the amounts of compensation were shifted to correct for the so-called "typographical errors." Defendants do not argue otherwise. Opp.23-26.

compensation could have been as much as $2.3 million (as opposed to $1.6 million) consistent with these disclosures. Mot.12. Defendants argue that the disclosures in the 2018 PPM should be ignored because they are estimates of future uses of proceeds. Opp.24-25. Any dispute over the 2018 PPM is irrelevant to whether the Reven Principals misappropriated investor money. Taking the 2018 PPM disclosures into account leads to a *higher* calculation of $6,440,000 for disclosed compensation to the Reven Principals for 2019 to 2021, and therefore a *lower* calculation of their misappropriation. Mot.12-13. The SEC credited this disclosure when calculating the Reven Principals' undisclosed compensation in the Motion and will continue to do so for the purpose of this Reply.

b. There is No Dispute the Reven Principals Took at Least $4.8 Million of Undisclosed Compensation for the Years 2019 to 2021.

The SEC presented evidence that the Reven Principals collectively received net payments for their benefit from Reven totaling $5.3 million in 2019, $3.35 million in 2020, and $6.65 million in 2021, for a total of $15,356,779. Mot.12-14; Doc. 8, Walker Decl. ¶¶18-19. Thus, the Motion asserts that the Reven Principals misappropriated at least $8.8 million based on $6.44 million of disclosed compensation. Mot.11-12, 14.

Defendants argue, based on a declaration submitted by Jon Ahern, that the SEC's calculation of the amounts the Reven Principals received should be reduced by $4,028,410 to account for purported legitimate business and travel expenses paid for with Defendant Volk's personal American Express ("AMEX") card and reimbursed by Reven,[3] a car allowance, and

[3] All AMEX charges were on Volk's *personal* AMEX card. When the SEC initiated this emergency action, AMEX had produced incomplete and redacted records related to those

marketing expenses. Opp.16-17; Doc. 96-1, Ahern Decl. ¶30, Table 7. These purported legitimate payments include lavish perquisites for the Reven Principals, such as $900,000 of payments for three years of personal "travel allowances" (which Ahern determined the Reven Principals exceeded) and $171,126 of payments for personal "auto allowances." *Id*., ¶¶ 23-24, 27-28. Defendants did not disclose any of this compensation to Reven investors, despite the PPM Compensation Tables in the 2020 and 2021 PPMs including a specific column for "All Other Compensation," which Defendants left blank. *See* Doc. 9-6 at SEC-SchaattL-E-0004066; Doc. 7-20 at SEC-REVEN-E-0001150; *see also, e.g.,* Ex. 1, Denomme Tr., 81:13-81:25:23 (travel and car allowances not disclosed); Ex. 2, Lange Tr., 123:4-10 (same).

Even if the Court were to accept *all* of these adjustments (which it should not), there is no dispute that the Reven Principals misappropriated millions of dollars. These adjustments would merely reduce the amount the Reven Principals misappropriated from at least $8.8 million to at least $4,888,369. Doc. 96-1, Ahern Decl. ¶30, Table 7.

Defendants argue that they did not "misappropriate" any investor money because their "employment agreements entitled Reven Principals to $23.1 million in total compensation for 2019-2021." Opp.23, 17-18. The terms of the Reven Principals' employment agreements are irrelevant to whether Defendants committed securities fraud because Defendants did not disclose the terms of the employment agreements to investors and instead told investors that they received, at most, $6.44 million of total compensation for the years 2019-2021. *See SEC v.*

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charges and the SEC reasonably assumed that the charges were personal in nature. However, even if 100% of the AMEX payments were for legitimate business expenses, Volk still took investor funds in excess of his disclosed compensation.

Benson, 657 F. Supp. 1122, 1134 (S.D.N.Y. 1987) (finding defendant's alleged "salary supplements" even if legitimate corporate payments, were "still in violation of the Federal securities laws since none of these supplements were disclosed" to investors and thus constituted misappropriated funds); *see also, e.g.*, Ex. 1, Denomme Tr., 49:1-5, 54:3-6, 60:5-7, 81:19-83:23 (admitting that he did not disclose employment agreements or that Reven owed him bonuses or other compensation).

Accordingly, even accepting Defendants' assertions, Defendants made false and misleading statements regarding their compensation: telling investors their total compensation was no more than $6,440,000 while actually taking at least $4,888,369 in excess of this amount.

c. Defendants Misstatements and Omissions about the Reven Principals' Compensation Were Material and Made with Scienter.

Defendants' false and misleading statements and omissions regarding the Reven Principals' compensation were important to the investment decisions of a reasonable investor. The law is clear that statements about compensation are material if they conceal that proceeds are funneled to the company's officers. *See, e.g.*, *SEC v. Rsch. Automation Corp.*, 585 F.2d 31, 35–36 (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 [the company's] officers []? . . . [A]ppellants' misleading statements and omissions concerned facts that were material as a matter of law."). Reven's misstatements and omissions were material even if investors did not demand access to the Reven Principals' employment agreements before investing. *See* Opp.25-26. Investors were entitled to rely on Defendants' statements.

Defendants also acted with scienter when they made the false and misleading statements and omissions in PPMs regarding their compensation. There is no dispute that Defendants were aware of their disclosures and knew what compensation they received. *See, e.g.*, *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"). Defendants' assertion that they understood the disclosures in the PPMs to reflect only their monthly draws, Opp.24, and not the additional millions of dollars they took, only reinforces that they were aware that their actual compensation exceeded what was disclosed.[4]

2. False and Misleading Statements and Omissions Regarding a Purported Audit of Reven's Financial Statements and its Imminent Ability to Go Public.

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." Opp.27. Defendants claim that from 2019 to 2021, they made "incremental progress toward Defendants' goal of obtaining audited financial statements for Reven and, potentially, pursuing a public offering." Opp.28. While Defendants overstate even their claims of "incremental progress" toward audited financials and a public offering, they concede the relevant facts established by the evidence submitted in support of the Motion.

- Reven never retained any accounting or auditing firm to perform an audit of Reven's financial statements. Mot.15; *see also, e.g.*, Ex. 2, Lange Tr. 92:8-93:8 (no audit firm ever engaged);

[4] Likewise, it is clear that these disclosures were also negligent, which would support much of the requested injunctive relief and the asset freeze. Defendants all but admit that the statements were negligently made, stating that they were "at most the product of negligence." Opp.4.

- Reven never had complete and reconciled accounting and bookkeeping records necessary to generate financial statements capable of being audited—Reven's external accountants indicated that the Reven records were not "auditable." Mot.15;

- No audit of Reven's financial statements was ever started, nearly completed, or completed. Mot.15;

- 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. Mot.18;

- Reven did not meet all the requirements for listing by either exchange they represented to investors they would list on. Mot.18;

- Reven could not have submitted an S-1 registration statement because an S-1 registration statement requires audited financial statements. Mot.18.

Defendants' do not dispute any of these facts in their Opposition. *See* Opp.27-34.

Against this backdrop, Defendants misrepresented to investors in numerous emails, Investor Decks, and other documents that Reven: 1) would imminently have two years of audited financial statements or *did* have two years of audited financial statements; and 2) was preparing for an imminent DPO. Mot.15-18.

For example, Defendants represented:

- Between September 2019 and August 2021, 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." Mot.15; Docs. 7-23, 7-24, 7-25; Doc. 9-1 at SEC-SchaattL-E-0003902; Doc. 11-1 at SEC-GreenJ-E-0000037.

- In an email to investors in December 2019 that "[w]e are currently undergoing our first audit now" to prepare for an IPO hopefully during sometime in 2020. Mot.15; Doc. 7-22.

- In an email to Investor Schaatt in July 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." Mot.15-16; Doc. 9-6.

- In a June 2021 email to Investor Frost, that the "S1 is essentially already finished," that our "audit should be finished in the next 45-60 days" and that the S-1 would be "filed with the SEC within the next 3–5 weeks." Mot.18; Doc. 12-2 at 2.

- In November 2021 and going forward, that the "Company *has* the minimum required two years of audited financial statements ending August 2021." Mot.15; Doc. 104-1 at SEC-SchaattL-E-0004094; Doc. 12-7 at 22 (emphasis added).

Defendants argue that some of the misrepresentations cited in the Motion[5] are not misstatements because they are "forward-looking expressions to communicate plans that were in progress," and/or that they contained "disclaimers and qualifications." Opp.29-30; Doc. 7-23; Docs. 9-6, 9-8; Doc. 12-2. However, the fact that a statement is about future events does not relieve defendants of their obligation to be truthful. The law requires that "[s]tatements of opinion or belief must rest on a factual basis that justifies them as accurate, the absence of which renders them misleading." *Hampton v. root9B Techs., Inc.*, 897 F.3d 1291, 1299 (10th Cir. 2018) (internal citation omitted). "[A reasonable investor] expects not just that the issuer believes the opinion (however irrationally), but that it fairly aligns with the information in the issuer's possession at the time." *Omnicare, Inc. v. Laborers Dist. Council Const. Indus. Pension Fund*, 575 U.S. 175, 188-89 (2015). "Thus, no matter how heartfelt their subjective beliefs, corporate executives, like [the Reven Principals], cannot make material representations to shareholders in

[5] Two of the five bullet points in this section of the Opposition contain references to documents that the Motion does not cite for misrepresentations regarding the status of the audit or DPO. These statements should be disregarded. *Compare* Mot.15-18 *and* Opp.29-30, Bullet 1 (citing Doc. 9-4), Bullet 3 (citing Doc. 7-14).

disregard or contravention of obvious facts…" *SEC v. GenAudio Inc.*, 32 F.4th 902, 924 (10th Cir. 2022).

Here, it is undisputed that Reven did not have financial statements capable of being audited and never hired an audit firm or began an audit. Defendants' statements about the imminent completion of an audit and public offering were false and misleading when made because they did not align with the obvious facts in Defendants' possession at the time of the statements.

These statements were also material, regardless of any purported "disclaimers and qualifications." Opp.30. Because they "referred to then-present factual conditions, or implied background factual assumptions a reasonable investor would regard as believing to be true, the 'bespeaks caution' doctrine would be of no assistance to defendants as to those statements." *Grossman v. Novell, Inc*., 120 F.3d 1112, 1123 (10th Cir. 1997). Moreover, the purported "[c]autionary language cited to justify application of the doctrine must precisely address the substance of the specific statement or omission that is challenged…" *In re Prudential Sec. Inc. Ltd. Partnerships Litig.*, 930 F. Supp. 68, 72 (S.D.N.Y. 1996). The statements at issue and the supposed cautionary language cited by Defendants do not meet this test. *See* Opp.29-31.

For example, Defendants claim that a statement in a June 9, 2021 email from Lange to Investor Schaatt that discusses a DPO listing "…sometime at end of August or early September…" was not false or misleading because it also states: "…depending on market conditions and the completion of some of the preparatory tasks…" Opp. 30-31. However, Lange also states that, "it is 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." Doc. 12-2 at 2. For

the reasons detailed above, Lange had no reasonable factual basis to state that an audit would be completed "in the next 45-60 days" or that a DPO would occur within the next few months. His statements about the status of the audit and the DPO were misleading because they communicated that steps were currently being taken to complete an audit when, in fact, Reven did not have financial statements capable of being audited and Reven had not retained an auditor. The purported "qualifying statements" cited by Defendants do not disclose these facts and do not lessen the materiality of the misstatements.

Defendants try to minimize their statements in the November and December 2021 Investor Decks that "[t]he company has the minimum required two years of audited financial statements ending August 2021" by claiming that they instead meant "that Reven *will* have audited financial statements." Opp.31. Aside from the tension between this argument and plain English, Defendants do not attempt to explain why they changed the statement in the Investor Decks from future tense ("will have [audited financial statements]") in earlier versions, to present tense ("has [audited financial statements]") in later versions, which undercuts any credibility of this argument. *Compare* Doc. 7-23, SEC-REVEN-E-0289524 to Doc. 12-7 at 22. Nor do Defendants attempt to address their statement in a December 2019 email to investors that "[w]e are currently undergoing our first audit now," Doc. 7-22, which was clearly false.

All of these misstatements were material and made with scienter. The statements regarding an audit and related DPO would be important to the investment decision of a reasonable investor, Mot.28-30, and the SEC does not need to show reliance in enforcement actions. *Geman v. SEC*, 334 F.3d 1183, 1191 (10th Cir. 2003). Although Defendants may have disclosed at times that the audit was incomplete, Opp.33, they omitted material facts including

that they did not have auditable accounting records and that they had not engaged an audit firm. Defendants do not dispute that they knew that Reven never retained an auditor or that they understood audited financials were a requirement for filing an S-1 registration statement for a DPO when they made the false and misleading statements. *See* Opp.27-34; *see also, e.g.,* Ex. 2, Lange Tr. 98:18-21 (knew that audited financials were required for an S-1); Ex. 1, Denomme Tr. 76:7-22 (same).

3. Other False and Misleading Statements and Omissions to Investors About the Specific Use of their Funds.

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

Defendants do not dispute that they represented to Schaatt that only $150,000 of her $2 million investment would go to the Reven Principals. Opp.35; Doc. 9-3. They also do not contest that they took 31% of Schaatt's investment, or approximately $620,000, for themselves. *Id.* Defendants' argument that it "it should have come as no surprise to Schaatt that Reven used some of her funds to pay other expenses not expressly included on the spreadsheet" because the spreadsheet "lists only $1,380,441.87 of expenses" ignores that the Reven Principals specifically represented the amounts they would take. Opp.35. Defendants' argument suggests an absurd result: that the Reven Principals could pay themselves as much as they wanted from the remaining balance. Defendants' actions in taking approximately $620,000, rather than $150,000, renders their representations false and misleading and demonstrates their scienter.

Although these statements were made after Schaatt wired money for the investment, Opp.35, they were made only a few days later in connection with a meeting with Volk and Lange about how Reven would use her investment. The SEC need not prove Schaatt relied on the

misrepresentations when she invested. *Geman*, 334 F.3d at 1191; *see also S.E.C. v. Wolfson*, 539 F.3d 1249, 1262 (10th Cir. 2008) (Courts take an "expansive reading" of the "in connection with" element of securities fraud claims, requiring only that the false statements "coincided" with the purchase of securities).

b. Defendants Made False and Misleading Statements as to How Investor Schaatt's and Green's Investments Would Be Used.

Volk and Lange misrepresented to Schaatt and Green in summer and fall 2021 that their investments would be used for clinical trials and to complete the steps necessary to list in a DPO. Doc. 9, Schaatt Decl. ¶24; Doc. 11, Frost Decl. ¶¶5-6; Doc. 9-8; Doc. 11-1. Instead, Reven used some of Schaatt's $3 million investment or Green's $2.5 million investment, or some of both, to make an initial $1.5 million payment toward a licensing transaction and used at least $2 million to settle an undisclosed five-year-old Reven shareholder lawsuit. Doc. 7, Schaatt Decl. ¶¶53-55; Doc. 8, Walker Decl. ¶¶22-23; Doc. 8-3. Defendants argue that their statements regarding how Schaatt's and Green's investments would be used were not misleading because *some* of Green's investment was used to make payments related to clinical trials. Opp.36. However, Defendants do not dispute that Green's and/or Schaatt's funds were used to pay for the settlement of the undisclosed Shareholder Lawsuit and an undisclosed licensing transaction. Opp.34-38. Therefore, there is no dispute that Defendants misrepresented to Schaatt and Green how their funds would be used. These misrepresentations were material because a reasonable investor would want to know that their investment was diverted to pay for an undisclosed Shareholder Lawsuit or a licensing transaction rather than to complete the Reven clinical trials as represented by Defendants. Schaatt and Green confirmed that they would not have invested if they had

known their money would be used to make these payments. Doc. 9, Schaatt Decl. ¶13; Doc. 12, Frost Decl. ¶15.

c. 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 Frost that her and her family's September 2021 investments would be used for a licensing transaction. Doc. 12, Frost Decl. ¶¶10-13; Docs. 12-3, 12-4, 12-5. Despite soliciting Frost and her family members' investments specifically for the licensing transaction, none of their money as used for that purpose. Doc. 8, Walker Decl. ¶¶24-25; Doc. 8-3. Defendants used a portion of the investments to make payments toward the undisclosed Shareholder Lawsuit settlement, as well as for payments unrelated to the purported licensing transaction. *Id.*

Defendants do not dispute any of these facts. Opp.36-37. Instead, they argue that because they told Frost that Reven wanted to "ink this [licensing] transaction. . . before the 15th of September," Opp.36-37, and the investments were not made until September 24, 2021, "Frost had no reason to believe that. . . Reven still planned to use her funds on the proposed licensing transaction." *Id.* However, Defendants do not claim that they disclosed to Frost that if the investments were received after September 15, the funds would be used to pay for the settlement of the undisclosed Shareholder Lawsuit and expenses unrelated to the licensing transaction. Opp.36-37. Defendants' false and misleading statements about their use of the Frosts' funds were material because it would be important to a reasonable investor to know that their funds would not be used to fund a profitable licensing transaction as represented, but to pay for an

undisclosed Shareholder Lawsuit alleging securities fraud and other unrelated expenses. *See, e.g.*, Doc.12, Frost Decl. ¶¶10-15.[6]

4. False and Misleading Statements about the Shareholder Lawsuit.

Defendants' attempts to argue that they did not make false and misleading statements and omissions concerning the Shareholder Lawsuit highlight how misleading their disclosures were and demonstrate their scienter.

Defendants argue that their statement in the August 2018 PPM that "[t]he Company is not currently the subject of any litigation" was technically correct because it was issued by Reven Holdings, Inc., and the lawsuit named Reven Pharmaceuticals, Inc. Opp.39-40. However, on August 21, 2018, only ten days before the PPM was issued, Reven Pharmaceuticals had transferred all of its assets and liabilities to Reven Holdings, Inc. Mot.5; Doc. 7, Greer Decl. ¶12. Unsurprisingly, the lawsuit was amended to include Reven Holdings, Inc. and settled in September 2021 using $2,750,000 of investors' money. Mot.21; Doc. 7, Greer Decl. ¶55; Doc. 8-3 at 4. Similarly, Defendants' assertion that Lange's statement to Schaatt that "we have no lawsuits from shareholders" was not "an intentional misrepresentation" because Lange thought the lawsuit was brought by a guardian of an incapacitated shareholder, rather than the shareholder himself, only further shows that Lange was seeking to mislead Schaatt. Opp.40;

[6] Defendants also contend that despite any statements they made about specific uses of investor money, money raised was meant to go to "Reven's immediate expenses not a guarantee that investments would be used for a specific purpose." Opp.37. Of course, that is not what they disclosed to investors. Rather, Defendants solicited certain investors for funds that would purportedly be used to pay specific expenses, not for other so-called "immediate" expenses. Doc. 9, Schaatt Decl. ¶¶11-13; Docs. 9-3, 9-8; Doc. 12, Frost Decl. ¶¶10-13; Doc. 11, Green Decl. ¶¶6-10; Doc. 11-1; Docs. 12-3, 12-4, 12-5.

Mot.21. Finally, Defendants' attempt to explain away their statement in the July 2020 PPM that they were "not aware of…pending litigation" by claiming that they did not believe the Shareholder Lawsuit was "material to Reven's financial condition" because they "believed the allegations in the lawsuit to be completely baseless." Opp.40-41. The credibility of that claim is belied by the fact that Defendants paid $2,750,000 of investor money to settle the lawsuit in 2021, which was more than 32% of the total amount Reven raised in 2020 and more than 12% of the total amount Reven raised in 2021. Doc. 8, Walker Decl. ¶14; Doc. 8-3 at 4.

Defendants' misstatements and omissions about the Shareholder Lawsuit against them were material to reasonable investors, especially considering that there were allegations of fraud. *See, e.g.*, *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). Schaatt confirmed that she would have wanted to know about the Shareholder Litigation. Doc. 9, Schaatt Decl. ¶13. The testimony Defendants cite regarding Schaatt's understanding of Defendants' statements in no way suggests that the undisclosed information about the Shareholder Litigation would not have been important to her investment decision, or any reasonable investor's decision to invest. *See* Opp.40-41.

II. The SEC has Shown that 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.

In violation of Rules 10b-5(a) and (c) and Securities Act Sections 17(a)(1) and (3), Defendants engaged in multiple deceptive or manipulative acts in furtherance of their scheme to pay the Reven Principals misappropriated investor funds, including: making and disseminating false and misleading statements; misappropriating investors' funds by diverting investors' funds deposited in Reven's bank accounts to excess transfers to the Reven Principals' personal

accounts and payments for their benefit; and disguising payments to the Reven Principals by setting up and making payments through a shell pass-through company. Mot.34-35 (reciting elements for these claims), 35-36.

Defendants argue that they did not misappropriate investor funds, and therefore did not engage in deceptive conduct, because they were entitled to millions of dollars of compensation beyond what they disclosed to investors. Opp.13-14. However, Defendants' actions in raising money from investors for Reven's business and diverting millions of dollars from Reven's accounts to their own accounts, without the knowledge of investors, are deceptive and manipulative acts. *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."); *Lottonet*, 2017 WL 6949289, at *6, *16-17 (finding Defendant's taking of investor funds in excess of compensation disclosed in PPM as misappropriation and "manipulative or deceptive acts that are part of a fraudulent or deceptive course of conduct"),.

Additionally, the Reven Principals formed a pass-through entity, Relief Defendant Health Analytics and Research Services, Inc. ("HARS"), to facilitate the transferring of money to the Reven Principals. *See* Doc. 10, Denomme Tr. 14:6-15:19, 16:18-23, 17:17-18:2, 18:9-12; 18:24-19:6. HARS provided no goods or services to Reven. *Id*. Defendants do not dispute Denomme's testimony that the Reven Principals used HARS to receive payments of additional compensation that they believed they were owed by Reven and identify only $275,000 that they claim was transferred from Reven to HARS for another purpose. *Id*.; Opp.15-16, 18. There is no dispute that Defendants caused Reven to transfer approximately $1.8 million to HARS, and at least

approximately $1.5 million was then disbursed to the Reven Principals or for their benefit. Doc. 8, Walker Decl. ¶18.d; Opp.18. Defendants' acts in funneling funds to Reven Principals by directing payments through HARS were deceptive and manipulative acts in furtherance of the scheme to pay the Reven Principals misappropriated investor funds.

For the same reasons set forth in the Motion and above, Defendants acted with scienter. *See* Mot.31-32.

III. THE COURT SHOULD ENTER A PRELIMINARY INJUNCTION AND CONTINUE THE ASSET FREEZE.

A. The SEC has Made a Clear Showing that Violations Occurred and Will Occur Again In The Future In The Absence Of A Preliminary Injunction.

"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). "Courts have not required the SEC to show irreparable injury . . . but rather require the SEC to show that defendant's actions violate the defendant's statutory obligations." *Id.* This showing is "analogous to the traditional likelihood of success standard regularly applied to private litigants." *Id.* This Court has formulated the SEC test as requiring the SEC to "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.

The SEC has made a clear showing that it is likely to prove the alleged violations by establishing that Defendants made numerous material misstatements and omissions and committed deceptive acts in furtherance of a scheme to defraud investors. As shown above and

in the Motion, Defendants acted with a high degree of scienter—they knew all of their representations to investors were false and they misappropriated investors' funds.

The SEC has also made a clear and substantial showing that the violations will likely occur again in the near future absent injunctive relief. "[P]roof of past violations of the securities laws serves as a basis for an inference that future violations may occur." *SEC v. Washington Cnty. Util. Dist.*, 676 F.2d 218, 22 (6th Cir. 1982). Moreover, this is not an isolated occurrence. Defendants' misstatements and scheme to defraud were perpetrated over several years and continued even after the SEC contacted them. Defendants continued to make misrepresentations to investors until at least October 2022, shortly before this Court temporarily restrained their fraudulent conduct, and even now contend that their misappropriation of investor money was appropriate. *See* Doc. 9, Schaatt Decl. ¶¶33-50; Opp.13-19.

Notably, in April 2023, while Reven was preparing its Opposition, Volk contacted Reven's largest investor, Bill Luther, and directed him to call Investor Schaatt and convince her to change the declaration she had provided in support of the SEC's Motion and state that she lied in that declaration. Ex. 3, Dep. Ex. 78, ¶6. Volk attempted to have Luther persuade her to make this change, stating that if Schaatt agreed "that their statements were garnered under false pretenses by an over-zealous investigator, [she] can retract [her] statements and we would not include them in our lawsuit where we seek damages for the devaluation of the company." *Id.* This brazen attempt to interfere with this proceeding—and potential violation of federal criminal laws prohibiting witness tampering—shows a continuing propensity to violate the law.

For these reasons, the Court should continue the relief granted by its TRO Order and preliminarily enjoin Defendants from violating the charged provisions of the federal securities

laws, from destroying documents, and from offering or selling securities, except in their own personal accounts, through the resolution of this case.

B. Continuation of the Asset Freeze is Necessary to Preserve the Status Quo.

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).

For the reasons stated above, the SEC has exceeded the required showing to continue the asset freeze granted by the TRO Order in order to preserve the status quo and "facilitate enforcement of any remedy that might be ordered in the event a violation is established on summary judgment or at trial." TRO Order, 12. Defendants wholly fail to address the lower legal standard for an asset freeze, all but conceding that the SEC has established that an asset freeze is warranted. The Court should enter an order that continues the asset freeze granted in the TRO Order through the resolution of this case on the merits.

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.

Dated: August 30, 2023

Respectfully submitted,

By: *s/ Sharan E. Lieberman*

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CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATIONS

Counsel hereby certifies that the foregoing pleading is comprised of 6124 words, exclusive of the caption, signature block, and certificate of service, and therefore complies with the type-volume limitations set forth in the Court's Order Granting the SEC's Unopposed Motion for Enlargement of Length Limitation. *See* Doc.103.