UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
JUDGE DANIEL D. DOMENICO

Civil Case No. 1:22-cv-03181-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,
MICHAEL A. VOLK,

Defendants,

and

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

Relief Defendants.

DEFENDANTS AND RELIEF DEFENDANTS' REPLY IN FURTHER SUPPORT OF THEIR MOTION TO NARROW PRELIMINARY INJUNCTION TO LIFT ASSET FREEZE

Defendants[1] file this Reply in Further Support of Their Motion to Narrow Preliminary Injunction to Lift Asset Freeze, ECF No. 124 (the "Motion"), and respectfully state the following:

[1] As defined in the Motion, ECF No. 124.

INTRODUCTION

Nothing in the SEC's Opposition disproves Defendants' core argument in the Motion: that the asset freeze has had the unintended effect of destroying, rather than preserving, the assets that Defendants owned at the outset of this case. For this reason alone, Defendants have shown good cause for the Court to lift the asset freeze.

The Opposition also ignores the reality that the SEC's case today is materially different from what was originally presented to the Court almost eighteen months ago. When the SEC sought a Temporary Restraining Order ("TRO"), it alleged ***misappropriation***—that Defendants had ***stolen*** money from investors and the company to line their own pockets. But, since then, Defendants have presented an ***uncontroverted*** analysis from a highly qualified forensic accounting expert ***conclusively disproving*** the SEC's original theory of deliberate theft. This unrebutted testimony reduced the SEC's case to mere complaints about the alleged inaccuracy of Defendants' disclosures in private placement memoranda and investor emails. Whether or not these alleged disclosure issues warrant a preliminary injunction against buying or selling securities, they certainly cannot justify a wholesale freeze of Defendants' business and personal assets for months or even years.

Beyond that, the Opposition exaggerates the potential harm from lifting the asset freeze, including by completely ignoring two critical facts: (1) that the Motion does not seek to remove the prohibition on buying or selling securities, and (2) that the Motion expressly states that Defendants do ***not*** seek to lift the asset freeze for

purposes of paying any compensation to Messrs. Lange, Volk, or Denomme (the "Reven Principals"). These facts eliminate any possible risk that Defendants would "resume paying themselves with investor proceeds" or otherwise engage in any other conduct that could be remotely objectionable to the SEC. ECF No. 127 at 2. Nor is there any realistic risk that Defendants would "dissipate" the assets. *Id.* at 1. On the contrary, that is the last thing that Defendants want or intend to happen after having spent more than a year watching the assets dwindle. The Court should remove the asset freeze so that Defendants can take action to protect the value of Reven's intellectual property and Defendants' other assets, for the benefit of Reven and its investors, in addition to the SEC.

ARGUMENT

I. The Asset Freeze Should Be Lifted Because Its Effects Are Contrary to Its Goals.

The asset freeze should be lifted for the simple reason that it is not accomplishing its intended goals. As stated in the Motion and acknowledged by the SEC, "the primary purpose of freezing assets is to facilitate compensation of defrauded investors in the event a violation is established at trial" and "to preserve the status quo by preventing the dissipation and diversion of assets." ECF No. 127 at 5 (quoting *SEC v. End of Rainbow Partners, LLC*, No. 17-cv-02670-MSK-NYW, 2017 WL 5404199, at *4 (D. Colo. Nov. 14, 2017) and *SEC v. Forte*, 598 F. Supp. 2d 689, 692 (S.D.N.Y. 2009)); *see also SEC v. Ahmed*, 123 F. Supp. 3d 301, 307–08 (D. Conn. 2015) ("[A]n 'asset freeze is a provisional remedy' that serves to preserve the status quo and 'to ensure that, in the event the SEC obtains a judgment, money will

be available to satisfy that judgment.'") (quoting *SEC v. Byers*, No. 08-cv-7104, 2009 WL 33434, at *2 (S.D.N.Y. Jan. 7, 2009)) (cited in ECF No. 127 at 4). But far from facilitating potential compensation of investors and preserving the status quo, the asset freeze has prevented Defendants from maintaining their intellectual property assets, resulting in permanent, irreversible losses to Reven and its shareholders. The asset freeze has thus diminished the value of Defendants' assets rather than preventing their dissipation, thereby *lowering* the amount of funds available to satisfy any future judgment. As stated in the Motion, continuing the asset freeze in this case does not serve the intended purpose. *See SEC v. 1 Glob. Cap. LLC*, No. 18-cv-61991, 2021 WL 5013794, at *2–3 (S. D. Fla. Oct. 28, 2021) (lifting asset freeze that had effect of reducing potential restitution amount available for investors).

The SEC argues that the asset freeze will preserve the status quo, but this argument fails. First and foremost, the weakness of its argument is shown by its abandonment of its central theory of this case, alleged misappropriation of investor funds by the Reven Principals. The SEC's filings that resulted in the TRO centered around this alleged "misappropriation." *See* ECF No. 1, ¶ 1 (stating the case is intended "to stop an ongoing offering fraud and misappropriation of investor assets by Defendants"), ¶¶ 45–46 (alleging an $8.8 million misappropriation); ECF No. 3 at 1 (same); ECF No. 28 at 11 (the Court stating that the evidence indicates "millions of dollars of misappropriated investor funds" and granting the TRO). However, as stated in the Motion, this argument ignores the ***uncontroverted*** expert testimony submitted in opposition to the Preliminary Injunction that ***there was no***

misappropriation. ECF No. 124, ¶ 25 (citing ECF No. 96 at 13–19 and ECF No. 96-1). The SEC does not even acknowledge this expert accounting analysis in its Opposition. *See generally* ECF No. 127. The SEC's abandonment of its key theory underpinning the TRO strongly underscores that the asset freeze is unnecessary to prevent further harm.

Moreover, as stated in the Motion, lifting the asset freeze is intended to enable Defendants to maintain Reven's intellectual property. Even if the SEC had been able to substantiate its baseless assertions that the Reven Principals misappropriated investor funds for their personal use (which the SEC has not and cannot), there is no way that the Reven Principals could, let alone would, misappropriate Reven's remaining intellectual property assets for their personal use. As stated in the Motion, Defendants will stipulate that licensing these assets or using them as collateral is solely for the purpose of "preserv[ing] and maximiz[ing] the value of the Company's intellectual property assets," *id.*, ¶ 27, including by paying the fees that are necessary for the assets to continue to exist at all. If Reven's critical patent family expires, that will be the opposite of preserving the status quo.

The SEC has provided no evidence that Defendants will dissipate their intellectual property assets should the freeze be lifted. *See SEC v. Ascenergy LLC*, No. 2:15-cv-01974, 2015 WL 13942801, at *7 (D. Nev. Oct. 15, 2015) (observing that an asset freeze is appropriate only where the SEC demonstrates "a likelihood of dissipation of the claimed assets"). As noted, the SEC initially claimed that investor funds were misappropriated and dissipated by transfers to the Reven Principals' and

Relief Defendants' accounts, ECF No. 3 at 35–36, but it has essentially abandoned that theory. Indeed, the only reference to asset dissipation in this Court's Order Granting the Preliminary Injunction is to the dissipation caused by the asset freeze itself. ECF No. 122 at 28. This too shows that the asset freeze is unnecessary. *See SEC v. ABS Manager, LLC*, No. 13-cv-319, 2013 WL 1164413, at *6 (S.D. Cal. Mar. 20, 2013) (denying request for asset freeze due to SEC's failure to show defendant was likely to dissipate assets). Further, the continued prohibition on Defendants' ability to solicit investments and transfers to the Reven Principals' personal accounts will prevent any possible dissipation by these methods.

The SEC also argues that the asset freeze should not be lifted because "Defendants have not established that any currently frozen assets are untainted." ECF No. 127 at 5. This assertion is both off-base and inapplicable. As set forth above and in the Motion, uncontroverted expert forensic accounting analysis conclusively demonstrates that there has been no misappropriation. In any event, the purpose of lifting the asset freeze is to allow Defendants to obtain ***new*** money to preserve their existing assets, ***not*** to allow access to cash reserves that the SEC itself admits are nearly depleted and therefore insufficient to pay fees necessary to maintain Reven's patents. *See id.* at 6 (acknowledging that "there is very little cash among [Defendants'] frozen assets"). Because Defendants seek to lift the asset freeze to obtain new funds, not gain access to old ones, the SEC's reliance on *Rainbow Partners* to argue that Defendants must show these funds are untainted is irrelevant. *Id.* at 5 (citing *Rainbow Partners*, 2017 WL 5404199, at *4). New funds obtained from

licensing intellectual property or incurring new debt would necessarily be untainted.[2] And if the SEC argues that the patents themselves are tainted because ***all*** the funds ***ever*** obtained by Reven were fraudulently obtained, that argument would make it impossible for Defendants to comply with this Court's instruction to maximize the value of Reven's primary remaining assets, its intellectual property. As noted in the Motion, "the goal of compensating investors" by maximizing the value of Defendants' remaining assets must take precedence over the SEC's tangential and unsupported theories of causation. ECF No. 124, ¶ 15 (quoting *SEC v. Manor Nursing Ctrs., Inc.*, 458 F.2d 1082, 1105 (2d Cir. 1972)).

Further, the SEC's argument that lifting the asset freeze would allow Defendants to "resume paying themselves with investor proceeds," ECF No. 127 at 1, ignores Defendants' express stipulation that "[l]ifting the asset freeze … would *not* involve soliciting investors or paying salaries to the Reven Principals while the Preliminary Injunction remains in place." ECF No. 124, ¶ 27 (emphasis in original). The SEC's argument is even more nonsensical given that (1) the Preliminary Injunction will still prevent Defendants from soliciting investments, *id.*, and (2) the SEC admits that Defendants have essentially exhausted their cash assets. *See* ECF No. 127 at 6 (acknowledging that "there is very little cash among [Defendants'] frozen assets"). No investor proceeds remain to pay the Reven Principals, and no further proceeds can be gained. Nonexistent proceeds cannot possibly be used to pay the

[2] If necessary, Defendants are willing to place any new funds into a new account.

Reven Principals.[3] The SEC's argument turns a blind eye to the dire straits in which the asset freeze has left Reven's primary remaining asset, its intellectual property.

II. The Asset Freeze Should Be Lifted in Its Entirety Given the Severity of the Situation.

In addition, contrary to the SEC's arguments in the Opposition, lifting the asset freeze in its entirety is necessary to preserve Defendants' intellectual property assets. As the SEC acknowledges, it is ***already*** the case that "there is very little cash among the frozen assets," meaning that "the only meaningful assets" to pay any penalty "will be Reven's hard-to-value intellectual property." *Id.* And to preserve that intellectual property, Defendants will likely have no choice but to incur debt or enter into new license agreements. Indeed, Defendants have exhausted their personal resources and are still enjoined from soliciting investments—how else ***can*** Defendants maintain the company's intellectual property? As the SEC also notes, there is a "heightened interest in having those assets maintained without further diminution pending the outcome of the action." *Id.* (quoting *Rainbow Partners*, 2017 WL 5404199, at *4). That is exactly why lifting the asset freeze is necessary—Defendants need to be able to enter into varied transactions to preserve Defendants' assets and protect shareholder value.

Limited carveouts, as the Court has allowed in the past, are insufficient, as

[3] Even so, if the Court remains concerned about the possibility that the Reven Principals will somehow receive further compensation from Reven or the other Defendants while the preliminary injunction remains in place, Defendants have no objection to the Court lifting the asset freeze but still expressly prohibiting the Reven Principals from receiving compensation from the other Defendants, directly or indirectly.

they do not give Defendants the necessary flexibility to pursue various methods of preserving the assets. The past limited carveouts were done to preserve specific assets and presented discreet issues.[4] Now, however, Defendants are faced with preserving ***all*** the assets ***and Reven itself***. This requires flexibility so that Defendants can enter transactions to preserve the assets and keep Reven afloat.

There are several other reasons why lifting the asset freeze is a better solution than continuous limited carveouts as the SEC suggests. First, operating under an asset freeze makes potential debt financing or licensing unattractive to prospective counterparties, regardless of the intrinsic value of Defendants' assets. Lifting the freeze would make the prospect of licensing or financing these assets more palatable for the third parties that will help to preserve these assets. Second, the process of negotiating and entering limited carveouts is cumbersome and time-consuming in and of itself, for both the parties and the Court. This concern is especially relevant given the close proximity of the upcoming deadlines to preserve Defendants' assets. ECF No. 124, ¶ 22.

The SEC also misstates the record when it contends that "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." ECF No. 127

[4] Defendants note that the last carve-out to preserve patents, ECF Nos. 73, 74, involved the Reven Principals using $100,000 of their own money to preserve patents in March 2023, some of which have nonetheless unfortunately lapsed. This demonstrates Defendants' good faith in doing everything in their power to preserve intellectual property assets.

at 7. The SEC's non-opposition has often come only after extensive back-and-forth with (and, in some cases, significant concessions from) Defendants. What's more, when Defendants sought to supplement their opposition to the SEC's Motion for Preliminary Injunction to provide additional evidence of the harms imposed by the TRO on Defendants' assets, the SEC opposed that relief and called this evidence "irrelevant to the standards this Court uses to assess whether the SEC has met its burden to obtain a preliminary injunction or asset freeze." ECF No. 114 at 1. Now, the SEC acknowledges that "[i]n 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.'" ECF No. 127 at 5 (quoting *Rainbow Partners*, 2017 WL 5404199, at *4). This inconsistency only underscores the SEC's ever-shifting positions on the relevant issues in this case. The SEC cannot ignore the deleterious effects of the asset freeze when it chooses, then dismiss them when forced to acknowledge their relevance to the issues at hand. Lifting the asset freeze in its entirety is the best way to preserve Reven's assets and protect its shareholders whether the SEC is ultimately successful or not.

CONCLUSION

For the foregoing reasons and the reasons set forth in the Motion, ECF No. 124, the Motion should be granted.

Dated: May 1, 2024

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 1, 2024, I electronically filed the foregoing **DEFENDANTS AND RELIEF DEFENDANTS' REPLY IN FURTHER SUPPORT OF THEIR MOTION TO NARROW PRELIMINARY INJUNCTION TO LIFT ASSET FREEZE** with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the following email addresses:

- **Sharan Lieberman**
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/s/ Katherine A. Preston

CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATIONS

Counsel hereby certifies that the foregoing pleading is comprised of 2477 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) and this Court's Order Granting Plaintiff's Motion for Preliminary Injunction, ECF No. 122 at 30.