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

INTERVENOR INVESTOR GROUP'S MOTION TO INTERVENE

I. INTRODUCTION AND RELIEF REQUESTED

Investors Leah Schaatt and Lee-Ann Frost, (collectively "Investor Group"), two innocent investors in Reven Pharmaceuticals, Inc. and its successor Reven Holdings, Inc. ("Reven"), move

this Court to intervene in a limited capacity solely to seek appointment of a General Receiver to marshal and sell the assets of Reven for the benefit of all of the 175 innocent investors who were harmed by Brian D. Denomme, Peter B. Lange, and Michael A. Volk's (collectively "Reven Defendants") misappropriation and misuse of investor funds for their personal enrichment. The SEC does not oppose their intervention.

Reven's assets are subject to a preliminary injunction and Asset Freeze. The Investor Group has a recognized, vested interest in preventing the diminution in value of Reven's assets for the express purpose of protecting those assets from further dissipation, misuse, and abuse by the Reven Defendants. However, the U.S. Securities and Exchange Commission ("SEC" or "Plaintiff") is not equipped and unable to directly manage the assets subject to the freeze, and the Reven Defendants *should not* be permitted to have any further control or access to even the smallest part of Reven's remaining assets.

This effective deadlock could very well lead to the complete dissipation of all remaining value in Reven, due to Reven's inability to make even the most basic patent prosecution and maintenance payments, let alone expend the millions of dollars necessary to continue clinical trial and development work during the ongoing FDA approval process.

The Investor Group should be permitted to intervene so the Court may consider the appointment of a General Receiver with the power of sale over all of the Reven entities and their assets, in order to manage, sell, and dispose of the remaining assets for the benefit of Reven's harmed investors.

II. STATEMENT OF FACTS

A. Background and Procedural Posture

The relevant facts have already been exhaustively briefed to this Court and will not be restated in full here. Briefly, the Investor Group, along with the Frost family members and Jeffrey Green, collectively invested approximately $12 million dollars in Reven between 2019 and 2021, representing approximately 25% of all investments into the Reven entities during that relevant time period. Schaatt Decl., ¶ 7, Frost Decl., ¶ 7, Green Decl., ¶ 4**.** During that period, the Reven Defendants made numerous false and misleading statements to the Investor Group and other investors. These statements included severely understating the amount of their compensation by millions of dollars, misrepresenting that Reven was about to have an imminent direct public offering ("DPO"), and was about to complete all necessary audited financial statements which were a condition precedent to that DPO. Dkt. 9, 11, 12. This also includes a failure on the part of the Reven Defendants to fully and accurately disclose the existence, basis, and details of 2016 litigation against Reven Pharmaceuticals and the Reven Defendants in the Twelfth Judicial Circuit of Sarasota County, Florida, and the use of investor funds to pay a settlement of that litigation. *See* Dkt. 7, ¶¶ 53-55; Dkt. 11; Dkt. 3, p. 21.

The SEC filed this instant suit against Reven and the Reven Defendants on December 9, 2022. Dkt. 1. Contemporaneous with that complaint, the SEC applied for a Temporary Restraining Order and Asset Freeze, which was granted on January 3, 2023. Dkt. 3, 28.

On March 29, 2024, after briefing from the parties, this Court extended the TRO and Asset Freeze through a preliminary injunction. Dkt. 122. However, the Court allowed the Reven Defendants an opportunity to move to "address[] the scope of the preliminary equitable relief in

light of this Order, including whether a more narrow preliminary remedy or lifting of the asset freeze in whole or in part is appropriate pending final resolution of this case." *Id.*, p. 29.

B. Status of Reven's Intellectual Property and Other Assets.

At this time, Reven's remaining assets are as follows: a limited amount of reserve cash, 12 domestic pharmaceutical patents and 28 pending domestic patent applications, 21 international pharmaceutical patents and 98 pending patent applications, FDA vendor data, and all associated intellectual property (e.g., formulations, lab notes, clinical data, and test result data). Wooten Decl., Exh. 1. *See also* Volk Decl., Dkt. 96-2, ¶ 2.

Both in response to the SEC's motion for a preliminary injunction, and again in response to the Court's order concerning the scope of the Asset Freeze, the Reven Defendants articulated in general terms their concern that the Asset Freeze would have the unintended effect of harming the value of Reven's remaining assets by impairing Reven's ability to make patent maintenance payment, unlock critical clinical trial data, and otherwise continue to advance their pharmaceutical candidates through the FDA approval process. *See, e.g.*, Dkt. 96, 96-2, 124. Specifically, they allege that the asset freeze has prevented Reven from raising additional capital from current and/or new investors, which would be used to pay patent prosecution and maintenance expenses, expenses associated with Phase II clinical trials for Reven's most promising pharmaceutical candidate, Rejuvinex ("RJX"), clinical development staff, and the expenses necessary to reconcile and audit its financial records in preparation for a public offering. Volk Decl., Dkt. 96-2, ¶¶ 26-29. The Reven Defendants have alleged that the costs of the access to the clinical data alone have cost Reven "at least 18 months of time and ***tens of millions of dollars***." *Id.* at ¶ 27 (emphasis in original).

Though the Reven Defendants do not provide more specificity to explain or justify this position, let alone explain why they ought to be trusted to resume their failed stewardship over those assets, the Investor Group has independently corroborated the Reven Defendants' claims about the risk of diminution in value of Reven's remaining assets. Specifically, they have retained Dr. Alyson Wooten of Berkeley Research Group, a doctor of pharmacy and intellectual property lawyer with over 25 years of relevant experience. Wooten Decl., Exh. 1. She has evaluated Reven's patent portfolio, its progress through the FDA approval process, the status of its clinical trials and delay in accessing and unlocking Reven's clinical trial data, and opined that the delay has caused a measurable decrease in the value of Reven's IP assets. *Id*., Exh. 1, ¶¶ 39-40. In her opinion, millions of dollars of additional work is necessary to realize the value of Reven's patent portfolio by completing all necessary clinical trial work prior to the expiration of its patents, in addition to the costs of maintaining the portfolio itself, *id*., Exh. 1, ¶¶ 32-41. As a result of the fraud of the Defendants and the Court's Asset Freeze, Reven is financially constrained from performing this work and should not be permitted control of assets to attempt to perform this work. If some action is not taken, however, Revens' shareholders risk of a total loss in the value of the company.

III. AUTHORITY AND ARGUMENT

A. The Investor Group May Intervene as a Matter of Right Under Fed. R. Civ. P. 24(a).

Fed. R. Civ. P. 24(a)(2) provides that a party may intervene as a matter of right if they "claim an interest relating to the property…that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest." To intervene as a matter of right, a party must establish four elements: "(1) the application is timely; (2) it claims an interest

relating to the property or transaction which is the subject of the action; (3) the interest may as a practical matter be impaired or impeded; and (4) the interest may not be adequately represented by existing parties" *Kane Cnty.*, 928 F.3d at 890.

1. *The Investor Group's Motion is Timely*.

A motion to intervene must be timely. Fed. R. Civ. P. 26(a) & (b). Timeliness is assessed "in light of all the circumstances, including [1] the length of time since the applicant knew of his interest in the case, [2] prejudice to the existing parties, [3] prejudice to the applicant, and [4] the existence of any unusual circumstances." *Kane Cnty, Utah v. United States*, 928 F.3d 877, 890-91 (10th Cir. 2019). "[D]elay in itself does not make a request for intervention untimely…the other factors in the test for untimeliness must also be considered." *Oklahoma ex rel. Edmonson v. Tyson Foods, Inc.*, 619 F.3d 1223, 1235 (10th Cir. 2010). The Investor Group's motion is timely under these factors.

First, the length of time is measured not from the inception of the case, but from when the "movant was on notice that its interest may not be protected by a party already in the case." *Oklahoma*, 619 F.3d at 1232-33. Here, the order granting the SEC's motion for a preliminary injunction was entered on March 29, 2024, approximately one month ago and briefing on the scope of the Asset Freeze and preliminary injunction closed on May 3, 2024. The Intervenor Group took immediate steps to protect their interests.

Second, existing parties are not prejudiced by intervention at this time. "Prejudice" within the meaning of this standard is not prejudice caused by intervention, but prejudice caused by intervention *at this time*. See *Oklahoma*, 619 F.3d at 1236. Here, intervention by the Investor Group will not impact the case schedule and the relief sought by the Investor Group is limited to

a prejudgment remedy. The Investor Group's intervention will have no impact on the resolution of the dispute between the SEC and Defendants.

Third, the Investor Group would be prejudiced were they not permitted to intervene. The injunction and Asset Freeze while necessary, has the unintended effect of preventing Reven from maintaining its patent portfolio and advancing its pharmaceutical candidates. The Investor Group's motion to intervene and corollary motion to appoint a receiver over Reven's assets is meant to prevent that outcome by preserving what value presently exists for Reven's innocent shareholders while the SEC litigates its case against the Defendants.

2. *The Investor Group Has an Interest Relating to the Property Which is the Subject of the Action.*

"There is no clear-cut test to determine the nature of the interest required for intervention of right." *U.S. v. Perry County Bd. Of Ed.*, 567 F.2d 277, 279 (5th Cir. 1978). Rather, the inquiry "is a flexible one, which focuses on the particular facts and circumstances surrounding each application," and it "must be measured by a practical rather than technical yardstick." *Id.* (quoting *United States v. Allegheny-Ludlum Indus., Inc.*, 517 F.2d 826, 841 (5th Cir. 1975)). "The question is not whether the applicable law assigns the prospective intervenor a cause of action. Rather, the question is whether the individual may intervene in an already pending cause of action." *Jones v. Prince George's County, Maryland*, 348 F.3d 1014 (D.C. Cir. 2003) (citing *Trbovich v. United Mine Workers of America*, 404 U.S. 528, 92 S.Ct. 630, 30 L.Ed.2d 686 (1972)). Nonetheless, the interest must be "direct, substantial, and legally protectable." *City of Stilwell, Okl. v. Ozarks Rural Elec. Co-op. Corp.*, 79 F.3d 1038, 1043 (1996).

Here, the Investor Group's interest in this case arises from their status as victims of Defendants' repeated and significant violations of U.S. Securities law. "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.'" *Securities and Exchange Commission v. End of the Rainbow Partners, LLC*, 2019 WL 8348323, *4 (D. Colo. Nov. 25, 2019) (quoting *SEC v. McGinn, Smith & Co., Inc.*, 2014 WL 675611, at *4 (N.D.N.Y. Feb. 21, 2014).

Together, the two members of the Investor Group as well as the Frost family and Jeffrey Green have invested approximately 25% of the nearly $44 million invested into Reven between 2019 and 2021. The Investor Group was directly harmed by the material misrepresentations made and misuse of investor funds by Defendants. The Investor Group's ability to recoup *any* of this money depends substantially on preserving the value of Reven's assets, specifically, its portfolio of patents and the position of its pharmaceutical candidates in the FDA approval process. *See S.E.C. v. Flight Tramsp. Corp.*, 699 F.2d 943, 948 (8th Cir. 1983) ("intervention as of right may be based upon an interest which is contingent upon the outcome of the litigation").

3. *The Investor Group's Interest May be Impaired or Impeded.*

Ironically, the pending Asset Freeze—while essential to prevent further misuse of funds by the Defendants—hinders, not helps, preserve Reven's value. Without the ability to spend money, Reven cannot make the necessary patent maintenance payments. Without the ability to operate, Reven cannot continue to advance its pharmaceutical candidates through the FDA approval process, exposing Reven's innocent investors to potentially a complete loss of their investment as Reven's IP portfolio continues to decline in value. Absent intervention, the Investor Group will have no recourse to protect their investment. *See, e.g., S.E.C. v. Homa*, 17 Fed.Appx.

441, 445-46 (7th Cir. 2001) (noting that a creditor's right to intervene depended in part upon whether they had the ability to seek recourse in a different forum, including an SEC receivership if one had been initiated).

Reven's remaining property is in imminent danger of being lost, concealed, injured, diminished in value, or squandered. All parties seem to agree that Reven's only remaining asset of any real value is its portfolio of pharmaceutical patents and intellectual property, including the RJX patent. However, all of Reven's patents require ongoing patent maintenance payments and associated legal work to retain their patent protection. Should maintenance payments not be made, the patent protection would lapse. Wooten Decl., Exh.1, ¶¶17-26.

Further, the patents themselves are not intrinsically valuable; pharmaceutical companies must spend millions of dollars not only to develop a potential pharmaceutical from those patents, but to advance the patents through the rigorous and expensive FDA approval process. Wooten Decl., Exh. 1 ¶¶27-31. The patent period provides pharmaceutical companies with incentive to engage in the expensive and intensive process of obtaining FDA approval, knowing that after they have spent tens of millions of dollars and several years to come out the other side of that process, they would have a period of patent exclusivity in which they could recoup their investment. *Id.* at ¶¶17-18.

In this case, even Reven's most promising pharmaceutical candidate, RJX, is still years away from FDA approval. Indeed, RJX has been unable to complete Phase II of the current clinical trials, and, according to industry statistics, Reven may be required to spend in the range of $22 to $53 million to complete the required Phase III clinical trials. *Id.* at 28. Even were Reven's bank accounts not subject to the asset freeze, what little remains in those accounts will not prove to be

adequate to make basic patent maintenance, let alone continue to spend the significantly greater sums required to continue to advance Reven's pharmaceutical candidates through the FDA approval process. This is significant as Reven's patent portfolio has only five to eight years remaining before the patent protection expires, and the remaining clinical trial timeline is between four and seven years. *Id.* at ¶35.

In short, if the patent holder for a pharmaceutical patent is not actively working towards—and spending considerable financial resources in the process—to advance the pharmaceutical candidate through the FDA process, the value of those assets has a one-way trajectory: Down. *See* Wooten Decl., Exh. 1, ¶40. A receiver is necessary *now* to preserve what value still exists in Reven's IP portfolio.

4. *The Investor Group's Interest May Not be Adequately Protected by the Current Parties*.

The parties to the present litigation are not able to adequately represent the interests of the Investor Group. While the Investor Group agrees with the Reven Defendants on the danger of the current status quo—namely, the ongoing harm that will occur to Reven's assets while necessary maintenance payments, development costs, and clinical work remains unfunded—Defendants' proposed solution is patently unacceptable. The Asset Freeze and preliminary injunction are justified remedies; they were put in place precisely because the Reven Defendants were demonstrably poor stewards of their investor's money, having actively spent it to enrich themselves at the expense of their investors. The Court should not allow the fox to guard the hen house.

For its part, the SEC is not equipped and cannot assume management of the assets in the stead of the Reven Defendants or Reven's innocent investors; the SEC's preliminary injunction

and Asset Freeze are the primary tools the SEC has in its toolbox to prevent dissipation of assets and ongoing harm to investors. Though necessary to prevent further waste, dissipation, and misappropriate of Reven's assets by the Reven Defendants, the Asset Freeze and injunction by their own terms prevent *any* operations by Reven, including those operations that would otherwise be necessary to preserve value for the innocent investors.

Nor, if the SEC were able to operate Reven directly would it be able to do so effectively. The SEC is not equipped to shepherd Reven's pharmaceutical candidates through the ongoing FDA approval process, nor is it clear that the SEC would even be permitted to do so.

In short, though the SEC is pursuing the laudable goal of protecting Reven's innocent investor from further harm, the unique position of Reven's only remaining intellectual property assets make it just as likely that the asset freeze will harm the investors as if the Reven Defendants were permitted to regain any operational control over the company.

The Investor Group has satisfied all of the requirements of Fed. R. Civ. P. 24(a) for intervention as a matter of right, and should be allowed to intervene on the limited issue of appointment of a receiver over Reven and its assets.

B. In the Alternative, the Investor Group Should be Permitted to Intervene Under Fed. R. Civ. P. 24(b).

In the event the Court determines that the Investor Group may not intervene as a matter of right, the Court should nonetheless permit the Investor Group to intervene under Fed. R. Civ. P. 24(b).

Fed. R. Civ. P. 24(b) provides that on timely motion, the court "may permit anyone to intervene who . . . has a claim or defense that shares with the main action a common question of law or fact." This is a two-part test; first, the Court determines whether the ground for permissive

intervention exists. If it does, then the Court must exercise its discretion in determining whether to permit intervention. *Id. See* 7A *C. Wright & A. Miller*, Federal Practice & Procedure, § 1911 (3d Ed.). *See also Shump v. Balka*, 574 F.2d 1341, 1345 (10th Cir. 1978).

1. The Intervenor Group's Petition to Appoint a Receiver Shares a Common Question of Law or Fact with the Main Action.

Fed. R. Civ. P. 24(b)(1)(B) permits intervention for anyone who "has a claim or defense that shares with the main action a common question of law or fact." Whether a common question of law or fact is shared between the aspiring intervenors and the present claims in the action is to be liberally construed. *Kootenai Tribe of Idaho v. Veneman*, 313 F.3d 1094, 1108-1109 (9th Cir. 2002). "[T]he interest claimed by the applicant in intervention did not have to be a direct interest in the property or transaction at issue provided that it was an interest that would be impaired by the outcome." *Nat. Res. Def. Council, Inc. v. U.S. Nuclear Reg. Comm'n*, 578 F.2d 1341, 1344 (1978).

Here, the Investor Group has significant questions of law and fact in common with this action. Specifically, the effect of the Court's pending asset freeze and injunction on the value of Reven's assets, and the request by the Reven Defendants to regain control over those assets. Both the Court's asset freeze, and the Reven Defendants' attempts to undo that freeze, materially and adversely bear on the Investor Group's interest in Reven. Were the injunction and asset freeze to remain in place and unmodified, the value of Reven's IP portfolio and its progress in advancing its pharmaceutical candidates through the FDA will be irreparably damaged. At best, a prolonged stay will further reduce the patent exclusivity period available to Reven to complete its expensive and time-consuming FDA approval process. At worst, Reven's inability to make even the most

modest patent maintenance payments might lead to the early expiration of all of Reven's patents, reducing the company's value to zero.

On the other hand, were the Reven Defendants to have their way, they would be placed back in charge of the company that this Court has already determined they likely have been stealing from, risking further harm to the investors this Court has already determined the Reven Defendants have likely defrauded. The Investor Group's proposed motion to appoint a receiver seeks to sail a middle course through those two more extreme options, maximizing and preserving the value of Reven for the innocent investors while simultaneously insulating those same investors from the questionable decision making and ill-intent of the Reven Defendants.

2. Discretionary Factors Weigh in Favor of Permitting the Investor Group to Intervene.

Once the Court has determined that the proposed intervenors share a common question of law or fact with the main case, the Court must exercise its discretion in deciding whether to permit the intervention. Courts considered several factors, such as:

- The nature and extent of the would-be intervenor's interests;
- The intervenor's standing to raise relevant legal issues;
- The legal position they seek to advance and its probable relation to the merits of the case; and
- Whether intervention would prolong or unduly delay litigation generally.

See Intervention, Rutter Group Prac. Guide Fed. Civ. Proc. Before Trial (Nat Ed.) Ch. 7-E, 7:258. *See also Romero v. Board of County Commissioners for the County of Curry*, 313 F.R.D. 133, 142-43 & 147 (D.N.M. Jan. 19, 2016).

Here, all of the factors weigh in favor of permissive intervention. Notably, the Court's discretion includes the discretion "to limit intervention to particular issues." *Van Hoomissen v. Xerox Corp.*, 497 F.2d 180, 181 (9th Cir. 1974). That is precisely what the Investor Group seeks here. The Investor Group does not intend to prosecute their own claims or causes of action against the Reven Defendants. They do not seek permission to take discovery or participate in trial. The Investor Group know that the Plaintiff in this case is fastidious and amply capable of prosecuting its own case against the Reven Defendants.

The Investor Group only seeks to intervene for the limited purpose of protecting the *assets* of Reven for the benefit of all harmed shareholders, and ensuring that the SEC's litigation against the Reven Defendants can proceed without causing any unintended, collateral harm to the investors the SEC is trying to protect. Intervention for this limited purpose will not impact the parties' current case schedule, discovery obligations, or issues for trial, and will not cause any delay in the resolution of the main litigation.

For all the reasons articulated above, permissive intervention should be granted even if the Court determines that the Investor Group may not intervene as of right.

IV. CONCLUSION

The Investor Group (and, frankly, all of the other harmed investors), have a "heightened interest" in maintaining Reven's remaining assets and preserving its remaining value. One Hundred Seventy-Five investors were misled by the Reven Defendants, and now, through no fault of their own, are faced with the possibility of the Reven Defendants' misappropriations diminishing the value of their investment to zero. The Investor Group has a recognized, vested interest in protecting their investment, while preserving the Asset Freeze and Preliminary

Injunction as to the Defendants. This right warrants the Investor Group's *limited* intervention to propose a balanced solution to the quandaries presented by the diminishing value of Reven's assets.

Pursuant to Fed. R. Civ. P. 26(c), a copy of the proposed pleading is enclosed herewith at **Appendix A**.

Respectfully submitted,

Dated: May 10th, 2024

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CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATIONS

Above-signing counsel hereby certify that the foregoing pleading is comprised of 3,999 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).

CERTIFICATE OF CONFERRAL

Pursuant to D.C.Colo.L.CivR 7.1, on May 7, 2024 and in follow-up on May 8-9, 2024, counsel for the Investor Group conferred with counsel for the SEC, and counsel for the SEC states that it does not oppose the relief requested herein, namely intervention on the limited issue of appointment of a receiver.

On May 7, 2024 counsel for the Investor Group conferred with counsel for the Defendants about this motion to intervene. Counsel for Defendants indicated that he would need to speak with his clients, but anticipated that the motion would be opposed. Counsel for the Investor Group explained both during the call and in a follow-up email that the Investor Group intended to file the motion on May 9, 2024, and for counsel for the Defendants consider stipulating to the relief requested, otherwise no further response would be confirmation that Defendants opposed the relief requested herein. Defendants subsequently confirmed their opposition.

DECLARATION OF SERVICE

I hereby certify that on May 10, 2024, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following e-mail addresses:

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DATED this10th day of May, 2024.

/s/ Sean V. Small
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Appendix A