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' MOTION TO NARROW PRELIMINARY INJUNCTION TO LIFT ASSET FREEZE

Pursuant to F.R.C.P. 65 and this Court's direction in its March 29, 2024 order ("Order") (ECF. 122 at 29–30), Defendants[1] hereby move to narrow the Preliminary Injunction by lifting the asset freeze:

[1] Defendants include Reven Holdings, Inc. d/b/a/ Reven Pharmaceuticals, Reven Pharmaceuticals, Inc., Brian D. Denomme, Peter B. Lange, and Michael A. Volk and Relief Defendants Reven, LLC, Reven IP Holdco, LLC, Reven Oncology Licensing, LLC, and Health Analytics and Research Services, LLC.

D.C. COLO. L.Civ.R 7.1(a) CONFERRAL STATEMENT

Pursuant to the requirements of local rule D.C.Colo.L.Civ. 7.1(A), counsel for Defendants conferred with counsel for Plaintiff, the US Securities and Exchange Commission (the "SEC") via email. The SEC has yet to provide its position on the relief requested herein.

INTRODUCTION

1. By this Motion, Defendants respectfully request that the Court narrow the Preliminary Injunction by lifting the asset freeze – which, as further explained below, has had and will continue to have the unintended effect of destroying assets, not preserving them.

2. Defendants respectfully disagree with the Court's conclusion, in converting the TRO to a Preliminary Injunction, that the SEC has demonstrated a likelihood of proving that Defendants violated the federal securities laws or that any such violation is likely to recur.[2] Order at 28–29.

3. But even accepting (for purposes of this motion) the Court's findings and conclusions in that regard, the provisions of the existing Preliminary Injunction prohibiting Defendants from (1) violating the anti-fraud provisions of the Securities Act and the Exchange Act and (2) from offering or selling securities, except in their own personal accounts, are already more than sufficient to serve the ostensible purpose of protecting existing and potential investors.

4. By contrast, the third component of the existing Preliminary Injunction

[2] Defendants reserve the right to appeal the Order.

– a wide-ranging personal and corporate asset freeze – has had, and would continue to have, the exact opposite effect, threatening Reven's ability to maintain its existing intellectual property and other assets, wasting valuable patent life, and blocking the Company's ability to move forward with critical drug trials, thereby decimating (not preserving) investor assets.

5. Fifteen months have passed since the SEC first persuaded this Court on an *ex parte* basis to enter a TRO (ECF No. 28) that included a wide-ranging corporate and personal asset freeze that the SEC argued was necessary to "***protect existing investors***" of Reven. *See* ECF No. 3 at 37 (emphasis added).

6. But the asset freeze has had the exact opposite effect – because of the asset freeze, Reven's "existing investors" have seen, and are continuing to see, the value of their investment further threatened and diminished as Defendants are prevented from preserving and protecting Reven's intellectual property and critical clinical data. Far from preserving the status quo, the asset freeze is destroying Reven's most valuable assets.

7. For these reasons, discussed in greater detail below, the existing Preliminary Injunction should be narrowed by lifting the asset freeze.

RELEVANT FACTS AND PROCEDURAL BACKGROUND

8. On December 9, 2022, the SEC filed its Complaint along with an *Ex Parte* Emergency Motion for a Rule 65(b)(1) Temporary Restraining Order, an Asset Freeze, and Other Emergency Relief (the "TRO Motion"), requesting that this Court enter an order: (1) prohibiting Defendants from violating the anti-fraud provisions of federal securities laws; (2) prohibiting Defendants Brian D. Denomme, Peter B. Lange, and

Michael A. Volk from offering or selling securities; (3) freezing Defendants' and Relief Defendants' assets; and (4) providing other ancillary relief. ECF Nos. 1, 3.

9. This Court granted the SEC's TRO Motion on January 3, 2023. ECF No. 28, as subsequently modified by ECF Nos. 36, 51, 55, 65, 66, 71, 72. In the Temporary Restraining Order (the "TRO"), this Court stated, *inter alia*, that "[a]ll assets, funds, or other property of any kind, including without limitation intellectual property, including patents or trademarks . . . are frozen and will not be sold, transferred, or encumbered in any way[.]" *Id.* at 15–16. Further, "[a]ny bank, financial, brokerage institution, corporation, licensor/licensee, or other person or entity holding any funds . . . in the name of, for the benefit of, or under the control of [Defendants] . . . must hold and retain within their control and prohibit the withdrawal, removal, transfer or other disposal of any such funds[.]" *Id.* at 16–17.

10. On March 29, 2024, this Court granted the SEC's request to convert the TRO into a Preliminary Injunction, but in so doing acknowledged Defendants' concerns that, "rather than preserving their assets [the asset freeze] 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." Order at 28. Accordingly, the Court invited Defendants to "promptly file a motion addressing 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.* at 29.

11. Consistent with the Court's directive, Defendants hereby move to

narrow the Preliminary Injunction to lift the asset freeze in order to preserve and maximize assets.

ARGUMENT

12. A district court "has broad discretion to modify or vacate a preliminary injunction and may do so 'in light of subsequent changes in the facts or law or for any other good reason.'" *Fed. Trade Comm'n v. Zurixx, LLC*, No. 2:19-CV-713-DAK-DAO, 2021 WL 5179139, at *3 (D. Utah Nov. 8, 2021) (quoting *Basic Research LLC v. Cytodyne Techs., Inc.*, 2000 WL 33363261, at *11 (D. Utah Dec. 20, 2000)); *see also, e.g.*, *SEC v. Forte*, 598 F. Supp. 2d 689, 692–94 (E.D. Pa. 2009) (in considering whether to modify existing injunction in this context, courts consider, *inter alia*, the best interests of investors and the expenses defendants seeks to pay).

13. As the Court explained in its Order, the objective of the Preliminary Injunction in this case is "to prevent future violations of the securities laws." Order at 28. But the first two prongs of the existing Preliminary Injunction – prohibiting Defendants from (1) violating the anti-fraud provisions of the Securities Act and the Exchange Act and (2) from offering or selling securities – are more than sufficient to accomplish that objective.

14. The third prong of the existing Preliminary Injunction – a wide-ranging personal and corporate asset freeze – is, by contrast, not only unwarranted in this case, but affirmatively harms, rather than benefits, investors. It should, accordingly, be lifted.

15. Courts have made clear in this context that "the disadvantages and possible deleterious effect of a freeze must be weighed against the considerations

indicating the need for such relief." *SEC v. Duclaud Gonzales de Castilla*, 170 F. Supp. 2d 427, 429 (S.D.N.Y. 2001). Indeed, as several courts have recognized, maintaining an asset freeze may in fact "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. Manor Nursing Ctrs., Inc.*, 458 F.2d 1082, 1105 (2d Cir. 1972); s*ee also SEC v. Traffic Monsoon, LLC*, 245 F. Supp. 3d 1275, 1297 (D. Utah 2017) (cited in Order at 29) (noting that asset freeze may be "particularly burdensome" if it would "harm the continuing viability of the enterprise" or deny innocent individuals "access to much needed funds").

16. That is precisely the case here, as the asset freeze – which has been in place for over 15 months – is causing ongoing harm to Reven ***and its existing investors*** by, among other things, putting the Company's intellectual property at risk and causing Reven to lose critical trial data. Since the SEC obtained the asset freeze in January 2023, Reven's substantial growth has been languishing without progress, and much of the data generated by Reven's previously near-complete FDA trials has been rendered useless and in need of duplication. ECF No. 96-2, Volk Decl. ¶ 27.

17. Reven's most valuable asset is its intellectual property, including that of its groundbreaking drug, Rejuveinix ("RJX"). The ability to develop, manufacture, and get approval to market drugs such as RJX requires a significant amount of institutional knowledge and exacting standards. ECF No. 113-1, Volk Supp. Decl. ¶ 3. Protecting this work requires both the application for, and maintenance of,

patent rights in the United States and abroad – which in turn requires financial outlay. *Id.*

18. In 2021, Reven had been issued 21 patents globally, with 98 additional applications in the filing, publication, and prosecution process. *Id.* ¶ 5. Given that these patents are issued only for a limited amount of time, it is critical that the patent's owner attempt to realize revenue as soon as possible once a patent is issued. *Id.* Patents and applications also require payment of annual or periodic fees to be maintained, and, while the amounts of such fees are typically relatively minor, the failure to make payment can lead to temporary or permanent loss of intellectual property rights. *Id.* ¶ 6. As such, the value of Reven's intellectual property is continually diminishing with the passage of time while the asset freeze remains in place.

19. For example, in the 15 months since the asset freeze has been in effect, Reven has lost four of its five patent families and been forced to abandon prosecution of numerous applications. This is despite the fact that Reven's Principals spent ***$100,000 of their own personal funds*** in an attempt to preserve Reven's intellectual property (and, ironically, had to seek the Court's permission to do so in light of the asset freeze). *See* ECF Nos. 73, 74. Reven has also lost the benefit of the significant out-of-pocket expenses incurred on its prior Phase 2 trials, which are at least ***$20 million***, and possibly much more. And beyond that, damage to Reven's existing investors, in the form of diminished value of Reven based on a prior valuation and subsequent loss of intellectual property and clinical data, is conservatively

estimated to be in the hundreds of millions or even billions of dollars. Further losses caused by a continuing asset freeze will impose additional harm on Reven's existing investors while doing nothing to benefit the SEC or investors in the event of a possible future judgment.

20. Moreover, the asset freeze, in addition to stripping Reven of its necessary financial assets, is slowly extinguishing the company's invaluable institutional assets, as a significant contingent of the experienced and knowledgeable personnel that have worked on Reven's clinical trials and devoted their time to the development of its intellectual property continue to depart the company given Reven's inability to raise money to pay salaries. ECF No. 96-2, Volk Decl. ¶ 28. Reven has also lost (without the possibility of retrieval) clinical trial data that was not only extremely valuable to Reven's future, but expensive to procure.

21. Additionally, the asset freeze has caused Reven Principal and Defendant Michael Volk to lose personal assets – the exact opposite of the intended goal of the asset freeze, *i.e.*, preserving assets that could otherwise be available to satisfy any judgment obtained by the SEC in this case. *See* ECF Nos. 116, 117, 119. Personal losses (and therefore, the decline of assets available to satisfy any future judgment) will only continue if the asset freeze remains in place.

22. Despite the significant setbacks caused by the asset freeze, there remains a possibility to preserve Reven's assets, protect existing investors, and forge a path forward for Reven and its shareholders. Reven's most critical patent family is still protected, although the deadline for payment, May 2024, is fast approaching.

And Reven has developed a new Phase 2 protocol and application for Rejuveinix, through which it could still work towards approving and marketing Rejuveinix and creating liquidity for Reven investors. Taking these necessary steps, however, requires the lifting of the asset freeze to permit Defendants to avail themselves of options like taking on debt, licensing Reven's intellectual property, and otherwise continuing to work towards the successful deployment of its groundbreaking drug.

23. Maintaining the asset freeze here does not "facilitate compensation of defrauded investors in the event a violation is established at trial," rather, "the disadvantages and possible deleterious effect of a freeze must be weighed against the considerations indicating the need for such relief." *SEC v. End of Rainbow Partners, LLC*, No. 17-cv-02670-MSK-NYW, 2019 WL 8348323, at *4 (D. Colo Nov. 25, 2019) (internal quotations omitted), *report and recommendation adopted*, 2020 WL 597527 (D. Colo. Feb. 7, 2020).

24. In such situations, where the paralysis of a defendant's assets is stripping a company of its value, courts have found that releasing funds from a freeze can actually benefit investors by staving off the company's financial ruin and thus preserving the assets available to potentially compensate allegedly defrauded investors. *See Forte*, 598 F. Supp. 2d at 692 (citing *Manor Nursing Centers*, 458 F.2d at 1105).

25. Even if it were not affirmatively harmful to investors (and it is, as discussed above), an asset freeze would still be inappropriate in this case. As the Court recognized it its Order, an asset freeze is generally reserved only for those cases

where the SEC has shown that defendants obtained "ill-gotten funds" which they misappropriated for personal use. *See* Order at 28 (citing *SEC v. End of Rainbow Partners, LLC*, No. 17-cv-02670-MSK-NYW, 2017 WL 5404199, at *2 (D. Colo. Nov. 14, 2017) and *Commodity Futures Trading Comm'n v. Walsh*, 618 F.3d 218, 225 (2d Cir. 2010)). In this regard, Defendants respectfully note that uncontraverted expert accounting analysis conclusively demonstrates (ECF No. 96 at 13–19 and ECF No. 96-1) that – even if Defendants violated the federal securities laws through inaccurate disclosures (which they dispute) – there has been no misappropriation.

26. Regardless, given that the Defendants will continue to be enjoined from offering securities, there is good reason to allow Defendants to operate in a more limited capacity in order to preserve Reven's intellectual property assets, including by potentially taking on debt and/or licensing intellectual property. This is supported by precedent; for example, in *Basic Research*, the District of Utah vacated (not just narrowed) a preliminary injunction after it found that the basis for the injunction no longer existed. 2000 WL 33363261, at *12. And as the court there noted, "[t]he purpose of a preliminary injunction is to preserve the status quo." *Id.* Here, preserving the status quo requires lifting the asset freeze.

27. Lifting the asset freeze to allow Defendants to potentially take on debt and/or license the Company's intellectual property in order to preserve it would *not* involve soliciting investors or paying salaries to the Reven Principals while the Preliminary Injunction remains in place. But this would allow Defendants to take action to preserve and maximize the value of the Company's intellectual property

assets, which would also "ensure that any disgorgement or civil penalties that may become due can be collected." Order at 27–28. Maximizing the value of Reven's assets should be an objective on which the SEC, Defendants, and the Court are in complete alignment. In the meantime, the Preliminary Injunction would still prohibit Defendants from violating the securities laws or offering or selling securities, thus satisfying the stated objectives of the injunction. *Id.* at 27.

CONCLUSION

For the foregoing reasons, Defendants respectfully request the Court issue an order narrowing the Preliminary Injunction to lift the asset freeze, and granting such other and further relief, in law and in equity, that the Court deems just and proper.

Dated: April 12, 2024

Respectfully Submitted,

/s/John E. Schreiber

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on April 12, 2024, I electronically filed the foregoing **DEFENDANTS' AND RELIEF DEFENDANTS' 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