FOUNDATIONLAW

Main Office:
445 S. Figueroa St., Suite 3100
Los Angeles, California 90071
www.foundationlaw.com

Stephen M. Lobbin
949.636.1391 Tel
stephen@foundationlaw.com

May 7, 2018

**VIA E-MAIL ONLY <pfleming@haugpartners.com>**

Porter F. Fleming
**Haug Partners LLP**
745 Fifth Avenue, 5th Floor
New York, NY 10151

**Re: *LCS Group LLC v. Shire LLP et al.*, Case No. 1:18-cv-2688-AT (S.D.N.Y.)**

Dear Porter:

In response to your April 26, 2018 letter, LCS first advises that likely it will be amending its complaint if we cannot resolve this matter equitably, in good faith, and quickly (*i.e.*, in the coming weeks). Specifically, as you may have gleaned from the detailed factual allegations in the original complaint, the basis for a racketeering (RICO fraud) claim is plain. The RICO claim would include additional defendants, including the Haug firm and likely several key individuals, who devised and were involved in an alleged scheme and artifice to defraud LCS including via fraudulent representations to LCS constituting federal mail and/or wire fraud, constituting a pattern of racketeering activity of a collective enterprise, and proximately causing great injury to LCS' business and property.

Further, pursuant to Paragraph III.B.ii of Judge Torres' Individual Practices in Civil Cases (revised February 6, 2018), LCS does not concur with any of the Shire Defendants' objections, as follows. First, you propose that "claim preclusion" bars LCS' action in view of the 2014 IPR proceeding and/or the 2017 *Sanfilippo v. Brewerton* case, but your letter is insufficient to raise this issue because you give no "reasons or controlling authorities" as the Chambers Rules require. Nonetheless, those were much different proceedings of completely different scope (particularly the former) and involving completely different parties (particularly the latter), among many other reasons claim preclusion could never attach. *See Bank of New York v. First Millennium, Inc.*, 607 F.3d 905, 918 (2d Cir. 2010) (claim preclusion requires same parties and claims).

Second, your attempted "shell game" with the breach of contract claim will not succeed, particularly on a motion to dismiss. More particularly, as the Shire individuals and those representing Shire in connection with the CDA were the same individuals who later prepared and filed and litigated the IPR, your assertion that "Shire LLC" could not have breached the CDA obviously fails because the confidentiality it promised via the CDA was never maintained vis-à-vis the sister company and the IPR. Nonetheless, LCS' amended pleading will include further factual allegations including addressing the concerns you raise.

Third, obviously we disagree with your contentions that the IPR filing (a) was not a "public disclosure," or (b) was excluded by Paragraph 5, or (c) was a prohibited "validity challenge." Moreover, these are issues of fact and contract interpretation, not Rule 12(b)(6) issues. Fourth, the facts supporting LCS' "good faith and fair dealing" claim are not necessarily co-extensive with the breach of contract claim, which vitiates your assertion that the claims are not "separate[ly] cognizable." Indeed, a plaintiff "may bring two breach of contact claims, one based on breach of the express terms and the other based on breach of the implied duty, as long as they are supported by factually distinct allegations." *Hospital Auth. of Rockdale Cty. v. GS Capital Partners V Fund, L.P.*, 2011 WL 182066, at *4 (S.D.N.Y. Jan. 20, 2011).

Fifth, concerning the tortious interference and fraud claims, there are acts of Defendants committed within the applicable limitations period that support the claims. Further, these claims are not federally preempted because they are not co-extensive with any federal claim. For example, the complaint alleges Shire's bad faith, which avoids any preemption. *See Zenith Elecs. Corp. v. Exzec, Inc.*, 182 F.3d 1340, 1355 (Fed. Cir. 1999). Nonetheless, LCS' amended pleading will include further factual allegations including addressing the concerns you raise.

Briefly responding to your May 1, 2018 letter, the press release you cite was composed, prepared, and issued by my client LCS Group LLC ("LCS"), not by me. I am identified in the press release only because I am, in fact, counsel in this action and am available to answer third-party inquiries about it. Otherwise, LCS disagrees that any of the three statements you cite are unequivocal, and misrepresentations of fact, and material (particularly in appropriate context of the press release).

If you have any questions, please contact me.

Sincerely,

**Foundation Law Group LLP**

/s/ Stephen M. Lobbin