

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

_____)	
SHIRE PHARMACEUTICALS LLC,)	
)	
Plaintiff,)	
)	C.A. No. 17-12259
v.)	
)	
EFFENDI ORTIZ-TORO, EMMETT)	
DUCHATEAU, ALISON VANDENBUSSCHE,)	
JENA CALLEN-SCHOLZ, and ULTRAGENYX)	
PHARMACEUTICAL INC.,)	
)	
Defendants.)	
_____)	

VERIFIED COMPLAINT

Shire Pharmaceuticals LLC (“Shire” or “Plaintiff”) brings this suit against Effendi Ortiz-Toro (“Ortiz-Toro”), Emmett Duchateau (“Duchateau”), Alison Vandebussche (“Vandebussche”), Jena Callen-Scholz (“Callen-Scholz”) (collectively, the “Individual Defendants”), and Ultragenyx Pharmaceutical Inc. (“Ultragenyx”) (collectively with Individual Defendants, “Defendants”), and for its causes of action, states as follows:

INTRODUCTION

1. Over the span of just a few weeks, Ultragenyx hired four former Shire employees when it knew or should have known of their contractual obligations to Shire, including obligations not to solicit Shire customers or employees, and obligations prohibiting the misuse of Shire’s confidential business information. Ultragenyx first hired Ortiz-Toro, a Midwest Zone Director at Shire, who later acted as the “pied piper” in hiring away Shire’s employees.

2. Ortiz-Toro breached his agreement with Shire by soliciting other Shire employees to work for Ultragenyx immediately following his departure from Shire.

3. Ortiz-Toro also breached his agreement and otherwise acted unlawfully by stealing Shire's confidential information for his own benefit and the benefit of Ultragenyx, forwarding more than 200 emails containing confidential information to his personal email address on his last day at Shire, with no legitimate business interest for doing so.

4. The remaining Individual Defendants breached their respective agreements with Shire by soliciting or encouraging (or working with others to solicit or encourage) Shire employees to join Ultragenyx, by soliciting Shire customers (or working with others to solicit those customers), and by using confidential Shire information.

5. Upon information and belief, Ultragenyx participated in, encouraged, or directed some or all of the Individual Defendants' unlawful actions.

6. Shire brings claims against all of the Defendants for violations of the Defend Trade Secrets Act of 2016 ("DTSA") and misappropriation under M.G.L. ch. 93, s. 42. Shire brings claims against the Individual Defendants for breach of their employment agreements. Shire brings a claim against Ortiz-Toro for breach of fiduciary duty. Shire brings claims against Ultragenyx for intentional interference with contractual relations. Shire seeks injunctive relief and damages against all Defendants.

PARTIES

7. Plaintiff Shire is a Delaware limited liability corporation with a principle place of business in Jersey, Ireland. Shire's US operational headquarters are located at 300 Shire Way in Lexington, Massachusetts.

8. Upon information and belief, Defendant Ortiz-Toro is a citizen of the State of Minnesota and resides at 2608 West 40th Street, Minneapolis, Minnesota.

9. Upon information and belief, Defendant Duchateau is a citizen of the state of Illinois and resides at 3452 Conover Drive, Rockford, Illinois.

10. Upon information and belief, Defendant Vandebussche is a citizen of the State of Michigan and resides at 5442 English Drive, Troy, Michigan.

11. Upon information and belief, Defendant Callen-Scholz is a citizen of Kansas and resides at 19421 West 200th Terrace, Spring Hill, Kansas.

12. Defendant Ultragenyx is a Delaware corporation with its principal place of business in Novato, California. Upon information and belief, Ultragenyx transacts business in numerous states throughout the country, including Massachusetts.

JURISDICTION AND VENUE

13. This Court has subject matter jurisdiction over this case pursuant to 28 U.S.C. § 1331 because Shire's claim against the Defendants under the DTSA, 18 U.S.C. § 1836, *et seq.*, raises a federal question. Shire's remaining claims likewise fall within this Court's supplemental jurisdiction (28 U.S.C. § 1367) because they are so related to the federal claim that they form part of the same case or controversy.

14. This Court has personal jurisdiction over the Individual Defendants because they have committed tortious acts in Massachusetts, as well as caused tortious injury in Massachusetts by an act or omission outside of Massachusetts, and they derived substantial revenue from Massachusetts. Moreover, this Court has personal jurisdiction over Callen-Scholz by virtue of her employment agreement, which contains a provision whereby she agreed to the exercise of personal jurisdiction in Massachusetts.

15. This Court has personal jurisdiction over Ultragenyx because it has committed tortious acts in Massachusetts by interfering with contracts made and performed in part in

Massachusetts. Additionally, this Court has personal jurisdiction over Ultragenyx because, upon information and belief, Ultragenyx conducts business in Massachusetts, and recently announced a merger with Dimension Therapeutics, Inc., headquartered in Cambridge, Massachusetts.

16. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events giving rise to this dispute occurred within this District.

FACTUAL ALLEGATIONS

A. Shire's Business and Confidential Information

17. Shire is a leading global biopharmaceutical company specializing in pharmaceutical drugs targeting rare diseases, defined as conditions that affect fewer than 200,000 people.

18. Shire manufactures over 60 pharmaceutical drugs, many of which target rare diseases, including drugs treating Hunter Syndrome, also known as mucopolysaccharidosis II ("MPS II"), a rare genetic metabolic disease caused by an enzyme deficiency resulting in the toxic buildup of complex sugars in the body called glycosaminoglycans or "GAGs," and Gaucher disease, another rare genetic disorder that is the most common lysosomal storage disorder (or "LSD").

19. The pharmaceutical industry is a highly competitive, specialized business. Even more so is the subset of companies focusing on rare diseases, of which there is only a handful of companies.

20. Given the small number of potential patients for its drugs, as well as the fact that patients with rare diseases are frequently misdiagnosed and thus are difficult to identify, Shire spends considerable time and energy to pinpoint physicians who may have patients affected by

the rare diseases that Shire's products are intended to treat, as well as patient advocacy groups that might provide relevant leads.

21. Shire essentially uses two methods of locating the patients affected by the rare diseases that its drugs treat.

22. First, Shire compiles a list of health care professionals in various geographic locations who, among other things, publish articles related to such rare diseases and prescribe Shire's drugs or drugs intended to treat conditions with similar symptoms (for which patients may be misdiagnosed), and other professionals such as geneticists, hematologists, endocrinologists, oncologists, and others.

23. Shire's representatives will then explore whether such professionals are good leads, and provide notes regarding the same in Shire's confidential databases. Accordingly, Shire's employees spend significant time honing its customer list, which is maintained in its confidential database.

24. Moreover, Shire engages several companies at great expense to find leads. For example, Shire uses a vendor, Symphony Health Solutions ("Symphony"), to identify different levels of leads (i.e., highest value leads versus those less likely to yield results) in a given geographic region for physicians likely to prescribe Shire's rare disease products. Shire pays Symphony hundreds of thousands of dollars in annual fees for this list, which is then integrated into Shire's secure database IQ2020, described below, and processed further to identify the highest-caliber leads within the list.

25. As just another example, Shire recently spent several hundreds of thousands of dollars to another vendor, Precision Analytics, to uncover leads for health care professionals

treating patients with MPS II; this exercise yielded only *twelve* leads, demonstrating the high value of such information and the high cost associated with obtaining it.

26. In addition, Shire typically contracts and pays millions of dollars for its data needs to other third parties.

27. These third-party vendors are subject to strict non-disclosure obligations to protect the confidentiality of Shire's information as well as the information provided by the vendors, for which Shire pays handsomely.

28. To summarize, Shire spends significant time and energy, not only through its own workforce, but also through third parties who are paid significant sums, to develop its customer lists and notes associated therewith.

29. Knowledge of the identities of Shire's leads would provide a significant advantage to other companies treating rare diseases, such as Ultragenyx, even if those diseases do not entirely overlap with the disorders that Shire's drugs are intended to treat, as many such diseases have overlapping or otherwise similar symptoms.

30. Additionally, as a leader in the rare disease field, Shire has highly confidential and proprietary business models, research, and a knowledge base that would be of great value to other pharmaceutical companies focusing on the highly specialized rare disease industry.

31. Because this confidential information is so important to its business, Shire makes extensive efforts to protect this asset. For instance, Shire employees can only access their company computers by using individual usernames and passwords.

32. Similarly, Shire uses secure databases, including its Veeva and IQ2020 databases, to store highly confidential information. Veeva contains data related to Shire employees' sales

calls, and IQ2020 houses Shire's sales reporting system (separating sales information by territory, zone, or national level) and lead lists.

33. Shire employees gain access to these secure databases by using separate passwords.

34. Moreover, only certain Shire employees have access to confidential information contained in its secure databases. For example, a rare disease sales representative in the Midwest would only have access to sales data in his or her region and specialty.

35. Shire also requires that all employees execute employment agreements containing provisions protecting its confidential information. Shire also subjects its employees to a Code of Ethics, Shire's Global Privacy Policy, and Appropriate Use of Technologies Policy, all of which address the importance of safeguarding Shire's assets (including but not limited to confidential information). Each of the Individual Defendants participated in training on these policies.

36. Finally, Shire has an Incident Response Program to address the potentially catastrophic loss of confidential and proprietary information.

37. In sum, the proprietary business information described herein is not available or readily ascertainable to the public (or even much of Shire's own workforce), is considered a closely-guarded trade secret and/or proprietary and confidential information by Shire, and has allowed Shire to develop significant goodwill in the pharmaceutical industry in general, and the rare disease subindustry more specifically.

B. Ultragenyx's Business

38. Like Shire, Ultragenyx is a biopharmaceutical company specializing in pharmaceutical drugs targeting rare diseases.

39. Shire is considered an “industry peer” of Ultragenyx (see <http://financials.morningstar.com/competitors/industry-peer.action?t=RARE®ion=usa&culture=en-US>).

Moreover, Ultragenyx’s own most recent 2017 Form 10-Q states that Shire is one of the “pharmaceutical and biotechnology companies [Ultragenyx] expect[s] to compete with.”

40. One of Ultragenyx’s drugs that is currently in the FDA approval process is rhGUS, which is intended to treat Sly Syndrome, also known as mucopolysaccharidosis 7 (“MPS 7”). Like MPS II, MPS 7 is a genetic metabolic disorder caused by an enzyme deficiency resulting in an inability to break down GAGs.

41. While MPS II and MPS 7 are different disorders, the symptoms of MPS II and MPS 7 overlap substantially. For example, patients of both disorders are likely to experience joint stiffness, shortened stature, enlarged liver and spleen, heart complications, and vision and hearing problems. These symptoms can also be misdiagnosed as other, more prevalent conditions. Accordingly, the leads cultivated by Shire to pinpoint patients with MPS II by symptom may identify MPS 7 patients. Accordingly, Ultragenyx would benefit greatly by obtaining Shire’s carefully honed customer list, as it would allow Ultragenyx to quickly identify health care providers likely to prescribe its drugs, without the substantial time or monetary investment that Shire has undertaken.

C. The Individual Defendants’ Employment with Shire

42. Shire hired Ortiz-Toro in or about 2010 as a Midwest Zone Director. In this role, Ortiz-Toro was responsible for, among other things: leading a team of nine regional business managers (“RBMs”) responsible for the sales of Shire’s drugs indicated for MPS II and Gaucher Disease. Ortiz-Toro was one of only four Zone Directors in Shire’s rare disease subgroup,

which, given its highly specialized nature, has a relatively small salesforce compared to other subgroups both within Shire and in the pharmaceutical industry in general.

43. Unlike in some other similar organizations (and even in other groups within Shire), rare disease Zone Directors act as both a first and second line manager. In other words, rare disease Zone Directors act as “managers of managers.”

44. In his role as Midwest Zone Director, Ortiz-Toro was privy to Shire’s entire rare disease product journey and reported to Shire’s sales head for Oncology and Lysosomal Storage Disorders.

45. Shire hired Duchateau in or about August 2007 as a sales representative. In or around February of 2016, Shire promoted Duchateau to an regional business manager in the rare disease space, whereas previously he had not had any experience in rare disease. In this role, where he was managed by Ortiz-Toro, Duchateau was responsible for managing sales of certain of Shire’s drugs, including those indicated for MPS II and Gaucher Disease, implementation of strategic Shire initiatives developed by the leadership team, developing a strong relationship with health care professionals (“HCPs”) such as physicians, genetic counselors, nurse practitioners, and physicians’ assistants in his region and promoting Shire’s rare disease drug portfolio to those HCPs.

46. Ultimately, Duchateau operated as a senior regional business manager and was considered a level 5 sales representative, whereas most Shire sales representatives are only level 3. Level 5 is the highest level of sales representative based on demonstrated success in 4 out of 5 years of employment, which is directly below the Zone Directors, and is incredibly difficult to reach; in fact, last year Duchateau was one of only two Shire employees to reach level 5 status.

47. Shire hired Vandebussche in or about September 2007 as a senior sales specialist. In or around January of 2016, Shire promoted Vandebussche to regional business manager, and she assumed additional responsibility as a FLEX/Regional Trainer. Like Duchateau, prior to her promotion, Vandebussche had not worked in the rare disease group. Vandebussche was considered a level 4 representative.

48. In this role, where she was managed by Ortiz-Toro, Vandebussche was responsible for managing sales of certain of Shire's drugs, including those indicated for MPS II and Gaucher Disease, implementation of strategic Shire initiatives developed by the leadership team, developing a strong relationship with HCPs in her region and promoting Shire's rare disease drug portfolio to those HCPs.

49. Vandebussche was also part of the Field Advisory Board, where she helped guide marketing initiatives, and as a FLEX/Regional Trainer, was responsible for collaborating across geographic zones to transfer and implement learnings, mentoring new hires, training and conducting field visits with both new hires and tenured RBMs, executing educational series, and assisting her zone director, Ortiz-Toro, in assessing individual training and development needs for new hires and existing RBMs.

50. Shire hired Callen-Scholz in or about February 2016 as a regional business manager. In this role, where she was managed by Ortiz-Toro, Callen-Scholz was responsible for managing sales of certain of Shire's drugs, including those indicated for MPS II and Gaucher Disease, implementation of strategic Shire initiatives developed by the leadership team, developing a strong relationship with HCPs in her region and promoting Shire's rare disease drug portfolio to those HCPs. Like Vandebussche, Callen-Scholz was considered a level 4 representative.

51. The Individual Defendants benefitted greatly from Shire's training. Shire typically spends at least eight weeks training its new employees, including time in the field with mentors and face-to-face training. Shire also conducts advanced trainings throughout the year; each Individual Defendant attended dozens of such trainings.

52. Defendants Vandebussche and Duchateau benefitted in particular from Shire's training, given that they had no prior experience in healthcare before joining Shire.

53. The Individual Defendants, through their employment with Shire, gained unique knowledge of Shire's customers, products and products under development, and business strategy which may be used to gain a competitive advantage against Shire.

54. Additionally, all four of the Individual Defendants regularly interacted with "key opinion leaders" (or "KOLs"), who constitute a small percentage of Shire's overall physician customer base and are identified as experts on Shire's drugs. KOLs often speak on behalf of Shire at industry events or Shire-sponsored programs, and are subject to non-disclosure agreements with Shire to protect Shire's confidential information.

55. For example, thus far in 2017, the rare disease group's Midwest region (supervised by Ortiz-Toro) has conducted dozens of programs with KOLs, and Vandebussche, Duchateau, and Callen-Scholz were responsible for six such programs in less than three months.

D. The Individual Defendants' Employment Agreements

56. Duchateau signed a Confidentiality, Intellectual Property Assignment and Non-Competition Agreement (the "Duchateau Agreement") on August 9, 2007. A copy of the Duchateau Agreement is attached hereto as Exhibit A.

57. Vandebussche signed a Confidentiality, Intellectual Property Assignment and Non-Competition Agreement (the “Vandebussche Agreement”) on August 23, 2007. A copy of the Vandebussche Agreement is attached hereto as Exhibit B.

58. Ortiz-Toro signed a Confidentiality, Intellectual Property Assignment and Non-Competition Agreement (the “Ortiz-Toro Agreement”) on December 11, 2009. A copy of the Ortiz-Toro Agreement is attached hereto as Exhibit C.

59. Callen-Scholz signed a Confidentiality, Intellectual Property Assignment and Non-Competition Agreement (the “Callen-Scholz Agreement”) on January 26, 2016. A copy of the Callen-Scholz Agreement is attached hereto as Exhibit D.

60. Each of the Individual Defendants received consideration for their agreement to execute their respective agreements, including consideration in the form of employment with Shire (and its concomitant compensation and benefits) and receipt of its confidential information.

61. The terms of the Ortiz-Toro Agreement, Duchateau Agreement, and Vandebussche Agreement are identical. Each agreement designates Pennsylvania law as controlling.

62. Section 2(B) of the Ortiz-Toro Agreement, Duchateau Agreement, and Vandebussche Agreement, “Protection of Company Confidential Information,” provides as follows:

I agree that I will use all reasonable efforts to protect the confidentiality of Company Confidential Information and shall keep Company Confidential Information secret. . . . I also agree that I will comply with Shire’s confidentiality policy set out in the company’s policies and Code of Ethics. Except as required in the performance of my duties for the Company, I will not, without the Company’s express written permission, disclose Company Confidential Information to anyone outside the Company or use Company Confidential Information in other than the Company’s business, either during or after my employment by the Company. I further agree that, except as required in the performance of my duties for the Company, I will not transmit, remove or

transport Company Confidential Information or Inventions . . . from any of the Company's premises without the prior written approval of the Company.

63. Section 2(A) of the Ortiz-Toro Agreement, Duchateau Agreement, and Vandebussche Agreement states that "Confidential Information" is:

[A]ny information, idea or material:

(a) generated, collected by or used in the operations of the Company that relates to the actual or anticipated business or research and development of the Company and that has not been made available generally to the public, but excluding confidential information which is or becomes public information other than through unauthorized disclosure of breach of the confidentiality restrictions by the employee or which was lawfully in the employees possession prior to employment by Shire; or

(b) suggested by or resulting from any task assigned to me or work performed by me for the Company or known to me as a consequence of my employment with the Company and that has not been made available generally to the public.

Company Confidential Information includes, but is not limited to, information about costs, profits, markets, sales, budgets, pricing policies, accounting, finance, products, product development, marketing strategies, operational methods, technical processes, research and development techniques, strategic plans, formulas, Inventions . . . discoveries, research, patent applications, business forecasts, customers, suppliers, agreements, personnel files and other business affairs and methods not generally available to the public and anything that is a trade secret within the meaning of the Uniform Trade Secret Act.

64. Section 2(C) of the Ortiz-Toro Agreement, Duchateau Agreement, and Vandebussche Agreement states as follows:

I agree that if I leave the employ of the Company, or at any other time the Company may request, I will deliver promptly to the Company all tangible Company Confidential Information and all other property of the Company that I obtained or created while employed by, or otherwise acting on behalf of, the Company.

65. Section 4(A) of the Ortiz-Toro Agreement, Duchateau Agreement, and Vandebussche Agreement provides:

For a period of one year following the date on which my employment with the Company terminates for any reason, regardless of whether the termination is

initiated by me or the Company, I will not solicit, divert, or attempt to solicit or divert or accept business from any customer or account or prospective customer or account of the Company whom I had contacted, solicited, or dealt with while in the Company's employ.

66. Section 4(B) of the Ortiz-Toro Agreement, Duchateau Agreement, and Vandebussche Agreement provides:

For a period of six months following the date that my employment with the Company terminates for any reason, regardless of whether the termination is initiated by me or the Company, I will not solicit, or assist or encourage the solicitation of, any employee of the Company to work for me or for any entity with which I am or become employed or affiliated, without the prior written consent of the Company. The term "solicit any employee" shall mean my contacting, or providing information to others who may be reasonably expected to contact any employee of the Company or its affiliates regarding such employee's interest in seeking employment with me or any entity with which I am employed or affiliated.

67. Section 5 of the Ortiz-Toro Agreement, Duchateau Agreement, and Vandebussche Agreement provides that the signatory acknowledges and agrees that the restrictions contained in Sections 2, 3, and 4 are "reasonable and necessary protections of the immediate interests of the Company, and that the Company would not have employed [the signatory] without receiving additional consideration offered by [the signatory] in binding [the signatory] to these restrictions and covenants." That section further provides that the employee agrees that if he or she breaches any of the provisions of Sections 2, 3, or 4, "the Company shall have the right and remedy to have such provisions specifically enforced by any court having equity jurisdiction, and [the employee] acknowledge[s] and agree[s] that any such breach of threatened breach may cause irreparable injury to the Company and that money damages may not provide an adequate remedy to the Company.

68. The Callen-Scholz Agreement is similar, but not identical, to the Ortiz-Toro, Duchateau, and Vandenbussche agreements. The Callen-Scholz Agreement designates Massachusetts law as controlling.

69. Section 2(B) of the Callen-Scholz Agreement provides:

I agree that I will use all reasonable efforts to protect the confidentiality of Company Confidential Information and shall keep Company Confidential Information secret. I also agree that I will comply with Shire's confidentiality policy set out in the Company's policies and Code of Ethics. Except as required in the performance of my duties for the Company, I will not, without the Company's express written permission, disclose Company Confidential Information to anyone outside the Company or use Company Confidential Information, either during or after my employment by the Company. I further agree that, except as required in the performance of my duties for the Company, I will not transmit, remove or transport Company Confidential Information or Inventions (as defined below in Section 3A), in electronic, hard copy or any other form, from any of the Company's premises without the prior written approval of the Company.

70. Section 2(A) of the Callen-Scholz Agreement states that "Confidential Information" is:

[A]ny information, idea or material:

(a) generated, collected by or used in the operations of the Company that relates to the actual or anticipated business or research and development of the Company and that has not been made available generally to the public, but excluding confidential information which is or becomes public information other than through unauthorized disclosure of breach of the confidentiality restrictions by the employee or which was lawfully in the employees possession prior to employment by Shire; or

(b) suggested by or resulting from any task assigned to me or work performed by me for the Company or known to me as a consequence of my employment with the Company and that has not been made available generally to the public.

Company Confidential Information includes, but is not limited to, information about costs, profits, markets, sales, budgets, pricing policies, accounting, finance, products, product development, marketing strategies, operational methods, technical processes, research and development techniques, strategic plans, formulas, Inventions . . . discoveries, research, patent applications, business forecasts, customers, suppliers, agreements, personnel files, employee lists and other business affairs and methods not generally available to the public and

anything that is a trade secret within the meaning of the Uniform Trade Secret Act.

71. Section 2(C) of the Callen-Scholz Agreement states as follows:

I agree that if I leave the employ of the Company, or at any other time the Company may request, I will deliver promptly to the Company all tangible Company Confidential Information and all other property of the Company that I obtained or created while employed by, or otherwise acting on behalf of, the Company.

72. Section 4(B) of the Callen-Scholz Agreement provides:

During my employment with the Company and for a period of one year following the date on which my employment with the Company terminates for any reason (the "Non-Competition Restricted Period"), regardless of whether the termination is initiated by me or by the Company, except on behalf of the Company, I will not, without the written consent of an expressly authorized officer of the Company, directly or indirectly, work for or provide services to, in any capacity, whether on my own behalf as an employee, independent contractor or otherwise, whether with or without compensation, any Entity engaged in or preparing to be engaged in a Competitive Business. An Entity is an individual, corporation, company, association, partnership, or any other entity or organization. A Competitive Business shall include, without express or implied limitation, the research, development, production, distribution, sale, marketing, providing or selling of a service or product identical or substantially similar to, any service or product of the Company with which I was familiar, upon which I worked or about which I acquired Confidential Information, during my employment with the Company.

73. Section 4(C) of the Callen-Scholz Agreement states:

During my employment with the Company and for a period of one year following the date on which my employment with the Company terminates for any reason, regardless of whether the termination is initiated by me or the Company, except on behalf of the Company, I will not, directly or indirectly, solicit, divert, or attempt to solicit or divert or accept business from or provide services to, any customer or account or prospective customer or account of the Company whom I had serviced, contacted, solicited, or dealt with while in the Company's employ.

74. Section 4(D) of the Callen-Scholz Agreement provides:

During my employment with the Company and for a period of one year following the date that my employment with the Company terminates for any reason, regardless of whether the termination is initiated by me or the Company, I will not, directly or indirectly, solicit, influence or assist or encourage the solicitation

of, any employee or consultant of the Company to work or otherwise provide services to any Entity other than the Company, without the prior express authorization of an officer of the Company. By way of example only, this provision restricts me from providing information to others who may be reasonably expected to contact any employee or consultant of the Company or its affiliates regarding such employee's or consultant's interest in seeking employment with any Entity other than the Company.

75. Section 4(E) of the Callen-Scholz Agreement states:

I acknowledge and agree that any and all good will that I develop during my employment with the company with any customer, account, vendor, supplier or business partner, or any prospective customer, account, vendor, supplier or business partner shall be the sole, exclusive and permanent property of the Company, and shall continue to be such after the termination of my employment with the Company, however such termination is caused or occurs.

76. Section 5 of the Callen-Scholz Agreement provides that Callen-Scholz agrees that the restrictions and covenants contained in Section 2 through 4 thereof are:

reasonable and necessary protections of the immediate interests of the Company, that each and every one of those restraints is reasonable to protect the subject matter and as to length of time and geographic area, and that these restraints will not prevent me from obtaining other suitable employment during the period in which I am bound by them. I agree that I will never assert, or permit to be asserted on my behalf, in any forum, any position contrary to the foregoing. I further agree that the Company would not have employed me or continued my employment without receiving additional consideration offered by me in binding myself to these restrictions and covenants. I further agree that no claim that I may have against the Company, whether predicated on this Agreement or otherwise, shall constitute a defense to the Company's enforcement of these restrictions and covenants. I also acknowledge and agree that, were I to breach any provision of this Agreement, the harm to the Company would be irreparable. I therefore agree that, in the event of such a breach or threatened breach, the Company shall, in addition to any other remedies available to it, have the right to obtain preliminary and permanent injunctive relief against any such breach or threatened breach without having to post bond, and will additionally be entitled to an award of attorney's fees incurred in connection with securing any relief hereunder. Finally, I agree that the periods of restriction set forth in Section 4 of this Agreement shall be tolled, and shall not run, during any period of time in which I am in violation of the terms thereof, in order that the Company shall have all of the agreed-upon temporal protection set forth herein.

E. The Individual Defendants' Departure from Shire and Solicitation of Shire Employees and Customers

77. Ortiz-Toro notified Shire of his intent to resign on August 28, 2017 by email to Carter Clanton, Shire's Head of US Marketing, Oncology and Lysosomal Storage Disorders. Ortiz-Toro's last day at Shire was September 8, 2017.

78. When Ortiz-Toro resigned, he claimed that he would be joining a non-competitive startup, although he declined to identify his new employer. Upon information and belief, at the time Ortiz-Toro made this statement, he knew that it was untrue, and that he would in fact be joining Ultragenyx, but chose not to disclose this fact because he knew that it would be highly concerning to Shire.

79. Given Ortiz-Toro's claim that he would be joining a non-competitive startup, Shire allowed Ortiz-Toro to continue working until his proposed last day, September 8, 2017. Additionally, Shire did not curtail Ortiz-Toro's access to confidential information based on his misrepresentation.

80. Had Shire known that Ortiz-Toro intended to join Ultragenyx, it would have immediately terminated his access to confidential information and refused to allow him to continue working.

81. Ortiz-Toro was supposed to return his Shire-issued computer on his last day, September 8, 2017, but instead failed to return it until the following Tuesday, September 12, 2017.

82. Upon information and belief, Ortiz-Toro became employed by Ultragenyx immediately following his departure from Shire. However, Ortiz-Toro failed to update his LinkedIn profile identifying Ultragenyx as his new employer.

83. Upon Ortiz-Toro's departure, Shire filled his role by promoting Kevin Billé ("Billé"), its former National Field Excellence Lead.

84. Duchateau, Vandebussche, and Callen-Scholz all resigned from Shire within 90 minutes of each other on October 6, 2017, effective October 20.

85. Following their disclosure that they would be joining Ultragenyx, Shire terminated Duchateau's, Vandebussche's, and Callen-Scholz's access to Shire's confidential information on October 9, 2017, and terminated their employment the same day.

86. Upon information and belief, Duchateau, Vandebussche, and Callen-Scholz became employed by Ultragenyx shortly after their employment with Shire terminated.

87. Shire did not learn that Ortiz-Toro had joined Ultragenyx until after the other Individual Defendants submitted their resignation.

88. Shire has learned that Ortiz-Toro also solicited Billé to join Ultragenyx, but Billé declined.

89. By virtue of the loss of the Individual Defendants in the span of just a few weeks, Shire has had to expend a great deal of time and money to find and train qualified replacements and expects to do so going forward. Given the highly specialized nature of the rare disease industry, it is incredibly difficult to find and train qualified replacements. In fact, given the incredibly small candidate pool with relevant experience in rare disease or other complex pharmaceutical subgroups, Shire will need to use an external agency to recruit qualified candidates.

90. Additionally, candidates identified by a recruiting agency will be subject to a rigorous (and expensive) interview process, requiring several Shire employees to take time away from their jobs to screen these candidates.

91. The cost of finding and training replacements is substantial. Shire expects to pay between \$25,000 and \$35,000 in agency fees for each RBM candidate, plus at least \$100,000 in onboarding expenses (including benefits; company car, computer, and phone; and travel to Shire's home office for training), and \$20,000 to train these individuals as new hires (on top of ongoing training costs of approximately \$10,000 per year thereafter). In addition to the eight weeks of training described herein, Shire expects that even upon commencing work full-time in the rare disease field, each replacement will take up to a year to get fully up to speed in this highly specialized niche. Shire expects this delay to have a significant effect on its rare disease drug sales.

F. Results of Shire's Preliminary Forensic Review

92. Upon information and belief, since the termination of his employment with Shire, Ortiz-Toro has solicited several Shire employees, including the remaining Individual Defendants, to leave Shire for Ultragenyx.

93. Following the Individual Defendants' resignations, Shire conducted a forensic review, which is ongoing. This review has revealed evidence suggesting, among other things, that Ortiz-Toro solicited the remaining Individual Defendants to join Ultragenyx, that Vandebussche solicited or assisted in soliciting Callen-Scholz (or vice versa), and that the Individual Defendants unlawfully took Shire's confidential information.

94. For example, on August 25, 2017, the business day before Ortiz-Toro submitted his notice of resignation, and on information and belief after he knew he would be joining Ultragenyx, Duchateau sent an email to Ortiz-Toro with the subject "Updated Lead List with recent additions." This email attached an Excel spreadsheet titled "Master Lead List for Manipulation.xlsx" (the "Lead List"). Duchateau wrote that "Tab 1 or Real Master Final would

be your list of all of the regions in the zone, (sorted by date of leads loaded with the most recent on top) then grouped by type of lead.”

95. The Lead List is the confidential compilation of nearly 4,000 customized leads for the Midwest zone created by Symphony, the third party vendor to whom Shire pays a significant annual fee. The Lead List a closely-guarded trade secret.

96. Upon information and belief, Ortiz-Toro has used or is planning to use the Lead List on Ultragenyx’s behalf, without Ultragenyx spending the time or money to develop its own list of leads in the rare disease field.

97. On September 2, 2017, prior to Ortiz-Toro’s last day with Shire, Vandebussche emailed a headhunter about setting up an interview on September 6, 2017, and attaching a copy of her resume. The same headhunter targeted other Shire employees for employment with Ultragenyx. Accordingly, upon information and belief, this interview was for a position with Ultragenyx, and was suggested by Ortiz-Toro.

98. On September 5, 2017, also prior to Ortiz-Toro’s last day with Shire, Vandebussche forwarded her email with the headhunter to Callen-Scholz. Shortly thereafter, Callen-Scholz forwarded this email to her own private Gmail account.

99. Less than an hour after initially sending Callen-Scholz her email exchange with the headhunter, Vandebussche sent Callen-Scholz an email through LinkedIn, along with an attachment. Given that this message was sent through LinkedIn, Shire is unable to determine the content of the attachment.

100. Shortly thereafter, Callen-Scholz forwarded the email notification of Vandebussche’s LinkedIn message to Callen-Scholz’s own private Gmail account.

101. On September 8, 2017, Ortiz-Toro's last day with Shire, he sent an email to Duchateau at 3:56 p.m. with the subject line "call me asap." Upon information and belief, Ortiz-Toro reached out to Duchateau at this time to solicit Duchateau to join Ultragenyx, or, if he had already done so, to discuss with Duchateau their joint plans at Ultragenyx.

102. Also on September 8, 2017, Ortiz-Toro forwarded over 200 emails containing highly sensitive Shire information from his Shire email account to his personal Yahoo! account.

103. Specifically, the vast majority of these emails contained confidential customer contact information, including phone numbers and email addresses. There is simply no legitimate business reason for Ortiz-Toro to send this information to himself, especially on his last day, unless he intended to use it while at Ultragenyx, which is expressly prohibited by the Ortiz-Toro Agreement.

104. On September 12, 2017, less than a week after Ortiz-Toro's last day with Shire, Callen-Scholz created a document titled "Study Guide-UG.doc" which, upon information and belief, was intended as her interview preparation for Ultragenyx.

105. Additionally, a review of Callen-Scholz's computer revealed that she had many other documents related to Ultragenyx, including PowerPoint presentations, on her computer.

106. A review of Vandebussche's computer revealed that while employed by Shire, and weeks prior to her resignation, she created a PowerPoint presentation on an Ultragenyx template titled "Field Commercial Team 30/60/90 Day Plan" (the "30/60/90 Day Plan"). The 30/60/90 Day Plan was dated September 18, 2017, and was last modified by Vandebussche on her Shire computer on September 15, 2017.

107. On the second page of the 30/60/90 Day Plan, Vandebussche wrote: "This 30-60-90 Plan will explain my strategy for the first three months as a member of the first Ultragenyx

Commercial Field Team. I have the experience, tenacity, determination, and willingness to **build this business from the ground up** as a true leader in rare disease.” (emphasis added).

108. The 30/60/90 Day Plan identifies several steps that Vandebussche apparently intended or intends to take to “build [Ultragenyx’s] business from the ground up” within her first 30 days, which includes many of the steps in Shire’s own business model.

109. This includes, notably, “Meeting with Identified Patients’ Geneticists & Every Metabolic Geneticist in Region” (emphasis in original) to promote rhGUS, the Ultragenyx drug intended to treat MPS 7.

110. On the slide devoted to the promotion of rhGUS, Vandebussche identified 8 medical centers and 21 health care professionals to target — all of which she interacted with while a Shire employee. In fact, *each and every one* of the medical centers and health care professionals identified in this slide were listed on Vandebussche’s transition plan that she presented to her Shire superiors upon giving her resignation. Only approximately 13 health care professionals listed in Vandebussche’s entire transition plan were *not* identified in the 30/60/90 Day Plan.

111. Moreover, the 30/60/90 Day Plan identified a number of conferences that Shire typically attends and/or presents at, as well as advocacy groups that Shire has interacted or worked with in 2017, as targets for Ultragenyx. These conferences typically have limited speaker opportunities; accordingly, to the extent the Individual Defendants use their Shire contacts to obtain such opportunities for Ultragenyx employees, Shire would likely lose crucial opportunities to market to potential customers.

112. Additionally, Vandebussche’s 30/60/90 Day Plan suggested that Ultragenyx implement several components identical to Shire’s own patient advocacy and service programs

(which is one of the keys to Shire's success, and includes highly proprietary knowledge that cannot simply be obtained quickly through internet research) and leverage her relationship with a key employee of one of Shire's vendors to implement a home infusion system (a component of Shire's own patient service program).

113. In summary, the 30/60/90 Day Plan appears to be an attempt to purloin Shire's connections (including confidential customer relationships) to benefit Vandebussche and Ultragenyx, as well as a roadmap to Ultragenyx to allow it to unfairly compete with Shire by using Shire's own unique model.

114. Upon information and belief, based on the 30/60/90 Day Plan and Ortiz-Toro's highly suspicious forwarding activity on his last day as a Shire employee, since joining Ultragenyx, the Individual Defendants have solicited, or intend to solicit, Shire's customers in violation of their respective agreements with Shire.

G. Shire's Attempt to Resolve this Dispute

115. On October 10, 2017, Shire sent letters to the Individual Defendants reminding them of their continuing obligations to Shire and demanding they provide written assurances that they would abide by those obligations by no later than October 16, 2017. Copies of these letters are attached hereto as Exhibit E.

116. Shire also sent a letter to Karah Parschauer ("Parschauer"), Ultragenyx's General Counsel, informing her of the Individual Defendants' continuing obligations, and requesting that Ultragenyx confirm in writing by October 16 that it had taken appropriate measures to ensure the Individual Defendants' compliance with those obligations. A copy of this letter is attached hereto as Exhibit F.

117. None of the Defendants responded to Shire by October 16. That day, Ronald Allen ("Allen"), Shire's Lead Counsel - US Employment, called and left a voicemail for Ms.

Parschauer to inquire as to the status of the requested assurances, and to convey additional details that Shire had learned about the Individual Defendants' conduct through its continuing forensic investigation. Ms. Parschauer did not respond to Mr. Allen.

118. Finally, on October 18, Dwight Moxie ("Moxie"), Ultragenyx's Vice President, Legal, sent Mr. Allen a letter denying that Ultragenyx had hired the Individual Defendants to obtain Shire's confidential information, and claiming that the Individual Defendants had represented that they did not bring any such information with them to Ultragenyx.

119. Notwithstanding these representations, outside counsel for Shire subsequently spoke with Mr. Moxie and explained that the initial results of Shire's forensic examination had revealed the Individual Defendants' claims to be inaccurate. Counsel for Shire demanded that Ultragenyx agree that among other things, consonant with the obligations contained in their respective employment agreements with Shire, the Individual Defendants would not call upon the health care professionals with whom they had contact while Shire employees. Mr. Moxie refused to agree that the Individual Defendants would abide by such non-solicitation obligations contained in their agreements.

COUNT I
Violation of the Defend Trade Secrets Act, 18 U.S.C. § 1832, *et seq.*
Against All Defendants

120. Plaintiff repeats and realleges Paragraphs 1 – 119 above, and incorporates them as if fully set forth herein.

121. During the course of their employment with Shire, the Individual Defendants were provided access to substantial amounts of Shire confidential information, including but not limited to the Lead List and other customer contact information.

122. Such information was developed and maintained by Shire at great time, cost and expense to Shire, and is maintained on password protected networks accessible only by certain Shire employees with need to use such information on the Company's behalf.

123. Shire's confidential information is not available to the general public and is closely guarded by Shire. Shire keeps such information strictly confidential in order to maintain a competitive advantage.

124. Shire derives independent economic value from the trade secrets and confidential information entrusted to the Individual Defendants; such information is not generally known or readily ascertainable by proper means by other persons who can obtain economic value from its disclosure and use, and the information is the subject of significant efforts to maintain its secrecy.

125. Shire's confidential information, including the information identified herein, is considered a trade secret under the DTSA, 18 U.S.C. § 1832 *et seq.*, because Shire derives independent economic value from this information not being generally known to the public, the information is not readily ascertainable by proper means by persons who could obtain economic value from its disclosure or use, and the information is the subject of reasonable efforts to maintain its secrecy.

126. Defendants acquired Shire's trade secrets by improper means and without authorization, including but not limited to by Ortiz-Toro's actions in forwarding customer contact information to himself, Duchateau's forwarding of the Lead List to Ortiz-Toro, and by Vandebussche's disclosure of a majority of her health care professional contacts to Ultragenyx before she even resigned from Shire.

127. Upon information and belief, the Defendants have used or disclosed, or intend to use or disclose, Shire's confidential customer information for Ultragenyx's benefit, without express or implied consent.

128. Defendants knew or should have known that the information, as described, (1) is confidential; (2) was acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; (3) was developed or acquired by Shire at great expense and effort; (4) was maintained as confidential and is not generally available to the public and Shire's competitors; (5) would provide significant benefit to a company seeking to compete with Shire; and (6) is critical to Shire's ability to conduct its business successfully.

129. Defendants actually misappropriated and/or threaten to inevitably misappropriate Shire's trade secrets and confidential information without Shire's consent.

130. Defendants will be or are unjustly enriched by the misappropriation and/or threatened misappropriation of Shire's trade secrets and confidential information, and, unless restrained, will continue to threaten to use, actually use, divulge, inevitably disclose, acquire and/or otherwise misappropriate Shire's trade secrets and confidential information.

131. Defendants' actual and/or threatened misappropriation has been willful and malicious.

132. As a result of the threatened and/or actual misappropriation of Shire's trade secrets and confidential information, Shire will be threatened with loss of business expectancies, customers, employees, its trade secrets and goodwill in amounts which may be impossible to determine, unless Defendants are enjoined and restrained by order of the Court.

133. In addition, Shire seeks actual, incidental, compensatory, punitive and consequential damages, along with reasonable attorneys' fees and costs in an amount to be determined at trial.

COUNT II
Breach of Contract Against Individual Defendants

134. Plaintiff repeats and realleges Paragraphs 1 – 133 above, and incorporates them as if fully set forth herein.

135. Shire and Ortiz-Toro entered into a contract during Ortiz-Toro's employment with Shire.

136. Shire and Duchateau entered into a contract during Duchateau's employment with Shire.

137. Shire and Vandebussche entered into a contract during Vandebussche's employment with Shire.

138. Shire and Callen-Scholz entered into a contract during Callen-Scholz's employment with Shire.

139. The covenants contained in the agreements between Shire and the Individual Defendants remained in full force and effect through the Individual Defendants' departure from Shire, and the Individual Defendants, for good consideration, remained obligated to comply with those covenants.

140. Shire satisfied all of its obligations under the terms and conditions of the agreements with the Individual Defendants.

141. By the acts described above, Ortiz-Toro has breached the Ortiz-Toro Agreement by, upon information and belief, soliciting or encouraging Shire's employees to leave Shire for

Ultragenyx during the twelve month period following the termination of his employment with Shire and by misappropriating Shire's confidential information.

142. By the acts described above, Vandebussche has breached the Vandebussche Agreement by, upon information and belief, soliciting or encouraging Shire's employees to leave Shire for Ultragenyx during the twelve month period following the termination of her employment with Shire and by misappropriating Shire's confidential information

143. By the acts described above, Callen-Scholz has breached the Callen-Scholz Agreement by, upon information and belief, soliciting or encouraging Shire's employees for Ultragenyx during the twelve month period following the termination of her employment with Shire, by misappropriating Shire's confidential information, and by accepting employment with Ultragenyx in violation of her non-competition obligation.

144. By the acts described above, Duchateau has breached the Duchateau Agreement by, upon information and belief, soliciting or encouraging Shire's employees for Ultragenyx during the twelve month period following the termination of his employment with Shire, and by misappropriating Shire's confidential information.

145. As a result of the Individual Defendants' breaches of contract, Shire has suffered monetary damages and has suffered substantial and irreparable injury and is threatened with further substantial and irreparable injury due to the loss of its personnel, trade secrets and/or confidential information, for which there is no adequate remedy at law to compensate.

146. By reason of the foregoing, Shire requires injunctive relief. Unless injunctive relief is granted, Shire will be irreparably harmed in a manner not fully compensable by money damages. In addition, Shire has been damaged in an amount to be determined at trial.

COUNT III

Intentional Interference With Contractual Relations Against Ultragenyx

147. Plaintiff repeats and realleges Paragraphs 1 – 146 above, and incorporates them as if fully set forth herein.

148. By the acts described above, Ultragenyx has interfered with Shire's contractual relationships with the Individual Defendants.

149. Ultragenyx knew or should have known that the Individual Defendants' solicitation of Shire employees and customers within twelve months of their departure from Shire would constitute violations of the Individual Defendants' respective agreements, but upon information and belief, encouraged this solicitation anyway.

150. Ultragenyx knew or should have known that the Individual Defendants had obligations not to misuse Shire's confidential information, but upon information and belief, encouraged such misuse anyway.

151. By the acts described above, Ultragenyx had an improper motive and used improper means in interfering with Shire's contractual and/or advantageous business relations without lawful justification or legitimate reason for this interference with these contractual and/or advantageous business relationships.

152. As a direct and proximate result of Ultragenyx's actions described above, the Individual Defendants have been induced to breach their respective agreements with Shire.

153. As a direct and proximate result of Ultragenyx's actions described above, Shire has suffered and continues to suffer irreparable harm and monetary damages.

154. By reason of the foregoing, Shire requires injunctive relief. Unless injunctive relief is granted, Shire will be irreparably harmed in a manner not fully compensable by money damages. In addition, Shire has been damaged in an amount to be determined at trial.

COUNT IV
Breach of Fiduciary Duty Against Ortiz-Toro

155. Plaintiff repeats and realleges Paragraphs 1 – 154 above, and incorporates them as if fully set forth herein.

156. In his role as Zone Director at Shire, Ortiz-Toro was placed in a position of trust and confidence, and was expected to devote his full time to the management and promotion of Shire's business interests.

157. As a result of this special relationship and privilege, Ortiz-Toro owed certain fiduciary duties to Shire including, but not limited to, a duty of loyalty and honesty, and a duty not to act in a way contrary to the interests of Shire.

158. Based on this fiduciary relationship, Ortiz-Toro owed, among other things, a duty to not misappropriate business and business opportunities, a duty to act in Shire's best interests, and a duty generally not to do anything on behalf of a competing business, while employed by Shire.

159. During the course of his employment with Shire, Ortiz-Toro breached his fiduciary duty by, among other things, failing to act in Shire's best interests; soliciting Shire employees whom he knew to be valuable to Shire to leave their employment with Shire and join a competitor; misappropriating Shire's confidential, proprietary and trade secret information for his own benefit; failing to return the confidential, proprietary and trade secret information; using or disclosing that information for the benefit of himself contrary to Shire's best interests, including disclosing the information to Ultragenyx, while Ortiz-Toro still was an employee of Shire; and developing a plan to divert corporate opportunities from Shire to a competitor.

160. As a direct result of Ortiz-Toro's breach of his fiduciary duties, Shire is suffering and will continue to suffer irreparable injury, including loss of business expectancies, its

confidential and trade secret information, and damage to goodwill, for which a remedy at law is inadequate. Accordingly, Shire is entitled to injunctive and equitable relief.

COUNT V
**Statutory and Common Law Misappropriation of Trade Secrets and/or Confidential
Business Information Against Defendants**

161. Plaintiff repeats and realleges Paragraphs 1 – 160 above, and incorporates them as if fully set forth herein.

162. By virtue of their employment at Shire and performance of responsibilities for Shire, the Individual Defendants were given access to and now possess trade secrets and confidential and proprietary business information belonging to Shire, described above, and including, without limitation, extensive information about Shire's customer identification and contacts.

163. Shire took reasonable steps to preserve the secrecy of its confidential business information and trade secrets.

164. Upon information and belief, the Defendants misappropriated, exploited, and misused Shire's trade secrets and/or confidential and proprietary information to benefit themselves and their new employer, Ultragenyx, in their own self-interest and to compete unfairly against Shire.

165. The disclosure and use of such information by the Defendants constitutes a misappropriation of trade secrets and/or confidential and proprietary business information in violation of M.G.L. c. 93, §§ 42 and 42A, and common law.

166. Upon information and belief, Ultragenyx knowingly benefited from the Individual Defendants' misappropriation of Shire's trade secrets.

167. As a result of the Defendants' wrongdoings, Shire has suffered monetary damages and has suffered substantial and irreparable injury and is threatened with further substantial and irreparable injury due to the loss and use by the Defendants of its trade secrets and/or confidential information, for which there is no adequate remedy at law to compensate.

168. By reason of the foregoing, Shire requires injunctive relief. Unless injunctive relief is granted, Shire will be irreparably harmed in a manner not fully compensable by money damages. In addition, Shire has been damaged in an amount to be determined at trial.

REQUESTED RELIEF

WHEREFORE, Shire prays that this Court:

A. Enter an order granting the relief set forth in Shire's proposed Order attached to its Motions for Temporary Restraining Order and Preliminary Injunction;

B. Enter judgment in Shire's favor and against Defendants jointly and severally, where applicable, for all damages that may be calculated that Shire may recover as a result of their misconduct;

C. Award attorneys' fees and costs as allowed by law; and

D. Grant such other and further relief as may be just and proper.

JURY TRIAL DEMAND

PLAINTIFF DEMANDS A TRIAL BY JURY OF ALL ISSUES AND COUNTS SO TRIABLE.

Respectfully submitted,

SHIRE PHARMACEUTICALS LLC,

By its attorneys,

/s/ Katherine E. Perrelli
Katherine E. Perrelli (BBO #549820)

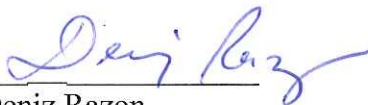
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Dated: November 15, 2017

VERIFICATION

I, Deniz Razon, hereby make oath and affirm that I have personal knowledge of allegations of the within Verified Complaint, and affirm that said allegations are true to the best of my knowledge and belief, except as to those allegations made upon information and belief, and as to said allegations, I believe them to be true.

Signed under the pains and penalties of perjury this 15th day of November, 2017.



Deniz Razon
Head of US Sales, Lysosomal Storage Disorders &
Oncology
Shire Pharmaceuticals, Inc.