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21 Attorneys for Plaintiff, William L. Grivas

22
23 **IN THE UNITED STATES DISTRICT COURT**
24 **CENTRAL DISTRICT OF CALIFORNIA**

25 WILLIAM L. GRIVAS, On Behalf of
26 Himself and All Others Similarly
27 Situated,

28 Plaintiff,

v.

METAGENICS, Inc.,

Defendant.

CASE NO. SACV15-1838 CJC (DFMx)

CLASS ACTION

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR VIOLATION OF
CALIFORNIA'S UNFAIR
COMPETITION LAW, BUSINESS &
PROFESSIONS CODE SECTIONS
17200, ET SEQ.**

DEMAND FOR JURY TRIAL

1 Plaintiff William L. Grivas, by and through his attorneys, brings this action
2 on behalf of himself, and all others similarly-situated against Defendant
3 Metagenics, Inc. Plaintiff alleges, on information and belief, except for information
4 based on personal knowledge, as follows:

5 **NATURE OF THE ACTION**

6 1. Metagenics touts itself as a “nutrigenomics” and “lifestyle medicine”
7 company that manufactures, markets, and sells a number of high-priced, non-
8 prescription consumable products or foods allegedly specially designed to treat a
9 number of chronic health conditions. Metagenics's tag line is “Genetic Potential
10 Through Nutrition.” A big part of Metagenics's business is its sale of so-called
11 “Medical Foods,” which it sells as non-prescription powdered beverages.

12 2. Metagenics knows that about 84 million people in this country suffer
13 from some form of cardiovascular disease.¹ Metagenics also knows that another 29
14 million Americans have diabetes.² To capitalize on that large customer base,
15 Metagenics sold its so-called “Medical Foods” to treat and correct diabetes and
16 related problems, “cardiovascular disease,” “glucose control,” “metabolic
17 syndrome,” “compromised gut function”, “inflammatory bowel disease”, “leaky gut
18 syndrome,” “fatigue,” and a host of other maladies. Metagenics falsely labelled
19 such products – some of which have been priced at \$150 or more per container – as
20 “Medical Food” knowing that such labeling carries a medical condition treatment
21 meaning to its customers and allows it to target broad markets, and that such a label
22 allows for a much higher price when compared to, for example, ordinary foods or
23 dietary “supplements.”

24
25 ¹ See [http://www.hopkinsmedicine.org/healthlibrary/conditions/cardiovascular_](http://www.hopkinsmedicine.org/healthlibrary/conditions/cardiovascular_diseases/cardiovascular_disease_statistics_85,P00243/)
26 [diseases/cardiovascular_disease_statistics_85,P00243/](http://www.hopkinsmedicine.org/healthlibrary/conditions/cardiovascular_diseases/cardiovascular_disease_statistics_85,P00243/) (last accessed Sept. 18,
27 2015).

28 ² See <http://www.cdc.gov/diabetes/data/statistics/2014statisticsreport.html> (last
accessed Sept. 18, 2015).

1 3. This strategy has worked for Metagenics. Upon information and
2 belief, Metagenics enjoyed sales of at least \$300 million in 2015. Metagenics's
3 sales and growth were so strong that it attracted a significant investment from
4 Alticor, Inc., the multi-billion dollar enterprise responsible for the Amway® brand,
5 which purchased a controlling stake in Metagenics in late 2009.

6 4. These lofty sales were largely achieved, however, by false labeling of
7 product as "Medical Food." Metagenics's "Medical Food " label is false and
8 deceptive as a matter of California law. Specifically, California's Sherman Food,
9 Drug, and Cosmetic Law specifically defines and regulates the use of the term
10 "Medical Food." Actual "Medical Foods" are specially formulated to be consumed
11 or administered enterally under the supervision of a physician and are intended for
12 the dietary management of a specific disease or condition. Metagenics's products
13 labeled as "Medical Food" uniformly *do not, however*, meet California's definition
14 of "Medical Food." Rather, Metagenics mass-produces general, not specific,
15 recipes that it hopes to sell to as many people as possible, with or without physician
16 involvement, without regard to whether products can actually treat, manage, or
17 support medical conditions. In short, Metagenics is deceiving people when it tells
18 them that their products are indeed specialized "Medical Food," thereby
19 endangering the health of the purchaser who is falsely being led to believe that they
20 are ingesting a product that will treat their serious and chronic medical condition—
21 when, in fact, it is little more than a falsely labeled placebo.

22 5. Plaintiff William L. Grivas saw and relied on Defendant's deceptive
23 messaging. He purchased Metagenics's alleged "Medical Foods" and seeks
24 monetary recovery and to otherwise hold Metagenics accountable for its continued
25 and knowing deception. Mr. Grivas brings this case on behalf of himself and all
26 similarly-situated purchasers of Metagenics's "Medical Foods."

1 Metagenics's "Medical Foods" in reliance on these claims, and suffered injury in fact
2 and lost money as a result of the unfair competition described here.

3 9. Defendant Metagenics is a global nutrigenomics and lifestyle medicine
4 company headquartered in this District in Aliso Viejo, California. Defendant makes
5 all major policy decisions, including advertising, labelling, and marketing decisions,
6 from its Orange County, California headquarters, for all sales nationwide such that it
7 can and does reasonably expect that it must comply with California law in its sales
8 nationwide.

9 **ADDITIONAL FACTUAL ALLEGATIONS**

10 **What "Medical Foods" are Supposed to Be**

11 10. According to California's Sherman Food, Drug and Cosmetic Act, a
12 "Medical Food" is:

13 a food which is formulated to be consumed or administered internally
14 under the supervision of a physician and which is intended for the
15 dietary management of a specific disease or condition for which
distinctive nutritional requirements, based on recognized scientific
principles, are established by medical evaluation.

16 Cal. Health & Safety Code § 110100; 21 USC § 360ee(b)(3) (incorporated by §
17 110100).

18 11. The following criteria clarify and add to the definition of a true
19 medical food. Specifically, a food is a medical food only if it fits the above
20 definition and:

21 a. it is a specially formulated and processed product (as opposed to a
22 naturally occurring foodstuff used in its natural state) for the partial or
23 exclusive feeding of a patient by means of oral intake or enteral feeding by
tube;

24 b. it is intended for the dietary management of a patient who, because of
therapeutic or chronic medical needs, has limited or impaired capacity to
25 ingest, digest, absorb, or metabolize ordinary foodstuffs or certain nutrients,
or who has other special medically determined nutrient requirements, the
26 dietary management of which cannot be achieved by the modification of the
normal diet alone;

27 c. it provides nutritional support specifically modified for the
28 management of the unique nutrient needs that result from the specific
disease or condition, as determined by medical evaluation;

d. it is intended to be used under medical supervision; and

e. it is intended only for a patient receiving active and ongoing medical supervision wherein the patient requires medical care on a recurring basis for, among other things, instructions on the use of the medical food.

Cal. Health & Safety Code § 110100; 21 C.F.R § 101.9(j)(8) (incorporated by § 110100).

12. Medical foods were intended, primarily, for use as a life support modality in the management of the critically ill or elderly. Their definition is meant to be narrowly construed.

Metagenics Falsely Labels Product as “Medical Foods”

13. Defendant Metagenics sells a whole line of product falsely labeled as “Medical Foods.” Metagenics has sold at least 17 offerings of so-called “Medical Foods” ranging in prices of up to \$150 per container or “kit.” The ones at issue here are the four “Medical Foods” that Plaintiff purchased (*UltraMeal Plus*, *UltraMeal Plus 360*, *UltraGlycemX* and *UltraClear*) as well as: *UltraMeal*, *GI Sustain*, *UltraCare for Kids*, *BariatricX*, *GlycemX*, *UltraClear Plus*, *UltraClear Plus pH*, *UltraClear RENEW*, *UltraInflamX*, *UltraInflamX Plus 360* and *ArginCor* (the “Class Medical Foods”). As explained more fully below, despite the various (often similar) names, the powdered products are substantially similar in that they are all touted as “Medical Foods” that are supposed to be effective for the treatment, management, or support of medical conditions, and they all contain substantially similar ingredients.

14. Every one of Metagenics’s “Medical Foods” prominently and uniformly lists the phrase “Medical Food” on the front of every product label, as well as in marketing materials such as those found on the Metagenics website and in its product brochures.

15. For example, the product packaging for one of Metagenics's more popular “Medical Food” products, *UltraMeal Plus 360*®, looks substantially like:



16. Mr. Grivas purchased UltraMealPlus 360®.

17. These products, however, do not meet California's statutory definition of "Medical Food" and Metagenics's use of that term on its product packaging and marketing materials is materially false and deceptive.

18. First, Metagenics's "Medical Foods" are *not* effectively formulated to actually treat a particular health condition, as true Medical Foods are supposed to be. Contrary to what a reasonable consumer would reasonably conclude—that different Medical Foods formulated to treat a wide range of various medical conditions would contain different specialized and targeted ingredients - that is not the case. Rather, Metagenics, as a matter of policy and general practice, mass produces and sells its "Medical Food" to anyone and these foods are made up of basic, ordinary over the counter vitamins, minerals, amino acids and simple food ingredients, similar to what would be found in any cheap multivitamin or protein powder. Moreover, Metagenics's various Medical Foods are mostly composed of

1 the same common ingredients, in spite of each product's claims of specially treating
2 divergent medical conditions.

3 19. Second, Metagenics's "Medical Foods" are not designed for
4 administration exclusively through a physician, as the law requires of true Medical
5 Foods. Rather, Metagenics's "Medical Foods" are available to anyone with internet
6 access including, at one point, via Amazon.com, and currently through Ebay.com.
7 Metagenics uses the general (false) pretext of "medical supervision" to further
8 perpetrate the fraud on the consumer that its products have actual medical treatment
9 efficacy.

10 20. Third, and again unlike actual Medical Foods, Metagenics does not
11 limit sales of its products to those with "limited or impaired capacity to ingest,
12 digest, absorb, or metabolize ordinary foodstuffs or certain nutrients, or who has
13 other special medically determined nutrient requirements, the dietary management
14 of which cannot be achieved by the modification of the normal diet alone."
15 Metagenics, in short, will sell to anyone as a matter of policy and practice.

16 21. Metagenics's labeling is also false and misleading because the
17 diseases and conditions for which Metagenics claims its Medical Food products
18 treat are diseases and conditions that can be managed by the general population
19 through regimens that include normal dietary intake, thus eliminating any legitimate
20 claims that Metagenics's products are true "Medical Foods" and rendering
21 Metagenics as little more than a modern day snake oil peddler.

22 22. For the above and other reasons, the Food and Drug Administration
23 (FDA) has expressly censured Metagenics for mislabeling its products as "Medical
24 Foods."³ The FDA has called Metagenics's products "misbranded" and their
25 product labels "false and misleading in that the products are labeled and marketed
26 as medical foods but do not meet the statutory definition of a medical food..."

27 _____
28 ³ The federal definition of "Medical Food" is the same as California's.

1 California adopted the same definition of “Medical Food” as that defined by the
2 FDA. Metagenics was instructed by the FDA to take “prompt action to correct the
3 violations.” The FDA, furthermore, has informed Metagenics of its violations on at
4 least two occasions.

5 23. While Metagenics has responded to Plaintiff’s original complaint in
6 this matter by taking the “Medical Food” label off a number of its products, it
7 continues to this day, to label some products with the erroneous “Medical Food”
8 label. Metagenics has relabeled to “dietary supplement” or “nutritional drink mix”,
9 or discontinued altogether, 12 of the 14 mis-branded Medical Foods cited in the
10 Plaintiff’s original complaint or by the FDA in its 2013 Warning Letter to
11 Metagenics. Metagenics has never disclosed to its customers that, although it
12 purports to sell “Medical Foods,” that the FDA has found that Metagenics’s
13 products *do not* meet state and federal criteria for Medical Foods.

14 24. During the Class Period, Plaintiff William L. Grivas purchased
15 several packages of Metagenics “Medical Foods” and, specifically, four different
16 varieties: *Ultrameal Plus*, *Ultrameal Plus 360*, *UltraGlycemX* and *UltraClear*.
17 Plaintiff purchased all four products from the Solana Beach Wellness Center,
18 between March and May 2012. All purchases were made in the offices of the
19 Center, from inventory stock in their wellness clinic.

20 25. In particular, Plaintiff suffers from diabetes, among other conditions
21 Metagenics promises to treat via its “Medical Foods.” Plaintiff had been taking
22 over-the-counter meal replacement powders to manage his conditions.

23 26. However, in March 2012, Plaintiff visited the Solana Beach Wellness
24 Center in furtherance of his efforts to manage his conditions. While in the Center,
25 Plaintiff observed that it stocked Metagenics products, including the Class Medical
26 Foods. Plaintiff reviewed those products and their labels. Previously, Plaintiff had
27 conducted some internet search on Metagenics products, including by visiting the
28 Metagenics website and researching various products on the website, where he

1 noticed that Metagenics had “Medical Foods” that were recommended for
2 treatment, management, and/or support of diabetes, cardiovascular issues, fatigue
3 and other medical conditions.

4 27. While at the Center in March, 2012, and relying on the labels of the
5 “Medical Foods” on display at the Center, as well as his review of Metagenics’s
6 website and printed brochures as they related to “Medical Foods,” Plaintiff
7 purchased *UltraMeal Plus* from the Center.

8 28. Plaintiff read and relied upon the Metagenics “Medical Foods”
9 packaging on display (including the “Medical Foods” moniker itself), along with
10 the consistent representations appearing on Defendant’s own website (which
11 repeated the “Medical Foods” title and promised to “support” and “manage”
12 medical conditions, such as Mr. Grivas’ conditions), along with Metagenics’s
13 printed color brochures republishing the same consistent messaging. In all,
14 Metagenics was consistently and repeatedly representing to Grivas and other
15 purchasers that their products were special “medical foods” that would effectively
16 treat or manage their conditions, as opposed to just ordinary (and much cheaper)
17 vitamins or supplements.

18 29. On a subsequent visit to the Center, Plaintiff also noticed the
19 *UltraMeal Plus 360* product—which made similar representations, including by
20 carrying the same “Medical Food” title. Plaintiff, relying on Metagenics’s
21 representations, purchased the same.

22 30. While taking the *UltraMeal* products, Plaintiff again visited the
23 Metagenics website and noticed that they offered yet another “Medical Food”
24 supposedly for persons with Diabetes or Diabetes symptoms- *UltraGlycemX*. Upon
25 his next visit to the Center, Plaintiff saw *UltraGlycemX*, read its label including the
26 “Medical Food” title, and purchased it after relying on Metagenics’s representations
27 about the product.
28

31. Then, upon developing some fatigue, Plaintiff researched the Metagenics's website further and identified that they offered another “Medical Food” product for “Chronic Fatigue Syndrome”—*UltraClear*. On a subsequent stop at the Center, Plaintiff saw the *UltraClear* on the shelves. After reviewing and relying on the *UltraClear* labelling (including its prominently-displayed “Medical Foods” title), as well as in reliance on Metagenics's other statements about its “Medical Foods” (e.g. from Defendant’s website and printed materials); Plaintiff purchased the *UltraClear*.

32. In late May 2012, Plaintiff discontinued all four of the Metagenics Medical Food products he had purchased. In 2014, Plaintiff saw a copy of an FDA letter to Metagenics indicating that fourteen products marketed and sold as Medical Foods—including the four that Plaintiff had purchased—were in fact mis-labeled and mis-advertised; were, in fact, *not* Medical Foods; and that there was no basis for the assertions associated with them for treatment of the cited medical conditions. Had he known that Metagenics's representations were deceptive—that the products were not really special “Medical Foods”—he would not have bought them.

CLASS ACTION ALLEGATIONS

33. Plaintiff brings this lawsuit on behalf of himself and the proposed Class members under Rule 23(b)(2) and (3) of the Federal Rules of Civil Procedure. The proposed Class consists of:

All persons who at any time through the date of class certification purchased Metagenics “Medical Foods.” Excluded from the Class are Defendant’s officers, directors and employees of Metagenics and *those who purchased Metagenics “Medical Foods” for the purpose of resale.*

34. Subject to additional information obtained through further investigation and discovery, the foregoing definition of the Class may be expanded or narrowed by amendment or amended complaint. Specifically excluded from the proposed Class are the Defendant, its officers, directors, agents, trustees, parents,

1 children, corporations, trusts, representatives, employees, principals, servants,
2 partners, joint venturers, or entities controlled by the Defendant, and its heirs,
3 successors, assigns, or other persons or entities related to or affiliated with the
4 Defendant and/or its officers and/or directors, or any of them; the Judge assigned to
5 this action, and any member of the Judge's immediate family.

6 35. **Numerosity.** The members of the Class are so numerous that their
7 individual joinder is impracticable. Plaintiff is informed and believes, and on that
8 basis alleges, that the proposed Class contains many thousands of members. The
9 precise number of Class members is unknown to Plaintiff. The true number of Class
10 members is known by the Defendant, however, and thus, may be notified of the
11 pendency of this action by first class mail, electronic mail, and by published notice.

12 36. **Existence and Predominance of Common Questions of Law and**
13 **Fact.** Common questions of law and fact exist as to all members of the Class and
14 predominate over any questions affecting only individual Class members. These
15 common legal and factual questions include, but are not limited to, the following:

16 (a) whether Metagenics's "Medical Food" line of products meets
17 the statutory definitions of Medical Foods;

18 (b) whether the claims discussed above are misleading, or
19 reasonably likely to deceive;

20 (c) whether Metagenics's alleged conduct violates public policy;

21 (d) whether the alleged conduct constitutes violations of the laws
22 asserted here;

23 (e) whether Metagenics engaged in false or misleading advertising;

24 (f) whether Plaintiff and Class members have sustained monetary
25 loss and the proper measure of that loss; and

26 (g) whether Plaintiff and Class members are entitled to relief.
27
28

1 37. **Typicality.** Plaintiff's claims are typical of the claims of the members
2 of the Class in that the Defendant was unjustly enriched as a result of Plaintiff's and
3 the Class' respective purchases of Metagenics "Medical Foods."

4 38. The Metagenics Medical Food Offerings at issue here include the 4
5 that Plaintiff purchased (*UltraMeal Plus*, *UltraMeal Plus 360*, *UltraGlycemX* and
6 *UltraClear*) as well as: *UltraMeal*, *GI Sustain*, *UltraCare for Kids*, *BariatricX*,
7 *GlycemX*, *UltraClear Plus*, *UltraClear Plus pH*, *UltraClear RENEW*, *UltraInflamX*,
8 *UltraInflamX Plus 360* and *ArginCor* (previously referred to as the "Class Medical
9 Foods").

10 39. All of the Class Medical Foods are substantially similar. Attached as
11 **Exhibit 1** to this Amended Complaint is a chart of these products with a description
12 of each product and the ingredients of each product. They are all composed of
13 common, basic everyday supplement ingredients found in any over the counter
14 multivitamin or protein powder—common vitamins, minerals, amino acids—as
15 well as simple foods (including cinnamon, pomegranate, watercress, ginger,
16 turmeric, beet powder, dried melon, green tea, prune extract, rosemary). None of
17 the 15 contain any proprietary or uniquely formulated ingredients. In fact, contrary
18 to what one would logically assume, 91% of the supplement ingredients contained
19 in the 11 Similar Medical Foods are identical to ingredients contained in one or
20 more of the 4 Medical Foods purchased by Plaintiff. Expressed another way, on
21 average, the 11 Similar Medical Foods each contain 26 supplement ingredients of
22 which 24 are common ingredients to those contained in the 4 Medical Foods
23 Plaintiff purchased. The remainder are simply other basic every day and cheap
24 vitamins, minerals or amino acids. This pervasive commonality of ingredients is all
25 the more cynically telling in light of the widely diverse medical conditions that the
26 15 Class Medical Foods are purported to treat.

27 40. Further as to the substantial similarity of the 15 Medical Foods: (a)
28 all 15 are in powder form; (b) all 15 require mixture with a liquid in order to be

1 ingested orally; (c) all 15 are advertised to be taken only under the supervision of a
2 physician or licensed healthcare professional; (d) all 15 are advertised as only being
3 available for purchase from an Authorized Metagenics Medical Practitioner, or
4 from Metagenics directly with a Practitioner Code; (e) all 15 are advertised as
5 treatment for medical conditions with distinct nutritional requirements that cannot
6 be addressed thorough normal dietary intake; (f) all have been similarly packaged:
7 in a white plastic tub container with a screw top; with a plastic seal on the screw
8 top; with a thick foil seal over the tub contents; with a 60cc or 14.7cc serving spoon
9 inside; and (g) all 15 have the term “Medical Food” capitalized and prominently
10 displayed on the front center of the product label.

11 41. ***Adequacy of Representation.*** Plaintiff will fairly and adequately
12 protect the interests of the members of the Class. Plaintiff has retained counsel
13 highly experienced in complex consumer class action litigation, and Plaintiff
14 intends to prosecute this action vigorously. Plaintiff has no adverse or antagonistic
15 interests to those of the Class.

16 42. ***Superiority.*** A class action is superior to all other available means for
17 the fair and efficient adjudication of this controversy. The damages or other
18 financial detriment suffered by individual Class members is relatively small
19 compared to the burden and expense that would be entailed by individual litigation
20 of their claims against the Defendant. It would thus be virtually impossible for the
21 Class, on an individual basis, to obtain effective redress for the wrongs done to
22 them. Furthermore, even if Class members could afford such individualized
23 litigation, the court system could not. Individualized litigation would create the
24 danger of inconsistent or contradictory judgments arising from the same set of facts.
25 Individualized litigation would also increase the delay and expense to all parties and
26 the court system from the issues raised by this action. By contrast, the class action
27 device provides the benefits of adjudication of these issues in a single proceeding,
28

1 economies of scale, and comprehensive supervision by a single court, and presents
2 no unusual management difficulties under the circumstances here.

3 43. In the alternative, the Class may also be certified because:

4 (a) the prosecution of separate actions by individual Class
5 members would create a risk of inconsistent or varying adjudication with respect to
6 individual Class members that would establish incompatible standards of conduct
7 for the Defendant;

8 (b) the prosecution of separate actions by individual Class
9 members would create a risk of adjudications with respect to them that would, as a
10 practical matter, be dispositive of the interests of other Class members not parties to
11 the adjudications, or substantially impair or impede their ability to protect their
12 interests; and/or

13 (c) Defendant has acted or refused to act on grounds generally
14 applicable to the Class thereby making appropriate final declaratory relief with
15 respect to the members of the Class as a whole.

16 44. Unless stated otherwise, the claims asserted herein are applicable to
17 all persons who purchased Metagenics "Medical Foods."

18 45. Adequate notice can be given to Class members directly using
19 information maintained in Defendant's records or through notice by publication.

20 46. Damages or restitution may be calculated, in part, from the sales
21 information maintained in Defendant's records, so that the cost of administering a
22 recovery for the Class can be minimized. However, the precise amount of damages
23 available to Plaintiff and the other members of the Class is not a barrier to class
24 certification.

25 47. Unless a class is certified, Defendant will retain monies received as a
26 result of its conduct that was taken from Plaintiff and proposed Class members.

27 48. Defendant's acts in furtherance of its issuance of materially false and
28 misleading advertising overwhelmingly occurred in the State of California. The

1 Defendant is a corporate citizen of California and has its corporate headquarters in
 2 Aliso Viejo, California from which all of its policies and procedures regarding
 3 advertising emanated. All orders are taken ore received in Aliso Viejo, California,
 4 and processed on Metagenics's servers located in Aliso Viejo. All invoices are sent
 5 from Metagenics's corporate headquarters in Aliso Viejo. All orders are shipped
 6 either from Aliso Viejo, California, or Metagenics's distribution centers in Gig
 7 Harbor, Washington, or the Midwest, at the direction of Metagenics in Aliso Viejo.

8 49. Defendant has availed itself of the protections and laws of California
 9 throughout the class period. In sum, all aspects of Defendant's complained-of
 10 conduct as alleged herein involved executives employed by Metagenics in
 11 California. All actions in furtherance of the alleged false advertising and
 12 implementation thereof overwhelmingly occurred in California.

13 50. Because the complained-of conduct overwhelmingly emanated from
 14 and took place in California, and the substantial economic harm visited on
 15 consumers throughout the United States was perpetrated by actors who are residents
 16 of California, California has a superior interest in having its laws applied to all
 17 injured consumers, which exceeds the interests of any other state; application of
 18 California law to consumers throughout the United States creates no true conflict of
 19 laws.

20 COUNT I

21 **Unlawful Business Acts and Practices in Violation of California** 22 **Business & Professions Code Sections 17200, *et seq.*,**

23 **On Behalf of Plaintiff and the Class**

24 51. Plaintiff repeats and re-alleges the allegations contained in the
 25 paragraphs above, as if fully set forth here.

26 52. California Business and Professions Code section 17200 prohibits any
 27 "unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue
 28 or misleading advertising." For the reasons discussed above, Metagenics has

1 violated each of these provisions of California Business and Professions Code
2 section 17200.

3 53. Metagenics has violated Section 17200's prohibition against engaging
4 in unlawful acts and practices by, *inter alia*, making the representations and
5 omissions of material facts, as set forth more fully here, and violating California
6 Civil Code sections 1572, 1573, 1709, 1710, 1711, 1770, California Business and
7 Professions Code sections 17200, *et seq.*, and California's Sherman Food, Drug,
8 and Cosmetic Law (*incl.* Health & Safety Code §§ 110100, 110765), by
9 misbranding food, Metagenics "Medical Foods," in violation of state law, and by
10 violating the common law.

11 54. Plaintiff and the Class reserve the right to allege other violations of
12 law which constitute other unlawful business acts or practices. Such conduct is
13 ongoing and continues to this date.

14 55. Metagenics's acts, omissions, misrepresentations, practices and non-
15 disclosures as alleged here also constitute "unfair" business acts and practices
16 within the meaning of California Business and Professions Code sections 17200, *et*
17 *seq.*, in that its conduct is substantially injurious to consumers, offends public
18 policy, and is immoral, unethical, oppressive, and unscrupulous as the gravity of the
19 conduct outweighs any alleged benefits attributable to such conduct.

20 56. As stated in this Complaint, Plaintiff alleges violations of consumer
21 protection, unfair competition and truth in advertising laws in California and other
22 states resulting in harm to consumers. Plaintiff asserts violations of the public
23 policy of engaging in false and misleading advertising, unfair competition and
24 deceptive conduct towards consumers. This conduct constitutes violations of the
25 unfair prong of California Business and Professions Code sections 17200, *et seq.*

26 57. There were reasonably available alternatives to further Metagenics's
27 legitimate business interests, other than the conduct described here.
28

1 Respectfully submitted:

2 DATED: January 18, 2018

NICHOLAS & TOMASEVIC, LLP

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18 Attorneys for Plaintiff, William Grivas
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the January 18, 2018, the foregoing document was filed electronically on the CM/ECF system, which caused all CM/ECF participants to be served by electronic means.

DATED: January 18, 2018

NICHOLAS & TOMASEVIC, LLP

By: /s/ Alex Tomasevic
ALEX TOMASEVIC (SBN 245598)

On average, the 11 "similar" Medical Foods each contain 24 of the same ingredients contained in one or more of the 4 Grivas purchased Medical Foods

	26 of 28	29 of 31	29 of 33	27 of 32	27 of 32	28 of 35	4 of 5
	93%	94%	88%	84%	84%	80%	80%