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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

WILLIAM L. GRIVAS, SR., On Behalf of
Himself and All Others Similarly Situated,

Plaintiff,

v.

METAGENICS, INC.,

Defendant.

Case No. SACV15-1838 CJC (DFMx)

STIPULATION OF SETTLEMENT

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SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“Agreement”) is made by and between:

(1) William L. Grivas, Sr., on behalf of himself and others similarly situated (“Class Representative”), and (2) Metagenics, Inc. (“Metagenics”) (collectively the “Parties”).

I. RECITALS

This Agreement is made for the following purposes and with reference to the following facts:

A. On November 9, 2015, Plaintiff William L. Grivas, Sr. filed a class action complaint against Metagenics in the United States District Court for the Central District of California, entitled *Grivas v. Metagenics, Inc.*, Case No. 15-cv-1838-CJC (the “Action”). On January 18, 2018 Plaintiff filed the operative First Amended Class Action Complaint (the “FAC” or “Complaint”). The FAC alleges that Metagenics’ advertisements and labelling of the Products (defined below) as “Medical Foods” was false or misleading because, among other reasons, the Products do not qualify as “Medical Foods” within the meaning of 21 U.S.C. § 360ee(b)(3). The FAC alleges a violation of California’s Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (“UCL”).

B. Metagenics has disputed, and continues to dispute, all claims alleged in the Complaint and in the Action and does not by this Agreement admit any liability or wrongdoing whatsoever. Metagenics has agreed to enter into this Agreement to avoid the further expense, inconvenience, and distraction of burdensome and protracted litigation.

C. Class Counsel and Mr. Grivas believe that the claims asserted in the Action possess merit and have examined and considered the benefits to be obtained under the proposed settlement set forth in this Agreement, the risks associated with the continued prosecution of this complex and potentially time-consuming litigation, and the likelihood of ultimate success on the merits of the Action. The parties have exchanged information, they have diligently investigated the facts and law relevant to the merits of their claims, and have concluded that the proposed settlement set forth in this Agreement is fair, adequate, reasonable, and in the best interests of the Settlement Class.

1 D. The Parties participated in a full-day mediation session with Hon. Peter Lichtman
2 of JAMS on August 14, 2018. On September 18, 2018, with Judge Lichtman’s continued
3 involvement, the Parties reached a settlement in principle by accepting Judge Lichtman’s written
4 Mediator’s Proposal.

5 E. The Parties desire to settle the Action as to the Class Representative, the
6 Settlement Class, and Metagenics in its entirety with respect to all potential claims arising out of
7 the facts that were or could have been alleged in the Complaint. The Parties intend this
8 Agreement to bind Metagenics, the Class Representative (both individually and as representative
9 of the Settlement Class), and all members of the Settlement Class as defined below who do not
10 specifically object or request exclusion.

11 The Parties agree to cooperate and take all reasonable steps necessary and appropriate to
12 obtain preliminary and final approval of the settlement set forth in this Agreement, to effectuate
13 its terms, and dismiss the Action with prejudice.

14 **NOW, THEREFORE**, in light of the foregoing, for good and valuable consideration, the
15 Parties, and each of them, hereby warrant, represent, acknowledge, covenant, and agree, subject
16 to approval by the Court, as follows:

17 **II. DEFINITIONS**

18 As used herein, the following terms have the meanings set forth below:

19 A. “Class Counsel” means Kirk B. Hulett of Hulett, Harper, & Stewart LLP, Alex
20 Tomasevic and Craig Nicholas of Nicholas & Tomasevic LLP, and Michael T. McColloch of
21 McColloch Law Firm.

22 B. “Class Member” means all persons who at any time since November 9, 2011 to the
23 present purchased one or more Products who do not file a valid and timely request to opt-out of
24 the Lawsuit. Excluded from the Class are Defendant’s officers, directors, and employees of
25 Metagenics and those, such as health care professionals, who purchased Products for the purpose
26 of resale.

27 C. “Class Period” means November 9, 2011 to the present.
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1 D. "Effective Date" means the earliest of the following: (1) the date of entry of the
2 Final Approval Order and Judgment if no objections are filed to the Settlement Agreement or if
3 all objections are withdrawn prior to the Court ruling on them; or (2) thirty (30) days after the
4 entry of the Final Approval Order and Judgment if objections are filed and overruled and no
5 appeal is taken; or (3) if a timely appeal is made, thirty-one (31) business days after the date of
6 the final resolution of that appeal and any subsequent appeals or petitions for certiorari from the
7 Final Approval Order and Judgment.

8 E. "Net Settlement Fund" means the amount, approved by the Court, to be paid out to
9 Participating Settlement Class Members from the Settlement Fund after deducting Court-
10 approved Attorneys' Fees and Expenses, Service Awards, and Settlement Administration
11 Expenses.

12 F. "Participating Settlement Class Members" means all Settlement Class Members
13 who do not file a valid and timely request to opt-out of the Lawsuit and who submit a timely
14 claims form as set forth in paragraph IV.D., below.

15 G. "Product" or "Products" means UltraMeal Plus, UltraMeal Plus 360,
16 UltraGlycemX and UltraClear, provided such Product was labelled as a "Medical Food" at the
17 time of purchase.

18 H. "Releasing Persons" means Class Representatives, each Class Member, and their
19 respective heirs, executors, administrators, representatives, agents, partners, successors, and
20 assigns.

21 I. "Released Persons" means Metagenics and each of its past or present directors,
22 officers, employees, agents, insurers, shareholders, attorneys, advisors, consultants,
23 representatives, partners, affiliates, parents, subsidiaries, joint venturers, independent contractors,
24 wholesalers, resellers, distributors, retailers, related companies, and divisions, and each of their
25 predecessors, successors, heirs, and assigns.

26 J. "Service Award" means an award authorized by the Court to be paid to Mr. Grivas
27 as Class Representative.

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K. “Settlement Administrator” means ILYM Group, Inc.

L. “Settlement Award” means the amount Participating Settlement Class Members shall each receive from the Net Settlement Fund. The Settlement Administrator shall calculate the Settlement Award as follows: The Net Settlement fund divided by the total number of Products that all Participating Settlement Class Members have validly claimed to have purchased throughout the Class Period. That result will then be multiplied by the number of Products each individual Participating Settlement Class member has claimed. More specifically, the Settlement Administrator will first calculate a per-Product award, and then each Participating Class Member will get that award multiplied by each Product or unit of Product that the Participating Class Member has validly claimed. To make a valid claim, each Participating Class Member will be required to attest to, under penalty of perjury in the claim form described below, how many Products they purchased during the class period. Participating Class Members will be allowed to attest to purchasing up to 5 units or Products *without* providing proof of purchase. Any Participating Class Member claiming to have purchased more than 5 units or Products must provide proof of purchase in the form of a legible receipt or equivalent document(s). Any Participating Class Member claiming to have purchased more than 5 units or Products, but who fails to provide adequate proof of purchase as determined by the Settlement Administrator, shall be treated as having purchased exactly 5 units or Products for purposes of this settlement and for calculating the Settlement Award. Only one claim may be made per household.

M. “Settlement Class” means all Class Members.

N. “Settlement Fund” means the maximum total sum of \$1,300,000.00 that Metagenics shall provide for the payment of Settlement Awards, Attorneys’ Fees and Expenses, Service Awards, and Settlement Administration Expenses. The Settlement Fund shall be non-reversionary.

III. SETTLEMENT TERMS

A. Subject to Court approval, Metagenics shall pay the Settlement Fund totaling \$1,300,000.00. The payment of the Settlement Fund shall fully satisfy Metagenics’ obligations

1 for all payments to Class Members, attorneys' fees, and costs/expenses identified in this
2 Settlement Agreement, including payments to the Class for Settlement Awards, Service Awards,
3 Settlement Administration Expenses, and Class Counsel's Attorneys' Fees and Expenses, in the
4 amounts and by the procedures specified in this Settlement Agreement. This Settlement Fund is
5 non-reversionary.

6 B. No later than fifteen (15) business days after the Effective Date, Metagenics shall
7 transmit \$1,300,000.00 to the Settlement Administrator, for deposit into an interest-bearing
8 escrow account established and maintained by the Settlement Administrator.

9 C. Subject to Court approval, the Settlement Administrator shall pay Class Counsel
10 Attorneys' Fees and Expenses of up to 35% of the Settlement Fund. Class Counsel will apply to
11 the Court for approval of payment of those amounts of reasonable expenses and attorneys' fees.
12 Metagenics agrees not to oppose Class Counsel's application for Attorneys' Fees and Expenses
13 provided it does not exceed 35% of the Settlement Fund. Any amounts not approved by the
14 Court will be added to the Net Settlement Amount. The Settlement Administrator shall pay Class
15 Counsel any Court-approved Attorneys' Fees and Expenses award no later than fifteen (15)
16 business days after the Effective Date. Class Counsel may elect to structure a portion of the
17 attorneys' fee awarded by the Court using a Qualified Settlement Fund ("QSF"), and so long as
18 Class Counsel pays the cost of the administration of the QSF, Defendants will cooperate with the
19 structuring of such fees in that manner.

20 D. Subject to Court approval, the Settlement Administrator shall pay a reasonable
21 Service Award to Plaintiff William Grivas from the Settlement Fund in recognition of his efforts
22 and time expended on behalf of the Class. Metagenics agrees not to oppose Plaintiff's application
23 for a reasonable service award, which shall be in addition to his Settlement Award. The
24 Settlement Administrator shall pay any Court-approved Service Award within fifteen (15)
25 business days after the Effective Date. For tax purposes, the Service Award will be treated as a
26 100% non-wage claim payment. Metagenics shall issue, through the Settlement Administrator,
27 IRS Form Misc. 1099s for the Service Award payment to Plaintiff.
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1 E. Subject to Court approval, the Settlement Administrator shall pay to itself all
2 reasonable Settlement Administration Expenses from the Settlement Fund to provide Class notice
3 and fully administer this Settlement Agreement. Should the Court never grant approval, or
4 should this settlement never become effective, then any fees or costs owed to the Settlement
5 Administrator associated with providing notice of or administering this Agreement shall be split
6 evenly by Plaintiff and Metagenics.

7 F. Within fifteen (15) business days after the Effective Date, distributions from
8 Settlement Fund shall be made (1) to each Participating Settlement Class Member for their
9 Settlement Awards; (2) to Plaintiff for his Service Award; (3) to the Settlement Administrator for
10 its Settlement Administration Expenses; and (4) to Class Counsel for the full amount of
11 reasonable and actual Attorneys' Fees and Expense as awarded by the Court.

12 G. Should there remain any residual from the Net Settlement Fund after all payments
13 are made under this Settlement Agreement, for example, any undeliverable funds, the residual
14 amount shall be paid into a *cy pres* fund jointly selected by the Parties.

15 H. The Parties agree, subject to Court approval, that the *cy pres* beneficiary shall be
16 Vitamin Angels, a nonprofit organization that provides vitamins and minerals to at-risk
17 populations in need, specifically, pregnant women, new mothers and children under five around
18 the world. If for any reason, the Court does not approve the proposed *cy pres* beneficiary, the
19 Parties shall agree upon and propose, as *cy pres* recipient(s), no more than three alternative
20 organizations that satisfy the requirements of California Code of Civil Procedure § 384(b)(3)(C).

21 I. No later than one hundred ninety-five (195) calendar days after the Settlement
22 Administrator has distributed all deliverable Settlement Awards, the Settlement Administrator
23 shall pay over any residual to the *cy pres* beneficiary designated by the process described above.
24 The Settlement Administrator shall provide a separate declaration of payment to the *cy pres*
25 beneficiary, which will be served on Class Counsel no later than ten (10) calendar days after the
26 payment of the residual to such beneficiary. Class Counsel shall timely file the declaration from
27 the Settlement Administrator regarding the distribution of the Net Settlement Fund and any
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1 residual funds with the Court.

2 **IV. CLASS SETTLEMENT PROCEDURES.**

3 A. **Cooperation to Obtain Court Approval.** The Parties agree to fully cooperate
4 with each other to accomplish the terms of this Settlement Agreement, including but not limited
5 to, executing such documents and taking such other action as may reasonably be necessary to
6 implement the terms of this Settlement Agreement. The Parties shall use their best efforts,
7 including all efforts contemplated by this Settlement Agreement and any other efforts that may
8 become necessary by order of the Court or otherwise to effectuate this Settlement Agreement and
9 the terms set forth herein. As soon as practicable after execution of this Settlement Agreement,
10 Class Counsel shall, with the assistance and cooperation of Metagenics and its counsel, take all
11 necessary steps to secure the Court’s preliminary and final approval of this Settlement
12 Agreement.

13 B. **Preliminary Approval and Provisional Class Certification.** Plaintiff shall move
14 for preliminary approval of the Settlement Agreement to be heard by the Court. The application
15 shall seek an order:

- 16 (a) preliminarily approving this Settlement Agreement as being within the
17 range of possible approval as fair, reasonable, and adequate;
- 18 (b) preliminarily approving the form, method of providing notice and content
19 of the Long-Form Notice in a format that will be agreed upon by both parties;
- 20 (c) staying all proceedings in the Action until the Court renders a final
21 decision on approval of the settlement;
- 22 (d) setting the date and time of the Fairness Hearing approximately one
23 hundred and twenty (120) calendar days after entry of the Preliminary Approval Order,
24 subject to the Court’s availability;

25 C. **Notice.** Subject to the Court entering the proposed Preliminary Approval Order,
26 the Parties agree that the Settlement Administrator will provide the Class with notice of the
27 Settlement Agreement by the following methods.

1 (a) **Publication.** The Settlement Administrator shall cause notice of the
2 settlement to be published in the USA Today National Edition. The Settlement
3 Administrator shall also publish using online banner ads and a text and image ad display
4 campaign over a 30-day period. Finally, the Settlement Administrator will also issue a
5 Press Release utilizing the PR Newswire or equivalent experienced distributor(s) of press
6 releases.

7 (b) **Settlement Website.** No later than ten (10) calendar days after entry of the
8 Preliminary Approval Order, the Settlement Administrator will create and operate a
9 publicly accessible website solely for the purposes of providing the Class Members notice
10 of the Settlement. The Settlement Website will contain the Long-Form Notice, Frequently
11 Asked Questions regarding the Settlement Agreement and approval process, the First
12 Amended Complaint, the Preliminary Approval Order, and other Action documents
13 agreed upon by the Parties. Subject to Court approval, the Long-Form Notice will be
14 agreed upon by both parties. The Parties will jointly provide the Settlement Administrator
15 with the content required for the Settlement Website.

16 (c) **Automated, Toll-free Telephone Support.** No later than ten (10)
17 calendar days after entry of the Preliminary Approval Order, the Settlement Administrator
18 will secure and operate a toll-free automated telephone support system whereby Class
19 Members can access information about the Settlement Agreement and the Settlement
20 Administrator can receive requests for Email Notice. The Parties will jointly provide the
21 Settlement Administrator with the script for the content and menu of the automated, toll-
22 free telephone support system.

23 D. **Proof of Claim.** Class Members who wish to become Participating Settlement
24 Class Members shall be required to return to the Claims Administrator within ninety (90) days
25 from notice-by-publication a claims form, either online or in paper format, setting forth their
26 contact information and a statement under oath that they purchased one or more Products, and
27 how many Products or units of Product they purchased. The Claims Administrator shall maintain
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1 a list of Participating Settlement Class Members and the number of Products they purchased for
2 purposes of arriving at the pro rata Settlement Award.

3 E. **Proof of Notice.** No later than five (5) calendar days before the filing date for
4 Plaintiff's motion in support of the Final Order and Judgment, the Settlement Administrator must
5 serve a declaration(s) on Class Counsel and Metagenics' Counsel confirming that the Settlement
6 Administrator provided the Class with notice of the Settlement Agreement in accordance with this
7 Settlement Agreement.

8 F. **Objections.** Any Class Member who has not requested exclusion from the Class
9 and who wants to object to the Settlement Agreement must mail a written objection to the
10 Settlement Administrator, no later than fifty (50) calendar days after the initial distribution of
11 Email Notice. The delivery date is deemed to be the date the objection is deposited in the U.S.
12 Mail as evidenced by the postmark. Written objections must include: (a) the name of the Action,
13 "*Grivas et al. v. Metagenics, Inc.*"; (b) the full name, address, and email address of the person
14 objecting; (c) the words "Notice of Objection," "Formal Objection" or words to that effect; and
15 (d) in clear and concise terms, the legal and factual arguments supporting the objection, including
16 an attestation of facts demonstrating that the person objecting is a Class Member, and any
17 supporting documentation. Any Class Member that mails a written objection as described in this
18 paragraph, and indicates their intent to appear, has the option to appear at the Fairness Hearing,
19 either in person or through counsel hired at the Class Member's expense, to object to the
20 Settlement Agreement. Class Members who fail to submit written objections as described in this
21 paragraph will be deemed to have waived any objections and will be foreclosed from making any
22 objections (whether by a subsequent objection, intervention, appeal, or any other process) to the
23 Settlement Agreement and the Class Member asserting such an objection shall be bound by the
24 final determination of the Court.

25 G. **Exclusion Requests.** Class Members may elect not to be part of the Class and not
26 to be bound by this Agreement. To make this election, Class Members must each send an
27 individual stand-alone, written exclusion request to the Settlement Administrator stating (a) the
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1 name of the Action, “*Grivas et al. v. Metagenics, Inc.*”; (b) the full name, address, and email
2 address of the person requesting exclusion; and (c) a clear statement that he/she does not wish to
3 participate in the Settlement, postmarked no later than fifty (50) calendar days after the initial
4 distribution of Email Notice. Class Members may not both request exclusion and raise a valid,
5 written objection to the Settlement Agreement. If a Class Member submits both, the Settlement
6 Administrator will treat the submissions as a request for exclusion and process them accordingly.

7 **H. Proof of Objection/Exclusion.** The Settlement Administrator shall (a) date stamp
8 all original requests for exclusion and objections to the Settlement that it receives; and (b) serve
9 copies on Class Counsel and Metagenics’ Counsel no later than five (5) business days after
10 receipt, or immediately if received within five (5) business days of the Final Approval Hearing.
11 Class Counsel shall provide the Court with copies of any requests for exclusion and written
12 objections as part of Plaintiff’s motion for final approval.

13 **I. Final Approval Motion and Final Approval Hearing.** Prior to the Final
14 Approval Hearing and consistent with the rules imposed by the Court and applicable law, Plaintiff
15 shall move the Court for entry of the Final Order and Judgment and, at the same time, move the
16 Court for an award of Attorneys’ Fees and Expenses and Service Awards. To the extent possible,
17 the motions seeking entry of the Order of Final Approval shall be noticed for the same day as the
18 Final Approval Hearing. The Parties shall make all reasonable efforts to secure entry of the Order
19 of Final Approval.

20 **J. Lawsuit Status if Settlement Agreement Not Approved.** This Settlement
21 Agreement is being entered into for settlement purposes only. If the Court conditions its approval
22 of either the Preliminary Approval Order or the Final Order and Judgment on any modifications
23 to the Settlement Agreement or the Final Order and Judgment, or if the Effective Date does not
24 occur for any reason, then this Settlement Agreement will be deemed null and void *ab initio*
25 absent a contrary agreement of the parties. In that event (a) the Preliminary Approval Order
26 and/or Final Order and Judgment and all of its or their provisions will be vacated by its or their
27 own terms; (b) the Action will revert to the status that existed before the Settlement Agreement’s
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1 execution date, including the need to reset a new trial date; (c) no term or draft of this Settlement
2 Agreement, or any part of the Parties' settlement discussions, negotiations or documentation will
3 have any effect or be admissible into evidence for any purpose in the Action or any other
4 proceeding; and (d) Metagenics shall have no obligation to make any payments under the
5 Settlement Agreement, except that any fees or costs owed to the Settlement Administrator
6 associated with providing notice of or administering this Agreement shall be split evenly by
7 Plaintiff and Metagenics.

8 **V. ENTRY OF JUDGMENT AND RELEASES.**

9 **A. Judgment and Enforcement.** The Parties agree that should the Court grant final
10 approval of the proposed settlement and enter judgment, the judgment shall include a provision
11 for the retention of the Court's jurisdiction over the Parties to enforce the terms of the judgment.

12 **B. Class Members' Release.** Upon entry of the Final Order and Judgment following
13 the Fairness Hearing, all Class Members who have not timely requested exclusion pursuant to
14 Section IV.G., and each of their successors, assigns, heirs, and personal representatives, release
15 and forever discharge the Released Persons from all manner of claims, including all actions,
16 causes of action, claims, demands, rights, suits, as well as remedies, including obligations, debts,
17 contracts, agreements, promises, liabilities, damages, charges, penalties, losses, costs, expenses,
18 and attorneys' fees, (a) as they were alleged in the complaints, including those based on alleged
19 violations of the Unfair Competition Law, or (b) that arise or could have arisen from the factual
20 allegations in Plaintiff's First Amended Complaint.

21 This Settlement Agreement is made and given subject to a waiver of the provisions of
22 California Civil Code Section 1542 which provides:

23 A general release does not extend to claims which the creditor does
24 not know or suspect to exist in his or her favor at the time of
25 executing the release, which if known by him or her must have
materially affected his or her settlement with the debtor.

26 Although the releases granted under this Settlement Agreement are not general releases,
27 Plaintiff, on behalf of himself and of all Class Members, nonetheless expressly acknowledge that
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1 Plaintiff and the Class Members are waiving the protections of section 1542 as to the Class
2 Members' Release only.

3 **VI. ADDITIONAL PROVISIONS.**

4 A. **No Admission of Liability.** This Settlement Agreement shall not constitute an
5 admission on behalf of Metagenics of any form of liability or the accuracy of any allegation made
6 in this Lawsuit.

7 B. **Change of Time Periods.** All time periods and dates described in this Settlement
8 Agreement are subject to the Court's approval. These time periods and dates may be changed by
9 the Court or by the Parties' written agreement without notice to the Class. The Parties reserve the
10 right, subject to the Court's approval, to make any reasonable extensions of time that might be
11 necessary to carry out any provisions of this Settlement Agreement.

12 C. **Good Faith.** The Parties agree that the Settlement Agreement reflects their good
13 faith compromise of the claims raised in the Action, based upon their assessment of the mutual
14 risks and costs of further litigation and the assessments of their respective counsel.

15 D. **Voluntary Agreement.** The Parties executed this Settlement Agreement
16 voluntarily and without duress or undue influence.

17 E. **Parties Represented by Competent Counsel.** The Parties acknowledge that:
18 (a) they have been represented by independent, competent counsel of their own choosing during
19 the negotiation and preparation of this Settlement Agreement; (b) they have read this Settlement
20 Agreement and are fully aware of its contents; and (c) their respective counsel fully explained to
21 them the Settlement Agreement and its legal effect.

22 F. **Appeals.** As part of the Settlement Agreement, the Parties waive their right to file
23 an appeal and/or a writ or any challenge whatsoever to the terms of the Final Order and
24 Judgment.

25 G. **Entire Agreement.** This Settlement Agreement contains the entire agreement
26 between the Parties and constitutes the complete, final, and exclusive embodiment of their
27 agreement with respect to the Action. This Settlement Agreement is executed without reliance on
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1 any promise, representation, or warranty by any Party or any Party's representative other than
2 those expressly set forth in this Settlement Agreement.

3 **H. Construction and Interpretation.** Neither a Party nor any of the Parties'
4 respective attorneys will be deemed the drafter of this Settlement Agreement for purposes of
5 interpreting any provision in this Settlement Agreement in any judicial or other proceeding that
6 may arise between them. This Settlement Agreement has been, and must be construed to have
7 been, drafted by all the Parties to it, so that any rule that construes ambiguities against the drafter
8 will have no force or effect.

9 **I. Headings and Formatting of Definitions.** The various headings used in this
10 Settlement Agreement are solely for the Parties' convenience and may not be used to interpret
11 this Settlement Agreement. Similarly, bolding and italicizing of definitional words and phrases is
12 solely for the Parties' convenience and may not be used to interpret this Settlement Agreement.
13 The headings and the formatting of the text in the definitions do not define, limit, extend, or
14 describe the Parties' intent or the scope of this Settlement Agreement.

15 **J. Modifications and Amendments.** No amendment, change, or modification to
16 this Settlement Agreement will be valid unless in writing signed by the Parties or their counsel.

17 **K. Execution Date.** This Settlement Agreement is deemed executed on the date the
18 Agreement is signed by all of the undersigned.

19 **L. Counterparts.** This Settlement Agreement may be executed in one or more
20 counterparts by facsimile or email which for purposes of this Settlement Agreement shall be
21 accepted as an original. All executed counterparts will be deemed to be one and the same
22 instrument and will be admissible in evidence to prove the existence and contents of this
23 Settlement Agreement

24 **M. Recitals.** The Recitals are incorporated by this reference and are part of the
25 Agreement.

26 **N. Severability.** If any provision of this Settlement Agreement is declared by the
27 Court to be invalid, void, or unenforceable, the remaining provisions of this Settlement
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1 Agreement will continue in full force and effect, unless the provision declared to be invalid, void,
2 or unenforceable is material, at which point the Parties shall attempt to renegotiate the Settlement
3 Agreement or, if that proves unavailing, either Party can terminate the Settlement Agreement
4 without prejudice to any Party.

5 O. **Notices.** Unless otherwise specifically provided herein, all notices, demands or
6 other communications given hereunder shall be in writing and shall be deemed to have been duly
7 given as of the third business day after mailing by United States registered or certified mail,
8 return receipt requested, addressed as follows:

9 To Class Counsel:

10 CRAIG NICHOLAS OR ALEX TOMASEVIC, NICHOLAS
11 & TOMASEVIC, LLP
12 225 Broadway, 19th Floor
13 San Diego, CA 92101
14 Telephone: (619) 325-0492
15 Email: atomasevic@nicholaslaw.org

16 MICHAEL T. McCOLLOCH
17 McCOLLOCH LAW FIRM
18 545 2nd Street, Suite 3
19 Encinitas, CA 92024
20 Telephone: (760) 632-1100
21 Email: mike@moonlightlaw.com

22 KIRK B. HULETT
23 HULETT, HARPER, & STEWART LLP
24 1262 Kettner Blvd., No. 1803
25 San Diego, CA 92101
26 Telephone: (619) 338-1133

27 To Defendants:

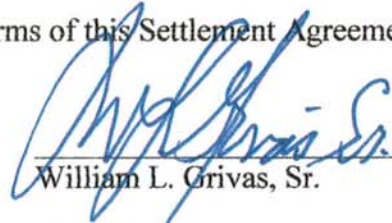
28 William L. Stern
MORRISON & FOERSTER LLP
425 Market Street
San Francisco, CA 94105-2482
Tel: (415) 268-7637
Email: wstern@mofo.com

If the identity of the person(s) to be notified for any party change or their address changes,
that party shall notify all other Parties of said change in writing.

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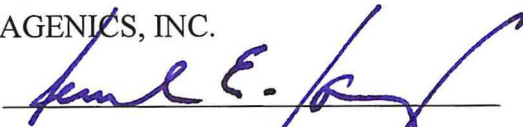
The Parties have agreed to the terms of this Settlement Agreement and have signed below.

Dated: Dec 5, 2018



William L. Grivas, Sr.
Plaintiff


Dated: Dec. 6,, 2018

METAGENICS, INC.
By: 

Title: Exec VP - Gen'l Counsel


APPROVED AS TO FORM:

Dated: December 6, 2018

WILLIAM L. STERN
MORRISON & FOERSTER LLP
By: 

William L. Stern
Attorneys for Defendant
METAGENICS, INC.

Dated: December 5, 2018

By: 

Alex Tomasevic
NICHOLAS & TOMASEVIC, LLP
Attorneys for Class Representative and
the Settlement Class