

Behrooz Shariati (State Bar No. 174436)
bshariati@jonesday.com
JONES DAY
Silicon Valley Office
1755 Embarcadero Road
Palo Alto, CA 94303
Telephone: 650-739-3939
Facsimile: 650-739-3900

Attorneys for Plaintiff
NORDIC NATURALS, INC.

William G. Gaede III (State Bar No. 136184)
wgaede@mwe.com
McDERMOTT WILL & EMERY LLP
3150 Porter Drive
Palo Alto, CA 94304-1212
Telephone: (650) 813-5000
Facsimile: (650) 813-5100

Attorneys for Defendants
J.R. CARLSON LABORATORIES, INC.
AND METAGENICS, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

NORDIC NATURALS, INC.,

Plaintiff,

v.

**J.R. CARLSON LABORATORIES,
INC. and METAGENICS, INC.,**

Defendants.

Case No. C-07-02385 PJH

**JOINT STIPULATION OF DISMISSAL
OF ALL CLAIMS AND ORDER
THEREON**

Pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii), the parties hereby stipulate to the dismissal of all claims and counterclaims, in the above-captioned action. The disposition of each claim is listed below.

**JOINT STIPULATION OF
DISMISSAL AND ORDER
Case No. C-07-02385 PJH**

1 **RECITALS AND STIPULATION**

2 **Whereas**, on May 2, 2007, Plaintiff Nordic Naturals, Inc. (“Plaintiff”) filed a complaint
 3 (“Complaint”) against Defendants J.R. Carlson Laboratories, Inc. and Metagenics, Inc.
 4 (“Defendants”) for Patent Infringement of US Patent Nos. 6,346,231 and 6,652,879 and for False
 5 Advertising Under § 43(a) of the Lanham Act;

6 **Whereas**, on June 5, 2007, Defendants denied all allegations raised in the Complaint,
 7 raised various affirmative defenses and alleged declaratory relief counterclaims of
 8 noninfringement and invalidity;

9 **Whereas**, on June 6, 2007, Plaintiff filed an Answer to the Defendants’ counterclaims;

10 **Whereas**, the parties have engaged in discovery in this matter and various motion
 11 practice;

12 **Whereas**, the parties hereby stipulate to the voluntary dismissal of this action on the
 13 following terms and conditions, each of which forms a material part of this dismissal:

14 1. Plaintiff hereby dismisses **with prejudice** its claims of infringement of U.S. Patent
 15 Nos. 6,346,231 and 6,652,879. Such claims are alleged against the Defendants’ products listed
 16 below.

Accused Metagenics Products
DHA LemonGels EPA-DHA 720™ EPA-DHA Extra Strength® Lemon Flavored Concentrated and Stabilized Purity-Certified, Omega-3 Fish Oils Omega-EFA™ EPA-DHA Complex® softgel 270SG EPA-DHA 6.1™ softgel 90SG Enteric Coated EPA-DHA Extra Strength Enteric Coated PL-EPA-DHA Lemon PL-EPA-DHA Extra Strength Enteric Coated

Accused Carlson Products
“Lightly Lemon” Norwegian Cod Liver Oil
Super 2 Daily™
Gene Right™
Carlson for Kids Chewable DHA Softgels
The Very Finest Fish Oil Softgels
Fish Oil Multi
Mother’s DHA Softgels, Orange Flavor
Professional Formula Simply the Best Cod Liver Softgels

2. Plaintiff hereby dismisses **with prejudice** its claims of False Advertising under § 43(a) of the Lanham Act. Such claims are alleged against the “DHA LemonGels” and “EPA-DHA Extra Strength® Lemon Flavored Concentrated and Stabilized Purity-Certified, Omega-3 Fish Oils” products marketed by Metagenics Inc., and the “Norwegian Cod Liver Oil Lightly Lemon 1000 mg” product marketed by J.R. Carlson Laboratories, Inc.

3. The Defendants hereby dismiss **with prejudice** their counterclaims for non-infringement of U.S. Patent Nos. 6,346,231 and 6,652,879, which are alleged with respect to the products Plaintiff accused of patent infringement that are listed in Paragraph 1.

4. Defendants hereby dismiss **without prejudice** their affirmative defenses and counterclaims of invalidity of U.S. Patent Nos. 6,346,231 and 6,652,879 that are set forth in the Answer filed on June 5, 2007. Plaintiff and Defendants further agree and stipulate that this stipulation and dismissal shall not in any way affect, bear upon, or bar Defendants’ procedural right to assert, or the Plaintiff’s procedural right to oppose, the affirmative defense of inequitable conduct that Defendants may have in any future action against any patent, including such grounds as identified in a draft amended answer transmitted on May 8, 2008, from Debra Dennett of McDermott Will & Emery LLP to James Glore of Jones Day LLP. No substantive rights or burdens of proof are affected by this stipulation.

1 5. Each party hereby waives any right to appeal this Stipulation.

2 6. Each party shall bear their own costs and fees associated with this action.

3 7. The parties stipulate that the foregoing operates as a complete dismissal of this
4 case in its entirety.

5
6 Dated June 06, 2008

7 Respectfully submitted,

Respectfully submitted,

8 By: /s/ Behrooz Shariati
9 Behrooz Shariati

By: /s/ William G. Gaede, III
William G. Gaede III

10 Attorneys for *Nordic Naturals, Inc.*

Attorneys for *J.R. Carlson Laboratories, Inc.*
and Metagenics, Inc.

11
12 **IT IS SO ORDERED:**

13 Dated: June 16, 2008

14
15
16
17 SVI-58283

