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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

MARITIME ASSET MANAGEMENT, LLC,
on Behalf of Itself and All Others Similarly
Situated,

Plaintiff,

v.

NEUROGESX, INC., ANTHONY A.
DITONNO, STEPHEN F. GHIGLIERI, and
JEFFREY K. TOBIAS, M.D.,

Defendants.

Case No. CV 12-05034-YGR

CLASS ACTION

**ORDER PRELIMINARILY
APPROVING SETTLEMENT AND
CERTIFYING SETTLEMENT
CLASS, APPROVING CLASS
NOTICE, AND SETTING
SETTLEMENT HEARING**

As Modified By The Court

EXHIBIT A

1 The Court has received the Stipulation of Settlement dated May 16, 2014 that has been
2 entered into by Lead Plaintiff and Defendants and Amendment No. 1 to the Stipulation of
3 Settlement dated June 26, 2014. The Court has reviewed the Settlement and its attached exhibits,
4 and, good cause appearing,

5 IT IS HEREBY ORDERED AS FOLLOWS:

6 1. For purposes of this Order, capitalized terms are as defined in paragraph 18
7 below.

8 2. The Court hereby certifies the settlement class consisting of all Persons who
9 purchased or otherwise acquired NeurogesX Securities pursuant to the July 21, 2011 Private
10 Placement (the "Settlement Class"). Excluded from the Settlement Class are Defendants, the
11 officers and directors of NeurogesX, members of their immediate families and their legal
12 representatives, heirs, successors or assigns, and any entity in which any defendant has a
13 controlling interest. Also excluded from the Settlement Class are any Persons who exclude
14 themselves by submitting a valid request for exclusion in accordance with the requirements set
15 forth in the Notice. The Court certifies Lead Plaintiff as the class representative for the
16 Settlement Class and appoints Levi & Korsinsky LLP as Lead Counsel to the Settlement Class.
17 The certification of the Settlement Class, and appointments of the class representative and Lead
18 Counsel, shall be binding only with respect to the Settlement. If, for any reason, the Settlement
19 is terminated, or the Effective Date does not occur, the certification of the Settlement Class shall
20 automatically be vacated, and the Action shall proceed as though the Settlement Class had never
21 been certified.

22 3. The Court preliminarily approves the Settlement as falling within the range of
23 possible approval and meriting submission to the Settlement Class for consideration, pursuant to
24 Rule 23(e) of the Federal Rules of Civil Procedure.

25 4. The Court approves for distribution to potential members of the Settlement Class
26 the Notice substantially in the form of Exhibit A-1 to this order, and the Claim Form
27 substantially in the form of Exhibit A-2 to this order.
28

1 5. Lead Counsel shall distribute, by registered first class mail, the Notice and Claim
2 Form to all persons who purchased NeurogesX Securities pursuant to the July 21, 2011 Private
3 Placement. The deadline for mailing of the Notice shall be July 3, 2014. Lead Counsel shall file
4 with the Court and serve upon Counsel for Defendants no later than 28 calendar days prior to the
5 Final Approval Hearing an affidavit or declaration stating that the mailings have been completed
6 in accordance with the terms of this order.

7 6. The Court finds that dissemination of the Notice and Claim Form in the manner
8 required in paragraph 5 constitutes the best notice practicable under the circumstances to
9 potential members of the Settlement Class, and complies fully with Rule 23 of the Federal Rules
10 of Civil Procedure, Section 21D(a)(7) of the Securities Exchange Act of 1934 (as amended by
11 the Private Securities Litigation Reform Act of 1995, 15 U.S.C. § 78u-4(a)(7)), and the United
12 States Constitution.

13 7. The Final Approval Hearing will be held on September 2, 2014, at 2:00 p.m., in
14 the United States District Court for the Northern District of California, Oakland Division, 1301
15 Clay Street, Courtroom 1, 4th Floor, Oakland, California, at which the Court will determine: (1)
16 whether the Settlement should be approved as fair, reasonable, and adequate; (2) whether the
17 Judgment, substantially in the form attached as Exhibit B to the Settlement, should be entered;
18 (3) whether Lead Counsel's Plan of Allocation is fair, reasonable, and adequate; and (4) whether
19 the application of Lead Counsel for attorneys' fees and Litigation Expenses should be approved.
20 The Court may adjourn or continue the Final Approval Hearing without further notice to the
21 Settlement Class.

22 8. Any Settlement Class Member who objects to the Settlement, the Plan of
23 Allocation, or application of Lead Counsel for attorneys' fees and Litigation Expenses, shall have
24 a right to appear and be heard at the Final Approval Hearing. Any such person must file with the
25 Court and deliver to Lead Counsel and Defendants' Counsel a written notice of objection no later
26 than August 5, 2014. The manner by which a notice of objection should be prepared, filed, and
27 delivered shall be stated in the Notice. Only Settlement Class Members who have filed and
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1 delivered valid and timely written notices of objection will be entitled to be heard at the Final
2 Approval Hearing, unless the Court otherwise orders.

3 9. Any Settlement Class Member who wishes to participate in the Settlement Fund
4 must submit a valid and timely Claim Form to Lead Counsel. To be valid, a Claim Form must
5 include the information requested by the Claim Form. To be timely, the Claim Form must be
6 submitted no later than August 5, 2014. All Settlement Class Members who submit valid and
7 timely Claim Forms shall share in the distribution of the Settlement Fund. Settlement Class
8 Members who do not submit valid and timely Claim Forms shall be forever barred from
9 receiving any payments from the Settlement Fund, but will in all other respects be subject to and
10 bound by the provisions of the Settlement and Judgment, including the releases provided for in
11 the Settlement and Judgment.

12 10. Any person falling within the definition of the Settlement Class may, upon
13 request, be excluded from the Settlement. Any such person must file with the Court and submit
14 to Lead Counsel a request for exclusion no later than August 5, 2014. A request for exclusion
15 must state: (1) the name, address, and telephone number of the person requesting exclusion; and
16 (2) that the person wishes to be excluded from the Settlement Class. All persons who submit
17 valid and timely requests for exclusion in the manner set forth in this paragraph shall have no
18 rights under the Settlement, shall not share in the distribution of the Settlement Fund, and shall
19 not be bound by the Settlement or the Judgment. All persons falling within the definition of
20 Settlement Class who do not request exclusion in the manner set forth in this paragraph shall be
21 Settlement Class Members and shall be bound by the Settlement and Judgment. Lead Counsel
22 shall provide copies of any and all requests for exclusion to Counsel for Defendants within five
23 (5) calendar days of receipt by Lead Counsel, and in no event later than fourteen (14) calendar
24 days before the Final Approval Hearing.

25 11. Lead Counsel shall administer the Settlement Fund in accordance with paragraphs
26 6.1 through 6.5 of the Settlement. Under no circumstances shall Lead Counsel disburse any
27 portion of the Settlement Fund prior to the Effective Date without an order of the Court, except
28 as permitted by paragraph 6.5 of the Settlement.

1 12. Lead Counsel shall submit any applications it wishes to make for attorneys' fees
2 and Litigation Expenses on or before July 22, 2014. **Any opposition thereto shall be filed no**
3 **later than August 5, 2014.**

4 13. The Plan of Allocation and Lead Counsel's application for attorneys' fees and
5 Litigation Expenses will be considered separately from the fairness, reasonableness, and
6 adequacy of the Settlement. Any appeal from any orders relating solely to the Plan of Allocation
7 and/or to Lead Counsel's application for attorneys' fees and Litigation Expenses, or any reversal
8 or modification thereof, shall not operate to terminate or cancel the Settlement, or affect or delay
9 the finality of the Judgment.

10 14. All briefs supporting final approval of the Settlement shall be served and filed no
11 later than August 12, 2014.

12 15. All discovery and other proceedings in the Action are stayed until further order of
13 the Court, except as may be necessary to implement the Settlement or comply with its terms.
14 The class representative and the Settlement Class Members are barred from commencing or
15 prosecuting any direct or representative action asserting any of the Released Claims, unless and
16 until the Settlement is terminated according to its terms.

17 16. The Court may, for good cause, extend any of the deadlines set forth in this order
18 without further notice to the Settlement Class.

19 17. The Court will retain jurisdiction of this matter for one year following final
20 approval of the settlement.

21 18. The Court, for purposes of this order, adopts the following definitions:

22 a. "Action" means the lawsuit now pending in the United States District
23 Court for the Northern District of California under the caption *Maritime*
24 *Asset Management, LLC v. NeurogesX, Inc. et al.*, Case No. CV 12-05034-
25 YGR.

26 b. "Appeal" means any attempt to seek review of an order or the Judgment
27 including any motion to alter or amend under Rules 52(b) or 59(e) of the
28 Federal Rule of Civil Procedure, any appeal as of right, discretionary

1 appeal, interlocutory appeal, petition for writ of certiorari or other
2 proceeding involving writs of certiorari or mandamus, and any other
3 proceedings of like kind. Any appeal or other proceeding pertaining solely
4 to the Plan of Allocation or an application for attorneys' fees and expenses
5 shall not in any way delay or preclude occurrence of the Effective Date.

6 c. "Authorized Claimant" means any Settlement Class Member who has
7 submitted a timely and valid Claim Form and who is entitled to a
8 distribution from the Net Settlement Fund pursuant to the Plan of
9 Allocation or any order of the Court.

10 d. "Claim Form" means the Claim Form and Release (substantially in the
11 form of Exhibit A-2 to Exhibit A to the Settlement) that a Settlement Class
12 Member must complete and timely submit in accordance with the
13 instructions on the Claim Form if that Settlement Class Member seeks to
14 be potentially eligible to share in a distribution of the Net Settlement
15 Fund.

16 e. "Defendants" means NeurogesX, Anthony A. DiTonno, Stephen F.
17 Ghiglieri, and Jeffrey K. Tobias, M.D.

18 f. "Defendants' Counsel" means the law firms of Morrison & Foerster LLP
19 and Cooley LLP.

20 g. "Effective Date" means the first date by which all of the following events
21 have occurred: (1) Lead Counsel and Defendants' Counsel have executed
22 the Settlement; (2) the Court has entered this Order Preliminarily
23 Approving Settlement and Certifying Settlement Class, Approving Class
24 Notice, and Setting Settlement Hearing; (3) the payment provided for in
25 paragraph 5.1 of the Settlement has been made to Lead Counsel for the
26 benefit of Settlement Class Members; (4) NeurogesX has not notified
27 Lead Counsel of its election to terminate the Settlement pursuant to ¶15.2
28 of the Settlement and the provisions of the Supplemental Agreement, or, if

1 such election has been made, the resulting termination has been withdrawn
2 pursuant to the terms of the Supplemental Agreement; (5) the Court has
3 entered the Judgment; (6) no Settling Party has given notice of its election
4 to terminate the Settlement pursuant to ¶15.1 of the Settlement, and the
5 time for doing so has expired; (7) the time to Appeal from the Judgment
6 has expired; and (8) if any Appeal is taken from the Judgment, the Appeal
7 has either been dismissed or has resulted in affirmance of the Judgment.

8 h. “Final Approval Hearing” means the hearing set by the Court for
9 September 2, 2014 at 2:00 p.m. under Rule 23(e) of the Federal Rules of
10 Civil Procedure to consider final approval of the Settlement.

11 i. “Judgment” means the Final Judgment and Order of Dismissal with
12 Prejudice to be entered after the Final Approval Hearing if the Settlement
13 is approved.

14 j. “Lead Counsel” means the law firm of Levi & Korsinsky LLP.

15 k. “Lead Plaintiff” means Maritime Asset Management, LLC.

16 l. “Litigation Expenses” means the reasonable costs and expenses incurred
17 by Lead Counsel in connection with commencing and prosecuting this
18 action. Litigation Expenses may also include reimbursement of Lead
19 Plaintiff’s expenses in accordance with 15 U.S.C. § 78u-4(a)(4).

20 m. “Net Settlement Fund” means the Settlement Fund less: (i) any taxes; (ii)
21 any notice and administration costs; (iii) any Litigation Expenses awarded
22 by the Court; (iv) any attorneys’ fees awarded by the Court; and (v) other
23 costs, expenses or amounts as may be approved by the Court.

24 n. “NeurogesX” means NeurogesX, Inc.

25 o. “NeurogesX Securities” means NeurogesX’s common stock and/or
26 warrants to purchase NeurogesX’s common stock.

27 p. “Notice” means the letter from Lead Counsel describing the terms of the
28 Settlement and the procedures for presenting the Settlement for the

1 approval of the Court and for requesting exclusion from the Settlement
2 Class or for submitting a Claim (substantially in the form of Exhibit A-1 to
3 Exhibit A of the Settlement).

4 q. “Person” means an individual, corporation, limited liability company,
5 professional corporation, partnership, domestic partnership, limited
6 partnership, limited liability partnership, marital community, association,
7 joint stock company, joint venture, joint venturer, estate, legal
8 representative, trust or trustee, unincorporated association, government or
9 any political subdivision or agency thereof, or any other business or legal
10 entity.

11 r. “Plan of Allocation” means the plan for allocation of the Net Settlement
12 Fund on a pro rata basis based on the ratio of (i) the purchase price paid by
13 each Authorized Claimant to purchase shares in the Private Placement to
14 (ii) the total purchase price paid by all Authorized Claimants, or such other
15 plan of allocation as the Court shall approve.

16 s. “Private Placement” means the transaction described in the Securities
17 Purchase Agreement dated July 21, 2011 between NeurogesX and the
18 purchasers identified on the signature pages attached to that agreement.

19 t. “Released Claims” means all claims, demands, rights, liabilities, suits,
20 debts, obligations, and causes of action, of every nature and description
21 whatsoever, whether known or unknown, contingent or absolute, mature
22 or unmature, discovered or undiscovered, liquidated or unliquidated,
23 accrued or unaccrued, including those that are concealed or hidden,
24 regardless of legal or equitable theory, that have been, could have been, or
25 in the future might be asserted based upon, arising out of, or in any way
26 relating to: (i) any purchase or sale by any Settlement Class member of
27 NeurogesX Securities; (ii) any act, failure to act, omission,
28 misrepresentation, fact, event, transaction, occurrence, or other matter set

1 forth, alleged, underlying, or otherwise referred to in the Action or that
2 could have been alleged in the Action; or (iii) the subject matter of the
3 Action. Notwithstanding the foregoing, “Released Claims” does not
4 include claims relating to the enforcement of the Settlement.

5 u. “Request for Exclusion” means a request by a Member of the Settlement
6 Class to be excluded from participating in the Settlement, submitted in
7 accordance with the requirements set out in the Notice or otherwise
8 accepted by the Court.

9 v. “Settlement” means the Stipulation of Settlement executed by Lead
10 Plaintiff and Defendants on May 16, 2014, including any amendment to
11 that agreement made in a writing signed by or on behalf of all Settling
12 Parties.

13 w. “Settlement Class” means all Persons who purchased or otherwise
14 acquired NeurogesX Securities pursuant to the July 21, 2011 Private
15 Placement. Excluded from the Settlement Class are Defendants, the
16 officers and directors of NeurogesX, members of their immediate families
17 and their legal representatives, heirs, successors or assigns, and any entity
18 in which any Defendant has a controlling interest. Also excluded from the
19 Settlement Class are any Persons who otherwise satisfy the above
20 requirements for membership in the Settlement Class, but who exclude
21 themselves by submitting a valid Request for Exclusion.

22 x. “Settlement Class Member” means a Person who falls within the
23 definition of the Settlement Class.

24 y. “Settlement Fund” means the sum of up to One Million Two Hundred
25 Fifty Thousand United States dollars (\$1,250,000) in cash, which
26 Defendants shall cause to be paid to Lead Counsel, to be held for the
27 benefit of Settlement Class Members, within fourteen (14) business days
28 after entry of the Judgment, plus all interest and income earned thereon.

1 z. "Supplemental Agreement" means the Supplemental Agreement regarding
2 the Opt-Out Threshold to be signed by the Settling Parties in connection
3 with the Settlement.
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7 IT IS SO ORDERED.

8 DATED: June 27, 2014

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10 THE HONORABLE YVONNE GONZALEZ ROGERS
11 UNITED STATES DISTRICT COURT JUDGE
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