

**IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI  
AT INDEPENDENCE**

<b>JOANNE MILLER, on behalf of herself</b>	)	
<b>And all others similarly situated,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	<b>Case No. 1616-CV06264</b>
<b>v.</b>	)	
	)	<b>Division No. 12</b>
<b>TELEBRANDS CORP.,</b>	)	
	)	
<b>Defendant.</b>	)	

**SETTLEMENT AGREEMENT**

This Settlement Agreement (the “Settlement Agreement”) is made by and between Plaintiff Joanne M. Miller (“Plaintiff”), on behalf of herself and the Settlement Class (defined below), on the one hand, and Defendant Telebrands Corporation (“Telebrands” or “Defendant”), on the other hand, subject to and conditioned upon Court approval of the terms and conditions hereof.

**RECITALS**

A. On March 14, 2016, Plaintiff commenced a putative class action against Telebrands titled *Joanne Miller, on behalf of herself and all others similarly situated, v. Telebrands Corp.*, in the Circuit Court of Jackson County, Missouri at Independence, Case No. 1616-CV06264 (the “Action”).

B. In Count I of her First Amended Class Action Petition, Plaintiff asserts a claim against Telebrands under the Missouri Merchandising Practices Act, Mo. Rev. Stat. § 407.010 *et seq.*, (the “MMPA”). Plaintiff alleges that Defendant made false and misleading statements in connection with the marketing and sale of Amish Secret Handmade Wood Polish (“Amish Secret”), including numerous misrepresentations of product quality, superiority and effectiveness. Plaintiff seeks to represent a class of Missouri consumers who purchased Amish Secret after January 1, 2014.

C. Plaintiff also has asserted a product liability claim in Count II of her First Amended Class Action Petition, which is asserted only in her individual capacity, for which Plaintiff does not seek class certification, and which is the subject of a separate confidential

agreement between the Parties (defined below).

D. On June 20, 2016, Telebrands filed its answer to Plaintiff's First Amended Class Action Petition in which it denies the material allegations made in the Action, denies any and all liability with respect to all facts and claims alleged therein, and further denies that any of the Settlement Class Members (defined below) or anyone else has suffered any harm or damage or is entitled to any monetary, injunctive, or other relief whatsoever in connection with the Action. Telebrands' answer sets forth twenty (20) separate affirmative defenses to bar or limit Plaintiff's claims.

E. Plaintiff's Counsel (defined below) has conducted a thorough examination and investigation into the factual and legal issues presented in this Action, including, but not limited to, investigating other complaints about and proceedings regarding Amish Secret, reviewing thousands of documents produced by Telebrands, and evaluating the strength of Plaintiff's claim under the Missouri Merchandising Practices Act and the governing legal standards. Plaintiff and Plaintiff's Counsel have evaluated the merits of the contentions of all Parties and have evaluated the settlement terms and conditions memorialized in this Settlement Agreement (the "Settlement"). Plaintiff and Plaintiff's Counsel, after taking into account the risks and costs of further litigation, have concluded that the terms and conditions of the Settlement are fair, reasonable, and adequate, and that this Settlement is in the best interest of the Settlement Class Members. In doing so, Plaintiff and Plaintiff's Counsel have considered and evaluated the numerous risks of continued litigation and other factors, including but not limited to the following: (1) the expense and length of time necessary to prosecute the Action through trial and any subsequent appeals; (2) the uncertainty of the outcome at trial and the possibility of an appeal by either side following the trial; (3) the possibility that a contested class might not be certified, and if certified, the possibility that such certification might be reversed on appeal; (4) the possibility that Telebrands might prevail on a dispositive motion challenging some or all of Plaintiff's claims prior to trial; and (5) the substantial benefits that are being made available to Plaintiff and the Settlement Class Members under the terms of this Settlement Agreement.

F. Telebrands, while continuing to deny all allegations of wrongdoing and disclaiming all liability with respect to all claims asserted in the Action, considers it desirable to resolve the Action on the terms and conditions of the Settlement stated in this Settlement Agreement in order to avoid further expense, inconvenience, risk, uncertainty, and burden

resulting from continued litigation and, therefore, has determined that the Settlement is in its best interests. Telebrands' execution of this Settlement Agreement is not, and shall not be construed as, an admission by Telebrands or deemed to be evidence of: (a) the validity of any of the claims made by the Class Representative on behalf of herself and the Class Members, or of any liability to Class Representatives or any Class Members; (b) that Telebrands has violated the Missouri Merchandising Practices Act, Mo. Rev. Stat. § 407.010 et seq.; or (c) that this Action is properly maintained as a class action.

G. Telebrands and Plaintiff, on behalf of herself and the other Settlement Class Members, along with Plaintiff's Counsel and Defendant's Counsel, negotiated and reached this Settlement after extensive review of the underlying facts and law, exchange of relevant information, and extensive and vigorous arm's length, good-faith negotiations, including an eight-hour mediation conference conducted with the assistance of independent mediator John R. Phillips of the Husch Blackwell law firm in Kansas City, Missouri.

H. This Settlement Agreement reflects a compromise between the Parties and shall in no event be construed as or be deemed an admission or concession by any Party of the truth of any allegation or the validity of any purported claim or defense asserted in any of the pleadings in the Action, or of any fault on the part of Telebrands, and all such allegations expressly are denied.

I. Given all of the above, and considering the risks and uncertainties of continued litigation and all factors bearing on the merits of settlement, the Parties are satisfied that the terms and conditions of this Settlement Agreement are fair, reasonable, adequate, and in their respective best interests.

J. In consideration of the covenants and agreements set forth herein, and of the releases and dismissals of claims as described below, and of other good and valuable consideration, the receipt and sufficiency of which hereby is acknowledged by each of the Parties, it is hereby stipulated and agreed by and between Plaintiff, on behalf of herself and the Settlement Class Members, and Telebrands that the Parties shall enter into the Settlement described herein, subject to Court approval as required by Missouri Rule of Civil Procedure 52.08, under the following terms and conditions:

### **I. DEFINITIONS**

As used in this Settlement Agreement and the annexed exhibits (which are an integral

part of this Settlement Agreement and are incorporated in their entirety by reference), the terms and phrases below have the following meanings, unless a section or subsection of this Settlement Agreement or its exhibits provides otherwise. Unless otherwise indicated, all defined terms include the plural as well as the singular.

1.1 “Action” means the putative class action lawsuit titled *Joanne Miller, on behalf of herself and all others similarly situated v. Telebrands Corp.*, Case No. 1616-CV06264, pending in the Circuit Court of Jackson County, Missouri, at Independence.

1.2 “Claim” means a claim for benefits under this Settlement Agreement.

1.3 “Claimant” means a Settlement Class Member who submits a Claim for benefits as described in Section II of this Settlement Agreement.

1.4 “Claim Determination Date” means thirty (30) calendar days after the Claims Deadline or thirty (30) calendar days after the Final Settlement Approval Date, whichever occurs later.

1.5 “Claim Form” means the document to be submitted by Settlement Class Members who want to submit a claim for benefits pursuant to this Settlement Agreement. The Claim Form will be available online at the Settlement Website and will be substantially the same as Exhibit A.

1.6 “Claim Payment Deadline” means thirty (30) calendar days after the Claim Determination Date, and is the date by which the Settlement Administrator will pay or fulfill all valid and approved Claims in accordance with the terms of this Settlement Agreement.

1.7 “Claims Deadline” means the final date and time by which a Claim Form must be postmarked or made online in order for a Settlement Class Member to be eligible for any of the Settlement benefits that are to be paid or provided from the Settlement Fund, as contemplated in this Settlement Agreement. The Claims Deadline shall be set by the Court in the Preliminary Approval Order. The Parties will request that the Claims Deadline be 60 days after the Notice Date.

1.8 “Class Counsel” and “Plaintiff’s Counsel” means the law firm of Shank & Moore, LLC.

1.9 “Class Notice” means the Court-approved “Notice of Class Action Settlement” to be published and communicated per the Notice Plan, attached as Exhibit D, in the form of Long Form Notice attached as Exhibit B and Short Form Notice attached as Exhibit C.

1.10 “Class Representative” means Plaintiff Joanne M. Miller.

1.11 “Court” means the Circuit Court of Jackson County, Missouri, at Independence.

1.12 “Defendant’s Counsel” means the law firm(s) of Sandberg Phoenix & von Gontard, P.C., and Beshada Farnese LLP.

1.13 “Fairness Hearing” means the hearing that is to take place after entry of the Preliminary Approval Order and at least 75 days after the Notice Date for purposes of, among other things: (a) determining the fairness, adequacy, and reasonableness of the Settlement Agreement; and (b) ruling upon an application by Class Counsel for a Fee and Expense Award and Plaintiff’s Incentive Award.

1.14 “Fee and Expense Award” means the amount awarded to Plaintiff’s Counsel by the Court for attorneys’ fees, costs, and expenses concerning Plaintiff’s Counsel’s work on behalf of Plaintiff and the Settlement Class relating to the Action, including but not limited to activities related to the Settlement and Settlement Agreement, which will be paid by Telebrands and distributed to Plaintiff’s Counsel as set forth in paragraphs 2.3(a) and 3.1 below. This amount shall not exceed one hundred ten thousand dollars (\$110,000.00).

1.15 “Final Order and Judgment” means the final order and final judgment entered by the Court approving this Settlement Agreement as binding upon the Parties and the Settlement Class Members, setting and awarding the amounts for the Fee and Expense Award and Incentive Awards pursuant to Section III of the Settlement Agreement, and dismissing the Action with prejudice. The Final Order and Judgment shall constitute a final judgment within the meaning and for purposes of Rule 74.01 of the Missouri Rules of Civil Procedure. The Parties jointly shall request the Court to enter the proposed Final Order and Judgment substantially in the form attached hereto and made a part hereof as Exhibit F, subject to further revisions or modifications as future circumstances may warrant.

1.16 “Final Settlement Approval Date” means the date that is forty (40) days after the Court’s entry of the Final Order and Judgment, without any appeal being taken, or, if an appeal or request for review has been taken, the date on which the Final Order and Judgment has been affirmed by the court of last resort to which an appeal or request for review has been taken and such affirmance is no longer subject to further appeal or review, or the date of denial of review after exhaustion of all appellate remedies.

1.17 “Incentive Award” means any incentive award approved by the Court, as set forth

in paragraph 3.2, after application by Plaintiff, that is payable to Plaintiff in recognition of the time and effort he expended in pursuing this Action and in fulfilling his obligations and responsibilities as class representative in this Action, and of the risks taken by him on behalf of the Settlement Class, and of the benefits conferred on all Settlement Class Members by the Settlement.

1.18 “Long Form Notice” means the notice approved by the Court substantially in the form attached hereto as Exhibit B.

1.19 “Notice and Settlement Administration Costs” means all costs and expenses actually incurred by the Settlement Administrator relating to (i) publication of Class Notice and handling of the notification duties imposed by Mo. R. Civ. P. 52.08(c)(2), in accordance with the Notice Plan; (ii) establishment of the Settlement Website; (iii) processing, review, payment, and handling of all Claims; and (iv) all other activities relating to the administration of the Settlement, as set forth in this Settlement Agreement, or as otherwise reasonably necessary to administer the Settlement.

1.20 “Notice Date” means thirty (30) days after the Preliminary Approval Date.

1.21 “Notice Plan” means the Settlement Administrator’s plan to disseminate Class Notice to Settlement Class Members, attached as Exhibit D.

1.22 “Objection” is the written communication that a Settlement Class Member may file with the Court in order to object to this Agreement as provided for in Paragraph 5.3 of this Settlement Agreement.

1.23 “Objection Deadline” means the date, to be set by the Court, by which Settlement Class Members must file objections, if any, to the Settlement Agreement in accordance with Paragraph 5.3 of this Settlement Agreement. The Parties shall request that the Court set an Objection Deadline coinciding with the Opt-Out Date.

1.24 “Opt-Out Date” means the date, to be set by the Court, by which a Request for Exclusion must be sent to the Settlement Administrator for a Class Member to be excluded from the Settlement Class as set forth in Paragraph 5.3 of this Settlement Agreement. The Parties shall request that the Court set an Opt-Out Date coinciding with the Objection Deadline.

1.25 “Parties” means Joanne M. Miller on the one hand, and Telebrands Corp. on the other hand.

1.26 “Plaintiff” means Plaintiff Joanne M. Miller.

1.27 “Preliminary Approval” means that the Court has entered an order preliminarily approving the terms and conditions of the Settlement as set forth in this Settlement Agreement, including the manner of providing the Class Notice to the Settlement Class Members.

1.28 “Preliminary Approval Date” means the date on which the Court enters an order granting Preliminary Approval.

1.29 “Preliminary Approval Order” means the Court’s order preliminarily approving the Settlement Agreement, approving the Notice Plan, and conditionally certifying the Settlement Class.

1.30 “Publication Notice” means publication of the Short Form Notice to be published in the Kansas City Star, Springfield News-Leader, and St. Louis Post-Dispatch as set forth in the Notice Plan.

1.31 “Released Claims” means the claims released by the Settlement Class Members, as described in Paragraph 6.1 below, who do not submit a valid Request for Exclusion.

1.32 “Released Persons” means Telebrands; all of Telebrands’ past and present respective parents, subsidiaries, divisions, affiliates, persons and entities directly or indirectly under its or their control in the past or in the present; Telebrands’ respective assignors, predecessors, successors, and assigns; and all past or present partners, shareholders, managers, members, directors, officers, employees, agents, attorneys, insurers, accountants, and representatives of any and all of the foregoing, including but not limited to the manufacturers (including Neutraderm, Inc.), retailers, suppliers, distributors, endorsers, consultants, and any and all entities or persons upstream or downstream in the production/distribution channels of the products of such persons or entities.

1.33 “Request for Exclusion” means the written communication that must be sent to the Settlement Administrator and postmarked on or before the Opt-Out Date by a Settlement Class Member who wishes to be excluded from the Settlement Class.

1.34 “Settlement Administrator” or “Claims Administrator” means Digital Settlement Group, LLC (or “DSG”), and its successors, assigns, agents and subcontractors, or any other entity approved by the Court to handle (i) publication of Class Notice and the notification duties imposed by Mo. R. Civ. P. 52.08(c)(2), in accordance with the Notice Plan; (ii) establishment of the Settlement Website; (iii) processing, review, payment, and handling of all Claims; and (iv)

all other activities relating to the administration of the Settlement, as set forth in this Settlement Agreement.

1.35 “Settlement Agreement” shall mean this Settlement Agreement, including all exhibits referenced herein.

1.36 “Settlement Class Members” or “Settlement Class” means:

All consumers who, at any time from January 1, 2014 to December 31, 2016 purchased Amish Secret Handmade Wood Polish in the State of Missouri for personal, household or family purposes. Excluded from the Class are (1) Defendant, subsidiaries and affiliates of Defendant, directors and officers of Defendant and members of their immediate families; (2) federal, state, and local governmental entities; and (3) any judicial officers presiding over this action, their judicial staff, and members of their immediate families.

1.37 “Settlement Class Period” or “Class Period” means the period of time from and including January 1, 2014 through and including December 31, 2016.

1.38 “Settlement Website” means a website established, operated, and maintained by the Settlement Administrator solely for purposes of making available to the Settlement Class Members the documents, information, and online claims submission process referenced in Section IV below.

1.39 “Short Form Notice” means the Court-approved form of notice for publication to Settlement Class Members, pursuant to the Notice Plan, in substantially the same form as Exhibit C.

## **II. SETTLEMENT CONSIDERATION**

2.1 Class Benefits. In full, complete, and final settlement and satisfaction of the Action and all Released Claims, and subject to all of the terms, conditions, and provisions of this Settlement Agreement, Telebrands agrees to provide the following consideration to Settlement Class Members who follow the procedures set forth in Paragraph 2.4 of this Settlement Agreement and submit a valid and timely Claim Form to the Class Action Administrator:

(a) For those Settlement Class Members who present a Claim Form with a valid receipt for the purchase of Amish Secret, \$10.00 per bottle as reflected on the receipt.

(b) For those Settlement Class Members who do not have a receipt but who submit a Claim Form, under penalty of perjury, providing certain limited information about his/her purchase to the administrator, \$5.00, irrespective of how many units of



Amish Secret the Settlement Class Member claims to have purchased.

(c) A credit card statement will not be considered a valid receipt.

(d) There will be a limit of one (1) Claim per household.

2.2 Notice and Settlement Administration Costs. Telebrands will pay all of the expenses and costs of the Settlement Administrator, including all costs for notice to the class.

2.3 Fee and Expense Award and Incentive Award.

a. *Payment of Fee and Expense Award.* By no later than fifteen (15) calendar days after the Final Settlement Approval Date, Telebrands will pay by wire transfer to Plaintiff's Counsel an amount equal to the Fee and Expense Award, as ordered by the Court pursuant to paragraph 3.1 below.

b. *Payment of Incentive Award.* By no later than fifteen (15) calendar days after the Final Settlement Approval Date, Telebrands will pay by wire transfer to Plaintiff's Counsel an amount equal to the Incentive Award, as ordered by the Court pursuant to paragraph 3.2 below. Plaintiff's Counsel shall promptly remit the Incentive Award to Plaintiff.

2.4 Claims Procedures. Each Settlement Class Member shall be eligible to file a Claim that will, if valid, entitle him or her to the benefits described in Paragraph 2.1 of this Settlement Agreement. To be eligible to receive relief under the Settlement Agreement, Settlement Class Members must submit a claim to the Settlement Administrator by completing and certifying the online Claim Form on the Settlement Website or completing, certifying and mailing the Claim Form to the Settlement Administrator. The Claim Form must be submitted online or postmarked no later than the Claim Deadline. Claim Forms submitted or postmarked after the Claim Deadline shall be denied by the Settlement Administrator and Telebrands will not be obligated to make any payment on such claims. Cash Claims will be paid on or before the Claim Payment Deadline. Checks shall be valid for one hundred twenty (120) calendar days from their issue date.

2.5 Review of Claims. The Settlement Administrator shall be responsible for reviewing all Claims to determine their validity. The Settlement Administrator shall have the discretion to review Claims with the objectives of efficiency and effecting substantial justice to the Parties and Settlement Class Members and in exercising that discretion, the Settlement Administrator shall have complete and final authority to determine the reasonableness of expenses and to adjust the Claims made. The Settlement Administrator shall reject any Claim

that does not comply in any material respect with the instructions on the Claim Form or the terms of this Settlement Agreement, or that is submitted after the Claim Submission Deadline. Any claims submitted to the Settlement Administrator after the Claim Submission Deadline shall be forever barred, unless otherwise permitted by the Court.

### **III. FEE AND EXPENSE AWARD AND INCENTIVE AWARD**

3.1 Fee and Expense Award. Plaintiff's Counsel will petition the Court for an award of attorneys' fees, costs, and expenses to be paid from the Settlement Fund. Plaintiff's Counsel agree that they will not seek more than a cumulative total of one hundred ten thousand dollars (\$110,000.00) in fees, costs, and expenses, and Telebrands agrees that it will not object to an application submitted by Plaintiff's Counsel to the Court seeking an award of attorneys' fees, costs, and expenses that does not exceed this amount. To the extent approved and ordered by the Court, the Fee and Expense Award will be paid to Plaintiff's Counsel by wire transfer, as described in paragraph 2.3(a) above.

3.2 Incentive Award. Plaintiff's Counsel will petition the Court for an incentive award to be paid to Plaintiff as Class Representative. Telebrands agrees that it will not object to an application submitted by Plaintiff's Counsel to the Court seeking an award of such incentive payment not to exceed five thousand dollars (\$5,000.00) to Plaintiff. To the extent approved and ordered by the Court, the Incentive Award will be paid to Plaintiff, as described in paragraph 2.3(b) above.

### **IV. NOTICE TO CLASS AND ADMINISTRATION OF SETTLEMENT**

4.1 Class Notice. The Class Notice shall conform to all applicable requirements of the Missouri Rules of Civil Procedure and any other applicable law, and shall otherwise be in the manner and form agreed upon by the Parties and approved by the Court.

4.2 General Notice Terms. The Class Notice will:

a. inform Settlement Class Members that, if they do not exclude themselves from the Settlement Class, they may be eligible to receive the relief to be provided under the proposed Settlement set forth in this Settlement Agreement;

b. contain a short, plain statement of the background of the Action, the Settlement Class certification for settlement purposes and the proposed Settlement Agreement;

c. describe the proposed settlement relief outlined in this Settlement Agreement;

d. state that any relief to Settlement Class Members is contingent on the Court's final approval of the Settlement; and

e. Inform Settlement Class Members of the date and time set for the Fairness Hearing, the location of the Fairness Hearing, and the procedures for attendance at the Fairness Hearing.

4.3 Notice of Exclusion and Objection Rights. The Class Notice will inform Settlement Class Members of their rights to exclude themselves from the Settlement Class or to object to the Settlement and the procedures and time limits for doing so, as described in paragraph 5.3 below.

4.4 Manner of Providing Class Notice. The Class Notice will be provided as set forth in the Notice Plan, attached hereto as Exhibit D.

4.5 Responsibilities of Settlement Administrator. Plaintiff's Counsel has retained the Settlement Administrator to help implement the terms of this Settlement Agreement. The Settlement Administrator shall be responsible for handling publication of the Class Notice and all notification duties imposed by Mo. R. Civ. P. 52.08(c)(2), establishment of the Settlement Website, the processing, review, payment, and all other activities relating to the administration of all Claims made by Claimants pursuant to the Settlement Agreement, as well as all other administrative tasks, including, without limitation: (a) arranging, as set forth in the Notice Plan (Exhibit D), for distribution of the Long-Form Class Notice (in the form set forth in Exhibit B), the Short Form Notice (in the form set forth in Exhibit C), and the Claim Forms (in the form set forth in Exhibit A) to Settlement Class Members using the most cost-effective means available; (b) making any mailings to Settlement Class Members required under the terms of this Settlement Agreement; (c) answering written inquiries from Settlement Class Members; (d) receiving and maintaining on behalf of the Court and the Parties any Settlement Class Member correspondence regarding Requests for Exclusion from the Settlement; (e) establishing the Settlement Website that posts the Class Notice and other notices, Claim Forms, and other related documents; (f) receiving, reviewing, approving, and otherwise processing Claims and distributing cash payments to Claimants; (g) communicating with and reporting to Plaintiff's Counsel and Defendant's Counsel; and (h) otherwise assisting with implementation and administration of the terms of the Settlement Agreement.

## V. CLASS SETTLEMENT PROCEDURES

5.1 Settlement Approval. As soon as practicable after the signing of this Settlement Agreement, Plaintiff shall move the Court for a Preliminary Approval Order, substantially in the form as that attached hereto as Exhibit E, for the purpose of, among other things: (a) conditionally certifying the Settlement Class, conditionally appointing Joanne M. Miller as the Class Representative of the Settlement Class and Shank & Moore, LLC as Class Counsel; (b) pending the Fairness Hearing, staying all proceedings in this Action, other than those necessary to carry out or enforce the terms of this Settlement Agreement and the Preliminary Approval Order; (c) preliminarily approving the terms and conditions of this Settlement Agreement as fair, reasonable, and adequate and in the best interests of the Settlement Class Members such that Class Notice should be provided; (d) appointing Digital Settlement Group, LLC (or “DSG”) as Settlement Administrator; (e) determining that notice of the Settlement Agreement and of the Fairness Hearing, as set forth in this Settlement Agreement, constitutes the best method of notice practicable under the circumstances, constitutes due and sufficient notice to all persons entitled thereto, and complies with all legal requirements, including Missouri Supreme Court Rule 52.08; (f) approving the form of Class Notice and directing that Class Notice shall be given to the Settlement Class Members as described in Section IV above; (g) providing that Settlement Class Members will have until the Claims Deadline to submit a Claim Form; (h) establishing procedures and deadlines for Settlement Class Members to submit Objections and Requests for Exclusion; (i) establishing the dates by which the Parties shall file and serve all papers in support of the application for final approval of the Settlement Agreement and/or in response to any valid and timely objections; (j) directing the Parties, pursuant to the terms and conditions of this Settlement Agreement, to take all necessary and appropriate steps to establish the terms and conditions of this Settlement Agreement and the Preliminary Approval Order; and (k) scheduling the Fairness Hearing on a date ordered by the Court, which the Parties shall request to be at least 75 calendar days after the Notice Date, to determine whether the Settlement Agreement should be approved as fair, reasonable and adequate, for purposes of Missouri Rule of Civil Procedure 52.08(e), to rule on any objections to the Settlement, to determine whether a Final Order and Judgment should be entered, and to determine whether attorneys’ fees, costs, and expenses, and an incentive award should be granted.

5.2 Final Approval Order and Judgment. At least seven (7) days before the Fairness Hearing, Plaintiff shall move the Court for entry of a Final Order and Judgment, substantially in the form as that attached hereto and made a part hereof as Exhibit F, subject to further revisions or modifications as future circumstances may warrant, granting final approval of this Settlement and holding this Settlement Agreement to be fair, reasonable, and adequate and in the best interests of the Settlement Class Members, and binding (as of the Final Settlement Approval Date) on all Settlement Class Members who have not excluded themselves as provided below; ordering that the Settlement relief be provided as set forth in this Settlement Agreement, ordering the releases as set forth in Section VI below to be effective on the Final Settlement Approval Date, and entering final judgment in the Action.

5.3 Exclusions and Objections. The Class Notice shall advise all Settlement Class Members of their right: (a) to be excluded from the Settlement; and (b) to object to the Settlement. If any Settlement Class Member wishes to be excluded from the Settlement, he or she must mail a valid Request for Exclusion, as described in the Class Notice, by the Opt-Out Date, that is, within forty-five (45) calendar days after the Notice Date. Any Settlement Class Member who timely elects to opt out of the Settlement shall not be permitted to object to the Settlement. Persons falling within the definition of the Settlement Class who validly and timely request exclusion from the Settlement effected by this Settlement Agreement, pursuant to the procedures set forth in this paragraph 5.3, shall not be Settlement Class Members, shall not be bound by this Settlement Agreement, and shall not be eligible to make a claim for any benefit under the terms of this Settlement Agreement. At least seven (7) calendar days prior to the Fairness Hearing, the Settlement Administrator shall prepare a report identifying the persons who have excluded themselves in a valid and timely manner from the Settlement Class (the “Opt-Outs”), and provide such report to Plaintiff’s Counsel, Defendant’s Counsel, and the Court.

If any Settlement Class Member wishes to object to the Settlement and/or to be heard, he or she will have forty-five (45) calendar days from the Notice Date to file with the Court a written Objection. Such written notice shall include: (i) the name, address, and telephone number of the Settlement Class Member; (ii) information sufficient to identify the case and demonstrate membership in the Settlement Class; (iii) the specific grounds for each objection asserted, with any legal support, papers, briefs, or evidence the person wishes to bring to the Court’s attention; and (iv) a statement indicating whether the Settlement Class Member intends

to appear at the hearing to consider final approval of the Settlement, either in person or through counsel. The written Objection must be personally signed by the Settlement Class Member and must be mailed to Plaintiff's Counsel and Defendant's Counsel at the same time it is filed with the Court.

If a Settlement Class Member objecting to the Settlement retains an attorney to represent him or her for the purposes of making an objection, the attorney must formally enter his or her appearance in the case within fifty-two (52) calendar days after the Notice Date.

Any Settlement Class Member wishing to appear at the hearing to consider final approval of the Settlement, either in person or through counsel, must file a notice of intention to appear with the Court as described in the Class Notice, and serve the notice upon Plaintiff's Counsel and Defendant's Counsel at the same time it is filed with the Court.

5.4 Stay of the Action. The Parties shall request that the Court, in connection with Preliminary Approval, issue an immediate stay of the Action except to the extent necessary to effectuate this Settlement Agreement, unless and until this Settlement Agreement is terminated pursuant to its terms and conditions. Until the Preliminary Approval Order is entered by the Court, including the stay of proceedings in the form contained therein, the Parties agree not to pursue discovery, and shall not in any way subsequently argue that another Party has failed to comply with suspended discovery obligations because of the suspension of discovery efforts pursuant to this Paragraph. Following Preliminary Approval, all activity in the Action shall be stayed except to the extent necessary to carry out or enforce the terms and conditions of this Settlement Agreement and the Preliminary Approval Order.

5.5 Effect if Settlement Not Approved. This Settlement Agreement was entered into only for purposes of settlement, subject to and without waiver of the Parties' respective rights. In the event that the Court fails to enter the order granting Preliminary Approval or fails to grant Final Approval, or in the event the Final Settlement Approval Date does not occur, Plaintiff's Counsel and Defendant's Counsel shall endeavor, consistent with the Settlement Agreement, to cure any defect identified by the Court. In the event that the Settlement Agreement is terminated for any reason, Final Approval does not occur for any reason, or the Final Settlement Approval Date does not occur, then, except as set forth in paragraph 2.3, no term or condition of the Settlement Agreement, or any draft thereof, or any discussion, negotiation, documentation, or other part or aspect of the Parties' settlement discussions shall have any effect, nor shall any such

matter be admissible in evidence for any purpose in the Action, or in any other proceeding, and the Parties shall be restored to their respective positions immediately preceding execution of this Settlement Agreement. The Parties agree that all drafts, discussions, negotiations, documentation or other information prepared in relation to the Settlement Agreement and the Parties' settlement discussions shall be treated as strictly confidential and may not be disclosed to any person other than the Parties' counsel, and only for purposes of the Action. Telebrands' rights with respect to class certification expressly are reserved and preserved.

5.6 Not Effective Until Signed. The Settlement Agreement shall have no effect unless and until this Settlement Agreement is fully executed by all Parties.

## **VI. RELEASES**

6.1 Release by Settlement Class Members. Effective as of the Final Settlement Approval Date, each Settlement Class Member (except any such person who has filed a proper and timely Request For Exclusion) shall release and forever discharge, and shall be forever barred from asserting, instituting, or maintaining against any or all of the Released Persons, any and all claims, demands, actions, causes of action, lawsuits, arbitrations, damages, or liabilities of any nature whatsoever, known or unknown, actual or potential, direct or indirect, whether legal, equitable or otherwise, arising from, relating to or regarding this Action or the marketing, advertising or sale of Amish Secret Handmade Wood Polish or relating to the Settlement Class Member's purchase or use of Amish Secret Handmade Wood Polish. Each term of this paragraph 6.1 shall inure to the benefit of each and all of the Released Persons, and each and all of their respective successors and personal representatives, which persons and entities are intended to be beneficiaries of this paragraph 6.1.

6.2 Class Enjoined. Effective as of the Final Settlement Approval Date, each Settlement Class Member (except any such person who has filed a proper and timely Request For Exclusion) will be forever barred and permanently enjoined from directly, indirectly, representatively or in any other capacity, filing, commencing, prosecuting, continuing, litigating, intervening in, participating in as class members or otherwise, or receiving any benefits or other relief from any other lawsuit, any other arbitration, or any other administrative, regulatory, or other proceeding against the Released Persons involving the Released Claims; and all persons and entities shall be forever barred and permanently enjoined from filing, commencing, or prosecuting any other lawsuit as a class action against the Released Persons (including by

seeking to amend a pending complaint to include class allegations or by seeking class certification in a pending action in any jurisdiction) on behalf of Settlement Class Members who have not timely excluded themselves from the Settlement Class if such other lawsuit is based on or arises from the Released Claims. This injunction does not apply to actions brought by the government.

6.3 Effectuation of Settlement. None of the above releases affect rights to enforce the terms of the Settlement Agreement.

6.4 No Admission of Liability. This Settlement Agreement reflects, among other things, the compromise and settlement of disputed claims among the Parties, and neither this Settlement Agreement nor the releases given herein, nor any consideration therefor, nor any actions taken to carry out this Settlement Agreement, are intended to be, nor may they be deemed or construed to be, an admission or concession of liability, or the validity of any claim, defense, or of any point of fact or law on the part of any Party. Telebrands denies the material allegations of the Petition filed in this Action. Neither this Settlement Agreement, nor the fact of settlement, nor the settlement proceedings, nor the settlement negotiations, nor any related document, shall be used as an admission of any fault or omission by any or all of the Released Persons, or be offered or received in evidence as an admission, concession, presumption, or inference of any wrongdoing by any or all of the Released Persons in any proceeding, other than such proceedings as may be necessary to consummate, interpret, or enforce this Settlement Agreement.

## **VII. CERTIFICATION OF SETTLEMENT CLASS**

7.1 The Parties agree, for settlement purposes only, that this Action shall be certified and proceed as a class action under Missouri Rule of Civil Procedure 52.08(b)(3), with a class consisting of all Settlement Class Members, and with the named Plaintiff as class representative of the Settlement Class and Plaintiff's Counsel as counsel for the Settlement Class Members.

7.2 Any certification of a conditional, preliminary, or final settlement class pursuant to the terms of this Settlement shall not constitute, and shall not be construed as, an admission on the part of Telebrands that this Action, or any other proposed or certified class action, is appropriate for trial class treatment pursuant to the Missouri Rules of Civil Procedure, or any similar state or federal class action statute or rule. This Settlement Agreement shall be without prejudice to the rights of Telebrands to: (a) move to dismiss or stay this Action on any applicable basis if the Settlement Agreement is terminated for any reason, Final Approval does



not occur for any reason, or the Final Settlement Approval Date does not occur; (b) oppose final certification in this Action should this Settlement Agreement not be approved or implemented for any reason; or (c) oppose certification in any other proposed or certified class action. Neither the fact of this Settlement nor this Settlement Agreement shall be used in connection with efforts in any proceeding to seek certification of any claims asserted against Telebrands.

### **VIII. MISCELLANEOUS PROVISIONS**

8.1 Reasonable Efforts. Subject to the other terms and conditions of this Settlement Agreement, the Parties and their respective counsel shall use reasonable efforts to cause the Court to give Preliminary Approval to this Settlement Agreement as promptly as practical, to take all steps contemplated by this Settlement Agreement that are necessary to effectuate the Settlement on the stated terms and conditions, and to obtain Final Approval of this Settlement Agreement and achieve a Final Settlement Approval Date for the settlement.

8.2 Change of Time Periods. The time periods and/or dates described in this Settlement Agreement with respect to the giving of notices and hearings are subject to approval and change by the Court or by the written agreement of Plaintiff's Counsel and Defendant's Counsel, without notice to Settlement Class Members. The Parties reserve the right, by agreement and with or without obtaining further approval of the Court, to grant any reasonable extension of time that might be needed to carry out any of the provisions of this Settlement Agreement.

8.3 Time for Compliance. If the date for performance of any act required by or under this Settlement Agreement falls on a Saturday, Sunday, or court holiday, that act may be performed on the next business day with the same effect as if it had been performed on the day or within the period of time specified by or under this Settlement Agreement.

8.4 Governing Law. This Settlement Agreement is intended to and shall be governed by the laws of the State of Missouri without giving effect to principles of conflicts of laws.

8.5 Entire Agreement. The terms and conditions set forth in this Settlement Agreement, including its Exhibits, constitute the complete and exclusive statement of the agreement between the Parties relating to the subject matter of this Settlement Agreement, superseding all previous negotiations and understandings, and may not be contradicted by evidence of any prior or contemporaneous agreement. The Parties further intend that this Settlement Agreement, including its Exhibits, constitutes the complete and exclusive statement

of its terms as between the Parties, and that no extrinsic evidence whatsoever may be introduced in any agency or judicial proceeding, if any, involving this Settlement Agreement.

8.6 Advice of Counsel. The determination of the terms and the drafting of this Settlement Agreement have been by mutual agreement after arm's-length negotiation, with consideration by and participation of all Parties and their counsel. Accordingly, the Parties agree that this Settlement Agreement shall not be construed more strictly against any Party merely by virtue of the identity of the drafter of the document or any provision in the document.

8.7 Binding Agreement. This Settlement Agreement shall be binding upon and inure to the benefit or detriment of the Parties and the Settlement Class Members and to their respective heirs, agents, employees, representatives, trustees, officers, directors, shareholders, divisions, parent corporations, subsidiaries, executors, assigns, and successors in interest, and the other Released Persons.

8.8 No Waiver. The waiver by any Party of any provision or breach of this Settlement Agreement shall not be deemed a waiver of any other provision or breach of this Settlement Agreement.

8.9 Execution in Counterparts. This Settlement Agreement shall become effective upon its execution by all of the undersigned. The Parties may execute this Settlement Agreement in counterparts, and execution of counterparts shall have the same force and effect as if all Parties had signed the same instrument. The Parties further agree that signatures provided by .pdf or other electronic transmission shall have the same force and effect as original signatures.

8.10 Modification or Amendment. The Settlement Agreement may be amended or modified only by a written instrument signed by or on behalf of all Parties or their respective successors-in-interest.

8.11 Enforcement of Settlement Agreement. The Court shall have and retain exclusive jurisdiction at all times to enforce, interpret, and implement this Settlement Agreement and all aspects of the Settlement, and the terms of any orders and judgments entered pursuant to this Settlement Agreement.

8.12 Notices. All notices to the Parties or counsel required by this Settlement Agreement shall be made in writing and communicated by e-mail and mail to the following addresses:

If to Plaintiff, Settlement Class Members or Plaintiff's Counsel:

Christopher S. Shank, Esq.  
David L. Heinemann, Esq.  
Shank & Moore, LLC  
1968 Shawnee Mission Parkway, Suite 100  
Mission Woods, KS 66205  
Telephone: (816) 471-0909  
Facsimile: (816) 471-3888  
chris@shankmoore.com  
davidh@shankmoore.com

If to Telebrands or Defendant's Counsel:

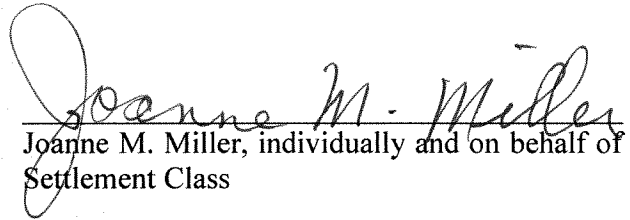
Natalie J. Kussart, Esq.  
Sandberg Phoenix & von Gontard, P.C.  
600 Washington Ave., 15<sup>th</sup> Floor  
Saint Louis, MO 63101  
Telephone: (314) 231-3332  
Facsimile: (314) 241-7604  
nkussart@sandbergphoenix.com

IN WITNESS HEREOF the undersigned, being duly authorized and intending to be legally bound hereby, have caused this Settlement Agreement to be executed on the dates shown below and agree that it shall take effect on the date it is executed by all of the undersigned.

**APPROVED AND AGREED:**

**CLASS REPRESENTATIVE AND CLASS COUNSEL:**


DATED: April 12, 2017

  
Joanne M. Miller, individually and on behalf of the  
Settlement Class

DATED: April 11<sup>th</sup>, 2017

SHANK & MOORE, LLC

By:

  
\_\_\_\_\_  
Christopher S. Shank, Esq.  
1968 Shawnee Mission Parkway  
Suite 100  
Mission Woods, KS 66205  
Tele: (816) 471-0909  
Fax: (816) 471-3888  
chriss@shankmoore.com

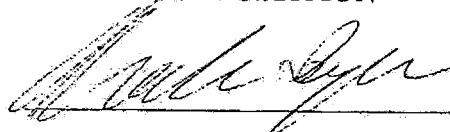
**APPROVED AND AGREED:**

**DEFENDANT AND DEFENSE COUNSEL:**

**TELEBRANDS CORPORATION**

DATED: April \_\_, 2017

By:



BALAJI IYER.

Printed Name

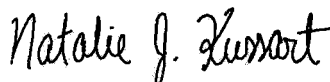
Exec VP & COO.

Title

**SANDBERG PHOENIX & von GONTARD P.C.**

DATED: April 14, 2017

By:



Mary Anne Mellow, #33351  
Natalie J. Kussart, #59622  
600 Washington Avenue - 15th Floor  
St. Louis, MO 63101-1313  
314-231-3332  
314-241-7604 (Fax)  
[mmellow@sandbergphoenix.com](mailto:mmellow@sandbergphoenix.com)  
[nkussart@sandbergphoenix.com](mailto:nkussart@sandbergphoenix.com)