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## CLASS ACTION SETTLEMENT AGREEMENT

THIS AGREEMENT is entered into as of June 1, 2017, by and between Plaintiff, Regis Greenwood ("Plaintiff" or "Class Representative"), for himself and on behalf of the Settlement Class (as defined below), and Telebrands Corp. ("Defendant"), and their respective counsel of record. Plaintiff and Defendant are referred to collectively as the "Parties."

Subject to Court approval as required by the applicable Rules, and as provided herein, the Parties hereby stipulate and agree that, in consideration of the promises and covenants set forth in this Agreement and upon the entry by the Court of a Final Order and Judgment, the Actions shall be settled and compromised upon the terms and conditions contained herein.

### **I. RECITALS**

WHEREAS, on October 14, 2014, Plaintiff filed a Complaint, on behalf of himself and the putative class, in the Superior Court of California, County of San Luis Obispo, styled *Greenwood v. Telebrands Corp.*, Case No. 14CV-0536 (the "Action.") Plaintiff alleged that Defendant marketed several of its products through advertising in which consumers would receive a bonus product for "free" when in reality consumers were charged and required to pay shipping, processing, or handling charges in excess of what is permitted by law. These products, which Defendant directly marketed and sold to California consumers, included the products known as Crazy Critters, Windshield Wonder, Heeltastic, Shoes Under, Aluma Wallet, Insta Bulb, Lint Lizard, Chef Basket, EZ Combs, Edge of Glory, Pasta Boat, Bare Lifts, Perfect Fit Button, Pet Rider, Fresh Sticks, Jupiter Jack, Sticky Buddy and Robo Stir ("Products.")

WHEREAS, Plaintiff pleaded claims for damages and injunctive and declaratory relief under the False Advertising Law ("FAL"), Business & Professions Code § 17500 *et. seq.*, and specifically Business & Professions Code § 17537, which makes it unlawful as part of an advertising plan or program, or by any other means, for a retailer to represent that the consumer will receive a free gift (or other similar term) and that as a condition of receiving the free gift, the consumer must pay money for shipping that exceeds the average cost of postage or the exact amount for the shipping or that the consumer must pay for handling that is not reasonable or exceeds the actual cost of handling or the greater of \$3.00 or 80% of the actual cost of the gift item. In connection with the alleged FAL violations, Plaintiff also pleaded a claim under the Unfair Competition Law ("UCL"), Business & Professions Code § 17200 *et seq.* Moreover, Plaintiff alleged that Defendant charged consumers excessive sales tax in violation of Sales Tax Laws;

WHEREAS, Defendant has denied and continues to deny Plaintiff's claims in the Action, has denied any wrongdoing or liability, and has raised numerous affirmative defenses;

WHEREAS, the Parties have, in advance of settlement, engaged in extensive arms-length negotiations, including the informal exchange of documents and other information pertaining to Plaintiff's claims, and participated in an extensive full day mediation session before the Hon. Ronald M. Sabraw (Ret.) of JAMS in San Francisco;

WHEREAS, based upon extensive analysis of the facts and the law applicable to Plaintiff's claims, and taking into account the extensive burden and expense of litigation, including the risks and uncertainties associated with protracted proceedings, trial and

appeals, as well as the fair, cost-effective and assured method of resolving the claims for the Settlement Class, Class Counsel and Plaintiff have concluded that this Agreement provides substantial benefits to the Settlement Class and the public as a whole, and is fair, reasonable, adequate and in the best interests of Plaintiff and the Settlement Class;

WHEREAS, Defendant, while denying any alleged wrongdoing or liability, has similarly concluded that this Agreement is desirable in order to avoid the time, risk and expense of defending protracted litigation, and to resolve finally and completely the pending claims of Plaintiff and the Settlement Class;

WHEREAS, the Parties agree that all potential Settlement Class Members shall have an individual right to be excluded ("opt out") from the Settlement Class (as provided in this Agreement), such that participation in the settlement shall be voluntary;

WHEREAS, the Parties have had a full and fair opportunity to evaluate the strengths and weaknesses of their respective positions, and wish to enter into a compromise and settlement of this Action on class-wide basis to avoid the uncertainty and expense of litigation and to achieve a fair, reasonable and adequate resolution for the benefit of the Settlement Class;

NOW, WHEREFORE, the Parties stipulate and agree that any and all Released Claims against all Released Parties shall be finally settled and resolved on the terms and conditions set forth in this Agreement, subject to Court approval of this Agreement, as a good faith, fair, reasonable and adequate settlement under applicable rules, regulations and laws.



## II. DEFINITIONS

As used in this Agreement and the exhibits hereto, the following terms shall have the meanings set forth below. Unless otherwise indicated, defined terms include the plural as well as the singular.

A. Action means the class action lawsuit filed in the Superior Court of California, for the County of San Luis Obispo, styled *Greenwood v. Telebrands Corp.*, Case No. 14CV-0536.

B. Administrative Expense means all expenses associated with administration of this settlement, including costs of Class Notice, claims administration, transaction fees, and any other costs or fees charged by the Claims Administrator in connection with the duties under this Agreement.

C. Agreement means this settlement agreement (including all exhibits hereto).

D. Authorized Claimant means those Settlement Class Members who timely submit a valid Claim Form to the Claims Administrator under this Agreement.

E. Claim Deadline means the date set by the Court in the Preliminary Approval Order, which shall be at least 60 days after the last date of the published Notice Period identified in the Notice Plan, by which Settlement Class Members must submit a claim to obtain a portion of the settlement described herein.

F. Claim Form means the form to be submitted by the Settlement Class Members who wish to receive a portion of the settlement (substantially in the form attached hereto as Exhibit C). The format of the Claim Form may be modified by the

Court in the Preliminary Approval Order, or to meet the requirements of the Claim's Administrator with approval by Class Counsel and Defendant's Counsel.

G. Claims Administrator means the Person or Entity that will oversee the administration of the settlement described herein.

H. Class Counsel means the Law Offices of Stephen G. Geihs.

I. Class Notice means the form of Court-approved notice (or notices) of this Settlement Agreement that are directed to the Settlement Class. Copies of the proposed long form and summary form of direct notice are attached hereto as Exhibits A and B.

J. Class Representative means Regis Greenwood.

K. Court means the Superior Court of California, County of San Luis Obispo.

L. Defendant means Telebrands Corp.

M. Defendant's Counsel means K&L Gates LLP.

N. Effective Date means the date 61 days after the entry of the Final Order and Judgment (as defined herein), except that if a Settlement Class Member files a timely appeal from the entry of the Final Order and Judgment, the Effective Date is the date upon which the Final Order and Judgment becomes final and is no longer subject to any further review.

O. Fairness Hearing means the hearing to be conducted by the Court in connection with the determination of the fairness, adequacy and reasonableness of this Settlement Agreement in accordance with applicable jurisprudence.

P. Final Order and Judgment means the order and final judgment to be entered by the Court (1) approving this Agreement without material alterations, as fair, adequate and reasonable in accordance with applicable jurisprudence; (2) adopting the

terms of this Agreement as a court order binding on Plaintiff and all Settlement Class Members and Defendant; (3) confirming the certification of the Settlement Class; (4) dismissing the Action with prejudice; and (5) issuing such other findings and determinations as the Court or the Parties deem necessary and appropriate to effectuate the terms of this Agreement. The proposed form of Final Order and Judgment is attached hereto as Exhibit D.

Q. Notice Date means the date upon which the Class Notice and Claim Forms are first disseminated to the Settlement Class Members.

R. Notice Expenses means (i) all reasonable costs and expenses incurred in connection with preparing, printing, mailing, disseminating, posting, emailing and/or, internet hosting of the Class Notice, identifying and notifying Settlement Class Members and informing Settlement Class Members of the proposed settlement and (ii) any necessary notice and notice-related expenses.

S. Notice Plan means the proposed plan for disseminating the Class Notice.

T. Opt-Out Period means the period for filing a Request for Exclusion ending on the deadline contained in the Class Notice.

U. Person means any individual, corporation, trust, partnership, limited liability company or other legal entity and its respective predecessors, successors or assigns.

V. Plaintiff means Regis Greenwood.

W. Preliminary Approval Order means an order by which the Court, among other things (1) appoints the Class Representative as the representative of the Settlement Class; (2) appoints Class Counsel; (3) conditionally certifies the Settlement Class for



settlement purposes only; (4) preliminarily approves this Agreement as within the range of possible approval; (5) approves the form of Class Notice and the Notice Plan; and (6) schedules the Fairness Hearing. The proposed form of the Preliminary Approval Order is attached hereto as Exhibit E.

X. Released Claims means any claim for damages (including, but not limited to, compensatory, consequential, special, statutory, exemplary or punitive), or injunctive relief based upon violations of the FAL or the UCL or any other statute, or common law principle, whether known or unknown, asserted or unasserted by the Releasing Parties against the Released Parties based on the claim that Defendant marketed and sold its Products through advertising that consumers would receive an additional Product as a "bonus," or for "free," or any similar language stating or implying that the additional Product would be received at a minimal or no cost when in reality consumers were charged and required to pay shipping, processing, or handling charges in excess of the actual cost to ship, process, or handle the additional Product. Released Claims do not include claims of a governmental entity or other claims that the Releasing Parties may have arising out of Defendant's marketing or sale of any other products.

Y. Released Party(ies) means Defendant, its predecessors, successors, assigns, its past, present and future parents, subsidiaries, affiliates, divisions, departments, vendors, and all of the past, present and future officers, directors, employees, stockholders, partners, agents, servants, successors, attorneys, auditors, consultants, representatives, insurers, and subrogees, of any and all of the forgoing. It is expressly understood that any Released Party that is not a party to this Agreement is an intended third-party beneficiary of this Agreement.

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Z. Releasing Party(ies) means Plaintiff and each Settlement Class Member and any Person claiming by, through, with or under the Settlement Class Member, including, but not limited to, his/her/its spouse, child, heir, associate, co-owner, attorney, agent, administrator, devisee, predecessor, successor, assignee, representative of any kind, shareholder, partner, director, employee or affiliate.

AA. Request for Exclusion is the written communication that must be filed with the Claims Administrator that is postmarked on or before the end of the Opt-Out Period if a Settlement Class Member wants to be excluded from the Settlement Class.

BB. Settlement Class or Settlement Class Member(s) means all Persons within California who purchased a Product directly from Telebrands under the offer that they would receive a “free” or “bonus” Product as a result of their purchase at any time from October 16, 2010 to December 1, 2011 (the date in which Defendant changed its advertising to comply with law), except that any Person who has properly filed a Request for Exclusion from the Settlement Class with the Claims Administrator under this Agreement shall not be included in the Settlement Class or be a Settlement Class Member. Excluded from the Settlement Class are the officers, directors and employees of Defendant.

CC. Settlement Funds means the total amount of consideration to be paid by Defendant to settle the Action.

### **III. PRELIMINARY APPROVAL**

Promptly after the execution of this Agreement, Class Counsel and Defendant’s Counsel shall submit this Agreement to the Court for its preliminary approval and shall move the Court for entry of the Preliminary Approval Order.



#### IV. CERTIFICATION OF SETTLEMENT CLASS

A. For settlement purposes only, the Parties stipulate to the certification of the Settlement Class. Further, the Parties stipulate to the appointment of Regis Greenwood as the Class Representative of the Settlement Class and Class Counsel as counsel for the Settlement Class.

B. This Agreement is without prejudice to the rights of Defendant to oppose class certification in this Action if this Agreement is not approved or implemented for any reason.

#### V. SETTLEMENT CONSIDERATION

A. **Defendant's Agreed Actions.** Defendant has agreed to take the following actions, provided the Court approves this Agreement.

1. Defendant will pay the amount of \$300,000.00 as Settlement Funds to settle this Action. The net settlement funds remaining after deduction of attorney fees, reasonable costs and expenses incurred by Class Counsel, and the incentive award paid to the Class Representative, shall be distributed to the Settlement Class Members on a claims-made basis. The net settlement fund shall have a distribution floor of \$50,000.00. Each member of the Settlement Class who submits a timely Claim Form will be entitled to receive the sum of \$5.00. If the class claims exceed the net settlement fund, the settlement funds shall be allocated among the Authorized Claimants on a pro-rata basis. If the class claims do not exceed the sum of \$50,000.00, then Defendant shall pay the difference between the amount of actual class claims and the sum of \$50,000.00 to a *cy pres* charity as agreed by the Parties and as allowed under the laws of California.

Any settlement funds remaining above the greater of class claims or the distribution floor of \$50,000.00 shall revert to Defendant.

2. In addition to the gross settlement fund of \$300,000.00, Defendant shall pay all costs associated with providing class notice and settlement administration. A professional third party administrator selected by Defendant shall administer the settlement.

3. To the extent they are available, Defendant will provide the Claims Administrator with the names, addresses and email addresses of all Settlement Class Members within 10 days of the entry of the Preliminary Approval Order.

**B. Settlement Class Members' Agreed Actions.**

1. Upon entry of the Final Order and Judgment, Plaintiff and each Settlement Class Member shall be deemed to and does hereby fully, finally and forever release and discharge each Released Party of and from any and all Released Claims.

2. With respect to any and all Released Claims, and upon entry of the Final Order and Judgment without further action, for good and valuable consideration, Plaintiff, on behalf of himself and the Settlement Class and as the representative of the Settlement Class, shall expressly, and all Settlement Class Members shall be deemed to have, and by operation of the final judgment contemplated by this Agreement shall have, fully, finally, and forever expressly waived and relinquished with respect to Released Claims, to the fullest extent permitted by law, any and all provisions, rights, and benefits of section 1542 of the California Civil Code and any and all similar provisions, rights and benefits conferred by any law of any state or territory of the United States or principle of common law that is similar, comparable, or equivalent to section 1542 of the California

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Civil Code, which provides: A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

3. Plaintiff and Settlement Class Members agree that they will not assert or continue to prosecute any Released Claims against the Released Parties during the pendency of any appeal taken from the Final Order and Judgment or any subsequent appeal from the initial appeal.

#### **VI. CLAIMS ADMINISTRATION**

A. All expenses incurred in administering this Agreement, including the costs of implementing and administering the Settlement, shall be paid by Defendant. These expenses are in addition to the Settlement Funds of \$300,000.00. The Claims Administrator shall provide Class Counsel and the Defendant's counsel with a detailed written summary of its activities.

B. Defendant, in conjunction with the Claims Administrator, shall submit a timely report to the Court summarizing the work performed by the Claims Administrator.

C. The Claims Administrator will mail to Authorized Claimants their share of the Settlement Fund within ninety days of the Effective Date.

#### **VII. NOTICE OF SETTLEMENT AND PROCEDURE TO MAKE A CLAIM**

A. As promptly as reasonably practicable after Preliminary Approval (and as the Court may direct), the Claims Administrator shall cause the Class Notice describing the Fairness Hearing and the terms of the settlement embodied herein with a Claim Form



to be disseminated to Settlement Class Members as provided herein. Notice shall comport with due process and be effectuated pursuant to a Notice Plan. The Notice Plan shall include: (1) individual email of the summary form notice with a Claim Form to any Settlement Class Member whose email address was provided to Defendant; and (2) summary form notice with a Claim Form via U.S. Mail to Settlement Class Members who did not provide email addresses to Defendant or whose email notices are returned as, or are otherwise known to be, undeliverable. The summary form notice will include a mailing address and a dedicated website address that can be used to obtain a copy of the long form notice and the Claim Form, which may be filled out and submitted through the website. The cost of the Notice, the Notice Plan as outlined herein, and the dissemination of the Notice shall be paid by Defendant.

B. The Class Notice shall advise Settlement Class Members of their rights, including the right to opt out of or object to the Agreement or its terms, and the date by which Settlement Class Members must submit a Claim Form to be entitled to a portion of the settlement, and the deadline to file a Request for Exclusion.

C. Settlement Class Members must send in a Claim Form to obtain a share of the Settlement Funds. Settlement Class Member will have 60 days from the date the Claims Administrator sends the initial Class Notice and Claim Forms to timely postmark, email or submit their Claim Forms online to be included as Authorized Claimant. In the event that the postmark is illegible, the Claim Form shall be deemed untimely unless it is received within ten days after the Claim Deadline. Claim Forms returned to the Settlement Administrator that are postmarked, emailed or submitted online after the Claim Deadline shall be conclusively deemed untimely and invalid. Any Settlement Class

Member, other than Plaintiff, who fails to submit a valid and timely Claim Form or otherwise opt out of the Settlement, shall be bound by all terms of the settlement and any Final Judgment entered in the Action but will be barred from receiving a settlement payment or any other benefit from the settlement.

D. Defendant shall file appropriate proof of compliance with the Notice Plan and information as to the number of Authorized Claimants with the Court prior to hearing on final approval of the settlement.

### **VIII. OBJECTIONS**

A. Any objector must include his/her name, address, and telephone number in the objection filed with the Court. Any objector must state, in writing, all objections and the basis for any such objection(s), and provide a statement whether the objector intends to appear at the Fairness Hearing, either with or without counsel.

B. Any objector may not assert an objection and thereafter ask to be excluded from the Settlement Class if his/her objection is overruled by the Court. Any Settlement Class Member who submits both a request for exclusion and an objection shall be treated solely as an objector. Any objector will be bound by the Settlement Agreement if it is approved by the Court. A Settlement Class Member requesting to be excluded from the Settlement Class may not assert an objection to the Settlement.

### **IX. OPT OUT RIGHT**

A. A Settlement Class Member may opt out of the Settlement Class at any time during the Opt Out Period, as outlined in the Court-approved Notice, provided that the Settlement Class Member is not an objector. In order to exercise the right to opt out, the Settlement Class Member must complete and return a Request for Exclusion to the

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Claims Administrator, designated by Class Counsel and Defendant's Counsel during the Opt Out Period by the deadline set forth in the Preliminary Approval Order. If a Settlement Class Member fails to properly or timely file a Request for Exclusion, the Settlement Class Member shall be a Settlement Class Member for all purposes under this Agreement. Any Settlement Class Member who elects to opt out of the Settlement Class shall not (1) be bound by any orders or judgments entered in this Action; (2) be entitled to any relief under or be affected by this Agreement; (3) gain any rights by virtue of this Agreement; or (4) be entitled to object to any aspect of this Agreement. The Request for Exclusion must be signed by the person requesting exclusion.

B. A Settlement Class Member may withdraw a Request for Exclusion at any time up to the date of the Fairness Hearing. Any notice to withdraw a Request for Exclusion must be in writing and signed by the Settlement Class Member.

C. The Claims Administrator shall provide Class Counsel and the Defendant's counsel with copies of all completed Requests for Exclusions within five business days after expiration of the Opt-Out Period.

D. The Parties will undertake all efforts to obtain approval of the settlement and to undertake all actions to prevent the termination of the settlement pursuant to the provisions of this Agreement.

**X. EXCLUSIVE REMEDY; DISMISSAL OF ACTIONS;  
JURISDICTION OF COURT**

A. This Agreement shall be the sole and exclusive remedy for any and all Released Claims. No Released Party shall be subject to liability or expense of any kind to Plaintiffs or any Settlement Class Member with respect to any Released Claim. Upon entry of the Final Order and Judgment pursuant to the Fairness Hearing, Plaintiffs and



each and every Settlement Class Member shall be barred and enjoined from initiating, asserting and/or prosecuting any Released Claim(s) against any Released Party in any court or any forum.

B. In accordance with all applicable laws including Code of Civil Procedure section 664.6, the Parties agree that the Court shall retain exclusive and continuing jurisdiction of the Action, Parties, Settlement Class Members, and the Claims Administrator to interpret and enforce the terms, conditions, and obligations under this Agreement.

**XI. CLASS COUNSEL'S FEES AND COSTS, AND INCENTIVE AWARD**

Class Counsel may seek an award of attorney fees not to exceed one-third (33 1/3%) of the gross settlement of \$300,000.00, plus the reasonable costs and expenses incurred by Class Counsel, and an incentive award payable to the Class Representative not to exceed \$5,000.00. The Defendant will not object to or otherwise challenge Class Counsel's application for attorney's fees and for the reimbursement of costs and expenses or the Plaintiff's incentive award, assuming that Class Counsel complies with these limitations and the Court's order does not award fees and an incentive award in excess of these amounts Payment of fees and costs and expenses awarded by the Court, and the incentive award, shall be paid out of the Settlement Funds within 10 days of the Effective Date.

**XII. SETTLEMENT APPROVAL ORDER**

This Agreement is subject to and conditioned upon the issuance of the Final Order and Judgment granting final approval of this Agreement.

**XIII. REPRESENTATIONS AND WARRANTIES**

Defendant represents and warrants that (i) it has all requisite corporate power and authority to execute, deliver, and perform this Agreement and to consummate the transactions contemplated hereby; (ii) the execution, delivery and performance of this Agreement and the consummation by it of the actions contemplated herein have been duly authorized by all necessary corporate action on the part of Defendant; and (iii) this Agreement has been duly and validly executed and delivered by Defendant and constitutes its legal, valid and binding obligation.

Class Counsel represent that he is authorized to execute this Agreement on behalf of the Class Representative.

#### **XIV. NO ADMISSIONS; NO USE**

A. This Agreement shall in no event be construed or deemed to be evidence or an admission of a concession on the part of any Party with respect to any claim of any fault or liability or damages.

B. This Agreement, whether or not consummated, and any proceedings taken pursuant to this Agreement, are not and shall not in any event be:

1. Construed as, offered in evidence as, received in evidence as, and/or deemed to be, evidence of a presumption, concession or an admission by Defendant of the truth of any fact alleged or the validity of any claim that has been, could have been, or in the future might be asserted in any litigation or the deficiency of any defense which has been, could have been, or in the future might be asserted in any litigation, or of any liability, fault, wrongdoing or otherwise of Defendant; or

2. Construed as, offered in evidence as, received in evidence as, and/or deemed to be, evidence of a presumption, concession or an admission of any fault,

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breach of duty, wrongful act or misrepresentation or omission in any statement or written document approved or made by Defendant or the approval or making of which was participated in by Defendant; or

3. Construed as, offered in evidence as, received in evidence as, and/or deemed to be, evidence of a presumption, concession or an admission of any liability, fault, or wrongdoing, or in any way referred to for any other reason, by any of the Parties in these actions or in any other civil, criminal or administrative action or proceeding other than such proceeding as may be necessary to effectuate the provisions of this Agreement; or

4. Construed by anyone for any purpose whatsoever as evidence of a presumption, concession or any admission of any liability, fault, wrongdoing or otherwise on the part of Defendant; or

5. Construed as, offered in evidence as, received in evidence as, and/or deemed to be, evidence of a presumption, concession, or an admission that the Class, or any of them, has in fact suffered any damage, or that Defendant is liable to any Class member or to any other Person; or

6. Construed as, offered in evidence as, received in evidence as, and/or deemed to be the basis of any claim of collateral estoppel or res judicata against Defendant; or

7. Except as mutually agreed, referred to for any other reason by any of the Parties in these actions, or in any other civil, criminal, or administrative proceedings, other than such proceedings as may be necessary to effectuate the provisions of this Agreement.



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## **XV. MISCELLANEOUS PROVISIONS**

A. This Agreement, including all exhibits hereto, shall constitute the entire Agreement among the Parties with regard to the subject matter of this Agreement. This Agreement may not be changed, modified, or amended, except in writing signed by all parties, subject to Court approval. The Parties contemplate that subsequent Agreement of Defendant and Class Counsel may modify the exhibits to this Agreement prior to dissemination to the Settlement Class Members.

B. This Agreement shall be construed under and governed by the laws of the State of California, applied without regard to laws applicable to choice of law.

C. This Agreement may be executed by the Parties or their Counsel in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. Facsimile signatures or signatures sent via email shall be treated as original signatures and shall be binding.

D. Any notice, instruction, application for Court approval or application for Court orders sought in connection with this Agreement or other document to be given by any Party to any other Party shall be in writing and delivered personally or sent by registered or certified mail, postage prepaid, if to Defendant to the attention of Defendant's respective representatives and to Class Counsel on behalf of Class members, or to other recipients as the Court may specify.

E. This Agreement shall be binding upon and inure to the benefit of the Parties and the Settlement Class Members and their respective heirs, successors, assigns, executors and legal representatives.

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F. Subject to Court approval, the Parties may agree to reasonable extensions of time to carry out any of the provisions of this Agreement.

G. The determination of the terms of, and the drafting of, this Agreement has been by mutual agreement after negotiations, with consideration by and participation of all Parties hereto and their counsel and, accordingly, the provisions of the Agreement shall not be construed against any Party as draftsman.

H. The waiver by one Party of any provision or breach of this Agreement shall not be deemed a waiver of any other provision or breach of this Agreement.

I. All notices to the Parties or counsel required by this Agreement, shall be made in writing and communicated by mail, e-mail or courier delivery to the following addresses:

If to Plaintiffs or Class Counsel:

Stephen G. Geihs  
Law Offices of Stephen G. Geihs  
314 Pomeroy Avenue, P.O. Box 155  
Pismo Beach, CA 93448  
winlawpb@aol.com

If to Defendant or Defendant's counsel:

Matthew G. Ball  
K&L Gates  
4 Embarcadero Center, Suite 1200  
San Francisco, CA 94111  
Matthew.Ball@klgates.com

## **XVI. TERMINATION OF THIS AGREEMENT**

A. This Agreement shall, without notice, be automatically terminated if (i) the Final Order and Judgment are not entered, or (ii) if the Final Order and Judgment are reversed on appeal and the reversal becomes final. Upon termination, all Parties shall be

restored to their respective positions as immediately prior to the date of execution of this Settlement Agreement except as otherwise provided, and the Settlement Funds shall be returned to Defendant within 20 days.

B. Defendant shall have the right to terminate this Agreement, and return to the *status quo ante*, if more than 15% of the Settlement Class Members file Requests for Exclusion. The Claims Administrator shall provide Class Counsel and the Defendant's counsel with copies of all completed Requests for Exclusions within five business days after expiration of the Opt Out Period and Class Counsel shall have the right to contact any Person requesting exclusion to seek to alter their decision to request exclusion.

#### **XVII. AUTHORITY TO SIGN**

Any individual signing this Agreement on behalf of any Person represents and warrants that he or she has full authority to do so.

Facsimile signatures shall be considered valid signatures as of the date hereof.

IN WITNESS WHEREOF, each of the Parties hereto has caused this Agreement to be executed on its behalf by its duly authorized counsel of record, all as of the day set forth above.

[Signatures on following pages]

**Plaintiff**

\_\_\_\_\_  
Regis Greenwood

**Defendant**  
Telebrands Corp.

By: \_\_\_\_\_

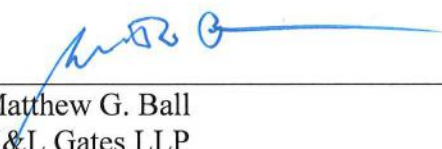


**Counsel for Plaintiff and the Class**

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Stephen G. Geihs  
Law Offices of Stephen G. Geihs

**Counsel for Defendant**



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Matthew G. Ball  
K&L Gates LLP