

1 **SETTLEMENT AGREEMENT**

2 **1. DEFINITIONS**

3 1.1 “Covered Products” means footwear that is Manufactured, distributed, sold or  
4 offered for sale by Settling Defendant.

5 1.2 “Effective Date” means the date on which this Settlement Agreement is  
6 approved by the Court.

7 1.3 “Lead Limits” means the maximum concentrations of lead and lead  
8 compounds (“Lead”) by weight specified in Section 3.2.

9 1.4 “Manufactured” and “Manufactures” means to manufacture, produce, or  
10 assemble.

11 1.5 “Paint or other Surface Coatings” means a fluid, semi-fluid, or other material,  
12 with or without a suspension of finely divided coloring matter, which changes to a solid film  
13 when a thin layer is applied to a metal, wood, stone, paper, leather, cloth, plastic, or other surface.  
14 This term does not include printing inks or those materials which actually become a part of the  
15 substrate, such as the pigment in a plastic article, or those materials which are actually bonded to  
16 the substrate, such as by electroplating or ceramic glazing.

17 1.6 “Vendor” means a person or entity that Manufactures, imports, distributes, or  
18 supplies a Covered Product to Settling Defendant.

19 **2. INTRODUCTION**

20 2.1 The parties to this Settlement Agreement (“Parties”) are the Center for  
21 Environmental Health (“CEH”) and Brighton Collectibles, LLC (“Settling Defendant”).

22 2.2 On November 15, 2013, CEH sent a 60-day Notice of Violation under  
23 Proposition 65 (The Safe Drinking Water and Toxic Enforcement Act of 1986, California Health  
24 & Safety Code §§ 25249.5, *et seq.*), alleging that Settling Defendant violated Proposition 65 by  
25 exposing persons to lead and lead compounds (“Lead”) contained in footwear (“Covered  
26 Products”), without first providing a clear and reasonable Proposition 65 warning.  
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1           2.3           On December 31, 2013, CEH filed the action entitled *Center for*  
2 *Environmental Health v. ANGL, Inc., et al.*, Alameda County Superior Court Case No. RG 13-  
3 708572, in the Superior Court of California for Alameda County (“the Action”). On February 5,  
4 2014, CEH filed a Doe amendment naming Settling Defendant as a party and alleging Proposition  
5 65 violations as to Covered Products. CEH has also sent a 60-day notice to 6 pm.com, an affiliate  
6 of Zappos.com, and named Zappos.com as a Doe defendant in the Action based in part on an  
7 allegation of Zappos.com’s sales of the Covered Products.

8           2.4           Nothing in this Settlement Agreement is or shall be construed as an admission  
9 by the Parties of any fact, conclusion of law, issue of law or violation of law, nor shall  
10 compliance with the Settlement Agreement constitute or be construed as an admission by the  
11 Parties of any fact, conclusion of law, issue of law, or violation of law. Nothing in this  
12 Settlement Agreement shall prejudice, waive or impair any right, remedy, argument or defense  
13 the Parties may have in any other legal proceeding. This Settlement Agreement is the product of  
14 negotiation and compromise and is accepted by the Parties for purposes of settling, compromising  
15 and resolving issues disputed in the Action.

16       **3. COMPLIANCE**

17           3.1           **Specification Compliance Date.** To the extent it has not already done so, no  
18 more than 30 days after the Effective Date, Settling Defendant shall provide the Lead Limits to its  
19 Vendors of Covered Products and shall instruct each Vendor to use reasonable efforts to provide  
20 Covered Products that comply with the Lead Limits on a nationwide basis.

21           3.2           **Lead Limits.** Commencing on the Effective Date, Settling Defendant shall  
22 not purchase, import, Manufacture, supply to an unaffiliated third party, or sell or offer for sale  
23 any Covered Product that will be sold or offered for sale to California consumers that contains a  
24 material or is made of a component that exceeds the following Lead Limits:

25                   3.2.1   Paint or other Surface Coatings: 90 parts per million (“ppm”).

26                   3.2.2   Polyvinyl chloride (“PVC”): 200 ppm.

27                   3.2.3   All other materials or components other than cubic zirconia (sometimes  
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1 called cubic zirconium, CZ), crystal, glass or rhinestones: 300 ppm.

2 For purposes of this Section 3.2, when Settling Defendant's direct customer sells or offers for sale  
3 to California consumers a Covered Product after the Effective Date, Settling Defendant is deemed  
4 to have "offered for sale to California consumers" that Covered Product.

5 **3.3 Action Regarding Specific Products.**

6 3.3.1 On or before the Effective Date, Settling Defendant shall cease selling (a)  
7 the Brighton Candy Apple Patent Flip Flops in Red, SKU No. 8-81934-18249-5, Style  
8 No. ORLA3; and (b) the Brighton OMG Patent Thing Sandals in Candy Apple Red, SKU  
9 No. 8-81934-93165-9 ("Section 3.3 Products") in California. On or before the Effective  
10 Date, Settling Defendant shall also: (i) cease shipping the Section 3.3 Products to any of  
11 its stores and other retailer customers in California, and (ii) to the extent the Section 3.3  
12 Products are currently in such stores, send instructions to its stores and other retailer  
13 customers in California instructing them either to: (a) return all of the Section 3.3 Products  
14 to Settling Defendant ; or (b) directly destroy the Section 3.3 Products.

15 3.3.2 Any destruction of the Section 3.3 Products shall be in compliance with all  
16 applicable laws.

17 3.3.3 Within sixty days of the Effective Date, Settling Defendant shall provide  
18 CEH with written certification from Settling Defendant confirming compliance with the  
19 requirements of this Section 3.3.

20 **4. SETTLEMENT PAYMENTS**

21 4.1 **Payments by Settling Defendant.** Within five (5) business days of the Effective  
22 Date, Settling Defendant shall pay the total sum of \$20,000 as a settlement payment. The total  
23 settlement amount for Settling Defendant shall be paid in three separate checks delivered to the  
24 offices of the Lexington Law Group (Attn: Eric Somers), 503 Divisadero Street, San Francisco,  
25 California 94117-2212 and made payable and allocated as follows:

26 4.1.1 Settling Defendant shall pay the sum of \$2,600 pursuant to Health & Safety  
27 Code § 25249.7(b), such money to be apportioned by CEH in accordance with Health & Safety

1 Code § 25249.12 (25% to CEH and 75% to the State of California’s Office of Environmental  
2 Health Hazard Assessment). The check shall be made payable to the Center For Environmental  
3 Health.

4 4.1.2 Settling Defendant shall pay the sum of \$3,900 as payment to CEH in lieu  
5 of payment pursuant to Health & Safety Code §25249.7(b), and California Code of Regulations,  
6 Title 11, §3202(b). CEH will use such funds to continue its work educating and protecting people  
7 from exposures to toxic chemicals, including heavy metals. In addition, as part of its Community  
8 Environmental Action and Justice Fund, CEH will use four percent of such funds to award grants  
9 to grassroots environmental justice groups working to educate and protect people from exposures  
10 to toxic chemicals. The method of selection of such groups can be found at the CEH web site at  
11 [www.ceh.org/justicefund](http://www.ceh.org/justicefund). The payment pursuant to this Section shall be made payable to the  
12 Center For Environmental Health.

13 4.1.3 Settling Defendant shall also separately pay the sum of \$13,500 to the  
14 Lexington Law Group as reimbursement of a portion of CEH’s reasonable attorneys’ fees and  
15 costs. The attorneys’ fees and cost reimbursement check shall be made payable to the Lexington  
16 Law Group.

17 **5. MODIFICATION**

18 5.1 This Settlement Agreement may be modified from time to time by express  
19 written agreement of the Parties.

20 **6. ENFORCEMENT OF SETTLEMENT AGREEMENT**

21 6.1 The Parties agree that any action based on an alleged violation of Proposition  
22 65 with respect to Lead in the Covered Products or based on an alleged violation of this  
23 Agreement shall be brought in the Superior Court of California in Alameda County. For purposes  
24 of this Agreement, the Parties agree that the Superior Court of California in Alameda County has  
25 subject matter jurisdiction over any disputes arising from this Agreement and personal  
26 jurisdiction over each of the Parties, and that venue is proper in the County of Alameda.

1           6.2           **Enforcement Procedures.** Prior to bringing any action to enforce an alleged  
2 violation of Proposition 65 with respect Lead in the Covered Products or the terms of this  
3 Agreement, a Party seeking to enforce shall provide the alleged violating Party thirty (30) days  
4 advanced written notice of its intent to enforce the alleged violation. The Parties shall meet and  
5 confer during this thirty (30) day period in a good faith effort to resolve the alleged violation  
6 without the need for Court intervention. To the extent such notice alleges a violation of the Lead  
7 Limits in Section 3.2, CEH shall provide Settling Defendant with test results confirming that the  
8 product(s) at issue contain lead in amounts that exceed those limits. Settling Defendant shall  
9 have a period of thirty (30) days from the date of such a notice to demonstrate that the results are  
10 not accurate or to recall the allegedly non-compliant products from retail stores located in  
11 California. For an additional thirty (30) days following Settling Defendant's response to a notice  
12 alleging a violation of the Lead Limits in Section 3.2, the Parties shall meet and confer in good  
13 faith regarding Settling Defendant's response in an effort to try to reach agreement on an  
14 appropriate remedy, if any, for the alleged violation.

15           6.3           After the requisite meet and confer period, the Party seeking to enforce may,  
16 by new action before the Superior Court of California in Alameda County, seek to enforce the  
17 terms and conditions contained in this Agreement, but only after more than four products are  
18 identified by Plaintiff under Section 6.2 as being in alleged violation of Proposition 65. For  
19 purposes of this Agreement, a product is a distinct product style, and the same product in different  
20 colors constitutes a single product.

21       **7.       CLAIMS COVERED AND RELEASED**

22           7.1           Within five (5) days of the Court's approval of this Settlement Agreement and  
23 Settling Defendant's complete payment of the amounts required by Section 4, CEH shall file a  
24 dismissal with prejudice of the Action against Brighton; and shall dismiss Zappos.com without  
25 prejudice from the Action, with CEH and Zappos.com each to bear their respective attorney fees  
26 and costs.

27           7.2           This Settlement Agreement is a full, final and binding resolution between  
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1 CEH on behalf of itself and the public interest and Settling Defendant and its parents,  
2 subsidiaries, affiliated entities that are under common ownership, directors, officers, employees,  
3 and attorneys (“Defendant Releasees”), and each entity to whom they directly or indirectly  
4 distribute or sell Covered Products, including but not limited to distributors, wholesalers,  
5 customers, retailers (including but not limited to Zappos.com and 6 pm.com), franchisees,  
6 cooperative members, licensors, and licensees (“Downstream Defendant Releasees”) of any  
7 violation of Proposition 65 that was or could have been asserted in the Action against Settling  
8 Defendant, Defendant Releasees, and Downstream Defendant Releasees, based on failure to warn  
9 about alleged exposure to Lead contained in Covered Products that were sold by Settling  
10 Defendant prior to the Effective Date.

11 7.3 Compliance with the terms of this Settlement Agreement by Settling  
12 Defendant constitutes compliance with Proposition 65 with respect to Lead in in Covered  
13 Products sold by Settling Defendant.

14 **8. SPECIFIC PERFORMANCE**

15 8.1 The Parties expressly recognize that Settling Defendant’s obligations under  
16 this Agreement are unique. In the event that Settling Defendant is found to be in breach of this  
17 Agreement for failure to comply with the provisions of Section 3 hereto, the Parties agree that it  
18 would be extremely impracticable to measure any resulting damages and that such breach would  
19 cause irreparable damage. Accordingly, CEH, in addition to any other available rights or  
20 remedies, may sue in equity for specific performance, and Settling Defendant expressly waives  
21 the defense that a remedy in damages will be adequate.

22 **9. NOTICE**

23 9.1 When CEH is entitled to receive any notice under this Settlement Agreement,  
24 the notice shall be sent by first class and electronic mail to:

25 Eric S. Somers  
26 Lexington Law Group  
27 503 Divisadero Street  
28 San Francisco, CA 94117  
esomers@lexlawgroup.com

1           9.2           When Settling Defendant is entitled to receive any notice under this  
2 Settlement Agreement, the notice shall be sent by first class and electronic mail to:

3                           Peter Hsiao  
4                           Navi Dhillon  
5                           Morrison & Foerster, LLP  
6                           425 Market Street  
7                           San Francisco, CA 94105-2482  
8                           phsiao@mofo.com  
9                           ndhillon@mofo.com

10           9.3           Any Party may modify the person and address to whom the notice is to be sent  
11 by sending each other Party notice by first class and electronic mail.

12           **10. COURT APPROVAL**

13           10.1           This Settlement Agreement shall become effective upon approval by the  
14 Court. CEH shall prepare and file a Motion for Approval of this Settlement Agreement and  
15 Settling Defendant shall support Court approval of this Settlement Agreement.

16           10.2           If this Settlement Agreement is not approved by the Court, it shall be of no  
17 force or effect and shall never be introduced into evidence or otherwise used in any proceeding  
18 for any purpose other than to allow the Court to determine if there was a material breach of  
19 Section 8.1.

20           **11. ATTORNEYS' FEES**

21           11.1           The prevailing party in any action to enforce a violation of this Settlement  
22 Agreement shall be entitled to its reasonable attorneys' fees and costs incurred as a result of such  
23 action.

24           11.2           Except as otherwise provided in this Settlement Agreement, each Party shall  
25 bear its own attorneys' fees and costs.

26           11.3           Nothing in this Section 11 shall preclude a Party from seeking an award of  
27 sanctions pursuant to law.

28           **12. OTHER TERMS**

          12.1           The terms of this Settlement Agreement shall be governed by the laws of the  
State of California.

1           12.2       This Settlement Agreement shall apply to and be binding upon CEH and  
2 Settling Defendant, and their respective divisions, subdivisions, and subsidiaries, and the  
3 successors or assigns of any of them.

4           12.3       Nothing in this Settlement Agreement shall release, or in any way affect any  
5 rights that any Settling Defendant might have against any other party except as expressly  
6 provided herein, including but not limited to the release of Zappos.com.

7           12.4       This Settlement Agreement may be executed in counterparts and by means of  
8 facsimile or portable document format (pdf), which taken together shall be deemed to constitute  
9 one document.

10          12.5       Each signatory to this Settlement Agreement certifies that he or she is fully  
11 authorized by the Party he or she represents to stipulate to this Settlement Agreement and to enter  
12 into and execute the Settlement Agreement on behalf of the Party represented and legally to bind  
13 that Party.

14          12.6       The Parties, including their counsel, have participated in the preparation of  
15 this Settlement Agreement and this Settlement Agreement is the result of the joint efforts of the  
16 Parties. This Settlement Agreement was subject to revision and modification by the Parties and  
17 has been accepted and approved as to its final form by all Parties and their counsel. Accordingly,  
18 any uncertainty or ambiguity existing in this Settlement Agreement shall not be interpreted  
19 against any Party as a result of the manner of the preparation of this Settlement Agreement. Each  
20 Party to this Settlement Agreement agrees that any statute or rule of construction providing that  
21 ambiguities are to be resolved against the drafting Party should not be employed in the  
22 interpretation of this Settlement Agreement and, in this regard, the Parties hereby waive  
23 California Civil Code § 1654.

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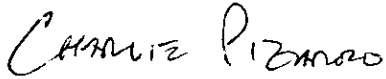


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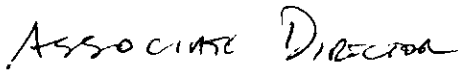
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CENTER FOR ENVIRONMENTAL HEALTH**



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**BRIGHTON COLLECTIBLES, LLC**

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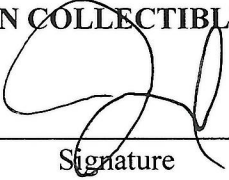
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**BRIGHTON COLLECTIBLES, LLC**

  
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**JERRY KOHL**  
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**PRESIDENT**  
\_\_\_\_\_  
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