

1 California, the City Attorneys of every California city with a population greater than 750,000, and
2 to Settling Defendant regarding the presence of cadmium in jewelry manufactured, distributed or
3 sold by Settling Defendant.

4 1.3 On July 30, 2010, CEH filed the operative First Amended Complaint
5 (“Complaint”) in this action, which names Settling Defendant as a party.

6 1.4 Settling Defendant is a corporation that employs 10 or more persons, and which
7 manufactures, distributes and/or sells Covered Products in the State of California.

8 1.5 For purposes of this Consent Judgment only, CEH and Settling Defendant (the
9 “Parties”) stipulate that this Court has jurisdiction over the allegations of violations contained in
10 the Complaint and personal jurisdiction over Settling Defendant as to the acts alleged in the
11 Complaint, that venue is proper in the County of Alameda, and that this Court has jurisdiction to
12 enter this Consent Judgment as a full and final resolution of all claims which were or could have
13 been raised in the Complaint based on the facts alleged therein with respect to Covered Products
14 manufactured, distributed, and/or sold by Settling Defendant.

15 1.6 CEH and Settling Defendant enter into this Consent Judgment as a full and final
16 settlement of all claims that were raised in the Complaint, or which could have been raised in the
17 Complaint, arising out of the facts or conduct related to Settling Defendant alleged therein. By
18 execution of this Consent Judgment and agreeing to comply with its terms, the Parties do not
19 admit any facts or conclusions of law including, but not limited to, any facts or conclusions of law
20 suggesting or demonstrating any violations of Proposition 65 (California Health and Safety Code
21 sections 25249.5 *et seq.*) or any other statutory, common law or equitable requirements relating to
22 cadmium in jewelry. Nothing in this Consent Judgment is or shall be construed as an admission
23 by the Parties of any fact, conclusion of law, issue of law or violation of law, nor shall compliance
24 with the Consent Judgment constitute or be construed as an admission by the Parties of any fact,
25 conclusion of law, issue of law, or violation of law. Settling Defendant denies the material, factual
26 and legal allegations in CEH’s Complaint and expressly denies any wrong doing whatsoever.
27 Nothing in this Consent Judgment shall prejudice, waive or impair any right, remedy, argument or
28 defense the Parties may have in this or any other pending or future legal proceedings. This

1 Consent Judgment is the product of negotiation and compromise and is accepted by the Parties
2 solely for purposes of settling, compromising, and resolving issues disputed in this action.

3 2. DEFINITIONS

4 2.1 The term “Cadmium Limit” means a concentration of more than 0.03 percent (300
5 parts per million (“ppm”)) by weight cadmium in any component of a Covered Product, or in any
6 material used in a Covered Product. The forgoing shall not apply to components of or materials
7 used in Covered Product made from cubic zirconia (sometimes called cubic zirconium, CZ), glass,
8 rhinestones or vitrified ceramics except where the Covered Products in question are subject to
9 California Health and Safety Code section 25214.2(d).

10 2.2 The term “Covered Product” means (a) the following ornaments worn by a person:
11 an anklet, arm cuff, bracelet, charm, brooch, chain, crown, cuff link, watch (excluding the
12 timepiece itself if removable), decorated hair accessory, earring, necklace, pin, ring; similar
13 clothing or shoe ornaments which are detachable; and body piercing jewelry; or (b) any bead,
14 chain, link, pendant, or other component of such an ornament.

15 2.3 The term “Effective Date” means the date of entry of this Consent Judgment.

16 3. INJUNCTIVE RELIEF

17 3.1 **Reformulation of Covered Products.** Settling Defendant shall comply with the
18 following requirements to achieve expeditious reformulation of the Covered Products to reduce or
19 eliminate exposures to cadmium arising from the Covered Products:

20 3.1.1 **Specification Compliance Date.** To the extent it has not already done so,
21 no more than 30 days after the Effective Date, Settling Defendant shall provide the Cadmium
22 Limit to its vendors of Covered Products and shall instruct each vendor to expeditiously provide
23 Covered Products that comply with the Cadmium Limit on a nationwide basis.

24 3.1.2 **Inventory Cutoff/Shipping Restriction Date.** As of August 15, 2011,
25 Settling Defendant shall not manufacture, purchase, import, or supply to an unaffiliated third party
26 any Covered Product for sale in California that exceeds the Cadmium Limit.

27 3.1.3 **Final Retail Compliance Date.** Commencing on December 31, 2011,
28 Settling Defendant shall not sell or offer for sale, or authorize any customer (including

1 merchandise liquidator) to sell or offer for sale in California, any Covered Product that exceeds
2 the Cadmium Limit.

3 **3.2 Market Withdrawal of Covered Products.** Prior to the Effective Date, Settling
4 Defendant shall have withdrawn from sale nationwide, and attempted to recall from prior
5 purchasers, the Justice Necklace with Cupcake Charm, SKU No. 78063765 (“Recall Product”),
6 which was identified in the 60-Day Notice sent by CEH to Settling Defendant. Within 30 days
7 following the Effective Date, Settling Defendant shall certify to CEH in writing that it has met the
8 foregoing obligation.

9 **4. ENFORCEMENT**

10 **4.1 Enforcement Procedures.** CEH may, by motion or application for an order to
11 show cause before this Court, enforce the terms and conditions of this Consent Judgment.

12 4.1.1 To the extent that CEH plans to exercise Section 4.1 above with respect to
13 the requirement set forth in Section 3.1.3 above, it shall first provide written notice to and offer to
14 meet and confer with Settling Defendant and provide Settling Defendant with 30 days to provide
15 CEH with evidence that Settling Defendant has, by that time, withdrawn from sale in and
16 permanently ceased selling the stock keeping unit(s) or item number(s) (collectively, “SKU”) of
17 the Covered Product(s) in question in California. In the event Settling Defendant provides CEH
18 with the evidence and assurances specified in the preceding sentence within the time provided by
19 the preceding sentence, CEH shall not proceed under Section 4.1 and Settling Defendant shall be
20 deemed to have remained in compliance with the terms of this Consent Judgment provided that
21 Settling Defendant also has tendered to CEH a payment of \$10,000 as reimbursement of attorneys’
22 fees and costs and other expenses incurred in investigating and enforcing violations of this and
23 related Consent Judgments. The payment required by the preceding sentence shall, however, be
24 waived the first time that this Section 4.1.1 is invoked and thereafter, for a period of eighteen
25 months running from the Effective Date, if the Cadmium Limit is exceeded in a *non-metallic*
26 material or component of the Covered Product at issue, the payment shall be reduced to \$5,000.

27 4.1.2 Prior to bringing any motion or order to show cause to enforce the terms of
28 this Consent Judgment other than with respect to Section 3.1.3 above, a Party seeking to enforce

1 shall provide the allegedly breaching party twenty (20) days advanced written notice of the alleged
2 violation. The Parties shall meet and confer during such twenty (20) day period in an effort to try
3 to reach agreement on an appropriate cure for the alleged violation. After such twenty (20) day
4 period, the Party seeking to enforce may, by new action, motion or order to show cause before the
5 Superior Court of Alameda, seek to enforce the terms and conditions contained in this Consent
6 Judgment (other than with respect to Section 3.1.3 above, which shall be governed by Section
7 4.1.1 exclusively). Should the Party seeking to enforce prevail on any motion or application under
8 this section, such Party shall be entitled to recover its reasonable attorneys' fees and costs
9 associated with such motion, order to show cause or procedure from the other Party.

10 4.1.3 The Settling Defendant shall not be subject to enforcement regarding an
11 SKU of a Covered Product under this Consent Judgment, including via Section 4.1.1 above, if the
12 California Department of Toxic Substances Control has initiated a proceeding or resolved a claim
13 regarding cadmium in the same SKU pursuant to its authority under Health and Safety Code
14 section 25214.3.

15 5. PAYMENTS

16 5.1 **Payments From Settling Defendant.** Due to the nationwide withdraw from sale
17 of the Recall Product upon receipt of the 60-Day Notice and subsequent recall of it and other
18 Covered Products containing cadmium on a nationwide basis, Settling Defendant shall be
19 accorded a \$5,000 credit against what have otherwise been a \$50,000 total settlement payment.
20 Accordingly, within five (5) days of the entry of this Consent Judgment, Settling Defendant shall
21 pay the total net sum of \$45,000 as further specified in Section 5.2 below.

22 5.2 **Allocation of Payments.** The total settlement amount for Settling Defendant shall
23 be paid in three separate checks delivered to the offices of the Lexington Law Group (Attn: Eric
24 Somers), 1627 Irving Street, San Francisco, California 94122, and made payable and allocated as
25 follows:

26 5.2.1 Settling Defendant shall pay the total sum of \$4,500 as a penalty pursuant
27 to Health & Safety Code §25249.7(b,) to be apportioned in accordance with California Health &
28 Safety Code § 25249.12(c) & (d), with 75% of these funds remitted to the State of California's

1 Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the
2 penalty remitted to CEH. Accordingly, one penalty payment check for \$3,375 shall be made
3 payable to “OEHHA” for the Safe Drinking Water and Toxic Enforcement Fund and be attributed
4 to taxpayer identification number 68-0284486, and a second penalty payment check for \$1,125
5 shall made payable to the “Center For Environmental Health” and associated with taxpayer
6 identification number 94-3251981.

7 5.2.2 Settling Defendant shall also separately pay the sum of \$11,500 as payment
8 to CEH in lieu of penalty pursuant to Health & Safety Code §25249.7(b), and California Code of
9 Regulations, Title 11, §3202(b). CEH will use such funds to continue its work educating and
10 protecting people from exposures to toxic chemicals, including heavy metals. CEH may also use a
11 portion of such funds to monitor compliance with the reformulation requirements of this and other
12 similar Consent Judgments, to purchase and test jewelry, and to prepare and compile the
13 information and documentation necessary to support enforcement efforts under this Consent
14 Judgment. In addition, as part of its Community Environmental Action and Justice Fund, CEH
15 will use four percent of such funds to award grants to grassroots environmental justice groups
16 working to educate and protect people from exposures to toxic chemicals. The method of
17 selection of such groups can be found at the CEH web site at www.ceh.org/justicefund. The
18 payment in lieu of penalty check shall be made payable to the “Center For Environmental Health”
19 and associated with taxpayer identification number 94-3251981.

20 5.2.3 Settling Defendant shall also separately pay the sum of \$29,000 as
21 reimbursement of a portion of CEH’s reasonable attorneys’ fees and costs. The attorneys’ fees
22 and cost reimbursement check shall be made payable to the “Lexington Law Group” and
23 associated with taxpayer identification number 94-3317175.

24 6. MODIFICATION AND DISPUTE RESOLUTION

25 6.1 **Modification.** This Consent Judgment may be modified from time to time by
26 express written agreement of the Parties, with the approval of the Court, or by an order of this
27 Court upon motion and in accordance with law.

28 6.2 **Notice; Meet and Confer.** Any Party seeking to modify this Consent Judgment

1 shall attempt in good faith to meet and confer with all affected Parties prior to filing a motion to
2 modify the Consent Judgment.

3 **6.3 Effect of Subsequent Settlements.** If CEH enters into a binding agreement to
4 resolve the claims asserted in the Complaint with more than two unaffiliated defendants named in
5 the Complaint where the average of the settlement payments to be made by each of such
6 unaffiliated entities is less than \$45,000, CEH shall issue the Settling Defendant a refund of the
7 monetary difference in question within thirty (30) days of receipt of the settlement payment from
8 the unaffiliated entities. If CEH enters into a binding agreement to resolve the claims asserted in
9 the Complaint with more than two unaffiliated entities that contains a stipulated payment section
10 for resolving an associated future enforcement matter that contains a stipulated payment that is
11 \$10,000 or less, the Settling Defendant shall be entitled to adopt that future enforcement and
12 stipulated payment section in its entirety by providing CEH with written notice of such election.
13 Thirty days after such election, this Consent Judgment shall be deemed amended to incorporate
14 the new future enforcement and stipulated payment section. However, this Section 6.3 shall not
15 be applicable to the extent that the two unaffiliated entities which are subject to the more favorable
16 payment amount(s) agreed to by CEH did not participate in settlement discussions in which the
17 Settling Defendant was a participant prior to entering into this Consent Judgment.

18 **7. CLAIMS COVERED AND RELEASE**

19 **7.1** This Consent Judgment is a full, final, and binding resolution between CEH and
20 Settling Defendant and Settling Defendant’s parents, shareholders, divisions, subdivisions,
21 subsidiaries, partners, sister companies and their successors and assigns (“Defendant Releases”),
22 and all entities to whom they distribute or sell Covered Products including, but not limited to,
23 distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees
24 (“Downstream Defendant Releasees”), of any violation of Proposition 65 or any other statutory or
25 common law claims that have been or could have been asserted in the public interest against
26 Settling Defendant, Defendant Releasees, and Downstream Defendant Releasees, regarding the
27 failure to warn about exposure to cadmium arising in connection with Covered Products
28 manufactured, distributed, or sold by Settling Defendant prior to the Effective Date.

1 7.2 CEH, for itself and acting on behalf of the public interest pursuant to Health &
2 Safety Code §25249.7(d), releases, waives, and forever discharges any and all claims against
3 Settling Defendant, Defendant Releasees, and Downstream Defendant Releasees arising from any
4 violation of Proposition 65 or any other statutory or common law claims that have been or could
5 have been asserted in the public interest regarding the failure to warn about exposure to cadmium
6 arising in connection with Covered Products manufactured, distributed or sold by Settling
7 Defendant prior to the Effective Date.

8 7.3 Compliance with the terms of this Consent Judgment by Settling Defendant and the
9 Defendant Releasees shall constitute compliance with Proposition 65 by Settling Defendant, the
10 Defendant Releasees and their Downstream Defendant Releasees with respect to any alleged
11 failure to warn about cadmium in Covered Products manufactured, distributed or sold by Settling
12 Defendant after the Effective Date.

13 8. PROVISION OF NOTICE

14 8.1 When any Party is entitled to receive any notice under this Consent Judgment, the
15 notice shall be sent by certified mail and electronic mail as follows:

16 8.1.1 **Notices to Settling Defendant.** The persons for Settling Defendant and to
17 receive Notices pursuant to this Consent Judgment shall be:

18 R. Yang and M. Hamilton
19 Office of the General Counsel
20 Tween Brands, Inc.
21 8323 Walton Parkway
22 New Albany, Ohio 43054
23 Ryang@tweenbrands.com
24 Mhamilton@tweenbrands.com

25 and

26 Robert Falk
27 Morrison & Foerster LLP
28 425 Market Street
 San Francisco, CA 94105
 rfalk@mofo.com

 8.1.2 **Notices to Plaintiff.** The person for CEH to receive Notices pursuant to

1 this Consent Judgment shall be:

2 Eric S. Somers
3 Lexington Law Group
4 1627 Irving Street
5 San Francisco, CA 94122
6 esomers@lexlawgroup.com

7 8.2 Any Party may modify the person and address to whom the notice is to be sent by
8 sending the other Party notice by electronic or certified mail.

9 9. COURT APPROVAL

10 9.1 This Consent Judgment shall become effective on the Effective Date, provided
11 however, that CEH shall prepare and file a Motion for Approval of this Consent Judgment and
12 Settling Defendant shall support approval of such Motion.

13 9.2 If this Consent Judgment is not entered by the Court, it shall be of no force or effect
14 and shall not be introduced into evidence or otherwise used in any proceeding for any purpose.

15 10. GOVERNING LAW AND CONSTRUCTION

16 10.1 The terms of this Consent Judgment shall be governed by the laws of the State of
17 California.

18 11. ENTIRE AGREEMENT

19 11.1 This Consent Judgment contains the sole and entire agreement and understanding
20 of the Parties with respect to the entire subject matter hereof, and any and all prior discussions,
21 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein
22 and therein. There are no warranties, representations, or other agreements between the Parties
23 except as expressly set forth herein. No representations, oral or otherwise, express or implied,
24 other than those specifically referred to in this Consent Judgment have been made by any Party
25 hereto. No other agreements not specifically contained or referenced herein, oral or otherwise,
26 shall be deemed to exist or to bind any of the Parties hereto. Any agreements specifically
27 contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any of the
28 Parties hereto only to the extent that they are expressly incorporated herein. No supplementation,
modification, waiver, or termination of this Consent Judgment shall be binding unless executed in
writing by the Party to be bound thereby. No waiver of any of the provisions of this Consent

1 Judgment shall be deemed or shall constitute a waiver of any of the other provisions hereof
2 whether or not similar, nor shall such waiver constitute a continuing waiver.

3 12. RETENTION OF JURISDICTION

4 12.1 This Court shall retain jurisdiction of this matter to implement or modify the
5 Consent Judgment.

6 13. AUTHORITY TO STIPULATE TO CONSENT JUDGMENT

7 13.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized
8 by the Party he or she represents to stipulate to this Consent Judgment and to enter into and
9 execute the Consent Judgment on behalf of the Party represented and legally to bind that Party.

10 14. NO EFFECT ON OTHER SETTLEMENTS

11 14.1 Nothing in this Consent Judgment shall preclude CEH from resolving any claim
12 against an entity that is not Settling Defendant on terms that are different than those contained in
13 this Consent Judgment.

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1 15. EXECUTION IN COUNTERPARTS

2 15.1 The stipulations to this Consent Judgment may be executed in counterparts and by
3 means of facsimile, which taken together shall be deemed to constitute one document.
4

5 **IT IS SO STIPULATED:**

6 Dated: March 16 2011 7 8 9 10 11 12 13 14	CENTER FOR ENVIRONMENTAL HEALTH  _____ CHARLIE PIZZANO _____ Printed Name ASSOCIATE DIRECTOR _____ Title
15 Dated: March __, 2011 16 17 18 19 20 21 22 23	TWEEN BRANDS, INC. _____ _____ Printed Name _____ Title

24 **IT IS SO ORDERED, ADJUDGED,
25 AND DECREED**

26 Dated: _____
27 Judge of the Superior Court of the State of California
28

1 **15. EXECUTION IN COUNTERPARTS**

2 15.1 The stipulations to this Consent Judgment may be executed in counterparts and by
3 means of facsimile, which taken together shall be deemed to constitute one document.

4
5 **IT IS SO STIPULATED:**

<p>6 Dated: March __, 2011</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p>	<p>CENTER FOR ENVIRONMENTAL HEALTH</p> <p>_____</p> <p>_____</p> <p>Printed Name</p> <p>_____</p> <p>Title</p>
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<p>15 Dated: March <u>16</u>, 2011</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p>	<p>TWEEN BRANDS, INC.</p> <p></p> <p><u>Rolando de Aquiar</u></p> <p>Printed Name</p> <p><u>EVP and CFO of Tween</u></p> <p>Title Brands</p>
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24 **IT IS SO ORDERED, ADJUDGED,**

25 **AND DECREED**

26 Dated: _____
27 Judge of the Superior Court of the State of California

28