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11 DENNIS JOHNSON

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 CITY AND COUNTY OF SANTA CLARA
14 UNLIMITED CIVIL JURISDICTION

15 DENNIS JOHNSON,
16 Plaintiff,

17 v.

18 VISUAL COMFORT & CO.; THE TJX
19 COMPANIES, INC.; and DOES 1-150,
20 inclusive,

21 Defendants.

Case No. 23CV419564

[PROPOSED] CONSENT JUDGMENT

(Health & Safety Code § 25249.6 *et seq.* and
Code of Civil Procedure § 664.6)

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between plaintiff Dennis Johnson (“Johnson”
4 or “Plaintiff”), individually and acting in the public interest, on the one hand, and defendant Visual
5 Comfort & Co. (“Visual Comfort” or “Defendant”), on the other hand, with Johnson and Visual
6 Comfort referred to individually as a “Party” and collectively as the “Parties.”

7 **1.2 Plaintiff**

8 Johnson is a resident of the State of California who seeks to promote awareness of
9 exposures to toxic chemicals, and to improve human health by reducing or eliminating harmful
10 substances contained in consumer and commercial products.

11 **1.3 Defendant**

12 Visual Comfort employs ten or more persons and is a person in the course of doing business
13 for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and
14 Safety Code section 25249.6 *et seq.* (“Proposition 65”).

15 **1.4 General Allegations**

16 In its Complaint, Johnson alleges that Visual Comfort manufactures, sells, and distributes,
17 and the TJX Companies, Inc. (“TJX”) sells, ceramic lamps with exterior designs containing lead
18 that are sold in California. Lead is listed pursuant to Proposition 65 as a chemical known to cause
19 cancer and birth defects or other reproductive harm. Johnson alleges that Visual Comfort and TJX
20 failed to provide a warning required by Proposition 65 for exposures to lead. Visual Comfort and
21 TJX deny that any such warning was or is required. While TJX is named as a defendant in the
22 Complaint, it is not a party to this Consent Judgment given its role as a retailer only. Upon entry of
23 this Consent Judgment as an Order of the Court, Plaintiff will file a dismissal as to TJX from this
24 action with prejudice.

25 **1.5 Product Description**

26 The products covered by this Consent Judgment are specifically defined as, and limited to,
27 the “*Ralph Lauren Ceramic Lamp*” UPC: Style: 088169, that are manufactured, sold, or distributed
28 for sale in California by Visual Comfort (hereinafter “Covered Products”).

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1.6 Notices of Violation

On September 30, 2022, Johnson served Ralph Lauren Corporation (“Ralph Lauren”) (as licensor of the Covered Products), TJX, and the requisite public enforcement agencies with a 60-Day Notice of Violation, alleging that the notice recipients violated Proposition 65 when they failed to provide a Proposition 65 warning with regard to exposure to lead in the Covered Products. Visual Comfort was subsequently identified as the manufacturer/supplier of the Covered Products.

On December 13, 2022, Johnson served Visual Comfort, Ralph Lauren, TJX, and the requisite public enforcement agencies with a Supplemental 60-Day Notice of Violation, alleging that the notice recipients violated Proposition 65 when they failed to provide a Proposition 65 warning with regard to exposure to lead in the Covered Products.

The September 30, 2022 Notice and December 13, 2022 Supplemental Notice shall hereinafter be collectively referred to as the “Notices.”

No public enforcer has commenced and is diligently prosecuting the claims alleged in the Notices.

1.7 Complaint

On July 19, 2023, Johnson initiated this action by filing a complaint against Visual Comfort and TJX (the “Complaint”).

1.8 No Admission

Visual Comfort, TJX and Ralph Lauren deny the material, factual, and legal allegations contained in the Notices and Complaint and maintain that they have not violated Proposition 65, including with regard to the Covered Products. Nothing in this Consent Judgment shall be construed as an admission by Visual Comfort, TJX or Ralph Lauren of any fact, finding, conclusion, issue of law, or violation of law, nor shall compliance with this Consent Judgment constitute or be construed as an admission by Visual Comfort, TJX or Ralph Lauren of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by each of them. This Section shall not, however, diminish or otherwise affect the obligations, responsibilities, and duties of Visual Comfort under this Consent Judgment.

1 **1.9 Jurisdiction**

2 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
3 jurisdiction over Visual Comfort as to the allegations contained in the Notices and the Complaint,
4 that venue is proper in the County of Santa Clara, and that the Court has jurisdiction to approve,
5 enter and enforce the provisions of this Consent Judgment pursuant to Proposition 65 and Code of
6 Civil Procedure section 664.6.

7 **1.10 Effective Date**

8 For purposes of this Consent Judgment, the term “Effective Date” shall mean the date that
9 Visual Comfort receives Notice of Entry of this Consent Judgment as a judgment of the Court.

10 **2. INJUNCTIVE RELIEF: REFORMULATION/WARNINGS**

11 **2.1 Reformulation Standard**

12 “Reformulated Products” are defined as those Covered Products that: (a) contain no more
13 than 90 parts per million (“ppm”) lead in any decoration, colored artwork, designs and/or marking
14 on the surface of the Covered Products when analyzed pursuant to U.S. Environmental Protection
15 Agency testing methodologies 3050B or equivalent methodologies utilized by federal or state
16 agencies for the purpose of determining lead content in a solid substance; and (b) yield no more
17 than 1.0 microgram of lead on any surface sampled and analyzed pursuant to the NIOSH 9100
18 testing protocol.

19 If the decoration is tested after it is affixed to the Covered Product, the percentage of the
20 lead by weight must related only to the decorating materials and must not include any quantity
21 attributable to non-decorating material (e.g., ceramic substrate).

22 **2.2 Reformulation/Warning Commitment**

23 No later than thirty (30) days after the Effective Date (the “Compliance Date”), and
24 continuing thereafter, Visual Comfort shall not manufacture or import Covered Products for sale in
25 the State of California unless they are Reformulated Products pursuant to Section 2.1 or contain a
26 warning pursuant to Section 2.3 below.

1 displayed and/or described; (b) on the same page as the price for the Covered Product; or (c) on one
2 or more web pages displayed to a California purchaser prior to completion of the checkout process.
3 Alternatively, a symbol consisting of a black exclamation point in a yellow or white equilateral
4 triangle may appear adjacent to or immediately following the display, description, price, or checkout
5 listing of the Covered Product, if the warning statement appears elsewhere on the same web page in
6 a manner that clearly associates it with the product(s) to which the warning applies.

7 **2.5** For any Covered Products that do not meet the Reformulation Standard in Section
8 2.1, Visual Comfort shall be deemed in compliance with Proposition 65 with respect to exposures
9 to lead from the Covered Products by complying with the warning requirements of Sections 2.3 and
10 2.4 of this Consent Judgement or by complying with warning requirements promulgated by the
11 State of California’s Office of Environmental Health Hazard Assessment (“OEHHA”) in effect on
12 or after the Effective Date.

13 **3. MONETARY SETTLEMENT TERMS**

14 **3.1 Civil Penalty Payment**

15 Pursuant to Health and Safety Code section 25249.7(b)(2), and in full and final settlement of
16 all claims alleged in the Notice or Complaint or referred to in this Consent Judgment, Visual
17 Comfort shall pay \$2,700 in civil penalties within five (5) business days of the Effective Date. The
18 penalty payment will be allocated in accordance with California Health and Safety Code section
19 25249.12(c)(1) & (d), with 75% of the penalty amount remitted to the California Office of
20 Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty
21 amount paid to Johnson and delivered to the address in Section 3.3 herein. Visual Comfort shall
22 provide its payment in two checks as follows: (1) “OEHHA” in the amount of \$2,025; and (2)
23 “Dennis Johnson” in the amount of \$675.

24 **3.2 Attorney’s Fees and Costs**

25 The Parties acknowledge that Johnson and his counsel offered to resolve this dispute
26 without reaching terms on the amount of fees and costs to be reimbursed to Johnson’s counsel,
27 thereby leaving the issue to be resolved after the material terms of the agreement had been settled.
28 Shortly after the other settlement terms had been reached, Visual Comfort expressed a desire to

1 resolve Johnson’s fees and costs. The Parties reached an accord on the compensation due to
2 Johnson’s counsel under general contract principles and the private attorney general doctrine
3 codified at Code of Civil Procedure section 1021.5 for all work performed in this matter. Under
4 these legal principles, within five (5) business days of the Effective Date, Visual Comfort shall pay
5 \$21,550, in the form of a check made payable to “Voorhees & Bailey, LLP,” for all fees and costs
6 incurred by Johnson in investigating, bringing this matter to the attention of Visual Comfort’s
7 management, litigating and negotiating, and obtaining judicial approval of a settlement in the public
8 interest. Except as expressly provided herein, each Party shall bear its own fees and costs.

9 **3.3 Payment Address**

10 All payments under this Consent Judgment shall be delivered to the following address:

11 Voorhees & Bailey, LLP
12 990 Amarillo Avenue
13 Palo Alto, CA 94303

14 **4. CLAIMS COVERED AND RELEASED**

15 **4.1 Binding Resolution and Release of Proposition 65 Claims**

16 This Consent Judgment is a full, final, and binding resolution between Johnson acting on his
17 own behalf, and on behalf of the public interest, and Visual Comfort, and its parents, subsidiaries,
18 shareholders, affiliates, members, directors, officers, managers, employees, representatives, agents,
19 attorneys, insurers, divisions, subdivisions, and its predecessors, successors and assigns
20 (collectively “Defendant Releasees”), and all entities from whom any Defendant Releasee obtained
21 Covered Products or their components, and to whom any Defendant Releasee directly or indirectly
22 manufactures, imports, distributes or sells Covered Products, including but not limited to
23 manufacturers, suppliers, distributors, wholesalers, licensors (including, without limitation, Ralph
24 Lauren, its parents, subsidiaries, and affiliated entities), licensees, auctioneers, retailers (including,
25 without limitation, TJX, its parents, subsidiaries, and affiliated entities), franchisees, reformulators,
26 customers, owners, purchasers, users, cooperative members, and each of their respective officers,
27 directors, attorneys, representatives, shareholders, agents, employees and affiliates (collectively
28 “Downstream Releasees”), of all claims that have been asserted for, could have been asserted for, or
that arise out of alleged or actual violations of Proposition 65 or its implementing regulations based

1 on alleged unwarned exposure to lead from Covered Products as set forth in the Notices or the
2 Complaint, with respect to any Covered Products manufactured, distributed, or sold by Visual
3 Comfort or TJX prior to the Compliance Date (hereinafter, the “Proposition 65 Claims”). Visual
4 Comfort, Defendant Releasees and Downstream Releasees are hereby collectively referred to as the
5 “Released Parties.” Plaintiff, on behalf of himself and in the public interest, hereby discharges and
6 releases Released Parties from any and all such Proposition 65 Claims. Any and all Proposition 65
7 Claims regarding unwarned exposures to lead in the Covered Products are resolved with prejudice
8 by this Consent Judgment. It is the Parties’ intention that this Consent Judgment shall have
9 preclusive effect such that no other private enforcers, whether purporting to act in his, her, or its
10 interests or the public interest, shall be permitted to pursue and/or take any action with respect to
11 any violation of Proposition 65 that was alleged in the Notices or the Complaint, or that could have
12 been brought pursuant to the Notices or the Complaint against Released Parties regarding alleged
13 unwarned exposures to lead in the Covered Products.

14 **4.2 Johnson’s Individual Release of Claims**

15 In addition to the foregoing, Johnson, on behalf of himself, his past and current agents,
16 representatives, attorneys, and successors and/or assignees, and *not* in his representative capacity,
17 hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action,
18 and discharges and releases the Released Parties from any and all claims for unwarned exposures to
19 lead in the Covered Products manufactured, imported, distributed, or sold by any Released Party
20 before the Compliance Date. This discharge and release shall be effective as a full and final accord
21 and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys’
22 fees, damages, losses, claims, liabilities and demands of Johnson, of any nature, character or kind,
23 whether known or unknown, suspected or unsuspected, arising out of alleged or actual exposures to
24 lead in the Covered Products, manufactured, imported, distributed or sold by any of the Released
25 Parties before the Compliance Date. In doing so, Johnson waives California Civil Code § 1542 (and
26 any other state, federal, or international law of similar import), which provides as follows:
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1 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR
2 RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR
3 AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER,
4 WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE
5 DEBTOR OR RELEASED PARTY.

6 **4.3 Defendant's Release of Johnson**

7 Visual Comfort, on its own behalf and on behalf of its past and current agents,
8 representatives, attorneys, successors and/or assignees, hereby waives any and all claims against
9 Johnson and his attorneys and other representatives, for any and all actions taken or statements
10 made (or those that could have been taken or made) by Johnson and his attorneys and other
11 representatives, whether in the course of investigating claims, seeking to enforce Proposition 65
12 against them in this matter, or with respect to the Covered Products.

13 **5. COURT APPROVAL AND ENTRY; DISMISSAL OF TJX**

14 This Consent Judgment is not effective until it is approved and entered by the Court and
15 shall be null and void if, for any reason, it is not approved and entered by the Court within one year
16 after it has been fully executed by the Parties. Johnson and Visual Comfort shall support the entry
17 of this agreement as a judgment, and to obtain the Court's approval of their settlement in a timely
18 manner. The Parties acknowledge that, pursuant to California Health and Safety Code section
19 25249.7(f), a noticed motion is required for judicial approval of this Consent Judgment, which
20 motion Johnson shall draft and file and Visual Comfort shall support, appearing at the hearing if so
21 requested. If any third-party objection to the motion is filed, Johnson and Visual Comfort shall
22 work together to file a reply and appear at any hearing. Upon entry of this Consent Judgment as an
23 Order of the Court, Plaintiff shall file a dismissal as to TJX from this action with prejudice.

24 **6. SEVERABILITY**

25 If, subsequent to the execution of this Consent Judgment, any provision of this Consent
26 Judgment is deemed by a court to be unenforceable, the validity of the remaining provisions shall
27 not be adversely affected.
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1 **7. GOVERNING LAW**

2 The terms of this Consent Judgment shall be governed by the laws of the State of California
3 and apply within the State of California. In the event that Proposition 65 is repealed or is otherwise
4 rendered inapplicable by reason of law generally, or as to the Covered Products, then Visual
5 Comfort may provide written notice to Johnson of any asserted change in the law and shall have no
6 further injunctive obligations pursuant to this Consent Judgment with respect to, and to the extent
7 that, the Covered Products are so affected.

8 **8. NOTICE**

9 Unless specified herein, all correspondence and notice required to be provided pursuant to
10 this Consent Judgment shall be in writing and sent by: (a) personal delivery; (b) first-class,
11 registered or certified mail, return receipt requested; or (c) a recognized overnight courier, on any
12 Party by the other at the following addresses:

13 For Visual Comfort:

14 Thomas M. Donnelly
15 Jones Day
16 555 California Street, 26th Floor
San Francisco, CA 94104

For Johnson:

Voorhees & Bailey, LLP
Proposition 65 Coordinator
990 Amarillo Avenue
Palo Alto, CA 94303

17 Any Party may, from time to time, specify in writing to the other a change of address to which all
18 notices and other communications shall be sent.

19 **9. COUNTERPARTS; FACSIMILE AND PDF SIGNATURES**

20 This Consent Judgment may be executed in counterparts and by facsimile or portable
21 document format (PDF) signature, each of which shall be deemed an original, and all of which,
22 when taken together, shall constitute one and the same document.

23 **10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

24 Johnson and his attorneys agree to comply with the reporting form requirements referenced
25 in California Health and Safety Code section 25249.7(f).

26 **11. INTEGRATION AND MODIFICATION**

27 This Consent Judgment contains the sole and entire agreement of the Parties and all prior
28 negotiations and understandings related hereto shall be deemed to have been merged within it. No

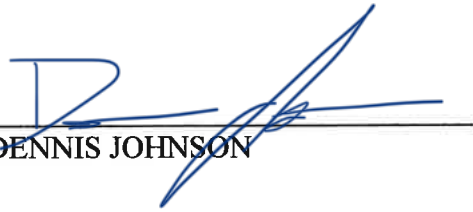
1 representations or terms of agreement other than those contained herein exist or have been made by
2 any Party with respect to the other Party or the subject matter hereof. This Consent Judgment may
3 be modified only by: (i) a written agreement of the Parties and the entry of a modified Consent
4 Judgment by the Court thereon; or (ii) upon a successful motion of any Party and the entry of a
5 modified Consent Judgment by the Court thereon.

6 **12. AUTHORIZATION**

7 The undersigned are authorized to execute this Consent Judgment on behalf of their
8 respective Parties, to legally bind their respective Parties to this Consent Judgment, and have read,
9 understand, and agree to all of the terms and conditions of this Consent Judgment.

10 **AGREED TO:**

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12 Date: 8/9/23

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15 By: 
16 DENNIS JOHNSON

AGREED TO:

12 Date: 8/3/2023

13
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15 By: 
16 VISUAL COMFORT & CO.
17 GARY HIRSCHEL

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