

# AMENDED SETTLEMENT AGREEMENT

## 1. INTRODUCTION

### 1.1 Parties

This Amended Settlement Agreement is entered into by and between John Moore (“Moore”) and 3N Optical, Inc. dba Site For Sore Eyes (“3N Optical”), with Moore and 3N Optical each individually referred to as a “Party” and collectively as the “Parties.” This Amended Settlement Agreement supersedes, in its entirety, the original Settlement Agreement entered into by the Parties on or about December 14, 2015.

Moore is an individual residing in the State of California who seeks to promote awareness of exposures to toxic chemicals, and to improve human health by reducing or eliminating hazardous substances used in consumer products. Moore alleges that 3N Optical employs ten or more persons and is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code § 25249.6 *et seq.* (“Proposition 65”).

### 1.2 General Allegations

Moore alleges that 3N Optical manufactures, sells, and/or distributes for sale in California, vinyl eyewear cases containing di(2-ethylhexyl)phthalate (“DEHP”). DEHP is listed pursuant to Proposition 65 as a chemical known to cause birth defects or other reproductive harm. Moore alleges that 3N Optical failed to provide the health hazard warning allegedly required by Proposition 65 for exposures to DEHP from the vinyl eyewear cases.

### 1.3 Product Description

The Products that are covered by this Amended Settlement Agreement are vinyl eyewear cases containing DEHP including, but not limited to, the *Site For Sore Eyes Eyewear Case, Black*, manufactured, sold or distributed for sale in California by 3N Optical (“Products”), as set forth in the 60-Day Notices of Violation sent on behalf of

Moore to Emerging Vision, franchisor of Site for Sore Eyes, on or about September 30, 2014 and to 3N Optical, Inc. dba Site For Sore Eyes on or about February 25, 2016.

#### **1.4 Notices of Violation**

On or about September 30, 2014, Moore served Emerging Vision, Inc. and certain requisite public enforcement agencies with a 60-Day Notice of Violation, alleging that Emerging Vision, Inc. violated Proposition 65 when it failed to warn customers and consumers in California that the Products expose users to DEHP. To the best of the Parties' knowledge, no public enforcer has commenced and is diligently prosecuting the allegations set forth in the September 30, 2014 notice. 3N Optical dba Site For Sore Eyes has agreed to resolve the allegations in the September 30, 2014 notice thereby releasing Emerging Vision, Inc.

On or about February 25, 2016, Moore served 3N Optical and certain requisite public enforcement agencies with a 60-Day Notice of Violation, alleging that 3N Optical violated Proposition 65 by failing to warn customers and consumers in California that the Products expose users to DEHP. Pending the expiration of the 60-day notice period, all monies paid by 3N Optical pursuant to the original, superseded Settlement Agreement shall be held in the trust account of Moore's counsel. If an authorized public prosecutor files a Proposition 65 enforcement action as to 3N Optical's Products, all monies paid by 3N Optical pursuant to Section 3 of the original, superseded Settlement Agreement shall be refunded to 3N Optical within two business days of such filing, and both the original, superseded Settlement Agreement and this Amended Settlement Agreement shall be null and void *ab initio*.

#### **1.5 No Admission**

3N Optical denies the material, factual, and legal allegations contained in the 60-Day Notices and maintains that all of the products that it has sold and distributed in California, including the Products, have been, and are, in compliance with all laws. Nothing in this Amended Settlement Agreement shall be construed as an admission by

3N Optical of any fact, finding, conclusion, issue of law, or violation of law, nor shall compliance with this Amended Settlement Agreement constitute or be construed as an admission by 3N Optical of any fact, finding, conclusion, issue of law, or violation of law, all of which is specifically denied by 3N Optical. However, this Section shall not diminish or otherwise affect 3N Optical's obligations, responsibilities, and duties under this Amended Settlement Agreement.

### **1.6 Effective Date**

For purposes of this Amended Settlement Agreement, the term "Effective Date" shall mean December 18, 2015.

## **2. INJUNCTIVE RELIEF: REFORMULATION AND WARNING**

### **2.1 Reformulation Commitment**

On or before May 30, 2016, and continuing thereafter, 3N Optical agrees to only purchase for sale or distribution in or into California, "Reformulated Products" as defined herein. For purposes of this Amended Settlement Agreement, "Reformulated Products" are Products that do not contain DEHP in concentrations greater than 0.1 percent by weight (1,000 parts per million) when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C or other methodology utilized by federal or state government agencies for the purpose of determining DEHP content in a solid substance. To comply with this reformulation commitment in the particular circumstances of this matter, 3N Optical shall send a written specification to its vendors, requiring them to supply only Products meeting the definition of "Reformulated Products" to 3N Optical.

### **2.2 Warnings for Existing Inventory**

After January 30, 2016, 3N Optical agrees that to the extent it sells or distributes Products in its existing inventory that contain more than 0.1% by weight (1,000 parts per million) of DEHP, it will provide a warning for any such Products that are offered for sale in California that complies with Proposition 65. 3N Optical may provide a warning

for Products remaining in inventory on or prior to May 30, 2016. The warnings shall be provided in a conspicuous and prominent manner so that the message is made available and likely to be read and understood by the consumer prior to or at the time of the sale or purchase. The Parties agree that a warning stating: “WARNING: This product contains chemicals known to the State of California to cause cancer and birth defects, or other reproductive harm.” shall constitute compliance with Proposition 65 for any Product that has not been reformulated and remains in inventory on or prior to May 30, 2016. The Parties agree that compliance with the terms of this Amended Settlement Agreement by 3N Optical shall constitute compliance with Proposition 65 with respect to any exposure to DEHP in Products.

### **3. MONETARY SETTLEMENT TERMS**

#### **3.1 Civil Penalty Payments**

Pursuant to Health and Safety Code § 25249.7(b)(2), and in settlement of all claims alleged in the Notices or referred to in this Amended Settlement Agreement, 3N Optical has agreed to pay a civil penalty of \$4,000. The penalty payment shall be allocated in accordance with California Health and Safety Code § 25249.12(c)(1) & (d), with 75% of the penalty amount remitted to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty amount paid to Moore, and delivered to the address in Section 3.3 herein. On or before the Effective Date, 3N Optical paid a civil penalty of \$4,000 in two checks for the following amounts made payable to: (a) “OEHHA” in the amount of \$3,000; and (b) “John Moore, Client Trust Account” in the amount of \$1,000.

#### **3.2 Attorneys’ Fees and Costs**

The Parties reached an accord on the compensation due to Moore and his counsel under general contract principles and the private attorney general doctrine codified at Code of Civil Procedure § 1021.5 for all work performed in this matter. Under these legal principles, 3N Optical has agreed to pay \$33,000 to Moore’s counsel, The Chanler

Group, as reimbursement for all fees and costs incurred investigating, bringing this matter to the attention of 3N Optical's management, and negotiating a settlement in the public interest. By January 29, 2016, Moore's counsel shall provide to 3N Optical all information necessary for 3N Optical to issue IRS 1099 Forms for the payment made by 3N Optical hereunder. 3N Optical's payment was made on or before the Effective Date, and was delivered to the address in Section 3.3 in the form of a check payable to "The Chanler Group."

### **3.3 Payment Address**

All payments required by this Amended Settlement Agreement were delivered to the following address:

The Chanler Group  
Attn: Proposition 65 Controller  
2560 Ninth Street  
Parker Plaza, Suite 214  
Berkeley, CA 94710

## **4. CLAIMS COVERED AND RELEASED**

### **4.1 Moore's Release**

This Amended Settlement Agreement is a full, final and binding resolution between Moore, as an individual and *not* on behalf of the public, and 3N Optical, of any violation of Proposition 65 that was or could have been asserted by Moore on behalf of himself, his past and current agents, representatives, attorneys, successors, and/or assignees, against 3N Optical and/or Emerging Vision, Inc., their respective parents, subsidiaries, affiliated entities under common ownership, directors, officers, partners, employees, attorneys, and each entity to whom they directly or indirectly distribute or sell Products, including, but not limited, to downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees ("Releasees"), based on the failure to warn about alleged exposures to DEHP contained in the Products that were manufactured, distributed, sold and/or offered for sale by 3N Optical or Emerging Vision in California before the Effective Date. Moore further agrees to dismiss the action pending against Emerging Vision, Inc. in Alameda Superior Court entitled *Moore v.*

*Emerging Vision, Inc.*, Case No. RG15759993, with prejudice within ten (10) days after the Effective Date.

In further consideration of the promises and agreements herein contained, Moore as an individual and *not* on behalf of the public, on behalf of himself, his past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims that Moore may have against 3N Optical and the other Releasees, including, without limitation, all actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses including, but not exclusively, investigation fees, expert fees, and attorneys' fees arising under Proposition 65 with respect to DEHP in the Products manufactured, distributed, sold and/or offered for sale by 3N Optical and/or Emerging Vision, before the Effective Date (collectively "claims"). Moore acknowledges that he is familiar with Section 1542 of Civil Code, which provides as follows:

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.

Moore, his past and current agents, representatives, attorneys, successors, and/or assignees expressly waives and relinquishes any and all rights and benefits which he may have under, or which may be conferred on it by the provisions of Civil Code § 1542 as well as under any other state or federal statute or common law principle of similar effect, to the fullest extent that it may lawfully waive such rights or benefits pertaining to the released matters.

The releases provided by Moore under this Amended Settlement Agreement are provided solely on Moore's behalf and are not releases on behalf of the public, and specifically do not apply in any way to upstream parties.

#### **4.2 3N Optical's Release of Moore**

3N Optical, on its own behalf, and on behalf of its past and current agents,

representatives, attorneys, successors, and/or assignees, hereby waives any and all claims against Moore and his attorneys and other representatives, for any and all actions taken or statements made by Moore and his attorneys and other representatives in the course of investigating claims, or otherwise seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.

**5. SEVERABILITY**

If, subsequent to the execution of this Amended Settlement Agreement, any of the provisions of this Amended Settlement Agreement are deemed by a court to be unenforceable, the validity of the enforceable provisions remaining shall not be adversely affected.

**6. GOVERNING LAW**

The terms of this Amended Settlement Agreement shall be governed by the laws of the State of California and apply within the State of California. In the event that Proposition 65 is repealed, preempted, or is otherwise rendered inapplicable by reason of law generally, or as to the Products, then 3N Optical may provide written notice to Moore of any asserted change in the law, and shall have no further injunctive obligations pursuant to this Amended Settlement Agreement with respect to, and to the extent that, the Products are so affected.

**7. NOTICE**

Unless specified herein, all correspondence and notices required to be provided pursuant to this Amended Settlement Agreement shall be in writing and sent by: (a) personal delivery; (b) first-class, registered or certified mail, return receipt requested; or (c) a recognized overnight courier, to any Party by the other at the following addresses:

**For 3N Optical:**

Patricia M. O'Toole, Esq.  
The O'Toole Law Firm  
P.O. Box 352348  
Los Angeles, CA 90035-0260

**For Moore:**

Proposition 65 Coordinator  
The Chanler Group  
2560 Ninth Street  
Parker Plaza, Suite 214  
Berkeley, CA 94710

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

**8. COUNTERPARTS; FACSIMILE SIGNATURES**

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

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

Moore and his attorneys agree to comply with the reporting form requirements referenced in California Health and Safety Code § 25249.7(f).

**10. MODIFICATION**

This Amended Settlement Agreement may be modified only by written agreement of the Parties.

**11. AUTHORIZATION**

The undersigned are authorized to execute this Amended Settlement Agreement on behalf of their respective Parties and have read, understood, and agree to all of the terms and conditions of this Amended Settlement Agreement.

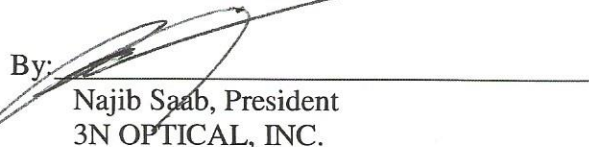
**AGREED TO:**

Date: 5/3/2016

By:   
JOHN MOORE

**AGREED TO:**

Date: 5/4/16

By:   
Najib Saab, President  
3N OPTICAL, INC.