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Attorneys for Plaintiff,
LIVE EYEWEAR, INC.

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

DIOPTICS MEDICAL PRODUCTS, INC., and
LIVE EYEWEAR, INC.,

Plaintiffs,

vs.

IDEAVILLAGE PRODUCTS CORP.,
d/b/a HD VISION and ANAND KHUBANI

Defendants.

CASE NO. CV 08-03538 (PVT)

**SECOND AMENDED
COMPLAINT BY DIOPTICS
MEDICAL PRODUCTS INC. AND
LIVE EYEWEAR, INC.**

DEMAND FOR JURY TRIAL

1 Plaintiffs Dioptics Medical Products, Inc. (“Dioptics”) and Live Eyewear, Inc. (“Live
 2 Eyewear”) (collectively, “Plaintiffs”), for their second amended joint pleading, hereby complain of
 3 Defendants IdeaVillage Products Corporation (“IdeaVillage”) and Anand Khubani (“Khubani”), and
 4 allege as follows:

5 **PARTIES**

6
 7 1. Plaintiff Dioptics is a corporation organized and existing under the laws of the
 8 state of California with its principal place of business in San Luis Obispo, California.

9 2. Plaintiff Live Eyewear is a corporation organized and existing under the laws of
 10 the State of California, having a principal place of business in San Luis Obispo, California.

11 3. On information and belief, Defendant IdeaVillage Products Corp. d/b/a HD
 12 Vision is a corporation organized and existing under the laws of the State of New Jersey with its
 13 principal place of business at 155 Route 46 W., 4th Floor, Wayne, New Jersey 07470.

14 4. On information and belief, Defendant Anand Khubani a/k/a Andy Khubani is an
 15 individual residing in Fairfield, New Jersey. On information and belief, Khubani is the president,
 16 chief executive officer, and principal shareholder of IdeaVillage. On information and belief,
 17 Khubani effectively controls and makes all major decisions for IdeaVillage.
 18

19 **JURISDICTION AND VENUE**

20 5. This Court has subject matter jurisdiction over this action upon at least the
 21 following grounds:
 22

- 23 (a) 28 U.S.C. § 1331, this being a civil action arising under the laws of the United
 24 States;
 25 (b) 28 U.S.C. § 1338(a), this being a civil action arising under the Patent Laws of
 26 the United States, namely, Title 35 U.S.C. § 1 *et seq.*;
 27
 28

- (c) 28 U.S.C. § 1338(a), this being a civil action arising under the trademark laws of the United States, namely, the Lanham Act, 15 U.S.C. §§ 1051-1127;
- (d) Section 39 of the Lanham Act, 15 U.S.C. § 1121, this being an action arising under that act;
- (e) 28 U.S.C. § 1337(a), this being a civil action arising under an Act of Congress regulating commerce;
- (f) 28 U.S.C. § 1338(b), this being a civil action asserting a claim of unfair competition joined with a substantial and related claim under the patent and trademark laws; and
- (g) 28 U.S.C. § 1367(a), this being a civil action including claims that are so related to claims that are within the original jurisdiction of this Court that they form part of the same case or controversy under Article III of the United States Constitution.

6. This Court has personal jurisdiction over IdeaVillage inasmuch as it is doing business in this State and District; it has significant contacts with this State and District; it has offered for sale and sold infringing products in this State and District; it has committed acts in this State and District that are the subject of the allegations set forth herein; and it has asserted counterclaims in this action.

7. This Court has personal jurisdiction over Khubani based upon his substantial business activities in and/or affecting California. Upon information and belief, Khubani is responsible for and has actively directed, managed, controlled, approved, participated in, and carried out the promotion of IdeaVillage's products, including the accused products, into the stream of commerce with the expectation that those products will be sold and offered for sale throughout the United States, including within California and within this judicial district. Upon information and belief, he has actively directed, managed, controlled, approved, participated in and carried out IdeaVillage's

1 infringing activities described herein and has done so with knowledge of Plaintiffs' intellectual
2 property rights and with the specific intent to encourage and induce IdeaVillage's infringement of
3 Plaintiffs' intellectual property rights. Further, upon information and belief, he actively directed,
4 managed, controlled, approved, participated in and carried out the manufacture, promotion, and sale
5 of the accused products with the expectation that the advertisements for the accused products and the
6 accused products themselves will be offered for sale, sold, promoted and distributed nationwide,
7 including in California and specifically in this judicial district.

8
9 8. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b)-(c) and
10 1400(b) in that Defendants have done business in California and in this judicial district, have
11 committed acts of infringement nationwide and in this district, and continue to commit acts of
12 infringement nationwide and in this district.

13 **INTRADISTRICT ASSIGNMENT**

14
15 9. This is an Intellectual Property Action and shall therefore be assigned on a district-
16 wide basis in accordance with Local Rule 3-2(c).

17 **FACTUAL ALLEGATIONS**

18 10. Dioptics is a leading presence in the medical, mass market, sporting goods and
19 professional eye care marketplaces with a stable of proprietary brands of sunglasses, reading glasses,
20 and associated eye care products and accessories.

21
22 11. Live Eyewear is a leading manufacturer of "over-prescription" sunglasses, sunglasses
23 specifically designed to be worn over prescription eyewear. Live Eyewear has manufactured over-
24 prescription collections that are worn by consumers around the world. Until approximately
25 September 2008, Live Eyewear was a sister company to Dioptics, with both companies owned and
26 controlled by the same owners. Live Eyewear and Dioptics are now independent of one another.
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1 12. On December 5, 2000, United States Design Patent No. D434,789 (the “‘789 Patent”)
2 was duly and legally issued for an invention entitled “Eyeglasses” (Exhibit A). Dioptics was
3 assigned the ‘789 Patent and continues to hold all rights and interest in it.

4 13. On November 28, 2006, United States Design Patent No. D532,814 (the “‘814
5 Patent”) was duly and legally issued for an invention entitled “Eyeglasses” (Exhibit B). Dioptics
6 was the original assignee of the ‘814 patent.

7 14. On September 30, 2008, Live Eyewear and Dioptics executed a Patent Assignment
8 Agreement (the “Assignment”) whereby Dioptics assigned to Live Eyewear its entire right, title, and
9 interest in and to the ‘814 Patent. The Assignment was recorded with the USPTO on November 5,
10 2008. Live Eyewear is now the current record assignee of the ‘814 Patent.

11 15. Live Eyewear introduced a collection of eyewear known as the Vistana collection,
12 which is covered by the design claimed in the ‘814 Patent. The arrival of the Vistana collection was
13 recognized as a momentous event in that it departed from traditional over-prescription sunglass
14 styling, delivering an unrestricted, panoramic view not available in prior styles.

15 16. Upon information and belief, IdeaVillage was aware of the ‘789 Patent and ‘814
16 Patent when it arranged for the HD Vision Wraparound products to be manufactured and when it
17 began to offer to sell and sell the HD Vision Wraparound products. Upon information and belief,
18 notwithstanding its knowledge of the ‘789 Patent and ‘814 Patent, IdeaVillage is continuing to sell
19 and offer to sell the HD Vision Wraparound products.

20 17. Upon information and belief, Khubani actively and knowingly assisted with
21 IdeaVillage’s infringement of the ‘789 Patent and ‘814 Patent when he managed, directed,
22 controlled, approved, participated in and carried out IdeaVillage’s manufacture of the HD Vision
23 Wraparound products. Among other things, Khubani was interested in having IdeaVillage sell a line
24 of over-prescription sunglasses. On or about August 27, 2007, Khubani was told by his employee
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1 that Plaintiffs' glasses were selling on QVC at a rate of "\$3k a minute," that reviews of the product
 2 were "excellent," and that his employees "have ordered samples *to review patents and design.*"

3 18. Upon information and belief, after having had his staff "*review patents and design,*"
 4 Khubani expressly sought to copy plaintiffs' patented designs. On or about August 29, 2007,
 5 Khubani wrote the following in an email to his designer: "*These are the glasses that I was told we*
 6 *should follow for our design. Andy.*" Khubani included a link to Live Eyewear's Vistana product,
 7 which is covered by the '814 Patent. Upon information and belief, Khubani had his staff on the
 8 following day locate a manufacturer for the infringing products, sending an email to his
 9 representative in Hong Kong with links to both Dioptics's Cocoon product (covered by the '789
 10 Patent) and Live Eyewear's Vistana product (covered by the '814 Patent).
 11

12 19. Khubani acted with the specific intent to encourage and induce IdeaVillage's
 13 infringement, and Khubani actively aided and abetted the infringement and induced infringement by
 14 IdeaVillage despite Khubani's awareness of the '789 Patent and '814 Patent when he managed,
 15 directed, controlled, approved, participated in and carried out IdeaVillage's sale and offer for sale of
 16 the HD Vision Wraparound products. Notwithstanding his knowledge of, and specific intent to
 17 encourage IdeaVillage's infringement of, the '789 Patent and '814 Patent, Khubani is continuing to
 18 manage, direct, control, approve, participate in, and carry out IdeaVillage's sale and/or offer of sale
 19 of the HD Vision Wraparound products.
 20

21 20. Still further, IdeaVillage has used, and continues to use, Live Eyewear's "Vistana"
 22 product and/or a product substantially similar to Live Eyewear's "Vistana" product (which is
 23 covered by the '814 Patent), along with other accused products, in its commercial advertising,
 24 despite repeated complaints that the commercials infringe the patents in suit and despite repeated
 25 misrepresentations by Defendant that the commercials have ceased. Khubani has actively and
 26 knowingly managed, directed, controlled, approved, participated in, and carried out, and continues to
 27
 28

1 manage, direct, control, approve, participate in, and carry out, IdeaVillage's use of Live Eyewear's
 2 "Vistana" product and/or a product substantially similar to Live Eyewear's "Vistana" product (which
 3 is covered by the '814 Patent), along with the other accused products, in its commercial advertising.
 4

5 **CLAIM ONE**

6 **(Infringement of the '789 Patent)**

7 21. Dioptics and Live Eyewear incorporate Paragraphs 1-20 by reference.

8 22. Pursuant to 35 U.S.C. § 282, the '789 Patent is presumed valid.

9 23. IdeaVillage has infringed and continues to infringe the '789 Patent. Its infringing acts
 10 include, but are not limited to, the manufacture, use, sale, importation, and/or offer for sale of
 11 infringing sunglasses and inducement of others to manufacture, use, sell, import, and/or offer to sell
 12 such sunglasses, including but not limited to certain of IdeaVillage's HD Vision Wraparounds
 13 sunglass products with a side panel (image of one such product at Exhibit C). IdeaVillage is
 14 therefore liable for infringement of the '789 Patent pursuant to 35 U.S.C. § 271. Dioptics is
 15 informed and believes that IdeaVillage has sold and/or made offers to sell and/or that IdeaVillage
 16 continues to sell and/or offer to sell products infringing the '789 Patent nationwide via the Internet
 17 and in this judicial district.
 18

19 24. IdeaVillage's infringement of Dioptics's exclusive rights under the '789 Patent have
 20 harmed and will continue to harm Dioptics, causing irreparable injury for which there is no adequate
 21 remedy at law unless enjoined by this Court.
 22

23 25. Dioptics has complied with the requirements of 35 U.S.C. § 287(a) and is entitled to
 24 collect damages for infringement occurring prior to suit with respect to the '789 Patent.

25 26. On information and belief, IdeaVillage's infringing products were directly copied
 26 from Dioptics products that are covered by the '789 Patent. Thus, on information and belief,
 27
 28

IdeaVillage's infringement of the '789 Patent is willful and deliberate, entitling Dioptics to attorney's fees and costs incurred in prosecuting this action under 35 U.S.C. § 285.

CLAIM TWO

(Infringement of the '814 Patent against IdeaVillage and Khubani)

27. Dioptics and Live Eyewear incorporate Paragraphs 1-20 by reference.

28. Pursuant to 35 U.S.C. § 282, the '814 Patent is presumed valid.

29. In August 2007, IdeaVillage decided to launch an over-prescription sunglass product. Rather than creating its own product, IdeaVillage searched the market for popular, state-of-the-art, wraparound sunglasses that provide an unrestricted, panoramic view. On information and belief, IdeaVillage obtained samples of Live Eyewear's Vistana product (that is covered by the '814 Patent) and/or located Live Eyewear's Vistana product (that is covered by the '814 Patent) on Live Eyewear's website. On August 29, 2007, Khubani, IdeaVillage's President and Chief Executive Officer, wrote the following in an email to his designer: "These are the glasses that I was told we should follow for our design. Andy." Khubani included a link to Live Eyewear's Vistana product, which is covered by the '814 Patent. IdeaVillage directly and knowingly copied products covered by the '814 Patent.

30. IdeaVillage is directly infringing, is contributing to the infringement of, and/or is inducing the infringement of the '814 Patent. Its infringing acts include, but are not limited to, the manufacture, use, sale, importation, and/or offer for sale of infringing sunglasses and inducement of others to manufacture, use, sale, importation, and/or offer to sell infringing sunglasses such as certain of IdeaVillage's HD Vision Wraparounds (image at Exhibit D). IdeaVillage is therefore liable for infringement of the '814 Patent pursuant to 35 U.S.C. § 271.

31. On information and belief, Khubani has actively induced, and is actively inducing, infringement of the '814 Patent by actively and knowingly assisting with IdeaVillage's infringement

of the '814 Patent when he managed, directed, controlled, approved, participated in and carried out IdeaVillage's manufacture of the HD Vision Wraparound products. Khubani has acted with the specific intent to encourage and induce IdeaVillage's infringement, and Khubani actively aided and abetted the infringement and induced infringement by IdeaVillage despite Khubani's awareness of the '814 Patent when he managed, directed, controlled, approved, participated in and carried out IdeaVillage's sale and offer for sale of the infringing products.

32. On information and belief, IdeaVillage has sold and/or offered to sell and continues to sell and/or offer to sell products infringing the '814 Patent nationwide via the Internet and in this judicial district. By way of example, IdeaVillage continues to include in its advertising and commercials clear depictions of products that infringe the '814 Patent.

33. Defendants acted despite an objectively high likelihood that their actions constituted infringement of the '814 Patent and despite the fact that Defendants knew or should have known of their infringement. Indeed, Khubani possessed a specific intent to induce infringement of the '814 Patent. Accordingly, Defendants' infringement of the '814 Patent is willful and deliberate, entitling Dioptics and Live Eyewear to attorney's fees and costs incurred in prosecuting this action under 35 U.S.C. § 285 as well as enhanced damages under 35 U.S.C. § 284.

34. Defendants' infringing activities have harmed Dioptics and Live Eyewear and will continue to harm Live Eyewear, causing irreparable injury for which there is no adequate remedy at law unless enjoined by the Court.

CLAIM THREE

(Violation of 15 U.S.C. § 1125(a) against IdeaVillage and Khubani)

35. Dioptics and Live Eyewear incorporate Paragraphs 1-20 by reference.

36. Plaintiffs and IdeaVillage are competitors in the relevant market.

1 37. IdeaVillage has used samples or photographs of Live Eyewear’s “Vistana” product
2 and/or a product substantially similar to Live Eyewear’s “Vistana” product (which is covered by the
3 ‘814 Patent) in its commercial advertising. When consumers order the product that they believe to
4 be Live Eyewear’s “Vistana” product and/or a product substantially similar to Live Eyewear’s
5 “Vistana” product (which is covered by the ‘814 Patent), IdeaVillage supplies a different,
6 substantially inferior product.
7

8 38. On information and belief, Khubani actively and knowingly caused IdeaVillage to use
9 samples or photographs of Live Eyewear’s “Vistana” product and/or a product substantially similar
10 to Live Eyewear’s “Vistana” product (which is covered by the ‘814 Patent) in its commercial
11 advertising. On information and belief, Khubani actively and knowingly directed, controlled,
12 ratified, participated in, and is the moving force behind IdeaVillage’s use of samples or photographs
13 of Live Eyewear’s “Vistana” product and/or a product substantially similar to Live Eyewear’s
14 “Vistana” product (which is covered by the ‘814 Patent) in its commercial advertising.
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16 39. IdeaVillage’s use in its advertisements of Live Eyewear’s advertising material and/or
17 a sample or photograph of Live Eyewear’s “Vistana” product and/or a product substantially similar
18 to Live Eyewear’s “Vistana” product (which is covered by the ‘814 Patent) tends falsely to associate
19 in the mind of Live Eyewear’s customers and the public the products of IdeaVillage with the
20 business and products of Live Eyewear, and tends to describe, represent, and designate that
21 IdeaVillage and its products in some manner enjoy the sponsorship of Live Eyewear, or some
22 manner of association with Live Eyewear or its products, to the damage of Live Eyewear. Still
23 further, IdeaVillage’s use of Live Eyewear’s advertising material and/or a sample or photograph of
24 Live Eyewear’s “Vistana” product and/or a product substantially similar to Live Eyewear’s
25 “Vistana” product (which is covered by the ‘814 Patent) in its commercial advertising or promotion,
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1 misrepresents the nature, characteristics, qualities, and/or geographic origin of IdeaVillage's goods,
2 services, and commercial activities.

3 40. Defendants' conduct is wrongful because, among other reasons, it involves an attempt
4 by IdeaVillage to misappropriate or profit from another's talents and workmanship.

5 41. Upon information and belief, Defendants' actions are willful, deliberate and done
6 with knowledge of Plaintiffs' exclusive proprietary rights and with knowledge that these actions are
7 likely to confuse, mislead, and deceive Plaintiffs' customers and the public and/or that its actions
8 have the tendency to misrepresent the nature, characteristics, qualities, and/or geographic origin of
9 IdeaVillage's goods, services, and commercial activities. Still further, Defendant has misrepresented
10 that the infringing advertising has ceased, when in fact it has not.

11 42. The unlawful activities of Defendants described herein have caused or will cause, and
12 if not enjoined will continue to cause, serious economic damage and irreparable injury to Plaintiffs,
13 to Plaintiffs' intellectual property rights, and to the business reputation and goodwill of Plaintiffs.
14

15 **CLAIM FOUR**

16 **(Common Law Unfair Competition/Palming Off against IdeaVillage and Khubani)**

17 43. Dioptics and Live Eyewear incorporate Paragraphs 1-20 by reference.

18 44. Plaintiffs and IdeaVillage are competitors in the relevant market.

19 45. IdeaVillage has used samples or photographs of Live Eyewear's "Vistana" product
20 and/or a product substantially similar to Live Eyewear's "Vistana" product (which is covered by the
21 '814 Patent) in its commercial advertising. When consumers order the product that they believe to
22 be Live Eyewear's "Vistana" product and/or a product substantially similar to Live Eyewear's
23 "Vistana" product (which is covered by the '814 Patent), IdeaVillage supplies a different,
24 substantially inferior product.
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1 46. On information and belief, Khubani actively and knowingly caused IdeaVillage to use
2 samples or photographs of Live Eyewear’s “Vistana” product and/or a product substantially similar
3 to Live Eyewear’s “Vistana” product (which is covered by the ‘814 Patent) in its commercial
4 advertising. On information and belief, Khubani actively and knowingly directed, controlled,
5 ratified, participated in, and is the moving force behind IdeaVillage’s use of samples or photographs
6 of Live Eyewear’s “Vistana” product and/or a product substantially similar to Live Eyewear’s
7 “Vistana” product (which is covered by the ‘814 Patent) in its commercial advertising.
8

9 47. IdeaVillage’s use in its advertisements of Live Eyewear’s advertising material and/or
10 a sample or photograph of Live Eyewear’s “Vistana” product and/or a product substantially similar
11 to Live Eyewear’s “Vistana” product (which is covered by the ‘814 Patent) constitute unfair
12 competition, palming off/passing off. IdeaVillage tends falsely to associate in the mind of Live
13 Eyewear’s customers and the public the products of IdeaVillage with the business and products of
14 Live Eyewear, and tends to describe, represent, and designate that IdeaVillage and its products in
15 some manner enjoy the sponsorship of Live Eyewear, or some manner of association with Live
16 Eyewear or its products, to the damage of Live Eyewear. Still further, IdeaVillage’s use of Live
17 Eyewear’s advertising material and/or a sample or photograph of Live Eyewear’s “Vistana” product
18 and/or a product substantially similar to Live Eyewear’s “Vistana” product (which is covered by the
19 ‘814 Patent) in its commercial advertising or promotion, misrepresents the nature, characteristics,
20 qualities, and/or geographic origin of IdeaVillage’s goods, services, and commercial activities. Still
21 further, Defendant has misrepresented that the infringing advertising has ceased, when in fact it has
22 not.
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25 48. Defendants’ conduct is wrongful because, among other reasons, it involves an attempt
26 by Defendants to misappropriate or profit from another’s talents and workmanship.
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49. The unlawful activities of Defendants described herein has caused or will cause, and if not enjoined will continue to cause, serious economic damage and irreparable injury to Plaintiffs, to Plaintiffs' intellectual property rights, and to the business reputation and goodwill of Plaintiffs.

CLAIM FIVE

(Violation of California Business & Professions Code Section 17200 against IdeaVillage and Khubani)

50. Dioptics and Live Eyewear incorporate Paragraphs 1-20 by reference.

51. IdeaVillage has engaged in unfair competition by committing unfair, fraudulent and deceptive acts within the meaning of Bus. & Prof. Code Section 17200 *et seq.*, including but not limited to the following:

- a. Manufacturing, using, selling, importing, and/or offering to sell infringing sunglasses;
- b. Advertising on television in infomercials, on the Internet, and elsewhere the sale of product that infringes on the '789 Patent and the '814 Patent;
- c. Advertising on television in infomercials, on the Internet, and elsewhere the sale of products that infringe the '789 Patent and the '814 Patent and providing consumers a different, inferior product;
- d. Representing that it has ceased its television advertising of the infringing products and/or a products substantially similar to Live Eyewear's "Vistana" product (which is covered by the '814 Patent), when in fact IdeaVillage has continued to cause the infringing advertisements to air;
- e. Advertising on television in infomercials, on the Internet, and elsewhere Plaintiffs' products and providing consumers with materially different products;

- f. Misappropriating or profiting from another's talents and workmanship;
- g. Continuing the unfair, fraudulent, and deceptive manufacture, importation, advertising and sale of infringing product even after being notified that its product infringed the '789 Patent and the '814 Patent;
- h. Inducing others to manufacture, use, sell, import, and/or offer to sell infringing sunglasses; and
- i. Using samples or photographs of Live Eyewear's "Vistana" product and/or a product substantially similar to Live Eyewear's "Vistana" product (which is covered by the '814 Patent) in its commercial advertising, but when consumers order the product that they believe to be Live Eyewear's "Vistana" product and/or a product substantially similar to Live Eyewear's "Vistana" product (which is covered by the '814 Patent), supplying a different, substantially inferior product.

52. Khubani has actively and knowingly directed, managed, controlled, approved, participated in and carried out IdeaVillage's activities described herein and has done so with knowledge of Plaintiffs' intellectual property rights and with the specific intent to encourage IdeaVillage's unlawful conduct.

53. Such misconduct is unlawful within the meaning of Section 17200 *et seq.*, and therefore constitutes unfair competition. Defendants' conduct was undertaken with knowledge and hence intent of unlawfully injuring Dioptics and Live Eyewear, for the purpose of advancing the competitive business interests of IdeaVillage at the expense of Dioptics and Live Eyewear.

54. Defendants' conduct constitutes, among other things, patent infringement in violation of 35 U.S.C. § 271 and passing off in violation of 15 U.S.C. § 1125(a) and common law.

1 55. Dioptics and Live Eyewear have suffered injury in fact as a result of Defendants'
2 misconduct, and will continue to suffer injury and harm if Defendants are not restrained from their
3 activities.

4 56. Dioptics and Live Eyewear are entitled to an injunction enjoining and restraining
5 Defendants from continuing their wrongful manufacture, importation, advertising, sale, and offers to
6 sell Plaintiffs' products and/or products that infringe the '789 Patent and the '814 Patent, either
7 directly or through others. Dioptics and Live Eyewear seek temporary, preliminary and permanent
8 injunctive relief to enjoin and restrain Defendants from further unlawful and wrongful conduct.
9

10 57. Dioptics and Live Eyewear seek injunctive relief under California Business &
11 Professions Code Sections 17200 *et seq.*, to remedy the unfair, unlawful and/or fraudulent business
12 practices described herein, in addition to restitution and/or disgorgement of funds obtained by
13 Defendants from their unlawful, unfair and fraudulent practices as described herein.
14

15 58. Specifically, Dioptics and Live Eyewear seek, among other things, that Defendants
16 and those associated with them be enjoined from manufacturing, importing, selling, offering to sell,
17 or advertising (including without limitation by airing infomercials in any medium such as television
18 and the Internet) Plaintiffs' products and/or any over-prescription sunglass product that infringe the
19 '789 Patent and the '814 Patent or infringes any other patent to which Dioptics and/or Live Eyewear
20 is the patent holder or assignee, as well as all other injunctive relief requested herein.
21

22 **PRAYER FOR RELIEF**

23 WHEREFORE, Plaintiffs request entry of judgment in its favor and against Defendants as
24 follows:

25 **FIRST CLAIM FOR RELIEF**

26 a. Declaring that IdeaVillage has infringed the '789 Patent;
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b. Preliminarily and permanently enjoining Defendants, their officers, agents, servants, employees, and those acting in privity with them, from further infringement, contributory infringement and/or inducing the infringement of the '789 Patent;

c. Awarding a monetary remedy of the greater of no less than a reasonable royalty (35 U.S.C. § 284) or the total profits (35 U.S.C. § 289) of Defendants for their infringing activities, together with interest, to compensate Dioptics for the past and willful infringement by Defendants of the '789 Patent, and that in light of the nature of that willful infringement, such award be increased three times the amount of the damages or profits found or assessed;

d. Declaring this case "exceptional" within the meaning of 35 U.S.C. § 285, and awarding to Plaintiffs their costs and reasonable attorney fees in respect thereto; and

e. Granting such other and further relief as the Court may deem just and proper, including relief sought or available under other claims asserted herein.

SECOND CLAIM FOR RELIEF

f. Declaring that IdeaVillage has infringed the '814 Patent, and that Khubani has induced infringement of the '814 Patent;

g. Preliminarily and permanently enjoining Defendants, their officers, agents, servants, employees, and those acting in privity with them, from further infringement, contributory infringement and/or inducing the infringement of the '814 Patent;

h. Awarding a monetary remedy of the greater of no less than a reasonable royalty (35 U.S.C. § 284) or the total profits (35 U.S.C. § 289) of Defendants for their infringing activities, together with interest, to compensate Live Eyewear for the past and willful infringement by Defendants of the '814 Patent, and that in light of the nature of that willful infringement, such award be increased three times the amount of the damages or profits found or assessed;

i. Declaring this case “exceptional” within the meaning of 35 U.S.C. § 285, and awarding to Plaintiffs their costs and reasonable attorney fees in respect thereto; and

j. Granting such other and further relief as the Court may deem just and proper, including relief sought or available under other claims asserted herein.

THIRD CLAIM FOR RELIEF

k. Preliminarily and permanently enjoining Defendants, their agents, servants, employees, and attorneys, and any other persons or entities in active concert or participation with it, from continuing the acts complained of herein and, more particularly, that Defendants and such other persons or entities be preliminarily and permanently enjoined and restrained from:

- (1) Using or employing, directly or indirectly, Plaintiffs’ advertising material and/or a sample or photograph of Live Eyewear’s “Vistana” product and/or a product substantially similar to Live Eyewear’s “Vistana” product (which is covered by the ‘814 Patent) in IdeaVillage’s commercial advertising or promotion;
- (2) Using or employing, directly or indirectly, in any manner Plaintiffs’ advertising material and/or a sample or photograph of Live Eyewear’s “Vistana” product and/or a product substantially similar to Live Eyewear’s “Vistana” product (which is covered by the ‘814 Patent);
- (3) Falsely representing or causing confusion in any manner such that Live Eyewear’s customers and/or the public would tend to falsely associate IdeaVillage’s business or products as being the same as, related to, approved by, sponsored by, affiliated with, or otherwise having any relationship with Live Eyewear or its business and products; and

(4) Unfairly competing with Plaintiffs in the manner complained of herein, passing off IdeaVillage's products as and/or for products of or sponsored by Live Eyewear, injuring the business reputation of Live Eyewear in any manner, and falsely describing, representing, advertising, or designating the origin of IdeaVillage's products, or otherwise engaging in unfair competition or deceptive trade practices.

l. IdeaVillage to recall from each distributor, dealer, and other customer or recipient thereof all HD Vision Wraparounds or any products substantially similar thereto;

m. IdeaVillage to destroy all HD Vision Wraparounds or any products substantially similar thereto in its possession, custody, or control, including all products returned pursuant to the foregoing paragraph;

n. IdeaVillage to destroy all of its promotional literature, catalogs, advertisements, commercials, sales aids, stationery, unexecuted business forms, business cards, and other material, in all tangible or intangible media, in its possession, custody, or control, and to deactivate or modify each website, on which appears IdeaVillage's HD Vision Wraparounds or any products substantially similar thereto;

o. IdeaVillage to publish and publicize to all manufacturers, distributors, recipients and purchasers of the HD Vision Wraparounds or any products substantially similar thereto, or any recipients of any promotional literature, catalogs, advertisements, commercials, sales aids, stationery, business forms, business cards and other material, in all tangible or intangible media, a corrective notice affirming the rights of Plaintiffs in their intellectual property and directing all manufacturers, distributors, recipients and purchasers to Plaintiffs for genuine and authorized products, and to do so with the same prominence and in all media and distribution channels and for

1 the same duration for which IdeaVillage offered, advertised, marketed or sold the infringing HD
2 Vision Wraparounds or any products substantially similar thereto;

3 p. IdeaVillage to file with this Court and serve on Plaintiffs within thirty (30) days after
4 the entry of any preliminary injunction or permanent injunction granted in this lawsuit, a report in
5 writing and under oath, setting forth in detail the manner and form in which IdeaVillage has
6 complied with the injunction;

7 q. That an accounting be had and Defendants be required to disgorge to Plaintiffs the
8 greater of no less than a reasonable royalty or the total profits Defendants have earned as a result of
9 its unlawful conduct as described herein;

10 r. That Defendants be required to pay Plaintiffs actual, enhanced, and treble damages in
11 light of Defendants' unlawful actions as set forth herein;

12 s. That IdeaVillage be required to pay Plaintiffs the costs of this action and the
13 reasonable attorneys' fees and expenses Plaintiffs incur in connection with this action consistent
14 with the provisions of 15 U.S.C. § 1117 and any other applicable law; and

15 t. That Plaintiffs be awarded such other and further relief, whether general, special, at
16 law or in equity, to which Plaintiffs may be entitled, including relief sought or available under other
17 claims asserted herein.

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21 **FOURTH CLAIM FOR RELIEF**

22 u. For temporary, preliminary and permanent injunctive relief as described above at
23 paragraphs j-o;

24 v. For restitution and/or disgorgement;

w. That Defendants be required to pay Plaintiffs actual, enhanced, and treble damages in light of Defendants' unlawful actions as set forth herein;

x. That Defendants be required to pay punitive damages;

y. That Defendants be required to pay Plaintiffs the costs of this action and the reasonable attorneys' fees and expenses Plaintiffs incur in connection with this action; and

z. That Plaintiffs be awarded such other and further relief, whether general, special, at law or in equity, to which Plaintiffs may be entitled, including relief sought or available under other claims asserted herein.

FIFTH CLAIM FOR RELIEF

aa. For temporary, preliminary and permanent injunctive relief as described above at paragraphs j-o;

bb. For restitution and/or disgorgement of funds obtained by Defendants from their unlawful, unfair and fraudulent practices as described herein;

cc. For private attorney general attorneys fees and costs; and

dd. For such other and further relief as the Court deems just and proper, including relief sought or available under other claims asserted herein.

Dated: October 6, 2009

Andrew P. Bridges
David S. Bloch
Nicole M. Norris
WINSTON & STRAWN, LLP

/s/ David S. Bloch
Attorneys for Plaintiff,
Dioptics Medical Products, Inc.

1
2 Dated: October 6, 2009

Michael D. Young
Benjamin F. Sidbury
Theresa Conduah
ALSTON & BIRD LLP

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4
5 /s/ Benjamin F. Sidbury
6 Attorneys for Plaintiff
Live Eyewear, Inc.

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ALSTON & BIRD LLP
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(213) 576-1000

SIGNATURE ATTESTATION

I am the ECF User whose identification and password are being used to file the foregoing document Second Amended Complaint.. In compliance with General Order 45.X.B., I hereby attest that the other signatories to this filing have concurred in this filing.

Dated: October 6, 2009

By: /s/ Benjamin F. Sidbury
Benjamin F. Sidbury

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CERTIFICATE OF SERVICE

I hereby certify that on October 6, 2009, I electronically filed the foregoing document with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the following counsel of record:

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Attorneys for Plaintiff
Dioptics Medical Products Inc.

/s/ Benjamin F. Sidbury

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