

MEMORANDUM TO: The Vision Council Members

FROM: Rick Van Arnam, Esq.  
Regulatory Counsel

DATE: October 31, 2013

RE: Prop 65 Update – Ophthalmic Industry Being Targeted;  
Products Containing the Phthalate di (2-ethylhexyl)

Consumer Advocacy Group, Inc. continues to serve 60 day notices against retailers, distributors and manufacturers of sunglasses for alleged violations of California's Proposition 65. Prop 65, a California state environmental law, regulates against the presence of certain substances in products sold or used in California unless those products contain warning labels informing potential customers of the presence of those substance(s) and that those substances can cause cancer, birth defects or reproductive toxicity. Members interested in learning more about Prop 65 should click on this link:

[http://www.thevisioncouncil.org/members/content\\_12020.cfm?navID=734](http://www.thevisioncouncil.org/members/content_12020.cfm?navID=734)

Once again, the substance common to the most recent batch of notices is the phthalate di (2-ethylhexyl), which goes by the acronym "DEHP". Other chemical names for this product include Bis (2- ethylhexyl) phthalate and di-octyl phthalate ("DOP"). DEHP is a general use plasticizer used to make plastics, in particular polyvinyl chloride, soft and pliable. Consumer Advocacy alleges in its notices that exposure to DEHP can cause cancer and reproductive toxicity, especially in males.

In light of this, companies doing business in California should confirm that their quality and control testing procedures include testing for DEHP. If your products contained this phthalate and those products were or will be introduced into California's commerce without a sufficient warning label, then you should be mindful of potential Prop 65 enforcement and consider steps to minimize your risks.

We will be tracking this development and updating the members accordingly. In the meantime, any questions can be forwarded to the Vision Council's Regulatory Counsel, Rick Van Arnam at [rvanarnam@barnesrichardson.com](mailto:rvanarnam@barnesrichardson.com), or to Jason McElvaney, Government & Regulatory Affairs liaison, at [jason@mcElvaneypublicaffairs.com](mailto:jason@mcElvaneypublicaffairs.com).