

Edgar Filing: EMERGING VISION INC - Form 10-Q

EMERGING VISION INC  
Form 10-Q  
May 15, 2003

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

FORM 10-Q

(Mark one)

Quarterly report pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 for the quarterly period ended March 31, 2003

OR

Transition report pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 for the transition period from \_\_\_\_\_ to \_\_\_\_\_

Commission file number: 1-14128

EMERGING VISION, INC.  
(Exact name of Registrant as specified in its Charter)

New York

11-3096941

-----  
(State of Incorporation)

-----  
(IRS Employer Identification No.)

100 Quentin Roosevelt Boulevard  
Garden City, New York 11530  
(Address of Principal Executive Offices, including Zip Code)

(516) 390-2100  
(Registrant's Telephone Number, Including Area Code)

Indicate by check mark whether the Registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the Registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.

Yes    X                      No  
      -----                      -----

APPLICABLE ONLY TO CORPORATE ISSUERS:

As of May 13, 2003, there were 79,890,620 outstanding share of the Registrant's Common Stock, par value \$0.01 per share.

Item 1. Financial Statements

EMERGING VISION, INC. AND SUBSIDIARIES  
CONSOLIDATED BALANCE SHEETS  
(In Thousands, Except Share Data)

Edgar Filing: EMERGING VISION INC - Form 10-Q

ASSETS

Current assets:

Cash and cash equivalents  
Franchise receivables, net of allowance of \$1,023 and \$1,063, respectively  
Other receivables, net of allowance of \$104 and \$101, respectively  
Current portion of franchise notes receivable, net of allowance of \$491 and \$442,  
respectively  
Inventories, net  
Prepaid expenses and other current assets

Total current assets

Property and equipment, net  
Franchise notes and other receivables, net of allowance of \$1,442 and \$1,486, respectively  
Goodwill  
Other assets

Total assets

LIABILITIES AND SHAREHOLDERS' DEFICIT

Current liabilities:

Current portion of long-term debt, net  
Accounts payable and accrued liabilities  
Accrual for store closings  
Related party borrowings  
Net liabilities of discontinued operations

Total current liabilities

Long-term debt

Related party borrowings

Franchise deposits and other liabilities

Contingencies (Note 7)

Shareholders' deficit:

Preferred stock, \$0.01 par value per share; 5,000,000 shares authorized:  
Senior Convertible Preferred Stock, \$100,000 liquidation preference per share;  
1 share issued and outstanding  
Common stock, \$0.01 par value per share; 150,000,000 shares authorized; 30,072,957 and  
29,922,957 shares issued, respectively, and 29,890,620 and 29,740,620 shares outstanding,  
respectively  
Treasury stock, at cost, 182,337 shares

Additional paid-in capital  
Accumulated deficit

Total shareholders' deficit

Total liabilities and shareholders' deficit

## Edgar Filing: EMERGING VISION INC - Form 10-Q

The accompanying notes are an integral part of these consolidated balance sheets.

2

### EMERGING VISION, INC. AND SUBSIDIARIES CONSOLIDATED STATEMENTS OF OPERATIONS (In Thousands, Except Per Share Data)

	For th ----- 200 -----
<b>Revenues:</b>	
Net sales	\$ 1
Franchise royalties	1
Net gains from the conveyance of Company-store assets to franchisees, and other franchise related fees	
Interest on franchise notes receivable	
Other income	
Total revenues	----- 3 -----
<b>Costs and expenses:</b>	
Cost of sales	
Selling, general and administrative expenses	2
Interest expense	
Total costs and expenses	----- 3 -----
Income (loss) from continuing operations before provision for income taxes	
Provision for income taxes	
Income (loss) from continuing operations	----- -----
Loss from discontinued operations (Note 3)	
Net income (loss)	----- \$ =====
<b>Per share information - basic and diluted (Note 4):</b>	
Income (loss) from continuing operations	\$
Loss from discontinued operations	(
Net income (loss)	----- \$ =====
Weighted-average number of common shares outstanding - basic and diluted	----- 29 =====

Edgar Filing: EMERGING VISION INC - Form 10-Q

The accompanying notes are an integral part of these consolidated statements.

3

EMERGING VISION, INC. AND SUBSIDIARIES  
 CONSOLIDATED STATEMENTS OF CASH FLOWS  
 (In Thousands)

	For t
	-----
	20
	-----
Cash flows from operating activities:	
Income (loss) from continuing operations	\$
Adjustments to reconcile income (loss) from continuing operations to net cash used in operating activities:	
Depreciation and amortization	
Provision for doubtful accounts	
Amortization of debt discount	
Changes in operating assets and liabilities:	
Franchise and other receivables	
Inventories	
Prepaid expenses and other current assets	
Other assets	
Accounts payable and accrued liabilities	
Franchise deposits and other liabilities	
Accrual for store closings	
Net cash used in operating activities	-----
Cash flows from investing activities:	
Franchise notes receivable issued	
Proceeds from franchise and other notes receivable	
Purchases of property and equipment	
Net cash provided by investing activities	-----
Cash flows from financing activities:	
Proceeds from borrowings	
Payments on borrowings	
Proceeds from issuance of common stock upon exercise of options	
Net cash (used in) provided by financing activities	-----
Net cash used in continuing operations	-----
Net cash used in discontinued operations	-----
Net decrease in cash and cash equivalents	-----
Cash and cash equivalents - beginning of period	-----

Edgar Filing: EMERGING VISION INC - Form 10-Q

Cash and cash equivalents - end of period \$  
=====

Supplemental disclosures of cash flow information:

Cash paid during the period for:

Interest \$  
=====

Taxes \$  
=====

The accompanying notes are an integral part of these consolidated statements.

4

EMERGING VISION, INC. AND SUBSIDIARIES  
CONSOLIDATED STATEMENT OF SHAREHOLDERS' DEFICIT  
FOR THE THREE MONTHS ENDED MARCH 31, 2003  
(In Thousands, Except Share Data)

	Senior Convertible Preferred Stock Shares	Amount	Common Stock Shares	Amount	Treasury Stock, at cost Shares	Amount	Add Pa Ca
	-----	-----	-----	-----	-----	-----	-----
BALANCE - DECEMBER 31, 2002	1	\$ 74	29,922,957	\$ 299	182,337	\$(204)	\$1
Exercise of stock options	-	-	150,000	2	-	-	-
Net income	-	-	-	-	-	-	-
BALANCE - MARCH 31, 2003 (Unaudited)	1	\$ 74	30,072,957	\$ 301	182,337	\$(204)	\$1
	=====	=====	=====	=====	=====	=====	=====

The accompanying notes are an integral part of this consolidated statement.

5

EMERGING VISION, INC. AND SUBSIDIARIES  
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS  
(UNAUDITED)

NOTE 1 - BASIS OF PRESENTATION:

The accompanying Consolidated Financial Statements of Emerging Vision, Inc. and subsidiaries (collectively, the "Company") have been prepared in accordance with accounting principles generally accepted for interim financial statement

## Edgar Filing: EMERGING VISION INC - Form 10-Q

presentation and in accordance with the instructions to Form 10-Q and Article 10 of Regulation S-X. Accordingly, they do not include all of the information and footnotes required by accounting principles generally accepted for complete financial statement presentation. In the opinion of management, all adjustments for a fair statement of the results of operations and financial position for the interim periods presented have been included. All such adjustments are of a normal recurring nature. This financial information should be read in conjunction with the Consolidated Financial Statements and Notes thereto included in the Company's Annual Report on Form 10-K for the year ended December 31, 2002. There have been no changes in significant accounting policies since December 31, 2002.

### NOTE 2 - MANAGEMENT'S LIQUIDITY PLANS:

As of March 31, 2003 (exclusive of net liabilities of discontinued operations), the Company had negative working capital of \$4,302,000 and cash on hand of \$418,000. During the three months ended March 31, 2003, the Company used \$149,000 of cash in its operating activities. This usage was primarily a result of a decrease in the accrual for store closings of \$306,000 (Note 6), a decrease of \$235,000 in franchise deposits and other liabilities, and a net increase of \$227,000 in franchise and other receivables, offset, in part, by income from continuing operations of \$581,000. Management anticipates that it will continue to make significant payments against liabilities, which are already reflected in the Consolidated Balance Sheet as of March 31, 2003, associated with the closure of non-profitable Company-owned stores.

The Company plans to continue to improve its cash flows during 2003 by improving store profitability through increased monitoring of store-by-store operations, closing non-profitable Company-owned stores, continuing to implement reductions of administrative overhead expenses where necessary and feasible, actively supporting development programs for franchisees, and continuing to add new franchise stores to the system. Management believes that with the successful execution of the aforementioned plans to improve cash flows, its existing cash, the collection of outstanding receivables, and the proceeds from its shareholder rights offering (Note 9), there will be sufficient liquidity available for the Company to continue in operation through the second quarter of 2004. However, there can be no assurance that the Company will be able to successfully execute the aforementioned plans.

### NOTE 3 - DISCONTINUED OPERATIONS:

As of March 31, 2003, there was approximately \$384,000 of expenses associated with the Company's discontinued operations accrued as part of accounts payable and accrued liabilities on the accompanying Consolidated Balance Sheet. The majority of this amount (of which \$225,000 was provided for during the three months ended March 31, 2003) relates to certain potential ongoing liabilities that the Company agreed to guarantee in connection with its sale of Insight Laser Centers N.Y.I., Inc. (the "Ambulatory Center") (Note 7).

### NOTE 4 - SIGNIFICANT ACCOUNTING POLICIES:

#### Stock-Based Compensation

In December 2002, the Financial Accounting Standards Board issued Statement of Financial Accounting Standards ("SFAS") No. 148, "Accounting for Stock-Based Compensation - Transition and Disclosure - an amendment of SFAS No. 123." This Statement amends SFAS No. 123, "Accounting for Stock-Based Compensation", to provide alternative methods of transition for a voluntary change to the fair value based method of accounting for stock-based

Edgar Filing: EMERGING VISION INC - Form 10-Q

6

employee compensation. In addition, this Statement amends the disclosure requirements of SFAS No. 123 to require prominent disclosures in both annual and interim financial statements about the method of accounting for stock-based employee compensation and the effect of the method used on reported results. The Company has adopted the provisions of SFAS No. 148 prospectively from January 1, 2003.

Prior to 2003, the Company accounted for stock-based employee compensation under the recognition and measurement provisions of Accounting Principles Board Opinion No. 25, "Accounting for Stock Issued to Employees," and related Interpretations. No stock-based compensation cost is reflected in the 2002 net loss, as all options granted to employees had an exercise price equal to the market value of the underlying common stock on the date of grant. No stock-based compensation cost is reflected in the 2003 net income as no stock-based awards were granted during the three months ended March 31, 2003. The following table illustrates the effect on net income (loss) and net income (loss) per share as if the fair value based method had been applied to all outstanding and unvested awards in each period:

	Thru
	----- 2003 -----
Net income (loss) - as reported	\$ 3
Deduct: Total stock-based employee compensation expense determined under fair value method for all awards	(7)
Pro forma net loss	\$ (4) =====
Earnings per share:	
Basis and diluted - as reported	\$ 0.
Basis and diluted - pro forma	\$ (0.) =====

Revenue Recognition

The Company charges franchisees a nonrefundable initial franchise fee. Initial franchise fees are recognized at the time all material services required to be provided by the Company have been substantially performed. Continuing franchise royalty fees are based upon a percentage of the gross revenues generated by each franchised location and are recorded as earned, subject to meeting all of the requirements of SAB 101 described below.

The Company derives its revenues from the following four principal sources:

Net sales - Represents sales from eye care products and related services;

## Edgar Filing: EMERGING VISION INC - Form 10-Q

Franchise royalties - Represents continuing franchise royalty fees based upon a percentage of the gross revenues generated by each franchised location;

Net gains from the conveyance of Company-store assets to franchisees, and other franchise related fees - Represents the net gains realized from the sale of Company-owned store assets to franchisees; and certain fees collected by the Company under the terms of franchise agreements (including, but not limited to, initial franchise fees, transfer fees and renewal fees).

Interest on franchise notes - Represents interest charged to franchisees pursuant to promissory notes issued in connection with a franchisee's acquisition of the assets of a store or a qualified refinancing of a franchisee's obligations to the Company.

The Company recognizes revenues in accordance with SEC Staff Accounting Bulletin No. 101, "Revenue Recognition in Financial Statements" ("SAB 101"). Accordingly, revenues are recorded when persuasive evidence of an arrangement

7

exists, delivery has occurred or services have been rendered, the Company's price to the buyer is fixed or determinable, and collectibility is reasonably assured. To the extent that collectibility of royalties and/or interest on franchise notes is not reasonably assured, the Company recognizes such revenue when the cash is received.

In addition, the Company accounts for discounts, coupons and promotions (that are offered to its customers) as a direct reduction of sales.

### NOTE 5 - PER SHARE INFORMATION:

In accordance with SFAS No. 128, "Earnings Per Share", basic net income (loss) per common share ("Basic EPS") is computed by dividing net income (loss) by the weighted-average number of common shares outstanding. Diluted net income (loss) per common share ("Diluted EPS") is computed by dividing the net income (loss) by the weighted-average number of common shares and dilutive common share equivalents and convertible securities then outstanding. SFAS No. 128 requires the presentation of both Basic EPS and Diluted EPS on the face of the Company's Consolidated Statements of Operations. Common stock equivalents were excluded from the computation for all periods presented, as their impact would have been anti-dilutive.

The following table sets forth the computation of basic and diluted per share information:

	For th
	----- 200 -----
Numerator:	
Income (loss) from continuing operations	\$ 5
Loss from discontinued operations	(2)
	-----
Net income (loss)	\$ 3



Edgar Filing: EMERGING VISION INC - Form 10-Q

Denominator:

Denominator for basic and diluted per share information -  
weighted average shares outstanding

=====  
29,8  
=====

Basic and Diluted Per Share Information:

Income (loss) from continuing operations  
Loss from discontinued operations

\$ 0.  
(0.  
-----

Net income (loss)

\$ 0.  
=====

NOTE 6 - ACCRUAL FOR STORE CLOSINGS:

Effective January 1, 2003, the Company adopted the provisions of SFAS No. 146, "Accounting for Costs Associated with Exit or Disposal Activities," which supercedes Emerging Issues Task Force Issue 94-3, "Liability Recognition for Certain Employee Termination Benefits and Other Costs to Exit an Activity." In accordance therewith, the Company records a liability for a cost associated with an exit or disposal activity when the liability is incurred. Prior to January 1, 2003, a provision was recorded at the time the determination was made to close a particular store and was based on the expected net proceeds, if any, to be generated from the disposition of the store's assets, as compared to the carrying value (after consideration of impairment, if any) of such store's assets and the estimated costs (including lease termination costs and other expenses) that were anticipated to be incurred in the closing of the store in question. As of December 31, 2002, the Company had accrued approximately \$1,109,000 related to its anticipated closure of 11 stores. During the three months ended March 31, 2003, the Company successfully closed five of such stores and, as of the date hereof, had closed two additional stores. As of March 31, 2003, \$803,000 remained as an accrual for store closings on the accompanying

9

Consolidated Balance Sheet. The Company anticipates completing its closure plan by the end of the second quarter of 2003. No additional provision was provided during the three months ended March 31, 2003.

NOTE 7 - CONTINGENCIES:

Litigation

In 1999, Apryl Robinson commenced an action in Kentucky against, among others, the Company, seeking an unspecified amount of damages and alleging numerous claims, including fraud and misrepresentation. The claims that are the subject of this action were subsequently tried in an action in New York that resulted in a judgment in favor of the Company, and against Ms. Robinson and Dr. Larry Joel, a co-defendant in such action. Subsequently, Ms. Robinson and Dr. Joel filed for bankruptcy in Kentucky, and the Company is proceeding with its efforts to enforce its judgment against Ms. Robinson and Dr. Joel.

In 1999, Berenter Greenhouse and Webster, the advertising agency previously utilized by the Company, commenced an action, against the Company, in the New

## Edgar Filing: EMERGING VISION INC - Form 10-Q

York State Supreme Court, New York County, for amounts alleged to be due for advertising and related fees. The amounts claimed by the plaintiff are in excess of \$200,000. In response to this action, the Company filed counterclaims of approximately \$500,000, based upon estimated overpayments allegedly made by the Company pursuant to the agreement previously entered into between the parties. As of the date hereof, this action was still in the discovery stage.

In April 2000, the Company commenced an action in the Supreme Court of the State of New Jersey against Preit-Rubin, Inc. and Cumberland Mall Associates, the landlord of the former Sterling Optical Store located in Cumberland Mall, Vineland, New Jersey, seeking damages of approximately \$200,000 as a result of the defendants alleged wrongful eviction of the Company from this location. In response thereto, the defendants asserted counterclaims of approximately \$100,000 plus legal fees based upon the Company's alleged breach of the lease pursuant to which it occupied such store. Thereafter, the defendant filed a motion for summary judgment seeking a dismissal of the Company's claims, which motion was decided by the Court, in a favor of the defendant. As of the date hereof, it is anticipated that a trial of this action will take place in May 2003.

In July 2001, the Company commenced an Arbitration Proceeding, in the Ontario Superior Court of Justice, against Eye-Site, Inc. and Eye Site (Ontario), Ltd., as the makers of two promissory notes (in the aggregate original principal amount of \$600,000) made by one or more of the makers in favor of the Company, as well as against Mohammed Ali, as the guarantor of the obligations of each maker under each note. The notes were issued, by the makers, in connection with the makers' acquisition of a Master Franchise Agreement for the Province of Ontario, Canada, as well as their purchase of the assets of, and a Sterling Optical Center Franchise for, four of the Company's retail optical stores then located in Ontario, Canada. In response, the defendants counterclaimed for damages, in the amount of \$1,500,000, based upon, among other items, alleged misrepresentations made by representatives of the Company in connection with these transactions. The Company believes that it has a meritorious defense to each counterclaim. As of the date hereof, these proceedings were in the discovery stage.

In February 2002, Kaye Scholer, LLP, the law firm previously retained by the Company as its outside counsel, commenced an action in the New York State Supreme Court seeking unpaid legal fees of approximately \$122,000. As of the date hereof, the Company has answered the Complaint in such action. The Company believes that it has a meritorious defense to such claim.

In May 2002, a class action was commenced in the California Superior Court, Los Angeles County, against the Company and VisionCare of California, Inc. ("VCC"), a wholly owned subsidiary of the Company, by Consumer Cause, Inc., seeking a preliminary and permanent injunction enjoining the defendants from their continued alleged violation of the California Business and Professions Code (the "California Code"), and restitution based upon the defendants' alleged illegal charging of dilation fees during the four year period immediately preceding the date of the plaintiff's commencement of such action. In its complaint, the plaintiff alleged that VCC's employment of licensed optometrists, as well as its operation (under the name Sterling VisionCare) of optometric offices in locations which are usually situated adjacent to the Company's retail optical stores located in the State of California, violates certain provisions

of the California Code and was seeking to permanently enjoin VCC from continuing to operate in such manner. On motion of the Company, which included a claim that VCC is a specialized Health Care Maintenance Organization that has been

## Edgar Filing: EMERGING VISION INC - Form 10-Q

specifically licensed, under the California Knox Keene Health Care Service Plan Act of 1975, as amended, to provide the identical services that the plaintiff was seeking to enjoin, the court dismissed this action, with prejudice, and without liability to the Company. In April 2003, the plaintiff filed a Notice of Appeal of the decision of the lower court dismissing this action. The Company intends to vigorously pursue its opposition of this appeal.

In August 2002, Sterling Advertising, Inc. ("SAI"), a wholly owned subsidiary of the Company, commenced an action in the New York State Supreme Court, Nassau County, against Harvey Herman Associates, Inc. ("HHA"), an advertising agency previously retained by SAI, seeking damages, in the estimated amount of \$150,000, as a result of HHA's alleged failure to provide certain of the services otherwise required of it pursuant to the terms of a certain Client-Agency Agreement, dated July 9, 2001, between SAI and HHA. Thereafter, HHA, on August 6, 2002, commenced an action in the New York State Supreme Court, New York County, against the Company, seeking damages in the approximate amount of \$90,000, based upon one or more additional agreements allegedly entered into between HHA and SAI, which, in the opinion of SAI, required HHA to perform certain services which were already included within the scope of the services required to be performed, by HHA, under such Client-Agency Agreement. As of the date hereof, the parties have agreed, in principal, to settle such litigation without the payment of any additional compensation.

In October 2002, an action was commenced against the Company and its wholly owned subsidiary, Sterling Vision of Eastland, Inc. (the "Tenant"), in the North Carolina General Court of Justice, in which Charlotte Eastland Mall, LLC, as the Landlord of the Tenant's former Sterling Optical Center located in Charlotte, North Carolina, is seeking, among other things, damages against the Company, in the approximate amount of \$81,000, under its Limited Guaranty of the Tenant's obligations under the Lease for such Center. The Company believes that it has a meritorious defense to such action. As of the date hereof, these proceedings were in the discovery stage.

In December 2002, Pyramid Champlain Company ("Pyramid") commenced an action against the Company, in the Supreme Court of the State of New York, Onondaga County, in which Pyramid, as the landlord of the Company's former Sterling Optical Center located in Plattsburg, New York, is seeking, among other things, damages against the Company, in the approximate amount of \$230,000, under the lease for such Center. The Company believes that it has a meritorious defense to such action. There was pending a motion, by Pyramid, to grant Pyramid partial summary judgment on certain of its claims raised in said action, which motion was denied by the Court. Both Pyramid and the Company have until the end of July 2003 to complete discovery as it relates to this action.

On or about January 15, 2003, Wells Fargo Financial Leasing, Inc. commenced an action against the Company, in the United States District Court, Eastern District of New York, as the lessor of certain office equipment allegedly leased to the Company, and is seeking therein, among other things, damages against the Company, in the approximate amount of \$100,000, in respect of claims arising under such lease. The Company believes that it has a meritorious defense to such action. As of the date hereof, the Company's time to answer the complaint has not expired.

In addition to the foregoing, the Company is a defendant in certain lawsuits alleging various claims incurred in the ordinary course of business, certain of which claims are covered by various insurance policies, subject to certain deductible amounts and maximum policy limits. In the opinion of management, the resolution of these claims should not have a material adverse effect, individually or in the aggregate, upon the Company's business or financial condition. Other than as set forth above, management believes that there are no other legal proceedings pending or threatened to which the Company is, or may be, a party, or to which any of its properties are or may be subject

## Edgar Filing: EMERGING VISION INC - Form 10-Q

to, which, in the opinion of management, will have a material adverse effect on the Company.

### Guarantees

In connection with the Company's sale of the Ambulatory Center on May 31, 2001 (Note 2), the Company agreed to guarantee certain of the potential ongoing liabilities of the Ambulatory Center. As of December 31, 2002, the Company had accrued \$159,000 for estimated guaranteed liabilities in 2002. During the three months ended March 31, 2003, the Company accrued an additional \$225,000 for such estimated guaranteed liabilities, representing the estimated cash flow losses of the Ambulatory Center through March 31, 2003, based on information provided by

10

the owner. Although the term of the Company's guarantee (of such liabilities) will not expire until April 2008, the Company's exposure hereunder may, in the future, be reduced, on a pro-rata basis, based upon the ability of the current owner to attract additional investors who agree to guarantee all or a portion thereof. However, there can be no assurance that such liabilities will be so reduced and, as a result, the Company could in the future continue to incur further costs associated with such guarantee should the Ambulatory Center continue to generate cash flow losses.

As of March 31, 2003, the Company was a guarantor of certain leases of retail optical stores franchised and subleased to its franchisees. In the event that all of such franchisees defaulted on their respective subleases, the Company would be obligated for aggregate lease obligations of approximately \$7,431,000.

### NOTE 8 - FINANCING ARRANGEMENTS:

In January 2002, the Company secured two separate financing arrangements as follows:

#### Secured Term Note

The Company entered into a secured term note for \$1,000,000 with an independent financial institution. This note was repayable in 24 equal monthly installments of \$41,666, and bore interest as defined (4.95% at the inception of the note, and subsequently amended on April 1, 2002 to 3.95%). The note was fully collateralized by a \$1,000,000 certificate of deposit posted by Horizons Investors Corp. ("Horizons"), a related party, at the same financial institution.

#### Credit Facility

The Company entered into an agreement with Horizons to borrow up to a maximum of \$1,000,000. This credit facility bore interest at the prime rate plus 1% (5.5% as of the date of the loan agreement), provided for an initial advance of \$300,000, required minimum incremental advances of \$150,000, was to mature on January 22, 2004, required ratable monthly principal and interest payments of each borrowing, was amortizable through the maturity date of the facility, was fully collateralized by a pledge of certain of the Company's qualifying franchise notes, and required the payment of a facility fee of 2% per annum, payable monthly, on the unused portion of the credit facility.

In consideration for providing access to the credit facility and posting

## Edgar Filing: EMERGING VISION INC - Form 10-Q

collateral for the term note, the Company granted Horizons an aggregate of 2,500,000 warrants, the fair value of which was \$234,000. The net proceeds received were allocated based on the relative fair values of the debt and the warrants. Accordingly, \$810,000 was allocated to the debt, and \$190,000 was allocated to the warrants as a discount to the debt to be amortized as interest expense over the term of the note (2 years). For the three months ended March 31, 2003, approximately \$24,000 of such discount was amortized and recognized as interest expense in the accompanying Consolidated Statement of Operations. On April 22, 2003, with a portion of the proceeds from its shareholder rights offering (the "Rights Offering"), the Company paid off \$417,000 and \$407,000, respectively, representing, at that time, the remaining principal amounts due under the secured term note and the credit facility (Note 9).

### NOTE 9 - SUBSEQUENT EVENTS:

#### Related Party Transaction

On April 4, 2003, the Board of Directors authorized the Company to borrow \$100,000 from one of its principal shareholders and directors. The loan was payable immediately after the closing of the Company's Rights Offering, together with interest in an amount equal to 1% of the principal amount of such loan. The Company repaid this loan, in full, on April 22, 2003, with a portion of the proceeds from the Rights Offering.

11

#### Shareholder Rights Offering

On February 12, 2003, the registration statement filed by the Company in connection with its shareholder rights offering (the "Rights Offering") was declared effective by the Securities and Exchange Commission. The Rights Offering consisted of 50,000,000 units, with each unit consisting of one share of the Company's Common Stock, and a warrant, having a term of 12 months, to purchase one additional share of Common Stock at an exercise price of \$0.05, which was determined based on certain closing price and volume requirements during the subscription period.

The terms of the Rights Offering provided that each shareholder was granted 1.67 non-transferable rights for every share of Common Stock owned as of the record date, February 25, 2003. Each right was exercisable for one unit at a price of \$0.04, the proceeds of which would be used to repay the amounts outstanding under the Company's existing credit facility and secured term note (Note 8), to fund its plan to continue to close non-profitable stores (Note 6), and for general corporate and working capital purposes.

On April 14, 2003, the subscription period ended and the Company completed the Rights Offering. Approximately 92,700,000 units were subscribed for in the Rights Offering, and, as a result, 50,000,000 new shares of Common Stock, and warrants to purchase 50,000,000 additional shares of Common Stock, were issued, resulting in gross proceeds of \$2,000,000. The issuance costs associated with the Rights Offering were approximately \$150,000.

Item 2. Management's Discussion and Analysis of Financial Condition and Results  
 -----  
 of Operations  
 -----

This Report contains certain forward-looking statements and information relating to the Company that are/is based on the beliefs of the Company's management, as well as assumptions made by, and information currently available to, the Company's management. When used in this Report, the words "anticipate", "believe", "estimate", "expect", and similar expressions, as they relate to the Company or the Company's management, are intended to identify forward-looking statements. Such statements reflect the current view of the Company with respect to future events, are not guarantees of future performance and are subject to certain risks and uncertainties. These risks and uncertainties may include, among other items: product demand and market acceptance risks; the effect of economic conditions; the impact of competitive products, services and pricing; product development, commercialization and technological difficulties; and the outcome of pending and future litigation. Should one or more of these risks or uncertainties materialize, or should underlying assumptions prove incorrect, actual results may vary materially from those described herein as "anticipated", "believed", "estimated", or "expected". The Company does not intend to update these forward-looking statements.

Results of Operations

For the Three Months Ended March 31, 2003, as Compared to the Comparable Period in 2002

Net sales for Company-owned stores, including revenues generated by the Company's wholly-owned subsidiary, VisionCare of California, Inc., a specialized health care maintenance organization licensed by the State of California Department of Managed Health Care, decreased by approximately \$1,073,000, or 35.9%, to \$1,917,000 for the three months ended March 31, 2003, as compared to \$2,990,000 for the comparable period in 2002. This decrease was primarily due to the lower average number of Company-owned stores in operation during the three months ended March 31, 2003, as compared to the same period in 2002. This decrease was in line with management's expectations due to the plan to continue to close non-profitable Company-owned stores.

As of March 31, 2003, there were 178 stores in operation, consisting of 17 Company-owned stores (including 7 Company-owned stores being managed by franchisees) and 159 franchised stores, as compared to 199 stores in operation as of March 31, 2002, consisting of 33 Company-owned stores (including 8 Company-owned stores being managed by franchisees) and 166 franchised stores. On a same store basis (for those stores that the Company will continue to operate as Company-owned stores), comparative net sales decreased by \$95,000, or 9.9%, to \$865,000 for the three months ended March 31, 2003, as compared to \$960,000 for the comparable period in 2002. Management believes that this decline was a direct result of the general downturn in the economy.

Franchise royalties decreased by \$96,000, or 5.7%, to \$1,601,000 for the three months ended March 31, 2003, as compared to \$1,697,000 for the comparable period in 2002. This decrease was primarily a result of a lower average number

## Edgar Filing: EMERGING VISION INC - Form 10-Q

of franchised stores in operation during the three month period ended March 31, 2003 as compared to 2002, as described above, offset by a slight increase in franchise sales for the stores that were open during both of the comparable periods.

For the three months ended March 31, 2003, there was \$181,000 of net gains from the conveyance of Company-owned store assets to franchisees, and other franchise related fees. For the three-month period ended March 31, 2002, the Company recognized no such gains and fees. This increase was directly attributable to the signing of seven new franchise agreements during the three months ended March 31, 2003.

13

Interest on franchise notes receivable decreased by \$36,000, or 42.4%, to \$49,000 for the three months ended March 31, 2003, as compared to \$85,000 for the comparable period in 2002. This decrease was primarily due to numerous franchise notes maturing during the past 12 months and no new notes being generated during the three-month period ended March 31, 2003 as compared to the comparable periods in 2002.

Excluding revenues generated by the Company's wholly-owned subsidiary, VisionCare of California, Inc., the Company's gross profit margin increased by 6.7%, to 71.5%, for the three months ended March 31, 2003, as compared to 64.8% for the comparable period in 2002. This increase was mainly a result of improved inventory management and control, improved purchasing at lower average product costs, and improved discounts obtained in 2003 from certain of the Company's vendors. In the future, the Company's gross profit margin may fluctuate depending upon the extent and timing of changes in the product mix in Company-owned stores, competitive pricing, and promotional incentives.

Selling, general and administrative expenses decreased by \$1,733,000, or 38.3%, to \$2,787,000 for the three months ended March 31, 2003, as compared to \$4,520,000 for the comparable period in 2002. This decrease was primarily due to management's continuing plan to reduce administrative expenses, where necessary and feasible, and to close non-profitable Company-owned stores. Included in this decrease were reductions in salaries and related expenses of \$622,000 and facility and other overhead charges of \$1,070,000.

Interest expense increased by \$22,000, to \$61,000, for the three months ended March 31, 2003, as compared to \$39,000 for the comparable period in 2002. This increase was primarily due to the fact that there was interest being incurred in connection with the financing arrangements obtained in January 2002, and the amortization of the discount associated with such financing, during the entire three months ended March 31, 2003, as opposed to the comparable period in 2002, where such expenses were only incurred for a two-month period.

### Liquidity and Capital Resources

As of March 31, 2003 (exclusive of net liabilities of discontinued operations), the Company had negative working capital of \$4,302,000 and cash on hand of \$418,000. During the three months ended March 31, 2003, the Company used \$149,000 of cash in its operating activities. This usage was primarily a result of a decrease in the accrual for store closings of \$306,000, a decrease of \$235,000 in franchise deposits and other liabilities, and a net increase of \$227,000 in franchise and other receivables, offset, in part, by income from continuing operations of \$581,000. Management anticipates that it will continue

## Edgar Filing: EMERGING VISION INC - Form 10-Q

to make significant payments against liabilities, which are already reflected in the Consolidated Balance Sheet as of March 31, 2003, associated with the closure of non-profitable Company-owned stores.

For the three months ended March 31, 2003, cash flows provided by investing activities were \$75,000, as compared to \$190,000 for the comparable period in 2002. This was principally due to the maturing of numerous of the Company's franchise notes receivable during the past twelve months.

For the three months ended March 31, 2003, cash flows used in financing activities were \$169,000, principally due to the repayment of a portion of the Company's debt financing and related party borrowings of \$331,000, offset by an additional borrowings under the credit facility of \$150,000.

In April 2003, the Company completed its shareholder rights offering, resulting in gross proceeds of \$2,000,000. With a portion of the proceeds, the Company paid off \$417,000, \$407,000 and \$100,000, respectively, representing the remaining principal amounts due under the secured term note, the credit facility and a director loan.

The Company plans to continue to improve its cash flows during 2003 by improving store profitability through increased monitoring of store-by-store operations, closing non-profitable Company-owned stores, continuing to implement reductions of administrative overhead expenses where necessary and feasible, actively supporting development programs for franchisees, and continuing to add new franchise stores to the system. Management believes that with the successful execution of the aforementioned plans to improve cash flows, its existing cash, the collection of outstanding receivables, and the proceeds from its shareholder rights offering, there will be sufficient liquidity available for the Company to continue in operation through the second quarter of 2004. However, there can be no assurance that the Company will be able to successfully execute the aforementioned plans.

14

### Item 3. Quantitative and Qualitative Disclosures about Market Risk

-----

The Company presently has outstanding certain equity instruments with beneficial conversion terms. Accordingly, the Company, in the future, could incur non-cash charges to equity (as a result of the exercise of such beneficial conversion terms), which would have a negative impact on future per share calculations.

### Item 4. Controls and Procedures

-----

#### a) Evaluation of Disclosure Controls and Procedures

Based on their evaluation of the Company's disclosure controls and procedures as of a date within 90 days of the filing of this Report, the Co-Chief Operating Officers (one of which is also the Company's Chief Financial Officer) have concluded that such controls and procedures are effective.

#### b) Changes in Internal Controls

There were no significant changes in the Company's internal controls, or in other factors, that could significantly affect such controls subsequent to the



date of their evaluation.

15

PART II - OTHER INFORMATION

Item 1. Legal Proceedings  
-----

In April 2003, Consumer Cause, Inc. filed a Notice of Appeal of the decision of the lower court dismissing its action against the Company and VisionCare of California, Inc. The Company intends to vigorously pursue its opposition of this appeal.

Item 2. Changes in Securities and Use of Proceeds  
-----

Not applicable.

Item 3. Defaults Upon Senior Securities  
-----

Not applicable.

Item 4. Submission of Matters to a Vote of Security Holders  
-----

Not applicable.

Item 5. Other Information  
-----

Not applicable.

Item 6. Exhibits and Reports on Form 8-K  
-----

A. Exhibits  
-----

99.1 Certifications of Principal Executive Officers and Principal Financial Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.

B. Reports on Form 8-K  
-----

On February 11, 2003, the Company filed a Report on Form 8-K regarding the issuance of a press release, on February 10, 2003, regarding the announcement of the final terms of its shareholder rights offering.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, as amended, the Registrant has duly caused this Report to be signed on its behalf by the undersigned hereunto duly authorized.

EMERGING VISION, INC.  
(Registrant)

BY: /s/ Christopher G. Payan

-----  
Christopher G. Payan  
Senior Vice President,  
Co-Chief Operating Officer and  
Chief Financial Officer  
(Co-Principal Executive Officer and  
Principal Financial Officer)

BY: /s/ Brian P. Alessi

-----  
Brian P. Alessi  
Corporate Controller  
(Principal Accounting Officer)

Dated: May 13, 2003

I, Christopher G. Payan, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Emerging Vision, Inc.;
2. Based on my knowledge, this quarterly report does not contain any untrue

## Edgar Filing: EMERGING VISION INC - Form 10-Q

statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this quarterly report;

3. Based on my knowledge, the financial statements, and other financial information included in this quarterly report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the period presented in this quarterly report;

4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-14 and 15d-14) for the registrant and we have:

a) designed such disclosure controls and procedures to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this quarterly report is being prepared;

b) evaluated the effectiveness of the registrant's disclosure controls and procedures as of a date within 90 days prior to the filing date of this quarterly report (the "Evaluation Date"); and

c) presented in this quarterly report our conclusion about the effectiveness of the disclosure controls and procedures based on our evaluation as of the Evaluation Date;

5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent function):

a) all significant deficiencies in the design or operation of internal controls which could adversely affect the registrant's ability to record, process, summarize and report financial data and have identified for the registrant's auditors any material weaknesses in internal controls; and

b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls; and

6. The registrant's other certifying officers and I have indicated in this quarterly report whether or not there were significant changes in internal controls or in other factors that could significantly affect internal controls subsequent to the date of our most recent evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

Date: May 13, 2003

/s/ Christopher G. Payan

-----  
Christopher G. Payan  
Co-Chief Operating Officer and  
Chief Financial Officer

I, Myles S. Lewis, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Emerging Vision, Inc.;

2. Based on my knowledge, this quarterly report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this quarterly report;

3. Based on my knowledge, the financial statements, and other financial information included in this quarterly report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the period presented in this quarterly report;

4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-14 and 15d-14) for the registrant and we have:

a) designed such disclosure controls and procedures to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this quarterly report is being prepared;

b) evaluated the effectiveness of the registrant's disclosure controls and procedures as of a date within 90 days prior to the filing date of this quarterly report (the "Evaluation Date"); and

c) presented in this quarterly report our conclusion about the effectiveness of the disclosure controls and procedures based on our evaluation as of the Evaluation Date;

5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent function):

a) all significant deficiencies in the design or operation of internal controls which could adversely affect the registrant's ability to record, process, summarize and report financial data and have identified for the registrant's auditors any material weaknesses in internal controls; and

b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls; and

6. The registrant's other certifying officers and I have indicated in this quarterly report whether or not there were significant changes in internal controls or in other factors that could significantly affect internal controls subsequent to the date of our most recent evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

Date: May 13, 2003

Edgar Filing: EMERGING VISION INC - Form 10-Q

/s/ Myles S. Lewis

-----  
Myles S. Lewis  
Co-Chief Operating Officer

19

I, Samuel Z. Herskowitz, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Emerging Vision, Inc.;

2. Based on my knowledge, this quarterly report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this quarterly report;

3. Based on my knowledge, the financial statements, and other financial information included in this quarterly report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the period presented in this quarterly report;

4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-14 and 15d-14) for the registrant and we have:

a) designed such disclosure controls and procedures to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this quarterly report is being prepared;

b) evaluated the effectiveness of the registrant's disclosure controls and procedures as of a date within 90 days prior to the filing date of this quarterly report (the "Evaluation Date"); and

c) presented in this quarterly report our conclusion about the effectiveness of the disclosure controls and procedures based on our evaluation as of the Evaluation Date;

5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent function):

a) all significant deficiencies in the design or operation of internal controls which could adversely affect the registrant's ability to record, process, summarize and report financial data and have identified for the registrant's auditors any material weaknesses in internal controls; and

b) any fraud, whether or not material, that involves management or other

Edgar Filing: EMERGING VISION INC - Form 10-Q

employees who have a significant role in the registrant's internal controls; and

6. The registrant's other certifying officers and I have indicated in this quarterly report whether or not there were significant changes in internal controls or in other factors that could significantly affect internal controls subsequent to the date of our most recent evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

Date: May 13, 2003

/s/ Samuel Z. Herskowitz

-----  
Samuel Z. Herskowitz  
Co-Chief Operating Officer

20

Exhibit 99.1

Certifications of Principal Executive Officers and Principal Financial Officer  
Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002

(Company Letterhead)

Certification of Principal Executive and Financial Officer  
Pursuant to 18 U.S.C. 1350  
(Section 906 of the Sarbanes-Oxley Act of 2002)

I, Christopher G. Payan, Co-Chief Operating Officer and Chief Financial Officer (co-principal executive officer and principal financial officer) of Emerging Vision, Inc. (the "Registrant"), certify that to the best of my knowledge, based upon a review of the Quarterly Report on Form 10-Q for the period ended March 31, 2003 of the Registrant (the "Report"):

(1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Registrant.

/s/ Christopher G. Payan

-----  
Name: Christopher G. Payan

Edgar Filing: EMERGING VISION INC - Form 10-Q

Date: May 13, 2003

(Company Letterhead)

Certification of Principal Executive Officer  
Pursuant to 18 U.S.C. 1350  
(Section 906 of the Sarbanes-Oxley Act of 2002)

I, Myles S. Lewis, Co-Chief Operating Officer (co-principal executive officer) of Emerging Vision, Inc. (the "Registrant"), certify that to the best of my knowledge, based upon a review of the Quarterly Report on Form 10-Q for the period ended March 31, 2003 of the Registrant (the "Report"):

(1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Registrant.

/s/ Myles S. Lewis

-----  
Name: Myles S. Lewis  
Date: May 13, 2003

(Company Letterhead)

Certification of Principal Executive Officer  
Pursuant to 18 U.S.C. 1350  
(Section 906 of the Sarbanes-Oxley Act of 2002)

I, Samuel Z. Herskowitz, Co-Chief Operating Officer (co-principal executive officer) of Emerging Vision, Inc. (the "Registrant"), certify that to the best of my knowledge, based upon a review of the Quarterly Report on Form 10-Q for the period ended March 31, 2003 of the Registrant (the "Report"):

(1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the

Edgar Filing: EMERGING VISION INC - Form 10-Q

Registrant.

/s/ Samuel Z. Herskowitz

-----  
Name: Samuel Z. Herskowitz  
Date: May 13, 2003