

# SETTLEMENT AGREEMENT

## 1. DEFINITIONS

### 1.1 Product Description

The products covered by this Private Settlement Agreement (“Private Settlement”) are defined as shower liners and associated packaging material manufactured, distributed and/or sold by Focus Products Group International (“Focus”) in the State of California including, but not limited to, the Hookless White Fabric Snap-In Liner RBH40BBS01 UPC877003002313. All such items shall be referred to herein as the “Products.”

### 1.2 Effective Date

For purposes of this Private Settlement, the term “Effective Date” shall mean the date this Private Settlement is signed by Kingpun Cheng (“Cheng”) and Focus.

## 2. INTRODUCTION

### 2.1 Parties

This Private Settlement is entered into by and between Cheng and Focus. Cheng and Focus are each a “Party,” and shall collectively be referred to as the “Parties.” Cheng is an individual residing in the State of California who seeks to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances contained in consumer products.

### 2.2 Notice of Violation

On or about October 9, 2017, Cheng served Focus, Bed Bath & Beyond Inc. (“BBB”), and various public enforcement agencies with a document entitled “60-Day Notice of Violation” pursuant to Health & Safety Code section 25249.7(d) (“Notice”), alleging that Focus was in violation of Proposition 65 for failing to warn consumers and customers that the Products exposed users in the State of California to DEHP (Di[2--Ethylhexyl] Phthalate). No public enforcer diligently prosecuted the claims threatened in the Notice within sixty (60) days plus service time after service of the Notice by Cheng.

### **2.3 General Allegations and Representations**

Cheng alleges that Focus manufactured, distributed, and/or sold in the State of California Hookless White Fabric Snap-In Liner RBH40BBS01 UPC877003002313 containing DEHP (Di[2-Ethylhexyl] Phthalate) in excess of the limit proscribed by the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code section 25249.5, *et seq.* (“Proposition 65”), and that such sales have not been accompanied by Proposition 65 warnings. DEHP (Di[2-Ethylhexyl] Phthalate) is listed under Proposition 65 as a chemical known to the State of California to cause cancer, birth defects, and reproductive toxicity. Cheng has cited the Hookless White Fabric Snap-In Liner RBH40BBS01 UPC877003002313 as an example of the Hookless Snap-In Fabric Shower Liners that are the subject of his allegation.

For purposes of this Private Settlement only, Focus represents that the Hookless White Fabric Snap-In Liner RBH40BBS01 UPC877003002313 is an item it distributes to retailers in the State of California, that it retained a laboratory to test the Hookless White Fabric Snap-In Liner RBH40BBS01 UPC877003002313 and associated packaging, and that the laboratory test results demonstrate that the Hookless White Fabric Snap-In Liner RBH40BBS01 UPC877003002313 and associated packaging do not exceed the threshold limits for DEHP as set forth in California Health & Safety Code section 25249.8(a).

### **2.4 Stipulation as to Jurisdiction**

For purposes of this Private Settlement only, the Parties stipulate that in the event either enforcement of this Private Settlement occurs, or a dispute arises regarding this Private Settlement, the Superior Court of California, County of San Diego has proper jurisdiction over the Parties, and that venue is proper in the County of San Diego.

### **2.5 No Admissions**

Focus denies the material, factual, and legal allegations contained in the Notice, and maintains that all of the Products it manufactured, distributed, and/or sold in the State of California, have been, and are, in compliance with all laws. Cheng, on the other hand,

contends that the Products violate Proposition 65 and require labeling. However, in a good faith effort to avoid the time and expense of litigation, the Parties have agreed to enter into this Private Settlement. Nothing in this Private Settlement shall be construed as an admission by Focus of any fact, finding, issue of law, or violation of law; nor shall compliance with this Private Settlement constitute or be construed as an admission by Focus of any fact, finding, conclusion, issue of law, or violation of law.

### **3. WARNING REQUIREMENT**

#### **3.1 Compliance**

The Products shall be deemed to comply with Proposition 65 with regard to DEHP (Di[2--Ethylhexyl] Phthalate) and be exempt from any Proposition 65 warning requirements for DEHP (Di[2--Ethylhexyl] Phthalate) by relying on information obtained from its suppliers regarding the content of the contents of the Product, provided such reliance is in good faith. Obtaining test results showing that the DEHP (Di[2--Ethylhexyl] Phthalate) content is no more than 1,000 ppm, using a method of sufficient sensitivity to establish a limit of quantification (as distinguished from detection) of less than 1,000 ppm shall be deemed to establish good faith reliance.

#### **3.2 Warning Requirement**

Should a warning be required under Section 3.1 above, Focus shall provide Proposition 65 warnings substantially as follows:

**WARNING:** This product can expose you to chemicals including phthalates such as DEHP, which are known to the State of California to cause cancer and birth defects or other reproductive harm. For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

OR

**WARNING:** This product contains a chemical known to the State of California to cause cancer and birth defects or other reproductive harm.

OR

**WARNING:** This product can expose you to chemicals including Di(2-

ethylhexyl)phthalate (DEHP), which are known to the State of California to cause cancer and birth defects or other reproductive harm. For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

OR

**WARNING:** Cancer and Reproductive Harm -  
[www.P65Warnings.ca.gov/product](http://www.P65Warnings.ca.gov/product).

#### **4. PAYMENTS**

##### **4.1 Payments Pursuant to Health and Safety Code § 25249.7(b)(2)**

In settlement of all claims referred to in this Private Settlement Agreement, Focus shall pay a total of five hundred dollars (\$500.00) in civil penalties in accordance with this Section. Each civil penalty payment will be allocated in accordance with Health and Safety Code section 25249.12(c)(1) & (d), with seventy-five percent (75%) of the penalty remitted to the California Office of Environmental Health Hazard Assessment (“OEHHA”), and the remaining twenty-five percent (25%) of the penalty retained by Cheng.

Focus shall deliver its payment on or before fifteen (15) business days after the Effective Date in two checks for the following amounts made payable to: (a) OEHHA in the amount of three hundred seventy-five dollars (\$375.00); and (b) Cheng in the amount of one hundred twenty-five dollars (\$125.00).

##### **4.2 Reimbursement of Attorneys’ Fees and Costs**

The Parties reached an accord on the compensation due to Cheng and his counsel under the private attorney general doctrine and principles of contract law codified at Code of Civil Procedure section 1021.5 for all work performed in this matter. Under these legal principles, Focus agrees to pay five thousand dollars (\$5,000) for all fees and costs incurred investigating, bringing this matter to Focus’s attention, and negotiating a settlement that provides a significant public benefit. Focus shall wire said monies to “Sy and Smith, PC” on or before fifteen (15) business days after the Effective Date. Sy and

Smith, PC will provide Focus with wire instruction and tax identification information on or before the Effective Date. Other than the payment required hereunder, each side is to bear its own attorneys' fees and costs.

#### **4.3 Payment Addresses**

Mike Gyurics  
Office of Environmental Health Hazard Assessment  
Fiscal Operations  
1001 "I" Street  
Mail Stop 12-B  
Sacramento, CA 95814

Mr. Kingpun Cheng  
C/O Sy and Smith, PC  
11622 El Camino Real, Suite 100  
Del Mar, CA 92130

#### **5. MODIFICATION**

This Private Settlement may be modified only by further written agreement signed by the Parties.

#### **6. CLAIMS COVERED AND RELEASED**

##### **6.1 Cheng's Release of Focus, BBB, and Downstream Distributors**

This Private Settlement Agreement is a full, final, and binding resolution between Cheng and Focus, of any violation of Proposition 65 that was or could have been asserted by Cheng, on his own behalf, or on behalf of his past and current agents, representatives, attorneys, successors, and assigns, against: (a) Focus, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, shareholders, employees, agents, attorneys, and the predecessor, successors, and assigns of each; (b) each entity to whom Focus directly or indirectly distributes or sells Products including, but not limited to, its downstream distributors, wholesalers, customers, retailers (including, but not limited to, BBB), franchisees, cooperative members, and licensees; and (c) the manufacturers, importers and suppliers of the Products ("Releasees"), for any violations arising under

Proposition 65 for unwarned exposures to lead from the Products sold prior to the Effective Date, as set forth in the Notice.

In further consideration of the promises and agreements herein contained, Cheng on his own behalf and on behalf of his past and current agents, representatives, attorneys, successors, and assignees, waives any and all rights that he may have to institute or participate in, directly or indirectly, any form of legal action, and releases all claims against Focus, and Releasees including, without limitation, all actions and causes of action, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, expenses, investigation fees, expert fees, and attorneys' fees for claims arising under Proposition 65 with respect to the alleged or actual failure to warn about exposures to lead in Products manufactured, distributed, sold or offered for sale by Focus, before the Effective Date, as alleged in the Notice.

The releases provided by Cheng under this Private Settlement Agreement are provided solely on Cheng's behalf and are not releases on behalf of the public in the State of California.

## **6.2 Focus' Release of Cheng**

Focus, on its own behalf and on behalf of its past and current agents, representatives, attorneys, successors, and assignees, hereby waives any and all claims against Cheng and his attorneys and other representatives, for any and all actions taken or statements made by Cheng and his attorneys and other representatives, whether in the course of investigating claims, seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.

## **7. PROVISION OF NOTICE**

Unless specified herein, all correspondence and notice required to be provided pursuant to this Private Settlement shall be in writing and personally delivered or sent by: electronic mail and either (a) first-class, registered or certified mail, return receipt requested; or (b) a recognized overnight courier on any Party by the other at the

following addresses:

For Focus:

Thomas L. Van Wyngarden  
Katten Muchin Rosenman LLP  
2029 Century Park East, Suite 2600  
Los Angeles, CA 90067

For Cheng:

Parker A. Smith  
Sy and Smith, PC  
11622 El Camino Real, Suite 100  
Del Mar, CA 92130

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

**8. GOVERNING LAW**

The terms of this Private Settlement shall be governed by the laws of the State of California and apply within the State of California.

**9. ATTORNEYS' FEES**

A Party who unsuccessfully brings or contests an action arising out of this Private Settlement shall be required to pay the prevailing Party's reasonable attorneys' fees and costs.

**10. SEVERABILITY AND MERGER**

**10.1 Enforceability**

If, subsequent to the execution of this Private Settlement, any provision of this Private Settlement is held by a court to be unenforceable, the validity of the remaining provisions shall not be adversely affected.

**10.2 Integration**

This Private Settlement contains the sole and entire agreement of the Parties and any and all prior negotiations and understandings related hereto shall be deemed to have been merged within it. No representations or terms of agreement other than those

contained herein exist or have been made by any Party with respect to the other Party or the subject matter hereof.

**11. EXECUTION IN COUNTERPARTS; SIGNATURES**

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

**12. COMPLIANCE WITH HEALTH & SAFETY CODE SECTION 25249.7(f)**

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

**13. CONFIDENTIALITY AND NON-DISPARAGEMENT**

The Parties agree to refrain from taking action or making statements, written, oral or through any form of social media, which disparage or defame the goodwill or reputation of the other Party.

**14. AUTHORITY TO EXECUTE PRIVATE SETTLEMENT**

The undersigned are authorized to execute this Private Settlement on behalf of their respective Parties and have read, understood, and agree to all of the terms and conditions of this Private Settlement and certifies that he or she is fully authorized by the Party he or she represents to execute the Private Settlement on behalf of the Party and legally bind that Party.

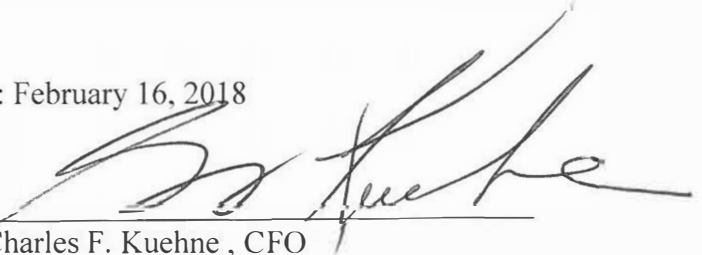
**AGREED TO:**

Date: February 21, 2018

By:   
Kingpun Cheng

**AGREED TO:**

Date: February 16, 2018

By:   
Charles F. Kuehne, CFO  
Focus Products Group International