PRIVATE ATTORNEYS GENERAL ACT (LABOR CODE § 2698 *ET SEQ.*)
SETTLEMENT AND RELEASE AGREEMENT

Amairani Gomez v. Focus Industries, Inc., et al.
Orange County Superior Court, Case No. 30-2023-01336931-CU-OE-CXC

Subject to Court approval by the Superior Court for the State of California, County of Orange ("Court"), Plaintiff Amairani Gomez ("Plaintiff") and Defendants Focus Industries, Inc. and Stan Shibata ("Defendants") (collectively, Plaintiff and Defendants are the "Parties") hereby agree to the following binding settlement ("Settlement" or "Settlement Agreement") of the PAGA claims in the Action entitled Amairani Gomez v. Focus Industries, Inc., et al., Orange County Superior Court case no. 30-2023-01336931-CU-OE-CXC (the "Action").

PAGA MEMBERS BY THE SETTLEMENT

1. **PAGA Members**: This Settlement covers all persons within the State of California who are or were employed by Defendants in the State of California and classified as non-exempt during the PAGA Period (the "PAGA Members").

2. **PAGA Period**: The Settlement covers the period from April 10, 2022 through June 20, 2024 (the "PAGA Period").

3. **Effective Date**: The effective date ("Effective Date") of this Agreement shall be the date the Court has signed an order approving the motion or joint stipulation of settlement for approval of this PAGA Settlement, and enters an order thereon.

SETTLEMENT CONSIDERATION

4. **Gross Settlement Amount**: Defendants will pay Fifty Thousand Dollars and Zero Cents ($50,000.00) to settle the PAGA claims in the Action ("Gross Settlement Amount"). In no event shall Defendants be liable for more than the Gross Settlement Amount of $50,000.00 as a result of this Settlement. The Gross Settlement Amount will be allocated as follows:

   a. Third-Party Settlement Administration Fees of up to Five Thousand Dollars ($5,000.00);

b. Plaintiff's counsel's, Maralle Messrelian of MM Law, APC (PAGA Counsel"), request for attorneys' fees ofup to 33.33% of the Gross Settlement Amount, or Sixteen Thousand Six Hundred Sixty-six Dollars and Sixty-six Cents ($16,666.66) ("PAGA Counsel's Fees"), subject to Court approval, plus actual costs and expenses incurred by PAGA Counsel related to the Action as supported by declaration, which are currently estimated to be no greater than Seven Thousand Five Hundred Dollars and Zero Cents ($7,500.00) ("PAGA Counsel's Costs");and

c. The remaining funds (the Gross Settlement Amount less the Third-Party Settlement Administration Fees, PAGA Counsel's Fees, and PAGA Counsel's Costs) shall be referred to as the "Net Settlement Amount."

5. **Total PAGA Members and Pay Period Count**. According to Defendants' records, as of June 20, 2024, there were 76 PAGA Members and 1,987 pay periods for all PAGA Members during the PAGA Period (4/10/2022 to 6/20/2024) and this served as the basis for Plaintiff accepting the settlement.

6. **Distribution of the Net Settlement Amount**. The Net Settlement Amount shall be designated as PAGA penalties in full satisfaction of all claims for PAGA civil penalties under the California Labor Code, Wage Orders, regulations, and/or other provisions of law alleged to have been violated in or reasonably related to the operative Complaint with respect to PAGA Members, allocated between the LWDA and the PAGA Members pursuant to Labor Code Section 2699(i) with 75% paid to the LWDA and 25% paid to the PAGA Members on a pro-rata basis ("PAGA Penalties Fund"). The 25% of the Net Settlement Amount will be paid to all PAGA Members according to the following formula: Settlement Payment to each PAGA Member = $[25% of Net Settlement Amount] × [Pay Periods Worked by Individual PAGA Member During PAGA Period ÷ Total Pay Periods Worked by All PAGA Members during PAGA Period].

7. **Settlement Administration**. Settlement Administrator Phoenix Class Action Administration Solutions, or as otherwise agreed to by the Parties and approved by the Court, will administer this Settlement and will be responsible for issuing payments and appropriate tax forms to PAGA Members, the LWDA, Plaintiff, and PAGA Counsel. The estimate of costs of

administration for the disbursement of the PAGA Penalties Fund is no more than $5,000.00. If less than $5,000.00 is spent on the Settlement Administrator, the unused funds will be re-allocated to the Net Settlement Amount.

8. **Court Approval of the Settlement and Distribution of Settlement Payments**. The Parties will present this Settlement Agreement to the Court and will request that the Court issue a Court Approval Order and Judgment approving and incorporating by reference the terms and conditions of the Settlement Agreement (the "Court Approval Order and Judgment"), dismissing the Action with prejudice, and entering judgment. The Parties shall submit this Settlement Agreement for the Court's approval by stipulation and order, unless the Court requires a motion, in which event, Plaintiff will undertake that responsibility.

9. **Notice to LWDA**. Pursuant to California Labor Code § 2699(l)(1), Plaintiff shall submit to the LWDA a copy of this Settlement Agreement and all supporting approval documents at the same time that Plaintiff submits it to the Court for approval.

10. **Funding of the Settlement**. Within thirty (30) calendar days after the Effective Date, Defendant shall deposit the Gross Settlement Amount with the Settlement Administrator. Within ten (10) calendar days after the Effective Date, Defendants shall provide the Settlement Administrator with a list of all PAGA Members with each listed employee's full name, hiring, and, if applicable, termination dates in connection with the employee's employment with Defendant during the PAGA Period, last known mailing address, and social security number. Within twenty (20) calendar days of receipt of the list of all PAGA Members, the Settlement Administrator shall run all the addresses of PAGA Members through the United States Postal Service NCOA database to obtain current address information, and issue payments to (a) the PAGA Members; (b) the LWDA; (c) PAGA Counsel for PAGA Counsel's Fees and Costs; and (c) itself. The Settlement Administrator will skip-trace return mail and re-mail within five (5) calendar days. The Settlement Administrator will issue the appropriate tax forms for all payments issued under this Settlement. If the Effective Date falls on a holiday or weekend, the Effective Date shall be the next calendar day.

11. **Settlement Payments to PAGA Members**: The Settlement Administrator will issue each PAGA Member a check for his or her share of the Net Settlement Amount along with

an explanatory letter in the form attached as **Exhibit A**. Checks will remain negotiable for one hundred eighty (180) days from the initial mailing or any re-mailing. Any checks returned as non-deliverable on or before the check cashing deadline will be sent promptly via regular First-Class U.S. Mail to the forwarding address affixed thereto. Funds represented by settlement checks returned as undeliverable and those settlement checks remaining un-cashed for more than 180 days after the initial mailing or re-mailing shall be paid to the California State Controller's Office Unclaimed Property Fund with an identification of the amount of unclaimed funds attributable to each PAGA Member. The Parties do not bear any liability for lost or stolen checks, forged signatures on checks, or unauthorized negotiation of checks. Unless responsible by its own acts of omission or commission, the same is true for the Settlement Administrator. All settlement payments to PAGA Members will be treated as miscellaneous income for which an IRS Form 1099 will be issued by the Settlement Administrator if required by law.

12. **Settled and Released PAGA Claims**. Upon the Effective Date of this Settlement, Plaintiff, the State of California (including, but not limited to, the LWDA), and the PAGA Members will be deemed to have fully, finally, and forever released, settled, compromised, relinquished, and discharged the Released PAGA Claims with respect to Defendant and its past and present officers, directors, shareholders, unit holders, managers, employees, agents, principals, heirs, representatives, accountants, auditors, consultants, and its respective successors and predecessors in interest, subsidiaries, affiliates, parents and attorneys. The Released PAGA claims shall include all known or unknown claims for civil penalties, attorneys' fees and costs, or any other relief under PAGA arising out of the Labor Code claims and allegations expressly plead in the operative Complaint and all other Labor Code claims that could have been asserted based on the facts and allegations plead in the operative Complaint, and/or any facts, claims, or theories set forth in the LWDA Notice against Defendants dated April 10, 2023, including but not limited to: California Labor Code Sections §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 558, 558.1, 1174, 1194, 1197, 1198, 2802, and IWC Wage Order 1, §§7, 11-12.

13. **No Credit Toward Benefit Plans**. Payments to PAGA Members as referenced herein will not be utilized to calculate any additional benefits under any benefit plans to which any PAGA Member may be eligible, including, but not limited to profit-sharing plans, bonus plans, 401(k) plans, stock purchase plans, vacation plans, sick leave plans, PTO plans, and any other

benefit plan. Rather, it is the Parties' intention that this Settlement Agreement will not affect any rights, contributions, or amounts to which any PAGA Member may be entitled under any benefit plans.

14. **No Prior Assignments**. The Parties and their counsel represent, covenant, and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or right herein released and discharged.

15. **Nullification of Settlement Agreement**. In the event that: (i) the Court does not approve the Settlement as provided herein; or (ii) the Settlement does not become final for any other reason, then this Settlement Agreement, and any documents generated to bring it into effect, will be null and void, and the Parties will be returned to their original respective positions.

16. **Continued Jurisdiction**. After entry of the Court Approval Order and Judgment, the Court will have continuing jurisdiction under California Code of Civil Procedure § 664.6 solely for purposes of addressing: (i) the interpretation and enforcement of the terms of the Settlement, (ii) settlement administration matters, and (iii) such post-Court Approval matters as may be appropriate under court rules or as set forth in this Settlement.

17. **Entire Agreement**. This Settlement Agreement constitutes the entirety of the Parties' settlement terms regarding the Action. No other prior or contemporaneous written or oral agreements may be deemed binding on the Parties.

18. **Amendment or Modification**. This Settlement Agreement may be amended or modified only by a written instrument, signed by either all the Parties or their successors-in-interest or counsel for all Parties.

19. **Authorization to Enter Into Settlement Agreement**. Counsel for all Parties warrant and represent they are expressly authorized by the Parties whom they represent to negotiate this Settlement Agreement and to take all appropriate action required or permitted to be taken by such Parties pursuant to this Settlement Agreement to effectuate its terms and to execute any other documents required to effectuate the terms of this Settlement Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to effect the implementation of

the Settlement. If the Parties are unable to reach agreement on the form or content of any document needed to implement the Settlement, or on any supplemental provisions that may become necessary to effectuate the terms of this Settlement, the Parties may seek the assistance of the Court to resolve such disagreement.

20. **Binding on Successors and Assigns**. This Settlement Agreement will be binding upon, and inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

21. **California Law Governs**. All terms of this Settlement Agreement and Exhibit(s) hereto will be governed by and interpreted according to the laws of the State of California.

22. **Execution and Counterparts**. This Settlement Agreement is subject only to the execution of all Parties. However, the Settlement Agreement may be executed in one or more counterparts. All executed counterparts and each of them, including facsimile and scanned copies of the signature page, will be deemed to be one and the same instrument.

23. **Acknowledgement that the Settlement is Fair and Reasonable**. The Parties believe this Settlement Agreement is a fair, adequate, and reasonable settlement of the Action and have arrived at this Settlement after arm's-length negotiations by experienced counsel before Louis Marlin, an experienced and well-respected mediator who focuses on mediation of employment matters involving alleged wage and hour violations. The Parties further acknowledge that they are each represented by competent counsel and that they have had an opportunity to consult with their counsel regarding the fairness and reasonableness of this Settlement.

24. **Denial of Liability**. The Parties expressly recognize that the making of this Settlement Agreement does not in any way constitute an admission or concession of wrongdoing on the part of Defendant, the Released Parties, or Plaintiff. Nothing in this Settlement, nor any action taken in implementation thereof, nor any statements, discussions or communications, nor any materials prepared, exchanged, issued or used during the course of this Action, is intended by the Parties to, nor will any of the foregoing constitute, be introduced, be used or be admissible in any way in any other judicial, arbitral, administrative, investigative or other forum or proceeding, as evidence of any violation of any federal, state, or local law, statute, ordinance, regulation, rule

or executive order, or any obligation or duty at law or in equity. Notwithstanding the foregoing, this Settlement Agreement may be used in any proceeding in the Court that has as its purpose the interpretation, implementation, or enforcement of the Settlement or any orders or judgments of the Court entered into in connection therewith.

25. **Invalidity of Any Provision**. Before declaring any provision of this Settlement Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest extent possible consistent with applicable precedents so as to define all provisions of this Settlement Agreement valid and enforceable. If any provision of this Settlement Agreement or the application thereof is held invalid, the invalidity shall not affect other provisions or applications of this Settlement Agreement which can be given effect without the invalid provisions or application and, to this end, the provisions of this Settlement Agreement are declared to be severable. Notwithstanding the foregoing, no portion of any release contained herein may be deemed severed or deleted from this Agreement, except upon waiver in writing by the applicable party.

26. **Captions**. The captions and section numbers in this Settlement Agreement are inserted for the reader's convenience, and in no way define, limit, construe or describe the scope or intent of the provisions of this Settlement Agreement.

27. **Waiver**. No waiver of any condition or covenant contained in this Settlement Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered to imply or constitute a further waiver by such party of the same or any other condition, covenant, right or remedy.

28. **Enforcement Action**. In the event that one or more of the Parties institutes any legal action or other proceeding against any other Party or Parties to enforce the provisions of this Settlement or to declare rights and/or obligations under this Settlement, the successful Party or Parties will be entitled to recover from the unsuccessful Party or Parties reasonable attorneys' fees and costs, including expert witness fees incurred in connection with any enforcement actions.

29. **Mutual Preparation**. The Parties have had a full opportunity to negotiate the terms and conditions of this Settlement Agreement. Accordingly, this Settlement Agreement will not be

construed more strictly against one party than another merely by virtue of the fact that it may have been prepared by counsel for one of the Parties, it being recognized that, because of the arms-length negotiations between the Parties, all Parties have contributed to the preparation of this Settlement Agreement.

30. **Representation By Counsel**. The Parties acknowledge that they have been represented by counsel throughout all negotiations that preceded the execution of this Settlement Agreement, and that this Settlement Agreement has been executed with the consent and advice of counsel, and reviewed in full.

31. **Cooperation and Execution of Necessary Documents**. All Parties will cooperate in good faith and execute all documents to the extent reasonably necessary to effectuate the terms of this Settlement Agreement.

32. **Binding Agreement**. The Parties warrant that they understand and have full authority to enter into this Settlement, and further intend that this Settlement Agreement will be fully enforceable and binding on all Parties, and agree that it will be admissible and subject to disclosure in any proceeding to enforce its terms, notwithstanding any mediation confidentiality provisions that otherwise might apply under federal or state law.

33. **Confidentiality**. The Parties and their attorneys agree to keep this settlement confidential through approval by the Court. Thereafter, Plaintiff and Plaintiff's Counsel will not (a) issue any press or other media release, (b) initiate any contact with the press, other media (including social media), or any third party, (c) respond to any inquiry from the press, or media, or (d) have any communication with the press or other media about this action, including, but not limited to the fact, amount, and terms of this Memorandum of Understanding and the Agreement, either before or after the Court approves the Agreement.

01/21/2025	Amairani Gomez (Jan 21, 2025 16:21 PST)
DATE	AMAIRANI GOMEZ, Plaintiff

1/30/2025	Cherie Luna
DATE	FOCUS INDUSTRIES INC. BY Cherie Luna, Controller
1/30/2025	Stan Shibata
DATE	STAN SHIBATA

APPROVED AS TO FORM

	MM LAW APC
January 21, 2025	Maralle Messrelian
DATE	Maralle Messrelian for Plaintiff Amairani Gomez
	GORDON REES SCULLY MANSUKHANI, LLP
February 3, 2025	Matthew Theriault
DATE	Matthew Theriault for Defendants

NOTICE OF PAGA SETTLEMENT

Amairani Gomez v. Focus Industries, Inc., et al.
Orange County Superior Court, Case No. 30-2023-01336931-CU-OE-CXC

<<Settlement Administrator >>
[ ]
[ ]
Telephone: [ ]

«Barcode» «BarcodeString»
SIMID «SIMID»
«FirstName»
«LastName»
«Address1» «Address2»
«City» «State» «Zip»

You are receiving this notice as a result of lawsuits brought on a representative basis under the Private Attorneys General Act, Labor Code § 2698 et seq. ("PAGA") ("the Action"). The plaintiff in the Action is Amairani Gomez ("Plaintiff") and the defendants are Focus Industries, Inc. and Stan Shibata ("Defendants"). The Action seek civil penalties for purported violations of the California Labor Code on behalf of all persons within the State of California who are or were employed by Defendants in the State of California and classified as non-exempt during the PAGA Period of April 10, 2022 through June 20, 2024 (the "PAGA Members"). Defendants deny all claims and allegations in the Action, deny that they owe any penalties, and assert that they have fully complied with all applicable Labor Code provisions. Nevertheless, to avoid further costs and time in defending the Action, Defendants have settled the case and the Court has approved the settlement and release of claims. By settling the Action, Defendants are not admitting that they have done anything wrong as of and subject to the occurrence of the Effective Date of the Settlement. Upon the Effective Date of this Settlement, Plaintiff, the State of California (including, but not limited to, the LWDA), and the PAGA Members will be deemed to have fully, finally, and forever released, settled, compromised, relinquished, and discharged the Released PAGA Claims with respect to Defendants and their past and present officers, directors, shareholders, unit holders, managers, employees, agents, principals, heirs, representatives, accountants, auditors, consultants, and respective successors and predecessors in interest, subsidiaries, affiliates, parents and attorneys. The released PAGA claims shall include all known or unknown claims for civil penalties, attorneys' fees and costs, or any other relief under PAGA arising out of the Labor Code claims and allegations expressly plead in the operative Complaint and all other Labor Code claims that could have been asserted based on the facts and allegations plead in the operative Complaint, including but not limited to: California Labor Code Sections §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 558, 558.1, 1174, 1194, 1197, 1198, 2802, IWC Wage Order 1, §§7, 11-12.

No claims for any unpaid or underpaid wages have been settled by this settlement, and this settlement is without prejudice to any pursuit of such claim.

By Order dated <<court approval order date>>, the Superior Court of the State of California, Orange County approved the Settlement of the PAGA claims.

According to the Defendants' records, you are a PAGA Member and therefore entitled to a share of the settlement based upon the Court approved allocation. Enclosed with this Notice is your check for your share. The settlement check shall remain valid for 180 days. Thereafter, all uncashed checks shall be distributed to California State Controller's Office Unclaimed Property Fund with an identification of the amount of unclaimed funds attributable to each PAGA Member.

Please Note: One hundred percent (100%) of your individual PAGA payment under this Settlement will be considered penalties and may be subject to local, state, or federal tax withholdings and will be reported to the IRS and state tax authorities. You should rely on your own tax advisors as to the tax consequences of your individual PAGA payment. Neither Plaintiff nor Defendants have made any representations or warranties regarding the taxation of your individual PAGA payment. Nothing within this notice or any other communication shall constitute or be construed or relied upon as tax advice within the meaning of United States Treasury Department Circular 230 (31 C.F.R. Part 10, as amended). Enclosed are the appropriate tax forms pertaining to your payment.

Do not call or write the Court or Office of the Clerk to ask questions about the settlement or to ask questions about the claims process. If you have any questions, you may call or write to ____________________ (the Settlement Administrator) using the contact information at the top of this correspondence.