

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Audrey Donaldson (“Donaldson”) and HaynesBesco Group, LLC (“HaynesBesco”), with Donaldson and HaynesBesco each individually referred to as a “Party” and collectively as the “Parties.” Donaldson 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 used in consumer products. Donaldson alleges that HaynesBesco employs ten or more persons and is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and Safety Code section 25249.6 *et seq.* (“Proposition 65”).

1.2 General Allegations

Donaldson alleges that HaynesBesco manufactures, sells, and distributes for sale in California, ceramic baking dishes with exterior decorations containing lead. Lead is listed pursuant to Proposition 65 as a chemical known to cause birth defects and other reproductive harm. Donaldson alleges that HaynesBesco failed to provide the health hazard warning required by Proposition 65 for exposures to lead.

1.3 Product Description

The products covered by this Settlement Agreement are ceramic baking dishes with exterior decorations containing lead that are manufactured, sold, or distributed for sale in California by HaynesBesco including, but not limited to, the “*HaynesBesco Bella Bug ‘Bacon Dish’*”; UPC 8 48984 02973 6 (hereinafter collectively referred to as “Products”).

1.4 Notice of Violation

On September 10, 2019, Donaldson served HaynesBesco and the requisite public enforcement agencies with a 60-Day Notice of Violation, alleging that HaynesBesco

violated Proposition 65 when it failed to warn its customers and consumers in California of the health hazards associated with exposures to lead from its Products. No public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

1.5 No Admission

HaynesBesco denies the material, factual, and legal allegations contained in the Notice and maintains that all of the products that it has sold and distributed in California, including the Products, have been, and are, in compliance with all laws. HaynesBesco asserts that its baking dishes are tested by reputable independent laboratories to ensure they comply with the Proposition 65 No Significant Risk Levels promulgated by the California Office of Environmental Health Hazard Assessment. Based on this testing, HaynesBesco is confident in the safety of its Products. Nothing in this Settlement Agreement shall be construed as an admission by HaynesBesco of any fact, finding, conclusion, issue of law, or violation of law, nor shall compliance with this Settlement Agreement constitute or be construed as an admission by HaynesBesco of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by HaynesBesco. This Section shall not, however, diminish or otherwise affect HaynesBesco's obligations, responsibilities, and duties under this Settlement Agreement.

1.6 Effective Date

For purposes of this Settlement Agreement, the term "Effective Date" shall mean June 19, 2020.

2. INJUNCTIVE RELIEF: REFORMULATION/WARNINGS

2.1 Reformulation Standards

"Reformulated Products" are defined as those Products that yield a result of no more than 1.0 micrograms of lead when sampled according to NIOSH 9100 protocol and analyzed according to EPA 6010B, EPA 6020A, or any other methodologies utilized by

federal or state agencies for the purpose of analyzing lead wipe samples taken pursuant to NIOSH 9100.

Products that meet this reformulation standard shall be deemed to comply with Proposition 65 and be exempt from any Proposition 65 warning requirements with respect to lead.

2.2 Reformulation Commitment

As of the Effective Date, HaynesBesco shall not manufacture, import, distribute, sell or offer the Products for sale in the State of California unless they are Reformulated Products pursuant to Section 2.1 or contain a warning pursuant to Section 2.3

2.3 Clear and Reasonable Warnings

As of the Effective Date, all Products HaynesBesco sells and/or distributes for sale in California that do not qualify as Reformulated Products, shall bear a clear and reasonable warning pursuant to this Section. HaynesBesco agrees that the warning will be prominently placed with such conspicuousness when compared with other words, statements, designs or devices as to render it likely to be read and understood by an ordinary individual under customary conditions of use. For purposes of this Settlement Agreement, a clear and reasonable warning for the Products shall consist of a warning affixed directly to the product or product packaging, label, or tag, for Products sold in California and contain one of the following statements:

⚠ **WARNING:** Cancer and Reproductive Harm- www.P65Warnings.ca.gov

OR

⚠ **WARNING:** This product can expose you to chemicals including lead, which are known to the State of California to cause cancer and birth defects and other reproductive harm. For more information go to www.P65Warnings.ca.gov.

In the event that the Office of Environmental Health Hazard Assessment (“OEHHA”) promulgates one or more regulations requiring or permitting specific safe harbor warning text and/or methods of transmission relevant to the Products that are

different than those set forth above, HaynesBesco shall be entitled to use, at its discretion, such other specific safe harbor warning text and/or methods of transmission without being deemed in breach of this Agreement.

3. MONETARY SETTLEMENT TERMS

3.1 Civil Penalty Payment

Pursuant to Health and Safety Code section 25249.7(b)(2), and in settlement of all claims alleged in the Notice or referred to in this Settlement Agreement, HaynesBesco agrees to pay \$2,900 in civil penalties no later than the Effective Date. The penalty payment will be allocated in accordance with California Health and Safety Code section 25249.12(c)(1) & (d), with 75% of the penalty amount remitted to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty amount paid to Donaldson, and delivered to the address in Section 3.3 herein. HaynesBesco will provide its payment in two checks as follows: (1) “OEHHA” in the amount of \$2,175; and (2) “Audrey Donaldson” in the amount of \$725.

3.2 Attorneys’ Fees and Costs

The Parties acknowledge that Donaldson and her counsel offered to resolve this dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to be resolved after the material terms of the agreement had been settled. HaynesBesco then expressed a desire to resolve Donaldson’s fees and costs. The Parties reached an accord on the compensation due to Donaldson’s counsel under general contract principles and the private attorney general doctrine codified at Code of Civil Procedure section 1021.5 for all work performed in this matter. Under these legal principles, on or before the Effective Date, HaynesBesco agrees to pay \$13,000, in the form of a check made payable to “Voorhees & Bailey, LLP,” for all fees and costs incurred investigating, bringing this matter to the attention of HaynesBesco’s management, and negotiating a settlement.

3.3 Payment Address

All payments under this Settlement Agreement shall be delivered to the following address:

Voorhees & Bailey, LLP
990 Amarillo Avenue
Palo Alto, CA 94303

4. CLAIMS COVERED AND RELEASED

4.1 Donaldson's Release of Proposition 65 Claims

Donaldson acting on her own behalf, and *not* on behalf of the public, releases HaynesBesco, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, agents employees, attorneys, and each entity to whom HaynesBesco directly or indirectly distributes or sells Products, including, but not limited, to Tractor Supply Company, downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, importers, and licensees (collectively, "Releasees"), from all claims for violations of Proposition 65 through the Effective Date based on unwarned exposures to lead in the Products. The Parties understand and agree that this Section 4.1 release shall not extend upstream to any entities that manufactured the Products or any component parts thereof, or any distributors or suppliers who sold the Products or any component parts thereof to HaynesBesco.

4.2 Donaldson's Individual Release of Claims

Donaldson, in her individual capacity only and *not* in her representative capacity, provides a release herein which shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities, and demands of Donaldson of any nature, character, or kind, whether known or unknown, suspected or unsuspected, including but not limited to all failure to warn claims, arising out of alleged or actual exposures to lead in the Products manufactured, imported, distributed, or sold by HaynesBesco or Tractor Supply Company prior to the Effective Date. The Parties

understand and agree that this Section 4.2 release shall not extend upstream to any entities that manufactured the Products (other than Tractor Supply Company), or any component parts thereof, or any distributors or suppliers who sold the Products, or any component parts thereof to HaynesBesco. Nothing in this Section affects Donaldson's right to commence or prosecute an action under Proposition 65 against a Releasee that does not involve HaynesBesco's Products.

4.3 HaynesBesco's Release of Donaldson

HaynesBesco, on its own behalf, and on behalf of its past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives any and all claims against Donaldson and her attorneys and other representatives, for any and all actions taken or statements made by Donaldson and her 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.

5. SEVERABILITY

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

6. GOVERNING LAW

The terms of this Settlement Agreement shall be governed by the laws of the State of California and apply within the State of California. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or as to the Products, then HaynesBesco may provide written notice to Donaldson of any asserted change in the law and shall have no further injunctive obligations pursuant to this Settlement Agreement with respect to, and to the extent that, the Products are so affected.

7. NOTICE

Unless specified herein, all correspondence and notice required to be provided pursuant to this Settlement Agreement shall be in writing and sent by: (a) personal

delivery; (b) first-class, registered or certified mail, return receipt requested; or (c) a recognized overnight courier on any Party by the other at the following addresses:

For HaynesBesco:

David D. Haynes
HaynesBesco Group, LLC
501 Corporate Center Drive
Franklin, TN 37067

For Donaldson:

Audrey Donaldson
c/o Voorhees & Bailey, LLP
990 Amarillo Avenue
Palo Alto, CA 94303

With a copy to:

Rick Sanders, Esq.
Aaron Sanders PLLC
605 Berry Road
Nashville, TN 37204

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. COUNTERPARTS; FACSIMILE SIGNATURES

This Settlement Agreement 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.

9. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)

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

10. MODIFICATION

This Settlement Agreement may be modified only by written agreement of the Parties.

11. AUTHORIZATION

The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understand, and agreed to all of the terms and conditions of this Settlement Agreement.

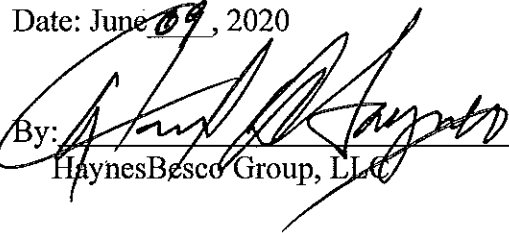
AGREED TO:

AGREED TO:

Date: June __, 2020

Date: June 09, 2020

By: _____
Audrey Donaldson

By:  _____
HaynesBesco Group, LLC

11. AUTHORIZATION

The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understand, and agreed to all of the terms and conditions of this Settlement Agreement.

AGREED TO:

AGREED TO:

Date: June 10, 2020

Date: June 09, 2020

By: _____

Audrey Donaldson

By: _____

HaynesBesco Group, LLC