

SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS

This Settlement Agreement (“Agreement”) is entered into by and between the Environmental Law Foundation (“ELF”) and Masco Corporation (“Masco”) (collectively, “the parties”). Masco’s ultimate subsidiaries currently include Hansgrohe, Inc. (“Hansgrohe”) and Brasstech, Inc. (“Brasstech”). As of November 29, 2018 (the “Effective Date”), the parties agree to the following terms and conditions:

WHEREAS:

- A. ELF is a non-profit corporation based in Oakland, California which seeks to improve environmental quality for those most at risk by providing access to information, strategies, and enforcement of environmental, toxics, and community right-to-know laws;
- B. Masco Corporation is considered a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health & Safety Code section 25249.6, et seq. (“Proposition 65”);
- C. Hansgrohe and Brasstech manufacture, distribute, and offer for sale in the State of California various brass faucets (the Products) and have done so in the past;
- D. The Products are required to comply with Proposition 65 relative to discharges of and exposures to lead. ELF contends that such compliance must be effectuated pursuant to the terms of consent judgments previously entered into between ELF and Hansgrohe and approved by the California Superior Court for the City and County of San Francisco in case number 989888 on June 8, 1998 and between ELF and a predecessor of Brasstech on February 3, 1998 (collectively, the “ELF Consent Judgments”);
- E. In addition to specified substantive Proposition 65 compliance requirements, the ELF Consent Judgments required Hansgrohe and Brasstech’s predecessor

to provide certain reports to ELF prior to selling Products in California that were (a) not already subject to a Certification of Compliance unless they were representative members of a previously so certified Product line or Products of Similar Application to such previously certified Products (“New Products”) or (b) if there was a change of design or manufacturing process for the Products where such change could reasonably be expected to cause a materially higher NSF Q Statistic for the Product than under the prior design or manufacturing process (“Changed Products”);

F. The ELF Consent Judgments provided for a \$1/unit stipulated penalty for each Product sold by Hansgrohe or Brastech’s predecessor in the State of California that was subject to, but did not comply with, the aforementioned reporting requirement;

G. Another subsidiary of Masco had, in 1995, previously entered into a separate Proposition 65 Consent Judgment with the People of the State of California, and a complementary settlement agreement with ELF and another non-profit organization, governing lead discharges and exposures from faucets manufactured, distributed or offered for sale in the State of California (collectively, “Masco’s Consent Judgment and Settlement”). The Masco’s Consent Judgment and Settlement expressly applied its rights and obligations to all present and future direct and indirect subsidiaries of Masco that manufacture faucets;

H. The Masco’s Consent Judgment and Settlement did not contain reporting obligations or related stipulated penalty provisions parallel or similar to those in the ELF Consent Judgments;

I. The San Francisco Superior Court case in which the ELF Consent Judgment was entered was dismissed by ELF against Brastech’s predecessor on May 6, 1999 and as to Hansgrohe on October 23, 1998;

J. Masco was not a party to the ELF Consent Judgment, did not acquire the predecessor of Brasstech until 2002 and did not own a controlling interest in the shares of Hansgrohe until 2003. The predecessor of Brasstech that had entered into the ELF Consent Judgment formally disappeared when it was merged into MAS Corporation, another Masco subsidiary, in 2002; MAS Corporation was subsequently renamed as Brasstech and is a distinct corporation from Brasstech's predecessor;

K. In 2006, the State of California enacted legislation known as Assembly Bill 1953--Chan ("AB 1953"), which required, beginning by no later than January 1, 2010, the use of "lead free" materials containing no more than a 0.25% weighted average of lead, on the wetted surfaces of all new plumbing fittings conveying or dispensing drinking water in the State, including faucets. The compliance demanded by AB 1953 thereby effectively ensured compliance with the ELF Consent Judgment's and the Masco Consent Judgment and Settlement's substantive compliance standards in all Products, including in any New Products and Changed Products;

L. In letters dated July 3, 2018, ELF alleged that Hansgrohe and Brasstech were not in compliance with the ELF Consent Judgment's reporting requirements and requested the provision of technical and California sales information related thereto;

M. Since July 3, 2018, Masco, through its legal counsel, has met and conferred with ELF extensively concerning the issues raised in ELF's letters to Hansgrohe and Brasstech and has provided ELF with information including, but not limited to (1) documentation that all of the Products are and have continuously been in compliance with the ELF Consent Judgment's substantive lead-related requirements, and (2) documentation concerning changes, adaptations, and additions made to Hansgrohe's and Brasstech's predecessor's Product lines that may have triggered the ELF Consent Judgment's reporting

requirement and the number of related California Product sales;

N. Masco and ELF have also exchanged positions concerning the potential prospect of, and potential bars and legal and equitable defenses to, actions seeking to enforce the ELF Consent Judgment's stipulated penalty provision with respect to alleged violations of its reporting requirements by Hansgrohe and Brasstech at this point in time and in light of the Masco's Consent Judgment and Settlement;

O. ELF and Masco disagree as to each other's positions and wish to resolve this matter without litigation or involvement of the courts; and

P. Nothing in this Agreement shall be construed as an admission by ELF, Masco, Hansgrohe or Brasstech of any fact, finding, issue of law or equity with respect to Proposition 65, the ELF Consent Judgment or Masco's Consent Judgment and Settlement; nor shall compliance with this Agreement or Masco's Consent Judgment and Settlement constitute or be construed as an admission by Masco, Hansgrohe, Brasstech, or Masco's other direct and indirect subsidiaries. However, this paragraph shall not diminish or otherwise affect the obligations, responsibilities, and duties of Masco under this Agreement or of Masco, Hansgrohe, Brasstech, or Masco's other direct and indirect subsidiaries with respect to Masco's Consent Judgment and Settlement.

NOW THEREFORE, ELF AND MASCO AGREE AS FOLLOWS:

1. **Liquidation of Stipulated Penalties.** In consideration of the terms contained in this Agreement, Masco or an entity acting on its behalf shall pay a total of \$24,225 in stipulated penalties to be allocated pursuant to Health & Safety Code Section 25249.12 as follows:

(a) Within no more than fifteen (15) business days of the Effective Date, Masco will issue one check made payable to the State of California's Office of Environmental

Health Hazard Assessment (“OEHHA”) in the amount of \$18,168.75 representing 75% of the total stipulated penalty; and

(b) Within no more than fifteen (15) business days of the Effective Date, Masco will issue one check to ELF in the amount of \$6,056.25 representing 25% of the total stipulated penalty;

Masco shall provide ELF with a photocopy of its check to OEHHA in conjunction with delivery of its aforementioned check to ELF. Masco shall also issue separate 1099s for each of the above payments and, within no more than five (5) business days of the Effective Date, ELF shall provide Masco with its tax identification number for such purposes.

2. Future Compliance Obligations and Enforcement Rights. ELF, by this Agreement, on behalf of itself, its agents, representatives, attorneys, assigns and in the interest of the general public hereby agrees to sunset and waive all future rights to seek enforcement of the requirements and associated stipulated penalty provisions of the ELF Consent Judgment with respect to Hansgrohe and Brasstech; PROVIDED HOWEVER, that nothing in this Agreement waives or releases Masco, Hansgrohe, Brasstech, or any other direct or indirect subsidiary of Masco from the compliance obligations set forth in Masco’s Consent Judgment and Settlement; nor does ELF waive any rights or remedies it may have relative to Masco’s Consent Judgment and Settlement, including with respect to seeking enforcement of relevant terms thereof under appropriate circumstances should they present themselves in the future.

3. Reimbursement of Fees and Costs. The parties acknowledge that ELF offered to resolve the dispute without reaching terms on the amount of fees and costs to be reimbursed, thereby leaving this open issue to be resolved after the material terms of the Agreement had been reached, and the matter settled. Masco then expressed a desire to

resolve the fee and cost issue once the other settlement terms were resolved, so the parties tried to and did reach an accord and satisfaction on the fee and cost recovery due to ELF in association with this matter.

More specifically, within no more than fifteen (15) business days of the Effective Date, Masco shall reimburse ELF in the amount of \$24,184 for all fees and costs ELF incurred as a result of investigating and bringing this matter to Masco's, Hansgrohe's and Brasstech's attention and negotiating a settlement of it in the public interest. Payment should be made payable to ELF separately from the check to ELF for its share of liquidated stipulated penalties as required in Section 1 of this Agreement.

4. **ELF's Release and Waiver.** ELF, by this Agreement, on behalf of itself, its agents, representatives, attorneys, assigns and in the interest of the general public, releases and waives all rights to institute or participate in, directly or indirectly, any form of legal or equitable action, and releases all claims, liabilities, obligations, losses, costs, expenses, fines and damages, against Hansgrohe and Brasstech and their respective directors, officers, employees, parents, corporate affiliates, successors and assigns based on the alleged failure to comply with the ELF Consent Judgment.

5. **Masco's Release of ELF.** Masco, by this Agreement, waives all of its and Hansgrohe's and Brasstech's rights to institute any form of legal or equitable action against ELF and its attorneys or representatives, for all actions or statements made by ELF's attorneys or representatives in the course of seeking potential enforcement of the ELF Consent Judgment against Hansgrohe or Brasstech.

6. **Future Attorneys' Fees.** In the event that a dispute arises with respect to any provision(s) of this Agreement, the prevailing party shall be entitled to recover costs and reasonable attorneys' fees.

7. **Governing Law.** The terms of this Agreement shall be governed by the laws of the State of California.

8. **Notices.** All correspondence to ELF shall be mailed to:

James Wheaton, Esq.
Environmental Law Foundation
1736 Franklin Street
Oakland, CA 94612

All correspondence to Masco, Hansgrohe, and/or Brasstech shall be mailed to:

Jim O'Doherty
Corporate Counsel - Litigation
Masco Corporation
17450 College Parkway
Livonia, MI 48152
-and-
Robert L. Falk, Esq.
Morrison & Foerster LLP
425 Market Street
San Francisco, CA 94105-2482

9. **Counterparts and Facsimile.** This Agreement may be executed in counterparts and facsimile, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

10. **Authorization.** The undersigned are authorized to execute this Agreement on behalf of their respective parties and have read, understood and agree to all of the terms and conditions of this Agreement.

AGREED TO:

AGREED TO:

DATE: 11/27/18



Environmental Law Foundation

DATE: 11/29/18



Masco Corporation