

# SETTLEMENT AGREEMENT

## 1. INTRODUCTION

### 1.1 Anthony E. Held, Ph.D., P.E., and Colorbok, Inc.

This Settlement Agreement is entered into by and between Anthony E. Held, Ph.D., P.E., (hereinafter “Held”), and Colorbok, Inc. (hereinafter, “Colorbok”), with Held and Colorbok collectively referred to as the “Parties.”

### 1.2 General Allegations

Held asserts that he is an individual residing in California who seeks to promote awareness of exposures to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer products. Colorbok employs ten or more persons and is a person in the course of doing business for purposes of Proposition 65.

Held alleges that Colorbok has manufactured, distributed and/or sold in the State of California bookmarks containing Di(2-ethylhexyl)phthalate and lead. Di(2-ethylhexyl)phthalate and lead are listed pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code §§25249.5 *et seq.* (“Proposition 65”), as chemicals known to the State of California to cause birth defects and other reproductive harm. Lead is also listed under Proposition 65 as a chemical known to the State of California to cause cancer. Di(2-ethylhexyl)phthalate and lead are referred to herein as the “Listed Chemical.”

### 1.3 Product Description

The products that are covered by this Settlement Agreement are defined as bookmarks

containing the Listed Chemical including, but not limited to: *Simply Sentiment Bookmark*, #52212 (#7 65468 52212 8). All such items shall be referred to herein as the “Products.”

**1.4 Notices of Violation**

On June 30, 2009, Held served Colorbok and various public enforcement agencies with a document entitled “60-Day Notice of Violation” (the “Notice”) that provided Colorbok and such public enforcers with notice that alleged that Colorbok was in violation of California Health & Safety Code §25249.6 for failing to warn consumers and customers that the Products exposed users in California to Di(2-ethylhexyl)phthalate. No public enforcer has diligently prosecuted the allegations set forth in the Notice.

**1.5 No Admission**

Colorbok denies the material factual and legal allegations contained in Held’s Notice and maintains that all products that it has sold and distributed in California, including the Products, have been and are in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by Colorbok of any fact, finding, issue of law, or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Colorbok of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Colorbok. However, this section shall not diminish or otherwise affect the obligations, responsibilities and duties of Colorbok under this Settlement Agreement.

**1.6 Effective Date**

For purposes of this Settlement Agreement, the term “Effective Date” shall mean November 15, 2009.

**2. INJUNCTIVE RELIEF – REFORMULATION**

As of the Effective Date, Colorbok shall only manufacture or cause to be manufactured Products for sale in California that are Phthalate Free, as set forth below. For purposes of this Settlement Agreement, “Phthalate Free” shall mean products containing less than or equal to 1,000 ppm of DEHP when analyzed pursuant to EPA testing methodologies 3580A and 8270C, or any method allowed by any state or federal agency to assess the DEHP content by weight of a solid substance.

**3. PENALTIES PURSUANT TO HEALTH & SAFETY CODE §25249.7(b)**

In settlement of all the claims referred to in this Settlement Agreement, Colorbok shall pay \$1,200 in civil penalties to be apportioned in accordance with California Health & Safety Code §25192, with 75% of these funds remitted to the State of California’s Office of Environmental Health Hazard Assessment and the remaining 25% of these penalty monies remitted to Held as provided by California Health & Safety Code §25249.12(d). Colorbok shall issue two separate checks for the penalty payment: (a) one check made payable to Chanler Law Group in Trust for the State of California’s Office of Environmental Health Hazard Assessment (“Chanler Law Group in Trust for OEHHA”) in the amount of \$900 representing 75% of the total penalty and (b) one check to “Chanler Law Group in Trust for Held” in the amount of \$300 representing 25% of the total penalty. Two separate 1099s shall be issued for the above payments: The first 1099 shall be issued to OEHHA, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486). The second 1099 shall be issued to Held, whose address and tax identification number shall be furnished, upon request, at least five calendar days before payment is due. The payments shall be

delivered on or before December 15, 2009, at the following address:

Chanler Law Group  
Attn: Proposition 65 Controller  
2560 Ninth Street  
Parker Plaza, Suite 214  
Berkeley, CA 94710

**4. REIMBURSEMENT OF FEES AND COSTS**

The Parties reached an accord on the compensation due to Held and his counsel under the private attorney general doctrine and contract law. Under these legal principles, Colorbok shall reimburse Held's counsel for fees and costs incurred as a result of investigating, bringing this matter to Colorbok's attention, and negotiating a settlement in the public interest. Colorbok shall pay Held and his counsel \$18,800 for all attorneys' fees, expert and investigation fees, and related costs. The payment shall be issued in a third separate check made payable to "Chanler Law Group" and shall be delivered on or before December 15, 2009, at the following address:

Chanler Law Group  
Attn: Proposition 65 Controller  
2560 Ninth Street  
Parker Plaza, Suite 214  
Berkeley, CA 94710

Colorbok shall issue a separate 1099 for fees and cost paid to Chanler Law Group, 2560 Ninth Street, Parker Plaza, Suite 214, Berkeley, CA 94710 (EIN: 94-3171522).

**5. RELEASE OF ALL CLAIMS**

**5.1 Release of Colorbok and Downstream Customers**

In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to Sections 3 and 4 above, Held, on behalf of himself, his past and

current agents, representatives, attorneys, including, without limitation, Chanler Law Group, successors and/or assignees, and in the interest of the general public, hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims, including, without limitation, all actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses or expenses (including, but not limited to, investigation fees, expert fees and attorneys' fees) of any nature whatsoever, whether known or unknown, fixed or contingent (collectively "Claims"), against Colorbok and each of its downstream distributors, wholesalers, licensors, licensees, auctioneers, retailers, franchisees, dealers, customers, owners, purchasers, users, parent companies, corporate affiliates, subsidiaries, and their respective officers, directors, attorneys, representatives, shareholders, agents, and employees, and sister and parent entities (collectively "Colorbok Releasees"). This release is limited to those claims that arise under Proposition 65, or are contingent upon violations of Proposition 65, as such claims relate to Colorbok' alleged failure to warn about exposures to or identification of DEHP contained in the Products.

Compliance with the terms of this Settlement Agreement resolves any issue, now and in the future, concerning compliance by Colorbok and Colorbok Releasees with the requirements of Proposition 65 with respect to alleged exposure to DEHP from the Products distributed or sold by Colorbok.

Held and his legal counsel their individual capacity and *not* their representative capacity hereby release all claims which he now has or may have in the future against Colorbok, irrespective of the subject matter, of all character, kind and nature, whether said claims are known

or unknown or are suspected or unsuspected and Held expressly waives any and all rights and benefits which he now has, or in the future may have, under California Civil Code Section 1542, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

It is expressly agreed and understood that the general release by Held of Colorbok for any listed chemical in any of its products is a determinative consideration of Colorbok's willingness and decision to enter into this Settlement Agreement.

The Parties intend and agree that this Settlement Agreement shall be given full effect for purposes of precluding claims regarding the Products against Colorbok or the Releasees under Proposition 65 as covered under this release. If requested in writing by Colorbok (within twelve months of the Effective Date), Held shall file a complaint and seek approval of this Settlement Agreement through a court approved Settlement Agreement incorporating the terms of this Settlement Agreement pursuant to California Health and Safety Code Section 25249.7, or as may be otherwise allowed by law, and Held shall reasonably cooperate with Colorbok and use best efforts and that of his counsel to support the entry of a Settlement Agreement incorporating the terms of this Settlement Agreement for approval by a superior court in California. Pursuant to CCP Sections 1021 and 1021.5, Colorbok will reimburse Held and his counsel for their reasonable fees and costs incurred in filing the complaint and seeking judicial approval of this Settlement Agreement, in an amount not to exceed \$15,000. No fees under this paragraph will be due and owing to Held or his counsel unless a written request is made by Colorbok to have Held file a

complaint and seek a Settlement Agreement. Colorbok will remit payment to Chanler Law Group, at the address set forth in Section 8 below. Such additional fees shall be paid by Colorbok within ten days after its receipt of monthly invoices from Held for work performed under this paragraph.

**5.2 Colorbok' Release of Held**

Colorbok waives any and all claims against Held, his attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by Held and his attorneys and other representatives, whether in the course of investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter, and/or with respect to the Products.

**6. SEVERABILITY**

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

**7. 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 Colorbok shall provide written notice to Held of any asserted change in the law, and shall have no further obligations pursuant to this Settlement Agreement with respect to, and to the extent that, the Products are so affected. Nothing in this Settlement Agreement shall be interpreted to relieve

Colorbok from any obligation to comply with any pertinent state or federal toxics control law.

**8. NOTICES**

Unless specified herein, all correspondence and notices required to be provided pursuant to this Settlement Agreement shall be in writing and personally delivered or sent by: (i) first-class, registered or certified mail, return receipt requested; or (ii) overnight courier on any party by the other party at the following addresses:

For Colorbok:

Charles McGonigle, President  
Colorbok, Inc.  
2820 Baker Road  
Dexter, MI 48130

With copies to:

Erica L. Keller  
Honigman Miller Schwartz and Cohn LLP  
660 Woodward Avenue  
2290 First National Building  
Detroit, MI 48226

For Held:

Proposition 65 Coordinator  
Chanler Law Group  
2560 Ninth Street  
Parker Plaza, Suite 214  
Berkeley, CA 94710-2565

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

9. **COUNTERPARTS: FACSIMILE SIGNATURES**

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

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

Held agrees to comply with the reporting form requirements referenced in Health & Safety Code §25249.7(f).

11. **MODIFICATION**

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

12. **AUTHORIZATION**

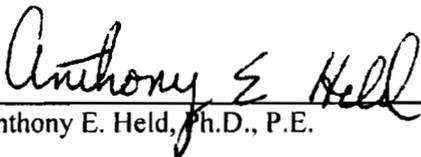
The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understood and agree to all of the terms and conditions of this Settlement Agreement.

AGREED TO:

**APPROVED**

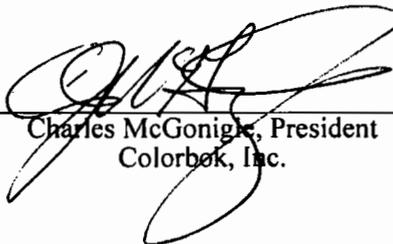
By Tony Held at 9:15 am, Nov 19, 2009

Date:

By:   
Anthony E. Held, Ph.D., P.E.

AGREED TO:

Date: 12/2/09

By:   
Charles McGonigle, President  
Colorbok, Inc.