

1 **SETTLEMENT AGREEMENT**

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3 This Agreement is entered into by and between Russell
4 Brimer and Coyne's & Company, Inc. a Minnesota corporation
5 (hereafter "Coyne's & Company"), as of December 17, 2004 (the
6 "Effective Date"). The parties agree to the following terms and
7 conditions:

8
9 **WHEREAS:**

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11 A. Russell Brimer is an individual residing in Alameda
12 County, California, who seeks to promote awareness of exposures
13 to toxic chemicals and improve human health by reducing or
14 eliminating hazardous substances contained in consumer and
15 industrial products;

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17 B. Brimer alleges that Coyne's & Company is a company
18 that currently manufactures and sells certain "suncatchers"
19 (also referred to as "lightcatchers") that contain lead, a
20 substance known to the State of California to cause birth
21 defects (and other reproductive harm);

22
23 C. Coyne's & Company allegedly sells and distributes in
24 the State of California suncatchers that contain lead (the
25 "Listed Chemical"). All such Coyne's & Company suncatcher
26 products including, but not limited, to the Lighcatch #7 63038
27 32613 8, are covered by this Agreement. These products are
28 collectively referred to hereinafter as the "Products."

1 D. On July 30, 2004, Russell Brimer first served Coyne's
2 & Company and public enforcement agencies with a document
3 entitled "60-Day Notice of Violation" that provided Coyne's &
4 Company, and such public enforcers, with notice that Coyne's &
5 Company was allegedly in violation of Health & Safety Code
6 § 25249.6 for failing to warn purchasers that certain products
7 sold in California expose users to the Listed Chemical; and
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9 E. Nothing in this Agreement shall be construed as an
10 admission by Coyne's & Company of any fact, finding, issue of
11 law or violation of law, nor shall compliance with this
12 Agreement constitute or be construed as an admission by Coyne's
13 & Company of any fact, finding, conclusion, issue of law or
14 violation of law. However, this paragraph shall not diminish or
15 otherwise affect the obligations, responsibilities, and duties
16 of Coyne's & Company under this Agreement.
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18 **NOW THEREFORE, RUSSELL BRIMER AND COYNE'S & COMPANY AGREE**
19 **AS FOLLOWS:**
20

21 **1.0 Product Warnings.** Beginning immediately after the
22 Effective Date of this Agreement, Coyne's & Company shall begin
23 to revise its product packaging or store displays or otherwise
24 take steps to ensure that all of the Products or packaging for
25 all of the Products sold or distributed by Coyne's & Company
26 bear the following warning statement (hereinafter the
27 "Warning"):
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1 "WARNING: This product contains lead, a
2 chemical known to the State
3 of California to cause birth
4 defects (and other
5 reproductive harm). *Please*
6 *wash hands thoroughly after*
7 *handling this product.*

8 In no event shall Coyne's & Company sell any of the
9 Products for use or purchase by consumers in California after
10 December 31, 2004, unless: (A) the Products are reformulated to
11 eliminate (as defined below) the presence of lead in the
12 Product; or (B) the Products are sent to distributors, retailers
13 or resellers with warnings. The Warning stated above may be
14 provided: (a) on a label attached to the Product; (b) on the
15 accompanying packaging as a sticker; or (c) on a "hang-tag"
16 hanging on the Product by a string, tape or similar method. For
17 purposes of this Agreement, a warning sticker placed on Product
18 packaging that is not expected to accompany the Products when
19 purchased by consumers or end users (e.g., on a carton which a
20 retailer may dispose of) does not comply with this paragraph.

21 If packaging restrictions do not allow warning labels to be
22 affixed to the product itself prior to sending to resellers,
23 then Coyne's & Company will send warning labels, as indicated
24 above, along with a letter, by certified mail, to retailers
25 instructing them that they must prominently affix the supplied
26 label on the product itself.

27 Notwithstanding any other provision of this Agreement, no
28 warning for exposure to lead shall or need be provided by
Coyne's & Company and Coyne's & Company shall be deemed to have

1 eliminated the presence of lead and be "lead-free" for: (1) any
2 Product containing .4 percent lead or less (by weight) in each
3 material used in the Products (such as solder or came); or
4 (2) any Product, for which the reasonably foreseeable exposure
5 to the Listed Chemical from the product is indirect, that yields
6 a result of less than .5 micrograms (ugs) of lead by a wipe test
7 conducted on any metal portions of the perimeter or other
8 surface area of the Product, performed as outlined in NIOSH
9 method of detection 9100.

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11 **1.1 Lead-Free Component Commitment** As part of its
12 commitment to promote the public health, Coyne's & Company
13 agrees, over the next 12 months from the Effective Date, to use
14 its best efforts to investigate and implement the specification
15 of lead-free solder and came (solder and came containing .4%
16 lead or less by weight) whenever such materials are used in the
17 Products to be sold by Coyne's & Company in the State of
18 California or to otherwise consider ways to eliminate the
19 exposure to lead by those who may handle the Products in the
20 State of California.

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24 **2. Payment Pursuant To Health & Safety Code § 25249.7(b).**
25 Pursuant to Health & Safety Code § 25249.7(b), Coyne's & Company
26 shall pay a civil penalty of \$2,400 to be made in three equal
27 payments: (1) \$800 within ten (10) days of the Effective Date;
28 (2) \$800 on January 15, 2005; and (3) \$800 on February 15, 2005.

1 The penalty payments are to be made payable to "Chanler Law
2 Group In Trust For Russell Brimer". All penalty monies shall be
3 apportioned by Brimer in accordance with Health & Safety Code
4 § 25192, with 75% of these funds remitted to the State of
5 California.

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7 **3.0 Reimbursement Of Fees And Costs.** The parties attempted
8 to (and did) reach an accord on the compensation due to Brimer
9 and his counsel under the private attorney general doctrine
10 codified at California Code of Civil Procedure § 1021.5 for all
11 work performed through the Effective Date of the Agreement.

12
13 Under the private attorney general doctrine, Coyne's &
14 Company shall reimburse Brimer and his counsel for his
15 reasonable fees and costs, incurred as result of investigating,
16 bringing this matter to Coyne's & Company attention, and
17 negotiating a settlement in the public interest. Coyne's &
18 Company shall pay Brimer and his counsel \$9,000.00, except, for
19 all attorneys' fees, expert and investigation fees, and
20 litigation costs, in three equal payments: (1) \$3,000 within ten
21 (10) days of the Effective Date; (2) \$3,000 on January 15, 2005;
22 and (3) \$3,000 on February 15, 2005. Payment should be made
23 payable to "Chanler Law Group".

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25 **4. Release Of Coyne's & Company.** Russell Brimer, by this
26 Agreement, on behalf of himself, his agents, representatives,
27 attorneys, assigns, and on behalf of individuals in California
28 who have been exposed to lead contained in the Products and in

1 the interest of the general public, waives all rights to
2 institute or participate in, directly or indirectly, any form of
3 legal action, and releases all claims, liabilities, obligations,
4 losses, costs, expenses, fines, penalties, fees, and damages,
5 restitution, injunction, and any other form of relief, whether
6 legal or equitable, against Coyne's & Company and its directors,
7 officers, employees, agents, parents, subsidiaries, successors
8 and assigns Proposition 65 based on their alleged failure to
9 warn about exposure to the Listed Chemicals contained in any of
10 the Products. This Agreement is a full, final, and binding
11 resolution between Brimer, on behalf of himself and in the
12 interest of the general public, and Coyne's & Company, of any
13 violation of Proposition 65 or any other claim that could have
14 been asserted based on alleged exposure, or failure to warn for
15 exposure to lead in the Products or other facts alleged in the
16 Complaint. The parties intend that compliance with this
17 Agreement to resolve any issue now, in the past, or in the
18 future concerning the Products' past and present, and future
19 compliance with Proposition 65 as such compliance pertains to
20 the Products at issue. In addition, Brimer, on behalf of
21 himself, his attorneys, and his agents, waives all rights to
22 institute any form of legal action against Coyne's & Company and
23 its attorneys or representatives, for all actions or statements
24 made by Coyne's & Company or its attorneys or representatives,
25 in the course of responding to alleged violations of Proposition
26 65 by Coyne's & Company. Provided, however, that Brimer shall
27 remain free to institute any form of legal action to enforce the
28 provisions of this Agreement.

1 4.1. Release of Downstream Persons. In further
2 consideration of the promises and agreements herein contained,
3 and for the payments to be made pursuant to Sections 2 and 3,
4 Brimer, on behalf of himself, his agents, representatives,
5 attorneys, and/or assignees, and in the interest of the general
6 public, further waives all rights to institute any form of legal
7 action and releases all claims against each retailer, dealer,
8 customer, owner, operator, purchaser, lessor, lessee, renter, or
9 user of the Products, or any of their respective parent
10 companies, divisions, subdivisions, subsidiaries (and the
11 predecessors, successors and assigns of any of them) and their
12 respective officers, directors, shareholders, partners,
13 attorneys, representatives, agents, and employees (collectively,
14 "Downstream Persons"). This waiver and release shall pertain
15 only to claims arising under Proposition 65, related to the
16 Downstream Persons' alleged failure to warn about exposures to
17 or identification of the Listed Chemical in the Products. The
18 Parties further agree and acknowledge that this Settlement
19 Agreement is a full, final, and binding resolution of any
20 violation of Proposition 65, that has been or could have been
21 asserted against Coyne's & Company for its alleged failure to
22 provide clear and reasonable warnings of exposure to or
23 identification of the Listed Chemical in the Products or any
24 other claim based on the facts or conduct alleged by Brimer in
25 the 60-Day Notice of Violation.

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27 It is specifically understood and agreed that the
28 Parties intend that this Settlement Agreement resolves all

1 issues and liability, now and in the future, concerning the
2 Downstream Persons' compliance with the requirements of
3 Proposition 65 as to the Listed Chemical in the Products.

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5 **5. Coyne's & Company's Release Of Russell Brimer.**

6 Coyne's & Company, by this Agreement, waives all rights to
7 institute any form of legal action against Russell Brimer and
8 his attorneys or representatives, for all actions or statements
9 made by Russell Brimer or his attorneys or representatives, in
10 the course of seeking enforcement of Proposition 65 against
11 Coyne's & Company. Provided, however, that Coyne's & Company
12 shall remain free to institute any form of legal action to
13 enforce the provisions of this Agreement.

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15 **6. Severability.** In the event that any of the provisions
16 of this Agreement are held by a court to be unenforceable, the
17 validity of the enforceable provisions shall not be adversely
18 affected.

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20 **7. Attorney's Fees.** In the event that a dispute arises
21 with respect to any provision(s) of this Agreement (including,
22 but not limited to, disputes arising from payments to be made
23 under this Agreement), reasonable attorneys' fees incurred from
24 the resolution of such dispute shall be available to the
25 prevailing party.

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

1 **9. Notices.** All correspondence to Russell Brimer shall
2 be mailed to:

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4 Stephen S. Sayad
5 Lara S. Paras
6 Paras Law Group
7 655 Redwood Highway, Suite 216
8 Mill Valley, CA 94941
9 Tel.: (415) 380-9222
10 Fax.: (415) 380-9223

11
12 Clifford A. Chanler
13 Chanler Law Group
14 71 Elm Street, Suite 8
15 New Canaan, CT 06840
16 Tel.: (203) 966-9911
17 Fax.: (203) 801-5222

18 All correspondence to Coyne's & Company shall be mailed to:

19 John E. Coyne
20 Coyne's & Company Inc.
21 7400 Boone Avenue North
22 Minneapolis, Minnesota 55428
23 Tel.: (763) 425-8666
24 Fax: (763) 425-1653

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

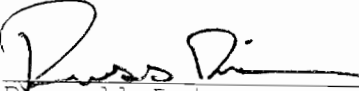
29 **11. Authorization.** The undersigned are authorized to
30 execute this Agreement on behalf of their respective parties and
31 have read, understood and agree to all of the terms and
32 conditions of this Agreement.


1 AGREED TO:

AGREED TO:

2 DATE: 12-28-04

DATE: 12-22-04

3 
4 Russell Brimer


Coynes & Company, Inc.

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