

TO: FORMER SITE ATTENDANTS, CUSTOMER SERVICE REPRESENTATIVES, FLOATERS, AND PRIMARY FLOATERS WHO WORKED FOR DEFENDANTS STRATEGIC MATERIALS, INC. AND CONTAIN-A-WAY, INC. DBA NEXCYCLE, DURING THE PERIOD FROM JUNE 15, 2011 THROUGH JULY 24, 2014,

**THIS IS A COURT AUTHORIZED NOTICE. PLEASE READ THIS NOTICE CAREFULLY. YOU ARE NOT BEING SUED. HOWEVER, YOUR LEGAL RIGHTS ARE AFFECTED WHETHER YOU ACT OR DO NOT ACT. YOUR RIGHTS, YOUR OPTIONS, AND THE DEADLINES TO EXERCISE YOUR OPTIONS ARE EXPLAINED IN THIS NOTICE.**

YOU ARE HEREBY NOTIFIED AS FOLLOWS:

A Settlement has been reached between the Parties in the lawsuit identified in the caption above on behalf of the following Settlement Class: The Settlement Class is comprised of all "Site Attendants" who worked for STRATEGIC MATERIALS, INC. OR CONTAIN-A-WAY, INC. DBA NEXCYCLE (collectively "Defendants") at any time during the period from June 15, 2011 through July 24, 2014, who are not a party to a Dispute Resolution Agreement or other arbitration agreement with Defendants containing a class action waiver. "Site Attendant" is defined as an employee who worked at one of Defendants' recycling centers who received recyclable products (glass, plastic and aluminum) from the general public, sorted the customer's products into large rubber garbage cans, weighed them, and provided the customer with a voucher or cash, and includes employees with the job titles of Site Attendant, Customer Service Representative, Floater and Primary Floater.

You have received this notice because Defendants' records indicate that you qualify as a member of the Settlement Class. This notice is designed to advise you of your rights in connection with the Settlement and instruct you what to do to exercise those rights. Please read this complete notice carefully.

### YOUR OPTIONS UNDER THE SETTLEMENT

Summary of Your Legal Rights and Options in this Settlement	
DO NOTHING AND RECEIVE A SETTLEMENT AWARD	<p><b>You may do nothing in response to this notice.</b></p> <p>If you do nothing, you <b><u>will participate in the Settlement and receive a share of the Settlement money</u></b>, and you will release certain claims as described in Section IV below.</p>
EXCLUDE YOURSELF	<p><b>Submit a Request for Exclusion.</b></p> <p>If you submit a timely and valid Request for Exclusion, you will <b><u>not</u></b> participate in the Settlement, will <b><u>not</u></b> receive a share of the Settlement money, and will <b><u>not</u></b> release the claims described in Section IV below. To submit a Request for Exclusion, follow the instructions below in Section III.B. A Request for Exclusion Form is enclosed with this notice.</p>
OBJECT	<p><b>Submit a written objection to the Court via the Settlement Administrator.</b></p> <p>If you disagree with the proposed Settlement, you may submit an objection. If the Court agrees with your objection, the parties can choose whether to withdraw the Settlement or change its terms. If the Court rejects your objection, you will still be bound by the Settlement, will receive a settlement payment and you will release the claims described in Section IV below. To submit an Objection, follow the instructions below in Section III.D. and fill out the enclosed Notice of Objection Form. A Notice of Objection Form is enclosed.</p>

#### I. BACKGROUND OF THE CASE

A class-action lawsuit was filed on June 15, 2015 by Plaintiff Jorge Sanchez against Contain-A-Way, Inc. dba Nexcycle and Strategic Materials, Inc. ("Defendants") in the California Superior Court, County of Riverside, Case No. RIC1507132 (the "Action").

The Action alleged claims for (1) Failure to Pay Overtime Wages; (2) Failure to Provide Meal Periods; (3) Failure to Provide Rest Periods; (4) Failure to Keep Accurate Payroll Records; (5) Unfair Competition (Business and Professions Code section 17200 et seq.); (6) Failure to Reimburse for Necessary Expenditures (Labor Code section 2802); (7) Unlawful Discount of Wages (Violation of Labor Code sections 212, 213 et seq.); and (8) Violation of Labor Code sections 2698-2690 (Private Attorney General Act).

The Court dismissed Plaintiff Jorge Sanchez and ordered that Kyle Rice and Cesar Becerra Buenrostro (“Buenrostro”) be added as named plaintiffs. Only Buenrostro remains as a named plaintiff. The Court also dismissed the claims for Failure to Keep Accurate Payroll Records, Unlawful Discount of Wages, and Violation of Labor Code Sections 2698-2690 (Private Attorney General Act). Only the claims for Failure to Pay Overtime Wages, Unfair Competition, and Failure to Reimburse for Necessary Expenditures were certified as Class Claims.

Defendants deny all of Plaintiffs’ claims as to liability and damages. No Court has yet ruled on the merits of Plaintiffs’ remaining claims.

Plaintiffs have vigorously prosecuted this case, and Defendants have vigorously defended it. The Parties have engaged in discovery and investigation, both formal and informal, to assess the relative merits of the claims of the Plaintiffs and the defenses to those claims.

Class Counsel believes that further proceedings in this case, including a trial and probable appeals, would be very expensive and protracted. No one can confidently predict how the various legal questions at issue, including the amount of damages, would ultimately be resolved. Therefore, upon careful consideration of all of the facts and circumstances of this case, Class Counsel believes that the proposed settlement is fair, adequate, and reasonable, and in the best interests of Class Members.

The Parties have since entered into a Revised Stipulation and Settlement Agreement of Class Action Claims.

## **II. SUMMARY OF THE PROPOSED SETTLEMENT**

The Class Representative and Class Counsel support this Settlement. Among the reasons given for support includes the inherent risk of trial on the merits and the delays associated with further litigation and potential appeals.

The Settlement provides for the following:

A. **Gross Settlement Amount:** Defendants agree to pay the Gross Maximum Settlement Amount of up to Five Hundred and Forty Thousand Dollars (\$540,000.00) (“Settlement Amount”). The Settlement Amount is the maximum amount Defendants can be required to pay under this Settlement, and includes all of the following: (1) payments to the Participating Settlement Class Members; (2) Class Counsel’s Fees and Costs; (3) settlement expenses (including all Settlement Administration Costs); (4) an Incentive Award to Plaintiff Cesar Becerra Buenrostro; and (5) all employee-side payroll tax withholdings due on amounts attributed to wages. Employer-side taxes due on settlement payments will be paid separate and apart from the Gross Maximum Settlement Amount. This is a non-reversionary settlement, and thus, as of the Effective Date, Defendants will pay the entire Settlement Amount plus employer-side taxes due on Individual Settlement Awards pursuant to the terms and timeline set forth in this Agreement.

B. **Net Settlement Amount:** The net amount available for payment of Individual Settlement Payments to Settlement Class Members will be determined after deducting the Class Counsel’s Fees and Costs, the Incentive Award to the Class Representative, the Settlement Administration Costs.

C. **Individual Settlement Payments:** Defendant will pay to each Settlement Class Member an Individual Settlement Award payment that will be calculated as follows:

The amount of each Individual Settlement Award will be determined by converting the Net Settlement Amount into a weekly value. The weekly value will be established by dividing the Net Settlement Amount by all full workweeks worked by the Class Members from June 15, 2011 through July 24, 2014 (the “Class Period”). The weeks worked during the Class Period will be derived from the hire and termination dates and payroll data in Defendants’ records to be supplied to the Administrator. Leave of absence weeks will be excluded. The gross settlement award for each Class Member will be determined by multiplying the weekly value by the number of weeks he or she individually worked during the Class Period.

Participating Class Members (*i.e.*, all Class Members who did not submit a timely Request for Exclusion) will have 120 days from the date the Settlement Administrator mails the settlement checks to cash the check with their Individual Settlement Award. Any funds from checks/Individual Settlement Awards that remain uncashed after the 120-day period after mailing will then be redistributed by the Settlement Administrator to the Participating Class Members who cashed their initial settlement checks on a prorated basis based on workweeks. More specifically, the funds from these uncashed checks (if any) will go into a second payment fund, which the Settlement Administrator - after the expiration of the 120-day period - will use to calculate second payment amounts based on the amount of funds available. The Settlement Administrator will prorate these second payments based on the number of full workweeks worked from June 15, 2011 through July 24, 2014 by the Participating Class Members who cashed their initial settlement check. The Settlement Administrator shall mail out these second payment checks using the same address as used for the first payment unless the Administrator is informed of a change of address or receives notice of a forwarding address, in which case the Administrator will mail the second check to the updated address.

The Individual Settlement Award payable to each Class Member (and any second payments if there are funds from uncashed initial settlement checks to be redistributed) will be apportioned as follows: 80% as wages and 20% for interest, penalties and any other claimed damages. The amounts paid as wages (the “Wage Component”) shall be subject to all tax withholdings customarily made from employee’s wages and all other authorized and required withholdings and shall be reported by W-2 forms. Payment of all amounts will be made subject to backup withholding unless a duly executed W-9 form is received from the payee(s). The amounts paid as penalties and interest shall be subject to all authorized and required withholdings other than the tax withholdings customarily made from employees’ wages and shall be reported by IRS 1099 forms when required.

D. Release: Defendants and all Released Parties (defined in Section IV.A. below) are released by Class Members who do not submit a timely and valid Request for Exclusion from any and all claims as defined in the Release detailed in the Settlement Agreement and Section IV below.

E. Class Representative Incentive Award: The Class Representative is Cesar Becerra Buenrostro. The Class Representative will apply to the Court for a Class Representative Incentive Award in an amount up to Seven Thousand Five Hundred Dollars (\$7,500.00), in recognition of his efforts and risks in assisting with the prosecution of the Action and as consideration for executing the Settlement and agreeing to a general release of all claims against Defendants and the Released Parties (defined in Section IV below). This request for an Incentive Award is subject to approval from the Court and any amount not awarded by the Court shall become part of the Net Settlement Amount.

F. Class Counsel Fees and Costs: The attorneys for Class Members will seek attorneys’ fees not to exceed one-third of the Gross Maximum Settlement Amount, or One Hundred Eighty Thousand Dollars (\$180,000.00) and will apply for an award of any costs and settlement expenses up to One Hundred Thousand Dollars (\$100,000.00). This request for Class Counsel Fees and Costs is subject to approval from the Court and any fees and costs not awarded by the Court shall become part of the Net Settlement Amount.

G. Claims Administration Costs: Phoenix Class Action Administration Solutions shall serve as the Settlement Administrator, subject to the Court’s approval. The Settlement Administrator will be paid costs of administration of the Settlement in an amount not to exceed Eleven Thousand Dollars (\$11,000) and subject to the Court’s approval.

### III. WHAT ARE YOUR RIGHTS AS A CLASS MEMBER?

Your interests as a Settlement Class Member are represented by the Class Representative and Class Counsel. Unless you submit a timely and valid Request for Exclusion, you are a part of the Settlement Class, you will be bound by the terms of the Settlement Agreement and any final judgment that may be entered by the Court, and you will be deemed to have released certain claims against the Defendants and the Released Parties as described in Section IV below. As a member of the Settlement Class you will not be responsible for the payment of attorneys’ fees or reimbursement of litigation costs except as approved of by the Court and deducted from the Gross Maximum Settlement Amount unless you retain your own counsel, in which event you will be responsible for your own attorneys’ fees and costs.

#### A. Do Nothing

If you do nothing, you will participate in the Settlement and receive a share of the Settlement money, and you will be bound by the Settlement and release certain claims as described in Section IV below.

If the Settlement receives final approval from the Court, any person who does not submit a timely Request for Exclusion will receive a portion of the Settlement money (based on the calculation described in Section II.C. above), will remain a member of the Settlement Class, and will be bound by the terms of the Settlement and release her/his claims against Defendants and the Released Parties as described in Section IV below.

Based on the number of workweeks you worked during the Class Period and the requested settlement allocations specified in Section II above, the Settlement Administrator estimates that the per workweek value will be approximately \$8.11. Using this estimated workweek value and Defendants’ records, the Settlement Administrator estimates that your settlement payment will be approximately \$<<EstSetAmt>> if the Court grants final approval of the Settlement.

#### B. Exclude Yourself from the Settlement

Any person that does not wish to participate in the Settlement may exclude themselves (i.e., “opt-out”) by completing the Request for Exclusion Form which is also enclosed. The Request for Exclusion Form must be signed, dated, completed, and returned via mail or fax to:

Phoenix Settlement Administrators  
P.O. Box 7208  
Orange, CA 92863  
(949) 209-2503

*The Request for Exclusion Form must be postmarked or fax date stamped no later than June 7, 2021.*

Any person who submits a complete and timely Request for Exclusion Form shall not be a Settlement Class Member, shall be barred from participating in any portion of the Settlement, may not object to the Settlement, and shall receive no payment or benefits from the Settlement. Any such person will not release any claims he/she may have against Defendants.

### **C. Object to the Settlement**

The Court has determined only that there is sufficient evidence to suggest that the proposed Settlement might be fair, adequate, and reasonable, and that any final determination of those issues will be made at the Final Approval Hearing identified below. You can object to the Settlement and the Court will consider your objection prior to ruling on whether to grant final approval to the Settlement. If the Court overrules your objection and approves the Settlement, you will still be bound by the terms of the Settlement and Release (described in Section IV below) and will still receive an Individual Settlement Award. To object, you must submit a written statement of objection (“Notice of Objection”) to the Settlement Administrator by mailing or faxing your Notice of Objection Form to:

Phoenix Settlement Administrators  
P.O. Box 7208  
Orange, CA 92863  
(949) 209-2503

The Notice of Objection must be signed by the Settlement Class Member and state: (1) the full name of the Settlement Class Member; (2) the last four digits of the Settlement Class Members’ Social Security number or Individual Taxpayer Identification Number, or the Employee ID number; and (3) the basis for the objection. All timely Notices of Objection must be submitted by the Settlement Administrator to the Court prior to the Final Approval Hearing. Settlement Class Members do not need to appear at the Final Approval Hearing to submit a written Notice of Objection. Settlement Class Members may also choose to appear at the Final Approval Hearing to object to the Settlement without submitting a Notice of Objection or in addition to submitting a Notice of Objection. Settlement Class Members who fail to object by either failing to submit a timely Notice of Objection in the manner specified above or failing to appear at the Final Approval Hearing to object shall be deemed to have waived any objections and shall be foreclosed from making any objections (whether by appeal or otherwise) to the Settlement. ***Any written objection to approval of the Settlement must be mailed to the Settlement Administrator with a postmark no later than June 7, 2021. DO NOT TELEPHONE THE COURT.***

If you choose to object to the terms of this Settlement, you may enter an appearance in propria persona (meaning you choose to represent yourself) or through your own attorney. You will then continue as a Settlement Class Member either in propria persona or with representation by your own attorney and ***you will be solely responsible for the fees and costs of your attorney.*** The final fairness hearing at which the Court will adjudicate any Objections, and be asked to approve the Settlement will be on August 24, 2021 at 8:30 a.m. in Department 6 of the California Superior Court, County of Riverside at 4050 Main St, Riverside, CA 92501, or such other, later date as the court may authorize. The Court may reschedule the final fairness hearing without further notice to Class Members. Class Members are advised to confirm the hearing date and time with Class Counsel if they intend to appear at the Final Approval Hearing. The Settlement Administrator will also give notice to any objecting party of a continuance of the Final Approval Hearing.

## **IV. EFFECT OF THE SETTLEMENT**

### **A. Released Rights and Claims**

Upon final approval of this Settlement by the Court, each member of the Settlement Class who does not file a timely and valid Request for Exclusion shall release Defendants Strategic Materials, Inc. and Contain-A-Way, Inc. together with their past, present and future officers, directors, employees and agents, and their respective successors and predecessors in interest, subsidiaries, affiliates, and parents and attorneys including, without limitation, Strategic Materials Holding Corp., Nexcycle, Inc. and rePlanet LLC (collectively “the Released Parties”) from all claims, demands, rights, liabilities, and/or causes of action of any nature and discretion whatsoever, known or unknown, in law or in equity, whether or not concealed or hidden, that have been asserted or that might have been asserted, arising during the period from and including June 15, 2011 through July 24, 2014 for unpaid wages or other compensation allegedly owed, or for damages, penalties (including without limitation waiting time penalties under Labor Code section 203), interest, liquidated damages, attorneys’ fees, or costs, or any other recovery based on or arising out of the claims and allegations alleged in the First Amended Class Action Complaint For Damages, Injunctive Relief, and Restitution, including under the California Labor Code and corresponding provisions of Wage Order 1-2001, for Violation of California Labor Code sections 510 and 1198 (Unpaid Overtime), Violation of California Labor Code sections 1194, 1197, and 1197.1 (Unpaid Minimum Wages), Violation of California Labor Code section 2802 (Failure to Reimburse Business Expenses), and Violation of California Business & Professions Code sections 17200 et seq., and any and all corresponding claims that could have been brought under California or federal law based on the allegations in the Action including without limitation under the Fair Labor Standards Act (FLSA) that might have occurred during the Class Period and expressly excluding all other claims, including but not limited to, disability, retaliation, and discrimination claims, and claims for unemployment insurance and workers’ compensation benefits, and claims unrelated to the claims in the Action which shall not be released.

The Released Claims also include all claims Plaintiff and Class Members may have against the Released Parties relating to (i) the payment and allocation of attorneys’ fees and costs to Class Counsel pursuant to the Settlement Agreement and (ii) the payment of the Class Representative Incentive Award pursuant to the Settlement Agreement. It is the intent of the Parties that the judgment entered

by the Court upon final approval of the Settlement shall have res judicata (i.e., preclusive) effect and be final and binding upon all Class Members who have not expressly requested to be excluded from the Settlement. The Released Claims include claims about which the Plaintiff and the Class Members do not know or suspect to exist in their favor as of the date of approval, to the fullest extent permitted by law, the provisions, rights and benefits of Section 1542 of the California Civil Code, or any other similar provision under law. Section 1542 of the California Civil Code reads as follows: A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, AND THAT IF KNOWN BY HIM OR HER WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY. The Released Claims also include all claims Plaintiff and Class Members may have against the Released Parties relating to (i) the payment and allocation of attorneys' fees, costs and expenses, including to Class Counsel or any other counsel or entity related to this Settlement and Action; and (ii) the payment of the Class Representative Incentive Award pursuant to this Settlement.

**B. Payment to Claimants**

Individual Settlement Awards will be paid to those who have not submitted a timely Request for Exclusion after the Court grants final approval of the Settlement and the Settlement becomes final and binding with no possibility of an appeal or further appeal (i.e., after the "Effective Date" of the Settlement is reached).

**V. FINAL SETTLEMENT APPROVAL HEARING**

The Court will hold a hearing in Department 6 of the California Superior Court, County of Riverside at 4050 Main St, Riverside, CA 92501, on August 24, 2021 at 8:30 a.m. to determine whether the Settlement should be finally approved as fair, reasonable, and adequate. The Court will also be asked to approve Class Counsel's request for attorneys' fees and reimbursement of costs and expenses and the Incentive Award to be paid to the Class Representative. Class Counsel's application for attorneys' fees and reimbursement of expenses will be on file with the Court before this hearing, and will be available for review.

It is not necessary for you to appear at this hearing unless you wish to appear and it is not necessary that you submit a written Notice of Objection to appear at the Final Approval Hearing. The hearing may be continued without further notice to the Settlement Class. The Settlement Administrator will notify anyone who submits a written Notice of Objection Form of any change to the Final Approval Hearing date or time. However, if you intend to appear, you should also confirm the hearing date and time in advance with the Settlement Administrator and/or Class Counsel at the information below:

**SETTLEMENT ADMINISTRATOR :**

Phoenix Settlement Administrators  
P.O. Box 7208  
Orange, CA 92863  
(800) 523-5773

**CLASS COUNSEL:**

Kevin Mahoney, Esq.  
Joshua D. Klein, Esq.  
Anna Salusky Mahoney, Esq.  
MAHONEY LAW GROUP, APC  
249 E. Ocean Boulevard, Suite 814  
Long Beach, CA 90802

**VI. ADDITIONAL INFORMATION**

The above is a summary of the basic terms of the Settlement. For the precise terms and conditions of the Settlement, you are referred to the "Revised Stipulation and Settlement Agreement of Class Action Claims", which is attached as Exhibit "A" to the Declaration of Kevin Mahoney filed on April 9, 2021 with the Superior Court of California, County of Riverside. The case name is: *Cesar Becerra Buenrostro v. Contain-A-Way, Inc. dba Nexcycle, Strategic Material, Inc. dba Western Strategic Materials, Inc.*, Case No. RIC1507132) (Note: The case was formerly captioned as *Jorge Sanchez* versus Defendants.). The pleadings and other records in this litigation including the Settlement Agreement and the motions for approval, may be examined at any time during regular business hours at the Clerk's Office, California Superior Court, County of Riverside at 4050 Main Street, Riverside, CA 92501 subject to any restriction the Court has in place (including due to the Covid-19 pandemic). In addition, you may contact Class Counsel (at the contact information above) to request copies of court-filed documents related to the Settlement. You can also access the Settlement and related documents via the Court's website at <https://www.riverside.courts.ca.gov/Divisions/Civil/civil.php> . If the Court grants final approval of this Settlement, a copy of the Court's Final Approval Order and Judgement shall be posted on the Settlement Administrator's website after the Final Approval Hearing at: <http://www.phoenixclassaction.com/sanchez-v-contain-a-way/>.

**PLEASE DO NOT CONTACT THE COURT, THE CLERK'S OFFICE, DEFENDANTS, OR DEFENDANTS' ATTORNEYS TO INQUIRE ABOUT THIS SETTLEMENT.**