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13 *[ADDITIONAL NAMES ON NEXT PAGE]*

14 SUPERIOR COURT OF CALIFORNIA
15 COUNTY OF RIVERSIDE

16 JORGE SANCHEZ as an individual and on
17 behalf of all similarly situated employees,

17 Plaintiff,

18 v.

19 CONTAIN-A-WAY, INC. dba
20 NEXCYCLE, a California corporation,
21 STRATEGIC MATERIAL, INC. dba
22 WESTERN STRATEGIC MATERIALS,
23 INC., a Delaware corporation, and DOES 1
24 through 50, inclusive,

23 Defendants.

Case No. RIC 1507132

**SECOND REVISED STIPULATION AND
SETTLEMENT AGREEMENT OF CLASS
ACTION CLAIMS**

**(If Approval is Granted, Case to be Re-
Captioned As: “CESAR BECERRA
BUENROSTRO as an individual and on behalf
of all similarly situated employees, Plaintiff, v.
CONTAIN-A-WAY, INC. dba NEXCYCLE, a
California corporation, STRATEGIC
MATERIALS, INC. dba WESTERN
STRATEGIC MATERIALS, INC., a Delaware
corporation, and DOES 1 through 50, inclusive,
Defendants” to Reflect the Name of the Current
Named Plaintiff, Cesar Becerra Buenrostro,
who Replaced Former Plaintiff Jorge
Sanchez.)**

First Amended Complaint Filed: June 15, 2015

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CESAR BECERRA BUENROSTRO, as an individual
8 and on behalf of all similarly situated employees
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1 IT IS HEREBY STIPULATED by and between Plaintiff CESAR BECERRA BUENROSTRO
2 on behalf of himself and the Settlement Class Members, on the one hand, and Defendants
3 STRATEGIC MATERIALS, INC. and CONTAIN-A-WAY, INC. dba NEXCYCLE, on the other
4 hand, and subject to the approval of the Court, that the above-captioned Action is hereby being
5 compromised and settled pursuant to the terms and conditions set forth herein (the “Stipulation”,
6 “Settlement” or “Agreement”).

7 **1. DEFINITIONS**

8 Unless otherwise defined herein, capitalized terms used in this Agreement shall have the
9 meanings set forth below:

10 1.1. “Action” means the matter, entitled *Jorge Sanchez, as an individual and on behalf of*
11 *all similarly situated employees v. Contain-A-Way, Inc. dba Nexcycle, a California corporation,*
12 *Strategic Materials, Inc. dba Western Strategic Materials, Inc., a Delaware corporation, and DOES*
13 *1 through 50, inclusive*, in the Superior Court of California, County of Riverside, Case No.
14 RIC1507132 (filed June 15, 2015), which the Parties are requesting be re-captioned as “*Cesar Becerra*
15 *Buenrostro as an individual and on behalf of all similarly situated employees, Plaintiff, v. Contain-A-*
16 *Way, Inc. dba Nexcycle, a California corporation, Strategic Materials, Inc. dba Western Strategic*
17 *Materials, Inc., a Delaware corporation, and Does 1 through 50, inclusive, Defendants*” to reflect the
18 name of the current named Plaintiff, Cesar Becerra Buenrostro, who replaced former plaintiff Jorge
19 Sanchez.

20 1.2. “Claims Administration Costs” means all fees and costs owed to the Settlement
21 Administrator in connection with administering the class settlement in this Action under the terms of
22 this Settlement, not to exceed Eleven Thousand Dollars (\$11,000.00).

23 1.3. “Settlement Administrator” means the third-party administrator appointed by the Court
24 to administer the class action settlement of this Action under the terms of this Settlement. Phoenix
25 Class Action Administration Solutions shall serve as the Settlement Administrator, subject to the
26 Court’s approval.

27 1.4. “Class Claims” means the certified claims for Failure to Pay Overtime Wages, Unfair
28 Competition (Business and Professions Code section 17200 et seq.), and Failure to Reimburse for

1 Necessary Expenditures (Labor Code section 2802).

2 1.5. "Class Counsel" means Kevin Mahoney, Anna Salusky Mahoney and Joshua D. Klein
3 of The Mahoney Law Group.

4 1.6. "Class Counsel Fees and Costs" means the total amount of attorneys' fees, litigation
5 costs, and expenses awarded to Class Counsel by the Court to compensate them for their representation
6 of the Class in this Action, including their pre-filing investigation, their filing of the Action, all related
7 litigation activities including discovery, mediation, the motion for class certification, this Settlement,
8 and all post-Settlement compliance procedures.

9 1.7. "Class Information" means information regarding Settlement Class Members that
10 Defendants have in good faith compiled from their records and will provide to the Settlement
11 Administrator as a Microsoft Excel spreadsheet to include: each Settlement Class Member's full name;
12 last known address; last known home telephone number; Social Security Number; start dates of
13 employment; and end dates of employment. The Settlement Administrator shall maintain the Class
14 Information in confidence; access shall be limited to those with a need to use the Class Information as
15 part of the administration of the Settlement. Class Information shall not be shared with Class Counsel.

16 1.8. "Class Period" shall mean the period of time from June 15, 2011 through July 24, 2014.

17 1.9. "Class Representative" or "Plaintiff" shall mean the Named Plaintiff Cesar Becerra
18 Buenrostro.

19 1.10. "Class Representative Incentive Award" or "Incentive Award" means the amount that
20 the Court authorizes to be paid to Plaintiff, not to exceed Seven Thousand Five Hundred Dollars
21 (\$7,500.00), in recognition of his efforts and risks in assisting with the prosecution of the Action and
22 as consideration for executing this Stipulation and release of his claims against Defendants and the
23 Released Parties.

24 1.11. "Court" means the Superior Court of California, County of Riverside.

25 1.12. "Defendants" means Strategic Materials, Inc. and Contain-A-Way, Inc.

26 1.13. "Defense Counsel" or "Counsel for Defendant" means Littler Mendelson, P.C. and/or
27 Jackson Lewis P.C.

28 1.14. The "Effective Date" of the Settlement means the date this Settlement is approved as

1 provided herein and the Court's Final Approval Order and judgment becomes final and is no longer
2 appealable, which shall be the later of: (i) the day after the last date by which a notice of appeal to the
3 applicable Court of Appeal of the order and judgment approving this Settlement and/or of an order
4 rejecting any motion to intervene may be timely filed and none is filed; (ii) if an appeal is filed, and
5 the appeal is finally disposed of by ruling, dismissal, denial or otherwise, the day after the last date for
6 filing a request for further review of the order and judgment approving this Settlement passes, and no
7 further review is requested; or (iii) if an appeal is filed and there is a final disposition by ruling,
8 dismissal, denial, or otherwise by the Court of Appeal, and further review of the order and judgment
9 approving this Settlement is requested, the day after the review is finally dismissed or denied with
10 prejudice and/or no further review of the judgment or order can be requested. The Effective Date
11 cannot occur, and Defendants will not be obligated to fund this Settlement, until and unless there is no
12 possibility of an appeal or further appeal that could potentially prevent this Settlement Agreement
13 from becoming final and binding.

14 1.15. "Final Approval Hearing" means the hearing to be conducted by the Court to determine
15 whether to finally approve and implement the terms of this Settlement.

16 1.16. "Final Approval Order" means the Court's entry of an order finally approving this
17 Settlement in accordance with the terms of this Settlement Agreement and substantially in the form of
18 the Proposed Final Approval Order attached hereto as Exhibit C.

19 1.17. "Gross Maximum Settlement Amount" or "Settlement Amount" is the total maximum
20 potential monetary value of the Settlement payable by Defendants as provided herein, which is Five
21 Hundred and Forty Thousand Dollars and Zero Cents (\$540,000.00). The Gross Maximum Settlement
22 Amount includes all of the following: (1) payments to the Participating Settlement Class Members;
23 (2) Class Counsel's fees, costs and expenses; (3) settlement expenses (including all administration
24 fees and costs); (4) incentive/service payment to Plaintiff; and (5) all employee-side payroll taxes.
25 Defendants will pay employer-side taxes due on amounts attributed to wages separate and apart from
26 the Gross Maximum Settlement Amount. This is a non-reversionary settlement, and thus, Defendants
27 shall pay the Gross Maximum Settlement Amount without any portion reverting to Defendants.
28 However, other than paying employer-side taxes on amounts attributed to wages, Defendants will not

1 be required to pay any amount above the Gross Maximum Settlement Amount in connection with this
2 Settlement Agreement.

3 1.18. “Individual Settlement Award” means the amount payable from the Net Settlement
4 Amount to each Settlement Class Member. The Individual Settlement Award shall be calculated
5 pursuant to Paragraph 3.4 herein.

6 1.19. “Judgment” means the judgment entered by the Court when it grants final approval of
7 this Settlement.

8 1.20. “Notice of Objection” or “Notice of Objection Form” means the form included in the
9 “Notice Packet” (defined below) as Exhibit A2 that Class Members can submit to the Settlement
10 Administrator to object to the Settlement if they choose to do so. If and when the Settlement
11 Administrator receives such Notices of Objection, the Settlement Administrator shall attach true and
12 correct copies to the Settlement Administrator’s declaration, which will be filed with the Court prior
13 to the Final Approval Hearing. The Notice of Objection shall (i) instruct the objecting Class Member
14 that the objection must be mailed or delivered to the Settlement Administrator, (ii) state the name and
15 address of the Settlement Administrator, and (iii) state the date by which the objection must be mailed
16 or otherwise delivered.

17 1.21. “Net Settlement Amount” means the net amount available for payment of Individual
18 Settlement Awards to Participating Settlement Class Members after deducting from the Gross
19 Maximum Settlement Amount (1) Class Counsel’s fees; (2) Class Counsel’s costs and expenses, (3)
20 the Incentive Award to Plaintiff; and (4) the cost of administration of the Settlement.

21 1.22. “Notice of Settlement” means the Notice of Class Action Settlement (substantially in
22 the form attached hereto as Exhibit A).

23 1.23. “Notice Packet” means the Notice of Class Action Settlement, Request for Exclusion,
24 and Notice of Objection Form (substantially in the form attached hereto as Exhibits A1 and A2). All
25 documents in the Notice Packet shall be translated into Spanish by a certified translator.

26 1.24. “Opt Out/Objection Deadline” means the date forty-five (45) calendar days from the
27 first date the Settlement Administrator mails Notice Packets to Settlement Class Members and the last
28 date on which Settlement Class Members may: (a) postmark or fax stamp Requests for Exclusion; or

1 (b) file and serve written Notices of Objection to the Settlement.

2 1.25. "Participating Settlement Class Members" are those Settlement Class Members who
3 do not submit a timely Request for Exclusion, and thus, will be mailed an Individual Settlement Award
4 and will be bound by the Released Claims as further detailed below.

5 1.26. "Parties" means Plaintiff and Defendants, and "Party" shall mean either Plaintiff or
6 either Defendant, individually.

7 1.27. "Preliminary Approval" or "Preliminary Approval Date" means the date the Court
8 enters the Preliminary Approval Order.

9 1.28. "Preliminary Approval Order" means the Court's entry of an order preliminarily
10 approving this Settlement substantially in the form of the Proposed Preliminary Approval Order
11 attached hereto as Exhibit B.

12 1.29. "Released Claims" include all released claims provided for in this Settlement
13 Agreement, including those described in the Release of Claims section (Paragraph 3.15) below.

14 1.30. "Released Parties" is defined to include Strategic Materials, Inc. and Contain-A-Way,
15 Inc. together with their past, present and future officers, directors, employees and agents, and their
16 respective successors and predecessors in interest, subsidiaries, affiliates, and parents including,
17 without limitation, Strategic Materials Holding Corp., Nexcycle, Inc., and rePlanet LLC. Strategic
18 Materials Holding Corp. is the parent company of Strategic Materials, Inc., and also the parent
19 company of Nexcycle, Inc., which sold Defendant Contain-A-Way, Inc., to rePlanet, LLC on January
20 31, 2014. RePlanet LLC is a successor in interest of Defendant Contain-A-Way, Inc. The Parties
21 agree that the definition of Released Parties and including Strategic Materials Holding Corp.,
22 Nexcycle, Inc. and rePlanet LLC as Released Parties is appropriate because it ensures that the Released
23 Claims are finally resolved with respect to all entities that Class Members could attempt to recover
24 from based on the Released Claims during the Class Period. The parties agree that the interests of
25 finality and providing certainty to Defendants given the substantial consideration offered justify the
26 scope of the Released Parties, as defined.

27 1.31. "Request for Exclusion" means the Request for Exclusion form (substantially in the
28 form attached hereto as Exhibit A1).

1 1.32. "Settlement" means the disposition of the Action pursuant to this Agreement.

2 1.33. "Settlement Class Members," "Settlement Class," or "Class Members" means all
3 individuals who worked for Defendants as "Site Attendants" at any time during the period from June
4 15, 2011 through July 24, 2014 ("Class Members"), who are not a party to a Dispute Resolution
5 Agreement or other arbitration agreement with Defendants containing a class action waiver, and who
6 do not submit a timely and valid Request for Exclusion pursuant to the procedures outlined in
7 paragraph 3.7.1 below.

8 1.34. "Settlement Fund Account" means the bank account established pursuant to the terms
9 of this Stipulation from which all monies payable under the terms of this Settlement shall be paid, as
10 set forth herein.

11 1.35. "Site Attendant" is defined as an employee who worked at one of Defendants' recycling
12 centers who received recyclable products (glass, plastic and aluminum) from the general public, sorted
13 the customer's products into large rubber garbage cans, weighed them, and provided the customer with
14 a voucher or cash, and includes employees with the job titles of Site Attendant, Customer Service
15 Representative, Floater and Primary Floater.

16 **2. RECITALS**

17 2.1. On June 15, 2015, Plaintiff Jorge Sanchez initiated the Action by filing a Complaint on
18 behalf of himself and all other employees similarly situated. Plaintiff's Complaint (mis-captioned
19 "First Amended Class Action Complaint for Damages, Injunctive Relief, and Restitution") alleged
20 claims for (1) Failure to Pay Overtime Wages; (2) Failure to Provide Meal Periods; (3) Failure to
21 Provide Rest Periods; (4) Failure to Keep Accurate Payroll Records; (5) Unfair Competition (Business
22 and Professions Code section 17200 et seq.); (6) Failure to Reimburse for Necessary Expenditures
23 (Labor Code section 2802); (7) Unlawful Discount of Wages (Violation of Labor Code sections 212,
24 213 et seq.); and (8) Violation of Labor Code sections 2698-2690 (Private Attorney General Act).

25 2.2. The Court dismissed Plaintiff Jorge Sanchez and ordered that Kyle Rice and Cesar
26 Becerra Buenrostro be added as named plaintiffs. The Court compelled Rice's claims other than his
27 claim for Violation of Labor Code sections 2698-2690 to arbitration.

28 2.3. Over the course of the litigation, the Court granted Defendants' motions for partial

1 summary judgment, thereby dismissing the claims for Failure to Keep Accurate Payroll Records,
2 Unlawful Discount of Wages, and Violation of Labor Code Sections 2698-2690 (Private Attorney
3 General Act).

4 2.4. Defendants deny any liability or wrongdoing of any kind associated with the Claims
5 alleged in the Action. Defendants contend that they have complied at all times with the California
6 Labor Code and California Business and Professions Code. The Action, the negotiation and execution
7 of this Settlement Agreement, and all acts performed or documents executed pursuant to or in
8 furtherance of the Settlement Agreement is not an admission of wrongdoing on behalf of either
9 Defendant and shall not be used by Plaintiff as evidence of wrongdoing or fault in any other proceeding
10 or action before a civil, criminal, or administrative agency.

11 2.5. Class Counsel represents that they have conducted a thorough investigation into the
12 facts and law during the prosecution of this class action case, including all information and documents
13 provided during discovery by Defendants. Counsel for the Parties also represent they have
14 investigated the applicable law as applied to the facts discovered regarding the alleged Claims of
15 Plaintiff and potential defenses thereto, and the damages claimed by Plaintiff.

16 2.6. On February 25, 2020, the Parties attended a mediation with Scott Markus of
17 Agreement.com, a distinguished labor and employment and class action mediator. After lengthy
18 negotiations and following the mediation, the Parties recognized the burdens and risk of continuing
19 with the litigation, and an agreement was reached to resolve the Action.

20 2.7. The Court has held two prior hearings on the Parties' motion and renewed motion for
21 preliminary approval, with the last one occurring on December 14, 2020. During the December 14,
22 2020 hearing, the Court denied the Parties' proposed settlement without prejudice, citing concerns,
23 which included the reversionary nature of the proposed settlement and the fact that employer-side
24 taxes were to be paid from the Gross Maximum Settlement Amount. The Parties subsequently
25 negotiated revisions to the Settlement Agreement at arms-length, taking into account the guidance
26 provided by the Court at the December 14, 2020 hearing, and have now revised this Settlement
27 Agreement to address each of those concerns. Specifically, this Settlement Agreement revises the
28 settlement from a reversionary/claims-made format to an all-in settlement format where no amount

1 will revert to Defendants. Furthermore, the Parties have negotiated revised terms so that Defendants
2 will now pay all employer-side payroll taxes separate and apart from the Gross Maximum Settlement
3 Amount, with a modest reduction to the Gross Maximum Settlement Amount from \$572,489.00 to
4 \$540,000.00 (approximately a 5.7% reduction) to account for the approximately \$32,000,000 in
5 estimated employer-side taxes that will be due. This was done to honor the negotiated amount
6 originally contemplated by the Parties, and which all Parties agree is fair and reasonable, while helping
7 ensure that the actual employer-side taxes due will not affect the total \$540,000.00 that will be paid
8 out under this revised Settlement Agreement.

9 2.8. Based on their own independent investigation and evaluation, Class Counsel are of the
10 opinion that settlement for the consideration and on the terms set forth in this Settlement Agreement
11 is fair, reasonable, and adequate and is in the best interest of the Settlement Class Members in light of
12 all known facts and circumstances, including the risk of significant delay and the defenses asserted by
13 Defendants. Defendants shall not take a contrary position during the preliminary approval process.

14 Based on these Recitals, the Parties hereby agree as follows.

15 3. **SETTLEMENT TERMS AND CONDITIONS**

16 3.1. **Gross Maximum Settlement Amount.** Defendants agree to pay the Gross Maximum
17 Settlement Amount of up to Five Hundred and Forty Thousand Dollars (\$540,000.00) (“Settlement
18 Amount”). With the sole exception of employer-side taxes due on Individual Settlement Awards
19 (which Defendants will pay separate and apart from the Settlement Amount), the Settlement Amount
20 is the maximum amount Defendants can be required to pay under this Settlement, and includes all of
21 the following: (1) payments to the Participating Settlement Class Members; (2) Class Counsel’s fees
22 and costs; (3) settlement expenses (including all administration fees and costs); (4) Incentive Award
23 to Plaintiff; and (5) all employee-side federal, state and local payroll tax withholdings due. No other
24 amounts will be paid by Defendants to the Settlement Class or their counsel. This is a non-reversionary
25 settlement, and thus, as of the Effective Date, Defendants will pay the entire Settlement Amount plus
26 employer-side taxes due on Individual Settlement Awards pursuant to the terms and timeline set forth
27 in this Agreement.

1 **3.2. Class Counsel Fees And Expenses.** Defendants will not oppose an application to the
2 Court for attorneys’ fees payable to Class Counsel in an amount not to exceed one-third of the
3 Settlement Amount, or One Hundred Eighty Thousand Dollars (\$180,000.00). Defendants reserve the
4 right to oppose an application to the Court for any costs and settlement expenses in excess of One
5 Hundred Thousand Dollars (\$100,000.00), which are not identified as “allowable” by California Civil
6 Procedure Code section 1033.5, do not appear reasonably necessary to the litigation, and/or which
7 appear unreasonable in amount. All fees, costs and expenses awarded will be paid out of the
8 Settlement Amount. Any fees, costs or expenses not awarded by the Court shall become part of the
9 Net Settlement Amount. Class Counsel shall provide proof of fees, costs and expenses incurred when
10 seeking approval of this Settlement. Settlement Class Members and Class Counsel shall not seek
11 payment of attorneys’ fees or reimbursement of costs or expenses except as set forth herein. The
12 award of such Class Counsel Fees and Expenses will be paid from the Gross Maximum Settlement
13 Amount. The Settlement Administrator will issue an IRS Form 1099 to Class Counsel with respect to
14 the attorneys’ fees, costs, and expenses awarded to them. This Settlement is not contingent upon the
15 Court awarding Class Counsel any particular amount in attorneys’ fees, costs or expenses.

16 **3.3. Class Representative Incentive Award.**

17 3.3.1. Defendants agree not to oppose Plaintiff’s request for an Incentive Award of up
18 to Seven Thousand Five Hundred Dollars (\$7,500.00) for Becerra. Any Incentive Award will be paid
19 out of the Gross Maximum Settlement Amount, and is in addition to whatever payment Plaintiff is
20 otherwise entitled to as a Class Member. If the Court reduces the amount of the Incentive Award in
21 the course of the settlement approval process, only the amount approved by the Court will be paid.
22 Any amount of the Incentive Award not approved by the Court shall become part of the Net Settlement
23 Amount. Plaintiff shall execute complete and general releases of all known and unknown claims
24 (including a Cal. Civ. Code § 1542 waiver) that he may have against Defendants and the Released
25 Parties (as defined below) in exchange for the additional consideration afforded by his incentive
26 award. The Settlement is not contingent on Plaintiff’s receipt of any Incentive Award out of the Gross
27 Maximum Settlement Amount. The Class Representative Incentive Award will be reported to the
28 taxing authorities by means of an IRS Form 1099. The amount of the Class Representative Incentive

1 Award is left to, and within the Court's sole discretion. Defendants agree not to oppose an application
2 for the Class Representative Incentive Award in the above amount; however, that should not be
3 construed as approval or endorsement by Defendants of the amount sought.

4 3.3.2. The Class Representative acknowledges and agrees that Defendants and their
5 attorneys have made no representations or warranties regarding the tax consequences of payment of
6 the Class Representative Incentive Award, and Class Representative has not relied on any such
7 representations or warranties. Class Representative further agrees to pay and bear sole responsibility
8 for all taxes, liens, levies, encumbrances, interest, and penalties that may be due or payable to any
9 taxing authority as a result of payment of the Incentive Award. Furthermore, Class Representative
10 agrees to defend and indemnify Defendants in connection with any taxes, fines, interest or penalties
11 incurred as a result of any failure by Class Representative to pay taxes due, if any, on the Class
12 Representative Incentive Award paid pursuant to this Agreement.

13 3.4. **Individual Settlement Awards.** The Net Settlement Amount will be divided and
14 distributed to the Settlement Class as follows:

15 3.4.1. **Payment to Class Members.** The amount that each Class Member will receive under
16 the Settlement will be determined by converting the Net Settlement Amount into a weekly value. The
17 weekly value will be established by dividing the Net Settlement Amount by all full workweeks worked
18 by the Class Members from June 15, 2011 through July 24, 2014. The weeks worked during the Class
19 Period will be derived from the hire and termination dates and payroll data in Defendants' records to
20 be supplied to the Administrator. Leave of absence weeks will be excluded. The gross settlement
21 award for each Class Member will be determined by multiplying the weekly value by the number of
22 weeks he or she individually worked during the Class Period. The Individual Settlement Award
23 payable to each Class Member will be apportioned as follows: 80% as wages and 20% for interest,
24 penalties and any other claimed damages. The amounts paid as wages (the "Wage Component") shall
25 be subject to all tax withholdings customarily made from employee's wages and all other authorized
26 and required withholdings and shall be reported by W-2 forms. Payment of all amounts will be made
27 subject to backup withholding unless a duly executed W-9 form is received by the Settlement
28 Administrator from the payee(s). The amounts paid as penalties and interest shall be subject to all

1 authorized and required withholdings other than the tax withholdings customarily made from
2 employees' wages and shall be reported by IRS 1099 forms when required.

3 Participating Class Members (*i.e.*, all Class Members who did not submit a timely Request for
4 Exclusion) will have 120 days from the date the Settlement Administrator mails the settlement checks
5 to cash the check with their Individual Settlement Award. The Settlement Administrator shall mail a
6 reminder notice to any Participating Class Member who has not cashed their Individual Settlement
7 Award after 30 days.

8 Any funds from checks/Individual Settlement Awards that remain uncashed after the 120-day
9 period after mailing will then be redistributed by the Settlement Administrator to the Participating
10 Class Members who cashed their initial settlement checks on a prorated basis based on workweeks.
11 More specifically, the funds from these uncashed checks (if any) will go into a second payment fund,
12 which the Settlement Administrator - after the expiration of the 120-day period - will use to calculate
13 second payment amounts based on the amount of funds available. The Settlement Administrator will
14 prorate these second payments based on the number of full workweeks worked from June 15, 2011
15 through July 24, 2014 by the Participating Class Members who cashed their initial settlement check.
16 The Settlement Administrator shall mail out these second payment checks using the same address as
17 used for the first payment unless the Administrator is informed of a change of address or receives
18 notice of a forwarding address, in which case the Administrator will mail the second check to the
19 updated address.

20 All Participating Class Members, regardless of whether or not they cash their Individual
21 Settlement Award check(s), will be bound by the releases detailed in this Settlement Agreement.
22 Participating Class Members who receive a second payment check, will have an additional 90 days to
23 cash the second check. If they fail to do so, the Settlement Administrator will pay funds from any
24 uncashed second settlement payments to Riverside Legal Aid, a nonprofit 501c(3) organization
25 dedicated to offering free legal services to low-income self-represented individuals who need legal
26 assistance. (See <http://riversidelegalaid.org>) The parties agree that Riverside Legal Aid meets the
27 requirements set forth in California Code of Civil Procedure section 384(c) because it is a well-
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1 established “nonprofit organization[] providing civil legal services to the indigent” in California, and
2 in Riverside County in particular.

3 **3.4.2. Distributions.** Within five (5) business days of the Effective Date, the
4 Settlement Administrator will provide Defense Counsel with the account information so that
5 Defendants can wire the Gross Maximum Settlement Amount.

6 3.4.2.1. Defendants are required to wire the Gross Maximum Settlement
7 Amount within ten (10) business days of the Effective Date. No distributions from the Gross
8 Maximum Settlement Amount shall occur except in accordance with the procedures and deadlines set
9 forth in this Agreement.

10 3.4.2.2. After transfer of the Gross Maximum Settlement Amount by
11 Defendants, the Settlement Administrator shall maintain the funds in an interest-bearing
12 account, which will continue to accrue interest on the account until payment is made pursuant to this
13 Settlement or each check to Class Members is cashed.

14 3.4.2.3. The Settlement Administrator will distribute checks to
15 Settlement Class Members (for their Individual Settlement Awards), to Plaintiff (for the Class
16 Representative Incentive Award approved by the Court), to Class Counsel (for the Class Counsel Fees
17 and Expenses approved by the Court, and to the Settlement Administrator (for Claims Administration
18 Costs approved by the Court) within fourteen (14) business days of receipt of payment from
19 Defendants pursuant to this Paragraph. Individual Settlement Awards (and second payments for
20 redistributed uncashed funds, if applicable) shall be mailed by regular First Class U.S. Mail to
21 Settlement Class Members’ last known mailing address.

22 3.4.2.4. Settlement checks will remain valid for a period of 120 calendar days after they
23 issue. Any check not cashed within 120 calendar days will be void. As detailed above, Participating
24 Class Members who cash their first settlement check and receive a second settlement check (if there
25 are funds from uncashed first settlement checks to be redistributed), will have an additional 90 days
26 to cash that second check before that second check becomes void. The Settlement Administrator will
27 pay funds from uncashed second settlement payments (if any) to Riverside Legal Aid, a nonprofit
28 501c(3) organization dedicated to offering free legal services to low-income self-represented

1 individuals who need legal assistance. (See <http://riversidelegalaid.org>)

2 3.4.3. **Taxes.** The Settlement Administrator will handle all tax reporting required as
3 a result of this Settlement, including without limitation issuing a W-2 Form to each Settlement Class
4 Member for the Wage Component of each Class Member's Individual Settlement Award made under
5 the Settlement Agreement, a 1099 form to each Settlement Class Member for the Class Member's
6 Penalty/Interest Payment, a 1099 Form to the Plaintiff for the Class Representative Incentive Award,
7 a 1099 Form to Class Counsel for the Class Counsel Fees and Expenses, and a 1099 Form to the
8 Settlement Administrator for all Claims Administration Costs. All Class Members covered by this
9 Settlement agree that they are not relying on any representations regarding the tax allocation or
10 treatment of any amounts paid to them under the terms of this Settlement and agree to hold Defendants
11 harmless for any and all tax consequences relating to the allocation of the payments made under this
12 Settlement.

13 3.5. **Payments To Class Do Not Trigger Additional or Derivative Payments.** It is
14 expressly understood and agreed that the receipt of Individual Settlement Awards will not entitle any
15 Settlement Class Member to additional or derivative compensation or benefits. It is the intent of this
16 Settlement that the settlement awards provided for in this Agreement are the sole payments to be made
17 by Defendants to the Class Members, and that the Class Members are not entitled to any additional or
18 derivative compensation or benefits as a result of having received the settlement awards
19 (notwithstanding any contrary language or agreement in any benefit or compensation plan document
20 that might have been in effect during the period covered by this Settlement).

21 3.6. **Settlement Approval and Implementation Procedures.** As part of this Settlement,
22 the Parties agree to the following procedures for obtaining the Court's preliminary approval of the
23 Settlement, notifying Settlement Class Members of the Settlement, obtaining the Court's final
24 approval of the Settlement, and processing the Individual Settlement Awards.

25 3.6.1. **Preliminary Approval.** As soon as practicable after execution of this
26 Stipulation, the Parties will jointly submit this Stipulation to the Court for its preliminary approval.
27 Such submission will include this Agreement, the proposed Notice Packet, attached hereto as Exhibits
28 A, A1 and A2, the proposed Preliminary Approval Order, and any motions, memoranda and evidence

1 as may be necessary for the Court to determine that this Agreement is fair, adequate and reasonable.

2 **3.6.2. Class Information.** No more than five (5) business days after the entry of the
3 Preliminary Approval Order, Defendants shall provide the Settlement Administrator with the Class
4 Information for purposes of mailing Notice Packets to Settlement Class Members. The Settlement
5 Administrator shall not share the Class Information with Class Counsel.

6 **3.6.3. Notice By First Class U.S. Mail.** Upon receipt of the Class Information, the
7 Settlement Administrator will perform a search on the National Change of Address database to update
8 the Settlement Class Members' addresses. No more than ten (10) business days after receiving the
9 Class Information from Defendant as provided herein, the Settlement Administrator shall mail copies
10 of the Notice Packet to all Settlement Class Members by regular First Class U.S. Mail. The Settlement
11 Administrator shall exercise its best judgment to determine the current mailing address for each
12 Settlement Class Member. The address identified by the Settlement Administrator as the current
13 mailing address shall be presumed to be the best mailing address for each Settlement Class Member.
14 It will be conclusively presumed that, if an envelope mailed to a Settlement Class Member has not
15 been returned as undeliverable within thirty (30) calendar days of the mailing, the Settlement Class
16 Member received the Notice Package.

17 **3.6.4. Undeliverable Notices.** If any Notice Packets are returned as undeliverable
18 within thirty (30) calendar days of the mailing of the Notice Packet with a forwarding address, the
19 Settlement Administrator shall have five (5) business days to re-mail the Notice Packet to the
20 forwarding address. If no forwarding address is provided, the Settlement Administrator shall make
21 reasonable efforts to obtain an updated mailing address within five (5) business days of the date of the
22 return of the Notice Packet. This inquiry shall include a National Change of Address search. The
23 Settlement Administrator will be responsible for taking all reasonable steps, consistent with its agreed
24 upon job parameters, Court orders and fee, as agreed to with Class Counsel and according to the
25 deadlines set forth in this Settlement, to trace the mailing address of any Class Member for whom a
26 Class Notice is returned by the U.S. Postal Service as undeliverable. These reasonable steps will
27 include, at a minimum, the tracking of all undelivered mail, performing an address search for all mail
28 returned without a forwarding address, and promptly re-mailing the Notice Packet to Class Members

1 for whom new addresses are found. If the Notice Packet is re-mailed, the Settlement Administrator
2 will note for its own records the date and address of each such re-mailing and so notify Class Counsel
3 and Defense Counsel. The obligation to trace and resend returned Notice Packets shall cease after two
4 mailings or thirty (30) calendar days after the initial mailing, whichever occurs first. The time period
5 to respond may not be extended on account of a returned or undeliverable mailing.

6 3.6.5. The Settlement Administrator shall provide weekly status reports to counsel for
7 the Parties, including: (a) the number of Notice Packets mailed; (b) the number of objections
8 submitted; and (c) the number of Requests for Exclusion submitted; (d) the number of notices returned;
9 (f) the number of notices traced; and (g) the number of notices forwarded.

10 3.6.6. Compliance with the procedures specified herein shall constitute due and
11 sufficient notice to Settlement Class Members of this Settlement and shall satisfy the requirement of
12 due process. Nothing else shall be required of, or done by, the Parties, Class Counsel, and Defense
13 Counsel to provide notice of the proposed settlement.

14 3.7. **Requests for Exclusion and Objections to Settlement.** Class Members may opt out
15 of the Settlement or submit objections to the Settlement pursuant to the following procedures:

16 3.7.1. **Requests for Exclusion.** The Notice Packet shall state that Settlement Class
17 Members who wish to exclude themselves from the Settlement must submit a Request for Exclusion
18 by the Opt Out/Objection Deadline. The Request for Exclusion: (1) must contain the name, address,
19 telephone number and the last four digits of the Social Security or Individual Taxpayer Identification
20 number of the person requesting exclusion or their Employee ID number, (2) must be signed by the
21 Settlement Class Member; (3) must state in substance: “I wish to exclude myself from the Settlement
22 in *Cesar Buenrostro, as an individual and on behalf of all similarly situated employees v. Contain-A-*
23 *Way, Inc. dba Nexcycle, a California corporation, Strategic Materials, Inc. dba Western Strategic*
24 *Materials, Inc., a Delaware corporation, and DOES 1 through 50, inclusive, in the California Superior*
25 *Court, County of Riverside, Case No. RIC1507132 (filed June 15, 2015); and (4) must be postmarked*
26 *or fax stamped by the Opt Out/Objection Deadline and returned to the Settlement Administrator at the*
27 *specified address or fax telephone number. The Settlement Administrator will submit any timely*
28 *Requests for Exclusion to the Court by a declaration filed concurrently with Class Counsel’s motion*

1 for final approval of the Settlement. If the Request for Exclusion does not contain the information
2 listed in (1)-(3), the Settlement Administrator will follow up with the Class Member who submitted
3 the Request for Exclusion Form to try to obtain the missing information, but if the required information
4 remains missing after the Settlement Administrator uses best efforts to obtain the missing information,
5 it will not be deemed valid for exclusion from this Settlement. The date of the postmark on the return
6 mailing envelope or fax stamp on the Request for Exclusion shall be the exclusive means used to
7 determine whether a Request for Exclusion has been timely submitted. Any Settlement Class Member
8 who is excluded from the Settlement Class will not be bound by the terms of the Settlement or have
9 any right to object, appeal or comment thereon. Settlement Class Members who receive a Notice
10 Packet but fail to submit a valid and timely Request for Exclusion on or before the Opt Out/Objection
11 Deadline shall be bound by all terms of the Settlement and any Final Judgment entered in this Action
12 if the Settlement is approved by the Court. No later than fourteen (14) calendar days after the Opt
13 Out/Objection Deadline, the Settlement Administrator shall provide Counsel for Defendants with a
14 complete list of all Class Members who have timely submitted valid Requests for Exclusion, including
15 their name and social security number. Class Counsel shall be provided with a summary report that
16 includes only the number of Requests for Exclusion received by the Settlement Administrator. At no
17 time shall any of the Parties or their counsel seek to solicit or otherwise encourage members of the
18 Settlement Class to submit Requests for Exclusion from the Settlement.

19 **3.7.2. Objections.** The Notice Packet shall state that Settlement Class Members who wish to
20 object to the Settlement can mail to the Settlement Administrator a statement of objection (“Notice of
21 Objection”) by the Opt Out/Objection Deadline using the Notice of Objection Form (Exhibit A2)
22 included with the Notice Packet or other pleading or form of their choice provided that it includes
23 sufficient information to (i) identify the objector as a person entitled to object to the Settlement, (ii)
24 describe the nature of and basis for the objection, and (iii) contact the objector to clarify any
25 uncertainties. The date of filing and the postmark date on the copies mailed to counsel for the Parties
26 shall be deemed the exclusive means for determining that a Notice of Objection was filed and served
27 timely. The Notice of Objection must be signed by the Settlement Class Member and state: (1) the
28 full name of the Settlement Class Member; (2) the last four digits of the Settlement Class Member’s

1 Social Security number or Individual Taxpayer Identification Number, and/or the Employee ID
2 number; and (3) the basis for the objection. Settlement Class Members do not need to appear at the
3 Final Approval Hearing to submit a written Notice of Objection. Settlement Class Members may also
4 choose to appear at the Final Approval Hearing to object to the Settlement without submitting a Notice
5 of Objection or in addition to submitting a Notice of Objection. Settlement Class Members who either
6 fail to submit a Notice of Objection in the manner specified in (1)-(3) above or fail to appear at the
7 Final Approval Hearing to object shall waive any objections (whether by appeal or otherwise) to the
8 Settlement. At no time shall any of the Parties or their counsel seek to solicit or otherwise encourage
9 Settlement Class Members to file or serve written objections to the Settlement or appeal from the Final
10 Approval Order. Class Counsel shall not solicit or represent any Settlement Class Members with
11 respect to any such objections. If a Class Member who has timely filed an objection to the Settlement
12 files a Notice of Appeal of the judgment within the time period prescribed by law, Defendants shall
13 not be required to fund any portion of the Gross Maximum Settlement Amount, and the Settlement
14 Administrator shall not distribute or pay any monies until the appeal(s) are finally resolved in favor of
15 the Settlement and the challenge to the Settlement is dismissed with prejudice without any right of a
16 further appeal. The Settlement Administrator shall give notice to any objecting party of a continuance
17 of the Final Approval Hearing.

18 **3.8. Option to Terminate Settlement.** If, after the Opt Out/Objection Deadline and before
19 the Final Approval Hearing, the number of individuals who submitted timely and valid Requests for
20 Exclusion from the Settlement exceeds five percent (5%) of all potential Settlement Class Members,
21 Defendants shall have, in their sole discretion, the option to terminate this Settlement. If Defendants
22 exercise their option to terminate this Settlement, Plaintiff and Defendants will share equally the
23 Claims Administration Costs incurred up to the date of termination.

24 **3.9. Resolution of Claim Disputes.** Settlement Class Members will have the opportunity,
25 should they disagree with Defendants' records regarding the dates of employment, to provide
26 documentation and/or an explanation to show contrary employment dates. If there is a dispute, the
27 Settlement Administrator will consult with the Parties to determine whether an adjustment is
28 warranted. The Settlement Administrator shall determine the eligibility for, and the amounts of, any

1 Individual Settlement Awards under the terms of this Agreement. The Settlement Administrator's
2 determination of the eligibility for and amount of any Individual Settlement Award shall be binding
3 upon the Settlement Class Member and the Parties, and in no event will Defendants be required to pay
4 any amount in excess of the Gross Maximum Settlement Amount.

5 **3.10. Settlement Administration Costs.** The Settlement Administrator shall be paid for the
6 costs of administration of the Settlement from the Gross Maximum Settlement Amount. Such costs
7 of administration shall not exceed Eleven Thousand Dollars (\$11,000.00). No fewer than fifteen (15)
8 calendar days prior to the Final Approval Hearing, the Settlement Administrator shall provide the
9 Parties with a statement detailing the costs of administration. The Settlement Administrator, on
10 Defendants' behalf, shall have the authority and obligation to make payments, credits and
11 disbursements, including payments and credits in the manner set forth herein, to Settlement Class
12 Members calculated in accordance with the methodology set out in this Agreement and orders of the
13 Court. The Parties agree to cooperate in the Settlement Administration process and to make all
14 reasonable efforts to control and minimize the cost and expenses incurred in administration of the
15 Settlement. The Parties each represent they do not have any financial interest in the Settlement
16 Administrator. The Settlement Administrator shall be responsible for: processing and mailing
17 payments to Plaintiff, Class Counsel, Settlement Class Members, printing and mailing the Notice
18 Packets to the Settlement Class Members as directed by the Court; receiving and reporting the
19 Requests for Exclusion; providing declaration(s) as necessary in support of preliminary and/or final
20 approval of this Settlement; and other tasks as the Parties mutually agree or the Court orders the
21 Settlement Administrator to perform. The Settlement Administrator shall keep the Parties timely
22 apprised of the performance of all Settlement Administrator responsibilities. Any legally mandated
23 tax reports, tax forms, tax filings, or other tax documents required by administration of this Agreement
24 shall be prepared by the Settlement Administrator. Any expenses incurred in connection with such
25 preparation shall be a cost of administration of the Settlement.

26 **3.11. No Solicitation of Settlement Objections or Exclusions.** The Parties agree to use
27 their best efforts to carry out the terms of this Settlement. At no time shall any of the Parties or their
28 counsel seek to solicit or otherwise encourage Settlement Class Members to submit either written

1 objections to the Settlement or Requests for Exclusion from the Settlement, or to appeal from the
2 Court's Final Approval Order.

3 **3.12. Additional Briefing and Final Approval.**

4 3.12.1. As soon as practicable following the Opt Out/Objection Deadline, Class
5 Counsel will file with the Court a motion for final approval of the Settlement and a memorandum in
6 support of the motion, which Defendants agree they will not oppose so long as the motion is consistent
7 with the terms of this Settlement. While the notice period is pending, the Class Members and Class
8 Counsel will also move for an award of the Class Representative Incentive Award and Class Counsel
9 Fees and Expenses pursuant to and in accordance with the terms of this Settlement, with a
10 memorandum in support of their motion, which Defendants agree they will not oppose so long as the
11 motion is in all respects consistent with the terms of this Settlement.

12 3.12.2. Not later than five (5) court days before the Final Approval Hearing, the Parties
13 may file, jointly or separately, a reply in support of the motion for final approval of the Settlement as
14 may be necessary or helpful to the Court regarding the subject matter of the Final Approval Hearing.
15 In addition, the Parties may file replies in support of the motions for the Class Representative Incentive
16 Award and the Class Counsel Fees and Expenses as may be necessary or helpful to the Court regarding
17 the subject matter of the motions.

18 3.12.3. Upon final approval of the Settlement by the Court at or after the Final Approval
19 Hearing, the Parties will present the proposed Final Approval Order for the Court's approval and entry.
20 A copy of the Proposed Final Approval Order is attached hereto as "Exhibit C." After entry of the
21 Final Approval Order and judgment, the Court will have continuing jurisdiction over the Action and
22 the Settlement solely for purposes of: (i) enforcing this Settlement, (ii) addressing any claims
23 administration matters that may arise; and (iii) addressing such post-Judgment matters as may be
24 appropriate under court rules or applicable law.

25 **3.13. Dispute Resolution.** Except as otherwise set forth herein, all disputes concerning the
26 interpretation, calculation or payment of settlement claims, or other disputes regarding compliance
27 with this Agreement shall be resolved as follows:

28 3.13.1. If Plaintiff or Class Counsel, on behalf of Plaintiff or any Settlement Class

1 Members, or the Defendants at any time believes that the other Party has breached or acted contrary
2 to the Agreement, that party shall notify the other party in writing of the alleged violation.

3 3.13.2. Upon receiving notice of the alleged violation or dispute, the responding party
4 shall have ten (10) calendar days to correct the alleged violation and/or respond to the initiating party
5 with the reasons why the Party disputes all or part of the allegation.

6 3.13.3. If the response does not address the alleged violation to the initiating party's
7 satisfaction, the Parties shall negotiate in good faith for up to ten (10) calendar days to resolve their
8 differences.

9 3.13.4. If Class Counsel and Defendants are unable to resolve their differences after
10 twenty (20) calendar days, either Party may file an appropriate motion for enforcement with the Court.

11 3.14. **Waiver of Right to Appeal.** The Parties agree to waive all appeals from the Court's
12 final approval of this Settlement and the terms contained herein. Any reduction in the Class Counsel
13 Fees and Expenses, and/or any reduction to the requested Class Representative Incentive Award, does
14 not constitute grounds to terminate or void the Settlement.

15 3.15. **Release of Claims.**

16 3.15.1. **Release of Claims By Class Members.** Upon entry of final judgment by the
17 Court, and in consideration for the Settlement Amount, Plaintiff and all Class Members who do not
18 submit valid and timely Requests for Exclusion shall release Defendants and the Released Parties
19 (defined above) of all claims, demands, rights, liabilities, and/or causes of action of any nature and
20 discretion whatsoever, known or unknown, in law or in equity, whether or not concealed or hidden,
21 that have been asserted or that might have been asserted, arising during the period from and including
22 June 15, 2011 through July 24, 2014 for unpaid wages or other compensation allegedly owed, or for
23 damages, penalties (including without limitation waiting time penalties under Labor Code section
24 203), interest, liquidated damages, attorneys' fees, or costs, or any other recovery based on or arising
25 out of the claims and allegations alleged in the First Amended Class Action Complaint For Damages,
26 Injunctive Relief, and Restitution, including under the California Labor Code and corresponding
27 provisions of Wage Order 1-2001, for Violation of California Labor Code sections 510 and 1198
28 (Unpaid Overtime), Violation of California Labor Code sections 1194, 1197, and 1197.1 (Unpaid

1 Minimum Wages), Violation of California Labor Code section 2802 (Failure to Reimburse Business
2 Expenses), and Violation of California Business & Professions Code sections 17200 et seq., and any
3 and all corresponding claims that could have been brought under California or federal law based on
4 the allegations in the Action including without limitation under the Fair Labor Standards Act (FLSA)
5 that might have occurred during the Class Period and expressly excluding all other claims, including
6 but not limited to, disability, retaliation, discrimination, and unemployment insurance and workers'
7 compensation benefits, and claims unrelated to the claims in the Action which shall not be released.
8 The Released Claims also include all claims Plaintiff and Class Members may have against the
9 Released Parties relating to (i) the payment and allocation of attorneys' fees and costs to Class Counsel
10 pursuant to this Agreement and (ii) the payment of the Incentive Award pursuant to this Agreement.
11 It is the intent of the Parties that the judgment entered by the Court upon final approval of the
12 Settlement shall have *res judicata* effect and be final and binding upon Plaintiff and all Class Members
13 who have not expressly requested to be excluded from the Settlement. The Released Claims include
14 claims about which the Plaintiff and the Class Members do not know or suspect to exist in their favor
15 as of the date of approval, to the fullest extent permitted by law, the provisions, rights and benefits of
16 Section 1542 of the California Civil Code, or any other similar provision under law. Section 1542 of
17 the California Civil Code reads as follows: A GENERAL RELEASE DOES NOT EXTEND TO
18 CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT
19 TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, AND
20 THAT IF KNOWN BY HIM OR HER WOULD HAVE MATERIALLY AFFECTED HIS OR HER
21 SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

22 **3.15.2. Complete And General Release By Plaintiff Cesar Becerra Buenrostro.** In
23 exchange for the Service Award, Plaintiff individually and on his own behalf releases the Released
24 Parties from any and all charges, complaints, claims, causes of action, demands, disputes, damages,
25 business expenses, attorneys' fees, costs, losses and liabilities of any kind or nature whatsoever, known
26 or unknown, suspected or unsuspected, asserted or unasserted, which Plaintiff, at any time heretofore,
27 had or claimed to have or Plaintiff may have, including but not limited to any and all claims arising
28 out of, relating to or resulting from his employment with and/or separation of employment with

1 Released Parties, including any claims arising under any federal, state or local law, statute, ordinance,
2 rule or regulation or Executive Order relating to employment, including, but in no way limited to, any
3 claim under Title VII of the Civil Rights Act of 1964, as amended (“Title VII”), 42 U.S.C. § 1981; the
4 Americans with Disabilities Act (“ADA”); the Family and Medical Leave Act (“FMLA”); the
5 Employee Retirement Income Security Act (“ERISA”); the California Family Rights Act (“CFRA”);
6 the California Fair Employment and Housing Act (“FEHA”); all claims for wages or penalties under
7 the Fair Labor Standards Act (“FLSA”); all claims for wages or penalties under the California Labor
8 Code; Business and Professions Code sections 17200 *et seq.*; all laws relating to violation of public
9 policy, retaliation, or interference with legal rights; any and all other employment or discrimination
10 laws; whistleblower claims; any tort, fraud or constitutional claims; and any breach of contract claims
11 or claims of promissory estoppel. It is agreed that this is a general release and is to be broadly
12 construed as a release of all claims; provided that, notwithstanding the foregoing, this paragraph
13 expressly does not include a release of any claims that cannot be released hereunder by law, including
14 any claim for indemnification pursuant to California Labor Code section 2802. Plaintiff hereby
15 warrants that he is not aware of any business expenses incurred by him during his employment with
16 Defendants which is not the subject of his Complaint and for which he has not been fully reimbursed
17 other than those which serve as the basis for his class claim and for which he will be compensated
18 through the Settlement. If a claim is not subject to release, to the extent permitted by law, Plaintiff
19 waives any right or ability to be a class or collective action representative or to otherwise participate
20 in any putative or certified class, collective or multi-party action or proceeding based on such a claim
21 in which any Releasee is a party. However, the Equal Employment Opportunity Commission
22 (“EEOC”) or other governmental agency cannot be barred from pursuing a claim on Plaintiff’s behalf,
23 although Plaintiff agrees that he is releasing his right to any personal recovery from a claim brought
24 by the EEOC or any other governmental agency. Plaintiff understands and expressly agrees that this
25 Agreement extends to claims that he has against Defendants, of whatever nature and kind, known or
26 unknown, suspected or unsuspected, vested or contingent, past, present, or future, arising from or
27 attributable to an incident or event, occurring in whole or in part, on or before the Effective Date of
28 this Agreement. Any and all rights granted under any state or federal law or regulation limiting the

1 effect of this Agreement, including the provisions of section 1542 of the California Civil Code, ARE
2 HEREBY EXPRESSLY WAIVED. Section 1542 of the California Civil Code reads as follows: A
3 GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR
4 RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT
5 THE TIME OF EXECUTING THE RELEASE, AND THAT IF KNOWN BY HIM OR HER
6 WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR
7 OR RELEASED PARTY.

8 **3.16. Nullification of Settlement Agreement.** In the event: (i) the Court does not enter the
9 Preliminary Approval Order as specified herein; (ii) the Court does not grant final approval of the
10 Settlement as provided herein; (iii) the Court does not enter a final Judgment as provided herein; or
11 (iv) the Settlement does not become final for any other reason, this Settlement Agreement shall be null
12 and void, and any order or judgment entered by the Court in furtherance of this Settlement shall be
13 treated as void from the beginning. In such a case, the Parties and any funds to be awarded under this
14 Settlement shall be returned to their respective statuses as of the date and time immediately prior to
15 the execution of this Agreement, and the Parties shall proceed in all respects as if this Agreement had
16 not been executed, except that any fees already incurred by the Settlement Administrator shall be paid
17 by the Parties in equal shares. In the event an appeal is filed from the Court's Final Approval Order
18 and Judgment, or any other appellate review is sought, administration of the Settlement shall be stayed
19 pending final resolution of the appeal or other appellate review.

20 **3.17. No Admission.** By agreeing to this Settlement, Defendants make no admission of
21 liability or wrongdoing. It is acknowledged by all parties that Defendants are participating in this
22 Settlement to avoid the expense, inconvenience and delay of further litigation.

23 **3.18. Confidentiality Preceding Preliminary Approval.** Class Counsel agrees not to issue
24 a press release or otherwise notify the media about the terms of the Settlement or advertise or market
25 any of the terms of the Settlement through written, recorded or electronic communications. In addition
26 counsel for Plaintiff will not disclose the Settlement, its terms or the Parties on their website or
27 otherwise. Plaintiff and his counsel further agree that if contacted regarding this case, they will state
28 only that the lawsuit exists and has been resolved. This provision shall not apply to, or limit the public

1 filing of motions or other case materials in the Action related to seeking and obtaining Court approval
2 of the Settlement. This provision shall also not prohibit Class Counsel from responding to specific
3 questions from Class Members. Nothing herein shall be interpreted as preventing any good-faith
4 communications by any Counsel and/or any Parties with the Court, the Class Members, or the
5 Settlement Administrator.

6 **3.19. Fair, Adequate And Reasonable Settlement.** This Settlement was reached after
7 extensive negotiations. The Parties believe and agree that this Settlement is a fair, adequate, and
8 reasonable resolution of the Action and have arrived at this Settlement in arms-length negotiations,
9 taking into account all relevant factors, present and potential, and will so represent it to the Court.

10 **3.20. Dismissal.**

11 3.20.1. The Parties agree that, upon final approval of the Settlement by the Court and
12 performance of the Settlement according to its terms and the Court's orders, the Action should be
13 dismissed in its entirety with prejudice pursuant to the Proposed Final Approval Order attached hereto
14 as Exhibit C and the Parties agree to take all steps necessary to secure the dismissal with prejudice of
15 this Action after the Settlement receives final approval from the Court.

16 **3.21. Jurisdiction of the Court.** The Parties agree that the Court shall retain jurisdiction
17 with respect to the interpretation, implementation and enforcement of the terms of this Agreement and
18 all orders and judgments entered in connection therewith, and the Parties and their counsel hereto
19 submit to the jurisdiction of the Court for purposes of interpreting, implementing and enforcing the
20 Settlement embodied in this Agreement and all orders and judgments entered in connection therewith.

21 **3.22. Class Certification for Settlement Purposes Only:** The Parties agree that to the
22 extent the motion for preliminary approval seeks, *inter alia*, certification of a class beyond the class
23 already certified, it will be for purposes of the Settlement only. If, for any reason, the Settlement is
24 not approved, the stipulation to certification will be void. The Parties further agree that any such
25 certification of the Released Claims is for purposes of the Settlement and is in no way an admission
26 by Defendant that class certification is proper under the standard applied to contested certification
27 motions.

1 **3.23. Execution by Settlement Class Members.** It is agreed that it is impossible or
2 impractical to have each Class Member execute this Settlement Agreement. The Notice will advise
3 all Settlement Class Members of the binding nature of the release and such shall have the same force
4 and effect as if each Settlement Class Member executed this Stipulation. Notice of entry of the final
5 Judgment shall be given to Class Counsel on behalf of Plaintiff and all Settlement Class Members.
6 The Settlement Administrator shall also provide notice to Class Members by posting a copy of the
7 Final Approval Order and Judgment to a website identified in the Class Notice. It shall not be
8 necessary to send notice of entry of this Final Approval Order or the ensuing Final Judgment to
9 individual Settlement Class Members. The time for any appeal shall run from service of Notice of
10 entry of the Final Approval Order and Final Judgment, by Class Counsel on Defendants or vice versa.

11 **3.24. Execution by Plaintiff.** Plaintiff is bound by the terms herein and further agrees not
12 to request to be excluded from the Settlement. Any such request for exclusion shall therefore be void
13 and of no force or effect.

14 **3.25. Miscellaneous Terms.**

15 **3.25.1. Integrated Agreement.** After it is signed and delivered by all Parties and their
16 counsel, this Settlement and its exhibits will constitute the entire agreement between the Parties
17 relating to the terms of Settlement, and will supersede any prior or contemporaneous oral
18 representations, warranties, covenants, or inducements made to any Party concerning this Settlement
19 or its exhibits, including the Settlement Terms.

20 **3.25.2. Execution in Counterparts.** This Settlement may be executed in one or more
21 counterparts and by facsimile or PDF version. All executed counterparts, and each of them, will be
22 deemed to be one and the same instrument, provided that counsel for the Parties will exchange between
23 themselves original signed counterparts. Facsimile or PDF signatures will be accepted if the original
24 signature is made available upon request within seven (7) calendar days. Any executed counterpart
25 will be admissible in evidence to prove the existence and contents of this Settlement.

26 **3.25.3. Exhibits and Headings.** The terms of this Agreement include the terms set
27 forth in any attached Exhibits, which are incorporated by this reference as though fully set forth herein.
28 Any Exhibits to this Agreement are an integral part of the Settlement. The descriptive headings of

1 any paragraphs or sections of this Agreement are inserted for convenience of reference only and do
2 not constitute a part of this Agreement.

3 **3.25.4. Modification of Settlement.** This Settlement, and any and all parts of it, may
4 be amended, modified, changed, or waived only by an express written instrument signed by all Parties
5 or their successors-in-interest.

6 **3.25.5. Settlement Binding on Successors.** This Settlement will be binding upon, and
7 inure to the benefit of, the successors of each of the Parties.

8 **3.25.6. Applicable Law.** All terms and conditions of this Settlement and its exhibits
9 will be governed by and interpreted according to the laws of the State of California, without giving
10 effect to any conflict of law or choice of law principles.

11 **3.25.7. Invalidity of Any Provision.** Before declaring any provision of this
12 Agreement invalid, the Court shall first attempt to construe the provisions valid to the fullest extent
13 possible consistent with applicable precedents so as to define all provisions of this Agreement valid
14 and enforceable.

15 **3.25.8. Interim Stay of Proceedings.** The parties agree that all proceedings in this
16 Action should be stayed until further order of the Court, except as may be necessary to implement the
17 terms of the Settlement. Pending final determination of whether the Settlement should be approved,
18 Plaintiffs agree not to commence or prosecute (either directly, representatively or in any other
19 capacity) against any of the Released Parties any action, arbitration or proceeding in any court,
20 arbitration forum or tribunal asserting any of the Released Claims.

21 **3.25.9. Authorization to Enter Into Settlement Agreement.** Counsel for all Parties
22 warrant and represent they are expressly authorized by the Parties whom they represent to negotiate
23 this Agreement and to take all appropriate actions required or permitted to be taken by such Parties
24 pursuant to this Agreement to effectuate its terms, and to execute any other documents required to
25 effectuate the terms of this Agreement. The Parties and their counsel will cooperate with each other
26 and use their best effort to effect the implementation of the Settlement. In the event the Parties are
27 unable to reach agreement on the form or content of any document needed to implement the
28 Settlement, or on any supplemental provisions that may become necessary to effectuate the terms of

1 this Settlement, the Parties may seek the assistance of the Court to resolve such disagreement. The
2 person(s) signing this Agreement on behalf of Defendants represents and warrants that they are
3 authorized to sign this Agreement on behalf of Defendants. Plaintiff represents and warrants that she
4 is authorized to sign this Agreement and that she has not assigned any claim, or part of a claim, covered
5 by this Settlement to a third-party.

6 3.25.10. **Cooperation in Drafting.** The Parties have cooperated in the drafting
7 and preparation of this Settlement. This Settlement will not be construed against any Party on the
8 basis that the Party was the drafter or participated in the drafting.

9 3.25.11. **Notices.** Unless otherwise specifically provided herein, all notices,
10 demands or other communications given hereunder shall be in writing and shall be deemed to have
11 been duly given as of the third business day after mailing by United States registered or certified mail,
12 return receipt requested, addressed as follows:

13 **To Class Counsel:**

14 Kevin Mahoney, Esq.
15 Joshua D. Klein, Esq.
16 Anna Salusky Mahoney, Esq.
17 MAHONEY LAW GROUP, APC
18 249 E. Ocean Boulevard, Suite 814
19 Long Beach, CA 90802
20 Telephone: 562.590.5550
21 Fax: 562.590.8400

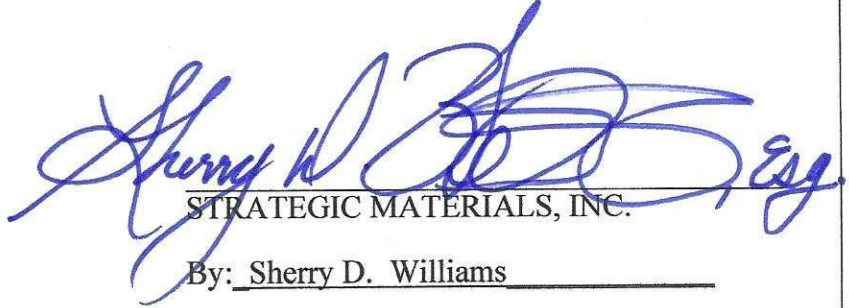
22 **To Defendants:**

23 Joshua Levine, Esq.
24 Jocelyn Hannah, Esq.
25 LITTLER MENDELSON, P.C.
26 501 West Broadway, Suite 900
27 San Diego, CA 92101
28 Telephone: 619.232.0441
Facsimile: 619.232.4302

Lawrence H. Stone, Esq.
Steven M. Zimmerman, Esq.
JACKSON LEWIS P.C.
725 South Figueroa Street, Suite 2500
Los Angeles, California 90017-5408
Telephone: 213.689.0404
Fax: 213.689.0430

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Dated: February 8, 2021


STRATEGIC MATERIALS, INC.

By: Sherry D. Williams

Title: Chief Legal Officer & Senior Vice
President, Human Resources

Dated: February 8, 2021

JOSHUA D. LEVINE
JOCELYN HANNAH
LITTLER MENDELSON, P.C.
Attorneys for Defendant
STRATEGIC MATERIALS, INC.

Dated:

CONTAIN-A-WAY, INC. dba NEXCYCLE

By: _____

Title: _____

Dated:

LAWRENCE H. STONE
STEVEN M. ZIMMERMAN
JACKSON LEWIS, P.C.
Attorneys for Defendant
CONTAIN-A-WAY, INC. dba NEXCYCLE

Dated:

CESAR BECERRA BUENROSTRO
PLAINTIFF

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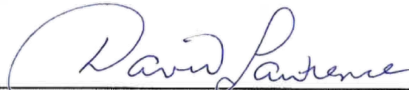
Dated: November 18, 2020

STRATEGIC MATERIALS, INC.
By: _____
Title: _____

Dated: November 18, 2020

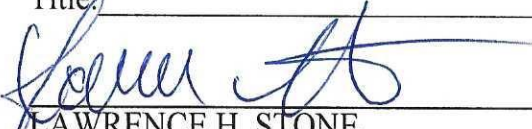
JOSHUA D. LEVINE
JOCELYN HANNAH
LITTLER MENDELSON, P.C.
Attorneys for Defendant
STRATEGIC MATERIALS, INC.

Dated: February 4, 2020



CONTAIN-A-WAY, INC. dba NEXCYCLE
By: David Lawrence
Title: President

Dated: February 4, 2020



LAWRENCE H. STONE
STEVEN M. ZIMMERMAN
JACKSON LEWIS, P.C.
Attorneys for Defendant
CONTAIN-A-WAY, INC. dba NEXCYCLE

Dated: October 27, 2020

CESAR BECERRA BUENROSTRO
PLAINTIFF

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Dated: November 18, 2020

STRATEGIC MATERIALS, INC.

By: _____

Title: _____

Dated: November 18, 2020

JOSHUA D. LEVINE
JOCELYN HANNAH
LITTLER MENDELSON, P.C.
Attorneys for Defendant
STRATEGIC MATERIALS, INC.

Dated: October 27, 2020

CONTAIN-A-WAY, INC. dba NEXCYCLE

By: _____

Title: _____

Dated: October 27, 2020

LAWRENCE H. STONE
STEVEN M. ZIMMERMAN
JACKSON LEWIS, P.C.
Attorneys for Defendant
CONTAIN-A-WAY, INC. dba NEXCYCLE

Dated: 2/4/2021

DocuSigned by:

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CESAR BECERRA BUENROSTRO
PLAINTIFF

EXHIBIT A

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

CESAR BECERRA BUENROSTRO as an individual and on behalf of all similarly situated employees,

Plaintiff,

v.

CONTAIN-A-WAY, INC. dba NEXCYCLE, a California corporation, STRATEGIC MATERIAL, INC. dba WESTERN STRATEGIC MATERIALS, INC., a Delaware corporation, and DOES 1 through 50, inclusive,

Defendants.

Case No. RIC 1507132

SECOND REVISED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE FOR COURT APPROVAL

Date: TBD
Time: TBD
Dept.: 06
Judge: Hon. Sunshine S. Sykes

First Amended Complaint Filed: June 15, 2015

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

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

10 YOU ARE HEREBY NOTIFIED AS FOLLOWS:

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

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

25 YOUR OPTIONS UNDER THE SETTLEMENT

26 Summary of Your Legal Rights and Options in this Settlement	
27 DO NOTHING AND 28 RECEIVE A SETTLEMENT AWARD	You may do nothing in response to this notice. If you do nothing, you <u>will participate in the Settlement and receive a share of the Settlement money</u> , and you will release certain claims as described in Section IV below.
EXCLUDE YOURSELF	Submit a Request for Exclusion. If you submit a timely and valid Request for Exclusion, you will <u>not</u> participate in the Settlement, will <u>not</u> receive a share of the Settlement

	money, and will not 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.
OBJECT	<p>Submit a written objection to the Court via the Settlement Administrator.</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.

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

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

4 The Settlement provides for the following:

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

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

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

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

20 Participating Class Members (*i.e.*, all Class Members who did not submit a timely Request for
21 Exclusion) will have 120 days from the date the Settlement Administrator mails the settlement checks
22 to cash the check with their Individual Settlement Award. Any funds from checks/Individual
23 Settlement Awards that remain uncashed after the 120-day period after mailing will then be
24 redistributed by the Settlement Administrator to the Participating Class Members who cashed their
25 initial settlement checks on a prorated basis based on workweeks. More specifically, the funds from
26 these uncashed checks (if any) will go into a second payment fund, which the Settlement Administrator
27 - after the expiration of the 120-day period - will use to calculate second payment amounts based on
28 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.

27 The Individual Settlement Award payable to each Class Member (and any second payments if
28 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

1 paid as wages (the “Wage Component”) shall be subject to all tax withholdings customarily made
2 from employee’s wages and all other authorized and required withholdings and shall be reported by
3 W-2 forms. Payment of all amounts will be made subject to backup withholding unless a duly
4 executed W-9 form is received from the payee(s). The amounts paid as penalties and interest shall be
5 subject to all authorized and required withholdings other than the tax withholdings customarily made
6 from employees’ wages and shall be reported by IRS 1099 forms when required.

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

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

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

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

27 **III. WHAT ARE YOUR RIGHTS AS A CLASS MEMBER?**

28 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.

1 Based on the number of workweeks you worked during the Class Period and the requested
2 settlement allocations specified in Section II above, the Settlement Administrator estimates that the
3 per workweek value will be approximately \$[INSERT]. Using this estimated workweek value and
4 Defendants' records, the Settlement Administrator estimates that your settlement payment will be
5 approximately \$[INSERT] if the Court grants final approval of the Settlement.

6 **B. Exclude Yourself from the Settlement**

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

10 Phoenix Class Action Administration Solutions

11 [ADDRESS]

12 [FAX NUMBER]

13 *The Request for Exclusion Form must be postmarked or fax date stamped no later than*
14 **[DATE].**

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

19 **C. Object to the Settlement**

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

28 Phoenix Class Action Administration Solutions

[ADDRESS]

[FAX NUMBER]

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 [DATE]. DO NOT
TELEPHONE THE COURT.***

1 If you choose to object to the terms of this Settlement, you may enter an appearance in propria
2 persona (meaning you choose to represent yourself) or through your own attorney. You will then
3 continue as a Settlement Class Member either in propria persona or with representation by your own
4 attorney and ***you will be solely responsible for the fees and costs of your attorney.*** The final fairness
5 hearing at which the Court will adjudicate any Objections, and be asked to approve the Settlement will
6 be on [DATE] at [TIME] in [DEPARTMENT NUMBER] of the California Superior Court, County
7 of Riverside at [ADDRESS], or such other, later date as the court may authorize. The Court may
8 reschedule the final fairness hearing without further notice to Class Members. Class Members are
9 advised to confirm the hearing date and time with Class Counsel if they intend to appear at the Final
10 Approval Hearing. The Settlement Administrator will also give notice to any objecting party of a
11 continuance of the Final Approval Hearing.

7 **IV. EFFECT OF THE SETTLEMENT**

8 **A. Released Rights and Claims**

9 Upon final approval of this Settlement by the Court, each member of the Settlement Class who
10 does not file a timely and valid Request for Exclusion shall release Defendants Strategic Materials,
11 Inc. and Contain-A-Way, Inc. together with their past, present and future officers, directors, employees
12 and agents, and their respective successors and predecessors in interest, subsidiaries, affiliates, and
13 parents and attorneys including, without limitation, Strategic Materials Holding Corp., Nexcycle, Inc.
14 and rePlanet LLC (collectively “the Released Parties”) from all claims, demands, rights, liabilities,
15 and/or causes of action of any nature and discretion whatsoever, known or unknown, in law or in
16 equity, whether or not concealed or hidden, that have been asserted or that might have been asserted,
17 arising during the period from and including June 15, 2011 through July 24, 2014 for unpaid wages or
18 other compensation allegedly owed, or for damages, penalties (including without limitation waiting
19 time penalties under Labor Code section 203), interest, liquidated damages, attorneys’ fees, or costs,
20 or any other recovery based on or arising out of the claims and allegations alleged in the First Amended
21 Class Action Complaint For Damages, Injunctive Relief, and Restitution, including under the
22 California Labor Code and corresponding provisions of Wage Order 1-2001, for Violation of
23 California Labor Code sections 510 and 1198 (Unpaid Overtime), Violation of California Labor Code
24 sections 1194, 1197, and 1197.1 (Unpaid Minimum Wages), Violation of California Labor Code
25 section 2802 (Failure to Reimburse Business Expenses), and Violation of California Business &
26 Professions Code sections 17200 et seq., and any and all corresponding claims that could have been
27 brought under California or federal law based on the allegations in the Action including without
28 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.

21 The Released Claims also include all claims Plaintiff and Class Members may have against the
22 Released Parties relating to (i) the payment and allocation of attorneys’ fees and costs to Class Counsel
23 pursuant to the Settlement Agreement and (ii) the payment of the Class Representative Incentive
24 Award pursuant to the Settlement Agreement. It is the intent of the Parties that the judgment entered
25 by the Court upon final approval of the Settlement shall have res judicata (i.e., preclusive) effect and
26 be final and binding upon all Class Members who have not expressly requested to be excluded from
27 the Settlement. The Released Claims include claims about which the Plaintiff and the Class Members
28 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

1 the Released Parties relating to (i) the payment and allocation of attorneys' fees, costs and expenses,
2 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.

3 **B. Payment to Claimants**

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

7 **V. FINAL SETTLEMENT APPROVAL HEARING**

8 The Court will hold a hearing in [DEPARTMENT NUMBER] of the California Superior
9 Court, County of Riverside at [ADDRESS], on [DATE] at [TIME] to determine whether the
10 Settlement should be finally approved as fair, reasonable, and adequate. The Court will also be asked
11 to approve Class Counsel's request for attorneys' fees and reimbursement of costs and expenses and
12 the Incentive Award to be paid to the Class Representative. Class Counsel's application for attorneys'
13 fees and reimbursement of expenses will be on file with the Court before this hearing, and will be
14 available for review.

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

22 **SETTLEMENT ADMINISTRATOR :**
23 Phoenix Class Action Administration Solutions
24 [ADDRESS]
25 [PHONE NUMBER]

26 **CLASS COUNSEL:**
27 Kevin Mahoney, Esq.
28 Joshua D. Klein, Esq.
Anna Salusky Mahoney, Esq.
MAHONEY LAW GROUP, APC
249 E. Ocean Boulevard, Suite 814
Long Beach, CA 90802

29 **VI. ADDITIONAL INFORMATION**

30 The above is a summary of the basic terms of the Settlement. For the precise terms and
31 conditions of the Settlement, you are referred to the "Revised Stipulation and Settlement Agreement
32 of Class Action Claims", which is attached as Exhibit "A" to the Declaration of Kevin Mahoney filed
33 on [INSERT DATE] with the Superior Court of California, County of Riverside. The case name is:
34 *Cesar Becerra Buenrostro v. Contain-A-Way, Inc. dba Nexcycle, Strategic Material, Inc. dba Western*
35 *Strategic Materials, Inc.*, Case No. RIC1507132) (Note: The case was formerly captioned as *Jorge*
36 *Sanchez* versus Defendants.). The pleadings and other records in this litigation including the
37 Settlement Agreement and the motions for approval, may be examined at any time during regular
38 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)

1 to request copies of court-filed documents related to the Settlement. You can also access the
2 Settlement and related documents via the Court's website at
3 <https://www.riverside.courts.ca.gov/Divisions/Civil/civil.php> . If the Court grants final approval of
4 this Settlement, a copy of the Court's Final Approval Order and Judgement shall be posted on the
5 Settlement Administrator's website after the Final Approval Hearing at: [WEBSITE ADDRESS TO
6 BE INSERTED BY SETTLEMENT ADMINISTRATOR].

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

EXHIBIT A1

REQUEST FOR EXCLUSION FORM

*Cesar Becerra Buenrostro, as an individual and on behalf of all similarly situated employees v.
Contain-A-Way, Inc. dba Nexcycle, a California corporation, Strategic Materials, Inc. dba
Western Strategic Materials, Inc.,*

Superior Court of California, County of Riverside, Case No. RIC1507132

INSTRUCTIONS: IF YOU DO NOT WANT TO PARTICIPATE IN THE SETTLEMENT AND YOU WANT TO PRESERVE YOUR INDIVIDUAL CLAIMS, COMPLETE THIS FORM AND RETURN IT VIA FIRST-CLASS MAIL OR FAX TO:

Phoenix Class Action Administration Solutions
[ADDRESS]
[FAX NUMBER]

THIS DOCUMENT MUST BE POSTMARKED OR FAX DATE STAMPED NO LATER THAN [DATE]

I wish to exclude myself from the Settlement described in the Notice of Class Action Settlement, which I have received and read. I wish to be excluded from the Settlement Class. I do **NOT** wish to participate in the proposed Settlement. **By excluding myself, I understand that I will NOT receive any money from the Settlement.**

Dated: _____

(signature)

(typed or printed name)

(address)

(telephone number)

Last 4 Digits of Social Security Number or Individual Taxpayer Identification Number or Employee ID Number: _____

EXHIBIT A2

NOTICE OF OBJECTION FORM

Cesar Becerra Buenrostro, as an individual and on behalf of all similarly situated employees v. Contain-A-Way, Inc. dba Nexcycle, a California corporation, Strategic Materials, Inc. dba Western Strategic Materials, Inc.,

Superior Court of California, County of Riverside, Case No. RIC1507132

INSTRUCTIONS: **IF YOU DISAGREE WITH THE PROPOSED SETTLEMENT, YOU MAY SUBMIT A WRITTEN OBJECTION BY COMPLETING THIS FORM AND RETURNING IT VIA FIRST-CLASS U.S. MAIL OR FAX WITH A WRITTEN STATEMENT EXPLAINING THE NATURE OF, AND BASIS FOR, YOUR OBJECTION TO:**

Phoenix Class Action Administration Solutions
[ADDRESS]
[FAX NUMBER]

THIS DOCUMENT MUST BE POSTMARKED OR FAX DATE STAMPED NO LATER THAN [DATE]

I wish to object to the Settlement described in the Notice of Class Action Settlement, which I have received and read. In the space provided below, I have explained why I object to the Settlement. I understand that I can attach additional pages if extra space is required. **I understand that if the Court overrules my objection, I will be bound by the Settlement and release the claims described in the Notice of Class Action Settlement and Settlement Agreement.**

BASIS FOR OBJECTION

EXHIBIT B

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

JORGE SANCHEZ as an individual and on behalf of all similarly situated employees, Plaintiff,

v.

CONTAIN-A-WAY, INC. dba NEXCYCLE, a California corporation, STRATEGIC MATERIAL, INC. dba WESTERN STRATEGIC MATERIALS, INC., a Delaware corporation, and DOES 1 through 50, inclusive, Defendants.

Case No. RIC 1507132

[PROPOSED] PRELIMINARY APPROVAL ORDER

First Amended Complaint Filed: June 15, 2015

1 WHEREAS, Plaintiff CESAR BERCERRA BUENROSTRO (“Plaintiff”) and Defendants
2 STRATEGIC MATERIALS, INC. and CONTAIN-A-WAY, INC. dba NEXCYCLE (collectively
3 “Defendants”) have applied to this Court for an order preliminarily approving the settlement of this
4 Action in accordance with a Second Revised Joint Stipulation and Settlement of Class Action Claims
5 (the “Settlement” or “Settlement Agreement”), which, together with the exhibits thereto, sets forth the
6 terms and conditions for a proposed settlement and dismissal of the pending Action with prejudice
7 upon the terms and conditions set forth therein; and

8 WHEREAS, the Court has read and considered the Plaintiffs’ Second Renewed Motion for
9 Preliminary Approval, the Parties’ Settlement Agreement and the exhibits and declarations thereto;

10 NOW, THEREFORE, IT IS HEREBY ORDERED:

11 1. This Order incorporates by reference the definitions in the Settlement Agreement, and
12 all terms defined therein shall have the same meaning in this Order as set forth in the Settlement
13 Agreement.

14 2. The Court has jurisdiction over the Action and all acts within the Action, and over all
15 the Parties to the Action, including Plaintiffs, Class Members, and Defendants.

16 3. It appears to the Court on a preliminary basis that the Settlement is fair, adequate and
17 reasonable. Indeed, the Court recognizes the significant value of the monetary recovery available to
18 all Class Members and finds that such available recovery is fair, adequate and reasonable when
19 balanced against further litigation related to liability and damages issues. It appears that the Parties
20 have conducted extensive and costly investigation, formal and informal discovery, research and
21 litigation such that Class Counsel and Defense Counsel are able to reasonably evaluate their respective
22 positions at this time. It further appears to the Court that the proposed Settlement, at this time, will
23 avoid substantial additional costs by all Parties, as well as avoid the risks and delay inherent to further
24 prosecution of the Action and potential appeals. It also appears that the Parties reached the Settlement
25 as the result of intensive, serious and non-collusive, arms-length negotiations facilitated by an
26 experienced and neutral mediator. Thus, the Court finds on a preliminary basis that the Settlement
27 Agreement appears to be within the range of reasonableness of a settlement that could ultimately be
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1 given final approval by this Court. Accordingly, the Motion for Preliminary Approval of Class Action
2 Settlement is hereby **GRANTED**.

3 4. The rights of any potential dissenters to the proposed Settlement are adequately
4 protected in that they may exclude themselves from the Release of Claims of the Released Parties, or
5 they may object to the Settlement of the Class Claims and appear before this Court. However, to do
6 so they must follow the procedures outlined in the Settlement Agreement and Notice of Settlement.

7 5. The Court approves, as to form and content, the proposed Notice of Settlement to Class
8 Members (Exhibit 1 to this Order) Form, Request for Exclusion (Exhibit 2 to this Order), and Notice
9 of Objection Form (Exhibit 3 to this Order), and finds that the method selected for communicating the
10 preliminary approval of the Settlement to Class Members and their options for responding is the best
11 notice practicable under the circumstances, constitutes due and sufficient notice to all persons entitled
12 to notice, and therefore satisfies due process.

13 6. The Court hereby appoints Phoenix Class Action Administration Solutions as the
14 Settlement Administrator and orders that it carry out all Settlement Administrator duties pursuant to
15 the terms in the Settlement Agreement. If there are any changes to the date and time of the Final
16 Approval Hearing, the Settlement Administrator shall provide notice to any objecting party.

17 7. No more than five (5) business days after the entry of the Preliminary Approval Order,
18 Defendants shall provide the Settlement Administrator with the Class Information for purposes of
19 mailing Notice Packets to Settlement Class Members. The "Notice Packet" shall include the Notice
20 of Class Action Settlement, Request for Exclusion Form, and Notice of Objection Form (substantially
21 in the form attached to this Order as Exhibits 1-3), and a self-addressed, stamped envelope for return
22 to the Settlement Administrator. All documents in the Notice Packet shall be translated into Spanish
23 by a certified translator.

24 8. As of the date of this Order, and to reflect the true name of the sole named Plaintiff in
25 this action and avoid confusion, this Action shall be re-captioned as:
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1 CESAR BECERRA BUENROSTRO as an individual
2 and on behalf of all similarly situated employees,

3 Plaintiff,

4 v.

5 CONTAIN-A-WAY, INC. dba NEXCYCLE, a
6 California corporation, STRATEGIC MATERIAL,
7 INC. dba WESTERN STRATEGIC MATERIALS,
8 INC., a Delaware corporation, and DOES 1 through
9 50, inclusive,

10 Defendants.

11 9. No more than five (5) business days after the entry of this Preliminary Approval Order,
12 Defendants shall provide the Settlement Administrator with the Class Information for purposes of
13 mailing Notice Packets to Settlement Class Members.

14 10. Upon receipt of the Class Information, the Settlement Administrator will perform a
15 search on the National Change of Address database to update the Settlement Class Members'
16 addresses. No more than ten (10) business days after receiving the Class Information from Defendant
17 as provided herein, the Settlement Administrator shall mail copies of the Notice Packet to all
18 Settlement Class Members by First Class U.S. Mail. The Notice of Class Action Settlement, Request
19 for Exclusion, and Notice of Objection Form in the Notice Packet shall specify that they should be
20 returned to the Settlement Administrator and not to the Court. The Settlement Administrator shall file
21 a declaration concurrently with the filing of the motion for final approval, specifying the number of
22 Settlement Class Members who submitted Requests for Exclusion and Notice of Objection forms
23 received. The Settlement Administrator shall exercise its best judgment to determine the current
24 mailing address for each Settlement Class Member. The address identified by the Settlement
25 Administrator as the current mailing address shall be presumed to be the best mailing address for each
26 Settlement Class Member. It will be conclusively presumed that, if an envelope mailed to a Settlement
27 Class Member has not been returned as undeliverable within thirty (30) calendar days of the mailing,
28 the Settlement Class Member received the Notice Package.

11. The Settlement is non-reversionary. Thus, if the Settlement is finally approved and
becomes Effective, Defendants will pay the entire Gross Maximum Settlement Amount plus

1 employer-side taxes due on Individual Settlement Awards pursuant to the terms and timeline set forth
2 in this Agreement. Settlement Class Members who do not submit a timely Request for Exclusion shall
3 participate in the Settlement and receive an Individual Settlement Award.

4 12. Settlement Class Members who wish to exclude themselves from the Settlement must
5 submit a Request for Exclusion by the Opt Out/Objection Deadline. The Request for Exclusion: (1)
6 must contain the name, address, telephone number and the last four digits of the Social Security or
7 Individual Taxpayer Identification number or Employee ID number of the person requesting
8 exclusion, (2) must be signed by the Class Member; (3) must state in substance: “I wish to exclude
9 myself from the Settlement in *Cesar Becerra Buenrostro, as an individual and on behalf of all*
10 *similarly situated employees v. Contain-A-Way, Inc. dba Nexcycle, a California corporation, Strategic*
11 *Materials, Inc. dba Western Strategic Materials, Inc., a Delaware corporation, and DOES 1 through*
12 *50, inclusive*, in the California Superior Court, County of Riverside, Case No. RIC1507132 (filed June
13 15, 2015); and (4) must be postmarked or fax stamped by the Opt Out/Objection Deadline and returned
14 to the Settlement Administrator (and not the Court) at the specified address or fax telephone number.
15 If the Request for Exclusion does not contain the information listed in (1)-(3), it will not be deemed
16 valid for exclusion from this Settlement. The date of the postmark on the return mailing envelope or
17 fax stamp on the Request for Exclusion shall be the exclusive means used to determine whether a
18 Request for Exclusion has been timely submitted. Any Settlement Class Member who is excluded
19 from the Settlement Class will not be bound by the terms of the Settlement or have any right to object,
20 appeal or comment thereon. Settlement Class Members who receive a Notice Packet but fail to submit
21 a valid and timely Request for Exclusion on or before the Opt Out/Objection Deadline shall be bound
22 by all terms of the Settlement and any Final Judgment entered in this Action if the Settlement is
23 approved by the Court. No later than fourteen (14) calendar days after the Opt Out/Objection
24 Deadline, the Settlement Administrator shall provide Counsel for Defendants with a complete list of
25 all Class Members who have timely submitted valid Requests for Exclusion, including their name and
26 social security number or Tax Identification Number. Class Counsel shall be provided with a summary
27 report that includes only the number of Requests for Exclusion received by the Settlement
28 Administrator.

1 13. Settlement Class Members who wish to object to the Settlement must submit their
2 written statement of objection (“Notice of Objection”) to the Settlement Administrator by the Opt
3 Out/Objection Deadline. The date of filing and the postmark date on the copies mailed to counsel for
4 the Parties shall be deemed the exclusive means for determining that a Notice of Objection was filed
5 and served timely. The Notice of Objection must be signed by the Settlement Class Member and state:
6 (1) the full name of the Settlement Class Member; (2) the last four digits of the Settlement Class
7 Member’s Social Security number or Individual Taxpayer Identification Number, and/or the
8 Employee ID number; and (3) the basis for the objection. Settlement Class Members do not need to
9 appear at the Final Approval Hearing to submit a written Notice of Objection. Settlement Class
10 Members may also choose to appear at the Final Approval Hearing to object to the Settlement without
11 submitting a Notice of Objection or in addition to submitting a Notice of Objection. Settlement Class
12 Members who fail to object by either failing to submit a timely Notice of Objection in the manner
13 specified above or failing to appear at the Final Approval Hearing to object shall waive any objections
14 (whether by appeal or otherwise) to the Settlement.

15 14. The Final Approval Hearing shall be held on _____ at _____ m., in
16 the Riverside County Superior Court, Department 6, located at 4050 Main Street, Riverside, CA
17 92501, to consider the fairness, adequacy and reasonableness of the proposed Settlement, including
18 without limitation the: Class Counsel Fees and Costs award, the Incentive Award for Plaintiff Cesar
19 Becerra Buenrostro, Claims Administration Costs, and Individual Settlement Awards to Participating
20 Settlement Class Members.

21 15. This Settlement is not a concession or admission and shall not be used by Plaintiff
22 against Defendants or any of the Released Parties as an admission or indication with respect to any
23 claim of any fault or admission by Defendants or any of the Released Parties. If for any reason the
24 Court does not execute and file a Final Approval Order, or if the Effective Date, as defined in the
25 Settlement Agreement, does not occur for any reason whatsoever, the Settlement Agreement and all
26 evidence and proceedings had in connection therewith shall be without prejudice to the *status quo ante*
27 rights of the Parties to the Action, as more specifically set forth in the Settlement Agreement, and this
28 Preliminary Approval Order shall be rendered null and void and shall be vacated.

1 16. Pending further orders of this Court, all proceedings in this matter except those
2 contemplated in this Preliminary Approval Order and in the Settlement Agreement are stayed.

3 17. The Court expressly reserves the right to adjourn or continue the Final Approval
4 Hearing from time to time without further notice to Class Members.

5 **IT IS SO ORDERED.**

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7 Dated: _____

8 HONORABLE SUNSHINE SYKES
9 JUDGE OF THE SUPERIOR COURT
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EXHIBIT C

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

CESAR BECERRA BUENROSTRO as an individual and on behalf of all similarly situated employees,
Plaintiff,

v.

CONTAIN-A-WAY, INC. dba NEXCYCLE, a California corporation, STRATEGIC MATERIAL, INC. dba WESTERN STRATEGIC MATERIALS, INC., a Delaware corporation, and DOES 1 through 50, inclusive,
Defendants.

Case No. RIC 1507132

[PROPOSED] FINAL APPROVAL ORDER

First Amended Complaint Filed: June 15, 2015

1 WHEREAS, this matter has come before the Court for hearing pursuant to the Preliminary
2 Approval Order dated [REDACTED], for final approval of the Settlement as set forth in the Second
3 Revised Joint Stipulation and Settlement of Class Action Claims (the “Settlement” or “Settlement
4 Agreement”) filed on [INSERT DATE] as Exhibit “A” to the Declaration of Kevin Mahoney, and the
5 Court having considered all papers filed and the proceedings had and otherwise being fully informed,

6 **THE COURT HEREBY MAKES THE FOLLOWING DETERMINATIONS AND ORDERS:**

7 1. This Order incorporates by reference the definitions in the Settlement Agreement and
8 all terms defined therein shall have the same meaning in this Order as set forth in the Settlement
9 Agreement.

10 2. This Court has jurisdiction over the subject matter of this litigation and over all Parties
11 to this litigation, including the Plaintiffs and Class Members.

12 3. Pursuant to the Preliminary Approval Order, the appointed Settlement Administrator,
13 Phoenix Class Action Administration Solutions, mailed a Notice of Settlement to all known Class
14 Members by First Class U.S. Mail. The Notice of Settlement fairly and adequately informed Class
15 Members of the terms of the proposed Settlement and the benefits available to Class Members
16 thereunder. The Notice of Settlement further informed Class Members of the pendency of the Action,
17 of the proposed Settlement, of Class Members’ right to receive their share of the Settlement (if
18 approved), of the scope and effect of the Released Claims, of the preliminary Court approval of the
19 proposed Settlement, of exclusion and objection timing and procedures, of the date of the Final
20 Approval Hearing, and of the right to file documentation in support of or in opposition to the
21 Settlement and to appear in connection with the Final Approval Hearing. Class Members had adequate
22 time to consider this information and to use the procedures identified in the Notice. The Court finds
23 and determines that this notice procedure afforded adequate protections to Class Members and
24 provides the basis for the Court to make an informed decision regarding approval of the Settlement
25 based on the responses of Class Members. The Court finds and determines that the Notice provided
26 in the Action was the best notice practicable, which satisfied the requirements of law and due process.

1 4. In response to the Notice of Settlement, [REDACTED] Class Members objected to the Settlement
2 and [REDACTED] Class Members submitted a Request for Exclusion from the Settlement. The names of the
3 Class Member who excluded themselves from the Settlement are: [INSERT NAMES].

4 5. The Court finds that the Settlement offers significant monetary recovery to Class
5 Members and finds that such recovery is fair, adequate and reasonable when balanced against further
6 litigation related to liability and damages issues. The Court further finds that the Parties have
7 conducted extensive and costly investigation, formal and informal discovery, research and litigation
8 such that Class Counsel and Defense Counsel are able to reasonably evaluate their respective positions
9 at this time. The Court finds that the proposed Settlement, at this time, will avoid substantial additional
10 costs by all Parties, as well as avoid the risks and delay inherent to further prosecution of the Action.
11 The Court further finds that the Parties reached the Settlement as the result of intensive, serious and
12 non-collusive, arms-length negotiations. Thus, the Court approves the Settlement set forth in the
13 Settlement Agreement and finds that the Settlement is, in all respects, fair, adequate and reasonable
14 and directs the Parties to effectuate the Settlement according to its terms.

15 The Court hereby orders the Settlement Administrator to distribute the Individual Settlement
16 Award payments to Settlement Class Members who did not submit a timely Request for Exclusion in
17 accordance with the provisions of the Settlement Agreement. The envelopes transmitting the
18 Settlement Award checks shall include the notation, "YOUR CLASS ACTION SETTLEMENT
19 CHECK IS ENCLOSED" and shall remain valid for a period of 120 calendar days. The Settlement
20 Administrator shall mail a reminder postcard to any class member whose settlement distribution check
21 has not been cashed within 30 days after the date of mailing. Any funds from checks/Individual
22 Settlement Awards that remain uncashed after the 120-day period after mailing will then be
23 redistributed by the Settlement Administrator to the Participating Class Members who cashed their
24 initial settlement checks on a prorated basis based on workweeks. More specifically, the funds from
25 these uncashed checks (if any) will go into a second payment fund, which the Settlement Administrator
26 - after the expiration of the 120-day period - will use to calculate second payment amounts based on
27 the amount of funds available. The Settlement Administrator will prorate these second payments
28 based on the number of full workweeks worked from June 15, 2011 through July 24, 2014 by the

1 Participating Class Members who cashed their initial settlement check. The Settlement Administrator
2 shall mail out these second payment checks using the same address as used for the first payment unless
3 the Administrator is informed of a change of address or receives notice of a forwarding address, in
4 which case the Administrator will mail the second check to the updated address.

5 6. All Participating Class Member, regardless of whether or not they cash their Individual
6 Settlement Award check(s), will be bound by the releases detailed in this Settlement Agreement.
7 Participating Class Members who receive a second payment check, will have an additional 90 days to
8 cash that second check. If they do not do so, the Settlement Administrator will pay funds from any
9 uncashed second settlement payments to Riverside Legal Aid, a nonprofit 501c(3) organization
10 dedicated to offering free legal services to low-income self-represented individuals who need legal
11 assistance.

12 7. For purposes of this Final Approval Order and this Settlement only, the Court hereby
13 confirms the appointment of Plaintiff Cesar Becerra Buenrostro as the class representative for the
14 Class Members. Further, the Court finally approves an Incentive Award to Plaintiff Cesar Becerra
15 Buenrostro only, as fair and reasonable, in the total amount of [REDACTED] Dollars (\$ [REDACTED]).
16 The Court hereby orders the Settlement Administrator to distribute the Incentive Award to the Plaintiff
17 Cesar Becerra Buenrostro in accordance with the provisions of the Settlement. No other individual or
18 former named Plaintiff in this action shall receive an Incentive Award.

19 8. For purposes of this Final Approval Order and this Settlement only, the Court hereby
20 confirms the appointment of The Mahoney Law Group as Class Counsel for the Class Members.
21 Further, the Court finally approves a Class Counsel Fees and Costs Award, as fair and reasonable, of
22 [REDACTED] Dollars (\$ [REDACTED]). Class Counsel's receipt of the Class Counsel
23 Fees and Costs Award shall fully satisfy all fees and litigation costs incurred by Class Counsel that
24 represented Plaintiffs and Class Members in the Action. Defendants' payment of the Court-awarded
25 attorneys' fees and costs shall constitute full satisfaction of Defendants' obligation to pay any person,
26 attorney, or law firm for attorneys' fees, costs, and expenses incurred on behalf of the Plaintiff and the
27 Class Members. The Court hereby orders the Settlement Administrator to distribute the Class Counsel
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1 Fees and Costs Award payment to Class Counsel in accordance with the provisions of the Settlement
2 Agreement.

3 9. For purposes of this Final Approval Order and this Settlement only, the Court hereby
4 confirms the appointment of Phoenix Class Action Administration Solutions as the Settlement
5 Administrator to administer the Settlement of this matter as more specifically set forth in the
6 Settlement Agreement and further finally approves Settlement Administration Costs, as fair and
7 reasonable, of [REDACTED] Dollars (\$ [REDACTED]).

8 10. As of the Effective Date, all Settlement Class Members who did not submit a timely
9 and valid Request for Exclusion shall be deemed to have released the Released Parties from all
10 Released Claims, as defined in the Settlement Agreement.

11 11. After Settlement administration has been completed in accordance with the Settlement
12 Agreement, the Parties shall file a report with this Court certifying compliance with the terms of the
13 Settlement.

14 12. Neither this Final Approval Order, the Settlement Agreement, nor any document
15 referred to herein, nor any action taken to carry out the Settlement Agreement is, may be construed as,
16 or may be used by Plaintiff as an admission by or against Defendants or any of the other Released
17 Parties of any fault, wrongdoing or liability whatsoever. Nor is this Final Approval Order a finding
18 of the validity of any claims in the Action or of any wrongdoing by Defendants or any of the other
19 Released Parties. The entering into or carrying out of the Settlement Agreement, and any negotiations
20 or proceedings related thereto, shall not in any event be construed as an admission or concession with
21 regard to the denials or defenses by Defendants or any of the other Released Parties and shall not be
22 offered in evidence by Plaintiff against Defendants or any of the Released Parties in any action or
23 proceeding in any court, administrative agency or other tribunal for any purpose whatsoever other than
24 to enforce the provisions of this Final Approval Order, the Settlement Agreement, or any related
25 agreement or release. Notwithstanding these restrictions, any of the Released Parties may file in the
26 Action or in any other proceeding this Final Approval Order, the Settlement Agreement, or any other
27 papers and records on file in the Action as evidence of the Settlement and to support a defense of res
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1 judicata, collateral estoppel, release, waiver or other theory of claim preclusion, issue preclusion or
2 similar defense.

3 13. If the Settlement does not become final and effective in accordance with the terms of
4 the Settlement Agreement, resulting in the return and/or retention of the Settlement funds to
5 Defendants consistent with the terms of the Settlement, then this Final Approval Order and all orders
6 entered in connection herewith, shall be rendered null and void and shall be vacated.

7 14. The Court hereby enters judgment, with prejudice, for the reasons set forth above, and
8 in accordance with the terms set forth in the Settlement Agreement. The Settlement Administrator
9 shall provide notice of this judgement by posting a copy of this order on the website specified in the
10 Class Notice.

11 15. Without affecting the finality of this Final Approval Order in any way, this Court
12 hereby retains continuing jurisdiction over the interpretation, implementation and enforcement of the
13 Settlement and all orders and judgments entered in connection therewith.

14 16. A Final Report (Nonappearance) Hearing is hereby set for [INSERT DATE]. A report
15 pursuant to Code of Civil Procedure section 384, subdivision (b), shall be filed within 5 court days of
16 the nonappearance hearing and shall be in the form of a declaration from the Settlement Administrator
17 or other declarant with personal knowledge of the facts. The report shall be in the form of a declaration
18 from the Settlement Administrator or other declarant with personal knowledge of the facts, and to
19 describe (i) the date the checks were mailed, (ii) the total number of checks mailed to class members,
20 (iii) the average amount of those checks, (iv) the number of checks that remained uncashed and were
21 redistributed, (v) the total value of those uncashed checks, (vi) the average amount of the uncashed
22 checks, and (vii) the nature and date of the disposition of those unclaimed funds. If applicable, the
23 proposed amended judgment shall require counsel for Plaintiff to send a copy of any amended
24 judgment which distributes funds to a *cy pres* recipient to the Judicial Council in compliance with
25 CCP Section 384.5. Further the correspondence by counsel shall include a cover letter providing the
26 Judicial Council with the information required pursuant to Government Code Section 68520. Proof of
27 Service shall be filed with the court within 15 days of the filing of the judgment.

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IT IS SO ORDERED.

Dated: _____

HONORABLE SUNSHINE SYKES
JUDGE OF THE SUPERIOR COURT