

1 Kevin Mahoney (SBN: 235367)
2 kmahoney@mahoney-law.net
3 **MAHONEY LAW GROUP, APC**
4 249 E. Ocean Blvd., Ste. 814
5 Long Beach, CA 90802
6 Telephone: (562) 590-5550
7 Facsimile: (562) 590-8400

8 Attorneys for Plaintiff CESAR BECERRA, as an
9 individual and on behalf of all employees similarly
10 situated

11 **SUPERIOR COURT OF CALIFORNIA**
12 **COUNTY OF RIVERSIDE**

13 JORGE SANCHEZ as an individual and on
14 behalf of all similarly situated employees

15 Plaintiff,

16 v.

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

23 Defendant.

Case No. RIC1507132

**AMENDED ~~PROPOSED~~ FINAL
APPROVAL ORDER AND JUDGEMENT**

Assigned for all purposes to:
Hon. Sunshine Sykes, Dept. 6

Date: October 25, 2021
Time: 8:30 a.m.
Dept. 6

Complaint Filed: June 15, 2015
Trial Date: No Trial Date Set

Complaint Filed: June 15, 2015

1 **AMENDED [PROPOSED] FINAL APPROVAL ORDER AND JUDGMENT**

2 WHEREAS, this matter has come before the Court for hearing pursuant to the Preliminary
3 Approval Order dated April 9, 2021 for final approval of the Settlement as set forth in the Second
4 Revised Joint Stipulation and Settlement of Class Action Claims (the “Settlement” or “Settlement
5 Agreement”) filed on February 10, 2021 as Exhibit “A” to the Declaration of Kevin Mahoney, and the
6 Court having considered all papers filed and the proceedings had and otherwise being fully informed,
7 **THE COURT HEREBY MAKES THE FOLLOWING DETERMINATIONS AND ORDERS:**

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

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

13 3. Pursuant to the Preliminary Approval Order, the appointed Settlement Administrator,
14 Phoenix Class Action Administration Solutions, mailed a Notice of Settlement to all known Class
15 Members by First Class U.S. Mail. The Notice of Settlement fairly and adequately informed Class
16 Members of the terms of the proposed Settlement and the benefits available to Class Members
17 thereunder. The Notice of Settlement further informed Class Members of the pendency of the Action,
18 of the proposed Settlement, of Class Members’ right to receive their share of the Settlement (if
19 approved), of the scope and effect of the Released Claims, of the preliminary Court approval of the
20 proposed Settlement, of exclusion and objection timing and procedures, of the date of the Final
21 Approval Hearing, and of the right to file documentation in support of or in opposition to the
22 Settlement and to appear in connection with the Final Approval Hearing. Class Members had adequate
23 time to consider this information and to use the procedures identified in the Notice. The Court finds
24 and determines that this notice procedure afforded adequate protections to Class Members and
25 provides the basis for the Court to make an informed decision regarding approval of the Settlement
26 based on the responses of Class Members. The Court finds and determines that the Notice provided
27 in the Action was the best notice practicable, which satisfied the requirements of law and due process.
28

1 4. In response to the Notice of Settlement, zero (0) Class Members objected to the
2 Settlement and zero (0) Class Members submitted a Request for Exclusion from the Settlement.

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

14 6. The Court hereby orders the Settlement Administrator to distribute the Individual
15 Settlement Award payments to Settlement Class Members who did not submit a timely Request for
16 Exclusion in accordance with the provisions of the Settlement Agreement. The envelopes transmitting
17 the Settlement Award checks shall include the notation, "YOUR CLASS ACTION SETTLEMENT
18 CHECK IS ENCLOSED" and shall remain valid for a period of 120 calendar days. The Settlement
19 Administrator shall mail a reminder postcard to any class member whose settlement distribution check
20 has not been negotiated or cashed within sixty (60) days after the date of mailing. Any settlement
21 check distributed shall be negotiable for ninety (90) days from the date of mailing. Any funds from
22 checks/Individual Settlement Awards that remain uncashed after the 120-day period after mailing will
23 then be redistributed by the Settlement Administrator to the Participating Class Members who cashed
24 their initial settlement checks on a prorated basis based on workweeks. More specifically, the funds
25 from these uncashed checks (if any) will go into a second payment fund, which the Settlement
26 Administrator - after the expiration of the 120-day period - will use to calculate second payment
27 amounts based on the amount of funds available. The Settlement Administrator will prorate these
28 second payments based on the number of full workweeks worked from June 15, 2011 through July 24,

1 2014 by the Participating Class Members who cashed their initial settlement check. The Settlement
2 Administrator shall mail out these second payment checks using the same address as used for the first
3 payment unless the Administrator is informed of a change of address or receives notice of a forwarding
4 address, in which case the Administrator will mail the second check to the updated address.

5 7. The Settlement Administrator shall arrange with Defendant to have their payments
6 delivered to their employees at the place of their employment if (i) any of the Participating Class
7 Members are current employees of the Defendant, and (ii) the payment mailed to those employees is
8 being returned as undeliverable and the Settlement Administrator is unable to locate a valid mailing
9 address.

10 8. All Participating Class Members, regardless of whether or not they cash their Individual
11 Settlement Award check(s), will be bound by the releases detailed in this Settlement Agreement.
12 Participating Class Members who receive a second payment check, will have an additional 90 days to
13 cash that second check. If they do not do so, the Settlement Administrator will pay funds from any
14 uncashed second settlement payments to Riverside Legal Aid, 4129 Main Street, Suite 101, Riverside,
15 CA 92501, a nonprofit 501c(3) organization dedicated to offering free legal services to low-income
16 self-represented individuals who need legal assistance.

17 9. For purposes of this Final Approval Order and this Settlement only, the Court hereby
18 confirms the appointment of Plaintiff Cesar Becerra Buenrostro as the class representative for the
19 Class Members. Further, the Court finally approves an Incentive Award to Plaintiff Cesar Becerra
20 Buenrostro only, as fair and reasonable, in the total amount of seven thousand five hundred dollars
21 (\$7,500.00). The Court hereby orders the Settlement Administrator to distribute the Incentive Award
22 to the Plaintiff Cesar Becerra Buenrostro in accordance with the provisions of the Settlement. No
23 other individual or former named Plaintiff in this action shall receive an Incentive Award.

24 10. For purposes of this Final Approval Order and this Settlement only, the Court hereby
25 confirms the appointment of The Mahoney Law Group as Class Counsel for the Class Members.
26 Further, the Court finally approves a Class Counsel Fees and Costs Award, as fair and reasonable, of
27 one hundred eighty thousand dollars (\$180,000.00) for attorneys' fees and eighty-three thousand six
28 hundred seventeen dollars and ninety cents (\$83,617.90) for costs. Class Counsel's receipt of the

1 Class Counsel Fees and Costs Award shall fully satisfy all fees and litigation costs incurred by Class
2 Counsel that represented Plaintiffs and Class Members in the Action. Defendants' payment of the
3 Court-awarded attorneys' fees and costs shall constitute full satisfaction of Defendants' obligation to
4 pay any person, attorney, or law firm for attorneys' fees, costs, and expenses incurred on behalf of the
5 Plaintiff and the Class Members. The Court hereby orders the Settlement Administrator to distribute
6 the Class Counsel Fees and Costs Award payment to Class Counsel in accordance with the provisions
7 of the Settlement Agreement.

8 11. For purposes of this Final Approval Order and this Settlement only, the Court hereby
9 confirms the appointment of Phoenix Class Action Administration Solutions as the Settlement
10 Administrator to administer the Settlement of this matter as more specifically set forth in the
11 Settlement Agreement and further finally approves Settlement Administration Costs, as fair and
12 reasonable, of seven thousand five hundred dollars (\$7,500.00).

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

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

19 14. Neither this Final Approval Order, the Settlement Agreement, nor any document
20 referred to herein, nor any action taken to carry out the Settlement Agreement is, may be construed as,
21 or may be used by Plaintiff as an admission by or against Defendants or any of the other Released
22 Parties of any fault, wrongdoing or liability whatsoever. Nor is this Final Approval Order a finding
23 of the validity of any claims in the Action or of any wrongdoing by Defendants or any of the other
24 Released Parties. The entering into or carrying out of the Settlement Agreement, and any negotiations
25 or proceedings related thereto, shall not in any event be construed as an admission or concession with
26 regard to the denials or defenses by Defendants or any of the other Released Parties and shall not be
27 offered in evidence by Plaintiff against Defendants or any of the Released Parties in any action or
28 proceeding in any court, administrative agency or other tribunal for any purpose whatsoever other than

1 to enforce the provisions of this Final Approval Order, the Settlement Agreement, or any related
2 agreement or release. Notwithstanding these restrictions, any of the Released Parties may file in the
3 Action or in any other proceeding this Final Approval Order, the Settlement Agreement, or any other
4 papers and records on file in the Action as evidence of the Settlement and to support a defense of res
5 judicata, collateral estoppel, release, waiver or other theory of claim preclusion, issue preclusion or
6 similar defense.

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

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

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

18 18. A Final Report (Nonappearance) Hearing is hereby set for May 25, 2022 (or
19 _____, a date more convenient for the Court). A report pursuant to Code of Civil
20 Procedure section 384, subdivision (b), shall be filed within 5 court days of the nonappearance hearing
21 and shall be in the form of a declaration from the Settlement Administrator or other declarant with
22 personal knowledge of the facts. The report shall be in the form of a declaration from the Settlement
23 Administrator or other declarant with personal knowledge of the facts, and to describe (i) the date the
24 checks were mailed, (ii) the total number of checks mailed to class members, (iii) the average amount
25 of those checks, (iv) the number of checks that remained uncashed and were redistributed, (v) the total
26 value of those uncashed checks, (vi) the average amount of the uncashed checks, and (vii) the nature
27 and date of the disposition of those unclaimed funds. If applicable, the proposed amended judgment
28 shall require counsel for Plaintiff to send a copy of any amended judgment which distributes funds to

1 a *cy pres* recipient to the Judicial Council in compliance with CCP Section 384.5. Further the
2 correspondence by counsel shall include a cover letter providing the Judicial Council with the
3 information required pursuant to Government Code Section 68520. Proof of Service shall be filed with
4 the court within 15 days of the filing of the judgment.

5 19. This document shall constitute a Judgment for purposes of California Rule of Court
6 3.769(h).

8 **IT IS SO ORDERED.**

9 ~~FBI DECF~~

10 Dated: ~~10/15/2021~~



11 _____
12 HONORABLE SUNSHINE SYKES
13 JUDGE OF THE SUPERIOR COURT
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE

Code of Civ. Proc. § 1013a, subd. (3)

STATE OF CALIFORNIA, COUNTY OF RIVERSIDE

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen (18) and not a party to the within entitled action. My place of business is 249 East Ocean Boulevard, Suite 814, Long Beach, CA 90802.

On **October 12, 2021**, I served true copies of the foregoing documents described as: **AMENDED [PROPOSED] FINAL APPROVAL ORDER AND JUDGMENT**. The documents listed above were served on the interested parties in this action, addressed as follows:

Joshua Levine, Esq. LITTLER MENDELSON, P.C. 501 W. Broadway, Ste. 900 San Diego, CA 92101	Attorney for Defendant STRATEGIC MATERIALS, INC. Telephone: (619) 515-1841 Facsimile: (619) 232-4302 Email: JDLevine@littler.com
Lawrence H. Stone, Esq. Steve Zimmerman, Esq. Jackson Lewis, P.C. 725 S. Figueroa Street, Ste. 2500 Los Angeles, CA 90017	Attorney for Defendant CONTAIN-A-WAY, INC. Telephone: (213) 630-8238 Facsimile: (213) 689-0430 Emails: lawrence.stone@jacksonlewis.com steve.zimmerman@jacksonlewis.com

By e-mail: Based upon court order or an agreement of the parties to accept service by e-mail, I caused the document(s) to be sent to the persons at the electronic service addresses listed above from the email address rcastilla@mahoney-law.net. Within a reasonable time after the transmission, no error, electronic message or any other indication that the transmission was unsuccessful was received.

State: I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on **October 12, 2021**, at Long Beach, California.


Rosa Saucedo