

APR - 9 2021

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

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
THE 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
MATERIALS, INC. dba WESTERN
STRATEGIC MATERIALS, INC., a
Delaware corporation, and DOES 1 through
50, inclusive

Defendant.

Case No.: RIC 1507132

CLASS ACTION

**~~[PROPOSED]~~ ORDER GRANTING
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

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

Date: April 9, 2021
Time: 8:30 a.m.
Dept: 6
Res. Id: RES243202

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

~~**PROPOSED**~~ **ORDER**

On April 9, 2021, Plaintiff CESAR BECERRA’S (“Plaintiff”) Motion for Preliminary Approval of Class Action Settlement (“Motion”) came on for hearing in Department 6 of the Superior Court of California, County of Riverside. The Court, having fully reviewed the motion for preliminary approval of class action settlement; points and authorities and declaration filed in support; and Class Action Settlement (“Settlement”), including the Notice of Class Action Settlement and the Employment Information and Dispute Form (“Notice”); and in recognition of the Court’s duty to make a preliminary determination as to the reasonableness of any proposed Class Action settlement, and if preliminarily determined to be reasonable, to ensure proper notice is provided to Class Members in accordance with due process requirements, and to set a Final Fairness Hearing to consider the proposed Settlement as to the good faith, fairness, adequacy and reasonableness of any proposed settlement.

HEREBY MAKES THE FOLLOWING DETERMINATIONS AND ORDERS:

1. The Settlement (including the proposed award of attorneys’ fees, litigation costs, and “Enhancement” payment to the Class Representative) falls within the “range of reasonableness” and, therefore, the Court grants preliminary approval of the Settlement. Based on a review of the papers submitted by Plaintiff, the Court finds that the Settlement is the result of arms’-length negotiations conducted after Class Counsel had thoroughly and adequately investigated the claims and became familiar with the strengths and weaknesses of those claims.

2. The Court hereby grants conditional class certification for settlement purposes only. The proposed Class, defined below, satisfies the requirement of a class because the members are readily ascertainable and a well-defined community of interest exists in the questions of law and fact affecting the Parties. Pursuant to the Settlement, the Class is defined as: all individuals who worked for Defendants as “Site Attendants” at any time during the period from June 15, 2011 through July 24, 2014 (“Class Members”), who are not a party to a Dispute Resolution Agreement or other arbitration agreement with Defendants containing a class action waiver, and who do not submit a

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1 timely and valid Request for Exclusion pursuant to the procedures outlined in paragraph 3.7.1 of the
2 Settlement.

3 3. Kevin Mahoney and Joshua D. Klein of Mahoney Law Group, APC, are appointed
4 Class Counsel for settlement purposes.

5 4. Named Plaintiff Cesar Becerra is approved as Class Representative.

6 5. The proposed Class Notice ("Notice") and the procedures set forth in the Settlement
7 for providing notice to the Class are approved. (Attached as Exhibit A.)

8 6. The Notice fairly, plainly, accurately, and reasonably informs Class Members of: (1)
9 appropriate information about the nature of this Action, the definition of the Class, the identity of
10 Class Counsel, and the essential terms of the Settlement; (2) appropriate information about Plaintiff
11 and Class Counsel's forthcoming applications for the enhancement payment to the Class
12 Representative and the Class Counsel attorneys' fees and litigation costs award; (3) appropriate
13 information about how the proceeds of the Settlement will be distributed, and about Class Members'
14 rights to appear through counsel, if they desire; (4) appropriate information about how to object to
15 the Settlement, if a Class Member chooses to do so; (5) appropriate instructions as to how to obtain
16 additional information regarding this Action and the Settlement; and (6) where to access any
17 judgment entered in this case following final approval. The proposed plan for mailing the Notice, by
18 first class mail to the most current mailing address information from a National Change of Address
19 Search (NCOA) based on the most current information provided from Defendant's records is an
20 appropriate method, reasonably designed to reach all individuals who would be bound by the
21 Settlement.

22 7. Phoenix Settlement Administrators ("PSA") is appointed to serve as Settlement
23 Administrator. The PSA shall be responsible for preparing, printing, and mailing the Class Notice to
24 the Putative Class Members; keeping track of any objections or requests for exclusion from Class
25 Members; performing skip traces and remailing Notices and Individual Settlement Shares to Class
26 Members; calculating any and all payroll tax deductions as required by law; calculating each Class
27 Member's Individual Settlement Share; providing weekly status reports to Defendant's Counsel and
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1 Class Counsel, which is to include updates on any objections or requests for exclusion that have been
2 received; providing a due diligence declaration for submission to the Court prior to the Final Approval
3 hearing; mailing Individual Settlement Shares to Participating Class Members; calculating and
4 mailing the PAGA Payment to the LWDA; distributing the Attorney Fee Award and Cost Award to
5 Class Counsel; printing and providing Class Members and Plaintiff with W-2s and 1099 forms as
6 required under this Agreement and applicable law; providing a due diligence declaration for
7 submission to the Superior Court upon the completion of the Settlement; providing any funds
8 remaining in the QSF as a result of uncashed checks to Riverside Legal Aid.

9 8. PSA shall concurrently mail the "Request for Exclusion Form" along with the Class
10 Notice. Such "Request for Exclusion forms" shall be submitted to PSA rather than filed with the
11 Court. (Attached as Exhibit B.)

12 9. PSA shall concurrently mail the "Objection Form" concurrently with the Class Notice.
13 The Notice shall instruct Class Members that the "Objection Form" shall be submitted to PSA rather
14 than filed with the Court. (Attached as Exhibit C.)

15 10. Notices returned to the Claims Administrator, Phoenix Settlement Administrators as
16 non-deliverable during the forty-five (45) calendar-day Opt Out/Objection Deadline period shall be
17 resent to the forwarding address, if any, on the returned envelope, within ten (10) days of the PSA's
18 receipt of the returned Notice. A returned Notice will be forwarded only once per Class Member by
19 the Claims Administrator. If there is no forwarding address, the Claims Administrator will do a
20 computer search for a new address using the Class Member's social security number; this search will
21 be performed only once per Class Member by the PSA. PSA shall continue to attempt to locate
22 updated addresses for undeliverable notices for either two mailings or thirty (30) calendar days from
23 the original date of the mailing of the Notice of Class Action Settlement by PSA have elapsed,
24 whichever occurs first. Upon completion of these steps by PSA, Defendant and the Claims
25 Administrator shall be deemed to have satisfied their obligations to provide the Notice of Class Action
26 Settlement and Notice of Settlement Payment to the affected Class Member. The affected Class
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1 Member shall remain a member of the Class and shall be bound by all the terms of the Settlement
2 and the Court's Order and Final Judgment.

3 11. The Notice and the manner of distributing the Notice are approved.

4 12. The Parties are ordered to carry out the Settlement according to its terms.

5 13. Promptly following the entry of this order, the Claims Administrator will prepare final
6 versions of the Notice, incorporating into them the relevant dates and deadlines set forth in this order.

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

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

24 16. Settlement checks will remain valid for a period of 120 calendar days after they issue.
25 Any check not cashed within 120 calendar days will be void. Participating Class Members who cash
26 their first settlement check and receive a second settlement check (if there are funds from uncashed
27 first settlement checks to be redistributed) will have an additional 90 days to cash that second check
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1 before that second check becomes void. Within twenty (20) calendar days after the expiration of the
2 180-day period, the Settlement Administrator will pay the amount of the Individual Settlement Share
3 to Riverside Legal Aid.

4 17. A final report shall be filed with the Court after the Settlement Administrator
5 determines the total amounts paid, and the total of any payments that were not cashed. Thirty (30)
6 days after the final report is filed with the Court, the Parties shall prepare and file a stipulation and
7 proposed order along with a Proposed Amended Judgment.

8 18. PSA shall give notice to any party objecting to the Settlement of any continuance of
9 the hearing on the Plaintiff's Motion for Final Approval.

10 19. PSA shall submit a declaration concurrently with the filing of Plaintiff's Motion for
11 Final Approval, which authenticates a copy of every "Exclusion Form" received by PSA.

12 20. PSA shall submit a declaration concurrently with the filing of Plaintiff's Motion for
13 Final Approval, which authenticates a copy of every "Objection Form" submitted by a Class Member
14 and received by PSA.

15 21. If no settlement payments are left uncashed, the Proposed Amended Judgment can be
16 signed by counsel for the class and defendant's counsel, as there will be no provision for cypres
17 payments in the final judgment.

18 **RELEVANT DATES AND DEADLINES**

19 22. On or before April 16, 2021, Defendant shall provide the Claims Administrator with
20 the following information that is within Defendant's possession for each Class Member: (1) the
21 Settlement Class Member's first and last name, (2) last known mailing address, (3) social security
22 number, (4) hire and termination dates, and (5) total number of pay periods during which the Class
23 Member performed work during the Class Period as a member of the Class. This information shall
24 be based on Defendant's payroll and other business records and in a format readily accessible to
25 Defendant. The data contained in the Database shall remain confidential and shall not be disclosed to
26 anyone, except to applicable taxing authorities and as needed by the Claims Administrator to carry
27 out the reasonable efforts required by the Settlement, or pursuant to express written authorization by
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1 Defendant or by order of the Court. The Claims Administrator shall be authorized to use any
2 reasonable practices to locate Class Members in order to provide them with the Notice and/or
3 Settlement Payments. Neither Class Counsel nor the Claims Administrator may use the Database for
4 any purpose other than to administer the Settlement as provided in the Settlement.

5 23. On or before April 30, 2021, the Claims Administrator shall mail a copy of the Class
6 Notice to all Class Members by first class regular U.S. mail. The Claims Administrator will engage
7 in address searches consistent with their normal practices in settlements of wage claims, including
8 skip tracing. Any returned envelopes from this mailing with forwarding address will be utilized by
9 the Claims Administrator to forward the Notice to the Class Members.

10 24. Each Notice will list the total workweeks worked by the Class Members during the
11 Class Period. To the extent a Class Member disputes the information listed on his or her Notice, the
12 Class Member may produce evidence to the Claims Administrator showing the number of weeks the
13 Class Member contends to have worked during the Class Period. If there is a dispute, the Settlement
14 Administrator will consult with the Parties to determine whether an adjustment is warranted. The
15 Settlement Administrator shall determine the eligibility for, and the amounts of, any Individual
16 Settlement Payments under the terms of this Agreement. The Settlement Administrator's
17 determination of the eligibility for and amount of any Individual Settlement Payment shall be binding
18 upon the Class Members and the Parties.

19 25. All requests for exclusions must be submitted the Settlement Administrator and be
20 postmarked on or before June 14, 2021. The Settlement Administrator shall send a copy of any request
21 for exclusion to counsel for the Parties.

22 26. All written objections must be mailed to the Settlement Administrator and be
23 postmarked on or before June 14, 2021. PSA shall send a copy of each "Objection Form" submitted
24 by a Class Member to counsel for the Parties. Any Objection must be signed by the Settlement Class
25 Member and state: (1) the full name of the Settlement Class Member; (2) the last four digits of the
26 Settlement Class Member's Social Security number and/or the Employee ID number; and (3) the
27 basis for the objection.

1 27. The Court will conduct a Final Fairness Hearing on August 24, 2021, at 8:30 a.m. to
2 determine: (1) whether the proposed Settlement is fair, reasonable, and adequate and should be finally
3 approved by the Court; (2) the amount of attorneys' fees and costs to award to Class Counsel; and (3)
4 the amount of Enhancement Payment to the Class Representative. If the settlement is finally approved
5 by the Court, Defendant will receive a release of claims as set forth in the Settlement Agreement.


6 28. Briefs/Motion in Support of Final Approval of the Settlement shall be filed per code.

7 29. The Court reserves the right to continue the date of the Final Fairness Hearing without
8 further notice to Settlement Class Members. The Court retains jurisdiction to consider all further
9 applications arising out of or in connection with the Settlement.

10 In the event the Settlement is not finally approved, or otherwise does not become effective in
11 accordance within the terms of the Settlement, this Order shall be rendered null and void and shall be
12 vacated, and the Parties shall revert to their respective positions as of before entering into the
13 settlement.

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15 **IT IS SO ORDERED.**

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17 Dated: 4/9/2021



The Honorable Sunshine S. Sykes
Judge of the Superior Court

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,
DURING THE PERIOD FROM JUNE 15, 2011 THROUGH JULY 24, 2014.

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

9 YOU ARE HEREBY NOTIFIED AS FOLLOWS:

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

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

23 YOUR OPTIONS UNDER THE SETTLEMENT

Summary of Your Legal Rights and Options in this Settlement	
DO NOTHING AND 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.

II. SUMMARY OF THE PROPOSED SETTLEMENT

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

The Settlement provides for the following:

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

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

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

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

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

The Individual Settlement Award payable to each Class Member (and any second payments if there are funds from uncashed initial settlement checks to be redistributed) will be apportioned as follows: 80% as wages and 20% for interest, penalties and any other claimed damages. The amounts

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
Defendants' records, the Settlement Administrator estimates that your settlement payment will be
approximately \$[INSERT] if the Court grants final approval of the Settlement.

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

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

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

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

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

13 **C. Object to the Settlement**

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

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

21 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'
22 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
23 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.
24 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.
25 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
26 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***
27 ***be mailed to the Settlement Administrator with a postmark no later than [DATE]. DO NOT***
TELEPHONE THE COURT.

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

IV. EFFECT OF THE SETTLEMENT

A. Released Rights and Claims

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

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

the Released Parties relating to (i) the payment and allocation of attorneys' fees, costs and expenses, including to Class Counsel or any other counsel or entity related to this Settlement and Action; and (ii) the payment of the Class Representative Incentive Award pursuant to this Settlement.

B. Payment to Claimants

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

V. FINAL SETTLEMENT APPROVAL HEARING

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

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

SETTLEMENT ADMINISTRATOR :
Phoenix Class Action Administration Solutions
[ADDRESS]
[PHONE NUMBER]

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

VI. ADDITIONAL INFORMATION

The above is a summary of the basic terms of the Settlement. For the precise terms and conditions of the Settlement, you are referred to the "Revised Stipulation and Settlement Agreement of Class Action Claims", which is attached as Exhibit "A" to the Declaration of Kevin Mahoney filed on [INSERT DATE] with the Superior Court of California, County of Riverside. The case name is: *Cesar Becerra Buenrostro v. Contain-A-Way, Inc. dba Nexcycle, Strategic Material, Inc. dba Western Strategic Materials, Inc.*, Case No. RIC1507132) (Note: The case was formerly captioned as *Jorge Sanchez* versus Defendants.). The pleadings and other records in this litigation including the Settlement Agreement and the motions for approval, may be examined at any time during regular business hours at the Clerk's Office, California Superior Court, County of Riverside at 4050 Main Street, Riverside, CA 92501 subject to any restriction the Court has in place (including due to the Covid-19 pandemic). In addition, you may contact Class Counsel (at the contact information above)

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 B

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 C

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

Lined area for text entry.

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: _____