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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

RAMON BARCIA; RANDALL LEWIS; on
behalf of themselves, and on behalf of all
persons similarly situated,

Plaintiff,

vs.

CONTAIN-A-WAY INC., a California
corporation, doing business as NEXCYCLE
and 20/20 RECYCLE CENTERS,

Defendants.

CASE No. **07 CV 0938 IEG (JMA)**

**NOTICE OF MOTION AND MOTION
FOR PRELIMINARY APPROVAL OF
CLASS SETTLEMENT**

Hearing Date: August 11, 2008
Hearing Time: 10:30 a.m.

District Judge: Hon. Irma E. Gonzalez
Courtroom: 1, 4th Flr

Action Filed: May 23, 2007

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on August 11, 2008 at 10:30 a.m., before the

1 Honorable Irma E. Gonzalez in Courtroom 1 of the United States District Court for the
2 Southern District of California, Plaintiffs Ramon Barcia and Randall Lewis will move and
3 hereby does move for Preliminary Approval of the proposed Class Settlement in this case.
4 This motion is unopposed as based on the Stipulation of Settlement.

5 The motion will be based on this Notice of Motion, the Memorandum of Points and
6 Authorities filed herewith, the Declaration of Norman B. Blumenthal and attached exhibits,
7 the argument of counsel and upon such other material contained in the file and pleadings of
8 this action.

9
10 BLUMENTHAL & NORDREHAUG

11 Dated: July 2, 2008

12 By: s/Norman B. Blumenthal
13 Norman B. Blumenthal, Esq.
14 Attorneys for Plaintiffs
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**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION FOR PRELIMINARY
APPROVAL OF CLASS SETTLEMENT**

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1 Plaintiffs Ramon Barcia and Randall Lewis (“Plaintiffs”) respectfully submit this
 2 memorandum of points and authorities in support of Plaintiffs’ motion for preliminary
 3 approval of settlement of this class action.

4 **I. INTRODUCTION**

5 Plaintiffs Ramon Barcia and Randall Lewis and Defendant Contain-a-Way Inc.,
 6 doing business as Nexcycle and 20/20 Recycle Centers (“Nexcycle”) have reached a full and
 7 final settlement of the above-captioned wage and benefits action, which is embodied in the
 8 Stipulation and Settlement Agreement (“Settlement Agreement”) submitted concurrently to
 9 the Court with this motion. By this motion, Plaintiffs seeks preliminary approval from the
 10 Court of the Settlement Agreement ¹ (a copy of which is attached as Exhibit A to the
 11 Declaration of Norman Blumenthal, served and filed herewith), conditional certification of
 12 the Settlement Class, approval of the Preliminary Order and an order scheduling the hearing
 13 date for Final Approval of the Class Settlement.

14 **II. DESCRIPTION OF THE SETTLEMENT**

15 Counsel for the parties, after contentious litigation and settlement negotiations,
 16 agreed to a settlement that is fair, reasonable and favorable to the Class, which includes all
 17 individuals employed as Site Attendants and/or Floaters by Nexcycle in California at any
 18 time from May 23, 2003 and the date of preliminary approval of the settlement by the Court.
 19 Declaration of Norman Blumenthal ¶ 9 (“Decl. Blumenthal”). The parties submitted to
 20 mediation before Mark Rudy, Esq., of the firm Rudy, Exelrod & Zieff, a prominent San
 21 Francisco law firm with extensive experience in wage and hour class actions. Decl.
 22 Blumenthal ¶ 5. Based upon his review of the facts in this case, and negotiation between the
 23 parties Mr. Rudy proposed an amount to the parties as a Mediator’s proposal. The Parties
 24 accepted the Mediator’s proposal, in light of Mr. Rudy’s experience as a Mediator and
 25

26
 27 ¹ Capitalized terms in this Memorandum have the same meaning as contained in the
 28 Stipulation and Settlement Agreement.

1 Litigator in wage and hour cases, and the uncertainties and cost of the years of litigation the
 2 Parties faced if the Mediator's proposal was not accepted. Decl. Blumenthal, ¶5.

3 Under the terms of the accepted mediator's proposal, the parties agreed that Nexcycle
 4 would pay up to Two Million, Five Hundred Thousand Dollars (\$ 2.5 million) in full
 5 discharge of all claims asserted in this action on a claims-made basis with a minimum
 6 payout of \$1.25 million. Declaration of Blumenthal at ¶3. This sum is inclusive of all
 7 claims of the Settlement Class Members related to this action, as well as Class Counsel's
 8 attorneys' fees and costs, an enhancement payment for the Class Representatives, the
 9 payment to the California Labor and Welfare Development Agency, and the cost of class
 10 notice and claims administration. The Settlement Agreement provides for a claims process
 11 requiring Nexcycle to make payments on each timely and valid claim submitted.

12 The ERISA claim totaling \$209,358.00 was settled by the application of the Self
 13 Correction Method set forth in the Internal Revenue Service's Revenue Procedure 2006-27,
 14 Appendix A. The Class is comprised of 753 Class Members who were allegedly denied
 15 ERISA benefits as part of the 2,264 Class Members who were allegedly denied proper
 16 wages for time worked during the Class Period.

17 This is an excellent result for the members of the Settlement Class. Liability in this
 18 case was uncertain because some or all of the Class Members may have been paid for the
 19 hours worked. Indeed, some courts have denied class certification to "off the clock" cases
 20 involving similar facts. Decl. Blumenthal, ¶ 6. Moreover, while the amount of wages for
 21 each Class Member would be hard to calculate, the \$2.5 million allows for the payment of a
 22 reasonable estimate of unpaid wages.

23 **III. NATURE OF THE CASE**

24 On April 19, 2007, Plaintiff Randall Lewis filed a complaint in the Superior Court for
 25 the County of San Diego, State of California (the "Court") as Civil Action No. 37-2007-
 26 00065322, entitled Randall Lewis, et al. v. Contain-A-Way, et al., on behalf of Plaintiff
 27 Lewis and all other similarly situated site attendant employees, seeking, among other things,
 28

1 unpaid wages and penalties for missed rest breaks. Declaration of Blumenthal at ¶ 7.

2 On May 23, 2007, Plaintiff Ramon Barcia filed this lawsuit in the United States
3 District Court for the Southern District of California which was captioned Ramon Barcia
4 and Matthew Carter v. Contain-a-Way, Inc., d/b/a Nexcycle and 20/20 Recycle Centers (the
5 “Action”).² The Action was brought on behalf of Plaintiff Barcia and all other similarly
6 situated site attendant and floater employees, seeking, among other things, unpaid wages and
7 penalties for missed rest breaks as well as a claim under ERISA for benefits. Following
8 extensive discovery in both the state and federal lawsuits, Plaintiff Barcia moved to amend
9 the complaint to add Randall Lewis to the Action.³ Following the addition of Plaintiff Lewis
10 to this Action, the state action was dismissed without prejudice for the purpose of
11 proceeding solely in the federal court where all claims could be redressed. Declaration of
12 Blumenthal at ¶ 7.

13 The complaint was also amended to add a claim under the Private Attorney Generals
14 Act (“PAGA”), Cal. Labor Code §2698, *et seq.* The Action therefore currently asserts
15 claims for violations of the California Labor Code §§ 204, 210, 218, 226, 226.7, 510, 512, 1194
16 and 1198, the Fair Labor Standards Act, 29 U.S.C. § 216, and the California Business and
17 Professions Code §17200, along with claims for benefits due under ERISA, 29 USCS §§
18 1001 *et seq.*, and for civil penalties under PAGA. The Named Plaintiffs allege that
19 individuals employed by Nexcycle as recycling site attendants and floaters were not paid
20 earned wages, including overtime, for all hours worked, were not provided with all meal and
21 rest breaks as required for non-exempt employees, and were improperly denied benefits
22 because they were designated as part-time employees. The Action sought various statutory
23 penalties and restitution for unfair competition pursuant to California Business and
24

25 ² On December 13, 2007, Plaintiff Matthew Carter voluntarily dismissed himself from
26 the Lawsuit.

27 ³ Leave to add Randall Lewis to the federal Lawsuit was sought when documents
28 concerning Nexcycle’s ERISA plan revealed that Randall Lewis may have a claim under
ERISA, which could only be brought in federal court.

1 Professions Code Section 17200 including disgorgement of profits, recovery of pre and post
2 judgment interest, attorneys' fees, and costs. The Class consists of all individuals employed
3 as Site Attendant and/or Floaters by Nexcycle in California at any time from May 23, 2003
4 and the date of preliminary approval of the settlement by the Court. Declaration of
5 Blumenthal at ¶ 8.

6 Nexcycle denies any and all liability or wrongdoing of any kind associated with the
7 claims alleged in the Complaint. Further, Nexcycle denies that the claims asserted are
8 suitable for class treatment. Nexcycle maintains, among other things, that they have
9 complied at all times with the California Labor Code, that the members of the putative class
10 were paid for wages for all hours worked, and that all members of the putative class were
11 provided with meal and rest breaks. Specifically, in Nexcycle's view, the Settlement Class
12 members were properly paid wages for all hours recorded on their time sheets. Further,
13 Nexcycle contends that class certification would be inappropriate because the Named
14 Plaintiffs do not share common issues of fact or law with the proposed class, they are not an
15 adequate representative of the proposed class, their claims are not typical of the proposed
16 class and class treatment would require the court to conduct myriad individualized inquiries
17 that would predominate over any common questions of law or fact.

18 Plaintiff contends that Nexcycle violated California wage and hour laws and that the
19 Action is appropriate for class certification on the basis that the Named Plaintiffs' claims
20 meet the requisites for class certification. Without admitting that class certification is
21 proper, Nexcycle has stipulated that a Class of all individuals employed as Site Attendant
22 and/or Floaters by Nexcycle in California may be certified for settlement purposes only.
23 The Parties agree that certification for settlement purposes is not an admission that class
24 certification would be proper if the class certification issue were litigated. Further, this
25 agreement is not admissible in this or any other proceeding as evidence that the Class could
26 be certified absent a settlement. Solely for purposes of settling the lawsuits, the Parties
27 stipulate and agree that the requisites for establishing class certification with respect to the
28

1 Class, as defined above, have been met and are met. Declaration of Blumenthal at ¶ 11.

2 Class Counsel has conducted a thorough investigation into the facts of the class
3 action, including depositions, interrogatories, document discovery, and extensive review of
4 relevant documents and data. Class Counsel has diligently evaluated the Class Members'
5 claims against Nexcycle. Prior to the parties attending mediation, counsel for Nexcycle
6 provided Class Counsel with access to Class Member data, including data reflecting the
7 weeks worked by the Class Members and relevant salary information for the positions at
8 issue. Based on the foregoing data and their own independent investigation and evaluation,
9 Class Counsel believe that the settlement with Nexcycle for the consideration and on the
10 terms set forth in this Stipulation of Settlement is fair, reasonable, and adequate and is in the
11 best interest of the class in light of all known facts and circumstances, including the risk of
12 significant delay, defenses asserted by Defendants, and numerous potential appellate issues.
13 Declaration of Blumenthal at ¶ 12. Nexcycle and Nexcycle's counsel also agree that the
14 Settlement is fair and in the best interest of the Class Members.

15 **IV. PLAN OF ALLOCATION**

16 In consideration for settlement of this Action and a release of the claims as described
17 in the Stipulation of Settlement, Nexcycle agrees to pay to settle all claims a sum not to
18 exceed Two Million Five Hundred Thousand Dollars (\$2,500,000), including Class
19 Counsel's attorneys' fees, costs and expenses, payment of ERISA claims under the Self
20 Correction Method, the Named Plaintiffs Enhancement, the costs of settlement
21 administration, and the PAGA award to the California Labor and Welfare Development
22 Agency ("The Settlement Amount"). Declaration of Blumenthal at ¶ 13. The Class
23 Settlement Amount will be distributed as follows:

24 The ERISA claim shall be settled by application of the Self-Correction method set
25 forth in the Internal Revenue Service's Revenue Procedure 2006-27, Appendix A, which
26 will result in the establishment of and/or contribution to 401(k)/retirement accounts for
27 eligible Class members in amounts equal to the individual missed deferral opportunities of
28

1 \$209,358.00. Class Members are not required to submit any claim in order to obtain those
2 vested benefits. Decl. Blumenthal at ¶14.

3 The remaining claims for relief alleged in the Action shall be settled for a monetary
4 amount to be paid out of the remainder of the \$2.5 million. The amount of the Maximum
5 Settlement Consideration allocable for the payment of claims shall be the amount remaining
6 (“Net Settlement Consideration”) after the payment of the following costs: (i) settlement
7 consideration used to fund 401(k) accounts in the total amount of the ERISA Settlement
8 Consideration, attorneys’ fees and costs of Class Counsel as approved by the Court,
9 incentive payments to the Named plaintiffs for serving as representative Class Plaintiffs as
10 approved by the Court, the costs, fees, charges and expenses of the claims administration,
11 and payment of \$25,000 to the California Labor and Workforce Development Agency
12 pursuant to the Private Attorneys General Act. Eligible Class Members who submit timely
13 claims shall receive their prorata share of the Net Settlement Consideration based upon the
14 total number of work weeks credited to each individual Class Member for weeks worked
15 during the class period as a percentage of the total number of work weeks of all the Class
16 Members as a group worked during the class period. Decl. Blumenthal at ¶14.

17 Nexcycle and their counsel will not oppose an attorneys’ fees award, including costs
18 incurred by Class Counsel, of 25% of the Maximum Settlement Consideration to
19 compensate Class Counsel for all of the work already performed in this case and all of the
20 work remaining to be performed in documenting the Settlement, securing Court approval of
21 the Settlement, making sure that the Settlement is fairly administered and implemented and
22 obtaining dismissal of the actions. Declaration of Blumenthal at ¶ 15.

23 Subject to Court approval, the Class Representatives Ramon Barcia and Randall
24 Lewis will receive a Named Plaintiff Enhancement, deducted from the Maximum Settlement
25 Amount, of a sum of no more than \$12,000 each for their service as Class Representatives in
26 addition to his claim share to which he is otherwise entitled to through the claims process.
27 Decl. Blumenthal at ¶ 16.

1 Subject to Court approval, Nexcycle further agrees to pay from the Settlement
 2 Amount the reasonable costs of the Claims Administrator associated with the administration
 3 of this Settlement equal to the fixed sum of \$24,510.44. The Claims Administrator will be
 4 Gilardi & Co., LLC and will charge no more than this fixed sum. Decl. Blumenthal at ¶ 17.

5 Within fifteen (15) business days after the Claims Administrator has calculated and
 6 provided notice to Nexcycle of the actual amount of claims to be paid out under the
 7 Settlement, Nexcycle agrees to wire transfer the amount specified by the Claims
 8 Administrator to a bank account established by the Claims Administrator. The Claims
 9 Administrator shall mail the settlement payments to Qualified Claimants within twenty (20)
 10 business days after the final approval of the settlement by the Court or, if there is any object
 11 to the settlement, within twenty (20) business days after the expiration of the time to file
 12 appeals or the resolution of any appeals filed. Decl. Blumenthal at ¶ 18.

13 **V. THE SETTLEMENT MEETS ALL CRITERIA NECESSARY FOR**
 14 **PRELIMINARY APPROVAL**

15 When a proposed class-wide settlement is reached, the settlement must be submitted
 16 to the court for approval. Fed. R. Civ. P. 23(e)(1)(A); 2 H. Newberg & A. Conte, Newberg
 17 on Class Actions (3d ed. 1992) at §11.41, p.11-87. Preliminary approval is the first of three
 18 steps that comprise the approval procedure for settlements of class actions. The second step
 19 is the dissemination of notice of the settlement to all class members. The third step is a final
 20 settlement approval hearing, at which evidence and argument concerning the fairness,
 21 adequacy, and reasonableness of the settlement may be presented and class members may be
 22 heard regarding the settlement. See Manual for Complex Litigation, Second §30.44 (1993).
 23 The question presented on a motion for preliminary approval of a proposed class action
 24 settlement is whether the proposed settlement is “within the range of possible approval.”
 25 Manual for Complex Litigation, Second §30.44 at 229; Gautreaux v. Pierce, 690 F.2d 616,
 26 621 n.3 (7th Cir. 1982). Preliminary approval is merely the prerequisite to giving notice so
 27 that “the proposed settlement . . . may be submitted to members of the prospective Class for
 28

1 their acceptance or rejection.” Philadelphia Housing Authority v. American Radiator &
 2 Standard Sanitary Corp., 323 F. Supp. 364, 372 (E.D. Pa. 1970). There is an initial
 3 presumption of fairness when a proposed settlement, which was negotiated at arm's length
 4 by counsel for the Class, is presented for court approval. Newberg, 3d Ed., §11.41, p.11-88.
 5 However, the ultimate question of whether the proposed settlement is fair, reasonable and
 6 adequate is made after notice of the settlement is given to the class members and a final
 7 settlement hearing is held by the Court.

8 **A. The Role Of The Court In Preliminary Approval Of A Class Action**
 9 **Settlement**

10 The approval of a proposed settlement of a class action suit is a matter within the
 11 broad discretion of the trial court. Staton v. Boeing, 327 F.3d 938, 959 (9th Cir. 2003).
 12 Preliminary approval does not require the trial court to answer the ultimate question of
 13 whether a proposed settlement is “fair, reasonable and adequate.” In re Jiffy Lube Sec.
 14 Litig., 927 F.2d 155, 158 (4th Cir. 1991); Manual for Complex Litigation, Third, §§ 20.212.
 15 That determination is made only after notice of the settlement has been given to the
 16 members of the class and after the class members have been given an opportunity to voice
 17 their views of the settlement or to be excluded from the settlement Class. See, e.g., 3B J.
 18 Moore, Moore's Federal Practice §§23.80 - 23.85 (2003).

19 In considering a potential settlement for preliminary approval purposes, the trial court
 20 does not have to reach any ultimate conclusions on the issues of fact and law which underlie
 21 the merits of the dispute (Detroit v. Grinnell Corp., 495 F.2d 448, 456 (2d Cir. 1974)), and
 22 need not engage in a trial on the merits (Officers for Justice v. Civil Serv. Comm'n, 688 F.2d
 23 615 (9th Cir. 1982), cert. denied, 459 U.S. 1217 (1983)). The court is not required to
 24 determine that certification of a settlement class is appropriate until the final settlement
 25 approval. In re General Motors Corp. Pick-Up Truck Fuel Tank Prods. Liab. Litig., 55 F.3d
 26 768, 797 (3d Cir. 1995).

27 The question whether a proposed settlement is fair, reasonable and adequate

necessarily requires a judgment and evaluation by the attorneys for the parties based upon a comparison of “the terms of the compromise with the likely rewards of litigation.” Weinberger v. Kendrick, 698 F.2d 61, 73 (2d Cir. 1982), cert. denied 464 U.S. 818 (1983) (quoting Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson, 390 U.S. 414, 424-25 (1968)). Therefore, many courts recognize that the opinion of experienced counsel supporting the settlement is entitled to considerable weight. Kirkorian v. Borelli, 695 F. Supp. 446, 451 (N.D. Cal. 1988); Reed v. General Motors Corp., 703 F.2d 170, 175 (5th Cir. 1983); Weinberger, 698 F.2d at 74; Armstrong v. Board of School Directors, 616 F.2d 305, 325 (7th Cir. 1980); Fisher Bros. v. Cambridge-Lee Indus., Inc., 630 F. Supp. 482, 489 (E.D. Pa. 1985). For example, in Lyons v. Marrud, Inc., [1972-1973 Transfer Binder] Fed. Sec. L. Rep. (CCH) Paragraph 93,525 (S.D.N.Y. 1972), the court noted that “[e]xperienced and competent counsel have assessed these problems and the probability of success on the merits. They have concluded that compromise is well-advised and necessary. The parties’ decision regarding the respective merits of their position has an important bearing on this case.” Id. at ¶ 92,520.

B. Factors To Be Considered In Granting Preliminary Approval

A number of factors are to be considered in evaluating a settlement for purposes of preliminary approval. No one factor should be determinative, but rather all factors should be considered. These criteria have been summarized as follows:

If the proposed settlement appears to be the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class, and falls within the range of possible approval, then the court should direct that notice be given to the class members of a formal fairness hearing, at which evidence may be presented in support of and in opposition to the settlement.

Manual of Complex Litigation, Second §30.44, at 229.

Here, the settlement meets all of these criteria.

1. The Settlement is the Product of Serious, Informed and Noncollusive Negotiations

This settlement is the result of extensive and hard fought negotiations. Nexcycle

1 denies each and every one of the claims and contentions alleged in this Action. Nexcycle
2 has asserted and continues to assert many defenses thereto, and has expressly denied and
3 continues to deny any wrongdoing or legal liability arising out of the conduct alleged in the
4 Action. Nonetheless, Nexcycle has concluded that this Action be settled in the manner and
5 upon the terms and conditions set forth in the Stipulation of Settlement in order to avoid the
6 expense, inconvenience, and burden of further legal proceedings, and the uncertainties of
7 trial and appeals. Nexcycle has decided to put to rest the Released Claims of the Class.

8 Settlement negotiations took place before Mark Rudy, one of the preeminent
9 mediators and litigators of wage and hour matters in California. After reviewing the facts in
10 this case, Mr. Rudy recommended a settlement amount to the parties as a mediator's
11 proposal. Counsel for the parties, after contentious litigation and settlement negotiations,
12 both agreed to accept the mediator's proposal, based upon Mr. Rudy's expertise as a wage
13 and hour mediator and litigator and the uncertainties of protracted litigation. Decl.
14 Blumenthal ¶ 5. Plaintiffs and Class Counsel believe that this settlement is fair, reasonable
15 and adequate. By reason of the settlement, Nexcycle has agreed to pay to the Settlement
16 Class members a maximum sum of \$ 2.5 million, as payment in full of all of Plaintiffs'
17 claims arising from the events described in the Complaint including Class Counsel's
18 attorneys' fees costs and expenses, the Named Plaintiffs Enhancements, payment of the
19 PAGA award, and the cost of class notice and claims administration.

20 The Settlement Agreement provides for a claims process requiring Nexcycle to
21 establish a fund for payments on each timely and valid claim submitted. This Settlement
22 Agreement establishes a total amount of \$2,500,000.00 to pay approved claims, attorneys'
23 fees, costs, and expenses directly related to the lawsuits (which includes all such fees and
24 costs incurred to date, as well as all such fees and costs incurred in documenting the
25 Settlement, securing court approval of the Settlement, administering the Settlement, and
26 obtaining a dismissal of the Complaints), the ERISA Settlement Consideration to establish
27 the 401(k) accounts, the Named Plaintiffs Enhancements, the PAGA award, and all costs of
28

1 administration, including settlement administration fees.

2 The Settlement Period begins on May 23, 2003 and continues through the date of
3 preliminary approval of the settlement. Class Counsel has conducted a thorough
4 investigation into the facts of the class action, including an extensive review of relevant
5 documents and data, and has diligently pursued an investigation of the Settlement Class
6 members' claims against Nexcycle. Based on the foregoing documents and data and their
7 own independent investigation and evaluation, Class Counsel is of the opinion that the
8 settlement with Nexcycle for the consideration and on the terms set forth in this Stipulation
9 of Settlement is fair, reasonable, and adequate and is in the best interest of the class in light
10 of all known facts and circumstances, including the risk of significant delay, defenses
11 asserted by Nexcycle, and numerous potential appellate issues. Nexcycle and Nexcycle's
12 counsel also agree that the Settlement is fair and in the best interest of the Class Members.

13 Plaintiffs and Class Counsel recognize the expense and length of continuing to
14 litigate and trying this Action against Nexcycle through possible appeals which could take
15 several years. Class Counsel also have taken into account the uncertain outcome and risk of
16 litigation, especially in complex actions such as this Action. Class Counsel are also mindful
17 of and recognize the inherent problems of proof under, and alleged defenses to, the claims
18 asserted in the Action. Based upon their evaluation, Plaintiffs and Class Counsel have
19 determined that the settlement set forth in the Stipulation is in the best interest of the Class
20 Members. Decl. Blumenthal at ¶20.

21 Here the litigation has been hard-fought with aggressive and capable advocacy on
22 both sides. Accordingly, "[t]here is likewise every reason to conclude that settlement
23 negotiations were vigorously conducted at arms' length and without any suggestion of undue
24 influence." In re Wash. Public Power Supply System Sec. Litig., 720 F. Supp. 1379, 1392
25 (D. Ariz. 1989).

2. **The Settlement Has No "Obvious Deficiencies" and Falls Within the Range for Approval**

The proposed settlement herein has no "obvious deficiencies" and is well within the range of possible approval. All Settlement Class members will receive an opportunity to participate in and receive payment. The ERISA claims will pay out at 100% of the amount due under the Internal Revenue Service calculation method, and the remaining claims calculate to compensate for the amount due for the nonpayment of wages as calculated by Wesley Nuten, Plaintiffs' damage expert. The hourly rate used was the straight time rate of \$8.69. The number of workweeks involved was 90,025 for the Class Period. Each one (1) hour per workweek for "off-the-clock" time for the Class equals \$780,879.33 for the Class Period. Each missed meal break per work week for the Class equals \$780,879.33 for the Class Period. Each missed rest break per work week for the Class equals \$780,879.33 for the Class Period. As a result, the Defendant was subject to claims at a rate of \$2,342,637.99 for the Class Period for the combination of one off-the-clock hour, one missed meal break, and one missed rest break per workweek. The settlement of \$2,500,000 after deduction of the PAGA payment of \$25,000 and the ERISA payment of \$209,358 equals \$2,265,642 which is nearly a full recovery assuming these amounts could be proven at trial. Clearly the goal of this litigation has been met. Decl. Blumenthal, ¶ 6.

In Glass v. UBS Fin. Servs., 2007 U.S. Dist. LEXIS 8476 (N.D. Cal. January 27, 2007) the federal district court for the Northern District of California recently approved a settlement of an action claiming unpaid overtime wages where the settlement amount constituted only approximately 25 to 35% of the estimated actual loss to the class. Here the settlement consideration constitutes almost 100% of the estimated actual loss to the class. Decl. Blumenthal, ¶ 6. In Glass, the federal court ruled that the settlement which represented approximately 25 to 35% of the loss to the class was fair, reasonable, and adequate. Id. at 28. A fortiori, this settlement at nearly 100% of actual estimated loss is most certainly entitled to preliminary approval.

1 Where both sides face significant uncertainty, the attendant risks favor settlement.
2 Hanlon v. Chrysler Corp., 150 F.3d 1011, 1026 (9th Cir. 1998). Here, a number of defenses
3 asserted by Nexcycle present serious threats to the claims of Plaintiff and the other Class
4 Members. Decl. Blumenthal at ¶24. For example, Nexcycle contended that the time records
5 prepared by the Class Members themselves were the best evidence of the hours worked by
6 employees, that Nexcycle paid employees for all hours listed on these time records and that
7 Nexcycle's handbook clearly prohibited off the clock work. Nexcycle also argued that
8 differences between the individual recycling sites and the practices of the employees at each
9 site precluded class-wide litigation of the alleged claims.

10 Recent federal authority supports the arguments by Nexcycle asserted against liability
11 and class certification. Decl. Blumenthal at 25. In Proctor v. Allsup's Convenience Stores,
12 Inc., 2008 U.S. Dist. Lexis 33707 (N.D. Tx 2008), the district court granted a motion to
13 decertify a class based upon alleged "off the clock" work. The court found that even though
14 Plaintiffs submitted declarations attesting to off the clock work, "there is no evidence of a
15 single decision, policy or plan that is causing the Plaintiffs to work off the clock." Id., at
16 *11. In Basco v. Wal-Mart Stores, Inc., 216 F. Supp. 2d 592 (E.D. La. 2002), the court
17 considered certification of a class of hourly employees alleging Wal-Mart failed to pay for
18 time worked off-the-clock. The court found predominance of factual inquiries regarding
19 off-the-clock work lacking, because "individualized issues will arise from the myriad of
20 possibilities that could be offered to explain why any one of the plaintiffs worked off-the-
21 clock." Id. at 603. These individual questions included, for example, whether the employee
22 did in fact work, whether the employee unreasonably failed to seek compensation for the
23 off-the-clock work performed, and whether the employee knew of Wal-Mart's policy
24 prohibiting off-the-clock work and chose to engage in it anyhow. Id.

25 In Clausnitzer v. Federal Express Corp., 248 F.R.D. 647 (S.D. Fla 2008), the district
26 court denied class certification for employees alleging that they were not paid "for all hours
27 worked." Id., at 648. Again, the court in Clausnitzer relied on the fact that there was no
28

“evidence of an explicit FedEx policy requiring employees to work during gap periods” and that “FedEx’s policies explicitly prohibited employees from performing work off the clock.” Id., at 651. As a result, the Court concluded that “individual issues of law and fact predominate over issues common among the class members.” Id., at 662.

Similarly here, Nexcycle would have certainly argued in opposing class certification that individual issues predominated because there was no explicit policy requiring off the clock work and there were variations as to why employees may have worked off the clock. While other cases have approved class certification in off the clock wage claims, class certification in this action would have been hotly disputed and was by no means a foregone conclusion. Decl. Blumenthal at ¶ 26.

After vigorous negotiations, the mediator presented the parties with a proposal of \$2.5 million to resolve the Action. Recognizing the potential risks, both sides agreed. As the federal court recently held in Glass where the parties faced uncertainties similar to those here:

In light of the above-referenced uncertainty in the law, the risk, expense, complexity, and likely duration of further litigation likewise favors the settlement. Regardless of how this Court might have ruled on the merits of the legal issues, the losing party likely would have appealed, and the parties would have faced the expense and uncertainty of litigating an appeal. "The expense and possible duration of the litigation should be considered in evaluating the reasonableness of [a] settlement." See In re Mego Financial Corp. Securities Litigation, 213 F.3d 454, 458 (9th Cir. 2000). Here, the risk of further litigation is substantial.

2007 U.S. Dist. LEXIS 8476 at *12.

3. The Settlement Does Not Improperly Grant Preferential Treatment To The Class Representative or Segments Of The Class

The relief provided in the settlement will benefit all Class Members equally. The settlement does not improperly grant preferential treatment to the Class Representative or any individual segments of the Class.

Each Settlement Class member, including the Class Representatives, will be entitled to payment based on the plan of allocation. Each Settlement Class member’s lump sum

1 payment will be determined as follows: Eligible Class Members who submit timely claims
2 shall receive their prorata share of the Net Settlement Consideration based upon the total
3 number of work weeks credited to each individual Class Member submitting a valid claim
4 for weeks worked by that individual during the class period as a percentage of the total
5 number of work weeks of all the Class Members as a group worked during the class period.
6 With respect to the ERISA payments, there are 753 Class Members who were denied ERISA
7 benefits but who were alleged to be eligible for the Nexcycle 401(k) Profit Sharing Plan
8 under because these employees completed more that 1,000 hours of service. See 29 U.S.C.
9 § 1052(a)(1)(A)(ii), (3)(A).

10 In addition, the Class Representatives will apply to the trial court for a Named
11 Plaintiff Enhancement of \$12,000 each. In Glass, the district court recently awarded each of
12 the class representatives in an overtime wages class action a service award of \$25,000.
13 2007 U.S. Dist. LEXIS 8476 at *51-52.

14
15 **4. The Stage Of The Proceedings Is Sufficiently Advanced To Permit Preliminary Approval Of The Settlement**

16 The stage of the proceedings at which this settlement was reached also militates in
17 favor of preliminary approval and ultimately, final approval of the settlement. Class
18 Counsel has conducted a thorough investigation into the facts of the class action. Class
19 Counsel began investigating the Class Members' claims before this action was filed and
20 conducted discovery including depositions, interrogatories and requests for production of
21 documents in both the state and federal actions. Class Counsel had engaged in an extensive
22 review and analysis of the relevant documents and data with the assistance of experts. At
23 the time the settlement was reached, Class Counsel was working on a motion for class
24 certification including supporting declarations which they were prepared to file if the
25 Settlement had not been agreed to. Accordingly, the agreement to settle certainly did not
26 occur until Class Counsel possessed sufficient information to make an informed judgment
27 regarding the likelihood of success on the merits and the results that could be obtained
28

1 through further litigation. Decl. Blumenthal at ¶ 27.

2 Based on the foregoing data and their own independent investigation and evaluation,
3 Class Counsel is of the opinion that the settlement with Nexcycle for the consideration and
4 on the terms set forth in this Stipulation of Settlement is fair, reasonable, and adequate and is
5 in the best interest of the class in light of all known facts and circumstances, including the
6 risk of significant delay, defenses asserted by Nexcycle, and numerous potential appellate
7 issues. Nexcycle and Nexcycle's counsel also agree that the Settlement is fair and in the
8 best interest of the Class Members. There can be no doubt that Counsel for both parties
9 possessed sufficient information to make an informed judgment regarding the likelihood of
10 success on the merits and the results that could be obtained through further litigation. Decl.
11 Blumenthal ¶ 28.

12 In Glass, the Northern District of California recently granted final approval of an
13 overtime and meal wage action although in Glass no formal discovery had been conducted
14 prior to the settlement:

15 Here, no formal discovery took place prior to settlement. As the Ninth Circuit
16 has observed, however, "[i]n the context of class action settlements, 'formal
17 discovery is not a necessary ticket to the bargaining table' where the parties
18 have sufficient information to make an informed decision about settlement."
19 See *In re Mego Financial Corp. Securities Litigation*, 213 F.3d at 459.

20 2007 U.S. Dist. LEXIS 8476 at *14.

21 Here, Class Counsel was in a significantly stronger position to evaluate the fairness of
22 this settlement than in Glass because they conducted substantial formal discovery as well as
23 informal investigation and due diligence to confirm the accuracy of the information supplied
24 by Nexcycle.

25 **VI. THE CLASS IS PROPERLY CERTIFIED FOR SETTLEMENT PURPOSES**

26 The proposed settlements meet all of the requirements for class certification under
27 F.R.C.P. §23(b)(2) and (3) as demonstrated below, and therefore, the Court may
28 appropriately approve the settlement classes as defined in the Stipulation of Settlement.
This Court should conditionally certify a settlement class for settlement purposes only that

1 consists of “all individuals employed as Site Attendant and/or Floaters by Nexcycle in
 2 California at any time from May 23, 2003 and the date of preliminary approval of the
 3 settlement by the Court.” Stipulation of Settlement Agreement at p.3.

4 **A. Rule 23 of the Federal Rules of Civil Procedure Governs**

5 Plaintiffs seek certification of this Action for settlement purposes under F.R.C.P.
 6 §23(b)(2) and (3).

7 Rule 23(b)(2) applies to class actions where “the party opposing the class has acted or
 8 refused to act on grounds that apply generally to the class, so that final injunctive relief or
 9 corresponding declaratory relief is appropriate respecting the class as a whole.”

10 Fed.R.Civ.P. 23(b)(2). Rule 23(b)(2) is applicable to the ERISA claim whereby Nexcycle
 11 was alleged to have refused to provide enrollment in the Nexcycle 401(k) Profit Sharing
 12 Plan. This ERISA claim is settled through the mandatory Self-Correction Method
 13 established by the Internal Revenue Service and Class Members will automatically receive
 14 these benefits without submitting a claim.

15 As to the remaining claims, rule 23(b)(3) applies to class actions where “the court
 16 finds that the questions of law or fact common to the members of the class predominate over
 17 any questions affecting only individual members, and that a class action is superior to other
 18 available methods for the fair and efficient adjudication of the controversy.” Fed.R.Civ.P.
 19 23(b)(3). Rule 23(b)(3) is therefore applicable to the wage and penalty claims which are
 20 being settled.

21 To maintain a class action under rule 23(b)(2) and (3), the four prerequisites of
 22 F.R.C.P. Rule 23(a) must first be satisfied. These prerequisites are referred to as
 23 numerosity, commonality, typicality, and adequacy of representation, and are set forth in
 24 Rule 23(a) as follows:

- 25 (1) the class is so numerous that joinder of all members is impracticable,
- 26 (2) there are questions of law or fact common to the class,
- 27 (3) the claims or defenses of the representative parties are typical of the

claims or defenses of the class, and

- (4) the representative parties will fairly and adequately protect the interests of the class.

While Nexcycle disputes that Plaintiffs can satisfy these requirements, the Parties agree that, for purposes of settlement, these requirements may be satisfied in this case, and therefore, the proposed Settlement Class should be certified for purposes of settlement.

B. The Numerosity Requirement Is Satisfied

Rule 23(a) merely requires that the class be “so numerous that joinder of all members is impracticable.” F.R.C.P. §23(a). “Courts have routinely found the numerosity requirement satisfied when the class comprises 40 or more members.” EEOC v. Kovacevich “5” Farms, 2007 U.S. Dist. LEXIS 32330 at *57 (E.D.Cal. April 18, 2007); see also Slaven v. BP Am., Inc., 190 F.R.D. 649, 654 (C.D. Cal. 2000); Ansari v. New York Univ., 179 F.R.D. 112, 114 (S.D.N.Y. 1998); Lockwood Motors, Inc. v. General Motors Corp., 162 F.R.D. 569, 574 (D. Minn. 1995); Consolidated Rail Corp. v. Town of Hyde Park, 47 F.3d 473, 483 (2d Cir. 1995). The Ninth Circuit observed that classes with fewer than 70 members have been certified in numerous cases. Jordan v. County of Los Angeles, 669 F.2d 1311, 1320 n.10 (9th Cir. 1982), vacated on other grounds, 459 U.S. 810, 103 S. Ct. 35, 74 L. Ed. 2d 48 (1982) (noting that classes with fewer than 70 members have been certified in numerous cases). Here, the Settlement Class is composed of 2,264 members, which is sufficiently numerous.

C. Common Questions of Law and Fact Bind the Class

Rule 23(a) requires that there be a common question of law or fact. There is no requirement that the members of the class be identically situated, only that there exists one or more factual or legal questions common to all members. Jenson v. Continental Fin. Corp., 404 F. Supp. 806 (D. Minn. 1975). This threshold of “commonality” is not particularly high. Jenkins v. Raymark Ind., Inc., 782 F.2d 468, 472 (5th Cir. 1986). The fundamental question is whether the resolution of the common legal or factual questions would affect all or a substantial number of the class members. Jenkins, supra, 782 F.2d at

1 472. Indeed, if a claim “arises out of the same legal or remedial theory, the presence of
2 factual variations is normally not sufficient to preclude class action treatment.” Donaldson
3 v. Pillsbury Co., 554 F.2d 825, 831 (8th Cir. 1977), cert. denied, 434 U.S. 856 (1977).

4 Rule 23(a) is satisfied where “the course or conduct giving rise to the cause of action
5 affects all class members, and at least one of the elements of that cause of action is shared by
6 all of the class members.” Lockwood Motors, 162 F.R.D. at 575. This requirement is met
7 if common questions of liability are present, even if there may be individual variations. In re
8 Workman’s Comp., 130 F.R.D. 99, 104 (D. Minn. 1990).

9 Here, common questions of law and fact, as alleged by the Plaintiff, are present,
10 specifically the question of whether Nexcycle’s practice of failing to provide ERISA
11 benefits and failing to accurately record the hours worked before and after site closing
12 complied with the law are common issues of law and fact. While Nexcycle disputes
13 commonality actually exists, it will not oppose such a finding for purposes of this settlement
14 only.

15 **D. The Claims of the Plaintiff Are Typical of the Class Claims**

16 The typicality requirement of Rule 23(a) requires the Plaintiff to demonstrate that the
17 members of the class have the same or similar claims as the named Plaintiff. “The typicality
18 requirement is met when the claims of the named Plaintiff arise from the same event or are
19 based on the same legal theories.” Tate v. Weyerhaeuser Co., 723 F.2d 598, 608 (8th Cir.
20 1983). In Hanlon v. Chrysler Co., 150 F.3d 1011 (9th Cir. 1998), the Ninth Circuit held that
21 “[u]nder the rule’s permissive standards, representative claims are ‘typical’ if they are
22 reasonably coextensive with those of absent class members; they need not be substantially
23 identical.” 50 F.3d at 1020. Typicality “does not mean that the claims of the class
24 representative[s] must be identical or substantially identical to those of the absent class
25 members.” Stanton v. Boeing, Inc., 327 F.3d 938, 957 (9th Cir. 2003).

26 In the instant case, there can be little doubt that the typicality requirement is fully
27 satisfied. The Plaintiffs, like every other member of the Class, was employed by Nexcycle
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1 as either a floater or site attendant and were subjected to the same practice as is alleged on
2 behalf of the class. The Plaintiffs, like every other member of the Class, claims unpaid
3 wages for work performed as a floater or site attendant and claims that ERISA benefits were
4 improperly denied even though they were eligible under the plan and ERISA. Thus, the
5 claims of both the Plaintiffs and the Members of the Class arise from the same course of
6 conduct by the Nexcycle, involve the same facts, and are based on the same legal theories.
7 The typicality requirement of Rule 23 is met as to the common issues presented in this case.
8 While Nexcycle disputes that Plaintiff is has claims typical of the individuals he purports to
9 represent, Nexcycle does not oppose a finding of typicality for purposes of this settlement
10 only pursuant to the settlement agreement.

11 **E. The Named Plaintiff Has Fairly and Adequately Protected the Interest of
the Class**

12 The named Plaintiffs provide adequate representation of the interests of the class in
13 that: (a) his attorneys are competent, experienced in class litigation and generally able to
14 conduct the proposed litigation; and (b) the named Plaintiffs do not have interests
15 antagonistic to those of the class. White v. Local 942, 688 F.2d 85, (9th Cir. 1982). Simply
16 put, Rule 23 asks whether the representative plaintiff will vigorously prosecute on behalf of
17 the class and has a basic understanding of the claims. This requirement has been met here.
18 First, Plaintiffs are well aware of their duties as a representative of the class and has actively
19 participated in the prosecution of this case to date. They appeared for deposition, testified
20 successfully and participated extensively in discovery and investigation of the Action.
21 Second, the Plaintiffs have retained competent counsel who have extensive experience in
22 consumer class actions. See Decl. Blumenthal at ¶30. Class Counsel have extensive
23 experience in class action litigation in California and throughout the country. Class Counsel
24 have been involved as class counsel in over two hundred (200) class action matters,
25 including many wage and hour class actions. See Resume attached as Exhibit B to the
26 Declaration of Blumenthal. Third, there is no antagonism between the interests of the
27 named Plaintiffs and those of the Class. Both the Plaintiffs and the Members of the Class
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1 seek monetary relief under the same set of facts and legal theories. Under such
 2 circumstances, there can be no conflicts of interest, and adequacy of representation is
 3 presumed. In re Wirebound Boxes Antitrust Lit., 128 F.R.D. 268 (D. Minn. 1989). While
 4 Nexcycle disputes that the Plaintiffs are adequate class representatives, Nexcycle does not
 5 oppose such a finding for purposes of this settlement only.

6 **F. The Additional Requirements of Rule 23 Are Satisfied**

7 Since the requirements of Rule 23(a) have been satisfied, the Court now looks to Rule
 8 23(b)(3) in order to determine whether a class should be maintained under one of the listed
 9 categories.⁴ Under Rule 23(b)(3), a class action may be maintained if two basic conditions
 10 are met. First, common questions must predominate over individual issues, and second, the
 11 class action must be superior to other available other methods for the fair and efficient
 12 adjudication of the controversy.

13 **1. The Predominance Requirement Is Met**

14 Rule 23(b)(3) provides that a class may be maintained if “the court finds that the
 15 questions of law and fact common to the members of the class predominate over any
 16 questions affecting only individual members.” There is no bright line to determine whether
 17 common issues predominate. A claim will meet the predominance requirement in cases
 18 where generalized evidence of the defendants’ conduct will prove or disprove an element of
 19 the claim on a simultaneous class-wide basis. The “fundamental question” is whether the
 20 claim asserted is seeking a remedy to a “common legal grievance.” Lockwood Motors, 162
 21 F.R.D. at 580; Buchholtz v. Swift & Co., 62 F.R.D. 581, 598 (D.Minn. 1973). Further, the
 22 mere fact that there are certain issues that may need to be determined on an individual basis
 23 does not preclude the satisfaction of the predominance requirement. See Newberg & Comte,
 24 Newberg on Class Actions §4.25 (3d ed. 1992).

25 Here, the adjudication of the common issues surrounding the Nexcycle’s uniform and

26
 27 ⁴ With respect to the ERISA claim, the additional requirements do not apply to the
 28 certification of the claim under Rule 23(b)(2).

1 systematic employment practices could establish Nexcycle's liability on a class-wide basis.
 2 Plaintiffs contends that Nexcycle engaged in a uniform course of conduct with respect to the
 3 Settlement Class; the only question is whether Nexcycle's conduct supports a meritorious
 4 claim. Such suits challenging the legality of a standardized course of conduct are generally
 5 appropriate for resolution by means of a class action. Accordingly, Plaintiffs contend that
 6 the common issues of law and fact present in this case predominate.

7 In the context of wage and hour litigation, courts have often found that common
 8 issues predominate where an employer treats the putative class members uniformly with
 9 respect to compensation, even where the party opposing class certification presents evidence
 10 of individualized variations. For example, in Wang v. Chinese Daily News, 231 F.R.D. 602,
 11 613 (C.D. Cal. 2005), the court held that the defendant "cannot, on the one hand, argue that
 12 all [putative class members] are exempt from overtime wages and, on the other hand, argue
 13 that the Court must inquire into the job duties of each [putative class member] in order to
 14 determine whether that individual is 'exempt.'" See also In re Wells Fargo Home Mortg.
 15 Overtime Pay Litig., 2007 U.S. Dist. LEXIS 77525 (N.D. Cal. October 17, 2007) at *17-18;
 16 Tierno v. Rite Aid Corp., 2006 U.S. Dist. LEXIS 71794, (N.D. Cal. Aug. 31, 2006) and
 17 Krzesniak v. Cendant Corp., 2007 U.S. Dist. LEXIS 47518, (N.D. Cal. June 20, 2007).

18 While Nexcycle disputes that the predominance requirement may be satisfied, it will
 19 not oppose such a finding for purposes of this settlement only.

20 **2. The Superiority Requirement Is Met**

21 To certify a class, the Court must also determine "that a class action is superior to
 22 other available methods for the fair and efficient adjudication of the controversy." F.R.C.P.
 23 Rule 23 (b)(3). "Where classwide litigation of common issues will reduce litigation costs
 24 and promote greater efficiency, a class action may be superior to other methods of
 25 litigation." Valentino v. Carter-Wallace, Inc., 97 F.3d 1227, 1234 (9th Cir. 1996); In re
 26 Wells Fargo Home Mortg. Overtime Pay Litig., supra, 2007 U.S. Dist. LEXIS 77525 at *
 27 33.

If the plaintiffs' claims are substantiated, a question as to which the court presently has no opinion, the class action mechanism is clearly the most efficient means of resolving the many claims which may be asserted.... If the case were not handled as a class, thousands of small claims would either be brought or unjustly abandoned. The first possibility would be a flood of cases, the second would involve individual claims abandoned because of cost.

In re Workers Compensation., 130 F.R.D. 99, 110 (D.Minn. 1990)

Here, a class action is the superior mechanism for adjudication of the claims as pled by the Plaintiffs. While Nexcycle disputes that the superiority requirement may be satisfied, it will not oppose such a finding for purposes of this settlement only.

VII. THE PROPOSED METHOD OF CLASS NOTICE IS APPROPRIATE

The parties have agreed upon procedures by which the Class will be provided with written notice of the Settlement similar to that approved and utilized in hundreds of class action settlements. The parties have jointly drafted a Notice of Preliminary Approval of the Settlement and submit it to the District Court for Approval which is part of the Settlement Agreement. The Claims Administrator will mail individual Notice to the members of the Settlement Class via first-class regular U.S. mail using the most current mailing address information available from Nexcycle's payroll records, which shall be updated by the Claims Administrator to correct for any known or identifiable address changes.

The Notice, drafted jointly and agreed upon by the Parties through their respective counsel includes information regarding the nature of the Litigation; a summary of the substance of the Settlement, including Nexcycle's denial of liability; the definition of the Settlement Class; the procedure and time period for objecting to the Settlement and participating in the Final Approval hearing; a statement that the District Court has preliminarily approved the Settlement; and information regarding the claims filing procedure and the opt-out procedure. See Exhibit "A" to Stipulation of Settlement.

The costs associated with the mailing will be paid out of the Settlement Amount. The Claims Administrator has already provided an estimate to the Parties that the Claims Administration can be handled for the reasonable amount of \$24,510.44. The Claims Administrator will mail a second postcard notice, 15 days after mailing of the initial notice.

1 The Claims Administrator shall disseminate the settlement Notice and Claim Form to the
2 Class, by U.S. mail, within thirty (30) days of the entering of the order granting preliminary
3 approval of the Settlement.

4 The proposed Notice states that Class Members who wish to participate in the
5 settlement shall complete and return the Claim Form pursuant to the instructions contained
6 therein by first class mail or equivalent, postage paid. The Claim Form shall set forth the
7 total workweeks for that Class Member as reflected by Nexcycle's records, and describes the
8 procedure for a Class Member to dispute the number of workweeks listed. Decl. Blumenthal
9 at ¶ 19. The Notice also provides that any Class Member may choose to opt out of the
10 Class, and that any such person who chooses to opt out of the Class will not be entitled to
11 any recovery obtained by way of the settlement and will not be bound by the settlement or
12 have any right to object, appeal or comment thereon, and includes a Request for Exclusion
13 form for use by Class Members who wish to opt-out. The notice will provide that to opt out
14 of the Settlement Class, a class member submit the completed Request for Exclusion form
15 by the Claim/Objection/ Exclusion deadline listed in the Notice. The Notice will provide
16 that all objections to the Settlement by anyone, including members of the Settlement Class,
17 must be made in writing, filed in the District Court, and served upon all counsel of record by
18 the Claim/Objection/ Exclusion deadline listed in the Notice. The Notice informs the Class
19 that any Class Member who fails to file and serve a timely written objections shall be
20 foreclosed from objecting to the terms of the settlement unless otherwise ordered by the
21 Court.

22 This notice program was designed to meaningfully reach the largest possible number
23 of potential Class Members. In any case in which a Notice to a Class Member is returned by
24 the United States Post Office as undeliverable, the Claims Administrator will use the
25 Internal Revenue Service Letter Forwarding Program or the Social Security Administration
26 Reporting Service to locate and notify Class Members. The mailing and distribution of the
27 Notice satisfies the requirements of due process, and is the best notice practicable under the
28

1 circumstances and constitutes due and sufficient notice to all persons entitled thereto.

2 The proposed Notice is accurate and informative. The Notice provides information
 3 on the terms and provisions of the settlement; the benefits that settlement provides for Class
 4 Members; the date, time and place of the final settlement approval hearing; and the
 5 procedure and deadlines for submitting comments, objections and requests for exclusion and
 6 complies with applicable law. Class notice is sufficient where, as here, the notice informs
 7 potential Class Members about what they can expect to receive under the settlement, how
 8 their settlement awards would be calculated, the procedure for objecting more generally or
 9 excluding oneself altogether from the settlement, the amount of fees and costs that would be
 10 paid out of the settlement, and the date of the final approval hearing. This notice satisfies the
 11 content requirements for notice following the exemplar class notice in the Manual for
 12 Complex Litigation, Second §41.43. This notice also fulfills the requirement that Class
 13 notices be neutral. Newberg, §8.39.

14 **VIII. CONCLUSION**

15 In the judgment of Plaintiffs and Class Counsel, the proposed settlements are a fair
 16 and reasonable compromise of the issues in dispute in light of the strengths and weaknesses
 17 of each party's case. Accordingly, Plaintiffs respectfully request that the Court preliminarily
 18 approve the proposed settlements, certify the Class for settlement purposes, schedule a date
 19 for a hearing on Final Approval, and sign the proposed Preliminary Approval Order
 20 submitted herewith.

21 Dated: July 2, 2008

BLUMENTHAL & NORDREHAUG

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 Norman B. Blumenthal
 Attorneys for Plaintiff

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Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

RAMON BARCIA; RANDALL LEWIS; on
behalf of themselves, and on behalf of all
persons similarly situated,

Plaintiff,

vs.

CONTAIN-A-WAY INC., a California
corporation, doing business as NEXCYCLE
and 20/20 RECYCLE CENTERS,

Defendants.

CASE No. **07 CV 0938 IEG (JMA)**

**DECLARATION OF NORMAN B.
BLUMENTHAL IN SUPPORT OF
MOTION FOR PRELIMINARY
APPROVAL OF CLASS SETTLEMENT**

Hearing Date: August 11, 2008

Hearing Time: 10:30 a.m.

District Judge: Hon. Irma E. Gonzalez

Courtroom: 1, 4th Flr

Action Filed: May 23, 2007

1 I, NORMAN B. BLUMENTHAL, declare as follows:

2 1. My professional corporation is a partner in the law firm of Blumenthal &
3 Nordrehaug counsel of record for the Class in this matter. As such, I am fully familiar with the
4 facts, pleadings and history of this matter. The following facts are within my own personal
5 knowledge, and if called as a witness, I could testify competently to the matters stated herein.

6 2. This declaration is being submitted in support of plaintiff's Motion For an Order
7 (1) Preliminarily Approving Settlement of Plaintiffs' Claims; (2) Scheduling Final Settlement
8 Hearing; and (3) Directing that Notice be sent to Class Members. Lodged herewith as Exhibit "A"
9 is a copy of the Stipulation and Settlement Agreement along with exhibits thereto.

10 Fairness of Settlement

11 3. Plaintiffs and Class Counsel believe that this settlement is fair, reasonable and
12 adequate. Under the terms of the accepted mediator's proposal, the parties agreed that
13 Nexcycle would pay up to Two Million, Five Hundred Thousand Dollars (\$ 2.5 million) in
14 full discharge of all claims asserted in this action on a claims-made basis with a minimum
15 payout of \$1.25 million. This sum is inclusive of all claims of the Settlement Class
16 Members related to this action, as well as Class Counsel's attorneys' fees and costs, an
17 enhancement payment for the Class Representatives, the payment to the California Labor
18 and Welfare Development Agency, and the cost of class notice and claims administration.

19 4. The Settlement Agreement provides for a claims process requiring Nexcycle to
20 make payments on each timely and valid claim submitted. All Settlement Class members
21 will receive an opportunity to participate in and receive payment.

22 5. The parties submitted to mediation before Mark Rudy, Esq., of the firm Rudy,
23 Exelrod & Zieff, a prominent San Francisco law firm with extensive experience in wage and
24 hour class actions. Based upon his review of the facts in this case, and negotiation between
25 the parties Mr. Rudy proposed an amount to the parties as a Mediator's proposal. The
26 Parties accepted the Mediator's proposal, in light of Mr. Rudy's experience as a Mediator
27 and Litigator in wage and hour cases, and the uncertainties and cost of the years of litigation

1 the Parties faced if the Mediator's proposal was not accepted.

2 6. This is an excellent result for the members of the Settlement Class. Liability
3 in this case was uncertain because some or all of the Class Members may have been paid for
4 the hours worked. Indeed, some courts have denied class certification to "off the clock"
5 cases involving similar facts. Moreover, while the amount of wages for each Class Member
6 would be hard to calculate, the \$2.5 million allows for the payment of a reasonable estimate
7 of unpaid wages. The ERISA claims will pay out at 100% of the amount due under the
8 Internal Revenue Service calculation method, and the remaining claims calculate to
9 compensate for the amount due for the nonpayment of wages as calculated by Wesley
10 Nutten, Plaintiffs' damage expert. The hourly rate used was the straight time rate of **\$8.69**.
11 The number of workweeks involved was **90,025** for the Class Period. Each one (1) hour per
12 workweek for "off-the-clock" time for the Class equals \$780,879.33 for the Class Period.
13 Each missed meal break per work week for the Class equals \$780,879.33 for the Class
14 Period. Each missed rest break per work week for the Class equals \$780,879.33 for the
15 Class Period. As a result, the Defendant was subject to claims at a rate of \$2,342,637.99 for
16 the Class Period for the combination of one off-the-clock hour, one missed meal break, and
17 one missed rest break per workweek. The settlement of \$2,500,000 after deduction of the
18 PAGA payment of \$25,000 and the ERISA payment of \$209,358 equals \$2,265,642 which
19 is nearly a full recovery of the estimated loss assuming these amounts could be proven at
20 trial. Clearly the goal of this litigation has been met.

21 Procedural History of the Litigation

22 7. On April 19, 2007, Plaintiff Randall Lewis filed a complaint in the Superior
23 Court for the County of San Diego, State of California (the "Court") as Civil Action No. 37-
24 2007-00065322, entitled Randall Lewis, et al. v. Contain-A-Way, et al., on behalf of
25 Plaintiff Lewis and all other similarly situated site attendant employees, seeking, among
26 other things, unpaid wages and penalties for missed rest breaks. On May 23, 2007, Plaintiff
27 Ramon Barcia filed this lawsuit in the United States District Court for the Southern District
28

1 of California which was captioned Ramon Barcia and Matthew Carter v. Contain-a-Way,
2 Inc., d/b/a Nexcycle and 20/20 Recycle Centers (the “Action”).¹ The Action was brought on
3 behalf of Plaintiff Barcia and all other similarly situated site attendant and floater
4 employees, seeking, among other things, unpaid wages and penalties for missed rest breaks
5 as well as a claim under ERISA for benefits. Following extensive discovery in both the state
6 and federal lawsuits, Plaintiff Barcia moved to amend the complaint to add Randall Lewis to
7 the Action.² Following the addition of Plaintiff Lewis to this Action, the state action was
8 dismissed without prejudice for the purpose of proceeding solely in the federal court where
9 all claims could be redressed.

10 8. The complaint was also amended to add a claim under the Private Attorney
11 Generals Act (“PAGA”), Cal. Labor Code §2698, *et seq.* The Action therefore currently
12 asserts claims for violations of the California Labor Code §§ 204, 210, 218, 226, 226.7, 510,
13 512, 1194 and 1198, the Fair Labor Standards Act, 29 U.S.C. § 216, and the California
14 Business and Professions Code §17200, along with claims for benefits due under ERISA, 29
15 USCS §§ 1001 *et seq.*, and for civil penalties under PAGA. The Named Plaintiffs allege
16 that individuals employed by Nexcycle as recycling site attendants and floaters were not paid
17 earned wages, including overtime, for all hours worked, were not provided with all meal and
18 rest breaks as required for non-exempt employees, and were improperly denied benefits
19 because they were designated as part-time employees. The Action sought various statutory
20 penalties and restitution for unfair competition pursuant to California Business and
21 Professions Code Section 17200 including disgorgement of profits, recovery of pre and post
22 judgment interest, attorneys’ fees, and costs. The Class consists of all individuals employed

23 _____
24 ¹ On December 13, 2007, Plaintiff Matthew Carter voluntarily dismissed himself from
25 the Lawsuit.

26 ² Leave to add Randall Lewis to the federal Lawsuit was sought when documents
27 concerning Nexcycle’s ERISA plan revealed that Randall Lewis may have a claim under
28 ERISA, which could only be brought in federal court.

1 as Site Attendant and/or Floaters by Nexcycle in California at any time from May 23, 2003
2 and the date of preliminary approval of the settlement by the Court.

3 9. The Class consists of all individuals employed as Site Attendants and/or
4 Floaters by Nexcycle in California at any time from May 23, 2003 and the date of preliminary
5 approval of the settlement by the Court.

6 10. Nexcycle denies any and all liability or wrongdoing of any kind associated
7 with the claims alleged in the Complaint. Further, Nexcycle denies that the claims asserted
8 are suitable for class treatment. Nexcycle maintains, among other things, that they have
9 complied at all times with the California Labor Code, that the members of the putative class
10 were paid for wages for all hours worked, and that all members of the putative class were
11 provided with meal and rest breaks. Specifically, in Nexcycle's view, the Settlement Class
12 members were properly paid wages for all hours recorded on their time sheets. Further,
13 Nexcycle contends that class certification would be inappropriate because the Named
14 Plaintiffs do not share common issues of fact or law with the proposed class, they are not an
15 adequate representative of the proposed class, their claims are not typical of the proposed
16 class and class treatment would require the court to conduct myriad individualized inquiries
17 that would predominate over any common questions of law or fact.

18 11. Plaintiff contends that Nexcycle violated California wage and hour laws and
19 that the Action is appropriate for class certification on the basis that the Named Plaintiffs'
20 claims meet the requisites for class certification. Without admitting that class certification is
21 proper, Nexcycle has stipulated that a Class of all individuals employed as Site Attendant
22 and/or Floaters by Nexcycle in California may be certified for settlement purposes only.
23 The Parties agree that certification for settlement purposes is not an admission that class
24 certification would be proper if the class certification issue were litigated. Further, this
25 agreement is not admissible in this or any other proceeding as evidence that the Class could
26 be certified absent a settlement. Solely for purposes of settling the lawsuits, the Parties
27
28

1 stipulate and agree that the requisites for establishing class certification with respect to the
2 Class, as defined above, have been met and are met.

3 12. Class Counsel has conducted a thorough investigation into the facts of the
4 class action, including depositions, interrogatories, document discovery, and extensive
5 review of relevant documents and data. Class Counsel has diligently evaluated the Class
6 Members' claims against Nexcycle. Prior to the parties attending mediation, counsel for
7 Nexcycle provided Class Counsel with access to Class Member data, including data
8 reflecting the weeks worked by the Class Members and relevant salary information for the
9 positions at issue. Based on the foregoing data and their own independent investigation and
10 evaluation, Class Counsel believe that the settlement with Nexcycle for the consideration
11 and on the terms set forth in this Stipulation of Settlement is fair, reasonable, and adequate
12 and is in the best interest of the class in light of all known facts and circumstances, including
13 the risk of significant delay, defenses asserted by Defendants, and numerous potential
14 appellate issues. Nexcycle and Nexcycle's counsel also agree that the Settlement is fair and
15 in the best interest of the Class Members.

16 Plan of Allocation

17 13. In consideration for settlement of this Action and a release of the claims as
18 described in the Stipulation of Settlement, Nexcycle agrees to pay to settle all claims a sum
19 not to exceed Two Million Five Hundred Thousand Dollars (\$2,500,000), including Class
20 Counsel's attorneys' fees, costs and expenses, payment of ERISA claims under the Self
21 Correction Method, the Named Plaintiffs Enhancement, the costs of settlement
22 administration, and the PAGA award to the California Labor and Welfare Development
23 Agency ("The Settlement Amount").

24 14. The ERISA claim shall be settled by application of the Self-Correction method
25 set forth in the Internal Revenue Service's Revenue Procedure 2006-27, Appendix A, which
26 will result in the establishment of and/or contribution to 401(k)/retirement accounts for
27 eligible Class members in amounts equal to the individual missed deferral opportunities of
28

1 \$209,358.00. Class Members are not required to submit any claim in order to obtain those
2 vested benefits. The remaining claims for relief alleged in the Action shall be settled for a
3 monetary amount to be paid out of the remainder of the \$2.5 million. The amount of the
4 Maximum Settlement Consideration allocable for the payment of claims shall be the amount
5 remaining ("Net Settlement Consideration") after the payment of the following costs: (i)
6 settlement consideration used to fund 401(k) accounts in the total amount of the ERISA
7 Settlement Consideration, attorneys' fees and costs of Class Counsel as approved by the
8 Court, incentive payments to the Named plaintiffs for serving as representative Class
9 Plaintiffs as approved by the Court, the costs, fees, charges and expenses of the claims
10 administration, and payment of \$25,000 to the California Labor and Workforce
11 Development Agency pursuant to the Private Attorneys General Act. Eligible Class
12 Members who submit timely claims shall receive their prorata share of the Net Settlement
13 Consideration based upon the total number of work weeks credited to each individual Class
14 Member for weeks worked during the class period as a percentage of the total number of
15 work weeks of all the Class Members as a group worked during the class period.

16 15. Nexcycle and their counsel will not oppose an attorneys' fees award, including
17 costs incurred by Class Counsel, of 25% of the Maximum Settlement Consideration to
18 compensate Class Counsel for all of the work already performed in this case and all of the
19 work remaining to be performed in documenting the Settlement, securing Court approval of
20 the Settlement, making sure that the Settlement is fairly administered and implemented and
21 obtaining dismissal of the actions.

22 16. Subject to Court approval, the Class Representatives Ramon Barcia and
23 Randall Lewis will receive a Named Plaintiff Enhancement, deducted from the Maximum
24 Settlement Amount, of a sum of no more than \$12,000 each for their service as Class
25 Representatives in addition to his claim share to which he is otherwise entitled to through
26 the claims process.

1 17. Subject to Court approval, Nexcycle further agrees to pay from the Settlement
2 Amount the reasonable costs of the Claims Administrator associated with the administration
3 of this Settlement equal to the fixed sum of \$24,510.44. The Claims Administrator will be
4 Gilardi & Co., LLC and will charge no more than this fixed sum.

5 18. Within fifteen (15) business days after the Claims Administrator has calculated
6 and provided notice to Nexcycle of the actual amount of claims to be paid out under the
7 Settlement, Nexcycle agrees to wire transfer the amount specified by the Claims
8 Administrator to a bank account established by the Claims Administrator. The Claims
9 Administrator shall mail the settlement payments to Qualified Claimants within twenty (20)
10 business days after the final approval of the settlement by the Court or, if there is any object
11 to the settlement, within twenty (20) business days after the expiration of the time to file
12 appeals or the resolution of any appeals filed.

13 19. The proposed Notice states that Class Members who wish to participate in the
14 settlement shall complete and return the Claim Form pursuant to the instructions contained
15 therein by first class mail or equivalent, postage paid. The Claim Form shall set forth the
16 total workweeks for that Class Member as reflected by Nexcycle's records, and describes the
17 procedure for a Class Member to dispute the number of workweeks listed.

18 Risks of Continued Litigation

19 22. Plaintiffs and Class Counsel recognize the expense and length of continuing to
20 litigate and trying this Action against Nexcycle through possible appeals which could take
21 several years. Class Counsel also have taken into account the uncertain outcome and risk of
22 litigation, especially in complex actions such as this Action. Class Counsel are also mindful
23 of and recognize the inherent problems of proof under, and alleged defenses to, the claims
24 asserted in the Action. Based upon their evaluation, Plaintiffs and Class Counsel have
25 determined that the settlement set forth in the Stipulation is in the best interest of the Class
26 Members.

1 23. Here the litigation has been hard-fought with aggressive and capable
2 advocacy on both sides. Clearly the goal of this litigation, to seek redress for the Class, has
3 been met.

4 24. Here, a number of defenses asserted by Nexcycle present serious threats to the
5 claims of Plaintiff and the other Class Members. For example, Nexcycle contended that the
6 time records prepared by the Class Members themselves were the best evidence of the hours
7 worked by employees, that Nexcycle paid employees for all hours listed on these time
8 records and that Nexcycle's handbook clearly prohibited off the clock work. Nexcycle also
9 argued that differences between the individual recycling sites and the practices of the
10 employees at each site precluded class-wide litigation of the alleged claims.

11 25. Recent federal authority supports the arguments by Nexcycle asserted against
12 liability and class certification. In Proctor v. Allsup's Convenience Stores, Inc., 2008 U.S.
13 Dist. Lexis 33707 (N.D. Tx 2008), the district court granted a motion to decertify a class
14 based upon alleged "off the clock" work. The court found that even though Plaintiffs
15 submitted declarations attesting to off the clock work, "there is no evidence of a single
16 decision, policy or plan that is causing the Plaintiffs to work off the clock." Id., at *11. In
17 Basco v. Wal-Mart Stores, Inc., 216 F. Supp. 2d 592 (E.D. La. 2002), the court considered
18 certification of a class of hourly employees alleging Wal-Mart failed to pay for time worked
19 off-the-clock. The court found predominance of factual inquiries regarding off-the-clock
20 work lacking, because "individualized issues will arise from the myriad of possibilities that
21 could be offered to explain why any one of the plaintiffs worked off-the-clock." Id. at 603.
22 These individual questions included, for example, whether the employee did in fact work,
23 whether the employee unreasonably failed to seek compensation for the off-the-clock work
24 performed, and whether the employee knew of Wal-Mart's policy prohibiting off-the-clock
25 work and chose to engage in it anyhow. Id. In Clausnitzer v. Federal Express Corp., 248
26 F.R.D. 647 (S.D. Fla 2008), the district court denied class certification for employees
27 alleging that the were not paid "for all hours worked." Id., at 648. Again, the court in
28

1 Clausnitzer relied on the fact that there was no “evidence of an explicit FedEx policy
2 requiring employees to work during gap periods” and that “FedEx’s policies explicitly
3 prohibited employees from performing work off the clock.” Id., at 651. As a result, the
4 Court concluded that “individual issues of law and fact predominate over issues common
5 among the class members.” Id., at 662.

6 26. Similarly here, Nexcycle would have certainly argued in opposing class
7 certification that individual issues predominated because there was no explicit policy
8 requiring off the clock work and there were variations as to why employees may have
9 worked off the clock. While other cases have approved class certification in off the clock
10 wage claims, class certification in this action would have been hotly disputed and was by no
11 means a foregone conclusion.

12 27. Class Counsel has conducted a thorough investigation into the facts of the
13 class action. Class Counsel began investigating the Class Members’ claims before this
14 action was filed and conducted discovery including depositions, interrogatories and requests
15 for production of documents in both the state and federal actions. Class Counsel had
16 engaged in an extensive review and analysis of the relevant documents and data with the
17 assistance of experts. At the time the settlement was reached, Class Counsel was working
18 on a motion for class certification including supporting declarations which they were
19 prepared to file if the Settlement had not been agreed to. Accordingly, the agreement to
20 settle certainly did not occur until Class Counsel possessed sufficient information to make
21 an informed judgment regarding the likelihood of success on the merits and the results that
22 could be obtained through further litigation.

23 28. Based on the foregoing data and their own independent investigation and
24 evaluation, Class Counsel is of the opinion that the settlement with Nexcycle for the
25 consideration and on the terms set forth in this Stipulation of Settlement is fair, reasonable,
26 and adequate and is in the best interest of the class in light of all known facts and
27 circumstances, including the risk of significant delay, defenses asserted by Nexcycle, and
28

1 numerous potential appellate issues. Nexcycle and Nexcycle's counsel also agree that the
2 Settlement is fair and in the best interest of the Class Members. There can be no doubt that
3 Counsel for both parties possessed sufficient information to make an informed judgment
4 regarding the likelihood of success on the merits and the results that could be obtained
5 through further litigation.

6 29. There is no need for continued litigation simply to reaffirm what is already known
7 by the negotiating parties. The extensive due diligence performed by class counsel has not created
8 any doubt concerning the accuracy of the information supplied by Nexcycle. Given the
9 complexities of this case, potential offsets, the claims of primary jurisdiction along with the
10 uncertainties of proof and appeal, the proposed settlement in Plaintiff's view is well within the
11 range of possible approval and has no obvious deficiencies.

12 30. Plaintiff's counsel are experienced in prosecuting class action lawsuits and can
13 competently represent the Class. Other lawyers at my firm and I have extensive class litigation
14 experience. We have handled a number of class actions and complex commercial cases and have
15 acted both as counsel and as lead and co-lead counsel in a variety of these matters. We have
16 successfully prosecuted and obtained significant recoveries in numerous class action lawsuits and
17 other lawsuits involving complex issues of law and fact. Class Counsel have been involved as class
18 counsel in over two hundred (200) class action matters. A true and correct copy of the resume of
19 my firm is attached hereto as Exhibit "B".

20 I declare under penalty of perjury under the laws of the State of California that the foregoing
21 is true and correct. Executed this 2nd day of July, 2008, at La Jolla, California.

22
23 By: s/Norman B. Blumenthal
24 NORMAN B. BLUMENTHAL

25
26 K:\D\NBB\Lewis v. Nexcycle\Preliminary Approval\p-Decl NBB.wpd
27
28

EXHIBIT “A”

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5 CONTAIN-A-WAY, INC.

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13 Attorneys for Plaintiffs
14 RAMON BARCIA and RANDALL LEWIS

15 UNITED STATES DISTRICT COURT
16 SOUTHERN DISTRICT OF CALIFORNIA

17 RAMON BARCIA; RANDALL LEWIS;
on behalf of themselves, and on behalf of
18 all persons similarly situated,

19 Plaintiffs,

20 v.

21 CONTAIN-A-WAY, INC., a California
corporation, doing business as
22 NEXCYCLE and 20/20 RECYCLE
CENTERS,

23 Defendants.
24
25
26
27
28

Case No. 07 CV 938 - IEG (JNA)

**STIPULATION OF CLASS ACTION
SETTLEMENT**

LITTLER MENDELSON
A PROFESSIONAL CORPORATION
501 W. BROADWAY
SAN DIEGO, CA 92101-3577
619.232.0441

STIPULATION OF CLASS ACTION
SETTLEMENT (NO. 07 CV 938 - IEG (JNA))

This Stipulation of Class Action Settlement ("Stipulation" or "Settlement") is made and entered into by and between the following parties: (1) Plaintiffs Ramon Barcia and Randall Lewis (hereafter "Plaintiffs"), on their own behalf and on behalf of a class to be certified for settlement purposes only (the "Class"), and (2) Defendant Contain-A-Way, Inc. (hereafter "Defendant"). Plaintiffs and Defendant will collectively be referred to hereafter as the "Parties." The Parties make this Stipulation through their respective counsel of record and subject to the terms and conditions hereof and the approval of the Court.

I.

INTRODUCTION AND NATURE OF ACTION

On May 23, 2007, Plaintiffs Ramon Barcia and Matthew Carter filed this lawsuit which is captioned *Ramon Barcia and Matthew Carter v. Contain-A-Way, Inc. d/b/a Nexcycle and 20/20 Recycle Centers* ("the Lawsuit"). On December 13, 2007, Plaintiff Matthew Carter voluntarily dismissed himself from the Lawsuit. On April 2, 2008, the United States District Court issued its order granting in part Plaintiffs' motion for leave to file a First Amended Complaint, which substituted Randall Lewis as a named Plaintiff.

The First Amended Complaint, which was filed on April 14, 2008, alleges the following claims for relief: (1) Failure to pay earned wages and overtime compensation in violation of Labor Code section 204, 210, 218, 510, 1194 and 1198; (2) Failure to provide rest and meal periods in violation of Labor Code sections 226.7 and 512; (3) Failure to provide accurate itemized statements in violation of Labor Code section 226; (4) Unfair competition in violation of Business and Professions Code section 17200 *et seq.*; (5) Claim for benefits due, declaratory relief, equitable, injunctive and/or appropriate relief under ERISA Plan [29 U.S.C. § 1132]; (6) Violation of Fair Labor Standards Act [29 U.S.C. § 216]; and (7) violation of Labor Code section 2698 *et seq.* [Private Attorneys General Act].

All claims for relief are brought as a class action on behalf of all present and former employees employed as Site Attendants or Floaters in California by Contain-A-Way, Inc. since May 23, 2003. Each of the state law causes of action alleged in the Lawsuit were also alleged in a duplicative lawsuit filed in the San Diego Superior Court which is captioned *Randall Lewis and*

1 *Patrick Dickey v. Contain-A-Way, Inc. d/b/a Nexcycle and 20/20 Recycle Centers.* The parties to
 2 that action stipulated to its dismissal in the entirety for the purpose of proceeding solely in federal
 3 court. By entering into this Stipulation, the Parties intend that the Lawsuit and the duplicative action
 4 filed in state court are both resolved.

5 On April 2, 2008, the Parties attended a mediation before Mark Rudy, Esq., of Rudy,
 6 Excelrod & Zieff, a prominent San Francisco mediation firm. This Settlement was reached during
 7 that mediation session. Mark Rudy is an independent mediator with extensive experience in wage
 8 and hour class actions. The mediation began at 9:00 a.m. and ended at 5:30 p.m. At all times, the
 9 Parties' negotiations were non-collusive and at arm's length.

10 II.

11 REPRESENTATIONS

12 This Stipulation relates solely to the claims raised by Plaintiffs and the Class they
 13 purport to represent in the Lawsuit. For settlement purposes only, the Parties stipulate to
 14 certification of the following class (the "Settlement Class"):

15
 16 All individuals employed as Site Attendants and/or Floaters by
 17 Defendant in California, at any time from May 23, 2003 and the
 18 date of preliminary approval of the settlement by the Court.
 19

20 The class will be certified for settlement purposes with respect to all claims alleged in
 21 the First Amended Complaint. The parties further stipulate for settlement purposes only that
 22 Plaintiffs Ramon Barcia and Randall Lewis shall be appointed as Class Representatives of the
 23 Settlement Class, and that Norman B. Blumenthal, Esq., Kyle R. Nordrehaug, Esq. and Aparajit
 24 Bhowmik, Esq. of Blumenthal & Nordrehaug, and Walter Haines, Esq. of the United Employees
 25 Law Group, shall be appointed as counsel for the Settlement Class ("Class Counsel").

26 Counsel for Defendant is Lena K. Sims, Esq. of Littler Mendelson, a Professional
 27 Corporation.
 28

1 This Settlement follows a thorough investigation into the facts of the Lawsuit.
 2 Immediately after Plaintiffs initiated litigation, both sides commenced formal discovery. Plaintiffs
 3 and their counsel have interviewed many putative class members and Area Managers about the facts
 4 alleged in the Lawsuit and have inspected extensive time and payroll records, written policies and
 5 procedures and other documentation relating to Defendant's policies and procedures concerning the
 6 claims alleged. Plaintiffs' counsel deposed a person most knowledgeable for Defendant Contain-A-
 7 Way, Inc., as well as the Area Manager of three of the named class representatives.

8 Defendant produced more than 4500 pages of documentary evidence to Plaintiffs.
 9 Defendant deposed each of the four individuals who have been or are named as class representatives
 10 in the Lawsuit and in the action filed in state court. Defendant also interviewed operations
 11 personnel, managers and many individuals in the putative class, as well as conducting an extensive
 12 review of relevant time and payroll records and other documentary evidence. Just prior to
 13 mediation, Defendant provided Plaintiffs' counsel with extensive electronic information, including
 14 data needed to mediate all claims alleged in the First Amended Complaint. Both sides are
 15 sufficiently familiar with the facts of this case to enter into a settlement at this time.

16 Defendant denies any liability or wrongdoing of any kind associated with the claims
 17 alleged in the First Amended Complaint. Defendant contends that it has complied at all times with
 18 the California Labor Code; that all employees received and/or were otherwise provided with their
 19 meal and rest periods; that Defendant complied with all itemized wage statement and recordkeeping
 20 obligations under California law; and that Defendant fulfilled its obligations under the Fair Labor
 21 Standards Act and the Employee Retirement Income Security Act. Nevertheless, Defendant
 22 recognizes that the issues presented in the Lawsuit are unlikely to be resolved without extensive and
 23 costly pretrial proceedings and that further litigation will cause inconvenience, distraction,
 24 disruption, delay and expense disproportionate to the potential benefits of litigation and have taken
 25 into account the risk and uncertainty of the outcome inherent in any litigation. Nothing contained in
 26 this Stipulation, nor the fact of this Stipulation itself, shall be construed or deemed as an admission
 27 of liability, culpability, negligence, or wrongdoing on the part of Defendant.
 28

Based on their own independent investigations and evaluations, the Parties and their respective counsel are of the opinion that the Settlement for the consideration and on the terms set forth in this Stipulation is fair, reasonable, and adequate and is in the best interests of the Class Members and Defendant in light of all known facts and circumstances and the risks inherent in litigation, including the potential appellate issues. The Settlement for each participating Class Member is fair, reasonable and adequate, given the inherent risk of litigation.

To the best knowledge of the Parties and their respective counsel, there are no other like class claims asserted or filed by members of the Class, other than this lawsuit and the State Court Lawsuit. To the best knowledge of the Parties and their respective counsel, no Class Member has refrained from bringing an action with claims similar to those raised in the Lawsuit, whether in reliance on the Lawsuit or otherwise, and who thus might be prejudiced by dismissal of the Lawsuit.

This Stipulation is contingent upon the approval and certification by the Court of the Class for settlement purposes only. Defendant does not waive, and indeed expressly reserve, their rights to challenge the propriety of class certification for any purpose should the Court not approve this Stipulation.

The Parties and their respective counsel agree to cooperate and take all steps necessary and appropriate to dismiss this action with prejudice after submission to the Court of proof of payment of all timely claims made by Class Members.

III.

TERMS OF SETTLEMENT

In consideration of the mutual covenants, promises, and representations set forth in this Stipulation, the Plaintiffs, on behalf of themselves and the Class, and Defendant, agree to settle and compromise the Lawsuit and the claims defined above, subject to the terms and conditions set forth in this Stipulation and the approval of the Court.

Defendant agrees to a maximum payout in the amount of \$2,500,000.00 ("the Maximum Settlement Consideration"). The ERISA claim shall be settled by application of the Self-Correction Method set forth in the Internal Revenue Service's Revenue Procedure 2006-27, Appendix A ("the ERISA Settlement Consideration"), which will result in the establishment of

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1 and/or contribution to 401(k)/retirement accounts for eligible Class Members in amounts equal to
 2 their individual missed deferral opportunities. To obtain any benefits that may be vested in a
 3 401(k)/retirement account, Class Members must contact Fidelity NetBenefits[®] at www.401k.com or
 4 call the Fidelity Retirement Benefits Line at 1-800-835-5097. Class Members are not required to
 5 submit any claim in order to obtain those vested benefits. The remaining claims for relief alleged in
 6 the First Amended Complaint, which include all claims for violation of the Labor Code, the Business
 7 and Professions Code and the Fair Labor Standards Act, shall be settled for a monetary amount to be
 8 paid out of a settlement fund in a bank account established by a Claims Administrator.

9 The Maximum Settlement Consideration will increase by any amount of the ERISA
 10 Settlement Consideration in excess of \$375,000.00.

11 The payout shall be made on a "claims made" basis with a minimum payout of
 12 \$1,250,000.00 ("the Minimum Settlement Consideration"). Any residue that remains beyond the
 13 Minimum Settlement Consideration will revert to Defendant. Defendant shall internally earmark
 14 funds in the amount of the Maximum Settlement Consideration less the ERISA Settlement
 15 Consideration used to establish 401(k) retirement accounts for eligible Class Members. The
 16 settlement consideration will be used to (i) fund 401(k) accounts in the total amount of the ERISA
 17 Settlement Consideration, (ii) pay timely claims to Class Members; (iii) pay attorneys' fees and costs
 18 of Class Counsel as approved by the Court; (iv) make incentive payments ("Enhancements") to the
 19 named plaintiffs for serving as representative Class Plaintiffs as approved by the Court; (v) pay the
 20 costs, fees, charges and expenses of the claims administration (referred to hereafter as the "Claims
 21 Administrator Costs" or "CA Costs"); (vi) make payment of \$25,000.00 to the California Labor and
 22 Workforce Development Agency pursuant to Labor Code section 269 *et seq.* [Private Attorneys
 23 General Act]; and (vii) pay the employees' share of applicable payroll taxes. The amount of the
 24 Maximum Settlement Consideration allocable for the payment of claims shall be the amount
 25 remaining ("Net Settlement Consideration") after the payment of all of the above enumerated costs
 26 except for the payment of timely claims to Class Members as enumerated in subsection (ii) above.

27 Within fifteen (15) business days after the Claims Administrator has calculated and
 28 provided notice to Defendant of the actual amount of Claims to be paid out under the Settlement,

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6.

Defendant agrees to wire transfer the amount specified by the Claims Administrator to a bank account established by the Claims Administrator. No separate settlement fund shall be created in connection with the Settlement, and any unclaimed funds beyond the Minimum Settlement Consideration shall be retained solely by and returned to Defendant. Any interests accrued from the bank account established by the Claims Administrator will be paid to Defendant along with any other funds remaining in the bank account. Under the terms of the Settlement, eligible Class Members who submit timely claims shall receive their prorata share of the Net Settlement Consideration based on the total number of work weeks credited to each individual Class Member for weeks worked during the class period as a percentage of the total number of work weeks of all the Class Members as a group worked during the class period. To the extent that the Minimum Settlement Consideration available for distribution is not exhausted by the timely claims made of the Class Members then the balance of the Minimum Settlement Consideration available for distribution shall be distributed prorata to the Class Members making timely claims in order to exhaust the use of the Minimum Settlement Consideration. Defendant will provide Class Counsel and the Claims Administrator with accurate workweek information for each Class Member to the best of its ability.

a. Class Counsel may apply for an award of attorneys' fees and costs, subject to Court approval, which shall include Plaintiffs' costs and expenses related to the filing and litigation of the Lawsuit (hereinafter called "Class Counsel Fees and Litigation Costs"). Class Counsel may apply to the Court for Class Counsel Fees and Litigation Costs, in a total amount not to exceed 25% of the Maximum Settlement Consideration. Any amount awarded by the Court as Class Counsel Fees and Litigation Costs shall fully compensate and reimburse Class Counsel for any and all of the work already performed in the Lawsuit and all work remaining to be performed in fully and finally resolving the Lawsuit, including, but not limited to preparing and filing for both preliminary and final motions and/or stipulations for securing Court approval of the settlement, drafting of the notice of claims to all Class Members and making sure that the settlement is fairly and properly administered. Defendant agrees not to oppose Class Counsel's application to the Court for the payment up to the foregoing amount in total Class Counsel Fees and Litigation Costs. Payment of Class Counsel Fees and Litigation Costs awarded by the Court shall be made to Class Counsel from

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1 the Maximum Settlement Consideration within ten business days of the later of (i) the Court's final
 2 approval of the settlement if no objections by Class Members have been filed that have not been
 3 withdrawn, (ii) the time for appeal has expired if an objection has been filed and not withdrawn, or
 4 (iii) the final resolution of any appeal that has been filed. A Form 1099-MISC shall be issued to
 5 Class Counsel at the appropriate time in the amount of Class Counsel Fees and Litigation Costs
 6 awarded by the Court and paid to Class Counsel. The payment of the Class Counsel Fees and
 7 Litigation Costs shall be made to the law firm of Blumenthal & Nordrehaug which shall be
 8 responsible for the distribution thereof to co-counsel.

9 b. Application will be made by Class Counsel to the Court, subject to
 10 Court approval, for a maximum sum of Twelve Thousand Dollars (\$12,000.00) each to Ramon
 11 Barcia and Randall Lewis as "Enhancements" for serving as representative class plaintiffs. The
 12 Enhancements are to be paid in addition to, any amounts they may be entitled to recover under the
 13 Settlement. Payment of the Enhancements will result in the issuance of a Form 1099-MISC to each
 14 of the named Plaintiffs. They shall assume full responsibility and liability for the payment of taxes
 15 due on such enhancement payments. Within 10 business days of the latter of (i) the Court's final
 16 approval of the settlement if no objections by Class Members have been filed that have not been
 17 withdrawn, (ii) the time for appeal has expired if an objection has been filed and not withdrawn, or
 18 (iii) the final resolution of any appeal which has been filed, payment shall be made to the named
 19 Plaintiffs from the settlement fund for any Enhancements awarded by the Court ("Effective Date").

20 c. The Parties agree that, subject to Court approval, Gilardi & Co., LLC
 21 will serve as Claims Administrator ("CA"). The duties of the CA are more particularly defined
 22 below.

23 d. The Maximum Settlement Consideration is the total amount Defendant
 24 is required to pay under this Settlement, and under no circumstances shall Defendant be required to
 25 pay more than Two Million Five Hundred Thousand Dollars (\$2,500,000.00) under this Settlement.
 26 Notwithstanding the foregoing, Defendant understands and agrees that it will be responsible for
 27 paying the employer's share of all applicable taxes and withholding. The unclaimed portion of the
 28 Settlement beyond the Minimum Settlement Consideration, if any, shall revert to Defendant. From

1 the reversion, Defendant may in its discretion pay the employer's share of payroll taxes associated
2 with the wage-related portion of the settlement as well as the costs of administering the settlement.

3 c. With regard to settlement payments to Class Members who make
4 timely and valid claims, one-third of each such payment shall be considered penalties and not subject
5 to withholdings, one-third shall be considered interest, and the remaining one-third of each such
6 payment shall be considered wages and subject to withholdings. Nothing in this Stipulation is
7 intended to constitute legal advice. To the extent that this Stipulation or any of its attachments is
8 interpreted to contain or constitute advice regarding any U.S. or federal tax issue, such advice is not
9 intended or written to be used, and cannot be used, by any person for the purpose of avoiding
10 penalties under the Internal Revenue Code. Defendant is not responsible for any tax consequences
11 regarding the allocation of the settlement payments on a one-third to penalties, one-third to interest,
12 and one-third to wages basis as set forth above. Defendant shall pay the employer's share of payroll
13 taxes and withholdings on that portion of settlement payments to Class Members that is allocated to
14 wages to the relevant state and federal taxing agencies in accordance with applicable law and
15 regulations. The CA will be responsible for issuing any required state and federal reporting
16 documents (such as IRS Forms W-2s and 1099s) to Class Members, Class Counsel and Class
17 Plaintiffs.

18 Defendant will bear its own attorneys' fees and costs.

19 The effective date of the settlement embodied in this Stipulation will be the date of
20 final approval by the Court (hereinafter the "Effective Date of the Settlement").

21 IV.

22 RELEASES

23 A. Releases By Ramon Barcia and Randall Lewis

24 In consideration of the mutual covenants, promises and representations set forth in
25 this Stipulation, and except for the rights, duties and obligations created by this Stipulation, Plaintiffs
26 Ramon Barcia and Randall Lewis hereby fully release and forever discharge Defendant and its
27 respective present and former officers, directors, employees, shareholders, agents, trustees,
28 representatives, attorneys, insurers, benefit plans, Strategic Materials, Inc., plan administrators.

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parent companies, subsidiaries, divisions, affiliates, successors, assigns, and any individual or entity that could be jointly liable with Defendant (each and all of the foregoing are collectively referred to hereafter as the "Released Parties") from any and all claims, causes of action, damages, wages, benefits, expenses, penalties, debts, liabilities, demands, obligations, attorneys' fees, costs, and any other form of relief or remedy in law, equity, or whatever kind or nature, whether known or unknown, suspected or unsuspected, including but not limited to (i) the Lawsuit and any Claims arising out of or related to the Lawsuit, including without limitation all claims under the California Labor Code, Industrial Welfare Commission Wage Orders, the California Business and Professions Code, California Private Attorney General Act, the Fair Labor Standards Act, and the Employee Retirement Income Security Act, claims for restitution and other equitable relief, liquidated damages, punitive damages, waiting time penalties, penalties of any nature whatsoever, other compensation or benefits, any wage and hour violations, whether premised on statute, contract, tort or other theory of liability under state, federal or local law, asserted or that might have been asserted, (ii) Plaintiffs' employment with Defendant and the termination of said employment, (iii) any claim for wages, overtime pay, retaliation, unused vacation, unpaid work expenses, unlawful deductions, wrongful termination of employment, harassment, discrimination, violation of public policy, breach of contract, breach of implied covenants, defamation, fraud, infliction of emotional distress, arising from or relating to their employment with Defendant.

With regard to the released claims described herein, Plaintiffs waive their rights under Section 1542 of the California Civil Code, which states:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Plaintiffs make this waiver with full knowledge of their rights and with the specific intent to release all known and unknown claims arising on or before the Effective Date of the Settlement, and therefore each of them specifically waives the provisions of any statute in any state of the United States which prevents release of unknown claims.

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10.

1 Plaintiffs also agree not to apply for or accept employment with Defendant or any
 2 Releasee at any time in the future. For purposes of this section, "employment" shall be defined to
 3 include any business relationship that creates an employer-employee relationship under common law
 4 or any state or federal employment statute, including but not limited to part-time or casual
 5 employment, employment through an agency, or employment pursuant to a contract creating a joint
 6 employer or other employment relationship. Plaintiffs agree that Defendant or any Releasee may
 7 reject any application submitted by Plaintiffs and may immediately terminate any employment
 8 obtained by Plaintiffs in contravention of this Stipulation.

9 **B. Release by Class Members**

10 In exchange for the consideration set forth above, this action will be dismissed with
 11 prejudice, and the Class Members will fully release and discharge Defendant and Releasees (as
 12 defined above) from any claims asserted in the Lawsuit. Upon the Effective Date of the Settlement
 13 and payment of amounts set forth herein, and except as to such rights or claims as may be created by
 14 this Settlement Agreement, the Settlement Class Members who do not opt out, fully release and
 15 discharge each Released Party from any and all claims, debts, liabilities, demands, obligations,
 16 guarantees, costs, expenses, attorneys' fees, damages, liquidated damages, interest, penalties, action
 17 or causes of action whatever kind or nature, that were averred or could have been averred including
 18 now known or unknown claims during the time period from May 23, 2003 to the date of preliminary
 19 approval of the Settlement relating to or arising from employment with Defendant during the Class
 20 Period based upon the following allegations in the Amended Complaint: (a) the alleged failure to
 21 pay earned wages or a minimum wage; (b) the alleged failure to pay overtime wages; (c) the alleged
 22 failure to provide rest and/or meal periods; (d) the alleged failure to provide timely accurate wage
 23 statements and/or maintain required payroll records; (e) the alleged failure to timely pay all wages
 24 due upon termination; (f) the alleged failure to provide benefits to employees under Defendant's
 25 health and welfare plans and/or its 401(k)/retirement plan; (g) the alleged failure to notify employees
 26 of their eligibility to participate in Defendant's health and welfare plans and/or its 401(k)/retirement
 27 plan; and (h) the alleged misreporting of time to prevent employees from obtaining eligibility to
 28 participate in Defendant's health and welfare plans and/or its 401(k) retirement plan. Collectively,

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11.

these claims are referred to as the "Released Claims." Released Claims includes any claims that were asserted, or that could have been asserted, based on the allegations set forth above under the California Labor Code, including without limitation the California Private Attorney General Act, California Labor Code Section 2698, *et seq.*, the California Business and Professions Code section 17200, *et seq.*, the Employee Retirement Security Income Act, 29 U.S.C. section 1132 *et seq.*, or the Fair Labor Standards Act, 29 U.S.C. section 201 *et seq.*

The Class Members shall agree in the Class Action Settlement Claim Form that they will not sue or otherwise make a claim against any of the Released Parties that is one of the Released Claims. The payments to Qualified Claimants making claims ("Settlement Payments") shall be paid specifically in exchange for the release of the Released Parties from the Class Members' Released Claims and for the covenant not to sue concerning the Class Members' Released Claims.

Further, as a condition of receiving payment of any portion of the Net Settlement Consideration, each Class Member shall execute in advance a release ("Individual Release") of the Released Claims. The Individual Release shall be in the Proof of Claim Form and approved by the Court.

V.

NOTICE TO THE CLASS AND THE CLAIMS PROCESS

The Parties have agreed that, subject to Court approval, Gilardi & Co, LLC will perform the duties of a Claims Administrator (CA) for the purpose of administering timely claims made by eligible Class Members in accordance with this Stipulation. Subject to Court approval, up to \$24,510.44.00 shall be paid by Defendant and will be deducted from the Minimum Settlement Consideration for the charges of the CA. The CA shall distribute the Class Member Notice discussed below in the following paragraph, determine eligibility for payment of Class Members, resolve any disputes regarding Compensable Weeks, keep track of opt-outs, provide information regarding opt-outs the Parties Counsel and the Court, prepare and mail the Settlement Payment checks to Qualified Claimants, issue w-2, w-3, 1096, and 1099 forms, and perform such other tasks as the Parties shall mutually agree or the Court orders the Parties to perform. The CA will submit to the Court in conjunction with the Final Approval papers a declaration stating, among other things,

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1 the number of Notice packets it mailed to the Class, the number re-mailed, the number of Notice
 2 packets ultimately undeliverable, the number of Requests for Exclusion Forms received, the number
 3 of Proof of Claim Forms received, the number of defective Proof of Claim Forms received and
 4 efforts to cure made, the number of disputed claims received and how they were resolved, the total
 5 amount of the Settlement claimed by the Qualified Claimants, the total of its charges for services
 6 rendered, and the anticipated future charges beyond the date of Final Approval should Final
 7 Approval be granted.

8 The document entitled, "Notice Of Proposed Class Action Settlement And Final
 9 Fairness And Approval Hearing" ("Notice"), in the form agreed to by the Parties' attorneys and
 10 approved by the Court and attached hereto as Exhibit A, shall be sent by the CA to each Class
 11 Member by first class mail to his or her last known address with directions to the Postmaster to
 12 forward the Notice and return all undeliverable Notices to the CA. The CA shall mail the foregoing
 13 Notice to each Class Member within twenty (20) business days of entry by the Court of the Order
 14 Granting Preliminary Approval of Class Settlement. Attached to the Notice will be a "Class Action
 15 Settlement Claim Form" ("Claim Form") and a Request for Exclusion Form in the form agreed to by
 16 the Parties' attorneys and approved by the Court and attached collectively hereto as Exhibit B, and a
 17 return postage pre-paid envelope. The Notice, Claim Form, and Request for Exclusion Form will
 18 direct the Class Members to return the Claim Forms and Request for Exclusion Forms directly to the
 19 CA.

20 The Parties shall confer with the mediator, Mark Rudy, Esq., if they are unable to
 21 reach agreement on language for the Notice, Claim Form, or Request for Exclusion Form. The
 22 Parties will submit any further disputes concerning the Notice, Claim Form, or Request for
 23 Exclusion Form to the Court for resolution.

24 Defendant shall provide to the CA and Class Counsel whatever data is necessary to
 25 effectuate the settlement including, but not limited to, the names, last known addresses, and dates of
 26 employment of all Class Members. Defendant shall also provide the CA with the Class Members'
 27 Social Security Numbers. In any case in which a Notice to a Class Member is returned by the
 28 United States Post Office as undeliverable, the CA will use the Internal Revenue Service Letter

Forwarding Program or the Social Security Administration Employer Reporting Service to locate and notify Class Members. One supplemental Notice will be mailed to each Class Member whose Notice is returned as undeliverable to the CA within thirty (30) days of the initial mailing of the Notice by the CA along with a reminder card to all class members who have not yet submitted claim forms.

Each Notice shall set forth the total workweeks that the receiving Class Member was employed by the Defendant as a Site Attendant or Floater and to the extent that a Class member held both positions then the combined total of both ("Settled Positions") during the class period ("Compensable Weeks") as reflected by Defendant's records, as well as a statement of the steps that the Class Member must take to obtain a Settlement Payment, including all applicable deadlines. The Proof of Claim Form also shall include the text of the release applicable to all Class Members.

In order to receive a payment under the Settlement, a Class Member must sign under penalty of perjury and mail the Proof of Claim Form to the CA by regular mail, postmarked no later than 45 days following the date of mailing of the "Notice" (the "Claim/Objection/Exclusion Deadline") unless such deadline is otherwise extended as provided in this Paragraph. The date of mailing is deemed to be the date the form is deposited in the U.S. Mail, as evidenced by the postmark. If a timely but incomplete or defective Proof of Claim Form is received by the CA, the Claimant shall be given the opportunity to cure the defect(s). Any such Proof of Claim Form shall be returned to the Claimant by the CA within ten (10) days from receipt of the defective Proof of Claim Form by the CA. The Claimant will be informed of the defect(s) and will be given fifteen (15) days from the date the Proof of Claim Form was mailed back to the Claimant within which to cure the defect(s) and return the Proof of Claim Form to the CA. If the corrected Proof of Claim Form is not returned within the specified period, unless agreed otherwise by the Parties, it shall be time-barred and it shall be rejected by the CA. After expiration of the specified period, the CA shall send a Notice of Denied Claim to any Claimant who submitted a Proof of Claim Form that was not timely and/or defective and/or did not demonstrate entitlement to a Settlement Payment, stating the reason the Claim was denied. If a Claimant disagrees with the CA's denial of his or her Claim, the Claimant shall submit a statement to the CA within ten (10) days of mailing of the Notice of Denied

1 Claim, stating all reasons the Claimant believes the Claim should be approved. The CA, in its sole
 2 discretion, shall determine whether the Claim shall be approved or denied and shall inform the
 3 Parties and the Claimant of its decision in writing within ten (10) days of receipt of the Claimant's
 4 statement. The CA may consult with counsel for the Parties in reaching its decision. An otherwise
 5 timely filed, valid Proof of Claim Form or correction of a deficiency will not be deemed invalid by
 6 the fact that it was not sent via regular mail. The timeliness of the Proof of Claim Forms shall be
 7 presumptively decided by the CA.

8 Any Class Member shall be entitled to dispute the Compensable Weeks to be
 9 compensated by Defendant to the Class Member as reflected on the Proof of Claim Form, provided
 10 that the Class Member has documentary evidence (e.g., pay stubs, cancelled checks, payroll records)
 11 showing a different number of Compensable Weeks worked as a Floater and/or Site Attendant
 12 during the Class Period. The Class Member may indicate such a dispute by writing what he or she
 13 believes to be the correct number of Compensable Weeks on the Proof of Claim Form and mailing
 14 the Proof of Claim Form, along with any documentary evidence supporting his or her position, to the
 15 CA by the Claims/Objection/Exclusion Deadline. The CA shall promptly serve all Parties and their
 16 counsel with a copy of the disputes, along with the pertinent Proof of Claim Forms. No such dispute
 17 shall be effective or considered for any purpose unless it is timely mailed by regular mail and
 18 received by the CA as provided above. The Parties shall then have ten (10) business days after
 19 receiving such notice from the CA to resolve the dispute. If the Parties cannot resolve the disputes
 20 within the time frame specified above, the matter will be referred to the CA for resolution. The
 21 Compensable Weeks calculated by the CA based upon the information provided by Defendant are
 22 presumed to be accurate, and the CA will be bound by that data unless the Class Member proves
 23 otherwise through documentary evidence. The CA will notify in writing the Class Member and
 24 counsel for the Parties of its decision for each disputed claim. The costs and fees for the CA to
 25 resolve these disputes will be deducted from the Maximum Settlement Consideration. The decision
 26 of the CA shall be final and non-appealable. Defendant may also dispute any Claims submitted by a
 27 Class Member that are believed to be fraudulent or believed to contain inaccurate information.

1 Notwithstanding the Claim/Objection/Exclusion Deadline, any Class Member on
 2 active military service may submit a Claim Form for up to 18 months from the original mailing date
 3 of the Notice. Additional time may be provided to any Class Member upon a showing of good cause
 4 as determined by the Court.

5 Subject to Court approval, Class Members who wish to opt-out of the Settlement shall
 6 return the Request For Exclusion Form to the CA not later than the Claim/Objection/Exclusion
 7 Deadline. Requests For Exclusion Forms postmarked after the close of the
 8 Claim/Objection/Exclusion Deadline will not be honored.

9 Class Members shall be given the opportunity to object to the terms of the settlement
 10 and requests for Class Counsel Fees and Litigation Costs and to participate at the final fairness and
 11 approval hearing, in accordance with the instructions set forth in the Notice. Any Class Member
 12 seeking to object to the terms of the settlement shall file such objection in writing with the Court and
 13 serve such objection on the Parties' attorneys no later than the Claim/Objection/Exclusion Deadline.
 14 Any Class Member who fails to file and serve a timely written objection shall be foreclosed from
 15 objecting to the terms of the settlement unless otherwise ordered by the Court.

16 Class Members who properly complete the Claim Form and return it to the CA in a
 17 timely manner will be considered "Qualified Claimants." The CA will certify what claims were
 18 timely filed. The CA will then calculate the amount of the payment to each Qualified Claimant in
 19 accordance with this Stipulation. The CA is responsible for issuing the payments and withholding
 20 all required state and federal taxes in accordance with this Stipulation. The CA shall be responsible
 21 for all W-2s, W-3s, Form 1096s, IRS Form 1099-MISCs, notices, mailings, secondary mailings if
 22 any, claims administration, and making any and all payments to Class Members in accordance with
 23 this Stipulation. The CA shall mail the settlement payments to Qualified Claimants within twenty
 24 (20) business days after the final approval of the settlement by the Court or, if there is any objection
 25 to the settlement (including but not limited to objections made by any state or federal officials or
 26 agencies), within twenty (20) business days after expiration of the time to file appeals or the
 27 resolution of any appeals filed. If there is an objection to the settlement that is later withdrawn, the
 28

1 CA shall mail the settlement payments within ten (10) business days of receipt of notice that such
2 objection has been withdrawn.

3 If ten percent (10%) or more of the Class Members (excluding the named-plaintiffs)
4 exercise their right to be excluded from the class action settlement defined in this Stipulation,
5 Defendant shall have the right, notwithstanding any other provisions of this Stipulation, to withdraw
6 from this Stipulation, whereupon said Stipulation will automatically be null and void for all purposes
7 and may not be used or introduced in further litigation. The CA shall notify Class Counsel of the
8 number of timely Requests for Exclusion Forms received as soon as practicable after the
9 Claim/Objection/Exclusion Deadline, but in not event later than five (5) business days after that date.
10 Defendant shall have until ten (10) business days following the Claim/Objection/Exclusion Deadline
11 to exercise any right to withdraw under this paragraph. In the event of any withdrawal, Defendant
12 shall be responsible for the entire costs and fees of the Claims Administrator. No settlement
13 payments shall be made to any Class Member until ten (10) business days after the expiration of the
14 time period for Defendant to exercise their rights under this paragraph.

15 The CA shall make the completed (i.e., original) Claim Forms and Requests For
16 Exclusion Forms available for inspection to counsel for the respective Parties prior to final approval
17 of this settlement and the dismissal of the Lawsuit. Any and all disputes regarding the CA's
18 performance of its duties shall be referred to the Court, if necessary, which will have continuing
19 jurisdiction over the terms and conditions of this Stipulation until all payments and obligations
20 contemplated by this Stipulation have been fully carried out.

21 VI.

22 DUTIES OF THE PARTIES PRIOR TO COURT APPROVAL

23 Promptly upon execution of this Stipulation, the Plaintiffs shall apply to the Court via
24 a Motion for Preliminary Approval of Class Action Settlement for a determination of the fairness,
25 adequacy, and reasonableness of the proposed settlement. The Plaintiffs shall apply to the Court for
26 the entry of a preliminary order substantially in the form attached hereto as Exhibit C for the
27 following:
28

1 a. Scheduling a fairness hearing on the question of whether the proposed
2 settlement, including the amount of Class Counsel Fees & Costs and the Enhancements, should be
3 finally approved as fair, reasonable and adequate as to the members of the Class;

4 b. Conditionally certifying a provisional settlement class in accordance
5 with the Stipulation for the purposes of settlement only;

6 c. Approving as to form and content the proposed Notice;

7 d. Approving as to form and content the proposed Class Action
8 Settlement Claim Form;

9 e. Directing the mailing of the Notice and Claim Form by first class mail
10 with return receipt requested to the Class Members; and

11 f. Preliminarily approving the settlement subject only to the objections of
12 Class Members and final review by the Court.

13 Within ten (10) days after the filing of this Stipulation with the Court for preliminary
14 approval, Defendant shall serve upon the appropriate state official of each state in which a Class
15 Member resides and the appropriate federal official, a notice of the proposed settlement consisting of
16 the documents and information required by 28 U.S.C. section 1715(b) ("CAFA Notice") consisting
17 of (1) a copy of the complaint and any materials filed with the complaint and any amended
18 complaints, (2) notice of any scheduled judicial hearing in the class action, (3) the proposed
19 notification to class members of exclusion rights and the proposed settlement, (4) the proposed class
20 action settlement, (5) any settlement or other agreement contemporaneously made between the
21 Parties' attorneys, (6) any final judgment or notice of dismissal, (7) the names of class members who
22 reside in each state and the estimated proportionate share of the claims of such members to the entire
23 settlement to that state's appropriate official (if feasible), or a reasonable estimate of the number of
24 class members residing in each state and the estimated proportionate share of the claims of such
25 members to the entire settlement, and (8) any written judicial opinion relating to the materials
26 described in items (1) through (7). If there any state or federal officials and/or agencies make any
27 objection to the Settlement, no payments of any kind shall be made under this Settlement until such
28 objections have been resolved and the time to appeal any resolution has expired.

STIPULATION OF CLASS ACTION
SETTLEMENT (NO. 07 CV 938 - IEG (JNA))

18.

VII.

DUTIES OF THE PARTIES FOLLOWING FINAL COURT APPROVAL

In accordance with the preliminary order, Plaintiffs shall apply to the Court via a Motion for Final Approval of Class Action Settlement for the final determination of the fairness, adequacy, and reasonableness of the proposed settlement. Following final approval by the Court of the settlement provided for in this Stipulation, Class Counsel will submit a proposed Judgment and Order of Final Approval of the Settlement and Dismissing Action in the form attached hereto as Exhibit D. for approval and issuance at least ninety (90) days after Defendant have served the appropriate state and federal agencies with CAFA notices (as described above):

- a. Approving the settlement, adjudging the terms thereof to be fair, reasonable and adequate, and directing consummation of its terms and provisions
- b. Approving the amount of Class Counsel Fees & Costs and the Enhancements;
- c. Dismissing the Lawsuit on the merits with prejudice and permanently barring all members of the settlement Class from prosecuting any of the Released Claims released in this Stipulation against Defendant and the Releasees; and
- d. Waiving all rights to appeal (except for any appeals of awards of Class Counsel Fees, Litigation Costs or Enhancements).

VIII.

PARTIES' AUTHORITY

The signatories hereto hereby represent that they are fully authorized to enter into this Stipulation and bind the Parties hereto to the terms and conditions hereof.

IX.

MUTUAL FULL COOPERATION

The Parties agree to fully cooperate with each other to accomplish the terms of this Stipulation, including but not limited to, execution of such documents and to take such other action as may reasonably be necessary to implement the terms of this Stipulation. The Parties to this Stipulation shall use their best efforts, including all efforts contemplated by this Stipulation and any other efforts that may become necessary by order of the Court, or otherwise, to effectuate this

1 Stipulation and the terms set forth herein. As soon as practicable after execution of this Stipulation,
2 Class Counsel shall, with the assistance and cooperation of Defendant and its counsel, take all
3 necessary steps to secure the final approval of this Stipulation from the Court.

4 The Parties' attorneys will cooperate in the drafting of all pleadings necessary to
5 obtain preliminary and final approval of the settlement described in this Stipulation and effectuation
6 of the Settlement.

7 Henceforth, Class Counsel and the Parties agree that they will not attempt directly or
8 indirectly to encourage or discourage Class Members from filing claims or encourage them to object
9 to the settlement.

10 No injunctive or other equitable relief will be sought or obtained by Plaintiffs or the
11 Settlement Class against Defendant.

12 This Settlement and all acts in furtherance of this Settlement will not be construed as
13 an admission of liability by Defendant. Defendant denies liability.

14 The Parties and their attorneys agree that they will not issue any press releases in
15 connection with the Settlement. If contacted by the press, Class Counsel shall refer the press to the
16 public record.

17 **X.**

18 **NO PRIOR ASSIGNMENTS**

19 The Parties hereto represent, covenant and warrant that they have not directly or
20 indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any
21 person or entity any portion of any liability, claim, demand, action, cause of action or rights herein
22 released and discharged except as set forth herein.

23 **XI.**

24 **NO ADMISSION**

25 Nothing contained herein nor the consummation of this Stipulation is to be construed
26 or deemed an admission of liability, culpability, negligence, or wrongdoing on the part of Defendant
27 or any of the Releasees. Each of the Parties hereto has entered into this Stipulation with the
28 intention to avoid further disputes and litigation with the attendant inconvenience and expenses.

STIPULATION OF CLASS ACTION
SETTLEMENT (NO. 07 CV 938 - IEG (JMA))

XII.

ENFORCEMENT ACTIONS

In the event that one or more of the Parties to this Stipulation institutes any legal action, arbitration or other proceeding against any other party or parties to enforce the provisions of this Stipulation or to declare rights and/or obligations under this Stipulation, the successful party or parties shall be entitled to recover from the unsuccessful party or parties reasonable attorneys' fees and costs, including expert witness fees incurred in connection with any enforcement actions.

XIII.

ADMISSIBILITY

Pursuant to Federal Rule of Evidence 408 and California Evidence Code sections 1152 and 1154, this Stipulation shall be inadmissible in evidence in any proceeding, except as necessary to approve, interpret or enforce this Stipulation.

XIV.

NOTICES

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

To the Class:

NORMAN B. BLUMENTHAL, Bar No. 068687
KYLE R. NORDREHAUG, Bar No. 205975
APARAJIT BHOWMIK, Bar No. 248066
BLUMENTHAL & NORDREHAUG
2255 Calle Clara
La Jolla, CA 92073

To Defendant:

LENA K. SIMS, Bar No. 212904
LITTLER MENDELSON
A Professional Corporation
501 W. Broadway, Suite 900
San Diego, CA 92101-3577

XV.

CONSTRUCTION

The Parties hereto agree that the terms and conditions of this Stipulation are the result of lengthy, intensive arm's length negotiations between the Parties and that this Stipulation shall not be construed in favor of or against any party by reason of the extent to which any party or his, her or its counsel participated in the drafting of this Stipulation.

XVI.

CAPTIONS AND INTERPRETATIONS

Paragraph titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Stipulation or any provision hereof. Each term of this Stipulation is contractual and not merely a recital.

XVII.

MODIFICATION

This Stipulation may not be changed, altered, or modified, except in writing and signed by the Parties hereto, and approved by the Court. This Stipulation may not be discharged except by performance in accordance with its terms or by a writing signed by the Parties hereto.

XVIII.

INTEGRATION CLAUSE

This Stipulation contains the entire agreement between the Parties relating to the settlement and transaction contemplated hereby, and all prior or contemporaneous agreements, understandings, representations, and statements, whether oral or written and whether by a party or such party's legal counsel, are merged herein. No rights hereunder may be waived except in writing.

XIX.

BINDING ON ASSIGNS

This Stipulation shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators, successors and assigns.

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XX.

CLASS COUNSEL SIGNATORIES

It is agreed that because the Class Members are so numerous, it is impossible or impractical to have each Class Member execute this Stipulation. The Notice will advise all Class Members of the binding nature of the release and such shall have the same force and effect as if this Stipulation were executed by each Class Member.

XXI.

COUNTERPARTS

This Stipulation may be executed in counterparts, and when each party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one Stipulation, which shall be binding upon and effective as to all Parties.

XXII.

CONTINUING JURISDICTION OF THE COURT

The Parties agree that upon final approval by the Court, this Stipulation shall be enforceable by the Court and the Court shall retain exclusive and continuing equity jurisdiction of this action over all Parties and Class Members to interpret and enforce the terms, conditions, and

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///

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ATT: 858-551-1232

obligations set forth in this Stipulation. In the event that the Court does not retain jurisdiction over the Lawsuit, any party shall have the right to terminate this Stipulation.

IT IS SO STIPULATED:

Dated: June 16, 2008


RANDALL LEWIS, Plaintiff


Dated: June 17, 2008


RAMON BARCIA, Plaintiff


Dated: June 13, 2008


I. PETER CORLEY, President & CEO
CONTAIN-A-WAY, INC.

Dated: June 13, 2008


LENA K. SIMS
LITTLER MENDELSON
A Professional Corporation
Attorneys for Defendant
CONTAIN-A-WAY, INC.

Dated: June 14, 2008


NORMAN B. BLUMENTHAL
KYLE R. NORDREHAUG
APARAJIT BHOWMIK
BLUMENTHAL & NORDREHAUG
Attorneys for Plaintiffs
RAMON BARCIA and RANDALL LEWIS

Dated: June _____, 2008

WALTER HAINES, ESQ.
UNITED EMPLOYEES LAW GROUP
Attorneys for Plaintiffs
RAMON BARCIA and RANDALL LEWIS

Proxifier: 35269474.1 050961.1002

STIPULATION OF CLASS ACTION
SETTLEMENT (NO. 07 CV 938 - IEG (JNA))

24.

U.S. District Court
Southern District of New York
Case No. 07 CV 938
Date Filed: 07/03/08
Page 36 of 71

obligations set forth in this Stipulation. In the event that the Court does not retain jurisdiction over the Lawsuit, any party shall have the right to terminate this Stipulation.

IT IS SO STIPULATED:

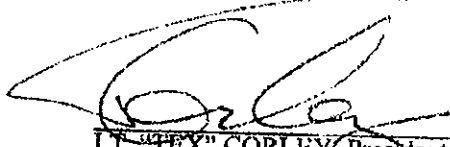
Dated: June ____, 2008

RANDALL LEWIS, Plaintiff

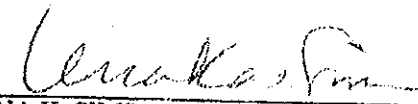
Dated: June ____, 2008

RAMON BARCIA, Plaintiff


Dated: June 13, 2008


I.T. "TEX" CORLEY, President & CEO
CONTAIN-A-WAY, INC.

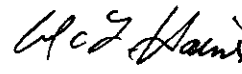
Dated: June 13, 2008


LENA K. SIMS
LITTLER MENDELSON
A Professional Corporation
Attorneys for Defendant
CONTAIN-A-WAY, INC.

Dated: June 14, 2008


NORMAN B. BLUMENTHAL
KYLE R. NORDREHAUG
APARAJIT BHOWMIK
BLUMENTHAL & NORDREHAUG
Attorneys for Plaintiffs
RAMON BARCIA and RANDALL LEWIS

Dated: June 14, 2008


WALTER HAINES, ESQ.
UNITED EMPLOYEES LAW GROUP
Attorneys for Plaintiffs
RAMON BARCIA and RANDALL LEWIS

Firmwide: 85269474.1 056961.1002

STIPULATION OF CLASS ACTION
SETTLEMENT (NO. 07 CV 938 - IEG (JNA))

24.

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT AND FINAL FAIRNESS AND APPROVAL HEARING

*Ramon Barcia and Randall Lewis v. Contain-A-Way, Inc., a California corporation dba Nexcycle and 20/20 Recycling Centers,
United States District Court, Case No. 07 CV 938 IEG (JNA)*

THIS NOTICE MAY AFFECT YOUR RIGHTS PLEASE READ ALL OF IT CAREFULLY

TO: ALL PERSONS WHO, AT ANY TIME FROM MAY 23, 2003 TO <<DATE>>, WERE EMPLOYED IN CALIFORNIA BY CONTAIN-A-WAY, INC. AS SITE ATTENDANTS AND/OR FLOATERS.

You are a member of the Settlement Class in this case and this Notice contains important information as to your rights under the proposed Settlement. As a qualifying Class Member, you are entitled to receive a cash payment in return for which you will give up certain potential claims against Contain-A-Way, Inc. and related parties.

This Notice also informs you that you may have vested benefits in a retirement/401(k) account. To learn whether you have any vested benefits in a retirement/401(k) account and what those benefits are, contact Fidelity NetBenefits® at www.401k.com or call the Fidelity Retirement Benefits Line at 1-800-835-5097

This Notice is not intended to be, and should not be construed as, an expression of any opinion by the Court with respect to the merits of any of the claims or defenses asserted in the Action.

I. What Are The Critical Dates?

- A. If you are willing to be bound by the Settlement and want to receive your share of the settlement money, the last date to mail your Claim Form is <<DATE>>.
- B. If you wish to be excluded from the Settlement because you are not willing to be bound by it and do not want to receive any money, the last date to mail your Request for Exclusion Forms is <<DATE>>.
- C. The last date to mail a written objection to the Settlement is <<DATE>>.
- D. The hearing on any objections and to give final approval to the Settlement is <<DATE>>.
- E. The appropriate date payment processing begins if there are no objections, appeals, or Court ordered extension is <<DATE>>; settlement checks shall be mailed by <<DATE>>.

II. Why Should You Read This Notice?

This Notice is given pursuant to an Order of the United States District Court, Southern District of California (the "Court"), dated <<DATE>>. The purpose of this Notice is to inform you of the Settlement of a Class Action lawsuit (hereafter referred to as "the Action") relating to alleged violations of California's wage-and-hour and related laws and alleged violations of the Employee Retirement Income Security Act and the Fair Labor Standards Act. The Action is entitled *Ramon Barcia and Randall Lewis v. Contain-A-Way, Inc., a California corporation dba Nexcycle and 20/20 Recycling Centers*. The Settlement is subject to final approval by the Court. If this occurs, the Settlement will result, among other things, in (a) the distribution of money to Class Members who remain in the Class and timely submit the required Claim Form, (b) notice to eligible Class Members of vested retirement benefits, and (c) the dismissal of the pending Action and the release of certain potential or actual claims which Class Members may have against Contain-A-Way, Inc. and/or related parties. The material terms of the Settlement are described below in more detail.

III. What Is The Action About?

Suing for themselves and on behalf of all other persons similarly situated, the Named Plaintiffs in the action are Ramon Barcia and Randall Lewis ("Plaintiffs"). The Defendant in the Action is Contain-A-Way, Inc. dba Nexcycle and 20/20 Recycling Centers ("Contain-A-Way"). The Action asserts claims against Contain-A-Way for failure to pay earned wages and overtime compensation, failure to provide rest and meal periods, failure to provide accurate itemized wage statements, unfair competition, failure to timely pay all wages due upon termination; failure to provide benefits to employees under Defendant's health and welfare plans and/or its 401(k)/retirement plan; alleged failure to notify employees of their eligibility to participate in Defendant's health and welfare plans and/or its 401(k)/retirement plan; and misreporting of time to prevent employees from obtaining eligibility to participate in Defendant's health and welfare plans and/or its 401(k) retirement plan; and violation of California's Private Attorneys General Act. Contain-A-Way has denied Plaintiffs' allegations of wrongdoing. In addition to asserting numerous affirmative defenses, Contain-A-Way asserts that its policies and practices are in compliance with all applicable law and that all employees have been timely and fully paid for all work performed.

IV. What Has Occurred In The Action?

This Action has been pending since May 2007 and has been litigated. Challenges to the legal and factual sufficiency of the Action are contemplated by Contain-A-Way, but have been deferred due to the pendency of this potential Settlement. Following discovery, and factual and legal investigation, the Parties participated in settlement discussions which resulted in the Stipulation to Class Action Settlement to settle the Action on the terms outlined in this Notice. The proposed Stipulation to Class Action Settlement was presented to the Court for Preliminary Approval at a hearing on <<DATE>>. At that time, the Court preliminarily approved the Stipulation to Class Action Settlement; certified the Class for settlement purposes only; appointed Class Counsel; approved this Class Notice and the procedures for finalizing the settlement approval process; and set <<DATE>> as the date for a hearing on whether to grant Final Approval of the Settlement.

V. What Are The Terms Of The Settlement?

- A. The Settlement provides for Contain-A-Way to pay certain sums to or for the benefit of the Class (the "Settlement Payments") in return for a release of actual or potential claims by the Class Members ("the Released Claims"). Contain-A-Way shall pay an aggregate sum not to exceed Two Million Five Hundred Thousand Dollars (\$2,500,000.00) ("Maximum Settlement Amount") and no less than One Million Two Hundred And Fifty Thousand Dollars (\$1,250,000.00) ("Minimum Settlement Amount") (referred to collectively as "the Settlement Amount"). The Settlement Amount is allocated as follows:
1. Attorneys' fees and costs of up to six hundred twenty-five thousand dollars (\$625,000.00);
 2. Claims Administration costs of up to twenty-four thousand five hundred ten dollars and eleven cents (\$24,510.11);
 3. Incentive Payments of a total of twenty-four thousand dollars (\$24,000) to Named Plaintiffs;
 4. Payment to the California Labor and Workforce Development Agency of \$25,000.00; and
 5. Net Settlement Fund is set at a maximum of \$1,802,000, which includes \$1,802,000.00 that will be used to establish 401(k)/retirement accounts in the amount of missed deferral opportunities for eligible Class Members.
- B. The proposed incentive payment to Named Plaintiffs Ramon Barcia and Randall Lewis, subject to the Court's approval, is up to Twelve Thousand Dollars (\$12,000) each.
1. This payment is made in recognition of the substantial risk taken by the Named Plaintiffs in representing the Class and the benefits conferred on Class Members. The payments are also made to compensate the Named Plaintiffs for the time and the potential financial risks to which they were exposed. The incentive payment also reflects California's strong public policy in favor of payment of wages due employees and encourages employees to take the steps necessary for the enforcement of California's comprehensive statutory scheme to ensure the proper payment of wages.

C. Payment to Class Members

1. Each member of the Class who submits a timely claim shall be eligible for a portion of the Net Settlement Fund. The amount paid to each Class Member who submits a timely claim will be determined by dividing the Net Settlement Fund by the total number of work weeks worked by all Class Members during the class period from March 23, 2003 through <<DATE>> This will yield the amount to be paid to each validly claiming Class Member for each work week that Class Member worked during the class period. When calculating work weeks, any work week wherein the Class Member performed no work due to any time-off from work (including vacation, sick leave, leave of absence, or other time-off) will not be counted toward that particular Class Member's total number of work weeks. The Class Members will be issued one check each and taxes will be withheld based on one-thirds being wages, one-third being interest and one-third being penalties. Defendant shall separately pay for Defendant's share of taxes due from funds other than the settlement consideration. IRS Forms W-2 and 1099 will be issued to each Class Member reflecting the payment.
2. To learn whether you also have any benefits that may be vested in a 401(k)/retirement account, Class Members need to contact Fidelity NetBenefits® at www.401k.com or call the Fidelity Retirement Benefits Line at 1-800-835-5097. Class Members are not required to submit any claim in order to obtain those vested benefits.

VI. What Are The Released Claims?

In return for their respective Settlement Payments, Class Members will be releasing Contain-A-Way and its related parties from a range of claims that Class Members may have pertaining to their employment. In particular, the Settlement Class Members who do not opt out, fully release and discharge each Released Party from any and all claims, debts, liabilities, demands, obligations, guarantees, costs, expenses, attorneys' fees, damages, liquidated damages, interest, penalties, action or causes of action whatever kind or nature, that were averred or could have been averred including now known or unknown claims during the time period from May 23, 2003 to the date of preliminary approval of the Settlement relating to or arising from employment with Defendant during the Class Period based upon the following allegations in the Amended Complaint: (a) the alleged failure to pay earned wages or a minimum wage; (b) the alleged failure to pay overtime wages; (c) the alleged failure to provide rest and/or meal periods; (d) the alleged failure to provide timely accurate wage statements and/or maintain required payroll records; (e) the alleged failure to timely pay all wages due upon termination; (f) the alleged failure to provide benefits to employees under Defendant's health and welfare plans and/or its 401(k)/retirement plan; (g) the alleged failure to notify employees of their eligibility to participate in Defendant's health and welfare plans and/or its 401(k)/retirement plan; and (h) the alleged misreporting of time to prevent employees from obtaining eligibility to participate in Defendant's health and welfare plans and/or its 401(k) retirement plan. Collectively, these claims are referred to as the "Released Claims." Released Claims includes any claims that were asserted, or that could have been asserted, based on the allegations set forth above under the California Labor Code, including without limitation the California Private Attorney General Act, California Labor Code Section 2698, *et seq.*, the California Business and Professions Code section 17200, *et seq.*, the Employee Retirement Security Income Act, 29 U.S.C. section 1132 *et seq.*, or the Fair Labor Standards Act, 29 U.S.C. section 201 *et seq.*

The Class Members submitting claims also agree that they will not sue or otherwise make a claim against any of the Released Parties that is one of the Released Claims.

VII. Why Is Class Counsel Recommending This Settlement?

Relative to the risks and costs of continuing the litigation, Class Counsel believes this Settlement provides a favorable recovery which is in the best interests of the Class. Class Counsel's evaluation in this regard is based on the investigation and discovery they have undertaken; and upon their experience prosecuting similar cases in California.

Absent settlement, Plaintiffs would have to secure class certification on the claims set forth in the Action over the strenuous opposition of Contain-A-Way. Additionally, at trial, Plaintiffs would have the burden of proof to establish liability and the amount of damages. In Class Counsel's judgment, were this case to proceed, there is a significant risk of an adverse result both at the certification stage and at trial in these respects. The case involves many unresolved factual and legal issues, some of which could be decided against Plaintiffs at or before trial, and which would jeopardize Plaintiffs' ability to certify a Class or to obtain a favorable judgment and preserve it on appeal.

In addition, settling the case now has the further advantage of avoiding the very substantial additional costs and delay that further litigation would involve. Contain-A-Way has made it clear that it would seek appellate review before trial of any grant of Class certification outside the settlement context, and that it would appeal any final adverse result at trial. Thus, absent settlement, it is likely to be years before the litigation ends and Class Members receive a monetary recovery, if any. Given the costs involved in further litigation and the time-value of money, even if a favorable judgment were obtained at trial, it could well produce less net recovery to the Class Members than the present settlement.

VIII. What Are The Procedures For Participating In The Settlement?

If you fall within the description of the persons to whom this Class Notice is directed and you want to participate in the Settlement and receive a share of the settlement proceeds, you must submit a Claim Form.

However, you do not have to submit a Claim Form to obtain any vested benefits in any 401(k)/retirement account established in your name to satisfy any missed deferral opportunity. You may learn whether you have any vested benefits in a 401(k)/retirement account, what those vested benefits are, and how you may exercise those vested benefits by contacting Fidelity NetBenefits® at www.401k.com or call the Fidelity Retirement Benefits Line at 1-800-835-5097

All Class Members who do not submit a Request for Exclusion Form will be bound by the Settlement. As a Class Member, you may enter a legal appearance individually or through your own counsel at your own expense. Otherwise, Class Counsel will represent your rights at no separate expense to you.

A. Submission of a Claim Form.

To receive a share of the settlement proceeds, you must complete and sign the Claim Form included with this Class Notice and mail it by first-class or equivalent mail to the Claims Administrator at <<ADDRESS>> with a postmark not later than <<DATE>>. You do not have to complete and sign any claim form in order to obtain vested benefits in any 401(k)/retirement account. To obtain any such benefits, you need only contact Fidelity NetBenefits® at www.401k.com or call the Fidelity Retirement Benefits Line at 1-800-835-5097

IX. What If You Do Not Wish To Participate In The Settlement?

If you do not fall within the description of persons to whom this Class Notice is directed on Page One, you are not a member of the Class and will not participate in the Settlement despite your receipt of this Class Notice. You need do nothing further.

If you wish to be excluded from the Settlement, you must submit a valid and timely Request for Exclusion. If you do submit a valid and timely Request for Exclusion Form, you will have no rights under the settlement, will not share in any distribution of settlement monies, and will not be bound by the Settlement Agreement or the Final Judgment which the Court enters to implement the settlement. Even if you submit a Request for Exclusion Form, you are still entitled to any vested benefits in any 401(k)/retirement account established to compensate you for any missed deferral. You may obtain any such benefits by contacting Fidelity NetBenefits® at www.401k.com or call the Fidelity Retirement Benefits Line at 1-800-835-5097.

A. Submission of a Request For Exclusion Form.

To be excluded from this Settlement, you must complete, sign, and return a Request for Exclusion Form stating your name and your decision to exclude yourself from the Class by mailing the Request for Exclusion Form by first-class or equivalent to the Claims Administrator at <<ADDRESS>>, with a postmark of not later than <<DATE>>.

X. What If You Do Nothing?

If you do not take any action — that is, if you decline to submit a Claim Form, and decline to submit a Request for Exclusion Form, or fail to make a written objection as set forth in Section XI below—you will not be entitled to a share of the settlement monies and you will waive any objections to the Settlement Agreement. However, you will be bound by the terms of the Agreement, even though you will not receive any money. Even if you decide to do nothing, you may still exercise your rights with respect to any vested benefits in any 401(k)/retirement account in which you have vested benefits resulting from contributions for missed deferral opportunities. To learn whether you have any vested benefits in a retirement/401(k) account,

what those benefits are and how you may access those benefits, contact Fidelity NetBenefits® at www.401k.com or call the Fidelity Retirement Benefits Line at 1-800-835-5097.

XI. Final Hearing.

A final hearing will be held on <<DATE>> at <<TIME>> a.m. before the Honorable Irma E. Gonzalez in Courtroom <<NUMBER>> at the United States District Court, Southern District of California, 701 Front Street, San Diego, California 92101 (the "Final Hearing") to determine whether the settlement is fair, reasonable and adequate. The Court will also be asked to approve Class Counsel's request for attorneys' fees, reimbursement of costs and Named Plaintiffs' enhancement awards. The Final Hearing will conclude the case by dismissal and permit the distribution of money as set-out above.

Subject to the conditions set forth below, any member of the Class may appear and be heard at the Final Hearing, including for the purpose of objecting to the proposed settlement. However, no Class Member wishing to object to the Settlement shall be heard, unless his or her objection or opposition is made in writing and is filed with the Court no later than <<DATE>>, along with proof of service by overnight mail of copies to the following counsel:

Norman B. Blumenthal
Blumenthal & Nordrehaug
2255 Calle Clara
La Jolla, CA 92073

Lena K. Sims
Littler Mendelson, P.C.
501 West Broadway, Suite 900
San Diego, CA 92101

Unless otherwise ordered by the Court, any Class Member who does not make his or her objection or opposition in the manner provided shall be deemed to have waived all objections and opposition to the fairness, reasonableness and adequacy of the proposed settlement, the distribution of Settlement payments to and among Class Members, the fee and expense application, and the incentive payment application, and will have no other chance to object or oppose any of these items.

The Court may suspend or reschedule the Final Hearing without further notice to the Class.

XII. Dismissal, Releases and Distribution of Settlement Shares.

If the Settlement is approved by the Court and not otherwise terminated, the Court will dismiss the Action with prejudice, and bar and permanently enjoin the named Plaintiffs and each Class Member from prosecuting the Released Claims. As a result, once the judgment of Court in accordance with this Settlement has become final (the "Effective Date"), each of the Class Members and their legal successors-in-interest shall be deemed to forever given up any Released Claims against Contain-A-Way and the other released parties.

The payment of Settlement proceeds to each Class Member shall be made as approved by the Court as promptly as possible following the Final Effective Date of the Settlement.

XIII. Where Can I Find Additional Information?

This Class Notice contains only a summary of the Action and terms of the proposed Settlement. For more detail, the pleadings in the Action and the full Settlement Agreement are available for inspection by you or your representative during regular business hours at the Clerk's Office at United States District Court, Southern District of California, 701 Front Street, San Diego, California 92101.

Inquiries regarding the Action or this Settlement should be addressed to:

Norman B. Blumenthal
Kyle R. Nordrehaug
Aparajit Bhowmik
Blumenthal & Nordrehaug
2255 Calle Clara
La Jolla, CA 92073
(858) 551-1223 ext. 122
E-mail to aj@bamlawlj.com

PLEASE DO NOT CONTACT THE COURT REGARDING THIS NOTICE

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Notice, Page 5 of 5

Firmwide:84964995.1 056961.1002

CONTAIN-A-WAY, INC.

PROOF OF CLAIM

Ramon Barcia and Randall Lewis v. Contain-A-Way, Inc., a California corporation dba Nexcycle and 20/20 Recycling Centers, United States District Court, Case No. 07 CV 938 IEG (JNA)

IN ORDER FOR YOUR CLAIM TO BE VALID, YOU MUST COMPLETE, SIGN UNDER PENALTY OF PERJURY, AND MAIL THIS DOCUMENT BY U.S. MAIL WITH A POSTMARK DATED NO LATER THAN <<DATE>> TO:

CONTAIN-A-WAY, INC. Claims Administrator
<<ADDRESS AND TELEPHONE NUMBER>>

A. CLAIMANT IDENTIFICATION:

Please Make any Name/Address Corrections Below:

<<CONTAIN-A-WAY, INC. ID>>

<<First>> <<Last>>

<<Address1>>

<<Address2>>

<<City>> <<State>> <Zip>>

Social Security Number

(_____) _____
Telephone Number

(The Internal Revenue Service requires this information. Failure to provide it will result in the delay of your payment.)

B. EMPLOYMENT INFORMATION:

1. Were you employed by Contain-A-Way, Inc., in California between May 23, 2003 and <<DATE>> in the position of Site Attendant and/or Floater?

☐ YES ☐ NO

2. Contain-A-Way, Inc.'s records indicate that you were employed as a Site Attendant and/or Floater as follows between May 23, 2003 and <<DATE>>: **Start Date:** <<StartDate>> -- **End Date:** <<EndDate>>

- a. Do you agree with these dates?

☐ YES ☐ NO

3. Contain-A-Way, Inc.'s records further indicate that you worked as a Site Attendant and/or Floater the following number of weeks between May 23, 2003 and <<DATE>>, excluding weeks in which you did not perform any work due to time-off from work (i.e., vacation, sick leave, leave of absence and/or other time off): <<weeks>>

- a. Do you agree with this number of weeks?

☐ YES ☐ NO

Proof of Claim, Page 1 of 3

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Exhibit "B"

4. If you answered "no," to question numbers 1, 2 and/or 3, please provide documentation to support your belief as to your position, dates of employment, and/or your belief as to the number of weeks worked between May 23, 2003 and <<DATE>> (excluding weeks in which you did not perform any work due to time-off). Write all facts in the space provided below (attach additional pages if you need more space). **Please Note: Failure to provide this information may result in the rejection of your dispute.**
-
-
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5. Do you believe you should be paid under the terms of the settlement and is it your decision to accept this settlement?

☐ YES ☐ NO

C. SUBMISSION TO JURISDICTION OF COURT, AGREEMENT WITH SETTLEMENT, ETC.:

I have received the Notice Of Proposed Class Action Settlement And Final Fairness And Approval Hearing. I submit this Proof of Claim under the terms of the Proposed Settlement described in the Notice. I also submit to the jurisdiction of the United States District Court, Southern District of California with respect to my claim as a Class Member and for purposes of enforcing the release of claims stated in the Settlement Agreement. The full and precise terms of the Proposed Settlement are contained in the Stipulation of Class Action Settlement between Plaintiffs and Defendant as filed with the Court. I further acknowledge that I am bound by the terms of any Court judgment that may be entered in this Class Action. I agree to furnish additional information to support my claim if required to do so.

D. RELEASE OF CLAIMS:

In exchange for the consideration to be received, I hereby release Contain-A-Way, Inc., its respective present and former officers, directors, employees, shareholders, agents, trustees, representatives, attorneys, insurers, benefit plans, Strategic Materials, Inc., plan administrators, parent companies, subsidiaries, divisions, affiliates, successors, assigns, and any individual or entity that could be jointly liable with Defendant (each and all of the foregoing are collectively referred to hereafter as the "Released Parties") from any and all claims, debts, liabilities, demands, obligations, guarantees, costs, expenses, attorneys' fees, damages, liquidated damages, interest, penalties, action or causes of action whatever kind or nature, that were averred or could have been averred including now known or unknown claims during the time period from May 23, 2003 to the date of preliminary approval of the Settlement relating to or arising from employment with Defendant during the Class Period based upon the following allegations in the Amended Complaint: (a) the alleged failure to pay earned wages or a minimum wage; (b) the alleged failure to pay overtime wages; (c) the alleged failure to provide rest and/or meal periods; (d) the alleged failure to provide timely accurate wage statements and/or maintain required payroll records; (e) the alleged failure to timely pay all wages due upon termination; (f) the alleged failure to provide benefits to employees under Defendant's health and welfare plans and/or its 401(k)/retirement plan; (g) the alleged failure to notify employees of their eligibility to participate in Defendant's health and welfare plans and/or its 401(k)/retirement plan; and (h) the alleged misreporting of time to prevent employees from obtaining eligibility to participate in Defendant's health and welfare plans and/or its 401(k) retirement plan. Collectively, these claims are referred to as the "Released Claims." Released Claims includes any claims that were asserted, or that could have been asserted, based on the allegations set forth above under the California Labor Code, including without limitation the California Private Attorney General Act, California Labor Code Section 2698, *et seq.*, the California Business and Professions Code section 17200, *et seq.*, the Employee Retirement Security Income Act, 29 U.S.C. section 1132 *et seq.*, or the Fair Labor Standards Act, 29 U.S.C. section 201 *et seq.*

I also agree that I will not sue or otherwise make a claim against any of the Released Parties that is one of the Released Claims.

Proof of Claim, Page 2 of 3

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Exhibit "B"

E. I verify that I have not assigned or purported to assign any of the claims described in paragraph D above.

F. **NO RETALIATION:**

Contain-A-Way, Inc. will not retaliate against any person who submits a Proof of Claim in connection with this Settlement.

G. **DECLARATION UNDER PENALTY OF PERJURY:**

I declare under penalty of perjury under the laws of the State of California that the foregoing information is true and accurate. Executed this _____ day of _____, _____, at _____, _____.
[month] [year] [city] [state]

(Signature of Claimant)

Name (Print): _____
Last First Middle

Reminder check list:

1. Sign and date directly above.
2. Keep a copy for your records.
3. Send Proof of Claim via U.S. Mail postmarked no later than <<DATE>>, to the address listed on Page 1 of this Claim Form:

CONTAIN-A-WAY, INC. Claims Administrator
<<ADDRESS AND TELEPHONE NUMBER>>

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Proof of Claim, Page 3 of 3

Firmwide:84983634.1 056961.1002

Exhibit "B"

CONTAIN-A-WAY, INC.

REQUEST FOR EXCLUSION FORM

Ramon Barcia and Randall Lewis v. Contain-A-Way, Inc., a California corporation dba Nexcycle and 20/20 Recycling Centers, United States District Court, Case No. 07 CV 938 IEG (JNA)

THIS DOCUMENT MUST BE POSTMARKED NO LATER THAN <<DATE>> AND IT MUST BE SENT VIA U.S. MAIL.

PLEASE SEND THIS EXCLUSION FORM VIA U. S. MAIL TO:

**CONTAIN-A-WAY, INC. Claims Administrator
c/o <<NAME, ADDRESS, TELEPHONE NUMBER>>**

IT IS MY DECISION NOT TO PARTICIPATE IN THE CLASS ACTION SETTLEMENT REFERRED TO IN THE NOTICE, AND TO BE EXCLUDED IN THE CLASS OF PLAINTIFFS IN THIS CLASS ACTION.

I confirm that I was employed by Contain-A-Way, Inc. during the Class Period. I confirm that I have received Notice Of Proposed Class Action Settlement And Final Fairness And Approval Hearing in this action, I have decided to be excluded from the Class, and I have decided not to participate in the proposed Settlement.

I understand that, by excluding myself from the Settlement, I am not entitled to receive any payment from the Settlement, but that I am still entitled to any vested benefits in any 401(k)/retirement account established to compensate me for any missed deferral. I further understand that I may obtain any such benefits by contacting Fidelity NetBenefits® at www.401k.com or call the Fidelity Retirement Benefits Line at 1-800-835-5097.

Dated: ____/____/____

(Signature)

____-____-____
(Social Security Number)

(Type or print name)

(____)____-____
(Telephone number)

(Street Address)

(City, State, Zip)

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Request for Exclusion, Page 1 of 1

Exhibit "B"

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

RAMON BARCIA; RANDALL LEWIS; on
behalf of themselves, and on behalf of all
persons similarly situated,

Plaintiffs,

v.

CONTAIN-A-WAY, INC., a California
corporation, doing business as NEXCYCLE
and 20/20 RECYCLE CENTERS,

Defendants.

Case No. 07-CV-0938 IEG (JNA)

**[PROPOSED] ORDER OF
PRELIMINARY APPROVAL OF
SETTLEMENT, CERTIFICATION OF
SETTLEMENT CLASS AND
APPOINTMENT OF CLASS COUNSEL**

Judge: Irma E. Gonzalez

Date: _____, 2008

Time: _____

EXHIBIT "C"

1 WHEREAS, on _____, 2008, Plaintiffs Ramon Barcia and Randall Lewis
2 (“Plaintiffs”) and Defendant Contain-A-Way (“Defendant”) entered into a Stipulation of
3 Settlement (“Settlement Agreement”) intended to resolve the above-captioned action;

4 WHEREAS, the Settlement Agreement sets forth the terms and conditions of a
5 proposed settlement and the dismissal of this action against Defendant;

6 WHEREAS, the Court has before it the Plaintiff’s Motion for Preliminary Approval of
7 Settlement and Certification of Settlement Class and Plaintiff’s Motion for Appointment of
8 Class Counsel filed _____, 2008, together with supporting materials;

9 WHEREAS, the Court has heard the attorneys for the parties with respect to the
10 proposed settlement of this action;

11 WHEREAS, the Court is satisfied that the terms set forth in the Settlement Agreement
12 are the result of good faith, arms-length negotiations among Plaintiff and Defendant, and
13 experienced counsel for both Plaintiff and Defendant; and

14 WHEREAS, the Court having conducted a hearing respecting the reasonableness of
15 proceeding with this proposed settlement, the Court now finds and Orders as follows:

16 Conditional Certification of Settlement Class

17 1. Terms used in this Order have the meaning assigned to them in the Settlement
18 Agreement.

19 2. For purposes only of the proposed settlement, a Class defined as follows is
20 conditionally certified pursuant to Federal Rule of Civil Procedure 23: All individuals
21 employed as Site Attendants and/or Floaters by Defendant in California, at any time from May
22 23, 2003 to the date of preliminary approval of the settlement by the Court, and who do not file
23 a timely request to be excluded from the settlement. In the event the proposed settlement is not
24 consummated for any reason, the conditional certification set forth in this paragraph shall be of
25 no further force or effect.
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Appointment of Class Counsel

3. The law firm of Blumenthal & Nordrehaug and Norman B. Blumenthal, Kyle Nordrehaug and Aparajit Bhowmik of that firm have fairly and adequately represented the interests of the Class, will continue to do so and, pursuant to Federal Rule of Civil Procedure 23(g)(1), are appointed class counsel for purposes of representing the Class conditionally certified in the preceding paragraph of this Order.

Preliminary Approval of Settlement

4. Pursuant to Federal Rule of Civil Procedure 23(c)(2)(B) and (e)(1)(B), the provisions of the Settlement Agreement are hereby preliminarily approved, subject to further consideration thereof at the final approval hearing provided for below. The Court finds that the Settlement Agreement is sufficiently within the range of reasonableness and that settlement is in the best interests of the Class, such that notice of the proposed settlement should be given as provided in paragraph 5 of this Order.

Notice to Class Members

5. Within 30 days of the entry of this Order, a Notice of Preliminary Approval and Final Approval Hearing ("Notice"), in the form attached to the Settlement as Exhibit A, along with the Proof of Claim Form and the Request for Exclusion Form in the forms collectively attached to the Settlement as Exhibit B, shall be sent by the Claims Administrator to all members of the Class defined above.

6. The Notice to be provided as set forth in this Order is hereby found to be the best means practicable of providing notice under the circumstances and, when completed, shall constitute sufficient notice of the settlement, the Final Approval Hearing, and the right to be excluded from the settlement to all persons entitled to participate in the settlement, pursuant to Federal Rule of Civil Procedure 23(c)(2)(B) and (e)(1)(B).

7. Any member of the class who desires to opt out of this class action must postmark his or her notification of such intent, pursuant to instructions in the Notice, no later than 45 days from the date of mailing the Notice.

The Final Approval Hearing

8. A hearing on final settlement approval (the "Final Approval Hearing") is hereby scheduled to be held before this Court on _____ 2008, at _____, to consider the fairness, reasonableness, and adequacy of the proposed settlement, Plaintiffs' motion for the award of attorneys' fees and costs, the dismissal with prejudice of the class action with respect to Defendant, and the entry of the final judgment in this action. The date and time of the Final Approval Hearing shall be set forth in the Notice.

9. All papers in support of final approval shall be filed on or before _____, 2008.

10. Any Class Member may, but need not, submit comments or objections to the Settlement Agreement. All such comments and objections must be filed with the Clerk of the Court, in writing, no later than 45 days from the mailing date of the Notice, and copies of all such papers must be delivered to Class Counsel and Defendant's Counsel on or before the same date.

11. Class Members wishing to be heard at the Final Approval Hearing are required to file written comments or objections and indicate in the writings their intention to appear at the hearing. Class Members need not appear at the Final Approval Hearing or take any other action to indicate their approval of the Settlement.

12. Any Class Member may, but need not, enter an appearance through his or her own attorney or may appear without an attorney.

Dated: _____

Hon. Irma E. Gonzalez
United States District Court Judge

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11 UNITED STATES DISTRICT COURT
12 SOUTHERN DISTRICT OF CALIFORNIA
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14 RAMON BARCIA; RANDALL LEWIS; on
15 behalf of themselves, and on behalf of all
16 persons similarly situated,

17 Plaintiffs,

18 v.

19 CONTAIN-A-WAY, INC., a California
20 corporation, doing business as NEXCYCLE
and 20/20 RECYCLE CENTERS,

21 Defendants.
22

Case No. 07-CV-0938 IEG (JNA)

**[PROPOSED] JUDGMENT AND
ORDER OF FINAL APPROVAL OF
THE SETTLEMENT AND
DISMISSING ACTION**

Judge: Irma E. Gonzalez

Date: _____, 2008

Time: _____
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EXHIBIT "D"

[PROPOSED] ORDER OF FINAL APPROVAL OF SETTLEMENT AND DISMISSING ACTION
07-CV-0938 IEG (JNA)

1 The Court having considered whether to order final approval of the settlement of the
2 above-captioned action pursuant to the Stipulation of Settlement ("Settlement Agreement")
3 filed on or about _____, 2008, having read and considered all of the papers of the
4 parties and their counsel, having granted preliminary approval on _____,
5 and directed that notice be given to all Class Members of preliminary approval of the
6 Settlement Agreement and the final approval hearing and the right to be excluded from the
7 settlement, and having received no objections to the settlement and good cause appearing,
8
9

10 **IT IS HEREBY ORDERED AS FOLLOWS:**

11 1. Terms used in this Order have the meaning assigned to them in the Settlement
12 Agreement.

13
14 2. This Court has jurisdiction over the claims asserted in the Litigation by Plaintiffs
15 Ramon Barcia and Randall Lewis ("Plaintiffs"), and over Class Members and Defendant
16 Contain-A-Way ("Defendant").

17 3. The Court hereby makes final the conditional class certification contained in the
18 Order of Preliminary Approval of Settlement, Certification of Settlement Class and
19 Appointment of Class Counsel, and thus makes final for purposes of the Settlement Agreement
20 the certification of a class whose members consist of All individuals employed as Site
21 Attendants and/or Floaters by Defendant in California, at any time from May 23, 2003 to
22 _____ [the date of preliminary approval of the settlement by the Court],
23
24 except for those persons who timely requested to be excluded from the settlement in
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1 accordance with the terms thereof, as reported in the Declaration of the Claims Administrator
2 on file herein.

3
4 4. The Court hereby finds that the Notice of Preliminary Approval of Settlement
5 and Final Approval Hearing, as mailed to all Class Members by _____, 2008,
6 fairly and adequately described the proposed Settlement Agreement, the manner in which
7 Class Members could object to or participate in the settlement, and the manner in which Class
8 Members could opt out of the Class; was the best notice practicable under the circumstances;
9 was valid, due and sufficient notice to all Class Members; and complied fully with the Federal
10 Rules of Civil Procedure, due process, and all other applicable laws. The Court further finds
11 that a full and fair opportunity has been afforded to Class Members to participate in the
12 proceedings convened to determine whether the proposed Settlement Agreement should be
13 given final approval. Accordingly, the Court hereby determines that all Class Members who
14 did not file a timely and proper request to be excluded from the settlement are bound by this
15 final Order.

16
17 5. The Court hereby finds that the Settlement Agreement is fair, reasonable, and
18 adequate as to the Class, Plaintiffs and Defendant, and is the product of good faith, arms-length
19 negotiations between the parties, and further, that the Settlement Agreement is consistent with
20 public policy, and fully complies with all applicable provisions of law. Accordingly, the Court
21 hereby finally and unconditionally approves the Settlement Agreement and authorizes
22 Defendant to pay the individual settlement amounts from the Settlement Amount in accordance
23 with the terms of the Settlement Agreement.

1 6. Defendant agreed in the Settlement Agreement not to object to Plaintiffs' request
2 for an enhancement award in the amount of \$12,000.00 each as payment to them for their
3 services as Plaintiffs and Representatives for the Class. The Court has considered Plaintiffs'
4 request for an enhancement award and, good cause appearing, hereby grants Plaintiffs' request
5 in the amount of \$12,000.00 each and authorizes Defendant to pay this amount from the
6 Settlement Amount in accordance with the terms of the Settlement.
7

8 7. Defendant further agreed in the Settlement Agreement not to oppose any motion
9 by Plaintiff for reasonable attorneys' fees and costs requesting up to 25% of the Maximum
10 Settlement Consideration (\$625,000.00), to be approved by the Court. The Court has
11 considered Plaintiff's motion for the award of attorneys' fees and costs and, good cause
12 appearing, hereby awards Plaintiff's counsel attorneys' fees and costs in the amount of
13 \$ _____ and authorizes Defendant to pay such amounts from the Settlement
14 Amount in accordance with the terms of the Settlement Agreement.
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17 8. Defendant further agreed in the Settlement Agreement to pay from the
18 Settlement Amount the reasonable costs of the Claims Administrator associated with notices to
19 the Class and the administration of the Settlement Agreement and all costs associated with
20 distribution of individual settlement amounts to Class Members. Good cause appearing, the
21 Court hereby authorizes Defendant to pay all such amounts not to exceed the aggregate sum of
22 \$24,510.44 from the Settlement Amount in accordance with the terms of the Settlement.
23
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25 9. The Litigation is hereby dismissed with prejudice; *provided, however*, that
26 without affecting the finality of this Order, the Court retains exclusive and continuing
27
28

1 jurisdiction over the Litigation, Plaintiffs, all Class Members and Defendant, for purposes of
2 supervising, implementing, interpreting and enforcing this Order and the Settlement
3 Agreement.
4

5
6 Dated: _____

7 Hon. Irma E. Gonzalez
8 United States District Court Judge
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EXHIBIT “B”

Blumenthal & Nordrehaug (AV)
2255 Calle Clara, La Jolla, California 92037
Tel: (858) 551-1223
Fax: (885) 551-1232

FIRM RESUME

Areas of Practice: Consumer and Securities Class Action, Civil Litigation, Transactional Law, Business Litigation, Products Liability and Construction Defects.

ATTORNEY BIOGRAPHIES

Norman B. Blumenthal

Partner

Practice Areas: Consumer and Securities Class Action, Civil Litigation, Transactional Law

Admitted: 1973, Illinois; 1976, California

Biography: Law Clerk to Justice Thomas J. Moran, Illinois Supreme Court, 1973-1975. Instructor, Oil and Gas Law: California Western School of Law, 1981; University of San Diego School of Law, 1983. President and Chairman of the Board, San Diego Petroleum Club Inc., 1985-1986. Chief Operating Officer and General Counsel, Brumark Corporation, 1980-1987.

Member: San Diego County, Illinois State and American Bar Associations; State Bar of California.

Educated: University of Wisconsin (B.A., 1970); Loyola University of Chicago (J.D., 1973)

Born: Washington, D.C., January 31, 1948

Kyle R. Nordrehaug

Partner

Practice Areas: Consumer and Securities Class Actions, Civil Litigation

Admitted: 1999, California

Member: State Bar of California

Educated: University of California at Berkeley (B.A., 1994); University of San Diego School of Law (J.D. 1999)

Born: San Diego, California, October 21, 1972

Scott Macrae

Contract Attorney

Practice Areas: Consumer and Securities Class Action

Admitted: 1982, California

Educated: Bowdoin College (B.A., 1978); University of California at Berkeley, Boalt Hall School of Law (J.D., 1982)

Born: Summit, New Jersey, November 26, 1956

Aparajit Bhowmik

Associate

Practice Areas: Civil Litigation; Consumer Class Actions

Admitted: 2006, California

Educated: University of California at San Diego (B.A., 2002); University of San Diego School of Law (J.D. 2006)



L A W
(858) 551-1223

◀ **HOME PAGE**

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◀ **F.A.Q.**

◀ **RESUME OF CLASS ACTION CASES**

◀ **THE FIRM**

Phone: (858) 551-1223

Fax: (858) 551-1232

Email: bam@bamlawlj.com

Located At:
2255 Calle Clara
La Jolla, CA 92037



BLUMENTHAL & NORDREHAUG

REPORTED CASES

In re Tobacco Cases II, 41 Cal. 4th 1257 (2007); Hall v. County of Los Angeles, 148 Cal. App. 4th 318 (2007); Coshov v. City of Escondido, 132 Cal. App. 4th 687 (2005); Daniels v. Philip Morris, 18 F.Supp 2d 1110 (1998 S.D. Cal.); Washington Mutual Bank v. Superior Court, 24 Cal. 4th 906 (2001); Gibson v. World Savings & Loan Asso., 103 Cal. App. 4th 1291 (2003); Jordan v. Department of Motor Vehicles, 75 Cal. App. 4th 445 (1999); Jordan v. Department of Motor Vehicles, 100 Cal.App. 4th 431 (2002); Norwest Mortgage, Inc. v. Superior Court, 72 Cal.App.4th 214 (1999); Hildago v. Diversified Transp. Sya, 1998 U.S. App. LEXIS 3207 (9th Cir. 1998); Kensington Capital Mgal. v. Oakley, Inc., 1999 U.S. Dist LEXIS 385; Fed.Sec.L.Rep. (CCH) P90, 411 (1999 C.D. Cal.); Olszewski v. Scripps Health, 30 Cal. 4th 798 (2003); Taiheiyo Cement Corp. v. Superior Court, 105 Cal.App. 4th 398 (2003); McMeans v. Scripps Health, Inc., 100 Cal. App. 4th 507 (2002); Ramos v. Countrywide Home Loans, 82 Cal.App. 4th 615 (2002); Tevssier v. City of San Diego, 81 Cal.App. 4th 685. Practice areas: Consumer Class Actions; Securities Class Actions; Civil Litigation; Transactional Law Business Litigation. Rocker v. KPMG LLP, 122 Nev. Adv. Op. No. 101 (2006)

LEAD COUNSEL

[Click Here to View Class Action Notices](#)

LEAD COUNSEL - CLASS ACTION

Adkins v. Washington Mutual Bank - Settled
Orange County Superior Court
Nature of Case: Unfair Competition - Bank Interest Overcharges
Plaintiff's Counsel: Blumenthal & Nordrehaug

Agah v. CompUSA - "In Litigation"
U.S. District Court, Southern District of California
Case No. SA CV05-1087 DOC (Anx)
Nature of Case: Unfair Competition - Unfair Rebate Program

Plaintiff's Counsel: Blumenthal and Nordrehaug

Allec v. Cross Country Bank - Settled
Orange County Superior Court
Nature of Case: Unfair Business Practices-Deceptive Advertising
Plaintiff's Counsel: Blumenthal & Nordrehaug

Arreguin v. Impact Solutions - "In Litigation"
Los Angeles Superior Court, Case No. BC 340107
Nature of Case: Labor Code Violations
Plaintiff's Counsel: Blumenthal and Nordrehaug

Ayala v. Met-RX USA - "In Litigation"
Los Angeles Superior Court, Case No. L.A.S.C. Case No. : BC 289455
Nature of Case: Unfair Competition - Sale of Illegal Products
Plaintiff's Counsel: Blumenthal and Nordrehaug & Trenam, Kemker, Scharf, Barkin, Frye, O'Neill & Mullis, P.A.

Bermant v. Bank of America, Investment Services, Inc. - "In Litigation"
Los Angeles Superior Court, Civil Action No. BC342505
Nature of Case: Labor Code Violations
Plaintiff's Counsel: Blumenthal and Nordrehaug & Arias, Ozzello & Gignac, L.L.P. & United Employees Law Group

Bolger v. Dr. Martens - Settled
San Diego Superior Court
Nature of Case: Unfair Business Practices-Deceptive Advertising
Plaintiff's Counsel: Blumenthal & Nordrehaug

Briseno v. American Savings Bank - Settled
Orange County Superior Court
Nature of Case: Unfair Competition - Force Ordered Insurance Overcharges
Plaintiff's Counsel: Blumenthal & Nordrehaug; Chavez & Gertler

Buonomo v. ValueVision - Settled
Minnesota District Court
Nature of Case: False Advertising, Breach of Warranty
Plaintiff's Counsel: Blumenthal & Nordrehaug; Mansfield, Tanick & Cohen, P.A.

Butler v. Oberman, Tivoli, Miller and Pickert, Inc. - "In

Litigation”
Los Angeles Superior Court, Case No. BC 339051
Nature of Case: Labor
Plaintiff’s Counsel: Blumenthal and Nordrehaug

Citizens for Fair Treatment v. Quest Communications -
Settled
San Diego Superior Court
Nature of Case: Failure to Pay for Vacation Time
Plaintiff’s Counsel: Blumenthal and Nordrehaug

Cohen v. Bosch Tool - “In Litigation”
San Diego Superior Court, Case No. GIC 853562
Nature of Case: Unfair Business Practices-Deceptive
Advertising
Plaintiff’s Counsel: Blumenthal and Nordrehaug

Collins v. Galpin Motors - “In Litigation”
Los Angeles Superior Court, Case No. BC 343915
Nature of Case: Overtime
Plaintiff’s Counsel: Blumenthal and Nordrehaug

Comstock v. Washington Mutual Bank - “In Litigation”
San Diego County Superior Court
Nature of Case: Unfair Competition - Force Order
Insurance
Plaintiff’s Counsel: Blumenthal & Nordrehaug

Conley v. Norwest - Settled
San Diego County Superior Court
Nature of Case: Unfair Business Practices-Force Ordered
Insurance Overcharges
Plaintiff’s Counsel: Blumenthal & Nordrehaug

Connell v. Sun Microsystems - “In Litigation”
Alameda Superior Court, Case No. RG06252310
Nature of Case: Labor Code Violations
Plaintiff’s Counsel: Blumenthal and Nordrehaug &
United Employees Law & Group Chavez & Gertler, LLP

Curry v. California Testing Bureau/McGraw Hill - “In
Litigation”
U.S. District Court, Northern District of California, San
Jose
Civil Action No. C-05-4003 JW
Nature of Case: ERISA Claim
Plaintiff’s Counsel: Blumenthal and Nordrehaug & Chavez
& Gertler

Danford v. Movo Media - Settled

San Diego Superior Court
Nature of Case: Unfair Business Practices-Unlawful
Violation of Unruh Civil Rights Act
Plaintiff's Counsel: Blumenthal & Nordrehaug

Daniels, et al. v. Philip Morris, et al. – On Review before
the California Supreme Court
San Diego Superior Court
Nature of Case: Unfair Business Practices-Unlawful,
Deceptive and Unfair Marketing of Cigarettes to Children
Plaintiff's Counsel: Blumenthal & Nordrehaug

Dewane v. Prudential - "In Litigation"
U.S. District Court, Central District of California
Case NO. SA CV 05-1031
Nature of Case: Labor Code Violations
Plaintiff's Counsel: Blumenthal and Nordrehaug &
Wynne Law Firm & Thierman Law Firm P.C.

Downtown Inns v. Pac Bell - Settled
California Public Utilities Commission
Nature of Case: Illegal Charge
Plaintiff's Counsel: Blumenthal & Nordrehaug; Sullivan
Hill.

Fallah v. Cingular Wireless - "In Litigation"
Orange County Superior Court
Case NO.
Nature of Case: Unfair Competition - Unfair Rebate
Program
Plaintiff's Counsel: Blumenthal and Nordrehaug

Fierro v. Chase Manhattan - Settled
San Diego Superior Court
Nature of Case: Unfair Competition - Bank Interest
Overcharges
Plaintiff's Counsel: Blumenthal & Nordrehaug

Friend v. Wellpoint - "In Litigation"
Los Angeles Superior Court, Case NO. BC345147
Nature of Case: Labor Code Violations
Plaintiff's Counsel: Blumenthal and Nordrehaug &
United Employees Law Group

Getchius v. National Private Security - "In Litigation"
Los Angeles Superior Court, Case No. BC 338907
Nature of Case: Overtime
Plaintiff's Counsel: Blumenthal and Nordrehaug

Gibson v. World Savings - Judgment for Class after Appeal

- Settled
Orange County Superior Court
Nature of Case: Unfair Business Practices-Force Ordered
Insurance Overcharges
Plaintiff's Counsel: Blumenthal & Nordrehaug

Gill v. Parabody, Inc. - Settled
San Diego Superior Court
Nature of Case: Product Defect
Plaintiff's Counsel: Blumenthal & Nordrehaug

Greer v. Fleet Mortgage - Settled
San Diego Superior Court
Nature of Case: Unfair Business Practices-Bank
Overcharges
Plaintiff's Counsel: Blumenthal & Nordrehaug

Guzman v. GNC, Inc. - "In Litigation"
U.S. District Court, Central District of California
Case No. CV 06-2326 MMM FMOx
Nature of Case: Unfair Competition - Illegal Product Sales
Plaintiff's Counsel: Blumenthal and Nordrehaug &
Trenam, Kemker, Scharf, Barkin, Frye,
O'Neill & Mullis, P.A.

Guzman v. Muscletech. - "In Litigation"
U.S. District Court, Central District of California
Case No. Case No. CV06-2377 CAS JTLx
Nature of Case: Unfair Competition - Illegal Product Sales
Plaintiff's Counsel: Blumenthal and Nordrehaug &
Thanasides, Zalkin & Acero & Trenam, Kemker, Scharf,
Barkin, Frye, O'Neill & Mullis, P.A.

Hahn v. Circuit City - Settled
San Diego Superior Court; U.S. District Court, Southern
District of California
Nature of Case: Unfair Business Practices, Failure to Pay
Vacation Time
Plaintiff's Counsel: Blumenthal & Nordrehaug

Hall v. County of Los Angeles - "In Litigation"
Los Angeles Superior Court, Case No. BC208582
Nature of Case: Gender Discrimination
Plaintiff's Counsel: Blumenthal and Nordrehaug &
The Lewis Law Firm

Handler v. Oppenheimer - "In Litigation"
Los Angeles Superior Court, Civil Action No. BC343542
Nature of Case: Labor Code Violations
Plaintiff's Counsel: Blumenthal and Nordrehaug &

Perona, Langer, Beck, Lallande and Serbin
Higgins v. Maryland Casualty - Settled
San Diego Superior Court
Nature of Case: Unfair Business Practices-Deceptive
Insurance Overcharges
Plaintiff's Counsel: Blumenthal & Nordrehaug

Hoffman v. National Warranty Insurance - "In Litigation"
District Court for the State of Nevada
Nature of Case: Auto Warranty Fraud
Plaintiff's Counsel: Blumenthal & Nordrehaug; Greco,
Traficante & Edwards;
Gerard, Osuch & Cisneros, LLP

Hollander v. Vitamin Shoppe Industries - "In Litigation"
Los Angeles Superior Court
Case No. L.A.S.C. Case No. BC311446
Nature of Case: Unfair Competition - Illegal Product Sales
Plaintiff's Counsel: Blumenthal and Nordrehaug &
Thanasides, Zalkin & Acero & Trenam, Kemker, Scharf,
Barkin, Frye, O'Neill & Mullis, P.A.

Jones v. E*Trade Mortgage - "In Litigation"
U.S. District Court, Southern District California
Case No. 02-CV-1123 L (JAH)
Nature of Case: TILA Violations
Plaintiff's Counsel: Blumenthal and Nordrehaug &
Robert C. Fellmeth, Esq.

King v. Nordstrom - Settled
San Diego Superior Court
Nature of Case: Unfair Business Practices-Failure to Pay
for Vacation Time
Plaintiff's Counsel: Blumenthal & Nordrehaug

Lopez v. K-Mart - "In Litigation"
Ventura County Superior Court, Case No. BC 351983
Nature of Case: Overtime - Unfair Business Practice
Plaintiff's Counsel: Blumenthal and Nordrehaug & Arias,
Ozzello, & Gignac, LLP & United Employees Law Group

Mann v. Vital Pharmaceuticals - "In Litigation"
Los Angeles Superior Court
Case No. L.A.S.C. Case No. : BC 310790
Nature of Case: Unfair Competition - Illegal Product Sales
Plaintiff's Counsel: Blumenthal and Nordrehaug &
Trenam, Kemker, Scharf, Barkin, Frye, O'Neill & Mullis,
P.A.

Mandell v. Republic Bank - Settled

Los Angeles County Superior Court
Nature of Case: Breach of Fiduciary Duties to IRA Account
Holders
Plaintiff's Counsel: Blumenthal & Nordrehaug

Manzanarez v. Home Savings of America - Settled
San Francisco Superior Court
Nature of Case: Unfair Business Practices-Overcharge for
Inspection Fees
Plaintiff's Counsel: Blumenthal & Nordrehaug

Marchese v. Ty, Inc. - Settled San Diego Superior Court
Nature of Case: Unfair Business Practices-Deceptive
Advertising
Plaintiff's Counsel: Blumenthal & Nordrehaug

Martinez v. Yahoo, Inc. - Settled
Nature of Case: Deceptive Advertising
Plaintiff's Counsel: Blumenthal & Nordrehaug

Matloubian v. Home Savings of America - Settled
San Diego Superior Court
Nature of Case: Unfair Business Practices-Force Ordered
Insurance Overcharges
Plaintiff's Counsel: Blumenthal & Nordrehaug; Chavez &
Gertler

McMeans v. ScrippsHealth, - Settled
San Diego Superior Court
Nature of Case: Unfair Competition, Lien Overcharges
Plaintiff's Counsel: Blumenthal & Nordrehaug

McPhail v. First Command - "In Litigation"
United States District Court for the Southern District of
California
Case No.05CV0179 IEG (JMA)
Nature of Case: Securities Fraud, 10(b)(5) violations
Plaintiff's Counsel: Blumenthal & Nordrehaug appointed
Lead Counsel, Greco & Traficante & Whatley Drake LLC
& Gray & White,& Brewer & Carlson, LLP & Franklin &
Hance, PSC

Meco v. International Medical Research (and related cases)
- "In Litigation"
Los Angeles Superior Court
Nature of Case: Unfair Competition, Product Adulteration,
Illegal Sale of Drugs
Plaintiff's Counsel: Blumenthal & Nordrehaug

Nakagawa v. LPJ Pharmaceuticals - "In Litigation"

Los Angeles Superior Court
Case No. FRESNO S.C. Case No. : 04CECG 00453
Nature of Case: Unfair Competition - Illegal Product Sales
Plaintiff's Counsel: Blumenthal and Nordrehaug &
Trenam, Kemker, Scharf, Barkin, Frye, O'Neill & Mullis,
P.A.

Navarette v. Edwards Theaters/Century - "In Litigation"
Orange County Superior Court, Case No. 05CC00211
Nature of Case: Overtime
Plaintiff's Counsel: Blumenthal and Nordrehaug

Nelson v. St. Paul Fire & Marine Insurance - Settled
Brazoria County District Court, Texas
Nature of Case: Deceptive Business Practices in sale of oil
& gas reserve insurance
Plaintiff's Counsel: Blumenthal & Nordrehaug

Nguyen v. Wells Fargo Home Mortgage - "In Litigation"
Orange County Superior Court, Case No. 05 CC 00116
Nature of Case: Unfair Business Practices - Force Ordered
Insurance Overcharges
Plaintiff's Counsel: Blumenthal & Nordrehaug

Olszewski v. ScrippsHealth - Judgment for Plaintiff
San Diego Superior Court
Nature of Case: Unfair Competition, Lien Overcharges
Plaintiff's Counsel: Blumenthal & Nordrehaug

Pacheco v. Lexicon Marketing - "In Litigation"
Los Angeles Superior Court, Case No. BC 342265
Nature of Case: Overtime
Plaintiff's Counsel: Blumenthal and Nordrehaug

Patelski v. The Boeing Company – Settled
United States District Court, Southern District of New
York;
transferred to United States District Court, Eastern District
of Missouri
Nature of Case: Refund Action
Plaintiffs' Counsel: Blumenthal & Nordrehaug, Sigman,
Lewis & Feinberg, P.C.

Pearlman v. Bank of America - Settled
San Diego Superior Court
Nature of Case: Unfair Business Practices-Force Ordered
Insurance Overcharges
Plaintiff's Counsel: Blumenthal & Nordrehaug; Chavez &
Gertler

Prince v. ClientLogic - "In Litigation"
Eighth Judicial District Court, Clark County, Nevada
No Case No. A517624
Nature of Case: Overtime
Plaintiff's Counsel: Blumenthal and Nordrehaug & Gerard
& Osuch, LLP

Puentes v. Wells Fargo Home Mortgage - "In Litigation"
San Diego Superior Court
Nature of Case: Unfair Business Practices - Bank Interest
Overcharges
Plaintiff's Counsel: Blumenthal & Nordrehaug

Ralphs v. Blockbuster, Inc. - Settled
San Diego Superior Court
Nature of Case: Unlawful Late Fees
Plaintiff's Counsel: Blumenthal & Nordrehaug, Morris and
Associates, Pettersen and Bark

Ramos v. Countrywide - Settled
San Diego Superior Court
Nature of Case: Unfair Business Practices-Force Ordered
Insurance Overcharges
Plaintiffs' Counsel: Blumenthal & Nordrehaug; Sullivan
Hill; Chavez & Gertler

Redin v. Sterling Trust - Settled
Los Angeles Superior Court
Nature of Case: Breach of Fiduciary Duties of IRA
Administrator
Plaintiff's Counsel: Blumenthal & Nordrehaug

Reynolds v. Marlboro/Philip Morris U.S.A. - "In
Litigation"
U.S. District Court, Southern District of California
Civil Action No. 05 CV 1876 JAH
Nature of Case: Unfair Competition
Plaintiff's Counsel: Blumenthal and Nordrehaug

Rezec v. Sony - Settled
San Diego Superior Court
Nature of Case: Fraudulent Advertising
Plaintiffs' Counsel: Blumenthal & Nordrehaug, Prongay &
Borderud; The Cifarelli Law Firm

RocheFord v. SC&E Administrative Service - "In
Litigation"
Orange County Superior Court
Nature of Case: Auto Warranty Fraud
Plaintiffs' Counsel: Blumenthal & Nordrehaug; Greco,

Traficante & Edwards;
Gerard, Osuch & Cisneros, LLP

Santone v. AT&T – Settled
United states District Court, Southern District of Alabama
Nature of Case: Unconscionable Business Practices
Plaintiff's Counsel: Blumenthal & Nordrehaug, Morris &
Associates

Scott v. Blockbuster, Inc. – Settled
Count of Appeals, Ninth District of Texas, Beaumont,
Texas
Nature of Case: Unlawful Late Fees
Plaintiff's Counsel: Blumenthal & Nordrehaug, Brothers &
Thomas, LLP, Vaughan O. Stewart

Shiell v. County of Los Angeles - "In Litigation"
Los Angeles Superior Court
Case Number BC208583; [Related to]: BC208582
Nature of Case: Claim for Common Law Employment
Plaintiff's Counsel: Blumenthal and Nordrehaug &
The Lewis Law Firm

Silvas v. E*Trade - "In Litigation"
U.S. District Court, Southern District
CASE NO. 05cv02348 - W (NLS)
Nature of Case: TILA Violations
Plaintiff's Counsel: Blumenthal and Nordrehaug & Robert
Fellmeth & The Law Offices of Daniel Harris & The
Nygaard Law Firm

Sims v. Philip Morris, Inc. – "In Litigation"
United States District Court, For the District of Columbia
Nature of Case: Unlawful Marketing of Cigarettes to
Children
Plaintiffs' Counsel: Blumenthal & Nordrehaug, Thorsnes,
Bartolotta & McGuire;
Chavez & Gertler, Thomas E. Sharkey and Fleishman &
Fisher

Sirota v. Swing-N-Slide - Settled
Wisconsin District Court, County of Rock Wisconsin
Case No. 95CV726J
Nature of Case: Fraudulent Stock Buy Back-Derivative
Claim
Plaintiff's Counsel: Blumenthal & Nordrehaug; Sullivan
Hill; Milberg, Weiss, Bershad, Hynes & Lerach; Nowlan &
Mouat

Sorensen v. Binions, - "In Litigation"

Nature of Case: ERISA violation
Plaintiff's Counsel: Blumenthal & Nordrehaug; Gerard & Osuch

Stevens v. Robinsons-May - Settled
San Diego Superior Court
Nature of Case: Unfair Business Practices-Failure to Pay for Vacation Time
Plaintiff's Counsel: Blumenthal & Nordrehaug

Strauss v. Bayer Corporation – In Litigation
United States District Court, District of Minnesota
Nature of Case: Baycol Products Liability Litigation
Plaintiffs' Counsel: Blumenthal & Nordrehaug; Fleishman & Fisher

Tauber v. Alaska Airlines - Settled
Los Angeles Superior Court
Nature of Case: Unfair Business Practice - Employment Practices
Plaintiff's Counsel: Blumenthal & Nordrehaug

Van Gorp v. Ameriquest Mortgage/Deutsche Bank - "In Litigation"
U.S. District Court, Central District of California
Case No. SACV05-907 CJC (ANx)
Nature of Case: Overtime
Plaintiff's Counsel: Blumenthal and Nordrehaug

Wadhwa v. Escrow Plus - Settled
Los Angeles Superior Court
Nature of Case: Investment Fraud
Plaintiff's Counsel: Blumenthal & Nordrehaug
Yao v. Bodyonics, Ltd. - "In Litigation"
Los Angeles Superior Court, JCCP No. 4363
Nature of Case: Unfair Competition - Illegal Product Sales
Plaintiff's Counsel: Blumenthal and Nordrehaug

Zugich v. Wells Fargo Bank - Settled
San Francisco Superior Court
Nature of Case: Unfair Business Practices-Force Ordered Insurance Overcharges
Plaintiff's Counsel: Blumenthal & Nordrehaug

CO-COUNSEL - Class Actions

Baxt v. Scor U.S. - Settled
Delaware Court of Chancery
Nature of Case: Takeover
Plaintiffs' Counsel: Blumenthal & Nordrehaug; Sullivan

Hill;
Rosenthal, Monhait, Gross & Goddess, P.A.

Bronson v. Blech Securities - Settled
U.S. District Court, Southern District of New York
Nature of Case: Securities Fraud
Plaintiffs' Counsel: Blumenthal & Nordrehaug; Milberg;
Weiss, Bershad, Hynes & Lerach; Kaplan, Kilsheimer &
Fox; Berstein, Liebhard & Lifshitz; Berstein & Ostraff;
Law Office of Dennis J. Johnson; John T. Maher; Sullivan
Hill; Weil, Gotshal & Manges; Paul, Hastings, Janofsky &
Walker; Andrews & Kurth; Paul, Weiss, Rifkind, Wharton
& Garrison; Wolff & Samson; Heller, Horowitz & Feit,
P.C.; Shereff, Friedman, Hoffman & Goodman, LLP;
Debevoise & Plimpton; Smith, Campbell, Paduano; Thelen,
Marrin, Johnson & Bridges; The Offices of Robert
Swetnick; Crummy Del Deo; Robinson, Silverman, Pearce,
Aronsohn & Berman; Buchanan Ingersoll, P.C.; Morgan,
Lewis & Bockius, Schwartz, Kelm, Warren & Ramirez;
Porter & Hedges, L.L.P.; MicroProbe Corp.; NeoRX Corp.;
Solomon, Zauderer, Ellenhorn, Frischer & Sharp;

Caushon v. General Motors Corp. - "In Coordinated
Litigation"
In re Automobile Antitrust Cases
San Diego Superior Court, coordinated in San Francisco
Nature of Case: Unfair Competition; Antitrust
Plaintiff's Co-Counsel: Blumenthal & Nordrehaug

Dibella v. Olympic Financial - Settled
U.S. District Court, District of Minnesota
Nature of Case: Securities Fraud
Plaintiff's Counsel: Blumenthal & Nordrehaug

Ferrari v. Read-Rite - Settled
U. S. District Court, Northern District of California
Nature of Case: Securities Fraud
Plaintiff's Counsel: Blumenthal & Nordrehaug; Milberg,
Weiss, Bershad, Hynes & Lerach

Hart v. United States Tobacco Co. - "In Litigation"
Los Angeles Superior Court
Coordinated in Smokeless Tobacco Litigation
Nature of Case: Unfair Competition; Antitrust
Plaintiff's Co-Counsel: Blumenthal & Nordrehaug; the
Cuneo Law Group P.C.; Gordon Ball

Kensington Capital v. Oakley - Settled
U. S. District Court, Southern District of California
Nature of Case: Securities Fraud

Plaintiffs' Counsel: Blumenthal & Nordrehaug; Milberg, Weiss, Bershad, Hynes & Lerach

Kensington Capital v. Vesta - Settled
U. S. District Court, Northern District of Alabama
Nature of Case: Securities Fraud
Plaintiffs' Counsel: Blumenthal & Nordrehaug; Milberg, Weiss, Bershad, Hynes & Lerach

Manaster v. SureBeam - Settled
United States District Court
Nature of Case: Violation of Securities Act
Plaintiffs' Counsel: Blumenthal & Nordrehaug; Milberg Weiss Bershad Hynes & Lerach

Jordan/Ramos v. DMV - Judgment for Plaintiff
Superior Court, Sacramento
Nature of Case: Commerce Clause Violation - Tax declared unconstitutional -
Affirmed on appeal
Plaintiffs' Counsel: Blumenthal & Nordrehaug; Milberg, Weiss, Bershad, Hynes & Lerach;
Weiss & Yourman; Sullivan Hill.

Ridgewood Capital Management v. Gensia - Settled
U.S. District Court, Southern District of California, #CV-92-1500H
Plaintiffs' Counsel: Barrack, Rodos & Bacine; Kaplan, Kilsheimer & Fox; Wolf, Popper, Ross, Wolf & Jones; Law Offices of Joseph H. Weiss; Kaufman, Malchman, Kaufman & Kirby; Sullivan Hill; Blumenthal & Nordrehaug

Shurman v. Scimed - Settled
State of Minnesota District Court, Fourth District, #94-17640
Plaintiffs' Counsel: Blumenthal & Nordrehaug; Milberg, Weiss, Bershad, Hynes & Lerach; Kaplan, Kilsheimer & Fox; Sullivan Hill; Law Offices of Lawrence G. Soicher.

Sirota v. Swing-N-Slide - Settled
Wisconsin District Court, County of Rock Wisconsin
Nature of Case: Fraudulent Stock Buy-Back-Derivative Claim
Plaintiff's Counsel: Blumenthal & Nordrehaug; Sullivan Hill;
Milberg, Weiss, Bershad, Hynes & Lerach; Nowlan & Mouat

Slatton v. G.E. Capital Mortgage Services - Settled

Camden County Superior Court, New Jersey,
#CAML0256198
Nature of Case: Forced order insurance
Plaintiff's Counsel: Blumenthal & Nordrehaug

Somkin v. Molten Metal - Settled
U.S. District Court, District of Massachusetts,
#9710325PBS
Nature of Case: Securities Fraud
Plaintiff's Counsel: Blumenthal & Nordrehaug

Sparks v AT&T - Settled
Illinois District Court - Madison County
Deceptive Practice claim - Leased consumer telephone
equipment
Plaintiff's counsel - Carr Korein Tillery; Blumenthal &
Nordrehaug; Whatley Drake

[Top](#)

BLUMENTHAL & NORDREHAUG

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Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

RAMON BARCIA, *et al.*,

Plaintiff,

vs.

CONTAIN-A-WAY INC., *et al.*,

Defendants.

CASE No. **07 CV 0938 IEG (JMA)**

PROOF OF SERVICE

[F.R.C.P. §5]

DEPT: 1, 4TH Floor

JUDGE: Hon. Irma E. Gonzalez

Action Filed: May 23, 2007

CERTIFICATE OF SERVICE [F.R.C.P. §5]

I am a citizen of the United States and a resident of the State of California. I am employed in the County of San Diego, State of California. I am over the age of 18 and not a party to the within action. My business address is 2255 Calle Clara, La Jolla, California 92037. On July 3, 2008, I served the document(s) described as below in the manner set forth below:

- (1) NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS SETTLEMENT
- (2) MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS SETTLEMENT
- (3) DECLARATION OF NORMAN B. BLUMENTHAL IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS SETTLEMENT

XX (BY ELECTRONIC SERVICE): I caused the listed documents to be electronically filed through the CM/ECF system at the United States District Court for the Southern District of California which generates a Notice of Electronic Filing to all parties and constitutes service of the electronically filed documents on all parties for purposes of the Federal Rules of Civil Procedure.

XX (Federal): I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made, and that the foregoing is true and correct under penalty of perjury.

Executed on July 3, 2008, at San Diego, California.

s/Norman B. Blumenthal
Norman B. Blumenthal
BLUMENTHAL & NORDREHAUG
2255 Calle Clara
La Jolla, CA 92037
(858) 551-1223
Fax: (858) 551-1232