

**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 AUGUST 14, 2008, 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](http://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 **October 27, 2008**.
- 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 **October 27, 2008**.
- C. The last date to mail a written objection to the Settlement is **October 27, 2008**.
- D. The hearing on any objections and to give final approval to the Settlement is **March 2, 2009**.
- E. The appropriate date payment processing begins if there are no objections, appeals, or Court ordered extension is **March 16, 2009**; settlement checks shall be mailed by **March 23, 2009**.

**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 **August 14, 2008**. 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 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 March 2, 2009 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 \$209,358.00 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 August 14, 2008. 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-third 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](http://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<sup>®</sup> at [www.401k.com](http://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 Barcia v. Contain-A-Way, Inc. Claims Administrator, c/o Gilardi & Co. LLC, P.O. Box 8060, San Rafael, CA 94912-8060, with a postmark not later than October 27, 2008. 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<sup>®</sup> at [www.401k.com](http://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<sup>®</sup> at [www.401k.com](http://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: Barcia v. Contain-A-Way, Inc. Claims Administrator, c/o Gilardi & Co. LLC, P.O. Box 8060, San Rafael, CA 94912-8060, with a postmark of not later than October 27, 2008.

**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](http://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 March 2, 2009 at 10:30 a.m. before the Honorable Irma E. Gonzalez in Courtroom 1 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 October 27, 2008, 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](mailto:aj@bamlawlj.com)

**PLEASE DO NOT CONTACT THE COURT REGARDING THIS NOTICE**