

1
2
3
4
5 **UNITED STATES DISTRICT COURT**
6 **SOUTHERN DISTRICT OF CALIFORNIA**

7 RICARDO MARTIN, an
8 individual; and NICK MORGAN,
9 an individual; on behalf of
10 themselves and all others
11 similarly situated,
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Plaintiffs,

v.

LEGACY SUPPLY CHAIN
SERVICES II, INC., an Indiana
Corporation; PrimePath, LLC, a
Florida Corporation; and DOES 1
through 100, inclusive,
Defendants.

Case No. 3:16-cv-02471-WQH-BLM

CLASS ACTION

ORDER

HAYES, Judge:

Plaintiffs Ricardo Martin and Nick Morgan (“Plaintiffs”), on behalf of themselves and the proposed Settlement Class, have filed an unopposed motion asking the Court to: (a) grant preliminary approval of the Stipulation and Agreement of Compromise and Class Settlement (“Settlement” or “Settlement Agreement”) entered into by and between Plaintiffs and Defendants Legacy Supply Chain Services II, Inc. and PrimePath, LLC (“Defendants”); (b) requesting the Court set a deadline for Plaintiffs to file their Motion for Approval of Class Counsel’s Attorneys’ Fees and Costs, and Class Representative Enhancement Payments; and (c) requesting the Court set a final approval hearing to determine the fairness of the Settlement.

1 The Court has considered the Parties' Settlement Agreement, along with Plaintiffs'
2 unopposed Motion for Preliminary Approval of the Settlement Agreement and the
3 Memorandum of Points and Authorities, Declaration of Christopher A. Olsen,
4 Declaration of Ricardo Martin, Declaration of Nick Morgan, and other documents filed
5 in support thereof, and finds good cause for issuing an Order preliminarily approving the
6 Parties' Settlement.

7 **NOW THEREFORE, IT IS HEREBY ORDERED:**

8 1. The Court GRANTS the request for Preliminary Approval of the Class Action
9 Settlement. All defined terms contained herein shall have the same meanings as set forth
10 in the Settlement.

11 2. Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, the Court GRANTS
12 the Parties' request for certification of the following Rule 23 Settlement Class for the sole
13 and limited purpose of implementing the terms of the Settlement Agreement, subject to
14 this Court's final approval:

15 All persons, or each of them, currently or formerly employed by
16 Defendants, or Defendants' predecessors, in the State of California as
17 hourly, non-exempt employees during the time frame of October 3, 2012
18 through the date the Court grants preliminary approval of this Settlement
19 Agreement.

20 3. The Court recognizes that certification under this Order is for settlement purposes
21 only, and shall not constitute or be construed as an admission by Defendants that this
22 action is appropriate for class treatment for litigation purposes. Entry of this Order is
23 without prejudice to the rights of Defendants to oppose certification of a class in this
24 action should the proposed settlement not be granted final approval.

25 4. The Court appoints and designates: (a) Plaintiffs Ricardo Martin and Nick Morgan
26 as the Class Representatives, and (b) the firm of Olsen Law Offices, APC as Class
27 Counsel for the Class. Class Counsel is authorized to act on behalf of the Class with
28 respect to all acts or consents required by, or which may be given, pursuant to the

1 Settlement, and such other acts necessary to finalize the Settlement Agreement and its
2 terms. Any Settlement Class Member may opt out of the Settlement and enter an
3 appearance through his or his own counsel at such Class Member's own expense. Any
4 Settlement Class Member who does not opt out will be represented by Class Counsel.

5 5. The Court hereby approves the terms provided for in the Settlement, finding them
6 to be fair, adequate, and reasonable and in the best interests of the Settlement Class
7 Members.

8 6. The Court hereby preliminarily approves the Settlement and the Maximum
9 Settlement Amount of \$625,000.00, with the Net Settlement Amount being calculated by
10 subtracting the following from the Maximum Settlement Amount: (1) Class Counsel's
11 attorneys' fees (not to exceed 33.33% of the Maximum Settlement Amount or
12 \$206,250.00); (2) Class Counsel's Costs (not to exceed \$10,000.00); (3) Class
13 Representative Enhancement Payments to be paid to Representatives Ricardo Martin and
14 Nick Morgan (not to exceed \$5,000 per class representative); (4) \$10,000.00 to be
15 allocated to claimed PAGA penalties with 75% (or \$7,500.00) to be paid to the California
16 LWDA and with 25% (or \$2,500.00) going into the Net Settlement Amount; and (5) the
17 Claims Administration Costs to the Claims Administrator, Phoenix Settlement
18 Administrators, Inc., not to exceed \$20,000.00. The Net Settlement Amount remaining
19 for paying Individual Settlement Payments to the Participating Class Members is
20 anticipated to be approximately \$371,250.00. The Court further preliminarily approves
21 the formulas provided in the Settlement for calculating Individual Settlement Payments,
22 and the Opt-Out Deadline of May 11, 2018. Additionally, Defendants' employer share
23 of payroll taxes (e.g. UI, ETT, Social Security and Medicare taxes) on Individual
24 Settlement Payments paid to the Participating Class Members will be deducted from the
25 Net Settlement Amount.

26 7. The Court finds on a preliminary basis that the Settlement, including the Class
27 Representative Enhancement Payment, Class Counsel Fees and Costs, the Claims
28 Administration Costs and the proposed allocation of Individual Settlement Payments to

1 Participating Class Members, appears to be within the range of reasonableness of a
2 settlement that could ultimately be given final approval by this Court. It appears to the
3 Court on a preliminary basis that the Settlement is fair, adequate and reasonable as to all
4 potential Settlement Class Members when balanced against the probable outcome of
5 further litigation relating to certification, liability and damages issues. It also appears that
6 extensive investigation, research and Court proceedings have been conducted so that
7 counsels for the Parties have been able to reasonably evaluate their respective positions.
8 It appears to the Court that settlement at this time will avoid substantial additional costs
9 by all Parties, as well as avoid the delay and risks that would be presented by the further
10 prosecution of this Action. It also appears that settlement has been reached because of
11 intensive, serious, and non-collusive arms-length negotiations, including a full-day
12 mediation with a third-party neutral.

13 8. A final approval hearing shall be held before this Court on July 13, 2018 in
14 Courtroom 14B of the United States District Court, Southern District of California, at
15 10:00 a.m. to determine all necessary matters concerning the Settlement, including
16 whether the proposed Settlement of the Action on the terms and conditions provided for
17 in the Settlement are fair, adequate and reasonable and should be finally approved by the
18 Court and whether a Judgment should be entered herein. At that time, a hearing on Class
19 Counsel's Motion for Attorneys' Fees and Costs and the Class Representative's
20 Enhancement Payment shall also be held.

21 9. The Court hereby approves, as to form and content, the Notice of Class Action
22 Settlement ("Notice Packet") to be sent to Settlement Class Members, which is attached
23 as Exhibits A to the Settlement Agreement. The Court finds that distribution of the Notice
24 Packets to the Settlement Class Members substantially in the manner and form set forth
25 in the Settlement is the best notice practicable under the circumstances and meets the
26 requirements of due process, and shall constitute due and sufficient notice to all parties
27 entitled thereto. The documents to be sent to all Settlement Class Members in the Notice
28 Packet are deemed sufficient to inform Settlement Class Members of the terms of the

1 Settlement, their rights under the Settlement, their rights to object to or comment on the
2 settlement, their right to receive an Individual Settlement Payment without having to take
3 any action, their right to exclude themselves and not participate in the Settlement, and the
4 processes for doing so, and the date and location of the Final Approval Hearing, and the
5 Notice Packet documents are therefore approved.

6 10. The Court appoints and designates Phoenix Settlement Administrators as the third-
7 party Claims Administrator. The Court hereby directs the Claims Administrator to
8 provide the approved Notice Packet documents to Settlement Class Members and
9 administer the Settlement in accordance with the procedures set forth in the Settlement
10 herein, including in conformance with the schedule set forth below.

11 11. Any Settlement Class Member may choose to opt out of and be excluded from the
12 Settlement as provided in the Settlement and Notice of Class Action Settlement and by
13 following the instructions for requesting exclusion. Any person who timely and properly
14 excludes themselves from the Settlement will not be bound by it or have any right to
15 object, appeal or comment thereon. Any Request for Exclusion must be signed by each
16 such Settlement Class Member and comply with the requirements for exclusion set forth
17 in the Settlement. Settlement Class Members who have not timely submitted a Requested
18 for Exclusion shall be bound by all determinations of the Court, the Settlement and the
19 Judgment. If both an opt-out and an objection are received from the same Settlement Class
20 Member, the Class Member will be deemed to have opted out.

21 12. Pursuant to Federal Rule of Civil Procedure 23(e) (5), members of the Settlement
22 Class may object to the terms of the settlement. Settlement Class Members who object to
23 the proposed Settlement may appear and present such objections at the Final Approval
24 Hearing in person or by counsel, provided that any objecting Settlement Class Member
25 submit a written statement containing the basis of that person's objections, together with
26 a notice of the intention to appear, if appropriate, which must be sent to the Claims
27 Administrator and postmarked no later than forty-five (45) calendar days from the date
28 on which the Notices are first sent out by the Claims Administrator. No person shall be

1 heard at the Final Approval Hearing, and no briefs or papers shall be received or
2 considered, unless the foregoing documents have been filed and served as provided in this
3 Order, except as this Court may permit for good cause shown.

4 13. The motion for final approval of the Settlement and Awarding Administration
5 Costs shall be filed by May 25, 2018. Class Counsel shall also file by May 25, 2018 the
6 Final Approval Hearing its Motion for Attorneys' Fees and Costs and Class
7 Representative Enhancement Payment, to be heard concurrently with the Final Approval
8 Hearing.

9 14. Upon Final Approval and completion of the Claims Administration process, all
10 Class Members who have not submitted timely Requests for Exclusion and the Class
11 Representatives will be deemed to have forever released and discharged the Released
12 Claims applicable to them and waived their rights under California Civil Code § 1542 for
13 the applicable Released Claims, as set forth and defined in the preliminarily approved
14 Settlement Agreement.

15 15. The Court reserves the right to change or otherwise continue or advance the date
16 of the Final Approval Hearing and all dates provided for in the Settlement without further
17 notice to the Class, and retains jurisdiction to consider further applications concerning the
18 Stipulation.

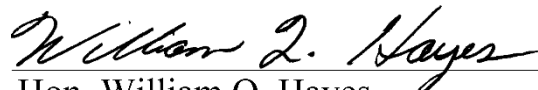
19 16. The Court orders the following schedule of dates and administration milestones
20 for the specified actions and further proceedings in this matter as agreed under the terms
21 of the Settlement:

Event	Date
Last day for Defendants to provide Claims Administrator the Class List	March 9, 2018
Notice-last day for Claims Administrator to mail the Notice Packet to Class Members	March 23, 2018

1 2 3	Last day for Settlement Class to submit a timely signed Request for Exclusion	May 11, 2018
4 5 6	Last day for Settlement Class to timely submit Objections	May 11, 2018
7 8 9	Last day to file Motion for Approval of Class Counsel's Attorneys' Fees and Costs, and Class Representative Enhancement Payment	April 27, 2018
10 11 12	Last day to file Motion for Final Approval of Class Action Settlement	May 25, 2018
13 14 15	Final Approval Hearing	July 13, 2018 at 10:00 a.m.

16
17
18
19
20
21
22
23
24
25
26
27
28

IT IS SO ORDERED.
Dated: February 12, 2018


Hon. William Q. Hayes
United States District Court