

APR 12 2024

By: V. Secaur

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

MARQUISE PHILLIPS, individually, and on
behalf of other members of the general public
similarly situated;

Plaintiff,

v.

PROVIDIEN THERMOFORMING, INC., a
California corporation; PROVIDIEN LLC, a
Delaware limited liability company; and DOES
1 through 100, inclusive;

Defendants.

PEPE MALVEDA, individually and on behalf
of all similarly situated employees of
Defendants in the State of California,

Plaintiff,

v.

PROVIDIEN, LLC, a limited liability
company; PROVIDIEN THERMOFORMING
INC., a corporation; and DOES 1 THROUGH
50, inclusive,

Defendants.

Case No.: 37-2021-00006863-CU-OE-CTL
[Consolidated With Case No.: 37-2021-
00017707-CU-OE-CTL]

Assigned for All Purposes to:
Honorable Marcella O. McLaughlin
Department C-72

CLASS ACTION

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

Hearing on Motion for Final Approval:

Hearing Date: April 12, 2024

Hearing Time: 9:00 a.m.

Hearing Place: Department C-72

Complaint Filed: February 17, 2021

FAC Filed: October 26, 2023

SAC Filed: December 27, 2023

Trial Date: None Set

Case No.: 37-2021-00017707-CU-OE-CTL
[Consolidated With Case No. 37-2021-
00006863-CU-OE-CTL]

Complaint Filed: April 21, 2021

FAC Filed: June 28, 2021

1 The Court, having read the papers filed regarding Plaintiffs Marquise Phillips, Pepe
2 Malveda, and Bruce Mason's ("Plaintiffs") Motion for Final Approval of Class Action
3 Settlement, and considering the papers submitted in support of the motion, including Stipulation
4 of Class Action and PAGA Representative Action Settlement and Release ("Settlement
5 Agreement," "Settlement," or "Agreement"), hereby **FINDS AND ORDERS:**

6 Plaintiffs and Defendants Providien Thermoforming, Inc. and Carlisle Medical
7 Technologies, LLC, fka Providien, LLC ("Defendants") entered the Settlement Agreement on or
8 about October 3, 2023 to settle this lawsuit.

9 The Court entered an order dated December 8, 2023 preliminarily approving the
10 settlement of this lawsuit ("Preliminary Approval Order"), consistent with the Code of Civil
11 Procedure section 382 and California Rule of Court 3.769, ordering notice to be sent to Class
12 Members, providing Class Members with an opportunity to object to the Settlement or exclude
13 themselves from the Class, and scheduling a Final Approval Hearing.

14 The Court held a Final Approval Hearing on April 12, 2024 to determine whether to give
15 final approval to the Settlement of this lawsuit.

16 1. Incorporation of Other Documents. This Amended Order of Final Approval and
17 Judgment ("Order and Judgment") incorporates the Settlement Agreement. Unless otherwise
18 provided herein, all capitalized terms in this Order and Judgment shall have the same meaning as
19 set forth in the Settlement Agreement.

20 2. Jurisdiction. Because adequate notice has been disseminated and the Class has
21 been given the opportunity to request exclusion, the Court has personal jurisdiction with respect
22 to the claims of all Class Members. The Court has subject matter jurisdiction over this lawsuit,
23 including jurisdiction to approve the Settlement and grants final certification of the Class.

24 3. Final Class Certification. The Court finds the Class satisfies all applicable
25 requirements of Code of Civil Procedure section 382, California Rule of Court 3.769, and due
26 process. The Court certifies the Class consisting of all current and former non-exempt employees
27 of Defendants in the State of California at any time during the period between February 17, 2017
28 and October 27, 2023 ("Class," "Class Members," "Class Period"). There are 1,099 Class

1 Members except those who submitted valid and timely Requests for Exclusion ("Settlement
2 Class Members").

3 4. Adequacy of Representation. Class Counsel fully and adequately represented the
4 Class for purposes of entering and implementing the Settlement and satisfied the requirements of
5 Code of Civil Procedure section 382.

6 5. Notice. The Notice of Proposed Class Action Settlement ("Notice") and its
7 distribution to Class Members were implemented pursuant to the Settlement and this Court's
8 Preliminary Approval Order. The Court also finds the Notice:

- 9 a. constitutes notice reasonably calculated to apprise Class Members of: (i)
10 pendency of this lawsuit; (ii) material terms and provisions of the Settlement
11 Agreement and their rights; (iii) their right to object to any aspect of the
12 Settlement Agreement; (iv) their right to exclude themselves from the Settlement
13 Agreement; (v) their right to receive settlement payments; (vi) their right to
14 appear at the Final Approval Hearing; and (vii) binding effect of the orders and
15 judgment in this lawsuit on all Settlement Class Members;
- 16 b. constitutes notice that fully satisfied the requirements of Code of Civil Procedure
17 section 382, California Rule of Court 3.769, and due process;
- 18 c. constitutes the best practicable notice to Class Members under the circumstances
19 of this lawsuit; and
- 20 d. constitutes notice reasonable, adequate, and sufficient to Class Members.

21 6. Final Settlement Approval. The terms and provisions of the Settlement
22 Agreement have been entered into good faith and are the product of arm's-length negotiations by
23 experienced counsel who have done a meaningful investigation of the claims. The Settlement
24 Agreement and all its terms and provisions are fully and finally approved as fair, reasonable,
25 adequate, and in the best interests of the Parties. The Parties are hereby directed to implement the
26 Settlement Agreement according to its terms and provisions.

27 7. Enforcement of Settlement. Nothing in this Order and Judgment shall preclude
28 any action to enforce the terms and provisions of the Settlement Agreement.

1 8. Binding Effect. The terms and provisions of the Settlement Agreement and this
2 Order and Judgment are binding on Plaintiffs, Settlement Class Members, Private Attorneys
3 General Act of 2004 ("PAGA") Employees, and their spouses, heirs, registered domestic
4 partners, executors, administrators, successors, and assigns. In addition, those terms shall have
5 res judicata and other preclusive effect in all pending and future claims, lawsuits, or other
6 proceedings maintained by or on behalf of any such persons to the extent those claims, lawsuits,
7 or other proceedings involve matters that were or could have been raised in this lawsuit and are
8 encompassed by the Class Released Claims and PAGA Released Claims. The Settlement
9 Agreement will have no binding effect upon, and provide no res judicata preclusion to, those
10 Class Members who have submitted timely requests for exclusion.

11 9. Class Released Claims. Upon full payment by Defendants of the Maximum
12 Settlement Amount to the Settlement Administrator as well as the employer's share of taxes
13 necessary to effectuate the Settlement, Settlement Class Members and Plaintiffs shall release
14 Released Parties from any and all Class Released Claims arising during the Class Period.

15 a. PAGA Released Claims. Upon full payment by Providien of the Maximum
16 Settlement Amount to the Settlement Administrator as well as the employer's
17 share of taxes necessary to effectuate the Settlement, all PAGA Employees,
18 Plaintiffs, and State of California (through Plaintiff Malveda and Plaintiff Mason
19 as Private Attorneys Generals), shall release Released Parties from any and all
20 PAGA Released Claims arising during the PAGA Period.

21 b. Plaintiffs' Released Claims. Plaintiffs release, on behalf of themselves and each
22 of their family members, heirs, representatives, attorneys, and assigns, the
23 Released Parties from any and all claims of any nature whatsoever, fixed or
24 contingent, known or unknown, suspected or unsuspected, including, without
25 limitation, those related to unknown and unsuspected injuries as well as unknown
26 and unsuspected consequences of known or suspected injuries, arising out of, or
27 in connection with Plaintiffs' employment with Defendants or their compensation
28 while an employee, under federal, state and/or local law, statute, ordinance,

1 regulation, common law, or other source of law. Plaintiffs acknowledge they are
2 expressly waiving any and all rights and benefits conferred by the provisions of
3 section 1542 of the Civil Code.

- 4 c. Released Parties. The Released Parties include Defendants and its predecessors,
5 successors, subsidiaries, parent companies, other corporate affiliates, and assigns,
6 including but not limited to Carlisle Medical Holdings, LLC, and Carlisle Medical
7 Technologies, LLC, and all of their owners, shareholders, members, officers,
8 directors, exempt employees, agents, servants, registered representatives,
9 attorneys, insurers, successors and assigns, and any other persons acting by,
10 through, under or in concert with any of them.

11 10. Service Awards. The Court finds the Service Awards of \$10,000, to be paid by
12 Defendants to each Plaintiff (totaling \$30,000) out of the Maximum Settlement Amount, to be
13 reasonable and appropriate. The Service Awards are to be paid pursuant to the terms and
14 provisions set forth in the Agreement.

- 15 a. The rationale for making enhancement payments is class representatives should
16 be compensated for the expense and risk they incurred in conferring a benefit on
17 the Class. Criteria courts consider include: (i) risk to the class representatives in
18 commencing suit; (ii) notoriety and personal difficulties; (iii) amount of time and
19 effort spent by the class representatives; (iv) duration of the litigation; and (v)
20 personal benefit (or lack thereof) enjoyed by class representatives.

- 21 b. The Court reviewed Plaintiffs' declarations outlining their involvement. Given the
22 risks inherent in the services as the class representatives, duration of the case and
23 time involved, and benefits created for the Class, the Court approves the payment
24 of the Service Awards of \$10,000 to each Plaintiff.

25 11. Fee and Expense Award. The Court finds the attorneys' fees of \$1,925,000, to be
26 paid out of the Maximum Settlement Amount by Defendants to Class Counsel, to be reasonable
27 and appropriate. In addition, the Court finds the attorneys' costs as reimbursement for actual
28 litigation costs collectively incurred of up to \$50,000, to be paid by Defendants to Class Counsel

1 out of the Maximum Settlement Amount, to be reasonable and appropriate. Such fees and costs
2 are to be paid pursuant to the terms and provisions set forth in the Settlement Agreement.
3 Defendants shall not be required to pay for any other attorneys' fees and expenses, costs, or
4 disbursements incurred by Class Counsel or any other counsel representing Plaintiffs or Class
5 Members. Defendants shall also not be required to pay for any other attorneys' fees and
6 expenses, costs, or disbursements incurred by Plaintiffs or Class Members in connection with or
7 related in any manner to this lawsuit, Settlement Agreement, settlement administration, and/or
8 Class Released Claims and PAGA Released Claims.

9 a. The Court has an independent right and responsibility to review the attorneys'
10 fees and only award so much as it determines reasonable. (See *Garabedian v. Los*
11 *Angeles Cellular Telephone Co.* (2004) 118 Cal.App.4th 123, 127-128.) The
12 attorneys' fees of \$1,925,000 is thirty-five percent (35%) of the common fund
13 created for the benefit of the Class and is supported by use of the percentage-fee
14 method. (See *Laffitte v. Robert Half International, Inc.* (2016) 1 Cal.5th 480,
15 504.) Considering the results achieved, financial risk undertaken, novel and
16 difficult nature of this litigation, skills required, percentage fees award in previous
17 and other cases, and contingent fees charged in the marketplace, the Court finds
18 the attorneys' fees is consistent with the marketplace, is reasonable, and is
19 approved.

20 b. The Court reviewed the declarations of Douglas Han and Graham S.P. Hollis
21 regarding the costs expended in prosecuting this case. Under the terms of the
22 Settlement, Class Counsel may seek reimbursement of up to \$50,000 in litigation
23 costs. The Court finds Class Counsel collectively expended \$54,115.21 in
24 litigation costs. Since the above-mentioned costs exceed the maximum amount
25 permitted to be reimbursed, the Court only approves the payment of the attorneys'
26 costs of \$50,000 from the common fund for the reimbursement of Class Counsel's
27 litigation costs.

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1 12. Administration Costs. The Court finds Administration Costs of \$16,250, to be
2 paid by Defendants to the Settlement Administrator out of the Maximum Settlement Amount, to
3 be reasonable and appropriate. The Administration Costs are to be paid pursuant to terms and
4 provisions set forth in the Settlement Agreement.

5 a. The Court reviewed the declaration of Jeremy Romero from CPT Group, Inc., the
6 Court-approved Settlement Administrator. The Court finds notice was provided to
7 the Class pursuant to the Preliminary Approval Order, constitutes the best
8 practicable notice to the Class, and satisfied due process. Therefore, the Court
9 approves the payment of the Administration Costs of \$16,250 for the Settlement
10 Administrator's services in administering the Settlement.

11 13. PAGA Payment. The Court finds the PAGA Payment of \$275,000, seventy-five
12 percent (75%) of which (\$206,250) will be paid to the California Labor and Workforce
13 Development Agency out of the Maximum Settlement Amount and twenty-five percent (25%) of
14 which (\$68,750) shall be paid to the PAGA Employees, on a pro rata basis, to be reasonable and
15 appropriate. The PAGA Payment is to be paid pursuant to the terms and provisions set forth in
16 the Settlement Agreement.

17 14. Funding the Settlement. Defendants shall fund the Maximum Settlement Amount
18 of \$5,500,000 by transferring the funds to the Qualified Settlement Fund within ten (10) calendar
19 days after the Effective Date of the Settlement. The Settlement Administrator will mail
20 settlement payments to the appropriate persons and entities within ten (10) calendar days after
21 Defendants make all necessary payments into the Qualified Settlement Fund.

22 15. Fairness of the Settlement. As noted in the Preliminary Approval Order, the
23 Settlement is entitled to a presumption of fairness. In the moving papers, Plaintiffs contend the
24 Settlement was the product of arm's-length negotiations following extensive litigation,
25 discovery, and exchange of documentation. The negotiations were facilitated with the aid of
26 Jeffrey A. Ross, an experienced and well-respected mediator.

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1 a. The fairness of the Settlement is demonstrated by there being no objections to and
2 no requests for exclusion from the Settlement.

3 b. The fairness of the Settlement is further illustrated by the gross *average*
4 Individual Settlement Payment being approximately \$2,911.41, and the gross
5 *highest* Individual Settlement Payment being about \$11,716.71.

6 16. Uncashed Checks. Each Settlement Class Member and PAGA Employee mailed
7 a settlement check will have one hundred eighty (180) calendar days from the date of the mailing
8 of the settlement check to cash the settlement check. Uncashed settlement checks will be voided
9 and escheat to the State Controller's Office, Unclaimed Property Division.

10 17. Modification of Agreement. The Settlement Class Members are hereby
11 authorized to agree to and adopt amendments to or modifications of the Agreement by a written
12 instrument signed by counsel for all Parties or their successors-in-interest and approved by the
13 Court. Such amendments or modifications shall be consistent with this Order and Judgment and
14 cannot limit the rights of Settlement Class Members under the Agreement.

15 18. Final Accounting and Compliance. The Court sets a compliance hearing for
16 December 27, 2024 in Department C-72. Within five (5) court days before this hearing, Plaintiffs
17 shall file a compliance status report. Pursuant to Code of Civil Procedure section 384, the
18 compliance status report shall specify the total amount paid to Settlement Class Members and the
19 residual of the unclaimed settlement funds that will be paid to the entity identified as the
20 recipient of such funds in the Settlement Agreement.

21 19. Retention of Jurisdiction. The Court has jurisdiction to enter this Order and
22 Judgment. This Court expressly retains jurisdiction for the administration, interpretation,
23 effectuation, and/or enforcement of the Settlement Agreement and of this Order and Judgment,
24 and for any other necessary purpose, including, without limitation:

25 a. enforcing the terms and provisions of the Settlement and resolving any disputes,
26 claims, or causes of action in this lawsuit that, in whole or in part, are related to or
27 arise out of the Settlement or this Order and Judgment;

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- 1 b. entering such additional orders as may be necessary or appropriate to protect or
2 effectuate this Order and Judgment approving the Settlement, and permanently
3 enjoining Plaintiffs from initiating or pursuing related proceedings, or to ensure
4 the fair and orderly administration of the Settlement; and
5 c. entering any other necessary or appropriate orders to protect and effectuate this
6 Court's retention of continuing jurisdiction.

7 The Motion for Final Approval of Class Action Settlement, Fee and Expense Award, and
8 Service Awards is GRANTED. The Settlement Administrator is directed to carry out the terms
9 of the Settlement Agreement forthwith.

10 THE PARTIES ARE HEREBY ORDERED TO COMPLY WITH THE TERMS OF
11 THE SETTLEMENT AGREEMENT. PURSUANT TO CALIFORNIA RULES OF COURT
12 3.769, THE COURT HEREBY ENTERS FINAL JUDGMENT BASED UPON THE TERMS
13 OF THIS ORDER AND SETTLEMENT AGREEMENT AND, WITHOUT AFFECTING THE
14 FINALITY OF THIS MATTER, RETAINS EXCLUSIVE AND CONTINUING
15 JURISDICTION TO ENFORCE THIS ORDER, THE SETTLEMENT AGREEMENT, AND
16 THE JUDGMENT THEREON.

17 IT IS SO ORDERED.

18
19 DATED: 4/12/2017


HONORABLE MARCELLA O. MCLAUGHLIN
SUPERIOR COURT JUDGE