

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

FILED
San Diego Superior Court

OCT - 6 2023

Clerk of the Superior Court
By: H. Chavarin, Deputy

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

GIANA BENSON, an individual; and
MONICA FOWLER, an individual, on
behalf of themselves and all others
similarly situated,

Plaintiffs,

v.

F21 OPCO, LLC dba FOREVER 21, a
Delaware Corporation; and DOES 1-10,
inclusive,

Defendants.

GIANA BENSON, and on behalf of the
general public as private attorneys
general,

Plaintiffs,

v.

F21 OPCO, LLC dba FOREVER 21, a
Delaware Corporation; and DOES 1-10,
inclusive,

Defendants.

Lead Case No.:
37-2021-00024619-CU-OE-CTL

Consolidated with:
Benson v. F21 OPCO, LLC, San Diego County,
37-2021-00037256-CU-OE-CTL

Assigned for All Purposes To:
Judge: Eddie C. Sturgeon
Dept.: C-67

**[PROPOSED] ORDER GRNAINIT FINAL
APPROVAL OF CLASS ACTION AND
PAGA SETTLEMENT AND ENTRY OF
JUDGMENT**

Date: October 6, 2023

Time: 9:00 a.m.

Dept.: C-67

1 On October 6, 2023 at 9:00 a.m., in Department 67, the Court heard Plaintiffs' Motion for
2 Final Approval of a Class Action and PAGA Settlement ("Final Approval Motion"), and Motion
3 for Award of Attorneys' Fees and Costs, and Class Representative Service Award ("Fees
4 Motion").

5 This matter came for hearing upon Plaintiffs' unopposed application for approval of the
6 settlement set forth in the Class Action and PAGA Settlement Agreement ("Settlement"). Due
7 and adequate notice having been given to the Class, and the Court having considered the
8 Settlement, all papers filed and proceedings had herein and all oral and written comments received
9 regarding the proposed settlement, and having reviewed the record in this Litigation, and good
10 cause appearing,

11 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:**

12 1. The Court, for the purposes of this Order, adopts all defined terms as set forth in
13 the Settlement filed in this case.

14 2. The Court has jurisdiction over the subject matter of the Litigation, the Class
15 Representatives, the other Members of the Settlement Class, the PAGA Employees, and
16 Defendant.

17 3. The Court further finds that the Settlement satisfies the standards and applicable
18 requirements for final approval of this class action settlement under California law, including the
19 provisions of California Code of Civil Procedure sections 382 and California Rules of Court, Rule
20 3.769, and applicable law.

21 4. For purposes of approving the Settlement only, this Court finds and concludes that:
22 (a) the Class Members are ascertainable and so numerous that joinder of all members is
23 impracticable; (b) there are questions of law or fact common to the Class, and there is a well-
24 defined community of interest among Class Members with respect to the subject matter of the
25 claims in the action; (c) the claims of the Plaintiffs are typical of the claims of the Class Members;
26 (d) the Plaintiffs have fairly and adequately protected the interests of the Class Members; (e) a
27 class action is superior to other available methods for an efficient adjudication of this controversy;
28 and (f) the counsel of record for the Plaintiffs, i.e., Class Counsel, is qualified to serve as counsel

1 for the Plaintiffs in their individual and representative capacity and for the Class.

2 5. The Class is defined and certified, for settlement purposes only, as all individuals
3 who are or were employed as hourly, non-exempt employees by Defendant F21 OpCo, LLC
4 (“Defendant”) in California at any time from February 29, 2020 to September 16, 2022 (the “Class
5 Period”). All Class Members who did not timely opt-out are bound by the terms of the Settlement
6 Agreement, and release all of their claims as defined in the Settlement Agreement.

7 6. Solely for purposes of effectuating this settlement, this Court has certified a class of
8 all Members of the Settlement Class, as those terms are defined in and by the terms of the
9 Settlement, and the Court deems this definition sufficient for purposes of California Rules of
10 Court 3.765(a) and 3.771.

11 7. The Court finds that the dissemination of the Notice of Class Action and PAGA
12 Settlement, as provided for in the Preliminary Approval Order, constituted the best notice
13 practicable under the circumstances to all persons within the definition of the Class, and fully met
14 the requirements of California law and due process under the United States Constitution. Based
15 on evidence and other material submitted in conjunction with the Final Approval Hearing, the
16 Court finds that the actual notice to the class was adequate.

17 8. The Court finds in favor of Settlement approval.

18 9. The Court has considered all relevant factors for determining the fairness of the
19 Settlement Agreement and has concluded that all such factors weigh in favor of granting final
20 approval. In particular, the Court finds that the Settlement Agreement was reached following
21 meaningful investigation and informal discovery conducted by Class Counsel; that the Settlement
22 Agreement is the result of informed, adversarial, and arm’s-length negotiations between the
23 Parties; and that the terms of the Settlement Agreement are in all respects fair, adequate, and
24 reasonable. In so finding, the Court has considered all of the evidence presented, including
25 evidence regarding the strength of the Plaintiffs’ case; the risk, expense, and complexity of the
26 claims presented; the likely duration of further litigation; the amount offered in the Settlement
27 Agreement; the extent of investigation and discovery completed; and the experience and views of
28 Class Counsel. Accordingly, the Court **FINALLY APPROVES** of the terms and conditions

1 contained in the Settlement Agreement as to the Participating Class Members and the PAGA
2 Employees. The Court finds that the Settlement is, in all respects, fair, reasonable, adequate, and
3 in the best interests of the Participating Class Members and PAGA Employees and hereby directs
4 implementation of all remaining terms, conditions, and provisions of the Settlement Agreement.

5 10. All Released Class Claims are released by all Participating Class Members upon
6 the Second Funding Date (contingent upon payment). As set forth in the Declaration of Tarus
7 Darcy, two of the Class Members have requested exclusion from the Settlement and will not
8 release the Released Claims: Jimena Garcia Vasquez and Ashley Caristrom.

9 11. All Released PAGA Claims are released by all PAGA Employees upon the Second
10 Funding Date (contingent upon payment).

11 12. Upon the Second Funding Date, in addition to the claims being released by all
12 Participating Class Members and PAGA Employees, Plaintiffs Gianna Benson and Monica
13 Fowler, will release and forever discharge the Released Parties, to the fullest extent permitted by
14 law, of and from any and all claims, known and unknown, asserted and not asserted, which
15 Plaintiffs have or may have against the Released Parties as of the date of execution of this
16 Settlement Agreement.

17 13. Upon the Second Funding Date, Plaintiffs Gianna Benson and Monica Fowler, and
18 the Participating Class Members are hereby enjoined from prosecuting the Released Class Claims,
19 and the PAGA Employees are hereby enjoined from prosecuting the Released PAGA Claims
20 against Defendant and/or the Released Parties.

21 14. The Court approves the calculation and allocation of the Individual Settlement
22 Payments from the Net Settlement Amount, which shall be distributed to Participating Class
23 Members and PAGA Employees in accordance with the formulas set forth in Section 4 of the
24 Settlement.

25 15. Defendant is ordered to make all payments in accordance with the terms of the
26 Settlement Agreement through the Settlement Administrator. Defendant is directed to deposit into
27 a Qualified Settlement Account established by the Settlement Administrator one-half of the Gross
28 Settlement Amount in the sum of Two Million Three Hundred and Fifty Thousand Dollars

1 (\$2,350,000) within fifteen business days of the Effective Date (“Initial Funding Date”).

2 16. Within ninety days of the Initial Funding Date (“Second Funding Date”),
3 Defendant is directed to deposit into a Qualified Settlement Account established by the Settlement
4 Administrator the remainder of the Gross Settlement Amount in the sum of Two Million Three
5 Hundred and Fifty Thousand Dollars (\$2,350,000). Concurrently with its delivery of the
6 remainder of the Gross Settlement Amount on the Second Funding Date, Defendant is directed to
7 deliver to the Settlement Administrator its share of Withholdings and Taxes, as calculated by the
8 Settlement Administrator based on the wage portion of the Individual Class Payments, per
9 paragraph 3.3 of the Settlement Agreement.

10 17. The Court approves the following payments from the Gross Settlement Amount
11 (\$4,700,000.00): (a) the Individual Settlement Payments to Participating Class Members and
12 PAGA Employees; (b) to Class Counsel attorneys’ fees in the amount of \$1,566,666.66
13 (preliminarily approved up to \$1,566,666.66) and costs in the amount of \$22,319.37 (preliminarily
14 approved up to \$30,000); (c) service awards of \$10,000.00 to each of the Class Representatives
15 Giana Benson and Monica Fowler for efforts; (up to \$10,000.00 each preliminarily approved)
16 (totaling \$20,000.00); (d) the sum of \$227,851.05 to be paid to the California Labor and
17 Workforce Development Agency for its share of the PAGA Penalties (which represents the
18 LWDA’s 75% share of the \$303,801.40 in PAGA Penalties paid); and (e) \$53,000.00 (up to
19 \$55,000.00 preliminarily approved) to the Settlement Administrator, CPT Group, Inc., for its fees
20 and costs relating to the settlement administration process. The Court finds that these amounts are
21 fair and reasonable.

22 18. Such sums must be paid to Participating Class Members and PAGA Employees, the
23 LWDA, Plaintiffs, and Class Counsel no later than ten (10) calendar days after the Second
24 Funding Date. The payments to Class Counsel and the Class Representative Service Payments
25 shall not precede disbursement of Individual Class Payments and Individual PAGA Payments.

26 19. Individual Settlement Payment checks shall be negotiable for 180 days from the
27 date of issuance. Funds represented by Individual Settlement Payment checks returned as
28 undeliverable and checks remaining un-cashed for more than one-hundred and eighty (180)

1 calendar days after issuance shall be transmitted by the Settlement Administrator to the State of
2 California, Department of the Controller Unclaimed Property Fund in the name(s) of the
3 corresponding Class Member(s) and/or PAGA Employee.

4 20. The Parties shall file a report concerning any uncashed checks or other cash residue
5 by _____ (November 5, 2024 proposed). The report shall be in the form of a
6 declaration from the Settlement Administrator and shall describe: (i) the date the checks were
7 mailed, (ii) the total number of checks mailed to class members, (iii) the average amount of those
8 checks, (iv) the number of checks that remain uncashed, (v) the total value of those uncashed
9 checks, (vi) the average amount of the uncashed checks, and (vii) the nature and date of the
10 disposition of those unclaimed funds.

11 21. The Court sets a compliance hearing for _____, 2024 at _____
12 a.m./p.m.

13 22. The Court finds that there is no reason for delay and directs the Clerk to enter
14 judgment in accordance with the terms of this Final Approval Order as of the date of this order. By
15 operation of the entry of this Final Approval Order, the Parties and the Participating Class
16 Members are ordered to perform their respective duties and obligations under the Settlement
17 Agreement.

18 23. Plaintiffs are to give notice to all Class Members of this Final Approval Order and
19 Judgment in accordance with California Rule of Court 3.771(b) by filing a Notice of Entry of
20 Judgment of this Final Approval Order and Judgment with the Court.

21 24. Within 10 days of entry of this Final Approval Order and Judgment, Plaintiff shall
22 provide a copy of this Final Approval Order and Judgment to the LWDA, pursuant to Labor Code
23 Section 2699, subdivisions (1), (3), & (4).

24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE, COUNTY OF ORANGE

I am a resident of the State of California, County of Orange. I am over the age of eighteen years and not a party to the within action. My business address is 9880 Research Drive., Suite 200, Irvine, California 92618.

On September 14, 2023, I served on the interested parties in this action the following document(s) entitled:


NOTICE OF ERRATA RE [PROPOSED] ORDER GRANTING FINAL APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT AND ENTRY OF JUDGMENT

[XX] BY ELECTRONIC SERVICE: Based on a court Order or an agreement by the parties to accept service by e-mail or electronic transmission, I caused the document(s) to be sent from the email address irma@jameshawkinsapl.com to the persons at the e-mail addresses listed in the Service List below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

SERVICE LIST
Please see page attached

[X] STATE: I declare under penalty of perjury, under the laws of the State of California, that the above is true and correct.

Executed on September 14, 2023, at Irvine, California.



Irma Ceja

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SERVICE LIST

Jonathan Melmed, Esq.
Laura Supanich, Esq.
Maria Burciaga, Esq.
MELMED LAW GROUP P.C.
1801 Century Park East, Suite 850
Los Angeles, CA 90067
Tel: 310-824-3828
Fax: 310-862-6851
jm@melmedlaw.com
lms@melmedlaw.com
mb@melmedlaw.com

Craig J. Ackermann, Esq.
ACKERMANN & TILAJEF. P.C.
1180 South Beverly Dr., Suite 610
Los Angeles, CA 90035
Tel: 310-277-0614
Fax: 310-227-0635
cja@ackermanntilajef.com

Attorneys for Plaintiffs

Jennifer Terry, Esq.
Brittany Hernandez, Esq.
REED SMITH LLP
355 South Grand Ave, Suite 2900
Los Angeles, CA 90071
bmhernandez@reedsmith.com
jennifer.terry@reedsmith.com

Mark Phillips, Esq.
SEALS PHILLIPS LLP
790 E. Colorado Blvd, Suite 900
Pasadena, CA 91101
mphillips@reedsmith.com

Attorneys for Defendant