

# NOTICE OF CLASS ACTION AND PAGA SETTLEMENT

*Giana Benson, et al. v. F21 OpCo, LLC dba Forever 21*, San Diego Superior Court, Case No. 37-2021-00024619

***The Superior Court for the State of California authorized this Notice. Read it carefully!  
It's not junk mail, spam, an advertisement, or solicitation by a lawyer. You are not being sued.***

To: All individuals who are or were employed as hourly, non-exempt employees by F21 OpCo, LLC dba Forever 21 in California at any time from February 29, 2020 through September 16, 2022 (“Class Members”).<sup>1</sup>

A proposed class and representative action settlement (the “Settlement”) has been reached in the matter *Giana Benson, et al. v. F21 OpCo, LLC dba Forever 21*, Case No. 37-2021-00024619 pending in the Superior Court of the State of California, in and for the County of San Diego between Plaintiffs GIANA BENSON and MONICA FOWLER (“Plaintiffs”) and Defendant F21 OPCO, LLC dba FOREVER 21 (“Defendant” or “F21”).

On April 21, 2023, the Honorable Eddie C. Sturgeon of the San Diego County Superior Court granted preliminary approval of this class and PAGA representative action settlement and ordered the litigants to notify all Class Members of the proposed Settlement. This Settlement is conditioned upon the Court entering an order granting final approval of the Settlement and entering the Judgment.

The purpose of this Notice of Class Action and PAGA Settlement (“Notice”) is to briefly describe the Actions, and to inform you of your rights and options in connection with it and the proposed Settlement. The proposed Settlement will resolve all claims in the Actions. You have received this Notice because the records of F21 indicate that you are a Class Member and PAGA Employee, and therefore entitled to a payment from the settlement. It is important that you read this Notice carefully as your rights may be affected by the Settlement.

F21 will not retaliate against you for any actions you take with respect to the proposed Settlement.

## SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

<b>Option 1 – Do Nothing and Receive an Individual Settlement Payment</b>	You do not need to do anything in order to receive an Individual Settlement Payment. If you do nothing, you will automatically be a Participating Class Member and PAGA Employee, be included in the Settlement, and will receive an Individual Settlement Payment so long as the settlement is approved and becomes final. You consent to the release of Released Class Claims and Released PAGA Claims. <b>See Section IV(A) of this Notice.</b>
<b>Option 2 – You Can Exclude Yourself (Opt-out) from the Settlement</b>  <b>The Response Deadline is July 27, 2023</b>	If you wish to exclude yourself (opt-out of) the Class Settlement, you must send a written Request for Exclusion to the Settlement Administrator by email, fax, or mail before the end of the Response Deadline, as provided below in <b>Section IV(B) of this Notice</b> . If you timely submit a valid, signed Request for Exclusion, you will still be bound by the release of the Released PAGA Claims, and you will receive your Individual PAGA Payment. Once excluded, you will not be entitled to an Individual Class Payment, will not be bound to the Settlement’s release of Released Class Claims, and cannot object to any portion of the proposed Settlement.
<b>Option 3 – Participating Class Members May Object to the Settlement</b>  <b>Written Objections Must be Submitted by July 27, 2023</b>	All Class Members who do not opt-out (“Participating Class Members”) may object to the terms of the Settlement. If you decide to object to the Settlement, you may submit a written objecting stating why you object to the Settlement, or you may instead appear at the Final Fairness Hearing to object to the Settlement. Even if you submit an objection, you will be bound by the terms of the Settlement, including the release of Released Class Claims and Released PAGA Claims, as set forth below, unless the Settlement is not finally approved by the Court. <b>Section IV(C) of this Notice.</b>

### I. WHAT IS THE ACTION ABOUT?

Plaintiffs Giana Benson and Monica Fowler, on their behalf and on behalf of current and former non-exempt, hourly employees, allege that Defendant violated California state wage and hour laws a result of alleged failure to, among other things: (1) pay minimum and overtime wages to employees for all hours worked; (2) pay overtime wages and meal/rest premiums at the correct rate of pay; (3) provide employees with meal and rest periods; (4) timely pay all wages owed to employees during each pay period

<sup>1</sup> All defined terms used in this Notice shall have the same meaning as they do in the Settlement Agreement.

and upon termination of their employment; (5) reimburse employees for necessary business expenses; (6) timely pay vested vacation pay at termination; and (7) provide employees with accurate, itemized wage statements. Based on the same claims, Plaintiffs have also asserted claims for violation of the Business and Professions Code § 17200 et seq. and a claim for civil penalties under the California Private Attorneys General Act (Labor Code §§ 2698, et seq.) (“PAGA”). These allegations were alleged on behalf of all Class Members as a putative class action and also on behalf of all PAGA Employees as representative actions under PAGA (the “Actions”), consolidated together in the operative Consolidated First Amended Complaint filed on January 23, 2023 in *Benson, et al. v. F21 OpCo, LLC dba Forever 21*, San Diego Superior Court Case No. 37-2021-00024619.

After the exchange of information and evidence, the parties agreed to enter into settlement negotiations in an attempt to informally resolve the claims in this case. On April 19, 2022, the parties participated in a mediation with Michael Dickstein, Esq., an experienced and well-respected class action mediator. With Mr. Dickstein’s guidance, the parties were able to negotiate a complete settlement of Plaintiffs’ claims.

Counsel for Plaintiffs, and the attorneys appointed by the Court to represent the class, James R. Hawkins and Christina M. Lucio of James Hawkins APLC; Jonathan Melmed and Laura Supanich of Melmed Law Group; and Craig Ackermann and Avi Kreitenberg of Ackermann & Tilajef, P.C. (“Class Counsel”), have investigated and researched the facts and circumstances underlying the issues raised in the case and the applicable law. While Class Counsel believe that the claims alleged in this lawsuit have merit, Class Counsel also recognized that the risk and expense of continued litigation justify settlement. Based on the foregoing, Class Counsel believe the proposed settlement is fair, adequate, reasonable, and in the best interests of Class Members.

Defendant has denied, and continues to deny the factual and legal allegations in the case and believes that it has valid defenses to Plaintiffs’ claims. By agreeing to settle, Defendant is not admitting liability on any of the factual allegations or claims in the case or that the case should proceed as a class or PAGA representative action. Defendant has agreed to settle the case as part of a compromise with Plaintiffs.

## **II. WHAT ARE THE IMPORTANT TERMS OF THE PROPOSED SETTLEMENT?**

### **A. What are the Terms of the Settlement?**

Subject to final Court approval, Defendant has agreed to pay Four Million Seven Hundred Thousand Dollars (\$4,700,000.00) (the “Gross Settlement Amount”). The Gross Settlement Amount includes: (1) all Individual Class Payments to all Class Members who do not request exclusion (opt out) (“Participating Class Members”); (2) \$1,566,666.66 in Attorneys’ Fees and up to \$30,000 in litigation costs and expenses; (3) PAGA Settlement Amount, inclusive of payment to the LWDA and PAGA Employees in connection with Plaintiffs’ claims under the Labor Code Private Attorneys General Act of 2004 (Lab. Code, §§ 2698, et seq., “PAGA”); (4) Class Representative Service Payments of \$10,000 each to Plaintiffs Giana Benson and Monica Fowler; and (5) Settlement Administration Costs currently estimated at \$55,000.00. Defendant will pay the employer’s share of any payroll taxes separately from the Gross Settlement Amount.

### **B. How are Individual Settlement Payments Calculated?**

#### **1. Net Settlement Amount**

The Net Settlement Amount means the portion of the Gross Settlement Amount remaining after deducting the following payments in the amounts approved by the Court: Attorneys’ Fees and Costs, Class Representative Service Payments, and the Settlement Administration Costs. Exactly ninety percent (90%) of the Net Settlement Amount will be allocated to Participating Class Members (“Class Fund Settlement Amount”) and the remaining ten percent (10%) will be allocated to the PAGA Settlement Amount.

#### **2. PAGA Settlement Amount**

The PAGA Settlement Amount means the sum equal to exactly ten percent (10%) of the Net Settlement Amount, which is the sum that the Parties have agreed to pay to the LWDA and PAGA Employees<sup>2</sup> in connection with Plaintiffs’ claims under the Labor Code Private Attorneys General Act of 2004 (Lab. Code, §§ 2698, et seq., “PAGA”). Pursuant to Labor Code Section 2699(i), the PAGA Payment will be distributed as follows: 25% to the PAGA Employees (PAGA Fund) and 75% to the LWDA (LWDA PAGA Payment).

The PAGA Fund is equal to exactly Twenty-Five (25%) of the PAGA Settlement Amount, and represents the portion of the PAGA Settlement Amount that will be paid to all PAGA Employees allocated to the Individual PAGA Payments. The entire PAGA Fund will be distributed based on the PAGA Employees’ pro rata number of Pay Periods worked during the applicable

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<sup>2</sup> Defined as all individuals who are or were employed as hourly, non-exempt employees by Defendant in California at any time during the period from February 29, 2020 to September 16, 2022 (“PAGA Period”).

PAGA Period as a percentage of all PAGA Employees' total number of Pay Periods worked during the applicable PAGA Period as reflected in Defendant's records, as set forth below.

### 3. Individual Settlement Payments

Individual Settlement Payments will be calculated and apportioned from the Class Fund Settlement Amount and PAGA Fund based on the number of Pay Periods a Class Member worked during the Class Period, and number of Pay Periods a PAGA Employee worked during the applicable PAGA Period. Specific calculations of Individual Settlement Payments will be made as follows:

#### *a. Individual Class Payments from Class Fund Settlement Amount*

To determine each Class Member's share of the Class Fund Settlement Amount, the Settlement Administrator will use the following formula: Individual Class Payment = individual Class Member's total Pay Periods during the Class Period ÷ all Class Members' total Pay Periods during the Class Period × Class Fund Settlement Amount. If there are any valid and timely Requests for Exclusion, the Settlement Administrator shall proportionally increase each Participating Class Member's share of the Class Fund Settlement Amount so that the amount actually distributed to the Settlement Class equals 100% of the Class Fund Settlement Amount. Governmentally-required employee tax withholdings shall be deducted from that portion of each Individual Class Payment allocated as wages (as set forth below).

#### *b. Individual PAGA Payments from PAGA Fund*

To determine each PAGA Employee's pro rata share of the PAGA Fund, the Settlement Administrator will use the following formula: Individual PAGA Payment = individual PAGA Employee's total Pay Periods during the PAGA Period ÷ all PAGA Employees' total Pay Periods during the PAGA Period × PAGA Fund. PAGA Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment (as set forth below).

### 4. Tax Reporting on Individual Settlement Payments

IRS Forms W-2 and 1099 will be distributed to Participating Class Members and PAGA Employees and the appropriate taxing authorities reflecting the payments they will receive under the Settlement. Class Members should consult their tax advisors concerning the tax consequences of the payments they will receive under the Settlement. For purposes of this Settlement, 20% of the portion of each Individual Class Payment from the Class Fund Settlement Amount will be allocated as wages for which IRS Forms W-2 will be issued, and 80% of the portion of each Individual Class Payment from the Class Fund Settlement Amount will be allocated as non-wages for which IRS Forms 1099-MISC will be issued. Additionally, any Individual PAGA Payments from the PAGA Fund will be allocated as penalties, for which IRS Forms 1099-MISC will be issued.

## III. WHAT IS MY ESTIMATED INDIVIDUAL SETTLEMENT PAYMENT?

According to Defendant's records, you worked during the Class Period in a non-exempt hourly position for a total of <<PayPeriods>> Pay Periods. Accordingly, your estimated Individual Class Payment from the Class Fund Settlement Amount, prior to tax withholdings is approximately <<\$est\_Amount>>.

Defendant's records reflect that you worked during the PAGA Period in a non-exempt, hourly position for a total of <<PAGA\_PayPeriods>> Pay Periods. Accordingly, your estimated Individual PAGA Payment from the PAGA Fund, is approximately <<\$PAGA\_estAmount>>.

Please note that because additional persons may file claims, Opt-Out or challenge their Pay Periods, your actual gross share may be more or less.

**Pay Period Challenges.** If you believe the Pay Period information provided above is incorrect, please contact the Settlement Administrator to dispute the information. You must attach all documentation in support of your dispute (such as by sending copies of pay stubs, W-2s, or other records) to show that you are entitled to payment based upon a different number of Pay Periods than the numbers calculated by the Settlement Administrator based on Defendant's data. All disputes must be postmarked, emailed, or faxed to the Settlement Administrator no later than July 27, 2023.

If you dispute the information stated above, Defendant's records will control unless you are able to provide documentation that establishes otherwise. Any disputes will be decided within ten (10) business days after the Response Deadline, July 27, 2023. All decisions regarding whether an adjustment to the number of Pay Periods worked by a Class Member and/or PAGA Employee is warranted shall be final and non-appealable.

**If the Settlement is approved by the Court, Participating Class Members and/or PAGA Employees will be mailed Individual Settlement Payment checks, which shall remain negotiable for 180-days from the date of mailing.**

Any Individual Class Payment checks or Individual PAGA Payment checks that remain uncashed after 180-days from issuance will be void and the Settlement Administrator shall pay the funds represented by such uncashed checks to the California Controller's Office Unclaimed Property Division, with an identification of the person to whom the funds belong, in accordance with California Code of Civil Procedure Section 384, to be held in trust for those Participating Class Members and/or PAGA Employees who did not cash their checks. Funds represented by Individual Settlement Payment checks returned as undeliverable will also be tendered to the State Controller's Office, Unclaimed Property Division with an identification of the person to whom the funds belong, in accordance with California Code of Civil Procedure Section 384, to be held in trust for those persons. In such event, the Participating Class Member and/or PAGA Employee shall nevertheless remain bound by the Settlement's Released Class Claims and/or Released PAGA Claims (defined below), as applicable.

Any amount paid to Participating Class Members and/or PAGA Employees will not count or be counted for determination of eligibility for, or calculation of, any employee benefits, or otherwise modify any eligibility criteria under any collective bargaining agreement, employee pension benefit plan or employee welfare plan sponsored by Defendant and/or the Released Parties, unless otherwise required by law.

*Your check will be sent to the same address as this Notice. If you change your address, be sure to notify the Settlement Administrator as soon as possible. The Settlement Administrator's contact information is below.*

#### **IV. YOUR OPTIONS UNDER THE SETTLEMENT**

You have two options under the Settlement, each of which is further discussed below. You may: (1) remain in the Class and receive an Individual Class Payment; or (2) exclude yourself from the Class and the release of the Released Class Claims. If you choose Option (1), you may also object to the Settlement, under Option (3) as explained below.

##### **A. Option 1 – Automatically Receive a Payment from the Settlement**

If you want to receive your payment from this settlement, then no further action is required on your part. You will automatically receive your settlement payment from the Settlement Administrator if and when the Settlement receives final approval by the Court and the Court's order approving the Settlement becomes final.

If you choose **Option 1**, and if the Court grants final approval of the settlement, you will be mailed a check for your share of the settlement funds once the Court's order approving the Settlement becomes final. In addition, you will be deemed to have released or waived the Released Class Claims and Released PAGA Claims, as defined below:

**Released Class Claims:** all claims for wages, statutory and civil penalties, damages and liquidated damages, interest, restitution, injunctive relief, fees and costs under California law that: were alleged in the complaints in the Actions (including the Consolidated Amended Complaint) or the PAGA Notices; or could have been alleged based on the facts alleged in any of the complaints in the Actions (including the Consolidated Amended Complaint) or the PAGA Notices, including (without limitation): claims for failure to pay for all hours worked, including overtime and minimum wage; failure to provide meal periods; failure to pay one hour of premium pay when lawful meal periods were not provided; failure to provide rest periods; failure to pay one hour of premium pay when lawful rest periods were not provided; failure to maintain accurate records of hours worked; failure to timely pay all wages at termination; failure to furnish accurate itemized wage statements; failure to pay all earned wages twice per month; failure to reimburse necessary expenses; Labor Code sections 201, 202, 203, 204, 210, 216, 218.5, 218.6, 221-224, 225.5, 226, 226.3, 226.7, 227.3, 510, 512, 516, 558, 1174, 1174.5, 1194, 1194.2, 1195, 1197, 1197.1, 1198, 1199, 2800, 2802; Business and Professions Code sections 17200-17208; all claims under the applicable IWC Wage Orders based on the preceding claims; all claims under the Code of Civil Procedure section 1021.5 as related to the claims specified forth herein; and all claims for interest, costs, and attorneys' fees as related to the claims specified herein. This release shall extend to all such Released Class Claims that accrued at any time during the Class Period. Expressly excluded from the Released Class Claims are claims for wages in Workers' Compensation and Unemployment Insurance benefits cases, and claims for benefits under the Employee Retirement Income Security Act of 1974 (ERISA).

**Released PAGA Claims:** all claims for civil penalties under the California Labor Code Private Attorneys General Act of 2004, Labor Code Sections 2698, et seq., based on the Labor Code violations that: were alleged in the complaints in the Actions (including the Consolidated Amended Complaint) or the PAGA Notices; or could have been alleged based on the facts alleged in any of the complaints in the Actions (including the Consolidated Amended Complaint) or the PAGA Notices, including (without limitation): claims for failure to pay for all hours worked, including overtime and minimum wage; failure to provide meal periods; failure to pay one hour of premium pay when lawful meal periods were not provided; failure to provide rest periods; failure to pay one hour of premium pay when lawful rest periods were not provided; failure to maintain accurate records of hours worked; failure to timely pay all wages at termination; failure to furnish accurate itemized wage statements; failure to pay all earned wages twice per month; failure to reimburse necessary expenses; Labor Code sections 200, 201, 202, 203, 204, 210, 218.5, 218.6, 225.5, 226, 226.3, 226.7, 246, 248.5, 510,

512, 558, 558.1, 1174, 1174.5, 1182.11, 1182.12, 1193.6, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2698, et seq., 2800, and 2802, and all claims for interest, costs, and attorneys' fees as related to the claims specified herein, as well as all facts, theories, or claims for civil penalties that would be considered administratively exhausted under applicable law by the PAGA Notices Plaintiffs sent to the LWDA. This release shall extend to all such Released PAGA Claims that accrued at any time during the PAGA Period. This release shall be binding on all PAGA Employees regardless of whether they submit a valid Request for Exclusion (defined below) from the Class.

**Released Parties:** Defendant F21 OpCo, LLC and each of its respective former and present parents, affiliates, divisions and subsidiaries, acquired companies, and each of their respective present and former directors, officers, shareholders, agents, representatives, employees, partners, owners, attorneys, insurers, predecessors, successors, assigns, subsidiaries, affiliated companies and entities, if any, and any other individual or entity which could be liable for any of the Released Class Claims and/or Released PAGA Claims.

**B. Option 2 – Request Exclusion (Opt-Out) of the Class and Released Class Claims**

If you do not wish to participate in the settlement, you may exclude yourself from Settlement and the release of Released Class Claims by submitting a written request to the Settlement Administrator expressly and clearly indicating that you have received this Notice, decided not to participate in the settlement, and desire to be excluded from the settlement. The written request for exclusion must include your name, signature, address, telephone number, and last four digits of your social security number (for verification purposes). Personally sign, date, and mail or fax the request for exclusion to the address in Section V below.

The Request for Exclusion must be postmarked or faxed not later than July 27, 2023. If you submit a Request for Exclusion which is not postmarked or faxed by July 27, 2023, your Request for Exclusion will be rejected, and you will be included in the Class.

If you choose **Option 2**, you will no longer be a Participating Class Member, and you will:

- Not receive an Individual Class Payment from the Class Fund Settlement Amount.
- Not release the Released Class Claims.
- However, you will still be bound by the release of the Released PAGA Claims, and will receive an Individual PAGA Payment from the PAGA Fund.

**C. Option 3 – Object to the Settlement**

Only Participating Class Members have the right to object to the Settlement. If you decide to object to the settlement, you may submit a written objection stating why you object to the settlement, or you may instead appear at the Final Fairness Hearing to object to the Settlement. Written objections must provide: (1) your full name, signature, address, and telephone number; (2) a written statement of all grounds for the objection, accompanied by any legal support for such objection; (3) copies of any papers, briefs, or other documents upon which the objection is based; and (4) a statement about whether you intend to appear at the Final Fairness Hearing. All written objections must be received by the Settlement Administrator not later than **July 27, 2023**. The objection must be mailed to the Settlement Administrator at *Giana Benson, et al. v. F21 OpCo, LLC dba Forever 21 Settlement*, c/o CPT Group, Inc., 50 Corporate Park, Irvine, CA 92606.

By submitting an objection, you are not excluding yourself from the settlement. To exclude yourself from the settlement, you must follow the directions described above (under Option 2 – Request Exclusion (Opt-Out) of the Class and Released Class Claims). Please note that you cannot both object to the settlement and exclude yourself. **You must choose one option only. If a Class Member timely submits both an objection and a Request for Exclusion, the Request for Exclusion will be given effect and considered valid, the objection shall be rejected, and the Class Member will be excluded from the Settlement Class.**

You may also, if you wish, attend the Final Approval Hearing set for October 6, 2023 at 9:00 a.m. in Department C-67 of the San Diego Superior Court, located at the Hall of Justice, 4<sup>th</sup> floor, 330 W. Broadway, San Diego, CA 92101 and discuss your objection with the Court and the Parties at your own expense. You may also retain an attorney to represent you at the hearing. You can attend (or hire a lawyer to attend) either personally or virtually via Microsoft Teams (<https://www.sdcourt.ca.gov/virtualhearings>). Check the Court's website for the most current information.

Please also note that the Final Fairness Hearing may be rescheduled by the Court to another date and/or time. Please visit <http://www.cptgroupcaseinfo.com/F21Settlement>, Court's website <https://roa.sdcourt.ca.gov/roa/>, or contact Class Counsel, to verify the date and time of the Final Approval Hearing.

If you choose **Option 3**, you will still be entitled to the money from the settlement if it is approved and deemed final. If the Court overrules your objection, you will be deemed to have released the Release Class Claims and Released PAGA Claims.

**V. HOW CAN I GET MORE INFORMATION?**

This Notice of Class Action and PAGA Settlement is only a summary of the case and the settlement. For a more detailed statement of the matters involved in the case and the settlement, you may refer to the pleadings, the settlement agreement, and other papers filed in the case. All inquiries by Class Members regarding this Notice and/or settlement should be directed to the Settlement Administrator or counsel.

You may call the Settlement Administrator at 1 (833) 816-0712 or write to *Giana Benson, et al. v. F21 OpCo, LLC dba Forever 21 Settlement*, c/o CPT Group, Inc., 50 Corporate Park, Irvine, CA 92606, or fax at 1 (949) 419-3446; or email at [F21Settlement@cptgroup.com](mailto:F21Settlement@cptgroup.com); or contact Class Counsel at the addresses provided below. You may receive a copy of the Settlement Agreement, the Final Judgment or other Settlement documents by contacting Class Counsel or may view the documents at <http://www.cptgroupcaseinfo.com/F21Settlement>.

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**PLEASE DO NOT CONTACT THE COURT ABOUT THIS NOTICE.**