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San Diego Superior Court

APR 21 2023

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By: H. Chavarin, Deputy

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 FOR THE COUNTY OF SAN DIEGO – CENTRAL DIVISION – HALL OF JUSTICE

10 GIANA BENSON, and on behalf of all others
11 similarly situated, MONICA FOWLER, an
individual, on behalf of herself and all others
12 similarly situated,

13 Plaintiffs,

14 v.

15
16 F21 OPCO, LLC dba FOREVER 21, a
Delaware Corporation; and DOES 1-10,
17 inclusive,

18 Defendants.

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

21 Plaintiffs,

22 v.

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

26 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] PRELIMINARY APPROVAL
ORDER**

Date: April 21, 2023

Time: 9:00 a.m.

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1 This matter, having come before the Honorable Eddie C. Sturgeon of the Superior Court of the
2 State of California, in and for the County of San Diego, on April 21, 2023 for the motion by Plaintiffs
3 Giana Benson and Monica Fowler (“Plaintiffs”) for preliminary approval of a global class and
4 representative action settlement that resolves all claims alleged by Plaintiffs and the Class against
5 Defendant F21 OpCo, LLC dba Forever 21 (“Defendant”) (collectively referred to herein as “Parties”).
6 The Court, having considered the briefs, argument of counsel and all matters presented to the Court,
7 and good cause appearing, hereby GRANTS Plaintiffs’ Motion for Preliminary Approval of Class
8 Action and PAGA Settlement.

9 IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

10 1. The Court preliminarily approves of the class action and representative action
11 settlement upon the terms and conditions set forth in the Class Action and PAGA Settlement
12 Agreement (“Agreement”), which is attached as Exhibit 1 to the Declaration of Craig J. Ackermann
13 in Support of Plaintiffs’ Motion for Preliminary Approval of Class and Representative Action
14 Settlement. This is based on the Court’s determination that the Settlement set forth in the Agreement
15 is within the range of possible final approval, pursuant to the provisions of Section 382 of the
16 California Code of Civil Procedure and California Rules of Court, rule 3.769.

17 2. For purposes of this Preliminary Approval Order (“Order”), the Court hereby adopts
18 and incorporates all definitions set forth in the Agreement.

19 3. The Court preliminarily finds that the Settlement is the product of informed, non-
20 collusive negotiations conducted at arms’ length by the Parties. The Court has considered the alleged
21 merit of Plaintiffs’ claims, Defendant’s potential liability, the allocation of Settlement proceeds among
22 Class Members and PAGA Employees, and the fact that the Settlement represents a compromise of
23 the Parties’ respective positions. The Court therefore preliminarily finds that the Settlement is fair,
24 adequate, and reasonable when balanced against the probable outcome of further litigation and the
25 significant risks related to certification, liability, and damages issues, subject to further consideration
26 at the Final Fairness and Approval Hearing described below.

27 4. Solely for the purpose of settlement in accordance with the Agreement, the Court finds
28 that the requirements for certification under section 382 of the California Code of Civil Procedure and

1 other laws applicable to preliminary settlement approval of class actions have been satisfied, and the
2 Court hereby certifies, for settlement purposes only, the following Class (the "Class"): all individuals
3 who are or were employed as hourly, non-exempt employees by Defendant F21 OpCo, LLC in
4 California at any time during the Class Period. The Class Period shall be the period from February
5 29, 2020 to September 16, 2022.

6 5. Pursuant to the Agreement, and for settlement purposes only, the Court further finds as
7 to the Class that:

- 8 a. The Class is so numerous that joinder of all members is impracticable;
- 9 b. There are questions of law or fact common to the Class which predominate over
10 the questions affecting only individual members;
- 11 c. The claims of the Class Representatives are typical of the claims of the Class
12 that the Class Representatives seek to certify;
- 13 d. The Class Representatives, Plaintiffs Giana Benson and Monica Fowler, will
14 fairly and adequately protect the interests of the Class and are, therefore,
15 appointed as the representatives of the Class;
- 16 e. Class Counsel, James R. Hawkins and Christina M. Lucio of James Hawkins
17 APLC; Jonathan Melmed and Laura Supanich of Melmed Law Group; and
18 Craig Ackermann and Avi Kreitenberg of Ackermann & Tilajef, P.C., will
19 fairly and adequately protect the interests of the Class and are qualified to
20 represent the Class and are, therefore, appointed as attorneys for the Class for
21 purposes of settlement only; and
- 22 f. Certification of the Class is superior to other available methods for fair and
23 efficient adjudication of the controversy.

24 6. PAGA Employees is defined as all individuals who are or were employed as hourly,
25 non-exempt employees by Defendant F21 OpCo, LLC in California at any time during the PAGA
26 Period. The PAGA Period shall be the period from February 29, 2020, to September 16, 2022.

27 7. CPT Group, Inc. is hereby appointed to serve as the Settlement Administrator. The
28 Settlement Administrator will administer the applicable provisions of the Settlement Agreement, will

1 include, *inter alia*: (i) printing and mailing and re-mailing (if necessary) of Notices of Class Action
2 and PAGA Settlement to Class Members and PAGA Employees and receiving Requests for Exclusion
3 and Objections from Class Members; (ii) preparing and submitting to Settlement Class Members,
4 PAGA Employees, and government entities all appropriate tax filings and forms; (iii) computing the
5 amount of and distributing Individual Settlement Payments, Class Representative Service Payments,
6 and Class Counsel Attorneys' Fees, Costs and Expenses; (iv) processing and validating disputes
7 concerning the calculation of Individual Settlement Payments; (v) establishing a Qualified Settlement
8 Fund, as defined by the Internal Revenue Code; and (vi) calculating and remitting to the appropriate
9 government agencies all employer and employee payroll tax obligations arising from the Settlement
10 and preparing and submitting filings required by law in connection with the payments required by the
11 Settlement; (vii) performing a National Change of Address (NCOA) search and a skip trace in order
12 to obtain the best possible address for Class Members and PAGA Employees; and (viii) providing
13 necessary reports and declarations, as requested by the Parties.

14 8. Pursuant to the terms of the Agreement, Defendant is hereby directed to prepare and
15 provide the Class and PAGA Data to the Settlement Administrator within twenty-one (21) days of
16 entry of this Order.

17 9. Pursuant to the terms of the Settlement Agreement, CPT Group, Inc. is hereby directed
18 to mail the Notice of Class Action and PAGA Settlement ("Notice") to all Class Members and PAGA
19 Employees via first-class regular U.S. Mail within fifty-one (51) days of entry of this Order.

20 10. The Court approves as to form and content the Notice attached as Exhibit A to the
21 Agreement, and attached hereto as Exhibit 1. The Court finds that the Notice appears to fully and
22 accurately inform the Class and PAGA Employees of all material elements of the proposed Settlement,
23 of the Class Members' right to be excluded from the Class by submitting a written Opt Out request,
24 and of each Class Member's right and opportunity to object to the Settlement. The Court further finds
25 that the distribution of the Notice in the manner and form set forth in the Agreement and this Order
26 meets the requirements of due process, is the best notice practicable under the circumstances, and
27 constitutes valid, due and sufficient notice to all members of the Class and PAGA Employees entitled
28 thereto. The Court orders the mailing of the Notice by first class mail, pursuant to the terms set forth

1 in the Agreement.

2 11. The Court hereby preliminarily approves the proposed procedure for exclusion from
3 the Settlement. Any Class Member may request to be excluded from the Class and the release of
4 Released Class Claims by submitting a written Request for Exclusion in accordance with Paragraphs
5 2.4.2 and 5.6 in the Agreement. Any such Request for Exclusion will be timely only if postmarked,
6 emailed, or faxed to the Settlement Administrator within the Response Deadline. Any Class Member,
7 who submits a completed, signed and timely written Request for Exclusion shall no longer be a
8 member of the Class, shall be barred from participating in this Settlement, shall be barred from
9 objecting to this Settlement, and shall receive no benefit from this Settlement, except that Class
10 Members who are PAGA Employees will still receive their Individual PAGA Payments and will
11 release the Released PAGA Claims. Class Members shall be bound by this Agreement and shall
12 release all Released Class Claims unless they submit a completed, signed, and timely Request for
13 Exclusion. If they submit a valid Request for Exclusion, they will still be bound by the release of the
14 Released PAGA Claims.

15 12. Any Class Member wishing to object to this Settlement may submit a written objection
16 or appear at the Final Fairness and Approval Hearing in person or through counsel of their choice
17 following the procedure set forth in the Notice and prescribed by Paragraph 5.7 of the Agreement.
18 Any Class Member who wishes to submit a written Objection to the Agreement must submit their
19 objection on or before the Response Deadline.

20 13. Any Class Member who has submitted such written objections may, but is not required
21 to, appear in person, or through counsel, at the Final Fairness and Approval Hearing and object to the
22 approval of the Settlement or the award of attorneys' fees and reimbursement of expenses to counsel.
23 Any written objections submitted by Class Members shall be turned over to Class Counsel, who shall
24 then file the objections and any response thereto with the Court. The Parties may file any response to
25 the objections submitted by objecting Class Members, if any,
26 no later than three (3) Court days prior to the Final Fairness and Approval Hearing, or on another date
27 set by the Court. Any Class Member who has not opted out may appear at the final approval hearing
28 and may object or express the Class Member's views regarding the Settlement, and may present

1 evidence and file briefs or other papers that may be proper and relevant to the issues to be heard and
2 determined by the Court as provided in the Notice.

3 14. Any Class Member who does not make their objection(s) in the manner so provided
4 herein and in the Notice shall be deemed to have waived such objection(s) and shall forever be
5 foreclosed from making any objection(s) to the fairness or adequacy of the proposed Settlement as
6 incorporated in the Agreement and the award of attorneys' fees and reimbursement of expenses to
7 counsel and the right to appeal any orders that are entered relating thereto, unless otherwise ordered
8 by the Court.

9 15. The Final Fairness and Approval Hearing shall be held on Oct 6, 2023
10 at 9 a.m./~~p.m.~~, before the Honorable Eddie C. Sturgeon, in Courtroom 67 in the Superior Court
11 of California in San Diego, located at 330 W. Broadway, San Diego, California 92101. At that time,
12 the Court shall determine: (a) whether the proposed settlement of the Action on the terms and
13 conditions provided for in the Settlement Agreement is fair, just, reasonable and adequate and should
14 be finally approved; (b) whether judgment as provided in the Settlement Agreement should be entered
15 herein; (c) whether to approve Class Counsel's application for an award of attorneys' fees and costs,
16 and any Class Representative Service Payments to Plaintiffs; and (d) to hear any timely objections to
17 the Settlement.

18 16. The Motion for Final Approval, and any motion or application for an award of
19 attorney's fees, costs, and any Class Representative Service Payments to Plaintiffs must be filed and
20 served by 5-26-23.

21 17. The Court reserves the right to adjourn the date of the Final Fairness and Approval
22 Hearing and any adjournment thereof without further notice to the Class Members and PAGA
23 Employees, and retains jurisdiction to consider all further applications arising out of or connected with
24 the Settlement. The Court may approve the Settlement, with such modifications as may be agreed to
25 by the Parties to the Settlement, if appropriate, without further notice to the Class or PAGA
26 Employees.


27 18. Pending further order of this Court, all proceedings in this matter except those
28 contemplated herein and in the Agreement are stayed and suspended until further order of this Court.

1 19. The Court recognizes that certification under this Order is for settlement purposes
2 only, and shall not constitute or be construed as a finding by the Court, or an admission on the part of
3 Defendant or any of the Released Parties, of any fault or omission with respect to any claim or that
4 this action is appropriate for class or representative treatment for litigation purposes. Entry of this
5 Order is without prejudice to the rights of Defendant or any of the Released Parties to oppose class
6 certification in this action should the proposed Settlement not be granted final approval.

7 20. If for any reason the Court does not execute and file an Final Order and Judgment, or
8 if the Effective Date of the settlement, as defined in the Agreement, does not occur for any reason
9 whatsoever, the Agreement and the proposed settlement that is the subject of this Order, and all
10 evidence and proceedings had in connections therewith, shall be without prejudice to the *status quo*
11 *ante* rights of the Parties to the litigation, as more specifically set forth in the Agreement.

12
13 **IT IS SO ORDERED.**

14
15 DATED: April 21 2023



HON. EDDIE C. STURGEON
JUDGE OF THE SUPERIOR COURT

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EXHIBIT 1