

James R. Hawkins (SBN 192925)
Christina Lucio (SBN 253677)
JAMES HAWKINS APLC
9880 Research Drive, Suite 200
Irvine, CA 92618
Telephone: (949) 387-7200
Facsimile: (949) 387-6676
Email: James@jameshawkinsaplc.com
Christina@jameshawkinsaplc.com

Additional counsel listed on following page

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO – CENTRAL DIVISION – HALL OF JUSTICE

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

Plaintiffs,

v.

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

Defendants.

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

[Assigned For All Purposes to Judge Eddie C.
Sturgeon, Department 67]

**[PROPOSED] PRELIMINARY APPROVAL
ORDER**

Consolidated

Complaint Filed:

Trial Date:

January 23, 2023

None

Jonathan Melmed (SBN 290218)
Laura Supanich (SBN 314805)
Maria Burciaga (SBN 334545)
MELMED LAW GROUP P.C.
1801 Century Park East, Suite 850
Los Angeles, California 90067
Telephone: (310) 824-3828
Facsimile: (310) 862-6851
Email: jm@melmedlaw.com
lms@melmedlaw.com
mb@melmedlaw.com

Craig J. Ackermann (SBN 229832)
Avi Kreitenberg (SBN 266571)
ACKERMANN & TILAJEF, P.C.
1180 South Beverly Drive, Suite 610
Los Angeles, California 90035
Telephone: (310) 277-0614
Facsimile: (310) 277-0635
Email: cja@ackermanntilajef.com
ak@ackermanntilajef.com

Attorneys for Plaintiffs, the Putative Class,
and the Aggrieved Employees

Jennifer C. Terry (SBN 200541)
Brittany M. Hernandez (SBN 299044)
REED SMITH LLP
355 South Grand Avenue, Suite 2900
Los Angeles, CA 90071-1514
Telephone: (213) 457 8000
Facsimile: (213) 457 8080
Email: jennifer.terry@reedsmith.com
bmhernandez@reedsmith.com

Mark R. Phillips (SBN 223289)
SEALS PHILLIPS LLP
790 E. Colorado Blvd., Suite 900
Pasadena, CA 91101
Telephone: (626) 240 0632
Email: mark@sealsphillips.com

Attorneys for Defendant
F21 OPCO, LLC dba FOREVER 21

1 This matter, having come before the Honorable Eddie C. Sturgeon of the Superior Court of
2 the State of California, in and for the County of San Diego, on March 13, 2023, for the motion by
3 Plaintiffs Giana Benson and Monica Fowler (“Plaintiffs”) for preliminary approval of a global class
4 and representative action settlement that resolves all claims alleged by Plaintiffs and the Class
5 against Defendant F21 OpCo, LLC dba Forever 21 (“Defendant”) (collectively referred to herein as
6 “Parties”). The Court, having considered the briefs, argument of counsel and all matters presented to
7 the Court, and good cause appearing, hereby GRANTS Plaintiffs’ Motion for Preliminary Approval
8 of Class 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 * to the Declaration of [] in Support of
13 Plaintiffs’ Motion for Preliminary Approval of Class and Representative Action Settlement. This is
14 based on the Court’s determination that the Settlement set forth in the Agreement is within the range
15 of possible final approval, pursuant to the provisions of Section 382 of the California Code of Civil
16 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
21 alleged merit of Plaintiffs’ claims, Defendant’s potential liability, the allocation of Settlement
22 proceeds among Class Members and PAGA Employees, and the fact that the Settlement represents a
23 compromise of the Parties’ respective positions. The Court therefore preliminarily finds that the
24 Settlement is fair, adequate, and reasonable when balanced against the probable outcome of further
25 litigation and the significant risks related to certification, liability, and damages issues, subject to
26 further consideration at the Final Fairness and Approval Hearing described below.

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

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

6 5. Pursuant to the Agreement, and for settlement purposes only, the Court further finds
7 as 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
10 over 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
3 Exclusion and Objections from Class Members; (ii) preparing and submitting to Settlement Class
4 Members, PAGA Employees, and government entities all appropriate tax filings and forms; (iii)
5 computing the amount of and distributing Individual Settlement Payments, Class Representative
6 Service Payments, and Class Counsel Attorneys' Fees, Costs and Expenses; (iv) processing and
7 validating disputes concerning the calculation of Individual Settlement Payments; (v) establishing a
8 Qualified Settlement Fund, as defined by the Internal Revenue Code; and (vi) calculating and
9 remitting to the appropriate government agencies all employer and employee payroll tax obligations
10 arising from the Settlement and preparing and submitting filings required by law in connection with
11 the payments required by the Settlement; (vii) performing a National Change of Address (NCOA)
12 search and a skip trace in order to obtain the best possible address for Class Members and PAGA
13 Employees; and (viii) providing 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
18 directed to mail the Notice of Class Action and PAGA Settlement ("Notice") to all Class Members
19 and PAGA Employees via first-class regular U.S. Mail within fifty-one (51) days of entry of this
20 Order.

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

1 PAGA Employees entitled thereto. The Court orders the mailing of the Notice by first class mail,
2 pursuant to the terms set forth in the Agreement.

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

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

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

1 hearing and may object or express the Class Member's views regarding the Settlement, and may
2 present evidence and file briefs or other papers that may be proper and relevant to the issues to be
3 heard and determined by the Court as provided in the Notice.

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

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

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

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

28 18. Pending further order of this Court, all proceedings in this matter except those

1 contemplated herein and in the Agreement are stayed and suspended until further order of this Court.

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

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

13
14 **IT IS SO ORDERED.**

15
16 DATED: _____ 2023

HON. EDDIE C. STURGEON
JUDGE OF THE SUPERIOR COURT

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