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UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

JOWHARAH HAMEED-BOLDEN and
ALI CONRAD O'BRIEN, On Behalf of
Themselves and All Others Similarly
Situated,

Plaintiffs,

v.

FOREVER 21 RETAIL, INC., and
FOREVER 21, INC.,

Defendants.

CV 18-3019-GW-JPRx

The Hon. George H. Wu

**ORDER GRANTING MOTION
FOR PRELIMINARY
APPROVAL OF CLASS
ACTION SETTLEMENT AND
DIRECTION OF NOTICE
UNDER RULE 23(e)**

1 Plaintiffs Jowharah Hameed-Bolden and Ali Conrad O'Brien ("Representative
2 Plaintiffs") and Defendants Forever 21 Retail, Inc., and Forever 21, Inc. ("Defendants" or
3 "Forever 21") have agreed to a settlement, the terms and conditions of which are set forth
4 in an executed Settlement Agreement (the "Settlement")¹. The parties reached the
5 Settlement through arm's-length negotiations following mediation. Under the Settlement,
6 subject to the terms and conditions therein and subject to Court approval, Settlement Class
7 Members are eligible to receive reimbursement of up to \$250 as reimbursement for their
8 out-of-pocket expenses (including time spent at a rate of \$25 per hour), and up to \$10,000 for
9 certain extraordinary expenses. In exchange for these considerations, Plaintiffs and the
10 proposed Settlement Class would fully, finally, and forever resolve, discharge, and release
11 their claims against Forever 21 related to the Security Incident, which resulted in
12 unauthorized access to customer payment card data and in some instances cardholder
13 name, without admission of liability by Forever 21. In addition, Forever 21 has agreed to
14 pay all fees and costs associated with providing notice to the Settlement Class and for
15 administration of the Settlement. Subject to Court approval, Forever 21 has also agreed to
16 pay Class Counsel's attorneys' fees of up to \$500,000, inclusive of reasonable costs and
17 expenses, and an incentive award of \$2,500 for the Representative Plaintiffs.

18 The Settlement has been filed with the Court, and Plaintiffs and Class Counsel filed
19 an Unopposed Renewed Motion for Preliminary Approval of Class Settlement and
20 Direction of Notice Under Rule 23(e) (the "Motion"). Upon considering the Motion and
21 exhibits thereto, the Settlement, the record in these proceedings, the representations and
22 recommendations of Class Counsel, and the requirements of law, the Court finds that: (1)
23 this Court has jurisdiction over the subject matter and parties to these proceedings; (2) for
24 settlement purposes only, the proposed Settlement Class meets the requirements of Federal
25 Rule of Civil Procedure 23 and should be certified; (3) the persons and entities identified
26 below should be appointed Class Representatives and Class Counsel; (4) the Settlement is
27 the result of informed, good-faith, arm's-length negotiations between the parties and their

28 _____
¹ Unless otherwise noted, all capitalized terms are defined in the Settlement Agreement.

1 capable and experienced counsel and is not the result of collusion; (5) the Settlement is
2 within the range of reasonableness and should be preliminarily approved; (6) the proposed
3 Notice Program and proposed forms of Notice satisfy Federal Rule of Civil Procedure 23
4 and constitutional due process requirements, and are reasonably calculated under the
5 circumstances to apprise the Settlement Class of the pendency of the Action, class
6 certification, the terms of the Settlement, Class Counsel’s application for an award of
7 attorneys’ fees, costs and expenses (“Fee Application”) and request for Service Award for
8 Plaintiffs, and their rights to opt-out of the Settlement Class and object to the Settlement,
9 Class Counsel’s Fee Motion, and/or the request for Service Award for Plaintiffs; (7) good
10 cause exists to schedule and conduct a Final Approval Hearing, pursuant to Federal Rule
11 of Civil Procedure 23(e), to assist the Court in determining whether to grant final approval
12 of the Settlement and enter Final Judgment, and whether to grant Class Counsel’s Fee
13 Application and request for Service Award for Plaintiffs; and (8) the other related matters
14 pertinent to the preliminary approval of the Settlement should also be approved.

15 Based on the foregoing, **IT IS HEREBY ORDERED AND ADJUDGED** as
16 follows:

- 17 1. As used in this Order, capitalized terms shall have the definitions and
18 meanings accorded to them in the Settlement.
- 19 2. The Court has jurisdiction over the subject matter and parties to this
20 proceeding pursuant to 28 U.S.C. § 1332.
- 21 3. Venue is proper in this District.

22 **Provisional Class Certification and**
23 **Appointment of Class Representatives and Class Counsel**

24 4. The Court, having fully reviewed Plaintiffs’ Motion, the supporting
25 Memorandum and Declarations filed in support thereof, determines that the Settlement
26 appears to be the product of thorough, serious, informed, and non-collusive negotiations
27 between experienced attorneys familiar with the legal and factual issues of this case; has
28 no obvious deficiencies; does not improperly grant preferential treatment to the Settlement

1 Class Representatives or segments of the Class; and appears to be fair, reasonable, and
2 adequate within the meaning of Rule 23 of the Federal Rules of Civil Procedure, such that
3 preliminary approval of the Settlement should be granted, notice of the Settlement should
4 be directed to the Settlement Class Members, and a Fairness Hearing should be set. The
5 Court preliminarily approves the Settlement, and the exhibits appended to the Motion, as
6 fair, reasonable, and adequate. The Court finds that the Settlement was reached in the
7 absence of collusion, and is the product of informed, good-faith, arm's-length negotiations
8 between the parties, and their capable and experienced counsel under the supervision of a
9 mediator. The Court further finds that the Settlement, including the exhibits appended to
10 the Motion, is within the range of reasonableness and possible judicial approval, such that:
11 (a) a presumption of fairness is appropriate for the purposes of preliminary settlement
12 approval; and (b) it is appropriate to effectuate notice to the Settlement Class, as set forth
13 below and in the Settlement, and schedule a Final Approval Hearing to assist the Court in
14 determining whether to grant Final Approval to the Settlement and enter final judgment.

15 5. The Court finds, on a preliminary basis, that the Settlement appears to be
16 within the range of reasonableness of a settlement which could ultimately be given final
17 approval by this Court, and that the Settlement is fair and reasonable to Settlement Class
18 Members when balanced against the probable outcome of further litigation, liability and
19 damages issues, and potential appeals of rulings.

20 6. In deciding whether to provisionally certify a settlement class, a court must
21 consider the same factors that it would consider in connection with a proposed litigation
22 class — i.e., all Rule 23(a) factors and at least one subsection of Rule 23(b) must be
23 satisfied — except that the Court need not consider the manageability of a potential trial,
24 since the settlement, if approved, would obviate the need for a trial. *See Amchem Products,*
25 *Inc. v. Windsor*, 521 U.S. 591, 620 (1997).

26 7. The Court finds, for settlement purposes only, that the Federal Rule of Civil
27 Procedure 23 factors are present and that certification of the proposed Settlement Class is
28 appropriate under Rule 23. The Court, therefore, provisionally certifies the following

1 Settlement Class:

2 All persons residing in the United States who used a payment card to
3 make a purchase at an affected Forever 21 point-of-sale device during
4 the Security Incident, or whose payment card information was
5 inadvertently stored in Forever 21's central database and determined to
6 be at risk.

7 The Settlement Class specifically excludes: (i) Forever 21 and its officers and
8 directors; (ii) all Settlement Class Members who timely and validly request exclusion from
9 the Settlement Class; (iii) the Judge assigned to evaluate the fairness of this settlement;
10 and (iv) any other Person found by a court of competent jurisdiction to be guilty under
11 criminal law of initiating, causing, aiding or abetting the criminal activity occurrence of
12 the Security Incident or who pleads *nolo contendere* to any such charge.

13 8. Specifically, the Court finds, for settlement purposes only, that the Settlement
14 Class satisfies the following factors of Federal Rule of Civil Procedure 23:

15 (a) Numerosity: In the Action there are more than 500,000 Class members
16 across the United States. Their joinder is impracticable. Thus, the Rule 23(a)(1)
17 numerosity requirement is met. *See* Fed. R. Civ. P. 23(a)(1); *Hanlon v. Chrysler Corp.*,
18 150 F.3d 1011, 1019 (9th Cir. 1998).

19 (b) Commonality: The bar for proving commonality is met when there is
20 at least one issue whose resolution will affect all or a significant number of the putative
21 class members. *See Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011). Here, the
22 commonality requirement is satisfied for settlement purposes because there are many
23 questions of law and fact common to the Settlement Class regarding Forever 21's Security
24 Incident. *See* Fed. R. Civ. P. 23(a) (2). There are multiple questions of law and fact that
25 center on whether Forever 21 was culpable in failing to prevent the Security Incident,
26 which are common to the Settlement Class.

27 (c) Typicality: Plaintiffs are typical of absent Settlement Class Members
28 because they were subjected to the same conduct of Defendants, had their information

1 placed at risk in the same manner as all Class members as a result of the Security Incident,
2 and because they will also benefit from the relief provided by the Settlement. Rule 23(a)(3)
3 is therefore satisfied. *See Just Film, Inc. v. Buono*, 847 F.3d 1108, 1118 (9th Cir. 2017)
4 (“it is sufficient for typicality if the plaintiff endured a course of conduct directed against
5 the class”).

6 (d) Adequacy: Adequacy under Rule 23(a)(4) relates to: (1) whether the
7 proposed class representative has interests antagonistic to the Settlement Class; and (2)
8 whether the proposed class counsel has the competence to undertake the litigation at issue.
9 *Staton v. Boeing Co.*, 327 F.3d 938, 957 (9th Cir. 2003) (adequacy satisfied if plaintiffs
10 and their counsel lack conflicts of interest and are willing to prosecute the action vigorously
11 on behalf of the class). Rule 23(a)(4) is satisfied here because there are no conflicts of
12 interest between the Plaintiffs and the Settlement Class, and Plaintiffs have retained
13 competent counsel to represent them and the Settlement Class. Class Counsel here
14 regularly engage in consumer class litigation and other complex litigation similar to the
15 present Litigation, and have dedicated substantial resources to prosecuting the Litigation.
16 Moreover, the Plaintiffs and Class Counsel have vigorously and competently represented
17 the Settlement Class Members’ interests in the Litigation.

18 (e) Predominance and Superiority: Rule 23(b)(3) is satisfied for settlement
19 purposes, as well, because the common legal and alleged factual issues here predominate
20 over individualized issues, and resolution of the common issues for thousands of
21 Settlement Class Members in a single, coordinated proceeding is superior to many
22 individual lawsuits addressing the same legal and factual issues. With respect to
23 predominance, Rule 23(b)(3) requires that “the questions of law or fact common to class
24 members predominate over any questions affecting only individual members, and a class
25 action is superior to other available methods for fairly and efficiently adjudicating the
26 controversy.” Fed. R. Civ. P. 23(b)(3); *see Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1022
27 (9th Cir. 1998). Based on the record currently before the Court, the predominance
28 requirement is satisfied here for settlement purposes because common questions present a

1 significant aspect of the case and because class-wide relief can fairly be provided for all
2 Settlement Class Members through a single common judgment.

3 9. The Court appoints the following persons as Class Representatives: Jowharah
4 Hameed-Bolden and Ali Conrad O'Brien.

5 10. The Court appoints the following persons and entities as Class Counsel who
6 shall be responsible for handling all Settlement-related matters on behalf of Plaintiffs and
7 the Settlement Class: Jean Martin and John Yanchunis of Morgan & Morgan Complex
8 Litigation Group, Kevin Ruf and Brian Murray of Glancy Prognay and Murray, LLP, Paul
9 Whalen of Law Office of Paul C. Whalen, and Jasper Ward of Jones Ward PLC.

10 **Approval of Notice, Direction to Effectuate Notice, and Claims Administration**

11 11. The Court approves the form and content of the Notice and Claim Form to be
12 provided to the Settlement Class, substantially in the forms appended hereto as Exhibits A
13 (“Detailed Notice”), B (“Publication Notice”), C (“Banner Ads”) and D (“Claim Form”).
14 The Court further finds that the Notice Program, described in Section 3 of the Settlement,
15 is the best practicable under the circumstances. The Notice Program is reasonably
16 calculated under the circumstances to apprise the Settlement Class of the pendency of the
17 Litigation, class certification, the terms of the Settlement, and their rights to opt-out of the
18 Settlement Class and object to the Settlement, Class Counsel’s fee request, and the request
19 for Service Award for Plaintiffs. The Notices and Notice Program constitute sufficient
20 notice to all persons entitled to notice. The Notices and Notice Program satisfy all
21 applicable requirements of law, including, but not limited to, Federal Rule of Civil
22 Procedure 23 and the constitutional requirement of due process.

23 12. The Court directs that Epiq provide notice and settlement administration.

24 13. The Notice Specialist and Settlement Administrator shall implement the
25 Notice Program, as set forth below and in the Settlement, using substantially the forms of
26 Notice appended hereto as Exhibits A through C and approved by this Order. Notice shall
27 be provided to the Settlement Class Members pursuant to the Notice Program, as specified
28 in Section 3 of the Settlement and approved by this Order.

1 14. The Settlement Administrator shall administer the Notice Program.

2 15. Notice shall be provided to Settlement Class Members by publication. This
3 publication notice shall take two forms: First, an advertisement in People Magazine. The
4 People Magazine notice shall be in black and white and encompass approximately one-
5 third of a magazine page. Second, the publication notice shall also be made via online
6 displays and ads across pre-vetted websites and social media platforms.

7 16. As set forth in the Settlement, the Notice Program shall commence within 30
8 days of the Preliminary Approval and Direction of Notice Order.

9 17. The Settlement Administrator shall provide Class Counsel and Forever 21's
10 counsel an affidavit that confirms that the Notice Program was completed in a timely
11 manner. Class Counsel shall file such affidavit with the Court in conjunction with
12 Plaintiff's Motion for Final Approval of the Settlement.

13 18. All fees and costs associated with the Notice Program shall be paid by Forever
14 21, as set forth in the Settlement.

15 19. The Court hereby appoints the Claims Referee proposed by the parties, Bruce
16 A. Friedman of JAMS (the "Claims Referee"). If Mr. Friedman becomes unavailable, the
17 parties may select another neutral from JAMS to serve in his place. The Claims Referee
18 shall be responsible for deciding certain claims that may be rejected by the Claims
19 Administrator, upon request of the Settlement Class Member submitting such Claims, as
20 described in the Settlement Agreement.

21 **Settlement Website and Toll-Free Settlement Line**

22 20. The Settlement Administrator shall establish a Settlement Website as a means
23 for Settlement Class Members to obtain notice of, and information about, the Settlement.
24 The Settlement Website shall be established as soon as practicable following Preliminary
25 Approval, but no later than 30 days after the Preliminary Approval Order. The Settlement
26 Website shall include hyperlinks to the Settlement, the Detailed Notice, this Order, and
27 such other documents as Lead Class Counsel and counsel for Forever 21 agree to post or
28 that the Court orders posted on the Settlement Website. These documents shall remain on

1 the Settlement Website at least until Final Approval.

2 21. The Settlement Administrator shall establish and maintain a toll-free
3 telephone line for Settlement Class Members to call with Settlement-related inquiries, and
4 shall answer the questions of Settlement Class Members who call or otherwise
5 communicate such inquiries.

6 22. Epiq is directed to perform all other responsibilities under the Notice Program
7 assigned to the Notice Specialist and Settlement Administrator in the Settlement.

8 **Final Approval Hearing, Opt-Outs, and Objections**

9 23. The Court directs that a Final Approval Hearing shall be scheduled to assist
10 the Court in determining whether to grant Final Approval to the Settlement and enter the
11 Final Approval Order and Judgment, and whether Class Counsel's Fee Application and
12 request for a Service Award for Plaintiffs should be granted.

13 24. The Court directs that any person within the Settlement Class definition who
14 wishes to be excluded from the Settlement Class may exercise his or her right to opt-out of
15 the Settlement Class by following the opt-out procedures set forth in the Detailed Notice
16 at any time during the Opt-Out-Period for the Settlement. To be valid and timely, opt-out
17 requests must be postmarked no later than one hundred twenty (120) days after the date on
18 which the Notice Program commences and must be mailed to the address indicated in the
19 Detailed Notice.

20 The Opt-Out Deadline established under Section 4 of the Settlement Agreement
21 shall be specified in the Detailed Notice and Settlement Website. All persons within the
22 Settlement Class definition who do not timely and validly opt-out of the Settlement Class
23 shall be bound by all determinations and judgments in the Action concerning the
24 Settlement, including, but not limited to, the Releases set forth in Section 6 of the
25 Settlement if the Settlement is finally approved.

26 25. The Court further directs that any person in the Settlement Class who does not
27 opt-out of the Settlement Class may object to the Settlement, Class Counsel's Motion
28 seeking an award for attorneys' fee, cost and expenses, and/or the request for Service

1 Award for Plaintiffs. Any such objections must be mailed to the Clerk of the Court, at the
2 address indicated in the Detailed Notice. For an objection to be considered by the Court,
3 the objection must be postmarked no later than one hundred twenty (120) days from the
4 date on which the Notice Program commences (“Objection Deadline”) and must include
5 the following information:

6 26. The objection must state: (i) your full name, address, telephone number, and
7 e-mail address (if any); (ii) information identifying you as a Settlement Class Member,
8 including proof that you are a member of the Settlement Class (e.g., copy of notice, copy
9 of original notice of the Security Incident); (iii) a written statement of all grounds for the
10 objection, accompanied by any legal support for the objection that you believe is
11 applicable; (iv) the identity of all counsel representing you; (v) the identity of all counsel
12 representing you who will appear at the Final Fairness Hearing; (vi) a list of all persons
13 who will be called to testify at the Final Fairness Hearing in support of the objection; (vii)
14 a statement confirming whether you intend to personally appear and/or testify at the Final
15 Fairness Hearing; (viii) your signature and the signature of your duly authorized attorney
16 or other duly authorized representative (along with documentation setting forth such
17 representation); (ix) a list, by case name, court, and docket number, of all other cases in
18 which you (directly or through counsel) have filed an objection to any proposed class action
19 settlement within the last 3 years; and, (x) a list, by case name, court, and docket number,
20 of all other cases in which you have been a named plaintiff in any class action or served as
21 a lead plaintiff or class representative. The Court will only require substantial compliance
22 with the requirements for submitting an objection.

23 27. It shall not be required that an objector who files an objection appear at the
24 final hearing. An objection shall be deemed to have been submitted when mailed, provided
25 it is received with a postmark date indicated on the envelope on or before the Objection
26 Deadline, mailed first-class postage prepaid, and addressed in accordance with the
27 instructions in the Settlement and Detailed Notice.

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1 **Further Papers in Support of Settlement and Fee Application**

2 28. Plaintiffs and Class Counsel shall file the petition for award of attorneys’ fees
3 and reimbursement of expenses, at least 30 days before the deadline for objecting to the
4 Settlement.

5 29. Plaintiffs and Class Counsel shall file final submissions in support of the
6 Settlement at least 14 days before the Final Approval Hearing.

7 30. Plaintiffs and Class Counsel shall file any reply in support of an award of
8 attorneys’ fees and reimbursement of expenses at least 7 days before the Final Approval
9 Hearing.

10 **Effect of Failure to Approve the Settlement or Termination**

11 31. In the event the Settlement is not approved by the Court, or for any reason the
12 Parties fail to obtain a Final Approval Order and Judgment as contemplated in the
13 Settlement, or the Settlement is terminated pursuant to its terms for any reason, then the
14 following shall apply:

15 (a) All orders and findings entered in connection with the Settlement shall
16 become null and void and have no further force and effect, shall not be used or referred to
17 for any purposes whatsoever, and shall not be admissible or discoverable in any other
18 proceeding;

19 (b) All of the Parties’ respective pre-Settlement claims and defenses will be
20 preserved;

21 (c) Nothing contained in this Order is, or may be construed as, any admission or
22 concession by or against Forever 21 or Plaintiffs on any point of fact or law; and

23 (d) Neither the Settlement terms nor any publicly disseminated information
24 regarding the Settlement, including, without limitation, the Notice, court filings, orders
25 and public statements, may be used as evidence. In addition, neither the fact of, nor any
26 documents relating to, either party’s withdrawal from the Settlement, any failure of the
27 Court to approve the Settlement, and/or any objections or interventions may be used as
28 evidence.

1 **Stay/Bar of Other Proceedings**

2 32. All proceedings in the Action are hereby stayed until further order of the
3 Court, except as may be necessary to implement the terms of the Settlement. Pending final
4 determination of whether the Settlement should be approved, Plaintiffs, all persons in the
5 Settlement Class, and persons purporting to act on their behalf are enjoined from
6 commencing or prosecuting (either directly, representatively, or in any other capacity)
7 against any of the Released Parties any action or proceeding in any court asserting any of
8 the Released Claims.

9 33. Based on the foregoing, the Court sets the following schedule for the Final
10 Approval Hearing and the actions which must precede it:

- 11 (i) The Settlement Administrator shall establish the Settlement Website and toll-
12 free telephone line as soon as practicable following Preliminary Approval,
13 but no later than November 20, 2021 (30 days after the date of this order);
- 14 (ii) The Settlement Administrator shall begin the Notice Program no later than
15 November 20, 2021 (30 days after the date of this order);
- 16 (iii) Settlement Class Members must file any objections to the Settlement no later
17 than March 20, 2022 (120 days from the date on which the Notice Program
18 commences);
- 19 (iv) Settlement Class Members must file requests for exclusion from the
20 Settlement no later than March 20, 2022 (120 days from the date on which
21 the Notice Program commences);
- 22 (v) Settlement Class Members must file claims for settlement benefits no later
23 than March 20, 2022 (120 days from the date on which the Notice Program
24 commences);
- 25 (vi) Plaintiffs and Class Counsel shall file their responses to timely filed
26 objections to Settlement no later than April 7, 2022 (14 days before Final
27 Approval Hearing);
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- (vii) If Forever 21 chooses to file a response to timely filed objections to Settlement, it shall do so no later than April 7, 2022 (14 days before Final Approval Hearing);
- (viii) Plaintiffs and Class Counsel shall file their Motion for Final Approval of the Settlement no later than April 7, 2022 (14 days before Final Approval Hearing);
- (ix) Plaintiffs and Class Counsel shall file their Request for Service Award for Plaintiffs and Motion seeking an award of Attorneys’ Fees, Costs and Expenses by February 18, 2022 (at least 30 days before the deadline for objecting to the Settlement); and
- (x) The Final Approval Hearing will be held on Thursday, April 21, 2022, at 8:30 a.m. (PT) in Courtroom 9D, United States Courthouse, Central District of California, 350 W. 1st Street, Los Angeles, CA 90012.

IT IS SO ORDERED.

Dated: October 21, 2021



The Honorable George H. Wu
United States District Judge