

IN THE SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

*Juana Diaz, individually and on behalf of all others similarly situated, Plaintiff v. Forever 21 Logistics, LLC, a Delaware corporation; and Doe One through and including Doe Fifty, Defendants.* Case No. BC 510004.

**NOTICE OF PROPOSED CLASS ACTION SETTLEMENT**

To: ALL FORMER AND CURRENT NONEXEMPT, HOURLY EMPLOYEES WHO WORKED FOR FOREVER 21 LOGISTICS, LLC AT ITS DISTRIBUTION CENTERS OR WAREHOUSES IN CALIFORNIA DURING THE PERIOD FROM MAY 24, 2009 THROUGH MARCH 11, 2015 WHO DID NOT WAIVE ALL WAGE AND HOUR CLAIMS ON THEIR BEHALF IN THE CLASS ACTION SETTLEMENT ENTITLED *Lozano et al. v. Forever 21, Inc. & Forever 21 Logistics, LLC*, Case No. BC413330 (“*Lozano Settlement*”)

**PLEASE READ THIS NOTICE CAREFULLY.**

Pursuant to an Order of the Los Angeles County Superior Court entered on March 11, 2015, **YOU ARE HEREBY NOTIFIED AS FOLLOWS:**

A proposed settlement (“Settlement”) has been reached among the parties in this class action pending in the Los Angeles County Superior Court, brought on behalf of all individuals described above (the “Class”). The Court has preliminarily approved the Settlement and conditionally certified the Class for purposes of the Settlement only. You have received this notice because Defendant’s records indicate that you are a member of the Class. The purpose of this Notice is to explain the terms of the Settlement and inform you of how you can make a claim under the Settlement, object to the Settlement, or elect to exclude yourself from the Settlement.

**I. BACKGROUND OF THE CASE**

On May 24, 2013, Plaintiff Juana Diaz (“Plaintiff”) commenced a purported class action against Forever 21 Logistics, LLC (“Defendant”) in Los Angeles County Superior Court, Case No. BC510004. Plaintiff alleged that she and members of the Class were: (1) not paid all overtime wages owed due to Defendant’s not including bonus payments in the regular rate of pay; (2) not provided with legally compliant meal and rest periods and not paid wage premiums for such violations; (3) not reimbursed for business expenses; and (4) not provided proper pay statements, as required by California law. Defendant filed a motion to limit the purported class to just those persons who were not signatories to arbitration agreements with Defendant. On March 10, 2014, Plaintiff amended her Complaint to redefine the class as such and added a claim for penalties under the Private Attorneys General Act of 2004 (“PAGA”), Labor Code section 2698, *et seq.* On May 23, 2014, an arbitration demand, *Aguilar, Silveria, et al. vs. Forever 21 Logistics, LLC*, JAMS Reference No. 1220048263 (containing the same allegations and claim as the class action Complaint), was submitted to JAMS on behalf of 52 claimants, each of whom worked as hourly employees in the California Forever 21 warehouses and *were* parties to arbitration agreements. An additional 134 claimants were later added to the arbitration demand. On or about October 24, 2014, Class Counsel filed a Second Amended Complaint to: (1) redefine the class as all former and current nonexempt, hourly employees who worked for Forever 21 Logistics, LLC at its Distribution Centers or warehouses in California during the period May 24, 2009 to present who did not waive all wage and hour claims on their behalf in the Class Action Settlement entitled *Lozano et al. v. Forever 21, Inc. & Forever 21 Logistics, LLC*, Case No. BC413330; and (2) add a claim for unpaid minimum and overtime wages under the federal Fair Labor Standards Act of 1938 (“FLSA”), as amended, 29 U.S.C. section 201, *et seq.* The original and amended Complaints seek recovery of allegedly unpaid wages, meal and rest period payments, penalties (including claims under PAGA), liquidated damages, interest, attorneys’ fees, and costs.

Defendant denies any liability or wrongdoing of any kind associated with the claims alleged and contends that, for any purpose other than settlement, this action is not appropriate for class action treatment. Defendant further contends that it has complied with the California Labor Code, the California Business and Professions Code, the applicable Industrial Welfare Commission Wage Orders, and similar federal laws, including but not limited to the federal Fair Labor Standards Act.

The parties engaged in extensive formal and informal discovery, including Defendant providing Class Counsel with Class Member name and contact information, time-keeping, payroll data and other relevant information. On October 3, 2014, the parties and their counsel participated in a full-day mediation before a well-respected mediator, Honorable Alexander H. Williams III. After good-faith, arm’s-length negotiations, the parties reached an agreement to settle the Action pursuant to the terms and conditions set forth below.

The Settlement represents a compromise and settlement of highly-disputed claims. Nothing in the Settlement is intended to or will be construed as an admission by Defendant that Plaintiff’s claims in the action have merit or that any of the Defendant bears any liability to Plaintiff or the Class on those claims.

Plaintiff, Defendant, and their counsel have concluded that the Settlement is advantageous, considering the risks and uncertainties to each side of continued litigation. The parties and their counsel have determined that the Settlement is fair, reasonable, and adequate and is in the best interests of all parties.

**QUESTIONS? CALL TOLL FREE 1-888-613-5553.**

**Claim Form must be submitted by July 29, 2015.**

## II. SUMMARY OF THE SETTLEMENT

### A. Who is included in the Settlement?

You are a Class Member, and are included in the Settlement, if you were a nonexempt, hourly employee who worked for Forever 21 Logistics, LLC at its Distribution Centers or warehouses in California during the period from May 24, 2009 to March 11, 2015 (“Covered Time Frame”) and did not waive all wage and hour claims on your behalf in the Class Action Settlement entitled *Lozano et al. v. Forever 21, Inc. & Forever 21 Logistics, LLC*, Case No. BC413330 (“*Lozano Settlement*”). “Class Members” explicitly includes those individuals who are parties in *Aguilar, Silveria, et al. vs. Forever 21 Logistics, LLC*, JAMS Reference No. 1220048263, currently pending before JAMS.

### B. What will I receive from the Settlement?

Defendant will make a settlement payment (“Settlement Payment”) to each Class Member who submits a timely and valid claim based on the formula discussed below.

The Settlement calls for the payment by Defendant of Five Hundred and Fifty Thousand Dollars (\$550,000.00) (referred to as the “Maximum Payment”). As will be set forth in more detail below, the amount available for Class Members from the \$550,000 is estimated at \$303,039, calculated as follows:

\$550,000	(Maximum Payment)
- \$183,333	(Plaintiff’s Attorneys’ Fees)
- \$7,000	(Plaintiff’s Litigation Costs)
- \$5,000	(Class Representatives’ Service Payments)
- \$21,300	(Settlement Administrator’s Costs (Estimated))
- \$15,328	(Employer Portion of Payroll Taxes)
- \$15,000	(Payment to California Labor & Workforce Development Agency)
<u>\$303,039</u>	(Net Settlement Proceeds to be paid to the Class) (Estimated)

This total will vary if the Court does not approve the requested amounts for attorneys’ fees, litigation costs, or class representatives’ service payments, or the cost of administration is different than estimated.

Each Class Member’s recovery is based on a formula that computes a dollars-per-work week amount for each Class Member.

**The estimated share you will receive under the Settlement is preprinted on your customized Claim Form accompanying this Notice.**

The amount of each Class Member’s recovery will depend on (a) the size of the Net Settlement Proceeds as finally approved by the Court; (b) the number of work weeks that each Class Member worked as an hourly or nonexempt employee at Defendant’s Distribution Centers or warehouses in California during the Covered Time Frame, excluding those work weeks that were covered through the *Lozano Settlement*; and (c) the number of eligible Class Members who submit valid Claim Forms (because if less than 100% of the Net Settlement Proceeds is claimed by Class Members, the value per Compensable Work Week will be recalculated to ensure that at least 100% of the Net Settlement Proceeds is distributed to Class Members who submitted timely and valid Claim Forms).

Each Class Member who submits a Claim Form that is completed in its entirety, signed under penalty of perjury, and postmarked by the deadline stated on the Claim Form is a “Participating Class Member” and will receive a settlement payment.

The amount that each Participating Class Member will receive will be subject to payroll and tax withholding on a portion of the payment. Thirty-five percent (35%) of the payment will be treated as wages subject to W-2 reporting and, therefore, normal payroll taxes and withholdings will be deducted pursuant to state and federal law. The remaining 65% will be treated as interest and penalties subject to IRS Form 1099 reporting. No payroll taxes will be withheld from the latter amount, and Participating Class Members will be issued an IRS Form 1099 for that portion of their payment as required by law. Participating Class Members will be responsible for correctly characterizing this compensation for tax purposes and paying any taxes owing on this amount.

### C. When will I receive my Settlement Payment?

The Settlement Payments will be paid within thirty (30) calendar days after the last of the following occurrences: (i) the 61st day after service of notice of entry of the Final Judgment, if no appeal, review, or writ has been filed; or (ii) if an appeal, review, or writ is sought from the Final Judgment, the day after the Final Order and Final Judgment are affirmed or the appeal, review, or writ is dismissed or denied, and the Final Judgment is no longer subject to further judicial review.

#### **D. What if I do not want to participate in the Settlement?**

You will not be included in the Settlement if you elect not to participate, by requesting exclusion by making a written request containing the name, address, telephone number and the last four (4) digits of your Social Security Number. Your request to be excluded must be signed by you and must be mailed to the Settlement Administrator and postmarked on or before July 29, 2015. The date of the transmission/ mailing (e.g., postmark) on the claim or mailing envelope shall be the exclusive means to determine whether a request for exclusion is timely. Any Class Member who timely requests exclusion in compliance with these requirements: (a) shall not have any rights under this Settlement; (b) shall not receive a portion of the settlement; and (c) shall not be bound by this Agreement or the Final Judgment. If a Class Member submits both a request for exclusion and Claim Form, the Claim Form will be accepted and the request for exclusion disregarded, and the Class Member will be treated as a verified claimant entitled to receive his/her share of the Net Settlement Proceeds.

#### **E. What if I do nothing: do not request exclusion and do not submit a Claim Form?**

If you do not timely submit a Claim Form nor request exclusion, you will forfeit any rights you would otherwise have to sue Defendant for claims that your rights under California overtime laws and certain other wage-and-hour laws have been violated, and you will not receive a Settlement Payment. However, if you do not submit a Claim Form nor submit a timely and valid request exclusion, you will not be waiving any rights that you may have under the FLSA. If you submit a valid and timely Claim Form, you will receive a Settlement Payment, and you will give up any rights you would otherwise have to sue Defendant for claims that your rights have been violated under California and federal overtime laws and other related wage-and-hour laws, as described more fully in the Release of Claims below.

#### **F. Release of Claims.**

The Class Members (other than those who submit a timely and valid exclusion request) release and discharge Forever 21 Logistics, LLC, Forever 21, Inc. and all of their former and present parents, subsidiaries, and affiliates, and their current and former officers, directors, employees, partners, shareholders and agents, and the predecessors and successors, assigns, and legal representatives of all such entities and individuals ("Released Parties"), from any and all of the following claims with respect to acts and omissions during the time period from May 24, 2009 through the date of final court approval of the Settlement: (a) failure to pay all wages owed, including overtime wages (Cal. Lab. Code §§ 510, 1994); (b) failure to pay all wages owed, including overtime wages to the extent permissible under the federal Fair Labor Standards Act, as amended ("FLSA"), 29 U.S.C. § 201 (excluding FLSA claims, only, by those Class Members who do not submit Claim Forms pursuant to this Settlement); (c) failure to provide compliant meal and rest periods and failure to pay wage premiums for alleged meal and rest break violations (Cal. Lab. Code §§ 226.7, 512); (d) failure to provide accurate wage statements (Cal. Lab. Code §§ 226, 226.3 and 226.6 et seq.); (e) waiting-time penalties (Cal. Lab. Code § 203); (f) unfair business practices and/or unfair competition (Cal. Bus. & Prof. Code §§ 17200 et seq.); (g) failure to reimburse for business expenses (Cal. Lab. Code § 2802); (h) civil penalties pursuant to the Labor Code Private Attorneys General Act of 2004 ("PAGA") (Cal. Lab. Code §§ 2698 et seq.) that were or could have been based on the facts and legal theories raised in the Second Amended Complaint; (i) any other claims or penalties under the wage and hour laws pleaded in the Second Amended Complaint or that could have been pleaded based on the allegations contained in the Second Amended Complaint; and (j) all damages, penalties, interest and other amounts recoverable pursuant to (a)-(i) to the extent permissible under the California Labor Code, California Industrial Welfare Commission Orders; the California Unfair Competition Law, and the FLSA (excluding FLSA claims, only, by those Class Members who do not submit Claim Forms pursuant to this Settlement) (collectively, "Released Claims").

#### **G. Class Representatives' Service Payments.**

In addition to her share as Participating Class Member, Plaintiff Juana Diaz will be paid up to \$5,000, subject to Court approval, for her service as Class Representative, as well as her willingness to accept the risks of an unsuccessful outcome. This payment will be paid out of the Maximum Payment.

#### **H. Attorneys' Fees.**

Class Counsel will seek approval from the Court for payment of attorneys' fees in the amount of one-third of the Maximum Payment (or \$183,333), plus costs not to exceed \$7,000. These amounts, if approved by the Court, will be paid out of the Maximum Payment. Defendant will not oppose Class Counsel's request for these amounts.

#### **I. Settlement Administrator.**

The Court has appointed Phoenix Settlement Administrators to act as an independent Settlement Administrator to process this Settlement and assist in resolving any disputes concerning a person's eligibility to participate in the Settlement and his or her share of the Net Settlement Proceeds.

#### **J. Costs of Administration.**

The costs of administering the Settlement will be paid out of the Maximum Payment. The Settlement Administrator estimates that this amount will be approximately \$21,300.

#### **K. Payment to the Labor & Workforce Development Agency.**

In addition, Defendant will pay \$15,000 to the State of California Labor & Workforce Development Agency, to be paid out of the Maximum Payment, in settlement of any and all claims for civil penalties that were or could have been sought in the Action.

### **III. PLAINTIFF AND CLASS COUNSEL SUPPORT THE SETTLEMENT**

Plaintiff, as Class Representative, and Class Counsel support this Settlement. Their reasons include the inherent risk of denial of class certification, the risk of a trial on the merits, and the inherent delays and uncertainties associated with litigation. Based on their experience litigating similar cases, Class Counsel believe that further proceedings in this case, including a trial and probable appeals, would be very expensive and protracted. No one can confidently predict how the various legal questions at issue, including the amount of damages, would ultimately be resolved, or at what additional cost. Therefore, upon careful consideration of all the facts and circumstances of this case, Class Counsel believe that the Settlement is fair, reasonable, and adequate.

### **IV. WHAT ARE YOUR RIGHTS AS A CLASS MEMBER?**

#### **A. Participating in the Settlement.**

Plaintiff, as Class Representative, and Class Counsel represent your interests as a Class Member. Unless you elect not to participate in the Settlement by timely requesting exclusion, you are a part of the Class, and you will be bound by the terms of the Settlement and any final judgment that may be entered by the Court. You will also be deemed to have released the wage-and-hour claims described in Section II, Paragraph F above against Defendant and the other Released Parties. If you submit a valid and timely Claim Form, you will receive a Settlement Payment and will forfeit any rights you would otherwise have to sue Defendant for claims (as described in Section II, Paragraph F) that your rights under California and federal wage-and-hour laws have been violated. As a member of the Class, you will not be responsible for the payment of attorneys' fees or reimbursement of litigation expenses unless you retain your own counsel, in which event you will be responsible for your own attorneys' fees and costs.

#### **B. Disputes as to Class Members' Compensable Work Weeks.**

The Claim Form enclosed with this Notice lists: (1) the time period during the Covered Time Frame that Defendant's records show that you worked as an hourly or nonexempt employee at a Forever 21 Distribution Center or warehouse in California during the Covered Time Frame; and (2) your total number of Compensable Work Weeks, defined as the number of work weeks you worked as an hourly or nonexempt employee at Defendant's Distribution Centers or warehouses in California during the Covered Time Frame, excluding those weeks covered through the *Lozano* Settlement.

If you believe your Claim Form incorrectly lists: (1) your dates worked as an hourly or nonexempt employee at a Forever 21 Distribution Center or warehouse in California during the Covered Time Frame; and/or (2) the number of Compensable Work Weeks you worked during the Covered Time Period, you should explain your disagreement on the signed and completed Claim Form, and mail it to the Settlement Administrator along with any documents that you believe show that the information on the Claim Form is incorrect, postmarked no later than July 29, 2015.

The Settlement Administrator will evaluate the evidence you submit and, after reviewing Defendant's records, the Settlement Administrator, together with counsel for the parties, will make the final decision as to which dates should be applied and/or your total number of Compensable Work Weeks. The determination by the Settlement Administrator will be final and not subject to further review.

#### **C. Objecting to the Settlement.**

You may object to the terms of the Settlement before final approval by submitting a written notice of your objections in the manner described below. If you timely submit written objections, you may also submit a notice of your intent to appear and object at the final approval hearing, if you wish to do so. If you submit a written objection, you may also submit a Claim Form. If the Court rejects your objection and you have not also submitted a Claim Form, you will not receive a Settlement Payment, but you will be bound by the terms of the Settlement.

To object to the Settlement, you must send a written notice of your objections, and also, if you wish, a written notice of your intent to appear and object at the final approval hearing, to the Settlement Administrator at the address shown below. Any written objection and/or notice of your intent to appear at the hearing must reference the name of the case and case number, *Juana Diaz, individually and on behalf of all others similarly situated, Plaintiff v. Forever 21 Logistics, LLC, a Delaware*

corporation; and Doe One through and including Doe Fifty, Defendants. Case No. BC 510004 and must state: (1) your full name; (2) your address; (3) the time period you worked as an hourly or nonexempt employee at a Forever 21 Distribution Center or warehouse in California ; and (4) in clear concise terms the basis of each objection, including the factual and legal arguments supporting the objection. To be valid and effective, any written objections and/or notices of intent to appear at the hearing must be postmarked to the Settlement Administrator not later than June 15, 2015. A Class Member who fails to submit a written statement of objections in the manner described above, by the specified deadline, will be deemed to have waived any objections and will be foreclosed from making any objection to the Settlement, whether by appeal or otherwise.

If you wish to object to Class Counsel's request for attorneys' fees and costs under the Settlement, you may do so by following the same procedure as described in the preceding paragraph.

If you request exclusion from the Class, you may not also submit objections to the Settlement or to Class Counsel's request for attorneys' fees and costs, nor may you appear at the hearing to present any objections. If you exclude yourself, you have no basis to object, because the case no longer affects you. However, if you exclude yourself, you will have the right to pursue your own claims against Defendant in a separate proceeding, if you wish.

Send Your Notice of Objections To:

Forever 21 Logistics, LLC Wage and Hour  
c/o Phoenix Settlement Administrators  
PO Box 27907  
Santa Ana, CA 92799

**D. Excluding Yourself from the Settlement.**

If you do not wish to participate in the Settlement, you must make a written request for exclusion. To be valid, the request for exclusion must contain your name, address, telephone number, and the last four (4) digits of your Social Security Number, and your signature, and must be mailed to:

Forever 21 Logistics, LLC Wage and Hour  
c/o Phoenix Settlement Administrators  
PO Box 27907  
Santa Ana, CA 92799

The request for exclusion must be postmarked on or before July 29, 2015. The date of the transmission/ mailing (e.g., postmark) on the claim or mailing envelope shall be the exclusive means to determine whether a request for exclusion is timely.

A Class Member who fails to submit a request for exclusion in the manner and by the deadline specified above will be bound by all terms and conditions of the Settlement and the Judgment if the Settlement is approved by the Court, regardless of whether he or she has objected to the Settlement (except that Class Members who do not file Claim Forms will not waive their federal claims under the FLSA).

Any Class Member who submits a complete and timely request for exclusion will, upon its receipt by the Settlement Administrator, no longer be a member of the Settlement Class, will be barred from participating in any portion of the Settlement, and will receive no benefits from the Settlement. Any such persons may, at their own expense, pursue any claims they may have against Defendant in a separate proceeding.

**DO NOT SUBMIT BOTH A REQUEST FOR EXCLUSION AND A CLAIM FORM.**

IF YOU SUBMIT BOTH, AND IF THE SETTLEMENT ADMINISTRATOR IS UNABLE TO CONTACT YOU TO ASCERTAIN YOUR INTENT, THE REQUESTED EXCLUSION WILL BE DEEMED INVALID, THE TIMELY CLAIM FORM WILL BE ACCEPTED FOR PAYMENT PURSUANT TO THE TERMS OF THE SETTLEMENT, AND YOU WILL BE BOUND BY THE TERMS OF THE SETTLEMENT.

**E. Claiming a Share of the Net Settlement Proceeds.**

To receive your share of the Net Settlement Proceeds, you must sign the enclosed Claim Form and return it in the enclosed pre-addressed, postage-paid envelope, to:

Forever 21 Logistics, LLC Wage and Hour  
c/o Phoenix Settlement Administrators  
PO Box 27907  
Santa Ana, CA 92799

To be valid, the Claim Form must include the last four digits of your social security number and be dated and signed by you under penalty of perjury. The Claim Form must be mailed with a postmark of not later than **July 29, 2015**. A Class Member who fails to submit a Claim Form in the manner and by the deadline specified above **will not** receive a share of the Net Settlement Proceeds. If that Class Member also fails to submit a valid and timely request for exclusion, the Class Member will be bound by all terms and conditions of the Settlement and the Judgment, if the Settlement is approved by the Court (except as to federal claims under the Fair Labor Standards Act), even though the Class Member did not receive a share of the Net Settlement Proceeds.

#### **V. FINAL SETTLEMENT APPROVAL HEARING**

The Court will hold a final approval hearing in Department 307 of the Superior Court of California, County of Los Angeles, located at 600 South Commonwealth Avenue Los Angeles, CA 90005, on September 22, 2015, at 9:00 a.m., to determine whether the Settlement should be finally approved as fair, reasonable, and adequate. At this hearing, the Court will also be asked to approve Class Counsel's request for costs and attorneys' fees and Plaintiff's request for service payments as the Class Representatives.

The hearing may be postponed without further notice to the Class. It is not necessary for you to appear at this hearing. If you have given notice of your objection to the Settlement, you may show up and ask to speak at the hearing, or have an attorney represent you at the hearing at your own expense, but only if by June 15, 2015 you have filed a notice of your intent to appear at the hearing, in accordance with the instructions set forth above.

If the Settlement is not approved by the Court or does not become final for some other reason, the litigation will continue.

#### **VI. GETTING MORE INFORMATION**

The above is a summary of the basic terms of the Settlement. For the precise terms and conditions of the Settlement, you are referred to the detailed Settlement Agreement and Joint Stipulation, which is on file with the Clerk of the Court. The pleadings and other records in this litigation, including the Joint Stipulation of Class Settlement, may be examined at any time during regular business hours in the office of the Clerk, Superior Court for the State of California, County of Los Angeles, Department 307, 600 South Commonwealth Avenue, Los Angeles, CA 90005. **You may also contact the Settlement Administrator at: 1-888-613-5553, or Class Counsel listed below for more information:**

Jonathan Ricasa  
Law Office of Jonathan Ricasa  
2341 Westwood Blvd., Suite 7  
Los Angeles, CA 90064  
Telephone: (424) 248-0510  
Facsimile: (424) 204-0652

Briana M. Kim  
Briana Kim, PC  
249 East Ocean Boulevard, Suite 814  
Long Beach, California 90802  
Telephone: (714) 482-6301  
Facsimile: (714) 482-6302

Additional information will be posted on the following website: [www.phoenixclassaction.com/DiazForever21](http://www.phoenixclassaction.com/DiazForever21).

#### **IMPORTANT:**

- 1. PLEASE DO NOT TELEPHONE THE COURT OR DEFENDANT' COUNSEL FOR INFORMATION REGARDING THIS SETTLEMENT OR THE CLAIM PROCESS!**
- 2. If you move to a different address, please send the Settlement Administrator your new address. It is your responsibility to keep a current address on file with the Settlement Administrator to ensure receipt of your Settlement Payment.**
- 3. It is strongly recommended that you keep a copy of your completed Claim Form and proof of its timely submission until after you have received your Settlement Payment.**