

1 **SHUB & JOHNS LLC**  
 2 Jonathan Shub (ID No. 237708)  
 Benjamin F. Johns  
 3 Samantha E. Holbrook  
 4 Four Tower Bridge  
 200 Barr Harbor Drive, Suite 400  
 5 Conshohocken, PA 19428  
 6 (610) 477-8380  
 7 jshub@shublawyers.com  
 bjohns@shublawyers.com  
 8 sholbrook@shublawyers.com

9 *Attorneys for Plaintiff*

10  
 11 **IN THE UNITED STATES DISTRICT COURT**  
**FOR THE CENTRAL DISTRICT OF CALIFORNIA**  
 12

13 BRITTNEY MOLL, individually and on  
 14 behalf of all others similarly situated,

15 Plaintiff,

16 v

17  
 18 F21 OPCO LLC D/B/A FOREVER 21;  
 19 and DOES 1 through 10, inclusive,

20 Defendants.

Case No.:

CLASS ACTION

JURY TRIAL DEMANDED



1 plans, including enrollment and premiums paid.<sup>1</sup>

2  
3 3. Social Security numbers are particularly valuable to criminals. This  
4 information can be sold and traded on the dark web black market. The loss of a  
5 Social Security number is particularly troubling because it cannot be easily  
6 changed and can be misused in a range of nefarious activities, such as filing  
7 fraudulent tax returns to steal tax refund payments, opening new accounts to take  
8 out loans, and other forms of identity theft.  
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11 4. The Data Breach was a direct result of Forever 21's failure to  
12 implement adequate and reasonable cybersecurity procedures and protocols  
13 necessary to protect Plaintiff and Class Members' Private Information.  
14 Inexplicitly, Defendants have acknowledged that the cybersecurity attack occurred  
15 on March 20, 2023, but waited until August 2023 before contacting Class  
16 Members.  
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19 5. According to a notice of data breach filed with the Attorney General  
20 of Maine, the Data Breach has affected 539,207 individuals.<sup>2</sup>  
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25 <sup>1</sup> Entertainment Partners Notifies 471k of Recent Social Security Number Data  
26 Breach, JDSUPRA.COM, <https://www.jdsupra.com/legalnews/entertainment-partners-notifies-471k-of-3579067/> (last accessed August 16, 2023).

27 <sup>2</sup> Data Breach Letter,  
28 <https://apps.web.maine.gov/online/aeviewer/ME/40/dfe496ce-bd38-477c-912a->



1 exceeds 100, many of whom have different citizenship, including certain Plaintiff.  
2 Thus, minimal diversity exists under 28 U.S.C. § 1332(d)(2)(A).  
3

4 9. This Court has personal jurisdiction over Forever 21 because its  
5 principal place of business is in this District and it conducts substantial business in  
6 this District.  
7

8 10. Venue is proper in this District because Forever 21's principal place  
9 of business is in this District and a significant amount of the events leading to  
10 Plaintiff's causes of action occurred in this District.  
11

12 **PARTIES**

13 **Plaintiffs**

14  
15 11. Plaintiff Brittney Moll is an adult, who at all relevant times, was a  
16 resident and citizen of Santa Clara County in the state of California.  
17

18 12. On or around September 6, 2023, Plaintiff Moll received a notice from  
19 Forever 21 informing her that her PII had been compromised during the Data  
20 Breach.  
21

22 13. Plaintiff Moll was previously employed by Defendant at the Forever  
23 21 Great Mall Location at 447 Great Mall Drive, Milpitas, CA 95035. She worked  
24 as a Sales Associate in 2020. She provided her Personal Information to Forever 21  
25 as a condition of her employment, and reasonably anticipated that Forever 21  
26 would safeguard this information.  
27  
28

1 14. Plaintiff Moll has spent several hours addressing the fraudulent  
2 activity and otherwise as a result of the Data Breach. The time spent dealing with  
3 these incidents resulting from the Data Breach is time Plaintiff Moll otherwise  
4 would have spent on other activities, such as work and/or recreation. Moreover,  
5 the time Plaintiff lost was spent at Defendants' direction. Indeed, in the notice letter  
6 Plaintiff Moll received, Defendants directed Plaintiff to spend time mitigating  
7 harm on her accounts by monitoring her personal information for unauthorized  
8 activity.  
9  
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12 15. Plaintiff Moll plans on taking additional time-consuming, necessary  
13 steps to help mitigate the harm caused by the Data Breach, including continually  
14 reviewing her accounts for any unauthorized activity.  
15

16 **Defendants**  
17

18 16. Defendant F21 OpCo LLC d/b/a Forever 21 is a fashion retailer that  
19 sells accessories, beauty products, home goods, and clothing for women, men and  
20 children. Its principal place of business and headquarters is located at 110 East 9th  
21 Street, Suite A500, Los Angeles, California, 90079.  
22

23 17. The true names and capacities, whether individual, corporate,  
24 associate, representative, alter ego or otherwise, of defendants named in this action  
25 as DOES 1 through 10 inclusive are presently unknown to Plaintiff, who therefore  
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sues such defendants by such fictitious names. Plaintiff will seek to amend this

1 Complaint to allege the true names and capacities of DOES 1 through 10 when the  
2 same have been ascertained. Plaintiff is informed and believes, and based thereon  
3  
4 alleges, that DOES 1 through 10 were and/or are, in some manner or way,  
5 responsible for and liable to Plaintiff and the Class Members for the events,  
6  
7 happenings, and damages set forth below.

8 18. Plaintiff is informed and believes, and based thereon alleges, that at  
9 all relevant times mentioned herein, Defendants acted as agents, employees,  
10 supervisors, partners, conspirators, servants and/or joint venturers of each other,  
11 and in doing the acts hereafter alleged, were acting within the course, scope, and  
12 authority of such agency, employment, partnership, conspiracy, enterprise and/or  
13 joint venture, and with the express and/or implied permission, knowledge, consent,  
14 authorization and ratification of their co-defendants.  
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18 **FACTUAL ALLEGATIONS**

19 19. Plaintiff and the proposed Class are customers of Defendants. Forever  
20  
21 is an organization in the fashion industry who describes itself as “a fashion  
22 industry leader making the latest trends accessible to all while inspiring unique  
23 style and confidence.”<sup>3</sup>  
24

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27 <sup>3</sup> <https://www.forever21.com/us/aboutus/aboutus.html> (last accessed on September  
28 6, 2023)

1           20. As noted above, Plaintiff brings this class action against Forever 21  
2 for Defendants’ failure to properly secure and safeguard personally identifiable  
3 information, for failing to comply with industry standards to protect and safeguard  
4 that information, and for failing to provide timely, accurate, and adequate notice  
5 to Plaintiff and other members of the Class that such information had been  
6 compromised.  
7  
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9           **Forever 21’s Unsecure Data Management and Disclosure of Data Breach**  
10

11           21. Plaintiff and Class Members provided their PII to Forever 21 with the  
12 reasonable expectation and mutual understanding that Forever 21 would comply  
13 with its obligations to keep such information confidential and secure from  
14 unauthorized access.  
15

16           22. Data security is purportedly a critical component of Forever 21’s  
17 business model. On its website, it maintains “.... our main goals are to gain and  
18 maintain your trust, including by addressing any questions or concerns you might  
19 have about the privacy and safety of your personal information when it is in our  
20 hands. In this regard, we have partnered with OneTrust, a leading technology  
21 platform, to allow us to better communicate with you and to respond to your  
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1 requests more efficiently. maintain similar advanced standards for their hosting  
2 facilities to protect against unauthorized access.”<sup>4</sup>  
3

4 23. According to its August 29, 2023 letter concerning the breach, on or  
5 around March 20, 2023, Forever 21 noticed that “an unauthorized third party  
6 accessed certain Forever 21 systems at various times between January 5, 2023 and  
7 March 21, 2023. Findings from the investigation indicate the unauthorized third  
8 party obtained select files from certain Forever 21 systems during this time period,  
9  
10  
11 <sup>5</sup> impacting the personal information of Plaintiff and Class Members.

12 24. The database files that were compromised by the unnamed  
13 “sophisticated threat actor” included names, mailing addresses, Social Security  
14 numbers and other information related to prior productions.  
15

16 25. As such, Forever 21 failed to secure the PII of the individuals that  
17 provided it with this sensitive information. It failed to take appropriate steps to  
18 protect the PII of Plaintiff and other Class Members from being disclosed.  
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26 <sup>4</sup> <https://www.forever21.com/us/privacypolicy.html> (last accessed on September 6,  
27 2023)

28 <sup>5</sup> Data Breach Letter.

1                   **Plaintiff and the Class Have Suffered Injury as a Result of Forever 21’s**  
2                   **Data Mismanagement**

3                   26. As a result of Forever 21’s failure to implement and follow even the  
4 most basic security procedures, Plaintiff’s and Class Members’ Private  
5 Information has been and is now in the hands of “an unauthorized third party”  
6 which may include thieves, unknown criminals, banks, credit companies, and other  
7 potentially hostile individuals. Plaintiff and other Class Members now face an  
8 increased risk of identity theft, particularly due to the dissemination of personal  
9 information, such as their name, Social Security number, date of birth, bank  
10 account numbers, and/or information regarding their Forever21 health plan,  
11 including enrollment and premiums paid, and will consequentially have to spend,  
12 and will continue to spend, significant time and money to protect themselves due  
13 to Forever 21’s Data Breach.  
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18                   27. Plaintiff and other Class Members have had their most personal,  
19 sensitive and Private Information disseminated to the public at large and have  
20 experienced and will continue to experience emotional pain and mental anguish  
21 and embarrassment.  
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24                   28. Plaintiff and Class Members face an increased risk of identity theft,  
25 phishing attacks, and related cybercrimes because of the Data Breach. Those  
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1 impacted are under heightened and prolonged anxiety and fear, as they will be at  
2 risk for falling victim for cybercrimes for years to come.  
3

4 29. PII is a valuable property right.<sup>6</sup> The value of PII as a commodity is  
5 measurable. “Firms are now able to attain significant market valuations by  
6 employing business models predicated on the successful use of personal data  
7 within the existing legal and regulatory frameworks.”<sup>7</sup> American companies are  
8 estimated to have spent over \$19 billion on acquiring personal data of consumers  
9 in 2018.<sup>8</sup> It is so valuable to identity thieves that once PII has been disclosed,  
10 criminals often trade it on the “cyber black-market,” or the “dark web,” for many  
11 years.  
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20 <sup>6</sup> See Marc van Lieshout, *The Value of Personal Data*, 457 IFIP ADVANCES IN  
21 INFORMATION AND COMMUNICATION TECHNOLOGY 26 (May 2015),  
22 [https://www.researchgate.net/publication/283668023\\_The\\_Value\\_of\\_Personal\\_Data](https://www.researchgate.net/publication/283668023_The_Value_of_Personal_Data) (“The value of [personal] information is well understood by marketers who try to collect as much data about personal conducts and preferences as possible...”).

23 <sup>7</sup> *Exploring the Economics of Personal Data: A Survey of Methodologies for*  
24 *Measuring Monetary Value*, OECD 4 (Apr. 2, 2013), [https://www.oecd-ilibrary.org/science-and-technology/exploring-the-economics-of-personal-](https://www.oecd-ilibrary.org/science-and-technology/exploring-the-economics-of-personal-data_5k486qtxldmq-en)  
25 [data\\_5k486qtxldmq-en](https://www.oecd-ilibrary.org/science-and-technology/exploring-the-economics-of-personal-data_5k486qtxldmq-en).

26 <sup>8</sup> *U.S. Firms to Spend Nearly \$19.2 Billion on Third-Party Audience Data and*  
27 *Data-Use Solutions in 2018, Up 17.5% from 2017*, INTERACTIVE ADVERTISING  
28 BUREAU (Dec. 5, 2018), <https://www.iab.com/news/2018-state-of-data-report/>.

1           30. As a result of its real value and the recent large-scale data breaches,  
2 identity thieves and cyber criminals have openly posted credit card numbers, Social  
3 Security numbers, PII, and other sensitive information directly on various Internet  
4 websites, making the information publicly available. This information from  
5 various breaches, including the information exposed in the Data Breach, can be  
6 aggregated and become more valuable to thieves and more damaging to victims.  
7

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9           31. Personal information can be sold at a price ranging from \$40 to \$200,  
10 and bank details have a price range of \$50 to \$200.<sup>9</sup> Experian reports that a stolen  
11 credit or debit card number can sell for \$5 to \$110 on the dark web.<sup>10</sup> Criminals  
12 can also purchase access to entire company data breaches from \$900 to \$4,500.<sup>11</sup>  
13

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15           32. Consumers place a high value on the privacy of that data. Researchers  
16 shed light on how much consumers value their data privacy—and the amount is  
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20 <sup>9</sup> Anita George, *Your personal data is for sale on the dark web. Here's how much*  
21 *it costs*, Digital Trends (Oct. 16, 2019),  
22 <https://www.digitaltrends.com/computing/personal-data-sold-on-the-dark-web-how-much-it-costs/>.

23 <sup>10</sup> Brian Stack, *Here's How Much Your Personal Information Is Selling for on the*  
24 *Dark Web*, Experian (Dec. 6, 2017), <https://www.experian.com/blogs/ask-experian/heres-how-much-your-personal-information-is-selling-for-on-the-dark-web/>

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26 <sup>11</sup> *In the Dark*, VPNOverview.com, 2019,  
27 <https://vpnoverview.com/privacy/anonymous-browsing/in-the-dark/> (last accessed  
28 on August 16, 2023).

1 considerable. Indeed, studies confirm that “when privacy information is made  
2 more salient and accessible, some consumers are willing to pay a premium to  
3 purchase from privacy protective websites.”<sup>12</sup>  
4

5 33. Given these facts, any company that transacts business with a  
6 consumer and then compromises the privacy of consumers’ Private Information  
7 has thus deprived that consumer of the full monetary value of the consumer’s  
8 transaction with the company.  
9  
10

11 34. Cyberattacks have become so notorious that the FBI and U.S. Secret  
12 Service have issued a warning to potential targets so they are aware of, and  
13 prepared for, a potential attack. As one report explained, “[e]ntities like smaller  
14 municipalities and hospitals are attractive to ransomware criminals... because they  
15 often have lesser IT defenses and a high incentive to regain access to their data  
16 quickly.<sup>13</sup>  
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24 <sup>12</sup> Janice Y. Tsai et al., *The Effect of Online Privacy Information on Purchasing*  
25 *Behavior, An Experimental Study*, 22(2) INFORMATION SYSTEMS RESEARCH 254  
(June 2011), <https://www.jstor.org/stable/23015560?seq=1>.

26 <sup>13</sup> Ben Kochman, *FBI, Secret Service Warn of Targeted Ransomware*, LAW360  
27 (Nov. 18, 2019), [https://www.law360.com/articles/1220974/fbi-secret-service-](https://www.law360.com/articles/1220974/fbi-secret-service-warn-of-targeted-ransomware)  
28 [warn-of-targeted-ransomware](https://www.law360.com/articles/1220974/fbi-secret-service-warn-of-targeted-ransomware) (last visited February 13, 2023).

1           35. Plaintiff and members of the Class, as a whole, must immediately  
2 devote time, energy, and money to: 1) closely monitor their bills, records, and  
3 credit and financial accounts; 2) change login and password information on any  
4 sensitive account even more frequently than they already do; 3) more carefully  
5 screen and scrutinize phone calls, emails, and other communications to ensure that  
6 they are not being targeted in a social engineering or spear phishing attack; and 4)  
7 search for suitable identity theft protection and credit monitoring services, and pay  
8 to procure them.  
9  
10

11           36. Once PII is exposed, there is virtually no way to ensure that the  
12 exposed information has been fully recovered or contained against future misuse.  
13 For this reason, Plaintiff and Class Members will need to maintain these heightened  
14 measures for years, and possibly their entire lives, as a result of Forever 21's  
15 conduct. Further, the value of Plaintiff's and Class Members' PII has been  
16 diminished by its exposure in the Data Breach.  
17  
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19           37. As a result of Forever 21's failures, Plaintiff and Class Members are  
20 at substantial risk of suffering identity theft and fraud or misuse of their Private  
21 Information.  
22  
23

24           38. Plaintiff and members of the Class suffered actual injury from having  
25 PII compromised as a result of Forever 21's negligent data management and  
26 resulting Data Breach including, but not limited to (a) damage to and diminution  
27  
28

1 in the value of their PII, a form of property that Forever 21 obtained from Plaintiff;  
2 (b) violation of their privacy rights; and (c) present and increased risk arising from  
3 the identity theft and fraud.  
4

5 39. For the reasons mentioned above, Forever 21's conduct, which  
6 allowed the Data Breach to occur, caused Plaintiff and members of the Class these  
7 significant injuries and harm.  
8

9 40. Plaintiff brings this class action against Forever 21 for their failure to  
10 properly secure and safeguard PII and for failing to provide timely, accurate, and  
11 adequate notice to Plaintiff and other Class Members that their Private Information  
12 had been compromised.  
13  
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15 41. Plaintiff, individually and on behalf of all other similarly situated  
16 individuals, alleges claims in negligence, negligence per se, breach of implied  
17 contract, breach of fiduciary duty, and unjust enrichment, violations of the  
18 California Consumer Privacy Act and California Legal Remedies Act, and  
19 California's Unfair Competition Law.  
20  
21

22 **CLASS ACTION ALLEGATIONS**

23 42. This action is brought, and may properly proceed, as a class action,  
24 pursuant to the California Rules of Court.  
25

26 43. Plaintiff seeks certification of a class defined as follows:  
27  
28

1 All persons whose PII was compromised in the Data Breach as  
2 detected by Forever 21 on or around March 20, 2023, including all  
3 who received Notice of the Data Breach (the “Class”).

4 44. Excluded from the Class are Forever 21’s officers and directors, and  
5 any entity in which Forever 21 has a controlling interest; and the affiliates, legal  
6 representatives, attorneys, successors, heirs, and assigns of Forever 21. Excluded  
7 also from the Class are members of the judiciary to whom this case is assigned,  
8 their families and members of their staff.  
9

10 45. **Numerosity**: The members of the Class are so numerous that joinder  
11 of all of them is impracticable. As noted above, there are approximately 539,207  
12 consumers affected.  
13

14 46. **Existence/Predominance of Common Questions of Fact and Law**:  
15 There are questions of law and fact common to the Class, which predominate over  
16 any questions affecting only individual Class Members. These common questions  
17 of law and fact include, without limitation:  
18  
19

- 20
- 21 a. Whether Forever 21 unlawfully used, maintained, lost, or disclosed  
22 Plaintiff’s and Class Members’ Private Information;  
23
  - 24 b. Whether Forever 21 failed to implement and maintain reasonable  
25 security procedures and practices appropriate to the nature and scope  
26 of the information compromised in the Data Breach;  
27
- 28



- c. Whether Forever 21's data security systems prior to and during the Data Breach complied with applicable data security laws and regulations;
- d. Whether Forever 21's data security systems prior to and during the Data Breach were consistent with industry standards;
- e. Whether Forever 21 owed a duty to Class Members to safeguard their Private Information;
- f. Whether Forever 21 breached its duty to Class Members to safeguard their Private Information;
- g. Whether computer hackers obtained Class Members' Private Information in the Data Breach;
- h. Whether Forever 21 knew or should have known that its data security systems and monitoring processes were deficient;
- i. Whether Forever 21's conduct was negligent;
- j. Whether Forever 21's acts, inactions, and practices complained of herein amount to acts of intrusion upon seclusion under the law;
- k. Whether Forever 21's acts breaching an implied contract they formed with Plaintiff and the Class Members;
- l. Whether Forever 21 violated the Federal Trade Commission Act

1 (“FTC Act”);

2 m. Whether Forever 21 was unjustly enriched to the detriment of Plaintiff  
3 and the Class;

4 n. Whether Forever 21 failed to provide notice of the Data Breach in a  
5 timely manner; and

6 o. Whether Plaintiff and Class Members are entitled to damages, civil  
7 penalties, punitive damages, and/or injunctive relief.

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11 47. **Typicality**: Plaintiff’s claims are typical of those of other Class  
12 Members because Plaintiff’s Private Information, like that of every other Class  
13 Member, was compromised in the Data Breach.

14  
15 48. **Adequacy**: Plaintiff is an adequate representative for the Class  
16 because her interests do not conflict with the interests of the Class that she seeks  
17 to represent. Plaintiff has retained counsel competent and highly experienced in  
18 complex class action litigation—including consumer fraud and automobile defect  
19 class action cases—and counsel intends to prosecute this action vigorously. The  
20 interests of the Class will be fairly and adequately protected by Plaintiff and her  
21 experienced counsel.

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25 49. **Superiority**: A class action is superior to all other available means  
26 of fair and efficient adjudication of the claims of Plaintiff and members of the Class.  
27

1 The injury suffered by each individual Class Member is relatively small in  
2 comparison to the burden and expense of individual prosecution of the complex  
3 and extensive litigation necessitated by Forever 21's conduct. It would be virtually  
4 impossible for members of the Class individually to redress effectively the wrongs  
5 done to them by Forever 21. Even if Class Members could afford such individual  
6 litigation, the court system could not. Individualized litigation presents a potential  
7 for inconsistent or contradictory judgments. Individualized litigation increases the  
8 delay and expense to all parties, and to the court system, presented by the complex  
9 legal and factual issues of the case. By contrast, the class action device presents far  
10 fewer management difficulties, and provides the benefits of single adjudication, an  
11 economy of scale, and comprehensive supervision by a single court. Upon  
12 information and belief, members of the Class can be readily identified and notified  
13 based upon, *inter alia*, the records (including databases, e-mails, dealership records  
14 and files, etc.) Forever 21 maintains regarding their consumers.  
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21 50. Defendant has acted, and refuses to act, on grounds generally  
22 applicable to the Class, thereby making appropriate final equitable relief with  
23 respect to the Class as a whole.  
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**CLAIMS FOR RELIEF**

**COUNT I**  
**NEGLIGENCE**

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51. Plaintiff realleges and incorporates by reference all preceding paragraphs as if fully set forth herein.

52. Forever 21 owed a duty to Plaintiff and all other Class Members to exercise reasonable care in safeguarding and protecting their PII in its possession, custody, or control.

53. Forever 21 knew, or should have known, the risks of collecting and storing Plaintiff's and all other Class Members' PII and the importance of maintaining secure systems. Forever 21 knew, or should have known, of the vast uptick in data breaches in recent years. Forever 21 had a duty to protect the PII of Plaintiff and Class Members.

54. Given the nature of Forever 21's business, the sensitivity and value of the PII it maintains, and the resources at its disposal, Forever 21 should have identified the vulnerabilities to its systems and prevented the Data Breach from occurring, which Forever 21 had a duty to prevent.

55. Forever 21 breached these duties by failing to exercise reasonable care in safeguarding and protecting Plaintiff's and Class Members' Private Information by failing to design, adopt, implement, control, direct, oversee, manage, monitor,

1 and audit appropriate data security processes, controls, policies, procedures,  
2 protocols, and software and hardware systems to safeguard and protect Private  
3 Information entrusted to it—including Plaintiff’s and Class Members’ Private  
4 Information.  
5

6           56. It was reasonably foreseeable to Forever 21 that its failure to exercise  
7 reasonable care in safeguarding and protecting Plaintiff’s and Class Members’  
8 Private Information by failing to design, adopt, implement, control, direct, oversee,  
9 manage, monitor, and audit appropriate data security processes, controls, policies,  
10 procedures, protocols, and software and hardware systems would result in the  
11 unauthorized release, disclosure, and dissemination of Plaintiff’s and Class  
12 Members’ PII to unauthorized individuals.  
13  
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15

16           57. But for Forever 21’s negligent conduct or breach of the above-  
17 described duties owed to Plaintiff and Class Members, their Private Information  
18 would not have been compromised.  
19  
20

21           58. As a result of Forever 21s’s above-described wrongful actions,  
22 inaction, and want of ordinary care that directly and proximately caused the Data  
23 Breach, Plaintiff and all other Class Members have suffered, and will continue to  
24 suffer, economic damages and other injury and actual harm in the form of, *inter*  
25 *alia*: (i) a substantially increased risk of identity theft—risks justifying  
26 expenditures for protective and remedial services for which they are entitled to  
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1 compensation; (ii) improper disclosure of their Private Information; (iii) breach of  
2 the confidentiality of their Private Information; (iv) deprivation of the value of their  
3 Private Information, for which there is a well-established national and international  
4 market; (v) lost time and money incurred to mitigate and remediate the effects of  
5 the Data Breach, including the increased risks of identity theft they face and will  
6 continue to face; and (vii) actual or attempted fraud.  
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10 **COUNT II**  
11 **NEGLIGENCE PER SE**

12 59. Plaintiff realleges and incorporates by reference all preceding  
13 paragraphs as if fully set forth herein.

14 60. Forever 21's duties arise from Section 5 of the FTC Act ("FTCA"),  
15 15 U.S.C. § 45(a)(1), which prohibits "unfair . . . practices in or affecting  
16 commerce," including, as interpreted by the FTC, the unfair act or practice by a  
17 business, such as Forever 21, of failing to employ reasonable measures to protect  
18 and secure PII.  
19

20 61. Forever 21 violated Security Rules and Section 5 of the FTCA by  
21 failing to use reasonable measures to protect Plaintiff's and all other Class  
22 Members' Private Information and not complying with applicable industry  
23 standards. Forever 21's conduct was particularly unreasonable given the nature and  
24 amount of Private Information it obtains and stores, and the foreseeable  
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1 consequences of a data breach involving Private Information including,  
2 specifically, the substantial damages that would result to Plaintiff and the other  
3 Class Members.  
4

5 62. Forever 21's violations of Security Rules and Section 5 of the FTCA  
6 constitutes negligence per se.  
7

8 63. Plaintiff and Class Members are within the class of persons that  
9 Security Rules and Section 5 of the FTCA were intended to protect.  
10

11 64. The harm occurring as a result of the Data Breach is the type of harm  
12 Security Rules and Section 5 of the FTCA were intended to guard against.  
13

14 65. It was reasonably foreseeable to Forever 21 that its failure to exercise  
15 reasonable care in safeguarding and protecting Plaintiff's and Class Members'  
16 Private Information by failing to design, adopt, implement, control, direct, oversee,  
17 manage, monitor, and audit appropriate data security processes, controls, policies,  
18 procedures, protocols, and software and hardware systems, would result in the  
19 release, disclosure, and dissemination of Plaintiff's and Class Members' Private  
20 Information to unauthorized individuals.  
21  
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23 66. The injury and harm that Plaintiff and the other Class Members  
24 suffered was the direct and proximate result of Forever 21's violations of Security  
25 Rules and Section 5 of the FTCA. Plaintiffs and Class Members have suffered (and  
26 will continue to suffer) economic damages and other injury and actual harm in the  
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28

1 form of, *inter alia*: (i) a substantially increased risk of identity theft—risks  
2 justifying expenditures for protective and remedial services for which they are  
3 entitled to compensation; (ii) improper disclosure of their Private Information; (iii)  
4 breach of the confidentiality of their Private Information; (iv) deprivation of the  
5 value of their Private Information, for which there is a well-established national  
6 and international market; (v) lost time and money incurred to mitigate and  
7 remediate the effects of the Data Breach; and (vi) actual or attempted fraud.  
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11 **COUNT III**  
12 **BREACH OF FIDUCIARY DUTY**

13 67. Plaintiff realleges and incorporates by reference all preceding  
14 paragraphs as if fully set forth herein.  
15

16 68. Plaintiff and Class Members either directly or indirectly gave Forever  
17 21 their PII in confidence, believing that Forever 21 would protect that information.  
18 Plaintiff and Class Members would not have provided Forever 21 with this  
19 information had they known it would not be adequately protected. Forever 21's  
20 acceptance and storage of Plaintiff's and Class Members' PII created a fiduciary  
21 relationship between Forever 21 and Plaintiff and Class Members. In light of this  
22 relationship, Forever 21 must act primarily for the benefit of its consumers, which  
23 includes safeguarding and protecting Plaintiff's and Class Members' Private  
24 Information.  
25  
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1           69. Forever 21 has a fiduciary duty to act for the benefit of Plaintiff and  
2 Class Members upon matters within the scope of their relationship. It breached that  
3 duty by failing to properly protect the integrity of the system containing Plaintiff's  
4 and Class Members' Private Information, failing to safeguard the Private  
5 Information of Plaintiff and Class Members it collected.  
6  
7

8           70. As a direct and proximate result of Forever 21's breaches of its  
9 fiduciary duties, Plaintiff and Class Members have suffered and will suffer injury,  
10 including, but not limited to: (i) a substantial increase in the likelihood of identity  
11 theft; (ii) the compromise, publication, and theft of their Private Information; (iii)  
12 out-of-pocket expenses associated with the prevention, detection, and recovery  
13 from unauthorized use of their Private Information; (iv) lost opportunity costs  
14 associated with effort attempting to mitigate the actual and future consequences of  
15 the Data Breach; (v) the continued risk to their Private Information which remains  
16 in Forever 21's possession; (vi) future costs in terms of time, effort, and money  
17 that will be required to prevent, detect, and repair the impact of the Private  
18 Information compromised as a result of the Data Breach; and (vii) actual or  
19 attempted fraud.  
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**COUNT IV**  
**UNJUST ENRICHMENT**

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2  
3         71. Plaintiff realleges and incorporates by reference all preceding  
4 paragraphs as if fully set forth herein. This claim is pled in the alternative to the  
5 implied contract claim pursuant to Fed. R. Civ. P. 8(d).  
6

7         72. Plaintiff and Class Members conferred a monetary benefit upon  
8 Forever 21 in the form of monies paid for production services or other services.  
9

10         73. Forever 21 accepted or had knowledge of the benefits conferred upon  
11 it by Plaintiff and Class Members. Forever 21 also benefitted from the receipt of  
12 Plaintiff's and Class Members' Private Information.  
13

14         74. As a result of Forever 21's conduct, Plaintiff and Class Members  
15 suffered actual damages in an amount equal to the difference in value between their  
16 payments made with reasonable data privacy and security practices and procedures  
17 that Plaintiff and Class Members paid for, and those payments without reasonable  
18 data privacy and security practices and procedures that they received.  
19  
20

21         75. Forever 21 should not be permitted to retain the money belonging to  
22 Plaintiff and Class Members because Forever 21 failed to adequately implement  
23 the data privacy and security procedures for itself that Plaintiff and Class Members  
24 paid for and that were otherwise mandated by federal, state, and local laws. and  
25 industry standards.  
26  
27  
28





1 implement and maintain reasonable security procedures and practices that are  
2 appropriate to the nature of the information collected.  
3

4 86. Forever 21 is subject to the CCPA and failed to implement such  
5 procedures which resulted in the Data Breach.  
6

7 87. Section 1798.150(a)(1) of the CCPA provides: “Any consumer whose  
8 nonencrypted or nonredacted personal information, as defined [by the CCPA] is  
9 subject to an unauthorized access and exfiltration, theft, or disclosure as a result of  
10 the business’ violation of the duty to implement and maintain reasonable security  
11 procedures and practices appropriate to the nature of the information to protect the  
12 personal information may institute a civil action for” statutory or actual damages,  
13 injunctive or declaratory relief, and any other relief the court deems proper.  
14  
15

16 88. Plaintiff is a “consumer” as defined by Civ. Code § 1798.140(g)  
17 because she is natural person residing in the state of California.  
18

19 89. Forever 21 is a “business” as defined by Civ. Code § 1798.140(c).  
20

21 90. The CCPA provides that “personal information” includes “[a]n  
22 individual’s first name or first initial and the individual’s last name in combination  
23 with any one or more of the following data elements, when either the name or the  
24 data elements are not encrypted or redacted . . . (iii) Account number or credit or  
25 debit card number, in combination with any required security code, access code,  
26  
27  
28

1 or password that would permit access to an individual’s financial account.” *See*  
2 Civ. Code § 1798.150(a)(1); Civ. Code § 1798.81.5(d)(1)(A).  
3

4 91. Plaintiff’s Private Information compromised in the Data Breach  
5 constitutes “personal information” within the meaning of the CCPA.  
6

7 92. Through the Data Breach, Plaintiff’s private information was  
8 accessed without authorization, exfiltrated, and stolen by criminals in a  
9 nonencrypted and/or nonredacted format.  
10

11 93. The Data Breach occurred as a result of Forever 21’s failure to  
12 implement and maintain reasonable security procedures and practices appropriate  
13 to the nature of the information.  
14

15 94. Simultaneously herewith, Plaintiff is providing notice to Defendants  
16 pursuant to Cal. Civ. Code § 1798.150(b)(1), identifying the specific provisions of  
17 the CCPA Plaintiff alleges Forever 21 has violated or is violating. Although a cure  
18 is not possible under the circumstances, if (as expected) Forever 21 is unable to  
19 cure or does not cure the violation within 30 days, Plaintiff will amend this  
20 Complaint to pursue actual or statutory damages as permitted by Cal. Civ. Code §  
21 1798.150(a)(1)(A). Plaintiff currently seeks injunctive and declaratory relief  
22 pursuant to this CCPA.  
23  
24  
25

26 95. Provided that Defendant does not cure the violation within 30 days,  
27 and as a result of Forever 21’s failure to implement and maintain reasonable  
28

1 security procedures and practices that resulted in the Data Breach, Plaintiff intends  
2 to seek statutory damages of up to \$750 per class member (and no less than \$100  
3 per class member), actual damages to the extent they exceed statutory damages,  
4 injunctive and declaratory relief, and any other relief as deemed appropriate by the  
5 Court.  
6  
7

8  
9 **COUNT VII**  
10 **VIOLATION OF THE CALIFORNIA CONSUMER LEGAL REMEDIES**  
11 **ACT**  
12 **Cal. Civ. Code §§ 1750 et seq. (“CLRA”)**

13 96. Plaintiff realleges and incorporates by reference each and every  
14 allegation contained elsewhere in this Complaint as if fully set forth herein.

15 97. This cause of action is brought pursuant to the California Consumers  
16 Legal Remedies Act (the “CLRA”), California Civil Code § 1750, *et seq.* This  
17 cause of action does not seek monetary damages at this time but is limited solely  
18 to injunctive relief. Plaintiff will later amend this Complaint to seek damages in  
19 accordance with the CLRA after providing Defendants with notice required by  
20 California Civil Code § 1782.  
21

22 98. Plaintiff and Class Members are “consumers,” as the term is defined  
23 by California Civil Code § 1761(d).  
24

25 99. Plaintiff, Class Members and Defendants have engaged in  
26 “transactions,” as that term is defined by California Civil Code § 1761(e).  
27  
28

1           100. The conduct alleged in this Complaint constitutes unfair methods of  
2 competition and unfair and deceptive acts and practices for the purpose of the  
3 CLRA, and the conduct undertaken by Defendants was likely to deceive  
4 consumers.  
5

6           101. Cal. Civ. Code § 1770(a)(5) prohibits one who is involved in a  
7 transaction from “[r]epresenting that goods or services have sponsorship, approval,  
8 characteristics, ingredients, uses, benefits, or quantities which they do not have.”  
9

10           102. Defendants violated this provision by representing that Defendants  
11 took appropriate measures to protect Plaintiff’s and the Class Members’ Private  
12 Information. Additionally, Defendants improperly handled, stored, or protected  
13 either unencrypted or partially encrypted data.  
14

15           103. As a result, Plaintiff and the Class Members were induced to provide  
16 their Private Information to Defendants.  
17

18           104. As a result of engaging in such conduct, Defendants have violated  
19 Civil Code § 1770.  
20

21           105. Pursuant to Civil Code § 1780(a)(2) and (a)(5), Plaintiff seeks an  
22 order of this Court that includes, but is not limited to, an order enjoining  
23 Defendants from continuing to engage in unlawful, unfair, or fraudulent business  
24 practices or any other act prohibited by law.  
25  
26  
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1 Plaintiff's and Class members' PII, Defendants engaged in unlawful, unfair and  
2 fraudulent practices within the meaning of the UCL.  
3

4 113. Defendants' business practices as alleged herein are unfair because  
5 they offend established public policy and are immoral, unethical, oppressive,  
6 unscrupulous and substantially injurious to consumers, in that the private and  
7 confidential Private Information of consumers has been compromised for all to see,  
8 use, or otherwise exploit.  
9  
10

11 114. Defendants' practices were unlawful and in violation of the CCPA  
12 and CLRA and Defendants' own privacy policy because Defendants failed to take  
13 reasonable measures to protect Plaintiff's and Class members' Private Information.  
14

15 115. Defendants' business practices as alleged herein are fraudulent  
16 because they are likely to deceive consumers into believing that the PII they  
17 provide to Defendants will remain private and secure, when in fact it was not  
18 private and secure.  
19

20 116. Plaintiff and Class Members suffered (and continue to suffer) injury  
21 in fact and lost money or property as a direct and proximate result of Defendants'  
22 above-described wrongful actions, inaction, and omissions including, *inter alia*,  
23 the unauthorized release and disclosure of their Private Information.  
24  
25

26 117. Defendants' above-described wrongful actions, inaction, and  
27 omissions, the resulting Data Breach, and the unauthorized release and disclosure  
28

1 of Plaintiff's and Class Members' Private Information also constitute "unfair"  
2 business acts and practices within the meaning of Cal. Bus. & Prof. Code § 17200  
3  
4 *et seq.*, in that Defendants' conduct was substantially injurious to Plaintiff and  
5 Class Members, offensive to public policy, immoral, unethical, oppressive and  
6 unscrupulous, and the gravity of Defendants' conduct outweighs any alleged  
7 benefits attributable to such conduct.  
8

9  
10 118. But for Defendants' misrepresentations and omissions, Plaintiff and  
11 Class Members would not have provided their Private Information to Defendants,  
12 or would have insisted that their Private Information be more securely protected.  
13

14 119. As a direct and proximate result of Defendants' above-described  
15 wrongful actions, inaction, and omissions, the resulting Data Breach, and the  
16 unauthorized release and disclosure of Plaintiff and Class Members' Private  
17 Information, they have been injured as follows: (1) the loss of the opportunity to  
18 control how their PII is used; (2) the diminution in the value and/or use of their  
19 Private Information entrusted to Defendants; (3) the increased, imminent risk of  
20 fraud and identity theft; (4) the compromise, publication, and/or theft of their  
21 Private Information; and (5) costs associated with monitoring their Private  
22 Information, amongst other things.  
23  
24  
25

26 120. Plaintiff takes upon herself enforcement of the laws violated by  
27 Defendants in connection with the reckless and negligent disclosure of Private  
28

1 Information. There is a financial burden incurred in pursuing this action and it  
2 would be against the interests of justice to penalize Plaintiff by forcing her to pay  
3 attorneys' fees and costs from the recovery in this action. Therefore, an award of  
4 attorneys' fees and costs is appropriate under California Code of Civil Procedure  
5 § 1021.5.  
6  
7

8 **PRAYER FOR RELIEF**

9  
10 WHEREFORE, Plaintiff, individually and on behalf of the Class, pray for  
11 judgment as follows:

- 12
- 13 a. For an Order certifying this action as a class action and  
14 appointing Plaintiff and her counsel to represent the Class;
  - 15 b. For equitable relief enjoining Forever 21 from engaging in the  
16 wrongful conduct complained of herein pertaining to the  
17 misuse and/or disclosure of Plaintiff's and Class Members'  
18 Private Information;
  - 19 c. For equitable relief compelling Forever 21 to utilize  
20 appropriate methods and policies with respect to consumer data  
21 collection, storage, and safety, and to disclose with specificity  
22 the type of Private Information compromised during the Data  
23 Breach;
  - 24 d. For an order requiring Forever 21 to pay for credit monitoring  
25 services for Plaintiff and the Class of a duration to be  
26 determined at trial;
  - 27 e. For an award of actual damages, compensatory damages,  
28 statutory damages, and statutory penalties, in an amount to be  
determined, as allowable by law;
  - f. For an award of punitive damages, as allowable by law;

- 1 g. For an award of attorneys' fees and costs, and any other  
2 expense, including expert witness fees;  
3 h. Pre and post-judgment interest on any amounts awarded; and  
4 i. Such other and further relief as this court may deem just and  
5 proper.

6 **JURY TRIAL DEMANDED**

7  
8 Plaintiff demands a trial by jury on all claims so triable.

9 Dated: September 7, 2023

Respectfully Submitted By:

10  
11 By: s/ Jonathan Shub

12 **SHUB & JOHNS LLC**

Jonathan Shub (No. 237708)

Benjamin F. Johns\*

Samantha E. Holbrook\*

Four Tower Bridge

200 Barr Harbor Drive, Suite 400

Conshohocken, PA 19428

(610) 477-8380

jshub@shublawyers.com

bjohns@shublawyers.com

sholbrook@shublawyers.com

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21 *Attorneys for Plaintiff and the  
Proposed Class*

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