

United States District Court
For the Northern District of California

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ANN OTSUKA; JANIS KEEFE; CORINNE
PHIPPS; and RENEE DAVIS, individually and
on behalf of all others similarly situated,

No. C 07-02780 SI

**ORDER GRANTING PLAINTIFFS'
MOTION FOR CLASS CERTIFICATION**

Plaintiffs,

v.

POLO RALPH LAUREN CORPORATION, et
al.,

Defendants.

Plaintiffs have filed a motion for class certification. The motion is scheduled for hearing on July 11, 2008. Pursuant to Civil Local Rule 7-1(b), the Court finds this matter appropriate for resolution without oral argument, and hereby VACATES the hearing. Having considered the arguments of the parties and the papers submitted, and for good cause shown, the Court hereby GRANTS plaintiffs' motion to certify the class.

BACKGROUND

The subject of this litigation is an employment dispute over unpaid wages brought by former retail sales employees against defendants Polo Ralph Lauren Corporation, Polo Retail, LLC, Polo Retail Corporation, and Fashions Outlet of America, who operate 28 full-price and outlet stores in the state of California. On May 30, 2006, plaintiffs Ann Otsuka, Janis Keefe, Corrine Phipps, and Justin Kiser filed a putative class action complaint in state court against defendants. Defendants removed the action to federal court on May 29, 2007, on grounds that this Court has either diversity jurisdiction or jurisdiction

1 pursuant to the Class Action Fairness Act. The complaint was amended multiple times in order to add
2 named plaintiff Renee Davis, remove plaintiff Kiser, and make other adjustments, such that the
3 operative complaint is now the Third Amended Complaint (“TAC”), which was filed by stipulation of
4 the parties in March 2008.

5 Plaintiffs have brought suit on behalf of all former California employees of defendants who
6 worked as sales associates or cashiers and were injured by defendants’ violation of employment laws
7 from May 30, 2002 to the present. TAC at ¶ 10, 43. The gravamen of the complaint is that defendants
8 failed to provide rest breaks, failed to pay employees for off-the-clock time spent inside the stores,
9 improperly classified all sales associates as commission salespeople who are exempt from premium
10 overtime compensation, and improperly used an arrears program in which sales associates who did not
11 meet minimum commission requirements were subject to reduced earnings on future commissions above
12 the minimum requirements. Plaintiffs contend that defendants use a single employee handbook for all
13 California stores, and that defendants’ policies and practices are standardized throughout California in
14 both retail and outlet stores. *See, e.g.*, TAC at ¶ 45. One of these practices, plaintiffs contend, is to
15 discourage or prevent employees from taking required rest breaks. *See, e.g.*, TAC at ¶ 35, 41. Another
16 practice is to conduct loss-prevention inspections (i.e. bag checks for stolen merchandise) on all
17 employees every time they leave the store, such as at the end of their shifts or to take lunch breaks. *See*
18 *e.g.*, TAC at ¶ 11; Kitchin Decl. ex. 12 at 25 (2002 employee handbook describing the required
19 inspections). Plaintiffs allege that these inspections only occur after an employee has clocked out, and
20 that employees often have to wait for 10-15 minutes, and sometimes longer, for a manager to show up
21 at the back door to conduct the inspection. TAC at ¶¶ 27, 34, 40. Plaintiffs also allege that defendants
22 treated all salespeople at retail stores as exempt from overtime compensation, even though many such
23 employees did not sell enough merchandise to be considered exempt commissioned employees, and
24 failed to conduct the promised “reconciliations” to determine whether the employees actually were
25 exempt. TAC at ¶ 11. These allegations are supported in large part by deposition testimony of the
26 named plaintiffs and by declarations filed by absent class members, though competing declarations
27 contesting many of these allegations have been filed by current employees on behalf of defendants.

28 The complaint alleges the following causes of action on behalf of all members of the putative

