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

ANN OTSUKA,

No. C 07-2780 SI

Plaintiff,

**ORDER DENYING DEFENDANTS’
MOTION TO DECERTIFY CLASS**

v.

POLO RALPH LAUREN CORPORATION,

Defendant.

Defendant has moved to decertify plaintiffs’ class with respect to their rest break claims. The Court finds this motion appropriate for determination without oral argument pursuant to Local Rule 7-1(b), and the hearing set for November 7, 2008 is VACATED. Having considered the parties’ submissions, and for the reasons set forth below, defendant’s motion is DENIED without prejudice.

Plaintiffs claim that defendant violated California Labor Code § 226.7 by failing to provide its employees with rest breaks. In its motion for decertification, defendant relies on *Brinker Restaurant Corp. v. Superior Court of San Diego County*, 80 Cal. Rptr. 3d 781, 786 (Cal. Ct. App. 2008), in which the California Court of Appeal considered similar facts to this case and concluded that the trial court’s certification of the plaintiff class was erroneous. The court noted that the Labor Code requires only that rest breaks be “made available” and not “ensured,” and concluded that individualized inquiry is necessary to determine whether an employer systematically prevents its employees from taking rest breaks or whether the employees have elected to waive them. *Id.* at 799-800. The court held that because individual issues predominated, the plaintiffs’ rest break claims were not amenable to class treatment. *Id.* at 801.

On October 22, 2008, the California Supreme Court granted review of *Brinker*. Because

1 defendant's motion for decertification relies exclusively on the Court of Appeal's decision in *Brinker*,
2 the Court DENIES defendant's motion without prejudice to renewal after the California Supreme
3 Court's resolution of the issue [Docket No. 111]. The Court further STAYS litigation as to the class
4 on the issue of rest break claims pending the California Supreme Court's decision.

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6 **IT IS SO ORDERED.**

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8 Dated: November 5, 2008



SUSAN ILLSTON
United States District Judge

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