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 14 **Corporation; Polo Retail, LLC; Polo Ralph Lauren**  
 15 **Corporation, doing business in California as Polo**  
**Retail Corporation; and Fashions Outlet of America,**  
 16 **Inc.**

17 **UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF CALIFORNIA**

18 ANN OTSUKA, et al.

19 Plaintiffs,

20 v.

21 POLO RALPH LAUREN CORPORATION, a  
 Delaware Corporation; et al.,

22 Defendants.  
 23

Case No. C07-02780 SI

**STIPULATION AND [PROPOSED]  
 ORDER MODIFYING THE  
 SETTLEMENT AGREEMENT**

Judge: Hon. Susan Illston

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 25  
 26 Plaintiffs Janis Keefe, Corinne Phipps, Renee Davis and the Certified Plaintiff Class  
 27 (“Plaintiffs”) and Defendants Polo Ralph Lauren Corporation, Polo Retail, LLC, Polo Ralph  
 28 Lauren Corporation, doing business in California as Polo Retail Corp. and Fashions Outlet of

1 America, Inc. (“Polo” or “Defendants”) hereby seek the Court’s approval of a modification of  
2 the settlement agreement in this wage and hour class action case.

3 **I. Background**

4 A. The Settlement Agreement Provides For A \$5,000 Cap On Recovery For Loss  
5 Prevention Waiting Time And Missed Rest Breaks.

6 In their settlement agreement, the parties agreed to place a \$5,000 (Five Thousand  
7 Dollar) cap on recovery for loss prevention waiting time and missed rest breaks for all  
8 Settlement Class Members. (Docket No. 281, Exhibit A, page 9, ¶ 5(C).) The parties set the  
9 cap at \$5,000 to avoid giving Class Members a windfall if only a small portion of the Class  
10 submitted claims. For example, if only 10% of the Class had submitted claims, individual  
11 recoveries would have exceeded the total value of all claims made on their behalf.<sup>1</sup>

12 The parties agreed any settlement funds remaining after application of the \$5,000 cap  
13 would be designated as a charitable contribution to the “State of California’s Labor &  
14 Workforce Development Agency’s General Funds, to be used at the Agency’s discretion for  
15 programs designed to protect and improve the well-being of California’s current and future  
16 workforce.” (*Id.*)

17 The settlement proceeds distribution model developed by the parties, through Dr.  
18 Hossein Borhani, Ph.D., and approved by the Court in its Order granting preliminary approval  
19 of the settlement (Docket No. 286.), assigns a value to each day or shift worked by Settlement  
20 Class Members based on the number of valid claims submitted. Dr. Borhani has now  
21 calculated the net cash settlement value available to compensate Settlement Class Members for  
22 loss prevention waiting time and missed rest breaks. The net settlement value was computed  
23 by reducing the gross settlement (\$4 million) by the following: incentive and service payments  
24 to Class Members; portions set aside for members of the Misclassification and Arrears  
25 Settlement Subclasses; claims administration fees; claims analysis service fees; and attorneys’  
26 fees and costs.

27 <sup>1</sup> 34.5% percent of the Class actually submitted timely claims, resulting in a reasonable per day  
28 or shift recovery rate of \$9.60 per shift. A 10% response rate would have resulted in a per shift  
rate of more than three times his value.

1 After these reductions, the net settlement value is \$2,192,250. When this net settlement  
2 value is divided by the total number of days or shifts worked by Settlement Class Members,  
3 each work day or shift is valued at \$9.60. Thus, if a Settlement Class Member worked 100  
4 shifts, her recovery for loss prevention waiting time and missed rest breaks would be \$960 (100  
5 shifts times \$9.60 per shift).

6 To reach the \$5,000 cap on this portion of the Class recovery, a Settlement Class  
7 Member would need to have worked a total of 521 shifts. Any shifts worked in excess of 521  
8 by a Settlement Class Member would not result in additional compensation for those extra  
9 shifts. Thus, a Settlement Class Member who worked 1,300 shifts would receive the same  
10 recovery as a Member who worked 521 shifts.

11 B. *Seventy-Five Settlement Class Members Would Be Adversely Affected By The \$5,000*  
12 *Cap.*

13 Based on the payroll and timekeeping analyses Dr. Hossein Borhani performed after the  
14 claim period expired earlier this month, the parties have determined that the settlement  
15 recovery for 75 Settlement Class Members would be adversely affected by the \$5,000 recovery  
16 cap. If subjected to the \$5,000 cap, these 75 Settlement Class Members would forfeit more  
17 than \$208,329 for shifts they worked in excess of 521.

18 But for the recovery cap, 16 Settlement Class Members would be entitled to over  
19 \$10,000. Fifty-nine Settlement Class Members would be entitled to a recovery between \$5,001  
20 and 9,999.

21 In their settlement agreement, the parties indicated that the net settlement funds that  
22 remained after applying the \$5,000 cap would be designated a charitable contribution to the  
23 “State of California’s Labor & Workforce Development Agency’s General Funds, to be used at  
24 the Agency’s discretion for programs designed to protect and improve the well-being of  
25 California’s current and future workforce.” (Docket No. 281, Exhibit A, page 9, ¶ 5(C).)

26 The parties now agree and request Court approval to modify section 5(C) of the  
27 settlement agreement to eliminate the \$5,000 recovery cap. This modification would result in  
28 the payment of approximately \$208,329 to those 75 Settlement Class Members affected by the

1 recovery cap who worked more than 521 shifts during their employment with Polo during the  
2 class period. The parties agree that the reallocation of \$208,329 to 75 Settlement Class  
3 Members instead of to the State of California would result in a more equitable distribution of  
4 the net settlement funds.

5 C. *Lifting The Settlement Cap Would Not Adversely Affect Any Other Class Member, But,*  
6 *Instead, Would Fairly Compensate Settlement Class Members Who Worked Longest*  
7 *For Polo.*

8 No other Settlement Class Member will be affected by lifting the \$5,000 recovery cap.  
9 The remaining net settlement funds, which had been designated for donation to the State of  
10 California, simply will now be reallocated and divided among the 75 Settlement Class  
11 Members based on the number of days or shifts they worked.

12 **II. Stipulation**

13 Plaintiffs and Polo, by and through their attorneys of record hereby stipulate to delete  
14 from section 5(C) of the settlement agreement the following language:

15 If the number of Settlement Class Members submitting timely claims would  
16 result in a proportional award in excess of \$5,000.00 for any Settlement Class  
17 Member, the Net Settlement Amount remaining after Settlement Awards shall  
18 be designated as a charitable award to the State of California's Labor &  
19 Workforce Development Agency's General Funds, to be used at the Agency's  
discretion for programs designed to protect and improve the well-being of  
California's current and future workforce.

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