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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CURTIS HAMILTON, an individual, on behalf of himself and all others similarly situated, Plaintiff,  
v.  
GENESIS LOGISTICS, INC., a Delaware corporation, Defendant.  
Case No. CV 13-01848 DDP (VBKx)  
**ORDER DENYING PLAINTIFF'S MOTION FOR CLASS CERTIFICATION**  
[Dkt. No. 32]

Before the court is Plaintiff Curtis Hamilton's Motion for Class Certification. (Dkt. No. 32.) The motion is fully briefed. Having considered the parties' submissions and heard oral argument, the court adopts the following order denying the motion.

**I. Background**

Plaintiff Curtis Hamilton ("Hamilton") is a former employee of Defendant Genesis Logistics, Inc. ("Genesis"), a logistics company that supplies and distributes food products, primarily serving 7-Eleven stores. During the putative class period, Genesis operated centers in San Diego, Fontana, Fullerton, and Union City,

1 California. Hamilton worked as a Transportation Supervisor at the  
2 Fullerton location from September 2010 until approximately March  
3 2011. (First Amended Complaint ("FAC") ¶ 4 and Ex. A at 1.) He  
4 brings this putative class action on behalf of himself and other  
5 Transportation Supervisors employed or formerly employed by Genesis  
6 at each of its locations in California. (See FAC ¶ 21; Motion at 2,  
7 27.)

8 Hamilton alleges that, although he and other members of the  
9 putative class were designated as Transportation Supervisors and  
10 paid a salary, they were not supervisors as a matter of law and  
11 were misclassified as "exempt" from California requirements  
12 regarding overtime pay and meal and rest breaks. (Id. ¶ 15.)  
13 Hamilton alleges that he and other putative class members had no  
14 authority to hire and fire other employees, nor exercise discretion  
15 or independent judgment as part of their jobs. (Id.) He alleges  
16 that they "oversaw the work of subordinate truck drivers, but such  
17 supervision was limited in scope and took up less than half of any  
18 shift." (Id.) He alleges further that he and other putative class  
19 members "were required to perform manual labor as part of the  
20 production of Defendants," including "moving inventory, loading  
21 trucks, cleaning, driving trucks, and filing forms related to  
22 delivery." (Id.) Hamilton alleges that Genesis intentionally  
23 misclassified him as an exempt employee in order to avoid paying  
24 him overtime. (Id. ¶¶ 59-60.)

25 Hamilton alleges that, as a result of their misclassification  
26 as "exempt," he and other putative class members were denied  
27 overtime compensation, in violation of California Labor Code §§  
28 510, 1194, 1198; meal periods, in violation of Labor Code §§ 226.7

1 and 512; rest periods, in violation of Labor Code § 226.7; and  
2 accurate wage statements, in violation of Labor Code §§ 226 and  
3 226.3. (*Id.* ¶¶ 36-61.) Hamilton also asserts derivative claims for  
4 prompt payment of wages under Labor Code § 216, waiting time  
5 penalties under Labor Code §§ 201, 202, 203, a claim under  
6 California's Private Attorney General Act, Labor Code §§ 2699 and  
7 2699.31, and a claim for unfair business practices under California  
8 Business & Professions Code §§ 17200 *et seq.* (*Id.* ¶¶ 57-82.)

9 Hamilton seeks certification of a class comprised of "anyone  
10 who Genesis currently or formerly employed in California as []  
11 'Transportation Supervisors' from February 13, 2009 to the  
12 present." (Mot. at 10.) The parties agree that the putative class  
13 includes approximately 30 members. (Motion at 2; Opposition at 17.)  
14

## 15 **II. Legal Standard for Certification of Class Actions**

16 The party seeking class certification bears the burden of  
17 showing that each of the four requirements of Rule 23(a) and at  
18 least one of the requirements of Rule 23(b) are met. See Hanon v.  
19 Dataprods. Corp., 976 F.2d 497, 508-09 (9th Cir. 1992). Rule 23(a)  
20 sets forth four prerequisites for class certification:

21 (1) the class is so numerous that joinder of all members is  
22 impracticable; (2) there are questions of law or fact  
23 common to the class; (3) the claims or defenses of the  
24 representative parties are typical of the claims or  
25 defenses of the class; and (4) the representative parties  
26 will fairly and adequately protect the interests of the  
27 class.

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1 Fed. R. Civ. P. 23(a); Hanon, 976 F.2d at 508. These four  
2 requirements are often referred to as numerosity, commonality,  
3 typicality, and adequacy. See Gen. Tel. Co. of Southwest v. Falcon,  
4 457 U.S. 147, 156 (1982).

5 Rule 23(b)(3), the provision of Rule 23(b) that is relevant in  
6 this action, provides that a plaintiff seeking to certify a class  
7 must show that questions of law or fact common to the members of  
8 the class "predominate over any questions affecting only individual  
9 members and that a class action is superior to other available  
10 methods for the fair and efficient adjudication of the  
11 controversy." Fed. R. Civ. P. 23(b)(3).

12 "In determining the propriety of a class action, the question  
13 is not whether the plaintiff or plaintiffs have stated a cause of  
14 action or will prevail on the merits, but rather whether the  
15 requirements of Rule 23 are met." Eisen v. Carlisle & Jacquelin,  
16 417 U.S. 156, 178 (1974) (internal quotation marks and citation  
17 omitted). This court, therefore, considers the merits of the  
18 underlying claim to the extent that the merits overlap with the  
19 Rule 23(a) requirements, but will not conduct a "mini-trial" or  
20 determine at this stage whether Plaintiffs could actually prevail.  
21 Ellis v. Costco Wholesale Corp., 657 F.3d 970, 981, 983 n.8 (9th  
22 Cir. 2011).

### 23

### 24 **III. Discussion**

#### 25 **A. Executive and Administrative Exemptions**

26 As discussed, Hamilton asserts that he and other class members  
27 were misclassified as exempt under California law. The relevant  
28 exemptions, set forth in California's Industrial Wage Commission

1 (IWC) Order No. 9-2001, which applies to persons employed in the  
2 transportation industry, are for employees who work in executive or  
3 administrative capacities. Genesis appears to rely on both  
4 exemptions, although the parties focus primarily on the executive  
5 exemption.

6 Under IWC Order No. 9, a person employed in an executive  
7 capacity is any employee:

8 (1) Whose duties and responsibilities involve the management  
9 of the enterprise in which he/she is employed or of a  
10 customarily recognized department or subdivision thereof; and

11 (b) Who customarily and regularly directs the work of two or  
12 more other employees therein; and

13 (c) Who has the authority to hire or fire other employees or  
14 whose suggestions and recommendations as to the hiring and  
15 firing and as to the advancement and promotion or any other  
16 change of status of other employees will be given particular  
17 weight; and

18 (d) Who customarily and regularly exercises discretion and  
19 independent judgment; and

20 (e) Who is primarily engaged in duties which meet the test of  
21 the exemption....

22 8 C.C.R. § 11090(1)(A)(1).

23 A person employed in an administrative capacity is any  
24 employee:

25 (a) Whose duties and responsibilities involve ... (i) The  
26 performance of office or non-manual work directly related to  
27 management policies or general business operations of his/her  
28 employer or his/her employer's customers; ... and

(b) Who customarily and regularly exercises discretion and  
independent judgment; and

(c) Who regularly and directly assists a proprietor, or an  
employee employed in a bona fide executive or administrative  
capacity ...; or

(d) Who performs under only general supervision work along  
specialized or technical lines requiring special training,  
experience, or knowledge; or

1 (e) Who executes under only general supervision special  
2 assignments and tasks; and

3 (f) Who is primarily engaged in duties which meet the test of  
4 the exemption. ...

5 (g) Such an employee must also earn a monthly salary  
6 equivalent to no less than two (2) times the state minimum  
7 wage for full time employment.

8 8 C.C.R. § 11090(1)(A)(2).

9 In determining whether an employee is properly classified as  
10 "exempt," courts must inquire "first and foremost how the employee  
11 actually spends his or her time." Ramirez v. Yosemite Water Co., 20  
12 Cal.4th 785, 802 (1999). A trial court also should consider  
13 "whether the employee's practice diverges from the employer's  
14 realistic expectations, whether there was any concrete expression  
15 of employer displeasure over an employee's substandard performance,  
16 and whether these expressions were themselves realistic given the  
17 actual overall requirements of the job." Id.

18 **B. Burden of Proof in Class Actions Asserting Misclassification**

19 Under California law, the employer bears the burden of  
20 demonstrating that an employee is exempt from the Labor Code's  
21 overtime requirements. Nordquist v. McGraw-Hill Broadcasting Co.,  
22 Inc., 32 Cal.App.4th 555, 562 (1995). "However, in order to  
23 maintain a class action challenging the overtime exemption, a  
24 plaintiff must have common evidence to support a legal theory of  
25 misclassification, either 'that deliberate misclassification was  
26 defendant's policy or practice' or similarly, that 'classification  
27 based on job descriptions alone resulted in widespread de facto  
28 misclassification.' A class action is appropriate if 'plaintiffs  
29 are able to demonstrate pursuant to either scenario that  
30 misclassification was the rule rather than the exception...'" Marlo

1 v. United Parcel Serv., Inc., 251 F.R.D. 476, 481 (C.D. Cal. 2008)  
2 aff'd, 639 F.3d 942 (9th Cir. 2011) (quoting Sav-On Drug Stores,  
3 Inc. v. Superior Court, 34 Cal.4th 319, 329 (2004)). In other  
4 words, "a plaintiff must provide common evidence of  
5 misclassification to maintain class certification and proceed with  
6 a class action trial." Id. at 483.

### 7 **C. Rule 23 Analysis**

8 Because it is dispositive of the present motion, the court  
9 focuses its analysis here on Rule 23(b)(3)'s requirement that (1)  
10 common questions of law or fact predominate over questions  
11 affecting only individual members and that (2) a class action is  
12 superior to other available methods for the fair and efficient  
13 adjudication of the controversy. In doing so, the court addresses  
14 the sufficiency of common proof of misclassification, which is the  
15 basis for each of Hamilton's wage-and-hour claims.

#### 16 **1. Predominance**

17 The predominance requirement demands a rigorous inquiry that  
18 "tests whether proposed classes are sufficiently cohesive to  
19 warrant adjudication by representation." Amchem Products, Inc. v.  
20 Windsor, 521 U.S. 591, 623-24 (1997). To satisfy this requirement,  
21 it is not enough simply that common questions of law or fact exist;  
22 predominance is a comparative concept that calls for measuring the  
23 relative balance of common issues to individual ones. See id.  
24 "Implicit in the satisfaction of the predominance test is the  
25 notion that the adjudication of common issues will help achieve  
26 judicial economy." Zinser v. Accufix Research Inst., Inc., 253 F.3d  
27 1180, 1189 (9th Cir. 2001) (citing Valentino v. Carter-Wallace  
28 Inc., 97 F.3d 1227, 1234 (9th Cir. 1996)).

1           In moving for class certification, Hamilton relies principally  
2 on his own deposition testimony describing his experiences and his  
3 observation, based on conversations with other Genesis employees,  
4 that the San Diego and Fontana facilities had policies and  
5 practices that were similar to the Fullerton facility where he was  
6 employed, (see, e.g., Deposition of Curtis Hamilton at 23-28, 69-  
7 72.), as well as brief declarations of two additional Genesis  
8 Transportation Supervisors at other Genesis facilities.  
9 (Declarations of Salvador Lopez (San Diego) ¶¶ 2-9 and Kirby Benin  
10 (Union City) ¶¶ 2-7.))

11           In opposing class certification, Genesis relies primarily on  
12 detailed declarations of seven Transportation Supervisors, all  
13 putative class members, who describe experiences that differ  
14 markedly from those described by Hamilton and his declarants. (See  
15 Declarations of Steve Lund (Fullerton), Maria Billy (Fullerton),  
16 Ray Para (Fullerton), John Guidry (Union City), Wayne Lehndorfer  
17 (Union City), David Spaziani (Union City), Isreal Del Rio (San  
18 Diego) in Support of Opposition.) Genesis also submitted detailed  
19 declarations from three Transportation Managers, who supervise the  
20 Transportation Supervisors. (See Declarations of Brett Campbell  
21 (Fullerton, San Diego, and Fontana), Don Pope (Union City), and  
22 Desi Martinez (San Diego) in Support of Opposition.)

23           The evidence submitted by the parties reflects highly  
24 divergent experiences among putative class members in a range of  
25 areas that are central to determining whether an employee has been  
26 misclassified. This variation precludes a finding that common  
27 issues predominate over individual issues.

28



1 First, there is substantial divergence on the issue of whether  
2 Transportation Supervisors play a role in hiring or firing other  
3 employees. As cited above, a role in hiring or firing decisions is  
4 an element of Wage Order No. 9's executive exemption. 8 C.C.R. §  
5 11090(1)(A)(1)(c). On the one hand, Hamilton and his two declarants  
6 assert that they had no authority to hire and fire other employees  
7 or had any role in the hiring process. (See, e.g., Hamilton Dep. II  
8 at 286:8-287:11 (stating that Hamilton interviewed "zero" drivers,  
9 reviewed "zero" job applications," and had no involvement in  
10 screening applicants); Benin Decl. ¶ ("I had no authority to hire  
11 or fire other employees. I did not give suggestions or  
12 recommendations as to the hiring or firing or as to the advancement  
13 and promotion or any other change of status of other employees");  
14 Lopez Decl. (stating that he had no authority to hire or fire other  
15 employees).

16 On the other hand, the seven Transportation Supervisors who  
17 provided declarations for Genesis stated that they played a  
18 substantial role in hiring and firing other employees. (See, e.g.  
19 Parra Decl. ¶ 8 ("I personally interviewed and made hiring  
20 recommendations for at least 50-60 drivers in the last year alone,  
21 and my recommendations were followed on each occasion."; Guidry  
22 Decl. ¶ 5 ("I do a significant amount of the hiring at the Union  
23 City station"); Lehndorfer Decl. ¶ 20 ("Even when I don't  
24 administer the discipline myself, my recommendations for  
25 discipline, including suspension or terminations, are given  
26 consideration by my General Manager. For example, I recommended  
27 that Genesis terminate a driver, Floyd H. approximately two or  
28 three weeks ago, and he was terminated."); Lund Decl. ¶ 5 (stating

1 that his tasks include "participating in the hiring process,  
2 including reviewing applications, conducting interviews, and  
3 providing comments, feedback, and recommendations to drivers that  
4 should and should not be hired by Genesis"); Spaziani Decl. ¶ 5  
5 (same).

6 Second, there is divergence with respect to the degree to  
7 which members of the putative class exercised discretion or  
8 independent judgment, an element of both the executive and the  
9 administrative exemptions. C.C.R. § 11090(1)(A)(1)(d) and §  
10 11090(1)(A)(2)(b). Hamilton and the two Transportation Supervisors  
11 whose declarations he submitted contend that their work entailed  
12 very limited discretion or independent judgment. (See FAC ¶ 15  
13 (alleging that neither he nor other class members "exercise[d]  
14 discretion or independent judgment as part of their jobs"); Benin  
15 Decl. ¶ 5 ("I very rarely, way less than 50% of the time, exercised  
16 any discretion or independent judgment, as part of my job with  
17 Genesis); Lopez Decl. ¶ 6 (same).

18 By contrast, each of the seven Transportation Supervisors  
19 whose declarations were submitted by Genesis describe regularly  
20 exercising substantial discretion and judgment in the course of  
21 their work. (See, e.g., Guidry Decl., ¶ 11 ("As a manager of my  
22 department and the supervisor of the drivers, local management  
23 provides me with the authority and flexibility to rely on my skill  
24 and experience and do what works best for me"); Lund Decl., ¶¶ 3-6,  
25 9-10, 13-22 ("[Factors such as] call-offs, accidents, injuries, and  
26 other unforeseen issues require me to react in real time to  
27 evaluate possible courses of action and use my experience and  
28 judgment to determine the best resolution under the

1 circumstances... Because of the fast-paced nature of Genesis'  
2 business, I am constantly using my discretion and judgment to  
3 problem solve."); Parra Decl. ¶ 22 ("I have discretion to make  
4 almost every decision in how I supervise the drivers and manage the  
5 daily operations of my department, and I make decisions based on my  
6 skill, experience, and judgment, as well as daily business needs.")  
7 Spaziani Decl., ¶ 22 (same); Lehndorfer Decl., ¶ 25 (same); Del Rio  
8 Decl., ¶ 21 (same); Billy Decl., ¶ 24 (same).

9 Third, there is divergence regarding whether putative class  
10 members were required to perform manual labor, an element of the  
11 administrative exemption. See 8 C.C.R. § 11090(1)(A)(2)(a).  
12 Hamilton and his declarants assert that they were required to  
13 perform substantial manual labor. (See Hamilton Dep. I at 92:2-7  
14 ("I was ... being told to load trucks, move trucks, do whatever you  
15 have to do to get the truck out on time."); Benin Decl. ¶ 7 ("I was  
16 required to perform manual labor, including but not limited to,  
17 moving inventory, loading trucks, cleaning, driving trucks, and  
18 filing forms related to delivery"); Lope Decl. ¶ 3 (same).)

19 These contentions are contrary to those Genesis's declarants.  
20 (See, e.g., Guidry Decl. ¶ 9 ("As a Transportation Supervisor, my  
21 job duties do not include physical labor tasks, such as moving  
22 inventory, loading or unloading vehicles, or cleaning the  
23 warehouse, as we have people for that. ... Accordingly, I never  
24 perform manual labor"); Billy Decl., ¶ 9 ("Driving or moving the  
25 trucks used for deliveries is not part of my job duties as a  
26 Transportation Supervisor. I have never driven a Genesis truck  
27 during my employment"); Parra Decl., ¶ 9 ("I may occasionally jump  
28 in to help load a vehicle while multi-tasking and overseeing the

1 process, pick up and discard pieces of trash or clean up a spill in  
2 the warehouse when it presents a potential safety hazard, or clean  
3 up my office space. I do so not because it is my responsibility or  
4 an expectation from management, but to set an example for my  
5 employees and show them that I am a team player while expediting  
6 operations at the facility. I always spend less than 50% of my week  
7 on the[se] types of tasks"). The divergence between Hamilton's  
8 experience and that of the other Transportation Supervisors was  
9 acknowledged by Hamilton himself who stated that the Transportation  
10 Supervisors from other sites "were shocked that we were actually  
11 doing this manual labor over here, the amount of work that we were  
12 doing. They were shocked." (Hamilton Depo. II, at 417:19-418:3.)

13         Hamilton contends that this court should find that common  
14 issues predominate because the Transportation Supervisors who  
15 provided declarations for Genesis described performing a similar  
16 set of job duties. (Reply at 5.) It is true that these employees  
17 described a largely identical list of tasks. These tasks included,  
18 among others, "conducting safety and quality observations of  
19 drivers and providing coaching and training in areas needing  
20 improvement"; "coaching and training drivers to achieve Genesis'  
21 goals related to quality of service, accurate and on-time  
22 deliveries, customer services expectations"; "managing drivers'  
23 workloads, including making adjustments to driver's routes and  
24 schedules as necessary to ensure that operations run efficiently  
25 and deliveries to Genesis' customers are timely"; "assigning  
26 responsibilities to drivers such as new-driver trainings,  
27 orientation, and ride-a-longs"; "coaching and disciplining drivers  
28 as needed, including performance evaluations and write-ups where

1 necessary"; "providing input with respect to more severe discipline  
2 and terminations"; "responding to driver complaints and grievances,  
3 including diffusing tensions among drivers when issues arise";  
4 "conducting audits of driver to evaluate drivers' performance";  
5 "monitoring legal compliance issues including Department of  
6 Transportation regulations regarding, among other issues, hours of  
7 service"; and "generally managing the day to day operations of the  
8 Transportation Department." (See Opposition, Ex 1. Compendium of  
9 Evidence ¶¶ 23-28.) Each of the seven Transportation Supervisors  
10 assert that they spent at least 70% or more of their time at work  
11 performing these and similar tasks. (See Guidry Decl., ¶¶ 6, 14  
12 (stating that he spends on average 90% to 97% of time per week on  
13 above and similar tasks); Parra Decl., ¶ 8 (average of 70% to 90%);  
14 Billy Decl., ¶¶ 6-8 (average of 80%); Spaziani Decl., ¶ 6 (average  
15 of 85% to 90%); Lund Decl., ¶¶ 5-6 (average of 85%); Lehndorfer  
16 Decl., ¶¶ 9-10 (average of 75% to 85%); Del Rio Decl., ¶¶ 5-7  
17 (average of 80% to 85%).)

18       However, the common description of duties does not satisfy  
19 Hamilton's burden under Rule 23(b)(3). In seeking class  
20 certification, Hamilton's burden is not merely to show that there  
21 are common experiences among the putative class members; he must  
22 offer common evidence that the class members were misclassified.  
23 See Marlo, 251 F.R.D. at 484; Sav-On, 34 Cal.4th at 329-330. Here,  
24 the common job duties cited by Genesis's declarants were offered to  
25 prove that putative class members were properly classified as  
26 exempt because they performed management duties during the majority  
27 of their work time. The duties cited by these declarants would

28

1 ordinarily constitute exempt, management functions.<sup>1</sup> Accordingly,  
2 Hamilton cannot rely on the commonality among Genesis's declarants'  
3 descriptions of their job duties to establish predominance.

4 In response to this objection, Hamilton suggests that the  
5 duties described by Genesis's declarants involved less discretion  
6 than the declarants themselves stated. (Reply at 8.) However, in  
7 making this argument, Hamilton relies solely on his own experience  
8 at Genesis. (See Reply at 8-9 (citing Hamilton Depo. I at 40-46  
9 (describing experience of being allotted limited discretion in  
10 ensuring proper staffing levels) and at 205-215 (describing limited  
11 discretion with respect to performance evaluations).) Hamilton's  
12 own experience is not strong evidence of common experiences  
13 throughout the class.

14 Hamilton also points to several additional items of evidence  
15 in support of his motion for class certification, but such evidence  
16 is unavailing. First, Hamilton notes Genesis's acknowledgment that  
17 it has classified all employees with the position "Transportation  
18 Supervisor" as exempt and paid all such employees with a salary  
19 rather than on an hourly basis. (Declaration of Roberg Kashfian in  
20 Support of Motion ¶ 14, Ex. E (Genesis Supplemental Response to  
21 Requests for Admissions, No. 6, 7).) However, such a policy is not

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22  
23 <sup>1</sup> Wage Order 9 provides that the activities constituting  
24 exempt and non-exempt work shall be construed in the same manner as  
25 such items are construed in specified federal regulations effective  
26 as of the date of Wage Order's promulgation. 8 C.C.R. §  
27 11090(1)(A)(4) (referring to, *inter alia*, 29 C.F.R. § 541.102  
28 (2000)). Former § 541.102 (2000) lists "management" duties as  
including: "interviewing, selecting, and training of employees";  
"directing their work"; "appraising their productivity and  
efficiency for the purpose of recommending promotions or other  
changes in status"; "handling their complaints and grievances and  
disciplining them when necessary"; "apportioning the work among the  
workers"; "providing for the safety of the men and the property."

1 common evidence of misclassification in the absence of evidence  
2 showing that the policy was wrongful. See Marlo, 251 F.R.D. at 484.  
3 (“[A] class-wide determination of misclassification generally  
4 cannot be proved from the existence of an exemption policy alone.”)

5 Second, Hamilton points to documents reflecting a similar  
6 management structure at the various Genesis locations. (Kashfian  
7 Decl. ¶ 19.) However, such similarity is of little probative value  
8 given the lack of evidence of a policy of misclassification.

9 Third, Hamilton cites similar job postings for Transportation  
10 Supervisors at the Fontana, Fullerton, and San Diego facilities  
11 (Kashfian Decl. Ex. H) and a role profile for Transportation  
12 Supervisors at Union City. (Id. Ex. I.) However, such postings,  
13 again, are only evidence that Transportation Supervisors were  
14 expected to perform similar duties and were classified as exempt,  
15 not that they were misclassified. Hamilton contends that the role  
16 profile “asserts that 70% of the time Transportation Supervisors  
17 perform non-exempt work.” (Mot. at 4.) However, he provides no  
18 explanation for this contention and the role profile itself  
19 describes a set of duties comprising 70% of the employee’s time  
20 that would ordinarily be considered exempt, largely mirroring the  
21 tasks listed by Genesis’s declarants. (See Kashfian Decl. Ex. H and  
22 I.) In any case, “the focus of the exemption test is the employee's  
23 actual work activities and these job descriptions simply do not  
24 establish what [Transportation Supervisors] actually do.” Marlo,  
25 251 F.R.D. at 486.

26 In sum, the court finds that Hamilton has not met his burden  
27 to show that common issues predominate.

28

1 **2. Superiority**

2 Under Rule 23(b)(3), Hamilton must also show that a class  
3 action is superior to other methods of adjudicating the  
4 controversy. Valentino v. Carter-Wallace, Inc., 97 F.3d 1227, 1235  
5 (9th Cir. 1996). As the Advisory Committee explained in its Note to  
6 Amended Rule 23, "Subdivision (b)(3) encompasses those cases in  
7 which a class action would achieve economies of time, effort, and  
8 expense, and promote uniformity of decision as to persons similarly  
9 situated, without sacrificing procedural fairness or bringing about  
10 other undesirable results."

11 Hamilton contends that class treatment is superior to other  
12 methods of adjudication because it would "allow the class litigants  
13 a chance to redress their claims against a large, resourceful  
14 defendant." (Mot. at 24.) He argues that if each individual class  
15 member were required to file an individual lawsuit, Genesis could  
16 exploit and overwhelm the limited resources that each individual  
17 class member could bring to bear to prosecute his or her case.  
18 (Id.)

19 The court is not persuaded. This case involves a relatively  
20 small putative class of 30 individuals. At least seven putative  
21 class members, more than a fifth of the group, have already  
22 signaled, through their signing declarations in opposition to class  
23 certification, that they would likely opt out of the class, leaving  
24 a group of at most 23 class members. This group is not so large  
25 that individuals within the group who wish to pursue  
26 misclassification-based wage and hour actions against Genesis could  
27 not join their claims and enjoy the resulting economy of scale in  
28 financing and prosecuting their claims. Indeed, as Hamilton has



1 brought to the court's attention, three other Genesis  
2 Transportation Supervisors have already brought a joint  
3 misclassification suit against Genesis. (See Plaintiff's Request  
4 for Judicial Notice (Dkt. No. 33) (Derrick Welch et al. v. Genesis  
5 Logistics, Inc., Case No.RG13698984 (Jan. 10, 2014).) Such an  
6 approach would not run the risk of sacrificing procedural fairness  
7 as would result from applying class treatment to claims that may  
8 not be representative of all members of the class. Accordingly, the  
9 court finds that class treatment is not a superior method of  
10 adjudication in this case.

11

12 Because Hamilton has failed to satisfy the requirements of  
13 predominance and superiority under Rule 23(b)(3), the instant  
14 motion for class certification must be denied.

15

16 **IV. Conclusion**

17 For the reasons stated herein, Hamilton's Motion for Class  
18 Certification (Dkt. No. 32) is DENIED.

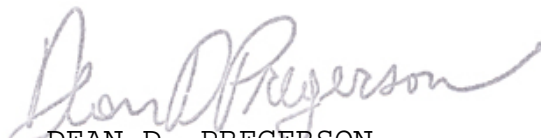
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20 IT IS SO ORDERED.

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22 Dated: August 22, 2014

23

  
DEAN D. PREGERSON  
United States District Judge

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