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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

SHARON POLE, individually,	)	Case No. CV 15-07196 DDP (Ex)
and on behalf of other	)	
members of the putative	)	<b>ORDER GRANTING MOTION FOR CLASS</b>
class, and on behalf of	)	<b>CERTIFICATION</b>
aggrieved employees pursuant	)	
to the Private Attorney	)	[Dkt. No. 15]
General Act ("PAGA"),	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
ESTENSON LOGISTICS, LLC, a	)	
Nevada limited liability	)	
company,	)	
	)	
Defendants.	)	
	)	
_____	)	

Presently before the Court is Plaintiff Sharon Pole's Motion for Class Certification. (Dkt. 15.) After considering the parties' submissions and hearing oral argument, the Court adopts the following Order.

**I. BACKGROUND**

This case arises out of an employee classification dispute between Plaintiff Sharon Pole and her former employer, Defendant

1 Estenson Logistics, LLC ("Estenson"). Estenson is a third-party  
2 trucking company that moves product for its customers from  
3 distribution centers to retail stores located in California.  
4 (Plaintiff's Appendix of Evidence ("PA") 6-7 (Deposition of  
5 Michelle Alexander 12:2-15:5).) Plaintiff was formerly employed by  
6 Estenson as a "Fleet Manager." (Complaint ¶ 14.) Plaintiff brings  
7 this action on the grounds that Estenson misclassified her as an  
8 "exempt" employee and paid her on a salary basis, without any  
9 compensation for overtime hours worked and missed meal periods or  
10 rest breaks. (Id. ¶ 15.)

11 In the present motion, Plaintiff seeks to certify the  
12 following class under Federal Rule of Civil Procedure 23(b)(3):

13 All current and former California-based salaried "Fleet  
14 Managers," or persons who held similar job titles and/or  
15 performed similar job duties, who worked for Estenson  
within the State of California from September 6, 2010 to  
final judgment.

16 (Motion for Class Certification ("Mot.") 1.) The gravamen of  
17 Plaintiff's class certification theory is that "Estenson  
18 misclassified her and other Fleet Managers as exempt because their  
19 job duties fail to satisfy any of the requirements for the  
20 executive or administrative exemptions." (Id. 1.)

21 **A. Estenson's Operation**

22 Estenson operates out of approximately forty-six distribution  
23 centers in California, some of which operate 24 hours a day.  
24 (Declaration of Michelle Alexander ¶ 2; Alexander Dep. 26:10-17.)  
25 Each location is overseen by a single Site Manager. (Alexander Dep.  
26 89:21-24.) The site managers are "ultimately . . . responsible for  
27 the operations of each facility." Each facility also employs  
28 administrative staff, drivers, and yard hostlers. (Id. 23:21-24:5.)

1 At eleven of these facilities, Estenson employs "Fleet Managers."  
2 (Id. 15:16-16:3.) These facilities are located across California.  
3 (Id. 18:7-19 (noting facilities from Redlands, CA in the south to  
4 Tracy, CA in the north).) Based on the size of operations, a  
5 location can have anywhere from one to five Fleet Managers employed  
6 at any given time. (Alexander Decl. ¶ 4.) During her employment,  
7 Plaintiff was one of two Fleet Managers at the Lathrop, CA  
8 location. (Plaintiff's Dep. 73:10-11.)

9 **B. Fleet Manager's Responsibilities**

10 According to Estenson's 2013 Fleet Manager job description,  
11 the position's responsibilities include ensuring loads are  
12 delivered on time, investigating complaints, ensuring company  
13 safety policies are understood, assisting in safety inspections and  
14 trainings, and filing paperwork generated by shipping activities.  
15 (See PA 140-141.) Other versions of the job description include  
16 tasks such as enforcing rules and company policies, ensuring safety  
17 and compliance, internal and external customer service, HR related  
18 tasks like hiring and training, scheduling, billing, complying with  
19 reporting requirements, and assisting the site manager. (See PA  
20 135-138.) Estenson has confirmed that these job duties apply to all  
21 Fleet Managers and are not site-specific. (Alexander Dep. 58:4-8.)

22 Plaintiff asserts that, on a day-to-day basis, Fleet Managers  
23 are primarily responsible for dispatching truck drivers, data  
24 entry, and taking calls. (PA 190 (Allen Decl. ¶ 4.); PA 193-14  
25 (Dorado Decl. ¶ 6); PA 196 (Elliot Decl. ¶ 5); PA 199-200 (Jones  
26 Decl. ¶ 6); PA 202 (Taylor Decl. ¶ 5); PA 205 (Thompson Decl. ¶  
27 5).) Fleet Managers create "route packets" based on a load  
28 planners assessment of how to arrange a customer's delivery

1 requests and give these packets to drivers, along with their keys.  
2 (Alexander Dep. 26:22-27:24; 61:18-64:25.) Fleet Managers also  
3 collect paperwork submitted by truck drivers and input into  
4 Estenson's computer system. (Alexander Dep. 73:16-24.) Furthermore,  
5 Fleet Managers handle all in-bound truck driver calls, including  
6 accident and maintenance reports. (Alexander Dep. 199:5-7; 92:5-  
7 97:6.) Some Fleet Managers were also given a "checklist" that  
8 memorializes many of these duties. (PA 143-44; PA 101-02 (Towell  
9 Depo. 75:6-76:2.)

10 Estenson elaborates on this account of a Fleet Manager's  
11 duties by noting additional responsibilities. For example, Estenson  
12 describes the specific considerations a Fleet Manager might account  
13 for when deciding how to assign a particular driver to a delivery  
14 route. (Alexander Dep. 36:6-37:9; 46:16-19.) Estenson also notes  
15 the various responsibilities involved in responding to customer  
16 complaints or handling other customer inquiries. (Suarez Decl. ¶¶  
17 10-11.) While Estenson describes some commonalities in the Fleet  
18 Manager role, it also elaborates on the differences. For instance,  
19 Estenson explains that larger facilities with more drivers have  
20 divided responsibilities among multiple Fleet Managers--with some  
21 handling loan planning and billing and others focusing on driver  
22 communications--while smaller facilities will have only a single  
23 Fleet Manager who is responsible for a broader range of  
24 responsibilities. (Towell Dep. 76:3-77:14.)

25 **C. Classification of Fleet Managers as Exempt**

26 The basis of Plaintiff's suit is that Estenson misclassifies  
27 its Fleet Managers as exempt. (Alexander Dep. 28:4-12.) As exempt  
28 employees, Estenson does not pay overtime to its Fleet Managers

1 when they work longer than eight hours a day or forty hours a week.  
2 (Alexander Dep. 122:13-124:1.) Estenson also does not provide its  
3 Fleet Managers with meal and rest breaks. (Towell Dep. 59:22-60:3.)  
4 According to Plaintiff, Fleet Managers routinely work longer than  
5 eight hours and did not take lunch or rest breaks. (Towell Dep.  
6 21:4-12; PA 191 (Allen Decl. ¶ 7); PA 194 (Dorado  
7 Decl. ¶ 9); PA 118 (Pole Dep. 104:1-18); PA 191 (Allen Decl. ¶  
8 8.)) Defendants acknowledge that Fleet Managers are not entitled  
9 to overtime and do not receive scheduled meal and rest breaks but  
10 submit evidence that some Fleet Managers have taken lunch breaks.  
11 (Suarez Decl. ¶ 15; Towell Dep. 64:9-20.)

## 12 **II. LEGAL STANDARD**

13 The party seeking class certification bears the burden of  
14 showing that each of the four requirements of Rule 23(a) and at  
15 least one of the requirements of Rule 23(b) are met. See Meyer v.  
16 Portfolio Recovery Assocs., LLC, 707 F.3d 1036, 1041 (9th Cir.  
17 2012); Hanon v. Dataprods. Corp., 976 F.2d 497, 508-09 (9th Cir.  
18 1992). In determining whether to certify a class, a court must  
19 conduct a "rigorous analysis" to determine whether the party  
20 seeking certification has met the prerequisites of Rule 23 of the  
21 Federal Rules of Civil Procedure. Valentino v. Carter-Wallace,  
22 Inc., 97 F.3d 1227, 1233 (9th Cir. 1996). Rule 23(a) sets forth  
23 four prerequisites for class certification:

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

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

5 In determining the propriety of a class action, the question  
6 is not whether the plaintiff has stated a cause of action or will  
7 prevail on the merits, but rather whether the requirements of Rule  
8 23 are met. Eisen v. Carlisle & Jacquelin, 417 U.S. 156, 178  
9 (1974). This Court, therefore, considers the merits of the  
10 underlying claim to the extent that the merits overlap with the  
11 Rule 23(a) requirements, but will not conduct a "mini-trial" or  
12 determine at this stage whether Plaintiffs could actually prevail.  
13 Ellis v. Costco Wholesale Corp., 657 F.3d 970, 981, 983 n.8 (9th  
14 Cir. 2011); see also Wal-Mart Stores, Inc. v. Dukes, 564 U.S. 338,  
15 131 S. Ct. 2541, 2551-52 (2011).

16 Rule 23(b) defines different types of classes. Leyva v.  
17 Medline Indus. Inc., 716 F.3d 510, 512 (9th Cir. 2012). Relevant  
18 here, Rule 23(b)(3) requires that "questions of law or fact common  
19 to class members predominate over individual questions . . . and  
20 that a class action is superior to other available methods for  
21 fairly and efficiently adjudicating the controversy." Fed. R. Civ.  
22 P. 23(b)(3).

### 23 **III. DISCUSSION**

#### 24 **A. Rule 23(a) Prerequisites**

25 To show that class certification is warranted, Plaintiffs  
26 must show that all four prerequisites listed in Rule 23(a) are  
27 satisfied.

##### 28 **1. Numerosity**

1 Numerosity is satisfied if "the class is so numerous that  
2 joinder of all members is impracticable." Fed. R. Civ. P.  
3 23(a)(1). The Ninth Circuit has elaborated that impracticable is  
4 not the same as impossible but instead asks courts to determine  
5 whether "potential class members would suffer a strong litigation  
6 hardship or inconvenience if joinder were required." Rannis v.  
7 Recchia, 380 F. App'x 646, 650-51 (9th Cir. 2010) (citing Harris  
8 v. Palm Springs Alpine Estates, Inc., 329 F.2d 909, 913-14 (9th  
9 Cir.1964)). The "numerosity requirement requires examination of  
10 the specific facts of each case and imposes no absolute  
11 limitations." Gen. Tel. Co. of the Nw. v. Equal Employment  
12 Opportunity Comm'n, 446 U.S. 318, 330 (1980). The Ninth Circuit  
13 has typically required at least fifteen members to certify a  
14 class, Harik v. Cal. Teachers Ass'n, 326 F.3d 1042, 1051 (9th Cir.  
15 2003), and has usually held classes of forty members or more  
16 satisfy numerosity, Rannis, 380 F. App'x 651.

17 Plaintiff's Motion for Class Certification states that the  
18 putative class includes approximately "45 Fleet Managers." (Mot.  
19 11.) Both Estenson's Opposition to the Motion for Class  
20 Certification and Plaintiff's Reply note that there are 55  
21 potential class members. (Opp'n 11; Reply 15.) On these  
22 representations, the court would be inclined to find the  
23 numerosity requirement satisfied. Since the completion of  
24 briefing, however, Estenson has submitted a Notice of Newly  
25 Acquired Facts stating that thirty-four current Fleet Managers and  
26 nine former employees have executed release agreements for all  
27 claims at issue, leaving "only 17 former employees" in the  
28

1 putative class. (Notice of Newly Acquired Facts ¶ 1.) Estenson did  
2 not provide a copy of the release.

3 Plaintiff challenges the legal effect and enforceability of  
4 these undisclosed releases. (Plaintiff's Response to Defendant's  
5 Newly Acquired Facts ¶ 1.) According to Plaintiff, the releases  
6 must be deemed invalid because they purportedly include a release  
7 of the Private Attorney General Act (PAGA) claims, which requires  
8 court approval. See Cal. Lab. Code § 2699(1)(2). Plaintiff also  
9 contends that even if the releases exist and are valid, they do  
10 not alter the class certification analysis because they only  
11 release claims that pre-date the release. (Id. ¶ 3 (citing  
12 Alexander Dep. 63:18-25, attached to Plaintiff's Response to  
13 Defendant's Newly Acquired Facts.) At bottom, Plaintiff's theory  
14 of class certification is that Estenson misclassifies Fleet  
15 Managers as exempt, and therefore improperly denies them mandated  
16 overtime pay and breaks. Even if a current employee released their  
17 prior claims, Plaintiff contends that these employees are still  
18 misclassified and continue suffer the resulting harms in the  
19 course of their employment. Because Plaintiff seeks to certify a  
20 class of all Fleet Managers "who worked for Estenson within the  
21 State of California from September 6, 2010 to final judgment,"  
22 Plaintiff believes these current employees should still be  
23 considered part of the class. (Mot. 1.)

24 Without knowing the specifics of the release, the court  
25 cannot conclusively determine the validity of the releases. For  
26 instance, the court cannot determine if the releases were invalid  
27 under California Labor Code section 206.5(a), which prohibits an  
28 employer from conditioning wages due on the execution of a



1 release. Likewise, Plaintiff correctly notes that a release of  
2 PAGA claims requires court approval but the implications of that  
3 are less apparent for the class certification motion. While  
4 individuals cannot release an employer from liability to the  
5 state, individuals can waive their own right to bring PAGA claims.  
6 See Waisbein v. UBS Financial Services Inc., No. C-07-2328 MMC,  
7 2007 WL 4287334, at \*3 (C.D. Cal. Dec. 5, 2007). In the instance  
8 case, the PAGA waiver may not have any impact on class  
9 certification because Plaintiff does not claim to bring the PAGA  
10 claims as a class action. To the contrary, she expressly states in  
11 her class certification motion that she is bringing the PAGA claim  
12 as a representative action that does not require class  
13 certification. (Mot. 1.) Thus, the only filed PAGA claim at this  
14 juncture—and thus the only PAGA settlement that might require  
15 court approval—is Plaintiff’s representative claim against  
16 Estenson. There is no reason to believe that the releases attempt  
17 to waive Plaintiff’s right to pursue her PAGA action.

18       Even assuming the validity of the releases, however, the  
19 putative class still meets the numerosity requirement because  
20 there are more than forty members to pursue the misclassification  
21 claim. While the precise number of class members has fluctuated  
22 across the parties’ various filing, the last count from Defendant  
23 asserts that there are “thirty-four (34) putative class members  
24 who are current employees” and “seventeen (17) former employee[s]  
25 . . . who have not executed binding settlement agreements with  
26 Estenson.” (Notice of Newly Acquired Facts ¶ 1.) Thus, there are  
27 at least fifty-one individual with a potential misclassification  
28 claim against Estenson who are eligible to participate in the

1 putative class action. As Defendant's notice acknowledges, "the  
2 thirty-four current employees who executed release agreements are  
3 now barred from pursuing claims for damages that pre-date the date  
4 on which they signed the agreements . . . ." (Id. (emphasis  
5 added).)

6 At least one California court has confronted precisely this  
7 issue when evaluating the effect of a release where employees  
8 released their employer "from all claims for unpaid overtime and  
9 any other Labor Code violations," agreed "not to participate in  
10 any class action that may include . . . any of the released  
11 Claims," and acknowledged that "he or she had spent more than 50%  
12 of the time performing managerial duties." Chindarah v. Pick Up  
13 Stix, Inc., 171 Cal. App. 4th 796, 798 (2009). In that case, the  
14 court upheld that validity of the release because the class action  
15 only concerned past unpaid overtime and the release "did not  
16 purport to exonerate [the employer] from future violations." This  
17 distinction is critical because under California law, "the  
18 statutory right to receive overtime pay embodied in section 1194  
19 is unwaivable." Gentry v. Superior Court, 42 Cal. 4th 443, 456  
20 (2007) abrogation on other grounds recognized by Iskanian v. CLS  
21 Transp. Los Angeles, LLC, 59 Cal. 4th 348, 366 (2014). Here, where  
22 the purported class claim includes allegations of an ongoing  
23 misclassification violation, any release by current employees of  
24 past claims does not exclude these individuals from participating  
25 in a class seeking to correct the misclassification.

26 With approximately fifty-one class members, the court  
27 concludes that the numerosity requirement is met. Out of an  
28 abundance of caution, however, the court proceeds to consider

1 whether even a seventeen-member class would meet the numerosity  
2 requirement in this case.<sup>1</sup> As noted above, the "specific facts of  
3 each case must be examined to determine if impracticability  
4 exists." Haley v. Medtronic, Inc., 169 F.R.D. 643, 647 (C.D. Cal.  
5 1996). In determining whether the requisite numerosity exists in  
6 cases where the class number is not great, courts consider "the  
7 geographical diversity of class members, the ability of individual  
8 claimants to institute separate suits, and whether injunctive or  
9 declaratory relief is sought." Jordan v. Los Angeles Cty., 669  
10 F.2d 1311, 1319 (9th Cir. 1982), vacated on other grounds, 459  
11 U.S. 810 (1982).

12 **(a) Geographical Diversity**

13 There is "no *per se* rule on the number of widely dispersed  
14 plaintiffs necessary to support a finding of numerosity."  
15 McCluskey v. Trustees of Red Dot Corp. Employee Stock Ownership  
16 Plan & Trust, 268 F.R.D. 670, 675 (W.D. Wash. 2010). Courts have  
17 found that the numerosity requirement was met where plaintiffs  
18 were merely dispersed across counties within the same state. Id.  
19 (citing Novella v. Westchester County, 443 F.Supp.2d 540, 546  
20 (S.D. N.Y., 2006)); see also Brink v. First Credit Resources, 185

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21  
22 <sup>1</sup> The court undertakes this inquiry both because, without  
23 knowing the specific language of the release, it may emerge that  
24 the release is more expansive than currently assumed and in the  
25 event that additional releases further alter the numerical  
26 composition of the class. In the event that additional releases are  
27 secured, district courts have found a "duty to supervise  
28 communications with potential class members exists even before a  
class is certified" if it is required to ensure "the fairness of  
the litigation process, the adequacy of representation, and the  
administration of justice generally.'" Cheverez v. Plains All Am.  
Pipeline, LP, No. CV 15-4113 PSG (JEMx), 2016 WL 861107, at \*2  
(C.D. Cal. Mar. 3, 2016) (quoting In re Oil Spill by the Oil Rig  
'Deepwater Horizon' in the Gulf of Mexico on Apr. 20, 2010, No.  
10-md-02179, 2011 WL 323866, at \*2. (E.D. La. Feb. 2, 2011)).

1 F.R.D. 567, 570 (D. Ariz. 1999) (holding that the joinder was  
2 impractical partially because class members are located throughout  
3 the state of Arizona). Similar to the facts at issue here, the  
4 court in Aguayo v. Oldenkamp Trucking held that joinder of the  
5 proposed class of 34 was impractical because “[t]he plaintiffs are  
6 truck drivers who likely live near both . . . Bakersfield, which  
7 is within this District, and near Ontario, which is outside this  
8 district[.]” Aguayo v. Oldenkamp Trucking, 2005 WL 2436477, at  
9 \*12 (E.D. Cal., October 3, 2005). Consequently, “[i]t would  
10 likely be difficult for individuals to prosecute in this distant  
11 forum.” Id.; but see Sandoval v. M1 Auto Collisions Centers, 309  
12 F.R.D. 549, 562 (N.D. Cal. 2015) (holding that numerosity was not  
13 met where the proposed class had only seventeen members who were  
14 all working in the San Francisco Bay Area).

15 In the present case, Fleet Managers are employed in at least  
16 the following California cities: Lathrop, Tracy, Bakersfield,  
17 Fremont, Mira Loma, Ontario, Redland, La Mirada, and Fontana.  
18 (Alexander Dep. 18:10-15.) Assuming that the release of claims did  
19 not result in the remaining putative class members all being  
20 located in the same or nearby cities, the court finds that the  
21 geographical diversity factor counsels in favor of meeting the  
22 numerosity requirement.

23 **(b) Ability to Bring Suit Separately**

24 The ability of individual class members to bring suit  
25 individually can make joinder impractical when potential class  
26 members lack the financial resources to file individual suits.  
27 McCluskey, 268 F.R.D. at 675. Putative class members are less able  
28 to bring their claims individually when their claims are

1 relatively small, making it unlikely that the individual would  
2 pursue relief absent class certification. Millan v. Cascade Water  
3 Services, Inc., 310 F.R.D. 593, 603 (E.D. Cal. 2015); see also  
4 Chastain v. Cam, 2016 WL 1572542, at \*1 (D. Ore. April 19, 2016)  
5 (holding that joinder is impractical in part because "Plaintiffs  
6 allege small amounts of individual damages for unpaid breaks").  
7 Individual class members are also unlikely to sue independently  
8 when they face fear or retaliation from an employer. See Buttino,  
9 1992 WL 12013803, at \*2 (holding that numerosity was satisfied in  
10 part because "many individual claimants would have difficulty  
11 filing individual lawsuits out of fear of retaliation, exposure,  
12 and/or prejudice, such that it is unlikely that individual class  
13 members would institute separate suits"); see also Aguayo, 2005 WL  
14 2435477, at \*12 (citing Mullen v. Treasure Chest Casino, LLC, 186  
15 F.3d 620, 625 (5th Cir. 1999)) (noting that "some of the potential  
16 class members are still employed with defendant and are unlikely  
17 to institute action against their employer").

18 Here, where some potential class members are still employed  
19 by Estenson and where the claims are for foregone overtime and  
20 breaks, the court finds that ability to individually bring suit  
21 counsels in favor of finding numerosity.

22 **(c) Relief Sought**

23 The numerosity requirement is "relaxed" when injunctive or  
24 declaratory relief is sought. Sueoka v. U.S., 2004 WL 1042541, at  
25 \*2 (9th Cir., May 5, 2004). This is largely because the type of  
26 relief sought necessarily implicates judicial economy where a  
27 judgment granting an injunction would avoid duplicative suits  
28 brought by other class members. See Escalante v. California

1 Physicians' Service, 309 F.R.D. 612, 618 (finding that a class of  
2 19 is still sufficiently numerous because "Plaintiff in this case  
3 is requesting declaratory and injunctive relief" and because  
4 "allowing a class action to be brought would be in the interests  
5 of judicial economy"). While there may ultimately be some  
6 individualized damage calculations, this putative class includes  
7 claims for both injunctive and declaratory relief. Given the facts  
8 presented in this case, it would be inefficient and unduly burden  
9 the court's docket to require each individual Fleet Manager to  
10 separately litigate their misclassification claim.

11 Evaluating the numerosity factors as a whole, and bearing in  
12 mind considerations of judicial economy, Plaintiff's putative  
13 class satisfies the numerosity requirement.

## 14 **2. Commonality**

15 Commonality is satisfied if "there are questions of law or  
16 fact common to the class." Fed. R. Civ. P. 23(a)(2). Note that  
17 this does not mean that *all* questions of law and fact must be  
18 identical across the class; "[t]he requirements of Rule 23(a)(2)  
19 have been construed permissively, and all questions of fact and  
20 law need not be common to satisfy the rule." Ellis v. Costco  
21 Wholesale Corp., 657 F.3d 970, 981 (9th Cir. 2011) (internal  
22 quotation marks and brackets omitted). However, posing common  
23 questions of trivial fact is not enough: the "question" must be  
24 one that "will generate common answers apt to drive the resolution  
25 of the litigation." Wal-Mart Stores, Inc. v. Dukes, 131 S. Ct.  
26 2541, 2551 (2011).

27 The common question raised by Plaintiff's potential class is  
28 whether Estenson properly classified Fleet Managers as exempt

1 employees, and thus was not required to pay overtime or schedule  
2 meal and rest breaks. According to Plaintiff, the commonality  
3 requirement is met because the evidence demonstrates that Estenson  
4 did not meet any of the requirements of invoking either the  
5 administrative or executive exemption. (Mot. 20.)

6 Under California law, an individual "employed in the  
7 transportation industry" qualifies as exempt if the following  
8 criteria are met:

- 9 (1) Executive Exemption A person employed in an executive  
10 capacity means any employee:  
11 (a) Whose duties and responsibilities involve the  
12 management of the enterprise in which he/she is  
13 employed or of a customarily recognized department or  
14 subdivision thereof; and  
15 (b) Who customarily and regularly directs the work of  
16 two or more other employees therein; and  
17 (c) Who has the authority to hire or fire other  
18 employees or whose suggestions and recommendations as  
19 to the hiring or firing and as to the advancement and  
20 promotion or any other change of status of other  
21 employees will be given particular weight; and  
22 (d) Who customarily and regularly exercises  
23 discretion and independent judgment; and  
24 (e) Who is primarily engaged in duties which meet the  
25 test of the exemption. . . .  
26 (2) Administrative Exemption A person employed in an  
27 administrative capacity means any employee:  
28 (a) Whose duties and responsibilities involve either:  
29 (i) The performance of office or non-manual work  
30 directly related to management policies or  
31 general business operations of his employer or  
32 his/her employer's customers; or  
33 (ii) The performance of functions in the  
34 administration of a school system, or  
35 educational establishment or institution, or of  
36 a department or subdivision thereof, in work  
37 directly related to the academic instruction or  
38 training carried on therein; and  
39 (b) Who customarily and regularly exercises  
40 discretion and independent judgment; and  
41 (c) Who regularly and directly assists a proprietor,  
42 or an employee employed in a bona fide executive or  
43 administrative capacity  
44 (d) Who performs under only general supervision work  
45 along specialized or technical lines requiring  
46 special training, experience, or knowledge; or

- 1 (e) Who executes under only general supervision  
special assignments and tasks; and  
2 (f) Who is primarily engaged in duties that meet the  
test of the exemption. . . .  
3

4 Cal. Code Regs. tit. 8, § 11090. Plaintiff argues that Estenson's  
5 Fleet Managers do not satisfy any of the requirements for invoking  
6 an exemption but this is a greater burden than Plaintiff needs to  
7 take on to demonstrate commonality. The statutory test for  
8 invoking an exemption is conjunctive. Thus, if Plaintiff can  
9 demonstrate that all Fleet Managers do not engage in any one of  
10 the required duties under each exception or that they are not  
11 primarily engaged in such duties, she will have supplied a common  
12 answer that will drive the resolution of this litigation.

13 Between Estenson's uniform job description of the Fleet  
14 Manager position and the testimony of Estenson's Rule 30(b)(6)  
15 witness that Estenson expects its Fleet Managers to perform the  
16 same duties regardless of their employment location, Plaintiff  
17 argues that commonality is satisfied. (Alexander Dep. 57:11-25;  
18 58:4-8.) Defendant responds that even if a group of employees are  
19 tasked with the same duties, questions about how each employee  
20 performs their duty may preclude class certification in the  
21 exemption classification context. (Opp'n 18-20.) In support,  
22 Estenson relies on Fjeld v. Penske Logistics, LLC, No. CV  
23 12-3500-GHK JCGX, 2013 WL 8360535 (C.D. Cal. Aug. 9, 2013). In  
24 Fjeld, the court considered whether to certify a class of  
25 Operations Supervisors who spent the majority of their time  
26 "assign[ing] drivers and trucks to routes to make [timely]  
27 deliveries based upon customer needs." Id. at \*5. The court  
28 determined that resolution of the exemption claim turned on



1 whether this task required discretion and independent judgement.  
2 Id. ("For there to be classwide answers on whether the relevant  
3 tasks are exempt, Plaintiff must make a threshold showing that the  
4 putative class members are performing the tasks in a substantially  
5 similar manner, e.g., by taking into account a similar set of  
6 factors."). In the absence of any evidence about how any potential  
7 class members other than the plaintiff performed this task, the  
8 court found that putative class did not meet the burden of  
9 demonstrating commonality.

10 In the Reply, Plaintiff argues that Fjeld does not resolve  
11 her certification claim because she submitted evidence about the  
12 factors Fleet Managers must rely on to complete the tasks Estenson  
13 posits are discretionary. (Reply 18-21.) With regard to assigning  
14 drivers to routes, Plaintiff has submitted evidence that a  
15 computer program decides whether a driver can be assigned to a  
16 route. (Suarez Dep. at 170:8-171:10.) Likewise, with regard to  
17 managing truck breakdowns, Plaintiff has submitted evidence that  
18 Fleet Managers call a tow truck from a pre-approved list of  
19 vendors and follow the instructions of the maintenance  
20 coordinator. (Suarez Dep. 127:9-128:1.) According to Plaintiffs,  
21 any choice a Fleet Manager must make are highly structured and  
22 largely predetermined.

23 While there appears to be some variation in the tasks  
24 individual Fleet Managers perform, there is also substantial  
25 commonality in the tasks Fleet Managers are expected to perform  
26 according to both job descriptions issued by Estenson and the  
27 individual testimony submitted before the court. Determining  
28 whether these tasks satisfy the requirements for classifying an

1 employee as exempt under California law is the sort of question  
2 amenable to classwide resolution and adequate to satisfy the  
3 commonality requirement under Rule 23(a)(2).

4 **3. Typicality**

5 Typicality is satisfied if "the claims or defenses of the  
6 representative parties are typical of the claims or defenses of  
7 the class." Fed. R. Civ. P. 23(a)(3). "The purpose of the  
8 typicality requirement is to assure that the interest of the named  
9 representative aligns with the interests of the class. Typicality  
10 refers to *the nature of the claim or defense* of the class  
11 representative, and *not to the specific facts from which it arose*  
12 or the relief sought. The test of typicality is whether other  
13 members have the same *or similar injury . . . .*" Hanon v.  
14 Dataproducts Corp., 976 F.2d 497, 508 (9th Cir. 1992) (internal  
15 quotation marks omitted) (citations omitted) (emphasis added).

16 Plaintiff argues that her claims are typical in that they are  
17 premised on her employment as a Fleet Manager and that there are  
18 no defenses unique to her case. Defendants do not expressly  
19 challenge this claim. Perhaps Defendants' argument that  
20 commonality is not satisfied because different Fleet Managers have  
21 different responsibilities can be understood to also challenge the  
22 typicality of Plaintiff's claims. But the court has already  
23 determined that different Fleet Managers do not appear to have  
24 such distinct responsibilities that their classification does not  
25 present a common question of law. The court cannot find any  
26 additional reason to doubt the typicality of Plaintiff's claims.  
27 Thus, the court concludes that typicality is satisfied.

28

1                   **4. Adequacy**

2           Adequacy of representation is satisfied if "the  
3 representative parties will fairly and adequately protect the  
4 interests of the class." Fed. R. Civ. P. 23(a)(4). Inasmuch as it  
5 is conceptually distinct from commonality and typicality, this  
6 prerequisite is primarily concerned with "the competency of class  
7 counsel and conflicts of interest." Gen. Tel. Co. of Southwest v.  
8 Falcon, 457 U.S. 147, 158 n.13 (1982). Thus, "courts must resolve  
9 two questions: (1) do the named plaintiffs and their counsel have  
10 any conflicts of interest with other class members and (2) will  
11 the named plaintiffs and their counsel prosecute the action  
12 vigorously on behalf of the class?" Ellis, 657 F.3d at 985. In  
13 this case, there is no dispute over this requirement.

14                   **B. Rule 23(b)(3)**

15           A class action may be certified under Rule 23(b)(3) if "the  
16 questions of law or fact common to class members predominate over  
17 any questions affecting only individual members, and that a class  
18 action is superior to other available methods for fairly and  
19 efficiently adjudicating the controversy." Fed. R. Civ. P.  
20 23(b)(3). In making its findings on these two issues, courts may  
21 consider "the class members' interests in individually controlling  
22 the prosecution or defense of separate actions," "the extent and  
23 nature of any litigation concerning the controversy already begun  
24 by or against class members," "the desirability or undesirability  
25 of concentrating the litigation of the claims in the particular  
26 forum," and "the likely difficulties in managing a class action."  
27 Id.

1                   **1. Predominance**

2                   “The Rule 23(b)(3) predominance inquiry tests whether  
3 proposed classes are sufficiently cohesive to warrant adjudication  
4 by representation.” Amchem Products, Inc. v. Windsor, 521 U.S.  
5 591, 623 (1997). “Even if Rule 23(a)'s commonality requirement may  
6 be satisfied by [a] shared experience, the predominance criterion  
7 is far more demanding.” Id. at 623-24. Predominance cannot be  
8 satisfied if there is a much “greater number” of “significant  
9 questions peculiar to the several categories of class members, and  
10 to individuals within each category.” Id. at 624. However, Rule  
11 23(b)(3) predominance “requires a showing that *questions* common to  
12 the class predominate, not that those questions will be answered,  
13 on the merits, in favor of the class.” Amgen Inc. v. Connecticut  
14 Ret. Plans & Trust Funds, 133 S. Ct. 1184, 1191 (2013).

15                   Plaintiff argues that predominance is satisfied because the  
16 realistic requirements of the Fleet Manager positions are  
17 identical and that any variation in the position is so minimal as  
18 to have no effect on the question of whether a Fleet Manager’s  
19 duties satisfy any of the requirements for an administrative or  
20 executive exemption. (Mot. 23-24.) Defendant asserts that there is  
21 variation in the duties of different Fleet Managers. Defendant  
22 also argues that this class cannot be certified because it runs  
23 afoul of the holding in Comcast Corp v. Behrend, 133 S. Ct. 1426  
24 (2013), that the predominance requirement is not satisfied where  
25 “questions of individual damage calculations will inevitably  
26 overwhelm questions common to the class.” Id. at 1433. Here, Fleet  
27 Managers did not record their time and Plaintiff acknowledges they  
28 did not all work the same number of hours. (Alexander Dep. 11:2-

1 12:1; Response to Special Interrogatory Nos. 8-10, Gruber Decl.,  
2 Ex. D.) Thus, Defendant contends that there is no workable method  
3 for calculating damages that would not require individual  
4 determinations, which overwhelm the efficiency of the class  
5 device.

6 As an initial matter, Comcast cannot be read as a general  
7 prohibition on class actions when damages cannot be calculated on  
8 a classwide basis. Rather, Comcast stands for the proposition that  
9 a "plaintiff must be able to show that their damages stemmed from  
10 the defendant's actions that created the legal liability." Leyva  
11 v. Medline Indus., Inc., 716 F.3d 510, 514 (9th Cir. 2013). The  
12 issue in Comcast was whether a particular model for calculating  
13 damages was permissible if it did not only calculate the damages  
14 for the theory of liability advanced by plaintiffs. Comcast, 133  
15 S. Ct. at 1433. The Ninth Circuit has repeatedly held since  
16 Comcast that "differences in damage calculations do not defeat  
17 class certification after Comcast." Pulaski & Middleman, LLC v.  
18 Google, Inc., 802 F.3d 979, 988 (9th Cir. 2015), cert. denied, 136  
19 S. Ct. 2410 (2016); accord Jimenez v. Allstate Insurance Co., 765  
20 F.3d 1161, 1167 (9th Cir. 2014).

21 Here, the Plaintiff posits a single theory of class  
22 liability: Fleet Managers are misclassified as exempt. Assuming  
23 that can be demonstrated, Comcast requires a damage model that can  
24 computer the injury caused by that misclassification without  
25 including additional theories of injury that were not prove. It  
26 does not stand for the proposition that no model can be utilized  
27 to calculate damages. In this case, Defendants do not provide, nor  
28 can the court discern, a reason why the damages model would be

1 unable to calculate the injury suffered by unpaid overtime and  
2 missed rest and meal breaks of this class of Plaintiffs. As to the  
3 question of whether individual questions of liability predominate,  
4 the court concludes that this putative class satisfies the  
5 predominance requirement. Defendants have submitted evidence that  
6 there is some variation in the specifics tasks performed by  
7 individual Fleet Managers but Plaintiffs contend that these  
8 variations do not address the central question of whether Fleet  
9 Managers performed any tasks that would justify an exempt  
10 classification. Based on the evidence submitted of the substantial  
11 overlap in the Fleet Manager role and the lack of evidence that  
12 the some individual Fleet Managers are engaged primarily in exempt  
13 tasks, the court finds that predominance requirement is satisfied.

## 14 **2. Superiority**

15 Rule 23(b)(3) also requires a class action to be "superior to  
16 other available methods for fairly and efficiently adjudicating  
17 the controversy." Fed. R. Civ. P. 23(b)(3). The Rule further  
18 provides four factors the Court must consider in Rule 23(b)(3)(A)  
19 through (D):

- 20 (A) the class members' interests in individually  
21 controlling the prosecution or defense of separate  
22 actions;
- 23 (B) the extent and nature of any litigation concerning  
24 the controversy already begun by or against class  
25 members;
- 26 (C) the desirability or undesirability of concentrating  
27 the litigation of the claims in the particular forum;  
28 and
- (D) the likely difficulties in managing a class action.

Here, Plaintiff argues that Fleet Managers have nearly  
identical responsibilities and none of those responsibilities  
qualify the position as exempt. (Mot. 24-25.) Given this theory of

1 liability, Plaintiff contends that the class device is superior to  
2 repeated mini-trials showing that a Fleet Manager performs the  
3 same responsibilities and is not properly classified as exempt.  
4 (Id.) Defendant main argument as to superiority is that Plaintiff  
5 has not submitted "a suitable and realistic plan for trial of the  
6 class claims" and that individual trials would allow the court to  
7 better assess the duties and responsibilities of individual Fleet  
8 Managers. (Opp'n 24 (quoting Zinser v. Accufix Research Inst.,  
9 Inc., 253 F.3d 1180, 1189 (9th Cir. 2001)).) In this particular  
10 case, the variation between Fleet Managers's responsibilities  
11 appears limited and does not contravene Plaintiff's contention  
12 that all Fleet Managers do not engage in certain activities  
13 required to invoke either the administrative or executive  
14 exemption. This issue appears to amenable to classwide resolution  
15 and would more efficiently answer the classification question than  
16 requiring numerous individual trials.

17 **IV. CONCLUSION**

18 For the reasons set forth above, the Court GRANTS Plaintiff's  
19 Motion for Class Certification.

20

21 IT IS SO ORDERED.

22

23 Dated: August 10, 2016

24

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DEAN D. PREGERSON  
United States District Judge