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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

ROBERT MARTINEZ, an individual, on behalf of himself and all others similarly situated,

Plaintiff,

v.

KNIGHT TRANSPORTATION, INC.  
d/b/a ARIZONA KNIGHT  
TRANSPORTATION, INC., and DOES 1  
through 50, inclusive,

Defendants.

No. 1:16-cv-01730-DAD-SKO

ORDER GRANTING PLAINTIFF’S MOTION  
FOR CLASS CERTIFICATION

(Doc. No. 25)

This matter is before the court on plaintiff’s motion for class certification. (Doc. No. 25.) On May 30, 2018, that motion came before the court for hearing. Attorney Craig Ackermann appeared telephonically on behalf of plaintiff Robert Martinez and the putative class members. Attorneys Richard Rahm and Kai-Ching Cha appeared on behalf of defendants. Having considered the parties’ briefing, and having heard from counsel, the court will grant plaintiff’s motion for class certification.

**BACKGROUND**

Plaintiff and the putative class members were employed as truck drivers by defendant. (Doc. No. 2-1 at 13.) Their job responsibilities included making deliveries of dry goods, produce,

1 materials, and other products to various businesses located throughout California. (*Id.* at 13.)

2 Plaintiff and the putative class members allege that they typically worked between 10 and  
3 14 hours per day, 5 to 6 days per week, and 52 weeks per year. (*Id.*) According to the allegations  
4 of the complaint, defendant failed to provide class members with appropriate meal and rest breaks  
5 as required under California law. (*Id.* at 13–14.) Moreover, although the class members were  
6 compensated based on a piece-rate formula, defendants did not pay them a separate hourly wage  
7 to compensate them for rest breaks and for performing non-driving tasks. (*Id.* at 13.) Based upon  
8 these allegations, plaintiff asserts multiple violations of California wage and hour provisions.

9 Plaintiff seeks to represent the following class:

10 All current and former truck drivers employed by Defendant Knight  
11 Transportation, Inc., who advised Defendant that they resided in  
12 Oregon, Nevada, Arizona, Utah, and/or Colorado, who were paid in  
13 whole or in part on a piece-rate basis, and who drove one or more  
14 routes of five hours or more entirely within the State of California  
15 for Defendant during the “Class Period” from September 30, 2012  
16 through the date of class certification.

17 (Doc. No. 25 at 2.)<sup>1</sup> Plaintiff seeks certification only as to the first, second, third, and sixth  
18 causes of action in the complaint.

## 19 LEGAL STANDARD

20 The class action is a procedural mechanism whereby the “usual rule that litigation be  
21 conducted by and on behalf of the named parties only” is swept aside so that multiple parties—  
22 unwieldy in number but possessing similar or identical claims—may pursue common redress in  
23 an efficient and economical manner. *Comcast v. Behrend*, 569 U.S. 27, 33 (2013) (quoting *Wal-*  
24 *Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 348 (2011)); *see also Abdullah v. U.S. Sec. Assocs.*, 731  
25 F.3d 952, 963–64 (9th Cir. 2013). Federal Rule of Civil Procedure 23 controls class certification  
26 and imposes a two-step process in deciding whether a class may be certified.

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28 <sup>1</sup> At the hearing on the pending motion the scope of the class definition was clarified. As the court presently understands plaintiff’s claim, plaintiff and the putative class members seek to apply California law only as to routes that were (a) driven entirely within the state of California, and (b) at least five hours in length. That is, plaintiff is *not* seeking apply California law extraterritorially. (*See* Doc. No. 29 at 5) (stating that “this case does not concern out-of-state routes or shifts”). The analysis that follows proceeds with this understanding.

1 Rule 23(a) requires the moving party to demonstrate the existence of four prerequisites in  
2 order for the court to consider whether certification is proper. These prerequisites are often  
3 described as: (1) numerosity, (2) commonality, (3) typicality, and (4) adequacy. If—and only  
4 if—a putative class satisfies these four requirements may it then proceed to show it also satisfies  
5 one of the three subsections of Rule 23(b). The party seeking class certification bears the burden  
6 of establishing conformity with these requirements, and must do so by producing facts  
7 “affirmatively demonstrat[ing]” that certification is warranted. *Comcast*, 569 U.S. at 33; *Dukes*,  
8 564 U.S. at 350. A court must review the merits of a party’s substantive claim to the extent that  
9 they overlap with issues touching on class certification. *Ellis v. Costco Wholesale Corp.*, 657  
10 F.3d 970, 981 (9th Cir. 2011) (citing *Dukes*, 564 U.S. at 350–51 and *Hanon v. Dataproducts*  
11 *Corp.*, 976 F.2d 497, 509 (9th Cir. 1992)); *see also Blair v. The CBE Grp.*, 309 F.R.D. 621, 625  
12 (S.D. Cal. 2015). Only after it has conducted a “rigorous analysis” of these facts and determined  
13 they show “actual, [and] not presumed, conformance” with Rule 23(a) and (b), may a district  
14 court certify a class. *Ellis*, 657 F.3d at 981 (quoting *Gen. Tel. Co. of Sw. v. Falcon*, 457 U.S. 147,  
15 160, 161, (1982)); *see also Comcast*, 569 U.S. at 33–34 (extending the “rigorous analysis”  
16 requirement to Rule 23(b)); *Patel v. Nike Retail Servs., Inc.*, Case No. 14-cv-4781-RS, 2016 WL  
17 1241777, at \*3 (N.D. Cal. Mar. 29, 2016) (“This ‘rigorous’ analysis applies both to Rule 23(a)  
18 and Rule 23(b).”). If a court does decide to certify a class, it must define the class claims and  
19 issues and appoint class counsel. Fed. R. Civ. P. 23(c)(1), (g). Finally, “[w]hen appropriate, a  
20 class may be divided into subclasses that are each treated as a class under this rule.” Fed. R. Civ.  
21 P. 23(c)(5).

#### 22 **A. Rule 23(a) Requirements**

23 In order for a class member to sue as a representative of all class members, the class  
24 member must establish the following prerequisites: (1) the class must be “so numerous that  
25 joinder of all members is impracticable”; (2) there must be “questions of law or fact common to  
26 the class”; (3) “the claims or defenses of the representative parties are typical of the claims or  
27 defenses of the class”; and (4) “the representative parties will fairly and adequately protect the  
28 interests of the class.” Fed. R. Civ. P. 23(a).

1           1.       Numerosity

2           A proposed class must be “so numerous that joinder of all members is impracticable.”  
3 Fed. R. Civ. P. 23(a)(1). While there is no strict number requirement for numerosity, courts have  
4 routinely held that classes comprised of more than forty members will satisfy this prerequisite.  
5 *See Ikonen v. Hartz Mt. Corp.*, 122 F.R.D. 258, 262 (S.D. Cal. 1988) (“As a general rule, classes  
6 of 20 are too small, classes of 20–40 may or may not be big enough depending on the  
7 circumstances of each case, and classes of 40 or more are numerous enough.”); *see also Dunakin*  
8 *v. Quigley*, 99 F. Supp. 3d 1297, 1327 (W.D. Wash. 2015) (“Generally, 40 or more members will  
9 satisfy the numerosity requirement.”) (quoting *Garrison v. Asotin County*, 251 F.R.D. 566, 569  
10 (E.D. Wash. 2008)); *McMillon v. Hawaii*, 261 F.R.D. 536, 542 (D. Haw. 2009).

11           2.       Commonality

12           Rule 23 requires there be “questions of law or fact common to the class.” Fed. R. Civ. P.  
13 23(a)(2). To satisfy Rule 23(a)’s commonality requirement, a class claim “must depend upon a  
14 common contention . . . of such a nature that it is capable of class[-]wide resolution—which  
15 means that determination of its truth or falsity will resolve an issue that is central to the validity of  
16 each one of the claims in one stroke.” *Dukes*, 564 U.S. at 350. As the Supreme Court further  
17 explained, this frequently necessitates an inquiry that “overlap[s] with the merits of plaintiff’s  
18 underlying claim.” *Id.* at 351.

19           3.       Typicality

20           “[T]he claims or defenses of the representative parties [must be] typical of the claims and  
21 defenses of the class.” Fed. R. Civ. P. 23(a)(3). They need not be clones; rather, all that is  
22 required is that the claims or defenses be “reasonably co-extensive.” *Hanlon v. Chrysler Corp.*,  
23 150 F.3d 1011, 1020 (9th Cir. 1998) (noting that this standard is a “permissive” one and requires  
24 only that the claims of the class representatives be “reasonably co-extensive with those of absent  
25 class members; they need not be substantially identical”). Typicality is satisfied if the  
26 representative’s claims arise from the same course of conduct as the class claims and are based on  
27 the same legal theory. *See, e.g., Kayes v. Pac. Lumber Co.*, 51 F.3d 1449, 1463 (9th Cir. 1995)  
28 (claims are typical where named plaintiffs have the same claims as other members of the class

1 and are not subject to unique defenses). “The test of typicality is whether other members have the  
2 same or similar injury, whether the action is based on conduct which is not unique to the named  
3 plaintiffs, and whether other class members have been injured by the same course of conduct.”  
4 *Hanon*, 976 F.2d at 508.

5 4. Adequacy of Representation

6 Plaintiffs seeking class certification must show that they “will fairly and adequately  
7 protect the interests of the class.” Fed. R. Civ. P. 23(a)(4). “To determine whether named  
8 plaintiffs will adequately represent a class, courts must resolve two questions: ‘(1) do the named  
9 plaintiffs and their counsel have any conflicts of interest with other class members and (2) will  
10 the named plaintiffs and their counsel prosecute the action vigorously on behalf of the class?’”  
11 *Ellis*, 657 F.3d at 985 (quoting *Hanlon*, 150 F.3d at 1020)); see also *In re Online DVD-Rental*  
12 *Antitrust Litig.*, 779 F.3d 934, 943 (9th Cir. 2015). “An absence of material conflicts of interest  
13 between the named plaintiffs and their counsel with other class members is central to adequacy  
14 and, in turn, to due process for absent members of the class.” *Rodriguez v. W. Publ’g Co.*, 563  
15 F.3d 948, 959 (9th Cir. 2009) (citing *Hanlon*, 150 F.3d at 1020). Accordingly, “[c]lass  
16 certification will be inappropriate if fundamental conflicts of interest are determined to exist  
17 among the proposed class members.” *Allied Orthopedic v. Tyco Healthcare Grp.*, 247 F.R.D.  
18 156, 177 (C.D. Cal. 2007). Generally, the adequacy inquiry seeks to ensure that the class  
19 representative is “part of the class and [that he] possess[es] the same interest and injury as the  
20 class members.” *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 625–26 (1997).

21 **B. Rule 23(b) Requirements**

22 Once the prerequisites of Rule 23(a) are met, the court must certify the class under one of  
23 the Rule 23(b) categories. Certification under Rule 23(b)(3) is permitted when “the questions of  
24 law or fact common to class members predominate over any questions affecting only individual  
25 members, and . . . a class action is [deemed to be] superior to other available methods for fairly  
26 and efficiently adjudicating the controversy.” *Dukes*, 564 U.S. at 362 (quoting Fed. R. Civ. P.  
27 23(b)(3)); see also *Tyson Foods, Inc. v. Bouaphakeo*, \_\_\_ U.S. \_\_\_, \_\_\_, 136 S. Ct. 1036, 1045  
28 (2016) (“An individual question is one where ‘members of a proposed class will need to present

1 evidence that varies from member to member,’ while a common question is one where ‘the same  
2 evidence will suffice for each member to make a prima facie showing [or] the issue is susceptible  
3 to generalized, class-wide proof.’”) (quoting 2 W. Rubenstein, *Newberg on Class Actions* § 4:50,  
4 pp. 196–97 (5th ed. 2012)). “The Rule 23(b)(3) predominance inquiry tests whether proposed  
5 classes are sufficiently cohesive to warrant adjudication by representation,” *Amchem*, 521 U.S. at  
6 622, whereas the superiority requirement demands courts “assess the relative advantages of  
7 alternative procedures for handling the total controversy” in order to determine that “a class  
8 action is the ‘superior’ method of resolution.” Fed. R. Civ. P. 23(b)(3) advisory comm. note; *see*  
9 *also Pointer v. Bank of Am. Nat’l Ass’n*, No. 2:14-cv-0525-KJM-CKD, 2016 WL 696582, at \*8  
10 (E.D. Cal. Feb. 22, 2016). While the predominance requirement is similar to the Rule 23(a)(2)  
11 commonality requirement, the standard is much higher at this stage of the analysis. *Dukes*, 564  
12 U.S. at 359; *Amchem*, 521 U.S. at 624–25; *Hanlon*, 150 F.3d at 1022. Ultimately, “[t]he  
13 predominance inquiry ‘asks whether the common, aggregation-enabling, issues in the case are  
14 more prevalent or important than the non-common, aggregation-defeating, individual issues.’”  
15 *Tyson Foods, Inc.*, 136 S. Ct. at 1045 (quoting *Newberg*, § 4:49, at 195–96).

16 Rule 23 provides that, aside from predominance, a court must find that a “class action is  
17 superior to other available methods for fairly and efficiently adjudicating the controversy.” Fed.  
18 R. Civ. P. 23(b)(3). The rule lists four metrics pertinent to superiority, including class members’  
19 interests in individually controlling litigation, whether any litigation has already been filed by  
20 putative class members, the desirability of concentrating the litigation in a class action, and the  
21 “likely difficulties in managing a class action.” *Id.* The Ninth Circuit has recognized a “well-  
22 settled presumption that courts should not refuse to certify a class merely on the basis of  
23 manageability concerns,” but rather should look to “manageability as one component of the  
24 superiority inquiry.” *Briseno v. ConAgra Foods, Inc.*, 844 F.3d 1121, 1128 (9th Cir. 2017)  
25 (quoting *Mullins v. Direct Digital, LLC*, 795 F.3d 654, 663 (7th Cir. 2015)).

## 26 DISCUSSION

27 The parties here do not contest most aspects of class certification. Defendant limits its  
28 opposition solely to the issue of predominance under Rule 23(b)(3). Nonetheless, the court has an

1 independent duty to ensure that class certification is appropriate in a given case. *See In re Nat'l*  
2 *W. Life Ins. Deferred Annuities Litig.*, 268 F.R.D. 652, 660 (S.D. Cal. 2010). Therefore, the court  
3 will briefly examine each of the uncontested areas of certification.

4 **A. Numerosity**

5 According to the pending motion for class certification, as of November 2016, the class  
6 was composed of 4,135 current and former non-California resident drivers and continues to grow  
7 in number. (Doc. No. 25 at 16.) This is sufficient to satisfy Rule 23's numerosity requirement.  
8 *See, e.g., Orvis v. Spokane County*, 281 F.R.D. 469, 473 (E.D. Wash. 2012) (finding numerosity  
9 satisfied with roughly 260 class members); *Collins v. Cargill Meat Sols. Corp.*, 274 F.R.D. 294,  
10 300 (E.D. Cal. 2011) ("Courts have routinely found the numerosity requirement satisfied when  
11 the class comprises 40 or more members.").

12 **B. Commonality**

13 "To show commonality, Plaintiffs must demonstrate that there are questions of fact and  
14 law that are common to the class." *Ellis*, 657 F.3d at 981. Commonality under Rule 23(a)(2) has  
15 "been construed permissively," and "[a]ll questions of fact and law need not be common to  
16 satisfy the rule." *Hanlon*, 150 F.3d at 1019. Defendant does not contest that commonality is  
17 satisfied here. The class in this case is composed solely of non-California resident drivers who  
18 drove at least five hours entirely within the state of California. (Doc. No. 25 at 12.) Although the  
19 length of time the drivers each spent within California varied, each was employed in the state for  
20 more than five consecutive hours. Moreover, and as discussed in more detail below, the claims of  
21 all class members will stand or fall depending on whether this length of time spent in California  
22 suffices to trigger the application of California wage and hour laws. *See Dukes*, 564 U.S. at 350  
23 ("What matters to class certification . . . is not the raising of common 'questions'—even in  
24 droves—but, rather the capacity of a class-wide proceeding to generate common *answers*  
25 apt to drive the resolution of the litigation.") (quoting Richard A. Nagareda, *Class Certification in*  
26 *the Age of Aggregate Proof*, 84 N.Y.U. L. REV. 97, 132 (2009)). The court concludes that  
27 commonality is satisfied here.

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1 **C. Typicality**

2 Defendant also does not contest typicality. Plaintiffs submit the declaration of named  
3 plaintiff Robert Martinez to demonstrate typicality. (Doc. No. 25-16 (“Martinez Decl.”).) In that  
4 declaration, Martinez avers that “Defendant’s uniform compensation policies [were] applicable to  
5 me and my fellow Non-California resident putative Class members,” and that “[t]hese policies  
6 applied uniformly among all of Knight’s California non-resident truck drivers.” (*Id.* at ¶ 3.)  
7 Based on this declaration, the court finds that plaintiff Martinez’s claims are “reasonably co-  
8 extensive with those of absent class members.” *Hanlon*, 150 F.3d at 1020. Typicality is therefore  
9 satisfied here.

10 **D. Adequacy of Representation**

11 Defendant does not contest that the class representative and his attorneys are adequate.  
12 Plaintiff and class counsel have submitted multiple declarations stating that there are no conflicts  
13 of interest because the named plaintiff, plaintiff’s attorneys, or the proposed class members.  
14 (Doc. No. 25-1 at ¶ 3; 25-14 at ¶ 4; 25-16 at ¶ 7.) The declarations of plaintiffs’ counsel establish  
15 that each has a great deal of experience in similar litigation. (Doc. No. 25-1 at ¶¶ 17–29; 25-14 at  
16 ¶¶ 1–8.) These declarations also establish that the named class representative is adequate to  
17 represent the wider class. (Doc. No. 30 at ¶ 30; 25-14 at ¶ 9; 25-16 at ¶ 7.) Adequacy of  
18 representation is satisfied here.

19 **E. Predominance**

20 Certification under Rule 23(b)(3) is permitted when “the questions of law or fact common  
21 to class members predominate over any questions affecting only individual members, and . . . a  
22 class action is [deemed to be] superior to other available methods for fairly and efficiently  
23 adjudicating the controversy.” *Dukes*, 564 U.S. at 362 (quoting Fed. R. Civ. P. 23(b)(3)); *see also*  
24 *Tyson Foods*, 136 S. Ct. at 1045 (“An individual question is one where ‘members of a proposed  
25 class will need to present evidence that varies from member to member,’ while a common  
26 question is one where ‘the same evidence will suffice for each member to make a prima facie  
27 showing [or] the issue is susceptible to generalized, class-wide proof.’”) (quoting 2 W.  
28 Rubenstein, *Newberg on Class Actions* § 4:50, pp. 196–97 (5th ed. 2012)). “The Rule 23(b)(3)

1 predominance inquiry tests whether proposed classes are sufficiently cohesive to warrant  
2 adjudication by representation,” *Amchem*, 521 U.S. at 622, whereas the superiority requirement  
3 demands courts “assess the relative advantages of alternative procedures for handling the total  
4 controversy” in order to determine that “a class action is the ‘superior’ method of resolution.”  
5 Fed. R. Civ. P. 23(b)(3) advisory comm. note; *see also Pointer*, 2016 WL 696582, at \*8. While  
6 the predominance requirement is similar to the Rule 23(a)(2) commonality requirement, the  
7 standard is much higher at this stage of the analysis. *Dukes*, 564 U.S. at 359; *Amchem*, 521 U.S.  
8 at 624–25; *Hanlon*, 150 F.3d at 1022. Ultimately, “[t]he predominance inquiry ‘asks whether the  
9 common, aggregation-enabling, issues in the case are more prevalent or important than the non-  
10 common, aggregation-defeating, individual issues.’” *Tyson Foods*, 136 S. Ct. at 1045 (quoting  
11 *Newberg*, § 4:49, at 195–96). Defendant raises multiple issues regarding predominance, each of  
12 which are addressed in turn.

13 1. Whether California Law Applies on a Class-Wide Basis

14 First, defendant contends that common questions of law do not predominate here because  
15 the question of whether California law applies to these claims is necessarily an individualized  
16 inquiry. As the California Supreme Court has noted, whether California’s wage and hour laws  
17 presumptively apply to particular classes of workers depends on whether the California  
18 Legislature would have intended those laws to apply to the class of workers. *See Sullivan v.*  
19 *Oracle Corp.*, 51 Cal. 4th 1191, 1197–98 (2011); *Tidewater Marine W., Inc. v. Bradshaw*, 14 Cal.  
20 4th 557, 577–78 (1996). Thus, “[i]f an employee resides in California, receives pay in California,  
21 and works exclusively, or principally, in California, then that employee is a ‘wage earner of  
22 California’ and presumptively enjoys the protection of IWC regulations.” *Tidewater*, 14 Cal. 4th  
23 at 578. To determine whether California law applies under circumstances akin to this one, most  
24 courts employ a multi-factor test drawn from language appearing in the *Sullivan* and *Tidewater*  
25 decisions. These factors include (1) the particular provision of law at issue, (2) the residence of  
26 the employer, (3) the residences of the employees, (4) whether the work at issue was performed in  
27 California (i.e., the situs of employment), (5) whether the employee receives pay in California,  
28 and (6) whether the employee’s absence from California was temporary or permanent. *See Oman*

1 *v. Delta Air Lines, Inc.*, 230 F. Supp. 3d 986, 992–93 (N.D. Cal. 2017); *Bernstein v. Virgin Am.*,  
2 *Inc.*, 227 F. Supp. 3d 1049, 1060 (N.D. Cal. 2017) (*Bernstein II*). Notably, the California  
3 Supreme Court has declined to adopt a bright-line territoriality rule, in which California law  
4 would apply only to work actually performed within the state. *See Tidewater*, 14 Cal. 4th at 577–  
5 578; *see also Bernstein v. Virgin Am., Inc.*, No. 15-CV-02277-JST, 2016 WL 6576621, at \*7  
6 (N.D. Cal. Nov. 7, 2016) (*Bernstein I*). As the court noted:

7           In some circumstances, state employment law explicitly governs  
8 employment outside the state’s territorial boundaries... The  
9 Legislature may have similarly intended extraterritorial enforcement  
10 of IWC wage orders in limited circumstances, such as when  
11 California residents working for a California employer travel  
12 temporarily outside the state during the course of the normal  
13 workday but return to California at the end of the day. On the other  
14 hand, the Legislature may not have intended IWC wage orders to  
15 govern out-of-state businesses employing nonresidents, though the  
16 nonresident employees enter California temporarily during the  
17 course of the workday. Thus, we are not prepared, without more  
18 thorough briefing of the issues, to hold that IWC wage orders apply  
19 to all employment in California, and never to employment outside  
20 California.

21 *Tidewater*, 14 Cal. 4th at 577–578. Nonetheless, many district courts have concluded that even if  
22 the situs of employment is not the *only* factor to consider in making this determination, it is  
23 certainly the most important. *See, e.g., Aguilar v. Zep Inc.*, No. 13-CV-00563-WHO, 2014 WL  
24 4245988, at \*12 (N.D. Cal. Aug. 27, 2014) (collecting cases and noting that “the critical factor is  
25 where the work at issue is performed”); *Wright v. Adventures Rolling Cross Country, Inc.*, No. C-  
26 12-0982 EMC, 2012 WL 12942824, at \*5 (N.D. Cal. May 3, 2012) (stating that focusing on the  
27 situs of employment is the “most reasonable” approach); *Sarviss v. Gen. Dynamics Info. Tech.*,  
28 *Inc.*, 663 F. Supp. 2d 883, 900 (C.D. Cal. 2009) (“[T]he determinative issue is whether an  
employee principally works in California.”).

Defendant correctly points out that plaintiff is not a California resident, that none of the  
putative class members are California residents, and that the class members drive most of their  
routes outside of California (even though the particular routes at issue in this case were driven  
entirely within California). (*See* Doc. No. 28 at 8–10, 12.) These factors weigh against a finding  
that California law applies. *See Sullivan v. Oracle Corp.*, 662 F.3d 1265, 1271 (9th Cir. 2011)

1 (finding that California had a sufficient connection to claims, in part, because defendant “has its  
2 headquarters and principal place of business in California”); *Gravestock v. Abilene Motor*  
3 *Express, Inc.*, No. SACV 14-170 JVS (RNBx), 2018 WL 1620885, at \*7 (C.D. Cal. Mar. 8, 2018)  
4 (finding it significant for purposes of the significant contact test that defendant “is not a  
5 California employer”); *Ayala v. U.S. Xpress Enters., Inc.*, No. EDCV 16-137-GW(KKx), 2016  
6 WL 7586910, at \*4 (C.D. Cal. Dec. 22, 2016) (noting that California may not have sufficient  
7 contacts to the claims at issue because “approximately 89% of the putative Class Members do not  
8 reside in California, and are not employed full-time in California—rather, they have only  
9 temporarily driven in or through California while performing deliveries”).

10       Whether the laws at issue here apply to the claims of the putative class members does not  
11 appear to have been definitively answered by any court. The parties have devoted a great deal of  
12 their briefing to this question. (Doc. No. 28 at 17–22; Doc. No. 29 at 6–11.) At this stage of the  
13 litigation, however, the court need not resolve it. Whether the California laws at issue here apply  
14 to trucking routes lasting five hours or more and driven entirely within the state of California—  
15 despite the fact that the drivers driving those routes are not California residents, work for a non-  
16 California employer, drive most of their routes outside of California, and are not paid in  
17 California—is a question of law that can be resolved on a class-wide basis in one fell swoop. *See*  
18 *Dukes*, 564 U.S. at 350 (“What matters to class certification . . . [is] the capacity of a classwide  
19 proceeding to generate common *answers* apt to drive the resolution of the litigation.”). If it does,  
20 the class may well prevail. If it does not, the class claims will fail. Resolution of this question  
21 would be inappropriate at this stage of the litigation. *See Amgen Inc. v. Conn. Ret. Plans & Tr.*  
22 *Funds*, 568 U.S. 455, 466 (2013) (“Rule 23 grants courts no license to engage in free-ranging  
23 merits inquiries at the certification stage.”); *Bernstein I*, 2016 WL 6576621, at \*10 (granting class  
24 certification but declining to resolve the question whether California law applied to the entire  
25 class, stating that if the court later determines that California law does not apply to some class  
26 members, “the Court can feasibly identify those Subclass members who have a right to recover”);  
27 *Oman*, 230 F. Supp. 3d at 993 (determining on a motion for summary judgment that because the  
28 “named plaintiffs only worked a *de minimis* amount of time in California . . . and in light of the

1 nature of their work . . . Section 226 does not apply to the claims of the four named plaintiffs”).  
2 The uncertainty regarding the applicability of California labor law does not defeat a finding of  
3 predominance in this case.

4 2. Due Process Concerns Regarding Application of California Law

5 Defendant separately contends that under California choice-of-law principles, California  
6 law may not be applied on a class-wide basis. Further, defendants argue that because plaintiff has  
7 failed to proffer a manageable way for the court to conduct a conflict-of-law analysis as to the  
8 applicability of other states’ laws, class certification should be denied. (Doc. No. 28 at 16–17.)

9 “A federal court sitting in diversity must look to the forum state’s choice of law rules to  
10 determine the controlling substantive law.” *Zinser v. Accufix Research Inst., Inc.*, 253 F.3d 1180,  
11 1187 (9th Cir.), *opinion amended on denial of reh’g*, 273 F.3d 1266 (9th Cir. 2001). The purpose  
12 of this inquiry, rooted in the Due Process Clause of the Constitution, is to ensure that application  
13 of a state’s substantive law on a class-wide basis “is neither arbitrary nor fundamentally unfair.”  
14 *Shutts*, 472 U.S. at 818 (quoting *Allstate Ins. Co. v. Hague*, 449 U.S. 302, 313 (1981)). The court  
15 begins with the strong presumption that California law applies, since “[a] state court is rarely  
16 forbidden by the Constitution to apply its own state’s law’ . . . especially where, as here, the case  
17 is predicated upon violations of a state’s law that allegedly occurred within that state.” *AT & T*  
18 *Mobility LLC v. AU Optronics Corp.*, 707 F.3d 1106, 1113 (9th Cir. 2013) (quoting *Sullivan v.*  
19 *Oracle Corp.*, 662 F.3d 1265, 1271 (2011)).

20 Under California law, “the class action proponent bears the initial burden to show that  
21 California has ‘significant contact or significant aggregation of contacts’ to the claims of each  
22 class member.” *Mazza v. Am. Honda Motor Co.*, 666 F.3d 581, 589 (9th Cir. 2012) (quoting  
23 *Wash. Mut. Bank, FA v. Superior Court*, 24 Cal. 4th 906, 921 (2001)); *see also Phillips*  
24 *Petroleum Co. v. Shutts*, 472 U.S. 797, 822 (1985). If the proponent satisfies this requirement,  
25 “the burden shifts to the other side to demonstrate ‘that foreign law, rather than California law,  
26 should apply to class claims.’” *Mazza*, 666 F.3d at 590 (quoting *Wash. Mut. Bank*, 24 Cal.4th at  
27 921). In that event, the party seeking application of another state’s law “must demonstrate that  
28 the latter rule of decision will further the interest of the foreign state and therefore that it is an

1 appropriate one for the forum to apply to the case before it.” *Wash. Mut. Bank*, 24 Cal. 4th at  
2 919.

3 a. *Significant Contact or Aggregation of Contacts*

4 Here, the proposed class is comprised solely of truck drivers who drove trucking routes in  
5 California, and the class is explicitly defined to encompass only that conduct which occurred in  
6 this state. *See AT & T Mobility*, 707 F.3d at 1113 (holding that California antitrust law can be  
7 lawfully applied “when more than a *de minimis* amount of the defendant’s alleged [misconduct]  
8 took place in California”). In addition, although defendant is not a citizen of California for  
9 purposes of personal jurisdiction, defendant nonetheless maintains substantial business operations  
10 in the state. *See Allstate*, 449 U.S. at 318 n.2 (“The Court has recognized that examination of a  
11 State’s contacts may result in divergent conclusions for jurisdiction and choice-of-law purposes.”)  
12 (citing *Kulko v. Cal. Superior Court*, 436 U.S. 84, 98 (1978) and *Shaffer v. Heitner*, 433 U.S. 186,  
13 215 (1977)). Specifically, plaintiff notes in his motion that “[d]efendant has no less than 30  
14 terminals, drop yards, and/or service centers, including California facilities in Tulare, Fontana,  
15 and Rancho Dominguez.” (Doc. No. 25 at 8.) Defendant’s employees also regularly conduct  
16 business in California: according to defendant’s opposition to the pending motion, the class  
17 members drove routes in California once per week, on average. (Doc. No. 28 at 7.) Perhaps most  
18 significantly, and as plaintiff now makes clear in his reply, plaintiff “only seeks to certify a Class  
19 of non-resident drivers for days worked *entirely* within California.” (Doc. No. 29 at 4.)

20 The undersigned concludes that the contacts of the class members in this case are  
21 sufficient to allay any due process concerns. As already noted, “[a] state court is rarely forbidden  
22 by the Constitution to apply its own state’s law.” *Sullivan*, 662 F.3d at 1271. Moreover, the  
23 Supreme Court’s decision in *Allstate* “places only ‘modest restrictions on the application of forum  
24 law,’ and most commentators have viewed *Allstate* as setting a highly permissive standard.” *AT*  
25 *& T Mobility*, 707 F.3d at 1111 (quoting *Shutts*, 472 U.S. at 818). By virtue of the business  
26 defendant regularly conducts in California, defendant “can hardly claim unfamiliarity with the  
27 laws of the host jurisdiction and surprise that the state courts might apply forum law to litigation  
28 in which the company is involved.” *Allstate*, 449 U.S. at 317–18; *see also Shutts*, 472 U.S. at

1 837–38 (noting that “the underlying theory of a choice-of-law due process claim must be that the  
2 parties plan their conduct and contractual relations based upon their legitimate expectations  
3 concerning the subsequent legal consequences of their actions”). Not only do defendants conduct  
4 business in California on a regular basis, but the incidents giving rise to plaintiff’s causes of  
5 action occurred entirely within California. *See AT & T Mobility*, 707 F.3d at 1113 (“[A]  
6 defendant cannot reasonably complain that the application of California law is arbitrary or unfair  
7 when its alleged conspiracy took place, at least in part, in California”) (citing *Shutts*, 472 U.S. at  
8 822); *see also In re Cathode Ray Tube (CRT) Antitrust Litig.*, No. C-07-5944-SC, 2013 WL  
9 4505701, at \*5 (N.D. Cal. Aug. 21, 2013) (noting that the holding of *AT & T Mobility* was not  
10 restricted to the particular statute at issue in that case, but was instead a “broader affirmation of  
11 the *Allstate* standard and the guidance it provides to district courts”). Given that defendant’s  
12 employees routinely drive trucking routes in California, defendant cannot reasonably be surprised  
13 that California law might apply to that portion of its business that occurs wholly within that state.  
14 The court therefore finds that plaintiff has satisfied his burden under the Due Process Clause.

15 b. *Governmental Interest Test*

16 The next step is to determine whether, under California conflict-of-law rules, the court  
17 may apply California law across the entire class, or if the law of another state should apply  
18 instead. Unlike the first prong of the test, the burden of proving that foreign law should apply to  
19 class claims rests with the party opposing class certification. *Mazza*, 666 F.3d at 589–90 (noting  
20 that once the “aggregation of contacts” showing is made, “the burden shifts to the other side to  
21 demonstrate ‘that foreign law, rather than California law, should apply to class claims’”) (quoting  
22 *Wash. Mut. Bank*, 24 Cal. 4th at 921). In making this determination, courts look to a three-step  
23 governmental interest test:

24 First, the court determines whether the relevant law of each of the  
25 potentially affected jurisdictions with regard to the particular issue in  
question is the same or different.

26 Second, if there is a difference, the court examines each jurisdiction’s  
27 interest in the application of its own law under the circumstances of  
the particular case to determine whether a true conflict exists.

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1 Third, if the court finds that there is a true conflict, it carefully  
2 evaluates and compares the nature and strength of the interest of each  
3 jurisdiction in the application of its own law to determine which  
4 state's interest would be more impaired if its policy were  
subordinated to the policy of the other state, and then ultimately  
applies the law of the state whose interest would be more impaired if  
its law were not applied.

5 *Mazza*, 666 F.3d at 590 (citing *McCann v. Foster Wheeler LLC*, 48 Cal. 4th 68, 81–82 (2010)).

6 As one district court has noted, a defendant seeking to satisfy this burden must engage “in an  
7 analytically rigorous discussion of each prong of the test based on the facts and circumstances of  
8 this case, and these Plaintiffs’ allegations.” *Forcellati v. Hyland’s, Inc.*, No. CV 12-1983-GHK  
9 MRWX, 2014 WL 1410264, at \*2 (C.D. Cal. Apr. 9, 2014) (brackets omitted).

10 Defendant does not analyze the three prongs of the governmental interest test in any  
11 detail, appearing to mistakenly believe that plaintiff bears the burden of persuasion on this issue.  
12 (*See* Doc. No. 28 at 23) (arguing that plaintiff “has not provided a manageable way for the Court  
13 to perform a conflict-of-law analysis for each of the five states that the putative class members  
14 reside in”). California law says otherwise. *See Zinser*, 253 F.3d at 1187 (“Because Zinser seeks  
15 to invoke the law of a jurisdiction other than California, she bears the burden of proof.”);  
16 *Garamendi v. Mission Ins. Co.*, 131 Cal. App. 4th 30, 41 (2005) (“In order to persuade a  
17 California court to apply the law of another forum, the proponent of the other forum’s laws must  
18 invoke the law of the foreign jurisdiction, show that it materially differs from California law, and  
19 demonstrate how applying that law will further the interest of the foreign jurisdiction.”).  
20 Nonetheless, construing defendant’s opposition liberally, the court will examine whether  
21 defendant has established that foreign law, rather than California law, should apply to this case.

22 i. Differences Among Potentially Affected Jurisdictions

23 Defendant’s memorandum in opposition identifies two differences between California law  
24 and the laws of the other states where the putative class members resided, which include Oregon,  
25 Nevada, Arizona, Utah, and Colorado. First, defendant argues that with respect to whether the  
26 class members would have to be paid separately for non-productive time, the laws of California,  
27 Oregon, and Nevada all have differing requirements. *See* Cal. Lab. Code § 226.2 (requiring  
28 nonproductive work to be paid separately); Or. Rev. Stat. § 653.045 (“An employee paid by piece

1 rate must have total earnings that equal or exceed the minimum wage for the hours worked.”);  
2 Nev. Admin. Code § 608.115(2) (“If the employer pays the employee by piece rate, it shall pay an  
3 amount at least equal to the minimum wage when the amount paid to an employee in a pay period  
4 is divided by the number of hours worked by the employee during the pay period.”). (Doc. No.  
5 28 at 24–25.) Second, defendant points to different requirements regarding whether drivers must  
6 be provided with meal breaks. *See, e.g.*, Cal. Lab. Code § 226.7; 512(a) (an employee is entitled  
7 to a 30-minute, off-duty meal period for every 5-hour work period each day); Arizona (no  
8 requirement for meal period); Or. Admin. R. 839-020- 0050(2) (an employee is entitled to a 30-  
9 minute, off-duty, unpaid meal period for every 6-8-hour work period each day); Nev. Rev. Stat. §  
10 608.019(1)–(2) (an employee is entitled to a 30-minute, off-duty, unpaid meal period for every 8-  
11 hour work period each day); Utah (no requirement for meal period). (*Id.* at 26.) The undersigned  
12 observes that these laws are, at least in some instances, materially different.

13 ii. Each State’s Interest in Applying Its Own Law

14 Next, the court examines each state’s interest in applying its own law. This analysis  
15 requires an examination of “the governmental policies underlying each state’s laws.” *Scott v.*  
16 *Ford Motor Co.*, 224 Cal. App. 4th 1492, 1504 (2014), *as modified on denial of reh’g* (Apr. 23,  
17 2014).

18 Here, the court finds that defendant has failed to carry its burden. Defendant has not  
19 addressed the relative interests of any state, nor is there any mention of the public policies that  
20 would be advanced by applying one state’s law over another. Defendant has failed to explain  
21 what governmental interests are at stake and the court has no independent obligation to do so.  
22 *See Senne*, 2017 WL 897338, at \*34 (“Defendants must make a specific and meaningful showing  
23 that the application of California law will not be appropriate under California choice of law  
24 principals [*sic*] to absent class members.”); *Opperman v. Path, Inc.*, No. 13-CV-00453-JST, 2016  
25 WL 3844326, at \*10 (N.D. Cal. July 15, 2016) (“For Defendants to meet their burden of showing  
26 that foreign states’ interests would be impaired, it is not enough for them merely to point to  
27 differences between California’s law and the laws of other states.”); *Werdebaugh v. Blue*  
28 *Diamond Growers*, No. 12-CV-02724-LHK, 2013 WL 5487236, at \*16 (N.D. Cal. Oct. 2, 2013)

1 (“Defendant—who bears the burden of demonstrating that foreign law, rather than California law,  
2 should apply to class claims in a California choice-of-law analysis—provides no support for its  
3 position that foreign law conflicts with California law, let alone that this conflict is so severe as to  
4 preclude applying California law to Werdebaugh’s class claims.”) (internal quotation marks and  
5 citation omitted). Because defendant has failed to satisfy its burden as to the second prong of the  
6 governmental interest test, the court need go no further in its analysis. *Wash. Mut. Bank*, 24 Cal.  
7 4th 906, 920 (2001) (“[T]he trial court may properly find California law applicable without  
8 proceeding to the third step in the analysis if the foreign law proponent fails to identify any actual  
9 conflict or to establish the other state’s interest in having its own law applied.”); *see also*  
10 *Forcellati*, 2014 WL 1410264, at \*4 (C.D. Cal. Apr. 9, 2014) (“Accordingly, because Plaintiffs  
11 have made a sufficient initial showing for application of California law, and Defendants have  
12 failed to show otherwise, California law applies to Plaintiffs’ proposed nationwide class.”). The  
13 court therefore concludes that choice-of-law concerns do not defeat a finding of predominance in  
14 this case.

15 3. Whether Individual Issues Predominate in Determining Which Individuals are  
16 Members of the Proposed Class

17 Second, defendant argues that plaintiff has not provided an efficient means of determining  
18 whether a particular driver is a member of the proposed class. Specifically, defendant argues that  
19 “individualized manual review of each driver’s trip history for every day of work during their  
20 employment is required to determine which non-resident drivers belong in Plaintiff’s class.”  
21 (Doc. No. 28 at 24.)

22 In support of its motion for class certification, plaintiff contends that “the precise number  
23 and identity of the individuals in the Class at any given time is ascertainable and can be  
24 determined from the records that Defendant maintains during its regular course of business.”  
25 (Doc. No. 25 at 9.) The deposition of Kevin Quast, defendant’s Chief Operations Officer,  
26 appears to confirm this. In that deposition, Mr. Quast testified that defendant maintains an  
27 electronic recordkeeping system of all routes driven by its employees. (Doc. No. 25-2 at 43:13–  
28 23.) Mr. Quast specifically confirmed that this records system would permit a user to determine

1 which trips started and ended entirely within California. (*Id.* at 54:1–3.) In addition, defendant  
2 also maintains records regarding when drivers perform non-driving tasks, such as pre- and post-  
3 trip inspections. (*Id.* at 37:3–8.) Finally, plaintiff has submitted evidence to the court that  
4 defendant maintains a uniform compensation policy that applies to all putative class members.  
5 (Doc. No. 25-4.)

6 The court finds that based on the existence of these records, a class-wide determination of  
7 liability or damages would not be so burdensome as to defeat predominance. Multiple courts  
8 have found predominance under strikingly similar facts. *See, e.g., Leyva v. Medline Indus. Inc.*,  
9 716 F.3d 510, 514 (9th Cir. 2013) (finding predominance satisfied because defendant’s  
10 “computerized payroll and time-keeping database would enable the court to accurately calculate  
11 damages and related penalties for each claim”); *Taylor v. Fedex Freight, Inc.*, No. 1:13-cv-01137-  
12 LJO-BAM, 2015 WL 2358248, at \*11 (E.D. Cal. May 15, 2015) (“Courts routinely hold that  
13 proof of a defendant’s uniform pay policy, similar to the mileage pay formula at issue here, is not  
14 plagued by individual inquiry, but is often sufficient to satisfy the predominance requirement.”),  
15 *report and recommendation adopted*, 2015 WL 4557412 (E.D. Cal. July 27, 2015); *Ridgeway v.*  
16 *Wal-Mart Stores Inc.*, No. C 08-05221 SI, 2014 WL 4477662, at \*8 (N.D. Cal. Sept. 10, 2014)  
17 (same); *Mendez v. R&L Carriers, Inc.*, No. C 11-2478 CW, 2012 WL 5868973, at \*17 (N.D. Cal.  
18 Nov. 19, 2012) (same); *Kamar v. Radio Shack Corp.*, 254 F.R.D. 387, 399 (C.D. Cal. 2008)  
19 (“Class certification is usually appropriate where liability turns on an employer’s uniform policy  
20 that is uniformly implemented, since in that situation predominance is easily established.”), *aff’d*,  
21 375 Fed. App’x 734 (9th Cir. 2010); *cf. In re Wells Fargo Home Mortg. Overtime Pay Litig.*, 571  
22 F.3d 953, 958 (9th Cir. 2009) (“[C]ourts have long found that comprehensive uniform policies  
23 detailing the job duties and responsibilities of employees carry great weight for certification  
24 purposes.”). Because of the system of electronic records maintained by defendant, the court finds  
25 that determining the composition of the class would be straightforward and provides no basis to  
26 deny class certification.

27 Accordingly, the court finds predominance to be satisfied here.

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1 **F. Superiority**

2 Finally, the court addresses whether the class action is the superior vehicle for  
3 adjudicating these claims. In determining superiority, the court is to look to issues such as class  
4 members' interests in individual control of the litigation, the extent of any litigation already  
5 begun by class members, the desirability of concentrating the litigation in a particular forum, and  
6 the likely difficulties in managing a class action. *See* Fed. R. Civ. P. 23(b)(3)(A)–(D). There has  
7 been no showing here that any of the class members have a separate interest in individual control  
8 of the litigation, or that suits by class members are already pending on these same issues.  
9 Moreover, the types of claims at issue in this case likely involve smaller amounts of damages, for  
10 which the only practical means of seeking redress is class treatment. *See Zinser*, 253 F.3d at 1190  
11 (“Where damages suffered by each putative class member are not large, this factor weighs in  
12 favor of certifying a class action.”). Superiority is therefore also satisfied here.

13 **CONCLUSION**

14 For the reasons set forth above:

- 15 1. Plaintiff’s motion for class certification (Doc. No. 25) is granted;
- 16 2. The following Class is certified pursuant to Federal Rule of Civil Procedure 23(a)  
17 and (b)(3): **All current and former truck drivers employed by defendant**  
18 **Knight Transportation, Inc., who advised defendant that they resided in**  
19 **Oregon, Nevada, Arizona, Utah, and/or Colorado, who were paid in whole or**  
20 **in part on a piece-rate basis, and who drove one or more routes of five hours**  
21 **or more entirely within the State of California for defendant during the**  
22 **“Class Period” from September 30, 2012 through the date of the entry of this**  
23 **Order.**
- 24 3. The Court finds that the attorneys at Ackermann & Tilajef, P.C. and  
25 HammondLaw, PC are qualified and adequate counsel, and hereby appoints  
26 Ackermann & Tilajef, P.C. and HammondLaw, PC as Co-Class Counsel for the  
27 aforementioned Class;

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- 4. The Court finds that plaintiff Robert Martinez will fairly and adequately protect the interests of the Class, and hereby appoints Robert Martinez as the Class Representative;
- 5. The parties are ordered to meet and confer within 14 days of this order regarding dissemination of a joint proposed notice of class certification and opportunity to opt-out. In the event the parties are unable to agree on a proposed notice, the parties may each submit a proposed notice and a supporting brief, not to exceed five pages in length, to the court with within 21 days of this order; and
- 6. The matter is referred back to the assigned magistrate judge for further proceedings consistent with this order.

IT IS SO ORDERED.

Dated: November 30, 2018

  
UNITED STATES DISTRICT JUDGE