Case No. E062678

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT, DIVISION TWO

VIRGINIA RODRIGUEZ, *et al.*,
Plaintiffs-Respondents,

v.

EXEL, INC.,
Defendant-Respondent

RUBIN CHAPPELL, *et al.*,
GABRIEL M. GARCIA,
Objectors-Appellants.

Appeal from Final Judgment of the Superior Court of California
County of San Bernardino, Case No. CIVDS1104594
Honorable Bryan F. Foster

PLAINTIFF-RESPONDENT RODRIGUEZ'S BRIEF

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TO BE FILED IN THE COURT OF APPEAL

APP-008

COURT OF APPEAL, Fourth **APPELLATE DISTRICT, DIVISION** Two	Court of Appeal Case Number: E062678
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APPELLANT/PETITIONER: Ruben Chappell, et al. RESPONDENT/REAL PARTY IN INTEREST: Virginia Rodriguez	
CERTIFICATE OF INTERESTED ENTITIES OR PERSONS *(Check one):* ☑ INITIAL CERTIFICATE ☐ SUPPLEMENTAL CERTIFICATE	

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1. This form is being submitted on behalf of the following party (*name*): Virginia Rodriguez

2. a. ☐ There are no interested entities or persons that must be listed in this certificate under rule 8.208.

   b. ☑ Interested entities or persons required to be listed under rule 8.208 are as follows:

	Full name of interested entity or person	**Nature of interest *(Explain):***
(1)	Virginia Rodriguez	Plaintiff and Respondent
(2)	Exel, Inc.	Defendant and Respondent
(3)	Rubin Chappell	Objector and Appellant
(4)	Gabriel Garcia	Objector and Appellant
(5)		

☐ Continued on attachment 2.

The undersigned certifies that the above-listed persons or entities (corporations, partnerships, firms, or any other association, but not including government entities or their agencies) have either (1) an ownership interest of 10 percent or more in the party if it is an entity; or (2) a financial or other interest in the outcome of the proceeding that the justices should consider in determining whether to disqualify themselves, as defined in rule 8.208(e)(2).

Date: December 1, 2015

Deepak Gupta
(TYPE OR PRINT NAME)

▶ 
(SIGNATURE OF PARTY OR ATTORNEY)

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Rules

Other Authorities

INTRODUCTION

After nearly four years of vigorous litigation, discovery, and negotiations, Virginia Rodriguez reached a settlement with defendant Exel, Inc., on behalf of a class of thousands of former and current Exel hourly employees. Exel agreed to pay more than $2 million to compensate the class for repeated wage-and-hour violations. The average individual payment to participating class members is almost $1,000. Less than 0.5% of the class decided to opt-out of the settlement. And only four class members—Gabriel Garcia, Rubin Chappell, Leonardo Muratalla, and Omar Jimenez—objected.

That the settlement provides class members with fair and reasonable compensation, particularly in light of the uncertain prospect of establishing Exel's class liability, is uncontested. Not once in their briefs do the objectors challenge the agreement's substantive terms. They do not attempt to explain how Rodriguez—or any other representative, for that matter—could have achieved a greater recovery for the class. And they offer no evidence casting doubt on Rodriguez's valuation of the settlement; indeed, the objectors' own counsel assigned some of the settled legal claims *lesser* value than class counsel did here.

But the objectors—all of whom are plaintiffs in later-filed, copycat class litigation against Exel (the *Garcia* and *Chappell* actions)—nonetheless contend that the trial court committed a clear abuse of discretion in

concluding that the settlement is fair, reasonable, and adequate. They assert that Rodriguez failed to sufficiently investigate the facts and legal issues before settling with Exel. That overlooks two years of discovery and litigation, during which class counsel reviewed almost 40,000 pages of documents and conducted ten depositions of Exel employees. The objectors also claim that Rodriguez failed to supply the trial court with adequate information to assess the settlement's fairness. That overlooks the detailed valuation analysis that class counsel provided to the court before the final fairness hearing. And the objectors contend, without evidence, that the settlement resulted from a collusive "reverse auction," even though Rodriguez filed and developed her case against Exel long before the objectors filed their copycat actions. The trial court properly rejected these arguments, and so should this Court.

The objectors also attack Rodriguez's qualifications as class representative. But the objectors' adequacy and typicality arguments contradict their own factual allegations, and are unsupported by precedent. The objectors' overtime claims merely allege specific ways by which Exel miscalculated and denied employees proper overtime pay, and are fully encompassed within Rodriguez's claim that Exel "failed to pay all overtime and hourly wages owed to Class Members."

At any rate, California law does not require that a class representative "have identical interests with the class members." (*Classen v.*

Weller (1983) 145 Cal.App.3d 27, 45 (*Classen*).) It requires only that there be no fundamental *conflict* of interest between the representative and absent class members—and the objectors establish none here. Accepting the objectors' narrow construction of adequacy and typicality would impermissibly constrict workers' ability to obtain relief for employers' unlawful labor practices, in violation of the California Supreme Court's command to "liberally construe[]. . . such protection[s]." (*IWC v. Super. Ct.* (1980) 27 Cal.3d 690, 702 (*IWC*).)

The objectors finally claim that Rodriguez and class counsel hoodwinked class members by not adequately apprising them of the *Garcia* and *Chappell* actions. But this too is contradicted by the record. The settling parties specifically amended the settlement and class notice to provide class members with information about the concurrent litigation, so that they could consider their options. And Rodriguez directly informed the trial court about the effect this settlement would have on the *Garcia* and *Chappell* actions. Nothing more is required.

The objectors do not want to accept that both the trial court and class members concluded that Rodriguez's settlement offered a fair recovery for the class, as compared to the uncertain prospects offered by the objectors' duplicative lawsuits. But, despite their protests, that is what happened here. This Court should therefore affirm the trial court's final approval of the settlement.

STATEMENT OF THE CASE

A. California law embodies a public policy favoring the use of class actions to remedy wage-and-hour violations.

"For the better part of a century, California law has guaranteed to employees wage and hour protection, including meal and rest periods intended to ameliorate the consequences of long hours." (*Brinker Rest. Corp. v. Super. Ct.* (2012) 53 Cal.4th 1004, 1017 (*Brinker*).) Provisions of the Labor Code and Industrial Welfare Commission (IWC) wage orders, "obligate[] employers to afford their nonexempt employees meal periods and rest periods during the workday." (*Id.* at 1018 (citing Lab. Code, §§ 226.7, 512; IWC wage order No. 5–2001).)

State law also requires employers to pay overtime to any non-exempt employee who works more than eight hours a day or 40 hours a week, and confers a private right of action to recover any unpaid wages. (Lab. Code, §§ 510, subd. (a), 1194.) "[I]n light of the remedial nature of the legislative enactments authorizing the regulation of wages, hours and working conditions for the protection and benefit of employees, the statutory provisions are to be liberally construed with an eye to promoting such protection." (*IWC*, *supra*, 27 Cal.3d at p. 702.) These laws "confirm[] a clear public policy . . . that is specifically directed at the enforcement of California's minimum wage and overtime laws for the benefit of workers." (*Sav-on Drug Stores, Inc. v. Super. Ct.* (2004) 34 Cal.4th 319, 340.) And, more

specifically, this "public policy supports the use of class actions to enforce California's minimum wage and overtime laws for the benefit of workers." (*Dailey v. Sears, Roebuck & Co.* (2013) 214 Cal.App.4th 974, 987 (*Dailey*).)

B. Rodriguez files this class action to obtain relief for Exel's violations of California's wage-and-hour laws.

1. Rodriguez' complaint and allegations.

Rodriguez worked for Exel, a supply-chain management company that operates logistics centers throughout the United States, from September 2006 to July 2010. (1 GA 23.)[1] She worked in multiple positions, including as a material handler/case picker and a forklift operator, at the company's Unilever facility in San Bernardino County, one of its twenty-nine warehouse facilities in California. (*Ibid.*; 4 CA 896.)

In April 2011, Rodriguez filed this action on behalf of herself and other similarly situated employees of Exel, claiming that Exel maintained policies and practices that violated California's wage-and-hour laws. (See 1 GA 2–18.) While working for Exel, Rodriguez alleged, her supervisor did not provide her with adequate, uninterrupted meal and rest periods, as required by state law. (1 CA 52–53, 66–67.) And on days that Rodriguez worked ten hours or more, "the supervisor did not inform [her that she] was entitled to a second 30 minute lunch." (4 CA 896.)

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[1] Citations to "GA" refer to Appellant Gabriel M. Garcia's Appendix, and citations to "CA" refer to Appellant Rubin Chappell's Appendix. The first number in each citation refers to the volume number.

Exel also failed to pay Rodriguez wages for all hours she had worked. Rodriguez recalled that, "at times overtime was paid and sometimes not, and sometimes double time was paid and sometimes not, even if they were the same hours worked." (1 CA 57.) Similarly, Exel "improperly calculated overtime rates of pay" generally, and failed to include "shift differential amounts," "[i]ncentive pay and/or production bonuses" when determining overtime premiums. (1 GA 15.)

Exel's unlawful practices extended beyond Rodriguez to its general workforce. Employees were "regularly required" to work more than five hours a day without adequate meal and rest periods—or compensation for failing to provide these periods. (1 GA 6, 12.) Exel also failed to pay employees "earned wages including overtime premiums" and "improperly calculated overtime rates of pay for overtime worked." (1 GA 3, 15.)

In her complaint, Rodriguez advanced five class claims. Her two primary claims were that Exel did not:

1. provide adequate meal and rest periods, or compensation for not providing such meal and rest periods, in violation of Labor Code sections 226.7 and 512; and

2. pay the proper amount of regular and overtime wages for all hours worked, in violation of Labor Code sections 510 and 558, as well as various IWC wage orders.

(1 GA 12–17.) Rodriguez also raised several derivative claims, alleging that Exel failed to timely pay wages due at termination; did not provide proper

employee wage statements; and violated the Unfair Competition Law (UCL), Business & Professional Code sections 17200, *et seq.* (*Ibid.*)

Rodriguez sought to define a class of all former and current Exel non-exempt employees who had not been provided statutorily required meal and rest periods. She also sought to represent a subclass composed of "[a]ll persons . . . who, within four (4) years of the filing of this Complaint, have worked as non exempt employees and were not paid all lawful wages, including, but not limited to, all regular time and/or overtime." (*Id.* 9.)

2. Rodriguez engages in over a year of discovery.

After filing her complaint, Rodriguez's and Exel's lawyers met and conferred to begin conducting discovery. (2 GA 478.) This discovery was comprehensive and substantial.

In October 2011, for example, Exel deposed Rodriguez for two full days. (*Id.* 481; see 1 CA 48.) Rodriguez then conducted ten depositions: two of Exel human resources managers, and eight of randomly selected hourly employees. (2 GA 481.) Exel also provided Rodriguez with almost 200 declarations from its employees—both managers and employees who worked in a number of Exel's facilities. (*Ibid.*)

Additionally, Rodriguez and Exel engaged in lengthy formal discovery; for instance, Rodriguez submitted to Exel four sets of requests for production, three sets of special interrogatories, a set of requests for admission, and form interrogatories. (2 GA 480.) In total, Exel produced

over 40,000 pages of documents in response to Rodriguez's formal and informal discovery requests, including:

- Rodriguez's personnel file;
- Exel "policy and training documents," including associate handbooks, and polices and procedures for overtime pay;
- Internal correspondence and reports regarding Rodriguez;
- Wage history reports;
- Time detail reports;
- Meal-and-rest period policy documents;
- Employee waiver forms;
- Time cards;
- Employee sign-in forms from a number of Exel facilities; and
- Hundreds of pages of site-specific policy and procedure documents, as well as site-specific employee records.

(See 2 GA 454–56, 481–84.) The "approximately 25,000 pages of timekeeping records" that Rodriguez reviewed compris[ed] approximately 500,000 lines of time punch record entries," and the "over 8,000 pages of Wage History Reports . . . compris[ed] over 400,000 lines of data regarding wage payments." (2 GA 456.)

3. Exel files a motion to strike Rodriguez's class action allegations.

Rodriguez and Exel engaged in hard-fought litigation throughout the discovery period. Following nearly a year of discovery, Exel moved to strike Rodriguez's class allegations under California Rules of Court, rule 3.767, subdivision (a).[2] Acknowledging that "California judicial policy

[2] Rule 3.767, subdivision (a) provides: "In the conduct of a class action, the court may make orders that: . . . (3) Require that the pleadings be amended to eliminate allegations as to representation of absent persons."

discourages trial courts from determining class sufficiency at the pleading stage," Exel argued that "motions to determine sufficiency of class allegations made after the parties have engaged in discovery are proper." (1 CA 32–33.) Here, Exel continued, "the parties have engaged in written discovery and deposition practice." (*Ibid.*) And Exel pointed to the evidence gathered in discovery to contend that "[Rodriguez's] claims are unique and should be adjudicated on an individualized basis." (*Id.* 32, 35–38.)

In opposition, Rodriguez recounted Exel's "actions challenging discovery and resisting production of . . . evidence," and requested "an expedited schedule for completing discovery." (4 CA 877.)[3] Rodriguez nevertheless contended that "there is sufficient evidence already of record . . . to satisfy the [class] certification requirements," and submitted lengthy evidentiary material to the trial court in support of her class claims. (*Ibid.* See also 4 CA 904–06, 925–1088.)

Exel's reply once again professed that the timing of its motion to strike was proper, in light of "almost fifteen months of litigation and extensive document and deposition discovery," including ten depositions in May 2012, three rounds of discovery requests, and its production of 34,720 pages of "responsive documents." (4 CA 1090–91.) Exel contended that even after producing 34,720 pages of "responsive documents"—and after

[3] "For example, Exel waited until the eve of Plaintiff's deadline for filing [her] Opposition before serving responses to Plaintiff's discovery requests." (*Id.* 879.)

Rodriguez had taken "testimony from [Exel's] human resources professionals and . . . sampl[ed] [Exel's] declarants"—there was insufficient evidence supporting Rodriguez's class claims. (*Ibid.*)

4. Rodriguez and Exel undertake informal settlement negotiations and mediation after the trial court partially grants the motion to strike.

The trial court granted in part Exel's motion, striking Rodriguez's class action allegations as to four of her five claim. (5 CA 1208.) But the court denied Exel's motion as to Rodriguez's unpaid-wages-and-overtime claim. (*Ibid.*)

Although Rodriguez considered appealing the trial court's ruling, she decided not to do so because the trial court had not terminated all of her class claims. (2 GA 479.) Still, Rodriguez "maintained throughout [the litigation] to Exel . . . that there [were] strong arguments for seeking reversal on appeal of the stricken claims, and that [she] would do so in the event the parties were unable to reach an amicable negotiated resolution." (*Id.* See also 3 GA 749.) Exel thus "recognized that any negotiated resolution of this case would necessarily involve a class-wide settlement of all of the wage and hour claims, including the MRB [meal-and-rest break] claims." (2 GA 479.)

Despite the trial court's order, Rodriguez "continued to work with Exel through its counsel to find any possible resolution of all the class claims as originally plead." (*Ibid.*) To that end, the parties' lawyers "engaged in

informal settlement discussions" regarding both the pending unpaid-wage claim as well as the stricken claims. (2 GA 457, 485.) Rodriguez and Exel also continued the discovery process, conducting "meetings, exchanges of information and review of records." (*Ibid.*)

After counsel was unable to informally reach an agreement, Rodriguez and Exel decided to conduct private mediation with the goal of amicably resolving all of Rodriguez's claims. (*Ibid.*) The private, full-day mediation session took place on March 20, 2013, in which the parties had a "frank and comprehensive discussion and examination of [their] respective positions on the legal and factual issues." (2 GA 486.) Though Rodriguez and Exel "made excellent progress towards understanding and valuing their claims and defenses, [they] were unable to arrive at mutually agreeable terms for Settlement." (2 GA 458.)

C. Rodriguez and Exel reach a settlement agreement.

Rodriguez and Exel "continued to confer and negotiate . . . throughout the rest of 2013 and into the early part of 2014," conducting "informational exchanges and informal discovery" in support of these negotiations. (2 GA 485.) Eight months of "vigorous" bargaining finally led to an agreement. (3 GA 750.)

Once they had agreed on terms, Rodriguez and Exel stipulated to filing a First Amended Complaint reinstating Rodriguez's stricken claims,

as Exel required a global settlement. (2 GA 479, 566–72.)[4] Following "further refined negotiations," as well as "confirmatory discovery and document review," Rodriguez and Exel signed an initial settlement agreement in April 2014—three years after Rodriguez filed her initial complaint. (2 GA 486. See also 1 GA 120–62 (settlement agreement).) The parties agreed on a class definition for settlement purposes that included:

> [A]ll persons who are or were employed by [Exel] in California in hourly, non-exempt positions . . . from April 11, 2007 through the date of preliminary approval of the Settlement Agreement, who allege:
>
> 1) they were not paid all wages earned, including regular and overtime wages related to the payment of non-discretionary bonuses . . . or were otherwise not compensated for all hours worked at the appropriate rate of pay; and/or
>
> 2) they were not provided legally compliant rest and meal breaks and were not provided premium wages for each alleged meal and rest violation; . . . .

(1 GA 123–24.)

The proposed settlement provided for a total settlement common fund of nearly $3 million, from which Exel would make individual settlement payments, and pay reasonable attorneys' fees and other costs.[5] (1 GA 123.) Class members who wished to participate were required to submit

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[4] The amended complaint also added a claim under the Private Attorney General Act of 2004 (PAGA), Lab. Code, § 2698, *et seq.*, and amended the class definition to "conform" with the agreed terms. (*Id.* at 479. See also 1 GA 59–60; 2 GA 561–62.)

[5] Exel agreed to pay from the common fund $25,000 in administrative costs, $30,000 in attorneys' costs and expenses, a $7,500 named plaintiff enhancement to Rodriguez, and $25,000 in PAGA penalties, all subject to court approval. (1 GA 212, 223–24.)

claim forms; the settlement administrator would then calculate the individual settlement payments based on the class member's total number of compensable workweeks. (1 GA 139.) Exel agreed to guarantee 55% of the net settlement amount (estimated to be $1,055,367.50 after the deductions); that is, if the total amount claimed did not equal that percentage, Exel would increase the payments to participating class members "on a pro rata basis" so that the amount distributed was at least 55% of the total fund. (1 GA 139–40.) Any unclaimed amount would revert to Exel. (*Ibid.*) Exel also agreed not to oppose an application by counsel for attorneys' fees of up to one-third of the common fund, or $999,899.99.

In exchange for individual payments, the settlement agreement required all class members to release the claims alleged in Rodriguez's FAC, encompassing those relating to: "alleged unpaid regular and overtime wages for all hours worked at the correct rate of pay"; and "alleged meal and rest period violations and failure to pay compensation in lieu thereof." (1 GA 129.) The proposed settlement agreement also detailed notice, objection, and opt-out procedures. (*Id.* 131–37.)

D. Chappell and Garcia file copycat class actions alleging the same wage-and-hour claims.

Almost a year after Rodriguez had filed her class action, and after nine months of extensive discovery practice between Rodriguez and Exel,

David Spivak, counsel for Rubin Chappell, filed a copycat class action against Exel in Los Angeles County Superior Court. (7 CA 1707.)

Chappell was a former employee of Exel who worked as a forklift operator at the Carson facility. (*Ibid.*) Although he often worked more than ten hours per day, Chappell alleged, Exel did not properly increase his hourly rate of pay.[6] (*Ibid.*) Like Rodriguez, Chappell explained that Exel erred by "not include[ing] all forms of compensation, such as nondiscretionary bonuses" when calculating his overtime pay rate. (*Ibid.*) Chappell also alleged that Exel denied him meal and rest periods. He asserted four claims, all of which duplicated claims in Rodriguez's complaint: (1) failure to pay all employees for all hours worked; (2) waiting time penalties; (3) failure to provide accurate wage statements; and (4) unfair competition. (See *id.* 1711–19.)

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[6] These allegations form what Chappell calls his "alternative workweek schedule" or AWS-overtime theory. California law allows employers to implement alternative workweeks where employees work four 10-hour days a week without receiving overtime. (See Lab. Code, § 511, subd. (a).) Alternative workweeks must "receive[] approval in a secret ballot election by at least two-thirds of affected employees in a readily identifiable work unit," and the employer must report the results to the State within 30 days. (§ 511, subds. (a), (e).) If the alternative schedule is not formally adopted, non-exempt employees continue to receive overtime pay for working more than eight hours a day. (§ 510, subd. (a).)

Chappell alleges that Exel's Carson employees worked unauthorized alternative workweeks until a secret election in September 2010. (Chappell Br. 6.) But "production documents provided by Exel" indicate that the Carson employees conducted an election in June 2007, before Chappell's class liability period began. (2 GA 492.) Exel's only violation thus appears to have been its failure to record the results with the State.

More than a year and a half later, in November 2013, Michael Nourmand filed another copycat lawsuit in Los Angeles County Superior Court. (See 2 GA 393–408.) This lawsuit, on behalf of Gabriel Garcia, contained allegations largely similar to Rodriguez's and Chappell's; he asserted that Exel employees "ha[d] not been paid, during the relevant liability periods, wages for all time worked, including overtime wages," nor had they been "provided statutorily required meal and rest periods." (*Id.* 396.) Garcia's complaint also alleged that Exel under-calculated overtime payments by "improperly rounding time." (*Ibid.*) Garcia's complaint advanced seven claims—again, largely duplicative of Rodriguez's—alleging that Exel had failed to: (1) pay overtime wages; (2) pay minimum wages; (3) provide meal periods; (4) provide rest periods; (5) pay all wages upon termination; (6) provide wage statements; and (7) comply with the UCL. (See *id.* 400–07.)

Chappell filed a motion for class certification in December 2013. The Los Angeles County Superior Court later ordered the *Chappell* and *Garcia* actions stayed, however, pending the *Rodriguez* settlement's resolution; thus, that court has not yet ruled on Chappell's class-certification motion. (1 GA 191; see also Chappell Br. 11.)

E. Rodriguez and Exel amend the settlement documents, and obtain the trial court's preliminary approval.

Rodriguez moved for preliminary approval of the initial settlement in April 2014, but then sought a continuance of the approval hearing to amend the settlement documents to "further clarify the scope of the claims and release" and "to ensure that Class Members . . . receive appropriate notice of the other two cases [*Garcia* and *Chappell*]." (1 GA 189; 2 GA 486.)

Two months later, the parties submitted the amended settlement for preliminary approval. Except for two changes, the terms were materially identical to the initial settlement. (1 GA 194.) First, the parties revised the agreement to clarify that, if the court were to deny approval to certain claims, the fund would be reduced by the amount allocated to those claims. (*Ibid.*) Second, the parties amended the class release to include those claims relating to "alleged unpaid hourly and overtime wages for all hours worked at the correct rate of pay, including . . . claims arising from alternative workweek schedules and alleged unlawful round of hours." (*Id.* 194–95.)

The latter amendment, the parties acknowledged to the court, clarified that "the release of the unpaid wages cause of action is and has been intended to be a global release of all unpaid wages claims." (1 GA 195.) The revised release language, the parties noted, "provide[s] the best practicable notice to the Class Members regarding the *Chappell* and *Garcia* cases so they will understand how resolution of the class claims in this action

will impact those in *Chappell* and *Garcia*." (*Ibid.*) The parties also revised the class notice to reflect the changes in the release. (*Id.* 196.) And the parties added substantive information about the *Chappell* and *Garcia* actions in the notice, to "enable Settlement Class members to make an informed decision regarding whether to participate in the Settlement in this action." (*Id.* 195–96.)[7]

After reviewing the amended settlement, the revised notice, and accompanying materials detailing the extent of discovery and negotiations, the trial court granted preliminary approval on July 2, 2014. (1 GA 262.) The court concluded "that the Settlement is fair, adequate and reasonable," because the parties' counsel had conducted "extensive and costly investigation, research and court proceedings . . . to reasonably evaluate their respective positions. (*Id.* 264.) The court also approved the revised notice and claim form, and appointed Rodriguez and her counsel as class representative and class counsel. (*Id.* 261–68.)

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[7] The revised class notice states: "There are two other ongoing cases where other plaintiffs have alleged similar class claims against Exel to those Plaintiff has alleged on behalf of her self and all other similarly situated Exel employees in this Action." (1 GA 235.) It then provides short summaries of the claims alleged in *Chappell* and *Garcia* actions. (*Ibid.*)

The notice further states: "Both the *Chappell* and the *Garcia* cases were initiated well after this Action. The claimed causes of action, liability periods, and class scopes of the *Chappell* and *Garcia* cases are encompassed under those in this Action, and will be resolved along with the class claims in this Action upon the Court's final approval of the Settlement." (*Ibid.*)

F. Class notice is distributed and the settlement is administered; less than 0.5% of class members opt out, and four class members object.

The settlement administrator mailed class notice—containing detailed instructions in both Spanish and English explaining how to participate in, opt-out from, or object to the settlement—to the class members on July 23, 2014. (2 GA 497; see 1 GA 233–40 (final class notice).) Three weeks later, the administrator sent reminder postcards to class members who had not yet returned claim forms. (*Ibid.*) After reviewing late and deficient claims, the administrator determined that there were "1,096 valid and accepted claim forms" returned by participating class members, submitting claims which include about 38% of the total number of weeks worked by class members. (2 GA 498.)

The participating class members' claims totaled $727,897.31, and the average individual settlement payment to participating members was $664.14. (2 GA 500–01.) As the total was less than the guaranteed 55% of the net settlement amount, an additional $327,470.19 will be distributed to participating class members on a pro rata basis. (*Ibid.*) After redistribution, the average individual settlement payment will be $962.93. (*Id.* 501.) Rodriguez's individual settlement payment, not including the named plaintiff enhancement, is $967.96. Of the objectors, Chappell would receive $1,332.53; Jimenez would receive $326.85; and Muratalla would receive $691.14. Garcia did not submit a claim form. (*Id.* 464.)

Only 15 out of 3,795 class members—or 0.4% of the total—submitted requests to opt-out of the settlement. (2 GA 501.) And, only four class members objected—all represented by Spivak and Nourmand in the *Garcia* and *Chappell* actions.[8] (1 GA 463. See also 1 GA 277–95 (Garcia objection); 6 CA 1461–88 (Chappell objection).)

The objectors advanced an assortment of challenges to the settlement, most of which they repeat on appeal. Specifically, they contended that the settling parties did not provide the court with sufficient information regarding class counsel's investigation, discovery, and estimates of potential recovery. (1 GA 284–89; 6 CA 1481–83.) For example, Garcia claimed—without acknowledging class counsel's review of thousands of pages of time records—that "there is nothing . . . that indicates that any investigation has been done to evaluate [unlawful rounding] claims." (1 GA 291.) The objectors also argued that class notice was inadequate because it did not contain certain information, including "the name of counsel in the *Garcia Action*," (1 GA 292), and a statement that "Chappell had marshaled a host of evidence in support of the meal break claims of the hourly forklift operators," (6 CA 1484). And the objectors attacked Rodriguez's adequacy and typicality as a class representative. (1 GA 291–94; 6 CA 1476–77.) Relatedly, Chappell argued that Rodriguez lacked standing to bring claims

[8] Leonardo Muratalla and Omar Jimenez, putative class members in the *Chappell* action, fully joined in Chappell's objection. (See 6 CA 1580–85 (Jimenez declaration); *id.* 1608–13 (Muratalla).)

on behalf of employees, like him, at the Carson facility, because she "never worked at Carson where the unique circumstances of the [alternative-workweek] claim arose." (6 CA 1474.)

Finally, the objectors argued generally that the settlement was a product of collusion. (1 GA 289–90; 6 CA 1485–88.) Chappell went so far as to claim that "only the Chappell lawsuit had the potential to result in a multi-million dollar judgment against [Exel] worth paying millions of dollars to shut down,"[9] and accused the settling parties—without any evidence—of entering into "an undisclosed side-deal." (6 CA 1485, 1488.)

G. After considering detailed information and analysis about the settled legal claims, as well as the objectors' arguments at the fairness hearing, the trial court grants final approval.

Once administration of the settlement was complete and the objection deadline had passed, Rodriguez moved for final approval of the settlement. Class counsel informed the court that the parties arrived at the final settlement amount after conducting a "thorough and reasonably realistic analysis of Exel's potential maximum liability exposure, based upon the strength of Plaintiff's claims and Exel's defenses and an appreciation of the uncertainties and expense of continued litigation." (2 GA 466.) And this analysis was supported by class counsel's extensive experience in

[9] To support this claim, Chappell asserted that his "discovery was more thorough" than Rodriguez's. (6 CA 1487.) Yet Chappell also contended that Rodriguez "failed to explain to the Court what discovery she conducted." (*Id.* 1481.) The two statements, at best, are inconsistent.

"represent[ing], mediat[ing] and sett[ling] other employee class action in wage and hour litigation"—indeed, class counsel's office is "currently litigating at least fifty" such actions. (1 GA 107, 113–14.)

In response to the objectors' unsupported attacks on class counsel's analysis of the settled legal claims, the final approval motion and the accompanying class counsel declaration set out detailed valuation and risk analysis. (See 2 GA 465–69, 487–96.) We briefly recount some of this analysis for the Court's benefit.

- **Meal-and-rest periods:** After analyzing approximately 25,000 pages of timekeeping records, class counsel estimated that Exel's potential maximum liability with respect to meal period violations was $4.2 million. (*Id.* 489–90.) Class counsel valued the liability as to rest period violations at $300,000, a "relatively low number, because of the uncertainty of successfully litigating that claim. (*Id.* 490.)[10]

- **Unpaid wages and overtime:** Class counsel broke down its valuation analysis of Rodriguez's overtime claims into three categories. (See *id.* 491–93.)

    - **Unlawful rounding:** From its review of the timekeeping records, class counsel determined that, "even if it could establish unlawful rounding," the rounding "would be for only a few minutes on each shift." (*Id.* 491.) Class counsel thus "conservatively estimated that, with an underpayment of 3 minutes per shift due to rounding," Exel could be exposed to potential liability of $1.05 million. (*Ibid.*)[11]

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[10] Exel did not—and was not required to—maintain records of when employees took rest periods, and had offered over 170 declarations in which employees stated they were provided sufficient rest periods. (*Id.* 490.)

[11] Class counsel explained that it could have discounted this valuation further, given Exel's assertion that it was unable to establish from the records whether class members were working during the "rounded time period," but class counsel did not do so "out of an abundance of caution." (*Ibid.*)

- **Alternative workweek:** Class counsel calculated that the maximum potential liability for claims based on alternative-workweek violations was $5.4 million. (*Id.* 492.) But, because various documents Exel had produced in discovery indicated that the company had largely complied with state law, counsel discounted the potential liability by approximately 75% to $1.5 million. (*Ibid.*) "This allocation," counsel noted, "is approximately twice what counsel for *Chappell* objectors has estimated as the maximum liability exposure to Exel." (*Id.* 492–93.)

- **Miscalculation of overtime rates:** Class counsel "conservatively estimated" that Exel's potential liability for its failure to include non-discretionary bonuses in calculating overtime rates was $100,000. (*Id.* 493.)

- **Derivative claims:** Class counsel determined that Exel's maximum potential liability on the wage statement claim was $3.2 million; its liability on the failure to timely pay wages was $2.4 million; and its liability under PAGA was $25,000. (*Id.* 494–95.)

Ultimately, counsel calculated Exel's "maximum liability exposure" for all claims as approximately $12.8 million, and its "total liability exposure . . . for the main and underlying class claims" as $7.15 million. (*Id.* 496.) The total settlement amount thus represents 23.5% of Exel's estimated maximum liability exposure, or 42% of Exel's potential liability for the main class claims. (*Ibid.*) These allocations, class counsel explained, "reasonably recognize the uncertainty of continued litigation and the difficulties in certifying cases which require comprehensive testimony from a multiplicity of class members in the face of testimony from 174 employees to the contrary and [Exel's] alleged facially compliant policies." (*Id.* 469.)

Class counsel gave the trial court the valuations, as well as the underlying calculations and assumptions, a month before the fairness hearing.

At the fairness hearing, the objectors' counsel repeated their arguments that the settling parties had not provided the court with sufficient information about the settlement, and that Rodriguez inadequately represented all class members with overtime claims. (See 1 RT 3, 6–7.) Normand maintained that "neither the court nor the class members had any information about what evaluation was given or what investigation was conducted with respect to an unlawful rounding claim." (*Id.* 4.) Spivak restated his contention that the settlement was a result of collusion, suggesting that "[t]he timing is damaging in this case" since the settlement was reached shortly after his certification motion. (*Id.* 6.)[12] And Spivak stressed that Exel settled in part to ameliorate the risk of defending against the *Garcia* and *Chappell* class actions—a permissible motivation that Exel has never denied, and indeed one that the settling parties expressly stated to the trial court when amending their settlement documents. (*Id.* 8–10.) In response, class counsel explained that the class "not only received notice about Virginia Rodriguez's case but also the other two cases pending." (*Id.* 13.) And counsel observed that "[t]his case was thoroughly litigated for well over three to three-and-a-half years," and that "[a]ll of the cleaning up that

[12] Spivak did not acknowledge another important fact about "timing"—that Rodriguez's class action predated his lawsuit by a year.

[the objectors] complain[] about . . . was all done very openly to the court and to the parties involved in the case." (*Ibid.*)

Several weeks later, the trial court issued an order granting final approval of the settlement. After considering all of the "documents submitted by the parties in connection with preliminary and final approval of the Settlement, and . . . all oral arguments presented by counsel for the parties and objectors, and the arguments and documents filed by the objectors and the parties' responses thereto," it overruled the objections. (*Id.* 838.) The court concluded that class notice "provided sufficient information so that members were able to decide whether to accept the benefits offered, opt-out and pursue their own remedies, or object to the proposed settlement," and that, on the whole, the settlement was "fair, reasonable, and adequate." (*Id.* 839.)

STANDARD OF REVIEW

The questions "whether a settlement was fair and reasonable, whether notice to the class was adequate, [and] whether certification of the class was proper . . . are matters addressed to the trial court's broad discretion." (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234–35 (*Wershba*).) This Court's review "is therefore limited to a determination whether the record shows 'a clear abuse of discretion,' . . . not to determine in the first instance whether the settlement was reasonable or whether certification was appropriate." (*Id.* at p. 235.)

ARGUMENT

I. The trial court properly concluded that the settlement is fair, reasonable, and adequate.

The objectors give this Court no reason to disturb the trial court's correct determination that the settlement is fair, reasonable, and adequate. Despite their list of concerns, the objectors markedly avoid discussing critical issues that confirm the fairness of this settlement. They offer *no* evidence that class counsel undervalued class members' legal claims to achieve a settlement—indeed, class counsel valued some of the objectors' claims as *greater* than the objectors themselves did. Nor do the objectors even attempt to claim that the substantive terms of the settlement insufficiently benefit class members. And the objectors ignore the fact that less than one percent of the class opted-out of or objected to what they contend is a grossly unfair settlement.

Instead, the objectors disregard Rodriguez's extensive discovery and litigation efforts, and accuse Rodriguez and class counsel of selling out class members' interests for their own gain. The trial court rejected these groundless arguments. So should this Court.

A. The presumption of fairness applies to this settlement.

Courts presume a settlement is fair when: "(1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is

experienced in similar litigation; and (4) the percentage of objectors is small." (*Carter v. City of L.A.* (2014) 224 Cal.App.4th 808, 820.)

Objectors do not—and cannot—contest the third and fourth factors; class counsel has represented plaintiffs in numerous California wage-and-hour class actions (1 GA 113–14), and only *four* of almost four thousand class members objected to the proposed settlement. Instead, the objectors contend that the settlement results from collusion and that Rodriguez did not conduct sufficient investigation or provide enough information to enable the trial court to make an informed decision.

Both contentions are baseless. As described below, the settling parties presented the trial court with detailed information and analysis—collected after more than three years of hard-fought litigation, formal and informal discovery, and arms-length negotiations.

B. Rodriguez's extensive investigation resulted in detailed information and analysis, all of which the trial court considered.

During the nearly three years between the filing of her complaint and the initial settlement, Rodriguez and class counsel conducted a thorough and in-depth investigation of her claims. Counsel analyzed approximately 25,000 pages of timekeeping records and over 8,000 pages of wage-history reports. (2 GA 456.) Counsel deposed ten Exel employees—human resources managers and hourly employees—and reviewed almost 200 employee declarations taken by Exel. (2 GA 481.) And counsel

reviewed thousands of pages of other documents, from policy and training materials to internal correspondence, produced as a result of formal and informal discovery requests. (2 GA 454–56.)

Class counsel then estimated the value of the legal claims in light of Exel's potential defenses and the risks of litigation, based on the information derived from discovery and counsel's long-time experience in wage-and-hour class litigation. (See Statement, Section G, *supra.*) Rodriguez's final-approval motion—filed a month before the fairness hearing—provided the trial court with a description of all the discovery materials and detailed summaries of counsel's valuation analysis, to consider along with the objections. (See 2 GA 465–69, 487–96.) In the summaries, class counsel not only laid out the liability estimates it had calculated, but also explained the assumptions underlying the calculations and any deviations or discounts it applied. (See *Ibid.*)

Ignoring all of this, the objectors profess that "there is *no* analysis in the moving papers and the supporting documents of the reasonable estimate of the nature and amount of recovery that class members could have obtained if Rodriguez prevailed on each claim." (Garcia Br. 21; see also Chappell Br. 33–37.) Chappell even argues (at 34) that "Rodriguez failed to explain to the trial court what discovery she conducted," and "did not show[] any substantive analysis of the discovery." On this basis, the

objectors claim, the trial court lacked sufficient information to evaluate the fairness of the settlement.

But these arguments cannot be reconciled with the record. Even the objectors appear to concede that, by the time of the fairness hearing, the final-approval motion and accompanying materials provided the trial court with the information and analysis typically required for assessing a settlement. (See Chappell Br. 37; Garcia Br. 22–26.)[13] Their concerns then essentially boil down to unhappiness that the *preliminary-approval motion* contained insufficient information. But that is incorrect. Class counsel's declaration at the preliminary-approval stage informed the court about the relative merits of the settled claims, and the court was well-aware of the extensive discovery in this case—much of which had been presented to the trial court when it ruled on Exel's earlier motion to strike. (See 4 CA 904–06, 925–1088.)

In any event, the objectors cite no precedent suggesting that courts considering a settlement should be presented at preliminary approval with the kind and extent of information objectors seem to think is required. In

[13] Chappell contends (at 37) that the information Rodriguez provided at the final-approval stage is "extremely suspect" *because* "it contradicts the detailed evidence that Chappell provided." Putting aside this unique approach to causation, Chappell offers no support for this assertion, and, as discussed, Rodriguez's calculations resulted in similar—and sometimes *greater*—valuations of the legal claims than Chappell's. Furthermore, his assertion (at 44) that his discovery was more "thorough" is belied by the record; Exel "provided Rodriguez's counsel with the same discovery materials that were produced by Exel in *Chappell*." (3 GA 748.)

fact, the precedent the objectors *do* cite shows by contrast that Rodriguez appropriately informed the trial court here.

In *Kullar v. Foot Locker Retail, Inc.* (*Kullar*) (2008) 168 Cal.App.4th 116, 128–29, for example, the trial court erroneously approved a settlement even though "absolutely no discovery was conducted with respect to the claim that class members were not provided meal period[s]," "[n]o declarations were filed . . . indicating the nature of the investigation that had been conducted," and "[n]o time records were produced." Nor did the settling parties present the court with any "analysis . . . of the factual or legal issues" or "any explanation of the factors that were considered in discounting the potential recovery for purposes of settlement." (*Ibid.*) The Court of Appeal reversed, holding that, because "there was nothing before the [trial] court to establish the sufficiency of class counsel's investigation," the court could not "intelligently evaluate the adequacy of the settlement." (*Ibid.*)[14]

In sharp contrast to counsel in *Kullar*, class counsel here conducted years of discovery, filed numerous declarations as to the nature of the investigation, reviewed thousands of pages of time records, and provided

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[14] Objectors also rely on *Clark v. Am. Residential Servs. LLC* (2009) 175 Cal.App.4th 785. But that case is irrelevant. *Clark* held that a "trial court is obliged, at a minimum, to determine whether a legitimate controversy exists on a legal point, if that legal point significantly affects the valuation of the case for settlement purposes." (*Id.* at p. 803.) But the objectors here do not claim that Rodriguez's valuation is *legally* improper; instead, they object to the calculations themselves, and claim that the valuation lacks a sufficient evidentiary foundation.

the trial court with detailed analysis of the factual and legal issues in this case. Counsel's efforts more than satisfy *Kullar*'s requirement, *supra*, that the trial court be sufficiently informed to "independent[ly] evaluat[e]" the settlement's fairness. (168 Cal.App.4th at p. 130.)

C. The settlement was the product of hard-fought litigation and arms-length bargaining, not collusion.

Unable to show that Rodriguez failed to investigate the case and provide sufficient information to the trial court, the objectors resort to accusing Rodriguez—without evidence—of impermissible collusion with Exel.

1. The settlement's fair terms demonstrate that there was no collusion.

Despite the objectors' repeated references to "red flags," there are no "indicia of collusion" here. (Garcia Br. 41–49; Chappell Br. 41–46.) As already discussed at length, Rodriguez conducted years of discovery, reviewing thousands of pages of records to develop her legal claims. And class counsel provided the trial court with detailed valuation analysis, in which counsel explained the assumptions underlying its calculations.

Most importantly, the objectors at no point attempt to contest whether the "terms of the proposed settlement are fair" or whether the settlement is "of questionable value." (Chappell Br. 42–43.) Nor could they. Rodriguez's multi-year efforts resulted in a $3 million recovery for the class, from which the average participating class member receives $962.93—and

employees like Chappell receive even higher payments. (2 GA 501.) The settlement's fairness is further confirmed by the fact that only 19 of 3,795 class members opted-out or objected. (*Ibid.*)

Objectors do not respond to the evidence showing the settlement's concrete benefits to the class members. Garcia strikingly provides *no* evidence that he could have achieved a greater recovery, nor even any alternative valuation of his claims. And Chappell's valuation of his primary overtime claim was about *half* of Rodriguez's valuation. (6 CA 1483.) As Chappell explains (at 42), "the proof is in the eating." In light of the absence of evidence of collusion and the settlement's substantively fair terms, the trial court properly found no collusion here.

2. The fee award does not suggest impropriety.

Aware that they lack any evidence of collusion, the objectors seek to train this Court's attention on the attorneys' fees award, which they characterize as "improper" and "excessive." (Garcia Br. 47–49.) But the total fees—representing one-third of the total settlement amount—fall squarely within the range that California courts hold reasonable.

That Exel agreed to not oppose class counsel's fee application, and that the trial court employed a percentage approach rather than a lodestar method, is not in the least improper. Indeed, California courts have described so-called "clear sailing" provisions as "a proper and ethical practice":

> This practice serves to facilitate settlements and avoids a conflict, and yet it gives the defendant a predictable measure of exposure of total monetary liability for the judgment and fees in a case. To the extent it facilitates completion of settlements, this practice should not be discouraged.

(*In re Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 553.) And "California has recognized that most fee awards based on either a lodestar or percentage calculation are 33 percent." (*Hartless v. Clorox Co.* (S.D.Cal. 2011) 273 F.R.D. 630, 642–43.) The fee award therefore falls within the heartland of the precedent.

Garcia suggests that the fee award is disproportionate because many class members did not submit claims, thus reducing the total payout to the class. But "where attorneys' fees are paid separately from the claim fund, courts base the fee award on the *entire settlement fund* as *that package* is the benefit to the class." (*Id.* at p. 645 (emphasis added).) That is, a "percentage fee in a traditional common fund case . . . may be calculated on the basis of the total fund made available rather than the actual payments made to the class." (*Lealao v. Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 51.) Particularly in light of the deference shown to the trial court's assessment as to the reasonableness of fees, the objectors offer no reason to question the fee award. (See *Akins v. Enter. Rent-A-Car Co. of S.F.* (2000) 79 Cal.App.4th 1127, 1134.)

3. Rodriguez had ample bargaining power, and thus no reverse auction occurred.

Objectors finally assert, without any evidence, that the settlement is the result of a "reverse auction." (Chappell Br. 43; Garcia Br. 41–45.) But this settlement bears none of "the tell-tale signs of a reverse auction." (*Id.* 43.)

There is no evidence here that Exel "pick[ed] the most ineffectual class lawyers to negotiate a settlement with in the hope that the district court w[ould] approve a weak settlement that w[ould] preclude other claims against the defendant." (*Negrete v. Allianz Life Ins. Co. of N. Am.* (9th Cir. 2008) 523 F.3d 1091, 1099 (*Negrete*).) Rodriguez's lawsuit was the *first* wage-and-hour class action against Exel, predating the objectors' actions by a year and two-and-a-half years, respectively. And, in seeking approval of the settlement, class counsel explicitly presented the trial court and class members with details about the parallel class actions, to enable them to make an informed decision.

Objectors suggest that Rodriguez lacked bargaining power after the trial court struck some of her class claims, leaving her with a valueless claim and eager to reach a settlement with Exel. (Chappell Br. 43–44; Garcia Br. 43.) Yet Rodriguez's overtime claim—the only claim at issue—remained viable. This claim, which, as discussed above, encompassed the objectors' calculation theories, continued to have great value, and Rodriguez's

sustained litigation of that claim pressured Exel into a settlement. And, of course, Rodriguez retained bargaining power by deciding to appeal the trial court's strike order if she was unable to reach a settlement. (2 GA 479; see also Exel Br. 30–31.)

In sum, "there is no evidence of underhanded activity in this case." (*Negrete*, *supra*, 523 F.3d at p. 1099.) And, absent affirmative evidence of collusion, the objectors in effect argue "that no settlement [sh]ould ever occur in the circumstances of parallel or multiple class actions," an argument rejected by numerous courts because then no "competing cases could settle without being accused by another of participating in a collusive reverse auction." (*Ibid.* (quoting *Rutter & Wilbanks Corp. v. Shell Oil Co.* (10th Cir. 2002) 314 F.3d 1180, 1189).) The trial court properly rejected the objectors' arguments, recognizing that Rodriguez had adequately represented class members' interests by reaching a fair settlement that provided them with substantial compensation. This Court should do so too.

II. Rodriguez is an adequate and typical representative for class members seeking relief for Exel's overtime violations.

Unable to undermine the settlement's substantive fairness, the objectors turn to attacking Rodriguez's procedural grounds for certifying the settlement class. But Rodriguez has established "a well-defined community of interest" among the class. (*Brinker*, *supra*, 53 Cal.4th at p. 1021.) She easily satisfies both the community-of-interest's twin tests: "the

claims of the representatives must be typical of the claims or defenses of the class; and the class representatives must be able to fairly and adequately protect the interests of the class." (*Wershba*, *supra*, 91 Cal.App.4th at p. 239.)

Still, because her overtime claim did not explicitly allege unlawful-rounding and alternative-workweek "theories" of overtime, the objectors contend, Rodriguez is neither an adequate nor a typical class representative.[15] (See Chappell Br. 23–28; Garcia Br. 26–30.) But the objectors' cramped understanding of California's adequacy and typicality requirements misconstrues the nature of Rodriguez's overtime allegations and finds no support in precedent. Accepting the objectors' meritless arguments would also frustrate California's public policy by unduly restricting plaintiffs from litigating—and legitimately settling—class actions to remedy widespread wage-and-hour violations.

A. Rodriguez's overtime-and-unpaid-wages claim is typical of class members' claims.

The objectors do not contest that Rodriguez meets the basic test for typicality: "whether [she and] other members have the same or similar injury [and] whether the action is based on conduct which is not unique to the named plaintiffs." (*Seastrom v. Neways, Inc.* (2007) 149 Cal.App.4th 1496,

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[15] The objectors' adequacy arguments are limited to Rodriguez's overtime claim. They do not contest Rodriguez's adequacy with respect to the remaining five class claims, including her meal-and-rest-breaks claim—the claim for which both class counsel and the objectors estimated the greatest value. (2 GA 490; Chappell Br. 25 n.9.)

1502.) Nor could they. The class members have suffered the same injury as Rodriguez—inadequate overtime pay—and this injury was caused, in all instances, by Exel's failure to properly calculate overtime.

Instead, the objectors contend that Rodriguez's interests do not "align[] with the interests of the class," *ibid.*, because their particular calculation theories—unlawful rounding and improper alternative-workweek pay—rise to the level of separate and distinct claims. But, far from being unique claims, the objectors' copycat claims are *subsets* of Rodriguez's broader overtime claim. That is, Rodriguez's overtime claim is not only typical of the objectors' claims, but encompasses them.

Since the inception of this class action, Rodriguez has always claimed that Exel repeatedly violated California law by failing to pay employees *all* wages earned. In her original complaint—filed years before the objectors'—Rodriguez alleged that the common question of law and fact underlying her claim is "[w]hether [Exel] violated section 510 of the Labor Code and IWC Wage Orders by failing to pay all lawful wages, including, but not limited to, all regular time and/or overtime." (1 GA 7, 11.) And Rodriguez defined her class, in part, as all Exel employees "who . . . were not paid all lawful wages, including, but not limited to, all regular time and/or overtime." (*Id.* 9.)

Rodriguez's amended complaint confirmed that her overtime claim is not limited to particular calculation methods or procedures. Rather, it

concerns Exel's broader practice of not paying employees the correct amount of overtime:

> [Exel] improperly calculated overtime rates of pay for overtime worked each day by non-exempt employees and failed to accurately pay overtime premiums by not including shift differential amounts, incentive pay and/or production based bonuses when calculating hourly overtime rates . . . , or *otherwise failed to pay all overtime* and hourly wages owed to Class Members or to pay them at the correct rate.

(1 GA 65 (emphasis added).) Rodriguez amended the class definition to conform to the amended settlement, covering all Exel employees who "were not paid all wages earned" and "who w[ere] otherwise not compensated for all hours worked at the appropriate rate of pay." (1 GA 59–60.)

The objectors nonetheless contend Rodriguez fails the typicality requirement, because their overtime claims are, in their view, "distinct" and "arise from markedly different courses of action." (Chappell Br. 26.) But the objectors' complaints reveal that their "claims" are simply narrower theories encompassed by Rodriguez's claim. For example, Garcia alleges that employees "were not paid overtime wages for all hours worked as a result of, including but not limited to, [Exel] improperly rounding time worked by its employees." (2 GA 400.) Likewise, Chappell alleged that Exel "failed to pay [employees] for all earned wages every pay period at the correct rates, including overtime rates and reporting time pay." (7 CA 1714.) And both objectors duplicate the statutory bases of Rodriguez's

claim: California Labor Code sections 510 and 1198, and applicable IWC Wage Orders.

That Chappell and Garcia specify certain improper calculation methods used by Exel does not render Rodriguez's broader overtime claim atypical. "[I]t has never been the law in California that the class representative must have *identical* interests with the class members." (*Classen*, *supra*, 145 Cal.App.3d at p. 45.) Rather, "it is sufficient that the representative is *similarly situated* so that he or she will have the motive to litigate on behalf of all class members." Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 1997) § 14:29.1. The objectors' own allegations make clear that Rodriguez is "similarly situated" to other class members; she, like all class members—and the objectors themselves—was denied wages due to Exel's policy of failing to pay employees for all hours worked. Rodriguez thus has sufficient "motive" to litigate for all class members.

B. Rodriguez adequately protects the interests of absent class members.

Nor can the objectors point to *any* conflict—let alone a substantial one—between Rodriguez and absent class members that suggests she compromised members' interests in pursuit of her own.

"Although the questions whether a plaintiff has claims typical of the class and will be able to adequately represent the class members are related,

they are not synonymous." (*Martinez v. Joe's Crab Shack Holdings* (2014) 231 Cal.App.4th 362, 375.) While typicality asks whether the representative has claims typical of those of other class members, "the adequacy inquiry . . . serves to uncover conflicts of interest between named parties and the class they seek to represent." (*J.P. Morgan & Co. v. Super. Ct.* (2003) 113 Cal.App.4th 195, 212.) And while "a putative representative cannot adequately protect the class if his interests are antagonistic to or in conflict with the objectives of those he purports to represent . . . only a conflict that goes to the very subject matter of the litigation will defeat a party's claim of representative status." (*Richmond v. Dart Indus., Inc.* (1981) 29 Cal.3d 462, 470.)

The objectors do not even attempt to show that such a conflict exists here. They contend that Rodriguez is an inadequate representative because those class members who worked alternative workweeks or were victims of unlawful rounding allegedly suffered greater damages than those who are situated like Rodriguez. But this implication is both contradicted by the record and legally irrelevant.

As to the record: Rodriguez's overtime class allegations cover all employees who were "not compensated for all hours worked at the appropriate rate of pay." (1 GA 60.) As described above, *see supra* at pp. 36–38, these allegations encompass the objectors' unlawful rounding and alternative-workweek theories, which confirms the trial court's conclusion

that Rodriguez adequately represented the interests of class members like Garcia and Chappell from the inception of this litigation. And the settlement's fair substantive terms, *see supra* pp. 30–31, further confirm Rodriguez's adequate representation.[16]

In any event, the objectors' adequacy arguments are based on a legally irrelevant premise. "[W]here the theory of liability asserts the employer's uniform policy violates California's labor laws, factual distinctions concerning whether or how employees were or were not adversely impacted by the allegedly illegal policy do not preclude certification." (*Hall v. Rite Aid Corp.* (2014) 226 Cal.App.4th 278, 289.) Here, Rodriguez has alleged that Exel has a general policy of failing to pay hourly employees for all hours worked. This general policy (as the objectors tacitly concede by not challenging predominance or class action superiority) is a common question of law or fact. The issues whether "each [employee] would have to make an individualized showing that he or she incurred overtime and that [defendant] failed to pay him or her the applicable overtime rate . . . relate to the existence and amount of each [employee's]

[16] Garcia also asserts (at 29), without citation to the record, that "there is no evidence" that Rodriguez "investigated unlawful rounding claims" or "invested even a modicum of energy in prosecuting those claims." Garcia's unsupported assertion ignores class counsel's voluminous review of thousands of pages of timekeeping records and wage history statements, as well as the valuation analysis provided to the trial court.

damages," not adequacy. (*Benton v. Telecom Network Specialists, Inc.* (2013) 220 Cal.App.4th 701, 731.)

Similarly, in *Wershba*, *supra*, objectors argued that the named plaintiffs were not adequate representatives in a challenge to Apple's technical-support policies, because various subgroups of the class had been affected differently by the policies. (91 Cal.App.4th at p. 238.) "[T]he interests of the various subgroups were in conflict," the objectors claimed, and so the representatives, who fell within one of the subgroups, "could not fairly protect the interests of the entire class." (*Ibid.*) But the Court of Appeal disagreed: "The fact that the class representatives had not personally incurred all of the damages suffered by each different class member does not necessarily preclude their providing adequate representation to the class." (*Ibid.*) The majority of class members, the court continued, did not "perceive[] their interests to be 'diametrically opposed' to that of the named representative"; rather, "all of the class members . . . suffered a common alleged wrong: they were deprived of the promised free technical support." (*Id.* at pp. 238–39.) So too here. That Rodriguez may have suffered damages as a result of bonus miscalculation does not preclude her providing adequate representation to class members who incurred different damages. All class members in this case have suffered "a common alleged wrong": Exel's denial of wages for all hours worked, including overtime. As in *Wershba*, this Court should reject the objectors' adequacy arguments.

C. The objectors' reliance on *Trotsky* is misplaced.

The only authority offered by the objectors in support of their challenge to Rodriguez's adequacy as class representative is *Trotsky v. Los Angeles Fed. Sav. & Loan Ass'n* (*Trotsky*) (1975) 48 Cal.App.3d 134. But, as described below, the adequacy concerns that troubled the court in *Trotsky* are absent here. In fact, *Trotsky*'s reasoning *confirms* the adequacy of Rodriguez's representation.

In *Trotsky*, the plaintiffs filed a class action seeking to declare three provisions of a trust deed—clauses 9, 10, and 12—invalid, but later amended their complaint to entirely omit the challenge to clause 10. (*Id.* at pp. 140–41.) A year later, a different plaintiff, Barwig, filed a class action against the same defendant, "apparently unaware of the *Trotsky* case." (*Id.* at p. 141.) The *Barwig* action challenged clause 10, not raising any claims as to clauses 9 and 12. The Trotskys then reached an agreement settling not only the clause 9 and clause 12 claims, but also the *clause 10 claim* not alleged in the Trotskys' complaint. (*Id.* at p. 142.) "[T]he parties [in *Trotsky*] did not inform the court of the existence of the *Barwig* case," and in their class notice, the settling parties "did not mention the existence of the *Barwig* case." (*Id.* at p. 143.) Barwig objected to the proposed settlement, which the trial court approved.

The Court of Appeal reversed, concluding that "[t]he purported clause 10 settlement was outside the scope of the second amended

complaint," for the complaint "contested only clauses 9 and 12, and made no allegations whatsoever concerning clause 10." (*Id.* at p. 145.) By "not defin[ing] the class to include clause 10 claimants," the court continued, the Trotskys "did not purport to represent such a class." (*Ibid.*) And, the court emphasized, "the failure to give notice to the trial court and to the class concerning the existence of the *Barwig* case and the effect of the *Trotsky* settlement upon it prevented a full and fair consideration of the adequacy of the settlement." (*Id.* at pp. 145–46.)

This case markedly differs from *Trotsky*. Critically, *Trotsky* involved the settlement of a claim that was wholly absent from the plaintiff's complaint; here, by contrast, Rodriguez has always litigated the settled claims, as her complaint encompasses all claims relating to Exel's failure to pay wages for all hours worked. And, unlike in *Trotsky*, Rodriguez's First Amended Complaint and the settlement agreement explicitly "define the class to include" individuals raising unlawful rounding and alternative-workweek theories. (48 Cal.App.3d at p. 145; *see* 1 GA 59–60, 210.) Thus, Rodriguez properly "amended [her complaint] to encompass the terms of the settlement," providing the trial court with the opportunity to "determine if [she] genuinely contests those issues and adequately represents the class." (*Trotsky*, *supra*, 48 Cal.App.3d at p. 148.)

Additionally, the overriding concern in *Trotsky* that the class representatives lacked "candor and openness" by failing to inform the court

of the pending related class action is absent here. (*Id.* at p. 149.) Rodriguez expressly informed the trial court that the reason for amending the settlement documents and class notice was to "provide the best practicable notice to the Class Members regarding the *Chappell* and *Garcia* cases so they will understand how resolution of the class claims in this action will impact those in *Chappell* and *Garcia*." (1 GA 195.) Indeed, Rodriguez moved to *continue* the preliminary hearing so that the trial court and the class would be provided with sufficient information about the pending class actions. While the settling parties in *Trotsky* "ma[de] a mockery of the salutary principle that, in order to prevent fraud, collusion or unfairness to the class, the settlement or dismissal of a class action requires court approval and notice to the class," the parties here made the "prompt and candid disclosure" the *Trotsky* court demanded. (48 Cal.App.3d at p. 149)

Finally, to the extent that *Trotsky* is relevant at all, it supports the adequacy of Rodriguez's representation. In contrast to the objectors' repeated attacks on Rodriguez for amending the settlement documents, *Trotsky* "recognize[d] that it is not unusual for defendants to insist upon amendments to the pleadings broadening the scope of the action prior to settlement, in an effort to 'cover everything' and insure that the settlement will in fact result in an end to litigation." (*Id.* at pp. 147–48.) That is what occurred here. Therefore, the trial court properly concluded that Rodriguez was an adequate class representative.

D. Rodriguez has standing to raise alternative-workweek claims on behalf of Exel's Carson employees.

Chappell also argues (at 18) that Rodriguez lacks standing to bring certain overtime claims because "she was never injured as a result of the defective [alternative-workweek schedules] and, in fact, never even worked at Exel's Carson facility." This argument misunderstands basic standing principles.

Initially, Chappell's heavy reliance on "standing under Article III of the U.S. Constitution," Chappell Br. 19–20, is, of course, irrelevant to determining whether Rodriguez has standing to bring her state-law claims in California's state courts. And there is no doubt that Rodriguez has standing under California law to litigate her unpaid-wage-and-overtime claim. Under California Code of Civil Procedure section 367, "every action must be prosecuted in the name of the real party in interest" and "the person or entity possessing the right sued on is the real party in interest." (Code Civ. Proc., § 367.) California Labor Code section 1194 confers upon Rodriguez, and any other employee who has been denied wages, standing to bring a civil action to claim unpaid wages and "the legal overtime compensation applicable to the employee."

Likewise, Rodriguez has standing to bring her UCL action, as the authorities cited by Chappell make clear. The UCL requires that the plaintiff "has suffered injury in fact and has lost money or property as a

result of the unfair competition." (Bus. & Prof. Code, § 17204.) Rodriguez alleges that Exel engaged in unfair competition by "failing to pay all [] wages earned including overtime." (1 GA 66.) Chappell does not dispute that Exel did not pay Rodriguez all wages earned, and, therefore, that Rodriguez has suffered an injury-in-fact as a result of Exel's unlawful activities. Under California law, a plaintiff has standing when she has suffered an actual injury caused by the defendant's unlawful conduct. That is the case here, and Chappell offers no evidence—let alone legal authority—to suggest otherwise. [17]

III. The class notice provided class members with more than sufficient notice of the *Garcia* and *Chappell* actions.

Finally, the objectors argue that the entire settlement should be invalidated because the class notice did not sufficiently inform the class members of their options. (Chappell Br. 38–41; Garcia Br. 30–35.) That is wrong. In fact, Rodriguez included far more information about the copycat

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[17] All that remains of Chappell's standing arguments, then, is that Rodriguez lacks standing to litigate the overtime claims relating specifically to forklift operators who worked alternative workweeks at Exel's Carson facility. (Chappell Br. 21.) This argument, though guised as a standing argument, largely duplicates Chappell's meritless typicality and adequacy theories, and is irrelevant to determining Rodriguez's standing.

Even if this Court were to consider Chappell's argument in terms of standing, however, it should reject it. Under Chappell's theory, named plaintiffs in wage-and-hour class actions could only represent employees who worked in *the same facility* as they did. This argument is not only illogical, but it also conflicts with California's public policy favoring "the use of class actions to enforce California's minimum wage and overtime laws for the benefit of workers." (*Dailey*, *supra*, 214 Cal.App.4th at 987.)

lawsuits than is required under California law, and the trial court correctly concluded that the notice sufficiently apprised class members of the concurrent class actions.

The "notice given to the class must fairly apprise the class members of the terms of the proposed compromise and of the options open to dissenting class members." (*Trotsky*, *supra*, 48 Cal.App.3d at pp. 151–52.) "As a general rule, class notice must strike a balance between thoroughness and the need to avoid unduly complicating the content of the notice and confusing class members." (*Wershba*, *supra*, 91 Cal.App.4th at p. 252.) "Here again the trial court has broad discretion." (*Ibid.*) California Rules of Court, rule 3.766, subdivision (d), sets forth required contents of class notice:

> (1) A brief explanation of the case, including the basic contentions or denials of the parties;
> (2) A statement that the court will exclude the member from the class if the member so requests by a specified date;
> (3) A procedure for the member to follow in requesting exclusion from the class;
> (4) A statement that the judgment, whether favorable or not, will bind all members who do not request exclusion; and
> (5) A statement that any member who does not request exclusion may, if the member so desires, enter an appearance through counsel.

The objectors notably do not dispute that the notice here complies with Rule 3.766(d). Indeed, they fail to even mention Rule 3.766—the California rule expressly governing the contents of class notice—presumably because they recognize the notice here complied with it. And the objectors concede that, unlike in *Trotsky*, the settling parties in this case

included in the notice information about the pending class actions. (Garcia Br. 34; Chappell Br. 39.) Nevertheless, they argue that the notice did not contain "material" information, and thus "effectively dissuaded" class members from rejecting this settlement in favor of joining their lawsuits. (*Ibid.*)

Yet the objectors cannot point to a single legal authority requiring the inclusion of a laundry list of information that they assert would benefit class members. Of course, the objectors understandably wish that class notice had served as an advocacy memo exhorting class members to reject the settlement and join their cases. But they cannot explain why any of this information is required to fairly apprise class members of their options. As even *Trotsky*—the objectors' only precedent—expressly states: "We do not suggest that the notice should advise class members regarding litigation strategy or the comparative merits of the *Trotsky* and *Barwig* cases. Given notice of the existence of the *Barwig* case, class members could determine that for themselves." (48 Cal.App.3d at p. 152 n.13.)

The notice here did more than what precedent requires; it not only informed class members of the "existence" of the *Garcia* and *Chappell* cases but also summarized the cases' claims and provided certain procedural details. (*Ibid.*) That information was more than enough to allow class members to "determine . . . for themselves" whether to opt-in or opt-out of the settlement. (*Ibid.*) The objectors' arguments that the class notice should

have included information regarding the "comparative merits" of their cases are unfounded. (*Ibid.*)

CONCLUSION

For almost four years, Rodriguez and her counsel have undertaken investigation, litigation, and negotiations to obtain relief for employees harmed by Exel's wage-and-hour violations. That representation resulted in an agreement conferring substantial monetary benefits on class members. The trial court considered detailed information and analysis provided by Rodriguez before correctly concluding that the settlement was fair, reasonable, and adequate. This Court should affirm the final approval of the settlement.

Dated: December 1, 2015

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to California Rules of Court, Rule 8.204(c), I hereby certify that this brief contains **11,686 words**, including footnotes. The word count was calculated using the word count feature in Microsoft Word, which was used for the preparation of this brief.

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. This declaration was executed on December 1, 2015 at Irvine, California.

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