

Gupta / Beck

Issues & Appeals

May 29, 2013

Molly C. Dwyer, Clerk
U.S. Court of Appeals for the Ninth Circuit
95 Seventh Street
San Francisco, CA 94103

**Re: No. 12-16384, *Brady v. Deloitte & Touche*
Rule 28(j) Notice of Decision In *Leyva v. Medline Industries***

Dear Ms. Dwyer:

Last month, Deloitte filed a supplemental letter arguing that *Comcast v. Behrend*, 133 S. Ct. 1426 (2013), requires decertification “where, as here, each putative plaintiff’s claim for damages necessitates an individualized determination.”

Yesterday, this Court reached exactly the opposite conclusion in another California wage-and-hour case, reversing a class-certification denial based on a similarly mistaken view of the law. *Leyva v. Medline Indus.*, --- F.3d ---, 2013 WL 2306567 (9th Cir. May 28, 2013). Reasoning that “the damages inquiry will be highly individualized,” the district court had concluded that (1) common issues did not predominate and (2) a class action was not a superior method of adjudication. *Id.* at *2-3. This Court held that both conclusions were an abuse of discretion.

As for the first conclusion, the district court “applied the wrong legal standard.” *Id.* at *3. “[D]amage calculations alone cannot defeat certification.” *Id.* If they could, that would effectively “sound the death-knell” of wage-and-hour class actions because “damages determinations are individual in nearly all” those cases. *Id.* That longstanding rule is consistent with recent Supreme Court precedent: *Wal-Mart v. Dukes* “clarifies ... that ‘individualized monetary claims belong in Rule 23(b)(3).’” *Id.* at *3 (quoting 131 S. Ct. 2541, 2558 (2011)). And *Comcast* means only “that the plaintiffs must be able to show that their damages stemmed from the defendant’s actions that created the legal liability” common across the class. *Id.* “Here, unlike in *Comcast*, if putative class members prove Medline’s liability, damages will be calculated based on the wages each employee lost due to Medline’s unlawful practices”—a ministerial task that would be done using “Medline’s computerized payroll and time-keeping database.” *Id.*

As for the second conclusion, “[t]he district court also applied the wrong legal standard” because “it based its manageability concerns on the need to individually calculate damages.” *Id.* at *4. The court “did not suggest any other means for putative class members to adjudicate their claims,” and “it appears that none exist.” *Id.* The same is true here. If it wasn’t clear before, Deloitte’s damages argument is now entirely foreclosed by *Leyva*.

Sincerely,

/s/ Deepak Gupta
Deepak Gupta
Counsel for Plaintiffs-Appellants

Gupta Beck PLLC

1625 Massachusetts Ave, NW, Suite 500, Washington, DC 20036

P 202 470 3826 F 202 328 7030