

FILED

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MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

KEVIN MONAGHAN, an individual,

Plaintiff-Appellant,

v.

TELECOM ITALIA SPARKLE OF
NORTH AMERICA, INC., a New York
Corporation and DOES, 1 through 10,
inclusive,

Defendants-Appellees.

No. 17-55031

D.C. No.

2:13-cv-00646-DSF-PLA

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Dale S. Fischer, District Judge, Presiding

Submitted June 6, 2018**
Pasadena, California

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Before: WARDLAW and CHRISTEN, Circuit Judges, and MOLLOY,^{***} District Judge.

Kevin Monaghan appeals the district court's partial denial of his request for attorney's fees. We have jurisdiction under 28 U.S.C. § 1291, and we affirm in part and reverse in part.

We affirm the district court's order concerning Monaghan's failure-to-pay-wages-owed claim under California Labor Code section 201, his paystub-violation claim under California Labor Code section 226, and his statutory claims under California Labor Code sections 212, 226, and 432 for which he was eligible for fees under California's Private Attorneys General Act (PAGA), California Labor Code section 2699(g). We also conclude the district court did not abuse its discretion by ruling that Monaghan's unlawful-retaliation claim under California Labor Code section 1102.5 was not inextricably intertwined with any of the claims for which Monaghan was statutorily eligible for fees.

We reverse the district court's decision to deny fees on Monaghan's misclassification claim under California Labor Code section 226.8. Monaghan's misclassification claim was inextricably intertwined with his failure-to-pay-wages-owed claim. A previous panel of this court found no error in the district court's

^{***} The Honorable Donald W. Molloy, United States District Judge for the District of Montana, sitting by designation.

award of fees for that claim. *See Monaghan v. Telecom Italia Sparkle of N. Am.*, 647 F. App'x 763, 771 (9th Cir. 2016) (“We note that we find no error in the district court’s award of attorneys’ fees under California Labor Code § 218.5 on Monaghan’s claim for unpaid wages due to misclassification.”). We are persuaded that Monaghan successfully removed fees that were unrelated to pursuing this claim when he reduced his request to \$81,767.31. On remand, the district court shall enter an order increasing Monaghan’s total fee award by an additional \$81,767.31.

The parties shall bear their own costs for this appeal.

AFFIRMED in part and REVERSED in part.