

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 13-0646 ABC (PLAx)	Date	July 30, 2014
Title	Kevin Monaghan v. Telecom Italia Sparkle of North America Inc. et al.		

Present: The Honorable	Audrey B. Collins
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Angela Bridges	None Present	
Deputy Clerk	Court Reporter / Recorder	Tape No.
Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:	
None Present	None Present	

Proceedings: ORDER GRANTING MOTION FOR ATTORNEYS' FEES (In Chambers)

Pending before the Court is Plaintiff Kevin Monaghan's ("Plaintiff") Motion for an Award of Attorneys' Fees and Costs ("Motion," docket no. 125). Defendant Telecom Italia Sparkle of North America, Inc. ("Defendant") filed an Opposition and Plaintiff filed a Reply. The Court will resolve this Motion without oral argument and therefore **VACATES** the hearing set for August 11, 2014. See Fed. R. Civ. P. 78; Local Rule 7-15. The Court **GRANTS** the Motion, as follows.

I. BACKGROUND

Plaintiff seeks an award of attorneys fees following a jury verdict in his favor on his claims against Defendant, his former employer, for wilfully misclassifying him and thus failing to pay him all wages and benefits due, and for wrongful termination. The jury awarded Plaintiff nearly \$1.2 million in damages, and assessed against Defendant a penalty of \$7,500 payable to the California Workforce Development Agency. Plaintiff asserted several other Labor Code violations that the Court largely summarily adjudicated in Plaintiff's favor.

Plaintiff argues that he is entitled to a fee award for all of his claims, and asks the Court to apply a multiplier of 1.8 to the lodestar to reward his attorneys for their efforts. As a result, Plaintiff seeks fees of \$800,537 (the lodestar of \$428,515 multiplied by 1.8, plus \$29,210 for the fee motion), plus costs and expenses.

II. LEGAL STANDARD

The Court must apply California law to determine whether to award attorneys' fees and costs, and the amount to award. Alyeska Pipeline Serv. Co. v. Wilderness Soc'y, 421 U.S. 240, 259 n. 31 (1975) (California law governs fee award sought in federal court and based on a state's attorney's fee statute); Crommie v. State of Cal., Public Utilities Com'n, 840 F.Supp. 719, 721-722 (N.D. Cal. 1994), aff'd sub nom Mangold v. California Public Utilities Com'n, 67 F.3d 1470 (9th Cir. 1995). Generally, each party must bear its own attorney fees for litigation in California; however, reasonable attorney fees are permitted when authorized by contract, statute, or law. Cal. Code. Civ. Proc. §

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1033.5(a)(1)(A)(B)(C).

California applies the lodestar/multiplier method to determine the amount of attorney’s fees to award. Ketchum v. Moses, 24 Cal.4th 1122, 1134-1136 (2001). The Court computes the “lodestar” by multiplying the number of hours reasonably expended by each professional by that professional’s current reasonable hourly rate. Id. at 1131-1132; Serrano v. Unruh, 32 Cal.3d 621, 624 (1982) (“Serrano IV”). The Court may, in its discretion, enhance this lodestar figure by a “multiplier” to account for a wide range of factors, such as contingent risk, delay in payment, and the degree of success achieved. Ketchum, 24 Cal.4th at 1132-1136; Serrano v. Priest, 20 Cal.3d 25, 49 (1977) (“Serrano III”).

III. DISCUSSION

A. Plaintiff is Entitled to Attorneys’ Fees for All of the Claims on which he Prevailed.

The parties agree that Plaintiff is entitled to attorneys’ fees for prevailing on his first claim, under Labor Code § 218.5, for unpaid wages. The jury awarded Plaintiff \$335,000 in damages for this claim.

Plaintiff also prevailed on his other major claim: his eighth claim for retaliation in violation of Cal. Labor Code § 1102.5.¹ The jury awarded Plaintiff \$861,882 in damages for this claim. Plaintiff asserts that § 1102.5(f) automatically imposes a \$10,000 civil penalty for retaliation, and that this penalty in turn triggers his eligibility for attorneys’ fees under the Private Attorney General Act (“PAGA”), which provides that “Any employee who prevails in any action [to recover civil penalties] shall be entitled to an award of reasonable attorney’s fees and costs.” Cal. Lab. C. § 2699(g)(1). This penalty was evidently omitted from the judgment, and Plaintiff has filed a Motion to Amend the Judgment to include this amount. Defendant nevertheless contends that because it was not assessed a penalty for this claim, Plaintiff’s entitlement to attorneys’ fees under the PAGA was not triggered. Presumably, Defendant will oppose the Motion to Amend Judgment. Whether Plaintiff’s omission can be corrected is a question for another day. The Court is not persuaded that the resolution of that issue matters for purposes of awarding fees. Plaintiff prevailed on his § 1102.5 claim, and based on the statute, Defendant “is liable” for a civil penalty of up to \$10,000 for that violation. That Plaintiff might have mistakenly failed to expressly seek the penalty should not forfeit his right to recover attorneys’ fees for the claim. To decide this issue in Defendant’s favor would undermine the purpose of PAGA’s fee shifting provision and would result in an intolerable windfall to Defendant. Omitting a penalty from a judgment should not have such drastic consequences.

That Plaintiff represented only himself and not other employees is not a bar to his recovering

¹ Although Plaintiff’s Complaint states only seven causes of action, the Final Pretrial Conference Order (and Plaintiff’s Trial Brief) break them out into eight claims. See Final Pretrial Conference Order, p. 4 (docket no. 95). The Court will therefore treat this case as raising eight claims.

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fees under PAGA. Notably, the Court understands that Plaintiff was Defendant’s only California employee, so he could not have represented anyone but himself. In any case, § 2699(g)(1) authorizes an award of fees to “Any employee who prevails in any action [to recover civil penalties]” Cal. Lab. C. § 2699(g)(1) (emphasis). This provision authorizes an award to any plaintiff who prevails in any action, not only to plaintiffs who represent others.

These two claims – for unpaid wages and wrongful termination – account for the vast majority of counsel’s fees. As such, it is neither necessary nor practicable to apportion the fees requested among the remaining claims. But even so, Plaintiff’s remaining claims are either inextricably intertwined with these two claims or independently trigger eligibility for fees. Plaintiff’s claims for violation of California Business & Professions Code §17200 and for wrongful termination in violation of public policy are inextricably intertwined with his claims for failure to pay wages and retaliation. As such, there need not be an independent basis for awarding fees for these claims, and the Court need not apportion fees among them and reduce the award. *See Kirby v. Sega of America*, 144 Cal. App. 4th 47, fn. 7 (2006); *see also Gracie v. Gracie*, 217 F.3d 1060, 1070 (9th Cir. 2000) (holding that apportionment of claims is not necessary if the claims are so inextricably intertwined that an estimated adjustment would be meaningless). As for Plaintiff’s remaining claims, they were for Labor Code violations, and the Court largely summarily adjudicated them in Plaintiff’s favor and against Defendant, and assessed civil penalties against Defendant based thereon. *See* Summary Judgment Order (docket no. 41) (assessing penalties against for violations of Labor Code §§ 226 (improper paystubs), 212 (failing to pay employee without charge or discount), and 432 (failure to provide requested documents)). The jury assessed a penalty for Defendant’s violation of Labor Code § 226.8 (misclassification). Under PAGA, that these penalties were assessed against Defendant entitles Plaintiff to recover his attorneys’ fees for these claims.

For the foregoing reasons, the Court finds that Plaintiff is entitled to an award of attorneys’ fees for all of his claims.

B. Amount of Fees.

1. Reasonableness of Hourly Rate.

Based on the substantial evidence Plaintiff presented and on the Court’s familiarity with rates in this district, the Court finds that the hourly rates Plaintiff requests for each of the four attorneys who worked on this case are reasonable relative to each attorney’s education and experience, and compared with attorneys in similar practice areas in this district. These hourly rates are as follows: \$700 per hour for Daniel Palay; \$450 per hour for Brian Hefelfinger; \$500 per hour for Michael Strauss; and \$250 per hour for Andrew Ellison. None of Defendant’s arguments that these rates are unreasonable has merit.

2. Reasonableness of Hours Spent and Lodestar Calculation

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The Court has reviewed Plaintiff’s counsel’s timesheets (Palay Decl. Exh. A), and finds that the 22 pages of single-spaced time entries are sufficiently detailed to show that the work described therein was necessary to this litigation and reasonable. Counsel asserts that his request excludes about 50 hours for work he would not ordinarily bill to a client. As a result, Plaintiff seeks fees for 567.4 hours of attorney time. This equates to \$428,515 for litigation other than the fees motion, and \$29,210 for the fees motion, for a total lodestar of \$457,725.

Defendant charges Plaintiff’s counsel with inefficiencies that inflate the fee request. None of these criticisms has merit. Defendant faults counsel for expending 55.2 hours communicating with their client, 90 hours on two (unspecified) motions, 32 hours for travel between Ventura and Los Angeles for trial, and “dozens of hours of work” performed by attorney Palay at the rate of \$700 per hour that could have been performed by junior attorneys or paralegals at a lower hourly rate. See Opp’n 15:24-16:7. Client communication and traveling to and from trial were obviously necessary to counsel’s prosecution of this case. The Court is not persuaded that any of this was excessive. For example, a client who is very engaged in his own case can be of great help to counsel. Defendant has not specifically identified the 90 hours spent on two motions, or explained why any of counsel’s work on those motions was excessive or unreasonable. Similarly, Defendant has not specifically identified which time entries reflect the “dozens of hours of work” that attorney Palay performed that someone more junior should have done instead. The Court will not pore through the timesheets in search of these entries. Again, the Court has reviewed the timesheets, and overall, they reflect work reasonably necessary to the prosecution of this action. The Court sees no reason to make any deductions.

Plaintiff also asks the Court to apply a multiplier of 1.8 to the lodestar. A multiplier is not appropriate in this case. This case was relatively straight-forward, did not involve complex or novel questions, and did not appear particularly burdensome. The contingent nature of counsel’s ability to receive a fee is already reflected in the above hourly rates. Finally, Plaintiff’s case was unusually strong, so there was a greater likelihood than usual that Plaintiff would obtain a recovery and counsel would receive fees.

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