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17 Telecom Italia Sparkle of North America, Inc.

18 **UNITED STATES DISTRICT COURT**
 19 **CENTRAL DISTRICT OF CALIFORNIA**

20 KEVIN MONAGHAN, an Individual,
 21 Plaintiff,
 22 vs.
 23 TELECOM ITALIA SPARKLE OF
 24 NORTH AMERICA, INC., a New York
 25 Corporation; and DOES 1 through 100,
 26 inclusive,
 27 Defendants.

28 **CASE NO: 2:13-cv-00646 DSF (PLAx)**

**AMENDED JUDGMENT ON SPECIAL
VERDICT AND DAMAGES
AWARDED BY THE COURT**

District Judge: Hon. Dale S. Fischer
Courtroom: Dept. 840

TRIAL OF THE MATTER:
May 27-30, 2014

1 This action came on regularly for a jury trial commencing on May 27, 2014, in
2 Courtroom 680 of the United States District Court, the Honorable Audrey B. Collins
3 presiding. Plaintiff was represented by Daniel Palay and Brian Hefelfinger, and
4 defendant was represented by Michael Purcell and Antonio Valla.

5 A jury of eight (8) persons was impaneled and sworn. After hearing the evidence
6 and arguments of counsel, and after the jury was instructed by the Court, the claims
7 were submitted to the jury with instructions to return a special verdict.

8 **JURY VERDICT**

9 The jury deliberated and thereafter returned into Court with its special verdict
10 consisting of questions submitted to the jury and the answers given thereto by the jury,
11 which said verdict was in words and figures as follows, to wit:

12
13 “We, the jury, answer the questions submitted to us as follows:
14

15 1. Has Plaintiff Kevin Monaghan proven by a preponderance of the evidence that
16 Defendant TISNA owes him wages or benefits that it has not paid?

17 X Yes _____ No

18 If your answer to Question 1 is YES, answer Questions 2 and 3. If your answer
19 to Question 1 is No, skip Questions 2, 3, and 4 and answer Question 5.
20

21 2. What amount of unpaid wages and benefits, if any, did Plaintiff Kevin
22 Monaghan prove, by a preponderance of the evidence, Defendant TISNA owes him?

23 \$335,000.00
24

25 3. Has Plaintiff Kevin Monaghan proven by a preponderance of the evidence that
26 Defendant TISNA willfully failed to pay any of these wages owed at the time of his
27 termination?

28 _____ Yes X No

1 If you answer to Question 3 is YES, Answer Question 4. If your answer to
2 Question 3 is NO skip Question 4 and Answer Question 5.

3
4 4. What amount of penalties do you award Plaintiff Kevin Monaghan (up to
5 thirty days' wages) for Defendant TISNA's failure to pay?

6 \$_____ (intentionally unanswered)
7

8 5. Has Plaintiff Kevin Monaghan proven by a preponderance of the evidence that
9 TISNA willfully misclassified Monaghan as an "independent contractor?"

10 X Yes _____ No

11 If your answer to Question 5 is YES, Answer Question 6. If you answer to
12 Question 5 is NO, skip Question 6 and answer Question 7.

13
14 6. What amount of penalties do you award to the State of California Workforce
15 Development agency as a result of this willful misclassification?

16 \$ 7,500.00
17

18 7. Has Plaintiff Kevin Monaghan proven by a preponderance of the evidence that
19 there was a causal link between Monaghan's complaints of illegal conduct (i.e.
20 misclassification and the failure to pay wages owed) and his termination from TISNA?

21 X Yes _____ No

22 If your answer to Question 7 is YES, Answer Question 8. If your answer to
23 Question 7 is NO skip the remaining questions and please sign and return the verdict
24 form.
25

26 8. Has Defendant TISNA proven, by clear and convincing evidence, that it
27 would have terminated Kevin Monaghan on or about June 7, 2012 for legitimate,
28 independent reasons even if he had not made the complaints of misclassification or the

1 failure to pay wages?

2 _____ Yes X No

3 If your answer to Question 8 is YES, please sign and return this verdict form. If
4 your answer to Question 8 is NO, please answer Questions 9 and 10.

5
6 9. What amount of damages, if any, did Plaintiff Kevin Monaghan prove by a
7 preponderance of the evidence as a result of this wrongful termination?

8 a. Past Economic Loss: \$252,729.00

9 b. Future Economic Loss: \$609,153.00

10 c. Non-economic Loss: \$0.00

11
12 10. Has Plaintiff Kevin Monaghan proven by clear and convincing evidence that
13 TISNA, through its agents, Roberto Miglioizzi or Joseph Rubino or Vincent Suppa,
14 terminated or ratified the termination of Mr. Monaghan with malice, oppression, or
15 fraud?

16 _____ Yes X No

17
18 Dated: May 30, 2014

/s/ _____

19 Foreperson

20
21 **DAMAGES AWARDED BY THE COURT**

22 In addition to the special verdict of the jury, on July 22, 2013 the Court partially
23 granted Plaintiff's motion for summary judgment and awarded Plaintiff the following
24 damages:

25 1) PAGA penalties for a violation of *California Labor Code* section 432 in the
26 amount of \$100.00.

27 2) PAGA penalties for violations of *California Labor Code* section 226 in the
28 amount of \$5,250.00.

- 1 3) PAGA penalties for violations of *California Labor Code* section 212 in the
2 amount of \$2,400.00.
- 3 4) Transportation costs awarded pursuant to *California Labor Code* section 201
4 in the amount of \$516.00.
- 5 5) Reimbursement for Wire Transfer Costs plus interest in the amount of
6 \$611.00.
- 7 6) Taxes awarded in the amount of \$13,327.60.
- 8 7) *California Labor Code* section 226 penalties of \$4,000.00 for a violation of
9 *California Labor Code* section 226.
- 10 8) The Court also found that Defendant had engaged in unfair business practices
11 in violation of *California Business & Professions Code* section 17200.

REMITTITUR

12
13 Following the Appeal of this matter by the Defendant, the parties agreed to the
14 remitter proposed by the Ninth Circuit Court of Appeals, which reduced the total
15 damages awarded by \$160,841.75 to \$1,072,351.60. Following judgment, the Court
16 awarded attorney fees and costs as follows:

- 17 1) Costs are awarded in the amount of \$13,586.00.

18 The Court awarded attorney fees and the parties stipulated to post-appeal costs
19 as follows:

- 20 2) Attorney fees are awarded to Plaintiff in the amount of \$112,669.50.¹
- 21 3) The parties also stipulate to an award of post-appeal costs to Plaintiff in the
22 amount of \$1,248.50.

LABOR CODE SECTION 226.8 COMPLIANCE

23
24 In addition, and as the jury has determined that Defendant has engaged in the
25 willful misclassification of the Plaintiff, *California Labor Code* section 226.8(e)
26 requires this Court to issue an order that the Defendant, as it does not have an Internet
27

28 ¹ Plaintiff intends to appeal the fee award (ECF No. 194) and in consenting to the form of this judgment does not waive any such rights.

1 Web Site, display prominently in an area that is accessible to all employees and the
2 general public in its New York offices, a notice that sets forth the following:

- 3 1. That the court has found that the Defendant, Telecom Italia Sparkle of North
4 America, Inc., has committed a serious violation of the law by engaging in the
5 willful misclassification of employees.
- 6 2. That the employer has changed its business practices in order to avoid
7 committing further violations of this section.
- 8 3. That any employee who believes that he or she is being misclassified as an
9 independent contractor may contact the Labor and Workforce Development
10 Agency. The notice shall include the mailing address, email address and
11 telephone number of the agency.
- 12 4. That the notice is being posted pursuant to this order.
- 13 5. That an officer shall sign this notice and it shall be posted for one year
14 commencing with the date of the final decision and order.

15 Pursuant to *Labor Code* section 226.8, the Defendant is ordered to comply with
16 this order immediately, and to provide proof to the court of its compliance by filing a
17 copy of the signed notice and photograph of the displayed notice, within thirty (30) days
18 of this order.

19 WHEREFORE, and by virtue of the law, IT IS HEREBY ORDERED,
20 ADJUDGED AND DECREED, that Plaintiff KEVIN MONAGHAN shall recover the
21 total sum of \$1,199,855.60 against TELECOM ITALIA SPARKLE OF NORTH
22 AMERICA, INC., a New York Corporation, and interest at the federal rate of 0.11% per
23 annum, which is \$2,985.57, as of December 23, 2016.

24
25 **SO ORDERED.**

26
27 DATED: January 11, 2017



28

Dals S. Fischer
United States District Judge

1 APPROVED AS TO FORM AND CONTENT BY:
2

3 /s/ Daniel J. Palay
4 DANIEL J. PALAY
5 Attorney for Plaintiff
6 Kevin Monaghan

7 /s/ Michael Purcell
8 MICHAEL PURCELL
9 Attorney for Defendant
10 Telecom Italia Sparkle of North America, Inc.

11 SIGNATURE CERTIFICATION

12 Pursuant to Section 2(f)(4) of the Electronic Case Filing Administrative Policies and
13 Procedures Manual, I hereby certify that the content of this document is acceptable to
14 Mr. Daniel J. Palay, counsel for Plaintiff Kevin Monaghan, and that I have obtained Mr.
15 Mr. Palay's authorization to affix his electronic signature to this document.

16 /s/ Michael P. Purcell
17 Michael P. Purcell
18 Valla & Associates, Inc., P.C.
19 Attorneys for Defendant
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