NOT FOR PUBLICATION

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U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

WAYNE HAGENDORF, Plaintiff - Appellant, v. LADAH LAW FIRM PLLC; RAMZY LADAH, Defendants - Appellees.	No. 24-982 D.C. No. 2:18-cv-00960-JCM-BNW MEMORANDUM[*]

Appeal from the United States District Court
for the District of Nevada
James C. Mahan, District Judge, Presiding

Submitted July 9, 2025[**]
San Francisco, California

Before: H.A. THOMAS and DE ALBA, Circuit Judges, and RAKOFF, District Judge.[***]

Wayne Hagendorf, as substitute plaintiff for his deceased wife, Deborah

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[*] 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).

[***] The Honorable Jed S. Rakoff, United States District Judge for the Southern District of New York, sitting by designation.

Carroll, appeals the district court's order granting summary judgment in favor of Ladah Law Firm PLLC and Ramzy Ladah (collectively, "Ladah"). We have jurisdiction under 28 U.S.C. § 1291. We affirm in part and reverse in part.

1. We review for abuse of discretion the district court's exclusion of evidence at the summary judgment stage. *United States ex rel. Kelly v. Serco, Inc.*, 846 F.3d 325, 330 (9th Cir. 2017). Hagendorf does not dispute that Carroll's declaration is hearsay, but argues that the declaration should be admitted under the residual exception of Federal Rule of Evidence 807. The residual exception allows a statement to be excluded from the rule against hearsay where the statement is (1) "supported by sufficient guarantees of trustworthiness" and (2) "more probative on the point for which it is offered than any other evidence that the proponent can obtain through reasonable efforts." Fed. R. Evid. 807(a). The district court did not abuse its discretion in finding the declaration was self-serving and not subject to cross-examination, and that Carroll's deposition testimony was more probative on the points for which Hagendorf offered the declaration. *See United States v. Lindsay*, 931 F.3d 852, 866–67 (9th Cir. 2019) (affirming the district court's exclusion of foreign deposition testimony where the government did not have the opportunity to cross-examine deponents and the probative value of the excluded testimony was unclear).

2. We review de novo the district court's order granting summary

judgment. *Vazquez v. Cnty. of Kern*, 949 F.3d 1153, 1159 (9th Cir. 2020). "We must determine, viewing the evidence in the light most favorable to the nonmoving party and drawing all justifiable inferences in its favor, whether there are any genuine issues of material fact and whether the moving party is entitled to judgment as a matter of law." *Id.* (quoting *Orr v. Bank of Am., NT & SA*, 285 F.3d 764, 772 (9th Cir. 2002)). "An issue of material fact is genuine 'if the evidence is such that a reasonable jury could return a verdict for the nonmoving party.'" *Pavoni v. Chrysler Grp., LLC*, 789 F.3d 1095, 1098 (9th Cir. 2015) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)).

A petitioner seeking unpaid overtime wages under the Fair Labor Standards Act ("FLSA") "has the burden of proving that [she] performed work for which [she] was not properly compensated." *Anderson v. Mt. Clemens Pottery Co.*, 328 U.S. 680, 686–87 (1946). However, courts give "[d]ue regard . . . to the fact that it is the employer who has the duty under [the FLSA] to keep proper records of wages, hours and other conditions and practices of employment and who is in position to know and to produce the most probative facts concerning the nature and amount of work performed." *Id.* at 687. "[W]here the employer's records are inaccurate or inadequate," *id.*, the employee need only show "to an imperfect degree of certainty" that she has performed improperly compensated work, and may rely on "reasonable inferences" in place of "unquantified and unrecorded

'actual' times," *Alvarez v. IBP, Inc.*, 339 F.3d 894, 914–15 (9th Cir. 2003) (citation omitted).

Here, Ladah failed to meet its initial burden on summary judgment to show Hagendorf did not have sufficient evidence to establish that Carroll performed work for which she was not properly compensated. *See Friedman v. Live Nation Merchandise, Inc.*, 833 F.3d 1180, 1188 (9th Cir. 2016) (clarifying that the moving party has the burden of persuasion on summary judgment). As we explained in Hagendorf's first appeal, "Ladah's records show that Carroll was logged into the company's Effortless Office ('EO') system for more than 40 hours during 13 of the 42 weeks of her employment with Ladah." *Hagendorf v. Ladah Law Firm PLLC*, No. 20-16127, 2022 WL 17352181, at *1 (9th Cir. Dec. 1, 2022). Indeed, in some weeks the records showed that Carroll was logged in for significantly more than 40 hours. Carroll testified during her deposition[1] that she always or almost always was working when logged onto the EO system, both at the office and at home, and that it was not possible to complete the work assigned to her "in a 40-hour workweek." Hagendorf also presented evidence corroborating Carrol's testimony. Hagendorf submitted a declaration stating that he frequently observed Carroll working from home in the early morning or at night, and other Ladah employees

[1] Ladah does not show that Hagendorf's deposition testimony would be inadmissible at trial. *See* Fed. R. Civ. P. 32(a)(4)(A).

testified during their depositions that the firm's work conditions required paralegals like Carroll to either occasionally or frequently work more than 40 hours per week. A reasonable jury could find, based on the EO records, Carroll's deposition testimony, and the testimony of Hagendorf and Ladah's employees that Carroll worked more than 40 hours during some or all of the weeks we previously identified. *See Hagendorf*, 2022 WL 17352181, at *1 n.1. As such, Ladah's contention that Carroll might have performed personal tasks while logged onto the EO system, as well as Ladah's other evidence regarding her work habits, "at most creates a factual dispute about whether Carroll's EO hours constitute compensable worktime"—an issue for the jury to resolve at trial. *Id.*, at *1 n.2; *see Tolan v. Cotton*, 572 U.S. 650, 656 (2014) ("[A] judge's function at summary judgment is not to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial" (internal quotation marks and citations omitted)).

3. The district court erred in granting summary judgment on the ground that Hagendorf did not present sufficient evidence to establish that Ladah had constructive notice that Carroll worked more than 40 hours during some weeks of her employment. Ladah does not dispute for purposes of summary judgment that it misclassified Carroll as an exempt employee, and that it failed to satisfy its obligations under the FLSA and Nevada state law to keep proper records of the

hours Carroll worked. *See* 29 U.S.C. § 211(c); NEV. REV. STAT. § 608.115(1)(d). A reasonable jury could find that, had Ladah properly classified Carroll and kept records of the hours she worked, it "should have known" that she worked more than 40 hours during the weeks she did so. *Forrester v. Roth's I.G.A. Foodliner, Inc.*, 646 F.2d 413, 414 (9th Cir. 1981).

4. The district court did not abuse its discretion in striking Hagendorf's countermotion for violating Local Rules IC 2-2(b), 7-2, and 7-3 of the United States District Court for the District of Nevada. *See All. of Nonprofits for Ins., Risk Retention Grp. v. Kipper,* 712 F.3d 1316, 1327 (9th Cir. 2013) ("The rulings of the district courts regarding local rules are reviewed for abuse of discretion" (internal quotation marks and citation omitted)). A decision concerning the enforcement of such rules will only be reversed if it "affects 'substantial rights,'" *id.*, a showing Hagendorf has not made.

Appellees shall bear the costs on appeal.

AFFIRMED in part and REVERSED in part.