DECLARATION OF DEBBIE AN

I, Debbie An, hereby declare and state:

1. I am an attorney licensed to practice in the State of Gould and a named partner at the law firm of An & Renno, LLP. This declaration is being submitted in support of Plaintiff An & Renno's Motion for Summary Judgment.

2. I helped start An & Renno more than twenty-five years ago. Since that time, An & Renno has become one of the most well-respected law firms in Gould City, Gould. Our firm specializes in business law, with a particular focus on counseling start-up companies. Despite its many successes, our firm has been impacted by the recent economic downturn. Consequently, beginning in 2012, the firm ended its longstanding summer-associate program. However, wishing to remain connected to and supportive of our local community, we established an unpaid, ten-week, summer-externship program for law students.

3. The externship program was designed to benefit both the local community and the students by having the externs primarily work on pro bono matters. We also provided the externs with formal and informal training programs, including a partner-mentorship program, a two-day mock trial, and a monthly breakfast-lecture series that covered topics relevant to the practice of business law and the development of professional skills. Typically, the breakfast lectures lasted one to two

hours and were attended by both the externs and our junior associates. To expose our externs to a variety of topics and viewpoints, our externship coordinator selected a variety of lawyers with differing legal backgrounds to give presentations.

4. In April 2012, I interviewed Janille Chambers, a Southern Gould University (SGU) School of Law student, for a position in our new externship program. At that time, I informed her that the position would be unpaid, and that there was no guarantee of an offer for fulltime employment. Based on my recommendation, the hiring committee offered a summer-externship position to Ms. Chambers, and Ms. Chambers accepted.

5. The 2012 summer-externship program commenced during the third week of May with a welcome ceremony. During that ceremony, at my direction, firm associates reiterated to the externs, among other things, that there was no guarantee of an offer for fulltime employment at the conclusion of the program.

6. All of the externs, including Ms. Chambers, were given access to a computer owned by the firm; an individual, unique password that allowed them to access the firm's internal network drive, including the firm's form files; and training concerning how to use the firm's computer network. On the first day of their externships, I instructed all of the externs to use the firm's computers and to access the internal network drive only for official firm work.

7. All the externs were also told to review An & Renno's twenty-page Employee Policy Manual, which contains a variety of internal policies. In a section entitled "Computer Policies," the Manual states, in relevant part, "[a]ll work completed by the attorneys of An & Renno, LLP during the course of their work is the sole property of the firm." It further states that "to protect the privacy of the firm's clients and to protect the confidentiality of the firm's work product, all our employees must conduct all firm business on the computers provided by the firm and must use those computers only for firm business, not for personal purposes." Finally, the Manual instructs all employees to "carefully guard" their computer passwords. The externs were not, however, required to sign an employment agreement or computer-use policy.

8. As part of the firm's externship program, I was assigned to be Ms. Chambers's individual mentor. At the beginning of the summer, I met with Ms. Chambers for weekly coffee dates. During those meetings, Ms. Chambers told me about her interest in one day starting her own law firm. Given my own experience starting An & Renno, I tried to provide her with career guidance relating to client development and professional skills. Unfortunately, during the months of July and August, I became increasingly busy and was unable to continue meeting individually with Ms. Chambers. Although I continued to work

with her on projects, our communications during that time period were limited to emails and brief contact at larger meetings.

9. During the summer, our externship coordinator assigned Ms. Chambers to do work, including performing legal research and summarizing deposition transcripts, for several of the firm's pro bono clients. In addition, at my direction, Ms. Chambers drafted a few simple employment contracts and nondisclosure agreements for one of my clients, Eros, LLC, which is a start-up company that designs applications for mobile-dating websites. I asked her to facilitate my meetings with Eros by getting coffee and other supplies. In between her other, more time-sensitive assignments, I also asked her to work on updating and reorganizing the firm's internal form files. These form files are quite extensive and include a large variety of essential legal documents, such as operating agreements, employment contracts, nondisclosure agreements, corporate bylaws, Internet disclaimers, and independent-contractor agreements. I believed that reviewing such a wide variety of essential legal documents would provide someone who wanted to start her own firm, like Ms. Chambers, with a valuable educational experience. However, because the form files represented years of paid work by the firm's attorneys, I explicitly warned her not to copy any of them and to work on them only on the firm's computers.

10. Although Ms. Chambers appeared to get along well with

the head of Eros, Ms. Ashton Massey, during client meetings in late June 2012, I noticed that Ms. Chambers was acting inappropriately by flirting with some of Eros's young, male employees. After noticing this, I met with Ms. Chambers, explained that her behavior was unprofessional, and told her that she must not attend future meetings with Eros employees.

11. Following this discussion, my relationship with Ms. Chambers became increasingly strained. Shortly thereafter, I asked Ms. Chambers to research a simple issue related to the enforcement of a non-compete clause, and she provided me with only a few responsive cases. I gave the results of her research to a client, but because Ms. Chambers had found only a few cases, I also asked an associate to research the same issue. That associate discovered that Ms. Chambers's research was not only incomplete but also inaccurate. Unfortunately, I had already presented Ms. Chambers's research to the client, and I was forced to call the client to explain the firm's error. It was highly embarrassing to the firm and me.

12. Given my busy workload, I was unable to individually meet with Ms. Chambers to discuss her error. Because I hoped this would be a learning opportunity for all the junior associates, I discussed what had happened, along with some general comments about the need for careful research, at a firm meeting in late June. Ms. Chambers reacted to my comments with

open hostility and seemed unwilling to accept my constructive criticism.

13. Following that meeting, Ms. Chambers stopped attending the monthly breakfast-lecture series. Her refusal to attend these training lectures resulted in numerous missed learning opportunities. Overall, Ms. Chambers's poor attitude became increasingly concerning to me as the summer progressed.

14. In late August 2012, I informed Ms. Chambers that she would not be offered a fulltime paid position. In communicating this to Ms. Chambers, I cited her poor work ethic, bad attitude, failure to attend training events, and the embarrassment she caused the firm by providing me with inaccurate research.

15. In December 2013, the firm suffered a computer-system malfunction, and we hired an information-technology (IT) expert to investigate the problem. The IT expert discovered that someone had infected the firm's network with sophisticated malware. In an effort to determine who had inserted the malware and which parts of the network were infected, the IT expert examined the entire network, including every time the form files had been accessed. The IT expert discovered that during the summer of 2012, Ms. Chambers had emailed large quantities of data to her home computer, including at least a dozen of the firm's form files. Knowing this violated the firm's policies, the IT expert informed me of Ms. Chambers's actions.

16. Although I am personally convinced that it was Ms. Chambers who infiltrated our system with malware so she could continue to steal our files, the IT expert was unable to identify the source of the malware or trace any further thefts of data to anyone, including Ms. Chambers. Nor did the IT expert find any evidence that Ms. Chambers logged into the firm's internal network drive after the end of her externship.

17. Nevertheless, the firm suffered enormous damage as a direct result of Ms. Chambers's actions. The cost of the investigation alone exceeded $5,000, and the value of the firm's form files, which represent many years of work by An & Renno attorneys, also far exceeds $5,000. In addition, the firm lost a significant amount of business from a valuable client, Eros, to Ms. Chambers. As a final insult, after a recent meeting with Ms. Massey it came to my attention that, in crafting an engagement letter to Eros, Ms. Chambers used language from the firm's standard engagement letter——one of the many form files that she had stolen. A true and correct copy of the firm's standard engagement letter is attached hereto as Exhibit A.

18. I hereby declare under penalty of perjury that the foregoing is true and accurate. Executed this 6th day of March, 2014 in Gould City, Gould.

Debbie An

DEBBIE AN

EXHIBIT A

STANDARD ENGAGEMENT LETTER AND FEE ARRANGEMENT

An & Renno, LLP
200 Boardwalk Avenue
Gould City, Gould 90001
(213) 300-1000

[Client Name]
[Client Address]
[Client Address]

[Date]

Dear [Client Name],

Pursuant to our discussion on [Date], [Attorney Name] of An & Renno, LLP has agreed to represent you in connection with [Describe Client Matter].

At this time, I want to thank you for selecting An & Renno, LLP to represent you in this matter. I also wish to set forth our agreement for the payment of fees. An & Renno, LLP fees for legal services completed by [Level of Attorney] are [Dollar Amount] per hour, plus any expenses that may be incurred (filing fees, deposition charges, copying costs, postage, related expenses, etc.). An & Renno, LLP will bill you monthly depending upon the amount of work that was done on your file during that period of time.

You have agreed to deposit [Retainer Amount] with An & Renno, LLP for fees and costs. An & Renno, LLP will hold your funds in its Lawyers' Trust Account and will provide you with a monthly statement of fees, costs, and expenses. After mailing you the monthly statement, An & Renno, LLP staff will apply the funds to the fees earned, and costs and expenses incurred. You are also responsible for paying fees, costs, and expenses in excess of the funds that we hold. Should An & Renno, LLP exceed the retainer, we may bill you monthly for additional fees and expenses. Payment must be made within 30 days. We reserve the right to withdraw from representation should these bills not be paid. Furthermore, we may ask that additional sums be deposited in our trust account should it appear necessary to cover additional fees and expenses.

An & Renno, LLP may send you pleadings, correspondence, and other documents and information throughout our representation. These copies will be for your file, and we ask that you retain them. An & Renno, LLP will also keep this information in a file in our office. Please bring your copy of the file to all of our meetings so that we both have all the necessary information in front of us. When An & Renno, LLP has completed all of the legal work necessary for representation, our firm will close the file and return the original documents to you. A file containing copies of the original documents will be stored for approximately ten (10) years. After that period of time, unless you instruct me in writing otherwise, the file will be destroyed.

I have included a copy of this letter for your review, signature, and return to An & Renno, LLP in the pre-paid envelope. If any of the information in this letter is inconsistent with your understanding of our prior discussion, please contact me before signing the letter. Otherwise, please sign the enclosed copy of this letter and return it to An & Renno, LLP.

On behalf of the firm, we look forward to representing you in this matter. If you have any questions, please contact me at your convenience.

Very truly yours,

_____
[Attorney Name]

I have read this letter and consent to the terms set forth in it.

_____
[Client Name]

DECLARATION OF ASHTON MASSEY

I, Ashton Massey, hereby declare and state:

1. My name is Ashton Massey. I am the founder and owner of Eros, LLC, a start-up company engaged in the business of designing applications for mobile-dating websites, with a principle place of business at 321 Beverly Boulevard, Gould City, Gould 90210. This declaration is being submitted in support of Plaintiff's Motion for Summary Judgment.

2. During the summer of 2012, I retained the law firm An & Renno, LLP to conduct legal services on behalf of Eros, LLC. These services included, among other things, drafting employment contracts and nondisclosure agreements.

3. While working with An & Renno, LLP during the summer of 2012, I occasionally interacted with Janille Chambers, a law school student from Southern Gould University (SGU) School of Law who was externing at the firm at that time. Our interactions included email exchanges in which Ms. Chambers asked me questions regarding information needed to draft agreements for Eros, as well as meetings attended by both Ms. Chambers and Debbie An, the lead attorney handling the Eros account. I got along well with both Ms. An and Ms. Chambers, as did my staff. They were both friendly, prompt, and competent. I did notice, however, that Ms. Chambers was openly flirtatious

with some of my male employees who accompanied me to the firm for meetings.

4. In November 2013, I received a phone call from Ms. Chambers. She informed me that she had started her own law practice in Gould City, Gould. Ms. Chambers reminded me about her experience working at An & Renno, LLP, and in particular, her work on behalf of Eros, LLC. Although Ms. Chambers impressed me during the summer of 2012, I was skeptical of hiring her because she was young and inexperienced so I asked her how much she would be charging. She then offered me an hourly rate significantly lower than the rate charged by An & Renno, LLP. I decided to hire her to save money. Also, because she had been trained at An & Renno, I believed that Ms. Chambers could do a competent job.

5. To finalize our arrangement, Ms. Chambers sent me an engagement letter on December 1, 2013. As directed, I signed and returned the letter. A true and correct copy of the engagement letter is attached hereto as Exhibit B.

6. After retaining Ms. Chambers, I was satisfied with the quality of her legal services, but because of her inexperience, I only asked her to work on simple projects such as drafting employment agreements. The agreements that she drafted looked basically the same as similar agreements that were drafted for me by the attorneys at An & Renno, LLP.

7. In February 2014, I decided to take my business back to An & Renno, LLP. While Ms. Chambers's work for Eros, LLC was adequate, I felt more comfortable with an experienced attorney who could provide a wide array of services and better serve as an advisor to my growing business. When we met in person, I disclosed to Ms. An that I had hired Ms. Chambers during the preceding months to execute some simple contracts. Ms. An explained to me that she was concerned the firm's internal work product was improperly being used by Ms. Chambers in her practice. I then gave Ms. An a copy of the engagement letter that I had signed with Ms. Chambers.

8. I hereby declare under penalty of perjury that the foregoing is true and accurate. Executed this 6th day of March, 2014 in Gould City, Gould.

Ashton Massey
ASHTON MASSEY

EXHIBIT B

The Law Offices of Janille Chambers
Ms. Janille Chambers, Esq.
699 Exposition Blvd.
Gould City, Gould 90089
(310) 999-0000
law@janillechambers.com

Eros, LLC
Ms. Ashton Massey
321 Beverly Boulevard
Gould City, Gould 90210

December 1, 2013

Dear Ms. Massey,

Pursuant to our discussion on November 30, 2013, I have agreed to represent you by providing legal services for Eros, LLC.

I sincerely thank you for selecting my law firm to represent you in this matter. My fees for legal services are $150 per hour, plus any expenses that may be incurred, such as filing fees, deposition charges, copying costs, postage, related expenses, etc. I will bill you monthly depending upon the amount of work that was done on your behalf during that period of time.

You have agreed to deposit $1,000 with the Law Offices of Janille Chambers for fees and costs. I will hold your funds in my office's Lawyers' Trust Account, and will provide you with a monthly statement of fees, costs, and expenses. After mailing you the monthly statement, I will apply the funds to the fees earned, and costs and expenses incurred. You are also responsible for paying fees, costs, and expenses in excess of the funds that I hold. Should I exceed the retainer, I may bill you monthly for additional fees and expenses. Payment must be made within 30 days. I reserve the right to withdraw from representation should these bills not be paid. Furthermore, I may ask that additional sums be deposited in the trust account should it appear necessary to cover additional fees and expenses.

The Law Offices of Janille Chambers may send you pleadings, correspondence, and other documents and information throughout representation. These copies will be for your file, and I ask that you retain them. I will also keep this information in a file at my office. Please bring your copy of the file to all of our meetings so that we both have all the necessary information in front of us. When I have completed all of the legal work necessary for representation, I will close the file and return the original documents to you. A file containing copies of the original documents will be stored for approximately ten (10) years. After that period of time, unless you instruct me in writing otherwise, the file will be destroyed.

I have included a copy of this letter for your review, signature, and return to the Law Offices of Janille Chambers in the pre-paid envelope. If any of the information in this letter is inconsistent with your understanding of our prior discussion, please contact me before signing the letter. Otherwise, please sign the enclosed copy of this letter and return it to the Law Offices of Janille Chambers.

I greatly look forward to representing you in this matter, and appreciate your business. If you have any questions, please do not hesitate to contact me.

Very truly yours,

Janille Chambers
Janille Chambers

I have read this letter and consent to the terms set forth in it.

Ashton Massey
Ashton Massey

DECLARATION OF JANILLE CHAMBERS

I, Janille Chambers, hereby declare and state:

1. I am an attorney licensed to practice law in the State of Gould. I am a solo practitioner, specializing in business law and counseling start-up entities. I am twenty-five years old. This declaration is being submitted in support of Defendant's Cross-Motion for Summary Judgment.

2. In May 2013, I graduated from Southern Gould University (SGU) School of Law with a business-law certificate. I passed the Gould bar exam in September 2013.

3. Near the end of my second year of law school and after trying unsuccessfully for months to find a paid summer position, I sought advice from the SGU Career Services Office (CSO) about employment opportunities for the 2012 summer. The CSO recommended that if I could not find a paid job, I might want to look for an unpaid externship. I told the CSO that I was particularly interested in working for a law firm that specializes in business law and counseling start-up companies, and that I would ultimately like to start my own law practice. The CSO told me that An & Renno, LLP, a law firm specializing in business law and counseling start-up companies, had recently discontinued its longstanding summer-associate program and started a new program offering unpaid, ten-week summer externships for law students.

4. Soon thereafter, I applied for a position as a summer extern at An & Renno, LLP, and the firm offered me an externship for the summer of 2012. Although they told me that the position was unpaid and that there was no guarantee of an offer for future fulltime employment, I knew that Omar Hashim, my friend and a former SGU Law student, had been a summer associate at An & Renno, LLP in 2010, and that he had been offered fulltime employment after that summer. When I spoke with him in late 2011 while he was working at the firm, he told me that the firm had an unofficial policy of offering jobs to all its former summer associates as long as they passed the bar. He left the firm before the summer of 2012 for reasons unknown to me.

5. During my summer externship, I was assigned various work projects, had the opportunity to attend monthly group training sessions, and was assigned an individual mentor, Debbie An, who is a named partner at the firm. The monthly training sessions consisted of short, informal, breakfast lectures that supposedly covered various topics relevant to the practice of business law and the development of professional skills. In reality, these meetings were more of a social event than an intensive educational training session. Most of the speakers were young, fairly inexperienced, junior associates who spoke briefly and then hosted question and answer discussions.

However, the questions posed by externs were rarely relevant to the practice of law, and much of the time was spent socializing.

6. On my first day at An & Renno, LLP, I was given a work computer and a password to access the firm's internal network drives. Although I was told that I should use my work computer and access the firm's internal network drives only for official firm work and not to copy any of the form files, I was never asked to sign a computer-use policy or other employment agreement. I understand that the firm had a twenty-page Policy Manual that allegedly included policies governing the use of the firm's computers, but I was too busy that summer to read a long manual.

7. One of my many summer work assignments was to help prepare an employment contract and nondisclosure agreement for a business called Eros, LLC, which is a start-up company that specializes in designing applications for mobile-dating websites. While working on the Eros matter, I got along very well with Ashton Massey, the head of Eros, as well as a few other Eros employees whom I met. However, to my dismay, Ms. An accused me of unprofessional and flirtatious behavior, and in June 2012, she banned me from future meetings with Eros.

8. Besides my work for Eros, LLC, most of my other work assignments were menial, time-consuming tasks for the firm's pro bono clients, such as delivering coffee to meetings, filing

documents, summarizing deposition transcripts, and doing simple research projects. In addition, near the beginning of the summer, Ms. An instructed me that whenever I had any spare time, I was to spend it reorganizing the firm's form files. She told me that I was free to read the files as I was reorganizing them and that doing so would help me understand most basic types of contracts, but I soon realized that organizing the form files was a menial, administrative task with little educational value.

9. Ms. An was assigned to be my personal mentor for the summer. During the first five weeks of the externship, Ms. An and I met weekly to discuss my externship experience. During that time, she gave me some feedback on my assignments and guidance on starting my own law practice, but by the end of June, Ms. An stopped making any effort to individually mentor me; instead, during July and August, our contact was limited to brief emails and conversations at large firm events. I was extremely disappointed by Ms. An's failure to individually meet with me during the second half of the summer, and our working relationship deteriorated. One time in particular, with no warning, Ms. An publicly reprimanded me at a firm-wide meeting for making an error on a research assignment, which was incredibly embarrassing. I had no idea that there had been a problem with my research before she publicly reprimanded me.

10. During my externship, I received very little training from the firm. I attended two brief breakfast lectures in May and June——both of which related to client contact and development——but as the summer progressed and my work assignments began piling up, I was unable to attend the last two breakfast lectures. In particular, I was overwhelmed trying to reorganize all of the firm's form files, which were numerous and disorganized; it took me an incredibly long time to organize them because I had to individually review every file to create a complete table of contents and index.

11. As a result of my increasingly heavy workload, along with certain personal obligations, including having a sick dog that needed my care at home, I realized that I would be unable to complete all my assigned work at the office during normal business hours. Because I wanted to finish all my assigned work, in July 2012, I emailed some of the firm's form files to my home computer so I could work on reorganizing them at night.

12. Despite some negative interactions with Ms. An, as the summer drew to a close, I felt optimistic about receiving an offer of fulltime employment from the firm because, despite my heavy workload, I had managed to finish all my assignments. In addition, the firm had all the externs participate in a two-day mock trial. My trial team won our mock trial, and I personally received many compliments about my performance. I also knew

that I was generally well-liked by most of the firm's attorneys; many of the junior associates had made comments to me such as, "you are a shoe-in at the firm." Furthermore, the experience of my friend Omar Hashim made me believe that the firm regularly offered permanent jobs to the students who worked at the firm during the summers, despite the firm's formal statement that we were not guaranteed offers of fulltime employment.

13. At the conclusion of my externship in August 2012, however, Ms. An told me that I would not be offered a fulltime, paid position. Ms. An said the decision was based on the fact that I had embarrassed her and the firm by producing inaccurate research; my allegedly "poor" work ethic and "bad attitude"; and my failure to attend some of the training events. I believe, however, that it was actually based on her subjective and unfair dislike of me, which I initially noticed when she wrongly accused me of flirting with some of Eros's staff.

14. After graduating from law school in spring 2013 and passing the bar exam in September 2013, I decided to start my own law practice. Because we had developed a great rapport during my time at An & Renno, LLP, I contacted Ms. Massey, the head of Eros, LLC, to let her know that I had opened my own law firm. During that call, she asked me how much I would be charging. When I told her my rate, she told me that she would like to hire me. I then sent her an engagement letter that was

executed on December 1, 2013. In crafting that letter, I used some of the standardized language from an An & Renno, LLP engagement-letter template. Although the template was one of the forms that I had emailed to my personal computer in July 2012, its language was not unique; to the contrary, its language was basically the same as many form letters that can be easily located for free on the Internet, and I therefore believed my use of it was harmless.

15. Unfortunately, in February 2014, Ms. Massey took her business back to An & Renno, LLP. Although disappointing, by this time I had gained a number of other small clients, and my solo practice has continued successfully.

16. I hereby declare under penalty of perjury that the foregoing is true and accurate. Executed this 6th day of March, 2014 in Gould City, Gould.

Janille Chambers
JANILLE CHAMBERS

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF GOULD

AN & RENNO, LLP	)	
	)	CV No. 13-014-AF
Plaintiff,	)	
	)	ORDER GRANTING PLAINTIFF'S
	)	AND DEFENDANT'S CROSS-MOTIONS
v.	)	FOR SUMMARY JUDGMENT
	)	
JANILLE CHAMBERS	)	
	)	
Defendant.	)	
	)	

This matter comes before the Court on Plaintiff An & Renno, LLP's and Defendant Janille Chambers's respective Motions for Summary Judgment. In January 2014, Plaintiff filed a complaint against Defendant, alleging that Defendant had violated the Computer Fraud and Abuse Act (CFAA), 18 U.S.C. § 1030 (2012), by accessing Plaintiff's computers without authorization and in excess of her authorization during the summer of 2012. Soon thereafter, Defendant filed a cross-complaint alleging that Plaintiff had violated the Fair Labor Standards Act (FLSA), 29 U.S.C. §§ 201 et seq. (2012), by failing to pay Defendant for the work that she performed during the summer of 2012.

In early March, the parties filed cross-motions for summary judgment. The parties agree that the material facts relevant to liability are undisputed but disagree as to the legal standards that apply to their claims under both the CFAA and the FLSA. In

its motion, Plaintiff argued that it was entitled to judgment on all the claims in Defendant's cross-complaint because Defendant was a "trainee," not an "employee" as defined in the FLSA, and therefore not entitled to wages.[1] Defendant filed an opposition to Plaintiff's motion, arguing that the facts were sufficient for a reasonable trier of fact to find that she qualified as an "employee" under the broad definition set forth in the FLSA, and therefore the Court should deny Plaintiff's motion for summary judgment. In addition, Defendant filed an affirmative cross-motion for summary judgment, arguing that she never violated the CFAA because Plaintiff had explicitly authorized her to access its computer network drives during her externship and she never exceeded that authorization. Plaintiff filed an opposition to Defendant's cross-motion, arguing that the facts were sufficient to support a finding by a reasonable trier of fact that Plaintiff had violated the CFAA when she copied its internal form files and emailed them to her personal computer.

Based on the following Findings of Fact and Conclusions of Law, the Court finds that neither party's affirmative claims in their respective complaints are supported by the undisputed facts. Accordingly, Plaintiff's and Defendant's respective Motions for Summary Judgment are both GRANTED.

[1] In their respective summary judgment motions, neither party asked the Court to summarily resolve its own claims; they argued only that their opponent's claims have no merit.

I. Findings of Fact

Based on the declarations submitted by the parties in support of their respective motions, the Court finds that the following facts are relevant and undisputed.

1. Plaintiff An & Renno, LLP is a law firm in Gould City, Gould that specializes in business law, with a particular focus on counseling start-up companies. Due to the financial downturn, in early 2012, An & Renno, LLP discontinued its longstanding summer-associate program and established an unpaid ten-week, summer-externship program for local law students.

2. In April 2012, one of Plaintiff's named partners, Debbie An, interviewed Defendant Janille Chambers, a student at Southern Gould University (SGU) School of Law, for a position in Plaintiff's new externship program. At that time, Ms. An informed Defendant that the position would be unpaid, and that there was no guarantee of an offer for fulltime employment at the conclusion of the program. Defendant was offered, and later accepted, a summer-externship position. In late May 2012, Defendant began working for Plaintiff as an extern.

3. The summer-externship program commenced with a welcome ceremony. At that ceremony, the externs were told that there was no guarantee of an offer for fulltime employment at the conclusion of the program. However, Defendant knew that her friend and former SGU Law student Omar Hashim had worked for

Plaintiff as a summer associate during the summer of 2010 and had been offered fulltime employment at the end of that summer. Mr. Hashim apparently told her that the firm had an informal policy of offering permanent jobs to all its summer associates. Mr. Hashim subsequently left the firm for reasons unknown to Defendant.

4. At the commencement of the externship program, all of the externs were instructed to review Plaintiff's twenty-page Employee Policy Manual. The Manual states, in relevant part, "[a]ll work completed by the attorneys of An & Renno, LLP during the course of their work is the sole property of the firm." The Manual also states, "to protect the privacy of the firm's clients and to protect the confidentiality of the firm's work product, all our employees must conduct all firm business on the computers provided by the firm and must use those computers only for firm business, not for personal purposes." Finally, the Manual instructs all employees to "carefully guard" their computer passwords. Yet, none of the externs were required to sign an employment agreement or computer-use policy. Defendant never reviewed the Employee Policy Manual.

5. All of the externs were assigned firm computers and given individual passwords that allowed them to access Plaintiff's internal network drives, including Plaintiff's form files. All of the externs were instructed to use the firm's

computers and its internal network drive and form files only for official firm work.

6. An & Renno, LLP provided externs with a number of training opportunities, including a two-day mock trial, a partner-mentorship program, and a monthly breakfast-lecture series, which covered topics relevant to the practice of business law and the development of professional skills. Ms. An was assigned to be Defendant's mentor, and they met weekly during the first five weeks of the summer. However, Ms. An did not individually meet with Defendant during the second half of the summer, and during the months of July and August, their communications were limited to brief emails and contact at larger meetings.

7. As an extern, Defendant delivered coffee to clients, conducted simple legal research, and summarized deposition transcripts, mostly for the firm's pro bono clients. Ms. An also asked Defendant to update and reorganize Plaintiff's form files. She told Defendant not to copy the form files or work on them from her home computer.

8. One of Ms. An's clients at the time was a company called Eros, LLC. Ms. An asked Defendant to help with work for that client, including drafting employment contracts and nondisclosure agreements. In late June, Ms. An found Defendant's behavior with some of Eros's male employees to be

unprofessional, and she barred Defendant from attending future meetings with Eros, LLC.

9. On one occasion in the middle of the summer, Defendant also provided some incomplete legal research to Ms. An, and Ms. An presented this research to a client. Ms. An publicly reprimanded Defendant for this mistake at a firm-wide meeting. Following this incident, Defendant stopped attending the monthly training lectures.

10. In July 2012, Defendant became increasingly busy organizing Plaintiff's form files, as well as taking care of a sick pet. She decided to email Plaintiff's form files to her home computer so she could work on them at night at home. Doing this violated Plaintiff's computer-use policies.

11. At the conclusion of the summer, in August 2012, Ms. An informed Defendant that she would not be offered a fulltime paid position due to her allegedly poor work ethic, bad attitude, failure to attend training events, and the embarrassment that she had caused the firm by providing incomplete research to Ms. An.

12. Defendant graduated from SGU Law in May 2013, and passed the bar exam in September 2013. Subsequently, Defendant opened her own law practice and obtained Eros, LLC as one of her first clients. In crafting her engagement letter with Eros, LLC, Defendant used the standardized language from

Plaintiff's engagement letter template——one of the many forms that she had emailed to her personal computer while she was working for Plaintiff as an extern.

13. In December 2013, Plaintiff suffered from a computer-system malfunction due to a malware attack and hired an information technology (IT) expert to investigate. The IT expert discovered that Defendant had emailed a dozen of Plaintiff's form files to her home computer during the summer of 2012. The IT expert was, however, unable to identify the source of the malware or trace any further thefts of data to anyone, including the Defendant. The IT expert also did not find any evidence to suggest that the Defendant logged into Plaintiff's internal network drives after her externship ended.

14. The IT investigation cost Plaintiff more than $5,000. Additionally, Plaintiff claims to have suffered more than $5,000 in losses based on the value of its form files and income from Eros, LLC as a client.

II. Conclusions of Law

Two issues are before this Court. First, whether Defendant was an "employee" within the meaning of the FLSA and therefore entitled to receive wages for the work she did for Plaintiff during the summer of 2012. Second, whether Defendant acted "without authorization" or exceeded her "authorized use" in violation of 18 U.S.C. § 1030(a)(2) when she emailed Plaintiff's

files to her home computer and subsequently used one of the Plaintiff's form files for personal purposes.

A. Fair Labor Standards Act

The Fair Labor Standards Act requires "employers" to pay all "employees" a minimum wage, unless an exemption applies. 29 U.S.C. § 206 (2012). The statute defines "employee" as "any individual employed by an employer." 29 U.S.C. § 203 (2012). Although this definition appears to be quite broad, in 1947, the Supreme Court carved out an exception for "trainees," who are not entitled to receive a minimum wage. See Walling v. Portland Terminal Co., 330 U.S. 148, 151-52 (1947) ("Portland Terminal"). Then, in 1975, the U.S. Department of Labor ("DOL"), Wage and Hour Division, published a six-factor test to differentiate "employees" from "trainees" in its Wage & Hour Manual. Wage & Hour Man. (BNA) 91:416 (1975). Since the publication of that six-part test, courts have disagreed as to what standard should be used to determine if an extern is an "employee" or "trainee." Because the Twelfth Circuit has yet to decide this issue, this Court must examine it as an issue of first impression.

The Court's analysis must begin with Portland Terminal. In Portland Terminal, the Supreme Court held that a prospective railroad brakeman was not an "employee" under the FLSA. 330 U.S. at 153. The Court reasoned that even though the definitions of "employ" and "employee" were broad, the words

could not "be interpreted so as to make a person whose work serves only his own interest an employee of another person who gives him aid and instruction." Id. Instead, the definitions needed to be read along with the purpose of the statute. Id. The Court also noted that, "without a doubt, the Act covers trainees, beginners, apprentices, or learners if they are employed to work for an employer for compensation." Id. at 151. Thus the Court held that the brakeman was not an "employee" because the railroad received "no immediate advantage" from the work he performed, id. at 153, he did not displace regular workers, his work was supervised, and his activities did not advance the railroad work but instead may have actually impeded it, id. at 149-150.

Then, in 1975, the DOL released the six-factor test in its manual, which states that if all six criteria are met, a trainee is not an employee under the FLSA. Wage & Hour Man. (BNA) 91:416 (1975). The six factors are whether (1) the internship, even though it includes actual operation of the facilities of the employer, is similar to training which would be given in an educational environment; (2) the internship experience is for the benefit of the intern; (3) the intern does not displace regular employees, but works under close supervision of existing staff; (4) the employer that provides the training derives no immediate advantage from the activities of the intern, and on

occasion, its operations may actually be impeded; (5) the intern is not necessarily entitled to a job at the conclusion of the internship; and (6) the employer and the intern understand that the intern is not entitled to wages for the time spent in the internship. Id. The circuits are divided, however, as to whether the DOL test must be applied, and if so, how much deference to give it. Solis v. Laurelbrook Sanitarium & Sch., Inc., 642 F.3d 518, 525 (6th Cir. 2011) (recognizing the split).

Most circuits have chosen not to strictly apply the DOL test. The Eleventh Circuit, for example, has adopted an "economic realities" test to determine whether an employer-employee relationship exists and uses DOL's six factors only for guidance in reaching that determination. Kaplan v. Code Blue Billing & Coding, Inc., 504 F. App'x 831, 834-836 (11th Cir. 2013). Meanwhile, the Sixth Circuit has adopted a "primary benefit" test, which focuses on which party received the primary benefit of the activities performed by the trainee. Solis, 642 F.3d at 525-526. In doing so, it noted that while the "six factors may be helpful in guiding the inquiry, the Secretary's test on the whole is not." Id. at 525. Likewise, the Tenth Circuit has adopted a "totality of the circumstances" test, in which the six factors are viewed as relevant but not dispositive in determining whether an employer-employee relationship exists.

Reich v. Parker Fire Prot. Dist., 992 F.2d 1023, 1026-27 (10th Cir. 1993).

Only the Fifth Circuit has adopted the DOL's entire six-factor test. Atkins v. Gen. Motors Corp., 701 F.2d 1124, 1128 (5th Cir. 1983). In adopting the DOL test, it reasoned that, because the DOL is charged with enforcing the FLSA, its decisions are entitled to significant deference. See id.

This Court is convinced that the totality of the circumstances is the best standard. Applying that test, the Court finds that the totality of the circumstances in this case show that, like the brakeman in Portland Terminal, Defendant was a "trainee," not an "employee" within the meaning of the FLSA. In reaching that conclusion, the Court has considered the DOL's six factors but is not treating them as binding because agency statements in letters and manuals are not entitled to deference. See Christensen v. Harris Cnty., 529 U.S. 576, 587 (2000). Yet, even considering the six factors, they weigh in favor of Defendant being a "trainee." First, the training Plaintiff provided for Defendant and her fellow externs was similar to the training that law students receive in law school clinics—— Defendant did research, drafted legal documents, interacted with pro bono clients, and attended training meetings. Second, the training she received benefited Defendant because she learned valuable legal skills, which later helped her build her own law

practice. Meanwhile, Plaintiff received little, if any, immediate advantage from Defendant's externship activities, especially given Defendant's apparently poor research skills, which may have actually impeded Plaintiff's operations. Finally, it is undisputed that Defendant was explicitly told that she would not be paid and that she was not guaranteed a permanent position at the end of her externship so the final two factors clearly weigh against her being an "employee."

The record is less clear as to whether Defendant displaced any of Plaintiff's employees. On one hand, Defendant does not seem to have relieved any of Plaintiff's other employees from doing their regular duties during the summer of 2012. On the other hand, the externship program allowed the Plaintiff to save money by replacing paid summer associates with unpaid summer externs. Thus, Defendant arguably was taking the place of a paid employee, but even if this factor weighs in favor of Defendant being an "employee," it stands alone.

In sum, the totality of the circumstances shows that Defendant was not an "employee" under the FLSA, and Plaintiff did not, therefore, violate the FLSA by not paying her.

B. Computer Fraud and Abuse Act

Pursuant to the Computer Fraud and Abuse Act (CFAA), criminal or civil penalties may be imposed upon a person who "intentionally accesses a computer without authorization or

exceeds authorized use, and thereby obtains information from any protected computer." 18 U.S.C. § 1030(a)(2) (2012). A protected computer is defined as "any computer used in interstate or foreign commerce or communication." § 1030(e)(2). "'[T]he Internet is an instrumentality and channel of interstate commerce,'" and any computer connected to the Internet is a protected computer. United States v. Sutcliffe, 505 F.3d 944, 952-53 (9th Cir. 2007) (quoting United States v. MacEwan, 445 F.3d 237, 245 (3rd Cir. 2006)).

Any person who "suffers damage or loss" as a result of the violation of § 1030(a)(2) may bring a civil action against the violator so long as the losses incurred during any one-year period exceed $5,000. § 1030(g). Thus, to successfully bring an action under § 1030(g) based on a violation of § 1030(a)(2), the plaintiff must show that the defendant "(1) intentionally accessed a computer, (2) without authorization or exceeding authorized access, and that the defendant (3) thereby obtained information (4) from any protected computer . . . and that (5) there was loss to one or more persons during any one-year period aggregating at least $5,000 in value." LVRC Holdings v. Brekka, 581 F.3d 1127, 1132 (9th Cir. 2009).

Currently, a circuit split exists regarding the interpretation of the terms "without authorization" and "exceeds authorized use." See e.g., Brekka, 581 F.3d at 1135 (adopting a

narrow interpretation); Int'l Airport Ctrs., L.L.C. v. Citrin, 440 F.3d 418, 420-21 (7th Cir. 2006) (adopting a broad agency-based interpretation); EF Cultural Travel BV v. Explorica, Inc., 274 F.3d 577, 581 (1st Cir. 2001) (adopting a broad contract-based interpretation). Like the courts that have adopted the narrow interpretation of the CFAA, this Court believes that it must independently examine what the legislature meant when it used the terms "without authorization" and "exceeds authorized use" in the CFAA.

Given that the CFAA fails to define the term "without authorization," the Court must first look to the ordinary, common meaning of the word "authorization." See Brekka, 581 F.3d at 1132-33. Authorization is commonly defined as "permission or power granted by an authority"; as such, an employee has authorization to access a computer when the employer gives the employee permission to do so and only loses such authorization if the employer explicitly rescinds permission to access the computer. Id. at 1133-35 (consulting Random House Unabridged Dictionary and Webster's Third International Dictionary).

Second, the CFAA states that the term "exceeds authorized use" means "to access a computer with authorization and to use such access to obtain or alter information in the computer" that the employee is not entitled to obtain or alter. § 1030(e)(6).

Hence, an individual "who is authorized to use a computer for certain purposes but goes beyond those limitations is considered by the CFAA as someone who has 'exceeded authorized use.'" Brekka, 581 F.3d at 1133 (quoting § 1030(e)(6)). However, an employee does not "exceed authorized use" by improperly using information that has been validly accessed. WEC Carolina Energy Solutions LLC v. Miller, 687 F.3d 199, 204 (4th Cir. 2012).

This narrow interpretation of the terms "without authorization" and "exceeds authorized use" not only comports with the plain language of the statute but also aligns with the CFAA's legislative history. Brekka, 581 F.3d at 1130-31. The CFAA was designed to "target hackers who accessed computers to steal information or to disrupt or destroy computer functionality," not to impute liability to employees who disregard computer-use policies. Id. at 1130; see also H.R. Rep. No. 98-894, at 21 (1984). To construe the CFAA otherwise would be to impute liability and potentially even criminalize every employee "who checked the latest Facebook posting or sporting event scores in contravention of his employer's use policy." WEC, 687 F.3d at 206.

This Court disagrees with the broader readings of the CFAA adopted by the Seventh and First circuits because those interpretations are inconsistent with the CFAA's plain language. For example, the Seventh Circuit has held that an employee acts

"without authorization" and in violation of the CFAA once he or she violates the duty of loyalty owed to an employer. Citrin, 440 F.3d at 420-21. Yet, no language in the CFAA supports the conclusion that authorization terminates "when an employee resolves to use the computer contrary to the employer's interest." Brekka, 581 F.3d at 1133, 1135.

Likewise, the First Circuit's broad, contract-based interpretation of the CFAA is inconsistent with the CFAA's plain language; the First Circuit has held that an employee "exceeds authorized use" when he or she breaches an employer's confidentiality agreement or other similar use policy. EF Cultural Travel, 274 F.3d at 581-82. Yet, this interpretation improperly conflates the meaning of the terms "without authorization" and "exceeds authorized use," and it fails to recognize that the CFAA's explicit definition of "exceeds authorized use" does not extend to the "improper use of information validly accessed." WEC, 687 F.3d at 204.

In addition, these broad interpretations, which reach a much broader range of conduct, violate the rule of lenity. See United States v. Santos, 553 U.S. 507, 514 (2008) (rule of lenity requires ambiguous laws to be interpreted in favor of defendants).

After analyzing the relevant precedent, this Court is persuaded that the Fourth and Ninth circuits are correct that

(1) an employee only accesses a computer "without authorization" if the employee has not received permission to use the computer for any purpose at all, or the employer has explicitly rescinded permission to access the computer; and (2) an employee only "exceeds authorized use" when he or she has permission to use a computer but accesses information that falls outside the bounds of approved access. See Brekka, 581 F.3d at 1133. This interpretation comports with the CFAA's plain language, aligns with its legislative history, and provides employees with fair notice of potential penalties.

Here, it is undisputed that Defendant intentionally accessed a protected computer and emailed a dozen of Plaintiff's form files to her personal computer. It is also undisputed that Plaintiff's form files were worth more than $5,000. However, it is also undisputed that the Defendant was authorized to access the Plaintiff's form files while she was working as an extern. Applying the law to these facts, the Court finds that Defendant was authorized to access Plaintiff's form files at the time she emailed them to her home computer, that authorization had not be rescinded, and she never exceeded that authorization. Thus, she did not violate the CFAA.

Further, even if this Court were to agree with the courts that have held that an employee's authorization to access an employer's computer is terminated when the employee violates the

duty of loyalty to the employer, in this case, Defendant still acted lawfully because she never acted against the Plaintiff's interests until after her externship. Likewise, even if the Court were to agree with the courts that have held that an employee "exceeds authorized use" when he or she breaches an employer's confidentiality agreement, Defendant never signed any such agreement. Thus, even under the broad interpretations of the CFAA, Defendant did not violate its provisions. Defendant is therefore entitled to summary judgment on the original complaint.

III. Conclusions

Based on the foregoing, Plaintiff's and Defendant's cross motions for summary judgment are both GRANTED. The Court hereby enters:

(1) Summary judgment for Defendant on all the CFAA claims set forth in the Complaint; and

(2) Summary judgment for Plaintiff on all the FLSA claims set forth in the Cross-Complaint.

Dated: June 21, 2014

Lexi Mayfield

LEXI MAYFIELD
United States District Judge

IN THE UNITED STATES COURT OF APPEALS

FOR THE TWELFTH CIRCUIT

Case Nos. 13-432 and 13-444

Decided August 22, 2014

AN & RENNO, LLP,

Plaintiff-Appellant,

v.

JANILLE CHAMBERS,

Defendant-Appellee.

APPEAL from Judgments of the United States District Court for the District of Gould. Before Genatowski, Raghuvanshi, and Gill. Opinion by Genatowski, J. Reversed.

I. INTRODUCTION

The parties in the above-captioned matter have each appealed an unfavorable grant of summary judgment. First, Plaintiff-Appellant An & Renno, LLP appealed the District Court's grant of summary judgment in favor of Defendant-Appellee Janille Chambers, in which the District Court held that An & Renno's claim——that Ms. Chambers had violated the Computer Fraud and Abuse Act (CFAA), 18 U.S.C. § 1030 (2012), by copying An &

Renno's form files, emailing them to her home computer, and later using them for personal purposes——had no merit. In reaching that decision, as an issue of first impression in this circuit, the District Court adopted a narrow interpretation of the meaning of the terms "without authorization" and "exceeds authorized use" as used in the CFAA. An & Renno argues that the District Court erred by adopting this narrow interpretation. Instead, applying a broad agency-based interpretation, An & Renno argues that Ms. Chambers acted "without authorization" and "exceeded authorized use" in violation of § 1030(a)(2) because her acts were forbidden by An & Renno's internal policies and violated specific instructions that she had been given by her supervising attorney. We agree. While we recognize that a deepening circuit split has arisen regarding the interpretation of the CFAA's terms "without authorization" and "exceeds authorized use," we believe that a broad, agency-based interpretation is proper given the legislative history of the CFAA. Thus, the District Court erred when it granted Ms. Chambers's summary judgment motion. For the reasons discussed in detail below, we reverse that grant and remand the matter for further proceedings consistent with this order.

Second, Ms. Chambers filed a cross-appeal from a separate grant of summary judgment, in which the District Court rejected Ms. Chambers's claim that An & Renno had violated the Fair Labor

Standards Act (FLSA), 29 U.S.C. § 201 et seq. (2012), by failing to pay Ms. Chambers for her work. In reaching that decision, the District Court adopted a "totality of the circumstances" test and determined that Ms. Chambers was not an "employee" entitled to wages under the FLSA. Ms. Chambers contends that the District Court erred by adopting this test and holding that she was not an employee. She further argues that the Court should instead have strictly applied a six-factor test set forth in the U. S. Department of Labor, Wage & Hour Manual. Wage & Hour Man. (BNA) 91:416 (1975). We agree. While this is an issue of first impression in this circuit, and we recognize that not all circuits agree, we believe that wholesale adoption of the DOL six-factor test is the appropriate standard. Applying that standard, a reasonable trier of fact could find that Ms. Chambers was an employee entitled to wages. For the reasons discussed in detail below, we therefore reverse the District Court's summary judgment grant in favor of An & Renno and remand the matter for further proceedings consistent with this order.

II. FACTS AND PROCEDURAL HISTORY

In 2012, as a result of the economic downturn, Plaintiff-Appellant An & Renno, LLP ended its longstanding, paid summer "associate" program. In its place, An & Renno set up a new, ten-week, unpaid, summer "externship" program for law students.

In April 2012, Debbie An, a named partner and practicing

attorney, interviewed Defendant-Appellee Janille Chambers, a Southern Gould University (SGU) School of Law student, for a position in the new externship program. During the interview, Ms. An informed Ms. Chambers that the position would be unpaid and that there was no guarantee of an offer for fulltime employment at the end of the program. She then offered Ms. Chambers a position as an extern, and Ms. Chambers accepted.

In late May 2012, at a welcome ceremony, all the externs, including Ms. Chambers, were told that there was no guarantee of an offer for fulltime employment at the conclusion of the program. They were also instructed to review An & Renno's twenty-page Employee Policy Manual. The Manual states, in relevant part, "[a]ll work completed by the attorneys of An & Renno, LLP during the course of their work is the sole property of the firm." The Manual also states, "to protect the privacy of the firm's clients and to protect the confidentiality of the firm's work product, all our employees must conduct all firm business on the computers provided by the firm and must use those computers only for firm business, not for personal purposes." Finally, the Manual instructs all employees to "carefully guard" their computer passwords. None of the externs were, however, required to sign an employment agreement or computer-use policy.

All of the externs were assigned firm computers and given

individual passwords that allowed them to access An & Renno's internal network drives, including its form files. Ms. An personally warned Ms. Chambers not to copy the form files and to work on them only on the firm's computers.

As an extern, Ms. Chambers was responsible for various work assignments, including delivering coffee to clients, conducting simple legal research for pro bono clients, summarizing deposition transcripts for pro bono clients, helping to execute employment contracts and nondisclosure agreements for Eros, LLC (a paying client), and updating and reorganizing An & Renno's voluminous, internal form files.

An & Renno provided formal and informal training opportunities for its summer externs. These training opportunities included a partner-mentorship program, a two-day mock trial, and a monthly breakfast-lecture series that covered topics relevant to the practice of business law and the development of professional skills. Ms. An was assigned to be Ms. Chambers's mentor. Although Ms. An met with Ms. Chambers weekly for the first half of the summer, she did not individually meet with Ms. Chambers during the second half. During the second half of the summer, their communications were limited to brief emails and contact at larger meetings. Ms. Chambers attended the first two breakfast lectures, but she did not attend the July and August lectures, following a

disagreement with Ms. An.

In July 2012, Ms. Chambers emailed documents from An & Renno's form files to her personal computer. Later investigation revealed that Ms. Chambers had emailed at least a dozen of An & Renno's form files to her personal computer by the end of the 2012 summer.

In August 2012, Ms. An informed Ms. Chambers that she would not be offered a fulltime paid position. In support of this decision, Ms. An cited Ms. Chambers's poor work ethic, bad attitude, and failure to attend training events. Additionally, Ms. An highlighted the embarrassment that Ms. Chambers had caused the firm by providing Ms. An with incomplete legal research, which was later communicated to a client.

The news that she would not be offered a fulltime paid position was shocking to Ms. Chambers given that associates had previously made favorable comments to her such as, "you are a shoe-in at the firm." Furthermore, Ms. Chambers knew that one of her friends who was also a former SGU Law student, Omar Hashim, had been a summer associate at An & Renno during the summer of 2010 and had later been offered fulltime employment. In 2011, he had told her that the firm usually made such offers despite having a stated policy to the contrary.

In May 2013, Ms. Chambers graduated from SGU. That fall, she passed the bar exam and opened her own law firm. Soon after

starting her own firm, Ms. Chambers contacted Ms. Massey, the head of Eros, LLC, to tell her that she had opened her own law firm. When Ms. Massey learned that Ms. Chambers would be charging a lower hourly rate than An & Renno attorneys, Ms. Massey decided to take her business away from An & Renno and hire Ms. Chambers instead. Ms. Chambers then executed an engagement letter in which she used the standardized language from one of An & Renno's form files——one of the files she had emailed to her personal computer during the summer of 2012.

In December 2013, An & Renno suffered from a computer-system malfunction. It hired an information technology (IT) expert, who examined its computers and discovered that Ms. Chambers had emailed at least a dozen of An & Renno's form files to her personal computer during the summer of 2012. However, the IT expert did not find any evidence to suggest that Ms. Chambers logged into An & Renno's internal network drive after the conclusion of her externship. Additionally, the IT expert was unable to identify the source of the malware or trace any further thefts of data to anyone, including Ms. Chambers.

Upon discovering that Ms. Chambers had violated its computer-use policy by emailing form files to her personal computer, An & Renno filed a complaint against Ms. Chambers, alleging that she violated the Computer Fraud and Abuse Act, 18 U.S.C. § 1030, by obtaining its form files "without

authorization," and by exceeding her "authorized use." In response, Ms. Chambers filed a cross-complaint, alleging that An & Renno violated the Fair Labor Standards Act, 29 U.S.C. § 201 et seq., by not paying her wages for work she did as an extern.

The parties filed cross-motions for summary judgment, both of which were granted. Ms. Chambers's motion was granted on the basis that An & Renno had given her permission to access and use its form files and a firm computer, An & Renno never rescinded that permission, and the information Ms. Chambers accessed did not fall outside her authorization. The District Court likewise granted An & Renno's motion regarding the FLSA claims, finding that that the appropriate standard for assessing an FLSA claim is the totality of the circumstances test, which in this case showed that Ms. Chambers was a "trainee" not entitled to wages.

III. DISCUSSION

A. Standard of Review

A district court's grant of summary judgment is reviewed de novo. LVRC Holdings LLC v. Brekka, 581 F.3d 1127, 1130 (9th Cir. 2009). When deciding a motion for summary judgment, appellate courts must view the evidence in the light most favorable to the non-moving party and then determine whether the district court correctly applied the substantive law. Universal Health Servs., Inc. v. Thompson, 363 F.3d 1013, 1019 (9th Cir. 2004). Summary judgment is appropriate only when there is no

genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Id.

B. The District Court Erred in Adopting a Narrow Interpretation of the CFAA and in Granting Ms. Chambers's Motion for Summary Judgment

Congress enacted the Computer Fraud and Abuse Act (CFAA) in 1984 and has amended it eight times——each time widening the depth and breadth of the statute "to accommodate the evolving role of computers in U.S. society." Thomas E. Booms, Hacking into Federal Court: Employee "Authorization" Under the Computer Fraud and Abuse Act, 13 Vand. J. Ent. & Tec. L. 543, 545-46 (2011). Today, criminal or civil penalties may be imposed upon a person who (1) intentionally accesses a computer, (2) without authorization or exceeding authorized use, and (3) thereby obtains information (4) from any protected computer, (5) causing a loss to one or more persons during any one-year period aggregating at least $5,000 in value. Brekka, 581 F.3d at 1132.

A deepening circuit split has arisen regarding the interpretation of the CFAA's use of the terms "without authorization" and "exceeds authorized use." See e.g., Brekka, 581 F.3d at 1135 (adopting a narrow interpretation); Int'l Airport Ctrs., L.L.C. v. Citrin, 440 F.3d 418, 420-21 (7th Cir. 2006) (adopting a broad agency-based interpretation); EF Cultural Travel BV v. Explorica, Inc., 274 F.3d 577, 581 (1st Cir. 2001) (adopting a broad contract-based interpretation).

The Fourth and Ninth circuits have applied a narrow interpretation of the terms "without authorization" and "exceeds authorized use." See WEC Carolina Energy Solutions LLC v. Miller, 687 F.3d 199, 206 (4th Cir. 2012); Brekka, 581 F.3d at 1132-33. Hence, these circuits have held that (1) an employee only accesses a computer "without authorization" if the employee has not received permission to use the computer for any purpose at all, or the employer has explicitly rescinded permission to access the computer; and (2) an employee only "exceeds authorized use" when he or she has permission to use a computer but accesses information that falls outside the bounds of approved access. Brekka, 581 F.3d at 1133, 1135.

Notably, under a narrow interpretation, so long as the employee has validly accessed information, the employee does not "exceed authorized use" by later misappropriating this information. WEC, 687 F.3d at 204, 207. For example, in Brekka, an employee who, during the course of his employment, emailed his employer's confidential information to his personal computer did not act "without authorization" because the employer had granted the employee permission to access its computer system by assigning the employee a work computer and login credentials. 581 F.3d at 1135. Similarly, in WEC, an employee who emailed an employer's confidential information to his personal computer and used that information in a

presentation to the employer's competitor did not "exceed authorized use" in violation of the CFAA because he was authorized to access it at the time he emailed it, regardless of how he later used it. 687 F.3d at 202, 206-07.

In contrast, the First Circuit has applied a broad, contract-based interpretation of the term "exceeds authorized use." See EF Cultural Travel, 274 F.3d at 581-82. It has held that an employee "exceeds authorized use" when he or she breaches a confidentiality agreement or similar use policy. Id. For example, in EF Cultural Travel, an employee exceeded authorized use when he violated his confidentiality agreement by designing software that gathered confidential information from his employer's website. Id. at 583-84.

Finally, the Seventh Circuit has applied a broad, agency-based interpretation of the term "without authorization" to hold that an employee acts "without authorization" and in violation of the CFAA once he or she violates the duty of loyalty owed to an employer. See Citrin, 440 F.3d at 420-21. For example, in Citrin, an employee who deleted files from his work computer prior to returning the computer to his former employer acted "without authorization" because his authorization terminated once he violated his duty of loyalty to his employer by deleting the files, as well as by leaving the company in breach of his employment contract. Id. at 420.

This broad, agency-based interpretation of the term "without authorization" appropriately integrates agency law principles into the CFAA. See Shurgard Storage Ctrs., Inc. v. Safeguard Self Storage, Inc., 119 F. Supp. 2d 1121, 1125 (W.D. Wash. 2000) (citing Restatement (Second) of Agency § 112 (1958) (". . . the authority of an agent terminates if, without knowledge of the principal, he acquires adverse interests or if he is otherwise guilty of a serious breach of loyalty to the principal")). Logically, if an employee's authority to access a computer is derived from his or her agency relationship with the employer, then "violating the duty of loyalty or failing to disclose adverse interests voids the agency relationship" and the employee's authority to access the computer. Citrin, 440 F.3d at 421. This type of integration of agency-law principles into federal offenses is not without precedent, as the Supreme Court has integrated agency-law principles into the federal mail- and wire-fraud statutes. Carpenter v. United States, 484 U.S. 19, 28 (1987) (relying upon agency principles in holding insider trader violated mail- and wire-fraud statutes).

Additionally, a broad, agency-based interpretation comports with the legislative history of the CFAA, as well as Congress's recent actions demonstrating an intent to expand the coverage of the CFAA. Shurgard, 119 F. Supp. 2d at 1129. The CFAA may have originally been designed to confront outside hackers, who were

the "new type of criminal" who came with the "technological explosion [that] made computers a mainstay . . . in American businesses." S. Rep. No. 99-432, at 2 (1986). Yet, the CFAA has been repeatedly amended to better reflect the reality that a malicious insider poses a greater threat to American businesses than the outside hacker. S. Rep. No. 104-357, at 5 (1996). A broad agency-based interpretation of the CFAA properly casts a wide net over computer crimes perpetrated by employees and grants courts the "necessary flexibility to combat computer crimes as they evolve." Booms, supra, at 557.

Overall, we find the logic of the Seventh Circuit persuasive, and we adopt it. We do so knowing that in cases in which an employee has acted "without authorization," the employee will also always have exceeded his or her "authorized use," making the two phrases essentially redundant. See Citrin, 440 F.3d at 420 ("The difference between 'without authorization' and 'exceed[s] authorized access' is paper thin, but not quite invisible.") Yet, we do not believe that result provides sufficient reason to reject this interpretation.

In this case, the District Court erred when it adopted a narrow interpretation of the CFAA and held that Ms. Chambers neither acted "without authorization" nor "exceeded authorized use." The narrow interpretation adopted by the District Court is flawed because it not only fails to recognize that precedent

supports integrating agency-law principles into federal offenses and that the CFAA's legislative history supports a broader interpretation of its terms, but also incorrectly invokes the rule of lenity. The rule of lenity only applies "to those situations in which a reasonable doubt persists about a statute's intended scope even *after* resort to the language and structure, legislative history, and motivating policies of the statute." Moskal v. United States, 498 U.S. 103, 108 (1990) (declining to invoke lenity merely because it was "possible to articulate a construction [of the term 'falsely made'] more narrow than that urged by the Government"). Here, the legislative history of the CFAA clearly favors a broad interpretation of the CFAA. Furthermore, the rule of lenity is "rooted in considerations of notice," yet employment contracts and computer-use policies provide ample notice to employees that their actions are improper. See Brekka, 581 F.3d at 1135.

Accordingly, we hold that if an employee accesses an employer's computer after the employee has violated a duty of loyalty owed to that employer, the employee is doing so "without authorization" in violation of the CFAA. We believe that this standard is amply justified by the proper integration of agency principles into the CFAA, the CFAA's legislative history, and Congress's demonstrated intent to expand the CFAA's coverage to "combat computer crimes as they evolve." Booms, supra, at 557.

As discussed above, an employee violates the duty of loyalty owed to his or her employer when he or she "acquires adverse interests [to the employer] or is otherwise guilty of a serious breach of loyalty to the [employer]." Restatement (Second) of Agency § 112 (1958). In this case, Ms. Chambers accepted an externship at An & Renno, in part, because she aspired to start her own law firm and hoped to gain experience from a firm that specialized in counseling start-up companies. Sufficient facts exist to conclude that Ms. Chambers's interests became adverse to An & Renno the moment she resolved to email the firm's valuable form files to her personal computer in violation of the Employee Policy Manual and the explicit instructions of Ms. An. Ms. Chambers further breached her duty of loyalty to An & Renno when she used the standardized language from one of those form files to further her own practice and take one of An & Renno's clients.

In sum, we conclude that sufficient facts exist to find that Ms. Chambers acted "without authorization" in violation of the CFAA, and her motion for summary judgment was therefore improperly granted. Given this ruling, we do not need to reach the alternative argument made by An & Renno that Ms. Chambers also exceeded her authorized use by violating the law firm's computer-use policies. However, should this issue be reached on remand, we would note that we would be inclined to agree with

the First Circuit and hold that if an employee violates an employer's computer-use policies, that employee has exceeded the "authorized use" of that computer. For the foregoing reasons, the District Court's grant of summary judgment in favor of Ms. Chambers must be reversed and the matter remanded for further proceedings consistent with this opinion.

C. The District Court Erred in Applying the Totality of the Circumstances Test and Granting An & Renno's Motion for Summary Judgment

The Fair Labor Standards Act ("FLSA") establishes a minimum wage that all employers must pay employees within the confines of the Act. 29 U.S.C. § 206 (2012). The terms "employee" and "employ" are defined broadly in the statute——an "employee" is any individual employed by an employer, and to "employ" is to suffer or permit to work. 29 U.S.C. § 203 (2012).

In Walling v. Portland Terminal Co., 330 U.S. 148 (1947) ("Portland Terminal"), the Supreme Court interpreted these definitions in determining whether a railroad trainee was an "employee" within the meaning of the statute. The Court held that the trainee was not an employee of the railroad under the FLSA, as the railroad did not receive an "immediate advantage" from the work performed by the trainee. Id. at 153.

Consistent with the Court's holding in Portland Terminal, in 1975, the U.S. Department of Labor ("DOL"), Wage and Hour Division (which is charged with administering the FLSA under 29

U.S.C. § 204 (2012)) issued a six-factor test to determine whether a "trainee" is exempt from "employee" status under the Act. Wage & Hour Man. (BNA) 91:416 (1975). The six factors are: (1) the internship, even though it includes actual operation of the facilities of the employer, is similar to training which would be given in an educational environment; (2) the internship experience is for the benefit of the intern; (3) the intern does not displace regular employees but works under close supervision of existing staff; (4) the employer that provides the training derives no immediate advantage from the activities of the intern, and on occasion its operations may actually be impeded; (5) the intern is not necessarily entitled to a job at the conclusion of the internship; and (6) the employer and the intern understand that the intern is not entitled to wages for the time spent in the internship. Id. While most courts have adopted the six-factor text to some extent, they are split as to how much deference it deserves.

The Fifth Circuit has adopted the DOL six-factor test in its entirety, holding that all six criteria must be met for a trainee to be exempt from employee status under the FLSA. See Atkins v. General Motors Corp., 701 F.2d 1124, 1127-28 (5th Cir. 1983). In its wholesale adoption of the DOL test, the court reasoned that the DOL's interpretation is entitled to "substantial deference," as it is statutorily charged with

administering the FLSA. See id. This approach is consistent with Supreme Court precedent that urges courts to defer to agency interpretations. See United States v. Mead Corp., 533 U.S. 218, 235 (2001); see also Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837, 844 (1984).

Other circuits have taken a more flexible approach to applying the six-factor test. See e.g., Reich v. Parker Fire Protection Dist., 992 F.2d 1023, 1027 (10th Cir. 1993); Solis v. Laurelbrook Sanitarium & Sch., Inc., 642 F.3d 518, 525-26 (6th Cir. 2011). For example, the Eleventh Circuit has adopted an "economic realities" test, which focuses on whether a trainee's work bestows an economic benefit on the person on whose behalf the trainee's work is performed. Kaplan v. Code Blue Billing & Coding, Inc., 504 F. App'x 831, 834 (11th Cir. 2013). The Tenth Circuit has similarly adopted a flexible "totality of the circumstances" test, which treats the DOL's six-factors as "relevant but not conclusive" in determining whether a trainee is an employee. Reich, 992 F.2d at 1027.

Only the Sixth Circuit has abandoned the DOL six-factor test and instead adopted a "primary beneficiary" test, which is a multi-factor inquiry that asks which party received the primary benefit of the work performed by the trainee. Solis, 642 F.3d at 529. Yet, even this test considers some of the DOL factors, such as whether the trainee displaced paid workers and

whether the trainee received educational value. Id.

We are persuaded that the wholesale adoption of the DOL six-factor test is appropriate for many reasons. First, the DOL's all-or-nothing approach is consistent with the purpose and plain language of the FLSA; because the FLSA purposefully defines "employee" and "employ" very broadly, the test for qualifying for an exemption should be strict. Second, the all-or-nothing approach is the only approach that is consistent with numerous prior opinions of the DOL Wage and Hour Division, which explicitly state and consistently reiterate its commitment to strictly applying the six-factor test. Wage & Hour Man. (BNA) 91:416 (1975). Finally, this Court finds little support for An & Renno's argument that the DOL six-factor test is too stringent. To the contrary, we believe that use of the more flexible standards, such as the totality of the circumstances test, will likely result in inconsistent and unpredictable judicial outcomes, which should be avoided.

Applying the six-factor test, this Court is persuaded that the record contains sufficient facts to show that Ms. Chambers qualified as an employee. First, Ms. Chambers's externship experience was not similar to a typical academic environment. The majority of the work that she did was research and drafting simple legal documents for a paying client, as well as clerical and administrative work, including reorganizing the firm's form

files. These tasks are ones that would typically be done by paid junior associates at a law firm, not in a classroom, educational environment. Second, this Court disagrees with the District Court's assertion that the externship predominantly benefitted Ms. Chambers. An & Renno benefited greatly from the program by obtaining free labor from the externs, including substantive legal work that would have otherwise been done by paid attorneys. Third, the creation of the externship program, by its very nature, displaced paid employees; it replaced a program of paid summer associates. Fourth, the law firm also derived an immediate advantage from Ms. Chambers's externship, as she worked on multiple fee-generating matters. Finally, although the law firm's lawyers told Ms. Chambers at the start of the externship that she was not guaranteed a job, those formal declarations were belied by other facts, including her friend's statement that the firm's informal policy was to hire all its summer associates and the statements of the junior associates that she was a "shoe-in" for a job. Thus, it is not clear that Ms. Chambers understood that she was not entitled to a paid job at the end of her externship.

In sum, the undisputed facts do not show that all the criteria in the DOL's six-part test are met, meaning that Ms. Chambers does not fall within the "trainee" exception.

IV. CONCLUSION

As to Plaintiff-Appellant An & Renno's motion for summary judgment, the District Court erred when it applied the totality of the circumstances test and determined that Ms. Chambers was not an employee within the meaning of the FLSA. Instead, the District Court should have strictly applied the DOL's six-factor test. When that test is applied, it is clear that the record contains sufficient facts to show that Ms. Chambers was an employee within the meaning of the FLSA and thus entitled to wages for the work she did as an extern.

Likewise, the District Court erred when it adopted a narrow interpretation of the CFAA, held that Ms. Chambers neither acted "without authorization" nor "exceeded authorized use," and granted Defendant-Respondent Janille Chambers's motion for summary judgment. A broad agency-based interpretation of the CFAA better comports with the CFAA's legislative history and properly integrates agency-law principles into the analysis. Applying that interpretation, it is clear that the record contains sufficient facts to show that Ms. Chambers acted "without authorization" when she breached her duty of loyalty to An & Renno by emailing its form files to her home computer.

Based on the foregoing, the judgments below are REVERSED, and the matter is REMANDED for further proceedings consistent with this opinion.

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 2014

No. 14-93

AN & RENNO, LLP,

Petitioner,

v.

JANILLE CHAMBERS,

Respondent.

The petitions for writ of certiorari filed simultaneously by each party in the above-captioned matter are hereby joined and granted, limited to the following questions presented:

1. Did the District Court err in granting the Petitioner's summary judgment motion using the totality of the circumstances test to determine that a law-student-extern was not an "employee" within the meaning of the Fair Labor Standards Act, 29 U.S.C. § 201 et seq. (2012)?

2. Did the District Court err in granting the Respondent's summary judgment motion using a narrow interpretation of the Computer Fraud and Abuse Act, 18 U.S.C. § 1030 (2012), to determine that an employee neither acts "without authorization" nor "exceeds authorized use" by emailing information to her personal computer in violation of the employer's policies?