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**MEMORANDUM* OPINION OF
THE NINTH CIRCUIT COURT OF APPEALS
(FEBRUARY 16, 2018)**

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

MARIE CONFORTO,

Plaintiff-Appellant,

v.

RICHARD V. SPENCER,
Secretary, Department of the Navy;
DEPARTMENT OF THE NAVY,

Defendants-Appellees.

No. 16-55808

D.C. No. 3:12-cv-01316-JAH-BLM

Appeal from the United States District Court
for the Southern District of California
John A. Houston, District Judge, Presiding

Submitted February 12, 2018**
Pasadena, California

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

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

Before: BERZON and BYBEE, Circuit Judges,
and WOODCOCK,** District Judge.

Marie Conforto sued her employer, the Department of the Navy, for discrimination and retaliation under Title VII, 42 U.S.C. § 2000e, and the Age Discrimination in Employment Act, 29 U.S.C. § 621. At trial, a jury returned a verdict for the Navy. Conforto raises only two issues on appeal: (1) whether substantial evidence supports the jury's finding that the denial of her request to attend a training symposium was not an adverse employment action; and (2) whether the district court abused its discretion in excluding the testimony of her chiropractor, Dr. Rahmanian.

With respect to the first issue, Conforto failed to renew her motion for judgment as a matter of law under Federal Rule of Civil Procedure 50(b). “[A] post-verdict motion under Rule 50(b) is an absolute prerequisite to any appeal based on insufficiency of the evidence.” *Nitco Holding Corp. v. Boujikian*, 491 F.3d 1086, 1089 (9th Cir. 2007) (citing *Unitherm Food Sys., Inc. v. Swift-Eckrich, Inc.*, 546 U.S. 394 (2006)). Conforto has therefore waived any challenge to the sufficiency of the evidence. *See id.* at 1089.¹

We need not address the merits of Conforto's second issue because she has not identified any way

*** The Honorable John A. Woodcock, Jr., United States District Judge for the district of Maine, sitting by designation.

¹ Conforto argues there was no judgment below. Although the district court did not enter judgment in a separate document as required by Federal Rule of Civil Procedure 58, judgment was deemed entered 150 days after entry of the jury's verdict on the civil docket. Fed. R. Civ. P. 58(c)(2).

in which the exclusion of Dr. Rahmanian's testimony prejudiced her, and indeed, it is clear the district court's evidentiary ruling did not impact the jury's verdict. *See U.S. Sec. & Exch. Comm'n v. Jensen*, 835 F.3d 1100, 1116 (9th Cir. 2016) ("Evidentiary rulings are reviewed for abuse of discretion, and reversed only if the decision below was both erroneous and prejudicial.").

AFFIRMED.

ORDER OF THE NINTH CIRCUIT DENYING
PETITION FOR REHEARING
(APRIL 3, 2018)

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

MARIE CONFORTO,

Plaintiff-Appellant,

v.

RICHARD V. SPENCER,
Secretary, Department of the Navy;
DEPARTMENT OF THE NAVY,

Defendants-Appellees.

No. 16-55808

D.C. No. 3:12-cv-01316-JAH-BLM
Southern District of California, San Diego

Before: BERZON and BYBEE, Circuit Judges,
and WOODCOCK,* District Judge.

Appellant's petition for rehearing, filed March
30, 2018, is **DENIED**.

* The Honorable John A. Woodcock, Jr., United States District
Judge for the district of Maine, sitting by designation.