



CLERK OF THE COURT

1 Mark R. Thierman, Nev. Bar No. 8285
mark@thiermanbuck.com
2 Joshua D. Buck, Nev. Bar No. 12187
josh@thiermanbuck.com
3 Leah L. Jones, Nev. Bar No. 13161
leah@thiermanbuck.com
4 THIERMAN BUCK LLP
7287 Lakeside Drive
5 Reno, Nevada 89511
6 Tel. (775) 284-1500
7 Fax. (775) 703-5027

8 *Attorneys for Plaintiff*

9 **DISTRICT COURT**
CLARK COUNTY, NEVADA

10 JOHN W. NEVILLE, JR., on behalf of
11 himself and all others similarly situated,

12 Plaintiff,

13 vs.

14 TERRIBLE HERBST, INC., and DOES 1
15 through 50, inclusive,

16 Defendant(s).

Case No.: A-15-728134-C

Dept. No.: V

**FIRST AMENDED CLASS ACTION
COMPLAINT**

**(EXEMPT FROM ARBITRATION
PURSUANT TO NAR 5)**

- 1) Failure to Pay Minimum Wages in Violation of the Nevada Constitution;
- 2) Failure to Compensate for All Hours Worked in Violation of NRS 608.140 and 608.016;
- 3) Failure to Pay Overtime in Violation of NRS 608.140 and 608.018;
- 4) Failure to Timely Pay All Wages Due and Owing in Violation of NRS 608.140 and 608.020-050; and
- 5) Breach of Contract.

JURY TRIAL DEMANDED

17
18
19
20
21
22
23
24 COMES NOW Plaintiff JOHN W. NEVILLE, JR., on behalf of himself and all others
25 similarly situated and alleges the following:

26 All allegations in the Complaint are based upon information and belief except for those
27 allegations that pertain to the Plaintiff named herein and his counsel. Each allegation in the
28

THIERMAN BUCK LLP
7287 Lakeside Drive
Reno, NV 89511
(775) 284-1500 Fax (775) 703-5027
Email info@thiermanbuck.com www.thiermanbuck.com

1 Complaint either has evidentiary support or is likely to have evidentiary support after a
2 reasonable opportunity for further investigation and discovery.

3 **JURISDICTION AND VENUE**

4 1. The Nevada state court has jurisdiction over the state law claims alleged herein
5 because the amount in controversy exceeds \$10,000 and because Plaintiff has a private right of
6 action for minimum wages for all hours worked pursuant to Section 16 of Article 15 of the
7 Nevada State Constitution. Article 15, Section 16(B) of the Constitution of the State of Nevada
8 states in relevant part: “An employee claiming violation of this section may bring an action
9 against his or her employer in the courts of this State to enforce the provisions of this section
10 and shall be entitled to all remedies available under the law or in equity appropriate to remedy
11 any violation of this section, including but not limited to back pay, damages, reinstatement or
12 injunctive relief. An employee who prevails in any action to enforce this section shall be
13 awarded his or her reasonable attorney’s fees and costs.”

14 2. In addition, this court has jurisdiction over the Nevada statutory claims alleged
15 herein because a party seeking to recover unpaid wages has a private right of action pursuant to
16 Nevada Revised Statute (“NRS”) sections 608.050, 608.250, and 608.140. *See Lucatelli v.*
17 *Texas De Brazil (Las Vegas) Corp.*, 2:11-CV-01829-RCJ, 2012 WL 1681394 (D. Nev. May 11,
18 2012) (“[T]he Nevada Supreme Court recently held that NRS § 608.040 contains a private
19 cause of action because it is “illogical” that a plaintiff who can privately enforce a claim for
20 attorneys' fees under NRS § 608.140 cannot privately enforce the underlying claim the fees
21 arose from.”); *Busk v. Integrity Staffing Solutions, Inc.*, 2013 U.S. App. LEXIS 7397 (9th Cir.
22 Nev. Apr. 12, 2013) (“Nevada Revised Statute § 608.140 does provide a private right of action
23 to recoup unpaid wages.”); *Doolittle v. Eight Judicial Dist. Court*, 54 Nev. 319, 15 P.2d 684;
24 1932 Nev. LEXIS 34 (Nev. 1932) (recognizing that former employees have a private cause of
25 action to sue their employer (as well as third party property owners where the work was
26 performed) for wages and waiting penalties under NRS 608.040 and NRS 608.050).

1 **paid employees employed by Defendant, in the State of Nevada within six years**
2 **immediately preceding the filing of this action until the date of judgement after trial.**

3 15. **The Class is Sufficiently Numerous.** Upon information and belief, Defendant
4 employs, and has employed, in excess of 500 Class Members within the applicable statute of
5 limitations. Because Defendant is legally obligated to keep accurate payroll records, Plaintiff
6 alleges that Defendant's records will establish the identity and ascertainably of members of the
7 Class as well as their numerosity.

8 16. **Plaintiff's Claims are Typical to Those of Fellow Class Members.** Each Class
9 Member is and was subject to the same practices, plans, and/or policies as Plaintiff, as follows:

10 (1) Defendant required Plaintiff and all Class Members to engage in pre- and post-shift
11 activities without compensation because of a companywide policy of rounding time to the
12 nearest 15 minute increment while at the same time requiring, suffering or permitting
13 employees to perform work during the time uncompensated due to rounding; (2) as a result of
14 working employees without compensation due to rounding that favored the employer and did
15 not pay for time actually worked, Defendant failed to pay Plaintiff and Class Members who are
16 former employees all wages due and owing at the time of their termination or separation from
17 employment ; and (3) Defendant failed to properly pay Plaintiff and all Class Members the
18 promised amount for all hours worked and for all hours worked on the graveyard shift.

19 17. **Common Questions of Law and Fact Exist.** Common questions of law and fact
20 exist and predominate as to Plaintiff and the Class, including, without limitation the following:

21 (1) Whether the time recorded by Plaintiff and all other class Members but not paid due to a
22 rounding policy is compensable under Nevada law; (2) Whether Defendant failed to pay a
23 premium rate of one and one half times their regular rate for all hours worked in excess of 40
24 hours a week, and if they were paid less than one and one half the minimum wage, then for all
25 hours worked in excess of 8 hours a day; (3) Whether Plaintiff and Class Members were
26 compensated for "all time worked by the employee at the direction of the employer, including
27 time worked by the employee that is outside the scheduled hours of work of the employee"
28 pursuant to the Nevada Administrative Code ("NAC") 608.115(1), and NRS 608.016; (4)

1 entitled to all remedies available under the law or in equity appropriate to remedy any violation
2 of the section, including but not limited to back pay, damages, reinstatement or injunctive
3 relief. An employee who prevails in any action to enforce the section shall be awarded her or
4 her reasonable attorney's fees and costs."

5 22. Defendant failed to pay Plaintiff and the Class any wages for the hours that they
6 unlawfully rounded off of employees' time cards. Indeed, Defendant paid Plaintiff and the
7 Class zero dollars (\$0.00) for the hours that they spent engaging in pre- and post-shift activities
8 because of Defendant's rounding policy. Zero dollars (\$0.00) is less than the Nevada's
9 minimum wage of \$7.25/\$8.25.

10 23. Because there is no statute of limitations explicitly applicable to violations of the
11 constitution, the four year "catch all" provisions of NRS 11.220 apply.

12 24. Wherefore, Plaintiff demands for himself and for Class Members payment by
13 Defendant at the minimum wage for all hours that were unlawfully rounded off employee's time
14 cards for the four years immediately preceding the filing of this complaint until the date of
15 judgement after trial, together with attorneys' fees, costs, and interest as provided by law.

16 **SECOND CAUSE OF ACTION**

17 **Failure to Pay Wages for All Hours Worked in Violation of NRS 608.140 and 608.016**

18 (On Behalf of Plaintiff and all members of the Class)

19 25. Plaintiff realleges and incorporates by the reference all the paragraphs above in
20 the Complaint as though fully set forth herein.

21 26. Nevada Revised Statutes ("NRS") 608.140 provides that an employee has a
22 private right of action for unpaid wages.

23 27. NRS 608.016 entitled, "Payment for each hour of work; trial or break-in period
24 not excepted" states that: "An employer shall pay to the employee wages for each hour the
25 employee works. An employer shall not require an employee to work without wages during a
26 trial or break-in period."

27 28. Nevada Administrative Code ("NAC") 608.115(1), entitled "Payment for time
28 worked. (NRS 607.160, 608.016, 608.250)" states: "An employer shall pay an employee for all

1 time worked by the employee at the direction of the employer, including time worked by the
2 employee that is outside the scheduled hours of work of the employee.”

3 29. Defendant’s system of rounding of hours systematically worked in favor of the
4 employer and against the employee is not permitted under Nevada law.

5 30. Because of this unlawful “rounding system” Defendant did not pay employees
6 for all time worked before the commencement of the employee’s regular shift start time nor all
7 time worked after the end of their regularly scheduled shift time.

8 31. By utilizing an improper system of rounding time records, Defendant did not pay
9 Plaintiff and the Class for every hour worked, but required, suffered or permitted them to work
10 up to seven minutes a day at the beginning of each shift and up to seven minutes a day at the
11 end of each shift.

12 32. Wherefore, Plaintiff demands for himself and for all Class Members payment by
13 Defendant at their regular rate of pay, or any applicable overtime premium rate, whichever is
14 higher, for the times worked each shift but not paid, for three years immediately preceding the
15 filing of this complaint until the date of judgement after trial, together with attorneys’ fees,
16 costs, and interest as provided by law.

17 **THIRD CAUSE OF ACTION**

18 **Failure to Pay Overtime Wages in Violation of NRS 608.140 and 608.018**

19 (On Behalf of Plaintiff and all members of the Class)

20 33. Plaintiff realleges and incorporates by this reference all the paragraphs above in
21 this Complaint as though fully set forth herein.

22 34. NRS 608.140 provides that an employee has a private right of action for unpaid
23 wages.

24 35. NRS 608.018(1) provides as follows:

25 An employer shall pay 1 1/2 times an employee’s regular wage
26 rate whenever an employee who receives compensation for
27 employment at a rate less than 1 1/2 times the minimum rate
28 prescribed pursuant to NRS 608.250 works: (a) More than 40
hours in any scheduled week of work; or (b) More than 8 hours in
any workday unless by mutual agreement the employee works a

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

scheduled 10 hours per day for 4 calendar days within any scheduled week of work.

36. NRS 608.018(2) provides as follows:

An employer shall pay 1 1/2 times an employee's regular wage rate whenever an employee who receives compensation for employment at a rate not less than 1 1/2 times the minimum rate prescribed pursuant to NRS 608.250 works more than 40 hours in any scheduled week of work

37. Defendant's system of rounding of hours systematically worked in favor of the employer and against the employee is not permitted under Nevada law.

38. Because of this unlawful "rounding system" Defendant did not pay Plaintiff and the Class for all time worked before the commencement of the employee's regular shift start time nor all time worked after the end of their regularly scheduled shift time.

39. By utilizing an improper system of rounding time records, Defendant did not pay Plaintiff and Class Member daily overtime premium a regular rate of less than one and one half times the minimum wage premium pay and, failed to pay a weekly premium overtime rate of pay of time and one half their regular rate for all members of the Class Members who worked in excess of forty (40) hours in a week in violation of NRS 608.140 and 608.018.

40. Wherefore, Plaintiff demands for himself and for the Class Members payment by Defendant at one and one half times their "regular rate" of pay for all hours worked in excess of eight (8) hours in a workday for those class members whose regular rate of pay did not exceed the one and one half the minimum wage set by law, and premium overtime rate of one and one half their regular rate for all class members who worked in excess of forty (40) hours a workweek during the Class Period together with attorneys' fees, costs, and interest as provided by law.

///
///
///
///
///

1 **FOURTH CAUSE OF ACTION**

2 **Failure to Timely Pay All Wages Due and Owing Upon Termination Pursuant to NRS**

3 **608.140 and 608.020-.050**

4 (On Behalf of Plaintiff and the Class)

5 41. Plaintiff realleges and incorporates by reference all the paragraphs above in the
6 Complaint as though fully set forth herein.

7 42. NRS 608.140 provides that an employee has a private right of action for unpaid
8 wages.

9 43. NRS 608.020 provides that “[w]henver an employer discharges an employee,
10 the wages and compensation earned and unpaid at the time of such discharge shall become due
11 and payable immediately.”

12 44. NRS 608.040(1)(a-b), in relevant part, imposes a penalty on an employer who
13 fails to pay a discharged or quitting employee: “Within 3 days after the wages or compensation
14 of a discharged employee becomes due; or on the day the wages or compensation is due to an
15 employee who resigns or quits, the wages or compensation of the employee continues at the
16 same rate from the day the employee resigned, quit, or was discharged until paid for 30-days,
17 whichever is less.”

18 45. NRS 608.050 grants an “employee lien” to each discharged or laid-off employee
19 for the purpose of collecting the wages or compensation owed to them “in the sum agreed upon
20 in the contract of employment for each day the employer is in default, until the employee is paid
21 in full, without rendering any service therefor; but the employee shall cease to draw such wages
22 or salary 30 days after such default.”

23 46. By failing to pay Plaintiff and all members of the Class who are former
24 employees for all hours worked in violation of state law, at the correct legal rate, Defendant has
25 failed to timely remit all wages due and owing to Plaintiff and all members of the Class who are
26 former employees.

27 47. Despite demand, Defendant willfully refuses and continues to refuse to pay
28 Plaintiff and all Class Members who are former employees.

1 supervisor prior to working overtime may result in disciplinary action, up to and
2 including termination of employment.

3 “Exempt employees are expected to work as much of each work day as is
4 necessary to complete their job responsibilities.”

5 53. Defendant breached its agreement with Plaintiff and Class Members by failing to
6 compensate them for all hours worked, namely, for not paying for all hours reported truthfully
7 as worked, and by not paying overtime required by law on such unpaid hours, where applicable.

8 54. As a result of Defendant’s breach, Plaintiff and Class Members have suffered
9 economic loss that includes lost wages and interest.

10 55. The statute of limitations for breach of a written agreement is six years.

11 56. Wherefore, Plaintiff demands for himself and for Class Members that Defendant
12 pay Plaintiff and Class Members their agreed upon rate of pay for all hours worked off the clock
13 during the relevant time period alleged herein together with attorney’s fees, costs, and interest
14 as provided by law.

15 57. Defendant further offered to pay Plaintiff and all Class Members who worked the
16 graveyard shift at a heightened hourly rate of \$8.50 per hour. *See* Exhibit 4 attached hereto.
17 Plaintiff and all Class Members understood that they would be compensated at this rate of pay
18 for the hours they worked during the graveyard shift. Defendant, however, paid Plaintiff and,
19 upon information and belief, all other Class Members who worked the graveyard shift at the
20 lower base rate of \$8.00 per hour for all hours worked during the graveyard shift. Defendant
21 thus breached its agreement with Plaintiff and Class Members who worked the graveyard shift
22 to pay them \$8.50 for graveyard shift hours.

23 58. As a result of Defendant’s breach, Plaintiff and Class Members who worked the
24 graveyard shift have suffered economic loss that includes lost wages and interest.

25 59. The statute of limitations for breach of a written agreement is six years.

26 60. Wherefore, Plaintiff demands for himself and for Class Members who worked
27 the graveyard shift that Defendant pay Plaintiff and Class Members who worked the graveyard
28 shift their agreed upon rate of pay for all hours worked during the graveyard shift during the

1 relevant time period alleged herein together with attorney's fees, costs, and interest as provided
2 by law.

3 **JURY TRIAL DEMANDED**

4 Plaintiff hereby demands a jury trial pursuant to Nevada Rule of Civil Procedure 38.

5 **PRAYER FOR RELIEF**

6 Wherefore Plaintiff, individually and on behalf of all Members of the Class alleged
7 herein, prays for relief as follows:

- 8 1. For an order certifying the action as a traditional class action under Nevada Rule
9 of Civil Procedure Rule 23 on behalf of all members of the Class;
- 10 2. For an order appointing Plaintiff as the Representative of the Class and his
11 counsel as Class Counsel for the Class;
- 12 3. For damages according to proof for minimum wage rate, the regular rate or the
13 overtime premium rate, if applicable, for all hours worked but not paid due the
14 Defendant's so called "rounding."
- 15 4. For waiting time penalties pursuant to NRS 608.140 and 608.040-.050;
- 16 5. For damages pursuant to Defendant's breach of contract;
- 17 6. For interest as provided by law at the maximum legal rate;
- 18 7. For reasonable attorneys' fees authorized by statute;
- 19 8. For costs of suit incurred herein;
- 20 9. For pre-judgment and post-judgment interest, as provided by law; and
- 21 10. For such other and further relief as the Court may deem just and proper.

22 DATED: November 24, 2015

Respectfully Submitted,

23 **THIERMAN BUCK LLP**

24 /s/Joshua D. Buck

25 Mark R. Thierman

26 Joshua D. Buck

Leah L. Jones

27 Attorneys for Plaintiff

EXHIBIT 1

EXHIBIT 1

January 15, 2014

To All:

We must adhere to the 7 minute rule. If you are scheduled at 6am do not come to work at 5am please come to work 7 minutes before your shift. The same goes for clocking out. This applies to all shifts.

The Company is encouraging a reduction in overtime, so we cannot start our shifts early. Please remember that you must always be clocked in when performing work.

Also, if you leave the premise, to cash a check or get lunch you must clock in and out. You cannot leave the premise being clocked in.

Thanks,
Mitch

EXHIBIT 2

EXHIBIT 2

Work week Wednesday to Tuesday
Weekly Time Clock Exception Report - Hourly Employees

Date:

Department: Store 278

Name:

John Veri/ke

Day	Date	Description	Time In	Time Out	Hours
Wednesday		<i>off</i>	: Am/Pm	: Am/Pm	
Thursday		<i>off</i>	: Am/Pm	: Am/Pm	
Friday	6/27	<i>DAY</i>	5:53 Am/Pm	2:05 Am/Pm	
Saturday	6/28	<i>DAY</i>	5:54 Am/Pm	2:02 Am/Pm	
Sunday	6/29	<i>SWING</i>	1:53 Am/Pm	10:07 Am/Pm	
Monday	6/30	<i>Grade</i>	9:53 Am/Pm	6:03 Am/Pm	
Tuesday	7/1	<i>Grade</i>	9:53 Am/Pm	6:02 Am/Pm	
Wednesday	7/2	<i>off</i>	: Am/Pm	: Am/Pm	
Thursday	7/3	<i>off</i>	9:53 Am/Pm	: Am/Pm	
Friday	7/4	<i>off</i>	9:53 Am/Pm	6:00 Am/Pm	
Saturday	7/5	<i>Swing</i>	1:53 Am/Pm	10:06 Am/Pm	
Sunday	7/6	<i>Swing</i>	1:53 Am/Pm	10:06 Am/Pm	
Monday	7/7	<i>Grade</i>	9:53 Am/Pm	6:05 Am/Pm	
Tuesday	7/8	<i>Grade</i>	9:53 Am/Pm	6:03 Am/Pm	
O/T Hours					
Total					

Description

W-Worked off Premises H-Pay Holiday (Manager's Discretion)
F-Forget Badge N-New Hire M-Missed Punch O-Other (Please explain)

Employee's Signature

Supervisor Approval

John Veri/ke

Employee ID
0220335
278

Employee Name
JOHN W. NEVILLE JR

Social Sec. No.
XXX-XX-6836

Date
07/16/2014

Start Per.
June 25, 2014

End Per.
July 8, 2014

Vacation Hours Available

Sick Time Available

PAY

TAXES

DEDUCTIONS

BENEFITS

Code	Rate	Hours	Amount	Code	Withheld	YTD	Code	Amount	YTD	Code	Amount	YTD
HOURLY	\$8.00	80.00	\$640.00	Med.	\$9.28	\$98.14						
				S.S.	\$39.68	\$419.62						
				FIT	\$42.78	\$443.15						
Totals			80.00	\$640.00								

Gross YTD \$6,768.00

Net YTD \$5,807.09

Net Pay \$548.26



TERRIBLE HERBST, INC.

NSB - PAYROLL ACCOUNT

P. O. BOX 93417
LAS VEGAS, NV 89193

Nevada State Bank
PO BOX 990
LAS VEGAS, NV 89125-0990

425935
94-77/1224

Pay **Five Hundred Forty Eight Dollars and 26 Cents**

DATE
Jul 16, 2014

AMOUNT
\$548.26

to the Order of:

JOHN W. NEVILLE JR
3264 FOSSIL SPRINGS ST
LAS VEGAS, NV 89135

EXHIBIT 3

EXHIBIT 3



"The Best Bad Guy In The West"

EMPLOYEE HANDBOOK
2010 UPDATE

The Company prohibits off-the-clock work. The Company expects to pay you for all time worked and expects you to make sure that all time you work is properly recorded.

Exempt employees may be required to record their time worked and report full days of absence from work due to vacation.

Any errors in your pay should be reported immediately to your supervisor, who will work with Human Resources or Payroll to correct errors. Normally corrections will be reflected on your next regular paycheck.

Breaks

You are entitled to one 10-minute paid break for each four hours worked or major fraction thereof. Smoking breaks are to be included in your authorized breaks. Meal breaks are to be determined by your departmental schedules. Breaks must be taken in a designated break area.

Overtime

As necessary, you may be required to work overtime. All overtime work must be previously authorized by a supervisor. The Company provides compensation for all overtime hours worked by non-exempt employees in accordance with state and federal law. Failure to obtain authorization from a supervisor prior to working overtime may result in disciplinary action, up to and including termination of employment.

Exempt employees are expected to work as much of each work day as is necessary to complete their job responsibilities.

Lost or Stolen Paychecks

Please report a lost or stolen paycheck to Human Resources immediately. A new paycheck will be issued within 24 hours after the stop payment process has been completed.

Tip Reporting

In accordance with Internal Revenue Service requirements, tipped employees must report all tips for income tax purposes. The Company participates in the IRS's tip compliance agreement program and a standard amount is reported for you to the IRS through the payroll system. It is your responsibility to report all income to the IRS, so if you choose not to participate in the tip compliance agreement program, see Human Resources about obtaining an Employee Daily Record of Tips booklet. This booklet provides the proper forms that you need to account for daily tip earnings. Tips booklets may be turned into Payroll on a weekly basis prior to the end of the pay period.

EXHIBIT 4

EXHIBIT 4

Professional Management

MANAGEMENT JOBS!

**No Resume?
No Problem!**

Master Match assigns a professional to hand-match each job seeker with each employer!

This is a FREE service!

Simply create your profile online and, for the next 180 days, our professionals will match your profile to employers who are hiring right now!

CREATE YOUR PROFILE NOW!

Reviewjournal.com/jobs

**No Resume
Needed!**

Use our convenient Online form today so our professionals can get started matching you with employers that are hiring NOW!

Choose from one of the following positions to enter your information:

- Bank Branch Manager
- Construction Supervisor
- General Management
- Hospitality Manager
- Marketing Manager
- Office Manager
- Property Management
- Retail Management
- Retail Management
- Sales Manager

WANTED

We are in the business of helping find solutions to fit our customer's needs. Our Branch Manager in Las Vegas is a leader who has managed a sales and installation operation (or similar business), has P&L exp., understands marketing and values customers. Must have excellent communication, computer and people skills. Please send resume to jobs@reviewjournal.com

Real Estate

Agents
REAL ESTATE ASSOCIATES
Need 10 more individuals.
Training, leads and support.
Classes start every week.
Income potential \$100,000
year. Call Dottie Leal, Broker
702-733-7382



www.e21consolidated.com

APARTMENT MGR WANTED
Min 5 yrs exp req. Sal + rent +
util + insur benefit. Live on site.
Fax resume to 702-233-0752

Retail



**Available Now
in Hiring
Cashiers Clerks**

for all metropolitan store locations
See Store Manager or
Employment Center for Details
Come join The Best in the West!

- A few great reasons to talk to us:
- \$9/hr. starting wage, \$0.50/hr. Guaranteed Benefits.
- Opportunities for Advancement
- All shifts avail.
- Full-Time

Apply in person at
any available location
or Available Now/JETT
Employment Center
5440 W. Russell Road
Las Vegas, NV 89118

Hours: Mon. thru Fri.
8:30 a.m. - 2:00 p.m.
Recruiting Hours: 10:00 a.m. - 5:00 p.m.



Sales