THIERMAN BUCK LLP7287 Lakeside DriveReno, NV 89511(775) 284-1500 Fax (775) 703-5027fo@thiermanbuck.com www.thiermanbuck.com	1 2 3 4 5 6 7 8 9 10 11 12 13 14	Mark R. Thierman, Nev. Bar No. 8285 mark@thiermanbuck.com Joshua D. Buck, Nev. Bar No. 12187 josh@thiermanbuck.com Leah L. Jones, Nev. Bar No. 13161 leah@thiermanbuck.com THIERMAN BUCK LLP 7287 Lakeside Drive Reno, Nevada 89511 Tel. (775) 284-1500 Fax. (775) 703-5027 Christian Gabroy, Nev. Bar No. 8805 GABROY LAW OFFICES christian@gabroy.com 170 S. Green Valley Pkwy Henderson, NV 89012 Tel. (702) 259-7777 Fax. (702) 259-7774 Attorneys for Plaintiff DISTRIC	T COURT					
THIERMAN B 7287 Lakesid Reno, NV (775) 284-1500 Fax. @thiermanbuck.com	15	CLARK COUNTY, NEVADA						
THI 7 (775) 28 Email info@thiem	 16 17 18 19 20 21 22 23 24 25 26 27 28 	JACOB RACHMEL, on behalf of himself and all others similarly situated, Plaintiff, vs. ADT LLC; and DOES 1 through 50, inclusive, Defendant(s). COMES NOW Plaintiff JACOB RACH situated and alleges the following:	 Case No.: A-17-759608-C Dept. No.: Department 27 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 Timely Pay All Wages Due and Owing in Violation of NRS 608.020-050 and 608.140. JURY TRIAL DEMANDED MEL, on behalf of himself and all others similarly 					
		- 1 - CLASS ACTION COMPLAINT Case Number: A-17-759608-C						

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3mail info@thiermanbuck.com www.thiermanbuck.com 11 775) 284-1500 Fax (775) 703-5027 **THIERMAN BUCK LLP** 12 '287 Lakeside Drive Reno, NV 89511 13 14 15 16

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All allegations in the Complaint are based upon information and belief except for those allegations that pertain to the Plaintiff named herein and his counsel. Each allegation in the 3 Complaint either has evidentiary support or is likely to have evidentiary support after a reasonable 4 opportunity for further investigation and discovery.

JURISDICTION AND VENUE

1. This Court has original jurisdiction over the state law claims alleged herein because the amount in controversy exceeds \$10,000 and a party seeking to recover unpaid wages has a private right of action pursuant to the Nevada Constitution, Article 15 Section 16, and Nevada Revised Statute ("NRS") sections 608.050 and 608.140. See Lucatelli v. Texas De Brazil (Las Vegas) Corp., 2:11-CV-01829-RCJ, 2012 WL 1681394 (D. Nev. May 11, 2012) ("[T]he Nevada Supreme Court recently held that NRS § 608.040 contains a private cause of action because it is "illogical" that a plaintiff who can privately enforce a claim for attorneys' fees under NRS § 608.140 cannot privately enforce the underlying claim the fees arose from."); Busk v. Integrity Staffing Solutions, Inc., 2013 U.S. App. LEXIS 7397 (9th Cir. Nev. Apr. 12, 2013) ("Nevada Revised Statute § 608.140 does provide a private right of action to recoup unpaid wages."); Doolittle v. Eight Judicial Dist. Court, 54 Nev. 319, 15 P.2d 684; 1932 Nev. LEXIS 34 (Nev. 1932) (recognizing that former employees have a private cause of action to sue their employer (as well as third party property owners where the work was performed) for wages and waiting penalties under NRS 608.040 and NRS 608.050). Plaintiff also claims a private cause of action to foreclose a lien against the property owner for wages due pursuant to NRS 608.050.

21 2. Venue is proper in this Court because one or more of the Defendants named herein 22 maintains a principal place of business or otherwise is found in this judicial district and many of the acts complained of herein occurred in Clark County, Nevada. 23

PARTIES

25 3. Plaintiff JACOB RACHMEL (hereinafter "Plaintiff" or "RACHMEL") is a natural person who is and was a resident of the State of Nevada and has been employed by 26 27 Defendant as a non-exempt hourly employee from April 2015 to the present.

2 located at 1501 Yamato Road, Boca Raton, Florida, 33431 3 5. The Defendant named herein is the employers of the Plaintiff and all Class Members alleged herein. 4 6. The Defendant us an "employer" engaged in commerce under the provisions of 5 NRS 608.011. 6 7. The identity of DOES 1-50 is unknown at the time and the Complaint will be 7 amended at such time when the identities are known to Plaintiff. Plaintiff is informed and believes 8 9 that each Defendants sued herein as DOE is responsible in some manner for the acts, omissions, 3mail info@thiermanbuck.com www.thiermanbuck.com 10 or representations alleged herein and any reference to "Defendant," "Defendants," or "ADT" herein shall mean "Defendants and each of them." 11 12 **FACTUAL ALLEGATIONS** 8. 13 Plaintiff was employed a salesperson by ADT. 9. ADP classified Plaintiff as an exempt outside sales employee and paid Plaintiff on 14 15 a commission basis. As a result, Plaintiff was not compensated overtime when he worked over 16 40 hours in a workweek. 17 10. Regardless of the number of hours worked by Plaintiff, ADP required that Plaintiff 18 only record that Plaintiff worked 40 hours per workweek. ADP required all of its salespersons to 19 report approximately the same number of hour regardless of the number of hours actually worked. This requirement to underreport hours worked is common to all salespersons in Nevada. 20 21 11. Plaintiff worked, on average, approximately 60 hours per workweek. Despite 22 working this many hours, Plaintiff was instructed by ADP to only record that he worked 40 hours. 12. 23 Even though Plaintiff was compensated on a commission basis, he was paid a 24 "minimum wage guarantee" when the amount of his compensation fell below the minimum wage 25 when based on a 40 hour workweek. The problem was that Plaintiff did not work a 40 hour workweek and thus is owed the minimum wages for the additional hours that he was required to 26 27 work but for which he was required to not report. 28 - 3 -

CLASS ACTION COMPLAINT

Defendant ADT LLC is a foreign corporation with its principle place of business

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1 13. ADT owes Plaintiff \$434.37 in minimum wages for the hours that he worked 2 between pay periods ending January 20, 2017 to February 10, 2017 ("Time Period").¹ During the 3 Time Period, Plaintiff did not earn the minimum wages for pay periods ending January 20, 4 January 27, and February 10. His effective hourly rate (the pay he received when divided by his 5 actual hours worked) for those pay periods was only \$5.57, \$6.44, and \$5.50, respectively. These 6 rates fall well below both of Nevada's minimum wage tier amounts of \$8.25 and \$7.25.

14. Upon information and belief, ADP similarly deprives all other Nevada sales employees their minimum wages for the actual hours that they work.

CLASS ACTION ALLEGATIONS

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

16. Plaintiff brings this action on behalf of himself and all other similarly situated employees as a class action under Rule 23 of the Nevada Rules of Civil Procedure.

17. The **Nevada Minimum Wage Class** is defined as "All ADT salespersons employed by Defendants in the state of Nevada at any time within 2 years from the filing of this complaint until judgment."

18. The **Waiting Time Penalty Subclass** is defined as "All Nevada Minimum Wage Class who are former employees."

19. Class treatment is appropriate under Rule 23's class certification mechanism because:

a. <u>The Classes are Sufficiently Numerous</u>: Upon information and belief, Defendants employ, and have employed, in excess of 200 Nevada Minimum Wage Class Members and Waiting Time Penalty Subclass Members within the applicable time period. Because Defendants are legally obligated to keep accurate payroll records, Plaintiff alleges that Defendants' records will establish the members of these Classes as well as their numerosity.

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²⁸ Plaintiff was paid on a weekly basis until sometime on or about the middle of May 2017 when ADT began paying Plaintiff on a bi-weekly basis.

b. <u>Plaintiff's Claims is Typical to Those of Fellow Class Members</u>: Each Class Member is and was subject to the same practices, plans, or policies as Plaintiff: (1) Whether Defendants' failed to compensate Plaintiff and Nevada Minimum Wage Class Members at least the applicable minimum wage for all the hours class members worked; and (2) Whether Plaintiff and members of the Waiting Time Penalty Subclass are entitled to waiting time penalties for the failure to pay them minimum owed.

c. <u>Common Questions of Law and Fact Exist</u>: Common questions of law and and fact exist and predominate as to Plaintiff and the Class Members, including, without limitation: (1) Whether Defendants' policy of requiring Plaintiff and Minimum Wage Class Members to under report their hours worked deprived them of the minimum wages for all the hours that they worked; and Whether Defendants failed to pay Plaintiff and the Waiting Time Penalty Subclass Members all their wages due and owing in violation of NRS 608.020-050.

d. <u>Plaintiff is Adequate Representative of the Class</u>: Plaintiff will fairly and adequately represent the interests of the Class because Plaintiff is a member of all the Classes, he has issues of law and fact in common with all members of the Classes, and his interests are not antagonistic to Class members. Plaintiff and his counsel are aware of their fiduciary responsibilities to Class Members and are determined to discharge those duties diligently by vigorously seeking the maximum possible recovery for Class Members.

e. <u>Common Issues Predominate/Superior Mechanism of Class Action</u>: A class action is superior to other available means for the fair and efficient adjudication of this controversy. Each Class Member has been damaged and is entitled to recovery by reason of Defendants' illegal policy and/or practice of failing to compensate its employees in accordance with Nevada wage and hour law. The prosecution of individual remedies by each Class Member will tend to establish inconsistent standards of conduct for Defendants and result in the impairment of Class Members' rights and the disposition of their interest through actions to which they were not parties.

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this Complaint as though fully set forth herein. 21. Article 15 Section 16 of the Nevada Constitution sets forth the requirements the minimum wage requirements in the State of Nevada and further provides that "[t]he provisions of this section may not be waived by agreement between an individual employee and an employer.... An employee claiming violation of this section may bring an action against his or her employer in the courts of this State to enforce the provisions of this section and shall be entitled to all remedies available under the law or in equity appropriate to remedy any violation of this section, including but not limited to back pay, damages, reinstatement or injunctive relief. An employee who prevails in any action to enforce this section shall be awarded his or her reasonable attorney's fees and costs."

22. Nevada Revised Statute ("NRS") 608.016 requires that "an employer shall pay to the employee wages for each hour the employee works." See also NAC 608.115 ("An employer shall pay an employee for all time worked by the employee at the direction of the employer, including time worked by the employee that is outside the scheduled hours of work of the employee."). This includes time spent travelling in between work assignments. See NAC 608.130(2)(a) ("Travel by an employee: [] Is considered to be time worked by the employee: (1) If the travel is between different work sites during a workday; or (2) If the employee is providing transportation for another employee on behalf of an employer who offers transportation for the convenience of his employees.").

25 23. As alleged herein, pursuant to Defendant's policy and practice of requiring 26 Plaintiff and members of the Minimum Wage Class to under-report their hours worked, 27 Defendant has failed to compensate Plaintiff and members of the Minimum Wage Class at least 28 the applicable minimum wage for all the hours that they worked.

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FIRST CAUSE OF ACTION

Failure to Pay Minimum Wages in Violation of the Nevada Constitution (On Behalf of Plaintiff and the Nevada Minimum Wage Class)

20. Plaintiff realleges and incorporates by this reference all the paragraphs above in

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25. Wherefore, Plaintiff demands for himself and for all other Nevada Minimum Wage Class Members that Defendant pay Plaintiff and Nevada Minimum Wage Class Members unpaid minimum wages for all hours worked during the relevant time period alleged herein together with attorneys' fees, costs, interest, and punitive damages, as provided by law.

SECOND CAUSE OF ACTION

Waiting Time Penalties Pursuant to NRS 608.020-.050 and 608.140 (On Behalf of Plaintiff and the Waiting Time Penalty Subclass)

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

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

28. NRS 608.020 provides that "[w]henever an employer discharges an employee, the wages and compensation earned and unpaid at the time of such discharge shall become due and payable immediately."

29. NRS 608.040(1)(a-b), in relevant part, imposes a penalty on an employer who fails to pay a discharged or quitting employee: "Within 3 days after the wages or compensation of a discharged employee becomes due; or on the day the wages or compensation is due to an 21 employee who resigns or quits, the wages or compensation of the employee continues at the same 22 23 rate from the day the employee resigned, quit, or was discharged until paid for 30-days, whichever 24 is less."

25 30. NRS 608.050 grants an "employee lien" to each discharged or laid-off employee 26 for the purpose of collecting the wages or compensation owed to them "in the sum agreed upon 27 in the contract of employment for each day the employer is in default, until the employee is paid

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in full, without rendering any service therefore; but the employee shall cease to draw such wages
 or salary 30 days after such default."

31. By failing to pay Plaintiff and the Waiting Time Penalty Subclass Members their minimum wages in violation of state law, Defendant has failed to timely remit all wages due and owing to Plaintiff and the Waiting Time Penalty Subclass Members.

32. Despite demand, Defendant willfully refuses and continues to refuse to pay Plaintiff and Waiting Time Penalty Subclass Members all the wages that were due and owing upon the termination of their employment.

33. Wherefore, Plaintiff and the Waiting Time Penalty Subclass Members demand thirty (30) days of pay as waiting penalties under NRS 608.040 and 608.140, and thirty (30) days of pay as waiting penalties under NRS 608.050 and 608.140, together with attorneys' fees, costs, interest, and punitive damages, as provided by law.

PRAYER FOR RELIEF

Wherefore Plaintiff, by himself and on behalf of Class and Subclass Members, pray for relief as follows relating to their class action allegations:

- For an order certifying this action as a class action on behalf the proposed Class and Subclass, and providing notice to all Class and Subclass Members so they may participate in this lawsuit;
- 2. For an order appointing Plaintiff as the Representative of the Classes and his counsel as Class Counsel;
- For damages according to proof for minimum rate pay under the Nevada Constitution for all hours worked;
- 4. For waiting time penalties pursuant to NRS 608.040-.050 and 608.140;
- 5. For interest as provided by law at the maximum legal rate;
- 6. For punitive damages;

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- 7. For reasonable attorneys' fees authorized by statute;
- 8. For costs of suit incurred herein;

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10.	For such other and further relief as the Court may deem just and				
10.	Tor such other and further rener as the court may deem just and				
DAT	TED: August 2, 2017	Respectfully Submitted,			
		THIERMAN BUCK LLP			
		/s/Joshua D. Buck			
		Joshua D. Buck			
		Mark R. Thierman Leah L. Jones			