



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
5 7287 Lakeside Drive
6 Reno, Nevada 89511
7 Tel. (775) 284-1500
8 Fax. (775) 703-5027

8 Christian Gabroy, Nev. Bar No. 8805
9 GABROY LAW OFFICES
christian@gabroy.com
10 170 S. Green Valley Pkwy
11 Henderson, NV 89012
12 Tel. (702) 259-7777
13 Fax. (702) 259-7704

Attorneys for Plaintiff

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

DISTRICT COURT

CLARK COUNTY, NEVADA

JACOB RACHMEL, on behalf of himself
and all others similarly situated,

Plaintiff,

vs.

ADT LLC; and DOES 1 through 50,
inclusive,

Defendant(s).

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

COMES NOW Plaintiff JACOB RACHMEL, on behalf of himself and all others similarly situated and alleges the following:

1 All allegations in the Complaint are based upon information and belief except for those
2 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.

5 **JURISDICTION AND VENUE**

6 1. This Court has original jurisdiction over the state law claims alleged herein
7 because the amount in controversy exceeds \$10,000 and a party seeking to recover unpaid wages
8 has a private right of action pursuant to the Nevada Constitution, Article 15 Section 16, and
9 Nevada Revised Statute (“NRS”) sections 608.050 and 608.140. *See Lucatelli v. Texas De Brazil*
10 *(Las Vegas) Corp.*, 2:11-CV-01829-RCJ, 2012 WL 1681394 (D. Nev. May 11, 2012) (“[T]he
11 Nevada Supreme Court recently held that NRS § 608.040 contains a private cause of action
12 because it is “illogical” that a plaintiff who can privately enforce a claim for attorneys' fees under
13 NRS § 608.140 cannot privately enforce the underlying claim the fees arose from.”); *Busk v.*
14 *Integrity Staffing Solutions, Inc.*, 2013 U.S. App. LEXIS 7397 (9th Cir. Nev. Apr. 12, 2013)
15 (“Nevada Revised Statute § 608.140 does provide a private right of action to recoup unpaid
16 wages.”); *Doolittle v. Eight Judicial Dist. Court*, 54 Nev. 319, 15 P.2d 684; 1932 Nev. LEXIS 34
17 (Nev. 1932) (recognizing that former employees have a private cause of action to sue their
18 employer (as well as third party property owners where the work was performed) for wages and
19 waiting penalties under NRS 608.040 and NRS 608.050). Plaintiff also claims a private cause of
20 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
23 the acts complained of herein occurred in Clark County, Nevada.

24 **PARTIES**

25 3. Plaintiff JACOB RACHMEL (hereinafter “Plaintiff” or “RACHMEL”) is a
26 natural person who is and was a resident of the State of Nevada and has been employed by
27 Defendant as a non-exempt hourly employee from April 2015 to the present.
28

13. ADT owes Plaintiff \$434.37 in minimum wages for the hours that he worked between pay periods ending January 20, 2017 to February 10, 2017 (“Time Period”).¹ During the Time Period, Plaintiff did not earn the minimum wages for pay periods ending January 20, January 27, and February 10. His effective hourly rate (the pay he received when divided by his actual hours worked) for those pay periods was only \$5.57, \$6.44, and \$5.50, respectively. These 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. The Classes are Sufficiently Numerous: 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.

¹ 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.

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

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

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

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

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)

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2
3
4 20. Plaintiff realleges and incorporates by this reference all the paragraphs above in
5 this Complaint as though fully set forth herein.

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

15 22. Nevada Revised Statute (“NRS”) 608.016 requires that “an employer shall pay to
16 the employee wages for each hour the employee works.” *See also* NAC 608.115 (“An employer
17 shall pay an employee for all time worked by the employee at the direction of the employer,
18 including time worked by the employee that is outside the scheduled hours of work of the
19 employee.”). This includes time spent travelling in between work assignments. *See* NAC
20 608.130(2)(a) (“Travel by an employee: [] Is considered to be time worked by the employee: (1)
21 If the travel is between different work sites during a workday; or (2) If the employee is providing
22 transportation for another employee on behalf of an employer who offers transportation for the
23 convenience of his employees.”).

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

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

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

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

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

13 **PRAYER FOR RELIEF**

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

- 16 1. For an order certifying this action as a class action on behalf the proposed Class
17 and Subclass, and providing notice to all Class and Subclass Members so they may
18 participate in this lawsuit;
- 19 2. For an order appointing Plaintiff as the Representative of the Classes and his
20 counsel as Class Counsel;
- 21 3. For damages according to proof for minimum rate pay under the Nevada
22 Constitution for all hours worked;
- 23 4. For waiting time penalties pursuant to NRS 608.040-.050 and 608.140;
- 24 5. For interest as provided by law at the maximum legal rate;
- 25 6. For punitive damages;
- 26 7. For reasonable attorneys’ fees authorized by statute;
- 27 8. For costs of suit incurred herein;
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- 9. For pre-judgment and post-judgment interest, as provided by law; and
- 10. For such other and further relief as the Court may deem just and proper.

DATED: August 2, 2017

Respectfully Submitted,
THIERMAN BUCK LLP

/s/ Joshua D. Buck
Joshua D. Buck
Mark R. Thierman
Leah L. Jones