

1 **ORDR**
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13 ADT LLC

14 **DISTRICT COURT**
15 **CLARK COUNTY, NEVADA**

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

18 Plaintiff,

19 vs.

20 ADT LLC; and DOES 1 through 50,
21 inclusive,

22 Defendant(s).

Case No. A-17-759608-C

Dept. No. 27

**ORDER DENYING IN PART AND
GRANTING IN PART DEFENDANT'S
MOTION TO DISMISS**

Hearing Date: December 6, 2017

Hearing Time: 10:00 a.m.

23 On December 6, 2017, Defendant ADT, LLC's ("Defendant" or "ADT") Motion to Dismiss
24 Plaintiff Jacob Rachmel's ("Plaintiff" or "Rachmel") (1) Second Cause of Action for Waiting Time
25 Penalties Pursuant to NRS 608.020-050 and 608.140 and (2) Punitive Damages Pursuant to Nev. R.
26 Civ. P. 12(b)(5) came before this Court for hearing. At the hearing, Defendant was represented by
27 Montgomery Y. Paek, Esq. and Plaintiff was represented by Joshua D. Buck, Esq. For the reasons
28 stated below, the Court DENIES IN PART and GRANTS IN PART Defendant's Motion to Dismiss.

THE COURT FINDS that, at the December 6, 2017 hearing, the Court granted the Motion
and dismissed the waiting time claims and the punitive damages remedy. However, the Court noted
that if the Nevada Supreme Court issued a decision on the pending *Neville Jr. v. Dist. Ct.* case that
decides Waiting Time Penalties issue differently, the Court would expect a stipulation from the

1 parties to conform to the Nevada Supreme Court's decision.

2 THE COURT FURTHER FINDS that on December 7, 2017, the Nevada Supreme Court
3 issued a decision in *Neville Jr. v. Dist. Ct.*, 133 Nev. Adv. Op. 95, indicating that a private right of
4 action exists under 608.140 to bring claims for waiting time penalties pursuant to NRS 608.020-.050.

5 THE COURT FURTHER FINDS that after review, an Order embodying the Court's
6 December 6, 2017 decision has not yet been submitted, and pursuant to *Millen v. Dist. Ct.*, 122 Nev.
7 1245 (2006), the Court's oral pronouncement from the bench is ineffective and the Court may issue
8 a written order that is different than the oral decision.

9 THE COURT FURTHER FINDS that after review, a telephonic hearing would be helpful in
10 this matter and the Court contacted the parties to schedule a brief telephonic hearing. On December
11 14, 2017, the parties attended the telephonic hearing with the Court. At this telephonic hearing,
12 Defendant was represented by Montgomery Y. Paek, Esq. and Plaintiff was represented by Joshua
13 D. Buck, Esq. Based on the ruling in *Neville*, the parties agreed that this Court's order should be
14 modified to deny the Motion to Dismiss as to the (1) Second Cause of Action for Waiting Time
15 Penalties Pursuant to NRS 608.020-050 and 608.140 and grant the Motion to Dismiss as to (2)
16 Punitive Damages. Further, the parties agreed that Plaintiff's Motion to Reconsider filed on
17 December 11, 2017 should be withdrawn and that its January 16, 2018 hearing would be vacated.

18 Upon careful consideration of the record before it, including the arguments of counsel:

19 IT IS HEREBY ORDERED that Defendant's Motion to Dismiss is DENIED IN PART AND
20 GRANTED IN PART.

21 IT IS FURTHER ORDERED that Defendant's Motion to Dismiss is DENIED IN PART as
22 to the Second Cause of Action for Waiting Time Penalties Pursuant to NRS 608.020-050 and
23 608.140.

24 IT IS FURTHER ORDERED that Defendant's Motion to Dismiss is GRANTED IN PART
25 as to Punitive Damages with prejudice.

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IT IS FURTHER ORDERED that Plaintiff's Motion to Reconsider filed on December 11, 2017 is withdrawn as moot.

IT IS SO ORDERED this 9 day of Jan., 2018.

Nancy L Aik
DISTRICT COURT JUDGE *ne*

Dated: January 8, 2018

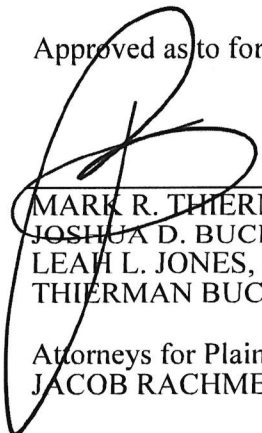
Respectfully submitted,


RICK D. ROSKELLEY, ESQ.
MONTGOMERY Y. PAEK, ESQ.
LITTLER MENDELSON, P.C.

Attorneys for Defendant
ADT LLC

Dated: January 8, 2018

Approved as to form and content by,


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