

1 **DAO**

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3 **EIGHTH JUDICIAL DISTRICT COURT**  
4 **CLARK COUNTY, NEVADA**

5  
6 JOHN NEVILLE, JR., )

7 Plaintiff, )

8 vs. )

9 TERRIBLE HERBST, INC., )

10 Defendant. )

CASE NO.: A-15-728134-C

DEPT. NO.: XIV

11 **DECISION AND ORDER**

12 This case involves allegations of violations of the Nevada Constitution’s Minimum  
13 Wage Amendment and statutory wage payment requirements. This Court granted in part  
14 Defendant’s motion to dismiss on April 22, 2016. Plaintiff then challenged the April 22, 2016  
15 order via a petition for writ of mandamus. The Nevada Supreme Court granted the petition  
16 and instructed this Court to vacate the order dismissing Neville’s claims on December 7,  
17 2016. *Neville v. District Court*, 133 Nev. Adv. Op. 95 (Dec. 7, 2017). The District Court now  
18 enters this order consistent with the Supreme Court’s mandate.

19 **Factual and Procedural Background**

20 Plaintiff was employed by Defendant at a convenience store, and alleged that he did  
21 not receive wages for all work actually performed due to the Defendant’s policy of rounding  
22 recorded work hours to the nearest 15 minutes. Plaintiff thus filed a complaint asserting  
23 causes of action for violation of the Nevada Constitution’s Minimum Wage Amendment, Nev.  
24 Const. art. 15, § 16; failure to compensate in violation of NRS 608.016; failure to pay  
25 overtime in violation of NRS 608.018; failure to timely pay all wages in violation of NRS  
26 608.020 through 608.050; and breach of contract. Defendant moved to dismiss Plaintiff’s  
27 complaint in its entirety pursuant to NRCP 12(b)(5), arguing that Plaintiff did not assert a

1 viable claim under the Minimum Wage Amendment, and that the Nevada Labor  
2 Commissioner has exclusive enforcement authority over NRS Chapter 608 and thus no private  
3 right of action exists.

4 This Court granted Defendant's motion in part as to Plaintiff's first, second, third, and  
5 fourth causes of action, but denied the motion as to Plaintiff's breach of contract claim. This  
6 Court's order was based on a finding that no private right of action exists to enforce NRS  
7 608.160, NRS 608.100, and NRS 613.120, under *Baldonado v. Wynn Las Vegas, LLC*, 124  
8 Nev. 951 (2008).

9 **Discussion**

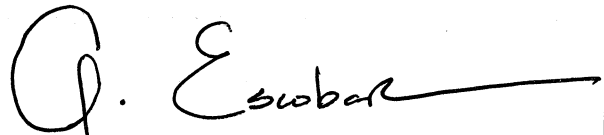
10 Upon review, the Nevada Supreme Court clarified that NRS 608.140 explicitly  
11 recognizes a private cause of action for unpaid wages, and thus that NRS Chapter 608  
12 provides a private right of action for unpaid wages. *Neville v. District Court*, 133 Nev. Adv.  
13 Op. 95 (Dec. 7, 2017). In light of the Nevada Supreme Court's holding, dismissal of  
14 Plaintiff's claims was improper, and thus this Court's April 22, 2016 order must be vacated,  
15 and Plaintiff's claims reinstated.

16 **Conclusion**

17 This Court's April 22, 2016 order granting in part Defendant's motion to dismiss is  
18 hereby VACATED, and Defendant's motion to dismiss is hereby DENIED in its entirety.

19 Defendant is directed to file an answer within 21 days of the date of entry of this order.  
20 The parties are further directed to hold an early case conference in the ordinary course  
21 following Defendant's answer.

22 DATED this 10th day of January, 2018.

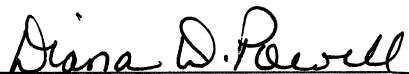
23  
24   
25 \_\_\_\_\_  
26 ADRIANA ESCOBAR  
27 DISTRICT JUDGE

**CERTIFICATE OF SERVICE**

1 I hereby certify that I caused the foregoing Order to be served by facsimile, by placing  
2 a copy in the attorney's folder in the Court Clerk's Office, or by mailing, or faxing, as  
3 indicated to:

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