

CASE NO: A-20-811554-C
Department 8

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EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

HEAVEN SMITH, on behalf of herself and
all others similarly situated,

Plaintiff,

vs.

ASCENDA USA INC. d/b/a and a/k/a 24-
7 INTOUCH; DOES 1 through 50;
inclusive,

Defendant(s).

Case No.:
Dept. No.:

CLASS ACTION COMPLAINT

**Arbitration Exemption Claimed: Class
Action**

- 1) Failure to Pay Overtime in Violation of
NRS 608.018 and 608.140;
- 2) Failure to Timely Pay All Wages Due
and Owing in Violation of NRS
608.020-050 and 608.140; and,
- 3) Injunctive Relief.

**LIEN REQUESTED PURSUANT TO
NRS 608.050**

JURY TRIAL DEMANDED

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1 COMES NOW Plaintiff Heaven Smith, on behalf of herself and all others similarly
2 situated and alleges the following:

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

7 **JURISDICTION AND VENUE**

8 1. This Court has original jurisdiction over the state law claims alleged herein
9 because the amount in controversy exceeds \$15,000 and a party seeking to recover
10 unpaid wages has a private right of action pursuant to the Nevada Constitution, Article
11 15 Section 16, and Nevada Revised Statute ("NRS") sections 608.050 and 608.140. See
12 *Neville v. Eighth Judicial Dist. Court in & for County of Clark*, 406 P.3d 499, 502 (Nev.
13 2017).

14 2. Plaintiff also claims a private cause of action to foreclose a lien against the
15 property owner for wages due pursuant to NRS 608.050.

16 3. Plaintiff made a proper demand for wages due pursuant to NRS 608.140
17 on February 26, 2020.

18 4. Venue is proper in this Court because the Defendant named herein
19 maintains a principal place of business or otherwise is found in this judicial district and
20 many of the acts complained of herein occurred in Clark County, Nevada.

21 5. Plaintiff demands a jury trial on all issues triable by jury herein.

22 **PARTIES**

23 6. Plaintiff Heaven Smith (hereinafter "Plaintiff" or "Smith") was at all
24 relevant times a resident of the State of Nevada and was employed by Defendant as a
25 non-exempt hourly employee from December of 2019 to February of 2020.

26 7. Defendant Ascenda USA Inc. d/b/a and a/k/a 24-7 Intouch ("Defendant") is
27 a foreign corporation registered with the Nevada Secretary of State.
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8. Defendant was doing business in this Judicial District in Clark County, Nevada where the subject incidences occurred.

9. Defendant Ascenda USA Inc. holds the fictitious firm name for 24-7 Intouch with Clark County.

10. At all relevant times, Defendant was Plaintiff's employer.

11. At all relevant times, each Defendant was an agent, employee, joint-venturer, shareholder, director, member, co-conspirator, alter ego, master, or partner of each of the other Defendants, and at all times mentioned herein were acting within the scope and course and in pursuance of his, her, or its agency, joint venture, partnership, employment, common enterprise, or actual or apparent authority in concert with each other and the other Defendants.

12. At all relevant times, the acts and omissions of Defendants concurred and contributed to the various acts and omissions of each and every one of the other Defendants in proximately causing the complaints, injuries, and damages alleged herein. At all relevant times herein, Defendants approved of, condoned and/or otherwise ratified each and every one of the acts or omissions complained of herein. At all relevant times herein, Defendants aided and abetted the acts and omissions of each and every one of the other Defendants thereby proximately causing the damages as herein alleged.

13. The Defendants named herein are the employers of the Plaintiff and all Class Members alleged herein. The Defendants are employers engaged in commerce under the provisions of NRS 608.011. The identity of DOES 1-50 is unknown at the time and the Complaint will be amended at such time when the identities are known to Plaintiff. Plaintiff is informed and believes that each Defendants sued herein as DOE is responsible in some manner for the acts, omissions, or representations alleged herein and any reference to "Defendant" or "Defendants" herein shall mean "Defendants and each of them."

FACTUAL ALLEGATIONS

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2 14. Plaintiff was employed by Defendant as a non-exempt employee from
3 December of 2019 to February of 2020.

4 15. Defendant maintains an unlawful policy of not paying daily overtime to non-
5 exempt hourly employees who earn less than 1 ½ times the applicable minimum wage.

6 16. Plaintiff has frequently worked over 8 hours in any 24-hour workday.

7 17. On many occasions, the number of hours Plaintiff worked in a workday
8 under Nevada law was over 8 hours in a 24-hour period of time.

9 18. For instance, during the workweek of February 6, 2020 Defendant
10 scheduled Plaintiff to work and Plaintiff did work over 8 hours in a 24-hour period of time.
11 See a true and correct copy of Plaintiff's work hours attached hereto as Exhibit I.

12 19. But despite having worked more than 8 hours in a 24-hour period of time,
13 Defendant failed to compensate Plaintiff at 1 ½ times her regular rate of pay for the
14 overtime hours she worked. See a true and correct copy of Plaintiff's earnings statement
15 attached hereto as Exhibit II.

16 20. Upon information and belief, Defendant maintains a company-wide policy
17 and practice of refusing to pay daily overtime wages to Nevada employees who earn
18 less than 1 ½ times the applicable minimum wage and who work over 8 hours in a
19 workday.

20 21. This "no daily overtime" policy has always been common to all non-exempt
21 hourly paid employees at Defendant's locations in the state of Nevada.

22 **CLASS ACTION ALLEGATIONS**

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

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

27 24. The **Nevada Overtime Class** is defined as "All hourly paid non-exempt
28 persons employed by Defendant in the state of Nevada who earned less than 1 ½ times

1 the applicable minimum wage and who worked over eight (8) hours in a workday at any
2 time within 3 years from February 26, 2020 until judgment.”

3 25. The **Waiting Time Penalty Class** is defined as “All Nevada Overtime
4 Class Members who are former employees of Defendant.”

5 26. Class treatment is appropriate under Rule 23’s class certification
6 mechanism because:

7 a. The Classes are Sufficiently Numerous: Upon information and belief,
8 Defendant employs, and has employed, in excess of 40 Nevada Overtime Class
9 Members within the applicable time period. Because Defendant is legally obligated to
10 keep accurate payroll records, Plaintiff alleges that Defendant’s records will establish the
11 members of the Classes as well as their numerosity.

12 b. Plaintiff’s Claim is Typical to Those of Fellow Class Members: Each
13 Class Member is and was subject to the same practices, plans, or policies as Plaintiff:
14 whether Defendant compensated Plaintiff and members of the Class daily overtime
15 wages when they worked over 8 hours in a workday and whether members of the
16 Waiting Time Penalty Class are entitled to waiting time penalties for the failure to pay
17 them minimum, regular, and overtime wages owed.

18 c. Common Questions of Law and Fact Exist: Common questions of
19 law and fact exist and predominate as to Plaintiff and the Class Members, including,
20 without limitation: whether Defendant failed to pay Plaintiff and the Class Members one
21 and one-half times their regular rate for all hours worked in excess of 8 hours a workday
22 and whether Defendant failed to pay the Waiting Time Penalty Class Members all their
23 wages due and owing in violation of NRS 608.020-050.

24 d. Plaintiff is Adequate Representative of the Class: Plaintiff will fairly
25 and adequately represent the interests of the Classes because Plaintiff is a member of
26 the Classes, she has issues of law and fact in common with all members of the Classes,
27 and her interests are not antagonistic to Class members. Plaintiff and her counsel are
28 aware of their fiduciary responsibilities to Class Members and are determined to

1 discharge those duties diligently by vigorously seeking the maximum possible recovery
2 for Class Members.

3 e. Predominance/Superior Mechanism: Class claims predominate and
4 a class action is superior to other available means for the fair and efficient adjudication of
5 this controversy. Each Class Member has been damaged and is entitled to recovery by
6 reason of Defendant's illegal policy and/or practice of failing to compensate its
7 employees in accordance with Nevada wage and hour law. The prosecution of individual
8 remedies by each Class Member will tend to establish inconsistent standards of conduct
9 for Defendant and result in the impairment of Class Members' rights and the disposition
10 of their interest through actions to which they were not parties.

11 **FIRST CAUSE OF ACTION**
12 **Failure to Pay Overtime Wages in Violation of NRS 608.018 and 608.140**
13 **(On Behalf of Plaintiff and the Nevada Overtime Class)**

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

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

18 29. NRS 608.018(1) provides as follows:

19 An employer shall pay 1 1/2 times an employee's
20 regular wage rate whenever an employee who receives
21 compensation for employment at a rate less than 1 1/2 times
22 the minimum rate 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 scheduled 10
hours per day for 4 calendar days within any scheduled
week of work.

23 30. NRS 608.018(2) provides as follows:

24 An employer shall pay 1 1/2 times an employee's regular
25 wage rate whenever an employee who receives
26 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.

27 31. As described above, Defendant maintains a policy and/or practice refusing
28 to pay daily overtime when Plaintiff and members of the Nevada Overtime Class worked

1 over 8 hours in a workday. As a result, Plaintiff and Nevada Overtime Class Members
2 have been denied overtime compensation according to Nevada law.

3 32. Wherefore, Plaintiff demands for herself and all Nevada Overtime Class
4 Members that Defendant pays Plaintiff and Nevada Overtime Class Members one and
5 one-half times their "regular rate" of pay for all hours worked in excess of eight (8) hours
6 in a workday during the relevant time period together with attorneys' fees, costs, and
7 interest as provided by law.

8 **SECOND CAUSE OF ACTION**
9 **Waiting Time Penalties Pursuant to NRS 608.020-.050 and 608.140**
10 **(On Behalf of Plaintiff and the Waiting Time Penalty Class)**

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

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

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

18 36. NRS 608.030 provides that "[w]henver an employee resigns or quits his or
19 her employment, the wages and compensation earned and unpaid at the time of the
20 employee's resignation or quitting must be paid no later than...[t]he day on which the
21 employee would have regularly been paid the wages or compensation; or[s]even days
22 after the employee resigns or quits...whichever is earlier."

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

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requests that this Honorable Court enter an Order that restrains Defendant from attempting to enforce the alleged unlawful payment practices.

46. Plaintiff requests that this Honorable Court enter a declaration of rights/obligations in regards to all such unlawful payment practices in this matter.

47. Further, disputes and controversies have arisen between the parties relative to the lawfulness of the payment practices, and Plaintiff is entitled to have an order entered pursuant to Chapter 30 of the Nevada Revised Statutes construing the payment practices and adjudging and declaring Plaintiff and the Class Members' rights and remedies thereunder including such an Order stating that such payment practices are unlawful.

48. Plaintiff has been required to retain the services of an attorney and is entitled to a reasonable award of attorneys' fees and costs.

PRAYER FOR RELIEF

Wherefore Plaintiff, by herself and on behalf of all Class Members, prays for relief as follows relating to her class action allegations:

1. For an order certifying this action as a class action on behalf the proposed Classes and providing notice to all Class Members so they may participate in this lawsuit;
2. For an order appointing Plaintiff as the Representative of the Classes and her counsel as Class Counsel;
3. For damages according to proof for overtime compensation under NRS 608.018 and 608.140 for all hours worked over 8 hours per day;
4. For waiting time penalties pursuant to NRS 608.040-.050 and 608.140;
5. For a lien on the property where Plaintiff and all Nevada Class Members labored pursuant to NRS 608.050;
6. For interest as provided by law at the maximum legal rate;
7. For injunctive relief;
8. For declaratory relief;

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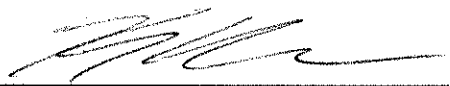
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- 9. For punitive damages;
- 10. For reasonable attorneys' fees authorized by statute;
- 11. For costs of suit incurred herein;
- 12. For pre-judgment and post-judgment interest, as provided by law; and,
- 13. For such other and further relief as the Court may deem just and proper.

DATED: March 3, 2020

Respectfully Submitted,

GABROY LAW OFFICES

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EXHIBIT I

9:03

50%



Hours



SCHEDULE

MY HOURS

PAY PERIODS

Status	Time In	Time Out
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THURSDAY, FEBRUARY 06, 2020

Work 8:30:00 AM 10:07:59 AM

Break 10:07:59 AM 10:18:00 AM

Work 10:18:01 AM 11:58:59 AM

Lunch 11:58:59 AM 12:29:00 PM

Work 12:29:01 PM 2:56:00 PM

Break 2:56:00 PM 3:07:00 PM

Work 3:07:01 PM 7:01:00 PM

WEDNESDAY, FEBRUARY 05, 2020

Login 8:06:42 AM 8:06:50 AM

Work 8:06:50 AM 10:05:07 AM

Logout 10:05:07 AM 10:05:07 AM

Login 2:07:09 PM 2:07:25 PM



Points



Hours



Referrals



Answers



Events

EXHIBIT II

CO. FILE DEPT. CLOCK NUMBER
8SA 049700 SUNLVO 50100 1
008

Earnings Statement



ASCENDA USA INC
14001 E. ILIFF AVE 5-7TH FLOOR
AURORA, CO 80014

Period Beginning: 01/26/2020
Period Ending: 02/08/2020
Pay Date: 02/14/2020

HEAVEN C SMITH

Earnings	rate	hours	this period	year to date
Regular	11.0000	79.29	872.19	2,402.73
Overtime				1,538.47
Training Hours				786.61
Gross Pay			\$872.19	4,727.81

Other Benefits and Information	this period	total to date
Vhr Memo	3.17	

Important Notes
YOUR COMPANY'S PHONE NUMBER IS 1-800-530-1121

Deductions	Statutory		
Social Security Tax		-54.07	293.12
Medicare Tax		-12.64	68.55
Federal Income Tax			110.34
Net Pay		\$805.48	
Net Check		\$805.48	

BASIS OF PAY: HOURLY
YOUR HOURLY RATE HAS BEEN CHANGED FROM 11.0000 TO 12.0000.

This is only a record of a prior payment or adjustment received.
This is not an image of the actual statement.

Your federal taxable wages this period are \$872.19

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ASCENDA USA INC
14001 E. ILIFF AVE 5-7TH FLOOR
AURORA, CO 80014

8SA 90-47711222
Payroll check number:
Pay date: 02/14/2020

Pay to the order of: HEAVEN C SMITH
This amount: EIGHT HUNDRED FIVE AND 48/100 DOLLARS \$805.48

ASSISTANCE WITH VERIFICATION AVAILABLE AT 1-877-421-7243
VOID NON-NEGOTIABLE VOID NON-NEGOTIABLE
VOID AFTER 180 DAYS

THIS IS NOT A CHECK

Wells Fargo Bank, N.A.

NON-NEGOTIABLE - VOID - NON-NEGOTIABLE - VOID