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Attorneys for Plaintiff

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

COREY SPLOND, on behalf of himself
and all others similarly situated,

Plaintiff,

vs.

SHIFTPIXY, INC.; FOOD WITH
PURPOSE, LLC d/b/a and a/k/a
SHARKY'S WOODFIRED MEXICAN
GRILL also d/b/a and a/k/a SHARKY'S
MODERN MEXICAN KITCHEN; and
DOES 1 through 50; inclusive,

Defendant(s).

Case No.: A-19-791709-C
Dept. No.: 5

**FIRST AMENDED 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 Corey Splond, on behalf of himself and all others similarly
2 situated and alleges the following:

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

8 **JURISDICTION AND VENUE**

9 1. This Court has original jurisdiction over the state law claims alleged herein
10 because the amount in controversy exceeds \$15,000 and a party seeking to recover
11 unpaid wages has a private right of action pursuant to the Nevada Constitution, Article
12 15 Section 16, and Nevada Revised Statute (“NRS”) sections 608.050 and 608.140. See
13 *Neville v. Eighth Judicial Dist. Court in & for County of Clark*, 406 P.3d 499, 502 (Nev.
14 2017).

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

17 3. Plaintiff made a proper demand for wages due pursuant to NRS 608.140
18 on March 19, 2019.

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

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

23 **PARTIES**

24 6. Plaintiff Corey Splond (hereinafter “Plaintiff” or “Splond”) was at all
25 relevant times a resident of the State of Nevada.

26 7. Plaintiff was employed by Defendants as a non-exempt hourly employee
27 from in or around June of 2018 to in or around January of 2019.

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1 8. Defendant Shiftpixy, Inc. (“Defendant Shiftpixy”) is a foreign corporation
2 registered with the Nevada Secretary of State.

3 9. Defendant Shiftpixy was doing business in this Judicial District in Clark
4 County, Nevada where the subject incidences occurred.

5 10. At all times relevant, Defendant Shiftpixy was Plaintiff’s employer.

6 11. Defendant Shiftpixy represents on Plaintiff’s 2018 W-2 that it was Plaintiff’s
7 employer.

8 12. Defendant Food With Purpose, LLC d/b/a and a/k/a Sharky’s Woodfired
9 Mexican Grill also d/b/a and a/k/a Sharky’s Modern Mexican Kitchen is a foreign limited-
10 liability company registered with the Nevada Secretary of State. Defendant Food With
11 Purpose, LLC (individually identified as “Defendant Sharky’s”) hold the fictitious firm
12 name for Sharky’s Woodfired Mexican Grill with Clark County.

13 13. Defendant Sharky’s was doing business in this Judicial District in Clark
14 County, Nevada where the subject incidences occurred.

15 14. At all times relevant, Defendant Sharky’s was Plaintiff’s joint employer
16 along with Defendant Shiftpixy.

17 15. Collectively, Defendant Shiftpixy and Defendant Sharky’s are referred to
18 herein as Defendants.

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

25 17. At all relevant times, the acts and omissions of Defendants concurred and
26 contributed to the various acts and omissions of each and every one of the other
27 Defendants in proximately causing the complaints, injuries, and damages alleged herein.

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1 At all relevant times herein, Defendants approved of, condoned and/or otherwise ratified
2 each and every one of the acts or omissions complained of herein. At all relevant times
3 herein, Defendants aided and abetted the acts and omissions of each and every one of
4 the other Defendants thereby proximately causing the damages as herein alleged.

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

13 **FACTUAL ALLEGATIONS**

14 **Defendant Shiftpixy Incorporated**

15 19. Defendant Shiftpixy is a publicly traded corporation with a NASDAQ stock
16 ticker symbol of PIXY.

17 20. Defendant Shiftpixy is a staffing agency that focuses on employing part-
18 time gig workers and deploying these workers to assist clients (i.e., restaurants) staff
19 their businesses. Defendant Shiftpixy’s purported “purposes” are “TO BRING
20 EFFICIENCY TO THE PART-TIME LABOR MARKETS”:

21 ShiftPixy combines the modern perks of the gig economy
22 with traditional employment benefits.

23 Our app serves as an all-in-one workforce management
24 platform for operators (aka, business owners) that rely on
25 contingent employees. But it’s also a dynamic employment
26 resource for shifters (aka, part-time workers) who want the
27 freedom to make their own schedule.

28 Shifters can receive valuable benefits such as health
insurance and workers’ compensation. Meanwhile, operators
are able to rest easy knowing that they remain compliant
with labor laws and free of time-consuming admin tasks.

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ShiftPixy's gig platform truly represents a new way to work.

See <https://shiftpixy.com/ourstory/> (last visited Jan. 30, 2022).

21. Defendant Shiftpixy guarantees and ensures that all labor laws are being followed so that their clients (i.e., restaurants) do not have to worry about burdening themselves with employment law compliance:

CUSTOMIZABLE RULES MAKE COMPLIANCE SIMPLE

- Stay compliant with notifications when labor laws change
- Custom rules engine ensures schedules are always compliant with federal, state and local regulations
- **Ensure laws are followed: hours worked, break frequency and time between shifts**

See <https://shiftpixy.com/operators/> (last visited Jan. 30, 2022) (emphasis added).

22. On its Securities and Exchange Commission Form 10K submitted at the end of fiscal year ended on August 31, 2021, Defendant Shiftpixy identified this litigation as and stated:

Splond Litigation

On April 8, 2019, claimant, Corey Splond, filed a class action lawsuit on behalf of himself and other similarly situated individuals in the Eighth Judicial District Court for the State of Nevada, Clark County, naming the Company and its client as defendants, and alleging violations of certain wage and hour laws. This lawsuit is in the initial stages, and the Company denies any liability. Even if the plaintiff ultimately prevails, the potential damages recoverable will depend substantially upon whether the Court determines in the future that this lawsuit may appropriately be maintained as a class action. Further, in the event that the Court ultimately enters a judgment in favor of plaintiff, the Company believes that it would be contractually entitled to be indemnified by its client against at least a portion of any damage award.

See <https://ir.shiftpixy.com/sec-filings/all-sec-filings##document-484-0001104659-21-146029-1> (last visited on Jan. 30, 2022).

1 employed by Defendant Shiftpixy in the state of Nevada who earned less than 1 ½ times
2 the applicable minimum wage and who worked over eight (8) hours in a workday at any
3 time within 3 years from March 19, 2019 until judgment.”

4 34. The **Shiftpixy Waiting Time Penalty Subclass** is defined as “All Shiftpixy
5 Class Members who are former employees of Defendant Shiftpixy.”

6 35. The **Sharky’s Class** is defined as “All hourly paid non-exempt persons
7 employed by Defendant Sharky’s in the state of Nevada who earned less than 1 ½ times
8 the applicable minimum wage and who worked over eight (8) hours in a workday at any
9 time within 3 years from March 19, 2019 until judgment.”

10 36. The **Sharky’s Waiting Time Penalty Subclass** is defined as “All Sharky’s
11 Class Members who are former employees of Defendant Sharky’s.”

12 37. Class treatment is appropriate under Rule 23’s class certification
13 mechanism because:

14 a. The Classes are Sufficiently Numerous: Upon information and belief,
15 Defendants employ, and has employed, in excess of 100 Class Members within the
16 applicable time period. Because Defendants are legally obligated to keep accurate
17 payroll records, Plaintiff alleges that Defendants’ records will establish the members of
18 the Classes as well as their numerosity.

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

25 c. Common Questions of Law and Fact Exist: Common questions of
26 law and fact exist and predominate as to Plaintiff and the Class Members, including,
27 without limitation: whether Defendants failed to pay Plaintiff and the Class Members one
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1 and one-half times their regular rate for all hours worked in excess of 8 hours a workday
2 and whether Defendants failed to pay the Waiting Time Penalty Subclass Members all
3 their wages due and owing in violation of NRS 608.020-050.

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

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

19 **FIRST CAUSE OF ACTION**
20 **Failure to Pay Overtime Wages in Violation of NRS 608.018 and 608.140**
21 **(On Behalf of Plaintiff and the Shiftpixy and Sharky's Classes)**

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

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

26 40. NRS 608.018(1) provides as follows:

27 An employer shall pay 1 1/2 times an employee's
28 regular wage rate whenever an employee who receives
compensation for employment at a rate less than 1 1/2 times
the minimum rate prescribed pursuant to NRS 608.250
works: (a) More than 40 hours in any scheduled week of

1 work; or (b) More than 8 hours in any workday unless by
2 mutual agreement the employee works a scheduled 10
3 hours per day for 4 calendar days within any scheduled
4 week of work.

41. NRS 608.018(2) provides as follows:

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

42. As described above, Defendants maintain a policy and/or practice of illegal shift jamming (i.e., refusing to pay daily overtime when Plaintiff and members of the Classes who worked over 8 hours in a workday). As a result, Plaintiff and Class Members have been denied overtime compensation according to Nevada law.

43. Wherefore, Plaintiff demands for himself and all Class Members that Defendants pay Plaintiff and Class Members one and one-half times their "regular rate" of pay for all hours worked in excess of eight (8) hours in a workday during the relevant time period together with attorneys' fees, costs, and interest 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 Shiftyxixy and Sharky's Waiting Time Penalty Subclasses)

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

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

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

47. NRS 608.030 provides that "[w]henver an employee resigns or quits his or her employment, the wages and compensation earned and unpaid at the time of the employee's resignation or quitting must be paid no later than...[t]he day on which the

1 employee would have regularly been paid the wages or compensation; or[s]even days
2 after the employee resigns or quits...whichever is earlier.”

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

9 49. NRS 608.050 grants an “employee lien” to each discharged or laid-off
10 employee for the purpose of collecting the wages or compensation owed to them “in the
11 sum agreed upon in the contract of employment for each day the employer is in default,
12 until the employee is paid in full, without rendering any service therefore; but the
13 employee shall cease to draw such wages or salary 30 days after such default.”

14 50. By failing to pay Waiting Time Penalty Subclass Members their minimum,
15 regular, and overtime wages in violation of state and federal law, Defendants have failed
16 to timely remit all wages due and owing to the Waiting Time Penalty Subclass Members.

17 51. Despite demand, Defendants willfully refused and continue to refuse to pay
18 Waiting Time Penalty Subclass Members all the wages that were due and owing upon
19 the termination of their employment.

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

24 **THIRD CAUSE OF ACTION**
25 **Injunctive/Declaratory Relief**
26 **(On Behalf of Plaintiff and the Shiftpixy and Sharky’s Classes)**

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

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CERTIFICATE OF SERVICE

I, Christian Gabroy on the 25th day of February 2022, caused to be electronically served through the Court's Odyssey system a true and correct copy of the foregoing **FIRST AMENDED CLASS ACTION COMPLAINT** addressed to:

Scott Mahoney, Esq.
Allison L. Kheel, Esq.
FISHER & PHILLIPS LLP
300 S. Fourth Street, Suite 1500
Las Vegas, Nevada 89101
Attorney for Defendants

By: /s/ Christian Gabroy
Christian Gabroy, Esq.
Kaine Messer, Esq.
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Attorney for Plaintiff

EXHIBIT I

Period From: 8/23/2018 To: 9/23/2018
 Employee's Last Name: [Redacted] Payroll ID: [Redacted]

Employee	Day	Date	In Time	Out Time	Notes	Regular	Overtime
300 - Cooks	IN	8/23/2018	7:25am	4:50pm		7.25	0.00
300 - Cooks	OUT	8/23/2018		4:50pm			0.00
Total Hours Worked This Week:							
						22.75	0.00
300 - Cooks	IN	8/24/2018	7:25am	4:50pm		7.25	0.00
300 - Cooks	OUT	8/24/2018		4:50pm			0.00
300 - Cooks	IN	8/25/2018	7:25am	4:50pm		7.25	0.00
300 - Cooks	OUT	8/25/2018		4:50pm			0.00
300 - Cooks	IN	8/26/2018	7:25am	4:50pm		7.25	0.00
300 - Cooks	OUT	8/26/2018		4:50pm			0.00
300 - Cooks	IN	8/27/2018	7:25am	4:50pm		7.25	0.00
300 - Cooks	OUT	8/27/2018		4:50pm			0.00
300 - Cooks	IN	8/28/2018	7:25am	4:50pm		7.25	0.00
300 - Cooks	OUT	8/28/2018		4:50pm			0.00
300 - Cooks	IN	8/29/2018	7:25am	4:50pm		7.25	0.00
300 - Cooks	OUT	8/29/2018		4:50pm			0.00
300 - Cooks	IN	8/30/2018	7:25am	4:50pm		7.25	0.00
300 - Cooks	OUT	8/30/2018		4:50pm			0.00
300 - Cooks	IN	8/31/2018	7:25am	4:50pm		7.25	0.00
300 - Cooks	OUT	8/31/2018		4:50pm			0.00
300 - Cooks	IN	9/1/2018	7:25am	4:50pm		7.25	0.00
300 - Cooks	OUT	9/1/2018		4:50pm			0.00
300 - Cooks	IN	9/2/2018	7:25am	4:50pm		7.25	0.00
300 - Cooks	OUT	9/2/2018		4:50pm			0.00
300 - Cooks	IN	9/3/2018	7:25am	4:50pm		7.25	0.00
300 - Cooks	OUT	9/3/2018		4:50pm			0.00
300 - Cooks	IN	9/4/2018	7:25am	4:50pm		7.25	0.00
300 - Cooks	OUT	9/4/2018		4:50pm			0.00
300 - Cooks	IN	9/5/2018	7:25am	4:50pm		7.25	0.00
300 - Cooks	OUT	9/5/2018		4:50pm			0.00
300 - Cooks	IN	9/6/2018	7:25am	4:50pm		7.25	0.00
300 - Cooks	OUT	9/6/2018		4:50pm			0.00
300 - Cooks	IN	9/7/2018	7:25am	4:50pm		7.25	0.00
300 - Cooks	OUT	9/7/2018		4:50pm			0.00
300 - Cooks	IN	9/8/2018	7:25am	4:50pm		7.25	0.00
300 - Cooks	OUT	9/8/2018		4:50pm			0.00
300 - Cooks	IN	9/9/2018	7:25am	4:50pm		7.25	0.00
300 - Cooks	OUT	9/9/2018		4:50pm			0.00
300 - Cooks	IN	9/10/2018	7:25am	4:50pm		7.25	0.00
300 - Cooks	OUT	9/10/2018		4:50pm			0.00
300 - Cooks	IN	9/11/2018	7:25am	4:50pm		7.25	0.00
300 - Cooks	OUT	9/11/2018		4:50pm			0.00
300 - Cooks	IN	9/12/2018	7:25am	4:50pm		7.25	0.00
300 - Cooks	OUT	9/12/2018		4:50pm			0.00
300 - Cooks	IN	9/13/2018	7:25am	4:50pm		7.25	0.00
300 - Cooks	OUT	9/13/2018		4:50pm			0.00
300 - Cooks	IN	9/14/2018	7:25am	4:50pm		7.25	0.00
300 - Cooks	OUT	9/14/2018		4:50pm			0.00
300 - Cooks	IN	9/15/2018	7:25am	4:50pm		7.25	0.00
300 - Cooks	OUT	9/15/2018		4:50pm			0.00
300 - Cooks	IN	9/16/2018	7:25am	4:50pm		7.25	0.00
300 - Cooks	OUT	9/16/2018		4:50pm			0.00
300 - Cooks	IN	9/17/2018	7:25am	4:50pm		7.25	0.00
300 - Cooks	OUT	9/17/2018		4:50pm			0.00
300 - Cooks	IN	9/18/2018	7:25am	4:50pm		7.25	0.00
300 - Cooks	OUT	9/18/2018		4:50pm			0.00
300 - Cooks	IN	9/19/2018	7:25am	4:50pm		7.25	0.00
300 - Cooks	OUT	9/19/2018		4:50pm			0.00
300 - Cooks	IN	9/20/2018	7:25am	4:50pm		7.25	0.00
300 - Cooks	OUT	9/20/2018		4:50pm			0.00
300 - Cooks	IN	9/21/2018	7:25am	4:50pm		7.25	0.00
300 - Cooks	OUT	9/21/2018		4:50pm			0.00
300 - Cooks	IN	9/22/2018	7:25am	4:50pm		7.25	0.00
300 - Cooks	OUT	9/22/2018		4:50pm			0.00
300 - Cooks	IN	9/23/2018	7:25am	4:50pm		7.25	0.00
300 - Cooks	OUT	9/23/2018		4:50pm			0.00

Note: If Weighted Average Overtime is enabled, totals are estimates until the labor week is final.
 Page 2
 TIME: 9/27/2018 10:10

Employee	Day	Date	In Time	Out Time	Notes	Regular	Overtime
300 - Cooks	IN	9/27/2018	1:21pm			1.21	0.00
300 - Cooks	OUT	9/27/2018		2:23pm			1.02
Total Hours Worked This Week:							
						17.69	0.00
Job Totals							
						107.70	0.00
Total Hours Worked This Pay Period:							
						107.70	0.00
						1,238.55	0.00
						1,238.55	0.00