

1 **COMP**  
2 Mark R. Thierman, Nev. Bar No. 8285  
3 mark@thiermanbuck.com  
4 Joshua D. Buck, Nev. Bar No. 12187  
5 josh@thiermanbuck.com  
6 Leah L. Jones, Nev. Bar No. 13161  
7 leah@thiermanbuck.com  
8 THIERMAN BUCK LLP  
9 7287 Lakeside Drive  
10 Reno, Nevada 89511  
11 Tel. (775) 284-1500  
12 Fax. (775) 703-5027

13 Christian Gabroy, Nev. Bar No. 8805  
14 christian@gabroy.com  
15 Kaine Messer, Nev. Bar No. 14240  
16 kmesser@gabroy.com  
17 GABROY LAW OFFICES  
18 170 S. Green Valley Pkwy  
19 Henderson, NV 89012  
20 Tel. (702) 259-7777  
21 Fax. (702) 259-7704

22 *Attorneys for Plaintiff*

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

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

27 Plaintiff,

28 vs.

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

35 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**

**GABROY LAW OFFICES**

170 S. Green Valley Pkwy., Suite 280  
Henderson, Nevada 89012  
(702) 259-7777 FAX: (702) 259-7704

1 COMES NOW Plaintiff Corey Splond, on behalf of himself 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 his 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 March 19, 2019.

18 4. Venue is proper in this Court because the Defendants named herein  
19 maintains a principal place of business or otherwise are 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 Corey Splond (hereinafter "Plaintiff" or "Splond") was at all  
24 relevant times a resident of the State of Nevada.

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

1           8. Defendant Food With Purpose, LLC d/b/a and a/k/a Sharky's Woodfired  
2 Mexican Grill also d/b/a and a/k/a Sharky's Modern Mexican Kitchen is a foreign limited-  
3 liability company registered with the Nevada Secretary of State.

4           9. Defendant Food With Purpose, LLC hold the fictitious firm name for  
5 Sharky's Woodfired Mexican Grill with Clark County.

6           10. Defendant Food With Purpose, LLC d/b/a and a/k/a Sharky's Woodfired  
7 Mexican Grill also d/b/a and a/k/a Sharky's Modern Mexican Kitchen was doing business  
8 in this Judicial District in Clark County, Nevada where the subject incidences occurred.

9           11. At all times relevant, Defendant Food With Purpose, LLC d/b/a and a/k/a  
10 Sharky's Woodfired Mexican Grill also d/b/a and a/k/a Sharky's Modern Mexican Kitchen  
11 was Plaintiff's employer.

12           12. Defendant Shiftpixy, Inc. is a foreign corporation registered with the  
13 Nevada Secretary of State.

14           13. Defendant Shiftpixy, Inc. was doing business in this Judicial District in Clark  
15 County, Nevada where the subject incidences occurred.

16           14. At all times relevant, Defendant Shiftpixy, Inc. was Plaintiff's employer.

17           15. Defendant Shiftpixy, Inc. represents on Plaintiff's 2018 W-2 that it was  
18 Plaintiff's employer.

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.

28

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 19. Plaintiff was employed by Defendants as a non-exempt employee from in  
15 or around June of 2018 to in or around January of 2019.

16 20. Defendants maintain an unlawful policy of not paying daily overtime to non-  
17 exempt hourly employees who earn 1 ½ times less than the applicable minimum wage.

18 21. Plaintiff has frequently worked over 8 hours in any 24-hour workday.

19 22. On many occasions, Plaintiff has worked a shift until the late evening hours  
20 and then returned early the next morning to work a day shift. The number of hours he  
21 worked in a workday under Nevada law was over 8 hours in a 24-hour period of time.

22 23. For instance, during the workweek of September 18, 2018 Defendants  
23 scheduled Plaintiff to work and Plaintiff did work over 8 hours in a 24-hour period of time.  
24 See a true and correct copy of Plaintiff's time card and job detail attached hereto as  
25 Exhibit I.

26 24. But despite having worked more than 8 hours in a 24-hour period of time,  
27 Defendants failed to compensate Plaintiff at 1 ½ times his regular rate of pay for the  
28

1 overtime hours he worked. See Exhibit I.

2 25. Upon information and belief, Defendants maintain a company-wide policy  
3 and practice of refusing to pay daily overtime wages to Nevada employees who worked  
4 over 8 hours in a workday.

5 26. This “no daily overtime” policy has always been common to all non-exempt  
6 hourly paid employees at Defendants’ locations in the state of Nevada.

7 **CLASS ACTION ALLEGATIONS**

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

10 28. Plaintiff brings this action on behalf of himself and all other similarly  
11 situated employees as a class action under Rule 23 of the Nevada Rules of Civil  
12 Procedure.

13 29. The **Nevada Overtime Class** is defined as “All hourly paid non-exempt  
14 persons employed by Defendants in the state of Nevada who earned less than 1 ½ times  
15 the applicable minimum wage and who worked over eight (8) hours in a workday at any  
16 time within 3 years from March 19, 2019 until judgment.”

17 30. The **Waiting Time Penalty Class** is defined as “All Nevada Overtime  
18 Class Members who are former employees of Defendants.”

19 31. Class treatment is appropriate under Rule 23’s class certification  
20 mechanism because:

21 a. The Classes are Sufficiently Numerous: Upon information and belief,  
22 Defendants employ, and has employed, in excess of 100 Nevada Overtime Class  
23 Members within the applicable time period. Because Defendants are legally obligated to  
24 keep accurate payroll records, Plaintiff alleges that Defendants’ records will establish the  
25 members of the Classes as well as their numerosity.

26 b. Plaintiff’s Claim is Typical to Those of Fellow Class Members: Each  
27 Class Member is and was subject to the same practices, plans, or policies as Plaintiff:  
28

1 whether Defendants compensated Plaintiff and members of the Class daily overtime  
2 wages when they worked over 8 hours in a workday and whether members of the  
3 Waiting Time Penalty Class are entitled to waiting time penalties for the failure to pay  
4 them minimum, regular, and overtime wages owed.

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

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

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

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

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

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

8 34. NRS 608.018(1) provides as follows:

9 An employer shall pay 1 1/2 times an employee's  
10 regular wage rate whenever an employee who receives  
11 compensation for employment at a rate less than 1 1/2 times  
12 the minimum rate prescribed pursuant to NRS 608.250  
13 works: (a) More than 40 hours in any scheduled week of  
14 work; or (b) More than 8 hours in any workday unless by  
15 mutual agreement the employee works a scheduled 10  
16 hours per day for 4 calendar days within any scheduled  
17 week of work.

18 35. NRS 608.018(2) provides as follows:

19 An employer shall pay 1 1/2 times an employee's regular  
20 wage rate whenever an employee who receives  
21 compensation for employment at a rate not less than 1 1/2  
22 times the minimum rate prescribed pursuant to NRS 608.250  
23 works more than 40 hours in any scheduled week of work.

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

32. Wherefore, Plaintiff demands for himself and all Nevada Overtime Class  
Members that Defendants pay Plaintiff and Nevada Overtime 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.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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

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

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

40. 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.”

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

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

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







**GABROY LAW OFFICES**


170 S. Green Valley Pkwy., Suite 280  
Henderson, Nevada 89012  
(702) 259-7777 FAX: (702) 259-7704

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

- 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 25, 2019

GABROY LAW OFFICES

By:   
Christian Gabroy, Nev. Bar No. 8805  
christian@gabroy.com  
Kaine Messer, Nev. Bar No. 14240  
kmesser@gabroy.com  
170 S. Green Valley Pkwy, Suite 280  
Henderson, NV 89012

Mark R. Thierman, Nev. Bar No. 8285  
mark@thiermanbuck.com  
Joshua D. Buck, Nev. Bar No. 12187  
josh@thiermanbuck.com  
Leah L. Jones, Nev. Bar No. 13161  
leah@thiermanbuck.com  
THIERMAN BUCK LLP  
7287 Lakeside Drive  
Reno, Nevada 89511

# EXHIBIT I

Period From: 09/01/2018 To: 09/27/2018

Employee: 300 - Cooks

IN	OUT	DATE	IN	OUT	REMARKS	REGULAR	OVERTIME
<b>Total Hours Worked This Week:</b>							
300 - Cooks	IN	Mon 9/17/2018	7:11am	3:11pm	Not Scheduled	0.00	0.00
300 - Cooks	OUT	Mon 9/17/2018	7:11am	3:11pm	Not Scheduled	0.00	0.00
300 - Cooks	IN	Tue 9/18/2018	6:57am	3:07pm	Late From Break	0.00	0.00
300 - Cooks	OUT	Tue 9/18/2018	6:57am	3:07pm	Late From Break	0.00	0.00
300 - Cooks	IN	Wed 9/19/2018	6:57am	3:07pm	Not Scheduled	0.00	0.00
300 - Cooks	OUT	Wed 9/19/2018	6:57am	3:07pm	Not Scheduled	0.00	0.00
300 - Cooks	IN	Thu 9/20/2018	6:57am	3:07pm	Not Scheduled	0.00	0.00
300 - Cooks	OUT	Thu 9/20/2018	6:57am	3:07pm	Not Scheduled	0.00	0.00
300 - Cooks	IN	Fri 9/21/2018	6:57am	3:07pm	Not Scheduled	0.00	0.00
300 - Cooks	OUT	Fri 9/21/2018	6:57am	3:07pm	Not Scheduled	0.00	0.00
300 - Cooks	IN	Sat 9/22/2018	6:57am	3:07pm	Not Scheduled	0.00	0.00
300 - Cooks	OUT	Sat 9/22/2018	6:57am	3:07pm	Not Scheduled	0.00	0.00
300 - Cooks	IN	Sun 9/23/2018	6:57am	3:07pm	Not Scheduled	0.00	0.00
300 - Cooks	OUT	Sun 9/23/2018	6:57am	3:07pm	Not Scheduled	0.00	0.00
<b>Total Hours Worked This Week:</b>							
300 - Cooks	IN	Mon 9/24/2018	9:12am	4:20pm	Late	0.00	0.00
300 - Cooks	OUT	Mon 9/24/2018	9:12am	4:20pm	Late	0.00	0.00
300 - Cooks	IN	Tue 9/25/2018	8:45am	3:11pm	Late	0.00	0.00
300 - Cooks	OUT	Tue 9/25/2018	8:45am	3:11pm	Late	0.00	0.00
300 - Cooks	IN	Thu 9/27/2018	9:04am	4:00pm	On Time	0.00	0.00
300 - Cooks	OUT	Thu 9/27/2018	9:04am	4:00pm	On Time	0.00	0.00
300 - Cooks	IN	Thu 9/27/2018	9:04am	4:00pm	On Time	0.00	0.00
300 - Cooks	OUT	Thu 9/27/2018	9:04am	4:00pm	On Time	0.00	0.00

Note: If Weighted Average Overtime is enabled, totals are estimates until the labor week is final.

300 - Cooks	IN	Thu 9/27/2018	9:04am	4:00pm	On Time	0.00	0.00
300 - Cooks	OUT	Thu 9/27/2018	9:04am	4:00pm	On Time	0.00	0.00
<b>Total Hours Worked This Week:</b>							
300 - Cooks			167.73		0.00	0.00	0.00

Job Totals	Regular Hours	Overtime Hours	Regular Pay	Overtime Pay	Total Pay
300 - Cooks	167.73	0.00	1,238.55	0.00	1,238.55
<b>Total Hours Worked This Pay Period:</b>	<b>167.73</b>	<b>0.00</b>	<b>1,238.55</b>	<b>0.00</b>	<b>1,238.55</b>