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FILED
San Francisco County Superior Court

OCT 19 2020

CLERK OF THE COURT
BY: Shelene Hobnis
Deputy Clerk

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF SAN FRANCISCO**

10
11 SHARON FENNIX, individually, and on behalf
12 of all others similarly situated,

13 Plaintiff,

14 vs.

15 TENDERLOIN HOUSING CLINIC, INC., a
16 California corporation; and DOES 1 through 10,
17 inclusive,

18 Defendants

Case No.: **CGC-20-587419**
**PAGA REPRESENTATIVE ACTION
COMPLAINT:**

1. Civil Penalties Under PAGA [Cal. Lab.
Code § 2699, et seq.]

DEMAND FOR JURY TRIAL

21 **BY FAX**

1 Plaintiff Sharon Fennix (“Plaintiff”), based upon facts that either have evidentiary
2 support or are likely to have evidentiary support after a reasonable opportunity for further
3 investigation and discovery, alleges as follows:

4 **INTRODUCTION & PRELIMINARY STATEMENT**

5 1. Plaintiff brings this action against Defendant Tenderloin Housing Clinic, Inc., and
6 Does 1 through 10 (Tenderloin Housing Clinic, Inc., and Does 1 through 10 are collectively
7 referred to as “Defendants”) for civil penalties under the Private Attorneys General Act of 2004,
8 California Labor Code §§ 2698 *et seq.* (“PAGA”) stemming from Defendants’ failure to pay for
9 all hours worked (including minimum wages, straight time wages, and overtime wages), failure
10 to provide meal periods, failure to authorize and permit rest periods, failure to maintain accurate
11 records of hours worked and meal periods, failure to timely pay all wages to terminated
12 employees, and failure to furnish accurate wage statements.

13 2. For over 50 years, California’s courts and legislature have recognized that this
14 State’s wage-and-hour laws serve a compelling public interest of fostering a stable job market.
15 Wages are not ordinary debts. Because of the economic position of the average worker and his
16 or her family, it is essential to the public welfare that employers obey the wage-and-hour laws so
17 that employees are promptly paid the minimum/overtime wages that the Legislature has required
18 for employees. So fundamental are California’s wage-and-hour laws that the Legislature has
19 criminalized certain types of violations. In extending extra protection to deter violations of these
20 underlying statutes—since Plaintiff is not seeking general and/or special damages, restitution or
21 other damages other than civil penalties—California has enacted the PAGA to permit an
22 individual to bring an action on behalf of herself and on behalf of others for PAGA penalties
23 only, which is the precise and sole nature of this action.

24 3. All California employees during the relevant statutes of limitations who are or
25 were harmed by Defendant’s illegal practices are “Aggrieved Employees.”

26 4. Plaintiff brings this action against Defendants seeking only to recover penalties for
27 herself, on behalf of all Aggrieved Employees that worked for Defendants, and on behalf of the
28 State of California. Plaintiff does not seek to recover anything other than penalties as permitted

1 by California Labor Code Section 2699 at this time. To the extent that statutory violations are
2 mentioned for wage violations, Plaintiff does not seek underlying general and/or special damages
3 for those violations, but simply penalties as permitted by California Labor Code Section 2699,
4 declaratory relief, and injunctive relief for herself and all aggrieved employees as permitted by
5 the PAGA.

6 5. Defendants own/owned and operate/operated an industry, business, and
7 establishment within the State of California, including San Francisco County. As such, and
8 based upon all the facts and circumstances incident to Defendants' business in California,
9 Defendants are subject to the California Labor Code, Wage Orders issued by the Industrial
10 Welfare Commission ("IWC"), and the California Business & Professions Code.

11 6. Despite these requirements, throughout the statutory period Defendants
12 maintained a systematic, company-wide policy and practice of:

- 13 (a) Failing to pay employees for all hours worked, including all minimum
14 wages, straight time wages, and overtime wages in compliance with the
15 California Labor Code and IWC Wage Orders;
- 16 (b) Failing to provide employees with timely and duty-free meal periods in
17 compliance with the California Labor Code and IWC Wage Orders, failing
18 to maintain accurate records of all meal periods taken or missed, and
19 failing to pay an additional hour's pay for each workday a meal period
20 violation occurred;
- 21 (c) Failing to authorize and permit employees to take timely and duty-free rest
22 periods in compliance with the California Labor Code and IWC Wage
23 Orders, and failing to pay an additional hour's pay for each workday a rest
24 period violation occurred;
- 25 (d) Failing to maintain accurate records of the hours employees worked;
- 26 (e) Willfully failing to pay employees all meal period, rest period, minimum
27 wages, straight time wages, and overtime wages due within the time period
28 specified by California law when employment terminates; and

1 (f) Failing to provide employees with accurate, itemized wage statements
2 containing all the information required by the California Labor Code and
3 IWC Wage Orders.

4 7. On information and belief, Defendants, and each of them were on actual and
5 constructive notice of the improprieties alleged herein and intentionally refused to rectify their
6 unlawful policies. Defendants' violations, as alleged above, during all relevant times herein were
7 willful and deliberate.

8 8. At all relevant times, Defendants were and are legally responsible for all of the
9 unlawful conduct, policies, practices, acts and omissions as described in each and all of the
10 foregoing paragraphs as the employer of Plaintiff and the Aggrieved Employees. Further,
11 Defendants are responsible for each of the unlawful acts or omissions complained of herein under
12 the doctrine of "respondeat superior".

13 **THE PARTIES**

14 **A. Plaintiff**

15 9. Plaintiff Sharon Fennix is a California resident who worked for Defendants in San
16 Francisco County, California as a case manager from approximately October 2018 to September
17 2019.

18 **B. Defendants**

19 10. Plaintiff is informed and believes, and based upon that information and belief
20 alleges, that Defendant Tenderloin Housing Clinic, Inc. is:

- 21 (a) A California corporation with its principal place of business in San
22 Francisco, California.
- 23 (b) A business entity conducting business in numerous counties throughout the
24 State of California, including in San Francisco County; and
- 25 (c) The former employer of Plaintiff, and the current and/or former employer
26 of the putative Class. Tenderloin Housing Clinic, Inc. suffered and
27 permitted Plaintiff and the Aggrieved Employees to work, and/or
28 controlled their wages, hours, or working conditions.

1 11. Plaintiff is informed and believes, and based upon that information and belief
2 alleges, that Defendant Highgate Hotels, L.P. is:

- 3 (a) A Delaware limited partnership with its principal places of business in San
4 Francisco, California.
- 5 (b) A business entity conducting business in numerous counties throughout the
6 State of California, including in San Francisco County; and
- 7 (c) The former employer of Plaintiff, and the current and/or former employer
8 of the putative Class. Highgate Hotels, L.P. suffered and permitted
9 Plaintiff and the Class to work, and/or controlled their wages, hours, or
10 working conditions.

11 12. Plaintiff does not know the true names or capacities of the persons or entities sued
12 herein as Does 1-10, inclusive, and therefore sues said Defendants by such fictitious names.
13 Each of the Doe Defendants was in some manner legally responsible for the damages suffered by
14 Plaintiff and the Aggrieved Employees as alleged herein. Plaintiff will amend this complaint to
15 set forth the true names and capacities of these Defendants when they have been ascertained,
16 together with appropriate charging allegations, as may be necessary.

17 13. At all times mentioned herein, the Defendants named as Does 1-10, inclusive, and
18 each of them, were residents of, doing business in, availed themselves of the jurisdiction of,
19 and/or injured a significant number of the Plaintiff and the Aggrieved Employees in the State of
20 California.

21 14. Plaintiff is informed and believes and thereon alleges that at all relevant times
22 each Defendant, directly or indirectly, or through agents or other persons, employed Plaintiff and
23 the other Aggrieved Employees, and exercised control over their wages, hours, and working
24 conditions. Plaintiff is informed and believes and thereon alleges that, at all relevant times, each
25 Defendant was the principal, agent, partner, joint venturer, officer, director, controlling
26 shareholder, subsidiary, affiliate, parent corporation, successor in interest and/or predecessor in
27 interest of some or all of the other Defendants, and was engaged with some or all of the other
28 Defendants in a joint enterprise for profit, and bore such other relationships to some or all of the

1 other Defendants so as to be liable for their conduct with respect to the matters alleged below.
2 Plaintiff is informed and believes and thereon alleges that each Defendant acted pursuant to and
3 within the scope of the relationships alleged above, that each Defendant knew or should have
4 known about, and authorized, ratified, adopted, approved, controlled, aided and abetted the
5 conduct of all other Defendants.

6 **ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

7 15. Plaintiff Sharon Fennix is a California resident who worked for Defendants in the
8 County of San Francisco, State of California, as a case manager from approximately October
9 2018 to September 2019. At all times Defendants classified Plaintiff as non-exempt from
10 California's overtime requirements. During the statutory period, Plaintiff was scheduled to work
11 5 days each workweek, and typically worked in excess of 8 hours each workday.

12 16. Throughout Plaintiff's employment, Defendants committed numerous labor code
13 violations under state law. As discussed below, Plaintiff's experience working for Defendants
14 was typical and illustrative.

15 17. Throughout the statutory period, Defendants failed to pay Plaintiff for all hours
16 worked (including minimum wages and overtime compensation), failed to provide Plaintiff with
17 uninterrupted meal periods, failed to authorize and permit Plaintiff to take uninterrupted rest
18 periods, failed to maintain accurate records of the hours Plaintiff worked, failed to timely pay all
19 final wages to Plaintiff when Defendants terminated Plaintiff's employment, and failed to furnish
20 accurate wage statements to Plaintiff. As discussed below, Plaintiff's experience working for
21 Defendants was typical and illustrative.

22 18. Throughout the statutory period, Defendants maintained a policy and practice of
23 failing to pay Plaintiff and the Aggrieved Employees for all hours worked, including overtime.
24 Specifically, Plaintiff and the Aggrieved Employees were required to work off-the-clock each
25 workday. For example, Plaintiff and the Aggrieved Employees clocked into work each workday
26 before their scheduled shift, and typically clocked out after the scheduled shift, but Plaintiffs and
27 the Aggrieved Employees were not paid for these additional minutes. Further, Defendants
28 regularly used a system of time rounding in a manner that resulted, over a period of time, in

1 failing to compensate Plaintiff and the Aggrieved Employees properly for all the time they
2 actually worked, even though the realities of Defendants' operations are such that it is possible,
3 practical, and feasible to count and pay for work time to the minute. Accordingly, Defendants
4 frequently paid Plaintiff and the Aggrieved Employees less than all their work time. Some of
5 this unpaid work also should have been paid at the overtime rate. In maintaining this practice of
6 failing to pay for all time worked, Defendants failed to maintain accurate records of the hours
7 Plaintiff and the Aggrieved Employees worked.

8 19. Throughout the statutory period, Defendants have wrongfully failed to provide
9 Plaintiff and the Aggrieved Employees with legally compliant meal periods. Defendants
10 regularly, but not always, required Plaintiff and the Aggrieved Employees to work in excess of
11 five consecutive hours a day without providing a 30-minute, continuous and uninterrupted, duty-
12 free meal period for every five hours of work, or without compensating Plaintiff and the
13 Aggrieved Employees for meal periods that were not provided by the end of the fifth hour of
14 work or tenth hour of work. Defendants did not adequately inform Plaintiff and the Aggrieved
15 Employees of their right to take a meal period by the end of the fifth hour of work, or, for shifts
16 greater than 10 hours, by the end of the tenth hour of work. Moreover, Defendants did not have
17 adequate written policies or practices providing meal periods for Plaintiff and the Aggrieved
18 Employees, nor did Defendants have adequate policies or practices regarding the timing of meal
19 periods. Accordingly, Defendants' policy and practice was to not provide meal periods to
20 Plaintiff and the Aggrieved Employees in compliance with California law.

21 20. Throughout the statutory period, Defendants have wrongfully failed to authorize
22 and permit Plaintiff and the Aggrieved Employees to take timely and duty-free rest periods.
23 Defendants regularly, but not always, required Plaintiff and the Aggrieved Employees to work in
24 excess of four consecutive hours a day without Defendants authorizing and permitting them to
25 take a 10-minute, continuous and uninterrupted, rest period for every four hours of work (or
26 major fraction of four hours), or without compensating Plaintiff and the Aggrieved Employees
27 for rest periods that were not authorized or permitted. Accordingly, Defendants' policy and
28

1 practice was to not authorize and permit Plaintiff and the Aggrieved Employees to take rest
2 periods in compliance with California law.

3 21. Throughout the statutory period, Defendants wrongfully required Plaintiff and the
4 Aggrieved Employees to pay expenses that they incurred in direct discharge of their duties for
5 Defendants without reimbursement. This included the use of their own vehicles, which mileage
6 and any other related expenses were not reimbursed. Plaintiff and the Aggrieved Employees
7 incurred these substantial expenses as a direct result of performing their job duties for
8 Defendants, and Defendants have failed to indemnify Plaintiff and the Aggrieved Employees for
9 these employment-related expenses.

10 22. Throughout the statutory period, Defendants willfully failed and refused to timely
11 pay Plaintiff and the Aggrieved Employees at the conclusion of their employment all wages,
12 including overtime wages, meal period premium wages, and rest period premium wages.

13 23. During the statutory period, Defendants failed to furnish Plaintiff and the
14 Aggrieved Employees with accurate, itemized wage statements showing all applicable hourly
15 rates, and all gross and net wages earned (including wages for meal periods that were not
16 provided in accordance with California law, wages for rest periods that were not authorized and
17 permitted to take in accordance with California law, and correct wages earned for hours worked).
18 As a result of these violations of California Labor Code § 226(a), the Plaintiff and the Aggrieved
19 Employees suffered injury because, among other things:

- 20 (a) the violations led them to believe that they were not entitled to be paid
21 minimum wages, overtime wages, meal period premium wages, and rest
22 period premium wages, even though they were entitled;
- 23 (b) the violations led them to believe that they had been paid the minimum,
24 overtime, meal period premium, and rest period premium wages to which
25 they were entitled, even though they had not been;
- 26 (c) the violations led them to believe they were not entitled to be paid
27 minimum, overtime, meal period premium, and rest period premium wages
28 at the correct California rate even though they were;

- 1 (d) the violations led them to believe they had been paid minimum, overtime,
2 meal period premium, and rest period premium wages at the correct
3 California rate even though they had not been;
- 4 (e) the violations hindered them from determining the amounts of minimum,
5 overtime, meal period premium, and rest period premium wages owed to
6 them;
- 7 (f) in connection with their employment before and during this action, and in
8 connection with prosecuting this action, the violations caused them to have
9 to perform mathematical computations to determine the amounts of wages
10 owed to them, computations they would not have to make if the wage
11 statements contained the required accurate information;
- 12 (g) by understating the wages truly due them, the violations caused them to
13 lose entitlement and/or accrual of the full amount of Social Security,
14 disability, unemployment, and other governmental benefits;
- 15 (h) the wage statements inaccurately understated the wages, hours, and wages
16 rates to which Plaintiff and the Aggrieved Employees were entitled, and
17 Plaintiff and the Aggrieved Employees were paid less than the wages and
18 wage rates to which they were entitled.

19 Thus, Plaintiff and the Aggrieved Employees are owed the amounts provided for in California
20 Labor Code § 226(e).

21
22 **FIRST CAUSE OF ACTION**

23 **(Against all Defendants for Civil Penalties Under the Private Attorneys General Act of**
24 **2004, Cal. Lab. Code § 2698 et seq.)**

25 24. Plaintiff incorporates by reference and re-alleges all preceding paragraphs as
26 though fully set forth herein.

27 25. At all times herein mentioned, Defendants were subject to the Labor Code of the
28 State of California and the applicable Industrial Welfare Commission Orders.

1 26. California Labor Code § 2699(a) specifically provides for a private right of action
2 to recover penalties for violations of the Labor Code: “Notwithstanding any other provision of
3 law, any provision of this code that provides for a civil penalty to be assessed and collected by
4 the Labor and Workforce Development Agency or any of its departments, divisions,
5 commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative,
6 be recovered through a civil action brought by an aggrieved employee on behalf of herself or
7 herself and other current or former employees pursuant to the procedures specified in Section
8 2699.3.”

9 27. Plaintiff has exhausted her administrative remedies pursuant to California Labor
10 Code § 2699.3. On June 4, 2020, she gave written notice by online filing to the Labor and
11 Workforce Development Agency and by certified mail to Defendants of the specific provisions
12 of the Labor Code that Defendants have violated against Plaintiff and current and former
13 aggrieved employees, including the facts and theories to support the violations. Plaintiff also
14 paid the filing fee shortly after June 4, 2020. Plaintiff’s PAGA case number is LWDA-CM-
15 792372-20.

16 28. The statute of limitations is tolled while a plaintiff exhausts his/her administrative
17 remedies with California’s Labor and Workforce Development Agency (LWDA) prior to suit,
18 which is required by the statute. (*See* Cal. Lab. Code § 2699.3(d).)

19 29. More than 65 days has elapsed since Plaintiff provided notice, but the Labor and
20 Workforce Development Agency has not indicated that it intends to investigate Defendants’
21 Labor Code violations discussed in the notice. Accordingly, Plaintiff may commence a civil
22 action to recover penalties under Labor Code § 2699 pursuant to § 2699.3 for the violations of
23 the Labor Code described in this Complaint. These penalties include, but are not limited to,
24 penalties under California Labor Code §§ 210, 226.3, 1197.1, and 2699(f)(2).

25 30. In addition, Plaintiff seeks penalties for Defendants’ violation of California Labor
26 Code § 1174(d). Pursuant to California Labor Code § 1174.5, any person, including any entity,
27 employing labor who willfully fails to maintain accurate and complete records required by
28 California Labor Code § 1174 is subject to a penalty under § 1174.5. Pursuant to the applicable

1 IWC Order § 7(A)(3), every employer shall keep time records showing when the employee
2 begins and ends each work period. Meal periods, and total hours worked daily shall also be
3 recorded. Additionally, pursuant to the applicable IWC Order § 7(A)(5), every employer shall
4 keep total hours worked in the payroll period and applicable rates of pay.

5 31. During the time period of employment for Plaintiff and the Aggrieved Employees,
6 Defendants failed to maintain records pursuant to the Labor Code and IWC Orders by failing to
7 maintain accurate records showing meal periods, and accurate records showing when employees
8 begin and end each work period. Defendants' failure to provide and maintain records required by
9 the Labor Code IWC Wage Orders deprived Plaintiff and the Aggrieved Employees the ability to
10 know, understand and question the accuracy and frequency of meal periods, and the accuracy of
11 their hours worked stated in Defendants' records. Therefore, Plaintiff and the Aggrieved
12 Employees had no way to dispute the resulting failure to pay wages, all of which resulted in an
13 unjustified economic enrichment to Defendants. As a direct result, Plaintiff and the Aggrieved
14 Employees have suffered and continue to suffer, substantial losses related to the use and
15 enjoyment of such wages, lost interest on such wages and expenses and attorney's fees in seeking
16 to compel Defendants to fully perform its obligation under state law, all to their respective
17 damage in amounts according to proof at trial. Because of Defendants' knowing failure to
18 comply with the Labor Code and applicable IWC Wage Orders, Plaintiff and the Aggrieved
19 Employees have also suffered an injury in that they were prevented from knowing,
20 understanding, and disputing the wage payments paid to them.

21 32. Based on the conduct described in this Complaint, Plaintiff is entitled to an award
22 of civil penalties on behalf of herself, the State of California, and similarly Aggrieved Employees
23 of Defendants. The exact amount of the applicable penalties, in all, is in an amount to be shown
24 according to proof at trial. These penalties are in addition to all other remedies permitted by law.

25 33. In addition, Plaintiff seeks an award of reasonable attorney's fees and costs
26 pursuant to Labor Code § 2699(g)(1), which states, "Any employee who prevails in any action
27 shall be entitled to an award of reasonable attorney's fees and costs."
28

1 **PRAYER FOR RELIEF**

2 Plaintiff, on behalf of all similarly aggrieved employees, prays for relief and judgment
3 against Defendants, jointly and severally, as follows:

4 1. That the Court declare, adjudge and decree that Defendants violated the California
5 Labor Code by failing to pay wages for all hours worked (including minimum, straight time, and
6 overtime wages), failing to provide meal periods, failing to authorize and permit rest periods,
7 failing to furnish accurate wage statements, and failing to maintain accurate records of all hours
8 worked and meal periods;

9 2. An award of civil penalties on behalf of herself and all similarly aggrieved
10 employees pursuant to PAGA;

11 3. Pre-judgment and post-judgment interest at the maximum rate allowed;

12 4. Attorneys' fees and costs reasonably incurred;

13 5. Injunctive and declaratory relief to the extent allowed by PAGA; and

14 6. Such other and further relief that the Court deems proper.
15

16 Dated: October 15, 2020

Respectfully submitted,

17 MOON & YANG, APC
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19 By: _____

Kane Moon
Allen Feghali
Enzo Nabiev
Attorneys for Plaintiff
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DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury as to all causes of action triable by jury.

Dated: October 15, 2020

MOON & YANG, APC

By: _____

Kane Moon
Allen Feghali
Enzo Nabiev
Attorneys for Plaintiff