

FILED
San Francisco County Superior Court

JAN 25 2024

CLERK OF THE COURT
BY: [Signature] Deputy Clerk

1 Kane Moon (SBN 249834)
Allen Feghali (SBN 301080)
2 Charlotte Mikat-Stevens (SBN 327047)
3 **MOON LAW GROUP, PC**
1055 West Seventh Street, Suite 1880
Los Angeles, California 90017
4 Telephone: (213) 232-3128
Facsimile: (213) 232-3125
5 Email: kmoon@moonlawgroup.com
Email: afeghali@moonlawgroup.com
6 Email: cmikat-stevens@moonlawgroup.com

7 *Attorneys for Plaintiff SHARON FENNIX*

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

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

12 Plaintiff,

13 vs.

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

17 Defendants

Case No.: CGC-20-584834

[Hon. Richard B. Jr. Ulmer, Dept. 302]

**[PROPOSED] ORDER GRANTING
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
AND PAGA ACTION SETTLEMENT**

*[Filed concurrently with Plaintiff's Notice of
Motion and Motion for Preliminary Approval
of Class and PAGA Action Settlement,
Declaration of Kane Moon, and Declaration
of Plaintiff Sharon Fennix]*

PRELIMINARY APPROVAL HEARING:

Date: January 25, 2024

Time: 9:30 a.m.

Dept.: 302

Complaint Filed: June 9, 2020

Trial Date: Not Set

1 **PROPOSED ORDER**

2 The Court has before it the unopposed Motion for Preliminary Approval of Class and
3 PAGA Action Settlement (“Motion”) of Plaintiff Sharon Fennix (“Plaintiff”). Having reviewed
4 the Notice of Motion, Motion, the Declaration of Kane Moon, the Declaration of Plaintiff Sharon
5 Fennix, and the Class and PAGA Action Settlement Agreement and Class Notice (“Settlement”),
6 and good cause appearing, **THE COURT HEREBY ORDERS AS FOLLOWS:**

7 1. The Settlement, which is attached as Exhibit 1 to the Declaration of Kane Moon
8 in Support of Plaintiff’s Motion for Preliminary Approval of Class and PAGA Action Settlement,
9 appears to be fair, adequate and reasonable, and therefore, meets the requirements for preliminary
10 approval. In particular, the Settlement appears to be fair and reasonable in light of the good faith,
11 non-collusive negotiations between Plaintiff and Defendant Tenderloin Housing Clinic, Inc.
12 (together, the “Parties”), which resulted in the Settlement; the significant formal and informal
13 discovery, investigation, and analysis conducted by the Parties, which enabled them to
14 intelligently evaluate, litigate and mediate the alleged claims; the probable outcome of further
15 litigation relating to class certification, liability and damages issues; the substantial costs, delay
16 and risks of further litigation relating to the same; and the risk of potential appeal.

17 2. The Settlement provides that Defendant will pay a Gross Settlement Amount of at
18 least \$330,000.00, subject to possible increase under the Escalator Clause, which will be used to
19 pay the Individual Class Payments to Participating Class Members; PAGA Penalties in the amount
20 of \$20,000.00, with 75% (\$15,000.00) allocated to the LWDA PAGA Payment, and 25%
21 (\$5,000.00) allocated to the Individual PAGA Payments to Aggrieved Employees; the Class
22 Counsel Fees Payment, which is not to exceed one third of the Gross Settlement Amount
23 (estimated to be \$110,000.00); the Class Counsel Litigation Expenses Payment, which is not to
24 exceed \$25,000.00; the Class Representative Service Payment, which is not to exceed \$7,500.00;
25 and the Administration Expenses Payment, which is not to exceed \$15,000.00 except for a showing
26 of good cause and as approved by the Court. These terms appear to contain the requisite criteria
27 for preliminary approval, pursuant to *California Code of Civil Procedure* section 382 and other
28 applicable law. Further, these terms appear to fall within the range of reasonableness of a

1 settlement which could ultimately be granted final approval by this Court.

2 3. The Class, which is defined as “all hourly-paid, non-exempt employees of
3 Defendant who worked in California during the Class Period” (the “Class Period” means the
4 period starting on June 9, 2020 through September 25, 2023), is provisionally certified for
5 settlement purposes only. Excluded from the Settlement Class are all Class Members who submit
6 a valid and timely request to be excluded from the Settlement pursuant to the instructions provided
7 in the Class Notice. The Class is provisionally certified because it appears to meet the following
8 requirements for certification under *California Code of Civil Procedure* section 382: (1) the Class
9 is so numerous that joinder is impractical; (2) there are questions of law and fact that are common,
10 or of general interest, to all Settlement Class Members which predominate over individual issues;
11 (3) Plaintiff’s claims are typical of the claims of the Participating Class Members; (4) Plaintiff
12 and Class Counsel will fairly and adequately protect the interests of the Settlement Class
13 Members; and (5) a class action is superior to other available methods for the fair and efficient
14 adjudication of the controversy. The Court notes that Class Members who do not request exclusion
15 from the Settlement may object thereto and may raise their objections at the Final Approval
16 Hearing on the Settlement.

17 4. Aggrieved Employees, which are defined as “all hourly-paid, non-exempt
18 employees of Defendant who worked in California during the PAGA Period” (the “PAGA Period”
19 is the period starting on June 9, 2020 through September 25, 2023), are provisionally approved
20 for settlement purposes only.

21 5. Effective on the date when Defendant fully funds the entire Gross Settlement Amount
22 and funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments,
23 Plaintiff, Participating Class Members, and Aggrieved Employees will release claims against all
24 Released Parties as follows (Settlement, ¶ 5):

- 25 a. **Released Parties.** “Released Parties” means Defendant and its current and former
26 parents, subsidiaries, affiliates, joint ventures, directors, officers, shareholders, owners,
27 employees, agents, attorneys, insurers, predecessors, successors, and assigns, and any
28 other person acting by, through, or under Defendant. (Settlement, ¶ 1.40.)

1 b. **Plaintiff's Release.** Plaintiff, on her behalf and on behalf of her respective former and
2 present spouses, representatives, agents, attorneys, heirs, administrators, successors, and
3 assigns generally, releases and discharges Released Parties from all claims, transactions,
4 or occurrences that occurred during the Class Period, including, but not limited to: (a) all
5 claims that were alleged, or reasonably could have been alleged based on the facts
6 contained, in the Plaintiff's Third Amended Complaint; (b) all PAGA claims that were
7 alleged, or reasonably could have been alleged based on facts contained, in the Third
8 Amended Complaint and Plaintiff's PAGA Notice; and (c) all claims related to or arising
9 from her employment with Defendant ("Plaintiff's Release"). Plaintiff's Release does not
10 extend to any claims or actions to enforce this Agreement, or to any claims for vested
11 benefits, unemployment benefits, disability benefits, social security benefits, workers'
12 compensation benefits that arose at any time, or based on occurrences outside the Class
13 Period. Plaintiff acknowledges that Plaintiff may discover facts or law different from, or
14 in addition to, the facts or law that Plaintiff now knows or believes to be true but agrees,
15 nonetheless, that Plaintiff's Release shall be and remain effective in all respects,
16 notwithstanding such different or additional facts or Plaintiff's discovery of them.
17 (Settlement, ¶ 5.1.)

18 i. **Plaintiff's Waiver of Rights Under California Civil Code § 1542.** For
19 purposes of Plaintiff's Release, Plaintiff expressly waives and relinquishes the
20 provisions, rights, and benefits, if any, of Section 1542 of the California Civil
21 Code, which reads: A general release does not extend to claims that the creditor
22 or releasing party does not know or suspect to exist in his or her favor at the
23 time of executing the release and that, if known by him or her, would have
24 materially affected his or her settlement with the debtor or released party.
25 (Settlement, ¶ 5.1.1.)

26 c. **Release by Participating Class Members.** All Participating Class Members, on behalf
27 of themselves and on behalf of their respective former and present representatives,
28 agents, attorneys, heirs, administrators, successors, and assigns, release the Released

1 Parties from all claims, transactions, or occurrences that occurred during the Class Period
2 and that were alleged, or reasonably could have been alleged based on the facts
3 contained, in the Third Amended Complaint. Except as set forth in Section 5.3 of this
4 Agreement, Participating Class Members do not release any other claims, including
5 claims for vested benefits, wrongful termination, violation of the Fair Employment and
6 Housing Act, unemployment insurance, disability, social security, workers'
7 compensation, or claims based on facts occurring outside the Class Period. (Settlement,
8 ¶ 5.2.)

9 d. **Release by Aggrieved Employees.** All Participating Class Members who are Aggrieved
10 Employees and all Non-Participating Class Members who are Aggrieved Employees, on
11 behalf of themselves and on behalf of their respective former and present representatives,
12 agents, attorneys, heirs, administrators, successors, and assigns, are deemed to release
13 the Released Parties from all claims, transactions, or occurrences that occurred during
14 the PAGA Period and that were alleged, or reasonably could have been alleged based on
15 the facts contained, in the Third Amended Complaint and Plaintiff's PAGA Notice.
16 (Settlement, ¶ 5.3.)

17 6. For settlement purposes only, the Class Representative appointed for this matter is
18 Plaintiff. The Class Representative Settlement Payment, which is not to exceed \$7,500.00, is
19 preliminarily approved. To the extent the final amount awarded is less, the remainder will be
20 allocated to the Net Settlement Amount for distribution to Participating Class Members.

21 7. For settlement purposes only, Class Counsel appointed for this matter is Moon
22 Law Group, PC. The Class Counsel Fees Payment, which is not to exceed one third of the Gross
23 Settlement Amount; and Class Counsel Litigation Expenses Payment, which is not to exceed
24 \$25,000.00, are preliminarily approved. To the extent the final amounts awarded are less, the
25 remainder will be allocated to the Net Settlement Amount for distribution to Participating Class
26 Members.

27 8. For settlement purposes only, the Administrator appointed for this matter is Apex
28 Class Action Administration. The Administration Expenses Payment, which is not to exceed

1 \$15,000.00, is preliminarily approved. To the extent actual administration expenses are less, the
2 remainder will be allocated to the Net Settlement Amount for distribution to Participating Class
3 Members.

4 9. The Court approves, as to form and content, the Class Notice attached to the
5 Settlement as Exhibit A. The Court finds, on a preliminary basis, that the plan for distribution of
6 the Class Notice to Class Members satisfies due process, provides the best notice practicable under
7 the circumstances, and constitutes due and sufficient notice to all persons entitled thereto.

8 10. A Final Approval Hearing on the question of whether the Settlement terms,
9 including the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, PAGA
10 Penalties, and Class Representative Service Payment, should be finally approved as fair, adequate
11 and reasonable as to the Participating Class Members is hereby set in accordance with the
12 following Implementation Schedule:

13 Defendant to provide Class Data to the 14 Administrator	Within fifteen (15) calendar days from the date of preliminary approval by the Court
15 Administrator to mail the Class Notices by 16 First Class Mail	Within fourteen (14) calendar days after the Administrator receives the Class Data
17 Response Deadline	Within forty-five (45) calendar days after the Administrator initially mails the Class Notices to Class Members and 18 Aggrieved Employees (extended by 14 19 calendar days for Class Members whose 20 initially undeliverable Class Notice is re- 21 mailed)
22 Deadline to file Motion for Final Approval	No later than sixteen (16) court days prior to the Final Approval Hearing
23 Final Approval Hearing	<u>May 28</u> , 2024 at <u>9:30 a.m.</u> 24 in Department <u>362</u> of the San 25 Francisco Superior Court

26 11. If any of the dates in the above schedule fall on a weekend, or bank or court
27 holiday, the time to act shall be extended to the next business day.

1 12. The Court reserves the right to continue the date of the Final Approval Hearing
2 without further notice to Class Members.

3 13. Pending further order of this Court, all proceedings in this lawsuit, except those
4 contemplated herein and in the Settlement, are stayed.

5 14. The Settlement is preliminarily approved but is not an admission by the Defendant
6 of the validity of any claims in the instant Class and PAGA action, or of any wrongdoing or
7 violation of law by Defendant.

8 15. Neither the Settlement nor any related document shall be offered or received in
9 evidence in any civil, criminal, or administrative action or proceeding other than such proceedings
10 as may be necessary to consummate or enforce the Agreement and Settlement.

11 16. The obligations set forth in the Settlement are deemed part of this Order. The
12 Parties and Administrator are to carry out the Settlement in accordance with its terms.

13 **IT IS SO ORDERED.**

14
15 DATE: 1/25/24

16 *Ulmer*
The Honorable Richard B. Jr. Ulmer
Judge of the San Francisco County Superior Court

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the county of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 1055 West Seventh Street, Suite 1880, Los Angeles, California 90017. On **January 2, 2024**, I served the foregoing document described as:

PROPOSED ORDER GRANTING PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS AND PAGA ACTION SETTLEMENT

X by placing ___ the original X a true copy thereof enclosed in sealed envelope(s) addressed as follows:

Shirley C. Wang
swang@saberlaw.com
Ren M. Kuan
rkuan@saberlaw.com

SABER LAW GROUP

101 Howard Street, Suite 400 San Francisco, California 94105

Telephone: (415) 278-1400

Facsimile: (415) 278-1404

Attorneys for Defendant TENDERLOIN HOUSING CLINIC, INC.

BY ELECTRONIC SERVICE: Based on a court order or an agreement of the parties to accept electronic service, I caused the documents to be sent to the persons at the electronic service addresses listed above via e-mail. I did not receive an error message.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this **January 2, 2024** at Los Angeles, California.

Jason Khozam

Type or Print Name

Signature 