



**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO**

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Case Number: CGC-08-478204

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COMPLAINT

MYDRA MCGARR VS. TENDERLOIN HOUSING CLINIC, INC. et al

001C02418949

Instructions:

Please place this sheet on top of the document to be scanned.

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):
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 ATTORNEY FOR (Name): Mydra McGarr, Plaintiff

SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Francisco
 STREET ADDRESS: 400 McAllister Street
 MAILING ADDRESS:
 CITY AND ZIP CODE: San Francisco, California 94102-4514
 BRANCH NAME:

PLAINTIFF: Mydra McGarr

 DEFENDANT: Tenderloin Housing Clinic, Inc., Chanel Samuel

DOES 1 TO 25
COMPLAINT—Personal Injury, Property Damage, Wrongful Death
 AMENDED (Number): FIRST
 Type (check all that apply):
 MOTOR VEHICLE **OTHER (specify):**
 Property Damage Wrongful Death
 Personal Injury Other Damages (specify): Personal Injury

Jurisdiction (check all that apply):
 ACTION IS A LIMITED CIVIL CASE
 Amount demanded does not exceed \$10,000
 exceeds \$10,000, but does not exceed \$25,000
 ACTION IS AN UNLIMITED CIVIL CASE (exceeds \$25,000)
 ACTION IS RECLASSIFIED by this amended complaint
 from limited to unlimited
 from unlimited to limited

FOR COURT USE ONLY

FILED
 Superior Court of California
 County of San Francisco

 MAR 2 = 2009
 GORDON PARK LI, Clerk
 BY: E. [Signature]
 Deputy Clerk

 e v

1. Plaintiff (name or names): Mydra McGarr
 alleges causes of action against defendant (name or names): Tenderloin Housing Clinic, Inc., Chanel Samuel, et al

2. This pleading, including attachments and exhibits, consists of the following number of pages: 6

3. Each plaintiff named above is a competent adult
 a. except plaintiff (name):
 (1) a corporation qualified to do business in California
 (2) an unincorporated entity (describe):
 (3) a public entity (describe):
 (4) a minor an adult
 (a) for whom a guardian or conservator of the estate or a guardian ad litem has been appointed
 (b) other (specify):
 (5) other (specify):

b. except plaintiff (name):
 (1) a corporation qualified to do business in California
 (2) an unincorporated entity (describe):
 (3) a public entity (describe):
 (4) a minor an adult
 (a) for whom a guardian or conservator of the estate or a guardian ad litem has been appointed
 (b) other (specify):
 (5) other (specify):

Information about additional plaintiffs who are not competent adults is shown in Attachment 3.

SHORT TITLE: McGarr v. Tenderloin Housing Clinic, Inc., Samuel, etal	CASE NUMBER: CGC- 08-478204
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4. Plaintiff (name):
 is doing business under the fictitious name (specify):

 and has complied with the fictitious business name laws.
5. Each defendant named above is a natural person
- a. except defendant (name): Tenderloin Housing Clini
 (1) a business organization, form unknown
 (2) a corporation
 (3) an unincorporated entity (describe):

 (4) a public entity (describe):
 (5) other (specify):
- c. except defendant (name):
 (1) a business organization, form unknown
 (2) a corporation
 (3) an unincorporated entity (describe):

 (4) a public entity (describe):
 (5) other (specify):
- b. except defendant (name):
 (1) a business organization, form unknown
 (2) a corporation
 (3) an unincorporated entity (describe):

 (4) a public entity (describe):
 (5) other (specify):
- d. except defendant (name):
 (1) a business organization, form unknown
 (2) a corporation
 (3) an unincorporated entity (describe):

 (4) a public entity (describe):
 (5) other (specify):
- Information about additional defendants who are not natural persons is contained in Attachment 5.
6. The true names of defendants sued as Does are unknown to plaintiff.
- a. Doe defendants (specify Doe numbers): 1-20 were the agents or employees of other named defendants and acted within the scope of that agency or employment.
- b. Doe defendants (specify Doe numbers): 1-5 are persons whose capacities are unknown to plaintiff.
7. Defendants who are joined under Code of Civil Procedure section 382 are (names):
8. This court is the proper court because
- a. at least one defendant now resides in its jurisdictional area.
 b. the principal place of business of a defendant corporation or unincorporated association is in its jurisdictional area.
 c. injury to person or damage to personal property occurred in its jurisdictional area.
 d. other (specify):
9. Plaintiff is required to comply with a claims statute, and
- a. has complied with applicable claims statutes, or
 b. is excused from complying because (specify):

SHORT TITLE:
McGarr v. Tenderloin Housing Clinic, Inc., Samuel, etal

CASE NUMBER:

CGC- 08-478204

10. The following causes of action are attached and the statements above apply to each (*each complaint must have one or more causes of action attached*):

- a. Motor Vehicle
 b. General Negligence
 c. Intentional Tort
 d. Products Liability
 e. Premises Liability
 f. Other (*specify*):
 Exemplary Damages

11. Plaintiff has suffered

- a. wage loss
 b. loss of use of property
 c. hospital and medical expenses
 d. general damage
 e. property damage
 f. loss of earning capacity
 g. other damage (*specify*):
 Exemplary Damages

12. The damages claimed for wrongful death and the relationships of plaintiff to the deceased are

- a. listed in Attachment 12.
 b. as follows:

13. The relief sought in this complaint is within the jurisdiction of this court.

14. Plaintiff prays for judgment for costs of suit; for such relief as is fair, just, and equitable; and for

- a. (1) compensatory damages
 (2) punitive damages

The amount of damages is (*in cases for personal injury or wrongful death, you must check (1)*):

- (1) according to proof
 (2) in the amount of: \$

15. The paragraphs of this complaint alleged on information and belief are as follows (*specify paragraph numbers*):

Date: February 13, 2009

William E. Weiss
 (TYPE OR PRINT NAME)


 (SIGNATURE OF PLAINTIFF OR ATTORNEY)

_____ **SECOND** _____ **CAUSE OF ACTION—Premises Liability** Page 5
 (number)

ATTACHMENT TO Complaint Cross-Complaint

(Use a separate cause of action form for each cause of action.)

Prem.L-1. Plaintiff (name): Mydra McGarr
 alleges the acts of defendants were the legal (proximate) cause of damages to plaintiff.
 On (date): May 30, 2008 plaintiff was injured on the following premises in the following

fashion (description of premises and circumstances of injury):
 The incident occurred at the Hartland Hotel in San Francisco, California, which is owned, operated and managed by defendant TENDERLOIN HOUSING CLINIC INC., when defendant SAMUEL, an employee and resident of the Hartland Hotel, viciously assaulted plaintiff McGARR by violently and repeatedly striking her with a metal pipe and causing plaintiff severe personal injuries.

Moreover, defendant TENDERLOIN HOUSING CLINIC, INC., ratified, adopted and approved defendant, SAMUEL's violent conduct, drug use and violation of employment and tenant rules at all times herein relevant.

Prem.L-2. **Count One—Negligence** The defendants who negligently owned, maintained, managed and operated the described premises were (names):
 TENDERLOIN HOUSING CLINIC, INC.

Does 1 to 25

Prem.L-3. **Count Two—Willful Failure to Warn** [Civil Code section 846] The defendant owners who willfully or maliciously failed to guard or warn against a dangerous condition, use, structure, or activity were (names): TENDERLOIN HOUSING CLINIC, INC.

Does 1 to 25
 Plaintiff, a recreational user, was an invited guest a paying guest.

Prem.L-4. **Count Three—Dangerous Condition of Public Property** The defendants who owned public property on which a dangerous condition existed were (names):

Does _____ to _____
 a. The defendant public entity had actual constructive notice of the existence of the dangerous condition in sufficient time prior to the injury to have corrected it.
 b. The condition was created by employees of the defendant public entity.

Prem.L-5. a. **Allegations about Other Defendants** The defendants who were the agents and employees of the other defendants and acted within the scope of the agency were (names):

Does _____ to _____
 b. The defendants who are liable to plaintiffs for other reasons and the reasons for their liability are described in attachment Prem.L-5.b as follows (names):

SHORT TITLE: McGarr v. Tenderloin Housing Clinic, Inc., et al.	CASE NUMBER: CGC- 08-478204
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 FIRST **CAUSE OF ACTION—General Negligence** **Page** **4**
(number)

ATTACHMENT TO **Complaint** **Cross-Complaint**

(Use a separate cause of action form for each cause of action.)

GN-1. Plaintiff (name): Mydra McGarr

alleges that defendant *(name)*: Tenderloin Housing Clinic, Inc., Chanel Samuel

Does **1** **to** **25**

was the legal (proximate) cause of damages to plaintiff. By the following acts or omissions to act, defendant negligently caused the damage to plaintiff
 on *(date)*: May 30, 2008
 at *(place)*: Hartland Hotel, 909 Geary Blvd., in San Francisco, California 94115.

(description of reasons for liability):

On May 30, 2008, at approximately 11:26 am, plaintiff MYDRA McGARR was viciously assaulted by a co-employee, Chanel Samuel, who violently beat McGARR with a metal pipe, causing severe personal injuries. The incident occurred at the Hartland Hotel where plaintiff McGARR and defendant SAMUEL were employed and where SAMUEL was a resident. Defendant TENDERLOIN HOUSING CLINIC, INC. owned operated and managed the Hartland Hotel during the time of the incident. Defendant TENDERLOIN HOUSING CLINIC, INC. had written and oral complaints about SAMUEL's propensity for violent, threatening and intimidating behavior prior to her attack on the plaintiff. Despite repeated complaints, Defendant, TENDERLOIN HOUSING CLINIC, INC., failed to discipline SAMUEL or prevent the assault on plaintiff, thereby ratifying, adopting and condoning her violent conduct.

Further Defendant, TENDERLOIN HOUSING CLINIC, INC., had actual and/or constructive notice that Defendant SAMUEL exhibited other aberrant behavior and was addicted to crack and/or methamphetamines. Further still Defendant, TENDERLOIN HOUSING CLINIC, INC., had actual and or constructive knowledge that said drug addiction coupled with Defendant SAMUEL's aberrant behavior was likely to lead to her committing an act of violence against co-employees.

Moreover, Defendant TENDERLOIN HOUSING CLINIC, INC., ratified, adopted and approved defendant SAMUEL'S violent conduct, drug use and violation of employment and tenant rules at all times herein relevant.

SHORT TITLE:
McGarr v. Tenderloin Housing Clinic, Inc., et al.

CASE NUMBER:
CGC- 08-478204

Exemplary Damages Attachment

Page 6

ATTACHMENT TO Complaint Cross - Complaint

EX-1. As additional damages against defendant (*name*): Tenderloin Housing Clinic, Inc.

Plaintiff alleges defendant was guilty of

- malice
- fraud
- oppression

as defined in Civil Code section 3294, and plaintiff should recover, in addition to actual damages, damages to make an example of and to punish defendant.

EX-2. The facts supporting plaintiff's claim are as follows:

Defendant TENDERLOIN HOUSING CLINIC INC., owned, managed and operated the Hartland Hotel in San Francisco, where Defendant CHANEL SAMUEL was an employee and resident. Based on the number of previous complaints made regarding SAMUEL's conduct, defendant TENDERLOIN HOUSING CLINIC, INC., had advance and/or constructive knowledge of SAMUEL's unfitness as an employee and the likelihood that SAMUEL would commit an act of violence against a co-employee. Since the incidence, Defendant TENDERLOIN HOUSING CLINIC, INC., has acted to suppress and destroy information concerning the assailant, such as CHANEL SAMUEL's propensity for violence and drug use and of any complaints whatsoever or other evidence indicating defendant SAMUEL was potentially violent so as to avoid liability.

Moreover, defendant, TENDERLOIN HOUSING CLINIC ratified, adopted and approved defendant SAMUEL's violent conduct, drug use and violation of employment and tenant rules at all time herein relevant.

By acting as alleged herein, Defendant, TENDERLOIN HOUSING CLINIC, INC., was grossly negligent and further its conduct as alleged herein was malicious, fraudulent and despicable, thus entitling plaintiff, McGARR to punitive damages in an amount according to proof.

EX-3. The amount of exemplary damages sought is

- a. not shown, pursuant to Code of Civil Procedure section 425.10.
- b. \$

SHORT TITLE: McGarr v. Tenderloin Housing Clinic, Inc., et al.	CASE NUMBER CGC-08-478204
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THIRD
(number)

CAUSE OF ACTION—Intentional Tort

Page 7

ATTACHMENT TO Complaint Cross - Complaint

(Use a separate cause of action form for each cause of action.)

IT-1. Plaintiff (name): Mydra McGarr

alleges that defendant (name): Tenderloin Housing Clinic, Inc., Chanel Samuel

Does 1 to 25

was the legal (proximate) cause of damages to plaintiff. By the following acts or omissions to act, defendant intentionally caused the damage to plaintiff
 on (date): May 30, 2008
 at (place): Hartland Hotel, 909 Geary Blvd., in San Francisco, CA 94115

(description of reasons for liability):

Defendant SAMUEL, with premeditation and after lying in wait, viciously beat plaintiff with a metal pipe and defendant TENDERLOIN HOUSING CLINIC, INC., ratified, adopted and condoned said actions by ignoring its actual and/or constructive knowledge that defendant SAMUEL was addicted to crack and/or methamphetamines, and that she had a history of violent, threatening and intimidating behavior at work and at her residence.

Moreover, defendant TENDERLOIN HOUSING CLINIC, INC., ratified, adopted and approved defendant SAMUEL's violent conduct, drug use and violation of employment and tenant rules at all times herein relevant.

Further, defendant TENDERLOIN HOUSING CLINIC, INC., acted to destroy, alter or modify any and all documents and evidence of its actual and/or constructive knowledge of SAMUEL, as stated above, in order to avoid liability.

Said acts by defendants, and each of them, was willful, malicious, fraudulent and despicable in complete derogation of the right of plaintiff McGARR and caused her severe emotional distress.

SHORT TITLE: McGarr v. Tenderloin Housing Clinic, Inc., et al.	CASE NUMBER CGC-08-478204
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FOURTH
(number)

CAUSE OF ACTION—Intentional Tort

Page 8

ATTACHMENT TO Complaint Cross - Complaint

(Use a separate cause of action form for each cause of action.)

IT-1. Plaintiff (name): Mydra McGarr

alleges that defendant (name): Tenderloin Housing Clinic, Inc., Chanel Samuel

Does 1 to 25

was the legal (proximate) cause of damages to plaintiff. By the following acts or omissions to act, defendant intentionally caused the damage to plaintiff on (date): May 30, 2008 at (place): Hartland Hotel, 909 Geary Blvd., in San Francisco, CA 94115

(description of reasons for liability):

On May 30, 2008, at approximately 11:26 am, plaintiff MYDRA McGARR was viciously assaulted by a co-employee, Chanel Samuel, who violently beat McGARR with a metal pipe, causing severe personal injuries. The incident occurred at the Hartland Hotel where plaintiff McGARR and defendant SAMUEL were employed and where SAMUEL was a resident. Defendant TENDERLOIN HOUSING CLINIC, INC. owned operated and managed the Hartland Hotel during the time of the incident. Defendant TENDERLOIN HOUSING CLINIC, INC. had written and oral complaints about SAMUEL's propensity for violent, threatening and intimidating behavior prior to her attack on the plaintiff. Despite repeated complaints, Defendant, TENDERLOIN HOUSING CLINIC, INC., failed to discipline SAMUEL or prevent the assault on plaintiff, thereby ratifying, adopting and condoning her violent conduct.

Further Defendant, TENDERLOIN HOUSING CLINIC, INC., had actual and/or constructive notice that Defendant SAMUEL exhibited other aberrant behavior and was addicted to crack and/or methamphetamines. Further still Defendant, TENDERLOIN HOUSING CLINIC, INC., had actual and or constructive knowledge that said drug addiction coupled with Defendant SAMUEL's aberrant behavior was likely to lead to her committing an act of violence against co-employees.

Moreover, Defendant TENDERLOIN HOUSING CLINIC, INC., ratified, adopted and approved defendant SAMUEL'S violent conduct, drug use and violation of employment and tenant rules at all times herein relevant.