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6 7	Attorneys for Defendant EQUINOX HOLDINGS, INC.	
8		
9	UNITED STATES	DISTRICT COURT
10	CENTRAL DISTRI	CT OF CALIFORNIA
11		
12	TAMAR KASBARIAN,	Case No.: 2:16-CV-01795 MWF (JCx)
13	Plaintiff,	DEFENDANT'S STATEMENT OF
14	VS.	UNCONTROVERTED MATERIAL FACTS AND CONCLUSIONS OF LAW
15	EQUINOX HOLDINGS, INC., EQUINOX FITNESS MARINA DEL REY INC.,	
16	EQUINOX FITNESS SEPULVEDA, INC., inclusive,	[F.R.C.P. Rule 56]
17	Defendants.	[Filed concurrently with Notice of Motion
18 19		and Motion; Memorandum of Points and Authorities; Statement of Uncontroverted Facts and Conclusions of Law, Declarations
20		and Exhibits in Support Thereof; Compendium of Evidence; [Proposed] Order; and [Proposed] Judgment]
21		Date: November 7, 2016
22		Time: 10:00 a.m. Courtroom: 165
23		
24		Complaint filed: April 13, 2015
25		
26		
27		
28		
	Case No: 2:16-CV-01795 MWF (JCx)	1 DEFENDANT'S STATEMENT OF

Defendant Equinox Holdings, Inc. ("Defendant"), by and through its attorneys of record, hereby submits the following Statement of Uncontroverted Facts and Conclusions of Law pursuant to Federal Rule of Civil Procedure, Local Rule 56-1 in support of its Motion for Summary Judgment as follows:

After consideration of the papers in support of and in opposition to Defendant's motion for summary judgment including the 93 Uncontroverted Facts, and the oral argument of counsel, the Court now makes the following Uncontroverted Facts and Conclusions of Law:

UNCONTROVERTED FACTS¹ AND SUPPORTING EVIDENCE ISSUE NO. 1

The club defendants were not Plaintiff's employer and should be dismissed from this action. (UF Nos. 86-87.)

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
86. Plaintiff admitted she never received	86. First Volume of the Deposition of
any W-2s during her employment	Plaintiff Tamar Kasbarian ("Plaintiff
reflecting either Equinox Fitness	Depo., Volume I"), 40:10-41:6, 41:11-
Sepulveda, Inc. ("Sepulveda") or Equinox	43:13, 67:3-16; Exhs. 7, 10 (W-2s).
Fitness Marina Del Rey ("Marina Del	
Rey"), Inc. as her employer.	
87. Neither the Sepulveda club nor the	87. Notice of Removal, ¶ 13,
Marina Del Rey club has any employees	Declaration of Patricia Wencelblat
nor has ever had an employment	("Wencelblat Decl."), ¶ 3.)
relationship with or made any employment	
decisions regarding Plaintiff.	

The facts set forth herein are being treated as uncontroverted for purposes of Defendant's Motion for Summary Judgment only.

Case No: 2:16-CV-01795 MWF (JCx)

DEFENDANT'S STATEMENT OF

ISSUE NO. 2

Plaintiff's first cause of action for violations of California Labor Code § 1102.5, et seq. fails as a matter of law because Plaintiff cannot establish a *prima facie* claim for retaliation because Plaintiff did not engage in "protected activity." (UF Nos. 1-80.)

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
1. Plaintiff was hired as a Membership	1. Plaintiff Depo., Volume I, 36:23-
Advisor ("MA") at Equinox's Santa	38:10, Exh. 5 (Offer Letter).
Monica club on or about October 15,	
2010.	
2. In January 2014, Plaintiff began	2. Plaintiff Depo., Volume I, 189:22-
working at Equinox's West Los Angeles	190:12, Exh. 13 (Memo).
club ("West LA club").	
3. At the West LA club, MAs were	3. Declaration of Brian Hemedinger
referred to as Membership Executives.	("Hemedinger Decl."), ¶ 3.
However, their job duties were the same.	
4. During Plaintiff's employment at	4. Declaration of Jack Gannon
Equinox's Santa Monica and West LA	("Gannon Decl."), ¶¶ 1-2.
clubs, Jack Gannon ("Gannon") was the	
Vice President of the West Coast.	
5. From about October 2011 through	5. Plaintiff Depo., Volume I, 270:8,-
about June 2015, Brian Hemedinger	14, 75:24-76:4; Deposition of Brian
("Hemedinger") was the Regional	Hemedinger ("Hemedinger Depo.")
Director of Operations ("Regional	15:3-10, 41:1-9, 13-16; Hemedinger
Director") of the Santa Monica and West	Decl., ¶ 1.
LA clubs.	
6. General Manager Kira Simonson	6. Plaintiff Depo., Volume I, 52:11-

1	DEFENDANT'S	DEFENDANT'S SUPPORTING
2	UNCONTROVERTED FACTS	EVIDENCE
3	("Simonson) supervised Plaintiff at the	19.
4	West LA club from about January 2014 to	
5	about January 2015.	
6	7. Plaintiff's personnel file includes an	7. Plaintiff Depo., Volume I, 43:18-
7	Employee Handbook: Receipt	45:15, Exh. 8 (Receipt
8	Acknowledgment Form with Plaintiff's	Acknowledgement Form); Declaration of
9	signature dated October 15, 2010.	Emerson Figueroa ("Figueroa Decl."), ¶
10		5, Exh. B.)
11	8. In particular, the Employee	8. Plaintiff Depo., Volume I, 43:18-
12	Handbook stated:	45:15, Exh. 8 (Receipt
13	I acknowledge that the receipt of the	Acknowledgement Form); Figueroa
14	Employee Handbook in no way creates a	Decl., ¶ 5, Exh. B (Receipt
15	contract between Equinox and me.	Acknowledgement Form).
16	Moreover, I understand and agree that all	
17	matters discussed in the Employee	
18	Handbook are subject to change or	
19	modification from time to time except the	
20	At-Will Employment Policy specified	
21	therein. The At-Will Employment Policy	
22	represents the final and complete	
23	agreement concerning the duration of my	
24	employment. I acknowledge that any	
25	change in the At-Will Employment Policy	
26	is effective only if set forth in a written	
27	document signed by the CEO of Equinox	
28	and myself.	

1	DEFENDANT'S	DEFENDANT'S SUPPORTING
2	UNCONTROVERTED FACTS	EVIDENCE
3	9. Plaintiff's personnel file also	9. Plaintiff Depo., Volume I, 36:23-
4	includes an Offer Letter, dated October	38:11, Exh. 5 (Offer Letter); Figueroa
5	15, 2010, which Plaintiff acknowledged	Decl., ¶ 6, Exh. C (Offer Letter).
6	receiving.	
7	10. In particular, the Offer Letter stated:	10. Plaintiff Depo., Volume I, 36:23-
8	We are excited at the prospect of you	38:11, Exh. 5 (Offer Letter); Figueroa
9	joining the Company, you should be	Decl., ¶ 6, Exh. C (Offer Letter).
10	aware that our relationship is	
11	"employment-at-will." That means you	
12	are free, at any time, for any reason, to	
13	end your employment with the Company	
14	and that the Company may do the same.	
15	Our agreement regarding the at-will	
16	nature of your employment may not be	
17	changed, except in a writing signed by the	
18	Company's Chief Executive Officer.	
19	Given the at-will nature, the Company	
20	may from time to time add to, modify, or	
21	discontinue its compensation policies,	
22	employee benefit plans or other aspects of	
23	your employment.	
24	11. Plaintiff's personnel file also	11. Figueroa Decl., ¶ 8, Exh. D.
25	includes an Employee Confidentiality and	
26	Non-Solicitation Agreement with	
27	Plaintiff's signature dated October 14,	
28	2010.	

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
12. This Agreement stated: "You agree	12. Figueroa Decl., ¶ 8, Exh. D.
and understand that nothing in this	
Agreement shall alter or modify the 'at-	
will' nature of your employment with the	
Company or confer on [y]ou any right with	
respect to continuation of your	
employment with the Company."	
13. In her deposition, Plaintiff admitted	13. Plaintiff Depo., Volume I, 36:23-
that she did not have a contract with	38:11, 43:18-45:15, Exh. 5 (Offer
Equinox; no one ever told her that she was	Letter), Exh. 8 (Receipt
guaranteed employment for a certain time	Acknowledgement Form).
period; and no one ever told her that she	
was anything other than an at-will	
employee.	
14. The Employee Handbook Plaintiff	14. Plaintiff Depo., Volume I, 43:18-
acknowledged receiving also included	45:15, Exh. 8 Receipt of Employee
Equinox's non-retaliation policy as well	Handbook; Declaration of Emerson
as complaint procedures for reporting	Figueroa ("Figueroa Decl."), Exh. A.
retaliation.	
15. In particular, Equinox's policy	15. Plaintiff Depo., Volume I, 43:18-
strictly prohibits retaliation against any	45:15, Exh. 8 Receipt of Employee
employee for "filing a complaint and	Handbook; Figueroa Decl., Exh. A,
[Equinox] will not knowingly permit	Employee Handbook.
retaliation by management, employees, or	
co-workers." Equinox's policy also	
prohibits retaliation against any employee	

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
for "using this complaint procedure or for	
filing, testifying, assisting, or participating	
in any manner in any investigation,	
proceeding, or hearing conducted by a	
governmental enforcement agency.	
Additionally, Equinox will not knowingly	
permit any retaliation against any	
employee who complains of prohibited	
harassment or who participates in an	
investigation."	
16. The complaint procedure as	16. Plaintiff Depo., Volume I, 43:18-
outlined in the Employee Handbook	45:15, Exh. 8 Receipt of Employee
permits an employee to report retaliation	Handbook; Figueroa Decl. ¶ 4.
to his or her manager, Human Resources,	
or through Equinox's Ethics Hotline.	
17. In or about June 2014, Hemedinger	17. Plaintiff Depo., Volume I, 190:16-
informed Plaintiff and other MAs that the	194:3, 219:7-10; Plaintiff Depo., Volume
compensation plan for all West LA MAs	II, 347:22-348:1; Deposition of Barry
was being clarified, so that the market	Holmes ("Holmes Depo.") 69:4-71:12,
bonuses would be paid out individually	73:23-75:10, Exhs. 201-202;
and not cumulatively for reaching a	Hemedinger Depo., 60:11-61:3, 68:12-
certain sales goal.	14, 70:19-72:3.; Rosen Depo., 33:5-15.
18. For example, the plan provided for a	18. Plaintiff Depo., Volume I, 190:16-
particular market bonus upon reaching a	194:3; Hemedinger Depo., 64:18-65:11
certain goal of sales:	
• 100% of goal – MA would	
certain goal of sales:	

1	DEFENDANT'S	DEFENDANT'S SUPPORTING
2	UNCONTROVERTED FACTS	EVIDENCE
3	receive an extra \$20 per sale	
4	• 115% of goal – MA would	
5	receive an extra \$40 per sale	
6	• 125% of goal – MA would	
7	receive an extra \$55 per sale	
8	• 150% of goal – MA would receive	
9	an extra \$70 per sale	
10	19. For the West LA club, Equinox's	19. Plaintiff Depo., Volume I, 190:16-
11	Payroll Department was adding the	194:3; Holmes Depo., 82:11-83:14;
12	bonuses together as opposed to giving one	Hemedinger Depo., 59:22-60:6, 62:3-
13	of the bonuses above depending on the	63:8; 66:6-11., 68:15-69:8.
14	overall percentage.	
15	20. Plaintiff testified that she	20. Plaintiff Depo., Volume I, 199:7-
16	complained about what she viewed as a	22; Hemedinger Depo., 59:14-60:10;
17	"change" in the compensation plan to the	Deposition of Scott Rosen ("Rosen
18	following managerial employees:	Depo.") 29:18-30:4, 30:22-31:12, 31:20-
19	Hemedinger, Gannon, Simonson, Veronica	33:4, 61:12-64:17, 65:8-69:12, Exhs.
20	Santarelli ("Santarelli") (Regional Sales	206-207; Holmes Depo., 71:23-73:22,
21	Manager), Matt Gonzalez ("Gonzalez")	77:18-82:10, 84:19-86:8, Ex. 203.
22	(Director of Sales), Barry Holmes	
23	("Holmes") (Senior Vice President of	
24	Sales), and Scott Rosen ("Rosen") (Chief	
25	Operating Officer) ("COO").	
26	21. Despite Plaintiff's complaints about	21. Plaintiff Depo., Volume I, 196:8-
27	the compensation plan, Plaintiff continued	14, 207:15-22, 220:5-20; Plaintiff Depo.,
28	to work at Equinox for seven months after	Volume II, 349:5-12.

1	DEFENDANT'S	DEFENDANT'S SUPPORTING
2	UNCONTROVERTED FACTS	EVIDENCE
3	the "changed" compensation plan was	
4	instituted in July/August 2014 and	
5	continued to work for Equinox until she	
6	quit in February 2015.	
7	22. Plaintiff testified that she	22. Plaintiff Depo., Volume I, 81:6-21;
8	complained to Hemedinger, Simonson, and	82:5-83:23, 94:14-97:9.
9	possibly to Gannon in February or March	
10	2014 that she believed that a MA at West	
11	LA was using one-month guest passes	
12	and/or gift cards to sign up members for	
13	what they believed was a month-long	
14	membership, but in actuality, was signing	
15	them up for a year-long membership by	
16	using their credit cards without	
17	authorization.	
18	23. According to Plaintiff, "charging	23. Plaintiff Depo., Volume II,
19	credit cards without people's approval and	334:16-336:23.
20	telling people they were signing up for a	
21	month-long contract, but then signing	
22	them up for a year-long contract" were the	
23	only "illegal activities" about which she	
24	complained to Equinox.	
25	24. According to Plaintiff, her other	24. Plaintiff Depo., Volume II,
26	complaints involved "things against	334:16-336:23.
27	Equinox policies that were happening as	
28	well."	

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
25. Plaintiff admitted that she could not	25. Plaintiff Depo., Volume II, 335:4-
identify any statute, ordinance, regulation,	336:23.
local law, state law, or federal law that	
was violated as a result of this alleged	
activity.	
26. Plaintiff also testified that she	26. Plaintiff Depo., Volume I, 76:17-
complained to Hemedinger and Simonson	79:19; 93:10-94:10, 102:10-107:24;
about the sales activities of another MA.	108:1-113:5; Hemedinger Depo., 45:8-
	47:19.
27. Specifically, Plaintiff complained	27. Plaintiff Depo., Volume I, 76:17-
that this MA was giving away "free	79:19; 93:10-94:10, 102:10-107:24;
months" to potential members, allowing	108:1-113:5; Hemedinger Depo., 45:8-
"freezes" for members, and offering "three	47:19.
month" deals.	
28. In or around December 2014, COO	28. Rosen Depo., 37:20-38:18;
Rosen was touring the West LA club	Declaration of Tracy Cuva ("Cuva
when he was told by a member that a MA	Decl."), ¶ 2.
had charged a membership to another	
member's credit card without that	
member's authorization.	
29. Member Services is Equinox's	29. Cuva Decl., ¶ 1.
billing department (centrally based in	
New York) which handles membership	
contracts and membership sales, including	
auditing of membership sales.	

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
30. Rosen contacted Tracy Cuva,	30. Rosen Depo., 37:20-38:21; Cuva
Senior Director of Equinox's Member	Decl., ¶ 2.
Services Department, gave her the	
information received from the member,	
and asked Member Services to investigate	
this sale.	
31. Member Services' investigation,	31. Cuva Decl., ¶ 2.
which was conducted by Cuva, confirmed	
that this was an unauthorized sale	
processed by a MA at the West LA Club	
(Plaintiff was not implicated in this	
transaction).	
32. This MA was relocating to New	32. Rosen Depo., 39:8-13.
York but, based on the investigation	
results, she was not hired to work for	
Equinox in New York.	
33. As a result of this member	33. Rosen Depo., 47:25-6; Cuva Decl.,
complaint, Rosen also asked Cuva to have	¶ 3.
Member Services conduct an investigation	
of sales transactions at the West LA club.	
34. Apart from requesting that the	34. Rosen Depo., 47:25-48:21.
investigation be conducted and asking Jim	
Burger (Senior Director of Loss	
Prevention) to travel to the West LA club	
and continue the investigation after	
Member Services finished their portion of	
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DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
the investigation, Rosen did not	
participate in that investigation.	
35. Cuva instructed Kevin Stanfa	35. Cuva Decl., ¶ 3; Stanfa Decl. ¶ 4.
("Stanfa") (Manager of Compliance and	
Special Projects), to review sales	
transactions at the West LA club.	
36. After Stanfa reported finding	36. Cuva Decl., ¶ 3; Stanfa Decl. ¶ 4.
various anomalies associated with sales	
transactions at the West LA club, Cuva	
instructed Stanfa to prepare a summary	
detailing his findings.	
37. Stanfa then prepared a workbook	37. Stanfa Decl., ¶ 4.
with three spreadsheets regarding the	
following sales activities: (1) 2014	
Freezes; (2) Modification to Direct Bill;	
and (3) West LA Sales Breakdown.	
38. Once these were prepared, Cuva	38. Rosen Depo., 47:25-48:21:
emailed the spreadsheets to Rosen,	Holmes Depo., 86:10-88:10, 95:9-96:10
Holmes and Gannon and summarized the	Cuva Decl., ¶ 6, Exh.N; Stanfa Decl., ¶
results of the Member Services	4-5.
investigation.	
39. In her email, Cuva indicated that	39. Cuva Decl., ¶ 7, Exh.N.
these spreadsheets "all reflect patterns	
unhealthy for the business."	
40. Cuva noted as follows:	40. Cuva Decl., ¶ 7, Exh.N.
i The 2014 Freezes spreadsheet	
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1	DEFENDANT'S	DEFENDANT'S SUPPORTING
2	UNCONTROVERTED FACTS	EVIDENCE
3	shows that West LA is an outlier	
4	in members who request a freeze	
5	in the first 60 days of	
6	membership who also go on to	
7	cancel in the same year.	
8	i The Modification to Direct Bill	
9	spreadsheet reflects members in	
10	the last quarter of 2014 whose	
11	billing was modified from the	
12	credit card payment type to direct	
13	bill the day before billing ran.	
14	The Company average is four per	
15	club. West LA had 28	
16	modifications to direct bill.	
17	i The West LA Breakdown	
18	spreadsheet shows questionable	
19	sales from two MAs (Plaintiff	
20	and the MA moving to New	
21	York). The other three MAs	
22	were reviewed and did not reflect	
23	the same anomalies seen with	
24	Plaintiff and the MA moving to	
25	New York. The questionable	
26	sales included selling	
27	memberships to members with	
28	the credit card of another	
		DEFEND ANTIQUE AT THE TOTAL OF

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
member (almost universally	
without requesting a referral	
credit) or re-contracting over a	
previously 3-day'd membership	
and either using the credit from	
the previous sale or recharging	
the same credit card, credit card	
not present for numerous sales	
transactions, 3-day cancellations	
with no or just one member visit,	
new memberships which were	
previously finance cancelled and	
had balances on account that	
were waived.	
41. Neither Cuva nor Stanfa were aware	41. Cuva Decl., ¶ 8; Stanfa Decl., ¶ 11.
Plaintiff had made any complaints about	
changes to her compensation plan or about	
the alleged activities of other MAs.	
42. In addition, Burger was asked to	42. Deposition of Jim Burger ("Burger
interview the sales team at the West LA	Depo."), 72:4-73:3, 73:13:75:22, 76:6-
club.	12.
43. When Burger came to Los Angeles	43. Hemedinger Decl., ¶ 4.
to conduct his interviews in late January	
2015, the West LA club's sales team	
consisted of three MAs, Plaintiff and two	
other MAs who were supervised by the	
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DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
Simonson and an Assistant General	
Manager.	
44. A MA was fired on or about January	44. Figueroa Decl. ¶ 9; Hemedinger
20, 2015 for improper sales activities.	Decl., ¶ 4.
45. At Burger's request, Member	45. Burger Depo., 72:13-73:3; Cuva
Services provided him with the	Decl. ¶ 8.
spreadsheets summarizing their findings of	
questionable sales transactions at the West	
LA club.	
46. Burger then met with Cuva and	46. Burger Depo., 73:13-74:15; Cuva
Stanfa and they discussed their findings	Decl. ¶ 8; Stanfa Decl., ¶ 9.
regarding the questionable sales at the	
West LA club.	
47. Burger had a subsequent meeting	47. Burger Depo., 74:16-75:3, 8-22;
with Stanfa to review the spreadsheets	Stanfa Decl., ¶ 9.
Member Services had prepared.	
48. These spreadsheets showed	
anomalies in various sales transactions,	Decl., ¶ 8; Stanfa Decl., ¶¶ 4-5.
including whether or not a contract was	
signed, whether or not a credit card was	
present for the sales transaction, whose	
credit card was used for the sales	
transactions, if another individual's credit	
card number was used for the sales	
transaction instead of the member's credit	
card number, whether or not a member had	

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
any visits to a club, etc.	
49. Burger also had a couple of	49. Burger Depo., 76:19-77:1; Stanfa
telephone conversations with Stanfa	Decl., ¶ 9.
regarding the anomalies in various sales	
activities at the West LA Club.	
50. In late January 2015, Burger came to	50. Burger Depo., 76:6-12; Gannon
Los Angeles to interview various	Decl., ¶ 3; Hemedinger Decl., ¶ 5.
employees regarding sales activities of the	
West LA MAs.	
51. Prior to the interviews, Burger and	51. Burger Depo., 116:12-117:12.
Gannon discussed suspending all of the	
individuals interviewed as part of the	
investigation pending the results of the	
investigation.	
52. Burger then interviewed the	52. Hemedinger Decl., ¶ 5.
following individuals: (1) the Assistant	
General Manager; (2) Plaintiff; (3) another	
MA; (4) a relatively newly hired MA; and	
(5) Simonson.	
53. Burger had never heard of or spoken	53. Burger Depo., 35:22-24.
to Plaintiff prior to this investigation	
meeting.	
54. On January 30, 2015, Plaintiff met	54. Plaintiff Depo., Volume I, 161:11-
with Burger and Leah Ball of Human	22, 164:10-22; Plaintiff Depo., Volume
Resources regarding West LA's sales	II, 305:21-24; , Burger Depo., 96:18-25.
practices.	
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DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
55. Plaintiff answered questions about	55. Plaintiff Depo., Volume I, 161:11-
her sales activities, as well as the activities	22, 164:10-22; Burger Depo., 53:13-
of other MAs.	54:9.
56. While Burger did not find Plaintiff	56. Burger Depo., 122:14-17.
credible, he felt, at that time, that there was	
insufficient information to warrant	
Plaintiff's termination.	
57. After Burger completed his	57. Burger Depo., 117:16-18, 24-
interviews, Burger, Gannon and	118:6.
Hemedinger met briefly to discuss	
Burger's impressions.	
58. Gannon then advised Plaintiff that	58. Plaintiff Depo., Volume I, 174:24-
she was being suspended.	175:3, 11-12; Plaintiff Depo., Volume II,
	306:3-7; Gannon Decl., ¶ 4.
59. All of the MAs interviewed as part	59. Burger Depo., ¶ 110:17-23;
of the investigation (with the exception of	Gannon Decl., ¶ 6.
the relatively new MA) were suspended	
pending investigation.	
60. Gannon also advised Plaintiff to	60. Plaintiff Depo., Volume I, 180:11-
report back to the West LA club at 2:00	181:4; Gannon Decl., ¶ 5.
p.m. the next day for another meeting.	
61. According to Plaintiff, Equinox told	61. Plaintiff Depo., Volume I, 174:24-
her that she would not have access to her	175:21; Plaintiff Depo., Volume II,
email or payroll account and escorted her	305:21-306:2, 364:17-20; Plaintiff's
out of the building in front of Equinox's	Complaint, 6:5-7.
clientele, staff and all of her peers.	
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1	DEFENDANT'S	DEFENDANT'S SUPPORTING
2	UNCONTROVERTED FACTS	EVIDENCE
3	62. It is Equinox's policy to turn off	62. Gannon Decl., ¶ 7.
4	email access for hourly employees who	
5	have been suspended pending investigation	
6	or who are on a leave of absence.	
7	63. Prior to Burger's interview of	63. Gannon Decl., ¶ 8.
8	Plaintiff, Gannon had the Payroll	
9	Department prepare a final paycheck for	
10	Plaintiff so that she could be paid in	
11	accordance with California law in the	
12	event the decision was made to terminate	
13	her employment.	
14	64. Plaintiff met with Hemedinger and	64. Plaintiff Depo., Volume I, 182:5-
15	Gannon at the West LA club on January	183:8; Plaintiff Depo., Volume II,
16	31, 2015 and was told that the	306:12:16, 382:12-17, 390:4-11, Exh.
17	investigation was concluded and that she	38; Hemedinger Depo., 54:17-21, 55:1-8;
18	would be working at the Marina Del Rey	Gannon Decl., ¶ 3; Hemedinger Decl., ¶
19	club.	6.
20	65. The decision was made to reassign	65. Rosen Depo., 71:7-20, 73:15-22,
21	Plaintiff to the Marina Del Rey club	76:5-14; Holmes Depo., 96:12-98:17;
22	because Equinox wanted to rebuild the	Hemedinger Depo., 51:7-52:23; Gannon
23	team of MAs in the West LA club and to	Decl., ¶ 10.
24	create a fresh culture, as a result of the	
25	investigation findings.	
26	66. Plaintiff's compensation plan would	66. Rosen Depo., 87:25-88:4; Gannon
27	change once at Marina Del Rey to align	Decl., ¶ 11.
28	with the compensation plan of Marina Del	
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DEFENDANT'S	DEFENDANT'S SUPPORTING
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Rey MAs. Equinox considered the	
reassignment a lateral move.	
67. Equinox considered the	67. Rosen Depo., 87:25-88:4; Gannon
reassignment a lateral move.	Decl., ¶ 11.
68. When Plaintiff was asked what her	68. Plaintiff Depo., Volume II, 390:4-
compensation would be at the Marina Del	11, Exh. 38; Gannon Decl., ¶ 12.
Rey club, she was sent the compensation	
plan of a Marina Del Rey MA.	
69. Equinox's expectation was she	69. Hemedinger Depo., 52:18-23;
would earn at least the same amount of	Rosen Depo., 57:13-19; 58:22-59:14;
money because the Marina Del Rey club	Holmes Depo., 31:13-15.
was a high performing club and the	
memberships for the Marina Del Rey club	
were less expensive than the memberships	
for the West LA club.	
70. It was easier to sell more	70. Hemedinger Depo., 52:18-23;
memberships at the Marina Del Rey club	Rosen Depo., 57:13-19; 58:22-59:14;
than the West LA club because the Marina	Holmes Depo., 50:18-51:5
Del Rey memberships were less expensive.	
71. Gannon emailed Plaintiff the	71. Plaintiff Depo., Volume I, 246:19-
compensation plan for the Marina Del Rey	247:2; Gannon Decl., ¶ 12.
Club on or about January 31, 2015.	
72. Plaintiff testified that no one from	72. Plaintiff Depo., Volume I, 171:10-
Equinox ever told her that she was being	172:7; Plaintiff Depo., Volume II,
"terminated" or "demoted" as part of her	306:17-310:19, 363:24-364:3; Gannon
reassignment to the Marina Del Rey club.	Decl., ¶ 13; Hemedinger Decl., ¶ 7.
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DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
73. Gannon made the decision to	73. Rosen Depo., 45:7-25. 57:8-12;
reassign Plaintiff to the Marina Del Rey	Hemedinger Depo., 53:14-18.
club.	
74. Plaintiff was told to report to the	74. Plaintiff Depo., Volume I, 186:5-
Marina Del Rey club on February 2, 2015	14; Plaintiff Depo., Volume II, 311:4-8;
at 9:00 a.m.	Hemedinger Depo., 54:17-55:18, 55:25-
	56:25, 57:6-57:11.
75. Before reporting to the Marina Del	75. Plaintiff Depo., Volume I, 186:5-
Rey club, Plaintiff submitted her	14, Exh. 26; Plaintiff Depo., Volume II,
resignation, via email, on the morning of	311:4-8; Hemedinger Depo., 54:17-
February 2, 2015 effective immediately.	55:18, 55:25-
	56:25, 57:6-57:11.
76. Plaintiff's last day of employment	76. Plaintiff Depo., Volume I, 186:11-
was February 2, 2015.	14.
77. Plaintiff never reported to work at	77. Plaintiff Depo., Volume I, 50:13-
the Marina Del Rey club.	15, 186:15-17; Hemedinger Depo.,
	56:22-25.
78. As of February 1, 2015, the only	78. Plaintiff Depo., Volume II, 342:3-
remaining MA at the West LA club was	11.
the recently hired MA.	
79. As of April/May 2015, the West LA	79. Plaintiff Depo., Volume II,
club had an entirely new sales team and	342:25-343:5.
sales management.	
80. Plaintiff testified that she was	80. Plaintiff Depo., Volume II, 343:6-
unaware of any other MA at the West LA	22.
club complaining about the unauthorized	
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DEFENDANT'S	DEFENDANT'S SUPPORTING	
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use of credit cards or telling someone that		
they were being signed up for a one-month		
membership but signing them up for a year		
instead.		
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Plaintiff's first cause of action for violations of California Labor Code § 1102.5, et seq. also fails as a matter of law because Plaintiff cannot establish a *prima facie* claim for retaliation because there was no "adverse employment action. (UF Nos. 1-80.)

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
1. Plaintiff was hired as a Membership	1. Plaintiff Depo., Volume I, 36:23-
Advisor ("MA") at Equinox's Santa	38:10, Exh. 5 (Offer Letter).
Monica club on or about October 15,	
2010.	
2. In January 2014, Plaintiff began	2. Plaintiff Depo., Volume I, 189:22-
working at Equinox's West Los Angeles	190:12, Exh. 13 (Memo).
club ("West LA club").	
3. At the West LA club, MAs were	3. Declaration of Brian Hemedinger
referred to as Membership Executives.	("Hemedinger Decl."), ¶ 3.
However, their job duties were the same.	
4. During Plaintiff's employment at	4. Declaration of Jack Gannon
Equinox's Santa Monica and West LA	("Gannon Decl."), ¶¶ 1-2.
clubs, Jack Gannon ("Gannon") was the	
Vice President of the West Coast.	
5. From about October 2011 through	5. Plaintiff Depo., Volume I, 270:8,-

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
about June 2015, Brian Hemedinger	14, 75:24-76:4; Deposition of Brian
("Hemedinger") was the Regional	Hemedinger ("Hemedinger Depo.")
Director of Operations ("Regional	15:3-10, 41:1-9, 13-16; Hemedinger
Director") of the Santa Monica and West	Decl., ¶ 1.
LA clubs.	
6. General Manager Kira Simonson	6. Plaintiff Depo., Volume I, 52:11-
("Simonson) supervised Plaintiff at the	19.
West LA club from about January 2014 to	
about January 2015.	
7. Plaintiff's personnel file includes an	7. Plaintiff Depo., Volume I, 43:18-
Employee Handbook: Receipt	45:15, Exh. 8 (Receipt
Acknowledgment Form with Plaintiff's	Acknowledgement Form); Declaration of
signature dated October 15, 2010.	Emerson Figueroa ("Figueroa Decl."), ¶
	5, Exh. B.)
8. In particular, the Employee	8. Plaintiff Depo., Volume I, 43:18-
Handbook stated:	45:15, Exh. 8 (Receipt
I acknowledge that the receipt of the	Acknowledgement Form); Figueroa
Employee Handbook in no way creates a	Decl., ¶ 5, Exh. B (Receipt
contract between Equinox and me.	Acknowledgement Form).
Moreover, I understand and agree that all	
matters discussed in the Employee	
Handbook are subject to change or	
modification from time to time except the	
At-Will Employment Policy specified	
therein. The At-Will Employment Policy	
represents the final and complete	

DEFENDANT'S	DEFENDANT'S SUPPORTING
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agreement concerning the duration of my	
employment. I acknowledge that any	
change in the At-Will Employment Policy	
is effective only if set forth in a written	
document signed by the CEO of Equinox	
and myself.	
9. Plaintiff's personnel file also	9. Plaintiff Depo., Volume I, 36:23-
includes an Offer Letter, dated October	38:11, Exh. 5 (Offer Letter); Figueroa
15, 2010, which Plaintiff acknowledged	Decl., ¶ 6, Exh. C (Offer Letter).
receiving.	
10. In particular, the Offer Letter stated:	10. Plaintiff Depo., Volume I, 36:23-
We are excited at the prospect of you	38:11, Exh. 5 (Offer Letter); Figueroa
joining the Company, you should be	Decl., ¶ 6, Exh. C (Offer Letter).
aware that our relationship is	
"employment-at-will." That means you	
are free, at any time, for any reason, to	
end your employment with the Company	
and that the Company may do the same.	
Our agreement regarding the at-will	
nature of your employment may not be	
changed, except in a writing signed by the	
Company's Chief Executive Officer.	
Given the at-will nature, the Company	
may from time to time add to, modify, or	
discontinue its compensation policies,	
employee benefit plans or other aspects of	

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
your employment.	
11. Plaintiff's personnel file also	11. Figueroa Decl., ¶ 8, Exh. D.
includes an Employee Confidentiality and	
Non-Solicitation Agreement with	
Plaintiff's signature dated October 14,	
2010.	
12. This Agreement stated: "You agree	12. Figueroa Decl., ¶ 8, Exh. D.
and understand that nothing in this	
Agreement shall alter or modify the 'at-	
will' nature of your employment with the	
Company or confer on [y]ou any right with	
respect to continuation of your	
employment with the Company."	
13. In her deposition, Plaintiff admitted	13. Plaintiff Depo., Volume I, 36:23-
that she did not have a contract with	38:11, 43:18-45:15, Exh. 5 (Offer
Equinox; no one ever told her that she was	Letter), Exh. 8 (Receipt
guaranteed employment for a certain time	Acknowledgement Form).
period; and no one ever told her that she	
was anything other than an at-will	
employee.	
14. The Employee Handbook Plaintiff	14. Plaintiff Depo., Volume I, 43:18-
acknowledged receiving also included	45:15, Exh. 8 Receipt of Employee
Equinox's non-retaliation policy as well	Handbook; Declaration of Emerson
as complaint procedures for reporting	Figueroa ("Figueroa Decl."), Exh. A.
retaliation.	
15. In particular, Equinox's policy	15. Plaintiff Depo., Volume I, 43:18-

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
strictly prohibits retaliation against any	45:15, Exh. 8 Receipt of Employee
employee for "filing a complaint and	Handbook; Figueroa Decl., Exh. A,
[Equinox] will not knowingly permit	Employee Handbook.
retaliation by management, employees, or	
co-workers." Equinox's policy also	
prohibits retaliation against any employee	
for "using this complaint procedure or for	
filing, testifying, assisting, or participating	
in any manner in any investigation,	
proceeding, or hearing conducted by a	
governmental enforcement agency.	
Additionally, Equinox will not knowingly	
permit any retaliation against any	
employee who complains of prohibited	
harassment or who participates in an	
investigation."	
16. The complaint procedure as	16. Plaintiff Depo., Volume I, 43:18-
outlined in the Employee Handbook	45:15, Exh. 8 Receipt of Employee
permits an employee to report retaliation	Handbook; Figueroa Decl. ¶ 4.
to his or her manager, Human Resources,	
or through Equinox's Ethics Hotline.	
17. In or about June 2014, Hemedinger	17. Plaintiff Depo., Volume I, 190:16-
informed Plaintiff and other MAs that the	194:3, 219:7-10; Plaintiff Depo., Volume
compensation plan for all West LA MAs	II, 347:22-348:1; Deposition of Barry
was being clarified, so that the market	Holmes ("Holmes Depo.") 69:4-71:12,
bonuses would be paid out individually	73:23-75:10, Exhs. 201-202;

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
and not cumulatively for reaching a	Hemedinger Depo., 60:11-61:3, 68:12-
certain sales goal.	14, 70:19-72:3.; Rosen Depo., 33:5-15.
18. For example, the plan provided for a	18. Plaintiff Depo., Volume I, 190:16-
particular market bonus upon reaching a	194:3; Hemedinger Depo., 64:18-65:11
certain goal of sales:	
• 100% of goal – MA would	
receive an extra \$20 per sale	
• 115% of goal – MA would	
receive an extra \$40 per sale	
• 125% of goal – MA would	
receive an extra \$55 per sale	
• 150% of goal – MA would receive	
an extra \$70 per sale	
19. For the West LA club, Equinox's	19. Plaintiff Depo., Volume I, 190:16-
Payroll Department was adding the	194:3; Holmes Depo., 82:11-83:14;
bonuses together as opposed to giving one	Hemedinger Depo., 59:22-60:6, 62:3-
of the bonuses above depending on the	63:8; 66:6-11., 68:15-69:8.
overall percentage.	
20. Plaintiff testified that she	20. Plaintiff Depo., Volume I, 199:7-
complained about what she viewed as a	22; Hemedinger Depo., 59:14-60:10;
"change" in the compensation plan to the	Deposition of Scott Rosen ("Rosen
following managerial employees:	Depo.") 29:18-30:4, 30:22-31:12, 31:20-
Hemedinger, Gannon, Simonson, Veronica	33:4, 61:12-64:17, 65:8-69:12, Exhs.
Santarelli ("Santarelli") (Regional Sales	206-207; Holmes Depo., 71:23-73:22,
Manager), Matt Gonzalez ("Gonzalez")	77:18-82:10, 84:19-86:8, Ex. 203.
(Director of Sales), Barry Holmes	

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2	UNCONTROVERTED FACTS	EVIDENCE
3	("Holmes") (Senior Vice President of	
4	Sales), and Scott Rosen ("Rosen") (Chief	
5	Operating Officer) ("COO").	
6	21. Despite Plaintiff's complaints about	21. Plaintiff Depo., Volume I, 196:8-
7	the compensation plan, Plaintiff continued	14, 207:15-22, 220:5-20; Plaintiff Depo.,
8	to work at Equinox for seven months after	Volume II, 349:5-12.
9	the "changed" compensation plan was	
10	instituted in July/August 2014 and	
11	continued to work for Equinox until she	
12	quit in February 2015.	
13	22. Plaintiff testified that she	22. Plaintiff Depo., Volume I, 81:6-21,
14	complained to Hemedinger, Simonson, and	82:5-83:23, 94:14-97:9.
15	possibly to Gannon in February or March	
16	2014 that she believed that a MA at West	
17	LA was using one-month guest passes	
18	and/or gift cards to sign up members for	
19	what they believed was a month-long	
20	membership, but in actuality, was signing	
21	them up for a year-long membership by	
22	using their credit cards without	
23	authorization.	
24	23. According to Plaintiff, "charging	23. Plaintiff Depo., Volume II,
25	credit cards without people's approval and	334:16-336:23.
26	telling people they were signing up for a	
27	month-long contract, but then signing	
28	them up for a year-long contract" were the	

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
only "illegal activities" about which she	
complained to Equinox.	
24. According to Plaintiff, her other	24. Plaintiff Depo., Volume II,
complaints involved "things against	334:16-336:23.
Equinox policies that were happening as	
well."	
25. Plaintiff admitted that she could not	25. Plaintiff Depo., Volume II, 335:4-
identify any statute, ordinance, regulation,	336:23.
local law, state law, or federal law that	
was violated as a result of this alleged	
activity.	
26. Plaintiff also testified that she	26. Plaintiff Depo., Volume I, 76:17-
complained to Hemedinger and Simonson	79:19; 93:10-94:10, 102:10-107:24;
about the sales activities of another MA.	108:1-113:5; Hemedinger Depo., 45:8-
	47:19.
27. Specifically, Plaintiff complained	27. Plaintiff Depo., Volume I, 76:17-
that this MA was giving away "free	79:19; 93:10-94:10, 102:10-107:24;
months" to potential members, allowing	108:1-113:5; Hemedinger Depo., 45:8-
"freezes" for members, and offering "three	47:19.
month" deals.	
28. In or around December 2014, COO	28. Rosen Depo., 37:20-38:18;
Rosen was touring the West LA club	Declaration of Tracy Cuva ("Cuva
when he was told by a member that a MA	Decl."), ¶ 2.
had charged a membership to another	
member's credit card without that	

DEFENDANT'S	DEFENDANT'S SUPPORTING
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member's authorization.	
29. Member Services is Equinox's	29. Cuva Decl., ¶ 1.
billing department (centrally based in	
New York) which handles membership	
contracts and membership sales, including	
auditing of membership sales.	
30. Rosen contacted Tracy Cuva,	30. Rosen Depo., 37:20-38:21; Cuva
Senior Director of Equinox's Member	Decl., ¶ 2.
Services Department, gave her the	
information received from the member,	
and asked Member Services to investigate	
this sale.	
31. Member Services' investigation,	31. Cuva Decl., ¶ 2.
which was conducted by Cuva, confirmed	
that this was an unauthorized sale	
processed by a MA at the West LA Club	
(Plaintiff was not implicated in this	
transaction).	
32. This MA was relocating to New	32. Rosen Depo., 39:8-13.
York but, based on the investigation	
results, she was not hired to work for	
Equinox in New York.	
33. As a result of this member	33. Rosen Depo., 47:25-6; Cuva Decl.,
complaint, Rosen also asked Cuva to have	¶ 3.
Member Services conduct an investigation	
of sales transactions at the West LA club.	
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34. Apart from requesting that the	34. Rosen Depo., 47:25-48:21.
investigation be conducted and asking Jim	
Burger (Senior Director of Loss	
Prevention) to travel to the West LA club	
and continue the investigation after	
Member Services finished their portion of	
the investigation, Rosen did not	
participate in that investigation.	
35. Cuva instructed Kevin Stanfa	35. Cuva Decl., ¶ 3; Stanfa Decl. ¶ 4.
("Stanfa") (Manager of Compliance and	
Special Projects), to review sales	
transactions at the West LA club.	
36. After Stanfa reported finding	36. Cuva Decl., ¶ 3; Stanfa Decl. ¶ 4.
various anomalies associated with sales	
transactions at the West LA club, Cuva	
instructed Stanfa to prepare a summary	
detailing his findings.	
37. Stanfa then prepared a workbook	37. Stanfa Decl., ¶ 4.
with three spreadsheets regarding the	
following sales activities: (1) 2014	
Freezes; (2) Modification to Direct Bill;	
and (3) West LA Sales Breakdown.	
38. Once these were prepared, Cuva	38. Rosen Depo., 47:25-48:21;
emailed the spreadsheets to Rosen,	Holmes Depo., 86:10-88:10, 95:9-96:10;
Holmes and Gannon and summarized the	Cuva Decl., ¶ 6, Exh.N; Stanfa Decl., ¶¶
results of the Member Services	4-5.
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investigation.	
39. In her email, Cuva indicated that	39. Cuva Decl., ¶ 7, Exh.N.
these spreadsheets "all reflect patterns	
unhealthy for the business."	
40. Cuva noted as follows:	40. Cuva Decl., ¶ 7, Exh.N.
i The 2014 Freezes spreadsheet	
shows that West LA is an outlier	
in members who request a freeze	
in the first 60 days of	
membership who also go on to	
cancel in the same year.	
i The Modification to Direct Bill	
spreadsheet reflects members in	
the last quarter of 2014 whose	
billing was modified from the	
credit card payment type to direct	
bill the day before billing ran.	
The Company average is four per	
club. West LA had 28	
modifications to direct bill.	
i The West LA Breakdown	
spreadsheet shows questionable	
sales from two MAs (Plaintiff	
and the MA moving to New	
York). The other three MAs	
were reviewed and did not reflect	

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
the same anomalies seen with	
Plaintiff and the MA moving to	
New York. The questionable	
sales included selling	
memberships to members with	
the credit card of another	
member (almost universally	
without requesting a referral	
credit) or re-contracting over a	
previously 3-day'd membership	
and either using the credit from	
the previous sale or recharging	
the same credit card, credit card	
not present for numerous sales	
transactions, 3-day cancellations	
with no or just one member visit,	
new memberships which were	
previously finance cancelled and	
had balances on account that	
were waived.	
41. Neither Cuva nor Stanfa were aware	41. Cuva Decl., ¶ 8; Stanfa Decl., ¶ 11.
Plaintiff had made any complaints about	
changes to her compensation plan or about	
the alleged activities of other MAs.	
42. In addition, Burger was asked to	42. Deposition of Jim Burger ("Burger
interview the sales team at the West LA	Depo."), 72:4-73:3, 73:13:75:22, 76:6-
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club.	12.
43. When Burger came to Los Angeles	43. Hemedinger Decl., ¶ 4.
to conduct his interviews in late January	
2015, the West LA club's sales team	
consisted of three MAs, Plaintiff and two	
other MAs who were supervised by the	
Simonson and an Assistant General	
Manager.	
44. A MA was fired on or about January	44. Figueroa Decl. ¶ 9; Hemedinger
20, 2015 for improper sales activities.	Decl., ¶ 4.
45. At Burger's request, Member	45. Burger Depo., 72:13-73:3; Cuva
Services provided him with the	Decl. ¶ 8.
spreadsheets summarizing their findings of	
questionable sales transactions at the West	
LA club.	
46. Burger then met with Cuva and	46. Burger Depo., 73:13-74:15; Cuva
Stanfa and they discussed their findings	Decl. ¶ 8; Stanfa Decl., ¶ 9.
regarding the questionable sales at the	
West LA club.	
47. Burger had a subsequent meeting	47. Burger Depo., 74:16-75:3, 8-22;
with Stanfa to review the spreadsheets	Stanfa Decl., ¶ 9.
Member Services had prepared.	
48. These spreadsheets showed	48. Burger Depo., 39:3-40:22; Cuva
anomalies in various sales transactions,	Decl., ¶ 8; Stanfa Decl., ¶¶ 4-5.
including whether or not a contract was	
signed, whether or not a credit card was	
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present for the sales transaction, whose	
credit card was used for the sales	
transactions, if another individual's credit	
card number was used for the sales	
transaction instead of the member's credit	
card number, whether or not a member had	
any visits to a club, etc.	
49. Burger also had a couple of	49. Burger Depo., 76:19-77:1; Stanfa
telephone conversations with Stanfa	Decl., ¶ 9.
regarding the anomalies in various sales	
activities at the West LA Club.	
50. In late January 2015, Burger came to	50. Burger Depo., 76:6-12; Gannon
Los Angeles to interview various	Decl., ¶ 3; Hemedinger Decl., ¶ 5.
employees regarding sales activities of the	
West LA MAs.	
51. Prior to the interviews, Burger and	51. Burger Depo., 116:12-117:12.
Gannon discussed suspending all of the	
individuals interviewed as part of the	
investigation pending the results of the	
investigation.	
52. Burger then interviewed the	52. Hemedinger Decl., ¶ 5.
following individuals: (1) the Assistant	
General Manager; (2) Plaintiff; (3) another	
MA; (4) a relatively newly hired MA; and	
(5) Simonson.	
53. Burger had never heard of or spoken	
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to Plaintiff prior to this investigation	
meeting.	
54. On January 30, 2015, Plaintiff met	54. Plaintiff Depo., Volume I, 161:11-
with Burger and Leah Ball of Human	22, 164:10-22; Plaintiff Depo., Volume
Resources regarding West LA's sales	II, 305:21-24; , Burger Depo., 96:18-25.
practices.	
55. Plaintiff answered questions about	55. Plaintiff Depo., Volume I, 161:11-
her sales activities, as well as the activities	22, 164:10-22; Burger Depo., 53:13-
of other MAs.	54:9.
56. While Burger did not find Plaintiff	56. Burger Depo., 122:14-17.
credible, he felt, at that time, that there was	
insufficient information to warrant	
Plaintiff's termination.	
57. After Burger completed his	57. Burger Depo., 117:16-18, 24-
interviews, Burger, Gannon and	118:6.
Hemedinger met briefly to discuss	
Burger's impressions.	
58. Gannon then advised Plaintiff that	58. Plaintiff Depo., Volume I, 174:24-
she was being suspended.	175:3, 11-12; Plaintiff Depo., Volume II,
	306:3-7; Gannon Decl., ¶ 4.
59. All of the MAs interviewed as part	59. Burger Depo., ¶ 110:17-23;
of the investigation (with the exception of	Gannon Decl., ¶ 6.
the relatively new MA) were suspended	
pending investigation.	
60. Gannon also advised Plaintiff to	60. Plaintiff Depo., Volume I, 180:11-
report back to the West LA club at 2:00	181:4; Gannon Decl., ¶ 5.
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p.m. the next day for another meeting.	
61. According to Plaintiff, Equinox told	61. Plaintiff Depo., Volume I, 174:24-
her that she would not have access to her	175:21; Plaintiff Depo., Volume II,
email or payroll account and escorted her	305:21-306:2, 364:17-20; Plaintiff's
out of the building in front of Equinox's	Complaint, 6:5-7.
clientele, staff and all of her peers.	
62. It is Equinox's policy to turn off	62. Gannon Decl., ¶ 7.
email access for hourly employees who	
have been suspended pending investigation	
or who are on a leave of absence.	
63. Prior to Burger's interview of	63. Gannon Decl., ¶ 8.
Plaintiff, Gannon had the Payroll	
Department prepare a final paycheck for	
Plaintiff so that she could be paid in	
accordance with California law in the	
event the decision was made to terminate	
her employment.	
64. Plaintiff met with Hemedinger and	64. Plaintiff Depo., Volume I, 182:5-
Gannon at the West LA club on January	183:8; Plaintiff Depo., Volume II,
31, 2015 and was told that the	306:12:16, 382:12-17, 390:4-11, Exh.
investigation was concluded and that she	38; Hemedinger Depo., 54:17-21, 55:1-8;
would be working at the Marina Del Rey	Gannon Decl., ¶ 3; Hemedinger Decl., ¶
club.	6.
65. The decision was made to reassign	65. Rosen Depo., 71:7-20, 73:15-22,
Plaintiff to the Marina Del Rey club	76:5-14; Holmes Depo., 96:12-98:17;
because Equinox wanted to rebuild the	Hemedinger Depo., 51:7-52:23; Gannon

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
team of MAs in the West LA club and to	Decl., ¶ 10.
create a fresh culture, as a result of the	
investigation findings.	
66. Plaintiff's compensation plan would	66. Rosen Depo., 87:25-88:4; Gannon
change once at Marina Del Rey to align	Decl., ¶ 11.
with the compensation plan of Marina Del	
Rey MAs. Equinox considered the	
reassignment a lateral move.	
67. Equinox considered the	67. Rosen Depo., 87:25-88:4; Gannon
reassignment a lateral move.	Decl., ¶ 11.
68. When Plaintiff was asked what her	68. Plaintiff Depo., Volume II, 390:4-
compensation would be at the Marina Del	11, Exh. 38; Gannon Decl., ¶ 12.
Rey club, she was sent the compensation	
plan of a Marina Del Rey MA.	
69. Equinox's expectation was she	69. Hemedinger Depo., 52:18-23;
would earn at least the same amount of	Rosen Depo., 57:13-19; 58:22-59:14;
money because the Marina Del Rey club	Holmes Depo., 31:13-15.
was a high performing club and the	
memberships for the Marina Del Rey club	
were less expensive than the memberships	
for the West LA club.	
70. It was easier to sell more	70. Hemedinger Depo., 52:18-23;
memberships at the Marina Del Rey club	Rosen Depo., 57:13-19; 58:22-59:14;
than the West LA club because the Marina	Holmes Depo., 50:18-51:5
Del Rey memberships were less expensive.	
71. Gannon emailed Plaintiff the	71. Plaintiff Depo., Volume I, 246:19-
Case No: 2:16-CV-01795 MWF (JCx) 3	DEFENDANT'S STATEMENT OF

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
compensation plan for the Marina Del Rey	247:2; Gannon Decl., ¶ 12.
Club on or about January 31, 2015.	
72. Plaintiff testified that no one from	72. Plaintiff Depo., Volume I, 171:10-
Equinox ever told her that she was being	172:7; Plaintiff Depo., Volume II,
"terminated" or "demoted" as part of her	306:17-310:19, 363:24-364:3; Gannon
reassignment to the Marina Del Rey club.	Decl., ¶ 13; Hemedinger Decl., ¶ 7.
73. Gannon made the decision to	73. Rosen Depo., 45:7-25. 57:8-12;
reassign Plaintiff to the Marina Del Rey	Hemedinger Depo., 53:14-18.
club.	
74. Plaintiff was told to report to the	74. Plaintiff Depo., Volume I, 186:5-
Marina Del Rey club on February 2, 2015	14; Plaintiff Depo., Volume II, 311:4-8;
at 9:00 a.m.	Hemedinger Depo., 54:17-55:18, 55:25-
	56:25, 57:6-57:11.
75. Before reporting to the Marina Del	75. Plaintiff Depo., Volume I, 186:5-
Rey club, Plaintiff submitted her	14, Exh. 26; Plaintiff Depo., Volume II,
resignation, via email, on the morning of	311:4-8; Hemedinger Depo., 54:17-
February 2, 2015 effective immediately.	55:18, 55:25-
	56:25, 57:6-57:11.
76. Plaintiff's last day of employment	76. Plaintiff Depo., Volume I, 186:11-
was February 2, 2015.	14.
77. Plaintiff never reported to work at	77. Plaintiff Depo., Volume I, 50:13-
the Marina Del Rey club.	15, 186:15-17; Hemedinger Depo.,
	56:22-25.
78. As of February 1, 2015, the only	78. Plaintiff Depo., Volume II, 342:3-
remaining MA at the West LA club was	11.
the recently hired MA.	
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DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
79. As of April/May 2015, the West LA	79. Plaintiff Depo., Volume II,
club had an entirely new sales team and	342:25-343:5.
sales management.	
80. Plaintiff testified that she was	80. Plaintiff Depo., Volume II, 343:6-
unaware of any other MA at the West LA	22.
club complaining about the unauthorized	
use of credit cards or telling someone that	
they were being signed up for a one-month	
membership but signing them up for a year	
instead.	

ISSUE NO. 4

Plaintiff's first cause of action for violations of California Labor Code § 1102.5, et seq. also fails as a matter of law because Plaintiff cannot establish a *prima facie* claim for retaliation because Plaintiff cannot show a causal connection between any "protected activity" and any "adverse employment action." (UF Nos. 1-80.)

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
1. Plaintiff was hired as a Membership	1. Plaintiff Depo., Volume I, 36:23-
Advisor ("MA") at Equinox's Santa	38:10, Exh. 5 (Offer Letter).
Monica club on or about October 15,	
2010.	
2. In January 2014, Plaintiff began	2. Plaintiff Depo., Volume I, 189:22-
working at Equinox's West Los Angeles	190:12, Exh. 13 (Memo).
club ("West LA club").	

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
3. At the West LA club, MAs were	3. Declaration of Brian Hemedinger
referred to as Membership Executives.	("Hemedinger Decl."), ¶ 3.
However, their job duties were the same.	
4. During Plaintiff's employment at	4. Declaration of Jack Gannon
Equinox's Santa Monica and West LA	("Gannon Decl."), ¶¶ 1-2.
clubs, Jack Gannon ("Gannon") was the	
Vice President of the West Coast.	
5. From about October 2011 through	5. Plaintiff Depo., Volume I, 270:8,-
about June 2015, Brian Hemedinger	14, 75:24-76:4; Deposition of Brian
("Hemedinger") was the Regional	Hemedinger ("Hemedinger Depo.")
Director of Operations ("Regional	15:3-10, 41:1-9, 13-16; Hemedinger
Director") of the Santa Monica and West	Decl., ¶ 1.
LA clubs.	
6. General Manager Kira Simonson	6. Plaintiff Depo., Volume I, 52:11-
("Simonson) supervised Plaintiff at the	19.
West LA club from about January 2014 to	
about January 2015.	
7. Plaintiff's personnel file includes an	7. Plaintiff Depo., Volume I, 43:18-
Employee Handbook: Receipt	45:15, Exh. 8 (Receipt
Acknowledgment Form with Plaintiff's	Acknowledgement Form); Declaration of
signature dated October 15, 2010.	Emerson Figueroa ("Figueroa Decl."), ¶
	5, Exh. B.)
8. In particular, the Employee	8. Plaintiff Depo., Volume I, 43:18-
Handbook stated:	45:15, Exh. 8 (Receipt
I acknowledge that the receipt of the	Acknowledgement Form); Figueroa
Employee Handbook in no way creates a	Decl., ¶ 5, Exh. B (Receipt

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
contract between Equinox and me.	Acknowledgement Form).
Moreover, I understand and agree that all	
matters discussed in the Employee	
Handbook are subject to change or	
modification from time to time except the	
At-Will Employment Policy specified	
therein. The At-Will Employment Policy	
represents the final and complete	
agreement concerning the duration of my	
employment. I acknowledge that any	
change in the At-Will Employment Policy	
is effective only if set forth in a written	
document signed by the CEO of Equinox	
and myself.	
9. Plaintiff's personnel file also	9. Plaintiff Depo., Volume I, 36:23-
includes an Offer Letter, dated October	38:11, Exh. 5 (Offer Letter); Figueroa
15, 2010, which Plaintiff acknowledged	Decl., ¶ 6, Exh. C (Offer Letter).
receiving.	
10. In particular, the Offer Letter stated:	10. Plaintiff Depo., Volume I, 36:23-
We are excited at the prospect of you	38:11, Exh. 5 (Offer Letter); Figueroa
joining the Company, you should be	Decl., ¶ 6, Exh. C (Offer Letter).
aware that our relationship is	
"employment-at-will." That means you	
are free, at any time, for any reason, to	
end your employment with the Company	
and that the Company may do the same.	

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
Our agreement regarding the at-will	
nature of your employment may not be	
changed, except in a writing signed by the	
Company's Chief Executive Officer.	
Given the at-will nature, the Company	
may from time to time add to, modify, or	
discontinue its compensation policies,	
employee benefit plans or other aspects of	
your employment.	
11. Plaintiff's personnel file also	11. Figueroa Decl., ¶ 8, Exh. D.
includes an Employee Confidentiality and	
Non-Solicitation Agreement with	
Plaintiff's signature dated October 14,	
2010.	
12. This Agreement stated: "You agree	12. Figueroa Decl., ¶ 8, Exh. D.
and understand that nothing in this	
Agreement shall alter or modify the 'at-	
will' nature of your employment with the	
Company or confer on [y]ou any right with	
respect to continuation of your	
employment with the Company."	
13. In her deposition, Plaintiff admitted	13. Plaintiff Depo., Volume I, 36:23-
that she did not have a contract with	38:11, 43:18-45:15, Exh. 5 (Offer
Equinox; no one ever told her that she was	Letter), Exh. 8 (Receipt
guaranteed employment for a certain time	Acknowledgement Form).
period; and no one ever told her that she	

1	DEFENDANT'S	DEFENDANT'S SUPPORTING
2	UNCONTROVERTED FACTS	EVIDENCE
3	was anything other than an at-will	
4	employee.	
5	14. The Employee Handbook Plaintiff	14. Plaintiff Depo., Volume I, 43:18-
6	acknowledged receiving also included	45:15, Exh. 8 Receipt of Employee
7	Equinox's non-retaliation policy as well	Handbook; Declaration of Emerson
8	as complaint procedures for reporting	Figueroa ("Figueroa Decl."), Exh. A.
9	retaliation.	
10	15. In particular, Equinox's policy	15. Plaintiff Depo., Volume I, 43:18-
11	strictly prohibits retaliation against any	45:15, Exh. 8 Receipt of Employee
12	employee for "filing a complaint and	Handbook; Figueroa Decl., Exh. A,
13	[Equinox] will not knowingly permit	Employee Handbook.
14	retaliation by management, employees, or	
15	co-workers." Equinox's policy also	
16	prohibits retaliation against any employee	
17	for "using this complaint procedure or for	
18	filing, testifying, assisting, or participating	
19	in any manner in any investigation,	
20	proceeding, or hearing conducted by a	
21	governmental enforcement agency.	
22	Additionally, Equinox will not knowingly	
23	permit any retaliation against any	
24	employee who complains of prohibited	
25	harassment or who participates in an	
26	investigation."	
27	16. The complaint procedure as	16. Plaintiff Depo., Volume I, 43:18-
28	outlined in the Employee Handbook	45:15, Exh. 8 Receipt of Employee

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
permits an employee to report retaliation	Handbook; Figueroa Decl. ¶ 4.
to his or her manager, Human Resources,	
or through Equinox's Ethics Hotline.	
17. In or about June 2014, Hemedinger	17. Plaintiff Depo., Volume I, 190:16-
informed Plaintiff and other MAs that the	194:3, 219:7-10; Plaintiff Depo., Volume
compensation plan for all West LA MAs	II, 347:22-348:1; Deposition of Barry
was being clarified, so that the market	Holmes ("Holmes Depo.") 69:4-71:12,
bonuses would be paid out individually	73:23-75:10, Exhs. 201-202;
and not cumulatively for reaching a	Hemedinger Depo., 60:11-61:3, 68:12-
certain sales goal.	14, 70:19-72:3.; Rosen Depo., 33:5-15.
18. For example, the plan provided for a	18. Plaintiff Depo., Volume I, 190:16-
particular market bonus upon reaching a	194:3; Hemedinger Depo., 64:18-65:11
certain goal of sales:	
• 100% of goal – MA would	
receive an extra \$20 per sale	
• 115% of goal – MA would	
receive an extra \$40 per sale	
• 125% of goal – MA would	
receive an extra \$55 per sale	
• 150% of goal – MA would receive	
an extra \$70 per sale	
19. For the West LA club, Equinox's	19. Plaintiff Depo., Volume I, 190:16-
Payroll Department was adding the	194:3; Holmes Depo., 82:11-83:14;
bonuses together as opposed to giving one	Hemedinger Depo., 59:22-60:6, 62:3-
of the bonuses above depending on the	63:8; 66:6-11., 68:15-69:8.
overall percentage.	

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
20. Plaintiff testified that she	20. Plaintiff Depo., Volume I, 199:7-
complained about what she viewed as a	22; Hemedinger Depo., 59:14-60:10;
"change" in the compensation plan to the	Deposition of Scott Rosen ("Rosen
following managerial employees:	Depo.") 29:18-30:4, 30:22-31:12, 31:20-
Hemedinger, Gannon, Simonson, Veronica	33:4, 61:12-64:17, 65:8-69:12, Exhs.
Santarelli ("Santarelli") (Regional Sales	206-207; Holmes Depo., 71:23-73:22,
Manager), Matt Gonzalez ("Gonzalez")	77:18-82:10, 84:19-86:8, Ex. 203.
(Director of Sales), Barry Holmes	
("Holmes") (Senior Vice President of	
Sales), and Scott Rosen ("Rosen") (Chief	
Operating Officer) ("COO").	
21. Despite Plaintiff's complaints about	21. Plaintiff Depo., Volume I, 196:8-
the compensation plan, Plaintiff continued	14, 207:15-22, 220:5-20; Plaintiff Depo.,
to work at Equinox for seven months after	Volume II, 349:5-12.
the "changed" compensation plan was	
instituted in July/August 2014 and	
continued to work for Equinox until she	
quit in February 2015.	
22. Plaintiff testified that she	22. Plaintiff Depo., Volume I, 81:6-21,
complained to Hemedinger, Simonson, and	82:5-83:23, 94:14-97:9.
possibly to Gannon in February or March	
2014 that she believed that a MA at West	
LA was using one-month guest passes	
and/or gift cards to sign up members for	
what they believed was a month-long	
membership, but in actuality, was signing	

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
them up for a year-long membership by	
using their credit cards without	
authorization.	
23. According to Plaintiff, "charging	23. Plaintiff Depo., Volume II,
credit cards without people's approval and	334:16-336:23.
telling people they were signing up for a	
month-long contract, but then signing	
them up for a year-long contract" were the	
only "illegal activities" about which she	
complained to Equinox.	
24. According to Plaintiff, her other	24. Plaintiff Depo., Volume II,
complaints involved "things against	334:16-336:23.
Equinox policies that were happening as	
well."	
25. Plaintiff admitted that she could not	25. Plaintiff Depo., Volume II, 335:4-
identify any statute, ordinance, regulation,	336:23.
local law, state law, or federal law that	
was violated as a result of this alleged	
activity.	
26. Plaintiff also testified that she	26. Plaintiff Depo., Volume I, 76:17-
complained to Hemedinger and Simonson	79:19; 93:10-94:10, 102:10-107:24;
about the sales activities of another MA.	108:1-113:5; Hemedinger Depo., 45:8-
	47:19.
27. Specifically, Plaintiff complained	27. Plaintiff Depo., Volume I, 76:17-
that this MA was giving away "free	79:19; 93:10-94:10, 102:10-107:24;

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CONCLUSIONS OF LAW

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
months" to potential members, allowing	108:1-113:5; Hemedinger Depo., 45:8-
"freezes" for members, and offering "three	47:19.
month" deals.	
28. In or around December 2014, COO	28. Rosen Depo., 37:20-38:18;
Rosen was touring the West LA club	Declaration of Tracy Cuva ("Cuva
when he was told by a member that a MA	Decl."), ¶ 2.
had charged a membership to another	
member's credit card without that	
member's authorization.	
29. Member Services is Equinox's	29. Cuva Decl., ¶ 1.
billing department (centrally based in	
New York) which handles membership	
contracts and membership sales, including	
auditing of membership sales.	
30. Rosen contacted Tracy Cuva,	30. Rosen Depo., 37:20-38:21; Cuva
Senior Director of Equinox's Member	Decl., ¶ 2.
Services Department, gave her the	
information received from the member,	
and asked Member Services to investigate	
this sale.	
31. Member Services' investigation,	31. Cuva Decl., ¶ 2.
which was conducted by Cuva, confirmed	
that this was an unauthorized sale	
processed by a MA at the West LA Club	
(Plaintiff was not implicated in this	
transaction).	
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DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
32. This MA was relocating to New	32. Rosen Depo., 39:8-13.
York but, based on the investigation	
results, she was not hired to work for	
Equinox in New York.	
33. As a result of this member	33. Rosen Depo., 47:25-6; Cuva Decl.,
complaint, Rosen also asked Cuva to have	¶ 3.
Member Services conduct an investigation	
of sales transactions at the West LA club.	
34. Apart from requesting that the	34. Rosen Depo., 47:25-48:21.
investigation be conducted and asking Jim	
Burger (Senior Director of Loss	
Prevention) to travel to the West LA club	
and continue the investigation after	
Member Services finished their portion of	
the investigation, Rosen did not	
participate in that investigation.	
35. Cuva instructed Kevin Stanfa	35. Cuva Decl., ¶ 3; Stanfa Decl. ¶ 4.
("Stanfa") (Manager of Compliance and	
Special Projects), to review sales	
transactions at the West LA club.	
36. After Stanfa reported finding	36. Cuva Decl., ¶ 3; Stanfa Decl. ¶ 4.
various anomalies associated with sales	
transactions at the West LA club, Cuva	
instructed Stanfa to prepare a summary	
detailing his findings.	
37. Stanfa then prepared a workbook	37. Stanfa Decl., ¶ 4.
Case No: 2:16-CV-01795 MWF (JCx) 4	DEFENDANT'S STATEMENT (

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
with three spreadsheets regarding the	
following sales activities: (1) 2014	
Freezes; (2) Modification to Direct Bill;	
and (3) West LA Sales Breakdown.	
38. Once these were prepared, Cuva	38. Rosen Depo., 47:25-48:21;
emailed the spreadsheets to Rosen,	Holmes Depo., 86:10-88:10, 95:9-96:10;
Holmes and Gannon and summarized the	Cuva Decl., ¶ 6, Exh. N; Stanfa Decl., ¶¶
results of the Member Services	4-5.
investigation.	
39. In her email, Cuva indicated that	39. Cuva Decl., ¶ 7, Exh. N.
these spreadsheets "all reflect patterns	
unhealthy for the business."	
40. Cuva noted as follows:	40. Cuva Decl., ¶ 7, Exh. N.
i The 2014 Freezes spreadsheet	
shows that West LA is an outlier	
in members who request a freeze	
in the first 60 days of	
membership who also go on to	
cancel in the same year.	
i The Modification to Direct Bill	
spreadsheet reflects members in	
the last quarter of 2014 whose	
billing was modified from the	
credit card payment type to direct	
bill the day before billing ran.	
The Company average is four per	
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1	DEFENDANT'S	DEFENDANT'S SUPPORTING
2	UNCONTROVERTED FACTS	EVIDENCE
3	club. West LA had 28	
4	modifications to direct bill.	
5	i The West LA Breakdown	
6	spreadsheet shows questionable	
7	sales from two MAs (Plaintiff	
8	and the MA moving to New	
9	York). The other three MAs	
10	were reviewed and did not reflect	
11	the same anomalies seen with	
12	Plaintiff and the MA moving to	
13	New York. The questionable	
14	sales included selling	
15	memberships to members with	
16	the credit card of another	
17	member (almost universally	
18	without requesting a referral	
19	credit) or re-contracting over a	
20	previously 3-day'd membership	
21	and either using the credit from	
22	the previous sale or recharging	
23	the same credit card, credit card	
24	not present for numerous sales	
25	transactions, 3-day cancellations	
26	with no or just one member visit,	
27	new memberships which were	
28	previously finance cancelled and	
	<u> </u>	

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
had balances on account that	
were waived.	
41. Neither Cuva nor Stanfa were aware	41. Cuva Decl., ¶ 8; Stanfa Decl., ¶ 11.
Plaintiff had made any complaints about	
changes to her compensation plan or about	
the alleged activities of other MAs.	
42. In addition, Burger was asked to	42. Deposition of Jim Burger ("Burger
interview the sales team at the West LA	Depo."), 72:4-73:3, 73:13:75:22, 76:6-
club.	12.
43. When Burger came to Los Angeles	43. Hemedinger Decl., ¶ 4.
to conduct his interviews in late January	
2015, the West LA club's sales team	
consisted of three MAs, Plaintiff and two	
other MAs who were supervised by the	
Simonson and an Assistant General	
Manager.	
44. A MA was fired on or about January	44. Figueroa Decl. ¶ 9; Hemedinger
20, 2015 for improper sales activities.	Decl., ¶ 4.
45. At Burger's request, Member	45. Burger Depo., 72:13-73:3; Cuva
Services provided him with the	Decl. ¶ 8.
spreadsheets summarizing their findings of	
questionable sales transactions at the West	
LA club.	
46. Burger then met with Cuva and	46. Burger Depo., 73:13-74:15; Cuva
Stanfa and they discussed their findings	Decl. ¶ 8; Stanfa Decl., ¶ 9.
regarding the questionable sales at the	
Case No: 2:16-CV-01795 MWF (JCx) 5	DEFENDANT'S STATEMENT O

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
West LA club.	
47. Burger had a subsequent meeting	47. Burger Depo., 74:16-75:3, 8-22;
with Stanfa to review the spreadsheets	Stanfa Decl., ¶ 9.
Member Services had prepared.	
48. These spreadsheets showed	48. Burger Depo., 39:3-40:22; Cuva
anomalies in various sales transactions,	Decl., ¶ 8; Stanfa Decl., ¶¶ 4-5.
including whether or not a contract was	
signed, whether or not a credit card was	
present for the sales transaction, whose	
credit card was used for the sales	
transactions, if another individual's credit	
card number was used for the sales	
transaction instead of the member's credit	
card number, whether or not a member had	
any visits to a club, etc.	
49. Burger also had a couple of	49. Burger Depo., 76:19-77:1; Stanfa
telephone conversations with Stanfa	Decl., ¶ 9.
regarding the anomalies in various sales	
activities at the West LA Club.	
50. In late January 2015, Burger came to	50. Burger Depo., 76:6-12; Gannon
Los Angeles to interview various	Decl., ¶ 3; Hemedinger Decl., ¶ 5.
employees regarding sales activities of the	
West LA MAs.	
51. Prior to the interviews, Burger and	51. Burger Depo., 116:12-117:12.
Gannon discussed suspending all of the	
individuals interviewed as part of the	
Case No: 2:16-CV-01795 MWF (JCx) 52	DEFENDANT'S STATEMENT

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
investigation pending the results of the	
investigation.	
52. Burger then interviewed the	52. Hemedinger Decl., ¶ 5.
following individuals: (1) the Assistant	
General Manager; (2) Plaintiff; (3) another	
MA; (4) a relatively newly hired MA; and	
(5) Simonson.	
53. Burger had never heard of or spoken	53. Burger Depo., 35:22-24.
to Plaintiff prior to this investigation	
meeting.	
54. On January 30, 2015, Plaintiff met	54. Plaintiff Depo., Volume I, 161:11-
with Burger and Leah Ball of Human	22, 164:10-22; Plaintiff Depo., Volume
Resources regarding West LA's sales	II, 305:21-24; , Burger Depo., 96:18-25.
practices.	
55. Plaintiff answered questions about	55. Plaintiff Depo., Volume I, 161:11-
her sales activities, as well as the activities	22, 164:10-22; Burger Depo., 53:13-
of other MAs.	54:9.
56. While Burger did not find Plaintiff	56. Burger Depo., 122:14-17.
credible, he felt, at that time, that there was	
insufficient information to warrant	
Plaintiff's termination.	
57. After Burger completed his	57. Burger Depo., 117:16-18, 24-
interviews, Burger, Gannon and	118:6.
Hemedinger met briefly to discuss	
Burger's impressions.	
58. Gannon then advised Plaintiff that	58. Plaintiff Depo., Volume I, 174:24-
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DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
she was being suspended.	175:3, 11-12; Plaintiff Depo., Volume II,
	306:3-7; Gannon Decl., ¶ 4.
59. All of the MAs interviewed as part	59. Burger Depo., ¶ 110:17-23;
of the investigation (with the exception of	Gannon Decl., ¶ 6.
the relatively new MA) were suspended	
pending investigation.	
60. Gannon also advised Plaintiff to	60. Plaintiff Depo., Volume I, 180:11-
report back to the West LA club at 2:00	181:4; Gannon Decl., ¶ 5.
p.m. the next day for another meeting.	
61. According to Plaintiff, Equinox told	61. Plaintiff Depo., Volume I, 174:24-
her that she would not have access to her	175:21; Plaintiff Depo., Volume II,
email or payroll account and escorted her	305:21-306:2, 364:17-20; Plaintiff's
out of the building in front of Equinox's	Complaint, 6:5-7.
clientele, staff and all of her peers.	
62. It is Equinox's policy to turn off	62. Gannon Decl., ¶ 7.
email access for hourly employees who	
have been suspended pending investigation	
or who are on a leave of absence.	
63. Prior to Burger's interview of	63. Gannon Decl., ¶ 8.
Plaintiff, Gannon had the Payroll	
Department prepare a final paycheck for	
Plaintiff so that she could be paid in	
accordance with California law in the	
event the decision was made to terminate	
her employment.	
64. Plaintiff met with Hemedinger and	64. Plaintiff Depo., Volume I, 182:5-

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
Gannon at the West LA club on January	183:8; Plaintiff Depo., Volume II,
31, 2015 and was told that the	306:12:16, 382:12-17, 390:4-11, Exh.
investigation was concluded and that she	38; Hemedinger Depo., 54:17-21, 55:1-8;
would be working at the Marina Del Rey	Gannon Decl., ¶ 3; Hemedinger Decl., ¶
club.	6.
65. The decision was made to reassign	65. Rosen Depo., 71:7-20, 73:15-22,
Plaintiff to the Marina Del Rey club	76:5-14; Holmes Depo., 96:12-98:17;
because Equinox wanted to rebuild the	Hemedinger Depo., 51:7-52:23; Gannon
team of MAs in the West LA club and to	Decl., ¶ 10.
create a fresh culture, as a result of the	
investigation findings.	
66. Plaintiff's compensation plan would	66. Rosen Depo., 87:25-88:4; Gannon
change once at Marina Del Rey to align	Decl., ¶ 11.
with the compensation plan of Marina Del	
Rey MAs. Equinox considered the	
reassignment a lateral move.	
67. Equinox considered the	67. Rosen Depo., 87:25-88:4; Gannon
reassignment a lateral move.	Decl., ¶ 11.
68. When Plaintiff was asked what her	68. Plaintiff Depo., Volume II, 390:4-
compensation would be at the Marina Del	11, Exh. 38; Gannon Decl., ¶ 12.
Rey club, she was sent the compensation	
plan of a Marina Del Rey MA.	
69. Equinox's expectation was she	69. Hemedinger Depo., 52:18-23;
would earn at least the same amount of	Rosen Depo., 57:13-19; 58:22-59:14;
money because the Marina Del Rey club	Holmes Depo., 31:13-15.
was a high performing club and the	

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
memberships for the Marina Del Rey club	
were less expensive than the memberships	
for the West LA club.	
70. It was easier to sell more	70. Hemedinger Depo., 52:18-23;
memberships at the Marina Del Rey club	Rosen Depo., 57:13-19; 58:22-59:14;
than the West LA club because the Marina	Holmes Depo., 50:18-51:5
Del Rey memberships were less expensive.	
71. Gannon emailed Plaintiff the	71. Plaintiff Depo., Volume I, 246:19-
compensation plan for the Marina Del Rey	247:2; Gannon Decl., ¶ 12.
Club on or about January 31, 2015.	
72. Plaintiff testified that no one from	72. Plaintiff Depo., Volume I, 171:10-
Equinox ever told her that she was being	172:7; Plaintiff Depo., Volume II,
"terminated" or "demoted" as part of her	306:17-310:19, 363:24-364:3; Gannon
reassignment to the Marina Del Rey club.	Decl., ¶ 13; Hemedinger Decl., ¶ 7.
73. Gannon made the decision to	73. Rosen Depo., 45:7-25. 57:8-12;
reassign Plaintiff to the Marina Del Rey	Hemedinger Depo., 53:14-18.
club.	
74. Plaintiff was told to report to the	74. Plaintiff Depo., Volume I, 186:5-
Marina Del Rey club on February 2, 2015	14; Plaintiff Depo., Volume II, 311:4-8;
at 9:00 a.m.	Hemedinger Depo., 54:17-55:18, 55:25-
	56:25, 57:6-57:11.
75. Before reporting to the Marina Del	75. Plaintiff Depo., Volume I, 186:5-
Rey club, Plaintiff submitted her	14, Exh. 26; Plaintiff Depo., Volume II,
resignation, via email, on the morning of	311:4-8; Hemedinger Depo., 54:17-
February 2, 2015 effective immediately.	55:18, 55:25-
	56:25, 57:6-57:11.

1	DEFENDANT'S	DEFENDANT'S SUPPORTING
2	UNCONTROVERTED FACTS	EVIDENCE
3	76. Plaintiff's last day of employment	76. Plaintiff Depo., Volume I, 186:11-
4	was February 2, 2015.	14.
5	77. Plaintiff never reported to work at	77. Plaintiff Depo., Volume I, 50:13-
6	the Marina Del Rey club.	15, 186:15-17; Hemedinger Depo.,
7		56:22-25.
8	78. As of February 1, 2015, the only	78. Plaintiff Depo., Volume II, 342:3-
9	remaining MA at the West LA club was	11.
10	the recently hired MA.	
11	79. As of April/May 2015, the West LA	79. Plaintiff Depo., Volume II,
12	club had an entirely new sales team and	342:25-343:5.
13	sales management.	
14	80. Plaintiff testified that she was	80. Plaintiff Depo., Volume II, 343:6-
15	unaware of any other MA at the West LA	22.
16	club complaining about the unauthorized	
17	use of credit cards or telling someone that	
18	they were being signed up for a one-month	
19	membership but signing them up for a year	
20	instead.	
21	ICCLIF	NO 5

ISSUE NO. 5

Plaintiff's first cause of action for violations of California Labor Code § 1102.5, et seq. also fails as a matter of law because Equinox had legitimate, non-retaliatory business reasons for reassigning Plaintiff to the Marina Del Rey club. (UF Nos. 1-80.)

	DEFENDANT'S	DEFENDANT'S SUPPORTING	
	UNCONTROVERTED FACTS	EVIDENCE	
1.	Plaintiff was hired as a Membership	1. Plaintiff Depo., Volume I, 36:23	3-

57

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DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
Advisor ("MA") at Equinox's Santa	38:10, Exh. 5 (Offer Letter).
Monica club on or about October 15,	
2010.	
2. In January 2014, Plaintiff began	2. Plaintiff Depo., Volume I, 189:22-
working at Equinox's West Los Angeles	190:12, Exh. 13 (Memo).
club ("West LA club").	
3. At the West LA club, MAs were	3. Declaration of Brian Hemedinger
referred to as Membership Executives.	("Hemedinger Decl."), ¶ 3.
However, their job duties were the same.	
4. During Plaintiff's employment at	4. Declaration of Jack Gannon
Equinox's Santa Monica and West LA	("Gannon Decl."), ¶¶ 1-2.
clubs, Jack Gannon ("Gannon") was the	
Vice President of the West Coast.	
5. From about October 2011 through	5. Plaintiff Depo., Volume I, 270:8,-
about June 2015, Brian Hemedinger	14, 75:24-76:4; Deposition of Brian
("Hemedinger") was the Regional	Hemedinger ("Hemedinger Depo.")
Director of Operations ("Regional	15:3-10, 41:1-9, 13-16; Hemedinger
Director") of the Santa Monica and West	Decl., ¶ 1.
LA clubs.	
6. General Manager Kira Simonson	6. Plaintiff Depo., Volume I, 52:11-
("Simonson) supervised Plaintiff at the	19.
West LA club from about January 2014 to	
about January 2015.	
7. Plaintiff's personnel file includes an	7. Plaintiff Depo., Volume I, 43:18-
Employee Handbook: Receipt	45:15, Exh. 8 (Receipt
Acknowledgment Form with Plaintiff's	Acknowledgement Form); Declaration of
Case No: 2:16-CV-01795 MWF (JCx) 5	DEFENDANT'S STATEMENT O

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
signature dated October 15, 2010.	Emerson Figueroa ("Figueroa Decl."), ¶
	5, Exh. B.)
8. In particular, the Employee	8. Plaintiff Depo., Volume I, 43:18-
Handbook stated:	45:15, Exh. 8 (Receipt
I acknowledge that the receipt of the	Acknowledgement Form); Figueroa
Employee Handbook in no way creates a	Decl., ¶ 5, Exh. B (Receipt
contract between Equinox and me.	Acknowledgement Form).
Moreover, I understand and agree that all	
matters discussed in the Employee	
Handbook are subject to change or	
modification from time to time except the	
At-Will Employment Policy specified	
therein. The At-Will Employment Policy	
represents the final and complete	
agreement concerning the duration of my	
employment. I acknowledge that any	
change in the At-Will Employment Policy	
is effective only if set forth in a written	
document signed by the CEO of Equinox	
and myself.	
9. Plaintiff's personnel file also	9. Plaintiff Depo., Volume I, 36:23-
includes an Offer Letter, dated October	38:11, Exh. 5 (Offer Letter); Figueroa
15, 2010, which Plaintiff acknowledged	Decl., ¶ 6, Exh. C (Offer Letter).
receiving.	
10. In particular, the Offer Letter stated:	10. Plaintiff Depo., Volume I, 36:23-
We are excited at the prospect of you	38:11, Exh. 5 (Offer Letter); Figueroa
Case No: 2:16-CV-01795 MWF (JCx) 59	DEFENDANT'S STATEMENT OF

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
joining the Company, you should be	Decl., ¶ 6, Exh. C (Offer Letter).
aware that our relationship is	
"employment-at-will." That means you	
are free, at any time, for any reason, to	
end your employment with the Company	
and that the Company may do the same.	
Our agreement regarding the at-will	
nature of your employment may not be	
changed, except in a writing signed by the	
Company's Chief Executive Officer.	
Given the at-will nature, the Company	
may from time to time add to, modify, or	
discontinue its compensation policies,	
employee benefit plans or other aspects of	
your employment.	
11. Plaintiff's personnel file also	11. Figueroa Decl., ¶ 8, Exh. D.
includes an Employee Confidentiality and	
Non-Solicitation Agreement with	
Plaintiff's signature dated October 14,	
2010.	
12. This Agreement stated: "You agree	12. Figueroa Decl., ¶ 8, Exh. D.
and understand that nothing in this	
Agreement shall alter or modify the 'at-	
will' nature of your employment with the	
Company or confer on [y]ou any right with	
respect to continuation of your	

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
employment with the Company."	
13. In her deposition, Plaintiff admitted	13. Plaintiff Depo., Volume I, 36:23-
that she did not have a contract with	38:11, 43:18-45:15, Exh. 5 (Offer
Equinox; no one ever told her that she was	Letter), Exh. 8 (Receipt
guaranteed employment for a certain time	Acknowledgement Form).
period; and no one ever told her that she	
was anything other than an at-will	
employee.	
14. The Employee Handbook Plaintiff	14. Plaintiff Depo., Volume I, 43:18-
acknowledged receiving also included	45:15, Exh. 8 Receipt of Employee
Equinox's non-retaliation policy as well	Handbook; Declaration of Emerson
as complaint procedures for reporting	Figueroa ("Figueroa Decl."), Exh. A.
retaliation.	
15. In particular, Equinox's policy	15. Plaintiff Depo., Volume I, 43:18-
strictly prohibits retaliation against any	45:15, Exh. 8 Receipt of Employee
employee for "filing a complaint and	Handbook; Figueroa Decl., Exh. A,
[Equinox] will not knowingly permit	Employee Handbook.
retaliation by management, employees, or	
co-workers." Equinox's policy also	
prohibits retaliation against any employee	
for "using this complaint procedure or for	
filing, testifying, assisting, or participating	
in any manner in any investigation,	
proceeding, or hearing conducted by a	
governmental enforcement agency.	
Additionally, Equinox will not knowingly	

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
permit any retaliation against any	
employee who complains of prohibited	
harassment or who participates in an	
investigation."	
16. The complaint procedure as	16. Plaintiff Depo., Volume I, 43:18-
outlined in the Employee Handbook	45:15, Exh. 8 Receipt of Employee
permits an employee to report retaliation	Handbook; Figueroa Decl. ¶ 4.
to his or her manager, Human Resources,	
or through Equinox's Ethics Hotline.	
17. In or about June 2014, Hemedinger	17. Plaintiff Depo., Volume I, 190:16-
informed Plaintiff and other MAs that the	194:3, 219:7-10; Plaintiff Depo., Volume
compensation plan for all West LA MAs	II, 347:22-348:1; Deposition of Barry
was being clarified, so that the market	Holmes ("Holmes Depo.") 69:4-71:12,
bonuses would be paid out individually	73:23-75:10, Exhs. 201-202;
and not cumulatively for reaching a	Hemedinger Depo., 60:11-61:3, 68:12-
certain sales goal.	14, 70:19-72:3.; Rosen Depo., 33:5-15.
18. For example, the plan provided for a	18. Plaintiff Depo., Volume I, 190:16-
particular market bonus upon reaching a	194:3; Hemedinger Depo., 64:18-65:11
certain goal of sales:	
• 100% of goal – MA would	
receive an extra \$20 per sale	
• 115% of goal – MA would	
receive an extra \$40 per sale	
• 125% of goal – MA would	
receive an extra \$55 per sale	
• 150% of goal – MA would receive	

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
an extra \$70 per sale	
19. For the West LA club, Equinox's	19. Plaintiff Depo., Volume I, 190:16-
Payroll Department was adding the	194:3; Holmes Depo., 82:11-83:14;
bonuses together as opposed to giving one	Hemedinger Depo., 59:22-60:6, 62:3-
of the bonuses above depending on the	63:8; 66:6-11., 68:15-69:8.
overall percentage.	
20. Plaintiff testified that she	20. Plaintiff Depo., Volume I, 199:7-
complained about what she viewed as a	22; Hemedinger Depo., 59:14-60:10;
"change" in the compensation plan to the	Deposition of Scott Rosen ("Rosen
following managerial employees:	Depo.") 29:18-30:4, 30:22-31:12, 31:20-
Hemedinger, Gannon, Simonson, Veronica	33:4, 61:12-64:17, 65:8-69:12, Exhs.
Santarelli ("Santarelli") (Regional Sales	206-207; Holmes Depo., 71:23-73:22,
Manager), Matt Gonzalez ("Gonzalez")	77:18-82:10, 84:19-86:8, Ex. 203.
(Director of Sales), Barry Holmes	
("Holmes") (Senior Vice President of	
Sales), and Scott Rosen ("Rosen") (Chief	
Operating Officer) ("COO").	
21. Despite Plaintiff's complaints about	21. Plaintiff Depo., Volume I, 196:8-
the compensation plan, Plaintiff continued	14, 207:15-22, 220:5-20; Plaintiff Depo.,
to work at Equinox for seven months after	Volume II, 349:5-12.
the "changed" compensation plan was	
instituted in July/August 2014 and	
continued to work for Equinox until she	
quit in February 2015.	
22. Plaintiff testified that she	22. Plaintiff Depo., Volume I, 81:6-21,
complained to Hemedinger, Simonson, and	82:5-83:23, 94:14-97:9.
$C_{\text{oco}} N_{\text{ot}} \sim 2.16 \text{ CV} / 01705 \text{ MWE} / IC_{\text{W}} $	DEEENDANT'S STATEMENT OF

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
possibly to Gannon in February or March	
2014 that she believed that a MA at West	
LA was using one-month guest passes	
and/or gift cards to sign up members for	
what they believed was a month-long	
membership, but in actuality, was signing	
them up for a year-long membership by	
using their credit cards without	
authorization.	
23. According to Plaintiff, "charging	23. Plaintiff Depo., Volume II,
credit cards without people's approval and	334:16-336:23.
telling people they were signing up for a	
month-long contract, but then signing	
them up for a year-long contract" were the	
only "illegal activities" about which she	
complained to Equinox.	
24. According to Plaintiff, her other	24. Plaintiff Depo., Volume II,
complaints involved "things against	334:16-336:23.
Equinox policies that were happening as	
well."	
25. Plaintiff admitted that she could not	25. Plaintiff Depo., Volume II, 335:4-
identify any statute, ordinance, regulation,	336:23.
local law, state law, or federal law that	
was violated as a result of this alleged	
activity.	
26. Plaintiff also testified that she	26. Plaintiff Depo., Volume I, 76:17-

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DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
complained to Hemedinger and Simonson	79:19; 93:10-94:10, 102:10-107:24;
about the sales activities of another MA.	108:1-113:5; Hemedinger Depo., 45:8-
	47:19.
27. Specifically, Plaintiff complained	27. Plaintiff Depo., Volume I, 76:17-
that this MA was giving away "free	79:19; 93:10-94:10, 102:10-107:24;
months" to potential members, allowing	108:1-113:5; Hemedinger Depo., 45:8-
"freezes" for members, and offering "three	47:19.
month" deals.	
28. In or around December 2014, COO	28. Rosen Depo., 37:20-38:18;
Rosen was touring the West LA club	Declaration of Tracy Cuva ("Cuva
when he was told by a member that a MA	Decl."), ¶ 2.
had charged a membership to another	
member's credit card without that	
member's authorization.	
29. Member Services is Equinox's	29. Cuva Decl., ¶ 1.
billing department (centrally based in	
New York) which handles membership	
contracts and membership sales, including	
auditing of membership sales.	
30. Rosen contacted Tracy Cuva,	30. Rosen Depo., 37:20-38:21; Cuva
Senior Director of Equinox's Member	Decl., ¶ 2.
Services Department, gave her the	
information received from the member,	
and asked Member Services to investigate	
this sale.	
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DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
31. Member Services' investigation,	31. Cuva Decl., ¶ 2.
which was conducted by Cuva, confirmed	
that this was an unauthorized sale	
processed by a MA at the West LA Club	
(Plaintiff was not implicated in this	
transaction).	
32. This MA was relocating to New	32. Rosen Depo., 39:8-13.
York but, based on the investigation	
results, she was not hired to work for	
Equinox in New York.	
33. As a result of this member	33. Rosen Depo., 47:25-6; Cuva Decl.,
complaint, Rosen also asked Cuva to have	¶ 3.
Member Services conduct an investigation	
of sales transactions at the West LA club.	
34. Apart from requesting that the	34. Rosen Depo., 47:25-48:21.
investigation be conducted and asking Jim	
Burger (Senior Director of Loss	
Prevention) to travel to the West LA club	
and continue the investigation after	
Member Services finished their portion of	
the investigation, Rosen did not	
participate in that investigation.	
35. Cuva instructed Kevin Stanfa	35. Cuva Decl., ¶ 3; Stanfa Decl. ¶ 4.
("Stanfa") (Manager of Compliance and	
Special Projects), to review sales	
transactions at the West LA club.	
Case No: 2:16-CV-01795 MWF (JCx) 6	6 DEFENDANT'S STATEMENT

1	DEFENDANT'S	DEFENDANT'S SUPPORTING
2	UNCONTROVERTED FACTS	EVIDENCE
3	36. After Stanfa reported finding	36. Cuva Decl., ¶ 3; Stanfa Decl. ¶ 4.
4	various anomalies associated with sales	
5	transactions at the West LA club, Cuva	
6	instructed Stanfa to prepare a summary	
7	detailing his findings.	
8	37. Stanfa then prepared a workbook	37. Stanfa Decl., ¶ 4.
9	with three spreadsheets regarding the	
10	following sales activities: (1) 2014	
11	Freezes; (2) Modification to Direct Bill;	
12	and (3) West LA Sales Breakdown.	
13	38. Once these were prepared, Cuva	38. Rosen Depo., 47:25-48:21;
14	emailed the spreadsheets to Rosen,	Holmes Depo., 86:10-88:10, 95:9-96:10;
15	Holmes and Gannon and summarized the	Cuva Decl., ¶ 6, Exh.N; Stanfa Decl., ¶¶
16	results of the Member Services	4-5.
17	investigation.	
18	39. In her email, Cuva indicated that	39. Cuva Decl., ¶ 7, Exh. N.
19	these spreadsheets "all reflect patterns	
20	unhealthy for the business."	
21	40. Cuva noted as follows:	40. Cuva Decl., ¶ 7, Exh. N.
22	i The 2014 Freezes spreadsheet	
23	shows that West LA is an outlier	
24	in members who request a freeze	
25	in the first 60 days of	
26	membership who also go on to	
27	cancel in the same year.	
28	i The Modification to Direct Bill	

1	DEFENDANT'S	DEFENDANT'S SUPPORTING
2	UNCONTROVERTED FACTS	EVIDENCE
3	spreadsheet reflects members in	
4	the last quarter of 2014 whose	
5	billing was modified from the	
6	credit card payment type to direct	
7	bill the day before billing ran.	
8	The Company average is four per	
9	club. West LA had 28	
10	modifications to direct bill.	
11	i The West LA Breakdown	
12	spreadsheet shows questionable	
13	sales from two MAs (Plaintiff	
14	and the MA moving to New	
15	York). The other three MAs	
16	were reviewed and did not reflect	
17	the same anomalies seen with	
18	Plaintiff and the MA moving to	
19	New York. The questionable	
20	sales included selling	
21	memberships to members with	
22	the credit card of another	
23	member (almost universally	
24	without requesting a referral	
25	credit) or re-contracting over a	
26	previously 3-day'd membership	
27	and either using the credit from	
28	the previous sale or recharging	

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
the same credit card, credit card	
not present for numerous sales	
transactions, 3-day cancellations	
with no or just one member visit,	
new memberships which were	
previously finance cancelled and	
had balances on account that	
were waived.	
41. Neither Cuva nor Stanfa were aware	41. Cuva Decl., ¶ 8; Stanfa Decl., ¶ 11.
Plaintiff had made any complaints about	
changes to her compensation plan or about	
the alleged activities of other MAs.	
42. In addition, Burger was asked to	42. Deposition of Jim Burger ("Burger
interview the sales team at the West LA	Depo."), 72:4-73:3, 73:13:75:22, 76:6-
club.	12.
43. When Burger came to Los Angeles	43. Hemedinger Decl., ¶ 4.
to conduct his interviews in late January	
2015, the West LA club's sales team	
consisted of three MAs, Plaintiff and two	
other MAs who were supervised by the	
Simonson and an Assistant General	
Manager.	
44. A MA was fired on or about January	44. Figueroa Decl. ¶ 9; Hemedinger
20, 2015 for improper sales activities.	Decl., ¶ 4.
45. At Burger's request, Member	45. Burger Depo., 72:13-73:3; Cuva
Services provided him with the	Decl. ¶ 8.
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DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
spreadsheets summarizing their findings of	
questionable sales transactions at the West	
LA club.	
46. Burger then met with Cuva and	46. Burger Depo., 73:13-74:15; Cuva
Stanfa and they discussed their findings	Decl. ¶ 8; Stanfa Decl., ¶ 9.
regarding the questionable sales at the	
West LA club.	
47. Burger had a subsequent meeting	47. Burger Depo., 74:16-75:3, 8-22;
with Stanfa to review the spreadsheets	Stanfa Decl., ¶ 9.
Member Services had prepared.	
48. These spreadsheets showed	48. Burger Depo., 39:3-40:22; Cuva
anomalies in various sales transactions,	Decl., ¶ 8; Stanfa Decl., ¶¶ 4-5.
including whether or not a contract was	
signed, whether or not a credit card was	
present for the sales transaction, whose	
credit card was used for the sales	
transactions, if another individual's credit	
card number was used for the sales	
transaction instead of the member's credit	
card number, whether or not a member had	
any visits to a club, etc.	
49. Burger also had a couple of	49. Burger Depo., 76:19-77:1; Stanfa
telephone conversations with Stanfa	Decl., ¶ 9.
regarding the anomalies in various sales	
activities at the West LA Club.	
50. In late January 2015, Burger came to Case No: 2:16-CV-01795 MWF (JCx) 70	50. Burger Depo., 76:6-12; Gannon

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
Los Angeles to interview various	Decl., ¶ 3; Hemedinger Decl., ¶ 5.
employees regarding sales activities of the	
West LA MAs.	
51. Prior to the interviews, Burger and	51. Burger Depo., 116:12-117:12.
Gannon discussed suspending all of the	
individuals interviewed as part of the	
investigation pending the results of the	
investigation.	
52. Burger then interviewed the	52. Hemedinger Decl., ¶ 5.
following individuals: (1) the Assistant	
General Manager; (2) Plaintiff; (3) another	
MA; (4) a relatively newly hired MA; and	
(5) Simonson.	
53. Burger had never heard of or spoken	53. Burger Depo., 35:22-24.
to Plaintiff prior to this investigation	
meeting.	
54. On January 30, 2015, Plaintiff met	54. Plaintiff Depo., Volume I, 161:11-
with Burger and Leah Ball of Human	22, 164:10-22; Plaintiff Depo., Volume
Resources regarding West LA's sales	II, 305:21-24; , Burger Depo., 96:18-25.
practices.	
55. Plaintiff answered questions about	55. Plaintiff Depo., Volume I, 161:11-
her sales activities, as well as the activities	22, 164:10-22; Burger Depo., 53:13-
of other MAs.	54:9.
56. While Burger did not find Plaintiff	56. Burger Depo., 122:14-17.
credible, he felt, at that time, that there was	
insufficient information to warrant	
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Plaintiff's termination. 57. After Burger completed his interviews, Burger, Gannon and Hemedinger met briefly to discuss Burger's impressions. 58. Gannon then advised Plaintiff that she was being suspended. 59. All of the MAs interviewed as part of the investigation (with the exception of the relatively new MA) were suspended pending investigation. 60. Gannon also advised Plaintiff to report back to the West LA club at 2:00 report page to the investing page of the investing page of the investigation. EVIDENCE EVIDENCE EVIDENCE EVIDENCE 57. Burger Depo., 117:16-18, 24- 118:6. 58. Plaintiff Depo., Volume I, 174:24- 175:3, 11-12; Plaintiff Depo., Volume II, 306:3-7; Gannon Decl., ¶ 4. 59. Burger Depo., ¶ 110:17-23; Gannon Decl., ¶ 6.
57. After Burger completed his interviews, Burger, Gannon and Hemedinger met briefly to discuss Burger's impressions. 58. Gannon then advised Plaintiff that she was being suspended. 59. All of the MAs interviewed as part of the investigation (with the exception of the relatively new MA) were suspended pending investigation. 57. Burger Depo., 117:16-18, 24-118:6. 58. Plaintiff Depo., Volume I, 174:24-175:3, 11-12; Plaintiff Depo., Volume II, 306:3-7; Gannon Decl., ¶ 4. 59. Burger Depo., ¶ 110:17-23; Gannon Decl., ¶ 6.
interviews, Burger, Gannon and Hemedinger met briefly to discuss Burger's impressions. 58. Gannon then advised Plaintiff that she was being suspended. 58. Plaintiff Depo., Volume I, 174:24-175:3, 11-12; Plaintiff Depo., Volume II, 306:3-7; Gannon Decl., ¶ 4. 59. All of the MAs interviewed as part of the investigation (with the exception of the relatively new MA) were suspended pending investigation. 60. Gannon also advised Plaintiff to 60. Plaintiff Depo., Volume I, 180:11-
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58. Gannon then advised Plaintiff that she was being suspended. 58. Plaintiff Depo., Volume I, 174:24-175:3, 11-12; Plaintiff Depo., Volume II, 306:3-7; Gannon Decl., ¶ 4. 59. All of the MAs interviewed as part of the investigation (with the exception of the relatively new MA) were suspended pending investigation. 60. Gannon also advised Plaintiff to 60. Plaintiff Depo., Volume I, 180:11-
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pending investigation. 60. Gannon also advised Plaintiff to 60. Plaintiff Depo., Volume I, 180:11-
60. Gannon also advised Plaintiff to 60. Plaintiff Depo., Volume I, 180:11-
report back to the West LA club at 2:00 181:4; Gannon Decl., ¶ 5.
p.m. the next day for another meeting.
61. According to Plaintiff, Equinox told 61. Plaintiff Depo., Volume I, 174:24-
her that she would not have access to her 175:21; Plaintiff Depo., Volume II,
email or payroll account and escorted her 305:21-306:2, 364:17-20; Plaintiff's
out of the building in front of Equinox's Complaint, 6:5-7.
clientele, staff and all of her peers.
62. It is Equinox's policy to turn off 62. Gannon Decl., ¶ 7.
email access for hourly employees who
have been suspended pending investigation
or who are on a leave of absence.
63. Prior to Burger's interview of 63. Gannon Decl., ¶ 8.
Plaintiff, Gannon had the Payroll Case No: 2:16-CV-01795 MWF (ICx) 72 DEFENDANT'S STATEMENT OF

Case No: 2:16-CV-01795 MWF (JCx)

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
Department prepare a final paycheck for	
Plaintiff so that she could be paid in	
accordance with California law in the	
event the decision was made to terminate	
her employment.	
64. Plaintiff met with Hemedinger and	64. Plaintiff Depo., Volume I, 182:5-
Gannon at the West LA club on January	183:8; Plaintiff Depo., Volume II,
31, 2015 and was told that the	306:12:16, 382:12-17, 390:4-11, Exh.
investigation was concluded and that she	38; Hemedinger Depo., 54:17-21, 55:1-8;
would be working at the Marina Del Rey	Gannon Decl., ¶ 3; Hemedinger Decl., ¶
club.	6.
65. The decision was made to reassign	65. Rosen Depo., 71:7-20, 73:15-22,
Plaintiff to the Marina Del Rey club	76:5-14; Holmes Depo., 96:12-98:17;
because Equinox wanted to rebuild the	Hemedinger Depo., 51:7-52:23; Gannon
team of MAs in the West LA club and to	Decl., ¶ 10.
create a fresh culture, as a result of the	
investigation findings.	
66. Plaintiff's compensation plan would	66. Rosen Depo., 87:25-88:4; Gannon
change once at Marina Del Rey to align	Decl., ¶ 11.
with the compensation plan of Marina Del	
Rey MAs. Equinox considered the	
reassignment a lateral move.	
67. Equinox considered the	67. Rosen Depo., 87:25-88:4; Gannon
reassignment a lateral move.	Decl., ¶ 11.
68. When Plaintiff was asked what her	68. Plaintiff Depo., Volume II, 390:4-
compensation would be at the Marina Del	11, Exh. 38; Gannon Decl., ¶ 12.
	

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
Rey club, she was sent the compensation	
plan of a Marina Del Rey MA.	
69. Equinox's expectation was she	69. Hemedinger Depo., 52:18-23;
would earn at least the same amount of	Rosen Depo., 57:13-19; 58:22-59:14;
money because the Marina Del Rey club	Holmes Depo., 31:13-15.
was a high performing club and the	
memberships for the Marina Del Rey club	
were less expensive than the memberships	
for the West LA club.	
70. It was easier to sell more	70. Hemedinger Depo., 52:18-23;
memberships at the Marina Del Rey club	Rosen Depo., 57:13-19; 58:22-59:14;
than the West LA club because the Marina	Holmes Depo., 50:18-51:5
Del Rey memberships were less expensive.	
71. Gannon emailed Plaintiff the	71. Plaintiff Depo., Volume I, 246:19-
compensation plan for the Marina Del Rey	247:2; Gannon Decl., ¶ 12.
Club on or about January 31, 2015.	
72. Plaintiff testified that no one from	72. Plaintiff Depo., Volume I, 171:10-
Equinox ever told her that she was being	172:7; Plaintiff Depo., Volume II,
"terminated" or "demoted" as part of her	306:17-310:19, 363:24-364:3; Gannon
reassignment to the Marina Del Rey club.	Decl., ¶ 13; Hemedinger Decl., ¶ 7.
73. Gannon made the decision to	73. Rosen Depo., 45:7-25. 57:8-12;
reassign Plaintiff to the Marina Del Rey	Hemedinger Depo., 53:14-18.
club.	
74. Plaintiff was told to report to the	74. Plaintiff Depo., Volume I, 186:5-
Marina Del Rey club on February 2, 2015	14; Plaintiff Depo., Volume II, 311:4-8;
at 9:00 a.m.	Hemedinger Depo., 54:17-55:18, 55:25-
Case No: 2:16-CV-01795 MWF (ICv) 74	DEFENDANT'S STATEMENT OF

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
	56:25, 57:6-57:11.
75. Before reporting to the Marina Del	75. Plaintiff Depo., Volume I, 186:5-
Rey club, Plaintiff submitted her	14, Exh. 26; Plaintiff Depo., Volume II,
resignation, via email, on the morning of	311:4-8; Hemedinger Depo., 54:17-
February 2, 2015 effective immediately.	55:18, 55:25-
	56:25, 57:6-57:11.
76. Plaintiff's last day of employment	76. Plaintiff Depo., Volume I, 186:11-
was February 2, 2015.	14.
77. Plaintiff never reported to work at	77. Plaintiff Depo., Volume I, 50:13-
the Marina Del Rey club.	15, 186:15-17; Hemedinger Depo.,
	56:22-25.
78. As of February 1, 2015, the only	78. Plaintiff Depo., Volume II, 342:3-
remaining MA at the West LA club was	11.
the recently hired MA.	
79. As of April/May 2015, the West LA	79. Plaintiff Depo., Volume II,
club had an entirely new sales team and	342:25-343:5.
sales management.	
80. Plaintiff testified that she was	80. Plaintiff Depo., Volume II, 343:6-
unaware of any other MA at the West LA	22.
club complaining about the unauthorized	
use of credit cards or telling someone that	
they were being signed up for a one-month	
membership but signing them up for a year	
instead.	

ISSUE NO. 6

Plaintiff's first cause of action for violations of California Labor Code § 1102.5, et seq. also fails as a matter of law because Plaintiff cannot show the reasons she was reassigned to the Marina Del Rey club were pretextual. (UF Nos. 1-80.)

Depend to the Marina Der Rey club were pretextual. (Of 100s. 1-00.)	
DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
1. Plaintiff was hired as a Membership	1. Plaintiff Depo., Volume I, 36:23-
Advisor ("MA") at Equinox's Santa	38:10, Exh. 5 (Offer Letter).
Monica club on or about October 15,	
2010.	
2. In January 2014, Plaintiff began	2. Plaintiff Depo., Volume I, 189:22-
working at Equinox's West Los Angeles	190:12, Exh. 13 (Memo).
club ("West LA club").	
3. At the West LA club, MAs were	3. Declaration of Brian Hemedinger
referred to as Membership Executives.	("Hemedinger Decl."), ¶ 3.
However, their job duties were the same.	
4. During Plaintiff's employment at	4. Declaration of Jack Gannon
Equinox's Santa Monica and West LA	("Gannon Decl."), ¶¶ 1-2.
clubs, Jack Gannon ("Gannon") was the	
Vice President of the West Coast.	
5. From about October 2011 through	5. Plaintiff Depo., Volume I, 270:8,-
about June 2015, Brian Hemedinger	14, 75:24-76:4; Deposition of Brian
("Hemedinger") was the Regional	Hemedinger ("Hemedinger Depo.")
Director of Operations ("Regional	15:3-10, 41:1-9, 13-16; Hemedinger
Director") of the Santa Monica and West	Decl., ¶ 1.
LA clubs.	
6. General Manager Kira Simonson	6. Plaintiff Depo., Volume I, 52:11-

1	DEFENDANT'S	DEFENDANT'S SUPPORTING
2	UNCONTROVERTED FACTS	EVIDENCE
3	("Simonson) supervised Plaintiff at the	19.
4	West LA club from about January 2014 to	
5	about January 2015.	
6	7. Plaintiff's personnel file includes an	7. Plaintiff Depo., Volume I, 43:18-
7	Employee Handbook: Receipt	45:15, Exh. 8 (Receipt
8	Acknowledgment Form with Plaintiff's	Acknowledgement Form); Declaration of
9	signature dated October 15, 2010.	Emerson Figueroa ("Figueroa Decl."), ¶
10		5, Exh. B.)
11	8. In particular, the Employee	8. Plaintiff Depo., Volume I, 43:18-
12	Handbook stated:	45:15, Exh. 8 (Receipt
13	I acknowledge that the receipt of the	Acknowledgement Form); Figueroa
14	Employee Handbook in no way creates a	Decl., ¶ 5, Exh. B (Receipt
15	contract between Equinox and me.	Acknowledgement Form).
16	Moreover, I understand and agree that all	
17	matters discussed in the Employee	
18	Handbook are subject to change or	
19	modification from time to time except the	
20	At-Will Employment Policy specified	
21	therein. The At-Will Employment Policy	
22	represents the final and complete	
23	agreement concerning the duration of my	
24	employment. I acknowledge that any	
25	change in the At-Will Employment Policy	
26	is effective only if set forth in a written	
27	document signed by the CEO of Equinox	
28	and myself.	

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
9. Plaintiff's personnel file also	9. Plaintiff Depo., Volume I, 36:23-
includes an Offer Letter, dated October	38:11, Exh. 5 (Offer Letter); Figueroa
15, 2010, which Plaintiff acknowledged	Decl., ¶ 6, Exh. C (Offer Letter).
receiving.	
10. In particular, the Offer Letter stated:	10. Plaintiff Depo., Volume I, 36:23-
We are excited at the prospect of you	38:11, Exh. 5 (Offer Letter); Figueroa
joining the Company, you should be	Decl., ¶ 6, Exh. C (Offer Letter).
aware that our relationship is	
"employment-at-will." That means you	
are free, at any time, for any reason, to	
end your employment with the Company	
and that the Company may do the same.	
Our agreement regarding the at-will	
nature of your employment may not be	
changed, except in a writing signed by the	
Company's Chief Executive Officer.	
Given the at-will nature, the Company	
may from time to time add to, modify, or	
discontinue its compensation policies,	
employee benefit plans or other aspects of	
your employment.	
11. Plaintiff's personnel file also	11. Figueroa Decl., ¶ 8, Exh. D.
includes an Employee Confidentiality and	
Non-Solicitation Agreement with	
Plaintiff's signature dated October 14,	
2010.	

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
12. This Agreement stated: "You agree	12. Figueroa Decl., ¶ 8, Exh. D.
and understand that nothing in this	
Agreement shall alter or modify the 'at-	
will' nature of your employment with the	
Company or confer on [y]ou any right with	
respect to continuation of your	
employment with the Company."	
13. In her deposition, Plaintiff admitted	13. Plaintiff Depo., Volume I, 36:23-
that she did not have a contract with	38:11, 43:18-45:15, Exh. 5 (Offer
Equinox; no one ever told her that she was	Letter), Exh. 8 (Receipt
guaranteed employment for a certain time	Acknowledgement Form).
period; and no one ever told her that she	
was anything other than an at-will	
employee.	
14. The Employee Handbook Plaintiff	14. Plaintiff Depo., Volume I, 43:18-
acknowledged receiving also included	45:15, Exh. 8 Receipt of Employee
Equinox's non-retaliation policy as well	Handbook; Declaration of Emerson
as complaint procedures for reporting	Figueroa ("Figueroa Decl."), Exh. A.
retaliation.	
15. In particular, Equinox's policy	15. Plaintiff Depo., Volume I, 43:18-
strictly prohibits retaliation against any	45:15, Exh. 8 Receipt of Employee
employee for "filing a complaint and	Handbook; Figueroa Decl., Exh. A,
[Equinox] will not knowingly permit	Employee Handbook.
retaliation by management, employees, or	
co-workers." Equinox's policy also	
prohibits retaliation against any employee	

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
for "using this complaint procedure or for	
filing, testifying, assisting, or participating	
in any manner in any investigation,	
proceeding, or hearing conducted by a	
governmental enforcement agency.	
Additionally, Equinox will not knowingly	
permit any retaliation against any	
employee who complains of prohibited	
harassment or who participates in an	
investigation."	
16. The complaint procedure as	16. Plaintiff Depo., Volume I, 43:18-
outlined in the Employee Handbook	45:15, Exh. 8 Receipt of Employee
permits an employee to report retaliation	Handbook; Figueroa Decl. ¶ 4.
to his or her manager, Human Resources,	
or through Equinox's Ethics Hotline.	
17. In or about June 2014, Hemedinger	17. Plaintiff Depo., Volume I, 190:16-
informed Plaintiff and other MAs that the	194:3, 219:7-10; Plaintiff Depo., Volume
compensation plan for all West LA MAs	II, 347:22-348:1; Deposition of Barry
was being clarified, so that the market	Holmes ("Holmes Depo.") 69:4-71:12,
bonuses would be paid out individually	73:23-75:10, Exhs. 201-202;
and not cumulatively for reaching a	Hemedinger Depo., 60:11-61:3, 68:12-
certain sales goal.	14, 70:19-72:3.; Rosen Depo., 33:5-15.
18. For example, the plan provided for a	18. Plaintiff Depo., Volume I, 190:16-
particular market bonus upon reaching a	194:3; Hemedinger Depo., 64:18-65:11
certain goal of sales:	
• 100% of goal – MA would	

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
receive an extra \$20 per sale	
• 115% of goal – MA would	
receive an extra \$40 per sale	
• 125% of goal – MA would	
receive an extra \$55 per sale	
• 150% of goal – MA would receive	
an extra \$70 per sale	
19. For the West LA club, Equinox's	19. Plaintiff Depo., Volume I, 190:16-
Payroll Department was adding the	194:3; Holmes Depo., 82:11-83:14;
bonuses together as opposed to giving one	Hemedinger Depo., 59:22-60:6, 62:3-
of the bonuses above depending on the	63:8; 66:6-11., 68:15-69:8.
overall percentage.	
20. Plaintiff testified that she	20. Plaintiff Depo., Volume I, 199:7-
complained about what she viewed as a	22; Hemedinger Depo., 59:14-60:10;
"change" in the compensation plan to the	Deposition of Scott Rosen ("Rosen
following managerial employees:	Depo.") 29:18-30:4, 30:22-31:12, 31:20-
Hemedinger, Gannon, Simonson, Veronica	33:4, 61:12-64:17, 65:8-69:12, Exhs.
Santarelli ("Santarelli") (Regional Sales	206-207; Holmes Depo., 71:23-73:22,
Manager), Matt Gonzalez ("Gonzalez")	77:18-82:10, 84:19-86:8, Ex. 203.
(Director of Sales), Barry Holmes	
("Holmes") (Senior Vice President of	
Sales), and Scott Rosen ("Rosen") (Chief	
Operating Officer) ("COO").	
21. Despite Plaintiff's complaints about	21. Plaintiff Depo., Volume I, 196:8-
the compensation plan, Plaintiff continued	14, 207:15-22, 220:5-20; Plaintiff Depo.,
to work at Equinox for seven months after	Volume II, 349:5-12.
	DEEENID A NITTO OT A TEMENIT OF

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
the "changed" compensation plan was	
instituted in July/August 2014 and	
continued to work for Equinox until she	
quit in February 2015.	
22. Plaintiff testified that she	22. Plaintiff Depo., Volume I, 81:6-21,
complained to Hemedinger, Simonson, and	82:5-83:23, 94:14-97:9.
possibly to Gannon in February or March	
2014 that she believed that a MA at West	
LA was using one-month guest passes	
and/or gift cards to sign up members for	
what they believed was a month-long	
membership, but in actuality, was signing	
them up for a year-long membership by	
using their credit cards without	
authorization.	
23. According to Plaintiff, "charging	23. Plaintiff Depo., Volume II,
credit cards without people's approval and	334:16-336:23.
telling people they were signing up for a	
month-long contract, but then signing	
them up for a year-long contract" were the	
only "illegal activities" about which she	
complained to Equinox.	
24. According to Plaintiff, her other	24. Plaintiff Depo., Volume II,
complaints involved "things against	334:16-336:23.
Equinox policies that were happening as	
well."	

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
25. Plaintiff admitted that she could not	25. Plaintiff Depo., Volume II, 335:4-
identify any statute, ordinance, regulation,	336:23.
local law, state law, or federal law that	
was violated as a result of this alleged	
activity.	
26. Plaintiff also testified that she	26. Plaintiff Depo., Volume I, 76:17-
complained to Hemedinger and Simonson	79:19; 93:10-94:10, 102:10-107:24;
about the sales activities of another MA.	108:1-113:5; Hemedinger Depo., 45:8-
	47:19.
27. Specifically, Plaintiff complained	27. Plaintiff Depo., Volume I, 76:17-
that this MA was giving away "free	79:19; 93:10-94:10, 102:10-107:24;
months" to potential members, allowing	108:1-113:5; Hemedinger Depo., 45:8-
"freezes" for members, and offering "three	47:19.
month" deals.	
28. In or around December 2014, COO	28. Rosen Depo., 37:20-38:18;
Rosen was touring the West LA club	Declaration of Tracy Cuva ("Cuva
when he was told by a member that a MA	Decl."), ¶ 2.
had charged a membership to another	
member's credit card without that	
member's authorization.	
29. Member Services is Equinox's	29. Cuva Decl., ¶ 1.
billing department (centrally based in	
New York) which handles membership	
contracts and membership sales, including	
auditing of membership sales.	

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
30. Rosen contacted Tracy Cuva,	30. Rosen Depo., 37:20-38:21; Cuva
Senior Director of Equinox's Member	Decl., ¶ 2.
Services Department, gave her the	
information received from the member,	
and asked Member Services to investigate	
this sale.	
31. Member Services' investigation,	31. Cuva Decl., ¶ 2.
which was conducted by Cuva, confirmed	
that this was an unauthorized sale	
processed by a MA at the West LA Club	
(Plaintiff was not implicated in this	
transaction).	
32. This MA was relocating to New	32. Rosen Depo., 39:8-13.
York but, based on the investigation	
results, she was not hired to work for	
Equinox in New York.	
33. As a result of this member	33. Rosen Depo., 47:25-6; Cuva Decl.,
complaint, Rosen also asked Cuva to have	¶ 3.
Member Services conduct an investigation	
of sales transactions at the West LA club.	
34. Apart from requesting that the	34. Rosen Depo., 47:25-48:21.
investigation be conducted and asking Jim	
Burger (Senior Director of Loss	
Prevention) to travel to the West LA club	
and continue the investigation after	
Member Services finished their portion of	
Case No: 2:16-CV-01795 MWF (JCx) 8-	DEFENDANT'S STATEMENT OF

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
the investigation, Rosen did not	
participate in that investigation.	
35. Cuva instructed Kevin Stanfa	35. Cuva Decl., ¶ 3; Stanfa Decl. ¶ 4.
("Stanfa") (Manager of Compliance and	
Special Projects), to review sales	
transactions at the West LA club.	
36. After Stanfa reported finding	36. Cuva Decl., ¶ 3; Stanfa Decl. ¶ 4.
various anomalies associated with sales	
transactions at the West LA club, Cuva	
instructed Stanfa to prepare a summary	
detailing his findings.	
37. Stanfa then prepared a workbook	37. Stanfa Decl., ¶ 4.
with three spreadsheets regarding the	
following sales activities: (1) 2014	
Freezes; (2) Modification to Direct Bill;	
and (3) West LA Sales Breakdown.	
38. Once these were prepared, Cuva	38. Rosen Depo., 47:25-48:21;
emailed the spreadsheets to Rosen,	Holmes Depo., 86:10-88:10, 95:9-96:10;
Holmes and Gannon and summarized the	Cuva Decl., ¶ 6, Exh. N; Stanfa Decl., ¶¶
results of the Member Services	4-5.
investigation.	
39. In her email, Cuva indicated that	39. Cuva Decl., ¶ 7, Exh. N.
these spreadsheets "all reflect patterns	
unhealthy for the business."	
40. Cuva noted as follows:	40. Cuva Decl., ¶ 7, Exh. N.
i The 2014 Freezes spreadsheet	

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1	DEFENDANT'S	DEFENDANT'S SUPPORTING
2	UNCONTROVERTED FACTS	EVIDENCE
3	shows that West LA is an outlier	
4	in members who request a freeze	
5	in the first 60 days of	
6	membership who also go on to	
7	cancel in the same year.	
8	i The Modification to Direct Bill	
9	spreadsheet reflects members in	
10	the last quarter of 2014 whose	
11	billing was modified from the	
12	credit card payment type to direct	
13	bill the day before billing ran.	
14	The Company average is four per	
15	club. West LA had 28	
16	modifications to direct bill.	
17	i The West LA Breakdown	
18	spreadsheet shows questionable	
19	sales from two MAs (Plaintiff	
20	and the MA moving to New	
21	York). The other three MAs	
22	were reviewed and did not reflect	
23	the same anomalies seen with	
24	Plaintiff and the MA moving to	
25	New York. The questionable	
26	sales included selling	
27	memberships to members with	
28	the credit card of another	
	C N 2.16 CV 01705 NOVE (IC.)	

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
member (almost universally	
without requesting a referral	
credit) or re-contracting over a	
previously 3-day'd membership	
and either using the credit from	
the previous sale or recharging	
the same credit card, credit card	
not present for numerous sales	
transactions, 3-day cancellations	
with no or just one member visit,	
new memberships which were	
previously finance cancelled and	
had balances on account that	
were waived.	
41. Neither Cuva nor Stanfa were aware	41. Cuva Decl., ¶ 8; Stanfa Decl., ¶ 11.
Plaintiff had made any complaints about	
changes to her compensation plan or about	
the alleged activities of other MAs.	
42. In addition, Burger was asked to	42. Deposition of Jim Burger ("Burger
interview the sales team at the West LA	Depo."), 72:4-73:3, 73:13:75:22, 76:6-
club.	12.
43. When Burger came to Los Angeles	43. Hemedinger Decl., ¶ 4.
to conduct his interviews in late January	
2015, the West LA club's sales team	
consisted of three MAs, Plaintiff and two	
other MAs who were supervised by the	
Case No: 2:16-CV-01795 MWF (JCx) 8'	To the state of th

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
Simonson and an Assistant General	
Manager.	
44. A MA was fired on or about January	44. Figueroa Decl. ¶ 9; Hemedinger
20, 2015 for improper sales activities.	Decl., ¶ 4.
45. At Burger's request, Member	45. Burger Depo., 72:13-73:3; Cuva
Services provided him with the	Decl. ¶ 8.
spreadsheets summarizing their findings of	
questionable sales transactions at the West	
LA club.	
46. Burger then met with Cuva and	46. Burger Depo., 73:13-74:15; Cuv
Stanfa and they discussed their findings	Decl. ¶ 8; Stanfa Decl., ¶ 9.
regarding the questionable sales at the	
West LA club.	
47. Burger had a subsequent meeting	47. Burger Depo., 74:16-75:3, 8-22
with Stanfa to review the spreadsheets	Stanfa Decl., ¶ 9.
Member Services had prepared.	
48. These spreadsheets showed	48. Burger Depo., 39:3-40:22; Cuv
anomalies in various sales transactions,	Decl., ¶ 8; Stanfa Decl., ¶¶ 4-5.
including whether or not a contract was	
signed, whether or not a credit card was	
present for the sales transaction, whose	
credit card was used for the sales	
transactions, if another individual's credit	
card number was used for the sales	
transaction instead of the member's credit	
card number, whether or not a member had	
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DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
any visits to a club, etc.	
49. Burger also had a couple of	49. Burger Depo., 76:19-77:1; Stanfa
telephone conversations with Stanfa	Decl., ¶ 9.
regarding the anomalies in various sales	
activities at the West LA Club.	
50. In late January 2015, Burger came to	50. Burger Depo., 76:6-12; Gannon
Los Angeles to interview various	Decl., ¶ 3; Hemedinger Decl., ¶ 5.
employees regarding sales activities of the	
West LA MAs.	
51. Prior to the interviews, Burger and	51. Burger Depo., 116:12-117:12.
Gannon discussed suspending all of the	
individuals interviewed as part of the	
investigation pending the results of the	
investigation.	
52. Burger then interviewed the	52. Hemedinger Decl., ¶ 5.
following individuals: (1) the Assistant	
General Manager; (2) Plaintiff; (3) another	
MA; (4) a relatively newly hired MA; and	
(5) Simonson.	
53. Burger had never heard of or spoken	53. Burger Depo., 35:22-24.
to Plaintiff prior to this investigation	
meeting.	
54. On January 30, 2015, Plaintiff met	
with Burger and Leah Ball of Human	
Resources regarding West LA's sales	II, 305:21-24; , Burger Depo., 96:18-25.
practices.	

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
55. Plaintiff answered questions about	55. Plaintiff Depo., Volume I, 161:11-
her sales activities, as well as the activities	22, 164:10-22; Burger Depo., 53:13-
of other MAs.	54:9.
56. While Burger did not find Plaintiff	56. Burger Depo., 122:14-17.
credible, he felt, at that time, that there was	
insufficient information to warrant	
Plaintiff's termination.	
57. After Burger completed his	57. Burger Depo., 117:16-18, 24-
interviews, Burger, Gannon and	118:6.
Hemedinger met briefly to discuss	
Burger's impressions.	
58. Gannon then advised Plaintiff that	58. Plaintiff Depo., Volume I, 174:24-
she was being suspended.	175:3, 11-12; Plaintiff Depo., Volume II,
	306:3-7; Gannon Decl., ¶ 4.
59. All of the MAs interviewed as part	59. Burger Depo., ¶ 110:17-23;
of the investigation (with the exception of	Gannon Decl., ¶ 6.
the relatively new MA) were suspended	
pending investigation.	
60. Gannon also advised Plaintiff to	60. Plaintiff Depo., Volume I, 180:11-
report back to the West LA club at 2:00	181:4; Gannon Decl., ¶ 5.
p.m. the next day for another meeting.	
61. According to Plaintiff, Equinox told	61. Plaintiff Depo., Volume I, 174:24-
her that she would not have access to her	175:21; Plaintiff Depo., Volume II,
email or payroll account and escorted her	305:21-306:2, 364:17-20; Plaintiff's
out of the building in front of Equinox's	Complaint, 6:5-7.
clientele, staff and all of her peers.	
Coco No. 2:16 CV 01705 MWE (ICv)	DEFENDANT'S STATEMENT OF

1	DEFENDANT'S	DEFENDANT'S SUPPORTING
2	UNCONTROVERTED FACTS	EVIDENCE
3	62. It is Equinox's policy to turn off	62. Gannon Decl., ¶ 7.
4	email access for hourly employees who	
5	have been suspended pending investigation	
6	or who are on a leave of absence.	
7	63. Prior to Burger's interview of	63. Gannon Decl., ¶ 8.
8	Plaintiff, Gannon had the Payroll	
9	Department prepare a final paycheck for	
10	Plaintiff so that she could be paid in	
11	accordance with California law in the	
12	event the decision was made to terminate	
13	her employment.	
14	64. Plaintiff met with Hemedinger and	64. Plaintiff Depo., Volume I, 182:5-
15	Gannon at the West LA club on January	183:8; Plaintiff Depo., Volume II,
16	31, 2015 and was told that the	306:12:16, 382:12-17, 390:4-11, Exh.
17	investigation was concluded and that she	38; Hemedinger Depo., 54:17-21, 55:1-8;
18	would be working at the Marina Del Rey	Gannon Decl., ¶ 3; Hemedinger Decl., ¶
19	club.	6.
20	65. The decision was made to reassign	65. Rosen Depo., 71:7-20, 73:15-22,
21	Plaintiff to the Marina Del Rey club	76:5-14; Holmes Depo., 96:12-98:17;
22	because Equinox wanted to rebuild the	Hemedinger Depo., 51:7-52:23; Gannon
23	team of MAs in the West LA club and to	Decl., ¶ 10.
24	create a fresh culture, as a result of the	
25	investigation findings.	
26	66. Plaintiff's compensation plan would	66. Rosen Depo., 87:25-88:4; Gannon
27	change once at Marina Del Rey to align	Decl., ¶ 11.
28	with the compensation plan of Marina Del	
	Case No: 2:16-CV-01795 MWF (JCx) 91	DEFENDANT'S STATEMENT OF

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
Rey MAs. Equinox considered the	
reassignment a lateral move.	
67. Equinox considered the	67. Rosen Depo., 87:25-88:4; Gannon
reassignment a lateral move.	Decl., ¶ 11.
68. When Plaintiff was asked what her	68. Plaintiff Depo., Volume II, 390:4-
compensation would be at the Marina Del	11, Exh. 38; Gannon Decl., ¶ 12.
Rey club, she was sent the compensation	
plan of a Marina Del Rey MA.	
69. Equinox's expectation was she	69. Hemedinger Depo., 52:18-23;
would earn at least the same amount of	Rosen Depo., 57:13-19; 58:22-59:14;
money because the Marina Del Rey club	Holmes Depo., 31:13-15.
was a high performing club and the	
memberships for the Marina Del Rey club	
were less expensive than the memberships	
for the West LA club.	
70. It was easier to sell more	70. Hemedinger Depo., 52:18-23;
memberships at the Marina Del Rey club	Rosen Depo., 57:13-19; 58:22-59:14;
than the West LA club because the Marina	Holmes Depo., 50:18-51:5
Del Rey memberships were less expensive.	
71. Gannon emailed Plaintiff the	71. Plaintiff Depo., Volume I, 246:19-
compensation plan for the Marina Del Rey	247:2; Gannon Decl., ¶ 12.
Club on or about January 31, 2015.	
72. Plaintiff testified that no one from	72. Plaintiff Depo., Volume I, 171:10-
Equinox ever told her that she was being	172:7; Plaintiff Depo., Volume II,
"terminated" or "demoted" as part of her	306:17-310:19, 363:24-364:3; Gannon
reassignment to the Marina Del Rey club.	Decl., ¶ 13; Hemedinger Decl., ¶ 7.
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DEFENDANT'S SUPPORTING
EVIDENCE
73. Rosen Depo., 45:7-25. 57:8-12;
Hemedinger Depo., 53:14-18.
74. Plaintiff Depo., Volume I, 186:5-
14; Plaintiff Depo., Volume II, 311:4-8;
Hemedinger Depo., 54:17-55:18, 55:25-
56:25, 57:6-57:11.
75. Plaintiff Depo., Volume I, 186:5-
14, Exh. 26; Plaintiff Depo., Volume II,
311:4-8; Hemedinger Depo., 54:17-
55:18, 55:25-
56:25, 57:6-57:11.
76. Plaintiff Depo., Volume I, 186:11-
14.
77. Plaintiff Depo., Volume I, 50:13-
15, 186:15-17; Hemedinger Depo.,
56:22-25.
78. Plaintiff Depo., Volume II, 342:3-
11.
79. Plaintiff Depo., Volume II,
342:25-343:5.
80. Plaintiff Depo., Volume II, 343:6-
22.
DEFENDANT'S STATEMENT (

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
use of credit cards or telling someone that	
they were being signed up for a one-month	
membership but signing them up for a year	
instead.	
ISSUE	NO. 7

Plaintiff's third cause of action for breach of contract of the "compensation plan agreement" fails as a matter of law because Plaintiff accepted the terms of the "changed compensation plan agreement" and because of Plaintiff's at-will status. (UF Nos. 1-5, 7-13, 17-21, 75-76.)

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
1. Plaintiff was hired as a Membership	1. Plaintiff Depo., Volume I, 36:23-
Advisor ("MA") at Equinox's Santa	38:10, Exh. 5 (Offer Letter).
Monica club on or about October 15,	
2010.	
2. In January 2014, Plaintiff began	2. Plaintiff Depo., Volume I, 189:22-
working at Equinox's West Los Angeles	190:12, Exh. 13 (Memo).
club ("West LA club").	
3. At the West LA club, MAs were	3. Declaration of Brian Hemedinger
referred to as Membership Executives.	("Hemedinger Decl."), ¶ 3.
However, their job duties were the same.	
4. During Plaintiff's employment at	4. Declaration of Jack Gannon
Equinox's Santa Monica and West LA	("Gannon Decl."), ¶¶ 1-2.
clubs, Jack Gannon ("Gannon") was the	
Vice President of the West Coast.	

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
5. From about October 2011 through	5. Plaintiff Depo., Volume I, 270:8,-
about June 2015, Brian Hemedinger	14, 75:24-76:4; Deposition of Brian
("Hemedinger") was the Regional	Hemedinger ("Hemedinger Depo.")
Director of Operations ("Regional	15:3-10, 41:1-9, 13-16; Hemedinger
Director") of the Santa Monica and West	Decl., ¶ 1.
LA clubs.	
7. Plaintiff's personnel file includes an	7. Plaintiff Depo., Volume I, 43:18-
Employee Handbook: Receipt	45:15, Exh. 8 (Receipt
Acknowledgment Form with Plaintiff's	Acknowledgement Form); Declaration of
signature dated October 15, 2010.	Emerson Figueroa ("Figueroa Decl."), ¶
	5, Exh. B.)
8. In particular, the Employee	8. Plaintiff Depo., Volume I, 43:18-
Handbook stated:	45:15, Exh. 8 (Receipt
I acknowledge that the receipt of the	Acknowledgement Form); Figueroa
Employee Handbook in no way creates a	Decl., ¶ 5, Exh. B (Receipt
contract between Equinox and me.	Acknowledgement Form).
Moreover, I understand and agree that all	
matters discussed in the Employee	
Handbook are subject to change or	
modification from time to time except the	
At-Will Employment Policy specified	
therein. The At-Will Employment Policy	
represents the final and complete	
agreement concerning the duration of my	
employment. I acknowledge that any	
change in the At-Will Employment Policy	

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
is effective only if set forth in a written	
document signed by the CEO of Equinox	
and myself.	
9. Plaintiff's personnel file also	9. Plaintiff Depo., Volume I, 36:23-
includes an Offer Letter, dated October	38:11, Exh. 5 (Offer Letter); Figueroa
15, 2010, which Plaintiff acknowledged	Decl., ¶ 6, Exh. C (Offer Letter).
receiving.	
10. In particular, the Offer Letter stated:	10. Plaintiff Depo., Volume I, 36:23-
We are excited at the prospect of you	38:11, Exh. 5 (Offer Letter); Figueroa
joining the Company, you should be	Decl., ¶ 6, Exh. C (Offer Letter).
aware that our relationship is	
"employment-at-will." That means you	
are free, at any time, for any reason, to	
end your employment with the Company	
and that the Company may do the same.	
Our agreement regarding the at-will	
nature of your employment may not be	
changed, except in a writing signed by the	
Company's Chief Executive Officer.	
Given the at-will nature, the Company	
may from time to time add to, modify, or	
discontinue its compensation policies,	
employee benefit plans or other aspects of	
your employment.	
11. Plaintiff's personnel file also	11. Figueroa Decl., ¶ 8, Exh. D.
includes an Employee Confidentiality and	

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
certain goal of sales:	
• 100% of goal – MA would	
receive an extra \$20 per sale	
• 115% of goal – MA would	
receive an extra \$40 per sale	
• 125% of goal – MA would	
receive an extra \$55 per sale	
• 150% of goal – MA would receive	
an extra \$70 per sale	
19. For the West LA club, Equinox's	19. Plaintiff Depo., Volume I, 190:16-
Payroll Department was adding the	194:3; Holmes Depo., 82:11-83:14;
bonuses together as opposed to giving one	Hemedinger Depo., 59:22-60:6, 62:3-
of the bonuses above depending on the	63:8; 66:6-11., 68:15-69:8.
overall percentage.	
20. Plaintiff testified that she	20. Plaintiff Depo., Volume I, 199:7-
complained about what she viewed as a	22; Hemedinger Depo., 59:14-60:10;
"change" in the compensation plan to the	Deposition of Scott Rosen ("Rosen
following managerial employees:	Depo.") 29:18-30:4, 30:22-31:12, 31:20-
Hemedinger, Gannon, Simonson, Veronica	33:4, 61:12-64:17, 65:8-69:12, Exhs.
Santarelli ("Santarelli") (Regional Sales	206-207; Holmes Depo., 71:23-73:22,
Manager), Matt Gonzalez ("Gonzalez")	77:18-82:10, 84:19-86:8, Ex. 203.
(Director of Sales), Barry Holmes	
("Holmes") (Senior Vice President of	
Sales), and Scott Rosen ("Rosen") (Chief	
Operating Officer) ("COO").	
21. Despite Plaintiff's complaints about	21. Plaintiff Depo., Volume I, 196:8-

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
the compensation plan, Plaintiff continued	14, 207:15-22, 220:5-20; Plaintiff Depo.,
to work at Equinox for seven months after	Volume II, 349:5-12.
the "changed" compensation plan was	
instituted in July/August 2014 and	
continued to work for Equinox until she	
quit in February 2015.	
75. Before reporting to the Marina Del	75. Plaintiff Depo., Volume I, 186:5-
Rey club, Plaintiff submitted her	14, Exh. 26; Plaintiff Depo., Volume II,
resignation, via email, on the morning of	311:4-8; Hemedinger Depo., 54:17-
February 2, 2015 effective immediately.	55:18, 55:25-
	56:25, 57:6-57:11.
76. Plaintiff's last day of employment	76. Plaintiff Depo., Volume I, 186:11-
was February 2, 2015.	14.
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Plaintiff's fourth cause of action for breach of express oral contract not to terminate employment without good cause fails as a matter of law because of Plaintiff's at-will status, because Plaintiff quit, and because Equinox had good cause for its actions. (UF Nos. 1-80.)

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
1	1. Plaintiff Depo., Volume I, 36:23-
Advisor ("MA") at Equinox's Santa	38:10, Exh. 5 (Offer Letter).
Monica club on or about October 15,	
2010.	

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
2. In January 2014, Plaintiff began	2. Plaintiff Depo., Volume I, 189:22-
working at Equinox's West Los Angeles	190:12, Exh. 13 (Memo).
club ("West LA club").	
3. At the West LA club, MAs were	3. Declaration of Brian Hemedinger
referred to as Membership Executives.	("Hemedinger Decl."), ¶ 3.
However, their job duties were the same.	
4. During Plaintiff's employment at	4. Declaration of Jack Gannon
Equinox's Santa Monica and West LA	("Gannon Decl."), ¶¶ 1-2.
clubs, Jack Gannon ("Gannon") was the	
Vice President of the West Coast.	
5. From about October 2011 through	5. Plaintiff Depo., Volume I, 270:8,-
about June 2015, Brian Hemedinger	14, 75:24-76:4; Deposition of Brian
("Hemedinger") was the Regional	Hemedinger ("Hemedinger Depo.")
Director of Operations ("Regional	15:3-10, 41:1-9, 13-16; Hemedinger
Director") of the Santa Monica and West	Decl., ¶ 1.
LA clubs.	
6. General Manager Kira Simonson	6. Plaintiff Depo., Volume I, 52:11-
("Simonson) supervised Plaintiff at the	19.
West LA club from about January 2014 to	
about January 2015.	
7. Plaintiff's personnel file includes an	7. Plaintiff Depo., Volume I, 43:18-
Employee Handbook: Receipt	45:15, Exh. 8 (Receipt
Acknowledgment Form with Plaintiff's	Acknowledgement Form); Declaration of
signature dated October 15, 2010.	Emerson Figueroa ("Figueroa Decl., ¶ 5,
	Exh. B.)
8. In particular, the Employee	8. Plaintiff Depo., Volume I, 43:18-
Case No: 2:16-CV-01795 MWF (JCx)	DEFENDANT'S STATEMENT OF

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
Handbook stated:	45:15, Exh. 8 (Receipt
I acknowledge that the receipt of the	Acknowledgement Form).
Employee Handbook in no way creates a	
contract between Equinox and me.	
Moreover, I understand and agree that all	
matters discussed in the Employee	
Handbook are subject to change or	
modification from time to time except the	
At-Will Employment Policy specified	
therein. The At-Will Employment Policy	
represents the final and complete	
agreement concerning the duration of my	
employment. I acknowledge that any	
change in the At-Will Employment Policy	
is effective only if set forth in a written	
document signed by the CEO of Equinox	
and myself.	
9. Plaintiff's personnel file also	9. Plaintiff Depo., Volume I, 36:23-
includes an Offer Letter, dated October	38:11, Exh. 5 (Offer Letter); Declaration
15, 2010, which Plaintiff acknowledged	of Emerson Figueroa ("Figueroa Decl."),
receiving.	¶ 6, Exh. C (Offer Letter).
10. In particular, the Offer Letter stated:	10. Plaintiff Depo., Volume I, 36:23-
We are excited at the prospect of you	38:11, Exh. 5 (Offer Letter); Figueroa
joining the Company, you should be	Decl., ¶ 6, Exh. C (Offer Letter).
aware that our relationship is	
"employment-at-will." That means you	

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
are free, at any time, for any reason, to	
end your employment with the Company	
and that the Company may do the same.	
Our agreement regarding the at-will	
nature of your employment may not be	
changed, except in a writing signed by the	
Company's Chief Executive Officer.	
Given the at-will nature, the Company	
may from time to time add to, modify, or	
discontinue its compensation policies,	
employee benefit plans or other aspects of	
your employment.	
11. Plaintiff's personnel file also	11. Figueroa Decl., ¶ 8, Exh. D.
includes an Employee Confidentiality and	
Non-Solicitation Agreement with	
Plaintiff's signature dated October 14,	
2010.	
12. This Agreement stated: "You agree	12. Figueroa Decl., ¶ 8, Exh. D.
and understand that nothing in this	
Agreement shall alter or modify the 'at-	
will' nature of your employment with the	
Company or confer on [y]ou any right with	
respect to continuation of your	
employment with the Company."	
13. In her deposition, Plaintiff admitted	13. Plaintiff Depo., Volume I, 36:23-
that she did not have a contract with	38:11, 43:18-45:15, Exh. 5 (Offer

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
Equinox; no one ever told her that she was	Letter), Exh. 8 (Receipt
guaranteed employment for a certain time	Acknowledgement Form).
period; and no one ever told her that she	
was anything other than an at-will	
employee.	
17. In or about June 2014, Hemedinger	17. Plaintiff Depo., Volume I, 190:16-
informed Plaintiff and other MAs that the compensation plan for all West LA MAs	194:3, 219:7-10; Plaintiff Depo., Volume
was being clarified, so that the market	II, 347:22-348:1; Deposition of Barry
bonuses would be paid out individually and not cumulatively for reaching a certain	Holmes ("Holmes Depo.") 69:4-71:12,
sales goal.	73:23-75:10, Exhs. 201-202;
	Hemedinger Depo., 60:11-61:3, 68:12-
	14, 70:19-72:3.; Rosen Depo., 33:5-15.
18. For example, the plan provided for a	18. Plaintiff Depo., Volume I, 190:16-
particular market bonus upon reaching a certain goal of sales:	194:3; Hemedinger Depo., 64:18-65:11
• 100% of goal – MA would receive an extra \$20 per sale	
• 115% of goal – MA would receive an extra \$40 per sale	
• 125% of goal – MA would receive an extra \$55 per sale	
• 150% of goal – MA would receive an extra \$70 per sale	
19. For the West LA club, Equinox's	19. Plaintiff Depo., Volume I, 190:16-
Payroll Department was adding the bonuses together as opposed to giving one	194:3; Holmes Depo., 82:11-83:14
of the bonuses above depending on the	Hemedinger Depo., 59:22-60:6, 62:3-
overall percentage.	63:8; 66:6-11., 68:15-69:8.

	DEFENDANCE CURRON CONTROL
DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
20. Plaintiff testified that she complained about what she viewed as a "change" in the compensation plan to the following managerial employees: Hemedinger, Gannon, Simonson, Veronica Santarelli ("Santarelli") (Regional Sales Manager), Matt Gonzalez ("Gonzalez") (Director of Sales), Barry Holmes ("Holmes") (Senior Vice President of Sales), and Scott Rosen ("Rosen") (Chief Operating Officer) ("COO").	20. Plaintiff Depo., Volume I, 199:7-22; Hemedinger Depo., 59:14-60:10; Deposition of Scott Rosen ("Rosen Depo.") 29:18-30:4, 30:22-31:12, 31:20-33:4, 61:12-64:17, 65:8-69:12, Exhs. 206-207; Holmes Depo., 71:23-73:22, 77:18-82:10, 84:19-86:8, Ex. 203.
21. Despite Plaintiff's complaints about the compensation plan, Plaintiff continued to work at Equinox for seven months after the "changed" compensation plan was instituted in July/August 2014 and continued to work for Equinox until she quit in February 2015.	21. Plaintiff Depo., Volume I, 196:8-14, 207:15-22, 220:5-20; Plaintiff Depo., Volume II, 349:5-12.
22. Plaintiff testified that she complained to Hemedinger, Simonson, and possibly to Gannon in February or March 2014 that she believed that a MA at West LA was using one-month guest passes and/or gift cards to sign up members for what they believed was a month-long membership, but in actuality, was signing them up for a year-long membership by using their credit cards without authorization.	22. Plaintiff Depo., Volume I, 81:6-21, 82:5-83:23, 94:14-97:9.
23. According to Plaintiff, "charging credit cards without people's approval and telling people they were signing up for a month-long contract, but then signing them up for a year-long contract" were the	23. Plaintiff Depo., Volume II, 334:16-336:23.

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
only "illegal activities" about which she	
complained to Equinox.	
24. According to Plaintiff, her other	24. Plaintiff Depo., Volume II,
complaints involved "things against	334:16-336:23.
Equinox policies that were happening as	
well."	
25. Plaintiff admitted that she could not	25. Plaintiff Depo., Volume II, 335:4-
identify any statute, ordinance, regulation,	336:23.
local law, state law, or federal law that	
was violated as a result of this alleged	
activity.	
26. Plaintiff also testified that she	26. Plaintiff Depo., Volume I, 76:17-
complained to Hemedinger and Simonson	79:19; 93:10-94:10, 102:10-107:24;
about the sales activities of another MA.	108:1-113:5; Hemedinger Depo., 45:8-
	47:19.
27. Specifically, Plaintiff complained	27. Plaintiff Depo., Volume I, 76:17-
that this MA was giving away "free	79:19; 93:10-94:10, 102:10-107:24;
months" to potential members, allowing	108:1-113:5; Hemedinger Depo., 45:8-
"freezes" for members, and offering "three	47:19.
month" deals.	
28. In or around December 2014, COO	28. Rosen Depo., 37:20-38:18;
Rosen was touring the West LA club	Declaration of Tracy Cuva ("Cuva
when he was told by a member that a MA	Decl."), ¶ 2.
had charged a membership to another	
member's credit card without that	

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
member's authorization.	
29. Member Services is Equinox's	29. Cuva Decl., ¶ 1.
billing department (centrally based in	
New York) which handles membership	
contracts and membership sales, including	
auditing of membership sales.	
30. Rosen contacted Tracy Cuva,	30. Rosen Depo., 37:20-38:21; Cuva
Senior Director of Equinox's Member	Decl., ¶ 2.
Services Department, gave her the	
information received from the member,	
and asked Member Services to investigate	
this sale.	
31. Member Services' investigation,	31. Cuva Decl., ¶ 2.
which was conducted by Cuva, confirmed	
that this was an unauthorized sale	
processed by a MA at the West LA Club	
(Plaintiff was not implicated in this	
transaction).	
32. This MA was relocating to New	32. Rosen Depo., 39:8-13.
York but, based on the investigation	
results, she was not hired to work for	
Equinox in New York.	
33. As a result of this member	33. Rosen Depo., 47:25-6; Cuva Decl.,
complaint, Rosen also asked Cuva to have	¶ 3.
Member Services conduct an investigation	
of sales transactions at the West LA club.	

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DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
34. Apart from requesting that the	34. Rosen Depo., 47:25-48:21.
investigation be conducted and asking Jim	
Burger (Senior Director of Loss	
Prevention) to travel to the West LA club	
and continue the investigation after	
Member Services finished their portion of	
the investigation, Rosen did not	
participate in that investigation.	
35. Cuva instructed Kevin Stanfa	35. Cuva Decl., ¶ 3; Stanfa Decl. ¶ 4.
("Stanfa") (Manager of Compliance and	
Special Projects), to review sales	
transactions at the West LA club.	
36. After Stanfa reported finding	36. Cuva Decl., ¶ 3; Stanfa Decl. ¶ 4.
various anomalies associated with sales	
transactions at the West LA club, Cuva	
instructed Stanfa to prepare a summary	
detailing his findings.	
37. Stanfa then prepared a workbook	37. Stanfa Decl., ¶ 4.
with three spreadsheets regarding the	
following sales activities: (1) 2014	
Freezes; (2) Modification to Direct Bill;	
and (3) West LA Sales Breakdown.	
38. Once these were prepared, Cuva	38. Rosen Depo., 47:25-48:21;
emailed the spreadsheets to Rosen,	Holmes Depo., 86:10-88:10, 95:9-96:10;
Holmes and Gannon and summarized the	Cuva Decl., ¶ 6, Exh.N; Stanfa Decl., ¶¶
results of the Member Services	4-5.

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
investigation.	
39. In her email, Cuva indicated that	39. Cuva Decl., ¶ 7, Exh. N.
these spreadsheets "all reflect patterns	
unhealthy for the business."	
40. Cuva noted as follows:	40. Cuva Decl., ¶ 7, Exh. N.
i The 2014 Freezes spreadsheet	
shows that West LA is an outlier	
in members who request a freeze	
in the first 60 days of	
membership who also go on to	
cancel in the same year.	
i The Modification to Direct Bill	
spreadsheet reflects members in	
the last quarter of 2014 whose	
billing was modified from the	
credit card payment type to direct	
bill the day before billing ran.	
The Company average is four per	
club. West LA had 28	
modifications to direct bill.	
i The West LA Breakdown	
spreadsheet shows questionable	
sales from two MAs (Plaintiff	
and the MA moving to New	
York). The other three MAs	
were reviewed and did not reflect	

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
the same anomalies seen with	
Plaintiff and the MA moving to	
New York. The questionable	
sales included selling	
memberships to members with	
the credit card of another	
member (almost universally	
without requesting a referral	
credit) or re-contracting over a	
previously 3-day'd membership	
and either using the credit from	
the previous sale or recharging	
the same credit card, credit card	
not present for numerous sales	
transactions, 3-day cancellations	
with no or just one member visit,	
new memberships which were	
previously finance cancelled and	
had balances on account that	
were waived.	
41. Neither Cuva nor Stanfa were aware	41. Cuva Decl., ¶ 8; Stanfa Decl., ¶ 11.
Plaintiff had made any complaints about	
changes to her compensation plan or about	
the alleged activities of other MAs.	
42. In addition, Burger was asked to	42. Deposition of Jim Burger ("Burger
interview the sales team at the West LA	Depo."), 72:4-73:3, 73:13:75:22, 76:6-
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DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
club.	12.
43. When Burger came to Los Angeles	43. Hemedinger Decl., ¶ 4.
to conduct his interviews in late January	
2015, the West LA club's sales team	
consisted of three MAs, Plaintiff and two	
other MAs who were supervised by the	
Simonson and an Assistant General	
Manager.	
44. A MA was fired on or about January	44. Figueroa Decl. ¶ 9; Hemedinger
20, 2015 for improper sales activities.	Decl., ¶ 4.
45. At Burger's request, Member	45. Burger Depo., 72:13-73:3; Cuva
Services provided him with the	Decl. ¶ 8.
spreadsheets summarizing their findings of	
questionable sales transactions at the West	
LA club.	
46. Burger then met with Cuva and	46. Burger Depo., 73:13-74:15; Cuva
Stanfa and they discussed their findings	Decl. ¶ 8; Stanfa Decl., ¶ 9.
regarding the questionable sales at the	
West LA club.	
47. Burger had a subsequent meeting	47. Burger Depo., 74:16-75:3, 8-22;
with Stanfa to review the spreadsheets	Stanfa Decl., ¶ 9.
Member Services had prepared.	
48. These spreadsheets showed	48. Burger Depo., 39:3-40:22; Cuva
anomalies in various sales transactions,	Decl., ¶ 8; Stanfa Decl., ¶¶ 4-5.
including whether or not a contract was	
signed, whether or not a credit card was	
Case No: 2:16-CV-01795 MWF (JCx) 11	DEFENDANT'S STATEMENT OF

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
present for the sales transaction, whose	
credit card was used for the sales	
transactions, if another individual's credit	
card number was used for the sales	
transaction instead of the member's credit	
card number, whether or not a member had	
any visits to a club, etc.	
49. Burger also had a couple of	49. Burger Depo., 76:19-77:1; Stanfa
telephone conversations with Stanfa	Decl., ¶ 9.
regarding the anomalies in various sales	
activities at the West LA Club.	
50. In late January 2015, Burger came to	50. Burger Depo., 76:6-12; Gannon
Los Angeles to interview various	Decl., ¶ 3; Hemedinger Decl., ¶ 5.
employees regarding sales activities of the	
West LA MAs.	
51. Prior to the interviews, Burger and	51. Burger Depo., 116:12-117:12.
Gannon discussed suspending all of the	
individuals interviewed as part of the	
investigation pending the results of the	
investigation.	
52. Burger then interviewed the	52. Hemedinger Decl., ¶ 5.
following individuals: (1) the Assistant	
General Manager; (2) Plaintiff; (3) another	
MA; (4) a relatively newly hired MA; and	
(5) Simonson.	
53. Burger had never heard of or spoken	53. Burger Depo., 35:22-24.
Case No: 2:16-CV-01795 MWF (JCx) 11	1 DEFENDANT'S STATEMENT OF

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
to Plaintiff prior to this investigation	
meeting.	
54. On January 30, 2015, Plaintiff met	54. Plaintiff Depo., Volume I, 161:11-
with Burger and Leah Ball of Human	22, 164:10-22; Plaintiff Depo., Volume
Resources regarding West LA's sales	II, 305:21-24; , Burger Depo., 96:18-25.
practices.	
55. Plaintiff answered questions about	55. Plaintiff Depo., Volume I, 161:11-
her sales activities, as well as the activities	22, 164:10-22; Burger Depo., 53:13-
of other MAs.	54:9.
56. While Burger did not find Plaintiff	56. Burger Depo., 122:14-17.
credible, he felt, at that time, that there was	
insufficient information to warrant	
Plaintiff's termination.	
57. After Burger completed his	57. Burger Depo., 117:16-18, 24-
interviews, Burger, Gannon and	118:6.
Hemedinger met briefly to discuss	
Burger's impressions.	
58. Gannon then advised Plaintiff that	58. Plaintiff Depo., Volume I, 174:24-
she was being suspended.	175:3, 11-12; Plaintiff Depo., Volume II,
	306:3-7; Gannon Decl., ¶ 4.
59. All of the MAs interviewed as part	59. Burger Depo., ¶ 110:17-23;
of the investigation (with the exception of	Gannon Decl., ¶ 6.
the relatively new MA) were suspended	
pending investigation.	
60. Gannon also advised Plaintiff to	60. Plaintiff Depo., Volume I, 180:11-
report back to the West LA club at 2:00	181:4; Gannon Decl., ¶ 5.
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DEFENDANT'S STATEMENT OF UNCONTROVERTED MATERIAL FACTS AND

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
p.m. the next day for another meeting.	
61. According to Plaintiff, Equinox told	61. Plaintiff Depo., Volume I, 174:24-
her that she would not have access to her	175:21; Plaintiff Depo., Volume II,
email or payroll account and escorted her	305:21-306:2, 364:17-20; Plaintiff's
out of the building in front of Equinox's	Complaint, 6:5-7.
clientele, staff and all of her peers.	
62. It is Equinox's policy to turn off	62. Gannon Decl., ¶ 7.
email access for hourly employees who	
have been suspended pending investigation	
or who are on a leave of absence.	
63. Prior to Burger's interview of	63. Gannon Decl., ¶ 8.
Plaintiff, Gannon had the Payroll	
Department prepare a final paycheck for	
Plaintiff so that she could be paid in	
accordance with California law in the	
event the decision was made to terminate	
her employment.	
64. Plaintiff met with Hemedinger and	64. Plaintiff Depo., Volume I, 182:5-
Gannon at the West LA club on January	183:8; Plaintiff Depo., Volume II,
31, 2015 and was told that the	306:12:16, 382:12-17, 390:4-11, Exh.
investigation was concluded and that she	38; Hemedinger Depo., 54:17-21, 55:1-8;
would be working at the Marina Del Rey	Gannon Decl., ¶ 3; Hemedinger Decl., ¶
club.	6.
65. The decision was made to reassign	65. Rosen Depo., 71:7-20, 73:15-22,
Plaintiff to the Marina Del Rey club	76:5-14; Holmes Depo., 96:12-98:17;
because Equinox wanted to rebuild the	Hemedinger Depo., 51:7-52:23; Gannon
	+

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
team of MAs in the West LA club and to	Decl., ¶ 10.
create a fresh culture, as a result of the	
investigation findings.	
66. Plaintiff's compensation plan would	66. Rosen Depo., 87:25-88:4; Gannon
change once at Marina Del Rey to align	Decl., ¶ 11.
with the compensation plan of Marina Del	
Rey MAs. Equinox considered the	
reassignment a lateral move.	
67. Equinox considered the	67. Rosen Depo., 87:25-88:4; Gannon
reassignment a lateral move.	Decl., ¶ 11.
68. When Plaintiff was asked what her	68. Plaintiff Depo., Volume II, 390:4-
compensation would be at the Marina Del	11, Exh. 38; Gannon Decl., ¶ 12.
Rey club, she was sent the compensation	
plan of a Marina Del Rey MA.	
69. Equinox's expectation was she	69. Hemedinger Depo., 52:18-23;
would earn at least the same amount of	Rosen Depo., 57:13-19; 58:22-59:14;
money because the Marina Del Rey club	Holmes Depo., 31:13-15.
was a high performing club and the	
memberships for the Marina Del Rey club	
were less expensive than the memberships	
for the West LA club.	
70. It was easier to sell more	70. Hemedinger Depo., 52:18-23;
memberships at the Marina Del Rey club	Rosen Depo., 57:13-19; 58:22-59:14;
than the West LA club because the Marina	Holmes Depo., 50:18-51:5
Del Rey memberships were less expensive.	
71. Gannon emailed Plaintiff the	71. Plaintiff Depo., Volume I, 246:19-

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
compensation plan for the Marina Del Rey	247:2; Gannon Decl., ¶ 12.
Club on or about January 31, 2015.	
72. Plaintiff testified that no one from	72. Plaintiff Depo., Volume I, 171:10-
Equinox ever told her that she was being	172:7; Plaintiff Depo., Volume II,
"terminated" or "demoted" as part of her	306:17-310:19, 363:24-364:3; Gannon
reassignment to the Marina Del Rey club.	Decl., ¶ 13; Hemedinger Decl., ¶ 7.
73. Gannon made the decision to	73. Rosen Depo., 45:7-25. 57:8-12;
reassign Plaintiff to the Marina Del Rey	Hemedinger Depo., 53:14-18.
club.	
74. Plaintiff was told to report to the	74. Plaintiff Depo., Volume I, 186:5-
Marina Del Rey club on February 2, 2015	14; Plaintiff Depo., Volume II, 311:4-8;
at 9:00 a.m.	Hemedinger Depo., 54:17-55:18, 55:25-
	56:25, 57:6-57:11.
75. Before reporting to the Marina Del	75. Plaintiff Depo., Volume I, 186:5-
Rey club, Plaintiff submitted her	14, Exh. 26; Plaintiff Depo., Volume II,
resignation, via email, on the morning of	311:4-8; Hemedinger Depo., 54:17-
February 2, 2015 effective immediately.	55:18, 55:25-
	56:25, 57:6-57:11.
76. Plaintiff's last day of employment	76. Plaintiff Depo., Volume I, 186:11-
was February 2, 2015.	14.
77. Plaintiff never reported to work at	77. Plaintiff Depo., Volume I, 50:13-
the Marina Del Rey club.	15, 186:15-17; Hemedinger Depo.,
	56:22-25.
78. As of February 1, 2015, the only	78. Plaintiff Depo., Volume II, 342:3-
remaining MA at the West LA club was	11.
the recently hired MA.	
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DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
79. As of April/May 2015, the West LA	79. Plaintiff Depo., Volume II,
club had an entirely new sales team and	342:25-343:5.
sales management.	
80. Plaintiff testified that she was	80. Plaintiff Depo., Volume II, 343:6-
unaware of any other MA at the West LA	22.
club complaining about the unauthorized	
use of credit cards or telling someone that	
they were being signed up for a one-month	
membership but signing them up for a year	
instead.	

ISSUE NO. 9

Plaintiff's fifth cause of action for breach of implied-in-fact contract not to terminate employment without good cause fails as a matter of law because of Plaintiff's at-will status, because Plaintiff quit, and because Equinox had good cause for its actions. (UF Nos. 1-80.)

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
1. Plaintiff was hired as a Membership	1. Plaintiff Depo., Volume I, 36:23-
Advisor ("MA") at Equinox's Santa	38:10, Exh. 5 (Offer Letter).
Monica club on or about October 15,	
2010.	
2. In January 2014, Plaintiff began	2. Plaintiff Depo., Volume I, 189:22-
working at Equinox's West Los Angeles	190:12, Exh. 13 (Memo).
club ("West LA club").	

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
3. At the West LA club, MAs were	3. Declaration of Brian Hemedinger
referred to as Membership Executives.	("Hemedinger Decl."), ¶ 3.
However, their job duties were the same.	
4. During Plaintiff's employment at	4. Declaration of Jack Gannon
Equinox's Santa Monica and West LA	("Gannon Decl."), ¶¶ 1-2.
clubs, Jack Gannon ("Gannon") was the	
Vice President of the West Coast.	
5. From about October 2011 through	5. Plaintiff Depo., Volume I, 270:8,-
about June 2015, Brian Hemedinger	14, 75:24-76:4; Deposition of Brian
("Hemedinger") was the Regional	Hemedinger ("Hemedinger Depo.")
Director of Operations ("Regional	15:3-10, 41:1-9, 13-16; Hemedinger
Director") of the Santa Monica and West	Decl., ¶ 1.
LA clubs.	
6. General Manager Kira Simonson	6. Plaintiff Depo., Volume I, 52:11-
("Simonson) supervised Plaintiff at the	19.
West LA club from about January 2014 to	
about January 2015.	
7. Plaintiff's personnel file includes an	7. Plaintiff Depo., Volume I, 43:18-
Employee Handbook: Receipt	45:15, Exh. 8 (Receipt
Acknowledgment Form with Plaintiff's	Acknowledgement Form); Declaration of
signature dated October 15, 2010.	Emerson Figueroa ("Figueroa Decl."), ¶
	5, Exh. B.)
8. In particular, the Employee	8. Plaintiff Depo., Volume I, 43:18-
Handbook stated:	45:15, Exh. 8 (Receipt
I acknowledge that the receipt of the	Acknowledgement Form); Figueroa
Employee Handbook in no way creates a	Decl., ¶ 5, Exh. B (Receipt

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
contract between Equinox and me.	Acknowledgement Form).
Moreover, I understand and agree that all	
matters discussed in the Employee	
Handbook are subject to change or	
modification from time to time except the	
At-Will Employment Policy specified	
therein. The At-Will Employment Policy	
represents the final and complete	
agreement concerning the duration of my	
employment. I acknowledge that any	
change in the At-Will Employment Policy	
is effective only if set forth in a written	
document signed by the CEO of Equinox	
and myself.	
9. Plaintiff's personnel file also	9. Plaintiff Depo., Volume I, 36:23-
includes an Offer Letter, dated October	38:11, Exh. 5 (Offer Letter); Figueroa
15, 2010, which Plaintiff acknowledged	Decl., ¶ 6, Exh. C (Offer Letter).
receiving.	
10. In particular, the Offer Letter stated:	10. Plaintiff Depo., Volume I, 36:23-
We are excited at the prospect of you	38:11, Exh. 5 (Offer Letter); Figueroa
joining the Company, you should be	Decl., ¶ 6, Exh. C (Offer Letter).
aware that our relationship is	
"employment-at-will." That means you	
are free, at any time, for any reason, to	
end your employment with the Company	
and that the Company may do the same.	

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
Our agreement regarding the at-will	
nature of your employment may not be	
changed, except in a writing signed by the	
Company's Chief Executive Officer.	
Given the at-will nature, the Company	
may from time to time add to, modify, or	
discontinue its compensation policies,	
employee benefit plans or other aspects of	
your employment.	
11. Plaintiff's personnel file also	11. Figueroa Decl., ¶ 8, Exh. D.
includes an Employee Confidentiality and	
Non-Solicitation Agreement with	
Plaintiff's signature dated October 14,	
2010.	
12. This Agreement stated: "You agree	12. Figueroa Decl., ¶ 8, Exh. D.
and understand that nothing in this	
Agreement shall alter or modify the 'at-	
will' nature of your employment with the	
Company or confer on [y]ou any right with	
respect to continuation of your	
employment with the Company."	
13. In her deposition, Plaintiff admitted	13. Plaintiff Depo., Volume I, 36:23-
that she did not have a contract with	38:11, 43:18-45:15, Exh. 5 (Offer
Equinox; no one ever told her that she was	Letter), Exh. 8 (Receipt
guaranteed employment for a certain time	Acknowledgement Form).
period; and no one ever told her that she	

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
was anything other than an at-will	
employee.	
14. The Employee Handbook Plaintiff	14. Plaintiff Depo., Volume I, 43:18-
acknowledged receiving also included	45:15, Exh. 8 Receipt of Employee
Equinox's non-retaliation policy as well	Handbook; Declaration of Emerson
as complaint procedures for reporting	Figueroa ("Figueroa Decl."), Exh. A.
retaliation.	
15. In particular, Equinox's policy	15. Plaintiff Depo., Volume I, 43:18-
strictly prohibits retaliation against any	45:15, Exh. 8 Receipt of Employee
employee for "filing a complaint and	Handbook; Figueroa Decl., Exh. A,
[Equinox] will not knowingly permit	Employee Handbook.
retaliation by management, employees, or	
co-workers." Equinox's policy also	
prohibits retaliation against any employee	
for "using this complaint procedure or for	
filing, testifying, assisting, or participating	
in any manner in any investigation,	
proceeding, or hearing conducted by a	
governmental enforcement agency.	
Additionally, Equinox will not knowingly	
permit any retaliation against any	
employee who complains of prohibited	
harassment or who participates in an	
investigation."	
16. The complaint procedure as	16. Plaintiff Depo., Volume I, 43:18-
outlined in the Employee Handbook	45:15, Exh. 8 Receipt of Employee

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
permits an employee to report retaliation	Handbook; Figueroa Decl. ¶ 4.
to his or her manager, Human Resources,	
or through Equinox's Ethics Hotline.	
17. In or about June 2014, Hemedinger	17. Plaintiff Depo., Volume I, 190:16-
informed Plaintiff and other MAs that the	194:3, 219:7-10; Plaintiff Depo., Volume
compensation plan for all West LA MAs	II, 347:22-348:1; Deposition of Barry
was being clarified, so that the market	Holmes ("Holmes Depo.") 69:4-71:12,
bonuses would be paid out individually	73:23-75:10, Exhs. 201-202;
and not cumulatively for reaching a	Hemedinger Depo., 60:11-61:3, 68:12-
certain sales goal.	14, 70:19-72:3.; Rosen Depo., 33:5-15.
18. For example, the plan provided for a	18. Plaintiff Depo., Volume I, 190:16-
particular market bonus upon reaching a	194:3; Hemedinger Depo., 64:18-65:11
certain goal of sales:	
• 100% of goal – MA would	
receive an extra \$20 per sale	
• 115% of goal – MA would	
receive an extra \$40 per sale	
• 125% of goal – MA would	
receive an extra \$55 per sale	
• 150% of goal – MA would receive	
an extra \$70 per sale	
19. For the West LA club, Equinox's	19. Plaintiff Depo., Volume I, 190:16-
Payroll Department was adding the	194:3; Holmes Depo., 82:11-83:14;
bonuses together as opposed to giving one	Hemedinger Depo., 59:22-60:6, 62:3-
of the bonuses above depending on the	63:8; 66:6-11., 68:15-69:8.
overall percentage.	

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
20. Plaintiff testified that she	20. Plaintiff Depo., Volume I, 199:7-
complained about what she viewed as a	22; Hemedinger Depo., 59:14-60:10;
"change" in the compensation plan to the	Deposition of Scott Rosen ("Rosen
following managerial employees:	Depo.") 29:18-30:4, 30:22-31:12, 31:20-
Hemedinger, Gannon, Simonson, Veronica	33:4, 61:12-64:17, 65:8-69:12, Exhs.
Santarelli ("Santarelli") (Regional Sales	206-207; Holmes Depo., 71:23-73:22,
Manager), Matt Gonzalez ("Gonzalez")	77:18-82:10, 84:19-86:8, Ex. 203.
(Director of Sales), Barry Holmes	
("Holmes") (Senior Vice President of	
Sales), and Scott Rosen ("Rosen") (Chief	
Operating Officer) ("COO").	
21. Despite Plaintiff's complaints about	21. Plaintiff Depo., Volume I, 196:8-
the compensation plan, Plaintiff continued	14, 207:15-22, 220:5-20; Plaintiff Depo.,
to work at Equinox for seven months after	Volume II, 349:5-12.
the "changed" compensation plan was	
instituted in July/August 2014 and	
continued to work for Equinox until she	
quit in February 2015.	
22. Plaintiff testified that she	22. Plaintiff Depo., Volume I, 81:6-21,
complained to Hemedinger, Simonson, and	82:5-83:23, 94:14-97:9.
possibly to Gannon in February or March	
2014 that she believed that a MA at West	
LA was using one-month guest passes	
and/or gift cards to sign up members for	
what they believed was a month-long	
membership, but in actuality, was signing	

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
them up for a year-long membership by	
using their credit cards without	
authorization.	
23. According to Plaintiff, "charging	23. Plaintiff Depo., Volume II,
credit cards without people's approval and	334:16-336:23.
telling people they were signing up for a	
month-long contract, but then signing	
them up for a year-long contract" were the	
only "illegal activities" about which she	
complained to Equinox.	
24. According to Plaintiff, her other	24. Plaintiff Depo., Volume II,
complaints involved "things against	334:16-336:23.
Equinox policies that were happening as	
well."	
25. Plaintiff admitted that she could not	25. Plaintiff Depo., Volume II, 335:4-
identify any statute, ordinance, regulation,	336:23.
local law, state law, or federal law that	
was violated as a result of this alleged	
activity.	
26. Plaintiff also testified that she	26. Plaintiff Depo., Volume I, 76:17-
complained to Hemedinger and Simonson	79:19; 93:10-94:10, 102:10-107:24;
about the sales activities of another MA.	108:1-113:5; Hemedinger Depo., 45:8-
	47:19.
27. Specifically, Plaintiff complained	27. Plaintiff Depo., Volume I, 76:17-
that this MA was giving away "free	79:19; 93:10-94:10, 102:10-107:24;

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
months" to potential members, allowing	108:1-113:5; Hemedinger Depo., 45:8-
"freezes" for members, and offering "three	47:19.
month" deals.	
28. In or around December 2014, COO	28. Rosen Depo., 37:20-38:18;
Rosen was touring the West LA club	Declaration of Tracy Cuva ("Cuva
when he was told by a member that a MA	Decl."), ¶ 2.
had charged a membership to another	
member's credit card without that	
member's authorization.	
29. Member Services is Equinox's	29. Cuva Decl., ¶ 1.
billing department (centrally based in	
New York) which handles membership	
contracts and membership sales, including	
auditing of membership sales.	
30. Rosen contacted Tracy Cuva,	30. Rosen Depo., 37:20-38:21; Cuva
Senior Director of Equinox's Member	Decl., ¶ 2.
Services Department, gave her the	
information received from the member,	
and asked Member Services to investigate	
this sale.	
31. Member Services' investigation,	31. Cuva Decl., ¶ 2.
which was conducted by Cuva, confirmed	
that this was an unauthorized sale	
processed by a MA at the West LA Club	
(Plaintiff was not implicated in this	
transaction).	
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UNCONTROVERTED FACTS	EVIDENCE
32. This MA was relocating to New	32. Rosen Depo., 39:8-13.
York but, based on the investigation	
results, she was not hired to work for	
Equinox in New York.	
33. As a result of this member	33. Rosen Depo., 47:25-6; Cuva Decl.,
complaint, Rosen also asked Cuva to have	¶ 3.
Member Services conduct an investigation	
of sales transactions at the West LA club.	
34. Apart from requesting that the	34. Rosen Depo., 47:25-48:21.
investigation be conducted and asking Jim	
Burger (Senior Director of Loss	
Prevention) to travel to the West LA club	
and continue the investigation after	
Member Services finished their portion of	
the investigation, Rosen did not	
participate in that investigation.	
35. Cuva instructed Kevin Stanfa	35. Cuva Decl., ¶ 3; Stanfa Decl. ¶ 4.
("Stanfa") (Manager of Compliance and	
Special Projects), to review sales	
transactions at the West LA club.	
36. After Stanfa reported finding	36. Cuva Decl., ¶ 3; Stanfa Decl. ¶ 4.
various anomalies associated with sales	
transactions at the West LA club, Cuva	
instructed Stanfa to prepare a summary	
detailing his findings.	
37. Stanfa then prepared a workbook	37. Stanfa Decl., ¶ 4.
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DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
with three spreadsheets regarding the	
following sales activities: (1) 2014	
Freezes; (2) Modification to Direct Bill;	
and (3) West LA Sales Breakdown.	
38. Once these were prepared, Cuva	38. Rosen Depo., 47:25-48:21;
emailed the spreadsheets to Rosen,	Holmes Depo., 86:10-88:10, 95:9-96:10;
Holmes and Gannon and summarized the	Cuva Decl., ¶ 6, Exh. N; Stanfa Decl., ¶¶
results of the Member Services	4-5.
investigation.	
39. In her email, Cuva indicated that	39. Cuva Decl., ¶ 7, Exh. N.
these spreadsheets "all reflect patterns	
unhealthy for the business."	
40. Cuva noted as follows:	40. Cuva Decl., ¶ 7, Exh. N.
i The 2014 Freezes spreadsheet	
shows that West LA is an outlier	
in members who request a freeze	
in the first 60 days of	
membership who also go on to	
cancel in the same year.	
i The Modification to Direct Bill	
spreadsheet reflects members in	
the last quarter of 2014 whose	
billing was modified from the	
credit card payment type to direct	
bill the day before billing ran.	
The Company average is four per	

1	DEFENDANT'S	DEFENDANT'S SUPPORTING
2	UNCONTROVERTED FACTS	EVIDENCE
3	club. West LA had 28	
4	modifications to direct bill.	
5	i The West LA Breakdown	
6	spreadsheet shows questionable	
7	sales from two MAs (Plaintiff	
8	and the MA moving to New	
9	York). The other three MAs	
10	were reviewed and did not reflect	
11	the same anomalies seen with	
12	Plaintiff and the MA moving to	
13	New York. The questionable	
14	sales included selling	
15	memberships to members with	
16	the credit card of another	
17	member (almost universally	
18	without requesting a referral	
19	credit) or re-contracting over a	
20	previously 3-day'd membership	
21	and either using the credit from	
22	the previous sale or recharging	
23	the same credit card, credit card	
24	not present for numerous sales	
25	transactions, 3-day cancellations	
26	with no or just one member visit,	
27	new memberships which were	
28	previously finance cancelled and	

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
had balances on account that	
were waived.	
41. Neither Cuva nor Stanfa were aware	41. Cuva Decl., ¶ 8; Stanfa Decl., ¶ 11.
Plaintiff had made any complaints about	
changes to her compensation plan or about	
the alleged activities of other MAs.	
42. In addition, Burger was asked to	42. Deposition of Jim Burger ("Burger
interview the sales team at the West LA	Depo."), 72:4-73:3, 73:13:75:22, 76:6-
club.	12.
43. When Burger came to Los Angeles	43. Hemedinger Decl., ¶ 4.
to conduct his interviews in late January	
2015, the West LA club's sales team	
consisted of three MAs, Plaintiff and two	
other MAs who were supervised by the	
Simonson and an Assistant General	
Manager.	
44. A MA was fired on or about January	44. Figueroa Decl. ¶ 9; Hemedinger
20, 2015 for improper sales activities.	Decl., ¶ 4.
45. At Burger's request, Member	45. Burger Depo., 72:13-73:3; Cuva
Services provided him with the	Decl. ¶ 8.
spreadsheets summarizing their findings of	
questionable sales transactions at the West	
LA club.	
46. Burger then met with Cuva and	46. Burger Depo., 73:13-74:15; Cuva
Stanfa and they discussed their findings	Decl. ¶ 8; Stanfa Decl., ¶ 9.
regarding the questionable sales at the	

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
West LA club.	
47. Burger had a subsequent meeting	47. Burger Depo., 74:16-75:3, 8-22
with Stanfa to review the spreadsheets	Stanfa Decl., ¶ 9.
Member Services had prepared.	
48. These spreadsheets showed	48. Burger Depo., 39:3-40:22; Cuva
anomalies in various sales transactions,	Decl., ¶ 8; Stanfa Decl., ¶¶ 4-5.
including whether or not a contract was	
signed, whether or not a credit card was	
present for the sales transaction, whose	
credit card was used for the sales	
transactions, if another individual's credit	
card number was used for the sales	
transaction instead of the member's credit	
card number, whether or not a member had	
any visits to a club, etc.	
49. Burger also had a couple of	49. Burger Depo., 76:19-77:1; Stanf
telephone conversations with Stanfa	Decl., ¶ 9.
regarding the anomalies in various sales	
activities at the West LA Club.	
50. In late January 2015, Burger came to	50. Burger Depo., 76:6-12; Gannot
Los Angeles to interview various	Decl., ¶ 3; Hemedinger Decl., ¶ 5.
employees regarding sales activities of the	
West LA MAs.	
51. Prior to the interviews, Burger and	51. Burger Depo., 116:12-117:12.
Gannon discussed suspending all of the	
individuals interviewed as part of the	
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DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
investigation pending the results of the	
investigation.	
52. Burger then interviewed the	52. Hemedinger Decl., ¶ 5.
following individuals: (1) the Assistant	
General Manager; (2) Plaintiff; (3) another	
MA; (4) a relatively newly hired MA; and	
(5) Simonson.	
53. Burger had never heard of or spoken	53. Burger Depo., 35:22-24.
to Plaintiff prior to this investigation	
meeting.	
54. On January 30, 2015, Plaintiff met	54. Plaintiff Depo., Volume I, 161:11-
with Burger and Leah Ball of Human	22, 164:10-22; Plaintiff Depo., Volume
Resources regarding West LA's sales	II, 305:21-24; , Burger Depo., 96:18-25.
practices.	
55. Plaintiff answered questions about	55. Plaintiff Depo., Volume I, 161:11-
her sales activities, as well as the activities	22, 164:10-22; Burger Depo., 53:13-
of other MAs.	54:9.
56. While Burger did not find Plaintiff	56. Burger Depo., 122:14-17.
credible, he felt, at that time, that there was	
insufficient information to warrant	
Plaintiff's termination.	
57. After Burger completed his	57. Burger Depo., 117:16-18, 24-
interviews, Burger, Gannon and	118:6.
Hemedinger met briefly to discuss	
Burger's impressions.	
58. Gannon then advised Plaintiff that	58. Plaintiff Depo., Volume I, 174:24-
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DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
she was being suspended.	175:3, 11-12; Plaintiff Depo., Volume II,
	306:3-7; Gannon Decl., ¶ 4.
59. All of the MAs interviewed as part	59. Burger Depo., ¶ 110:17-23;
of the investigation (with the exception of	Gannon Decl., ¶ 6.
the relatively new MA) were suspended	
pending investigation.	
60. Gannon also advised Plaintiff to	60. Plaintiff Depo., Volume I, 180:11-
report back to the West LA club at 2:00	181:4; Gannon Decl., ¶ 5.
p.m. the next day for another meeting.	
61. According to Plaintiff, Equinox told	61. Plaintiff Depo., Volume I, 174:24-
her that she would not have access to her	175:21; Plaintiff Depo., Volume II,
email or payroll account and escorted her	305:21-306:2, 364:17-20; Plaintiff's
out of the building in front of Equinox's	Complaint, 6:5-7.
clientele, staff and all of her peers.	
62. It is Equinox's policy to turn off	62. Gannon Decl., ¶ 7.
email access for hourly employees who	
have been suspended pending investigation	
or who are on a leave of absence.	
63. Prior to Burger's interview of	63. Gannon Decl., ¶ 8.
Plaintiff, Gannon had the Payroll	
Department prepare a final paycheck for	
Plaintiff so that she could be paid in	
accordance with California law in the	
event the decision was made to terminate	
her employment.	
64. Plaintiff met with Hemedinger and	64. Plaintiff Depo., Volume I, 182:5-

DETENDING AND A	DEFEND AND COURT
DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
Gannon at the West LA club on January	183:8; Plaintiff Depo., Volume II,
31, 2015 and was told that the	306:12:16, 382:12-17, 390:4-11, Exh.
investigation was concluded and that she	38; Hemedinger Depo., 54:17-21, 55:1-8;
would be working at the Marina Del Rey	Gannon Decl., ¶ 3; Hemedinger Decl., ¶
club.	6.
65. The decision was made to reassign	65. Rosen Depo., 71:7-20, 73:15-22,
Plaintiff to the Marina Del Rey club	76:5-14; Holmes Depo., 96:12-98:17;
because Equinox wanted to rebuild the	Hemedinger Depo., 51:7-52:23; Gannon
team of MAs in the West LA club and to	Decl., ¶ 10.
create a fresh culture, as a result of the	
investigation findings.	
66. Plaintiff's compensation plan would	66. Rosen Depo., 87:25-88:4; Gannon
change once at Marina Del Rey to align	Decl., ¶ 11.
with the compensation plan of Marina Del	
Rey MAs. Equinox considered the	
reassignment a lateral move.	
67. Equinox considered the	67. Rosen Depo., 87:25-88:4; Gannon
reassignment a lateral move.	Decl., ¶ 11.
68. When Plaintiff was asked what her	68. Plaintiff Depo., Volume II, 390:4-
compensation would be at the Marina Del	11, Exh. 38; Gannon Decl., ¶ 12.
Rey club, she was sent the compensation	
plan of a Marina Del Rey MA.	
69. Equinox's expectation was she	69. Hemedinger Depo., 52:18-23;
would earn at least the same amount of	Rosen Depo., 57:13-19; 58:22-59:14;
money because the Marina Del Rey club	Holmes Depo., 31:13-15.
was a high performing club and the	

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
memberships for the Marina Del Rey club	
were less expensive than the memberships	
for the West LA club.	
70. It was easier to sell more	70. Hemedinger Depo., 52:18-23;
memberships at the Marina Del Rey club	Rosen Depo., 57:13-19; 58:22-59:14;
than the West LA club because the Marina	Holmes Depo., 50:18-51:5
Del Rey memberships were less expensive.	
71. Gannon emailed Plaintiff the	71. Plaintiff Depo., Volume I, 246:19-
compensation plan for the Marina Del Rey	247:2; Gannon Decl., ¶ 12.
Club on or about January 31, 2015.	
72. Plaintiff testified that no one from	72. Plaintiff Depo., Volume I, 171:10-
Equinox ever told her that she was being	172:7; Plaintiff Depo., Volume II,
"terminated" or "demoted" as part of her	306:17-310:19, 363:24-364:3; Gannon
reassignment to the Marina Del Rey club.	Decl., ¶ 13; Hemedinger Decl., ¶ 7.
73. Gannon made the decision to	73. Rosen Depo., 45:7-25. 57:8-12;
reassign Plaintiff to the Marina Del Rey	Hemedinger Depo., 53:14-18.
club.	
74. Plaintiff was told to report to the	74. Plaintiff Depo., Volume I, 186:5-
Marina Del Rey club on February 2, 2015	14; Plaintiff Depo., Volume II, 311:4-8;
at 9:00 a.m.	Hemedinger Depo., 54:17-55:18, 55:25-
	56:25, 57:6-57:11.
75. Before reporting to the Marina Del	75. Plaintiff Depo., Volume I, 186:5-
Rey club, Plaintiff submitted her	14, Exh. 26; Plaintiff Depo., Volume II,
resignation, via email, on the morning of	311:4-8; Hemedinger Depo., 54:17-
February 2, 2015 effective immediately.	55:18, 55:25-
	56:25, 57:6-57:11.

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
UNCONTROVERTED FACTS	EVIDENCE
76. Plaintiff's last day of employment	76. Plaintiff Depo., Volume I, 186:11-
was February 2, 2015.	14.
77. Plaintiff never reported to work at	77. Plaintiff Depo., Volume I, 50:13-
the Marina Del Rey club.	15, 186:15-17; Hemedinger Depo.,
	56:22-25.
78. As of February 1, 2015, the only	78. Plaintiff Depo., Volume II, 342:3-
remaining MA at the West LA club was	11.
the recently hired MA.	
79. As of April/May 2015, the West LA	79. Plaintiff Depo., Volume II,
club had an entirely new sales team and	342:25-343:5.
sales management.	
80. Plaintiff testified that she was	80. Plaintiff Depo., Volume II, 343:6-
unaware of any other MA at the West LA	22.
club complaining about the unauthorized	
use of credit cards or telling someone that	
they were being signed up for a one-month	
membership but signing them up for a year	
instead.	

ISSUE NO. 10

Plaintiff's sixth cause of action for wrongful termination in violation of public policy (discussing wages) fails as a matter of law because Plaintiff was not terminated. (UF Nos. 1-80.)

	DEFENDANT'S	DEFENDANT'S SUPPORTING	
	UNCONTROVERTED FACTS	EVIDENCE	
1.	Plaintiff was hired as a Membership	1. Plaintiff Depo., Volume I, 36:23-	-

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89:22- edinger
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dinger
dinger
amger
Bannon
270:8,-
Brian
Depo.")
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52:11-
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V Z V Z Y

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43:18-

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
signature dated October 15, 2010.	Emerson Figueroa ("Figueroa Decl."), ¶
	5, Exh. B.)
8. In particular, the Employee	8. Plaintiff Depo., Volume I, 43:18-
Handbook stated:	45:15, Exh. 8 (Receipt
I acknowledge that the receipt of the	Acknowledgement Form); Figueroa
Employee Handbook in no way creates a	Decl., ¶ 5, Exh. B (Receipt
contract between Equinox and me.	Acknowledgement Form).
Moreover, I understand and agree that all	
matters discussed in the Employee	
Handbook are subject to change or	
modification from time to time except the	
At-Will Employment Policy specified	
therein. The At-Will Employment Policy	
represents the final and complete	
agreement concerning the duration of my	
employment. I acknowledge that any	
change in the At-Will Employment Policy	
is effective only if set forth in a written	
document signed by the CEO of Equinox	
and myself.	
9. Plaintiff's personnel file also	9. Plaintiff Depo., Volume I, 36:23-
includes an Offer Letter, dated October	38:11, Exh. 5 (Offer Letter); Figueroa
15, 2010, which Plaintiff acknowledged	Decl., ¶ 6, Exh. C (Offer Letter).
receiving.	
10. In particular, the Offer Letter stated:	10. Plaintiff Depo., Volume I, 36:23-
We are excited at the prospect of you	38:11, Exh. 5 (Offer Letter); Figueroa

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
joining the Company, you should be	Decl., ¶ 6, Exh. C (Offer Letter).
aware that our relationship is	
"employment-at-will." That means you	
are free, at any time, for any reason, to	
end your employment with the Company	
and that the Company may do the same.	
Our agreement regarding the at-will	
nature of your employment may not be	
changed, except in a writing signed by the	
Company's Chief Executive Officer.	
Given the at-will nature, the Company	
may from time to time add to, modify, or	
discontinue its compensation policies,	
employee benefit plans or other aspects of	
your employment.	
11. Plaintiff's personnel file also	11. Figueroa Decl., ¶ 8, Exh. D.
includes an Employee Confidentiality and	
Non-Solicitation Agreement with	
Plaintiff's signature dated October 14,	
2010.	
12. This Agreement stated: "You agree	12. Figueroa Decl., ¶ 8, Exh. D.
and understand that nothing in this	
Agreement shall alter or modify the 'at-	
will' nature of your employment with the	
Company or confer on [y]ou any right with	
respect to continuation of your	

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
employment with the Company."	
13. In her deposition, Plaintiff admitted	13. Plaintiff Depo., Volume I, 36:23-
that she did not have a contract with	38:11, 43:18-45:15, Exh. 5 (Offer
Equinox; no one ever told her that she was	Letter), Exh. 8 (Receipt
guaranteed employment for a certain time	Acknowledgement Form).
period; and no one ever told her that she	
was anything other than an at-will	
employee.	
14. The Employee Handbook Plaintiff	14. Plaintiff Depo., Volume I, 43:18-
acknowledged receiving also included	45:15, Exh. 8 Receipt of Employee
Equinox's non-retaliation policy as well	Handbook; Declaration of Emerson
as complaint procedures for reporting	Figueroa ("Figueroa Decl."), Exh. A.
retaliation.	
15. In particular, Equinox's policy	15. Plaintiff Depo., Volume I, 43:18-
strictly prohibits retaliation against any	45:15, Exh. 8 Receipt of Employee
employee for "filing a complaint and	Handbook; Figueroa Decl., Exh. A,
[Equinox] will not knowingly permit	Employee Handbook.
retaliation by management, employees, or	
co-workers." Equinox's policy also	
prohibits retaliation against any employee	
for "using this complaint procedure or for	
filing, testifying, assisting, or participating	
in any manner in any investigation,	
proceeding, or hearing conducted by a	
governmental enforcement agency.	
Additionally, Equinox will not knowingly	

EVIDENCE
16. Plaintiff Depo., Volume I, 43:18-
45:15, Exh. 8 Receipt of Employee
Handbook; Figueroa Decl. ¶ 4.
17. Plaintiff Depo., Volume I, 190:16-
194:3, 219:7-10; Plaintiff Depo., Volume
II, 347:22-348:1; Deposition of Barry
Holmes ("Holmes Depo.") 69:4-71:12,
73:23-75:10, Exhs. 201-202;
Hemedinger Depo., 60:11-61:3, 68:12-
14, 70:19-72:3.; Rosen Depo., 33:5-15.
18. Plaintiff Depo., Volume I, 190:16-
194:3; Hemedinger Depo., 64:18-65:11

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
an extra \$70 per sale	
19. For the West LA club, Equinox's	19. Plaintiff Depo., Volume I, 190:16-
Payroll Department was adding the	194:3; Holmes Depo., 82:11-83:14;
bonuses together as opposed to giving one	Hemedinger Depo., 59:22-60:6, 62:3-
of the bonuses above depending on the	63:8; 66:6-11., 68:15-69:8.
overall percentage.	
20. Plaintiff testified that she	20. Plaintiff Depo., Volume I, 199:7-
complained about what she viewed as a	22; Hemedinger Depo., 59:14-60:10;
"change" in the compensation plan to the	Deposition of Scott Rosen ("Rosen
following managerial employees:	Depo.") 29:18-30:4, 30:22-31:12, 31:20-
Hemedinger, Gannon, Simonson, Veronica	33:4, 61:12-64:17, 65:8-69:12, Exhs.
Santarelli ("Santarelli") (Regional Sales	206-207; Holmes Depo., 71:23-73:22,
Manager), Matt Gonzalez ("Gonzalez")	77:18-82:10, 84:19-86:8, Ex. 203.
(Director of Sales), Barry Holmes	
("Holmes") (Senior Vice President of	
Sales), and Scott Rosen ("Rosen") (Chief	
Operating Officer) ("COO").	
21. Despite Plaintiff's complaints about	21. Plaintiff Depo., Volume I, 196:8-
the compensation plan, Plaintiff continued	14, 207:15-22, 220:5-20; Plaintiff Depo.,
to work at Equinox for seven months after	Volume II, 349:5-12.
the "changed" compensation plan was	
instituted in July/August 2014 and	
continued to work for Equinox until she	
quit in February 2015.	
22. Plaintiff testified that she	22. Plaintiff Depo., Volume I, 81:6-21,
complained to Hemedinger, Simonson, and	82:5-83:23, 94:14-97:9.

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
possibly to Gannon in February or March	
2014 that she believed that a MA at West	
LA was using one-month guest passes	
and/or gift cards to sign up members for	
what they believed was a month-long	
membership, but in actuality, was signing	
them up for a year-long membership by	
using their credit cards without	
authorization.	
23. According to Plaintiff, "charging	23. Plaintiff Depo., Volume II,
credit cards without people's approval and	334:16-336:23.
telling people they were signing up for a	
month-long contract, but then signing	
them up for a year-long contract" were the	
only "illegal activities" about which she	
complained to Equinox.	
24. According to Plaintiff, her other	24. Plaintiff Depo., Volume II,
complaints involved "things against	334:16-336:23.
Equinox policies that were happening as	
well."	
25. Plaintiff admitted that she could not	25. Plaintiff Depo., Volume II, 335:4-
identify any statute, ordinance, regulation,	336:23.
local law, state law, or federal law that	
was violated as a result of this alleged	
activity.	
26. Plaintiff also testified that she	26. Plaintiff Depo., Volume I, 76:17-
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DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
complained to Hemedinger and Simonson	79:19; 93:10-94:10, 102:10-107:24;
about the sales activities of another MA.	108:1-113:5; Hemedinger Depo., 45:8-
	47:19.
27. Specifically, Plaintiff complained	27. Plaintiff Depo., Volume I, 76:17-
that this MA was giving away "free	79:19; 93:10-94:10, 102:10-107:24;
months" to potential members, allowing	108:1-113:5; Hemedinger Depo., 45:8-
"freezes" for members, and offering "three	47:19.
month" deals.	
28. In or around December 2014, COO	28. Rosen Depo., 37:20-38:18;
Rosen was touring the West LA club	Declaration of Tracy Cuva ("Cuva
when he was told by a member that a MA	Decl."), ¶ 2.
had charged a membership to another	
member's credit card without that	
member's authorization.	
29. Member Services is Equinox's	29. Cuva Decl., ¶ 1.
billing department (centrally based in	
New York) which handles membership	
contracts and membership sales, including	
auditing of membership sales.	
30. Rosen contacted Tracy Cuva,	30. Rosen Depo., 37:20-38:21; Cuva
Senior Director of Equinox's Member	Decl., ¶ 2.
Services Department, gave her the	
information received from the member,	
and asked Member Services to investigate	
this sale.	
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DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
31. Member Services' investigation,	31. Cuva Decl., ¶ 2.
which was conducted by Cuva, confirmed	
that this was an unauthorized sale	
processed by a MA at the West LA Club	
(Plaintiff was not implicated in this	
transaction).	
32. This MA was relocating to New	32. Rosen Depo., 39:8-13.
York but, based on the investigation	
results, she was not hired to work for	
Equinox in New York.	
33. As a result of this member	33. Rosen Depo., 47:25-6; Cuva Decl.,
complaint, Rosen also asked Cuva to have	¶ 3.
Member Services conduct an investigation	
of sales transactions at the West LA club.	
34. Apart from requesting that the	34. Rosen Depo., 47:25-48:21.
investigation be conducted and asking Jim	
Burger (Senior Director of Loss	
Prevention) to travel to the West LA club	
and continue the investigation after	
Member Services finished their portion of	
the investigation, Rosen did not	
participate in that investigation.	
35. Cuva instructed Kevin Stanfa	35. Cuva Decl., ¶ 3; Stanfa Decl. ¶ 4.
("Stanfa") (Manager of Compliance and	
Special Projects), to review sales	
transactions at the West LA club.	

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1	DEFENDANT'S	DEFENDANT'S SUPPORTING
2	UNCONTROVERTED FACTS	EVIDENCE
3	36. After Stanfa reported finding	36. Cuva Decl., ¶ 3; Stanfa Decl. ¶ 4.
4	various anomalies associated with sales	
5	transactions at the West LA club, Cuva	
6	instructed Stanfa to prepare a summary	
7	detailing his findings.	
8	37. Stanfa then prepared a workbook	37. Stanfa Decl., ¶ 4.
9	with three spreadsheets regarding the	
10	following sales activities: (1) 2014	
11	Freezes; (2) Modification to Direct Bill;	
12	and (3) West LA Sales Breakdown.	
13	38. Once these were prepared, Cuva	38. Rosen Depo., 47:25-48:21;
14	emailed the spreadsheets to Rosen,	Holmes Depo., 86:10-88:10, 95:9-96:10;
15	Holmes and Gannon and summarized the	Cuva Decl., ¶ 6, Exh. N; Stanfa Decl., ¶¶
16	results of the Member Services	4-5.
17	investigation.	
18	39. In her email, Cuva indicated that	39. Cuva Decl., ¶ 7, Exh. N.
19	these spreadsheets "all reflect patterns	
20	unhealthy for the business."	
21	40. Cuva noted as follows:	40. Cuva Decl., ¶ 7, Exh. N.
22	i The 2014 Freezes spreadsheet	
23	shows that West LA is an outlier	
24	in members who request a freeze	
25	in the first 60 days of	
26	membership who also go on to	
27	cancel in the same year.	
28	i The Modification to Direct Bill	

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
spreadsheet reflects members in	
the last quarter of 2014 whose	
billing was modified from the	
credit card payment type to direct	
bill the day before billing ran.	
The Company average is four per	
club. West LA had 28	
modifications to direct bill.	
i The West LA Breakdown	
spreadsheet shows questionable	
sales from two MAs (Plaintiff	
and the MA moving to New	
York). The other three MAs	
were reviewed and did not reflect	
the same anomalies seen with	
Plaintiff and the MA moving to	
New York. The questionable	
sales included selling	
memberships to members with	
the credit card of another	
member (almost universally	
without requesting a referral	
credit) or re-contracting over a	
previously 3-day'd membership	
and either using the credit from	
the previous sale or recharging	
	spreadsheet reflects members in the last quarter of 2014 whose billing was modified from the credit card payment type to direct bill the day before billing ran. The Company average is four per club. West LA had 28 modifications to direct bill. i The West LA Breakdown spreadsheet shows questionable sales from two MAs (Plaintiff and the MA moving to New York). The other three MAs were reviewed and did not reflect the same anomalies seen with Plaintiff and the MA moving to New York. The questionable sales included selling memberships to members with the credit card of another member (almost universally without requesting a referral credit) or re-contracting over a previously 3-day'd membership and either using the credit from

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
the same credit card, credit card	
not present for numerous sales	
transactions, 3-day cancellations	
with no or just one member visit,	
new memberships which were	
previously finance cancelled and	
had balances on account that	
were waived.	
41. Neither Cuva nor Stanfa were aware	41. Cuva Decl., ¶ 8; Stanfa Decl., ¶ 11.
Plaintiff had made any complaints about	
changes to her compensation plan or about	
the alleged activities of other MAs.	
42. In addition, Burger was asked to	42. Deposition of Jim Burger ("Burger
interview the sales team at the West LA	Depo."), 72:4-73:3, 73:13:75:22, 76:6-
club.	12.
43. When Burger came to Los Angeles	43. Hemedinger Decl., ¶ 4.
to conduct his interviews in late January	
2015, the West LA club's sales team	
consisted of three MAs, Plaintiff and two	
other MAs who were supervised by the	
Simonson and an Assistant General	
Manager.	
44. A MA was fired on or about January	44. Figueroa Decl. ¶ 9; Hemedinger
20, 2015 for improper sales activities.	Decl., ¶ 4.
45. At Burger's request, Member	45. Burger Depo., 72:13-73:3; Cuva
Services provided him with the	Decl. ¶ 8.
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DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
spreadsheets summarizing their findings of	
questionable sales transactions at the West	
LA club.	
46. Burger then met with Cuva and	46. Burger Depo., 73:13-74:15; Cuva
Stanfa and they discussed their findings	Decl. ¶ 8; Stanfa Decl., ¶ 9.
regarding the questionable sales at the	
West LA club.	
47. Burger had a subsequent meeting	47. Burger Depo., 74:16-75:3, 8-22;
with Stanfa to review the spreadsheets	Stanfa Decl., ¶ 9.
Member Services had prepared.	
48. These spreadsheets showed	48. Burger Depo., 39:3-40:22; Cuva
anomalies in various sales transactions,	Decl., ¶ 8; Stanfa Decl., ¶¶ 4-5.
including whether or not a contract was	
signed, whether or not a credit card was	
present for the sales transaction, whose	
credit card was used for the sales	
transactions, if another individual's credit	
card number was used for the sales	
transaction instead of the member's credit	
card number, whether or not a member had	
any visits to a club, etc.	40 B B 55.10 55.1 6 6
49. Burger also had a couple of	49. Burger Depo., 76:19-77:1; Stanfa
telephone conversations with Stanfa	Decl., ¶ 9.
regarding the anomalies in various sales	
activities at the West LA Club.	50 P 755 12 G
50. In late January 2015, Burger came to	50. Burger Depo., 76:6-12; Gannon

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
Los Angeles to interview various	Decl., ¶ 3; Hemedinger Decl., ¶ 5.
employees regarding sales activities of the	
West LA MAs.	
51. Prior to the interviews, Burger and	51. Burger Depo., 116:12-117:12.
Gannon discussed suspending all of the	
individuals interviewed as part of the	
investigation pending the results of the	
investigation.	
52. Burger then interviewed the	52. Hemedinger Decl., ¶ 5.
following individuals: (1) the Assistant	
General Manager; (2) Plaintiff; (3) another	
MA; (4) a relatively newly hired MA; and	
(5) Simonson.	
53. Burger had never heard of or spoken	53. Burger Depo., 35:22-24.
to Plaintiff prior to this investigation	
meeting.	
54. On January 30, 2015, Plaintiff met	54. Plaintiff Depo., Volume I, 161:11-
with Burger and Leah Ball of Human	22, 164:10-22; Plaintiff Depo., Volume
Resources regarding West LA's sales	II, 305:21-24; , Burger Depo., 96:18-25.
practices.	
55. Plaintiff answered questions about	55. Plaintiff Depo., Volume I, 161:11-
her sales activities, as well as the activities	22, 164:10-22; Burger Depo., 53:13-
of other MAs.	54:9.
56. While Burger did not find Plaintiff	56. Burger Depo., 122:14-17.
credible, he felt, at that time, that there was	
insufficient information to warrant	
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DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
Plaintiff's termination.	
57. After Burger completed his	57. Burger Depo., 117:16-18, 24-
interviews, Burger, Gannon and	118:6.
Hemedinger met briefly to discuss	
Burger's impressions.	
58. Gannon then advised Plaintiff that	58. Plaintiff Depo., Volume I, 174:24-
she was being suspended.	175:3, 11-12; Plaintiff Depo., Volume II,
	306:3-7; Gannon Decl., ¶ 4.
59. All of the MAs interviewed as part	59. Burger Depo., ¶ 110:17-23;
of the investigation (with the exception of	Gannon Decl., ¶ 6.
the relatively new MA) were suspended	
pending investigation.	
60. Gannon also advised Plaintiff to	60. Plaintiff Depo., Volume I, 180:11-
report back to the West LA club at 2:00	181:4; Gannon Decl., ¶ 5.
p.m. the next day for another meeting.	
61. According to Plaintiff, Equinox told	61. Plaintiff Depo., Volume I, 174:24-
her that she would not have access to her	175:21; Plaintiff Depo., Volume II,
email or payroll account and escorted her	305:21-306:2, 364:17-20; Plaintiff's
out of the building in front of Equinox's	Complaint, 6:5-7.
clientele, staff and all of her peers.	
62. It is Equinox's policy to turn off	62. Gannon Decl., ¶ 7.
email access for hourly employees who	
have been suspended pending investigation	
or who are on a leave of absence.	
63. Prior to Burger's interview of	63. Gannon Decl., ¶ 8.
Plaintiff, Gannon had the Payroll	
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DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
Department prepare a final paycheck for	
Plaintiff so that she could be paid in	
accordance with California law in the	
event the decision was made to terminate	
her employment.	
64. Plaintiff met with Hemedinger and	64. Plaintiff Depo., Volume I, 182:5-
Gannon at the West LA club on January	183:8; Plaintiff Depo., Volume II,
31, 2015 and was told that the	306:12:16, 382:12-17, 390:4-11, Exh.
investigation was concluded and that she	38; Hemedinger Depo., 54:17-21, 55:1-8;
would be working at the Marina Del Rey	Gannon Decl., ¶ 3; Hemedinger Decl., ¶
club.	6.
65. The decision was made to reassign	65. Rosen Depo., 71:7-20, 73:15-22,
Plaintiff to the Marina Del Rey club	76:5-14; Holmes Depo., 96:12-98:17;
because Equinox wanted to rebuild the	Hemedinger Depo., 51:7-52:23; Gannon
team of MAs in the West LA club and to	Decl., ¶ 10.
create a fresh culture, as a result of the	
investigation findings.	
66. Plaintiff's compensation plan would	66. Rosen Depo., 87:25-88:4; Gannon
change once at Marina Del Rey to align	Decl., ¶ 11.
with the compensation plan of Marina Del	
Rey MAs. Equinox considered the	
reassignment a lateral move.	
67. Equinox considered the	67. Rosen Depo., 87:25-88:4; Gannon
reassignment a lateral move.	Decl., ¶ 11.
68. When Plaintiff was asked what her	68. Plaintiff Depo., Volume II, 390:4-
compensation would be at the Marina Del	11, Exh. 38; Gannon Decl., ¶ 12.

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
Rey club, she was sent the compensation	
plan of a Marina Del Rey MA.	
69. Equinox's expectation was she	69. Hemedinger Depo., 52:18-23;
would earn at least the same amount of	Rosen Depo., 57:13-19; 58:22-59:14;
money because the Marina Del Rey club	Holmes Depo., 31:13-15.
was a high performing club and the	
memberships for the Marina Del Rey club	
were less expensive than the memberships	
for the West LA club.	
70. It was easier to sell more	70. Hemedinger Depo., 52:18-23;
memberships at the Marina Del Rey club	Rosen Depo., 57:13-19; 58:22-59:14;
than the West LA club because the Marina	Holmes Depo., 50:18-51:5
Del Rey memberships were less expensive.	
71. Gannon emailed Plaintiff the	71. Plaintiff Depo., Volume I, 246:19-
compensation plan for the Marina Del Rey	247:2; Gannon Decl., ¶ 12.
Club on or about January 31, 2015.	
72. Plaintiff testified that no one from	72. Plaintiff Depo., Volume I, 171:10-
Equinox ever told her that she was being	172:7; Plaintiff Depo., Volume II,
"terminated" or "demoted" as part of her	306:17-310:19, 363:24-364:3; Gannon
reassignment to the Marina Del Rey club.	Decl., ¶ 13; Hemedinger Decl., ¶ 7.
73. Gannon made the decision to	73. Rosen Depo., 45:7-25. 57:8-12;
reassign Plaintiff to the Marina Del Rey	Hemedinger Depo., 53:14-18.
club.	
74. Plaintiff was told to report to the	74. Plaintiff Depo., Volume I, 186:5-
Marina Del Rey club on February 2, 2015	14; Plaintiff Depo., Volume II, 311:4-8;
at 9:00 a.m.	Hemedinger Depo., 54:17-55:18, 55:25-
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DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
	56:25, 57:6-57:11.
75. Before reporting to the Marina Del	75. Plaintiff Depo., Volume I, 186:5-
Rey club, Plaintiff submitted her	14, Exh. 26; Plaintiff Depo., Volume II,
resignation, via email, on the morning of	311:4-8; Hemedinger Depo., 54:17-
February 2, 2015 effective immediately.	55:18, 55:25-
	56:25, 57:6-57:11.
76. Plaintiff's last day of employment	76. Plaintiff Depo., Volume I, 186:11-
was February 2, 2015.	14.
77. Plaintiff never reported to work at	77. Plaintiff Depo., Volume I, 50:13-
the Marina Del Rey club.	15, 186:15-17; Hemedinger Depo.,
	56:22-25.
78. As of February 1, 2015, the only	78. Plaintiff Depo., Volume II, 342:3-
remaining MA at the West LA club was	11.
the recently hired MA.	
79. As of April/May 2015, the West LA	79. Plaintiff Depo., Volume II,
club had an entirely new sales team and	342:25-343:5.
sales management.	
80. Plaintiff testified that she was	80. Plaintiff Depo., Volume II, 343:6-
unaware of any other MA at the West LA	22.
club complaining about the unauthorized	
use of credit cards or telling someone that	
they were being signed up for a one-month	
membership but signing them up for a year	
instead.	

ISSUE NO. 11

Although Plaintiff has not pled a cause of action for constructive discharge, such a claim (even if properly pled) would fail as a matter of law because Plaintiff cannot establish a *prima facie* claim of constructive discharge because Plaintiff was not subjected to intolerable working conditions. (UF Nos. 1-80.)

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
1. Plaintiff was hired as a Membership	1. Plaintiff Depo., Volume I, 36:23-
Advisor ("MA") at Equinox's Santa	38:10, Exh. 5 (Offer Letter).
Monica club on or about October 15,	
2010.	
2. In January 2014, Plaintiff began	2. Plaintiff Depo., Volume I, 189:22-
working at Equinox's West Los Angeles	190:12, Exh. 13 (Memo).
club ("West LA club").	
3. At the West LA club, MAs were	3. Declaration of Brian Hemedinger
referred to as Membership Executives.	("Hemedinger Decl."), ¶ 3.
However, their job duties were the same.	
4. During Plaintiff's employment at	4. Declaration of Jack Gannon
Equinox's Santa Monica and West LA	("Gannon Decl."), ¶¶ 1-2.
clubs, Jack Gannon ("Gannon") was the	
Vice President of the West Coast.	
5. From about October 2011 through	5. Plaintiff Depo., Volume I, 270:8,-
about June 2015, Brian Hemedinger	14, 75:24-76:4; Deposition of Brian
("Hemedinger") was the Regional	Hemedinger ("Hemedinger Depo.")
Director of Operations ("Regional	15:3-10, 41:1-9, 13-16; Hemedinger
Director") of the Santa Monica and West	Decl., ¶ 1.
LA clubs.	

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
6. General Manager Kira Simonson	6. Plaintiff Depo., Volume I, 52:11-
("Simonson) supervised Plaintiff at the	19.
West LA club from about January 2014 to	
about January 2015.	
7. Plaintiff's personnel file includes an	7. Plaintiff Depo., Volume I, 43:18-
Employee Handbook: Receipt	45:15, Exh. 8 (Receipt
Acknowledgment Form with Plaintiff's	Acknowledgement Form); Declaration of
signature dated October 15, 2010.	Emerson Figueroa ("Figueroa Decl."), ¶
	5, Exh. B.)
8. In particular, the Employee	8. Plaintiff Depo., Volume I, 43:18-
Handbook stated:	45:15, Exh. 8 (Receipt
I acknowledge that the receipt of the	Acknowledgement Form); Figueroa
Employee Handbook in no way creates a	Decl., ¶ 5, Exh. B (Receipt
contract between Equinox and me.	Acknowledgement Form).
Moreover, I understand and agree that all	
matters discussed in the Employee	
Handbook are subject to change or	
modification from time to time except the	
At-Will Employment Policy specified	
therein. The At-Will Employment Policy	
represents the final and complete	
agreement concerning the duration of my	
employment. I acknowledge that any	
change in the At-Will Employment Policy	
is effective only if set forth in a written	
document signed by the CEO of Equinox	

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
and myself.	
9. Plaintiff's personnel file also	9. Plaintiff Depo., Volume I, 36:23-
includes an Offer Letter, dated October	38:11, Exh. 5 (Offer Letter); Figueroa
15, 2010, which Plaintiff acknowledged	Decl., ¶ 6, Exh. C (Offer Letter).
receiving.	
10. In particular, the Offer Letter stated:	10. Plaintiff Depo., Volume I, 36:23-
We are excited at the prospect of you	38:11, Exh. 5 (Offer Letter); Figueroa
joining the Company, you should be	Decl., ¶ 6, Exh. C (Offer Letter).
aware that our relationship is	
"employment-at-will." That means you	
are free, at any time, for any reason, to	
end your employment with the Company	
and that the Company may do the same.	
Our agreement regarding the at-will	
nature of your employment may not be	
changed, except in a writing signed by the	
Company's Chief Executive Officer.	
Given the at-will nature, the Company	
may from time to time add to, modify, or	
discontinue its compensation policies,	
employee benefit plans or other aspects of	
your employment.	
11. Plaintiff's personnel file also	11. Figueroa Decl., ¶ 8, Exh. D.
includes an Employee Confidentiality and	
Non-Solicitation Agreement with	
Plaintiff's signature dated October 14,	

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
2010.	
12. This Agreement stated: "You agree	12. Figueroa Decl., ¶ 8, Exh. D.
and understand that nothing in this	
Agreement shall alter or modify the 'at-	
will' nature of your employment with the	
Company or confer on [y]ou any right with	
respect to continuation of your	
employment with the Company."	
13. In her deposition, Plaintiff admitted	13. Plaintiff Depo., Volume I, 36:23-
that she did not have a contract with	38:11, 43:18-45:15, Exh. 5 (Offer
Equinox; no one ever told her that she was	Letter), Exh. 8 (Receipt
guaranteed employment for a certain time	Acknowledgement Form).
period; and no one ever told her that she	
was anything other than an at-will	
employee.	
14. The Employee Handbook Plaintiff	14. Plaintiff Depo., Volume I, 43:18-
acknowledged receiving also included	45:15, Exh. 8 Receipt of Employee
Equinox's non-retaliation policy as well	Handbook; Declaration of Emerson
as complaint procedures for reporting	Figueroa ("Figueroa Decl."), Exh. A.
retaliation.	
15. In particular, Equinox's policy	15. Plaintiff Depo., Volume I, 43:18-
strictly prohibits retaliation against any	45:15, Exh. 8 Receipt of Employee
employee for "filing a complaint and	Handbook; Figueroa Decl., Exh. A,
[Equinox] will not knowingly permit	Employee Handbook.
retaliation by management, employees, or	
co-workers." Equinox's policy also	
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DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
prohibits retaliation against any employee	
for "using this complaint procedure or for	
filing, testifying, assisting, or participating	
in any manner in any investigation,	
proceeding, or hearing conducted by a	
governmental enforcement agency.	
Additionally, Equinox will not knowingly	
permit any retaliation against any	
employee who complains of prohibited	
harassment or who participates in an	
investigation."	
16. The complaint procedure as	16. Plaintiff Depo., Volume I, 43:18-
outlined in the Employee Handbook	45:15, Exh. 8 Receipt of Employee
permits an employee to report retaliation	Handbook; Figueroa Decl. ¶ 4.
to his or her manager, Human Resources,	
or through Equinox's Ethics Hotline.	
17. In or about June 2014, Hemedinger	17. Plaintiff Depo., Volume I, 190:16-
informed Plaintiff and other MAs that the	194:3, 219:7-10; Plaintiff Depo., Volume
compensation plan for all West LA MAs	II, 347:22-348:1; Deposition of Barry
was being clarified, so that the market	Holmes ("Holmes Depo.") 69:4-71:12,
bonuses would be paid out individually	73:23-75:10, Exhs. 201-202;
and not cumulatively for reaching a	Hemedinger Depo., 60:11-61:3, 68:12-
certain sales goal.	14, 70:19-72:3.; Rosen Depo., 33:5-15.
18. For example, the plan provided for a	18. Plaintiff Depo., Volume I, 190:16-
particular market bonus upon reaching a	194:3; Hemedinger Depo., 64:18-65:11
certain goal of sales:	

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
• 100% of goal – MA would	
receive an extra \$20 per sale	
• 115% of goal – MA would	
receive an extra \$40 per sale	
• 125% of goal – MA would	
receive an extra \$55 per sale	
• 150% of goal – MA would receive	
an extra \$70 per sale	
19. For the West LA club, Equinox's	19. Plaintiff Depo., Volume I, 190:16-
Payroll Department was adding the	194:3; Holmes Depo., 82:11-83:14;
bonuses together as opposed to giving one	Hemedinger Depo., 59:22-60:6, 62:3-
of the bonuses above depending on the	63:8; 66:6-11., 68:15-69:8.
overall percentage.	
20. Plaintiff testified that she	20. Plaintiff Depo., Volume I, 199:7-
complained about what she viewed as a	22; Hemedinger Depo., 59:14-60:10;
"change" in the compensation plan to the	Deposition of Scott Rosen ("Rosen
following managerial employees:	Depo.") 29:18-30:4, 30:22-31:12, 31:20-
Hemedinger, Gannon, Simonson, Veronica	33:4, 61:12-64:17, 65:8-69:12, Exhs.
Santarelli ("Santarelli") (Regional Sales	206-207; Holmes Depo., 71:23-73:22,
Manager), Matt Gonzalez ("Gonzalez")	77:18-82:10, 84:19-86:8, Ex. 203.
(Director of Sales), Barry Holmes	
("Holmes") (Senior Vice President of	
Sales), and Scott Rosen ("Rosen") (Chief	
Operating Officer) ("COO").	
21. Despite Plaintiff's complaints about	21. Plaintiff Depo., Volume I, 196:8-
the compensation plan, Plaintiff continued	14, 207:15-22, 220:5-20; Plaintiff Depo.,

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
to work at Equinox for seven months after	Volume II, 349:5-12.
the "changed" compensation plan was	
instituted in July/August 2014 and	
continued to work for Equinox until she	
quit in February 2015.	
22. Plaintiff testified that she	22. Plaintiff Depo., Volume I, 81:6-21,
complained to Hemedinger, Simonson, and	82:5-83:23, 94:14-97:9.
possibly to Gannon in February or March	
2014 that she believed that a MA at West	
LA was using one-month guest passes	
and/or gift cards to sign up members for	
what they believed was a month-long	
membership, but in actuality, was signing	
them up for a year-long membership by	
using their credit cards without	
authorization.	
23. According to Plaintiff, "charging	23. Plaintiff Depo., Volume II,
credit cards without people's approval and	334:16-336:23.
telling people they were signing up for a	
month-long contract, but then signing	
them up for a year-long contract" were the	
only "illegal activities" about which she	
complained to Equinox.	
24. According to Plaintiff, her other	24. Plaintiff Depo., Volume II,
complaints involved "things against	334:16-336:23.
Equinox policies that were happening as	

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
well."	
25. Plaintiff admitted that she could not	25. Plaintiff Depo., Volume II, 335:4-
identify any statute, ordinance, regulation,	336:23.
local law, state law, or federal law that	
was violated as a result of this alleged	
activity.	
26. Plaintiff also testified that she	26. Plaintiff Depo., Volume I, 76:17-
complained to Hemedinger and Simonson	79:19; 93:10-94:10, 102:10-107:24;
about the sales activities of another MA.	108:1-113:5; Hemedinger Depo., 45:8-
	47:19.
27. Specifically, Plaintiff complained	27. Plaintiff Depo., Volume I, 76:17-
that this MA was giving away "free	79:19; 93:10-94:10, 102:10-107:24;
months" to potential members, allowing	108:1-113:5; Hemedinger Depo., 45:8-
"freezes" for members, and offering "three	47:19.
month" deals.	
28. In or around December 2014, COO	28. Rosen Depo., 37:20-38:18;
Rosen was touring the West LA club	Declaration of Tracy Cuva ("Cuva
when he was told by a member that a MA	Decl."), ¶ 2.
had charged a membership to another	
member's credit card without that	
member's authorization.	
29. Member Services is Equinox's	29. Cuva Decl., ¶ 1.
billing department (centrally based in	
New York) which handles membership	
contracts and membership sales, including	

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
auditing of membership sales.	
30. Rosen contacted Tracy Cuva,	30. Rosen Depo., 37:20-38:21; Cuva
Senior Director of Equinox's Member	Decl., ¶ 2.
Services Department, gave her the	
information received from the member,	
and asked Member Services to investigate	
this sale.	
31. Member Services' investigation,	31. Cuva Decl., ¶ 2.
which was conducted by Cuva, confirmed	
that this was an unauthorized sale	
processed by a MA at the West LA Club	
(Plaintiff was not implicated in this	
transaction).	
32. This MA was relocating to New	32. Rosen Depo., 39:8-13.
York but, based on the investigation	
results, she was not hired to work for	
Equinox in New York.	
33. As a result of this member	33. Rosen Depo., 47:25-6; Cuva Decl.,
complaint, Rosen also asked Cuva to have	¶ 3.
Member Services conduct an investigation	
of sales transactions at the West LA club.	
34. Apart from requesting that the	34. Rosen Depo., 47:25-48:21.
investigation be conducted and asking Jim	
Burger (Senior Director of Loss	
Prevention) to travel to the West LA club	
and continue the investigation after	

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DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
Member Services finished their portion of	
the investigation, Rosen did not	
participate in that investigation.	
35. Cuva instructed Kevin Stanfa	35. Cuva Decl., ¶ 3; Stanfa Decl. ¶ 4.
("Stanfa") (Manager of Compliance and	
Special Projects), to review sales	
transactions at the West LA club.	
36. After Stanfa reported finding	36. Cuva Decl., ¶ 3; Stanfa Decl. ¶ 4.
various anomalies associated with sales	
transactions at the West LA club, Cuva	
instructed Stanfa to prepare a summary	
detailing his findings.	
37. Stanfa then prepared a workbook	37. Stanfa Decl., ¶ 4.
with three spreadsheets regarding the	
following sales activities: (1) 2014	
Freezes; (2) Modification to Direct Bill;	
and (3) West LA Sales Breakdown.	
38. Once these were prepared, Cuva	38. Rosen Depo., 47:25-48:21;
emailed the spreadsheets to Rosen,	Holmes Depo., 86:10-88:10, 95:9-96:10;
Holmes and Gannon and summarized the	Cuva Decl., ¶ 6, Exh. N; Stanfa Decl., ¶¶
results of the Member Services	4-5.
investigation.	
39. In her email, Cuva indicated that	39. Cuva Decl., ¶ 7, Exh. N.
these spreadsheets "all reflect patterns	
unhealthy for the business."	
40. Cuva noted as follows:	40. Cuva Decl., ¶ 7, Exh. N.

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
the credit card of another	
member (almost universally	
without requesting a referral	
credit) or re-contracting over a	
previously 3-day'd membership	
and either using the credit from	
the previous sale or recharging	
the same credit card, credit card	
not present for numerous sales	
transactions, 3-day cancellations	
with no or just one member visit,	
new memberships which were	
previously finance cancelled and	
had balances on account that	
were waived.	
41. Neither Cuva nor Stanfa were aware	41. Cuva Decl., ¶ 8; Stanfa Decl., ¶ 11.
Plaintiff had made any complaints about	
changes to her compensation plan or about	
the alleged activities of other MAs.	
42. In addition, Burger was asked to	42. Deposition of Jim Burger ("Burger
interview the sales team at the West LA	Depo."), 72:4-73:3, 73:13:75:22, 76:6-
club.	12.
43. When Burger came to Los Angeles	43. Hemedinger Decl., ¶ 4.
to conduct his interviews in late January	
2015, the West LA club's sales team	
consisted of three MAs, Plaintiff and two	
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DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
other MAs who were supervised by the	
Simonson and an Assistant General	
Manager.	
44. A MA was fired on or about January	44. Figueroa Decl. ¶ 9; Hemedinger
20, 2015 for improper sales activities.	Decl., ¶ 4.
45. At Burger's request, Member	45. Burger Depo., 72:13-73:3; Cuva
Services provided him with the	Decl. ¶ 8.
spreadsheets summarizing their findings of	
questionable sales transactions at the West	
LA club.	
46. Burger then met with Cuva and	46. Burger Depo., 73:13-74:15; Cuva
Stanfa and they discussed their findings	Decl. ¶ 8; Stanfa Decl., ¶ 9.
regarding the questionable sales at the	
West LA club.	
47. Burger had a subsequent meeting	47. Burger Depo., 74:16-75:3, 8-22;
with Stanfa to review the spreadsheets	Stanfa Decl., ¶ 9.
Member Services had prepared.	
48. These spreadsheets showed	48. Burger Depo., 39:3-40:22; Cuva
anomalies in various sales transactions,	Decl., ¶ 8; Stanfa Decl., ¶¶ 4-5.
including whether or not a contract was	
signed, whether or not a credit card was	
present for the sales transaction, whose	
credit card was used for the sales	
transactions, if another individual's credit	
card number was used for the sales	
transaction instead of the member's credit	

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
card number, whether or not a member had	
any visits to a club, etc.	
49. Burger also had a couple of	49. Burger Depo., 76:19-77:1; Stanfa
telephone conversations with Stanfa	Decl., ¶ 9.
regarding the anomalies in various sales	
activities at the West LA Club.	
50. In late January 2015, Burger came to	50. Burger Depo., 76:6-12; Gannon
Los Angeles to interview various	Decl., ¶ 3; Hemedinger Decl., ¶ 5.
employees regarding sales activities of the	
West LA MAs.	
51. Prior to the interviews, Burger and	51. Burger Depo., 116:12-117:12.
Gannon discussed suspending all of the	
individuals interviewed as part of the	
investigation pending the results of the	
investigation.	
52. Burger then interviewed the	52. Hemedinger Decl., ¶ 5.
following individuals: (1) the Assistant	
General Manager; (2) Plaintiff; (3) another	
MA; (4) a relatively newly hired MA; and	
(5) Simonson.	
53. Burger had never heard of or spoken	53. Burger Depo., 35:22-24.
to Plaintiff prior to this investigation	
meeting.	
54. On January 30, 2015, Plaintiff met	54. Plaintiff Depo., Volume I, 161:11-
with Burger and Leah Ball of Human	22, 164:10-22; Plaintiff Depo., Volume
Resources regarding West LA's sales	II, 305:21-24; , Burger Depo., 96:18-25.

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DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
practices.	
55. Plaintiff answered questions about	55. Plaintiff Depo., Volume I, 161:11-
her sales activities, as well as the activities	22, 164:10-22; Burger Depo., 53:13-
of other MAs.	54:9.
56. While Burger did not find Plaintiff	56. Burger Depo., 122:14-17.
credible, he felt, at that time, that there was	
insufficient information to warrant	
Plaintiff's termination.	
57. After Burger completed his	57. Burger Depo., 117:16-18, 24-
interviews, Burger, Gannon and	118:6.
Hemedinger met briefly to discuss	
Burger's impressions.	
58. Gannon then advised Plaintiff that	58. Plaintiff Depo., Volume I, 174:24-
she was being suspended.	175:3, 11-12; Plaintiff Depo., Volume II,
	306:3-7; Gannon Decl., ¶ 4.
59. All of the MAs interviewed as part	59. Burger Depo., ¶ 110:17-23;
of the investigation (with the exception of	Gannon Decl., ¶ 6.
the relatively new MA) were suspended	
pending investigation.	
60. Gannon also advised Plaintiff to	60. Plaintiff Depo., Volume I, 180:11-
report back to the West LA club at 2:00	181:4; Gannon Decl., ¶ 5.
p.m. the next day for another meeting.	
61. According to Plaintiff, Equinox told	61. Plaintiff Depo., Volume I, 174:24-
her that she would not have access to her	175:21; Plaintiff Depo., Volume II,
email or payroll account and escorted her	305:21-306:2, 364:17-20; Plaintiff's
out of the building in front of Equinox's	Complaint, 6:5-7.
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1	DEFENDANT'S	DEFENDANT'S SUPPORTING
2	UNCONTROVERTED FACTS	EVIDENCE
3	clientele, staff and all of her peers.	
4	62. It is Equinox's policy to turn off	62. Gannon Decl., ¶ 7.
5	email access for hourly employees who	
6	have been suspended pending investigation	
7	or who are on a leave of absence.	
8	63. Prior to Burger's interview of	63. Gannon Decl., ¶ 8.
9	Plaintiff, Gannon had the Payroll	
10	Department prepare a final paycheck for	
11	Plaintiff so that she could be paid in	
12	accordance with California law in the	
13	event the decision was made to terminate	
14	her employment.	
15	64. Plaintiff met with Hemedinger and	64. Plaintiff Depo., Volume I, 182:5-
16	Gannon at the West LA club on January	183:8; Plaintiff Depo., Volume II,
17	31, 2015 and was told that the	306:12:16, 382:12-17, 390:4-11, Exh.
18	investigation was concluded and that she	38; Hemedinger Depo., 54:17-21, 55:1-8;
19	would be working at the Marina Del Rey	Gannon Decl., ¶ 3; Hemedinger Decl., ¶
20	club.	6.
21	65. The decision was made to reassign	65. Rosen Depo., 71:7-20, 73:15-22,
22	Plaintiff to the Marina Del Rey club	76:5-14; Holmes Depo., 96:12-98:17;
23	because Equinox wanted to rebuild the	Hemedinger Depo., 51:7-52:23; Gannon
24	team of MAs in the West LA club and to	Decl., ¶ 10.
25	create a fresh culture, as a result of the	
26	investigation findings.	
27	66. Plaintiff's compensation plan would	66. Rosen Depo., 87:25-88:4; Gannon
28	change once at Marina Del Rey to align	Decl., ¶ 11.

CONCLUSIONS OF LAW

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
with the compensation plan of Marina Del	
Rey MAs. Equinox considered the	
reassignment a lateral move.	
67. Equinox considered the	67. Rosen Depo., 87:25-88:4; Gannon
reassignment a lateral move.	Decl., ¶ 11.
68. When Plaintiff was asked what her	68. Plaintiff Depo., Volume II, 390:4-
compensation would be at the Marina Del	11, Exh. 38; Gannon Decl., ¶ 12.
Rey club, she was sent the compensation	
plan of a Marina Del Rey MA.	
69. Equinox's expectation was she	69. Hemedinger Depo., 52:18-23;
would earn at least the same amount of	Rosen Depo., 57:13-19; 58:22-59:14;
money because the Marina Del Rey club	Holmes Depo., 31:13-15.
was a high performing club and the	
memberships for the Marina Del Rey club	
were less expensive than the memberships	
for the West LA club.	
70. It was easier to sell more	70. Hemedinger Depo., 52:18-23;
memberships at the Marina Del Rey club	Rosen Depo., 57:13-19; 58:22-59:14;
than the West LA club because the Marina	Holmes Depo., 50:18-51:5
Del Rey memberships were less expensive.	
71. Gannon emailed Plaintiff the	71. Plaintiff Depo., Volume I, 246:19-
compensation plan for the Marina Del Rey	247:2; Gannon Decl., ¶ 12.
Club on or about January 31, 2015.	
72. Plaintiff testified that no one from	72. Plaintiff Depo., Volume I, 171:10-
Equinox ever told her that she was being	172:7; Plaintiff Depo., Volume II,
"terminated" or "demoted" as part of her	306:17-310:19, 363:24-364:3; Gannon

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
reassignment to the Marina Del Rey club.	Decl., ¶ 13; Hemedinger Decl., ¶ 7.
73. Gannon made the decision to	73. Rosen Depo., 45:7-25. 57:8-12;
reassign Plaintiff to the Marina Del Rey	Hemedinger Depo., 53:14-18.
club.	
74. Plaintiff was told to report to the	74. Plaintiff Depo., Volume I, 186:5-
Marina Del Rey club on February 2, 2015	14; Plaintiff Depo., Volume II, 311:4-8;
at 9:00 a.m.	Hemedinger Depo., 54:17-55:18, 55:25-
	56:25, 57:6-57:11.
75. Before reporting to the Marina Del	75. Plaintiff Depo., Volume I, 186:5-
Rey club, Plaintiff submitted her	14, Exh. 26; Plaintiff Depo., Volume II
resignation, via email, on the morning of	311:4-8; Hemedinger Depo., 54:17-
February 2, 2015 effective immediately.	55:18, 55:25-
	56:25, 57:6-57:11.
76. Plaintiff's last day of employment	76. Plaintiff Depo., Volume I, 186:11-
was February 2, 2015.	14.
77. Plaintiff never reported to work at	77. Plaintiff Depo., Volume I, 50:13-
the Marina Del Rey club.	15, 186:15-17; Hemedinger Depo.
	56:22-25.
78. As of February 1, 2015, the only	78. Plaintiff Depo., Volume II, 342:3-
remaining MA at the West LA club was	11.
the recently hired MA.	
79. As of April/May 2015, the West LA	79. Plaintiff Depo., Volume II
club had an entirely new sales team and	342:25-343:5.
sales management.	
80. Plaintiff testified that she was	80. Plaintiff Depo., Volume II, 343:6-
unaware of any other MA at the West LA	22.
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DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
club complaining about the unauthorized	
use of credit cards or telling someone that	
they were being signed up for a one-month	
membership but signing them up for a year	
instead.	
ICCLIE NO. 12	

ISSUE NO. 12

Although Plaintiff has not pled a cause of action for constructive discharge, such a claim (even if properly pled) would also fail as a matter of law because Equinox had legitimate, non-retaliatory business reasons for reassigning Plaintiff to the Marina Del Rey club. (UF Nos. 1-80.)

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
1. Plaintiff was hired as a Membership	1. Plaintiff Depo., Volume I, 36:23-
Advisor ("MA") at Equinox's Santa	38:10, Exh. 5 (Offer Letter).
Monica club on or about October 15,	
2010.	
2. In January 2014, Plaintiff began	2. Plaintiff Depo., Volume I, 189:22-
working at Equinox's West Los Angeles	190:12, Exh. 13 (Memo).
club ("West LA club").	
3. At the West LA club, MAs were	3. Declaration of Brian Hemedinger
referred to as Membership Executives.	("Hemedinger Decl."), ¶ 3.
However, their job duties were the same.	
4. During Plaintiff's employment at	4. Declaration of Jack Gannon
Equinox's Santa Monica and West LA	("Gannon Decl."), ¶¶ 1-2.
clubs, Jack Gannon ("Gannon") was the	

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
Vice President of the West Coast.	
5. From about October 2011 through	5. Plaintiff Depo., Volume I, 270:8,-
about June 2015, Brian Hemedinger	14, 75:24-76:4; Deposition of Brian
("Hemedinger") was the Regional	Hemedinger ("Hemedinger Depo.")
Director of Operations ("Regional	15:3-10, 41:1-9, 13-16; Hemedinger
Director") of the Santa Monica and West	Decl., ¶ 1.
LA clubs.	
6. General Manager Kira Simonson	6. Plaintiff Depo., Volume I, 52:11-
("Simonson) supervised Plaintiff at the	19.
West LA club from about January 2014 to	
about January 2015.	
7. Plaintiff's personnel file includes an	7. Plaintiff Depo., Volume I, 43:18-
Employee Handbook: Receipt	45:15, Exh. 8 (Receipt
Acknowledgment Form with Plaintiff's	Acknowledgement Form); Declaration of
signature dated October 15, 2010.	Emerson Figueroa ("Figueroa Decl."), ¶
	5, Exh. B.)
8. In particular, the Employee	8. Plaintiff Depo., Volume I, 43:18-
Handbook stated:	45:15, Exh. 8 (Receipt
I acknowledge that the receipt of the	Acknowledgement Form); Figueroa
Employee Handbook in no way creates a	Decl., ¶ 5, Exh. B (Receipt
contract between Equinox and me.	Acknowledgement Form).
Moreover, I understand and agree that all	
matters discussed in the Employee	
Handbook are subject to change or	
modification from time to time except the	
At-Will Employment Policy specified	

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
therein. The At-Will Employment Policy	
represents the final and complete	
agreement concerning the duration of my	
employment. I acknowledge that any	
change in the At-Will Employment Policy	
is effective only if set forth in a written	
document signed by the CEO of Equinox	
and myself.	
9. Plaintiff's personnel file also	9. Plaintiff Depo., Volume I, 36:23-
includes an Offer Letter, dated October	38:11, Exh. 5 (Offer Letter); Figueroa
15, 2010, which Plaintiff acknowledged	Decl., ¶ 6, Exh. C (Offer Letter).
receiving.	
10. In particular, the Offer Letter stated:	10. Plaintiff Depo., Volume I, 36:23-
We are excited at the prospect of you	38:11, Exh. 5 (Offer Letter); Figueroa
joining the Company, you should be	Decl., ¶ 6, Exh. C (Offer Letter).
aware that our relationship is	
"employment-at-will." That means you	
are free, at any time, for any reason, to	
end your employment with the Company	
and that the Company may do the same.	
Our agreement regarding the at-will	
nature of your employment may not be	
changed, except in a writing signed by the	
Company's Chief Executive Officer.	
Given the at-will nature, the Company	
may from time to time add to, modify, or	

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
discontinue its compensation policies,	
employee benefit plans or other aspects of	
your employment.	
11. Plaintiff's personnel file also	11. Figueroa Decl., ¶ 8, Exh. D.
includes an Employee Confidentiality and	
Non-Solicitation Agreement with	
Plaintiff's signature dated October 14,	
2010.	
12. This Agreement stated: "You agree	12. Figueroa Decl., ¶ 8, Exh. D.
and understand that nothing in this	
Agreement shall alter or modify the 'at-	
will' nature of your employment with the	
Company or confer on [y]ou any right with	
respect to continuation of your	
employment with the Company."	
13. In her deposition, Plaintiff admitted	13. Plaintiff Depo., Volume I, 36:23-
that she did not have a contract with	38:11, 43:18-45:15, Exh. 5 (Offer
Equinox; no one ever told her that she was	Letter), Exh. 8 (Receipt
guaranteed employment for a certain time	Acknowledgement Form).
period; and no one ever told her that she	
was anything other than an at-will	
employee.	
14. The Employee Handbook Plaintiff	14. Plaintiff Depo., Volume I, 43:18-
acknowledged receiving also included	45:15, Exh. 8 Receipt of Employee
Equinox's non-retaliation policy as well	Handbook; Declaration of Emerson
as complaint procedures for reporting	Figueroa ("Figueroa Decl."), Exh. A.

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
retaliation.	
15. In particular, Equinox's policy	15. Plaintiff Depo., Volume I, 43:18-
strictly prohibits retaliation against any	45:15, Exh. 8 Receipt of Employee
employee for "filing a complaint and	Handbook; Figueroa Decl., Exh. A,
[Equinox] will not knowingly permit	Employee Handbook.
retaliation by management, employees, or	
co-workers." Equinox's policy also	
prohibits retaliation against any employee	
for "using this complaint procedure or for	
filing, testifying, assisting, or participating	
in any manner in any investigation,	
proceeding, or hearing conducted by a	
governmental enforcement agency.	
Additionally, Equinox will not knowingly	
permit any retaliation against any	
employee who complains of prohibited	
harassment or who participates in an	
investigation."	
16. The complaint procedure as	16. Plaintiff Depo., Volume I, 43:18-
outlined in the Employee Handbook	45:15, Exh. 8 Receipt of Employee
permits an employee to report retaliation	Handbook; Figueroa Decl. ¶ 4.
to his or her manager, Human Resources,	
or through Equinox's Ethics Hotline.	
17. In or about June 2014, Hemedinger	17. Plaintiff Depo., Volume I, 190:16-
informed Plaintiff and other MAs that the	194:3, 219:7-10; Plaintiff Depo., Volume
compensation plan for all West LA MAs	II, 347:22-348:1; Deposition of Barry
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UNCONTROVERTED FACTS	EVIDENCE
was being clarified, so that the market	Holmes ("Holmes Depo.") 69:4-71:12,
bonuses would be paid out individually	73:23-75:10, Exhs. 201-202;
and not cumulatively for reaching a	Hemedinger Depo., 60:11-61:3, 68:12-
certain sales goal.	14, 70:19-72:3.; Rosen Depo., 33:5-15.
18. For example, the plan provided for a	18. Plaintiff Depo., Volume I, 190:16-
particular market bonus upon reaching a	194:3; Hemedinger Depo., 64:18-65:11
certain goal of sales:	
• 100% of goal – MA would	
receive an extra \$20 per sale	
• 115% of goal – MA would	
receive an extra \$40 per sale	
• 125% of goal – MA would	
receive an extra \$55 per sale	
• 150% of goal – MA would receive	
an extra \$70 per sale	
19. For the West LA club, Equinox's	19. Plaintiff Depo., Volume I, 190:16-
Payroll Department was adding the	194:3; Holmes Depo., 82:11-83:14;
bonuses together as opposed to giving one	Hemedinger Depo., 59:22-60:6, 62:3-
of the bonuses above depending on the	63:8; 66:6-11., 68:15-69:8.
overall percentage.	
20. Plaintiff testified that she	20. Plaintiff Depo., Volume I, 199:7-
complained about what she viewed as a	22; Hemedinger Depo., 59:14-60:10;
"change" in the compensation plan to the	Deposition of Scott Rosen ("Rosen
following managerial employees:	Depo.") 29:18-30:4, 30:22-31:12, 31:20-
Hemedinger, Gannon, Simonson, Veronica	33:4, 61:12-64:17, 65:8-69:12, Exhs.
Santarelli ("Santarelli") (Regional Sales	206-207; Holmes Depo., 71:23-73:22,

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
Manager), Matt Gonzalez ("Gonzalez")	77:18-82:10, 84:19-86:8, Ex. 203.
(Director of Sales), Barry Holmes	
("Holmes") (Senior Vice President of	
Sales), and Scott Rosen ("Rosen") (Chief	
Operating Officer) ("COO").	
21. Despite Plaintiff's complaints about	21. Plaintiff Depo., Volume I, 196:8-
the compensation plan, Plaintiff continued	14, 207:15-22, 220:5-20; Plaintiff Depo.,
to work at Equinox for seven months after	Volume II, 349:5-12.
the "changed" compensation plan was	
instituted in July/August 2014 and	
continued to work for Equinox until she	
quit in February 2015.	
22. Plaintiff testified that she	22. Plaintiff Depo., Volume I, 81:6-21,
complained to Hemedinger, Simonson, and	82:5-83:23, 94:14-97:9.
possibly to Gannon in February or March	
2014 that she believed that a MA at West	
LA was using one-month guest passes	
and/or gift cards to sign up members for	
what they believed was a month-long	
membership, but in actuality, was signing	
them up for a year-long membership by	
using their credit cards without	
authorization.	
23. According to Plaintiff, "charging	23. Plaintiff Depo., Volume II,
credit cards without people's approval and	334:16-336:23.
telling people they were signing up for a	

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
month-long contract, but then signing	
them up for a year-long contract" were the	
only "illegal activities" about which she	
complained to Equinox.	
24. According to Plaintiff, her other	24. Plaintiff Depo., Volume II,
complaints involved "things against	334:16-336:23.
Equinox policies that were happening as	
well."	
25. Plaintiff admitted that she could not	25. Plaintiff Depo., Volume II, 335:4-
identify any statute, ordinance, regulation,	336:23.
local law, state law, or federal law that	
was violated as a result of this alleged	
activity.	
26. Plaintiff also testified that she	26. Plaintiff Depo., Volume I, 76:17-
complained to Hemedinger and Simonson	79:19; 93:10-94:10, 102:10-107:24;
about the sales activities of another MA.	108:1-113:5; Hemedinger Depo., 45:8-
	47:19.
27. Specifically, Plaintiff complained	27. Plaintiff Depo., Volume I, 76:17-
that this MA was giving away "free	79:19; 93:10-94:10, 102:10-107:24;
months" to potential members, allowing	108:1-113:5; Hemedinger Depo., 45:8-
"freezes" for members, and offering "three	47:19.
month" deals.	
28. In or around December 2014, COO	28. Rosen Depo., 37:20-38:18;
Rosen was touring the West LA club	Declaration of Tracy Cuva ("Cuva
when he was told by a member that a MA	Decl."), ¶ 2.

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
had charged a membership to another	
member's credit card without that	
member's authorization.	
29. Member Services is Equinox's	29. Cuva Decl., ¶ 1.
billing department (centrally based in	
New York) which handles membership	
contracts and membership sales, including	
auditing of membership sales.	
30. Rosen contacted Tracy Cuva,	30. Rosen Depo., 37:20-38:21; Cuva
Senior Director of Equinox's Member	Decl., ¶ 2.
Services Department, gave her the	
information received from the member,	
and asked Member Services to investigate	
this sale.	
31. Member Services' investigation,	31. Cuva Decl., ¶ 2.
which was conducted by Cuva, confirmed	
that this was an unauthorized sale	
processed by a MA at the West LA Club	
(Plaintiff was not implicated in this	
transaction).	
32. This MA was relocating to New	32. Rosen Depo., 39:8-13.
York but, based on the investigation	
results, she was not hired to work for	
Equinox in New York.	
33. As a result of this member	33. Rosen Depo., 47:25-6; Cuva Decl.,
complaint, Rosen also asked Cuva to have	¶ 3.

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UNCONTROVERTED FACTS	EVIDENCE
Member Services conduct an investigation	
of sales transactions at the West LA club.	
34. Apart from requesting that the	34. Rosen Depo., 47:25-48:21.
investigation be conducted and asking Jim	
Burger (Senior Director of Loss	
Prevention) to travel to the West LA club	
and continue the investigation after	
Member Services finished their portion of	
the investigation, Rosen did not	
participate in that investigation.	
35. Cuva instructed Kevin Stanfa	35. Cuva Decl., ¶ 3; Stanfa Decl. ¶ 4.
("Stanfa") (Manager of Compliance and	
Special Projects), to review sales	
transactions at the West LA club.	
36. After Stanfa reported finding	36. Cuva Decl., ¶ 3; Stanfa Decl. ¶ 4.
various anomalies associated with sales	
transactions at the West LA club, Cuva	
instructed Stanfa to prepare a summary	
detailing his findings.	
37. Stanfa then prepared a workbook	37. Stanfa Decl., ¶ 4.
with three spreadsheets regarding the	
following sales activities: (1) 2014	
Freezes; (2) Modification to Direct Bill;	
and (3) West LA Sales Breakdown.	
38. Once these were prepared, Cuva	38. Rosen Depo., 47:25-48:21;
emailed the spreadsheets to Rosen,	Holmes Depo., 86:10-88:10, 95:9-96:10;

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DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
Holmes and Gannon and summarized the	Cuva Decl., ¶ 6, Exh. N; Stanfa Decl., ¶¶
results of the Member Services	4-5.
investigation.	
39. In her email, Cuva indicated that	39. Cuva Decl., ¶ 7, Exh. N.
these spreadsheets "all reflect patterns	
unhealthy for the business."	
40. Cuva noted as follows:	40. Cuva Decl., ¶ 7, Exh. N.
i The 2014 Freezes spreadsheet	
shows that West LA is an outlier	
in members who request a freeze	
in the first 60 days of	
membership who also go on to	
cancel in the same year.	
i The Modification to Direct Bill	
spreadsheet reflects members in	
the last quarter of 2014 whose	
billing was modified from the	
credit card payment type to direct	
bill the day before billing ran.	
The Company average is four per	
club. West LA had 28	
modifications to direct bill.	
i The West LA Breakdown	
spreadsheet shows questionable	
sales from two MAs (Plaintiff	
and the MA moving to New	

1	DEFENDANT'S	DEFENDANT'S SUPPORTING
2	UNCONTROVERTED FACTS	EVIDENCE
3	York). The other three MAs	
4	were reviewed and did not reflect	
5	the same anomalies seen with	
6	Plaintiff and the MA moving to	
7	New York. The questionable	
8	sales included selling	
9	memberships to members with	
10	the credit card of another	
11	member (almost universally	
12	without requesting a referral	
13	credit) or re-contracting over a	
14	previously 3-day'd membership	
15	and either using the credit from	
16	the previous sale or recharging	
17	the same credit card, credit card	
18	not present for numerous sales	
19	transactions, 3-day cancellations	
20	with no or just one member visit,	
21	new memberships which were	
22	previously finance cancelled and	
23	had balances on account that	
24	were waived.	
25	41. Neither Cuva nor Stanfa were aware	41. Cuva Decl., ¶ 8; Stanfa Decl., ¶ 11.
26	Plaintiff had made any complaints about	
27	changes to her compensation plan or about	
28	the alleged activities of other MAs.	
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DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
42. In addition, Burger was asked to	42. Deposition of Jim Burger ("Burger
interview the sales team at the West LA	Depo."), 72:4-73:3, 73:13:75:22, 76:6-
club.	12.
43. When Burger came to Los Angeles	43. Hemedinger Decl., ¶ 4.
to conduct his interviews in late January	
2015, the West LA club's sales team	
consisted of three MAs, Plaintiff and two	
other MAs who were supervised by the	
Simonson and an Assistant General	
Manager.	
44. A MA was fired on or about January	44. Figueroa Decl. ¶ 9; Hemedinger
20, 2015 for improper sales activities.	Decl., ¶ 4.
45. At Burger's request, Member	45. Burger Depo., 72:13-73:3; Cuva
Services provided him with the	Decl. ¶ 8.
spreadsheets summarizing their findings of	
questionable sales transactions at the West	
LA club.	
46. Burger then met with Cuva and	46. Burger Depo., 73:13-74:15; Cuva
Stanfa and they discussed their findings	Decl. ¶ 8; Stanfa Decl., ¶ 9.
regarding the questionable sales at the	
West LA club.	
47. Burger had a subsequent meeting	47. Burger Depo., 74:16-75:3, 8-22;
with Stanfa to review the spreadsheets	Stanfa Decl., ¶ 9.
Member Services had prepared.	
48. These spreadsheets showed	48. Burger Depo., 39:3-40:22; Cuva
anomalies in various sales transactions,	Decl., ¶ 8; Stanfa Decl., ¶¶ 4-5.
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DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
including whether or not a contract was	
signed, whether or not a credit card was	
present for the sales transaction, whose	
credit card was used for the sales	
transactions, if another individual's credit	
card number was used for the sales	
transaction instead of the member's credit	
card number, whether or not a member had	
any visits to a club, etc.	
49. Burger also had a couple of	49. Burger Depo., 76:19-77:1; Stanfa
telephone conversations with Stanfa	Decl., ¶ 9.
regarding the anomalies in various sales	
activities at the West LA Club.	
50. In late January 2015, Burger came to	50. Burger Depo., 76:6-12; Gannon
Los Angeles to interview various	Decl., ¶ 3; Hemedinger Decl., ¶ 5.
employees regarding sales activities of the	
West LA MAs.	
51. Prior to the interviews, Burger and	51. Burger Depo., 116:12-117:12.
Gannon discussed suspending all of the	
individuals interviewed as part of the	
investigation pending the results of the	
investigation.	
52. Burger then interviewed the	52. Hemedinger Decl., ¶ 5.
following individuals: (1) the Assistant	
General Manager; (2) Plaintiff; (3) another	
MA; (4) a relatively newly hired MA; and	
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DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
(5) Simonson.	
53. Burger had never heard of or spoken	53. Burger Depo., 35:22-24.
to Plaintiff prior to this investigation	
meeting.	
54. On January 30, 2015, Plaintiff met	54. Plaintiff Depo., Volume I, 161:11-
with Burger and Leah Ball of Human	22, 164:10-22; Plaintiff Depo., Volume
Resources regarding West LA's sales	II, 305:21-24; , Burger Depo., 96:18-25.
practices.	
55. Plaintiff answered questions about	55. Plaintiff Depo., Volume I, 161:11-
her sales activities, as well as the activities	22, 164:10-22; Burger Depo., 53:13-
of other MAs.	54:9.
56. While Burger did not find Plaintiff	56. Burger Depo., 122:14-17.
credible, he felt, at that time, that there was	
insufficient information to warrant	
Plaintiff's termination.	
57. After Burger completed his	57. Burger Depo., 117:16-18, 24-
interviews, Burger, Gannon and	118:6.
Hemedinger met briefly to discuss	
Burger's impressions.	
58. Gannon then advised Plaintiff that	58. Plaintiff Depo., Volume I, 174:24-
she was being suspended.	175:3, 11-12; Plaintiff Depo., Volume II,
	306:3-7; Gannon Decl., ¶ 4.
59. All of the MAs interviewed as part	59. Burger Depo., ¶ 110:17-23;
of the investigation (with the exception of	Gannon Decl., ¶ 6.
the relatively new MA) were suspended	
pending investigation.	
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DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
60. Gannon also advised Plaintiff to	60. Plaintiff Depo., Volume I, 180:11-
report back to the West LA club at 2:00	181:4; Gannon Decl., ¶ 5.
p.m. the next day for another meeting.	
61. According to Plaintiff, Equinox told	61. Plaintiff Depo., Volume I, 174:24-
her that she would not have access to her	175:21; Plaintiff Depo., Volume II,
email or payroll account and escorted her	305:21-306:2, 364:17-20; Plaintiff's
out of the building in front of Equinox's	Complaint, 6:5-7.
clientele, staff and all of her peers.	
62. It is Equinox's policy to turn off	62. Gannon Decl., ¶ 7.
email access for hourly employees who	
have been suspended pending investigation	
or who are on a leave of absence.	
63. Prior to Burger's interview of	63. Gannon Decl., ¶ 8.
Plaintiff, Gannon had the Payroll	
Department prepare a final paycheck for	
Plaintiff so that she could be paid in	
accordance with California law in the	
event the decision was made to terminate	
her employment.	
64. Plaintiff met with Hemedinger and	64. Plaintiff Depo., Volume I, 182:5-
Gannon at the West LA club on January	183:8; Plaintiff Depo., Volume II,
31, 2015 and was told that the	306:12:16, 382:12-17, 390:4-11, Exh.
investigation was concluded and that she	38; Hemedinger Depo., 54:17-21, 55:1-8;
would be working at the Marina Del Rey	Gannon Decl., ¶ 3; Hemedinger Decl., ¶
club.	6.
65. The decision was made to reassign	65. Rosen Depo., 71:7-20, 73:15-22,

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
Plaintiff to the Marina Del Rey club	76:5-14; Holmes Depo., 96:12-98:17;
because Equinox wanted to rebuild the	Hemedinger Depo., 51:7-52:23; Gannon
team of MAs in the West LA club and to	Decl., ¶ 10.
create a fresh culture, as a result of the	
investigation findings.	
66. Plaintiff's compensation plan would	66. Rosen Depo., 87:25-88:4; Gannon
change once at Marina Del Rey to align	Decl., ¶ 11.
with the compensation plan of Marina Del	
Rey MAs. Equinox considered the	
reassignment a lateral move.	
67. Equinox considered the	67. Rosen Depo., 87:25-88:4; Gannon
reassignment a lateral move.	Decl., ¶ 11.
68. When Plaintiff was asked what her	68. Plaintiff Depo., Volume II, 390:4-
compensation would be at the Marina Del	11, Exh. 38; Gannon Decl., ¶ 12.
Rey club, she was sent the compensation	
plan of a Marina Del Rey MA.	
69. Equinox's expectation was she	69. Hemedinger Depo., 52:18-23;
would earn at least the same amount of	Rosen Depo., 57:13-19; 58:22-59:14;
money because the Marina Del Rey club	Holmes Depo., 31:13-15.
was a high performing club and the	
memberships for the Marina Del Rey club	
were less expensive than the memberships	
for the West LA club.	
70. It was easier to sell more	70. Hemedinger Depo., 52:18-23;
memberships at the Marina Del Rey club	Rosen Depo., 57:13-19; 58:22-59:14;
than the West LA club because the Marina	Holmes Depo., 50:18-51:5

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
Del Rey memberships were less expensive.	
71. Gannon emailed Plaintiff the	71. Plaintiff Depo., Volume I, 246:19-
compensation plan for the Marina Del Rey	247:2; Gannon Decl., ¶ 12.
Club on or about January 31, 2015.	
72. Plaintiff testified that no one from	72. Plaintiff Depo., Volume I, 171:10-
Equinox ever told her that she was being	172:7; Plaintiff Depo., Volume II,
"terminated" or "demoted" as part of her	306:17-310:19, 363:24-364:3; Gannon
reassignment to the Marina Del Rey club.	Decl., ¶ 13; Hemedinger Decl., ¶ 7.
73. Gannon made the decision to	73. Rosen Depo., 45:7-25. 57:8-12;
reassign Plaintiff to the Marina Del Rey	Hemedinger Depo., 53:14-18.
club.	
74. Plaintiff was told to report to the	74. Plaintiff Depo., Volume I, 186:5-
Marina Del Rey club on February 2, 2015	14; Plaintiff Depo., Volume II, 311:4-8;
at 9:00 a.m.	Hemedinger Depo., 54:17-55:18, 55:25-
	56:25, 57:6-57:11.
75. Before reporting to the Marina Del	75. Plaintiff Depo., Volume I, 186:5-
Rey club, Plaintiff submitted her	14, Exh. 26; Plaintiff Depo., Volume II,
resignation, via email, on the morning of	311:4-8; Hemedinger Depo., 54:17-
February 2, 2015 effective immediately.	55:18, 55:25-
	56:25, 57:6-57:11.
76. Plaintiff's last day of employment	76. Plaintiff Depo., Volume I, 186:11-
was February 2, 2015.	14.
77. Plaintiff never reported to work at	77. Plaintiff Depo., Volume I, 50:13-
the Marina Del Rey club.	15, 186:15-17; Hemedinger Depo.,
	56:22-25.
78. As of February 1, 2015, the only	78. Plaintiff Depo., Volume II, 342:3-
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UNCONTROVERTED FACTS	EVIDENCE
remaining MA at the West LA club was	11.
the recently hired MA.	
79. As of April/May 2015, the West LA	79. Plaintiff Depo., Volume II,
club had an entirely new sales team and	342:25-343:5.
sales management.	
80. Plaintiff testified that she was	80. Plaintiff Depo., Volume II, 343:6-
unaware of any other MA at the West LA	22.
club complaining about the unauthorized	
use of credit cards or telling someone that	
they were being signed up for a one-month	
membership but signing them up for a year	
instead.	

ISSUE NO. 13

Although Plaintiff has not pled a cause of action for constructive discharge, such a claim (even if properly pled) would also fail as a matter of law because Plaintiff cannot show the reasons she was reassigned to the Marina Del Rey club were pretextual. (UF Nos. 1-80.)

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
1. Plaintiff was hired as a Membership	1. Plaintiff Depo., Volume I, 36:23-
Advisor ("MA") at Equinox's Santa	38:10, Exh. 5 (Offer Letter).
Monica club on or about October 15,	
2010.	

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
2. In January 2014, Plaintiff began	2. Plaintiff Depo., Volume I, 189:22-
working at Equinox's West Los Angeles	190:12, Exh. 13 (Memo).
club ("West LA club").	
3. At the West LA club, MAs were	3. Declaration of Brian Hemedinger
referred to as Membership Executives.	("Hemedinger Decl."), ¶ 3.
However, their job duties were the same.	
4. During Plaintiff's employment at	4. Declaration of Jack Gannon
Equinox's Santa Monica and West LA	("Gannon Decl."), ¶¶ 1-2.
clubs, Jack Gannon ("Gannon") was the	
Vice President of the West Coast.	
5. From about October 2011 through	5. Plaintiff Depo., Volume I, 270:8,-
about June 2015, Brian Hemedinger	14, 75:24-76:4; Deposition of Brian
("Hemedinger") was the Regional	Hemedinger ("Hemedinger Depo.")
Director of Operations ("Regional	15:3-10, 41:1-9, 13-16; Hemedinger
Director") of the Santa Monica and West	Decl., ¶ 1.
LA clubs.	
6. General Manager Kira Simonson	6. Plaintiff Depo., Volume I, 52:11-
("Simonson) supervised Plaintiff at the	19.
West LA club from about January 2014 to	
about January 2015.	
7. Plaintiff's personnel file includes an	7. Plaintiff Depo., Volume I, 43:18-
Employee Handbook: Receipt	45:15, Exh. 8 (Receipt
Acknowledgment Form with Plaintiff's	Acknowledgement Form); Declaration of
signature dated October 15, 2010.	Emerson Figueroa ("Figueroa Decl."), ¶
	5, Exh. B.)
8. In particular, the Employee	8. Plaintiff Depo., Volume I, 43:18-

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
Handbook stated:	45:15, Exh. 8 (Receipt
I acknowledge that the receipt of the	Acknowledgement Form); Figueroa
Employee Handbook in no way creates a	Decl., ¶ 5, Exh. B (Receipt
contract between Equinox and me.	Acknowledgement Form).
Moreover, I understand and agree that all	
matters discussed in the Employee	
Handbook are subject to change or	
modification from time to time except the	
At-Will Employment Policy specified	
therein. The At-Will Employment Policy	
represents the final and complete	
agreement concerning the duration of my	
employment. I acknowledge that any	
change in the At-Will Employment Policy	
is effective only if set forth in a written	
document signed by the CEO of Equinox	
and myself.	
9. Plaintiff's personnel file also	9. Plaintiff Depo., Volume I, 36:23-
includes an Offer Letter, dated October	38:11, Exh. 5 (Offer Letter); Figueroa
15, 2010, which Plaintiff acknowledged	Decl., ¶ 6, Exh. C (Offer Letter).
receiving.	
10. In particular, the Offer Letter stated:	10. Plaintiff Depo., Volume I, 36:23-
We are excited at the prospect of you	38:11, Exh. 5 (Offer Letter); Figueroa
joining the Company, you should be	Decl., ¶ 6, Exh. C (Offer Letter).
aware that our relationship is	
"employment-at-will." That means you	

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
are free, at any time, for any reason, to	
end your employment with the Company	
and that the Company may do the same.	
Our agreement regarding the at-will	
nature of your employment may not be	
changed, except in a writing signed by the	
Company's Chief Executive Officer.	
Given the at-will nature, the Company	
may from time to time add to, modify, or	
discontinue its compensation policies,	
employee benefit plans or other aspects of	
your employment.	
11. Plaintiff's personnel file also	11. Figueroa Decl., ¶ 8, Exh. D.
includes an Employee Confidentiality and	
Non-Solicitation Agreement with	
Plaintiff's signature dated October 14,	
2010.	
12. This Agreement stated: "You agree	12. Figueroa Decl., ¶ 8, Exh. D.
and understand that nothing in this	
Agreement shall alter or modify the 'at-	
will' nature of your employment with the	
Company or confer on [y]ou any right with	
respect to continuation of your	
employment with the Company."	
13. In her deposition, Plaintiff admitted	13. Plaintiff Depo., Volume I, 36:23-
that she did not have a contract with	38:11, 43:18-45:15, Exh. 5 (Offer

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
Equinox; no one ever told her that she was	Letter), Exh. 8 (Receipt
guaranteed employment for a certain time	Acknowledgement Form).
period; and no one ever told her that she	
was anything other than an at-will	
employee.	
14. The Employee Handbook Plaintiff	14. Plaintiff Depo., Volume I, 43:18-
acknowledged receiving also included	45:15, Exh. 8 Receipt of Employee
Equinox's non-retaliation policy as well	Handbook; Declaration of Emerson
as complaint procedures for reporting	Figueroa ("Figueroa Decl."), Exh. A.
retaliation.	
15. In particular, Equinox's policy	15. Plaintiff Depo., Volume I, 43:18-
strictly prohibits retaliation against any	45:15, Exh. 8 Receipt of Employee
employee for "filing a complaint and	Handbook; Figueroa Decl., Exh. A,
[Equinox] will not knowingly permit	Employee Handbook.
retaliation by management, employees, or	
co-workers." Equinox's policy also	
prohibits retaliation against any employee	
for "using this complaint procedure or for	
filing, testifying, assisting, or participating	
in any manner in any investigation,	
proceeding, or hearing conducted by a	
governmental enforcement agency.	
Additionally, Equinox will not knowingly	
permit any retaliation against any	
employee who complains of prohibited	
harassment or who participates in an	

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
investigation."	
16. The complaint procedure as	16. Plaintiff Depo., Volume I, 43:18-
outlined in the Employee Handbook	45:15, Exh. 8 Receipt of Employee
permits an employee to report retaliation	Handbook; Figueroa Decl. ¶ 4.
to his or her manager, Human Resources,	
or through Equinox's Ethics Hotline.	
17. In or about June 2014, Hemedinger	17. Plaintiff Depo., Volume I, 190:16-
informed Plaintiff and other MAs that the	194:3, 219:7-10; Plaintiff Depo., Volume
compensation plan for all West LA MAs	II, 347:22-348:1; Deposition of Barry
was being clarified, so that the market	Holmes ("Holmes Depo.") 69:4-71:12,
bonuses would be paid out individually	73:23-75:10, Exhs. 201-202;
and not cumulatively for reaching a	Hemedinger Depo., 60:11-61:3, 68:12-
certain sales goal.	14, 70:19-72:3.; Rosen Depo., 33:5-15.
18. For example, the plan provided for a	18. Plaintiff Depo., Volume I, 190:16-
particular market bonus upon reaching a	194:3; Hemedinger Depo., 64:18-65:11
certain goal of sales:	
• 100% of goal – MA would	
receive an extra \$20 per sale	
• 115% of goal – MA would	
receive an extra \$40 per sale	
• 125% of goal – MA would	
receive an extra \$55 per sale	
• 150% of goal – MA would receive	
an extra \$70 per sale	
19. For the West LA club, Equinox's	19. Plaintiff Depo., Volume I, 190:16-
Payroll Department was adding the	194:3; Holmes Depo., 82:11-83:14;

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
bonuses together as opposed to giving one	Hemedinger Depo., 59:22-60:6, 62:3-
of the bonuses above depending on the	63:8; 66:6-11., 68:15-69:8.
overall percentage.	
20. Plaintiff testified that she	20. Plaintiff Depo., Volume I, 199:7-
complained about what she viewed as a	22; Hemedinger Depo., 59:14-60:10;
"change" in the compensation plan to the	Deposition of Scott Rosen ("Rosen
following managerial employees:	Depo.") 29:18-30:4, 30:22-31:12, 31:20-
Hemedinger, Gannon, Simonson, Veronica	33:4, 61:12-64:17, 65:8-69:12, Exhs.
Santarelli ("Santarelli") (Regional Sales	206-207; Holmes Depo., 71:23-73:22,
Manager), Matt Gonzalez ("Gonzalez")	77:18-82:10, 84:19-86:8, Ex. 203.
(Director of Sales), Barry Holmes	
("Holmes") (Senior Vice President of	
Sales), and Scott Rosen ("Rosen") (Chief	
Operating Officer) ("COO").	
21. Despite Plaintiff's complaints about	21. Plaintiff Depo., Volume I, 196:8-
the compensation plan, Plaintiff continued	14, 207:15-22, 220:5-20; Plaintiff Depo.,
to work at Equinox for seven months after	Volume II, 349:5-12.
the "changed" compensation plan was	
instituted in July/August 2014 and	
continued to work for Equinox until she	
quit in February 2015.	
22. Plaintiff testified that she	22. Plaintiff Depo., Volume I, 81:6-21,
complained to Hemedinger, Simonson, and	82:5-83:23, 94:14-97:9.
possibly to Gannon in February or March	
2014 that she believed that a MA at West	
LA was using one-month guest passes	
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UNCONTROVERTED FACTS	EVIDENCE
and/or gift cards to sign up members for	
what they believed was a month-long	
membership, but in actuality, was signing	
them up for a year-long membership by	
using their credit cards without	
authorization.	
23. According to Plaintiff, "charging	23. Plaintiff Depo., Volume II,
credit cards without people's approval and	334:16-336:23.
telling people they were signing up for a	
month-long contract, but then signing	
them up for a year-long contract" were the	
only "illegal activities" about which she	
complained to Equinox.	
24. According to Plaintiff, her other	24. Plaintiff Depo., Volume II,
complaints involved "things against	334:16-336:23.
Equinox policies that were happening as	
well."	
25. Plaintiff admitted that she could not	25. Plaintiff Depo., Volume II, 335:4-
identify any statute, ordinance, regulation,	336:23.
local law, state law, or federal law that	
was violated as a result of this alleged	
activity.	
26. Plaintiff also testified that she	26. Plaintiff Depo., Volume I, 76:17-
complained to Hemedinger and Simonson	79:19; 93:10-94:10, 102:10-107:24;
about the sales activities of another MA.	108:1-113:5; Hemedinger Depo., 45:8-
	47:19.

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
UNCONTROVERTED FACTS	EVIDENCE
27 9 10 11 11 11 1	07 DI 1 100 D VI I V 7 (17
27. Specifically, Plaintiff complained	-
that this MA was giving away "free	79:19; 93:10-94:10, 102:10-107:24;
months" to potential members, allowing	108:1-113:5; Hemedinger Depo., 45:8-
"freezes" for members, and offering "three	47:19.
month" deals.	
28. In or around December 2014, COO	28. Rosen Depo., 37:20-38:18;
Rosen was touring the West LA club	Declaration of Tracy Cuva ("Cuva
when he was told by a member that a MA	Decl."), ¶ 2.
had charged a membership to another	
member's credit card without that	
member's authorization.	
29. Member Services is Equinox's	29. Cuva Decl., ¶ 1.
billing department (centrally based in	
New York) which handles membership	
contracts and membership sales, including	
auditing of membership sales.	
30. Rosen contacted Tracy Cuva,	30. Rosen Depo., 37:20-38:21; Cuva
Senior Director of Equinox's Member	Decl., ¶ 2.
Services Department, gave her the	
information received from the member,	
and asked Member Services to investigate	
this sale.	
31. Member Services' investigation,	31. Cuva Decl., ¶ 2.
which was conducted by Cuva, confirmed	
that this was an unauthorized sale	

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
processed by a MA at the West LA Club	
(Plaintiff was not implicated in this	
transaction).	
32. This MA was relocating to New	32. Rosen Depo., 39:8-13.
York but, based on the investigation	
results, she was not hired to work for	
Equinox in New York.	
33. As a result of this member	33. Rosen Depo., 47:25-6; Cuva Decl.,
complaint, Rosen also asked Cuva to have	¶ 3.
Member Services conduct an investigation	
of sales transactions at the West LA club.	
34. Apart from requesting that the	34. Rosen Depo., 47:25-48:21.
investigation be conducted and asking Jim	
Burger (Senior Director of Loss	
Prevention) to travel to the West LA club	
and continue the investigation after	
Member Services finished their portion of	
the investigation, Rosen did not	
participate in that investigation.	
35. Cuva instructed Kevin Stanfa	35. Cuva Decl., ¶ 3; Stanfa Decl. ¶ 4.
("Stanfa") (Manager of Compliance and	
Special Projects), to review sales	
transactions at the West LA club.	
36. After Stanfa reported finding	36. Cuva Decl., ¶ 3; Stanfa Decl. ¶ 4.
various anomalies associated with sales	
transactions at the West LA club, Cuva	

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DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
instructed Stanfa to prepare a summary	
detailing his findings.	
37. Stanfa then prepared a workbook	37. Stanfa Decl., ¶ 4.
with three spreadsheets regarding the	
following sales activities: (1) 2014	
Freezes; (2) Modification to Direct Bill;	
and (3) West LA Sales Breakdown.	
38. Once these were prepared, Cuva	38. Rosen Depo., 47:25-48:21;
emailed the spreadsheets to Rosen,	Holmes Depo., 86:10-88:10, 95:9-96:10;
Holmes and Gannon and summarized the	Cuva Decl., ¶ 6, Exh. N; Stanfa Decl., ¶¶
results of the Member Services	4-5.
investigation.	
39. In her email, Cuva indicated that	39. Cuva Decl., ¶ 7, Exh. N.
these spreadsheets "all reflect patterns	
unhealthy for the business."	
40. Cuva noted as follows:	40. Cuva Decl., ¶ 7, Exh. N.
i The 2014 Freezes spreadsheet	
shows that West LA is an outlier	
in members who request a freeze	
in the first 60 days of	
membership who also go on to	
cancel in the same year.	
i The Modification to Direct Bill	
spreadsheet reflects members in	
the last quarter of 2014 whose	
billing was modified from the	

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1	DEFENDANT'S	DEFENDANT'S SUPPORTING
2	UNCONTROVERTED FACTS	EVIDENCE
3	credit card payment type to direct	
4	bill the day before billing ran.	
5	The Company average is four per	
6	club. West LA had 28	
7	modifications to direct bill.	
8	i The West LA Breakdown	
9	spreadsheet shows questionable	
10	sales from two MAs (Plaintiff	
11	and the MA moving to New	
12	York). The other three MAs	
13	were reviewed and did not reflect	
14	the same anomalies seen with	
15	Plaintiff and the MA moving to	
16	New York. The questionable	
17	sales included selling	
18	memberships to members with	
19	the credit card of another	
20	member (almost universally	
21	without requesting a referral	
22	credit) or re-contracting over a	
23	previously 3-day'd membership	
24	and either using the credit from	
25	the previous sale or recharging	
26	the same credit card, credit card	
27	not present for numerous sales	
28	transactions, 3-day cancellations	

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
with no or just one member visit,	
new memberships which were	
previously finance cancelled and	
had balances on account that	
were waived.	
41. Neither Cuva nor Stanfa were aware	41. Cuva Decl., ¶ 8; Stanfa Decl., ¶ 11.
Plaintiff had made any complaints about	
changes to her compensation plan or about	
the alleged activities of other MAs.	
42. In addition, Burger was asked to	42. Deposition of Jim Burger ("Burger
interview the sales team at the West LA	Depo."), 72:4-73:3, 73:13:75:22, 76:6-
club.	12.
43. When Burger came to Los Angeles	43. Hemedinger Decl., ¶ 4.
to conduct his interviews in late January	
2015, the West LA club's sales team	
consisted of three MAs, Plaintiff and two	
other MAs who were supervised by the	
Simonson and an Assistant General	
Manager.	
44. A MA was fired on or about January	44. Figueroa Decl. ¶ 9; Hemedinger
20, 2015 for improper sales activities.	Decl., ¶ 4.
45. At Burger's request, Member	45. Burger Depo., 72:13-73:3; Cuva
Services provided him with the	Decl. ¶ 8.
spreadsheets summarizing their findings of	
questionable sales transactions at the West	
LA club.	
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1	DEFENDANT'S	DEFENDANT'S SUPPORTING
2	UNCONTROVERTED FACTS	EVIDENCE
3	46. Burger then met with Cuva and	46. Burger Depo., 73:13-74:15; Cuva
4	Stanfa and they discussed their findings	Decl. ¶ 8; Stanfa Decl., ¶ 9.
5	regarding the questionable sales at the	
6	West LA club.	
7	47. Burger had a subsequent meeting	47. Burger Depo., 74:16-75:3, 8-22;
8	with Stanfa to review the spreadsheets	Stanfa Decl., ¶ 9.
9	Member Services had prepared.	
10	48. These spreadsheets showed	48. Burger Depo., 39:3-40:22; Cuva
11	anomalies in various sales transactions,	Decl., ¶ 8; Stanfa Decl., ¶¶ 4-5.
12	including whether or not a contract was	
13	signed, whether or not a credit card was	
14	present for the sales transaction, whose	
15	credit card was used for the sales	
16	transactions, if another individual's credit	
17	card number was used for the sales	
18	transaction instead of the member's credit	
19	card number, whether or not a member had	
20	any visits to a club, etc.	
21	49. Burger also had a couple of	49. Burger Depo., 76:19-77:1; Stanfa
22	telephone conversations with Stanfa	Decl., ¶ 9.
23	regarding the anomalies in various sales	
24	activities at the West LA Club.	
25	50. In late January 2015, Burger came to	50. Burger Depo., 76:6-12; Gannon
26	Los Angeles to interview various	Decl., ¶ 3; Hemedinger Decl., ¶ 5.
27	employees regarding sales activities of the	
28	West LA MAs.	

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
51. Prior to the interviews, Burger and	51. Burger Depo., 116:12-117:12.
Gannon discussed suspending all of the	
individuals interviewed as part of the	
investigation pending the results of the	
investigation.	
52. Burger then interviewed the	52. Hemedinger Decl., ¶ 5.
following individuals: (1) the Assistant	
General Manager; (2) Plaintiff; (3) another	
MA; (4) a relatively newly hired MA; and	
(5) Simonson.	
53. Burger had never heard of or spoken	53. Burger Depo., 35:22-24.
to Plaintiff prior to this investigation	
meeting.	
54. On January 30, 2015, Plaintiff met	54. Plaintiff Depo., Volume I, 161:11-
with Burger and Leah Ball of Human	22, 164:10-22; Plaintiff Depo., Volume
Resources regarding West LA's sales	II, 305:21-24; , Burger Depo., 96:18-25.
practices.	
55. Plaintiff answered questions about	55. Plaintiff Depo., Volume I, 161:11-
her sales activities, as well as the activities	22, 164:10-22; Burger Depo., 53:13-
of other MAs.	54:9.
56. While Burger did not find Plaintiff	56. Burger Depo., 122:14-17.
credible, he felt, at that time, that there was	
insufficient information to warrant	
Plaintiff's termination.	
57. After Burger completed his	57. Burger Depo., 117:16-18, 24-
interviews, Burger, Gannon and	118:6.

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DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
Hemedinger met briefly to discuss	
Burger's impressions.	
58. Gannon then advised Plaintiff that	58. Plaintiff Depo., Volume I, 174:24-
she was being suspended.	175:3, 11-12; Plaintiff Depo., Volume II,
	306:3-7; Gannon Decl., ¶ 4.
59. All of the MAs interviewed as part	59. Burger Depo., ¶ 110:17-23;
of the investigation (with the exception of	Gannon Decl., ¶ 6.
the relatively new MA) were suspended	
pending investigation.	
60. Gannon also advised Plaintiff to	60. Plaintiff Depo., Volume I, 180:11-
report back to the West LA club at 2:00	181:4; Gannon Decl., ¶ 5.
p.m. the next day for another meeting.	
61. According to Plaintiff, Equinox told	61. Plaintiff Depo., Volume I, 174:24-
her that she would not have access to her	175:21; Plaintiff Depo., Volume II,
email or payroll account and escorted her	305:21-306:2, 364:17-20; Plaintiff's
out of the building in front of Equinox's	Complaint, 6:5-7.
clientele, staff and all of her peers.	
62. It is Equinox's policy to turn off	62. Gannon Decl., ¶ 7.
email access for hourly employees who	
have been suspended pending investigation	
or who are on a leave of absence.	
63. Prior to Burger's interview of	63. Gannon Decl., ¶ 8.
Plaintiff, Gannon had the Payroll	
Department prepare a final paycheck for	
Plaintiff so that she could be paid in	
accordance with California law in the	

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
event the decision was made to terminate	
her employment.	
64. Plaintiff met with Hemedinger and	64. Plaintiff Depo., Volume I, 182:5-
Gannon at the West LA club on January	183:8; Plaintiff Depo., Volume II,
31, 2015 and was told that the	306:12:16, 382:12-17, 390:4-11, Exh.
investigation was concluded and that she	38; Hemedinger Depo., 54:17-21, 55:1-8;
would be working at the Marina Del Rey	Gannon Decl., ¶ 3; Hemedinger Decl., ¶
club.	6.
65. The decision was made to reassign	65. Rosen Depo., 71:7-20, 73:15-22,
Plaintiff to the Marina Del Rey club	76:5-14; Holmes Depo., 96:12-98:17;
because Equinox wanted to rebuild the	Hemedinger Depo., 51:7-52:23; Gannon
team of MAs in the West LA club and to	Decl., ¶ 10.
create a fresh culture, as a result of the	
investigation findings.	
66. Plaintiff's compensation plan would	66. Rosen Depo., 87:25-88:4; Gannon
change once at Marina Del Rey to align	Decl., ¶ 11.
with the compensation plan of Marina Del	
Rey MAs. Equinox considered the	
reassignment a lateral move.	
67. Equinox considered the	67. Rosen Depo., 87:25-88:4; Gannon
reassignment a lateral move.	Decl., ¶ 11.
68. When Plaintiff was asked what her	68. Plaintiff Depo., Volume II, 390:4-
compensation would be at the Marina Del	11, Exh. 38; Gannon Decl., ¶ 12.
Rey club, she was sent the compensation	
plan of a Marina Del Rey MA.	
69. Equinox's expectation was she	69. Hemedinger Depo., 52:18-23;

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
would earn at least the same amount of	Rosen Depo., 57:13-19; 58:22-59:14;
money because the Marina Del Rey club	Holmes Depo., 31:13-15.
was a high performing club and the	
memberships for the Marina Del Rey club	
were less expensive than the memberships	
for the West LA club.	
70. It was easier to sell more	70. Hemedinger Depo., 52:18-23;
memberships at the Marina Del Rey club	Rosen Depo., 57:13-19; 58:22-59:14;
than the West LA club because the Marina	Holmes Depo., 50:18-51:5
Del Rey memberships were less expensive.	
71. Gannon emailed Plaintiff the	71. Plaintiff Depo., Volume I, 246:19-
compensation plan for the Marina Del Rey	247:2; Gannon Decl., ¶ 12.
Club on or about January 31, 2015.	
72. Plaintiff testified that no one from	72. Plaintiff Depo., Volume I, 171:10-
Equinox ever told her that she was being	172:7; Plaintiff Depo., Volume II,
"terminated" or "demoted" as part of her	306:17-310:19, 363:24-364:3; Gannon
reassignment to the Marina Del Rey club.	Decl., ¶ 13; Hemedinger Decl., ¶ 7.
73. Gannon made the decision to	73. Rosen Depo., 45:7-25. 57:8-12;
reassign Plaintiff to the Marina Del Rey	Hemedinger Depo., 53:14-18.
club.	
74. Plaintiff was told to report to the	74. Plaintiff Depo., Volume I, 186:5-
Marina Del Rey club on February 2, 2015	14; Plaintiff Depo., Volume II, 311:4-8;
at 9:00 a.m.	Hemedinger Depo., 54:17-55:18, 55:25-
	56:25, 57:6-57:11.
75. Before reporting to the Marina Del	75. Plaintiff Depo., Volume I, 186:5-
Rey club, Plaintiff submitted her	14, Exh. 26; Plaintiff Depo., Volume II,

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DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
resignation, via email, on the morning of	311:4-8; Hemedinger Depo., 54:17-
February 2, 2015 effective immediately.	55:18, 55:25-
	56:25, 57:6-57:11.
76. Plaintiff's last day of employment	76. Plaintiff Depo., Volume I, 186:11-
was February 2, 2015.	14.
77. Plaintiff never reported to work at	77. Plaintiff Depo., Volume I, 50:13-
the Marina Del Rey club.	15, 186:15-17; Hemedinger Depo.,
	56:22-25.
78. As of February 1, 2015, the only	78. Plaintiff Depo., Volume II, 342:3-
remaining MA at the West LA club was	11.
the recently hired MA.	
79. As of April/May 2015, the West LA	79. Plaintiff Depo., Volume II,
club had an entirely new sales team and	342:25-343:5.
sales management.	
80. Plaintiff testified that she was	80. Plaintiff Depo., Volume II, 343:6-
unaware of any other MA at the West LA	22.
club complaining about the unauthorized	
use of credit cards or telling someone that	
they were being signed up for a one-month	
membership but signing them up for a year	
instead.	

ISSUE NO. 14

Plaintiff's seventh cause of action for wrongful termination in violation of public policy (discussing wages) in violation of California Labor Code §1102.5 fails as a matter of law because Plaintiff was not terminated. (UF Nos. 1-80.)

of law because Flamith was not terminated. (OF Nos. 1-80.)		
DEFENDANT'S	DEFENDANT'S SUPPORTING	
UNCONTROVERTED FACTS	EVIDENCE	
1. Plaintiff was hired as a Membership	1. Plaintiff Depo., Volume I, 36:23-	
Advisor ("MA") at Equinox's Santa	38:10, Exh. 5 (Offer Letter).	
Monica club on or about October 15,		
2010.		
2. In January 2014, Plaintiff began	2. Plaintiff Depo., Volume I, 189:22-	
working at Equinox's West Los Angeles	190:12, Exh. 13 (Memo).	
club ("West LA club").		
3. At the West LA club, MAs were	3. Declaration of Brian Hemedinger	
referred to as Membership Executives.	("Hemedinger Decl."), ¶ 3.	
However, their job duties were the same.		
4. During Plaintiff's employment at	4. Declaration of Jack Gannon	
Equinox's Santa Monica and West LA	("Gannon Decl."), ¶¶ 1-2.	
clubs, Jack Gannon ("Gannon") was the		
Vice President of the West Coast.		
5. From about October 2011 through	5. Plaintiff Depo., Volume I, 270:8,-	
about June 2015, Brian Hemedinger	14, 75:24-76:4; Deposition of Brian	
("Hemedinger") was the Regional	Hemedinger ("Hemedinger Depo.")	
Director of Operations ("Regional	15:3-10, 41:1-9, 13-16; Hemedinger	
Director") of the Santa Monica and West	Decl., ¶ 1.	
LA clubs.		
6. General Manager Kira Simonson	6. Plaintiff Depo., Volume I, 52:11-	

1	DEFENDANT'S	DEFENDANT'S SUPPORTING
2	UNCONTROVERTED FACTS	EVIDENCE
3	("Simonson) supervised Plaintiff at the	19.
4	West LA club from about January 2014 to	
5	about January 2015.	
6	7. Plaintiff's personnel file includes an	7. Plaintiff Depo., Volume I, 43:18-
7	Employee Handbook: Receipt	45:15, Exh. 8 (Receipt
8	Acknowledgment Form with Plaintiff's	Acknowledgement Form); Declaration of
9	signature dated October 15, 2010.	Emerson Figueroa ("Figueroa Decl."), ¶
10		5, Exh. B.)
11	8. In particular, the Employee	8. Plaintiff Depo., Volume I, 43:18-
12	Handbook stated:	45:15, Exh. 8 (Receipt
13	I acknowledge that the receipt of the	Acknowledgement Form); Figueroa
14	Employee Handbook in no way creates a	Decl., ¶ 5, Exh. B (Receipt
15	contract between Equinox and me.	Acknowledgement Form).
16	Moreover, I understand and agree that all	
17	matters discussed in the Employee	
18	Handbook are subject to change or	
19	modification from time to time except the	
20	At-Will Employment Policy specified	
21	therein. The At-Will Employment Policy	
22	represents the final and complete	
23	agreement concerning the duration of my	
24	employment. I acknowledge that any	
25	change in the At-Will Employment Policy	
26	is effective only if set forth in a written	
27	document signed by the CEO of Equinox	
28	and myself.	

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
9. Plaintiff's personnel file also	9. Plaintiff Depo., Volume I, 36:23-
includes an Offer Letter, dated October	38:11, Exh. 5 (Offer Letter); Figueroa
15, 2010, which Plaintiff acknowledged	Decl., ¶ 6, Exh. C (Offer Letter).
receiving.	Zeen, a e, zam e (errer zerrer).
10. In particular, the Offer Letter stated:	10. Plaintiff Depo., Volume I, 36:23-
We are excited at the prospect of you	38:11, Exh. 5 (Offer Letter); Figueroa
joining the Company, you should be	Decl., ¶ 6, Exh. C (Offer Letter).
aware that our relationship is	Zeen, a e, zam e (errer zerrer).
"employment-at-will." That means you	
are free, at any time, for any reason, to	
end your employment with the Company	
and that the Company may do the same.	
Our agreement regarding the at-will	
nature of your employment may not be	
changed, except in a writing signed by the	
Company's Chief Executive Officer.	
Given the at-will nature, the Company	
may from time to time add to, modify, or	
discontinue its compensation policies,	
employee benefit plans or other aspects of	
your employment.	
11. Plaintiff's personnel file also	11. Figueroa Decl., ¶ 8, Exh. D.
includes an Employee Confidentiality and	
Non-Solicitation Agreement with	
Plaintiff's signature dated October 14,	
2010.	

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
12. This Agreement stated: "You agree	12. Figueroa Decl., ¶ 8, Exh. D.
and understand that nothing in this	
Agreement shall alter or modify the 'at-	
will' nature of your employment with the	
Company or confer on [y]ou any right with	
respect to continuation of your	
employment with the Company."	
13. In her deposition, Plaintiff admitted	13. Plaintiff Depo., Volume I, 36:23-
that she did not have a contract with	38:11, 43:18-45:15, Exh. 5 (Offer
Equinox; no one ever told her that she was	Letter), Exh. 8 (Receipt
guaranteed employment for a certain time	Acknowledgement Form).
period; and no one ever told her that she	
was anything other than an at-will	
employee.	
14. The Employee Handbook Plaintiff	14. Plaintiff Depo., Volume I, 43:18-
acknowledged receiving also included	45:15, Exh. 8 Receipt of Employee
Equinox's non-retaliation policy as well	Handbook; Declaration of Emerson
as complaint procedures for reporting	Figueroa ("Figueroa Decl."), Exh. A.
retaliation.	
15. In particular, Equinox's policy	15. Plaintiff Depo., Volume I, 43:18-
strictly prohibits retaliation against any	45:15, Exh. 8 Receipt of Employee
employee for "filing a complaint and	Handbook; Figueroa Decl., Exh. A,
[Equinox] will not knowingly permit	Employee Handbook.
retaliation by management, employees, or	
co-workers." Equinox's policy also	
prohibits retaliation against any employee	

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
for "using this complaint procedure or for	
filing, testifying, assisting, or participating	
in any manner in any investigation,	
proceeding, or hearing conducted by a	
governmental enforcement agency.	
Additionally, Equinox will not knowingly	
permit any retaliation against any	
employee who complains of prohibited	
harassment or who participates in an	
investigation."	
16. The complaint procedure as	16. Plaintiff Depo., Volume I, 43:18-
outlined in the Employee Handbook	45:15, Exh. 8 Receipt of Employee
permits an employee to report retaliation	Handbook; Figueroa Decl. ¶ 4.
to his or her manager, Human Resources,	
or through Equinox's Ethics Hotline.	
17. In or about June 2014, Hemedinger	17. Plaintiff Depo., Volume I, 190:16-
informed Plaintiff and other MAs that the	194:3, 219:7-10; Plaintiff Depo., Volume
compensation plan for all West LA MAs	II, 347:22-348:1; Deposition of Barry
was being clarified, so that the market	Holmes ("Holmes Depo.") 69:4-71:12,
bonuses would be paid out individually	73:23-75:10, Exhs. 201-202;
and not cumulatively for reaching a	Hemedinger Depo., 60:11-61:3, 68:12-
certain sales goal.	14, 70:19-72:3.; Rosen Depo., 33:5-15.
18. For example, the plan provided for a	18. Plaintiff Depo., Volume I, 190:16-
particular market bonus upon reaching a	194:3; Hemedinger Depo., 64:18-65:11
certain goal of sales:	
• 100% of goal – MA would	

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
receive an extra \$20 per sale	
• 115% of goal – MA would	
receive an extra \$40 per sale	
• 125% of goal – MA would	
receive an extra \$55 per sale	
• 150% of goal – MA would receive	
an extra \$70 per sale	
19. For the West LA club, Equinox's	19. Plaintiff Depo., Volume I, 190:16-
Payroll Department was adding the	194:3; Holmes Depo., 82:11-83:14;
bonuses together as opposed to giving one	Hemedinger Depo., 59:22-60:6, 62:3-
of the bonuses above depending on the	63:8; 66:6-11., 68:15-69:8.
overall percentage.	
20. Plaintiff testified that she	20. Plaintiff Depo., Volume I, 199:7-
complained about what she viewed as a	22; Hemedinger Depo., 59:14-60:10;
"change" in the compensation plan to the	Deposition of Scott Rosen ("Rosen
following managerial employees:	Depo.") 29:18-30:4, 30:22-31:12, 31:20-
Hemedinger, Gannon, Simonson, Veronica	33:4, 61:12-64:17, 65:8-69:12, Exhs.
Santarelli ("Santarelli") (Regional Sales	206-207; Holmes Depo., 71:23-73:22,
Manager), Matt Gonzalez ("Gonzalez")	77:18-82:10, 84:19-86:8, Ex. 203.
(Director of Sales), Barry Holmes	
("Holmes") (Senior Vice President of	
Sales), and Scott Rosen ("Rosen") (Chief	
Operating Officer) ("COO").	
21. Despite Plaintiff's complaints about	21. Plaintiff Depo., Volume I, 196:8-
the compensation plan, Plaintiff continued	14, 207:15-22, 220:5-20; Plaintiff Depo.,
to work at Equinox for seven months after	Volume II, 349:5-12.
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1	DEFENDANT'S	DEFENDANT'S SUPPORTING
2	UNCONTROVERTED FACTS	EVIDENCE
3	the "changed" compensation plan was	
4	instituted in July/August 2014 and	
5	continued to work for Equinox until she	
6	quit in February 2015.	
7	22. Plaintiff testified that she	22. Plaintiff Depo., Volume I, 81:6-21,
8	complained to Hemedinger, Simonson, and	82:5-83:23, 94:14-97:9.
9	possibly to Gannon in February or March	
10	2014 that she believed that a MA at West	
11	LA was using one-month guest passes	
12	and/or gift cards to sign up members for	
13	what they believed was a month-long	
14	membership, but in actuality, was signing	
15	them up for a year-long membership by	
16	using their credit cards without	
17	authorization.	
18	23. According to Plaintiff, "charging	23. Plaintiff Depo., Volume II,
19	credit cards without people's approval and	334:16-336:23.
20	telling people they were signing up for a	
21	month-long contract, but then signing	
22	them up for a year-long contract" were the	
23	only "illegal activities" about which she	
24	complained to Equinox.	
25	24. According to Plaintiff, her other	24. Plaintiff Depo., Volume II,
26	complaints involved "things against	334:16-336:23.
27	Equinox policies that were happening as	
28	well."	

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
25. Plaintiff admitted that she could not	25. Plaintiff Depo., Volume II, 335:4-
identify any statute, ordinance, regulation,	336:23.
local law, state law, or federal law that	
was violated as a result of this alleged	
activity.	
26. Plaintiff also testified that she	26. Plaintiff Depo., Volume I, 76:17-
complained to Hemedinger and Simonson	79:19; 93:10-94:10, 102:10-107:24;
about the sales activities of another MA.	108:1-113:5; Hemedinger Depo., 45:8-
	47:19.
27. Specifically, Plaintiff complained	27. Plaintiff Depo., Volume I, 76:17-
that this MA was giving away "free	79:19; 93:10-94:10, 102:10-107:24;
months" to potential members, allowing	108:1-113:5; Hemedinger Depo., 45:8-
"freezes" for members, and offering "three	47:19.
month" deals.	
28. In or around December 2014, COO	28. Rosen Depo., 37:20-38:18;
Rosen was touring the West LA club	Declaration of Tracy Cuva ("Cuva
when he was told by a member that a MA	Decl."), ¶ 2.
had charged a membership to another	
member's credit card without that	
member's authorization.	
29. Member Services is Equinox's	29. Cuva Decl., ¶ 1.
billing department (centrally based in	
New York) which handles membership	
contracts and membership sales, including	
auditing of membership sales.	

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
30. Rosen contacted Tracy Cuva,	30. Rosen Depo., 37:20-38:21; Cuva
Senior Director of Equinox's Member	Decl., ¶ 2.
Services Department, gave her the	
information received from the member,	
and asked Member Services to investigate	
this sale.	
31. Member Services' investigation,	31. Cuva Decl., ¶ 2.
which was conducted by Cuva, confirmed	
that this was an unauthorized sale	
processed by a MA at the West LA Club	
(Plaintiff was not implicated in this	
transaction).	
32. This MA was relocating to New	32. Rosen Depo., 39:8-13.
York but, based on the investigation	
results, she was not hired to work for	
Equinox in New York.	
33. As a result of this member	33. Rosen Depo., 47:25-6; Cuva Decl.,
complaint, Rosen also asked Cuva to have	¶ 3.
Member Services conduct an investigation	
of sales transactions at the West LA club.	
34. Apart from requesting that the	34. Rosen Depo., 47:25-48:21.
investigation be conducted and asking Jim	
Burger (Senior Director of Loss	
Prevention) to travel to the West LA club	
and continue the investigation after	
Member Services finished their portion of	

DEFENDANT'S SUPPORTING
EVIDENCE
35. Cuva Decl., ¶ 3; Stanfa Decl. ¶ 4.
36. Cuva Decl., ¶ 3; Stanfa Decl. ¶ 4.
37. Stanfa Decl., ¶ 4.
38. Rosen Depo., 47:25-48:21;
Holmes Depo., 86:10-88:10, 95:9-96:10;
Cuva Decl., ¶ 6, Exh. N; Stanfa Decl., ¶¶
4-5.
39. Cuva Decl., ¶ 7, Exh. N.
40. Cuva Decl., ¶ 7, Exh. N.

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DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
shows that West LA is an outlier	
in members who request a freeze	
in the first 60 days of	
membership who also go on to	
cancel in the same year.	
i The Modification to Direct Bill	
spreadsheet reflects members in	
the last quarter of 2014 whose	
billing was modified from the	
credit card payment type to direct	
bill the day before billing ran.	
The Company average is four per	
club. West LA had 28	
modifications to direct bill.	
i The West LA Breakdown	
spreadsheet shows questionable	
sales from two MAs (Plaintiff	
and the MA moving to New	
York). The other three MAs	
were reviewed and did not reflect	
the same anomalies seen with	
Plaintiff and the MA moving to	
New York. The questionable	
sales included selling	
memberships to members with	
the credit card of another	
	shows that West LA is an outlier in members who request a freeze in the first 60 days of membership who also go on to cancel in the same year. i The Modification to Direct Bill spreadsheet reflects members in the last quarter of 2014 whose billing was modified from the credit card payment type to direct bill the day before billing ran. The Company average is four per club. West LA had 28 modifications to direct bill. i The West LA Breakdown spreadsheet shows questionable sales from two MAs (Plaintiff and the MA moving to New York). The other three MAs were reviewed and did not reflect the same anomalies seen with Plaintiff and the MA moving to New York. The questionable sales included selling memberships to members with

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
member (almost universally	
without requesting a referral	
credit) or re-contracting over a	
previously 3-day'd membership	
and either using the credit from	
the previous sale or recharging	
the same credit card, credit card	
not present for numerous sales	
transactions, 3-day cancellations	
with no or just one member visit,	
new memberships which were	
previously finance cancelled and	
had balances on account that	
were waived.	
41. Neither Cuva nor Stanfa were aware	41. Cuva Decl., ¶ 8; Stanfa Decl., ¶ 11.
Plaintiff had made any complaints about	
changes to her compensation plan or about	
the alleged activities of other MAs.	
42. In addition, Burger was asked to	42. Deposition of Jim Burger ("Burger
interview the sales team at the West LA	Depo."), 72:4-73:3, 73:13:75:22, 76:6-
club.	12.
43. When Burger came to Los Angeles	43. Hemedinger Decl., ¶ 4.
to conduct his interviews in late January	
2015, the West LA club's sales team	
consisted of three MAs, Plaintiff and two	
other MAs who were supervised by the	
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DEFENDANTIA GUDDODENIA
DEFENDANT'S SUPPORTING
EVIDENCE
44. Figueroa Decl. ¶ 9; Hemedinger
Decl., ¶ 4.
45. Burger Depo., 72:13-73:3; Cuva
Decl. ¶ 8.
46. Burger Depo., 73:13-74:15; Cuva
Decl. ¶ 8; Stanfa Decl., ¶ 9.
47. Burger Depo., 74:16-75:3, 8-22;
Stanfa Decl., ¶ 9.
48. Burger Depo., 39:3-40:22; Cuva
Decl., ¶ 8; Stanfa Decl., ¶¶ 4-5.

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
any visits to a club, etc.	
49. Burger also had a couple of	49. Burger Depo., 76:19-77:1; Stanfa
telephone conversations with Stanfa	Decl., ¶ 9.
regarding the anomalies in various sales	
activities at the West LA Club.	
50. In late January 2015, Burger came to	50. Burger Depo., 76:6-12; Gannon
Los Angeles to interview various	Decl., ¶ 3; Hemedinger Decl., ¶ 5.
employees regarding sales activities of the	
West LA MAs.	
51. Prior to the interviews, Burger and	51. Burger Depo., 116:12-117:12.
Gannon discussed suspending all of the	
individuals interviewed as part of the	
investigation pending the results of the	
investigation.	
52. Burger then interviewed the	52. Hemedinger Decl., ¶ 5.
following individuals: (1) the Assistant	
General Manager; (2) Plaintiff; (3) another	
MA; (4) a relatively newly hired MA; and	
(5) Simonson.	
53. Burger had never heard of or spoken	53. Burger Depo., 35:22-24.
to Plaintiff prior to this investigation	
meeting.	
54. On January 30, 2015, Plaintiff met	54. Plaintiff Depo., Volume I, 161:11-
with Burger and Leah Ball of Human	22, 164:10-22; Plaintiff Depo., Volume
Resources regarding West LA's sales	II, 305:21-24; , Burger Depo., 96:18-25.
practices.	
Case No: 2:16-CV-01795 MWF (JCx) 22	DEFENDANT'S STATEMENT (

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
55. Plaintiff answered questions about	55. Plaintiff Depo., Volume I, 161:11-
her sales activities, as well as the activities	22, 164:10-22; Burger Depo., 53:13-
of other MAs.	54:9.
56. While Burger did not find Plaintiff	56. Burger Depo., 122:14-17.
credible, he felt, at that time, that there was	
insufficient information to warrant	
Plaintiff's termination.	
57. After Burger completed his	57. Burger Depo., 117:16-18, 24-
interviews, Burger, Gannon and	118:6.
Hemedinger met briefly to discuss	
Burger's impressions.	
58. Gannon then advised Plaintiff that	58. Plaintiff Depo., Volume I, 174:24-
she was being suspended.	175:3, 11-12; Plaintiff Depo., Volume II,
	306:3-7; Gannon Decl., ¶ 4.
59. All of the MAs interviewed as part	59. Burger Depo., ¶ 110:17-23;
of the investigation (with the exception of	Gannon Decl., ¶ 6.
the relatively new MA) were suspended	
pending investigation.	
60. Gannon also advised Plaintiff to	60. Plaintiff Depo., Volume I, 180:11-
report back to the West LA club at 2:00	181:4; Gannon Decl., ¶ 5.
p.m. the next day for another meeting.	
61. According to Plaintiff, Equinox told	61. Plaintiff Depo., Volume I, 174:24-
her that she would not have access to her	175:21; Plaintiff Depo., Volume II,
email or payroll account and escorted her	305:21-306:2, 364:17-20; Plaintiff's
out of the building in front of Equinox's	Complaint, 6:5-7.
clientele, staff and all of her peers.	
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DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
62. It is Equinox's policy to turn off	62. Gannon Decl., ¶ 7.
email access for hourly employees who	
have been suspended pending investigation	
or who are on a leave of absence.	
63. Prior to Burger's interview of	63. Gannon Decl., ¶ 8.
Plaintiff, Gannon had the Payroll	
Department prepare a final paycheck for	
Plaintiff so that she could be paid in	
accordance with California law in the	
event the decision was made to terminate	
her employment.	
64. Plaintiff met with Hemedinger and	64. Plaintiff Depo., Volume I, 182:5
Gannon at the West LA club on January	183:8; Plaintiff Depo., Volume II
31, 2015 and was told that the	306:12:16, 382:12-17, 390:4-11, Exh
investigation was concluded and that she	38; Hemedinger Depo., 54:17-21, 55:1-8
would be working at the Marina Del Rey	Gannon Decl., ¶ 3; Hemedinger Decl., ¶
club.	6.
65. The decision was made to reassign	65. Rosen Depo., 71:7-20, 73:15-22
Plaintiff to the Marina Del Rey club	76:5-14; Holmes Depo., 96:12-98:17
because Equinox wanted to rebuild the	Hemedinger Depo., 51:7-52:23; Gannor
team of MAs in the West LA club and to	Decl., ¶ 10.
create a fresh culture, as a result of the	
investigation findings.	
66. Plaintiff's compensation plan would	66. Rosen Depo., 87:25-88:4; Gannor
change once at Marina Del Rey to align	Decl., ¶ 11.
with the compensation plan of Marina Del	
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DEFENDANT'S SUPPORTING
EVIDENCE
67. Rosen Depo., 87:25-88:4; Gannon
Decl., ¶ 11.
68. Plaintiff Depo., Volume II, 390:4-
11, Exh. 38; Gannon Decl., ¶ 12.
69. Hemedinger Depo., 52:18-23;
Rosen Depo., 57:13-19; 58:22-59:14;
Holmes Depo., 31:13-15.
70. Hemedinger Depo., 52:18-23;
Rosen Depo., 57:13-19; 58:22-59:14;
Holmes Depo., 50:18-51:5
71. Plaintiff Depo., Volume I, 246:19-
247:2; Gannon Decl., ¶ 12.
72. Plaintiff Depo., Volume I, 171:10-
172:7; Plaintiff Depo., Volume II,
306:17-310:19, 363:24-364:3; Gannon
Decl., ¶ 13; Hemedinger Decl., ¶ 7.

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
73. Gannon made the decision to	73. Rosen Depo., 45:7-25. 57:8-12;
reassign Plaintiff to the Marina Del Rey	Hemedinger Depo., 53:14-18.
club.	
74. Plaintiff was told to report to the	74. Plaintiff Depo., Volume I, 186:5-
Marina Del Rey club on February 2, 2015	14; Plaintiff Depo., Volume II, 311:4-8;
at 9:00 a.m.	Hemedinger Depo., 54:17-55:18, 55:25-
	56:25, 57:6-57:11.
75. Before reporting to the Marina Del	75. Plaintiff Depo., Volume I, 186:5-
Rey club, Plaintiff submitted her	14, Exh. 26; Plaintiff Depo., Volume II,
resignation, via email, on the morning of	311:4-8; Hemedinger Depo., 54:17-
February 2, 2015 effective immediately.	55:18, 55:25-
	56:25, 57:6-57:11.
76. Plaintiff's last day of employment	76. Plaintiff Depo., Volume I, 186:11-
was February 2, 2015.	14.
77. Plaintiff never reported to work at	77. Plaintiff Depo., Volume I, 50:13-
the Marina Del Rey club.	15, 186:15-17; Hemedinger Depo.,
	56:22-25.
78. As of February 1, 2015, the only	78. Plaintiff Depo., Volume II, 342:3-
remaining MA at the West LA club was	11.
the recently hired MA.	
79. As of April/May 2015, the West LA	79. Plaintiff Depo., Volume II,
club had an entirely new sales team and	342:25-343:5.
sales management.	
80. Plaintiff testified that she was	80. Plaintiff Depo., Volume II, 343:6-
unaware of any other MA at the West LA	22.
club complaining about the unauthorized	
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1	DEFENDANT'S	DEFENDANT'S SUPPORTING
2	UNCONTROVERTED FACTS	EVIDENCE
3	use of credit cards or telling someone that	
4	they were being signed up for a one-month	
5	membership but signing them up for a year	
6	instead.	
7	ISSUE NO. 15	
8	A 1411- D1-:4:CC 1411	of action for constructive discharge such

Although Plaintiff has not pled a cause of action for constructive discharge, such a claim (even if properly pled) would fail as a matter of law because Plaintiff cannot establish a *prima facie* claim of constructive discharge because Plaintiff was not subjected to intolerable working conditions. (UF Nos. 1-80.)

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
1. Plaintiff was hired as a Membership	1. Plaintiff Depo., Volume I, 36:23-
Advisor ("MA") at Equinox's Santa	38:10, Exh. 5 (Offer Letter).
Monica club on or about October 15,	
2010.	
2. In January 2014, Plaintiff began	2. Plaintiff Depo., Volume I, 189:22-
working at Equinox's West Los Angeles	190:12, Exh. 13 (Memo).
club ("West LA club").	
3. At the West LA club, MAs were	3. Declaration of Brian Hemedinger
referred to as Membership Executives.	("Hemedinger Decl."), ¶ 3.
However, their job duties were the same.	
4. During Plaintiff's employment at	4. Declaration of Jack Gannon
Equinox's Santa Monica and West LA	("Gannon Decl."), ¶¶ 1-2.
clubs, Jack Gannon ("Gannon") was the	
Vice President of the West Coast.	

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DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
5. From about October 2011 through	5. Plaintiff Depo., Volume I, 270:8,-
about June 2015, Brian Hemedinger	14, 75:24-76:4; Deposition of Brian
("Hemedinger") was the Regional	Hemedinger ("Hemedinger Depo.")
Director of Operations ("Regional	15:3-10, 41:1-9, 13-16; Hemedinger
Director") of the Santa Monica and West	Decl., ¶ 1.
LA clubs.	
6. General Manager Kira Simonson	6. Plaintiff Depo., Volume I, 52:11-
("Simonson) supervised Plaintiff at the	19.
West LA club from about January 2014 to	
about January 2015.	
7. Plaintiff's personnel file includes an	7. Plaintiff Depo., Volume I, 43:18-
Employee Handbook: Receipt	45:15, Exh. 8 (Receipt
Acknowledgment Form with Plaintiff's	Acknowledgement Form); Declaration of
signature dated October 15, 2010.	Emerson Figueroa ("Figueroa Decl."), ¶
	5, Exh. B.)
8. In particular, the Employee	8. Plaintiff Depo., Volume I, 43:18-
Handbook stated:	45:15, Exh. 8 (Receipt
I acknowledge that the receipt of the	Acknowledgement Form); Figueroa
Employee Handbook in no way creates a	Decl., ¶ 5, Exh. B (Receipt
contract between Equinox and me.	Acknowledgement Form).
Moreover, I understand and agree that all	
matters discussed in the Employee	
Handbook are subject to change or	
modification from time to time except the	
At-Will Employment Policy specified	
therein. The At-Will Employment Policy	

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
represents the final and complete	
agreement concerning the duration of my	
employment. I acknowledge that any	
change in the At-Will Employment Policy	
is effective only if set forth in a written	
document signed by the CEO of Equinox	
and myself.	
9. Plaintiff's personnel file also	9. Plaintiff Depo., Volume I, 36:23-
includes an Offer Letter, dated October	38:11, Exh. 5 (Offer Letter); Figueroa
15, 2010, which Plaintiff acknowledged	Decl., ¶ 6, Exh. C (Offer Letter).
receiving.	
10. In particular, the Offer Letter stated:	10. Plaintiff Depo., Volume I, 36:23-
We are excited at the prospect of you	38:11, Exh. 5 (Offer Letter); Figueroa
joining the Company, you should be	Decl., ¶ 6, Exh. C (Offer Letter).
aware that our relationship is	
"employment-at-will." That means you	
are free, at any time, for any reason, to	
end your employment with the Company	
and that the Company may do the same.	
Our agreement regarding the at-will	
nature of your employment may not be	
changed, except in a writing signed by the	
Company's Chief Executive Officer.	
Given the at-will nature, the Company	
may from time to time add to, modify, or	
discontinue its compensation policies,	

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
employee benefit plans or other aspects of	
your employment.	
11. Plaintiff's personnel file also	11. Figueroa Decl., ¶ 8, Exh. D.
includes an Employee Confidentiality and	
Non-Solicitation Agreement with	
Plaintiff's signature dated October 14,	
2010.	
12. This Agreement stated: "You agree	12. Figueroa Decl., ¶ 8, Exh. D.
and understand that nothing in this	
Agreement shall alter or modify the 'at-	
will' nature of your employment with the	
Company or confer on [y]ou any right with	
respect to continuation of your	
employment with the Company."	
13. In her deposition, Plaintiff admitted	13. Plaintiff Depo., Volume I, 36:23-
that she did not have a contract with	38:11, 43:18-45:15, Exh. 5 (Offer
Equinox; no one ever told her that she was	Letter), Exh. 8 (Receipt
guaranteed employment for a certain time	Acknowledgement Form).
period; and no one ever told her that she	
was anything other than an at-will	
employee.	
14. The Employee Handbook Plaintiff	14. Plaintiff Depo., Volume I, 43:18-
acknowledged receiving also included	45:15, Exh. 8 Receipt of Employee
Equinox's non-retaliation policy as well	Handbook; Declaration of Emerson
as complaint procedures for reporting	Figueroa ("Figueroa Decl."), Exh. A.
retaliation.	

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
15. In particular, Equinox's policy	15. Plaintiff Depo., Volume I, 43:18-
strictly prohibits retaliation against any	45:15, Exh. 8 Receipt of Employee
employee for "filing a complaint and	Handbook; Figueroa Decl., Exh. A,
[Equinox] will not knowingly permit	Employee Handbook.
retaliation by management, employees, or	
co-workers." Equinox's policy also	
prohibits retaliation against any employee	
for "using this complaint procedure or for	
filing, testifying, assisting, or participating	
in any manner in any investigation,	
proceeding, or hearing conducted by a	
governmental enforcement agency.	
Additionally, Equinox will not knowingly	
permit any retaliation against any	
employee who complains of prohibited	
harassment or who participates in an	
investigation."	
16. The complaint procedure as	16. Plaintiff Depo., Volume I, 43:18-
outlined in the Employee Handbook	45:15, Exh. 8 Receipt of Employee
permits an employee to report retaliation	Handbook; Figueroa Decl. ¶ 4.
to his or her manager, Human Resources,	
or through Equinox's Ethics Hotline.	
17. In or about June 2014, Hemedinger	17. Plaintiff Depo., Volume I, 190:16-
informed Plaintiff and other MAs that the	194:3, 219:7-10; Plaintiff Depo., Volume
compensation plan for all West LA MAs	II, 347:22-348:1; Deposition of Barry
was being clarified, so that the market	Holmes ("Holmes Depo.") 69:4-71:12,
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DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
bonuses would be paid out individually	73:23-75:10, Exhs. 201-202;
and not cumulatively for reaching a	Hemedinger Depo., 60:11-61:3, 68:12-
certain sales goal.	14, 70:19-72:3.; Rosen Depo., 33:5-15.
18. For example, the plan provided for a	18. Plaintiff Depo., Volume I, 190:16-
particular market bonus upon reaching a	194:3; Hemedinger Depo., 64:18-65:11
certain goal of sales:	
• 100% of goal – MA would	
receive an extra \$20 per sale	
• 115% of goal – MA would	
receive an extra \$40 per sale	
• 125% of goal – MA would	
receive an extra \$55 per sale	
• 150% of goal – MA would receive	
an extra \$70 per sale	
19. For the West LA club, Equinox's	19. Plaintiff Depo., Volume I, 190:16-
Payroll Department was adding the	194:3; Holmes Depo., 82:11-83:14;
bonuses together as opposed to giving one	Hemedinger Depo., 59:22-60:6, 62:3-
of the bonuses above depending on the	63:8; 66:6-11., 68:15-69:8.
overall percentage.	
20. Plaintiff testified that she	20. Plaintiff Depo., Volume I, 199:7-
complained about what she viewed as a	22; Hemedinger Depo., 59:14-60:10;
"change" in the compensation plan to the	Deposition of Scott Rosen ("Rosen
following managerial employees:	Depo.") 29:18-30:4, 30:22-31:12, 31:20-
Hemedinger, Gannon, Simonson, Veronica	33:4, 61:12-64:17, 65:8-69:12, Exhs.
Santarelli ("Santarelli") (Regional Sales	206-207; Holmes Depo., 71:23-73:22,
Manager), Matt Gonzalez ("Gonzalez")	77:18-82:10, 84:19-86:8, Ex. 203.

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
(Director of Sales), Barry Holmes	
("Holmes") (Senior Vice President of	
Sales), and Scott Rosen ("Rosen") (Chief	
Operating Officer) ("COO").	
21. Despite Plaintiff's complaints about	21. Plaintiff Depo., Volume I, 196:8-
the compensation plan, Plaintiff continued	14, 207:15-22, 220:5-20; Plaintiff Depo.,
to work at Equinox for seven months after	Volume II, 349:5-12.
the "changed" compensation plan was	
instituted in July/August 2014 and	
continued to work for Equinox until she	
quit in February 2015.	
22. Plaintiff testified that she	22. Plaintiff Depo., Volume I, 81:6-21,
complained to Hemedinger, Simonson, and	82:5-83:23, 94:14-97:9.
possibly to Gannon in February or March	
2014 that she believed that a MA at West	
LA was using one-month guest passes	
and/or gift cards to sign up members for	
what they believed was a month-long	
membership, but in actuality, was signing	
them up for a year-long membership by	
using their credit cards without	
authorization.	
23. According to Plaintiff, "charging	23. Plaintiff Depo., Volume II,
credit cards without people's approval and	334:16-336:23.
telling people they were signing up for a	
month-long contract, but then signing	

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
them up for a year-long contract" were the	
only "illegal activities" about which she	
complained to Equinox.	
24. According to Plaintiff, her other	24. Plaintiff Depo., Volume II,
complaints involved "things against	334:16-336:23.
Equinox policies that were happening as	
well."	
25. Plaintiff admitted that she could not	25. Plaintiff Depo., Volume II, 335:4-
identify any statute, ordinance, regulation,	336:23.
local law, state law, or federal law that	
was violated as a result of this alleged	
activity.	
26. Plaintiff also testified that she	26. Plaintiff Depo., Volume I, 76:17-
complained to Hemedinger and Simonson	79:19; 93:10-94:10, 102:10-107:24;
about the sales activities of another MA.	108:1-113:5; Hemedinger Depo., 45:8-
	47:19.
27. Specifically, Plaintiff complained	27. Plaintiff Depo., Volume I, 76:17-
that this MA was giving away "free	79:19; 93:10-94:10, 102:10-107:24;
months" to potential members, allowing	108:1-113:5; Hemedinger Depo., 45:8-
"freezes" for members, and offering "three	47:19.
month" deals.	
28. In or around December 2014, COO	28. Rosen Depo., 37:20-38:18;
Rosen was touring the West LA club	Declaration of Tracy Cuva ("Cuva
when he was told by a member that a MA	Decl."), ¶ 2.
had charged a membership to another	

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
member's credit card without that	
member's authorization.	
29. Member Services is Equinox's	29. Cuva Decl., ¶ 1.
billing department (centrally based in	
New York) which handles membership	
contracts and membership sales, including	
auditing of membership sales.	
30. Rosen contacted Tracy Cuva,	30. Rosen Depo., 37:20-38:21; Cuva
Senior Director of Equinox's Member	Decl., ¶ 2.
Services Department, gave her the	
information received from the member,	
and asked Member Services to investigate	
this sale.	
31. Member Services' investigation,	31. Cuva Decl., ¶ 2.
which was conducted by Cuva, confirmed	
that this was an unauthorized sale	
processed by a MA at the West LA Club	
(Plaintiff was not implicated in this	
transaction).	
32. This MA was relocating to New	32. Rosen Depo., 39:8-13.
York but, based on the investigation	
results, she was not hired to work for	
Equinox in New York.	
33. As a result of this member	33. Rosen Depo., 47:25-6; Cuva Decl.,
complaint, Rosen also asked Cuva to have	¶ 3.
Member Services conduct an investigation	

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DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
of sales transactions at the West LA club.	
34. Apart from requesting that the	34. Rosen Depo., 47:25-48:21.
investigation be conducted and asking Jim	
Burger (Senior Director of Loss	
Prevention) to travel to the West LA club	
and continue the investigation after	
Member Services finished their portion of	
the investigation, Rosen did not	
participate in that investigation.	
35. Cuva instructed Kevin Stanfa	35. Cuva Decl., ¶ 3; Stanfa Decl. ¶ 4.
("Stanfa") (Manager of Compliance and	
Special Projects), to review sales	
transactions at the West LA club.	
36. After Stanfa reported finding	36. Cuva Decl., ¶ 3; Stanfa Decl. ¶ 4.
various anomalies associated with sales	
transactions at the West LA club, Cuva	
instructed Stanfa to prepare a summary	
detailing his findings.	
37. Stanfa then prepared a workbook	37. Stanfa Decl., ¶ 4.
with three spreadsheets regarding the	
following sales activities: (1) 2014	
Freezes; (2) Modification to Direct Bill;	
and (3) West LA Sales Breakdown.	
38. Once these were prepared, Cuva	38. Rosen Depo., 47:25-48:21;
emailed the spreadsheets to Rosen,	Holmes Depo., 86:10-88:10, 95:9-96:10;
Holmes and Gannon and summarized the	Cuva Decl., ¶ 6, Exh. N; Stanfa Decl., ¶¶

1	DEFENDANT'S	DEFENDANT'S SUPPORTING
2	UNCONTROVERTED FACTS	EVIDENCE
3	results of the Member Services	4-5.
4	investigation.	
5	39. In her email, Cuva indicated that	39. Cuva Decl., ¶ 7, Exh. N.
6	these spreadsheets "all reflect patterns	
7	unhealthy for the business."	
8	40. Cuva noted as follows:	40. Cuva Decl., ¶ 7, Exh. N.
9	i The 2014 Freezes spreadsheet	
10	shows that West LA is an outlier	
11	in members who request a freeze	
12	in the first 60 days of	
13	membership who also go on to	
14	cancel in the same year.	
15	i The Modification to Direct Bill	
16	spreadsheet reflects members in	
17	the last quarter of 2014 whose	
18	billing was modified from the	
19	credit card payment type to direct	
20	bill the day before billing ran.	
21	The Company average is four per	
22	club. West LA had 28	
23	modifications to direct bill.	
24	i The West LA Breakdown	
25	spreadsheet shows questionable	
26	sales from two MAs (Plaintiff	
27	and the MA moving to New	
28	York). The other three MAs	

1	DEFENDANT'S	DEFENDANT'S SUPPORTING
2	UNCONTROVERTED FACTS	EVIDENCE
3	were reviewed and did not reflect	
4	the same anomalies seen with	
5	Plaintiff and the MA moving to	
6	New York. The questionable	
7	sales included selling	
8	memberships to members with	
9	the credit card of another	
10	member (almost universally	
11	without requesting a referral	
12	credit) or re-contracting over a	
13	previously 3-day'd membership	
14	and either using the credit from	
15	the previous sale or recharging	
16	the same credit card, credit card	
17	not present for numerous sales	
18	transactions, 3-day cancellations	
19	with no or just one member visit,	
20	new memberships which were	
21	previously finance cancelled and	
22	had balances on account that	
23	were waived.	
24	41. Neither Cuva nor Stanfa were aware	41. Cuva Decl., ¶ 8; Stanfa Decl., ¶ 11.
25	Plaintiff had made any complaints about	
26	changes to her compensation plan or about	
27	the alleged activities of other MAs.	
28	42. In addition, Burger was asked to	42. Deposition of Jim Burger ("Burger
	Case No: 2:16-CV-01795 MWF (JCx) 23	7 DEFENDANT'S STATEMENT OF

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
interview the sales team at the West LA	Depo."), 72:4-73:3, 73:13:75:22, 76:6-
club.	12.
43. When Burger came to Los Angeles	43. Hemedinger Decl., ¶ 4.
to conduct his interviews in late January	
2015, the West LA club's sales team	
consisted of three MAs, Plaintiff and two	
other MAs who were supervised by the	
Simonson and an Assistant General	
Manager.	
44. A MA was fired on or about January	44. Figueroa Decl. ¶ 9; Hemedinger
20, 2015 for improper sales activities.	Decl., ¶ 4.
45. At Burger's request, Member	45. Burger Depo., 72:13-73:3; Cuva
Services provided him with the	Decl. ¶ 8.
spreadsheets summarizing their findings of	
questionable sales transactions at the West	
LA club.	
46. Burger then met with Cuva and	46. Burger Depo., 73:13-74:15; Cuva
Stanfa and they discussed their findings	Decl. ¶ 8; Stanfa Decl., ¶ 9.
regarding the questionable sales at the	
West LA club.	
47. Burger had a subsequent meeting	47. Burger Depo., 74:16-75:3, 8-22;
with Stanfa to review the spreadsheets	Stanfa Decl., ¶ 9.
Member Services had prepared.	
48. These spreadsheets showed	48. Burger Depo., 39:3-40:22; Cuva
anomalies in various sales transactions,	Decl., ¶ 8; Stanfa Decl., ¶¶ 4-5.
including whether or not a contract was	
Case No: 2:16-CV-01795 MWF (JCx) 23	8 DEFENDANT'S STATEMENT OF

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
signed, whether or not a credit card was	
present for the sales transaction, whose	
credit card was used for the sales	
transactions, if another individual's credit	
card number was used for the sales	
transaction instead of the member's credit	
card number, whether or not a member had	
any visits to a club, etc.	
49. Burger also had a couple of	49. Burger Depo., 76:19-77:1; Stanfa
telephone conversations with Stanfa	Decl., ¶ 9.
regarding the anomalies in various sales	
activities at the West LA Club.	
50. In late January 2015, Burger came to	50. Burger Depo., 76:6-12; Gannon
Los Angeles to interview various	Decl., ¶ 3; Hemedinger Decl., ¶ 5.
employees regarding sales activities of the	
West LA MAs.	
51. Prior to the interviews, Burger and	51. Burger Depo., 116:12-117:12.
Gannon discussed suspending all of the	
individuals interviewed as part of the	
investigation pending the results of the	
investigation.	
52. Burger then interviewed the	52. Hemedinger Decl., ¶ 5.
following individuals: (1) the Assistant	
General Manager; (2) Plaintiff; (3) another	
MA; (4) a relatively newly hired MA; and	
(5) Simonson.	

EVIDENCE 53. Burger Depo., 35:22-24.
53. Burger Depo., 35:22-24.
54. Plaintiff Depo., Volume I, 161:11-
22, 164:10-22; Plaintiff Depo., Volume
II, 305:21-24; , Burger Depo., 96:18-25.
55. Plaintiff Depo., Volume I, 161:11-
22, 164:10-22; Burger Depo., 53:13-
54:9.
56. Burger Depo., 122:14-17.
57. Burger Depo., 118:1-6.
58. Plaintiff Depo., Volume I, 174:24
175:3, 11-12; Plaintiff Depo., Volume II
306:3-7; Gannon Decl., ¶ 4.
59. Burger Depo., ¶ 110:17-23
Gannon Decl., ¶ 6.
60. Plaintiff Depo., Volume I, 180:11-

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
report back to the West LA club at 2:00	181:4; Gannon Decl., ¶ 5.
p.m. the next day for another meeting.	
61. According to Plaintiff, Equinox told	61. Plaintiff Depo., Volume I, 174:24-
her that she would not have access to her	175:21; Plaintiff Depo., Volume II,
email or payroll account and escorted her	305:21-306:2, 364:17-20; Plaintiff's
out of the building in front of Equinox's	Complaint, 6:5-7.
clientele, staff and all of her peers.	
62. It is Equinox's policy to turn off	62. Gannon Decl., ¶ 7.
email access for hourly employees who	
have been suspended pending investigation	
or who are on a leave of absence.	
63. Prior to Burger's interview of	63. Gannon Decl., ¶ 8.
Plaintiff, Gannon had the Payroll	
Department prepare a final paycheck for	
Plaintiff so that she could be paid in	
accordance with California law in the	
event the decision was made to terminate	
her employment.	
64. Plaintiff met with Hemedinger and	64. Plaintiff Depo., Volume I, 182:5-
Gannon at the West LA club on January	183:8; Plaintiff Depo., Volume II,
31, 2015 and was told that the	306:12:16, 382:12-17, 390:4-11, Exh.
investigation was concluded and that she	38; Hemedinger Depo., 54:17-21, 55:1-8;
would be working at the Marina Del Rey	Gannon Decl., ¶ 3; Hemedinger Decl., ¶
club.	6.
65. The decision was made to reassign	65. Rosen Depo., 71:7-20, 73:15-22,
Plaintiff to the Marina Del Rey club	76:5-14; Holmes Depo., 96:12-98:17;
	A SEPTIME IN THE CONTROL OF THE CONT

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
because Equinox wanted to rebuild the	Hemedinger Depo., 51:7-52:23; Gannon
team of MAs in the West LA club and to	Decl., ¶ 10.
create a fresh culture, as a result of the	
investigation findings.	
66. Plaintiff's compensation plan would	66. Rosen Depo., 87:25-88:4; Gannon
change once at Marina Del Rey to align	Decl., ¶ 11.
with the compensation plan of Marina Del	
Rey MAs. Equinox considered the	
reassignment a lateral move.	
67. Equinox considered the	67. Rosen Depo., 87:25-88:4; Gannon
reassignment a lateral move.	Decl., ¶ 11.
68. When Plaintiff was asked what her	68. Plaintiff Depo., Volume II, 390:4-
compensation would be at the Marina Del	11, Exh. 38; Gannon Decl., ¶ 12.
Rey club, she was sent the compensation	
plan of a Marina Del Rey MA.	
69. Equinox's expectation was she	69. Hemedinger Depo., 52:18-23;
would earn at least the same amount of	Rosen Depo., 57:13-19; 58:22-59:14;
money because the Marina Del Rey club	Holmes Depo., 31:13-15.
was a high performing club and the	
memberships for the Marina Del Rey club	
were less expensive than the memberships	
for the West LA club.	
70. It was easier to sell more	70. Hemedinger Depo., 52:18-23;
memberships at the Marina Del Rey club	Rosen Depo., 57:13-19; 58:22-59:14;
than the West LA club because the Marina	Holmes Depo., 50:18-51:5
Del Rey memberships were less expensive.	

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
71. Gannon emailed Plaintiff the	71. Plaintiff Depo., Volume I, 246:19-
compensation plan for the Marina Del Rey	247:2; Gannon Decl., ¶ 12.
Club on or about January 31, 2015.	
72. Plaintiff testified that no one from	72. Plaintiff Depo., Volume I, 171:10-
Equinox ever told her that she was being	172:7; Plaintiff Depo., Volume II,
"terminated" or "demoted" as part of her	306:17-310:19, 363:24-364:3; Gannon
reassignment to the Marina Del Rey club.	Decl., ¶ 13; Hemedinger Decl., ¶ 7.
73. Gannon made the decision to	73. Rosen Depo., 45:7-25. 57:8-12;
reassign Plaintiff to the Marina Del Rey	Hemedinger Depo., 53:14-18.
club.	
74. Plaintiff was told to report to the	74. Plaintiff Depo., Volume I, 186:5-
Marina Del Rey club on February 2, 2015	14; Plaintiff Depo., Volume II, 311:4-8;
at 9:00 a.m.	Hemedinger Depo., 54:17-55:18, 55:25-
	56:25, 57:6-57:11.
75. Before reporting to the Marina Del	75. Plaintiff Depo., Volume I, 186:5-
Rey club, Plaintiff submitted her	14, Exh. 26; Plaintiff Depo., Volume II,
resignation, via email, on the morning of	311:4-8; Hemedinger Depo., 54:17-
February 2, 2015 effective immediately.	55:18, 55:25-
	56:25, 57:6-57:11.
76. Plaintiff's last day of employment	76. Plaintiff Depo., Volume I, 186:11-
was February 2, 2015.	14.
77. Plaintiff never reported to work at	77. Plaintiff Depo., Volume I, 50:13-
the Marina Del Rey club.	15, 186:15-17; Hemedinger Depo.,
	56:22-25.
78. As of February 1, 2015, the only	78. Plaintiff Depo., Volume II, 342:3-
remaining MA at the West LA club was	11.
Case No: 2:16-CV-01795 MWF (JCx) 24	3 DEFENDANT'S STATEMENT OF

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
the recently hired MA.	
79. As of April/May 2015, the West LA	79. Plaintiff Depo., Volume II,
club had an entirely new sales team and	342:25-343:5.
sales management.	
80. Plaintiff testified that she was	80. Plaintiff Depo., Volume II, 343:6-
unaware of any other MA at the West LA	22.
club complaining about the unauthorized	
use of credit cards or telling someone that	
they were being signed up for a one-month	
membership but signing them up for a year	
instead.	

ISSUE NO. 16

Although Plaintiff has not pled a cause of action for constructive discharge, such a claim (even if properly pled) would also fail as a matter of law because Equinox had legitimate, non-retaliatory business reasons for reassigning Plaintiff to the Marina Del Rey club. (UF Nos. 1-80.)

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
1. Plaintiff was hired as a Membership	1. Plaintiff Depo., Volume I, 36:23-
Advisor ("MA") at Equinox's Santa	38:10, Exh. 5 (Offer Letter).
Monica club on or about October 15,	
2010.	
2. In January 2014, Plaintiff began	2. Plaintiff Depo., Volume I, 189:22-
working at Equinox's West Los Angeles	190:12, Exh. 13 (Memo).
club ("West LA club").	

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
3. At the West LA club, MAs were	3. Declaration of Brian Hemedinger
referred to as Membership Executives.	("Hemedinger Decl."), ¶ 3.
However, their job duties were the same.	
4. During Plaintiff's employment at	4. Declaration of Jack Gannon
Equinox's Santa Monica and West LA	("Gannon Decl."), ¶¶ 1-2.
clubs, Jack Gannon ("Gannon") was the	
Vice President of the West Coast.	
5. From about October 2011 through	5. Plaintiff Depo., Volume I, 270:8,-
about June 2015, Brian Hemedinger	14, 75:24-76:4; Deposition of Brian
("Hemedinger") was the Regional	Hemedinger ("Hemedinger Depo.")
Director of Operations ("Regional	15:3-10, 41:1-9, 13-16; Hemedinger
Director") of the Santa Monica and West	Decl., ¶ 1.
LA clubs.	
6. General Manager Kira Simonson	6. Plaintiff Depo., Volume I, 52:11-
("Simonson) supervised Plaintiff at the	19.
West LA club from about January 2014 to	
about January 2015.	
7. Plaintiff's personnel file includes an	7. Plaintiff Depo., Volume I, 43:18-
Employee Handbook: Receipt	45:15, Exh. 8 (Receipt
Acknowledgment Form with Plaintiff's	Acknowledgement Form); Declaration of
signature dated October 15, 2010.	Emerson Figueroa ("Figueroa Decl."), ¶
	5, Exh. B.)
8. In particular, the Employee	8. Plaintiff Depo., Volume I, 43:18-
Handbook stated:	45:15, Exh. 8 (Receipt
I acknowledge that the receipt of the	Acknowledgement Form); Figueroa
Employee Handbook in no way creates a	Decl., ¶ 5, Exh. B (Receipt

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
contract between Equinox and me.	Acknowledgement Form).
Moreover, I understand and agree that all	
matters discussed in the Employee	
Handbook are subject to change or	
modification from time to time except the	
At-Will Employment Policy specified	
therein. The At-Will Employment Policy	
represents the final and complete	
agreement concerning the duration of my	
employment. I acknowledge that any	
change in the At-Will Employment Policy	
is effective only if set forth in a written	
document signed by the CEO of Equinox	
and myself.	
9. Plaintiff's personnel file also	9. Plaintiff Depo., Volume I, 36:23-
includes an Offer Letter, dated October	38:11, Exh. 5 (Offer Letter); Figueroa
15, 2010, which Plaintiff acknowledged	Decl., ¶ 6, Exh. C (Offer Letter).
receiving.	
10. In particular, the Offer Letter stated:	10. Plaintiff Depo., Volume I, 36:23-
We are excited at the prospect of you	38:11, Exh. 5 (Offer Letter); Figueroa
joining the Company, you should be	Decl., ¶ 6, Exh. C (Offer Letter).
aware that our relationship is	
"employment-at-will." That means you	
are free, at any time, for any reason, to	
end your employment with the Company	
and that the Company may do the same.	

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
Our agreement regarding the at-will	
nature of your employment may not be	
changed, except in a writing signed by the	
Company's Chief Executive Officer.	
Given the at-will nature, the Company	
may from time to time add to, modify, or	
discontinue its compensation policies,	
employee benefit plans or other aspects of	
your employment.	
11. Plaintiff's personnel file also	11. Figueroa Decl., ¶ 8, Exh. D.
includes an Employee Confidentiality and	
Non-Solicitation Agreement with	
Plaintiff's signature dated October 14,	
2010.	
12. This Agreement stated: "You agree	12. Figueroa Decl., ¶ 8, Exh. D.
and understand that nothing in this	
Agreement shall alter or modify the 'at-	
will' nature of your employment with the	
Company or confer on [y]ou any right with	
respect to continuation of your	
employment with the Company."	
13. In her deposition, Plaintiff admitted	13. Plaintiff Depo., Volume I, 36:23-
that she did not have a contract with	38:11, 43:18-45:15, Exh. 5 (Offer
Equinox; no one ever told her that she was	Letter), Exh. 8 (Receipt
guaranteed employment for a certain time	Acknowledgement Form).
period; and no one ever told her that she	

1	DEFENDANT'S	DEFENDANT'S SUPPORTING
2	UNCONTROVERTED FACTS	EVIDENCE
3	was anything other than an at-will	
4	employee.	
5	14. The Employee Handbook Plaintiff	14. Plaintiff Depo., Volume I, 43:18-
6	acknowledged receiving also included	45:15, Exh. 8 Receipt of Employee
7	Equinox's non-retaliation policy as well	Handbook; Declaration of Emerson
8	as complaint procedures for reporting	Figueroa ("Figueroa Decl."), Exh. A.
9	retaliation.	
10	15. In particular, Equinox's policy	15. Plaintiff Depo., Volume I, 43:18-
11	strictly prohibits retaliation against any	45:15, Exh. 8 Receipt of Employee
12	employee for "filing a complaint and	Handbook; Figueroa Decl., Exh. A,
13	[Equinox] will not knowingly permit	Employee Handbook.
14	retaliation by management, employees, or	
15	co-workers." Equinox's policy also	
16	prohibits retaliation against any employee	
17	for "using this complaint procedure or for	
18	filing, testifying, assisting, or participating	
19	in any manner in any investigation,	
20	proceeding, or hearing conducted by a	
21	governmental enforcement agency.	
22	Additionally, Equinox will not knowingly	
23	permit any retaliation against any	
24	employee who complains of prohibited	
25	harassment or who participates in an	
26	investigation."	
27	16. The complaint procedure as	16. Plaintiff Depo., Volume I, 43:18-
28	outlined in the Employee Handbook	45:15, Exh. 8 Receipt of Employee

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
permits an employee to report retaliation	Handbook; Figueroa Decl. ¶ 4.
to his or her manager, Human Resources,	
or through Equinox's Ethics Hotline.	
17. In or about June 2014, Hemedinger	17. Plaintiff Depo., Volume I, 190:16-
informed Plaintiff and other MAs that the	194:3, 219:7-10; Plaintiff Depo., Volume
compensation plan for all West LA MAs	II, 347:22-348:1; Deposition of Barry
was being clarified, so that the market	Holmes ("Holmes Depo.") 69:4-71:12,
bonuses would be paid out individually	73:23-75:10, Exhs. 201-202;
and not cumulatively for reaching a	Hemedinger Depo., 60:11-61:3, 68:12-
certain sales goal.	14, 70:19-72:3.; Rosen Depo., 33:5-15.
18. For example, the plan provided for a	18. Plaintiff Depo., Volume I, 190:16-
particular market bonus upon reaching a	194:3; Hemedinger Depo., 64:18-65:11
certain goal of sales:	
• 100% of goal – MA would	
receive an extra \$20 per sale	
• 115% of goal – MA would	
receive an extra \$40 per sale	
• 125% of goal – MA would	
receive an extra \$55 per sale	
• 150% of goal – MA would receive	
an extra \$70 per sale	
19. For the West LA club, Equinox's	19. Plaintiff Depo., Volume I, 190:16-
Payroll Department was adding the	194:3; Holmes Depo., 82:11-83:14;
bonuses together as opposed to giving one	Hemedinger Depo., 59:22-60:6, 62:3-
of the bonuses above depending on the	63:8; 66:6-11., 68:15-69:8.
overall percentage.	

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
20. Plaintiff testified that she	20. Plaintiff Depo., Volume I, 199:7-
complained about what she viewed as a	22; Hemedinger Depo., 59:14-60:10;
"change" in the compensation plan to the	Deposition of Scott Rosen ("Rosen
following managerial employees:	Depo.") 29:18-30:4, 30:22-31:12, 31:20-
Hemedinger, Gannon, Simonson, Veronica	33:4, 61:12-64:17, 65:8-69:12, Exhs.
Santarelli ("Santarelli") (Regional Sales	206-207; Holmes Depo., 71:23-73:22,
Manager), Matt Gonzalez ("Gonzalez")	77:18-82:10, 84:19-86:8, Ex. 203.
(Director of Sales), Barry Holmes	
("Holmes") (Senior Vice President of	
Sales), and Scott Rosen ("Rosen") (Chief	
Operating Officer) ("COO").	
21. Despite Plaintiff's complaints about	21. Plaintiff Depo., Volume I, 196:8-
the compensation plan, Plaintiff continued	14, 207:15-22, 220:5-20; Plaintiff Depo.,
to work at Equinox for seven months after	Volume II, 349:5-12.
the "changed" compensation plan was	
instituted in July/August 2014 and	
continued to work for Equinox until she	
quit in February 2015.	
22. Plaintiff testified that she	22. Plaintiff Depo., Volume I, 81:6-21,
complained to Hemedinger, Simonson, and	82:5-83:23, 94:14-97:9.
possibly to Gannon in February or March	
2014 that she believed that a MA at West	
LA was using one-month guest passes	
and/or gift cards to sign up members for	
what they believed was a month-long	
membership, but in actuality, was signing	

DEFENDANT'S SUPPORTING
EVIDENCE
23. Plaintiff Depo., Volume II,
334:16-336:23.
24. Plaintiff Depo., Volume II,
334:16-336:23.
25. Plaintiff Depo., Volume II, 335:4-
336:23.
26. Plaintiff Depo., Volume I, 76:17-
79:19; 93:10-94:10, 102:10-107:24;
108:1-113:5; Hemedinger Depo., 45:8-
47:19.
27. Plaintiff Depo., Volume I, 76:17-
79:19; 93:10-94:10, 102:10-107:24;

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DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
months" to potential members, allowing	108:1-113:5; Hemedinger Depo., 45:8-
"freezes" for members, and offering "three	47:19.
month" deals.	
28. In or around December 2014, COO	28. Rosen Depo., 37:20-38:18;
Rosen was touring the West LA club	Declaration of Tracy Cuva ("Cuva
when he was told by a member that a MA	Decl."), ¶ 2.
had charged a membership to another	
member's credit card without that	
member's authorization.	
29. Member Services is Equinox's	29. Cuva Decl., ¶ 1.
billing department (centrally based in	
New York) which handles membership	
contracts and membership sales, including	
auditing of membership sales.	
30. Rosen contacted Tracy Cuva,	30. Rosen Depo., 37:20-38:21; Cuva
Senior Director of Equinox's Member	Decl., ¶ 2.
Services Department, gave her the	
information received from the member,	
and asked Member Services to investigate	
this sale.	
31. Member Services' investigation,	31. Cuva Decl., ¶ 2.
which was conducted by Cuva, confirmed	
that this was an unauthorized sale	
processed by a MA at the West LA Club	
(Plaintiff was not implicated in this	
transaction).	
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DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
32. This MA was relocating to New	32. Rosen Depo., 39:8-13.
York but, based on the investigation	
results, she was not hired to work for	
Equinox in New York.	
33. As a result of this member	33. Rosen Depo., 47:25-6; Cuva Decl.,
complaint, Rosen also asked Cuva to have	¶ 3.
Member Services conduct an investigation	
of sales transactions at the West LA club.	
34. Apart from requesting that the	34. Rosen Depo., 47:25-48:21.
investigation be conducted and asking Jim	
Burger (Senior Director of Loss	
Prevention) to travel to the West LA club	
and continue the investigation after	
Member Services finished their portion of	
the investigation, Rosen did not	
participate in that investigation.	
35. Cuva instructed Kevin Stanfa	35. Cuva Decl., ¶ 3; Stanfa Decl. ¶ **.
("Stanfa") (Manager of Compliance and	
Special Projects), to review sales	
transactions at the West LA club.	
36. After Stanfa reported finding	36. Cuva Decl., ¶ 3; Stanfa Decl. ¶ 4.
various anomalies associated with sales	
transactions at the West LA club, Cuva	
instructed Stanfa to prepare a summary	
detailing his findings.	
37. Stanfa then prepared a workbook	37. Stanfa Decl., ¶ 4.

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
with three spreadsheets regarding the	
following sales activities: (1) 2014	
Freezes; (2) Modification to Direct Bill;	
and (3) West LA Sales Breakdown.	
38. Once these were prepared, Cuva	38. Rosen Depo., 47:25-48:21;
emailed the spreadsheets to Rosen,	Holmes Depo., 86:10-88:10, 95:9-96:10;
Holmes and Gannon and summarized the	Cuva Decl., ¶ 6, Exh. N; Stanfa Decl., ¶¶
results of the Member Services	4-5.
investigation.	
39. In her email, Cuva indicated that	39. Cuva Decl., ¶ 7, Exh. N.
these spreadsheets "all reflect patterns	
unhealthy for the business."	
40. Cuva noted as follows:	40. Cuva Decl., ¶ 7, Exh. N.
i The 2014 Freezes spreadsheet	
shows that West LA is an outlier	
in members who request a freeze	
in the first 60 days of	
membership who also go on to	
cancel in the same year.	
i The Modification to Direct Bill	
spreadsheet reflects members in	
the last quarter of 2014 whose	
billing was modified from the	
credit card payment type to direct	
bill the day before billing ran.	
The Company average is four per	

1	DEFENDANT'S	DEFENDANT'S SUPPORTING
2	UNCONTROVERTED FACTS	EVIDENCE
3	club. West LA had 28	
4	modifications to direct bill.	
5	i The West LA Breakdown	
6	spreadsheet shows questionable	
7	sales from two MAs (Plaintiff	
8	and the MA moving to New	
9	York). The other three MAs	
10	were reviewed and did not reflect	
11	the same anomalies seen with	
12	Plaintiff and the MA moving to	
13	New York. The questionable	
14	sales included selling	
15	memberships to members with	
16	the credit card of another	
17	member (almost universally	
18	without requesting a referral	
19	credit) or re-contracting over a	
20	previously 3-day'd membership	
21	and either using the credit from	
22	the previous sale or recharging	
23	the same credit card, credit card	
24	not present for numerous sales	
25	transactions, 3-day cancellations	
26	with no or just one member visit,	
27	new memberships which were	
28	previously finance cancelled and	

DEFENDANT'S SUPPORTING
EVIDENCE
41. Cuva Decl., ¶ 8; Stanfa Decl., ¶ 11.
42. Deposition of Jim Burger ("Burger
Depo."), 72:4-73:3, 73:13:75:22, 76:6-
12.
43. Hemedinger Decl., ¶ 4.
44. Figueroa Decl. ¶ 9; Hemedinger
Decl., ¶ 4.
45. Burger Depo., 72:13-73:3; Cuva
Decl. ¶ 8.
46. Burger Depo., 73:13-74:15; Cuva
Decl. ¶ 8; Stanfa Decl., ¶ 9.

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
West LA club.	
47. Burger had a subsequent meeting	47. Burger Depo., 74:16-75:3, 8-22;
with Stanfa to review the spreadsheets	Stanfa Decl., ¶ 9.
Member Services had prepared.	
48. These spreadsheets showed	48. Burger Depo., 39:3-40:22; Cuva
anomalies in various sales transactions,	Decl., ¶ 8; Stanfa Decl., ¶¶ 4-5.
including whether or not a contract was	
signed, whether or not a credit card was	
present for the sales transaction, whose	
credit card was used for the sales	
transactions, if another individual's credit	
card number was used for the sales	
transaction instead of the member's credit	
card number, whether or not a member had	
any visits to a club, etc.	
49. Burger also had a couple of	49. Burger Depo., 76:19-77:1; Stanfa
telephone conversations with Stanfa	Decl., ¶ 9.
regarding the anomalies in various sales	
activities at the West LA Club.	
50. In late January 2015, Burger came to	50. Burger Depo., 76:6-12; Gannon
Los Angeles to interview various	Decl., ¶ 3; Hemedinger Decl., ¶ 5.
employees regarding sales activities of the	
West LA MAs.	
51. Prior to the interviews, Burger and	51. Burger Depo., 116:12-117:12.
Gannon discussed suspending all of the	
individuals interviewed as part of the	

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
investigation pending the results of the	
investigation.	
52. Burger then interviewed the	52. Hemedinger Decl., ¶ 5.
following individuals: (1) the Assistant	
General Manager; (2) Plaintiff; (3) another	
MA; (4) a relatively newly hired MA; and	
(5) Simonson.	
53. Burger had never heard of or spoken	53. Burger Depo., 35:22-24.
to Plaintiff prior to this investigation	
meeting.	
54. On January 30, 2015, Plaintiff met	54. Plaintiff Depo., Volume I, 161:11-
with Burger and Leah Ball of Human	22, 164:10-22; Plaintiff Depo., Volume
Resources regarding West LA's sales	II, 305:21-24; , Burger Depo., 96:18-25.
practices.	
55. Plaintiff answered questions about	55. Plaintiff Depo., Volume I, 161:11-
her sales activities, as well as the activities	22, 164:10-22; Burger Depo., 53:13-
of other MAs.	54:9.
56. While Burger did not find Plaintiff	56. Burger Depo., 122:14-17.
credible, he felt, at that time, that there was	
insufficient information to warrant	
Plaintiff's termination.	
57. After Burger completed his	57. Burger Depo., 117:16-18, 24-
interviews, Burger, Gannon and	118:6.
Hemedinger met briefly to discuss	
Burger's impressions.	
58. Gannon then advised Plaintiff that	58. Plaintiff Depo., Volume I, 174:24-
	L

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DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
she was being suspended.	175:3, 11-12; Plaintiff Depo., Volume II,
	306:3-7; Gannon Decl., ¶ 4.
59. All of the MAs interviewed as part	59. Burger Depo., ¶ 110:17-23;
of the investigation (with the exception of	Gannon Decl., ¶ 6.
the relatively new MA) were suspended	
pending investigation.	
60. Gannon also advised Plaintiff to	60. Plaintiff Depo., Volume I, 180:11-
report back to the West LA club at 2:00	181:4; Gannon Decl., ¶ 5.
p.m. the next day for another meeting.	
61. According to Plaintiff, Equinox told	61. Plaintiff Depo., Volume I, 174:24-
her that she would not have access to her	175:21; Plaintiff Depo., Volume II,
email or payroll account and escorted her	305:21-306:2, 364:17-20; Plaintiff's
out of the building in front of Equinox's	Complaint, 6:5-7.
clientele, staff and all of her peers.	
62. It is Equinox's policy to turn off	62. Gannon Decl., ¶ 7.
email access for hourly employees who	
have been suspended pending investigation	
or who are on a leave of absence.	
63. Prior to Burger's interview of	63. Gannon Decl., ¶ 8.
Plaintiff, Gannon had the Payroll	
Department prepare a final paycheck for	
Plaintiff so that she could be paid in	
accordance with California law in the	
event the decision was made to terminate	
her employment.	
64. Plaintiff met with Hemedinger and	64. Plaintiff Depo., Volume I, 182:5-

DEFEND ANDSC	DEDENDA MESO CURRORENIO
DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
Gannon at the West LA club on January	183:8; Plaintiff Depo., Volume II,
31, 2015 and was told that the	306:12:16, 382:12-17, 390:4-11, Exh.
investigation was concluded and that she	38; Hemedinger Depo., 54:17-21, 55:1-8;
would be working at the Marina Del Rey	Gannon Decl., ¶ 3; Hemedinger Decl., ¶
club.	6.
65. The decision was made to reassign	65. Rosen Depo., 71:7-20, 73:15-22,
Plaintiff to the Marina Del Rey club	76:5-14; Holmes Depo., 96:12-98:17;
because Equinox wanted to rebuild the	Hemedinger Depo., 51:7-52:23; Gannon
team of MAs in the West LA club and to	Decl., ¶ 10.
create a fresh culture, as a result of the	
investigation findings.	
66. Plaintiff's compensation plan would	66. Rosen Depo., 87:25-88:4; Gannon
change once at Marina Del Rey to align	Decl., ¶ 11.
with the compensation plan of Marina Del	
Rey MAs. Equinox considered the	
reassignment a lateral move.	
67. Equinox considered the	67. Rosen Depo., 87:25-88:4; Gannon
reassignment a lateral move.	Decl., ¶ 11.
68. When Plaintiff was asked what her	68. Plaintiff Depo., Volume II, 390:4-
compensation would be at the Marina Del	11, Exh. 38; Gannon Decl., ¶ 12.
Rey club, she was sent the compensation	
plan of a Marina Del Rey MA.	
69. Equinox's expectation was she	69. Hemedinger Depo., 52:18-23;
would earn at least the same amount of	Rosen Depo., 57:13-19; 58:22-59:14;
money because the Marina Del Rey club	Holmes Depo., 31:13-15.
was a high performing club and the	

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
memberships for the Marina Del Rey club	
were less expensive than the memberships	
for the West LA club.	
70. It was easier to sell more	70. Hemedinger Depo., 52:18-23;
memberships at the Marina Del Rey club	Rosen Depo., 57:13-19; 58:22-59:14;
than the West LA club because the Marina	Holmes Depo., 50:18-51:5
Del Rey memberships were less expensive.	
71. Gannon emailed Plaintiff the	71. Plaintiff Depo., Volume I, 246:19-
compensation plan for the Marina Del Rey	247:2; Gannon Decl., ¶ 12.
Club on or about January 31, 2015.	
72. Plaintiff testified that no one from	72. Plaintiff Depo., Volume I, 171:10-
Equinox ever told her that she was being	172:7; Plaintiff Depo., Volume II,
"terminated" or "demoted" as part of her	306:17-310:19, 363:24-364:3; Gannon
reassignment to the Marina Del Rey club.	Decl., ¶ 13; Hemedinger Decl., ¶ 7.
73. Gannon made the decision to	73. Rosen Depo., 45:7-25. 57:8-12;
reassign Plaintiff to the Marina Del Rey	Hemedinger Depo., 53:14-18.
club.	
74. Plaintiff was told to report to the	74. Plaintiff Depo., Volume I, 186:5-
Marina Del Rey club on February 2, 2015	14; Plaintiff Depo., Volume II, 311:4-8;
at 9:00 a.m.	Hemedinger Depo., 54:17-55:18, 55:25-
	56:25, 57:6-57:11.
75. Before reporting to the Marina Del	75. Plaintiff Depo., Volume I, 186:5-
Rey club, Plaintiff submitted her	14, Exh. 26; Plaintiff Depo., Volume II,
resignation, via email, on the morning of	311:4-8; Hemedinger Depo., 54:17-
February 2, 2015 effective immediately.	55:18, 55:25-
	56:25, 57:6-57:11.

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DEFENDANT'S SUPPORTING
EVIDENCE
76. Plaintiff Depo., Volume I, 186:11-
14.
77. Plaintiff Depo., Volume I, 50:13-
15, 186:15-17; Hemedinger Depo.,
56:22-25.
78. Plaintiff Depo., Volume II, 342:3-
11.
79. Plaintiff Depo., Volume II,
342:25-343:5.
80. Plaintiff Depo., Volume II, 343:6-
22.

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Although Plaintiff has not pled a cause of action for constructive discharge, such a claim (even if properly pled) would also fail as a matter of law because Plaintiff cannot show the reasons she was reassigned to the Marina Del Rey club were pretextual. (UF Nos. 1-80.)

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
1. Plaintiff was hired as a Membership	1. Plaintiff Depo., Volume I, 36:23-
Advisor ("MA") at Equinox's Santa	38:10, Exh. 5 (Offer Letter).
Monica club on or about October 15,	
2010.	
2. In January 2014, Plaintiff began	2. Plaintiff Depo., Volume I, 189:22-
working at Equinox's West Los Angeles	190:12, Exh. 13 (Memo).
club ("West LA club").	
3. At the West LA club, MAs were	3. Declaration of Brian Hemedinger
referred to as Membership Executives.	("Hemedinger Decl."), ¶ 3.
However, their job duties were the same.	
4. During Plaintiff's employment at	4. Declaration of Jack Gannon
Equinox's Santa Monica and West LA	("Gannon Decl."), ¶¶ 1-2.
clubs, Jack Gannon ("Gannon") was the	
Vice President of the West Coast.	
5. From about October 2011 through	5. Plaintiff Depo., Volume I, 270:8,-
about June 2015, Brian Hemedinger	14, 75:24-76:4; Deposition of Brian
("Hemedinger") was the Regional	Hemedinger ("Hemedinger Depo.")
Director of Operations ("Regional	15:3-10, 41:1-9, 13-16; Hemedinger
Director") of the Santa Monica and West	Decl., ¶ 1.
LA clubs.	

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
6. General Manager Kira Simonson	6. Plaintiff Depo., Volume I, 52:11-
("Simonson) supervised Plaintiff at the	19.
West LA club from about January 2014 to	
about January 2015.	
7. Plaintiff's personnel file includes an	7. Plaintiff Depo., Volume I, 43:18-
Employee Handbook: Receipt	45:15, Exh. 8 (Receipt
Acknowledgment Form with Plaintiff's	Acknowledgement Form); Declaration of
signature dated October 15, 2010.	Emerson Figueroa ("Figueroa Decl."), ¶
	5, Exh. B.)
8. In particular, the Employee	8. Plaintiff Depo., Volume I, 43:18-
Handbook stated:	45:15, Exh. 8 (Receipt
I acknowledge that the receipt of the	Acknowledgement Form); Figueroa
Employee Handbook in no way creates a	Decl., ¶ 5, Exh. B (Receipt
contract between Equinox and me.	Acknowledgement Form).
Moreover, I understand and agree that all	
matters discussed in the Employee	
Handbook are subject to change or	
modification from time to time except the	
At-Will Employment Policy specified	
therein. The At-Will Employment Policy	
represents the final and complete	
agreement concerning the duration of my	
employment. I acknowledge that any	
change in the At-Will Employment Policy	
is effective only if set forth in a written	
document signed by the CEO of Equinox	

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
and myself.	
9. Plaintiff's personnel file also	9. Plaintiff Depo., Volume I, 36:23-
includes an Offer Letter, dated October	38:11, Exh. 5 (Offer Letter); Figueroa
15, 2010, which Plaintiff acknowledged	Decl., ¶ 6, Exh. C (Offer Letter).
receiving.	
10. In particular, the Offer Letter stated:	10. Plaintiff Depo., Volume I, 36:23-
We are excited at the prospect of you	38:11, Exh. 5 (Offer Letter); Figueroa
joining the Company, you should be	Decl., ¶ 6, Exh. C (Offer Letter).
aware that our relationship is	
"employment-at-will." That means you	
are free, at any time, for any reason, to	
end your employment with the Company	
and that the Company may do the same.	
Our agreement regarding the at-will	
nature of your employment may not be	
changed, except in a writing signed by the	
Company's Chief Executive Officer.	
Given the at-will nature, the Company	
may from time to time add to, modify, or	
discontinue its compensation policies,	
employee benefit plans or other aspects of	
your employment.	
11. Plaintiff's personnel file also	11. Figueroa Decl., ¶ 8, Exh. D.
includes an Employee Confidentiality and	
Non-Solicitation Agreement with	
Plaintiff's signature dated October 14,	

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
2010.	
12. This Agreement stated: "You agree	12. Figueroa Decl., ¶ 8, Exh. D.
and understand that nothing in this	
Agreement shall alter or modify the 'at-	
will' nature of your employment with the	
Company or confer on [y]ou any right with	
respect to continuation of your	
employment with the Company."	
13. In her deposition, Plaintiff admitted	13. Plaintiff Depo., Volume I, 36:23-
that she did not have a contract with	38:11, 43:18-45:15, Exh. 5 (Offer
Equinox; no one ever told her that she was	Letter), Exh. 8 (Receipt
guaranteed employment for a certain time	Acknowledgement Form).
period; and no one ever told her that she	
was anything other than an at-will	
employee.	
14. The Employee Handbook Plaintiff	14. Plaintiff Depo., Volume I, 43:18-
acknowledged receiving also included	45:15, Exh. 8 Receipt of Employee
Equinox's non-retaliation policy as well	Handbook; Declaration of Emerson
as complaint procedures for reporting	Figueroa ("Figueroa Decl."), Exh. A.
retaliation.	
15. In particular, Equinox's policy	15. Plaintiff Depo., Volume I, 43:18-
strictly prohibits retaliation against any	45:15, Exh. 8 Receipt of Employee
employee for "filing a complaint and	Handbook; Figueroa Decl., Exh. A,
[Equinox] will not knowingly permit	Employee Handbook.
retaliation by management, employees, or	
co-workers." Equinox's policy also	

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
prohibits retaliation against any employee	
for "using this complaint procedure or for	
filing, testifying, assisting, or participating	
in any manner in any investigation,	
proceeding, or hearing conducted by a	
governmental enforcement agency.	
Additionally, Equinox will not knowingly	
permit any retaliation against any	
employee who complains of prohibited	
harassment or who participates in an	
investigation."	
16. The complaint procedure as	16. Plaintiff Depo., Volume I, 43:18-
outlined in the Employee Handbook	45:15, Exh. 8 Receipt of Employee
permits an employee to report retaliation	Handbook; Figueroa Decl. ¶ 4.
to his or her manager, Human Resources,	
or through Equinox's Ethics Hotline.	
17. In or about June 2014, Hemedinger	17. Plaintiff Depo., Volume I, 190:16-
informed Plaintiff and other MAs that the	194:3, 219:7-10; Plaintiff Depo., Volume
compensation plan for all West LA MAs	II, 347:22-348:1; Deposition of Barry
was being clarified, so that the market	Holmes ("Holmes Depo.") 69:4-71:12,
bonuses would be paid out individually	73:23-75:10, Exhs. 201-202;
and not cumulatively for reaching a	Hemedinger Depo., 60:11-61:3, 68:12-
certain sales goal.	14, 70:19-72:3.; Rosen Depo., 33:5-15.
18. For example, the plan provided for a	18. Plaintiff Depo., Volume I, 190:16-
particular market bonus upon reaching a	194:3; Hemedinger Depo., 64:18-65:11
certain goal of sales:	

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
• 100% of goal – MA would	
receive an extra \$20 per sale	
• 115% of goal – MA would	
receive an extra \$40 per sale	
• 125% of goal – MA would	
receive an extra \$55 per sale	
• 150% of goal – MA would receive	
an extra \$70 per sale	
19. For the West LA club, Equinox's	19. Plaintiff Depo., Volume I, 190:16-
Payroll Department was adding the	194:3; Holmes Depo., 82:11-83:14;
bonuses together as opposed to giving one	Hemedinger Depo., 59:22-60:6, 62:3-
of the bonuses above depending on the	63:8; 66:6-11., 68:15-69:8.
overall percentage.	
20. Plaintiff testified that she	20. Plaintiff Depo., Volume I, 199:7-
complained about what she viewed as a	22; Hemedinger Depo., 59:14-60:10;
"change" in the compensation plan to the	Deposition of Scott Rosen ("Rosen
following managerial employees:	Depo.") 29:18-30:4, 30:22-31:12, 31:20-
Hemedinger, Gannon, Simonson, Veronica	33:4, 61:12-64:17, 65:8-69:12, Exhs.
Santarelli ("Santarelli") (Regional Sales	206-207; Holmes Depo., 71:23-73:22,
Manager), Matt Gonzalez ("Gonzalez")	77:18-82:10, 84:19-86:8, Ex. 203.
(Director of Sales), Barry Holmes	
("Holmes") (Senior Vice President of	
Sales), and Scott Rosen ("Rosen") (Chief	
Operating Officer) ("COO").	
21. Despite Plaintiff's complaints about	21. Plaintiff Depo., Volume I, 196:8-
the compensation plan, Plaintiff continued	14, 207:15-22, 220:5-20; Plaintiff Depo.,

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
to work at Equinox for seven months after	Volume II, 349:5-12.
the "changed" compensation plan was	
instituted in July/August 2014 and	
continued to work for Equinox until she	
quit in February 2015.	
22. Plaintiff testified that she	22. Plaintiff Depo., Volume I, 81:6-21,
complained to Hemedinger, Simonson, and	82:5-83:23, 94:14-97:9.
possibly to Gannon in February or March	
2014 that she believed that a MA at West	
LA was using one-month guest passes	
and/or gift cards to sign up members for	
what they believed was a month-long	
membership, but in actuality, was signing	
them up for a year-long membership by	
using their credit cards without	
authorization.	
23. According to Plaintiff, "charging	23. Plaintiff Depo., Volume II,
credit cards without people's approval and	334:16-336:23.
telling people they were signing up for a	
month-long contract, but then signing	
them up for a year-long contract" were the	
only "illegal activities" about which she	
complained to Equinox.	
24. According to Plaintiff, her other	24. Plaintiff Depo., Volume II,
complaints involved "things against	334:16-336:23.
Equinox policies that were happening as	

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
well."	
25. Plaintiff admitted that she could not	25. Plaintiff Depo., Volume II, 335:4-
identify any statute, ordinance, regulation,	336:23.
local law, state law, or federal law that	
was violated as a result of this alleged	
activity.	
26. Plaintiff also testified that she	26. Plaintiff Depo., Volume I, 76:17-
complained to Hemedinger and Simonson	79:19; 93:10-94:10, 102:10-107:24;
about the sales activities of another MA.	108:1-113:5; Hemedinger Depo., 45:8-
	47:19.
27. Specifically, Plaintiff complained	27. Plaintiff Depo., Volume I, 76:17-
that this MA was giving away "free	79:19; 93:10-94:10, 102:10-107:24;
months" to potential members, allowing	108:1-113:5; Hemedinger Depo., 45:8-
"freezes" for members, and offering "three	47:19.
month" deals.	
28. In or around December 2014, COO	28. Rosen Depo., 37:20-38:18;
Rosen was touring the West LA club	Declaration of Tracy Cuva ("Cuva
when he was told by a member that a MA	Decl."), ¶ 2.
had charged a membership to another	
member's credit card without that	
member's authorization.	
29. Member Services is Equinox's	29. Cuva Decl., ¶ 1.
billing department (centrally based in	
New York) which handles membership	
contracts and membership sales, including	

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
auditing of membership sales.	
30. Rosen contacted Tracy Cuva,	30. Rosen Depo., 37:20-38:21; Cuva
Senior Director of Equinox's Member	Decl., ¶ 2.
Services Department, gave her the	
information received from the member,	
and asked Member Services to investigate	
this sale.	
31. Member Services' investigation,	31. Cuva Decl., ¶ 2.
which was conducted by Cuva, confirmed	
that this was an unauthorized sale	
processed by a MA at the West LA Club	
(Plaintiff was not implicated in this	
transaction).	
32. This MA was relocating to New	32. Rosen Depo., 39:8-13.
York but, based on the investigation	
results, she was not hired to work for	
Equinox in New York.	
33. As a result of this member	33. Rosen Depo., 47:25-6; Cuva Decl.,
complaint, Rosen also asked Cuva to have	¶ 3.
Member Services conduct an investigation	
of sales transactions at the West LA club.	
34. Apart from requesting that the	34. Rosen Depo., 47:25-48:21.
investigation be conducted and asking Jim	
Burger (Senior Director of Loss	
Prevention) to travel to the West LA club	
and continue the investigation after	

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UNCONTROVERTED FACTS	EVIDENCE
Member Services finished their portion of	
the investigation, Rosen did not	
participate in that investigation.	
35. Cuva instructed Kevin Stanfa	35. Cuva Decl., ¶ 3; Stanfa Decl. ¶ **.
("Stanfa") (Manager of Compliance and	
Special Projects), to review sales	
transactions at the West LA club.	
36. After Stanfa reported finding	36. Cuva Decl., ¶ 3; Stanfa Decl. ¶ 4.
various anomalies associated with sales	
transactions at the West LA club, Cuva	
instructed Stanfa to prepare a summary	
detailing his findings.	
37. Stanfa then prepared a workbook	37. Stanfa Decl., ¶ 4.
with three spreadsheets regarding the	
following sales activities: (1) 2014	
Freezes; (2) Modification to Direct Bill;	
and (3) West LA Sales Breakdown.	
38. Once these were prepared, Cuva	38. Rosen Depo., 47:25-48:21;
emailed the spreadsheets to Rosen,	Holmes Depo., 86:10-88:10, 95:9-96:10;
Holmes and Gannon and summarized the	Cuva Decl., ¶ 6, Exh. N; Stanfa Decl., ¶¶
results of the Member Services	4-5.
investigation.	
39. In her email, Cuva indicated that	39. Cuva Decl., ¶ 7, Exh. N.
these spreadsheets "all reflect patterns	
unhealthy for the business."	
40. Cuva noted as follows:	40. Cuva Decl., ¶ 7, Exh. N.

1	DEFENDANT'S	DEFENDANT'S SUPPORTING
2	UNCONTROVERTED FACTS	EVIDENCE
3	i The 2014 Freezes spreadsheet	
4	shows that West LA is an outlier	
5	in members who request a freeze	
6	in the first 60 days of	
7	membership who also go on to	
8	cancel in the same year.	
9	i The Modification to Direct Bill	
10	spreadsheet reflects members in	
11	the last quarter of 2014 whose	
12	billing was modified from the	
13	credit card payment type to direct	
14	bill the day before billing ran.	
15	The Company average is four per	
16	club. West LA had 28	
17	modifications to direct bill.	
18	i The West LA Breakdown	
19	spreadsheet shows questionable	
20	sales from two MAs (Plaintiff	
21	and the MA moving to New	
22	York). The other three MAs	
23	were reviewed and did not reflect	
24	the same anomalies seen with	
25	Plaintiff and the MA moving to	
26	New York. The questionable	
27	sales included selling	
28	memberships to members with	

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
the credit card of another	
member (almost universally	
without requesting a referral	
credit) or re-contracting over a	
previously 3-day'd membership	
and either using the credit from	
the previous sale or recharging	
the same credit card, credit card	
not present for numerous sales	
transactions, 3-day cancellations	
with no or just one member visit,	
new memberships which were	
previously finance cancelled and	
had balances on account that	
were waived.	
41. Neither Cuva nor Stanfa were aware	41. Cuva Decl., ¶ 8; Stanfa Decl., ¶ 11.
Plaintiff had made any complaints about	
changes to her compensation plan or about	
the alleged activities of other MAs.	
42. In addition, Burger was asked to	42. Deposition of Jim Burger ("Burger
interview the sales team at the West LA	Depo."), 72:4-73:3, 73:13:75:22, 76:6-
club.	12.
43. When Burger came to Los Angeles	43. Hemedinger Decl., ¶ 4.
to conduct his interviews in late January	
2015, the West LA club's sales team	
consisted of three MAs, Plaintiff and two	
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DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
other MAs who were supervised by the	
Simonson and an Assistant General	
Manager.	
44. A MA was fired on or about January	44. Figueroa Decl. ¶ 9; Hemedinger
20, 2015 for improper sales activities.	Decl., ¶ 4.
45. At Burger's request, Member	45. Burger Depo., 72:13-73:3; Cuva
Services provided him with the	Decl. ¶ 8.
spreadsheets summarizing their findings of	
questionable sales transactions at the West	
LA club.	
46. Burger then met with Cuva and	46. Burger Depo., 73:13-74:15; Cuva
Stanfa and they discussed their findings	Decl. ¶ 8; Stanfa Decl., ¶ 9.
regarding the questionable sales at the	
West LA club.	
47. Burger had a subsequent meeting	47. Burger Depo., 74:16-75:3, 8-22;
with Stanfa to review the spreadsheets	Stanfa Decl., ¶ 9.
Member Services had prepared.	
48. These spreadsheets showed	48. Burger Depo., 39:3-40:22; Cuva
anomalies in various sales transactions,	Decl., ¶ 8; Stanfa Decl., ¶¶ 4-5.
including whether or not a contract was	
signed, whether or not a credit card was	
present for the sales transaction, whose	
credit card was used for the sales	
transactions, if another individual's credit	
card number was used for the sales	
transaction instead of the member's credit	

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
card number, whether or not a member had	
any visits to a club, etc.	
49. Burger also had a couple of	49. Burger Depo., 76:19-77:1; Stanfa
telephone conversations with Stanfa	Decl., ¶ 9.
regarding the anomalies in various sales	
activities at the West LA Club.	
50. In late January 2015, Burger came to	50. Burger Depo., 76:6-12; Gannon
Los Angeles to interview various	Decl., ¶ 3; Hemedinger Decl., ¶ 5.
employees regarding sales activities of the	
West LA MAs.	
51. Prior to the interviews, Burger and	51. Burger Depo., 116:12-117:12.
Gannon discussed suspending all of the	
individuals interviewed as part of the	
investigation pending the results of the	
investigation.	
52. Burger then interviewed the	52. Hemedinger Decl., ¶ 5.
following individuals: (1) the Assistant	
General Manager; (2) Plaintiff; (3) another	
MA; (4) a relatively newly hired MA; and	
(5) Simonson.	
53. Burger had never heard of or spoken	53. Burger Depo., 35:22-24.
to Plaintiff prior to this investigation	
meeting.	
54. On January 30, 2015, Plaintiff met	54. Plaintiff Depo., Volume I, 161:11-
with Burger and Leah Ball of Human	22, 164:10-22; Plaintiff Depo., Volume
Resources regarding West LA's sales	II, 305:21-24; , Burger Depo., 96:18-25.

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DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
practices.	
55. Plaintiff answered questions about	55. Plaintiff Depo., Volume I, 161:11-
her sales activities, as well as the activities	22, 164:10-22; Burger Depo., 53:13-
of other MAs.	54:9.
56. While Burger did not find Plaintiff	56. Burger Depo., 122:14-17.
credible, he felt, at that time, that there was	
insufficient information to warrant	
Plaintiff's termination.	
57. After Burger completed his	57. Burger Depo., 117:16-18, 24-
interviews, Burger, Gannon and	118:6.
Hemedinger met briefly to discuss	
Burger's impressions.	
58. Gannon then advised Plaintiff that	58. Plaintiff Depo., Volume I, 174:24-
she was being suspended.	175:3, 11-12; Plaintiff Depo., Volume II,
	306:3-7; Gannon Decl., ¶ 4.
59. All of the MAs interviewed as part	59. Burger Depo., ¶ 110:17-23;
of the investigation (with the exception of	Gannon Decl., ¶ 6.
the relatively new MA) were suspended	
pending investigation.	
60. Gannon also advised Plaintiff to	60. Plaintiff Depo., Volume I, 180:11-
report back to the West LA club at 2:00	181:4; Gannon Decl., ¶ 5.
p.m. the next day for another meeting.	
61. According to Plaintiff, Equinox told	61. Plaintiff Depo., Volume I, 174:24-
her that she would not have access to her	175:21; Plaintiff Depo., Volume II,
email or payroll account and escorted her	305:21-306:2, 364:17-20; Plaintiff's
out of the building in front of Equinox's	Complaint, 6:5-7.

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
clientele, staff and all of her peers.	
62. It is Equinox's policy to turn off	62. Gannon Decl., ¶ 7.
email access for hourly employees who	
have been suspended pending investigation	
or who are on a leave of absence.	
63. Prior to Burger's interview of	63. Gannon Decl., ¶ 8.
Plaintiff, Gannon had the Payroll	
Department prepare a final paycheck for	
Plaintiff so that she could be paid in	
accordance with California law in the	
event the decision was made to terminate	
her employment.	
64. Plaintiff met with Hemedinger and	64. Plaintiff Depo., Volume I, 182:5-
Gannon at the West LA club on January	183:8; Plaintiff Depo., Volume II,
31, 2015 and was told that the	306:12:16, 382:12-17, 390:4-11, Exh.
investigation was concluded and that she	38; Hemedinger Depo., 54:17-21, 55:1-8;
would be working at the Marina Del Rey	Gannon Decl., ¶ 3; Hemedinger Decl., ¶
club.	6.
65. The decision was made to reassign	65. Rosen Depo., 71:7-20, 73:15-22,
Plaintiff to the Marina Del Rey club	76:5-14; Holmes Depo., 96:12-98:17;
because Equinox wanted to rebuild the	Hemedinger Depo., 51:7-52:23; Gannon
team of MAs in the West LA club and to	Decl., ¶ 10.
create a fresh culture, as a result of the	
investigation findings.	
66. Plaintiff's compensation plan would	66. Rosen Depo., 87:25-88:4; Gannon
change once at Marina Del Rey to align	Decl., ¶ 11.

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
with the compensation plan of Marina Del	
Rey MAs. Equinox considered the	
reassignment a lateral move.	
67. Equinox considered the	67. Rosen Depo., 87:25-88:4; Gannon
reassignment a lateral move.	Decl., ¶ 11.
68. When Plaintiff was asked what her	68. Plaintiff Depo., Volume II, 390:4-
compensation would be at the Marina Del	11, Exh. 38; Gannon Decl., ¶ 12.
Rey club, she was sent the compensation	
plan of a Marina Del Rey MA.	
69. Equinox's expectation was she	69. Hemedinger Depo., 52:18-23;
would earn at least the same amount of	Rosen Depo., 57:13-19; 58:22-59:14;
money because the Marina Del Rey club	Holmes Depo., 31:13-15.
was a high performing club and the	
memberships for the Marina Del Rey club	
were less expensive than the memberships	
for the West LA club.	
70. It was easier to sell more	70. Hemedinger Depo., 52:18-23;
memberships at the Marina Del Rey club	Rosen Depo., 57:13-19; 58:22-59:14;
than the West LA club because the Marina	Holmes Depo., 50:18-51:5
Del Rey memberships were less expensive.	
71. Gannon emailed Plaintiff the	71. Plaintiff Depo., Volume I, 246:19-
compensation plan for the Marina Del Rey	247:2; Gannon Decl., ¶ 12.
Club on or about January 31, 2015.	
72. Plaintiff testified that no one from	72. Plaintiff Depo., Volume I, 171:10-
Equinox ever told her that she was being	172:7; Plaintiff Depo., Volume II,
"terminated" or "demoted" as part of her	306:17-310:19, 363:24-364:3; Gannon
Case No: 2:16-CV-01795 MWF (JCx) 27	DEFENDANT'S STATEMENT C

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
reassignment to the Marina Del Rey club.	Decl., ¶ 13; Hemedinger Decl., ¶ 7.
73. Gannon made the decision to	73. Rosen Depo., 45:7-25. 57:8-12;
reassign Plaintiff to the Marina Del Rey	Hemedinger Depo., 53:14-18.
club.	
74. Plaintiff was told to report to the	74. Plaintiff Depo., Volume I, 186:5-
Marina Del Rey club on February 2, 2015	14; Plaintiff Depo., Volume II, 311:4-8;
at 9:00 a.m.	Hemedinger Depo., 54:17-55:18, 55:25-
	56:25, 57:6-57:11.
75. Before reporting to the Marina Del	75. Plaintiff Depo., Volume I, 186:5-
Rey club, Plaintiff submitted her	14, Exh. 26; Plaintiff Depo., Volume II
resignation, via email, on the morning of	311:4-8; Hemedinger Depo., 54:17-
February 2, 2015 effective immediately.	55:18, 55:25-
	56:25, 57:6-57:11.
76. Plaintiff's last day of employment	76. Plaintiff Depo., Volume I, 186:11-
was February 2, 2015.	14.
77. Plaintiff never reported to work at	77. Plaintiff Depo., Volume I, 50:13-
the Marina Del Rey club.	15, 186:15-17; Hemedinger Depo.
	56:22-25.
78. As of February 1, 2015, the only	78. Plaintiff Depo., Volume II, 342:3-
remaining MA at the West LA club was	11.
the recently hired MA.	
79. As of April/May 2015, the West LA	79. Plaintiff Depo., Volume II
club had an entirely new sales team and	342:25-343:5.
sales management.	
80. Plaintiff testified that she was	80. Plaintiff Depo., Volume II, 343:6-
unaware of any other MA at the West LA	22.
Case No: 2:16-CV-01795 MWF (JCx) 28	0 DEFENDANT'S STATEMENT

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
club complaining about the unauthorized	
use of credit cards or telling someone that	
they were being signed up for a one-month	
membership but signing them up for a year	
instead.	
ICCLIE NO. 10	

Plaintiff's eighth cause of action for defamation fails as a matter of law because Plaintiff has no evidence of a false statement of fact. (UF Nos. 81-85.)

	011404 (011105.01 00.)
DEFENDANT'S UNCONTROVERTED	DEFENDANT'S SUPPORTING
FACTS	EVIDENCE
81. Plaintiff testified that no one ever	81. Plaintiff Depo., Volume II, 323:6-
asked her if she had been terminated from	328: 9.
Equinox for improper behavior and she	
testified she had no evidence to	
substantiate her claim that Equinox told	
anyone that she had been terminated for	
improper behavior.	
82. Plaintiff testified that she could not	82. Plaintiff Depo., Volume I, 134:9-
identify a single statement attributed to	20.
Hemedinger about Plaintiff that Plaintiff	
believed to be false.	
83. Plaintiff testified that she only heard	83. Plaintiff Depo., Volume I, 134:3-8,
second-hand and third-hand that Gannon	134:21-16:20, 147:15-148:9, 151:9-
had called her "crazy."	156:2.
84. Plaintiff also testified that other	84. Plaintiff Depo., Volume I, 135:14-

managerial employees had told her that she	136:12; Volume II, 319:2-320:3, 7-11,
was acting "crazy."	320:20-321:6
85. Lastly, Plaintiff testified that she	85. Plaintiff Depo., Volume II,
heard Gannon refer to her as "Amy	321:12-322:11, 331:19-334:5.
Winehouse."	

Plaintiff's eighth cause of action for defamation also fails as a matter of law because Plaintiff has no evidence of publication to a third party. (UF Nos. 81-85.)

DEFENDANT'S SUPPORTING
EVIDENCE
81. Plaintiff Depo., Volume II, 323:6-
328: 9.
82. Plaintiff Depo., Volume I, 134:9-
20.
83. Plaintiff Depo., Volume I, 134:3-8,
134:21-16:20, 147:15-148:9, 151:9-
156:2.
84. Plaintiff Depo., Volume I, 135:14-
136:12; Volume II, 319:2-320:3, 7-11,

was acting "crazy."	320:20-321:6
85. Lastly, Plaintiff testified that she	85. Plaintiff Depo., Volume II,
heard Gannon refer to her as "Amy Winehouse."	321:12-322:11, 331:19-334:5.

Plaintiff's eighth cause of action for defamation also fails as a matter of law because the alleged defamatory statements are protected under the common interest privilege. (UF Nos. 81-85.)

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
81. Plaintiff testified that no one ever	81. Plaintiff Depo., Volume II, 323:6-
asked her if she had been terminated from	328: 9.
Equinox for improper behavior and she	
testified she had no evidence to	
substantiate her claim that Equinox told	
anyone that <i>she</i> had been terminated for	
improper behavior.	
82. Plaintiff testified that she could not	82. Plaintiff Depo., Volume I, 134:9-
identify a single statement attributed to	20.
Hemedinger about Plaintiff that Plaintiff	
believed to be false.	
83. Plaintiff testified that she only heard	83. Plaintiff Depo., Volume I, 134:3-8,
second-hand and third-hand that Gannon	134:21-16:20, 147:15-148:9, 151:9-
had called her "crazy."	156:2.
84. Plaintiff also testified that other	84. Plaintiff Depo., Volume I, 135:14-
managerial employees had told her that she	136:12; Volume II, 319:2-320:3, 7-11,

was acting "crazy."	320:20-321:6
85. Lastly, Plaintiff testified that she	85. Plaintiff Depo., Volume II,
heard Gannon refer to her as "Amy	321:12-322:11, 331:19-334:5.
Winehouse."	

Plaintiff's ninth cause of action for intentional infliction of emotional distress fails as a matter of law because it is barred by the exclusive remedy of California's Workers' Compensation Act.

DEFEND A NIESC	DECEMBANGS CURRORSIS
DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
1. Plaintiff was hired as a Membership	1. Plaintiff Depo., Volume I, 36:23-
Advisor ("MA") at Equinox's Santa	38:10, Exh. 5 (Offer Letter).
Monica club on or about October 15,	
2010.	
2. In January 2014, Plaintiff began	2. Plaintiff Depo., Volume I, 189:22-
working at Equinox's West Los Angeles	190:12, Exh. 13 (Memo).
club ("West LA club").	
3. At the West LA club, MAs were	3. Declaration of Brian Hemedinger
referred to as Membership Executives.	("Hemedinger Decl."), ¶ 3.
However, their job duties were the same.	
4. During Plaintiff's employment at	4. Declaration of Jack Gannon
Equinox's Santa Monica and West LA	("Gannon Decl."), ¶¶ 1-2.
clubs, Jack Gannon ("Gannon") was the	
Vice President of the West Coast.	
5. From about October 2011 through	5. Plaintiff Depo., Volume I, 270:8,-
about June 2015, Brian Hemedinger	14, 75:24-76:4; Deposition of Brian

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
("Hemedinger") was the Regional	Hemedinger ("Hemedinger Depo.")
Director of Operations ("Regional	15:3-10, 41:1-9, 13-16; Hemedinger
Director") of the Santa Monica and West	Decl., ¶ 1.
LA clubs.	
6. General Manager Kira Simonson	6. Plaintiff Depo., Volume I, 52:11-
("Simonson) supervised Plaintiff at the	19.
West LA club from about January 2014 to	
about January 2015.	
7. Plaintiff's personnel file includes an	7. Plaintiff Depo., Volume I, 43:18-
Employee Handbook: Receipt	45:15, Exh. 8 (Receipt
Acknowledgment Form with Plaintiff's	Acknowledgement Form); Declaration of
signature dated October 15, 2010.	Emerson Figueroa ("Figueroa Decl."), ¶
	5, Exh. B.)
8. In particular, the Employee	8. Plaintiff Depo., Volume I, 43:18-
Handbook stated:	45:15, Exh. 8 (Receipt
I acknowledge that the receipt of the	Acknowledgement Form); Figueroa
Employee Handbook in no way creates a	Decl., ¶ 5, Exh. B (Receipt
contract between Equinox and me.	Acknowledgement Form).
Moreover, I understand and agree that all	
matters discussed in the Employee	
Handbook are subject to change or	
modification from time to time except the	
At-Will Employment Policy specified	
therein. The At-Will Employment Policy	
represents the final and complete	
agreement concerning the duration of my	

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
employment. I acknowledge that any	
change in the At-Will Employment Policy	
is effective only if set forth in a written	
document signed by the CEO of Equinox	
and myself.	
9. Plaintiff's personnel file also	9. Plaintiff Depo., Volume I, 36:23-
includes an Offer Letter, dated October	38:11, Exh. 5 (Offer Letter); Figueroa
15, 2010, which Plaintiff acknowledged	Decl., ¶ 6, Exh. C (Offer Letter).
receiving.	
10. In particular, the Offer Letter stated:	10. Plaintiff Depo., Volume I, 36:23-
We are excited at the prospect of you	38:11, Exh. 5 (Offer Letter); Figueroa
joining the Company, you should be	Decl., ¶ 6, Exh. C (Offer Letter).
aware that our relationship is	
"employment-at-will." That means you	
are free, at any time, for any reason, to	
end your employment with the Company	
and that the Company may do the same.	
Our agreement regarding the at-will	
nature of your employment may not be	
changed, except in a writing signed by the	
Company's Chief Executive Officer.	
Given the at-will nature, the Company	
may from time to time add to, modify, or	
discontinue its compensation policies,	
employee benefit plans or other aspects of	
your employment.	

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
11. Plaintiff's personnel file also	11. Figueroa Decl., ¶ 8, Exh. D.
includes an Employee Confidentiality and	
Non-Solicitation Agreement with	
Plaintiff's signature dated October 14,	
2010.	
12. This Agreement stated: "You agree	12. Figueroa Decl., ¶ 8, Exh. D.
and understand that nothing in this	
Agreement shall alter or modify the 'at-	
will' nature of your employment with the	
Company or confer on [y]ou any right with	
respect to continuation of your	
employment with the Company."	
13. In her deposition, Plaintiff admitted	13. Plaintiff Depo., Volume I, 36:23-
that she did not have a contract with	38:11, 43:18-45:15, Exh. 5 (Offer
Equinox; no one ever told her that she was	Letter), Exh. 8 (Receipt
guaranteed employment for a certain time	Acknowledgement Form).
period; and no one ever told her that she	
was anything other than an at-will	
employee.	
14. The Employee Handbook Plaintiff	14. Plaintiff Depo., Volume I, 43:18-
acknowledged receiving also included	45:15, Exh. 8 Receipt of Employee
Equinox's non-retaliation policy as well	Handbook; Declaration of Emerson
as complaint procedures for reporting	Figueroa ("Figueroa Decl."), Exh. A.
retaliation.	
15. In particular, Equinox's policy	15. Plaintiff Depo., Volume I, 43:18-
strictly prohibits retaliation against any	45:15, Exh. 8 Receipt of Employee

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
employee for "filing a complaint and	Handbook; Figueroa Decl., Exh. A,
[Equinox] will not knowingly permit	Employee Handbook.
retaliation by management, employees, or	
co-workers." Equinox's policy also	
prohibits retaliation against any employee	
for "using this complaint procedure or for	
filing, testifying, assisting, or participating	
in any manner in any investigation,	
proceeding, or hearing conducted by a	
governmental enforcement agency.	
Additionally, Equinox will not knowingly	
permit any retaliation against any	
employee who complains of prohibited	
harassment or who participates in an	
investigation."	
16. The complaint procedure as	16. Plaintiff Depo., Volume I, 43:18-
outlined in the Employee Handbook	45:15, Exh. 8 Receipt of Employee
permits an employee to report retaliation	Handbook; Figueroa Decl. ¶ 4.
to his or her manager, Human Resources,	
or through Equinox's Ethics Hotline.	
17. In or about June 2014, Hemedinger	17. Plaintiff Depo., Volume I, 190:16-
informed Plaintiff and other MAs that the	194:3, 219:7-10; Plaintiff Depo., Volume
compensation plan for all West LA MAs	II, 347:22-348:1; Deposition of Barry
was being clarified, so that the market	Holmes ("Holmes Depo.") 69:4-71:12,
bonuses would be paid out individually	73:23-75:10, Exhs. 201-202;
and not cumulatively for reaching a	Hemedinger Depo., 60:11-61:3, 68:12-

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
certain sales goal.	14, 70:19-72:3.; Rosen Depo., 33:5-15.
18. For example, the plan provided for a	18. Plaintiff Depo., Volume I, 190:16-
particular market bonus upon reaching a	194:3; Hemedinger Depo., 64:18-65:11
certain goal of sales:	
• 100% of goal – MA would	
receive an extra \$20 per sale	
• 115% of goal – MA would	
receive an extra \$40 per sale	
• 125% of goal – MA would	
receive an extra \$55 per sale	
• 150% of goal – MA would receive	
an extra \$70 per sale	
19. For the West LA club, Equinox's	19. Plaintiff Depo., Volume I, 190:16-
Payroll Department was adding the	194:3; Holmes Depo., 82:11-83:14;
bonuses together as opposed to giving one	Hemedinger Depo., 59:22-60:6, 62:3-
of the bonuses above depending on the	63:8; 66:6-11., 68:15-69:8.
overall percentage.	
20. Plaintiff testified that she	20. Plaintiff Depo., Volume I, 199:7-
complained about what she viewed as a	22; Hemedinger Depo., 59:14-60:10;
"change" in the compensation plan to the	Deposition of Scott Rosen ("Rosen
following managerial employees:	Depo.") 29:18-30:4, 30:22-31:12, 31:20-
Hemedinger, Gannon, Simonson, Veronica	33:4, 61:12-64:17, 65:8-69:12, Exhs.
Santarelli ("Santarelli") (Regional Sales	206-207; Holmes Depo., 71:23-73:22,
Manager), Matt Gonzalez ("Gonzalez")	77:18-82:10, 84:19-86:8, Ex. 203.
(Director of Sales), Barry Holmes	
("Holmes") (Senior Vice President of	

DEFENDANT'S	DEFENDANT'S SUPPORTING		
UNCONTROVERTED FACTS	EVIDENCE		
Sales), and Scott Rosen ("Rosen") (Chief			
Operating Officer) ("COO").			
21. Despite Plaintiff's complaints about	21. Plaintiff Depo., Volume I, 196:8-		
the compensation plan, Plaintiff continued	14, 207:15-22, 220:5-20; Plaintiff Depo.,		
to work at Equinox for seven months after	Volume II, 349:5-12.		
the "changed" compensation plan was			
instituted in July/August 2014 and			
continued to work for Equinox until she			
quit in February 2015.			
22. Plaintiff testified that she	22. Plaintiff Depo., Volume I, 81:6-21,		
complained to Hemedinger, Simonson, and	82:5-83:23, 94:14-97:9.		
possibly to Gannon in February or March			
2014 that she believed that a MA at West			
LA was using one-month guest passes			
and/or gift cards to sign up members for			
what they believed was a month-long			
membership, but in actuality, was signing			
them up for a year-long membership by			
using their credit cards without			
authorization.			
23. According to Plaintiff, "charging	23. Plaintiff Depo., Volume II,		
credit cards without people's approval and	334:16-336:23.		
telling people they were signing up for a			
month-long contract, but then signing			
them up for a year-long contract" were the			
only "illegal activities" about which she			

DEFENDANT'S DEFENDANT'S SUPPORTINE UNCONTROVERTED FACTS complained to Equinox. 24. According to Plaintiff, her other complaints involved "things against Equinox policies that were happening as Equinox policies that were happening that Equinox policies that the Equ	
complained to Equinox. 24. According to Plaintiff, her other complaints involved "things against 334:16-336:23. Equinox policies that were happening as	II,
24. According to Plaintiff, her other complaints involved "things against 334:16-336:23. Equinox policies that were happening as	II,
complaints involved "things against 334:16-336:23. Equinox policies that were happening as	II,
Equinox policies that were happening as	
,, ,,	
well."	
25. Plaintiff admitted that she could not 25. Plaintiff Depo., Volume II, 3	35:4-
identify any statute, ordinance, regulation, 336:23.	
local law, state law, or federal law that	
was violated as a result of this alleged	
activity.	
26. Plaintiff also testified that she 26. Plaintiff Depo., Volume I, 7	6:17-
complained to Hemedinger and Simonson 79:19; 93:10-94:10, 102:10-10	7:24;
about the sales activities of another MA. 108:1-113:5; Hemedinger Depo.,	45:8-
47:19.	
27. Specifically, Plaintiff complained 27. Plaintiff Depo., Volume I, 7	6:17-
that this MA was giving away "free 79:19; 93:10-94:10, 102:10-10	7:24;
months" to potential members, allowing 108:1-113:5; Hemedinger Depo.,	45:8-
"freezes" for members, and offering "three 47:19.	
month" deals.	
28. In or around December 2014, COO 28. Rosen Depo., 37:20-3	8:18;
Rosen was touring the West LA club Declaration of Tracy Cuva ("	Cuva
when he was told by a member that a MA Decl."), ¶ 2.	
had charged a membership to another	
member's credit card without that	
member's authorization.	

DEFENDANT'S	DEFENDANT'S SUPPORTING		
UNCONTROVERTED FACTS	EVIDENCE		
29. Member Services is Equinox's	29. Cuva Decl., ¶ 1.		
billing department (centrally based in			
New York) which handles membership			
contracts and membership sales, including			
auditing of membership sales.			
30. Rosen contacted Tracy Cuva,	30. Rosen Depo., 37:20-38:21; Cuva		
Senior Director of Equinox's Member	Decl., ¶ 2.		
Services Department, gave her the			
information received from the member,			
and asked Member Services to investigate			
this sale.			
31. Member Services' investigation,	31. Cuva Decl., ¶ 2.		
which was conducted by Cuva, confirmed			
that this was an unauthorized sale			
processed by a MA at the West LA Club			
(Plaintiff was not implicated in this			
transaction).			
32. This MA was relocating to New	32. Rosen Depo., 39:8-13.		
York but, based on the investigation			
results, she was not hired to work for			
Equinox in New York.			
33. As a result of this member	33. Rosen Depo., 47:25-6; Cuva Decl.,		
complaint, Rosen also asked Cuva to have	¶ 3.		
Member Services conduct an investigation			
of sales transactions at the West LA club.			
34. Apart from requesting that the	34. Rosen Depo., 47:25-48:21.		

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DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
investigation be conducted and asking Jim	
Burger (Senior Director of Loss	
Prevention) to travel to the West LA club	
and continue the investigation after	
Member Services finished their portion of	
the investigation, Rosen did not	
participate in that investigation.	
35. Cuva instructed Kevin Stanfa	35. Cuva Decl., ¶ 3; Stanfa Decl. ¶ **.
("Stanfa") (Manager of Compliance and	
Special Projects), to review sales	
transactions at the West LA club.	
36. After Stanfa reported finding	36. Cuva Decl., ¶ 3; Stanfa Decl. ¶ 4.
various anomalies associated with sales	
transactions at the West LA club, Cuva	
instructed Stanfa to prepare a summary	
detailing his findings.	
37. Stanfa then prepared a workbook	37. Stanfa Decl., ¶ 4.
with three spreadsheets regarding the	
following sales activities: (1) 2014	
Freezes; (2) Modification to Direct Bill;	
and (3) West LA Sales Breakdown.	
38. Once these were prepared, Cuva	38. Rosen Depo., 47:25-48:21;
emailed the spreadsheets to Rosen,	Holmes Depo., 86:10-88:10, 95:9-96:10;
Holmes and Gannon and summarized the	Cuva Decl., ¶ 6, Exh. N; Stanfa Decl., ¶¶
results of the Member Services	4-5.
investigation.	

1			DEFENDANT'S	D	DEFENDANT'S SUPPORTING
2	τ	JN	CONTROVERTED FACTS		EVIDENCE
3	39.	In	her email, Cuva indicated that	39.	Cuva Decl., ¶ 7, Exh. N.
4	these	sţ	preadsheets "all reflect patterns		
5	unhea	lth	y for the business."		
6	40.	Cı	uva noted as follows:	40.	Cuva Decl., ¶ 7, Exh. N.
7		i	The 2014 Freezes spreadsheet		
8			shows that West LA is an outlier		
9			in members who request a freeze		
0			in the first 60 days of		
1			membership who also go on to		
2			cancel in the same year.		
3		i	The Modification to Direct Bill		
4			spreadsheet reflects members in		
5			the last quarter of 2014 whose		
6			billing was modified from the		
7			credit card payment type to direct		
8			bill the day before billing ran.		
9			The Company average is four per		
0			club. West LA had 28		
1			modifications to direct bill.		
2		i	The West LA Breakdown		
3			spreadsheet shows questionable		
4			sales from two MAs (Plaintiff		
5			and the MA moving to New		
6			York). The other three MAs		
7			were reviewed and did not reflect		
8			the same anomalies seen with		

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
Plaintiff and the MA moving to	
New York. The questionable	
sales included selling	
memberships to members with	
the credit card of another	
member (almost universally	
without requesting a referral	
credit) or re-contracting over a	
previously 3-day'd membership	
and either using the credit from	
the previous sale or recharging	
the same credit card, credit card	
not present for numerous sales	
transactions, 3-day cancellations	
with no or just one member visit,	
new memberships which were	
previously finance cancelled and	
had balances on account that	
were waived.	
41. Neither Cuva nor Stanfa were aware	41. Cuva Decl., ¶ 8; Stanfa Decl., ¶ 11.
Plaintiff had made any complaints about	
changes to her compensation plan or about	
the alleged activities of other MAs.	
42. In addition, Burger was asked to	42. Deposition of Jim Burger ("Burger
interview the sales team at the West LA	Depo."), 72:4-73:3, 73:13:75:22, 76:6-
club.	12.
Case No: 2:16-CV-01795 MWF (JCx) 29	DEFENDANT'S STATEMENT OF

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
43. When Burger came to Los Angeles	43. Hemedinger Decl., ¶ 4.
to conduct his interviews in late January	
2015, the West LA club's sales team	
consisted of three MAs, Plaintiff and two	
other MAs who were supervised by the	
Simonson and an Assistant General	
Manager.	
44. A MA was fired on or about January	44. Figueroa Decl. ¶ 9; Hemedinger
20, 2015 for improper sales activities.	Decl., ¶ 4.
45. At Burger's request, Member	45. Burger Depo., 72:13-73:3; Cuva
Services provided him with the	Decl. ¶ 8.
spreadsheets summarizing their findings of	
questionable sales transactions at the West	
LA club.	
46. Burger then met with Cuva and	46. Burger Depo., 73:13-74:15; Cuva
Stanfa and they discussed their findings	Decl. ¶ 8; Stanfa Decl., ¶ 9.
regarding the questionable sales at the	
West LA club.	
47. Burger had a subsequent meeting	47. Burger Depo., 74:16-75:3, 8-22;
with Stanfa to review the spreadsheets	Stanfa Decl., ¶ 9.
Member Services had prepared.	
48. These spreadsheets showed	48. Burger Depo., 39:3-40:22; Cuva
anomalies in various sales transactions,	Decl., \P 8; Stanfa Decl., $\P\P$ 4-5.
including whether or not a contract was	
signed, whether or not a credit card was	
present for the sales transaction, whose	

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
credit card was used for the sales	
transactions, if another individual's credit	
card number was used for the sales	
transaction instead of the member's credit	
card number, whether or not a member had	
any visits to a club, etc.	
49. Burger also had a couple of	49. Burger Depo., 76:19-77:1; Stanfa
telephone conversations with Stanfa	Decl., ¶ 9.
regarding the anomalies in various sales	
activities at the West LA Club.	
50. In late January 2015, Burger came to	50. Burger Depo., 76:6-12; Gannon
Los Angeles to interview various	Decl., ¶ 3; Hemedinger Decl., ¶ 5.
employees regarding sales activities of the	
West LA MAs.	
51. Prior to the interviews, Burger and	51. Burger Depo., 116:12-117:12.
Gannon discussed suspending all of the	
individuals interviewed as part of the	
investigation pending the results of the	
investigation.	
52. Burger then interviewed the	52. Hemedinger Decl., ¶ 5.
following individuals: (1) the Assistant	
General Manager; (2) Plaintiff; (3) another	
MA; (4) a relatively newly hired MA; and	
(5) Simonson.	
53. Burger had never heard of or spoken	53. Burger Depo., 35:22-24.
to Plaintiff prior to this investigation	

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DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
meeting.	
54. On January 30, 2015, Plaintiff met	54. Plaintiff Depo., Volume I, 161:11-
with Burger and Leah Ball of Human	22, 164:10-22; Plaintiff Depo., Volume
Resources regarding West LA's sales	II, 305:21-24; , Burger Depo., 96:18-25.
practices.	
55. Plaintiff answered questions about	55. Plaintiff Depo., Volume I, 161:11-
her sales activities, as well as the activities	22, 164:10-22; Burger Depo., 53:13-
of other MAs.	54:9.
56. While Burger did not find Plaintiff	56. Burger Depo., 122:14-17.
credible, he felt, at that time, that there was	
insufficient information to warrant	
Plaintiff's termination.	
57. After Burger completed his	57. Burger Depo., 117:16-18, 24-
interviews, Burger, Gannon and	118:6.
Hemedinger met briefly to discuss	
Burger's impressions.	
58. Gannon then advised Plaintiff that	58. Plaintiff Depo., Volume I, 174:24-
she was being suspended.	175:3, 11-12; Plaintiff Depo., Volume II,
	306:3-7; Gannon Decl., ¶ 4.
59. All of the MAs interviewed as part	59. Burger Depo., ¶ 110:17-23;
of the investigation (with the exception of	Gannon Decl., ¶ 6.
the relatively new MA) were suspended	
pending investigation.	
60. Gannon also advised Plaintiff to	60. Plaintiff Depo., Volume I, 180:11-
report back to the West LA club at 2:00	181:4; Gannon Decl., ¶ 5.
p.m. the next day for another meeting.	
Case No: 2:16-CV-01795 MWF (JCx) 29	8 DEFENDANT'S STATEMENT OF

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
61. According to Plaintiff, Equinox told	61. Plaintiff Depo., Volume I, 174:24-
her that she would not have access to her	175:21; Plaintiff Depo., Volume II,
email or payroll account and escorted her	305:21-306:2, 364:17-20; Plaintiff's
out of the building in front of Equinox's	Complaint, 6:5-7.
clientele, staff and all of her peers.	
62. It is Equinox's policy to turn off	62. Gannon Decl., ¶ 7.
email access for hourly employees who	
have been suspended pending investigation	
or who are on a leave of absence.	
63. Prior to Burger's interview of	63. Gannon Decl., ¶ 8.
Plaintiff, Gannon had the Payroll	
Department prepare a final paycheck for	
Plaintiff so that she could be paid in	
accordance with California law in the	
event the decision was made to terminate	
her employment.	
64. Plaintiff met with Hemedinger and	64. Plaintiff Depo., Volume I, 182:5-
Gannon at the West LA club on January	183:8; Plaintiff Depo., Volume II,
31, 2015 and was told that the	306:12:16, 382:12-17, 390:4-11, Exh.
investigation was concluded and that she	38; Hemedinger Depo., 54:17-21, 55:1-8;
would be working at the Marina Del Rey	Gannon Decl., ¶ 3; Hemedinger Decl., ¶
club.	6.
65. The decision was made to reassign	65. Rosen Depo., 71:7-20, 73:15-22,
Plaintiff to the Marina Del Rey club	76:5-14; Holmes Depo., 96:12-98:17;
because Equinox wanted to rebuild the	Hemedinger Depo., 51:7-52:23; Gannon
team of MAs in the West LA club and to	Decl., ¶ 10.
Case No: 2:16-CV-01795 MWF (JCx) 29	9 DEFENDANT'S STATEMENT O

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
create a fresh culture, as a result of the	
investigation findings.	
66. Plaintiff's compensation plan would	66. Rosen Depo., 87:25-88:4; Gannon
change once at Marina Del Rey to align	Decl., ¶ 11.
with the compensation plan of Marina Del	
Rey MAs. Equinox considered the	
reassignment a lateral move.	
67. Equinox considered the	67. Rosen Depo., 87:25-88:4; Gannon
reassignment a lateral move.	Decl., ¶ 11.
68. When Plaintiff was asked what her	68. Plaintiff Depo., Volume II, 390:4-
compensation would be at the Marina Del	11, Exh. 38; Gannon Decl., ¶ 12.
Rey club, she was sent the compensation	
plan of a Marina Del Rey MA.	
69. Equinox's expectation was she	69. Hemedinger Depo., 52:18-23;
would earn at least the same amount of	Rosen Depo., 57:13-19; 58:22-59:14;
money because the Marina Del Rey club	Holmes Depo., 31:13-15.
was a high performing club and the	
memberships for the Marina Del Rey club	
were less expensive than the memberships	
for the West LA club.	
70. It was easier to sell more	70. Hemedinger Depo., 52:18-23;
memberships at the Marina Del Rey club	Rosen Depo., 57:13-19; 58:22-59:14;
than the West LA club because the Marina	Holmes Depo., 50:18-51:5
Del Rey memberships were less expensive.	
71. Gannon emailed Plaintiff the	71. Plaintiff Depo., Volume I, 246:19-
compensation plan for the Marina Del Rey	247:2; Gannon Decl., ¶ 12.
Case No: 2:16-CV-01795 MWF (JCx) 30	0 DEFENDANT'S STATEMENT (

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
Club on or about January 31, 2015.	
72. Plaintiff testified that no one from	72. Plaintiff Depo., Volume I, 171:10-
Equinox ever told her that she was being	172:7; Plaintiff Depo., Volume II,
"terminated" or "demoted" as part of her	306:17-310:19, 363:24-364:3; Gannon
reassignment to the Marina Del Rey club.	Decl., ¶ 13; Hemedinger Decl., ¶ 7.
73. Gannon made the decision to	73. Rosen Depo., 45:7-25. 57:8-12;
reassign Plaintiff to the Marina Del Rey	Hemedinger Depo., 53:14-18.
club.	
74. Plaintiff was told to report to the	74. Plaintiff Depo., Volume I, 186:5-
Marina Del Rey club on February 2, 2015	14; Plaintiff Depo., Volume II, 311:4-8;
at 9:00 a.m.	Hemedinger Depo., 54:17-55:18, 55:25-
	56:25, 57:6-57:11.
75. Before reporting to the Marina Del	75. Plaintiff Depo., Volume I, 186:5-
Rey club, Plaintiff submitted her	14, Exh. 26; Plaintiff Depo., Volume II,
resignation, via email, on the morning of	311:4-8; Hemedinger Depo., 54:17-
February 2, 2015 effective immediately.	55:18, 55:25-
	56:25, 57:6-57:11.
76. Plaintiff's last day of employment	76. Plaintiff Depo., Volume I, 186:11-
was February 2, 2015.	14.
77. Plaintiff never reported to work at	77. Plaintiff Depo., Volume I, 50:13-
the Marina Del Rey club.	15, 186:15-17; Hemedinger Depo.,
	56:22-25.
78. As of February 1, 2015, the only	78. Plaintiff Depo., Volume II, 342:3-
remaining MA at the West LA club was	11.
the recently hired MA.	
79. As of April/May 2015, the West LA	79. Plaintiff Depo., Volume II,
Case No: 2:16-CV-01795 MWF (JCx) 30	DEFENDANT'S STATEMENT OF

DEFENDANT'S SUPPORTING
EVIDENCE
342:25-343:5.
80. Plaintiff Depo., Volume II, 343:6-
22.

ISSUE NO. 22

Plaintiff's ninth cause of action for intentional infliction of emotional distress also fails ("IIED") as a matter of law because Plaintiff cannot establish a *prima facie* case of IIED because Plaintiff cannot establish extreme and outrageous conduct. (UF Nos. 1-80.)

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
1. Plaintiff was hired as a Membership	1. Plaintiff Depo., Volume I, 36:23-
Advisor ("MA") at Equinox's Santa	38:10, Exh. 5 (Offer Letter).
Monica club on or about October 15,	
2010.	
2. In January 2014, Plaintiff began	2. Plaintiff Depo., Volume I, 189:22-
working at Equinox's West Los Angeles	190:12, Exh. 13 (Memo).
club ("West LA club").	
3. At the West LA club, MAs were	3. Declaration of Brian Hemedinger
referred to as Membership Executives.	("Hemedinger Decl."), ¶ 3.
However, their job duties were the same.	

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
4. During Plaintiff's employment at	4. Declaration of Jack Gannon
Equinox's Santa Monica and West LA	("Gannon Decl."), ¶¶ 1-2.
clubs, Jack Gannon ("Gannon") was the	
Vice President of the West Coast.	
5. From about October 2011 through	5. Plaintiff Depo., Volume I, 270:8,-
about June 2015, Brian Hemedinger	14, 75:24-76:4; Deposition of Brian
("Hemedinger") was the Regional	Hemedinger ("Hemedinger Depo.")
Director of Operations ("Regional	15:3-10, 41:1-9, 13-16; Hemedinger
Director") of the Santa Monica and West	Decl., ¶ 1.
LA clubs.	
6. General Manager Kira Simonson	6. Plaintiff Depo., Volume I, 52:11-
("Simonson) supervised Plaintiff at the	19.
West LA club from about January 2014 to	
about January 2015.	
7. Plaintiff's personnel file includes an	7. Plaintiff Depo., Volume I, 43:18-
Employee Handbook: Receipt	45:15, Exh. 8 (Receipt
Acknowledgment Form with Plaintiff's	Acknowledgement Form); Declaration of
signature dated October 15, 2010.	Emerson Figueroa ("Figueroa Decl."), ¶
	5, Exh. B.)
8. In particular, the Employee	8. Plaintiff Depo., Volume I, 43:18-
Handbook stated:	45:15, Exh. 8 (Receipt
I acknowledge that the receipt of the	Acknowledgement Form); Figueroa
Employee Handbook in no way creates a	Decl., ¶ 5, Exh. B (Receipt
contract between Equinox and me.	Acknowledgement Form).
Moreover, I understand and agree that all	
matters discussed in the Employee	

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
Handbook are subject to change or	
modification from time to time except the	
At-Will Employment Policy specified	
therein. The At-Will Employment Policy	
represents the final and complete	
agreement concerning the duration of my	
employment. I acknowledge that any	
change in the At-Will Employment Policy	
is effective only if set forth in a written	
document signed by the CEO of Equinox	
and myself.	
9. Plaintiff's personnel file also	9. Plaintiff Depo., Volume I, 36:23-
includes an Offer Letter, dated October	38:11, Exh. 5 (Offer Letter); Figueroa
15, 2010, which Plaintiff acknowledged	Decl., ¶ 6, Exh. C (Offer Letter).
receiving.	
10. In particular, the Offer Letter stated:	10. Plaintiff Depo., Volume I, 36:23-
We are excited at the prospect of you	38:11, Exh. 5 (Offer Letter); Figueroa
joining the Company, you should be	Decl., ¶ 6, Exh. C (Offer Letter).
aware that our relationship is	
"employment-at-will." That means you	
are free, at any time, for any reason, to	
end your employment with the Company	
and that the Company may do the same.	
Our agreement regarding the at-will	
nature of your employment may not be	
changed, except in a writing signed by the	

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
Company's Chief Executive Officer.	
Given the at-will nature, the Company	
may from time to time add to, modify, or	
discontinue its compensation policies,	
employee benefit plans or other aspects of	
your employment.	
11. Plaintiff's personnel file also	11. Figueroa Decl., ¶ 8, Exh. D.
includes an Employee Confidentiality and	
Non-Solicitation Agreement with	
Plaintiff's signature dated October 14,	
2010.	
12. This Agreement stated: "You agree	12. Figueroa Decl., ¶ 8, Exh. D.
and understand that nothing in this	
Agreement shall alter or modify the 'at-	
will' nature of your employment with the	
Company or confer on [y]ou any right with	
respect to continuation of your	
employment with the Company."	
13. In her deposition, Plaintiff admitted	13. Plaintiff Depo., Volume I, 36:23-
that she did not have a contract with	38:11, 43:18-45:15, Exh. 5 (Offer
Equinox; no one ever told her that she was	Letter), Exh. 8 (Receipt
guaranteed employment for a certain time	Acknowledgement Form).
period; and no one ever told her that she	
was anything other than an at-will	
employee.	
14. The Employee Handbook Plaintiff	14. Plaintiff Depo., Volume I, 43:18-

DEFENDANT'S SUPPORTING
EVIDENCE
45:15, Exh. 8 Receipt of Employee
Handbook; Declaration of Emerson
Figueroa ("Figueroa Decl."), Exh. A.
15. Plaintiff Depo., Volume I, 43:18-
45:15, Exh. 8 Receipt of Employee
Handbook; Figueroa Decl., Exh. A,
Employee Handbook.
16. Plaintiff Depo., Volume I, 43:18-
45:15, Exh. 8 Receipt of Employee
Handbook; Figueroa Decl. ¶ 4.

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
17. In or about June 2014, Hemedinger	17. Plaintiff Depo., Volume I, 190:16-
informed Plaintiff and other MAs that the	194:3, 219:7-10; Plaintiff Depo., Volume
compensation plan for all West LA MAs	II, 347:22-348:1; Deposition of Barry
was being clarified, so that the market	Holmes ("Holmes Depo.") 69:4-71:12,
bonuses would be paid out individually	73:23-75:10, Exhs. 201-202;
and not cumulatively for reaching a	Hemedinger Depo., 60:11-61:3, 68:12-
certain sales goal.	14, 70:19-72:3.; Rosen Depo., 33:5-15.
18. For example, the plan provided for a	18. Plaintiff Depo., Volume I, 190:16-
particular market bonus upon reaching a	194:3; Hemedinger Depo., 64:18-65:11
certain goal of sales:	
• 100% of goal – MA would	
receive an extra \$20 per sale	
• 115% of goal – MA would	
receive an extra \$40 per sale	
• 125% of goal – MA would	
receive an extra \$55 per sale	
• 150% of goal – MA would receive	
an extra \$70 per sale	
19. For the West LA club, Equinox's	19. Plaintiff Depo., Volume I, 190:16-
Payroll Department was adding the	194:3; Holmes Depo., 82:11-83:14;
bonuses together as opposed to giving one	Hemedinger Depo., 59:22-60:6, 62:3-
of the bonuses above depending on the	63:8; 66:6-11., 68:15-69:8.
overall percentage.	
20. Plaintiff testified that she	20. Plaintiff Depo., Volume I, 199:7-
complained about what she viewed as a	22; Hemedinger Depo., 59:14-60:10;
"change" in the compensation plan to the	Deposition of Scott Rosen ("Rosen
Case No: 2:16-CV-01795 MWF (JCx) 30	7 DEFENDANT'S STATEMENT OF

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
following managerial employees:	Depo.") 29:18-30:4, 30:22-31:12, 31:20-
Hemedinger, Gannon, Simonson, Veronica	33:4, 61:12-64:17, 65:8-69:12, Exhs.
Santarelli ("Santarelli") (Regional Sales	206-207; Holmes Depo., 71:23-73:22,
Manager), Matt Gonzalez ("Gonzalez")	77:18-82:10, 84:19-86:8, Ex. 203.
(Director of Sales), Barry Holmes	
("Holmes") (Senior Vice President of	
Sales), and Scott Rosen ("Rosen") (Chief	
Operating Officer) ("COO").	
21. Despite Plaintiff's complaints about	21. Plaintiff Depo., Volume I, 196:8-
the compensation plan, Plaintiff continued	14, 207:15-22, 220:5-20; Plaintiff Depo.,
to work at Equinox for seven months after	Volume II, 349:5-12.
the "changed" compensation plan was	
instituted in July/August 2014 and	
continued to work for Equinox until she	
quit in February 2015.	
22. Plaintiff testified that she	22. Plaintiff Depo., Volume I, 81:6-21,
complained to Hemedinger, Simonson, and	82:5-83:23, 94:14-97:9.
possibly to Gannon in February or March	
2014 that she believed that a MA at West	
LA was using one-month guest passes	
and/or gift cards to sign up members for	
what they believed was a month-long	
membership, but in actuality, was signing	
them up for a year-long membership by	
using their credit cards without	
authorization.	

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
23. According to Plaintiff, "charging	23. Plaintiff Depo., Volume II,
credit cards without people's approval and	334:16-336:23.
telling people they were signing up for a	
month-long contract, but then signing	
them up for a year-long contract" were the	
only "illegal activities" about which she	
complained to Equinox.	
24. According to Plaintiff, her other	24. Plaintiff Depo., Volume II,
complaints involved "things against	334:16-336:23.
Equinox policies that were happening as	
well."	
25. Plaintiff admitted that she could not	25. Plaintiff Depo., Volume II, 335:4-
identify any statute, ordinance, regulation,	336:23.
local law, state law, or federal law that	
was violated as a result of this alleged	
activity.	
26. Plaintiff also testified that she	26. Plaintiff Depo., Volume I, 76:17-
complained to Hemedinger and Simonson	79:19; 93:10-94:10, 102:10-107:24;
about the sales activities of another MA.	108:1-113:5; Hemedinger Depo., 45:8-
	47:19.
27. Specifically, Plaintiff complained	27. Plaintiff Depo., Volume I, 76:17-
that this MA was giving away "free	79:19; 93:10-94:10, 102:10-107:24;
months" to potential members, allowing	108:1-113:5; Hemedinger Depo., 45:8-
"freezes" for members, and offering "three	47:19.
month" deals.	

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
28. In or around December 2014, COO	28. Rosen Depo., 37:20-38:18;
Rosen was touring the West LA club	Declaration of Tracy Cuva ("Cuva
when he was told by a member that a MA	Decl."), ¶ 2.
had charged a membership to another	
member's credit card without that	
member's authorization.	
29. Member Services is Equinox's	29. Cuva Decl., ¶ 1.
billing department (centrally based in	
New York) which handles membership	
contracts and membership sales, including	
auditing of membership sales.	
30. Rosen contacted Tracy Cuva,	30. Rosen Depo., 37:20-38:21; Cuva
Senior Director of Equinox's Member	Decl., ¶ 2.
Services Department, gave her the	
information received from the member,	
and asked Member Services to investigate	
this sale.	
31. Member Services' investigation,	31. Cuva Decl., ¶ 2.
which was conducted by Cuva, confirmed	
that this was an unauthorized sale	
processed by a MA at the West LA Club	
(Plaintiff was not implicated in this	
transaction).	
32. This MA was relocating to New	32. Rosen Depo., 39:8-13.
York but, based on the investigation	
results, she was not hired to work for	

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DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
Equinox in New York.	
33. As a result of this member	33. Rosen Depo., 47:25-6; Cuva Decl.,
complaint, Rosen also asked Cuva to have	¶ 3.
Member Services conduct an investigation	
of sales transactions at the West LA club.	
34. Apart from requesting that the	34. Rosen Depo., 47:25-48:21.
investigation be conducted and asking Jim	
Burger (Senior Director of Loss	
Prevention) to travel to the West LA club	
and continue the investigation after	
Member Services finished their portion of	
the investigation, Rosen did not	
participate in that investigation.	
35. Cuva instructed Kevin Stanfa	35. Cuva Decl., ¶ 3; Stanfa Decl. ¶ **.
("Stanfa") (Manager of Compliance and	
Special Projects), to review sales	
transactions at the West LA club.	
36. After Stanfa reported finding	36. Cuva Decl., ¶ 3; Stanfa Decl. ¶ 4.
various anomalies associated with sales	
transactions at the West LA club, Cuva	
instructed Stanfa to prepare a summary	
detailing his findings.	
37. Stanfa then prepared a workbook	37. Stanfa Decl., ¶ 4.
with three spreadsheets regarding the	
following sales activities: (1) 2014	
Freezes; (2) Modification to Direct Bill;	

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DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
and (3) West LA Sales Breakdown.	
38. Once these were prepared, Cuva	38. Rosen Depo., 47:25-48:21;
emailed the spreadsheets to Rosen,	Holmes Depo., 86:10-88:10, 95:9-96:10;
Holmes and Gannon and summarized the	Cuva Decl., ¶ 6, Exh. N; Stanfa Decl., ¶¶
results of the Member Services	4-5.
investigation.	
39. In her email, Cuva indicated that	39. Cuva Decl., ¶ 7, Exh. N.
these spreadsheets "all reflect patterns	
unhealthy for the business."	
40. Cuva noted as follows:	40. Cuva Decl., ¶ 7, Exh. N.
i The 2014 Freezes spreadsheet	
shows that West LA is an outlier	
in members who request a freeze	
in the first 60 days of	
membership who also go on to	
cancel in the same year.	
i The Modification to Direct Bill	
spreadsheet reflects members in	
the last quarter of 2014 whose	
billing was modified from the	
credit card payment type to direct	
bill the day before billing ran.	
The Company average is four per	
club. West LA had 28	
modifications to direct bill.	
i The West LA Breakdown	

1	DEFENDANT'S	DEFENDANT'S SUPPORTING
2	UNCONTROVERTED FACTS	EVIDENCE
3	spreadsheet shows questionable	
4	sales from two MAs (Plaintiff	
5	and the MA moving to New	
6	York). The other three MAs	
7	were reviewed and did not reflect	
8	the same anomalies seen with	
9	Plaintiff and the MA moving to	
10	New York. The questionable	
11	sales included selling	
12	memberships to members with	
13	the credit card of another	
14	member (almost universally	
15	without requesting a referral	
16	credit) or re-contracting over a	
17	previously 3-day'd membership	
18	and either using the credit from	
19	the previous sale or recharging	
20	the same credit card, credit card	
21	not present for numerous sales	
22	transactions, 3-day cancellations	
23	with no or just one member visit,	
24	new memberships which were	
25	previously finance cancelled and	
26	had balances on account that	
27	were waived.	
28	41. Neither Cuva nor Stanfa were aware	41. Cuva Decl., ¶ 8; Stanfa Decl., ¶ 11.

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
Plaintiff had made any complaints about	
changes to her compensation plan or about	
the alleged activities of other MAs.	
42. In addition, Burger was asked to	42. Deposition of Jim Burger ("Burger
interview the sales team at the West LA	Depo."), 72:4-73:3, 73:13:75:22, 76:6-
club.	12.
43. When Burger came to Los Angeles	43. Hemedinger Decl., ¶ 4.
to conduct his interviews in late January	
2015, the West LA club's sales team	
consisted of three MAs, Plaintiff and two	
other MAs who were supervised by the	
Simonson and an Assistant General	
Manager.	
44. A MA was fired on or about January	44. Figueroa Decl. ¶ 9; Hemedinger
20, 2015 for improper sales activities.	Decl., ¶ 4.
45. At Burger's request, Member	45. Burger Depo., 72:13-73:3; Cuva
Services provided him with the	Decl. ¶ 8.
spreadsheets summarizing their findings of	
questionable sales transactions at the West	
LA club.	
46. Burger then met with Cuva and	46. Burger Depo., 73:13-74:15; Cuva
Stanfa and they discussed their findings	Decl. ¶ 8; Stanfa Decl., ¶ 9.
regarding the questionable sales at the	
West LA club.	
47. Burger had a subsequent meeting	47. Burger Depo., 74:16-75:3, 8-22;
with Stanfa to review the spreadsheets	Stanfa Decl., ¶ 9.

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
Member Services had prepared.	
48. These spreadsheets showed	48. Burger Depo., 39:3-40:22; Cuva
anomalies in various sales transactions,	Decl., ¶ 8; Stanfa Decl., ¶¶ 4-5.
including whether or not a contract was	
signed, whether or not a credit card was	
present for the sales transaction, whose	
credit card was used for the sales	
transactions, if another individual's credit	
card number was used for the sales	
transaction instead of the member's credit	
card number, whether or not a member had	
any visits to a club, etc.	
49. Burger also had a couple of	49. Burger Depo., 76:19-77:1; Stanfa
telephone conversations with Stanfa	Decl., ¶ 9.
regarding the anomalies in various sales	
activities at the West LA Club.	
50. In late January 2015, Burger came to	50. Burger Depo., 76:6-12; Gannon
Los Angeles to interview various	Decl., ¶ 3; Hemedinger Decl., ¶ 5.
employees regarding sales activities of the	
West LA MAs.	
51. Prior to the interviews, Burger and	51. Burger Depo., 116:12-117:12.
Gannon discussed suspending all of the	
individuals interviewed as part of the	
investigation pending the results of the	
investigation.	
52. Burger then interviewed the	52. Hemedinger Decl., ¶ 5.
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DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
	EVIDENCE
following individuals: (1) the Assistant	
General Manager; (2) Plaintiff; (3) another	
MA; (4) a relatively newly hired MA; and	
(5) Simonson.	
53. Burger had never heard of or spoken	53. Burger Depo., 35:22-24.
to Plaintiff prior to this investigation	
meeting.	
54. On January 30, 2015, Plaintiff met	54. Plaintiff Depo., Volume I, 161:11-
with Burger and Leah Ball of Human	22, 164:10-22; Plaintiff Depo., Volume
Resources regarding West LA's sales	II, 305:21-24; , Burger Depo., 96:18-25.
practices.	
55. Plaintiff answered questions about	55. Plaintiff Depo., Volume I, 161:11-
her sales activities, as well as the activities	22, 164:10-22; Burger Depo., 53:13-
of other MAs.	54:9.
56. While Burger did not find Plaintiff	56. Burger Depo., 122:14-17.
credible, he felt, at that time, that there was	
insufficient information to warrant	
Plaintiff's termination.	
57. After Burger completed his	57. Burger Depo., 117:16-18, 24-
interviews, Burger, Gannon and	118:6.
Hemedinger met briefly to discuss	
Burger's impressions.	
58. Gannon then advised Plaintiff that	58. Plaintiff Depo., Volume I, 174:24-
she was being suspended.	175:3, 11-12; Plaintiff Depo., Volume II,
	306:3-7; Gannon Decl., ¶ 4.
59. All of the MAs interviewed as part	59. Burger Depo., ¶ 110:17-23;

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DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
of the investigation (with the exception of	Gannon Decl., ¶ 6.
the relatively new MA) were suspended	
pending investigation.	
60. Gannon also advised Plaintiff to	60. Plaintiff Depo., Volume I, 180:11-
report back to the West LA club at 2:00	181:4; Gannon Decl., ¶ 5.
p.m. the next day for another meeting.	
61. According to Plaintiff, Equinox told	61. Plaintiff Depo., Volume I, 174:24-
her that she would not have access to her	175:21; Plaintiff Depo., Volume II,
email or payroll account and escorted her	305:21-306:2, 364:17-20; Plaintiff's
out of the building in front of Equinox's	Complaint, 6:5-7.
clientele, staff and all of her peers.	
62. It is Equinox's policy to turn off	62. Gannon Decl., ¶ 7.
email access for hourly employees who	
have been suspended pending investigation	
or who are on a leave of absence.	
63. Prior to Burger's interview of	63. Gannon Decl., ¶ 8.
Plaintiff, Gannon had the Payroll	
Department prepare a final paycheck for	
Plaintiff so that she could be paid in	
accordance with California law in the	
event the decision was made to terminate	
her employment.	
64. Plaintiff met with Hemedinger and	64. Plaintiff Depo., Volume I, 182:5-
Gannon at the West LA club on January	183:8; Plaintiff Depo., Volume II,
31, 2015 and was told that the	306:12:16, 382:12-17, 390:4-11, Exh.
investigation was concluded and that she	38; Hemedinger Depo., 54:17-21, 55:1-8;

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
would be working at the Marina Del Rey	Gannon Decl., ¶ 3; Hemedinger Decl., ¶
club.	6.
65. The decision was made to reassign	65. Rosen Depo., 71:7-20, 73:15-22,
Plaintiff to the Marina Del Rey club	76:5-14; Holmes Depo., 96:12-98:17;
because Equinox wanted to rebuild the	Hemedinger Depo., 51:7-52:23; Gannon
team of MAs in the West LA club and to	Decl., ¶ 10.
create a fresh culture, as a result of the	
investigation findings.	
66. Plaintiff's compensation plan would	66. Rosen Depo., 87:25-88:4; Gannon
change once at Marina Del Rey to align	Decl., ¶ 11.
with the compensation plan of Marina Del	
Rey MAs. Equinox considered the	
reassignment a lateral move.	
67. Equinox considered the	67. Rosen Depo., 87:25-88:4; Gannon
reassignment a lateral move.	Decl., ¶ 11.
68. When Plaintiff was asked what her	68. Plaintiff Depo., Volume II, 390:4-
compensation would be at the Marina Del	11, Exh. 38; Gannon Decl., ¶ 12.
Rey club, she was sent the compensation	
plan of a Marina Del Rey MA.	
69. Equinox's expectation was she	69. Hemedinger Depo., 52:18-23;
would earn at least the same amount of	Rosen Depo., 57:13-19; 58:22-59:14;
money because the Marina Del Rey club	Holmes Depo., 31:13-15.
was a high performing club and the	
memberships for the Marina Del Rey club	
were less expensive than the memberships	
for the West LA club.	

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
70. It was easier to sell more	70. Hemedinger Depo., 52:18-23;
memberships at the Marina Del Rey club	Rosen Depo., 57:13-19; 58:22-59:14;
than the West LA club because the Marina	Holmes Depo., 50:18-51:5
Del Rey memberships were less expensive.	
71. Gannon emailed Plaintiff the	71. Plaintiff Depo., Volume I, 246:19-
compensation plan for the Marina Del Rey	247:2; Gannon Decl., ¶ 12.
Club on or about January 31, 2015.	
72. Plaintiff testified that no one from	72. Plaintiff Depo., Volume I, 171:10-
Equinox ever told her that she was being	172:7; Plaintiff Depo., Volume II,
"terminated" or "demoted" as part of her	306:17-310:19, 363:24-364:3; Gannon
reassignment to the Marina Del Rey club.	Decl., ¶ 13; Hemedinger Decl., ¶ 7.
73. Gannon made the decision to	73. Rosen Depo., 45:7-25. 57:8-12;
reassign Plaintiff to the Marina Del Rey	Hemedinger Depo., 53:14-18.
club.	
74. Plaintiff was told to report to the	74. Plaintiff Depo., Volume I, 186:5-
Marina Del Rey club on February 2, 2015	14; Plaintiff Depo., Volume II, 311:4-8;
at 9:00 a.m.	Hemedinger Depo., 54:17-55:18, 55:25-
	56:25, 57:6-57:11.
75. Before reporting to the Marina Del	75. Plaintiff Depo., Volume I, 186:5-
Rey club, Plaintiff submitted her	14, Exh. 26; Plaintiff Depo., Volume II,
resignation, via email, on the morning of	311:4-8; Hemedinger Depo., 54:17-
February 2, 2015 effective immediately.	55:18, 55:25-
	56:25, 57:6-57:11.
76. Plaintiff's last day of employment	76. Plaintiff Depo., Volume I, 186:11-
was February 2, 2015.	14.
77. Plaintiff never reported to work at	•
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DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
the Marina Del Rey club.	15, 186:15-17; Hemedinger Depo.,
	56:22-25.
78. As of February 1, 2015, the only	78. Plaintiff Depo., Volume II, 342:3-
remaining MA at the West LA club was	11.
the recently hired MA.	
79. As of April/May 2015, the West LA	79. Plaintiff Depo., Volume II,
club had an entirely new sales team and	342:25-343:5.
sales management.	
80. Plaintiff testified that she was	80. Plaintiff Depo., Volume II, 343:6-
unaware of any other MA at the West LA	22.
club complaining about the unauthorized	
use of credit cards or telling someone that	
they were being signed up for a one-month	
membership but signing them up for a year	
instead.	

ISSUE NO. 23

Plaintiff's punitive damages claim has no merit as a matter of law because there is no clear and convincing evidence that any managing agent acted with the requisite "oppression, malice, or fraud." (UF Nos. 1-80.)

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
1. Plaintiff was hired as a Membership	1. Plaintiff Depo., Volume I, 36:23-
Advisor ("MA") at Equinox's Santa	38:10, Exh. 5 (Offer Letter).
Monica club on or about October 15,	
2010.	

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
2. In January 2014, Plaintiff began	2. Plaintiff Depo., Volume I, 189:22-
working at Equinox's West Los Angeles	190:12, Exh. 13 (Memo).
club ("West LA club").	
3. At the West LA club, MAs were	3. Declaration of Brian Hemedinger
referred to as Membership Executives.	("Hemedinger Decl."), ¶ 3.
However, their job duties were the same.	
4. During Plaintiff's employment at	4. Declaration of Jack Gannon
Equinox's Santa Monica and West LA	("Gannon Decl."), ¶¶ 1-2.
clubs, Jack Gannon ("Gannon") was the	
Vice President of the West Coast.	
5. From about October 2011 through	5. Plaintiff Depo., Volume I, 270:8,-
about June 2015, Brian Hemedinger	14, 75:24-76:4; Deposition of Brian
("Hemedinger") was the Regional	Hemedinger ("Hemedinger Depo.")
Director of Operations ("Regional	15:3-10, 41:1-9, 13-16; Hemedinger
Director") of the Santa Monica and West	Decl., ¶ 1.
LA clubs.	
6. General Manager Kira Simonson	6. Plaintiff Depo., Volume I, 52:11-
("Simonson) supervised Plaintiff at the	19.
West LA club from about January 2014 to	
about January 2015.	
7. Plaintiff's personnel file includes an	7. Plaintiff Depo., Volume I, 43:18-
Employee Handbook: Receipt	45:15, Exh. 8 (Receipt
Acknowledgment Form with Plaintiff's	Acknowledgement Form); Declaration of
signature dated October 15, 2010.	Emerson Figueroa ("Figueroa Decl."), ¶
	5, Exh. B.)
8. In particular, the Employee	8. Plaintiff Depo., Volume I, 43:18-

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
Handbook stated:	45:15, Exh. 8 (Receipt
I acknowledge that the receipt of the	Acknowledgement Form); Figueroa
Employee Handbook in no way creates a	Decl., ¶ 5, Exh. B (Receipt
contract between Equinox and me.	Acknowledgement Form).
Moreover, I understand and agree that all	
matters discussed in the Employee	
Handbook are subject to change or	
modification from time to time except the	
At-Will Employment Policy specified	
therein. The At-Will Employment Policy	
represents the final and complete	
agreement concerning the duration of my	
employment. I acknowledge that any	
change in the At-Will Employment Policy	
is effective only if set forth in a written	
document signed by the CEO of Equinox	
and myself.	
9. Plaintiff's personnel file also	9. Plaintiff Depo., Volume I, 36:23-
includes an Offer Letter, dated October	38:11, Exh. 5 (Offer Letter); Figueroa
15, 2010, which Plaintiff acknowledged	Decl., ¶ 6, Exh. C (Offer Letter).
receiving.	
10. In particular, the Offer Letter stated:	10. Plaintiff Depo., Volume I, 36:23-
We are excited at the prospect of you	38:11, Exh. 5 (Offer Letter); Figueroa
joining the Company, you should be	Decl., ¶ 6, Exh. C (Offer Letter).
aware that our relationship is	
"employment-at-will." That means you	

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
are free, at any time, for any reason, to	
end your employment with the Company	
and that the Company may do the same.	
Our agreement regarding the at-will	
nature of your employment may not be	
changed, except in a writing signed by the	
Company's Chief Executive Officer.	
Given the at-will nature, the Company	
may from time to time add to, modify, or	
discontinue its compensation policies,	
employee benefit plans or other aspects of	
your employment.	
11. Plaintiff's personnel file also	11. Figueroa Decl., ¶ 8, Exh. D.
includes an Employee Confidentiality and	
Non-Solicitation Agreement with	
Plaintiff's signature dated October 14,	
2010.	
12. This Agreement stated: "You agree	12. Figueroa Decl., ¶ 8, Exh. D.
and understand that nothing in this	
Agreement shall alter or modify the 'at-	
will' nature of your employment with the	
Company or confer on [y]ou any right with	
respect to continuation of your	
employment with the Company."	
13. In her deposition, Plaintiff admitted	13. Plaintiff Depo., Volume I, 36:23-
that she did not have a contract with	38:11, 43:18-45:15, Exh. 5 (Offer

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
Equinox; no one ever told her that she was	Letter), Exh. 8 (Receipt
guaranteed employment for a certain time	Acknowledgement Form).
period; and no one ever told her that she	
was anything other than an at-will	
employee.	
14. The Employee Handbook Plaintiff	14. Plaintiff Depo., Volume I, 43:18-
acknowledged receiving also included	45:15, Exh. 8 Receipt of Employee
Equinox's non-retaliation policy as well	Handbook; Declaration of Emerson
as complaint procedures for reporting	Figueroa ("Figueroa Decl."), Exh. A.
retaliation.	
15. In particular, Equinox's policy	15. Plaintiff Depo., Volume I, 43:18-
strictly prohibits retaliation against any	45:15, Exh. 8 Receipt of Employee
employee for "filing a complaint and	Handbook; Figueroa Decl., Exh. A,
[Equinox] will not knowingly permit	Employee Handbook.
retaliation by management, employees, or	
co-workers." Equinox's policy also	
prohibits retaliation against any employee	
for "using this complaint procedure or for	
filing, testifying, assisting, or participating	
in any manner in any investigation,	
proceeding, or hearing conducted by a	
governmental enforcement agency.	
Additionally, Equinox will not knowingly	
permit any retaliation against any	
employee who complains of prohibited	
harassment or who participates in an	

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
investigation."	
16. The complaint procedure as	16. Plaintiff Depo., Volume I, 43:18-
outlined in the Employee Handbook	45:15, Exh. 8 Receipt of Employee
permits an employee to report retaliation	Handbook; Figueroa Decl. ¶ 4.
to his or her manager, Human Resources,	
or through Equinox's Ethics Hotline.	
17. In or about June 2014, Hemedinger	17. Plaintiff Depo., Volume I, 190:16-
informed Plaintiff and other MAs that the	194:3, 219:7-10; Plaintiff Depo., Volume
compensation plan for all West LA MAs	II, 347:22-348:1; Deposition of Barry
was being clarified, so that the market	Holmes ("Holmes Depo.") 69:4-71:12,
bonuses would be paid out individually	73:23-75:10, Exhs. 201-202;
and not cumulatively for reaching a	Hemedinger Depo., 60:11-61:3, 68:12-
certain sales goal.	14, 70:19-72:3.; Rosen Depo., 33:5-15.
18. For example, the plan provided for a	18. Plaintiff Depo., Volume I, 190:16-
particular market bonus upon reaching a	194:3; Hemedinger Depo., 64:18-65:11
certain goal of sales:	
• 100% of goal – MA would	
receive an extra \$20 per sale	
• 115% of goal – MA would	
receive an extra \$40 per sale	
• 125% of goal – MA would	
receive an extra \$55 per sale	
• 150% of goal – MA would receive	
an extra \$70 per sale	
19. For the West LA club, Equinox's	19. Plaintiff Depo., Volume I, 190:16-
Payroll Department was adding the	194:3; Holmes Depo., 82:11-83:14;

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
bonuses together as opposed to giving one	Hemedinger Depo., 59:22-60:6, 62:3-
of the bonuses above depending on the	63:8; 66:6-11., 68:15-69:8.
overall percentage.	
20. Plaintiff testified that she	20. Plaintiff Depo., Volume I, 199:7-
complained about what she viewed as a	22; Hemedinger Depo., 59:14-60:10;
"change" in the compensation plan to the	Deposition of Scott Rosen ("Rosen
following managerial employees:	Depo.") 29:18-30:4, 30:22-31:12, 31:20-
Hemedinger, Gannon, Simonson, Veronica	33:4, 61:12-64:17, 65:8-69:12, Exhs.
Santarelli ("Santarelli") (Regional Sales	206-207; Holmes Depo., 71:23-73:22,
Manager), Matt Gonzalez ("Gonzalez")	77:18-82:10, 84:19-86:8, Ex. 203.
(Director of Sales), Barry Holmes	
("Holmes") (Senior Vice President of	
Sales), and Scott Rosen ("Rosen") (Chief	
Operating Officer) ("COO").	
21. Despite Plaintiff's complaints about	21. Plaintiff Depo., Volume I, 196:8-
the compensation plan, Plaintiff continued	14, 207:15-22, 220:5-20; Plaintiff Depo.,
to work at Equinox for seven months after	Volume II, 349:5-12.
the "changed" compensation plan was	
instituted in July/August 2014 and	
continued to work for Equinox until she	
quit in February 2015.	
22. Plaintiff testified that she	22. Plaintiff Depo., Volume I, 81:6-21,
complained to Hemedinger, Simonson, and	82:5-83:23, 94:14-97:9.
possibly to Gannon in February or March	
2014 that she believed that a MA at West	
LA was using one-month guest passes	
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DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
and/or gift cards to sign up members for	
what they believed was a month-long	
membership, but in actuality, was signing	
them up for a year-long membership by	
using their credit cards without	
authorization.	
23. According to Plaintiff, "charging	23. Plaintiff Depo., Volume II,
credit cards without people's approval and	334:16-336:23.
telling people they were signing up for a	
month-long contract, but then signing	
them up for a year-long contract" were the	
only "illegal activities" about which she	
complained to Equinox.	
24. According to Plaintiff, her other	24. Plaintiff Depo., Volume II,
complaints involved "things against	334:16-336:23.
Equinox policies that were happening as	
well."	
25. Plaintiff admitted that she could not	25. Plaintiff Depo., Volume II, 335:4-
identify any statute, ordinance, regulation,	336:23.
local law, state law, or federal law that	
was violated as a result of this alleged	
activity.	
26. Plaintiff also testified that she	26. Plaintiff Depo., Volume I, 76:17-
complained to Hemedinger and Simonson	79:19; 93:10-94:10, 102:10-107:24;
about the sales activities of another MA.	108:1-113:5; Hemedinger Depo., 45:8-
	47:19.

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
27. Specifically, Plaintiff complained	27. Plaintiff Depo., Volume I, 76:17-
that this MA was giving away "free	79:19; 93:10-94:10, 102:10-107:24;
months" to potential members, allowing	108:1-113:5; Hemedinger Depo., 45:8-
"freezes" for members, and offering "three	47:19.
month" deals.	
28. In or around December 2014, COO	28. Rosen Depo., 37:20-38:18;
Rosen was touring the West LA club	Declaration of Tracy Cuva ("Cuva
when he was told by a member that a MA	Decl."), ¶ 2.
had charged a membership to another	
member's credit card without that	
member's authorization.	
29. Member Services is Equinox's	29. Cuva Decl., ¶ 1.
billing department (centrally based in	
New York) which handles membership	
contracts and membership sales, including	
auditing of membership sales.	
30. Rosen contacted Tracy Cuva,	30. Rosen Depo., 37:20-38:21; Cuva
Senior Director of Equinox's Member	Decl., ¶ 2.
Services Department, gave her the	
information received from the member,	
and asked Member Services to investigate	
this sale.	
31. Member Services' investigation,	31. Cuva Decl., ¶ 2.
which was conducted by Cuva, confirmed	
that this was an unauthorized sale	

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
processed by a MA at the West LA Club	
(Plaintiff was not implicated in this	
transaction).	
32. This MA was relocating to New	32. Rosen Depo., 39:8-13.
York but, based on the investigation	
results, she was not hired to work for	
Equinox in New York.	
33. As a result of this member	33. Rosen Depo., 47:25-6; Cuva Decl.,
complaint, Rosen also asked Cuva to have	¶ 3.
Member Services conduct an investigation	
of sales transactions at the West LA club.	
34. Apart from requesting that the	34. Rosen Depo., 47:25-48:21.
investigation be conducted and asking Jim	
Burger (Senior Director of Loss	
Prevention) to travel to the West LA club	
and continue the investigation after	
Member Services finished their portion of	
the investigation, Rosen did not	
participate in that investigation.	
35. Cuva instructed Kevin Stanfa	35. Cuva Decl., ¶ 3; Stanfa Decl. ¶ **.
("Stanfa") (Manager of Compliance and	
Special Projects), to review sales	
transactions at the West LA club.	
36. After Stanfa reported finding	36. Cuva Decl., ¶ 3; Stanfa Decl. ¶ 4.
various anomalies associated with sales	
transactions at the West LA club, Cuva	
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DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
instructed Stanfa to prepare a summary	
detailing his findings.	
37. Stanfa then prepared a workbook	37. Stanfa Decl., ¶ 4.
with three spreadsheets regarding the	
following sales activities: (1) 2014	
Freezes; (2) Modification to Direct Bill;	
and (3) West LA Sales Breakdown.	
38. Once these were prepared, Cuva	38. Rosen Depo., 47:25-48:21;
emailed the spreadsheets to Rosen,	Holmes Depo., 86:10-88:10, 95:9-96:10;
Holmes and Gannon and summarized the	Cuva Decl., ¶ 6, Exh. N; Stanfa Decl., ¶¶
results of the Member Services	4-5.
investigation.	
39. In her email, Cuva indicated that	39. Cuva Decl., ¶ 7, Exh. N.
these spreadsheets "all reflect patterns	
unhealthy for the business."	
40. Cuva noted as follows:	40. Cuva Decl., ¶ 7, Exh. N.
i The 2014 Freezes spreadsheet	
shows that West LA is an outlier	
in members who request a freeze	
in the first 60 days of	
membership who also go on to	
cancel in the same year.	
i The Modification to Direct Bill	
spreadsheet reflects members in	
the last quarter of 2014 whose	
billing was modified from the	

1	DEFENDANT'S	DEFENDANT'S SUPPORTING
2	UNCONTROVERTED FACTS	EVIDENCE
3	credit card payment type to direct	
4	bill the day before billing ran.	
5	The Company average is four per	
6	club. West LA had 28	
7	modifications to direct bill.	
8	i The West LA Breakdown	
9	spreadsheet shows questionable	
10	sales from two MAs (Plaintiff	
11	and the MA moving to New	
12	York). The other three MAs	
13	were reviewed and did not reflect	
14	the same anomalies seen with	
15	Plaintiff and the MA moving to	
16	New York. The questionable	
17	sales included selling	
18	memberships to members with	
19	the credit card of another	
20	member (almost universally	
21	without requesting a referral	
22	credit) or re-contracting over a	
23	previously 3-day'd membership	
24	and either using the credit from	
25	the previous sale or recharging	
26	the same credit card, credit card	
27	not present for numerous sales	
28	transactions, 3-day cancellations	

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
with no or just one member visit,	
new memberships which were	
previously finance cancelled and	
had balances on account that	
were waived.	
41. Neither Cuva nor Stanfa were aware	41. Cuva Decl., ¶ 8; Stanfa Decl., ¶ 11.
Plaintiff had made any complaints about	
changes to her compensation plan or about	
the alleged activities of other MAs.	
42. In addition, Burger was asked to	42. Deposition of Jim Burger ("Burger
interview the sales team at the West LA	Depo."), 72:4-73:3, 73:13:75:22, 76:6-
club.	12.
43. When Burger came to Los Angeles	43. Hemedinger Decl., ¶ 4.
to conduct his interviews in late January	
2015, the West LA club's sales team	
consisted of three MAs, Plaintiff and two	
other MAs who were supervised by the	
Simonson and an Assistant General	
Manager.	
44. A MA was fired on or about January	44. Figueroa Decl. ¶ 9; Hemedinger
20, 2015 for improper sales activities.	Decl., ¶ 4.
45. At Burger's request, Member	45. Burger Depo., 72:13-73:3; Cuva
Services provided him with the	Decl. ¶ 8.
spreadsheets summarizing their findings of	
questionable sales transactions at the West	
LA club.	
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1	DEFENDANT'S	DEFENDANT'S SUPPORTING
2	UNCONTROVERTED FACTS	EVIDENCE
3	46. Burger then met with Cuva and	46. Burger Depo., 73:13-74:15; Cuva
4	Stanfa and they discussed their findings	Decl. ¶ 8; Stanfa Decl., ¶ 9.
5	regarding the questionable sales at the	
6	West LA club.	
7	47. Burger had a subsequent meeting	47. Burger Depo., 74:16-75:3, 8-22;
8	with Stanfa to review the spreadsheets	Stanfa Decl., ¶ 9.
9	Member Services had prepared.	
10	48. These spreadsheets showed	48. Burger Depo., 39:3-40:22; Cuva
11	anomalies in various sales transactions,	Decl., ¶ 8; Stanfa Decl., ¶¶ 4-5.
12	including whether or not a contract was	
13	signed, whether or not a credit card was	
14	present for the sales transaction, whose	
15	credit card was used for the sales	
16	transactions, if another individual's credit	
17	card number was used for the sales	
18	transaction instead of the member's credit	
19	card number, whether or not a member had	
20	any visits to a club, etc.	
21	49. Burger also had a couple of	49. Burger Depo., 76:19-77:1; Stanfa
22	telephone conversations with Stanfa	Decl., ¶ 9.
23	regarding the anomalies in various sales	
24	activities at the West LA Club.	
25	50. In late January 2015, Burger came to	50. Burger Depo., 76:6-12; Gannon
26	Los Angeles to interview various	Decl., ¶ 3; Hemedinger Decl., ¶ 5.
27	employees regarding sales activities of the	
28	West LA MAs.	

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
51. Prior to the interviews, Burger and	51. Burger Depo., 116:12-117:12.
Gannon discussed suspending all of the	
individuals interviewed as part of the	
investigation pending the results of the	
investigation.	
52. Burger then interviewed the	52. Hemedinger Decl., ¶ 5.
following individuals: (1) the Assistant	
General Manager; (2) Plaintiff; (3) another	
MA; (4) a relatively newly hired MA; and	
(5) Simonson.	
53. Burger had never heard of or spoken	53. Burger Depo., 35:22-24.
to Plaintiff prior to this investigation	
meeting.	
54. On January 30, 2015, Plaintiff met	54. Plaintiff Depo., Volume I, 161:11-
with Burger and Leah Ball of Human	22, 164:10-22; Plaintiff Depo., Volume
Resources regarding West LA's sales	II, 305:21-24; , Burger Depo., 96:18-25.
practices.	
55. Plaintiff answered questions about	55. Plaintiff Depo., Volume I, 161:11-
her sales activities, as well as the activities	22, 164:10-22; Burger Depo., 53:13-
of other MAs.	54:9.
56. While Burger did not find Plaintiff	56. Burger Depo., 122:14-17.
credible, he felt, at that time, that there was	
insufficient information to warrant	
Plaintiff's termination.	
57. After Burger completed his	57. Burger Depo., 117:16-18, 24-
interviews, Burger, Gannon and	118:6.

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DEFENDANT'S STATEMENT OF UNCONTROVERTED MATERIAL FACTS AND CONCLUSIONS OF LAW

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
Hemedinger met briefly to discuss	
Burger's impressions.	
58. Gannon then advised Plaintiff that	58. Plaintiff Depo., Volume I, 174:24-
she was being suspended.	175:3, 11-12; Plaintiff Depo., Volume II,
	306:3-7; Gannon Decl., ¶ 4.
59. All of the MAs interviewed as part	59. Burger Depo., ¶ 110:17-23;
of the investigation (with the exception of	Gannon Decl., ¶ 6.
the relatively new MA) were suspended	
pending investigation.	
60. Gannon also advised Plaintiff to	60. Plaintiff Depo., Volume I, 180:11-
report back to the West LA club at 2:00	181:4; Gannon Decl., ¶ 5.
p.m. the next day for another meeting.	
61. According to Plaintiff, Equinox told	61. Plaintiff Depo., Volume I, 174:24-
her that she would not have access to her	175:21; Plaintiff Depo., Volume II,
email or payroll account and escorted her	305:21-306:2, 364:17-20; Plaintiff's
out of the building in front of Equinox's	Complaint, 6:5-7.
clientele, staff and all of her peers.	
62. It is Equinox's policy to turn off	62. Gannon Decl., ¶ 7.
email access for hourly employees who	
have been suspended pending investigation	
or who are on a leave of absence.	
63. Prior to Burger's interview of	63. Gannon Decl., ¶ 8.
Plaintiff, Gannon had the Payroll	
Department prepare a final paycheck for	
Plaintiff so that she could be paid in	
accordance with California law in the	

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
event the decision was made to terminate	
her employment.	
64. Plaintiff met with Hemedinger and	64. Plaintiff Depo., Volume I, 182:5-
Gannon at the West LA club on January	183:8; Plaintiff Depo., Volume II,
31, 2015 and was told that the	306:12:16, 382:12-17, 390:4-11, Exh.
investigation was concluded and that she	38; Hemedinger Depo., 54:17-21, 55:1-8;
would be working at the Marina Del Rey	Gannon Decl., ¶ 3; Hemedinger Decl., ¶
club.	6.
65. The decision was made to reassign	65. Rosen Depo., 71:7-20, 73:15-22,
Plaintiff to the Marina Del Rey club	76:5-14; Holmes Depo., 96:12-98:17;
because Equinox wanted to rebuild the	Hemedinger Depo., 51:7-52:23; Gannon
team of MAs in the West LA club and to	Decl., ¶ 10.
create a fresh culture, as a result of the	
investigation findings.	
66. Plaintiff's compensation plan would	66. Rosen Depo., 87:25-88:4; Gannon
change once at Marina Del Rey to align	Decl., ¶ 11.
with the compensation plan of Marina Del	
Rey MAs. Equinox considered the	
reassignment a lateral move.	
67. Equinox considered the	67. Rosen Depo., 87:25-88:4; Gannon
reassignment a lateral move.	Decl., ¶ 11.
68. When Plaintiff was asked what her	68. Plaintiff Depo., Volume II, 390:4-
compensation would be at the Marina Del	11, Exh. 38; Gannon Decl., ¶ 12.
Rey club, she was sent the compensation	
plan of a Marina Del Rey MA.	
69. Equinox's expectation was she	69. Hemedinger Depo., 52:18-23;

DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
would earn at least the same amount of	Rosen Depo., 57:13-19; 58:22-59:14;
money because the Marina Del Rey club	Holmes Depo., 31:13-15.
was a high performing club and the	
memberships for the Marina Del Rey club	
were less expensive than the memberships	
for the West LA club.	
70. It was easier to sell more	70. Hemedinger Depo., 52:18-23;
memberships at the Marina Del Rey club	Rosen Depo., 57:13-19; 58:22-59:14;
than the West LA club because the Marina	Holmes Depo., 50:18-51:5
Del Rey memberships were less expensive.	
71. Gannon emailed Plaintiff the	71. Plaintiff Depo., Volume I, 246:19-
compensation plan for the Marina Del Rey	247:2; Gannon Decl., ¶ 12.
Club on or about January 31, 2015.	
72. Plaintiff testified that no one from	72. Plaintiff Depo., Volume I, 171:10-
Equinox ever told her that she was being	172:7; Plaintiff Depo., Volume II,
"terminated" or "demoted" as part of her	306:17-310:19, 363:24-364:3; Gannon
reassignment to the Marina Del Rey club.	Decl., ¶ 13; Hemedinger Decl., ¶ 7.
73. Gannon made the decision to	73. Rosen Depo., 45:7-25. 57:8-12;
reassign Plaintiff to the Marina Del Rey	Hemedinger Depo., 53:14-18.
club.	
74. Plaintiff was told to report to the	74. Plaintiff Depo., Volume I, 186:5-
Marina Del Rey club on February 2, 2015	14; Plaintiff Depo., Volume II, 311:4-8;
at 9:00 a.m.	Hemedinger Depo., 54:17-55:18, 55:25-
	56:25, 57:6-57:11.
75. Before reporting to the Marina Del	75. Plaintiff Depo., Volume I, 186:5-
Rey club, Plaintiff submitted her	14, Exh. 26; Plaintiff Depo., Volume II,

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DEFENDANT'S	DEFENDANT'S SUPPORTING
UNCONTROVERTED FACTS	EVIDENCE
resignation, via email, on the morning of	311:4-8; Hemedinger Depo., 54:17-
February 2, 2015 effective immediately.	55:18, 55:25-
	56:25, 57:6-57:11.
76. Plaintiff's last day of employment	76. Plaintiff Depo., Volume I, 186:11-
was February 2, 2015.	14.
77. Plaintiff never reported to work at	77. Plaintiff Depo., Volume I, 50:13-
the Marina Del Rey club.	15, 186:15-17; Hemedinger Depo.,
	56:22-25.
78. As of February 1, 2015, the only	78. Plaintiff Depo., Volume II, 342:3-
remaining MA at the West LA club was	11.
the recently hired MA.	
79. As of April/May 2015, the West LA	79. Plaintiff Depo., Volume II,
club had an entirely new sales team and	342:25-343:5.
sales management.	
80. Plaintiff testified that she was	80. Plaintiff Depo., Volume II, 343:6-
unaware of any other MA at the West LA	22.
club complaining about the unauthorized	
use of credit cards or telling someone that	
they were being signed up for a one-month	
membership but signing them up for a year	
instead.	
Dated: October 7, 2016	JACKSON LEWIS P.C.
By:	/s/Mia Farber
	Mia Farber
	Dorothy L. Black.
	Attorneys for Defendant



