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EQUINOX HOLDINGS, INC.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

TAMAR KASBARIAN,

Plaintiff,

vs.

EQUINOX HOLDINGS, INC., EQUINOX
FITNESS MARINA DEL REY INC.,
EQUINOX FITNESS SEPULVEDA,
INC., inclusive,

Defendants.

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

**DEFENDANT'S STATEMENT OF
UNCONTROVERTED MATERIAL
FACTS AND CONCLUSIONS OF LAW
IN SUPPORT OF MOTION FOR
SUMMARY JUDGMENT**

[F.R.C.P. Rule 56]

[Filed concurrently with Notice of Motion and Motion; Memorandum of Points and Authorities; Statement of Uncontroverted Facts and Conclusions of Law, Declarations and Exhibits in Support Thereof; Compendium of Evidence; [Proposed] Order; and [Proposed] Judgment]

Date: November 7, 2016
Time: 10:00 a.m.
Courtroom: 165

Complaint filed: April 13, 2015

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

¹ The facts set forth herein are being treated as uncontroverted for purposes of Defendant’s Motion for Summary Judgment only.

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

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
<p>1 (“Simonson) supervised Plaintiff at the West LA club from about January 2014 to about January 2015.</p>	<p>19.</p>
<p>7. Plaintiff’s personnel file includes an Employee Handbook: Receipt Acknowledgment Form with Plaintiff’s signature dated October 15, 2010.</p>	<p>7. Plaintiff Depo., Volume I, 43:18-45:15, Exh. 8 (Receipt Acknowledgement Form); Declaration of Emerson Figueroa (“Figueroa Decl.”), ¶ 5, Exh. B.)</p>
<p>8. In particular, the Employee Handbook stated: I acknowledge that the receipt of the 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.</p>	<p>8. Plaintiff Depo., Volume I, 43:18-45:15, Exh. 8 (Receipt Acknowledgement Form); Figueroa Decl., ¶ 5, Exh. B (Receipt Acknowledgement Form).</p>

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
9. Plaintiff's personnel file also includes an Offer Letter, dated October 15, 2010, which Plaintiff acknowledged receiving.	9. Plaintiff Depo., Volume I, 36:23-38:11, Exh. 5 (Offer Letter); Figueroa Decl., ¶ 6, Exh. C (Offer Letter).
10. In particular, the Offer Letter stated: We are excited at the prospect of you joining the Company, you should be 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.	10. Plaintiff Depo., Volume I, 36:23-38:11, Exh. 5 (Offer Letter); Figueroa Decl., ¶ 6, Exh. C (Offer Letter).
11. Plaintiff's personnel file also includes an Employee Confidentiality and Non-Solicitation Agreement with Plaintiff's signature dated October 14, 2010.	11. Figueroa Decl., ¶ 8, Exh. D.

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
12. This Agreement stated: "You agree 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."	12. Figueroa Decl., ¶ 8, Exh. D.
13. In her deposition, Plaintiff admitted that she did not have a contract with Equinox; no one ever told her that she was guaranteed employment for a certain time period; and no one ever told her that she was anything other than an at-will employee.	13. Plaintiff Depo., Volume I, 36:23-38:11, 43:18-45:15, Exh. 5 (Offer Letter), Exh. 8 (Receipt Acknowledgement Form).
14. The Employee Handbook Plaintiff acknowledged receiving also included Equinox's non-retaliation policy as well as complaint procedures for reporting retaliation.	14. Plaintiff Depo., Volume I, 43:18-45:15, Exh. 8 Receipt of Employee Handbook; Declaration of Emerson Figueroa ("Figueroa Decl."), Exh. A.
15. In particular, Equinox's policy strictly prohibits retaliation against any employee for "filing a complaint and [Equinox] will not knowingly permit retaliation by management, employees, or co-workers." Equinox's policy also prohibits retaliation against any employee	15. Plaintiff Depo., Volume I, 43:18-45:15, Exh. 8 Receipt of Employee Handbook; Figueroa Decl., Exh. A, Employee Handbook.

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
<p>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.”</p>	
<p>16. The complaint procedure as outlined in the Employee Handbook permits an employee to report retaliation to his or her manager, Human Resources, or through Equinox’s Ethics Hotline.</p>	<p>16. Plaintiff Depo., Volume I, 43:18-45:15, Exh. 8 Receipt of Employee Handbook; Figueroa Decl. ¶ 4.</p>
<p>17. In or about June 2014, Hemedinger informed Plaintiff and other MAs that the compensation plan for all West LA MAs was being clarified, so that the market bonuses would be paid out individually and not cumulatively for reaching a certain sales goal.</p>	<p>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.</p>
<p>18. For example, the plan provided for a particular market bonus upon reaching a certain goal of sales:</p> <ul style="list-style-type: none"> • 100% of goal – MA would 	<p>18. Plaintiff Depo., Volume I, 190:16-194:3; Hemedinger Depo., 64:18-65:11</p>

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
<p>receive an extra \$20 per sale</p> <ul style="list-style-type: none"> • 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 	
<p>19. For the West LA club, Equinox's Payroll Department was adding the bonuses together as opposed to giving one of the bonuses above depending on the overall percentage.</p>	<p>19. Plaintiff Depo., Volume I, 190:16-194:3; Holmes Depo., 82:11-83:14; Hemedinger Depo., 59:22-60:6, 62:3-63:8; 66:6-11., 68:15-69:8.</p>
<p>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").</p>	<p>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.</p>
<p>21. Despite Plaintiff's complaints about the compensation plan, Plaintiff continued to work at Equinox for seven months after</p>	<p>21. Plaintiff Depo., Volume I, 196:8-14, 207:15-22, 220:5-20; Plaintiff Depo., Volume II, 349:5-12.</p>

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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 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 only "illegal activities" about which she complained to Equinox.	23. Plaintiff Depo., Volume II, 334:16-336:23.
24. According to Plaintiff, her other complaints involved "things against Equinox policies that were happening as well."	24. Plaintiff Depo., Volume II, 334:16-336:23.

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

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30. Rosen contacted Tracy Cuva, Senior Director of Equinox's Member Services Department, gave her the information received from the member, and asked Member Services to investigate this sale.	30. Rosen Depo., 37:20-38:21; Cuva Decl., ¶ 2.
31. Member Services' investigation, 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).	31. Cuva Decl., ¶ 2.
32. This MA was relocating to New York but, based on the investigation results, she was not hired to work for Equinox in New York.	32. Rosen Depo., 39:8-13.
33. As a result of this member complaint, Rosen also asked Cuva to have Member Services conduct an investigation of sales transactions at the West LA club.	33. Rosen Depo., 47:25-6; Cuva Decl., ¶ 3.
34. Apart from requesting that the 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	34. Rosen Depo., 47:25-48:21.

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

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<p>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.</p> <p>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.</p> <p>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</p>	

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<p>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.</p>	
<p>41. Neither Cuva nor Stanfa were aware Plaintiff had made any complaints about changes to her compensation plan or about the alleged activities of other MAs.</p>	<p>41. Cuva Decl., ¶ 8; Stanfa Decl., ¶ 11.</p>
<p>42. In addition, Burger was asked to interview the sales team at the West LA club.</p>	<p>42. Deposition of Jim Burger ("Burger Depo."), 72:4-73:3, 73:13:75:22, 76:6-12.</p>
<p>43. When Burger came to Los Angeles 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</p>	<p>43. Hemedinger Decl., ¶ 4.</p>

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Simonson and an Assistant General Manager.	
44. A MA was fired on or about January 20, 2015 for improper sales activities.	44. Figueroa Decl. ¶ 9; Hemedinger Decl., ¶ 4.
45. At Burger's request, Member Services provided him with the spreadsheets summarizing their findings of questionable sales transactions at the West LA club.	45. Burger Depo., 72:13-73:3; Cuva Decl. ¶ 8.
46. Burger then met with Cuva and Stanfa and they discussed their findings regarding the questionable sales at the West LA club.	46. Burger Depo., 73:13-74:15; Cuva Decl. ¶ 8; Stanfa Decl., ¶ 9.
47. Burger had a subsequent meeting with Stanfa to review the spreadsheets Member Services had prepared.	47. Burger Depo., 74:16-75:3, 8-22; Stanfa Decl., ¶ 9.
48. These spreadsheets showed anomalies in various sales transactions, 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	48. Burger Depo., 39:3-40:22; Cuva Decl., ¶ 8; Stanfa Decl., ¶¶ 4-5.

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any visits to a club, etc.	
49. Burger also had a couple of telephone conversations with Stanfa regarding the anomalies in various sales activities at the West LA Club.	49. Burger Depo., 76:19-77:1; Stanfa Decl., ¶ 9.
50. In late January 2015, Burger came to Los Angeles to interview various employees regarding sales activities of the West LA MAs.	50. Burger Depo., 76:6-12; Gannon Decl., ¶ 3; Hemedinger Decl., ¶ 5.
51. Prior to the interviews, Burger and Gannon discussed suspending all of the individuals interviewed as part of the investigation pending the results of the investigation.	51. Burger Depo., 116:12-117:12.
52. Burger then interviewed the following individuals: (1) the Assistant General Manager; (2) Plaintiff; (3) another MA; (4) a relatively newly hired MA; and (5) Simonson.	52. Hemedinger Decl., ¶ 5.
53. Burger had never heard of or spoken to Plaintiff prior to this investigation meeting.	53. Burger Depo., 35:22-24.
54. On January 30, 2015, Plaintiff met with Burger and Leah Ball of Human Resources regarding West LA's sales practices.	54. Plaintiff Depo., Volume I, 161:11-22, 164:10-22; Plaintiff Depo., Volume II, 305:21-24; , Burger Depo., 96:18-25.

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

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

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
Rey MAs. Equinox considered the reassignment a lateral move.	
67. Equinox considered the reassignment a lateral move.	67. Rosen Depo., 87:25-88:4; Gannon Decl., ¶ 11.
68. When Plaintiff was asked what her compensation would be at the Marina Del Rey club, she was sent the compensation plan of a Marina Del Rey MA.	68. Plaintiff Depo., Volume II, 390:4-11, Exh. 38; Gannon Decl., ¶ 12.
69. Equinox's expectation was she would earn at least the same amount of money because the Marina Del Rey club 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.	69. Hemedinger Depo., 52:18-23; Rosen Depo., 57:13-19; 58:22-59:14; Holmes Depo., 31:13-15.
70. It was easier to sell more memberships at the Marina Del Rey club than the West LA club because the Marina Del Rey memberships were less expensive.	70. Hemedinger Depo., 52:18-23; Rosen Depo., 57:13-19; 58:22-59:14; Holmes Depo., 50:18-51:5
71. Gannon emailed Plaintiff the compensation plan for the Marina Del Rey Club on or about January 31, 2015.	71. Plaintiff Depo., Volume I, 246:19-247:2; Gannon Decl., ¶ 12.
72. Plaintiff testified that no one from Equinox ever told her that she was being "terminated" or "demoted" as part of her reassignment to the Marina Del Rey club.	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 UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
73. Gannon made the decision to reassign Plaintiff to the Marina Del Rey club.	73. Rosen Depo., 45:7-25. 57:8-12; Hemedinger Depo., 53:14-18.
74. Plaintiff was told to report to the Marina Del Rey club on February 2, 2015 at 9:00 a.m.	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. Before reporting to the Marina Del Rey club, Plaintiff submitted her resignation, via email, on the morning of February 2, 2015 effective immediately.	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's last day of employment was February 2, 2015.	76. Plaintiff Depo., Volume I, 186:11-14.
77. Plaintiff never reported to work at the Marina Del Rey club.	77. Plaintiff Depo., Volume I, 50:13-15, 186:15-17; Hemedinger Depo., 56:22-25.
78. As of February 1, 2015, the only remaining MA at the West LA club was the recently hired MA.	78. Plaintiff Depo., Volume II, 342:3-11.
79. As of April/May 2015, the West LA club had an entirely new sales team and sales management.	79. Plaintiff Depo., Volume II, 342:25-343:5.
80. Plaintiff testified that she was unaware of any other MA at the West LA club complaining about the unauthorized	80. Plaintiff Depo., Volume II, 343:6-22.

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING 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. 3

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

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
about June 2015, Brian Hemedinger ("Hemedinger") was the Regional Director of Operations ("Regional Director") of the Santa Monica and West LA clubs.	14, 75:24-76:4; Deposition of Brian Hemedinger ("Hemedinger Depo.") 15:3-10, 41:1-9, 13-16; Hemedinger Decl., ¶ 1.
6. General Manager Kira Simonson ("Simonson") supervised Plaintiff at the West LA club from about January 2014 to about January 2015.	6. Plaintiff Depo., Volume I, 52:11-19.
7. Plaintiff's personnel file includes an Employee Handbook: Receipt Acknowledgment Form with Plaintiff's signature dated October 15, 2010.	7. Plaintiff Depo., Volume I, 43:18-45:15, Exh. 8 (Receipt Acknowledgement Form); Declaration of Emerson Figueroa ("Figueroa Decl."), ¶ 5, Exh. B.)
8. In particular, the Employee Handbook stated: I acknowledge that the receipt of the 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	8. Plaintiff Depo., Volume I, 43:18-45:15, Exh. 8 (Receipt Acknowledgement Form); Figueroa Decl., ¶ 5, Exh. B (Receipt Acknowledgement Form).

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
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 includes an Offer Letter, dated October 15, 2010, which Plaintiff acknowledged receiving.	9. Plaintiff Depo., Volume I, 36:23-38:11, Exh. 5 (Offer Letter); Figueroa Decl., ¶ 6, Exh. C (Offer Letter).
10. In particular, the Offer Letter stated: We are excited at the prospect of you joining the Company, you should be 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	10. Plaintiff Depo., Volume I, 36:23-38:11, Exh. 5 (Offer Letter); Figueroa Decl., ¶ 6, Exh. C (Offer Letter).

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
your employment.	
11. Plaintiff's personnel file also includes an Employee Confidentiality and Non-Solicitation Agreement with Plaintiff's signature dated October 14, 2010.	11. Figueroa Decl., ¶ 8, Exh. D.
12. This Agreement stated: "You agree 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."	12. Figueroa Decl., ¶ 8, Exh. D.
13. In her deposition, Plaintiff admitted that she did not have a contract with Equinox; no one ever told her that she was guaranteed employment for a certain time period; and no one ever told her that she was anything other than an at-will employee.	13. Plaintiff Depo., Volume I, 36:23-38:11, 43:18-45:15, Exh. 5 (Offer Letter), Exh. 8 (Receipt Acknowledgement Form).
14. The Employee Handbook Plaintiff acknowledged receiving also included Equinox's non-retaliation policy as well as complaint procedures for reporting retaliation.	14. Plaintiff Depo., Volume I, 43:18-45:15, Exh. 8 Receipt of Employee Handbook; Declaration of Emerson Figueroa ("Figueroa Decl."), Exh. A.
15. In particular, Equinox's policy	15. Plaintiff Depo., Volume I, 43:18-

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
<p>strictly prohibits retaliation against any employee for “filing a complaint and [Equinox] will not knowingly permit 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.”</p>	<p>45:15, Exh. 8 Receipt of Employee Handbook; Figueroa Decl., Exh. A, Employee Handbook.</p>
<p>16. The complaint procedure as outlined in the Employee Handbook permits an employee to report retaliation to his or her manager, Human Resources, or through Equinox’s Ethics Hotline.</p>	<p>16. Plaintiff Depo., Volume I, 43:18-45:15, Exh. 8 Receipt of Employee Handbook; Figueroa Decl. ¶ 4.</p>
<p>17. In or about June 2014, Hemedinger informed Plaintiff and other MAs that the compensation plan for all West LA MAs was being clarified, so that the market bonuses would be paid out individually</p>	<p>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;</p>

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
and not cumulatively for reaching a certain sales goal.	Hemedinger Depo., 60:11-61:3, 68:12-14, 70:19-72:3.; Rosen Depo., 33:5-15.
<p>18. For example, the plan provided for a particular market bonus upon reaching a certain goal of sales:</p> <ul style="list-style-type: none"> • 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 	18. Plaintiff Depo., Volume I, 190:16-194:3; Hemedinger Depo., 64:18-65:11
19. For the West LA club, Equinox's Payroll Department was adding the bonuses together as opposed to giving one of the bonuses above depending on the overall percentage.	19. Plaintiff Depo., Volume I, 190:16-194:3; Holmes Depo., 82:11-83:14; Hemedinger Depo., 59:22-60:6, 62:3-63:8; 66:6-11., 68:15-69:8.
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	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.

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

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

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
34. Apart from requesting that the 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.	34. Rosen Depo., 47:25-48:21.
35. Cuva instructed Kevin Stanfa ("Stanfa") (Manager of Compliance and Special Projects), to review sales transactions at the West LA club.	35. Cuva Decl., ¶ 3; Stanfa Decl. ¶ 4.
36. After Stanfa reported finding various anomalies associated with sales transactions at the West LA club, Cuva instructed Stanfa to prepare a summary detailing his findings.	36. Cuva Decl., ¶ 3; Stanfa Decl. ¶ 4.
37. Stanfa then prepared a workbook with three spreadsheets regarding the following sales activities: (1) 2014 Freezes; (2) Modification to Direct Bill; and (3) West LA Sales Breakdown.	37. Stanfa Decl., ¶ 4.
38. Once these were prepared, Cuva emailed the spreadsheets to Rosen, Holmes and Gannon and summarized the results of the Member Services	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.

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
investigation.	
39. In her email, Cuva indicated that these spreadsheets "all reflect patterns unhealthy for the business."	39. Cuva Decl., ¶ 7, Exh.N.
<p>40. Cuva noted as follows:</p> <ul style="list-style-type: none"> 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 	40. Cuva Decl., ¶ 7, Exh.N.

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
<p>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.</p>	
<p>41. Neither Cuva nor Stanfa were aware Plaintiff had made any complaints about changes to her compensation plan or about the alleged activities of other MAs.</p>	<p>41. Cuva Decl., ¶ 8; Stanfa Decl., ¶ 11.</p>
<p>42. In addition, Burger was asked to interview the sales team at the West LA</p>	<p>42. Deposition of Jim Burger ("Burger Depo."), 72:4-73:3, 73:13:75:22, 76:6-</p>

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
club.	12.
43. When Burger came to Los Angeles 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.	43. Hemedinger Decl., ¶ 4.
44. A MA was fired on or about January 20, 2015 for improper sales activities.	44. Figueroa Decl. ¶ 9; Hemedinger Decl., ¶ 4.
45. At Burger's request, Member Services provided him with the spreadsheets summarizing their findings of questionable sales transactions at the West LA club.	45. Burger Depo., 72:13-73:3; Cuva Decl. ¶ 8.
46. Burger then met with Cuva and Stanfa and they discussed their findings regarding the questionable sales at the West LA club.	46. Burger Depo., 73:13-74:15; Cuva Decl. ¶ 8; Stanfa Decl., ¶ 9.
47. Burger had a subsequent meeting with Stanfa to review the spreadsheets Member Services had prepared.	47. Burger Depo., 74:16-75:3, 8-22; Stanfa Decl., ¶ 9.
48. These spreadsheets showed anomalies in various sales transactions, including whether or not a contract was signed, whether or not a credit card was	48. Burger Depo., 39:3-40:22; Cuva Decl., ¶ 8; Stanfa Decl., ¶¶ 4-5.

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING 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 telephone conversations with Stanfa regarding the anomalies in various sales activities at the West LA Club.	49. Burger Depo., 76:19-77:1; Stanfa Decl., ¶ 9.
50. In late January 2015, Burger came to Los Angeles to interview various employees regarding sales activities of the West LA MAs.	50. Burger Depo., 76:6-12; Gannon Decl., ¶ 3; Hemedinger Decl., ¶ 5.
51. Prior to the interviews, Burger and Gannon discussed suspending all of the individuals interviewed as part of the investigation pending the results of the investigation.	51. Burger Depo., 116:12-117:12.
52. Burger then interviewed the following individuals: (1) the Assistant General Manager; (2) Plaintiff; (3) another MA; (4) a relatively newly hired MA; and (5) Simonson.	52. Hemedinger Decl., ¶ 5.
53. Burger had never heard of or spoken	53. Burger Depo., 35:22-24.

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
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 practices.	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 answered questions about her sales activities, as well as the activities of other MAs.	55. Plaintiff Depo., Volume I, 161:11-22, 164:10-22; Burger Depo., 53:13-54:9.
56. While Burger did not find Plaintiff credible, he felt, at that time, that there was insufficient information to warrant Plaintiff's termination.	56. Burger Depo., 122:14-17.
57. After Burger completed his interviews, Burger, Gannon and Hemedinger met briefly to discuss Burger's impressions.	57. Burger Depo., 117:16-18, 24-118:6.
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.	59. Burger Depo., ¶ 110:17-23; Gannon Decl., ¶ 6.
60. Gannon also advised Plaintiff to report back to the West LA club at 2:00	60. Plaintiff Depo., Volume I, 180:11-181:4; Gannon Decl., ¶ 5.

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

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

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
compensation plan for the Marina Del Rey Club on or about January 31, 2015.	247:2; Gannon Decl., ¶ 12.
72. Plaintiff testified that no one from Equinox ever told her that she was being “terminated” or “demoted” as part of her reassignment to the Marina Del Rey club.	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.
73. Gannon made the decision to reassign Plaintiff to the Marina Del Rey club.	73. Rosen Depo., 45:7-25. 57:8-12; Hemedinger Depo., 53:14-18.
74. Plaintiff was told to report to the Marina Del Rey club on February 2, 2015 at 9:00 a.m.	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. Before reporting to the Marina Del Rey club, Plaintiff submitted her resignation, via email, on the morning of February 2, 2015 effective immediately.	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's last day of employment was February 2, 2015.	76. Plaintiff Depo., Volume I, 186:11-14.
77. Plaintiff never reported to work at the Marina Del Rey club.	77. Plaintiff Depo., Volume I, 50:13-15, 186:15-17; Hemedinger Depo., 56:22-25.
78. As of February 1, 2015, the only remaining MA at the West LA club was the recently hired MA.	78. Plaintiff Depo., Volume II, 342:3-11.

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
79. As of April/May 2015, the West LA club had an entirely new sales team and sales management.	79. Plaintiff Depo., Volume II, 342:25-343:5.
80. Plaintiff testified that she was unaware of any other MA at the West LA 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.	80. Plaintiff Depo., Volume II, 343:6-22.

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

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

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
<p>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.</p>	<p>Acknowledgement Form).</p>
<p>9. Plaintiff's personnel file also includes an Offer Letter, dated October 15, 2010, which Plaintiff acknowledged receiving.</p>	<p>9. Plaintiff Depo., Volume I, 36:23-38:11, Exh. 5 (Offer Letter); Figueroa Decl., ¶ 6, Exh. C (Offer Letter).</p>
<p>10. In particular, the Offer Letter stated: We are excited at the prospect of you joining the Company, you should be 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.</p>	<p>10. Plaintiff Depo., Volume I, 36:23-38:11, Exh. 5 (Offer Letter); Figueroa Decl., ¶ 6, Exh. C (Offer Letter).</p>

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
<p>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.</p>	
<p>11. Plaintiff's personnel file also includes an Employee Confidentiality and Non-Solicitation Agreement with Plaintiff's signature dated October 14, 2010.</p>	<p>11. Figueroa Decl., ¶ 8, Exh. D.</p>
<p>12. This Agreement stated: "You agree 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."</p>	<p>12. Figueroa Decl., ¶ 8, Exh. D.</p>
<p>13. In her deposition, Plaintiff admitted that she did not have a contract with Equinox; no one ever told her that she was guaranteed employment for a certain time period; and no one ever told her that she</p>	<p>13. Plaintiff Depo., Volume I, 36:23-38:11, 43:18-45:15, Exh. 5 (Offer Letter), Exh. 8 (Receipt Acknowledgement Form).</p>

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
was anything other than an at-will employee.	
14. The Employee Handbook Plaintiff acknowledged receiving also included Equinox's non-retaliation policy as well as complaint procedures for reporting retaliation.	14. Plaintiff Depo., Volume I, 43:18-45:15, Exh. 8 Receipt of Employee Handbook; Declaration of Emerson Figueroa ("Figueroa Decl."), Exh. A.
15. In particular, Equinox's policy strictly prohibits retaliation against any employee for "filing a complaint and [Equinox] will not knowingly permit 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."	15. Plaintiff Depo., Volume I, 43:18-45:15, Exh. 8 Receipt of Employee Handbook; Figueroa Decl., Exh. A, Employee Handbook.
16. The complaint procedure as outlined in the Employee Handbook	16. Plaintiff Depo., Volume I, 43:18-45:15, Exh. 8 Receipt of Employee

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
permits an employee to report retaliation to his or her manager, Human Resources, or through Equinox's Ethics Hotline.	Handbook; Figueroa Decl. ¶ 4.
17. In or about June 2014, Hemedinger informed Plaintiff and other MAs that the compensation plan for all West LA MAs was being clarified, so that the market bonuses would be paid out individually and not cumulatively for reaching a certain sales goal.	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. For example, the plan provided for a particular market bonus upon reaching a certain goal of sales: <ul style="list-style-type: none">• 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	18. Plaintiff Depo., Volume I, 190:16-194:3; Hemedinger Depo., 64:18-65:11
19. For the West LA club, Equinox's Payroll Department was adding the bonuses together as opposed to giving one of the bonuses above depending on the overall percentage.	19. Plaintiff Depo., Volume I, 190:16-194:3; Holmes Depo., 82:11-83:14; Hemedinger Depo., 59:22-60:6, 62:3-63:8; 66:6-11., 68:15-69:8.

DEFENDANT’S UNCONTROVERTED FACTS	DEFENDANT’S SUPPORTING EVIDENCE
<p>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”).</p>	<p>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.</p>
<p>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.</p>	<p>21. Plaintiff Depo., Volume I, 196:8-14, 207:15-22, 220:5-20; Plaintiff Depo., Volume II, 349:5-12.</p>
<p>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</p>	<p>22. Plaintiff Depo., Volume I, 81:6-21, 82:5-83:23, 94:14-97:9.</p>

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

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

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
32. This MA was relocating to New York but, based on the investigation results, she was not hired to work for Equinox in New York.	32. Rosen Depo., 39:8-13.
33. As a result of this member complaint, Rosen also asked Cuva to have Member Services conduct an investigation of sales transactions at the West LA club.	33. Rosen Depo., 47:25-6; Cuva Decl., ¶ 3.
34. Apart from requesting that the 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.	34. Rosen Depo., 47:25-48:21.
35. Cuva instructed Kevin Stanfa ("Stanfa") (Manager of Compliance and Special Projects), to review sales transactions at the West LA club.	35. Cuva Decl., ¶ 3; Stanfa Decl. ¶ 4.
36. After Stanfa reported finding various anomalies associated with sales transactions at the West LA club, Cuva instructed Stanfa to prepare a summary detailing his findings.	36. Cuva Decl., ¶ 3; Stanfa Decl. ¶ 4.
37. Stanfa then prepared a workbook	37. Stanfa Decl., ¶ 4.

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING 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 emailed the spreadsheets to Rosen, Holmes and Gannon and summarized the results of the Member Services investigation.	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. In her email, Cuva indicated that these spreadsheets "all reflect patterns unhealthy for the business."	39. Cuva Decl., ¶ 7, Exh. N.
40. Cuva noted as follows: 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	40. Cuva Decl., ¶ 7, Exh. N.

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
<p>club. West LA had 28 modifications to direct bill.</p> <p>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 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</p>	

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

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
West LA club.	
47. Burger had a subsequent meeting with Stanfa to review the spreadsheets Member Services had prepared.	47. Burger Depo., 74:16-75:3, 8-22; Stanfa Decl., ¶ 9.
48. These spreadsheets showed anomalies in various sales transactions, 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.	48. Burger Depo., 39:3-40:22; Cuva Decl., ¶ 8; Stanfa Decl., ¶¶ 4-5.
49. Burger also had a couple of telephone conversations with Stanfa regarding the anomalies in various sales activities at the West LA Club.	49. Burger Depo., 76:19-77:1; Stanfa Decl., ¶ 9.
50. In late January 2015, Burger came to Los Angeles to interview various employees regarding sales activities of the West LA MAs.	50. Burger Depo., 76:6-12; Gannon Decl., ¶ 3; Hemedinger Decl., ¶ 5.
51. Prior to the interviews, Burger and Gannon discussed suspending all of the individuals interviewed as part of the	51. Burger Depo., 116:12-117:12.

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

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

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

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING 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 memberships at the Marina Del Rey club than the West LA club because the Marina Del Rey memberships were less expensive.	70. Hemedinger Depo., 52:18-23; Rosen Depo., 57:13-19; 58:22-59:14; Holmes Depo. , 50:18-51:5
71. Gannon emailed Plaintiff the compensation plan for the Marina Del Rey Club on or about January 31, 2015.	71. Plaintiff Depo., Volume I, 246:19-247:2; Gannon Decl., ¶ 12.
72. Plaintiff testified that no one from Equinox ever told her that she was being “terminated” or “demoted” as part of her reassignment to the Marina Del Rey club.	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.
73. Gannon made the decision to reassign Plaintiff to the Marina Del Rey club.	73. Rosen Depo., 45:7-25. 57:8-12; Hemedinger Depo., 53:14-18.
74. Plaintiff was told to report to the Marina Del Rey club on February 2, 2015 at 9:00 a.m.	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. Before reporting to the Marina Del Rey club, Plaintiff submitted her resignation, via email, on the morning of February 2, 2015 effective immediately.	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.

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
76. Plaintiff's last day of employment was February 2, 2015.	76. Plaintiff Depo., Volume I, 186:11-14.
77. Plaintiff never reported to work at the Marina Del Rey club.	77. Plaintiff Depo., Volume I, 50:13-15, 186:15-17; Hemedinger Depo., 56:22-25.
78. As of February 1, 2015, the only remaining MA at the West LA club was the recently hired MA.	78. Plaintiff Depo., Volume II, 342:3-11.
79. As of April/May 2015, the West LA club had an entirely new sales team and sales management.	79. Plaintiff Depo., Volume II, 342:25-343:5.
80. Plaintiff testified that she was unaware of any other MA at the West LA 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.	80. Plaintiff Depo., Volume II, 343:6-22.

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

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
Advisor ("MA") at Equinox's Santa Monica club on or about October 15, 2010.	38:10, Exh. 5 (Offer Letter).
2. In January 2014, Plaintiff began working at Equinox's West Los Angeles club ("West LA club").	2. Plaintiff Depo., Volume I, 189:22-190:12, Exh. 13 (Memo).
3. At the West LA club, MAs were referred to as Membership Executives. However, their job duties were the same.	3. Declaration of Brian Hemedinger ("Hemedinger Decl."), ¶ 3.
4. During Plaintiff's employment at Equinox's Santa Monica and West LA clubs, Jack Gannon ("Gannon") was the Vice President of the West Coast.	4. Declaration of Jack Gannon ("Gannon Decl."), ¶¶ 1-2.
5. From about October 2011 through about June 2015, Brian Hemedinger ("Hemedinger") was the Regional Director of Operations ("Regional Director") of the Santa Monica and West LA clubs.	5. Plaintiff Depo., Volume I, 270:8,-14, 75:24-76:4; Deposition of Brian Hemedinger ("Hemedinger Depo.") 15:3-10, 41:1-9, 13-16; Hemedinger Decl., ¶ 1.
6. General Manager Kira Simonson ("Simonson") supervised Plaintiff at the West LA club from about January 2014 to about January 2015.	6. Plaintiff Depo., Volume I, 52:11-19.
7. Plaintiff's personnel file includes an Employee Handbook: Receipt Acknowledgment Form with Plaintiff's	7. Plaintiff Depo., Volume I, 43:18-45:15, Exh. 8 (Receipt Acknowledgement Form); Declaration of

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
signature dated October 15, 2010.	Emerson Figueroa ("Figueroa Decl."), ¶ 5, Exh. B.)
<p>8. In particular, the Employee Handbook stated:</p> <p>I acknowledge that the receipt of the 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.</p>	<p>8. Plaintiff Depo., Volume I, 43:18-45:15, Exh. 8 (Receipt Acknowledgement Form); Figueroa Decl., ¶ 5, Exh. B (Receipt Acknowledgement Form).</p>
<p>9. Plaintiff's personnel file also includes an Offer Letter, dated October 15, 2010, which Plaintiff acknowledged receiving.</p>	<p>9. Plaintiff Depo., Volume I, 36:23-38:11, Exh. 5 (Offer Letter); Figueroa Decl., ¶ 6, Exh. C (Offer Letter).</p>
<p>10. In particular, the Offer Letter stated: We are excited at the prospect of you</p>	<p>10. Plaintiff Depo., Volume I, 36:23-38:11, Exh. 5 (Offer Letter); Figueroa</p>

DEFENDANT’S UNCONTROVERTED FACTS	DEFENDANT’S SUPPORTING EVIDENCE
<p>joining the Company, you should be 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.</p>	<p>Decl., ¶ 6, Exh. C (Offer Letter).</p>
<p>11. Plaintiff’s personnel file also includes an Employee Confidentiality and Non-Solicitation Agreement with Plaintiff’s signature dated October 14, 2010.</p>	<p>11. Figueroa Decl., ¶ 8, Exh. D.</p>
<p>12. This Agreement stated: “You agree 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</p>	<p>12. Figueroa Decl., ¶ 8, Exh. D.</p>

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
employment with the Company.”	
13. In her deposition, Plaintiff admitted that she did not have a contract with Equinox; no one ever told her that she was guaranteed employment for a certain time period; and no one ever told her that she was anything other than an at-will employee.	13. Plaintiff Depo., Volume I, 36:23-38:11, 43:18-45:15, Exh. 5 (Offer Letter), Exh. 8 (Receipt Acknowledgement Form).
14. The Employee Handbook Plaintiff acknowledged receiving also included Equinox’s non-retaliation policy as well as complaint procedures for reporting retaliation.	14. Plaintiff Depo., Volume I, 43:18-45:15, Exh. 8 Receipt of Employee Handbook; Declaration of Emerson Figueroa (“Figueroa Decl.”), Exh. A.
15. In particular, Equinox’s policy strictly prohibits retaliation against any employee for “filing a complaint and [Equinox] will not knowingly permit 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	15. Plaintiff Depo., Volume I, 43:18-45:15, Exh. 8 Receipt of Employee Handbook; Figueroa Decl., Exh. A, Employee Handbook.

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
<p>permit any retaliation against any employee who complains of prohibited harassment or who participates in an investigation.”</p>	
<p>16. The complaint procedure as outlined in the Employee Handbook permits an employee to report retaliation to his or her manager, Human Resources, or through Equinox’s Ethics Hotline.</p>	<p>16. Plaintiff Depo., Volume I, 43:18-45:15, Exh. 8 Receipt of Employee Handbook; Figueroa Decl. ¶ 4.</p>
<p>17. In or about June 2014, Hemedinger informed Plaintiff and other MAs that the compensation plan for all West LA MAs was being clarified, so that the market bonuses would be paid out individually and not cumulatively for reaching a certain sales goal.</p>	<p>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.</p>
<p>18. For example, the plan provided for a particular market bonus upon reaching a certain goal of sales:</p> <ul style="list-style-type: none"> • 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 	<p>18. Plaintiff Depo., Volume I, 190:16-194:3; Hemedinger Depo., 64:18-65:11</p>

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
an extra \$70 per sale	
19. For the West LA club, Equinox's Payroll Department was adding the bonuses together as opposed to giving one of the bonuses above depending on the overall percentage.	19. Plaintiff Depo., Volume I, 190:16-194:3; Holmes Depo., 82:11-83:14; Hemedinger Depo., 59:22-60:6, 62:3-63:8; 66:6-11., 68:15-69:8.
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	22. Plaintiff Depo., Volume I, 81:6-21, 82:5-83:23, 94:14-97:9.

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING 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 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 only "illegal activities" about which she complained to Equinox.	23. Plaintiff Depo., Volume II, 334:16-336:23.
24. According to Plaintiff, her other complaints involved "things against Equinox policies that were happening as well."	24. Plaintiff Depo., Volume II, 334:16-336:23.
25. Plaintiff admitted that she could not identify any statute, ordinance, regulation, local law, state law, or federal law that was violated as a result of this alleged activity.	25. Plaintiff Depo., Volume II, 335:4-336:23.
26. Plaintiff also testified that she	26. Plaintiff Depo., Volume I, 76:17-

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
<p>1 complained to Hemedinger and Simonson 2 about the sales activities of another MA. 3 4 5 6</p>	<p>79:19; 93:10-94:10, 102:10-107:24; 108:1-113:5; Hemedinger Depo., 45:8- 47:19.</p>
<p>7 27. Specifically, Plaintiff complained 8 that this MA was giving away “free 9 months” to potential members, allowing 10 “freezes” for members, and offering “three 11 month” deals.</p>	<p>27. 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.</p>
<p>12 28. In or around December 2014, COO 13 Rosen was touring the West LA club 14 when he was told by a member that a MA 15 had charged a membership to another 16 member’s credit card without that 17 member’s authorization.</p>	<p>28. Rosen Depo., 37:20-38:18; Declaration of Tracy Cuva (“Cuva Decl.”), ¶ 2.</p>
<p>18 29. Member Services is Equinox’s 19 billing department (centrally based in 20 New York) which handles membership 21 contracts and membership sales, including 22 auditing of membership sales.</p>	<p>29. Cuva Decl., ¶ 1.</p>
<p>23 30. Rosen contacted Tracy Cuva, 24 Senior Director of Equinox’s Member 25 Services Department, gave her the 26 information received from the member, 27 and asked Member Services to investigate 28 this sale.</p>	<p>30. Rosen Depo., 37:20-38:21; Cuva Decl., ¶ 2.</p>

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
31. Member Services' investigation, 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).	31. Cuva Decl., ¶ 2.
32. This MA was relocating to New York but, based on the investigation results, she was not hired to work for Equinox in New York.	32. Rosen Depo., 39:8-13.
33. As a result of this member complaint, Rosen also asked Cuva to have Member Services conduct an investigation of sales transactions at the West LA club.	33. Rosen Depo., 47:25-6; Cuva Decl., ¶ 3.
34. Apart from requesting that the 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.	34. Rosen Depo., 47:25-48:21.
35. Cuva instructed Kevin Stanfa ("Stanfa") (Manager of Compliance and Special Projects), to review sales transactions at the West LA club.	35. Cuva Decl., ¶ 3; Stanfa Decl. ¶ 4.

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
36. After Stanfa reported finding various anomalies associated with sales transactions at the West LA club, Cuva instructed Stanfa to prepare a summary detailing his findings.	36. Cuva Decl., ¶ 3; Stanfa Decl. ¶ 4.
37. Stanfa then prepared a workbook with three spreadsheets regarding the following sales activities: (1) 2014 Freezes; (2) Modification to Direct Bill; and (3) West LA Sales Breakdown.	37. Stanfa Decl., ¶ 4.
38. Once these were prepared, Cuva emailed the spreadsheets to Rosen, Holmes and Gannon and summarized the results of the Member Services investigation.	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. In her email, Cuva indicated that these spreadsheets “all reflect patterns unhealthy for the business.”	39. Cuva Decl., ¶ 7, Exh. N.
40. Cuva noted as follows: 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	40. Cuva Decl., ¶ 7, Exh. N.

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
<p>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.</p> <p>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</p>	

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING 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 Plaintiff had made any complaints about changes to her compensation plan or about the alleged activities of other MAs.	41. Cuva Decl., ¶ 8; Stanfa Decl., ¶ 11.
42. In addition, Burger was asked to interview the sales team at the West LA club.	42. Deposition of Jim Burger ("Burger Depo."), 72:4-73:3, 73:13:75:22, 76:6-12.
43. When Burger came to Los Angeles 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.	43. Hemedinger Decl., ¶ 4.
44. A MA was fired on or about January 20, 2015 for improper sales activities.	44. Figueroa Decl. ¶ 9; Hemedinger Decl., ¶ 4.
45. At Burger's request, Member Services provided him with the	45. Burger Depo., 72:13-73:3; Cuva Decl. ¶ 8.

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
spreadsheets summarizing their findings of questionable sales transactions at the West LA club.	
46. Burger then met with Cuva and Stanfa and they discussed their findings regarding the questionable sales at the West LA club.	46. Burger Depo., 73:13-74:15; Cuva Decl. ¶ 8; Stanfa Decl., ¶ 9.
47. Burger had a subsequent meeting with Stanfa to review the spreadsheets Member Services had prepared.	47. Burger Depo., 74:16-75:3, 8-22; Stanfa Decl., ¶ 9.
48. These spreadsheets showed anomalies in various sales transactions, 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.	48. Burger Depo., 39:3-40:22; Cuva Decl., ¶ 8; Stanfa Decl., ¶¶ 4-5.
49. Burger also had a couple of telephone conversations with Stanfa regarding the anomalies in various sales activities at the West LA Club.	49. Burger Depo., 76:19-77:1; Stanfa Decl., ¶ 9.
50. In late January 2015, Burger came to	50. Burger Depo., 76:6-12; Gannon

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

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
Plaintiff's termination.	
57. After Burger completed his interviews, Burger, Gannon and Hemedinger met briefly to discuss Burger's impressions.	57. Burger Depo., 117:16-18, 24-118:6.
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.	59. Burger Depo., ¶ 110:17-23; Gannon Decl., ¶ 6.
60. Gannon also advised Plaintiff to report back to the West LA club at 2:00 p.m. the next day for another meeting.	60. Plaintiff Depo., Volume I, 180:11-181:4; Gannon Decl., ¶ 5.
61. According to Plaintiff, Equinox told her that she would not have access to her email or payroll account and escorted her out of the building in front of Equinox's clientele, staff and all of her peers.	61. Plaintiff Depo., Volume I, 174:24-175:21; Plaintiff Depo., Volume II, 305:21-306:2, 364:17-20; Plaintiff's Complaint, 6:5-7.
62. It is Equinox's policy to turn off email access for hourly employees who have been suspended pending investigation or who are on a leave of absence.	62. Gannon Decl., ¶ 7.
63. Prior to Burger's interview of Plaintiff, Gannon had the Payroll	63. Gannon Decl., ¶ 8.

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

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

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
	56:25, 57:6-57:11.
75. Before reporting to the Marina Del Rey club, Plaintiff submitted her resignation, via email, on the morning of February 2, 2015 effective immediately.	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's last day of employment was February 2, 2015.	76. Plaintiff Depo., Volume I, 186:11-14.
77. Plaintiff never reported to work at the Marina Del Rey club.	77. Plaintiff Depo., Volume I, 50:13-15, 186:15-17; Hemedinger Depo., 56:22-25.
78. As of February 1, 2015, the only remaining MA at the West LA club was the recently hired MA.	78. Plaintiff Depo., Volume II, 342:3-11.
79. As of April/May 2015, the West LA club had an entirely new sales team and sales management.	79. Plaintiff Depo., Volume II, 342:25-343:5.
80. Plaintiff testified that she was unaware of any other MA at the West LA 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.	80. Plaintiff Depo., Volume II, 343:6-22.

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.)

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

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
<p>(“Simonson) supervised Plaintiff at the West LA club from about January 2014 to about January 2015.</p>	<p>19.</p>
<p>7. Plaintiff’s personnel file includes an Employee Handbook: Receipt Acknowledgment Form with Plaintiff’s signature dated October 15, 2010.</p>	<p>7. Plaintiff Depo., Volume I, 43:18-45:15, Exh. 8 (Receipt Acknowledgement Form); Declaration of Emerson Figueroa (“Figueroa Decl.”), ¶ 5, Exh. B.)</p>
<p>8. In particular, the Employee Handbook stated: I acknowledge that the receipt of the 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.</p>	<p>8. Plaintiff Depo., Volume I, 43:18-45:15, Exh. 8 (Receipt Acknowledgement Form); Figueroa Decl., ¶ 5, Exh. B (Receipt Acknowledgement Form).</p>

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
9. Plaintiff's personnel file also includes an Offer Letter, dated October 15, 2010, which Plaintiff acknowledged receiving.	9. Plaintiff Depo., Volume I, 36:23-38:11, Exh. 5 (Offer Letter); Figueroa Decl., ¶ 6, Exh. C (Offer Letter).
10. In particular, the Offer Letter stated: We are excited at the prospect of you joining the Company, you should be 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.	10. Plaintiff Depo., Volume I, 36:23-38:11, Exh. 5 (Offer Letter); Figueroa Decl., ¶ 6, Exh. C (Offer Letter).
11. Plaintiff's personnel file also includes an Employee Confidentiality and Non-Solicitation Agreement with Plaintiff's signature dated October 14, 2010.	11. Figueroa Decl., ¶ 8, Exh. D.

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
12. This Agreement stated: "You agree 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."	12. Figueroa Decl., ¶ 8, Exh. D.
13. In her deposition, Plaintiff admitted that she did not have a contract with Equinox; no one ever told her that she was guaranteed employment for a certain time period; and no one ever told her that she was anything other than an at-will employee.	13. Plaintiff Depo., Volume I, 36:23-38:11, 43:18-45:15, Exh. 5 (Offer Letter), Exh. 8 (Receipt Acknowledgement Form).
14. The Employee Handbook Plaintiff acknowledged receiving also included Equinox's non-retaliation policy as well as complaint procedures for reporting retaliation.	14. Plaintiff Depo., Volume I, 43:18-45:15, Exh. 8 Receipt of Employee Handbook; Declaration of Emerson Figueroa ("Figueroa Decl."), Exh. A.
15. In particular, Equinox's policy strictly prohibits retaliation against any employee for "filing a complaint and [Equinox] will not knowingly permit retaliation by management, employees, or co-workers." Equinox's policy also prohibits retaliation against any employee	15. Plaintiff Depo., Volume I, 43:18-45:15, Exh. 8 Receipt of Employee Handbook; Figueroa Decl., Exh. A, Employee Handbook.

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
<p>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.”</p>	
<p>16. The complaint procedure as outlined in the Employee Handbook permits an employee to report retaliation to his or her manager, Human Resources, or through Equinox’s Ethics Hotline.</p>	<p>16. Plaintiff Depo., Volume I, 43:18-45:15, Exh. 8 Receipt of Employee Handbook; Figueroa Decl. ¶ 4.</p>
<p>17. In or about June 2014, Hemedinger informed Plaintiff and other MAs that the compensation plan for all West LA MAs was being clarified, so that the market bonuses would be paid out individually and not cumulatively for reaching a certain sales goal.</p>	<p>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.</p>
<p>18. For example, the plan provided for a particular market bonus upon reaching a certain goal of sales:</p> <ul style="list-style-type: none"> • 100% of goal – MA would 	<p>18. Plaintiff Depo., Volume I, 190:16-194:3; Hemedinger Depo., 64:18-65:11</p>

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
<p>receive an extra \$20 per sale</p> <ul style="list-style-type: none"> • 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 	
<p>19. For the West LA club, Equinox's Payroll Department was adding the bonuses together as opposed to giving one of the bonuses above depending on the overall percentage.</p>	<p>19. Plaintiff Depo., Volume I, 190:16-194:3; Holmes Depo., 82:11-83:14; Hemedinger Depo., 59:22-60:6, 62:3-63:8; 66:6-11., 68:15-69:8.</p>
<p>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").</p>	<p>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.</p>
<p>21. Despite Plaintiff's complaints about the compensation plan, Plaintiff continued to work at Equinox for seven months after</p>	<p>21. Plaintiff Depo., Volume I, 196:8-14, 207:15-22, 220:5-20; Plaintiff Depo., Volume II, 349:5-12.</p>

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING 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 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 only "illegal activities" about which she complained to Equinox.	23. Plaintiff Depo., Volume II, 334:16-336:23.
24. According to Plaintiff, her other complaints involved "things against Equinox policies that were happening as well."	24. Plaintiff Depo., Volume II, 334:16-336:23.

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

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30. Rosen contacted Tracy Cuva, Senior Director of Equinox's Member Services Department, gave her the information received from the member, and asked Member Services to investigate this sale.	30. Rosen Depo., 37:20-38:21; Cuva Decl., ¶ 2.
31. Member Services' investigation, 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).	31. Cuva Decl., ¶ 2.
32. This MA was relocating to New York but, based on the investigation results, she was not hired to work for Equinox in New York.	32. Rosen Depo., 39:8-13.
33. As a result of this member complaint, Rosen also asked Cuva to have Member Services conduct an investigation of sales transactions at the West LA club.	33. Rosen Depo., 47:25-6; Cuva Decl., ¶ 3.
34. Apart from requesting that the 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	34. Rosen Depo., 47:25-48:21.

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

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
<p>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.</p> <p>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.</p> <p>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</p>	

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<p>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.</p>	
<p>41. Neither Cuva nor Stanfa were aware Plaintiff had made any complaints about changes to her compensation plan or about the alleged activities of other MAs.</p>	<p>41. Cuva Decl., ¶ 8; Stanfa Decl., ¶ 11.</p>
<p>42. In addition, Burger was asked to interview the sales team at the West LA club.</p>	<p>42. Deposition of Jim Burger ("Burger Depo."), 72:4-73:3, 73:13:75:22, 76:6-12.</p>
<p>43. When Burger came to Los Angeles 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</p>	<p>43. Hemedinger Decl., ¶ 4.</p>

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
Simonson and an Assistant General Manager.	
44. A MA was fired on or about January 20, 2015 for improper sales activities.	44. Figueroa Decl. ¶ 9; Hemedinger Decl., ¶ 4.
45. At Burger's request, Member Services provided him with the spreadsheets summarizing their findings of questionable sales transactions at the West LA club.	45. Burger Depo., 72:13-73:3; Cuva Decl. ¶ 8.
46. Burger then met with Cuva and Stanfa and they discussed their findings regarding the questionable sales at the West LA club.	46. Burger Depo., 73:13-74:15; Cuva Decl. ¶ 8; Stanfa Decl., ¶ 9.
47. Burger had a subsequent meeting with Stanfa to review the spreadsheets Member Services had prepared.	47. Burger Depo., 74:16-75:3, 8-22; Stanfa Decl., ¶ 9.
48. These spreadsheets showed anomalies in various sales transactions, 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	48. Burger Depo., 39:3-40:22; Cuva Decl., ¶ 8; Stanfa Decl., ¶¶ 4-5.

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
any visits to a club, etc.	
49. Burger also had a couple of telephone conversations with Stanfa regarding the anomalies in various sales activities at the West LA Club.	49. Burger Depo., 76:19-77:1; Stanfa Decl., ¶ 9.
50. In late January 2015, Burger came to Los Angeles to interview various employees regarding sales activities of the West LA MAs.	50. Burger Depo., 76:6-12; Gannon Decl., ¶ 3; Hemedinger Decl., ¶ 5.
51. Prior to the interviews, Burger and Gannon discussed suspending all of the individuals interviewed as part of the investigation pending the results of the investigation.	51. Burger Depo., 116:12-117:12.
52. Burger then interviewed the following individuals: (1) the Assistant General Manager; (2) Plaintiff; (3) another MA; (4) a relatively newly hired MA; and (5) Simonson.	52. Hemedinger Decl., ¶ 5.
53. Burger had never heard of or spoken to Plaintiff prior to this investigation meeting.	53. Burger Depo., 35:22-24.
54. On January 30, 2015, Plaintiff met with Burger and Leah Ball of Human Resources regarding West LA's sales practices.	54. Plaintiff Depo., Volume I, 161:11-22, 164:10-22; Plaintiff Depo., Volume II, 305:21-24; , Burger Depo., 96:18-25.

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

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

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
Rey MAs. Equinox considered the reassignment a lateral move.	
67. Equinox considered the reassignment a lateral move.	67. Rosen Depo., 87:25-88:4; Gannon Decl., ¶ 11.
68. When Plaintiff was asked what her compensation would be at the Marina Del Rey club, she was sent the compensation plan of a Marina Del Rey MA.	68. Plaintiff Depo., Volume II, 390:4-11, Exh. 38; Gannon Decl., ¶ 12.
69. Equinox's expectation was she would earn at least the same amount of money because the Marina Del Rey club 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.	69. Hemedinger Depo., 52:18-23; Rosen Depo., 57:13-19; 58:22-59:14; Holmes Depo., 31:13-15.
70. It was easier to sell more memberships at the Marina Del Rey club than the West LA club because the Marina Del Rey memberships were less expensive.	70. Hemedinger Depo., 52:18-23; Rosen Depo., 57:13-19; 58:22-59:14; Holmes Depo., 50:18-51:5
71. Gannon emailed Plaintiff the compensation plan for the Marina Del Rey Club on or about January 31, 2015.	71. Plaintiff Depo., Volume I, 246:19-247:2; Gannon Decl., ¶ 12.
72. Plaintiff testified that no one from Equinox ever told her that she was being "terminated" or "demoted" as part of her reassignment to the Marina Del Rey club.	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 UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
73. Gannon made the decision to reassign Plaintiff to the Marina Del Rey club.	73. Rosen Depo., 45:7-25. 57:8-12; Hemedinger Depo., 53:14-18.
74. Plaintiff was told to report to the Marina Del Rey club on February 2, 2015 at 9:00 a.m.	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. Before reporting to the Marina Del Rey club, Plaintiff submitted her resignation, via email, on the morning of February 2, 2015 effective immediately.	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's last day of employment was February 2, 2015.	76. Plaintiff Depo., Volume I, 186:11-14.
77. Plaintiff never reported to work at the Marina Del Rey club.	77. Plaintiff Depo., Volume I, 50:13-15, 186:15-17; Hemedinger Depo., 56:22-25.
78. As of February 1, 2015, the only remaining MA at the West LA club was the recently hired MA.	78. Plaintiff Depo., Volume II, 342:3-11.
79. As of April/May 2015, the West LA club had an entirely new sales team and sales management.	79. Plaintiff Depo., Volume II, 342:25-343:5.
80. Plaintiff testified that she was unaware of any other MA at the West LA club complaining about the unauthorized	80. Plaintiff Depo., Volume II, 343:6-22.

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

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
<p>5. From about October 2011 through about June 2015, Brian Hemedinger (“Hemedinger”) was the Regional Director of Operations (“Regional Director”) of the Santa Monica and West LA clubs.</p>	<p>5. Plaintiff Depo., Volume I, 270:8,-14, 75:24-76:4; Deposition of Brian Hemedinger (“Hemedinger Depo.”) 15:3-10, 41:1-9, 13-16; Hemedinger Decl., ¶ 1.</p>
<p>7. Plaintiff’s personnel file includes an Employee Handbook: Receipt Acknowledgment Form with Plaintiff’s signature dated October 15, 2010.</p>	<p>7. Plaintiff Depo., Volume I, 43:18-45:15, Exh. 8 (Receipt Acknowledgement Form); Declaration of Emerson Figueroa (“Figueroa Decl.”), ¶ 5, Exh. B.)</p>
<p>8. In particular, the Employee Handbook stated: I acknowledge that the receipt of the 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</p>	<p>8. Plaintiff Depo., Volume I, 43:18-45:15, Exh. 8 (Receipt Acknowledgement Form); Figueroa Decl., ¶ 5, Exh. B (Receipt Acknowledgement Form).</p>

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING 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 includes an Offer Letter, dated October 15, 2010, which Plaintiff acknowledged receiving.	9. Plaintiff Depo., Volume I, 36:23-38:11, Exh. 5 (Offer Letter); Figueroa Decl., ¶ 6, Exh. C (Offer Letter).
10. In particular, the Offer Letter stated: We are excited at the prospect of you joining the Company, you should be 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.	10. Plaintiff Depo., Volume I, 36:23-38:11, Exh. 5 (Offer Letter); Figueroa Decl., ¶ 6, Exh. C (Offer Letter).
11. Plaintiff's personnel file also includes an Employee Confidentiality and	11. Figueroa Decl., ¶ 8, Exh. D.

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
Non-Solicitation Agreement with Plaintiff's signature dated October 14, 2010.	
12. This Agreement stated: "You agree 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."	12. Figueroa Decl., ¶ 8, Exh. D.
13. In her deposition, Plaintiff admitted that she did not have a contract with Equinox; no one ever told her that she was guaranteed employment for a certain time period; and no one ever told her that she was anything other than an at-will employee.	13. Plaintiff Depo., Volume I, 36:23-38:11, 43:18-45:15, Exh. 5 (Offer Letter), Exh. 8 (Receipt Acknowledgement Form).
17. In or about June 2014, Hemedinger informed Plaintiff and other MAs that the compensation plan for all West LA MAs was being clarified, so that the market bonuses would be paid out individually and not cumulatively for reaching a certain sales goal.	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. For example, the plan provided for a particular market bonus upon reaching a	18. Plaintiff Depo., Volume I, 190:16-194:3; Hemedinger Depo., 64:18-65:11

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
<p>certain goal of sales:</p> <ul style="list-style-type: none"> • 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 	
<p>19. For the West LA club, Equinox's Payroll Department was adding the bonuses together as opposed to giving one of the bonuses above depending on the overall percentage.</p>	<p>19. Plaintiff Depo., Volume I, 190:16-194:3; Holmes Depo., 82:11-83:14; Hemedinger Depo., 59:22-60:6, 62:3-63:8; 66:6-11., 68:15-69:8.</p>
<p>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").</p>	<p>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.</p>
<p>21. Despite Plaintiff's complaints about</p>	<p>21. Plaintiff Depo., Volume I, 196:8-</p>

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
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.	14, 207:15-22, 220:5-20; Plaintiff Depo., Volume II, 349:5-12.
75. Before reporting to the Marina Del Rey club, Plaintiff submitted her resignation, via email, on the morning of February 2, 2015 effective immediately.	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's last day of employment was February 2, 2015.	76. Plaintiff Depo., Volume I, 186:11-14.

ISSUE NO. 8

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

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

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
<p>Handbook stated:</p> <p>I acknowledge that the receipt of the 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.</p>	<p>45:15, Exh. 8 (Receipt Acknowledgement Form).</p>
<p>9. Plaintiff's personnel file also includes an Offer Letter, dated October 15, 2010, which Plaintiff acknowledged receiving.</p>	<p>9. Plaintiff Depo., Volume I, 36:23-38:11, Exh. 5 (Offer Letter); Declaration of Emerson Figueroa ("Figueroa Decl."), ¶ 6, Exh. C (Offer Letter).</p>
<p>10. In particular, the Offer Letter stated: We are excited at the prospect of you joining the Company, you should be aware that our relationship is "employment-at-will." That means you</p>	<p>10. Plaintiff Depo., Volume I, 36:23-38:11, Exh. 5 (Offer Letter); Figueroa Decl., ¶ 6, Exh. C (Offer Letter).</p>

DEFENDANT’S UNCONTROVERTED FACTS	DEFENDANT’S SUPPORTING EVIDENCE
<p>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.</p>	
<p>11. Plaintiff’s personnel file also includes an Employee Confidentiality and Non-Solicitation Agreement with Plaintiff’s signature dated October 14, 2010.</p>	<p>11. Figueroa Decl., ¶ 8, Exh. D.</p>
<p>12. This Agreement stated: “You agree 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.”</p>	<p>12. Figueroa Decl., ¶ 8, Exh. D.</p>
<p>13. In her deposition, Plaintiff admitted that she did not have a contract with</p>	<p>13. Plaintiff Depo., Volume I, 36:23-38:11, 43:18-45:15, Exh. 5 (Offer</p>

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
Equinox; no one ever told her that she was guaranteed employment for a certain time period; and no one ever told her that she was anything other than an at-will employee.	Letter), Exh. 8 (Receipt Acknowledgement Form).
17. In or about June 2014, Hemedinger informed Plaintiff and other MAs that the compensation plan for all West LA MAs was being clarified, so that the market bonuses would be paid out individually and not cumulatively for reaching a certain sales goal.	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. For example, the plan provided for a particular market bonus upon reaching a 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	18. Plaintiff Depo., Volume I, 190:16-194:3; Hemedinger Depo., 64:18-65:11
19. For the West LA club, Equinox's Payroll Department was adding the bonuses together as opposed to giving one of the bonuses above depending on the overall percentage.	19. Plaintiff Depo., Volume I, 190:16-194:3; Holmes Depo., 82:11-83:14; Hemedinger Depo., 59:22-60:6, 62:3-63:8; 66:6-11., 68:15-69:8.

DEFENDANT’S UNCONTROVERTED FACTS	DEFENDANT’S SUPPORTING EVIDENCE
<p>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”).</p>	<p>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.</p>
<p>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.</p>	<p>21. Plaintiff Depo., Volume I, 196:8-14, 207:15-22, 220:5-20; Plaintiff Depo., Volume II, 349:5-12.</p>
<p>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.</p>	<p>22. Plaintiff Depo., Volume I, 81:6-21, 82:5-83:23, 94:14-97:9.</p>
<p>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</p>	<p>23. Plaintiff Depo., Volume II, 334:16-336:23.</p>

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

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

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
34. Apart from requesting that the 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.	34. Rosen Depo., 47:25-48:21.
35. Cuva instructed Kevin Stanfa ("Stanfa") (Manager of Compliance and Special Projects), to review sales transactions at the West LA club.	35. Cuva Decl., ¶ 3; Stanfa Decl. ¶ 4.
36. After Stanfa reported finding various anomalies associated with sales transactions at the West LA club, Cuva instructed Stanfa to prepare a summary detailing his findings.	36. Cuva Decl., ¶ 3; Stanfa Decl. ¶ 4.
37. Stanfa then prepared a workbook with three spreadsheets regarding the following sales activities: (1) 2014 Freezes; (2) Modification to Direct Bill; and (3) West LA Sales Breakdown.	37. Stanfa Decl., ¶ 4.
38. Once these were prepared, Cuva emailed the spreadsheets to Rosen, Holmes and Gannon and summarized the results of the Member Services	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.

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
investigation.	
39. In her email, Cuva indicated that these spreadsheets "all reflect patterns unhealthy for the business."	39. Cuva Decl., ¶ 7, Exh. N.
<p>40. Cuva noted as follows:</p> <ul style="list-style-type: none"> 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 	40. Cuva Decl., ¶ 7, Exh. N.

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
<p>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.</p>	
<p>41. Neither Cuva nor Stanfa were aware Plaintiff had made any complaints about changes to her compensation plan or about the alleged activities of other MAs.</p>	<p>41. Cuva Decl., ¶ 8; Stanfa Decl., ¶ 11.</p>
<p>42. In addition, Burger was asked to interview the sales team at the West LA</p>	<p>42. Deposition of Jim Burger ("Burger Depo."), 72:4-73:3, 73:13:75:22, 76:6-</p>

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
club.	12.
43. When Burger came to Los Angeles 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.	43. Hemedinger Decl., ¶ 4.
44. A MA was fired on or about January 20, 2015 for improper sales activities.	44. Figueroa Decl. ¶ 9; Hemedinger Decl., ¶ 4.
45. At Burger's request, Member Services provided him with the spreadsheets summarizing their findings of questionable sales transactions at the West LA club.	45. Burger Depo., 72:13-73:3; Cuva Decl. ¶ 8.
46. Burger then met with Cuva and Stanfa and they discussed their findings regarding the questionable sales at the West LA club.	46. Burger Depo., 73:13-74:15; Cuva Decl. ¶ 8; Stanfa Decl., ¶ 9.
47. Burger had a subsequent meeting with Stanfa to review the spreadsheets Member Services had prepared.	47. Burger Depo., 74:16-75:3, 8-22; Stanfa Decl., ¶ 9.
48. These spreadsheets showed anomalies in various sales transactions, including whether or not a contract was signed, whether or not a credit card was	48. Burger Depo., 39:3-40:22; Cuva Decl., ¶ 8; Stanfa Decl., ¶¶ 4-5.

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING 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 telephone conversations with Stanfa regarding the anomalies in various sales activities at the West LA Club.	49. Burger Depo., 76:19-77:1; Stanfa Decl., ¶ 9.
50. In late January 2015, Burger came to Los Angeles to interview various employees regarding sales activities of the West LA MAs.	50. Burger Depo., 76:6-12; Gannon Decl., ¶ 3; Hemedinger Decl., ¶ 5.
51. Prior to the interviews, Burger and Gannon discussed suspending all of the individuals interviewed as part of the investigation pending the results of the investigation.	51. Burger Depo., 116:12-117:12.
52. Burger then interviewed the following individuals: (1) the Assistant General Manager; (2) Plaintiff; (3) another MA; (4) a relatively newly hired MA; and (5) Simonson.	52. Hemedinger Decl., ¶ 5.
53. Burger had never heard of or spoken	53. Burger Depo., 35:22-24.

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
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 practices.	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 answered questions about her sales activities, as well as the activities of other MAs.	55. Plaintiff Depo., Volume I, 161:11-22, 164:10-22; Burger Depo., 53:13-54:9.
56. While Burger did not find Plaintiff credible, he felt, at that time, that there was insufficient information to warrant Plaintiff's termination.	56. Burger Depo., 122:14-17.
57. After Burger completed his interviews, Burger, Gannon and Hemedinger met briefly to discuss Burger's impressions.	57. Burger Depo., 117:16-18, 24-118:6.
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.	59. Burger Depo., ¶ 110:17-23; Gannon Decl., ¶ 6.
60. Gannon also advised Plaintiff to report back to the West LA club at 2:00	60. Plaintiff Depo., Volume I, 180:11-181:4; Gannon Decl., ¶ 5.

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

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

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
compensation plan for the Marina Del Rey Club on or about January 31, 2015.	247:2; Gannon Decl., ¶ 12.
72. Plaintiff testified that no one from Equinox ever told her that she was being “terminated” or “demoted” as part of her reassignment to the Marina Del Rey club.	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.
73. Gannon made the decision to reassign Plaintiff to the Marina Del Rey club.	73. Rosen Depo., 45:7-25. 57:8-12; Hemedinger Depo., 53:14-18.
74. Plaintiff was told to report to the Marina Del Rey club on February 2, 2015 at 9:00 a.m.	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. Before reporting to the Marina Del Rey club, Plaintiff submitted her resignation, via email, on the morning of February 2, 2015 effective immediately.	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's last day of employment was February 2, 2015.	76. Plaintiff Depo., Volume I, 186:11-14.
77. Plaintiff never reported to work at the Marina Del Rey club.	77. Plaintiff Depo., Volume I, 50:13-15, 186:15-17; Hemedinger Depo., 56:22-25.
78. As of February 1, 2015, the only remaining MA at the West LA club was the recently hired MA.	78. Plaintiff Depo., Volume II, 342:3-11.

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
79. As of April/May 2015, the West LA club had an entirely new sales team and sales management.	79. Plaintiff Depo., Volume II, 342:25-343:5.
80. Plaintiff testified that she was unaware of any other MA at the West LA 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.	80. Plaintiff Depo., Volume II, 343:6-22.

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

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

DEFENDANT’S UNCONTROVERTED FACTS	DEFENDANT’S SUPPORTING EVIDENCE
<p>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.</p>	<p>Acknowledgement Form).</p>
<p>9. Plaintiff’s personnel file also includes an Offer Letter, dated October 15, 2010, which Plaintiff acknowledged receiving.</p>	<p>9. Plaintiff Depo., Volume I, 36:23-38:11, Exh. 5 (Offer Letter); Figueroa Decl., ¶ 6, Exh. C (Offer Letter).</p>
<p>10. In particular, the Offer Letter stated: We are excited at the prospect of you joining the Company, you should be 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.</p>	<p>10. Plaintiff Depo., Volume I, 36:23-38:11, Exh. 5 (Offer Letter); Figueroa Decl., ¶ 6, Exh. C (Offer Letter).</p>

DEFENDANT’S UNCONTROVERTED FACTS	DEFENDANT’S SUPPORTING EVIDENCE
<p>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.</p>	
<p>11. Plaintiff’s personnel file also includes an Employee Confidentiality and Non-Solicitation Agreement with Plaintiff’s signature dated October 14, 2010.</p>	<p>11. Figueroa Decl., ¶ 8, Exh. D.</p>
<p>12. This Agreement stated: “You agree 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.”</p>	<p>12. Figueroa Decl., ¶ 8, Exh. D.</p>
<p>13. In her deposition, Plaintiff admitted that she did not have a contract with Equinox; no one ever told her that she was guaranteed employment for a certain time period; and no one ever told her that she</p>	<p>13. Plaintiff Depo., Volume I, 36:23-38:11, 43:18-45:15, Exh. 5 (Offer Letter), Exh. 8 (Receipt Acknowledgement Form).</p>

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
was anything other than an at-will employee.	
14. The Employee Handbook Plaintiff acknowledged receiving also included Equinox's non-retaliation policy as well as complaint procedures for reporting retaliation.	14. Plaintiff Depo., Volume I, 43:18-45:15, Exh. 8 Receipt of Employee Handbook; Declaration of Emerson Figueroa ("Figueroa Decl."), Exh. A.
15. In particular, Equinox's policy strictly prohibits retaliation against any employee for "filing a complaint and [Equinox] will not knowingly permit 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."	15. Plaintiff Depo., Volume I, 43:18-45:15, Exh. 8 Receipt of Employee Handbook; Figueroa Decl., Exh. A, Employee Handbook.
16. The complaint procedure as outlined in the Employee Handbook	16. Plaintiff Depo., Volume I, 43:18-45:15, Exh. 8 Receipt of Employee

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
permits an employee to report retaliation to his or her manager, Human Resources, or through Equinox's Ethics Hotline.	Handbook; Figueroa Decl. ¶ 4.
17. In or about June 2014, Hemedinger informed Plaintiff and other MAs that the compensation plan for all West LA MAs was being clarified, so that the market bonuses would be paid out individually and not cumulatively for reaching a certain sales goal.	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. For example, the plan provided for a particular market bonus upon reaching a certain goal of sales: <ul style="list-style-type: none"> • 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 	18. Plaintiff Depo., Volume I, 190:16-194:3; Hemedinger Depo., 64:18-65:11
19. For the West LA club, Equinox's Payroll Department was adding the bonuses together as opposed to giving one of the bonuses above depending on the overall percentage.	19. Plaintiff Depo., Volume I, 190:16-194:3; Holmes Depo., 82:11-83:14; Hemedinger Depo., 59:22-60:6, 62:3-63:8; 66:6-11., 68:15-69:8.

DEFENDANT’S UNCONTROVERTED FACTS	DEFENDANT’S SUPPORTING EVIDENCE
<p>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”).</p>	<p>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.</p>
<p>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.</p>	<p>21. Plaintiff Depo., Volume I, 196:8-14, 207:15-22, 220:5-20; Plaintiff Depo., Volume II, 349:5-12.</p>
<p>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</p>	<p>22. Plaintiff Depo., Volume I, 81:6-21, 82:5-83:23, 94:14-97:9.</p>

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

DEFENDANT’S UNCONTROVERTED FACTS	DEFENDANT’S SUPPORTING EVIDENCE
<p>months” to potential members, allowing “freezes” for members, and offering “three month” deals.</p>	<p>108:1-113:5; Hemedinger Depo., 45:8-47:19.</p>
<p>28. In or around December 2014, COO Rosen was touring the West LA club when he was told by a member that a MA had charged a membership to another member’s credit card without that member’s authorization.</p>	<p>28. Rosen Depo., 37:20-38:18; Declaration of Tracy Cuva (“Cuva Decl.”), ¶ 2.</p>
<p>29. Member Services is Equinox’s billing department (centrally based in New York) which handles membership contracts and membership sales, including auditing of membership sales.</p>	<p>29. Cuva Decl., ¶ 1.</p>
<p>30. Rosen contacted Tracy Cuva, Senior Director of Equinox’s Member Services Department, gave her the information received from the member, and asked Member Services to investigate this sale.</p>	<p>30. Rosen Depo., 37:20-38:21; Cuva Decl., ¶ 2.</p>
<p>31. Member Services’ investigation, 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).</p>	<p>31. Cuva Decl., ¶ 2.</p>

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
32. This MA was relocating to New York but, based on the investigation results, she was not hired to work for Equinox in New York.	32. Rosen Depo., 39:8-13.
33. As a result of this member complaint, Rosen also asked Cuva to have Member Services conduct an investigation of sales transactions at the West LA club.	33. Rosen Depo., 47:25-6; Cuva Decl., ¶ 3.
34. Apart from requesting that the 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.	34. Rosen Depo., 47:25-48:21.
35. Cuva instructed Kevin Stanfa ("Stanfa") (Manager of Compliance and Special Projects), to review sales transactions at the West LA club.	35. Cuva Decl., ¶ 3; Stanfa Decl. ¶ 4.
36. After Stanfa reported finding various anomalies associated with sales transactions at the West LA club, Cuva instructed Stanfa to prepare a summary detailing his findings.	36. Cuva Decl., ¶ 3; Stanfa Decl. ¶ 4.
37. Stanfa then prepared a workbook	37. Stanfa Decl., ¶ 4.

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING 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 emailed the spreadsheets to Rosen, Holmes and Gannon and summarized the results of the Member Services investigation.	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. In her email, Cuva indicated that these spreadsheets "all reflect patterns unhealthy for the business."	39. Cuva Decl., ¶ 7, Exh. N.
40. Cuva noted as follows: 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	40. Cuva Decl., ¶ 7, Exh. N.

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
<p>club. West LA had 28 modifications to direct bill.</p> <p>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 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</p>	

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

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
West LA club.	
47. Burger had a subsequent meeting with Stanfa to review the spreadsheets Member Services had prepared.	47. Burger Depo., 74:16-75:3, 8-22; Stanfa Decl., ¶ 9.
48. These spreadsheets showed anomalies in various sales transactions, 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.	48. Burger Depo., 39:3-40:22; Cuva Decl., ¶ 8; Stanfa Decl., ¶¶ 4-5.
49. Burger also had a couple of telephone conversations with Stanfa regarding the anomalies in various sales activities at the West LA Club.	49. Burger Depo., 76:19-77:1; Stanfa Decl., ¶ 9.
50. In late January 2015, Burger came to Los Angeles to interview various employees regarding sales activities of the West LA MAs.	50. Burger Depo., 76:6-12; Gannon Decl., ¶ 3; Hemedinger Decl., ¶ 5.
51. Prior to the interviews, Burger and Gannon discussed suspending all of the individuals interviewed as part of the	51. Burger Depo., 116:12-117:12.

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

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

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

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING 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 memberships at the Marina Del Rey club than the West LA club because the Marina Del Rey memberships were less expensive.	70. Hemedinger Depo., 52:18-23; Rosen Depo., 57:13-19; 58:22-59:14; Holmes Depo. , 50:18-51:5
71. Gannon emailed Plaintiff the compensation plan for the Marina Del Rey Club on or about January 31, 2015.	71. Plaintiff Depo., Volume I, 246:19-247:2; Gannon Decl., ¶ 12.
72. Plaintiff testified that no one from Equinox ever told her that she was being “terminated” or “demoted” as part of her reassignment to the Marina Del Rey club.	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.
73. Gannon made the decision to reassign Plaintiff to the Marina Del Rey club.	73. Rosen Depo., 45:7-25. 57:8-12; Hemedinger Depo., 53:14-18.
74. Plaintiff was told to report to the Marina Del Rey club on February 2, 2015 at 9:00 a.m.	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. Before reporting to the Marina Del Rey club, Plaintiff submitted her resignation, via email, on the morning of February 2, 2015 effective immediately.	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.

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
76. Plaintiff's last day of employment was February 2, 2015.	76. Plaintiff Depo., Volume I, 186:11-14.
77. Plaintiff never reported to work at the Marina Del Rey club.	77. Plaintiff Depo., Volume I, 50:13-15, 186:15-17; Hemedinger Depo., 56:22-25.
78. As of February 1, 2015, the only remaining MA at the West LA club was the recently hired MA.	78. Plaintiff Depo., Volume II, 342:3-11.
79. As of April/May 2015, the West LA club had an entirely new sales team and sales management.	79. Plaintiff Depo., Volume II, 342:25-343:5.
80. Plaintiff testified that she was unaware of any other MA at the West LA 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.	80. Plaintiff Depo., Volume II, 343:6-22.

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

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
Advisor ("MA") at Equinox's Santa Monica club on or about October 15, 2010.	38:10, Exh. 5 (Offer Letter).
2. In January 2014, Plaintiff began working at Equinox's West Los Angeles club ("West LA club").	2. Plaintiff Depo., Volume I, 189:22-190:12, Exh. 13 (Memo).
3. At the West LA club, MAs were referred to as Membership Executives. However, their job duties were the same.	3. Declaration of Brian Hemedinger ("Hemedinger Decl."), ¶ 3.
4. During Plaintiff's employment at Equinox's Santa Monica and West LA clubs, Jack Gannon ("Gannon") was the Vice President of the West Coast.	4. Declaration of Jack Gannon ("Gannon Decl."), ¶¶ 1-2.
5. From about October 2011 through about June 2015, Brian Hemedinger ("Hemedinger") was the Regional Director of Operations ("Regional Director") of the Santa Monica and West LA clubs.	5. Plaintiff Depo., Volume I, 270:8,-14, 75:24-76:4; Deposition of Brian Hemedinger ("Hemedinger Depo.") 15:3-10, 41:1-9, 13-16; Hemedinger Decl., ¶ 1.
6. General Manager Kira Simonson ("Simonson") supervised Plaintiff at the West LA club from about January 2014 to about January 2015.	6. Plaintiff Depo., Volume I, 52:11-19.
7. Plaintiff's personnel file includes an Employee Handbook: Receipt Acknowledgment Form with Plaintiff's	7. Plaintiff Depo., Volume I, 43:18-45:15, Exh. 8 (Receipt Acknowledgement Form); Declaration of

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
signature dated October 15, 2010.	Emerson Figueroa ("Figueroa Decl."), ¶ 5, Exh. B.)
<p>8. In particular, the Employee Handbook stated:</p> <p>I acknowledge that the receipt of the 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.</p>	<p>8. Plaintiff Depo., Volume I, 43:18-45:15, Exh. 8 (Receipt Acknowledgement Form); Figueroa Decl., ¶ 5, Exh. B (Receipt Acknowledgement Form).</p>
<p>9. Plaintiff's personnel file also includes an Offer Letter, dated October 15, 2010, which Plaintiff acknowledged receiving.</p>	<p>9. Plaintiff Depo., Volume I, 36:23-38:11, Exh. 5 (Offer Letter); Figueroa Decl., ¶ 6, Exh. C (Offer Letter).</p>
<p>10. In particular, the Offer Letter stated: We are excited at the prospect of you</p>	<p>10. Plaintiff Depo., Volume I, 36:23-38:11, Exh. 5 (Offer Letter); Figueroa</p>

DEFENDANT’S UNCONTROVERTED FACTS	DEFENDANT’S SUPPORTING EVIDENCE
<p>joining the Company, you should be 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.</p>	<p>Decl., ¶ 6, Exh. C (Offer Letter).</p>
<p>11. Plaintiff’s personnel file also includes an Employee Confidentiality and Non-Solicitation Agreement with Plaintiff’s signature dated October 14, 2010.</p>	<p>11. Figueroa Decl., ¶ 8, Exh. D.</p>
<p>12. This Agreement stated: “You agree 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</p>	<p>12. Figueroa Decl., ¶ 8, Exh. D.</p>

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
employment with the Company.”	
13. In her deposition, Plaintiff admitted that she did not have a contract with Equinox; no one ever told her that she was guaranteed employment for a certain time period; and no one ever told her that she was anything other than an at-will employee.	13. Plaintiff Depo., Volume I, 36:23-38:11, 43:18-45:15, Exh. 5 (Offer Letter), Exh. 8 (Receipt Acknowledgement Form).
14. The Employee Handbook Plaintiff acknowledged receiving also included Equinox’s non-retaliation policy as well as complaint procedures for reporting retaliation.	14. Plaintiff Depo., Volume I, 43:18-45:15, Exh. 8 Receipt of Employee Handbook; Declaration of Emerson Figueroa (“Figueroa Decl.”), Exh. A.
15. In particular, Equinox’s policy strictly prohibits retaliation against any employee for “filing a complaint and [Equinox] will not knowingly permit 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	15. Plaintiff Depo., Volume I, 43:18-45:15, Exh. 8 Receipt of Employee Handbook; Figueroa Decl., Exh. A, Employee Handbook.

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
<p>permit any retaliation against any employee who complains of prohibited harassment or who participates in an investigation.”</p>	
<p>16. The complaint procedure as outlined in the Employee Handbook permits an employee to report retaliation to his or her manager, Human Resources, or through Equinox’s Ethics Hotline.</p>	<p>16. Plaintiff Depo., Volume I, 43:18-45:15, Exh. 8 Receipt of Employee Handbook; Figueroa Decl. ¶ 4.</p>
<p>17. In or about June 2014, Hemedinger informed Plaintiff and other MAs that the compensation plan for all West LA MAs was being clarified, so that the market bonuses would be paid out individually and not cumulatively for reaching a certain sales goal.</p>	<p>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.</p>
<p>18. For example, the plan provided for a particular market bonus upon reaching a certain goal of sales:</p> <ul style="list-style-type: none"> • 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 	<p>18. Plaintiff Depo., Volume I, 190:16-194:3; Hemedinger Depo., 64:18-65:11</p>

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
an extra \$70 per sale	
19. For the West LA club, Equinox's Payroll Department was adding the bonuses together as opposed to giving one of the bonuses above depending on the overall percentage.	19. Plaintiff Depo., Volume I, 190:16-194:3; Holmes Depo., 82:11-83:14; Hemedinger Depo., 59:22-60:6, 62:3-63:8; 66:6-11., 68:15-69:8.
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	22. Plaintiff Depo., Volume I, 81:6-21, 82:5-83:23, 94:14-97:9.

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
<p>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.</p>	
<p>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 only “illegal activities” about which she complained to Equinox.</p>	<p>23. Plaintiff Depo., Volume II, 334:16-336:23.</p>
<p>24. According to Plaintiff, her other complaints involved “things against Equinox policies that were happening as well.”</p>	<p>24. Plaintiff Depo., Volume II, 334:16-336:23.</p>
<p>25. Plaintiff admitted that she could not identify any statute, ordinance, regulation, local law, state law, or federal law that was violated as a result of this alleged activity.</p>	<p>25. Plaintiff Depo., Volume II, 335:4-336:23.</p>
<p>26. Plaintiff also testified that she</p>	<p>26. Plaintiff Depo., Volume I, 76:17-</p>

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
<p>1 complained to Hemedinger and Simonson</p> <p>2 about the sales activities of another MA.</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p>	<p>79:19; 93:10-94:10, 102:10-107:24;</p> <p>108:1-113:5; Hemedinger Depo., 45:8-</p> <p>47:19.</p>
<p>7 27. Specifically, Plaintiff complained</p> <p>8 that this MA was giving away “free</p> <p>9 months” to potential members, allowing</p> <p>10 “freezes” for members, and offering “three</p> <p>11 month” deals.</p>	<p>27. Plaintiff Depo., Volume I, 76:17-</p> <p>79:19; 93:10-94:10, 102:10-107:24;</p> <p>108:1-113:5; Hemedinger Depo., 45:8-</p> <p>47:19.</p>
<p>12 28. In or around December 2014, COO</p> <p>13 Rosen was touring the West LA club</p> <p>14 when he was told by a member that a MA</p> <p>15 had charged a membership to another</p> <p>16 member’s credit card without that</p> <p>17 member’s authorization.</p>	<p>28. Rosen Depo., 37:20-38:18;</p> <p>Declaration of Tracy Cuva (“Cuva</p> <p>Decl.”), ¶ 2.</p>
<p>18 29. Member Services is Equinox’s</p> <p>19 billing department (centrally based in</p> <p>20 New York) which handles membership</p> <p>21 contracts and membership sales, including</p> <p>22 auditing of membership sales.</p>	<p>29. Cuva Decl., ¶ 1.</p>
<p>23 30. Rosen contacted Tracy Cuva,</p> <p>24 Senior Director of Equinox’s Member</p> <p>25 Services Department, gave her the</p> <p>26 information received from the member,</p> <p>27 and asked Member Services to investigate</p> <p>28 this sale.</p>	<p>30. Rosen Depo., 37:20-38:21; Cuva</p> <p>Decl., ¶ 2.</p>

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
31. Member Services' investigation, 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).	31. Cuva Decl., ¶ 2.
32. This MA was relocating to New York but, based on the investigation results, she was not hired to work for Equinox in New York.	32. Rosen Depo., 39:8-13.
33. As a result of this member complaint, Rosen also asked Cuva to have Member Services conduct an investigation of sales transactions at the West LA club.	33. Rosen Depo., 47:25-6; Cuva Decl., ¶ 3.
34. Apart from requesting that the 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.	34. Rosen Depo., 47:25-48:21.
35. Cuva instructed Kevin Stanfa ("Stanfa") (Manager of Compliance and Special Projects), to review sales transactions at the West LA club.	35. Cuva Decl., ¶ 3; Stanfa Decl. ¶ 4.

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
36. After Stanfa reported finding various anomalies associated with sales transactions at the West LA club, Cuva instructed Stanfa to prepare a summary detailing his findings.	36. Cuva Decl., ¶ 3; Stanfa Decl. ¶ 4.
37. Stanfa then prepared a workbook with three spreadsheets regarding the following sales activities: (1) 2014 Freezes; (2) Modification to Direct Bill; and (3) West LA Sales Breakdown.	37. Stanfa Decl., ¶ 4.
38. Once these were prepared, Cuva emailed the spreadsheets to Rosen, Holmes and Gannon and summarized the results of the Member Services investigation.	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. In her email, Cuva indicated that these spreadsheets "all reflect patterns unhealthy for the business."	39. Cuva Decl., ¶ 7, Exh. N.
40. Cuva noted as follows: 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	40. Cuva Decl., ¶ 7, Exh. N.

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
<p>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.</p> <p>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</p>	

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
<p>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.</p>	
<p>41. Neither Cuva nor Stanfa were aware Plaintiff had made any complaints about changes to her compensation plan or about the alleged activities of other MAs.</p>	<p>41. Cuva Decl., ¶ 8; Stanfa Decl., ¶ 11.</p>
<p>42. In addition, Burger was asked to interview the sales team at the West LA club.</p>	<p>42. Deposition of Jim Burger ("Burger Depo."), 72:4-73:3, 73:13:75:22, 76:6-12.</p>
<p>43. When Burger came to Los Angeles 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.</p>	<p>43. Hemedinger Decl., ¶ 4.</p>
<p>44. A MA was fired on or about January 20, 2015 for improper sales activities.</p>	<p>44. Figueroa Decl. ¶ 9; Hemedinger Decl., ¶ 4.</p>
<p>45. At Burger's request, Member Services provided him with the</p>	<p>45. Burger Depo., 72:13-73:3; Cuva Decl. ¶ 8.</p>

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
spreadsheets summarizing their findings of questionable sales transactions at the West LA club.	
46. Burger then met with Cuva and Stanfa and they discussed their findings regarding the questionable sales at the West LA club.	46. Burger Depo., 73:13-74:15; Cuva Decl. ¶ 8; Stanfa Decl., ¶ 9.
47. Burger had a subsequent meeting with Stanfa to review the spreadsheets Member Services had prepared.	47. Burger Depo., 74:16-75:3, 8-22; Stanfa Decl., ¶ 9.
48. These spreadsheets showed anomalies in various sales transactions, 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.	48. Burger Depo., 39:3-40:22; Cuva Decl., ¶ 8; Stanfa Decl., ¶¶ 4-5.
49. Burger also had a couple of telephone conversations with Stanfa regarding the anomalies in various sales activities at the West LA Club.	49. Burger Depo., 76:19-77:1; Stanfa Decl., ¶ 9.
50. In late January 2015, Burger came to	50. Burger Depo., 76:6-12; Gannon

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

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
Plaintiff's termination.	
57. After Burger completed his interviews, Burger, Gannon and Hemedinger met briefly to discuss Burger's impressions.	57. Burger Depo., 117:16-18, 24-118:6.
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.	59. Burger Depo., ¶ 110:17-23; Gannon Decl., ¶ 6.
60. Gannon also advised Plaintiff to report back to the West LA club at 2:00 p.m. the next day for another meeting.	60. Plaintiff Depo., Volume I, 180:11-181:4; Gannon Decl., ¶ 5.
61. According to Plaintiff, Equinox told her that she would not have access to her email or payroll account and escorted her out of the building in front of Equinox's clientele, staff and all of her peers.	61. Plaintiff Depo., Volume I, 174:24-175:21; Plaintiff Depo., Volume II, 305:21-306:2, 364:17-20; Plaintiff's Complaint, 6:5-7.
62. It is Equinox's policy to turn off email access for hourly employees who have been suspended pending investigation or who are on a leave of absence.	62. Gannon Decl., ¶ 7.
63. Prior to Burger's interview of Plaintiff, Gannon had the Payroll	63. Gannon Decl., ¶ 8.

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

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

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
	56:25, 57:6-57:11.
75. Before reporting to the Marina Del Rey club, Plaintiff submitted her resignation, via email, on the morning of February 2, 2015 effective immediately.	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's last day of employment was February 2, 2015.	76. Plaintiff Depo., Volume I, 186:11-14.
77. Plaintiff never reported to work at the Marina Del Rey club.	77. Plaintiff Depo., Volume I, 50:13-15, 186:15-17; Hemedinger Depo., 56:22-25.
78. As of February 1, 2015, the only remaining MA at the West LA club was the recently hired MA.	78. Plaintiff Depo., Volume II, 342:3-11.
79. As of April/May 2015, the West LA club had an entirely new sales team and sales management.	79. Plaintiff Depo., Volume II, 342:25-343:5.
80. Plaintiff testified that she was unaware of any other MA at the West LA 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.	80. Plaintiff Depo., Volume II, 343:6-22.

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

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
6. General Manager Kira Simonson ("Simonson") supervised Plaintiff at the West LA club from about January 2014 to about January 2015.	6. Plaintiff Depo., Volume I, 52:11-19.
7. Plaintiff's personnel file includes an Employee Handbook: Receipt Acknowledgment Form with Plaintiff's signature dated October 15, 2010.	7. Plaintiff Depo., Volume I, 43:18-45:15, Exh. 8 (Receipt Acknowledgment Form); Declaration of Emerson Figueroa ("Figueroa Decl."), ¶ 5, Exh. B.)
8. In particular, the Employee Handbook stated: I acknowledge that the receipt of the 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	8. Plaintiff Depo., Volume I, 43:18-45:15, Exh. 8 (Receipt Acknowledgment Form); Figueroa Decl., ¶ 5, Exh. B (Receipt Acknowledgment Form).

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
and myself.	
9. Plaintiff's personnel file also includes an Offer Letter, dated October 15, 2010, which Plaintiff acknowledged receiving.	9. Plaintiff Depo., Volume I, 36:23-38:11, Exh. 5 (Offer Letter); Figueroa Decl., ¶ 6, Exh. C (Offer Letter).
10. In particular, the Offer Letter stated: We are excited at the prospect of you joining the Company, you should be 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.	10. Plaintiff Depo., Volume I, 36:23-38:11, Exh. 5 (Offer Letter); Figueroa Decl., ¶ 6, Exh. C (Offer Letter).
11. Plaintiff's personnel file also includes an Employee Confidentiality and Non-Solicitation Agreement with Plaintiff's signature dated October 14,	11. Figueroa Decl., ¶ 8, Exh. D.

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
2010.	
12. This Agreement stated: "You agree 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."	12. Figueroa Decl., ¶ 8, Exh. D.
13. In her deposition, Plaintiff admitted that she did not have a contract with Equinox; no one ever told her that she was guaranteed employment for a certain time period; and no one ever told her that she was anything other than an at-will employee.	13. Plaintiff Depo., Volume I, 36:23-38:11, 43:18-45:15, Exh. 5 (Offer Letter), Exh. 8 (Receipt Acknowledgement Form).
14. The Employee Handbook Plaintiff acknowledged receiving also included Equinox's non-retaliation policy as well as complaint procedures for reporting retaliation.	14. Plaintiff Depo., Volume I, 43:18-45:15, Exh. 8 Receipt of Employee Handbook; Declaration of Emerson Figueroa ("Figueroa Decl."), Exh. A.
15. In particular, Equinox's policy strictly prohibits retaliation against any employee for "filing a complaint and [Equinox] will not knowingly permit retaliation by management, employees, or co-workers." Equinox's policy also	15. Plaintiff Depo., Volume I, 43:18-45:15, Exh. 8 Receipt of Employee Handbook; Figueroa Decl., Exh. A, Employee Handbook.

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
<p>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.”</p>	
<p>16. The complaint procedure as outlined in the Employee Handbook permits an employee to report retaliation to his or her manager, Human Resources, or through Equinox’s Ethics Hotline.</p>	<p>16. Plaintiff Depo., Volume I, 43:18-45:15, Exh. 8 Receipt of Employee Handbook; Figueroa Decl. ¶ 4.</p>
<p>17. In or about June 2014, Hemedinger informed Plaintiff and other MAs that the compensation plan for all West LA MAs was being clarified, so that the market bonuses would be paid out individually and not cumulatively for reaching a certain sales goal.</p>	<p>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.</p>
<p>18. For example, the plan provided for a particular market bonus upon reaching a certain goal of sales:</p>	<p>18. Plaintiff Depo., Volume I, 190:16-194:3; Hemedinger Depo., 64:18-65:11</p>

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
<ul style="list-style-type: none"> • 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 Payroll Department was adding the bonuses together as opposed to giving one of the bonuses above depending on the overall percentage.	19. Plaintiff Depo., Volume I, 190:16-194:3; Holmes Depo., 82:11-83:14; Hemedinger Depo., 59:22-60:6, 62:3-63:8; 66:6-11., 68:15-69:8.
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	21. Plaintiff Depo., Volume I, 196:8-14, 207:15-22, 220:5-20; Plaintiff Depo.,

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
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.	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 only “illegal activities” about which she complained to Equinox.	23. Plaintiff Depo., Volume II, 334:16-336:23.
24. According to Plaintiff, her other complaints involved “things against Equinox policies that were happening as	24. Plaintiff Depo., Volume II, 334:16-336:23.

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

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

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

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
<p>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.</p> <p>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.</p> <p>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</p>	

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
<p>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.</p>	
<p>41. Neither Cuva nor Stanfa were aware Plaintiff had made any complaints about changes to her compensation plan or about the alleged activities of other MAs.</p>	<p>41. Cuva Decl., ¶ 8; Stanfa Decl., ¶ 11.</p>
<p>42. In addition, Burger was asked to interview the sales team at the West LA club.</p>	<p>42. Deposition of Jim Burger ("Burger Depo."), 72:4-73:3, 73:13:75:22, 76:6-12.</p>
<p>43. When Burger came to Los Angeles to conduct his interviews in late January 2015, the West LA club's sales team consisted of three MAs, Plaintiff and two</p>	<p>43. Hemedinger Decl., ¶ 4.</p>

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
other MAs who were supervised by the Simonson and an Assistant General Manager.	
44. A MA was fired on or about January 20, 2015 for improper sales activities.	44. Figueroa Decl. ¶ 9; Hemedinger Decl., ¶ 4.
45. At Burger's request, Member Services provided him with the spreadsheets summarizing their findings of questionable sales transactions at the West LA club.	45. Burger Depo., 72:13-73:3; Cuva Decl. ¶ 8.
46. Burger then met with Cuva and Stanfa and they discussed their findings regarding the questionable sales at the West LA club.	46. Burger Depo., 73:13-74:15; Cuva Decl. ¶ 8; Stanfa Decl., ¶ 9.
47. Burger had a subsequent meeting with Stanfa to review the spreadsheets Member Services had prepared.	47. Burger Depo., 74:16-75:3, 8-22; Stanfa Decl., ¶ 9.
48. These spreadsheets showed anomalies in various sales transactions, 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	48. Burger Depo., 39:3-40:22; Cuva Decl., ¶ 8; Stanfa Decl., ¶¶ 4-5.

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

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

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

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

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
reassignment to the Marina Del Rey club.	Decl., ¶ 13; Hemedinger Decl., ¶ 7.
73. Gannon made the decision to reassign Plaintiff to the Marina Del Rey club.	73. Rosen Depo., 45:7-25. 57:8-12; Hemedinger Depo., 53:14-18.
74. Plaintiff was told to report to the Marina Del Rey club on February 2, 2015 at 9:00 a.m.	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. Before reporting to the Marina Del Rey club, Plaintiff submitted her resignation, via email, on the morning of February 2, 2015 effective immediately.	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's last day of employment was February 2, 2015.	76. Plaintiff Depo., Volume I, 186:11-14.
77. Plaintiff never reported to work at the Marina Del Rey club.	77. Plaintiff Depo., Volume I, 50:13-15, 186:15-17; Hemedinger Depo., 56:22-25.
78. As of February 1, 2015, the only remaining MA at the West LA club was the recently hired MA.	78. Plaintiff Depo., Volume II, 342:3-11.
79. As of April/May 2015, the West LA club had an entirely new sales team and sales management.	79. Plaintiff Depo., Volume II, 342:25-343:5.
80. Plaintiff testified that she was unaware of any other MA at the West LA	80. Plaintiff Depo., Volume II, 343:6-22.

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING 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.	

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

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
Vice President of the West Coast.	
5. From about October 2011 through about June 2015, Brian Hemedinger ("Hemedinger") was the Regional Director of Operations ("Regional Director") of the Santa Monica and West LA clubs.	5. Plaintiff Depo., Volume I, 270:8,-14, 75:24-76:4; Deposition of Brian Hemedinger ("Hemedinger Depo.") 15:3-10, 41:1-9, 13-16; Hemedinger Decl., ¶ 1.
6. General Manager Kira Simonson ("Simonson") supervised Plaintiff at the West LA club from about January 2014 to about January 2015.	6. Plaintiff Depo., Volume I, 52:11-19.
7. Plaintiff's personnel file includes an Employee Handbook: Receipt Acknowledgment Form with Plaintiff's signature dated October 15, 2010.	7. Plaintiff Depo., Volume I, 43:18-45:15, Exh. 8 (Receipt Acknowledgement Form); Declaration of Emerson Figueroa ("Figueroa Decl."), ¶ 5, Exh. B.)
8. In particular, the Employee Handbook stated: I acknowledge that the receipt of the 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	8. Plaintiff Depo., Volume I, 43:18-45:15, Exh. 8 (Receipt Acknowledgement Form); Figueroa Decl., ¶ 5, Exh. B (Receipt Acknowledgement Form).

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
<p>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.</p>	
<p>9. Plaintiff's personnel file also includes an Offer Letter, dated October 15, 2010, which Plaintiff acknowledged receiving.</p>	<p>9. Plaintiff Depo., Volume I, 36:23-38:11, Exh. 5 (Offer Letter); Figueroa Decl., ¶ 6, Exh. C (Offer Letter).</p>
<p>10. In particular, the Offer Letter stated: We are excited at the prospect of you joining the Company, you should be 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</p>	<p>10. Plaintiff Depo., Volume I, 36:23-38:11, Exh. 5 (Offer Letter); Figueroa Decl., ¶ 6, Exh. C (Offer Letter).</p>

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
discontinue its compensation policies, employee benefit plans or other aspects of your employment.	
11. Plaintiff's personnel file also includes an Employee Confidentiality and Non-Solicitation Agreement with Plaintiff's signature dated October 14, 2010.	11. Figueroa Decl., ¶ 8, Exh. D.
12. This Agreement stated: "You agree 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."	12. Figueroa Decl., ¶ 8, Exh. D.
13. In her deposition, Plaintiff admitted that she did not have a contract with Equinox; no one ever told her that she was guaranteed employment for a certain time period; and no one ever told her that she was anything other than an at-will employee.	13. Plaintiff Depo., Volume I, 36:23-38:11, 43:18-45:15, Exh. 5 (Offer Letter), Exh. 8 (Receipt Acknowledgement Form).
14. The Employee Handbook Plaintiff acknowledged receiving also included Equinox's non-retaliation policy as well as complaint procedures for reporting	14. Plaintiff Depo., Volume I, 43:18-45:15, Exh. 8 Receipt of Employee Handbook; Declaration of Emerson Figueroa ("Figueroa Decl."), Exh. A.

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
retaliation.	
<p>15. In particular, Equinox's policy strictly prohibits retaliation against any employee for "filing a complaint and [Equinox] will not knowingly permit 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."</p>	<p>15. Plaintiff Depo., Volume I, 43:18-45:15, Exh. 8 Receipt of Employee Handbook; Figueroa Decl., Exh. A, Employee Handbook.</p>
<p>16. The complaint procedure as outlined in the Employee Handbook permits an employee to report retaliation to his or her manager, Human Resources, or through Equinox's Ethics Hotline.</p>	<p>16. Plaintiff Depo., Volume I, 43:18-45:15, Exh. 8 Receipt of Employee Handbook; Figueroa Decl. ¶ 4.</p>
<p>17. In or about June 2014, Hemedinger informed Plaintiff and other MAs that the compensation plan for all West LA MAs</p>	<p>17. Plaintiff Depo., Volume I, 190:16-194:3, 219:7-10; Plaintiff Depo., Volume II, 347:22-348:1; Deposition of Barry</p>

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
<p>was being clarified, so that the market bonuses would be paid out individually and not cumulatively for reaching a certain sales goal.</p>	<p>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.</p>
<p>18. For example, the plan provided for a particular market bonus upon reaching a certain goal of sales:</p> <ul style="list-style-type: none"> • 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 	<p>18. Plaintiff Depo., Volume I, 190:16-194:3; Hemedinger Depo., 64:18-65:11</p>
<p>19. For the West LA club, Equinox’s Payroll Department was adding the bonuses together as opposed to giving one of the bonuses above depending on the overall percentage.</p>	<p>19. Plaintiff Depo., Volume I, 190:16-194:3; Holmes Depo., 82:11-83:14; Hemedinger Depo., 59:22-60:6, 62:3-63:8; 66:6-11., 68:15-69:8.</p>
<p>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</p>	<p>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,</p>

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
<p>Manager), Matt Gonzalez (“Gonzalez”) (Director of Sales), Barry Holmes (“Holmes”) (Senior Vice President of Sales), and Scott Rosen (“Rosen”) (Chief Operating Officer) (“COO”).</p>	<p>77:18-82:10, 84:19-86:8, Ex. 203.</p>
<p>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.</p>	<p>21. Plaintiff Depo., Volume I, 196:8-14, 207:15-22, 220:5-20; Plaintiff Depo., Volume II, 349:5-12.</p>
<p>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.</p>	<p>22. Plaintiff Depo., Volume I, 81:6-21, 82:5-83:23, 94:14-97:9.</p>
<p>23. According to Plaintiff, “charging credit cards without people’s approval and telling people they were signing up for a</p>	<p>23. Plaintiff Depo., Volume II, 334:16-336:23.</p>

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING 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 complaints involved “things against Equinox policies that were happening as well.”	24. Plaintiff Depo., Volume II, 334:16-336:23.
25. Plaintiff admitted that she could not identify any statute, ordinance, regulation, local law, state law, or federal law that was violated as a result of this alleged activity.	25. Plaintiff Depo., Volume II, 335:4-336:23.
26. Plaintiff also testified that she complained to Hemedinger and Simonson about the sales activities of another MA.	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. Specifically, Plaintiff complained that this MA was giving away “free months” to potential members, allowing “freezes” for members, and offering “three month” deals.	27. 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.
28. In or around December 2014, COO Rosen was touring the West LA club when he was told by a member that a MA	28. Rosen Depo., 37:20-38:18; Declaration of Tracy Cuva (“Cuva Decl.”), ¶ 2.

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

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
Member Services conduct an investigation of sales transactions at the West LA club.	
34. Apart from requesting that the 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.	34. Rosen Depo., 47:25-48:21.
35. Cuva instructed Kevin Stanfa ("Stanfa") (Manager of Compliance and Special Projects), to review sales transactions at the West LA club.	35. Cuva Decl., ¶ 3; Stanfa Decl. ¶ 4.
36. After Stanfa reported finding various anomalies associated with sales transactions at the West LA club, Cuva instructed Stanfa to prepare a summary detailing his findings.	36. Cuva Decl., ¶ 3; Stanfa Decl. ¶ 4.
37. Stanfa then prepared a workbook with three spreadsheets regarding the following sales activities: (1) 2014 Freezes; (2) Modification to Direct Bill; and (3) West LA Sales Breakdown.	37. Stanfa Decl., ¶ 4.
38. Once these were prepared, Cuva emailed the spreadsheets to Rosen,	38. Rosen Depo., 47:25-48:21; Holmes Depo., 86:10-88:10, 95:9-96:10;

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
Holmes and Gannon and summarized the results of the Member Services investigation.	Cuva Decl., ¶ 6, Exh. N; Stanfa Decl., ¶¶ 4-5.
39. In her email, Cuva indicated that these spreadsheets "all reflect patterns unhealthy for the business."	39. Cuva Decl., ¶ 7, Exh. N.
<p>40. Cuva noted as follows:</p> <ul style="list-style-type: none"> 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 	40. Cuva Decl., ¶ 7, Exh. N.

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
<p>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 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.</p>	
<p>41. Neither Cuva nor Stanfa were aware Plaintiff had made any complaints about changes to her compensation plan or about the alleged activities of other MAs.</p>	<p>41. Cuva Decl., ¶ 8; Stanfa Decl., ¶ 11.</p>

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
42. In addition, Burger was asked to interview the sales team at the West LA club.	42. Deposition of Jim Burger ("Burger Depo."), 72:4-73:3, 73:13:75:22, 76:6-12.
43. When Burger came to Los Angeles 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.	43. Hemedinger Decl., ¶ 4.
44. A MA was fired on or about January 20, 2015 for improper sales activities.	44. Figueroa Decl. ¶ 9; Hemedinger Decl., ¶ 4.
45. At Burger's request, Member Services provided him with the spreadsheets summarizing their findings of questionable sales transactions at the West LA club.	45. Burger Depo., 72:13-73:3; Cuva Decl. ¶ 8.
46. Burger then met with Cuva and Stanfa and they discussed their findings regarding the questionable sales at the West LA club.	46. Burger Depo., 73:13-74:15; Cuva Decl. ¶ 8; Stanfa Decl., ¶ 9.
47. Burger had a subsequent meeting with Stanfa to review the spreadsheets Member Services had prepared.	47. Burger Depo., 74:16-75:3, 8-22; Stanfa Decl., ¶ 9.
48. These spreadsheets showed anomalies in various sales transactions,	48. Burger Depo., 39:3-40:22; Cuva Decl., ¶ 8; Stanfa Decl., ¶¶ 4-5.

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING 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 telephone conversations with Stanfa regarding the anomalies in various sales activities at the West LA Club.	49. Burger Depo., 76:19-77:1; Stanfa Decl., ¶ 9.
50. In late January 2015, Burger came to Los Angeles to interview various employees regarding sales activities of the West LA MAs.	50. Burger Depo., 76:6-12; Gannon Decl., ¶ 3; Hemedinger Decl., ¶ 5.
51. Prior to the interviews, Burger and Gannon discussed suspending all of the individuals interviewed as part of the investigation pending the results of the investigation.	51. Burger Depo., 116:12-117:12.
52. Burger then interviewed the following individuals: (1) the Assistant General Manager; (2) Plaintiff; (3) another MA; (4) a relatively newly hired MA; and	52. Hemedinger Decl., ¶ 5.

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
(5) Simonson.	
53. Burger had never heard of or spoken to Plaintiff prior to this investigation meeting.	53. Burger Depo., 35:22-24.
54. On January 30, 2015, Plaintiff met with Burger and Leah Ball of Human Resources regarding West LA's sales practices.	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 answered questions about her sales activities, as well as the activities of other MAs.	55. Plaintiff Depo., Volume I, 161:11-22, 164:10-22; Burger Depo., 53:13-54:9.
56. While Burger did not find Plaintiff credible, he felt, at that time, that there was insufficient information to warrant Plaintiff's termination.	56. Burger Depo., 122:14-17.
57. After Burger completed his interviews, Burger, Gannon and Hemedinger met briefly to discuss Burger's impressions.	57. Burger Depo., 117:16-18, 24-118:6.
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.	59. Burger Depo., ¶ 110:17-23; Gannon Decl., ¶ 6.

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
60. Gannon also advised Plaintiff to report back to the West LA club at 2:00 p.m. the next day for another meeting.	60. Plaintiff Depo., Volume I, 180:11-181:4; Gannon Decl., ¶ 5.
61. According to Plaintiff, Equinox told her that she would not have access to her email or payroll account and escorted her out of the building in front of Equinox's clientele, staff and all of her peers.	61. Plaintiff Depo., Volume I, 174:24-175:21; Plaintiff Depo., Volume II, 305:21-306:2, 364:17-20; Plaintiff's Complaint, 6:5-7.
62. It is Equinox's policy to turn off email access for hourly employees who have been suspended pending investigation or who are on a leave of absence.	62. Gannon Decl., ¶ 7.
63. Prior to Burger's interview of 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.	63. Gannon Decl., ¶ 8.
64. Plaintiff met with Hemedinger and Gannon at the West LA club on January 31, 2015 and was told that the investigation was concluded and that she would be working at the Marina Del Rey club.	64. Plaintiff Depo., Volume I, 182:5-183:8; Plaintiff Depo., Volume II, 306:12:16, 382:12-17, 390:4-11, Exh. 38; Hemedinger Depo., 54:17-21, 55:1-8; Gannon Decl., ¶ 3; Hemedinger Decl., ¶ 6.
65. The decision was made to reassign	65. Rosen Depo., 71:7-20, 73:15-22,

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

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
Del Rey memberships were less expensive.	
71. Gannon emailed Plaintiff the compensation plan for the Marina Del Rey Club on or about January 31, 2015.	71. Plaintiff Depo., Volume I, 246:19-247:2; Gannon Decl., ¶ 12.
72. Plaintiff testified that no one from Equinox ever told her that she was being “terminated” or “demoted” as part of her reassignment to the Marina Del Rey club.	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.
73. Gannon made the decision to reassign Plaintiff to the Marina Del Rey club.	73. Rosen Depo., 45:7-25. 57:8-12; Hemedinger Depo., 53:14-18.
74. Plaintiff was told to report to the Marina Del Rey club on February 2, 2015 at 9:00 a.m.	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. Before reporting to the Marina Del Rey club, Plaintiff submitted her resignation, via email, on the morning of February 2, 2015 effective immediately.	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's last day of employment was February 2, 2015.	76. Plaintiff Depo., Volume I, 186:11-14.
77. Plaintiff never reported to work at the Marina Del Rey club.	77. Plaintiff Depo., Volume I, 50:13-15, 186:15-17; Hemedinger Depo., 56:22-25.
78. As of February 1, 2015, the only	78. Plaintiff Depo., Volume II, 342:3-

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
remaining MA at the West LA club was the recently hired MA.	11.
79. As of April/May 2015, the West LA club had an entirely new sales team and sales management.	79. Plaintiff Depo., Volume II, 342:25-343:5.
80. Plaintiff testified that she was unaware of any other MA at the West LA 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.	80. Plaintiff Depo., Volume II, 343:6-22.

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

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

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
<p>Handbook stated:</p> <p>I acknowledge that the receipt of the 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.</p>	<p>45:15, Exh. 8 (Receipt Acknowledgement Form); Figueroa Decl., ¶ 5, Exh. B (Receipt Acknowledgement Form).</p>
<p>9. Plaintiff's personnel file also includes an Offer Letter, dated October 15, 2010, which Plaintiff acknowledged receiving.</p>	<p>9. Plaintiff Depo., Volume I, 36:23-38:11, Exh. 5 (Offer Letter); Figueroa Decl., ¶ 6, Exh. C (Offer Letter).</p>
<p>10. In particular, the Offer Letter stated: We are excited at the prospect of you joining the Company, you should be aware that our relationship is "employment-at-will." That means you</p>	<p>10. Plaintiff Depo., Volume I, 36:23-38:11, Exh. 5 (Offer Letter); Figueroa Decl., ¶ 6, Exh. C (Offer Letter).</p>

DEFENDANT’S UNCONTROVERTED FACTS	DEFENDANT’S SUPPORTING EVIDENCE
<p>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.</p>	
<p>11. Plaintiff’s personnel file also includes an Employee Confidentiality and Non-Solicitation Agreement with Plaintiff’s signature dated October 14, 2010.</p>	<p>11. Figueroa Decl., ¶ 8, Exh. D.</p>
<p>12. This Agreement stated: “You agree 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.”</p>	<p>12. Figueroa Decl., ¶ 8, Exh. D.</p>
<p>13. In her deposition, Plaintiff admitted that she did not have a contract with</p>	<p>13. Plaintiff Depo., Volume I, 36:23-38:11, 43:18-45:15, Exh. 5 (Offer</p>

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
Equinox; no one ever told her that she was guaranteed employment for a certain time period; and no one ever told her that she was anything other than an at-will employee.	Letter), Exh. 8 (Receipt Acknowledgement Form).
14. The Employee Handbook Plaintiff acknowledged receiving also included Equinox's non-retaliation policy as well as complaint procedures for reporting retaliation.	14. Plaintiff Depo., Volume I, 43:18-45:15, Exh. 8 Receipt of Employee Handbook; Declaration of Emerson Figueroa ("Figueroa Decl."), Exh. A.
15. In particular, Equinox's policy strictly prohibits retaliation against any employee for "filing a complaint and [Equinox] will not knowingly permit 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	15. Plaintiff Depo., Volume I, 43:18-45:15, Exh. 8 Receipt of Employee Handbook; Figueroa Decl., Exh. A, Employee Handbook.

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
investigation.”	
16. The complaint procedure as outlined in the Employee Handbook permits an employee to report retaliation to his or her manager, Human Resources, or through Equinox’s Ethics Hotline.	16. Plaintiff Depo., Volume I, 43:18-45:15, Exh. 8 Receipt of Employee Handbook; Figueroa Decl. ¶ 4.
17. In or about June 2014, Hemedinger informed Plaintiff and other MAs that the compensation plan for all West LA MAs was being clarified, so that the market bonuses would be paid out individually and not cumulatively for reaching a certain sales goal.	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. For example, the plan provided for a particular market bonus upon reaching a certain goal of sales: <ul style="list-style-type: none"> • 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 	18. Plaintiff Depo., Volume I, 190:16-194:3; Hemedinger Depo., 64:18-65:11
19. For the West LA club, Equinox’s Payroll Department was adding the	19. Plaintiff Depo., Volume I, 190:16-194:3; Holmes Depo., 82:11-83:14;

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
bonuses together as opposed to giving one of the bonuses above depending on the overall percentage.	Hemedinger Depo., 59:22-60:6, 62:3-63:8; 66:6-11., 68:15-69:8.
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	22. Plaintiff Depo., Volume I, 81:6-21, 82:5-83:23, 94:14-97:9.

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING 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 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 only "illegal activities" about which she complained to Equinox.	23. Plaintiff Depo., Volume II, 334:16-336:23.
24. According to Plaintiff, her other complaints involved "things against Equinox policies that were happening as well."	24. Plaintiff Depo., Volume II, 334:16-336:23.
25. Plaintiff admitted that she could not identify any statute, ordinance, regulation, local law, state law, or federal law that was violated as a result of this alleged activity.	25. Plaintiff Depo., Volume II, 335:4-336:23.
26. Plaintiff also testified that she complained to Hemedinger and Simonson about the sales activities of another MA.	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.

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

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

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
instructed Stanfa to prepare a summary detailing his findings.	
37. Stanfa then prepared a workbook with three spreadsheets regarding the following sales activities: (1) 2014 Freezes; (2) Modification to Direct Bill; and (3) West LA Sales Breakdown.	37. Stanfa Decl., ¶ 4.
38. Once these were prepared, Cuva emailed the spreadsheets to Rosen, Holmes and Gannon and summarized the results of the Member Services investigation.	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. In her email, Cuva indicated that these spreadsheets "all reflect patterns unhealthy for the business."	39. Cuva Decl., ¶ 7, Exh. N.
40. Cuva noted as follows: 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	40. Cuva Decl., ¶ 7, Exh. N.

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
<p>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.</p> <p>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 the same credit card, credit card not present for numerous sales transactions, 3-day cancellations</p>	

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING 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 Plaintiff had made any complaints about changes to her compensation plan or about the alleged activities of other MAs.	41. Cuva Decl., ¶ 8; Stanfa Decl., ¶ 11.
42. In addition, Burger was asked to interview the sales team at the West LA club.	42. Deposition of Jim Burger ("Burger Depo."), 72:4-73:3, 73:13:75:22, 76:6-12.
43. When Burger came to Los Angeles 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.	43. Hemedinger Decl., ¶ 4.
44. A MA was fired on or about January 20, 2015 for improper sales activities.	44. Figueroa Decl. ¶ 9; Hemedinger Decl., ¶ 4.
45. At Burger's request, Member Services provided him with the spreadsheets summarizing their findings of questionable sales transactions at the West LA club.	45. Burger Depo., 72:13-73:3; Cuva Decl. ¶ 8.

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
46. Burger then met with Cuva and Stanfa and they discussed their findings regarding the questionable sales at the West LA club.	46. Burger Depo., 73:13-74:15; Cuva Decl. ¶ 8; Stanfa Decl., ¶ 9.
47. Burger had a subsequent meeting with Stanfa to review the spreadsheets Member Services had prepared.	47. Burger Depo., 74:16-75:3, 8-22; Stanfa Decl., ¶ 9.
48. These spreadsheets showed anomalies in various sales transactions, 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.	48. Burger Depo., 39:3-40:22; Cuva Decl., ¶ 8; Stanfa Decl., ¶¶ 4-5.
49. Burger also had a couple of telephone conversations with Stanfa regarding the anomalies in various sales activities at the West LA Club.	49. Burger Depo., 76:19-77:1; Stanfa Decl., ¶ 9.
50. In late January 2015, Burger came to Los Angeles to interview various employees regarding sales activities of the West LA MAs.	50. Burger Depo., 76:6-12; Gannon Decl., ¶ 3; Hemedinger Decl., ¶ 5.

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

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
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.	59. Burger Depo., ¶ 110:17-23; Gannon Decl., ¶ 6.
60. Gannon also advised Plaintiff to report back to the West LA club at 2:00 p.m. the next day for another meeting.	60. Plaintiff Depo., Volume I, 180:11-181:4; Gannon Decl., ¶ 5.
61. According to Plaintiff, Equinox told her that she would not have access to her email or payroll account and escorted her out of the building in front of Equinox's clientele, staff and all of her peers.	61. Plaintiff Depo., Volume I, 174:24-175:21; Plaintiff Depo., Volume II, 305:21-306:2, 364:17-20; Plaintiff's Complaint, 6:5-7.
62. It is Equinox's policy to turn off email access for hourly employees who have been suspended pending investigation or who are on a leave of absence.	62. Gannon Decl., ¶ 7.
63. Prior to Burger's interview of 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	63. Gannon Decl., ¶ 8.

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

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

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

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.)

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

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
<p>(“Simonson) supervised Plaintiff at the West LA club from about January 2014 to about January 2015.</p>	<p>19.</p>
<p>7. Plaintiff’s personnel file includes an Employee Handbook: Receipt Acknowledgment Form with Plaintiff’s signature dated October 15, 2010.</p>	<p>7. Plaintiff Depo., Volume I, 43:18-45:15, Exh. 8 (Receipt Acknowledgement Form); Declaration of Emerson Figueroa (“Figueroa Decl.”), ¶ 5, Exh. B.)</p>
<p>8. In particular, the Employee Handbook stated: I acknowledge that the receipt of the 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.</p>	<p>8. Plaintiff Depo., Volume I, 43:18-45:15, Exh. 8 (Receipt Acknowledgement Form); Figueroa Decl., ¶ 5, Exh. B (Receipt Acknowledgement Form).</p>

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
9. Plaintiff's personnel file also includes an Offer Letter, dated October 15, 2010, which Plaintiff acknowledged receiving.	9. Plaintiff Depo., Volume I, 36:23-38:11, Exh. 5 (Offer Letter); Figueroa Decl., ¶ 6, Exh. C (Offer Letter).
10. In particular, the Offer Letter stated: We are excited at the prospect of you joining the Company, you should be 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.	10. Plaintiff Depo., Volume I, 36:23-38:11, Exh. 5 (Offer Letter); Figueroa Decl., ¶ 6, Exh. C (Offer Letter).
11. Plaintiff's personnel file also includes an Employee Confidentiality and Non-Solicitation Agreement with Plaintiff's signature dated October 14, 2010.	11. Figueroa Decl., ¶ 8, Exh. D.

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
12. This Agreement stated: "You agree 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."	12. Figueroa Decl., ¶ 8, Exh. D.
13. In her deposition, Plaintiff admitted that she did not have a contract with Equinox; no one ever told her that she was guaranteed employment for a certain time period; and no one ever told her that she was anything other than an at-will employee.	13. Plaintiff Depo., Volume I, 36:23-38:11, 43:18-45:15, Exh. 5 (Offer Letter), Exh. 8 (Receipt Acknowledgement Form).
14. The Employee Handbook Plaintiff acknowledged receiving also included Equinox's non-retaliation policy as well as complaint procedures for reporting retaliation.	14. Plaintiff Depo., Volume I, 43:18-45:15, Exh. 8 Receipt of Employee Handbook; Declaration of Emerson Figueroa ("Figueroa Decl."), Exh. A.
15. In particular, Equinox's policy strictly prohibits retaliation against any employee for "filing a complaint and [Equinox] will not knowingly permit retaliation by management, employees, or co-workers." Equinox's policy also prohibits retaliation against any employee	15. Plaintiff Depo., Volume I, 43:18-45:15, Exh. 8 Receipt of Employee Handbook; Figueroa Decl., Exh. A, Employee Handbook.

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
<p>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.”</p>	
<p>16. The complaint procedure as outlined in the Employee Handbook permits an employee to report retaliation to his or her manager, Human Resources, or through Equinox’s Ethics Hotline.</p>	<p>16. Plaintiff Depo., Volume I, 43:18-45:15, Exh. 8 Receipt of Employee Handbook; Figueroa Decl. ¶ 4.</p>
<p>17. In or about June 2014, Hemedinger informed Plaintiff and other MAs that the compensation plan for all West LA MAs was being clarified, so that the market bonuses would be paid out individually and not cumulatively for reaching a certain sales goal.</p>	<p>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.</p>
<p>18. For example, the plan provided for a particular market bonus upon reaching a certain goal of sales:</p> <ul style="list-style-type: none"> • 100% of goal – MA would 	<p>18. Plaintiff Depo., Volume I, 190:16-194:3; Hemedinger Depo., 64:18-65:11</p>

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
<p>receive an extra \$20 per sale</p> <ul style="list-style-type: none"> • 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 	
<p>19. For the West LA club, Equinox's Payroll Department was adding the bonuses together as opposed to giving one of the bonuses above depending on the overall percentage.</p>	<p>19. Plaintiff Depo., Volume I, 190:16-194:3; Holmes Depo., 82:11-83:14; Hemedinger Depo., 59:22-60:6, 62:3-63:8; 66:6-11., 68:15-69:8.</p>
<p>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").</p>	<p>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.</p>
<p>21. Despite Plaintiff's complaints about the compensation plan, Plaintiff continued to work at Equinox for seven months after</p>	<p>21. Plaintiff Depo., Volume I, 196:8-14, 207:15-22, 220:5-20; Plaintiff Depo., Volume II, 349:5-12.</p>

DEFENDANT’S UNCONTROVERTED FACTS	DEFENDANT’S SUPPORTING EVIDENCE
<p>the “changed” compensation plan was instituted in July/August 2014 and continued to work for Equinox until she quit in February 2015.</p>	
<p>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.</p>	<p>22. Plaintiff Depo., Volume I, 81:6-21, 82:5-83:23, 94:14-97:9.</p>
<p>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 only “illegal activities” about which she complained to Equinox.</p>	<p>23. Plaintiff Depo., Volume II, 334:16-336:23.</p>
<p>24. According to Plaintiff, her other complaints involved “things against Equinox policies that were happening as well.”</p>	<p>24. Plaintiff Depo., Volume II, 334:16-336:23.</p>

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

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
<p>30. Rosen contacted Tracy Cuva, Senior Director of Equinox's Member Services Department, gave her the information received from the member, and asked Member Services to investigate this sale.</p>	<p>30. Rosen Depo., 37:20-38:21; Cuva Decl., ¶ 2.</p>
<p>31. Member Services' investigation, 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).</p>	<p>31. Cuva Decl., ¶ 2.</p>
<p>32. This MA was relocating to New York but, based on the investigation results, she was not hired to work for Equinox in New York.</p>	<p>32. Rosen Depo., 39:8-13.</p>
<p>33. As a result of this member complaint, Rosen also asked Cuva to have Member Services conduct an investigation of sales transactions at the West LA club.</p>	<p>33. Rosen Depo., 47:25-6; Cuva Decl., ¶ 3.</p>
<p>34. Apart from requesting that the 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</p>	<p>34. Rosen Depo., 47:25-48:21.</p>

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

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
<p>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.</p> <p>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.</p> <p>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</p>	

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
<p>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.</p>	
<p>41. Neither Cuva nor Stanfa were aware Plaintiff had made any complaints about changes to her compensation plan or about the alleged activities of other MAs.</p>	<p>41. Cuva Decl., ¶ 8; Stanfa Decl., ¶ 11.</p>
<p>42. In addition, Burger was asked to interview the sales team at the West LA club.</p>	<p>42. Deposition of Jim Burger ("Burger Depo."), 72:4-73:3, 73:13:75:22, 76:6-12.</p>
<p>43. When Burger came to Los Angeles 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</p>	<p>43. Hemedinger Decl., ¶ 4.</p>

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
Simonson and an Assistant General Manager.	
44. A MA was fired on or about January 20, 2015 for improper sales activities.	44. Figueroa Decl. ¶ 9; Hemedinger Decl., ¶ 4.
45. At Burger's request, Member Services provided him with the spreadsheets summarizing their findings of questionable sales transactions at the West LA club.	45. Burger Depo., 72:13-73:3; Cuva Decl. ¶ 8.
46. Burger then met with Cuva and Stanfa and they discussed their findings regarding the questionable sales at the West LA club.	46. Burger Depo., 73:13-74:15; Cuva Decl. ¶ 8; Stanfa Decl., ¶ 9.
47. Burger had a subsequent meeting with Stanfa to review the spreadsheets Member Services had prepared.	47. Burger Depo., 74:16-75:3, 8-22; Stanfa Decl., ¶ 9.
48. These spreadsheets showed anomalies in various sales transactions, 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	48. Burger Depo., 39:3-40:22; Cuva Decl., ¶ 8; Stanfa Decl., ¶¶ 4-5.

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
any visits to a club, etc.	
49. Burger also had a couple of telephone conversations with Stanfa regarding the anomalies in various sales activities at the West LA Club.	49. Burger Depo., 76:19-77:1; Stanfa Decl., ¶ 9.
50. In late January 2015, Burger came to Los Angeles to interview various employees regarding sales activities of the West LA MAs.	50. Burger Depo., 76:6-12; Gannon Decl., ¶ 3; Hemedinger Decl., ¶ 5.
51. Prior to the interviews, Burger and Gannon discussed suspending all of the individuals interviewed as part of the investigation pending the results of the investigation.	51. Burger Depo., 116:12-117:12.
52. Burger then interviewed the following individuals: (1) the Assistant General Manager; (2) Plaintiff; (3) another MA; (4) a relatively newly hired MA; and (5) Simonson.	52. Hemedinger Decl., ¶ 5.
53. Burger had never heard of or spoken to Plaintiff prior to this investigation meeting.	53. Burger Depo., 35:22-24.
54. On January 30, 2015, Plaintiff met with Burger and Leah Ball of Human Resources regarding West LA's sales practices.	54. Plaintiff Depo., Volume I, 161:11-22, 164:10-22; Plaintiff Depo., Volume II, 305:21-24; , Burger Depo., 96:18-25.

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

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

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
Rey MAs. Equinox considered the reassignment a lateral move.	
67. Equinox considered the reassignment a lateral move.	67. Rosen Depo., 87:25-88:4; Gannon Decl., ¶ 11.
68. When Plaintiff was asked what her compensation would be at the Marina Del Rey club, she was sent the compensation plan of a Marina Del Rey MA.	68. Plaintiff Depo., Volume II, 390:4-11, Exh. 38; Gannon Decl., ¶ 12.
69. Equinox's expectation was she would earn at least the same amount of money because the Marina Del Rey club 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.	69. Hemedinger Depo., 52:18-23; Rosen Depo., 57:13-19; 58:22-59:14; Holmes Depo., 31:13-15.
70. It was easier to sell more memberships at the Marina Del Rey club than the West LA club because the Marina Del Rey memberships were less expensive.	70. Hemedinger Depo., 52:18-23; Rosen Depo., 57:13-19; 58:22-59:14; Holmes Depo., 50:18-51:5
71. Gannon emailed Plaintiff the compensation plan for the Marina Del Rey Club on or about January 31, 2015.	71. Plaintiff Depo., Volume I, 246:19-247:2; Gannon Decl., ¶ 12.
72. Plaintiff testified that no one from Equinox ever told her that she was being "terminated" or "demoted" as part of her reassignment to the Marina Del Rey club.	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 UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
73. Gannon made the decision to reassign Plaintiff to the Marina Del Rey club.	73. Rosen Depo., 45:7-25. 57:8-12; Hemedinger Depo., 53:14-18.
74. Plaintiff was told to report to the Marina Del Rey club on February 2, 2015 at 9:00 a.m.	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. Before reporting to the Marina Del Rey club, Plaintiff submitted her resignation, via email, on the morning of February 2, 2015 effective immediately.	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's last day of employment was February 2, 2015.	76. Plaintiff Depo., Volume I, 186:11-14.
77. Plaintiff never reported to work at the Marina Del Rey club.	77. Plaintiff Depo., Volume I, 50:13-15, 186:15-17; Hemedinger Depo., 56:22-25.
78. As of February 1, 2015, the only remaining MA at the West LA club was the recently hired MA.	78. Plaintiff Depo., Volume II, 342:3-11.
79. As of April/May 2015, the West LA club had an entirely new sales team and sales management.	79. Plaintiff Depo., Volume II, 342:25-343:5.
80. Plaintiff testified that she was unaware of any other MA at the West LA club complaining about the unauthorized	80. Plaintiff Depo., Volume II, 343:6-22.

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING 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. 15

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

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
5. From about October 2011 through about June 2015, Brian Hemedinger ("Hemedinger") was the Regional Director of Operations ("Regional Director") of the Santa Monica and West LA clubs.	5. Plaintiff Depo., Volume I, 270:8,-14, 75:24-76:4; Deposition of Brian Hemedinger ("Hemedinger Depo.") 15:3-10, 41:1-9, 13-16; Hemedinger Decl., ¶ 1.
6. General Manager Kira Simonson ("Simonson") supervised Plaintiff at the West LA club from about January 2014 to about January 2015.	6. Plaintiff Depo., Volume I, 52:11-19.
7. Plaintiff's personnel file includes an Employee Handbook: Receipt Acknowledgment Form with Plaintiff's signature dated October 15, 2010.	7. Plaintiff Depo., Volume I, 43:18-45:15, Exh. 8 (Receipt Acknowledgement Form); Declaration of Emerson Figueroa ("Figueroa Decl."), ¶ 5, Exh. B.)
8. In particular, the Employee Handbook stated: I acknowledge that the receipt of the 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	8. Plaintiff Depo., Volume I, 43:18-45:15, Exh. 8 (Receipt Acknowledgement Form); Figueroa Decl., ¶ 5, Exh. B (Receipt Acknowledgement Form).

DEFENDANT’S UNCONTROVERTED FACTS	DEFENDANT’S SUPPORTING EVIDENCE
<p>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.</p>	
<p>9. Plaintiff’s personnel file also includes an Offer Letter, dated October 15, 2010, which Plaintiff acknowledged receiving.</p>	<p>9. Plaintiff Depo., Volume I, 36:23-38:11, Exh. 5 (Offer Letter); Figueroa Decl., ¶ 6, Exh. C (Offer Letter).</p>
<p>10. In particular, the Offer Letter stated: We are excited at the prospect of you joining the Company, you should be 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,</p>	<p>10. Plaintiff Depo., Volume I, 36:23-38:11, Exh. 5 (Offer Letter); Figueroa Decl., ¶ 6, Exh. C (Offer Letter).</p>

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
employee benefit plans or other aspects of your employment.	
11. Plaintiff's personnel file also includes an Employee Confidentiality and Non-Solicitation Agreement with Plaintiff's signature dated October 14, 2010.	11. Figueroa Decl., ¶ 8, Exh. D.
12. This Agreement stated: "You agree 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."	12. Figueroa Decl., ¶ 8, Exh. D.
13. In her deposition, Plaintiff admitted that she did not have a contract with Equinox; no one ever told her that she was guaranteed employment for a certain time period; and no one ever told her that she was anything other than an at-will employee.	13. Plaintiff Depo., Volume I, 36:23-38:11, 43:18-45:15, Exh. 5 (Offer Letter), Exh. 8 (Receipt Acknowledgement Form).
14. The Employee Handbook Plaintiff acknowledged receiving also included Equinox's non-retaliation policy as well as complaint procedures for reporting retaliation.	14. Plaintiff Depo., Volume I, 43:18-45:15, Exh. 8 Receipt of Employee Handbook; Declaration of Emerson Figueroa ("Figueroa Decl."), Exh. A.

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
<p>15. In particular, Equinox's policy strictly prohibits retaliation against any employee for "filing a complaint and [Equinox] will not knowingly permit 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."</p>	<p>15. Plaintiff Depo., Volume I, 43:18-45:15, Exh. 8 Receipt of Employee Handbook; Figueroa Decl., Exh. A, Employee Handbook.</p>
<p>16. The complaint procedure as outlined in the Employee Handbook permits an employee to report retaliation to his or her manager, Human Resources, or through Equinox's Ethics Hotline.</p>	<p>16. Plaintiff Depo., Volume I, 43:18-45:15, Exh. 8 Receipt of Employee Handbook; Figueroa Decl. ¶ 4.</p>
<p>17. In or about June 2014, Hemedinger informed Plaintiff and other MAs that the compensation plan for all West LA MAs was being clarified, so that the market</p>	<p>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,</p>

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
bonuses would be paid out individually and not cumulatively for reaching a certain 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.
<p>18. For example, the plan provided for a particular market bonus upon reaching a certain goal of sales:</p> <ul style="list-style-type: none"> • 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 	18. Plaintiff Depo., Volume I, 190:16-194:3; Hemedinger Depo., 64:18-65:11
19. For the West LA club, Equinox's Payroll Department was adding the bonuses together as opposed to giving one of the bonuses above depending on the overall percentage.	19. Plaintiff Depo., Volume I, 190:16-194:3; Holmes Depo., 82:11-83:14; Hemedinger Depo., 59:22-60:6, 62:3-63:8; 66:6-11., 68:15-69:8.
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")	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.

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING 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 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	23. Plaintiff Depo., Volume II, 334:16-336:23.

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING 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 complaints involved “things against Equinox policies that were happening as well.”	24. Plaintiff Depo., Volume II, 334:16-336:23.
25. Plaintiff admitted that she could not identify any statute, ordinance, regulation, local law, state law, or federal law that was violated as a result of this alleged activity.	25. Plaintiff Depo., Volume II, 335:4-336:23.
26. Plaintiff also testified that she complained to Hemedinger and Simonson about the sales activities of another MA.	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. Specifically, Plaintiff complained that this MA was giving away “free months” to potential members, allowing “freezes” for members, and offering “three month” deals.	27. 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.
28. In or around December 2014, COO Rosen was touring the West LA club when he was told by a member that a MA had charged a membership to another	28. Rosen Depo., 37:20-38:18; Declaration of Tracy Cuva (“Cuva Decl.”), ¶ 2.

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

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
of sales transactions at the West LA club.	
34. Apart from requesting that the 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.	34. Rosen Depo., 47:25-48:21.
35. Cuva instructed Kevin Stanfa ("Stanfa") (Manager of Compliance and Special Projects), to review sales transactions at the West LA club.	35. Cuva Decl., ¶ 3; Stanfa Decl. ¶ 4.
36. After Stanfa reported finding various anomalies associated with sales transactions at the West LA club, Cuva instructed Stanfa to prepare a summary detailing his findings.	36. Cuva Decl., ¶ 3; Stanfa Decl. ¶ 4.
37. Stanfa then prepared a workbook with three spreadsheets regarding the following sales activities: (1) 2014 Freezes; (2) Modification to Direct Bill; and (3) West LA Sales Breakdown.	37. Stanfa Decl., ¶ 4.
38. Once these were prepared, Cuva emailed the spreadsheets to Rosen, Holmes and Gannon and summarized the	38. Rosen Depo., 47:25-48:21; Holmes Depo., 86:10-88:10, 95:9-96:10; Cuva Decl., ¶ 6, Exh. N; Stanfa Decl., ¶¶

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
results of the Member Services investigation.	4-5.
39. In her email, Cuva indicated that these spreadsheets "all reflect patterns unhealthy for the business."	39. Cuva Decl., ¶ 7, Exh. N.
<p>40. Cuva noted as follows:</p> <ul style="list-style-type: none"> 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 	40. Cuva Decl., ¶ 7, Exh. N.

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
<p>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 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.</p>	
<p>41. Neither Cuva nor Stanfa were aware Plaintiff had made any complaints about changes to her compensation plan or about the alleged activities of other MAs.</p>	<p>41. Cuva Decl., ¶ 8; Stanfa Decl., ¶ 11.</p>
<p>42. In addition, Burger was asked to</p>	<p>42. Deposition of Jim Burger ("Burger</p>

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
interview the sales team at the West LA club.	Depo.”), 72:4-73:3, 73:13:75:22, 76:6-12.
43. When Burger came to Los Angeles 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.	43. Hemedinger Decl., ¶ 4.
44. A MA was fired on or about January 20, 2015 for improper sales activities.	44. Figueroa Decl. ¶ 9; Hemedinger Decl., ¶ 4.
45. At Burger’s request, Member Services provided him with the spreadsheets summarizing their findings of questionable sales transactions at the West LA club.	45. Burger Depo., 72:13-73:3; Cuva Decl. ¶ 8.
46. Burger then met with Cuva and Stanfa and they discussed their findings regarding the questionable sales at the West LA club.	46. Burger Depo., 73:13-74:15; Cuva Decl. ¶ 8; Stanfa Decl., ¶ 9.
47. Burger had a subsequent meeting with Stanfa to review the spreadsheets Member Services had prepared.	47. Burger Depo., 74:16-75:3, 8-22; Stanfa Decl., ¶ 9.
48. These spreadsheets showed anomalies in various sales transactions, including whether or not a contract was	48. Burger Depo., 39:3-40:22; Cuva Decl., ¶ 8; Stanfa Decl., ¶¶ 4-5.

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
<p>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.</p>	
<p>49. Burger also had a couple of telephone conversations with Stanfa regarding the anomalies in various sales activities at the West LA Club.</p>	<p>49. Burger Depo., 76:19-77:1; Stanfa Decl., ¶ 9.</p>
<p>50. In late January 2015, Burger came to Los Angeles to interview various employees regarding sales activities of the West LA MAs.</p>	<p>50. Burger Depo., 76:6-12; Gannon Decl., ¶ 3; Hemedinger Decl., ¶ 5.</p>
<p>51. Prior to the interviews, Burger and Gannon discussed suspending all of the individuals interviewed as part of the investigation pending the results of the investigation.</p>	<p>51. Burger Depo., 116:12-117:12.</p>
<p>52. Burger then interviewed the following individuals: (1) the Assistant General Manager; (2) Plaintiff; (3) another MA; (4) a relatively newly hired MA; and (5) Simonson.</p>	<p>52. Hemedinger Decl., ¶ 5.</p>

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
53. Burger had never heard of or spoken to Plaintiff prior to this investigation meeting.	53. Burger Depo., 35:22-24.
54. On January 30, 2015, Plaintiff met with Burger and Leah Ball of Human Resources regarding West LA's sales practices.	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 answered questions about her sales activities, as well as the activities of other MAs.	55. Plaintiff Depo., Volume I, 161:11-22, 164:10-22; Burger Depo., 53:13-54:9.
56. While Burger did not find Plaintiff credible, he felt, at that time, that there was insufficient information to warrant Plaintiff's termination.	56. Burger Depo., 122:14-17.
57. After Burger completed his interviews, Burger, Gannon and Hemedinger met briefly to discuss Burger's impressions.	57. Burger Depo., 118:1-6.
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.	59. Burger Depo., ¶ 110:17-23; Gannon Decl., ¶ 6.
60. Gannon also advised Plaintiff to	60. Plaintiff Depo., Volume I, 180:11-

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

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

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
71. Gannon emailed Plaintiff the compensation plan for the Marina Del Rey Club on or about January 31, 2015.	71. Plaintiff Depo., Volume I, 246:19-247:2; Gannon Decl., ¶ 12.
72. Plaintiff testified that no one from Equinox ever told her that she was being “terminated” or “demoted” as part of her reassignment to the Marina Del Rey club.	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.
73. Gannon made the decision to reassign Plaintiff to the Marina Del Rey club.	73. Rosen Depo., 45:7-25. 57:8-12; Hemedinger Depo., 53:14-18.
74. Plaintiff was told to report to the Marina Del Rey club on February 2, 2015 at 9:00 a.m.	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. Before reporting to the Marina Del Rey club, Plaintiff submitted her resignation, via email, on the morning of February 2, 2015 effective immediately.	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's last day of employment was February 2, 2015.	76. Plaintiff Depo., Volume I, 186:11-14.
77. Plaintiff never reported to work at the Marina Del Rey club.	77. Plaintiff Depo., Volume I, 50:13-15, 186:15-17; Hemedinger Depo., 56:22-25.
78. As of February 1, 2015, the only remaining MA at the West LA club was	78. Plaintiff Depo., Volume II, 342:3-11.

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
the recently hired MA.	
79. As of April/May 2015, the West LA club had an entirely new sales team and sales management.	79. Plaintiff Depo., Volume II, 342:25-343:5.
80. Plaintiff testified that she was unaware of any other MA at the West LA 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.	80. Plaintiff Depo., Volume II, 343:6-22.

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

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

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
<p>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.</p>	<p>Acknowledgement Form).</p>
<p>9. Plaintiff's personnel file also includes an Offer Letter, dated October 15, 2010, which Plaintiff acknowledged receiving.</p>	<p>9. Plaintiff Depo., Volume I, 36:23-38:11, Exh. 5 (Offer Letter); Figueroa Decl., ¶ 6, Exh. C (Offer Letter).</p>
<p>10. In particular, the Offer Letter stated: We are excited at the prospect of you joining the Company, you should be 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.</p>	<p>10. Plaintiff Depo., Volume I, 36:23-38:11, Exh. 5 (Offer Letter); Figueroa Decl., ¶ 6, Exh. C (Offer Letter).</p>

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
<p>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.</p>	
<p>11. Plaintiff's personnel file also includes an Employee Confidentiality and Non-Solicitation Agreement with Plaintiff's signature dated October 14, 2010.</p>	<p>11. Figueroa Decl., ¶ 8, Exh. D.</p>
<p>12. This Agreement stated: "You agree 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."</p>	<p>12. Figueroa Decl., ¶ 8, Exh. D.</p>
<p>13. In her deposition, Plaintiff admitted that she did not have a contract with Equinox; no one ever told her that she was guaranteed employment for a certain time period; and no one ever told her that she</p>	<p>13. Plaintiff Depo., Volume I, 36:23-38:11, 43:18-45:15, Exh. 5 (Offer Letter), Exh. 8 (Receipt Acknowledgement Form).</p>

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
was anything other than an at-will employee.	
14. The Employee Handbook Plaintiff acknowledged receiving also included Equinox's non-retaliation policy as well as complaint procedures for reporting retaliation.	14. Plaintiff Depo., Volume I, 43:18-45:15, Exh. 8 Receipt of Employee Handbook; Declaration of Emerson Figueroa ("Figueroa Decl."), Exh. A.
15. In particular, Equinox's policy strictly prohibits retaliation against any employee for "filing a complaint and [Equinox] will not knowingly permit 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."	15. Plaintiff Depo., Volume I, 43:18-45:15, Exh. 8 Receipt of Employee Handbook; Figueroa Decl., Exh. A, Employee Handbook.
16. The complaint procedure as outlined in the Employee Handbook	16. Plaintiff Depo., Volume I, 43:18-45:15, Exh. 8 Receipt of Employee

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
permits an employee to report retaliation to his or her manager, Human Resources, or through Equinox's Ethics Hotline.	Handbook; Figueroa Decl. ¶ 4.
17. In or about June 2014, Hemedinger informed Plaintiff and other MAs that the compensation plan for all West LA MAs was being clarified, so that the market bonuses would be paid out individually and not cumulatively for reaching a certain sales goal.	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. For example, the plan provided for a particular market bonus upon reaching a certain goal of sales: <ul style="list-style-type: none">• 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	18. Plaintiff Depo., Volume I, 190:16-194:3; Hemedinger Depo., 64:18-65:11
19. For the West LA club, Equinox's Payroll Department was adding the bonuses together as opposed to giving one of the bonuses above depending on the overall percentage.	19. Plaintiff Depo., Volume I, 190:16-194:3; Holmes Depo., 82:11-83:14; Hemedinger Depo., 59:22-60:6, 62:3-63:8; 66:6-11., 68:15-69:8.

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
<p>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”).</p>	<p>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.</p>
<p>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.</p>	<p>21. Plaintiff Depo., Volume I, 196:8-14, 207:15-22, 220:5-20; Plaintiff Depo., Volume II, 349:5-12.</p>
<p>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</p>	<p>22. Plaintiff Depo., Volume I, 81:6-21, 82:5-83:23, 94:14-97:9.</p>

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

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

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
32. This MA was relocating to New York but, based on the investigation results, she was not hired to work for Equinox in New York.	32. Rosen Depo., 39:8-13.
33. As a result of this member complaint, Rosen also asked Cuva to have Member Services conduct an investigation of sales transactions at the West LA club.	33. Rosen Depo., 47:25-6; Cuva Decl., ¶ 3.
34. Apart from requesting that the 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.	34. Rosen Depo., 47:25-48:21.
35. Cuva instructed Kevin Stanfa ("Stanfa") (Manager of Compliance and Special Projects), to review sales transactions at the West LA club.	35. Cuva Decl., ¶ 3; Stanfa Decl. ¶ **.
36. After Stanfa reported finding various anomalies associated with sales transactions at the West LA club, Cuva instructed Stanfa to prepare a summary detailing his findings.	36. Cuva Decl., ¶ 3; Stanfa Decl. ¶ 4.
37. Stanfa then prepared a workbook	37. Stanfa Decl., ¶ 4.

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING 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 emailed the spreadsheets to Rosen, Holmes and Gannon and summarized the results of the Member Services investigation.	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. In her email, Cuva indicated that these spreadsheets "all reflect patterns unhealthy for the business."	39. Cuva Decl., ¶ 7, Exh. N.
40. Cuva noted as follows: 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	40. Cuva Decl., ¶ 7, Exh. N.

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
<p>club. West LA had 28 modifications to direct bill.</p> <p>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 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</p>	

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

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
West LA club.	
47. Burger had a subsequent meeting with Stanfa to review the spreadsheets Member Services had prepared.	47. Burger Depo., 74:16-75:3, 8-22; Stanfa Decl., ¶ 9.
48. These spreadsheets showed anomalies in various sales transactions, 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.	48. Burger Depo., 39:3-40:22; Cuva Decl., ¶ 8; Stanfa Decl., ¶¶ 4-5.
49. Burger also had a couple of telephone conversations with Stanfa regarding the anomalies in various sales activities at the West LA Club.	49. Burger Depo., 76:19-77:1; Stanfa Decl., ¶ 9.
50. In late January 2015, Burger came to Los Angeles to interview various employees regarding sales activities of the West LA MAs.	50. Burger Depo., 76:6-12; Gannon Decl., ¶ 3; Hemedinger Decl., ¶ 5.
51. Prior to the interviews, Burger and Gannon discussed suspending all of the individuals interviewed as part of the	51. Burger Depo., 116:12-117:12.

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

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

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

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING 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 memberships at the Marina Del Rey club than the West LA club because the Marina Del Rey memberships were less expensive.	70. Hemedinger Depo., 52:18-23; Rosen Depo., 57:13-19; 58:22-59:14; Holmes Depo. , 50:18-51:5
71. Gannon emailed Plaintiff the compensation plan for the Marina Del Rey Club on or about January 31, 2015.	71. Plaintiff Depo., Volume I, 246:19-247:2; Gannon Decl., ¶ 12.
72. Plaintiff testified that no one from Equinox ever told her that she was being “terminated” or “demoted” as part of her reassignment to the Marina Del Rey club.	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.
73. Gannon made the decision to reassign Plaintiff to the Marina Del Rey club.	73. Rosen Depo., 45:7-25. 57:8-12; Hemedinger Depo., 53:14-18.
74. Plaintiff was told to report to the Marina Del Rey club on February 2, 2015 at 9:00 a.m.	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. Before reporting to the Marina Del Rey club, Plaintiff submitted her resignation, via email, on the morning of February 2, 2015 effective immediately.	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.

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
76. Plaintiff's last day of employment was February 2, 2015.	76. Plaintiff Depo., Volume I, 186:11-14.
77. Plaintiff never reported to work at the Marina Del Rey club.	77. Plaintiff Depo., Volume I, 50:13-15, 186:15-17; Hemedinger Depo., 56:22-25.
78. As of February 1, 2015, the only remaining MA at the West LA club was the recently hired MA.	78. Plaintiff Depo., Volume II, 342:3-11.
79. As of April/May 2015, the West LA club had an entirely new sales team and sales management.	79. Plaintiff Depo., Volume II, 342:25-343:5.
80. Plaintiff testified that she was unaware of any other MA at the West LA 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.	80. Plaintiff Depo., Volume II, 343:6-22.

ISSUE NO. 17

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

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
6. General Manager Kira Simonson ("Simonson) supervised Plaintiff at the West LA club from about January 2014 to about January 2015.	6. Plaintiff Depo., Volume I, 52:11-19.
7. Plaintiff's personnel file includes an Employee Handbook: Receipt Acknowledgment Form with Plaintiff's signature dated October 15, 2010.	7. Plaintiff Depo., Volume I, 43:18-45:15, Exh. 8 (Receipt Acknowledgement Form); Declaration of Emerson Figueroa ("Figueroa Decl."), ¶ 5, Exh. B.)
8. In particular, the Employee Handbook stated: I acknowledge that the receipt of the 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	8. Plaintiff Depo., Volume I, 43:18-45:15, Exh. 8 (Receipt Acknowledgement Form); Figueroa Decl., ¶ 5, Exh. B (Receipt Acknowledgement Form).

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
and myself.	
9. Plaintiff's personnel file also includes an Offer Letter, dated October 15, 2010, which Plaintiff acknowledged receiving.	9. Plaintiff Depo., Volume I, 36:23-38:11, Exh. 5 (Offer Letter); Figueroa Decl., ¶ 6, Exh. C (Offer Letter).
10. In particular, the Offer Letter stated: We are excited at the prospect of you joining the Company, you should be 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.	10. Plaintiff Depo., Volume I, 36:23-38:11, Exh. 5 (Offer Letter); Figueroa Decl., ¶ 6, Exh. C (Offer Letter).
11. Plaintiff's personnel file also includes an Employee Confidentiality and Non-Solicitation Agreement with Plaintiff's signature dated October 14,	11. Figueroa Decl., ¶ 8, Exh. D.

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
2010.	
12. This Agreement stated: "You agree 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."	12. Figueroa Decl., ¶ 8, Exh. D.
13. In her deposition, Plaintiff admitted that she did not have a contract with Equinox; no one ever told her that she was guaranteed employment for a certain time period; and no one ever told her that she was anything other than an at-will employee.	13. Plaintiff Depo., Volume I, 36:23-38:11, 43:18-45:15, Exh. 5 (Offer Letter), Exh. 8 (Receipt Acknowledgement Form).
14. The Employee Handbook Plaintiff acknowledged receiving also included Equinox's non-retaliation policy as well as complaint procedures for reporting retaliation.	14. Plaintiff Depo., Volume I, 43:18-45:15, Exh. 8 Receipt of Employee Handbook; Declaration of Emerson Figueroa ("Figueroa Decl."), Exh. A.
15. In particular, Equinox's policy strictly prohibits retaliation against any employee for "filing a complaint and [Equinox] will not knowingly permit retaliation by management, employees, or co-workers." Equinox's policy also	15. Plaintiff Depo., Volume I, 43:18-45:15, Exh. 8 Receipt of Employee Handbook; Figueroa Decl., Exh. A, Employee Handbook.

DEFENDANT’S UNCONTROVERTED FACTS	DEFENDANT’S SUPPORTING EVIDENCE
<p>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.”</p>	
<p>16. The complaint procedure as outlined in the Employee Handbook permits an employee to report retaliation to his or her manager, Human Resources, or through Equinox’s Ethics Hotline.</p>	<p>16. Plaintiff Depo., Volume I, 43:18-45:15, Exh. 8 Receipt of Employee Handbook; Figueroa Decl. ¶ 4.</p>
<p>17. In or about June 2014, Hemedinger informed Plaintiff and other MAs that the compensation plan for all West LA MAs was being clarified, so that the market bonuses would be paid out individually and not cumulatively for reaching a certain sales goal.</p>	<p>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.</p>
<p>18. For example, the plan provided for a particular market bonus upon reaching a certain goal of sales:</p>	<p>18. Plaintiff Depo., Volume I, 190:16-194:3; Hemedinger Depo., 64:18-65:11</p>

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
<ul style="list-style-type: none"> • 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 	
<p>19. For the West LA club, Equinox's Payroll Department was adding the bonuses together as opposed to giving one of the bonuses above depending on the overall percentage.</p>	<p>19. Plaintiff Depo., Volume I, 190:16-194:3; Holmes Depo., 82:11-83:14; Hemedinger Depo., 59:22-60:6, 62:3-63:8; 66:6-11., 68:15-69:8.</p>
<p>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").</p>	<p>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.</p>
<p>21. Despite Plaintiff's complaints about the compensation plan, Plaintiff continued</p>	<p>21. Plaintiff Depo., Volume I, 196:8-14, 207:15-22, 220:5-20; Plaintiff Depo.,</p>

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
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.	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 only “illegal activities” about which she complained to Equinox.	23. Plaintiff Depo., Volume II, 334:16-336:23.
24. According to Plaintiff, her other complaints involved “things against Equinox policies that were happening as	24. Plaintiff Depo., Volume II, 334:16-336:23.

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

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

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

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
<p>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.</p> <p>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.</p> <p>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</p>	

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
<p>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.</p>	
<p>41. Neither Cuva nor Stanfa were aware Plaintiff had made any complaints about changes to her compensation plan or about the alleged activities of other MAs.</p>	<p>41. Cuva Decl., ¶ 8; Stanfa Decl., ¶ 11.</p>
<p>42. In addition, Burger was asked to interview the sales team at the West LA club.</p>	<p>42. Deposition of Jim Burger ("Burger Depo."), 72:4-73:3, 73:13:75:22, 76:6-12.</p>
<p>43. When Burger came to Los Angeles to conduct his interviews in late January 2015, the West LA club's sales team consisted of three MAs, Plaintiff and two</p>	<p>43. Hemedinger Decl., ¶ 4.</p>

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
other MAs who were supervised by the Simonson and an Assistant General Manager.	
44. A MA was fired on or about January 20, 2015 for improper sales activities.	44. Figueroa Decl. ¶ 9; Hemedinger Decl., ¶ 4.
45. At Burger's request, Member Services provided him with the spreadsheets summarizing their findings of questionable sales transactions at the West LA club.	45. Burger Depo., 72:13-73:3; Cuva Decl. ¶ 8.
46. Burger then met with Cuva and Stanfa and they discussed their findings regarding the questionable sales at the West LA club.	46. Burger Depo., 73:13-74:15; Cuva Decl. ¶ 8; Stanfa Decl., ¶ 9.
47. Burger had a subsequent meeting with Stanfa to review the spreadsheets Member Services had prepared.	47. Burger Depo., 74:16-75:3, 8-22; Stanfa Decl., ¶ 9.
48. These spreadsheets showed anomalies in various sales transactions, 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	48. Burger Depo., 39:3-40:22; Cuva Decl., ¶ 8; Stanfa Decl., ¶¶ 4-5.

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

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

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

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

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
reassignment to the Marina Del Rey club.	Decl., ¶ 13; Hemedinger Decl., ¶ 7.
73. Gannon made the decision to reassign Plaintiff to the Marina Del Rey club.	73. Rosen Depo., 45:7-25. 57:8-12; Hemedinger Depo., 53:14-18.
74. Plaintiff was told to report to the Marina Del Rey club on February 2, 2015 at 9:00 a.m.	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. Before reporting to the Marina Del Rey club, Plaintiff submitted her resignation, via email, on the morning of February 2, 2015 effective immediately.	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's last day of employment was February 2, 2015.	76. Plaintiff Depo., Volume I, 186:11-14.
77. Plaintiff never reported to work at the Marina Del Rey club.	77. Plaintiff Depo., Volume I, 50:13-15, 186:15-17; Hemedinger Depo., 56:22-25.
78. As of February 1, 2015, the only remaining MA at the West LA club was the recently hired MA.	78. Plaintiff Depo., Volume II, 342:3-11.
79. As of April/May 2015, the West LA club had an entirely new sales team and sales management.	79. Plaintiff Depo., Volume II, 342:25-343:5.
80. Plaintiff testified that she was unaware of any other MA at the West LA	80. Plaintiff Depo., Volume II, 343:6-22.

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING 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.	

ISSUE NO. 18

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.)

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

1 2 3 4 5 6	managerial employees had told her that she was acting “crazy.”	136:12; Volume II, 319:2-320:3, 7-11, 320:20-321:6
7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	85. Lastly, Plaintiff testified that she heard Gannon refer to her as “Amy Winehouse.”	85. Plaintiff Depo., Volume II, 321:12-322:11, 331:19-334:5.

ISSUE NO. 19

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

1	was acting “crazy.”	320:20-321:6
2		
3	85. Lastly, Plaintiff testified that she	85. Plaintiff Depo., Volume II,
4	heard Gannon refer to her as “Amy	321:12-322:11, 331:19-334:5.
5	Winehouse.”	

ISSUE NO. 20

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

1 was acting “crazy.”	320:20-321:6
2	
3 85. Lastly, Plaintiff testified that she	85. Plaintiff Depo., Volume II,
4 heard Gannon refer to her as “Amy	321:12-322:11, 331:19-334:5.
5 Winehouse.”	

ISSUE NO. 21

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.

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

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
<p>(“Hemedinger”) was the Regional Director of Operations (“Regional Director”) of the Santa Monica and West LA clubs.</p>	<p>Hemedinger (“Hemedinger Depo.”) 15:3-10, 41:1-9, 13-16; Hemedinger Decl., ¶ 1.</p>
<p>6. General Manager Kira Simonson (“Simonson) supervised Plaintiff at the West LA club from about January 2014 to about January 2015.</p>	<p>6. Plaintiff Depo., Volume I, 52:11-19.</p>
<p>7. Plaintiff’s personnel file includes an Employee Handbook: Receipt Acknowledgment Form with Plaintiff’s signature dated October 15, 2010.</p>	<p>7. Plaintiff Depo., Volume I, 43:18-45:15, Exh. 8 (Receipt Acknowledgement Form); Declaration of Emerson Figueroa (“Figueroa Decl.”), ¶ 5, Exh. B.)</p>
<p>8. In particular, the Employee Handbook stated: I acknowledge that the receipt of the 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</p>	<p>8. Plaintiff Depo., Volume I, 43:18-45:15, Exh. 8 (Receipt Acknowledgement Form); Figueroa Decl., ¶ 5, Exh. B (Receipt Acknowledgement Form).</p>

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
<p>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.</p>	
<p>9. Plaintiff's personnel file also includes an Offer Letter, dated October 15, 2010, which Plaintiff acknowledged receiving.</p>	<p>9. Plaintiff Depo., Volume I, 36:23-38:11, Exh. 5 (Offer Letter); Figueroa Decl., ¶ 6, Exh. C (Offer Letter).</p>
<p>10. In particular, the Offer Letter stated: We are excited at the prospect of you joining the Company, you should be 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.</p>	<p>10. Plaintiff Depo., Volume I, 36:23-38:11, Exh. 5 (Offer Letter); Figueroa Decl., ¶ 6, Exh. C (Offer Letter).</p>

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
11. Plaintiff's personnel file also includes an Employee Confidentiality and Non-Solicitation Agreement with Plaintiff's signature dated October 14, 2010.	11. Figueroa Decl., ¶ 8, Exh. D.
12. This Agreement stated: "You agree 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."	12. Figueroa Decl., ¶ 8, Exh. D.
13. In her deposition, Plaintiff admitted that she did not have a contract with Equinox; no one ever told her that she was guaranteed employment for a certain time period; and no one ever told her that she was anything other than an at-will employee.	13. Plaintiff Depo., Volume I, 36:23-38:11, 43:18-45:15, Exh. 5 (Offer Letter), Exh. 8 (Receipt Acknowledgement Form).
14. The Employee Handbook Plaintiff acknowledged receiving also included Equinox's non-retaliation policy as well as complaint procedures for reporting retaliation.	14. Plaintiff Depo., Volume I, 43:18-45:15, Exh. 8 Receipt of Employee Handbook; Declaration of Emerson Figueroa ("Figueroa Decl."), Exh. A.
15. In particular, Equinox's policy strictly prohibits retaliation against any	15. Plaintiff Depo., Volume I, 43:18-45:15, Exh. 8 Receipt of Employee

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
<p>employee for “filing a complaint and [Equinox] will not knowingly permit 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.”</p>	<p>Handbook; Figueroa Decl., Exh. A, Employee Handbook.</p>
<p>16. The complaint procedure as outlined in the Employee Handbook permits an employee to report retaliation to his or her manager, Human Resources, or through Equinox’s Ethics Hotline.</p>	<p>16. Plaintiff Depo., Volume I, 43:18-45:15, Exh. 8 Receipt of Employee Handbook; Figueroa Decl. ¶ 4.</p>
<p>17. In or about June 2014, Hemedinger informed Plaintiff and other MAs that the compensation plan for all West LA MAs was being clarified, so that the market bonuses would be paid out individually and not cumulatively for reaching a</p>	<p>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-</p>

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
certain sales goal.	14, 70:19-72:3.; Rosen Depo., 33:5-15.
<p>18. For example, the plan provided for a particular market bonus upon reaching a certain goal of sales:</p> <ul style="list-style-type: none"> • 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 	18. Plaintiff Depo., Volume I, 190:16-194:3; Hemedinger Depo., 64:18-65:11
19. For the West LA club, Equinox's Payroll Department was adding the bonuses together as opposed to giving one of the bonuses above depending on the overall percentage.	19. Plaintiff Depo., Volume I, 190:16-194:3; Holmes Depo., 82:11-83:14; Hemedinger Depo., 59:22-60:6, 62:3-63:8; 66:6-11., 68:15-69:8.
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	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.

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
Sales), and Scott Rosen ("Rosen") (Chief Operating Officer) ("COO").	
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 only "illegal activities" about which she	23. Plaintiff Depo., Volume II, 334:16-336:23.

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

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

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING 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 ("Stanfa") (Manager of Compliance and Special Projects), to review sales transactions at the West LA club.	35. Cuva Decl., ¶ 3; Stanfa Decl. ¶ **.
36. After Stanfa reported finding various anomalies associated with sales transactions at the West LA club, Cuva instructed Stanfa to prepare a summary detailing his findings.	36. Cuva Decl., ¶ 3; Stanfa Decl. ¶ 4.
37. Stanfa then prepared a workbook with three spreadsheets regarding the following sales activities: (1) 2014 Freezes; (2) Modification to Direct Bill; and (3) West LA Sales Breakdown.	37. Stanfa Decl., ¶ 4.
38. Once these were prepared, Cuva emailed the spreadsheets to Rosen, Holmes and Gannon and summarized the results of the Member Services investigation.	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.

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
39. In her email, Cuva indicated that these spreadsheets "all reflect patterns unhealthy for the business."	39. Cuva Decl., ¶ 7, Exh. N.
<p>40. Cuva noted as follows:</p> <ul style="list-style-type: none"> 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 the same anomalies seen with 	40. Cuva Decl., ¶ 7, Exh. N.

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
<p>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.</p>	
<p>41. Neither Cuva nor Stanfa were aware Plaintiff had made any complaints about changes to her compensation plan or about the alleged activities of other MAs.</p>	<p>41. Cuva Decl., ¶ 8; Stanfa Decl., ¶ 11.</p>
<p>42. In addition, Burger was asked to interview the sales team at the West LA club.</p>	<p>42. Deposition of Jim Burger ("Burger Depo."), 72:4-73:3, 73:13:75:22, 76:6-12.</p>

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

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING 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 telephone conversations with Stanfa regarding the anomalies in various sales activities at the West LA Club.	49. Burger Depo., 76:19-77:1; Stanfa Decl., ¶ 9.
50. In late January 2015, Burger came to Los Angeles to interview various employees regarding sales activities of the West LA MAs.	50. Burger Depo., 76:6-12; Gannon Decl., ¶ 3; Hemedinger Decl., ¶ 5.
51. Prior to the interviews, Burger and Gannon discussed suspending all of the individuals interviewed as part of the investigation pending the results of the investigation.	51. Burger Depo., 116:12-117:12.
52. Burger then interviewed the following individuals: (1) the Assistant General Manager; (2) Plaintiff; (3) another MA; (4) a relatively newly hired MA; and (5) Simonson.	52. Hemedinger Decl., ¶ 5.
53. Burger had never heard of or spoken to Plaintiff prior to this investigation	53. Burger Depo., 35:22-24.

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
meeting.	
54. On January 30, 2015, Plaintiff met with Burger and Leah Ball of Human Resources regarding West LA's sales practices.	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 answered questions about her sales activities, as well as the activities of other MAs.	55. Plaintiff Depo., Volume I, 161:11-22, 164:10-22; Burger Depo., 53:13-54:9.
56. While Burger did not find Plaintiff credible, he felt, at that time, that there was insufficient information to warrant Plaintiff's termination.	56. Burger Depo., 122:14-17.
57. After Burger completed his interviews, Burger, Gannon and Hemedinger met briefly to discuss Burger's impressions.	57. Burger Depo., 117:16-18, 24-118:6.
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.	59. Burger Depo., ¶ 110:17-23; Gannon Decl., ¶ 6.
60. Gannon also advised Plaintiff to report back to the West LA club at 2:00 p.m. the next day for another meeting.	60. Plaintiff Depo., Volume I, 180:11-181:4; Gannon Decl., ¶ 5.

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
61. According to Plaintiff, Equinox told her that she would not have access to her email or payroll account and escorted her out of the building in front of Equinox's clientele, staff and all of her peers.	61. Plaintiff Depo., Volume I, 174:24-175:21; Plaintiff Depo., Volume II, 305:21-306:2, 364:17-20; Plaintiff's Complaint, 6:5-7.
62. It is Equinox's policy to turn off email access for hourly employees who have been suspended pending investigation or who are on a leave of absence.	62. Gannon Decl., ¶ 7.
63. Prior to Burger's interview of 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.	63. Gannon Decl., ¶ 8.
64. Plaintiff met with Hemedinger and Gannon at the West LA club on January 31, 2015 and was told that the investigation was concluded and that she would be working at the Marina Del Rey club.	64. Plaintiff Depo., Volume I, 182:5-183:8; Plaintiff Depo., Volume II, 306:12:16, 382:12-17, 390:4-11, Exh. 38; Hemedinger Depo., 54:17-21, 55:1-8; Gannon Decl., ¶ 3; Hemedinger Decl., ¶ 6.
65. The decision was made to reassign Plaintiff to the Marina Del Rey club because Equinox wanted to rebuild the team of MAs in the West LA club and to	65. Rosen Depo., 71:7-20, 73:15-22, 76:5-14; Holmes Depo., 96:12-98:17; Hemedinger Depo., 51:7-52:23; Gannon Decl., ¶ 10.

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
create a fresh culture, as a result of the investigation findings.	
66. Plaintiff's compensation plan would change once at Marina Del Rey to align with the compensation plan of Marina Del Rey MAs. Equinox considered the reassignment a lateral move.	66. Rosen Depo., 87:25-88:4; Gannon Decl., ¶ 11.
67. Equinox considered the reassignment a lateral move.	67. Rosen Depo., 87:25-88:4; Gannon Decl., ¶ 11.
68. When Plaintiff was asked what her compensation would be at the Marina Del Rey club, she was sent the compensation plan of a Marina Del Rey MA.	68. Plaintiff Depo., Volume II, 390:4-11, Exh. 38; Gannon Decl., ¶ 12.
69. Equinox's expectation was she would earn at least the same amount of money because the Marina Del Rey club 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.	69. Hemedinger Depo., 52:18-23; Rosen Depo., 57:13-19; 58:22-59:14; Holmes Depo., 31:13-15.
70. It was easier to sell more memberships at the Marina Del Rey club than the West LA club because the Marina Del Rey memberships were less expensive.	70. Hemedinger Depo., 52:18-23; Rosen Depo., 57:13-19; 58:22-59:14; Holmes Depo., 50:18-51:5
71. Gannon emailed Plaintiff the compensation plan for the Marina Del Rey	71. Plaintiff Depo., Volume I, 246:19-247:2; Gannon Decl., ¶ 12.

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
Club on or about January 31, 2015.	
72. Plaintiff testified that no one from Equinox ever told her that she was being "terminated" or "demoted" as part of her reassignment to the Marina Del Rey club.	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.
73. Gannon made the decision to reassign Plaintiff to the Marina Del Rey club.	73. Rosen Depo., 45:7-25. 57:8-12; Hemedinger Depo., 53:14-18.
74. Plaintiff was told to report to the Marina Del Rey club on February 2, 2015 at 9:00 a.m.	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. Before reporting to the Marina Del Rey club, Plaintiff submitted her resignation, via email, on the morning of February 2, 2015 effective immediately.	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's last day of employment was February 2, 2015.	76. Plaintiff Depo., Volume I, 186:11-14.
77. Plaintiff never reported to work at the Marina Del Rey club.	77. Plaintiff Depo., Volume I, 50:13-15, 186:15-17; Hemedinger Depo., 56:22-25.
78. As of February 1, 2015, the only remaining MA at the West LA club was the recently hired MA.	78. Plaintiff Depo., Volume II, 342:3-11.
79. As of April/May 2015, the West LA	79. Plaintiff Depo., Volume II,

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
club had an entirely new sales team and sales management.	342:25-343:5.
80. Plaintiff testified that she was unaware of any other MA at the West LA 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.	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 UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
1. Plaintiff was hired as a Membership Advisor ("MA") at Equinox's Santa Monica club on or about October 15, 2010.	1. Plaintiff Depo., Volume I, 36:23-38:10, Exh. 5 (Offer Letter).
2. In January 2014, Plaintiff began working at Equinox's West Los Angeles club ("West LA club").	2. Plaintiff Depo., Volume I, 189:22-190:12, Exh. 13 (Memo).
3. At the West LA club, MAs were referred to as Membership Executives. However, their job duties were the same.	3. Declaration of Brian Hemedinger ("Hemedinger Decl."), ¶ 3.

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

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
<p>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.</p>	
<p>9. Plaintiff's personnel file also includes an Offer Letter, dated October 15, 2010, which Plaintiff acknowledged receiving.</p>	<p>9. Plaintiff Depo., Volume I, 36:23-38:11, Exh. 5 (Offer Letter); Figueroa Decl., ¶ 6, Exh. C (Offer Letter).</p>
<p>10. In particular, the Offer Letter stated: We are excited at the prospect of you joining the Company, you should be 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</p>	<p>10. Plaintiff Depo., Volume I, 36:23-38:11, Exh. 5 (Offer Letter); Figueroa Decl., ¶ 6, Exh. C (Offer Letter).</p>

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
<p>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.</p>	
<p>11. Plaintiff's personnel file also includes an Employee Confidentiality and Non-Solicitation Agreement with Plaintiff's signature dated October 14, 2010.</p>	<p>11. Figueroa Decl., ¶ 8, Exh. D.</p>
<p>12. This Agreement stated: "You agree 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."</p>	<p>12. Figueroa Decl., ¶ 8, Exh. D.</p>
<p>13. In her deposition, Plaintiff admitted that she did not have a contract with Equinox; no one ever told her that she was guaranteed employment for a certain time period; and no one ever told her that she was anything other than an at-will employee.</p>	<p>13. Plaintiff Depo., Volume I, 36:23-38:11, 43:18-45:15, Exh. 5 (Offer Letter), Exh. 8 (Receipt Acknowledgement Form).</p>
<p>14. The Employee Handbook Plaintiff</p>	<p>14. Plaintiff Depo., Volume I, 43:18-</p>

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
acknowledged receiving also included Equinox's non-retaliation policy as well as complaint procedures for reporting retaliation.	45:15, Exh. 8 Receipt of Employee Handbook; Declaration of Emerson Figueroa ("Figueroa Decl."), Exh. A.
15. In particular, Equinox's policy strictly prohibits retaliation against any employee for "filing a complaint and [Equinox] will not knowingly permit 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."	15. Plaintiff Depo., Volume I, 43:18-45:15, Exh. 8 Receipt of Employee Handbook; Figueroa Decl., Exh. A, Employee Handbook.
16. The complaint procedure as outlined in the Employee Handbook permits an employee to report retaliation to his or her manager, Human Resources, or through Equinox's Ethics Hotline.	16. Plaintiff Depo., Volume I, 43:18-45:15, Exh. 8 Receipt of Employee Handbook; Figueroa Decl. ¶ 4.

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
<p>17. In or about June 2014, Hemedinger informed Plaintiff and other MAs that the compensation plan for all West LA MAs was being clarified, so that the market bonuses would be paid out individually and not cumulatively for reaching a certain sales goal.</p>	<p>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.</p>
<p>18. For example, the plan provided for a particular market bonus upon reaching a certain goal of sales:</p> <ul style="list-style-type: none"> • 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 	<p>18. Plaintiff Depo., Volume I, 190:16-194:3; Hemedinger Depo., 64:18-65:11</p>
<p>19. For the West LA club, Equinox's Payroll Department was adding the bonuses together as opposed to giving one of the bonuses above depending on the overall percentage.</p>	<p>19. Plaintiff Depo., Volume I, 190:16-194:3; Holmes Depo., 82:11-83:14; Hemedinger Depo., 59:22-60:6, 62:3-63:8; 66:6-11., 68:15-69:8.</p>
<p>20. Plaintiff testified that she complained about what she viewed as a "change" in the compensation plan to the</p>	<p>20. Plaintiff Depo., Volume I, 199:7-22; Hemedinger Depo., 59:14-60:10; Deposition of Scott Rosen ("Rosen</p>

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
<p>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").</p>	<p>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.</p>
<p>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.</p>	<p>21. Plaintiff Depo., Volume I, 196:8-14, 207:15-22, 220:5-20; Plaintiff Depo., Volume II, 349:5-12.</p>
<p>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.</p>	<p>22. Plaintiff Depo., Volume I, 81:6-21, 82:5-83:23, 94:14-97:9.</p>

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
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 only "illegal activities" about which she complained to Equinox.	23. Plaintiff Depo., Volume II, 334:16-336:23.
24. According to Plaintiff, her other complaints involved "things against Equinox policies that were happening as well."	24. Plaintiff Depo., Volume II, 334:16-336:23.
25. Plaintiff admitted that she could not identify any statute, ordinance, regulation, local law, state law, or federal law that was violated as a result of this alleged activity.	25. Plaintiff Depo., Volume II, 335:4-336:23.
26. Plaintiff also testified that she complained to Hemedinger and Simonson about the sales activities of another MA.	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. Specifically, Plaintiff complained that this MA was giving away "free months" to potential members, allowing "freezes" for members, and offering "three month" deals.	27. 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.

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

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
Equinox in New York.	
33. As a result of this member complaint, Rosen also asked Cuva to have Member Services conduct an investigation of sales transactions at the West LA club.	33. Rosen Depo., 47:25-6; Cuva Decl., ¶ 3.
34. Apart from requesting that the 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.	34. Rosen Depo., 47:25-48:21.
35. Cuva instructed Kevin Stanfa ("Stanfa") (Manager of Compliance and Special Projects), to review sales transactions at the West LA club.	35. Cuva Decl., ¶ 3; Stanfa Decl. ¶ **.
36. After Stanfa reported finding various anomalies associated with sales transactions at the West LA club, Cuva instructed Stanfa to prepare a summary detailing his findings.	36. Cuva Decl., ¶ 3; Stanfa Decl. ¶ 4.
37. Stanfa then prepared a workbook with three spreadsheets regarding the following sales activities: (1) 2014 Freezes; (2) Modification to Direct Bill;	37. Stanfa Decl., ¶ 4.

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
and (3) West LA Sales Breakdown.	
38. Once these were prepared, Cuva emailed the spreadsheets to Rosen, Holmes and Gannon and summarized the results of the Member Services investigation.	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. In her email, Cuva indicated that these spreadsheets "all reflect patterns unhealthy for the business."	39. Cuva Decl., ¶ 7, Exh. N.
<p>40. Cuva noted as follows:</p> <ul style="list-style-type: none"> 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 	40. Cuva Decl., ¶ 7, Exh. N.

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
<p>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 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.</p>	
<p>41. Neither Cuva nor Stanfa were aware</p>	<p>41. Cuva Decl., ¶ 8; Stanfa Decl., ¶ 11.</p>

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING 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 interview the sales team at the West LA club.	42. Deposition of Jim Burger ("Burger Depo."), 72:4-73:3, 73:13:75:22, 76:6-12.
43. When Burger came to Los Angeles 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.	43. Hemedinger Decl., ¶ 4.
44. A MA was fired on or about January 20, 2015 for improper sales activities.	44. Figueroa Decl. ¶ 9; Hemedinger Decl., ¶ 4.
45. At Burger's request, Member Services provided him with the spreadsheets summarizing their findings of questionable sales transactions at the West LA club.	45. Burger Depo., 72:13-73:3; Cuva Decl. ¶ 8.
46. Burger then met with Cuva and Stanfa and they discussed their findings regarding the questionable sales at the West LA club.	46. Burger Depo., 73:13-74:15; Cuva Decl. ¶ 8; Stanfa Decl., ¶ 9.
47. Burger had a subsequent meeting with Stanfa to review the spreadsheets	47. Burger Depo., 74:16-75:3, 8-22; Stanfa Decl., ¶ 9.

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
Member Services had prepared.	
48. These spreadsheets showed anomalies in various sales transactions, 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.	48. Burger Depo., 39:3-40:22; Cuva Decl., ¶ 8; Stanfa Decl., ¶¶ 4-5.
49. Burger also had a couple of telephone conversations with Stanfa regarding the anomalies in various sales activities at the West LA Club.	49. Burger Depo., 76:19-77:1; Stanfa Decl., ¶ 9.
50. In late January 2015, Burger came to Los Angeles to interview various employees regarding sales activities of the West LA MAs.	50. Burger Depo., 76:6-12; Gannon Decl., ¶ 3; Hemedinger Decl., ¶ 5.
51. Prior to the interviews, Burger and Gannon discussed suspending all of the individuals interviewed as part of the investigation pending the results of the investigation.	51. Burger Depo., 116:12-117:12.
52. Burger then interviewed the	52. Hemedinger Decl., ¶ 5.

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING 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 to Plaintiff prior to this investigation meeting.	53. Burger Depo., 35:22-24.
54. On January 30, 2015, Plaintiff met with Burger and Leah Ball of Human Resources regarding West LA's sales practices.	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 answered questions about her sales activities, as well as the activities of other MAs.	55. Plaintiff Depo., Volume I, 161:11-22, 164:10-22; Burger Depo., 53:13-54:9.
56. While Burger did not find Plaintiff credible, he felt, at that time, that there was insufficient information to warrant Plaintiff's termination.	56. Burger Depo., 122:14-17.
57. After Burger completed his interviews, Burger, Gannon and Hemedinger met briefly to discuss Burger's impressions.	57. Burger Depo., 117:16-18, 24-118:6.
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	59. Burger Depo., ¶ 110:17-23;

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

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

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
70. It was easier to sell more memberships at the Marina Del Rey club than the West LA club because the Marina Del Rey memberships were less expensive.	70. Hemedinger Depo., 52:18-23; Rosen Depo., 57:13-19; 58:22-59:14; Holmes Depo., 50:18-51:5
71. Gannon emailed Plaintiff the compensation plan for the Marina Del Rey Club on or about January 31, 2015.	71. Plaintiff Depo., Volume I, 246:19-247:2; Gannon Decl., ¶ 12.
72. Plaintiff testified that no one from Equinox ever told her that she was being “terminated” or “demoted” as part of her reassignment to the Marina Del Rey club.	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.
73. Gannon made the decision to reassign Plaintiff to the Marina Del Rey club.	73. Rosen Depo., 45:7-25. 57:8-12; Hemedinger Depo., 53:14-18.
74. Plaintiff was told to report to the Marina Del Rey club on February 2, 2015 at 9:00 a.m.	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. Before reporting to the Marina Del Rey club, Plaintiff submitted her resignation, via email, on the morning of February 2, 2015 effective immediately.	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's last day of employment was February 2, 2015.	76. Plaintiff Depo., Volume I, 186:11-14.
77. Plaintiff never reported to work at	77. Plaintiff Depo., Volume I, 50:13-

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
the Marina Del Rey club.	15, 186:15-17; Hemedinger Depo., 56:22-25.
78. As of February 1, 2015, the only remaining MA at the West LA club was the recently hired MA.	78. Plaintiff Depo., Volume II, 342:3-11.
79. As of April/May 2015, the West LA club had an entirely new sales team and sales management.	79. Plaintiff Depo., Volume II, 342:25-343:5.
80. Plaintiff testified that she was unaware of any other MA at the West LA 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.	80. Plaintiff Depo., Volume II, 343:6-22.

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

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

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
<p>Handbook stated:</p> <p>I acknowledge that the receipt of the 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.</p>	<p>45:15, Exh. 8 (Receipt Acknowledgement Form); Figueroa Decl., ¶ 5, Exh. B (Receipt Acknowledgement Form).</p>
<p>9. Plaintiff's personnel file also includes an Offer Letter, dated October 15, 2010, which Plaintiff acknowledged receiving.</p>	<p>9. Plaintiff Depo., Volume I, 36:23-38:11, Exh. 5 (Offer Letter); Figueroa Decl., ¶ 6, Exh. C (Offer Letter).</p>
<p>10. In particular, the Offer Letter stated: We are excited at the prospect of you joining the Company, you should be aware that our relationship is "employment-at-will." That means you</p>	<p>10. Plaintiff Depo., Volume I, 36:23-38:11, Exh. 5 (Offer Letter); Figueroa Decl., ¶ 6, Exh. C (Offer Letter).</p>

DEFENDANT’S UNCONTROVERTED FACTS	DEFENDANT’S SUPPORTING EVIDENCE
<p>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.</p>	
<p>11. Plaintiff’s personnel file also includes an Employee Confidentiality and Non-Solicitation Agreement with Plaintiff’s signature dated October 14, 2010.</p>	<p>11. Figueroa Decl., ¶ 8, Exh. D.</p>
<p>12. This Agreement stated: “You agree 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.”</p>	<p>12. Figueroa Decl., ¶ 8, Exh. D.</p>
<p>13. In her deposition, Plaintiff admitted that she did not have a contract with</p>	<p>13. Plaintiff Depo., Volume I, 36:23-38:11, 43:18-45:15, Exh. 5 (Offer</p>

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
Equinox; no one ever told her that she was guaranteed employment for a certain time period; and no one ever told her that she was anything other than an at-will employee.	Letter), Exh. 8 (Receipt Acknowledgement Form).
14. The Employee Handbook Plaintiff acknowledged receiving also included Equinox's non-retaliation policy as well as complaint procedures for reporting retaliation.	14. Plaintiff Depo., Volume I, 43:18-45:15, Exh. 8 Receipt of Employee Handbook; Declaration of Emerson Figueroa ("Figueroa Decl."), Exh. A.
15. In particular, Equinox's policy strictly prohibits retaliation against any employee for "filing a complaint and [Equinox] will not knowingly permit 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	15. Plaintiff Depo., Volume I, 43:18-45:15, Exh. 8 Receipt of Employee Handbook; Figueroa Decl., Exh. A, Employee Handbook.

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
investigation.”	
16. The complaint procedure as outlined in the Employee Handbook permits an employee to report retaliation to his or her manager, Human Resources, or through Equinox’s Ethics Hotline.	16. Plaintiff Depo., Volume I, 43:18-45:15, Exh. 8 Receipt of Employee Handbook; Figueroa Decl. ¶ 4.
17. In or about June 2014, Hemedinger informed Plaintiff and other MAs that the compensation plan for all West LA MAs was being clarified, so that the market bonuses would be paid out individually and not cumulatively for reaching a certain sales goal.	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. For example, the plan provided for a particular market bonus upon reaching a certain goal of sales: <ul style="list-style-type: none">• 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	18. Plaintiff Depo., Volume I, 190:16-194:3; Hemedinger Depo., 64:18-65:11
19. For the West LA club, Equinox’s Payroll Department was adding the	19. Plaintiff Depo., Volume I, 190:16-194:3; Holmes Depo., 82:11-83:14;

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
bonuses together as opposed to giving one of the bonuses above depending on the overall percentage.	Hemedinger Depo., 59:22-60:6, 62:3-63:8; 66:6-11., 68:15-69:8.
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	22. Plaintiff Depo., Volume I, 81:6-21, 82:5-83:23, 94:14-97:9.

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
<p>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.</p>	
<p>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 only “illegal activities” about which she complained to Equinox.</p>	<p>23. Plaintiff Depo., Volume II, 334:16-336:23.</p>
<p>24. According to Plaintiff, her other complaints involved “things against Equinox policies that were happening as well.”</p>	<p>24. Plaintiff Depo., Volume II, 334:16-336:23.</p>
<p>25. Plaintiff admitted that she could not identify any statute, ordinance, regulation, local law, state law, or federal law that was violated as a result of this alleged activity.</p>	<p>25. Plaintiff Depo., Volume II, 335:4-336:23.</p>
<p>26. Plaintiff also testified that she complained to Hemedinger and Simonson about the sales activities of another MA.</p>	<p>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.</p>

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

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

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
instructed Stanfa to prepare a summary detailing his findings.	
37. Stanfa then prepared a workbook with three spreadsheets regarding the following sales activities: (1) 2014 Freezes; (2) Modification to Direct Bill; and (3) West LA Sales Breakdown.	37. Stanfa Decl., ¶ 4.
38. Once these were prepared, Cuva emailed the spreadsheets to Rosen, Holmes and Gannon and summarized the results of the Member Services investigation.	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. In her email, Cuva indicated that these spreadsheets "all reflect patterns unhealthy for the business."	39. Cuva Decl., ¶ 7, Exh. N.
40. Cuva noted as follows: 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	40. Cuva Decl., ¶ 7, Exh. N.

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
<p>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.</p> <p>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 the same credit card, credit card not present for numerous sales transactions, 3-day cancellations</p>	

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING 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 Plaintiff had made any complaints about changes to her compensation plan or about the alleged activities of other MAs.	41. Cuva Decl., ¶ 8; Stanfa Decl., ¶ 11.
42. In addition, Burger was asked to interview the sales team at the West LA club.	42. Deposition of Jim Burger ("Burger Depo."), 72:4-73:3, 73:13-75:22, 76:6-12.
43. When Burger came to Los Angeles 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.	43. Hemedinger Decl., ¶ 4.
44. A MA was fired on or about January 20, 2015 for improper sales activities.	44. Figueroa Decl. ¶ 9; Hemedinger Decl., ¶ 4.
45. At Burger's request, Member Services provided him with the spreadsheets summarizing their findings of questionable sales transactions at the West LA club.	45. Burger Depo., 72:13-73:3; Cuva Decl. ¶ 8.

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
46. Burger then met with Cuva and Stanfa and they discussed their findings regarding the questionable sales at the West LA club.	46. Burger Depo., 73:13-74:15; Cuva Decl. ¶ 8; Stanfa Decl., ¶ 9.
47. Burger had a subsequent meeting with Stanfa to review the spreadsheets Member Services had prepared.	47. Burger Depo., 74:16-75:3, 8-22; Stanfa Decl., ¶ 9.
48. These spreadsheets showed anomalies in various sales transactions, 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.	48. Burger Depo., 39:3-40:22; Cuva Decl., ¶ 8; Stanfa Decl., ¶¶ 4-5.
49. Burger also had a couple of telephone conversations with Stanfa regarding the anomalies in various sales activities at the West LA Club.	49. Burger Depo., 76:19-77:1; Stanfa Decl., ¶ 9.
50. In late January 2015, Burger came to Los Angeles to interview various employees regarding sales activities of the West LA MAs.	50. Burger Depo., 76:6-12; Gannon Decl., ¶ 3; Hemedinger Decl., ¶ 5.

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

DEFENDANT'S UNCONTROVERTED FACTS	DEFENDANT'S SUPPORTING EVIDENCE
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.	59. Burger Depo., ¶ 110:17-23; Gannon Decl., ¶ 6.
60. Gannon also advised Plaintiff to report back to the West LA club at 2:00 p.m. the next day for another meeting.	60. Plaintiff Depo., Volume I, 180:11-181:4; Gannon Decl., ¶ 5.
61. According to Plaintiff, Equinox told her that she would not have access to her email or payroll account and escorted her out of the building in front of Equinox's clientele, staff and all of her peers.	61. Plaintiff Depo., Volume I, 174:24-175:21; Plaintiff Depo., Volume II, 305:21-306:2, 364:17-20; Plaintiff's Complaint, 6:5-7.
62. It is Equinox's policy to turn off email access for hourly employees who have been suspended pending investigation or who are on a leave of absence.	62. Gannon Decl., ¶ 7.
63. Prior to Burger's interview of 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	63. Gannon Decl., ¶ 8.

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

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

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

Dated: October 7, 2016

JACKSON LEWIS P.C.

By: /s/Mia Farber
Mia Farber
Dorothy L. Black.
Attorneys for Defendant
EQUINOX HOLDINGS, INC.

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