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TAMAR KASBARIAN

**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., and DOES 1 to  
50, inclusive,

Defendants.

Case No.: 2:26-CV-01795 MWF (JCx)

**The Honorable Michael W. Fitzgerald**

**PLAINTIFF TAMAR KASBARIAN'S  
REPLY TO DEFENDANT EQUINOX  
HOLDINGS, INC.'S SEPARATE  
STATEMENT OF UNCONTROVERTED  
FACTS AND CONCLUSIONS OF LAW  
IN OPPOSITION TO DEFENDANT'S  
MOTION FOR SUMMARY JUDGMENT**

Date: November 7, 2016

Time: 10:00 a.m.

Ctrm.: 165

Action Filed: April 13, 2015

1 Plaintiff, Tamar Kasbarian, respectfully submits this Reply to Defendant Equinox  
2 Holdings, Inc.'s Statement of Uncontroverted Material Facts and Conclusions of Law in  
3 Opposition to Defendant's Motion for Summary Judgment.  
4

5 Dated: October 17, 2016

SHEGERIAN & ASSOCIATES, INC.

7 By: /S/ Carney R. Shegerian  
8 Carney R. Shegerian, Esq.

9 Attorneys for Plaintiff,  
10 TAMAR KASBARIAN  
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**ISSUE NO. 1:** The club defendants are Plaintiff's employer and should be dismissed from this action. (UF Nos. 86-87.)

**Alleged Undisputed Facts and  
Supporting Evidence**

1. 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.

**Evidence:**

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).

2. Neither the Sepulveda club nor the Marina Del Rey club has any employees nor has ever had an employment relation-

**Plaintiff's Responses and  
Supporting Evidence**

1. Disputed. Gannon testified that Equinox Fitness Marina del Rey, Inc. is an entity that has employees. Moreover, Defendants failed to properly notice as an issue, which entity defendants it is seeking to summarily adjudicate as not being Kasbarian's employer. Defendant specifically fails to identify who the "club defendants" are and the court, therefore, cannot summarily adjudicate them. Moreover, only defendant Equinox Holdings, Inc. has brought a motion for summary judgment and/or adjudication, not the remaining two defendants, therefore, they must remain in the case.

**Evidence:**

Gannon Depo., 41:3-12; Defendant's Notice of Motion and Motion for Summary Judgment and Summary Adjudication, Noticed Issue No. 1.

2. Disputed. Gannon testified that Equinox Fitness Marina del Rey, Inc. is an entity that has employees. Moreover,

ship with or made any employment decisions regarding Plaintiff.

**Evidence:**

Notice of Removal, ¶ 13, Declaration of Patricia Wencelblat (“Wencelblat Decl.”), ¶ 3.

Defendants failed to properly notice as an issue, which entity defendants it is seeking to summarily adjudicate as not being Kasbarian’s employer. Defendant specifically fails to identify who the “club defendants” are and the court, therefore, cannot summarily adjudicate them. Moreover, only defendant Equinox Holdings, Inc. has brought a motion for summary judgment and/or adjudication, not the remaining two defendants, therefore, they must remain in the case.

**Evidence:**

Gannon Depo., 41:3-12; Defendant’s Notice of Motion and Motion for Summary Judgment and Summary Adjudication, Noticed Issue No. 1

**ISSUE NO. 2:** Plaintiff’s first cause of action for violations of California Labor Code § 1102.5, et seq. survives as a matter of law because Plaintiff can establish a *prima facie* claim for retaliation because Plaintiff did engage in “protected activity.” (UF Nos. 1-80.)

**Alleged Undisputed Facts and  
Supporting Evidence**

1. Plaintiff was hired as a Membership Advisor (“MA”) at Equinox’s Santa Monica club on or about October 15, 2010.

**Evidence:**

**Plaintiff’s Responses and  
Supporting Evidence**

1. Undisputed.

**Evidence:**

1 Plaintiff Depo., Volume I, 36:23-38:10,  
2 Exh. 5 (Offer Letter).

3  
4 2. In January 2014, Plaintiff began  
5 working at Equinox's West Los Angeles  
6 club ("West LA club").

7 **Evidence:**

8 Plaintiff Depo., Volume I, 189:22-190:12,  
9 Exh. 13 (Memo).

10  
11  
12  
13  
14 3. At the West LA club, MAs were re-  
15 ferred to as Membership Executives.  
16 However, their job duties were the same.

17 **Evidence:**

18 Declaration of Brian Hemedinger  
19 ("Hemedinger Decl."), ¶ 3.

2. Disputed. Kasbarian was promoted  
to the position of Membership Executive at  
the West Los Angeles club ("West LA") in  
October 2013.

**Evidence:**

Exh. 10; Kasbarian Depo., Vol. I, 89:9-  
90:19, 279:14-280:12; Kasbarian Decl., ¶  
5; Hemedinger Depo., 50:4-9; Rosen  
Depo., 20:4-18; Holmes Depo., 39:13-18.

3. Disputed. A Membership Executive  
position is considered a promotion from an  
MA position. Kasbarian was specifically  
told her position as a Membership  
Executive was a promotion from an MA,  
and she received a memo on it, as well as a  
higher compensation plan. Kasbarian's  
hourly rate also increased with her position  
as a Membership Executive, to \$19.23 per  
hour, as well as an increase in  
commissions and bonuses.

**Evidence:**

Exh. 10; Kasbarian Depo., Vol. I, 89:9-  
90:19, 279:14-280:12; Kasbarian Decl., ¶  
5; Hemedinger Depo., 50:4-9; Rosen

Depo., 20:4-18; Holmes Depo., 39:13-18.

4. During Plaintiff's employment at Equinox Santa Monica and West LA clubs, Jack Gannon ("Gannon") was the Vice President of the West Coast.

**Evidence:**

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.

**Evidence:**

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.

**Evidence:**

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.

**Evidence:**

Plaintiff Depo., Volume I, 43:18-45:15, Exh. 8 (Receipt Acknowledgement [sic] 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 and myself.

**Evidence:**

Plaintiff Depo., Volume I, 43:18-45:15, Exh. 8 (Receipt Acknowledgement [sic] Form); Figueroa Decl., ¶ 5, Exh. B (Re-

7. Undisputed.

**Evidence:**

8. Undisputed, as to what the actual document states. However, disputed as to whether Kasbarian actually believed her employment was "at-will." Kasbarian believes she would not be demoted, have her pay cut, her employment suspended, or, reassigned, etc. unless it was for good cause.

**Evidence:**

Kasbarian Decl., ¶¶ 4, 11, 13, 14.

1 receipt Acknowledgement [sic] Form.

2  
3 9. Plaintiff's personnel file also in- 9. Undisputed.  
4 cludes an Offer Letter, dated October 15, **Evidence:**  
5 2010, which Plaintiff acknowledged re-  
6 ceiving.

7 **Evidence:**

8 Plaintiff Depo., Volume I, 36:23-38:11,  
9 Exh. 5 (Offer Letter); Figueroa Decl., ¶ 6,  
10 Exh. C (Offer Letter).

11  
12 10. In particular, the Offer Letter stated:

13 We are excited at the pros-  
14 pect of you joining the Compa-  
15 ny, you should be aware that  
16 our relationship is "employ-  
17 ment-at-will." That means you  
18 are free, at any time, for any  
19 reason, to end your employment  
20 with the Company and that the  
21 Company may do the same.  
22 Our agreement regarding the at-  
23 will nature of your employment  
24 may not be changed, except in a  
25 writing signed by the Compa-  
26 ny's Chief Executive Officer.  
27 Given the at-will nature, the  
28 Company may from time to  
time add to, modify, or discon-  
tinue its compensation policies,  
employee benefit plans or other  
aspects of your employment.

24 **Evidence:**

25 Plaintiff Depo., Volume I, 36:23-38:11,  
26 Exh. 5 (Offer Letter); Figueroa Decl., ¶ 6,  
27 Exh. C (Offer Letter).

10. Undisputed, as to what the actual  
document states. However, disputed as to  
whether Kasbarian actually believed her  
employment was "at-will." Kasbarian  
believes she would not be demoted, have  
her pay cut, her employment suspended,  
or, reassigned, etc. unless it was for good  
cause.

**Evidence:**

Kasbarian Decl., ¶¶ 4, 11, 13, 14.



1 11. Plaintiff's personnel file also in-  
 2 cludes an Employee Confidentiality and  
 3 Non-Solicitation Agreement with Plain-  
 4 tiff's signature dated October 14, 2010.

5 **Evidence:**

6 Figueroa Decl., ¶ 8, Exh. D.  
 7

8 12. This Agreement stated: "You agree  
 9 and understand that nothing in this Agree-  
 10 ment shall alter or modify the 'at-will'  
 11 nature of your employment with the Com-  
 12 pany or confer on [y]ou any rights with re-  
 13 spect to continuation of your employment  
 14 with the Company."

15 **Evidence:**

16 Figueroa Decl., ¶ 8, Exh. D.  
 17  
 18

19 13. In her deposition, Plaintiff admitted  
 20 that she did not have a contract with  
 21 Equinox; no one ever told her that she was  
 22 guaranteed employment for a certain time  
 23 period; and no one ever told her that she  
 24 was anything other than an at-will em-  
 25 ployee.

26 **Evidence:**

27 Plaintiff Depo., Volume I, 36:23-38:11,  
 28 43:18-45:15, Exh. 5 (Offer Letter), Exh. 8

11. Undisputed.

**Evidence:**

12. Undisputed, as to what the actual  
 document states. However, disputed as to  
 whether Kasbarian actually believed her  
 employment was "at-will." Kasbarian  
 believes she would not be demoted, have  
 her pay cut, her employment suspended,  
 or, reassigned, etc. unless it was for good  
 cause.

**Evidence:**

Kasbarian Decl., ¶¶ 4, 11, 13, 14.

13. Undisputed, as to what the actual  
 document states. However, disputed as to  
 whether Kasbarian actually believed her  
 employment was "at-will." Kasbarian  
 believes she would not be demoted, have  
 her pay cut, her employment suspended,  
 or, reassigned, etc. unless it was for good  
 cause.

**Evidence:**

(Receipt Acknowledgement [sic] Form). Kasbarian Decl., ¶¶ 4, 11, 13, 14.

14. The Employee Handbook Plaintiff 14. Undisputed.  
acknowledged receiving also included **Evidence:**  
Equinox's non-retaliation policy as well as  
complaint procedures for reporting retaliation.

**Evidence:**

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 15. Undisputed.  
ly prohibits retaliation against any employ- **Evidence:**  
ee 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 inves-

1 tigation.”

2 **Evidence:**

3 Plaintiff Depo., Volume I, 43:18-45:15,  
4 Exh. 8 Receipt of Employee Handbook;  
5 Figueroa Decl., Exh. A, Employee Hand-  
6 book.

7  
8 16. The complaint procedure as outlined 16. Undisputed.  
9 in the Employee Handbook permits an em- **Evidence:**  
10 ployee to report retaliation to his or her  
11 manager, Human Resources, or through  
12 Equinox’s Ethics Hotline.

13 **Evidence:**

14 Plaintiff Depo., Volume I, 43:18-45:15,  
15 Exh. 8 Receipt of Employee Handbook;  
16 Figueroa Decl. ¶ 4.

17  
18 17. In or about June 2014, Hemedinger 17. Disputed. In June 2014, five months  
19 informed Plaintiff and other MAs that the after Kasbarian started complaining about  
20 compensation plan for all West LA MAs the fraudulent activities by other  
21 was being clarified, so that the market bo- membership advisors, Kasbarian’s  
22 nuses would be paid out individually and commission and bonus check for May  
23 not cumulatively for reaching a certain 2014 was suddenly and for the first time  
24 sales goal. since she started at West LA 25-33% short

25 **Evidence:**

26 Plaintiff Depo., Volume I, 190:16-194:3, immediately complained about her unpaid  
27 219:7-10; Plaintiff Depo., Volume II, commissions and bonuses. After she  
28 347:22-348:1; Deposition of Barry Holmes complained defendant permanently cut her

(“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.

compensation plan stating that they have been paying her too much and in “error” and told her that she is “lucky that they were not asking her to pay the difference back.”

**Evidence:**

Exhs. 11, 12, 13; Kasbarian Depo., Vol. I, 201:1-206:5, 207:4-20, 209:19-210:8, 221:11-14; Kasbarian Depo., Vol. II, 347:1-18; Kasbarian Decl., ¶¶ 8, 9; Hemedinger Depo., 59:14-60:10; Rosen Depo., 22:15-23:17, 29:18-31:6, Holmes Depo., 73:5-17, 81:7-24; 120:19-121:3; Figueroa Depo., 99:22- 100:5; Gannon Depo., 99:4-7; Hemedinger Depo., 59:14-60:10.

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. Disputed. In June 2014, five months after Kasbarian started complaining about the fraudulent activities by other membership advisors, Kasbarian’s commission and bonus check for May 2014 was suddenly and for the first time since she started at West LA 25-33% short of what she was owed. Kasbarian immediately complained about her unpaid commissions and bonuses. After she complained defendant permanently cut her

**Evidence:**

Plaintiff Depo., Volume I, 190:16-194:3;  
Hemedinger Depo., 64:18-65:11.

compensation plan stating that they have been paying her too much and in “error” and told her that she is “lucky that they were not asking her to pay the difference back.”

**Evidence:**

Exhs. 11, 12, 13; Kasbarian Depo., Vol. I, 201:1-206:5, 207:4-20, 209:19-210:8, 221:11-14; Kasbarian Depo., Vol. II, 347:1-18; Kasbarian Decl., ¶¶ 8, 9; Hemedinger Depo., 59:14-60:10; Rosen Depo., 22:15-23:17, 29:18-31:6, Holmes Depo., 73:5-17, 81:7-24; 120:19-121:3; Figueroa Depo., 99:22- 100:5; Gannon Depo., 99:4-7; Hemedinger Depo., 59:14-60:10.

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.

**Evidence:**

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., 68:125-69:8.

19. Disputed. In June 2014, five months after Kasbarian started complaining about the fraudulent activities by other membership advisors, Kasbarian’s commission and bonus check for May 2014 was suddenly and for the first time since she started at West LA 25-33% short of what she was owed. Kasbarian immediately complained about her unpaid commissions and bonuses. After she complained defendant permanently cut her

compensation plan stating that they have been paying her too much and in “error” and told her that she is “lucky that they were not asking her to pay the difference back.”

**Evidence:**

Exhs. 11, 12, 13; Kasbarian Depo., Vol. I, 201:1-206:5, 207:4-20, 209:19-210:8, 221:11-14; Kasbarian Depo., Vol. II, 347:1-18; Kasbarian Decl., ¶¶ 8, 9; Hemedinger Depo., 59:14-60:10; Rosen Depo., 22:15-23:17, 29:18-31:6, Holmes Depo., 73:5-17, 81:7-24; 120:19-121:3; Figueroa Depo., 99:22- 100:5; Gannon Depo., 99:4-7; Hemedinger Depo., 59:14-60:10.

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. Undisputed as to Kasbarian’s complaints but otherwise disputed. In June 2014, five months after Kasbarian started complaining about the fraudulent activities by other membership advisors, Kasbarian’s commission and bonus check for May 2014 was suddenly and for the first time since she started at West LA 25-33% short of what she was owed. Kasbarian immediately complained about her unpaid commissions and bonuses. After she

**Evidence:**

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.

complained defendant permanently cut her compensation plan stating that they have been paying her too much and in “error” and told her that she is “lucky that they were not asking her to pay the difference back.”

**Evidence:**

Exhs. 11, 12, 13; Kasbarian Depo., Vol. I, 201:1-206:5, 207:4-20, 209:19-210:8, 221:11-14; Kasbarian Depo., Vol. II, 347:1-18; Kasbarian Decl., ¶¶ 8, 9; Hemedinger Depo., 59:14-60:10; Rosen Depo., 22:15-23:17, 29:18-31:6, Holmes Depo., 73:5-17, 81:7-24; 120:19-121:3; Figueroa Depo., 99:22- 100:5; Gannon Depo., 99:4-7; Hemedinger Depo., 59:14-60:10.

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.

**Evidence:**

Plaintiff Depo., Volume I, 196:8-14, 207:15-22, 220:5-20; Plaintiff Depo., Vol-

21. Undisputed to the fact that Kasbarian continued to work at Equinox until February 2015 after she complained; however, disputed as to the rest. In June 2014, five months after Kasbarian started complaining about the fraudulent activities by other membership advisors, Kasbarian’s commission and bonus check for May 2014 was suddenly and for the first time since she started at West LA 25-33% short

ume II, 349:5-12.

of what she was owed. Kasbarian immediately complained about her unpaid commissions and bonuses. After she complained defendant permanently cut her compensation plan stating that they have been paying her too much and in “error” and told her that she is “lucky that they were not asking her to pay the difference back.”

**Evidence:**

Exhs. 11, 12, 13; Kasbarian Depo., Vol. I, 201:1-206:5, 207:4-20, 209:19-210:8, 221:11-14; Kasbarian Depo., Vol. II, 347:1-18; Kasbarian Decl., ¶¶ 8, 9; Hemedinger Depo., 59:14-60:10; Rosen Depo., 22:15-23:17, 29:18-31:6, Holmes Depo., 73:5-17, 81:7-24; 120:19-121:3; Figueroa Depo., 99:22- 100:5; Gannon Depo., 99:4-7; Hemedinger Depo., 59:14-60:10.

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

22. Undisputed. However, Kasbarian testified that she complained about multiple MAs at West LA, including Lauren Beck and Devin Mcvelogue about multiple fraudulent and unlawful activities, including charging members credit cards without their authorization.



1 in actuality, was signing them up for a  
 2 year-long membership by using their credit  
 3 cards without authorization.

4 **Evidence:**

5 Plaintiff Depo., Volume I, 81:6-21; 82:5-  
 6 83:23, 94:14-97:9.

**Evidence:**

Kasbarian Depo., Vol. I, 69:5-71:5, 71:20-  
 72:4, 76:5-25, 82:9-83:19, 98:11-99:4,  
 102:13-103:25, 112:5-113:2; Kasbarian  
 Depo., Vol. II, 334:16-25; Kasbarian  
 Decl., ¶ 6; Hemedinger Depo., 43:13-15,  
 45:8-22, 46:10-22; 76:1-15.

9 23. According to Plaintiff, “charging  
 10 credit cards without people’s approval and  
 11 telling people they were signing up for a  
 12 month-long contract, but then signing them  
 13 up for a year-long contract” were the only  
 14 “illegal activities” about which she com-  
 15 plained to Equinox.

16 **Evidence:**

17 Plaintiff Depo., Volume II, 334:16-336:23.

23. Undisputed. Gannon also testified  
 and admitted in testimony that he believes  
 that the type of conduct Kasbarian  
 complained of was illegal and is the type  
 of conduct that needs to be investigated.

**Evidence:**

Gannon Depo., 51:10-15, 52:23-53:3.

19 24. According to Plaintiff, her other  
 20 complaints involved “things against  
 21 Equinox policies that were happening as  
 22 well.”

23 **Evidence:**

24 Plaintiff Depo., Volume II, 334:16-336:23.

24. Undisputed.

**Evidence:**

26 25. Plaintiff admitted that she could not  
 27 identify any statute, ordinance, regulation,  
 28 local law, state law, or federal law that was

25. Disputed. Plaintiff testified that she  
 believed this conduct was illegal.  
 Moreover, Gannon also testified and

1 violated as a result of this alleged activity.

2 **Evidence:**

3 Plaintiff Depo., Volume II, 335:4-336:23.

admitted in testimony that he believes that  
the type of conduct Kasbarian complained  
of was illegal and is the type of conduct  
that needs to be investigated.

5 **Evidence:**

6 Kasbarian Depo., Volume II, 334:16-  
7 336:23; Gannon Depo., 51:10-15, 52:23-  
8 53:3.

10 26. Plaintiff also testified that she com-  
11 plained to Hemedinger and Simonson  
12 about the sales activities of another MA.

26. Undisputed.

13 **Evidence:**

14 Plaintiff Depo., Volume I, 76:17-79:19;  
15 93:10-94:10, 102:10-107:24; 108:1-113:5;  
16 Hemedinger Depo., 45:8-47:19.

**Evidence:**

18 27. Specifically, Plaintiff complained  
19 that this MA was giving away “free  
20 months” to potential members, allowing  
21 “freezes” for members, and offering “three  
22 month” deals.

27. Undisputed. However, Kasbarian  
testified that she complained about  
multiple MAs at West LA, including  
Lauren Beck and Devin Mcvelogue about  
multiple fraudulent and unlawful activities,  
including charging members credit cards  
without their authorization.

23 **Evidence:**

24 Plaintiff Depo., Volume I, 76:17-79:19p  
25 93:10-94:10, 102:10-107:24; 108:1-113:5;  
26 Hemedinger Depo., 45:8-47:19.

**Evidence:**

Kasbarian Depo., Vol. I, 69:5-71:5, 71:20-  
72:4, 76:5-25, 82:9-83:19, 98:11-99:4,  
102:13-103:25, 112:5-113:2; Kasbarian

Depo., Vol. II, 334:16-25; Kasbarian Decl., ¶ 6; Hemedinger Depo., 43:13-15, 45:8-22, 46:10-22; 76:1-15.

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.

**Evidence:**

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.

**Evidence:**

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.

**Evidence:**

1 Rosen Depo., 37:20-38:21; Cuva Decl.,  
2 ¶ 2.

3  
4 31. Member Services' investigation, 31. Undisputed.  
5 which was conducted by Cuva, confirmed **Evidence:**  
6 that this was an unauthorized sale  
7 processed by a MA at the West LA Club  
8 (Plaintiff was not implicated in this  
9 transaction).

10 **Evidence:**

11 Cuva Decl., ¶ 2.

12  
13 32. This MA was relocating to New 32. Undisputed. However, this MA was  
14 York but, based on the investigation terminated.  
15 results, she was not hired to work for **Evidence:**  
16 Equinox in New York. Kasbarian Depo., Vol. I, 84:7-85:1,

17 **Evidence:**

18 Rosen Depo., 39:8-13.

184:20-23; Kasbarian Decl., ¶ 10;  
19 Hemedinger Decl., ¶ 4; Gannon Depo.,  
20 58:20-59:18, 60:2-21.

21 33. As a result of this member com- 33. Disputed. Senior Director of Loss  
22 plaint, Rosen also asked Cuva to have Prevention, Jim Burger, testified that Jack  
23 Member Services conduct an investigation Gannon contacted him to do an  
24 of sales transactions at the West LA club. investigation at the West LA location and  
25 reported to him throughout.

25 **Evidence:**

26 Rosen Depo., 47:25-6; Cuva Decl., ¶ 3.

**Evidence:**

Burger Depo., 70:9-21, 78:4-11, 83:18-

84:3.

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.

**Evidence:**

Rosen Depo., 47:25-48:21.

34. Disputed. Senior Director of Loss Prevention, Jim Burger, testified that Jack Gannon contacted him to do an investigation at the West LA location and reported to him throughout.

**Evidence:**

Burger Depo., 70:9-21, 78:4-11, 83:18-84:3.

35. Cuva instructed Kevin Stanfa (“Stanfa”) (Manager of Compliance and Special Projects), to review sales transactions at the West LA club.

**Evidence:**

Cuva Decl., ¶ 3; Stanfa Decl. ¶ 4.

35. Undisputed.

**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.

**Evidence:**

Cuva Decl., ¶ 3; Stanfa Decl. ¶ 4.

36. Undisputed.

**Evidence:**

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.

**Evidence:**

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.

**Evidence:**

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.”

**Evidence:**

Cuva Decl., ¶ 7, Exh.N.

40. Cuva noted as follows:

- i The 2041 Freezes spreadsheet shows that West LA is an outlier in members who request a freeze in the first 60

37. Disputed. Defendant fails to produce the spreadsheets corroborating those sales.

**Evidence:**

Defendant’s Amended Compendium of Exhibits.

38. Disputed. Defendant fails to produce the spreadsheets corroborating those sales.

**Evidence:**

Defendant’s Amended Compendium of Exhibits.

39. Undisputed as to that statement being written in the email.

**Evidence:**

40. Disputed. Kasbarian was found to have not committed any of the inappropriate and fraudulent conduct or “fake” sales that were being investigated.

**Evidence:**

1 days of membership who also  
 2 go on to cancel in the same  
 3 year.

4 i The Modification to Direct  
 5 Bill spreadsheet reflects  
 6 members in the last quarter  
 7 of 2014 whose billing was  
 8 modified from the credit card  
 9 payment type to direct bill  
 10 the day before billing ran.  
 11 The Company average is four  
 12 per club. West LA had 28  
 13 modifications to direct bill.

14 i The West LA Breakdown  
 15 spreadsheet shows question-  
 16 able sales from two MAs  
 17 (Plaintiff and the MA moving  
 18 to New York). The other  
 19 three MAs were reviewed  
 20 and did not reflect the same  
 21 anomalies seen with Plaintiff  
 22 and the MA moving to New  
 23 York. The questionable sales  
 24 included selling memberships  
 25 to members with the credit  
 26 card of another member (al-  
 27 most universally without re-  
 28 questing a referral credit) or

Holmes Depo., 88:4-10, 106:11-19;  
 Hemedinger Depo., 51:23-52:23; Rosen  
 Depo., 48:22-49:3, 54:3-8, 76:5-14, 98:6-  
 17, 101:24-102:7; Gannon Depo., 70:8-  
 71:15, 72:7-20, 75:22-76:8, 79:5-10, 81:7-  
 11; Gannon Decl., ¶ 6, 10.

1 re-contracting over a previ-  
 2 ously 3-day'd membership  
 3 and either using the credit  
 4 from the previous sale or re-  
 5 charging the same credit  
 6 card, credit card not present  
 7 for numerous sales transac-  
 8 tions, 3-day cancellations  
 9 with no or just one member  
 10 visit, new memberships  
 11 which were previously fi-  
 12 nance cancelled and had bal-  
 13 ances on account that were  
 14 waived.

15 **Evidence:**

16 Cuva Decl., ¶ 7, Exh.N.

18 41. Neither Cuva nor Stanfa were aware  
 19 Plaintiff had made any complaints about  
 20 changes to her compensation plan or about  
 21 the alleged activities of other MAs.

22 **Evidence:**

23 Cuva Decl., ¶ 8; Stanfa Decl., ¶ 11.

41. Undisputed. However, Kasbarian  
 was found to have not committed any of  
 the inappropriate and fraudulent conduct or  
 “fake” sales that were being investigated.

**Evidence:**

41. Holmes Depo., 88:4-10, 106:11-19;  
 Hemedinger Depo., 51:23-52:23; Rosen  
 Depo., 48:22-49:3, 54:3-8, 76:5-14, 98:6-  
 17, 101:24-102:7; Gannon Depo., 70:8-  
 71:15, 72:7-20, 75:22-76:8, 79:5-10, 81:7-  
 11; Gannon Decl., ¶ 6, 10.



**Evidence:**

42. In addition, Burger was asked to interview the sales team at the West LA club.

42. Undisputed.

**Evidence:**

Deposition of Jim Burger (“Burger Depo.”), 72:4-73:3, 73:13-75:22, 76:6-12.

**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 [sic] and an Assistant General Manager.

43. Undisputed.

**Evidence:**

Hemedinger Decl., ¶ 4.

**Evidence:**

44. A MA was fired on or about January 20, 2015 for improper sales activities.

44. Undisputed.

**Evidence:**

Figueroa Decl. ¶ 9; Hemedinger Decl., ¶ 4.

**Evidence:**

45. At Burger’s request, Member Services provided him with the spreadsheets summarizing their findings of questionable

45. Disputed. Defendant fails to produce the spreadsheets corroborating those sales.

**Evidence:**

1 sales transactions at the West LA club.

Defendant's Amended Compendium of Exhibits.

2 **Evidence:**

3 Burger Depo., 72:13-73:3; Cuva Decl. ¶ 8.

4  
5 46. Burger then met with Cuva and  
6 Stanfa and they discussed their findings re-  
7 garding the questionable sales at the West  
8 LA club.

46. Undisputed.

9 **Evidence:**

10 Burger Depo., 73:13-74:15; Cuva Decl.  
11 ¶ 8; Stanfa Decl., ¶ 9.

12  
13 47. Burger had a subsequent meeting  
14 with Stanfa to review the spreadsheets  
15 Member Services had prepared.

47. Disputed. Defendant fails to produce the spreadsheets corroborating those sales.

16 **Evidence:**

17 Burger Depo., 74:16-75:3, 8-22; Stanfa  
18 Decl., ¶ 9.

**Evidence:**

Defendant's Amended Compendium of Exhibits.

19  
20 48. These spreadsheets showed anoma-  
21 lies in various sales transactions, including  
22 whether or not a contract was signed,  
23 whether or not a credit card was present  
24 for the sales transaction, whose credit card  
25 was used for the sales transactions, if an-  
26 other individual's credit card number was  
27 used for the sales transaction instead of the  
28 member's credit card number, whether or

48. Disputed. Defendant fails to produce the spreadsheets corroborating those sales. However, However, Kasbarian was found to have not committed any of the inappropriate and fraudulent conduct or "fake" sales that were being investigated.

**Evidence:**

Defendant's Amended Compendium of Exhibits; Holmes Depo., 88:4-10, 106:11-

1 not a member had any visits to a club, etc. 19; Hemedinger Depo., 51:23-52:23;  
 2 **Evidence:** Rosen Depo., 48:22-49:3, 54:3-8, 76:5-14,  
 3 Burger Depo., 39:3-40:22; Cuva Decl., ¶ 8; 98:6-17, 101:24-102:7; Gannon Depo.,  
 4 Stanfa Decl., ¶¶ 4-5. 70:8-71:15, 72:7-20, 75:22-76:8, 79:5-10,  
 5 81:7-11; Gannon Decl., ¶ 6, 10.

6  
 7  
 8 49. Burger also had a couple of tele- 49. Undisputed.  
 9 phone conversations with Stanfa regarding **Evidence:**  
 10 the anomalies in various sales activities at  
 11 the West LA Club.

12 **Evidence:**  
 13 Burger Depo., 76:19-77:1; Stanfa Decl.,  
 14 ¶ 9.

15  
 16 50. In late January 2015, Burger came to 50. Undisputed.  
 17 Los Angeles to interview various employ- **Evidence:**  
 18 ees regarding sales activities of the West  
 19 LA MAs.

20 **Evidence:**  
 21 Burger Depo., 76:6-12; Gannon Decl., ¶ 3;  
 22 Hemedinger Decl., ¶ 5.

23  
 24 51. Prior to the interviews, Burger and 51. Disputed. Gannon testified that one  
 25 Gannon discussed suspending all of the in- MA was not suspended and was not  
 26 dividuals interviewed as part of the investi- discussed suspending because there “was  
 27 gation pending the results of the investiga- no suspicious conduct linked to him” even  
 28 tion. at the beginning of the investigation.

**Evidence:**

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.

**Evidence:**

Hemedinger Decl., ¶ 5.

53. Burger had never heard of or spoken to Plaintiff prior to this investigation meeting.

**Evidence:**

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.

**Evidence:**

Plaintiff Depo., Volume I, 161:11-22, 164:10-22; Plaintiff Depo., Volume II, 305:21-24; , [sic] Burger Depo., 96:18-25.

**Evidence:**

Gannon Depo., 70:8-71:19, 81:7-11; Gannon Decl., ¶ 6, 10.

52. Disputed. Gannon testified that one MA was not suspended and was not discussed suspending because there "was no suspicious conduct linked to him" even at the beginning of the investigation.

**Evidence:**

Gannon Depo., 70:8-71:19, 81:7-11; Gannon Decl., ¶ 6, 10.

53. Undisputed.

**Evidence:**

54. Undisputed.

**Evidence:**

1 55. Plaintiff answered questions about  
2 her sales activities, as well as the activities  
3 of other MAs.

4 **Evidence:**

5 Plaintiff Depo., Volume I, 161:11-22,  
6 164:10-22; Burger Depo., 53:13-54:9.

55. Undisputed. Additionally, at the  
beginning of Kasbarian's interview, she  
notifies Senior Director of Loss  
Prevention, Jim Burger, about the  
fraudulent activity and unauthorized  
membership sales that she observed and  
complained about to management for  
months

9 **Evidence:**

10 Exh. 17; Kasbarian Depo., Vol. I, 158:4-  
11 18, 161:15-162:1, 166:9-167:2; Kasbarian  
12 Decl., ¶¶ 10, 11; Burger Depo., 70:9-21,  
13 78:4-11, 83:18-84:3, 91:5-92:18, 100:3-8,  
14 183:21-184:12.

16 56. While Burger did not find Plaintiff  
17 credible, he felt, at that time, that there was  
18 insufficient information to warrant Plain-  
19 tiff's termination.

20 **Evidence:**

21 Burger Depo, 122:14-17.

56. Undisputed as to Burger concluding  
there was insufficient information to  
warrant any terminable offense committed  
by Burger. Kasbarian was found to have  
not committed any of the inappropriate and  
fraudulent conduct or "fake" sales that  
were being investigated.

23 **Evidence:**

24 Holmes Depo., 88:4-10, 106:11-19;  
25 Hemedinger Depo., 51:23-52:23; Rosen  
26 Depo., 48:22-49:3, 54:3-8, 76:5-14, 98:6-  
27 17, 101:24-102:7; Gannon Depo., 70:8-  
28 71:15, 72:7-20, 75:22-76:8, 79:5-10, 81:7-

11; Gannon Decl., ¶ 6, 10.

57. After Burger completed his inter-views, Burger, Gannon and Hemedinger met briefly to discuss Burger's impression.

**Evidence:**

Burger Depo., 117:16-18, 24-118:6.

57. Undisputed.

**Evidence:**

58. Gannon then advised Plaintiff that she was being suspended.

**Evidence:**

Plaintiff Depo, Volume I, 174:24-175:3, 11-12; Plaintiff Depo., Volume II, 306:3-7; Gannon Decl., ¶ 4.

58. Undisputed. However, she was suspended despite her having been found to not have committed any terminable offense.

**Evidence:**

Holmes Depo., 88:4-10, 106:11-19; Hemedinger Depo., 51:23-52:23; Rosen Depo., 48:22-49:3, 54:3-8, 76:5-14, 98:6-17, 101:24-102:7; Gannon Depo., 70:8-71:15, 72:7-20, 75:22-76:8, 79:5-10, 81:7-11; Gannon Decl., ¶ 6, 10.

59. All of the MAs interviewed as part of the investigation (with the exception of the relatively new MA) were suspended pending investigation.

**Evidence:**

Burger Depo., ¶ [sic] 110:17-23; Gannon

59. Undisputed. One MA was not suspended.

**Evidence:**

Gannon Depo., 70:8-71:15, 81:7-11; Gannon Decl., ¶ 6, 10.

Decl., ¶ 6.

60. Gannon also advised Plaintiff to re- 60. Undisputed.  
port back to the West LA club at 2:00 p.m. **Evidence:**  
the next day for another meeting.

**Evidence:**  
Plaintiff Depo., Volume II, 180:11-181:4;  
Gannon Decl., ¶ 5.

61. According to Plaintiff, Equinox told 61. Undisputed.  
her that she would not have access to her **Evidence:**  
email or payroll account and escorted her  
out of the building in front of Equinox's  
clientele, staff and all of her peers.

**Evidence:**  
Plaintiff Depo., Volume II, 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 62. Disputed. Defendant did not produce  
email access for hourly employees who any documentation corroborating this  
have been suspended pending investigation policy.  
or who are on leave of absence. **Evidence:**

**Evidence:** Defendant's Amended Compendium of  
Gannon Decl., ¶ 7. Evidence.

63. Prior to Burger's interview of Plain- 63. Undisputed as to Gannon preparing  
tiff, Gannon had the Payroll Department the final paycheck; however, this paycheck

1 prepare a final paycheck for Plaintiff so  
 2 that she could be paid in accordance with  
 3 California law in the event the decision  
 4 was made to terminate her employment.

5 **Evidence:**

6 Gannon Decl., ¶ 8.

was prepared by Gannon even before the  
 interview in preparation for Kasbarian's  
 termination.

**Evidence:**

Gannon Decl., ¶ 8; Exh. 15; Kasbarian  
 Depo., Vol. I, 130:21-131:3, 185:5-15;  
 Kasbarian Depo., Vol. II, 311:9-22;  
 Kasbarian Decl., ¶ 11.

10 64. Plaintiff met with Hemedinger and  
 11 Gannon at the West LA club on January  
 12 31, 2015 and was told that the investiga-  
 13 tion was concluded and that she would be  
 14 working at the Marina Del Rey club.

15 **Evidence:**

16 Plaintiff Depo., Volume I, 182:5-183:8;  
 17 Plaintiff Depo., Volume II, 306:12:16  
 18 [sic], 382:12-17, 390:4-11, Exh. 38;  
 19 Hemedinger Depo., 54:17-21, 55:1-8;  
 20 Gannon Decl., ¶ 3; Hemedinger Decl., ¶ 6.

64. Undisputed.

**Evidence:**

22 65. The decision was made to reassign  
 23 Plaintiff to the Marina Del Rey club be-  
 24 cause Equinox wanted to rebuild the team  
 25 of MAs in the West LA club and to create  
 26 a fresh culture, as a result of the investiga-  
 27 tion findings.

28 **Evidence:**

65. Disputed. Defendant's claim that  
 Kasbarian was reassigned to Marina Del  
 Rey because they wanted to rebuild the  
 team of Mas, yet one MA was allowed to  
 stay at West LA

**Evidence:**

Rosen Depo., 48:22-49:3, 54:3-8, 98:6-17,



Rosen Depo., 71:7-20, 73:15-22, 76:5-14; 76:5-14; Hemedinger Depo., 51:23-52:23; Holmes Depo., 96:12-98:17; Hemedinger Holmes Depo., 88:4-10, 106:11-19, Depo., 51:7-52:23; Gannon Decl., ¶ 10. 101:24-102:7; Gannon Depo., 70:8-71:15, 72:7-20, 75:22-76:8, 79:5-10, 81:7-11; Gannon Decl., ¶ 6, 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.

**Evidence:**

Rosen Depo., 87:25-88:4; Gannon Decl., ¶ 11.

66. Undisputed that the compensation plan would change; however, disputed as to it being a lateral move. Kasbarian is told that she would be paid \$9.00/hour at the Marina del Rey office, which was a \$10.00 per hour decrease in hourly rate that she was being paid at the West Los Angeles branch at \$19.23 per hour. Barry Holmes, Vice President of Sales, admits that urban clubs, such as the Santa Monica location, tend to generate more revenue than suburban clubs, like the Marina Del Rey location, and the West LA location is a higher tier club than urban clubs. Brian Hemedinger admits in deposition that they thought it would be "best for Tamar, if she had the opportunity to be a membership advisor at a different location," while acknowledging that she would be going to a lower tier location than when she first started with the company. Moreover, when Kasbarian went to West LA she was

promoted from MA to Membership Executive, which it stated on her “Promotion Memo.”

**Evidence:**

Exh. 10, 14; Kasbarian Depo., Vol. I, 50:24-51:1, 89:9-90:19, 279:14-280:12, 182:12-184:19; Kasbarian Depo., Vol. II, 354:1-18, 458:24-459:17; Gannon Decl., 9, 10; Holmes Depo., 28:22-29:2, 50:18-25; Gannon Depo., 32:15-17, 88:25-89:5; Hemedinger Depo., 50:14-20, 51:23-52:23, 81:2-23.

67. Equinox considered the reassignment a lateral move.

**Evidence:**

Rosen Depo., 87:25-88:4; Gannon Decl., ¶ 11.

67. Disputed. Kasbarian is told that she would be paid \$9.00/hour at the Marina del Rey office, which was a \$10.00 per hour decrease in hourly rate that she was being paid at the West Los Angeles branch at \$19.23 per hour. Barry Holmes, Vice President of Sales, admits that urban clubs, such as the Santa Monica location, tend to generate more revenue than suburban clubs, like the Marina Del Rey location, and the West LA location is a higher tier club than urban clubs. Brian Hemedinger admits in deposition that they thought it would be “best for Tamar, if she had the opportunity to be a membership advisor at

a different location,” while acknowledging that she would be going to a lower tier location than when she first started with the company. Moreover, when Kasbarian went to West LA she was promoted from MA to Membership Executive, which it stated on her “Promotion Memo.”

**Evidence:**

Exh. 10, 14; Kasbarian Depo., Vol. I, 50:24-51:1, 89:9-90:19, 279:14-280:12, 182:12-184:19; Kasbarian Depo., Vol. II, 354:1-18, 458:24-459:17; Gannon Decl., 9, 10; Holmes Depo., 28:22-29:2, 50:18-25; Gannon Depo., 32:15-17, 88:25-89:5; Hemedinger Depo., 50:14-20, 51:23-52:23, 81:2-23.

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.

**Evidence:**

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

68. Undisputed.

**Evidence:**

69. Disputed. Kasbarian is told that she would be paid \$9.00/hour at the Marina del Rey office, which was a \$10.00 per hour

1 was a high performing club and the mem-  
 2 berships for the Marina Del Rey club were  
 3 less expensive than the memberships for  
 4 the West LA club.

5 **Evidence:**

6 Hemedinger Depo., 52:18-23; Rosen  
 7 Depo., 57:13-19; 58:22-59:14; Holmes  
 8 Depo., 31:13-15.

decrease in hourly rate that she was being  
 paid at the West Los Angeles branch at  
 \$19.23 per hour. Barry Holmes, Vice  
 President of Sales, admits that urban clubs,  
 such as the Santa Monica location, tend to  
 generate more revenue than suburban  
 clubs, like the Marina Del Rey location,  
 and the West LA location is a higher tier  
 club than urban clubs. Brian Hemedinger  
 admits in deposition that they thought it  
 would be “best for Tamar, if she had the  
 opportunity to be a membership advisor at  
 a different location,” while acknowledging  
 that she would be going to a lower tier  
 location than when she first started with  
 the company. Moreover, when Kasbarian  
 went to West LA she was promoted from  
 MA to Membership Executive, which it  
 stated on her “Promotion Memo.”

20 **Evidence:**

21 Exh. 10, 14; Kasbarian Depo., Vol. I,  
 22 50:24-51:1, 89:9-90:19, 279:14-280:12,  
 23 182:12-184:19; Kasbarian Depo., Vol. II,  
 24 354:1-18, 458:24-459:17; Gannon Decl., 9,  
 25 10; Holmes Depo., 28:22-29:2, 50:18-25;  
 26 Gannon Depo., 32:15-17, 88:25-89:5;  
 27 Hemedinger Depo., 50:14-20, 51:23-

52:23, 81:2-23.

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.

**Evidence:**

Hemedinger Depo., 52:18-23; Rosen Depo., 57:13-19; 58:22-59:14; Holmes Depo. , [sic] 50:18-51:5.

70. Disputed. Kasbarian is told that she would be paid \$9.00/hour at the Marina del Rey office, which was a \$10.00 per hour decrease in hourly rate that she was being paid at the West Los Angeles branch at \$19.23 per hour. Barry Holmes, Vice President of Sales, admits that urban clubs, such as the Santa Monica location, tend to generate more revenue than suburban clubs, like the Marina Del Rey location, and the West LA location is a higher tier club than urban clubs. Brian Hemedinger admits in deposition that they thought it would be “best for Tamar, if she had the opportunity to be a membership advisor at a different location,” while acknowledging that she would be going to a lower tier location than when she first started with the company. Moreover, when Kasbarian went to West LA she was promoted from MA to Membership Executive, which it stated on her “Promotion Memo.”

**Evidence:**

Exh. 10, 14; Kasbarian Depo., Vol. I, 50:24-51:1, 89:9-90:19, 279:14-280:12, 182:12-184:19; Kasbarian Depo., Vol. II,

354:1-18, 458:24-459:17; Gannon Decl., 9, 10; Holmes Depo., 28:22-29:2, 50:18-25; Gannon Depo., 32:15-17, 88:25-89:5; Hemedinger Depo., 50:14-20, 51:23-52:23, 81:2-23.

71. Gannon emailed Plaintiff the compensation plan for the Marina Del Rey Club on or about January 31, 2015.

**Evidence:**

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.

**Evidence:**

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.

71. Undisputed.

**Evidence:**

72. Undisputed as to no one stating those actual words; however, Kasbarian is told that she would be paid \$9.00/hour at the Marina del Rey office, which was a \$10.00 per hour decrease in hourly rate that she was being paid at the West Los Angeles branch at \$19.23 per hour. Barry Holmes, Vice President of Sales, admits that urban clubs, such as the Santa Monica location, tend to generate more revenue than suburban clubs, like the Marina Del Rey location, and the West LA location is a higher tier club than urban clubs. Brian Hemedinger admits in deposition that they thought it would be “best for Tamar, if she

had the opportunity to be a membership advisor at a different location,” while acknowledging that she would be going to a lower tier location than when she first started with the company. Moreover, when Kasbarian went to West LA she was promoted from MA to Membership Executive, which it stated on her “Promotion Memo.”

**Evidence:**

Exh. 10, 14; Kasbarian Depo., Vol. I, 50:24-51:1, 89:9-90:19, 279:14-280:12, 182:12-184:19; Kasbarian Depo., Vol. II, 354:1-18, 458:24-459:17; Gannon Decl., 9, 10; Holmes Depo., 28:22-29:2, 50:18-25; Gannon Depo., 32:15-17, 88:25-89:5; Hemedinger Depo., 50:14-20, 51:23-52:23, 81:2-23.

73. Gannon made the decision to reassign Plaintiff to the Marina Del Rey club.

73. Undisputed.

**Evidence:**

Rosen Depo., 45:7-25. 57:8-12; Hemedinger Depo., 53:14-18.

**Evidence:**

74. Plaintiff was told to report to the Marina Del Rey club on February 2, 2015 at 9:00 a.m.

74. Undisputed.

**Evidence:**

**Evidence:**

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.

**Evidence:**

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.

75. Undisputed; however, Kasbarian was forced to resign due to intolerable working conditions at Equinox. On February 2, 2015, the day Kasbarian was supposed to start at the Marina del Rey location, she feels she is no longer welcome at Equinox and feels pushed out since she was forced to take a demotion, a significant pay cut and restart her business and clientele base, along with the overwhelming stress of the interrogation and suspension and fear of being terminated that she is forced to resign.

**Evidence:**

Exh. 16; Kasbarian Depo., Vol. I, 186:5-14; Kasbarian Decl., ¶¶ 12-14.

76. Plaintiff's last day of employment was February 2, 2015.

76. Undisputed.

**Evidence:****Evidence:**

Plaintiff Depo., Volume I, 186:11-14.



77. Plaintiff never reported to work at the Marina Del Rey club. 77. Undisputed.

**Evidence:**

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. Undisputed.

**Evidence:**

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. Undisputed. However, one MA was able to stay at the West LA location, despite Gannon stating he wanted to rebuild the team by getting rid of all of the Membership Executives at West LA.

**Evidence:**

Plaintiff Depo., Volume II, 342:25-343:5.

**Evidence:**

Rosen Depo., 76:5-14; Hemedinger Depo., 51:23-52:23; Holmes Depo., 101:24-102:7; Gannon Depo., 70:8-71:15, 81:7-11; Gannon Decl., ¶ 6, 10.

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 80. Undisputed.

**Evidence:**

membership but signing them up for a year instead.

**Evidence:**

Plaintiff Depo., Volume II, 343:6-22.

**ISSUE NO. 3:** Plaintiff’s first cause of action for violations of California Labor Code § 1102.5, et seq. also survives as a matter of law because Plaintiff can establish a *prima facie* claim for retaliation because there was an “adverse employment action.” (UF Nos. 1-80.)

**Alleged Undisputed Facts and  
Supporting Evidence**

**Plaintiff’s Responses and  
Supporting Evidence**

1. Plaintiff was hired as a Membership Advisor (“MA”) at Equinox’s Santa Monica club on or about October 15, 2010.

**Evidence:**

Plaintiff Depo., Volume I, 36:23-38:10, Exh. 5 (Offer Letter).

1. Undisputed.

**Evidence:**

2. In January 2014, Plaintiff began working at Equinox’s West Los Angeles club (“West LA club”).

**Evidence:**

Plaintiff Depo., Volume I, 189:22-190:12, Exh. 13 (Memo).

2. Disputed. Kasbarian was promoted to the position of Membership Executive at the West Los Angeles club (“West LA”) in October 2013.

**Evidence:**

Exh. 10; Kasbarian Depo., Vol. I, 89:9-90:19, 279:14-280:12; Kasbarian Decl., ¶ 5; Hemedinger Depo., 50:4-9; Rosen Depo., 20:4-18; Holmes Depo., 39:13-18.

3. At the West LA club, MAs were referred to as Membership Executives. However, their job duties were the same.

**Evidence:**

Declaration of Brian Hemedinger (“Hemedinger Decl.”), ¶ 3.

3. Disputed. A Membership Executive position is considered a promotion from an MA position. Kasbarian was specifically told her position as a Membership Executive was a promotion from an MA, and she received a memo on it, as well as a higher compensation plan. Kasbaian’s hourly rate also increased with her position as a Membership Executive, to \$19.23 per hour, as well as an increase in commissions and bonuses.

**Evidence:**

Exh. 10; Kasbarian Depo., Vol. I, 89:9-90:19, 279:14-280:12; Kasbarian Decl., ¶ 5; Hemedinger Depo., 50:4-9; Rosen Depo., 20:4-18; Holmes Depo., 39:13-18.

4. During Plaintiff’s employment at Equinox Santa Monica and West LA clubs, Jack Gannon (“Gannon”) was the Vice President of the West Coast.

**Evidence:**

Declaration of Jack Gannon (“Gannon Decl.”), ¶¶ 1-2.

4. Undisputed.

**Evidence:**

5. From about October 2011 through about June 2015, Brian Hemedinger (“Hemedinger”) was the Regional Director

5. Undisputed.

**Evidence:**

1 of Operations (“Regional Director”) of the  
 2 Santa Monica and West LA clubs.

3 **Evidence:**

4 Plaintiff Depo., Volume I, 270:8,-14,  
 5 75:24-76:4; Deposition of Brian  
 6 Hemedinger (“Hemedinger Depo.”) 15:3-  
 7 10, 41:1-9, 13-16; Hemedinger Decl., ¶ 1.

8  
 9 6. General Manager Kira Simonson 6. Undisputed.  
 10 (“Simonson) supervised Plaintiff at the **Evidence:**  
 11 West LA club from about January 2014 to  
 12 about January 2015.

13 **Evidence:**

14 Plaintiff Depo., Volume I, 52:11-19.

15  
 16 7. Plaintiff’s personnel file includes an 7. Undisputed.  
 17 Employee Handbook Receipt Acknowl- **Evidence:**  
 18 edgment Form with Plaintiff’s signature  
 19 dated October 15, 2010.

20 **Evidence:**

21 Plaintiff Depo., Volume I, 43:18-45:15,  
 22 Exh. 8 (Receipt Acknowledgement [sic]  
 23 Form); Declaration of Emerson Figueroa  
 24 (“Figueroa Decl.”), ¶ 5, Exh. B.

25  
 26 8. In particular, the Employee Hand- 8. Undisputed, as to what the actual  
 27 book stated: document states. However, disputed as to  
 28 I acknowledge that the re- whether Kasbarian actually believed her  
 ceint of the Employee Hand-

book 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.

employment was “at-will.” Kasbarian believes she would not be demoted, have her pay cut, her employment suspended, or, reassigned, etc. unless it was for good cause.

**Evidence:**

Kasbarian Decl., ¶¶ 4, 11, 13, 14.

**Evidence:**

Plaintiff Depo., Volume I, 43:18-45:15, Exh. 8 (Receipt Acknowledgement [sic] Form); Figueroa Decl., ¶ 5, Exh. B (Receipt Acknowledgement [sic] Form).

9. Plaintiff’s personnel file also includes an Offer Letter, dated October 15, 2010, which Plaintiff acknowledged receiving.

9. Undisputed.

**Evidence:**

Plaintiff Depo., Volume I, 36:23-38:11, Exh. 5 (Offer Letter); Figueroa Decl., ¶ 6, Exh. C (Offer Letter).

**Evidence:**

10. Undisputed, as to what the actual document states. However, disputed as to whether Kasbarian actually believed her

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 “employ-

ment-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.

**Evidence:**

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.

**Evidence:**

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 rights with respect to continuation of your employment with the Company.”

employment was “at-will.” Kasbarian believes she would not be demoted, have her pay cut, her employment suspended, or, reassigned, etc. unless it was for good cause.

**Evidence:**

Kasbarian Decl., ¶¶ 4, 11, 13, 14.

11. Undisputed.

**Evidence:**

12. Undisputed, as to what the actual document states. However, disputed as to whether Kasbarian actually believed her employment was “at-will.” Kasbarian believes she would not be demoted, have her pay cut, her employment suspended, or, reassigned, etc. unless it was for good

**Evidence:**

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.

**Evidence:**

Plaintiff Depo., Volume I, 36:23-38:11, 43:18-45:15, Exh. 5 (Offer Letter), Exh. 8 (Receipt Acknowledgement [sic] Form).

14. The Employee Handbook Plaintiff acknowledged receiving also included Equinox's non-retaliation policy as well as complaint procedures for reporting retaliation.

**Evidence:**

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 strict-

cause.

**Evidence:**

Kasbarian Decl., ¶¶ 4, 11, 13, 14.

13. Undisputed, as to what the actual document states. However, disputed as to whether Kasbarian actually believed her employment was "at-will." Kasbarian believes she would not be demoted, have her pay cut, her employment suspended, or, reassigned, etc. unless it was for good cause.

**Evidence:**

Kasbarian Decl., ¶¶ 4, 11, 13, 14.

14. Undisputed.

**Evidence:**

15. Undisputed.

ly prohibits retaliation against any employ- **Evidence:**  
 ee 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 com-  
 plaint 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 inves-  
 tigation.”

**Evidence:**

Plaintiff Depo., Volume I, 43:18-45:15,  
 Exh. 8 Receipt of Employee Handbook;  
 Figueroa Decl., Exh. A, Employee Hand-  
 book.

16. The complaint procedure as outlined 16. Undisputed.  
 in the Employee Handbook permits an em- **Evidence:**  
 ployee to report retaliation to his or her  
 manager, Human Resources, or through  
 Equinox’s Ethics Hotline.

**Evidence:**

Plaintiff Depo., Volume I, 43:18-45:15,



1 Exh. 8 Receipt of Employee Handbook;  
 2 Figueroa Decl. ¶ 4.  
 3

4 17. In or about June 2014, Hemedinger  
 5 informed Plaintiff and other MAs that the  
 6 compensation plan for all West LA MAs  
 7 was being clarified, so that the market bo-  
 8 nuses would be paid out individually and  
 9 not cumulatively for reaching a certain  
 10 sales goal.

11 **Evidence:**

12 Plaintiff Depo., Volume I, 190:16-194:3,  
 13 219:7-10; Plaintiff Depo., Volume II,  
 14 347:22-348:1; Deposition of Barry Holmes  
 15 (“Holmes Depo.”) 69:4-71:12, 73:23-  
 16 75:10, Exhs. 201-202; Hemedinger Depo.,  
 17 60:11-61:3, 68:12-14, 70:19-72:3.; Rosen  
 18 Depo., 33:5-15.  
 19  
 20

17. Disputed. In June 2014, five months  
 after Kasbarian started complaining about  
 the fraudulent activities by other  
 membership advisors, Kasbarian’s  
 commission and bonus check for May  
 2014 was suddenly and for the first time  
 since she started at West LA 25-33% short  
 of what she was owed. Kasbarian  
 immediately complained about her unpaid  
 commissions and bonuses. After she  
 complained defendant permanently cut her  
 compensation plan stating that they have  
 been paying her too much and in “error”  
 and told her that she is “lucky that they  
 were not asking her to pay the difference  
 back.”

21 **Evidence:**

22 Exhs. 11, 12, 13; Kasbarian Depo., Vol. I,  
 201:1-206:5, 207:4-20, 209:19-210:8,  
 221:11-14; Kasbarian Depo., Vol. II,  
 23 347:1-18; Kasbarian Decl., ¶¶ 8, 9;  
 24 Hemedinger Depo., 59:14-60:10; Rosen  
 25 Depo., 22:15-23:17, 29:18-31:6, Holmes  
 26 Depo., 73:5-17, 81:7-24; 120:19-121:3;  
 27 Figueroa Depo., 99:22- 100:5; Gannon  
 28

Depo., 99:4-7; Hemedinger Depo., 59:14-60:10.

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

**Evidence:**

Plaintiff Depo., Volume I, 190:16-194:3; Hemedinger Depo., 64:18-65:11.

18. Disputed. In June 2014, five months after Kasbarian started complaining about the fraudulent activities by other membership advisors, Kasbarian's commission and bonus check for May 2014 was suddenly and for the first time since she started at West LA 25-33% short of what she was owed. Kasbarian immediately complained about her unpaid commissions and bonuses. After she complained defendant permanently cut her compensation plan stating that they have been paying her too much and in "error" and told her that she is "lucky that they were not asking her to pay the difference back."

**Evidence:**

Exhs. 11, 12, 13; Kasbarian Depo., Vol. I, 201:1-206:5, 207:4-20, 209:19-210:8, 221:11-14; Kasbarian Depo., Vol. II, 347:1-18; Kasbarian Decl., ¶¶ 8, 9; Hemedinger Depo., 59:14-60:10; Rosen Depo., 22:15-23:17, 29:18-31:6, Holmes Depo., 73:5-17, 81:7-24; 120:19-121:3; Figueroa Depo., 99:22- 100:5; Gannon

Depo., 99:4-7; Hemedinger Depo., 59:14-60:10.

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.

**Evidence:**

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., 68:125-69:8.

19. Disputed. In June 2014, five months after Kasbarian started complaining about the fraudulent activities by other membership advisors, Kasbarian's commission and bonus check for May 2014 was suddenly and for the first time since she started at West LA 25-33% short of what she was owed. Kasbarian immediately complained about her unpaid commissions and bonuses. After she complained defendant permanently cut her compensation plan stating that they have been paying her too much and in "error" and told her that she is "lucky that they were not asking her to pay the difference back."

**Evidence:**

Exhs. 11, 12, 13; Kasbarian Depo., Vol. I, 201:1-206:5, 207:4-20, 209:19-210:8, 221:11-14; Kasbarian Depo., Vol. II, 347:1-18; Kasbarian Decl., ¶¶ 8, 9; Hemedinger Depo., 59:14-60:10; Rosen Depo., 22:15-23:17, 29:18-31:6, Holmes Depo., 73:5-17, 81:7-24; 120:19-121:3; Figueroa Depo., 99:22- 100:5; Gannon

Depo., 99:4-7; Hemedinger Depo., 59:14-60:10.

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”).

**Evidence:**

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.

20. Undisputed as to Kasbarian’s complaints but otherwise disputed. In June 2014, five months after Kasbarian started complaining about the fraudulent activities by other membership advisors, Kasbarian’s commission and bonus check for May 2014 was suddenly and for the first time since she started at West LA 25-33% short of what she was owed. Kasbarian immediately complained about her unpaid commissions and bonuses. After she complained defendant permanently cut her compensation plan stating that they have been paying her too much and in “error” and told her that she is “lucky that they were not asking her to pay the difference back.”

**Evidence:**

Exhs. 11, 12, 13; Kasbarian Depo., Vol. I, 201:1-206:5, 207:4-20, 209:19-210:8, 221:11-14; Kasbarian Depo., Vol. II, 347:1-18; Kasbarian Decl., ¶¶ 8, 9; Hemedinger Depo., 59:14-60:10; Rosen Depo., 22:15-23:17, 29:18-31:6, Holmes Depo., 73:5-17, 81:7-24; 120:19-121:3;

Figueroa Depo., 99:22- 100:5; Gannon Depo., 99:4-7; Hemedinger Depo., 59:14-60:10.

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.

**Evidence:**

Plaintiff Depo., Volume I, 196:8-14, 207:15-22, 220:5-20; Plaintiff Depo., Volume II, 349:5-12.

21. Undisputed to the fact that Kasbarian continued to work at Equinox until February 2015 after she complained; however, disputed as to the rest. In June 2014, five months after Kasbarian started complaining about the fraudulent activities by other membership advisors, Kasbarian's commission and bonus check for May 2014 was suddenly and for the first time since she started at West LA 25-33% short of what she was owed. Kasbarian immediately complained about her unpaid commissions and bonuses. After she complained defendant permanently cut her compensation plan stating that they have been paying her too much and in "error" and told her that she is "lucky that they were not asking her to pay the difference back."

**Evidence:**

Exhs. 11, 12, 13; Kasbarian Depo., Vol. I, 201:1-206:5, 207:4-20, 209:19-210:8, 221:11-14; Kasbarian Depo., Vol. II, 347:1-18; Kasbarian Decl., ¶¶ 8, 9;

Hemedinger Depo., 59:14-60:10; Rosen Depo., 22:15-23:17, 29:18-31:6, Holmes Depo., 73:5-17, 81:7-24; 120:19-121:3; Figueroa Depo., 99:22- 100:5; Gannon Depo., 99:4-7; Hemedinger Depo., 59:14-60:10.

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.

**Evidence:**

Plaintiff Depo., Volume I, 81:6-21; 82:5-83:23, 94:14-97:9.

22. Undisputed. However, Kasbarian testified that she complained about multiple MAs at West LA, including Lauren Beck and Devin Mcvelogue about multiple fraudulent and unlawful activities, including charging members credit cards without their authorization.

**Evidence:**

Kasbarian Depo., Vol. I, 69:5-71:5, 71:20-72:4, 76:5-25, 82:9-83:19, 98:11-99:4, 102:13-103:25, 112:5-113:2; Kasbarian Depo., Vol. II, 334:16-25; Kasbarian Decl., ¶ 6; Hemedinger Depo., 43:13-15, 45:8-22, 46:10-22; 76:1-15.

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 com-

23. Undisputed. Gannon also testified and admitted in testimony that he believes that the type of conduct Kasbarian complained of was illegal and is the type of conduct that needs to be investigated.

**Evidence:**

1 plained to Equinox.

Gannon Depo., 51:10-15, 52:23-53:3.

2 **Evidence:**

3 Plaintiff Depo., Volume II, 334:16-336:23.

4  
5 24. According to Plaintiff, her other  
6 complaints involved “things against  
7 Equinox policies that were happening as  
8 well.”

24. Undisputed.

9 **Evidence:**

10 Plaintiff Depo., Volume II, 334:16-336:23.

11  
12 25. Plaintiff admitted that she could not  
13 identify any statute, ordinance, regulation,  
14 local law, state law, or federal law that was  
15 violated as a result of this alleged activity.

25. Disputed. Plaintiff testified that she  
believed this conduct was illegal.  
Moreover, Gannon also testified and  
admitted in testimony that he believes that  
the type of conduct Kasbarian complained  
of was illegal and is the type of conduct  
that needs to be investigated.

16 **Evidence:**

17 Plaintiff Depo., Volume II, 335:4-336:23.

18  
19 **Evidence:**

20 Kasbarian Depo., Volume II, 334:16-  
21 336:23; Gannon Depo., 51:10-15, 52:23-  
22 53:3.

23  
24 26. Plaintiff also testified that she com-  
25 plained to Hemedinger and Simonson  
26 about the sales activities of another MA.

26. Undisputed.

27 **Evidence:**

28 Plaintiff Depo., Volume I, 76:17-79:19;

**Evidence:**

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.

**Evidence:**

Plaintiff Depo., Volume I, 76:17-79:19p  
93:10-94:10, 102:10-107:24; 108:1-113:5;  
Hemedinger Depo., 45:8-47:19.

27. Undisputed. However, Kasbarian testified that she complained about multiple MAs at West LA, including Lauren Beck and Devin Mcvelogue about multiple fraudulent and unlawful activities, including charging members credit cards without their authorization.

**Evidence:**

Kasbarian Depo., Vol. I, 69:5-71:5, 71:20-72:4, 76:5-25, 82:9-83:19, 98:11-99:4, 102:13-103:25, 112:5-113:2; Kasbarian Depo., Vol. II, 334:16-25; Kasbarian Decl., ¶ 6; Hemedinger Depo., 43:13-15, 45:8-22, 46:10-22; 76:1-15.

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.

**Evidence:**

Rosen Depo., 37:20-38:18; Declaration of Tracy Cuva (“Cuva Decl.”), ¶ 2.

28. Undisputed.

**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.

**Evidence:**

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.

**Evidence:**

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).

**Evidence:**

Cuva Decl., ¶ 2.

32. This MA was relocating to New York but, based on the investigation terminated.

1 results, she was not hired to work for **Evidence:**

2 Equinox in New York.

Kasbarian Depo., Vol. I, 84:7-85:1,  
184:20-23; Kasbarian Decl., ¶ 10;  
Hemedinger Decl., ¶ 4; Gannon Depo.,  
58:20-59:18, 60:2-21.

3 **Evidence:**

4 Rosen Depo., 39:8-13.

7 33. As a result of this member com-  
8 plaint, Rosen also asked Cuva to have  
9 Member Services conduct an investigation  
10 of sales transactions at the West LA club.

11 **Evidence:**

12 Rosen Depo., 47:25-6; Cuva Decl., ¶ 3.

33. Disputed. Senior Director of Loss  
Prevention, Jim Burger, testified that Jack  
Gannon contacted him to do an  
investigation at the West LA location and  
reported to him throughout.

**Evidence:**

Burger Depo., 70:9-21, 78:4-11, 83:18-  
84:3.

16 34. Apart from requesting that the inves-  
17 tigation be conducted and asking Jim  
18 Burger (Senior Director of Loss Preven-  
19 tion) to travel to the West LA club and  
20 continue the investigation after Member  
21 Services finished their portion of the inves-  
22 tigation, Rosen did not participate in that  
23 investigation.

24 **Evidence:**

25 Rosen Depo., 47:25-48:21.

34. Disputed. Senior Director of Loss  
Prevention, Jim Burger, testified that Jack  
Gannon contacted him to do an  
investigation at the West LA location and  
reported to him throughout.

**Evidence:**

Burger Depo., 70:9-21, 78:4-11, 83:18-  
84:3.

27 35. Cuva instructed Kevin Stanfa  
28 (“Stanfa”) (Manager of Compliance and

35. Undisputed.

**Evidence:**

1 Special Projects), to review sales transac-  
 2 tions at the West LA club.

3 **Evidence:**

4 Cuva Decl., ¶ 3; Stanfa Decl. ¶ 4.

6 36. After Stanfa reported finding various  
 7 anomalies associated with sales transac-  
 8 tions at the West LA club, Cuva instructed  
 9 Stanfa to prepare a summary detailing his  
 10 findings.

11 **Evidence:**

12 Cuva Decl., ¶ 3; Stanfa Decl. ¶ 4.

14 37. Stanfa then prepared a workbook  
 15 with three spreadsheets regarding the fol-  
 16 lowing sales activities: (1) 2014 Freezes;  
 17 (2) Modification to Direct Bill; and  
 18 (3) West LA Sales Breakdown.

19 **Evidence:**

20 Stanfa Decl., ¶ 4.

22 38. Once these were prepared, Cuva  
 23 emailed the spreadsheets to Rosen, Holmes  
 24 and Gannon and summarized the results of  
 25 the Member Services investigation.

26 **Evidence:**

27 Rosen Depo., 47:25-48:21; Holmes Depo.,  
 28 86:10-88:10, 95:9-96:10; Cuva Decl., ¶ 6,

36. Undisputed.

**Evidence:**

37. Disputed. Defendant fails to produce  
 the spreadsheets corroborating those sales.

**Evidence:**

Defendant's Amended Compendium of  
 Exhibits.

38. Disputed. Defendant fails to produce  
 the spreadsheets corroborating those sales.

**Evidence:**

Defendant's Amended Compendium of  
 Exhibits.

Exh.N; Stanfa Decl. ¶¶ 4-5.

39. In her email, Cuva indicated that these spreadsheets “all reflect patterns unhealthy for the business.”

**Evidence:**

Cuva Decl., ¶ 7, Exh.N.

40. Cuva noted as follows:

- i The 2041 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 question-

39. Undisputed as to that statement being written in the email.

**Evidence:**

40. Disputed. Kasbarian was found to have not committed any of the inappropriate and fraudulent conduct or “fake” sales that were being investigated.

**Evidence:**

Holmes Depo., 88:4-10, 106:11-19; Hemedinger Depo., 51:23-52:23; Rosen Depo., 48:22-49:3, 54:3-8, 76:5-14, 98:6-17, 101:24-102:7; Gannon Depo., 70:8-71:15, 72:7-20, 75:22-76:8, 79:5-10, 81:7-11; Gannon Decl., ¶ 6, 10.

1           able sales from two MAs  
2           (Plaintiff and the MA moving  
3           to New York). The other  
4           three MAs were reviewed  
5           and did not reflect the same  
6           anomalies seen with Plaintiff  
7           and the MA moving to New  
8           York. The questionable sales  
9           included selling memberships  
10          to members with the credit  
11          card of another member (al-  
12          most universally without re-  
13          questing a referral credit) or  
14          re-contracting over a previ-  
15          ously 3-day'd membership  
16          and either using the credit  
17          from the previous sale or re-  
18          charging the same credit  
19          card, credit card not present  
20          for numerous sales transac-  
21          tions, 3-day cancellations  
22          with no or just one member  
23          visit, new memberships  
24          which were previously fi-  
25          nance cancelled and had bal-  
26          ances on account that were  
27          waived.

28 **Evidence:**

1 Cuva Decl., ¶ 7, Exh.N.

2  
3 41. Neither Cuva nor Stanfa were aware  
4 Plaintiff had made any complaints about  
5 changes to her compensation plan or about  
6 the alleged activities of other MAs.

7 **Evidence:**

8 Cuva Decl., ¶ 8; Stanfa Decl., ¶ 11.

41. Undisputed. However, Kasbarian  
was found to have not committed any of  
the inappropriate and fraudulent conduct or  
“fake” sales that were being investigated.

**Evidence:**

41. Holmes Depo., 88:4-10, 106:11-19;  
Hemedinger Depo., 51:23-52:23; Rosen  
Depo., 48:22-49:3, 54:3-8, 76:5-14, 98:6-  
17, 101:24-102:7; Gannon Depo., 70:8-  
71:15, 72:7-20, 75:22-76:8, 79:5-10, 81:7-  
11; Gannon Decl., ¶ 6, 10.

**Evidence:**

17 42. In addition, Burger was asked to in-  
18 terview the sales team at the West LA  
19 club.

20 **Evidence:**

21 Deposition of Jim Burger (“Burger  
22 Depo.”), 72:4-73:3, 73:13-75:22, 76:6-12.

42. Undisputed.

**Evidence:**

24 43. When Burger came to Los Angeles  
25 to conduct his interviews in late January  
26 2015, the West LA club’s sales team con-  
27 sisted of three MAs, Plaintiff and two  
28 other MAs who were supervised by the

43. Undisputed.

**Evidence:**

Simonson [sic] and an Assistant General Manager.

**Evidence:**

Hemedinger Decl., ¶ 4.

44. A MA was fired on or about January 20, 2015 for improper sales activities.

44. Undisputed.

**Evidence:**

**Evidence:**

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. Disputed. Defendant fails to produce the spreadsheets corroborating those sales.

**Evidence:**

Defendant's Amended Compendium of Exhibits.

**Evidence:**

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. Undisputed.

**Evidence:**

**Evidence:**

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. Disputed. Defendant fails to produce the spreadsheets corroborating those sales.

**Evidence:**

**Evidence:**

Burger Depo., 74:16-75:3, 8-22; Stanfa Exhibits.  
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.

**Evidence:**

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.

**Evidence:**

Burger Depo., 76:19-77:1; Stanfa Decl., ¶ 9.

Defendant's Amended Compendium of Exhibits.

48. Disputed. Defendant fails to produce the spreadsheets corroborating those sales. However, However, Kasbarian was found to have not committed any of the inappropriate and fraudulent conduct or "fake" sales that were being investigated.

**Evidence:**

Defendant's Amended Compendium of Exhibits; Holmes Depo., 88:4-10, 106:11-19; Hemedinger Depo., 51:23-52:23; Rosen Depo., 48:22-49:3, 54:3-8, 76:5-14, 98:6-17, 101:24-102:7; Gannon Depo., 70:8-71:15, 72:7-20, 75:22-76:8, 79:5-10, 81:7-11; Gannon Decl., ¶ 6, 10.

49. Undisputed.

**Evidence:**



50. In late January 2015, Burger came to Los Angeles to interview various employees regarding sales activities of the West LA MAs.

**Evidence:**

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.

**Evidence:**

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.

**Evidence:**

Hemedinger Decl., ¶ 5.

53. Burger had never heard of or spoken to Plaintiff prior to this investigation meet-

50. Undisputed.

**Evidence:**

51. Disputed. Gannon testified that one MA was not suspended and was not discussed suspending because there “was no suspicious conduct linked to him” even at the beginning of the investigation.

**Evidence:**

Gannon Depo., 70:8-71:19, 81:7-11; Gannon Decl., ¶ 6, 10.

52. Disputed. Gannon testified that one MA was not suspended and was not discussed suspending because there “was no suspicious conduct linked to him” even at the beginning of the investigation.

**Evidence:**

Gannon Depo., 70:8-71:19, 81:7-11; Gannon Decl., ¶ 6, 10.

53. Undisputed.

**Evidence:**

1 ing.

2 **Evidence:**

3 Burger Depo., 35:22-24.

5 54. On January 30, 2015, Plaintiff met 54. Undisputed.

6 with Burger and Leah Ball of Human **Evidence:**

7 Resources regarding West LA's sales prac-  
8 tices.

9 **Evidence:**

10 Plaintiff Depo., Volume I, 161:11-22,  
11 164:10-22; Plaintiff Depo., Volume II,  
12 305:21-24; , [sic] Burger Depo., 96:18-25.

14 55. Plaintiff answered questions about  
15 her sales activities, as well as the activities  
16 of other MAs.

17 **Evidence:**

18 Plaintiff Depo., Volume I, 161:11-22,  
19 164:10-22; Burger Depo., 53:13-54:9.

55. Undisputed. Additionally, at the  
beginning of Kasbarian's interview, she  
notifies Senior Director of Loss  
Prevention, Jim Burger, about the  
fraudulent activity and unauthorized  
membership sales that she observed and  
complained about to management for  
months

22 **Evidence:**

23 Exh. 17; Kasbarian Depo., Vol. I, 158:4-  
24 18, 161:15-162:1, 166:9-167:2; Kasbarian  
25 Decl., ¶¶ 10, 11; Burger Depo., 70:9-21,  
26 78:4-11, 83:18-84:3, 91:5-92:18, 100:3-8,  
27 183:21-184:12.

1 56. While Burger did not find Plaintiff  
2 credible, he felt, at that time, that there was  
3 insufficient information to warrant Plain-  
4 tiff's termination.

5 **Evidence:**

6 Burger Depo., 122:14-17.  
7  
8

56. Undisputed as to Burger concluding  
there was insufficient information to  
warrant any terminable offense committed  
by Burger. Kasbarian was found to have  
not committed any of the inappropriate and  
fraudulent conduct or "fake" sales that  
were being investigated.

9 **Evidence:**

Holmes Depo., 88:4-10, 106:11-19;  
Hemedinger Depo., 51:23-52:23; Rosen  
Depo., 48:22-49:3, 54:3-8, 76:5-14, 98:6-  
17, 101:24-102:7; Gannon Depo., 70:8-  
71:15, 72:7-20, 75:22-76:8, 79:5-10, 81:7-  
11; Gannon Decl., ¶ 6, 10.  
15  
16

17 57. After Burger completed his inter-  
18 views, Burger, Gannon and Hemedinger  
19 met briefly to discuss Burger's impression.

20 **Evidence:**

21 Burger Depo., 117:16-18, 24-118:6.  
22

57. Undisputed.

23 **Evidence:**

23 58. Gannon then advised Plaintiff that  
24 she was being suspended.

25 **Evidence:**

26 Plaintiff Depo, Volume I, 174:24-175:3,  
27 11-12; Plaintiff Depo., Volume II, 306:3-7;  
28

58. Undisputed. However, she was  
suspended despite her having been found  
to not have committed any terminable  
offense.

**Evidence:**

Holmes Depo., 88:4-10, 106:11-19;

Gannon Decl., ¶ 4.

Hemedinger Depo., 51:23-52:23; Rosen Depo., 48:22-49:3, 54:3-8, 76:5-14, 98:6-17, 101:24-102:7; Gannon Depo., 70:8-71:15, 72:7-20, 75:22-76:8, 79:5-10, 81:7-11; Gannon Decl., ¶ 6, 10.

59. All of the MAs interviewed as part of the investigation (with the exception of the relatively new MA) were suspended pending investigation.

**Evidence:**

Burger Depo., ¶ [sic] 110:17-23; Gannon Decl., ¶ 6.

59. Undisputed. One MA was not suspended.

**Evidence:**

Gannon Depo., 70:8-71:15, 81:7-11; Gannon Decl., ¶ 6, 10.

60. Gannon also advised Plaintiff to report back to the West LA club at 2:00 p.m. the next day for another meeting.

**Evidence:**

Plaintiff Depo., Volume II, 180:11-181:4; Gannon Decl., ¶ 5.

60. Undisputed.

**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.

**Evidence:**

Plaintiff Depo., Volume II, 174:24-175:21;

61. Undisputed.

**Evidence:**

1 Plaintiff Depo., Volume II, 305:21-306:2,  
2 364:17-20; Plaintiff's Complaint, 6:5-7.

3  
4 62. It is Equinox's policy to turn off  
5 email access for hourly employees who  
6 have been suspended pending investigation  
7 or who are on leave of absence.

8 **Evidence:**

9 Gannon Decl., ¶ 7.

10  
11 63. Prior to Burger's interview of Plain-  
12 tiff, Gannon had the Payroll Department  
13 prepare a final paycheck for Plaintiff so  
14 that she could be paid in accordance with  
15 California law in the event the decision  
16 was made to terminate her employment.

17 **Evidence:**

18 Gannon Decl., ¶ 8.

19  
20  
21  
22 64. Plaintiff met with Hemedinger and  
23 Gannon at the West LA club on January  
24 31, 2015 and was told that the investiga-  
25 tion was concluded and that she would be  
26 working at the Marina Del Rey club.

27 **Evidence:**

28 Plaintiff Depo., Volume I, 182:5-183:8;

62. Disputed. Defendant did not produce  
any documentation corroborating this  
policy.

**Evidence:**

Defendant's Amended Compendium of  
Evidence.

63. Undisputed as to Gannon preparing  
the final paycheck; however, this paycheck  
was prepared by Gannon even before the  
interview in preparation for Kasbarian's  
termination.

**Evidence:**

Gannon Decl., ¶ 8; Exh. 15; Kasbarian  
Depo., Vol. I, 130:21-131:3, 185:5-15;  
Kasbarian Depo., Vol. II, 311:9-22;  
Kasbarian Decl., ¶ 11.

64. Undisputed.

**Evidence:**

1 Plaintiff Depo., Volume II, 306:12:16  
 2 [sic], 382:12-17, 390:4-11, Exh. 38;  
 3 Hemedinger Depo., 54:17-21, 55:1-8;  
 4 Gannon Decl., ¶ 3; Hemedinger Decl., ¶ 6.

6 65. The decision was made to reassign  
 7 Plaintiff to the Marina Del Rey club be-  
 8 cause Equinox wanted to rebuild the team  
 9 of MAs in the West LA club and to create  
 10 a fresh culture, as a result of the investiga-  
 11 tion findings.

12 **Evidence:**

13 Rosen Depo., 71:7-20, 73:15-22, 76:5-14;  
 14 Holmes Depo., 96:12-98:17; Hemedinger  
 15 Depo., 51:7-52:23; Gannon Decl., ¶ 10.

19 66. Plaintiff's compensation plan would  
 20 change once at Marina Del Rey to align  
 21 with the compensation plan of Marina Del  
 22 Rey MAs. Equinox considered the reas-  
 23 signment a lateral move.

24 **Evidence:**

25 Rosen Depo., 87:25-88:4; Gannon Decl.,  
 26 ¶ 11.

65. Disputed. Defendant's claim that  
 Kasbarian was reassigned to Marina Del  
 Rey because they wanted to rebuild the  
 team of Mas, yet one MA was allowed to  
 stay at West LA

**Evidence:**

Rosen Depo., 48:22-49:3, 54:3-8, 98:6-17,  
 76:5-14; Hemedinger Depo., 51:23-52:23;  
 Holmes Depo., 88:4-10, 106:11-19,  
 101:24-102:7; Gannon Depo., 70:8-71:15,  
 72:7-20, 75:22-76:8, 79:5-10, 81:7-11;  
 Gannon Decl., ¶ 6, 10.

66. Undisputed that the compensation  
 plan would change; however, disputed as  
 to it being a lateral move. Kasbarian is told  
 that she would be paid \$9.00/hour at the  
 Marina del Rey office, which was a \$10.00  
 per hour decrease in hourly rate that she  
 was being paid at the West Los Angeles  
 branch at \$19.23 per hour. Barry Holmes,  
 Vice President of Sales, admits that urban  
 clubs, such as the Santa Monica location,

tend to generate more revenue than suburban clubs, like the Marina Del Rey location, and the West LA location is a higher tier club than urban clubs. Brian Hemedinger admits in deposition that they thought it would be “best for Tamar, if she had the opportunity to be a membership advisor at a different location,” while acknowledging that she would be going to a lower tier location than when she first started with the company. Moreover, when Kasbarian went to West LA she was promoted from MA to Membership Executive, which it stated on her “Promotion Memo.”

**Evidence:**

Exh. 10, 14; Kasbarian Depo., Vol. I, 50:24-51:1, 89:9-90:19, 279:14-280:12, 182:12-184:19; Kasbarian Depo., Vol. II, 354:1-18, 458:24-459:17; Gannon Decl., 9, 10; Holmes Depo., 28:22-29:2, 50:18-25; Gannon Depo., 32:15-17, 88:25-89:5; Hemedinger Depo., 50:14-20, 51:23-52:23, 81:2-23.

67. Equinox considered the reassignment a lateral move.

**Evidence:**

67. Disputed. Kasbarian is told that she would be paid \$9.00/hour at the Marina del Rey office, which was a \$10.00 per hour

1 Rosen Depo., 87:25-88:4; Gannon Decl., decrease in hourly rate that she was being  
 2 ¶ 11. paid at the West Los Angeles branch at  
 3 \$19.23 per hour. Barry Holmes, Vice  
 4 President of Sales, admits that urban clubs,  
 5 such as the Santa Monica location, tend to  
 6 generate more revenue than suburban  
 7 clubs, like the Marina Del Rey location,  
 8 and the West LA location is a higher tier  
 9 club than urban clubs. Brian Hemedinger  
 10 admits in deposition that they thought it  
 11 would be “best for Tamar, if she had the  
 12 opportunity to be a membership advisor at  
 13 a different location,” while acknowledging  
 14 that she would be going to a lower tier  
 15 location than when she first started with  
 16 the company. Moreover, when Kasbarian  
 17 went to West LA she was promoted from  
 18 MA to Membership Executive, which it  
 19 stated on her “Promotion Memo.”

20 **Evidence:**

21 Exh. 10, 14; Kasbarian Depo., Vol. I,  
 22 50:24-51:1, 89:9-90:19, 279:14-280:12,  
 23 182:12-184:19; Kasbarian Depo., Vol. II,  
 24 354:1-18, 458:24-459:17; Gannon Decl., 9,  
 25 10; Holmes Depo., 28:22-29:2, 50:18-25;  
 26 Gannon Depo., 32:15-17, 88:25-89:5;  
 27 Hemedinger Depo., 50:14-20, 51:23-  
 28



52:23, 81:2-23.

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.

**Evidence:**

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.

**Evidence:**

Hemedinger Depo., 52:18-23; Rosen Depo., 57:13-19; 58:22-59:14; Holmes Depo., 31:13-15.

68. Undisputed.

**Evidence:**

69. Disputed. Kasbarian is told that she would be paid \$9.00/hour at the Marina del Rey office, which was a \$10.00 per hour decrease in hourly rate that she was being paid at the West Los Angeles branch at \$19.23 per hour. Barry Holmes, Vice President of Sales, admits that urban clubs, such as the Santa Monica location, tend to generate more revenue than suburban clubs, like the Marina Del Rey location, and the West LA location is a higher tier club than urban clubs. Brian Hemedinger admits in deposition that they thought it would be "best for Tamar, if she had the opportunity to be a membership advisor at a different location," while acknowledging that she would be going to a lower tier location than when she first started with

the company. Moreover, when Kasbarian went to West LA she was promoted from MA to Membership Executive, which it stated on her “Promotion Memo.”

**Evidence:**

Exh. 10, 14; Kasbarian Depo., Vol. I, 50:24-51:1, 89:9-90:19, 279:14-280:12, 182:12-184:19; Kasbarian Depo., Vol. II, 354:1-18, 458:24-459:17; Gannon Decl., 9, 10; Holmes Depo., 28:22-29:2, 50:18-25; Gannon Depo., 32:15-17, 88:25-89:5; Hemedinger Depo., 50:14-20, 51:23-52:23, 81:2-23.

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.

**Evidence:**

Hemedinger Depo., 52:18-23; Rosen Depo., 57:13-19; 58:22-59:14; Holmes Depo., [sic] 50:18-51:5.

70. Disputed. Kasbarian is told that she would be paid \$9.00/hour at the Marina del Rey office, which was a \$10.00 per hour decrease in hourly rate that she was being paid at the West Los Angeles branch at \$19.23 per hour. Barry Holmes, Vice President of Sales, admits that urban clubs, such as the Santa Monica location, tend to generate more revenue than suburban clubs, like the Marina Del Rey location, and the West LA location is a higher tier club than urban clubs. Brian Hemedinger admits in deposition that they thought it would be “best for Tamar, if she had the

1 opportunity to be a membership advisor at  
 2 a different location,” while acknowledging  
 3 that she would be going to a lower tier  
 4 location than when she first started with  
 5 the company. Moreover, when Kasbarian  
 6 went to West LA she was promoted from  
 7 MA to Membership Executive, which it  
 8 stated on her “Promotion Memo.”

9 **Evidence:**

10 Exh. 10, 14; Kasbarian Depo., Vol. I,  
 11 50:24-51:1, 89:9-90:19, 279:14-280:12,  
 12 182:12-184:19; Kasbarian Depo., Vol. II,  
 13 354:1-18, 458:24-459:17; Gannon Decl., 9,  
 14 10; Holmes Depo., 28:22-29:2, 50:18-25;  
 15 Gannon Depo., 32:15-17, 88:25-89:5;  
 16 Hemedinger Depo., 50:14-20, 51:23-  
 17 52:23, 81:2-23.

18  
 19 71. Gannon emailed Plaintiff the com-  
 20 pensation plan for the Marina Del Rey  
 21 Club on or about January 31, 2015.

22 **Evidence:**

23 Plaintiff Depo., Volume I, 246:19-247:2;  
 24 Gannon Decl., ¶ 12.

25  
 26 72. Plaintiff testified that no one from  
 27 Equinox ever told her that she was being  
 28 “terminated” or “demoted” as part of her

71. Undisputed.

**Evidence:**

72. Undisputed as to no one stating those  
 actual words; however, Kasbarian is told  
 that she would be paid \$9.00/hour at the

1 reassignment to the Marina Del Rey club.

2 **Evidence:**

3 Plaintiff Depo., Volume I, 171:10-172:7;  
 4 Plaintiff Depo., Volume II, 306:17-310:19,  
 5 363:24-364:3; Gannon Decl., ¶ 13;  
 6 Hemedinger Decl., ¶ 7.

Marina del Rey office, which was a \$10.00  
 per hour decrease in hourly rate that she  
 was being paid at the West Los Angeles  
 branch at \$19.23 per hour. Barry Holmes,  
 Vice President of Sales, admits that urban  
 clubs, such as the Santa Monica location,  
 tend to generate more revenue than  
 suburban clubs, like the Marina Del Rey  
 location, and the West LA location is a  
 higher tier club than urban clubs. Brian  
 Hemedinger admits in deposition that they  
 thought it would be “best for Tamar, if she  
 had the opportunity to be a membership  
 advisor at a different location,” while  
 acknowledging that she would be going to  
 a lower tier location than when she first  
 started with the company. Moreover, when  
 Kasbarian went to West LA she was  
 promoted from MA to Membership  
 Executive, which it stated on her  
 “Promotion Memo.”

22 **Evidence:**

23 Exh. 10, 14; Kasbarian Depo., Vol. I,  
 24 50:24-51:1, 89:9-90:19, 279:14-280:12,  
 25 182:12-184:19; Kasbarian Depo., Vol. II,  
 26 354:1-18, 458:24-459:17; Gannon Decl., 9,  
 27 10; Holmes Depo., 28:22-29:2, 50:18-25;  
 28 Gannon Depo., 32:15-17, 88:25-89:5;

Hemedinger Depo., 50:14-20, 51:23-52:23, 81:2-23.

73. Gannon made the decision to reassign Plaintiff to the Marina Del Rey club. 73. Undisputed. **Evidence:**

**Evidence:**

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. Undisputed. **Evidence:**

**Evidence:**

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. Undisputed; however, Kasbarian was forced to resign due to intolerable working conditions at Equinox. On February 2, 2015, the day Kasbarian was supposed to start at the Marina del Rey location, she

**Evidence:**

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. feels she is no longer welcome at Equinox and feels pushed out since she was forced to take a demotion, a significant pay cut and restart her business and clientele base, along with the overwhelming stress of the

interrogation and suspension and fear of being terminated that she is forced to resign.

**Evidence:**

Exh. 16; Kasbarian Depo., Vol. I, 186:5-14; Kasbarian Decl., ¶¶ 12-14.

76. Plaintiff's last day of employment was February 2, 2015. 76. Undisputed.

**Evidence:**

Plaintiff Depo., Volume I, 186:11-14.

77. Plaintiff never reported to work at the Marina Del Rey club. 77. Undisputed.

**Evidence:**

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. Undisputed.

**Evidence:**

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. Undisputed. However, one MA was able to stay at the West LA location, despite Gannon stating he wanted to rebuild the team by getting rid of all of the

**Evidence:**

Plaintiff Depo., Volume II, 342:25-343:5. Membership Executives at West LA.

**Evidence:**

Rosen Depo., 76:5-14; Hemedinger Depo., 51:23-52:23; Holmes Depo., 101:24-102:7; Gannon Depo., 70:8-71:15, 81:7-11; Gannon Decl., ¶ 6, 10.

80. Plaintiff testified that she was un- 80. Undisputed.

aware of any other MA at the West LA **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.

**Evidence:**

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. survives as a matter of law because Plaintiff can establish a *prima facie* claim for retaliation because Plaintiff can show a causal connection between a "protected activity" and an "adverse employment action."

**Alleged Undisputed Facts and  
Supporting Evidence**

**Plaintiff's Responses and  
Supporting Evidence**

1. Plaintiff was hired as a Membership Advisor ("MA") at Equinox's Santa Monica club on or about October 15, 2010.

**Evidence:**

Plaintiff Depo., Volume I, 36:23-38:10,

1 Exh. 5 (Offer Letter).

2  
3 2. In January 2014, Plaintiff began  
4 working at Equinox's West Los Angeles  
5 club ("West LA club").

6 **Evidence:**

7 Plaintiff Depo., Volume I, 189:22-190:12,  
8 Exh. 13 (Memo).

9  
10  
11  
12  
13 3. At the West LA club, MAs were re-  
14 ferred to as Membership Executives.  
15 However, their job duties were the same.

16 **Evidence:**

17 Declaration of Brian Hemedinger  
18 ("Hemedinger Decl."), ¶ 3.

2. Disputed. Kasbarian was promoted  
to the position of Membership Executive at  
the West Los Angeles club ("West LA") in  
October 2013.

**Evidence:**

Exh. 10; Kasbarian Depo., Vol. I, 89:9-  
90:19, 279:14-280:12; Kasbarian Decl., ¶  
5; Hemedinger Depo., 50:4-9; Rosen  
Depo., 20:4-18; Holmes Depo., 39:13-18.

3. Disputed. A Membership Executive  
position is considered a promotion from an  
MA position. Kasbarian was specifically  
told her position as a Membership  
Executive was a promotion from an MA,  
and she received a memo on it, as well as a  
higher compensation plan. Kasbarian's  
hourly rate also increased with her position  
as a Membership Executive, to \$19.23 per  
hour, as well as an increase in  
commissions and bonuses.

**Evidence:**

Exh. 10; Kasbarian Depo., Vol. I, 89:9-  
90:19, 279:14-280:12; Kasbarian Decl., ¶  
5; Hemedinger Depo., 50:4-9; Rosen



Depo., 20:4-18; Holmes Depo., 39:13-18.

4. During Plaintiff's employment at Equinox Santa Monica and West LA clubs, Jack Gannon ("Gannon") was the Vice President of the West Coast.

**Evidence:**

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.

**Evidence:**

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.

**Evidence:**

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.

**Evidence:**

Plaintiff Depo., Volume I, 43:18-45:15, Exh. 8 (Receipt Acknowledgement [sic] 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 and myself.

**Evidence:**

Plaintiff Depo., Volume I, 43:18-45:15, Exh. 8 (Receipt Acknowledgement [sic] Form); Figueroa Decl., ¶ 5, Exh. B (Re-

7. Undisputed.

**Evidence:**

8. Undisputed, as to what the actual document states. However, disputed as to whether Kasbarian actually believed her employment was "at-will." Kasbarian believes she would not be demoted, have her pay cut, her employment suspended, or, reassigned, etc. unless it was for good cause.

**Evidence:**

Kasbarian Decl., ¶¶ 4, 11, 13, 14.

1 receipt Acknowledgement [sic] Form.

2  
3 9. Plaintiff's personnel file also in- 9. Undisputed.  
4 cludes an Offer Letter, dated October 15, **Evidence:**  
5 2010, which Plaintiff acknowledged re-  
6 ceiving.

7 **Evidence:**

8 Plaintiff Depo., Volume I, 36:23-38:11,  
9 Exh. 5 (Offer Letter); Figueroa Decl., ¶ 6,  
10 Exh. C (Offer Letter).

11  
12 10. In particular, the Offer Letter stated:

13 We are excited at the pros-  
14 pect of you joining the Compa-  
15 ny, you should be aware that  
16 our relationship is "employ-  
17 ment-at-will." That means you  
18 are free, at any time, for any  
19 reason, to end your employment  
20 with the Company and that the  
21 Company may do the same.  
22 Our agreement regarding the at-  
23 will nature of your employment  
24 may not be changed, except in a  
25 writing signed by the Compa-  
26 ny's Chief Executive Officer.  
27 Given the at-will nature, the  
28 Company may from time to  
time add to, modify, or discon-  
tinue its compensation policies,  
employee benefit plans or other  
aspects of your employment.

24 **Evidence:**

25 Plaintiff Depo., Volume I, 36:23-38:11,  
26 Exh. 5 (Offer Letter); Figueroa Decl., ¶ 6,  
27 Exh. C (Offer Letter).

10. Undisputed, as to what the actual  
document states. However, disputed as to  
whether Kasbarian actually believed her  
employment was "at-will." Kasbarian  
believes she would not be demoted, have  
her pay cut, her employment suspended,  
or, reassigned, etc. unless it was for good  
cause.

**Evidence:**

Kasbarian Decl., ¶¶ 4, 11, 13, 14.

1 11. Plaintiff's personnel file also in-  
 2 cludes an Employee Confidentiality and  
 3 Non-Solicitation Agreement with Plain-  
 4 tiff's signature dated October 14, 2010.

5 **Evidence:**

6 Figueroa Decl., ¶ 8, Exh. D.  
 7

8 12. This Agreement stated: "You agree  
 9 and understand that nothing in this Agree-  
 10 ment shall alter or modify the 'at-will'  
 11 nature of your employment with the Com-  
 12 pany or confer on [y]ou any rights with re-  
 13 spect to continuation of your employment  
 14 with the Company."

15 **Evidence:**

16 Figueroa Decl., ¶ 8, Exh. D.  
 17  
 18

19 13. In her deposition, Plaintiff admitted  
 20 that she did not have a contract with  
 21 Equinox; no one ever told her that she was  
 22 guaranteed employment for a certain time  
 23 period; and no one ever told her that she  
 24 was anything other than an at-will em-  
 25 ployee.

26 **Evidence:**

27 Plaintiff Depo., Volume I, 36:23-38:11,  
 28 43:18-45:15, Exh. 5 (Offer Letter), Exh. 8

11. Undisputed.

**Evidence:**

12. Undisputed, as to what the actual  
 document states. However, disputed as to  
 whether Kasbarian actually believed her  
 employment was "at-will." Kasbarian  
 believes she would not be demoted, have  
 her pay cut, her employment suspended,  
 or, reassigned, etc. unless it was for good  
 cause.

**Evidence:**

Kasbarian Decl., ¶¶ 4, 11, 13, 14.

13. Undisputed, as to what the actual  
 document states. However, disputed as to  
 whether Kasbarian actually believed her  
 employment was "at-will." Kasbarian  
 believes she would not be demoted, have  
 her pay cut, her employment suspended,  
 or, reassigned, etc. unless it was for good  
 cause.

**Evidence:**

(Receipt Acknowledgement [sic] Form). Kasbarian Decl., ¶¶ 4, 11, 13, 14.

14. The Employee Handbook Plaintiff 14. Undisputed.

acknowledged receiving also included **Evidence:**

Equinox's non-retaliation policy as well as  
complaint procedures for reporting retaliation.

**Evidence:**

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 15. Undisputed.

ly prohibits retaliation against any employee **Evidence:**

ee 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 inves-

1 tigation.”

2 **Evidence:**

3 Plaintiff Depo., Volume I, 43:18-45:15,  
4 Exh. 8 Receipt of Employee Handbook;  
5 Figueroa Decl., Exh. A, Employee Hand-  
6 book.

7  
8 16. The complaint procedure as outlined 16. Undisputed.  
9 in the Employee Handbook permits an em- **Evidence:**  
10 ployee to report retaliation to his or her  
11 manager, Human Resources, or through  
12 Equinox’s Ethics Hotline.

13 **Evidence:**

14 Plaintiff Depo., Volume I, 43:18-45:15,  
15 Exh. 8 Receipt of Employee Handbook;  
16 Figueroa Decl. ¶ 4.

17  
18 17. In or about June 2014, Hemedinger 17. Disputed. In June 2014, five months  
19 informed Plaintiff and other MAs that the after Kasbarian started complaining about  
20 compensation plan for all West LA MAs the fraudulent activities by other  
21 was being clarified, so that the market bo- membership advisors, Kasbarian’s  
22 nuses would be paid out individually and commission and bonus check for May  
23 not cumulatively for reaching a certain 2014 was suddenly and for the first time  
24 sales goal. since she started at West LA 25-33% short

25 **Evidence:**

26 Plaintiff Depo., Volume I, 190:16-194:3, immediately complained about her unpaid  
27 219:7-10; Plaintiff Depo., Volume II, commissions and bonuses. After she  
28 347:22-348:1; Deposition of Barry Holmes complained defendant permanently cut her

(“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.

compensation plan stating that they have been paying her too much and in “error” and told her that she is “lucky that they were not asking her to pay the difference back.”

**Evidence:**

Exhs. 11, 12, 13; Kasbarian Depo., Vol. I, 201:1-206:5, 207:4-20, 209:19-210:8, 221:11-14; Kasbarian Depo., Vol. II, 347:1-18; Kasbarian Decl., ¶¶ 8, 9; Hemedinger Depo., 59:14-60:10; Rosen Depo., 22:15-23:17, 29:18-31:6, Holmes Depo., 73:5-17, 81:7-24; 120:19-121:3; Figueroa Depo., 99:22- 100:5; Gannon Depo., 99:4-7; Hemedinger Depo., 59:14-60:10.

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. Disputed. In June 2014, five months after Kasbarian started complaining about the fraudulent activities by other membership advisors, Kasbarian’s commission and bonus check for May 2014 was suddenly and for the first time since she started at West LA 25-33% short of what she was owed. Kasbarian immediately complained about her unpaid commissions and bonuses. After she complained defendant permanently cut her

**Evidence:**

Plaintiff Depo., Volume I, 190:16-194:3;  
Hemedinger Depo., 64:18-65:11.

compensation plan stating that they have been paying her too much and in “error” and told her that she is “lucky that they were not asking her to pay the difference back.”

**Evidence:**

Exhs. 11, 12, 13; Kasbarian Depo., Vol. I, 201:1-206:5, 207:4-20, 209:19-210:8, 221:11-14; Kasbarian Depo., Vol. II, 347:1-18; Kasbarian Decl., ¶¶ 8, 9; Hemedinger Depo., 59:14-60:10; Rosen Depo., 22:15-23:17, 29:18-31:6, Holmes Depo., 73:5-17, 81:7-24; 120:19-121:3; Figueroa Depo., 99:22- 100:5; Gannon Depo., 99:4-7; Hemedinger Depo., 59:14-60:10.

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.

**Evidence:**

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., 68:125-69:8.

19. Disputed. In June 2014, five months after Kasbarian started complaining about the fraudulent activities by other membership advisors, Kasbarian’s commission and bonus check for May 2014 was suddenly and for the first time since she started at West LA 25-33% short of what she was owed. Kasbarian immediately complained about her unpaid commissions and bonuses. After she complained defendant permanently cut her



compensation plan stating that they have been paying her too much and in “error” and told her that she is “lucky that they were not asking her to pay the difference back.”

**Evidence:**

Exhs. 11, 12, 13; Kasbarian Depo., Vol. I, 201:1-206:5, 207:4-20, 209:19-210:8, 221:11-14; Kasbarian Depo., Vol. II, 347:1-18; Kasbarian Decl., ¶¶ 8, 9; Hemedinger Depo., 59:14-60:10; Rosen Depo., 22:15-23:17, 29:18-31:6, Holmes Depo., 73:5-17, 81:7-24; 120:19-121:3; Figueroa Depo., 99:22- 100:5; Gannon Depo., 99:4-7; Hemedinger Depo., 59:14-60:10.

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. Undisputed as to Kasbarian’s complaints but otherwise disputed. In June 2014, five months after Kasbarian started complaining about the fraudulent activities by other membership advisors, Kasbarian’s commission and bonus check for May 2014 was suddenly and for the first time since she started at West LA 25-33% short of what she was owed. Kasbarian immediately complained about her unpaid commissions and bonuses. After she

**Evidence:**

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.

complained defendant permanently cut her compensation plan stating that they have been paying her too much and in “error” and told her that she is “lucky that they were not asking her to pay the difference back.”

**Evidence:**

Exhs. 11, 12, 13; Kasbarian Depo., Vol. I, 201:1-206:5, 207:4-20, 209:19-210:8, 221:11-14; Kasbarian Depo., Vol. II, 347:1-18; Kasbarian Decl., ¶¶ 8, 9; Hemedinger Depo., 59:14-60:10; Rosen Depo., 22:15-23:17, 29:18-31:6, Holmes Depo., 73:5-17, 81:7-24; 120:19-121:3; Figueroa Depo., 99:22- 100:5; Gannon Depo., 99:4-7; Hemedinger Depo., 59:14-60:10.

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.

**Evidence:**

Plaintiff Depo., Volume I, 196:8-14, 207:15-22, 220:5-20; Plaintiff Depo., Vol-

21. Undisputed to the fact that Kasbarian continued to work at Equinox until February 2015 after she complained; however, disputed as to the rest. In June 2014, five months after Kasbarian started complaining about the fraudulent activities by other membership advisors, Kasbarian’s commission and bonus check for May 2014 was suddenly and for the first time since she started at West LA 25-33% short

ume II, 349:5-12.

of what she was owed. Kasbarian immediately complained about her unpaid commissions and bonuses. After she complained defendant permanently cut her compensation plan stating that they have been paying her too much and in “error” and told her that she is “lucky that they were not asking her to pay the difference back.”

**Evidence:**

Exhs. 11, 12, 13; Kasbarian Depo., Vol. I, 201:1-206:5, 207:4-20, 209:19-210:8, 221:11-14; Kasbarian Depo., Vol. II, 347:1-18; Kasbarian Decl., ¶¶ 8, 9; Hemedinger Depo., 59:14-60:10; Rosen Depo., 22:15-23:17, 29:18-31:6, Holmes Depo., 73:5-17, 81:7-24; 120:19-121:3; Figueroa Depo., 99:22- 100:5; Gannon Depo., 99:4-7; Hemedinger Depo., 59:14-60:10.

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

22. Undisputed. However, Kasbarian testified that she complained about multiple MAs at West LA, including Lauren Beck and Devin Mcvelogue about multiple fraudulent and unlawful activities, including charging members credit cards without their authorization.

1 in actuality, was signing them up for a  
 2 year-long membership by using their credit  
 3 cards without authorization.

4 **Evidence:**

5 Plaintiff Depo., Volume I, 81:6-21; 82:5-  
 6 83:23, 94:14-97:9.

**Evidence:**

Kasbarian Depo., Vol. I, 69:5-71:5, 71:20-  
 72:4, 76:5-25, 82:9-83:19, 98:11-99:4,  
 102:13-103:25, 112:5-113:2; Kasbarian  
 Depo., Vol. II, 334:16-25; Kasbarian  
 Decl., ¶ 6; Hemedinger Depo., 43:13-15,  
 45:8-22, 46:10-22; 76:1-15.

9 23. According to Plaintiff, “charging  
 10 credit cards without people’s approval and  
 11 telling people they were signing up for a  
 12 month-long contract, but then signing them  
 13 up for a year-long contract” were the only  
 14 “illegal activities” about which she com-  
 15 plained to Equinox.

16 **Evidence:**

17 Plaintiff Depo., Volume II, 334:16-336:23.

23. Undisputed. Gannon also testified  
 and admitted in testimony that he believes  
 that the type of conduct Kasbarian  
 complained of was illegal and is the type  
 of conduct that needs to be investigated.

**Evidence:**

Gannon Depo., 51:10-15, 52:23-53:3.

19 24. According to Plaintiff, her other  
 20 complaints involved “things against  
 21 Equinox policies that were happening as  
 22 well.”

23 **Evidence:**

24 Plaintiff Depo., Volume II, 334:16-336:23.

24. Undisputed.

**Evidence:**

26 25. Plaintiff admitted that she could not  
 27 identify any statute, ordinance, regulation,  
 28 local law, state law, or federal law that was

25. Disputed. Plaintiff testified that she  
 believed this conduct was illegal.  
 Moreover, Gannon also testified and

1 violated as a result of this alleged activity.

2 **Evidence:**

3 Plaintiff Depo., Volume II, 335:4-336:23.

admitted in testimony that he believes that  
the type of conduct Kasbarian complained  
of was illegal and is the type of conduct  
that needs to be investigated.

5 **Evidence:**

6 Kasbarian Depo., Volume II, 334:16-  
7 336:23; Gannon Depo., 51:10-15, 52:23-  
8 53:3.

10 26. Plaintiff also testified that she com-  
11 plained to Hemedinger and Simonson  
12 about the sales activities of another MA.

26. Undisputed.

13 **Evidence:**

14 Plaintiff Depo., Volume I, 76:17-79:19;  
15 93:10-94:10, 102:10-107:24; 108:1-113:5;  
16 Hemedinger Depo., 45:8-47:19.

**Evidence:**

18 27. Specifically, Plaintiff complained  
19 that this MA was giving away “free  
20 months” to potential members, allowing  
21 “freezes” for members, and offering “three  
22 month” deals.

27. Undisputed. However, Kasbarian  
testified that she complained about  
multiple MAs at West LA, including  
Lauren Beck and Devin Mcvelogue about  
multiple fraudulent and unlawful activities,  
including charging members credit cards  
without their authorization.

23 **Evidence:**

24 Plaintiff Depo., Volume I, 76:17-79:19p  
25 93:10-94:10, 102:10-107:24; 108:1-113:5;  
26 Hemedinger Depo., 45:8-47:19.

**Evidence:**

Kasbarian Depo., Vol. I, 69:5-71:5, 71:20-  
72:4, 76:5-25, 82:9-83:19, 98:11-99:4,  
102:13-103:25, 112:5-113:2; Kasbarian

Depo., Vol. II, 334:16-25; Kasbarian Decl., ¶ 6; Hemedinger Depo., 43:13-15, 45:8-22, 46:10-22; 76:1-15.

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.

**Evidence:**

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.

**Evidence:**

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.

**Evidence:**

1 Rosen Depo., 37:20-38:21; Cuva Decl.,  
2 ¶ 2.

3  
4 31. Member Services' investigation, 31. Undisputed.  
5 which was conducted by Cuva, confirmed **Evidence:**  
6 that this was an unauthorized sale  
7 processed by a MA at the West LA Club  
8 (Plaintiff was not implicated in this  
9 transaction).

10 **Evidence:**

11 Cuva Decl., ¶ 2.

12  
13 32. This MA was relocating to New 32. Undisputed. However, this MA was  
14 York but, based on the investigation terminated.  
15 results, she was not hired to work for **Evidence:**  
16 Equinox in New York. Kasbarian Depo., Vol. I, 84:7-85:1,

17 **Evidence:**

18 Rosen Depo., 39:8-13.

184:20-23; Kasbarian Decl., ¶ 10;  
19 Hemedinger Decl., ¶ 4; Gannon Depo.,  
20 58:20-59:18, 60:2-21.

21 33. As a result of this member com- 33. Disputed. Senior Director of Loss  
22 plaint, Rosen also asked Cuva to have Prevention, Jim Burger, testified that Jack  
23 Member Services conduct an investigation Gannon contacted him to do an  
24 of sales transactions at the West LA club. investigation at the West LA location and  
25 reported to him throughout.

25 **Evidence:**

26 Rosen Depo., 47:25-6; Cuva Decl., ¶ 3.

**Evidence:**

Burger Depo., 70:9-21, 78:4-11, 83:18-

84:3.

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.

**Evidence:**

Rosen Depo., 47:25-48:21.

34. Disputed. Senior Director of Loss Prevention, Jim Burger, testified that Jack Gannon contacted him to do an investigation at the West LA location and reported to him throughout.

**Evidence:**

Burger Depo., 70:9-21, 78:4-11, 83:18-84:3.

35. Cuva instructed Kevin Stanfa (“Stanfa”) (Manager of Compliance and Special Projects), to review sales transactions at the West LA club.

**Evidence:**

Cuva Decl., ¶ 3; Stanfa Decl. ¶ 4.

35. Undisputed.

**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.

**Evidence:**

Cuva Decl., ¶ 3; Stanfa Decl. ¶ 4.

36. Undisputed.

**Evidence:**



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.

**Evidence:**

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.

**Evidence:**

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.”

**Evidence:**

Cuva Decl., ¶ 7, Exh.N.

40. Cuva noted as follows:

- i The 2041 Freezes spreadsheet shows that West LA is an outlier in members who request a freeze in the first 60

37. Disputed. Defendant fails to produce the spreadsheets corroborating those sales.

**Evidence:**

Defendant’s Amended Compendium of Exhibits.

38. Disputed. Defendant fails to produce the spreadsheets corroborating those sales.

**Evidence:**

Defendant’s Amended Compendium of Exhibits.

39. Undisputed as to that statement being written in the email.

**Evidence:**

40. Disputed. Kasbarian was found to have not committed any of the inappropriate and fraudulent conduct or “fake” sales that were being investigated.

**Evidence:**

1 days of membership who also  
 2 go on to cancel in the same  
 3 year.

4 i The Modification to Direct  
 5 Bill spreadsheet reflects  
 6 members in the last quarter  
 7 of 2014 whose billing was  
 8 modified from the credit card  
 9 payment type to direct bill  
 10 the day before billing ran.  
 11 The Company average is four  
 12 per club. West LA had 28  
 13 modifications to direct bill.

14 i The West LA Breakdown  
 15 spreadsheet shows question-  
 16 able sales from two MAs  
 17 (Plaintiff and the MA moving  
 18 to New York). The other  
 19 three MAs were reviewed  
 20 and did not reflect the same  
 21 anomalies seen with Plaintiff  
 22 and the MA moving to New  
 23 York. The questionable sales  
 24 included selling memberships  
 25 to members with the credit  
 26 card of another member (al-  
 27 most universally without re-  
 28 questing a referral credit) or

Holmes Depo., 88:4-10, 106:11-19;  
 Hemedinger Depo., 51:23-52:23; Rosen  
 Depo., 48:22-49:3, 54:3-8, 76:5-14, 98:6-  
 17, 101:24-102:7; Gannon Depo., 70:8-  
 71:15, 72:7-20, 75:22-76:8, 79:5-10, 81:7-  
 11; Gannon Decl., ¶ 6, 10.

1 re-contracting over a previ-  
 2 ously 3-day'd membership  
 3 and either using the credit  
 4 from the previous sale or re-  
 5 charging the same credit  
 6 card, credit card not present  
 7 for numerous sales transac-  
 8 tions, 3-day cancellations  
 9 with no or just one member  
 10 visit, new memberships  
 11 which were previously fi-  
 12 nance cancelled and had bal-  
 13 ances on account that were  
 14 waived.

15 **Evidence:**

16 Cuva Decl., ¶ 7, Exh.N.

18 41. Neither Cuva nor Stanfa were aware  
 19 Plaintiff had made any complaints about  
 20 changes to her compensation plan or about  
 21 the alleged activities of other MAs.

22 **Evidence:**

23 Cuva Decl., ¶ 8; Stanfa Decl., ¶ 11.

41. Undisputed. However, Kasbarian  
 was found to have not committed any of  
 the inappropriate and fraudulent conduct or  
 “fake” sales that were being investigated.

**Evidence:**

41. Holmes Depo., 88:4-10, 106:11-19;  
 Hemedinger Depo., 51:23-52:23; Rosen  
 Depo., 48:22-49:3, 54:3-8, 76:5-14, 98:6-  
 17, 101:24-102:7; Gannon Depo., 70:8-  
 71:15, 72:7-20, 75:22-76:8, 79:5-10, 81:7-  
 11; Gannon Decl., ¶ 6, 10.

**Evidence:**

42. In addition, Burger was asked to interview the sales team at the West LA club.

42. Undisputed.

**Evidence:**

Deposition of Jim Burger (“Burger Depo.”), 72:4-73:3, 73:13-75:22, 76:6-12.

**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 [sic] and an Assistant General Manager.

43. Undisputed.

**Evidence:**

Hemedinger Decl., ¶ 4.

**Evidence:**

44. A MA was fired on or about January 20, 2015 for improper sales activities.

44. Undisputed.

**Evidence:**

Figueroa Decl. ¶ 9; Hemedinger Decl., ¶ 4.

**Evidence:**

45. At Burger’s request, Member Services provided him with the spreadsheets summarizing their findings of questionable

45. Disputed. Defendant fails to produce the spreadsheets corroborating those sales.

**Evidence:**

1 sales transactions at the West LA club.

Defendant's Amended Compendium of Exhibits.

2 **Evidence:**

3 Burger Depo., 72:13-73:3; Cuva Decl. ¶ 8.

4  
5 46. Burger then met with Cuva and  
6 Stanfa and they discussed their findings re-  
7 garding the questionable sales at the West  
8 LA club.

46. Undisputed.

9 **Evidence:**

10 Burger Depo., 73:13-74:15; Cuva Decl.  
11 ¶ 8; Stanfa Decl., ¶ 9.

**Evidence:**

12  
13 47. Burger had a subsequent meeting  
14 with Stanfa to review the spreadsheets  
15 Member Services had prepared.

47. Disputed. Defendant fails to produce the spreadsheets corroborating those sales.

16 **Evidence:**

17 Burger Depo., 74:16-75:3, 8-22; Stanfa  
18 Decl., ¶ 9.

**Evidence:**

Defendant's Amended Compendium of Exhibits.

19  
20 48. These spreadsheets showed anoma-  
21 lies in various sales transactions, including  
22 whether or not a contract was signed,  
23 whether or not a credit card was present  
24 for the sales transaction, whose credit card  
25 was used for the sales transactions, if an-  
26 other individual's credit card number was  
27 used for the sales transaction instead of the  
28 member's credit card number, whether or

48. Disputed. Defendant fails to produce the spreadsheets corroborating those sales. However, However, Kasbarian was found to have not committed any of the inappropriate and fraudulent conduct or "fake" sales that were being investigated.

**Evidence:**

Defendant's Amended Compendium of Exhibits; Holmes Depo., 88:4-10, 106:11-

1 not a member had any visits to a club, etc. 19; Hemedinger Depo., 51:23-52:23;  
2 **Evidence:** Rosen Depo., 48:22-49:3, 54:3-8, 76:5-14,  
3 Burger Depo., 39:3-40:22; Cuva Decl., ¶ 8; 98:6-17, 101:24-102:7; Gannon Depo.,  
4 Stanfa Decl., ¶¶ 4-5. 70:8-71:15, 72:7-20, 75:22-76:8, 79:5-10,  
5 81:7-11; Gannon Decl., ¶ 6, 10.  
6  
7

8 49. Burger also had a couple of tele- 49. Undisputed.  
9 phone conversations with Stanfa regarding **Evidence:**  
10 the anomalies in various sales activities at  
11 the West LA Club.

12 **Evidence:**  
13 Burger Depo., 76:19-77:1; Stanfa Decl.,  
14 ¶ 9.  
15

16 50. In late January 2015, Burger came to 50. Undisputed.  
17 Los Angeles to interview various employ- **Evidence:**  
18 ees regarding sales activities of the West  
19 LA MAs.

20 **Evidence:**  
21 Burger Depo., 76:6-12; Gannon Decl., ¶ 3;  
22 Hemedinger Decl., ¶ 5.  
23

24 51. Prior to the interviews, Burger and 51. Disputed. Gannon testified that one  
25 Gannon discussed suspending all of the in- MA was not suspended and was not  
26 dividuals interviewed as part of the investi- discussed suspending because there “was  
27 gation pending the results of the investiga- no suspicious conduct linked to him” even  
28 tion. at the beginning of the investigation.

**Evidence:**

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.

**Evidence:**

Hemedinger Decl., ¶ 5.

53. Burger had never heard of or spoken to Plaintiff prior to this investigation meeting.

**Evidence:**

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.

**Evidence:**

Plaintiff Depo., Volume I, 161:11-22, 164:10-22; Plaintiff Depo., Volume II, 305:21-24; , [sic] Burger Depo., 96:18-25.

**Evidence:**

Gannon Depo., 70:8-71:19, 81:7-11; Gannon Decl., ¶ 6, 10.

52. Disputed. Gannon testified that one MA was not suspended and was not discussed suspending because there "was no suspicious conduct linked to him" even at the beginning of the investigation.

**Evidence:**

Gannon Depo., 70:8-71:19, 81:7-11; Gannon Decl., ¶ 6, 10.

53. Undisputed.

**Evidence:**

54. Undisputed.

**Evidence:**

1 55. Plaintiff answered questions about  
2 her sales activities, as well as the activities  
3 of other MAs.

4 **Evidence:**

5 Plaintiff Depo., Volume I, 161:11-22,  
6 164:10-22; Burger Depo., 53:13-54:9.

55. Undisputed. Additionally, at the  
beginning of Kasbarian's interview, she  
notifies Senior Director of Loss  
Prevention, Jim Burger, about the  
fraudulent activity and unauthorized  
membership sales that she observed and  
complained about to management for  
months

9 **Evidence:**

10 Exh. 17; Kasbarian Depo., Vol. I, 158:4-  
11 18, 161:15-162:1, 166:9-167:2; Kasbarian  
12 Decl., ¶¶ 10, 11; Burger Depo., 70:9-21,  
13 78:4-11, 83:18-84:3, 91:5-92:18, 100:3-8,  
14 183:21-184:12.

16 56. While Burger did not find Plaintiff  
17 credible, he felt, at that time, that there was  
18 insufficient information to warrant Plain-  
19 tiff's termination.

20 **Evidence:**

21 Burger Depo, 122:14-17.

56. Undisputed as to Burger concluding  
there was insufficient information to  
warrant any terminable offense committed  
by Burger. Kasbarian was found to have  
not committed any of the inappropriate and  
fraudulent conduct or "fake" sales that  
were being investigated.

23 **Evidence:**

24 Holmes Depo., 88:4-10, 106:11-19;  
25 Hemedinger Depo., 51:23-52:23; Rosen  
26 Depo., 48:22-49:3, 54:3-8, 76:5-14, 98:6-  
27 17, 101:24-102:7; Gannon Depo., 70:8-  
28 71:15, 72:7-20, 75:22-76:8, 79:5-10, 81:7-



11; Gannon Decl., ¶ 6, 10.

57. After Burger completed his inter-views, Burger, Gannon and Hemedinger met briefly to discuss Burger's impression.

**Evidence:**

Burger Depo., 117:16-18, 24-118:6.

57. Undisputed.

**Evidence:**

58. Gannon then advised Plaintiff that she was being suspended.

**Evidence:**

Plaintiff Depo, Volume I, 174:24-175:3, 11-12; Plaintiff Depo., Volume II, 306:3-7; Gannon Decl., ¶ 4.

58. Undisputed. However, she was suspended despite her having been found to not have committed any terminable offense.

**Evidence:**

Holmes Depo., 88:4-10, 106:11-19; Hemedinger Depo., 51:23-52:23; Rosen Depo., 48:22-49:3, 54:3-8, 76:5-14, 98:6-17, 101:24-102:7; Gannon Depo., 70:8-71:15, 72:7-20, 75:22-76:8, 79:5-10, 81:7-11; Gannon Decl., ¶ 6, 10.

59. All of the MAs interviewed as part of the investigation (with the exception of the relatively new MA) were suspended pending investigation.

**Evidence:**

Burger Depo., ¶ [sic] 110:17-23; Gannon

59. Undisputed. One MA was not suspended.

**Evidence:**

Gannon Depo., 70:8-71:15, 81:7-11; Gannon Decl., ¶ 6, 10.

Decl., ¶ 6.

60. Gannon also advised Plaintiff to re- 60. Undisputed.  
port back to the West LA club at 2:00 p.m. **Evidence:**  
the next day for another meeting.

**Evidence:**

Plaintiff Depo., Volume II, 180:11-181:4;  
Gannon Decl., ¶ 5.

61. According to Plaintiff, Equinox told 61. Undisputed.  
her that she would not have access to her **Evidence:**  
email or payroll account and escorted her  
out of the building in front of Equinox's  
clientele, staff and all of her peers.

**Evidence:**

Plaintiff Depo., Volume II, 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 62. Disputed. Defendant did not produce  
email access for hourly employees who any documentation corroborating this  
have been suspended pending investigation policy.  
or who are on leave of absence. **Evidence:**

**Evidence:**

Gannon Decl., ¶ 7.

Defendant's Amended Compendium of  
Evidence.

63. Prior to Burger's interview of Plain- 63. Undisputed as to Gannon preparing  
tiff, Gannon had the Payroll Department the final paycheck; however, this paycheck

1 prepare a final paycheck for Plaintiff so  
2 that she could be paid in accordance with  
3 California law in the event the decision  
4 was made to terminate her employment.

5 **Evidence:**

6 Gannon Decl., ¶ 8.

was prepared by Gannon even before the  
interview in preparation for Kasbarian's  
termination.

**Evidence:**

Gannon Decl., ¶ 8; Exh. 15; Kasbarian  
Depo., Vol. I, 130:21-131:3, 185:5-15;  
Kasbarian Depo., Vol. II, 311:9-22;  
Kasbarian Decl., ¶ 11.

10 64. Plaintiff met with Hemedinger and  
11 Gannon at the West LA club on January  
12 31, 2015 and was told that the investiga-  
13 tion was concluded and that she would be  
14 working at the Marina Del Rey club.

15 **Evidence:**

16 Plaintiff Depo., Volume I, 182:5-183:8;  
17 Plaintiff Depo., Volume II, 306:12-16  
18 [sic], 382:12-17, 390:4-11, Exh. 38;  
19 Hemedinger Depo., 54:17-21, 55:1-8;  
20 Gannon Decl., ¶ 3; Hemedinger Decl., ¶ 6.

64. Undisputed.

**Evidence:**

22 65. The decision was made to reassign  
23 Plaintiff to the Marina Del Rey club be-  
24 cause Equinox wanted to rebuild the team  
25 of MAs in the West LA club and to create  
26 a fresh culture, as a result of the investiga-  
27 tion findings.

28 **Evidence:**

65. Disputed. Defendant's claim that  
Kasbarian was reassigned to Marina Del  
Rey because they wanted to rebuild the  
team of Mas, yet one MA was allowed to  
stay at West LA

**Evidence:**

Rosen Depo., 48:22-49:3, 54:3-8, 98:6-17,

Rosen Depo., 71:7-20, 73:15-22, 76:5-14; 76:5-14; Hemedinger Depo., 51:23-52:23;  
Holmes Depo., 96:12-98:17; Hemedinger Holmes Depo., 88:4-10, 106:11-19,  
Depo., 51:7-52:23; Gannon Decl., ¶ 10. 101:24-102:7; Gannon Depo., 70:8-71:15,  
72:7-20, 75:22-76:8, 79:5-10, 81:7-11;  
Gannon Decl., ¶ 6, 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 reas-  
signment a lateral move.

**Evidence:**

Rosen Depo., 87:25-88:4; Gannon Decl.,  
¶ 11.

66. Undisputed that the compensation  
plan would change; however, disputed as  
to it being a lateral move. Kasbarian is told  
that she would be paid \$9.00/hour at the  
Marina del Rey office, which was a \$10.00  
per hour decrease in hourly rate that she  
was being paid at the West Los Angeles  
branch at \$19.23 per hour. Barry Holmes,  
Vice President of Sales, admits that urban  
clubs, such as the Santa Monica location,  
tend to generate more revenue than  
suburban clubs, like the Marina Del Rey  
location, and the West LA location is a  
higher tier club than urban clubs. Brian  
Hemedinger admits in deposition that they  
thought it would be "best for Tamar, if she  
had the opportunity to be a membership  
advisor at a different location," while  
acknowledging that she would be going to  
a lower tier location than when she first  
started with the company. Moreover, when  
Kasbarian went to West LA she was

promoted from MA to Membership Executive, which it stated on her “Promotion Memo.”

**Evidence:**

Exh. 10, 14; Kasbarian Depo., Vol. I, 50:24-51:1, 89:9-90:19, 279:14-280:12, 182:12-184:19; Kasbarian Depo., Vol. II, 354:1-18, 458:24-459:17; Gannon Decl., 9, 10; Holmes Depo., 28:22-29:2, 50:18-25; Gannon Depo., 32:15-17, 88:25-89:5; Hemedinger Depo., 50:14-20, 51:23-52:23, 81:2-23.

67. Equinox considered the reassignment a lateral move.

**Evidence:**

Rosen Depo., 87:25-88:4; Gannon Decl., ¶ 11.

67. Disputed. Kasbarian is told that she would be paid \$9.00/hour at the Marina del Rey office, which was a \$10.00 per hour decrease in hourly rate that she was being paid at the West Los Angeles branch at \$19.23 per hour. Barry Holmes, Vice President of Sales, admits that urban clubs, such as the Santa Monica location, tend to generate more revenue than suburban clubs, like the Marina Del Rey location, and the West LA location is a higher tier club than urban clubs. Brian Hemedinger admits in deposition that they thought it would be “best for Tamar, if she had the opportunity to be a membership advisor at

a different location,” while acknowledging that she would be going to a lower tier location than when she first started with the company. Moreover, when Kasbarian went to West LA she was promoted from MA to Membership Executive, which it stated on her “Promotion Memo.”

**Evidence:**

Exh. 10, 14; Kasbarian Depo., Vol. I, 50:24-51:1, 89:9-90:19, 279:14-280:12, 182:12-184:19; Kasbarian Depo., Vol. II, 354:1-18, 458:24-459:17; Gannon Decl., 9, 10; Holmes Depo., 28:22-29:2, 50:18-25; Gannon Depo., 32:15-17, 88:25-89:5; Hemedinger Depo., 50:14-20, 51:23-52:23, 81:2-23.

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.

**Evidence:**

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

68. Undisputed.

**Evidence:**

69. Disputed. Kasbarian is told that she would be paid \$9.00/hour at the Marina del Rey office, which was a \$10.00 per hour

1 was a high performing club and the mem-  
2 berships for the Marina Del Rey club were  
3 less expensive than the memberships for  
4 the West LA club.

5 **Evidence:**

6 Hemedinger Depo., 52:18-23; Rosen  
7 Depo., 57:13-19; 58:22-59:14; Holmes  
8 Depo., 31:13-15.

decrease in hourly rate that she was being  
paid at the West Los Angeles branch at  
\$19.23 per hour. Barry Holmes, Vice  
President of Sales, admits that urban clubs,  
such as the Santa Monica location, tend to  
generate more revenue than suburban  
clubs, like the Marina Del Rey location,  
and the West LA location is a higher tier  
club than urban clubs. Brian Hemedinger  
admits in deposition that they thought it  
would be “best for Tamar, if she had the  
opportunity to be a membership advisor at  
a different location,” while acknowledging  
that she would be going to a lower tier  
location than when she first started with  
the company. Moreover, when Kasbarian  
went to West LA she was promoted from  
MA to Membership Executive, which it  
stated on her “Promotion Memo.”

20 **Evidence:**

21 Exh. 10, 14; Kasbarian Depo., Vol. I,  
22 50:24-51:1, 89:9-90:19, 279:14-280:12,  
23 182:12-184:19; Kasbarian Depo., Vol. II,  
24 354:1-18, 458:24-459:17; Gannon Decl., 9,  
25 10; Holmes Depo., 28:22-29:2, 50:18-25;  
26 Gannon Depo., 32:15-17, 88:25-89:5;  
27 Hemedinger Depo., 50:14-20, 51:23-

52:23, 81:2-23.

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.

**Evidence:**

Hemedinger Depo., 52:18-23; Rosen Depo., 57:13-19; 58:22-59:14; Holmes Depo. , [sic] 50:18-51:5.

70. Disputed. Kasbarian is told that she would be paid \$9.00/hour at the Marina del Rey office, which was a \$10.00 per hour decrease in hourly rate that she was being paid at the West Los Angeles branch at \$19.23 per hour. Barry Holmes, Vice President of Sales, admits that urban clubs, such as the Santa Monica location, tend to generate more revenue than suburban clubs, like the Marina Del Rey location, and the West LA location is a higher tier club than urban clubs. Brian Hemedinger admits in deposition that they thought it would be “best for Tamar, if she had the opportunity to be a membership advisor at a different location,” while acknowledging that she would be going to a lower tier location than when she first started with the company. Moreover, when Kasbarian went to West LA she was promoted from MA to Membership Executive, which it stated on her “Promotion Memo.”

**Evidence:**

Exh. 10, 14; Kasbarian Depo., Vol. I, 50:24-51:1, 89:9-90:19, 279:14-280:12, 182:12-184:19; Kasbarian Depo., Vol. II,



354:1-18, 458:24-459:17; Gannon Decl., 9, 10; Holmes Depo., 28:22-29:2, 50:18-25; Gannon Depo., 32:15-17, 88:25-89:5; Hemedinger Depo., 50:14-20, 51:23-52:23, 81:2-23.

71. Gannon emailed Plaintiff the compensation plan for the Marina Del Rey Club on or about January 31, 2015.

**Evidence:**

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.

**Evidence:**

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.

71. Undisputed.

**Evidence:**

72. Undisputed as to no one stating those actual words; however, Kasbarian is told that she would be paid \$9.00/hour at the Marina del Rey office, which was a \$10.00 per hour decrease in hourly rate that she was being paid at the West Los Angeles branch at \$19.23 per hour. Barry Holmes, Vice President of Sales, admits that urban clubs, such as the Santa Monica location, tend to generate more revenue than suburban clubs, like the Marina Del Rey location, and the West LA location is a higher tier club than urban clubs. Brian Hemedinger admits in deposition that they thought it would be “best for Tamar, if she

1 had the opportunity to be a membership  
2 advisor at a different location,” while  
3 acknowledging that she would be going to  
4 a lower tier location than when she first  
5 started with the company. Moreover, when  
6 Kasbarian went to West LA she was  
7 promoted from MA to Membership  
8 Executive, which it stated on her  
9 “Promotion Memo.”

10 **Evidence:**

11 Exh. 10, 14; Kasbarian Depo., Vol. I,  
12 50:24-51:1, 89:9-90:19, 279:14-280:12,  
13 182:12-184:19; Kasbarian Depo., Vol. II,  
14 354:1-18, 458:24-459:17; Gannon Decl., 9,  
15 10; Holmes Depo., 28:22-29:2, 50:18-25;  
16 Gannon Depo., 32:15-17, 88:25-89:5;  
17 Hemedinger Depo., 50:14-20, 51:23-  
18 52:23, 81:2-23.

19  
20 73. Gannon made the decision to reas-  
21 sign Plaintiff to the Marina Del Rey club.

73. Undisputed.

22 **Evidence:**

23 Rosen Depo., 45:7-25. 57:8-12;  
24 Hemedinger Depo., 53:14-18.

**Evidence:**

25  
26 74. Plaintiff was told to report to the  
27 Marina Del Rey club on February 2, 2015  
28 at 9:00 a.m.

74. Undisputed.

**Evidence:**

**Evidence:**

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.

**Evidence:**

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.

75. Undisputed; however, Kasbarian was forced to resign due to intolerable working conditions at Equinox. On February 2, 2015, the day Kasbarian was supposed to start at the Marina del Rey location, she feels she is no longer welcome at Equinox and feels pushed out since she was forced to take a demotion, a significant pay cut and restart her business and clientele base, along with the overwhelming stress of the interrogation and suspension and fear of being terminated that she is forced to resign.

**Evidence:**

Exh. 16; Kasbarian Depo., Vol. I, 186:5-14; Kasbarian Decl., ¶¶ 12-14.

76. Plaintiff's last day of employment was February 2, 2015.

**Evidence:**

Plaintiff Depo., Volume I, 186:11-14.

76. Undisputed.

**Evidence:**

1 77. Plaintiff never reported to work at 77. Undisputed.  
2 the Marina Del Rey club. **Evidence:**

3 **Evidence:**

4 Plaintiff Depo., Volume I, 50:13-15,  
5 186:15-17; Hemedinger Depo., 56:22-25.  
6

7 78. As of February 1, 2015, the only re- 78. Undisputed.  
8 maining MA at the West LA club was the **Evidence:**  
9 recently hired MA. Gannon Decl., ¶ 6, 10.

10 **Evidence:**

11 Plaintiff Depo., Volume II, 342:3-11.  
12

13 79. As of April/May 2015, the West LA 79. Undisputed. However, one MA was  
14 club had an entirely new sales team and able to stay at the West LA location,  
15 sales management. despite Gannon stating he wanted to

16 **Evidence:**

17 Plaintiff Depo., Volume II, 342:25-343:5.  
18

Membership Executives at West LA.

19 **Evidence:**

20 Rosen Depo., 76:5-14; Hemedinger Depo.,  
21 51:23-52:23; Holmes Depo., 101:24-  
22 102:7; Gannon Depo., 70:8-71:15, 81:7-  
23 11; Gannon Decl., ¶ 6, 10.

24 80. Plaintiff testified that she was un- 80. Undisputed.  
25 aware of any other MA at the West LA **Evidence:**  
26 club complaining about the unauthorized  
27 use of credit cards or telling someone that  
28 they were being signed up for a one-month

1 membership but signing them up for a year  
2 instead.

3 **Evidence:**

4 Plaintiff Depo., Volume II, 343:6-22.

5  
6 **ISSUE NO. 5:** Plaintiff's first cause of action for violations of California Labor Code  
7 § 1102.5, et seq. also survives as a matter of law because Equinox did not have  
8 legitimate, non-retaliatory reasons for reassigning Plaintiff to the Marina Del Rey club.  
9 (UF Nos. 1-80.)

10 **Alleged Undisputed Facts and**  
11 **Supporting Evidence**

12 1. Plaintiff was hired as a Membership  
13 Advisor ("MA") at Equinox's Santa  
14 Monica club on or about October 15, 2010.

15 **Evidence:**

16 Plaintiff Depo., Volume I, 36:23-38:10,  
17 Exh. 5 (Offer Letter).

18  
19 2. In January 2014, Plaintiff began  
20 working at Equinox's West Los Angeles  
21 club ("West LA club").

22 **Evidence:**

23 Plaintiff Depo., Volume I, 189:22-190:12,  
24 Exh. 13 (Memo).

**Plaintiff's Responses and**  
**Supporting Evidence**

1. Undisputed.

**Evidence:**

2. Disputed. Kasbarian was promoted  
to the position of Membership Executive at  
the West Los Angeles club ("West LA") in  
October 2013.

**Evidence:**

Exh. 10; Kasbarian Depo., Vol. I, 89:9-  
90:19, 279:14-280:12; Kasbarian Decl., ¶  
5; Hemedinger Depo., 50:4-9; Rosen  
Depo., 20:4-18; Holmes Depo., 39:13-18.

3. At the West LA club, MAs were referred to as Membership Executives. However, their job duties were the same.

**Evidence:**

Declaration of Brian Hemedinger (“Hemedinger Decl.”), ¶ 3.

3. Disputed. A Membership Executive position is considered a promotion from an MA position. Kasbarian was specifically told her position as a Membership Executive was a promotion from an MA, and she received a memo on it, as well as a higher compensation plan. Kasbarian’s hourly rate also increased with her position as a Membership Executive, to \$19.23 per hour, as well as an increase in commissions and bonuses.

**Evidence:**

Exh. 10; Kasbarian Depo., Vol. I, 89:9-90:19, 279:14-280:12; Kasbarian Decl., ¶ 5; Hemedinger Depo., 50:4-9; Rosen Depo., 20:4-18; Holmes Depo., 39:13-18.

4. During Plaintiff’s employment at Equinox Santa Monica and West LA clubs, Jack Gannon (“Gannon”) was the Vice President of the West Coast.

**Evidence:**

Declaration of Jack Gannon (“Gannon Decl.”), ¶¶ 1-2.

4. Undisputed.

**Evidence:**

5. From about October 2011 through about June 2015, Brian Hemedinger (“Hemedinger”) was the Regional Director

5. Undisputed.

**Evidence:**

1 of Operations (“Regional Director”) of the  
2 Santa Monica and West LA clubs.

3 **Evidence:**

4 Plaintiff Depo., Volume I, 270:8,-14,  
5 75:24-76:4; Deposition of Brian  
6 Hemedinger (“Hemedinger Depo.”) 15:3-  
7 10, 41:1-9, 13-16; Hemedinger Decl., ¶ 1.

8  
9 6. General Manager Kira Simonson 6. Undisputed.  
10 (“Simonson) supervised Plaintiff at the **Evidence:**  
11 West LA club from about January 2014 to  
12 about January 2015.

13 **Evidence:**

14 Plaintiff Depo., Volume I, 52:11-19.

15  
16 7. Plaintiff’s personnel file includes an 7. Undisputed.  
17 Employee Handbook Receipt Acknowl- **Evidence:**  
18 edgment Form with Plaintiff’s signature  
19 dated October 15, 2010.

20 **Evidence:**

21 Plaintiff Depo., Volume I, 43:18-45:15,  
22 Exh. 8 (Receipt Acknowledgement [sic]  
23 Form); Declaration of Emerson Figueroa  
24 (“Figueroa Decl.”), ¶ 5, Exh. B.

25  
26 8. In particular, the Employee Hand- 8. Undisputed, as to what the actual  
27 book stated: document states. However, disputed as to  
28 I acknowledge that the re- whether Kasbarian actually believed her  
ceint of the Employee Hand-

book 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.

employment was “at-will.” Kasbarian believes she would not be demoted, have her pay cut, her employment suspended, or, reassigned, etc. unless it was for good cause.

**Evidence:**

Kasbarian Decl., ¶¶ 4, 11, 13, 14.

**Evidence:**

Plaintiff Depo., Volume I, 43:18-45:15, Exh. 8 (Receipt Acknowledgement [sic] Form); Figueroa Decl., ¶ 5, Exh. B (Receipt Acknowledgement [sic] Form).

9. Plaintiff’s personnel file also includes an Offer Letter, dated October 15, 2010, which Plaintiff acknowledged receiving.

**Evidence:**

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 “employ-

9. Undisputed.

**Evidence:**

10. Undisputed, as to what the actual document states. However, disputed as to whether Kasbarian actually believed her



ment-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.

**Evidence:**

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.

**Evidence:**

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 rights with respect to continuation of your employment with the Company.”

employment was “at-will.” Kasbarian believes she would not be demoted, have her pay cut, her employment suspended, or, reassigned, etc. unless it was for good cause.

**Evidence:**

Kasbarian Decl., ¶¶ 4, 11, 13, 14.

11. Undisputed.

**Evidence:**

12. Undisputed, as to what the actual document states. However, disputed as to whether Kasbarian actually believed her employment was “at-will.” Kasbarian believes she would not be demoted, have her pay cut, her employment suspended, or, reassigned, etc. unless it was for good

**Evidence:**

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.

**Evidence:**

Plaintiff Depo., Volume I, 36:23-38:11, 43:18-45:15, Exh. 5 (Offer Letter), Exh. 8 (Receipt Acknowledgement [sic] Form).

14. The Employee Handbook Plaintiff acknowledged receiving also included Equinox's non-retaliation policy as well as complaint procedures for reporting retaliation.

**Evidence:**

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 strict-

cause.

**Evidence:**

Kasbarian Decl., ¶¶ 4, 11, 13, 14.

13. Undisputed, as to what the actual document states. However, disputed as to whether Kasbarian actually believed her employment was "at-will." Kasbarian believes she would not be demoted, have her pay cut, her employment suspended, or, reassigned, etc. unless it was for good cause.

**Evidence:**

Kasbarian Decl., ¶¶ 4, 11, 13, 14.

14. Undisputed.

**Evidence:**

15. Undisputed.

1 ly prohibits retaliation against any employ- **Evidence:**  
2 ee for “filing a complaint and [Equinox]  
3 will not knowingly permit retaliation by  
4 management, employees, or co-workers.”  
5 Equinox’s policy also prohibits retaliation  
6 against any employee for “using this com-  
7 plaint procedure or for filing, testifying,  
8 assisting, or participating in any manner in  
9 any investigation, proceeding, or hearing  
10 conducted by a governmental enforcement  
11 agency. Additionally, Equinox will not  
12 knowingly permit any retaliation against  
13 any employee who complains of prohibited  
14 harassment or who participates in an inves-  
15 tigation.”

16 **Evidence:**

17 Plaintiff Depo., Volume I, 43:18-45:15,  
18 Exh. 8 Receipt of Employee Handbook;  
19 Figueroa Decl., Exh. A, Employee Hand-  
20 book.

22 16. The complaint procedure as outlined 16. Undisputed.  
23 in the Employee Handbook permits an em- **Evidence:**  
24 ployee to report retaliation to his or her  
25 manager, Human Resources, or through  
26 Equinox’s Ethics Hotline.

27 **Evidence:**

28 Plaintiff Depo., Volume I, 43:18-45:15,

1 Exh. 8 Receipt of Employee Handbook;  
2 Figueroa Decl. ¶ 4.  
3

4 17. In or about June 2014, Hemedinger  
5 informed Plaintiff and other MAs that the  
6 compensation plan for all West LA MAs  
7 was being clarified, so that the market bo-  
8 nuses would be paid out individually and  
9 not cumulatively for reaching a certain  
10 sales goal.

11 **Evidence:**

12 Plaintiff Depo., Volume I, 190:16-194:3,  
13 219:7-10; Plaintiff Depo., Volume II,  
14 347:22-348:1; Deposition of Barry Holmes  
15 (“Holmes Depo.”) 69:4-71:12, 73:23-  
16 75:10, Exhs. 201-202; Hemedinger Depo.,  
17 60:11-61:3, 68:12-14, 70:19-72:3.; Rosen  
18 Depo., 33:5-15.  
19

17. Disputed. In June 2014, five months  
after Kasbarian started complaining about  
the fraudulent activities by other  
membership advisors, Kasbarian’s  
commission and bonus check for May  
2014 was suddenly and for the first time  
since she started at West LA 25-33% short  
of what she was owed. Kasbarian  
immediately complained about her unpaid  
commissions and bonuses. After she  
complained defendant permanently cut her  
compensation plan stating that they have  
been paying her too much and in “error”  
and told her that she is “lucky that they  
were not asking her to pay the difference  
back.”

20 **Evidence:**

21 Exhs. 11, 12, 13; Kasbarian Depo., Vol. I,  
22 201:1-206:5, 207:4-20, 209:19-210:8,  
23 221:11-14; Kasbarian Depo., Vol. II,  
24 347:1-18; Kasbarian Decl., ¶¶ 8, 9;  
25 Hemedinger Depo., 59:14-60:10; Rosen  
26 Depo., 22:15-23:17, 29:18-31:6, Holmes  
27 Depo., 73:5-17, 81:7-24; 120:19-121:3;  
28 Figueroa Depo., 99:22- 100:5; Gannon

Depo., 99:4-7; Hemedinger Depo., 59:14-60:10.

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

**Evidence:**

Plaintiff Depo., Volume I, 190:16-194:3; Hemedinger Depo., 64:18-65:11.

18. Disputed. In June 2014, five months after Kasbarian started complaining about the fraudulent activities by other membership advisors, Kasbarian's commission and bonus check for May 2014 was suddenly and for the first time since she started at West LA 25-33% short of what she was owed. Kasbarian immediately complained about her unpaid commissions and bonuses. After she complained defendant permanently cut her compensation plan stating that they have been paying her too much and in "error" and told her that she is "lucky that they were not asking her to pay the difference back."

**Evidence:**

Exhs. 11, 12, 13; Kasbarian Depo., Vol. I, 201:1-206:5, 207:4-20, 209:19-210:8, 221:11-14; Kasbarian Depo., Vol. II, 347:1-18; Kasbarian Decl., ¶¶ 8, 9; Hemedinger Depo., 59:14-60:10; Rosen Depo., 22:15-23:17, 29:18-31:6, Holmes Depo., 73:5-17, 81:7-24; 120:19-121:3; Figueroa Depo., 99:22- 100:5; Gannon

Depo., 99:4-7; Hemedinger Depo., 59:14-60:10.

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.

**Evidence:**

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., 68:125-69:8.

19. Disputed. In June 2014, five months after Kasbarian started complaining about the fraudulent activities by other membership advisors, Kasbarian's commission and bonus check for May 2014 was suddenly and for the first time since she started at West LA 25-33% short of what she was owed. Kasbarian immediately complained about her unpaid commissions and bonuses. After she complained defendant permanently cut her compensation plan stating that they have been paying her too much and in "error" and told her that she is "lucky that they were not asking her to pay the difference back."

**Evidence:**

Exhs. 11, 12, 13; Kasbarian Depo., Vol. I, 201:1-206:5, 207:4-20, 209:19-210:8, 221:11-14; Kasbarian Depo., Vol. II, 347:1-18; Kasbarian Decl., ¶¶ 8, 9; Hemedinger Depo., 59:14-60:10; Rosen Depo., 22:15-23:17, 29:18-31:6, Holmes Depo., 73:5-17, 81:7-24; 120:19-121:3; Figueroa Depo., 99:22- 100:5; Gannon

Depo., 99:4-7; Hemedinger Depo., 59:14-60:10.

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”).

**Evidence:**

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.

20. Undisputed as to Kasbarian’s complaints but otherwise disputed. In June 2014, five months after Kasbarian started complaining about the fraudulent activities by other membership advisors, Kasbarian’s commission and bonus check for May 2014 was suddenly and for the first time since she started at West LA 25-33% short of what she was owed. Kasbarian immediately complained about her unpaid commissions and bonuses. After she complained defendant permanently cut her compensation plan stating that they have been paying her too much and in “error” and told her that she is “lucky that they were not asking her to pay the difference back.”

**Evidence:**

Exhs. 11, 12, 13; Kasbarian Depo., Vol. I, 201:1-206:5, 207:4-20, 209:19-210:8, 221:11-14; Kasbarian Depo., Vol. II, 347:1-18; Kasbarian Decl., ¶¶ 8, 9; Hemedinger Depo., 59:14-60:10; Rosen Depo., 22:15-23:17, 29:18-31:6, Holmes Depo., 73:5-17, 81:7-24; 120:19-121:3;

Figueroa Depo., 99:22- 100:5; Gannon Depo., 99:4-7; Hemedinger Depo., 59:14-60:10.

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.

**Evidence:**

Plaintiff Depo., Volume I, 196:8-14, 207:15-22, 220:5-20; Plaintiff Depo., Volume II, 349:5-12.

21. Undisputed to the fact that Kasbarian continued to work at Equinox until February 2015 after she complained; however, disputed as to the rest. In June 2014, five months after Kasbarian started complaining about the fraudulent activities by other membership advisors, Kasbarian's commission and bonus check for May 2014 was suddenly and for the first time since she started at West LA 25-33% short of what she was owed. Kasbarian immediately complained about her unpaid commissions and bonuses. After she complained defendant permanently cut her compensation plan stating that they have been paying her too much and in "error" and told her that she is "lucky that they were not asking her to pay the difference back."

**Evidence:**

Exhs. 11, 12, 13; Kasbarian Depo., Vol. I, 201:1-206:5, 207:4-20, 209:19-210:8, 221:11-14; Kasbarian Depo., Vol. II, 347:1-18; Kasbarian Decl., ¶¶ 8, 9;



Hemedinger Depo., 59:14-60:10; Rosen Depo., 22:15-23:17, 29:18-31:6, Holmes Depo., 73:5-17, 81:7-24; 120:19-121:3; Figueroa Depo., 99:22- 100:5; Gannon Depo., 99:4-7; Hemedinger Depo., 59:14-60:10.

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.

**Evidence:**

Plaintiff Depo., Volume I, 81:6-21; 82:5-83:23, 94:14-97:9.

22. Undisputed. However, Kasbarian testified that she complained about multiple MAs at West LA, including Lauren Beck and Devin Mcvelogue about multiple fraudulent and unlawful activities, including charging members credit cards without their authorization.

**Evidence:**

Kasbarian Depo., Vol. I, 69:5-71:5, 71:20-72:4, 76:5-25, 82:9-83:19, 98:11-99:4, 102:13-103:25, 112:5-113:2; Kasbarian Depo., Vol. II, 334:16-25; Kasbarian Decl., ¶ 6; Hemedinger Depo., 43:13-15, 45:8-22, 46:10-22; 76:1-15.

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 com-

23. Undisputed. Gannon also testified and admitted in testimony that he believes that the type of conduct Kasbarian complained of was illegal and is the type of conduct that needs to be investigated.

**Evidence:**

1 plained to Equinox.

Gannon Depo., 51:10-15, 52:23-53:3.

2 **Evidence:**

3 Plaintiff Depo., Volume II, 334:16-336:23.

4  
5 24. According to Plaintiff, her other  
6 complaints involved “things against  
7 Equinox policies that were happening as  
8 well.”

24. Undisputed.

9 **Evidence:**

10 Plaintiff Depo., Volume II, 334:16-336:23.

11  
12 25. Plaintiff admitted that she could not  
13 identify any statute, ordinance, regulation,  
14 local law, state law, or federal law that was  
15 violated as a result of this alleged activity.

25. Disputed. Plaintiff testified that she  
believed this conduct was illegal.  
Moreover, Gannon also testified and  
admitted in testimony that he believes that  
the type of conduct Kasbarian complained  
of was illegal and is the type of conduct  
that needs to be investigated.

16 **Evidence:**

17 Plaintiff Depo., Volume II, 335:4-336:23.

18  
19 **Evidence:**

20 Kasbarian Depo., Volume II, 334:16-  
21 336:23; Gannon Depo., 51:10-15, 52:23-  
22 53:3.

23  
24 26. Plaintiff also testified that she com-  
25 plained to Hemedinger and Simonson  
26 about the sales activities of another MA.

26. Undisputed.

27 **Evidence:**

28 Plaintiff Depo., Volume I, 76:17-79:19;

**Evidence:**

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.

**Evidence:**

Plaintiff Depo., Volume I, 76:17-79:19p  
93:10-94:10, 102:10-107:24; 108:1-113:5;  
Hemedinger Depo., 45:8-47:19.

27. Undisputed. However, Kasbarian testified that she complained about multiple MAs at West LA, including Lauren Beck and Devin Mcvelogue about multiple fraudulent and unlawful activities, including charging members credit cards without their authorization.

**Evidence:**

Kasbarian Depo., Vol. I, 69:5-71:5, 71:20-72:4, 76:5-25, 82:9-83:19, 98:11-99:4, 102:13-103:25, 112:5-113:2; Kasbarian Depo., Vol. II, 334:16-25; Kasbarian Decl., ¶ 6; Hemedinger Depo., 43:13-15, 45:8-22, 46:10-22; 76:1-15.

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.

**Evidence:**

Rosen Depo., 37:20-38:18; Declaration of Tracy Cuva (“Cuva Decl.”), ¶ 2.

28. Undisputed.

**Evidence:**

1 29. Member Services is Equinox's bill- 29. Undisputed.  
2 ing department (centrally based in New **Evidence:**  
3 York) which handles membership con-  
4 tracts and membership sales, including  
5 auditing of membership sales.

6 **Evidence:**  
7 Cuva Decl., ¶ 1.  
8

9 30. Rosen contacted Tracy Cuva, Senior 30. Undisputed.  
10 Director of Equinox's Member Services **Evidence:**  
11 Department, gave her the information re-  
12 ceived from the member, and asked  
13 Member Services to investigate this sale.

14 **Evidence:**  
15 Rosen Depo., 37:20-38:21; Cuva Decl.,  
16 ¶ 2.  
17

18 31. Member Services' investigation, 31. Undisputed.  
19 which was conducted by Cuva, confirmed **Evidence:**  
20 that this was an unauthorized sale  
21 processed by a MA at the West LA Club  
22 (Plaintiff was not implicated in this  
23 transaction).

24 **Evidence:**  
25 Cuva Decl., ¶ 2.  
26

27 32. This MA was relocating to New 32. Undisputed. However, this MA was  
28 York but, based on the investigation terminated.

1 results, she was not hired to work for  
2 Equinox in New York.

3 **Evidence:**

4 Rosen Depo., 39:8-13.

**Evidence:**

Kasbarian Depo., Vol. I, 84:7-85:1,  
184:20-23; Kasbarian Decl., ¶ 10;  
Hemedinger Decl., ¶ 4; Gannon Depo.,  
58:20-59:18, 60:2-21.

7 33. As a result of this member com-  
8 plaint, Rosen also asked Cuva to have  
9 Member Services conduct an investigation  
10 of sales transactions at the West LA club.

11 **Evidence:**

12 Rosen Depo., 47:25-6; Cuva Decl., ¶ 3.

33. Disputed. Senior Director of Loss  
Prevention, Jim Burger, testified that Jack  
Gannon contacted him to do an  
investigation at the West LA location and  
reported to him throughout.

**Evidence:**

Burger Depo., 70:9-21, 78:4-11, 83:18-  
84:3.

16 34. Apart from requesting that the inves-  
17 tigation be conducted and asking Jim  
18 Burger (Senior Director of Loss Preven-  
19 tion) to travel to the West LA club and  
20 continue the investigation after Member  
21 Services finished their portion of the inves-  
22 tigation, Rosen did not participate in that  
23 investigation.

24 **Evidence:**

25 Rosen Depo., 47:25-48:21.

34. Disputed. Senior Director of Loss  
Prevention, Jim Burger, testified that Jack  
Gannon contacted him to do an  
investigation at the West LA location and  
reported to him throughout.

**Evidence:**

Burger Depo., 70:9-21, 78:4-11, 83:18-  
84:3.

27 35. Cuva instructed Kevin Stanfa  
28 (“Stanfa”) (Manager of Compliance and

35. Undisputed.

**Evidence:**

1 Special Projects), to review sales transac-  
2 tions at the West LA club.

3 **Evidence:**

4 Cuva Decl., ¶ 3; Stanfa Decl. ¶ 4.  
5

6 36. After Stanfa reported finding various  
7 anomalies associated with sales transac-  
8 tions at the West LA club, Cuva instructed  
9 Stanfa to prepare a summary detailing his  
10 findings.

11 **Evidence:**

12 Cuva Decl., ¶ 3; Stanfa Decl. ¶ 4.  
13

14 37. Stanfa then prepared a workbook  
15 with three spreadsheets regarding the fol-  
16 lowing sales activities: (1) 2014 Freezes;  
17 (2) Modification to Direct Bill; and  
18 (3) West LA Sales Breakdown.

19 **Evidence:**

20 Stanfa Decl., ¶ 4.  
21

22 38. Once these were prepared, Cuva  
23 emailed the spreadsheets to Rosen, Holmes  
24 and Gannon and summarized the results of  
25 the Member Services investigation.

26 **Evidence:**

27 Rosen Depo., 47:25-48:21; Holmes Depo.,  
28 86:10-88:10, 95:9-96:10; Cuva Decl., ¶ 6,

36. Undisputed.

**Evidence:**

37. Disputed. Defendant fails to produce  
the spreadsheets corroborating those sales.

**Evidence:**

Defendant's Amended Compendium of  
Exhibits.

38. Disputed. Defendant fails to produce  
the spreadsheets corroborating those sales.

**Evidence:**

Defendant's Amended Compendium of  
Exhibits.

Exh.N; Stanfa Decl. ¶¶ 4-5.

39. In her email, Cuva indicated that these spreadsheets “all reflect patterns unhealthy for the business.”

**Evidence:**

Cuva Decl., ¶ 7, Exh.N.

40. Cuva noted as follows:

i The 2041 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 question-

39. Undisputed as to that statement being written in the email.

**Evidence:**

40. Disputed. Kasbarian was found to have not committed any of the inappropriate and fraudulent conduct or “fake” sales that were being investigated.

**Evidence:**

Holmes Depo., 88:4-10, 106:11-19; Hemedinger Depo., 51:23-52:23; Rosen Depo., 48:22-49:3, 54:3-8, 76:5-14, 98:6-17, 101:24-102:7; Gannon Depo., 70:8-71:15, 72:7-20, 75:22-76:8, 79:5-10, 81:7-11; Gannon Decl., ¶ 6, 10.

1           able sales from two MAs  
2           (Plaintiff and the MA moving  
3           to New York). The other  
4           three MAs were reviewed  
5           and did not reflect the same  
6           anomalies seen with Plaintiff  
7           and the MA moving to New  
8           York. The questionable sales  
9           included selling memberships  
10          to members with the credit  
11          card of another member (al-  
12          most universally without re-  
13          questing a referral credit) or  
14          re-contracting over a previ-  
15          ously 3-day'd membership  
16          and either using the credit  
17          from the previous sale or re-  
18          charging the same credit  
19          card, credit card not present  
20          for numerous sales transac-  
21          tions, 3-day cancellations  
22          with no or just one member  
23          visit, new memberships  
24          which were previously fi-  
25          nance cancelled and had bal-  
26          ances on account that were  
27          waived.

28       **Evidence:**



1 Cuva Decl., ¶ 7, Exh.N.

2  
3 41. Neither Cuva nor Stanfa were aware  
4 Plaintiff had made any complaints about  
5 changes to her compensation plan or about  
6 the alleged activities of other MAs.

7 **Evidence:**

8 Cuva Decl., ¶ 8; Stanfa Decl., ¶ 11.

41. Undisputed. However, Kasbarian  
was found to have not committed any of  
the inappropriate and fraudulent conduct or  
“fake” sales that were being investigated.

**Evidence:**

41. Holmes Depo., 88:4-10, 106:11-19;  
Hemedinger Depo., 51:23-52:23; Rosen  
Depo., 48:22-49:3, 54:3-8, 76:5-14, 98:6-  
17, 101:24-102:7; Gannon Depo., 70:8-  
71:15, 72:7-20, 75:22-76:8, 79:5-10, 81:7-  
11; Gannon Decl., ¶ 6, 10.

**Evidence:**

17 42. In addition, Burger was asked to in-  
18 terview the sales team at the West LA  
19 club.

20 **Evidence:**

21 Deposition of Jim Burger (“Burger  
22 Depo.”), 72:4-73:3, 73:13-75:22, 76:6-12.

42. Undisputed.

**Evidence:**

24 43. When Burger came to Los Angeles  
25 to conduct his interviews in late January  
26 2015, the West LA club’s sales team con-  
27 sisted of three MAs, Plaintiff and two  
28 other MAs who were supervised by the

43. Undisputed.

**Evidence:**

1 Simonson [sic] and an Assistant General  
2 Manager.

3 **Evidence:**

4 Hemedinger Decl., ¶ 4.  
5

6 44. A MA was fired on or about January 44. Undisputed.  
7 20, 2015 for improper sales activities. **Evidence:**

8 **Evidence:**

9 Figueroa Decl. ¶ 9; Hemedinger Decl., ¶ 4.  
10

11 45. At Burger's request, Member Ser- 45. Disputed. Defendant fails to produce  
12 vices provided him with the spreadsheets the spreadsheets corroborating those sales.

13 summarizing their findings of questionable **Evidence:**

14 sales transactions at the West LA club. Defendant's Amended Compendium of  
15 **Evidence:** Exhibits.

16 Burger Depo., 72:13-73:3; Cuva Decl. ¶ 8.  
17

18 46. Burger then met with Cuva and 46. Undisputed.

19 Stanfa and they discussed their findings re- **Evidence:**

20 garding the questionable sales at the West  
21 LA club.

22 **Evidence:**

23 Burger Depo., 73:13-74:15; Cuva Decl.  
24 ¶ 8; Stanfa Decl., ¶ 9.  
25

26 47. Burger had a subsequent meeting 47. Disputed. Defendant fails to produce  
27 with Stanfa to review the spreadsheets the spreadsheets corroborating those sales.

28 Member Services had prepared. **Evidence:**

**Evidence:** Defendant's Amended Compendium of  
Burger Depo., 74:16-75:3, 8-22; Stanfa Exhibits.  
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. Disputed. Defendant fails to produce the spreadsheets corroborating those sales. However, However, Kasbarian was found to have not committed any of the inappropriate and fraudulent conduct or "fake" sales that were being investigated.

**Evidence:**  
Defendant's Amended Compendium of Exhibits; Holmes Depo., 88:4-10, 106:11-19; Hemedinger Depo., 51:23-52:23; Rosen Depo., 48:22-49:3, 54:3-8, 76:5-14, 98:6-17, 101:24-102:7; Gannon Depo., 70:8-71:15, 72:7-20, 75:22-76:8, 79:5-10, 81:7-11; Gannon Decl., ¶ 6, 10.

**Evidence:**  
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. Undisputed.

**Evidence:**  
Burger Depo., 76:19-77:1; Stanfa Decl., ¶ 9.

**Evidence:**

1 50. In late January 2015, Burger came to  
2 Los Angeles to interview various employ-  
3 ees regarding sales activities of the West  
4 LA MAs.

5 **Evidence:**

6 Burger Depo., 76:6-12; Gannon Decl., ¶ 3;  
7 Hemedinger Decl., ¶ 5.  
8

9 51. Prior to the interviews, Burger and  
10 Gannon discussed suspending all of the in-  
11 dividuals interviewed as part of the investi-  
12 gation pending the results of the investiga-  
13 tion.

14 **Evidence:**

15 Burger Depo., 116:12-117:12.  
16  
17

18 52. Burger then interviewed the follow-  
19 ing individuals: (1) the Assistant General  
20 Manager; (2) Plaintiff; (3) another MA;  
21 (4) a relatively newly hired MA; and  
22 (5) Simonson.

23 **Evidence:**

24 Hemedinger Decl., ¶ 5.  
25  
26

27 53. Burger had never heard of or spoken  
28 to Plaintiff prior to this investigation meet-

50. Undisputed.

**Evidence:**

51. Disputed. Gannon testified that one  
MA was not suspended and was not  
discussed suspending because there “was  
no suspicious conduct linked to him” even  
at the beginning of the investigation.

**Evidence:**

Gannon Depo., 70:8-71:19, 81:7-11;  
Gannon Decl., ¶ 6, 10.

52. Disputed. Gannon testified that one  
MA was not suspended and was not  
discussed suspending because there “was  
no suspicious conduct linked to him” even  
at the beginning of the investigation.

**Evidence:**

Gannon Depo., 70:8-71:19, 81:7-11;  
Gannon Decl., ¶ 6, 10.

53. Undisputed.

**Evidence:**

1 ing.

2 **Evidence:**

3 Burger Depo., 35:22-24.

5 54. On January 30, 2015, Plaintiff met 54. Undisputed.

6 with Burger and Leah Ball of Human **Evidence:**

7 Resources regarding West LA's sales prac-  
8 tices.

9 **Evidence:**

10 Plaintiff Depo., Volume I, 161:11-22,  
11 164:10-22; Plaintiff Depo., Volume II,  
12 305:21-24; , [sic] Burger Depo., 96:18-25.

14 55. Plaintiff answered questions about 55. Undisputed. Additionally, at the  
15 her sales activities, as well as the activities beginning of Kasbarian's interview, she  
16 of other MAs. notifies Senior Director of Loss

17 **Evidence:**

18 Plaintiff Depo., Volume I, 161:11-22, fraudulent activity and unauthorized  
19 164:10-22; Burger Depo., 53:13-54:9. membership sales that she observed and  
20 complained about to management for  
21 months

22 **Evidence:**

23 Exh. 17; Kasbarian Depo., Vol. I, 158:4-  
24 18, 161:15-162:1, 166:9-167:2; Kasbarian  
25 Decl., ¶¶ 10, 11; Burger Depo., 70:9-21,  
26 78:4-11, 83:18-84:3, 91:5-92:18, 100:3-8,  
27 183:21-184:12.

1 56. While Burger did not find Plaintiff  
2 credible, he felt, at that time, that there was  
3 insufficient information to warrant Plain-  
4 tiff's termination.

5 **Evidence:**

6 Burger Depo., 122:14-17.  
7  
8

56. Undisputed as to Burger concluding  
there was insufficient information to  
warrant any terminable offense committed  
by Burger. Kasbarian was found to have  
not committed any of the inappropriate and  
fraudulent conduct or "fake" sales that  
were being investigated.

9 **Evidence:**

10 Holmes Depo., 88:4-10, 106:11-19;  
11 Hemedinger Depo., 51:23-52:23; Rosen  
12 Depo., 48:22-49:3, 54:3-8, 76:5-14, 98:6-  
13 17, 101:24-102:7; Gannon Depo., 70:8-  
14 71:15, 72:7-20, 75:22-76:8, 79:5-10, 81:7-  
15 11; Gannon Decl., ¶ 6, 10.  
16

17 57. After Burger completed his inter-  
18 views, Burger, Gannon and Hemedinger  
19 met briefly to discuss Burger's impression.

20 **Evidence:**

21 Burger Depo., 117:16-18, 24-118:6.  
22

57. Undisputed.

23 **Evidence:**

24 58. Gannon then advised Plaintiff that  
25 she was being suspended.

26 **Evidence:**

27 Plaintiff Depo, Volume I, 174:24-175:3,  
28 11-12; Plaintiff Depo., Volume II, 306:3-7;

58. Undisputed. However, she was  
suspended despite her having been found  
to not have committed any terminable  
offense.

**Evidence:**

Holmes Depo., 88:4-10, 106:11-19;

1 Gannon Decl., ¶ 4.

Hemedinger Depo., 51:23-52:23; Rosen  
Depo., 48:22-49:3, 54:3-8, 76:5-14, 98:6-  
17, 101:24-102:7; Gannon Depo., 70:8-  
71:15, 72:7-20, 75:22-76:8, 79:5-10, 81:7-  
11; Gannon Decl., ¶ 6, 10.

7 59. All of the MAs interviewed as part of  
8 the investigation (with the exception of the  
9 relatively new MA) were suspended pend-  
10 ing investigation.

11 **Evidence:**

12 Burger Depo., ¶ [sic] 110:17-23; Gannon  
13 Decl., ¶ 6.

59. Undisputed. One MA was not  
suspended.

**Evidence:**

Gannon Depo., 70:8-71:15, 81:7-11;  
Gannon Decl., ¶ 6, 10.

15 60. Gannon also advised Plaintiff to re-  
16 port back to the West LA club at 2:00 p.m.  
17 the next day for another meeting.

18 **Evidence:**

19 Plaintiff Depo., Volume II, 180:11-181:4;  
20 Gannon Decl., ¶ 5.

60. Undisputed.

**Evidence:**

22 61. According to Plaintiff, Equinox told  
23 her that she would not have access to her  
24 email or payroll account and escorted her  
25 out of the building in front of Equinox's  
26 clientele, staff and all of her peers.

27 **Evidence:**

28 Plaintiff Depo., Volume II, 174:24-175:21;

61. Undisputed.

**Evidence:**

1 Plaintiff Depo., Volume II, 305:21-306:2,  
2 364:17-20; Plaintiff's Complaint, 6:5-7.

3  
4 62. It is Equinox's policy to turn off  
5 email access for hourly employees who  
6 have been suspended pending investigation  
7 or who are on leave of absence.

8 **Evidence:**  
9 Gannon Decl., ¶ 7.

10  
11 63. Prior to Burger's interview of Plain-  
12 tiff, Gannon had the Payroll Department  
13 prepare a final paycheck for Plaintiff so  
14 that she could be paid in accordance with  
15 California law in the event the decision  
16 was made to terminate her employment.

17 **Evidence:**  
18 Gannon Decl., ¶ 8.

19  
20  
21  
22 64. Plaintiff met with Hemedinger and  
23 Gannon at the West LA club on January  
24 31, 2015 and was told that the investiga-  
25 tion was concluded and that she would be  
26 working at the Marina Del Rey club.

27 **Evidence:**  
28 Plaintiff Depo., Volume I, 182:5-183:8;

62. Disputed. Defendant did not produce  
any documentation corroborating this  
policy.

**Evidence:**  
Defendant's Amended Compendium of  
Evidence.

63. Undisputed as to Gannon preparing  
the final paycheck; however, this paycheck  
was prepared by Gannon even before the  
interview in preparation for Kasbarian's  
termination.

**Evidence:**  
Gannon Decl., ¶ 8; Exh. 15; Kasbarian  
Depo., Vol. I, 130:21-131:3, 185:5-15;  
Kasbarian Depo., Vol. II, 311:9-22;  
Kasbarian Decl., ¶ 11.

64. Undisputed.

**Evidence:**



1 Plaintiff Depo., Volume II, 306:12:16  
2 [sic], 382:12-17, 390:4-11, Exh. 38;  
3 Hemedinger Depo., 54:17-21, 55:1-8;  
4 Gannon Decl., ¶ 3; Hemedinger Decl., ¶ 6.  
5

6 65. The decision was made to reassign  
7 Plaintiff to the Marina Del Rey club be-  
8 cause Equinox wanted to rebuild the team  
9 of MAs in the West LA club and to create  
10 a fresh culture, as a result of the investiga-  
11 tion findings.

12 **Evidence:**

13 Rosen Depo., 71:7-20, 73:15-22, 76:5-14;  
14 Holmes Depo., 96:12-98:17; Hemedinger  
15 Depo., 51:7-52:23; Gannon Decl., ¶ 10.  
16  
17  
18

19 66. Plaintiff's compensation plan would  
20 change once at Marina Del Rey to align  
21 with the compensation plan of Marina Del  
22 Rey MAs. Equinox considered the reas-  
23 signment a lateral move.

24 **Evidence:**

25 Rosen Depo., 87:25-88:4; Gannon Decl.,  
26 ¶ 11.  
27  
28

65. Disputed. Defendant's claim that  
Kasbarian was reassigned to Marina Del  
Rey because they wanted to rebuild the  
team of Mas, yet one MA was allowed to  
stay at West LA

**Evidence:**

Rosen Depo., 48:22-49:3, 54:3-8, 98:6-17,  
76:5-14; Hemedinger Depo., 51:23-52:23;  
Holmes Depo., 88:4-10, 106:11-19,  
101:24-102:7; Gannon Depo., 70:8-71:15,  
72:7-20, 75:22-76:8, 79:5-10, 81:7-11;  
Gannon Decl., ¶ 6, 10.

66. Undisputed that the compensation  
plan would change; however, disputed as  
to it being a lateral move. Kasbarian is told  
that she would be paid \$9.00/hour at the  
Marina del Rey office, which was a \$10.00  
per hour decrease in hourly rate that she  
was being paid at the West Los Angeles  
branch at \$19.23 per hour. Barry Holmes,  
Vice President of Sales, admits that urban  
clubs, such as the Santa Monica location,

1 tend to generate more revenue than  
2 suburban clubs, like the Marina Del Rey  
3 location, and the West LA location is a  
4 higher tier club than urban clubs. Brian  
5 Hemedinger admits in deposition that they  
6 thought it would be “best for Tamar, if she  
7 had the opportunity to be a membership  
8 advisor at a different location,” while  
9 acknowledging that she would be going to  
10 a lower tier location than when she first  
11 started with the company. Moreover, when  
12 Kasbarian went to West LA she was  
13 promoted from MA to Membership  
14 Executive, which it stated on her  
15 “Promotion Memo.”

16 **Evidence:**

17 Exh. 10, 14; Kasbarian Depo., Vol. I,  
18 50:24-51:1, 89:9-90:19, 279:14-280:12,  
19 182:12-184:19; Kasbarian Depo., Vol. II,  
20 354:1-18, 458:24-459:17; Gannon Decl., 9,  
21 10; Holmes Depo., 28:22-29:2, 50:18-25;  
22 Gannon Depo., 32:15-17, 88:25-89:5;  
23 Hemedinger Depo., 50:14-20, 51:23-  
24 52:23, 81:2-23.

26 67. Equinox considered the reassignment  
27 a lateral move.

28 **Evidence:**

67. Disputed. Kasbarian is told that she  
would be paid \$9.00/hour at the Marina del  
Rey office, which was a \$10.00 per hour

1 Rosen Depo., 87:25-88:4; Gannon Decl., decrease in hourly rate that she was being  
2 ¶ 11. paid at the West Los Angeles branch at  
3 \$19.23 per hour. Barry Holmes, Vice  
4 President of Sales, admits that urban clubs,  
5 such as the Santa Monica location, tend to  
6 generate more revenue than suburban  
7 clubs, like the Marina Del Rey location,  
8 and the West LA location is a higher tier  
9 club than urban clubs. Brian Hemedinger  
10 admits in deposition that they thought it  
11 would be “best for Tamar, if she had the  
12 opportunity to be a membership advisor at  
13 a different location,” while acknowledging  
14 that she would be going to a lower tier  
15 location than when she first started with  
16 the company. Moreover, when Kasbarian  
17 went to West LA she was promoted from  
18 MA to Membership Executive, which it  
19 stated on her “Promotion Memo.”

20 **Evidence:**

21 Exh. 10, 14; Kasbarian Depo., Vol. I,  
22 50:24-51:1, 89:9-90:19, 279:14-280:12,  
23 182:12-184:19; Kasbarian Depo., Vol. II,  
24 354:1-18, 458:24-459:17; Gannon Decl., 9,  
25 10; Holmes Depo., 28:22-29:2, 50:18-25;  
26 Gannon Depo., 32:15-17, 88:25-89:5;  
27 Hemedinger Depo., 50:14-20, 51:23-  
28

52:23, 81:2-23.

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.

**Evidence:**

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.

**Evidence:**

Hemedinger Depo., 52:18-23; Rosen Depo., 57:13-19; 58:22-59:14; Holmes Depo., 31:13-15.

68. Undisputed.

**Evidence:**

69. Disputed. Kasbarian is told that she would be paid \$9.00/hour at the Marina del Rey office, which was a \$10.00 per hour decrease in hourly rate that she was being paid at the West Los Angeles branch at \$19.23 per hour. Barry Holmes, Vice President of Sales, admits that urban clubs, such as the Santa Monica location, tend to generate more revenue than suburban clubs, like the Marina Del Rey location, and the West LA location is a higher tier club than urban clubs. Brian Hemedinger admits in deposition that they thought it would be "best for Tamar, if she had the opportunity to be a membership advisor at a different location," while acknowledging that she would be going to a lower tier location than when she first started with

the company. Moreover, when Kasbarian went to West LA she was promoted from MA to Membership Executive, which it stated on her “Promotion Memo.”

**Evidence:**

Exh. 10, 14; Kasbarian Depo., Vol. I, 50:24-51:1, 89:9-90:19, 279:14-280:12, 182:12-184:19; Kasbarian Depo., Vol. II, 354:1-18, 458:24-459:17; Gannon Decl., 9, 10; Holmes Depo., 28:22-29:2, 50:18-25; Gannon Depo., 32:15-17, 88:25-89:5; Hemedinger Depo., 50:14-20, 51:23-52:23, 81:2-23.

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.

**Evidence:**

Hemedinger Depo., 52:18-23; Rosen Depo., 57:13-19; 58:22-59:14; Holmes Depo., [sic] 50:18-51:5.

70. Disputed. Kasbarian is told that she would be paid \$9.00/hour at the Marina del Rey office, which was a \$10.00 per hour decrease in hourly rate that she was being paid at the West Los Angeles branch at \$19.23 per hour. Barry Holmes, Vice President of Sales, admits that urban clubs, such as the Santa Monica location, tend to generate more revenue than suburban clubs, like the Marina Del Rey location, and the West LA location is a higher tier club than urban clubs. Brian Hemedinger admits in deposition that they thought it would be “best for Tamar, if she had the

1 opportunity to be a membership advisor at  
2 a different location,” while acknowledging  
3 that she would be going to a lower tier  
4 location than when she first started with  
5 the company. Moreover, when Kasbarian  
6 went to West LA she was promoted from  
7 MA to Membership Executive, which it  
8 stated on her “Promotion Memo.”

9 **Evidence:**

10 Exh. 10, 14; Kasbarian Depo., Vol. I,  
11 50:24-51:1, 89:9-90:19, 279:14-280:12,  
12 182:12-184:19; Kasbarian Depo., Vol. II,  
13 354:1-18, 458:24-459:17; Gannon Decl., 9,  
14 10; Holmes Depo., 28:22-29:2, 50:18-25;  
15 Gannon Depo., 32:15-17, 88:25-89:5;  
16 Hemedinger Depo., 50:14-20, 51:23-  
17 52:23, 81:2-23.

18  
19 71. Gannon emailed Plaintiff the com-  
20 pensation plan for the Marina Del Rey  
21 Club on or about January 31, 2015.

22 **Evidence:**

23 Plaintiff Depo., Volume I, 246:19-247:2;  
24 Gannon Decl., ¶ 12.

25  
26 72. Plaintiff testified that no one from  
27 Equinox ever told her that she was being  
28 “terminated” or “demoted” as part of her

71. Undisputed.

**Evidence:**

72. Undisputed as to no one stating those  
actual words; however, Kasbarian is told  
that she would be paid \$9.00/hour at the

1 reassignment to the Marina Del Rey club.

2 **Evidence:**

3 Plaintiff Depo., Volume I, 171:10-172:7;

4 Plaintiff Depo., Volume II, 306:17-310:19,

5 363:24-364:3; Gannon Decl., ¶ 13;

6 Hemedinger Decl., ¶ 7.

Marina del Rey office, which was a \$10.00 per hour decrease in hourly rate that she was being paid at the West Los Angeles branch at \$19.23 per hour. Barry Holmes, Vice President of Sales, admits that urban clubs, such as the Santa Monica location, tend to generate more revenue than suburban clubs, like the Marina Del Rey location, and the West LA location is a higher tier club than urban clubs. Brian Hemedinger admits in deposition that they thought it would be “best for Tamar, if she had the opportunity to be a membership advisor at a different location,” while acknowledging that she would be going to a lower tier location than when she first started with the company. Moreover, when Kasbarian went to West LA she was promoted from MA to Membership Executive, which it stated on her “Promotion Memo.”

22 **Evidence:**

23 Exh. 10, 14; Kasbarian Depo., Vol. I, 50:24-51:1, 89:9-90:19, 279:14-280:12, 182:12-184:19; Kasbarian Depo., Vol. II, 354:1-18, 458:24-459:17; Gannon Decl., 9, 10; Holmes Depo., 28:22-29:2, 50:18-25; Gannon Depo., 32:15-17, 88:25-89:5;

Hemedinger Depo., 50:14-20, 51:23-52:23, 81:2-23.

73. Gannon made the decision to reassign Plaintiff to the Marina Del Rey club. 73. Undisputed. **Evidence:**

**Evidence:**

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. Undisputed. **Evidence:**

**Evidence:**

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. Undisputed; however, Kasbarian was forced to resign due to intolerable working conditions at Equinox. On February 2, 2015, the day Kasbarian was supposed to start at the Marina del Rey location, she

**Evidence:**

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. feels she is no longer welcome at Equinox and feels pushed out since she was forced to take a demotion, a significant pay cut and restart her business and clientele base, along with the overwhelming stress of the



interrogation and suspension and fear of being terminated that she is forced to resign.

**Evidence:**

Exh. 16; Kasbarian Depo., Vol. I, 186:5-14; Kasbarian Decl., ¶¶ 12-14.

76. Plaintiff's last day of employment was February 2, 2015. 76. Undisputed.

**Evidence:**

**Evidence:**

Plaintiff Depo., Volume I, 186:11-14.

77. Plaintiff never reported to work at the Marina Del Rey club. 77. Undisputed.

**Evidence:**

**Evidence:**

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. Undisputed.

**Evidence:**

Gannon Decl., ¶ 6, 10.

**Evidence:**

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. Undisputed. However, one MA was able to stay at the West LA location, despite Gannon stating he wanted to rebuild the team by getting rid of all of the

**Evidence:**

Plaintiff Depo., Volume II, 342:25-343:5. Membership Executives at West LA.

**Evidence:**

Rosen Depo., 76:5-14; Hemedinger Depo., 51:23-52:23; Holmes Depo., 101:24-102:7; Gannon Depo., 70:8-71:15, 81:7-11; Gannon Decl., ¶ 6, 10.

80. Plaintiff testified that she was un- 80. Undisputed.

aware of any other MA at the West LA **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.

**Evidence:**

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 survives as a matter of law because Plaintiff can show the reasons she was reassigned to the Marina Del Rey club were pretextual.

**Alleged Undisputed Facts and  
Supporting Evidence**

**Plaintiff's Responses and  
Supporting Evidence**

1. Plaintiff was hired as a Membership Advisor ("MA") at Equinox's Santa Monica club on or about October 15, 2010.

**Evidence:**

Plaintiff Depo., Volume I, 36:23-38:10,

1 Exh. 5 (Offer Letter).

2  
3 2. In January 2014, Plaintiff began  
4 working at Equinox's West Los Angeles  
5 club ("West LA club").

6 **Evidence:**

7 Plaintiff Depo., Volume I, 189:22-190:12,  
8 Exh. 13 (Memo).

9  
10  
11  
12  
13 3. At the West LA club, MAs were re-  
14 ferred to as Membership Executives.  
15 However, their job duties were the same.

16 **Evidence:**

17 Declaration of Brian Hemedinger  
18 ("Hemedinger Decl."), ¶ 3.

2. Disputed. Kasbarian was promoted  
to the position of Membership Executive at  
the West Los Angeles club ("West LA") in  
October 2013.

**Evidence:**

Exh. 10; Kasbarian Depo., Vol. I, 89:9-  
90:19, 279:14-280:12; Kasbarian Decl., ¶  
5; Hemedinger Depo., 50:4-9; Rosen  
Depo., 20:4-18; Holmes Depo., 39:13-18.

3. Disputed. A Membership Executive  
position is considered a promotion from an  
MA position. Kasbarian was specifically  
told her position as a Membership  
Executive was a promotion from an MA,  
and she received a memo on it, as well as a  
higher compensation plan. Kasbarian's  
hourly rate also increased with her position  
as a Membership Executive, to \$19.23 per  
hour, as well as an increase in  
commissions and bonuses.

**Evidence:**

Exh. 10; Kasbarian Depo., Vol. I, 89:9-  
90:19, 279:14-280:12; Kasbarian Decl., ¶  
5; Hemedinger Depo., 50:4-9; Rosen

Depo., 20:4-18; Holmes Depo., 39:13-18.

4. During Plaintiff's employment at Equinox Santa Monica and West LA clubs, Jack Gannon ("Gannon") was the Vice President of the West Coast.

**Evidence:**

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.

**Evidence:**

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.

**Evidence:**

Plaintiff Depo., Volume I, 52:11-19.

1 7. Plaintiff's personnel file includes an 7. Undisputed.  
2 Employee Handbook Receipt Acknowledgment Form with Plaintiff's signature  
3 dated October 15, 2010.  
4

5 **Evidence:**

6 Plaintiff Depo., Volume I, 43:18-45:15,  
7 Exh. 8 (Receipt Acknowledgement [sic]  
8 Form); Declaration of Emerson Figueroa  
9 ("Figueroa Decl."), ¶ 5, Exh. B.  
10

11 8. In particular, the Employee Hand-  
12 book stated:

13 I acknowledge that the re-  
14 ceipt of the Employee Hand-  
15 book in no way creates a con-  
16 tract between Equinox and me.  
17 Moreover, I understand and  
18 agree that all matters discussed  
19 in the Employee Handbook are  
20 subject to change or modifica-  
21 tion from time to time except  
22 the At-Will Employment Policy  
23 specified therein. The At-Will  
24 Employment Policy represents  
25 the final and complete agree-  
26 ment concerning the duration of  
27 my employment. I acknowl-  
28 edge that any change in the At-  
Will Employment Policy is ef-  
fective only if set forth in a  
written document signed by the  
CEO of Equinox and myself.

24 **Evidence:**

25 Plaintiff Depo., Volume I, 43:18-45:15,  
26 Exh. 8 (Receipt Acknowledgement [sic]  
27 Form); Figueroa Decl., ¶ 5, Exh. B (Re-  
28

8. Undisputed, as to what the actual  
document states. However, disputed as to  
whether Kasbarian actually believed her  
employment was "at-will." Kasbarian  
believes she would not be demoted, have  
her pay cut, her employment suspended,  
or, reassigned, etc. unless it was for good  
cause.

**Evidence:**

Kasbarian Decl., ¶¶ 4, 11, 13, 14.

1 ceipt Acknowledgement [sic] Form.

2  
3 9. Plaintiff's personnel file also in- 9. Undisputed.  
4 cludes an Offer Letter, dated October 15, **Evidence:**  
5 2010, which Plaintiff acknowledged re-  
6 ceiving.

7 **Evidence:**

8 Plaintiff Depo., Volume I, 36:23-38:11,  
9 Exh. 5 (Offer Letter); Figueroa Decl., ¶ 6,  
10 Exh. C (Offer Letter).

11  
12 10. In particular, the Offer Letter stated:

13 We are excited at the pros-  
14 pect of you joining the Compa-  
15 ny, you should be aware that  
16 our relationship is "employ-  
17 ment-at-will." That means you  
18 are free, at any time, for any  
19 reason, to end your employment  
20 with the Company and that the  
21 Company may do the same.  
22 Our agreement regarding the at-  
23 will nature of your employment  
24 may not be changed, except in a  
25 writing signed by the Compa-  
26 ny's Chief Executive Officer.  
27 Given the at-will nature, the  
28 Company may from time to  
time add to, modify, or discon-  
tinue its compensation policies,  
employee benefit plans or other  
aspects of your employment.

24 **Evidence:**

25 Plaintiff Depo., Volume I, 36:23-38:11,  
26 Exh. 5 (Offer Letter); Figueroa Decl., ¶ 6,  
27 Exh. C (Offer Letter).

10. Undisputed, as to what the actual  
document states. However, disputed as to  
whether Kasbarian actually believed her  
employment was "at-will." Kasbarian  
believes she would not be demoted, have  
her pay cut, her employment suspended,  
or, reassigned, etc. unless it was for good  
cause.

**Evidence:**

Kasbarian Decl., ¶¶ 4, 11, 13, 14.

1 11. Plaintiff's personnel file also in-  
2 cludes an Employee Confidentiality and  
3 Non-Solicitation Agreement with Plain-  
4 tiff's signature dated October 14, 2010.

5 **Evidence:**

6 Figueroa Decl., ¶ 8, Exh. D.  
7

8 12. This Agreement stated: "You agree  
9 and understand that nothing in this Agree-  
10 ment shall alter or modify the 'at-will'  
11 nature of your employment with the Com-  
12 pany or confer on [y]ou any rights with re-  
13 spect to continuation of your employment  
14 with the Company."

15 **Evidence:**

16 Figueroa Decl., ¶ 8, Exh. D.  
17  
18

19 13. In her deposition, Plaintiff admitted  
20 that she did not have a contract with  
21 Equinox; no one ever told her that she was  
22 guaranteed employment for a certain time  
23 period; and no one ever told her that she  
24 was anything other than an at-will em-  
25 ployee.

26 **Evidence:**

27 Plaintiff Depo., Volume I, 36:23-38:11,  
28 43:18-45:15, Exh. 5 (Offer Letter), Exh. 8

11. Undisputed.

**Evidence:**

12. Undisputed, as to what the actual  
document states. However, disputed as to  
whether Kasbarian actually believed her  
employment was "at-will." Kasbarian  
believes she would not be demoted, have  
her pay cut, her employment suspended,  
or, reassigned, etc. unless it was for good  
cause.

**Evidence:**

Kasbarian Decl., ¶¶ 4, 11, 13, 14.

13. Undisputed, as to what the actual  
document states. However, disputed as to  
whether Kasbarian actually believed her  
employment was "at-will." Kasbarian  
believes she would not be demoted, have  
her pay cut, her employment suspended,  
or, reassigned, etc. unless it was for good  
cause.

**Evidence:**

(Receipt Acknowledgement [sic] Form). Kasbarian Decl., ¶¶ 4, 11, 13, 14.

14. The Employee Handbook Plaintiff 14. Undisputed.

acknowledged receiving also included **Evidence:**

Equinox's non-retaliation policy as well as  
complaint procedures for reporting retaliation.

**Evidence:**

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 15. Undisputed.

ly prohibits retaliation against any employee **Evidence:**

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 inves-



1 tigation.”

2 **Evidence:**

3 Plaintiff Depo., Volume I, 43:18-45:15,  
4 Exh. 8 Receipt of Employee Handbook;  
5 Figueroa Decl., Exh. A, Employee Hand-  
6 book.

7  
8 16. The complaint procedure as outlined 16. Undisputed.  
9 in the Employee Handbook permits an em- **Evidence:**  
10 ployee to report retaliation to his or her  
11 manager, Human Resources, or through  
12 Equinox’s Ethics Hotline.

13 **Evidence:**

14 Plaintiff Depo., Volume I, 43:18-45:15,  
15 Exh. 8 Receipt of Employee Handbook;  
16 Figueroa Decl. ¶ 4.

17  
18 17. In or about June 2014, Hemedinger 17. Disputed. In June 2014, five months  
19 informed Plaintiff and other MAs that the after Kasbarian started complaining about  
20 compensation plan for all West LA MAs the fraudulent activities by other  
21 was being clarified, so that the market bo- membership advisors, Kasbarian’s  
22 nuses would be paid out individually and commission and bonus check for May  
23 not cumulatively for reaching a certain 2014 was suddenly and for the first time  
24 sales goal. since she started at West LA 25-33% short

25 **Evidence:**

26 Plaintiff Depo., Volume I, 190:16-194:3, immediately complained about her unpaid  
27 219:7-10; Plaintiff Depo., Volume II, commissions and bonuses. After she  
28 347:22-348:1; Deposition of Barry Holmes complained defendant permanently cut her

1 (“Holmes Depo.”) 69:4-71:12, 73:23-  
2 75:10, Exhs. 201-202; Hemedinger Depo.,  
3 60:11-61:3, 68:12-14, 70:19-72:3.; Rosen  
4 Depo., 33:5-15.

compensation plan stating that they have  
been paying her too much and in “error”  
and told her that she is “lucky that they  
were not asking her to pay the difference  
back.”

**Evidence:**

Exhs. 11, 12, 13; Kasbarian Depo., Vol. I,  
201:1-206:5, 207:4-20, 209:19-210:8,  
221:11-14; Kasbarian Depo., Vol. II,  
347:1-18; Kasbarian Decl., ¶¶ 8, 9;  
Hemedinger Depo., 59:14-60:10; Rosen  
Depo., 22:15-23:17, 29:18-31:6, Holmes  
Depo., 73:5-17, 81:7-24; 120:19-121:3;  
Figueroa Depo., 99:22- 100:5; Gannon  
Depo., 99:4-7; Hemedinger Depo., 59:14-  
60:10.

18 18. For example, the plan provided for a  
19 particular market bonus upon reaching a  
20 certain goal of sales:

- 21 • 100% of goal—MA would
- 22 receive an extra \$20 per sale
- 23 • 115% of goal—MA would
- 24 receive an extra \$40 per sale
- 25 • 125% of goal—MA would
- 26 receive an extra \$55 per sale
- 27 • 150% of goal—MA would
- 28 receive an extra \$70 per sale

18. Disputed. In June 2014, five months  
after Kasbarian started complaining about  
the fraudulent activities by other  
membership advisors, Kasbarian’s  
commission and bonus check for May  
2014 was suddenly and for the first time  
since she started at West LA 25-33% short  
of what she was owed. Kasbarian  
immediately complained about her unpaid  
commissions and bonuses. After she  
complained defendant permanently cut her

**Evidence:**

Plaintiff Depo., Volume I, 190:16-194:3; Hemedinger Depo., 64:18-65:11.

compensation plan stating that they have been paying her too much and in “error” and told her that she is “lucky that they were not asking her to pay the difference back.”

**Evidence:**

Exhs. 11, 12, 13; Kasbarian Depo., Vol. I, 201:1-206:5, 207:4-20, 209:19-210:8, 221:11-14; Kasbarian Depo., Vol. II, 347:1-18; Kasbarian Decl., ¶¶ 8, 9; Hemedinger Depo., 59:14-60:10; Rosen Depo., 22:15-23:17, 29:18-31:6, Holmes Depo., 73:5-17, 81:7-24; 120:19-121:3; Figueroa Depo., 99:22- 100:5; Gannon Depo., 99:4-7; Hemedinger Depo., 59:14-60:10.

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.

**Evidence:**

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., 68:125-69:8.

19. Disputed. In June 2014, five months after Kasbarian started complaining about the fraudulent activities by other membership advisors, Kasbarian’s commission and bonus check for May 2014 was suddenly and for the first time since she started at West LA 25-33% short of what she was owed. Kasbarian immediately complained about her unpaid commissions and bonuses. After she complained defendant permanently cut her

1 compensation plan stating that they have  
2 been paying her too much and in “error”  
3 and told her that she is “lucky that they  
4 were not asking her to pay the difference  
5 back.”

6 **Evidence:**

7 Exhs. 11, 12, 13; Kasbarian Depo., Vol. I,  
8 201:1-206:5, 207:4-20, 209:19-210:8,  
9 221:11-14; Kasbarian Depo., Vol. II,  
10 347:1-18; Kasbarian Decl., ¶¶ 8, 9;  
11 Hemedinger Depo., 59:14-60:10; Rosen  
12 Depo., 22:15-23:17, 29:18-31:6, Holmes  
13 Depo., 73:5-17, 81:7-24; 120:19-121:3;  
14 Figueroa Depo., 99:22- 100:5; Gannon  
15 Depo., 99:4-7; Hemedinger Depo., 59:14-  
16 60:10.

17  
18 20. Plaintiff testified that she complained  
19 about what she viewed as a “change” in  
20 the compensation plan to the following  
21 managerial employees: Hemedinger,  
22 Gannon, Simonson, Veronica Santarelli  
23 (“Santarelli”) (Regional Sales Manager),  
24 Matt Gonzalez (“Gonzalez”) (Director of  
25 Sales), Barry Holmes (“Holmes”) (Senior  
26 Vice President of Sales), and Scott Rosen  
27 (“Rosen”) (Chief Operating Officer)  
28 (“COO”).

20. Undisputed as to Kasbarian’s  
complaints but otherwise disputed. In June  
2014, five months after Kasbarian started  
complaining about the fraudulent activities  
by other membership advisors, Kasbarian’s  
commission and bonus check for May  
2014 was suddenly and for the first time  
since she started at West LA 25-33% short  
of what she was owed. Kasbarian  
immediately complained about her unpaid  
commissions and bonuses. After she

**Evidence:**

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.

complained defendant permanently cut her compensation plan stating that they have been paying her too much and in “error” and told her that she is “lucky that they were not asking her to pay the difference back.”

**Evidence:**

Exhs. 11, 12, 13; Kasbarian Depo., Vol. I, 201:1-206:5, 207:4-20, 209:19-210:8, 221:11-14; Kasbarian Depo., Vol. II, 347:1-18; Kasbarian Decl., ¶¶ 8, 9; Hemedinger Depo., 59:14-60:10; Rosen Depo., 22:15-23:17, 29:18-31:6, Holmes Depo., 73:5-17, 81:7-24; 120:19-121:3; Figueroa Depo., 99:22- 100:5; Gannon Depo., 99:4-7; Hemedinger Depo., 59:14-60:10.

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.

**Evidence:**

Plaintiff Depo., Volume I, 196:8-14, 207:15-22, 220:5-20; Plaintiff Depo., Vol-

21. Undisputed to the fact that Kasbarian continued to work at Equinox until February 2015 after she complained; however, disputed as to the rest. In June 2014, five months after Kasbarian started complaining about the fraudulent activities by other membership advisors, Kasbarian’s commission and bonus check for May 2014 was suddenly and for the first time since she started at West LA 25-33% short

1     ume II, 349:5-12.

of what she was owed. Kasbarian immediately complained about her unpaid commissions and bonuses. After she complained defendant permanently cut her compensation plan stating that they have been paying her too much and in “error” and told her that she is “lucky that they were not asking her to pay the difference back.”

10     **Evidence:**

11     Exhs. 11, 12, 13; Kasbarian Depo., Vol. I, 201:1-206:5, 207:4-20, 209:19-210:8, 221:11-14; Kasbarian Depo., Vol. II, 347:1-18; Kasbarian Decl., ¶¶ 8, 9; Hemedinger Depo., 59:14-60:10; Rosen Depo., 22:15-23:17, 29:18-31:6, Holmes Depo., 73:5-17, 81:7-24; 120:19-121:3; Figueroa Depo., 99:22- 100:5; Gannon Depo., 99:4-7; Hemedinger Depo., 59:14-60:10.

22     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

22. Undisputed. However, Kasbarian testified that she complained about multiple MAs at West LA, including Lauren Beck and Devin Mcvelogue about multiple fraudulent and unlawful activities, including charging members credit cards without their authorization.

1 in actuality, was signing them up for a  
2 year-long membership by using their credit  
3 cards without authorization.

4 **Evidence:**

5 Plaintiff Depo., Volume I, 81:6-21; 82:5-  
6 83:23, 94:14-97:9.

**Evidence:**

Kasbarian Depo., Vol. I, 69:5-71:5, 71:20-  
72:4, 76:5-25, 82:9-83:19, 98:11-99:4,  
102:13-103:25, 112:5-113:2; Kasbarian  
Depo., Vol. II, 334:16-25; Kasbarian  
Decl., ¶ 6; Hemedinger Depo., 43:13-15,  
45:8-22, 46:10-22; 76:1-15.

9 23. According to Plaintiff, “charging  
10 credit cards without people’s approval and  
11 telling people they were signing up for a  
12 month-long contract, but then signing them  
13 up for a year-long contract” were the only  
14 “illegal activities” about which she com-  
15 plained to Equinox.

16 **Evidence:**

17 Plaintiff Depo., Volume II, 334:16-336:23.

23. Undisputed. Gannon also testified  
and admitted in testimony that he believes  
that the type of conduct Kasbarian  
complained of was illegal and is the type  
of conduct that needs to be investigated.

**Evidence:**

Gannon Depo., 51:10-15, 52:23-53:3.

19 24. According to Plaintiff, her other  
20 complaints involved “things against  
21 Equinox policies that were happening as  
22 well.”

23 **Evidence:**

24 Plaintiff Depo., Volume II, 334:16-336:23.

24. Undisputed.

**Evidence:**

26 25. Plaintiff admitted that she could not  
27 identify any statute, ordinance, regulation,  
28 local law, state law, or federal law that was

25. Disputed. Plaintiff testified that she  
believed this conduct was illegal.  
Moreover, Gannon also testified and

1 violated as a result of this alleged activity.

2 **Evidence:**

3 Plaintiff Depo., Volume II, 335:4-336:23.

admitted in testimony that he believes that  
the type of conduct Kasbarian complained  
of was illegal and is the type of conduct  
that needs to be investigated.

5 **Evidence:**

6 Kasbarian Depo., Volume II, 334:16-  
7 336:23; Gannon Depo., 51:10-15, 52:23-  
8 53:3.

9  
10 26. Plaintiff also testified that she com-  
11 plained to Hemedinger and Simonson  
12 about the sales activities of another MA.

26. Undisputed.

13 **Evidence:**

14 Plaintiff Depo., Volume I, 76:17-79:19;  
15 93:10-94:10, 102:10-107:24; 108:1-113:5;  
16 Hemedinger Depo., 45:8-47:19.

**Evidence:**

17  
18 27. Specifically, Plaintiff complained  
19 that this MA was giving away “free  
20 months” to potential members, allowing  
21 “freezes” for members, and offering “three  
22 month” deals.

27. Undisputed. However, Kasbarian  
testified that she complained about  
multiple MAs at West LA, including  
Lauren Beck and Devin Mcvelogue about  
multiple fraudulent and unlawful activities,  
including charging members credit cards  
without their authorization.

23 **Evidence:**

24 Plaintiff Depo., Volume I, 76:17-79:19p  
25 93:10-94:10, 102:10-107:24; 108:1-113:5;  
26 Hemedinger Depo., 45:8-47:19.

**Evidence:**

27 Kasbarian Depo., Vol. I, 69:5-71:5, 71:20-  
72:4, 76:5-25, 82:9-83:19, 98:11-99:4,  
28 102:13-103:25, 112:5-113:2; Kasbarian



Depo., Vol. II, 334:16-25; Kasbarian Decl., ¶ 6; Hemedinger Depo., 43:13-15, 45:8-22, 46:10-22; 76:1-15.

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.

**Evidence:**

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.

**Evidence:**

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.

**Evidence:**

1 Rosen Depo., 37:20-38:21; Cuva Decl.,  
2 ¶ 2.

3  
4 31. Member Services' investigation, 31. Undisputed.  
5 which was conducted by Cuva, confirmed **Evidence:**  
6 that this was an unauthorized sale  
7 processed by a MA at the West LA Club  
8 (Plaintiff was not implicated in this  
9 transaction).

10 **Evidence:**

11 Cuva Decl., ¶ 2.

12  
13 32. This MA was relocating to New 32. Undisputed. However, this MA was  
14 York but, based on the investigation terminated.  
15 results, she was not hired to work for **Evidence:**  
16 Equinox in New York. Kasbarian Depo., Vol. I, 84:7-85:1,

17 **Evidence:**

18 Rosen Depo., 39:8-13.

184:20-23; Kasbarian Decl., ¶ 10;  
19 Hemedinger Decl., ¶ 4; Gannon Depo.,  
20 58:20-59:18, 60:2-21.

21 33. As a result of this member com- 33. Disputed. Senior Director of Loss  
22 plaint, Rosen also asked Cuva to have Prevention, Jim Burger, testified that Jack  
23 Member Services conduct an investigation Gannon contacted him to do an  
24 of sales transactions at the West LA club. investigation at the West LA location and

25 **Evidence:**

26 Rosen Depo., 47:25-6; Cuva Decl., ¶ 3.

reported to him throughout.

27 **Evidence:**

Burger Depo., 70:9-21, 78:4-11, 83:18-

84:3.

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.

**Evidence:**

Rosen Depo., 47:25-48:21.

34. Disputed. Senior Director of Loss Prevention, Jim Burger, testified that Jack Gannon contacted him to do an investigation at the West LA location and reported to him throughout.

**Evidence:**

Burger Depo., 70:9-21, 78:4-11, 83:18-84:3.

35. Cuva instructed Kevin Stanfa (“Stanfa”) (Manager of Compliance and Special Projects), to review sales transactions at the West LA club.

**Evidence:**

Cuva Decl., ¶ 3; Stanfa Decl. ¶ 4.

35. Undisputed.

**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.

**Evidence:**

Cuva Decl., ¶ 3; Stanfa Decl. ¶ 4.

36. Undisputed.

**Evidence:**

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.

**Evidence:**

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.

**Evidence:**

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.”

**Evidence:**

Cuva Decl., ¶ 7, Exh.N.

40. Cuva noted as follows:

- i The 2041 Freezes spreadsheet shows that West LA is an outlier in members who request a freeze in the first 60

37. Disputed. Defendant fails to produce the spreadsheets corroborating those sales.

**Evidence:**

Defendant’s Amended Compendium of Exhibits.

38. Disputed. Defendant fails to produce the spreadsheets corroborating those sales.

**Evidence:**

Defendant’s Amended Compendium of Exhibits.

39. Undisputed as to that statement being written in the email.

**Evidence:**

40. Disputed. Kasbarian was found to have not committed any of the inappropriate and fraudulent conduct or “fake” sales that were being investigated.

**Evidence:**

1 days of membership who also  
2 go on to cancel in the same  
3 year.

4 i The Modification to Direct  
5 Bill spreadsheet reflects  
6 members in the last quarter  
7 of 2014 whose billing was  
8 modified from the credit card  
9 payment type to direct bill  
10 the day before billing ran.  
11 The Company average is four  
12 per club. West LA had 28  
13 modifications to direct bill.

14 i The West LA Breakdown  
15 spreadsheet shows question-  
16 able sales from two MAs  
17 (Plaintiff and the MA moving  
18 to New York). The other  
19 three MAs were reviewed  
20 and did not reflect the same  
21 anomalies seen with Plaintiff  
22 and the MA moving to New  
23 York. The questionable sales  
24 included selling memberships  
25 to members with the credit  
26 card of another member (al-  
27 most universally without re-  
28 questing a referral credit) or

Holmes Depo., 88:4-10, 106:11-19;  
Hemedinger Depo., 51:23-52:23; Rosen  
Depo., 48:22-49:3, 54:3-8, 76:5-14, 98:6-  
17, 101:24-102:7; Gannon Depo., 70:8-  
71:15, 72:7-20, 75:22-76:8, 79:5-10, 81:7-  
11; Gannon Decl., ¶ 6, 10.

1 re-contracting over a previ-  
2 ously 3-day'd membership  
3 and either using the credit  
4 from the previous sale or re-  
5 charging the same credit  
6 card, credit card not present  
7 for numerous sales transac-  
8 tions, 3-day cancellations  
9 with no or just one member  
10 visit, new memberships  
11 which were previously fi-  
12 nance cancelled and had bal-  
13 ances on account that were  
14 waived.

15 **Evidence:**

16 Cuva Decl., ¶ 7, Exh.N.

17  
18 41. Neither Cuva nor Stanfa were aware  
19 Plaintiff had made any complaints about  
20 changes to her compensation plan or about  
21 the alleged activities of other MAs.

22 **Evidence:**

23 Cuva Decl., ¶ 8; Stanfa Decl., ¶ 11.

41. Undisputed. However, Kasbarian  
was found to have not committed any of  
the inappropriate and fraudulent conduct or  
“fake” sales that were being investigated.

**Evidence:**

41. Holmes Depo., 88:4-10, 106:11-19;  
Hemedinger Depo., 51:23-52:23; Rosen  
Depo., 48:22-49:3, 54:3-8, 76:5-14, 98:6-  
17, 101:24-102:7; Gannon Depo., 70:8-  
71:15, 72:7-20, 75:22-76:8, 79:5-10, 81:7-  
11; Gannon Decl., ¶ 6, 10.

**Evidence:**

42. In addition, Burger was asked to interview the sales team at the West LA club.

42. Undisputed.

**Evidence:**

**Evidence:**

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 [sic] and an Assistant General Manager.

43. Undisputed.

**Evidence:**

**Evidence:**

Hemedinger Decl., ¶ 4.

44. A MA was fired on or about January 20, 2015 for improper sales activities.

44. Undisputed.

**Evidence:**

**Evidence:**

Figueroa Decl. ¶ 9; Hemedinger Decl., ¶ 4.

45. At Burger’s request, Member Services provided him with the spreadsheets summarizing their findings of questionable

45. Disputed. Defendant fails to produce the spreadsheets corroborating those sales.

**Evidence:**

1 sales transactions at the West LA club.

Defendant's Amended Compendium of Exhibits.

2 **Evidence:**

3 Burger Depo., 72:13-73:3; Cuva Decl. ¶ 8.

4  
5 46. Burger then met with Cuva and  
6 Stanfa and they discussed their findings re-  
7 garding the questionable sales at the West  
8 LA club.

46. Undisputed.

9 **Evidence:**

10 Burger Depo., 73:13-74:15; Cuva Decl.  
11 ¶ 8; Stanfa Decl., ¶ 9.

**Evidence:**

12  
13 47. Burger had a subsequent meeting  
14 with Stanfa to review the spreadsheets  
15 Member Services had prepared.

47. Disputed. Defendant fails to produce the spreadsheets corroborating those sales.

16 **Evidence:**

17 Burger Depo., 74:16-75:3, 8-22; Stanfa  
18 Decl., ¶ 9.

**Evidence:**

Defendant's Amended Compendium of Exhibits.

19  
20 48. These spreadsheets showed anoma-  
21 lies in various sales transactions, including  
22 whether or not a contract was signed,  
23 whether or not a credit card was present  
24 for the sales transaction, whose credit card  
25 was used for the sales transactions, if an-  
26 other individual's credit card number was  
27 used for the sales transaction instead of the  
28 member's credit card number, whether or

48. Disputed. Defendant fails to produce the spreadsheets corroborating those sales. However, However, Kasbarian was found to have not committed any of the inappropriate and fraudulent conduct or "fake" sales that were being investigated.

**Evidence:**

Defendant's Amended Compendium of Exhibits; Holmes Depo., 88:4-10, 106:11-



1 not a member had any visits to a club, etc. 19; Hemedinger Depo., 51:23-52:23;  
2 **Evidence:** Rosen Depo., 48:22-49:3, 54:3-8, 76:5-14,  
3 Burger Depo., 39:3-40:22; Cuva Decl., ¶ 8; 98:6-17, 101:24-102:7; Gannon Depo.,  
4 Stanfa Decl., ¶¶ 4-5. 70:8-71:15, 72:7-20, 75:22-76:8, 79:5-10,  
5 81:7-11; Gannon Decl., ¶ 6, 10.  
6  
7

8 49. Burger also had a couple of tele- 49. Undisputed.  
9 phone conversations with Stanfa regarding **Evidence:**  
10 the anomalies in various sales activities at  
11 the West LA Club.

12 **Evidence:**  
13 Burger Depo., 76:19-77:1; Stanfa Decl.,  
14 ¶ 9.  
15

16 50. In late January 2015, Burger came to 50. Undisputed.  
17 Los Angeles to interview various employ- **Evidence:**  
18 ees regarding sales activities of the West  
19 LA MAs.

20 **Evidence:**  
21 Burger Depo., 76:6-12; Gannon Decl., ¶ 3;  
22 Hemedinger Decl., ¶ 5.  
23

24 51. Prior to the interviews, Burger and 51. Disputed. Gannon testified that one  
25 Gannon discussed suspending all of the in- MA was not suspended and was not  
26 dividuals interviewed as part of the investi- discussed suspending because there “was  
27 gation pending the results of the investiga- no suspicious conduct linked to him” even  
28 tion. at the beginning of the investigation.

**Evidence:**

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.

**Evidence:**

Hemedinger Decl., ¶ 5.

53. Burger had never heard of or spoken to Plaintiff prior to this investigation meeting.

**Evidence:**

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.

**Evidence:**

Plaintiff Depo., Volume I, 161:11-22, 164:10-22; Plaintiff Depo., Volume II, 305:21-24; , [sic] Burger Depo., 96:18-25.

**Evidence:**

Gannon Depo., 70:8-71:19, 81:7-11; Gannon Decl., ¶ 6, 10.

52. Disputed. Gannon testified that one MA was not suspended and was not discussed suspending because there "was no suspicious conduct linked to him" even at the beginning of the investigation.

**Evidence:**

Gannon Depo., 70:8-71:19, 81:7-11; Gannon Decl., ¶ 6, 10.

53. Undisputed.

**Evidence:**

54. Undisputed.

**Evidence:**

1 55. Plaintiff answered questions about  
2 her sales activities, as well as the activities  
3 of other MAs.

4 **Evidence:**

5 Plaintiff Depo., Volume I, 161:11-22,  
6 164:10-22; Burger Depo., 53:13-54:9.

55. Undisputed. Additionally, at the  
beginning of Kasbarian's interview, she  
notifies Senior Director of Loss  
Prevention, Jim Burger, about the  
fraudulent activity and unauthorized  
membership sales that she observed and  
complained about to management for  
months

9 **Evidence:**

10 Exh. 17; Kasbarian Depo., Vol. I, 158:4-  
11 18, 161:15-162:1, 166:9-167:2; Kasbarian  
12 Decl., ¶¶ 10, 11; Burger Depo., 70:9-21,  
13 78:4-11, 83:18-84:3, 91:5-92:18, 100:3-8,  
14 183:21-184:12.

16 56. While Burger did not find Plaintiff  
17 credible, he felt, at that time, that there was  
18 insufficient information to warrant Plain-  
19 tiff's termination.

20 **Evidence:**

21 Burger Depo, 122:14-17.

56. Undisputed as to Burger concluding  
there was insufficient information to  
warrant any terminable offense committed  
by Burger. Kasbarian was found to have  
not committed any of the inappropriate and  
fraudulent conduct or "fake" sales that  
were being investigated.

23 **Evidence:**

24 Holmes Depo., 88:4-10, 106:11-19;  
25 Hemedinger Depo., 51:23-52:23; Rosen  
26 Depo., 48:22-49:3, 54:3-8, 76:5-14, 98:6-  
27 17, 101:24-102:7; Gannon Depo., 70:8-  
28 71:15, 72:7-20, 75:22-76:8, 79:5-10, 81:7-

11; Gannon Decl., ¶ 6, 10.

57. After Burger completed his inter- views, Burger, Gannon and Hemedinger met briefly to discuss Burger's impression.

**Evidence:**

Burger Depo., 117:16-18, 24-118:6.

58. Gannon then advised Plaintiff that she was being suspended.

**Evidence:**

Plaintiff Depo, Volume I, 174:24-175:3, 11-12; Plaintiff Depo., Volume II, 306:3-7; Gannon Decl., ¶ 4.

57. Undisputed.

**Evidence:**

58. Undisputed. However, she was suspended despite her having been found to not have committed any terminable offense.

**Evidence:**

Holmes Depo., 88:4-10, 106:11-19; Hemedinger Depo., 51:23-52:23; Rosen Depo., 48:22-49:3, 54:3-8, 76:5-14, 98:6-17, 101:24-102:7; Gannon Depo., 70:8-71:15, 72:7-20, 75:22-76:8, 79:5-10, 81:7-11; Gannon Decl., ¶ 6, 10.

59. All of the MAs interviewed as part of the investigation (with the exception of the relatively new MA) were suspended pending investigation.

**Evidence:**

Burger Depo., ¶ [sic] 110:17-23; Gannon

59. Undisputed. One MA was not suspended.

**Evidence:**

Gannon Depo., 70:8-71:15, 81:7-11; Gannon Decl., ¶ 6, 10.

Decl., ¶ 6.

60. Gannon also advised Plaintiff to re- 60. Undisputed.  
port back to the West LA club at 2:00 p.m. **Evidence:**  
the next day for another meeting.

**Evidence:**

Plaintiff Depo., Volume II, 180:11-181:4;  
Gannon Decl., ¶ 5.

61. According to Plaintiff, Equinox told 61. Undisputed.  
her that she would not have access to her **Evidence:**  
email or payroll account and escorted her  
out of the building in front of Equinox's  
clientele, staff and all of her peers.

**Evidence:**

Plaintiff Depo., Volume II, 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 62. Disputed. Defendant did not produce  
email access for hourly employees who any documentation corroborating this  
have been suspended pending investigation policy.  
or who are on leave of absence. **Evidence:**

**Evidence:**

Gannon Decl., ¶ 7.

Defendant's Amended Compendium of  
Evidence.

63. Prior to Burger's interview of Plain- 63. Undisputed as to Gannon preparing  
tiff, Gannon had the Payroll Department the final paycheck; however, this paycheck

1 prepare a final paycheck for Plaintiff so  
2 that she could be paid in accordance with  
3 California law in the event the decision  
4 was made to terminate her employment.

5 **Evidence:**

6 Gannon Decl., ¶ 8.

was prepared by Gannon even before the  
interview in preparation for Kasbarian's  
termination.

**Evidence:**

Gannon Decl., ¶ 8; Exh. 15; Kasbarian  
Depo., Vol. I, 130:21-131:3, 185:5-15;  
Kasbarian Depo., Vol. II, 311:9-22;  
Kasbarian Decl., ¶ 11.

10 64. Plaintiff met with Hemedinger and  
11 Gannon at the West LA club on January  
12 31, 2015 and was told that the investiga-  
13 tion was concluded and that she would be  
14 working at the Marina Del Rey club.

15 **Evidence:**

16 Plaintiff Depo., Volume I, 182:5-183:8;  
17 Plaintiff Depo., Volume II, 306:12-16  
18 [sic], 382:12-17, 390:4-11, Exh. 38;  
19 Hemedinger Depo., 54:17-21, 55:1-8;  
20 Gannon Decl., ¶ 3; Hemedinger Decl., ¶ 6.

64. Undisputed.

**Evidence:**

22 65. The decision was made to reassign  
23 Plaintiff to the Marina Del Rey club be-  
24 cause Equinox wanted to rebuild the team  
25 of MAs in the West LA club and to create  
26 a fresh culture, as a result of the investiga-  
27 tion findings.

28 **Evidence:**

65. Disputed. Defendant's claim that  
Kasbarian was reassigned to Marina Del  
Rey because they wanted to rebuild the  
team of Mas, yet one MA was allowed to  
stay at West LA

**Evidence:**

Rosen Depo., 48:22-49:3, 54:3-8, 98:6-17,

1 Rosen Depo., 71:7-20, 73:15-22, 76:5-14; 76:5-14; Hemedinger Depo., 51:23-52:23;  
2 Holmes Depo., 96:12-98:17; Hemedinger Holmes Depo., 88:4-10, 106:11-19,  
3 Depo., 51:7-52:23; Gannon Decl., ¶ 10. 101:24-102:7; Gannon Depo., 70:8-71:15,  
4 72:7-20, 75:22-76:8, 79:5-10, 81:7-11;  
5 Gannon Decl., ¶ 6, 10.  
6

7 66. Plaintiff's compensation plan would  
8 change once at Marina Del Rey to align  
9 with the compensation plan of Marina Del  
10 Rey MAs. Equinox considered the reas-  
11 signment a lateral move.

12 **Evidence:**

13 Rosen Depo., 87:25-88:4; Gannon Decl.,  
14 ¶ 11.  
15  
16  
17  
18  
19  
20  
21  
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24  
25  
26  
27  
28

66. Undisputed that the compensation  
plan would change; however, disputed as  
to it being a lateral move. Kasbarian is told  
that she would be paid \$9.00/hour at the  
Marina del Rey office, which was a \$10.00  
per hour decrease in hourly rate that she  
was being paid at the West Los Angeles  
branch at \$19.23 per hour. Barry Holmes,  
Vice President of Sales, admits that urban  
clubs, such as the Santa Monica location,  
tend to generate more revenue than  
suburban clubs, like the Marina Del Rey  
location, and the West LA location is a  
higher tier club than urban clubs. Brian  
Hemedinger admits in deposition that they  
thought it would be "best for Tamar, if she  
had the opportunity to be a membership  
advisor at a different location," while  
acknowledging that she would be going to  
a lower tier location than when she first  
started with the company. Moreover, when  
Kasbarian went to West LA she was

promoted from MA to Membership Executive, which it stated on her “Promotion Memo.”

**Evidence:**

Exh. 10, 14; Kasbarian Depo., Vol. I, 50:24-51:1, 89:9-90:19, 279:14-280:12, 182:12-184:19; Kasbarian Depo., Vol. II, 354:1-18, 458:24-459:17; Gannon Decl., 9, 10; Holmes Depo., 28:22-29:2, 50:18-25; Gannon Depo., 32:15-17, 88:25-89:5; Hemedinger Depo., 50:14-20, 51:23-52:23, 81:2-23.

67. Equinox considered the reassignment a lateral move.

**Evidence:**

Rosen Depo., 87:25-88:4; Gannon Decl., ¶ 11.

67. Disputed. Kasbarian is told that she would be paid \$9.00/hour at the Marina del Rey office, which was a \$10.00 per hour decrease in hourly rate that she was being paid at the West Los Angeles branch at \$19.23 per hour. Barry Holmes, Vice President of Sales, admits that urban clubs, such as the Santa Monica location, tend to generate more revenue than suburban clubs, like the Marina Del Rey location, and the West LA location is a higher tier club than urban clubs. Brian Hemedinger admits in deposition that they thought it would be “best for Tamar, if she had the opportunity to be a membership advisor at



a different location,” while acknowledging that she would be going to a lower tier location than when she first started with the company. Moreover, when Kasbarian went to West LA she was promoted from MA to Membership Executive, which it stated on her “Promotion Memo.”

**Evidence:**

Exh. 10, 14; Kasbarian Depo., Vol. I, 50:24-51:1, 89:9-90:19, 279:14-280:12, 182:12-184:19; Kasbarian Depo., Vol. II, 354:1-18, 458:24-459:17; Gannon Decl., 9, 10; Holmes Depo., 28:22-29:2, 50:18-25; Gannon Depo., 32:15-17, 88:25-89:5; Hemedinger Depo., 50:14-20, 51:23-52:23, 81:2-23.

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.

**Evidence:**

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

68. Undisputed.

**Evidence:**

69. Disputed. Kasbarian is told that she would be paid \$9.00/hour at the Marina del Rey office, which was a \$10.00 per hour

1 was a high performing club and the mem-  
2 berships for the Marina Del Rey club were  
3 less expensive than the memberships for  
4 the West LA club.

5 **Evidence:**

6 Hemedinger Depo., 52:18-23; Rosen  
7 Depo., 57:13-19; 58:22-59:14; Holmes  
8 Depo., 31:13-15.

decrease in hourly rate that she was being  
paid at the West Los Angeles branch at  
\$19.23 per hour. Barry Holmes, Vice  
President of Sales, admits that urban clubs,  
such as the Santa Monica location, tend to  
generate more revenue than suburban  
clubs, like the Marina Del Rey location,  
and the West LA location is a higher tier  
club than urban clubs. Brian Hemedinger  
admits in deposition that they thought it  
would be “best for Tamar, if she had the  
opportunity to be a membership advisor at  
a different location,” while acknowledging  
that she would be going to a lower tier  
location than when she first started with  
the company. Moreover, when Kasbarian  
went to West LA she was promoted from  
MA to Membership Executive, which it  
stated on her “Promotion Memo.”

20 **Evidence:**

21 Exh. 10, 14; Kasbarian Depo., Vol. I,  
22 50:24-51:1, 89:9-90:19, 279:14-280:12,  
23 182:12-184:19; Kasbarian Depo., Vol. II,  
24 354:1-18, 458:24-459:17; Gannon Decl., 9,  
25 10; Holmes Depo., 28:22-29:2, 50:18-25;  
26 Gannon Depo., 32:15-17, 88:25-89:5;  
27 Hemedinger Depo., 50:14-20, 51:23-

52:23, 81:2-23.

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.

**Evidence:**

Hemedinger Depo., 52:18-23; Rosen Depo., 57:13-19; 58:22-59:14; Holmes Depo. , [sic] 50:18-51:5.

70. Disputed. Kasbarian is told that she would be paid \$9.00/hour at the Marina del Rey office, which was a \$10.00 per hour decrease in hourly rate that she was being paid at the West Los Angeles branch at \$19.23 per hour. Barry Holmes, Vice President of Sales, admits that urban clubs, such as the Santa Monica location, tend to generate more revenue than suburban clubs, like the Marina Del Rey location, and the West LA location is a higher tier club than urban clubs. Brian Hemedinger admits in deposition that they thought it would be “best for Tamar, if she had the opportunity to be a membership advisor at a different location,” while acknowledging that she would be going to a lower tier location than when she first started with the company. Moreover, when Kasbarian went to West LA she was promoted from MA to Membership Executive, which it stated on her “Promotion Memo.”

**Evidence:**

Exh. 10, 14; Kasbarian Depo., Vol. I, 50:24-51:1, 89:9-90:19, 279:14-280:12, 182:12-184:19; Kasbarian Depo., Vol. II,

354:1-18, 458:24-459:17; Gannon Decl., 9, 10; Holmes Depo., 28:22-29:2, 50:18-25; Gannon Depo., 32:15-17, 88:25-89:5; Hemedinger Depo., 50:14-20, 51:23-52:23, 81:2-23.

71. Gannon emailed Plaintiff the compensation plan for the Marina Del Rey Club on or about January 31, 2015.

**Evidence:**

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.

**Evidence:**

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.

71. Undisputed.

**Evidence:**

72. Undisputed as to no one stating those actual words; however, Kasbarian is told that she would be paid \$9.00/hour at the Marina del Rey office, which was a \$10.00 per hour decrease in hourly rate that she was being paid at the West Los Angeles branch at \$19.23 per hour. Barry Holmes, Vice President of Sales, admits that urban clubs, such as the Santa Monica location, tend to generate more revenue than suburban clubs, like the Marina Del Rey location, and the West LA location is a higher tier club than urban clubs. Brian Hemedinger admits in deposition that they thought it would be “best for Tamar, if she

1 had the opportunity to be a membership  
2 advisor at a different location,” while  
3 acknowledging that she would be going to  
4 a lower tier location than when she first  
5 started with the company. Moreover, when  
6 Kasbarian went to West LA she was  
7 promoted from MA to Membership  
8 Executive, which it stated on her  
9 “Promotion Memo.”

10 **Evidence:**

11 Exh. 10, 14; Kasbarian Depo., Vol. I,  
12 50:24-51:1, 89:9-90:19, 279:14-280:12,  
13 182:12-184:19; Kasbarian Depo., Vol. II,  
14 354:1-18, 458:24-459:17; Gannon Decl., 9,  
15 10; Holmes Depo., 28:22-29:2, 50:18-25;  
16 Gannon Depo., 32:15-17, 88:25-89:5;  
17 Hemedinger Depo., 50:14-20, 51:23-  
18 52:23, 81:2-23.

19  
20 73. Gannon made the decision to reas-  
21 sign Plaintiff to the Marina Del Rey club.

73. Undisputed.

22 **Evidence:**

23 Rosen Depo., 45:7-25. 57:8-12;  
24 Hemedinger Depo., 53:14-18.

**Evidence:**

25  
26 74. Plaintiff was told to report to the  
27 Marina Del Rey club on February 2, 2015  
28 at 9:00 a.m.

74. Undisputed.

**Evidence:**

**Evidence:**

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.

**Evidence:**

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.

75. Undisputed; however, Kasbarian was forced to resign due to intolerable working conditions at Equinox. On February 2, 2015, the day Kasbarian was supposed to start at the Marina del Rey location, she feels she is no longer welcome at Equinox and feels pushed out since she was forced to take a demotion, a significant pay cut and restart her business and clientele base, along with the overwhelming stress of the interrogation and suspension and fear of being terminated that she is forced to resign.

**Evidence:**

Exh. 16; Kasbarian Depo., Vol. I, 186:5-14; Kasbarian Decl., ¶¶ 12-14.

76. Plaintiff's last day of employment was February 2, 2015.

76. Undisputed.

**Evidence:**

**Evidence:**

Plaintiff Depo., Volume I, 186:11-14.

77. Plaintiff never reported to work at the Marina Del Rey club. 77. Undisputed.

**Evidence:**

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. Undisputed.

**Evidence:**

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. Undisputed. However, one MA was able to stay at the West LA location, despite Gannon stating he wanted to rebuild the team by getting rid of all of the Membership Executives at West LA.

**Evidence:**

Plaintiff Depo., Volume II, 342:25-343:5.

**Evidence:**

Rosen Depo., 76:5-14; Hemedinger Depo., 51:23-52:23; Holmes Depo., 101:24-102:7; Gannon Depo., 70:8-71:15, 81:7-11; Gannon Decl., ¶ 6, 10.

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 80. Undisputed.

**Evidence:**

1 membership but signing them up for a year  
2 instead.

3 **Evidence:**

4 Plaintiff Depo., Volume II, 343:6-22.

5  
6 **ISSUE NO. 7:** Plaintiff's third cause of action for breach of contract of the "compensa-  
7 tion plan agreement" survives as a matter of law because Plaintiff did not accept the  
8 terms of the "changed compensation plan agreement" and because of Plaintiff is not an  
9 at-will status. (UF Nos. 1-5, 7-13, 17-21, 75-76.)

10 **Alleged Undisputed Facts and**  
11 **Supporting Evidence**

12 1. Plaintiff was hired as a Membership  
13 Advisor ("MA") at Equinox's Santa  
14 Monica club on or about October 15, 2010.

15 **Evidence:**

16 Plaintiff Depo., Volume I, 36:23-38:10,  
17 Exh. 5 (Offer Letter).

18  
19 2. In January 2014, Plaintiff began  
20 working at Equinox's West Los Angeles  
21 club ("West LA club").

22 **Evidence:**

23 Plaintiff Depo., Volume I, 189:22-190:12,  
24 Exh. 13 (Memo).

**Plaintiff's Responses and**  
**Supporting Evidence**

1. Undisputed.

**Evidence:**

2. Disputed. Kasbarian was promoted  
to the position of Membership Executive at  
the West Los Angeles club ("West LA") in  
October 2013.

**Evidence:**

Exh. 10; Kasbarian Depo., Vol. I, 89:9-  
90:19, 279:14-280:12; Kasbarian Decl., ¶  
5; Hemedinger Depo., 50:4-9; Rosen  
Depo., 20:4-18; Holmes Depo., 39:13-18.



1 3. At the West LA club, MAs were re-  
2 ferred to as Membership Executives.  
3 However, their job duties were the same.

4 **Evidence:**

5 Declaration of Brian Hemedinger  
6 (“Hemedinger Decl.”), ¶ 3.

3. Disputed. A Membership Executive position is considered a promotion from an MA position. Kasbarian was specifically told her position as a Membership Executive was a promotion from an MA, and she received a memo on it, as well as a higher compensation plan. Kasbaian’s hourly rate also increased with her position as a Membership Executive, to \$19.23 per hour, as well as an increase in commissions and bonuses.

12 **Evidence:**

13 Exh. 10; Kasbarian Depo., Vol. I, 89:9-  
14 90:19, 279:14-280:12; Kasbarian Decl., ¶  
15 5; Hemedinger Depo., 50:4-9; Rosen  
16 Depo., 20:4-18; Holmes Depo., 39:13-18.

18 4. During Plaintiff’s employment at  
19 Equinox Santa Monica and West LA  
20 clubs, Jack Gannon (“Gannon”) was the  
21 Vice President of the West Coast.

22 **Evidence:**

23 Declaration of Jack Gannon (“Gannon  
24 Decl.”), ¶¶ 1-2.

4. Undisputed.

22 **Evidence:**

26 5. From about October 2011 through  
27 about June 2015, Brian Hemedinger  
28 (“Hemedinger”) was the Regional Director

5. Undisputed.

**Evidence:**

1 of Operations (“Regional Director”) of the  
2 Santa Monica and West LA clubs.

3 **Evidence:**

4 Plaintiff Depo., Volume I, 270:8,-14,  
5 75:24-76:4; Deposition of Brian  
6 Hemedinger (“Hemedinger Depo.”) 15:3-  
7 10, 41:1-9, 13-16; Hemedinger Decl., ¶ 1.

8  
9 7. Plaintiff’s personnel file includes an 7. Undisputed.  
10 Employee Handbook Receipt Acknowl- **Evidence:**  
11 edgment Form with Plaintiff’s signature  
12 dated October 15, 2010.

13 **Evidence:**

14 Plaintiff Depo., Volume I, 43:18-45:15,  
15 Exh. 8 (Receipt Acknowledgement [sic]  
16 Form); Declaration of Emerson Figueroa  
17 (“Figueroa Decl.”), ¶ 5, Exh. B.

18  
19 8. In particular, the Employee Hand-  
20 book stated:

21 I acknowledge that the re-  
22 ceipt of the Employee Hand-  
23 book in no way creates a con-  
24 tract between Equinox and me.  
25 Moreover, I understand and  
26 agree that all matters discussed  
27 in the Employee Handbook are  
28 subject to change or modifica-  
tion from time to time except  
the At-Will Employment Policy  
specified therein. The At-Will  
Employment Policy represents  
the final and complete agree-  
ment concerning the duration of  
my employment. I acknowl-  
edge that any change in the At-

8. Undisputed, as to what the actual  
document states. However, disputed as to  
whether Kasbarian actually believed her  
employment was “at-will.” Kasbarian  
believes she would not be demoted, have  
her pay cut, her employment suspended,  
or, reassigned, etc. unless it was for good  
cause.

**Evidence:**

Will Employment Policy is effective only if set forth in a written document signed by the CEO of Equinox and myself.

Kasbarian Decl., ¶¶ 4, 11, 13, 14.

**Evidence:**

Plaintiff Depo., Volume I, 43:18-45:15, Exh. 8 (Receipt Acknowledgement [sic] Form); Figueroa Decl., ¶ 5, Exh. B (Receipt Acknowledgement [sic] Form).

9. Plaintiff's personnel file also includes an Offer Letter, dated October 15, 2010, which Plaintiff acknowledged receiving.

9. Undisputed.

**Evidence:**

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.

10. Undisputed, as to what the actual document states. However, disputed as to whether Kasbarian actually believed her employment was "at-will." Kasbarian believes she would not be demoted, have her pay cut, her employment suspended, or, reassigned, etc. unless it was for good cause.

**Evidence:**

employee benefit plans or other aspects of your employment.

Kasbarian Decl., ¶¶ 4, 11, 13, 14.

**Evidence:**

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.

**Evidence:**

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 rights with respect to continuation of your employment with the Company."

**Evidence:**

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

11. Undisputed.

**Evidence:**

12. Undisputed, as to what the actual document states. However, disputed as to whether Kasbarian actually believed her employment was "at-will." Kasbarian believes she would not be demoted, have her pay cut, her employment suspended, or, reassigned, etc. unless it was for good cause.

**Evidence:**

Kasbarian Decl., ¶¶ 4, 11, 13, 14.

13. Undisputed, as to what the actual document states. However, disputed as to whether Kasbarian actually believed her

1 guaranteed employment for a certain time  
2 period; and no one ever told her that she  
3 was anything other than an at-will em-  
4 ployee.

5 **Evidence:**

6 Plaintiff Depo., Volume I, 36:23-38:11,  
7 43:18-45:15, Exh. 5 (Offer Letter), Exh. 8  
8 (Receipt Acknowledgement [sic] Form).

9  
10 17. In or about June 2014, Hemedinger  
11 informed Plaintiff and other MAs that the  
12 compensation plan for all West LA MAs  
13 was being clarified, so that the market bo-  
14 nuses would be paid out individually and  
15 not cumulatively for reaching a certain  
16 sales goal.

17 **Evidence:**

18 Plaintiff Depo., Volume I, 190:16-194:3,  
19 219:7-10; Plaintiff Depo., Volume II,  
20 347:22-348:1; Deposition of Barry Holmes  
21 (“Holmes Depo.”) 69:4-71:12, 73:23-  
22 75:10, Exhs. 201-202; Hemedinger Depo.,  
23 60:11-61:3, 68:12-14, 70:19-72:3.; Rosen  
24 Depo., 33:5-15.

employment was “at-will.” Kasbarian  
believes she would not be demoted, have  
her pay cut, her employment suspended,  
or, reassigned, etc. unless it was for good  
cause.

5 **Evidence:**

6 Kasbarian Decl., ¶¶ 4, 11, 13, 14.

17. Disputed. In June 2014, five months  
after Kasbarian started complaining about  
the fraudulent activities by other  
membership advisors, Kasbarian’s  
commission and bonus check for May  
2014 was suddenly and for the first time  
since she started at West LA 25-33% short  
of what she was owed. Kasbarian  
immediately complained about her unpaid  
commissions and bonuses. After she  
complained defendant permanently cut her  
compensation plan stating that they have  
been paying her too much and in “error”  
and told her that she is “lucky that they  
were not asking her to pay the difference  
back.”

26 **Evidence:**

27 Exhs. 11, 12, 13; Kasbarian Depo., Vol. I,  
28 201:1-206:5, 207:4-20, 209:19-210:8,

221:11-14; Kasbarian Depo., Vol. II, 347:1-18; Kasbarian Decl., ¶¶ 8, 9; Hemedinger Depo., 59:14-60:10; Rosen Depo., 22:15-23:17, 29:18-31:6, Holmes Depo., 73:5-17, 81:7-24; 120:19-121:3; Figueroa Depo., 99:22- 100:5; Gannon Depo., 99:4-7; Hemedinger Depo., 59:14-60:10.

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

**Evidence:**

Plaintiff Depo., Volume I, 190:16-194:3; Hemedinger Depo., 64:18-65:11.

18. Disputed. In June 2014, five months after Kasbarian started complaining about the fraudulent activities by other membership advisors, Kasbarian's commission and bonus check for May 2014 was suddenly and for the first time since she started at West LA 25-33% short of what she was owed. Kasbarian immediately complained about her unpaid commissions and bonuses. After she complained defendant permanently cut her compensation plan stating that they have been paying her too much and in "error" and told her that she is "lucky that they were not asking her to pay the difference back."

**Evidence:**

Exhs. 11, 12, 13; Kasbarian Depo., Vol. I, 201:1-206:5, 207:4-20, 209:19-210:8,

221:11-14; Kasbarian Depo., Vol. II, 347:1-18; Kasbarian Decl., ¶¶ 8, 9; Hemedinger Depo., 59:14-60:10; Rosen Depo., 22:15-23:17, 29:18-31:6, Holmes Depo., 73:5-17, 81:7-24; 120:19-121:3; Figueroa Depo., 99:22- 100:5; Gannon Depo., 99:4-7; Hemedinger Depo., 59:14-60:10.

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.

**Evidence:**

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., 68:125-69:8.

19. Disputed. In June 2014, five months after Kasbarian started complaining about the fraudulent activities by other membership advisors, Kasbarian's commission and bonus check for May 2014 was suddenly and for the first time since she started at West LA 25-33% short of what she was owed. Kasbarian immediately complained about her unpaid commissions and bonuses. After she complained defendant permanently cut her compensation plan stating that they have been paying her too much and in "error" and told her that she is "lucky that they were not asking her to pay the difference back."

**Evidence:**

Exhs. 11, 12, 13; Kasbarian Depo., Vol. I, 201:1-206:5, 207:4-20, 209:19-210:8,

221:11-14; Kasbarian Depo., Vol. II, 347:1-18; Kasbarian Decl., ¶¶ 8, 9; Hemedinger Depo., 59:14-60:10; Rosen Depo., 22:15-23:17, 29:18-31:6, Holmes Depo., 73:5-17, 81:7-24; 120:19-121:3; Figueroa Depo., 99:22- 100:5; Gannon Depo., 99:4-7; Hemedinger Depo., 59:14-60:10.

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”).

**Evidence:**

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,

20. Undisputed as to Kasbarian’s complaints but otherwise disputed. In June 2014, five months after Kasbarian started complaining about the fraudulent activities by other membership advisors, Kasbarian’s commission and bonus check for May 2014 was suddenly and for the first time since she started at West LA 25-33% short of what she was owed. Kasbarian immediately complained about her unpaid commissions and bonuses. After she complained defendant permanently cut her compensation plan stating that they have been paying her too much and in “error” and told her that she is “lucky that they were not asking her to pay the difference back.”

**Evidence:**

Exhs. 11, 12, 13; Kasbarian Depo., Vol. I,



84:19-86:8, Ex. 203.

201:1-206:5, 207:4-20, 209:19-210:8, 221:11-14; Kasbarian Depo., Vol. II, 347:1-18; Kasbarian Decl., ¶¶ 8, 9; Hemedinger Depo., 59:14-60:10; Rosen Depo., 22:15-23:17, 29:18-31:6, Holmes Depo., 73:5-17, 81:7-24; 120:19-121:3; Figueroa Depo., 99:22- 100:5; Gannon Depo., 99:4-7; Hemedinger Depo., 59:14-60:10.

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.

**Evidence:**

Plaintiff Depo., Volume I, 196:8-14, 207:15-22, 220:5-20; Plaintiff Depo., Volume II, 349:5-12.

21. Undisputed to the fact that Kasbarian continued to work at Equinox until February 2015 after she complained; however, disputed as to the rest. In June 2014, five months after Kasbarian started complaining about the fraudulent activities by other membership advisors, Kasbarian's commission and bonus check for May 2014 was suddenly and for the first time since she started at West LA 25-33% short of what she was owed. Kasbarian immediately complained about her unpaid commissions and bonuses. After she complained defendant permanently cut her compensation plan stating that they have been paying her too much and in "error" and told her that she is "lucky that they were not asking her to pay the difference

back.”

**Evidence:**

Exhs. 11, 12, 13; Kasbarian Depo., Vol. I, 201:1-206:5, 207:4-20, 209:19-210:8, 221:11-14; Kasbarian Depo., Vol. II, 347:1-18; Kasbarian Decl., ¶¶ 8, 9; Hemedinger Depo., 59:14-60:10; Rosen Depo., 22:15-23:17, 29:18-31:6, Holmes Depo., 73:5-17, 81:7-24; 120:19-121:3; Figueroa Depo., 99:22- 100:5; Gannon Depo., 99:4-7; Hemedinger Depo., 59:14-60:10.

75. Before reporting to the Marina Del Rey club, Plaintiff submitted her resignation, via email, on the morning of February 2, 2015 effective immediately.

**Evidence:**

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.

75. Undisputed; however, Kasbarian was forced to resign due to intolerable working conditions at Equinox. On February 2, 2015, the day Kasbarian was supposed to start at the Marina del Rey location, she feels she is no longer welcome at Equinox and feels pushed out since she was forced to take a demotion, a significant pay cut and restart her business and clientele base, along with the overwhelming stress of the interrogation and suspension and fear of being terminated that she is forced to resign.

**Evidence:**

Exh. 16; Kasbarian Depo., Vol. I, 186:5-

14; Kasbarian Decl., ¶¶ 12-14.

76. Plaintiff's last day of employment was February 2, 2015. 76. Undisputed.

**Evidence:**

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 survives as a matter of law because Plaintiff does not have an at-will status, because Plaintiff quit, and because Equinox did not have good cause for its actions. (UF Nos. 1-80.)

**Alleged Undisputed Facts and  
Supporting Evidence**

**Plaintiff's Responses and  
Supporting Evidence**

1. Plaintiff was hired as a Membership Advisor ("MA") at Equinox's Santa Monica club on or about October 15, 2010. 1. Undisputed.

**Evidence:**

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. Disputed. Kasbarian was promoted to the position of Membership Executive at the West Los Angeles club ("West LA") in October 2013.

**Evidence:**

Plaintiff Depo., Volume I, 189:22-190:12, Exh. 13 (Memo).

**Evidence:**

Exh. 10; Kasbarian Depo., Vol. I, 89:9-90:19, 279:14-280:12; Kasbarian Decl., ¶ 5; Hemedinger Depo., 50:4-9; Rosen

Depo., 20:4-18; Holmes Depo., 39:13-18.

3. At the West LA club, MAs were referred to as Membership Executives. However, their job duties were the same.

**Evidence:**

Declaration of Brian Hemedinger (“Hemedinger Decl.”), ¶ 3.

3. Disputed. A Membership Executive position is considered a promotion from an MA position. Kasbarian was specifically told her position as a Membership Executive was a promotion from an MA, and she received a memo on it, as well as a higher compensation plan. Kasbaian’s hourly rate also increased with her position as a Membership Executive, to \$19.23 per hour, as well as an increase in commissions and bonuses.

**Evidence:**

Exh. 10; Kasbarian Depo., Vol. I, 89:9-90:19, 279:14-280:12; Kasbarian Decl., ¶ 5; Hemedinger Depo., 50:4-9; Rosen Depo., 20:4-18; Holmes Depo., 39:13-18.

4. During Plaintiff’s employment at Equinox Santa Monica and West LA clubs, Jack Gannon (“Gannon”) was the Vice President of the West Coast.

**Evidence:**

Declaration of Jack Gannon (“Gannon Decl.”), ¶¶ 1-2.

4. Undisputed.

**Evidence:**

5. From about October 2011 through

5. Undisputed.

1 about June 2015, Brian Hemedinger **Evidence:**  
2 (“Hemedinger”) was the Regional Director  
3 of Operations (“Regional Director”) of the  
4 Santa Monica and West LA clubs.

5 **Evidence:**

6 Plaintiff Depo., Volume I, 270:8,-14,  
7 75:24-76:4; Deposition of Brian  
8 Hemedinger (“Hemedinger Depo.”) 15:3-  
9 10, 41:1-9, 13-16; Hemedinger Decl., ¶ 1.  
10

11 6. General Manager Kira Simonson 6. Undisputed.  
12 (“Simonson) supervised Plaintiff at the **Evidence:**  
13 West LA club from about January 2014 to  
14 about January 2015.

15 **Evidence:**

16 Plaintiff Depo., Volume I, 52:11-19.  
17

18 7. Plaintiff’s personnel file includes an 7. Undisputed.  
19 Employee Handbook Receipt Acknowl- **Evidence:**  
20 edgment Form with Plaintiff’s signature  
21 dated October 15, 2010.

22 **Evidence:**

23 Plaintiff Depo., Volume I, 43:18-45:15,  
24 Exh. 8 (Receipt Acknowledgement [sic]  
25 Form); Declaration of Emerson Figueroa  
26 (“Figueroa Decl.”), ¶ 5, Exh. B.  
27

28 8. In particular, the Employee Hand- 8. Undisputed, as to what the actual

1 book stated:

2 I acknowledge that the re-  
3 ceipt of the Employee Hand-  
4 book in no way creates a con-  
5 tract between Equinox and me.  
6 Moreover, I understand and  
7 agree that all matters discussed  
8 in the Employee Handbook are  
9 subject to change or modifica-  
10 tion from time to time except  
11 the At-Will Employment Policy  
12 specified therein. The At-Will  
13 Employment Policy represents  
14 the final and complete agree-  
15 ment concerning the duration of  
16 my employment. I acknowl-  
17 edge that any change in the At-  
18 Will Employment Policy is ef-  
19 fective only if set forth in a  
20 written document signed by the  
21 CEO of Equinox and myself.

22 **Evidence:**

23 Plaintiff Depo., Volume I, 43:18-45:15,  
24 Exh. 8 (Receipt Acknowledgement [sic]  
25 Form); Figueroa Decl., ¶ 5, Exh. B (Re-  
26 ceipt Acknowledgement [sic] Form.

27 9. Plaintiff's personnel file also in-  
28 cludes an Offer Letter, dated October 15,  
2010, which Plaintiff acknowledged re-  
ceiving.

**Evidence:**

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:

document states. However, disputed as to  
whether Kasbarian actually believed her  
employment was "at-will." Kasbarian  
believes she would not be demoted, have  
her pay cut, her employment suspended,  
or, reassigned, etc. unless it was for good  
cause.

**Evidence:**

Kasbarian Decl., ¶¶ 4, 11, 13, 14.

9. Undisputed.

**Evidence:**

10. Undisputed, as to what the actual

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.

**Evidence:**

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.

**Evidence:**

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 rights with re-

document states. However, disputed as to whether Kasbarian actually believed her employment was “at-will.” Kasbarian believes she would not be demoted, have her pay cut, her employment suspended, or, reassigned, etc. unless it was for good cause.

**Evidence:**

Kasbarian Decl., ¶¶ 4, 11, 13, 14.

11. Undisputed.

**Evidence:**

12. Undisputed, as to what the actual document states. However, disputed as to whether Kasbarian actually believed her employment was “at-will.” Kasbarian believes she would not be demoted, have

spect to continuation of your employment with the Company.”

**Evidence:**

Figueroa Decl., ¶ 8, Exh. D.

her pay cut, her employment suspended, or, reassigned, etc. unless it was for good cause.

**Evidence:**

Kasbarian Decl., ¶¶ 4, 11, 13, 14.

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.

**Evidence:**

Plaintiff Depo., Volume I, 36:23-38:11, 43:18-45:15, Exh. 5 (Offer Letter), Exh. 8 (Receipt Acknowledgement [sic] Form).

13. Undisputed, as to what the actual document states. However, disputed as to whether Kasbarian actually believed her employment was “at-will.” Kasbarian believes she would not be demoted, have her pay cut, her employment suspended, or, reassigned, etc. unless it was for good cause.

**Evidence:**

Kasbarian Decl., ¶¶ 4, 11, 13, 14.

14. The Employee Handbook Plaintiff acknowledged receiving also included Equinox’s non-retaliation policy as well as complaint procedures for reporting retaliation.

**Evidence:**

Plaintiff Depo., Volume I, 43:18-45:15, Exh. 8 Receipt of Employee Handbook; Declaration of Emerson Figueroa

14. Undisputed.

**Evidence:**



1 (“Figueroa Decl.”), Exh. A.

2  
3 15. In particular, Equinox’s policy strict-  
4 ly prohibits retaliation against any employ-  
5 ee for “filing a complaint and [Equinox]  
6 will not knowingly permit retaliation by  
7 management, employees, or co-workers.”  
8 Equinox’s policy also prohibits retaliation  
9 against any employee for “using this com-  
10 plaint procedure or for filing, testifying,  
11 assisting, or participating in any manner in  
12 any investigation, proceeding, or hearing  
13 conducted by a governmental enforcement  
14 agency. Additionally, Equinox will not  
15 knowingly permit any retaliation against  
16 any employee who complains of prohibited  
17 harassment or who participates in an inves-  
18 tigation.”

19 **Evidence:**

20 Plaintiff Depo., Volume I, 43:18-45:15,  
21 Exh. 8 Receipt of Employee Handbook;  
22 Figueroa Decl., Exh. A, Employee Hand-  
23 book.

24  
25 16. The complaint procedure as outlined  
26 in the Employee Handbook permits an em-  
27 ployee to report retaliation to his or her  
28 manager, Human Resources, or through

15. Undisputed.

**Evidence:**

16. Undisputed.

**Evidence:**

Equinox's Ethics Hotline.

**Evidence:**

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.

**Evidence:**

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.

17. Disputed. In June 2014, five months after Kasbarian started complaining about the fraudulent activities by other membership advisors, Kasbarian's commission and bonus check for May 2014 was suddenly and for the first time since she started at West LA 25-33% short of what she was owed. Kasbarian immediately complained about her unpaid commissions and bonuses. After she complained defendant permanently cut her compensation plan stating that they have been paying her too much and in "error" and told her that she is "lucky that they were not asking her to pay the difference back."

**Evidence:**

Exhs. 11, 12, 13; Kasbarian Depo., Vol. I, 201:1-206:5, 207:4-20, 209:19-210:8, 221:11-14; Kasbarian Depo., Vol. II, 347:1-18; Kasbarian Decl., ¶¶ 8, 9; Hemedinger Depo., 59:14-60:10; Rosen

Depo., 22:15-23:17, 29:18-31:6, Holmes Depo., 73:5-17, 81:7-24; 120:19-121:3; Figueroa Depo., 99:22- 100:5; Gannon Depo., 99:4-7; Hemedinger Depo., 59:14-60:10.

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

**Evidence:**

Plaintiff Depo., Volume I, 190:16-194:3; Hemedinger Depo., 64:18-65:11.

18. Disputed. In June 2014, five months after Kasbarian started complaining about the fraudulent activities by other membership advisors, Kasbarian's commission and bonus check for May 2014 was suddenly and for the first time since she started at West LA 25-33% short of what she was owed. Kasbarian immediately complained about her unpaid commissions and bonuses. After she complained defendant permanently cut her compensation plan stating that they have been paying her too much and in "error" and told her that she is "lucky that they were not asking her to pay the difference back."

**Evidence:**

Exhs. 11, 12, 13; Kasbarian Depo., Vol. I, 201:1-206:5, 207:4-20, 209:19-210:8, 221:11-14; Kasbarian Depo., Vol. II, 347:1-18; Kasbarian Decl., ¶¶ 8, 9; Hemedinger Depo., 59:14-60:10; Rosen

Depo., 22:15-23:17, 29:18-31:6, Holmes  
Depo., 73:5-17, 81:7-24; 120:19-121:3;  
Figueroa Depo., 99:22- 100:5; Gannon  
Depo., 99:4-7; Hemedinger Depo., 59:14-  
60:10.

19. For the West LA club, Equinox's  
Payroll Department was adding the bonus-  
es together as opposed to giving one of the  
bonuses above depending on the overall  
percentage.

**Evidence:**

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.,  
68:125-69:8.

19. Disputed. In June 2014, five months  
after Kasbarian started complaining about  
the fraudulent activities by other  
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commission and bonus check for May  
2014 was suddenly and for the first time  
since she started at West LA 25-33% short  
of what she was owed. Kasbarian  
immediately complained about her unpaid  
commissions and bonuses. After she  
complained defendant permanently cut her  
compensation plan stating that they have  
been paying her too much and in "error"  
and told her that she is "lucky that they  
were not asking her to pay the difference  
back."

**Evidence:**

Exhs. 11, 12, 13; Kasbarian Depo., Vol. I,  
201:1-206:5, 207:4-20, 209:19-210:8,  
221:11-14; Kasbarian Depo., Vol. II,  
347:1-18; Kasbarian Decl., ¶¶ 8, 9;  
Hemedinger Depo., 59:14-60:10; Rosen

Depo., 22:15-23:17, 29:18-31:6, Holmes Depo., 73:5-17, 81:7-24; 120:19-121:3; Figueroa Depo., 99:22- 100:5; Gannon Depo., 99:4-7; Hemedinger Depo., 59:14-60:10.

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”).

**Evidence:**

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.

20. Undisputed as to Kasbarian’s complaints but otherwise disputed. In June 2014, five months after Kasbarian started complaining about the fraudulent activities by other membership advisors, Kasbarian’s commission and bonus check for May 2014 was suddenly and for the first time since she started at West LA 25-33% short of what she was owed. Kasbarian immediately complained about her unpaid commissions and bonuses. After she complained defendant permanently cut her compensation plan stating that they have been paying her too much and in “error” and told her that she is “lucky that they were not asking her to pay the difference back.”

**Evidence:**

Exhs. 11, 12, 13; Kasbarian Depo., Vol. I, 201:1-206:5, 207:4-20, 209:19-210:8, 221:11-14; Kasbarian Depo., Vol. II, 347:1-18; Kasbarian Decl., ¶¶ 8, 9;

Hemedinger Depo., 59:14-60:10; Rosen Depo., 22:15-23:17, 29:18-31:6, Holmes Depo., 73:5-17, 81:7-24; 120:19-121:3; Figueroa Depo., 99:22- 100:5; Gannon Depo., 99:4-7; Hemedinger Depo., 59:14-60:10.

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.

**Evidence:**

Plaintiff Depo., Volume I, 196:8-14, 207:15-22, 220:5-20; Plaintiff Depo., Volume II, 349:5-12.

21. Undisputed to the fact that Kasbarian continued to work at Equinox until February 2015 after she complained; however, disputed as to the rest. In June 2014, five months after Kasbarian started complaining about the fraudulent activities by other membership advisors, Kasbarian's commission and bonus check for May 2014 was suddenly and for the first time since she started at West LA 25-33% short of what she was owed. Kasbarian immediately complained about her unpaid commissions and bonuses. After she complained defendant permanently cut her compensation plan stating that they have been paying her too much and in "error" and told her that she is "lucky that they were not asking her to pay the difference back."

**Evidence:**

Exhs. 11, 12, 13; Kasbarian Depo., Vol. I,

201:1-206:5, 207:4-20, 209:19-210:8, 221:11-14; Kasbarian Depo., Vol. II, 347:1-18; Kasbarian Decl., ¶¶ 8, 9; Hemedinger Depo., 59:14-60:10; Rosen Depo., 22:15-23:17, 29:18-31:6, Holmes Depo., 73:5-17, 81:7-24; 120:19-121:3; Figueroa Depo., 99:22- 100:5; Gannon Depo., 99:4-7; Hemedinger Depo., 59:14-60:10.

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.

**Evidence:**

Plaintiff Depo., Volume I, 81:6-21; 82:5-83:23, 94:14-97:9.

22. Undisputed. However, Kasbarian testified that she complained about multiple MAs at West LA, including Lauren Beck and Devin Mcvelogue about multiple fraudulent and unlawful activities, including charging members credit cards without their authorization.

**Evidence:**

Kasbarian Depo., Vol. I, 69:5-71:5, 71:20-72:4, 76:5-25, 82:9-83:19, 98:11-99:4, 102:13-103:25, 112:5-113:2; Kasbarian Depo., Vol. II, 334:16-25; Kasbarian Decl., ¶ 6; Hemedinger Depo., 43:13-15, 45:8-22, 46:10-22; 76:1-15.

23. According to Plaintiff, “charging credit cards without people’s approval and telling people they were signing up for a

23. Undisputed. Gannon also testified and admitted in testimony that he believes that the type of conduct Kasbarian

1 month-long contract, but then signing them complained of was illegal and is the type  
2 up for a year-long contract” were the only of conduct that needs to be investigated.  
3 “illegal activities” about which she com- **Evidence:**  
4 plained to Equinox. Gannon Depo., 51:10-15, 52:23-53:3.

5 **Evidence:**

6 Plaintiff Depo., Volume II, 334:16-336:23.  
7

8 24. According to Plaintiff, her other 24. Undisputed.  
9 complaints involved “things against **Evidence:**  
10 Equinox policies that were happening as  
11 well.”

12 **Evidence:**

13 Plaintiff Depo., Volume II, 334:16-336:23.  
14

15 25. Plaintiff admitted that she could not 25. Disputed. Plaintiff testified that she  
16 identify any statute, ordinance, regulation, believed this conduct was illegal.  
17 local law, state law, or federal law that was Moreover, Gannon also testified and  
18 violated as a result of this alleged activity. admitted in testimony that he believes that

19 **Evidence:**

20 Plaintiff Depo., Volume II, 335:4-336:23.  
21

the type of conduct Kasbarian complained  
of was illegal and is the type of conduct  
that needs to be investigated.

22 **Evidence:**

23 Kasbarian Depo., Volume II, 334:16-  
24 336:23; Gannon Depo., 51:10-15, 52:23-  
25 53:3.  
26

27 26. Plaintiff also testified that she com- 26. Undisputed.  
28 plained to Hemedinger and Simonson **Evidence:**



1 about the sales activities of another MA.

2 **Evidence:**

3 Plaintiff Depo., Volume I, 76:17-79:19;  
4 93:10-94:10, 102:10-107:24; 108:1-113:5;  
5 Hemedinger Depo., 45:8-47:19.  
6

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.

12 **Evidence:**

13 Plaintiff Depo., Volume I, 76:17-79:19p  
14 93:10-94:10, 102:10-107:24; 108:1-113:5;  
15 Hemedinger Depo., 45:8-47:19.  
16  
17  
18  
19  
20  
21

22 28. In or around December 2014, COO  
23 Rosen was touring the West LA club when  
24 he was told by a member that a MA had  
25 charged a membership to another mem-  
26 ber’s credit card without that member’s  
27 authorization.

28 **Evidence:**

27. Undisputed. However, Kasbarian  
testified that she complained about  
multiple MAs at West LA, including  
Lauren Beck and Devin Mcvelogue about  
multiple fraudulent and unlawful activities,  
including charging members credit cards  
without their authorization.

**Evidence:**

Kasbarian Depo., Vol. I, 69:5-71:5, 71:20-  
72:4, 76:5-25, 82:9-83:19, 98:11-99:4,  
102:13-103:25, 112:5-113:2; Kasbarian  
Depo., Vol. II, 334:16-25; Kasbarian  
Decl., ¶ 6; Hemedinger Depo., 43:13-15,  
45:8-22, 46:10-22; 76:1-15.

28. Undisputed.

**Evidence:**

1 Rosen Depo., 37:20-38:18; Declaration of  
2 Tracy Cuva (“Cuva Decl.”), ¶ 2.

3  
4 29. Member Services is Equinox’s bill- 29. Undisputed.  
5 ing department (centrally based in New **Evidence:**  
6 York) which handles membership con-  
7 tracts and membership sales, including  
8 auditing of membership sales.

9 **Evidence:**

10 Cuva Decl., ¶ 1.

11  
12 30. Rosen contacted Tracy Cuva, Senior 30. Undisputed.  
13 Director of Equinox’s Member Services **Evidence:**  
14 Department, gave her the information re-  
15 ceived from the member, and asked  
16 Member Services to investigate this sale.

17 **Evidence:**

18 Rosen Depo., 37:20-38:21; Cuva Decl.,  
19 ¶ 2.

20  
21 31. Member Services’ investigation, 31. Undisputed.  
22 which was conducted by Cuva, confirmed **Evidence:**  
23 that this was an unauthorized sale  
24 processed by a MA at the West LA Club  
25 (Plaintiff was not implicated in this  
26 transaction).

27 **Evidence:**

1 Cuva Decl., ¶ 2.

2  
3 32. This MA was relocating to New  
4 York but, based on the investigation  
5 results, she was not hired to work for  
6 Equinox in New York.

7 **Evidence:**

8 Rosen Depo., 39:8-13.

32. Undisputed. However, this MA was  
terminated.

**Evidence:**

Kasbarian Depo., Vol. I, 84:7-85:1,  
184:20-23; Kasbarian Decl., ¶ 10;  
Hemedinger Decl., ¶ 4; Gannon Depo.,  
58:20-59:18, 60:2-21.

9  
10  
11 33. As a result of this member com-  
12 plaint, Rosen also asked Cuva to have  
13 Member Services conduct an investigation  
14 of sales transactions at the West LA club.

15 **Evidence:**

16 Rosen Depo., 47:25-6; Cuva Decl., ¶ 3.

33. Disputed. Senior Director of Loss  
Prevention, Jim Burger, testified that Jack  
Gannon contacted him to do an  
investigation at the West LA location and  
reported to him throughout.

**Evidence:**

Burger Depo., 70:9-21, 78:4-11, 83:18-  
84:3.

17  
18  
19  
20 34. Apart from requesting that the inves-  
21 tigation be conducted and asking Jim  
22 Burger (Senior Director of Loss Preven-  
23 tion) to travel to the West LA club and  
24 continue the investigation after Member  
25 Services finished their portion of the inves-  
26 tigation, Rosen did not participate in that  
27 investigation.

28 **Evidence:**

34. Disputed. Senior Director of Loss  
Prevention, Jim Burger, testified that Jack  
Gannon contacted him to do an  
investigation at the West LA location and  
reported to him throughout.

**Evidence:**

Burger Depo., 70:9-21, 78:4-11, 83:18-  
84:3.

1 Rosen Depo., 47:25-48:21.

2  
3 35. Cuva instructed Kevin Stanfa 35. Undisputed.  
4 (“Stanfa”) (Manager of Compliance and **Evidence:**  
5 Special Projects), to review sales transac-  
6 tions at the West LA club.

7 **Evidence:**

8 Cuva Decl., ¶ 3; Stanfa Decl. ¶ 4.  
9

10 36. After Stanfa reported finding various 36. Undisputed.  
11 anomalies associated with sales transac- **Evidence:**  
12 tions at the West LA club, Cuva instructed  
13 Stanfa to prepare a summary detailing his  
14 findings.

15 **Evidence:**

16 Cuva Decl., ¶ 3; Stanfa Decl. ¶ 4.  
17

18 37. Stanfa then prepared a workbook 37. Disputed. Defendant fails to produce  
19 with three spreadsheets regarding the fol- the spreadsheets corroborating those sales.  
20 lowing sales activities: (1) 2014 Freezes; **Evidence:**  
21 (2) Modification to Direct Bill; and Defendant’s Amended Compendium of  
22 (3) West LA Sales Breakdown. Exhibits.

23 **Evidence:**

24 Stanfa Decl., ¶ 4.  
25

26 38. Once these were prepared, Cuva 38. Disputed. Defendant fails to produce  
27 emailed the spreadsheets to Rosen, Holmes the spreadsheets corroborating those sales.  
28 and Gannon and summarized the results of **Evidence:**

the Member Services investigation.

Defendant's Amended Compendium of Exhibits.

**Evidence:**

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. Undisputed as to that statement being written in the email.

**Evidence:**

**Evidence:**

Cuva Decl., ¶ 7, Exh.N.

40. Cuva noted as follows:

40. Disputed. Kasbarian was found to have not committed any of the inappropriate and fraudulent conduct or "fake" sales that were being investigated.

**Evidence:**

i The 2041 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.

Holmes Depo., 88:4-10, 106:11-19; Hemedinger Depo., 51:23-52:23; Rosen Depo., 48:22-49:3, 54:3-8, 76:5-14, 98:6-17, 101:24-102:7; Gannon Depo., 70:8-71:15, 72:7-20, 75:22-76:8, 79:5-10, 81:7-11; Gannon Decl., ¶ 6, 10.

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

1 per club. West LA had 28  
2 modifications to direct bill.

3 i The West LA Breakdown  
4 spreadsheet shows question-  
5 able sales from two MAs  
6 (Plaintiff and the MA moving  
7 to New York). The other  
8 three MAs were reviewed  
9 and did not reflect the same  
10 anomalies seen with Plaintiff  
11 and the MA moving to New  
12 York. The questionable sales  
13 included selling memberships  
14 to members with the credit  
15 card of another member (al-  
16 most universally without re-  
17 questing a referral credit) or  
18 re-contracting over a previ-  
19 ously 3-day'd membership  
20 and either using the credit  
21 from the previous sale or re-  
22 charging the same credit  
23 card, credit card not present  
24 for numerous sales transac-  
25 tions, 3-day cancellations  
26 with no or just one member  
27 visit, new memberships  
28 which were previously fi-

1 nance cancelled and had bal-  
2 ances on account that were  
3 waived.

4 **Evidence:**

5 Cuva Decl., ¶ 7, Exh.N.  
6

7 41. Neither Cuva nor Stanfa were aware  
8 Plaintiff had made any complaints about  
9 changes to her compensation plan or about  
10 the alleged activities of other MAs.

11 **Evidence:**

12 Cuva Decl., ¶ 8; Stanfa Decl., ¶ 11.  
13  
14  
15  
16  
17  
18  
19  
20

41. Undisputed. However, Kasbarian  
was found to have not committed any of  
the inappropriate and fraudulent conduct or  
“fake” sales that were being investigated.

**Evidence:**

41. Holmes Depo., 88:4-10, 106:11-19;  
Hemedinger Depo., 51:23-52:23; Rosen  
Depo., 48:22-49:3, 54:3-8, 76:5-14, 98:6-  
17, 101:24-102:7; Gannon Depo., 70:8-  
71:15, 72:7-20, 75:22-76:8, 79:5-10, 81:7-  
11; Gannon Decl., ¶ 6, 10.

**Evidence:**

21 42. In addition, Burger was asked to in-  
22 terview the sales team at the West LA  
23 club.  
24

**Evidence:**

25 Deposition of Jim Burger (“Burger  
26 Depo.”), 72:4-73:3, 73:13-75:22, 76:6-12.  
27

42. Undisputed.

**Evidence:**

28 43. When Burger came to Los Angeles

43. Undisputed.

1 to conduct his interviews in late January **Evidence:**  
2 2015, the West LA club's sales team con-  
3 sisted of three MAs, Plaintiff and two  
4 other MAs who were supervised by the  
5 Simonson [sic] and an Assistant General  
6 Manager.

7 **Evidence:**  
8 Hemedinger Decl., ¶ 4.

9  
10 44. A MA was fired on or about January 44. Undisputed.  
11 20, 2015 for improper sales activities. **Evidence:**

12 **Evidence:**  
13 Figueroa Decl. ¶ 9; Hemedinger Decl., ¶ 4.

14  
15 45. At Burger's request, Member Ser- 45. Disputed. Defendant fails to produce  
16 vices provided him with the spreadsheets the spreadsheets corroborating those sales.  
17 summarizing their findings of questionable **Evidence:**  
18 sales transactions at the West LA club. Defendant's Amended Compendium of  
19 **Evidence:** Exhibits.  
20 Burger Depo., 72:13-73:3; Cuva Decl. ¶ 8.

21  
22 46. Burger then met with Cuva and 46. Undisputed.  
23 Stanfa and they discussed their findings re- **Evidence:**  
24 garding the questionable sales at the West  
25 LA club.

26 **Evidence:**  
27 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.

**Evidence:**

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.

**Evidence:**

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

47. Disputed. Defendant fails to produce the spreadsheets corroborating those sales.

**Evidence:**

Defendant's Amended Compendium of Exhibits.

48. Disputed. Defendant fails to produce the spreadsheets corroborating those sales. However, However, Kasbarian was found to have not committed any of the inappropriate and fraudulent conduct or "fake" sales that were being investigated.

**Evidence:**

Defendant's Amended Compendium of Exhibits; Holmes Depo., 88:4-10, 106:11-19; Hemedinger Depo., 51:23-52:23; Rosen Depo., 48:22-49:3, 54:3-8, 76:5-14, 98:6-17, 101:24-102:7; Gannon Depo., 70:8-71:15, 72:7-20, 75:22-76:8, 79:5-10, 81:7-11; Gannon Decl., ¶ 6, 10.

49. Undisputed.

**Evidence:**

1 the West LA Club.

2 **Evidence:**

3 Burger Depo., 76:19-77:1; Stanfa Decl.,  
4 ¶ 9.

5  
6 50. In late January 2015, Burger came to 50. Undisputed.  
7 Los Angeles to interview various employ- **Evidence:**  
8 ees regarding sales activities of the West  
9 LA MAs.

10 **Evidence:**

11 Burger Depo., 76:6-12; Gannon Decl., ¶ 3;  
12 Hemedinger Decl., ¶ 5.

13  
14 51. Prior to the interviews, Burger and 51. Disputed. Gannon testified that one  
15 Gannon discussed suspending all of the in- MA was not suspended and was not  
16 dividuals interviewed as part of the investi- discussed suspending because there “was  
17 gation pending the results of the investiga- no suspicious conduct linked to him” even  
18 tion.

19 **Evidence:**

20 Burger Depo., 116:12-117:12.

**Evidence:**

Gannon Depo., 70:8-71:19, 81:7-11;  
Gannon Decl., ¶ 6, 10.

21  
22  
23 52. Burger then interviewed the follow- 52. Disputed. Gannon testified that one  
24 ing individuals: (1) the Assistant General MA was not suspended and was not  
25 Manager; (2) Plaintiff; (3) another MA; discussed suspending because there “was  
26 (4) a relatively newly hired MA; and no suspicious conduct linked to him” even  
27 (5) Simonson. at the beginning of the investigation.

28 **Evidence:**

**Evidence:**

1 Hemedinger Decl., ¶ 5.

Gannon Depo., 70:8-71:19, 81:7-11;

2 Gannon Decl., ¶ 6, 10.

3  
4 53. Burger had never heard of or spoken  
5 to Plaintiff prior to this investigation meet-  
6 ing.

53. Undisputed.

7 **Evidence:**

8 Burger Depo., 35:22-24.

9  
10 54. On January 30, 2015, Plaintiff met  
11 with Burger and Leah Ball of Human  
12 Resources regarding West LA's sales prac-  
13 tices.

54. Undisputed.

14 **Evidence:**

15 Plaintiff Depo., Volume I, 161:11-22,  
16 164:10-22; Plaintiff Depo., Volume II,  
17 305:21-24; , [sic] Burger Depo., 96:18-25.

18  
19 55. Plaintiff answered questions about  
20 her sales activities, as well as the activities  
21 of other MAs.

55. Undisputed. Additionally, at the  
beginning of Kasbarian's interview, she  
notifies Senior Director of Loss  
Prevention, Jim Burger, about the  
fraudulent activity and unauthorized  
membership sales that she observed and  
complained about to management for  
months

22 **Evidence:**

23 Plaintiff Depo., Volume I, 161:11-22,  
24 164:10-22; Burger Depo., 53:13-54:9.

27 **Evidence:**

28 Exh. 17; Kasbarian Depo., Vol. I, 158:4-

1 18, 161:15-162:1, 166:9-167:2; Kasbarian  
2 Decl., ¶¶ 10, 11; Burger Depo., 70:9-21,  
3 78:4-11, 83:18-84:3, 91:5-92:18, 100:3-8,  
4 183:21-184:12.

5  
6 56. While Burger did not find Plaintiff  
7 credible, he felt, at that time, that there was  
8 insufficient information to warrant Plain-  
9 tiff's termination.

10 **Evidence:**

11 Burger Depo., 122:14-17.  
12  
13

56. Undisputed as to Burger concluding  
there was insufficient information to  
warrant any terminable offense committed  
by Burger. Kasbarian was found to have  
not committed any of the inappropriate and  
fraudulent conduct or "fake" sales that  
were being investigated.

14 **Evidence:**

15 Holmes Depo., 88:4-10, 106:11-19;  
16 Hemedinger Depo., 51:23-52:23; Rosen  
17 Depo., 48:22-49:3, 54:3-8, 76:5-14, 98:6-  
18 17, 101:24-102:7; Gannon Depo., 70:8-  
19 71:15, 72:7-20, 75:22-76:8, 79:5-10, 81:7-  
20 11; Gannon Decl., ¶ 6, 10.

21  
22 57. After Burger completed his inter-  
23 views, Burger, Gannon and Hemedinger  
24 met briefly to discuss Burger's impression.

25 **Evidence:**

26 Burger Depo., 117:16-18, 24-118:6.  
27

57. Undisputed.

**Evidence:**

28 58. Gannon then advised Plaintiff that

58. Undisputed. However, she was

1 she was being suspended.

2 **Evidence:**

3 Plaintiff Depo., Volume I, 174:24-175:3,  
4 11-12; Plaintiff Depo., Volume II, 306:3-7;  
5 Gannon Decl., ¶ 4.

suspended despite her having been found  
to not have committed any terminable  
offense.

6 **Evidence:**

7 Holmes Depo., 88:4-10, 106:11-19;  
8 Hemedinger Depo., 51:23-52:23; Rosen  
9 Depo., 48:22-49:3, 54:3-8, 76:5-14, 98:6-  
10 17, 101:24-102:7; Gannon Depo., 70:8-  
11 71:15, 72:7-20, 75:22-76:8, 79:5-10, 81:7-  
12 11; Gannon Decl., ¶ 6, 10.

13 59. All of the MAs interviewed as part of  
14 the investigation (with the exception of the  
15 relatively new MA) were suspended pend-  
16 ing investigation.

17 **Evidence:**

18 Burger Depo., ¶ [sic] 110:17-23; Gannon  
19 Decl., ¶ 6.

59. Undisputed. One MA was not  
suspended.

20 **Evidence:**

21 Gannon Depo., 70:8-71:15, 81:7-11;  
22 Gannon Decl., ¶ 6, 10.

23 60. Gannon also advised Plaintiff to re-  
24 port back to the West LA club at 2:00 p.m.  
25 the next day for another meeting.

26 **Evidence:**

27 Plaintiff Depo., Volume II, 180:11-181:4;  
28 Gannon Decl., ¶ 5.

60. Undisputed.

**Evidence:**

61. According to Plaintiff, Equinox told  
her that she would not have access to her

61. Undisputed.

**Evidence:**

1 email or payroll account and escorted her  
2 out of the building in front of Equinox's  
3 clientele, staff and all of her peers.

4 **Evidence:**

5 Plaintiff Depo., Volume II, 174:24-175:21;  
6 Plaintiff Depo., Volume II, 305:21-306:2,  
7 364:17-20; Plaintiff's Complaint, 6:5-7.

8  
9 62. It is Equinox's policy to turn off  
10 email access for hourly employees who  
11 have been suspended pending investigation  
12 or who are on leave of absence.

13 **Evidence:**

14 Gannon Decl., ¶ 7.

15  
16 63. Prior to Burger's interview of Plain-  
17 tiff, Gannon had the Payroll Department  
18 prepare a final paycheck for Plaintiff so  
19 that she could be paid in accordance with  
20 California law in the event the decision  
21 was made to terminate her employment.

22 **Evidence:**

23 Gannon Decl., ¶ 8.

24  
25  
26  
27 64. Plaintiff met with Hemedinger and  
28 Gannon at the West LA club on January

62. Disputed. Defendant did not produce  
any documentation corroborating this  
policy.

**Evidence:**

Defendant's Amended Compendium of  
Evidence.

63. Undisputed as to Gannon preparing  
the final paycheck; however, this paycheck  
was prepared by Gannon even before the  
interview in preparation for Kasbarian's  
termination.

**Evidence:**

Gannon Decl., ¶ 8; Exh. 15; Kasbarian  
Depo., Vol. I, 130:21-131:3, 185:5-15;  
Kasbarian Depo., Vol. II, 311:9-22;  
Kasbarian Decl., ¶ 11.

64. Undisputed.

**Evidence:**

31, 2015 and was told that the investigation was concluded and that she would be working at the Marina Del Rey club.

**Evidence:**

Plaintiff Depo., Volume I, 182:5-183:8; Plaintiff Depo., Volume II, 306:12:16 [sic], 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.

**Evidence:**

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.

65. Disputed. Defendant's claim that Kasbarian was reassigned to Marina Del Rey because they wanted to rebuild the team of Mas, yet one MA was allowed to stay at West LA

**Evidence:**

Rosen Depo., 48:22-49:3, 54:3-8, 98:6-17, 76:5-14; Hemedinger Depo., 51:23-52:23; Holmes Depo., 88:4-10, 106:11-19, 101:24-102:7; Gannon Depo., 70:8-71:15, 72:7-20, 75:22-76:8, 79:5-10, 81:7-11; Gannon Decl., ¶ 6, 10.

66. Undisputed that the compensation plan would change; however, disputed as to it being a lateral move. Kasbarian is told that she would be paid \$9.00/hour at the Marina del Rey office, which was a \$10.00

**Evidence:**

Rosen Depo., 87:25-88:4; Gannon Decl., ¶ 11.

per hour decrease in hourly rate that she was being paid at the West Los Angeles branch at \$19.23 per hour. Barry Holmes, Vice President of Sales, admits that urban clubs, such as the Santa Monica location, tend to generate more revenue than suburban clubs, like the Marina Del Rey location, and the West LA location is a higher tier club than urban clubs. Brian Hemedinger admits in deposition that they thought it would be “best for Tamar, if she had the opportunity to be a membership advisor at a different location,” while acknowledging that she would be going to a lower tier location than when she first started with the company. Moreover, when Kasbarian went to West LA she was promoted from MA to Membership Executive, which it stated on her “Promotion Memo.”

**Evidence:**

Exh. 10, 14; Kasbarian Depo., Vol. I, 50:24-51:1, 89:9-90:19, 279:14-280:12, 182:12-184:19; Kasbarian Depo., Vol. II, 354:1-18, 458:24-459:17; Gannon Decl., 9, 10; Holmes Depo., 28:22-29:2, 50:18-25; Gannon Depo., 32:15-17, 88:25-89:5; Hemedinger Depo., 50:14-20, 51:23-



52:23, 81:2-23.

67. Equinox considered the reassignment a lateral move.

**Evidence:**

Rosen Depo., 87:25-88:4; Gannon Decl., ¶ 11.

67. Disputed. Kasbarian is told that she would be paid \$9.00/hour at the Marina del Rey office, which was a \$10.00 per hour decrease in hourly rate that she was being paid at the West Los Angeles branch at \$19.23 per hour. Barry Holmes, Vice President of Sales, admits that urban clubs, such as the Santa Monica location, tend to generate more revenue than suburban clubs, like the Marina Del Rey location, and the West LA location is a higher tier club than urban clubs. Brian Hemedinger admits in deposition that they thought it would be “best for Tamar, if she had the opportunity to be a membership advisor at a different location,” while acknowledging that she would be going to a lower tier location than when she first started with the company. Moreover, when Kasbarian went to West LA she was promoted from MA to Membership Executive, which it stated on her “Promotion Memo.”

**Evidence:**

Exh. 10, 14; Kasbarian Depo., Vol. I, 50:24-51:1, 89:9-90:19, 279:14-280:12, 182:12-184:19; Kasbarian Depo., Vol. II,

354:1-18, 458:24-459:17; Gannon Decl., 9, 10; Holmes Depo., 28:22-29:2, 50:18-25; Gannon Depo., 32:15-17, 88:25-89:5; Hemedinger Depo., 50:14-20, 51:23-52:23, 81:2-23.

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.

**Evidence:**

Plaintiff Depo., Volume II, 390:4-11, Exh. 38; Gannon Decl., ¶ 12.

68. Undisputed.

**Evidence:**

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.

**Evidence:**

Hemedinger Depo., 52:18-23; Rosen Depo., 57:13-19; 58:22-59:14; Holmes Depo., 31:13-15.

69. Disputed. Kasbarian is told that she would be paid \$9.00/hour at the Marina del Rey office, which was a \$10.00 per hour decrease in hourly rate that she was being paid at the West Los Angeles branch at \$19.23 per hour. Barry Holmes, Vice President of Sales, admits that urban clubs, such as the Santa Monica location, tend to generate more revenue than suburban clubs, like the Marina Del Rey location, and the West LA location is a higher tier club than urban clubs. Brian Hemedinger admits in deposition that they thought it would be "best for Tamar, if she had the

1 opportunity to be a membership advisor at  
2 a different location,” while acknowledging  
3 that she would be going to a lower tier  
4 location than when she first started with  
5 the company. Moreover, when Kasbarian  
6 went to West LA she was promoted from  
7 MA to Membership Executive, which it  
8 stated on her “Promotion Memo.”

9 **Evidence:**

10 Exh. 10, 14; Kasbarian Depo., Vol. I,  
11 50:24-51:1, 89:9-90:19, 279:14-280:12,  
12 182:12-184:19; Kasbarian Depo., Vol. II,  
13 354:1-18, 458:24-459:17; Gannon Decl., 9,  
14 10; Holmes Depo., 28:22-29:2, 50:18-25;  
15 Gannon Depo., 32:15-17, 88:25-89:5;  
16 Hemedinger Depo., 50:14-20, 51:23-  
17 52:23, 81:2-23.

18  
19 70. It was easier to sell more member-  
20 ships at the Marina Del Rey club than the  
21 West LA club because the Marina Del Rey  
22 memberships were less expensive.

23 **Evidence:**

24 Hemedinger Depo., 52:18-23; Rosen  
25 Depo., 57:13-19; 58:22-59:14; Holmes  
26 Depo. , [sic] 50:18-51:5.

70. Disputed. Kasbarian is told that she  
would be paid \$9.00/hour at the Marina del  
Rey office, which was a \$10.00 per hour  
decrease in hourly rate that she was being  
paid at the West Los Angeles branch at  
\$19.23 per hour. Barry Holmes, Vice  
President of Sales, admits that urban clubs,  
such as the Santa Monica location, tend to  
generate more revenue than suburban  
clubs, like the Marina Del Rey location,

1 and the West LA location is a higher tier  
2 club than urban clubs. Brian Hemedinger  
3 admits in deposition that they thought it  
4 would be “best for Tamar, if she had the  
5 opportunity to be a membership advisor at  
6 a different location,” while acknowledging  
7 that she would be going to a lower tier  
8 location than when she first started with  
9 the company. Moreover, when Kasbarian  
10 went to West LA she was promoted from  
11 MA to Membership Executive, which it  
12 stated on her “Promotion Memo.”

13 **Evidence:**

14 Exh. 10, 14; Kasbarian Depo., Vol. I,  
15 50:24-51:1, 89:9-90:19, 279:14-280:12,  
16 182:12-184:19; Kasbarian Depo., Vol. II,  
17 354:1-18, 458:24-459:17; Gannon Decl., 9,  
18 10; Holmes Depo., 28:22-29:2, 50:18-25;  
19 Gannon Depo., 32:15-17, 88:25-89:5;  
20 Hemedinger Depo., 50:14-20, 51:23-  
21 52:23, 81:2-23.

22  
23 71. Gannon emailed Plaintiff the com-  
24 pensation plan for the Marina Del Rey  
25 Club on or about January 31, 2015.

26 **Evidence:**

27 Plaintiff Depo., Volume I, 246:19-247:2;  
28

71. Undisputed.

**Evidence:**

1 Gannon Decl., ¶ 12.

2  
3 72. Plaintiff testified that no one from  
4 Equinox ever told her that she was being  
5 “terminated” or “demoted” as part of her  
6 reassignment to the Marina Del Rey club.

7 **Evidence:**

8 Plaintiff Depo., Volume I, 171:10-172:7;  
9 Plaintiff Depo., Volume II, 306:17-310:19,  
10 363:24-364:3; Gannon Decl., ¶ 13;  
11 Hemedinger Decl., ¶ 7.

72. Undisputed as to no one stating those  
actual words; however, Kasbarian is told  
that she would be paid \$9.00/hour at the  
Marina del Rey office, which was a \$10.00  
per hour decrease in hourly rate that she  
was being paid at the West Los Angeles  
branch at \$19.23 per hour. Barry Holmes,  
Vice President of Sales, admits that urban  
clubs, such as the Santa Monica location,  
tend to generate more revenue than  
suburban clubs, like the Marina Del Rey  
location, and the West LA location is a  
higher tier club than urban clubs. Brian  
Hemedinger admits in deposition that they  
thought it would be “best for Tamar, if she  
had the opportunity to be a membership  
advisor at a different location,” while  
acknowledging that she would be going to  
a lower tier location than when she first  
started with the company. Moreover, when  
Kasbarian went to West LA she was  
promoted from MA to Membership  
Executive, which it stated on her  
“Promotion Memo.”

27 **Evidence:**

28 Exh. 10, 14; Kasbarian Depo., Vol. I,

50:24-51:1, 89:9-90:19, 279:14-280:12,  
182:12-184:19; Kasbarian Depo., Vol. II,  
354:1-18, 458:24-459:17; Gannon Decl., 9,  
10; Holmes Depo., 28:22-29:2, 50:18-25;  
Gannon Depo., 32:15-17, 88:25-89:5;  
Hemedinger Depo., 50:14-20, 51:23-  
52:23, 81:2-23.

73. Gannon made the decision to reas- 73. Undisputed.  
sign Plaintiff to the Marina Del Rey club. **Evidence:**

**Evidence:**

Rosen Depo., 45:7-25. 57:8-12;  
Hemedinger Depo., 53:14-18.

74. Plaintiff was told to report to the 74. Undisputed.  
Marina Del Rey club on February 2, 2015 **Evidence:**  
at 9:00 a.m.

**Evidence:**

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 75. Undisputed; however, Kasbarian was  
Rey club, Plaintiff submitted her resigna- forced to resign due to intolerable working  
tion, via email, on the morning of February conditions at Equinox. On February 2,  
2, 2015 effective immediately. 2015, the day Kasbarian was supposed to  
start at the Marina del Rey location, she

**Evidence:**

1 Plaintiff Depo., Volume I, 186:5-14, Exh. feels she is no longer welcome at Equinox  
2 26; Plaintiff Depo., Volume II, 311:4-8; and feels pushed out since she was forced  
3 Hemedinger Depo., 54:17-55:18, 55:25- to take a demotion, a significant pay cut  
4 56:25, 57:6-57:11. and restart her business and clientele base,

5 along with the overwhelming stress of the  
6 interrogation and suspension and fear of  
7 being terminated that she is forced to  
8 resign.

9 **Evidence:**

10 Exh. 16; Kasbarian Depo., Vol. I, 186:5-  
11 14; Kasbarian Decl., ¶¶ 12-14.

12  
13 76. Plaintiff's last day of employment 76. Undisputed.  
14 was February 2, 2015. **Evidence:**

15 **Evidence:**

16 Plaintiff Depo., Volume I, 186:11-14.

17  
18 77. Plaintiff never reported to work at 77. Undisputed.  
19 the Marina Del Rey club. **Evidence:**

20 **Evidence:**

21 Plaintiff Depo., Volume I, 50:13-15,  
22 186:15-17; Hemedinger Depo., 56:22-25.

23  
24 78. As of February 1, 2015, the only re- 78. Undisputed.  
25 maining MA at the West LA club was the **Evidence:**  
26 recently hired MA. Gannon Decl., ¶ 6, 10.

27 **Evidence:**

1 Plaintiff Depo., Volume II, 342:3-11.

2  
3 79. As of April/May 2015, the West LA  
4 club had an entirely new sales team and  
5 sales management.

6 **Evidence:**

7 Plaintiff Depo., Volume II, 342:25-343:5.

79. Undisputed. However, one MA was  
able to stay at the West LA location,  
despite Gannon stating he wanted to  
rebuild the team by getting rid of all of the  
Membership Executives at West LA.

8 **Evidence:**

9 Rosen Depo., 76:5-14; Hemedinger Depo.,  
10 51:23-52:23; Holmes Depo., 101:24-  
11 102:7; Gannon Depo., 70:8-71:15, 81:7-  
12 11; Gannon Decl., ¶ 6, 10.

13  
14 80. Plaintiff testified that she was un-  
15 aware of any other MA at the West LA  
16 club complaining about the unauthorized  
17 use of credit cards or telling someone that  
18 they were being signed up for a one-month  
19 membership but signing them up for a year  
20 instead.

21 **Evidence:**

22 Plaintiff Depo., Volume II, 343:6-22.

80. Undisputed.

23 **Evidence:**

24 **ISSUE NO. 9:** Plaintiff's fifth cause of action for breach of implied-in-fact contract not  
25 to terminate employment without good cause survives as a matter of law because Plain-  
26 tiff does not have an at-will status, because Plaintiff quit, and because Equinox did not  
27 have good cause for its actions. (UF Nos. 1-80.)

28 **Alleged Undisputed Facts and**

**Plaintiff's Responses and**



**Supporting Evidence**

1. Plaintiff was hired as a Membership Advisor (“MA”) at Equinox’s Santa Monica club on or about October 15, 2010.

**Evidence:**

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”).

**Evidence:**

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.

**Evidence:**

Declaration of Brian Hemedinger (“Hemedinger Decl.”), ¶ 3.

**Supporting Evidence**

1. Undisputed.

**Evidence:**

2. Disputed. Kasbarian was promoted to the position of Membership Executive at the West Los Angeles club (“West LA”) in October 2013.

**Evidence:**

Exh. 10; Kasbarian Depo., Vol. I, 89:9-90:19, 279:14-280:12; Kasbarian Decl., ¶ 5; Hemedinger Depo., 50:4-9; Rosen Depo., 20:4-18; Holmes Depo., 39:13-18.

3. Disputed. A Membership Executive position is considered a promotion from an MA position. Kasbarian was specifically told her position as a Membership Executive was a promotion from an MA, and she received a memo on it, as well as a higher compensation plan. Kasbarian’s hourly rate also increased with her position as a Membership Executive, to \$19.23 per hour, as well as an increase in

commissions and bonuses.

**Evidence:**

Exh. 10; Kasbarian Depo., Vol. I, 89:9-90:19, 279:14-280:12; Kasbarian Decl., ¶ 5; Hemedinger Depo., 50:4-9; Rosen Depo., 20:4-18; Holmes Depo., 39:13-18.

4. During Plaintiff's employment at Equinox Santa Monica and West LA clubs, Jack Gannon ("Gannon") was the Vice President of the West Coast.

**Evidence:**

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.

**Evidence:**

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

6. Undisputed.  
**Evidence:**

West LA club from about January 2014 to about January 2015.

**Evidence:**

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.

**Evidence:**

Plaintiff Depo., Volume I, 43:18-45:15, Exh. 8 (Receipt Acknowledgement [sic] 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 and myself.

7. Undisputed.

**Evidence:**

8. Undisputed, as to what the actual document states. However, disputed as to whether Kasbarian actually believed her employment was "at-will." Kasbarian believes she would not be demoted, have her pay cut, her employment suspended, or, reassigned, etc. unless it was for good cause.

**Evidence:**

Kasbarian Decl., ¶¶ 4, 11, 13, 14.

**Evidence:**

Plaintiff Depo., Volume I, 43:18-45:15, Exh. 8 (Receipt Acknowledgement [sic] Form); Figueroa Decl., ¶ 5, Exh. B (Receipt Acknowledgement [sic] Form).

9. Plaintiff's personnel file also includes an Offer Letter, dated October 15, 2010, which Plaintiff acknowledged receiving.

**Evidence:**

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.

**Evidence:**

9. Undisputed.

**Evidence:**

10. Undisputed, as to what the actual document states. However, disputed as to whether Kasbarian actually believed her employment was "at-will." Kasbarian believes she would not be demoted, have her pay cut, her employment suspended, or, reassigned, etc. unless it was for good cause.

**Evidence:**

Kasbarian Decl., ¶¶ 4, 11, 13, 14.

1 Plaintiff Depo., Volume I, 36:23-38:11,  
2 Exh. 5 (Offer Letter); Figueroa Decl., ¶ 6,  
3 Exh. C (Offer Letter).

5 11. Plaintiff's personnel file also in- 11. Undisputed.  
6 cludes an Employee Confidentiality and **Evidence:**  
7 Non-Solicitation Agreement with Plain-  
8 tiff's signature dated October 14, 2010.

9 **Evidence:**

10 Figueroa Decl., ¶ 8, Exh. D.

12 12. This Agreement stated: "You agree 12. Undisputed, as to what the actual  
13 and understand that nothing in this Agree- document states. However, disputed as to  
14 ment shall alter or modify the 'at-will' whether Kasbarian actually believed her  
15 nature of your employment with the Com- employment was "at-will." Kasbarian  
16 pany or confer on [y]ou any rights with re- believes she would not be demoted, have  
17 spect to continuation of your employment her pay cut, her employment suspended,  
18 with the Company."

19 **Evidence:**

20 Figueroa Decl., ¶ 8, Exh. D.

**Evidence:**

21 Kasbarian Decl., ¶¶ 4, 11, 13, 14.

23 13. In her deposition, Plaintiff admitted 13. Undisputed, as to what the actual  
24 that she did not have a contract with document states. However, disputed as to  
25 Equinox; no one ever told her that she was whether Kasbarian actually believed her  
26 guaranteed employment for a certain time employment was "at-will." Kasbarian  
27 period; and no one ever told her that she believes she would not be demoted, have  
28 was anything other than an at-will em- her pay cut, her employment suspended,

1 ployee. or, reassigned, etc. unless it was for good  
2 **Evidence:** cause.

3 Plaintiff Depo., Volume I, 36:23-38:11, **Evidence:**  
4 43:18-45:15, Exh. 5 (Offer Letter), Exh. 8 Kasbarian Decl., ¶¶ 4, 11, 13, 14.  
5 (Receipt Acknowledgement [sic] Form).  
6

7 14. The Employee Handbook Plaintiff 14. Undisputed.  
8 acknowledged receiving also included **Evidence:**  
9 Equinox's non-retaliation policy as well as  
10 complaint procedures for reporting retalia-  
11 tion.

12 **Evidence:**  
13 Plaintiff Depo., Volume I, 43:18-45:15,  
14 Exh. 8 Receipt of Employee Handbook;  
15 Declaration of Emerson Figueroa  
16 ("Figueroa Decl."), Exh. A.  
17

18 15. In particular, Equinox's policy strict- 15. Undisputed.  
19 ly prohibits retaliation against any employ- **Evidence:**  
20 ee for "filing a complaint and [Equinox]  
21 will not knowingly permit retaliation by  
22 management, employees, or co-workers."  
23 Equinox's policy also prohibits retaliation  
24 against any employee for "using this com-  
25 plaint procedure or for filing, testifying,  
26 assisting, or participating in any manner in  
27 any investigation, proceeding, or hearing  
28 conducted by a governmental enforcement

1 agency. Additionally, Equinox will not  
2 knowingly permit any retaliation against  
3 any employee who complains of prohibited  
4 harassment or who participates in an inves-  
5 tigation.”

6 **Evidence:**

7 Plaintiff Depo., Volume I, 43:18-45:15,  
8 Exh. 8 Receipt of Employee Handbook;  
9 Figueroa Decl., Exh. A, Employee Hand-  
10 book.

12 16. The complaint procedure as outlined  
13 in the Employee Handbook permits an em-  
14 ployee to report retaliation to his or her  
15 manager, Human Resources, or through  
16 Equinox’s Ethics Hotline.

17 **Evidence:**

18 Plaintiff Depo., Volume I, 43:18-45:15,  
19 Exh. 8 Receipt of Employee Handbook;  
20 Figueroa Decl. ¶ 4.

22 17. In or about June 2014, Hemedinger  
23 informed Plaintiff and other MAs that the  
24 compensation plan for all West LA MAs  
25 was being clarified, so that the market bo-  
26 nuses would be paid out individually and  
27 not cumulatively for reaching a certain  
28 sales goal.

16. Undisputed.

**Evidence:**

17. Disputed. In June 2014, five months  
after Kasbarian started complaining about  
the fraudulent activities by other  
membership advisors, Kasbarian’s  
commission and bonus check for May  
2014 was suddenly and for the first time  
since she started at West LA 25-33% short

**Evidence:**

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.

of what she was owed. Kasbarian immediately complained about her unpaid commissions and bonuses. After she complained defendant permanently cut her compensation plan stating that they have been paying her too much and in “error” and told her that she is “lucky that they were not asking her to pay the difference back.”

**Evidence:**

Exhs. 11, 12, 13; Kasbarian Depo., Vol. I, 201:1-206:5, 207:4-20, 209:19-210:8, 221:11-14; Kasbarian Depo., Vol. II, 347:1-18; Kasbarian Decl., ¶¶ 8, 9; Hemedinger Depo., 59:14-60:10; Rosen Depo., 22:15-23:17, 29:18-31:6, Holmes Depo., 73:5-17, 81:7-24; 120:19-121:3; Figueroa Depo., 99:22- 100:5; Gannon Depo., 99:4-7; Hemedinger Depo., 59:14-60:10.

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

18. Disputed. In June 2014, five months after Kasbarian started complaining about the fraudulent activities by other membership advisors, Kasbarian’s commission and bonus check for May 2014 was suddenly and for the first time since she started at West LA 25-33% short



- 125% of goal—MA would receive an extra \$55 per sale
- 150% of goal—MA would receive an extra \$70 per sale

**Evidence:**

Plaintiff Depo., Volume I, 190:16-194:3;  
Hemedinger Depo., 64:18-65:11.

of what she was owed. Kasbarian immediately complained about her unpaid commissions and bonuses. After she complained defendant permanently cut her compensation plan stating that they have been paying her too much and in “error” and told her that she is “lucky that they were not asking her to pay the difference back.”

**Evidence:**

Exhs. 11, 12, 13; Kasbarian Depo., Vol. I, 201:1-206:5, 207:4-20, 209:19-210:8, 221:11-14; Kasbarian Depo., Vol. II, 347:1-18; Kasbarian Decl., ¶¶ 8, 9; Hemedinger Depo., 59:14-60:10; Rosen Depo., 22:15-23:17, 29:18-31:6, Holmes Depo., 73:5-17, 81:7-24; 120:19-121:3; Figueroa Depo., 99:22- 100:5; Gannon Depo., 99:4-7; Hemedinger Depo., 59:14-60:10.

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.

**Evidence:**

Plaintiff Depo., Volume I, 190:16-194:3;

19. Disputed. In June 2014, five months after Kasbarian started complaining about the fraudulent activities by other membership advisors, Kasbarian’s commission and bonus check for May 2014 was suddenly and for the first time since she started at West LA 25-33% short

1 Holmes Depo., 82:11-83:14; Hemedinger of what she was owed. Kasbarian  
2 Depo., 59:22-60:6, 62:3-63:8; 66:6-11., immediately complained about her unpaid  
3 68:125-69:8. commissions and bonuses. After she

4 complained defendant permanently cut her  
5 compensation plan stating that they have  
6 been paying her too much and in “error”  
7 and told her that she is “lucky that they  
8 were not asking her to pay the difference  
9 back.”

10 **Evidence:**

11 Exhs. 11, 12, 13; Kasbarian Depo., Vol. I,  
12 201:1-206:5, 207:4-20, 209:19-210:8,  
13 221:11-14; Kasbarian Depo., Vol. II,  
14 347:1-18; Kasbarian Decl., ¶¶ 8, 9;  
15 Hemedinger Depo., 59:14-60:10; Rosen  
16 Depo., 22:15-23:17, 29:18-31:6, Holmes  
17 Depo., 73:5-17, 81:7-24; 120:19-121:3;  
18 Figueroa Depo., 99:22- 100:5; Gannon  
19 Depo., 99:4-7; Hemedinger Depo., 59:14-  
20 60:10.

21  
22 20. Plaintiff testified that she complained 20. Undisputed as to Kasbarian’s  
23 about what she viewed as a “change” in complaints but otherwise disputed. In June  
24 the compensation plan to the following 2014, five months after Kasbarian started  
25 managerial employees: Hemedinger, complaining about the fraudulent activities  
26 Gannon, Simonson, Veronica Santarelli by other membership advisors, Kasbarian’s  
27 (“Santarelli”) (Regional Sales Manager), commission and bonus check for May  
28 Matt Gonzalez (“Gonzalez”) (Director of 2014 was suddenly and for the first time

1 Sales), Barry Holmes (“Holmes”) (Senior  
2 Vice President of Sales), and Scott Rosen  
3 (“Rosen”) (Chief Operating Officer)  
4 (“COO”).

5 **Evidence:**

6 Plaintiff Depo., Volume I, 199:7-22;  
7 Hemedinger Depo., 59:14-60:10; Depo-  
8 sition of Scott Rosen (“Rosen Depo.”)  
9 29:18-30:4, 30:22-31:12, 31:20-33:4,  
10 61:12-64:17, 65:8-69:12, Exhs. 206-207;  
11 Holmes Depo., 71:23-73:22, 77:18-82:10,  
12 84:19-86:8, Ex. 203.

since she started at West LA 25-33% short  
of what she was owed. Kasbarian  
immediately complained about her unpaid  
commissions and bonuses. After she  
complained defendant permanently cut her  
compensation plan stating that they have  
been paying her too much and in “error”  
and told her that she is “lucky that they  
were not asking her to pay the difference  
back.”

13 **Evidence:**

14 Exhs. 11, 12, 13; Kasbarian Depo., Vol. I,  
15 201:1-206:5, 207:4-20, 209:19-210:8,  
16 221:11-14; Kasbarian Depo., Vol. II,  
17 347:1-18; Kasbarian Decl., ¶¶ 8, 9;  
18 Hemedinger Depo., 59:14-60:10; Rosen  
19 Depo., 22:15-23:17, 29:18-31:6, Holmes  
20 Depo., 73:5-17, 81:7-24; 120:19-121:3;  
21 Figueroa Depo., 99:22- 100:5; Gannon  
22 Depo., 99:4-7; Hemedinger Depo., 59:14-  
60:10.

23 21. Despite Plaintiff’s complaints about  
24 the compensation plan, Plaintiff continued  
25 to work at Equinox for seven months after  
26 the “changed” compensation plan was in-  
27 stituted in July/August 2014 and continued  
28 to work for Equinox until she quit in

21. Undisputed to the fact that Kasbarian  
continued to work at Equinox until  
February 2015 after she complained;  
however, disputed as to the rest. In June  
2014, five months after Kasbarian started  
complaining about the fraudulent activities

February 2015.

**Evidence:**

Plaintiff Depo., Volume I, 196:8-14, 207:15-22, 220:5-20; Plaintiff Depo., Volume II, 349:5-12.

by other membership advisors, Kasbarian's commission and bonus check for May 2014 was suddenly and for the first time since she started at West LA 25-33% short of what she was owed. Kasbarian immediately complained about her unpaid commissions and bonuses. After she complained defendant permanently cut her compensation plan stating that they have been paying her too much and in "error" and told her that she is "lucky that they were not asking her to pay the difference back."

**Evidence:**

Exhs. 11, 12, 13; Kasbarian Depo., Vol. I, 201:1-206:5, 207:4-20, 209:19-210:8, 221:11-14; Kasbarian Depo., Vol. II, 347:1-18; Kasbarian Decl., ¶¶ 8, 9; Hemedinger Depo., 59:14-60:10; Rosen Depo., 22:15-23:17, 29:18-31:6, Holmes Depo., 73:5-17, 81:7-24; 120:19-121:3; Figueroa Depo., 99:22- 100:5; Gannon Depo., 99:4-7; Hemedinger Depo., 59:14-60:10.

22. Plaintiff testified that she complained to Hemedinger, Simonson, and possibly to Gannon in February or March 2014 that

22. Undisputed. However, Kasbarian testified that she complained about multiple MAs at West LA, including

1 she believed that a MA at West LA was  
2 using one-month guest passes and/or gift  
3 cards to sign up members for what they be-  
4 lieved was a month-long membership, but  
5 in actuality, was signing them up for a  
6 year-long membership by using their credit  
7 cards without authorization.

8 **Evidence:**

9 Plaintiff Depo., Volume I, 81:6-21; 82:5-  
10 83:23, 94:14-97:9.

Lauren Beck and Devin Mcvelogue about  
multiple fraudulent and unlawful activities,  
including charging members credit cards  
without their authorization.

**Evidence:**

Kasbarian Depo., Vol. I, 69:5-71:5, 71:20-  
72:4, 76:5-25, 82:9-83:19, 98:11-99:4,  
102:13-103:25, 112:5-113:2; Kasbarian  
Depo., Vol. II, 334:16-25; Kasbarian  
Decl., ¶ 6; Hemedinger Depo., 43:13-15,  
45:8-22, 46:10-22; 76:1-15.

13 23. According to Plaintiff, “charging  
14 credit cards without people’s approval and  
15 telling people they were signing up for a  
16 month-long contract, but then signing them  
17 up for a year-long contract” were the only  
18 “illegal activities” about which she com-  
19 plained to Equinox.

20 **Evidence:**

21 Plaintiff Depo., Volume II, 334:16-336:23.

23. Undisputed. Gannon also testified  
and admitted in testimony that he believes  
that the type of conduct Kasbarian  
complained of was illegal and is the type  
of conduct that needs to be investigated.

**Evidence:**

Gannon Depo., 51:10-15, 52:23-53:3.

23 24. According to Plaintiff, her other  
24 complaints involved “things against  
25 Equinox policies that were happening as  
26 well.”

27 **Evidence:**

24. Undisputed.

**Evidence:**

1 Plaintiff Depo., Volume II, 334:16-336:23.

2  
3 25. Plaintiff admitted that she could not  
4 identify any statute, ordinance, regulation,  
5 local law, state law, or federal law that was  
6 violated as a result of this alleged activity.

7 **Evidence:**

8 Plaintiff Depo., Volume II, 335:4-336:23.

25. Disputed. Plaintiff testified that she  
believed this conduct was illegal.  
Moreover, Gannon also testified and  
admitted in testimony that he believes that  
the type of conduct Kasbarian complained  
of was illegal and is the type of conduct  
that needs to be investigated.

9  
10 **Evidence:**

11 Kasbarian Depo., Volume II, 334:16-  
12 336:23; Gannon Depo., 51:10-15, 52:23-  
13 53:3.

14  
15 26. Plaintiff also testified that she com-  
16 plained to Hemedinger and Simonson  
17 about the sales activities of another MA.

18 **Evidence:**

19 Plaintiff Depo., Volume I, 76:17-79:19;  
20 93:10-94:10, 102:10-107:24; 108:1-113:5;  
21 Hemedinger Depo., 45:8-47:19.

26. Undisputed.

22 **Evidence:**

23 27. Specifically, Plaintiff complained  
24 that this MA was giving away “free  
25 months” to potential members, allowing  
26 “freezes” for members, and offering “three  
27 month” deals.

28 **Evidence:**

27. Undisputed. However, Kasbarian  
testified that she complained about  
multiple MAs at West LA, including  
Lauren Beck and Devin Mcvelogue about  
multiple fraudulent and unlawful activities,  
including charging members credit cards

1 Plaintiff Depo., Volume I, 76:17-79:19p without their authorization.

2 93:10-94:10, 102:10-107:24; 108:1-113:5; **Evidence:**

3 Hemedinger Depo., 45:8-47:19.

Kasbarian Depo., Vol. I, 69:5-71:5, 71:20-72:4, 76:5-25, 82:9-83:19, 98:11-99:4, 102:13-103:25, 112:5-113:2; Kasbarian Depo., Vol. II, 334:16-25; Kasbarian Decl., ¶ 6; Hemedinger Depo., 43:13-15, 45:8-22, 46:10-22; 76:1-15.

10 28. In or around December 2014, COO 28. Undisputed.

11 Rosen was touring the West LA club when **Evidence:**

12 he was told by a member that a MA had  
13 charged a membership to another mem-  
14 ber's credit card without that member's  
15 authorization.

16 **Evidence:**

17 Rosen Depo., 37:20-38:18; Declaration of  
18 Tracy Cuva ("Cuva Decl."), ¶ 2.

20 29. Member Services is Equinox's bill- 29. Undisputed.

21 ing department (centrally based in New **Evidence:**

22 York) which handles membership con-  
23 tracts and membership sales, including  
24 auditing of membership sales.

25 **Evidence:**

26 Cuva Decl., ¶ 1.

28 30. Rosen contacted Tracy Cuva, Senior 30. Undisputed.

Director of Equinox's Member Services Department, gave her the information received from the member, and asked Member Services to investigate this sale.

**Evidence:**

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).

**Evidence:**

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.

**Evidence:**

Rosen Depo., 39:8-13.

32. Undisputed. However, this MA was terminated.

**Evidence:**

Kasbarian Depo., Vol. I, 84:7-85:1, 184:20-23; Kasbarian Decl., ¶ 10; Hemedinger Decl., ¶ 4; Gannon Depo., 58:20-59:18, 60:2-21.

33. As a result of this member complaint, Rosen also asked Cuva to have Member Services conduct an investigation

33. Disputed. Senior Director of Loss Prevention, Jim Burger, testified that Jack Gannon contacted him to do an



1 of sales transactions at the West LA club.

2 **Evidence:**

3 Rosen Depo., 47:25-6; Cuva Decl., ¶ 3.

investigation at the West LA location and reported to him throughout.

**Evidence:**

Burger Depo., 70:9-21, 78:4-11, 83:18-84:3.

7 34. Apart from requesting that the inves-  
8 tigation be conducted and asking Jim  
9 Burger (Senior Director of Loss Preven-  
10 tion) to travel to the West LA club and  
11 continue the investigation after Member  
12 Services finished their portion of the inves-  
13 tigation, Rosen did not participate in that  
14 investigation.

15 **Evidence:**

16 Rosen Depo., 47:25-48:21.

34. Disputed. Senior Director of Loss Prevention, Jim Burger, testified that Jack Gannon contacted him to do an investigation at the West LA location and reported to him throughout.

**Evidence:**

Burger Depo., 70:9-21, 78:4-11, 83:18-84:3.

18 35. Cuva instructed Kevin Stanfa  
19 (“Stanfa”) (Manager of Compliance and  
20 Special Projects), to review sales transac-  
21 tions at the West LA club.

22 **Evidence:**

23 Cuva Decl., ¶ 3; Stanfa Decl. ¶ 4.

35. Undisputed.

**Evidence:**

25 36. After Stanfa reported finding various  
26 anomalies associated with sales transac-  
27 tions at the West LA club, Cuva instructed  
28 Stanfa to prepare a summary detailing his

36. Undisputed.

**Evidence:**

findings.

**Evidence:**

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.

**Evidence:**

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.

**Evidence:**

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.”

**Evidence:**

Cuva Decl., ¶ 7, Exh.N.

40. Cuva noted as follows:

37. Disputed. Defendant fails to produce the spreadsheets corroborating those sales.

**Evidence:**

Defendant’s Amended Compendium of Exhibits.

38. Disputed. Defendant fails to produce the spreadsheets corroborating those sales.

**Evidence:**

Defendant’s Amended Compendium of Exhibits.

39. Undisputed as to that statement being written in the email.

**Evidence:**

40. Disputed. Kasbarian was found to

1 i The 2041 Freezes spread-  
2 sheet shows that West LA is  
3 an outlier in members who  
4 request a freeze in the first 60  
5 days of membership who also  
6 go on to cancel in the same  
7 year.

8 i The Modification to Direct  
9 Bill spreadsheet reflects  
10 members in the last quarter  
11 of 2014 whose billing was  
12 modified from the credit card  
13 payment type to direct bill  
14 the day before billing ran.  
15 The Company average is four  
16 per club. West LA had 28  
17 modifications to direct bill.

18 i The West LA Breakdown  
19 spreadsheet shows question-  
20 able sales from two MAs  
21 (Plaintiff and the MA moving  
22 to New York). The other  
23 three MAs were reviewed  
24 and did not reflect the same  
25 anomalies seen with Plaintiff  
26 and the MA moving to New  
27 York. The questionable sales  
28 included selling memberships

have not committed any of the  
inappropriate and fraudulent conduct or  
“fake” sales that were being investigated.

**Evidence:**

Holmes Depo., 88:4-10, 106:11-19;  
Hemedinger Depo., 51:23-52:23; Rosen  
Depo., 48:22-49:3, 54:3-8, 76:5-14, 98:6-  
17, 101:24-102:7; Gannon Depo., 70:8-  
71:15, 72:7-20, 75:22-76:8, 79:5-10, 81:7-  
11; Gannon Decl., ¶ 6, 10.

1 to members with the credit  
2 card of another member (al-  
3 most universally without re-  
4 questing a referral credit) or  
5 re-contracting over a previ-  
6 ously 3-day'd membership  
7 and either using the credit  
8 from the previous sale or re-  
9 charging the same credit  
10 card, credit card not present  
11 for numerous sales transac-  
12 tions, 3-day cancellations  
13 with no or just one member  
14 visit, new memberships  
15 which were previously fi-  
16 nance cancelled and had bal-  
17 ances on account that were  
18 waived.

19 **Evidence:**

20 Cuva Decl., ¶ 7, Exh.N.  
21

22 41. Neither Cuva nor Stanfa were aware  
23 Plaintiff had made any complaints about  
24 changes to her compensation plan or about  
25 the alleged activities of other MAs.

26 **Evidence:**

27 Cuva Decl., ¶ 8; Stanfa Decl., ¶ 11.  
28

41. Undisputed. However, Kasbarian  
was found to have not committed any of  
the inappropriate and fraudulent conduct or  
“fake” sales that were being investigated.

**Evidence:**

41. Holmes Depo., 88:4-10, 106:11-19;  
Hemedinger Depo., 51:23-52:23; Rosen

Depo., 48:22-49:3, 54:3-8, 76:5-14, 98:6-17, 101:24-102:7; Gannon Depo., 70:8-71:15, 72:7-20, 75:22-76:8, 79:5-10, 81:7-11; Gannon Decl., ¶ 6, 10.

**Evidence:**

42. In addition, Burger was asked to interview the sales team at the West LA club.

42. Undisputed.

**Evidence:**

**Evidence:**

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 [sic] and an Assistant General Manager.

43. Undisputed.

**Evidence:**

**Evidence:**

Hemedinger Decl., ¶ 4.

44. A MA was fired on or about January 20, 2015 for improper sales activities.

44. Undisputed.

**Evidence:**

**Evidence:**

1 Figueroa Decl. ¶ 9; Hemedinger Decl., ¶ 4.

2  
3 45. At Burger's request, Member Ser-  
4 vices provided him with the spreadsheets  
5 summarizing their findings of questionable  
6 sales transactions at the West LA club.

7 **Evidence:**

8 Burger Depo., 72:13-73:3; Cuva Decl. ¶ 8.

9  
10 46. Burger then met with Cuva and  
11 Stanfa and they discussed their findings re-  
12 garding the questionable sales at the West  
13 LA club.

14 **Evidence:**

15 Burger Depo., 73:13-74:15; Cuva Decl.  
16 ¶ 8; Stanfa Decl., ¶ 9.

17  
18 47. Burger had a subsequent meeting  
19 with Stanfa to review the spreadsheets  
20 Member Services had prepared.

21 **Evidence:**

22 Burger Depo., 74:16-75:3, 8-22; Stanfa  
23 Decl., ¶ 9.

24  
25 48. These spreadsheets showed anoma-  
26 lies in various sales transactions, including  
27 whether or not a contract was signed,  
28 whether or not a credit card was present

45. Disputed. Defendant fails to produce  
the spreadsheets corroborating those sales.

**Evidence:**

Defendant's Amended Compendium of  
Exhibits.

46. Undisputed.

**Evidence:**

47. Disputed. Defendant fails to produce  
the spreadsheets corroborating those sales.

**Evidence:**

Defendant's Amended Compendium of  
Exhibits.

48. Disputed. Defendant fails to produce  
the spreadsheets corroborating those sales.  
However, However, Kasbarian was found  
to have not committed any of the

1 for the sales transaction, whose credit card inappropriate and fraudulent conduct or  
2 was used for the sales transactions, if an- “fake” sales that were being investigated.  
3 other individual’s credit card number was **Evidence:**  
4 used for the sales transaction instead of the Defendant’s Amended Compendium of  
5 member’s credit card number, whether or Exhibits; Holmes Depo., 88:4-10, 106:11-  
6 not a member had any visits to a club, etc. 19; Hemedinger Depo., 51:23-52:23;

7 **Evidence:**

8 Burger Depo., 39:3-40:22; Cuva Decl., ¶ 8; 98:6-17, 101:24-102:7; Gannon Depo.,  
9 Stanfa Decl., ¶¶ 4-5. 70:8-71:15, 72:7-20, 75:22-76:8, 79:5-10,  
10 81:7-11; Gannon Decl., ¶ 6, 10.  
11  
12

13 49. Burger also had a couple of tele- 49. Undisputed.  
14 phone conversations with Stanfa regarding **Evidence:**  
15 the anomalies in various sales activities at  
16 the West LA Club.

17 **Evidence:**

18 Burger Depo., 76:19-77:1; Stanfa Decl.,  
19 ¶ 9.  
20

21 50. In late January 2015, Burger came to 50. Undisputed.  
22 Los Angeles to interview various employ- **Evidence:**  
23 ees regarding sales activities of the West  
24 LA MAs.

25 **Evidence:**

26 Burger Depo., 76:6-12; Gannon Decl., ¶ 3;  
27 Hemedinger Decl., ¶ 5.  
28

1 51. Prior to the interviews, Burger and  
2 Gannon discussed suspending all of the in-  
3 dividuals interviewed as part of the investi-  
4 gation pending the results of the investiga-  
5 tion.

6 **Evidence:**

7 Burger Depo., 116:12-117:12.  
8  
9

10 52. Burger then interviewed the follow-  
11 ing individuals: (1) the Assistant General  
12 Manager; (2) Plaintiff; (3) another MA;  
13 (4) a relatively newly hired MA; and  
14 (5) Simonson.

15 **Evidence:**

16 Hemedinger Decl., ¶ 5.  
17  
18

19 53. Burger had never heard of or spoken  
20 to Plaintiff prior to this investigation meet-  
21 ing.

22 **Evidence:**

23 Burger Depo., 35:22-24.  
24

25 54. On January 30, 2015, Plaintiff met  
26 with Burger and Leah Ball of Human  
27 Resources regarding West LA's sales prac-  
28 tices.

51. Disputed. Gannon testified that one  
MA was not suspended and was not  
discussed suspending because there "was  
no suspicious conduct linked to him" even  
at the beginning of the investigation.

**Evidence:**

Gannon Depo., 70:8-71:19, 81:7-11;  
Gannon Decl., ¶ 6, 10.

52. Disputed. Gannon testified that one  
MA was not suspended and was not  
discussed suspending because there "was  
no suspicious conduct linked to him" even  
at the beginning of the investigation.

**Evidence:**

Gannon Depo., 70:8-71:19, 81:7-11;  
Gannon Decl., ¶ 6, 10.

53. Undisputed.

**Evidence:**

54. Undisputed.

**Evidence:**



**Evidence:**

Plaintiff Depo., Volume I, 161:11-22, 164:10-22; Plaintiff Depo., Volume II, 305:21-24; , [sic] Burger Depo., 96:18-25.

55. Plaintiff answered questions about her sales activities, as well as the activities of other MAs.

**Evidence:**

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.

**Evidence:**

Burger Depo, 122:14-17.

55. Undisputed. Additionally, at the beginning of Kasbarian's interview, she notifies Senior Director of Loss Prevention, Jim Burger, about the fraudulent activity and unauthorized membership sales that she observed and complained about to management for months

**Evidence:**

Exh. 17; Kasbarian Depo., Vol. I, 158:4-18, 161:15-162:1, 166:9-167:2; Kasbarian Decl., ¶¶ 10, 11; Burger Depo., 70:9-21, 78:4-11, 83:18-84:3, 91:5-92:18, 100:3-8, 183:21-184:12.

56. Undisputed as to Burger concluding there was insufficient information to warrant any terminable offense committed by Burger. Kasbarian was found to have not committed any of the inappropriate and fraudulent conduct or "fake" sales that were being investigated.

**Evidence:**

Holmes Depo., 88:4-10, 106:11-19; Hemedinger Depo., 51:23-52:23; Rosen Depo., 48:22-49:3, 54:3-8, 76:5-14, 98:6-17, 101:24-102:7; Gannon Depo., 70:8-71:15, 72:7-20, 75:22-76:8, 79:5-10, 81:7-11; Gannon Decl., ¶ 6, 10.

57. After Burger completed his interviews, Burger, Gannon and Hemedinger met briefly to discuss Burger's impression.

**Evidence:**

Burger Depo., 117:16-18, 24-118:6.

57. Undisputed.

**Evidence:**

58. Gannon then advised Plaintiff that she was being suspended.

**Evidence:**

Plaintiff Depo, Volume I, 174:24-175:3, 11-12; Plaintiff Depo., Volume II, 306:3-7; Gannon Decl., ¶ 4.

58. Undisputed. However, she was suspended despite her having been found to not have committed any terminable offense.

**Evidence:**

Holmes Depo., 88:4-10, 106:11-19; Hemedinger Depo., 51:23-52:23; Rosen Depo., 48:22-49:3, 54:3-8, 76:5-14, 98:6-17, 101:24-102:7; Gannon Depo., 70:8-71:15, 72:7-20, 75:22-76:8, 79:5-10, 81:7-11; Gannon Decl., ¶ 6, 10.

59. All of the MAs interviewed as part of the investigation (with the exception of the

59. Undisputed. One MA was not suspended.

1 relatively new MA) were suspended pend-  
2 ing investigation.

3 **Evidence:**

4 Burger Depo., ¶ [sic] 110:17-23; Gannon  
5 Decl., ¶ 6.

**Evidence:**

Gannon Depo., 70:8-71:15, 81:7-11;  
Gannon Decl., ¶ 6, 10.

7 60. Gannon also advised Plaintiff to re-  
8 port back to the West LA club at 2:00 p.m.  
9 the next day for another meeting.

10 **Evidence:**

11 Plaintiff Depo., Volume II, 180:11-181:4;  
12 Gannon Decl., ¶ 5.

60. Undisputed.

**Evidence:**

14 61. According to Plaintiff, Equinox told  
15 her that she would not have access to her  
16 email or payroll account and escorted her  
17 out of the building in front of Equinox's  
18 clientele, staff and all of her peers.

19 **Evidence:**

20 Plaintiff Depo., Volume II, 174:24-175:21;  
21 Plaintiff Depo., Volume II, 305:21-306:2,  
22 364:17-20; Plaintiff's Complaint, 6:5-7.

61. Undisputed.

**Evidence:**

24 62. It is Equinox's policy to turn off  
25 email access for hourly employees who  
26 have been suspended pending investigation  
27 or who are on leave of absence.

28 **Evidence:**

62. Disputed. Defendant did not produce  
any documentation corroborating this  
policy.

**Evidence:**

Defendant's Amended Compendium of

1 Gannon Decl., ¶ 7.

Evidence.

2  
3 63. Prior to Burger's interview of Plain-  
4 tiff, Gannon had the Payroll Department  
5 prepare a final paycheck for Plaintiff so  
6 that she could be paid in accordance with  
7 California law in the event the decision  
8 was made to terminate her employment.

9 **Evidence:**

10 Gannon Decl., ¶ 8.

63. Undisputed as to Gannon preparing  
the final paycheck; however, this paycheck  
was prepared by Gannon even before the  
interview in preparation for Kasbarian's  
termination.

**Evidence:**

Gannon Decl., ¶ 8; Exh. 15; Kasbarian  
Depo., Vol. I, 130:21-131:3, 185:5-15;  
Kasbarian Depo., Vol. II, 311:9-22;  
Kasbarian Decl., ¶ 11.

11  
12  
13  
14 64. Plaintiff met with Hemedinger and  
15 Gannon at the West LA club on January  
16 31, 2015 and was told that the investiga-  
17 tion was concluded and that she would be  
18 working at the Marina Del Rey club.

19 **Evidence:**

20 Plaintiff Depo., Volume I, 182:5-183:8;  
21 Plaintiff Depo., Volume II, 306:12:16  
22 [sic], 382:12-17, 390:4-11, Exh. 38;  
23 Hemedinger Depo., 54:17-21, 55:1-8;  
24 Gannon Decl., ¶ 3; Hemedinger Decl., ¶ 6.

64. Undisputed.

**Evidence:**

25  
26 65. The decision was made to reassign  
27 Plaintiff to the Marina Del Rey club be-  
28 cause Equinox wanted to rebuild the team

65. Disputed. Defendant's claim that  
Kasbarian was reassigned to Marina Del  
Rey because they wanted to rebuild the

1 of MAs in the West LA club and to create  
2 a fresh culture, as a result of the investiga-  
3 tion findings.

4 **Evidence:**

5 Rosen Depo., 71:7-20, 73:15-22, 76:5-14;  
6 Holmes Depo., 96:12-98:17; Hemedinger  
7 Depo., 51:7-52:23; Gannon Decl., ¶ 10.

team of Mas, yet one MA was allowed to  
stay at West LA

**Evidence:**

Rosen Depo., 48:22-49:3, 54:3-8, 98:6-17,  
76:5-14; Hemedinger Depo., 51:23-52:23;  
Holmes Depo., 88:4-10, 106:11-19,  
101:24-102:7; Gannon Depo., 70:8-71:15,  
72:7-20, 75:22-76:8, 79:5-10, 81:7-11;  
Gannon Decl., ¶ 6, 10.

11 66. Plaintiff's compensation plan would  
12 change once at Marina Del Rey to align  
13 with the compensation plan of Marina Del  
14 Rey MAs. Equinox considered the reas-  
15 signment a lateral move.

16 **Evidence:**

17 Rosen Depo., 87:25-88:4; Gannon Decl.,  
18 ¶ 11.

66. Undisputed that the compensation  
plan would change; however, disputed as  
to it being a lateral move. Kasbarian is told  
that she would be paid \$9.00/hour at the  
Marina del Rey office, which was a \$10.00  
per hour decrease in hourly rate that she  
was being paid at the West Los Angeles  
branch at \$19.23 per hour. Barry Holmes,  
Vice President of Sales, admits that urban  
clubs, such as the Santa Monica location,  
tend to generate more revenue than  
suburban clubs, like the Marina Del Rey  
location, and the West LA location is a  
higher tier club than urban clubs. Brian  
Hemedinger admits in deposition that they  
thought it would be "best for Tamar, if she  
had the opportunity to be a membership  
advisor at a different location," while

acknowledging that she would be going to a lower tier location than when she first started with the company. Moreover, when Kasbarian went to West LA she was promoted from MA to Membership Executive, which it stated on her “Promotion Memo.”

**Evidence:**

Exh. 10, 14; Kasbarian Depo., Vol. I, 50:24-51:1, 89:9-90:19, 279:14-280:12, 182:12-184:19; Kasbarian Depo., Vol. II, 354:1-18, 458:24-459:17; Gannon Decl., 9, 10; Holmes Depo., 28:22-29:2, 50:18-25; Gannon Depo., 32:15-17, 88:25-89:5; Hemedinger Depo., 50:14-20, 51:23-52:23, 81:2-23.

67. Equinox considered the reassignment a lateral move.

**Evidence:**

Rosen Depo., 87:25-88:4; Gannon Decl., ¶ 11.

67. Disputed. Kasbarian is told that she would be paid \$9.00/hour at the Marina del Rey office, which was a \$10.00 per hour decrease in hourly rate that she was being paid at the West Los Angeles branch at \$19.23 per hour. Barry Holmes, Vice President of Sales, admits that urban clubs, such as the Santa Monica location, tend to generate more revenue than suburban clubs, like the Marina Del Rey location, and the West LA location is a higher tier

club than urban clubs. Brian Hemedinger admits in deposition that they thought it would be “best for Tamar, if she had the opportunity to be a membership advisor at a different location,” while acknowledging that she would be going to a lower tier location than when she first started with the company. Moreover, when Kasbarian went to West LA she was promoted from MA to Membership Executive, which it stated on her “Promotion Memo.”

**Evidence:**

Exh. 10, 14; Kasbarian Depo., Vol. I, 50:24-51:1, 89:9-90:19, 279:14-280:12, 182:12-184:19; Kasbarian Depo., Vol. II, 354:1-18, 458:24-459:17; Gannon Decl., 9, 10; Holmes Depo., 28:22-29:2, 50:18-25; Gannon Depo., 32:15-17, 88:25-89:5; Hemedinger Depo., 50:14-20, 51:23-52:23, 81:2-23.

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.

**Evidence:**

Plaintiff Depo., Volume II, 390:4-11, Exh.

68. Undisputed.

**Evidence:**

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.

**Evidence:**

Hemedinger Depo., 52:18-23; Rosen Depo., 57:13-19; 58:22-59:14; Holmes Depo., 31:13-15.

69. Disputed. Kasbarian is told that she would be paid \$9.00/hour at the Marina del Rey office, which was a \$10.00 per hour decrease in hourly rate that she was being paid at the West Los Angeles branch at \$19.23 per hour. Barry Holmes, Vice President of Sales, admits that urban clubs, such as the Santa Monica location, tend to generate more revenue than suburban clubs, like the Marina Del Rey location, and the West LA location is a higher tier club than urban clubs. Brian Hemedinger admits in deposition that they thought it would be "best for Tamar, if she had the opportunity to be a membership advisor at a different location," while acknowledging that she would be going to a lower tier location than when she first started with the company. Moreover, when Kasbarian went to West LA she was promoted from MA to Membership Executive, which it stated on her "Promotion Memo."

**Evidence:**

Exh. 10, 14; Kasbarian Depo., Vol. I, 50:24-51:1, 89:9-90:19, 279:14-280:12, 182:12-184:19; Kasbarian Depo., Vol. II,



354:1-18, 458:24-459:17; Gannon Decl., 9, 10; Holmes Depo., 28:22-29:2, 50:18-25; Gannon Depo., 32:15-17, 88:25-89:5; Hemedinger Depo., 50:14-20, 51:23-52:23, 81:2-23.

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.

**Evidence:**

Hemedinger Depo., 52:18-23; Rosen Depo., 57:13-19; 58:22-59:14; Holmes Depo., [sic] 50:18-51:5.

70. Disputed. Kasbarian is told that she would be paid \$9.00/hour at the Marina del Rey office, which was a \$10.00 per hour decrease in hourly rate that she was being paid at the West Los Angeles branch at \$19.23 per hour. Barry Holmes, Vice President of Sales, admits that urban clubs, such as the Santa Monica location, tend to generate more revenue than suburban clubs, like the Marina Del Rey location, and the West LA location is a higher tier club than urban clubs. Brian Hemedinger admits in deposition that they thought it would be “best for Tamar, if she had the opportunity to be a membership advisor at a different location,” while acknowledging that she would be going to a lower tier location than when she first started with the company. Moreover, when Kasbarian went to West LA she was promoted from MA to Membership Executive, which it stated on her “Promotion Memo.”

**Evidence:**

Exh. 10, 14; Kasbarian Depo., Vol. I, 50:24-51:1, 89:9-90:19, 279:14-280:12, 182:12-184:19; Kasbarian Depo., Vol. II, 354:1-18, 458:24-459:17; Gannon Decl., 9, 10; Holmes Depo., 28:22-29:2, 50:18-25; Gannon Depo., 32:15-17, 88:25-89:5; Hemedinger Depo., 50:14-20, 51:23-52:23, 81:2-23.

71. Gannon emailed Plaintiff the compensation plan for the Marina Del Rey Club on or about January 31, 2015.

**Evidence:**

Plaintiff Depo., Volume I, 246:19-247:2; Gannon Decl., ¶ 12.

71. Undisputed.

**Evidence:**

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.

**Evidence:**

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.

72. Undisputed as to no one stating those actual words; however, Kasbarian is told that she would be paid \$9.00/hour at the Marina del Rey office, which was a \$10.00 per hour decrease in hourly rate that she was being paid at the West Los Angeles branch at \$19.23 per hour. Barry Holmes, Vice President of Sales, admits that urban clubs, such as the Santa Monica location, tend to generate more revenue than suburban clubs, like the Marina Del Rey

location, and the West LA location is a higher tier club than urban clubs. Brian Hemedinger admits in deposition that they thought it would be “best for Tamar, if she had the opportunity to be a membership advisor at a different location,” while acknowledging that she would be going to a lower tier location than when she first started with the company. Moreover, when Kasbarian went to West LA she was promoted from MA to Membership Executive, which it stated on her “Promotion Memo.”

**Evidence:**

Exh. 10, 14; Kasbarian Depo., Vol. I, 50:24-51:1, 89:9-90:19, 279:14-280:12, 182:12-184:19; Kasbarian Depo., Vol. II, 354:1-18, 458:24-459:17; Gannon Decl., 9, 10; Holmes Depo., 28:22-29:2, 50:18-25; Gannon Depo., 32:15-17, 88:25-89:5; Hemedinger Depo., 50:14-20, 51:23-52:23, 81:2-23.

73. Gannon made the decision to reassign Plaintiff to the Marina Del Rey club.

73. Undisputed.

**Evidence:**

Rosen Depo., 45:7-25. 57:8-12;

**Evidence:**

1 Hemedinger Depo., 53:14-18.

2  
3 74. Plaintiff was told to report to the 74. Undisputed.  
4 Marina Del Rey club on February 2, 2015 **Evidence:**  
5 at 9:00 a.m.

6 **Evidence:**

7 Plaintiff Depo., Volume I, 186:5-14;  
8 Plaintiff Depo., Volume II, 311:4-8;  
9 Hemedinger Depo., 54:17-55:18, 55:25-  
10 56:25, 57:6-57:11.

11  
12 75. Before reporting to the Marina Del  
13 Rey club, Plaintiff submitted her resigna-  
14 tion, via email, on the morning of February  
15 2, 2015 effective immediately.

16 **Evidence:**

17 Plaintiff Depo., Volume I, 186:5-14, Exh.  
18 26; Plaintiff Depo., Volume II, 311:4-8;  
19 Hemedinger Depo., 54:17-55:18, 55:25-  
20 56:25, 57:6-57:11.

75. Undisputed; however, Kasbarian was  
forced to resign due to intolerable working  
conditions at Equinox. On February 2,  
2015, the day Kasbarian was supposed to  
start at the Marina del Rey location, she  
feels she is no longer welcome at Equinox  
and feels pushed out since she was forced  
to take a demotion, a significant pay cut  
and restart her business and clientele base,  
along with the overwhelming stress of the  
interrogation and suspension and fear of  
being terminated that she is forced to  
resign.

25 **Evidence:**

26 Exh. 16; Kasbarian Depo., Vol. I, 186:5-  
27 14; Kasbarian Decl., ¶¶ 12-14.

76. Plaintiff's last day of employment was February 2, 2015. 76. Undisputed.

**Evidence:**

Plaintiff Depo., Volume I, 186:11-14.

77. Plaintiff never reported to work at the Marina Del Rey club. 77. Undisputed.

**Evidence:**

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. Undisputed.

**Evidence:**

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. Undisputed. However, one MA was able to stay at the West LA location, despite Gannon stating he wanted to rebuild the team by getting rid of all of the Membership Executives at West LA.

**Evidence:**

Plaintiff Depo., Volume II, 342:25-343:5.

**Evidence:**

Rosen Depo., 76:5-14; Hemedinger Depo., 51:23-52:23; Holmes Depo., 101:24-102:7; Gannon Depo., 70:8-71:15, 81:7-11; Gannon Decl., ¶ 6, 10.

80. Plaintiff testified that she was un- 80. Undisputed.  
aware of any other MA at the West LA **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.

**Evidence:**

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) survives as a matter of law because Plaintiff was terminated. (UF Nos. 1-80.)

**Alleged Undisputed Facts and  
Supporting Evidence**

**Plaintiff's Responses and  
Supporting Evidence**

1. Plaintiff was hired as a Membership 1. Undisputed.  
Advisor ("MA") at Equinox's Santa **Evidence:**  
Monica club on or about October 15, 2010.

**Evidence:**

Plaintiff Depo., Volume I, 36:23-38:10,  
Exh. 5 (Offer Letter).

2. In January 2014, Plaintiff began 2. Disputed. Kasbarian was promoted  
working at Equinox's West Los Angeles to the position of Membership Executive at  
club ("West LA club"). the West Los Angeles club ("West LA") in

**Evidence:**

Plaintiff Depo., Volume I, 189:22-190:12, **Evidence:**

Exh. 10; Kasbarian Depo., Vol. I, 89:9-

1 Exh. 13 (Memo).

90:19, 279:14-280:12; Kasbarian Decl., ¶  
2 5; Hemedinger Depo., 50:4-9; Rosen  
3 Depo., 20:4-18; Holmes Depo., 39:13-18.

4  
5 3. At the West LA club, MAs were re-  
6 ferred to as Membership Executives.  
7 However, their job duties were the same.

8 **Evidence:**

9 Declaration of Brian Hemedinger  
10 (“Hemedinger Decl.”), ¶ 3.

3. Disputed. A Membership Executive  
position is considered a promotion from an  
MA position. Kasbarian was specifically  
told her position as a Membership  
Executive was a promotion from an MA,  
and she received a memo on it, as well as a  
higher compensation plan. Kasbarian’s  
hourly rate also increased with her position  
as a Membership Executive, to \$19.23 per  
hour, as well as an increase in  
commissions and bonuses.

16 **Evidence:**

17 Exh. 10; Kasbarian Depo., Vol. I, 89:9-  
18 90:19, 279:14-280:12; Kasbarian Decl., ¶  
19 5; Hemedinger Depo., 50:4-9; Rosen  
20 Depo., 20:4-18; Holmes Depo., 39:13-18.

21  
22 4. During Plaintiff’s employment at  
23 Equinox Santa Monica and West LA  
24 clubs, Jack Gannon (“Gannon”) was the  
25 Vice President of the West Coast.

26 **Evidence:**

27 Declaration of Jack Gannon (“Gannon  
28

4. Undisputed.

**Evidence:**

Decl.”), ¶¶ 1-2.

5. From about October 2011 through 5. Undisputed.  
about June 2015, Brian Hemedinger **Evidence:**  
 (“Hemedinger”) was the Regional Director  
of Operations (“Regional Director”) of the  
Santa Monica and West LA clubs.

**Evidence:**

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. Undisputed.  
 (“Simonson) supervised Plaintiff at the **Evidence:**  
West LA club from about January 2014 to  
about January 2015.

**Evidence:**

Plaintiff Depo., Volume I, 52:11-19.

7. Plaintiff’s personnel file includes an 7. Undisputed.  
Employee Handbook Receipt Acknowl- **Evidence:**  
edgment Form with Plaintiff’s signature  
dated October 15, 2010.

**Evidence:**

Plaintiff Depo., Volume I, 43:18-45:15,  
Exh. 8 (Receipt Acknowledgement [sic]  
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 and myself.

**Evidence:**

Plaintiff Depo., Volume I, 43:18-45:15, Exh. 8 (Receipt Acknowledgement [sic] Form); Figueroa Decl., ¶ 5, Exh. B (Receipt Acknowledgement [sic] Form.

9. Plaintiff’s personnel file also includes an Offer Letter, dated October 15, 2010, which Plaintiff acknowledged receiving.

**Evidence:**

Plaintiff Depo., Volume I, 36:23-38:11, Exh. 5 (Offer Letter); Figueroa Decl., ¶ 6,

8. Undisputed, as to what the actual document states. However, disputed as to whether Kasbarian actually believed her employment was “at-will.” Kasbarian believes she would not be demoted, have her pay cut, her employment suspended, or, reassigned, etc. unless it was for good cause.

**Evidence:**

Kasbarian Decl., ¶¶ 4, 11, 13, 14.

9. Undisputed.

**Evidence:**

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.

**Evidence:**

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.

**Evidence:**

Figueroa Decl., ¶ 8, Exh. D.

12. This Agreement stated: “You agree and understand that nothing in this Agree-

10. Undisputed, as to what the actual document states. However, disputed as to whether Kasbarian actually believed her employment was “at-will.” Kasbarian believes she would not be demoted, have her pay cut, her employment suspended, or, reassigned, etc. unless it was for good cause.

**Evidence:**

Kasbarian Decl., ¶¶ 4, 11, 13, 14.

11. Undisputed.

**Evidence:**

12. Undisputed, as to what the actual document states. However, disputed as to

1 ment shall alter or modify the ‘at-will’  
2 nature of your employment with the Com-  
3 pany or confer on [y]ou any rights with re-  
4 spect to continuation of your employment  
5 with the Company.”

6 **Evidence:**

7 Figueroa Decl., ¶ 8, Exh. D.

whether Kasbarian actually believed her  
employment was “at-will.” Kasbarian  
believes she would not be demoted, have  
her pay cut, her employment suspended,  
or, reassigned, etc. unless it was for good  
cause.

8 **Evidence:**

9 Kasbarian Decl., ¶¶ 4, 11, 13, 14.

10 13. In her deposition, Plaintiff admitted  
11 that she did not have a contract with  
12 Equinox; no one ever told her that she was  
13 guaranteed employment for a certain time  
14 period; and no one ever told her that she  
15 was anything other than an at-will em-  
16 ployee.

17 **Evidence:**

18 Plaintiff Depo., Volume I, 36:23-38:11,  
19 43:18-45:15, Exh. 5 (Offer Letter), Exh. 8  
20 (Receipt Acknowledgement [sic] Form).

13. Undisputed, as to what the actual  
document states. However, disputed as to  
whether Kasbarian actually believed her  
employment was “at-will.” Kasbarian  
believes she would not be demoted, have  
her pay cut, her employment suspended,  
or, reassigned, etc. unless it was for good  
cause.

21 **Evidence:**

22 Kasbarian Decl., ¶¶ 4, 11, 13, 14.

22 14. The Employee Handbook Plaintiff  
23 acknowledged receiving also included  
24 Equinox’s non-retaliation policy as well as  
25 complaint procedures for reporting retalia-  
26 tion.

27 **Evidence:**

28 Plaintiff Depo., Volume I, 43:18-45:15,

14. Undisputed.

**Evidence:**

1 Exh. 8 Receipt of Employee Handbook;  
2 Declaration of Emerson Figueroa  
3 (“Figueroa Decl.”), Exh. A.  
4

5 15. In particular, Equinox’s policy strict- 15. Undisputed.  
6 ly prohibits retaliation against any employ- **Evidence:**  
7 ee for “filing a complaint and [Equinox]  
8 will not knowingly permit retaliation by  
9 management, employees, or co-workers.”  
10 Equinox’s policy also prohibits retaliation  
11 against any employee for “using this com-  
12 plaint procedure or for filing, testifying,  
13 assisting, or participating in any manner in  
14 any investigation, proceeding, or hearing  
15 conducted by a governmental enforcement  
16 agency. Additionally, Equinox will not  
17 knowingly permit any retaliation against  
18 any employee who complains of prohibited  
19 harassment or who participates in an inves-  
20 tigation.”

21 **Evidence:**

22 Plaintiff Depo., Volume I, 43:18-45:15,  
23 Exh. 8 Receipt of Employee Handbook;  
24 Figueroa Decl., Exh. A, Employee Hand-  
25 book.  
26

27 16. The complaint procedure as outlined 16. Undisputed.  
28 in the Employee Handbook permits an em- **Evidence:**

1 ployee to report retaliation to his or her  
2 manager, Human Resources, or through  
3 Equinox's Ethics Hotline.

4 **Evidence:**

5 Plaintiff Depo., Volume I, 43:18-45:15,  
6 Exh. 8 Receipt of Employee Handbook;  
7 Figueroa Decl. ¶ 4.  
8

9 17. In or about June 2014, Hemedinger  
10 informed Plaintiff and other MAs that the  
11 compensation plan for all West LA MAs  
12 was being clarified, so that the market bo-  
13 nuses would be paid out individually and  
14 not cumulatively for reaching a certain  
15 sales goal.

16 **Evidence:**

17 Plaintiff Depo., Volume I, 190:16-194:3,  
18 219:7-10; Plaintiff Depo., Volume II,  
19 347:22-348:1; Deposition of Barry Holmes  
20 ("Holmes Depo.") 69:4-71:12, 73:23-  
21 75:10, Exhs. 201-202; Hemedinger Depo.,  
22 60:11-61:3, 68:12-14, 70:19-72:3.; Rosen  
23 Depo., 33:5-15.  
24

17. Disputed. In June 2014, five months  
after Kasbarian started complaining about  
the fraudulent activities by other  
membership advisors, Kasbarian's  
commission and bonus check for May  
2014 was suddenly and for the first time  
since she started at West LA 25-33% short  
of what she was owed. Kasbarian  
immediately complained about her unpaid  
commissions and bonuses. After she  
complained defendant permanently cut her  
compensation plan stating that they have  
been paying her too much and in "error"  
and told her that she is "lucky that they  
were not asking her to pay the difference  
back."

25 **Evidence:**

26 Exhs. 11, 12, 13; Kasbarian Depo., Vol. I,  
27 201:1-206:5, 207:4-20, 209:19-210:8,  
28 221:11-14; Kasbarian Depo., Vol. II,

347:1-18; Kasbarian Decl., ¶¶ 8, 9; Hemedinger Depo., 59:14-60:10; Rosen Depo., 22:15-23:17, 29:18-31:6, Holmes Depo., 73:5-17, 81:7-24; 120:19-121:3; Figueroa Depo., 99:22- 100:5; Gannon Depo., 99:4-7; Hemedinger Depo., 59:14-60:10.

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

**Evidence:**

Plaintiff Depo., Volume I, 190:16-194:3; Hemedinger Depo., 64:18-65:11.

18. Disputed. In June 2014, five months after Kasbarian started complaining about the fraudulent activities by other membership advisors, Kasbarian's commission and bonus check for May 2014 was suddenly and for the first time since she started at West LA 25-33% short of what she was owed. Kasbarian immediately complained about her unpaid commissions and bonuses. After she complained defendant permanently cut her compensation plan stating that they have been paying her too much and in "error" and told her that she is "lucky that they were not asking her to pay the difference back."

**Evidence:**

Exhs. 11, 12, 13; Kasbarian Depo., Vol. I, 201:1-206:5, 207:4-20, 209:19-210:8, 221:11-14; Kasbarian Depo., Vol. II,

347:1-18; Kasbarian Decl., ¶¶ 8, 9; Hemedinger Depo., 59:14-60:10; Rosen Depo., 22:15-23:17, 29:18-31:6, Holmes Depo., 73:5-17, 81:7-24; 120:19-121:3; Figueroa Depo., 99:22- 100:5; Gannon Depo., 99:4-7; Hemedinger Depo., 59:14-60:10.

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.

**Evidence:**

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., 68:125-69:8.

19. Disputed. In June 2014, five months after Kasbarian started complaining about the fraudulent activities by other membership advisors, Kasbarian's commission and bonus check for May 2014 was suddenly and for the first time since she started at West LA 25-33% short of what she was owed. Kasbarian immediately complained about her unpaid commissions and bonuses. After she complained defendant permanently cut her compensation plan stating that they have been paying her too much and in "error" and told her that she is "lucky that they were not asking her to pay the difference back."

**Evidence:**

Exhs. 11, 12, 13; Kasbarian Depo., Vol. I, 201:1-206:5, 207:4-20, 209:19-210:8, 221:11-14; Kasbarian Depo., Vol. II,

347:1-18; Kasbarian Decl., ¶¶ 8, 9; Hemedinger Depo., 59:14-60:10; Rosen Depo., 22:15-23:17, 29:18-31:6, Holmes Depo., 73:5-17, 81:7-24; 120:19-121:3; Figueroa Depo., 99:22- 100:5; Gannon Depo., 99:4-7; Hemedinger Depo., 59:14-60:10.

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”).

**Evidence:**

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.

20. Undisputed as to Kasbarian’s complaints but otherwise disputed. In June 2014, five months after Kasbarian started complaining about the fraudulent activities by other membership advisors, Kasbarian’s commission and bonus check for May 2014 was suddenly and for the first time since she started at West LA 25-33% short of what she was owed. Kasbarian immediately complained about her unpaid commissions and bonuses. After she complained defendant permanently cut her compensation plan stating that they have been paying her too much and in “error” and told her that she is “lucky that they were not asking her to pay the difference back.”

**Evidence:**

Exhs. 11, 12, 13; Kasbarian Depo., Vol. I, 201:1-206:5, 207:4-20, 209:19-210:8,



221:11-14; Kasbarian Depo., Vol. II, 347:1-18; Kasbarian Decl., ¶¶ 8, 9; Hemedinger Depo., 59:14-60:10; Rosen Depo., 22:15-23:17, 29:18-31:6, Holmes Depo., 73:5-17, 81:7-24; 120:19-121:3; Figueroa Depo., 99:22- 100:5; Gannon Depo., 99:4-7; Hemedinger Depo., 59:14-60:10.

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.

**Evidence:**

Plaintiff Depo., Volume I, 196:8-14, 207:15-22, 220:5-20; Plaintiff Depo., Volume II, 349:5-12.

21. Undisputed to the fact that Kasbarian continued to work at Equinox until February 2015 after she complained; however, disputed as to the rest. In June 2014, five months after Kasbarian started complaining about the fraudulent activities by other membership advisors, Kasbarian's commission and bonus check for May 2014 was suddenly and for the first time since she started at West LA 25-33% short of what she was owed. Kasbarian immediately complained about her unpaid commissions and bonuses. After she complained defendant permanently cut her compensation plan stating that they have been paying her too much and in "error" and told her that she is "lucky that they were not asking her to pay the difference back."

**Evidence:**

Exhs. 11, 12, 13; Kasbarian Depo., Vol. I, 201:1-206:5, 207:4-20, 209:19-210:8, 221:11-14; Kasbarian Depo., Vol. II, 347:1-18; Kasbarian Decl., ¶¶ 8, 9; Hemedinger Depo., 59:14-60:10; Rosen Depo., 22:15-23:17, 29:18-31:6, Holmes Depo., 73:5-17, 81:7-24; 120:19-121:3; Figueroa Depo., 99:22- 100:5; Gannon Depo., 99:4-7; Hemedinger Depo., 59:14-60:10.

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.

**Evidence:**

Plaintiff Depo., Volume I, 81:6-21; 82:5-83:23, 94:14-97:9.

22. Undisputed. However, Kasbarian testified that she complained about multiple MAs at West LA, including Lauren Beck and Devin Mcvelogue about multiple fraudulent and unlawful activities, including charging members credit cards without their authorization.

**Evidence:**

Kasbarian Depo., Vol. I, 69:5-71:5, 71:20-72:4, 76:5-25, 82:9-83:19, 98:11-99:4, 102:13-103:25, 112:5-113:2; Kasbarian Depo., Vol. II, 334:16-25; Kasbarian Decl., ¶ 6; Hemedinger Depo., 43:13-15, 45:8-22, 46:10-22; 76:1-15.

23. According to Plaintiff, “charging

23. Undisputed. Gannon also testified

1 credit cards without people's approval and admitted in testimony that he believes  
2 telling people they were signing up for a that the type of conduct Kasbarian  
3 month-long contract, but then signing them complained of was illegal and is the type  
4 up for a year-long contract" were the only of conduct that needs to be investigated.  
5 "illegal activities" about which she com- **Evidence:**  
6 plained to Equinox. Gannon Depo., 51:10-15, 52:23-53:3.

7 **Evidence:**

8 Plaintiff Depo., Volume II, 334:16-336:23.

9  
10 24. According to Plaintiff, her other 24. Undisputed.  
11 complaints involved "things against **Evidence:**  
12 Equinox policies that were happening as  
13 well."

14 **Evidence:**

15 Plaintiff Depo., Volume II, 334:16-336:23.

16  
17 25. Plaintiff admitted that she could not 25. Disputed. Plaintiff testified that she  
18 identify any statute, ordinance, regulation, believed this conduct was illegal.  
19 local law, state law, or federal law that was Moreover, Gannon also testified and  
20 violated as a result of this alleged activity. admitted in testimony that he believes that  
21 the type of conduct Kasbarian complained  
22 of was illegal and is the type of conduct  
23 that needs to be investigated.

24 **Evidence:**

25 Plaintiff Depo., Volume II, 335:4-336:23.

26 **Evidence:**

27 Kasbarian Depo., Volume II, 334:16-  
28 336:23; Gannon Depo., 51:10-15, 52:23-  
53:3.

26. Plaintiff also testified that she complained to Hemedinger and Simonson about the sales activities of another MA.

**Evidence:**

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.

**Evidence:**

Plaintiff Depo., Volume I, 76:17-79:19p 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

26. Undisputed.

**Evidence:**

27. Undisputed. However, Kasbarian testified that she complained about multiple MAs at West LA, including Lauren Beck and Devin Mcvelogue about multiple fraudulent and unlawful activities, including charging members credit cards without their authorization.

**Evidence:**

Kasbarian Depo., Vol. I, 69:5-71:5, 71:20-72:4, 76:5-25, 82:9-83:19, 98:11-99:4, 102:13-103:25, 112:5-113:2; Kasbarian Depo., Vol. II, 334:16-25; Kasbarian Decl., ¶ 6; Hemedinger Depo., 43:13-15, 45:8-22, 46:10-22; 76:1-15.

28. Undisputed.

**Evidence:**

1 authorization.

2 **Evidence:**

3 Rosen Depo., 37:20-38:18; Declaration of  
4 Tracy Cuva (“Cuva Decl.”), ¶ 2.

5  
6 29. Member Services is Equinox’s bill- 29. Undisputed.  
7 ing department (centrally based in New **Evidence:**  
8 York) which handles membership con-  
9 tracts and membership sales, including  
10 auditing of membership sales.

11 **Evidence:**

12 Cuva Decl., ¶ 1.

13  
14 30. Rosen contacted Tracy Cuva, Senior 30. Undisputed.  
15 Director of Equinox’s Member Services **Evidence:**  
16 Department, gave her the information re-  
17 ceived from the member, and asked  
18 Member Services to investigate this sale.

19 **Evidence:**

20 Rosen Depo., 37:20-38:21; Cuva Decl.,  
21 ¶ 2.

22  
23 31. Member Services’ investigation, 31. Undisputed.  
24 which was conducted by Cuva, confirmed **Evidence:**  
25 that this was an unauthorized sale  
26 processed by a MA at the West LA Club  
27 (Plaintiff was not implicated in this  
28 transaction).

**Evidence:**

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.

**Evidence:**

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.

**Evidence:**

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.

32. Undisputed. However, this MA was terminated.

**Evidence:**

Kasbarian Depo., Vol. I, 84:7-85:1, 184:20-23; Kasbarian Decl., ¶ 10; Hemedinger Decl., ¶ 4; Gannon Depo., 58:20-59:18, 60:2-21.

33. Disputed. Senior Director of Loss Prevention, Jim Burger, testified that Jack Gannon contacted him to do an investigation at the West LA location and reported to him throughout.

**Evidence:**

Burger Depo., 70:9-21, 78:4-11, 83:18-84:3.

34. Disputed. Senior Director of Loss Prevention, Jim Burger, testified that Jack Gannon contacted him to do an investigation at the West LA location and reported to him throughout.

**Evidence:**

Burger Depo., 70:9-21, 78:4-11, 83:18-

**Evidence:** 84:3.

Rosen Depo., 47:25-48:21.

35. Cuva instructed Kevin Stanfa 35. Undisputed.

(“Stanfa”) (Manager of Compliance and **Evidence:**

Special Projects), to review sales transactions at the West LA club.

**Evidence:**

Cuva Decl., ¶ 3; Stanfa Decl. ¶ 4.

36. After Stanfa reported finding various 36. Undisputed.

anomalies associated with sales transactions at the West LA club, Cuva instructed **Evidence:**

Stanfa to prepare a summary detailing his findings.

**Evidence:**

Cuva Decl., ¶ 3; Stanfa Decl. ¶ 4.

37. Stanfa then prepared a workbook 37. Disputed. Defendant fails to produce with three spreadsheets regarding the following sales activities: (1) 2014 Freezes; the spreadsheets corroborating those sales.

(2) Modification to Direct Bill; and **Evidence:**

(3) West LA Sales Breakdown. Defendant’s Amended Compendium of Exhibits.

**Evidence:**

Stanfa Decl., ¶ 4.

38. Once these were prepared, Cuva 38. Disputed. Defendant fails to produce emailed the spreadsheets to Rosen, Holmes the spreadsheets corroborating those sales.

1 and Gannon and summarized the results of  
2 the Member Services investigation.

3 **Evidence:**

4 Rosen Depo., 47:25-48:21; Holmes Depo.,  
5 86:10-88:10, 95:9-96:10; Cuva Decl., ¶ 6,  
6 Exh.N; Stanfa Decl. ¶¶ 4-5.

**Evidence:**

Defendant's Amended Compendium of  
Exhibits.

8 39. In her email, Cuva indicated that  
9 these spreadsheets "all reflect patterns un-  
10 healthy for the business."

11 **Evidence:**

12 Cuva Decl., ¶ 7, Exh.N.

39. Undisputed as to that statement being  
written in the email.

**Evidence:**

14 40. Cuva noted as follows:

15 i The 2041 Freezes spread-  
16 sheet shows that West LA is  
17 an outlier in members who  
18 request a freeze in the first 60  
19 days of membership who also  
20 go on to cancel in the same  
21 year.

22 i The Modification to Direct  
23 Bill spreadsheet reflects  
24 members in the last quarter  
25 of 2014 whose billing was  
26 modified from the credit card  
27 payment type to direct bill  
28 the day before billing ran.

40. Disputed. Kasbarian was found to  
have not committed any of the  
inappropriate and fraudulent conduct or  
"fake" sales that were being investigated.

**Evidence:**

Holmes Depo., 88:4-10, 106:11-19;  
Hemedinger Depo., 51:23-52:23; Rosen  
Depo., 48:22-49:3, 54:3-8, 76:5-14, 98:6-  
17, 101:24-102:7; Gannon Depo., 70:8-  
71:15, 72:7-20, 75:22-76:8, 79:5-10, 81:7-  
11; Gannon Decl., ¶ 6, 10.



1 The Company average is four  
2 per club. West LA had 28  
3 modifications to direct bill.

- 4 i The West LA Breakdown  
5 spreadsheet shows question-  
6 able sales from two MAs  
7 (Plaintiff and the MA moving  
8 to New York). The other  
9 three MAs were reviewed  
10 and did not reflect the same  
11 anomalies seen with Plaintiff  
12 and the MA moving to New  
13 York. The questionable sales  
14 included selling memberships  
15 to members with the credit  
16 card of another member (al-  
17 most universally without re-  
18 questing a referral credit) or  
19 re-contracting over a previ-  
20 ously 3-day'd membership  
21 and either using the credit  
22 from the previous sale or re-  
23 charging the same credit  
24 card, credit card not present  
25 for numerous sales transac-  
26 tions, 3-day cancellations  
27 with no or just one member  
28 visit, new memberships

1 which were previously fi-  
2 nance cancelled and had bal-  
3 ances on account that were  
4 waived.

5 **Evidence:**

6 Cuva Decl., ¶ 7, Exh.N.  
7

8 41. Neither Cuva nor Stanfa were aware  
9 Plaintiff had made any complaints about  
10 changes to her compensation plan or about  
11 the alleged activities of other MAs.

12 **Evidence:**

13 Cuva Decl., ¶ 8; Stanfa Decl., ¶ 11.  
14  
15  
16  
17  
18  
19  
20  
21

22 42. In addition, Burger was asked to in-  
23 terview the sales team at the West LA  
24 club.

25 **Evidence:**

26 Deposition of Jim Burger (“Burger  
27 Depo.”), 72:4-73:3, 73:13-75:22, 76:6-12.  
28

41. Undisputed. However, Kasbarian  
was found to have not committed any of  
the inappropriate and fraudulent conduct or  
“fake” sales that were being investigated.

**Evidence:**

41. Holmes Depo., 88:4-10, 106:11-19;  
Hemedinger Depo., 51:23-52:23; Rosen  
Depo., 48:22-49:3, 54:3-8, 76:5-14, 98:6-  
17, 101:24-102:7; Gannon Depo., 70:8-  
71:15, 72:7-20, 75:22-76:8, 79:5-10, 81:7-  
11; Gannon Decl., ¶ 6, 10.

**Evidence:**

42. Undisputed.

**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 [sic] and an Assistant General Manager.

**Evidence:**

Hemedinger Decl., ¶ 4.

44. A MA was fired on or about January 20, 2015 for improper sales activities.

**Evidence:**

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.

**Evidence:**

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.

**Evidence:**

Burger Depo., 73:13-74:15; Cuva Decl.

43. Undisputed.

**Evidence:**

44. Undisputed.

**Evidence:**

45. Disputed. Defendant fails to produce the spreadsheets corroborating those sales.

**Evidence:**

Defendant's Amended Compendium of Exhibits.

46. Undisputed.

**Evidence:**

¶ 8; Stanfa Decl., ¶ 9.

47. Burger had a subsequent meeting with Stanfa to review the spreadsheets Member Services had prepared.

**Evidence:**

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.

**Evidence:**

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

47. Disputed. Defendant fails to produce the spreadsheets corroborating those sales.

**Evidence:**

Defendant's Amended Compendium of Exhibits.

48. Disputed. Defendant fails to produce the spreadsheets corroborating those sales. However, However, Kasbarian was found to have not committed any of the inappropriate and fraudulent conduct or "fake" sales that were being investigated.

**Evidence:**

Defendant's Amended Compendium of Exhibits; Holmes Depo., 88:4-10, 106:11-19; Hemedinger Depo., 51:23-52:23; Rosen Depo., 48:22-49:3, 54:3-8, 76:5-14, 98:6-17, 101:24-102:7; Gannon Depo., 70:8-71:15, 72:7-20, 75:22-76:8, 79:5-10, 81:7-11; Gannon Decl., ¶ 6, 10.

49. Undisputed.

**Evidence:**

1 the West LA Club.

2 **Evidence:**

3 Burger Depo., 76:19-77:1; Stanfa Decl.,  
4 ¶ 9.

5  
6 50. In late January 2015, Burger came to 50. Undisputed.  
7 Los Angeles to interview various employ- **Evidence:**  
8 ees regarding sales activities of the West  
9 LA MAs.

10 **Evidence:**

11 Burger Depo., 76:6-12; Gannon Decl., ¶ 3;  
12 Hemedinger Decl., ¶ 5.

13  
14 51. Prior to the interviews, Burger and 51. Disputed. Gannon testified that one  
15 Gannon discussed suspending all of the in- MA was not suspended and was not  
16 dividuals interviewed as part of the investi- discussed suspending because there “was  
17 gation pending the results of the investiga- no suspicious conduct linked to him” even  
18 tion.

19 **Evidence:**

20 Burger Depo., 116:12-117:12.

**Evidence:**

Gannon Depo., 70:8-71:19, 81:7-11;  
Gannon Decl., ¶ 6, 10.

21  
22  
23 52. Burger then interviewed the follow- 52. Disputed. Gannon testified that one  
24 ing individuals: (1) the Assistant General MA was not suspended and was not  
25 Manager; (2) Plaintiff; (3) another MA; discussed suspending because there “was  
26 (4) a relatively newly hired MA; and no suspicious conduct linked to him” even  
27 (5) Simonson. at the beginning of the investigation.

28 **Evidence:**

**Evidence:**

Hemedinger Decl., ¶ 5.

Gannon Depo., 70:8-71:19, 81:7-11;  
Gannon Decl., ¶ 6, 10.

53. Burger had never heard of or spoken  
to Plaintiff prior to this investigation meet-  
ing.

53. Undisputed.

**Evidence:**

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 prac-  
tices.

54. Undisputed.

**Evidence:**

Plaintiff Depo., Volume I, 161:11-22,  
164:10-22; Plaintiff Depo., Volume II,  
305:21-24; , [sic] Burger Depo., 96:18-25.

55. Plaintiff answered questions about  
her sales activities, as well as the activities  
of other MAs.

55. Undisputed. Additionally, at the  
beginning of Kasbarian's interview, she  
notifies Senior Director of Loss  
Prevention, Jim Burger, about the  
fraudulent activity and unauthorized  
membership sales that she observed and  
complained about to management for  
months

**Evidence:**

Plaintiff Depo., Volume I, 161:11-22,  
164:10-22; Burger Depo., 53:13-54:9.

**Evidence:**

Exh. 17; Kasbarian Depo., Vol. I, 158:4-

1 18, 161:15-162:1, 166:9-167:2; Kasbarian  
2 Decl., ¶¶ 10, 11; Burger Depo., 70:9-21,  
3 78:4-11, 83:18-84:3, 91:5-92:18, 100:3-8,  
4 183:21-184:12.

5  
6 56. While Burger did not find Plaintiff  
7 credible, he felt, at that time, that there was  
8 insufficient information to warrant Plain-  
9 tiff's termination.

10 **Evidence:**

11 Burger Depo., 122:14-17.  
12  
13

56. Undisputed as to Burger concluding  
there was insufficient information to  
warrant any terminable offense committed  
by Burger. Kasbarian was found to have  
not committed any of the inappropriate and  
fraudulent conduct or "fake" sales that  
were being investigated.

14 **Evidence:**

15 Holmes Depo., 88:4-10, 106:11-19;  
16 Hemedinger Depo., 51:23-52:23; Rosen  
17 Depo., 48:22-49:3, 54:3-8, 76:5-14, 98:6-  
18 17, 101:24-102:7; Gannon Depo., 70:8-  
19 71:15, 72:7-20, 75:22-76:8, 79:5-10, 81:7-  
20 11; Gannon Decl., ¶ 6, 10.  
21

22 57. After Burger completed his inter-  
23 views, Burger, Gannon and Hemedinger  
24 met briefly to discuss Burger's impression.

25 **Evidence:**

26 Burger Depo., 117:16-18, 24-118:6.  
27

57. Undisputed.

**Evidence:**

28 58. Gannon then advised Plaintiff that

58. Undisputed. However, she was

1 she was being suspended.

2 **Evidence:**

3 Plaintiff Depo, Volume I, 174:24-175:3,  
4 11-12; Plaintiff Depo., Volume II, 306:3-7;  
5 Gannon Decl., ¶ 4.

suspended despite her having been found  
to not have committed any terminable  
offense.

6 **Evidence:**

7 Holmes Depo., 88:4-10, 106:11-19;  
8 Hemedinger Depo., 51:23-52:23; Rosen  
9 Depo., 48:22-49:3, 54:3-8, 76:5-14, 98:6-  
10 17, 101:24-102:7; Gannon Depo., 70:8-  
11 71:15, 72:7-20, 75:22-76:8, 79:5-10, 81:7-  
12 11; Gannon Decl., ¶ 6, 10.

13 59. All of the MAs interviewed as part of  
14 the investigation (with the exception of the  
15 relatively new MA) were suspended pend-  
16 ing investigation.

17 **Evidence:**

18 Burger Depo., ¶ [sic] 110:17-23; Gannon  
19 Decl., ¶ 6.

59. Undisputed. One MA was not  
suspended.

20 **Evidence:**

21 Gannon Depo., 70:8-71:15, 81:7-11;  
22 Gannon Decl., ¶ 6, 10.

23 60. Gannon also advised Plaintiff to re-  
24 port back to the West LA club at 2:00 p.m.  
25 the next day for another meeting.

26 **Evidence:**

27 Plaintiff Depo., Volume II, 180:11-181:4;  
28 Gannon Decl., ¶ 5.

60. Undisputed.

**Evidence:**

61. According to Plaintiff, Equinox told  
her that she would not have access to her

61. Undisputed.

**Evidence:**



1 email or payroll account and escorted her  
2 out of the building in front of Equinox's  
3 clientele, staff and all of her peers.

4 **Evidence:**

5 Plaintiff Depo., Volume II, 174:24-175:21;  
6 Plaintiff Depo., Volume II, 305:21-306:2,  
7 364:17-20; Plaintiff's Complaint, 6:5-7.

8  
9 62. It is Equinox's policy to turn off  
10 email access for hourly employees who  
11 have been suspended pending investigation  
12 or who are on leave of absence.

13 **Evidence:**

14 Gannon Decl., ¶ 7.

15  
16 63. Prior to Burger's interview of Plain-  
17 tiff, Gannon had the Payroll Department  
18 prepare a final paycheck for Plaintiff so  
19 that she could be paid in accordance with  
20 California law in the event the decision  
21 was made to terminate her employment.

22 **Evidence:**

23 Gannon Decl., ¶ 8.

24  
25  
26  
27 64. Plaintiff met with Hemedinger and  
28 Gannon at the West LA club on January

62. Disputed. Defendant did not produce  
any documentation corroborating this  
policy.

**Evidence:**

Defendant's Amended Compendium of  
Evidence.

63. Undisputed as to Gannon preparing  
the final paycheck; however, this paycheck  
was prepared by Gannon even before the  
interview in preparation for Kasbarian's  
termination.

**Evidence:**

Gannon Decl., ¶ 8; Exh. 15; Kasbarian  
Depo., Vol. I, 130:21-131:3, 185:5-15;  
Kasbarian Depo., Vol. II, 311:9-22;  
Kasbarian Decl., ¶ 11.

64. Undisputed.

**Evidence:**

31, 2015 and was told that the investigation was concluded and that she would be working at the Marina Del Rey club.

**Evidence:**

Plaintiff Depo., Volume I, 182:5-183:8; Plaintiff Depo., Volume II, 306:12:16 [sic], 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.

**Evidence:**

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.

65. Disputed. Defendant's claim that Kasbarian was reassigned to Marina Del Rey because they wanted to rebuild the team of Mas, yet one MA was allowed to stay at West LA

**Evidence:**

Rosen Depo., 48:22-49:3, 54:3-8, 98:6-17, 76:5-14; Hemedinger Depo., 51:23-52:23; Holmes Depo., 88:4-10, 106:11-19, 101:24-102:7; Gannon Depo., 70:8-71:15, 72:7-20, 75:22-76:8, 79:5-10, 81:7-11; Gannon Decl., ¶ 6, 10.

66. Undisputed that the compensation plan would change; however, disputed as to it being a lateral move. Kasbarian is told that she would be paid \$9.00/hour at the Marina del Rey office, which was a \$10.00

**Evidence:**

Rosen Depo., 87:25-88:4; Gannon Decl., ¶ 11.

per hour decrease in hourly rate that she was being paid at the West Los Angeles branch at \$19.23 per hour. Barry Holmes, Vice President of Sales, admits that urban clubs, such as the Santa Monica location, tend to generate more revenue than suburban clubs, like the Marina Del Rey location, and the West LA location is a higher tier club than urban clubs. Brian Hemedinger admits in deposition that they thought it would be “best for Tamar, if she had the opportunity to be a membership advisor at a different location,” while acknowledging that she would be going to a lower tier location than when she first started with the company. Moreover, when Kasbarian went to West LA she was promoted from MA to Membership Executive, which it stated on her “Promotion Memo.”

**Evidence:**

Exh. 10, 14; Kasbarian Depo., Vol. I, 50:24-51:1, 89:9-90:19, 279:14-280:12, 182:12-184:19; Kasbarian Depo., Vol. II, 354:1-18, 458:24-459:17; Gannon Decl., 9, 10; Holmes Depo., 28:22-29:2, 50:18-25; Gannon Depo., 32:15-17, 88:25-89:5; Hemedinger Depo., 50:14-20, 51:23-

52:23, 81:2-23.

67. Equinox considered the reassignment a lateral move.

**Evidence:**

Rosen Depo., 87:25-88:4; Gannon Decl., ¶ 11.

67. Disputed. Kasbarian is told that she would be paid \$9.00/hour at the Marina del Rey office, which was a \$10.00 per hour decrease in hourly rate that she was being paid at the West Los Angeles branch at \$19.23 per hour. Barry Holmes, Vice President of Sales, admits that urban clubs, such as the Santa Monica location, tend to generate more revenue than suburban clubs, like the Marina Del Rey location, and the West LA location is a higher tier club than urban clubs. Brian Hemedinger admits in deposition that they thought it would be “best for Tamar, if she had the opportunity to be a membership advisor at a different location,” while acknowledging that she would be going to a lower tier location than when she first started with the company. Moreover, when Kasbarian went to West LA she was promoted from MA to Membership Executive, which it stated on her “Promotion Memo.”

**Evidence:**

Exh. 10, 14; Kasbarian Depo., Vol. I, 50:24-51:1, 89:9-90:19, 279:14-280:12, 182:12-184:19; Kasbarian Depo., Vol. II,

354:1-18, 458:24-459:17; Gannon Decl., 9, 10; Holmes Depo., 28:22-29:2, 50:18-25; Gannon Depo., 32:15-17, 88:25-89:5; Hemedinger Depo., 50:14-20, 51:23-52:23, 81:2-23.

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.

**Evidence:**

Plaintiff Depo., Volume II, 390:4-11, Exh. 38; Gannon Decl., ¶ 12.

68. Undisputed.

**Evidence:**

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.

**Evidence:**

Hemedinger Depo., 52:18-23; Rosen Depo., 57:13-19; 58:22-59:14; Holmes Depo., 31:13-15.

69. Disputed. Kasbarian is told that she would be paid \$9.00/hour at the Marina del Rey office, which was a \$10.00 per hour decrease in hourly rate that she was being paid at the West Los Angeles branch at \$19.23 per hour. Barry Holmes, Vice President of Sales, admits that urban clubs, such as the Santa Monica location, tend to generate more revenue than suburban clubs, like the Marina Del Rey location, and the West LA location is a higher tier club than urban clubs. Brian Hemedinger admits in deposition that they thought it would be "best for Tamar, if she had the

1 opportunity to be a membership advisor at  
2 a different location,” while acknowledging  
3 that she would be going to a lower tier  
4 location than when she first started with  
5 the company. Moreover, when Kasbarian  
6 went to West LA she was promoted from  
7 MA to Membership Executive, which it  
8 stated on her “Promotion Memo.”

9 **Evidence:**

10 Exh. 10, 14; Kasbarian Depo., Vol. I,  
11 50:24-51:1, 89:9-90:19, 279:14-280:12,  
12 182:12-184:19; Kasbarian Depo., Vol. II,  
13 354:1-18, 458:24-459:17; Gannon Decl., 9,  
14 10; Holmes Depo., 28:22-29:2, 50:18-25;  
15 Gannon Depo., 32:15-17, 88:25-89:5;  
16 Hemedinger Depo., 50:14-20, 51:23-  
17 52:23, 81:2-23.

18  
19 70. It was easier to sell more member-  
20 ships at the Marina Del Rey club than the  
21 West LA club because the Marina Del Rey  
22 memberships were less expensive.

23 **Evidence:**

24 Hemedinger Depo., 52:18-23; Rosen  
25 Depo., 57:13-19; 58:22-59:14; Holmes  
26 Depo., [sic] 50:18-51:5.

27 70. Disputed. Kasbarian is told that she  
28 would be paid \$9.00/hour at the Marina del  
Rey office, which was a \$10.00 per hour  
decrease in hourly rate that she was being  
paid at the West Los Angeles branch at  
\$19.23 per hour. Barry Holmes, Vice  
President of Sales, admits that urban clubs,  
such as the Santa Monica location, tend to  
generate more revenue than suburban  
clubs, like the Marina Del Rey location,

1 and the West LA location is a higher tier  
2 club than urban clubs. Brian Hemedinger  
3 admits in deposition that they thought it  
4 would be “best for Tamar, if she had the  
5 opportunity to be a membership advisor at  
6 a different location,” while acknowledging  
7 that she would be going to a lower tier  
8 location than when she first started with  
9 the company. Moreover, when Kasbarian  
10 went to West LA she was promoted from  
11 MA to Membership Executive, which it  
12 stated on her “Promotion Memo.”

13 **Evidence:**

14 Exh. 10, 14; Kasbarian Depo., Vol. I,  
15 50:24-51:1, 89:9-90:19, 279:14-280:12,  
16 182:12-184:19; Kasbarian Depo., Vol. II,  
17 354:1-18, 458:24-459:17; Gannon Decl., 9,  
18 10; Holmes Depo., 28:22-29:2, 50:18-25;  
19 Gannon Depo., 32:15-17, 88:25-89:5;  
20 Hemedinger Depo., 50:14-20, 51:23-  
21 52:23, 81:2-23.

22  
23 71. Gannon emailed Plaintiff the com-  
24 pensation plan for the Marina Del Rey  
25 Club on or about January 31, 2015.

26 **Evidence:**

27 Plaintiff Depo., Volume I, 246:19-247:2;  
28

71. Undisputed.

**Evidence:**

1 Gannon Decl., ¶ 12.

2  
3 72. Plaintiff testified that no one from  
4 Equinox ever told her that she was being  
5 “terminated” or “demoted” as part of her  
6 reassignment to the Marina Del Rey club.

7 **Evidence:**

8 Plaintiff Depo., Volume I, 171:10-172:7;  
9 Plaintiff Depo., Volume II, 306:17-310:19,  
10 363:24-364:3; Gannon Decl., ¶ 13;  
11 Hemedinger Decl., ¶ 7.

72. Undisputed as to no one stating those  
actual words; however, Kasbarian is told  
that she would be paid \$9.00/hour at the  
Marina del Rey office, which was a \$10.00  
per hour decrease in hourly rate that she  
was being paid at the West Los Angeles  
branch at \$19.23 per hour. Barry Holmes,  
Vice President of Sales, admits that urban  
clubs, such as the Santa Monica location,  
tend to generate more revenue than  
suburban clubs, like the Marina Del Rey  
location, and the West LA location is a  
higher tier club than urban clubs. Brian  
Hemedinger admits in deposition that they  
thought it would be “best for Tamar, if she  
had the opportunity to be a membership  
advisor at a different location,” while  
acknowledging that she would be going to  
a lower tier location than when she first  
started with the company. Moreover, when  
Kasbarian went to West LA she was  
promoted from MA to Membership  
Executive, which it stated on her  
“Promotion Memo.”

27 **Evidence:**

28 Exh. 10, 14; Kasbarian Depo., Vol. I,



50:24-51:1, 89:9-90:19, 279:14-280:12,  
182:12-184:19; Kasbarian Depo., Vol. II,  
354:1-18, 458:24-459:17; Gannon Decl., 9,  
10; Holmes Depo., 28:22-29:2, 50:18-25;  
Gannon Depo., 32:15-17, 88:25-89:5;  
Hemedinger Depo., 50:14-20, 51:23-  
52:23, 81:2-23.

73. Gannon made the decision to reas- 73. Undisputed.  
sign Plaintiff to the Marina Del Rey club. **Evidence:**

**Evidence:**

Rosen Depo., 45:7-25. 57:8-12;  
Hemedinger Depo., 53:14-18.

74. Plaintiff was told to report to the 74. Undisputed.  
Marina Del Rey club on February 2, 2015 **Evidence:**  
at 9:00 a.m.

**Evidence:**

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 75. Undisputed; however, Kasbarian was  
Rey club, Plaintiff submitted her resigna- forced to resign due to intolerable working  
tion, via email, on the morning of February conditions at Equinox. On February 2,  
2, 2015 effective immediately. 2015, the day Kasbarian was supposed to  
start at the Marina del Rey location, she

**Evidence:**

1 Plaintiff Depo., Volume I, 186:5-14, Exh. feels she is no longer welcome at Equinox  
2 26; Plaintiff Depo., Volume II, 311:4-8; and feels pushed out since she was forced  
3 Hemedinger Depo., 54:17-55:18, 55:25- to take a demotion, a significant pay cut  
4 56:25, 57:6-57:11. and restart her business and clientele base,

5 along with the overwhelming stress of the  
6 interrogation and suspension and fear of  
7 being terminated that she is forced to  
8 resign.

9 **Evidence:**

10 Exh. 16; Kasbarian Depo., Vol. I, 186:5-  
11 14; Kasbarian Decl., ¶¶ 12-14.

12  
13 76. Plaintiff's last day of employment 76. Undisputed.  
14 was February 2, 2015. **Evidence:**

15 **Evidence:**

16 Plaintiff Depo., Volume I, 186:11-14.

17  
18 77. Plaintiff never reported to work at 77. Undisputed.  
19 the Marina Del Rey club. **Evidence:**

20 **Evidence:**

21 Plaintiff Depo., Volume I, 50:13-15,  
22 186:15-17; Hemedinger Depo., 56:22-25.

23  
24 78. As of February 1, 2015, the only re- 78. Undisputed.  
25 maining MA at the West LA club was the **Evidence:**  
26 recently hired MA. Gannon Decl., ¶ 6, 10.

27 **Evidence:**

1 Plaintiff Depo., Volume II, 342:3-11.

2  
3 79. As of April/May 2015, the West LA  
4 club had an entirely new sales team and  
5 sales management.

6 **Evidence:**

7 Plaintiff Depo., Volume II, 342:25-343:5.

79. Undisputed. However, one MA was  
able to stay at the West LA location,  
despite Gannon stating he wanted to  
rebuild the team by getting rid of all of the  
Membership Executives at West LA.

8 **Evidence:**

9 Rosen Depo., 76:5-14; Hemedinger Depo.,  
10 51:23-52:23; Holmes Depo., 101:24-  
11 102:7; Gannon Depo., 70:8-71:15, 81:7-  
12 11; Gannon Decl., ¶ 6, 10.

13  
14 80. Plaintiff testified that she was un-  
15 aware of any other MA at the West LA  
16 club complaining about the unauthorized  
17 use of credit cards or telling someone that  
18 they were being signed up for a one-month  
19 membership but signing them up for a year  
20 instead.

21 **Evidence:**

22 Plaintiff Depo., Volume II, 343:6-22.

80. Undisputed.

23 **Evidence:**

24 **ISSUE NO. 11:** Although Plaintiff has not pled a cause of action for constructive dis-  
25 charge, such a claim (even if properly pled) would survive as a matter of law because  
26 Plaintiff can establish a *prima facie* claim of constructive discharge because Plaintiff was  
27 subjected to intolerable working conditions. (UF Nos. 1-80.)

28 **Alleged Undisputed Facts and**

**Plaintiff's Responses and**

**Supporting Evidence**

1. Plaintiff was hired as a Membership Advisor (“MA”) at Equinox’s Santa Monica club on or about October 15, 2010.

**Evidence:**

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”).

**Evidence:**

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.

**Evidence:**

Declaration of Brian Hemedinger (“Hemedinger Decl.”), ¶ 3.

**Supporting Evidence**

1. Undisputed.

**Evidence:**

2. Disputed. Kasbarian was promoted to the position of Membership Executive at the West Los Angeles club (“West LA”) in October 2013.

**Evidence:**

Exh. 10; Kasbarian Depo., Vol. I, 89:9-90:19, 279:14-280:12; Kasbarian Decl., ¶ 5; Hemedinger Depo., 50:4-9; Rosen Depo., 20:4-18; Holmes Depo., 39:13-18.

3. Disputed. A Membership Executive position is considered a promotion from an MA position. Kasbarian was specifically told her position as a Membership Executive was a promotion from an MA, and she received a memo on it, as well as a higher compensation plan. Kasbarian’s hourly rate also increased with her position as a Membership Executive, to \$19.23 per hour, as well as an increase in

commissions and bonuses.

**Evidence:**

Exh. 10; Kasbarian Depo., Vol. I, 89:9-90:19, 279:14-280:12; Kasbarian Decl., ¶ 5; Hemedinger Depo., 50:4-9; Rosen Depo., 20:4-18; Holmes Depo., 39:13-18.

4. During Plaintiff's employment at Equinox Santa Monica and West LA clubs, Jack Gannon ("Gannon") was the Vice President of the West Coast.

**Evidence:**

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.

**Evidence:**

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

6. Undisputed.  
**Evidence:**

West LA club from about January 2014 to about January 2015.

**Evidence:**

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.

**Evidence:**

Plaintiff Depo., Volume I, 43:18-45:15, Exh. 8 (Receipt Acknowledgement [sic] 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 and myself.

7. Undisputed.

**Evidence:**

8. Undisputed, as to what the actual document states. However, disputed as to whether Kasbarian actually believed her employment was "at-will." Kasbarian believes she would not be demoted, have her pay cut, her employment suspended, or, reassigned, etc. unless it was for good cause.

**Evidence:**

Kasbarian Decl., ¶¶ 4, 11, 13, 14.

**Evidence:**

Plaintiff Depo., Volume I, 43:18-45:15, Exh. 8 (Receipt Acknowledgement [sic] Form); Figueroa Decl., ¶ 5, Exh. B (Receipt Acknowledgement [sic] Form).

9. Plaintiff's personnel file also includes an Offer Letter, dated October 15, 2010, which Plaintiff acknowledged receiving.

**Evidence:**

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.

**Evidence:**

9. Undisputed.

**Evidence:**

10. Undisputed, as to what the actual document states. However, disputed as to whether Kasbarian actually believed her employment was "at-will." Kasbarian believes she would not be demoted, have her pay cut, her employment suspended, or, reassigned, etc. unless it was for good cause.

**Evidence:**

Kasbarian Decl., ¶¶ 4, 11, 13, 14.

1 Plaintiff Depo., Volume I, 36:23-38:11,  
2 Exh. 5 (Offer Letter); Figueroa Decl., ¶ 6,  
3 Exh. C (Offer Letter).

5 11. Plaintiff's personnel file also in- 11. Undisputed.  
6 cludes an Employee Confidentiality and **Evidence:**  
7 Non-Solicitation Agreement with Plain-  
8 tiff's signature dated October 14, 2010.

9 **Evidence:**

10 Figueroa Decl., ¶ 8, Exh. D.

12 12. This Agreement stated: "You agree 12. Undisputed, as to what the actual  
13 and understand that nothing in this Agree- document states. However, disputed as to  
14 ment shall alter or modify the 'at-will' whether Kasbarian actually believed her  
15 nature of your employment with the Com- employment was "at-will." Kasbarian  
16 pany or confer on [y]ou any rights with re- believes she would not be demoted, have  
17 spect to continuation of your employment her pay cut, her employment suspended,  
18 with the Company."

19 **Evidence:**

20 Figueroa Decl., ¶ 8, Exh. D.

**Evidence:**

21 Kasbarian Decl., ¶¶ 4, 11, 13, 14.

23 13. In her deposition, Plaintiff admitted 13. Undisputed, as to what the actual  
24 that she did not have a contract with document states. However, disputed as to  
25 Equinox; no one ever told her that she was whether Kasbarian actually believed her  
26 guaranteed employment for a certain time employment was "at-will." Kasbarian  
27 period; and no one ever told her that she believes she would not be demoted, have  
28 was anything other than an at-will em- her pay cut, her employment suspended,



1 ployee. or, reassigned, etc. unless it was for good  
2 **Evidence:** cause.

3 Plaintiff Depo., Volume I, 36:23-38:11, **Evidence:**  
4 43:18-45:15, Exh. 5 (Offer Letter), Exh. 8 Kasbarian Decl., ¶¶ 4, 11, 13, 14.  
5 (Receipt Acknowledgement [sic] Form).  
6

7 14. The Employee Handbook Plaintiff 14. Undisputed.  
8 acknowledged receiving also included **Evidence:**  
9 Equinox's non-retaliation policy as well as  
10 complaint procedures for reporting retalia-  
11 tion.

12 **Evidence:**  
13 Plaintiff Depo., Volume I, 43:18-45:15,  
14 Exh. 8 Receipt of Employee Handbook;  
15 Declaration of Emerson Figueroa  
16 ("Figueroa Decl."), Exh. A.  
17

18 15. In particular, Equinox's policy strict- 15. Undisputed.  
19 ly prohibits retaliation against any employ- **Evidence:**  
20 ee for "filing a complaint and [Equinox]  
21 will not knowingly permit retaliation by  
22 management, employees, or co-workers."  
23 Equinox's policy also prohibits retaliation  
24 against any employee for "using this com-  
25 plaint procedure or for filing, testifying,  
26 assisting, or participating in any manner in  
27 any investigation, proceeding, or hearing  
28 conducted by a governmental enforcement

1 agency. Additionally, Equinox will not  
2 knowingly permit any retaliation against  
3 any employee who complains of prohibited  
4 harassment or who participates in an inves-  
5 tigation.”

6 **Evidence:**

7 Plaintiff Depo., Volume I, 43:18-45:15,  
8 Exh. 8 Receipt of Employee Handbook;  
9 Figueroa Decl., Exh. A, Employee Hand-  
10 book.

12 16. The complaint procedure as outlined  
13 in the Employee Handbook permits an em-  
14 ployee to report retaliation to his or her  
15 manager, Human Resources, or through  
16 Equinox’s Ethics Hotline.

17 **Evidence:**

18 Plaintiff Depo., Volume I, 43:18-45:15,  
19 Exh. 8 Receipt of Employee Handbook;  
20 Figueroa Decl. ¶ 4.

22 17. In or about June 2014, Hemedinger  
23 informed Plaintiff and other MAs that the  
24 compensation plan for all West LA MAs  
25 was being clarified, so that the market bo-  
26 nuses would be paid out individually and  
27 not cumulatively for reaching a certain  
28 sales goal.

16. Undisputed.

**Evidence:**

17. Disputed. In June 2014, five months  
after Kasbarian started complaining about  
the fraudulent activities by other  
membership advisors, Kasbarian’s  
commission and bonus check for May  
2014 was suddenly and for the first time  
since she started at West LA 25-33% short

**Evidence:**

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.

of what she was owed. Kasbarian immediately complained about her unpaid commissions and bonuses. After she complained defendant permanently cut her compensation plan stating that they have been paying her too much and in “error” and told her that she is “lucky that they were not asking her to pay the difference back.”

**Evidence:**

Exhs. 11, 12, 13; Kasbarian Depo., Vol. I, 201:1-206:5, 207:4-20, 209:19-210:8, 221:11-14; Kasbarian Depo., Vol. II, 347:1-18; Kasbarian Decl., ¶¶ 8, 9; Hemedinger Depo., 59:14-60:10; Rosen Depo., 22:15-23:17, 29:18-31:6, Holmes Depo., 73:5-17, 81:7-24; 120:19-121:3; Figueroa Depo., 99:22- 100:5; Gannon Depo., 99:4-7; Hemedinger Depo., 59:14-60:10.

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

18. Disputed. In June 2014, five months after Kasbarian started complaining about the fraudulent activities by other membership advisors, Kasbarian’s commission and bonus check for May 2014 was suddenly and for the first time since she started at West LA 25-33% short

- 125% of goal—MA would receive an extra \$55 per sale
- 150% of goal—MA would receive an extra \$70 per sale

**Evidence:**

Plaintiff Depo., Volume I, 190:16-194:3; Hemedinger Depo., 64:18-65:11.

of what she was owed. Kasbarian immediately complained about her unpaid commissions and bonuses. After she complained defendant permanently cut her compensation plan stating that they have been paying her too much and in “error” and told her that she is “lucky that they were not asking her to pay the difference back.”

**Evidence:**

Exhs. 11, 12, 13; Kasbarian Depo., Vol. I, 201:1-206:5, 207:4-20, 209:19-210:8, 221:11-14; Kasbarian Depo., Vol. II, 347:1-18; Kasbarian Decl., ¶¶ 8, 9; Hemedinger Depo., 59:14-60:10; Rosen Depo., 22:15-23:17, 29:18-31:6, Holmes Depo., 73:5-17, 81:7-24; 120:19-121:3; Figueroa Depo., 99:22- 100:5; Gannon Depo., 99:4-7; Hemedinger Depo., 59:14-60:10.

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.

**Evidence:**

Plaintiff Depo., Volume I, 190:16-194:3;

19. Disputed. In June 2014, five months after Kasbarian started complaining about the fraudulent activities by other membership advisors, Kasbarian’s commission and bonus check for May 2014 was suddenly and for the first time since she started at West LA 25-33% short

1 Holmes Depo., 82:11-83:14; Hemedinger of what she was owed. Kasbarian  
2 Depo., 59:22-60:6, 62:3-63:8; 66:6-11., immediately complained about her unpaid  
3 68:125-69:8. commissions and bonuses. After she

4 complained defendant permanently cut her  
5 compensation plan stating that they have  
6 been paying her too much and in “error”  
7 and told her that she is “lucky that they  
8 were not asking her to pay the difference  
9 back.”

10 **Evidence:**

11 Exhs. 11, 12, 13; Kasbarian Depo., Vol. I,  
12 201:1-206:5, 207:4-20, 209:19-210:8,  
13 221:11-14; Kasbarian Depo., Vol. II,  
14 347:1-18; Kasbarian Decl., ¶¶ 8, 9;  
15 Hemedinger Depo., 59:14-60:10; Rosen  
16 Depo., 22:15-23:17, 29:18-31:6, Holmes  
17 Depo., 73:5-17, 81:7-24; 120:19-121:3;  
18 Figueroa Depo., 99:22- 100:5; Gannon  
19 Depo., 99:4-7; Hemedinger Depo., 59:14-  
20 60:10.

21  
22 20. Plaintiff testified that she complained 20. Undisputed as to Kasbarian’s  
23 about what she viewed as a “change” in complaints but otherwise disputed. In June  
24 the compensation plan to the following 2014, five months after Kasbarian started  
25 managerial employees: Hemedinger, complaining about the fraudulent activities  
26 Gannon, Simonson, Veronica Santarelli by other membership advisors, Kasbarian’s  
27 (“Santarelli”) (Regional Sales Manager), commission and bonus check for May  
28 Matt Gonzalez (“Gonzalez”) (Director of 2014 was suddenly and for the first time

1 Sales), Barry Holmes (“Holmes”) (Senior  
2 Vice President of Sales), and Scott Rosen  
3 (“Rosen”) (Chief Operating Officer)  
4 (“COO”).

5 **Evidence:**

6 Plaintiff Depo., Volume I, 199:7-22;  
7 Hemedinger Depo., 59:14-60:10; Depo-  
8 sition of Scott Rosen (“Rosen Depo.”)  
9 29:18-30:4, 30:22-31:12, 31:20-33:4,  
10 61:12-64:17, 65:8-69:12, Exhs. 206-207;  
11 Holmes Depo., 71:23-73:22, 77:18-82:10,  
12 84:19-86:8, Ex. 203.

since she started at West LA 25-33% short  
of what she was owed. Kasbarian  
immediately complained about her unpaid  
commissions and bonuses. After she  
complained defendant permanently cut her  
compensation plan stating that they have  
been paying her too much and in “error”  
and told her that she is “lucky that they  
were not asking her to pay the difference  
back.”

13 **Evidence:**

14 Exhs. 11, 12, 13; Kasbarian Depo., Vol. I,  
201:1-206:5, 207:4-20, 209:19-210:8,  
221:11-14; Kasbarian Depo., Vol. II,  
347:1-18; Kasbarian Decl., ¶¶ 8, 9;  
15 Hemedinger Depo., 59:14-60:10; Rosen  
16 Depo., 22:15-23:17, 29:18-31:6, Holmes  
17 Depo., 73:5-17, 81:7-24; 120:19-121:3;  
18 Figueroa Depo., 99:22- 100:5; Gannon  
19 Depo., 99:4-7; Hemedinger Depo., 59:14-  
20 60:10.  
21  
22

23 21. Despite Plaintiff’s complaints about  
24 the compensation plan, Plaintiff continued  
25 to work at Equinox for seven months after  
26 the “changed” compensation plan was in-  
27 stituted in July/August 2014 and continued  
28 to work for Equinox until she quit in

21. Undisputed to the fact that Kasbarian  
continued to work at Equinox until  
February 2015 after she complained;  
however, disputed as to the rest. In June  
2014, five months after Kasbarian started  
complaining about the fraudulent activities

1 February 2015.

2 **Evidence:**

3 Plaintiff Depo., Volume I, 196:8-14,  
4 207:15-22, 220:5-20; Plaintiff Depo., Vol-  
5 ume II, 349:5-12.

by other membership advisors, Kasbarian's  
commission and bonus check for May  
2014 was suddenly and for the first time  
since she started at West LA 25-33% short  
of what she was owed. Kasbarian  
immediately complained about her unpaid  
commissions and bonuses. After she  
complained defendant permanently cut her  
compensation plan stating that they have  
been paying her too much and in "error"  
and told her that she is "lucky that they  
were not asking her to pay the difference  
back."

14 **Evidence:**

15 Exhs. 11, 12, 13; Kasbarian Depo., Vol. I,  
16 201:1-206:5, 207:4-20, 209:19-210:8,  
17 221:11-14; Kasbarian Depo., Vol. II,  
18 347:1-18; Kasbarian Decl., ¶¶ 8, 9;  
19 Hemedinger Depo., 59:14-60:10; Rosen  
20 Depo., 22:15-23:17, 29:18-31:6, Holmes  
21 Depo., 73:5-17, 81:7-24; 120:19-121:3;  
22 Figueroa Depo., 99:22- 100:5; Gannon  
23 Depo., 99:4-7; Hemedinger Depo., 59:14-  
24 60:10.

26 22. Plaintiff testified that she complained  
27 to Hemedinger, Simonson, and possibly to  
28 Gannon in February or March 2014 that

22. Undisputed. However, Kasbarian  
testified that she complained about  
multiple MAs at West LA, including

1 she believed that a MA at West LA was  
2 using one-month guest passes and/or gift  
3 cards to sign up members for what they be-  
4 lieved was a month-long membership, but  
5 in actuality, was signing them up for a  
6 year-long membership by using their credit  
7 cards without authorization.

8 **Evidence:**

9 Plaintiff Depo., Volume I, 81:6-21; 82:5-  
10 83:23, 94:14-97:9.

Lauren Beck and Devin Mcvelogue about  
multiple fraudulent and unlawful activities,  
including charging members credit cards  
without their authorization.

**Evidence:**

Kasbarian Depo., Vol. I, 69:5-71:5, 71:20-  
72:4, 76:5-25, 82:9-83:19, 98:11-99:4,  
102:13-103:25, 112:5-113:2; Kasbarian  
Depo., Vol. II, 334:16-25; Kasbarian  
Decl., ¶ 6; Hemedinger Depo., 43:13-15,  
45:8-22, 46:10-22; 76:1-15.

13 23. According to Plaintiff, “charging  
14 credit cards without people’s approval and  
15 telling people they were signing up for a  
16 month-long contract, but then signing them  
17 up for a year-long contract” were the only  
18 “illegal activities” about which she com-  
19 plained to Equinox.

20 **Evidence:**

21 Plaintiff Depo., Volume II, 334:16-336:23.

23. Undisputed. Gannon also testified  
and admitted in testimony that he believes  
that the type of conduct Kasbarian  
complained of was illegal and is the type  
of conduct that needs to be investigated.

**Evidence:**

Gannon Depo., 51:10-15, 52:23-53:3.

23 24. According to Plaintiff, her other  
24 complaints involved “things against  
25 Equinox policies that were happening as  
26 well.”

27 **Evidence:**

24. Undisputed.

**Evidence:**



1 Plaintiff Depo., Volume II, 334:16-336:23.

2  
3 25. Plaintiff admitted that she could not  
4 identify any statute, ordinance, regulation,  
5 local law, state law, or federal law that was  
6 violated as a result of this alleged activity.

7 **Evidence:**

8 Plaintiff Depo., Volume II, 335:4-336:23.

25. Disputed. Plaintiff testified that she  
believed this conduct was illegal.  
Moreover, Gannon also testified and  
admitted in testimony that he believes that  
the type of conduct Kasbarian complained  
of was illegal and is the type of conduct  
that needs to be investigated.

9  
10 **Evidence:**

11 Kasbarian Depo., Volume II, 334:16-  
12 336:23; Gannon Depo., 51:10-15, 52:23-  
13 53:3.

14  
15 26. Plaintiff also testified that she com-  
16 plained to Hemedinger and Simonson  
17 about the sales activities of another MA.

18 **Evidence:**

19 Plaintiff Depo., Volume I, 76:17-79:19;  
20 93:10-94:10, 102:10-107:24; 108:1-113:5;  
21 Hemedinger Depo., 45:8-47:19.

26. Undisputed.

22 **Evidence:**

23 27. Specifically, Plaintiff complained  
24 that this MA was giving away “free  
25 months” to potential members, allowing  
26 “freezes” for members, and offering “three  
27 month” deals.

28 **Evidence:**

27. Undisputed. However, Kasbarian  
testified that she complained about  
multiple MAs at West LA, including  
Lauren Beck and Devin Mcvelogue about  
multiple fraudulent and unlawful activities,  
including charging members credit cards

1 Plaintiff Depo., Volume I, 76:17-79:19p without their authorization.

2 93:10-94:10, 102:10-107:24; 108:1-113:5; **Evidence:**

3 Hemedinger Depo., 45:8-47:19.

Kasbarian Depo., Vol. I, 69:5-71:5, 71:20-72:4, 76:5-25, 82:9-83:19, 98:11-99:4, 102:13-103:25, 112:5-113:2; Kasbarian Depo., Vol. II, 334:16-25; Kasbarian Decl., ¶ 6; Hemedinger Depo., 43:13-15, 45:8-22, 46:10-22; 76:1-15.

10 28. In or around December 2014, COO 28. Undisputed.

11 Rosen was touring the West LA club when **Evidence:**

12 he was told by a member that a MA had  
13 charged a membership to another mem-  
14 ber's credit card without that member's  
15 authorization.

16 **Evidence:**

17 Rosen Depo., 37:20-38:18; Declaration of  
18 Tracy Cuva ("Cuva Decl."), ¶ 2.

20 29. Member Services is Equinox's bill- 29. Undisputed.

21 ing department (centrally based in New **Evidence:**

22 York) which handles membership con-  
23 tracts and membership sales, including  
24 auditing of membership sales.

25 **Evidence:**

26 Cuva Decl., ¶ 1.

28 30. Rosen contacted Tracy Cuva, Senior 30. Undisputed.

1 Director of Equinox's Member Services **Evidence:**  
2 Department, gave her the information re-  
3 ceived from the member, and asked  
4 Member Services to investigate this sale.

5 **Evidence:**

6 Rosen Depo., 37:20-38:21; Cuva Decl.,  
7 ¶ 2.

8  
9 31. Member Services' investigation, 31. Undisputed.  
10 which was conducted by Cuva, confirmed **Evidence:**  
11 that this was an unauthorized sale  
12 processed by a MA at the West LA Club  
13 (Plaintiff was not implicated in this  
14 transaction).

15 **Evidence:**

16 Cuva Decl., ¶ 2.

17  
18 32. This MA was relocating to New 32. Undisputed. However, this MA was  
19 York but, based on the investigation terminated.

20 results, she was not hired to work for **Evidence:**

21 Equinox in New York.

22 **Evidence:**

23 Rosen Depo., 39:8-13.

Kasbarian Depo., Vol. I, 84:7-85:1,  
184:20-23; Kasbarian Decl., ¶ 10;  
Hemedinger Decl., ¶ 4; Gannon Depo.,  
58:20-59:18, 60:2-21.

24  
25  
26 33. As a result of this member com- 33. Disputed. Senior Director of Loss  
27 plaint, Rosen also asked Cuva to have Prevention, Jim Burger, testified that Jack  
28 Member Services conduct an investigation Gannon contacted him to do an

1 of sales transactions at the West LA club.

2 **Evidence:**

3 Rosen Depo., 47:25-6; Cuva Decl., ¶ 3.

investigation at the West LA location and reported to him throughout.

**Evidence:**

Burger Depo., 70:9-21, 78:4-11, 83:18-84:3.

7 34. Apart from requesting that the inves-  
8 tigation be conducted and asking Jim  
9 Burger (Senior Director of Loss Preven-  
10 tion) to travel to the West LA club and  
11 continue the investigation after Member  
12 Services finished their portion of the inves-  
13 tigation, Rosen did not participate in that  
14 investigation.

15 **Evidence:**

16 Rosen Depo., 47:25-48:21.

34. Disputed. Senior Director of Loss Prevention, Jim Burger, testified that Jack Gannon contacted him to do an investigation at the West LA location and reported to him throughout.

**Evidence:**

Burger Depo., 70:9-21, 78:4-11, 83:18-84:3.

18 35. Cuva instructed Kevin Stanfa  
19 (“Stanfa”) (Manager of Compliance and  
20 Special Projects), to review sales transac-  
21 tions at the West LA club.

22 **Evidence:**

23 Cuva Decl., ¶ 3; Stanfa Decl. ¶ 4.

35. Undisputed.

**Evidence:**

25 36. After Stanfa reported finding various  
26 anomalies associated with sales transac-  
27 tions at the West LA club, Cuva instructed  
28 Stanfa to prepare a summary detailing his

36. Undisputed.

**Evidence:**

findings.

**Evidence:**

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.

**Evidence:**

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.

**Evidence:**

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.”

**Evidence:**

Cuva Decl., ¶ 7, Exh.N.

40. Cuva noted as follows:

37. Disputed. Defendant fails to produce the spreadsheets corroborating those sales.

**Evidence:**

Defendant’s Amended Compendium of Exhibits.

38. Disputed. Defendant fails to produce the spreadsheets corroborating those sales.

**Evidence:**

Defendant’s Amended Compendium of Exhibits.

39. Undisputed as to that statement being written in the email.

**Evidence:**

40. Disputed. Kasbarian was found to

1 i The 2041 Freezes spread-  
2 sheet shows that West LA is  
3 an outlier in members who  
4 request a freeze in the first 60  
5 days of membership who also  
6 go on to cancel in the same  
7 year.

8 i The Modification to Direct  
9 Bill spreadsheet reflects  
10 members in the last quarter  
11 of 2014 whose billing was  
12 modified from the credit card  
13 payment type to direct bill  
14 the day before billing ran.  
15 The Company average is four  
16 per club. West LA had 28  
17 modifications to direct bill.

18 i The West LA Breakdown  
19 spreadsheet shows question-  
20 able sales from two MAs  
21 (Plaintiff and the MA moving  
22 to New York). The other  
23 three MAs were reviewed  
24 and did not reflect the same  
25 anomalies seen with Plaintiff  
26 and the MA moving to New  
27 York. The questionable sales  
28 included selling memberships

have not committed any of the  
inappropriate and fraudulent conduct or  
“fake” sales that were being investigated.

**Evidence:**

Holmes Depo., 88:4-10, 106:11-19;  
Hemedinger Depo., 51:23-52:23; Rosen  
Depo., 48:22-49:3, 54:3-8, 76:5-14, 98:6-  
17, 101:24-102:7; Gannon Depo., 70:8-  
71:15, 72:7-20, 75:22-76:8, 79:5-10, 81:7-  
11; Gannon Decl., ¶ 6, 10.

1 to members with the credit  
2 card of another member (al-  
3 most universally without re-  
4 questing a referral credit) or  
5 re-contracting over a previ-  
6 ously 3-day'd membership  
7 and either using the credit  
8 from the previous sale or re-  
9 charging the same credit  
10 card, credit card not present  
11 for numerous sales transac-  
12 tions, 3-day cancellations  
13 with no or just one member  
14 visit, new memberships  
15 which were previously fi-  
16 nance cancelled and had bal-  
17 ances on account that were  
18 waived.

19 **Evidence:**

20 Cuva Decl., ¶ 7, Exh.N.  
21

22 41. Neither Cuva nor Stanfa were aware  
23 Plaintiff had made any complaints about  
24 changes to her compensation plan or about  
25 the alleged activities of other MAs.

26 **Evidence:**

27 Cuva Decl., ¶ 8; Stanfa Decl., ¶ 11.  
28

41. Undisputed. However, Kasbarian  
was found to have not committed any of  
the inappropriate and fraudulent conduct or  
“fake” sales that were being investigated.

**Evidence:**

41. Holmes Depo., 88:4-10, 106:11-19;  
Hemedinger Depo., 51:23-52:23; Rosen

Depo., 48:22-49:3, 54:3-8, 76:5-14, 98:6-17, 101:24-102:7; Gannon Depo., 70:8-71:15, 72:7-20, 75:22-76:8, 79:5-10, 81:7-11; Gannon Decl., ¶ 6, 10.

**Evidence:**

42. In addition, Burger was asked to interview the sales team at the West LA club.

42. Undisputed.

**Evidence:**

**Evidence:**

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 [sic] and an Assistant General Manager.

43. Undisputed.

**Evidence:**

**Evidence:**

Hemedinger Decl., ¶ 4.

44. A MA was fired on or about January 20, 2015 for improper sales activities.

44. Undisputed.

**Evidence:**

**Evidence:**



1 Figueroa Decl. ¶ 9; Hemedinger Decl., ¶ 4.

2  
3 45. At Burger's request, Member Ser-  
4 vices provided him with the spreadsheets  
5 summarizing their findings of questionable  
6 sales transactions at the West LA club.

7 **Evidence:**

8 Burger Depo., 72:13-73:3; Cuva Decl. ¶ 8.

9  
10 46. Burger then met with Cuva and  
11 Stanfa and they discussed their findings re-  
12 garding the questionable sales at the West  
13 LA club.

14 **Evidence:**

15 Burger Depo., 73:13-74:15; Cuva Decl.  
16 ¶ 8; Stanfa Decl., ¶ 9.

17  
18 47. Burger had a subsequent meeting  
19 with Stanfa to review the spreadsheets  
20 Member Services had prepared.

21 **Evidence:**

22 Burger Depo., 74:16-75:3, 8-22; Stanfa  
23 Decl., ¶ 9.

24  
25 48. These spreadsheets showed anoma-  
26 lies in various sales transactions, including  
27 whether or not a contract was signed,  
28 whether or not a credit card was present

45. Disputed. Defendant fails to produce  
the spreadsheets corroborating those sales.

**Evidence:**

Defendant's Amended Compendium of  
Exhibits.

46. Undisputed.

**Evidence:**

47. Disputed. Defendant fails to produce  
the spreadsheets corroborating those sales.

**Evidence:**

Defendant's Amended Compendium of  
Exhibits.

48. Disputed. Defendant fails to produce  
the spreadsheets corroborating those sales.  
However, However, Kasbarian was found  
to have not committed any of the

1 for the sales transaction, whose credit card inappropriate and fraudulent conduct or  
2 was used for the sales transactions, if an- “fake” sales that were being investigated.  
3 other individual’s credit card number was **Evidence:**  
4 used for the sales transaction instead of the Defendant’s Amended Compendium of  
5 member’s credit card number, whether or Exhibits; Holmes Depo., 88:4-10, 106:11-  
6 not a member had any visits to a club, etc. 19; Hemedinger Depo., 51:23-52:23;

7 **Evidence:**

8 Burger Depo., 39:3-40:22; Cuva Decl., ¶ 8; 98:6-17, 101:24-102:7; Gannon Depo.,  
9 Stanfa Decl., ¶¶ 4-5. 70:8-71:15, 72:7-20, 75:22-76:8, 79:5-10,  
10 81:7-11; Gannon Decl., ¶ 6, 10.  
11  
12

13 49. Burger also had a couple of tele- 49. Undisputed.  
14 phone conversations with Stanfa regarding **Evidence:**  
15 the anomalies in various sales activities at  
16 the West LA Club.

17 **Evidence:**

18 Burger Depo., 76:19-77:1; Stanfa Decl.,  
19 ¶ 9.  
20

21 50. In late January 2015, Burger came to 50. Undisputed.  
22 Los Angeles to interview various employ- **Evidence:**  
23 ees regarding sales activities of the West  
24 LA MAs.

25 **Evidence:**

26 Burger Depo., 76:6-12; Gannon Decl., ¶ 3;  
27 Hemedinger Decl., ¶ 5.  
28

1 51. Prior to the interviews, Burger and  
2 Gannon discussed suspending all of the in-  
3 dividuals interviewed as part of the investi-  
4 gation pending the results of the investiga-  
5 tion.

6 **Evidence:**

7 Burger Depo., 116:12-117:12.  
8  
9

10 52. Burger then interviewed the follow-  
11 ing individuals: (1) the Assistant General  
12 Manager; (2) Plaintiff; (3) another MA;  
13 (4) a relatively newly hired MA; and  
14 (5) Simonson.

15 **Evidence:**

16 Hemedinger Decl., ¶ 5.  
17  
18

19 53. Burger had never heard of or spoken  
20 to Plaintiff prior to this investigation meet-  
21 ing.

22 **Evidence:**

23 Burger Depo., 35:22-24.  
24

25 54. On January 30, 2015, Plaintiff met  
26 with Burger and Leah Ball of Human  
27 Resources regarding West LA's sales prac-  
28 tices.

51. Disputed. Gannon testified that one  
MA was not suspended and was not  
discussed suspending because there "was  
no suspicious conduct linked to him" even  
at the beginning of the investigation.

**Evidence:**

Gannon Depo., 70:8-71:19, 81:7-11;  
Gannon Decl., ¶ 6, 10.

52. Disputed. Gannon testified that one  
MA was not suspended and was not  
discussed suspending because there "was  
no suspicious conduct linked to him" even  
at the beginning of the investigation.

**Evidence:**

Gannon Depo., 70:8-71:19, 81:7-11;  
Gannon Decl., ¶ 6, 10.

53. Undisputed.

**Evidence:**

54. Undisputed.

**Evidence:**

**Evidence:**

Plaintiff Depo., Volume I, 161:11-22, 164:10-22; Plaintiff Depo., Volume II, 305:21-24; , [sic] Burger Depo., 96:18-25.

55. Plaintiff answered questions about her sales activities, as well as the activities of other MAs.

**Evidence:**

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.

**Evidence:**

Burger Depo, 122:14-17.

55. Undisputed. Additionally, at the beginning of Kasbarian's interview, she notifies Senior Director of Loss Prevention, Jim Burger, about the fraudulent activity and unauthorized membership sales that she observed and complained about to management for months

**Evidence:**

Exh. 17; Kasbarian Depo., Vol. I, 158:4-18, 161:15-162:1, 166:9-167:2; Kasbarian Decl., ¶¶ 10, 11; Burger Depo., 70:9-21, 78:4-11, 83:18-84:3, 91:5-92:18, 100:3-8, 183:21-184:12.

56. Undisputed as to Burger concluding there was insufficient information to warrant any terminable offense committed by Burger. Kasbarian was found to have not committed any of the inappropriate and fraudulent conduct or "fake" sales that were being investigated.

**Evidence:**

Holmes Depo., 88:4-10, 106:11-19; Hemedinger Depo., 51:23-52:23; Rosen Depo., 48:22-49:3, 54:3-8, 76:5-14, 98:6-17, 101:24-102:7; Gannon Depo., 70:8-71:15, 72:7-20, 75:22-76:8, 79:5-10, 81:7-11; Gannon Decl., ¶ 6, 10.

57. After Burger completed his interviews, Burger, Gannon and Hemedinger met briefly to discuss Burger's impression.

**Evidence:**

Burger Depo., 117:16-18, 24-118:6.

57. Undisputed.

**Evidence:**

58. Gannon then advised Plaintiff that she was being suspended.

**Evidence:**

Plaintiff Depo, Volume I, 174:24-175:3, 11-12; Plaintiff Depo., Volume II, 306:3-7; Gannon Decl., ¶ 4.

58. Undisputed. However, she was suspended despite her having been found to not have committed any terminable offense.

**Evidence:**

Holmes Depo., 88:4-10, 106:11-19; Hemedinger Depo., 51:23-52:23; Rosen Depo., 48:22-49:3, 54:3-8, 76:5-14, 98:6-17, 101:24-102:7; Gannon Depo., 70:8-71:15, 72:7-20, 75:22-76:8, 79:5-10, 81:7-11; Gannon Decl., ¶ 6, 10.

59. All of the MAs interviewed as part of the investigation (with the exception of the

59. Undisputed. One MA was not suspended.

1 relatively new MA) were suspended pend-  
2 ing investigation.

3 **Evidence:**

4 Burger Depo., ¶ [sic] 110:17-23; Gannon  
5 Decl., ¶ 6.

**Evidence:**

Gannon Depo., 70:8-71:15, 81:7-11;  
Gannon Decl., ¶ 6, 10.

6  
7 60. Gannon also advised Plaintiff to re-  
8 port back to the West LA club at 2:00 p.m.  
9 the next day for another meeting.

10 **Evidence:**

11 Plaintiff Depo., Volume II, 180:11-181:4;  
12 Gannon Decl., ¶ 5.

60. Undisputed.

**Evidence:**

13  
14 61. According to Plaintiff, Equinox told  
15 her that she would not have access to her  
16 email or payroll account and escorted her  
17 out of the building in front of Equinox's  
18 clientele, staff and all of her peers.

19 **Evidence:**

20 Plaintiff Depo., Volume II, 174:24-175:21;  
21 Plaintiff Depo., Volume II, 305:21-306:2,  
22 364:17-20; Plaintiff's Complaint, 6:5-7.

61. Undisputed.

**Evidence:**

23  
24 62. It is Equinox's policy to turn off  
25 email access for hourly employees who  
26 have been suspended pending investigation  
27 or who are on leave of absence.

28 **Evidence:**

62. Disputed. Defendant did not produce  
any documentation corroborating this  
policy.

**Evidence:**

Defendant's Amended Compendium of

1 Gannon Decl., ¶ 7.

Evidence.

2  
3 63. Prior to Burger's interview of Plain-  
4 tiff, Gannon had the Payroll Department  
5 prepare a final paycheck for Plaintiff so  
6 that she could be paid in accordance with  
7 California law in the event the decision  
8 was made to terminate her employment.

9 **Evidence:**

10 Gannon Decl., ¶ 8.

63. Undisputed as to Gannon preparing  
the final paycheck; however, this paycheck  
was prepared by Gannon even before the  
interview in preparation for Kasbarian's  
termination.

**Evidence:**

Gannon Decl., ¶ 8; Exh. 15; Kasbarian  
Depo., Vol. I, 130:21-131:3, 185:5-15;  
Kasbarian Depo., Vol. II, 311:9-22;  
Kasbarian Decl., ¶ 11.

11  
12  
13  
14 64. Plaintiff met with Hemedinger and  
15 Gannon at the West LA club on January  
16 31, 2015 and was told that the investiga-  
17 tion was concluded and that she would be  
18 working at the Marina Del Rey club.

19 **Evidence:**

20 Plaintiff Depo., Volume I, 182:5-183:8;  
21 Plaintiff Depo., Volume II, 306:12-16  
22 [sic], 382:12-17, 390:4-11, Exh. 38;  
23 Hemedinger Depo., 54:17-21, 55:1-8;  
24 Gannon Decl., ¶ 3; Hemedinger Decl., ¶ 6.

64. Undisputed.

**Evidence:**

25  
26 65. The decision was made to reassign  
27 Plaintiff to the Marina Del Rey club be-  
28 cause Equinox wanted to rebuild the team

65. Disputed. Defendant's claim that  
Kasbarian was reassigned to Marina Del  
Rey because they wanted to rebuild the

1 of MAs in the West LA club and to create  
2 a fresh culture, as a result of the investiga-  
3 tion findings.

4 **Evidence:**

5 Rosen Depo., 71:7-20, 73:15-22, 76:5-14;  
6 Holmes Depo., 96:12-98:17; Hemedinger  
7 Depo., 51:7-52:23; Gannon Decl., ¶ 10.

team of Mas, yet one MA was allowed to  
stay at West LA

**Evidence:**

Rosen Depo., 48:22-49:3, 54:3-8, 98:6-17,  
76:5-14; Hemedinger Depo., 51:23-52:23;  
Holmes Depo., 88:4-10, 106:11-19,  
101:24-102:7; Gannon Depo., 70:8-71:15,  
72:7-20, 75:22-76:8, 79:5-10, 81:7-11;  
Gannon Decl., ¶ 6, 10.

11 66. Plaintiff's compensation plan would  
12 change once at Marina Del Rey to align  
13 with the compensation plan of Marina Del  
14 Rey MAs. Equinox considered the reas-  
15 signment a lateral move.

16 **Evidence:**

17 Rosen Depo., 87:25-88:4; Gannon Decl.,  
18 ¶ 11.

66. Undisputed that the compensation  
plan would change; however, disputed as  
to it being a lateral move. Kasbarian is told  
that she would be paid \$9.00/hour at the  
Marina del Rey office, which was a \$10.00  
per hour decrease in hourly rate that she  
was being paid at the West Los Angeles  
branch at \$19.23 per hour. Barry Holmes,  
Vice President of Sales, admits that urban  
clubs, such as the Santa Monica location,  
tend to generate more revenue than  
suburban clubs, like the Marina Del Rey  
location, and the West LA location is a  
higher tier club than urban clubs. Brian  
Hemedinger admits in deposition that they  
thought it would be "best for Tamar, if she  
had the opportunity to be a membership  
advisor at a different location," while



acknowledging that she would be going to a lower tier location than when she first started with the company. Moreover, when Kasbarian went to West LA she was promoted from MA to Membership Executive, which it stated on her "Promotion Memo."

**Evidence:**

Exh. 10, 14; Kasbarian Depo., Vol. I, 50:24-51:1, 89:9-90:19, 279:14-280:12, 182:12-184:19; Kasbarian Depo., Vol. II, 354:1-18, 458:24-459:17; Gannon Decl., 9, 10; Holmes Depo., 28:22-29:2, 50:18-25; Gannon Depo., 32:15-17, 88:25-89:5; Hemedinger Depo., 50:14-20, 51:23-52:23, 81:2-23.

67. Equinox considered the reassignment a lateral move.

**Evidence:**

Rosen Depo., 87:25-88:4; Gannon Decl., ¶ 11.

67. Disputed. Kasbarian is told that she would be paid \$9.00/hour at the Marina del Rey office, which was a \$10.00 per hour decrease in hourly rate that she was being paid at the West Los Angeles branch at \$19.23 per hour. Barry Holmes, Vice President of Sales, admits that urban clubs, such as the Santa Monica location, tend to generate more revenue than suburban clubs, like the Marina Del Rey location, and the West LA location is a higher tier

club than urban clubs. Brian Hemedinger admits in deposition that they thought it would be “best for Tamar, if she had the opportunity to be a membership advisor at a different location,” while acknowledging that she would be going to a lower tier location than when she first started with the company. Moreover, when Kasbarian went to West LA she was promoted from MA to Membership Executive, which it stated on her “Promotion Memo.”

**Evidence:**

Exh. 10, 14; Kasbarian Depo., Vol. I, 50:24-51:1, 89:9-90:19, 279:14-280:12, 182:12-184:19; Kasbarian Depo., Vol. II, 354:1-18, 458:24-459:17; Gannon Decl., 9, 10; Holmes Depo., 28:22-29:2, 50:18-25; Gannon Depo., 32:15-17, 88:25-89:5; Hemedinger Depo., 50:14-20, 51:23-52:23, 81:2-23.

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.

**Evidence:**

Plaintiff Depo., Volume II, 390:4-11, Exh.

68. Undisputed.

**Evidence:**

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.

**Evidence:**

Hemedinger Depo., 52:18-23; Rosen Depo., 57:13-19; 58:22-59:14; Holmes Depo., 31:13-15.

69. Disputed. Kasbarian is told that she would be paid \$9.00/hour at the Marina del Rey office, which was a \$10.00 per hour decrease in hourly rate that she was being paid at the West Los Angeles branch at \$19.23 per hour. Barry Holmes, Vice President of Sales, admits that urban clubs, such as the Santa Monica location, tend to generate more revenue than suburban clubs, like the Marina Del Rey location, and the West LA location is a higher tier club than urban clubs. Brian Hemedinger admits in deposition that they thought it would be "best for Tamar, if she had the opportunity to be a membership advisor at a different location," while acknowledging that she would be going to a lower tier location than when she first started with the company. Moreover, when Kasbarian went to West LA she was promoted from MA to Membership Executive, which it stated on her "Promotion Memo."

**Evidence:**

Exh. 10, 14; Kasbarian Depo., Vol. I, 50:24-51:1, 89:9-90:19, 279:14-280:12, 182:12-184:19; Kasbarian Depo., Vol. II,

354:1-18, 458:24-459:17; Gannon Decl., 9, 10; Holmes Depo., 28:22-29:2, 50:18-25; Gannon Depo., 32:15-17, 88:25-89:5; Hemedinger Depo., 50:14-20, 51:23-52:23, 81:2-23.

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.

**Evidence:**

Hemedinger Depo., 52:18-23; Rosen Depo., 57:13-19; 58:22-59:14; Holmes Depo., [sic] 50:18-51:5.

70. Disputed. Kasbarian is told that she would be paid \$9.00/hour at the Marina del Rey office, which was a \$10.00 per hour decrease in hourly rate that she was being paid at the West Los Angeles branch at \$19.23 per hour. Barry Holmes, Vice President of Sales, admits that urban clubs, such as the Santa Monica location, tend to generate more revenue than suburban clubs, like the Marina Del Rey location, and the West LA location is a higher tier club than urban clubs. Brian Hemedinger admits in deposition that they thought it would be “best for Tamar, if she had the opportunity to be a membership advisor at a different location,” while acknowledging that she would be going to a lower tier location than when she first started with the company. Moreover, when Kasbarian went to West LA she was promoted from MA to Membership Executive, which it stated on her “Promotion Memo.”

**Evidence:**

Exh. 10, 14; Kasbarian Depo., Vol. I, 50:24-51:1, 89:9-90:19, 279:14-280:12, 182:12-184:19; Kasbarian Depo., Vol. II, 354:1-18, 458:24-459:17; Gannon Decl., 9, 10; Holmes Depo., 28:22-29:2, 50:18-25; Gannon Depo., 32:15-17, 88:25-89:5; Hemedinger Depo., 50:14-20, 51:23-52:23, 81:2-23.

71. Gannon emailed Plaintiff the compensation plan for the Marina Del Rey Club on or about January 31, 2015.

**Evidence:**

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.

**Evidence:**

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.

71. Undisputed.

**Evidence:**

72. Undisputed as to no one stating those actual words; however, Kasbarian is told that she would be paid \$9.00/hour at the Marina del Rey office, which was a \$10.00 per hour decrease in hourly rate that she was being paid at the West Los Angeles branch at \$19.23 per hour. Barry Holmes, Vice President of Sales, admits that urban clubs, such as the Santa Monica location, tend to generate more revenue than suburban clubs, like the Marina Del Rey

location, and the West LA location is a higher tier club than urban clubs. Brian Hemedinger admits in deposition that they thought it would be “best for Tamar, if she had the opportunity to be a membership advisor at a different location,” while acknowledging that she would be going to a lower tier location than when she first started with the company. Moreover, when Kasbarian went to West LA she was promoted from MA to Membership Executive, which it stated on her “Promotion Memo.”

**Evidence:**

Exh. 10, 14; Kasbarian Depo., Vol. I, 50:24-51:1, 89:9-90:19, 279:14-280:12, 182:12-184:19; Kasbarian Depo., Vol. II, 354:1-18, 458:24-459:17; Gannon Decl., 9, 10; Holmes Depo., 28:22-29:2, 50:18-25; Gannon Depo., 32:15-17, 88:25-89:5; Hemedinger Depo., 50:14-20, 51:23-52:23, 81:2-23.

73. Gannon made the decision to reassign Plaintiff to the Marina Del Rey club.

73. Undisputed.

**Evidence:**

Rosen Depo., 45:7-25. 57:8-12;

**Evidence:**

1 Hemedinger Depo., 53:14-18.

2  
3 74. Plaintiff was told to report to the 74. Undisputed.  
4 Marina Del Rey club on February 2, 2015 **Evidence:**  
5 at 9:00 a.m.

6 **Evidence:**

7 Plaintiff Depo., Volume I, 186:5-14;  
8 Plaintiff Depo., Volume II, 311:4-8;  
9 Hemedinger Depo., 54:17-55:18, 55:25-  
10 56:25, 57:6-57:11.

11  
12 75. Before reporting to the Marina Del  
13 Rey club, Plaintiff submitted her resigna-  
14 tion, via email, on the morning of February  
15 2, 2015 effective immediately.

16 **Evidence:**

17 Plaintiff Depo., Volume I, 186:5-14, Exh.  
18 26; Plaintiff Depo., Volume II, 311:4-8;  
19 Hemedinger Depo., 54:17-55:18, 55:25-  
20 56:25, 57:6-57:11.

75. Undisputed; however, Kasbarian was  
forced to resign due to intolerable working  
conditions at Equinox. On February 2,  
2015, the day Kasbarian was supposed to  
start at the Marina del Rey location, she  
feels she is no longer welcome at Equinox  
and feels pushed out since she was forced  
to take a demotion, a significant pay cut  
and restart her business and clientele base,  
along with the overwhelming stress of the  
interrogation and suspension and fear of  
being terminated that she is forced to  
resign.

25 **Evidence:**

26 Exh. 16; Kasbarian Depo., Vol. I, 186:5-  
27 14; Kasbarian Decl., ¶¶ 12-14.

76. Plaintiff's last day of employment was February 2, 2015. 76. Undisputed.

**Evidence:**

Plaintiff Depo., Volume I, 186:11-14.

77. Plaintiff never reported to work at the Marina Del Rey club. 77. Undisputed.

**Evidence:**

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. Undisputed.

**Evidence:**

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. Undisputed. However, one MA was able to stay at the West LA location, despite Gannon stating he wanted to rebuild the team by getting rid of all of the Membership Executives at West LA.

**Evidence:**

Plaintiff Depo., Volume II, 342:25-343:5.

**Evidence:**

Rosen Depo., 76:5-14; Hemedinger Depo., 51:23-52:23; Holmes Depo., 101:24-102:7; Gannon Depo., 70:8-71:15, 81:7-11; Gannon Decl., ¶ 6, 10.



80. Plaintiff testified that she was un- 80. Undisputed.  
aware of any other MA at the West LA **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.

**Evidence:**

Plaintiff Depo., Volume II, 343:6-22.

**ISSUE NO. 12:** Although Plaintiff has not pled a cause of action for constructive discharge, such a claim (even if properly pled) would also survive as a matter of law because Equinox did not have a legitimate, non-discriminatory business reason for reassigning Plaintiff to the Marina Del Rey club. (UF Nos. 1-80.)

**Alleged Undisputed Facts and  
Supporting Evidence**

**Plaintiff's Responses and  
Supporting Evidence**

1. Plaintiff was hired as a Membership 1. Undisputed.  
Advisor ("MA") at Equinox's Santa **Evidence:**  
Monica club on or about October 15, 2010.

**Evidence:**

Plaintiff Depo., Volume I, 36:23-38:10,  
Exh. 5 (Offer Letter).

2. In January 2014, Plaintiff began 2. Disputed. Kasbarian was promoted  
working at Equinox's West Los Angeles to the position of Membership Executive at  
club ("West LA club"). the West Los Angeles club ("West LA") in

**Evidence:**

October 2013.

Plaintiff Depo., Volume I, 189:22-190:12, **Evidence:**

1 Exh. 13 (Memo).

Exh. 10; Kasbarian Depo., Vol. I, 89:9-90:19, 279:14-280:12; Kasbarian Decl., ¶ 5; Hemedinger Depo., 50:4-9; Rosen Depo., 20:4-18; Holmes Depo., 39:13-18.

2  
3  
4  
5  
6 3. At the West LA club, MAs were re-ferred to as Membership Executives. However, their job duties were the same.

7  
8  
9 **Evidence:**

10 Declaration of Brian Hemedinger  
11 (“Hemedinger Decl.”), ¶ 3.

3. Disputed. A Membership Executive position is considered a promotion from an MA position. Kasbarian was specifically told her position as a Membership Executive was a promotion from an MA, and she received a memo on it, as well as a higher compensation plan. Kasbarian’s hourly rate also increased with her position as a Membership Executive, to \$19.23 per hour, as well as an increase in commissions and bonuses.

12  
13  
14  
15  
16  
17 **Evidence:**

18 Exh. 10; Kasbarian Depo., Vol. I, 89:9-90:19, 279:14-280:12; Kasbarian Decl., ¶ 5; Hemedinger Depo., 50:4-9; Rosen Depo., 20:4-18; Holmes Depo., 39:13-18.

19  
20  
21  
22  
23 4. During Plaintiff’s employment at Equinox Santa Monica and West LA clubs, Jack Gannon (“Gannon”) was the Vice President of the West Coast.

24  
25  
26  
27 **Evidence:**

28 Declaration of Jack Gannon (“Gannon

4. Undisputed.

**Evidence:**

Decl.”), ¶¶ 1-2.

5. From about October 2011 through 5. Undisputed.  
about June 2015, Brian Hemedinger **Evidence:**  
 (“Hemedinger”) was the Regional Director  
of Operations (“Regional Director”) of the  
Santa Monica and West LA clubs.

**Evidence:**

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. Undisputed.  
 (“Simonson) supervised Plaintiff at the **Evidence:**  
West LA club from about January 2014 to  
about January 2015.

**Evidence:**

Plaintiff Depo., Volume I, 52:11-19.

7. Plaintiff’s personnel file includes an 7. Undisputed.  
Employee Handbook Receipt Acknowl- **Evidence:**  
edgment Form with Plaintiff’s signature  
dated October 15, 2010.

**Evidence:**

Plaintiff Depo., Volume I, 43:18-45:15,  
Exh. 8 (Receipt Acknowledgement [sic]  
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 and myself.

**Evidence:**

Plaintiff Depo., Volume I, 43:18-45:15, Exh. 8 (Receipt Acknowledgement [sic] Form); Figueroa Decl., ¶ 5, Exh. B (Receipt Acknowledgement [sic] Form).

9. Plaintiff’s personnel file also includes an Offer Letter, dated October 15, 2010, which Plaintiff acknowledged receiving.

**Evidence:**

Plaintiff Depo., Volume I, 36:23-38:11, Exh. 5 (Offer Letter); Figueroa Decl., ¶ 6,

8. Undisputed, as to what the actual document states. However, disputed as to whether Kasbarian actually believed her employment was “at-will.” Kasbarian believes she would not be demoted, have her pay cut, her employment suspended, or, reassigned, etc. unless it was for good cause.

**Evidence:**

Kasbarian Decl., ¶¶ 4, 11, 13, 14.

9. Undisputed.

**Evidence:**

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.

**Evidence:**

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.

**Evidence:**

Figueroa Decl., ¶ 8, Exh. D.

12. This Agreement stated: “You agree and understand that nothing in this Agree-

10. Undisputed, as to what the actual document states. However, disputed as to whether Kasbarian actually believed her employment was “at-will.” Kasbarian believes she would not be demoted, have her pay cut, her employment suspended, or, reassigned, etc. unless it was for good cause.

**Evidence:**

Kasbarian Decl., ¶¶ 4, 11, 13, 14.

11. Undisputed.

**Evidence:**

12. Undisputed, as to what the actual document states. However, disputed as to

1 ment shall alter or modify the ‘at-will’  
2 nature of your employment with the Com-  
3 pany or confer on [y]ou any rights with re-  
4 spect to continuation of your employment  
5 with the Company.”

6 **Evidence:**

7 Figueroa Decl., ¶ 8, Exh. D.

whether Kasbarian actually believed her  
employment was “at-will.” Kasbarian  
believes she would not be demoted, have  
her pay cut, her employment suspended,  
or, reassigned, etc. unless it was for good  
cause.

8 **Evidence:**

9 Kasbarian Decl., ¶¶ 4, 11, 13, 14.

10 13. In her deposition, Plaintiff admitted  
11 that she did not have a contract with  
12 Equinox; no one ever told her that she was  
13 guaranteed employment for a certain time  
14 period; and no one ever told her that she  
15 was anything other than an at-will em-  
16 ployee.

17 **Evidence:**

18 Plaintiff Depo., Volume I, 36:23-38:11,  
19 43:18-45:15, Exh. 5 (Offer Letter), Exh. 8  
20 (Receipt Acknowledgement [sic] Form).

13. Undisputed, as to what the actual  
document states. However, disputed as to  
whether Kasbarian actually believed her  
employment was “at-will.” Kasbarian  
believes she would not be demoted, have  
her pay cut, her employment suspended,  
or, reassigned, etc. unless it was for good  
cause.

21 **Evidence:**

22 Kasbarian Decl., ¶¶ 4, 11, 13, 14.

23 14. The Employee Handbook Plaintiff  
24 acknowledged receiving also included  
25 Equinox’s non-retaliation policy as well as  
26 complaint procedures for reporting retalia-  
27 tion.

28 **Evidence:**

Plaintiff Depo., Volume I, 43:18-45:15,

14. Undisputed.

**Evidence:**

1 Exh. 8 Receipt of Employee Handbook;  
2 Declaration of Emerson Figueroa  
3 (“Figueroa Decl.”), Exh. A.  
4

5 15. In particular, Equinox’s policy strict- 15. Undisputed.  
6 ly prohibits retaliation against any employ- **Evidence:**  
7 ee for “filing a complaint and [Equinox]  
8 will not knowingly permit retaliation by  
9 management, employees, or co-workers.”  
10 Equinox’s policy also prohibits retaliation  
11 against any employee for “using this com-  
12 plaint procedure or for filing, testifying,  
13 assisting, or participating in any manner in  
14 any investigation, proceeding, or hearing  
15 conducted by a governmental enforcement  
16 agency. Additionally, Equinox will not  
17 knowingly permit any retaliation against  
18 any employee who complains of prohibited  
19 harassment or who participates in an inves-  
20 tigation.”

21 **Evidence:**

22 Plaintiff Depo., Volume I, 43:18-45:15,  
23 Exh. 8 Receipt of Employee Handbook;  
24 Figueroa Decl., Exh. A, Employee Hand-  
25 book.  
26

27 16. The complaint procedure as outlined 16. Undisputed.  
28 in the Employee Handbook permits an em- **Evidence:**

1 ployee to report retaliation to his or her  
2 manager, Human Resources, or through  
3 Equinox's Ethics Hotline.

4 **Evidence:**

5 Plaintiff Depo., Volume I, 43:18-45:15,  
6 Exh. 8 Receipt of Employee Handbook;  
7 Figueroa Decl. ¶ 4.  
8

9 17. In or about June 2014, Hemedinger  
10 informed Plaintiff and other MAs that the  
11 compensation plan for all West LA MAs  
12 was being clarified, so that the market bo-  
13 nuses would be paid out individually and  
14 not cumulatively for reaching a certain  
15 sales goal.

16 **Evidence:**

17 Plaintiff Depo., Volume I, 190:16-194:3,  
18 219:7-10; Plaintiff Depo., Volume II,  
19 347:22-348:1; Deposition of Barry Holmes  
20 ("Holmes Depo.") 69:4-71:12, 73:23-  
21 75:10, Exhs. 201-202; Hemedinger Depo.,  
22 60:11-61:3, 68:12-14, 70:19-72:3.; Rosen  
23 Depo., 33:5-15.  
24

17. Disputed. In June 2014, five months  
after Kasbarian started complaining about  
the fraudulent activities by other  
membership advisors, Kasbarian's  
commission and bonus check for May  
2014 was suddenly and for the first time  
since she started at West LA 25-33% short  
of what she was owed. Kasbarian  
immediately complained about her unpaid  
commissions and bonuses. After she  
complained defendant permanently cut her  
compensation plan stating that they have  
been paying her too much and in "error"  
and told her that she is "lucky that they  
were not asking her to pay the difference  
back."

25 **Evidence:**

26 Exhs. 11, 12, 13; Kasbarian Depo., Vol. I,  
27 201:1-206:5, 207:4-20, 209:19-210:8,  
28 221:11-14; Kasbarian Depo., Vol. II,



347:1-18; Kasbarian Decl., ¶¶ 8, 9; Hemedinger Depo., 59:14-60:10; Rosen Depo., 22:15-23:17, 29:18-31:6, Holmes Depo., 73:5-17, 81:7-24; 120:19-121:3; Figueroa Depo., 99:22- 100:5; Gannon Depo., 99:4-7; Hemedinger Depo., 59:14-60:10.

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

**Evidence:**

Plaintiff Depo., Volume I, 190:16-194:3; Hemedinger Depo., 64:18-65:11.

18. Disputed. In June 2014, five months after Kasbarian started complaining about the fraudulent activities by other membership advisors, Kasbarian's commission and bonus check for May 2014 was suddenly and for the first time since she started at West LA 25-33% short of what she was owed. Kasbarian immediately complained about her unpaid commissions and bonuses. After she complained defendant permanently cut her compensation plan stating that they have been paying her too much and in "error" and told her that she is "lucky that they were not asking her to pay the difference back."

**Evidence:**

Exhs. 11, 12, 13; Kasbarian Depo., Vol. I, 201:1-206:5, 207:4-20, 209:19-210:8, 221:11-14; Kasbarian Depo., Vol. II,

347:1-18; Kasbarian Decl., ¶¶ 8, 9; Hemedinger Depo., 59:14-60:10; Rosen Depo., 22:15-23:17, 29:18-31:6, Holmes Depo., 73:5-17, 81:7-24; 120:19-121:3; Figueroa Depo., 99:22- 100:5; Gannon Depo., 99:4-7; Hemedinger Depo., 59:14-60:10.

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.

**Evidence:**

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., 68:125-69:8.

19. Disputed. In June 2014, five months after Kasbarian started complaining about the fraudulent activities by other membership advisors, Kasbarian's commission and bonus check for May 2014 was suddenly and for the first time since she started at West LA 25-33% short of what she was owed. Kasbarian immediately complained about her unpaid commissions and bonuses. After she complained defendant permanently cut her compensation plan stating that they have been paying her too much and in "error" and told her that she is "lucky that they were not asking her to pay the difference back."

**Evidence:**

Exhs. 11, 12, 13; Kasbarian Depo., Vol. I, 201:1-206:5, 207:4-20, 209:19-210:8, 221:11-14; Kasbarian Depo., Vol. II,

347:1-18; Kasbarian Decl., ¶¶ 8, 9; Hemedinger Depo., 59:14-60:10; Rosen Depo., 22:15-23:17, 29:18-31:6, Holmes Depo., 73:5-17, 81:7-24; 120:19-121:3; Figueroa Depo., 99:22- 100:5; Gannon Depo., 99:4-7; Hemedinger Depo., 59:14-60:10.

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”).

**Evidence:**

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.

20. Undisputed as to Kasbarian’s complaints but otherwise disputed. In June 2014, five months after Kasbarian started complaining about the fraudulent activities by other membership advisors, Kasbarian’s commission and bonus check for May 2014 was suddenly and for the first time since she started at West LA 25-33% short of what she was owed. Kasbarian immediately complained about her unpaid commissions and bonuses. After she complained defendant permanently cut her compensation plan stating that they have been paying her too much and in “error” and told her that she is “lucky that they were not asking her to pay the difference back.”

**Evidence:**

Exhs. 11, 12, 13; Kasbarian Depo., Vol. I, 201:1-206:5, 207:4-20, 209:19-210:8,

221:11-14; Kasbarian Depo., Vol. II, 347:1-18; Kasbarian Decl., ¶¶ 8, 9; Hemedinger Depo., 59:14-60:10; Rosen Depo., 22:15-23:17, 29:18-31:6, Holmes Depo., 73:5-17, 81:7-24; 120:19-121:3; Figueroa Depo., 99:22- 100:5; Gannon Depo., 99:4-7; Hemedinger Depo., 59:14-60:10.

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.

**Evidence:**

Plaintiff Depo., Volume I, 196:8-14, 207:15-22, 220:5-20; Plaintiff Depo., Volume II, 349:5-12.

21. Undisputed to the fact that Kasbarian continued to work at Equinox until February 2015 after she complained; however, disputed as to the rest. In June 2014, five months after Kasbarian started complaining about the fraudulent activities by other membership advisors, Kasbarian's commission and bonus check for May 2014 was suddenly and for the first time since she started at West LA 25-33% short of what she was owed. Kasbarian immediately complained about her unpaid commissions and bonuses. After she complained defendant permanently cut her compensation plan stating that they have been paying her too much and in "error" and told her that she is "lucky that they were not asking her to pay the difference back."

**Evidence:**

Exhs. 11, 12, 13; Kasbarian Depo., Vol. I, 201:1-206:5, 207:4-20, 209:19-210:8, 221:11-14; Kasbarian Depo., Vol. II, 347:1-18; Kasbarian Decl., ¶¶ 8, 9; Hemedinger Depo., 59:14-60:10; Rosen Depo., 22:15-23:17, 29:18-31:6, Holmes Depo., 73:5-17, 81:7-24; 120:19-121:3; Figueroa Depo., 99:22- 100:5; Gannon Depo., 99:4-7; Hemedinger Depo., 59:14-60:10.

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.

**Evidence:**

Plaintiff Depo., Volume I, 81:6-21; 82:5-83:23, 94:14-97:9.

22. Undisputed. However, Kasbarian testified that she complained about multiple MAs at West LA, including Lauren Beck and Devin Mcvelogue about multiple fraudulent and unlawful activities, including charging members credit cards without their authorization.

**Evidence:**

Kasbarian Depo., Vol. I, 69:5-71:5, 71:20-72:4, 76:5-25, 82:9-83:19, 98:11-99:4, 102:13-103:25, 112:5-113:2; Kasbarian Depo., Vol. II, 334:16-25; Kasbarian Decl., ¶ 6; Hemedinger Depo., 43:13-15, 45:8-22, 46:10-22; 76:1-15.

23. According to Plaintiff, “charging

23. Undisputed. Gannon also testified

1 credit cards without people's approval and admitted in testimony that he believes  
2 telling people they were signing up for a that the type of conduct Kasbarian  
3 month-long contract, but then signing them complained of was illegal and is the type  
4 up for a year-long contract" were the only of conduct that needs to be investigated.  
5 "illegal activities" about which she com- **Evidence:**  
6 plained to Equinox. Gannon Depo., 51:10-15, 52:23-53:3.

7 **Evidence:**

8 Plaintiff Depo., Volume II, 334:16-336:23.

9  
10 24. According to Plaintiff, her other 24. Undisputed.  
11 complaints involved "things against **Evidence:**  
12 Equinox policies that were happening as  
13 well."

14 **Evidence:**

15 Plaintiff Depo., Volume II, 334:16-336:23.

16  
17 25. Plaintiff admitted that she could not 25. Disputed. Plaintiff testified that she  
18 identify any statute, ordinance, regulation, believed this conduct was illegal.  
19 local law, state law, or federal law that was Moreover, Gannon also testified and  
20 violated as a result of this alleged activity. admitted in testimony that he believes that  
21 the type of conduct Kasbarian complained  
22 of was illegal and is the type of conduct  
23 that needs to be investigated.

24 **Evidence:**

25 Plaintiff Depo., Volume II, 335:4-336:23.

26 **Evidence:**

27 Kasbarian Depo., Volume II, 334:16-  
28 336:23; Gannon Depo., 51:10-15, 52:23-  
53:3.

26. Plaintiff also testified that she complained to Hemedinger and Simonson about the sales activities of another MA.

**Evidence:**

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.

**Evidence:**

Plaintiff Depo., Volume I, 76:17-79:19p 93:10-94:10, 102:10-107:24; 108:1-113:5; Hemedinger Depo., 45:8-47:19.

26. Undisputed.

**Evidence:**

27. Undisputed. However, Kasbarian testified that she complained about multiple MAs at West LA, including Lauren Beck and Devin Mcvelogue about multiple fraudulent and unlawful activities, including charging members credit cards without their authorization.

**Evidence:**

Kasbarian Depo., Vol. I, 69:5-71:5, 71:20-72:4, 76:5-25, 82:9-83:19, 98:11-99:4, 102:13-103:25, 112:5-113:2; Kasbarian Depo., Vol. II, 334:16-25; Kasbarian Decl., ¶ 6; Hemedinger Depo., 43:13-15, 45:8-22, 46:10-22; 76:1-15.

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

28. Undisputed.

**Evidence:**

1 authorization.

2 **Evidence:**

3 Rosen Depo., 37:20-38:18; Declaration of  
4 Tracy Cuva (“Cuva Decl.”), ¶ 2.

5  
6 29. Member Services is Equinox’s bill- 29. Undisputed.  
7 ing department (centrally based in New **Evidence:**  
8 York) which handles membership con-  
9 tracts and membership sales, including  
10 auditing of membership sales.

11 **Evidence:**

12 Cuva Decl., ¶ 1.

13  
14 30. Rosen contacted Tracy Cuva, Senior 30. Undisputed.  
15 Director of Equinox’s Member Services **Evidence:**  
16 Department, gave her the information re-  
17 ceived from the member, and asked  
18 Member Services to investigate this sale.

19 **Evidence:**

20 Rosen Depo., 37:20-38:21; Cuva Decl.,  
21 ¶ 2.

22  
23 31. Member Services’ investigation, 31. Undisputed.  
24 which was conducted by Cuva, confirmed **Evidence:**  
25 that this was an unauthorized sale  
26 processed by a MA at the West LA Club  
27 (Plaintiff was not implicated in this  
28 transaction).



**Evidence:**

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.

**Evidence:**

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.

**Evidence:**

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.

32. Undisputed. However, this MA was terminated.

**Evidence:**

Kasbarian Depo., Vol. I, 84:7-85:1, 184:20-23; Kasbarian Decl., ¶ 10; Hemedinger Decl., ¶ 4; Gannon Depo., 58:20-59:18, 60:2-21.

33. Disputed. Senior Director of Loss Prevention, Jim Burger, testified that Jack Gannon contacted him to do an investigation at the West LA location and reported to him throughout.

**Evidence:**

Burger Depo., 70:9-21, 78:4-11, 83:18-84:3.

34. Disputed. Senior Director of Loss Prevention, Jim Burger, testified that Jack Gannon contacted him to do an investigation at the West LA location and reported to him throughout.

**Evidence:**

Burger Depo., 70:9-21, 78:4-11, 83:18-

**Evidence:** 84:3.

Rosen Depo., 47:25-48:21.

35. Cuva instructed Kevin Stanfa 35. Undisputed.

(“Stanfa”) (Manager of Compliance and **Evidence:**

Special Projects), to review sales transac-  
tions at the West LA club.

**Evidence:**

Cuva Decl., ¶ 3; Stanfa Decl. ¶ 4.

36. After Stanfa reported finding various 36. Undisputed.

anomalies associated with sales transac- **Evidence:**

tions at the West LA club, Cuva instructed  
Stanfa to prepare a summary detailing his  
findings.

**Evidence:**

Cuva Decl., ¶ 3; Stanfa Decl. ¶ 4.

37. Stanfa then prepared a workbook 37. Disputed. Defendant fails to produce  
with three spreadsheets regarding the fol- the spreadsheets corroborating those sales.

lowing sales activities: (1) 2014 Freezes; **Evidence:**

(2) Modification to Direct Bill; and Defendant’s Amended Compendium of  
(3) West LA Sales Breakdown. Exhibits.

**Evidence:**

Stanfa Decl., ¶ 4.

38. Once these were prepared, Cuva 38. Disputed. Defendant fails to produce  
emailed the spreadsheets to Rosen, Holmes the spreadsheets corroborating those sales.

1 and Gannon and summarized the results of  
2 the Member Services investigation.

3 **Evidence:**

4 Rosen Depo., 47:25-48:21; Holmes Depo.,  
5 86:10-88:10, 95:9-96:10; Cuva Decl., ¶ 6,  
6 Exh.N; Stanfa Decl. ¶¶ 4-5.

**Evidence:**

Defendant's Amended Compendium of  
Exhibits.

8 39. In her email, Cuva indicated that  
9 these spreadsheets "all reflect patterns un-  
10 healthy for the business."

11 **Evidence:**

12 Cuva Decl., ¶ 7, Exh.N.

39. Undisputed as to that statement being  
written in the email.

**Evidence:**

14 40. Cuva noted as follows:

15 i The 2041 Freezes spread-  
16 sheet shows that West LA is  
17 an outlier in members who  
18 request a freeze in the first 60  
19 days of membership who also  
20 go on to cancel in the same  
21 year.

22 i The Modification to Direct  
23 Bill spreadsheet reflects  
24 members in the last quarter  
25 of 2014 whose billing was  
26 modified from the credit card  
27 payment type to direct bill  
28 the day before billing ran.

40. Disputed. Kasbarian was found to  
have not committed any of the  
inappropriate and fraudulent conduct or  
"fake" sales that were being investigated.

**Evidence:**

Holmes Depo., 88:4-10, 106:11-19;  
Hemedinger Depo., 51:23-52:23; Rosen  
Depo., 48:22-49:3, 54:3-8, 76:5-14, 98:6-  
17, 101:24-102:7; Gannon Depo., 70:8-  
71:15, 72:7-20, 75:22-76:8, 79:5-10, 81:7-  
11; Gannon Decl., ¶ 6, 10.

1 The Company average is four  
2 per club. West LA had 28  
3 modifications to direct bill.

- 4 i The West LA Breakdown  
5 spreadsheet shows question-  
6 able sales from two MAs  
7 (Plaintiff and the MA moving  
8 to New York). The other  
9 three MAs were reviewed  
10 and did not reflect the same  
11 anomalies seen with Plaintiff  
12 and the MA moving to New  
13 York. The questionable sales  
14 included selling memberships  
15 to members with the credit  
16 card of another member (al-  
17 most universally without re-  
18 questing a referral credit) or  
19 re-contracting over a previ-  
20 ously 3-day'd membership  
21 and either using the credit  
22 from the previous sale or re-  
23 charging the same credit  
24 card, credit card not present  
25 for numerous sales transac-  
26 tions, 3-day cancellations  
27 with no or just one member  
28 visit, new memberships

1 which were previously fi-  
2 nance cancelled and had bal-  
3 ances on account that were  
4 waived.

5 **Evidence:**

6 Cuva Decl., ¶ 7, Exh.N.

7  
8 41. Neither Cuva nor Stanfa were aware  
9 Plaintiff had made any complaints about  
10 changes to her compensation plan or about  
11 the alleged activities of other MAs.

12 **Evidence:**

13 Cuva Decl., ¶ 8; Stanfa Decl., ¶ 11.

41. Undisputed. However, Kasbarian  
was found to have not committed any of  
the inappropriate and fraudulent conduct or  
“fake” sales that were being investigated.

14 **Evidence:**

41. Holmes Depo., 88:4-10, 106:11-19;  
Hemedinger Depo., 51:23-52:23; Rosen  
Depo., 48:22-49:3, 54:3-8, 76:5-14, 98:6-  
17, 101:24-102:7; Gannon Depo., 70:8-  
71:15, 72:7-20, 75:22-76:8, 79:5-10, 81:7-  
11; Gannon Decl., ¶ 6, 10.

15 **Evidence:**

16  
17  
18  
19  
20  
21  
22 42. In addition, Burger was asked to in-  
23 terview the sales team at the West LA  
24 club.

25 **Evidence:**

26 Deposition of Jim Burger (“Burger  
27 Depo.”), 72:4-73:3, 73:13-75:22, 76:6-12.

42. Undisputed.

28 **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 [sic] and an Assistant General Manager.

**Evidence:**

Hemedinger Decl., ¶ 4.

44. A MA was fired on or about January 20, 2015 for improper sales activities.

**Evidence:**

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.

**Evidence:**

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.

**Evidence:**

Burger Depo., 73:13-74:15; Cuva Decl.

43. Undisputed.

**Evidence:**

44. Undisputed.

**Evidence:**

45. Disputed. Defendant fails to produce the spreadsheets corroborating those sales.

**Evidence:**

Defendant's Amended Compendium of Exhibits.

46. Undisputed.

**Evidence:**

¶ 8; Stanfa Decl., ¶ 9.

47. Burger had a subsequent meeting with Stanfa to review the spreadsheets Member Services had prepared.

**Evidence:**

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.

**Evidence:**

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

47. Disputed. Defendant fails to produce the spreadsheets corroborating those sales.

**Evidence:**

Defendant's Amended Compendium of Exhibits.

48. Disputed. Defendant fails to produce the spreadsheets corroborating those sales. However, However, Kasbarian was found to have not committed any of the inappropriate and fraudulent conduct or "fake" sales that were being investigated.

**Evidence:**

Defendant's Amended Compendium of Exhibits; Holmes Depo., 88:4-10, 106:11-19; Hemedinger Depo., 51:23-52:23; Rosen Depo., 48:22-49:3, 54:3-8, 76:5-14, 98:6-17, 101:24-102:7; Gannon Depo., 70:8-71:15, 72:7-20, 75:22-76:8, 79:5-10, 81:7-11; Gannon Decl., ¶ 6, 10.

49. Undisputed.

**Evidence:**

1 the West LA Club.

2 **Evidence:**

3 Burger Depo., 76:19-77:1; Stanfa Decl.,  
4 ¶ 9.

5  
6 50. In late January 2015, Burger came to 50. Undisputed.  
7 Los Angeles to interview various employ- **Evidence:**  
8 ees regarding sales activities of the West  
9 LA MAs.

10 **Evidence:**

11 Burger Depo., 76:6-12; Gannon Decl., ¶ 3;  
12 Hemedinger Decl., ¶ 5.

13  
14 51. Prior to the interviews, Burger and 51. Disputed. Gannon testified that one  
15 Gannon discussed suspending all of the in- MA was not suspended and was not  
16 dividuals interviewed as part of the investi- discussed suspending because there “was  
17 gation pending the results of the investiga- no suspicious conduct linked to him” even  
18 tion.

19 **Evidence:**

20 Burger Depo., 116:12-117:12.

**Evidence:**

Gannon Depo., 70:8-71:19, 81:7-11;  
Gannon Decl., ¶ 6, 10.

21  
22  
23 52. Burger then interviewed the follow- 52. Disputed. Gannon testified that one  
24 ing individuals: (1) the Assistant General MA was not suspended and was not  
25 Manager; (2) Plaintiff; (3) another MA; discussed suspending because there “was  
26 (4) a relatively newly hired MA; and no suspicious conduct linked to him” even  
27 (5) Simonson. at the beginning of the investigation.

28 **Evidence:**

**Evidence:**



1 Hemedinger Decl., ¶ 5.

Gannon Depo., 70:8-71:19, 81:7-11;

2 Gannon Decl., ¶ 6, 10.

3  
4 53. Burger had never heard of or spoken  
5 to Plaintiff prior to this investigation meet-  
6 ing.

53. Undisputed.

7 **Evidence:**

8 Burger Depo., 35:22-24.

9  
10 54. On January 30, 2015, Plaintiff met  
11 with Burger and Leah Ball of Human  
12 Resources regarding West LA's sales prac-  
13 tices.

54. Undisputed.

14 **Evidence:**

15 Plaintiff Depo., Volume I, 161:11-22,  
16 164:10-22; Plaintiff Depo., Volume II,  
17 305:21-24; , [sic] Burger Depo., 96:18-25.

18  
19 55. Plaintiff answered questions about  
20 her sales activities, as well as the activities  
21 of other MAs.

55. Undisputed. Additionally, at the  
beginning of Kasbarian's interview, she  
notifies Senior Director of Loss  
Prevention, Jim Burger, about the  
fraudulent activity and unauthorized  
membership sales that she observed and  
complained about to management for  
months

22 **Evidence:**

23 Plaintiff Depo., Volume I, 161:11-22,  
24 164:10-22; Burger Depo., 53:13-54:9.

27 **Evidence:**

28 Exh. 17; Kasbarian Depo., Vol. I, 158:4-

1 18, 161:15-162:1, 166:9-167:2; Kasbarian  
2 Decl., ¶¶ 10, 11; Burger Depo., 70:9-21,  
3 78:4-11, 83:18-84:3, 91:5-92:18, 100:3-8,  
4 183:21-184:12.

5  
6 56. While Burger did not find Plaintiff  
7 credible, he felt, at that time, that there was  
8 insufficient information to warrant Plain-  
9 tiff's termination.

10 **Evidence:**

11 Burger Depo., 122:14-17.  
12  
13

56. Undisputed as to Burger concluding  
there was insufficient information to  
warrant any terminable offense committed  
by Burger. Kasbarian was found to have  
not committed any of the inappropriate and  
fraudulent conduct or "fake" sales that  
were being investigated.

14 **Evidence:**

15 Holmes Depo., 88:4-10, 106:11-19;  
16 Hemedinger Depo., 51:23-52:23; Rosen  
17 Depo., 48:22-49:3, 54:3-8, 76:5-14, 98:6-  
18 17, 101:24-102:7; Gannon Depo., 70:8-  
19 71:15, 72:7-20, 75:22-76:8, 79:5-10, 81:7-  
20 11; Gannon Decl., ¶ 6, 10.

21  
22 57. After Burger completed his inter-  
23 views, Burger, Gannon and Hemedinger  
24 met briefly to discuss Burger's impression.

25 **Evidence:**

26 Burger Depo., 117:16-18, 24-118:6.  
27

57. Undisputed.

**Evidence:**

28 58. Gannon then advised Plaintiff that

58. Undisputed. However, she was

1 she was being suspended.

2 **Evidence:**

3 Plaintiff Depo, Volume I, 174:24-175:3,  
4 11-12; Plaintiff Depo., Volume II, 306:3-7;  
5 Gannon Decl., ¶ 4.

suspended despite her having been found  
to not have committed any terminable  
offense.

6 **Evidence:**

7 Holmes Depo., 88:4-10, 106:11-19;  
8 Hemedinger Depo., 51:23-52:23; Rosen  
9 Depo., 48:22-49:3, 54:3-8, 76:5-14, 98:6-  
10 17, 101:24-102:7; Gannon Depo., 70:8-  
11 71:15, 72:7-20, 75:22-76:8, 79:5-10, 81:7-  
12 11; Gannon Decl., ¶ 6, 10.

13 59. All of the MAs interviewed as part of  
14 the investigation (with the exception of the  
15 relatively new MA) were suspended pend-  
16 ing investigation.

17 **Evidence:**

18 Burger Depo., ¶ [sic] 110:17-23; Gannon  
19 Decl., ¶ 6.

59. Undisputed. One MA was not  
suspended.

20 **Evidence:**

21 Gannon Depo., 70:8-71:15, 81:7-11;  
22 Gannon Decl., ¶ 6, 10.

23 60. Gannon also advised Plaintiff to re-  
24 port back to the West LA club at 2:00 p.m.  
25 the next day for another meeting.

26 **Evidence:**

27 Plaintiff Depo., Volume II, 180:11-181:4;  
28 Gannon Decl., ¶ 5.

60. Undisputed.

**Evidence:**

61. According to Plaintiff, Equinox told  
her that she would not have access to her

61. Undisputed.

**Evidence:**

1 email or payroll account and escorted her  
2 out of the building in front of Equinox's  
3 clientele, staff and all of her peers.

4 **Evidence:**

5 Plaintiff Depo., Volume II, 174:24-175:21;  
6 Plaintiff Depo., Volume II, 305:21-306:2,  
7 364:17-20; Plaintiff's Complaint, 6:5-7.

8  
9 62. It is Equinox's policy to turn off  
10 email access for hourly employees who  
11 have been suspended pending investigation  
12 or who are on leave of absence.

13 **Evidence:**

14 Gannon Decl., ¶ 7.

15  
16 63. Prior to Burger's interview of Plain-  
17 tiff, Gannon had the Payroll Department  
18 prepare a final paycheck for Plaintiff so  
19 that she could be paid in accordance with  
20 California law in the event the decision  
21 was made to terminate her employment.

22 **Evidence:**

23 Gannon Decl., ¶ 8.

24  
25  
26  
27 64. Plaintiff met with Hemedinger and  
28 Gannon at the West LA club on January

62. Disputed. Defendant did not produce  
any documentation corroborating this  
policy.

**Evidence:**

Defendant's Amended Compendium of  
Evidence.

63. Undisputed as to Gannon preparing  
the final paycheck; however, this paycheck  
was prepared by Gannon even before the  
interview in preparation for Kasbarian's  
termination.

**Evidence:**

Gannon Decl., ¶ 8; Exh. 15; Kasbarian  
Depo., Vol. I, 130:21-131:3, 185:5-15;  
Kasbarian Depo., Vol. II, 311:9-22;  
Kasbarian Decl., ¶ 11.

64. Undisputed.

**Evidence:**

31, 2015 and was told that the investigation was concluded and that she would be working at the Marina Del Rey club.

**Evidence:**

Plaintiff Depo., Volume I, 182:5-183:8; Plaintiff Depo., Volume II, 306:12:16 [sic], 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.

**Evidence:**

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.

65. Disputed. Defendant's claim that Kasbarian was reassigned to Marina Del Rey because they wanted to rebuild the team of Mas, yet one MA was allowed to stay at West LA

**Evidence:**

Rosen Depo., 48:22-49:3, 54:3-8, 98:6-17, 76:5-14; Hemedinger Depo., 51:23-52:23; Holmes Depo., 88:4-10, 106:11-19, 101:24-102:7; Gannon Depo., 70:8-71:15, 72:7-20, 75:22-76:8, 79:5-10, 81:7-11; Gannon Decl., ¶ 6, 10.

66. Undisputed that the compensation plan would change; however, disputed as to it being a lateral move. Kasbarian is told that she would be paid \$9.00/hour at the Marina del Rey office, which was a \$10.00

**Evidence:**

Rosen Depo., 87:25-88:4; Gannon Decl., ¶ 11.

per hour decrease in hourly rate that she was being paid at the West Los Angeles branch at \$19.23 per hour. Barry Holmes, Vice President of Sales, admits that urban clubs, such as the Santa Monica location, tend to generate more revenue than suburban clubs, like the Marina Del Rey location, and the West LA location is a higher tier club than urban clubs. Brian Hemedinger admits in deposition that they thought it would be “best for Tamar, if she had the opportunity to be a membership advisor at a different location,” while acknowledging that she would be going to a lower tier location than when she first started with the company. Moreover, when Kasbarian went to West LA she was promoted from MA to Membership Executive, which it stated on her “Promotion Memo.”

**Evidence:**

Exh. 10, 14; Kasbarian Depo., Vol. I, 50:24-51:1, 89:9-90:19, 279:14-280:12, 182:12-184:19; Kasbarian Depo., Vol. II, 354:1-18, 458:24-459:17; Gannon Decl., 9, 10; Holmes Depo., 28:22-29:2, 50:18-25; Gannon Depo., 32:15-17, 88:25-89:5; Hemedinger Depo., 50:14-20, 51:23-

52:23, 81:2-23.

67. Equinox considered the reassignment a lateral move.

**Evidence:**

Rosen Depo., 87:25-88:4; Gannon Decl., ¶ 11.

67. Disputed. Kasbarian is told that she would be paid \$9.00/hour at the Marina del Rey office, which was a \$10.00 per hour decrease in hourly rate that she was being paid at the West Los Angeles branch at \$19.23 per hour. Barry Holmes, Vice President of Sales, admits that urban clubs, such as the Santa Monica location, tend to generate more revenue than suburban clubs, like the Marina Del Rey location, and the West LA location is a higher tier club than urban clubs. Brian Hemedinger admits in deposition that they thought it would be “best for Tamar, if she had the opportunity to be a membership advisor at a different location,” while acknowledging that she would be going to a lower tier location than when she first started with the company. Moreover, when Kasbarian went to West LA she was promoted from MA to Membership Executive, which it stated on her “Promotion Memo.”

**Evidence:**

Exh. 10, 14; Kasbarian Depo., Vol. I, 50:24-51:1, 89:9-90:19, 279:14-280:12, 182:12-184:19; Kasbarian Depo., Vol. II,

354:1-18, 458:24-459:17; Gannon Decl., 9, 10; Holmes Depo., 28:22-29:2, 50:18-25; Gannon Depo., 32:15-17, 88:25-89:5; Hemedinger Depo., 50:14-20, 51:23-52:23, 81:2-23.

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.

**Evidence:**

Plaintiff Depo., Volume II, 390:4-11, Exh. 38; Gannon Decl., ¶ 12.

68. Undisputed.

**Evidence:**

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.

**Evidence:**

Hemedinger Depo., 52:18-23; Rosen Depo., 57:13-19; 58:22-59:14; Holmes Depo., 31:13-15.

69. Disputed. Kasbarian is told that she would be paid \$9.00/hour at the Marina del Rey office, which was a \$10.00 per hour decrease in hourly rate that she was being paid at the West Los Angeles branch at \$19.23 per hour. Barry Holmes, Vice President of Sales, admits that urban clubs, such as the Santa Monica location, tend to generate more revenue than suburban clubs, like the Marina Del Rey location, and the West LA location is a higher tier club than urban clubs. Brian Hemedinger admits in deposition that they thought it would be "best for Tamar, if she had the



1 opportunity to be a membership advisor at  
2 a different location,” while acknowledging  
3 that she would be going to a lower tier  
4 location than when she first started with  
5 the company. Moreover, when Kasbarian  
6 went to West LA she was promoted from  
7 MA to Membership Executive, which it  
8 stated on her “Promotion Memo.”

9 **Evidence:**

10 Exh. 10, 14; Kasbarian Depo., Vol. I,  
11 50:24-51:1, 89:9-90:19, 279:14-280:12,  
12 182:12-184:19; Kasbarian Depo., Vol. II,  
13 354:1-18, 458:24-459:17; Gannon Decl., 9,  
14 10; Holmes Depo., 28:22-29:2, 50:18-25;  
15 Gannon Depo., 32:15-17, 88:25-89:5;  
16 Hemedinger Depo., 50:14-20, 51:23-  
17 52:23, 81:2-23.

18  
19 70. It was easier to sell more member-  
20 ships at the Marina Del Rey club than the  
21 West LA club because the Marina Del Rey  
22 memberships were less expensive.

23 **Evidence:**

24 Hemedinger Depo., 52:18-23; Rosen  
25 Depo., 57:13-19; 58:22-59:14; Holmes  
26 Depo. , [sic] 50:18-51:5.

70. Disputed. Kasbarian is told that she  
would be paid \$9.00/hour at the Marina del  
Rey office, which was a \$10.00 per hour  
decrease in hourly rate that she was being  
paid at the West Los Angeles branch at  
\$19.23 per hour. Barry Holmes, Vice  
President of Sales, admits that urban clubs,  
such as the Santa Monica location, tend to  
generate more revenue than suburban  
clubs, like the Marina Del Rey location,

1 and the West LA location is a higher tier  
2 club than urban clubs. Brian Hemedinger  
3 admits in deposition that they thought it  
4 would be “best for Tamar, if she had the  
5 opportunity to be a membership advisor at  
6 a different location,” while acknowledging  
7 that she would be going to a lower tier  
8 location than when she first started with  
9 the company. Moreover, when Kasbarian  
10 went to West LA she was promoted from  
11 MA to Membership Executive, which it  
12 stated on her “Promotion Memo.”

13 **Evidence:**

14 Exh. 10, 14; Kasbarian Depo., Vol. I,  
15 50:24-51:1, 89:9-90:19, 279:14-280:12,  
16 182:12-184:19; Kasbarian Depo., Vol. II,  
17 354:1-18, 458:24-459:17; Gannon Decl., 9,  
18 10; Holmes Depo., 28:22-29:2, 50:18-25;  
19 Gannon Depo., 32:15-17, 88:25-89:5;  
20 Hemedinger Depo., 50:14-20, 51:23-  
21 52:23, 81:2-23.

22  
23 71. Gannon emailed Plaintiff the com-  
24 pensation plan for the Marina Del Rey  
25 Club on or about January 31, 2015.

26 **Evidence:**

27 Plaintiff Depo., Volume I, 246:19-247:2;  
28

71. Undisputed.

**Evidence:**

1 Gannon Decl., ¶ 12.

2  
3 72. Plaintiff testified that no one from  
4 Equinox ever told her that she was being  
5 “terminated” or “demoted” as part of her  
6 reassignment to the Marina Del Rey club.

7 **Evidence:**

8 Plaintiff Depo., Volume I, 171:10-172:7;  
9 Plaintiff Depo., Volume II, 306:17-310:19,  
10 363:24-364:3; Gannon Decl., ¶ 13;  
11 Hemedinger Decl., ¶ 7.

72. Undisputed as to no one stating those  
actual words; however, Kasbarian is told  
that she would be paid \$9.00/hour at the  
Marina del Rey office, which was a \$10.00  
per hour decrease in hourly rate that she  
was being paid at the West Los Angeles  
branch at \$19.23 per hour. Barry Holmes,  
Vice President of Sales, admits that urban  
clubs, such as the Santa Monica location,  
tend to generate more revenue than  
suburban clubs, like the Marina Del Rey  
location, and the West LA location is a  
higher tier club than urban clubs. Brian  
Hemedinger admits in deposition that they  
thought it would be “best for Tamar, if she  
had the opportunity to be a membership  
advisor at a different location,” while  
acknowledging that she would be going to  
a lower tier location than when she first  
started with the company. Moreover, when  
Kasbarian went to West LA she was  
promoted from MA to Membership  
Executive, which it stated on her  
“Promotion Memo.”

27 **Evidence:**

28 Exh. 10, 14; Kasbarian Depo., Vol. I,

50:24-51:1, 89:9-90:19, 279:14-280:12,  
182:12-184:19; Kasbarian Depo., Vol. II,  
354:1-18, 458:24-459:17; Gannon Decl., 9,  
10; Holmes Depo., 28:22-29:2, 50:18-25;  
Gannon Depo., 32:15-17, 88:25-89:5;  
Hemedinger Depo., 50:14-20, 51:23-  
52:23, 81:2-23.

73. Gannon made the decision to reas- 73. Undisputed.  
sign Plaintiff to the Marina Del Rey club. **Evidence:**

**Evidence:**

Rosen Depo., 45:7-25. 57:8-12;  
Hemedinger Depo., 53:14-18.

74. Plaintiff was told to report to the 74. Undisputed.  
Marina Del Rey club on February 2, 2015 **Evidence:**  
at 9:00 a.m.

**Evidence:**

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 75. Undisputed; however, Kasbarian was  
Rey club, Plaintiff submitted her resigna- forced to resign due to intolerable working  
tion, via email, on the morning of February conditions at Equinox. On February 2,  
2, 2015 effective immediately. 2015, the day Kasbarian was supposed to  
start at the Marina del Rey location, she

**Evidence:**

1 Plaintiff Depo., Volume I, 186:5-14, Exh. feels she is no longer welcome at Equinox  
2 26; Plaintiff Depo., Volume II, 311:4-8; and feels pushed out since she was forced  
3 Hemedinger Depo., 54:17-55:18, 55:25- to take a demotion, a significant pay cut  
4 56:25, 57:6-57:11. and restart her business and clientele base,

5 along with the overwhelming stress of the  
6 interrogation and suspension and fear of  
7 being terminated that she is forced to  
8 resign.

9 **Evidence:**

10 Exh. 16; Kasbarian Depo., Vol. I, 186:5-  
11 14; Kasbarian Decl., ¶¶ 12-14.

12  
13 76. Plaintiff's last day of employment 76. Undisputed.  
14 was February 2, 2015. **Evidence:**

15 **Evidence:**

16 Plaintiff Depo., Volume I, 186:11-14.

17  
18 77. Plaintiff never reported to work at 77. Undisputed.  
19 the Marina Del Rey club. **Evidence:**

20 **Evidence:**

21 Plaintiff Depo., Volume I, 50:13-15,  
22 186:15-17; Hemedinger Depo., 56:22-25.

23  
24 78. As of February 1, 2015, the only re- 78. Undisputed.  
25 maining MA at the West LA club was the **Evidence:**  
26 recently hired MA. Gannon Decl., ¶ 6, 10.

27 **Evidence:**

1 Plaintiff Depo., Volume II, 342:3-11.

2  
3 79. As of April/May 2015, the West LA  
4 club had an entirely new sales team and  
5 sales management.

6 **Evidence:**

7 Plaintiff Depo., Volume II, 342:25-343:5.

79. Undisputed. However, one MA was  
able to stay at the West LA location,  
despite Gannon stating he wanted to  
rebuild the team by getting rid of all of the  
Membership Executives at West LA.

8 **Evidence:**

9 Rosen Depo., 76:5-14; Hemedinger Depo.,  
10 51:23-52:23; Holmes Depo., 101:24-  
11 102:7; Gannon Depo., 70:8-71:15, 81:7-  
12 11; Gannon Decl., ¶ 6, 10.

13  
14 80. Plaintiff testified that she was un-  
15 aware of any other MA at the West LA  
16 club complaining about the unauthorized  
17 use of credit cards or telling someone that  
18 they were being signed up for a one-month  
19 membership but signing them up for a year  
20 instead.

21 **Evidence:**

22 Plaintiff Depo., Volume II, 343:6-22.

80. Undisputed.

23 **Evidence:**

24 **ISSUE NO. 13:** Although Plaintiff has not pled a cause of action for constructive dis-  
25 charge, such a claim (even if properly pled) would also survive as a matter of law  
26 because Plaintiff can show the reasons she was assigned to the Marina Del Rey club  
27 were pretextual. (UF Nos. 1-80.)

28 **Alleged Undisputed Facts and**

**Plaintiff's Responses and**

**Supporting Evidence**

1. Plaintiff was hired as a Membership Advisor (“MA”) at Equinox’s Santa Monica club on or about October 15, 2010.

**Evidence:**

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”).

**Evidence:**

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.

**Evidence:**

Declaration of Brian Hemedinger (“Hemedinger Decl.”), ¶ 3.

**Supporting Evidence**

1. Undisputed.

**Evidence:**

2. Disputed. Kasbarian was promoted to the position of Membership Executive at the West Los Angeles club (“West LA”) in October 2013.

**Evidence:**

Exh. 10; Kasbarian Depo., Vol. I, 89:9-90:19, 279:14-280:12; Kasbarian Decl., ¶ 5; Hemedinger Depo., 50:4-9; Rosen Depo., 20:4-18; Holmes Depo., 39:13-18.

3. Disputed. A Membership Executive position is considered a promotion from an MA position. Kasbarian was specifically told her position as a Membership Executive was a promotion from an MA, and she received a memo on it, as well as a higher compensation plan. Kasbaian’s hourly rate also increased with her position as a Membership Executive, to \$19.23 per hour, as well as an increase in

commissions and bonuses.

**Evidence:**

Exh. 10; Kasbarian Depo., Vol. I, 89:9-90:19, 279:14-280:12; Kasbarian Decl., ¶ 5; Hemedinger Depo., 50:4-9; Rosen Depo., 20:4-18; Holmes Depo., 39:13-18.

4. During Plaintiff's employment at Equinox Santa Monica and West LA clubs, Jack Gannon ("Gannon") was the Vice President of the West Coast.

**Evidence:**

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.

**Evidence:**

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

**Evidence:**



West LA club from about January 2014 to about January 2015.

**Evidence:**

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.

**Evidence:**

Plaintiff Depo., Volume I, 43:18-45:15, Exh. 8 (Receipt Acknowledgement [sic] 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 and myself.

7. Undisputed.

**Evidence:**

8. Undisputed, as to what the actual document states. However, disputed as to whether Kasbarian actually believed her employment was "at-will." Kasbarian believes she would not be demoted, have her pay cut, her employment suspended, or, reassigned, etc. unless it was for good cause.

**Evidence:**

Kasbarian Decl., ¶¶ 4, 11, 13, 14.

**Evidence:**

Plaintiff Depo., Volume I, 43:18-45:15, Exh. 8 (Receipt Acknowledgement [sic] Form); Figueroa Decl., ¶ 5, Exh. B (Receipt Acknowledgement [sic] Form).

9. Plaintiff's personnel file also includes an Offer Letter, dated October 15, 2010, which Plaintiff acknowledged receiving.

**Evidence:**

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.

**Evidence:**

9. Undisputed.

**Evidence:**

10. Undisputed, as to what the actual document states. However, disputed as to whether Kasbarian actually believed her employment was "at-will." Kasbarian believes she would not be demoted, have her pay cut, her employment suspended, or, reassigned, etc. unless it was for good cause.

**Evidence:**

Kasbarian Decl., ¶¶ 4, 11, 13, 14.

1 Plaintiff Depo., Volume I, 36:23-38:11,  
2 Exh. 5 (Offer Letter); Figueroa Decl., ¶ 6,  
3 Exh. C (Offer Letter).

5 11. Plaintiff's personnel file also in- 11. Undisputed.  
6 cludes an Employee Confidentiality and **Evidence:**  
7 Non-Solicitation Agreement with Plain-  
8 tiff's signature dated October 14, 2010.

9 **Evidence:**

10 Figueroa Decl., ¶ 8, Exh. D.

12 12. This Agreement stated: "You agree 12. Undisputed, as to what the actual  
13 and understand that nothing in this Agree- document states. However, disputed as to  
14 ment shall alter or modify the 'at-will' whether Kasbarian actually believed her  
15 nature of your employment with the Com- employment was "at-will." Kasbarian  
16 pany or confer on [y]ou any rights with re- believes she would not be demoted, have  
17 spect to continuation of your employment her pay cut, her employment suspended,  
18 with the Company."

19 **Evidence:**

20 Figueroa Decl., ¶ 8, Exh. D.

**Evidence:**

21 Kasbarian Decl., ¶¶ 4, 11, 13, 14.

23 13. In her deposition, Plaintiff admitted 13. Undisputed, as to what the actual  
24 that she did not have a contract with document states. However, disputed as to  
25 Equinox; no one ever told her that she was whether Kasbarian actually believed her  
26 guaranteed employment for a certain time employment was "at-will." Kasbarian  
27 period; and no one ever told her that she believes she would not be demoted, have  
28 was anything other than an at-will em- her pay cut, her employment suspended,

1 ployee. or, reassigned, etc. unless it was for good  
2 **Evidence:** cause.

3 Plaintiff Depo., Volume I, 36:23-38:11, **Evidence:**  
4 43:18-45:15, Exh. 5 (Offer Letter), Exh. 8 Kasbarian Decl., ¶¶ 4, 11, 13, 14.  
5 (Receipt Acknowledgement [sic] Form).  
6

7 14. The Employee Handbook Plaintiff 14. Undisputed.  
8 acknowledged receiving also included **Evidence:**  
9 Equinox's non-retaliation policy as well as  
10 complaint procedures for reporting retalia-  
11 tion.

12 **Evidence:**  
13 Plaintiff Depo., Volume I, 43:18-45:15,  
14 Exh. 8 Receipt of Employee Handbook;  
15 Declaration of Emerson Figueroa  
16 ("Figueroa Decl."), Exh. A.  
17

18 15. In particular, Equinox's policy strict- 15. Undisputed.  
19 ly prohibits retaliation against any employ- **Evidence:**  
20 ee for "filing a complaint and [Equinox]  
21 will not knowingly permit retaliation by  
22 management, employees, or co-workers."  
23 Equinox's policy also prohibits retaliation  
24 against any employee for "using this com-  
25 plaint procedure or for filing, testifying,  
26 assisting, or participating in any manner in  
27 any investigation, proceeding, or hearing  
28 conducted by a governmental enforcement

1 agency. Additionally, Equinox will not  
2 knowingly permit any retaliation against  
3 any employee who complains of prohibited  
4 harassment or who participates in an inves-  
5 tigation.”

6 **Evidence:**

7 Plaintiff Depo., Volume I, 43:18-45:15,  
8 Exh. 8 Receipt of Employee Handbook;  
9 Figueroa Decl., Exh. A, Employee Hand-  
10 book.

12 16. The complaint procedure as outlined  
13 in the Employee Handbook permits an em-  
14 ployee to report retaliation to his or her  
15 manager, Human Resources, or through  
16 Equinox’s Ethics Hotline.

17 **Evidence:**

18 Plaintiff Depo., Volume I, 43:18-45:15,  
19 Exh. 8 Receipt of Employee Handbook;  
20 Figueroa Decl. ¶ 4.

22 17. In or about June 2014, Hemedinger  
23 informed Plaintiff and other MAs that the  
24 compensation plan for all West LA MAs  
25 was being clarified, so that the market bo-  
26 nuses would be paid out individually and  
27 not cumulatively for reaching a certain  
28 sales goal.

16. Undisputed.

**Evidence:**

17. Disputed. In June 2014, five months  
after Kasbarian started complaining about  
the fraudulent activities by other  
membership advisors, Kasbarian’s  
commission and bonus check for May  
2014 was suddenly and for the first time  
since she started at West LA 25-33% short

**Evidence:**

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.

of what she was owed. Kasbarian immediately complained about her unpaid commissions and bonuses. After she complained defendant permanently cut her compensation plan stating that they have been paying her too much and in “error” and told her that she is “lucky that they were not asking her to pay the difference back.”

**Evidence:**

Exhs. 11, 12, 13; Kasbarian Depo., Vol. I, 201:1-206:5, 207:4-20, 209:19-210:8, 221:11-14; Kasbarian Depo., Vol. II, 347:1-18; Kasbarian Decl., ¶¶ 8, 9; Hemedinger Depo., 59:14-60:10; Rosen Depo., 22:15-23:17, 29:18-31:6, Holmes Depo., 73:5-17, 81:7-24; 120:19-121:3; Figueroa Depo., 99:22- 100:5; Gannon Depo., 99:4-7; Hemedinger Depo., 59:14-60:10.

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

18. Disputed. In June 2014, five months after Kasbarian started complaining about the fraudulent activities by other membership advisors, Kasbarian’s commission and bonus check for May 2014 was suddenly and for the first time since she started at West LA 25-33% short

- 125% of goal—MA would receive an extra \$55 per sale
- 150% of goal—MA would receive an extra \$70 per sale

**Evidence:**

Plaintiff Depo., Volume I, 190:16-194:3; Hemedinger Depo., 64:18-65:11.

of what she was owed. Kasbarian immediately complained about her unpaid commissions and bonuses. After she complained defendant permanently cut her compensation plan stating that they have been paying her too much and in “error” and told her that she is “lucky that they were not asking her to pay the difference back.”

**Evidence:**

Exhs. 11, 12, 13; Kasbarian Depo., Vol. I, 201:1-206:5, 207:4-20, 209:19-210:8, 221:11-14; Kasbarian Depo., Vol. II, 347:1-18; Kasbarian Decl., ¶¶ 8, 9; Hemedinger Depo., 59:14-60:10; Rosen Depo., 22:15-23:17, 29:18-31:6, Holmes Depo., 73:5-17, 81:7-24; 120:19-121:3; Figueroa Depo., 99:22- 100:5; Gannon Depo., 99:4-7; Hemedinger Depo., 59:14-60:10.

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.

**Evidence:**

Plaintiff Depo., Volume I, 190:16-194:3;

19. Disputed. In June 2014, five months after Kasbarian started complaining about the fraudulent activities by other membership advisors, Kasbarian’s commission and bonus check for May 2014 was suddenly and for the first time since she started at West LA 25-33% short

1 Holmes Depo., 82:11-83:14; Hemedinger of what she was owed. Kasbarian  
2 Depo., 59:22-60:6, 62:3-63:8; 66:6-11., immediately complained about her unpaid  
3 68:125-69:8. commissions and bonuses. After she

4 complained defendant permanently cut her  
5 compensation plan stating that they have  
6 been paying her too much and in “error”  
7 and told her that she is “lucky that they  
8 were not asking her to pay the difference  
9 back.”

10 **Evidence:**

11 Exhs. 11, 12, 13; Kasbarian Depo., Vol. I,  
12 201:1-206:5, 207:4-20, 209:19-210:8,  
13 221:11-14; Kasbarian Depo., Vol. II,  
14 347:1-18; Kasbarian Decl., ¶¶ 8, 9;  
15 Hemedinger Depo., 59:14-60:10; Rosen  
16 Depo., 22:15-23:17, 29:18-31:6, Holmes  
17 Depo., 73:5-17, 81:7-24; 120:19-121:3;  
18 Figueroa Depo., 99:22- 100:5; Gannon  
19 Depo., 99:4-7; Hemedinger Depo., 59:14-  
20 60:10.

21  
22 20. Plaintiff testified that she complained 20. Undisputed as to Kasbarian’s  
23 about what she viewed as a “change” in complaints but otherwise disputed. In June  
24 the compensation plan to the following 2014, five months after Kasbarian started  
25 managerial employees: Hemedinger, complaining about the fraudulent activities  
26 Gannon, Simonson, Veronica Santarelli by other membership advisors, Kasbarian’s  
27 (“Santarelli”) (Regional Sales Manager), commission and bonus check for May  
28 Matt Gonzalez (“Gonzalez”) (Director of 2014 was suddenly and for the first time



Sales), Barry Holmes (“Holmes”) (Senior Vice President of Sales), and Scott Rosen (“Rosen”) (Chief Operating Officer) (“COO”).

**Evidence:**

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.

since she started at West LA 25-33% short of what she was owed. Kasbarian immediately complained about her unpaid commissions and bonuses. After she complained defendant permanently cut her compensation plan stating that they have been paying her too much and in “error” and told her that she is “lucky that they were not asking her to pay the difference back.”

**Evidence:**

Exhs. 11, 12, 13; Kasbarian Depo., Vol. I, 201:1-206:5, 207:4-20, 209:19-210:8, 221:11-14; Kasbarian Depo., Vol. II, 347:1-18; Kasbarian Decl., ¶¶ 8, 9; Hemedinger Depo., 59:14-60:10; Rosen Depo., 22:15-23:17, 29:18-31:6, Holmes Depo., 73:5-17, 81:7-24; 120:19-121:3; Figueroa Depo., 99:22- 100:5; Gannon Depo., 99:4-7; Hemedinger Depo., 59:14-60:10.

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

21. Undisputed to the fact that Kasbarian continued to work at Equinox until February 2015 after she complained; however, disputed as to the rest. In June 2014, five months after Kasbarian started complaining about the fraudulent activities

February 2015.

**Evidence:**

Plaintiff Depo., Volume I, 196:8-14, 207:15-22, 220:5-20; Plaintiff Depo., Volume II, 349:5-12.

by other membership advisors, Kasbarian's commission and bonus check for May 2014 was suddenly and for the first time since she started at West LA 25-33% short of what she was owed. Kasbarian immediately complained about her unpaid commissions and bonuses. After she complained defendant permanently cut her compensation plan stating that they have been paying her too much and in "error" and told her that she is "lucky that they were not asking her to pay the difference back."

**Evidence:**

Exhs. 11, 12, 13; Kasbarian Depo., Vol. I, 201:1-206:5, 207:4-20, 209:19-210:8, 221:11-14; Kasbarian Depo., Vol. II, 347:1-18; Kasbarian Decl., ¶¶ 8, 9; Hemedinger Depo., 59:14-60:10; Rosen Depo., 22:15-23:17, 29:18-31:6, Holmes Depo., 73:5-17, 81:7-24; 120:19-121:3; Figueroa Depo., 99:22- 100:5; Gannon Depo., 99:4-7; Hemedinger Depo., 59:14-60:10.

22. Plaintiff testified that she complained to Hemedinger, Simonson, and possibly to Gannon in February or March 2014 that

22. Undisputed. However, Kasbarian testified that she complained about multiple MAs at West LA, including

1 she believed that a MA at West LA was  
2 using one-month guest passes and/or gift  
3 cards to sign up members for what they be-  
4 lieved was a month-long membership, but  
5 in actuality, was signing them up for a  
6 year-long membership by using their credit  
7 cards without authorization.

8 **Evidence:**

9 Plaintiff Depo., Volume I, 81:6-21; 82:5-  
10 83:23, 94:14-97:9.

Lauren Beck and Devin Mcvelogue about  
multiple fraudulent and unlawful activities,  
including charging members credit cards  
without their authorization.

**Evidence:**

Kasbarian Depo., Vol. I, 69:5-71:5, 71:20-  
72:4, 76:5-25, 82:9-83:19, 98:11-99:4,  
102:13-103:25, 112:5-113:2; Kasbarian  
Depo., Vol. II, 334:16-25; Kasbarian  
Decl., ¶ 6; Hemedinger Depo., 43:13-15,  
45:8-22, 46:10-22; 76:1-15.

13 23. According to Plaintiff, “charging  
14 credit cards without people’s approval and  
15 telling people they were signing up for a  
16 month-long contract, but then signing them  
17 up for a year-long contract” were the only  
18 “illegal activities” about which she com-  
19 plained to Equinox.

20 **Evidence:**

21 Plaintiff Depo., Volume II, 334:16-336:23.

23 Undisputed. Gannon also testified  
and admitted in testimony that he believes  
that the type of conduct Kasbarian  
complained of was illegal and is the type  
of conduct that needs to be investigated.

**Evidence:**

Gannon Depo., 51:10-15, 52:23-53:3.

23 24. According to Plaintiff, her other  
24 complaints involved “things against  
25 Equinox policies that were happening as  
26 well.”

27 **Evidence:**

24 Undisputed.

**Evidence:**

1 Plaintiff Depo., Volume II, 334:16-336:23.

2  
3 25. Plaintiff admitted that she could not  
4 identify any statute, ordinance, regulation,  
5 local law, state law, or federal law that was  
6 violated as a result of this alleged activity.

7 **Evidence:**

8 Plaintiff Depo., Volume II, 335:4-336:23.

25. Disputed. Plaintiff testified that she  
believed this conduct was illegal.  
Moreover, Gannon also testified and  
admitted in testimony that he believes that  
the type of conduct Kasbarian complained  
of was illegal and is the type of conduct  
that needs to be investigated.

9  
10 **Evidence:**

11 Kasbarian Depo., Volume II, 334:16-  
12 336:23; Gannon Depo., 51:10-15, 52:23-  
13 53:3.

14  
15 26. Plaintiff also testified that she com-  
16 plained to Hemedinger and Simonson  
17 about the sales activities of another MA.

18 **Evidence:**

19 Plaintiff Depo., Volume I, 76:17-79:19;  
20 93:10-94:10, 102:10-107:24; 108:1-113:5;  
21 Hemedinger Depo., 45:8-47:19.

26. Undisputed.

22 **Evidence:**

23 27. Specifically, Plaintiff complained  
24 that this MA was giving away “free  
25 months” to potential members, allowing  
26 “freezes” for members, and offering “three  
27 month” deals.

28 **Evidence:**

27. Undisputed. However, Kasbarian  
testified that she complained about  
multiple MAs at West LA, including  
Lauren Beck and Devin Mcvelogue about  
multiple fraudulent and unlawful activities,  
including charging members credit cards

1 Plaintiff Depo., Volume I, 76:17-79:19p without their authorization.

2 93:10-94:10, 102:10-107:24; 108:1-113:5; **Evidence:**

3 Hemedinger Depo., 45:8-47:19.

Kasbarian Depo., Vol. I, 69:5-71:5, 71:20-72:4, 76:5-25, 82:9-83:19, 98:11-99:4, 102:13-103:25, 112:5-113:2; Kasbarian Depo., Vol. II, 334:16-25; Kasbarian Decl., ¶ 6; Hemedinger Depo., 43:13-15, 45:8-22, 46:10-22; 76:1-15.

10 28. In or around December 2014, COO 28. Undisputed.

11 Rosen was touring the West LA club when **Evidence:**

12 he was told by a member that a MA had  
13 charged a membership to another mem-  
14 ber's credit card without that member's  
15 authorization.

16 **Evidence:**

17 Rosen Depo., 37:20-38:18; Declaration of  
18 Tracy Cuva ("Cuva Decl."), ¶ 2.

20 29. Member Services is Equinox's bill- 29. Undisputed.

21 ing department (centrally based in New **Evidence:**

22 York) which handles membership con-  
23 tracts and membership sales, including  
24 auditing of membership sales.

25 **Evidence:**

26 Cuva Decl., ¶ 1.

28 30. Rosen contacted Tracy Cuva, Senior 30. Undisputed.

1 Director of Equinox's Member Services **Evidence:**  
2 Department, gave her the information re-  
3 ceived from the member, and asked  
4 Member Services to investigate this sale.

5 **Evidence:**

6 Rosen Depo., 37:20-38:21; Cuva Decl.,  
7 ¶ 2.

8  
9 31. Member Services' investigation, 31. Undisputed.  
10 which was conducted by Cuva, confirmed **Evidence:**  
11 that this was an unauthorized sale  
12 processed by a MA at the West LA Club  
13 (Plaintiff was not implicated in this  
14 transaction).

15 **Evidence:**

16 Cuva Decl., ¶ 2.

17  
18 32. This MA was relocating to New 32. Undisputed. However, this MA was  
19 York but, based on the investigation terminated.

20 results, she was not hired to work for **Evidence:**

21 Equinox in New York.

22 **Evidence:**

23 Rosen Depo., 39:8-13.

Kasbarian Depo., Vol. I, 84:7-85:1,  
184:20-23; Kasbarian Decl., ¶ 10;  
Hemedinger Decl., ¶ 4; Gannon Depo.,  
58:20-59:18, 60:2-21.

24  
25  
26 33. As a result of this member com- 33. Disputed. Senior Director of Loss  
27 plaint, Rosen also asked Cuva to have Prevention, Jim Burger, testified that Jack  
28 Member Services conduct an investigation Gannon contacted him to do an

1 of sales transactions at the West LA club.

2 **Evidence:**

3 Rosen Depo., 47:25-6; Cuva Decl., ¶ 3.

investigation at the West LA location and reported to him throughout.

**Evidence:**

Burger Depo., 70:9-21, 78:4-11, 83:18-84:3.

7 34. Apart from requesting that the inves-  
8 tigation be conducted and asking Jim  
9 Burger (Senior Director of Loss Preven-  
10 tion) to travel to the West LA club and  
11 continue the investigation after Member  
12 Services finished their portion of the inves-  
13 tigation, Rosen did not participate in that  
14 investigation.

15 **Evidence:**

16 Rosen Depo., 47:25-48:21.

34. Disputed. Senior Director of Loss Prevention, Jim Burger, testified that Jack Gannon contacted him to do an investigation at the West LA location and reported to him throughout.

**Evidence:**

Burger Depo., 70:9-21, 78:4-11, 83:18-84:3.

18 35. Cuva instructed Kevin Stanfa  
19 (“Stanfa”) (Manager of Compliance and  
20 Special Projects), to review sales transac-  
21 tions at the West LA club.

22 **Evidence:**

23 Cuva Decl., ¶ 3; Stanfa Decl. ¶ 4.

35. Undisputed.

**Evidence:**

25 36. After Stanfa reported finding various  
26 anomalies associated with sales transac-  
27 tions at the West LA club, Cuva instructed  
28 Stanfa to prepare a summary detailing his

36. Undisputed.

**Evidence:**

findings.

**Evidence:**

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.

**Evidence:**

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.

**Evidence:**

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.”

**Evidence:**

Cuva Decl., ¶ 7, Exh.N.

40. Cuva noted as follows:

37. Disputed. Defendant fails to produce the spreadsheets corroborating those sales.

**Evidence:**

Defendant’s Amended Compendium of Exhibits.

38. Disputed. Defendant fails to produce the spreadsheets corroborating those sales.

**Evidence:**

Defendant’s Amended Compendium of Exhibits.

39. Undisputed as to that statement being written in the email.

**Evidence:**

40. Disputed. Kasbarian was found to



1 i The 2041 Freezes spread-  
2 sheet shows that West LA is  
3 an outlier in members who  
4 request a freeze in the first 60  
5 days of membership who also  
6 go on to cancel in the same  
7 year.

8 i The Modification to Direct  
9 Bill spreadsheet reflects  
10 members in the last quarter  
11 of 2014 whose billing was  
12 modified from the credit card  
13 payment type to direct bill  
14 the day before billing ran.  
15 The Company average is four  
16 per club. West LA had 28  
17 modifications to direct bill.

18 i The West LA Breakdown  
19 spreadsheet shows question-  
20 able sales from two MAs  
21 (Plaintiff and the MA moving  
22 to New York). The other  
23 three MAs were reviewed  
24 and did not reflect the same  
25 anomalies seen with Plaintiff  
26 and the MA moving to New  
27 York. The questionable sales  
28 included selling memberships

have not committed any of the  
inappropriate and fraudulent conduct or  
“fake” sales that were being investigated.

**Evidence:**

Holmes Depo., 88:4-10, 106:11-19;  
Hemedinger Depo., 51:23-52:23; Rosen  
Depo., 48:22-49:3, 54:3-8, 76:5-14, 98:6-  
17, 101:24-102:7; Gannon Depo., 70:8-  
71:15, 72:7-20, 75:22-76:8, 79:5-10, 81:7-  
11; Gannon Decl., ¶ 6, 10.

1 to members with the credit  
2 card of another member (al-  
3 most universally without re-  
4 requesting a referral credit) or  
5 re-contracting over a previ-  
6 ously 3-day'd membership  
7 and either using the credit  
8 from the previous sale or re-  
9 charging the same credit  
10 card, credit card not present  
11 for numerous sales transac-  
12 tions, 3-day cancellations  
13 with no or just one member  
14 visit, new memberships  
15 which were previously fi-  
16 nance cancelled and had bal-  
17 ances on account that were  
18 waived.

19 **Evidence:**

20 Cuva Decl., ¶ 7, Exh.N.  
21

22 41. Neither Cuva nor Stanfa were aware  
23 Plaintiff had made any complaints about  
24 changes to her compensation plan or about  
25 the alleged activities of other MAs.

26 **Evidence:**

27 Cuva Decl., ¶ 8; Stanfa Decl., ¶ 11.  
28

41. Undisputed. However, Kasbarian  
was found to have not committed any of  
the inappropriate and fraudulent conduct or  
“fake” sales that were being investigated.

**Evidence:**

41. Holmes Depo., 88:4-10, 106:11-19;  
Hemedinger Depo., 51:23-52:23; Rosen

Depo., 48:22-49:3, 54:3-8, 76:5-14, 98:6-17, 101:24-102:7; Gannon Depo., 70:8-71:15, 72:7-20, 75:22-76:8, 79:5-10, 81:7-11; Gannon Decl., ¶ 6, 10.

**Evidence:**

42. In addition, Burger was asked to interview the sales team at the West LA club.

42. Undisputed.

**Evidence:**

**Evidence:**

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 [sic] and an Assistant General Manager.

43. Undisputed.

**Evidence:**

**Evidence:**

Hemedinger Decl., ¶ 4.

44. A MA was fired on or about January 20, 2015 for improper sales activities.

44. Undisputed.

**Evidence:**

**Evidence:**

1 Figueroa Decl. ¶ 9; Hemedinger Decl., ¶ 4.

2  
3 45. At Burger's request, Member Ser-  
4 vices provided him with the spreadsheets  
5 summarizing their findings of questionable  
6 sales transactions at the West LA club.

7 **Evidence:**

8 Burger Depo., 72:13-73:3; Cuva Decl. ¶ 8.

9  
10 46. Burger then met with Cuva and  
11 Stanfa and they discussed their findings re-  
12 garding the questionable sales at the West  
13 LA club.

14 **Evidence:**

15 Burger Depo., 73:13-74:15; Cuva Decl.  
16 ¶ 8; Stanfa Decl., ¶ 9.

17  
18 47. Burger had a subsequent meeting  
19 with Stanfa to review the spreadsheets  
20 Member Services had prepared.

21 **Evidence:**

22 Burger Depo., 74:16-75:3, 8-22; Stanfa  
23 Decl., ¶ 9.

24  
25 48. These spreadsheets showed anoma-  
26 lies in various sales transactions, including  
27 whether or not a contract was signed,  
28 whether or not a credit card was present

45. Disputed. Defendant fails to produce  
the spreadsheets corroborating those sales.

**Evidence:**

Defendant's Amended Compendium of  
Exhibits.

46. Undisputed.

**Evidence:**

47. Disputed. Defendant fails to produce  
the spreadsheets corroborating those sales.

**Evidence:**

Defendant's Amended Compendium of  
Exhibits.

48. Disputed. Defendant fails to produce  
the spreadsheets corroborating those sales.  
However, However, Kasbarian was found  
to have not committed any of the

1 for the sales transaction, whose credit card inappropriate and fraudulent conduct or  
2 was used for the sales transactions, if an- “fake” sales that were being investigated.  
3 other individual’s credit card number was **Evidence:**  
4 used for the sales transaction instead of the Defendant’s Amended Compendium of  
5 member’s credit card number, whether or Exhibits; Holmes Depo., 88:4-10, 106:11-  
6 not a member had any visits to a club, etc. 19; Hemedinger Depo., 51:23-52:23;

7 **Evidence:**

8 Burger Depo., 39:3-40:22; Cuva Decl., ¶ 8; 98:6-17, 101:24-102:7; Gannon Depo.,  
9 Stanfa Decl., ¶¶ 4-5. 70:8-71:15, 72:7-20, 75:22-76:8, 79:5-10,  
10 81:7-11; Gannon Decl., ¶ 6, 10.  
11  
12

13 49. Burger also had a couple of tele- 49. Undisputed.  
14 phone conversations with Stanfa regarding **Evidence:**  
15 the anomalies in various sales activities at  
16 the West LA Club.

17 **Evidence:**

18 Burger Depo., 76:19-77:1; Stanfa Decl.,  
19 ¶ 9.  
20

21 50. In late January 2015, Burger came to 50. Undisputed.  
22 Los Angeles to interview various employ- **Evidence:**  
23 ees regarding sales activities of the West  
24 LA MAs.

25 **Evidence:**

26 Burger Depo., 76:6-12; Gannon Decl., ¶ 3;  
27 Hemedinger Decl., ¶ 5.  
28

1 51. Prior to the interviews, Burger and  
2 Gannon discussed suspending all of the in-  
3 dividuals interviewed as part of the investi-  
4 gation pending the results of the investiga-  
5 tion.

6 **Evidence:**

7 Burger Depo., 116:12-117:12.  
8  
9

10 52. Burger then interviewed the follow-  
11 ing individuals: (1) the Assistant General  
12 Manager; (2) Plaintiff; (3) another MA;  
13 (4) a relatively newly hired MA; and  
14 (5) Simonson.

15 **Evidence:**

16 Hemedinger Decl., ¶ 5.  
17  
18

19 53. Burger had never heard of or spoken  
20 to Plaintiff prior to this investigation meet-  
21 ing.

22 **Evidence:**

23 Burger Depo., 35:22-24.  
24

25 54. On January 30, 2015, Plaintiff met  
26 with Burger and Leah Ball of Human  
27 Resources regarding West LA's sales prac-  
28 tices.

51. Disputed. Gannon testified that one  
MA was not suspended and was not  
discussed suspending because there "was  
no suspicious conduct linked to him" even  
at the beginning of the investigation.

**Evidence:**

Gannon Depo., 70:8-71:19, 81:7-11;  
Gannon Decl., ¶ 6, 10.

52. Disputed. Gannon testified that one  
MA was not suspended and was not  
discussed suspending because there "was  
no suspicious conduct linked to him" even  
at the beginning of the investigation.

**Evidence:**

Gannon Depo., 70:8-71:19, 81:7-11;  
Gannon Decl., ¶ 6, 10.

53. Undisputed.

**Evidence:**

54. Undisputed.

**Evidence:**

**Evidence:**

Plaintiff Depo., Volume I, 161:11-22, 164:10-22; Plaintiff Depo., Volume II, 305:21-24; , [sic] Burger Depo., 96:18-25.

55. Plaintiff answered questions about her sales activities, as well as the activities of other MAs.

**Evidence:**

Plaintiff Depo., Volume I, 161:11-22, 164:10-22; Burger Depo., 53:13-54:9.

55. Undisputed. Additionally, at the beginning of Kasbarian's interview, she notifies Senior Director of Loss Prevention, Jim Burger, about the fraudulent activity and unauthorized membership sales that she observed and complained about to management for months

**Evidence:**

Exh. 17; Kasbarian Depo., Vol. I, 158:4-18, 161:15-162:1, 166:9-167:2; Kasbarian Decl., ¶¶ 10, 11; Burger Depo., 70:9-21, 78:4-11, 83:18-84:3, 91:5-92:18, 100:3-8, 183:21-184:12.

56. While Burger did not find Plaintiff credible, he felt, at that time, that there was insufficient information to warrant Plaintiff's termination.

**Evidence:**

Burger Depo, 122:14-17.

56. Undisputed as to Burger concluding there was insufficient information to warrant any terminable offense committed by Burger. Kasbarian was found to have not committed any of the inappropriate and fraudulent conduct or "fake" sales that were being investigated.

**Evidence:**

Holmes Depo., 88:4-10, 106:11-19; Hemedinger Depo., 51:23-52:23; Rosen Depo., 48:22-49:3, 54:3-8, 76:5-14, 98:6-17, 101:24-102:7; Gannon Depo., 70:8-71:15, 72:7-20, 75:22-76:8, 79:5-10, 81:7-11; Gannon Decl., ¶ 6, 10.

57. After Burger completed his interviews, Burger, Gannon and Hemedinger met briefly to discuss Burger's impression.

**Evidence:**

Burger Depo., 117:16-18, 24-118:6.

57. Undisputed.

**Evidence:**

58. Gannon then advised Plaintiff that she was being suspended.

**Evidence:**

Plaintiff Depo, Volume I, 174:24-175:3, 11-12; Plaintiff Depo., Volume II, 306:3-7; Gannon Decl., ¶ 4.

58. Undisputed. However, she was suspended despite her having been found to not have committed any terminable offense.

**Evidence:**

Holmes Depo., 88:4-10, 106:11-19; Hemedinger Depo., 51:23-52:23; Rosen Depo., 48:22-49:3, 54:3-8, 76:5-14, 98:6-17, 101:24-102:7; Gannon Depo., 70:8-71:15, 72:7-20, 75:22-76:8, 79:5-10, 81:7-11; Gannon Decl., ¶ 6, 10.

59. All of the MAs interviewed as part of the investigation (with the exception of the

59. Undisputed. One MA was not suspended.



1 relatively new MA) were suspended pend-  
2 ing investigation.

3 **Evidence:**

4 Burger Depo., ¶ [sic] 110:17-23; Gannon  
5 Decl., ¶ 6.

**Evidence:**

Gannon Depo., 70:8-71:15, 81:7-11;  
Gannon Decl., ¶ 6, 10.

6  
7 60. Gannon also advised Plaintiff to re-  
8 port back to the West LA club at 2:00 p.m.  
9 the next day for another meeting.

10 **Evidence:**

11 Plaintiff Depo., Volume II, 180:11-181:4;  
12 Gannon Decl., ¶ 5.

60. Undisputed.

**Evidence:**

13  
14 61. According to Plaintiff, Equinox told  
15 her that she would not have access to her  
16 email or payroll account and escorted her  
17 out of the building in front of Equinox's  
18 clientele, staff and all of her peers.

19 **Evidence:**

20 Plaintiff Depo., Volume II, 174:24-175:21;  
21 Plaintiff Depo., Volume II, 305:21-306:2,  
22 364:17-20; Plaintiff's Complaint, 6:5-7.

61. Undisputed.

**Evidence:**

23  
24 62. It is Equinox's policy to turn off  
25 email access for hourly employees who  
26 have been suspended pending investigation  
27 or who are on leave of absence.

28 **Evidence:**

62. Disputed. Defendant did not produce  
any documentation corroborating this  
policy.

**Evidence:**

Defendant's Amended Compendium of

1 Gannon Decl., ¶ 7.

Evidence.

2  
3 63. Prior to Burger's interview of Plain-  
4 tiff, Gannon had the Payroll Department  
5 prepare a final paycheck for Plaintiff so  
6 that she could be paid in accordance with  
7 California law in the event the decision  
8 was made to terminate her employment.

9 **Evidence:**

10 Gannon Decl., ¶ 8.

63. Undisputed as to Gannon preparing  
the final paycheck; however, this paycheck  
was prepared by Gannon even before the  
interview in preparation for Kasbarian's  
termination.

**Evidence:**

Gannon Decl., ¶ 8; Exh. 15; Kasbarian  
Depo., Vol. I, 130:21-131:3, 185:5-15;  
Kasbarian Depo., Vol. II, 311:9-22;  
Kasbarian Decl., ¶ 11.

11  
12  
13  
14 64. Plaintiff met with Hemedinger and  
15 Gannon at the West LA club on January  
16 31, 2015 and was told that the investiga-  
17 tion was concluded and that she would be  
18 working at the Marina Del Rey club.

19 **Evidence:**

20 Plaintiff Depo., Volume I, 182:5-183:8;  
21 Plaintiff Depo., Volume II, 306:12:16  
22 [sic], 382:12-17, 390:4-11, Exh. 38;  
23 Hemedinger Depo., 54:17-21, 55:1-8;  
24 Gannon Decl., ¶ 3; Hemedinger Decl., ¶ 6.

64. Undisputed.

**Evidence:**

25  
26 65. The decision was made to reassign  
27 Plaintiff to the Marina Del Rey club be-  
28 cause Equinox wanted to rebuild the team

65. Disputed. Defendant's claim that  
Kasbarian was reassigned to Marina Del  
Rey because they wanted to rebuild the

1 of MAs in the West LA club and to create  
2 a fresh culture, as a result of the investiga-  
3 tion findings.

4 **Evidence:**

5 Rosen Depo., 71:7-20, 73:15-22, 76:5-14;  
6 Holmes Depo., 96:12-98:17; Hemedinger  
7 Depo., 51:7-52:23; Gannon Decl., ¶ 10.

team of Mas, yet one MA was allowed to  
stay at West LA

**Evidence:**

Rosen Depo., 48:22-49:3, 54:3-8, 98:6-17,  
76:5-14; Hemedinger Depo., 51:23-52:23;  
Holmes Depo., 88:4-10, 106:11-19,  
101:24-102:7; Gannon Depo., 70:8-71:15,  
72:7-20, 75:22-76:8, 79:5-10, 81:7-11;  
Gannon Decl., ¶ 6, 10.

11 66. Plaintiff's compensation plan would  
12 change once at Marina Del Rey to align  
13 with the compensation plan of Marina Del  
14 Rey MAs. Equinox considered the reas-  
15 signment a lateral move.

16 **Evidence:**

17 Rosen Depo., 87:25-88:4; Gannon Decl.,  
18 ¶ 11.

66. Undisputed that the compensation  
plan would change; however, disputed as  
to it being a lateral move. Kasbarian is told  
that she would be paid \$9.00/hour at the  
Marina del Rey office, which was a \$10.00  
per hour decrease in hourly rate that she  
was being paid at the West Los Angeles  
branch at \$19.23 per hour. Barry Holmes,  
Vice President of Sales, admits that urban  
clubs, such as the Santa Monica location,  
tend to generate more revenue than  
suburban clubs, like the Marina Del Rey  
location, and the West LA location is a  
higher tier club than urban clubs. Brian  
Hemedinger admits in deposition that they  
thought it would be "best for Tamar, if she  
had the opportunity to be a membership  
advisor at a different location," while

acknowledging that she would be going to a lower tier location than when she first started with the company. Moreover, when Kasbarian went to West LA she was promoted from MA to Membership Executive, which it stated on her “Promotion Memo.”

**Evidence:**

Exh. 10, 14; Kasbarian Depo., Vol. I, 50:24-51:1, 89:9-90:19, 279:14-280:12, 182:12-184:19; Kasbarian Depo., Vol. II, 354:1-18, 458:24-459:17; Gannon Decl., 9, 10; Holmes Depo., 28:22-29:2, 50:18-25; Gannon Depo., 32:15-17, 88:25-89:5; Hemedinger Depo., 50:14-20, 51:23-52:23, 81:2-23.

67. Equinox considered the reassignment a lateral move.

**Evidence:**

Rosen Depo., 87:25-88:4; Gannon Decl., ¶ 11.

67. Disputed. Kasbarian is told that she would be paid \$9.00/hour at the Marina del Rey office, which was a \$10.00 per hour decrease in hourly rate that she was being paid at the West Los Angeles branch at \$19.23 per hour. Barry Holmes, Vice President of Sales, admits that urban clubs, such as the Santa Monica location, tend to generate more revenue than suburban clubs, like the Marina Del Rey location, and the West LA location is a higher tier

club than urban clubs. Brian Hemedinger admits in deposition that they thought it would be “best for Tamar, if she had the opportunity to be a membership advisor at a different location,” while acknowledging that she would be going to a lower tier location than when she first started with the company. Moreover, when Kasbarian went to West LA she was promoted from MA to Membership Executive, which it stated on her “Promotion Memo.”

**Evidence:**

Exh. 10, 14; Kasbarian Depo., Vol. I, 50:24-51:1, 89:9-90:19, 279:14-280:12, 182:12-184:19; Kasbarian Depo., Vol. II, 354:1-18, 458:24-459:17; Gannon Decl., 9, 10; Holmes Depo., 28:22-29:2, 50:18-25; Gannon Depo., 32:15-17, 88:25-89:5; Hemedinger Depo., 50:14-20, 51:23-52:23, 81:2-23.

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.

**Evidence:**

Plaintiff Depo., Volume II, 390:4-11, Exh.

68. Undisputed.

**Evidence:**

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.

**Evidence:**

Hemedinger Depo., 52:18-23; Rosen Depo., 57:13-19; 58:22-59:14; Holmes Depo., 31:13-15.

69. Disputed. Kasbarian is told that she would be paid \$9.00/hour at the Marina del Rey office, which was a \$10.00 per hour decrease in hourly rate that she was being paid at the West Los Angeles branch at \$19.23 per hour. Barry Holmes, Vice President of Sales, admits that urban clubs, such as the Santa Monica location, tend to generate more revenue than suburban clubs, like the Marina Del Rey location, and the West LA location is a higher tier club than urban clubs. Brian Hemedinger admits in deposition that they thought it would be "best for Tamar, if she had the opportunity to be a membership advisor at a different location," while acknowledging that she would be going to a lower tier location than when she first started with the company. Moreover, when Kasbarian went to West LA she was promoted from MA to Membership Executive, which it stated on her "Promotion Memo."

**Evidence:**

Exh. 10, 14; Kasbarian Depo., Vol. I, 50:24-51:1, 89:9-90:19, 279:14-280:12, 182:12-184:19; Kasbarian Depo., Vol. II,

354:1-18, 458:24-459:17; Gannon Decl., 9, 10; Holmes Depo., 28:22-29:2, 50:18-25; Gannon Depo., 32:15-17, 88:25-89:5; Hemedinger Depo., 50:14-20, 51:23-52:23, 81:2-23.

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.

**Evidence:**

Hemedinger Depo., 52:18-23; Rosen Depo., 57:13-19; 58:22-59:14; Holmes Depo. , [sic] 50:18-51:5.

70. Disputed. Kasbarian is told that she would be paid \$9.00/hour at the Marina del Rey office, which was a \$10.00 per hour decrease in hourly rate that she was being paid at the West Los Angeles branch at \$19.23 per hour. Barry Holmes, Vice President of Sales, admits that urban clubs, such as the Santa Monica location, tend to generate more revenue than suburban clubs, like the Marina Del Rey location, and the West LA location is a higher tier club than urban clubs. Brian Hemedinger admits in deposition that they thought it would be “best for Tamar, if she had the opportunity to be a membership advisor at a different location,” while acknowledging that she would be going to a lower tier location than when she first started with the company. Moreover, when Kasbarian went to West LA she was promoted from MA to Membership Executive, which it stated on her “Promotion Memo.”

**Evidence:**

Exh. 10, 14; Kasbarian Depo., Vol. I, 50:24-51:1, 89:9-90:19, 279:14-280:12, 182:12-184:19; Kasbarian Depo., Vol. II, 354:1-18, 458:24-459:17; Gannon Decl., 9, 10; Holmes Depo., 28:22-29:2, 50:18-25; Gannon Depo., 32:15-17, 88:25-89:5; Hemedinger Depo., 50:14-20, 51:23-52:23, 81:2-23.

71. Gannon emailed Plaintiff the compensation plan for the Marina Del Rey Club on or about January 31, 2015.

**Evidence:**

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.

**Evidence:**

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.

71. Undisputed.

**Evidence:**

72. Undisputed as to no one stating those actual words; however, Kasbarian is told that she would be paid \$9.00/hour at the Marina del Rey office, which was a \$10.00 per hour decrease in hourly rate that she was being paid at the West Los Angeles branch at \$19.23 per hour. Barry Holmes, Vice President of Sales, admits that urban clubs, such as the Santa Monica location, tend to generate more revenue than suburban clubs, like the Marina Del Rey



1 location, and the West LA location is a  
2 higher tier club than urban clubs. Brian  
3 Hemedinger admits in deposition that they  
4 thought it would be “best for Tamar, if she  
5 had the opportunity to be a membership  
6 advisor at a different location,” while  
7 acknowledging that she would be going to  
8 a lower tier location than when she first  
9 started with the company. Moreover, when  
10 Kasbarian went to West LA she was  
11 promoted from MA to Membership  
12 Executive, which it stated on her  
13 “Promotion Memo.”

14 **Evidence:**

15 Exh. 10, 14; Kasbarian Depo., Vol. I,  
16 50:24-51:1, 89:9-90:19, 279:14-280:12,  
17 182:12-184:19; Kasbarian Depo., Vol. II,  
18 354:1-18, 458:24-459:17; Gannon Decl., 9,  
19 10; Holmes Depo., 28:22-29:2, 50:18-25;  
20 Gannon Depo., 32:15-17, 88:25-89:5;  
21 Hemedinger Depo., 50:14-20, 51:23-  
22 52:23, 81:2-23.

23  
24 73. Gannon made the decision to reas-  
25 sign Plaintiff to the Marina Del Rey club.

73. Undisputed.

26 **Evidence:**

27 Rosen Depo., 45:7-25. 57:8-12;  
28

**Evidence:**

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.

**Evidence:**

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.

**Evidence:**

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.

74. Undisputed.

**Evidence:**

75. Undisputed; however, Kasbarian was forced to resign due to intolerable working conditions at Equinox. On February 2, 2015, the day Kasbarian was supposed to start at the Marina del Rey location, she feels she is no longer welcome at Equinox and feels pushed out since she was forced to take a demotion, a significant pay cut and restart her business and clientele base, along with the overwhelming stress of the interrogation and suspension and fear of being terminated that she is forced to resign.

**Evidence:**

Exh. 16; Kasbarian Depo., Vol. I, 186:5-14; Kasbarian Decl., ¶¶ 12-14.

76. Plaintiff's last day of employment was February 2, 2015. 76. Undisputed.

**Evidence:**

Plaintiff Depo., Volume I, 186:11-14.

77. Plaintiff never reported to work at the Marina Del Rey club. 77. Undisputed.

**Evidence:**

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. Undisputed.

**Evidence:**

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. Undisputed. However, one MA was able to stay at the West LA location, despite Gannon stating he wanted to rebuild the team by getting rid of all of the Membership Executives at West LA.

**Evidence:**

Plaintiff Depo., Volume II, 342:25-343:5.

**Evidence:**

Rosen Depo., 76:5-14; Hemedinger Depo., 51:23-52:23; Holmes Depo., 101:24-102:7; Gannon Depo., 70:8-71:15, 81:7-11; Gannon Decl., ¶ 6, 10.

80. Plaintiff testified that she was un- 80. Undisputed.  
aware of any other MA at the West LA **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.

**Evidence:**

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 survives as a matter of law because Plaintiff was terminated. (UF Nos. 1-80.)

**Alleged Undisputed Facts and  
Supporting Evidence**

**Plaintiff's Responses and  
Supporting Evidence**

1. Plaintiff was hired as a Membership 1. Undisputed.  
Advisor ("MA") at Equinox's Santa **Evidence:**  
Monica club on or about October 15, 2010.

**Evidence:**

Plaintiff Depo., Volume I, 36:23-38:10,  
Exh. 5 (Offer Letter).

2. In January 2014, Plaintiff began 2. Disputed. Kasbarian was promoted  
working at Equinox's West Los Angeles to the position of Membership Executive at  
club ("West LA club"). the West Los Angeles club ("West LA") in  
October 2013.

**Evidence:**

Plaintiff Depo., Volume I, 189:22-190:12, **Evidence:**

Exh. 10; Kasbarian Depo., Vol. I, 89:9-

1 Exh. 13 (Memo).

90:19, 279:14-280:12; Kasbarian Decl., ¶  
2 5; Hemedinger Depo., 50:4-9; Rosen  
3 Depo., 20:4-18; Holmes Depo., 39:13-18.

4  
5 3. At the West LA club, MAs were re-  
6 ferred to as Membership Executives.  
7 However, their job duties were the same.

8 **Evidence:**

9 Declaration of Brian Hemedinger  
10 (“Hemedinger Decl.”), ¶ 3.

3. Disputed. A Membership Executive  
position is considered a promotion from an  
MA position. Kasbarian was specifically  
told her position as a Membership  
Executive was a promotion from an MA,  
and she received a memo on it, as well as a  
higher compensation plan. Kasbarian’s  
hourly rate also increased with her position  
as a Membership Executive, to \$19.23 per  
hour, as well as an increase in  
commissions and bonuses.

16 **Evidence:**

17 Exh. 10; Kasbarian Depo., Vol. I, 89:9-  
18 90:19, 279:14-280:12; Kasbarian Decl., ¶  
19 5; Hemedinger Depo., 50:4-9; Rosen  
20 Depo., 20:4-18; Holmes Depo., 39:13-18.

21  
22 4. During Plaintiff’s employment at  
23 Equinox Santa Monica and West LA  
24 clubs, Jack Gannon (“Gannon”) was the  
25 Vice President of the West Coast.

26 **Evidence:**

27 Declaration of Jack Gannon (“Gannon  
28

4. Undisputed.

**Evidence:**

Decl.”), ¶¶ 1-2.

5. From about October 2011 through 5. Undisputed.  
about June 2015, Brian Hemedinger **Evidence:**  
 (“Hemedinger”) was the Regional Director  
 of Operations (“Regional Director”) of the  
 Santa Monica and West LA clubs.

**Evidence:**

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. Undisputed.  
 (“Simonson) supervised Plaintiff at the **Evidence:**  
 West LA club from about January 2014 to  
 about January 2015.

**Evidence:**

Plaintiff Depo., Volume I, 52:11-19.

7. Plaintiff’s personnel file includes an 7. Undisputed.  
 Employee Handbook Receipt Acknowl- **Evidence:**  
 edgment Form with Plaintiff’s signature  
 dated October 15, 2010.

**Evidence:**

Plaintiff Depo., Volume I, 43:18-45:15,  
 Exh. 8 (Receipt Acknowledgement [sic]  
 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 and myself.

**Evidence:**

Plaintiff Depo., Volume I, 43:18-45:15, Exh. 8 (Receipt Acknowledgement [sic] Form); Figueroa Decl., ¶ 5, Exh. B (Receipt Acknowledgement [sic] Form.

9. Plaintiff’s personnel file also includes an Offer Letter, dated October 15, 2010, which Plaintiff acknowledged receiving.

**Evidence:**

Plaintiff Depo., Volume I, 36:23-38:11, Exh. 5 (Offer Letter); Figueroa Decl., ¶ 6,

8. Undisputed, as to what the actual document states. However, disputed as to whether Kasbarian actually believed her employment was “at-will.” Kasbarian believes she would not be demoted, have her pay cut, her employment suspended, or, reassigned, etc. unless it was for good cause.

**Evidence:**

Kasbarian Decl., ¶¶ 4, 11, 13, 14.

9. Undisputed.

**Evidence:**

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.

**Evidence:**

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.

**Evidence:**

Figueroa Decl., ¶ 8, Exh. D.

12. This Agreement stated: “You agree and understand that nothing in this Agree-

10. Undisputed, as to what the actual document states. However, disputed as to whether Kasbarian actually believed her employment was “at-will.” Kasbarian believes she would not be demoted, have her pay cut, her employment suspended, or, reassigned, etc. unless it was for good cause.

**Evidence:**

Kasbarian Decl., ¶¶ 4, 11, 13, 14.

11. Undisputed.

**Evidence:**

12. Undisputed, as to what the actual document states. However, disputed as to



1 ment shall alter or modify the ‘at-will’  
2 nature of your employment with the Com-  
3 pany or confer on [y]ou any rights with re-  
4 spect to continuation of your employment  
5 with the Company.”

6 **Evidence:**

7 Figueroa Decl., ¶ 8, Exh. D.

whether Kasbarian actually believed her  
employment was “at-will.” Kasbarian  
believes she would not be demoted, have  
her pay cut, her employment suspended,  
or, reassigned, etc. unless it was for good  
cause.

8 **Evidence:**

Kasbarian Decl., ¶¶ 4, 11, 13, 14.

9  
10 13. In her deposition, Plaintiff admitted  
11 that she did not have a contract with  
12 Equinox; no one ever told her that she was  
13 guaranteed employment for a certain time  
14 period; and no one ever told her that she  
15 was anything other than an at-will em-  
16 ployee.

17 **Evidence:**

18 Plaintiff Depo., Volume I, 36:23-38:11,  
19 43:18-45:15, Exh. 5 (Offer Letter), Exh. 8  
20 (Receipt Acknowledgement [sic] Form).

13. Undisputed, as to what the actual  
document states. However, disputed as to  
whether Kasbarian actually believed her  
employment was “at-will.” Kasbarian  
believes she would not be demoted, have  
her pay cut, her employment suspended,  
or, reassigned, etc. unless it was for good  
cause.

21 **Evidence:**

Kasbarian Decl., ¶¶ 4, 11, 13, 14.

22 14. The Employee Handbook Plaintiff  
23 acknowledged receiving also included  
24 Equinox’s non-retaliation policy as well as  
25 complaint procedures for reporting retalia-  
26 tion.

27 **Evidence:**

28 Plaintiff Depo., Volume I, 43:18-45:15,

14. Undisputed.

**Evidence:**

1 Exh. 8 Receipt of Employee Handbook;  
2 Declaration of Emerson Figueroa  
3 (“Figueroa Decl.”), Exh. A.  
4

5 15. In particular, Equinox’s policy strict- 15. Undisputed.  
6 ly prohibits retaliation against any employ- **Evidence:**  
7 ee for “filing a complaint and [Equinox]  
8 will not knowingly permit retaliation by  
9 management, employees, or co-workers.”  
10 Equinox’s policy also prohibits retaliation  
11 against any employee for “using this com-  
12 plaint procedure or for filing, testifying,  
13 assisting, or participating in any manner in  
14 any investigation, proceeding, or hearing  
15 conducted by a governmental enforcement  
16 agency. Additionally, Equinox will not  
17 knowingly permit any retaliation against  
18 any employee who complains of prohibited  
19 harassment or who participates in an inves-  
20 tigation.”

21 **Evidence:**

22 Plaintiff Depo., Volume I, 43:18-45:15,  
23 Exh. 8 Receipt of Employee Handbook;  
24 Figueroa Decl., Exh. A, Employee Hand-  
25 book.  
26

27 16. The complaint procedure as outlined 16. Undisputed.  
28 in the Employee Handbook permits an em- **Evidence:**

1 ployee to report retaliation to his or her  
2 manager, Human Resources, or through  
3 Equinox's Ethics Hotline.

4 **Evidence:**

5 Plaintiff Depo., Volume I, 43:18-45:15,  
6 Exh. 8 Receipt of Employee Handbook;  
7 Figueroa Decl. ¶ 4.  
8

9 17. In or about June 2014, Hemedinger  
10 informed Plaintiff and other MAs that the  
11 compensation plan for all West LA MAs  
12 was being clarified, so that the market bo-  
13 nuses would be paid out individually and  
14 not cumulatively for reaching a certain  
15 sales goal.

16 **Evidence:**

17 Plaintiff Depo., Volume I, 190:16-194:3,  
18 219:7-10; Plaintiff Depo., Volume II,  
19 347:22-348:1; Deposition of Barry Holmes  
20 ("Holmes Depo.") 69:4-71:12, 73:23-  
21 75:10, Exhs. 201-202; Hemedinger Depo.,  
22 60:11-61:3, 68:12-14, 70:19-72:3.; Rosen  
23 Depo., 33:5-15.  
24

17. Disputed. In June 2014, five months  
after Kasbarian started complaining about  
the fraudulent activities by other  
membership advisors, Kasbarian's  
commission and bonus check for May  
2014 was suddenly and for the first time  
since she started at West LA 25-33% short  
of what she was owed. Kasbarian  
immediately complained about her unpaid  
commissions and bonuses. After she  
complained defendant permanently cut her  
compensation plan stating that they have  
been paying her too much and in "error"  
and told her that she is "lucky that they  
were not asking her to pay the difference  
back."

25 **Evidence:**

26 Exhs. 11, 12, 13; Kasbarian Depo., Vol. I,  
27 201:1-206:5, 207:4-20, 209:19-210:8,  
28 221:11-14; Kasbarian Depo., Vol. II,

347:1-18; Kasbarian Decl., ¶¶ 8, 9; Hemedinger Depo., 59:14-60:10; Rosen Depo., 22:15-23:17, 29:18-31:6, Holmes Depo., 73:5-17, 81:7-24; 120:19-121:3; Figueroa Depo., 99:22- 100:5; Gannon Depo., 99:4-7; Hemedinger Depo., 59:14-60:10.

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

**Evidence:**

Plaintiff Depo., Volume I, 190:16-194:3; Hemedinger Depo., 64:18-65:11.

18. Disputed. In June 2014, five months after Kasbarian started complaining about the fraudulent activities by other membership advisors, Kasbarian's commission and bonus check for May 2014 was suddenly and for the first time since she started at West LA 25-33% short of what she was owed. Kasbarian immediately complained about her unpaid commissions and bonuses. After she complained defendant permanently cut her compensation plan stating that they have been paying her too much and in "error" and told her that she is "lucky that they were not asking her to pay the difference back."

**Evidence:**

Exhs. 11, 12, 13; Kasbarian Depo., Vol. I, 201:1-206:5, 207:4-20, 209:19-210:8, 221:11-14; Kasbarian Depo., Vol. II,

347:1-18; Kasbarian Decl., ¶¶ 8, 9; Hemedinger Depo., 59:14-60:10; Rosen Depo., 22:15-23:17, 29:18-31:6, Holmes Depo., 73:5-17, 81:7-24; 120:19-121:3; Figueroa Depo., 99:22- 100:5; Gannon Depo., 99:4-7; Hemedinger Depo., 59:14-60:10.

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.

**Evidence:**

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., 68:125-69:8.

19. Disputed. In June 2014, five months after Kasbarian started complaining about the fraudulent activities by other membership advisors, Kasbarian's commission and bonus check for May 2014 was suddenly and for the first time since she started at West LA 25-33% short of what she was owed. Kasbarian immediately complained about her unpaid commissions and bonuses. After she complained defendant permanently cut her compensation plan stating that they have been paying her too much and in "error" and told her that she is "lucky that they were not asking her to pay the difference back."

**Evidence:**

Exhs. 11, 12, 13; Kasbarian Depo., Vol. I, 201:1-206:5, 207:4-20, 209:19-210:8, 221:11-14; Kasbarian Depo., Vol. II,

347:1-18; Kasbarian Decl., ¶¶ 8, 9; Hemedinger Depo., 59:14-60:10; Rosen Depo., 22:15-23:17, 29:18-31:6, Holmes Depo., 73:5-17, 81:7-24; 120:19-121:3; Figueroa Depo., 99:22- 100:5; Gannon Depo., 99:4-7; Hemedinger Depo., 59:14-60:10.

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”).

**Evidence:**

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.

20. Undisputed as to Kasbarian’s complaints but otherwise disputed. In June 2014, five months after Kasbarian started complaining about the fraudulent activities by other membership advisors, Kasbarian’s commission and bonus check for May 2014 was suddenly and for the first time since she started at West LA 25-33% short of what she was owed. Kasbarian immediately complained about her unpaid commissions and bonuses. After she complained defendant permanently cut her compensation plan stating that they have been paying her too much and in “error” and told her that she is “lucky that they were not asking her to pay the difference back.”

**Evidence:**

Exhs. 11, 12, 13; Kasbarian Depo., Vol. I, 201:1-206:5, 207:4-20, 209:19-210:8,

221:11-14; Kasbarian Depo., Vol. II, 347:1-18; Kasbarian Decl., ¶¶ 8, 9; Hemedinger Depo., 59:14-60:10; Rosen Depo., 22:15-23:17, 29:18-31:6, Holmes Depo., 73:5-17, 81:7-24; 120:19-121:3; Figueroa Depo., 99:22- 100:5; Gannon Depo., 99:4-7; Hemedinger Depo., 59:14-60:10.

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.

**Evidence:**

Plaintiff Depo., Volume I, 196:8-14, 207:15-22, 220:5-20; Plaintiff Depo., Volume II, 349:5-12.

21. Undisputed to the fact that Kasbarian continued to work at Equinox until February 2015 after she complained; however, disputed as to the rest. In June 2014, five months after Kasbarian started complaining about the fraudulent activities by other membership advisors, Kasbarian's commission and bonus check for May 2014 was suddenly and for the first time since she started at West LA 25-33% short of what she was owed. Kasbarian immediately complained about her unpaid commissions and bonuses. After she complained defendant permanently cut her compensation plan stating that they have been paying her too much and in "error" and told her that she is "lucky that they were not asking her to pay the difference back."

**Evidence:**

Exhs. 11, 12, 13; Kasbarian Depo., Vol. I, 201:1-206:5, 207:4-20, 209:19-210:8, 221:11-14; Kasbarian Depo., Vol. II, 347:1-18; Kasbarian Decl., ¶¶ 8, 9; Hemedinger Depo., 59:14-60:10; Rosen Depo., 22:15-23:17, 29:18-31:6, Holmes Depo., 73:5-17, 81:7-24; 120:19-121:3; Figueroa Depo., 99:22- 100:5; Gannon Depo., 99:4-7; Hemedinger Depo., 59:14-60:10.

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.

**Evidence:**

Plaintiff Depo., Volume I, 81:6-21; 82:5-83:23, 94:14-97:9.

22. Undisputed. However, Kasbarian testified that she complained about multiple MAs at West LA, including Lauren Beck and Devin Mcvelogue about multiple fraudulent and unlawful activities, including charging members credit cards without their authorization.

**Evidence:**

Kasbarian Depo., Vol. I, 69:5-71:5, 71:20-72:4, 76:5-25, 82:9-83:19, 98:11-99:4, 102:13-103:25, 112:5-113:2; Kasbarian Depo., Vol. II, 334:16-25; Kasbarian Decl., ¶ 6; Hemedinger Depo., 43:13-15, 45:8-22, 46:10-22; 76:1-15.

23. According to Plaintiff, “charging

23. Undisputed. Gannon also testified



1 credit cards without people's approval and admitted in testimony that he believes  
2 telling people they were signing up for a that the type of conduct Kasbarian  
3 month-long contract, but then signing them complained of was illegal and is the type  
4 up for a year-long contract" were the only of conduct that needs to be investigated.  
5 "illegal activities" about which she com- **Evidence:**  
6 plained to Equinox. Gannon Depo., 51:10-15, 52:23-53:3.

7 **Evidence:**

8 Plaintiff Depo., Volume II, 334:16-336:23.

9  
10 24. According to Plaintiff, her other 24. Undisputed.  
11 complaints involved "things against **Evidence:**  
12 Equinox policies that were happening as  
13 well."

14 **Evidence:**

15 Plaintiff Depo., Volume II, 334:16-336:23.

16  
17 25. Plaintiff admitted that she could not 25. Disputed. Plaintiff testified that she  
18 identify any statute, ordinance, regulation, believed this conduct was illegal.  
19 local law, state law, or federal law that was Moreover, Gannon also testified and  
20 violated as a result of this alleged activity. admitted in testimony that he believes that  
21 the type of conduct Kasbarian complained  
22 of was illegal and is the type of conduct  
23 that needs to be investigated.

24 **Evidence:**

25 Plaintiff Depo., Volume II, 335:4-336:23.

26 **Evidence:**

27 Kasbarian Depo., Volume II, 334:16-  
28 336:23; Gannon Depo., 51:10-15, 52:23-  
53:3.

26. Plaintiff also testified that she complained to Hemedinger and Simonson about the sales activities of another MA.

**Evidence:**

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.

**Evidence:**

Plaintiff Depo., Volume I, 76:17-79:19p 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

26. Undisputed.

**Evidence:**

27. Undisputed. However, Kasbarian testified that she complained about multiple MAs at West LA, including Lauren Beck and Devin Mcvelogue about multiple fraudulent and unlawful activities, including charging members credit cards without their authorization.

**Evidence:**

Kasbarian Depo., Vol. I, 69:5-71:5, 71:20-72:4, 76:5-25, 82:9-83:19, 98:11-99:4, 102:13-103:25, 112:5-113:2; Kasbarian Depo., Vol. II, 334:16-25; Kasbarian Decl., ¶ 6; Hemedinger Depo., 43:13-15, 45:8-22, 46:10-22; 76:1-15.

28. Undisputed.

**Evidence:**

1 authorization.

2 **Evidence:**

3 Rosen Depo., 37:20-38:18; Declaration of  
4 Tracy Cuva (“Cuva Decl.”), ¶ 2.

5  
6 29. Member Services is Equinox’s bill- 29. Undisputed.  
7 ing department (centrally based in New **Evidence:**  
8 York) which handles membership con-  
9 tracts and membership sales, including  
10 auditing of membership sales.

11 **Evidence:**

12 Cuva Decl., ¶ 1.

13  
14 30. Rosen contacted Tracy Cuva, Senior 30. Undisputed.  
15 Director of Equinox’s Member Services **Evidence:**  
16 Department, gave her the information re-  
17 ceived from the member, and asked  
18 Member Services to investigate this sale.

19 **Evidence:**

20 Rosen Depo., 37:20-38:21; Cuva Decl.,  
21 ¶ 2.

22  
23 31. Member Services’ investigation, 31. Undisputed.  
24 which was conducted by Cuva, confirmed **Evidence:**  
25 that this was an unauthorized sale  
26 processed by a MA at the West LA Club  
27 (Plaintiff was not implicated in this  
28 transaction).

**Evidence:**

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.

**Evidence:**

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.

**Evidence:**

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.

32. Undisputed. However, this MA was terminated.

**Evidence:**

Kasbarian Depo., Vol. I, 84:7-85:1, 184:20-23; Kasbarian Decl., ¶ 10; Hemedinger Decl., ¶ 4; Gannon Depo., 58:20-59:18, 60:2-21.

33. Disputed. Senior Director of Loss Prevention, Jim Burger, testified that Jack Gannon contacted him to do an investigation at the West LA location and reported to him throughout.

**Evidence:**

Burger Depo., 70:9-21, 78:4-11, 83:18-84:3.

34. Disputed. Senior Director of Loss Prevention, Jim Burger, testified that Jack Gannon contacted him to do an investigation at the West LA location and reported to him throughout.

**Evidence:**

Burger Depo., 70:9-21, 78:4-11, 83:18-

**Evidence:** 84:3.

Rosen Depo., 47:25-48:21.

35. Cuva instructed Kevin Stanfa 35. Undisputed.

(“Stanfa”) (Manager of Compliance and **Evidence:**

Special Projects), to review sales transactions at the West LA club.

**Evidence:**

Cuva Decl., ¶ 3; Stanfa Decl. ¶ 4.

36. After Stanfa reported finding various 36. Undisputed.

anomalies associated with sales transactions at the West LA club, Cuva instructed **Evidence:**

Stanfa to prepare a summary detailing his findings.

**Evidence:**

Cuva Decl., ¶ 3; Stanfa Decl. ¶ 4.

37. Stanfa then prepared a workbook 37. Disputed. Defendant fails to produce with three spreadsheets regarding the following sales activities: (1) 2014 Freezes; the spreadsheets corroborating those sales.

(2) Modification to Direct Bill; and **Evidence:**

(3) West LA Sales Breakdown. Defendant’s Amended Compendium of Exhibits.

**Evidence:**

Stanfa Decl., ¶ 4.

38. Once these were prepared, Cuva 38. Disputed. Defendant fails to produce emailed the spreadsheets to Rosen, Holmes the spreadsheets corroborating those sales.

1 and Gannon and summarized the results of  
2 the Member Services investigation.

3 **Evidence:**

4 Rosen Depo., 47:25-48:21; Holmes Depo.,  
5 86:10-88:10, 95:9-96:10; Cuva Decl., ¶ 6,  
6 Exh.N; Stanfa Decl. ¶¶ 4-5.

**Evidence:**

Defendant's Amended Compendium of  
Exhibits.

8 39. In her email, Cuva indicated that  
9 these spreadsheets "all reflect patterns un-  
10 healthy for the business."

11 **Evidence:**

12 Cuva Decl., ¶ 7, Exh.N.

39. Undisputed as to that statement being  
written in the email.

**Evidence:**

14 40. Cuva noted as follows:

15 i The 2041 Freezes spread-  
16 sheet shows that West LA is  
17 an outlier in members who  
18 request a freeze in the first 60  
19 days of membership who also  
20 go on to cancel in the same  
21 year.

22 i The Modification to Direct  
23 Bill spreadsheet reflects  
24 members in the last quarter  
25 of 2014 whose billing was  
26 modified from the credit card  
27 payment type to direct bill  
28 the day before billing ran.

40. Disputed. Kasbarian was found to  
have not committed any of the  
inappropriate and fraudulent conduct or  
"fake" sales that were being investigated.

**Evidence:**

Holmes Depo., 88:4-10, 106:11-19;  
Hemedinger Depo., 51:23-52:23; Rosen  
Depo., 48:22-49:3, 54:3-8, 76:5-14, 98:6-  
17, 101:24-102:7; Gannon Depo., 70:8-  
71:15, 72:7-20, 75:22-76:8, 79:5-10, 81:7-  
11; Gannon Decl., ¶ 6, 10.

1 The Company average is four  
2 per club. West LA had 28  
3 modifications to direct bill.

- 4 i The West LA Breakdown  
5 spreadsheet shows question-  
6 able sales from two MAs  
7 (Plaintiff and the MA moving  
8 to New York). The other  
9 three MAs were reviewed  
10 and did not reflect the same  
11 anomalies seen with Plaintiff  
12 and the MA moving to New  
13 York. The questionable sales  
14 included selling memberships  
15 to members with the credit  
16 card of another member (al-  
17 most universally without re-  
18 questing a referral credit) or  
19 re-contracting over a previ-  
20 ously 3-day'd membership  
21 and either using the credit  
22 from the previous sale or re-  
23 charging the same credit  
24 card, credit card not present  
25 for numerous sales transac-  
26 tions, 3-day cancellations  
27 with no or just one member  
28 visit, new memberships

1 which were previously fi-  
2 nance cancelled and had bal-  
3 ances on account that were  
4 waived.

5 **Evidence:**

6 Cuva Decl., ¶ 7, Exh.N.

7  
8 41. Neither Cuva nor Stanfa were aware  
9 Plaintiff had made any complaints about  
10 changes to her compensation plan or about  
11 the alleged activities of other MAs.

12 **Evidence:**

13 Cuva Decl., ¶ 8; Stanfa Decl., ¶ 11.

41. Undisputed. However, Kasbarian  
was found to have not committed any of  
the inappropriate and fraudulent conduct or  
“fake” sales that were being investigated.

14 **Evidence:**

41. Holmes Depo., 88:4-10, 106:11-19;  
Hemedinger Depo., 51:23-52:23; Rosen  
Depo., 48:22-49:3, 54:3-8, 76:5-14, 98:6-  
17, 101:24-102:7; Gannon Depo., 70:8-  
71:15, 72:7-20, 75:22-76:8, 79:5-10, 81:7-  
11; Gannon Decl., ¶ 6, 10.

15 **Evidence:**

16  
17  
18  
19  
20  
21  
22 42. In addition, Burger was asked to in-  
23 terview the sales team at the West LA  
24 club.

25 **Evidence:**

26 Deposition of Jim Burger (“Burger  
27 Depo.”), 72:4-73:3, 73:13-75:22, 76:6-12.

42. Undisputed.

28 **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 [sic] and an Assistant General Manager.

**Evidence:**

Hemedinger Decl., ¶ 4.

44. A MA was fired on or about January 20, 2015 for improper sales activities.

**Evidence:**

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.

**Evidence:**

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.

**Evidence:**

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.

**Evidence:**

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.

**Evidence:**

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

47. Disputed. Defendant fails to produce the spreadsheets corroborating those sales.

**Evidence:**

Defendant's Amended Compendium of Exhibits.

48. Disputed. Defendant fails to produce the spreadsheets corroborating those sales. However, However, Kasbarian was found to have not committed any of the inappropriate and fraudulent conduct or "fake" sales that were being investigated.

**Evidence:**

Defendant's Amended Compendium of Exhibits; Holmes Depo., 88:4-10, 106:11-19; Hemedinger Depo., 51:23-52:23; Rosen Depo., 48:22-49:3, 54:3-8, 76:5-14, 98:6-17, 101:24-102:7; Gannon Depo., 70:8-71:15, 72:7-20, 75:22-76:8, 79:5-10, 81:7-11; Gannon Decl., ¶ 6, 10.

49. Undisputed.

**Evidence:**

1 the West LA Club.

2 **Evidence:**

3 Burger Depo., 76:19-77:1; Stanfa Decl.,  
4 ¶ 9.

5  
6 50. In late January 2015, Burger came to 50. Undisputed.  
7 Los Angeles to interview various employ- **Evidence:**  
8 ees regarding sales activities of the West  
9 LA MAs.

10 **Evidence:**

11 Burger Depo., 76:6-12; Gannon Decl., ¶ 3;  
12 Hemedinger Decl., ¶ 5.

13  
14 51. Prior to the interviews, Burger and 51. Disputed. Gannon testified that one  
15 Gannon discussed suspending all of the in- MA was not suspended and was not  
16 dividuals interviewed as part of the investi- discussed suspending because there “was  
17 gation pending the results of the investiga- no suspicious conduct linked to him” even  
18 tion.

19 **Evidence:**

20 Burger Depo., 116:12-117:12.

**Evidence:**

Gannon Depo., 70:8-71:19, 81:7-11;  
Gannon Decl., ¶ 6, 10.

21  
22  
23 52. Burger then interviewed the follow- 52. Disputed. Gannon testified that one  
24 ing individuals: (1) the Assistant General MA was not suspended and was not  
25 Manager; (2) Plaintiff; (3) another MA; discussed suspending because there “was  
26 (4) a relatively newly hired MA; and no suspicious conduct linked to him” even  
27 (5) Simonson.

28 **Evidence:**

**Evidence:**

Hemedinger Decl., ¶ 5.

Gannon Depo., 70:8-71:19, 81:7-11;  
Gannon Decl., ¶ 6, 10.

53. Burger had never heard of or spoken  
to Plaintiff prior to this investigation meet-  
ing.

53. Undisputed.

**Evidence:**

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 prac-  
tices.

54. Undisputed.

**Evidence:**

Plaintiff Depo., Volume I, 161:11-22,  
164:10-22; Plaintiff Depo., Volume II,  
305:21-24; , [sic] Burger Depo., 96:18-25.

**Evidence:**

55. Plaintiff answered questions about  
her sales activities, as well as the activities  
of other MAs.

55. Undisputed. Additionally, at the  
beginning of Kasbarian's interview, she  
notifies Senior Director of Loss  
Prevention, Jim Burger, about the  
fraudulent activity and unauthorized  
membership sales that she observed and  
complained about to management for  
months

**Evidence:**

Plaintiff Depo., Volume I, 161:11-22,  
164:10-22; Burger Depo., 53:13-54:9.

**Evidence:**

Exh. 17; Kasbarian Depo., Vol. I, 158:4-

1 18, 161:15-162:1, 166:9-167:2; Kasbarian  
2 Decl., ¶¶ 10, 11; Burger Depo., 70:9-21,  
3 78:4-11, 83:18-84:3, 91:5-92:18, 100:3-8,  
4 183:21-184:12.

5  
6 56. While Burger did not find Plaintiff  
7 credible, he felt, at that time, that there was  
8 insufficient information to warrant Plain-  
9 tiff's termination.

10 **Evidence:**

11 Burger Depo., 122:14-17.  
12  
13

56. Undisputed as to Burger concluding  
there was insufficient information to  
warrant any terminable offense committed  
by Burger. Kasbarian was found to have  
not committed any of the inappropriate and  
fraudulent conduct or "fake" sales that  
were being investigated.

14 **Evidence:**

15 Holmes Depo., 88:4-10, 106:11-19;  
16 Hemedinger Depo., 51:23-52:23; Rosen  
17 Depo., 48:22-49:3, 54:3-8, 76:5-14, 98:6-  
18 17, 101:24-102:7; Gannon Depo., 70:8-  
19 71:15, 72:7-20, 75:22-76:8, 79:5-10, 81:7-  
20 11; Gannon Decl., ¶ 6, 10.  
21

22 57. After Burger completed his inter-  
23 views, Burger, Gannon and Hemedinger  
24 met briefly to discuss Burger's impression.

25 **Evidence:**

26 Burger Depo., 117:16-18, 24-118:6.  
27

57. Undisputed.

**Evidence:**

28 58. Gannon then advised Plaintiff that

58. Undisputed. However, she was

1 she was being suspended.

2 **Evidence:**

3 Plaintiff Depo., Volume I, 174:24-175:3,  
4 11-12; Plaintiff Depo., Volume II, 306:3-7;  
5 Gannon Decl., ¶ 4.

suspended despite her having been found  
to not have committed any terminable  
offense.

6 **Evidence:**

7 Holmes Depo., 88:4-10, 106:11-19;  
8 Hemedinger Depo., 51:23-52:23; Rosen  
9 Depo., 48:22-49:3, 54:3-8, 76:5-14, 98:6-  
10 17, 101:24-102:7; Gannon Depo., 70:8-  
11 71:15, 72:7-20, 75:22-76:8, 79:5-10, 81:7-  
12 11; Gannon Decl., ¶ 6, 10.

13 59. All of the MAs interviewed as part of  
14 the investigation (with the exception of the  
15 relatively new MA) were suspended pend-  
16 ing investigation.

17 **Evidence:**

18 Burger Depo., ¶ [sic] 110:17-23; Gannon  
19 Decl., ¶ 6.

59. Undisputed. One MA was not  
suspended.

20 **Evidence:**

21 Gannon Depo., 70:8-71:15, 81:7-11;  
22 Gannon Decl., ¶ 6, 10.

23 60. Gannon also advised Plaintiff to re-  
24 port back to the West LA club at 2:00 p.m.  
25 the next day for another meeting.

26 **Evidence:**

27 Plaintiff Depo., Volume II, 180:11-181:4;  
28 Gannon Decl., ¶ 5.

60. Undisputed.

**Evidence:**

61. According to Plaintiff, Equinox told  
her that she would not have access to her

61. Undisputed.

**Evidence:**

1 email or payroll account and escorted her  
2 out of the building in front of Equinox's  
3 clientele, staff and all of her peers.

4 **Evidence:**

5 Plaintiff Depo., Volume II, 174:24-175:21;  
6 Plaintiff Depo., Volume II, 305:21-306:2,  
7 364:17-20; Plaintiff's Complaint, 6:5-7.

8  
9 62. It is Equinox's policy to turn off  
10 email access for hourly employees who  
11 have been suspended pending investigation  
12 or who are on leave of absence.

13 **Evidence:**

14 Gannon Decl., ¶ 7.

15  
16 63. Prior to Burger's interview of Plain-  
17 tiff, Gannon had the Payroll Department  
18 prepare a final paycheck for Plaintiff so  
19 that she could be paid in accordance with  
20 California law in the event the decision  
21 was made to terminate her employment.

22 **Evidence:**

23 Gannon Decl., ¶ 8.

24  
25  
26  
27 64. Plaintiff met with Hemedinger and  
28 Gannon at the West LA club on January

62. Disputed. Defendant did not produce  
any documentation corroborating this  
policy.

**Evidence:**

Defendant's Amended Compendium of  
Evidence.

63. Undisputed as to Gannon preparing  
the final paycheck; however, this paycheck  
was prepared by Gannon even before the  
interview in preparation for Kasbarian's  
termination.

**Evidence:**

Gannon Decl., ¶ 8; Exh. 15; Kasbarian  
Depo., Vol. I, 130:21-131:3, 185:5-15;  
Kasbarian Depo., Vol. II, 311:9-22;  
Kasbarian Decl., ¶ 11.

64. Undisputed.

**Evidence:**

31, 2015 and was told that the investigation was concluded and that she would be working at the Marina Del Rey club.

**Evidence:**

Plaintiff Depo., Volume I, 182:5-183:8; Plaintiff Depo., Volume II, 306:12:16 [sic], 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.

**Evidence:**

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.

65. Disputed. Defendant's claim that Kasbarian was reassigned to Marina Del Rey because they wanted to rebuild the team of Mas, yet one MA was allowed to stay at West LA

**Evidence:**

Rosen Depo., 48:22-49:3, 54:3-8, 98:6-17, 76:5-14; Hemedinger Depo., 51:23-52:23; Holmes Depo., 88:4-10, 106:11-19, 101:24-102:7; Gannon Depo., 70:8-71:15, 72:7-20, 75:22-76:8, 79:5-10, 81:7-11; Gannon Decl., ¶ 6, 10.

66. Undisputed that the compensation plan would change; however, disputed as to it being a lateral move. Kasbarian is told that she would be paid \$9.00/hour at the Marina del Rey office, which was a \$10.00



**Evidence:**

Rosen Depo., 87:25-88:4; Gannon Decl.,  
¶ 11.

per hour decrease in hourly rate that she was being paid at the West Los Angeles branch at \$19.23 per hour. Barry Holmes, Vice President of Sales, admits that urban clubs, such as the Santa Monica location, tend to generate more revenue than suburban clubs, like the Marina Del Rey location, and the West LA location is a higher tier club than urban clubs. Brian Hemedinger admits in deposition that they thought it would be “best for Tamar, if she had the opportunity to be a membership advisor at a different location,” while acknowledging that she would be going to a lower tier location than when she first started with the company. Moreover, when Kasbarian went to West LA she was promoted from MA to Membership Executive, which it stated on her “Promotion Memo.”

**Evidence:**

Exh. 10, 14; Kasbarian Depo., Vol. I, 50:24-51:1, 89:9-90:19, 279:14-280:12, 182:12-184:19; Kasbarian Depo., Vol. II, 354:1-18, 458:24-459:17; Gannon Decl., 9, 10; Holmes Depo., 28:22-29:2, 50:18-25; Gannon Depo., 32:15-17, 88:25-89:5; Hemedinger Depo., 50:14-20, 51:23-

52:23, 81:2-23.

67. Equinox considered the reassignment a lateral move.

**Evidence:**

Rosen Depo., 87:25-88:4; Gannon Decl., ¶ 11.

67. Disputed. Kasbarian is told that she would be paid \$9.00/hour at the Marina del Rey office, which was a \$10.00 per hour decrease in hourly rate that she was being paid at the West Los Angeles branch at \$19.23 per hour. Barry Holmes, Vice President of Sales, admits that urban clubs, such as the Santa Monica location, tend to generate more revenue than suburban clubs, like the Marina Del Rey location, and the West LA location is a higher tier club than urban clubs. Brian Hemedinger admits in deposition that they thought it would be “best for Tamar, if she had the opportunity to be a membership advisor at a different location,” while acknowledging that she would be going to a lower tier location than when she first started with the company. Moreover, when Kasbarian went to West LA she was promoted from MA to Membership Executive, which it stated on her “Promotion Memo.”

**Evidence:**

Exh. 10, 14; Kasbarian Depo., Vol. I, 50:24-51:1, 89:9-90:19, 279:14-280:12, 182:12-184:19; Kasbarian Depo., Vol. II,

354:1-18, 458:24-459:17; Gannon Decl., 9, 10; Holmes Depo., 28:22-29:2, 50:18-25; Gannon Depo., 32:15-17, 88:25-89:5; Hemedinger Depo., 50:14-20, 51:23-52:23, 81:2-23.

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.

**Evidence:**

Plaintiff Depo., Volume II, 390:4-11, Exh. 38; Gannon Decl., ¶ 12.

68. Undisputed.

**Evidence:**

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.

**Evidence:**

Hemedinger Depo., 52:18-23; Rosen Depo., 57:13-19; 58:22-59:14; Holmes Depo., 31:13-15.

69. Disputed. Kasbarian is told that she would be paid \$9.00/hour at the Marina del Rey office, which was a \$10.00 per hour decrease in hourly rate that she was being paid at the West Los Angeles branch at \$19.23 per hour. Barry Holmes, Vice President of Sales, admits that urban clubs, such as the Santa Monica location, tend to generate more revenue than suburban clubs, like the Marina Del Rey location, and the West LA location is a higher tier club than urban clubs. Brian Hemedinger admits in deposition that they thought it would be "best for Tamar, if she had the

1 opportunity to be a membership advisor at  
2 a different location,” while acknowledging  
3 that she would be going to a lower tier  
4 location than when she first started with  
5 the company. Moreover, when Kasbarian  
6 went to West LA she was promoted from  
7 MA to Membership Executive, which it  
8 stated on her “Promotion Memo.”

9 **Evidence:**

10 Exh. 10, 14; Kasbarian Depo., Vol. I,  
11 50:24-51:1, 89:9-90:19, 279:14-280:12,  
12 182:12-184:19; Kasbarian Depo., Vol. II,  
13 354:1-18, 458:24-459:17; Gannon Decl., 9,  
14 10; Holmes Depo., 28:22-29:2, 50:18-25;  
15 Gannon Depo., 32:15-17, 88:25-89:5;  
16 Hemedinger Depo., 50:14-20, 51:23-  
17 52:23, 81:2-23.

18  
19 70. It was easier to sell more member-  
20 ships at the Marina Del Rey club than the  
21 West LA club because the Marina Del Rey  
22 memberships were less expensive.

23 **Evidence:**

24 Hemedinger Depo., 52:18-23; Rosen  
25 Depo., 57:13-19; 58:22-59:14; Holmes  
26 Depo. , [sic] 50:18-51:5.

70. Disputed. Kasbarian is told that she  
would be paid \$9.00/hour at the Marina del  
Rey office, which was a \$10.00 per hour  
decrease in hourly rate that she was being  
paid at the West Los Angeles branch at  
\$19.23 per hour. Barry Holmes, Vice  
President of Sales, admits that urban clubs,  
such as the Santa Monica location, tend to  
generate more revenue than suburban  
clubs, like the Marina Del Rey location,

1 and the West LA location is a higher tier  
2 club than urban clubs. Brian Hemedinger  
3 admits in deposition that they thought it  
4 would be “best for Tamar, if she had the  
5 opportunity to be a membership advisor at  
6 a different location,” while acknowledging  
7 that she would be going to a lower tier  
8 location than when she first started with  
9 the company. Moreover, when Kasbarian  
10 went to West LA she was promoted from  
11 MA to Membership Executive, which it  
12 stated on her “Promotion Memo.”

13 **Evidence:**

14 Exh. 10, 14; Kasbarian Depo., Vol. I,  
15 50:24-51:1, 89:9-90:19, 279:14-280:12,  
16 182:12-184:19; Kasbarian Depo., Vol. II,  
17 354:1-18, 458:24-459:17; Gannon Decl., 9,  
18 10; Holmes Depo., 28:22-29:2, 50:18-25;  
19 Gannon Depo., 32:15-17, 88:25-89:5;  
20 Hemedinger Depo., 50:14-20, 51:23-  
21 52:23, 81:2-23.

22  
23 71. Gannon emailed Plaintiff the com-  
24 pensation plan for the Marina Del Rey  
25 Club on or about January 31, 2015.

26 **Evidence:**

27 Plaintiff Depo., Volume I, 246:19-247:2;  
28

71. Undisputed.

**Evidence:**

1 Gannon Decl., ¶ 12.

2  
3 72. Plaintiff testified that no one from  
4 Equinox ever told her that she was being  
5 “terminated” or “demoted” as part of her  
6 reassignment to the Marina Del Rey club.

7 **Evidence:**

8 Plaintiff Depo., Volume I, 171:10-172:7;  
9 Plaintiff Depo., Volume II, 306:17-310:19,  
10 363:24-364:3; Gannon Decl., ¶ 13;  
11 Hemedinger Decl., ¶ 7.

72. Undisputed as to no one stating those  
actual words; however, Kasbarian is told  
that she would be paid \$9.00/hour at the  
Marina del Rey office, which was a \$10.00  
per hour decrease in hourly rate that she  
was being paid at the West Los Angeles  
branch at \$19.23 per hour. Barry Holmes,  
Vice President of Sales, admits that urban  
clubs, such as the Santa Monica location,  
tend to generate more revenue than  
suburban clubs, like the Marina Del Rey  
location, and the West LA location is a  
higher tier club than urban clubs. Brian  
Hemedinger admits in deposition that they  
thought it would be “best for Tamar, if she  
had the opportunity to be a membership  
advisor at a different location,” while  
acknowledging that she would be going to  
a lower tier location than when she first  
started with the company. Moreover, when  
Kasbarian went to West LA she was  
promoted from MA to Membership  
Executive, which it stated on her  
“Promotion Memo.”

27 **Evidence:**

28 Exh. 10, 14; Kasbarian Depo., Vol. I,

50:24-51:1, 89:9-90:19, 279:14-280:12,  
182:12-184:19; Kasbarian Depo., Vol. II,  
354:1-18, 458:24-459:17; Gannon Decl., 9,  
10; Holmes Depo., 28:22-29:2, 50:18-25;  
Gannon Depo., 32:15-17, 88:25-89:5;  
Hemedinger Depo., 50:14-20, 51:23-  
52:23, 81:2-23.

73. Gannon made the decision to reas- 73. Undisputed.  
sign Plaintiff to the Marina Del Rey club. **Evidence:**

**Evidence:**

Rosen Depo., 45:7-25. 57:8-12;  
Hemedinger Depo., 53:14-18.

74. Plaintiff was told to report to the 74. Undisputed.  
Marina Del Rey club on February 2, 2015 **Evidence:**  
at 9:00 a.m.

**Evidence:**

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 75. Undisputed; however, Kasbarian was  
Rey club, Plaintiff submitted her resigna- forced to resign due to intolerable working  
tion, via email, on the morning of February conditions at Equinox. On February 2,  
2, 2015 effective immediately. 2015, the day Kasbarian was supposed to  
start at the Marina del Rey location, she

**Evidence:**

1 Plaintiff Depo., Volume I, 186:5-14, Exh. feels she is no longer welcome at Equinox  
2 26; Plaintiff Depo., Volume II, 311:4-8; and feels pushed out since she was forced  
3 Hemedinger Depo., 54:17-55:18, 55:25- to take a demotion, a significant pay cut  
4 56:25, 57:6-57:11. and restart her business and clientele base,

5 along with the overwhelming stress of the  
6 interrogation and suspension and fear of  
7 being terminated that she is forced to  
8 resign.

9 **Evidence:**

10 Exh. 16; Kasbarian Depo., Vol. I, 186:5-  
11 14; Kasbarian Decl., ¶¶ 12-14.

12  
13 76. Plaintiff's last day of employment 76. Undisputed.  
14 was February 2, 2015. **Evidence:**

15 **Evidence:**

16 Plaintiff Depo., Volume I, 186:11-14.

17  
18 77. Plaintiff never reported to work at 77. Undisputed.  
19 the Marina Del Rey club. **Evidence:**

20 **Evidence:**

21 Plaintiff Depo., Volume I, 50:13-15,  
22 186:15-17; Hemedinger Depo., 56:22-25.

23  
24 78. As of February 1, 2015, the only re- 78. Undisputed.  
25 maining MA at the West LA club was the **Evidence:**  
26 recently hired MA. Gannon Decl., ¶ 6, 10.

27 **Evidence:**



1 Plaintiff Depo., Volume II, 342:3-11.

2  
3 79. As of April/May 2015, the West LA  
4 club had an entirely new sales team and  
5 sales management.

6 **Evidence:**

7 Plaintiff Depo., Volume II, 342:25-343:5.

79. Undisputed. However, one MA was  
able to stay at the West LA location,  
despite Gannon stating he wanted to  
rebuild the team by getting rid of all of the  
Membership Executives at West LA.

8 **Evidence:**

9 Rosen Depo., 76:5-14; Hemedinger Depo.,  
10 51:23-52:23; Holmes Depo., 101:24-  
11 102:7; Gannon Depo., 70:8-71:15, 81:7-  
12 11; Gannon Decl., ¶ 6, 10.

13  
14 80. Plaintiff testified that she was un-  
15 aware of any other MA at the West LA  
16 club complaining about the unauthorized  
17 use of credit cards or telling someone that  
18 they were being signed up for a one-month  
19 membership but signing them up for a year  
20 instead.

21 **Evidence:**

22 Plaintiff Depo., Volume II, 343:6-22.

80. Undisputed.

23 **Evidence:**

24 **ISSUE NO. 15:** Although Plaintiff has not pled a cause of action for constructive dis-  
25 charge, such a claim (even if properly pled) would survive as a matter of law because  
26 Plaintiff can establish a *prima facie* claim of constructive discharge because Plaintiff was  
27 subjected to intolerable working conditions. (UF Nos. 1-80.)

28 **Alleged Undisputed Facts and**

**Plaintiff's Responses and**

**Supporting Evidence**

1. Plaintiff was hired as a Membership Advisor (“MA”) at Equinox’s Santa Monica club on or about October 15, 2010.

**Evidence:**

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”).

**Evidence:**

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.

**Evidence:**

Declaration of Brian Hemedinger (“Hemedinger Decl.”), ¶ 3.

**Supporting Evidence**

1. Undisputed.

**Evidence:**

2. Disputed. Kasbarian was promoted to the position of Membership Executive at the West Los Angeles club (“West LA”) in October 2013.

**Evidence:**

Exh. 10; Kasbarian Depo., Vol. I, 89:9-90:19, 279:14-280:12; Kasbarian Decl., ¶ 5; Hemedinger Depo., 50:4-9; Rosen Depo., 20:4-18; Holmes Depo., 39:13-18.

3. Disputed. A Membership Executive position is considered a promotion from an MA position. Kasbarian was specifically told her position as a Membership Executive was a promotion from an MA, and she received a memo on it, as well as a higher compensation plan. Kasbarian’s hourly rate also increased with her position as a Membership Executive, to \$19.23 per hour, as well as an increase in

commissions and bonuses.

**Evidence:**

Exh. 10; Kasbarian Depo., Vol. I, 89:9-90:19, 279:14-280:12; Kasbarian Decl., ¶ 5; Hemedinger Depo., 50:4-9; Rosen Depo., 20:4-18; Holmes Depo., 39:13-18.

4. During Plaintiff's employment at Equinox Santa Monica and West LA clubs, Jack Gannon ("Gannon") was the Vice President of the West Coast.

**Evidence:**

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.

**Evidence:**

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

**Evidence:**

1 West LA club from about January 2014 to  
2 about January 2015.

3 **Evidence:**

4 Plaintiff Depo., Volume I, 52:11-19.

6 7. Plaintiff's personnel file includes an 7. Undisputed.  
7 Employee Handbook Receipt Acknowl- **Evidence:**  
8 edgment Form with Plaintiff's signature  
9 dated October 15, 2010.

10 **Evidence:**

11 Plaintiff Depo., Volume I, 43:18-45:15,  
12 Exh. 8 (Receipt Acknowledgement [sic]  
13 Form); Declaration of Emerson Figueroa  
14 ("Figueroa Decl."), ¶ 5, Exh. B.

16 8. In particular, the Employee Hand-  
17 book stated:

18 I acknowledge that the re-  
19 ceipt of the Employee Hand-  
20 book in no way creates a con-  
21 tract between Equinox and me.  
22 Moreover, I understand and  
23 agree that all matters discussed  
24 in the Employee Handbook are  
25 subject to change or modifica-  
26 tion from time to time except  
27 the At-Will Employment Policy  
28 specified therein. The At-Will  
Employment Policy represents  
the final and complete agree-  
ment concerning the duration of  
my employment. I acknowl-  
edge that any change in the At-  
Will Employment Policy is ef-  
fective only if set forth in a  
written document signed by the  
CEO of Equinox and myself.

8. Undisputed, as to what the actual  
document states. However, disputed as to  
whether Kasbarian actually believed her  
employment was "at-will." Kasbarian  
believes she would not be demoted, have  
her pay cut, her employment suspended,  
or, reassigned, etc. unless it was for good  
cause.

**Evidence:**

Kasbarian Decl., ¶¶ 4, 11, 13, 14.

**Evidence:**

Plaintiff Depo., Volume I, 43:18-45:15, Exh. 8 (Receipt Acknowledgement [sic] Form); Figueroa Decl., ¶ 5, Exh. B (Receipt Acknowledgement [sic] Form).

9. Plaintiff's personnel file also includes an Offer Letter, dated October 15, 2010, which Plaintiff acknowledged receiving.

**Evidence:**

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.

**Evidence:**

9. Undisputed.

**Evidence:**

10. Undisputed, as to what the actual document states. However, disputed as to whether Kasbarian actually believed her employment was "at-will." Kasbarian believes she would not be demoted, have her pay cut, her employment suspended, or, reassigned, etc. unless it was for good cause.

**Evidence:**

Kasbarian Decl., ¶¶ 4, 11, 13, 14.

1 Plaintiff Depo., Volume I, 36:23-38:11,  
2 Exh. 5 (Offer Letter); Figueroa Decl., ¶ 6,  
3 Exh. C (Offer Letter).

5 11. Plaintiff's personnel file also in- 11. Undisputed.  
6 cludes an Employee Confidentiality and **Evidence:**  
7 Non-Solicitation Agreement with Plain-  
8 tiff's signature dated October 14, 2010.

9 **Evidence:**

10 Figueroa Decl., ¶ 8, Exh. D.

12 12. This Agreement stated: "You agree 12. Undisputed, as to what the actual  
13 and understand that nothing in this Agree- document states. However, disputed as to  
14 ment shall alter or modify the 'at-will' whether Kasbarian actually believed her  
15 nature of your employment with the Com- employment was "at-will." Kasbarian  
16 pany or confer on [y]ou any rights with re- believes she would not be demoted, have  
17 spect to continuation of your employment her pay cut, her employment suspended,  
18 with the Company."

19 **Evidence:**

20 Figueroa Decl., ¶ 8, Exh. D.

**Evidence:**

21 Kasbarian Decl., ¶¶ 4, 11, 13, 14.

23 13. In her deposition, Plaintiff admitted 13. Undisputed, as to what the actual  
24 that she did not have a contract with document states. However, disputed as to  
25 Equinox; no one ever told her that she was whether Kasbarian actually believed her  
26 guaranteed employment for a certain time employment was "at-will." Kasbarian  
27 period; and no one ever told her that she believes she would not be demoted, have  
28 was anything other than an at-will em- her pay cut, her employment suspended,

1 ployee. or, reassigned, etc. unless it was for good  
2 **Evidence:** cause.

3 Plaintiff Depo., Volume I, 36:23-38:11, **Evidence:**  
4 43:18-45:15, Exh. 5 (Offer Letter), Exh. 8 Kasbarian Decl., ¶¶ 4, 11, 13, 14.  
5 (Receipt Acknowledgement [sic] Form).  
6

7 14. The Employee Handbook Plaintiff 14. Undisputed.  
8 acknowledged receiving also included **Evidence:**  
9 Equinox's non-retaliation policy as well as  
10 complaint procedures for reporting retalia-  
11 tion.

12 **Evidence:**  
13 Plaintiff Depo., Volume I, 43:18-45:15,  
14 Exh. 8 Receipt of Employee Handbook;  
15 Declaration of Emerson Figueroa  
16 ("Figueroa Decl."), Exh. A.  
17

18 15. In particular, Equinox's policy strict- 15. Undisputed.  
19 ly prohibits retaliation against any employ- **Evidence:**  
20 ee for "filing a complaint and [Equinox]  
21 will not knowingly permit retaliation by  
22 management, employees, or co-workers."  
23 Equinox's policy also prohibits retaliation  
24 against any employee for "using this com-  
25 plaint procedure or for filing, testifying,  
26 assisting, or participating in any manner in  
27 any investigation, proceeding, or hearing  
28 conducted by a governmental enforcement

1 agency. Additionally, Equinox will not  
2 knowingly permit any retaliation against  
3 any employee who complains of prohibited  
4 harassment or who participates in an inves-  
5 tigation.”

6 **Evidence:**

7 Plaintiff Depo., Volume I, 43:18-45:15,  
8 Exh. 8 Receipt of Employee Handbook;  
9 Figueroa Decl., Exh. A, Employee Hand-  
10 book.

12 16. The complaint procedure as outlined  
13 in the Employee Handbook permits an em-  
14 ployee to report retaliation to his or her  
15 manager, Human Resources, or through  
16 Equinox’s Ethics Hotline.

17 **Evidence:**

18 Plaintiff Depo., Volume I, 43:18-45:15,  
19 Exh. 8 Receipt of Employee Handbook;  
20 Figueroa Decl. ¶ 4.

22 17. In or about June 2014, Hemedinger  
23 informed Plaintiff and other MAs that the  
24 compensation plan for all West LA MAs  
25 was being clarified, so that the market bo-  
26 nuses would be paid out individually and  
27 not cumulatively for reaching a certain  
28 sales goal.

16. Undisputed.

**Evidence:**

17. Disputed. In June 2014, five months  
after Kasbarian started complaining about  
the fraudulent activities by other  
membership advisors, Kasbarian’s  
commission and bonus check for May  
2014 was suddenly and for the first time  
since she started at West LA 25-33% short



**Evidence:**

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.

of what she was owed. Kasbarian immediately complained about her unpaid commissions and bonuses. After she complained defendant permanently cut her compensation plan stating that they have been paying her too much and in “error” and told her that she is “lucky that they were not asking her to pay the difference back.”

**Evidence:**

Exhs. 11, 12, 13; Kasbarian Depo., Vol. I, 201:1-206:5, 207:4-20, 209:19-210:8, 221:11-14; Kasbarian Depo., Vol. II, 347:1-18; Kasbarian Decl., ¶¶ 8, 9; Hemedinger Depo., 59:14-60:10; Rosen Depo., 22:15-23:17, 29:18-31:6, Holmes Depo., 73:5-17, 81:7-24; 120:19-121:3; Figueroa Depo., 99:22- 100:5; Gannon Depo., 99:4-7; Hemedinger Depo., 59:14-60:10.

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

18. Disputed. In June 2014, five months after Kasbarian started complaining about the fraudulent activities by other membership advisors, Kasbarian’s commission and bonus check for May 2014 was suddenly and for the first time since she started at West LA 25-33% short

- 125% of goal—MA would receive an extra \$55 per sale
- 150% of goal—MA would receive an extra \$70 per sale

**Evidence:**

Plaintiff Depo., Volume I, 190:16-194:3; Hemedinger Depo., 64:18-65:11.

of what she was owed. Kasbarian immediately complained about her unpaid commissions and bonuses. After she complained defendant permanently cut her compensation plan stating that they have been paying her too much and in “error” and told her that she is “lucky that they were not asking her to pay the difference back.”

**Evidence:**

Exhs. 11, 12, 13; Kasbarian Depo., Vol. I, 201:1-206:5, 207:4-20, 209:19-210:8, 221:11-14; Kasbarian Depo., Vol. II, 347:1-18; Kasbarian Decl., ¶¶ 8, 9; Hemedinger Depo., 59:14-60:10; Rosen Depo., 22:15-23:17, 29:18-31:6, Holmes Depo., 73:5-17, 81:7-24; 120:19-121:3; Figueroa Depo., 99:22- 100:5; Gannon Depo., 99:4-7; Hemedinger Depo., 59:14-60:10.

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.

**Evidence:**

Plaintiff Depo., Volume I, 190:16-194:3;

19. Disputed. In June 2014, five months after Kasbarian started complaining about the fraudulent activities by other membership advisors, Kasbarian’s commission and bonus check for May 2014 was suddenly and for the first time since she started at West LA 25-33% short

1 Holmes Depo., 82:11-83:14; Hemedinger of what she was owed. Kasbarian  
2 Depo., 59:22-60:6, 62:3-63:8; 66:6-11., immediately complained about her unpaid  
3 68:125-69:8. commissions and bonuses. After she

4 complained defendant permanently cut her  
5 compensation plan stating that they have  
6 been paying her too much and in “error”  
7 and told her that she is “lucky that they  
8 were not asking her to pay the difference  
9 back.”

10 **Evidence:**

11 Exhs. 11, 12, 13; Kasbarian Depo., Vol. I,  
12 201:1-206:5, 207:4-20, 209:19-210:8,  
13 221:11-14; Kasbarian Depo., Vol. II,  
14 347:1-18; Kasbarian Decl., ¶¶ 8, 9;  
15 Hemedinger Depo., 59:14-60:10; Rosen  
16 Depo., 22:15-23:17, 29:18-31:6, Holmes  
17 Depo., 73:5-17, 81:7-24; 120:19-121:3;  
18 Figueroa Depo., 99:22- 100:5; Gannon  
19 Depo., 99:4-7; Hemedinger Depo., 59:14-  
20 60:10.

21  
22 20. Plaintiff testified that she complained 20. Undisputed as to Kasbarian’s  
23 about what she viewed as a “change” in complaints but otherwise disputed. In June  
24 the compensation plan to the following 2014, five months after Kasbarian started  
25 managerial employees: Hemedinger, complaining about the fraudulent activities  
26 Gannon, Simonson, Veronica Santarelli by other membership advisors, Kasbarian’s  
27 (“Santarelli”) (Regional Sales Manager), commission and bonus check for May  
28 Matt Gonzalez (“Gonzalez”) (Director of 2014 was suddenly and for the first time

1 Sales), Barry Holmes (“Holmes”) (Senior  
2 Vice President of Sales), and Scott Rosen  
3 (“Rosen”) (Chief Operating Officer)  
4 (“COO”).

5 **Evidence:**

6 Plaintiff Depo., Volume I, 199:7-22;  
7 Hemedinger Depo., 59:14-60:10; Depo-  
8 sition of Scott Rosen (“Rosen Depo.”)  
9 29:18-30:4, 30:22-31:12, 31:20-33:4,  
10 61:12-64:17, 65:8-69:12, Exhs. 206-207;  
11 Holmes Depo., 71:23-73:22, 77:18-82:10,  
12 84:19-86:8, Ex. 203.

since she started at West LA 25-33% short  
of what she was owed. Kasbarian  
immediately complained about her unpaid  
commissions and bonuses. After she  
complained defendant permanently cut her  
compensation plan stating that they have  
been paying her too much and in “error”  
and told her that she is “lucky that they  
were not asking her to pay the difference  
back.”

13 **Evidence:**

14 Exhs. 11, 12, 13; Kasbarian Depo., Vol. I,  
201:1-206:5, 207:4-20, 209:19-210:8,  
221:11-14; Kasbarian Depo., Vol. II,  
347:1-18; Kasbarian Decl., ¶¶ 8, 9;  
15 Hemedinger Depo., 59:14-60:10; Rosen  
16 Depo., 22:15-23:17, 29:18-31:6, Holmes  
17 Depo., 73:5-17, 81:7-24; 120:19-121:3;  
18 Figueroa Depo., 99:22- 100:5; Gannon  
19 Depo., 99:4-7; Hemedinger Depo., 59:14-  
20 60:10.  
21  
22

23 21. Despite Plaintiff’s complaints about  
24 the compensation plan, Plaintiff continued  
25 to work at Equinox for seven months after  
26 the “changed” compensation plan was in-  
27 stituted in July/August 2014 and continued  
28 to work for Equinox until she quit in

21. Undisputed to the fact that Kasbarian  
continued to work at Equinox until  
February 2015 after she complained;  
however, disputed as to the rest. In June  
2014, five months after Kasbarian started  
complaining about the fraudulent activities

February 2015.

**Evidence:**

Plaintiff Depo., Volume I, 196:8-14, 207:15-22, 220:5-20; Plaintiff Depo., Volume II, 349:5-12.

by other membership advisors, Kasbarian's commission and bonus check for May 2014 was suddenly and for the first time since she started at West LA 25-33% short of what she was owed. Kasbarian immediately complained about her unpaid commissions and bonuses. After she complained defendant permanently cut her compensation plan stating that they have been paying her too much and in "error" and told her that she is "lucky that they were not asking her to pay the difference back."

**Evidence:**

Exhs. 11, 12, 13; Kasbarian Depo., Vol. I, 201:1-206:5, 207:4-20, 209:19-210:8, 221:11-14; Kasbarian Depo., Vol. II, 347:1-18; Kasbarian Decl., ¶¶ 8, 9; Hemedinger Depo., 59:14-60:10; Rosen Depo., 22:15-23:17, 29:18-31:6, Holmes Depo., 73:5-17, 81:7-24; 120:19-121:3; Figueroa Depo., 99:22- 100:5; Gannon Depo., 99:4-7; Hemedinger Depo., 59:14-60:10.

22. Plaintiff testified that she complained to Hemedinger, Simonson, and possibly to Gannon in February or March 2014 that

22. Undisputed. However, Kasbarian testified that she complained about multiple MAs at West LA, including

1 she believed that a MA at West LA was Lauren Beck and Devin Mcvelogue about  
2 using one-month guest passes and/or gift multiple fraudulent and unlawful activities,  
3 cards to sign up members for what they be- including charging members credit cards  
4 lieved was a month-long membership, but without their authorization.  
5 in actuality, was signing them up for a **Evidence:**  
6 year-long membership by using their credit Kasbarian Depo., Vol. I, 69:5-71:5, 71:20-  
7 cards without authorization. 72:4, 76:5-25, 82:9-83:19, 98:11-99:4,  
8

**Evidence:**

9 Plaintiff Depo., Volume I, 81:6-21; 82:5- Kasbarian Depo., Vol. II, 334:16-25; Kasbarian  
10 83:23, 94:14-97:9. Decl., ¶ 6; Hemedinger Depo., 43:13-15,  
11 45:8-22, 46:10-22; 76:1-15.  
12

13 23. According to Plaintiff, “charging 23. Undisputed. Gannon also testified  
14 credit cards without people’s approval and and admitted in testimony that he believes  
15 telling people they were signing up for a that the type of conduct Kasbarian  
16 month-long contract, but then signing them complained of was illegal and is the type  
17 up for a year-long contract” were the only of conduct that needs to be investigated.  
18 “illegal activities” about which she com- **Evidence:**  
19 plained to Equinox. Gannon Depo., 51:10-15, 52:23-53:3.  
20

**Evidence:**

21 Plaintiff Depo., Volume II, 334:16-336:23.  
22

23 24. According to Plaintiff, her other 24. Undisputed.  
24 complaints involved “things against **Evidence:**  
25 Equinox policies that were happening as  
26 well.”

**Evidence:**

1 Plaintiff Depo., Volume II, 334:16-336:23.

2  
3 25. Plaintiff admitted that she could not  
4 identify any statute, ordinance, regulation,  
5 local law, state law, or federal law that was  
6 violated as a result of this alleged activity.

7 **Evidence:**

8 Plaintiff Depo., Volume II, 335:4-336:23.

25. Disputed. Plaintiff testified that she  
believed this conduct was illegal.  
Moreover, Gannon also testified and  
admitted in testimony that he believes that  
the type of conduct Kasbarian complained  
of was illegal and is the type of conduct  
that needs to be investigated.

9  
10 **Evidence:**

11 Kasbarian Depo., Volume II, 334:16-  
12 336:23; Gannon Depo., 51:10-15, 52:23-  
13 53:3.

14  
15 26. Plaintiff also testified that she com-  
16 plained to Hemedinger and Simonson  
17 about the sales activities of another MA.

18 **Evidence:**

19 Plaintiff Depo., Volume I, 76:17-79:19;  
20 93:10-94:10, 102:10-107:24; 108:1-113:5;  
21 Hemedinger Depo., 45:8-47:19.

26. Undisputed.

22 **Evidence:**

23 27. Specifically, Plaintiff complained  
24 that this MA was giving away “free  
25 months” to potential members, allowing  
26 “freezes” for members, and offering “three  
27 month” deals.

28 **Evidence:**

27. Undisputed. However, Kasbarian  
testified that she complained about  
multiple MAs at West LA, including  
Lauren Beck and Devin Mcvelogue about  
multiple fraudulent and unlawful activities,  
including charging members credit cards

1 Plaintiff Depo., Volume I, 76:17-79:19p without their authorization.

2 93:10-94:10, 102:10-107:24; 108:1-113:5; **Evidence:**

3 Hemedinger Depo., 45:8-47:19.

Kasbarian Depo., Vol. I, 69:5-71:5, 71:20-72:4, 76:5-25, 82:9-83:19, 98:11-99:4, 102:13-103:25, 112:5-113:2; Kasbarian Depo., Vol. II, 334:16-25; Kasbarian Decl., ¶ 6; Hemedinger Depo., 43:13-15, 45:8-22, 46:10-22; 76:1-15.

10 28. In or around December 2014, COO 28. Undisputed.

11 Rosen was touring the West LA club when **Evidence:**

12 he was told by a member that a MA had  
13 charged a membership to another mem-  
14 ber's credit card without that member's  
15 authorization.

16 **Evidence:**

17 Rosen Depo., 37:20-38:18; Declaration of  
18 Tracy Cuva ("Cuva Decl."), ¶ 2.

20 29. Member Services is Equinox's bill- 29. Undisputed.

21 ing department (centrally based in New **Evidence:**

22 York) which handles membership con-  
23 tracts and membership sales, including  
24 auditing of membership sales.

25 **Evidence:**

26 Cuva Decl., ¶ 1.

28 30. Rosen contacted Tracy Cuva, Senior 30. Undisputed.



1 Director of Equinox's Member Services **Evidence:**  
2 Department, gave her the information re-  
3 ceived from the member, and asked  
4 Member Services to investigate this sale.

5 **Evidence:**

6 Rosen Depo., 37:20-38:21; Cuva Decl.,  
7 ¶ 2.

8  
9 31. Member Services' investigation, 31. Undisputed.  
10 which was conducted by Cuva, confirmed **Evidence:**  
11 that this was an unauthorized sale  
12 processed by a MA at the West LA Club  
13 (Plaintiff was not implicated in this  
14 transaction).

15 **Evidence:**

16 Cuva Decl., ¶ 2.

17  
18 32. This MA was relocating to New 32. Undisputed. However, this MA was  
19 York but, based on the investigation terminated.

20 results, she was not hired to work for **Evidence:**

21 Equinox in New York.

22 **Evidence:**

23 Rosen Depo., 39:8-13.

Kasbarian Depo., Vol. I, 84:7-85:1,  
184:20-23; Kasbarian Decl., ¶ 10;  
Hemedinger Decl., ¶ 4; Gannon Depo.,  
58:20-59:18, 60:2-21.

24  
25  
26 33. As a result of this member com- 33. Disputed. Senior Director of Loss  
27 plaint, Rosen also asked Cuva to have Prevention, Jim Burger, testified that Jack  
28 Member Services conduct an investigation Gannon contacted him to do an

1 of sales transactions at the West LA club.

2 **Evidence:**

3 Rosen Depo., 47:25-6; Cuva Decl., ¶ 3.

investigation at the West LA location and reported to him throughout.

**Evidence:**

Burger Depo., 70:9-21, 78:4-11, 83:18-84:3.

7 34. Apart from requesting that the inves-  
8 tigation be conducted and asking Jim  
9 Burger (Senior Director of Loss Preven-  
10 tion) to travel to the West LA club and  
11 continue the investigation after Member  
12 Services finished their portion of the inves-  
13 tigation, Rosen did not participate in that  
14 investigation.

15 **Evidence:**

16 Rosen Depo., 47:25-48:21.

34. Disputed. Senior Director of Loss Prevention, Jim Burger, testified that Jack Gannon contacted him to do an investigation at the West LA location and reported to him throughout.

**Evidence:**

Burger Depo., 70:9-21, 78:4-11, 83:18-84:3.

18 35. Cuva instructed Kevin Stanfa  
19 (“Stanfa”) (Manager of Compliance and  
20 Special Projects), to review sales transac-  
21 tions at the West LA club.

22 **Evidence:**

23 Cuva Decl., ¶ 3; Stanfa Decl. ¶ 4.

35. Undisputed.

**Evidence:**

25 36. After Stanfa reported finding various  
26 anomalies associated with sales transac-  
27 tions at the West LA club, Cuva instructed  
28 Stanfa to prepare a summary detailing his

36. Undisputed.

**Evidence:**

findings.

**Evidence:**

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.

**Evidence:**

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.

**Evidence:**

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.”

**Evidence:**

Cuva Decl., ¶ 7, Exh.N.

40. Cuva noted as follows:

37. Disputed. Defendant fails to produce the spreadsheets corroborating those sales.

**Evidence:**

Defendant’s Amended Compendium of Exhibits.

38. Disputed. Defendant fails to produce the spreadsheets corroborating those sales.

**Evidence:**

Defendant’s Amended Compendium of Exhibits.

39. Undisputed as to that statement being written in the email.

**Evidence:**

40. Disputed. Kasbarian was found to

1 i The 2041 Freezes spread-  
2 sheet shows that West LA is  
3 an outlier in members who  
4 request a freeze in the first 60  
5 days of membership who also  
6 go on to cancel in the same  
7 year.

8 i The Modification to Direct  
9 Bill spreadsheet reflects  
10 members in the last quarter  
11 of 2014 whose billing was  
12 modified from the credit card  
13 payment type to direct bill  
14 the day before billing ran.  
15 The Company average is four  
16 per club. West LA had 28  
17 modifications to direct bill.

18 i The West LA Breakdown  
19 spreadsheet shows question-  
20 able sales from two MAs  
21 (Plaintiff and the MA moving  
22 to New York). The other  
23 three MAs were reviewed  
24 and did not reflect the same  
25 anomalies seen with Plaintiff  
26 and the MA moving to New  
27 York. The questionable sales  
28 included selling memberships

have not committed any of the  
inappropriate and fraudulent conduct or  
“fake” sales that were being investigated.

**Evidence:**

Holmes Depo., 88:4-10, 106:11-19;  
Hemedinger Depo., 51:23-52:23; Rosen  
Depo., 48:22-49:3, 54:3-8, 76:5-14, 98:6-  
17, 101:24-102:7; Gannon Depo., 70:8-  
71:15, 72:7-20, 75:22-76:8, 79:5-10, 81:7-  
11; Gannon Decl., ¶ 6, 10.

1 to members with the credit  
2 card of another member (al-  
3 most universally without re-  
4 questing a referral credit) or  
5 re-contracting over a previ-  
6 ously 3-day'd membership  
7 and either using the credit  
8 from the previous sale or re-  
9 charging the same credit  
10 card, credit card not present  
11 for numerous sales transac-  
12 tions, 3-day cancellations  
13 with no or just one member  
14 visit, new memberships  
15 which were previously fi-  
16 nance cancelled and had bal-  
17 ances on account that were  
18 waived.

19 **Evidence:**

20 Cuva Decl., ¶ 7, Exh.N.  
21

22 41. Neither Cuva nor Stanfa were aware  
23 Plaintiff had made any complaints about  
24 changes to her compensation plan or about  
25 the alleged activities of other MAs.

26 **Evidence:**

27 Cuva Decl., ¶ 8; Stanfa Decl., ¶ 11.  
28

41. Undisputed. However, Kasbarian  
was found to have not committed any of  
the inappropriate and fraudulent conduct or  
“fake” sales that were being investigated.

**Evidence:**

41. Holmes Depo., 88:4-10, 106:11-19;  
Hemedinger Depo., 51:23-52:23; Rosen

Depo., 48:22-49:3, 54:3-8, 76:5-14, 98:6-17, 101:24-102:7; Gannon Depo., 70:8-71:15, 72:7-20, 75:22-76:8, 79:5-10, 81:7-11; Gannon Decl., ¶ 6, 10.

**Evidence:**

42. In addition, Burger was asked to interview the sales team at the West LA club.

42. Undisputed.

**Evidence:**

**Evidence:**

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 [sic] and an Assistant General Manager.

43. Undisputed.

**Evidence:**

**Evidence:**

Hemedinger Decl., ¶ 4.

44. A MA was fired on or about January 20, 2015 for improper sales activities.

44. Undisputed.

**Evidence:**

**Evidence:**

1 Figueroa Decl. ¶ 9; Hemedinger Decl., ¶ 4.

2  
3 45. At Burger's request, Member Ser-  
4 vices provided him with the spreadsheets  
5 summarizing their findings of questionable  
6 sales transactions at the West LA club.

7 **Evidence:**

8 Burger Depo., 72:13-73:3; Cuva Decl. ¶ 8.

9  
10 46. Burger then met with Cuva and  
11 Stanfa and they discussed their findings re-  
12 garding the questionable sales at the West  
13 LA club.

14 **Evidence:**

15 Burger Depo., 73:13-74:15; Cuva Decl.  
16 ¶ 8; Stanfa Decl., ¶ 9.

17  
18 47. Burger had a subsequent meeting  
19 with Stanfa to review the spreadsheets  
20 Member Services had prepared.

21 **Evidence:**

22 Burger Depo., 74:16-75:3, 8-22; Stanfa  
23 Decl., ¶ 9.

24  
25 48. These spreadsheets showed anoma-  
26 lies in various sales transactions, including  
27 whether or not a contract was signed,  
28 whether or not a credit card was present

45. Disputed. Defendant fails to produce  
the spreadsheets corroborating those sales.

**Evidence:**

Defendant's Amended Compendium of  
Exhibits.

46. Undisputed.

**Evidence:**

47. Disputed. Defendant fails to produce  
the spreadsheets corroborating those sales.

**Evidence:**

Defendant's Amended Compendium of  
Exhibits.

48. Disputed. Defendant fails to produce  
the spreadsheets corroborating those sales.  
However, However, Kasbarian was found  
to have not committed any of the

1 for the sales transaction, whose credit card inappropriate and fraudulent conduct or  
2 was used for the sales transactions, if an- “fake” sales that were being investigated.  
3 other individual’s credit card number was **Evidence:**  
4 used for the sales transaction instead of the Defendant’s Amended Compendium of  
5 member’s credit card number, whether or Exhibits; Holmes Depo., 88:4-10, 106:11-  
6 not a member had any visits to a club, etc. 19; Hemedinger Depo., 51:23-52:23;

7 **Evidence:**

8 Burger Depo., 39:3-40:22; Cuva Decl., ¶ 8; 98:6-17, 101:24-102:7; Gannon Depo.,  
9 Stanfa Decl., ¶¶ 4-5. 70:8-71:15, 72:7-20, 75:22-76:8, 79:5-10,  
10 81:7-11; Gannon Decl., ¶ 6, 10.  
11  
12

13 49. Burger also had a couple of tele- 49. Undisputed.  
14 phone conversations with Stanfa regarding **Evidence:**  
15 the anomalies in various sales activities at  
16 the West LA Club.

17 **Evidence:**

18 Burger Depo., 76:19-77:1; Stanfa Decl.,  
19 ¶ 9.  
20

21 50. In late January 2015, Burger came to 50. Undisputed.  
22 Los Angeles to interview various employ- **Evidence:**  
23 ees regarding sales activities of the West  
24 LA MAs.

25 **Evidence:**

26 Burger Depo., 76:6-12; Gannon Decl., ¶ 3;  
27 Hemedinger Decl., ¶ 5.  
28



1 51. Prior to the interviews, Burger and  
2 Gannon discussed suspending all of the in-  
3 dividuals interviewed as part of the investi-  
4 gation pending the results of the investiga-  
5 tion.

6 **Evidence:**

7 Burger Depo., 116:12-117:12.  
8  
9

10 52. Burger then interviewed the follow-  
11 ing individuals: (1) the Assistant General  
12 Manager; (2) Plaintiff; (3) another MA;  
13 (4) a relatively newly hired MA; and  
14 (5) Simonson.

15 **Evidence:**

16 Hemedinger Decl., ¶ 5.  
17  
18

19 53. Burger had never heard of or spoken  
20 to Plaintiff prior to this investigation meet-  
21 ing.

22 **Evidence:**

23 Burger Depo., 35:22-24.  
24

25 54. On January 30, 2015, Plaintiff met  
26 with Burger and Leah Ball of Human  
27 Resources regarding West LA's sales prac-  
28 tices.

51. Disputed. Gannon testified that one  
MA was not suspended and was not  
discussed suspending because there "was  
no suspicious conduct linked to him" even  
at the beginning of the investigation.

**Evidence:**

Gannon Depo., 70:8-71:19, 81:7-11;  
Gannon Decl., ¶ 6, 10.

52. Disputed. Gannon testified that one  
MA was not suspended and was not  
discussed suspending because there "was  
no suspicious conduct linked to him" even  
at the beginning of the investigation.

**Evidence:**

Gannon Depo., 70:8-71:19, 81:7-11;  
Gannon Decl., ¶ 6, 10.

53. Undisputed.

**Evidence:**

54. Undisputed.

**Evidence:**

**Evidence:**

Plaintiff Depo., Volume I, 161:11-22, 164:10-22; Plaintiff Depo., Volume II, 305:21-24; , [sic] Burger Depo., 96:18-25.

55. Plaintiff answered questions about her sales activities, as well as the activities of other MAs.

**Evidence:**

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.

**Evidence:**

Burger Depo, 122:14-17.

55. Undisputed. Additionally, at the beginning of Kasbarian's interview, she notifies Senior Director of Loss Prevention, Jim Burger, about the fraudulent activity and unauthorized membership sales that she observed and complained about to management for months

**Evidence:**

Exh. 17; Kasbarian Depo., Vol. I, 158:4-18, 161:15-162:1, 166:9-167:2; Kasbarian Decl., ¶¶ 10, 11; Burger Depo., 70:9-21, 78:4-11, 83:18-84:3, 91:5-92:18, 100:3-8, 183:21-184:12.

56. Undisputed as to Burger concluding there was insufficient information to warrant any terminable offense committed by Burger. Kasbarian was found to have not committed any of the inappropriate and fraudulent conduct or "fake" sales that were being investigated.

**Evidence:**

Holmes Depo., 88:4-10, 106:11-19; Hemedinger Depo., 51:23-52:23; Rosen Depo., 48:22-49:3, 54:3-8, 76:5-14, 98:6-17, 101:24-102:7; Gannon Depo., 70:8-71:15, 72:7-20, 75:22-76:8, 79:5-10, 81:7-11; Gannon Decl., ¶ 6, 10.

57. After Burger completed his interviews, Burger, Gannon and Hemedinger met briefly to discuss Burger's impression.

**Evidence:**

Burger Depo., 117:16-18, 24-118:6.

57. Undisputed.

**Evidence:**

58. Gannon then advised Plaintiff that she was being suspended.

**Evidence:**

Plaintiff Depo, Volume I, 174:24-175:3, 11-12; Plaintiff Depo., Volume II, 306:3-7; Gannon Decl., ¶ 4.

58. Undisputed. However, she was suspended despite her having been found to not have committed any terminable offense.

**Evidence:**

Holmes Depo., 88:4-10, 106:11-19; Hemedinger Depo., 51:23-52:23; Rosen Depo., 48:22-49:3, 54:3-8, 76:5-14, 98:6-17, 101:24-102:7; Gannon Depo., 70:8-71:15, 72:7-20, 75:22-76:8, 79:5-10, 81:7-11; Gannon Decl., ¶ 6, 10.

59. All of the MAs interviewed as part of the investigation (with the exception of the

59. Undisputed. One MA was not suspended.

1 relatively new MA) were suspended pend-  
2 ing investigation.

3 **Evidence:**

4 Burger Depo., ¶ [sic] 110:17-23; Gannon  
5 Decl., ¶ 6.

**Evidence:**

Gannon Depo., 70:8-71:15, 81:7-11;  
Gannon Decl., ¶ 6, 10.

6  
7 60. Gannon also advised Plaintiff to re-  
8 port back to the West LA club at 2:00 p.m.  
9 the next day for another meeting.

10 **Evidence:**

11 Plaintiff Depo., Volume II, 180:11-181:4;  
12 Gannon Decl., ¶ 5.

60. Undisputed.

**Evidence:**

13  
14 61. According to Plaintiff, Equinox told  
15 her that she would not have access to her  
16 email or payroll account and escorted her  
17 out of the building in front of Equinox's  
18 clientele, staff and all of her peers.

19 **Evidence:**

20 Plaintiff Depo., Volume II, 174:24-175:21;  
21 Plaintiff Depo., Volume II, 305:21-306:2,  
22 364:17-20; Plaintiff's Complaint, 6:5-7.

61. Undisputed.

**Evidence:**

23  
24 62. It is Equinox's policy to turn off  
25 email access for hourly employees who  
26 have been suspended pending investigation  
27 or who are on leave of absence.

28 **Evidence:**

62. Disputed. Defendant did not produce  
any documentation corroborating this  
policy.

**Evidence:**

Defendant's Amended Compendium of

1 Gannon Decl., ¶ 7.

Evidence.

2  
3 63. Prior to Burger's interview of Plain-  
4 tiff, Gannon had the Payroll Department  
5 prepare a final paycheck for Plaintiff so  
6 that she could be paid in accordance with  
7 California law in the event the decision  
8 was made to terminate her employment.

9 **Evidence:**

10 Gannon Decl., ¶ 8.

63. Undisputed as to Gannon preparing  
the final paycheck; however, this paycheck  
was prepared by Gannon even before the  
interview in preparation for Kasbarian's  
termination.

**Evidence:**

Gannon Decl., ¶ 8; Exh. 15; Kasbarian  
Depo., Vol. I, 130:21-131:3, 185:5-15;  
Kasbarian Depo., Vol. II, 311:9-22;  
Kasbarian Decl., ¶ 11.

11  
12  
13  
14 64. Plaintiff met with Hemedinger and  
15 Gannon at the West LA club on January  
16 31, 2015 and was told that the investiga-  
17 tion was concluded and that she would be  
18 working at the Marina Del Rey club.

19 **Evidence:**

20 Plaintiff Depo., Volume I, 182:5-183:8;  
21 Plaintiff Depo., Volume II, 306:12:16  
22 [sic], 382:12-17, 390:4-11, Exh. 38;  
23 Hemedinger Depo., 54:17-21, 55:1-8;  
24 Gannon Decl., ¶ 3; Hemedinger Decl., ¶ 6.

64. Undisputed.

**Evidence:**

25  
26 65. The decision was made to reassign  
27 Plaintiff to the Marina Del Rey club be-  
28 cause Equinox wanted to rebuild the team

65. Disputed. Defendant's claim that  
Kasbarian was reassigned to Marina Del  
Rey because they wanted to rebuild the

1 of MAs in the West LA club and to create  
2 a fresh culture, as a result of the investiga-  
3 tion findings.

4 **Evidence:**

5 Rosen Depo., 71:7-20, 73:15-22, 76:5-14;  
6 Holmes Depo., 96:12-98:17; Hemedinger  
7 Depo., 51:7-52:23; Gannon Decl., ¶ 10.

team of Mas, yet one MA was allowed to  
stay at West LA

**Evidence:**

Rosen Depo., 48:22-49:3, 54:3-8, 98:6-17,  
76:5-14; Hemedinger Depo., 51:23-52:23;  
Holmes Depo., 88:4-10, 106:11-19,  
101:24-102:7; Gannon Depo., 70:8-71:15,  
72:7-20, 75:22-76:8, 79:5-10, 81:7-11;  
Gannon Decl., ¶ 6, 10.

11 66. Plaintiff's compensation plan would  
12 change once at Marina Del Rey to align  
13 with the compensation plan of Marina Del  
14 Rey MAs. Equinox considered the reas-  
15 signment a lateral move.

16 **Evidence:**

17 Rosen Depo., 87:25-88:4; Gannon Decl.,  
18 ¶ 11.

66. Undisputed that the compensation  
plan would change; however, disputed as  
to it being a lateral move. Kasbarian is told  
that she would be paid \$9.00/hour at the  
Marina del Rey office, which was a \$10.00  
per hour decrease in hourly rate that she  
was being paid at the West Los Angeles  
branch at \$19.23 per hour. Barry Holmes,  
Vice President of Sales, admits that urban  
clubs, such as the Santa Monica location,  
tend to generate more revenue than  
suburban clubs, like the Marina Del Rey  
location, and the West LA location is a  
higher tier club than urban clubs. Brian  
Hemedinger admits in deposition that they  
thought it would be "best for Tamar, if she  
had the opportunity to be a membership  
advisor at a different location," while

acknowledging that she would be going to a lower tier location than when she first started with the company. Moreover, when Kasbarian went to West LA she was promoted from MA to Membership Executive, which it stated on her “Promotion Memo.”

**Evidence:**

Exh. 10, 14; Kasbarian Depo., Vol. I, 50:24-51:1, 89:9-90:19, 279:14-280:12, 182:12-184:19; Kasbarian Depo., Vol. II, 354:1-18, 458:24-459:17; Gannon Decl., 9, 10; Holmes Depo., 28:22-29:2, 50:18-25; Gannon Depo., 32:15-17, 88:25-89:5; Hemedinger Depo., 50:14-20, 51:23-52:23, 81:2-23.

67. Equinox considered the reassignment a lateral move.

**Evidence:**

Rosen Depo., 87:25-88:4; Gannon Decl., ¶ 11.

67. Disputed. Kasbarian is told that she would be paid \$9.00/hour at the Marina del Rey office, which was a \$10.00 per hour decrease in hourly rate that she was being paid at the West Los Angeles branch at \$19.23 per hour. Barry Holmes, Vice President of Sales, admits that urban clubs, such as the Santa Monica location, tend to generate more revenue than suburban clubs, like the Marina Del Rey location, and the West LA location is a higher tier

club than urban clubs. Brian Hemedinger admits in deposition that they thought it would be “best for Tamar, if she had the opportunity to be a membership advisor at a different location,” while acknowledging that she would be going to a lower tier location than when she first started with the company. Moreover, when Kasbarian went to West LA she was promoted from MA to Membership Executive, which it stated on her “Promotion Memo.”

**Evidence:**

Exh. 10, 14; Kasbarian Depo., Vol. I, 50:24-51:1, 89:9-90:19, 279:14-280:12, 182:12-184:19; Kasbarian Depo., Vol. II, 354:1-18, 458:24-459:17; Gannon Decl., 9, 10; Holmes Depo., 28:22-29:2, 50:18-25; Gannon Depo., 32:15-17, 88:25-89:5; Hemedinger Depo., 50:14-20, 51:23-52:23, 81:2-23.

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.

**Evidence:**

Plaintiff Depo., Volume II, 390:4-11, Exh.

68. Undisputed.

**Evidence:**



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.

**Evidence:**

Hemedinger Depo., 52:18-23; Rosen Depo., 57:13-19; 58:22-59:14; Holmes Depo., 31:13-15.

69. Disputed. Kasbarian is told that she would be paid \$9.00/hour at the Marina del Rey office, which was a \$10.00 per hour decrease in hourly rate that she was being paid at the West Los Angeles branch at \$19.23 per hour. Barry Holmes, Vice President of Sales, admits that urban clubs, such as the Santa Monica location, tend to generate more revenue than suburban clubs, like the Marina Del Rey location, and the West LA location is a higher tier club than urban clubs. Brian Hemedinger admits in deposition that they thought it would be "best for Tamar, if she had the opportunity to be a membership advisor at a different location," while acknowledging that she would be going to a lower tier location than when she first started with the company. Moreover, when Kasbarian went to West LA she was promoted from MA to Membership Executive, which it stated on her "Promotion Memo."

**Evidence:**

Exh. 10, 14; Kasbarian Depo., Vol. I, 50:24-51:1, 89:9-90:19, 279:14-280:12, 182:12-184:19; Kasbarian Depo., Vol. II,

354:1-18, 458:24-459:17; Gannon Decl., 9, 10; Holmes Depo., 28:22-29:2, 50:18-25; Gannon Depo., 32:15-17, 88:25-89:5; Hemedinger Depo., 50:14-20, 51:23-52:23, 81:2-23.

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.

**Evidence:**

Hemedinger Depo., 52:18-23; Rosen Depo., 57:13-19; 58:22-59:14; Holmes Depo. , [sic] 50:18-51:5.

70. Disputed. Kasbarian is told that she would be paid \$9.00/hour at the Marina del Rey office, which was a \$10.00 per hour decrease in hourly rate that she was being paid at the West Los Angeles branch at \$19.23 per hour. Barry Holmes, Vice President of Sales, admits that urban clubs, such as the Santa Monica location, tend to generate more revenue than suburban clubs, like the Marina Del Rey location, and the West LA location is a higher tier club than urban clubs. Brian Hemedinger admits in deposition that they thought it would be “best for Tamar, if she had the opportunity to be a membership advisor at a different location,” while acknowledging that she would be going to a lower tier location than when she first started with the company. Moreover, when Kasbarian went to West LA she was promoted from MA to Membership Executive, which it stated on her “Promotion Memo.”

**Evidence:**

Exh. 10, 14; Kasbarian Depo., Vol. I, 50:24-51:1, 89:9-90:19, 279:14-280:12, 182:12-184:19; Kasbarian Depo., Vol. II, 354:1-18, 458:24-459:17; Gannon Decl., 9, 10; Holmes Depo., 28:22-29:2, 50:18-25; Gannon Depo., 32:15-17, 88:25-89:5; Hemedinger Depo., 50:14-20, 51:23-52:23, 81:2-23.

71. Gannon emailed Plaintiff the compensation plan for the Marina Del Rey Club on or about January 31, 2015.

**Evidence:**

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.

**Evidence:**

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.

71. Undisputed.

**Evidence:**

72. Undisputed as to no one stating those actual words; however, Kasbarian is told that she would be paid \$9.00/hour at the Marina del Rey office, which was a \$10.00 per hour decrease in hourly rate that she was being paid at the West Los Angeles branch at \$19.23 per hour. Barry Holmes, Vice President of Sales, admits that urban clubs, such as the Santa Monica location, tend to generate more revenue than suburban clubs, like the Marina Del Rey

1 location, and the West LA location is a  
2 higher tier club than urban clubs. Brian  
3 Hemedinger admits in deposition that they  
4 thought it would be “best for Tamar, if she  
5 had the opportunity to be a membership  
6 advisor at a different location,” while  
7 acknowledging that she would be going to  
8 a lower tier location than when she first  
9 started with the company. Moreover, when  
10 Kasbarian went to West LA she was  
11 promoted from MA to Membership  
12 Executive, which it stated on her  
13 “Promotion Memo.”

14 **Evidence:**

15 Exh. 10, 14; Kasbarian Depo., Vol. I,  
16 50:24-51:1, 89:9-90:19, 279:14-280:12,  
17 182:12-184:19; Kasbarian Depo., Vol. II,  
18 354:1-18, 458:24-459:17; Gannon Decl., 9,  
19 10; Holmes Depo., 28:22-29:2, 50:18-25;  
20 Gannon Depo., 32:15-17, 88:25-89:5;  
21 Hemedinger Depo., 50:14-20, 51:23-  
22 52:23, 81:2-23.

23  
24 73. Gannon made the decision to reas-  
25 sign Plaintiff to the Marina Del Rey club.

73. Undisputed.

26 **Evidence:**

27 Rosen Depo., 45:7-25. 57:8-12;  
28

**Evidence:**

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.

**Evidence:**

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.

**Evidence:**

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.

74. Undisputed.

**Evidence:**

75. Undisputed; however, Kasbarian was forced to resign due to intolerable working conditions at Equinox. On February 2, 2015, the day Kasbarian was supposed to start at the Marina del Rey location, she feels she is no longer welcome at Equinox and feels pushed out since she was forced to take a demotion, a significant pay cut and restart her business and clientele base, along with the overwhelming stress of the interrogation and suspension and fear of being terminated that she is forced to resign.

**Evidence:**

Exh. 16; Kasbarian Depo., Vol. I, 186:5-14; Kasbarian Decl., ¶¶ 12-14.

76. Plaintiff's last day of employment was February 2, 2015. 76. Undisputed.  
**Evidence:**

**Evidence:**  
Plaintiff Depo., Volume I, 186:11-14.

77. Plaintiff never reported to work at the Marina Del Rey club. 77. Undisputed.  
**Evidence:**

**Evidence:**  
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. Undisputed.  
**Evidence:**  
Gannon Decl., ¶ 6, 10.

**Evidence:**  
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. Undisputed. However, one MA was able to stay at the West LA location, despite Gannon stating he wanted to rebuild the team by getting rid of all of the Membership Executives at West LA.

**Evidence:**  
Plaintiff Depo., Volume II, 342:25-343:5.

**Evidence:**  
Rosen Depo., 76:5-14; Hemedinger Depo., 51:23-52:23; Holmes Depo., 101:24-102:7; Gannon Depo., 70:8-71:15, 81:7-11; Gannon Decl., ¶ 6, 10.

80. Plaintiff testified that she was un- 80. Undisputed.  
aware of any other MA at the West LA **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.

**Evidence:**

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 survive as a matter of law because Equinox did not have legitimate, non-retaliatory business reasons for reassigning Plaintiff to the Marina Del Rey club. (UF Nos. 1-80.)

**Alleged Undisputed Facts and  
Supporting Evidence**

**Plaintiff's Responses and  
Supporting Evidence**

1. Plaintiff was hired as a Membership 1. Undisputed.  
Advisor ("MA") at Equinox's Santa **Evidence:**  
Monica club on or about October 15, 2010.

**Evidence:**

Plaintiff Depo., Volume I, 36:23-38:10,  
Exh. 5 (Offer Letter).

2. In January 2014, Plaintiff began 2. Disputed. Kasbarian was promoted  
working at Equinox's West Los Angeles to the position of Membership Executive at  
club ("West LA club"). the West Los Angeles club ("West LA") in

**Evidence:**

October 2013.

Plaintiff Depo., Volume I, 189:22-190:12, **Evidence:**

1 Exh. 13 (Memo).

Exh. 10; Kasbarian Depo., Vol. I, 89:9-90:19, 279:14-280:12; Kasbarian Decl., ¶ 5; Hemedinger Depo., 50:4-9; Rosen Depo., 20:4-18; Holmes Depo., 39:13-18.

2  
3  
4  
5  
6 3. At the West LA club, MAs were re-ferred to as Membership Executives. However, their job duties were the same.

7  
8  
9 **Evidence:**

10 Declaration of Brian Hemedinger  
11 (“Hemedinger Decl.”), ¶ 3.

3. Disputed. A Membership Executive position is considered a promotion from an MA position. Kasbarian was specifically told her position as a Membership Executive was a promotion from an MA, and she received a memo on it, as well as a higher compensation plan. Kasbarian’s hourly rate also increased with her position as a Membership Executive, to \$19.23 per hour, as well as an increase in commissions and bonuses.

12  
13  
14  
15  
16  
17 **Evidence:**

18 Exh. 10; Kasbarian Depo., Vol. I, 89:9-90:19, 279:14-280:12; Kasbarian Decl., ¶ 5; Hemedinger Depo., 50:4-9; Rosen Depo., 20:4-18; Holmes Depo., 39:13-18.

19  
20  
21  
22  
23 4. During Plaintiff’s employment at Equinox Santa Monica and West LA clubs, Jack Gannon (“Gannon”) was the Vice President of the West Coast.

24  
25  
26  
27 **Evidence:**

28 Declaration of Jack Gannon (“Gannon

4. Undisputed.

**Evidence:**



Decl.”), ¶¶ 1-2.

5. From about October 2011 through 5. Undisputed.  
about June 2015, Brian Hemedinger **Evidence:**  
 (“Hemedinger”) was the Regional Director  
of Operations (“Regional Director”) of the  
Santa Monica and West LA clubs.

**Evidence:**

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. Undisputed.  
 (“Simonson) supervised Plaintiff at the **Evidence:**  
West LA club from about January 2014 to  
about January 2015.

**Evidence:**

Plaintiff Depo., Volume I, 52:11-19.

7. Plaintiff’s personnel file includes an 7. Undisputed.  
Employee Handbook Receipt Acknowl- **Evidence:**  
edgment Form with Plaintiff’s signature  
dated October 15, 2010.

**Evidence:**

Plaintiff Depo., Volume I, 43:18-45:15,  
Exh. 8 (Receipt Acknowledgement [sic]  
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 and myself.

**Evidence:**

Plaintiff Depo., Volume I, 43:18-45:15, Exh. 8 (Receipt Acknowledgement [sic] Form); Figueroa Decl., ¶ 5, Exh. B (Receipt Acknowledgement [sic] Form.

9. Plaintiff’s personnel file also includes an Offer Letter, dated October 15, 2010, which Plaintiff acknowledged receiving.

**Evidence:**

Plaintiff Depo., Volume I, 36:23-38:11, Exh. 5 (Offer Letter); Figueroa Decl., ¶ 6,

8. Undisputed, as to what the actual document states. However, disputed as to whether Kasbarian actually believed her employment was “at-will.” Kasbarian believes she would not be demoted, have her pay cut, her employment suspended, or, reassigned, etc. unless it was for good cause.

**Evidence:**

Kasbarian Decl., ¶¶ 4, 11, 13, 14.

9. Undisputed.

**Evidence:**

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.

**Evidence:**

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.

**Evidence:**

Figueroa Decl., ¶ 8, Exh. D.

12. This Agreement stated: “You agree and understand that nothing in this Agree-

10. Undisputed, as to what the actual document states. However, disputed as to whether Kasbarian actually believed her employment was “at-will.” Kasbarian believes she would not be demoted, have her pay cut, her employment suspended, or, reassigned, etc. unless it was for good cause.

**Evidence:**

Kasbarian Decl., ¶¶ 4, 11, 13, 14.

11. Undisputed.

**Evidence:**

12. Undisputed, as to what the actual document states. However, disputed as to

1 ment shall alter or modify the ‘at-will’  
2 nature of your employment with the Com-  
3 pany or confer on [y]ou any rights with re-  
4 spect to continuation of your employment  
5 with the Company.”

6 **Evidence:**

7 Figueroa Decl., ¶ 8, Exh. D.

whether Kasbarian actually believed her  
employment was “at-will.” Kasbarian  
believes she would not be demoted, have  
her pay cut, her employment suspended,  
or, reassigned, etc. unless it was for good  
cause.

8 **Evidence:**

9 Kasbarian Decl., ¶¶ 4, 11, 13, 14.

10 13. In her deposition, Plaintiff admitted  
11 that she did not have a contract with  
12 Equinox; no one ever told her that she was  
13 guaranteed employment for a certain time  
14 period; and no one ever told her that she  
15 was anything other than an at-will em-  
16 ployee.

17 **Evidence:**

18 Plaintiff Depo., Volume I, 36:23-38:11,  
19 43:18-45:15, Exh. 5 (Offer Letter), Exh. 8  
20 (Receipt Acknowledgement [sic] Form).

13. Undisputed, as to what the actual  
document states. However, disputed as to  
whether Kasbarian actually believed her  
employment was “at-will.” Kasbarian  
believes she would not be demoted, have  
her pay cut, her employment suspended,  
or, reassigned, etc. unless it was for good  
cause.

21 **Evidence:**

22 Kasbarian Decl., ¶¶ 4, 11, 13, 14.

23 14. The Employee Handbook Plaintiff  
24 acknowledged receiving also included  
25 Equinox’s non-retaliation policy as well as  
26 complaint procedures for reporting retalia-  
27 tion.

28 **Evidence:**

Plaintiff Depo., Volume I, 43:18-45:15,

14. Undisputed.

**Evidence:**

1 Exh. 8 Receipt of Employee Handbook;  
2 Declaration of Emerson Figueroa  
3 (“Figueroa Decl.”), Exh. A.  
4

5 15. In particular, Equinox’s policy strict- 15. Undisputed.  
6 ly prohibits retaliation against any employ- **Evidence:**  
7 ee for “filing a complaint and [Equinox]  
8 will not knowingly permit retaliation by  
9 management, employees, or co-workers.”  
10 Equinox’s policy also prohibits retaliation  
11 against any employee for “using this com-  
12 plaint procedure or for filing, testifying,  
13 assisting, or participating in any manner in  
14 any investigation, proceeding, or hearing  
15 conducted by a governmental enforcement  
16 agency. Additionally, Equinox will not  
17 knowingly permit any retaliation against  
18 any employee who complains of prohibited  
19 harassment or who participates in an inves-  
20 tigation.”

21 **Evidence:**

22 Plaintiff Depo., Volume I, 43:18-45:15,  
23 Exh. 8 Receipt of Employee Handbook;  
24 Figueroa Decl., Exh. A, Employee Hand-  
25 book.  
26

27 16. The complaint procedure as outlined 16. Undisputed.  
28 in the Employee Handbook permits an em- **Evidence:**

1 ployee to report retaliation to his or her  
2 manager, Human Resources, or through  
3 Equinox's Ethics Hotline.

4 **Evidence:**

5 Plaintiff Depo., Volume I, 43:18-45:15,  
6 Exh. 8 Receipt of Employee Handbook;  
7 Figueroa Decl. ¶ 4.  
8

9 17. In or about June 2014, Hemedinger  
10 informed Plaintiff and other MAs that the  
11 compensation plan for all West LA MAs  
12 was being clarified, so that the market bo-  
13 nuses would be paid out individually and  
14 not cumulatively for reaching a certain  
15 sales goal.

16 **Evidence:**

17 Plaintiff Depo., Volume I, 190:16-194:3,  
18 219:7-10; Plaintiff Depo., Volume II,  
19 347:22-348:1; Deposition of Barry Holmes  
20 ("Holmes Depo.") 69:4-71:12, 73:23-  
21 75:10, Exhs. 201-202; Hemedinger Depo.,  
22 60:11-61:3, 68:12-14, 70:19-72:3.; Rosen  
23 Depo., 33:5-15.  
24

17. Disputed. In June 2014, five months  
after Kasbarian started complaining about  
the fraudulent activities by other  
membership advisors, Kasbarian's  
commission and bonus check for May  
2014 was suddenly and for the first time  
since she started at West LA 25-33% short  
of what she was owed. Kasbarian  
immediately complained about her unpaid  
commissions and bonuses. After she  
complained defendant permanently cut her  
compensation plan stating that they have  
been paying her too much and in "error"  
and told her that she is "lucky that they  
were not asking her to pay the difference  
back."

25 **Evidence:**

26 Exhs. 11, 12, 13; Kasbarian Depo., Vol. I,  
27 201:1-206:5, 207:4-20, 209:19-210:8,  
28 221:11-14; Kasbarian Depo., Vol. II,

347:1-18; Kasbarian Decl., ¶¶ 8, 9; Hemedinger Depo., 59:14-60:10; Rosen Depo., 22:15-23:17, 29:18-31:6, Holmes Depo., 73:5-17, 81:7-24; 120:19-121:3; Figueroa Depo., 99:22- 100:5; Gannon Depo., 99:4-7; Hemedinger Depo., 59:14-60:10.

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

**Evidence:**

Plaintiff Depo., Volume I, 190:16-194:3; Hemedinger Depo., 64:18-65:11.

18. Disputed. In June 2014, five months after Kasbarian started complaining about the fraudulent activities by other membership advisors, Kasbarian's commission and bonus check for May 2014 was suddenly and for the first time since she started at West LA 25-33% short of what she was owed. Kasbarian immediately complained about her unpaid commissions and bonuses. After she complained defendant permanently cut her compensation plan stating that they have been paying her too much and in "error" and told her that she is "lucky that they were not asking her to pay the difference back."

**Evidence:**

Exhs. 11, 12, 13; Kasbarian Depo., Vol. I, 201:1-206:5, 207:4-20, 209:19-210:8, 221:11-14; Kasbarian Depo., Vol. II,

347:1-18; Kasbarian Decl., ¶¶ 8, 9; Hemedinger Depo., 59:14-60:10; Rosen Depo., 22:15-23:17, 29:18-31:6, Holmes Depo., 73:5-17, 81:7-24; 120:19-121:3; Figueroa Depo., 99:22- 100:5; Gannon Depo., 99:4-7; Hemedinger Depo., 59:14-60:10.

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.

**Evidence:**

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., 68:125-69:8.

19. Disputed. In June 2014, five months after Kasbarian started complaining about the fraudulent activities by other membership advisors, Kasbarian's commission and bonus check for May 2014 was suddenly and for the first time since she started at West LA 25-33% short of what she was owed. Kasbarian immediately complained about her unpaid commissions and bonuses. After she complained defendant permanently cut her compensation plan stating that they have been paying her too much and in "error" and told her that she is "lucky that they were not asking her to pay the difference back."

**Evidence:**

Exhs. 11, 12, 13; Kasbarian Depo., Vol. I, 201:1-206:5, 207:4-20, 209:19-210:8, 221:11-14; Kasbarian Depo., Vol. II,



347:1-18; Kasbarian Decl., ¶¶ 8, 9; Hemedinger Depo., 59:14-60:10; Rosen Depo., 22:15-23:17, 29:18-31:6, Holmes Depo., 73:5-17, 81:7-24; 120:19-121:3; Figueroa Depo., 99:22- 100:5; Gannon Depo., 99:4-7; Hemedinger Depo., 59:14-60:10.

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”).

**Evidence:**

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.

20. Undisputed as to Kasbarian’s complaints but otherwise disputed. In June 2014, five months after Kasbarian started complaining about the fraudulent activities by other membership advisors, Kasbarian’s commission and bonus check for May 2014 was suddenly and for the first time since she started at West LA 25-33% short of what she was owed. Kasbarian immediately complained about her unpaid commissions and bonuses. After she complained defendant permanently cut her compensation plan stating that they have been paying her too much and in “error” and told her that she is “lucky that they were not asking her to pay the difference back.”

**Evidence:**

Exhs. 11, 12, 13; Kasbarian Depo., Vol. I, 201:1-206:5, 207:4-20, 209:19-210:8,

221:11-14; Kasbarian Depo., Vol. II, 347:1-18; Kasbarian Decl., ¶¶ 8, 9; Hemedinger Depo., 59:14-60:10; Rosen Depo., 22:15-23:17, 29:18-31:6, Holmes Depo., 73:5-17, 81:7-24; 120:19-121:3; Figueroa Depo., 99:22- 100:5; Gannon Depo., 99:4-7; Hemedinger Depo., 59:14-60:10.

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.

**Evidence:**

Plaintiff Depo., Volume I, 196:8-14, 207:15-22, 220:5-20; Plaintiff Depo., Volume II, 349:5-12.

21. Undisputed to the fact that Kasbarian continued to work at Equinox until February 2015 after she complained; however, disputed as to the rest. In June 2014, five months after Kasbarian started complaining about the fraudulent activities by other membership advisors, Kasbarian's commission and bonus check for May 2014 was suddenly and for the first time since she started at West LA 25-33% short of what she was owed. Kasbarian immediately complained about her unpaid commissions and bonuses. After she complained defendant permanently cut her compensation plan stating that they have been paying her too much and in "error" and told her that she is "lucky that they were not asking her to pay the difference back."

**Evidence:**

Exhs. 11, 12, 13; Kasbarian Depo., Vol. I, 201:1-206:5, 207:4-20, 209:19-210:8, 221:11-14; Kasbarian Depo., Vol. II, 347:1-18; Kasbarian Decl., ¶¶ 8, 9; Hemedinger Depo., 59:14-60:10; Rosen Depo., 22:15-23:17, 29:18-31:6, Holmes Depo., 73:5-17, 81:7-24; 120:19-121:3; Figueroa Depo., 99:22- 100:5; Gannon Depo., 99:4-7; Hemedinger Depo., 59:14-60:10.

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.

**Evidence:**

Plaintiff Depo., Volume I, 81:6-21; 82:5-83:23, 94:14-97:9.

22. Undisputed. However, Kasbarian testified that she complained about multiple MAs at West LA, including Lauren Beck and Devin Mcvelogue about multiple fraudulent and unlawful activities, including charging members credit cards without their authorization.

**Evidence:**

Kasbarian Depo., Vol. I, 69:5-71:5, 71:20-72:4, 76:5-25, 82:9-83:19, 98:11-99:4, 102:13-103:25, 112:5-113:2; Kasbarian Depo., Vol. II, 334:16-25; Kasbarian Decl., ¶ 6; Hemedinger Depo., 43:13-15, 45:8-22, 46:10-22; 76:1-15.

23. According to Plaintiff, “charging

23. Undisputed. Gannon also testified

1 credit cards without people's approval and admitted in testimony that he believes  
2 telling people they were signing up for a that the type of conduct Kasbarian  
3 month-long contract, but then signing them complained of was illegal and is the type  
4 up for a year-long contract" were the only of conduct that needs to be investigated.  
5 "illegal activities" about which she com- **Evidence:**  
6 plained to Equinox. Gannon Depo., 51:10-15, 52:23-53:3.

7 **Evidence:**

8 Plaintiff Depo., Volume II, 334:16-336:23.

9  
10 24. According to Plaintiff, her other 24. Undisputed.  
11 complaints involved "things against **Evidence:**  
12 Equinox policies that were happening as  
13 well."

14 **Evidence:**

15 Plaintiff Depo., Volume II, 334:16-336:23.

16  
17 25. Plaintiff admitted that she could not 25. Disputed. Plaintiff testified that she  
18 identify any statute, ordinance, regulation, believed this conduct was illegal.  
19 local law, state law, or federal law that was Moreover, Gannon also testified and  
20 violated as a result of this alleged activity. admitted in testimony that he believes that  
21 the type of conduct Kasbarian complained  
22 of was illegal and is the type of conduct  
23 that needs to be investigated.

24 **Evidence:**

25 Plaintiff Depo., Volume II, 335:4-336:23.

26 **Evidence:**

27 Kasbarian Depo., Volume II, 334:16-  
28 336:23; Gannon Depo., 51:10-15, 52:23-  
53:3.

26. Plaintiff also testified that she complained to Hemedinger and Simonson about the sales activities of another MA.

**Evidence:**

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.

**Evidence:**

Plaintiff Depo., Volume I, 76:17-79:19p 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

26. Undisputed.

**Evidence:**

27. Undisputed. However, Kasbarian testified that she complained about multiple MAs at West LA, including Lauren Beck and Devin Mcvelogue about multiple fraudulent and unlawful activities, including charging members credit cards without their authorization.

**Evidence:**

Kasbarian Depo., Vol. I, 69:5-71:5, 71:20-72:4, 76:5-25, 82:9-83:19, 98:11-99:4, 102:13-103:25, 112:5-113:2; Kasbarian Depo., Vol. II, 334:16-25; Kasbarian Decl., ¶ 6; Hemedinger Depo., 43:13-15, 45:8-22, 46:10-22; 76:1-15.

28. Undisputed.

**Evidence:**

1 authorization.

2 **Evidence:**

3 Rosen Depo., 37:20-38:18; Declaration of  
4 Tracy Cuva (“Cuva Decl.”), ¶ 2.

5  
6 29. Member Services is Equinox’s bill- 29. Undisputed.  
7 ing department (centrally based in New **Evidence:**  
8 York) which handles membership con-  
9 tracts and membership sales, including  
10 auditing of membership sales.

11 **Evidence:**

12 Cuva Decl., ¶ 1.

13  
14 30. Rosen contacted Tracy Cuva, Senior 30. Undisputed.  
15 Director of Equinox’s Member Services **Evidence:**  
16 Department, gave her the information re-  
17 ceived from the member, and asked  
18 Member Services to investigate this sale.

19 **Evidence:**

20 Rosen Depo., 37:20-38:21; Cuva Decl.,  
21 ¶ 2.

22  
23 31. Member Services’ investigation, 31. Undisputed.  
24 which was conducted by Cuva, confirmed **Evidence:**  
25 that this was an unauthorized sale  
26 processed by a MA at the West LA Club  
27 (Plaintiff was not implicated in this  
28 transaction).

**Evidence:**

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.

**Evidence:**

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.

**Evidence:**

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.

32. Undisputed. However, this MA was terminated.

**Evidence:**

Kasbarian Depo., Vol. I, 84:7-85:1, 184:20-23; Kasbarian Decl., ¶ 10; Hemedinger Decl., ¶ 4; Gannon Depo., 58:20-59:18, 60:2-21.

33. Disputed. Senior Director of Loss Prevention, Jim Burger, testified that Jack Gannon contacted him to do an investigation at the West LA location and reported to him throughout.

**Evidence:**

Burger Depo., 70:9-21, 78:4-11, 83:18-84:3.

34. Disputed. Senior Director of Loss Prevention, Jim Burger, testified that Jack Gannon contacted him to do an investigation at the West LA location and reported to him throughout.

**Evidence:**

Burger Depo., 70:9-21, 78:4-11, 83:18-

**Evidence:** 84:3.

Rosen Depo., 47:25-48:21.

35. Cuva instructed Kevin Stanfa 35. Undisputed.

(“Stanfa”) (Manager of Compliance and **Evidence:**

Special Projects), to review sales transac-  
tions at the West LA club.

**Evidence:**

Cuva Decl., ¶ 3; Stanfa Decl. ¶ 4.

36. After Stanfa reported finding various 36. Undisputed.

anomalies associated with sales transac- **Evidence:**

tions at the West LA club, Cuva instructed  
Stanfa to prepare a summary detailing his  
findings.

**Evidence:**

Cuva Decl., ¶ 3; Stanfa Decl. ¶ 4.

37. Stanfa then prepared a workbook 37. Disputed. Defendant fails to produce  
with three spreadsheets regarding the fol- the spreadsheets corroborating those sales.

lowing sales activities: (1) 2014 Freezes; **Evidence:**

(2) Modification to Direct Bill; and Defendant’s Amended Compendium of  
(3) West LA Sales Breakdown. Exhibits.

**Evidence:**

Stanfa Decl., ¶ 4.

38. Once these were prepared, Cuva 38. Disputed. Defendant fails to produce  
emailed the spreadsheets to Rosen, Holmes the spreadsheets corroborating those sales.



1 and Gannon and summarized the results of  
2 the Member Services investigation.

3 **Evidence:**

4 Rosen Depo., 47:25-48:21; Holmes Depo.,  
5 86:10-88:10, 95:9-96:10; Cuva Decl., ¶ 6,  
6 Exh.N; Stanfa Decl. ¶¶ 4-5.

**Evidence:**

Defendant's Amended Compendium of  
Exhibits.

8 39. In her email, Cuva indicated that  
9 these spreadsheets "all reflect patterns un-  
10 healthy for the business."

11 **Evidence:**

12 Cuva Decl., ¶ 7, Exh.N.

39. Undisputed as to that statement being  
written in the email.

**Evidence:**

14 40. Cuva noted as follows:

15 i The 2041 Freezes spread-  
16 sheet shows that West LA is  
17 an outlier in members who  
18 request a freeze in the first 60  
19 days of membership who also  
20 go on to cancel in the same  
21 year.

22 i The Modification to Direct  
23 Bill spreadsheet reflects  
24 members in the last quarter  
25 of 2014 whose billing was  
26 modified from the credit card  
27 payment type to direct bill  
28 the day before billing ran.

40. Disputed. Kasbarian was found to  
have not committed any of the  
inappropriate and fraudulent conduct or  
"fake" sales that were being investigated.

**Evidence:**

Holmes Depo., 88:4-10, 106:11-19;  
Hemedinger Depo., 51:23-52:23; Rosen  
Depo., 48:22-49:3, 54:3-8, 76:5-14, 98:6-  
17, 101:24-102:7; Gannon Depo., 70:8-  
71:15, 72:7-20, 75:22-76:8, 79:5-10, 81:7-  
11; Gannon Decl., ¶ 6, 10.

1 The Company average is four  
2 per club. West LA had 28  
3 modifications to direct bill.

- 4 i The West LA Breakdown  
5 spreadsheet shows question-  
6 able sales from two MAs  
7 (Plaintiff and the MA moving  
8 to New York). The other  
9 three MAs were reviewed  
10 and did not reflect the same  
11 anomalies seen with Plaintiff  
12 and the MA moving to New  
13 York. The questionable sales  
14 included selling memberships  
15 to members with the credit  
16 card of another member (al-  
17 most universally without re-  
18 questing a referral credit) or  
19 re-contracting over a previ-  
20 ously 3-day'd membership  
21 and either using the credit  
22 from the previous sale or re-  
23 charging the same credit  
24 card, credit card not present  
25 for numerous sales transac-  
26 tions, 3-day cancellations  
27 with no or just one member  
28 visit, new memberships

1 which were previously fi-  
2 nance cancelled and had bal-  
3 ances on account that were  
4 waived.

5 **Evidence:**

6 Cuva Decl., ¶ 7, Exh.N.

7  
8 41. Neither Cuva nor Stanfa were aware  
9 Plaintiff had made any complaints about  
10 changes to her compensation plan or about  
11 the alleged activities of other MAs.

12 **Evidence:**

13 Cuva Decl., ¶ 8; Stanfa Decl., ¶ 11.

41. Undisputed. However, Kasbarian  
was found to have not committed any of  
the inappropriate and fraudulent conduct or  
“fake” sales that were being investigated.

**Evidence:**

41. Holmes Depo., 88:4-10, 106:11-19;  
Hemedinger Depo., 51:23-52:23; Rosen  
Depo., 48:22-49:3, 54:3-8, 76:5-14, 98:6-  
17, 101:24-102:7; Gannon Depo., 70:8-  
71:15, 72:7-20, 75:22-76:8, 79:5-10, 81:7-  
11; Gannon Decl., ¶ 6, 10.

**Evidence:**

14  
15  
16  
17  
18  
19  
20  
21  
22 42. In addition, Burger was asked to in-  
23 terview the sales team at the West LA  
24 club.

25 **Evidence:**

26 Deposition of Jim Burger (“Burger  
27 Depo.”), 72:4-73:3, 73:13-75:22, 76:6-12.

42. Undisputed.

**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 [sic] and an Assistant General Manager.

**Evidence:**

Hemedinger Decl., ¶ 4.

44. A MA was fired on or about January 20, 2015 for improper sales activities.

**Evidence:**

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.

**Evidence:**

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.

**Evidence:**

Burger Depo., 73:13-74:15; Cuva Decl.

43. Undisputed.

**Evidence:**

44. Undisputed.

**Evidence:**

45. Disputed. Defendant fails to produce the spreadsheets corroborating those sales.

**Evidence:**

Defendant's Amended Compendium of Exhibits.

46. Undisputed.

**Evidence:**

¶ 8; Stanfa Decl., ¶ 9.

47. Burger had a subsequent meeting with Stanfa to review the spreadsheets Member Services had prepared.

**Evidence:**

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.

**Evidence:**

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

47. Disputed. Defendant fails to produce the spreadsheets corroborating those sales.

**Evidence:**

Defendant's Amended Compendium of Exhibits.

48. Disputed. Defendant fails to produce the spreadsheets corroborating those sales. However, However, Kasbarian was found to have not committed any of the inappropriate and fraudulent conduct or "fake" sales that were being investigated.

**Evidence:**

Defendant's Amended Compendium of Exhibits; Holmes Depo., 88:4-10, 106:11-19; Hemedinger Depo., 51:23-52:23; Rosen Depo., 48:22-49:3, 54:3-8, 76:5-14, 98:6-17, 101:24-102:7; Gannon Depo., 70:8-71:15, 72:7-20, 75:22-76:8, 79:5-10, 81:7-11; Gannon Decl., ¶ 6, 10.

49. Undisputed.

**Evidence:**

1 the West LA Club.

2 **Evidence:**

3 Burger Depo., 76:19-77:1; Stanfa Decl.,  
4 ¶ 9.

5  
6 50. In late January 2015, Burger came to 50. Undisputed.  
7 Los Angeles to interview various employ- **Evidence:**  
8 ees regarding sales activities of the West  
9 LA MAs.

10 **Evidence:**

11 Burger Depo., 76:6-12; Gannon Decl., ¶ 3;  
12 Hemedinger Decl., ¶ 5.

13  
14 51. Prior to the interviews, Burger and 51. Disputed. Gannon testified that one  
15 Gannon discussed suspending all of the in- MA was not suspended and was not  
16 dividuals interviewed as part of the investi- discussed suspending because there “was  
17 gation pending the results of the investiga- no suspicious conduct linked to him” even  
18 tion.

19 **Evidence:**

20 Burger Depo., 116:12-117:12.

**Evidence:**

Gannon Depo., 70:8-71:19, 81:7-11;  
Gannon Decl., ¶ 6, 10.

21  
22  
23 52. Burger then interviewed the follow- 52. Disputed. Gannon testified that one  
24 ing individuals: (1) the Assistant General MA was not suspended and was not  
25 Manager; (2) Plaintiff; (3) another MA; discussed suspending because there “was  
26 (4) a relatively newly hired MA; and no suspicious conduct linked to him” even  
27 (5) Simonson. at the beginning of the investigation.

28 **Evidence:**

**Evidence:**

Hemedinger Decl., ¶ 5.

Gannon Depo., 70:8-71:19, 81:7-11;  
Gannon Decl., ¶ 6, 10.

53. Burger had never heard of or spoken  
to Plaintiff prior to this investigation meet-  
ing.

53. Undisputed.

**Evidence:**

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 prac-  
tices.

54. Undisputed.

**Evidence:**

Plaintiff Depo., Volume I, 161:11-22,  
164:10-22; Plaintiff Depo., Volume II,  
305:21-24; , [sic] Burger Depo., 96:18-25.

**Evidence:**

55. Plaintiff answered questions about  
her sales activities, as well as the activities  
of other MAs.

55. Undisputed. Additionally, at the  
beginning of Kasbarian's interview, she  
notifies Senior Director of Loss  
Prevention, Jim Burger, about the  
fraudulent activity and unauthorized  
membership sales that she observed and  
complained about to management for  
months

**Evidence:**

Plaintiff Depo., Volume I, 161:11-22,  
164:10-22; Burger Depo., 53:13-54:9.

**Evidence:**

Exh. 17; Kasbarian Depo., Vol. I, 158:4-

1 18, 161:15-162:1, 166:9-167:2; Kasbarian  
2 Decl., ¶¶ 10, 11; Burger Depo., 70:9-21,  
3 78:4-11, 83:18-84:3, 91:5-92:18, 100:3-8,  
4 183:21-184:12.

5  
6 56. While Burger did not find Plaintiff  
7 credible, he felt, at that time, that there was  
8 insufficient information to warrant Plain-  
9 tiff's termination.

10 **Evidence:**

11 Burger Depo., 122:14-17.  
12  
13

56. Undisputed as to Burger concluding  
there was insufficient information to  
warrant any terminable offense committed  
by Burger. Kasbarian was found to have  
not committed any of the inappropriate and  
fraudulent conduct or "fake" sales that  
were being investigated.

14 **Evidence:**

15 Holmes Depo., 88:4-10, 106:11-19;  
16 Hemedinger Depo., 51:23-52:23; Rosen  
17 Depo., 48:22-49:3, 54:3-8, 76:5-14, 98:6-  
18 17, 101:24-102:7; Gannon Depo., 70:8-  
19 71:15, 72:7-20, 75:22-76:8, 79:5-10, 81:7-  
20 11; Gannon Decl., ¶ 6, 10.

21  
22 57. After Burger completed his inter-  
23 views, Burger, Gannon and Hemedinger  
24 met briefly to discuss Burger's impression.

25 **Evidence:**

26 Burger Depo., 117:16-18, 24-118:6.  
27

57. Undisputed.

**Evidence:**

28 58. Gannon then advised Plaintiff that

58. Undisputed. However, she was



1 she was being suspended.

2 **Evidence:**

3 Plaintiff Depo, Volume I, 174:24-175:3,  
4 11-12; Plaintiff Depo., Volume II, 306:3-7;  
5 Gannon Decl., ¶ 4.

suspended despite her having been found  
to not have committed any terminable  
offense.

6 **Evidence:**

7 Holmes Depo., 88:4-10, 106:11-19;  
8 Hemedinger Depo., 51:23-52:23; Rosen  
9 Depo., 48:22-49:3, 54:3-8, 76:5-14, 98:6-  
10 17, 101:24-102:7; Gannon Depo., 70:8-  
11 71:15, 72:7-20, 75:22-76:8, 79:5-10, 81:7-  
12 11; Gannon Decl., ¶ 6, 10.

13 59. All of the MAs interviewed as part of  
14 the investigation (with the exception of the  
15 relatively new MA) were suspended pend-  
16 ing investigation.

17 **Evidence:**

18 Burger Depo., ¶ [sic] 110:17-23; Gannon  
19 Decl., ¶ 6.

59. Undisputed. One MA was not  
suspended.

20 **Evidence:**

21 Gannon Depo., 70:8-71:15, 81:7-11;  
22 Gannon Decl., ¶ 6, 10.

23 60. Gannon also advised Plaintiff to re-  
24 port back to the West LA club at 2:00 p.m.  
25 the next day for another meeting.

26 **Evidence:**

27 Plaintiff Depo., Volume II, 180:11-181:4;  
28 Gannon Decl., ¶ 5.

60. Undisputed.

**Evidence:**

61. According to Plaintiff, Equinox told  
her that she would not have access to her

61. Undisputed.

**Evidence:**

1 email or payroll account and escorted her  
2 out of the building in front of Equinox's  
3 clientele, staff and all of her peers.

4 **Evidence:**

5 Plaintiff Depo., Volume II, 174:24-175:21;  
6 Plaintiff Depo., Volume II, 305:21-306:2,  
7 364:17-20; Plaintiff's Complaint, 6:5-7.

8  
9 62. It is Equinox's policy to turn off  
10 email access for hourly employees who  
11 have been suspended pending investigation  
12 or who are on leave of absence.

13 **Evidence:**

14 Gannon Decl., ¶ 7.

15  
16 63. Prior to Burger's interview of Plain-  
17 tiff, Gannon had the Payroll Department  
18 prepare a final paycheck for Plaintiff so  
19 that she could be paid in accordance with  
20 California law in the event the decision  
21 was made to terminate her employment.

22 **Evidence:**

23 Gannon Decl., ¶ 8.

24  
25  
26  
27 64. Plaintiff met with Hemedinger and  
28 Gannon at the West LA club on January

62. Disputed. Defendant did not produce  
any documentation corroborating this  
policy.

**Evidence:**

Defendant's Amended Compendium of  
Evidence.

63. Undisputed as to Gannon preparing  
the final paycheck; however, this paycheck  
was prepared by Gannon even before the  
interview in preparation for Kasbarian's  
termination.

**Evidence:**

Gannon Decl., ¶ 8; Exh. 15; Kasbarian  
Depo., Vol. I, 130:21-131:3, 185:5-15;  
Kasbarian Depo., Vol. II, 311:9-22;  
Kasbarian Decl., ¶ 11.

64. Undisputed.

**Evidence:**

31, 2015 and was told that the investigation was concluded and that she would be working at the Marina Del Rey club.

**Evidence:**

Plaintiff Depo., Volume I, 182:5-183:8; Plaintiff Depo., Volume II, 306:12:16 [sic], 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.

**Evidence:**

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.

65. Disputed. Defendant's claim that Kasbarian was reassigned to Marina Del Rey because they wanted to rebuild the team of Mas, yet one MA was allowed to stay at West LA

**Evidence:**

Rosen Depo., 48:22-49:3, 54:3-8, 98:6-17, 76:5-14; Hemedinger Depo., 51:23-52:23; Holmes Depo., 88:4-10, 106:11-19, 101:24-102:7; Gannon Depo., 70:8-71:15, 72:7-20, 75:22-76:8, 79:5-10, 81:7-11; Gannon Decl., ¶ 6, 10.

66. Undisputed that the compensation plan would change; however, disputed as to it being a lateral move. Kasbarian is told that she would be paid \$9.00/hour at the Marina del Rey office, which was a \$10.00

**Evidence:**

Rosen Depo., 87:25-88:4; Gannon Decl.,  
¶ 11.

per hour decrease in hourly rate that she was being paid at the West Los Angeles branch at \$19.23 per hour. Barry Holmes, Vice President of Sales, admits that urban clubs, such as the Santa Monica location, tend to generate more revenue than suburban clubs, like the Marina Del Rey location, and the West LA location is a higher tier club than urban clubs. Brian Hemedinger admits in deposition that they thought it would be “best for Tamar, if she had the opportunity to be a membership advisor at a different location,” while acknowledging that she would be going to a lower tier location than when she first started with the company. Moreover, when Kasbarian went to West LA she was promoted from MA to Membership Executive, which it stated on her “Promotion Memo.”

**Evidence:**

Exh. 10, 14; Kasbarian Depo., Vol. I, 50:24-51:1, 89:9-90:19, 279:14-280:12, 182:12-184:19; Kasbarian Depo., Vol. II, 354:1-18, 458:24-459:17; Gannon Decl., 9, 10; Holmes Depo., 28:22-29:2, 50:18-25; Gannon Depo., 32:15-17, 88:25-89:5; Hemedinger Depo., 50:14-20, 51:23-

52:23, 81:2-23.

67. Equinox considered the reassignment  
a lateral move.

**Evidence:**

Rosen Depo., 87:25-88:4; Gannon Decl.,  
¶ 11.

67. Disputed. Kasbarian is told that she  
would be paid \$9.00/hour at the Marina del  
Rey office, which was a \$10.00 per hour  
decrease in hourly rate that she was being  
paid at the West Los Angeles branch at  
\$19.23 per hour. Barry Holmes, Vice  
President of Sales, admits that urban clubs,  
such as the Santa Monica location, tend to  
generate more revenue than suburban  
clubs, like the Marina Del Rey location,  
and the West LA location is a higher tier  
club than urban clubs. Brian Hemedinger  
admits in deposition that they thought it  
would be “best for Tamar, if she had the  
opportunity to be a membership advisor at  
a different location,” while acknowledging  
that she would be going to a lower tier  
location than when she first started with  
the company. Moreover, when Kasbarian  
went to West LA she was promoted from  
MA to Membership Executive, which it  
stated on her “Promotion Memo.”

**Evidence:**

Exh. 10, 14; Kasbarian Depo., Vol. I,  
50:24-51:1, 89:9-90:19, 279:14-280:12,  
182:12-184:19; Kasbarian Depo., Vol. II,

354:1-18, 458:24-459:17; Gannon Decl., 9, 10; Holmes Depo., 28:22-29:2, 50:18-25; Gannon Depo., 32:15-17, 88:25-89:5; Hemedinger Depo., 50:14-20, 51:23-52:23, 81:2-23.

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.

**Evidence:**

Plaintiff Depo., Volume II, 390:4-11, Exh. 38; Gannon Decl., ¶ 12.

68. Undisputed.

**Evidence:**

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.

**Evidence:**

Hemedinger Depo., 52:18-23; Rosen Depo., 57:13-19; 58:22-59:14; Holmes Depo., 31:13-15.

69. Disputed. Kasbarian is told that she would be paid \$9.00/hour at the Marina del Rey office, which was a \$10.00 per hour decrease in hourly rate that she was being paid at the West Los Angeles branch at \$19.23 per hour. Barry Holmes, Vice President of Sales, admits that urban clubs, such as the Santa Monica location, tend to generate more revenue than suburban clubs, like the Marina Del Rey location, and the West LA location is a higher tier club than urban clubs. Brian Hemedinger admits in deposition that they thought it would be "best for Tamar, if she had the

1 opportunity to be a membership advisor at  
2 a different location,” while acknowledging  
3 that she would be going to a lower tier  
4 location than when she first started with  
5 the company. Moreover, when Kasbarian  
6 went to West LA she was promoted from  
7 MA to Membership Executive, which it  
8 stated on her “Promotion Memo.”

9 **Evidence:**

10 Exh. 10, 14; Kasbarian Depo., Vol. I,  
11 50:24-51:1, 89:9-90:19, 279:14-280:12,  
12 182:12-184:19; Kasbarian Depo., Vol. II,  
13 354:1-18, 458:24-459:17; Gannon Decl., 9,  
14 10; Holmes Depo., 28:22-29:2, 50:18-25;  
15 Gannon Depo., 32:15-17, 88:25-89:5;  
16 Hemedinger Depo., 50:14-20, 51:23-  
17 52:23, 81:2-23.

18  
19 70. It was easier to sell more member-  
20 ships at the Marina Del Rey club than the  
21 West LA club because the Marina Del Rey  
22 memberships were less expensive.

23 **Evidence:**

24 Hemedinger Depo., 52:18-23; Rosen  
25 Depo., 57:13-19; 58:22-59:14; Holmes  
26 Depo. , [sic] 50:18-51:5.

70. Disputed. Kasbarian is told that she  
would be paid \$9.00/hour at the Marina del  
Rey office, which was a \$10.00 per hour  
decrease in hourly rate that she was being  
paid at the West Los Angeles branch at  
\$19.23 per hour. Barry Holmes, Vice  
President of Sales, admits that urban clubs,  
such as the Santa Monica location, tend to  
generate more revenue than suburban  
clubs, like the Marina Del Rey location,

1 and the West LA location is a higher tier  
2 club than urban clubs. Brian Hemedinger  
3 admits in deposition that they thought it  
4 would be “best for Tamar, if she had the  
5 opportunity to be a membership advisor at  
6 a different location,” while acknowledging  
7 that she would be going to a lower tier  
8 location than when she first started with  
9 the company. Moreover, when Kasbarian  
10 went to West LA she was promoted from  
11 MA to Membership Executive, which it  
12 stated on her “Promotion Memo.”

13 **Evidence:**

14 Exh. 10, 14; Kasbarian Depo., Vol. I,  
15 50:24-51:1, 89:9-90:19, 279:14-280:12,  
16 182:12-184:19; Kasbarian Depo., Vol. II,  
17 354:1-18, 458:24-459:17; Gannon Decl., 9,  
18 10; Holmes Depo., 28:22-29:2, 50:18-25;  
19 Gannon Depo., 32:15-17, 88:25-89:5;  
20 Hemedinger Depo., 50:14-20, 51:23-  
21 52:23, 81:2-23.

22  
23 71. Gannon emailed Plaintiff the com-  
24 pensation plan for the Marina Del Rey  
25 Club on or about January 31, 2015.

26 **Evidence:**

27 Plaintiff Depo., Volume I, 246:19-247:2;  
28

71. Undisputed.

**Evidence:**



1 Gannon Decl., ¶ 12.

2  
3 72. Plaintiff testified that no one from  
4 Equinox ever told her that she was being  
5 “terminated” or “demoted” as part of her  
6 reassignment to the Marina Del Rey club.

7 **Evidence:**

8 Plaintiff Depo., Volume I, 171:10-172:7;  
9 Plaintiff Depo., Volume II, 306:17-310:19,  
10 363:24-364:3; Gannon Decl., ¶ 13;  
11 Hemedinger Decl., ¶ 7.

72. Undisputed as to no one stating those  
actual words; however, Kasbarian is told  
that she would be paid \$9.00/hour at the  
Marina del Rey office, which was a \$10.00  
per hour decrease in hourly rate that she  
was being paid at the West Los Angeles  
branch at \$19.23 per hour. Barry Holmes,  
Vice President of Sales, admits that urban  
clubs, such as the Santa Monica location,  
tend to generate more revenue than  
suburban clubs, like the Marina Del Rey  
location, and the West LA location is a  
higher tier club than urban clubs. Brian  
Hemedinger admits in deposition that they  
thought it would be “best for Tamar, if she  
had the opportunity to be a membership  
advisor at a different location,” while  
acknowledging that she would be going to  
a lower tier location than when she first  
started with the company. Moreover, when  
Kasbarian went to West LA she was  
promoted from MA to Membership  
Executive, which it stated on her  
“Promotion Memo.”

27 **Evidence:**

28 Exh. 10, 14; Kasbarian Depo., Vol. I,

50:24-51:1, 89:9-90:19, 279:14-280:12,  
182:12-184:19; Kasbarian Depo., Vol. II,  
354:1-18, 458:24-459:17; Gannon Decl., 9,  
10; Holmes Depo., 28:22-29:2, 50:18-25;  
Gannon Depo., 32:15-17, 88:25-89:5;  
Hemedinger Depo., 50:14-20, 51:23-  
52:23, 81:2-23.

73. Gannon made the decision to reas- 73. Undisputed.  
sign Plaintiff to the Marina Del Rey club. **Evidence:**

**Evidence:**

Rosen Depo., 45:7-25. 57:8-12;  
Hemedinger Depo., 53:14-18.

74. Plaintiff was told to report to the 74. Undisputed.  
Marina Del Rey club on February 2, 2015 **Evidence:**  
at 9:00 a.m.

**Evidence:**

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 75. Undisputed; however, Kasbarian was  
Rey club, Plaintiff submitted her resigna- forced to resign due to intolerable working  
tion, via email, on the morning of February conditions at Equinox. On February 2,  
2, 2015 effective immediately. 2015, the day Kasbarian was supposed to  
start at the Marina del Rey location, she

**Evidence:**

1 Plaintiff Depo., Volume I, 186:5-14, Exh. feels she is no longer welcome at Equinox  
2 26; Plaintiff Depo., Volume II, 311:4-8; and feels pushed out since she was forced  
3 Hemedinger Depo., 54:17-55:18, 55:25- to take a demotion, a significant pay cut  
4 56:25, 57:6-57:11. and restart her business and clientele base,

5 along with the overwhelming stress of the  
6 interrogation and suspension and fear of  
7 being terminated that she is forced to  
8 resign.

9 **Evidence:**

10 Exh. 16; Kasbarian Depo., Vol. I, 186:5-  
11 14; Kasbarian Decl., ¶¶ 12-14.

12  
13 76. Plaintiff's last day of employment 76. Undisputed.  
14 was February 2, 2015. **Evidence:**

15 **Evidence:**

16 Plaintiff Depo., Volume I, 186:11-14.

17  
18 77. Plaintiff never reported to work at 77. Undisputed.  
19 the Marina Del Rey club. **Evidence:**

20 **Evidence:**

21 Plaintiff Depo., Volume I, 50:13-15,  
22 186:15-17; Hemedinger Depo., 56:22-25.

23  
24 78. As of February 1, 2015, the only re- 78. Undisputed.  
25 maining MA at the West LA club was the **Evidence:**  
26 recently hired MA. Gannon Decl., ¶ 6, 10.

27 **Evidence:**

1 Plaintiff Depo., Volume II, 342:3-11.

2  
3 79. As of April/May 2015, the West LA  
4 club had an entirely new sales team and  
5 sales management.

6 **Evidence:**

7 Plaintiff Depo., Volume II, 342:25-343:5.

79. Undisputed. However, one MA was  
able to stay at the West LA location,  
despite Gannon stating he wanted to  
rebuild the team by getting rid of all of the  
Membership Executives at West LA.

8 **Evidence:**

9 Rosen Depo., 76:5-14; Hemedinger Depo.,  
10 51:23-52:23; Holmes Depo., 101:24-  
11 102:7; Gannon Depo., 70:8-71:15, 81:7-  
12 11; Gannon Decl., ¶ 6, 10.

13  
14 80. Plaintiff testified that she was un-  
15 aware of any other MA at the West LA  
16 club complaining about the unauthorized  
17 use of credit cards or telling someone that  
18 they were being signed up for a one-month  
19 membership but signing them up for a year  
20 instead.

21 **Evidence:**

22 Plaintiff Depo., Volume II, 343:6-22.

80. Undisputed.

23 **Evidence:**

24 **ISSUE NO. 17:** Although Plaintiff has not pled a cause of action for constructive dis-  
25 charge, such a claim (even if properly pled) would also survive as a matter of law  
26 because can show the reasons she was reassigned to the Marina Del Rey club were  
27 pretextual. (UF Nos. 1-80.)

28 **Alleged Undisputed Facts and**

**Plaintiff's Responses and**

**Supporting Evidence**

1. Plaintiff was hired as a Membership Advisor (“MA”) at Equinox’s Santa Monica club on or about October 15, 2010.

**Evidence:**

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”).

**Evidence:**

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.

**Evidence:**

Declaration of Brian Hemedinger (“Hemedinger Decl.”), ¶ 3.

**Supporting Evidence**

1. Undisputed.

**Evidence:**

2. Disputed. Kasbarian was promoted to the position of Membership Executive at the West Los Angeles club (“West LA”) in October 2013.

**Evidence:**

Exh. 10; Kasbarian Depo., Vol. I, 89:9-90:19, 279:14-280:12; Kasbarian Decl., ¶ 5; Hemedinger Depo., 50:4-9; Rosen Depo., 20:4-18; Holmes Depo., 39:13-18.

3. Disputed. A Membership Executive position is considered a promotion from an MA position. Kasbarian was specifically told her position as a Membership Executive was a promotion from an MA, and she received a memo on it, as well as a higher compensation plan. Kasbarian’s hourly rate also increased with her position as a Membership Executive, to \$19.23 per hour, as well as an increase in

commissions and bonuses.

**Evidence:**

Exh. 10; Kasbarian Depo., Vol. I, 89:9-90:19, 279:14-280:12; Kasbarian Decl., ¶ 5; Hemedinger Depo., 50:4-9; Rosen Depo., 20:4-18; Holmes Depo., 39:13-18.

4. During Plaintiff's employment at Equinox Santa Monica and West LA clubs, Jack Gannon ("Gannon") was the Vice President of the West Coast.

**Evidence:**

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.

**Evidence:**

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

**Evidence:**

West LA club from about January 2014 to about January 2015.

**Evidence:**

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.

**Evidence:**

Plaintiff Depo., Volume I, 43:18-45:15, Exh. 8 (Receipt Acknowledgement [sic] 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 and myself.

7. Undisputed.

**Evidence:**

8. Undisputed, as to what the actual document states. However, disputed as to whether Kasbarian actually believed her employment was "at-will." Kasbarian believes she would not be demoted, have her pay cut, her employment suspended, or, reassigned, etc. unless it was for good cause.

**Evidence:**

Kasbarian Decl., ¶¶ 4, 11, 13, 14.

**Evidence:**

Plaintiff Depo., Volume I, 43:18-45:15, Exh. 8 (Receipt Acknowledgement [sic] Form); Figueroa Decl., ¶ 5, Exh. B (Receipt Acknowledgement [sic] Form).

9. Plaintiff's personnel file also includes an Offer Letter, dated October 15, 2010, which Plaintiff acknowledged receiving.

**Evidence:**

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.

**Evidence:**

9. Undisputed.

**Evidence:**

10. Undisputed, as to what the actual document states. However, disputed as to whether Kasbarian actually believed her employment was "at-will." Kasbarian believes she would not be demoted, have her pay cut, her employment suspended, or, reassigned, etc. unless it was for good cause.

**Evidence:**

Kasbarian Decl., ¶¶ 4, 11, 13, 14.



1 Plaintiff Depo., Volume I, 36:23-38:11,  
2 Exh. 5 (Offer Letter); Figueroa Decl., ¶ 6,  
3 Exh. C (Offer Letter).

4  
5 11. Plaintiff's personnel file also in- 11. Undisputed.  
6 cludes an Employee Confidentiality and **Evidence:**  
7 Non-Solicitation Agreement with Plain-  
8 tiff's signature dated October 14, 2010.

9 **Evidence:**

10 Figueroa Decl., ¶ 8, Exh. D.

11  
12 12. This Agreement stated: "You agree 12. Undisputed, as to what the actual  
13 and understand that nothing in this Agree- document states. However, disputed as to  
14 ment shall alter or modify the 'at-will' whether Kasbarian actually believed her  
15 nature of your employment with the Com- employment was "at-will." Kasbarian  
16 pany or confer on [y]ou any rights with re- believes she would not be demoted, have  
17 spect to continuation of your employment her pay cut, her employment suspended,  
18 with the Company."

19 **Evidence:**

20 Figueroa Decl., ¶ 8, Exh. D.

**Evidence:**

21 Kasbarian Decl., ¶¶ 4, 11, 13, 14.

22  
23 13. In her deposition, Plaintiff admitted 13. Undisputed, as to what the actual  
24 that she did not have a contract with document states. However, disputed as to  
25 Equinox; no one ever told her that she was whether Kasbarian actually believed her  
26 guaranteed employment for a certain time employment was "at-will." Kasbarian  
27 period; and no one ever told her that she believes she would not be demoted, have  
28 was anything other than an at-will em- her pay cut, her employment suspended,

1 ployee. or, reassigned, etc. unless it was for good  
2 **Evidence:** cause.

3 Plaintiff Depo., Volume I, 36:23-38:11, **Evidence:**  
4 43:18-45:15, Exh. 5 (Offer Letter), Exh. 8 Kasbarian Decl., ¶¶ 4, 11, 13, 14.  
5 (Receipt Acknowledgement [sic] Form).  
6

7 14. The Employee Handbook Plaintiff 14. Undisputed.  
8 acknowledged receiving also included **Evidence:**  
9 Equinox's non-retaliation policy as well as  
10 complaint procedures for reporting retalia-  
11 tion.

12 **Evidence:**  
13 Plaintiff Depo., Volume I, 43:18-45:15,  
14 Exh. 8 Receipt of Employee Handbook;  
15 Declaration of Emerson Figueroa  
16 ("Figueroa Decl."), Exh. A.  
17

18 15. In particular, Equinox's policy strict- 15. Undisputed.  
19 ly prohibits retaliation against any employ- **Evidence:**  
20 ee for "filing a complaint and [Equinox]  
21 will not knowingly permit retaliation by  
22 management, employees, or co-workers."  
23 Equinox's policy also prohibits retaliation  
24 against any employee for "using this com-  
25 plaint procedure or for filing, testifying,  
26 assisting, or participating in any manner in  
27 any investigation, proceeding, or hearing  
28 conducted by a governmental enforcement

1 agency. Additionally, Equinox will not  
2 knowingly permit any retaliation against  
3 any employee who complains of prohibited  
4 harassment or who participates in an inves-  
5 tigation.”

6 **Evidence:**

7 Plaintiff Depo., Volume I, 43:18-45:15,  
8 Exh. 8 Receipt of Employee Handbook;  
9 Figueroa Decl., Exh. A, Employee Hand-  
10 book.

12 16. The complaint procedure as outlined  
13 in the Employee Handbook permits an em-  
14 ployee to report retaliation to his or her  
15 manager, Human Resources, or through  
16 Equinox’s Ethics Hotline.

17 **Evidence:**

18 Plaintiff Depo., Volume I, 43:18-45:15,  
19 Exh. 8 Receipt of Employee Handbook;  
20 Figueroa Decl. ¶ 4.

22 17. In or about June 2014, Hemedinger  
23 informed Plaintiff and other MAs that the  
24 compensation plan for all West LA MAs  
25 was being clarified, so that the market bo-  
26 nuses would be paid out individually and  
27 not cumulatively for reaching a certain  
28 sales goal.

16. Undisputed.

**Evidence:**

17. Disputed. In June 2014, five months  
after Kasbarian started complaining about  
the fraudulent activities by other  
membership advisors, Kasbarian’s  
commission and bonus check for May  
2014 was suddenly and for the first time  
since she started at West LA 25-33% short

**Evidence:**

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.

of what she was owed. Kasbarian immediately complained about her unpaid commissions and bonuses. After she complained defendant permanently cut her compensation plan stating that they have been paying her too much and in “error” and told her that she is “lucky that they were not asking her to pay the difference back.”

**Evidence:**

Exhs. 11, 12, 13; Kasbarian Depo., Vol. I, 201:1-206:5, 207:4-20, 209:19-210:8, 221:11-14; Kasbarian Depo., Vol. II, 347:1-18; Kasbarian Decl., ¶¶ 8, 9; Hemedinger Depo., 59:14-60:10; Rosen Depo., 22:15-23:17, 29:18-31:6, Holmes Depo., 73:5-17, 81:7-24; 120:19-121:3; Figueroa Depo., 99:22- 100:5; Gannon Depo., 99:4-7; Hemedinger Depo., 59:14-60:10.

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

18. Disputed. In June 2014, five months after Kasbarian started complaining about the fraudulent activities by other membership advisors, Kasbarian’s commission and bonus check for May 2014 was suddenly and for the first time since she started at West LA 25-33% short

- 125% of goal—MA would receive an extra \$55 per sale
- 150% of goal—MA would receive an extra \$70 per sale

**Evidence:**

Plaintiff Depo., Volume I, 190:16-194:3; Hemedinger Depo., 64:18-65:11.

of what she was owed. Kasbarian immediately complained about her unpaid commissions and bonuses. After she complained defendant permanently cut her compensation plan stating that they have been paying her too much and in “error” and told her that she is “lucky that they were not asking her to pay the difference back.”

**Evidence:**

Exhs. 11, 12, 13; Kasbarian Depo., Vol. I, 201:1-206:5, 207:4-20, 209:19-210:8, 221:11-14; Kasbarian Depo., Vol. II, 347:1-18; Kasbarian Decl., ¶¶ 8, 9; Hemedinger Depo., 59:14-60:10; Rosen Depo., 22:15-23:17, 29:18-31:6, Holmes Depo., 73:5-17, 81:7-24; 120:19-121:3; Figueroa Depo., 99:22- 100:5; Gannon Depo., 99:4-7; Hemedinger Depo., 59:14-60:10.

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.

**Evidence:**

Plaintiff Depo., Volume I, 190:16-194:3;

19. Disputed. In June 2014, five months after Kasbarian started complaining about the fraudulent activities by other membership advisors, Kasbarian’s commission and bonus check for May 2014 was suddenly and for the first time since she started at West LA 25-33% short

1 Holmes Depo., 82:11-83:14; Hemedinger of what she was owed. Kasbarian  
2 Depo., 59:22-60:6, 62:3-63:8; 66:6-11., immediately complained about her unpaid  
3 68:125-69:8. commissions and bonuses. After she

4 complained defendant permanently cut her  
5 compensation plan stating that they have  
6 been paying her too much and in “error”  
7 and told her that she is “lucky that they  
8 were not asking her to pay the difference  
9 back.”

10 **Evidence:**

11 Exhs. 11, 12, 13; Kasbarian Depo., Vol. I,  
12 201:1-206:5, 207:4-20, 209:19-210:8,  
13 221:11-14; Kasbarian Depo., Vol. II,  
14 347:1-18; Kasbarian Decl., ¶¶ 8, 9;  
15 Hemedinger Depo., 59:14-60:10; Rosen  
16 Depo., 22:15-23:17, 29:18-31:6, Holmes  
17 Depo., 73:5-17, 81:7-24; 120:19-121:3;  
18 Figueroa Depo., 99:22- 100:5; Gannon  
19 Depo., 99:4-7; Hemedinger Depo., 59:14-  
20 60:10.

21  
22 20. Plaintiff testified that she complained 20. Undisputed as to Kasbarian’s  
23 about what she viewed as a “change” in complaints but otherwise disputed. In June  
24 the compensation plan to the following 2014, five months after Kasbarian started  
25 managerial employees: Hemedinger, complaining about the fraudulent activities  
26 Gannon, Simonson, Veronica Santarelli by other membership advisors, Kasbarian’s  
27 (“Santarelli”) (Regional Sales Manager), commission and bonus check for May  
28 Matt Gonzalez (“Gonzalez”) (Director of 2014 was suddenly and for the first time

1 Sales), Barry Holmes (“Holmes”) (Senior  
2 Vice President of Sales), and Scott Rosen  
3 (“Rosen”) (Chief Operating Officer)  
4 (“COO”).

5 **Evidence:**

6 Plaintiff Depo., Volume I, 199:7-22;  
7 Hemedinger Depo., 59:14-60:10; Depo-  
8 sition of Scott Rosen (“Rosen Depo.”)  
9 29:18-30:4, 30:22-31:12, 31:20-33:4,  
10 61:12-64:17, 65:8-69:12, Exhs. 206-207;  
11 Holmes Depo., 71:23-73:22, 77:18-82:10,  
12 84:19-86:8, Ex. 203.

since she started at West LA 25-33% short  
of what she was owed. Kasbarian  
immediately complained about her unpaid  
commissions and bonuses. After she  
complained defendant permanently cut her  
compensation plan stating that they have  
been paying her too much and in “error”  
and told her that she is “lucky that they  
were not asking her to pay the difference  
back.”

13 **Evidence:**

14 Exhs. 11, 12, 13; Kasbarian Depo., Vol. I,  
201:1-206:5, 207:4-20, 209:19-210:8,  
221:11-14; Kasbarian Depo., Vol. II,  
347:1-18; Kasbarian Decl., ¶¶ 8, 9;  
15 Hemedinger Depo., 59:14-60:10; Rosen  
16 Depo., 22:15-23:17, 29:18-31:6, Holmes  
17 Depo., 73:5-17, 81:7-24; 120:19-121:3;  
18 Figueroa Depo., 99:22- 100:5; Gannon  
19 Depo., 99:4-7; Hemedinger Depo., 59:14-  
20 60:10.  
21  
22

23 21. Despite Plaintiff’s complaints about  
24 the compensation plan, Plaintiff continued  
25 to work at Equinox for seven months after  
26 the “changed” compensation plan was in-  
27 stituted in July/August 2014 and continued  
28 to work for Equinox until she quit in

21. Undisputed to the fact that Kasbarian  
continued to work at Equinox until  
February 2015 after she complained;  
however, disputed as to the rest. In June  
2014, five months after Kasbarian started  
complaining about the fraudulent activities

February 2015.

**Evidence:**

Plaintiff Depo., Volume I, 196:8-14, 207:15-22, 220:5-20; Plaintiff Depo., Volume II, 349:5-12.

by other membership advisors, Kasbarian's commission and bonus check for May 2014 was suddenly and for the first time since she started at West LA 25-33% short of what she was owed. Kasbarian immediately complained about her unpaid commissions and bonuses. After she complained defendant permanently cut her compensation plan stating that they have been paying her too much and in "error" and told her that she is "lucky that they were not asking her to pay the difference back."

**Evidence:**

Exhs. 11, 12, 13; Kasbarian Depo., Vol. I, 201:1-206:5, 207:4-20, 209:19-210:8, 221:11-14; Kasbarian Depo., Vol. II, 347:1-18; Kasbarian Decl., ¶¶ 8, 9; Hemedinger Depo., 59:14-60:10; Rosen Depo., 22:15-23:17, 29:18-31:6, Holmes Depo., 73:5-17, 81:7-24; 120:19-121:3; Figueroa Depo., 99:22- 100:5; Gannon Depo., 99:4-7; Hemedinger Depo., 59:14-60:10.

22. Plaintiff testified that she complained to Hemedinger, Simonson, and possibly to Gannon in February or March 2014 that

22. Undisputed. However, Kasbarian testified that she complained about multiple MAs at West LA, including



1 she believed that a MA at West LA was  
2 using one-month guest passes and/or gift  
3 cards to sign up members for what they be-  
4 lieved was a month-long membership, but  
5 in actuality, was signing them up for a  
6 year-long membership by using their credit  
7 cards without authorization.

8 **Evidence:**

9 Plaintiff Depo., Volume I, 81:6-21; 82:5-  
10 83:23, 94:14-97:9.

Lauren Beck and Devin Mcvelogue about  
multiple fraudulent and unlawful activities,  
including charging members credit cards  
without their authorization.

**Evidence:**

Kasbarian Depo., Vol. I, 69:5-71:5, 71:20-  
72:4, 76:5-25, 82:9-83:19, 98:11-99:4,  
102:13-103:25, 112:5-113:2; Kasbarian  
Depo., Vol. II, 334:16-25; Kasbarian  
Decl., ¶ 6; Hemedinger Depo., 43:13-15,  
45:8-22, 46:10-22; 76:1-15.

13 23. According to Plaintiff, “charging  
14 credit cards without people’s approval and  
15 telling people they were signing up for a  
16 month-long contract, but then signing them  
17 up for a year-long contract” were the only  
18 “illegal activities” about which she com-  
19 plained to Equinox.

20 **Evidence:**

21 Plaintiff Depo., Volume II, 334:16-336:23.

23. Undisputed. Gannon also testified  
and admitted in testimony that he believes  
that the type of conduct Kasbarian  
complained of was illegal and is the type  
of conduct that needs to be investigated.

**Evidence:**

Gannon Depo., 51:10-15, 52:23-53:3.

23 24. According to Plaintiff, her other  
24 complaints involved “things against  
25 Equinox policies that were happening as  
26 well.”

27 **Evidence:**

24. Undisputed.

**Evidence:**

1 Plaintiff Depo., Volume II, 334:16-336:23.

2  
3 25. Plaintiff admitted that she could not  
4 identify any statute, ordinance, regulation,  
5 local law, state law, or federal law that was  
6 violated as a result of this alleged activity.

7 **Evidence:**

8 Plaintiff Depo., Volume II, 335:4-336:23.

25. Disputed. Plaintiff testified that she  
believed this conduct was illegal.  
Moreover, Gannon also testified and  
admitted in testimony that he believes that  
the type of conduct Kasbarian complained  
of was illegal and is the type of conduct  
that needs to be investigated.

9  
10 **Evidence:**

11 Kasbarian Depo., Volume II, 334:16-  
12 336:23; Gannon Depo., 51:10-15, 52:23-  
13 53:3.

14  
15 26. Plaintiff also testified that she com-  
16 plained to Hemedinger and Simonson  
17 about the sales activities of another MA.

18 **Evidence:**

19 Plaintiff Depo., Volume I, 76:17-79:19;  
20 93:10-94:10, 102:10-107:24; 108:1-113:5;  
21 Hemedinger Depo., 45:8-47:19.

26. Undisputed.

22 **Evidence:**

23 27. Specifically, Plaintiff complained  
24 that this MA was giving away “free  
25 months” to potential members, allowing  
26 “freezes” for members, and offering “three  
27 month” deals.

28 **Evidence:**

27. Undisputed. However, Kasbarian  
testified that she complained about  
multiple MAs at West LA, including  
Lauren Beck and Devin Mcvelogue about  
multiple fraudulent and unlawful activities,  
including charging members credit cards

1 Plaintiff Depo., Volume I, 76:17-79:19p without their authorization.

2 93:10-94:10, 102:10-107:24; 108:1-113:5; **Evidence:**

3 Hemedinger Depo., 45:8-47:19.

Kasbarian Depo., Vol. I, 69:5-71:5, 71:20-  
72:4, 76:5-25, 82:9-83:19, 98:11-99:4,  
102:13-103:25, 112:5-113:2; Kasbarian  
Depo., Vol. II, 334:16-25; Kasbarian  
Decl., ¶ 6; Hemedinger Depo., 43:13-15,  
45:8-22, 46:10-22; 76:1-15.

10 28. In or around December 2014, COO 28. Undisputed.

11 Rosen was touring the West LA club when **Evidence:**

12 he was told by a member that a MA had  
13 charged a membership to another mem-  
14 ber's credit card without that member's  
15 authorization.

16 **Evidence:**

17 Rosen Depo., 37:20-38:18; Declaration of  
18 Tracy Cuva ("Cuva Decl."), ¶ 2.

20 29. Member Services is Equinox's bill- 29. Undisputed.

21 ing department (centrally based in New **Evidence:**

22 York) which handles membership con-  
23 tracts and membership sales, including  
24 auditing of membership sales.

25 **Evidence:**

26 Cuva Decl., ¶ 1.

28 30. Rosen contacted Tracy Cuva, Senior 30. Undisputed.

1 Director of Equinox's Member Services **Evidence:**  
2 Department, gave her the information re-  
3 ceived from the member, and asked  
4 Member Services to investigate this sale.

5 **Evidence:**

6 Rosen Depo., 37:20-38:21; Cuva Decl.,  
7 ¶ 2.

8  
9 31. Member Services' investigation, 31. Undisputed.  
10 which was conducted by Cuva, confirmed **Evidence:**  
11 that this was an unauthorized sale  
12 processed by a MA at the West LA Club  
13 (Plaintiff was not implicated in this  
14 transaction).

15 **Evidence:**

16 Cuva Decl., ¶ 2.

17  
18 32. This MA was relocating to New 32. Undisputed. However, this MA was  
19 York but, based on the investigation terminated.

20 results, she was not hired to work for **Evidence:**

21 Equinox in New York.

22 **Evidence:**

23 Rosen Depo., 39:8-13.

Kasbarian Depo., Vol. I, 84:7-85:1,  
184:20-23; Kasbarian Decl., ¶ 10;  
Hemedinger Decl., ¶ 4; Gannon Depo.,  
58:20-59:18, 60:2-21.

24  
25  
26 33. As a result of this member com- 33. Disputed. Senior Director of Loss  
27 plaint, Rosen also asked Cuva to have Prevention, Jim Burger, testified that Jack  
28 Member Services conduct an investigation Gannon contacted him to do an

1 of sales transactions at the West LA club.

2 **Evidence:**

3 Rosen Depo., 47:25-6; Cuva Decl., ¶ 3.

investigation at the West LA location and reported to him throughout.

**Evidence:**

Burger Depo., 70:9-21, 78:4-11, 83:18-84:3.

7 34. Apart from requesting that the inves-  
8 tigation be conducted and asking Jim  
9 Burger (Senior Director of Loss Preven-  
10 tion) to travel to the West LA club and  
11 continue the investigation after Member  
12 Services finished their portion of the inves-  
13 tigation, Rosen did not participate in that  
14 investigation.

15 **Evidence:**

16 Rosen Depo., 47:25-48:21.

34. Disputed. Senior Director of Loss Prevention, Jim Burger, testified that Jack Gannon contacted him to do an investigation at the West LA location and reported to him throughout.

**Evidence:**

Burger Depo., 70:9-21, 78:4-11, 83:18-84:3.

18 35. Cuva instructed Kevin Stanfa  
19 (“Stanfa”) (Manager of Compliance and  
20 Special Projects), to review sales transac-  
21 tions at the West LA club.

22 **Evidence:**

23 Cuva Decl., ¶ 3; Stanfa Decl. ¶ 4.

35. Undisputed.

**Evidence:**

25 36. After Stanfa reported finding various  
26 anomalies associated with sales transac-  
27 tions at the West LA club, Cuva instructed  
28 Stanfa to prepare a summary detailing his

36. Undisputed.

**Evidence:**

findings.

**Evidence:**

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.

**Evidence:**

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.

**Evidence:**

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.”

**Evidence:**

Cuva Decl., ¶ 7, Exh.N.

40. Cuva noted as follows:

37. Disputed. Defendant fails to produce the spreadsheets corroborating those sales.

**Evidence:**

Defendant’s Amended Compendium of Exhibits.

38. Disputed. Defendant fails to produce the spreadsheets corroborating those sales.

**Evidence:**

Defendant’s Amended Compendium of Exhibits.

39. Undisputed as to that statement being written in the email.

**Evidence:**

40. Disputed. Kasbarian was found to

1 i The 2041 Freezes spread-  
2 sheet shows that West LA is  
3 an outlier in members who  
4 request a freeze in the first 60  
5 days of membership who also  
6 go on to cancel in the same  
7 year.

8 i The Modification to Direct  
9 Bill spreadsheet reflects  
10 members in the last quarter  
11 of 2014 whose billing was  
12 modified from the credit card  
13 payment type to direct bill  
14 the day before billing ran.  
15 The Company average is four  
16 per club. West LA had 28  
17 modifications to direct bill.

18 i The West LA Breakdown  
19 spreadsheet shows question-  
20 able sales from two MAs  
21 (Plaintiff and the MA moving  
22 to New York). The other  
23 three MAs were reviewed  
24 and did not reflect the same  
25 anomalies seen with Plaintiff  
26 and the MA moving to New  
27 York. The questionable sales  
28 included selling memberships

have not committed any of the  
inappropriate and fraudulent conduct or  
“fake” sales that were being investigated.

**Evidence:**

Holmes Depo., 88:4-10, 106:11-19;  
Hemedinger Depo., 51:23-52:23; Rosen  
Depo., 48:22-49:3, 54:3-8, 76:5-14, 98:6-  
17, 101:24-102:7; Gannon Depo., 70:8-  
71:15, 72:7-20, 75:22-76:8, 79:5-10, 81:7-  
11; Gannon Decl., ¶ 6, 10.

1 to members with the credit  
2 card of another member (al-  
3 most universally without re-  
4 questing a referral credit) or  
5 re-contracting over a previ-  
6 ously 3-day'd membership  
7 and either using the credit  
8 from the previous sale or re-  
9 charging the same credit  
10 card, credit card not present  
11 for numerous sales transac-  
12 tions, 3-day cancellations  
13 with no or just one member  
14 visit, new memberships  
15 which were previously fi-  
16 nance cancelled and had bal-  
17 ances on account that were  
18 waived.

19 **Evidence:**

20 Cuva Decl., ¶ 7, Exh.N.  
21

22 41. Neither Cuva nor Stanfa were aware  
23 Plaintiff had made any complaints about  
24 changes to her compensation plan or about  
25 the alleged activities of other MAs.

26 **Evidence:**

27 Cuva Decl., ¶ 8; Stanfa Decl., ¶ 11.  
28

41. Undisputed. However, Kasbarian  
was found to have not committed any of  
the inappropriate and fraudulent conduct or  
“fake” sales that were being investigated.

**Evidence:**

41. Holmes Depo., 88:4-10, 106:11-19;  
Hemedinger Depo., 51:23-52:23; Rosen



Depo., 48:22-49:3, 54:3-8, 76:5-14, 98:6-17, 101:24-102:7; Gannon Depo., 70:8-71:15, 72:7-20, 75:22-76:8, 79:5-10, 81:7-11; Gannon Decl., ¶ 6, 10.

**Evidence:**

42. In addition, Burger was asked to interview the sales team at the West LA club.

42. Undisputed.

**Evidence:**

**Evidence:**

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 [sic] and an Assistant General Manager.

43. Undisputed.

**Evidence:**

**Evidence:**

Hemedinger Decl., ¶ 4.

44. A MA was fired on or about January 20, 2015 for improper sales activities.

44. Undisputed.

**Evidence:**

**Evidence:**

1 Figueroa Decl. ¶ 9; Hemedinger Decl., ¶ 4.

2  
3 45. At Burger's request, Member Ser-  
4 vices provided him with the spreadsheets  
5 summarizing their findings of questionable  
6 sales transactions at the West LA club.

7 **Evidence:**

8 Burger Depo., 72:13-73:3; Cuva Decl. ¶ 8.

9  
10 46. Burger then met with Cuva and  
11 Stanfa and they discussed their findings re-  
12 garding the questionable sales at the West  
13 LA club.

14 **Evidence:**

15 Burger Depo., 73:13-74:15; Cuva Decl.  
16 ¶ 8; Stanfa Decl., ¶ 9.

17  
18 47. Burger had a subsequent meeting  
19 with Stanfa to review the spreadsheets  
20 Member Services had prepared.

21 **Evidence:**

22 Burger Depo., 74:16-75:3, 8-22; Stanfa  
23 Decl., ¶ 9.

24  
25 48. These spreadsheets showed anoma-  
26 lies in various sales transactions, including  
27 whether or not a contract was signed,  
28 whether or not a credit card was present

45. Disputed. Defendant fails to produce  
the spreadsheets corroborating those sales.

**Evidence:**

Defendant's Amended Compendium of  
Exhibits.

46. Undisputed.

**Evidence:**

47. Disputed. Defendant fails to produce  
the spreadsheets corroborating those sales.

**Evidence:**

Defendant's Amended Compendium of  
Exhibits.

48. Disputed. Defendant fails to produce  
the spreadsheets corroborating those sales.  
However, However, Kasbarian was found  
to have not committed any of the

1 for the sales transaction, whose credit card inappropriate and fraudulent conduct or  
2 was used for the sales transactions, if an- “fake” sales that were being investigated.  
3 other individual’s credit card number was **Evidence:**  
4 used for the sales transaction instead of the Defendant’s Amended Compendium of  
5 member’s credit card number, whether or Exhibits; Holmes Depo., 88:4-10, 106:11-  
6 not a member had any visits to a club, etc. 19; Hemedinger Depo., 51:23-52:23;

7 **Evidence:**

8 Burger Depo., 39:3-40:22; Cuva Decl., ¶ 8; 98:6-17, 101:24-102:7; Gannon Depo.,  
9 Stanfa Decl., ¶¶ 4-5. 70:8-71:15, 72:7-20, 75:22-76:8, 79:5-10,  
10 81:7-11; Gannon Decl., ¶ 6, 10.  
11  
12

13 49. Burger also had a couple of tele- 49. Undisputed.  
14 phone conversations with Stanfa regarding **Evidence:**  
15 the anomalies in various sales activities at  
16 the West LA Club.

17 **Evidence:**

18 Burger Depo., 76:19-77:1; Stanfa Decl.,  
19 ¶ 9.  
20

21 50. In late January 2015, Burger came to 50. Undisputed.  
22 Los Angeles to interview various employ- **Evidence:**  
23 ees regarding sales activities of the West  
24 LA MAs.

25 **Evidence:**

26 Burger Depo., 76:6-12; Gannon Decl., ¶ 3;  
27 Hemedinger Decl., ¶ 5.  
28

1 51. Prior to the interviews, Burger and  
2 Gannon discussed suspending all of the in-  
3 dividuals interviewed as part of the investi-  
4 gation pending the results of the investiga-  
5 tion.

6 **Evidence:**

7 Burger Depo., 116:12-117:12.  
8  
9

10 52. Burger then interviewed the follow-  
11 ing individuals: (1) the Assistant General  
12 Manager; (2) Plaintiff; (3) another MA;  
13 (4) a relatively newly hired MA; and  
14 (5) Simonson.

15 **Evidence:**

16 Hemedinger Decl., ¶ 5.  
17  
18

19 53. Burger had never heard of or spoken  
20 to Plaintiff prior to this investigation meet-  
21 ing.

22 **Evidence:**

23 Burger Depo., 35:22-24.  
24

25 54. On January 30, 2015, Plaintiff met  
26 with Burger and Leah Ball of Human  
27 Resources regarding West LA's sales prac-  
28 tices.

51. Disputed. Gannon testified that one  
MA was not suspended and was not  
discussed suspending because there "was  
no suspicious conduct linked to him" even  
at the beginning of the investigation.

**Evidence:**

Gannon Depo., 70:8-71:19, 81:7-11;  
Gannon Decl., ¶ 6, 10.

52. Disputed. Gannon testified that one  
MA was not suspended and was not  
discussed suspending because there "was  
no suspicious conduct linked to him" even  
at the beginning of the investigation.

**Evidence:**

Gannon Depo., 70:8-71:19, 81:7-11;  
Gannon Decl., ¶ 6, 10.

53. Undisputed.

**Evidence:**

54. Undisputed.

**Evidence:**

**Evidence:**

Plaintiff Depo., Volume I, 161:11-22, 164:10-22; Plaintiff Depo., Volume II, 305:21-24; , [sic] Burger Depo., 96:18-25.

55. Plaintiff answered questions about her sales activities, as well as the activities of other MAs.

**Evidence:**

Plaintiff Depo., Volume I, 161:11-22, 164:10-22; Burger Depo., 53:13-54:9.

55. Undisputed. Additionally, at the beginning of Kasbarian's interview, she notifies Senior Director of Loss Prevention, Jim Burger, about the fraudulent activity and unauthorized membership sales that she observed and complained about to management for months

**Evidence:**

Exh. 17; Kasbarian Depo., Vol. I, 158:4-18, 161:15-162:1, 166:9-167:2; Kasbarian Decl., ¶¶ 10, 11; Burger Depo., 70:9-21, 78:4-11, 83:18-84:3, 91:5-92:18, 100:3-8, 183:21-184:12.

56. While Burger did not find Plaintiff credible, he felt, at that time, that there was insufficient information to warrant Plaintiff's termination.

**Evidence:**

Burger Depo, 122:14-17.

56. Undisputed as to Burger concluding there was insufficient information to warrant any terminable offense committed by Burger. Kasbarian was found to have not committed any of the inappropriate and fraudulent conduct or "fake" sales that were being investigated.

**Evidence:**

Holmes Depo., 88:4-10, 106:11-19;  
Hemedinger Depo., 51:23-52:23; Rosen  
Depo., 48:22-49:3, 54:3-8, 76:5-14, 98:6-  
17, 101:24-102:7; Gannon Depo., 70:8-  
71:15, 72:7-20, 75:22-76:8, 79:5-10, 81:7-  
11; Gannon Decl., ¶ 6, 10.

57. After Burger completed his inter-  
views, Burger, Gannon and Hemedinger  
met briefly to discuss Burger's impression.

**Evidence:**

Burger Depo., 117:16-18, 24-118:6.

57. Undisputed.

**Evidence:**

58. Gannon then advised Plaintiff that  
she was being suspended.

**Evidence:**

Plaintiff Depo, Volume I, 174:24-175:3,  
11-12; Plaintiff Depo., Volume II, 306:3-7;  
Gannon Decl., ¶ 4.

58. Undisputed. However, she was  
suspended despite her having been found  
to not have committed any terminable  
offense.

**Evidence:**

Holmes Depo., 88:4-10, 106:11-19;  
Hemedinger Depo., 51:23-52:23; Rosen  
Depo., 48:22-49:3, 54:3-8, 76:5-14, 98:6-  
17, 101:24-102:7; Gannon Depo., 70:8-  
71:15, 72:7-20, 75:22-76:8, 79:5-10, 81:7-  
11; Gannon Decl., ¶ 6, 10.

59. All of the MAs interviewed as part of  
the investigation (with the exception of the

59. Undisputed. One MA was not  
suspended.

1 relatively new MA) were suspended pend-  
2 ing investigation.

3 **Evidence:**

4 Burger Depo., ¶ [sic] 110:17-23; Gannon  
5 Decl., ¶ 6.

**Evidence:**

Gannon Depo., 70:8-71:15, 81:7-11;  
Gannon Decl., ¶ 6, 10.

6  
7 60. Gannon also advised Plaintiff to re-  
8 port back to the West LA club at 2:00 p.m.  
9 the next day for another meeting.

10 **Evidence:**

11 Plaintiff Depo., Volume II, 180:11-181:4;  
12 Gannon Decl., ¶ 5.

60. Undisputed.

**Evidence:**

13  
14 61. According to Plaintiff, Equinox told  
15 her that she would not have access to her  
16 email or payroll account and escorted her  
17 out of the building in front of Equinox's  
18 clientele, staff and all of her peers.

19 **Evidence:**

20 Plaintiff Depo., Volume II, 174:24-175:21;  
21 Plaintiff Depo., Volume II, 305:21-306:2,  
22 364:17-20; Plaintiff's Complaint, 6:5-7.

61. Undisputed.

**Evidence:**

23  
24 62. It is Equinox's policy to turn off  
25 email access for hourly employees who  
26 have been suspended pending investigation  
27 or who are on leave of absence.

28 **Evidence:**

62. Disputed. Defendant did not produce  
any documentation corroborating this  
policy.

**Evidence:**

Defendant's Amended Compendium of

1 Gannon Decl., ¶ 7.

Evidence.

2  
3 63. Prior to Burger's interview of Plain-  
4 tiff, Gannon had the Payroll Department  
5 prepare a final paycheck for Plaintiff so  
6 that she could be paid in accordance with  
7 California law in the event the decision  
8 was made to terminate her employment.

9 **Evidence:**

10 Gannon Decl., ¶ 8.

63. Undisputed as to Gannon preparing  
the final paycheck; however, this paycheck  
was prepared by Gannon even before the  
interview in preparation for Kasbarian's  
termination.

**Evidence:**

Gannon Decl., ¶ 8; Exh. 15; Kasbarian  
Depo., Vol. I, 130:21-131:3, 185:5-15;  
Kasbarian Depo., Vol. II, 311:9-22;  
Kasbarian Decl., ¶ 11.

11  
12  
13  
14 64. Plaintiff met with Hemedinger and  
15 Gannon at the West LA club on January  
16 31, 2015 and was told that the investiga-  
17 tion was concluded and that she would be  
18 working at the Marina Del Rey club.

19 **Evidence:**

20 Plaintiff Depo., Volume I, 182:5-183:8;  
21 Plaintiff Depo., Volume II, 306:12-16  
22 [sic], 382:12-17, 390:4-11, Exh. 38;  
23 Hemedinger Depo., 54:17-21, 55:1-8;  
24 Gannon Decl., ¶ 3; Hemedinger Decl., ¶ 6.

64. Undisputed.

**Evidence:**

25  
26 65. The decision was made to reassign  
27 Plaintiff to the Marina Del Rey club be-  
28 cause Equinox wanted to rebuild the team

65. Disputed. Defendant's claim that  
Kasbarian was reassigned to Marina Del  
Rey because they wanted to rebuild the



1 of MAs in the West LA club and to create  
2 a fresh culture, as a result of the investiga-  
3 tion findings.

4 **Evidence:**

5 Rosen Depo., 71:7-20, 73:15-22, 76:5-14;  
6 Holmes Depo., 96:12-98:17; Hemedinger  
7 Depo., 51:7-52:23; Gannon Decl., ¶ 10.

team of Mas, yet one MA was allowed to  
stay at West LA

**Evidence:**

Rosen Depo., 48:22-49:3, 54:3-8, 98:6-17,  
76:5-14; Hemedinger Depo., 51:23-52:23;  
Holmes Depo., 88:4-10, 106:11-19,  
101:24-102:7; Gannon Depo., 70:8-71:15,  
72:7-20, 75:22-76:8, 79:5-10, 81:7-11;  
Gannon Decl., ¶ 6, 10.

11 66. Plaintiff's compensation plan would  
12 change once at Marina Del Rey to align  
13 with the compensation plan of Marina Del  
14 Rey MAs. Equinox considered the reas-  
15 signment a lateral move.

16 **Evidence:**

17 Rosen Depo., 87:25-88:4; Gannon Decl.,  
18 ¶ 11.

66. Undisputed that the compensation  
plan would change; however, disputed as  
to it being a lateral move. Kasbarian is told  
that she would be paid \$9.00/hour at the  
Marina del Rey office, which was a \$10.00  
per hour decrease in hourly rate that she  
was being paid at the West Los Angeles  
branch at \$19.23 per hour. Barry Holmes,  
Vice President of Sales, admits that urban  
clubs, such as the Santa Monica location,  
tend to generate more revenue than  
suburban clubs, like the Marina Del Rey  
location, and the West LA location is a  
higher tier club than urban clubs. Brian  
Hemedinger admits in deposition that they  
thought it would be "best for Tamar, if she  
had the opportunity to be a membership  
advisor at a different location," while

acknowledging that she would be going to a lower tier location than when she first started with the company. Moreover, when Kasbarian went to West LA she was promoted from MA to Membership Executive, which it stated on her “Promotion Memo.”

**Evidence:**

Exh. 10, 14; Kasbarian Depo., Vol. I, 50:24-51:1, 89:9-90:19, 279:14-280:12, 182:12-184:19; Kasbarian Depo., Vol. II, 354:1-18, 458:24-459:17; Gannon Decl., 9, 10; Holmes Depo., 28:22-29:2, 50:18-25; Gannon Depo., 32:15-17, 88:25-89:5; Hemedinger Depo., 50:14-20, 51:23-52:23, 81:2-23.

67. Equinox considered the reassignment a lateral move.

**Evidence:**

Rosen Depo., 87:25-88:4; Gannon Decl., ¶ 11.

67. Disputed. Kasbarian is told that she would be paid \$9.00/hour at the Marina del Rey office, which was a \$10.00 per hour decrease in hourly rate that she was being paid at the West Los Angeles branch at \$19.23 per hour. Barry Holmes, Vice President of Sales, admits that urban clubs, such as the Santa Monica location, tend to generate more revenue than suburban clubs, like the Marina Del Rey location, and the West LA location is a higher tier

club than urban clubs. Brian Hemedinger admits in deposition that they thought it would be “best for Tamar, if she had the opportunity to be a membership advisor at a different location,” while acknowledging that she would be going to a lower tier location than when she first started with the company. Moreover, when Kasbarian went to West LA she was promoted from MA to Membership Executive, which it stated on her “Promotion Memo.”

**Evidence:**

Exh. 10, 14; Kasbarian Depo., Vol. I, 50:24-51:1, 89:9-90:19, 279:14-280:12, 182:12-184:19; Kasbarian Depo., Vol. II, 354:1-18, 458:24-459:17; Gannon Decl., 9, 10; Holmes Depo., 28:22-29:2, 50:18-25; Gannon Depo., 32:15-17, 88:25-89:5; Hemedinger Depo., 50:14-20, 51:23-52:23, 81:2-23.

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.

**Evidence:**

Plaintiff Depo., Volume II, 390:4-11, Exh.

68. Undisputed.

**Evidence:**

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.

**Evidence:**

Hemedinger Depo., 52:18-23; Rosen Depo., 57:13-19; 58:22-59:14; Holmes Depo., 31:13-15.

69. Disputed. Kasbarian is told that she would be paid \$9.00/hour at the Marina del Rey office, which was a \$10.00 per hour decrease in hourly rate that she was being paid at the West Los Angeles branch at \$19.23 per hour. Barry Holmes, Vice President of Sales, admits that urban clubs, such as the Santa Monica location, tend to generate more revenue than suburban clubs, like the Marina Del Rey location, and the West LA location is a higher tier club than urban clubs. Brian Hemedinger admits in deposition that they thought it would be "best for Tamar, if she had the opportunity to be a membership advisor at a different location," while acknowledging that she would be going to a lower tier location than when she first started with the company. Moreover, when Kasbarian went to West LA she was promoted from MA to Membership Executive, which it stated on her "Promotion Memo."

**Evidence:**

Exh. 10, 14; Kasbarian Depo., Vol. I, 50:24-51:1, 89:9-90:19, 279:14-280:12, 182:12-184:19; Kasbarian Depo., Vol. II,

354:1-18, 458:24-459:17; Gannon Decl., 9, 10; Holmes Depo., 28:22-29:2, 50:18-25; Gannon Depo., 32:15-17, 88:25-89:5; Hemedinger Depo., 50:14-20, 51:23-52:23, 81:2-23.

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.

**Evidence:**

Hemedinger Depo., 52:18-23; Rosen Depo., 57:13-19; 58:22-59:14; Holmes Depo., [sic] 50:18-51:5.

70. Disputed. Kasbarian is told that she would be paid \$9.00/hour at the Marina del Rey office, which was a \$10.00 per hour decrease in hourly rate that she was being paid at the West Los Angeles branch at \$19.23 per hour. Barry Holmes, Vice President of Sales, admits that urban clubs, such as the Santa Monica location, tend to generate more revenue than suburban clubs, like the Marina Del Rey location, and the West LA location is a higher tier club than urban clubs. Brian Hemedinger admits in deposition that they thought it would be “best for Tamar, if she had the opportunity to be a membership advisor at a different location,” while acknowledging that she would be going to a lower tier location than when she first started with the company. Moreover, when Kasbarian went to West LA she was promoted from MA to Membership Executive, which it stated on her “Promotion Memo.”

**Evidence:**

Exh. 10, 14; Kasbarian Depo., Vol. I, 50:24-51:1, 89:9-90:19, 279:14-280:12, 182:12-184:19; Kasbarian Depo., Vol. II, 354:1-18, 458:24-459:17; Gannon Decl., 9, 10; Holmes Depo., 28:22-29:2, 50:18-25; Gannon Depo., 32:15-17, 88:25-89:5; Hemedinger Depo., 50:14-20, 51:23-52:23, 81:2-23.

71. Gannon emailed Plaintiff the compensation plan for the Marina Del Rey Club on or about January 31, 2015.

**Evidence:**

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.

**Evidence:**

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.

71. Undisputed.

**Evidence:**

72. Undisputed as to no one stating those actual words; however, Kasbarian is told that she would be paid \$9.00/hour at the Marina del Rey office, which was a \$10.00 per hour decrease in hourly rate that she was being paid at the West Los Angeles branch at \$19.23 per hour. Barry Holmes, Vice President of Sales, admits that urban clubs, such as the Santa Monica location, tend to generate more revenue than suburban clubs, like the Marina Del Rey

location, and the West LA location is a higher tier club than urban clubs. Brian Hemedinger admits in deposition that they thought it would be “best for Tamar, if she had the opportunity to be a membership advisor at a different location,” while acknowledging that she would be going to a lower tier location than when she first started with the company. Moreover, when Kasbarian went to West LA she was promoted from MA to Membership Executive, which it stated on her “Promotion Memo.”

**Evidence:**

Exh. 10, 14; Kasbarian Depo., Vol. I, 50:24-51:1, 89:9-90:19, 279:14-280:12, 182:12-184:19; Kasbarian Depo., Vol. II, 354:1-18, 458:24-459:17; Gannon Decl., 9, 10; Holmes Depo., 28:22-29:2, 50:18-25; Gannon Depo., 32:15-17, 88:25-89:5; Hemedinger Depo., 50:14-20, 51:23-52:23, 81:2-23.

73. Gannon made the decision to reassign Plaintiff to the Marina Del Rey club.

73. Undisputed.

**Evidence:**

Rosen Depo., 45:7-25. 57:8-12;

**Evidence:**

1 Hemedinger Depo., 53:14-18.

2  
3 74. Plaintiff was told to report to the 74. Undisputed.  
4 Marina Del Rey club on February 2, 2015 **Evidence:**  
5 at 9:00 a.m.

6 **Evidence:**

7 Plaintiff Depo., Volume I, 186:5-14;  
8 Plaintiff Depo., Volume II, 311:4-8;  
9 Hemedinger Depo., 54:17-55:18, 55:25-  
10 56:25, 57:6-57:11.

11  
12 75. Before reporting to the Marina Del  
13 Rey club, Plaintiff submitted her resigna-  
14 tion, via email, on the morning of February  
15 2, 2015 effective immediately.

16 **Evidence:**

17 Plaintiff Depo., Volume I, 186:5-14, Exh.  
18 26; Plaintiff Depo., Volume II, 311:4-8;  
19 Hemedinger Depo., 54:17-55:18, 55:25-  
20 56:25, 57:6-57:11.

75. Undisputed; however, Kasbarian was  
forced to resign due to intolerable working  
conditions at Equinox. On February 2,  
2015, the day Kasbarian was supposed to  
start at the Marina del Rey location, she  
feels she is no longer welcome at Equinox  
and feels pushed out since she was forced  
to take a demotion, a significant pay cut  
and restart her business and clientele base,  
along with the overwhelming stress of the  
interrogation and suspension and fear of  
being terminated that she is forced to  
resign.

25 **Evidence:**

26 Exh. 16; Kasbarian Depo., Vol. I, 186:5-  
27 14; Kasbarian Decl., ¶¶ 12-14.



76. Plaintiff's last day of employment was February 2, 2015. 76. Undisputed.

**Evidence:**

Plaintiff Depo., Volume I, 186:11-14.

77. Plaintiff never reported to work at the Marina Del Rey club. 77. Undisputed.

**Evidence:**

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. Undisputed.

**Evidence:**

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. Undisputed. However, one MA was able to stay at the West LA location, despite Gannon stating he wanted to rebuild the team by getting rid of all of the Membership Executives at West LA.

**Evidence:**

Plaintiff Depo., Volume II, 342:25-343:5.

**Evidence:**

Rosen Depo., 76:5-14; Hemedinger Depo., 51:23-52:23; Holmes Depo., 101:24-102:7; Gannon Depo., 70:8-71:15, 81:7-11; Gannon Decl., ¶ 6, 10.

80. Plaintiff testified that she was un- 80. Undisputed.  
aware of any other MA at the West LA **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.

**Evidence:**

Plaintiff Depo., Volume II, 343:6-22.

**ISSUE NO. 18:** Plaintiff's eighth cause of action for defamation fails as a matter of law because Plaintiff has evidence of a false statement of fact. (UF Nos. 81-85.)

**Alleged Undisputed Facts and**

**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 substanti-  
ate her claim that Equinox told anyone that  
*she* had been terminated for improper be-  
havior.

**Evidence:**

Plaintiff Depo., Volume II, 323:6-328:9.

82. Plaintiff testified that she could not 82. Undisputed.  
identify a single statement attributed to **Evidence:**  
Hemedinger about Plaintiff that Plaintiff  
believed to be false.

**Plaintiff's Responses and**

**Supporting Evidence**

81. Disputed. Kasbarian testified that  
people she knew, including a manager a a  
spin studio, were asking her and texting  
her about Ponzi schemes and the FBI  
being involved at Equinox and whether  
Kasbarian was involved with that.

**Evidence:**

Kasbarian Depo., Vol. I, 323:6-324:6.

1 **Evidence:**

2 Plaintiff Depo., Volume I, 134:9-20.

3  
4 83. Plaintiff testified that she only heard 83. Undisputed.  
5 second-hand and third-hand that Gannon  
6 had called her “crazy.”

7 **Evidence:**

8 Plaintiff Depo., Volume I, 134:3-8,  
9 134:21-16:20 [sic], 147:15-148:9, 151:9-  
10 156:2.

11  
12 84. Plaintiff also testified that other man- 84. Undisputed.  
13 agerial employees had told her that she **Evidence:**  
14 was “acting crazy.”

15 **Evidence:**

16 Plaintiff Depo., Volume I, 135:14-136:12;  
17 Volume II, 319:2-320:3, 7-11, 320:20-  
18 321:6.

19  
20 85. Lastly, Plaintiff testified that she 85. Undisputed.  
21 heard Gannon refer to her as “Amy **Evidence:**  
22 Winehouse.”

23 **Evidence:**

24 Plaintiff Depo., Volume II, 321:12-322:11,  
25 331:19-334:5.

**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.)

**Alleged Undisputed Facts and  
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 *she* had been terminated for improper behavior.

**Evidence:**

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.

**Evidence:**

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."

**Evidence:**

Plaintiff Depo., Volume I, 134:3-8, 134:21-16:20 [sic], 147:15-148:9, 151:9-

**Plaintiff's Responses and  
Supporting Evidence**

81. Disputed. Kasbarian testified that people she knew, including a manager a a spin studio, were asking her and texting her about Ponzi schemes and the FBI being involved at Equinox and whether Kasbarian was involved with that.

**Evidence:**

Kasbarian Depo., Vol. I, 323:6-324:6.

82. Undisputed.

**Evidence:**

83. Undisputed.

156:2.

84. Plaintiff also testified that other managerial employees had told her that she was “acting crazy.” 84. Undisputed.

**Evidence:**

Plaintiff Depo., Volume I, 135:14-136:12; Volume II, 319:2-320:3, 7-11, 320:20-321:6.

85. Lastly, Plaintiff testified that she heard Gannon refer to her as “Amy Winehouse.” 85. Undisputed.

**Evidence:**

Plaintiff Depo., Volume II, 321:12-322:11, 331:19-334:5.

**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.)

**Alleged Undisputed Facts and  
Supporting Evidence**

**Plaintiff’s Responses and  
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 be-	81. Disputed. Kasbarian testified that people she knew, including a manager a spin studio, were asking her and texting her about Ponzi schemes and the FBI being involved at Equinox and whether Kasbarian was involved with that.
--	--

havior.

**Evidence:**

**Evidence:**

Kasbarian Depo., Vol. II, 323:6-324:6.

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. Undisputed.

**Evidence:**

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. Undisputed.

**Evidence:**

Plaintiff Depo., Volume I, 134:3-8, 134:21-16:20 [sic], 147:15-148:9, 151:9-156:2.

84. Plaintiff also testified that other managerial employees had told her that she was “acting crazy.”

84. Undisputed.

**Evidence:**

Plaintiff Depo., Volume I, 135:14-136:12; Volume II, 319:2-320:3, 7-11, 320:20-321:6.

85. Lastly, Plaintiff testified that she

85. Undisputed.

1 heard Gannon refer to her as “Amy **Evidence:**  
2 Winehouse.”

3 **Evidence:**

4 Plaintiff Depo., Volume II, 321:12-322:11,  
5 331:19-334:5.

6  
7 **ISSUE NO. 21:** Plaintiff’s ninth cause of action for intentional infliction of emotional  
8 distress survives as a matter of law because it is not barred by the exclusive remedy of  
9 California’s Workers’ Compensation Act.

10 **Alleged Undisputed Facts and**  
11 **Supporting Evidence**

**Plaintiff’s Responses and**  
**Supporting Evidence**

12 1. Plaintiff was hired as a Membership  
13 Advisor (“MA”) at Equinox’s Santa  
14 Monica club on or about October 15, 2010.

15 **Evidence:**

16 Plaintiff Depo., Volume I, 36:23-38:10,  
17 Exh. 5 (Offer Letter).

18  
19 2. In January 2014, Plaintiff began  
20 working at Equinox’s West Los Angeles  
21 club (“West LA club”).

22 **Evidence:**

23 Plaintiff Depo., Volume I, 189:22-190:12,  
24 Exh. 13 (Memo).

1. Undisputed.

**Evidence:**

2. Disputed. Kasbarian was promoted  
to the position of Membership Executive at  
the West Los Angeles club (“West LA”) in  
October 2013.

**Evidence:**

Exh. 10; Kasbarian Depo., Vol. I, 89:9-  
90:19, 279:14-280:12; Kasbarian Decl., ¶  
5; Hemedinger Depo., 50:4-9; Rosen  
Depo., 20:4-18; Holmes Depo., 39:13-18.

1 3. At the West LA club, MAs were re-  
2 ferred to as Membership Executives.  
3 However, their job duties were the same.

4 **Evidence:**

5 Declaration of Brian Hemedinger  
6 (“Hemedinger Decl.”), ¶ 3.

3. Disputed. A Membership Executive position is considered a promotion from an MA position. Kasbarian was specifically told her position as a Membership Executive was a promotion from an MA, and she received a memo on it, as well as a higher compensation plan. Kasbaian’s hourly rate also increased with her position as a Membership Executive, to \$19.23 per hour, as well as an increase in commissions and bonuses.

12 **Evidence:**

13 Exh. 10; Kasbarian Depo., Vol. I, 89:9-  
14 90:19, 279:14-280:12; Kasbarian Decl., ¶  
15 5; Hemedinger Depo., 50:4-9; Rosen  
16 Depo., 20:4-18; Holmes Depo., 39:13-18.

18 4. During Plaintiff’s employment at  
19 Equinox Santa Monica and West LA  
20 clubs, Jack Gannon (“Gannon”) was the  
21 Vice President of the West Coast.

22 **Evidence:**

23 Declaration of Jack Gannon (“Gannon  
24 Decl.”), ¶¶ 1-2.

4. Undisputed.

22 **Evidence:**

26 5. From about October 2011 through  
27 about June 2015, Brian Hemedinger  
28 (“Hemedinger”) was the Regional Director

5. Undisputed.

**Evidence:**



1 of Operations (“Regional Director”) of the  
2 Santa Monica and West LA clubs.

3 **Evidence:**

4 Plaintiff Depo., Volume I, 270:8,-14,  
5 75:24-76:4; Deposition of Brian  
6 Hemedinger (“Hemedinger Depo.”) 15:3-  
7 10, 41:1-9, 13-16; Hemedinger Decl., ¶ 1.

8  
9 6. General Manager Kira Simonson 6. Undisputed.  
10 (“Simonson) supervised Plaintiff at the **Evidence:**  
11 West LA club from about January 2014 to  
12 about January 2015.

13 **Evidence:**

14 Plaintiff Depo., Volume I, 52:11-19.

15  
16 7. Plaintiff’s personnel file includes an 7. Undisputed.  
17 Employee Handbook Receipt Acknowl- **Evidence:**  
18 edgment Form with Plaintiff’s signature  
19 dated October 15, 2010.

20 **Evidence:**

21 Plaintiff Depo., Volume I, 43:18-45:15,  
22 Exh. 8 (Receipt Acknowledgement [sic]  
23 Form); Declaration of Emerson Figueroa  
24 (“Figueroa Decl.”), ¶ 5, Exh. B.

25  
26 8. In particular, the Employee Hand- 8. Undisputed, as to what the actual  
27 book stated: document states. However, disputed as to  
28 I acknowledge that the re- whether Kasbarian actually believed her  
ceint of the Employee Hand-

book 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.

employment was “at-will.” Kasbarian believes she would not be demoted, have her pay cut, her employment suspended, or, reassigned, etc. unless it was for good cause.

**Evidence:**

Kasbarian Decl., ¶¶ 4, 11, 13, 14.

**Evidence:**

Plaintiff Depo., Volume I, 43:18-45:15, Exh. 8 (Receipt Acknowledgement [sic] Form); Figueroa Decl., ¶ 5, Exh. B (Receipt Acknowledgement [sic] Form).

9. Plaintiff’s personnel file also includes an Offer Letter, dated October 15, 2010, which Plaintiff acknowledged receiving.

**Evidence:**

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 “employ-

9. Undisputed.

**Evidence:**

10. Undisputed, as to what the actual document states. However, disputed as to whether Kasbarian actually believed her

ment-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.

**Evidence:**

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.

**Evidence:**

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 rights with respect to continuation of your employment with the Company.”

employment was “at-will.” Kasbarian believes she would not be demoted, have her pay cut, her employment suspended, or, reassigned, etc. unless it was for good cause.

**Evidence:**

Kasbarian Decl., ¶¶ 4, 11, 13, 14.

11. Undisputed.

**Evidence:**

12. Undisputed, as to what the actual document states. However, disputed as to whether Kasbarian actually believed her employment was “at-will.” Kasbarian believes she would not be demoted, have her pay cut, her employment suspended, or, reassigned, etc. unless it was for good

**Evidence:**

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.

**Evidence:**

Plaintiff Depo., Volume I, 36:23-38:11, 43:18-45:15, Exh. 5 (Offer Letter), Exh. 8 (Receipt Acknowledgement [sic] Form).

14. The Employee Handbook Plaintiff acknowledged receiving also included Equinox's non-retaliation policy as well as complaint procedures for reporting retaliation.

**Evidence:**

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 strict-

cause.

**Evidence:**

Kasbarian Decl., ¶¶ 4, 11, 13, 14.

13. Undisputed, as to what the actual document states. However, disputed as to whether Kasbarian actually believed her employment was "at-will." Kasbarian believes she would not be demoted, have her pay cut, her employment suspended, or, reassigned, etc. unless it was for good cause.

**Evidence:**

Kasbarian Decl., ¶¶ 4, 11, 13, 14.

14. Undisputed.

**Evidence:**

15. Undisputed.

1 ly prohibits retaliation against any employ- **Evidence:**  
2 ee for “filing a complaint and [Equinox]  
3 will not knowingly permit retaliation by  
4 management, employees, or co-workers.”  
5 Equinox’s policy also prohibits retaliation  
6 against any employee for “using this com-  
7 plaint procedure or for filing, testifying,  
8 assisting, or participating in any manner in  
9 any investigation, proceeding, or hearing  
10 conducted by a governmental enforcement  
11 agency. Additionally, Equinox will not  
12 knowingly permit any retaliation against  
13 any employee who complains of prohibited  
14 harassment or who participates in an inves-  
15 tigation.”

16 **Evidence:**

17 Plaintiff Depo., Volume I, 43:18-45:15,  
18 Exh. 8 Receipt of Employee Handbook;  
19 Figueroa Decl., Exh. A, Employee Hand-  
20 book.

22 16. The complaint procedure as outlined 16. Undisputed.  
23 in the Employee Handbook permits an em- **Evidence:**  
24 ployee to report retaliation to his or her  
25 manager, Human Resources, or through  
26 Equinox’s Ethics Hotline.

27 **Evidence:**

28 Plaintiff Depo., Volume I, 43:18-45:15,

1 Exh. 8 Receipt of Employee Handbook;  
2 Figueroa Decl. ¶ 4.  
3

4 17. In or about June 2014, Hemedinger  
5 informed Plaintiff and other MAs that the  
6 compensation plan for all West LA MAs  
7 was being clarified, so that the market bo-  
8 nuses would be paid out individually and  
9 not cumulatively for reaching a certain  
10 sales goal.

11 **Evidence:**

12 Plaintiff Depo., Volume I, 190:16-194:3,  
13 219:7-10; Plaintiff Depo., Volume II,  
14 347:22-348:1; Deposition of Barry Holmes  
15 (“Holmes Depo.”) 69:4-71:12, 73:23-  
16 75:10, Exhs. 201-202; Hemedinger Depo.,  
17 60:11-61:3, 68:12-14, 70:19-72:3.; Rosen  
18 Depo., 33:5-15.  
19

17. Disputed. In June 2014, five months  
after Kasbarian started complaining about  
the fraudulent activities by other  
membership advisors, Kasbarian’s  
commission and bonus check for May  
2014 was suddenly and for the first time  
since she started at West LA 25-33% short  
of what she was owed. Kasbarian  
immediately complained about her unpaid  
commissions and bonuses. After she  
complained defendant permanently cut her  
compensation plan stating that they have  
been paying her too much and in “error”  
and told her that she is “lucky that they  
were not asking her to pay the difference  
back.”

20 **Evidence:**

21 Exhs. 11, 12, 13; Kasbarian Depo., Vol. I,  
22 201:1-206:5, 207:4-20, 209:19-210:8,  
23 221:11-14; Kasbarian Depo., Vol. II,  
24 347:1-18; Kasbarian Decl., ¶¶ 8, 9;  
25 Hemedinger Depo., 59:14-60:10; Rosen  
26 Depo., 22:15-23:17, 29:18-31:6, Holmes  
27 Depo., 73:5-17, 81:7-24; 120:19-121:3;  
28 Figueroa Depo., 99:22- 100:5; Gannon

Depo., 99:4-7; Hemedinger Depo., 59:14-60:10.

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

**Evidence:**

Plaintiff Depo., Volume I, 190:16-194:3; Hemedinger Depo., 64:18-65:11.

18. Disputed. In June 2014, five months after Kasbarian started complaining about the fraudulent activities by other membership advisors, Kasbarian's commission and bonus check for May 2014 was suddenly and for the first time since she started at West LA 25-33% short of what she was owed. Kasbarian immediately complained about her unpaid commissions and bonuses. After she complained defendant permanently cut her compensation plan stating that they have been paying her too much and in "error" and told her that she is "lucky that they were not asking her to pay the difference back."

**Evidence:**

Exhs. 11, 12, 13; Kasbarian Depo., Vol. I, 201:1-206:5, 207:4-20, 209:19-210:8, 221:11-14; Kasbarian Depo., Vol. II, 347:1-18; Kasbarian Decl., ¶¶ 8, 9; Hemedinger Depo., 59:14-60:10; Rosen Depo., 22:15-23:17, 29:18-31:6, Holmes Depo., 73:5-17, 81:7-24; 120:19-121:3; Figueroa Depo., 99:22- 100:5; Gannon

Depo., 99:4-7; Hemedinger Depo., 59:14-60:10.

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.

**Evidence:**

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., 68:125-69:8.

19. Disputed. In June 2014, five months after Kasbarian started complaining about the fraudulent activities by other membership advisors, Kasbarian's commission and bonus check for May 2014 was suddenly and for the first time since she started at West LA 25-33% short of what she was owed. Kasbarian immediately complained about her unpaid commissions and bonuses. After she complained defendant permanently cut her compensation plan stating that they have been paying her too much and in "error" and told her that she is "lucky that they were not asking her to pay the difference back."

**Evidence:**

Exhs. 11, 12, 13; Kasbarian Depo., Vol. I, 201:1-206:5, 207:4-20, 209:19-210:8, 221:11-14; Kasbarian Depo., Vol. II, 347:1-18; Kasbarian Decl., ¶¶ 8, 9; Hemedinger Depo., 59:14-60:10; Rosen Depo., 22:15-23:17, 29:18-31:6, Holmes Depo., 73:5-17, 81:7-24; 120:19-121:3; Figueroa Depo., 99:22- 100:5; Gannon



Depo., 99:4-7; Hemedinger Depo., 59:14-60:10.

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”).

**Evidence:**

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.

20. Undisputed as to Kasbarian’s complaints but otherwise disputed. In June 2014, five months after Kasbarian started complaining about the fraudulent activities by other membership advisors, Kasbarian’s commission and bonus check for May 2014 was suddenly and for the first time since she started at West LA 25-33% short of what she was owed. Kasbarian immediately complained about her unpaid commissions and bonuses. After she complained defendant permanently cut her compensation plan stating that they have been paying her too much and in “error” and told her that she is “lucky that they were not asking her to pay the difference back.”

**Evidence:**

Exhs. 11, 12, 13; Kasbarian Depo., Vol. I, 201:1-206:5, 207:4-20, 209:19-210:8, 221:11-14; Kasbarian Depo., Vol. II, 347:1-18; Kasbarian Decl., ¶¶ 8, 9; Hemedinger Depo., 59:14-60:10; Rosen Depo., 22:15-23:17, 29:18-31:6, Holmes Depo., 73:5-17, 81:7-24; 120:19-121:3;

Figueroa Depo., 99:22- 100:5; Gannon Depo., 99:4-7; Hemedinger Depo., 59:14-60:10.

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.

**Evidence:**

Plaintiff Depo., Volume I, 196:8-14, 207:15-22, 220:5-20; Plaintiff Depo., Volume II, 349:5-12.

21. Undisputed to the fact that Kasbarian continued to work at Equinox until February 2015 after she complained; however, disputed as to the rest. In June 2014, five months after Kasbarian started complaining about the fraudulent activities by other membership advisors, Kasbarian's commission and bonus check for May 2014 was suddenly and for the first time since she started at West LA 25-33% short of what she was owed. Kasbarian immediately complained about her unpaid commissions and bonuses. After she complained defendant permanently cut her compensation plan stating that they have been paying her too much and in "error" and told her that she is "lucky that they were not asking her to pay the difference back."

**Evidence:**

Exhs. 11, 12, 13; Kasbarian Depo., Vol. I, 201:1-206:5, 207:4-20, 209:19-210:8, 221:11-14; Kasbarian Depo., Vol. II, 347:1-18; Kasbarian Decl., ¶¶ 8, 9;

Hemedinger Depo., 59:14-60:10; Rosen Depo., 22:15-23:17, 29:18-31:6, Holmes Depo., 73:5-17, 81:7-24; 120:19-121:3; Figueroa Depo., 99:22- 100:5; Gannon Depo., 99:4-7; Hemedinger Depo., 59:14-60:10.

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.

**Evidence:**

Plaintiff Depo., Volume I, 81:6-21; 82:5-83:23, 94:14-97:9.

22. Undisputed. However, Kasbarian testified that she complained about multiple MAs at West LA, including Lauren Beck and Devin Mcvelogue about multiple fraudulent and unlawful activities, including charging members credit cards without their authorization.

**Evidence:**

Kasbarian Depo., Vol. I, 69:5-71:5, 71:20-72:4, 76:5-25, 82:9-83:19, 98:11-99:4, 102:13-103:25, 112:5-113:2; Kasbarian Depo., Vol. II, 334:16-25; Kasbarian Decl., ¶ 6; Hemedinger Depo., 43:13-15, 45:8-22, 46:10-22; 76:1-15.

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 com-

23. Undisputed. Gannon also testified and admitted in testimony that he believes that the type of conduct Kasbarian complained of was illegal and is the type of conduct that needs to be investigated.

**Evidence:**

1 plained to Equinox.

Gannon Depo., 51:10-15, 52:23-53:3.

2 **Evidence:**

3 Plaintiff Depo., Volume II, 334:16-336:23.

4  
5 24. According to Plaintiff, her other  
6 complaints involved “things against  
7 Equinox policies that were happening as  
8 well.”

24. Undisputed.

9 **Evidence:**

10 Plaintiff Depo., Volume II, 334:16-336:23.

11  
12 25. Plaintiff admitted that she could not  
13 identify any statute, ordinance, regulation,  
14 local law, state law, or federal law that was  
15 violated as a result of this alleged activity.

25. Disputed. Plaintiff testified that she  
believed this conduct was illegal.  
Moreover, Gannon also testified and  
admitted in testimony that he believes that  
the type of conduct Kasbarian complained  
of was illegal and is the type of conduct  
that needs to be investigated.

16 **Evidence:**

17 Plaintiff Depo., Volume II, 335:4-336:23.

18  
19 **Evidence:**

20 Kasbarian Depo., Volume II, 334:16-  
21 336:23; Gannon Depo., 51:10-15, 52:23-  
22 53:3.

23  
24 26. Plaintiff also testified that she com-  
25 plained to Hemedinger and Simonson  
26 about the sales activities of another MA.

26. Undisputed.

27 **Evidence:**

28 Plaintiff Depo., Volume I, 76:17-79:19;

**Evidence:**

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.

**Evidence:**

Plaintiff Depo., Volume I, 76:17-79:19p  
93:10-94:10, 102:10-107:24; 108:1-113:5;  
Hemedinger Depo., 45:8-47:19.

27. Undisputed. However, Kasbarian testified that she complained about multiple MAs at West LA, including Lauren Beck and Devin Mcvelogue about multiple fraudulent and unlawful activities, including charging members credit cards without their authorization.

**Evidence:**

Kasbarian Depo., Vol. I, 69:5-71:5, 71:20-72:4, 76:5-25, 82:9-83:19, 98:11-99:4, 102:13-103:25, 112:5-113:2; Kasbarian Depo., Vol. II, 334:16-25; Kasbarian Decl., ¶ 6; Hemedinger Depo., 43:13-15, 45:8-22, 46:10-22; 76:1-15.

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.

**Evidence:**

Rosen Depo., 37:20-38:18; Declaration of Tracy Cuva (“Cuva Decl.”), ¶ 2.

28. Undisputed.

**Evidence:**

1 29. Member Services is Equinox's bill- 29. Undisputed.  
2 ing department (centrally based in New **Evidence:**  
3 York) which handles membership con-  
4 tracts and membership sales, including  
5 auditing of membership sales.

6 **Evidence:**

7 Cuva Decl., ¶ 1.  
8

9 30. Rosen contacted Tracy Cuva, Senior 30. Undisputed.  
10 Director of Equinox's Member Services **Evidence:**  
11 Department, gave her the information re-  
12 ceived from the member, and asked  
13 Member Services to investigate this sale.

14 **Evidence:**

15 Rosen Depo., 37:20-38:21; Cuva Decl.,  
16 ¶ 2.  
17

18 31. Member Services' investigation, 31. Undisputed.  
19 which was conducted by Cuva, confirmed **Evidence:**  
20 that this was an unauthorized sale  
21 processed by a MA at the West LA Club  
22 (Plaintiff was not implicated in this  
23 transaction).

24 **Evidence:**

25 Cuva Decl., ¶ 2.  
26

27 32. This MA was relocating to New 32. Undisputed. However, this MA was  
28 York but, based on the investigation terminated.

1 results, she was not hired to work for  
2 Equinox in New York.

3 **Evidence:**

4 Rosen Depo., 39:8-13.

**Evidence:**

Kasbarian Depo., Vol. I, 84:7-85:1,  
184:20-23; Kasbarian Decl., ¶ 10;  
Hemedinger Decl., ¶ 4; Gannon Depo.,  
58:20-59:18, 60:2-21.

7 33. As a result of this member com-  
8 plaint, Rosen also asked Cuva to have  
9 Member Services conduct an investigation  
10 of sales transactions at the West LA club.

11 **Evidence:**

12 Rosen Depo., 47:25-6; Cuva Decl., ¶ 3.

33. Disputed. Senior Director of Loss  
Prevention, Jim Burger, testified that Jack  
Gannon contacted him to do an  
investigation at the West LA location and  
reported to him throughout.

**Evidence:**

Burger Depo., 70:9-21, 78:4-11, 83:18-  
84:3.

16 34. Apart from requesting that the inves-  
17 tigation be conducted and asking Jim  
18 Burger (Senior Director of Loss Preven-  
19 tion) to travel to the West LA club and  
20 continue the investigation after Member  
21 Services finished their portion of the inves-  
22 tigation, Rosen did not participate in that  
23 investigation.

24 **Evidence:**

25 Rosen Depo., 47:25-48:21.

34. Disputed. Senior Director of Loss  
Prevention, Jim Burger, testified that Jack  
Gannon contacted him to do an  
investigation at the West LA location and  
reported to him throughout.

**Evidence:**

Burger Depo., 70:9-21, 78:4-11, 83:18-  
84:3.

27 35. Cuva instructed Kevin Stanfa  
28 (“Stanfa”) (Manager of Compliance and

35. Undisputed.

**Evidence:**

1 Special Projects), to review sales transac-  
2 tions at the West LA club.

3 **Evidence:**

4 Cuva Decl., ¶ 3; Stanfa Decl. ¶ 4.  
5

6 36. After Stanfa reported finding various  
7 anomalies associated with sales transac-  
8 tions at the West LA club, Cuva instructed  
9 Stanfa to prepare a summary detailing his  
10 findings.

11 **Evidence:**

12 Cuva Decl., ¶ 3; Stanfa Decl. ¶ 4.  
13

14 37. Stanfa then prepared a workbook  
15 with three spreadsheets regarding the fol-  
16 lowing sales activities: (1) 2014 Freezes;  
17 (2) Modification to Direct Bill; and  
18 (3) West LA Sales Breakdown.

19 **Evidence:**

20 Stanfa Decl., ¶ 4.  
21

22 38. Once these were prepared, Cuva  
23 emailed the spreadsheets to Rosen, Holmes  
24 and Gannon and summarized the results of  
25 the Member Services investigation.

26 **Evidence:**

27 Rosen Depo., 47:25-48:21; Holmes Depo.,  
28 86:10-88:10, 95:9-96:10; Cuva Decl., ¶ 6,

36. Undisputed.

**Evidence:**

37. Disputed. Defendant fails to produce  
the spreadsheets corroborating those sales.

**Evidence:**

Defendant's Amended Compendium of  
Exhibits.

38. Disputed. Defendant fails to produce  
the spreadsheets corroborating those sales.

**Evidence:**

Defendant's Amended Compendium of  
Exhibits.



Exh.N; Stanfa Decl. ¶¶ 4-5.

39. In her email, Cuva indicated that these spreadsheets “all reflect patterns unhealthy for the business.”

**Evidence:**

Cuva Decl., ¶ 7, Exh.N.

40. Cuva noted as follows:

i The 2041 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 question-

39. Undisputed as to that statement being written in the email.

**Evidence:**

40. Disputed. Kasbarian was found to have not committed any of the inappropriate and fraudulent conduct or “fake” sales that were being investigated.

**Evidence:**

Holmes Depo., 88:4-10, 106:11-19; Hemedinger Depo., 51:23-52:23; Rosen Depo., 48:22-49:3, 54:3-8, 76:5-14, 98:6-17, 101:24-102:7; Gannon Depo., 70:8-71:15, 72:7-20, 75:22-76:8, 79:5-10, 81:7-11; Gannon Decl., ¶ 6, 10.

1           able sales from two MAs  
2           (Plaintiff and the MA moving  
3           to New York). The other  
4           three MAs were reviewed  
5           and did not reflect the same  
6           anomalies seen with Plaintiff  
7           and the MA moving to New  
8           York. The questionable sales  
9           included selling memberships  
10          to members with the credit  
11          card of another member (al-  
12          most universally without re-  
13          questing a referral credit) or  
14          re-contracting over a previ-  
15          ously 3-day'd membership  
16          and either using the credit  
17          from the previous sale or re-  
18          charging the same credit  
19          card, credit card not present  
20          for numerous sales transac-  
21          tions, 3-day cancellations  
22          with no or just one member  
23          visit, new memberships  
24          which were previously fi-  
25          nance cancelled and had bal-  
26          ances on account that were  
27          waived.

28       **Evidence:**

1 Cuva Decl., ¶ 7, Exh.N.

2  
3 41. Neither Cuva nor Stanfa were aware  
4 Plaintiff had made any complaints about  
5 changes to her compensation plan or about  
6 the alleged activities of other MAs.

7 **Evidence:**

8 Cuva Decl., ¶ 8; Stanfa Decl., ¶ 11.

41. Undisputed. However, Kasbarian  
was found to have not committed any of  
the inappropriate and fraudulent conduct or  
“fake” sales that were being investigated.

**Evidence:**

41. Holmes Depo., 88:4-10, 106:11-19;  
Hemedinger Depo., 51:23-52:23; Rosen  
Depo., 48:22-49:3, 54:3-8, 76:5-14, 98:6-  
17, 101:24-102:7; Gannon Depo., 70:8-  
71:15, 72:7-20, 75:22-76:8, 79:5-10, 81:7-  
11; Gannon Decl., ¶ 6, 10.

**Evidence:**

17 42. In addition, Burger was asked to in-  
18 terview the sales team at the West LA  
19 club.

20 **Evidence:**

21 Deposition of Jim Burger (“Burger  
22 Depo.”), 72:4-73:3, 73:13-75:22, 76:6-12.

42. Undisputed.

**Evidence:**

24 43. When Burger came to Los Angeles  
25 to conduct his interviews in late January  
26 2015, the West LA club’s sales team con-  
27 sisted of three MAs, Plaintiff and two  
28 other MAs who were supervised by the

43. Undisputed.

**Evidence:**

1 Simonson [sic] and an Assistant General  
2 Manager.

3 **Evidence:**

4 Hemedinger Decl., ¶ 4.  
5

6 44. A MA was fired on or about January 44. Undisputed.  
7 20, 2015 for improper sales activities. **Evidence:**

8 **Evidence:**

9 Figueroa Decl. ¶ 9; Hemedinger Decl., ¶ 4.  
10

11 45. At Burger's request, Member Ser- 45. Disputed. Defendant fails to produce  
12 vices provided him with the spreadsheets the spreadsheets corroborating those sales.  
13 summarizing their findings of questionable **Evidence:**  
14 sales transactions at the West LA club. Defendant's Amended Compendium of

15 **Evidence:**

16 Burger Depo., 72:13-73:3; Cuva Decl. ¶ 8.  
17

18 46. Burger then met with Cuva and 46. Undisputed.  
19 Stanfa and they discussed their findings re- **Evidence:**  
20 garding the questionable sales at the West  
21 LA club.

22 **Evidence:**

23 Burger Depo., 73:13-74:15; Cuva Decl.  
24 ¶ 8; Stanfa Decl., ¶ 9.  
25

26 47. Burger had a subsequent meeting 47. Disputed. Defendant fails to produce  
27 with Stanfa to review the spreadsheets the spreadsheets corroborating those sales.  
28 Member Services had prepared. **Evidence:**

**Evidence:** Defendant's Amended Compendium of  
Burger Depo., 74:16-75:3, 8-22; Stanfa Exhibits.  
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. Disputed. Defendant fails to produce the spreadsheets corroborating those sales. However, However, Kasbarian was found to have not committed any of the inappropriate and fraudulent conduct or "fake" sales that were being investigated.

**Evidence:** Defendant's Amended Compendium of Exhibits; Holmes Depo., 88:4-10, 106:11-19; Hemedinger Depo., 51:23-52:23; Rosen Depo., 48:22-49:3, 54:3-8, 76:5-14, 98:6-17, 101:24-102:7; Gannon Depo., 70:8-71:15, 72:7-20, 75:22-76:8, 79:5-10, 81:7-11; Gannon Decl., ¶ 6, 10.

**Evidence:** 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. Undisputed.

**Evidence:** Burger Depo., 76:19-77:1; Stanfa Decl., ¶ 9.

**Evidence:**

1 50. In late January 2015, Burger came to 50. Undisputed.  
2 Los Angeles to interview various employ- **Evidence:**  
3 ees regarding sales activities of the West  
4 LA MAs.

5 **Evidence:**

6 Burger Depo., 76:6-12; Gannon Decl., ¶ 3;  
7 Hemedinger Decl., ¶ 5.  
8

9 51. Prior to the interviews, Burger and 51. Disputed. Gannon testified that one  
10 Gannon discussed suspending all of the in- MA was not suspended and was not  
11 dividuals interviewed as part of the investi- discussed suspending because there “was  
12 gation pending the results of the investiga- no suspicious conduct linked to him” even  
13 tion.

14 **Evidence:**

15 Burger Depo., 116:12-117:12.  
16

**Evidence:**

Gannon Depo., 70:8-71:19, 81:7-11;  
Gannon Decl., ¶ 6, 10.  
17

18 52. Burger then interviewed the follow- 52. Disputed. Gannon testified that one  
19 ing individuals: (1) the Assistant General MA was not suspended and was not  
20 Manager; (2) Plaintiff; (3) another MA; discussed suspending because there “was  
21 (4) a relatively newly hired MA; and no suspicious conduct linked to him” even  
22 (5) Simonson.

23 **Evidence:**

24 Hemedinger Decl., ¶ 5.  
25

**Evidence:**

Gannon Depo., 70:8-71:19, 81:7-11;  
Gannon Decl., ¶ 6, 10.  
26

27 53. Burger had never heard of or spoken 53. Undisputed.  
28 to Plaintiff prior to this investigation meet- **Evidence:**

1 ing.

2 **Evidence:**

3 Burger Depo., 35:22-24.

5 54. On January 30, 2015, Plaintiff met 54. Undisputed.

6 with Burger and Leah Ball of Human **Evidence:**

7 Resources regarding West LA's sales prac-  
8 tices.

9 **Evidence:**

10 Plaintiff Depo., Volume I, 161:11-22,  
11 164:10-22; Plaintiff Depo., Volume II,  
12 305:21-24; , [sic] Burger Depo., 96:18-25.

14 55. Plaintiff answered questions about  
15 her sales activities, as well as the activities  
16 of other MAs.

17 **Evidence:**

18 Plaintiff Depo., Volume I, 161:11-22,  
19 164:10-22; Burger Depo., 53:13-54:9.

55. Undisputed. Additionally, at the  
beginning of Kasbarian's interview, she  
notifies Senior Director of Loss  
Prevention, Jim Burger, about the  
fraudulent activity and unauthorized  
membership sales that she observed and  
complained about to management for  
months

22 **Evidence:**

23 Exh. 17; Kasbarian Depo., Vol. I, 158:4-  
24 18, 161:15-162:1, 166:9-167:2; Kasbarian  
25 Decl., ¶¶ 10, 11; Burger Depo., 70:9-21,  
26 78:4-11, 83:18-84:3, 91:5-92:18, 100:3-8,  
27 183:21-184:12.

1 56. While Burger did not find Plaintiff  
2 credible, he felt, at that time, that there was  
3 insufficient information to warrant Plain-  
4 tiff's termination.

5 **Evidence:**

6 Burger Depo., 122:14-17.  
7  
8

56. Undisputed as to Burger concluding  
there was insufficient information to  
warrant any terminable offense committed  
by Burger. Kasbarian was found to have  
not committed any of the inappropriate and  
fraudulent conduct or "fake" sales that  
were being investigated.

9 **Evidence:**

10 Holmes Depo., 88:4-10, 106:11-19;  
11 Hemedinger Depo., 51:23-52:23; Rosen  
12 Depo., 48:22-49:3, 54:3-8, 76:5-14, 98:6-  
13 17, 101:24-102:7; Gannon Depo., 70:8-  
14 71:15, 72:7-20, 75:22-76:8, 79:5-10, 81:7-  
15 11; Gannon Decl., ¶ 6, 10.  
16

17 57. After Burger completed his inter-  
18 views, Burger, Gannon and Hemedinger  
19 met briefly to discuss Burger's impression.

20 **Evidence:**

21 Burger Depo., 117:16-18, 24-118:6.  
22

57. Undisputed.

23 **Evidence:**

24 58. Gannon then advised Plaintiff that  
25 she was being suspended.

26 **Evidence:**

27 Plaintiff Depo, Volume I, 174:24-175:3,  
28 11-12; Plaintiff Depo., Volume II, 306:3-7;

58. Undisputed. However, she was  
suspended despite her having been found  
to not have committed any terminable  
offense.

**Evidence:**

Holmes Depo., 88:4-10, 106:11-19;



1 Gannon Decl., ¶ 4.

Hemedinger Depo., 51:23-52:23; Rosen  
Depo., 48:22-49:3, 54:3-8, 76:5-14, 98:6-  
17, 101:24-102:7; Gannon Depo., 70:8-  
71:15, 72:7-20, 75:22-76:8, 79:5-10, 81:7-  
11; Gannon Decl., ¶ 6, 10.

7 59. All of the MAs interviewed as part of  
8 the investigation (with the exception of the  
9 relatively new MA) were suspended pend-  
10 ing investigation.

11 **Evidence:**

12 Burger Depo., ¶ [sic] 110:17-23; Gannon  
13 Decl., ¶ 6.

59. Undisputed. One MA was not  
suspended.

**Evidence:**

Gannon Depo., 70:8-71:15, 81:7-11;  
Gannon Decl., ¶ 6, 10.

15 60. Gannon also advised Plaintiff to re-  
16 port back to the West LA club at 2:00 p.m.  
17 the next day for another meeting.

18 **Evidence:**

19 Plaintiff Depo., Volume II, 180:11-181:4;  
20 Gannon Decl., ¶ 5.

60. Undisputed.

**Evidence:**

22 61. According to Plaintiff, Equinox told  
23 her that she would not have access to her  
24 email or payroll account and escorted her  
25 out of the building in front of Equinox's  
26 clientele, staff and all of her peers.

27 **Evidence:**

28 Plaintiff Depo., Volume II, 174:24-175:21;

61. Undisputed.

**Evidence:**

1 Plaintiff Depo., Volume II, 305:21-306:2,  
2 364:17-20; Plaintiff's Complaint, 6:5-7.

3  
4 62. It is Equinox's policy to turn off  
5 email access for hourly employees who  
6 have been suspended pending investigation  
7 or who are on leave of absence.

8 **Evidence:**  
9 Gannon Decl., ¶ 7.

10  
11 63. Prior to Burger's interview of Plain-  
12 tiff, Gannon had the Payroll Department  
13 prepare a final paycheck for Plaintiff so  
14 that she could be paid in accordance with  
15 California law in the event the decision  
16 was made to terminate her employment.

17 **Evidence:**  
18 Gannon Decl., ¶ 8.

19  
20  
21  
22 64. Plaintiff met with Hemedinger and  
23 Gannon at the West LA club on January  
24 31, 2015 and was told that the investiga-  
25 tion was concluded and that she would be  
26 working at the Marina Del Rey club.

27 **Evidence:**  
28 Plaintiff Depo., Volume I, 182:5-183:8;

62. Disputed. Defendant did not produce  
any documentation corroborating this  
policy.

**Evidence:**  
Defendant's Amended Compendium of  
Evidence.

63. Undisputed as to Gannon preparing  
the final paycheck; however, this paycheck  
was prepared by Gannon even before the  
interview in preparation for Kasbarian's  
termination.

**Evidence:**  
Gannon Decl., ¶ 8; Exh. 15; Kasbarian  
Depo., Vol. I, 130:21-131:3, 185:5-15;  
Kasbarian Depo., Vol. II, 311:9-22;  
Kasbarian Decl., ¶ 11.

64. Undisputed.

**Evidence:**

1 Plaintiff Depo., Volume II, 306:12:16  
2 [sic], 382:12-17, 390:4-11, Exh. 38;  
3 Hemedinger Depo., 54:17-21, 55:1-8;  
4 Gannon Decl., ¶ 3; Hemedinger Decl., ¶ 6.  
5

6 65. The decision was made to reassign  
7 Plaintiff to the Marina Del Rey club be-  
8 cause Equinox wanted to rebuild the team  
9 of MAs in the West LA club and to create  
10 a fresh culture, as a result of the investiga-  
11 tion findings.

12 **Evidence:**

13 Rosen Depo., 71:7-20, 73:15-22, 76:5-14;  
14 Holmes Depo., 96:12-98:17; Hemedinger  
15 Depo., 51:7-52:23; Gannon Decl., ¶ 10.  
16  
17  
18

19 66. Plaintiff's compensation plan would  
20 change once at Marina Del Rey to align  
21 with the compensation plan of Marina Del  
22 Rey MAs. Equinox considered the reas-  
23 signment a lateral move.

24 **Evidence:**

25 Rosen Depo., 87:25-88:4; Gannon Decl.,  
26 ¶ 11.  
27  
28

65. Disputed. Defendant's claim that  
Kasbarian was reassigned to Marina Del  
Rey because they wanted to rebuild the  
team of Mas, yet one MA was allowed to  
stay at West LA

**Evidence:**

Rosen Depo., 48:22-49:3, 54:3-8, 98:6-17,  
76:5-14; Hemedinger Depo., 51:23-52:23;  
Holmes Depo., 88:4-10, 106:11-19,  
101:24-102:7; Gannon Depo., 70:8-71:15,  
72:7-20, 75:22-76:8, 79:5-10, 81:7-11;  
Gannon Decl., ¶ 6, 10.

66. Undisputed that the compensation  
plan would change; however, disputed as  
to it being a lateral move. Kasbarian is told  
that she would be paid \$9.00/hour at the  
Marina del Rey office, which was a \$10.00  
per hour decrease in hourly rate that she  
was being paid at the West Los Angeles  
branch at \$19.23 per hour. Barry Holmes,  
Vice President of Sales, admits that urban  
clubs, such as the Santa Monica location,

1 tend to generate more revenue than  
2 suburban clubs, like the Marina Del Rey  
3 location, and the West LA location is a  
4 higher tier club than urban clubs. Brian  
5 Hemedinger admits in deposition that they  
6 thought it would be “best for Tamar, if she  
7 had the opportunity to be a membership  
8 advisor at a different location,” while  
9 acknowledging that she would be going to  
10 a lower tier location than when she first  
11 started with the company. Moreover, when  
12 Kasbarian went to West LA she was  
13 promoted from MA to Membership  
14 Executive, which it stated on her  
15 “Promotion Memo.”

16 **Evidence:**

17 Exh. 10, 14; Kasbarian Depo., Vol. I,  
18 50:24-51:1, 89:9-90:19, 279:14-280:12,  
19 182:12-184:19; Kasbarian Depo., Vol. II,  
20 354:1-18, 458:24-459:17; Gannon Decl., 9,  
21 10; Holmes Depo., 28:22-29:2, 50:18-25;  
22 Gannon Depo., 32:15-17, 88:25-89:5;  
23 Hemedinger Depo., 50:14-20, 51:23-  
24 52:23, 81:2-23.

26 67. Equinox considered the reassignment  
27 a lateral move.

28 **Evidence:**

67. Disputed. Kasbarian is told that she  
would be paid \$9.00/hour at the Marina del  
Rey office, which was a \$10.00 per hour

1 Rosen Depo., 87:25-88:4; Gannon Decl., decrease in hourly rate that she was being  
2 ¶ 11. paid at the West Los Angeles branch at  
3 \$19.23 per hour. Barry Holmes, Vice  
4 President of Sales, admits that urban clubs,  
5 such as the Santa Monica location, tend to  
6 generate more revenue than suburban  
7 clubs, like the Marina Del Rey location,  
8 and the West LA location is a higher tier  
9 club than urban clubs. Brian Hemedinger  
10 admits in deposition that they thought it  
11 would be “best for Tamar, if she had the  
12 opportunity to be a membership advisor at  
13 a different location,” while acknowledging  
14 that she would be going to a lower tier  
15 location than when she first started with  
16 the company. Moreover, when Kasbarian  
17 went to West LA she was promoted from  
18 MA to Membership Executive, which it  
19 stated on her “Promotion Memo.”

20 **Evidence:**

21 Exh. 10, 14; Kasbarian Depo., Vol. I,  
22 50:24-51:1, 89:9-90:19, 279:14-280:12,  
23 182:12-184:19; Kasbarian Depo., Vol. II,  
24 354:1-18, 458:24-459:17; Gannon Decl., 9,  
25 10; Holmes Depo., 28:22-29:2, 50:18-25;  
26 Gannon Depo., 32:15-17, 88:25-89:5;  
27 Hemedinger Depo., 50:14-20, 51:23-  
28

52:23, 81:2-23.

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.

**Evidence:**

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.

**Evidence:**

Hemedinger Depo., 52:18-23; Rosen Depo., 57:13-19; 58:22-59:14; Holmes Depo., 31:13-15.

68. Undisputed.

**Evidence:**

69. Disputed. Kasbarian is told that she would be paid \$9.00/hour at the Marina del Rey office, which was a \$10.00 per hour decrease in hourly rate that she was being paid at the West Los Angeles branch at \$19.23 per hour. Barry Holmes, Vice President of Sales, admits that urban clubs, such as the Santa Monica location, tend to generate more revenue than suburban clubs, like the Marina Del Rey location, and the West LA location is a higher tier club than urban clubs. Brian Hemedinger admits in deposition that they thought it would be "best for Tamar, if she had the opportunity to be a membership advisor at a different location," while acknowledging that she would be going to a lower tier location than when she first started with

the company. Moreover, when Kasbarian went to West LA she was promoted from MA to Membership Executive, which it stated on her “Promotion Memo.”

**Evidence:**

Exh. 10, 14; Kasbarian Depo., Vol. I, 50:24-51:1, 89:9-90:19, 279:14-280:12, 182:12-184:19; Kasbarian Depo., Vol. II, 354:1-18, 458:24-459:17; Gannon Decl., 9, 10; Holmes Depo., 28:22-29:2, 50:18-25; Gannon Depo., 32:15-17, 88:25-89:5; Hemedinger Depo., 50:14-20, 51:23-52:23, 81:2-23.

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.

**Evidence:**

Hemedinger Depo., 52:18-23; Rosen Depo., 57:13-19; 58:22-59:14; Holmes Depo., [sic] 50:18-51:5.

70. Disputed. Kasbarian is told that she would be paid \$9.00/hour at the Marina del Rey office, which was a \$10.00 per hour decrease in hourly rate that she was being paid at the West Los Angeles branch at \$19.23 per hour. Barry Holmes, Vice President of Sales, admits that urban clubs, such as the Santa Monica location, tend to generate more revenue than suburban clubs, like the Marina Del Rey location, and the West LA location is a higher tier club than urban clubs. Brian Hemedinger admits in deposition that they thought it would be “best for Tamar, if she had the

1 opportunity to be a membership advisor at  
2 a different location,” while acknowledging  
3 that she would be going to a lower tier  
4 location than when she first started with  
5 the company. Moreover, when Kasbarian  
6 went to West LA she was promoted from  
7 MA to Membership Executive, which it  
8 stated on her “Promotion Memo.”

9 **Evidence:**

10 Exh. 10, 14; Kasbarian Depo., Vol. I,  
11 50:24-51:1, 89:9-90:19, 279:14-280:12,  
12 182:12-184:19; Kasbarian Depo., Vol. II,  
13 354:1-18, 458:24-459:17; Gannon Decl., 9,  
14 10; Holmes Depo., 28:22-29:2, 50:18-25;  
15 Gannon Depo., 32:15-17, 88:25-89:5;  
16 Hemedinger Depo., 50:14-20, 51:23-  
17 52:23, 81:2-23.

18  
19 71. Gannon emailed Plaintiff the com-  
20 pensation plan for the Marina Del Rey  
21 Club on or about January 31, 2015.

22 **Evidence:**

23 Plaintiff Depo., Volume I, 246:19-247:2;  
24 Gannon Decl., ¶ 12.

25  
26 72. Plaintiff testified that no one from  
27 Equinox ever told her that she was being  
28 “terminated” or “demoted” as part of her

71. Undisputed.

**Evidence:**

72. Undisputed as to no one stating those  
actual words; however, Kasbarian is told  
that she would be paid \$9.00/hour at the



1 reassignment to the Marina Del Rey club.

2 **Evidence:**

3 Plaintiff Depo., Volume I, 171:10-172:7;

4 Plaintiff Depo., Volume II, 306:17-310:19,

5 363:24-364:3; Gannon Decl., ¶ 13;

6 Hemedinger Decl., ¶ 7.

Marina del Rey office, which was a \$10.00 per hour decrease in hourly rate that she was being paid at the West Los Angeles branch at \$19.23 per hour. Barry Holmes, Vice President of Sales, admits that urban clubs, such as the Santa Monica location, tend to generate more revenue than suburban clubs, like the Marina Del Rey location, and the West LA location is a higher tier club than urban clubs. Brian Hemedinger admits in deposition that they thought it would be “best for Tamar, if she had the opportunity to be a membership advisor at a different location,” while acknowledging that she would be going to a lower tier location than when she first started with the company. Moreover, when Kasbarian went to West LA she was promoted from MA to Membership Executive, which it stated on her “Promotion Memo.”

22 **Evidence:**

23 Exh. 10, 14; Kasbarian Depo., Vol. I, 50:24-51:1, 89:9-90:19, 279:14-280:12, 182:12-184:19; Kasbarian Depo., Vol. II, 354:1-18, 458:24-459:17; Gannon Decl., 9, 10; Holmes Depo., 28:22-29:2, 50:18-25; Gannon Depo., 32:15-17, 88:25-89:5;

Hemedinger Depo., 50:14-20, 51:23-52:23, 81:2-23.

73. Gannon made the decision to reassign Plaintiff to the Marina Del Rey club. 73. Undisputed.  
**Evidence:**

**Evidence:**

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. Undisputed.  
**Evidence:**

**Evidence:**

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. Undisputed; however, Kasbarian was forced to resign due to intolerable working conditions at Equinox. On February 2, 2015, the day Kasbarian was supposed to start at the Marina del Rey location, she

**Evidence:**

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. feels she is no longer welcome at Equinox and feels pushed out since she was forced to take a demotion, a significant pay cut and restart her business and clientele base, along with the overwhelming stress of the

interrogation and suspension and fear of being terminated that she is forced to resign.

**Evidence:**

Exh. 16; Kasbarian Depo., Vol. I, 186:5-14; Kasbarian Decl., ¶¶ 12-14.

76. Plaintiff's last day of employment was February 2, 2015. 76. Undisputed.

**Evidence:**

Plaintiff Depo., Volume I, 186:11-14.

77. Plaintiff never reported to work at the Marina Del Rey club. 77. Undisputed.

**Evidence:**

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. Undisputed.

**Evidence:**

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. Undisputed. However, one MA was able to stay at the West LA location, despite Gannon stating he wanted to rebuild the team by getting rid of all of the

**Evidence:**

Plaintiff Depo., Volume II, 342:25-343:5. Membership Executives at West LA.

**Evidence:**

Rosen Depo., 76:5-14; Hemedinger Depo., 51:23-52:23; Holmes Depo., 101:24-102:7; Gannon Depo., 70:8-71:15, 81:7-11; Gannon Decl., ¶ 6, 10.

80. Plaintiff testified that she was un- 80. Undisputed.

aware of any other MA at the West LA **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.

**Evidence:**

Plaintiff Depo., Volume II, 343:6-22.

**ISSUE NO. 22:** Plaintiff's ninth cause of action for intentional infliction of emotional distress also survives ("IIED") as a matter of law because Plaintiff can establish a *prima facie* case of IIED because Plaintiff can establish extreme and outrageous conduct. (UF Nos. 1-80.)

**Alleged Undisputed Facts and  
Supporting Evidence**

**Plaintiff's Responses and  
Supporting Evidence**

1. Plaintiff was hired as a Membership Advisor ("MA") at Equinox's Santa Monica club on or about October 15, 2010.

**Evidence:**

Plaintiff Depo., Volume I, 36:23-38:10,

1 Exh. 5 (Offer Letter).

2  
3 2. In January 2014, Plaintiff began  
4 working at Equinox's West Los Angeles  
5 club ("West LA club").

6 **Evidence:**

7 Plaintiff Depo., Volume I, 189:22-190:12,  
8 Exh. 13 (Memo).

9  
10  
11  
12  
13 3. At the West LA club, MAs were re-  
14 ferred to as Membership Executives.  
15 However, their job duties were the same.

16 **Evidence:**

17 Declaration of Brian Hemedinger  
18 ("Hemedinger Decl."), ¶ 3.

2. Disputed. Kasbarian was promoted  
to the position of Membership Executive at  
the West Los Angeles club ("West LA") in  
October 2013.

**Evidence:**

Exh. 10; Kasbarian Depo., Vol. I, 89:9-  
90:19, 279:14-280:12; Kasbarian Decl., ¶  
5; Hemedinger Depo., 50:4-9; Rosen  
Depo., 20:4-18; Holmes Depo., 39:13-18.

3. Disputed. A Membership Executive  
position is considered a promotion from an  
MA position. Kasbarian was specifically  
told her position as a Membership  
Executive was a promotion from an MA,  
and she received a memo on it, as well as a  
higher compensation plan. Kasbarian's  
hourly rate also increased with her position  
as a Membership Executive, to \$19.23 per  
hour, as well as an increase in  
commissions and bonuses.

**Evidence:**

Exh. 10; Kasbarian Depo., Vol. I, 89:9-  
90:19, 279:14-280:12; Kasbarian Decl., ¶  
5; Hemedinger Depo., 50:4-9; Rosen

Depo., 20:4-18; Holmes Depo., 39:13-18.

4. During Plaintiff's employment at Equinox Santa Monica and West LA clubs, Jack Gannon ("Gannon") was the Vice President of the West Coast.

**Evidence:**

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.

**Evidence:**

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.

**Evidence:**

Plaintiff Depo., Volume I, 52:11-19.

1 7. Plaintiff's personnel file includes an 7. Undisputed.  
2 Employee Handbook Receipt Acknowl- **Evidence:**  
3 edgment Form with Plaintiff's signature  
4 dated October 15, 2010.

5 **Evidence:**

6 Plaintiff Depo., Volume I, 43:18-45:15,  
7 Exh. 8 (Receipt Acknowledgement [sic]  
8 Form); Declaration of Emerson Figueroa  
9 ("Figueroa Decl."), ¶ 5, Exh. B.  
10

11 8. In particular, the Employee Hand-  
12 book stated:

13 I acknowledge that the re-  
14 ceipt of the Employee Hand-  
15 book in no way creates a con-  
16 tract between Equinox and me.  
17 Moreover, I understand and  
18 agree that all matters discussed  
19 in the Employee Handbook are  
20 subject to change or modifica-  
21 tion from time to time except  
22 the At-Will Employment Policy  
23 specified therein. The At-Will  
24 Employment Policy represents  
25 the final and complete agree-  
26 ment concerning the duration of  
27 my employment. I acknowl-  
28 edge that any change in the At-  
Will Employment Policy is ef-  
fective only if set forth in a  
written document signed by the  
CEO of Equinox and myself.

24 **Evidence:**

25 Plaintiff Depo., Volume I, 43:18-45:15,  
26 Exh. 8 (Receipt Acknowledgement [sic]  
27 Form); Figueroa Decl., ¶ 5, Exh. B (Re-  
28

8. Undisputed, as to what the actual  
document states. However, disputed as to  
whether Kasbarian actually believed her  
employment was "at-will." Kasbarian  
believes she would not be demoted, have  
her pay cut, her employment suspended,  
or, reassigned, etc. unless it was for good  
cause.

**Evidence:**

Kasbarian Decl., ¶¶ 4, 11, 13, 14.

1 ceipt Acknowledgement [sic] Form.

2  
3 9. Plaintiff's personnel file also in- 9. Undisputed.  
4 cludes an Offer Letter, dated October 15, **Evidence:**  
5 2010, which Plaintiff acknowledged re-  
6 ceiving.

7 **Evidence:**

8 Plaintiff Depo., Volume I, 36:23-38:11,  
9 Exh. 5 (Offer Letter); Figueroa Decl., ¶ 6,  
10 Exh. C (Offer Letter).

11  
12 10. In particular, the Offer Letter stated:

13 We are excited at the pros-  
14 pect of you joining the Compa-  
15 ny, you should be aware that  
16 our relationship is "employ-  
17 ment-at-will." That means you  
18 are free, at any time, for any  
19 reason, to end your employment  
20 with the Company and that the  
21 Company may do the same.  
22 Our agreement regarding the at-  
23 will nature of your employment  
24 may not be changed, except in a  
25 writing signed by the Compa-  
26 ny's Chief Executive Officer.  
27 Given the at-will nature, the  
28 Company may from time to  
time add to, modify, or discon-  
tinue its compensation policies,  
employee benefit plans or other  
aspects of your employment.

24 **Evidence:**

25 Plaintiff Depo., Volume I, 36:23-38:11,  
26 Exh. 5 (Offer Letter); Figueroa Decl., ¶ 6,  
27 Exh. C (Offer Letter).

10. Undisputed, as to what the actual  
document states. However, disputed as to  
whether Kasbarian actually believed her  
employment was "at-will." Kasbarian  
believes she would not be demoted, have  
her pay cut, her employment suspended,  
or, reassigned, etc. unless it was for good  
cause.

**Evidence:**

Kasbarian Decl., ¶¶ 4, 11, 13, 14.



1 11. Plaintiff's personnel file also in-  
2 cludes an Employee Confidentiality and  
3 Non-Solicitation Agreement with Plain-  
4 tiff's signature dated October 14, 2010.

5 **Evidence:**

6 Figueroa Decl., ¶ 8, Exh. D.  
7

8 12. This Agreement stated: "You agree  
9 and understand that nothing in this Agree-  
10 ment shall alter or modify the 'at-will'  
11 nature of your employment with the Com-  
12 pany or confer on [y]ou any rights with re-  
13 spect to continuation of your employment  
14 with the Company."

15 **Evidence:**

16 Figueroa Decl., ¶ 8, Exh. D.  
17  
18

19 13. In her deposition, Plaintiff admitted  
20 that she did not have a contract with  
21 Equinox; no one ever told her that she was  
22 guaranteed employment for a certain time  
23 period; and no one ever told her that she  
24 was anything other than an at-will em-  
25 ployee.

26 **Evidence:**

27 Plaintiff Depo., Volume I, 36:23-38:11,  
28 43:18-45:15, Exh. 5 (Offer Letter), Exh. 8

11. Undisputed.

**Evidence:**

12. Undisputed, as to what the actual  
document states. However, disputed as to  
whether Kasbarian actually believed her  
employment was "at-will." Kasbarian  
believes she would not be demoted, have  
her pay cut, her employment suspended,  
or, reassigned, etc. unless it was for good  
cause.

**Evidence:**

Kasbarian Decl., ¶¶ 4, 11, 13, 14.

13. Undisputed, as to what the actual  
document states. However, disputed as to  
whether Kasbarian actually believed her  
employment was "at-will." Kasbarian  
believes she would not be demoted, have  
her pay cut, her employment suspended,  
or, reassigned, etc. unless it was for good  
cause.

**Evidence:**

(Receipt Acknowledgement [sic] Form). Kasbarian Decl., ¶¶ 4, 11, 13, 14.

14. The Employee Handbook Plaintiff 14. Undisputed.

acknowledged receiving also included **Evidence:**

Equinox's non-retaliation policy as well as  
complaint procedures for reporting retaliation.

**Evidence:**

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 15. Undisputed.

ly prohibits retaliation against any employee **Evidence:**

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 inves-

1 tigation.”

2 **Evidence:**

3 Plaintiff Depo., Volume I, 43:18-45:15,  
4 Exh. 8 Receipt of Employee Handbook;  
5 Figueroa Decl., Exh. A, Employee Hand-  
6 book.

7  
8 16. The complaint procedure as outlined 16. Undisputed.  
9 in the Employee Handbook permits an em- **Evidence:**  
10 ployee to report retaliation to his or her  
11 manager, Human Resources, or through  
12 Equinox’s Ethics Hotline.

13 **Evidence:**

14 Plaintiff Depo., Volume I, 43:18-45:15,  
15 Exh. 8 Receipt of Employee Handbook;  
16 Figueroa Decl. ¶ 4.

17  
18 17. In or about June 2014, Hemedinger 17. Disputed. In June 2014, five months  
19 informed Plaintiff and other MAs that the after Kasbarian started complaining about  
20 compensation plan for all West LA MAs the fraudulent activities by other  
21 was being clarified, so that the market bo- membership advisors, Kasbarian’s  
22 nuses would be paid out individually and commission and bonus check for May  
23 not cumulatively for reaching a certain 2014 was suddenly and for the first time  
24 sales goal. since she started at West LA 25-33% short

25 **Evidence:**

26 Plaintiff Depo., Volume I, 190:16-194:3, immediately complained about her unpaid  
27 219:7-10; Plaintiff Depo., Volume II, commissions and bonuses. After she  
28 347:22-348:1; Deposition of Barry Holmes complained defendant permanently cut her

1 (“Holmes Depo.”) 69:4-71:12, 73:23-  
2 75:10, Exhs. 201-202; Hemedinger Depo.,  
3 60:11-61:3, 68:12-14, 70:19-72:3.; Rosen  
4 Depo., 33:5-15.

compensation plan stating that they have  
been paying her too much and in “error”  
and told her that she is “lucky that they  
were not asking her to pay the difference  
back.”

**Evidence:**

Exhs. 11, 12, 13; Kasbarian Depo., Vol. I,  
201:1-206:5, 207:4-20, 209:19-210:8,  
221:11-14; Kasbarian Depo., Vol. II,  
347:1-18; Kasbarian Decl., ¶¶ 8, 9;  
Hemedinger Depo., 59:14-60:10; Rosen  
Depo., 22:15-23:17, 29:18-31:6, Holmes  
Depo., 73:5-17, 81:7-24; 120:19-121:3;  
Figueroa Depo., 99:22- 100:5; Gannon  
Depo., 99:4-7; Hemedinger Depo., 59:14-  
60:10.

18 18. For example, the plan provided for a  
19 particular market bonus upon reaching a  
20 certain goal of sales:

- 21 • 100% of goal—MA would
- 22 receive an extra \$20 per sale
- 23 • 115% of goal—MA would
- 24 receive an extra \$40 per sale
- 25 • 125% of goal—MA would
- 26 receive an extra \$55 per sale
- 27 • 150% of goal—MA would
- 28 receive an extra \$70 per sale

18. Disputed. In June 2014, five months  
after Kasbarian started complaining about  
the fraudulent activities by other  
membership advisors, Kasbarian’s  
commission and bonus check for May  
2014 was suddenly and for the first time  
since she started at West LA 25-33% short  
of what she was owed. Kasbarian  
immediately complained about her unpaid  
commissions and bonuses. After she  
complained defendant permanently cut her

**Evidence:**

Plaintiff Depo., Volume I, 190:16-194:3; Hemedinger Depo., 64:18-65:11.

compensation plan stating that they have been paying her too much and in “error” and told her that she is “lucky that they were not asking her to pay the difference back.”

**Evidence:**

Exhs. 11, 12, 13; Kasbarian Depo., Vol. I, 201:1-206:5, 207:4-20, 209:19-210:8, 221:11-14; Kasbarian Depo., Vol. II, 347:1-18; Kasbarian Decl., ¶¶ 8, 9; Hemedinger Depo., 59:14-60:10; Rosen Depo., 22:15-23:17, 29:18-31:6, Holmes Depo., 73:5-17, 81:7-24; 120:19-121:3; Figueroa Depo., 99:22- 100:5; Gannon Depo., 99:4-7; Hemedinger Depo., 59:14-60:10.

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.

**Evidence:**

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., 68:125-69:8.

19. Disputed. In June 2014, five months after Kasbarian started complaining about the fraudulent activities by other membership advisors, Kasbarian’s commission and bonus check for May 2014 was suddenly and for the first time since she started at West LA 25-33% short of what she was owed. Kasbarian immediately complained about her unpaid commissions and bonuses. After she complained defendant permanently cut her

1 compensation plan stating that they have  
2 been paying her too much and in “error”  
3 and told her that she is “lucky that they  
4 were not asking her to pay the difference  
5 back.”

6 **Evidence:**

7 Exhs. 11, 12, 13; Kasbarian Depo., Vol. I,  
8 201:1-206:5, 207:4-20, 209:19-210:8,  
9 221:11-14; Kasbarian Depo., Vol. II,  
10 347:1-18; Kasbarian Decl., ¶¶ 8, 9;  
11 Hemedinger Depo., 59:14-60:10; Rosen  
12 Depo., 22:15-23:17, 29:18-31:6, Holmes  
13 Depo., 73:5-17, 81:7-24; 120:19-121:3;  
14 Figueroa Depo., 99:22- 100:5; Gannon  
15 Depo., 99:4-7; Hemedinger Depo., 59:14-  
16 60:10.

17  
18 20. Plaintiff testified that she complained  
19 about what she viewed as a “change” in  
20 the compensation plan to the following  
21 managerial employees: Hemedinger,  
22 Gannon, Simonson, Veronica Santarelli  
23 (“Santarelli”) (Regional Sales Manager),  
24 Matt Gonzalez (“Gonzalez”) (Director of  
25 Sales), Barry Holmes (“Holmes”) (Senior  
26 Vice President of Sales), and Scott Rosen  
27 (“Rosen”) (Chief Operating Officer)  
28 (“COO”).

20. Undisputed as to Kasbarian’s  
complaints but otherwise disputed. In June  
2014, five months after Kasbarian started  
complaining about the fraudulent activities  
by other membership advisors, Kasbarian’s  
commission and bonus check for May  
2014 was suddenly and for the first time  
since she started at West LA 25-33% short  
of what she was owed. Kasbarian  
immediately complained about her unpaid  
commissions and bonuses. After she

**Evidence:**

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.

complained defendant permanently cut her compensation plan stating that they have been paying her too much and in “error” and told her that she is “lucky that they were not asking her to pay the difference back.”

**Evidence:**

Exhs. 11, 12, 13; Kasbarian Depo., Vol. I, 201:1-206:5, 207:4-20, 209:19-210:8, 221:11-14; Kasbarian Depo., Vol. II, 347:1-18; Kasbarian Decl., ¶¶ 8, 9; Hemedinger Depo., 59:14-60:10; Rosen Depo., 22:15-23:17, 29:18-31:6, Holmes Depo., 73:5-17, 81:7-24; 120:19-121:3; Figueroa Depo., 99:22- 100:5; Gannon Depo., 99:4-7; Hemedinger Depo., 59:14-60:10.

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.

**Evidence:**

Plaintiff Depo., Volume I, 196:8-14, 207:15-22, 220:5-20; Plaintiff Depo., Vol-

21. Undisputed to the fact that Kasbarian continued to work at Equinox until February 2015 after she complained; however, disputed as to the rest. In June 2014, five months after Kasbarian started complaining about the fraudulent activities by other membership advisors, Kasbarian’s commission and bonus check for May 2014 was suddenly and for the first time since she started at West LA 25-33% short

1     ume II, 349:5-12.

of what she was owed. Kasbarian immediately complained about her unpaid commissions and bonuses. After she complained defendant permanently cut her compensation plan stating that they have been paying her too much and in “error” and told her that she is “lucky that they were not asking her to pay the difference back.”

10     **Evidence:**

11     Exhs. 11, 12, 13; Kasbarian Depo., Vol. I, 201:1-206:5, 207:4-20, 209:19-210:8, 221:11-14; Kasbarian Depo., Vol. II, 347:1-18; Kasbarian Decl., ¶¶ 8, 9; Hemedinger Depo., 59:14-60:10; Rosen Depo., 22:15-23:17, 29:18-31:6, Holmes Depo., 73:5-17, 81:7-24; 120:19-121:3; Figueroa Depo., 99:22- 100:5; Gannon Depo., 99:4-7; Hemedinger Depo., 59:14-60:10.

22     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

22. Undisputed. However, Kasbarian testified that she complained about multiple MAs at West LA, including Lauren Beck and Devin Mcvelogue about multiple fraudulent and unlawful activities, including charging members credit cards without their authorization.



1 in actuality, was signing them up for a  
2 year-long membership by using their credit  
3 cards without authorization.

4 **Evidence:**

5 Plaintiff Depo., Volume I, 81:6-21; 82:5-  
6 83:23, 94:14-97:9.

**Evidence:**

Kasbarian Depo., Vol. I, 69:5-71:5, 71:20-  
72:4, 76:5-25, 82:9-83:19, 98:11-99:4,  
102:13-103:25, 112:5-113:2; Kasbarian  
Depo., Vol. II, 334:16-25; Kasbarian  
Decl., ¶ 6; Hemedinger Depo., 43:13-15,  
45:8-22, 46:10-22; 76:1-15.

9 23. According to Plaintiff, “charging  
10 credit cards without people’s approval and  
11 telling people they were signing up for a  
12 month-long contract, but then signing them  
13 up for a year-long contract” were the only  
14 “illegal activities” about which she com-  
15 plained to Equinox.

16 **Evidence:**

17 Plaintiff Depo., Volume II, 334:16-336:23.

23. Undisputed. Gannon also testified  
and admitted in testimony that he believes  
that the type of conduct Kasbarian  
complained of was illegal and is the type  
of conduct that needs to be investigated.

**Evidence:**

Gannon Depo., 51:10-15, 52:23-53:3.

19 24. According to Plaintiff, her other  
20 complaints involved “things against  
21 Equinox policies that were happening as  
22 well.”

23 **Evidence:**

24 Plaintiff Depo., Volume II, 334:16-336:23.

24. Undisputed.

**Evidence:**

26 25. Plaintiff admitted that she could not  
27 identify any statute, ordinance, regulation,  
28 local law, state law, or federal law that was

25. Disputed. Plaintiff testified that she  
believed this conduct was illegal.  
Moreover, Gannon also testified and

violated as a result of this alleged activity.

**Evidence:**

Plaintiff Depo., Volume II, 335:4-336:23.

admitted in testimony that he believes that the type of conduct Kasbarian complained of was illegal and is the type of conduct that needs to be investigated.

**Evidence:**

Kasbarian Depo., Volume II, 334:16-336:23; Gannon Depo., 51:10-15, 52:23-53:3.

26. Plaintiff also testified that she complained to Hemedinger and Simonson about the sales activities of another MA.

**Evidence:**

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.

26. Undisputed.

**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.

**Evidence:**

Plaintiff Depo., Volume I, 76:17-79:19p 93:10-94:10, 102:10-107:24; 108:1-113:5; Hemedinger Depo., 45:8-47:19.

27. Undisputed. However, Kasbarian testified that she complained about multiple MAs at West LA, including Lauren Beck and Devin Mcvelogue about multiple fraudulent and unlawful activities, including charging members credit cards without their authorization.

**Evidence:**

Kasbarian Depo., Vol. I, 69:5-71:5, 71:20-72:4, 76:5-25, 82:9-83:19, 98:11-99:4, 102:13-103:25, 112:5-113:2; Kasbarian

Depo., Vol. II, 334:16-25; Kasbarian Decl., ¶ 6; Hemedinger Depo., 43:13-15, 45:8-22, 46:10-22; 76:1-15.

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.

**Evidence:**

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.

**Evidence:**

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.

**Evidence:**

1 Rosen Depo., 37:20-38:21; Cuva Decl.,  
2 ¶ 2.

3  
4 31. Member Services' investigation, 31. Undisputed.  
5 which was conducted by Cuva, confirmed **Evidence:**  
6 that this was an unauthorized sale  
7 processed by a MA at the West LA Club  
8 (Plaintiff was not implicated in this  
9 transaction).

10 **Evidence:**

11 Cuva Decl., ¶ 2.

12  
13 32. This MA was relocating to New 32. Undisputed. However, this MA was  
14 York but, based on the investigation terminated.  
15 results, she was not hired to work for **Evidence:**  
16 Equinox in New York. Kasbarian Depo., Vol. I, 84:7-85:1,

17 **Evidence:**

18 Rosen Depo., 39:8-13.

184:20-23; Kasbarian Decl., ¶ 10;  
19 Hemedinger Decl., ¶ 4; Gannon Depo.,  
20 58:20-59:18, 60:2-21.

21 33. As a result of this member com- 33. Disputed. Senior Director of Loss  
22 plaint, Rosen also asked Cuva to have Prevention, Jim Burger, testified that Jack  
23 Member Services conduct an investigation Gannon contacted him to do an  
24 of sales transactions at the West LA club. investigation at the West LA location and

25 **Evidence:**

26 Rosen Depo., 47:25-6; Cuva Decl., ¶ 3.

reported to him throughout.

27 **Evidence:**

28 Burger Depo., 70:9-21, 78:4-11, 83:18-

84:3.

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.

**Evidence:**

Rosen Depo., 47:25-48:21.

34. Disputed. Senior Director of Loss Prevention, Jim Burger, testified that Jack Gannon contacted him to do an investigation at the West LA location and reported to him throughout.

**Evidence:**

Burger Depo., 70:9-21, 78:4-11, 83:18-84:3.

35. Cuva instructed Kevin Stanfa (“Stanfa”) (Manager of Compliance and Special Projects), to review sales transactions at the West LA club.

**Evidence:**

Cuva Decl., ¶ 3; Stanfa Decl. ¶ 4.

35. Undisputed.

**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.

**Evidence:**

Cuva Decl., ¶ 3; Stanfa Decl. ¶ 4.

36. Undisputed.

**Evidence:**

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.

**Evidence:**

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.

**Evidence:**

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.”

**Evidence:**

Cuva Decl., ¶ 7, Exh.N.

40. Cuva noted as follows:

- i The 2041 Freezes spreadsheet shows that West LA is an outlier in members who request a freeze in the first 60

37. Disputed. Defendant fails to produce the spreadsheets corroborating those sales.

**Evidence:**

Defendant’s Amended Compendium of Exhibits.

38. Disputed. Defendant fails to produce the spreadsheets corroborating those sales.

**Evidence:**

Defendant’s Amended Compendium of Exhibits.

39. Undisputed as to that statement being written in the email.

**Evidence:**

40. Disputed. Kasbarian was found to have not committed any of the inappropriate and fraudulent conduct or “fake” sales that were being investigated.

**Evidence:**

1 days of membership who also  
2 go on to cancel in the same  
3 year.

4 i The Modification to Direct  
5 Bill spreadsheet reflects  
6 members in the last quarter  
7 of 2014 whose billing was  
8 modified from the credit card  
9 payment type to direct bill  
10 the day before billing ran.  
11 The Company average is four  
12 per club. West LA had 28  
13 modifications to direct bill.

14 i The West LA Breakdown  
15 spreadsheet shows question-  
16 able sales from two MAs  
17 (Plaintiff and the MA moving  
18 to New York). The other  
19 three MAs were reviewed  
20 and did not reflect the same  
21 anomalies seen with Plaintiff  
22 and the MA moving to New  
23 York. The questionable sales  
24 included selling memberships  
25 to members with the credit  
26 card of another member (al-  
27 most universally without re-  
28 questing a referral credit) or

Holmes Depo., 88:4-10, 106:11-19;  
Hemedinger Depo., 51:23-52:23; Rosen  
Depo., 48:22-49:3, 54:3-8, 76:5-14, 98:6-  
17, 101:24-102:7; Gannon Depo., 70:8-  
71:15, 72:7-20, 75:22-76:8, 79:5-10, 81:7-  
11; Gannon Decl., ¶ 6, 10.

1 re-contracting over a previ-  
2 ously 3-day'd membership  
3 and either using the credit  
4 from the previous sale or re-  
5 charging the same credit  
6 card, credit card not present  
7 for numerous sales transac-  
8 tions, 3-day cancellations  
9 with no or just one member  
10 visit, new memberships  
11 which were previously fi-  
12 nance cancelled and had bal-  
13 ances on account that were  
14 waived.

15 **Evidence:**

16 Cuva Decl., ¶ 7, Exh.N.

17  
18 41. Neither Cuva nor Stanfa were aware  
19 Plaintiff had made any complaints about  
20 changes to her compensation plan or about  
21 the alleged activities of other MAs.

22 **Evidence:**

23 Cuva Decl., ¶ 8; Stanfa Decl., ¶ 11.

41. Undisputed. However, Kasbarian  
was found to have not committed any of  
the inappropriate and fraudulent conduct or  
“fake” sales that were being investigated.

24 **Evidence:**

41. Holmes Depo., 88:4-10, 106:11-19;  
Hemedinger Depo., 51:23-52:23; Rosen  
Depo., 48:22-49:3, 54:3-8, 76:5-14, 98:6-  
17, 101:24-102:7; Gannon Depo., 70:8-  
71:15, 72:7-20, 75:22-76:8, 79:5-10, 81:7-  
11; Gannon Decl., ¶ 6, 10.



**Evidence:**

42. In addition, Burger was asked to interview the sales team at the West LA club.

42. Undisputed.

**Evidence:**

**Evidence:**

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 [sic] and an Assistant General Manager.

43. Undisputed.

**Evidence:**

**Evidence:**

Hemedinger Decl., ¶ 4.

44. A MA was fired on or about January 20, 2015 for improper sales activities.

44. Undisputed.

**Evidence:**

**Evidence:**

Figueroa Decl. ¶ 9; Hemedinger Decl., ¶ 4.

45. At Burger’s request, Member Services provided him with the spreadsheets summarizing their findings of questionable

45. Disputed. Defendant fails to produce the spreadsheets corroborating those sales.

**Evidence:**

1 sales transactions at the West LA club.

Defendant's Amended Compendium of Exhibits.

2 **Evidence:**

3 Burger Depo., 72:13-73:3; Cuva Decl. ¶ 8.

4  
5 46. Burger then met with Cuva and  
6 Stanfa and they discussed their findings re-  
7 garding the questionable sales at the West  
8 LA club.

46. Undisputed.

9 **Evidence:**

10 Burger Depo., 73:13-74:15; Cuva Decl.  
11 ¶ 8; Stanfa Decl., ¶ 9.

**Evidence:**

12  
13 47. Burger had a subsequent meeting  
14 with Stanfa to review the spreadsheets  
15 Member Services had prepared.

47. Disputed. Defendant fails to produce the spreadsheets corroborating those sales.

16 **Evidence:**

17 Burger Depo., 74:16-75:3, 8-22; Stanfa  
18 Decl., ¶ 9.

**Evidence:**

Defendant's Amended Compendium of Exhibits.

19  
20 48. These spreadsheets showed anoma-  
21 lies in various sales transactions, including  
22 whether or not a contract was signed,  
23 whether or not a credit card was present  
24 for the sales transaction, whose credit card  
25 was used for the sales transactions, if an-  
26 other individual's credit card number was  
27 used for the sales transaction instead of the  
28 member's credit card number, whether or

48. Disputed. Defendant fails to produce the spreadsheets corroborating those sales. However, However, Kasbarian was found to have not committed any of the inappropriate and fraudulent conduct or "fake" sales that were being investigated.

**Evidence:**

Defendant's Amended Compendium of Exhibits; Holmes Depo., 88:4-10, 106:11-

1 not a member had any visits to a club, etc. 19; Hemedinger Depo., 51:23-52:23;  
2 **Evidence:** Rosen Depo., 48:22-49:3, 54:3-8, 76:5-14,  
3 Burger Depo., 39:3-40:22; Cuva Decl., ¶ 8; 98:6-17, 101:24-102:7; Gannon Depo.,  
4 Stanfa Decl., ¶¶ 4-5. 70:8-71:15, 72:7-20, 75:22-76:8, 79:5-10,  
5 81:7-11; Gannon Decl., ¶ 6, 10.  
6  
7

8 49. Burger also had a couple of tele- 49. Undisputed.  
9 phone conversations with Stanfa regarding **Evidence:**  
10 the anomalies in various sales activities at  
11 the West LA Club.

12 **Evidence:**  
13 Burger Depo., 76:19-77:1; Stanfa Decl.,  
14 ¶ 9.  
15

16 50. In late January 2015, Burger came to 50. Undisputed.  
17 Los Angeles to interview various employ- **Evidence:**  
18 ees regarding sales activities of the West  
19 LA MAs.

20 **Evidence:**  
21 Burger Depo., 76:6-12; Gannon Decl., ¶ 3;  
22 Hemedinger Decl., ¶ 5.  
23

24 51. Prior to the interviews, Burger and 51. Disputed. Gannon testified that one  
25 Gannon discussed suspending all of the in- MA was not suspended and was not  
26 dividuals interviewed as part of the investi- discussed suspending because there “was  
27 gation pending the results of the investiga- no suspicious conduct linked to him” even  
28 tion. at the beginning of the investigation.

**Evidence:**

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.

**Evidence:**

Hemedinger Decl., ¶ 5.

53. Burger had never heard of or spoken to Plaintiff prior to this investigation meeting.

**Evidence:**

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.

**Evidence:**

Plaintiff Depo., Volume I, 161:11-22, 164:10-22; Plaintiff Depo., Volume II, 305:21-24; , [sic] Burger Depo., 96:18-25.

**Evidence:**

Gannon Depo., 70:8-71:19, 81:7-11; Gannon Decl., ¶ 6, 10.

52. Disputed. Gannon testified that one MA was not suspended and was not discussed suspending because there "was no suspicious conduct linked to him" even at the beginning of the investigation.

**Evidence:**

Gannon Depo., 70:8-71:19, 81:7-11; Gannon Decl., ¶ 6, 10.

53. Undisputed.

**Evidence:**

54. Undisputed.

**Evidence:**

1 55. Plaintiff answered questions about  
2 her sales activities, as well as the activities  
3 of other MAs.

4 **Evidence:**

5 Plaintiff Depo., Volume I, 161:11-22,  
6 164:10-22; Burger Depo., 53:13-54:9.

55. Undisputed. Additionally, at the  
beginning of Kasbarian's interview, she  
notifies Senior Director of Loss  
Prevention, Jim Burger, about the  
fraudulent activity and unauthorized  
membership sales that she observed and  
complained about to management for  
months

9 **Evidence:**

10 Exh. 17; Kasbarian Depo., Vol. I, 158:4-  
11 18, 161:15-162:1, 166:9-167:2; Kasbarian  
12 Decl., ¶¶ 10, 11; Burger Depo., 70:9-21,  
13 78:4-11, 83:18-84:3, 91:5-92:18, 100:3-8,  
14 183:21-184:12.

16 56. While Burger did not find Plaintiff  
17 credible, he felt, at that time, that there was  
18 insufficient information to warrant Plain-  
19 tiff's termination.

20 **Evidence:**

21 Burger Depo, 122:14-17.

56. Undisputed as to Burger concluding  
there was insufficient information to  
warrant any terminable offense committed  
by Burger. Kasbarian was found to have  
not committed any of the inappropriate and  
fraudulent conduct or "fake" sales that  
were being investigated.

23 **Evidence:**

24 Holmes Depo., 88:4-10, 106:11-19;  
25 Hemedinger Depo., 51:23-52:23; Rosen  
26 Depo., 48:22-49:3, 54:3-8, 76:5-14, 98:6-  
27 17, 101:24-102:7; Gannon Depo., 70:8-  
28 71:15, 72:7-20, 75:22-76:8, 79:5-10, 81:7-

11; Gannon Decl., ¶ 6, 10.

57. After Burger completed his inter-views, Burger, Gannon and Hemedinger met briefly to discuss Burger's impression.

**Evidence:**

Burger Depo., 117:16-18, 24-118:6.

57. Undisputed.

**Evidence:**

58. Gannon then advised Plaintiff that she was being suspended.

**Evidence:**

Plaintiff Depo, Volume I, 174:24-175:3, 11-12; Plaintiff Depo., Volume II, 306:3-7; Gannon Decl., ¶ 4.

58. Undisputed. However, she was suspended despite her having been found to not have committed any terminable offense.

**Evidence:**

Holmes Depo., 88:4-10, 106:11-19; Hemedinger Depo., 51:23-52:23; Rosen Depo., 48:22-49:3, 54:3-8, 76:5-14, 98:6-17, 101:24-102:7; Gannon Depo., 70:8-71:15, 72:7-20, 75:22-76:8, 79:5-10, 81:7-11; Gannon Decl., ¶ 6, 10.

59. All of the MAs interviewed as part of the investigation (with the exception of the relatively new MA) were suspended pending investigation.

**Evidence:**

Burger Depo., ¶ [sic] 110:17-23; Gannon

59. Undisputed. One MA was not suspended.

**Evidence:**

Gannon Depo., 70:8-71:15, 81:7-11; Gannon Decl., ¶ 6, 10.

Decl., ¶ 6.

60. Gannon also advised Plaintiff to re- 60. Undisputed.  
port back to the West LA club at 2:00 p.m. **Evidence:**  
the next day for another meeting.

**Evidence:**

Plaintiff Depo., Volume II, 180:11-181:4;  
Gannon Decl., ¶ 5.

61. According to Plaintiff, Equinox told 61. Undisputed.  
her that she would not have access to her **Evidence:**  
email or payroll account and escorted her  
out of the building in front of Equinox's  
clientele, staff and all of her peers.

**Evidence:**

Plaintiff Depo., Volume II, 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 62. Disputed. Defendant did not produce  
email access for hourly employees who any documentation corroborating this  
have been suspended pending investigation policy.  
or who are on leave of absence. **Evidence:**

**Evidence:**

Gannon Decl., ¶ 7.

Defendant's Amended Compendium of  
Evidence.

63. Prior to Burger's interview of Plain- 63. Undisputed as to Gannon preparing  
tiff, Gannon had the Payroll Department the final paycheck; however, this paycheck

1 prepare a final paycheck for Plaintiff so  
2 that she could be paid in accordance with  
3 California law in the event the decision  
4 was made to terminate her employment.

5 **Evidence:**

6 Gannon Decl., ¶ 8.

was prepared by Gannon even before the  
interview in preparation for Kasbarian's  
termination.

**Evidence:**

Gannon Decl., ¶ 8; Exh. 15; Kasbarian  
Depo., Vol. I, 130:21-131:3, 185:5-15;  
Kasbarian Depo., Vol. II, 311:9-22;  
Kasbarian Decl., ¶ 11.

10 64. Plaintiff met with Hemedinger and  
11 Gannon at the West LA club on January  
12 31, 2015 and was told that the investiga-  
13 tion was concluded and that she would be  
14 working at the Marina Del Rey club.

15 **Evidence:**

16 Plaintiff Depo., Volume I, 182:5-183:8;  
17 Plaintiff Depo., Volume II, 306:12-16  
18 [sic], 382:12-17, 390:4-11, Exh. 38;  
19 Hemedinger Depo., 54:17-21, 55:1-8;  
20 Gannon Decl., ¶ 3; Hemedinger Decl., ¶ 6.

64. Undisputed.

**Evidence:**

22 65. The decision was made to reassign  
23 Plaintiff to the Marina Del Rey club be-  
24 cause Equinox wanted to rebuild the team  
25 of MAs in the West LA club and to create  
26 a fresh culture, as a result of the investiga-  
27 tion findings.

28 **Evidence:**

65. Disputed. Defendant's claim that  
Kasbarian was reassigned to Marina Del  
Rey because they wanted to rebuild the  
team of Mas, yet one MA was allowed to  
stay at West LA

**Evidence:**

Rosen Depo., 48:22-49:3, 54:3-8, 98:6-17,



1 Rosen Depo., 71:7-20, 73:15-22, 76:5-14; 76:5-14; Hemedinger Depo., 51:23-52:23;  
2 Holmes Depo., 96:12-98:17; Hemedinger Holmes Depo., 88:4-10, 106:11-19,  
3 Depo., 51:7-52:23; Gannon Decl., ¶ 10. 101:24-102:7; Gannon Depo., 70:8-71:15,  
4 72:7-20, 75:22-76:8, 79:5-10, 81:7-11;  
5 Gannon Decl., ¶ 6, 10.  
6

7 66. Plaintiff's compensation plan would  
8 change once at Marina Del Rey to align  
9 with the compensation plan of Marina Del  
10 Rey MAs. Equinox considered the reas-  
11 signment a lateral move.

12 **Evidence:**

13 Rosen Depo., 87:25-88:4; Gannon Decl.,  
14 ¶ 11.  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

66. Undisputed that the compensation  
plan would change; however, disputed as  
to it being a lateral move. Kasbarian is told  
that she would be paid \$9.00/hour at the  
Marina del Rey office, which was a \$10.00  
per hour decrease in hourly rate that she  
was being paid at the West Los Angeles  
branch at \$19.23 per hour. Barry Holmes,  
Vice President of Sales, admits that urban  
clubs, such as the Santa Monica location,  
tend to generate more revenue than  
suburban clubs, like the Marina Del Rey  
location, and the West LA location is a  
higher tier club than urban clubs. Brian  
Hemedinger admits in deposition that they  
thought it would be "best for Tamar, if she  
had the opportunity to be a membership  
advisor at a different location," while  
acknowledging that she would be going to  
a lower tier location than when she first  
started with the company. Moreover, when  
Kasbarian went to West LA she was

promoted from MA to Membership Executive, which it stated on her “Promotion Memo.”

**Evidence:**

Exh. 10, 14; Kasbarian Depo., Vol. I, 50:24-51:1, 89:9-90:19, 279:14-280:12, 182:12-184:19; Kasbarian Depo., Vol. II, 354:1-18, 458:24-459:17; Gannon Decl., 9, 10; Holmes Depo., 28:22-29:2, 50:18-25; Gannon Depo., 32:15-17, 88:25-89:5; Hemedinger Depo., 50:14-20, 51:23-52:23, 81:2-23.

67. Equinox considered the reassignment a lateral move.

**Evidence:**

Rosen Depo., 87:25-88:4; Gannon Decl., ¶ 11.

67. Disputed. Kasbarian is told that she would be paid \$9.00/hour at the Marina del Rey office, which was a \$10.00 per hour decrease in hourly rate that she was being paid at the West Los Angeles branch at \$19.23 per hour. Barry Holmes, Vice President of Sales, admits that urban clubs, such as the Santa Monica location, tend to generate more revenue than suburban clubs, like the Marina Del Rey location, and the West LA location is a higher tier club than urban clubs. Brian Hemedinger admits in deposition that they thought it would be “best for Tamar, if she had the opportunity to be a membership advisor at

a different location,” while acknowledging that she would be going to a lower tier location than when she first started with the company. Moreover, when Kasbarian went to West LA she was promoted from MA to Membership Executive, which it stated on her “Promotion Memo.”

**Evidence:**

Exh. 10, 14; Kasbarian Depo., Vol. I, 50:24-51:1, 89:9-90:19, 279:14-280:12, 182:12-184:19; Kasbarian Depo., Vol. II, 354:1-18, 458:24-459:17; Gannon Decl., 9, 10; Holmes Depo., 28:22-29:2, 50:18-25; Gannon Depo., 32:15-17, 88:25-89:5; Hemedinger Depo., 50:14-20, 51:23-52:23, 81:2-23.

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.

**Evidence:**

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

68. Undisputed.

**Evidence:**

69. Disputed. Kasbarian is told that she would be paid \$9.00/hour at the Marina del Rey office, which was a \$10.00 per hour

1 was a high performing club and the mem-  
2 berships for the Marina Del Rey club were  
3 less expensive than the memberships for  
4 the West LA club.

5 **Evidence:**

6 Hemedinger Depo., 52:18-23; Rosen  
7 Depo., 57:13-19; 58:22-59:14; Holmes  
8 Depo., 31:13-15.

decrease in hourly rate that she was being  
paid at the West Los Angeles branch at  
\$19.23 per hour. Barry Holmes, Vice  
President of Sales, admits that urban clubs,  
such as the Santa Monica location, tend to  
generate more revenue than suburban  
clubs, like the Marina Del Rey location,  
and the West LA location is a higher tier  
club than urban clubs. Brian Hemedinger  
admits in deposition that they thought it  
would be “best for Tamar, if she had the  
opportunity to be a membership advisor at  
a different location,” while acknowledging  
that she would be going to a lower tier  
location than when she first started with  
the company. Moreover, when Kasbarian  
went to West LA she was promoted from  
MA to Membership Executive, which it  
stated on her “Promotion Memo.”

20 **Evidence:**

21 Exh. 10, 14; Kasbarian Depo., Vol. I,  
22 50:24-51:1, 89:9-90:19, 279:14-280:12,  
23 182:12-184:19; Kasbarian Depo., Vol. II,  
24 354:1-18, 458:24-459:17; Gannon Decl., 9,  
25 10; Holmes Depo., 28:22-29:2, 50:18-25;  
26 Gannon Depo., 32:15-17, 88:25-89:5;  
27 Hemedinger Depo., 50:14-20, 51:23-

52:23, 81:2-23.

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.

**Evidence:**

Hemedinger Depo., 52:18-23; Rosen Depo., 57:13-19; 58:22-59:14; Holmes Depo. , [sic] 50:18-51:5.

70. Disputed. Kasbarian is told that she would be paid \$9.00/hour at the Marina del Rey office, which was a \$10.00 per hour decrease in hourly rate that she was being paid at the West Los Angeles branch at \$19.23 per hour. Barry Holmes, Vice President of Sales, admits that urban clubs, such as the Santa Monica location, tend to generate more revenue than suburban clubs, like the Marina Del Rey location, and the West LA location is a higher tier club than urban clubs. Brian Hemedinger admits in deposition that they thought it would be “best for Tamar, if she had the opportunity to be a membership advisor at a different location,” while acknowledging that she would be going to a lower tier location than when she first started with the company. Moreover, when Kasbarian went to West LA she was promoted from MA to Membership Executive, which it stated on her “Promotion Memo.”

**Evidence:**

Exh. 10, 14; Kasbarian Depo., Vol. I, 50:24-51:1, 89:9-90:19, 279:14-280:12, 182:12-184:19; Kasbarian Depo., Vol. II,

354:1-18, 458:24-459:17; Gannon Decl., 9, 10; Holmes Depo., 28:22-29:2, 50:18-25; Gannon Depo., 32:15-17, 88:25-89:5; Hemedinger Depo., 50:14-20, 51:23-52:23, 81:2-23.

71. Gannon emailed Plaintiff the compensation plan for the Marina Del Rey Club on or about January 31, 2015.

**Evidence:**

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.

**Evidence:**

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.

71. Undisputed.

**Evidence:**

72. Undisputed as to no one stating those actual words; however, Kasbarian is told that she would be paid \$9.00/hour at the Marina del Rey office, which was a \$10.00 per hour decrease in hourly rate that she was being paid at the West Los Angeles branch at \$19.23 per hour. Barry Holmes, Vice President of Sales, admits that urban clubs, such as the Santa Monica location, tend to generate more revenue than suburban clubs, like the Marina Del Rey location, and the West LA location is a higher tier club than urban clubs. Brian Hemedinger admits in deposition that they thought it would be “best for Tamar, if she

1 had the opportunity to be a membership  
2 advisor at a different location,” while  
3 acknowledging that she would be going to  
4 a lower tier location than when she first  
5 started with the company. Moreover, when  
6 Kasbarian went to West LA she was  
7 promoted from MA to Membership  
8 Executive, which it stated on her  
9 “Promotion Memo.”

10 **Evidence:**

11 Exh. 10, 14; Kasbarian Depo., Vol. I,  
12 50:24-51:1, 89:9-90:19, 279:14-280:12,  
13 182:12-184:19; Kasbarian Depo., Vol. II,  
14 354:1-18, 458:24-459:17; Gannon Decl., 9,  
15 10; Holmes Depo., 28:22-29:2, 50:18-25;  
16 Gannon Depo., 32:15-17, 88:25-89:5;  
17 Hemedinger Depo., 50:14-20, 51:23-  
18 52:23, 81:2-23.

19  
20 73. Gannon made the decision to reas-  
21 sign Plaintiff to the Marina Del Rey club.

73. Undisputed.

22 **Evidence:**

23 Rosen Depo., 45:7-25. 57:8-12;  
24 Hemedinger Depo., 53:14-18.

**Evidence:**

25  
26 74. Plaintiff was told to report to the  
27 Marina Del Rey club on February 2, 2015  
28 at 9:00 a.m.

74. Undisputed.

**Evidence:**

**Evidence:**

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.

**Evidence:**

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.

75. Undisputed; however, Kasbarian was forced to resign due to intolerable working conditions at Equinox. On February 2, 2015, the day Kasbarian was supposed to start at the Marina del Rey location, she feels she is no longer welcome at Equinox and feels pushed out since she was forced to take a demotion, a significant pay cut and restart her business and clientele base, along with the overwhelming stress of the interrogation and suspension and fear of being terminated that she is forced to resign.

**Evidence:**

Exh. 16; Kasbarian Depo., Vol. I, 186:5-14; Kasbarian Decl., ¶¶ 12-14.

76. Plaintiff's last day of employment was February 2, 2015.

76. Undisputed.

**Evidence:**

**Evidence:**

Plaintiff Depo., Volume I, 186:11-14.



1 77. Plaintiff never reported to work at 77. Undisputed.  
2 the Marina Del Rey club. **Evidence:**

3 **Evidence:**

4 Plaintiff Depo., Volume I, 50:13-15,  
5 186:15-17; Hemedinger Depo., 56:22-25.  
6

7 78. As of February 1, 2015, the only re- 78. Undisputed.  
8 maining MA at the West LA club was the **Evidence:**  
9 recently hired MA. Gannon Decl., ¶ 6, 10.

10 **Evidence:**

11 Plaintiff Depo., Volume II, 342:3-11.  
12

13 79. As of April/May 2015, the West LA 79. Undisputed. However, one MA was  
14 club had an entirely new sales team and able to stay at the West LA location,  
15 sales management. despite Gannon stating he wanted to

16 **Evidence:**

17 Plaintiff Depo., Volume II, 342:25-343:5.  
18

Membership Executives at West LA.

19 **Evidence:**

20 Rosen Depo., 76:5-14; Hemedinger Depo.,  
21 51:23-52:23; Holmes Depo., 101:24-  
22 102:7; Gannon Depo., 70:8-71:15, 81:7-  
23 11; Gannon Decl., ¶ 6, 10.

24 80. Plaintiff testified that she was un- 80. Undisputed.  
25 aware of any other MA at the West LA **Evidence:**  
26 club complaining about the unauthorized  
27 use of credit cards or telling someone that  
28 they were being signed up for a one-month

1 membership but signing them up for a year  
2 instead.

3 **Evidence:**

4 Plaintiff Depo., Volume II, 343:6-22.

5  
6 **ISSUE NO. 23:** Plaintiff's punitive damages claim has no merit as a matter of law  
7 because there is clear and convincing evidence that any managing agent acted with the  
8 requisite "oppression, malice, or fraud." (UF Nos. 1-80.)

9 **Alleged Undisputed Facts and**  
10 **Supporting Evidence**

**Plaintiff's Responses and**  
**Supporting Evidence**

11 1. Plaintiff was hired as a Membership  
12 Advisor ("MA") at Equinox's Santa  
13 Monica club on or about October 15, 2010.

14 **Evidence:**

15 Plaintiff Depo., Volume I, 36:23-38:10,  
16 Exh. 5 (Offer Letter).

17  
18 2. In January 2014, Plaintiff began  
19 working at Equinox's West Los Angeles  
20 club ("West LA club").

21 **Evidence:**

22 Plaintiff Depo., Volume I, 189:22-190:12,  
23 Exh. 13 (Memo).

1. Undisputed.

**Evidence:**

2. Disputed. Kasbarian was promoted  
to the position of Membership Executive at  
the West Los Angeles club ("West LA") in  
October 2013.

**Evidence:**

Exh. 10; Kasbarian Depo., Vol. I, 89:9-  
90:19, 279:14-280:12; Kasbarian Decl., ¶  
5; Hemedinger Depo., 50:4-9; Rosen  
Depo., 20:4-18; Holmes Depo., 39:13-18.

24  
25  
26  
27  
28 3. At the West LA club, MAs were re-

3. Disputed. A Membership Executive

ferred to as Membership Executives. position is considered a promotion from an  
However, their job duties were the same. MA position. Kasbarian was specifically

**Evidence:**

Declaration of Brian Hemedinger Executive was a promotion from an MA,  
("Hemedinger Decl."), ¶ 3. and she received a memo on it, as well as a

higher compensation plan. Kasbaian's  
hourly rate also increased with her position  
as a Membership Executive, to \$19.23 per  
hour, as well as an increase in  
commissions and bonuses.

**Evidence:**

Exh. 10; Kasbarian Depo., Vol. I, 89:9-  
90:19, 279:14-280:12; Kasbarian Decl., ¶  
5; Hemedinger Depo., 50:4-9; Rosen  
Depo., 20:4-18; Holmes Depo., 39:13-18.

4. During Plaintiff's employment at 4. Undisputed.  
Equinox Santa Monica and West LA  
clubs, Jack Gannon ("Gannon") was the  
Vice President of the West Coast.

**Evidence:**

Declaration of Jack Gannon ("Gannon  
Decl."), ¶¶ 1-2.

5. From about October 2011 through 5. Undisputed.  
about June 2015, Brian Hemedinger  
("Hemedinger") was the Regional Director  
of Operations ("Regional Director") of the

1 Santa Monica and West LA clubs.

2 **Evidence:**

3 Plaintiff Depo., Volume I, 270:8,-14,  
4 75:24-76:4; Deposition of Brian  
5 Hemedinger (“Hemedinger Depo.”) 15:3-  
6 10, 41:1-9, 13-16; Hemedinger Decl., ¶ 1.

7  
8 6. General Manager Kira Simonson 6. Undisputed.  
9 (“Simonson) supervised Plaintiff at the **Evidence:**  
10 West LA club from about January 2014 to  
11 about January 2015.

12 **Evidence:**

13 Plaintiff Depo., Volume I, 52:11-19.

14  
15 7. Plaintiff’s personnel file includes an 7. Undisputed.  
16 Employee Handbook Receipt Acknowl- **Evidence:**  
17 edgment Form with Plaintiff’s signature  
18 dated October 15, 2010.

19 **Evidence:**

20 Plaintiff Depo., Volume I, 43:18-45:15,  
21 Exh. 8 (Receipt Acknowledgement [sic]  
22 Form); Declaration of Emerson Figueroa  
23 (“Figueroa Decl.”), ¶ 5, Exh. B.

24  
25 8. In particular, the Employee Hand- 8. Undisputed, as to what the actual  
26 book stated: document states. However, disputed as to

27 I acknowledge that the re-  
28 ceipt of the Employee Hand-  
book in no way creates a con-  
tract between Equinox and me.

whether Kasbarian actually believed her  
employment was “at-will.” Kasbarian

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.

believes she would not be demoted, have her pay cut, her employment suspended, or, reassigned, etc. unless it was for good cause.

**Evidence:**

Kasbarian Decl., ¶¶ 4, 11, 13, 14.

**Evidence:**

Plaintiff Depo., Volume I, 43:18-45:15, Exh. 8 (Receipt Acknowledgement [sic] Form); Figueroa Decl., ¶ 5, Exh. B (Receipt Acknowledgement [sic] Form).

9. Plaintiff's personnel file also includes an Offer Letter, dated October 15, 2010, which Plaintiff acknowledged receiving.

9. Undisputed.

**Evidence:**

Plaintiff Depo., Volume I, 36:23-38:11, Exh. 5 (Offer Letter); Figueroa Decl., ¶ 6, Exh. C (Offer Letter).

**Evidence:**

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

10. Undisputed, as to what the actual document states. However, disputed as to whether Kasbarian actually believed her employment was "at-will." Kasbarian

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.

**Evidence:**

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.

**Evidence:**

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 rights with respect to continuation of your employment with the Company."

**Evidence:**

believes she would not be demoted, have her pay cut, her employment suspended, or, reassigned, etc. unless it was for good cause.

**Evidence:**

Kasbarian Decl., ¶¶ 4, 11, 13, 14.

11. Undisputed.

**Evidence:**

12. Undisputed, as to what the actual document states. However, disputed as to whether Kasbarian actually believed her employment was "at-will." Kasbarian believes she would not be demoted, have her pay cut, her employment suspended, or, reassigned, etc. unless it was for good cause.

1 Figueroa Decl., ¶ 8, Exh. D.

**Evidence:**

2 Kasbarian Decl., ¶¶ 4, 11, 13, 14.

3  
4 13. In her deposition, Plaintiff admitted  
5 that she did not have a contract with  
6 Equinox; no one ever told her that she was  
7 guaranteed employment for a certain time  
8 period; and no one ever told her that she  
9 was anything other than an at-will em-  
10 ployee.

11 **Evidence:**

12 Plaintiff Depo., Volume I, 36:23-38:11,  
13 43:18-45:15, Exh. 5 (Offer Letter), Exh. 8  
14 (Receipt Acknowledgement [sic] Form).

13. Undisputed, as to what the actual  
document states. However, disputed as to  
whether Kasbarian actually believed her  
employment was “at-will.” Kasbarian  
believes she would not be demoted, have  
her pay cut, her employment suspended,  
or, reassigned, etc. unless it was for good  
cause.

**Evidence:**

Kasbarian Decl., ¶¶ 4, 11, 13, 14.

15  
16 14. The Employee Handbook Plaintiff  
17 acknowledged receiving also included  
18 Equinox’s non-retaliation policy as well as  
19 complaint procedures for reporting retalia-  
20 tion.

21 **Evidence:**

22 Plaintiff Depo., Volume I, 43:18-45:15,  
23 Exh. 8 Receipt of Employee Handbook;  
24 Declaration of Emerson Figueroa  
25 (“Figueroa Decl.”), Exh. A.

14. Undisputed.

**Evidence:**

26  
27 15. In particular, Equinox’s policy strict-  
28 ly prohibits retaliation against any employ-

15. Undisputed.

**Evidence:**

1 ee for “filing a complaint and [Equinox]  
2 will not knowingly permit retaliation by  
3 management, employees, or co-workers.”  
4 Equinox’s policy also prohibits retaliation  
5 against any employee for “using this com-  
6 plaint procedure or for filing, testifying,  
7 assisting, or participating in any manner in  
8 any investigation, proceeding, or hearing  
9 conducted by a governmental enforcement  
10 agency. Additionally, Equinox will not  
11 knowingly permit any retaliation against  
12 any employee who complains of prohibited  
13 harassment or who participates in an inves-  
14 tigation.”

15 **Evidence:**

16 Plaintiff Depo., Volume I, 43:18-45:15,  
17 Exh. 8 Receipt of Employee Handbook;  
18 Figueroa Decl., Exh. A, Employee Hand-  
19 book.

20  
21 16. The complaint procedure as outlined 16. Undisputed.  
22 in the Employee Handbook permits an em- **Evidence:**  
23 ployee to report retaliation to his or her  
24 manager, Human Resources, or through  
25 Equinox’s Ethics Hotline.

26 **Evidence:**

27 Plaintiff Depo., Volume I, 43:18-45:15,  
28 Exh. 8 Receipt of Employee Handbook;



1 Figueroa Decl. ¶ 4.

2  
3 17. In or about June 2014, Hemedinger  
4 informed Plaintiff and other MAs that the  
5 compensation plan for all West LA MAs  
6 was being clarified, so that the market bo-  
7 nuses would be paid out individually and  
8 not cumulatively for reaching a certain  
9 sales goal.

10 **Evidence:**

11 Plaintiff Depo., Volume I, 190:16-194:3,  
12 219:7-10; Plaintiff Depo., Volume II,  
13 347:22-348:1; Deposition of Barry Holmes  
14 (“Holmes Depo.”) 69:4-71:12, 73:23-  
15 75:10, Exhs. 201-202; Hemedinger Depo.,  
16 60:11-61:3, 68:12-14, 70:19-72:3.; Rosen  
17 Depo., 33:5-15.

17. Disputed. In June 2014, five months  
after Kasbarian started complaining about  
the fraudulent activities by other  
membership advisors, Kasbarian’s  
commission and bonus check for May  
2014 was suddenly and for the first time  
since she started at West LA 25-33% short  
of what she was owed. Kasbarian  
immediately complained about her unpaid  
commissions and bonuses. After she  
complained defendant permanently cut her  
compensation plan stating that they have  
been paying her too much and in “error”  
and told her that she is “lucky that they  
were not asking her to pay the difference  
back.”

19 **Evidence:**

20 Exhs. 11, 12, 13; Kasbarian Depo., Vol. I,  
21 201:1-206:5, 207:4-20, 209:19-210:8,  
22 221:11-14; Kasbarian Depo., Vol. II,  
23 347:1-18; Kasbarian Decl., ¶¶ 8, 9;  
24 Hemedinger Depo., 59:14-60:10; Rosen  
25 Depo., 22:15-23:17, 29:18-31:6, Holmes  
26 Depo., 73:5-17, 81:7-24; 120:19-121:3;  
27 Figueroa Depo., 99:22- 100:5; Gannon  
28 Depo., 99:4-7; Hemedinger Depo., 59:14-

60:10.

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

**Evidence:**

Plaintiff Depo., Volume I, 190:16-194:3; Hemedinger Depo., 64:18-65:11.

18. Disputed. In June 2014, five months after Kasbarian started complaining about the fraudulent activities by other membership advisors, Kasbarian's commission and bonus check for May 2014 was suddenly and for the first time since she started at West LA 25-33% short of what she was owed. Kasbarian immediately complained about her unpaid commissions and bonuses. After she complained defendant permanently cut her compensation plan stating that they have been paying her too much and in "error" and told her that she is "lucky that they were not asking her to pay the difference back."

**Evidence:**

Exhs. 11, 12, 13; Kasbarian Depo., Vol. I, 201:1-206:5, 207:4-20, 209:19-210:8, 221:11-14; Kasbarian Depo., Vol. II, 347:1-18; Kasbarian Decl., ¶¶ 8, 9; Hemedinger Depo., 59:14-60:10; Rosen Depo., 22:15-23:17, 29:18-31:6, Holmes Depo., 73:5-17, 81:7-24; 120:19-121:3; Figueroa Depo., 99:22- 100:5; Gannon Depo., 99:4-7; Hemedinger Depo., 59:14-

60:10.

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.

**Evidence:**

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., 68:125-69:8.

19. Disputed. In June 2014, five months after Kasbarian started complaining about the fraudulent activities by other membership advisors, Kasbarian's commission and bonus check for May 2014 was suddenly and for the first time since she started at West LA 25-33% short of what she was owed. Kasbarian immediately complained about her unpaid commissions and bonuses. After she complained defendant permanently cut her compensation plan stating that they have been paying her too much and in "error" and told her that she is "lucky that they were not asking her to pay the difference back."

**Evidence:**

Exhs. 11, 12, 13; Kasbarian Depo., Vol. I, 201:1-206:5, 207:4-20, 209:19-210:8, 221:11-14; Kasbarian Depo., Vol. II, 347:1-18; Kasbarian Decl., ¶¶ 8, 9; Hemedinger Depo., 59:14-60:10; Rosen Depo., 22:15-23:17, 29:18-31:6, Holmes Depo., 73:5-17, 81:7-24; 120:19-121:3; Figueroa Depo., 99:22- 100:5; Gannon Depo., 99:4-7; Hemedinger Depo., 59:14-

60:10.

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”).

**Evidence:**

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.

20. Undisputed as to Kasbarian’s complaints but otherwise disputed. In June 2014, five months after Kasbarian started complaining about the fraudulent activities by other membership advisors, Kasbarian’s commission and bonus check for May 2014 was suddenly and for the first time since she started at West LA 25-33% short of what she was owed. Kasbarian immediately complained about her unpaid commissions and bonuses. After she complained defendant permanently cut her compensation plan stating that they have been paying her too much and in “error” and told her that she is “lucky that they were not asking her to pay the difference back.”

**Evidence:**

Exhs. 11, 12, 13; Kasbarian Depo., Vol. I, 201:1-206:5, 207:4-20, 209:19-210:8, 221:11-14; Kasbarian Depo., Vol. II, 347:1-18; Kasbarian Decl., ¶¶ 8, 9; Hemedinger Depo., 59:14-60:10; Rosen Depo., 22:15-23:17, 29:18-31:6, Holmes Depo., 73:5-17, 81:7-24; 120:19-121:3; Figueroa Depo., 99:22- 100:5; Gannon

Depo., 99:4-7; Hemedinger Depo., 59:14-60:10.

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.

**Evidence:**

Plaintiff Depo., Volume I, 196:8-14, 207:15-22, 220:5-20; Plaintiff Depo., Volume II, 349:5-12.

21. Undisputed to the fact that Kasbarian continued to work at Equinox until February 2015 after she complained; however, disputed as to the rest. In June 2014, five months after Kasbarian started complaining about the fraudulent activities by other membership advisors, Kasbarian's commission and bonus check for May 2014 was suddenly and for the first time since she started at West LA 25-33% short of what she was owed. Kasbarian immediately complained about her unpaid commissions and bonuses. After she complained defendant permanently cut her compensation plan stating that they have been paying her too much and in "error" and told her that she is "lucky that they were not asking her to pay the difference back."

**Evidence:**

Exhs. 11, 12, 13; Kasbarian Depo., Vol. I, 201:1-206:5, 207:4-20, 209:19-210:8, 221:11-14; Kasbarian Depo., Vol. II, 347:1-18; Kasbarian Decl., ¶¶ 8, 9; Hemedinger Depo., 59:14-60:10; Rosen

Depo., 22:15-23:17, 29:18-31:6, Holmes Depo., 73:5-17, 81:7-24; 120:19-121:3; Figueroa Depo., 99:22- 100:5; Gannon Depo., 99:4-7; Hemedinger Depo., 59:14-60:10.

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.

**Evidence:**

Plaintiff Depo., Volume I, 81:6-21; 82:5-83:23, 94:14-97:9.

22. Undisputed. However, Kasbarian testified that she complained about multiple MAs at West LA, including Lauren Beck and Devin Mcvelogue about multiple fraudulent and unlawful activities, including charging members credit cards without their authorization.

**Evidence:**

Kasbarian Depo., Vol. I, 69:5-71:5, 71:20-72:4, 76:5-25, 82:9-83:19, 98:11-99:4, 102:13-103:25, 112:5-113:2; Kasbarian Depo., Vol. II, 334:16-25; Kasbarian Decl., ¶ 6; Hemedinger Depo., 43:13-15, 45:8-22, 46:10-22; 76:1-15.

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. Undisputed. Gannon also testified and admitted in testimony that he believes that the type of conduct Kasbarian complained of was illegal and is the type of conduct that needs to be investigated.

**Evidence:**

**Evidence:** Gannon Depo., 51:10-15, 52:23-53:3.  
Plaintiff Depo., Volume II, 334:16-336:23.

24. According to Plaintiff, her other 24. Undisputed.  
complaints involved “things against  
Equinox policies that were happening as  
well.”

**Evidence:**  
Plaintiff Depo., Volume II, 334:16-336:23.

25. Plaintiff admitted that she could not 25. Disputed. Plaintiff testified that she  
identify any statute, ordinance, regulation, believed this conduct was illegal.  
local law, state law, or federal law that was Moreover, Gannon also testified and  
violated as a result of this alleged activity. admitted in testimony that he believes that

**Evidence:** the type of conduct Kasbarian complained  
Plaintiff Depo., Volume II, 335:4-336:23. of was illegal and is the type of conduct  
that needs to be investigated.

**Evidence:**

Kasbarian Depo., Volume II, 334:16-  
336:23; Gannon Depo., 51:10-15, 52:23-  
53:3.

26. Plaintiff also testified that she com- 26. Undisputed.  
plained to Hemedinger and Simonson  
about the sales activities of another MA.

**Evidence:**  
Plaintiff Depo., Volume I, 76:17-79:19;  
93:10-94:10, 102:10-107:24; 108:1-113:5;

1 Hemedinger Depo., 45:8-47:19.

2  
3 27. Specifically, Plaintiff complained  
4 that this MA was giving away “free  
5 months” to potential members, allowing  
6 “freezes” for members, and offering “three  
7 month” deals.

8 **Evidence:**

9 Plaintiff Depo., Volume I, 76:17-79:19p  
10 93:10-94:10, 102:10-107:24; 108:1-113:5;  
11 Hemedinger Depo., 45:8-47:19.

27. Undisputed. However, Kasbarian  
testified that she complained about  
multiple MAs at West LA, including  
Lauren Beck and Devin Mcvelogue about  
multiple fraudulent and unlawful activities,  
including charging members credit cards  
without their authorization.

**Evidence:**

Kasbarian Depo., Vol. I, 69:5-71:5, 71:20-  
72:4, 76:5-25, 82:9-83:19, 98:11-99:4,  
102:13-103:25, 112:5-113:2; Kasbarian  
Depo., Vol. II, 334:16-25; Kasbarian  
Decl., ¶ 6; Hemedinger Depo., 43:13-15,  
45:8-22, 46:10-22; 76:1-15.

12  
13  
14  
15  
16  
17  
18 28. In or around December 2014, COO  
19 Rosen was touring the West LA club when  
20 he was told by a member that a MA had  
21 charged a membership to another mem-  
22 ber’s credit card without that member’s  
23 authorization.

24 **Evidence:**

25 Rosen Depo., 37:20-38:18; Declaration of  
26 Tracy Cuva (“Cuva Decl.”), ¶ 2.

28. Undisputed.

**Evidence:**

27  
28 29. Member Services is Equinox’s bill-

29. Undisputed.



1 ing department (centrally based in New **Evidence:**  
2 York) which handles membership con-  
3 tracts and membership sales, including  
4 auditing of membership sales.

5 **Evidence:**

6 Cuva Decl., ¶ 1.

8 30. Rosen contacted Tracy Cuva, Senior 30. Undisputed.  
9 Director of Equinox's Member Services **Evidence:**  
10 Department, gave her the information re-  
11 ceived from the member, and asked  
12 Member Services to investigate this sale.

13 **Evidence:**

14 Rosen Depo., 37:20-38:21; Cuva Decl.,  
15 ¶ 2.

17 31. Member Services' investigation, 31. Undisputed.  
18 which was conducted by Cuva, confirmed **Evidence:**  
19 that this was an unauthorized sale  
20 processed by a MA at the West LA Club  
21 (Plaintiff was not implicated in this  
22 transaction).

23 **Evidence:**

24 Cuva Decl., ¶ 2.

26 32. This MA was relocating to New 32. Undisputed. However, this MA was  
27 York but, based on the investigation terminated.  
28 results, she was not hired to work for **Evidence:**

Equinox in New York.

**Evidence:**

Rosen Depo., 39:8-13.

Kasbarian Depo., Vol. I, 84:7-85:1, 184:20-23; Kasbarian Decl., ¶ 10; Hemedinger Decl., ¶ 4; Gannon Depo., 58:20-59:18, 60:2-21.

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.

**Evidence:**

Rosen Depo., 47:25-6; Cuva Decl., ¶ 3.

33. Disputed. Senior Director of Loss Prevention, Jim Burger, testified that Jack Gannon contacted him to do an investigation at the West LA location and reported to him throughout.

**Evidence:**

Burger Depo., 70:9-21, 78:4-11, 83:18-84:3.

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.

**Evidence:**

Rosen Depo., 47:25-48:21.

34. Disputed. Senior Director of Loss Prevention, Jim Burger, testified that Jack Gannon contacted him to do an investigation at the West LA location and reported to him throughout.

**Evidence:**

Burger Depo., 70:9-21, 78:4-11, 83:18-84:3.

35. Cuva instructed Kevin Stanfa (“Stanfa”) (Manager of Compliance and Special Projects), to review sales transac-

35. Undisputed.

**Evidence:**

1 tions at the West LA club.

2 **Evidence:**

3 Cuva Decl., ¶ 3; Stanfa Decl. ¶ 4.

5 36. After Stanfa reported finding various 36. Undisputed.

6 anomalies associated with sales transac- **Evidence:**

7 tions at the West LA club, Cuva instructed  
8 Stanfa to prepare a summary detailing his  
9 findings.

10 **Evidence:**

11 Cuva Decl., ¶ 3; Stanfa Decl. ¶ 4.

13 37. Stanfa then prepared a workbook 37. Disputed. Defendant fails to produce  
14 with three spreadsheets regarding the fol- the spreadsheets corroborating those sales.

15 lowing sales activities: (1) 2014 Freezes; **Evidence:**

16 (2) Modification to Direct Bill; and Defendant's Amended Compendium of  
17 (3) West LA Sales Breakdown. Exhibits.

18 **Evidence:**

19 Stanfa Decl., ¶ 4.

21 38. Once these were prepared, Cuva 38. Disputed. Defendant fails to produce  
22 emailed the spreadsheets to Rosen, Holmes the spreadsheets corroborating those sales.

23 and Gannon and summarized the results of **Evidence:**

24 the Member Services investigation. Defendant's Amended Compendium of  
25 **Evidence:** Exhibits.

26 Rosen Depo., 47:25-48:21; Holmes Depo.,  
27 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.”

**Evidence:**

Cuva Decl., ¶ 7, Exh.N.

40. Cuva noted as follows:

i The 2041 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 question-

39. Undisputed as to that statement being written in the email.

**Evidence:**

40. Disputed. Kasbarian was found to have not committed any of the inappropriate and fraudulent conduct or “fake” sales that were being investigated.

**Evidence:**

Holmes Depo., 88:4-10, 106:11-19; Hemedinger Depo., 51:23-52:23; Rosen Depo., 48:22-49:3, 54:3-8, 76:5-14, 98:6-17, 101:24-102:7; Gannon Depo., 70:8-71:15, 72:7-20, 75:22-76:8, 79:5-10, 81:7-11; Gannon Decl., ¶ 6, 10.

1           able sales from two MAs  
2           (Plaintiff and the MA moving  
3           to New York). The other  
4           three MAs were reviewed  
5           and did not reflect the same  
6           anomalies seen with Plaintiff  
7           and the MA moving to New  
8           York. The questionable sales  
9           included selling memberships  
10          to members with the credit  
11          card of another member (al-  
12          most universally without re-  
13          questing a referral credit) or  
14          re-contracting over a previ-  
15          ously 3-day'd membership  
16          and either using the credit  
17          from the previous sale or re-  
18          charging the same credit  
19          card, credit card not present  
20          for numerous sales transac-  
21          tions, 3-day cancellations  
22          with no or just one member  
23          visit, new memberships  
24          which were previously fi-  
25          nance cancelled and had bal-  
26          ances on account that were  
27          waived.

28       **Evidence:**

1 Cuva Decl., ¶ 7, Exh.N.

2  
3 41. Neither Cuva nor Stanfa were aware  
4 Plaintiff had made any complaints about  
5 changes to her compensation plan or about  
6 the alleged activities of other MAs.

7 **Evidence:**

8 Cuva Decl., ¶ 8; Stanfa Decl., ¶ 11.

41. Undisputed. However, Kasbarian  
was found to have not committed any of  
the inappropriate and fraudulent conduct or  
“fake” sales that were being investigated.

**Evidence:**

41. Holmes Depo., 88:4-10, 106:11-19;  
Hemedinger Depo., 51:23-52:23; Rosen  
Depo., 48:22-49:3, 54:3-8, 76:5-14, 98:6-  
17, 101:24-102:7; Gannon Depo., 70:8-  
71:15, 72:7-20, 75:22-76:8, 79:5-10, 81:7-  
11; Gannon Decl., ¶ 6, 10.

**Evidence:**

17 42. In addition, Burger was asked to in-  
18 terview the sales team at the West LA  
19 club.

20 **Evidence:**

21 Deposition of Jim Burger (“Burger  
22 Depo.”), 72:4-73:3, 73:13-75:22, 76:6-12.

42. Undisputed.

**Evidence:**

24 43. When Burger came to Los Angeles  
25 to conduct his interviews in late January  
26 2015, the West LA club’s sales team con-  
27 sisted of three MAs, Plaintiff and two  
28 other MAs who were supervised by the

43. Undisputed.

**Evidence:**

Simonson [sic] and an Assistant General Manager.

**Evidence:**

Hemedinger Decl., ¶ 4.

44. A MA was fired on or about January 20, 2015 for improper sales activities.

44. Undisputed.

**Evidence:**

**Evidence:**

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. Disputed. Defendant fails to produce the spreadsheets corroborating those sales.

**Evidence:**

Defendant's Amended Compendium of Exhibits.

**Evidence:**

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. Undisputed.

**Evidence:**

**Evidence:**

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. Disputed. Defendant fails to produce the spreadsheets corroborating those sales.

**Evidence:**

**Evidence:** Defendant's Amended Compendium of  
Burger Depo., 74:16-75:3, 8-22; Stanfa Exhibits.  
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. Disputed. Defendant fails to produce the spreadsheets corroborating those sales. However, However, Kasbarian was found to have not committed any of the inappropriate and fraudulent conduct or "fake" sales that were being investigated.

**Evidence:**  
Burger Depo., 39:3-40:22; Cuva Decl., ¶ 8; Stanfa Decl., ¶¶ 4-5.

**Evidence:**  
Defendant's Amended Compendium of Exhibits; Holmes Depo., 88:4-10, 106:11-19; Hemedinger Depo., 51:23-52:23; Rosen Depo., 48:22-49:3, 54:3-8, 76:5-14, 98:6-17, 101:24-102:7; Gannon Depo., 70:8-71:15, 72:7-20, 75:22-76:8, 79:5-10, 81:7-11; Gannon Decl., ¶ 6, 10.

49. Burger also had a couple of telephone conversations with Stanfa regarding the anomalies in various sales activities at the West LA Club.

49. Undisputed.

**Evidence:**  
Burger Depo., 76:19-77:1; Stanfa Decl., ¶ 9.

**Evidence:**



1 50. In late January 2015, Burger came to  
2 Los Angeles to interview various employ-  
3 ees regarding sales activities of the West  
4 LA MAs.

5 **Evidence:**

6 Burger Depo., 76:6-12; Gannon Decl., ¶ 3;  
7 Hemedinger Decl., ¶ 5.  
8

9 51. Prior to the interviews, Burger and  
10 Gannon discussed suspending all of the in-  
11 dividuals interviewed as part of the investi-  
12 gation pending the results of the investiga-  
13 tion.

14 **Evidence:**

15 Burger Depo., 116:12-117:12.  
16  
17

18 52. Burger then interviewed the follow-  
19 ing individuals: (1) the Assistant General  
20 Manager; (2) Plaintiff; (3) another MA;  
21 (4) a relatively newly hired MA; and  
22 (5) Simonson.

23 **Evidence:**

24 Hemedinger Decl., ¶ 5.  
25  
26

27 53. Burger had never heard of or spoken  
28 to Plaintiff prior to this investigation meet-

50. Undisputed.

**Evidence:**

51. Disputed. Gannon testified that one  
MA was not suspended and was not  
discussed suspending because there “was  
no suspicious conduct linked to him” even  
at the beginning of the investigation.

**Evidence:**

Gannon Depo., 70:8-71:19, 81:7-11;  
Gannon Decl., ¶ 6, 10.

52. Disputed. Gannon testified that one  
MA was not suspended and was not  
discussed suspending because there “was  
no suspicious conduct linked to him” even  
at the beginning of the investigation.

**Evidence:**

Gannon Depo., 70:8-71:19, 81:7-11;  
Gannon Decl., ¶ 6, 10.

53. Undisputed.

**Evidence:**

1 ing.

2 **Evidence:**

3 Burger Depo., 35:22-24.

5 54. On January 30, 2015, Plaintiff met 54. Undisputed.

6 with Burger and Leah Ball of Human **Evidence:**

7 Resources regarding West LA's sales prac-  
8 tices.

9 **Evidence:**

10 Plaintiff Depo., Volume I, 161:11-22,  
11 164:10-22; Plaintiff Depo., Volume II,  
12 305:21-24; , [sic] Burger Depo., 96:18-25.

14 55. Plaintiff answered questions about  
15 her sales activities, as well as the activities  
16 of other MAs.

17 **Evidence:**

18 Plaintiff Depo., Volume I, 161:11-22,  
19 164:10-22; Burger Depo., 53:13-54:9.

55. Undisputed. Additionally, at the  
beginning of Kasbarian's interview, she  
notifies Senior Director of Loss  
Prevention, Jim Burger, about the  
fraudulent activity and unauthorized  
membership sales that she observed and  
complained about to management for  
months

22 **Evidence:**

23 Exh. 17; Kasbarian Depo., Vol. I, 158:4-  
24 18, 161:15-162:1, 166:9-167:2; Kasbarian  
25 Decl., ¶¶ 10, 11; Burger Depo., 70:9-21,  
26 78:4-11, 83:18-84:3, 91:5-92:18, 100:3-8,  
27 183:21-184:12.

1 56. While Burger did not find Plaintiff  
2 credible, he felt, at that time, that there was  
3 insufficient information to warrant Plain-  
4 tiff's termination.

5 **Evidence:**

6 Burger Depo., 122:14-17.  
7  
8

56. Undisputed as to Burger concluding  
there was insufficient information to  
warrant any terminable offense committed  
by Burger. Kasbarian was found to have  
not committed any of the inappropriate and  
fraudulent conduct or "fake" sales that  
were being investigated.

9 **Evidence:**

10 Holmes Depo., 88:4-10, 106:11-19;  
11 Hemedinger Depo., 51:23-52:23; Rosen  
12 Depo., 48:22-49:3, 54:3-8, 76:5-14, 98:6-  
13 17, 101:24-102:7; Gannon Depo., 70:8-  
14 71:15, 72:7-20, 75:22-76:8, 79:5-10, 81:7-  
15 11; Gannon Decl., ¶ 6, 10.  
16

17 57. After Burger completed his inter-  
18 views, Burger, Gannon and Hemedinger  
19 met briefly to discuss Burger's impression.

20 **Evidence:**

21 Burger Depo., 117:16-18, 24-118:6.  
22

57. Undisputed.

23 **Evidence:**

24 58. Gannon then advised Plaintiff that  
25 she was being suspended.

26 **Evidence:**

27 Plaintiff Depo, Volume I, 174:24-175:3,  
28 11-12; Plaintiff Depo., Volume II, 306:3-7;

58. Undisputed. However, she was  
suspended despite her having been found  
to not have committed any terminable  
offense.

**Evidence:**

Holmes Depo., 88:4-10, 106:11-19;

1 Gannon Decl., ¶ 4.

Hemedinger Depo., 51:23-52:23; Rosen  
Depo., 48:22-49:3, 54:3-8, 76:5-14, 98:6-  
17, 101:24-102:7; Gannon Depo., 70:8-  
71:15, 72:7-20, 75:22-76:8, 79:5-10, 81:7-  
11; Gannon Decl., ¶ 6, 10.

7 59. All of the MAs interviewed as part of  
8 the investigation (with the exception of the  
9 relatively new MA) were suspended pend-  
10 ing investigation.

11 **Evidence:**

12 Burger Depo., ¶ [sic] 110:17-23; Gannon  
13 Decl., ¶ 6.

59. Undisputed. One MA was not  
suspended.

**Evidence:**

Gannon Depo., 70:8-71:15, 81:7-11;  
Gannon Decl., ¶ 6, 10.

15 60. Gannon also advised Plaintiff to re-  
16 port back to the West LA club at 2:00 p.m.  
17 the next day for another meeting.

18 **Evidence:**

19 Plaintiff Depo., Volume II, 180:11-181:4;  
20 Gannon Decl., ¶ 5.

60. Undisputed.

**Evidence:**

22 61. According to Plaintiff, Equinox told  
23 her that she would not have access to her  
24 email or payroll account and escorted her  
25 out of the building in front of Equinox's  
26 clientele, staff and all of her peers.

27 **Evidence:**

28 Plaintiff Depo., Volume II, 174:24-175:21;

61. Undisputed.

**Evidence:**

1 Plaintiff Depo., Volume II, 305:21-306:2,  
2 364:17-20; Plaintiff's Complaint, 6:5-7.

3  
4 62. It is Equinox's policy to turn off  
5 email access for hourly employees who  
6 have been suspended pending investigation  
7 or who are on leave of absence.

8 **Evidence:**

9 Gannon Decl., ¶ 7.

10  
11 63. Prior to Burger's interview of Plain-  
12 tiff, Gannon had the Payroll Department  
13 prepare a final paycheck for Plaintiff so  
14 that she could be paid in accordance with  
15 California law in the event the decision  
16 was made to terminate her employment.

17 **Evidence:**

18 Gannon Decl., ¶ 8.

19  
20  
21  
22 64. Plaintiff met with Hemedinger and  
23 Gannon at the West LA club on January  
24 31, 2015 and was told that the investiga-  
25 tion was concluded and that she would be  
26 working at the Marina Del Rey club.

27 **Evidence:**

28 Plaintiff Depo., Volume I, 182:5-183:8;

62. Disputed. Defendant did not produce  
any documentation corroborating this  
policy.

**Evidence:**

Defendant's Amended Compendium of  
Evidence.

63. Undisputed as to Gannon preparing  
the final paycheck; however, this paycheck  
was prepared by Gannon even before the  
interview in preparation for Kasbarian's  
termination.

**Evidence:**

Gannon Decl., ¶ 8; Exh. 15; Kasbarian  
Depo., Vol. I, 130:21-131:3, 185:5-15;  
Kasbarian Depo., Vol. II, 311:9-22;  
Kasbarian Decl., ¶ 11.

64. Undisputed.

**Evidence:**

1 Plaintiff Depo., Volume II, 306:12:16  
2 [sic], 382:12-17, 390:4-11, Exh. 38;  
3 Hemedinger Depo., 54:17-21, 55:1-8;  
4 Gannon Decl., ¶ 3; Hemedinger Decl., ¶ 6.  
5

6 65. The decision was made to reassign  
7 Plaintiff to the Marina Del Rey club be-  
8 cause Equinox wanted to rebuild the team  
9 of MAs in the West LA club and to create  
10 a fresh culture, as a result of the investiga-  
11 tion findings.

12 **Evidence:**

13 Rosen Depo., 71:7-20, 73:15-22, 76:5-14;  
14 Holmes Depo., 96:12-98:17; Hemedinger  
15 Depo., 51:7-52:23; Gannon Decl., ¶ 10.  
16  
17  
18

19 66. Plaintiff's compensation plan would  
20 change once at Marina Del Rey to align  
21 with the compensation plan of Marina Del  
22 Rey MAs. Equinox considered the reas-  
23 signment a lateral move.

24 **Evidence:**

25 Rosen Depo., 87:25-88:4; Gannon Decl.,  
26 ¶ 11.  
27  
28

65. Disputed. Defendant's claim that  
Kasbarian was reassigned to Marina Del  
Rey because they wanted to rebuild the  
team of Mas, yet one MA was allowed to  
stay at West LA

**Evidence:**

Rosen Depo., 48:22-49:3, 54:3-8, 98:6-17,  
76:5-14; Hemedinger Depo., 51:23-52:23;  
Holmes Depo., 88:4-10, 106:11-19,  
101:24-102:7; Gannon Depo., 70:8-71:15,  
72:7-20, 75:22-76:8, 79:5-10, 81:7-11;  
Gannon Decl., ¶ 6, 10.

66. Undisputed that the compensation  
plan would change; however, disputed as  
to it being a lateral move. Kasbarian is told  
that she would be paid \$9.00/hour at the  
Marina del Rey office, which was a \$10.00  
per hour decrease in hourly rate that she  
was being paid at the West Los Angeles  
branch at \$19.23 per hour. Barry Holmes,  
Vice President of Sales, admits that urban  
clubs, such as the Santa Monica location,

1 tend to generate more revenue than  
2 suburban clubs, like the Marina Del Rey  
3 location, and the West LA location is a  
4 higher tier club than urban clubs. Brian  
5 Hemedinger admits in deposition that they  
6 thought it would be “best for Tamar, if she  
7 had the opportunity to be a membership  
8 advisor at a different location,” while  
9 acknowledging that she would be going to  
10 a lower tier location than when she first  
11 started with the company. Moreover, when  
12 Kasbarian went to West LA she was  
13 promoted from MA to Membership  
14 Executive, which it stated on her  
15 “Promotion Memo.”

16 **Evidence:**

17 Exh. 10, 14; Kasbarian Depo., Vol. I,  
18 50:24-51:1, 89:9-90:19, 279:14-280:12,  
19 182:12-184:19; Kasbarian Depo., Vol. II,  
20 354:1-18, 458:24-459:17; Gannon Decl., 9,  
21 10; Holmes Depo., 28:22-29:2, 50:18-25;  
22 Gannon Depo., 32:15-17, 88:25-89:5;  
23 Hemedinger Depo., 50:14-20, 51:23-  
24 52:23, 81:2-23.

26 67. Equinox considered the reassignment  
27 a lateral move.

28 **Evidence:**

67. Disputed. Kasbarian is told that she  
would be paid \$9.00/hour at the Marina del  
Rey office, which was a \$10.00 per hour

1 Rosen Depo., 87:25-88:4; Gannon Decl., decrease in hourly rate that she was being  
2 ¶ 11. paid at the West Los Angeles branch at  
3 \$19.23 per hour. Barry Holmes, Vice  
4 President of Sales, admits that urban clubs,  
5 such as the Santa Monica location, tend to  
6 generate more revenue than suburban  
7 clubs, like the Marina Del Rey location,  
8 and the West LA location is a higher tier  
9 club than urban clubs. Brian Hemedinger  
10 admits in deposition that they thought it  
11 would be “best for Tamar, if she had the  
12 opportunity to be a membership advisor at  
13 a different location,” while acknowledging  
14 that she would be going to a lower tier  
15 location than when she first started with  
16 the company. Moreover, when Kasbarian  
17 went to West LA she was promoted from  
18 MA to Membership Executive, which it  
19 stated on her “Promotion Memo.”

20 **Evidence:**

21 Exh. 10, 14; Kasbarian Depo., Vol. I,  
22 50:24-51:1, 89:9-90:19, 279:14-280:12,  
23 182:12-184:19; Kasbarian Depo., Vol. II,  
24 354:1-18, 458:24-459:17; Gannon Decl., 9,  
25 10; Holmes Depo., 28:22-29:2, 50:18-25;  
26 Gannon Depo., 32:15-17, 88:25-89:5;  
27 Hemedinger Depo., 50:14-20, 51:23-  
28



52:23, 81:2-23.

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.

**Evidence:**

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.

**Evidence:**

Hemedinger Depo., 52:18-23; Rosen Depo., 57:13-19; 58:22-59:14; Holmes Depo., 31:13-15.

68. Undisputed.

**Evidence:**

69. Disputed. Kasbarian is told that she would be paid \$9.00/hour at the Marina del Rey office, which was a \$10.00 per hour decrease in hourly rate that she was being paid at the West Los Angeles branch at \$19.23 per hour. Barry Holmes, Vice President of Sales, admits that urban clubs, such as the Santa Monica location, tend to generate more revenue than suburban clubs, like the Marina Del Rey location, and the West LA location is a higher tier club than urban clubs. Brian Hemedinger admits in deposition that they thought it would be "best for Tamar, if she had the opportunity to be a membership advisor at a different location," while acknowledging that she would be going to a lower tier location than when she first started with

the company. Moreover, when Kasbarian went to West LA she was promoted from MA to Membership Executive, which it stated on her “Promotion Memo.”

**Evidence:**

Exh. 10, 14; Kasbarian Depo., Vol. I, 50:24-51:1, 89:9-90:19, 279:14-280:12, 182:12-184:19; Kasbarian Depo., Vol. II, 354:1-18, 458:24-459:17; Gannon Decl., 9, 10; Holmes Depo., 28:22-29:2, 50:18-25; Gannon Depo., 32:15-17, 88:25-89:5; Hemedinger Depo., 50:14-20, 51:23-52:23, 81:2-23.

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.

**Evidence:**

Hemedinger Depo., 52:18-23; Rosen Depo., 57:13-19; 58:22-59:14; Holmes Depo., [sic] 50:18-51:5.

70. Disputed. Kasbarian is told that she would be paid \$9.00/hour at the Marina del Rey office, which was a \$10.00 per hour decrease in hourly rate that she was being paid at the West Los Angeles branch at \$19.23 per hour. Barry Holmes, Vice President of Sales, admits that urban clubs, such as the Santa Monica location, tend to generate more revenue than suburban clubs, like the Marina Del Rey location, and the West LA location is a higher tier club than urban clubs. Brian Hemedinger admits in deposition that they thought it would be “best for Tamar, if she had the

1 opportunity to be a membership advisor at  
2 a different location,” while acknowledging  
3 that she would be going to a lower tier  
4 location than when she first started with  
5 the company. Moreover, when Kasbarian  
6 went to West LA she was promoted from  
7 MA to Membership Executive, which it  
8 stated on her “Promotion Memo.”

9 **Evidence:**

10 Exh. 10, 14; Kasbarian Depo., Vol. I,  
11 50:24-51:1, 89:9-90:19, 279:14-280:12,  
12 182:12-184:19; Kasbarian Depo., Vol. II,  
13 354:1-18, 458:24-459:17; Gannon Decl., 9,  
14 10; Holmes Depo., 28:22-29:2, 50:18-25;  
15 Gannon Depo., 32:15-17, 88:25-89:5;  
16 Hemedinger Depo., 50:14-20, 51:23-  
17 52:23, 81:2-23.

18  
19 71. Gannon emailed Plaintiff the com-  
20 pensation plan for the Marina Del Rey  
21 Club on or about January 31, 2015.

22 **Evidence:**

23 Plaintiff Depo., Volume I, 246:19-247:2;  
24 Gannon Decl., ¶ 12.

25  
26 72. Plaintiff testified that no one from  
27 Equinox ever told her that she was being  
28 “terminated” or “demoted” as part of her

71. Undisputed.

**Evidence:**

72. Undisputed as to no one stating those  
actual words; however, Kasbarian is told  
that she would be paid \$9.00/hour at the

1 reassignment to the Marina Del Rey club.

2 **Evidence:**

3 Plaintiff Depo., Volume I, 171:10-172:7;  
4 Plaintiff Depo., Volume II, 306:17-310:19,  
5 363:24-364:3; Gannon Decl., ¶ 13;  
6 Hemedinger Decl., ¶ 7.

Marina del Rey office, which was a \$10.00  
per hour decrease in hourly rate that she  
was being paid at the West Los Angeles  
branch at \$19.23 per hour. Barry Holmes,  
Vice President of Sales, admits that urban  
clubs, such as the Santa Monica location,  
tend to generate more revenue than  
suburban clubs, like the Marina Del Rey  
location, and the West LA location is a  
higher tier club than urban clubs. Brian  
Hemedinger admits in deposition that they  
thought it would be “best for Tamar, if she  
had the opportunity to be a membership  
advisor at a different location,” while  
acknowledging that she would be going to  
a lower tier location than when she first  
started with the company. Moreover, when  
Kasbarian went to West LA she was  
promoted from MA to Membership  
Executive, which it stated on her  
“Promotion Memo.”

22 **Evidence:**

23 Exh. 10, 14; Kasbarian Depo., Vol. I,  
24 50:24-51:1, 89:9-90:19, 279:14-280:12,  
25 182:12-184:19; Kasbarian Depo., Vol. II,  
26 354:1-18, 458:24-459:17; Gannon Decl., 9,  
27 10; Holmes Depo., 28:22-29:2, 50:18-25;  
28 Gannon Depo., 32:15-17, 88:25-89:5;

Hemedinger Depo., 50:14-20, 51:23-52:23, 81:2-23.

73. Gannon made the decision to reassign Plaintiff to the Marina Del Rey club. 73. Undisputed.  
**Evidence:**

**Evidence:**

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. Undisputed.  
**Evidence:**

**Evidence:**

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. Undisputed; however, Kasbarian was forced to resign due to intolerable working conditions at Equinox. On February 2, 2015, the day Kasbarian was supposed to start at the Marina del Rey location, she

**Evidence:**

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. feels she is no longer welcome at Equinox and feels pushed out since she was forced to take a demotion, a significant pay cut and restart her business and clientele base, along with the overwhelming stress of the

interrogation and suspension and fear of being terminated that she is forced to resign.

**Evidence:**

Exh. 16; Kasbarian Depo., Vol. I, 186:5-14; Kasbarian Decl., ¶¶ 12-14.

76. Plaintiff's last day of employment was February 2, 2015. 76. Undisputed.

**Evidence:**

Plaintiff Depo., Volume I, 186:11-14.

77. Plaintiff never reported to work at the Marina Del Rey club. 77. Undisputed.

**Evidence:**

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. Undisputed.

**Evidence:**

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. Undisputed. However, one MA was able to stay at the West LA location, despite Gannon stating he wanted to rebuild the team by getting rid of all of the

**Evidence:**

Plaintiff Depo., Volume II, 342:25-343:5. Membership Executives at West LA.

**Evidence:**

Rosen Depo., 76:5-14; Hemedinger Depo., 51:23-52:23; Holmes Depo., 101:24-102:7; Gannon Depo., 70:8-71:15, 81:7-11; Gannon Decl., ¶ 6, 10.

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.

**Evidence:**

Plaintiff Depo., Volume II, 343:6-22.

**Plaintiff's Additional Material Facts that Negate Summary Judgment and Summary Adjudication of Issues Nos. 1-23**

**Material Facts**

**Supporting Evidence**

1. Kasbarian was first employed by Equinox Holdings, Inc. (collectively, “Defendants” or “Equinox”) as a Membership Advisor at the Santa Monica branch in October 2010, working her way up to a Membership Executive at the West Los Angeles location in October 2013 until she was forced to resign on February 2,	1. Kasbarian Depo., Vol. I, 39:20-40:9; Declaration of Tamar Kasbarian, “Kasbarian Decl.,” ¶ 2.
---	---

1 2015.

2 2. Kasbarian excelled at her job and 2. Exh. 9.  
3 was consistently a top performer and was  
4 ranked as exceeding expectations on her  
5 performance reviews year after year.  
6

7 3. Kasbarian's supervisor, Veronica 3. Exh. 9, EQU00041, EQU00043.  
8 Santarelli, has noted on her reviews that:  
9 *"Tamar has a lot of integrity and upholds*  
10 *a high moral character," "She is*  
11 *someone people trust," and "Tamar*  
12 *finished last year at 107% to plan, so she*  
13 *exceeded our desired results. She is very*  
14 *driven, see's sales as a "Lifeblood"*  
15 *culture and takes initiative to make things*  
16 *happen."*  
17

18 4. Kira Simonson, Kasbarian's other 4. Exh. 9, EQU00061.  
19 supervisor, has noted on her reviews that:  
20 Tamar *"[t]akes a vested interest in the*  
21 *needs of the member or prospect and*  
22 *ensures their expectations are exceeded."*  
23

24 5. Scott Rosen, COO of Equinox, who 5. Rosen Depo., 17-13-20, 18:3-13,  
25 closely worked with Kasbarian, testified 21:5-16.  
26 that Kasbarian was *"one of the better*  
27 *advisors," a "top performer," "she wrote*  
28 *the most sales,"* and that *"she could*



1 *handle the member base at the West LA*  
2 *location” because “she was very*  
3 *aggressive, very confident.”*  
4

5 6. Barry Holmes, Vice President of  
6 Sales, testified that Kasbarian was a “*good*  
7 *performer,” “met her goals” and “was*  
8 *absolutely consistently above budget”*  
9

6. Holmes Depo., 123:12-124:7.

10 7. For four consecutive years, starting  
11 in 2011, Equinox sent Kasbarian on trips  
12 to New York and Miami in rewards for her  
13 top sales performance.  
14

7. Kasbarian Depo., Vol. I, 122:24-  
124:25; Kasbarian Decl., ¶ 4; Holmes  
Depo., 38:20-39:12.

15 8. In October 2013, Kasbarian is  
16 promoted to the position of Membership  
17 Executive with a higher compensation plan  
18 at the West Los Angeles (“West LA”)   
19 Branch, which was a “Flagship Club,” the  
20 highest tier club at Equinox.  
21

8. Exh. 10; Kasbarian Depo., Vol. I,  
89:9-90:19, 279:14-280:12; Kasbarian  
Decl., ¶ 5; Hemedinger Depo., 50:4-9;  
Rosen Depo., 20:4-18; Holmes Depo.,  
39:13-18.

22 9. As a Membership Executive,  
23 Kasbarian’s hourly rate increased to  
24 \$19.23 per hour, as well as an increase in  
25 commissions and bonuses.  
26

9. Exh. 10.

27 10. Beginning in January 2014,  
28 Kasbarian observed certain membership

10. Kasbarian Depo., Vol. I, 82:9-83:19;  
Kasbarian Decl., ¶ 6; Hemedinger Depo.,

1 advisors at the West Los Angeles location, 46:10-224.  
2 including Lauren Beck and Devin  
3 Mcelvogue, engaging in fraudulent and  
4 unlawful conduct, specifically, charging  
5 members and guests credit cards for a  
6 recurring year-long membership fee,  
7 without their approval when they only  
8 authorized a one-month membership fee.

9  
10 11. Kasbarian observed Devin 11. Kasbarian Depo., Vol. I, 112:5-  
11 Mcelvogue doing three-month deals, 113:2; Kasbarian Decl., ¶ 6; Hemedinger  
12 where he would give members three Depo., 46:10-224, 76:1-15.  
13 months for the price of one-month, which  
14 was against policy at Equinox.

15  
16 12. Kasbarian would complain on 12. Kasbarian Depo., Vol. I, 69:5-71:5,  
17 multiple occasions to Regional Director, 71:20-72:4, 76:5-25, 82:9-83:19, 98:11-  
18 Brian Hemedinger, her supervisor, Kira 99:4, 102:13-103:25; Kasbarian Depo.,  
19 Simonson, and Regional Vice President, Vol. II, 334:16-25; Hemedinger Depo.,  
20 Jack Gannon, as well as others about the 43:13-15, 45:8-22, 46:10-22; Kasbarian  
21 unlawful conduct she observed the other Decl., ¶ 6.  
22 West Los Angeles membership advisors  
23 engage in, including Lauren Beck and  
24 Devon Mcvelogue charging clients and  
25 potential clients' credit cards without their  
26 approval, and notifying them that they  
27 were only signing up for a month-long  
28 membership, but instead charging them for

1 a recurring year-long membership contract.

2  
3 13. Brian Hemedinger and Emerson 13. Hemedinger Depo., 46:10-224, 76:1-  
4 Figueroa, Human Resources, acknowledged 15; Figueroa Depo., 77:3-8, 78:1-8, 167:4-  
5 that Kasbarian complained to him about 23.  
6 these activities.

7  
8 14. Gannon admitted in testimony that 14. Gannon Depo., 51:10-15, 52:23-  
9 he believes that the type of conduct 53:3.  
10 Kasbarian complained of was illegal and is  
11 the type of conduct that needs to be  
12 investigated.

13  
14 15. Jack Gannon says “*She’s really great* 15. Kasbarian Depo., Vol. I, 135:1-  
15 *at sales, but she’s crazy.*” 136:15, 150:12-154:4; Kasbarian Decl., ¶;  
16 7.

17  
18 16. Jack Gannon states “*Is she being* 16. Kasbarian Depo., Vol. I, 135:1-  
19 *crazy again?*” 136:15, 150:12-154:4; Kasbarian Decl., ¶;  
20 7.

21  
22 17. Jack Gannon states “*you’re acting* 17. Kasbarian Depo., Vol. I, 150:12-  
23 *out*” 154:4; Kasbarian Decl., ¶; 7.

24  
25 18. Jack Gannon refers to Kasbarian as 18. Kasbarian Depo., Vol. II, 321:7-  
26 “*Amy Winehouse*” on multiple occasions 322:8, 333:15-334:5; Kasbarian Decl., ¶ 7;  
27 Gannon Depo., 53:22-23, 54:4-6.  
28

1 19. In June 2014, five months since  
2 Kasbarian started complaining about the  
3 fraudulent activities by other membership  
4 advisors, Kasbarian is suddenly and for the  
5 first time paid less on her commissions and  
6 bonuses check for May 2014 by 25-33%.

7  
8 20. In June 2014, immediately after  
9 receiving her check and noticing she was  
10 not paid correctly, she complains to Jack  
11 Gannon, Scott Rosen, COO, and Barry  
12 Holmes Vice President of Sales.

13  
14  
15  
16  
17  
18 21. In July 2014, Gannon and  
19 Hemedinger change and lower Kasbarian's  
20 compensation package permanently,  
21 stating that they have been paying her "too  
22 much" and in "error" since she has been  
23 working at the West LA location back in  
24 October 2013, and tell her she is "lucky  
25 that they are not asking you to pay the  
26 difference back."

19. Kasbarian Depo., Vol. I, 201:1-  
206:5, 207:4-20, 209:19-210:8; Kasbarian  
Depo., Vol. II, 347:1-18; Kasbarian Decl.,  
¶ 8.

20. Exhs. 11, 12, 13; Kasbarian Depo.,  
Vol. I, 201:1-206:5, 207:4-20, 209:19-  
210:8, 221:11-14; Kasbarian Depo., Vol.  
II, 347:1-18; Kasbarian Decl., ¶ 8;  
Hemedinger Depo., 59:14-60:10; Rosen  
Depo., 29:18-31:6, Holmes Depo., 73:5-  
17, 81:7-24; 120:19-121:3; Figueroa  
Depo., 99:22- 100:5; Gannon Depo., 99:4-  
7.

21. Kasbarian Depo., Vol. I, 201:1-  
206:5, 207:4-20, 209:19-210:8, 221:11-14;  
Kasbarian Depo., Vol. II, 347:1-18;  
Kasbarian Decl., ¶¶ 8, 9; Rosen Depo.,  
22:15-23:17; Hemedinger Depo., 59:14-  
60:10.

1 22. Shortly after Kasbarian's complaints 22. Kasbarian Depo., Vol. II, 348:2-11.  
2 about unpaid commissions and bonuses,  
3 Kasbarian's supervisor, Kira Simonson,  
4 tells her not to complain about her pay  
5 because she will jeopardize her job.  
6

7 23. In January 2015, a Membership 23. Kasbarian Depo., Vol. I, 84:7-85:1,  
8 Advisor at West LA, whom Kasbarian 184:20-23; Kasbarian Decl., ¶ 10;  
9 complained about was engaging in Hemedinger Decl., ¶ 4; Gannon Depo.,  
10 unlawful activity, is fired for charging 58:20-59:18, 60:2-21.  
11 guests without their approval.  
12

13 24. In late January 2015, Jack Gannon 24. Burger Depo., 70:9-21, 78:4-11,  
14 launches an investigation and Kasbarian is 83:18-84:3; Kasbarian Depo., Vol. I,  
15 interviewed on January 30, 2015 and was 158:4-18, 161:15-162:1, 166:9-167:2;  
16 harassed with questioning about multiple Kasbarian Decl., ¶¶ 10, 11; Exh. 17.  
17 memberships that she sold, which were all  
18 corroborated with managers' approval.  
19

20 25. At the beginning of Kasbarian's 25. Exh. 17; Burger Depo., 91:5-92:18,  
21 interview, she notifies Senior Director of 100:3-8, 183:21-184:12.  
22 Loss Prevention, Jim Burger, about the  
23 fraudulent activity and unauthorized  
24 membership sales that she observed and  
25 complained about to management for  
26 months.  
27

28 26. That same day, immediately after the 26. Kasbarian Depo., Vol. I, 174:24-

1 interview, Jack Gannon suspends 175:14; Kasbarian Decl., ¶ 11; Gannon  
2 Kasbarian, effective immediately, Depo., 62:20-63:6, 64:7-14, 72:7-20,  
3 removes her access to her email, and 75:22-76:8, 84:5-8, 97:1-10.  
4 escorts her out of the building.  
5

6 27. On January 30, 2015, a final 27. Exh. 15; Kasbarian Depo., Vol. I,  
7 paycheck is cut to Kasbarian, indicating 130:21-131:3, 185:5-15; Kasbarian Depo.,  
8 Equinox's plan to terminate her that day. Vol. II, 311:9-22; Kasbarian Decl., ¶ 11.  
9

10 28. Gannon admits that he prepared a 28. Gannon Decl., ¶ 8.  
11 final paycheck for Kasbarian, even prior to  
12 her interview, in preparation to terminate  
13 her, but Kasbarian was found not to have  
14 committed any terminable offenses.  
15

16 29. On January 31, 2015, Kasbarian 29. Exh. 10, 14; Kasbarian Depo., Vol. I,  
17 meets with Gannon and he informs her that 182:12-184:19; Kasbarian Depo., Vol. II,  
18 she would be reinstated, but demoted to a 354:1-18, 458:24-459:17; Gannon Decl., 9,  
19 membership advisor position at the Marina 10; Gannon Depo., 88:25-89:5;  
20 del Rey location, which was the lowest tier Hemedinger Depo., 50:14-20.  
21 club and a lower compensation plan than  
22 West LA or at Santa Monica, where  
23 Kasbarian first started at.  
24

25 30. Kasbarian is told that she would be 30. Exh. 10; Kasbarian Depo., Vol. I.,  
26 paid \$9.00/hour at the Marina del Rey 50:24-51:1, 89:9-90:19, 279:14-280:12;  
27 office, which was a \$10.00 per hour Kasbarian Depo., Vol. II, 354:1-18;  
28 decrease in hourly rate that she was being Hemedinger Depo., 50:14-20, 81:2-23;

1 paid at the West Los Angeles branch at Gannon Depo., 32:15-17.  
2 \$19.23 per hour.  
3

4 31. Barry Holmes, Vice President of 31. Holmes Depo., 28:22-29:2, 50:18-25.  
5 Sales, admits that urban clubs, such as the  
6 Santa Monica location, tend to generate  
7 more revenue than suburban clubs, like the  
8 Marina Del Rey location, and the West LA  
9 location is a higher tier club than urban  
10 clubs.  
11

12 32. Brian Hemedinger admits in 32. Hemedinger Depo., 51:23-52:23.  
13 deposition that they thought it would be  
14 “best for Tamar, if she had the opportunity  
15 to be a membership advisor at a different  
16 location,” while acknowledging that she  
17 would be going to a lower tier location  
18 than when she first started with the  
19 company.  
20

21 33. On February 2, 2015, the day 33. Exh. 16; Kasbarian Depo., Vol. I,  
22 Kasbarian was supposed to start at the 186:5-14; Kasbarian Decl., ¶¶ 12-14.  
23 Marina del Rey location, she feels she is  
24 no longer welcome at Equinox and feels  
25 pushed out since she was forced to take a  
26 demotion, a significant pay cut and restart  
27 her business and clientele base, along with  
28 the overwhelming stress of the

1 interrogation and suspension and fear of  
2 being terminated that she is forced to  
3 resign.  
4

5 34. Kasbarian suffered from insomnia, 34. Kasbarian Depo., Vol. I, 250:11-  
6 lack of appetite, panick attacks and 251:5, 263:2-22; Kasbarian Decl., ¶ 15.  
7 depression after she was forced to resign  
8 from Equinox and she was severely  
9 emotionally distressed that she had to see a  
10 psychiatrist, who prescribed her  
11 medication for depression and sleep.  
12

13 35. Senior Director of Loss Prevention, 35. Burger Depo., 70:9-21, 78:4-11,  
14 Jim Burger, testifies that Jack Gannon 83:18-84:3; Gannon Depo., 76:9-77:18.  
15 contacted him to do an investigation at the  
16 West LA location and reported to him  
17 throughout yet Gannon states that he never  
18 initiated the investigation and did not  
19 speak with Burger at all until after the  
20 investigation was completed.  
21

22 36. Hemedinger and Holmes admit that 36. Holmes Depo., 88:4-10, 106:11-19;  
23 Kasbarian did not engage in any Hemedinger Depo., 51:23-52:23; Rosen  
24 terminable conduct but moved her out of Depo., 48:22-49:3, 54:3-8, 98:6-17;  
25 the West LA location anyway, yet one Gannon Depo., 70:8-71:15, 72:7-20,  
26 other Membership advisor was allowed to 75:22-76:8, 79:5-10; Gannon Decl., ¶ 6,  
27 stay at the West Los Angeles location, 10.  
28 despite him also not engaging in any



1 terminable conduct.

2  
3 37. Rosen, Hemedinger and Holmes all 37. Rosen Depo., 76:5-14; Hemedinger  
4 testify that they removed all of the Depo., 51:23-52:23; Holmes Depo.,  
5 membership advisors at West LA that were 101:24-102:7; Gannon Depo., 70:8-71:15,  
6 not terminated after the investigation in 81:7-11; Gannon Decl., ¶ 6, 10.  
7 order to create a fresh culture, yet Gannon  
8 states he let one membership advisor stay  
9 at the club and never even suspended him.

10  
11 38. Regional Vice President of the 38. Gannon Depo., 80:12-25, 83:24-84:1;  
12 company (Jack Gannon)<sup>1</sup> and the Regional Hemedinger Depo., 41:17-42:2, 53:9-18,  
13 Sales Director (Brian Hemedinger), both 54:6-13, 91:12-22; Holmes Depo., 103:3-  
14 officers and management in the company, 15.  
15 were the decision makers of Kasbarian's  
16 suspension and reassignment to Marina del  
17 Rey location.

18  
19 39. Ganon is responsible for the financial 39. Gannon Depo., 18:14-19:19, 25:12-  
20 performance of 25 Equinox clubs, and he 22.  
21 establishes the local policy for those club  
22 in the Western region.

23  
24 40. Gannon also directly supervisors all 40. Gannon Depo., 24:2-8, 24:16-25:2.  
25 managers at the 25 Equinox clubs he

26  
27 <sup>1</sup> Ganon is responsible for the financial performance of 25 Equinox clubs, and he establishes the local  
28 policy for those club in the Western region. (Gannon Depo., 18:14-19:19, 25:12-22). Gannon also  
directly supervisors all managers at the 25 Equinox clubs he oversees in California and indirectly  
supervises 2500 employees. (24:2-8, 24:16-25:2)

1 oversees in California and indirectly  
2 supervises 2500 employees.  
3

4 41. Plaintiff's complaint references her 41. Exh. 18, Plaintiff's Complaint, 6:20,  
5 "forced resignation," "constructive 8:16, 9:16-17.  
6 employment termination" and  
7 "constructive discharge" throughout it.  
8

9 42. After Kasbarian complained, Kira 42. Kasbarian Decl., ¶ 6.  
10 Simmonson would accuse her of "tattle  
11 telling," and would say that Kasbarian was  
12 "lucky" to be making as much money as  
13 she did and should not "ruin it" for myself.  
14 Hemedinger responded to Kasbarian's  
15 complaints by saying that she was "too  
16 aggressive" with how she was approaching  
17 the complaints of fraudulent activity, and  
18 told her in either October or November of  
19 2014 that she should leave if she did not  
20 want to witness any fruaudlent activity.  
21

22 43. With Gannon, Kasbarian raised the 43. Kasbarian Decl., ¶ 6.  
23 complaints to him everytime that she saw  
24 him, which was approximately twice a  
25 month, but he would turn red in the face  
26 and ignore her. Gannon would alos often  
27 ignore her phone calls about these  
28 complaints as well. Gonzalez would tell

1 her “worry about what you can control” in  
2 response to her complaints.

3  
4 44. After Kasbarian complained about 44. Kasbarian Decl., ¶ 8.  
5 her compensation plan in June 2014,  
6 Kasbarian would tell Scott Rosen that she  
7 thought what they were doing with her pay  
8 was illegal and that she wanted what was  
9 promised, and that she consulted with an  
10 attorney.

11  
12 45. Kasbarian would also inform 45. Kasbarian Decl., ¶ 8.  
13 Hemedinger that she would like to consult  
14 with an attorney to ascertain her rights.  
15 Both Hemedinger and Simonson, who she  
16 also informed of the pay issue, warned her  
17 to not complain so as to not “jeopardize”  
18 my career. They were both demeaning  
19 toward her and Hemedinger in particular  
20 appeared angry when she raised the issue,  
21 his face would turn red, and would speak  
22 to her in a belittling manner.

23  
24 46. Gannon appeared to avoid 46. Kasbarian Decl., ¶ 8.  
25 Kasbarian’s calls, or at least not pick up  
26 after her numerous calls to him. Kasbarian  
27 left him several messages about needing to  
28 fix her pay, that the pay issue was unfair,

1 and that the company was not following  
2 the pay agreement. Gonzalez told her after  
3 she informed him that Equinox's failure to  
4 pay her what she was promised was illegal  
5 that if it were up to him, he "would have  
6 her pay them back," "you're lucky we're  
7 not having you pay us back," and "I  
8 strongly suggest that you don't challenge  
9 the pay."

10  
11 Dated: October 17, 2016 SHEGERIAN & ASSOCIATES, INC.

12  
13 By: /S/ Carney R. Shegerian  
14 Carney R. Shegerian, Esq.

15 Attorneys for Plaintiff,  
16 TAMAR KASBARIAN  
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**KASBARIAN v. EQUINOX, et al. USDC Case No. 2:16-CV-01795 MWF (JCx)**

**PROOF OF SERVICE**

**STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

I am an employee in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 225 Santa Monica Boulevard, Suite 700, Santa Monica, California 90401.

On October 17, 2016, I served the foregoing document, described as **“PLAINTIFF TAMAR KASBARIAN’S REPLY TO DEFENDANT EQUINOX HOLDINGS, INC.’S SEPARATE STATEMENT OF UNCONTROVERTED FACTS AND CONCLUSIONS OF LAW IN OPPOSITION TO DEFENDANT’S MOTION FOR SUMMARY JUDGMENT,”** on all interested parties in this action by placing a true copy thereof in a sealed envelope, addressed as follows:

**Mia Farber, Esq.  
Dorothy L. Black, Esq.  
JACKSON LEWIS P.C.  
725 South Figueroa Street, Suite 2500  
Los Angeles, California 90017-5408**

☒ **BY CM/ECF NOTICE OF ELECTRONIC FILING:** I electronically filed the document(s) with the Clerk of the Court by using the CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system. Participants in the case who are not registered CM/ECF users will be served by mail or by other means permitted by the court rules.

☒ **(FEDERAL)** I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on October 17, 2016, at Santa Monica, California.

/S/ Edgar Claros  
Edgar Claros