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7

8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**

10
11 FRANK J. FODERA, JR. and
12 MICHAEL M. BONELLA, individually
and on behalf of all others similarly
13 situated,

14 Plaintiffs,

15 v.

16 EQUINOX HOLDINGS, INC., a
17 Delaware corporation; and DOES 1-50,
18 inclusive,

19 Defendants.
20

Case No.:

**NOTICE OF REMOVAL OF
ACTION TO THE UNITED STATES
DISTRICT COURT FOR THE
NORTHERN DISTRICT OF
CALIFORNIA PURSUANT TO 28
U.S.C. §§ 1332, 1367, 1441, 1446, AND
1453**

21
22 **TO THE HONORABLE CLERK OF THE UNITED STATES DISTRICT**
23 **COURT FOR THE NORTHERN CENTRAL DISTRICT OF CALIFORNIA:**

24 **PLEASE TAKE NOTICE** that Defendant EQUINOX HOLDINGS, INC.
25 (“Equinox” or “Defendant”) hereby invokes this Court’s jurisdiction under the
26 provisions of 28 U.S.C. §§ 1332, 1367, 1441(a)-(b), 1446, and 1453, and removes the
27 above-entitled action to this Court from the Superior Court of the State of California in
28 and for the County of Alameda.

1 1. The original Complaint was filed by Plaintiff Frank J. Fodera, Jr.
2 (“Fodera”) in the Superior Court of the State of California in and for the County of
3 Alameda on April 3, 2019.

4 2. On April 8, 2019, the Superior Court issued a notice for the Parties to
5 appear at a Complex Litigation Determination Hearing and Initial Complex Case
6 Management Conference on May 8, 2019 and June 5, 2019, respectively. By Order
7 dated May 10, 2019, the Court designated the case as complex pursuant to Rule 3.400,
8 *et seq.* of the California Rules of Court. (True and correct copies of the Notice and
9 Orders are attached as **Exhibit “A”**.)

10 3. On June 3, 2019, counsel for Plaintiff Fodera filed an *ex parte* application
11 for an extension of time to serve the Complaint. (A true and correct copy of the
12 application is attached as **Exhibit “B”**.)

13 4. On July 16, 2019, Plaintiffs Fodera and MICHAEL BONELLA
14 (“Bonella”) (collectively, “Plaintiffs”) filed a First Amended Class Action Complaint
15 against Equinox, and DOES 1-50, inclusive, in the Superior Court of the State of
16 California in and for the County of Alameda (“Superior Court”) entitled *Frank J.*
17 *Fodera, Jr. et al. v. Equinox Holdings, Inc., et al.*, bearing Case No. RG19013798,
18 which sets forth the following ten (10) causes of action: (1) Failure to Pay All Wages
19 Earned; (2) Failure to Pay Minimum Wage; (3) Failure to Pay Overtime Wages; (4)
20 Failure to Provide Meal Periods; (5) Failure to Provide Rest Periods; (6) Failure to Pay
21 for Rest and Recovery Periods; (7) Failure to Furnish Accurate Wage Statements; (8)
22 Failure to Maintain Required Records; (9) Failure to Pay Earned Wages Upon
23 Termination; and (10) Unfair Competition in Violation of Business and Professions
24 Code Section 17200, *et seq.* (A true and correct copy of the Summons, First Amended
25 Complaint and other related court documents are attached as **Exhibit “C”**.)

26 5. On July 18, 2019, Defendant was served with Plaintiffs’ Summons, First
27 Amended Complaint, and related courts documents. (A true and correct copy of the
28

1 Proof of Service Plaintiffs filed regarding the service of these documents is attached as
2 **Exhibit “D”**.)

3 **TIMELINESS OF REMOVAL**

4 6. This Notice of Removal has been filed within thirty (30) days after
5 Defendant first received a copy of Plaintiffs’ Summons and First Amended Complaint
6 upon which this action is based. This Notice of Removal is therefore filed within the
7 time period provided by 28 U.S.C. § 1446(b).

8 7. In accordance with 28 U.S.C. § 1446(d), the undersigned counsel certifies
9 that a copy of this Notice of Removal and all supporting documents will be promptly
10 served on Plaintiffs’ counsel and filed with the Clerk of the Alameda County Superior
11 Court. Therefore, all procedural requirements under 28 U.S.C. § 1446 will be satisfied.

12 **JURISDICTION PURSUANT TO THE CLASS ACTION FAIRNESS ACT**

13 8. Pursuant to Section 4 of the Class Action Fairness Act of 2005 (“CAFA”),
14 28 U.S.C. § 1332(d)(2) has been amended to read, in relevant part:

15 The district courts shall have original jurisdiction of any civil
16 action in which the matter in controversy exceeds the sum or
17 value of \$5,000,000, exclusive of interest and costs, and is a class
18 action in which – (A) any member of a class of plaintiffs is a
19 citizen of a State different from any defendant.

20 9. In addition, CAFA provides for jurisdiction in the district courts where the
21 proposed class involves 100 or more members, or where the primary defendants are
22 not States, State officials, or other governmental entities. 28 U.S.C. § 1332(5).

23 10. As set forth below, this is a civil action over which this Court has original
24 jurisdiction under 28 U.S.C. § 1332(d). It is a civil action filed as a putative class action
25 in which Plaintiffs are citizens of a state different from Defendant, the Complaint’s
26 allegations (and Plaintiff’s own itemization of penalties) place more than \$5,000,000
27 in controversy exclusive of interest and costs, and the putative class numbers more than
28

1 100 members. *See* 28 U.S.C. §§ 1332(d) and 1453. Furthermore, Defendant is not a
2 State, State official, or other governmental entity.

3 **CAFA's Diversity Requirement Is Satisfied**

4 11. CAFA's diversity requirement is satisfied, in relevant part, when at least
5 one member of a class of plaintiffs is a citizen of a state different from any named
6 defendant. 28 U.S.C. § 1332(d)(2); *see also Snyder v. Harris*, 394 U.S. 332, 340, 89 S.
7 Ct. 1053, 1059 (1969) ("if one member of a class is of diverse citizenship from the
8 class' opponent, and no nondiverse members are named parties, the suit may be brought
9 in federal court even though all other members of the class are citizens of the same
10 State as the defendant and have nothing to fear from trying the lawsuit in the courts of
11 their own State."); *Reece v. Bank of N.Y. Mellon*, 760 F.3d 771, 777 (8th Cir. 2014)
12 ("the citizenship of 'the entire plaintiff class' has no bearing on the jurisdictional
13 inquiry. Diversity jurisdiction in a class action depends solely on the citizenship of the
14 named parties."); *In re "Agent Orange" Prod. Liab. Litig.*, 818 F.2d 145, 162 (2d Cir.
15 1987) ("It is hornbook law, based on 66 years of Supreme Court precedent, that
16 complete diversity is required only between the named plaintiffs and the named
17 defendants in a federal class action.").

18 12. Citizenship of the parties in this Action is determined by their citizenship
19 status at the Action's commencement. *See Mann v. City of Tucson*, 782 F.2d 790 (9th
20 Cir. 1986).

21 13. For diversity jurisdiction purposes, citizenship is determined by a person's
22 domicile. *Lew v. Moss*, 797 F.2d 747, 749 (9th Cir. 1986); *see also Crowley v. Glaze*,
23 710 F.2d 676, 678 (10th Cir. 1983). "A person's domicile is her permanent home,
24 where she resides with the intention to remain or to which she intends to return." *Kanter*
25 *v. Warner-Lambert Co.*, 265 F.3d 853, 857 (9th Cir. 2001). While residence and
26 citizenship are not the same, a person's place of residence is *prima facie* evidence of
27 their citizenship. *State Farm Mut. Auto. Ins. Co. v. Dyer*, 19 F.3d 514, 519-20 (10th
28 Cir. 1994) (allegation of residency "created a presumption of continuing residence in

1 [state] and put the burden of coming forward with contrary evidence on the party
2 seeking to prove otherwise”); *see also Smith v. Simmons*, 2008 U.S. Dist. LEXIS
3 21162, at *22 (E.D. Cal. 2008) (place of residence provides “prima facie” case of
4 domicile). Furthermore, a person’s intention to remain may be established by their
5 place of employment. *Youn Kyung Park v. Holder*, 572 F.3d 619, 625 (9th Cir. 2009);
6 *see also Francisco v. Emeritus Corp.*, 2017 U.S. Dist. LEXIS 90131, at *10 (C.D. Cal.
7 June 12, 2017). (“Plaintiff’s residence and employment in California are sufficient
8 evidence of his intent to remain in California.”).

9 14. Plaintiff Fodera alleges that he is “a resident of Los Angeles County,
10 California.” *See* First Amended Complaint ¶ 8. Furthermore, Plaintiff Fodera alleges
11 he is “employed by Defendants in Los Angeles, California.” *Id.* Plaintiff Bonella
12 alleges he is “a resident of San Francisco County, California.” *See* First Amended
13 Complaint ¶ 7. Plaintiff Bonella alleges he was “employed by Defendants in San
14 Francisco County and San Diego County.” *Id.* In addition, Defendant is informed and
15 believes Plaintiffs are residents and citizens of the State of California. *See* Declaration
16 of Emerson Figueroa in Support of Defendant’s Notice of Removal (“Figueroa Decl.”),
17 ¶¶ 5-6. Accordingly, Plaintiffs are citizens of the State of California within the
18 meaning of 28 U.S.C. § 1332(a). *See, e.g., Zavala v. Deutsche Bank Tr. Co. Ams.*, 2013
19 U.S. Dist. LEXIS 96719, at *9 (N.D. Cal. July 10, 2013) (“A party’s residence is ‘prima
20 facie’ evidence of domicile. In the absence of evidence to the contrary, [plaintiff] is a
21 California citizen for diversity purposes.”) (internal citations omitted).

22 15. A corporation is a citizen of any state in which it is incorporated and of
23 the state in which it has its principal place of business. 28 U.S.C. § 1332(c).

24 16. Defendant, both at the time this action was commenced and at the time it
25 was removed to federal court, is either a citizen of the State of Delaware or the State of
26 New York within the meaning of Section 1332(c)(1), because it has been at all such
27 times a corporation formed under the laws of the State of Delaware, with its principal
28 place of business and corporate headquarters located in New York, New York, where

1 Defendant conducts a predominance of its corporate and business activities. Moreover,
2 Defendant's high-level corporate officers are located at its headquarters in New York,
3 New York. *Hertz Corp. v. Friend*, 599 U.S. 77, 130 S.Ct. 1181 (2010). See Declaration
4 of Neta Levanon in Support of Defendant's Notice of Removal ("Levanon Decl."), ¶
5 2.

6 17. Defendant's Board of Directors typically meets at its headquarters in New
7 York, New York. *Id.* ¶ 3; see also *Hertz Corp.*, 130 S. Ct. at 1192 (holding that a
8 corporation's "nerve center" should "normally be the place where the corporation
9 maintains its headquarters--provided that the headquarters is the actual center of
10 direction, control, and coordination, *i.e.*, the "nerve center," and not simply an office
11 where the corporation holds its board meetings (for example, attended by directors and
12 officers who have traveled there for the occasion)."). Applying the "nerve center" test,
13 New York is the state where Defendant's primary executive, administrative, financial
14 and management functions are conducted and where the high-level officers direct,
15 control, and coordinate the corporation's activities — *i.e.*, the principle place of
16 business of Defendant. See generally Levanon Decl. ¶ 2.

17 18. Because at least one member of the class of Plaintiffs is a citizen of a state
18 (*i.e.* California) different from Defendant (*i.e.* Delaware or New York), minimal
19 diversity exists here. *Bradford v. Bank of Am. Corp.*, No. CV 15-5201-GHK (JCx),
20 2015 U.S. Dist. LEXIS 120800, at *13 (C.D. Cal. Sep. 10, 2015) ("[defendant] needed
21 only to establish that one plaintiff was a citizen of a different state from any one
22 defendant at the time of removal.").

23 19. The presence of Doe defendants has no bearing on diversity with respect
24 to removal. See 28 U.S.C. § 1441(a) ("For purposes of removal under this Chapter, the
25 citizenship of defendants used under a fictitious name shall be disregarded.").

26 **CAFA'S Amount In Controversy Requirement is Satisfied**

27 20. CAFA, 28 U.S.C. Section 1332(d), authorizes the removal of class action
28 cases in which, among other factors mentioned above, the amount in controversy for

1 all class members exceeds \$5,000,000. In *Dart Cherokee Basin Operating Company,*
2 *LLC v. Owens*, 135 S. Ct. 547, 554 (2014), the United States Supreme Court held that
3 where a plaintiff's complaint is silent as to whether the amount in controversy is less
4 than CAFA's jurisdictional threshold of \$5,000,000, "a defendant's notice of removal
5 need include only a plausible allegation that the amount in controversy exceeds the
6 jurisdictional threshold."

7 21. In determining whether the amount in controversy exceeds \$5,000,000,
8 the Court must presume Plaintiffs will prevail on each and every one of their claims.
9 *Kenneth Rothschild Trust v. Morgan Stanley Dean Witter*, 199 F.Supp. 993, 1001 (C.D.
10 Cal. 2002), *citing Burns v. Windsor Ins. Co.*, 31 F.3d 1092, 1096 (11th Cir. 1994) (the
11 amount in controversy analysis presumes that "plaintiff prevails on liability") and
12 *Angus v. Shiley Inc.*, 989 F.2d 142, 146 (3d Cir. 1993) ("the amount in controversy is
13 not measured by the low end of an open-ended claim, but rather by a reasonable reading
14 of the value of the rights being litigated"). The argument and facts set forth herein may
15 appropriately be considered in determining whether the jurisdictional amount in
16 controversy is satisfied. *Cohn v. Petsmart, Inc.*, 281 F.3d 837, 843 n.1 (9th Cir. 2002),
17 *citing Willingham v. Morgan*, 395 U.S. 402, 407 n.3 (1969). Notably, "[t]here is no
18 obligation by defendant to support removal with production of extensive business
19 records to prove or disprove liability and/or damages with respect to plaintiff or the
20 putative class members at this premature (pre-certification) stage of the litigation."
21 *Muniz v. Pilot Travel Ctrs. LLC*, 2007 U.S. Dist. LEXIS 31515, at *15 (E.D. Cal. Apr.
22 30, 2007).

23 22. Under CAFA, the claims of the individual members in a class action are
24 aggregated to determine if the amount in controversy exceeds the sum or value of
25 \$5,000,000. *See* 28 U.S.C. § 1332(d)(6). Congress intended federal jurisdiction to be
26 appropriate under CAFA "if the value of the matter in litigation exceeds \$5,000,000
27 either from the viewpoint of the plaintiff or the viewpoint of the defendant, and
28 regardless of the type of relief sought (e.g., damages, injunctive relief, or declaratory

1 relief).” Sen. Jud. Comm. Rep., S. REP. 109-14, at 42. Moreover, any doubts
2 regarding the amount in controversy requirement under CAFA should be resolved in
3 favor of federal jurisdiction. S. Rep. 109-14, at 42-43 (“[I]f a federal court is uncertain
4 about whether ‘all matters in controversy’ in a purported class action ‘do not in the
5 aggregate exceed the sum or value of \$5,000,000, the court should err in favor of
6 exercising jurisdiction over the case Overall, new section 1332(d) is intended to
7 expand substantially federal court jurisdiction over class actions. Its provisions should
8 be read broadly”).

9 23. Plaintiffs do not allege a specific amount in damages for the class they
10 purport to represent, but indicate that they seek damages in excess of twenty-five
11 thousand dollars (\$25,000). *See* Plaintiffs’ Civil Cover Sheet. Thus, the amount in
12 controversy, as plead by Plaintiffs, is at least \$25,000 per plaintiff, or at least
13 \$107,475,000.00 (\$25,000 x 4,299 putative class members). *See* Figueroa Decl. at ¶12;
14 *see also* *Abrego v. The Dow Chem. Co.*, 443 F.3d 676, 689 (9th Cir. 2006) (finding
15 jurisdictional amount met where complaint sought no specific amount in damages, but
16 pled the amount in controversy to exceed \$25,000 and there were 1,160 class
17 members). For this reason alone, CAFA’s amount in controversy requirement is
18 satisfied.

19 24. But even were this insufficient to establish jurisdiction under CAFA (and
20 it is not), Plaintiffs’ Complaint still meets CAFA’s amount in controversy requirement.
21 If a plaintiff asserts statutory violations, the court must assume that the violation rate
22 is 100% unless the plaintiff specifically alleges otherwise. *See* *Muniz v. Pilot Travel*
23 *Ctrs. LLC*, 2007 U.S. Dist. LEXIS 31515, at *12-13 (E.D. Cal. Apr. 30, 2007) (“As
24 these allegations reveal, plaintiff includes no fact-specific allegations that would result
25 in a putative class or violation rate that is discernibly smaller than 100%, used by
26 defendant in its calculations. Plaintiff is the ‘master of [her] claim[s],’ and if she
27 wanted to avoid removal, she could have alleged facts specific to her claims which
28 would narrow the scope of the putative class or the damages sought.”) (citing

1 *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 392 (1987)); *see also Arreola v. The Finish*
2 *Line*, No. 14- CV-03339-LHK, 2014 WL 6982571, at *4 (N.D. Cal. Dec. 9, 2014)
3 (“District courts in the Ninth Circuit have permitted a defendant removing an action
4 under CAFA to make assumptions when calculating the amount in controversy—such
5 as assuming a 100 percent violation rate, or assuming that each member of the class
6 will have experienced some type of violation— when those assumptions are reasonable
7 in light of the allegations in the complaint.”); *Coleman v. Estes Express Lines, Inc.*,
8 730 F. Supp. 2d 1141, 1149 (C.D. Cal. 2010) (“[C]ourts have assumed a 100% violation
9 rate in calculating the amount in controversy when the complaint does not allege a
10 more precise calculation.”).

11 25. Without admitting that Plaintiffs could recover or are entitled to any
12 damages individually, let alone on a class wide basis, Defendant has a good-faith belief
13 that Plaintiffs’ sought-after relief places the amount in controversy in this action in
14 excess of \$5,000,000, exclusive of interest and costs.

15 26. The First Amended Complaint herein seeks relief on behalf of “[a]ll
16 current and former non-exempt employees employed by any Defendant in California
17 as group fitness instructors, personal trainers, or in any other similar capacity, at any
18 time during the four-year period preceding the filing of this action through the present.”
19 *See* Complaint ¶ 41.

20 27. Plaintiffs plead in their First Amended Complaint that they, and the
21 alleged putative class, are “entitled to recover” penalties pursuant to Labor Code
22 Section 203, seeking a penalty of up to 30 days’ wages for failure to pay all unpaid
23 wages at termination. *See* Complaint ¶¶ 110-111. From April 3, 2015 through 30 days
24 from the date of preparing this removal (*i.e.* July 17, 2019) approximately 2,495
25 individuals formerly employed as personal trainers, group fitness instructors, or both,
26 in California left their employment with Defendant or were otherwise “terminated.”
27 *See* Figueroa Decl., ¶9; *see also* Complaint ¶ 105 (Plaintiffs defining “terminated” to
28

1 include Plaintiffs and Class Members who quit, were discharged, or terminated from
2 employment).

3 28. Plaintiffs specifically allege “Plaintiffs and Class Members regularly
4 worked more than 40 hours in a workweek and more than 8 hours in a workday.” See
5 Complaint ¶ 21. Plaintiffs further allege that Defendant “failed to pay Plaintiffs and
6 other Terminated Class Members all wages earned and unpaid at the time of
7 Termination timely[.]” See Complaint ¶ 107.

8 29. The California minimum wage was \$9.00 an hour effective January 1,
9 2015, \$10.00 an hour on January 1, 2016, \$10.50 an hour on January 1, 2017, \$11.00
10 an hour on January 1, 2018 and \$12.00 an hour on January 1, 2019. See California
11 Department of Industrial Relations History of California Minimum Wage Chart.

12 30. Accordingly, based on the lowest possible minimum wage rate for the
13 calculation of penalties (*i.e.* \$9.00 per hour) and Plaintiffs’ allegations that they – and
14 the putative Class Members – regularly worked at least 8 hours in a workday, the
15 penalties for a claim under Labor Code section 203 for the 2,495 employees equals
16 \$5,389,200 (or 2,495 x \$9.00/hr. x 8 hours x 30 days). See *e.g. Lucas v. Michael Kors*
17 *(USA) Inc.*, No. CV 18-1608-MWF (MRWx), 2018 U.S. Dist. LEXIS 78510, at *8
18 (C.D. Cal. May 9, 2018) (“Defendants may use reasonable assumptions in calculating
19 the amount in controversy for purposes of removal.”). This alone satisfies CAFA’s
20 amount in controversy requirement.

21 31. Further, Plaintiffs claim “at all material times set forth herein,” Defendant
22 failed to provide accurate wage statements as required under Labor Code section
23 226(a), and that “Plaintiffs and Class Members are each entitled to recover from
24 Defendants the greater of their actual monetary damages caused by Defendants’ failure
25 to comply with California Labor Code section 226(a), or an aggregate penalty not
26 exceeding four thousand dollars (\$4,000) per employee[.]” See Complaint ¶ 100; see
27 also, *e.g., Romeo v. Home Depot U.S.A., Inc.*, No. 06CV1505 IEG (BLM), 2006 U.S.
28 Dist. LEXIS 79881, at *8 (S.D. Cal. Oct. 30, 2006) (holding that when plaintiffs seek

1 the statutory maximum in their complaint, plaintiffs “cannot avoid satisfaction of the
2 amount in controversy by alleging it would be ‘far from reasonable to infer that a court
3 or jury’ would award the statutory maximum.”).

4 32. Labor Code section 226(e)(1) provides that “[a]n employee suffering
5 injury as a result of a knowing and intentional failure by an employer to comply with
6 [section 226] subdivision (a) is entitled to recover the greater of all actual damages or
7 fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred
8 dollars (\$100) per employee for each violation in a subsequent pay period, not to
9 exceed an aggregate penalty of four thousand dollars (\$4,000).” Plaintiffs’ § 226(a)
10 claims are subject to a one-year statute of limitations. *See e.g.* Cal. Code Civ. Proc. §
11 340(a). From April 3, 2018 to approximately April 3, 2019, there are/were
12 approximately 2,414 current and former non-exempt employees employed by
13 Defendant as personal trainers, group fitness instructors, or both, in California. *See*
14 *Figueroa Decl.*, ¶ 10.

15 33. As set forth in Plaintiffs’ First Complaint, Plaintiffs and the class members
16 are seeking the “greater” of their actual monetary damages or an aggregate penalty not
17 exceeding \$4,000 per employee (Complaint ¶ 100) and are therefore seeking the
18 “statutory maximum.” *Romeo v. Home Depot U.S.A., Inc.*, No. 06CV1505 IEG (BLM),
19 2006 U.S. Dist. LEXIS 79881, at *8 (S.D. Cal. Oct. 30, 2006). Thus, based on
20 Plaintiffs’ requested relief, an assessment of total penalties based on the statutory
21 maximum could amount to up to \$9,656,000 (\$4,000 x 2,414 employees).

22 34. But even assuming less than the statutory cap of \$4,000 per employee,
23 Plaintiffs’ alleged wage statement penalties (to which Defendant denies Plaintiffs or
24 any putative Class Members are entitled) would exceed the amount in controversy
25 requirement. Members of the putative class who work or worked for Defendant
26 are/were paid biweekly, or every two weeks. *See Figueroa Decl.*, ¶ 11. The total
27 number of paystubs that Defendant issued to employees who are members of the
28 putative class during the time period of April 3, 2018 to April 3, 2019 is approximately

1 62,764 paystubs (*i.e.* 2,414 employees x 26 weeks). Assuming a violation of Labor
2 Code section 226(a) (which Defendant denies) for each pay period for the time period
3 claimed by Plaintiffs, potential penalties are approximately \$6,155,700 (fifty dollars
4 (\$50) per putative class member for the first violation and one hundred dollars (\$100)
5 for each of the subsequent violations). *See* Labor Code § 226(e)(1); *see also Moppin*
6 *v. Los Robles Reg'l Med. Ctr.*, 2015 U.S. Dist. LEXIS 129574, at *10 (C.D. Cal. Sep.
7 24, 2015) (district court finding that a 100% violation rate was justified because the
8 plaintiff there asserted in her complaint that “at all relevant times herein, defendants
9 intentionally and willfully failed to furnish plaintiff and the class members with
10 accurate wage statements,” thereby accusing defendants of “issuing inaccurate wage
11 statements ‘at all times’ and in regards to both Plaintiff and the class members.”); *Lucas*
12 *v. Michael Kors (USA) Inc.*, No. CV 18-1608-MWF (MRWx), 2018 U.S. Dist. LEXIS
13 78510, at *25 (C.D. Cal. May 9, 2018) (noting that “it is not unreasonable to assume
14 that, with this many violations alleged by Plaintiff, every one of the wage statements
15 issued during the one-year period could very likely have been noncompliant.”).

16 35. Accordingly, just from Plaintiffs’ contention that they and the class
17 members are “each entitled to recover” the statutory maximum for Defendant’s alleged
18 failure to provide accurate wage statements (*i.e.* \$9,476,000) the amount in controversy
19 exceeds \$5,000,000. Alternatively, a conservative calculation of Plaintiffs’ claims for
20 violations under Labor Code sections 203 and 226—for Equinox’s alleged failure to pay
21 all wages due at termination and alleged failure to provide accurate wage statements,
22 respectively—can also reasonably be read to place in controversy an amount exceeding
23 \$11,544,850 (*i.e.* \$5,389,150 + \$6,155,700, respectively). As such, based on either
24 calculation, the amount in controversy based on the allegations of the Complaint
25 exceed \$5,000,000. *See, e.g., Behrazfar v. UNISYS Corp.*, 687 F. Supp. 2d 999, 1004
26 (C.D. Cal. 2009) (When a “[d]efendant’s calculations were relatively conservative,
27 made in good faith, and based on evidence wherever possible,” the Court may find that
28

1 the “[d]efendant has established by a preponderance of the evidence that the amount in
2 controversy exceeds \$5,000,000.”).

3 36. Additionally, Plaintiffs’ First Amended Complaint seeks an unspecified
4 amount of attorneys’ fees in connection with their Complaint. *See, e.g.,* Complaint ¶¶
5 39, 40. Such fees may be considered to determine jurisdictional amount, *see Goldberg*
6 *v. CPC Int’l, Inc.* 678 F.2d 1365, 1367 (9th Cir. 1982), cert. denied, 459 U.S. 945
7 (1982), including those fees that are recoverable by statute, *Galt G/S v. JSS Scandinavia*
8 142 F.3d 1150, 1155-56 (9th Cir. 1998). Indeed, the Ninth Circuit recently concluded
9 that “the amount in controversy is not limited to damages incurred prior to removal—
10 for example, it is not limited to wages a plaintiff-employee would have earned before
11 removal (as opposed to after removal). Rather, the amount in controversy is
12 determined by the complaint operative at the time of removal and encompasses all
13 relief a court may grant on that complaint if the plaintiff is victorious.” *Chavez v.*
14 *JPMorgan Chase & Co.*, 888 F.3d 413, 414-15 (9th Cir. 2018); *see also Lucas v.*
15 *Michael Kors (USA) Inc.*, 2018 U.S. Dist. LEXIS 78510, at *32 (C.D. Cal. May 9,
16 2018) (“unaccrued post-removal attorneys’ fees can be factored into the amount in
17 controversy.”).

18 37. “Courts in this circuit have held that, for purposes of calculating the
19 amount in controversy in a wage-and-hour class action, removing defendants can
20 reasonably assume that plaintiffs are entitled to attorney fees valued at approximately
21 twenty-five percent of the projected damages.” *Fong v. Regis Corp.*, No. C 13-04497
22 RS, 2014 U.S. Dist. LEXIS 275, at *23 (N.D. Cal. Jan. 2, 2014); *see also Hamilton v.*
23 *Wal-Mart Stores, Inc.*, No. ED CV 17-01415-AB (KKx), 2017 U.S. Dist. LEXIS
24 162856, at *16 (C.D. Cal. Sep. 29, 2017) (“The Ninth Circuit has allowed an estimate
25 fee award of 25% of a plaintiff’s damages in calculating the amount in controversy
26 under CAFA.”); *Gutierrez v. Stericycle, Inc.*, No. LA CV15-08187 JAK (JEMx), 2017
27 U.S. Dist. LEXIS 20975, at *51 (C.D. Cal. Feb. 14, 2017) (“it is appropriate to include
28 in the calculation of the amount in controversy a potential fee award of 25% of the

1 value of certain of the substantive claims.”); *Herrera v. Carmax Auto Superstores Cal.,*
2 *LLC*, 2014 U.S. Dist. LEXIS 188729, at *12 (C.D. Cal. June 12, 2014) (“Substantial
3 authority supports a ‘benchmark’ 25 percent attorneys’ fees figure to be added to any
4 claim for which attorneys’ fees are available.”).

5 38. Here, the projected damages of Plaintiffs’ claims of inaccurate wage
6 statements and waiting time penalties may surpass \$11,544,850, which itself exceeds
7 the jurisdictional requirement. Twenty-five percent of this amount is \$2,886,212.50.
8 Of course, in addition to these claims, Plaintiffs have also asserted claims for, *inter*
9 *alia*, failure to pay all wages earned; failure to pay minimum wage; failure to pay
10 overtime wages; and unfair competition. *See* Complaint ¶¶ 50-55, 57-63, 65-71, 117-
11 118.

12 **CAFA’s Numerosity Requirement Is Satisfied**

13 39. CAFA also requires that “the number of members of all proposed plaintiff
14 classes in the aggregate” exceeds 100, a standard satisfied by the Complaint here. *See*
15 28 U.S.C. § 1332(d)(5).

16 40. Here, Plaintiffs allege “it is estimated that the Class will number greater
17 than 100.” *See* Complaint ¶ 43. Furthermore, based upon Defendant’s records, the
18 putative class includes approximately 4,299 current and former employees who were
19 employed by Defendant as personal trainers, group fitness instructors, or both, in
20 California between April 3, 2015 and approximately August 6, 2019. *See* Figueroa
21 Decl., ¶ 12. As such, this Court properly has jurisdiction over this matter, as the class
22 proposed by Plaintiffs contains in excess of 100 members.

23 **TRADITIONAL DIVERSITY JURISDICTION PURSUANT TO 28 U.S.C. §**

24 **1332**

25 41. Separately and independently, the Court has subject matter jurisdiction
26 over this case on the basis of 28 U.S.C §§ 1332 and 1441, because this is a civil action
27 between citizens of different States, in which the amount in controversy exceeds the
28 sum of \$75,000, exclusive of costs and interests.

1 **Traditional Diversity Is Satisfied**

2 42. As noted above, Plaintiffs are both citizens of California. See First
3 Amended Complaint ¶¶ 7 - 8. As discussed, Equinox is incorporated in Delaware and
4 headquartered in New York and is therefore a citizen of Delaware and New York. See
5 Levanon Decl., ¶ 2. Moreover, as previously discussed, the presence of Doe defendants
6 has no bearing on diversity with respect to removal. See *supra* ¶ 17.

7 43. Therefore, this is an action between California citizens, on the one hand,
8 and a citizen of New York and/or Delaware, on the other hand, so as to vest this Court
9 with traditional diversity jurisdiction.

10 **The Amount In Controversy Requirement for Traditional Diversity Jurisdiction**
11 **is Satisfied**

12 44. This action also meets the amount in controversy requirement for removal
13 based on traditional diversity jurisdiction. Specifically, 28 U.S.C. § 1332(a) authorizes
14 the removal of cases in which, among other factors addressed above, the amount in
15 controversy exceeds the sum or value of \$75,000, exclusive of interest and costs.
16 Where the plaintiff's complaint is silent to the amount of damages claimed, the
17 removing defendant need only establish that it is more probable than not that the
18 plaintiff's claim exceeds the jurisdictional minimum. *Guglielmino v. McKee Foods,*
19 *Corp.*, 506 F.3d 696, 699 (9th Cir. 2007); *Sanchez v. Monumental Life Ins. Co.*, 95 F.3d
20 856, 860-61 (9th Cir. 1996). That is, a plaintiff's failure to specify in the complaint the
21 total amount of damages she seeks does not deprive this Court of jurisdiction. See,
22 e.g., *White v. J.C. Penney Life Ins. Co.*, 861 F.Supp. 25, 26 (S.D. W.Va. 1994) (a
23 defendant may remove a suit to federal court notwithstanding the failure of plaintiff to
24 plead a specific dollar amount in controversy; if the rules were otherwise, "any plaintiff
25 could avoid removal simply by declining . . . to place a specific dollar value upon its
26 claim.").

27 45. In assessing diversity jurisdiction in a multi-plaintiff action, if one
28 plaintiff's claims "satisfy the amount-in-controversy requirement, but the claims of

1 other plaintiffs do not, . . . § 1367(a) confers supplemental jurisdiction over all claims,
2 including those that do not independently satisfy the amount-in-controversy
3 requirement, if the claims are part of the same Article III case or controversy.” See
4 *Exxon Mobil Corp. v. Allapattah Servs.*, 545 U.S. 546, 558-59, 125 S. Ct. 2611, 2620
5 (2005); see also *Geerlof v. C&S Wholesale Grocers, Inc.*, 2014 U.S. Dist. LEXIS
6 51428, at *20 (E.D. Cal. Apr. 11, 2014) (“Should at least one Plaintiff meet the \$75,000
7 requirement, the Court may exercise its supplemental jurisdiction over the claims of
8 the remaining Plaintiffs.”); *Alcatel Lucent United States, Inc. v. Dugdale Communs.*,
9 *Inc.*, 2010 U.S. Dist. LEXIS 22226, at *14-15 (C.D. Cal. Mar. 5, 2010) (“In an action
10 involving multiple plaintiffs, a federal court may exercise supplemental jurisdiction
11 over a co-plaintiff’s claims that fail to meet the jurisdictional amount in controversy if
12 (1) at least one plaintiff satisfies the amount in controversy, (2) the other elements of
13 diversity jurisdiction are satisfied, and (3) the plaintiff’s claims are part of the same
14 ‘case or controversy.’”).

15 Here, the jurisdictional amount is satisfied because Plaintiff Fodera’s claims
16 exceed the sum or value of \$75,000, and because all of Plaintiffs’ claims are part of the
17 same Article III case or controversy. See *Alcatel Lucent United States, Inc. v. Dugdale*
18 *Communs., Inc.*, 2010 U.S. Dist. LEXIS 22226, at *16 (C.D. Cal. Mar. 5, 2010) (“In
19 order to determine whether the claims are part of the same case or controversy, the
20 Court will examine whether they involve a ‘common nucleus of operative fact.’”); see
21 also Complaint ¶ 47 (“The claims of Plaintiffs are typical of the claims of all members
22 of the Class they seek to represent because all members of the Class sustained injuries
23 and damages arising out of Defendants’ policies, practices, and common course of
24 conduct in violation of law, and the injuries and damages of all members of the Class
25 were caused by Defendants’ wrongful conduct in said violation of law, as alleged
26 herein.”).

27 46. Fodera alleges that he “regularly worked more than 40 hours in a
28 workweek and more than 8 hours in a workday,” and that Defendant maintained a

1 policy of requiring him to perform various duties off the clock “at all relevant times
2 within the applicable class period.” Complaint ¶¶ 24-31, 67, 69. Fodera does not allege
3 the precise number of overtime hours worked and further does not allege the rate at
4 which he believes payment was due. *Id.*; *see also Lucas v. Michael Kors (USA) Inc.*,
5 2018 U.S. Dist. LEXIS 78510, at *8 (C.D. Cal. May 9, 2018) (“Defendants may use
6 reasonable assumptions in calculating the amount in controversy for purposes of
7 removal.”). Instead, Fodera only notes that he “is, and within the four last years
8 preceding the filing of this action was, employed by Defendants as a group fitness
9 instructor in Los Angeles County, California.” Complaint ¶ 8. Based on the lowest
10 possible minimum wage rate for the “applicable class period,” and assuming solely for
11 purposes of removal that Fodera worked ten (10) hours of overtime per week during
12 the applicable class period for which he was allegedly not compensated, the amount
13 placed in controversy with respect to Fodera’s claim for failure to pay overtime wages
14 is at least \$25,950 (*i.e.* \$10.00 per hour x 1.5 [\$15.00/hour] x 10 hours x 173 weeks).

15 47. As discussed, Fodera also alleges he “regularly worked” more than 8
16 hours in a workday, and that Defendant “failed to pay Plaintiffs and other Terminated
17 Class Members all wages earned and unpaid at the time of Termination timely[.]”
18 Complaint ¶ 108. Thus, based on the lowest possible minimum wage rate for the
19 calculation of penalties (*i.e.* \$10.00 per hour), and Fodera’s allegations that he regularly
20 worked at least 8 hours in a workday, the penalties for a claim under Labor Code
21 section 203 for Fodera would equal \$2,400.00 (\$10.00/hr. x 8 hours x 30 days).

22 48. As further discussed, in light of Fodera’s claim that “at all material times
23 set forth herein” Defendant failed to provide accurate wage statements as required
24 under Labor Code section 226(a), and assuming a violation of Labor Code section
25 226(a) for each pay period for the time period claimed by Fodera, the number of
26 potentially inaccurate wage statements supports an assessment of total potential
27 penalties of at least \$2,550 (fifty dollars (\$50) for the first violation, and one hundred
28 dollars (\$100) for each subsequent violation). *See* Labor Code § 226(e)(1); *see also*

1 *Lucas v. Michael Kors (USA) Inc.*, 2018 U.S. Dist. LEXIS 78510, at *25 (C.D. Cal.
2 May 9, 2018) (noting that “it is not unreasonable to assume that, with this many
3 violations alleged by Plaintiff, every one of the wage statements issued during the one-
4 year period could very likely have been noncompliant.”).

5 49. Accordingly, just from Fodera’s claims for (i) failure to pay overtime
6 wages, (ii) failure to pay wages earned at termination, and (iii) failure to furnish
7 accurate wage statements, Defendant estimates the amount in controversy arising from
8 these three claims to be a minimum of \$30,900.00 Of course, Fodera also includes
9 claims for, *inter alia*, failure to pay all wages earned, failure to provide meal and rest
10 periods, and unfair competition in violation of Business and Professions Code section
11 17200, which only further add to the amount in controversy. *See* Complaint §§ 50-55,
12 73-85, 114-118.

13 50. In addition, Fodera alleges that he is entitled to recover his attorneys’ fees
14 pursuant to Labor Code § 218.5, Code of Civil Procedure § 1021.5, and “any other
15 applicable sections.” Complaint §§ 39, 40. As discussed, attorneys’ fees are properly
16 included in the amount in controversy for purposes of evaluating diversity jurisdiction.
17 *Galt G/S v. JSS Scandinavia* 142 F.3d 1150, 1156 (9th Cir. 1998) (“where an
18 underlying statute authorizes an award of attorneys’ fees, either with mandatory or
19 discretionary language, such fees may be included in the amount in controversy.”).
20 Moreover, the Court may examine the nature of the action and the relief sought and
21 take judicial notice of attorney’s fee awards in similar cases. *See e.g. Rutledge v.*
22 *Healthport Techs., LLC*, 2017 U.S. Dist. LEXIS 26453, at *4 n.3 (N.D. Cal. Feb. 24,
23 2017).

24 51. District courts in the Ninth Circuit have acknowledged “attorneys
25 handling wage-and-hour cases typically spend far more than 100 hours on the case.”
26 *Lippold v. Godiva Chocolatier, Inc.*, 2010 U.S. Dist. LEXIS 47144, at *11 (N.D. Cal.
27 Apr. 15, 2010); *see also Cagle v. C&S Wholesale Grocers, Inc.*, 2014 U.S. Dist. LEXIS
28 21571, at *30 (E.D. Cal. Feb. 18, 2014). Here, Plaintiffs are represented by the law

1 firm Makarem & Associates, and specifically, attorneys Ronald W. Makarem
2 (principal attorney) and Samuel D. Almon (a senior associate attorney). *See*
3 Complaint. Over two years ago, Mr. Makarem represented that his hourly rate was
4 \$640.00, and that the hourly rate for a senior associate attorney at his firm was \$510.00.
5 *See* Defendant's Request for Judicial Notice in support of Notice of Removal, Exhibit
6 1. Thus, at a blended rate of \$575.00/hour, attorneys' fees would reach \$57,500 after
7 just 100 billable hours. *Id.*; *see also Velazquez v. Costco Wholesale Corp.*, 2013 U.S.
8 Dist. LEXIS 202124, at *7 (C.D. Cal. Mar. 11, 2013) (finding an hourly rate of \$600
9 to be "reasonable" in a wage and hour case); *Anderson v. Nextel Retail Stores, LLC*,
10 2010 U.S. Dist. LEXIS 71598, at *24 (C.D. Cal. June 30, 2010) (noting that hourly
11 billing rates ranging from \$450 to \$515 for associates and \$600 to \$750 for partners
12 are reasonable in a "straightforward wage-and-hour litigation").

13 52. Moreover, as discussed, Fodera is also seeking attorneys' fees pursuant to
14 Code of Civil Procedure § 1021.5. Complaint ¶¶ 40, 118; *see also Serrano v. Unruh*,
15 32 Cal.3d 621, 639 (Cal. 1982) ("We hold therefore that, absent circumstances
16 rendering the award unjust, fees recoverable under section 1021.5 ordinarily include
17 compensation for all hours reasonably spent, including those necessary to establish and
18 defend the fee claim.") *Velasquez v. Khan*, 2005 U.S. Dist. LEXIS 28956, at *11 (E.D.
19 Cal. Sep. 28, 2005) (district court awarding reasonable attorney's fees, pursuant to
20 section 1021.5, in the amount of \$192,555.00); *Castro v. Chang Sup Han (In re Chang*
21 *Sup Han)*, 2015 Bankr. LEXIS 3210, at *32 (Bankr. C.D. Cal. Sep. 22, 2015) (awarding
22 professional fees and costs of \$138,866.50 for services rendered and \$9,377.42 for
23 costs, for a total of \$148,243.92, pursuant to California Labor Code § 1194(a) and
24 California Code of Civil Procedure § 1021.5).

25 53. In short, the amount in controversy requirement for traditional diversity
26 jurisdiction is easily satisfied. Even without considering several of Fodera's claims
27 (including his Business & Professions Code § 17200 claim), Fodera's individual claims
28 place in controversy in excess of \$75,000: \$25,950 [unpaid overtime work] + \$2,400.00

1 [statutory penalties for failure to pay wages at termination] + \$2,550.00 [civil wage
2 statement penalties] + \$57,500.00 [attorneys' fees] = \$88,400.00. Although this is the
3 minimum amount Fodera has placed in controversy, Defendant nevertheless disputes
4 that Fodera – or any Plaintiff – is entitled to recover *anything* by virtue of this action.

5 54. Accordingly, pursuant to both § 1332(d)(2) (diversity jurisdiction
6 pursuant to CAFA) and § 1332(a) (traditional diversity jurisdiction), the amount in
7 controversy requirement is satisfied here.

8 **VENUE IS PROPER**

9 55. Venue lies in the United States District Court for the Northern District of
10 California pursuant to 28 U.S.C. § 1441(a) and 1391(c) because the State action was
11 filed in this district and Defendant is subject to personal jurisdiction in the Northern
12 District of California.

13 56. WHEREFORE, Defendant removes the above-entitled action now
14 pending in the Superior Court of the State of California for the County of Alameda to
15 this Court.

16
17
18 Dated: August 16, 2019

Respectfully submitted,

JACKSON LEWIS P.C.

19
20 By: /s/ Mia Farber

Mia Farber
Nima Darouian

21
22 Attorneys for Defendant
EQUINOX HOLDINGS, INC.

23 4835-6780-1761, v. 1

EXHIBIT A

<http://apps.alameda.courts.ca.gov/domainweb>.

All motions in this matter to be heard prior to Complex Litigation Determination Hearing must be scheduled for hearing in Department 21.

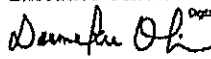
If the information contained in this notice requires change or clarification, please contact the courtroom clerk for Department 21 by e-mail at Dept.21@alameda.courts.ca.gov or by phone at (510) 267-6937.

TELEPHONIC COURT APPEARANCES at Case Management Conferences may be available by contacting CourtCall, an independent vendor, at least 3 business days prior to the scheduled conference. Parties can make arrangements by calling (888) 882-6878, or faxing a service request form to (888) 883-2946. This service is subject to charges by the vendor.

Dated: 04/08/2019

Chad Finke Executive Officer / Clerk of the Superior Court

By



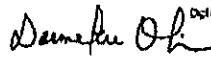
Deputy Clerk

CLERK'S CERTIFICATE OF MAILING

I certify that the following is true and correct: I am the clerk of the above-named court and not a party to this cause. I served this Notice by placing copies in envelopes addressed as shown hereon and then by sealing and placing them for collection, stamping or metering with prepaid postage, and mailing on the date stated below, in the United States mail at Alameda County, California, following standard court practices.

Executed on 04/09/2019.

By



Deputy Clerk

Makarem & Associates
Attn: Almon Esq, Samuel D.
11601 Wilshire Blvd.
Ste 2440
Los Angeles, CA 90025

RECEIVED
MAY 20 2019
Makarem & Associates

Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse

Fodora	Plaintiff/Petitioner(s)
VS.	
Equinox Holdings, Inc.	Defendant/Respondent(s) (Abbreviated Title)

No. RG19013798

Order

Complaint - Other Employment

The Complex Determination Hearing was set for hearing on 05/10/2019 at 09:00 AM in Department 21 before the Honorable Winifred Y. Smith. The Tentative Ruling was published and has not been contested.

IT IS HEREBY ORDERED THAT:

The tentative ruling is affirmed as follows: **COMPLEX DETERMINATION**

The Court designates this case as complex pursuant to Rule 3.400 et seq. of the California Rules of Court. Counsel are advised to be familiar with the Alameda County Local Rules concerning complex litigation, including Rule 3.250 et seq. An order assigning the case to one of the three complex judges and an initial case management order will be issued.

COMPLEX CASE FEES

Pursuant to Government Code section 70616, any non-exempt party who has appeared in the action but has not paid the complex case fee is required to pay the fee within ten days of the filing of this order. The complex case fee is \$1,000 for each plaintiff or group of plaintiffs appearing together and \$1,000 PER PARTY for each defendant, intervenor, respondent or other adverse party, whether filing separately or jointly, up to a maximum of \$18,000 for all adverse parties. All payments must identify on whose behalf the fee is submitted. Please submit payment to the attention of the Complex Litigation Clerk located in the Civil Division at the Rene C. Davidson Courthouse, 1225 Fallon Street, Oakland, CA 94612. Please make check(s) payable to the Clerk of the Superior Court. Documents may continue to be filed as allowed under Local Rule 1.9. Note that for those admitted pro hac vice, there is also an annual fee. (Gov't Code section 70617.)

PROCEDURES

Calendar information, filings, and tentative rulings are available to the public at <http://www.alameda.courts.ca.gov/domainweb/>. All counsel are expected to be familiar and to comply with pertinent provisions of the Code of Civil Procedure, the California Rules of Court, the Alameda County Superior Court Local Rules and the procedures outlined on the domain web page of the assigned department.

SERVICE OF THIS ORDER

Order

Counsel for plaintiff(s) shall have a continuing obligation to serve a copy of this order on newly joined parties defendant not listed on the proof of service of this order and file proof of service. Each party defendant joining any third party cross-defendant shall have a continuing duty to serve a copy of this order on newly joined cross-defendants and to file proof of service.

Dated: 05/10/2019

FACED


Judge Winifred Y. Smith

Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse

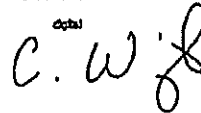
Case Number: RG19013798
Order After Hearing Re: of 05/10/2019

DECLARATION OF SERVICE BY MAIL

I certify that I am not a party to this cause and that a true and correct copy of the foregoing document was mailed first class, postage prepaid, in a sealed envelope, addressed as shown on the foregoing document or on the attached, and that the mailing of the foregoing and execution of this certificate occurred at 1225 Fallon Street, Oakland, California.

Executed on 05/15/2019.

Chad Finke Executive Officer / Clerk of the Superior Court

By 

Deputy Clerk

EXHIBIT C

SUM-100

**SUMMONS ON FIRST Amended
(CITACION JUDICIAL) Complaint**

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**
EQUINOX HOLDINGS, INC., a Delaware corporation; and DOES 1-50, Inclusive,

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**
FRANK J. FODERA, JR. and MICHAEL M. BONELLA, Individually and on behalf of all others similarly situated,

FOR REPLY USE ONLY
PARA RESPUESTA USO DE LA CORTE

FILED

By ALAMEDA COUNTY

JUL 16 2019

CLERK OF THE SUPERIOR COURT

By Anita Dhir Deputy

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below:

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find those court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate those nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** La hon demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en este corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov), en la biblioteca de leyes de su condado o en la corte que le queda más cerca. Si no puede pagar la cuota de presentación, pida el formulario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos adeudados por imponer un gravamen sobre cualquier recuperación de \$10,000 o más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desochar el caso.

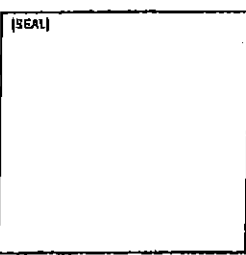
The name and address of the court is:
(El nombre y dirección de la corte es): René C. Davidson Courthouse
1225 Fallon Street
Oakland, California 94612

CASE NUMBER:
(Número del Caso):
RG19013798

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección, y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Makarem & Associates, APLC- 11601 Wilshire Blvd., #2440, Los Angeles, California 90025 (310) 312-0299

DATE: 7/16/19
(Fecha) Chad Finka Clerk, by Anita Dhir Deputy (Secretario)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010).)



- NOTICE TO THE PERSON SERVED:** You are served
- as an individual defendant.
 - as the person sued under the fictitious name of (specify):
 - on behalf of (specify): **Equinox Holdings, Inc., a Delaware Corporation**
 - under: CCP 418.10 (corporation) CCP 418.60 (minor)
 - CCP 418.20 (defunct corporation) CCP 418.70 (conservatee)
 - CCP 418.40 (association or partnership) CCP 418.90 (authorized person)
 - other (specify):
 - by personal delivery on (date):

COPY

1 MAKAREM & ASSOCIATES APLC
2 Ronald W. Makarem, Esq. (SB#180442)
3 Samuel D. Almon (SB# 243569)
4 11601 Wilshire Boulevard, Suite 2440
5 Los Angeles, California 90025-1760
6 Phone: (310) 312-0299; Fax:(310) 312-0296

7 Attorneys for Plaintiffs FRANK J. FODERA, JR.
8 and MICHAEL M. BONELLA, individually and
9 on behalf of all others similarly situated.

UNRECORDED
FILED
ALAMEDA COUNTY
JUL 16 2019
Anita Dhir
Deputy

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FOR THE COUNTY OF ALAMEDA

12 FRANK J. FODERA, JR. and MICHAEL M.
13 BONELLA, individually and on behalf of all
14 others similarly situated,

15 Plaintiffs,

16 vs.

17 EQUINOX HOLDINGS, INC., a Delaware
18 corporation; and DOES 1-50, inclusive,

19 Defendants.

CASE NO.: RG19013798

CLASS ACTION

FIRST AMENDED CLASS ACTION
COMPLAINT FOR:

- (1) Failure to Pay All Wages Earned;
- (2) Failure to Pay Minimum Wage;
- (3) Failure to Pay Overtime Wages;
- (4) Failure To Provide Meal Periods;
- (5) Failure To Provide Rest Periods;
- (6) Failure To Pay for Rest and Recovery Periods;
- (7) Failure to Furnish Accurate Wage Statements;
- (8) Failure to Maintain Required Records;
- (9) Failure to Pay Earned Wages Upon Termination;
- (10) Unfair Competition in Violation of Business and Professions Code Section 17200

[JURY TRIAL DEMANDED]

1 Plaintiff FRANK J. FODERA and MICHAEL M. BONELLA ("Plaintiffs"), individually
2 and on behalf of all similarly situated individuals, hereby complain and allege as follows:

3 **INTRODUCTION**

4 1. This case arises out of the failure of Defendants EQUINOX HOLDINGS, INC.
5 ("Equinox Holdings") and Does 1-50 (together with Equinox Holdings, "Defendants") to pay all
6 wages owed to non-exempt employees, failure to pay all overtime hours earned, failure to provide
7 compliant meal and rest periods, failure to provide accurate wage statements, failure to pay for
8 separate rest and recovery periods in connection with piece-rate work, failure to furnish accurate
9 wage statements, and failure to pay all wages owed at the time of termination, among other things.

10 2. Plaintiffs and all other similarly situated individuals (collectively, the "Class" or
11 "Class Members") were employed by Defendants during the four years preceding the filing of this
12 action, and continued while this action was pending (the "Class Period"), and were denied the
13 benefits and protections required under the California Labor Code and other statutes and
14 regulations applicable to employees in the State of California.

15 3. Plaintiffs and Class Members allege that Defendants (1) failed to pay Plaintiffs and
16 Class Members all wages earned; (2) failed to pay Plaintiffs and Class Members required minimum
17 wages; (3) failed to pay Plaintiffs and Class Members required overtime wages; (4) failed to
18 provide Plaintiffs and Class Members with compliant meal periods and failed to pay one hour of
19 pay at Class Members' regular rate of compensation for each workday that a compliant meal period
20 was not provided; (5) failed to authorize and permit compliant rest periods and failed to pay one
21 hour of pay at Plaintiffs' and Class Members' regular rate of compensation for each workday that
22 a compliant rest period was not authorized and permitted; (6) failed to pay Plaintiffs and Class
23 Members for rest and recovery periods separately from, and in addition to, their piece-rate pay for
24 piece-rate work performed pursuant to Labor Code § 226.2; (7) failed to furnish Plaintiffs and Class
25 Members with complete and accurate wage statements; (8) failed to maintain required records; (9)
26 failed to pay Plaintiff Bonella and Class Members all earned wages after their employment ended
27
28

1 in violation of Labor Code §§ 201 and/or 202; and (10) violated California's Unfair Business
2 Practices Act, California Business & Professions Code §§ 17200, et seq.

3 4. Plaintiffs and Class Members, pursuant to Business & Professions Code §§ 17200-
4 17208, also seek injunctive relief, restitution, and disgorgement of all benefits Defendants enjoyed
5 from their failure to pay proper compensation.

6 **JURISDICTION AND VENUE**

7 5. This Court has jurisdiction over this action pursuant to Code of Civil Procedure §
8 410.10. The action is brought pursuant to Code of Civil Procedure § 382 and Civil Code § 1781
9 et seq. Plaintiffs bring this action on their own behalf, and on behalf of all persons within the Class
10 as hereinafter defined.

11 6. Venue of this action in the County of Alameda is proper pursuant to Code of Civil
12 Procedure §§ 395(a) and 395.5, in that many of the wrongful acts complained of herein occurred
13 in Alameda County, and Defendants are found, maintain offices in, and/or transact business in
14 Alameda County.

15 **THE PARTIES**

16 7. Plaintiff MICHAEL M. BONELLA ("Bonella") is a resident of San Francisco
17 County, California, and was employed by Defendants in San Francisco County and San Diego
18 County, California as a non-exempt employee within the last four years preceding the filing of this
19 action. Bonella is a former employee of Defendants, and was employed by Defendants as a
20 personal trainer and as a group fitness instructor in California within the last four years preceding
21 the filing of this action.

22 8. Plaintiff FRANK J. FODERA, JR. ("Fodera") is a resident of Los Angeles County,
23 California, and was employed by Defendants in Los Angeles County, California, as a non-exempt
24 employee within the last four years preceding the filing of this action. Fodera is employed by
25 Defendants as a group fitness instructor in California, and within the four last four years preceding
26 the filing of this action, Fodera was employed by Defendants as a personal trainer in California.

1 9. Plaintiffs are informed and believe, and thereon allege, that EQUINOX HOLDINGS,
2 INC. is and at all times relevant hereto was a Delaware corporation doing business in Alameda
3 County, California and other counties in the State of California.

4 10. The true names and capacities of Defendants Does 1 through 50, inclusive, and each
5 of them, are unknown to Plaintiffs, who sue said defendants by such fictitious names. Plaintiffs are
6 informed and believe and thereon allege that each of the defendants fictitiously named herein is
7 legally responsible in some actionable manner for the events described herein, and thereby
8 proximately caused the damage to Plaintiffs and the members of the Class. Plaintiffs will seek leave
9 of Court to amend this Complaint to state the true name(s) and capacities of such fictitiously named
10 defendants when the same have been ascertained.

11 11. Plaintiffs are informed and believe and thereon allege that at all times relevant herein,
12 each defendant aided and abetted, and acted in concert with and/or conspired with each and every
13 other defendant to commit the acts complained of herein and to engage in a course of conduct and
14 the business practices complained of herein.

15 12. Defendants, including Does 1 through 50, inclusive, are now, and/or at all times
16 mentioned in this Complaint were, the affiliates of some or all other Defendants, and vice-versa, and
17 in doing the thing alleged in this Complaint, Defendants were directly or indirectly controlling,
18 controlled by or under common control with such other Defendants.

19 13. Defendants, including Does 1 through 50, inclusive, are now, and/or at all times
20 mentioned in this Complaint were, the agents, servants and/or employees of some or all other
21 Defendants, and vice-versa, and in doing the things alleged in this Complaint, Defendants are now
22 and/or at all times mentioned in this Complaint were acting within the course and scope of that
23 agency, servitude and/or employment.

24 14. Defendants, including Does 1 through 50, inclusive, are now, and/or at all times
25 mentioned in this Complaint were, members of, and/or engaged in, a joint venture, partnership and
26 common enterprise, and acting within the course and scope of, and in pursuance of said joint venture,
27 partnership and common enterprise.

28

1 15. Defendants, including Does 1 through 50, inclusive, at all times mentioned in this
2 Complaint approved of, condoned and/or otherwise ratified each and every one of the acts and/or
3 omissions alleged in this Complaint.
4

5 **FACTUAL ALLEGATIONS**

6 16. This is a class action pursuant to Section 382 of the California Code of Civil Procedure
7 to vindicate rights afforded to the class by California labor law. This action is brought on behalf of
8 Plaintiffs and all similarly situated current and former employees who worked for Defendants as
9 non-exempt employees within the State of California within the four years preceding the filing of
10 this lawsuit.

11 17. On information and belief, Defendants are in the business of, among other things,
12 owning and operating luxury health clubs throughout California. According to Defendants' website,
13 Defendants currently have approximately 30 locations in California, including in Alameda County,
14 and news outlets have reported on additional locations planned in San Francisco, Los Angeles, and
15 San Diego County.

16 18. Defendants employ group fitness instructors and personal trainers at their health clubs,
17 including in Alameda County, as non-exempt employees.

18 19. During Plaintiffs' and Class Members' entire employment with Defendants, Plaintiffs
19 and Class Members were not exempt from the Employment Laws and Regulations, and Defendants
20 treated Plaintiffs and Class Members as non-exempt employees. Plaintiffs and Class Members
21 primarily engaged in non-exempt duties delegated to non-exempt employees such as, for example,
22 performing personal training sessions, teaching group fitness classes, cleaning and straightening up
23 the facilities during "floor shifts," preparing client exercise programs, communicating with clients
24 outside of personal training sessions, and attending mandatory meetings and trainings.

25 20. During Plaintiffs' and Class Members' entire employment with Defendants, Plaintiffs
26 and Class Members spent few to none of their working hours performing work which was primarily
27 intellectual, managerial or creative, or which required the regular and customary exercise of
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1 discretion and independent judgment with respect to matters of significance on more than an
2 occasional basis.

3 21. On information and belief, Plaintiffs and Class Members regularly worked more than
4 40 hours in a workweek and more than 8 hours in a workday. During their employment, Plaintiffs
5 and Class Members suffered damages for the wage and hour violations committed by Defendants
6 described below.

7 22. During Plaintiffs' and Class Members' entire employment with Defendants,
8 Defendants' policies provided that Plaintiffs and Class Members were to be paid at an hourly rate
9 for time that they were clocked in while performing certain tasks, such as, for example, personal
10 training sessions, teaching group fitness classes, cleaning and straightening up the facilities during
11 "floor shifts" and attending mandatory meetings and trainings.

12 23. Defendants' policies also provided that Plaintiffs and Class Members were to be paid
13 on a piece-rate basis for certain tasks. Under Defendants' piece-rate compensation policies,
14 Plaintiffs and Class Members were to be paid a fixed sum each time they completed a particular
15 task, such as, for example, performing a personal training session or teaching a group fitness class.

16 24. Defendants also regularly suffered or permitted Plaintiffs and Class Members to
17 perform a wide range of unpaid, off-the-clock work. Some of this off-the-clock work consisted of
18 tasks which Defendants referred to as "session related activities." "Session related activities"
19 included, for example, interacting with clients outside of personal training and group fitness
20 sessions, creating calendars, and preparing client programs. "Session related activities" included
21 tasks that were not directly related to performing a personal training or group fitness session.

22 25. During Plaintiffs' and Class Members' entire employment with Defendants,
23 Defendants also regularly suffered or permitted Plaintiffs and Class Members to perform other work
24 off the clock that was not designated "session related activities." For example, Defendants regularly
25 required Plaintiffs and Class Members, while not clocked in, to perform work including, without
26 limitation, manually scheduling work-related meetings, corresponding with supervisors, and
27 contacting prospective customers. Defendants did not pay Plaintiffs or Class Members for time
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1 spent performing off-the-clock work.

2 26. Although Defendants suffered or permitted Plaintiffs and Class Members to work off
3 the clock, including, without limitation, by performing "session related activities" and other off-the-
4 clock work, Defendants neither compensated Plaintiffs and Class Members for such work nor
5 counted those hours for purposes of calculating overtime.

6 27. Instead of paying Plaintiffs and Class Members for each hour worked, Defendants'
7 stated policy was to engage in wage averaging, whereby Defendants purported to determine whether
8 the piece-rate compensation paid, divided by the time spent performing the session plus the time
9 spent performing unpaid "session related activities", resulted in an average hourly rate of at least
10 minimum wage.

11 28. In practice, Defendants discouraged and/or prohibited Plaintiffs and Class Members
12 from recording all time they worked performing session related activities and other off-the-clock
13 work. Consequently, Defendants' records did not reflect all hours worked by Plaintiffs and Class
14 Members.

15 29. During Plaintiffs' and Class Members' entire employment with Defendants, under
16 Defendants' compensation policies, Plaintiffs and Class Members were entitled to receive certain
17 non-discretionary bonuses if they met certain objective criteria. Defendants repeatedly failed to pay
18 earned non-discretionary bonuses when due.

19 30. Defendants also repeatedly failed to pay Plaintiffs and Class Members, among other
20 things, all piece-rate pay earned. For example, Defendants failed to pay Plaintiffs and Class
21 Members for all personal training sessions and group fitness classes performed in the applicable pay
22 period.

23 31. Defendants did not pay Plaintiffs and Class Members all overtime compensation
24 earned. For example, Defendants did not consider Plaintiffs' and Class Members' off-the-clock
25 work when calculating overtime wages, resulting in Plaintiffs and Class Members not being paid all
26 overtime wages due. As another example, upon information and belief, in calculating overtime
27 wages, Defendants failed to consider all non-discretionary bonuses earned by Plaintiffs and Class
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1 Members, including, among other reasons, because Defendants failed to pay all earned non-
2 discretionary bonuses when due and failed to include them in Plaintiff's and Class Members' pay
3 checks and wage statements.

4 32. Defendants failed to pay Plaintiffs and Class Members minimum wage for all hours
5 worked, including uncompensated off-the-clock work which Defendants suffered or permitted
6 Plaintiffs and Class Members to perform.

7 33. Defendants did not provide Plaintiffs or Class Members with compliant and timely
8 thirty-minute meal periods. For example, Defendants regularly failed to provide meal periods until
9 after Plaintiffs and Class Members had completed a work period of more than five hours. As another
10 example, Plaintiffs and Class Members were regularly required to take meal periods of less than 30
11 minutes in order to timely return to their job duties, such as, for example, to avoid being late for
12 their next training session.

13 34. If an employer fails to provide an employee with compliant and timely thirty-minute
14 meal periods, the employer must pay the employee a premium payment of one hour of pay at the
15 employee's regular rate of compensation for each workday that the meal period is not provided. Yet
16 Defendants failed to pay Plaintiffs and Class Members premium payments for each missed or non-
17 compliant meal period.

18 35. Defendants did not authorize or permit Plaintiffs or Class Members to take compliant
19 and timely ten-minute rest periods. For example, Plaintiffs and Class Members regularly worked
20 four hours or more continuously without a paid ten-minute rest break. As another example, Plaintiffs
21 and Class Members regularly worked between two and four hours continuously without a paid ten-
22 minute rest break, on days in which they worked three and one-half hours or more.

23 36. Defendants failed to pay Plaintiffs and Class Members premium payments for each
24 shift with a missed or non-compliant rest periods.

25 37. With respect to work that Plaintiffs and Class Members performed on a piece-rate
26 basis, Defendants failed to compensate Plaintiffs and Class Members for rest and recovery periods
27 separate from any piece-rate compensation, and failed to calculate such compensation as required
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1 under Labor Code § 226.2(a)(3).

2 38. As a result of these violations, Defendants also failed to provide complete and accurate
3 wage statements, failed to maintain proper records, and failed to pay Plaintiffs and Class Members
4 all amounts owed upon termination of employment. Defendants also thereby violated California's
5 Unfair Business Practices Act, California Business & Professions Code §§ 17200.

6 39. Plaintiffs seek attorneys' fees pursuant to California Labor Code section 218.5 and
7 any other applicable sections.

8 40. Plaintiffs also seek restitution and disgorgement of all sums wrongfully obtained by
9 Defendants through unfair business practices in violation of California Business & Professions Code
10 section 17200, *et seq.*, to prevent the Defendants from benefiting from their unlawful, fraudulent
11 and unfair acts. Such sums recovered under the Unfair Competition Act and Unfair Businesses Act
12 are equitable in nature and are not to be considered damages. Plaintiffs are also entitled to costs,
13 attorneys' fees, interest and penalties as provided for by the Labor Code, the Business & Professions
14 Code and Code of Civil Procedure §1021.5.

15 **CLASS ACTION ALLEGATIONS**

16 41. Plaintiffs bring this action on behalf of themselves and all other similarly situated
17 persons as a class action pursuant to Code of Civil Procedure Section 382. The Classes Plaintiffs
18 seek to represent are composed of and defined as follows:

19
20 All current and former non-exempt employees employed by any
21 Defendant in California as personal trainers, or in any other similar
22 capacity, at any time during the four-year period preceding the filing of
23 this action through the present.

24 All current and former non-exempt employees employed by any
25 Defendant in California as group fitness instructors, or in any other
26 similar capacity, at any time during the four-year period preceding the
27 filing of this action through the present.

1 42. This action has been brought and may be maintained as a class action pursuant to Code
2 of Civil Procedure Section 382 because there is a well-defined community of interest among many
3 persons who comprise a readily ascertainable class.

4 43. **Numerosity and Ascertainability (C.C.P. § 382):** The potential number of Class
5 Members as defined is so numerous that joinder of all members would be infeasible and impractical.
6 The disposition of their claims through this class action will benefit both the parties and this Court.
7 The number of putative Class Members is unknown at this time, however, it is estimated that the
8 Class will number greater than 100. The identity of such membership can be readily ascertained
9 from Defendants' employment records.

10 44. **Superiority (C.C.P. § 382):** The nature of this action and the nature of laws available
11 to Plaintiffs make the use of the class action format particularly efficient and appropriate. By
12 establishing a technique whereby the claims of many individuals can be resolved at the same time,
13 the class suit both eliminates the possibility of repetitious litigation and provides small claimants
14 with a method of obtaining redress for claims which would otherwise be too small to warrant
15 individual litigation. Class action treatment will allow a large number of similarly situated persons
16 to prosecute their common claims in a single forum, simultaneously, efficiently, and without the
17 unnecessary duplication of effort and expense that numerous individual actions would require. The
18 actual monetary recovery due to most of the individual Class Members is likely to be small, and the
19 burden and expense of individual litigation would make it prohibitive for individual Class Members
20 to seek relief. A class action will serve an important public interest by permitting such individuals
21 to effectively pursue recovery of the sums owed to them. Further, class litigation prevents the
22 potential for inconsistent or contradictory judgments if individual Class Members were to litigate
23 separately.

24 45. **Well-defined Community of Interest:** Plaintiffs also meet the three factors for
25 establishing a community of interest: (1) predominant common questions of law or fact; (2) a class
26 representative with claims or defenses typical of the class; and (3) a class representative who can
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1 adequately represent the class, (*see, e.g. Lockheed Martin Corp. v. Superior Court* (2003) 29 Cal.4th.
2 1096), as follows:

3 46. **Predominant Questions of Law or Fact:** There are common questions of law and/or
4 fact as to the members of the Class which predominate over questions affecting only individual
5 members of the Class, including, without limitation:

- 6 a. Whether Defendants violated Labor Code Section 204 by not paying Class
7 Members for all wages earned during each pay period;
- 8 b. Whether Defendants violated Labor Code Section 1194 by not paying Class
9 Members the legal minimum wage for all hours worked;
- 10 c. Whether Defendants violated Labor Code Sections 510 and 1194 by not properly
11 paying overtime wages to Class Members for all hours worked in excess of eight
12 hours in one day, in excess of 40 hours in one workweek, and in during the first
13 eight hours on the seventh day of work in one workweek, and by failing to pay
14 Class Members their overtime wages a the required double time rate for hours
15 worked in excess of 12 hours a day and in excess of eight hours on the seventh
16 day of a workweek;
- 17 d. Whether Defendants violated Labor Code Section 512 by not providing Class
18 Members with compliant meal periods;
- 19 e. Whether Defendants violated Labor Code Section 512 by not authorizing and
20 permitting Class Members to take compliant rest periods;
- 21 f. Whether Defendants violated Labor Code Section 226.7 by not paying Class
22 Members additional pay for shifts when Class Members did not receive compliant
23 meal or rest periods;
- 24 g. Whether Defendants violated Labor code section 226.2 by not paying Class
25 members separately for rest and recovery periods with respect to work performed
26 on a piece-rate basis, and by not properly calculating compensation for such rest
27 and recovery periods;
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- 1 h. Whether Defendants violated Labor Code Section 226(a) by not providing Class
- 2 Members with accurate wage statements;
- 3 i. Whether Defendants are liable for penalties for failure to maintain the records
- 4 required under Labor Code Sections 226 and 1174;
- 5 j. Whether Defendants violated Labor Code Sections 201 or 202 by not paying Class
- 6 Members all wages due upon termination in a timely manner;
- 7 k. Whether Class Members who are no longer working for Defendants are entitled to
- 8 waiting time penalties under Labor Code Section 203;
- 9 l. Whether Defendants' conduct constituted unfair competition or an unlawful
- 10 business practice under Business and Professions Code Section 17200, *et seq.*
- 11 m. Whether injunctive relief is appropriate to ensure Defendants' compliance with
- 12 the Labor Code with respect to members of the Class currently working for
- 13 Defendants;
- 14 n. Whether Class Members are entitled to attorneys' fees;
- 15 o. Whether Class Members are entitled to pre-judgment interest;
- 16 p. Whether Class Members are entitled to restitution; and
- 17 q. Whether the fact each Class Member might be required to ultimately justify an
- 18 individual claim does or does not preclude maintenance of a class action. *See*
- 19 *Collins v. Rocha* (1972) 7 Cal.2d 232.

20 47. **Typicality:** The claims of Plaintiffs are typical of the claims of all members of the

21 Class they seek to represent because all members of the Class sustained injuries and damages arising

22 out of Defendants' policies, practices, and common course of conduct in violation of law, and the

23 injuries and damages of all members of the Class were caused by Defendants' wrongful conduct in

24 said violation of law, as alleged herein.

- 25 48. **Adequacy:** Plaintiffs Frank J. Fodera, Jr. and Michael M. Bonella:
- 26 a. are adequate representatives of the Class they seek to represent;
 - 27 b. will fairly protect the interests of the members of the Class;
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- 1 c. have no interests antagonistic to the members of the Class; and
2 d. will vigorously pursue this suit via attorneys who are competent, skilled and
3 experienced in litigating matters of this type.

4 **FIRST CAUSE OF ACTION**

5 **For Failure to Pay All Wages Earned**

6 **(Against All Defendants)**

7 49. Plaintiffs incorporates by reference and realleges as if fully stated herein all the
8 allegations set out above in the preceding paragraphs.

9 50. At all relevant times, Plaintiffs and other Class Members were employees covered by
10 Labor Code Section 204.

11 51. Pursuant to Labor Code Section 204, Plaintiffs and the other Class Members were
12 entitled to receive on regular paydays all wages earned for the pay period corresponding to the
13 payday.

14 52. Defendants failed to pay Plaintiffs and other Class Members for all wages earned each
15 pay period on the regular payday for the pay period. The earned and unpaid wages include, but are
16 not limited to, additional pay for missed meal and rest periods, unpaid wages for piece-rate work,
17 wages for hours worked off the clock, and overtime wages.

18 53. California law does not allow an employer to avoid paying its employees for all hours
19 worked by averaging total compensation over total hours worked. *See, e.g., Gonzalez v. Downtown*
20 *LA Motors, LP*, 215 Cal. App. 4th 36, 40-41 (2013); *Armenta v. Osmose, Inc.*, 135 Cal. App. 4th
21 314, 324 (2005).

22 54. As a result of Defendants' unlawful conduct, Plaintiffs and other Class Members have
23 suffered damages in an amount according to proof at trial.

24 55. Pursuant to Labor Code Sections 218, 218.5 and 218.6, Plaintiffs and other Class
25 Members are entitled to recover the full amount of their unpaid wages, prejudgment interest,
26 reasonable attorney's fees and costs of suit.

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THIRD CAUSE OF ACTION

For Failure to Pay Overtime Wages

(Against All Defendants)

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4 64. Plaintiffs incorporate by reference and realleges as if fully stated herein all the
5 allegations set out above in the preceding paragraphs.

6 65. At all relevant times, Plaintiffs and the other Class Members were employees covered
7 by Labor Code Sections 510, 1194 and the applicable Industrial Wage Order.

8 66. Pursuant to Labor Code Sections 510, 1194 and the applicable Industrial Wage Order,
9 Plaintiffs and the other Class Members were entitled to overtime wages payable at the rate of at least
10 one and one-half times their regular rate of pay for all work in excess of eight hours in one workday,
11 in excess of forty hours in one workweek, or during the first eight hours worked on the seventh day
12 of one workweek, and payable at the rate of at least twice the regular rate of pay for all work in
13 excess of twelve hours in one workday or in excess of eight hours worked on the seventh day of one
14 workweek.

15 67. Defendant failed to pay Plaintiffs and the other Class Members for all overtime
16 worked in accordance with Labor Code Sections 510, 1194 and the applicable Industrial Wage
17 Order. Plaintiffs are informed and believes and thereon allege that at all relevant times within the
18 applicable class period, Defendants maintained and continue to maintain a policy or practice of
19 requiring Plaintiffs and other Class Members to perform various duties off the clock without
20 compensating them for all their hours actually worked, including time in excess of eight hours in a
21 day, in excess of forty hours in a workweek, and/or time worked on the seventh day of work in one
22 workweek.

23 68. Plaintiffs are informed and believe and thereon allege that at all relevant times within
24 the applicable class period, Defendants maintained and continue to maintain a policy or practice of
25 undercalculating Plaintiffs' and Class Members' regular rate of pay, including by failing to include
26 all earned nondiscretionary bonuses in Plaintiff's and Class Members' regular rate of pay.
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1 compliant meal periods, as required by California Labor Code § 226.7 and other applicable sections
2 of the Employment Laws and Regulations.

3 77. No Class Members, including Plaintiffs, are exempt from the meal period
4 requirements of the Employment Laws and Regulations.

5 78. As a result of Defendants' unlawful conduct, Plaintiffs and Class Members have
6 suffered damages in an amount, subject to proof, to the extent they were not paid additional pay for
7 meal period violations.

8 **FIFTH CAUSE OF ACTION**

9 **For Failure to Provide Rest Periods**

10 **(Against All Defendants)**

11 79. Plaintiffs incorporate by reference and realleges as if fully stated herein all the
12 allegations set out above in the preceding paragraphs.

13 80. At all relevant times, Plaintiffs and Class Members were employees covered by Labor
14 Code Sections 226.7 and 512, and the applicable Industrial Wage Order.

15 81. Labor Code Sections 226.7 and 512 and the applicable Industrial Wage Order provide
16 that employers shall authorize and permit employees to take rest periods at the rate of ten (10)
17 minutes net rest time per four (4) hours of work or major fraction thereof.

18 82. Labor Code Section 226.7 and the applicable Industrial Wage Order further provide
19 that if an employer fails to provide an employee rest periods in accordance with this law, the
20 employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation
21 for each workday that the rest period is not authorized and permitted.

22 83. During the Class Period, Defendants have routinely failed to authorize and permit the
23 Class Members, including Plaintiffs, to take rest periods during their work shifts, and have failed to
24 compensate Class Members, including Plaintiffs, for those non-compliant rest periods, as required
25 by California Labor Code Section 226.7 and other applicable sections of the Employment Laws and
26 Regulations.

1 92. As a result of Defendants' unlawful conduct, Plaintiffs and Class Members have
2 suffered damages in an amount, subject to proof, to the extent that they were not paid all
3 compensation owed for rest and recovery periods and other nonproductive time separate from any
4 piece-rate compensation

5 93. Pursuant to Labor Code Section 1194, Plaintiffs and Class Members are entitled to
6 recover the full amount of their unpaid wages, prejudgment interest, reasonable attorneys' fees and
7 costs of suit.

8 94. Pursuant to Labor Code Section 1194.2, Plaintiffs and Class Members are entitled to
9 recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

10 **SEVENTH CAUSE OF ACTION**

11 **Failure to Furnish Accurate Wage Statements**

12 **(Against All Defendants)**

13 95. Plaintiffs incorporate by reference and realleges as if fully stated herein all the
14 allegations set out above in the preceding paragraphs.

15 96. At all relevant times, Plaintiffs and other Class Members were employees of
16 Defendants covered by Labor Code Section 226.

17 97. California Labor Code Section 226(a) provides that:

18 An employer, semimonthly or at the time of each payment of wages,
19 shall furnish to his or her employee, either as a detachable part of the
20 check, draft, or voucher paying the employee's wages, or separately if
21 wages are paid by personal check or cash, an accurate itemized
22 statement in writing showing (1) gross wages earned, (2) total hours
23 worked by the employee, except as provided in subdivision (j), (3) the
24 number of piece-rate units earned and any applicable piece rate if the
25 employee is paid on a piece-rate basis, (4) all deductions, provided that
26 all deductions made on written orders of the employee may be
27 aggregated and shown as one item, (5) net wages earned, (6) the
28 inclusive dates of the period for which the employee is paid, (7) the
name of the employee and only the last four digits of his or her social
security number or an employee identification number other than a
social security number, (8) the name and address of the legal entity
that is the employer and, if the employer is a farm labor contractor, as
defined in subdivision (b) of Section 1682, the name and address of
the legal entity that secured the services of the employer, and (9) all
applicable hourly rates in effect during the pay period and the
corresponding number of hours worked at each hourly rate by the

1 employee and, beginning July 1, 2013, if the employer is a temporary
2 services employer as defined in Section 201.3, the rate of pay and the
total hours worked for each temporary services assignment.

3 98. Further, the relevant wage orders of the Industrial Welfare Commission applicable to
4 Plaintiffs' and Class Members' employment with Defendants require employers to maintain
5 accurate information regarding, among other items, "[t]ime records showing when the employee
6 begins and ends each work period. Meal periods, split shift intervals and total daily hours worked
7 shall also be recorded. Meal periods during which operations cease and authorized rest periods need
8 not be recorded."

9 99. At all material times set forth herein, Defendants either recklessly or intentionally
10 failed to make, keep and preserve true, accurate records of, among other things, the actual number
11 of hours worked each workday and workweek by Plaintiffs and Class Members, when Plaintiffs and
12 Class Members took required meal and rest periods, meal and rest period premiums that were owed
13 to Plaintiffs and Class Members, and the number of piece-rate units earned and any applicable piece
14 rate.

15 100. As a result of Defendants' unlawful conduct, Plaintiffs and Class Members are each
16 entitled to recover from Defendants the greater of their actual monetary damages caused by
17 Defendants' failure to comply with California Labor Code section 226(a), or an aggregate penalty
18 not exceeding four thousand dollars (\$4,000) per employee, at a rate of \$50 per pay period with
19 incomplete or inaccurate wage statement, and an award of costs and reasonable attorneys' fees
20 pursuant to California Labor Code section 226(e).

21 **EIGHTH CAUSE OF ACTION**

22 **For Failure to Maintain Required Records [Cal. Labor Code §§ 226, 1174]**

23 **(Against All Defendants)**

24 101. Plaintiffs incorporate by reference and realleges as if fully stated herein all the
25 allegations set out above in the preceding paragraphs.

26 102. During the Class Period, as part of Defendants' illegal payroll policies and practices
27 intended to deprive Plaintiffs and Class Members of all wages earned and due, Defendants
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1 knowingly and intentionally failed to maintain records as required under California Labor Code
2 sections 226 and 1174, and the applicable Industrial Wage Order, including but not limited to the
3 following records: all hours worked by Plaintiffs and other Class Members; all piece-rate
4 compensation due to Plaintiffs and other Class Members; all compensation for rest and recovery
5 periods and other nonproductive time separate from any piece-rate compensation due to Plaintiffs
6 and other Class Members; all bonuses due to Plaintiffs and other Class Members; meal periods; rest
7 periods; and accurate itemized wage statements.

8 103. As a proximate result of Defendants' unlawful actions and omissions, Plaintiffs and
9 other Class Members have been damaged in an amount according to proof at trial, and are entitled
10 to all wages earned and due, plus interest thereon. Additionally, Plaintiffs and other Class Members
11 are entitled to all available statutory penalties, including but not limited to civil penalties pursuant
12 to California Labor Code sections 226(e), 226.3, and 1174.5, and an award of attorneys' fees, and
13 expenses and costs of suit, including but not limited to those provided by California Labor Code
14 section 226(e) as well as other available remedies.

15 **NINTH CAUSE OF ACTION**

16 **Failure to Pay Wages Earned At Termination Or Discharge [Labor Code §§ 201, 202]**

17 **(Against All Defendants)**

18 104. Plaintiffs incorporate by reference and realleges as if fully stated herein all the
19 allegations set out above in the preceding paragraphs.

20 105. At all relevant times, Plaintiffs and Class Members who quit, were discharged, or
21 terminated (collectively referred to as "Terminated" or "Termination") from employment with
22 Defendants are and were covered by Labor Code sections 201 and/or 202.

23 106. Pursuant to Labor Code sections 201 and 202, Plaintiffs and Class Members were
24 entitled to receive, upon termination, all wages earned and unpaid at the time of termination. If an
25 employee is discharged, all wages earned and unpaid are due and payable immediately upon
26 discharge. If an employee quits his or her employment, his or her wages shall become due and
27 payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice
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1 of his or her intention to quit, in which case the employee is entitled to his or her wages at the time
2 of quitting.

3 107. Defendants failed to pay Plaintiffs and other Terminated Class Members all wages
4 earned and unpaid at the time of Termination timely in accordance with Labor Code sections 201
5 and 202. Their earned and unpaid wages at the time of Termination include, but are not limited to,
6 hours worked off the clock, hours worked overtime, additional pay for missed or non-compliant
7 meal and rest periods, unpaid piece-rate compensation due, unpaid compensation for rest and
8 recovery periods and other nonproductive time separate from any piece-rate compensation due
9 Terminated Class Members, and unpaid bonuses.

10 108. Defendants' failure to pay Plaintiffs and other Terminated Class Members all wages
11 earned prior to Termination in accordance with Labor Code sections 201 and 202 was willful.
12 Defendants had the ability to pay all wages earned by employees prior to termination in accordance
13 with Labor Code sections 201 and 202, but intentionally followed a practice or adopted a policy that
14 violated Labor Code sections 201 and 202.

15 109. Pursuant to Labor Code sections 201 and 202, Plaintiffs and other Terminated Class
16 Members are entitled to all wages earned prior to Termination that Defendants failed to pay them.

17 110. California Labor Code section 203 provides that if an employer willfully fails to pay,
18 without abatement or reduction, in accordance with Labor Code sections 201 and 202, any wages
19 of the employee shall continue as a penalty from the due date thereof at the same rate until paid or
20 until an action therefore is commenced; but the wages shall not continue for more than 30 days.

21 111. Therefore, Plaintiffs and other Terminated Class Members are entitled to recover from
22 Defendants the statutory penalty for each day they were not paid, at their regular rate of pay – not
23 to exceed 30 days – pursuant to California Labor Code section 203.

24 112. Pursuant to Labor Code sections 218 and 218.5, Plaintiffs and other Terminated Class
25 Members are entitled to recover their unpaid wages, waiting time penalties under Labor Code
26 section 203, reasonable attorneys' fees and costs of suit. Pursuant to Labor Code section 218.6
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1 and/or Civil Code section 3287(a), Terminated Class Members are entitled to recover prejudgment
2 interest.

3 **TENTH CAUSE OF ACTION**

4 **Unfair Competition [Bus. & Prof. Code §§ 17200, *et seq.*]**

5 **(Against All Defendants)**

6 113. Plaintiffs incorporate by reference and realleges as if fully stated herein all the
7 allegations set out above in the preceding paragraphs.

8 114. Defendants are "persons" as that term is defined under Business & Professions Code
9 section 17021. Business & Professions Code section 17200 defines unfair competition as any
10 unlawful, unfair, or fraudulent business act or practice.

11 115. Defendants' violation of the Employment Laws and Regulations as alleged in this
12 Complaint, including Defendants' (a) failure to provide complaint meal periods or authorize and
13 permit compliant rest periods; and (b) failure to pay all earned wages upon termination, constitute
14 unfair business practices in violation of Business & Professions Code §§ 17200 *et seq.*

15 116. As a result of Defendants' unfair business practices, Defendants have reaped unfair
16 benefits and illegal profits at the expense of Class Members, and to the detriment of members of the
17 public. Defendants should be made to disgorge their ill-gotten gains and restore them to Plaintiffs
18 and other Class Members. Pursuant to Business & Professions Code section 17203, Plaintiffs and
19 other Class Members are entitled to restitution of the wages and other monies withheld, deducted,
20 and/or retained by Defendants during a period that commences four years prior to the filing of this
21 action.

22 117. Pursuant to Business & Professions Code section 17203, Defendants' unfair business
23 practices entitle Plaintiffs to seek preliminary and permanent injunctive relief including, but not
24 limited to, orders that Defendants account for, disgorge, and restore to Plaintiffs and other Class
25 Members all compensation unlawfully withheld from them.

1 118. Plaintiffs and other Class Members are entitled to recover reasonable attorneys' fees
2 in connection with their unfair competition claims pursuant to Code of Civil Procedure section
3 1021.5, the substantial benefit doctrine, and/or the common fund doctrine.
4

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Plaintiffs, individually and on behalf of all Class Members, prays for
7 judgment in his favor and against Defendants as follows:

8 a.) CLASS CERTIFICATION

- 9 i. An order that the action be certified as a class action;
10 ii. An order that Plaintiffs be certified as the representatives of the Class;
11 iii. An order that counsel for Plaintiffs be confirmed as Class Counsel;

12 b) ON THE FIRST CAUSE OF ACTION

- 13 i. Damages for unpaid wages earned but not paid each pay period in an amount
14 according to proof;
15 ii. Prejudgment interest;
16 iii. Reasonable attorney's fees;
17 iv. Costs of suit;
18 v. Such other relief as the Court deems just and proper;

19 c) ON THE SECOND CAUSE OF ACTION

- 20 i. Damages for unpaid minimum wages according to proof;
21 ii. Liquidated damages;
22 iii. Prejudgment interest; ..
23 iv. Reasonable attorney's fees;
24 v. Costs of suit;
25 vi. Such other relief as the Court deems just and proper;

26 d) ON THE THIRD CAUSE OF ACTION

- 27 i. Damages for unpaid overtime wages according to proof;
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- ii. Prejudgment interest;
- iii. Reasonable attorneys' fees;
- iv. Costs of suit; and
- v. Such other relief as the Court deems just and proper;

e) ON THE FOURTH CAUSE OF ACTION

- i. Damages for unpaid additional pay owed for missed or noncompliant meal periods in an amount according to proof;
- ii. Prejudgment interest;
- iii. Costs of suit; and
- iv. Such other relief as the Court deems just and proper;

f) ON THE FIFTH CAUSE OF ACTION

- i. Damages for unpaid additional pay owed for missed or noncompliant rest periods in an amount according to proof;
- ii. Prejudgment interest;
- iii. Costs of suit; and
- iv. Such other relief as the Court deems just and proper;

g) ON THE SIXTH CAUSE OF ACTION

- i. Damages for unpaid compensation owed for rest and recovery periods and other nonproductive time pursuant to Labor Code Section 226.2;
- ii. Liquidated damages;
- iii. Prejudgment interest;
- iv. Reasonable attorney's fees;
- v. Costs of suit;
- vi. Such other relief as the Court deems just and proper;

h) ON THE SEVENTH CAUSE OF ACTION

- i. Damages or penalties for not providing accurate wage statements in an amount according to proof;

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- ii. An order requiring Defendants to comply with Labor Code Section 226(a);
 - iii. Reasonable attorney's fees;
 - iv. Costs of suit; and
 - v. Such other relief as the Court deems just and proper.
- i) ON THE EIGHTH CAUSE OF ACTION
- i. Damages or penalties for not maintaining required records in an amount according to proof;
 - ii. Reasonable attorney's fees;
 - iii. Costs of suit; and
 - iv. Such other relief as the Court deems just and proper.
- j) ON THE NINTH CAUSE OF ACTION
- i. Damages for unpaid wages earned prior to termination of employment in an amount according to proof;
 - ii. Waiting time penalties for failing to pay all earned wages timely upon termination of employment in an amount according to proof;
 - iii. Prejudgment interest;
 - iv. Reasonable attorney's fees;
 - v. Costs of suit; and
 - vi. Such other relief as the Court deems just and proper.

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k) ON THE TENTH CAUSE OF ACTION

- i. Restitution of all unpaid wages and other monies owed and belonging to Class Members that Defendants unlawfully withheld from them and retained for themselves in an amount according to proof;
- ii. Prejudgment interest;
- iii. Reasonable attorney's fees;
- iv. Costs of suit; and
- v. Such other relief as the Court deems just and proper.

Dated: July 16, 2019

MAKAREM & ASSOCIATES, APLC

By: 

SAMUEL D. ALMON
Attorneys for Plaintiffs FRANK J. FODERA,
JR. and MICHAEL M. BONELLA,
individually and on behalf of all others
similarly situated

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand trial by jury of all causes of action.

Dated: July 16, 2019

MAKAREM & ASSOCIATES, APLC

By: 

SAMUEL D. ALMON
Attorneys for Plaintiffs FRANK J. FODERA,
JR. and MICHAEL M. BONELLA,
individually and on behalf of all others
similarly situated

COPY

SUM-100

**SUMMONS
(CITACION JUDICIAL)**

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**
EQUINOX HOLDINGS, INC., a Delaware corporation; and DOES 1-50,
Inclusive,

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**
FRANK J. FODERA, JR., Individually and on behalf of all others similarly
situated,

FOR COUNTY USE ONLY
(SOLO PARA USO DE LA CORTE)

**ENDORSED
FILED**
ALAMEDA COUNTY
APR 03 2019

CLERK OF THE SUPERIOR COURT
By Jessie [Signature] Deputy

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en este corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto al darse que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol), en la biblioteca de leyes de su condado o en la corte que lo quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:
(El nombre y dirección de la corte es):
Rene C. Davidson Courthouse
1225 Fallon Street
Oakland, California 94612

CASE NUMBER:
(Número del Caso): RG19013798

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Makarem & Associates, 11601 Wilshire Blvd., Suite 2440 Los Angeles, CA 90025, Samuel D. Almon (SB#243589)

DATE: APR 03 2019
(Fecha)

Clerk, by Jessie [Signature], Deputy
(Secretario)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

[SEAL]

- NOTICE TO THE PERSON SERVED:** You are served
- as an individual defendant.
 - as the person sued under the fictitious name of (specify):
 - on behalf of (specify):
under: CCP 416.10 (corporation) CCP 416.60 (minor)
 CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 CCP 416.40 (association or partnership) CCP 416.80 (authorized person)
 other (specify):
 - by personal delivery on (date):

COPY

1 MAKAREM & ASSOCIATES APLC
2 Ronald W. Makarem, Esq. (SB#180442)
3 Samuel D. Almon (SB# 243569)
4 11601 Wilshire Boulevard, Suite 2440
5 Los Angeles, California 90025-1760
6 Phone: (310) 312-0299; Fax: (310) 312-0296

ENDORSED
FILED
ALAMEDA COUNTY

APR 03 2019

7 Attorneys for Plaintiff FRANK J. FODERA, JR.,
8 individually and on behalf of all others similarly
9 situated

CLERK OF THE SUPERIOR COURT

By *[Signature]*
Deputy

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FOR THE COUNTY OF ALAMEDA

12 FRANK J. FODERA, JR., individually and
13 on behalf of all others similarly situated,

CASE NO.: RG19013798

14 Plaintiff,

CLASS ACTION COMPLAINT FOR:

15 vs.

16 EQUINOX HOLDINGS, INC., a Delaware
17 corporation; and DOES 1-50, inclusive,

18 Defendants.

- (1) Failure to Pay All Wages Earned;
- (2) Failure to Pay Minimum Wage;
- (3) Failure to Pay Overtime Wages;
- (4) Failure To Provide Meal Periods;
- (5) Failure To Provide Rest Periods;
- (6) Failure To Pay for Rest and Recovery Periods;
- (7) Failure to Furnish Accurate Wage Statements;
- (8) Failure to Maintain Required Records;
- (9) Failure to Pay Earned Wages Upon Termination;
- (10) Unfair Competition in Violation of Business and Professions Code Section 17200

[JURY TRIAL DEMANDED]

19 Plaintiff FRANK J. FODERA ("Plaintiff"), individually and on behalf of all similarly
20 situated individuals, hereby complains and alleges as follows:
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INTRODUCTION

1. This case arises out of the failure of Defendants EQUINOX HOLDINGS, INC. ("Equinox Holdings") and Does 1-50 (together with Equinox Holdings, "Defendants") to pay all wages owed to non-exempt employees, failure to pay all overtime hours earned, failure to provide compliant meal and rest periods, failure to provide accurate wage statements, failure to pay for separate rest and recovery periods in connection with piece-rate work, failure to furnish accurate wage statements, and failure to pay all wages owed at the time of termination, among other things.

2. Plaintiff and all other similarly situated individuals (collectively, the "Class" or "Class Members") were employed by Defendants during the four years preceding the filing of this action, and continued while this action was pending (the "Class Period"), and were denied the benefits and protections required under the California Labor Code and other statutes and regulations applicable to employees in the State of California.

3. Plaintiff and Class Members allege that Defendants (1) failed to pay Plaintiff and Class Members all wages earned; (2) failed to pay Plaintiff and Class Members required minimum wages; (3) failed to pay Plaintiff and Class Members required overtime wages; (4) failed to provide Plaintiff and Class Members with compliant meal periods and failed to pay one hour of pay at Class Members' regular rate of compensation for each workday that a compliant meal period was not provided; (5) failed to authorize and permit compliant rest periods and failed to pay one hour of pay at Plaintiff's and Class Members' regular rate of compensation for each workday that a compliant rest period was not authorized and permitted; (6) failed to pay Plaintiff and Class Members for rest and recovery periods separately from, and in addition to, their piece-rate pay for piece-rate work performed pursuant to Labor Code § 226.2; (7) failed to furnish Plaintiff and Class Members with complete and accurate wage statements; (8) failed to maintain required records; (9) failed to pay Class Members all earned wages after their employment ended in violation of Labor Code §§ 201 and/or 202; and (10) violated California's Unfair Business Practices Act, California Business & Professions Code §§ 17200, et seq.

1 defendants when the same have been ascertained.

2 10. Plaintiff is informed and believes and thereon alleges that at all times relevant herein,
3 each defendant aided and abetted, and acted in concert with and/or conspired with each and every
4 other defendant to commit the acts complained of herein and to engage in a course of conduct and
5 the business practices complained of herein.

6 11. Defendants, including Does 1 through 50, inclusive, are now, and/or at all times
7 mentioned in this Complaint were, the affiliates of some or all other Defendants, and vice-versa, and
8 in doing the thing alleged in this Complaint, Defendants were directly or indirectly controlling,
9 controlled by or under common control with such other Defendants.

10 12. Defendants, including Does 1 through 50, inclusive, are now, and/or at all times
11 mentioned in this Complaint were, the agents, servants and/or employees of some or all other
12 Defendants, and vice-versa, and in doing the things alleged in this Complaint, Defendants are now
13 and/or at all times mentioned in this Complaint were acting within the course and scope of that
14 agency, servitude and/or employment.

15 13. Defendants, including Does 1 through 50, inclusive, are now, and/or at all times
16 mentioned in this Complaint were, members of, and/or engaged in, a joint venture, partnership and
17 common enterprise, and acting within the course and scope of, and in pursuance of said joint venture,
18 partnership and common enterprise.

19 14. Defendants, including Does 1 through 50, inclusive, at all times mentioned in this
20 Complaint approved of, condoned and/or otherwise ratified each and every one of the acts and/or
21 omissions alleged in this Complaint.

22 **FACTUAL ALLEGATIONS**

23 15. This is a class action pursuant to Section 382 of the California Code of Civil Procedure
24 to vindicate rights afforded to the class by California labor law. This action is brought on behalf of
25 Plaintiff and all similarly situated current and former employees who worked for Defendants as non-
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1 exempt employees within the State of California within the four years preceding the filing of this
2 lawsuit.

3 16. On information and belief, Defendants are in the business of, among other things,
4 owning and operating luxury health clubs throughout California. According to Defendants' website,
5 Defendants currently have approximately 30 locations in California, including in Alameda County,
6 and news outlets have reported on additional locations planned in San Francisco, Los Angeles, and
7 San Diego County.

8 17. Defendants employ group fitness instructors and personal trainers at their health clubs,
9 including in Alameda County, as non-exempt employees.

10 18. During Plaintiff's and Class Members' entire employment with Defendants, Plaintiff
11 and Class Members were not exempt from the Employment Laws and Regulations, and Defendants
12 treated Plaintiff and Class Members as non-exempt employees. Plaintiff and Class Members
13 primarily engaged in non-exempt duties delegated to non-exempt employees such as, for example,
14 performing personal training sessions, teaching group fitness classes, cleaning and straightening up
15 the facilities during "floor shifts," preparing client exercise programs, communicating with clients
16 outside of personal training sessions, and attending mandatory meetings and trainings.

17 19. During Plaintiff's and Class Members' entire employment with Defendants, Plaintiff
18 and Class Members spent few to none of their working hours performing work which was primarily
19 intellectual, managerial or creative, or which required the regular and customary exercise of
20 discretion and independent judgment with respect to matters of significance on more than an
21 occasional basis.

22 20. On information and belief, Plaintiff and Class Members regularly worked more than
23 40 hours in a workweek and more than 8 hours in a workday. During their employment, Plaintiff
24 and Class Members suffered damages for the wage and hour violations committed by Defendants
25 described below.

26 21. During Plaintiff's and Class Members' entire employment with Defendants,
27 Defendants' policies provided that Plaintiff and Class Members were to be paid at an hourly rate for
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1 time that they were clocked in while performing certain tasks, such as, for example, personal training
2 sessions, teaching group fitness classes, cleaning and straightening up the facilities during "floor
3 shifts" and attending mandatory meetings and trainings.

4 22. Defendants' policies also provided that Plaintiff and Class Members were to be paid
5 on a piece-rate basis for certain tasks. Under Defendants' piece-rate compensation policies, Plaintiff
6 and Class Members were to be paid a fixed sum each time they completed a particular task, such as,
7 for example, performing a personal training session or teaching a group fitness class.

8 23. Defendants also regularly suffered or permitted Plaintiff and Class Members to
9 perform a wide range of unpaid, off-the-clock work. Some of this off-the-clock work consisted of
10 tasks which Defendants referred to as "session related activities." "Session related activities"
11 included, for example, interacting with clients outside of personal training and group fitness
12 sessions, creating calendars, and preparing client programs. "Session related activities" included
13 tasks that were not directly related to performing a personal training or group fitness session.

14 24. During Plaintiff's and Class Members' entire employment with Defendants,
15 Defendants also regularly suffered or permitted Plaintiff and Class Members to perform other work
16 off the clock that was not designated "session related activities." For example, Defendants regularly
17 required Plaintiff and Class Members, while not clocked in, to perform work including, without
18 limitation, manually scheduling work-related meetings, corresponding with supervisors, and
19 contacting prospective customers. Defendants did not pay Plaintiff or Class Members for time spent
20 performing off-the-clock work.

21 25. Although Defendants suffered or permitted Plaintiff and Class Members to work off
22 the clock, including, without limitation, by performing "session related activities" and other off-the-
23 clock work, Defendants neither compensated Plaintiff and Class Members for such work nor
24 counted those hours for purposes of calculating overtime.

25 26. Instead of paying Plaintiff and Class Members for each hour worked, Defendants'
26 stated policy was to engage in wage averaging, whereby Defendants purported to determine whether
27 the piece-rate compensation paid, divided by the time spent performing the session plus the time
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1 spent performing unpaid "session related activities", resulted in an average hourly rate of at least
2 minimum wage.

3 27. In practice, Defendants discouraged and/or prohibited Plaintiff and Class Members
4 from recording all time they worked performing session related activities and other off-the-clock
5 work. Consequently, Defendants' records did not reflect all hours worked by Plaintiff and Class
6 Members.

7 28. During Plaintiff's and Class Members' entire employment with Defendants, under
8 Defendants' compensation policies, Plaintiff and Class Members were entitled to receive certain
9 non-discretionary bonuses if they met certain objective criteria. Defendants repeatedly failed to pay
10 earned non-discretionary bonuses when due.

11 29. Defendants also repeatedly failed to pay Plaintiff and Class Members, among other
12 things, all piece-rate pay earned. For example, Defendants failed to pay Plaintiff and Class Members
13 for all personal training sessions and group fitness classes performed in the applicable pay period.

14 30. Defendants did not pay Plaintiff and Class Members all overtime compensation
15 earned. For example, Defendants did not consider Plaintiff's and Class Members' off-the-clock
16 work when calculating overtime wages, resulting in Plaintiff and Class Members not being paid all
17 overtime wages due. As another example, upon information and belief, in calculating overtime
18 wages, Defendants failed to consider all non-discretionary bonuses earned by Plaintiff and Class
19 Members, including, among other reasons, because Defendants failed to pay all earned non-
20 discretionary bonuses when due and failed to include them in Plaintiff's and Class Members' pay
21 checks and wage statements.

22 31. Defendants failed to pay Plaintiff and Class Members minimum wage for all hours
23 worked, including uncompensated off-the-clock work which Defendants suffered or permitted
24 Plaintiff and Class Members to perform.

25 32. Defendants did not provide Plaintiff or Class Members with compliant and timely
26 thirty-minute meal periods. For example, Defendants regularly failed to provide meal periods until
27 after Plaintiff and Class Members had completed a work period of more than five hours. As another
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1 example, Plaintiff and Class Members were regularly required to take meal periods of less than 30
2 minutes in order to timely return to their job duties, such as, for example, to avoid being late for
3 their next training session.

4 33. If an employer fails to provide an employee with compliant and timely thirty-minute
5 meal periods, the employer must pay the employee a premium payment of one hour of pay at the
6 employee's regular rate of compensation for each workday that the meal period is not provided. Yet
7 Defendants failed to pay Plaintiff and Class Members premium payments for each missed or non-
8 compliant meal period.

9 34. Defendants did not authorize or permit Plaintiff or Class Members to take compliant
10 and timely ten-minute rest periods. For example, Plaintiff and Class Members regularly worked
11 four hours or more continuously without a paid ten-minute rest break. As another example, Plaintiff
12 and Class Members regularly worked between two and four hours continuously without a paid ten-
13 minute rest break, on days in which they worked three and one-half hours or more.

14 35. Defendants failed to pay Plaintiff and Class Members premium payments for each
15 shift with a missed or non-compliant rest periods.

16 36. With respect to work that Plaintiff and Class Members performed on a piece-rate basis,
17 Defendants failed to compensate Plaintiff and Class Members for rest and recovery periods separate
18 from any piece-rate compensation, and failed to calculate such compensation as required under
19 Labor Code § 226.2(a)(3).

20 37. As a result of these violations, Defendants also failed to provide complete and accurate
21 wage statements, failed to maintain proper records, and failed to pay Plaintiff and Class Members
22 all amounts owed upon termination of employment. Defendants also thereby violated California's
23 Unfair Business Practices Act, California Business & Professions Code §§ 17200.

24 38. Plaintiff seeks attorneys' fees pursuant to California Labor Code section 218.5 and
25 any other applicable sections.

26 39. Plaintiff also seeks restitution and disgorgement of all sums wrongfully obtained by
27 Defendants through unfair business practices in violation of California Business & Professions Code
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1 section 17200, *et seq.*, to prevent the Defendants from benefiting from their unlawful, fraudulent
2 and unfair acts. Such sums recovered under the Unfair Competition Act and Unfair Businesses Act
3 are equitable in nature and are not to be considered damages. Plaintiff is also entitled to costs,
4 attorneys' fees, interest and penalties as provided for by the Labor Code, the Business & Professions
5 Code and Code of Civil Procedure §1021.5.

6 **CLASS ACTION ALLEGATIONS**

7 40. Plaintiff brings this action on behalf of himself and all other similarly situated persons
8 as a class action pursuant to Code of Civil Procedure Section 382. The Classes Plaintiff seeks to
9 represent are composed of and defined as follows:

10 All current and former non-exempt employees employed by any
11 Defendant in California as personal trainers, or in any other similar
12 capacity, at any time during the four-year period preceding the filing of
13 this action through the present.

14 All current and former non-exempt employees employed by any
15 Defendant in California as group fitness instructors, or in any other
16 similar capacity, at any time during the four-year period preceding the
17 filing of this action through the present.

18 41. This action has been brought and may be maintained as a class action pursuant to Code
19 of Civil Procedure Section 382 because there is a well-defined community of interest among many
20 persons who comprise a readily ascertainable class.

21 42. **Numerosity and Ascertainability (C.C.P. § 382):** The potential number of Class
22 Members as defined is so numerous that joinder of all members would be infeasible and impractical.
23 The disposition of their claims through this class action will benefit both the parties and this Court.
24 The number of putative Class Members is unknown at this time, however, it is estimated that the
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1 Class will number greater than 100. The identity of such membership can be readily ascertained
2 from Defendants' employment records.

3 **43. Superiority (C.C.P. § 382):** The nature of this action and the nature of laws available
4 to Plaintiff make the use of the class action format particularly efficient and appropriate. By
5 establishing a technique whereby the claims of many individuals can be resolved at the same time;
6 the class suit both eliminates the possibility of repetitious litigation and provides small claimants
7 with a method of obtaining redress for claims which would otherwise be too small to warrant
8 individual litigation. Class action treatment will allow a large number of similarly situated persons
9 to prosecute their common claims in a single forum, simultaneously, efficiently, and without the
10 unnecessary duplication of effort and expense that numerous individual actions would require. The
11 actual monetary recovery due to most of the individual Class Members is likely to be small, and the
12 burden and expense of individual litigation would make it prohibitive for individual Class Members
13 to seek relief. A class action will serve an important public interest by permitting such individuals
14 to effectively pursue recovery of the sums owed to them. Further, class litigation prevents the
15 potential for inconsistent or contradictory judgments if individual Class Members were to litigate
16 separately.

17 **44. Well-defined Community of Interest:** Plaintiff also meets the three factors for
18 establishing a community of interest: (1) predominant common questions of law or fact; (2) a class
19 representative with claims or defenses typical of the class; and (3) a class representative who can
20 adequately represent the class, (*see, e.g. Lockheed Martin Corp. v. Superior Court* (2003) 29 Cal.4th
21 1096), as follows:

22 **45. Predominant Questions of Law or Fact:** There are common questions of law and/or
23 fact as to the members of the Class which predominate over questions affecting only individual
24 members of the Class, including, without limitation:

- 25 a. Whether Defendants violated Labor Code Section 204 by not paying Class
26 Members for all wages earned during each pay period;

- 1 b. Whether Defendants violated Labor Code Section 1194 by not paying Class
2 Members the legal minimum wage for all hours worked;
- 3 c. Whether Defendants violated Labor Code Sections 510 and 1194 by not properly
4 paying overtime wages to Class Members for all hours worked in excess of eight
5 hours in one day, in excess of 40 hours in one workweek, and in during the first
6 eight hours on the seventh day of work in one workweek, and by failing to pay
7 Class Members their overtime wages a the required double time rate for hours
8 worked in excess of 12 hours a day and in excess of eight hours on the seventh
9 day of a workweek;
- 10 d. Whether Defendants violated Labor Code Section 512 by not providing Class
11 Members with compliant meal periods;
- 12 e. Whether Defendants violated Labor Code Section 512 by not authorizing and
13 permitting Class Members to take compliant rest periods;
- 14 f. Whether Defendants violated Labor Code Section 226.7 by not paying Class
15 Members additional pay for shifts when Class Members did not receive compliant
16 meal or rest periods;
- 17 g. Whether Defendants violated Labor code section 226.2 by not paying Class
18 members separately for rest and recovery periods with respect to work performed
19 on a piece-rate basis, and by not properly calculating compensation for such rest
20 and recovery periods;
- 21 h. Whether Defendants violated Labor Code Section 226(a) by not providing Class
22 Members with accurate wage statements;
- 23 i. Whether Defendants are liable for penalties for failure to maintain the records
24 required under Labor Code Sections 226 and 1174;
- 25 j. Whether Defendants violated Labor Code Sections 201 or 202 by not paying Class
26 Members all wages due upon termination in a timely manner;
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- 1 k. Whether Class Members who are no longer working for Defendants are entitled to
- 2 waiting time penalties under Labor Code Section 203;
- 3 l. Whether Defendants' conduct constituted unfair competition or an unlawful
- 4 business practice under Business and Professions Code Section 17200, *et seq.*
- 5 m. Whether injunctive relief is appropriate to ensure Defendants' compliance with
- 6 the Labor Code with respect to members of the Class currently working for
- 7 Defendants;
- 8 n. Whether Class Members are entitled to attorneys' fees;
- 9 o. Whether Class Members are entitled to pre-judgment interest;
- 10 p. Whether Class Members are entitled to restitution; and
- 11 q. Whether the fact each Class Member might be required to ultimately justify an
- 12 individual claim does or does not preclude maintenance of a class action. *See*
- 13 *Collins v. Rocha* (1972) 7 Cal.2d 232.

14 46. **Typicality:** The claims of Plaintiff are typical of the claims of all members of the
15 Class he seeks to represent because all members of the Class sustained injuries and damages arising
16 out of Defendants' policies, practices, and common course of conduct in violation of law, and the
17 injuries and damages of all members of the Class were caused by Defendants' wrongful conduct in
18 said violation of law, as alleged herein.

19 47. **Adequacy:** Plaintiff Frank J. Fodera, Jr.:

- 20 a. is an adequate representative of the Class he seeks to represent;
- 21 b. will fairly protect the interests of the members of the Class;
- 22 c. has no interests antagonistic to the members of the Class; and
- 23 d. will vigorously pursue this suit via attorneys who are competent, skilled and
- 24 experienced in litigating matters of this type.

FIRST CAUSE OF ACTION

For Failure to Pay All Wages Earned

(Against All Defendants)

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4 48. Plaintiff incorporates by reference and realleges as if fully stated herein all the
5 allegations set out above in the preceding paragraphs.

6 49. At all relevant times, Plaintiff and other Class Members were employees covered by
7 Labor Code Section 204.

8 50. Pursuant to Labor Code Section 204, Plaintiff and the other Class Members were
9 entitled to receive on regular paydays all wages earned for the pay period corresponding to the
10 payday.

11 51. Defendants failed to pay Plaintiff and other Class Members for all wages earned each
12 pay period on the regular payday for the pay period. The earned and unpaid wages include, but are
13 not limited to, additional pay for missed meal and rest periods, unpaid wages for piece-rate work,
14 wages for hours worked off the clock, and overtime wages.

15 52. California law does not allow an employer to avoid paying its employees for all hours
16 worked by averaging total compensation over total hours worked. *See, e.g., Gonzalez v. Downtown*
17 *LA Motors, LP*, 215 Cal. App. 4th 36, 40-41 (2013); *Armenta v. Osmose, Inc.*, 135 Cal. App. 4th
18 314, 324 (2005).

19 53. As a result of Defendants' unlawful conduct, Plaintiff and other Class Members have
20 suffered damages in an amount according to proof at trial.

21 54. Pursuant to Labor Code Sections 218, 218.5 and 218.6, Plaintiff and other Class
22 Members are entitled to recover the full amount of their unpaid wages, prejudgment interest,
23 reasonable attorney's fees and costs of suit.
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SECOND CAUSE OF ACTION

For Failure to Pay Minimum Wage

(Against All Defendants)

55. Plaintiff incorporates by reference and realleges as if fully stated herein all the allegations set out above in the preceding paragraphs.

56. At all relevant times, Plaintiff and other Class Members were employees covered by Labor Code section 1194 and the applicable Industrial Wage Order.

57. Pursuant to Labor Code Section 1194 and the applicable Industrial Wage Order, Plaintiff and Class Members were entitled to minimum wage for all hours worked.

58. Plaintiff is informed and believe and thereon allege that at all relevant times within the applicable Class Period, Defendants failed to pay Plaintiff and Class Members their earned wages for all hours worked in accordance with Labor Code Section 1194 and the applicable Industrial Wage Order. For example, Defendants regularly required Plaintiff and Class Members to work off the clock.

59. As a result of Defendants' unlawful conduct, Plaintiff and Class Members have suffered damages in an amount, subject to proof, to the extent that they were not paid for all hours worked.

60. California law does not allow an employer to avoid paying its employees for all hours worked by averaging total compensation over total hours worked. *See, e.g., Gonzalez v. Downtown LA Motors, LP*, 215 Cal. App. 4th 36, 40-41 (2013); *Armenta v. Osmose, Inc.*, 135 Cal. App. 4th 314, 324 (2005).

61. Pursuant to Labor Code Section 1194, Plaintiff and Class Members are entitled to recover the full amount of their unpaid wages, prejudgment interest, reasonable attorneys' fees and costs of suit.

62. Pursuant to Labor Code Section 1194.2, Plaintiff and Class Members are entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

THIRD CAUSE OF ACTION

For Failure to Pay Overtime Wages

(Against All Defendants)

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4 63. Plaintiff incorporates by reference and realleges as if fully stated herein all the
5 allegations set out above in the preceding paragraphs.

6 64. At all relevant times, Plaintiff and the other Class Members were employees covered
7 by Labor Code Sections 510, 1194 and the applicable Industrial Wage Order.

8 65. Pursuant to Labor Code Sections 510, 1194 and the applicable Industrial Wage Order,
9 Plaintiff and the other Class Members were entitled to overtime wages payable at the rate of at least
10 one and one-half times their regular rate of pay for all work in excess of eight hours in one workday,
11 in excess of forty hours in one workweek, or during the first eight hours worked on the seventh day
12 of one workweek, and payable at the rate of at least twice the regular rate of pay for all work in
13 excess of twelve hours in one workday or in excess of eight hours worked on the seventh day of one
14 workweek.

15 66. Defendant failed to pay Plaintiff and the other Class Members for all overtime worked
16 in accordance with Labor Code Sections 510, 1194 and the applicable Industrial Wage Order.
17 Plaintiff is informed and believes and thereon allege that at all relevant times within the applicable
18 class period, Defendants maintained and continue to maintain a policy or practice of requiring
19 Plaintiff and other Class Members to perform various duties off the clock without compensating
20 them for all their hours actually worked, including time in excess of eight hours in a day, in excess
21 of forty hours in a workweek, and/or time worked on the seventh day of work in one workweek.

22 67. Plaintiff is informed and believes and thereon allege that at all relevant times within
23 the applicable class period, Defendants maintained and continue to maintain a policy or practice of
24 undercalculating Plaintiff's and Class Members' regular rate of pay, including by failing to include
25 all earned nondiscretionary bonuses in Plaintiff's and Class Members' regular rate of pay.

26 68. California law does not allow an employer to avoid paying its employees for all hours
27 worked by averaging total compensation over total hours worked. *See, e.g., Gonzalez v. Downtown*
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1 *LA Motors, LP*, 215 Cal. App. 4th 36, 40-41 (2013); *Armenta v. Osmose, Inc.*, 135 Cal. App. 4th
2 314, 324 (2005).

3 69. As a result of Defendants' unlawful conduct, Plaintiff and other Class Members have
4 suffered damages in an amount, subject to proof, to the extent they were not paid for all overtime
5 wages earned.

6 70. Pursuant to Labor Code Section 1194, Plaintiff and other Class Members are entitled
7 to recover the full amount of their unpaid overtime wages, prejudgment interest, reasonable
8 attorney's fees and costs of suit.

9 **FOURTH CAUSE OF ACTION**

10 **For Failure to Provide Meal Periods**

11 **(Against All Defendants)**

12 71. Plaintiff incorporates by reference and realleges as if fully stated herein all the
13 allegations set out above in the preceding paragraphs.

14 72. At all relevant times, Plaintiff and Class Members were employees covered by Labor
15 Code Sections 226.7 and 512, and the applicable Industrial Wage Order.

16 73. Labor Code §§ 226.7 and 512 and the applicable Industrial Wage Order provide that
17 no employer shall employ any person for a work period of more than five (5) hours without a meal
18 period of not less than 30 minutes.

19 74. Labor Code § 226.7 and the applicable Industrial Wage Order provide that if an
20 employer fails to provide an employee with a meal period in accordance with this section, the
21 employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation
22 for each five (5) hours of work that the meal period is not provided.

23 75. During the Class Period, Defendants have routinely failed to provide the Class
24 Members, including Plaintiff, with compliant meal periods prior to the end of the employees' fifth
25 hour of work, and have failed to compensate Class Members, including Plaintiff, for those non-
26 compliant meal periods, as required by California Labor Code § 226.7 and other applicable sections
27 of the Employment Laws and Regulations.
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1 compensation owed for rest and recovery periods and other nonproductive time separate from any
2 piece-rate compensation

3 92. Pursuant to Labor Code Section 1194, Plaintiff and Class Members are entitled to
4 recover the full amount of their unpaid wages, prejudgment interest, reasonable attorneys' fees and
5 costs of suit.

6 93. Pursuant to Labor Code Section 1194.2, Plaintiff and Class Members are entitled to
7 recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

8 **SEVENTH CAUSE OF ACTION**

9 **Failure to Furnish Accurate Wage Statements**

10 **(Against All Defendants)**

11 94. Plaintiff incorporates by reference and realleges as if fully stated herein all the
12 allegations set out above in the preceding paragraphs.

13 95. At all relevant times, Plaintiff and other Class Members were employees of
14 Defendants covered by Labor Code Section 226.

15 96. California Labor Code Section 226(a) provides that:

16 An employer, semimonthly or at the time of each payment of wages,
17 shall furnish to his or her employee, either as a detachable part of the
18 check, draft, or voucher paying the employee's wages, or separately if
19 wages are paid by personal check or cash, an accurate itemized
20 statement in writing showing (1) gross wages earned, (2) total hours
21 worked by the employee, except as provided in subdivision (j), (3) the
22 number of piece-rate units earned and any applicable piece rate if the
23 employee is paid on a piece-rate basis, (4) all deductions, provided that
24 all deductions made on written orders of the employee may be
25 aggregated and shown as one item, (5) net wages earned, (6) the
26 inclusive dates of the period for which the employee is paid, (7) the
27 name of the employee and only the last four digits of his or her social
28 security number or an employee identification number other than a
social security number, (8) the name and address of the legal entity
that is the employer and, if the employer is a farm labor contractor, as
defined in subdivision (b) of Section 1682, the name and address of
the legal entity that secured the services of the employer, and (9) all
applicable hourly rates in effect during the pay period and the
corresponding number of hours worked at each hourly rate by the
employee and, beginning July 1, 2013, if the employer is a temporary
services employer as defined in Section 201.3, the rate of pay and the
total hours worked for each temporary services assignment.

1 records: all hours worked by Plaintiff and other Class Members; all piece-rate compensation due to
2 Plaintiff and other Class Members; all compensation for rest and recovery periods and other
3 nonproductive time separate from any piece-rate compensation due to Plaintiff and other Class
4 Members; all bonuses due to Plaintiff and other Class Members; meal periods; rest periods; and
5 accurate itemized wage statements.

6 102. As a proximate result of Defendants' unlawful actions and omissions, Plaintiff and
7 other Class Members have been damaged in an amount according to proof at trial, and are entitled
8 to all wages earned and due, plus interest thereon. Additionally, Plaintiff and other Class Members
9 are entitled to all available statutory penalties, including but not limited to civil penalties pursuant
10 to California Labor Code sections 226(e), 226.3, and 1174.5, and an award of attorneys' fees, and
11 expenses and costs of suit, including but not limited to those provided by California Labor Code
12 section 226(e) as well as other available remedies.

13 NINTH CAUSE OF ACTION

14 **Failure to Pay Wages Earned At Termination Or Discharge [Labor Code §§ 201, 202]**

15 **(Against All Defendants)**

16 103. Plaintiff incorporates by reference and realleges as if fully stated herein all the
17 allegations set out above in the preceding paragraphs.

18 104. At all relevant times, Class Members who quit, were discharged, or terminated
19 (collectively referred to as "Terminated" or "Termination") from employment with Defendants are
20 and were covered by Labor Code sections 201 and/or 202.

21 105. Pursuant to Labor Code sections 201 and 202, Class Members were entitled to receive,
22 upon termination, all wages earned and unpaid at the time of termination. If an employee is
23 discharged, all wages earned and unpaid are due and payable immediately upon discharge. If an
24 employee quits his or her employment, his or her wages shall become due and payable not later than
25 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention
26 to quit, in which case the employee is entitled to his or her wages at the time of quitting.
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1 106. Defendants failed to pay Terminated Class Members all wages earned and unpaid at
2 the time of Termination timely in accordance with Labor Code sections 201 and 202. Their earned
3 and unpaid wages at the time of Termination include, but are not limited to, hours worked off the
4 clock, hours worked overtime, additional pay for missed or non-compliant meal and rest periods,
5 unpaid piece-rate compensation due, unpaid compensation for rest and recovery periods and other
6 nonproductive time separate from any piece-rate compensation due Terminated Class Members, and
7 unpaid bonuses.

8 107. Defendants' failure to pay Terminated Class Members all wages earned prior to
9 Termination in accordance with Labor Code sections 201 and 202 was willful. Defendants had the
10 ability to pay all wages earned by employees prior to Termination in accordance with Labor Code
11 sections 201 and 202, but intentionally followed a practice or adopted a policy that violated Labor
12 Code sections 201 and 202.

13 108. Pursuant to Labor Code sections 201 and 202, Terminated Class Members are entitled
14 to all wages earned prior to Termination that Defendants failed to pay them.

15 109. California Labor Code section 203 provides that if an employer willfully fails to pay,
16 without abatement or reduction, in accordance with Labor Code sections 201 and 202, any wages
17 of the employee shall continue as a penalty from the due date thereof at the same rate until paid or
18 until an action therefore is commenced; but the wages shall not continue for more than 30 days.

19 110. Therefore, Terminated Class Members are entitled to recover from Defendants the
20 statutory penalty for each day they were not paid, at their regular rate of pay – not to exceed 30 days
21 – pursuant to California Labor Code section 203.

22 111. Pursuant to Labor Code sections 218 and 218.5, Terminated Class Members are
23 entitled to recover their unpaid wages, waiting time penalties under Labor Code section 203,
24 reasonable attorneys' fees and costs of suit. Pursuant to Labor Code section 218.6 and/or Civil Code
25 section 3287(a), Terminated Class Members are entitled to recover prejudgment interest.
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TENTH CAUSE OF ACTION

Unfair Competition [Bus. & Prof. Code §§ 17200, *et seq.*]

(Against All Defendants)

112. Plaintiff incorporates by reference and realleges as if fully stated herein all the allegations set out above in the preceding paragraphs.

113. Defendants are "persons" as that term is defined under Business & Professions Code section 17021. Business & Professions Code section 17200 defines unfair competition as any unlawful, unfair, or fraudulent business act or practice.

114. Defendants' violation of the Employment Laws and Regulations as alleged in this Complaint, including Defendants' (a) failure to provide complaint meal periods or authorize and permit compliant rest periods; and (b) failure to pay all earned wages upon termination, constitute unfair business practices in violation of Business & Professions Code §§ 17200 *et seq.*

115. As a result of Defendants' unfair business practices, Defendants have reaped unfair benefits and illegal profits at the expense of Class Members, and to the detriment of members of the public. Defendants should be made to disgorge their ill-gotten gains and restore them to Plaintiff and other Class Members. Pursuant to Business & Professions Code section 17203, Plaintiff and other Class Members are entitled to restitution of the wages and other monies withheld, deducted, and/or retained by Defendants during a period that commences four years prior to the filing of this action.

116. Pursuant to Business & Professions Code section 17203, Defendants' unfair business practices entitle Plaintiff to seek preliminary and permanent injunctive relief including, but not limited to, orders that Defendants account for, disgorge, and restore to Plaintiff and other Class Members all compensation unlawfully withheld from them.

117. Plaintiff and other Class Members are entitled to recover reasonable attorneys' fees in connection with their unfair competition claims pursuant to Code of Civil Procedure section 1021.5, the substantial benefit doctrine, and/or the common fund doctrine.

PRAYER FOR RELIEF

1
2 **WHEREFORE**, Plaintiff, individually and on behalf of all Class Members, prays for
3 judgment in his favor and against Defendants as follows:

4 a.) **CLASS CERTIFICATION**

- 5 i. An order that the action be certified as a class action;
6 ii. An order that Plaintiff be certified as the representative of the Class;
7 iii. An order that counsel for Plaintiff be confirmed as Class Counsel;

8 b) **ON THE FIRST CAUSE OF ACTION**

- 9 i. Damages for unpaid wages earned but not paid each pay period in an amount
10 according to proof;
11 ii. Prejudgment interest;
12 iii. Reasonable attorney's fees;
13 iv. Costs of suit;
14 v. Such other relief as the Court deems just and proper;

15 c) **ON THE SECOND CAUSE OF ACTION**

- 16 i. Damages for unpaid minimum wages according to proof;
17 ii. Liquidated damages;
18 iii. Prejudgment interest;
19 iv. Reasonable attorney's fees;
20 v. Costs of suit;
21 vi. Such other relief as the Court deems just and proper;

22 d) **ON THE THIRD CAUSE OF ACTION**

- 23 i. Damages for unpaid overtime wages according to proof;
24 ii. Prejudgment interest;
25 iii. Reasonable attorneys' fees;
26 iv. Costs of suit; and
27 v. Such other relief as the Court deems just and proper;

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e) ON THE FOURTH CAUSE OF ACTION

- i. Damages for unpaid additional pay owed for missed or noncompliant meal periods in an amount according to proof;
- ii. Prejudgment interest;
- iii. Costs of suit; and
- iv. Such other relief as the Court deems just and proper;

f) ON THE FIFTH CAUSE OF ACTION

- i. Damages for unpaid additional pay owed for missed or noncompliant rest periods in an amount according to proof;
- ii. Prejudgment interest;
- iii. Costs of suit; and
- iv. Such other relief as the Court deems just and proper;

g) ON THE SIXTH CAUSE OF ACTION

- i. Damages for unpaid compensation owed for rest and recovery periods and other nonproductive time pursuant to Labor Code Section 226.2;
- ii. Liquidated damages;
- iii. Prejudgment interest;
- iv. Reasonable attorney's fees;
- v. Costs of suit;
- vi. Such other relief as the Court deems just and proper;

h) ON THE SEVENTH CAUSE OF ACTION

- i. Damages or penalties for not providing accurate wage statements in an amount according to proof;
- ii. An order requiring Defendants to comply with Labor Code Section 226(a);
- iii. Reasonable attorney's fees;
- iv. Costs of suit; and
- v. Such other relief as the Court deems just and proper.

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i) ON THE EIGHTH CAUSE OF ACTION

- i. Damages or penalties for not maintaining required records in an amount according to proof;
- ii. Reasonable attorney's fees;
- iii. Costs of suit; and
- iv. Such other relief as the Court deems just and proper.

j) ON THE NINTH CAUSE OF ACTION

- i. Damages for unpaid wages earned prior to termination of employment in an amount according to proof;
- ii. Waiting time penalties for failing to pay all earned wages timely upon termination of employment in an amount according to proof;
- iii. Prejudgment interest;
- iv. Reasonable attorney's fees;
- v. Costs of suit; and
- vi. Such other relief as the Court deems just and proper.

k) ON THE TENTH CAUSE OF ACTION

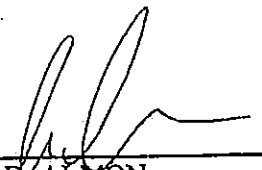
- i. Restitution of all unpaid wages and other monies owed and belonging to Class Members that Defendants unlawfully withheld from them and retained for themselves in an amount according to proof;
- ii. Prejudgment interest;
- iii. Reasonable attorney's fees;
- iv. Costs of suit; and
- v. Such other relief as the Court deems just and proper.

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Dated: April 3, 2019

MAKAREM & ASSOCIATES, APLC

By: 


SAMUEL D. ALMON
Attorneys for Plaintiff FRANK J. FODERA,
JR., individually and on behalf of all others
similarly situated

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand trial by jury of all causes of action.

Dated: April 3, 2019

MAKAREM & ASSOCIATES, APLC

By: 

SAMUEL D. ALMON
Attorneys for Plaintiff FRANK J. FODERA,
JR., individually and on behalf of all others
similarly situated

**Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse**

<p>Fodera Plaintiff/Petitioner(s)</p> <p style="text-align: center;">vs.</p> <p>Equinox Holdings, Inc. Defendant/Respondent(s) (Abbreviated Title)</p>	<p>No. <u>RG19013798</u></p> <p>Case Management Order</p> <p>Date: 06/05/2019 Time: 09:01 AM Dept: 21 Judge: Winifred Y. Smith</p>
--	--

ORDER re: CASE MANAGEMENT

The Court has ordered the following after review of the case, including timely filed Case Management Statements, without a conference.

FURTHER CONFERENCE

A further Case Management Conference is scheduled for 08/01/2019 at 09:00 AM in Dept. 21.

a Joint Case Management Statement, in narrative-form, must be filed no later than 07/25/2019. If the foregoing date is a court holiday or a weekend, the time is extended to the next business day.

NOTICES

The Court orders counsel and/or self-represented parties to obtain a copy of this order from the court's website <http://www.alameda.courts.ca.gov/domainweb>.

Any delay in the trial, caused by non-compliance with any order contained herein, shall be the subject of sanctions pursuant to CCP 177.5.

Dated: 06/05/2019

Preside
Winifred Y. Smith

Judge Winifred Y. Smith

Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse

Fodera	Plaintiff/Petitioner(s)
VS.	
Equinox Holdings, Inc.	Defendant/Respondent(s)
(Abbreviated Title)	

No. RG19013798

Minutes

Department 21

Honorable Winifred Y. Smith, Judge

Cause called for Case Management Conference on June 05, 2019.

Plaintiff Frank J. Fodera Jr. not appearing.
Defendant Equinox Holdings, Inc. not appearing.

ORDER re: CASE MANAGEMENT

The Court has ordered the following after review of the case, including timely filed Case Management Statements, without a conference.

FURTHER CONFERENCE

A further Case Management Conference is scheduled for 08/01/2019 at 09:00 AM in Dept. 21.

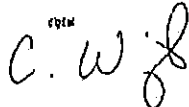
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NOTICES

The Court orders counsel and/or self-represented parties to obtain a copy of this order from the court's website <http://www.alameda.courts.ca.gov/domainweb>.

Minutes of 06/05/2019
Entered on 06/05/2019

Chad Finke Executive Officer / Clerk of the Superior Court

By 

Deputy Clerk

Minutes

M13030261



FILED
ALAMEDA COUNTY

JUL 03 2019

CLERK OF THE SUPERIOR COURT
By [Signature] Deputy

1 MAKAREM & ASSOCIATES APLC
2 Ronald W. Makarem, Esq. (SB#180442)
3 Samuel D. Almon (SB# 243569)
4 11601 Wilshire Boulevard, Suite 2440
5 Los Angeles, California 90025-1760
6 Phone: (310) 312-0299; Fax:(310) 312-0296

7 Attorneys for Plaintiff FRANK J. FODERA, JR.,
8 individually and on behalf of all others similarly
9 situated

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF ALAMEDA**

12 FRANK J. FODERA, JR., individually and
13 on behalf of all others similarly situated,

14 Plaintiff,

15 vs.

16 EQUINOX HOLDINGS, INC., a Delaware
17 corporation; and DOES 1-50, inclusive,

18 Defendants.

Case No.: RG19013798

Hon. Winifred Y. Smith
Dept.: 21

**PLAINTIFF'S EX PARTE APPLICATION
FOR EXTENSION OF TIME TO SERVE
COMPLAINT; DECLARATION OF
SAMUEL D. ALMON; PROPOSED ORDER**

Complaint filed: April 3, 2019

[No appearance required. CRC 3.1207(2)]

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that in Department 21 of the Superior Court of the State of
3 California for the County of Alameda, located at Administration Building, Fourth Floor, 1221
4 Oak Street, Oakland, California 94612, Plaintiff Frank J. Podera, Jr. respectfully will and hereby
5 does apply *ex parte* for the relief set forth below.

6 Pursuant to California Rules of Court, Rule 3.1207(2), no appearance is required in
7 connection with this *ex parte* application.

8 **RELIEF REQUESTED**

9 Plaintiff respectfully requests an order extending time for service of the complaint by 45
10 days.

11 **DISCUSSION**

12 Plaintiff filed his complaint in this wage and hour class action on April 3, 2019. Service
13 of the complaint is presently required to be completed by Monday, June 3, 2019. There have
14 been no previous requests for extension of time to serve the complaint.

15 Plaintiff requests an extension of 45 days to serve the complaint on Defendant Equinox
16 Holdings, Inc. If this extension is granted, service would be completed by Thursday, July 18,
17 2019.

18 **NOTICE**

19 Notice of this *ex parte* application was not given because Defendants have not yet been
20 served with process and have not appeared in this action. A copy of this application will be
21 served on Defendants at the time of service of the Complaint.

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CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court extend the time to serve the complaint by 45 days, through Thursday, July 18, 2019. A Proposed Order is attached hereto as Exhibit A.

Dated: May 30, 2019

MAKAREM & ASSOCIATES, APLC

By: 

SAMUEL D. ALMON
Attorneys for Plaintiff **FRANK J. FODERA, JR.**, individually and on behalf of all others similarly situated

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DECLARATION OF SAMUEL D. ALMON

I, Samuel D. Almon, declare and state as follows:

1. I am an attorney duly licensed to practice law in all of the courts of the State of California. I am an associate at Makarem & Associates APLC, which represents Plaintiff in this litigation. I am one of the attorneys handling this case, and have personal knowledge of the facts set forth herein, except where indicated otherwise. If called upon to do so, I could and would testify competently hereto.

2. The complaint in this action was filed on April 3, 2019.

3. I have calculated that the current 60-day time period for service of the complaint runs through Monday, June 3, 2019.


4. Plaintiff has not previously requested an extension of time to serve the complaint.

5. Because Defendants have not yet been served with process and have not appeared in this action, Plaintiff did not give notice of this *ex parte* application. Plaintiff will serve Defendants with a copy of this application at the time of service of the Complaint.

I declare under penalty of perjury under the laws of California that the foregoing is true and correct. Executed on May 30, 2019 at Los Angeles, California.

Dated: May 30, 2019

MAKAREM & ASSOCIATES APLC

By: 

Samuel D. Almon
Attorneys for Plaintiff

EXHIBIT A

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Exhibit A

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~~PROPOSED~~ ORDER

Having considered Plaintiff's Ex Parte Application for Extension of Time to Serve Complaint, the Court rules as follows:

The application for an order extending the time to serve Plaintiff's complaint is GRANTED. The complaint must be served no later than July 18, 2019.

Additionally, the Court rules as follows:

IT IS SO ORDERED.

Dated: June 3, 2019


Honorable Winifred Smith
Judge of the Superior Court

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MAKAREM & ASSOCIATES APLC
Ronald W. Makarem, Esq. (SB#180442)
Samuel D. Almon (SB# 243569)
11601 Wilshire Boulevard, Suite 2440
Los Angeles, California 90025-1760
Phone: (310) 312-0299; Fax:(310) 312-0296

Attorneys for Plaintiff FRANK J. FODERA, JR.,
individually and on behalf of all others similarly
situated

ENDORSED
FILED
ALAMEDA COUNTY
MAY 31 2019
CLERK OF THE SUPERIOR COURT
By TANIA PIERCE Deputy

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA**

FRANK J. FODERA, JR., individually and
on behalf of all others similarly situated,

Plaintiff,

vs.

EQUINOX HOLDINGS, INC., a Delaware
corporation; and DOES 1-50, inclusive,

Defendants.

Case No.: RG19013798

Hon. Winifred Y. Smith
Dept.: 21

**PLAINTIFF'S EX PARTE APPLICATION
FOR EXTENSION OF TIME TO SERVE
COMPLAINT; DECLARATION OF
SAMUEL D. ALMON; PROPOSED ORDER**

Complaint filed: April 3, 2019

[No appearance required. CRC 3.1207(2)]

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that in Department 21 of the Superior Court of the State of
3 California for the County of Alameda, located at Administration Building, Fourth Floor, 1221
4 Oak Street, Oakland, California 94612, Plaintiff Frank J. Fodera, Jr. respectfully will and hereby
5 does apply *ex parte* for the relief set forth below.

6 Pursuant to California Rules of Court, Rule 3.1207(2), no appearance is required in
7 connection with this *ex parte* application.

8 **RELIEF REQUESTED**

9 Plaintiff respectfully requests an order extending time for service of the complaint by 45
10 days.

11 **DISCUSSION**

12 Plaintiff filed his complaint in this wage and hour class action on April 3, 2019. Service
13 of the complaint is presently required to be completed by Monday, June 3, 2019. There have
14 been no previous requests for extension of time to serve the complaint.

15 Plaintiff requests an extension of 45 days to serve the complaint on Defendant Equinox
16 Holdings, Inc. If this extension is granted, service would be completed by Thursday, July 18,
17 2019.

18 **NOTICE**

19 Notice of this *ex parte* application was not given because Defendants have not yet been
20 served with process and have not appeared in this action. A copy of this application will be
21 served on Defendants at the time of service of the Complaint.

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CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court extend the time to serve the complaint by 45 days, through Thursday, July 18, 2019. A Proposed Order is attached hereto as Exhibit A.

Dated: May 30, 2019

MAKAREM & ASSOCIATES, APLC

By: 

SAMUEL D. ALMON
Attorneys for Plaintiff FRANK J. FODERA,
JR., individually and on behalf of all others
similarly situated

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DECLARATION OF SAMUEL D. ALMON

I, Samuel D. Almon, declare and state as follows:

1. I am an attorney duly licensed to practice law in all of the courts of the State of California. I am an associate at Makarem & Associates APLC, which represents Plaintiff in this litigation. I am one of the attorneys handling this case, and have personal knowledge of the facts set forth herein, except where indicated otherwise. If called upon to do so, I could and would testify competently hereto.

2. The complaint in this action was filed on April 3, 2019.

3. I have calculated that the current 60-day time period for service of the complaint runs through Monday, June 3, 2019.

4. Plaintiff has not previously requested an extension of time to serve the complaint.

5. Because Defendants have not yet been served with process and have not appeared in this action, Plaintiff did not give notice of this *ex parte* application. Plaintiff will serve Defendants with a copy of this application at the time of service of the Complaint.

I declare under penalty of perjury under the laws of California that the foregoing is true and correct. Executed on May 30, 2019 at Los Angeles, California.

Dated: May 30, 2019

MAKAREM & ASSOCIATES APLC

By: 

Samuel D. Almon

Attorneys for Plaintiff

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Exhibit A

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[PROPOSED] ORDER

Having considered Plaintiff's Ex Parte Application for Extension of Time to Serve Complaint, the Court rules as follows:

The application for an order extending the time to serve Plaintiff's complaint is **GRANTED**. The complaint must be served no later than July 18, 2019.

Additionally, the Court rules as follows:

IT IS SO ORDERED.

Dated: _____, 2019

Honorable Winifred Smith
Judge of the Superior Court

COPY

1 **MAKAREM & ASSOCIATES APLC**
2 Ronald W. Makarem, Esq. (SB#180442)
3 Samuel D. Almon (SB# 243569)
4 11601 Wilshire Boulevard, Suite 2440
5 Los Angeles, California 90025-1760
6 Phone: (310) 312-0299; Fax:(310) 312-0296

7 Attorneys for Plaintiff FRANK J. FODERA, JR.,
8 individually and on behalf of all others similarly
9 situated

ENDORSED
FILED
ALAMEDA COUNTY
MAY 29 2019
CLERK OF THE SUPERIOR COURT
By Lanette L. Quinn, Deputy

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF ALAMEDA**

12 FRANK J. FODERA, JR., individually and
13 on behalf of all others similarly situated,

14 Plaintiff,

15 vs.

16 EQUINOX HOLDINGS, INC., a Delaware
17 corporation; and DOES 1-50, inclusive,

18 Defendants.

CASE NO.: RG19013798

PLAINTIFF'S COMPLEX CASE
MANAGEMENT CONFERENCE
STATEMENT; PROPOSED ORDER

Date: June 5, 2019
Time: 9:01 a.m.
Dept.: 21

FILE BY
FAX

19 Plaintiff FRANK J. FODERA, JR. ("Plaintiff") respectfully submits the following
20 Complex Case Management Conference Statement:

21 **PARTIES AND COUNSEL**

22 Plaintiff Frank J. Fodera, Jr. is represented by Ronald W. Makarem and Samuel D. Almon
23 of Makarem & Associates in Los Angeles. Defendant Equinox Holdings, Inc. ("Equinox") has
24 not yet been served and no counsel have appeared on behalf of Equinox.
25

26 **PROCEDURAL BACKGROUND**

27 Plaintiff filed his complaint in this wage and hour class action on April 3, 2019, asserting
28 violations of a number of Labor Code provisions as well as a claim for unfair competition under

1 Business & Professions Code Section 17200. Plaintiff has demanded a jury trial. On May 10,
2 2019, the Court determined this action to be complex.

3 **FACTUAL BACKGROUND**

4 Plaintiff is suing Equinox on behalf of himself and those similarly situated for (1) Failure
5 to Pay All Wages Earned; (2) Failure to Pay Minimum Wage; (3) Failure to Pay Overtime
6 Wages; (4) Failure To Provide Meal Periods; (5) Failure To Provide Rest Periods; (6) Failure To
7 Pay for Rest and Recovery Periods; (7) Failure to Furnish Accurate Wage Statements; (8) Failure
8 to Maintain Required Records; (9) Failure to Pay Earned Wages Upon Termination; and (10)
9 Unfair Competition in Violation of Business and Professions Code Section 17200.

10 Within the four years preceding the filing of the complaint, Plaintiff was employed by
11 Equinox in California as a group fitness instructor and as a personal trainer. He alleges that
12 Equinox, among other things, suffered or permitted him and other putative class members to
13 perform off-the-clock work without pay, failed to pay Plaintiff and other putative class members
14 all non-discretionary bonuses and piece-rate pay earned, failed to properly calculate and pay all
15 overtime compensation earned, failed to provide compliant meal and rest periods, with respect to
16 work performed on a piece-rate basis, failed to compensate Plaintiff and putative class members
17 for rest and recovery periods separate from any piece-rate compensation, and committed a variety
18 of other Labor Code violations.

19 **DISCOVERY**

20 Due to the early posture of this case, discovery has not yet commenced and no discovery
21 issues are known at this time.

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REQUEST TO CONTINUE CASE MANAGEMENT CONFERENCE

Because Equinox has not yet been served and no defense counsel has entered an appearance, Plaintiff is requesting that the Court continue the Case Management Conference by 60 days. A Proposed Order continuing the Case Management Conference by 60 days is attached hereto as Exhibit A.

Dated: May 29, 2019

MAKAREM & ASSOCIATES, APLC

By: 
SAMUEL D. ALMON
Attorneys for Plaintiff FRANK J. FODERA,
JR., individually and on behalf of all others
similarly situated

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Exhibit A

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PROPOSED ORDER

IT IS SO ORDERED that the Case Management Conference currently scheduled for June 5, 2019 at 9:01 a.m. is hereby continued to _____, 2019 at _____.

Dated: _____, 2019

Honorable Winifred Smith
Judge of the Superior Court

Makarem & Associates
 Attn: Almon Esq, Samuel D.
 11601 Wilshire Blvd.
 Ste 2440
 Los Angeles, CA 90025

RECEIVED
 MAY 20 2019
 Makarem & Associates

**Superior Court of California, County of Alameda
 Rene C. Davidson Alameda County Courthouse**

Fodora <p style="text-align: center;">Plaintiff/Petitioner(s)</p> <p style="text-align: center;">VS.</p> Equinox Holdings, Inc. <p style="text-align: center;">Defendant/Respondent(s) (Abbreviated Title)</p>	No. <u>RG19013798</u> <p style="text-align: center;">Order</p> Complaint - Other Employment
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The Complex Determination Hearing was set for hearing on 05/10/2019 at 09:00 AM in Department 21 before the Honorable Winifred Y. Smith. The Tentative Ruling was published and has not been contested.

IT IS HEREBY ORDERED THAT:

The tentative ruling is affirmed as follows: **COMPLEX DETERMINATION**

The Court designates this case as complex pursuant to Rule 3.400 et seq. of the California Rules of Court. Counsel are advised to be familiar with the Alameda County Local Rules concerning complex litigation, including Rule 3.250 et seq. An order assigning the case to one of the three complex judges and an initial case management order will be issued.

COMPLEX CASE FEES

Pursuant to Government Code section 70616, any non-exempt party who has appeared in the action but has not paid the complex case fee is required to pay the fee within ten days of the filing of this order. The complex case fee is \$1,000 for each plaintiff or group of plaintiffs appearing together and \$1,000 PER PARTY for each defendant, intervenor, respondent or other adverse party, whether filing separately or jointly, up to a maximum of \$18,000 for all adverse parties. All payments must identify on whose behalf the fee is submitted. Please submit payment to the attention of the Complex Litigation Clerk located in the Civil Division at the Rene C. Davidson Courthouse, 1225 Fallon Street, Oakland, CA 94612. Please make check(s) payable to the Clerk of the Superior Court. Documents may continue to be filed as allowed under Local Rule 1.9. Note that for those admitted pro hac vice, there is also an annual fee. (Gov't Code section 70617.)

PROCEDURES

Calendar information, filings, and tentative rulings are available to the public at <http://www.alameda.courts.ca.gov/domainweb/>. All counsel are expected to be familiar and to comply with pertinent provisions of the Code of Civil Procedure, the California Rules of Court, the Alameda County Superior Court Local Rules and the procedures outlined on the domain web page of the assigned department.

SERVICE OF THIS ORDER

Order

Counsel for plaintiff(s) shall have a continuing obligation to serve a copy of this order on newly joined parties defendant not listed on the proof of service of this order and file proof of service. Each party defendant joining any third party cross-defendant shall have a continuing duty to serve a copy of this order on newly joined cross-defendants and to file proof of service.

Dated: 05/10/2019

 1322024

Judge Winifred Y. Smith

Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse

Case Number: RG19013798
Order After Hearing Re: of 05/10/2019

DECLARATION OF SERVICE BY MAIL

I certify that I am not a party to this cause and that a true and correct copy of the foregoing document was mailed first class, postage prepaid, in a sealed envelope, addressed as shown on the foregoing document or on the attached, and that the mailing of the foregoing and execution of this certificate occurred at 1225 Fallon Street, Oakland, California.

Executed on 05/15/2019.

Chad Finke Executive Officer / Clerk of the Superior Court

By ^{cc:td} C. W. F.

Deputy Clerk

<http://apps.alameda.courts.ca.gov/domainweb>.

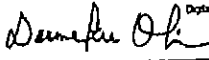
All motions in this matter to be heard prior to Complex Litigation Determination Hearing must be scheduled for hearing in Department 21.

If the information contained in this notice requires change or clarification, please contact the courtroom clerk for Department 21 by e-mail at Dept.21@alameda.courts.ca.gov or by phone at (510) 267-6937.

TELEPHONIC COURT APPEARANCES at Case Management Conferences may be available by contacting CourtCall, an independent vendor, at least 3 business days prior to the scheduled conference. Parties can make arrangements by calling (888) 882-6878, or faxing a service request form to (888) 883-2946. This service is subject to charges by the vendor.

Dated: 04/08/2019

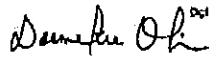
Chad Finke Executive Officer / Clerk of the Superior Court

By 
Deputy Clerk

CLERK'S CERTIFICATE OF MAILING

I certify that the following is true and correct: I am the clerk of the above-named court and not a party to this cause. I served this Notice by placing copies in envelopes addressed as shown hereon and then by sealing and placing them for collection, stamping or metering with prepaid postage, and mailing on the date stated below, in the United States mail at Alameda County, California, following standard court practices.

Executed on 04/09/2019.

By 
Deputy Clerk

COPY CM-010
FOR COURT USE ONLY

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Ronald W. Makarem, Esq. (SB#180442) Samuel D. Almon, Esq. (SB#243569) Makarem & Associates, 11601 Wilshire Blvd. Ste 2440, Los Angeles, CA 90025 TELEPHONE NO.: 310-312-0299 FAX NO.: 310-312-0298 ATTORNEY FOR (Name): Plaintiff, FRANK J. FODERA, JR. Individually and on behalf, etc.		ENDORSED FILED ALAMEDA COUNTY APR 03 2019 CLERK OF THE SUPERIOR COURT By <i>Jessie [Signature]</i> Deputy
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Alameda STREET ADDRESS: 1226 Fallon Street MAILING ADDRESS: 1226 Fallon Street CITY AND ZIP CODE: Oakland, California 94612 BRANCH NAME: René C. Davidson Courthouse		
CASE NAME: FRANK J. FODERA, JR., etc., et al. v. EQUINOX HOLDINGS, INC., etc., et al.		
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)		CASE NUMBER: RG19013798
Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)		JUDGE: DEPT:

Items 1-8 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

<input type="checkbox"/> Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorists (46) Other PUPD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PUPD/WD (23) Non-PUPD/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (18) <input type="checkbox"/> Intellectual property (10) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PUPD/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (38) <input checked="" type="checkbox"/> Other employment (16)	<input type="checkbox"/> Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (08) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) <input type="checkbox"/> Real Property <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) <input type="checkbox"/> Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Pollution re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	<input type="checkbox"/> Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) <input type="checkbox"/> Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) <input type="checkbox"/> Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (62) <input type="checkbox"/> Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|---|--|
| a. <input type="checkbox"/> Large number of separately represented parties | d. <input checked="" type="checkbox"/> Large number of witnesses |
| b. <input checked="" type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input checked="" type="checkbox"/> Substantial amount of documentary evidence | f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
3. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive
4. Number of causes of action (specify): 10
6. This case is is not a class action suit.
8. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: April 3, 2019
 Samuel D. Almon (TYPE OR PRINT NAME) *[Signature]* (SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

CM-010

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check one box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the primary cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

Auto (22)—Personal Injury/Property Damage/Wrongful Death
Uninsured Motorist (46) *(If the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto)*

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
Asbestos Property Damage
Asbestos Personal Injury/Wrongful Death
Product Liability (not asbestos or toxic/environmental) (24)
Medical Malpractice (45)
Medical Malpractice—Physicians & Surgeons
Other Professional Health Care Malpractice
Other PI/PD/WD (23)
Premises Liability (e.g., slip and fall)
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
Intentional infliction of Emotional Distress
Negligent infliction of Emotional Distress
Other PI/PD/WD

Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practices (07)
Civil Rights (e.g., discrimination, false arrest) (not civil harassment) (08)
Defamation (e.g., slander, libel) (13)
Fraud (16)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice (not medical or legal)
Other Non-PI/PD/WD Tort (35)

Employment

Wrongful Termination (36)
Other Employment (15)

Contract

Breach of Contract/Warranty (06)
Breach of Rental/Lease Contract (not unlawful detainer or wrongful eviction)
Contract/Warranty Breach—Seller Plaintiff (not fraud or negligence)
Negligent Breach of Contract/Warranty
Other Breach of Contract/Warranty
Collections (e.g., money owed, open book accounts) (09)
Collection Case—Seller Plaintiff
Other Promissory Note/Collections Case
Insurance Coverage (not provisionally complex) (18)
Auto Subrogation
Other Coverage
Other Contract (37)
Contractual Fraud
Other Contract Dispute

Real Property

Eminent Domain/Inverse Condemnation (14)
Wrongful Eviction (33)
Other Real Property (e.g., quiet title) (26)
Writ of Possession of Real Property
Mortgage Foreclosure
Quiet Title
Other Real Property (not eminent domain, landlord/tenant, or foreclosure)

Unlawful Detainer

Commercial (31)
Residential (32)
Drugs (38) *(if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential)*

Judicial Review

Asset Forfeiture (05)
Petition Re: Arbitration Award (11)
Writ of Mandate (02)
Writ—Administrative Mandamus
Writ—Mandamus on Limited Court Case Matter
Writ—Other Limited Court Case Review
Other Judicial Review (39)
Review of Health Officer Order
Notice of Appeal—Labor Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)
Construction Defect (10)
Claims Involving Mass Tort (40)
Securities Litigation (28)
Environmental/Toxic Tort (30)
Insurance Coverage Claims (arising from provisionally complex case type listed above) (41)

Enforcement of Judgment

Enforcement of Judgment (20)
Abstract of Judgment (Out of County)
Confession of Judgment (non-domestic relations)
Sister State Judgment
Administrative Agency Award (not unpaid taxes)
Petition/Certification of Entry of Judgment on Unpaid Taxes
Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

RICO (27)
Other Complaint (not specified above) (42)
Declaratory Relief Only
Injunctive Relief Only (non-harassment)
Mechanics Lien
Other Commercial Complaint Case (non-tort/non-complex)
Other Civil Complaint (non-tort/non-complex)

Miscellaneous Civil Petition

Partnership and Corporate Governance (21)
Other Petition (not specified above) (43)
Civil Harassment
Workplace Violence
Elder/Dependent Adult Abuse
Election Contest
Petition for Name Change
Petition for Relief From Lala Claim
Other Civil Petition



Superior Court of California, County of Alameda Alternative Dispute Resolution (ADR) Information Packet

The person who files a civil lawsuit (plaintiff) must include the ADR Information Packet with the complaint when serving the defendant. Cross complainants must serve the ADR Information Packet on any new parties named to the action.

The Court *strongly encourages* the parties to use some form of ADR before proceeding to trial. You may choose ADR by:

- Indicating your preference on Case Management Form CM-110;
- Filing the Stipulation to ADR and Delay Initial Case Management Conference for 90 Days (a local form included with the information packet); or
- Agree to ADR at your Initial Case Management Conference.

QUESTIONS? Call (510) 891-6055. Email adrprogram@alameda.courts.ca.gov
Or visit the court's website at <http://www.alameda.courts.ca.gov/adr>

What Are The Advantages Of Using ADR?

- *Faster* – Litigation can take years to complete but ADR usually takes weeks or months.
- *Cheaper* – Parties can save on attorneys' fees and litigation costs.
- *More control and flexibility* – Parties choose the ADR process appropriate for their case.
- *Cooperative and less stressful* – In mediation, parties cooperate to find a mutually agreeable resolution.
- *Preserve Relationships* – A mediator can help you effectively communicate your interests and point of view to the other side. This is an important benefit when you want to preserve a relationship.

What Is The Disadvantage Of Using ADR?

- *You may go to court anyway* – If you cannot resolve your dispute using ADR, you may still have to spend time and money resolving your lawsuit through the courts.

What ADR Options Are Available?

- *Mediation* – A neutral person (mediator) helps the parties communicate, clarify facts, identify legal issues, explore settlement options, and agree on a solution that is acceptable to all sides.
 - **Court Mediation Program:** Mediators do not charge fees for the first two hours of mediation. If parties need more time, they must pay the mediator's regular fees.

Some mediators ask for a deposit before mediation starts which is subject to a refund for unused time.

- **Private Mediation:** This is mediation where the parties pay the mediator's regular fees and may choose a mediator outside the court's panel.
- **Arbitration** – A neutral person (arbitrator) hears arguments and evidence from each side and then decides the outcome of the dispute. Arbitration is less formal than a trial and the rules of evidence are often relaxed. Arbitration is effective when the parties want someone other than themselves to decide the outcome.
 - **Judicial Arbitration Program (non-binding):** The judge can refer a case or the parties can agree to use judicial arbitration. The parties select an arbitrator from a list provided by the court. If the parties cannot agree on an arbitrator, one will be assigned by the court. There is no fee for the arbitrator. The arbitrator must send the decision (award of the arbitrator) to the court. The parties have the right to reject the award and proceed to trial.
 - **Private Arbitration (binding and non-binding)** occurs when parties involved in a dispute either agree or are contractually obligated. This option takes place outside of the courts and is normally binding meaning the arbitrator's decision is final.

Mediation Service Programs In Alameda County

Low cost mediation services are available through non-profit community organizations. Trained volunteer mediators provide these services. Contact the following organizations for more information:

SEEDS Community Resolution Center

1968 San Pablo Avenue, Berkeley, CA 94702-1612

Telephone: (510) 548-2377 Website: www.seedscrc.org

Their mission is to provide mediation, facilitation, training and education programs in our diverse communities – Services that Encourage Effective Dialogue and Solution-making.

Center for Community Dispute Settlement

291 McLeod Street, Livermore, CA 94550

Telephone: (925) 373-1035 Website: www.trivalleymediation.com

CCDS provides services in the Tri-Valley area for all of Alameda County.

For Victim/Offender Restorative Justice Services

Catholic Charities of the East Bay: Oakland

433 Jefferson Street, Oakland, CA 94607

Telephone: (510) 768-3100 Website: www.cceb.org

Mediation sessions involve the youth, victim, and family members work toward a mutually agreeable restitution agreement.

ALA ADR-001

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address) TELEPHONE NO.: _____ FAX NO. (Optional): _____ E-MAIL ADDRESS (Optional): _____ ATTORNEY FOR (Name): _____	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, ALAMEDA COUNTY STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME	
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	
STIPULATION TO ATTEND ALTERNATIVE DISPUTE RESOLUTION (ADR) AND DELAY INITIAL CASE MANAGEMENT CONFERENCE FOR 90 DAYS	CASE NUMBER:

INSTRUCTIONS: All applicable boxes must be checked, and the specified information must be provided.

This stipulation is effective when:

- All parties have signed and filed this stipulation with the Case Management Conference Statement at least 15 days before the initial case management conference.
- A copy of this stipulation has been received by the ADR Program Administrator, 1225 Fallon Street, Oakland, CA 94612.

1. Date complaint filed: _____, An Initial Case Management Conference is scheduled for:

Date: _____ Time: _____ Department: _____

2. Counsel and all parties certify they have met and conferred and have selected the following ADR process (check one):


- Court mediation Judicial arbitration
 Private mediation Private arbitration

3. All parties agree to complete ADR within 90 days and certify that:


- No party to the case has requested a complex civil litigation determination hearing;
- All parties have been served and intend to submit to the jurisdiction of the court;
- All parties have agreed to a specific plan for sufficient discovery to make the ADR process meaningful;
- Copies of this stipulation and self-addressed stamped envelopes are provided for returning endorsed filed stamped copies to counsel and all parties;
- Case management statements are submitted with this stipulation;
- All parties will attend ADR conferences; and,
- The court will not allow more than 90 days to complete ADR.

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

Date: _____

_____ (TYPE OR PRINT NAME)  _____ (SIGNATURE OF PLAINTIFF)

Date: _____

_____ (TYPE OR PRINT NAME)  _____ (SIGNATURE OF ATTORNEY FOR PLAINTIFF)

ALA ADR-001

PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	CASE NUMBER.:
--	---------------

Date:

_____ ▶ _____
 (TYPE OR PRINT NAME) (SIGNATURE OF DEFENDANT)

Date:

_____ ▶ _____
 (TYPE OR PRINT NAME) (SIGNATURE OF ATTORNEY FOR DEFENDANT)

EXHIBIT D



CALIFORNIA

To: KATY AREAS ESPINOZA
LAROCCA HORNIK ROSEN ET AL
THE TRUMP BLDG 40 WALL ST 32ND FL
NEW YORK, NY 10005

Service of Process #: CA005228

SERVICE OF PROCESS INFORMATION

Date Served: 7/18/2019 12:15 PM

Parties in Action: FRANK FODERA VS EQUINOX HOLDINGS, INC.

Name under which Service of Process was made: EQUINOX HOLDINGS, INC.

Court/Agency/Department: SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF ALAMEDA

Case/Instrument Number: RG19013798

Type of Service/Document(s) served: Complaint/Petition/Third Party Complaint
Summons/Citation/Third Party Summons

Method of Service: Process Server

Answer Date: 30 CALENDAR DAYS

Service received from: SAMUEL D ALMON
MAKAREM & ASSOCIATES
11601 WILSHIRE BLVD SUITE 2440
Los Angeles, California 90025
(310) 312-0299

The data provided above is for Informational purposes only and should not be considered a legal opinion. Please take appropriate action when receiving this Service of Process.

GKL Corporate/Search, Inc.
One Capitol Mall, Suite 660
Sacramento, California 95814

Toll Free: (800) 446-5455
Phone: (916) 442-7652
Fax: (916) 442-1797

1 Mia Farber (SBN 131467)
mia.farber@jacksonlewis.com
2 Nima Darouian (SBN 271367)
nima.darouian@jacksonlewis.com
3 **JACKSON LEWIS P.C.**
725 South Figueroa Street, Suite 2500
4 Los Angeles, California 90017-5408
Telephone: (213) 689-0404
5 Facsimile: (213) 689-0430

6 Attorneys for Defendant
EQUINOX HOLDINGS, INC.
7

8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**

10
11 FRANK J. FODERA, JR. and
12 MICHAEL M. BONELLA, individually
and on behalf of all others similarly
13 situated,

14 Plaintiffs,

15 v.

16 EQUINOX HOLDINGS, INC., a
17 Delaware corporation; and DOES 1-50,
18 inclusive,

19 Defendants.
20

Case No.:

**DECLARATION OF NETA
LEVANON IN SUPPORT OF
DEFENDANT'S NOTICE OF
REMOVAL OF ACTION TO THE
UNITED STATES DISTRICT
COURT FOR THE NORTHERN
DISTRICT OF CALIFORNIA**

DECLARATION OF NETA LEVANON

I, Neta Levanon, declare as follows:

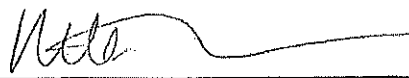
1. I hold the position of Senior Counsel for Defendant Equinox Holdings, Inc. (“Equinox” or “Defendant”). I work for Equinox in New York, New York. I am over the age of eighteen and have personal knowledge of the facts set forth herein and, if called as a witness, I could and would testify competently as to them.

2. Since the filing of this lawsuit, Defendant has at all times been incorporated under the laws of the State of Delaware. At all relevant times, Defendant’s principal place of business and corporate headquarters has been in New York, New York. Further, Defendant’s high-level corporate officers are located at its headquarters in New York, New York. Accordingly, all of Defendant’s primary, executive, administrative, financial, policymaking, and management functions are performed in the State of New York.

3. Defendant’s Board of Directors typically meets at its headquarters in New York, New York.

I declare under penalty of perjury under the laws of the United States of America and the States of California and New York that the foregoing is true and correct.

Executed on this 15th day of August, 2019 at New York, New York.



NETA LEVANON

1 Mia Farber (SBN 131467)
mia.farber@jacksonlewis.com
2 Nima Darouian (SBN 271367)
nima.darouian@jacksonlewis.com
3 **JACKSON LEWIS P.C.**
725 South Figueroa Street, Suite 2500
4 Los Angeles, California 90017-5408
Telephone: (213) 689-0404
5 Facsimile: (213) 689-0430

6 Attorneys for Defendant
EQUINOX HOLDINGS, INC.
7

8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**
10

11 FRANK J. FODERA, JR. and
12 MICHAEL M. BONELLA, individually
and on behalf of all others similarly
13 situated,

14 Plaintiffs,

15 v.

16 EQUINOX HOLDINGS, INC., a
17 Delaware corporation; and DOES 1-50,
18 inclusive,

19 Defendants.
20

Case No.:

**DECLARATION OF EMERSON
FIGUEROA IN SUPPORT OF
DEFENDANT'S NOTICE OF
REMOVAL OF ACTION TO THE
UNITED STATES DISTRICT
COURT FOR THE NORTHERN
DISTRICT OF CALIFORNIA**

DECLARATION OF EMERSON FIGUEROA

I, Emerson Figueroa, declare as follows:

1. I am currently employed by Equinox Holdings, Inc. (“Equinox”) as the Senior Regional Director of People Services (Equinox’s human resourced department) for the West Coast Region, which consists of the entire State of California.

2. I am over the age of eighteen and have personal knowledge of the facts set forth herein and, if called as a witness, I could and would testify competently as to them. I submit this declaration in support of Equinox’s Notice of Removal of Action to the United States District Court for the Northern District of California.

3. I have held my current position since April 1, 2019. Prior to that, from April 1, 2015 to March 31, 2019, I was the Regional Director of People Services for the same geographical area, and prior to that, from January 26, 2014 through March 31, 2015, I was Equinox’s Senior Manager of Human Resources for the same geographical area.

4. In my role as the Senior Regional Director of People Services for the West Coast Region, I am responsible for, among other things, providing support, leadership and oversight of People Services activities for Equinox California. In my current role, I am familiar with Equinox policies and practices and have access to personnel files, time records and pay records of employees and former employees such as Plaintiff Frank Fodera, Jr. (“Fodera”) and Michael M. Bonella (“Bonella”) (collectively, “Plaintiffs”).

5. Based on my review of personnel files, time records, and pay records, Fodera is a citizen of the United States, and he is employed with the Equinox Sports Club located in West Los Angeles, California. Furthermore, from at least on or about April 11, 2016 to the present, Fodera has represented to Equinox that he is domiciled in California. In fact, from April 2016 to the present day,

1 his home address has consistently been an address located in Los Angeles, California. At no point
2 during his employment with Equinox has Fodera ever communicated to People Services that he has
3 another home in a different state, or that he intends on returning to a different state.

4 6. Based on my review of personnel files, time records, and pay records, Bonella is a
5 citizen of the United States, and was formerly employed with the Equinox's Pine Street Club in San
6 Francisco, California and Equinox's La Costa Club in Carlsbad, California. Furthermore, from at
7 least October 27, 2015 to June 6, 2018, Bonella represented to Equinox that he was domiciled in
8 California. In fact, from October 27, 2015 to June 6, 2018 (*i.e.*, the end of Bonella's employment
9 with Equinox), his home addresses were consistently addresses located in California. At no point
10 during his employment with Equinox did Bonella communicate to People Services that he had another
11 home in a different state, or that he intended on returning to a different state.

12 7. Based on my review of personnel files, time records, and pay records, Fodera has been
13 employed by Equinox since April 11, 2016. Throughout his employment with Equinox, Fodera has
14 been paid on a biweekly basis. The first pay period that Fodera received a pay statement from
15 Equinox was the pay period ending on April 16, 2016. From April 16, 2016 to the present day, there
16 have been approximately 86 pay periods for which Fodera received a pay statement.

17 8. Based on my review of personnel files, time records, and pay records, Bonella was
18 employed by Equinox from October 27, 2015 through June 6, 2018. Throughout his employment
19 with Equinox, Bonella was paid on a biweekly basis. The first pay period that Bonella received a pay
20 statement from Equinox was the pay period ending on October 31, 2015. From October 31, 2015 to
21 June 6, 2018 (the last date of employment), there were approximately 68 pay periods for which
22 Bonella received a pay statement.

23 9. Based on my review of personnel files, time records, and pay records, approximately
24
25
26
27

1 2,495 individuals formerly employed as personal trainers, group fitness instructors, or both, in
2 California left their employment with Defendant or were otherwise "terminated" between April 3,
3 2015 to July 17, 2019.

4 10. Based on my review of personnel files, time records, and pay records, from April 3,
5 2018 to approximately April 3, 2019, there are/were approximately 2,414 current and former non-
6 exempt employees employed by Defendant as personal trainers, group fitness instructors, or both, in
7 California.

9 11. It is my understanding members of the putative class who work or worked for
10 Defendant are/were paid biweekly, or every two weeks.

11 12. Based on my review of personnel files, time records, and pay records, the putative
12 class includes approximately 4,299 current and former employees who were employed by Defendant
13 as personal trainers, group fitness instructors, or both, in California between April 3, 2015 and
14 approximately August 6, 2019.

16 I declare under penalty of perjury under the laws of the United States of America and the State
17 of California that the foregoing is true and correct.

18 Execution on this 16th day of August, 2019 at Los Angeles, California.

20
21 EMERSON FIGUEROA
22
23
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25
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27

JS-CAND 44 (Rev. 07/19)

CIVIL COVER SHEET

The JS-CAND 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Frank Fodera and Michael M. Bonella, individually and on behalf of others similarly situated

(b) County of Residence of First Listed Plaintiff Los Angeles, CA
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Ronald V. Makarem, Esq. (SBN 180442); Samuel D. Amon, Esq. (243569); Makarem & Associates, 11601 Wilshire Blvd., Suite 2440, Los Angeles, CA 90025-1760 (310) 312-0299

DEFENDANTS

Equinox Holdings, Inc.

County of Residence of First Listed Defendant New York
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)
Mia Farber, Esq. (SBN 131467); Nima Darouian, Esq. (271367), Jackson Lewis P.C., 725 South Figueroa St., Suite 2500
Los Angeles, CA 90017-5408 (213) 689-0404

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Incorporated or Principal Place of Business In This State	<input type="checkbox"/>	<input type="checkbox"/>
Citizen of Another State	<input type="checkbox"/>	<input type="checkbox"/>	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Citizen or Subject of a Foreign Country	<input type="checkbox"/>	<input type="checkbox"/>	Foreign Nation	<input type="checkbox"/>	<input type="checkbox"/>

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
110 Insurance	PERSONAL INJURY 310 Airplane 315 Airplane Product Liability 320 Assault, Libel & Slander 330 Federal Employers' Liability 340 Marine 345 Marine Product Liability 350 Motor Vehicle 355 Motor Vehicle Product Liability 360 Other Personal Injury 362 Personal Injury -Medical Malpractice	PERSONAL INJURY 365 Personal Injury -Product Liability 367 Health Care/Pharmaceutical Personal Injury Product Liability 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY 370 Other Fraud 371 Truth in Lending 380 Other Personal Property Damage 385 Property Damage Product Liability	625 Drug Related Seizure of Property 21 USC § 881 690 Other LABOR 710 Fair Labor Standards Act 720 Labor/Management Relations 740 Railway Labor Act 751 Family and Medical Leave Act <input checked="" type="checkbox"/> 790 Other Labor Litigation 791 Employee Retirement Income Security Act IMMIGRATION 462 Naturalization Application 465 Other Immigration Actions	422 Appeal 28 USC § 158 423 Withdrawal 28 USC § 157 PROPERTY RIGHTS 820 Copyrights 830 Patent 835 Patent-Abbreviated New Drug Application 840 Trademark SOCIAL SECURITY 861 HIA (1395ff) 862 Black Lung (923) 863 DIWC/DIWW (405(g)) 864 SSID Title XVI 865 RSI (405(g)) FEDERAL TAX SUITS 870 Taxes (U.S. Plaintiff or Defendant) 871 IRS-Third Party 26 USC § 7609	375 False Claims Act 376 Qui Tam (31 USC § 3729(a)) 400 State Reapportionment 410 Antitrust 430 Banks and Banking 450 Commerce 460 Deportation 470 Racketeer Influenced & Corrupt Organizations 480 Consumer Credit 485 Telephone Consumer Protection Act 490 Cable/Sat TV 850 Securities/Commodities/Exchange 890 Other Statutory Actions 891 Agricultural Acts 893 Environmental Matters 895 Freedom of Information Act 896 Arbitration 899 Administrative Procedure Act/Review or Appeal of Agency Decision 950 Constitutionality of State Statutes
REAL PROPERTY 210 Land Condemnation 220 Foreclosure 230 Rent Lease & Ejectment 240 Torts to Land 245 Tort Product Liability 290 All Other Real Property	CIVIL RIGHTS 440 Other Civil Rights 441 Voting 442 Employment 443 Housing/Accommodations 445 Amer. w/Disabilities-Employment 446 Amer. w/Disabilities-Other 448 Education	PRISONER PETITIONS HABEAS CORPUS 463 Alien Detainee 510 Motions to Vacate Sentence 530 General 535 Death Penalty OTHER 540 Mandamus & Other 550 Civil Rights 555 Prison Condition 560 Civil Detainee-Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from Another District (specify)
- 6 Multidistrict Litigation-Transfer
- 8 Multidistrict Litigation-Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 U.S.C. sections 1332, 1367, 1441, and 1446

Brief description of cause:

Alleged violation of California Labor Code

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P. DEMAND \$

CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S), IF ANY (See instructions):

JUDGE

DOCKET NUMBER

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)

(Place an "X" in One Box Only) SAN FRANCISCO/OAKLAND SAN JOSE EUREKA-MCKINLEYVILLE

DATE 08/16/2019

SIGNATURE OF ATTORNEY OF RECORD

/s/ Mia Farber

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Equinox Facing Class Action Over Alleged Failure to Pay for Overtime, Off-the-Clock Work](#)
