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**FILED**  
Superior Court of California  
County of Alameda  
01/31/2023  
Clad Fluke, Executive Officer / Clerk of the Court  
By:                     A. Linhares                     Deputy

7 Attorneys for Plaintiffs RENEE PORTER and  
8 JOSHUA TOLIN, FRANK J. FODERA, JR.,  
9 MICHAEL M BONELLA, and GENEVIEVE  
10 BILLSON

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

13 RENEE PORTER and JOSHUA TOLIN,  
14 individually and on behalf of all others  
15 similarly situated,

16 Plaintiffs,

17 vs.

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

20 Defendants.

CASE NO.: RG19009052

~~PROPOSED~~ **SECOND AMENDED CLASS  
AND PAGA REPRESENTATIVE  
COMPLAINT**

- (1) **Failure to Pay Minimum Wage;**
- (2) **Failure to Pay Overtime Wages;**
- (3) **Failure To Provide Meal Periods;**
- (4) **Failure To Provide Rest Periods;**
- (5) **Failure To Pay for Rest and Recovery  
Periods;**
- (6) **Failure to Furnish Accurate Wage  
Statements;**
- (7) **Failure to Pay Earned Wages Upon  
Termination;**
- (8) **Unfair Competition in Violation of  
Business and Professions Code  
Sections 17200, et seq.**
- (9) **Private Attorneys General Act, Labor  
Code sections 2698, et seq.**

21 **[JURY TRIAL DEMANDED]**

1 COME NOW Plaintiffs RENEE PORTER, JOSHUA TOLIN, FRANK J. FODERA, JR.,  
2 MICHAEL M. BONELLA, and GENEVIEVE BILLSON (“Plaintiffs”), on behalf of themselves  
3 and all others similarly situated, and as Private Attorneys General Act Representatives of  
4 similarly aggrieved individuals in the State of California, hereby respectfully allege, aver, and  
5 complain as follows:

6 **INTRODUCTION**

7 1. This is a class and representative action brought on behalf of Plaintiffs individually,  
8 on behalf of all other individuals similarly situated, and on behalf of all other individuals similarly  
9 aggrieved, who worked for Equinox Holdings, Inc. (“Equinox”) and Does 1 through 50 (together  
10 with Equinox, “Defendants”), against Defendants for violation of the California Labor Code, IWC  
11 Wage Orders, and Private Attorneys General Act (“PAGA”) (Labor Code sections 2698, *et seq.*).

12 2. Plaintiffs, all other individuals similarly situated, and all other individuals similarly  
13 aggrieved, are or were employed by Defendants as non-exempt employees in California during the  
14 relevant Class Period and PAGA Period, and were denied benefits and protections required under  
15 the California Labor Code and other statutes and regulations applicable to employees in the State  
16 of California.

17 3. Plaintiffs and the other similarly situated and aggrieved employees allege that  
18 Defendants (1) failed to pay Plaintiffs and other similarly situated and aggrieved employees  
19 required minimum wages; (2) failed to pay Plaintiffs and other similarly situated and aggrieved  
20 employees required overtime wages; (3) failed to provide Plaintiffs and other similarly situated and  
21 aggrieved employees with compliant meal periods and failed to pay one hour of pay at other  
22 similarly situated and aggrieved employees’ regular rate of compensation for each workday that a  
23 compliant meal period was not provided; (4) failed to authorize and permit compliant rest periods  
24 and failed to pay one hour of pay at Plaintiffs’ and other similarly situated and aggrieved  
25 employees’ regular rate of compensation for each workday that a compliant rest period was not  
26 authorized and permitted; (5) failed to pay Plaintiffs and other similarly situated and aggrieved  
27 employees for rest and recovery periods separately from, and in addition to, their piece-rate pay  
28



1 Alameda County, and Defendants are found, maintain offices in, and/or transact business in  
2 Alameda County.

3 **THE PARTIES**

4 7. Plaintiff RENEE PORTER (“Porter”) is a resident of Los Angeles County,  
5 California, and has been employed by Defendants as a non-exempt employee since 2015. Porter  
6 has been employed by Defendants as a personal trainer during her entire employment with  
7 Defendants.

8 8. Plaintiff JOSHUA TOLIN (“Tolin”) is a resident of Los Angeles County, California,  
9 and was employed by Defendants as a non-exempt employee from approximately August 2016  
10 through April 2018. Tolin was employed by Defendants as a personal trainer during his entire  
11 employment with Defendant.

12 9. Plaintiff FRANK J. FODERA, JR. (“Fodera”) is a resident of Los Angeles County,  
13 California, and was employed by Defendants in Los Angeles County, California, as a non-exempt  
14 employee within the last four years preceding the filing of this action. Fodera is employed by  
15 Defendants as a group fitness instructor in California, and within the four last four years preceding  
16 the filing of this action, Fodera was employed by Defendants as a personal trainer in California.

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

23 11. Plaintiff GENEVIEVE BILLSON (“Billson”) is a resident of Los Angeles County,  
24 California, and was employed by Defendants in Los Angeles County, California, as a non-exempt  
25 employee within the last four years preceding the filing of this action. Billson was employed by  
26 Defendants as a Pilates instructor and group fitness instructor in California, and within the four  
27 years preceding the filing of this Action.  
28

1           12. 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           13. 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           14. 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           15. 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           16. 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           17. 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 18. 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 19. This is an action to vindicate rights afforded to Plaintiffs and other similarly situated  
7 and aggrieved employees by California labor law. This action is brought on behalf of Plaintiffs and  
8 all other similarly situated and aggrieved individuals employed by Defendants during the time  
9 frames alleged herein.

10 20. On information and belief, Defendants are in the business of, among other things,  
11 owning and operating luxury health clubs throughout California. According to Defendants' website,  
12 Defendants currently have approximately 32 locations in California, including in Alameda County.

13 21. Defendants employ group fitness instructors, Pilates instructors, and personal trainers  
14 at their health clubs, including in Alameda County, as non-exempt employees. Defendants also  
15 employ individuals in other non-exempt positions such as, by way of example only, membership  
16 sales, spa therapists/estheticians, maintenance, retail shop, front desk, and administrative.

17 22. During Plaintiffs' entire employment with Defendants, Plaintiffs and other similarly  
18 situated and aggrieved employees were not exempt from the Employment Laws and Regulations,  
19 and Defendants treated Plaintiffs and other similarly situated and aggrieved employees as non-  
20 exempt employees. Plaintiffs and other similarly situated and aggrieved employees primarily  
21 engaged in non-exempt duties delegated to non-exempt employees such as, for example, personal  
22 training of clients, cleaning the facilities, preparing client exercise programs, communicating with  
23 clients outside of personal training sessions, and attending mandatory meetings and trainings.

24 23. During Plaintiffs' and other similarly situated and aggrieved employees' entire  
25 employment with Defendants, Plaintiffs and other similarly situated and aggrieved employees spent  
26 few to none of their working hours performing work which was primarily intellectual, managerial  
27 or creative, or which required the regular and customary exercise of discretion and independent  
28

1 judgment with respect to matters of significance on more than an occasional basis.

2 24. Plaintiffs and other similarly situated and aggrieved employees were not paid for all  
3 wages earned and labor performed each pay period. For example, Defendants suffered or permitted  
4 Plaintiffs and other similarly situated and aggrieved employees to work off the clock, such as by  
5 communicating with personal training clients, creating client programs, responding to supervisors,  
6 and scheduling work meetings, among other things, and such hours were neither recorded nor paid  
7 by Defendants.

8 25. Plaintiffs and other similarly situated and aggrieved employees were not paid their  
9 earned minimum wages for all hours worked. For example, Defendants suffered or permitted  
10 Plaintiffs and other similarly situated and aggrieved employees to work off the clock, such as by  
11 communicating with personal training clients, creating client programs, responding to supervisors,  
12 and scheduling work meetings, among other things, and such hours were neither recorded nor paid  
13 by Defendants.

14 26. Plaintiffs and other similarly situated and aggrieved employees were not paid their  
15 earned overtime wages for all overtime hours worked. For example, Defendants suffered or  
16 permitted Plaintiffs and other similarly situated and aggrieved employees to work off the clock, but  
17 did not pay Plaintiffs and other similarly situated and aggrieved employees for that time, nor count  
18 that time in calculating overtime. This often occurred on occasions when Plaintiffs and other  
19 similarly situated and aggrieved employees worked in excess of eight hours in a day or 40 hours in  
20 a week.

21 27. Plaintiffs and other similarly situated and aggrieved employees were not provided  
22 timely, compliant meal periods. For example, Plaintiffs and other similarly situated and aggrieved  
23 employees were often required to take meal periods of less than 30 minutes in order to avoid being  
24 late for their next personal training session. As another example, Defendants often failed to provide  
25 meal periods until after Plaintiffs and other similarly situated and aggrieved employees had  
26 completed a work period of more than five hours. On occasions when Plaintiff and other similarly  
27

1 situated and aggrieved employees did not receive a compliant 30-minute meal period, they were not  
2 compensated the requisite one hour of pay at their regular rate of pay.

3 28. Plaintiffs and other similarly situated and aggrieved employees were not provided  
4 timely, compliant rest periods. For example, Plaintiffs and other similarly situated and aggrieved  
5 employees often performed four hours of personal training sessions in a row without receiving a  
6 ten-minute rest period. On occasions when Plaintiff and other similarly situated and aggrieved  
7 employees did not receive a compliant 10-minute rest period, they were not compensated the  
8 requisite one hour of pay at their regular rate of pay.

9 29. Under Defendants' compensation policies, Plaintiffs and other similarly situated and  
10 aggrieved employees were owed piece-rate pay for performing certain tasks such as personal  
11 training sessions, yet Plaintiffs and other similarly situated and aggrieved employees were not paid  
12 for rest and recovery periods and other nonproductive time separate from any piece-rate  
13 compensation.

14 30. As a result of the unpaid wage, unpaid overtime, meal break, rest break and other  
15 Labor Code violations set forth above, Defendants failed to furnish Plaintiffs and other similarly  
16 situated and aggrieved employees compliant wage statements that accurately reflected, *inter alia*,  
17 hours worked, overtime, and meal and rest break premiums. Consequently, Defendants also failed  
18 to maintain compliant payroll records. Wage statements issued by Defendants to the Other similarly  
19 situated and aggrieved employees also fail to accurately reflect the total hours worked and all  
20 applicable hourly rates and the corresponding number of hours worked at each hourly rate for each  
21 pay period in which a wage statement contains one or more of the Overtime Prem, Break Premium,  
22 CanXNo show, PT Ses Cancel, Pilates No Show, or CA Rest Break.

23 31. For those Plaintiffs and other similarly situated and aggrieved employees who were  
24 discharged or terminated, these unpaid and premium wages were due and payable in accordance  
25 with Labor Code sections 201 and 202. When Defendants failed to pay these individuals upon  
26 termination of their employment, Defendants further violated Labor Code sections 201 or 202.

27 32. Plaintiffs also seek reasonable attorneys' fees pursuant to California Labor Code  
28



1 sections 2699(g)(1), 218.5 and any other applicable Labor Code sections.

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

9 34. Plaintiffs also seek recovery of civil penalties as provided for under PAGA.

10 **CLASS ACTION ALLEGATIONS**

11 35. Plaintiffs bring this action, on behalf of themselves and all other similarly situated  
12 persons, as a class action pursuant to Code of Civil Procedure section 382. The Class Plaintiffs seek  
13 to represent is composed of and defined as follows: "All individuals employed by Equinox as a non-  
14 exempt employee in California from April 3, 2015 through the present."

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

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

25 38. **Superiority (C.C.P. § 382):** The nature of this action and the nature of laws available  
26 to Plaintiffs make the use of the class action format particularly efficient and appropriate. By  
27 establishing a technique whereby the claims of many individuals can be resolved at the same time,  
28

1 the class suit both eliminates the possibility of repetitious litigation and provides small claimants  
2 with a method of obtaining redress for claims which would otherwise be too small to warrant  
3 individual litigation. Class action treatment will allow a large number of similarly situated persons  
4 to prosecute their common claims in a single forum, simultaneously, efficiently, and without the  
5 unnecessary duplication of effort and expense that numerous individual actions would require. The  
6 actual monetary recovery due to most of the individual other similarly situated and aggrieved  
7 employees is likely to be small, and the burden and expense of individual litigation would make it  
8 prohibitive for individual other similarly situated and aggrieved employees to seek relief. A class  
9 action will serve an important public interest by permitting such individuals to effectively pursue  
10 recovery of the sums owed to them. Further, class litigation prevents the potential for inconsistent  
11 or contradictory judgments if individual other similarly situated and aggrieved employees were to  
12 litigate separately.

13       39. **Well-defined Community of Interest:** Plaintiffs also meet the three factors for  
14 establishing a community of interest: (1) predominant common questions of law or fact; (2) a class  
15 representative with claims or defenses typical of the class; and (3) a class representative who can  
16 adequately represent the class, (*see, e.g. Lockheed Martin Corp. v. Superior Court* (2003) 29 Cal.4<sup>th</sup>  
17 1096), as follows:

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

- 21           a. Whether Defendants violated Labor Code Section 1194 by not paying other  
22 similarly situated employees the legal minimum wage for all hours worked;
- 23           b. Whether Defendants violated Labor Code Sections 510 and 1194 by not properly  
24 paying overtime wages to other similarly situated employees for all hours worked  
25 in excess of eight hours in one day, in excess of 40 hours in one workweek, and in  
26 during the first eight hours on the seventh day of work in one workweek, and by  
27 failing to pay other similarly situated employees their overtime wages a the  
28

1 required double time rate for hours worked in excess of 12 hours a day and in  
2 excess of eight hours on the seventh day of a workweek;

- 3 c. Whether Defendants violated Labor Code Section 512 by not providing other  
4 similarly situated employees with compliant meal periods;
- 5 d. Whether Defendants violated Labor Code Section 512 by not authorizing and  
6 permitting other similarly situated employees to take compliant rest periods;
- 7 e. Whether Defendants violated Labor Code Section 226.7 by not paying other  
8 similarly situated employees additional pay for shifts when other similarly situated  
9 and did not receive compliant meal or rest periods;
- 10 f. Whether Defendants violated Labor Code Section 226.7 by not paying other  
11 similarly situated employees additional premium pay at the proper regular rate of  
12 compensation for shifts when other similarly situated employees did not receive  
13 compliant meal or rest periods;
- 14 g. Whether Defendants violated Labor code section 226.2 by not paying other  
15 similarly situated employees separately for rest and recovery periods with respect  
16 to work performed on a piece-rate basis, and by not properly calculating  
17 compensation for such rest and recovery periods;
- 18 h. Whether Defendants violated Labor Code Section 226(a) by not providing other  
19 similarly situated employees with accurate wage statements;
- 20 i. Whether Defendants are liable for penalties for failure to maintain the records  
21 required under Labor Code Sections 226 and 1174;
- 22 j. Whether Defendants violated Labor Code Sections 201 or 202 by not paying other  
23 similarly situated employees all wages due upon termination in a timely manner;
- 24 k. Whether other similarly situated employees who are no longer working for  
25 Defendants are entitled to waiting time penalties under Labor Code Section 203;
- 26 l. Whether Defendants' conduct constituted unfair competition or an unlawful  
27 business practice under Business and Professions Code Section 17200, *et seq.*  
28

- 1 m. Whether injunctive relief is appropriate to ensure Defendants' compliance with  
2 the Labor Code with respect to members of the Class currently working for  
3 Defendants;  
4 n. Whether other similarly situated employees are entitled to attorneys' fees;  
5 o. Whether other similarly situated employees are entitled to pre-judgment interest;  
6 p. Whether other similarly situated employees are entitled to restitution; and  
7 q. Whether the fact each employee might be required to ultimately justify an  
8 individual claim does or does not preclude maintenance of a class action. *See*  
9 *Collins v. Rocha* (1972) 7 Cal.2d 232.

10 41. **Typicality:** The claims of Plaintiffs are typical of the claims of all members of the  
11 Class they seek to represent because all members of the Class sustained injuries and damages arising  
12 out of Defendants' policies, practices, and common course of conduct in violation of law, and the  
13 injuries and damages of all members of the Class were caused by Defendants' wrongful conduct in  
14 said violation of law, as alleged herein.

15 42. **Adequacy:** Plaintiffs Renee Porter, Joshua Tolin, Frank J. Fodera, Jr., Genevieve  
16 Billson, and Michael M. Bonella:

- 17 a. are adequate representatives of the Class they seek to represent;  
18 b. will fairly protect the interests of the members of the Class;  
19 c. have no interests antagonistic to the members of the Class; and  
20 d. will vigorously pursue this suit via attorneys who are competent, skilled and  
21 experienced in litigating matters of this type.

## 22 **FIRST CAUSE OF ACTION**

### 23 **For Failure to Pay Minimum Wage**

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

26 44. At all relevant times, Plaintiffs and other similarly situated and aggrieved employees  
27 were employees covered by Labor Code section 1194 and the applicable Industrial Wage Order.  
28



1           52. At all relevant times, Plaintiffs and the other similarly situated and aggrieved  
2 employees were employees covered by Labor Code Sections 510, 1194 and the applicable Industrial  
3 Wage Order.

4           53. Pursuant to Labor Code Sections 510, 1194 and the applicable Industrial Wage Order,  
5 Plaintiffs and the other similarly situated and aggrieved employees were entitled to overtime wages  
6 payable at the rate of at least one and one-half times their regular rate of pay for all work in excess  
7 of eight hours in one workday, in excess of forty hours in one workweek, or during the first eight  
8 hours worked on the seventh day of one workweek, and payable at the rate of at least twice the  
9 regular rate of pay for all work in excess of twelve hours in one workday or in excess of eight hours  
10 worked on the seventh day of one workweek.

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

19           55. Plaintiffs are informed and believe and thereon allege that at all relevant times within  
20 the applicable class period, Defendants maintained and continue to maintain a policy or practice of  
21 undercalculating Plaintiffs' and other similarly situated and aggrieved employees' regular rate of  
22 pay, including by failing to include all earned nondiscretionary bonuses in Plaintiffs' and other  
23 similarly situated and aggrieved employees' regular rate of pay.

24           56. California law does not allow an employer to avoid paying its employees for all hours  
25 worked by averaging total compensation over total hours worked. *See, e.g., Gonzalez v. Downtown*  
26 *LA Motors, LP*, 215 Cal. App. 4th 36, 40-41 (2013); *Armenta v. Osmose, Inc.*, 135 Cal. App. 4th  
27 314, 324 (2005).  
28



1 64. No other similarly situated and aggrieved employees, including Plaintiffs, are exempt  
2 from the meal period requirements of the Employment Laws and Regulations.

3 65. As a result of Defendants' unlawful conduct, Plaintiffs and other similarly situated  
4 and aggrieved employees have suffered damages in an amount, subject to proof, to the extent they  
5 were not paid additional pay for meal period violations.

6 **FOURTH CAUSE OF ACTION**

7 **For Failure to Provide Rest Periods**

8 66. Plaintiffs incorporate by reference and reallege as if fully stated herein all the  
9 allegations set out above in the preceding paragraphs.

10 67. At all relevant times, Plaintiffs and other similarly situated and aggrieved employees  
11 were employees covered by Labor Code Sections 226.7 and 512, and the applicable Industrial Wage  
12 Order.

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

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

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

25 71. No other similarly situated and aggrieved employees, including Plaintiffs, are exempt  
26 from the rest period requirements of the Employment Laws and Regulations, including failing to  
27

28



1 compensate other similarly situated and aggrieved employees at the appropriate regular rate of  
2 compensation.

3 72. As a result of Defendants' unlawful conduct, Plaintiffs and other similarly situated  
4 and aggrieved employees have suffered damages in an amount, subject to proof, to the extent they  
5 were not paid additional pay for rest period violations.

6 **FIFTH CAUSE OF ACTION**

7 **For Failure to Pay for Rest and Recovery Periods**

8 **(Against All Defendants as to the Fitness Instructor Class)**

9 73. Plaintiffs incorporate by reference and reallege as if fully stated herein all the  
10 allegations set out above in the preceding paragraphs.

11 74. At all relevant times, Plaintiffs and other similarly situated and aggrieved employees  
12 were employees covered by Labor Code Section 226.2 and the applicable Industrial Wage Order.

13 75. Labor Code Section 226.2 provides that employees shall be compensated for rest and  
14 recovery periods and other nonproductive time separate from any piece-rate compensation.

15 76. Labor Code Section 226.2 further provides that employees shall be compensated for  
16 rest and recovery periods at a regular hourly rate that is no less than the higher of: (i) an average  
17 hourly rate determined by dividing the total compensation for the workweek, exclusive of  
18 compensation for rest and recovery periods and any premium compensation for overtime, by the  
19 total hours worked during the workweek, exclusive of rest and recovery periods, or (ii) the applicable  
20 minimum wage.

21 77. Plaintiffs are informed and believes and thereon allege that at all relevant times within  
22 the applicable Class Period, Defendants failed to pay Plaintiffs and other similarly situated and  
23 aggrieved employees for rest and recovery periods and other nonproductive time separate from any  
24 piece-rate compensation.

25 78. Plaintiffs are further informed and believes and thereon allege that at all relevant times  
26 within the applicable Class Period, Defendants failed to properly calculate the regular hourly rate of  
27 compensation for rest and recovery periods and other nonproductive time.  
28

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

5 80. Pursuant to Labor Code Section 1194, Plaintiffs and other similarly situated and  
6 aggrieved employees are entitled to recover the full amount of their unpaid wages, prejudgment  
7 interest, reasonable attorneys' fees and costs of suit.

8 81. Pursuant to Labor Code Section 1194.2, Plaintiffs and other similarly situated and  
9 aggrieved employees are entitled to recover liquidated damages in an amount equal to the wages  
10 unlawfully unpaid and interest thereon.

11 **SIXTH CAUSE OF ACTION**

12 **Failure to Furnish Accurate Wage Statements**

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

15 83. At all relevant times, Plaintiffs and other similarly situated and aggrieved employees  
16 were employees of Defendants covered by Labor Code Section 226.

17 84. 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 85. Further, the relevant wage orders of the Industrial Welfare Commission applicable to  
4 Plaintiffs' and other similarly situated and aggrieved employees' employment with Defendants  
5 require employers to maintain accurate information regarding, among other items, "[t]ime records  
6 showing when the employee begins and ends each work period. Meal periods, split shift intervals  
7 and total daily hours worked shall also be recorded. Meal periods during which operations cease  
8 and authorized rest periods need not be recorded."

9 86. 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 other similarly situated and  
12 aggrieved employees, when Plaintiffs and other similarly situated and aggrieved employees took  
13 required meal and rest periods, meal and rest period premiums that were owed to Plaintiffs and other  
14 similarly situated and aggrieved employees, and the number of piece-rate units earned and any  
15 applicable piece rate.

16 87. At all material times set forth herein, with respect to all other similarly situated and  
17 aggrieved employees, Defendants either recklessly or intentionally failed to provide accurate  
18 itemized wage statements in that the wage statements issued by Defendants to the other similarly  
19 situated and aggrieved employees fail to accurately reflect the total hours worked and all applicable  
20 hourly rates and the corresponding number of hours worked at each hourly rate for each work week  
21 a Class member both worked overtime and earned non-discretionary, non-hourly pay such as piece  
22 rate, commissions, or bonuses. In particular, because certain wage statements have two separate line  
23 items each stating the overtime hours worked as well as breaking down the applicable overtime rate  
24 into two separate line items, the wage statements do not accurately reflect the total hours worked  
25 since they double count any overtime hours, and they do not accurately state the applicable overtime  
26 rate(s). Defendants' wage statements also include "hours worked" attributable to payment of meal  
27 and rest period premium wages, as well as "hours worked" attributable to canceled sessions or  
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1 sessions for which the client did not show up, in the calculation of the total hours worked in a pay  
2 period even though even though other similarly situated and aggrieved employees are not actually  
3 working or on the clock with respect to such time, and the wage statements accordingly do not  
4 accurately reflect the actual total hours worked by the other similarly situated and aggrieved  
5 employees. Defendants' wage statements also failed to state the correct regular rate for  
6 compensation for payment of meal period premium wages. These violations are both derivative of  
7 the claims for unpaid wages as well as "stand alone" violations evident on the face of the wage  
8 statements as to all other similarly situated and aggrieved employees.

9 88. As a result of Defendants' unlawful conduct, Plaintiffs and other similarly situated  
10 and aggrieved employees have suffered actual injury within the meaning of California Labor Code  
11 section 226(e) and are each entitled to recover from Defendants the greater of their actual monetary  
12 damages caused by Defendants' failure to comply with California Labor Code section 226(a), or an  
13 aggregate penalty not exceeding four thousand dollars (\$4,000) per employee, at a rate of \$50 per  
14 pay period with incomplete or inaccurate wage statement, and an award of costs and reasonable  
15 attorneys' fees pursuant to California Labor Code section 226(e).

#### 16 **SEVENTH CAUSE OF ACTION**

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

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

20 90. At all relevant times, Plaintiffs and other similarly situated and aggrieved employees  
21 who quit, were discharged, or terminated (collectively referred to as "Terminated" or  
22 "Termination") from employment with Defendants are and were covered by Labor Code sections  
23 201 and/or 202.

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

4 92. Defendants failed to pay those Plaintiffs and other similarly situated and aggrieved  
5 employees no longer employed with Defendants all wages earned and unpaid at the time of  
6 Termination timely in accordance with Labor Code sections 201 and 202. Their earned and unpaid  
7 wages at the time of termination include, but are not limited to, hours worked off the clock, hours  
8 worked overtime, additional pay for missed or non-compliant meal and rest periods, unpaid piece-  
9 rate compensation due, unpaid compensation for rest and recovery periods and other nonproductive  
10 time separate from any piece-rate compensation due other terminated similarly situated and  
11 aggrieved employees, and unpaid bonuses.

12 93. Defendants' failure to pay Plaintiffs and other similarly situated and aggrieved  
13 employees who are no longer employed all wages earned prior to termination in accordance with  
14 Labor Code sections 201 and 202 was willful. Defendants had the ability to pay all wages earned  
15 by employees prior to termination in accordance with Labor Code sections 201 and 202, but  
16 intentionally followed a practice or adopted a policy that violated Labor Code sections 201 and 202.

17 94. Pursuant to Labor Code sections 201 and 202, Plaintiffs and other terminated similarly  
18 situated and aggrieved employees are entitled to all wages earned prior to termination that  
19 Defendants failed to pay them.

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

24 96. Therefore, Plaintiffs and other terminated similarly situated and aggrieved employees  
25 are entitled to recover from Defendants the statutory penalty for each day they were not paid, at their  
26 regular rate of pay – not to exceed 30 days – pursuant to California Labor Code section 203.  
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1 97. Pursuant to Labor Code sections 218 and 218.5, Plaintiffs and other terminated  
2 similarly situated and aggrieved employees are entitled to recover their unpaid wages, waiting time  
3 penalties under Labor Code section 203, reasonable attorneys' fees and costs of suit. Pursuant to  
4 Labor Code section 218.6 and/or Civil Code section 3287(a), other terminated similarly situated and  
5 aggrieved employees are entitled to recover prejudgment interest.

6 **EIGHTH CAUSE OF ACTION**

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

8 98. Plaintiffs incorporate by reference and reallege as if fully stated herein all the  
9 allegations set out above in the preceding paragraphs.

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

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

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

24 102. Pursuant to Business & Professions Code section 17203, Defendants' unfair business  
25 practices entitle Plaintiffs to seek preliminary and permanent injunctive relief including, but not  
26 limited to, orders that Defendants account for, disgorge, and restore to Plaintiffs and other similarly  
27 situated and aggrieved employees all compensation unlawfully withheld from them.

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

5 **NINTH CAUSE OF ACTION**

6 **Violation of Private Attorneys General Act (Labor Code § 2698 *et seq.*)**

7 104. Plaintiffs incorporate by reference and reallege as if fully stated herein the material  
8 allegations set out above in the preceding paragraphs.

9 105. As a result of the acts alleged above, Plaintiffs seek civil penalties under California  
10 Labor Code sections 2698, *et seq.*, because of Defendants' violations of California Labor Code  
11 sections 201, 202, 203, 204, 226, 226.2, 226.7, 510, 512, 1174, 1174.5, and 1194.

12 106. Plaintiffs were employed with Defendants within one year of the filing of this  
13 California Private Attorneys' General Act ("PAGA") claim and within one year of the written notice  
14 served on or about October 25, 2018 and suffered one or more of the Labor Code violations set forth  
15 in this complaint.

16 107. For each violation, Plaintiffs, on behalf of themselves and other current and former  
17 employees of Defendants, seek any and all applicable legal penalties and amounts due, pursuant to  
18 PAGA and as otherwise provided by statute, for which Defendants are liable as a result of their  
19 violations of the above mentioned Labor Code sections, in an amount according to proof at trial.

20 108. Plaintiffs additionally seek reasonable attorneys' fees and costs pursuant to California  
21 Labor Code section 2699(g)(1).

22 109. Plaintiffs have complied with all requirements set forth in Labor Code section 2699.3  
23 to bring this civil action against the named Defendants. On or about October 25, 2018, Plaintiffs  
24 gave written notice by online filing with the Labor and Workforce Development Agency (the  
25 "LWDA"), and by certified mail to Defendants, of the specific provisions of the Labor Code alleged  
26 to have been violated, including the facts and theories to support the alleged violations. The LWDA  
27 did not provide written notice of its intention to investigate the claimed violations within 65 calendar  
28 days of the postmark of the date of the notice.





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- iii. Costs of suit; and
- iv. Such other relief as the Court deems just and proper;

f) ON THE FOURTH 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 FIFTH 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 SIXTH 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.

i) ON THE SEVENTH 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 EIGHTH CAUSE OF ACTION

- i. Restitution of all unpaid wages and other monies owed and belonging to Other similarly situated and aggrieved employees 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.

l) ON THE NINTH CAUSE OF ACTION

- b.) Judgment in favor of Plaintiffs and other Aggrieved Employees working for Defendants in the State of California;
- c.) For all penalties and amounts due pursuant to PAGA, including without limitation California Labor Code sections 2698, 2699, 204, 210, 226, 226.3, 226.7, 512, 558, and 1197.1, and distributed in accordance with PAGA;
- d.) Reasonable attorneys' fees;
- e.) Costs of suit;
- f.) Pre-judgment and post-judgment interest as provided by law; and
- g.) Such other relief as the Court deems just and proper.

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Dated: 12/8, 2022

**MAKAREM & ASSOCIATES, APLC**

By:   
\_\_\_\_\_

SAMUEL D. ALMON  
Attorneys for Plaintiffs RENEE PORTER,  
JOSHUA TOLIN, FRANK J. FODERA, JR.,  
MICHAEL M. BONELLA, and  
GENEVIEVE BILLSON

**DEMAND FOR JURY TRIAL**

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

Dated: 12/8, 2022

**MAKAREM & ASSOCIATES, APLC**

By:   
\_\_\_\_\_

SAMUEL D. ALMON  
Attorneys for Plaintiffs RENEE PORTER,  
JOSHUA TOLIN, FRANK J. FODERA, JR.,  
MICHAEL M. BONELLA, and  
GENEVIEVE BILLSON

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PROOF OF SERVICE

(Code of Civil Procedure §1013A(d))

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action. My business address is 11601 Wilshire Boulevard, Suite 2440 Los Angeles, CA 90025. My email address is [baker@law-rm.com](mailto:baker@law-rm.com). On January 31, 2023, I caused the foregoing documents described as:

1. SECOND AMENDED CLASS AND PAGA REPRESENTATIVE COMPLAINT

Said documents were served on the interested parties in this action by placing true copies thereof, enclosed in a sealed envelope, addressed as follows:

**JACKSON LEWIS P.C.**  
725 South Figueroa Street, Suite 2500  
Los Angeles, California 90017-5408  
[Mia.farber@jacksonlewis.com](mailto:Mia.farber@jacksonlewis.com);  
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[ladocket@jacksonlewis.com](mailto:ladocket@jacksonlewis.com);  
[klodya.casas@jacksonlewis.com](mailto:klodya.casas@jacksonlewis.com);  
*Attorneys for Defendants*  
*EQUINOX HOLDINGS, INC.*

  X   BY EMAIL: I caused a true copy of the foregoing document to be served by e-mail at the e-mail addresses set forth above. Each email was complete and no reports of error were received.

I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct. Executed on January 31, 2023, at Los Angeles, California.

*Natalie Baker*

\_\_\_\_\_  
Natalie Baker