

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
STEVEN HAMMOND,

Plaintiff,

SUMMONS

- against -

Index No.

EQUINOX HOLDINGS LLC d/b/a EQUINOX
FITNESS CLUB d/b/a EQUINOX, EQUINOX WALL
STREET, INC., and MICHAEL ALEXANDER,

Defendants.

-----X

To the above-named Defendants:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the plaintiff's attorney(s) within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: New York, New York
May 17, 2019



Neal Brickman, Esq.
Jason A. Stewart, Esq.
The Law Offices of Neal Brickman, P.C.
Attorneys for Plaintiff
420 Lexington Avenue, Suite 2440
New York, New York 10170
(212) 986-6840

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
STEVEN HAMMOND,

Plaintiff,

**COMPLAINT AND
JURY DEMAND**

- against -

Index No.

EQUINOX HOLDINGS LLC d/b/a EQUINOX
FITNESS CLUB d/b/a EQUINOX, EQUINOX WALL
STREET, INC., and MICHAEL ALEXANDER,

Defendants.

-----X

COMES NOW Plaintiff, STEVEN HAMMOND (hereinafter “Hammond”, “Plaintiff” or “plaintiff”), by and through his undersigned counsel, The Law Offices of Neal Brickman, P.C., located at 420 Lexington Avenue, Suite 2440, New York, New York 10170, and as and for his complaint against Defendants, EQUINOX HOLDINGS, INC. d/b/a EQUINOX FITNESS CLUB d/b/a EQUINOX, EQUINOX WALL STREET, INC., (hereinafter “Equinox Wall Street”)(collectively “Equinox”) and MICHAEL ALEXANDER (“Alexander” or “Former Equinox Employee”) states and alleges as follows:

NATURE OF CASE

1. This is an action by a former member of Equinox’s Wall Street location who was caused to suffer immense financial and emotional harm, as well as irreparable public embarrassment and harm to his reputation, following a series of events that began on May 21, 2018, starting with a patently false and entirely unfounded allegation of lewd conduct made against him by a now former employee of the Equinox Fitness Club at the health club facility located at 14 Wall Street in the City and State of New York. Plaintiff asserts claims for defamation, negligence, gross negligence, breach of contract, breach of the covenant of good faith and fair

dealing, and negligent hiring, supervision and training, and negligent infliction of emotional distress.

2. Through a carefully considered corporate branding and marketing strategy begun after Plaintiff had accepted Equinox membership, but more than a decade before the false allegation by then employee Michael Alexander, Equinox sought to promote an image of its clubs as venues for immoral behavior. By carelessly and intentionally pursuing its aggressive branding strategy, Equinox foreseeably encouraged third parties, including Alexander, to target Equinox and its members with the very kind of false allegation at the core of plaintiff's injuries. In response to a rising tide of allegations of immoral conduct in its clubs, Equinox then systematically failed to safeguard its members from such false and defamatory statements by adopting a so-called "zero tolerance" policy that in fact was a tactic to recklessly afford zero protection to its members' legitimate rights. In pursuit of this falsely denominated "zero tolerance" policy, Equinox compounded its misconduct and recklessly aggravated plaintiff's injuries by intentionally failing to follow its own protocols concerning allegations of inappropriate conduct. Equinox's careless abandonment of its own protocols and policies extended, in the case of plaintiff, to allegations that on their face bore the directly foreseeable consequence of causing massive harm. By summarily and without justification terminating Plaintiff's membership without any investigation-- and despite readily available information that Equinox knew or should have known to cast severe doubt on Alexander's credibility-- Equinox abandoned the most basic duties and obligations owed to the plaintiff. Equinox and its employees further compounded its wrongdoing through an ongoing course of defamatory acts that have aggravated the grievous injury to Plaintiff and his reputation caused by Alexander's lie.

3. Equinox's wrongful and reckless action in unilaterally terminating Plaintiff's membership without investigating or otherwise attempting to verify the false allegation against him has proximately caused significant damages in an amount to be proved at trial, but estimated to exceed ten million dollars.

JURISDICTION AND VENUE

4. This Court has jurisdiction over this matter because defendant Equinox Holdings LLC is a Domestic Limited Liability Company with corporate headquarters maintained at 895 Broadway, 3rd Fl., within the City and State of New York, and Equinox Wall Street, Inc. is a Domestic Business Corporation which operates a health club facility at 14 Wall Street, within the City and State of New York. As set forth more fully herein, a majority of the claims asserted herein against all defendants arose in the County of New York and the damages alleged were suffered in part in this County, and at the time of his initial false allegation, Alexander was employed by Equinox in New York County.

5. Venue is properly laid in this Court because Defendant Equinox and Equinox Wall Street, and Alexander transact, and did transact, business within this County and the claims asserted herein are based in significant part on conduct that occurred in the County, City and State of New York.

PARTIES

6. Plaintiff, Steven Hammond, is a natural person who currently resides in Portugal.

7. Shortly after September 11, 2001, plaintiff was offered the possibility of taking membership in Equinox as a result of a special arrangement concluded by other members of the Downtown Athletic Club, where plaintiff had been a long-standing member until it closed for business in the wake of the terrorist attack.

8. On or about October 4, 2001, Plaintiff entered into a written Membership Agreement with Equinox that was amended or extended on various occasions, including on or about November 15, 2001, June 10, 2003, December 30, 2003 and April 30, 2004.

9. From October 4, 2001 through May 21, 2018, the date on which plaintiff's membership was wrongfully terminated, plaintiff was a member of Equinox's Wall Street health club in good standing whose conduct at the various Equinox facilities he visited had never been questioned. During the period of his Equinox membership, Plaintiff never participated in, nor observed, any form of inappropriate conduct at any Equinox facility.

10. Plaintiff is, and has been, employed as an attorney specializing in international arbitration and litigation for four decades. He was named a partner at the renowned international law firm Hughes Hubbard & Reed LLP in August 1986, after having held associate and partner positions in the New York City law firm of Hill Betts & Nash.

11. At the time of the false allegation, a significant portion of Mr. Hammond's income was derived from his being selected to serve as a third-party neutral arbitrator deciding and resolving all aspects of major international arbitration disputes.

12. Upon information and belief, Equinox is a privately held hotel, restaurant and leisure company which operates, among other things, fitness clubs that offer a selection of programs, services and products, including personal training and spa services.

13. Upon information and belief, Equinox Wall Street is the subsidiary entity of Equinox that owns and operates Equinox's health club facility located at 14 Wall Street, City and State of New York.

14. Upon information and belief, Alexander was employed by Equinox on May 21, 2018, when he defamed plaintiff by falsely claiming that he had engaged in lewd conduct in the

steam room of the Equinox Wall Street health club. On information and belief, Alexander's employment with Equinox was terminated for cause some three months later for reasons detailed below.

STATEMENT OF FACTS

15. As set forth in further detail herein, Plaintiff was caused to suffer significant financial and emotional harm and irreparable public embarrassment and harm to his reputation as a result of a series of actions deriving from Equinox's and its now former employee's patently false allegation of lewd behavior. The extent of Plaintiff's injuries will be established at trial, but are presently estimated to exceed ten million dollars.

A. OCCURENCES LEADING UP TO THE FALSE ALLEGATION

16. Upon information and belief, Former Equinox Employee Alexander was first hired by Equinox on or around October 4, 2015, as a Front Desk Associate at the Equinox health club facility located at or near 43rd Street in the City and State of New York. A copy of the New Employee Summary Information Sheet pertaining to Alexander's first hiring and Equinox's Harassment Policy signed by Alexander on October 7, 2015 are annexed hereto as Exhibit "A".

17. Upon information and belief, Alexander was re-hired by Equinox beginning on or about January 18, 2018, once again as a Front Desk Associate at the same Equinox facility. A copy of the New Employee Summary Information Sheet pertaining to Alexander's second hiring and containing Equinox's Unlawful Discrimination, Harassment and Retaliation Policy signed by Alexander on January 19, 2018 are collectively annexed hereto as Exhibit "B".

18. Upon information and belief, on or about March 30, 2018, Alexander began working as a Front Desk Associate at the Equinox health club facility located at 14 Wall Street in the City and State of New York. A copy of the New Employee Summary Information Sheet

pertaining to Alexander's employment there and containing Equinox's Unlawful Discrimination, Harassment and Retaliation Policy signed by Alexander on March 19, 2018 are annexed hereto as Exhibit "C".

19. Upon information and belief, during his brief employment at the Equinox Wall Street Club, Alexander was the subject of discipline proceedings pertaining to his failure to "meet [sic] the expectations of an Equinox employee as it relates to company standards regarding attendance and punctuality." A copy of the Equinox Record of Discussion dated May 1, 2018 is annexed hereto as Exhibit "D".

20. According to the Record of Discussion, Alexander "no called, no showed" for a shift on April 21, 2018 and was told that if he "is a no call, no show for any scheduled shift over the next six (6) months, employment will be terminated." This Record of Discussion was marked as "Final". See Exhibit "D".

21. Upon information and belief, some 20 days after he received his "Final" warning threatening termination by Equinox, Alexander maliciously fabricated his defamatory allegation against Plaintiff in order to bolster his bargaining position in his escalating attack on his then employer.

22. On May 19, 2018, just two days before the false allegation was made by Alexander, the New York Post ran an article about a multi-plaintiff lawsuit brought by attorney Marc Held against Equinox claiming that the Equinox ignores "the reprehensible conduct occurring in [its] steam rooms." On information and belief, Alexander retained attorney Marc Held at some point in 2018 and ultimately joined as a plaintiff in a subsequent iteration of Held's multi-plaintiff lawsuit as referenced in the May 19, 2018 Post article.

B. THE DAY THE FALSE AND DEFAMATORY STATEMENT WAS FIRST MADE

23. On May 21, 2018 beginning at approximately 8:11 am, Plaintiff entered Equinox Wall Street.

24. On that morning, Plaintiff engaged in his normal workout routine at the Equinox Wall Street facility until approximately 9:30 am, at which time, as was often his practice, he entered the facility's steam room.

25. Thereafter, from approximately 9:30 am until approximately 9:50 am, plaintiff was in the steam room, during which time several other club members were also present there. Upon the plaintiff's having entered the steam room, there were two or three people already there, as was the case when the plaintiff left the steam room before 10:00 am.

26. After leaving the steam room, Plaintiff proceeded to shave and shower before dressing and exiting the Equinox Wall Street facility without incident.

27. Upon information and belief, Alexander had been working on the morning of May 21, 2018, with his shift beginning at 5:00 am and ending at or before 9:00 am. Upon information and belief, then employee Alexander did not leave Equinox Wall Street following the end of his work shift.

28. Upon information and belief, between 9:40 am and 10:15 am, then Equinox Employee Alexander told Equinox employee Taryn Sander, whose title was "Complex Spa Coordination & Master Therapist," that he had "witnessed a member masturbating in the steam room."

29. Upon information and belief, Sander, reported the defamatory allegation to Wall Street Equinox General Manager John Tawfik and informed Tawfik that she and another Equinox employee had asked "FDA Michael [Alexander] to wait at the Front Desk to identify the member."

Sander further stated that, at the front desk, she “recognized the member as Steve Hammond, ID#10033471.”

30. In making her report, Spa Coordinator Sander referred to Alexander as “FDA Michael,” with the abbreviation FDA, an abbreviation that, upon information and belief, stands for “Front Desk Associate.”

31. Upon information and belief, at the time Equinox Wall Street General Manager Tawfik learned of the allegation of misconduct, he advised Alexander not to contact Human Resources and not to fill out an incident report.

32. At approximately 1:48 pm General Manager Tawfik called the plaintiff and repeated the false and defamatory allegation that he attributed to a “staff person.” Tawfik further claimed that Equinox had a “zero tolerance policy” as a result of which plaintiff’s membership had been canceled. Plaintiff in the phone conversation immediately and vehemently denied the false and defamatory accusation.

33. General Manager Tawfik referred to the individual who witnessed the alleged lewd behavior as a “staff person,” indicating that Alexander’s role in observing and reporting the alleged occurrence was perceived by Equinox as Alexander acting in his capacity as an Equinox employee..

34. At 4:27 pm, plaintiff wrote an email to Equinox Wall Street General Manager Tawfik stating, “I have called twice and left you messages since we spoke but have received no reply from you. Please make sure that you obtain no later than today a written statement from your staff person who claims to have witnessed the incident in the steam room, ensuring that he provides the precise time, the number and names of all individuals in the steam room, ...a description of where each individual was seated, as well as what he claims to have observed. He should also

indicate what action he took to confront the individuals involved either at the time or after they left the steam room. Please provide me with a copy of the statement as well as a list of individuals who were present in the club at the alleged time of the incident since I am in the process of consulting counsel in connection with a defamation suit against your company. I will be at the club early tomorrow morning for my usual work out and will expect to speak with you and receive a copy of the statement then.”

35. At 6:10 pm General Manager Tawfik replied to plaintiff’s email, stating in part “your membership has been cancelled. The employee was able to identify you outside of the locker room. We have a zero-tolerance policy towards lewd behavior in the club.”

36. Upon information and belief, the fact that plaintiff’s membership was immediately cancelled was reported to the New York Police Department by multiple Equinox employees, including but not limited to Alexander. The immediate cancellation of plaintiff’s membership implied guilt and wrong-doing on the plaintiff’s part and wrongfully lent credence to Alexander’s false and defamatory statement. In portraying plaintiff in this false light, Defendant Equinox made no effort to explain: 1) that its action had been taken without investigation and in direct contravention of its own corporate protocols and policies applying to allegations of such misconduct; or 2) that Equinox’s so-called “zero tolerance” policy was in fact nothing more than a public relations ploy intended to mask its wholesale failure to reasonably protect its members from false and scurrilous allegations. Equinox’s recklessness in this regard foreseeably aggravated Plaintiff’s injuries.

C. ACTIONS OCCURRING AFTER THE DEFAMATORY ACCUSATION WAS FIRST MADE

37. On May 22, 2018, at approximately 9:30 am, the day after the false allegation was made, Plaintiff returned to Equinox Wall Street to address and rebut the false and defamatory allegation made against him with Equinox Wall Street General Manager John Tawfik.

38. Plaintiff went directly to the General Manager's office asking for John Tawfik by name. Mr. Tawfik was in his office with another individual and said "I'll be with you in a few minutes."

39. While waiting for Tawfik, the plaintiff approached an Equinox staff member known to him and asked the staff member if he had heard anything about something happening in the steam room the day prior. The staff member responded that he heard that someone had filed a complaint about the plaintiff and repeated to plaintiff the false and defamatory statement made the previous day by Equinox and Alexander.

40. Following this exchange, Plaintiff returned to the General Manager's office, but the General Manager was still with the unknown individual, so the plaintiff went to the locker room and asked several people if they had worked out the day before and, if they answered yes, whether they had been in the steam room. One of the individuals to whom plaintiff spoke at that time confirmed that he had worked out the prior morning, that he had entered the steam room at about 9:30, and that he had not witnessed anything unusual while he was there.

41. The plaintiff then exited the locker room and proceeded to speak with Equinox Wall Street General Manager Tawfik, relaying to Tawfik the investigative information he had been able to develop within the short period of his arrival while he waited for Tawfik to finish his meeting. In the course of that conversation, the plaintiff again vigorously denied the allegations, requested

and was denied the name of his accuser and a copy of any written statement by the accuser, and demanded that Equinox identify the others present in the steam room the morning before to confirm that they had observed no misconduct, and retract its defamation and purported cancellation. On information and belief, Equinox recklessly persisted in its refusal to investigate the incident and to reinstate plaintiff's membership, thus emboldening Alexander to persist in his false accusation.

42. Upon information and belief, Equinox submitted an Employee Injury/Incident Report Form to its Workman's Compensation insurance carrier which stated that an injury occurred on May 21, 2018 and listed Tawfik as the Club General Manager. Notably absent from the form, as completed, was any description of the occurrence, the injury, or steps taken to verify the alleged incident.

43. Upon information and belief, Alexander for his part immediately inquired about medical leave options following his defamatory allegation against the plaintiff.

44. Upon information and belief, Former Equinox Employee Alexander repeatedly followed up with multiple Equinox employees throughout at least June of 2018 about medical leave options following his false report of May 21, 2018.

45. Upon information and belief, Alexander intentionally fabricated the events underlying the false allegations against plaintiff in order to procure special benefits and protections from his employer to which he was not entitled and to protect his otherwise threatened employment.

D. EQUINOX'S GROSS DEPARTURE FROM ITS OWN INTERNAL INVESTIGATIVE PROCEDURES

46. Upon information and belief, Former Equinox Employee Alexander's false allegation against Plaintiff was not reported, recorded or investigated in accordance with Equinox's "Unlawful Discrimination, Harassment and Retaliation Policy."

47. Equinox's "Unlawful Discrimination, Harassment and Retaliation Policy," specifically states that "all discrimination, harassment and retaliation is unacceptable in the workplace and in any work-related setting such as business trips and business-related social functions regardless of whether the conduct is engaged in by a supervisor, co-worker, client, customer, vendor, or other third party." The "Unlawful Discrimination, Harassment and Retaliation Policy" specifically spells out "Reporting Procedures" and "Investigation Procedures" to be followed in the event of an allegation of a violation of said policy.

48. According to Equinox's "Reporting Procedure" an employee is required to report conduct of the type falsely alleged by Alexander to the immediate attention of his or her immediate supervisor or the office of Regional Human Resources. Such complaint, "should be as detailed as possible and include a description of the incident, the names of individuals involved, witnesses, direct quotes (when language is relevant) and any documentary evidence (e.g., notes, pictures, cartoons, etc.) or other information [the employee] may have."

49. Upon information and belief, Alexander failed to abide by Equinox's harassment "Reporting Procedures" when he made his false allegation against the plaintiff.

50. According to the "Investigation Procedures" contained in Equinox's harassment policy, upon receiving a complaint of a violation of the policy, "Equinox will promptly conduct a fair and thorough investigation into the facts and circumstances of any claim of a violation of this

policy” and “during the investigation Equinox generally will interview the complainant and the accused, conduct further interviews as necessary and review any relevant documents or other information. Upon completion of the investigation, Equinox shall determine whether this policy has been violated based upon its reasonable evaluation of the information gathered during the investigation. Equinox will inform the complainant and the accused of the results of the investigation.”

51. Upon information and belief, Equinox and Equinox Wall Street failed to investigate or otherwise verify the Former Equinox Employee’s allegation prior to terminating plaintiff’s membership in violation of Equinox’s Unlawful Discrimination, Harassment and Retaliation Policy’s defined “Investigation Procedures.”

52. Upon information and belief, even in the absence of Equinox’s “Investigation Procedures,” Equinox’s failure to conduct a proper investigation concerning the false allegations was a blatant and reckless departure from a reasonable standard of care and a breach of good faith and fair dealing as further alleged herein.

53. Upon information and belief, Equinox and Equinox Wall Street, had or should have had ample reason to understand the lack of credibility of its Former Employee and the false nature of his allegation, but instead chose not to exercise due care by investigating the false allegation prior to terminating plaintiff’s membership and in the process defaming him.

54. Upon information and belief, Equinox Wall Street General Manager John Tawfik failed to investigate Former Equinox Employee Alexander’s allegations, never interviewed the plaintiff or Former Equinox Employee Alexander regarding the allegation, nor was Former Equinox Employee Alexander asked about the details of what was purportedly witnessed, prior to the termination of plaintiff’s membership.

55. Upon information and belief, General Manager Tawfik grossly departed from and wantonly violated Equinox's Investigation Procedure by terminating plaintiff's membership without having conducted an interview of the complainant, the plaintiff or other parties who would have been able to offer relevant information regarding the false allegation. In doing so, Equinox made manifest that its "zero tolerance policy" was in fact a public relations ploy that was tantamount to a "zero protection policy" by which the company abandoned without *any* investigation the rights of its members whenever *any* claim of misconduct, no matter how lacking in merit or credibility, was leveled against one of its members.

56. Upon information and belief, Equinox Wall Street recklessly subverted its own "Investigation Procedures" in an effort to "keep the matter in house" and to avoid negative attention in light of growing accusations of sexual misconduct, sexual assault, sexual acts and lewd behavior made in the face of its ongoing branding campaign.

E. EQUINOX'S UNTIMELY AND INCOMPLETE INVESTIGATIVE EFFORTS AND THE EXCULPATORY FINDINGS

57. Upon information and belief, Equinox's first meaningful investigative effort taken in connection with Alexander's false allegation was on June 19, 2018, nearly one month after the defamatory allegations were made, repeated, and distributed. Upon information and belief, on that date Equinox Wall Street employees and co-workers of Alexander were questioned respectively by Equinox Regional Director, People Services, Stephanie Herrmann and Equinox Wall Street Manager Rafeena Khan.

58. Upon information and belief, these investigative efforts were not conducted for the benefit of the plaintiff, but rather were performed in furtherance of Equinox's attempts to deal with Alexander's increasingly aggressive weaponizing of his false allegation.

59. Upon information and belief, one of Alexander's former co-workers who was interviewed on that date had been working on the morning Former Equinox Employee Alexander made his false allegation against the plaintiff, and was asked a series of questions as a result of which Alexander's co-worker reported that "he had a great relationship with all the front desk associates with the exception of Michael [Alexander];" that the club culture was "great with the exception of Michael [Alexander];" that "he thinks everyone is profession[al] and respectful except for Michael [Alexander]. [Alexander is] the only one that exhibited unprofessional behavior."

60. On information and belief, Alexander's co-worker went on to report that a specific incident occurred where "Michael [Alexander] asked him, why does he [the co-worker] keep wearing pants that make his butt look big" and further described his interactions with Michael [Alexander], "mention[ing] that its uncomfortable as he [Alexander]'s blatantly lying." On information and belief, Alexander's former co-worker further reported that "Michael [Alexander is] just a very jealous individual that gets upset and rude when members chat or favor another employee [and that Alexander] just makes being at work very uncomfortable and [that he, the co-worker] does not like working with him, that there are times when Michael refuses to leave the club, he stays in the men's locker room."

61. Upon information and belief, on or about June 19, 2018, another Equinox Wall Street co-worker of Alexander was interviewed about his interactions with Alexander and recounted an occasion when Michael [Alexander] asked if "I noticed that guys were looking at me or giving me 'a look'", the co-worker further recounted that Alexander said that, "[he, the co-worker] didn't see it from [Alexander's] point of view, but they must think [the co-worker is] attractive and [Alexander] said that [he, Alexander] also gives [the co-worker] 'the look'."

62. On information and belief, this second co-worker interviewed on June 19, 2018 further recounted that “last week, [Alexander] came in at 5:30am – he was a little late. He told me that he wasn’t feeling well and needed to go to the doctor. I was being polite and asked what was wrong, and he told me that his ass was hurting, and he needed to get it checked out. He left around 6:00 am that day. There was another time when a member was leaving the club and Michael [Alexander] said to me that he’d let them f*** him.”

63. On information and belief, the second co-worker summed up by saying that he knows other people do not like working with [Alexander] and he calls out a lot.

64. Upon information and belief, on August 8, 2018, Former Equinox Employee Michael Alexander was asked a series of questions and his answers were transcribed in a memorandum which is annexed as Exhibit “E”.

65. On information and belief, within that memorandum it is noted that Former Equinox Employee Alexander stated in part as follows: “there should be standards of how things are supposed to be handled – no one knew what to do when the situation happened with the member...Why was I told not to fill out an incident report. Why did John [Tawfik, the General Manager of Equinox Wall Street] tell me that when situations happened we’d keep [it] in house? That’s part of why I want to change my location as well. The reason I went to the police was because I was told not to fill out an incident report – once I went to the police, they didn’t know what to put it under. I told John that I went to the police and they’re involved. If I was a female, I felt like it would be handled differently – but because I’m a man it was handled differently.” See Exhibit “E”.

66. On information and belief, Former Equinox Employee Alexander went on to state “we asked to submit a report and John said no to us. John doesn’t really know what happened because he never asked me – he didn’t get the details.” See Exhibit “E”.

67. Upon information and belief, had Equinox and/or Equinox Wall Street timely conducted the interviews which were held on June 19, 2018 and August 8, 2018 before jumping to conclusions about the original defamatory statements concocted by Alexander on May 21, 2018 and lending credence to the false allegation by recklessly canceling plaintiff’s membership without investigation in accordance with its own announced policy, Equinox could have avoided and/or substantially mitigated the extreme harm it caused the plaintiff and established the false nature of the accusations.

F. PUBLICATION OF THE DEFAMATORY STATEMENT BY THE MEDIA

68. Upon information and belief, on August 25, 2018, as Former Equinox Employee Alexander’s job with Equinox appeared at increasing risk of termination, Alexander was quoted anonymously, as an “Equinox staffer” in a New York Post article discussing the allegations he made on May 21, 2018, and stated that “he was encouraged [by Equinox] not to file a report.”

69. On information and belief, at the time of the publication of the August 25, 2018 article, Equinox had for some time been in possession of internal materials that raised serious questions regarding Alexander’s credibility, but it recklessly failed to take action on what it had belatedly learned about Alexander’s complete lack of trustworthiness. To the contrary, Equinox on information and belief responded to press inquiries at the time by referencing “house rules” warning against “inappropriate behavior” and by stating that “every customer gets a copy of the house rules [that Equinox] e-mailed last week.” Equinox’s reckless statements were clearly

intended to suppress the information of Alexander's lack of credibility and affirmatively and recklessly buttressed the false inference that the plaintiff violated those house rules.

70. Upon information and belief, on August 27, 2018, Former Equinox Employee Alexander spoke to Equinox's public relations staff and Equinox Wall Street General Manager John Tawfik about the August 25th article published in the New York Post, and following those conversations, Alexander was escorted from the Equinox Wall Street facility.

71. Upon information and belief, on August 31, 2018, Alexander received notice from Equinox that his employment had been terminated as of that date.

G. ALEXANDER'S ONGOING ATTEMPTS TO USE THE FALSE ALLEGATION FOR LEVERAGE AGAINST HIS FORMER EMPLOYER, AND EQUINOX'S CONTINUED FAILURE TO MITIGATE THE ENORMOUS INJURY CAUSED BY ITS COURSE OF CONDUCT AND THE RESULTING DEFAMATORY STATEMENTS

72. Upon information and belief, Former Equinox Employee Alexander persisted after he was fired by Equinox to use his false allegation and Equinox's inadequate and flawed handling of that allegation as leverage in his ongoing attempts to extract from Equinox personal pecuniary gain.

73. Upon information and belief Alexander weaponized his false allegation against the Plaintiff by bringing suit against Equinox on November 6, 2018 in Supreme Court, New York County under index number 160323/2018. Upon information and belief, Alexander similarly joined as a plaintiff in a second lawsuit brought by attorney Marc Held, the same attorney referenced in the May 19, 2018 New York Post article published two days prior to Alexander and Equinox's defamation of the plaintiff. The second lawsuit involving Alexander against Equinox is a sealed multi-plaintiff suit, commenced in Supreme Court, Kings County under index number 2245/2018, with only Michael Alexander's name having been made public in that case.

74. Upon information and belief, Equinox has retained Larocca Hornik Rosen & Greenberg LLP (“counsel for Equinox”) as defense counsel in the New York County Supreme Court case to defend claims against Equinox that Former Equinox Employee Alexander was subject to a hostile work environment based on sex and was unlawfully discharged in retaliation for his complaints about his treatment to management. Upon information and belief, counsel for Equinox has moved for dismissal of the New York County Supreme Court case, however, within their motion, Equinox counsel ignores that the criminal charges brought against the plaintiff as a result of Alexander’s unfounded complaint to the New York Police Department were dismissed within weeks of the filing of Alexander’s November 2018 lawsuit against Equinox. On information and belief, counsel also ignores the substantial evidence developed by Equinox as early as June 2018 of Alexander’s total lack of credibility. Equinox instead foreseeably and recklessly aggravated Plaintiff’s injuries by stating that “Equinox could not be held liable for - much less have prevented- a spontaneous sexual act by a member about whom Equinox had no notice of any such proclivities.”

H. EQUINOX’S DECADE-LONG BRANDING ACTIVITIES RECKLESSLY ENCOURAGED THE MAKING OF FALSE ALLEGATIONS OF MISCONDUCT WITHIN ITS HEALTH CLUBS AND, TOGETHER WITH ITS PUBLIC RELATIONS PLOY OF A SO-CALLED “ZERO TOLERANCE” POLICY, DIRECTLY AND FORESEEABLY CAUSED PLAINTIFF ENORMOUS INJURY.

75. Upon information and belief, Equinox has engaged in a corporate branding and marketing strategy that foreseeably facilitates and encourages the very kind of unfounded and defamatory complaints of misconduct as the one at issue here.

76. Equinox has in recent years been the subject of a multitude of lawsuits arising out of allegations of overt sexual conduct, sexual assault, sexual acts and/or lewd behavior occurring

in various Equinox facilities, all a foreseeable consequence of the corporation's carefully considered hyper-sexual branding and marketing strategy.

77. As detailed below, Equinox has for approximately a decade been engaged in a sexually charged and suggestive advertising campaign that has served to encourage and foster an environment in which repeated allegations of overt sexual acts and misconduct, all wholly unrelated to plaintiff, has occurred within a variety of Equinox facilities.

78. Upon information and belief, beginning around 2008, Equinox developed the "Happily Ever After" advertising campaign, which consisted of provocative, flesh-baring and sexually charged photography taken by famed photographer Ellen von Unwerth, who is reported to specialize in "erotic femininity."

79. Upon information and belief, the "Happily Ever After" advertising images uses the phrase "happily ever," suggestively asking "what's your after?" and stating "It's not fitness. It's life. Equinox." Copies of "Happily Ever After" campaign images are annexed hereto as Exhibit "F".

80. Upon information and belief, beginning around 2010 and continuing through approximately 2013, Equinox intensified its racy branding campaigns by retaining famed fashion photographer Terry Richardson to take a series of photographs as the center piece of several provocative, flesh-baring, sexually charged advertisements.

81. Upon information and belief, those advertising images depict scantily clad men and women in various stages of dress, undress and lingerie and posing in suggestive positions, which are obviously intended to be perceived as pre-coital and post-coital positioning. The images are captioned with phrases like "Confidence. By Equinox," "Banished Inhibitions," "Results from

Every Angle,” and “Limitless Possibilities.” Copies of the Terry Richardson advertising images are annexed as Exhibit “G”.

82. Upon information and belief, beginning around 2014 and continuing through approximately 2015, Equinox continued its racy branding campaigns under the campaign tagline “Equinox Made Me Do It.”

83. Upon information and belief, those advertising images continued to depict racy and controversial imagery including one photograph which depicts an entirely nude man and woman under the caption “Equinox Made Me Do It.” Copies of the “Equinox Made Me Do It.” campaign images, including the nude model advertisement is annexed as Exhibit “H”.

84. Upon information and belief, beginning around 2016 and continuing through approximately 2017, Equinox continued to escalate even further its racy branding campaigns under the tagline “Commit to Something.”

85. Upon information and belief, those advertising images continued to depict racy and controversial imagery including photographs depicting men and women in various stages of undress, including an image that appears to depict five individuals laying on a bed engaging in what could only be described as an “orgy” with the words “Commit to Something” overlaid and the word “Equinox” depicted across the bottom. Copies of the “Commit to Something” advertising images are annexed as Exhibit “T”.

86. Upon information and belief, these advertising images used by Equinox were recklessly intended to promote in the public mind a connection between a culture of sexual permissiveness and the Equinox brand and thereby invited, fostered and resulted in repeated allegations of overtly sexual misconduct and sexual assaults on Equinox premises.

87. Upon information and belief, Equinox's reckless, sexually charged branding campaigns, begun well after plaintiff accepted membership in its club, promulgated and fostered an environment where Former Equinox Employee Alexander was emboldened to raise his false allegation against the plaintiff in May 2018 as a subterfuge to avoid his then-threatened termination.

88. Upon information and belief, the resulting public and media attention and growing threats of legal liability associated with Equinox's over the top advertising led to a "circle the wagons" environment that prompted Equinox and Equinox Wall Street General Manager John Tawfik, upon receiving word of Alexander's false allegation, to sacrifice not only plaintiff's membership, but an unblemished 40 year professional reputation without even attempting to conduct an investigation into the defamation directed at the plaintiff, all in direct contravention of Equinox's own written policy.

89. Upon information and belief, Equinox's circle the wagons approach has been driven in part by a growing number of claims and lawsuits against it alleging various acts of sexual misconduct and/or harassment, including but not limited to the following:

- a. Supreme Court, New York County Index No. 157373/2018, wherein member Shane Crandall by his attorney Marc Held commenced suit against Equinox for an alleged sexual assault in the steam room of Equinox Greenwich Avenue facility.
- b. Supreme Court, Kings County Index No. 2245/2018, wherein multiple plaintiffs by their attorney Marc Held commenced suit in a sealed action brought against Equinox. Upon information and belief, the plaintiffs' claims within that suit include harassment and hostile work environment claims by reason of sex.
- c. Supreme Court, New York County Index No. 161353/2018, wherein Equinox personal trainer Esther Ortiz commenced suit against her employer Equinox for claims of sexual harassment.

- d. Supreme Court, New York County Index #100672/2007, a lawsuit was commenced against several New York City Equinox facilities by Equinox employees claiming that deviant sexual acts “were taking place on an ongoing and regular basis” in the steam room.
- e. Supreme Court, New York County Index #119228/2006, a lawsuit by Equinox employees against several New York City Equinox facilities claiming that they had been exposed to inappropriate sexual behavior and were obliged to clean up bodily fluids (semen).

90. Upon information and belief, there is a growing tide of claims and law suits against Equinox within the New York area and nationwide arising out of allegations of sexual misconduct, and/or sexual harassment on Equinox premises, including those detailed herein and others that are presently unknown to the plaintiff, but which upon discovery will be brought to light.

91. Upon information and belief, Equinox’s history of aggressively sexualized branding and marketing along with the resulting history of lawsuits and media coverage of those allegations promulgated and fostered an environment in which Alexander was emboldened to raise his false allegation against the plaintiff.

92. Upon information and belief, Equinox abandoned its own corporate policies by summarily terminating plaintiff’s membership without conducting an appropriate investigation in a misguided attempt to insulate itself from the consequences of its own reckless branding strategy. In seeking to excuse its misconduct by falsely and publicly claiming that its wholesale failure to protect the rights and reputations of its members was justified by a “zero tolerance” policy, it recklessly and foreseeably caused monumental injury to Plaintiff’s reputation and caused him grave economic loss and emotional distress.

93. Upon information and belief, Equinox, whose annual revenues already exceed one billion dollars, recklessly persisted in the misconduct detailed above in part because the rising tide of accusations born of its decade-long branding strategy detailed above came just as Equinox was

finalizing its effort to expand its brand to luxury hotels, including those due to open in New York and Los Angeles in 2019. So it was that Equinox saw fit to sacrifice the rights and reputations of its members in a reckless pursuit of corporate gain.

94. Upon information and belief, Equinox, Equinox Wall Street and their employees improperly handled the false allegations made by Alexander by: directing Alexander not to prepare a formal written report; failing to investigate them; prematurely canceling plaintiff's membership prior to investigating the accusation and thereby lending credence to the false allegation; failing to follow its own announced internal policies and procedures; failing to act to mitigate the consequences of its recklessness once it belatedly developed clear evidence of Alexander's lack of credibility; and by repeatedly and publicly placing Plaintiff in a false light by seeking to excuse its misfeasance with incantations of a so-called "zero tolerance" policy that was in fact nothing more than a public relations ploy intended to disguise its wholesale failure to protect foreseeable harm to its members caused by its own misconduct.

AS AND FOR A FIRST CAUSE OF ACTION FOR DEFAMATION
(*As Against All Defendants*)

95. Plaintiff repeats and realleges each and every allegation set forth in paragraph "1" through "94" of this Complaint with the same force and effect as if set forth fully herein.

96. As detailed above, on multiple occasions and continuing since May 21, 2018 through present, the plaintiff has been repeatedly defamed by Equinox, Equinox Wall Street and Former Equinox Employee Alexander.

97. The making of a false statement which tends to expose a person to public contempt, ridicule, aversion, or disgrace constitutes defamation.

98. In the first instance Former Equinox Employee Alexander made his false statement that the plaintiff engaged in lewd and criminal conduct within the Equinox Wall Street steam room on the morning of May 21, 2018 at approximately 9:40 am.

99. Former Equinox Employee Alexander's false statement was initially made to Equinox Spa Coordinate Taryn Sanders on the morning of May 21, 2018.

100. This false statement in and of itself exposed plaintiff to public contempt, ridicule, aversion and/or disgrace.

101. However, Former Equinox Employee Alexander's false statement was then repeated and disseminated time and again, including but not limited to Taryn Sanders repeating the statement to Equinox Wall Street General Manager John Tawfik and by way of other internal Equinox communications.

102. Moreover, upon information and belief, Former Equinox Employee Alexander's false statement was provided to a certain New York Post reporter, Kathianne Bonioello, who has reported on a number of lawsuits brought by attorney Marc Held, counsel to Former Equinox Employee Alexander in one of his lawsuits against Equinox referred to herein.

103. Reporter Bonioello wrote a story with the headline "Lawyer accused of masturbating in gym while staring at employee," which was published on August 25, 2018 in the New York Post. (hereinafter the August 25th Bonioello story").

104. In the August 25th Bonioello story plaintiff was unmistakably identified by name, profession and by virtue of his employment with a prominent, well known and well-respected law firm.

105. In the August 25th Bonioello story a detailed statement recounting the false allegation was attributed to a 27-year old “Equinox staffer,” who has since been identified as Former Equinox Employee Alexander.

106. The statement contained in the August 25th Bonioello story by Former Equinox Employee Alexander was patently false and exposed and continues to expose the plaintiff to public contempt, ridicule, aversion, and disgrace.

107. On September 1, 2018, Bonioello wrote another story again referencing the Former Equinox Employee’s false statements and running a photograph of the plaintiff under an unflattering headline and again subjecting plaintiff to further embarrassment stemming from Former Equinox Employee Alexander’s false statements.

108. Upon information and belief, Equinox, Equinox Wall Street or the employees thereof, including but not limited to Former Equinox Employee Alexander told the police that plaintiff’s membership had been terminated the day of the incident thereby lending further credence to the false allegations.

109. Upon information and belief, it is significant that both of the devastating and false New York Post articles were published well after Equinox’s untimely internal interviews had established the lack of character and trustworthiness on the part of Former Equinox Employee Alexander. Equinox recklessly sat on the results of its own untimely investigation and did nothing while it continued to sacrifice plaintiff’s reputation in covering up the consequences of its own reckless branding strategy.

110. Upon information and belief, Equinox, Equinox Wall Street and their attorneys continue to defame the plaintiff by failing to repudiate the false allegation as asserted within the

Former Equinox Employee's lawsuits thereby lending further credence to allegations it knows or should have known to be false.

111. As a result of the false defamatory statements made by Former Equinox Employee Alexander and the employees of Equinox and Equinox Wall Street, the plaintiff has suffered immense financial and emotional harm, as well as irreparable public embarrassment and harm to his reputation.

112. Equinox, Equinox Wall Street and the employees, including but not limited to Former Equinox Employee Alexander are liable to the plaintiff for defamation.

113. Equinox and Equinox Wall Street are liable to the plaintiff for Former Equinox Employee Alexander's actions under a theory of *respondeat superior* as on the date the false allegation was made Former Equinox Employee Alexander was working a shift beginning at 5:00 am and was only at the Equinox Wall Street facilities by virtue of the fact that he had completed his shift. Furthermore, Former Equinox Employee Alexander's action in reporting the false allegation was treated as a staff complaint-- as distinguished from and opposed to as a member complaint--, and an employee incident report was filed providing Equinox's workers compensation carrier notice of the event.

114. Plaintiff has suffered significant and irreparable direct and collateral injury as a result of defendants' various acts of defamation, the value of which is to be determined at trial, but which in no event is less than ten million dollars.

AS AND FOR A SECOND CAUSE OF ACTION FOR NEGLIGENCE AND GROSS
NEGLIGENCE
(As Against All Defendants)

115. Plaintiff repeats and realleges each and every allegation set forth in paragraph "1" through "114" of this Complaint with the same force and effect as if set forth fully herein.

116. At all relevant times herein, Equinox was aware of repeated instances of allegations of misconduct of a sexual nature stemming from alleged occurrences at various Equinox properties that gave rise to numerous civil litigation claims.

117. Equinox, having promulgated a hyper-sexual branding and marketing strategy and having been party to multiple civil litigation proceedings arising from allegations of sexual misconduct alleged to have occurred on Equinox properties, the exact type of allegation which was falsely made by Alexander, was aware of the foreseeability of such an allegation and of the potential harms that could stem from such a false allegation of that nature, to its members.

118. Upon information and belief, Equinox developed and implemented an Unlawful Discrimination, Harassment and Retaliation Policy as a means to protect its members, employees and its own corporate interests in instances of alleged misconduct.

119. Upon information and belief all newly hired employees were required to sign and abide by the Unlawful Discrimination, Harassment and Retaliation Policy. Alexander, Equinox Wall Street General Manager Tawfik and all Equinox Wall Street employees were aware of, or should have been aware of Equinox's Unlawful Discrimination, Harassment and Retaliation Policy and the procedures detailed therein.

120. Equinox's Unlawful Discrimination, Harassment and Retaliation Policy included certain "Reporting Procedures" and "Investigation Procedures" which according to the policy were to be implemented on occasions when an allegation of a violation of the policy arose.

consequence of its departure from the standard of care owed to the Plaintiff, all as detailed above. Plaintiff has suffered significant and irreparable direct and collateral injury as a result of Equinox and Defendant Alexander's negligence, the value is to be determined at trial, but which in no event is estimated to exceed ten million dollars. Defendants' recklessness in connection with those actions, as detailed above, furthermore constituted gross negligence entitling plaintiff to recover punitive damages.

AS AND FOR A THIRD CAUSE OF ACTION FOR BREACH OF CONTRACT
(As Against Equinox Defendants)

126. Plaintiff repeats and realleges each and every allegation set forth in paragraph "1" through "125" of this Complaint with the same force and effect as if set forth fully herein at length.

127. The Plaintiff entered into a contract with Equinox to utilize the health club facilities.

128. The Plaintiff performed under the contract by paying monthly dues for over 15 years and was a member in good standing until such time as his gym membership was wrongfully terminated without sufficient and due cause, following an uninvestigated false allegation of lewd conduct on the premises of the Wall Street Club.

129. Equinox breached the agreement by failing and refusing to take reasonable precautions to protect the plaintiff against a false allegation by Former Equinox Employee Alexander, failing and refusing to take a formal statement or undertake even a quasi-formal investigation, by refusing to work in good-faith with the Plaintiff after the false allegation occurred, and by abruptly and unjustly terminating the plaintiff's membership, all in a manner which led to major harm to plaintiff and his reputation. .

130. Based upon the foregoing, Equinox and Equinox Wall Street furthermore breached the implied covenant of good faith and fair dealing when it terminated the plaintiff's membership without sufficient and due cause, following an uninvestigated false allegation.

131. Plaintiff has suffered significant and irreparable direct and collateral injury as a result of Equinox's breach, the value is to be determined at trial, but which in no event is estimated to exceed ten million dollars.

AS AND FOR A FOURTH CAUSE OF ACTION FOR NEGLIGENT HIRING,
RETENTION, TRAINING AND SUPERVISION
(As Against Equinox Defendants)

132. Plaintiff repeats and realleges each and every allegation set forth in paragraph "1" through "131" of this Complaint with the same force and effect as if set forth fully herein.

133. Equinox and Equinox Wall Street knew or should have known of the offending employee's propensity to commit the conduct that caused the plaintiff's injury.

134. Defendant Equinox hired Former Equinox Employee Alexander on three separate occasions.

135. Upon information and belief, former Equinox Employee Alexander was terminated on at least one occasion prior to the date of his initial defamatory act and was made subject to a final written discipline notice three weeks prior to that false allegation.

136. According to untimely interviews conducted with co-workers of Former Equinox Employee Alexander on June 19, 2018, (one month after the false allegation and wrongful membership termination) Alexander was known to have a propensity to "blatantly lie"; to linger around the locker room; to engage in inappropriate discussions of a sexual nature and to "get jealous" about how members interacted with other staff members.

137. Based upon Alexander's history with the company and the information readily conveyed by his co-workers when questioned, Equinox knew or should have known that Alexander's credibility was so suspect that a decision on Equinox's part to recklessly act without investigation in terminating plaintiff's membership and otherwise violating its own corporate

policies would encourage its employee to persist in his lie and compound the devastating effects of his and Equinox's defamations.

138. Defendants had an implied duty to act reasonably towards plaintiff as a member of their facilities and breached that duty when Former Equinox Employee Alexander wantonly and recklessly made the false allegation, and Equinox unreasonably and foreseeably aggravated that injury in wantonly and recklessly failing to investigate and ultimately republishing the false allegation made against the plaintiff.

139. Equinox and Equinox Wall Street were grossly negligent in hiring, training, retaining, supervising Alexander as a Front Desk Associate.

140. Equinox and Equinox Wall Street had written Reporting and Investigation Procedures for addressing complaints of harassment and were grossly negligent in their failure to investigate the false allegation, their departing from their company-wide reporting and investigation procedures for harassment allegations and in their termination of the plaintiff's membership absent investigation.

141. By virtue of the gross negligence of Equinox, defendants are liable to the plaintiff for punitive damages, as well as significant and irreparable direct and collateral injury, the value is to be determined at trial, but which in no event, as to non-punitive damages only, is estimated be no less than ten million dollars.

AS AND FOR A FIFTH CAUSE OF ACTION FOR NEGLIGENT INFLECTION OF
EMOTIONAL DISTRESS
(As Against All Defendants)

142. Plaintiff repeats and realleges each and every allegation set forth in paragraph "1" through "141" of this Complaint with the same force and effect as if set forth fully herein.

143. As set forth above, Defendants conduct was extreme and outrageous.

144. As set forth above, Defendants' extreme and outrageous behavior was negligent.

145. As set forth above, Defendants, through their conduct alleged, did inflict emotional distress upon the Plaintiff.

146. By virtue of the foregoing Equinox and Defendant Alexander are liable to the plaintiff, as well as significant and irreparable direct and collateral injury, the value is to be determined at trial, but which in no event, as to non-punitive damages only, is estimated be no less than ten million dollars.

147. That due to the defendants' conduct, Plaintiff was caused to suffer and sustain pecuniary losses and psychological and emotional injuries, including but not limited to mental trauma, fear, humiliation, shame, stress, and anxiety, along with the physical manifestations of same.

JURY TRIAL DEMAND

Plaintiff hereby requests a trial by jury on all issues as triable by right.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands the following relief against Defendants:

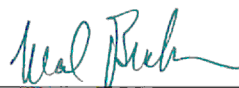
(a) Awarding actual damages resulting from Defendants' wrongdoing in an amount to be determined at trial, but in no event less than \$10,000,000, representing, inter alia, his lost wages and the damage to his professional reputation built up over forty years at the bar and in service to his clients and the legal profession;

(b) Punitive damages in an amount to be proven at trial;

(c) Pre- and post-judgment costs, interest, and attorneys' fees; and

(d) Such other and further relief as this Court may deem appropriate.

Dated: New York, New York
May 17, 2019

A handwritten signature in blue ink, appearing to read "Neal Brickman", is written over a horizontal line.

Neal Brickman, Esq.
Jason A. Stewart, Esq.
The Law Offices of Neal Brickman, P.C.
Attorneys for Plaintiff
420 Lexington Avenue, Suite 2440
New York, New York 10170
(212) 986-6840