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Case Number CVPS2204080 0000036195516 - W. Samuel Hamrick Jr., Executive Officer/Clerk of the Court By Kimberly Jove, Clerk

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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF RIVERSIDE

11 UNLIMITED JURISDICTION

12 MARCELO MUTO, and all others similarly
situated,

13 Plaintiff,

14 v.

15 FENIX INTERNATIONAL LIMITED; FENIX
16 INTERNET LLC,

17 Defendants.
18
19
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Case No. **CVPS2204080**

COMPLAINT FOR:

(1) VIOLATION OF THE
CALIFORNIA CONSUMER LEGAL
REMEDIES ACT [Civ. Code § 1750 et
seq.] and

(2) UNFAIR COMPETITION [Bus. &
Prof. Code § 17200 et seq., § 17600 et
seq.]

21
22 **INTRODUCTION**

23 1. Plaintiff Marcelo Muto brings this action to remedy Defendants’ failure to comply
24 with the ARL.

25 **PARTIES**

26 2. Plaintiff Marcelo Muto is a resident of Riverside County, California.

27 3. Defendant Fenix International Limited (“FIL”) is, on information and belief, a
28 business entity incorporated under the laws of the United Kingdom, with its principal place of

1 business in London. FIL is the counterparty to the Terms of Service that Mr. Muto entered in
2 Riverside County. On information and belief, FIL is the business entity that receives some or all
3 of the automatic renewal fees that are paid by OnlyFans customers and that are the subject of this
4 complaint.

5 4. Defendant Fenix Internet LLC is a Delaware limited liability company that is
6 headquartered in Florida. On information and belief, Fenix Internet LLC is a wholly owned
7 subsidiary of FIL, and is the company through which OnlyFan’s content creators receive
8 payment. Accordingly, Fenix Internet LLC is, or has been, continuously in possession of a
9 portion of the money Mr. Muto seeks to have restored to him by virtue of this lawsuit.

10 **VENUE**

11 5. Venue is proper in this jurisdiction because Plaintiff resides in Riverside County
12 and entered into the transactions at issue in this case in Riverside County.

13 **FACTUAL ALLEGATIONS**

14 6. Defendants violated California’s ARL on their OnlyFans platform by not
15 presenting the automatic renewal terms in a clear and conspicuous manner, and by not sending
16 Mr. Muto a post-transaction acknowledgement containing the information required by section
17 17602(a)(3).

18 7. Plaintiff Marcelo Muto subscribed to follow the account of an OnlyFans creator
19 called “@taste.of.heaven” in February 2021. Mr. Muto paid the initial subscription fee to that
20 account, and in doing so failed to receive an adequate set of disclosures at the time of that
21 transaction to clearly and conspicuously advise him that his card would be automatically billed
22 upon expiration of his initial enrollment period. Similarly, upon information and belief Mr. Muto
23 did not receive any post-transaction acknowledgement advising him of the matters set forth in
24 section 17602(a)(3), but if he did, that acknowledgement would have consisted of nothing but a
25 very short email identifying the account he had subscribed to.

26 8. Mr. Muto was thereafter charged a \$29.99 automatic renewal fee on or about
27 March 14, 2021, which Defendants refused to refund to him.

28 9. Had Mr. Muto received the clear and conspicuous disclosures required by the ARL

1 at the time he initially subscribed to @taste.of.heaven, and the post-subscription acknowledgment
2 required by section 17602(a)(3) with details on the auto-renewal offer and a readily accessible
3 means of canceling, he would have canceled his subscription prior to the renewal date, and would
4 not have lost \$29.99 to Defendants.

5 **FIRST CAUSE OF ACTION**

6 **(Violation of the California Consumer Legal Remedies Act, Civ. Code § 1750 et seq.)**

7 10. Plaintiff hereby incorporates the allegations of all preceding paragraphs as though
8 fully set forth herein.

9 11. Plaintiff is a “consumer” within the meaning of Civil Code § 1761(d) in that
10 Plaintiff sought or acquired Defendants’ goods and/or services for personal purposes.

11 12. Defendants’ membership program pertains to “services” within the meaning of
12 Civil Code § 1761(a) and (b).

13 13. The payments that Plaintiff made to Defendants are “transactions” within the
14 meaning of Civil Code section 1761(e).

15 14. Defendants have violated Civil Code § 1770, subdivisions (a)(5), (9), and (14), by
16 representing that Defendants’ goods or services have characteristics that they do not have;
17 advertising goods and services with the intent not to sell them as advertised; and representing that
18 a transaction confers or involves rights, remedies, or obligations that it does not have or involve,
19 or that are prohibited by law.

20 15. Unless enjoined and restrained by this Court, Defendants will continue to commit
21 the violations alleged herein. Pursuant to Civil Code § 1780(a)(2), Plaintiff seeks an injunction
22 prohibiting Defendants from continuing their unlawful practices as alleged herein.

23 **SECOND CAUSE OF ACTION**

24 **(Violation of the California Unfair Competition Law, B&P Code § 17200 et seq.; § 17600 et**
25 **seq.)**

26 16. Plaintiff hereby incorporates the allegations of all preceding paragraphs as though
27 fully set forth herein.

28 17. The Unfair Competition Law defines unfair competition as including any

1 unlawful, unfair, or fraudulent business act or practice; any unfair, deceptive, untrue, or
2 misleading advertising; and any act of false advertising under § 17500.

3 18. In the course of conducting business in California within the applicable limitations
4 period, Defendants committed unlawful, unfair, and/or fraudulent business practices, and engaged
5 in unfair, deceptive, untrue, or misleading advertising, by, inter alia and without limitation: (a)
6 failing to present automatic renewal offer terms in a clear and conspicuous manner before a
7 subscription or purchasing agreement is fulfilled and in visual proximity to the offer; (b) charging
8 the consumer's credit card or debit card for an automatic renewal fee without first obtaining the
9 consumer's affirmative consent to an agreement containing clear and conspicuous disclosure of
10 the automatic renewal offer terms; and (c) failing to provide an acknowledgment that includes
11 clear and conspicuous disclosure of all automatic renewal offer terms, the cancellation policy, and
12 information regarding how to cancel in a manner that is capable of being retained by the
13 consumer and that provides a mechanism for cancellation that is cost-effective, timely, and easy
14 to use, all in violation of § 17602(a) and (b).

15 19. Plaintiff has lost money as a result of Defendants' unlawful acts of unfair
16 competition, in that Plaintiff would not have incurred the automatic renewal fee associated with
17 the account of the creator known as @taste.of.heaven had Defendants fully, clearly, and
18 conspicuously apprised him of the terms of the automatic renewal offer described herein.

19 20. Pursuant to § 17203, Plaintiff is entitled to restitution of the amount he paid to
20 Defendants in connection with an automatic renewal membership program.

21 21. Unless enjoined and restrained by this Court, Defendants will continue to commit
22 the violations alleged herein. Pursuant to § 17203, Plaintiff seeks an injunction prohibiting
23 Defendants from continuing their unlawful practices as alleged herein.

24 **PRAYER**

25 Plaintiff prays for judgment against Defendants, as follows:

- 26 1. For restitution of the amounts he was unlawfully charged;
27 2. For injunctive relief against further violations of the ARL by Defendants;
28 3. For costs of suit;

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- 4. For prejudgment interest; and
- 5. For such other relief as the Court deems just and proper.

Dated: September 21, 2022

GAW | POE LLP

By: 

MARK POE
Attorneys for Plaintiff
Marcelo Muto