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**UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

MARCELO MUTO and all others  
similarly situated,

Plaintiffs,

v.

FENIX INTERNATIONAL LIMITED  
and FENIX INTERNET LLC,  
Defendants.

Case No. 5:22-cv-02164-SSS-DTBx

**ORDER GRANTING  
DEFENDANTS' MOTION TO  
DISMISS [Dkt. 35] AND DENYING  
AS MOOT PLAINTIFFS' MOTION  
TO PROCEED ANONYMOUSLY  
[Dkt. 50] AND DEFENDANTS'  
MOTION TO SEAL [Dkt. 36]**

1 Before the Court is the motion to dismiss filed jointly by Defendants  
2 Fenix International Limited (“FIL”) and Fenix Internet LLC (“Fenix Internet”).  
3 [Mot. (Dkt. 35)]. The motion is fully briefed [Opp. (Dkt. 41); Reply (Dkt. 48)]  
4 and was taken under submission without a hearing.

5 Also before the Court are Defendants’ motion to seal [Dkt. 36] and  
6 Plaintiffs’ motion to proceed anonymously [Dkt. 50; *see also* Dkt. 52 (Defs.’  
7 Response); Dkt. 53 (Pls.’ Reply)].

8 For the reasons set forth below, the motion to dismiss is **GRANTED**.

9 Defendants’ motion to seal [Dkt. 36] and Plaintiffs’ motion to proceed  
10 anonymously [Dkt. 50] are **DENIED AS MOOT**.

### 11 I. BACKGROUND

12 Defendant FIL owns and operates OnlyFans, a “social media and creation  
13 platform through which consumers [subscribe]... to original content uploaded  
14 by [OnlyFans] creators.” [Cons. Compl. (Dkt. 34) at ¶¶ 2, 3]. Defendant Fenix  
15 Internet is a wholly owned subsidiary of FIL. [Cons. Compl. at ¶ 4].<sup>1</sup>

16 Plaintiffs are four California residents, each of whom purchased a  
17 subscription to one or more OnlyFans creators between February 2021 and  
18 December 2022. Thereafter, they were charged automatically for monthly  
19 renewals of those subscriptions. Plaintiffs allege that Defendants violated  
20 California’s Automatic Renewal Law by failing to provide (1) adequate notice  
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24 <sup>1</sup> Defendant FIL is a private, limited company registered under the laws of the  
25 United Kingdom and Hong Kong, with its principal place of business in the  
26 United Kingdom. Defendant Fenix Internet is a limited liability company  
27 incorporated in Delaware and headquartered in Florida. [Cons. Compl. at ¶¶ 18,  
28 19].

1 of OnlyFans’ automatic subscription renewal policy and (2) appropriate  
2 subscription cancellation options. Cal. Bus. & Prof. Code § 17600 *et seq.*  
3 [Cons. Compl. at ¶¶ 77-100]. Plaintiffs seek to represent themselves and a  
4 putative class of similarly situated California consumers.

## 5 II. THE AUTOMATIC RENEWAL LAW

6 California’s Automatic Renewal Law (“ARL”) codifies the legislature’s  
7 intent “to end the practice of ongoing charging of consumer credit or debit cards  
8 or third-party payment accounts without the consumers’ explicit consent.” *King*  
9 *v. Bumble Trading, Inc.*, 393 F. Supp. 3d 856, 867-68 (N.D. Cal. 2019), citing  
10 Cal. Bus. & Prof. Code § 17600.

11 To that end, Section 17602(a) of the statute requires every business  
12 offering products or services in California to present automatic renewal offer  
13 terms in a “clear and conspicuous manner” in “visual proximity...to the request  
14 for consent to the offer.” Cal. Bus. & Prof. Code §17602(a)(1). The statute  
15 defines a “clear and conspicuous” notice as one presented “in larger type than  
16 the surrounding text,” or “in contrasting type, font, or color to the surrounding  
17 text of the same size,” or that is “set off from the surrounding text of the same  
18 size by symbols or other marks, in a manner that clearly calls attention to the  
19 language.” Cal. Bus. & Prof. Code §17601.

20 A business must also provide the consumer with an “acknowledgment  
21 that includes the automatic renewal offer terms or continuous service offer  
22 terms, cancellation policy, and information regarding how to cancel in a manner  
23 that is capable of being retained by the consumer.” Cal. Bus. & Prof. Code §  
24 17602(a)(2)-(3).

25 Section 17602(d) requires that “any business that allows a consumer to  
26 accept an automatic renewal or continuous service offer online” must “allow a  
27 consumer to terminate [that] service exclusively online, at will” through either a  
28 “prominently located direct link or button... within the customer account or

1 profile” or “an immediately accessible termination email formatted and  
2 provided by the business that a consumer can send to the business without  
3 additional information.”

4 The ARL does not itself provide a private right of action. *Mayron v.*  
5 *Google LLC*, 269 Cal. Rptr. 3d 86, 88-91 (2020). However, a “consumer who  
6 has been harmed by a violation of the ARL may bring a claim pursuant to other  
7 [California] consumer protection statutes, including the FAL [False Advertising  
8 Law], CLRA [Consumer Legal Remedies Act], and UCL [Unfair Competition  
9 Law].” *Arnold v. Hearst Mag. Media, Inc.*, No. 19-1969, 2021 WL 488343 at \*6  
10 (S.D. Cal. Feb. 10, 2021); *see also Johnson v. Pluralsight, LLC*, 728 F. App'x  
11 674, 677 (9th Cir. 2018).

12 Plaintiffs rely on the UCL, which prohibits any “unlawful, unfair, or  
13 fraudulent business practice.” Cal. Bus. & Prof. Code § 17200. The UCL  
14 “thereby ‘borrows’ violations from other laws by making them independently  
15 actionable as unfair competitive practices.” *AT & T Mobility LLC v. AU*  
16 *Optronics Corp.*, 707 F.3d 1106, 1107 n.1 (9th Cir. 2013). Plaintiffs allege that  
17 Defendants’ failures to comply with the ARL’s requirements constitute  
18 unlawful business practices under California law. [Cons. Compl. at ¶¶ 113-  
19 116].

### 20 III. MOTION TO DISMISS

21 Defendants argue that Plaintiffs’ suit should be dismissed either (1)  
22 because the forum selection clause contained in OnlyFans’ Terms of Service  
23 requires that this matter be litigated in the United Kingdom,<sup>2</sup> (2) because this  
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27 <sup>2</sup> Defendants, appropriately, rely on the doctrine of forum non convenien as  
28 grounds for dismissal pursuant to a forum selection clause that purports to  
require litigation in a foreign country. *In re Facebook, Inc. S'holder Derivative*

1 Court lacks personal jurisdiction over the Defendants, or (3) because Plaintiffs  
2 lack standing to pursue their claims. Separately, Fenix Internet also contends  
3 that Plaintiffs have failed to state a claim against it.

4 The Court finds that the forum selection clause is unenforceable, but that  
5 it lacks personal jurisdiction over Defendants with respect to Plaintiffs' ARL  
6 claims. Because the jurisdictional defect alone requires dismissal, the Court  
7 does not reach the other arguments advanced by Defendants in their motion.

#### 8 **A. Enforceability of the Forum Selection Clause**

##### 9 **i. Legal Standard**

10 A forum selection clause is prima facie valid unless the party challenging  
11 the provision can show it is unreasonable under the circumstances. *M/S Bremen*  
12 *v. Zapata Off-Shore Co.*, 407 U.S. 1, 10 (1972). Such a clause may be deemed  
13 unreasonable if “the inclusion of the clause in the agreement was the product of  
14 fraud or overreaching,” if “the party wishing to repudiate the clause would  
15 effectively be deprived of his day in court were the clause enforced,” or “if  
16 enforcement would contravene a strong public policy of the forum in which suit  
17 is brought.” *Holland Am. Line Inc. v. Wartsila N. Am., Inc.*, 485 F.3d 450, 457  
18 (9th Cir. 2007), quoting *Murphy v. Schneider Nat'l, Inc.*, 362 F.3d 1133, 1140  
19 (9th Cir. 2004).

20 To determine the public policy of a state, a federal court considers “the  
21 Constitution, laws, and judicial decisions of that state, and as well the applicable  
22 principles of the common law.” *First Intercontinental Bank v. Ahn*, 798 F.3d  
23 1149, 1156 (9th Cir. 2015). No bright-line rules govern this analysis. *See*  
24 *Century 21 Real Estate LLC v. All Profl Realty, Inc.*, 889 F. Supp. 2d 1198,

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28 *Priv. Litig.*, 367 F. Supp. 3d 1108, 1118 (N.D. Cal. 2019), citing *Atl. Marine*  
*Const. Co. v. U.S. Dist. Court for W. Dist. of Texas*, 571 U.S. 49, 61 (2013).

1 1216 (E.D. Cal. 2012). It is clear, however, that the policy must be a  
2 “substantial” one. *See Brack v. Omni Loan Co.*, 164 Cal. App. 4th 1312, 1323  
3 (2008).

4 **ii. Discussion**

5 Defendants seek to rely on a forum selection clause included in the  
6 OnlyFans Terms of Service stating that any claim “which [the consumer has] ...  
7 arising out of or in connection with [OnlyFans] or [the consumer’s] use of  
8 OnlyFans ... must be brought in the courts of England and Wales.” [Mot. at 14;  
9 Taylor Decl. (Dkt. 35-1) and Exhs. A-D]. Defendants contend that the clause  
10 precludes Plaintiffs from pursuing this litigation in any American forum.

11 Plaintiffs argue, in part, that the forum selection clause is void because its  
12 enforcement would violate California’s fundamental public policy favoring  
13 consumer class actions in cases like this one. Defendants maintain that  
14 California has no such policy. They also assert that even if it did, enforcement  
15 of the clause would not contravene the policy because procedures equivalent to  
16 the American class action are available to claimants in courts of the United  
17 Kingdom. The Court disagrees, finding that California’s strong state policy  
18 regarding consumer class actions is implicated by this case and that this policy  
19 would be wholly undermined if Plaintiffs were required to litigate in  
20 Defendants’ proposed forum.

21 First, California’s courts have made clear that it is the “fundamental  
22 policy” of this state to ensure that its citizens have a “viable forum in which to  
23 recover minor amounts of money allegedly obtained in violation of the UCL.”  
24 *Aral v. Earthlink, Inc.*, 134 Cal. App. 4th 544, 564 (2005). In consumer  
25 litigation where each individual’s damages may be small, but where “[a]  
26 company which wrongfully extracts a dollar from each of millions of customers  
27 will reap a handsome profit,” the class action device “is often the only effective  
28 way to halt and redress such exploitation.” *Omstead v. Dell, Inc.*, 533 F. Supp.

1 2d 1012, 1016-17 (N.D. Cal. 2008). California policy therefore dictates that, in  
2 such cases, the fact that transfer the defendant’s chosen forum would render  
3 class action relief unavailable is “sufficient in and by itself to preclude  
4 enforcement of [a] forum selection clause.” *Am. Online, Inc. v. Superior Ct.*, 90  
5 Cal. App. 4th 1, 108 Cal. Rptr. 2d 699, 712 (2001).

6 Plaintiffs’ allegations indicate that this is precisely the kind of consumer  
7 case for which California has found access to class remedies to be particularly  
8 important. Plaintiffs and the putative class members describe individual  
9 damages equal to the monthly subscription fees that they were improperly  
10 charged. The monthly fees cited in the complaint range from about five dollars  
11 to about fifty dollars – figures small enough that it is unlikely that the damages  
12 owed to any single plaintiff would be so substantial as to justify the time and  
13 expense of individual litigation. At the same time, Plaintiffs provide facts to  
14 suggest that Defendants may have generated substantial profits by enrolling  
15 California consumers in automatic subscriptions in violation of the ARL’s  
16 requirements: Defendants derived almost half a billion dollars in net revenue  
17 from OnlyFans user subscriptions in 2021, with 8.4% of their total revenue  
18 coming from California consumers entitled to the protections of the ARL.<sup>3</sup>  
19 [Cons. Compl. at ¶¶ 5, 12].

20 Moreover, none of the procedures in the English and Welsh courts that  
21 Defendants have identified would offer Plaintiffs the essential benefits of the  
22 class action format. [Mot. at 17; White Decl. (Dkt. 35-14) at ¶¶ 47-49; Reply at  
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28 <sup>3</sup> See Cons. Compl. at ¶ 25 (indicating 70% of Defendants’ total revenues are generated in the United States, and 12% of that 70% comes from California).

1 6, 7]. Under a “group litigation order,” per CPR 19.11,<sup>4</sup> each claimant would be  
2 required to affirmatively opt into the proceedings and enter into a retainer  
3 agreement with the solicitor (attorney) responsible for managing the group’s  
4 claims. As British courts acknowledge, the up-front costs of the retainer  
5 agreement render this process “not economic” for “claims which individually  
6 are only worth a few hundred pounds.” [*Lloyd v. Google, LLC* (Dkt. 42-1)].  
7 For similar reasons, the Court finds that the other procedural alternatives  
8 Defendants point to [*see* White Decl. (Dkt. 35-14) at ¶¶ 47, 48] would also fail  
9 to protect the important objectives of California’s strong consumer class action  
10 policy.

11 As such, the Court concludes that Defendants’ forum selection clause is  
12 void as contrary to California public policy and declines to enforce it.

13 **B. Personal Jurisdiction over Defendants in California**

14 Next, Defendants argue that Plaintiffs’ claims must be dismissed because  
15 this Court lacks personal jurisdiction over them. [Mot. at 23-27]. Plaintiffs  
16 concede that there is no general personal jurisdiction over either Defendant in  
17 California but maintain that specific jurisdiction is appropriate with regards to  
18 their ARL claim. [Opp. at 17].

19 **i. Legal Standard**

20 Under Federal Rule of Civil Procedure 12(b)(2), a defendant may move to  
21 dismiss for lack of personal jurisdiction. The exercise of specific personal  
22 jurisdiction over a nonresident defendant is proper only if the plaintiffs can  
23 show that (1) the defendant purposefully directed certain conduct to the forum  
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27 <sup>4</sup> As explained in Defendants’ expert declaration in support of their motion, “the  
28 procedure of English civil litigation is governed by the Civil Procedure Rules  
1998, as amended (the ‘CPR’).” [White Decl. at ¶ 10].



1 state or purposely availed itself of the privileges of doing business there, and  
2 that (2) plaintiffs’ claims arise out of or relate to these identified “forum-related  
3 activities.” *AMA Multimedia, LLC v. Wanat*, 970 F.3d 1201, 1208 (9th Cir.  
4 2020).

5 To determine whether a defendant “purposefully directed” its activities  
6 toward the forum, a court must consider the “effects” test derived from *Calder*  
7 *v. Jones*, 465 U.S. 783 (1984). That test “focuses on the forum in which the  
8 defendant’s actions were felt, whether or not the actions themselves occurred  
9 within the forum.” *Mavrix Photo, Inc. v. Brand Techs., Inc.*, 647 F.3d 1218,  
10 1228 (9th Cir. 2011), quoting *Yahoo! Inc. v. La Ligue Contre Le Racisme Et*  
11 *L’Antisemitisme*, 433 F.3d 1199, 1206 (9th Cir. 2006). The *Calder* effects test  
12 asks “whether the defendant: (1) committed an intentional act, (2) expressly  
13 aimed at the forum state, (3) causing harm that the defendant knows is likely to  
14 be suffered in the forum state.” *Will Co. v. Lee*, 47 F.4th 917, 922 (9th Cir.  
15 2022).

16 In order to show purposeful availment, the plaintiff must show that the  
17 defendant “deliberately reached out beyond [its] home—by, for example,  
18 exploiting a market in the forum State or entering a contractual relationship  
19 centered there.” *Yamashita v. LG Chem, Ltd.*, 62 F.4th 496, 503 (9th Cir. 2023).  
20 “[U]nilateral activity of another party or a third person” does not suffice.  
21 *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 417 (1984).

## 22 **ii. Discussion**

23 Plaintiffs argue that, by “enroll[ing] consumers into automatically  
24 recurring OnlyFans subscriptions,” Defendants “purposefully availed” themselves  
25 of the privileges of doing business in California and should be subject to  
26 personal jurisdiction here. [Opp. at 18].

27 Plaintiffs are mistaken. As the Ninth Circuit has made clear, the mere  
28 operation of “interactive website” visited by residents of a particular state does

1 not, by itself, establish that Defendant either “expressly aimed” its conduct at  
2 that state or “deliberately reached out” to it. *See Mavrix*, 647 F.3d at 1231.  
3 Rather, the court must consider whether the defendant’s generally accessible  
4 website had some “forum-specific focus,” or if the defendant “exhibited an  
5 intent to cultivate an audience in the forum.” *Herbal Brands, Inc. v.*  
6 *Photoplaza, Inc.*, 72 F.4th 1085, 1091-92 (9th Cir. 2023). Plaintiffs’ assertions  
7 that a significant number of California residents visited and purchased  
8 subscriptions through Defendants’ website are not enough to carry their burden  
9 in this inquiry.

10 Defendants’ motion to dismiss under Fed. R. Civ. P. 12(b)(2) is therefore  
11 granted.

#### 12 IV. CONCLUSION

13 For the reasons provided above, the Court **GRANTS** Defendants’ motion  
14 to dismiss for lack of personal jurisdiction and **DISMISSES** the complaint.<sup>5</sup>

15 Defendants’ motion to seal [Dkt. 36] and Plaintiffs’ motion to proceed  
16 anonymously [Dkt. 50] are **DENIED AS MOOT**. Defendants are **DIRECTED**  
17 to lodge with this Court a proposed final judgment, consistent with this order,  
18 on or before **Friday, May 10, 2024**.

19 **IT IS SO ORDERED.**

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21 Dated: May 2, 2024



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SUNSHINE S. SYKES  
United States District Judge

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27 <sup>5</sup> Because neither Plaintiffs’ complaint nor their briefing suggests that the  
28 jurisdictional defect identified here is curable, the Court does not grant them  
leave to amend their pleadings.