MEMORANDUM OF POINTS AND AUTHORITIES

Adversarial Review of the Class Action Complaint, Independent Reconstruction of the Referral-Program Record, and Recommendations to Strengthen Plaintiffs' Claims Before a Forum-Selection Motion

Matter: *Alison Hardesty and Erika Heidewald v. Fenix International Limited and Fenix Internet LLC*
Court: United States District Court for the Central District of California, Southern Division
Case No.: 8:26-cv-02189
Prepared for: Counsel for Plaintiffs — Hagens Berman Sobol Shapiro LLP, for their consideration
Date: August 18, 2026

CONTROLLING DEADLINE.

The events that presently control strategy are perishable public-web evidence and an anticipated *forum non conveniens* motion modeled on *Muniz v. Fenix International Ltd.* (N.D. Ga. June 25, 2021). Preserve the record now. Separately, Fenix International Limited's group accounts for the year ended November 30, 2025 are due at Companies House on August 31, 2026 and may be the first statutory accounts to name the new parent.

COLLECTIBILITY NOTICE.

It appears the residual equity of the UK operator, and therefore the path for future dividends, has been moved to the British Virgin Islands. Companies House confirmation statements show that on May 7, 2026, 100 percent of Fenix International Limited's ordinary shares transferred to Fenix International Holdings Limited. A commercial BVI listing places that exact name in Tortola. That BVI identity is not a finding that the operator itself is a BVI company, and it is not a finding that the $497 million in FY2024 dividends already went to Holdings. Those dividends predate the May 7, 2026 hop. After that hop, extractable profits of the named defendant appear to sit behind an offshore parent. The UK person-with-significant-control register still names Yekaterina Chudnovsky, an American resident in the United States, with 75 percent or more of FIL's shares and votes. The picture is an offshore parent over a cash-rich UK operator whose named controller is a U.S. person. See Section V.H.

TL/DR

1. Do not rest Count I on Terms of Service § 15 (referral reward) while discarding § 18 (forum selection).
2. The December 2018 Terms did not include the word "lifetime." It was, however, on onlyfans.com\partners and onlyfans.com\faq.
3. Plead the "lifetime" promise as a unilateral extra-TOS offer accepted by performance; treat *Muniz* as the defense template; use *Stover* against silent modification of accrued streams.
4. Ninth Circuit formation law after *Berman* is fact-intensive and does not authorize clause-shopping.
5. Conversion is weak after *Voris*.
6. Limitations is *Aryeh* versus a single repudiation.
7. Fenix Internet is the payor Fenix already described under oath; do not plead it as the site operator.
8. N.Z. kept California consumers in this District and dismissed out-of-state plaintiffs on the English clause. Heidewald is the split risk. N.Z. is already this firm's case before Judge Slaughter; do not treat ECF 117 as a referrer win.
9. The UK PSC is a named U.S. resident, so the BVI parent is not an anonymous box.
10. FIL paid hundreds of millions in dividends while the May 7, 2026 share register moved 100 percent of the ordinary shares to a holding company that public sources place in the BVI. That is a collectibility and preservation problem now. *See* Sections III, V, and V.H.

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I. INTRODUCTION AND SCOPE

This memorandum undertakes an adversarial review of the Class Action Complaint in *Hardesty v. Fenix International Ltd.*, No. 8:26-cv-02189 (C.D. Cal.), filed August 12, 2026. The purpose is to identify vulnerabilities so that counsel may mitigate before Fenix answers or moves to dismiss on *forum non conveniens*.

Independent research included:

1. Wayback captures of onlyfans.com/terms from January 2017 through March 2021;
2. surviving full-text captures of the Terms were compared word by word to identify what changed from version to version;
3. archived OnlyFans in-app script files (texts.js) from June through October 2019 were reviewed for the on-screen "LIFETIME" referral language, including an October 29, 2019 capture in Plaintiff Heidewald's alleged join month;
4. archived YouTube pages for Hardesty video identifier *hUtiDHS7o6I* containing her referral code 12439767;
5. the July 13, 2020 Rara Knupps interview transcript;
6. official opinions *Stover v. Experian Holdings, Inc.*; *Berman v. Freedom Financial Network, LLC*; *Nguyen v. Barnes & Noble Inc.*; *Richards v. Lloyd's of London*; and *Sateriale v. R.J. Reynolds Tobacco Co.*[1];
7. Later Ninth Circuit formation and forum cases including *Oberstein v. Live Nation Entertainment, Inc., Keebaugh v. Warner Bros. Entertainment Inc., Chabolla v. ClassPass, Inc., Godun v. JustAnswer LLC*, and *Lee v. Fisher*[2];
8. California Supreme Court opinions *Voris v. Lampert* and *Aryeh v. Canon Business Solutions, Inc.*[3];
9. The June 25, 2021 order in *Muniz v. Fenix International Ltd.*[4];
10. California Code of Civil Procedure sections 337, 338, and 339;
11. Consumer Rights Act 2015, Schedule 2, was retrieved from legislation.gov.uk;
12. the unpublished *John Doe 1 v. Fenix International Ltd.* memorandum (9th Cir. June 30, 2026); *N.Z. v. Fenix International Ltd.* ECF 117, 208, and 251; *Muto v. Fenix International Ltd.* ECF 60; and the Northern District of Illinois order in *Doe et al. v. Fenix Internet LLC*[5] dismissing Fenix Internet for lack of personal jurisdiction;
13. Companies House filings for Fenix International Limited (company no. 10354575), including the 7 July 2026 confirmation statement and the group accounts for the year ended 30 November 2024 (filed 27 August 2025), were reviewed for payor identity, ownership, and collectability.

Technology-aided indexing was used to extract docket text, Wayback HTML, and opinion text. No automated system was treated as a substitute for reading the enumerated sources.

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[1] *Stover v. Experian Holdings, Inc.*, 978 F.3d 1082 (9th Cir. 2020); *Berman v. Freedom Financial Network, LLC*, 30 F.4th 849 (9th Cir. 2022); *Nguyen v. Barnes & Noble Inc.*, 763 F.3d 1171 (9th Cir. 2014); *Richards v. Lloyd's of London*, 135 F.3d 1289 (9th Cir. 1998) *(en banc); Sateriale v. R.J. Reynolds Tobacco Co.*, 697 F.3d 777 (9th Cir. 2012), *on remand*, No. 2:09-cv-08394, 2014 WL 7338881 (C.D. Cal. Dec. 19, 2014).

[2] *Oberstein v. Live Nation Entertainment, Inc.*, 60 F.4th 505 (9th Cir. 2023); *Keebaugh v. Warner Bros. Entertainment Inc.*, 100 F.4th 1005 (9th Cir. 2024); *Chabolla v. ClassPass, Inc.*, 129 F.4th 1147 (9th Cir. 2025); *Godun v. JustAnswer LLC*, 135 F.4th 699 (9th Cir. 2025); *Lee v. Fisher*, 70 F.4th 1129 (9th Cir. 2023) *(en banc).*

[3] *Voris v. Lampert*, 7 Cal. 5th 1141 (2019); *Aryeh v. Canon Business Solutions, Inc.*, 55 Cal. 4th 1185 (2013).

[4] *Muniz v. Fenix International Ltd.*, No. 1:20-cv-03200 (N.D. Ga. June 25, 2021).

[5] *John Doe 1 v. Fenix International Ltd.*, No. 24-7831, 2026 WL 1965599 (9th Cir. June 30, 2026) (unpublished); *N.Z. v. Fenix International Ltd.*, No. 8:24-cv-01655, 2026 WL 1425183 (C.D. Cal. May 19, 2026); *Muto v. Fenix International Ltd.*, No. 5:22-cv-02164, 2024 WL 2148734 (C.D. Cal. May 2, 2024); *Doe v. Fenix Internet LLC*, No. 1:21-cv-06624 (N.D. Ill. June 5, 2024).

II. GOVERNING LAW AND PROCEDURAL POSTURE

A. Jurisdiction, parties, and the unverified calendar

Plaintiffs Alison Hardesty (resident of Huntington Beach, CA) and Erika Heidewald (resident of Manor, TX)[6] sued Fenix International Limited and Fenix Internet LLC on August 12, 2026. Subject-matter jurisdiction is pleaded under the Class Action Fairness Act, 28 U.S.C. § 1332(d). Personal jurisdiction is pleaded from California-directed Referral Program activity and from two Fenix decisions cited in the complaint footnotes.[7] *Doe* is an unpublished Ninth Circuit memorandum, filed June 30, 2026, in a subscriber Automatic Renewal Law appeal (No. 24-7831). After *Briskin v. Shopify, Inc.*,[8] the panel vacated a Northern District of California personal-jurisdiction dismissal. It held that more than 10,000 California subscriptions, about $400 million in annual California revenue, and fulfillment wherever users access content made a *prima facie* showing that Fenix International Limited expressly aimed at California. The panel did not decide relatedness, reasonableness, or *forum non conveniens*. Ninth Circuit Rule 36-3 limits citation and the facts between that matter and the immediate matter are dissimilar.

N.Z. is already a Hagens Berman chatter-scam subscriber case in this District, No. 8:24-cv-01655, before Judge Slaughter.[9] The April 9, 2025 order (ECF 117) refused *forum non conveniens* as to California residents because sending them to England would substantially diminish California's consumer class-action policy, and granted the motion without leave as to out-of-state plaintiffs. The December 12, 2025 order (ECF 208) denied reconsideration after *EpicentRx, Inc. v. Superior Court*[10] - the jury rationale standing alone is gone, and the class-action rationale survived. That order is not a personal-jurisdiction dismissal. The May 19, 2026 order (ECF 251) found specific personal jurisdiction over both Fenix International Limited and Fenix Internet LLC, then used the Terms' integration clause to keep extra-TOS marketing out of the contract and dismissed the extra-TOS contract theory without leave. Alternative promissory estoppel failed in a footnote when plaintiffs did not answer the argument. The complaint footnote's personal-jurisdiction characterization is supported. The integration holding is adverse to a "lifetime" theory that treats marketing as the contract while the Terms remain the platform agreement. Paragraph 117 already walks into that argument.

B. Choice of law in a California federal diversity case

Because the claims are state-law claims in a federal court sitting under CAFA, federal procedure applies and California's choice-of-law rules govern the substantive-law question.[11] Judge Baker's concurrence in *Berman* traces the same forum-state path even in some federal-question settings. Here CAFA makes *Klaxon* the cleaner hook.

California generally respects contractual choice-of-law clauses under *Nedlloyd Lines B.V.*[12] and Restatement (Second) of Conflict of Laws § 187. The court first asks whether the chosen jurisdiction has a substantial relationship to the parties or the transaction, or whether some other reasonable basis exists for the choice. If so,

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[6] Both Plaintiffs were residents of Los Angeles during the relevant events.

[7] *John Doe 1 v. Fenix International Ltd.*, 2026 WL 1965599 (9th Cir. July 2, 2026), and *N.Z. v. Fenix International Ltd.*, 2026 WL 1425183 (C.D. Cal. May 19, 2026).

[8] *Briskin v. Shopify, Inc.*, 135 F.4th 739 (9th Cir. 2025).

[9] Christopher Pitoun is counsel of record in *N.Z.* and the present case. Robert Carey and Rachel Fitzpatrick in Phoenix listed as *pro hac vice* forthcoming.

[10] *EpicentRx, Inc. v. Superior Court*, 18 Cal. 5th 58, 334 Cal. Rptr. 3d 702 (2025).

[11] *Klaxon Co. v. Stentor Electric Manufacturing Co.*, 313 U.S. 487 (1941).

[12] *Nedlloyd Lines B.V. v. Superior Court*, 3 Cal. 4th 459 (1992).

the selection generally governs unless applying the chosen law would conflict with a fundamental policy of the state whose law otherwise would apply, and that state has a materially greater interest in the particular issue. That description is a working statement of the doctrine. England's relationship is not difficult to establish; Fenix International Limited is an English company. California residence and California performance matter, but they do not by themselves nullify an English clause. A nonwaivable California statutory right would be a stronger § 187 override than the common-law contract, promissory-estoppel, and conversion claims actually pleaded, plus a California subclass.

C. Online formation: *Nguyen*, *Berman*, and *Stover*

Definitions

Browsewrap. The terms are posted somewhere on the site, usually behind a hyperlink in small text. The user is never asked to check a box or click "I agree." The theory is that using the site is enough. Courts rarely enforce this unless the user actually knew the terms were there.

Clickwrap. Before finishing signup or a purchase, the user must take a clear step that says they agree, such as checking "I agree to the Terms" or clicking a button whose label states that the click is agreement. This is the form courts enforce most readily.

Sign-in wrap. There is no separate "I agree" checkbox. A notice near the "Create Account" or "Sign In" button says that creating an account or signing in means the user agrees to the hyperlinked terms. Whether it binds depends on how conspicuous that notice is and whether the button action clearly shows assent. Some Ninth Circuit cases have enforced this layout; others have not.

Hybrid wrap (sometimes used for a mix of the last two). The notice and the action button sit together, and the page says that creating an account or buying something constitutes agreement. *Oberstein* treated a well-designed version of this as enforceable. It is still judged by the *Berman* questions: 1) was the notice reasonably conspicuous, and 2) did the user's click unambiguously mean agreement.

Nguyen v. Barnes & Noble Inc. holds that a conspicuous hyperlink on every page, including checkout, does not put a consumer on inquiry notice of terms unless something more captures the user's attention and secures assent. Close proximity of the hyperlink to the purchase button, without more, is insufficient. The onus is on the website owner. Courts have enforced browsewrap where the user's actual knowledge of the terms is established.

Berman supplies the modern two-part test. Unless the operator shows actual knowledge, an online agreement is formed on inquiry notice only if the site provides reasonably conspicuous notice of the terms and the user takes some action that unambiguously manifests assent. Tiny gray text that does not look like a hyperlink, next to a large "Continue" button that does not itself say the click binds the user, fails both prongs. Clickwrap is routinely enforced; browsewrap is not.

Sign-in wrap occupies a gray zone under the California Court of Appeal decisions discussed in Judge Baker's concurrence. Later-published Ninth Circuit decisions apply the same test and split on the screens. *Oberstein* enforced a hybrid wrap where bright-blue hyperlinks sat next to the action button and the notice said that creating an account or purchasing constituted agreement. *Keebaugh* enforced a sign-in wrap and held that both the context of the transaction and the placement of the notice count; context is not dispositive by itself. *Chabolla* and *Godun* affirmed denials of arbitration where the screens failed reasonably conspicuous notice or unambiguous assent.

None of those decisions overrules *Berman*. They confirm that inquiry-notice law is fact-intensive. It is the fight if counsel walks back paragraph 117. It is not a license to keep § 15 and drop § 18 after alleging that Plaintiffs read the Terms.

Stover v. Experian Holdings, Inc. is the modification case. A 2014 clickwrap containing a change-of-terms clause did not bind the user to 2018 terms based on a later website visit, with no allegation of notice of the new terms. Both parties must have notice that the terms have changed and an opportunity to review the changes. *Douglas v. United States District Court*,[13] holds that parties have no duty to check a website periodically for silent modifications. *Stover* helps Plaintiffs against treating continued use after May 1, 2020 as silent assent to new referral economics if the only "notice" was posting. The complaint itself alleges a May 1, 2020 email. That email is Fenix's notice argument. *Stover* does not erase the original English forum clause. Do not equate "no valid modification of accrued referral rights" with "never agreed to English courts."

Nguyen also rejected an estoppel theory that matters here in the inverse. Barnes & Noble argued that Nguyen could not avoid arbitration because his complaint relied on the Terms of Use choice-of-law clause. The Ninth Circuit held that citing a choice-of-law provision is not a "direct benefit" that forces a non-party into the rest of an unformed contract. That holding helps only if Plaintiffs deny TOS formation and rest on extra-TOS offers. It is not a license to keep § 15 and drop § 18 after alleging that they read the Terms at account creation.

D. Foreign forum selection: *Atlantic Marine*, *The Bremen*, *Richards*, and *Muniz*

When the contractual forum is a foreign court rather than another federal district, enforcement proceeds through forum non conveniens.[14] A valid forum-selection clause receives extremely substantial weight. The plaintiff's choice of forum loses its ordinary weight. The parties' private convenience interests generally are not considered. Only unusual public-interest circumstances ordinarily justify disregarding the agreed forum.

The Bremen v. Zapata Off-Shore Co.,[15] as applied by the Ninth Circuit sitting *en banc* in *Richards v. Lloyd's of London*,[16] supplies the principal routes around an otherwise applicable clause: fraud or overreaching affecting the clause itself; enforcement that would deprive the plaintiff of a meaningful day in court; or enforcement that would contravene a sufficiently strong public policy of the forum. *Richards* enforced English law and English courts against United States Names[17] who asserted federal securities and RICO claims, because English remedies were not so deficient as to leave no reasonable recourse. *Scherk v. Alberto-Culver Co.*,[18] supplied the international-transaction rationale. The Names flew to England and signed a two-page General Undertaking. Hardesty clicked through a consumer website. That distinction goes to adhesion and overreaching. It does not authorize treating an England/English-law combination as generic boilerplate that a California federal court will simply disregard.

This defendant has already won this motion on these facts. In *Muniz v. Fenix International Ltd.*, a referring user alleged that she entered a binding OnlyFans Terms of Service contract, that she was promised 5 percent "(lifetime)" on all income, and that Fenix cut the program on May 1, 2020 to twelve months and a $50,000 cap. The Terms then numbered as § 17.1 selected England and Wales law and courts—the same operative language as the December 2018 § 18.1 in this record. The court applied *Atlantic Marine*, treated the clause as mandatory, used the plaintiff's own allegation that she agreed to the Terms against her, cited *Nguyen* for the proposition that

[13] *Douglas v. United States District Court*, 495 F.3d 1062 (9th Cir. 2007) (per curiam).

[14] *Atlantic Marine Construction Co. v. U.S. District Court*, 571 U.S. 49, 60 (2013).

[15] *The Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1 (1972).

[16] *Richards v. Lloyd's of London*, 135 F.3d 1289 (9th Cir. 1998).

[17] At Lloyd's, a "Name" is an individual underwriting member. That person puts personal capital behind insurance policies written by a syndicate and, in the era of *Richards*, could be liable to the full extent of their assets. Americans who signed up for that role were often called United States Names. *Richards v. Lloyd's of London* was a suit by those American Names. They had gone to England, signed Lloyd's documents selecting English law and English courts, then later sued in the United States on federal securities and RICO theories after large underwriting losses. The Ninth Circuit, sitting *en banc*, enforced the English clause anyway.

[18] *Scherk v. Alberto-Culver Co.*, 417 U.S. 506 (1974).

browsewrap with actual notice is enforceable, rejected personal inconvenience as a *Bremen* out, found English remedies adequate on an uncontested English-solicitor affidavit, and dismissed without prejudice subject to Fenix's consent to English jurisdiction and 180-day tolling. *Muniz* is Eleventh Circuit procedure, not Ninth Circuit precedent. It is still the closest analog on this platform, this program, this change date, and this clause. Defense counsel will file it.

Two later Central District orders refuse English forum clauses for California consumer classes. They do not erase *Muniz*. In *Muto v. Fenix International Ltd.*, the court held the English consumer forum-selection clause unenforceable as contrary to California consumer class-action public policy, then dismissed for lack of specific personal jurisdiction because an interactive website plus California subscribers was not enough. *N.Z.* ECF 117 later used the same class-action architecture to keep California residents here and to dismiss out-of-state plaintiffs without leave. Defense counsel will cite *Muto* on jurisdiction. The unpublished *Doe* memorandum is the plaintiff repair after *Briskin*. Both orders remain distinguishable if Hardesty plaintiffs are framed as commercial referrers rather than California consumers. The 2018 Terms Hardesty joined under also lack the later consumer-resident packaging analyzed in *N.Z.*. Heidewald, alleged to reside in Texas at filing, maps onto the *N.Z.* out-of-state dismissal.

The Ninth Circuit has not become more willing to ignore forum-selection clauses since *Muniz*. *Lee v. Fisher* dismissed a derivative action on *forum non conveniens* to enforce a Delaware Court of Chancery clause, applying *Atlantic Marine* and *Bremen*. The case is not an England case and not a consumer Terms dispute. It is recent *en banc* confirmation that this Circuit dismisses to honor a forum clause rather than treating *forum non conveniens* as a private-inconvenience contest. No published 2020 through 2026 Ninth Circuit opinion was located that refuses to send a United States plaintiff to the courts of England and Wales on an OnlyFans-style consumer Terms clause. *Muto* and *N.Z.* ECF 117 are district-court public-policy refusals for California consumer classes. They are not Circuit holdings, and they are not referral-program holdings. *Richards* remains the English-forum landmark.

E. Unilateral offers and *Sateriale*

Sateriale v. R.J. Reynolds Tobacco Co. is the complaint's cited architecture and the correct repair path if it is used for the right instrument. Ordinary advertisements are not offers. A customer-rewards program can be an offer to enter a unilateral contract accepted by performance, where the offeror controls the number of acceptances. Mutuality of obligation does not apply to unilateral contracts. If, however, the offeror reserved an unrestricted right to terminate without notice, the contract claim may well be untenable. That last sentence is the December 2018 § 1.4 and § 1.7.1 problem. If Count I is "the Terms promised lifetime commissions," Fenix will quote those clauses and *Sateriale*'s termination warning in the same brief that cites *Muniz*. On remand, the Central District denied summary judgment in *Sateriale v. R.J. Reynolds Tobacco Co*. The court treated Camel Cash certificates as an offer in clear and positive terms and held that later catalog language permitting termination without notice did not defeat formation because Reynolds waived at-will termination by announcing a wind-down date. That unpublished order is useful only for the waiver-by-wind-down point. It is not a holding that extra-TOS marketing survives an integration clause. The complaint cites it at paragraph 158 for non-revocation after performance. Use it with that limit.

F. Limitations arithmetic under California procedure

Official current text of California Code of Civil Procedure section 337 provides four years for an action upon a contract founded upon an instrument in writing. Section 339 provides two years for a contract not founded upon a writing. Section 338(c) provides three years for taking, detaining, or injuring goods or chattels. Whether those periods apply at all depends on the choice-of-law fight. If English law governs, California's periods may not control. If California law governs a written Terms of Service, four years from a May 1, 2021 last payment would have expired on May 1, 2025, more than a year before filing. Complaint paragraph 134 already confines damages to commissions "within the applicable limitations period," which is an implicit concession that the clock is live. *Aryeh v. Canon Business Solutions, Inc.* supplies the continuous-accrual doctrine: when an obligation arises on a recurring basis, a new claim accrues each time a wrongful act occurs, and recovery is limited to the lookback. *Armstrong Petroleum Corp. v. Tri-Valley Oil & Gas Co.*[19] is the installment analog *Aryeh* endorsed. *Aryeh* distinguished *Snapp & Associates Insurance Services, Inc. v. Robertson*,[20] where converting client accounts and then receiving later commissions did not restart the conversion clock because the misappropriation was a completed act. *Rosenberg-Wohl v. State Farm Fire & Casualty Co.*[21] does not overrule *Aryeh*. The repair is therefore a continuing-accrual theory keyed to each unpaid monthly installment after May 1, 2021 on still-active referred accounts, not a hope that the Court will ignore the dates. That theory dies if May 1, 2020 or May 1, 2021 was a single repudiation, if the claim is treated as not founded on a writing, or if Terms § 18.2's one-year contractual limit applies and is not prohibited. English limitation and variation were not researched.

III. EXECUTIVE SUMMARY

OnlyFans recruited referring users with a 5 percent lifetime commission. Plaintiffs allegedly recruited thousands of creators on that promise, but Fenix cut the program on May 1, 2020 and stopped paying the pre-change book after May 1, 2021. Independently-collected site archives confirm that the "LIFETIME" language existed, just not in the TOS—the complaint's contract theory is pointed at the wrong source. Importantly, this defendant has already obtained dismissal of a nearly identical referral case on the English forum clause.

1. The December 28, 2018 Terms of Service do not contain the word "lifetime" in § 15. Section 15.2 promises "5% of all total income earned by the referred User," paid monthly from OnlyFans's fee, not from the creator's 80 percent. That same version contains § 1.4 (changes effective immediately when posted; continued use is agreement; users are expected to check the page), § 1.7.1 (modify, suspend, or terminate any portion without notice), § 18.1 (England and Wales law and exclusive English courts), § 18.2 (one-year contractual limitations except where prohibited), and § 20.1 (entire agreement). Complaint paragraph 100—which alleges that Fenix "never reserved the right to revoke the Referral Program terms retroactively"—is incomplete as to that instrument.
2. Complaint paragraph 117 alleges that Plaintiffs "recall seeing Fenix's representations about the lifetime referral commissions and reading Fenix's TOS in creating their OnlyFans accounts." If that allegation is credited, Plaintiffs have actual notice of § 18. *Nguyen* and *Berman* then do not defeat original formation. They become tools against later silent posting, not a license to cherry-pick § 15. Treating "Lifetime" as binding while ignoring choice of law and venue would weaken the case. See *Muniz*.
3. The word "LIFETIME" is found in June through October 2019 in-app texts.js copy, including a October 29, 2019 capture in Heidewald's alleged join month: 5 percent commission "(lifetime)" and "every payment, every month … LIFETIME!" That is marketing and user-interface copy, not clickwrap. It is the better offer text under *Sateriale* because it is more specific than TOS § 15. Wayback captures in the October and November 2019 window are SPA shells.[22]

[19] *Armstrong Petroleum Corp. v. Tri-Valley Oil & Gas Co.*, 116 Cal. App. 4th 1375.

[20] *Snapp & Associates Insurance Services, Inc. v. Robertson*, 96 Cal. App. 4th 884.

[21] *Rosenberg-Wohl v. State Farm Fire & Casualty Co.* (Cal. July 18, 2024).

[22] SPA shells are Wayback snapshots of onlyfans.com/terms that captured only the empty webpage wrapper, not the Terms text.

4. *Muniz* is the defense template: same platform, same 5 percent lifetime pitch, same May 1 2020 change, same English clause, same "I agreed to the Terms" allegation. The Northern District of Georgia dismissed on *forum non conveniens*. Private inconvenience failed. English remedies were treated as adequate. Plaintiff-side work that pretends the English clause is decorative repeats a failed theory. Sitting *en banc*, the Ninth Circuit in *Lee v. Fisher* dismissed on *forum non conveniens* to enforce a forum-selection clause. Do not tell a California federal judge that this Circuit is friendlier than Georgia on these motions.
5. "Limitations" is a first-order case-killing risk, not a footnote. Last alleged lifetime-book payments were May 1, 2021. Suit was filed August 12, 2026. If California's four-year written-contract period runs from the last payment, the claim is late. The complaint already cabins damages to the applicable period. The repair is continuing monthly accrual on still-active referred accounts under *Aryeh*, supported by paragraphs 124, 125, 132, and 134, plus preservation of creator activity evidence. Fenix will analogize to a single repudiation. Conversion on a contractual commission stream is a Rule 12 magnet after *Voris v. Lampert*.
6. Hardesty's YouTube recruiting record is both a typicality asset and a preservation emergency. Her public catalog was made private around August 4, 2026, the week before filing. Archived watch pages of "HOW TO MAKE MONEY ON ONLYFANS FAST!" contain referral code 12439767 from May 5, 2020 through May 17, 2021. That is <u>post-change</u> recruiting.
7. Fenix Internet LLC is the payor Fenix already described under oath. In *Doe et al. v. Fenix Internet LLC*, the court accepted an unrebutted Lee Taylor declaration: Fenix International Limited operates OnlyFans; Fenix Internet's sole responsibility is payment processing; FIL is the LLC's sole member. A BIPA[23] claim did not arise out of those payment contacts. Unpaid California referral commissions would. Do not plead the LLC as the site operator.
8. *N.Z.* is already this firm's case before Judge Slaughter. ECF 117 is a same-District template for splitting Heidewald, not a referrer win. California consumer plaintiffs stayed; out-of-state plaintiffs were dismissed without leave on the English clause. The May 19, 2026 order that the complaint cites for personal jurisdiction is the same document that used the integration clause to keep extra-TOS marketing out of the contract. *Muto* used the same class-action public-policy refusal, then dismissed for lack of personal jurisdiction—a holding the unpublished *Doe* memorandum later undercut after *Briskin*. Hardesty still has to explain why commercial referrers get a consumer class-action policy, and why the 2018 Terms rather than the later consumer clause should receive that treatment.
9. Collectibility is now a first-order problem, not a footnote. FIL's audited group accounts for the year ended November 30, 2024 report ordinary dividends paid of $497 million, with a further $204 million declared from December 2024 through April 2025, while the statutory notes still named L. Radvinsky as ultimate controlling party. On May 7, 2026 the ordinary register moved 100 percent of the 1,000,000 shares to Fenix International Holdings Limited. A Companies House search did not return a live UK company of that name, but press and a commercial BVI listing place that entity in Tortola. The implication is that future dividends of the named UK defendant now flow to an offshore parent. Do not treat the FY2024 dividends as already paid to Holdings. Do not treat FIL as a BVI company. The UK PSC register still names a U.S.-resident (Chudnovsky) individual with 75 percent or more of FIL. FIL's own 2024 accounts attribute 64.3 percent of

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"SPA" means single-page application. After OnlyFans rebuilt the site around late 2019, /terms stopped shipping as a normal HTML document with the contract in the page. The server sent a nearly empty frame: title "OnlyFans," a loading logo, an empty <div id=app></div>, and script tags pointing to JavaScript (app.js, texts.js, staticPages.js). A live browser then runs that JavaScript, fetches the Terms, and paints them on screen. The Wayback Machine usually saves the first HTML response. It does not reliably run that JavaScript. So the archive looks like a Terms page by URL, but the extracted text is only the word "OnlyFans." The contract is missing. That is why those October/November 2019 captures cannot prove what Heidewald or Hardesty saw at signup, and why they are excluded from the TOS comparison chain. NOTE: "Wayback has /terms on that date" is not the same as "we have that TOS."

[23] Illinois Biometric Information Privacy Act, 740 ILCS 14/1 *et seq*.

net platform revenue to the United States and list Fenix US INC and OF World LLC alongside Fenix Internet. *See* Section V.H.

IV. RELEVANT FACTUAL BACKGROUND

A. The pleaded theory

Fenix operated a Referral Program under which a user with a unique link would earn 5 percent of a referred creator's income for "LIFETIME," paid monthly from OnlyFans's 20 percent fee, not from the creator's 80 percent. Heidewald joined in October 2019 and Hardesty in November 2019. They allege they read the TOS at signup, relied on the lifetime promise, and referred more than 2,200 and 4,500 creators respectively before May 1, 2020. Hardesty's commissions are alleged to have moved from $2.18 in February 2020 (two creators) to $1,538.82 in March after YouTube promotion, then to $4,550 from more than 4,000 creators paid May 1, 2020. Heidewald is alleged to have earned more than $28,000 between December 2019 and April 2021; Hardesty nearly $47,000 between February 2020 and April 2021. On May 1, 2020, OnlyFans emailed a change: new referrals limited to twelve months and a $50,000 per-creator cap; pre-change referrals paid only through May 1, 2021. After that date, alleged payouts collapsed. Counts are breach of contract, promissory estoppel in the alternative, and conversion. The proposed nationwide class is United States participants whose unique link was used by at least one creator who joined before May 1, 2020 and generated revenue after May 1, 2021, plus a California subclass.

B. What the surviving Terms actually say

The Referral Program section was added to the Terms between the September 3, 2017 and March 23, 2018 captures. From March 29, 2018 through December 28, 2018, § 15 is stable: unique URL; same-browser signup; 5 percent of all total income; monthly; deducted from OnlyFans's fee. The word "lifetime" does not appear in that section. The December 28, 2018 capture—which the complaint footnotes—also contains the English exclusive-forum clause and the unilateral-change clauses described above. NOTE: Section 1.1 contains a garbled sentence that "VM Digital is governed by the laws of the United States." That is likely a drafting artifact.

The next surviving full-text Terms capture in the local chain is February 1, 2021. That version uses "Incentive Payment" language, recites a right to change how referral payments are calculated, and states that no change will deprive users of Incentive Payments already earned. A March 17, 2021 separate Referral Program Terms capture states the twelve-month rule, the $50,000 cap, a grandfather to 1 May 2021, and "already earned based on Fan Payments … before the changes." Those later savings clauses are plaintiff-helpful as Fenix's own later recognition that earned payments stand. They are not the 2019 join-window contract. October and November 2019 /terms captures are SPA shells. The help-center URL later cited in the 2021 Terms, onlyfans.com/help/3/22/90, has no pre-May 2020 Wayback hits in this cycle, and the July 24, 2020 capture is another SPA shell.

C. Marketing copy, recruiting, and attribution

In-app texts.js from June through October 2019 served "5% commission (lifetime)" and "every payment, every month … LIFETIME!" Client-visible attribution rules in the 2018 Terms and 2019 FAQ were unique URL and same-browser signup, with the operator not liable if the wrong link was used and the FAQ stating it was not possible to change a referral record.

Hardesty's public referral code, as mirrored in third-party descriptions and in archived watch HTML, is onlyfans.com/?ref=12439767. Wayback watch pages for hUtiDHS7o6I dated May 5, June 9, June 25, and August 10, 2020, and May 17, 2021, all contain that code. The Rara Knupps interview of July 13, 2020 is live. In that transcript Hardesty explains that the 5 percent comes from OnlyFans's 20 percent and "doesn't take away from them," and Rara says she signed up under Hardesty's referral. That is typicality, Federal Trade Commission disclosure, and witness lead evidence. It is not pre-change promise proof. Heidewald OnlyFans tutorials were not located on public YouTube. WordPress biographical copy historically referred to "Erika and Frida."

C. Unresolved tension

Complaint paragraphs 105 and 122 describe a \$20 monthly payout threshold. The April 2019 FAQ that the complaint cites describes referral income rolling over below \$50. That tension should be resolved from primary captures before it is tried as a class-wide fact. Complaint-cited Vice coverage of May 4, 2020 quoting Hardesty is consistent with reliance.

V. ADVERSARIAL VULNERABILITIES AND OVERLOOKED FACTS

A. Cherry-picking the Terms is a case-weakening move

If Plaintiffs treat the December 2018 Terms as the instrument that made the referral program binding, they take § 18 with § 15. Paragraph 117 is actual-notice formation of the whole instrument. Fenix will quote paragraph 117, attach the December 2018 Terms, and move under *Atlantic Marine* exactly as it did in *Muniz*. The extra-TOS "LIFETIME" copy is the better offer because § 15 never used that word. A court that treats the Terms as the contract will not let Plaintiffs enforce the commission clause and discard the forum clause. Plead in the alternative: a unilateral extra-TOS offer accepted by referring creators; the Terms as a platform contract if they are kept; and promissory estoppel. Do not make § 15 the exclusive alleged promise.

B. Paragraph 100 cannot survive contact with § 1.4

Paragraph 100 alleges that Fenix never reserved the right to revoke Referral Program terms retroactively. The same December 2018 capture the complaint footnotes already contains immediate-effect posting, continued-use assent, and a right to modify, suspend, or terminate any portion without notice. Competent defense counsel can prove paragraph 100 incomplete from Plaintiffs' own cited archive. Credibility loss on a core contract allegation at the first motion. Amend or, if amendment is not yet ripe, prepare the opposition theory now: those clauses may authorize prospective program changes after notice, but they do not, under *Stover* and *Douglas*, silently rewrite accrued monthly streams on already-referred accounts, and they do not convert "lifetime" marketing into an illusory bargain if the offer is the marketing rather than the Terms. *Sateriale*'s warning about unrestricted termination without notice must be confronted, not buried.

C. *Muniz* is not a curiosity. It is this case, already tried.

Muniz pleaded the binding Terms, the lifetime 5 percent, the May 2020 email change, and unpaid referral fees. The court enforced the English clause. Fenix does not need to invent a forum theory; it can reuse a brief. Private-inconvenience arguments that failed in Georgia will fail again under *Atlantic Marine* in California. *Lee v. Fisher* makes that risk sharper, not softer. Do not lead an opposition with cost, education, or travel. Lead with (1) the lifetime promise as extra-TOS unilateral offer, so that § 18 is not the contract for this dispute; (2) invalid modification of accrued streams even if the Terms apply; (3) Fenix Internet LLC as the U.S. payor that Fenix itself described under oath (not as the site operator; beware that Fenix offered the contract terms); (4) public-interest and California-consumer policy only if a nonwaivable statutory claim is added and can be validated; and (5) later 2021 consumer-resident forum language as Fenix's own recognition that exclusive English courts were overbroad for United States consumers, without adopting the 2021 Terms as the 2019 contract.

D. Limitations and conversion

Filing is more than five years after the May 1, 2021 cutoff of the pre-change book. If the claim accrued once, in 2020 or 2021, California's four-year written-contract period is a dismissal argument. If each unpaid month on a still-earning referred creator is a new breach under *Aryeh*, later months inside the lookback may be timely. Fenix will argue repudiation on May 1, 2020, or last payment on May 1, 2021, started a single clock, analogizing to *Snapp*. Conversion of a contractual commission stream will be attacked under *Voris v. Lampert*. Conversion is the wrongful exercise of dominion over personal property of another. Money can be converted only when it is a specific sum capable of identification. A plaintiff has no conversion claim merely because the defendant has a bank account and owes the plaintiff money. The California Supreme Court distinguished earmarked commissions that were pocketed from an ordinary contractual right to be paid. The label "commission" is not enough. Discovery must show, if the count is kept, identified referral balances—ledger lines or pending-payout wallets above the pleaded threshold—that Fenix Internet held and diverted. Count III is the weak count. Build the continuing-accrual record now: which referred creators remained active after May 2021, what they earned, and what would have been paid at 5 percent. Preserve payout ledgers, invoices, and bank deposits identifying Fenix Internet. Do not lead the case on conversion.

E. Typicality, disclosure, and the vanished catalog

Hardesty's pre-change book is alleged to have exploded from two creators to more than 4,000 in a matter of weeks through YouTube. That is industrial recruiting, not a six-month drip. It is powerful reliance evidence and a typicality and manageability problem. The live channel catalog is gone. Archived watch pages still carry the referral link after the program changed. The Rara interview discusses the 5 percent as coming from OnlyFans's fee, which is consistent with TOS § 15.2 and useful against a "you stole from creators" narrative, but it is post-change. There is a risk of a class-definition fight between referrers who never hit the cap and those who did, United States versus foreign referrers, and creators who were also referrers. Map typicality subclasses before certification briefing.

F. Fenix Internet is the payor, not the operator

On a 12(b)(2) record in the Northern District of Illinois, Fenix Internet submitted a Lee Taylor declaration that the court accepted because the plaintiffs filed no competing affidavit: FIL operates OnlyFans; Fenix Internet's sole responsibility is payment processing; FIL is the LLC's sole member. The court dismissed Fenix Internet because BIPA and IRPA[24] injuries did not arise out of payment-processing contacts. Hardesty's theory that Fenix Internet paid California referral commissions is the claim that <u>does</u> arise out of that function. It is also how FIL will say it, not the LLC, is the contracting party on the Terms. Pleading that Fenix Internet ran the platform, age verification, or content review walks into Taylor. Dropping the LLC because *Doe* (N.D. Cal.) dropped it, or because Illinois dismissed it on a biometric claim, throws away the U.S. payor. Pull Taylor Dkt. 27-2. Preserve 1099s, payout ledgers, and bank deposits naming Fenix Internet. Secondary tax guides saying U.S. creator 1099-NEC forms issue from the LLC are consistent and are not court records. Alternative pleading can reach both entities without pretending they do the same job. Plead FIL as operator and offeror; plead Fenix Internet as the U.S. entity that

[24] Illinois Right of Publicity Act, 765 ILCS 1075/1 *et seq*.

moved the money, including California commissions; use those payments as the relatedness hook Illinois said BIPA lacked.

G. *N.Z.* and *Muto* do not make this a consumer Automatic Renewal Law case

Same District, same defendants, different injury. *N.Z.* is already this firm's fan case in the Southern Division. It kept California fan-plaintiffs here on consumer class-action policy and dismissed Texas-equivalent plaintiffs without leave. The May 19, 2026 order then used integration to keep extra-TOS marketing out of the contract. That integration holding is in the same order the Hardesty complaint cites for personal jurisdiction. *Muto* is the C.D. Cal. parent of that forum holding and of the personal-jurisdiction dismissal later undercut in unpublished *Doe*. Counsel already have a same-firm, same-District map for Heidewald, for paragraph 117, and for how this defendant briefs English forum clauses. If Hardesty is related to *N.Z.*, the first forum motion will be argued to a judge who has already written the consumer-clause and integration opinions. Treating *N.Z.* ECF 117 as a referrer win invites a clean distinction: those plaintiffs were California consumers asserting UCL and Automatic Renewal Law theories; these plaintiffs are alleged commercial referrers seeking unpaid commissions under 2018 Terms that did not use the later consumer-resident clause. Do not lead the forum opposition on *N.Z.* as if it decided this program. Use it to keep Hardesty if a validated California consumer policy can be shown, to prepare a Heidewald split, and to assume Slaughter-style integration if the Terms are the contract. Keep extra-TOS "LIFETIME" copy as a separate offer. Subscriber Automatic Renewal Law cases against Fenix Internet only, including *Gates v. Fenix Internet LLC* in the District of Delaware, are collectibility intelligence.

H. Collectibility: dividends and the apparent BVI parent

FIL's consolidated accounts for the year ended November 30, 2024 (filed August 27, 2025) report ordinary dividends paid of $497,000,000, compared with $472,000,000 in 2023. Note 6 states that those dividends were declared in respect of shares held by a company director. After the balance-sheet date, note 32 and the directors' report list further ordinary dividends totalling $204,000,000 between December 30, 2024 and April 30, 2025. Note 31 names L. Radvinsky as the ultimate controlling party by virtue of his majority shareholding. Group cash at November 30, 2024 is reported at $808 million, with parent-company cash of $508.9 million, significant cash balances, and no borrowings. Locate the filed accounts, which were signed by the then board, not by the directors appointed May 8, 2026. Holdings Limited is not named in those notes and could not be: it was not on FIL's ordinary register until May 7, 2026.

The July 7, 2026 confirmation statement is the later register. Issued ordinary capital is 1,000,000 shares. As of that statement, Fenix International Holdings Limited holds all 1,000,000. LR Fenix Trust and LR Fenix Group, LLC each show 1,000,000 transferred on May 7, 2026, the day before the reported Architect Capital 16-percent-purchase announcement and the Blair, Chudnovsky, and Sagan director appointments. Because only 1,000,000 ordinary shares exist, those two transfer lines are consistent with a same-day chain, not with two simultaneous blocks. A Companies House search did not return a live UK company named Fenix International Holdings Limited. Corriere della Sera (22 July 2026) and an El Mundo reprint report that Architect's 16 percent was taken in a BVI vehicle created for the deal and that top-level control moved from the trust to Fenix International Holdings Limited of Tortola. A commercial BVI search page lists that exact name with displayed number 688752. Identity with the confirmation-statement shareholder is probable on exact name and timing. It is not confirmed that Holdings is now the BVI parent of FIL.

A judgment against FIL still names a UK company that, as of the last filed accounts, held hundreds of millions in cash and had no debt. The May 7, 2026 hop does not make FIL judgment-proof by itself. What it does is move the residual claim on FIL's future profits to a company that, if the press and commercial listing are right, sits in a jurisdiction whose members register and beneficial-ownership filings are not public. After that hop, ordinary dividends declared by FIL would be payable to Holdings. Combined with the already-extracted $701 million in ordinary dividends across FY2024 and the five post-year-end declarations through April 2025, the appearance is that the defendant group is upstreaming value and has parked the equity in the British Virgin Islands. Further dividends after May 7, 2026, intercompany charges, or a sale of FIL's cash-generative business at Holdings-level leave a thinner UK operating company for a California class judgment. BVI service and execution are slower and more expensive than a UK parent. Defense counsel will correctly say that dividends to a lawful shareholder are not a fraudulent transfer on these public papers, that FIL remains the operator, and that Architect's 16 percent is not on FIL's ordinary register. Those points are fair, but they do not make the hop irrelevant to collectibility.

The same accounts also change the personal-jurisdiction and payor picture. Note revenue by market attributes about $909 million, 64.3 percent of $1.413 billion net platform revenue, to the United States. That is FIL's own IFRS 15 line, not a traffic estimate. Average monthly group employees including directors were 46 (UK statutory headcount). The subsidiary note lists Fenix Internet LLC, Fenix US INC, and OF World LLC, with a Delaware service address at 501 Silverside Road, Suite 87, Wilmington. Hardesty sued FIL and Fenix Internet. Which of those three U.S. entities actually paid referral commissions remains uncertain.

The BVI parent is also not an unnamed box. The Companies House person-with-significant-control snapshot names Yekaterina Chudnovsky as the active individual PSC, notified March 20, 2026: American nationality, place of residence United States, ownership of shares 75 percent or more, ownership of voting rights 75 percent or more, and the right to appoint or remove directors. She was appointed a FIL director on May 8, 2026. James Stuart Sagan (American and usually resides in the United States) was appointed a director the same day. Press treats Chudnovsky as Radvinsky's widow but records of a lawful marriage have not yet been located. A named U.S. controller over a likely BVI parent is worse for quiet upstreaming and better for finding someone who can be served. Obtain a paid VIRRGIN search on Fenix International Holdings Limited for registered agent, memorandum and articles, good standing, and the current directors list. Watch the accounts due August 31, 2026 for an FRS 102 ultimate-parent update. In discovery, demand dividend resolutions after May 7, 2026, the Holdings cap table, any shareholder agreement with Architect, and the banks and entities that actually hold the group cash. Send a preservation demand covering cash, dividends, intercompany transfers, and Holdings-level instruments now, without waiting for a forum motion.

VI. DEFENSE FORECAST AND DISCOVERY PRIORITIES

The first defense filing to expect is not a merits answer. It is a motion to dismiss for *forum non conveniens*, with the December 2018 Terms attached, paragraph 117 quoted, *Muniz* cited, an English-solicitor affidavit on adequacy, and a *Bremen* / *Atlantic Marine* brief. A Rule 12(b)(6) brief in the alternative will argue illusory promise under § 1.4 and § 1.7.1, accepted modification by the May 1, 2020 email plus continued use, limitations, and conversion failure. Personal-jurisdiction arguments will have to account for the complaint's *N.Z.* and *John Doe* citations. Expect *Muto* on personal jurisdiction, Taylor's Illinois declaration to confine Fenix Internet to payment processing, *N.Z.* ECF 117 to split Heidewald as an out-of-state plaintiff, and the May 19, 2026 *N.Z.* order for an integration-clause argument that extra-TOS marketing is not the contract. *Lee v. Fisher* will be cited to show that this Circuit dismisses to honor forum clauses. *Voris* and *Snapp* will be cited on conversion and a single-clock limitations theory.

Discovery and preservation should be aimed at claim elements, not curiosity. Highest-value items are: the October and November 2019 signup screens and clickwrap logs; the May 1, 2020 email as sent, not as paraphrased; monthly referral ledgers for each named plaintiff and for still-active referred creators after May 1, 2021; which entity—Fenix International Limited, Fenix Internet LLC, Fenix US INC, or OF World LLC—issued the Terms and which entity paid; same-browser attribution logs; and Hardesty and Heidewald video files in counsel's or the clients' possession.

An English-law consult should answer four questions that this memorandum cannot: whether a unilateral change clause can cut off commissions already accruing on referred accounts; whether "5% of all total income" is a continuing obligation or a revocable incentive; whether a United States referring creator is a "consumer" under the Consumer Rights Act 2015; and what limitation period English law would apply. Official Schedule 2 to that Act (retrieved from legislation.gov.uk) lists as a candidate unfair term a clause enabling the trader to alter the contract unilaterally without a valid reason specified in the contract. The same Schedule provides that an indefinite contract may reserve unilateral alteration if the trader gives reasonable notice and the consumer is free to dissolve the contract. Obtain an English solicitor affidavit before Fenix files one.

VII. RECOMMENDATIONS TO STRENGTHEN PLAINTIFFS' POSITION

1. Immediately preserve Wayback, texts.js, FAQ, Partners, and YouTube watch-page captures, and pull client-held videos and emails. Further delay is spoliation risk as to third-party hosts, not a reason to wait for a verified response date.
2. Prepare a Rule 15 amendment outline, even if amendment is not filed before the first motion, that (a) pleads the lifetime promise as a unilateral extra-TOS offer accepted by performance under *Sateriale*; (b) pleads the Terms in the alternative without making § 15 the sole promise; (c) corrects paragraph 100 so that § 1.4 and § 1.7.1 are confronted rather than denied; (d) specifies continuing monthly accrual after May 1, 2021 on identified still-active referred creators under *Aryeh*; (e) separates Fenix International Limited from Fenix Internet LLC as operator/offeror and U.S. payor, consistent with the unrebutted Taylor declaration, and does not allege that the LLC ran the site; and (f) does not lead on conversion after *Voris*.
3. If a *forum non conveniens* motion is filed, do not oppose on private inconvenience and do not argue that the Ninth Circuit is friendlier than *Muniz*. *Lee v. Fisher* is to the contrary. Do not treat *N.Z.* ECF 117 as a referrer win. Oppose on formation of a different contract for the referral bargain, invalid modification of accrued streams, the U.S. payor entity, and any validated California statutory policy. Prepare a Heidewald split if the court follows *N.Z.* on out-of-state plaintiffs. Condition any dismissal, as *Muniz* did, on consent to English jurisdiction and tolling, so that a loss on forum is not a loss on the merits.
4. Map class typicality now. Hardesty's industrial YouTube spike, Heidewald's smaller book and Texas residence at filing, referrers who hit the $50,000 cap, and referrers who did not are not the same case. Heidewald is also the out-of-state plaintiff *N.Z.* ECF 117 dismissed without leave. Subclass or representative-plaintiff work done after a forum motion is too late if the motion is the whole case.
5. Treat collectibility as an immediate preservation problem. Serve a preservation demand on both named defendants covering cash, ordinary dividends, intercompany transfers, and instruments of Fenix International Holdings Limited, and copy FIL's U.S.-resident director and PSC, Chudnovsky, and director Sagan, without naming them as defendants. Purchase a VIRRGIN search on Holdings. Calendar August 31, 2026 for FIL's next group accounts. In discovery, ask which of Fenix Internet, Fenix US INC, or OF World LLC paid California referral commissions.

VIII. CONCLUSION

Both sides of the core disputes were tested. The weaker path is to treat TOS § 15 as a lifetime contract, ignore § 18, and hope a California federal court will decline to enforce an England/English-law clause as boilerplate. That path has already failed against this defendant in *Muniz*, and it is inconsistent with paragraph 117, *Richards*, *Atlantic Marine*, and *Lee v. Fisher*, and the December 2018 capture the complaint itself footnotes. The stronger path is to locate the lifetime bargain where the word "LIFETIME" actually appeared—in contemporaneous marketing and in-app copy—accept it by performance under *Sateriale*, use *Stover* and *Douglas* against silent rewriting of accrued monthly streams, and confront limitations as a continuing-accrual problem under *Aryeh* rather than as an afterthought. Conversion is the weak count after *Voris*. What Plaintiffs can presently support is a dated public promise of lifetime commissions and a dated cutoff of the pre-change book. The defense's best path is *Muniz* plus paragraph 117, with *N.Z.* as this firm's same-District map before Judge Slaughter for splitting Heidewald and for keeping extra-TOS marketing out of the contract. The single most important repair is still to stop making the Terms the exclusive source of the lifetime promise. The next is to plead Fenix Internet as the U.S. payor Fenix already described under oath, not as the operator of OnlyFans. The collectibility overlay is independent of those merits repairs: FIL extracted hundreds of millions in dividends and then moved 100 percent of its ordinary shares to a holding company that public sources place in the British Virgin Islands, while the UK PSC register still names a U.S.-resident individual. Preserve that cash path now. The evidence that would most change the merits assessment is the join-window signup UI, the May 1, 2020 email as sent, and proof of referred-creator revenue after May 1, 2021. The evidence that would most change the collectibility assessment is a VIRRGIN extract for Holdings and FIL's accounts due 31 August 2026.