24-1914-cv

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

SARI E. NEWMAN,
Plaintiff-Appellant,

v.

JPMORGAN CHASE BANK, N.A.,
Defendant-Appellee.

On Appeal from the United States District Court for the Southern District of New York, No. 1:22-cv-6948 (Hon. Jesse M. Furman)

BRIEF FOR AMICI CURIAE THE BANK POLICY INSTITUTE, THE CLEARING HOUSE ASSOCIATION L.L.C., AND THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA IN SUPPORT OF DEFENDANT-APPELLEE AND AFFIRMANCE

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May 5, 2025

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Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure, amici curiae the Bank Policy Institute and The Clearing House Association L.L.C. state that neither has a parent corporation and, since neither has stock, no publicly held company owns 10% or more of either entity's stock. Amicus curiae the Chamber of Commerce of the United States of America states that it is a non-profit organization incorporated in the District of Columbia. The Chamber has no parent corporation, and no publicly held corporation has 10% or greater ownership in the Chamber.

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INTEREST OF AMICI CURIAE[1]

The Clearing House Association L.L.C. ("TCH"), established in 1853, is a nonpartisan advocacy organization that represents the interests of its member banks by developing and promoting policies to support a safe, sound, and competitive banking system that serves customers, communities, and economic growth. TCH's sister company, The Clearing House Payments Company L.L.C., owns and operates U.S. payments networks that provide safe, sound, and efficient payment clearing and settlement services to financial institutions.

The Bank Policy Institute ("BPI") is a nonpartisan public policy, research, and advocacy group that represents universal banks, regional banks, and major foreign banks doing business in the United States. BPI produces academic research and analysis on regulatory and monetary policy topics, analyzes and comments on proposed regulations, and represents the financial services industry with respect to cybersecurity, fraud, and other information security issues. Both TCH and BPI regularly file amicus curiae briefs on issues that are important to the financial industry.

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[1] No party's counsel authored this brief in whole or part, and no party or party's counsel contributed money that was intended to fund its preparation or submission. All parties have consented to the filing of this brief.

The Chamber of Commerce of the United States of America is the world's largest business federation. It represents approximately 300,000 direct members and indirectly represents the interests of more than three million companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. Like TCH and BPI, the Chamber regularly files amicus curiae briefs on important business issues.

Amici have an interest in this case because their members participate in, process, and support billions of electronic funds transfers ("EFTs") each year that are covered by the Electronic Fund Transfer Act ("EFTA"). As a result, Amici's members have extensive experience with the investigation and resolution of claims that certain of those EFTs were "unauthorized electronic fund transfers." Amici's members are committed to consumer protection, including their obligations under the EFTA and other applicable federal and state consumer protection laws. At the same time, Amici's members strive to provide consumers with secure options for efficient, effective, low-cost electronic payments. The bona fide error defense of 15 U.S.C. § 1693m(c), at issue in this case, plays an important role in Amici's members' ability to provide these services.

Applied in this context, the bona fide error defense recognizes the inherent complexity and difficulty of financial institutions' investigation and resolution of unauthorized-transfer claims. Even with cutting-edge technology, strong policies and procedures, and well-trained employees, no financial institution can be perfect. Resolving and paying claims with one hundred percent accuracy is the goal, but inherently difficult to achieve. The EFTA bona fide error defense addresses that reality. If an entity has policies reasonably adapted to address an EFTA requirement, and the entity nevertheless commits an unintentional good-faith error, *and* the entity can establish all three of those things (reasonably adapted policies, lack of intent, good faith) by a preponderance of the evidence, then it cannot be held liable for that error in a private civil action under the EFTA.

The arguments of Plaintiff and her supporting amicus would effectively nullify this important defense for one of the most important areas of the statute—investigation, resolution, and liability for unauthorized transfers, covered in 15 U.S.C. §§ 1693f and 1693g. Those arguments find no support in the EFTA's text, the legislative history, or the case law. Amici submit this brief to explain why, so that the bona fide error defense will continue to serve its essential role in the statutory framework and allow the EFTA to simultaneously protect consumers and facilitate the electronic payment services on which so many consumers rely.

INTRODUCTION AND SUMMARY OF ARGUMENT

This case presents the question of whether the bona fide error defense of the EFTA applies when financial institutions charged with investigating, resolving, and paying claims for unauthorized transfers make unintentional, good faith errors. In the same section of the EFTA that provides consumers a private right of action for violation of the statute's terms, Congress included a defense, set forth in 15 U.S.C. § 1693m(c), that provides that an institution is not liable for a violation of the EFTA if the institution "shows by a preponderance of the evidence that" (1) "the violation was not intentional," (2) the violation "resulted from a bona fide error," and (3) the violation occurred "notwithstanding the maintenance of procedures reasonably adapted to avoid any such error." *Id.* This is an especially important defense in the context of the time-sensitive, complicated investigations that the EFTA requires financial institutions to undertake with respect to each dispute they receive from a customer about an allegedly unauthorized EFT, to determine liability for that transaction.

Plaintiff's position, supported by amicus National Consumer Law Center ("NCLC"), is that the bona fide error defense has effectively no application in this context for two reasons. First, although Plaintiff did not oppose summary judgment on this ground in the district court, Plaintiff and NCLC make the surprising assertion that the bona fide error defense does not apply *at all* when a consumer brings a

private right of action for violation of 15 U.S.C. § 1693g, the provision that assigns liability for unauthorized EFTs. Second, reprising the argument that Plaintiff did make in the district court, Plaintiff (though not NCLC) argues that the bona fide error defense should be cabined to merely clerical errors, no more.

Neither position can be squared with the text of the statute or its legislative history. Nor is either position supported by the case law. As to the first argument, concerning whether the bona fide error defense applies to civil actions for violation of § 1693g, neither Plaintiff nor the NCLC cites any decisions embracing their interpretation of the § 1693m(c) bona fide error defense. And as to the second argument, neither the single decision Plaintiff cites nor any other cases hold that § 1693m(c) is limited to clerical errors.

The issues here are more than simply technical statutory disputes. There is a larger context: Although financial institutions invest heavily in technology to protect their customers from and eliminate fraud, millions of unauthorized-transfer claims are submitted each year at thousands of financial institutions across the United States. Many claims are valid, and financial institutions pay them. Many are not. And most require the institution to undertake a complex investigation to reach a determination, and to do so in a statutorily established, short period of time. Financial institutions thus devote substantial time and resources to policies, procedures, and training to thoroughly review and accurately resolve unauthorized-

transfer claims and reimburse customers for those EFTs determined to have been unauthorized. Given the sheer volume of claims and the difficulty of the task at hand, errors will inevitably be made. The perfection Plaintiff and the NCLC demand, when it comes to assigning liability in private civil actions, is not realistic nor what the law requires. Congress included a bona fide error defense, applicable to all civil actions for violation of an EFTA requirement, for those cases where an institution makes an unintentional, good faith error notwithstanding having established and implemented procedures reasonably adapted to prevent the error. In this area especially—the investigation, resolution, and payment of unauthorized-transfer claims—Congress's choice is important and should be respected as written.

ARGUMENT

I. THE BONA FIDE ERROR DEFENSE APPLIES TO PRIVATE ACTIONS BROUGHT FOR VIOLATIONS OF THE EFTA'S PROVISIONS, INCLUDING SECTION 1693g

Though Plaintiff did not oppose summary judgment in the district court on this ground, she now argues on appeal, supported by amicus NCLC, that the bona fide error defense has no application whatsoever to private actions brought for alleged violations of 15 U.S.C. § 1693g. To the extent the Court determines to reach that question, it should reject Plaintiff's and NCLC's argument based on the plain text of the statute.

The bona fide error defense is located in 15 U.S.C. § 1693m, the civil liability provision of the EFTA. It is § 1693m that grants a consumer, in the first place, the authority to bring a private right of action for an EFTA violation. *See id.* § 1693m(a). Indeed, Plaintiff and NCLC acknowledge that § 1693m(a) is the basis for Plaintiff's claim, one brought for violation of § 1693g. *See* Pl.-App. Br. 13; NCLC Br. 7. Subsection 1693m(a) speaks broadly, allowing a suit for relief against "any person who fails to comply with *any provision* of" the EFTA. (Emphasis added). The bona fide error defense in the same section of the EFTA mirrors that breadth, providing for a defense "in *any action* brought under this section for a violation of" the EFTA. *Id.* § 1693m(c) (emphasis added). This parallel breadth in the statute's text makes clear that § 1693m(c) applies to violations of § 1693g just like it applies to violations of other EFTA provisions.

The breadth of § 1693m(c) is subject to only one exception—one that Congress spelled out explicitly in § 1693m(c) itself. Subsection (c) thus begins: "Except as provided in *section 1693h* of this title, … a person may not be held liable …." (Emphasis added). The referenced provision, § 1693h, is titled "Liability of financial institutions" and provides for one form of relief ("proximately caused" damages) for certain acts (*e.g.*, failures to make EFTs). Congress allowed no other exception to the bona fide error defense in § 1693m(c). Section 1693g, which Plaintiff and NCLC would nevertheless carve out of the defense, is not mentioned at

all. The fact that Congress provided an explicit exception for another EFTA provision, but not for § 1693g, should be dispositive. Unsurprisingly given the clarity of the statutory text, Plaintiff and NCLC cite no decisions that support their attempt to add a § 1693g exception to the bona fide error defense.

Instead, Plaintiff and NCLC point to a subsection in *section 1693g* as support for their reading. That subsection (e) states: "Except as provided in this section, a consumer incurs no liability from an unauthorized electronic fund transfer." Even if one were to indulge the suggestion that Congress, having written an explicit exception into § 1693m(c), would scatter other exceptions across the EFTA, § 1693g(e) is very different from § 1693m(c). In § 1693m, Congress authorized private civil actions to hold persons "liable *to [a] consumer*" for an EFTA violation, *id.* § 1693m(a) (emphasis added), and then granted those same persons (*i.e.*, persons sued by a consumer) a bona fide error defense to being "held liable," *id.* § 1693m(c). Section 1693g(e) uses different—indeed, precisely the opposite—terminology, addressing the liability *of* a consumer, not liability *to* a consumer. And § 1693g(e) makes no reference to the bona fide error defense. The text Congress employed in § 1693g(e) thus refutes any suggestion that Congress intended, without explicitly saying so, to enact a second exception to the § 1693m(c) bona fide error defense in the last subsection of a provision entirely different from the § 1693m private-right-of-action provision.

Plaintiff's and NCLC's argument also contradicts their own acknowledgment that the authority for a private lawsuit for violations of § 1693g is found *not* in that section, but rather in § 1693m. *See* Pl.-App. Br. 13; NCLC Br. 7. That explains why Plaintiff seeks statutory damages for her claim that Defendant violated § 1693g. No such damages are provided for in § 1693g. They are provided for in § 1693m(a). Plaintiff's and NCLC's arguments thus would allow EFTA plaintiffs to have their proverbial cake and eat it too—to claim authority to sue for the "liability" provided for in § 1693m(a), yet to simultaneously avoid the defense that Congress explicitly and indisputably provided in § 1693m(c) to that very same "liability." That theory should be rejected.[2]

II. THE BONA FIDE ERROR DEFENSE APPLIES TO MORE THAN CLERICAL ERRORS

Plaintiff's second attempt to evade the application of the bona fide error defense to her case—this time an argument she did make below, but which the district court rejected—is her assertion that the defense applies only to so-called "clerical errors." Plaintiff does not explain what she means by that term, nor provide a way to distinguish it from other errors. Nevertheless, the "statutory text, context,

[2] Indeed, it is not clear why Plaintiff presents this § 1693g variation of her argument at all, given that the "liability" in section 1693g has already been resolved in this case, with the acknowledgment by Plaintiff that Defendant has now reimbursed her for the amounts of the unauthorized transfers. The *only* relief Plaintiff seeks is relief available for the "liability" imposed by § 1693m, a liability to which the bona fide error defense of § 1693m(c) indisputably applies.

and legislative history" all refute her argument. *Main St. Legal Servs., Inc. v. National Sec. Council*, 811 F.3d 542, 556 (2d Cir. 2016).

Start with the text. Nothing in § 1693m(c)'s text suggests, much less states, that the defense is limited to clerical errors. The word "clerical" appears nowhere in the statute. Indeed, the only modifier applied to the word "error" is the term "bona fide," which in this context means "made in good faith." *E.g.*, *Ramirez v. LTD Fin. Servs., LP*, 2021 WL 5027860, at *7 (N.D. Ga. July 16, 2021) (quoting *Edwards v. Niagara Credit Sols., Inc.*, 584 F.3d 1350, 1353 (11th Cir. 2009)), *report and recommendation adopted*, 2021 WL 9598131 (N.D. Ga. Sept. 2, 2021). And Plaintiff makes no argument based on that statutory language. That is, she does not argue that the only kind of error that can be "bona fide" is a clerical one. Nor could she. So long as an error is made in good faith, an error of fact can be just as "bona fide" as a clerical error. At bottom then, Plaintiff's argument should be seen for what it is—an attempt to add the modifier "clerical" to § 1693m(c), even though Congress did not. It is a well-established principle of statutory interpretation, however, that courts may not "add words to the law to produce what is thought to be a desirable result." *EEOC v. Abercrombie & Fitch Stores, Inc.*, 575 U.S. 768, 774 (2015); *see also, e.g.*, *Kidd v. Thomson Reuters Corp.*, 925 F.3d 99, 106 n.9 (2d Cir. 2019) (same).

Finding no support in the text of § 1693m(c), Plaintiff vaguely invokes other federal consumer protection statutes, tracing the bona fide error defense back to the Truth In Lending Act ("TILA"), and urges this Court to interpret § 1693m(c) in common with the TILA. *See* Pl.-App. Br. 26-27. But Congress made a completely *different* textual choice in the TILA, with that statute's bona fide error defense providing:

> A creditor or assignee may not be held liable in any action brought under this section … for a violation of this subchapter if [they] show[] by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error. *Examples of a bona fide error include, but are not limited to, clerical, calculation, computer malfunction and programming, and printing errors,* except that an error of legal judgment with respect to a person's obligations under this subchapter is not a bona fide error.

15 U.S.C. § 1640(c) (emphasis added). That italicized text, to the extent it could even be interpreted as *limiting* the defense to clerical errors (as opposed to "*includ[ing]*" them, as the text says), does not appear in § 1693m(c).

While the difference in the text of the two statutes should be dispositive, the legislative history also underscores that the difference was intentional. In 1978, the Senate Committee on Banking, Housing and Urban Affairs considered a bill that addressed both the TILA and the EFTA. *See* S. Rep. No. 95-1273 (1978)

("Report").[3] That Report discussed the proposed legislation related to the bona fide error defenses in the two statutes in different terms. As to the TILA, the Report explained that the bill "clarif[ied]" the "bona fide error" "defense to civil liability … to make clear that it applies to *mechanical and computer errors*, provided they are not the result of erroneous legal judgments as to the act's requirements." *Id.* at 20 (emphasis added). As to the EFTA, however, the Report described the bona fide error defense in the same broad way as its enacted text, with no mention of the "mechanical and computer errors" in the TILA portion of the bill. The Report thus referred to the EFTA bona fide error defense as one of "five defenses provided in this section which would relieve a financial institution of *any* civil liability"—under which "a financial institution would be relieved of liability if it shows that its violation was unintentional and resulted from a bona fide error which occurred despite procedures designed to avoid such an error." *Id.* at 34 (emphasis added).

[3] The bill at issue in Senate Report 95-1273 originally addressed only a short amendment on savings account interest rates, but the committee "proceeded to append four completely unrelated bills to it as six subsequent titles, including the EFTA and [TILA] simplification." Hsia, *Legislative History and Proposed Regulatory Implementation of the Electronic Fund Transfer Act*, 13 U.S.F. L. Rev. 299, 306 (1979). After the report and bill were reported to the full Senate, a House resolution had "expanded [it] to twenty-one titles, but had deleted the [TILA] simplification." *Id.* The bill was eventually passed as revised, without the TILA amendments. The "clerical error" language in the TILA's safe harbor provision, discussed in the 1978 committee report, was added two years later. *See* Truth in Lending Simplification and Reform Act, Pub. L. No. 96-221 § 615, 94 Stat. 180, 181 (1980).

This legislative history highlights that the Congress that enacted the EFTA was aware of the possibility of clarifying a bona fide error defense's application to clerical errors, but chose not to employ any such language in the EFTA. To the extent resort to legislative history is even necessary, that choice confirms what the enacted text of the two statutes already makes clear. *See, e.g.*, *WATCH (Waterbury Action to Conserve Our Heritage, Inc.) v. Harris*, 603 F.2d 310, 325 (2d Cir. 1979) (explaining that committee report appending material addressing regulations demonstrated Congress "was aware of" the regulations "but chose not to change" the legislation).

The decisions Plaintiff cites also provide no support for her attempt to cabin the bona fide error defense to only so-called clerical errors. To start, most of the cases discussed in Plaintiff's brief are cited for reasons entirely irrelevant to the clerical-error limitation she seeks. No party in this case disputes that the bona fide error defense is inapplicable to mistakes of law. *See* Pl.-App. Br. 27-28. And the text of the bona fide error defense, which requires the defendant to have procedures reasonably adapted to prevent the error, itself establishes that the defense would not apply when the procedures in question, in Plaintiff's words, "explicitly violate provisions of the EFTA." *Id.* at 28. Finally, that the record in some reported cases may involve disputes of fact concerning the elements of the defense, thereby

precluding summary judgment, is entirely irrelevant to the scope of the bona fide error defense. *See id.* at 28-30.

Plaintiff's argument based on precedent thus reduces to essentially a single unreported decision, *Kelsey v. Pitsch Cos.*, 2015 WL 3604437 (W.D. Mich. June 8, 2015), which she claims stands for the proposition that "[f]actual mistakes concerning the nature of a transfer" are not a basis for the bona fide error defense. Pl.-App. Br. 28. The decision, however, contains no such holding. Indeed, the decision nowhere discusses the legal question concerning the scope of the bona fide error defense. Rather, the court there rejected the defense because the *only* argument the defendant made was that its error was based on a mistaken belief. The defendant "ma[de] no argument and … presented no evidence," however, that it employed "'procedures reasonably adapted to avoid any such error.'" *Kelsey*, 2015 WL 3604437, at *2. In short, the court nowhere said that a mistake of fact is outside the scope of the bona fide error defense.

Plaintiff also discusses two cases that *granted* (or recommended granting) summary judgment based on the bona fide error defense, seeking to distinguish them both. *See* Pl.-App. Br. 31-33. The first, *Ramirez*, supports the district court's decision here holding that the bona fide error defense applies to mistakes of fact. Recognizing the well-established principle that the defense does not apply to "mistakes in legal judgment," the court stated that the defense *does* apply to "clerical

errors and mistakes of fact." 2021 WL 5027860, at *8.[4] Unsurprisingly, then, the *Ramirez* court did not attempt to classify the particular error at issue as falling in one or the other category. *See id.* at *7. Meanwhile, the second decision addressed by Plaintiff, *Wheeler v. Fitness Formula, Ltd.*, 2018 WL 5981849 (N.D. Ill. Nov. 14, 2018), includes no discussion of the scope of the bona fide error defense, nowhere even uses the phrase "clerical error," and nowhere states that a mistake of fact is outside the scope of the bona fide error defense.

Finally, it bears noting that while Plaintiff's argument is based on a supposed statutory distinction between clerical errors and mistakes of fact, Plaintiff offers no way of drawing that line. Nor is it apparent how courts would do so. In addition to all the foregoing reasons for rejecting Plaintiff's atextual "clerical error" limitation, this Court should not adopt an interpretation of the EFTA bona fide error defense that would require courts to "give talismanic significance to a label"—clerical—and "invite difficult line-drawing problems around what exactly qualifies" as a clerical

[4] As authority, *Ramirez* cited the Supreme Court's decision in *Jerman v. Carlisle, McNellie, Rini, Kramer & Ulrich LPA*, 559 U.S. 573 (2010). To be sure, the Supreme Court, in considering the bona fide error defense in the Fair Debt Collection Practices Act ("FDCPA"), declined to address the "distinction between clerical and factual errors" or to decide "what kinds of factual mistakes qualify under the FDCPA's bona fide error defense." 559 U.S. at 591-592 n.12. The Court nevertheless credited the government's argument, as amicus, that the procedures at issue "are ones that help to avoid errors like clerical or factual mistakes." *Id.* at 587.

error versus a mistake of fact. *Connelly v. County of Rockland*, 61 F.4th 322, 327 (2d Cir. 2023).

III. THE BONA FIDE ERROR DEFENSE IS IMPORTANT TO THE SUBJECT OF THIS CASE—INVESTIGATION, RESOLUTION, AND PAYMENT OF UNAUTHORIZED TRANSFER CLAIMS

The questions presented about the bona fide error defense are particularly important to the EFTA subject matter of this case—financial institutions' investigation, resolution, and payment of claims by consumers that an EFT was unauthorized. That subject matter is central to the EFTA statutory scheme, and is addressed in 15 U.S.C. §§ 1693f and 1693g. The former provision requires financial institutions, when a customer presents a timely claim disputing an EFT, to investigate the claim, resolve it, and take certain actions depending on the institution's conclusion—including, if the EFT was unauthorized, paying reimbursement. *See id.* § 1693f(a)-(b), (d), (f). Institutions must conduct these investigations in short time frames—45 days if the institution provisionally credits the customer, 10 days if not. *See id.* § 1693f(c). Meanwhile, § 1693g sets forth rules for determining a consumer's liability for an unauthorized transfer, which liability depends on, among other things, whether (or when) the consumer notifies its institution of any error and whether notice, or earlier notice, could have avoided an unauthorized transfer. *See id.* § 1693g(a). The two EFTA provisions, §§ 1693f and 1693g, are explicitly and practically interconnected. As to the former, § 1693f

requires institutions to pay a provisional credit or a required reimbursement pursuant to § 1693g. *See id.* § 1693f(b)-(c) (referring to § 1693g). And, as a practical matter, institutions make the determination whether to reimburse a customer for an unauthorized transfer (*i.e.*, the reimbursement required under § 1693g) through the process required in § 1693f.

Financial institutions invest heavily in policies, procedures, technology, and training to carry out and guide the investigations required by § 1693f and the reimbursement required by § 1693g. The number of investigations conducted by financial institutions is staggering, given the ever-present specter of fraud in the financial system. To be sure, financial institutions also invest heavily in anti-fraud measures to protect their customers. For example, institutions develop and deploy real-time algorithmic monitoring to detect suspicious transactions and trends; update authentication methods to stay ahead of bad actors; and warn customers about new and prevalent scams. Financial institutions also routinely update employee training programs both to prevent cyberfraud and to identify and stop it quickly. Financial institutions, like their customers, are the victims of cyberfraud and highly motivated to prevent it.

Nevertheless, fraud remains, so financial institutions must employ substantial numbers of employees to address the millions of unauthorized-transfer claims they receive each year. For example, call center representatives field claims;

investigators research the claims, including gathering data from multiple sources internal and external to the institution, depending on the specific transaction; and then the institution must make a determination whether the EFT was in fact unauthorized. Amici's members strive for perfection—resolving all claims consistent with the facts available. But even beyond the massive scale of these operations, the investigative processes face natural limits. Customer claims are not sworn statements; banks can collect significant data, but unlike courts, have no subpoena power to seek all information that may be probative on the claim. And throughout, financial institutions face the risk of first-party fraud on the institution, through the claims process.[5]

To fulfill their responsibilities under the EFTA, to their customers, and to the institution itself, financial institutions do exactly what the bona fide error defense requires: they develop strong policies and procedures reasonably adapted to determine whether a customer's claim of an unauthorized EFT is accurate. These policies and procedures are extensive and detailed, as the record in this case demonstrates. Given the overall volume of claims, the limits on available information for each claim, the short time frame to conduct investigations, and the

[5] *E.g.*, Ryan, *Solving the Fraud Problem: What Is First-Party Fraud?*, Experian (Feb. 6, 2025), https://tinyurl.com/4cdncvbw; Cox, *What Is First-Party Fraud?*, FICO Blog (July 27, 2023), https://tinyurl.com/2trd95a5.

complexity of the fact-intensive determination that needs to be made, no financial institution operating in this framework could possibly be perfect. Even the best-intentioned financial institution, operating with optimally designed procedures and well-trained employees, will make mistakes.

Courts' observations about the bona fide error defense generally are therefore especially apt here: "Errors happen—that is an unfortunate fact of life, and the bona fide error defense presupposes as much." *Ramirez*, 2021 WL 5027860, at *8. The bona fide error defense exists for precisely the types of issues financial institutions face in this area. While Congress provided a private right of action for violations of the EFTA's provisions, including the right to secure statutory damages (among other relief), it chose not to hold institutions liable if they develop and implement procedures reasonably adapted to comply with the EFTA and, nevertheless, make an unintentional, good faith mistake. Refusing to apply the defense in this context, as Plaintiff and NCLC urge, would not only cordon off one of the most significant areas of the statute from a universally applicable defense, but also would ignore a key area where unintentional, good faith errors are especially likely to occur, given the statutory requirements at issue.

CONCLUSION

For the foregoing reasons, the Court should affirm the district court's grant of summary judgment to Chase.

Respectfully submitted.

/s/ *Noah Levine*

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May 5, 2025

CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(g)(1), the undersigned hereby certifies that this brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B), as modified by Local Rule 32.1(a)(4), Local Rule 29.1, and Fed. R. App. P. 29(a)(5).

1. Exclusive of the exempted portions of the brief, as provided in Fed. R. App. P. 32(f), the brief contains 4,623 words.

2. The brief has been prepared in proportionally spaced typeface using Microsoft Word for Office 365 in 14-point Times New Roman font and complies with the requirements of Fed. R. App. P. 32(a)(5)-(6). As permitted by Fed. R. App. P. 32(g)(1), the undersigned has relied upon the word count feature of this word processing system in preparing this certificate.

/s/ Noah Levine
NOAH LEVINE

May 5, 2025