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

EDWIN BAZARGANFARD and  
BARAK GOLAN, on behalf of  
themselves and all others similarity  
situated,

Plaintiffs,

v.

CLUB 360 *et al.*,

Defendants.

Case No.: 2:21-cv-2272-CBM-BFM

**ORDER RE: PLAINTIFF BARAK  
GOLAN’S MOTION FOR  
SUMMARY JUDGMENT AND/OR  
PARTIAL SUMMARY JUDGMENT**

The matter before the Court is Plaintiff Barak Golan’s (“Plaintiff’s”) Motion for Summary Judgment and/or Partial Summary Judgment. (Dkt. No. 151.)

**I. BACKGROUND**

The Court has issued several orders on motions filed by the parties. (Dkt. Nos. 64, 86.) The sole remaining claim in this action is Plaintiff Golan’s EFTA claim (first cause of action) limited to 1) the \$9.99 amount charged during the pandemic closures in March 2020 to June 2020 and August 2020 as to Defendants Club 360 LLC, Jehangir Meher, and ABA Financial; and 2) the \$9.99 amount charged during the club closures in August 2020 as to Defendants Valley Gym Corp., North Hollywood Fitness LLC, and Van Nuys Fitness Center LLC. On July 28, 2023, the Court granted Plaintiff Golan’s Motion for Class Certification

1 as to his EFTA claim for monetary relief; and denied the Motion for Class  
2 Certification as to any claim for injunctive relief pursuant to Federal Rule of Civil  
3 Procedure 23(b)(2). (Dkt. No. 116 (hereinafter, “Class Certification Order”).)

4 The Court certified the following class and subclasses as to the EFTA claim for  
5 monetary relief:

- 6 (1) “All persons in the United States whose bank accounts were  
7 debited on a reoccurring basis by Meher or ABC without  
8 obtaining a written authorization signed or similarly  
9 authenticated for preauthorized electronic fund transfers in  
10 March 14, 2020 to September 2020 for fees at any of the USA  
11 Fitness gyms” (hereinafter, “the “EFTA Class”);  
12 (2) “All persons in the United States whose bank accounts were  
13 debited on a reoccurring basis by Club 360, Meher, or ABC  
14 without obtaining a written authorization signed or similarly  
15 authenticated for preauthorized electronic fund transfers in  
16 March 14, 2020 to September 2020 for fees at Club 360’s  
17 gyms” (hereinafter, the “EFTA Club360 Subclass”); and  
18 (3) “All persons in the United States whose bank accounts were  
19 debited on a reoccurring basis by Defendants without obtaining  
20 a written authorization signed or similarly authenticated for  
21 preauthorized electronic fund transfers after June 15, 2020 to  
22 September 2020 for fees at any of the USA Fitness gyms”  
23 (hereinafter, the “EFTA USA Fitness Subclass”).<sup>1</sup>

24 (*Id.*)<sup>2</sup> Plaintiff Golan now moves for summary judgment on the remaining EFTA  
25 claim. (Dkt. No. 151.)

## 26 II. STATEMENT OF THE LAW

27 On a motion for summary judgment, the Court must determine whether,  
28 viewing the evidence in the light most favorable to the nonmoving party, there are  
any genuine issues of material fact. *Simo v. Union of Needletrades, Indus. &*  
*Textile Employees*, 322 F.3d 602, 609-10 (9th Cir. 2003); Fed. R. Civ. P. 56.

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29 <sup>1</sup> The Class Certification Order also appointed Plaintiff Golan as the class  
30 representative of the class and subclasses’ claims for monetary relief under the  
31 EFTA, and appointed Plaintiff’s counsel the Law Offices of Todd M. Friedman,  
32 P.C., as class counsel. (Dkt. No. 116.)

33 <sup>2</sup> The case was subsequently stayed until January 17, 2024 for the parties to attend  
34 mediation (Dkt. No. 123), but the parties did not reach a resolution of this action  
35 during mediation.

1 Summary judgment against a party is appropriate when the pleadings, depositions,  
2 answers to interrogatories, and admissions on file, together with the affidavits, if  
3 any, show that there is no genuine issue as to any material fact and that the  
4 moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56. A  
5 factual dispute is “material” only if it might affect the outcome of the suit under  
6 governing law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). An  
7 issue is “genuine” only if there is a sufficient evidentiary basis on which a  
8 reasonable jury could find for the non-moving party. *Id.* at 249. The evidence  
9 presented by the parties must be admissible. Fed. R. Civ. P. 56(e). In judging  
10 evidence at the summary judgment stage, the Court does not make credibility  
11 determinations or weigh conflicting evidence. *T.W. Elec. Serv., Inc. v. Pac. Elec.*  
12 *Contractors Ass’n*, 809 F.2d 626, 630 (9th Cir. 1987). Rather, “[t]he evidence of  
13 the nonmovant is to be believed, and all justifiable inferences are to be drawn in  
14 [the nonmovant’s] favor.” *Anderson*, 477 U.S. at 255.

### 15 III. DISCUSSION

#### 16 A. Right to Jury Trial

17 Defendants argue granting summary judgment would “impair” Defendants’  
18 Seventh Amendment constitutional right to a jury trial and summary judgment  
19 cannot be granted in a case seeking damages such as the instant action. However,  
20 Fed. R. Civ. P. 56 provides “[a] party may move for summary judgment,  
21 identifying each claim or defense--or the part of each claim or defense--on which  
22 summary judgment is sought,” and “[t]he court shall grant summary judgment if  
23 the movant shows that there is no genuine dispute as to any material fact and the  
24 movant is entitled to judgment as a matter of law.” There is no exception to  
25 summary judgment pursuant to Fed. R. Civ. P. 56 for cases wherein a plaintiff  
26 seeks money damages. *See Etalook v. Exxon Pipeline Co.*, 831 F.2d 1440, 1447  
27 (9th Cir. 1987).

#### 28 B. EFTA

1 15 U.S.C. § 1693e(a) of the EFTA provides:

2 A preauthorized electronic fund transfer from a consumer’s account  
3 may be authorized by the consumer only in writing, and a copy of  
4 such authorization shall be provided to the consumer when made. A  
5 consumer may stop payment of a preauthorized electronic fund  
6 transfer by notifying the financial institution orally or in writing at  
7 any time up to three business days preceding the scheduled date of  
8 such transfer. The financial institution may require written  
9 confirmation to be provided to it within fourteen days of an oral  
10 notification if, when the oral notification is made, the consumer is  
11 advised of such requirement and the address to which such  
12 confirmation should be sent.

8 Section 205.10(b) of Regulation E, 12 C.F.R. § 205.10(b), provides:

9 Preauthorized electronic fund transfers from a consumer’s account  
10 may be authorized only by a writing signed or similarly authenticated  
11 by the consumer. The person that obtains the authorization shall  
12 provide a copy to the consumer.

12 Defendants do not dispute that \$9.99 amounts were charged to class  
13 members’ accounts, but argue the case should be tried to a jury because there are  
14 triable issues precluding summary judgment.

15 **(1) Membership Dues**

16 Defendants contend there is a genuine dispute of material fact as to whether  
17 the \$9.99 amount were reduced membership dues which Defendants were  
18 authorized to charge under the membership agreement. Defendants rely on the  
19 following portion of Plaintiff Golan’s membership agreement which they contend  
20 preauthorized them to charge the \$9.99 amount:

21 By executing this Agreement, You authorize Club and Club’s agents,  
22 including its third party payment processing companies (“Club’s  
23 Agents”) to store the account or card information provided by You on  
24 or in relation to this Agreement and/or Your Club Membership  
25 Agreement (“Club Agreement”), as well as any other account or card  
26 information provided by You through any means to Club or Club’s  
27 Agents (including information provided in person, online or over the  
28 phone) for purposes of making any payment in relation to this  
Agreement and/or Your Club Agreement (hereinafter, “Payment  
Information”). Club and/or Club’s Agents will use the stored  
Payment information to process payment of all dues, fees, taxes,  
purchases and incidental charges that are due or will become due,  
including all items on the Payment Schedule, fees identified in Your  
Club Agreement, membership-related obligations, retail transactions,  
personal training purchases, group exercise purchases, childcare fees,

1 or other purchases. Clun and/or Club’s Agents may also use the  
2 stored Payment information to process payments owed in relation to  
3 all subsequent Agreements entered between You and Club. The fixed  
4 dates and intervals on which transactions will be processed and the  
5 transaction amounts (including all associated fees, taxes, and charge)  
6 and/or a description of how they will be calculated are more  
7 specifically set forth in the Payment Schedule and other terms of  
8 Your Club Agreement. If Your Club Agreement will automatically  
9 renew at the end of the Term defined therein, the stored Payment  
information will be used to process payments owed in relation to the  
renewal terms. This consent to store Payment Information will not  
expire unless it is expressly revoked. The general cancellation and  
refund policies provided in Your Club Agreement will apply to this  
consent. If any changes are made to the terms of this consent, an e-  
mail notifying You of such changes will be sent to the e-mail address  
provided by You on the face of Your Club Agreement or, if an e-mail  
is not provided, notice will be sent to the mailing address provided on  
Your Club Agreement.

10 (Meher Decl. Ex. 4.)

11 However, the specific preauthorization for transfer of funds included in  
12 Plaintiff Golan’s membership agreement states:

13 A default occurs when any payment due under this agreement is more  
14 than ten days late. A SERVICE FEE WILL BE CHARGED  
15 IMMEDIATELY FOR ANY CHECK, DRAFT, CREDIT CARD,  
16 OR ORDER RETURNED FOR INSUFFICIENT FUNDS OR ANY  
17 OTHER REASONS. A \$15 LATE FEE WILL BE CHARGED  
18 IMMEDIATELY SHOULD ANY MONTHLY PAYMENT  
19 BECOME PAST DUE. IF NOT RECTIFIED WITHIN TEN DAYS  
20 FROM BILL DUE DATE A \$15 RETURN ITEM WILL BE  
21 CHARGED IN ADDITION. The clubs [sic] billing company, ABC  
22 Financial Services, LLC, reserves the right to draft all amounts owed  
23 by the member including any and all late fees and service fees.  
24 Subject to appropriate State and Federal Law: Should any member  
25 paying by Electronic Funds Transfer or credit card default on any  
26 payment as called for by this agreement, the club reserves the right to  
27 increase monthly dues by \$10 (for additional handling of account)  
28 until billing information is rectified. Once rectified, monthly dues  
will return to the previous rate and no credit or refund will be due.  
This fee does not encompass monthly renewal dues increase or late  
fees.

...

1st Payment Schedule: DUES		
Number of Payments	Monthly Payment Amount	Payment Due Date
10	\$ 39.99	07/08/2019

27 The agreement further stated: “I/We hereby request the privilege of paying to  
28 ABC Financial Services, LLC (“The Company”), Sherwood, AR 72124, and

1 further authorize the Company to draw items (checks, electronic funds transfers,  
2 charge card) for the purpose of paying said payments, including any late fees or  
3 service fees, on the account of ....” The agreement further stated: “The Items  
4 outlined in Your Membership Agreement (monthly dues, annual fees, enrollment  
5 fees, etc.) shall be drawn on or about the date or dates set forth in the Membership  
6 Agreement. By signing below, You authorize the Company to draft via EFT said  
7 amounts from the account or card identified herein. The transactions on Your  
8 bank, debit, or credit card statement shall constitute receipts for payment on Your  
9 account.”

10 As this Court noted in its prior summary judgment order, “[n]o other  
11 monthly dues were listed in Golan’s Membership Agreement other than the  
12 \$39.99 monthly membership dues listed with a payment due date of 07/08/2019.  
13 Thus, the preauthorization in Plaintiff Golan’s Membership Agreement was  
14 limited to the \$39.99 monthly dues listed in the agreement, \$15 late fees charged if  
15 Plaintiff Golan’s \$39.99 monthly dues were past due, and service fees for  
16 insufficient funds for the \$39.99 monthly dues. Therefore, the plain language of  
17 Plaintiff Golan’s membership agreement did not include Plaintiff Golan’s  
18 preauthorization regarding electronic fund transfer of the \$9.99 amount charged  
19 during the Club’s pandemic closures.” (Dkt. No. 101 (hereinafter “April 4, 2023  
20 MSJ Order”) at 6-7.) Accordingly, the \$9.99 amount charged was not  
21 preauthorized under the agreement, and the agreement does not constitute written  
22 preauthorization for withdrawing the \$9.99 charge during the gyms’ pandemic  
23 closures.

24 Defendants also argue there is a genuine dispute of material fact as to  
25 whether the gyms exercised their right under the membership agreement to change  
26 policies and fees. Defendants contend the membership agreement permitted them  
27 to vary the amount for the dues due based on the following portion from the  
28 agreement which provided:

1 If the regular payments set forth in the Membership Agreement  
2 should vary in amount, You are entitled to notice at least 10 days  
3 before each payment of when it will be made and how much it will  
be. However, by executing this preauthorization, You choose to  
instead get this notice only when the payment would differ by more  
than \$50.00 from the most recent payment You have made.

4 (Meher Decl. Ex. 4.) Defendants contend that the membership agreements  
5 expressly permitted them to adjust fee amounts upon giving class members  
6 advanced notice, and that Defendants followed contractual procedures under the  
7 agreements requiring giving advance notice by sending multiple notices to class  
8 members explaining the change in monthly charge. However, there is no breach  
9 of contract claim pending in this action and whether Defendants complied with  
10 contractual notice obligations is irrelevant as to whether Defendants violated the  
11 EFTA.

12 As to the EFTA's provisions regarding varying amounts, 15 U.S.C. §  
13 1693e(b) of the EFTA provides:

14 In the case of preauthorized transfers from a consumer's account to  
15 the same person which may vary in amount, the financial institution  
16 or designated payee shall, prior to each transfer, provide reasonable  
17 advance notice to the consumer, in accordance with regulations of the  
Bureau, of the amount to be transferred and the scheduled date of the  
transfer.

18 The federal regulation codified at 12 C.F.R. § 205.10(d) in turn provides:

19 (1) Notice. When a preauthorized electronic fund transfer from the  
20 consumer's account will vary in amount from the previous transfer  
21 under the same authorization or from the preauthorized amount, the  
22 designated payee or the financial institution shall send the consumer  
written notice of the amount and date of the transfer at least 10 days  
before the scheduled date of transfer.

23 (2) Range. The designated payee or the institution shall inform the  
24 consumer of the right to receive notice of all varying transfers, but  
25 may give the consumer the option of receiving notice only when a  
transfer falls outside a specified range of amounts or only when a  
transfer differs from the most recent transfer by more than an agreed-  
upon amount.

26 "The clear purpose of this advance notice is to protect the consumer from  
27 unauthorized, fraudulent or erroneous transfers, which allows the consumer an  
28 opportunity to stop payment in accordance with the applicable laws and

1 procedures established by the consumer’s financial institution.” *Bultemeyer v.*  
2 *Fitness All., LLC*, 2014 WL 667585, at \*4 (D. Ariz. Feb. 20, 2014) (citing *Bank of*  
3 *America v. City and Cnty. of San Francisco*, 309 F.3d 551, 564 (9th Cir. 2002);  
4 *Kashanchi v. Texas Commerce Med. Bank*, 703 F.2d 936, 940-41 (5th Cir. 1983);  
5 H.R.Rep. No. 95–1315, at 2 (1978) (Congress passed the EFTA because of its  
6 concern that electronic funds transfers are “much more vulnerable to fraud,  
7 embezzlement, and unauthorized use than the traditional payment methods.”)).

8 Defendants argue, without citing to any evidence, that Plaintiff was sent a  
9 notice of the reduction of his dues from \$39.99 to \$9.99 on March 29, 2020, which  
10 was at least 10 days prior to the April 8, 2020 charge. (Opp. at 13.) Defendants  
11 contend they complied with the EFTA’s statutory requirement for changes to a  
12 recurring charge by providing reasonable advance notice, and that “[a]t the least,”  
13 the “sufficiency” of the March 29, 2020 notice—including the issue of whether  
14 the notice was “valid” and “[m]et EFTA’s notice requirements”—is a factual  
15 question for the jury. Elsewhere in Defendants’ opposition, Defendants refer to a  
16 “message” posted on the gym defendants’<sup>3</sup> website and text message sent to class  
17 members with a “link and update” on March 29, 2020. (Opp. at 6.) Defendant  
18 Meher declares: “On March 29, the Club posted the same message on the Club’s  
19 website. Also on March 29, the Club sent text messages to all active members  
20 directing them to the website for an update. Attached hereto as Exhibit 2 are true  
21 and correct copies of the notices referenced.” (Meher Decl. ¶ 5.) Ex. 2 attached to  
22 Meher’s declaration states:

23 TEMPORARY CLOSURE DUE TO CITY MANDATE

24 Due to the executive order by the Mayor of Los Angeles, we have  
25 made the difficult decision to temporarily close all USA Fitness  
26 locations starting March 16th. We are determined to prioritize the  
27 safety of our staff and members during this global pandemic. We  
28 anticipate to reopen on May 16th, unless otherwise advised by city

<sup>3</sup> “Gym defendants” as used herein refers to Defendants Club 360 LLC, Valley Gym Corp., North Hollywood Fitness LLC, and Van Nuys Fitness Center LLC.

officials.

In these unprecedented times, we are taking big steps to minimize costs to our customers while maximizing value of the services provided. Effective April 1, 2020, all **memberships will be placed on a freeze** during the duration of the mandated temporary closure, and our standard **monthly freeze fee of \$9.99** would apply. Your membership will be extended with no additional charges for the same duration as the temporary closure. During this period, all customers will still have access to the USA Fitness live, which will include classes and other means of exercise. Once we open, all active members who paid the monthly freeze fee will receive an additional free membership for a friend or family member for the same period of time that we were mandated to be closed.

Any non-monthly membership dues will go through as specified on the agreement.

If this arrangement does not work for you, please email us at [memberships@usafitnessonline.com](mailto:memberships@usafitnessonline.com) and we will work with you to reach a mutually acceptable outcome.

(Meher Decl. Ex. 2 (emphasis added).)

As the Court previously found in its April 3, 2023 MSJ Order, Defendants’ “notice” does not refer to the \$9.99 amount as a monthly membership due or a reduced membership fee. Therefore, the March 29, 2020 “notice” could not have constituted a notice of the varying amount of the fees preauthorized in the membership agreement under 15 U.S.C. § 1693e(b) and 12 C.F.R. § 205.10(d). Moreover, the posting of the notice of Defendants’ website and sending of a text message with a link to the website likely does not constitute “written notice” within the meaning of 15 U.S.C. § 1693e(b) and 12 C.F.R. § 205.10(d). Furthermore, the March 29, 2020 “notice” on Defendants’ website did not include the “date of the transfer” as required under 12 C.F.R. § 205.10(d).

In their opposition, Defendants also refer to a March 28, 2020 email sent to class members which stated:

In these unprecedented times, we are taking big steps to minimize costs to our customers while maximizing value of the services provided. Effective April 1 all memberships will be placed on a freeze during the duration of the mandated temporary closure, our standard monthly freeze fee of \$9.99 will apply. Your membership will be extended with no additional charges for the same duration as the temporary closure. During this period, all customers will still

1 have access to the USA Fitness live, which will include classes and  
2 other means of exercise.

3 Once we open, all active members who paid the monthly freeze fee  
4 will receive an additional free membership for a friend or family  
5 member for the same period of time that we were mandated to be  
6 closed.

7 Any non-monthly membership dues will go through as specified on  
8 the agreement.

9 If this arrangement does not work for you, please email us at  
10 memberships@usafitnessonline.com and we will work with you to  
11 reach a mutually acceptable outcome.

12 To the extent Defendants also rely on this March 28, 2020 email as written notice  
13 for charging the \$9.99 amount during the gym closures during the pandemic, the  
14 email does not refer to the \$9.99 amount as a monthly membership due or a  
15 reduced membership fee and therefore cannot constitute notice of the varying  
16 amount of the fees preauthorized in the membership agreement under 15 U.S.C. §  
17 1693e(b) and 12 C.F.R. § 205.10(d). Moreover, the March 28, 2020 email did not  
18 include the “date of the transfer” as required under 12 C.F.R. § 205.10(d).

19 Accordingly, there is no genuine issue of disputed fact that Defendants  
20 failed to obtain prior written authorization of the \$9.99 amount withdrawn from  
21 Plaintiff Golan and class members’ accounts.

22 **(2) Performance Under and/or Excuse under the Membership  
23 Agreement**

24 Defendants contend there is a genuine dispute of material fact as to whether  
25 Defendants performed under the membership agreement or were excused from  
26 performing a contractual obligation under the agreement which cannot be resolved  
27 without a trial. However, as stated above, there is no breach of contract claim  
28 pending in this case and whether Defendants performed or were excused from  
performing contractual obligations under the membership agreement is irrelevant  
for Plaintiff’s EFTA claim.

**(3) Bona Fide Error Defense**

Defendants also argue there are triable issues as to whether the bona fide

1 error defense applies to the corporate defendants.

2 15 U.S.C. § 1693m(c) of the EFTA provides “a person may not be held  
3 liable in any action brought under this section for a violation of this subchapter if  
4 the person shows by a preponderance of evidence that the violation was not  
5 intentional and resulted from a bona fide error notwithstanding the maintenance  
6 of procedures reasonably adapted to avoid any such error.” (Emphasis added).

7 Thus, to be entitled to the bona fide error defense, Defendants must demonstrate  
8 by a preponderance of the evidence that the error at issue was: (1) unintentional;  
9 (2) the product of a *bona fide* error; and (3) must have occurred notwithstanding  
10 the maintenance of procedures reasonably adapted to avoid the error in question.  
11 See 15 U.S.C. § 1693m(c); *In re Cardtronics ATM Fee Notice Litig.*, 874 F. Supp.  
12 2d 916, 922 (S.D. Cal. 2012) (same), *aff’d*, 559 F. App’x 633 (9th Cir. 2014);  
13 *Simone v. M & M Fitness LLC*, 2017 WL 1318012, at \*4 (D. Ariz. Apr. 10, 2017)  
14 (citing *Singer v. EIntelligence, Inc.*, 55 F. Supp. 3d 1043, 1051 (N.D. Ill. 2014)).

15 Defendants argue they “did not interpret EFTA incorrectly; rather, they  
16 believed—based on the Agreement language and legal counsel’s opinion—that the  
17 reduced fee was still within the bounds of the Agreement” so that there is a  
18 question of material fact as to whether the bona fide defense applies to Plaintiff’s  
19 EFTA claim. Defendants contend “[c]ourts interpret the EFTA’s bona fide error  
20 provision in the same way as the parallel provision of the Fair Debt Collection  
21 Practices Act.” (Opp. at 15-16.) However, the Ninth Circuit has held in a Fair  
22 Debt Collection Practices Act (“FDCPA”) case that “[r]eliance on advice of  
23 counsel or a mistake about the law is insufficient by itself to raise the bona fide  
24 error defense.” *Baker v. G. C. Servs. Corp.*, 677 F.2d 775, 779 (9th Cir. 1982).<sup>4</sup>

25 \_\_\_\_\_  
26 <sup>4</sup> 15 U.S.C. § 1692k(c) of the FDCPA provides: “A debt collector may not be  
27 held liable in any action brought under this subchapter if the debt collector shows  
28 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.” The statutory language under the FDCPA’s  
bona fide error defense is nearly identical to the statutory language of 15 U.S.C. §  
1693m(c) of the EFTA. Compare 15 U.S.C. § 1693m(c) (“[A] person may not be

1 Moreover, the Supreme Court has held the “bona fide error” defense set forth in  
2 15 U.S.C. § 1692k(c) of the FDCPA does not “appl[y] to a violation resulting  
3 from a debt collector’s mistaken interpretation of the legal requirements of the  
4 FDCPA.” *Jerman v. Carlisle, McNellie, Rini, Kramer & Ulrich LPA*, 559 U.S.  
5 573, 577, 581 n.4 (2010).

6 Defendants nevertheless argue there is a material issue of fact in question as  
7 to whether there was an underlying “factual” or “collateral legal” error regarding  
8 “how to roll out and document a permissible reduction under the membership  
9 agreements” during the gyms’ closures during the pandemic, rather than a  
10 misunderstanding of the EFTA’s prohibitions, so the issue of whether the bona  
11 fide defense applies in this case must be tried to a jury, relying on *Kaiser v.*  
12 *Cascade Cap., LLC*, 989 F.3d 1127 (9th Cir. 2021). As this Court previously held  
13 in its April 4, 2023 MSJ Order:

14 Unlike in *Kaiser*, this case does not involve a collateral issue  
15 regarding state law. Nor does this action involve misinterpretation of  
16 the legal requirements of federal law other than the EFTA. Rather,  
17 Defendants’ alleged mistake of law and reliance on counsel pertains  
18 to the specific violation of the EFTA asserted by Plaintiff Golan in  
19 this action—whether the withdrawal of the \$9.99 charge from  
20 Plaintiff Golan’s bank account violated the EFTA’s preauthorization  
21 requirements. Therefore, the general maxim that “ignorance of the  
22 law” is no excuse applies here. Accordingly, Defendants’ reliance on  
23 their review of their “contractual and legal bases” to charge members  
24 during the pandemic closures and retention of outside counsel who  
25 stated in a letter that Defendants’ policy of charging the \$9.99  
26 amount and reference to the charge as a “freeze fee” appeared  
27 “reasonable and not violative of any law” cannot serve as a basis for  
28 Defendants’ bona fide error defense under 15 U.S.C. § 1693m(c) of  
the EFTA.

23 (April 4, 2023 MSJ Order at 20-21 (internal citation omitted).) Thus, Defendants  
24 cannot rely on the membership agreement and advice from counsel in arguing that  
25 the bona fide error defense applies to Plaintiff’s EFTA claim. *See Simone v. M &*

26 \_\_\_\_\_  
27 held liable in any action brought under this section for a violation of this  
28 subchapter if the person shows 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.”).

1 *M Fitness LLC*, 2017 WL 1318012 (D. Ariz. Apr. 10, 2017) (citing *Jerman*,  
2 *McNellie, Rini, Kramer & Ulrich, LPA*, 559 U.S. 573 (2010); *Baker v. G.C. Servs.*  
3 *Corp.*, 677 F.2d 775 (9th Cir. 1982)). Accordingly, Defendants fail to  
4 demonstrate a genuine issue of material fact exists as to the bona fide error  
5 defense precluding summary judgment in favor of Plaintiff on the EFTA claim.<sup>5</sup>

6 **(4) Defendant Meher’s Personal Liability**

7 Defendants argue there are triable issues regarding Defendant Meher’s  
8 personal liability for the alleged conduct of the corporate defendants, and  
9 imposing personal liability against Defendant Meher in addition to corporate  
10 liability would result in a duplicative penalty for actions that were part of Meher’s  
11 managerial duties.

12 15 U.S.C. § 1693m of the EFTA provides “[a]ny person who fails to  
13 comply with any provision of this subchapter with respect to any consumer,  
14 except for an error resolved in accordance with section 1693f of this title, is liable  
15 to such consumer in an amount equal to the sum of” actual damages sustained by  
16 the consumer, statutory damages, and attorneys’ fees. (Emphasis added.)  
17 “[I]ndividual liability for corporate malfeasance is available for violations of the  
18 EFTA because such violations are also deemed to be violations of the [Federal  
19 Trade Commission] Act.” *F.T.C. v. Grant Connect, LLC*, 763 F.3d 1094, 1104  
20 (9th Cir. 2014).

21 Plaintiff offers deposition testimony from Defendant Meher wherein Meher  
22 testified:

- 23 1. Meher is the sole owner of the gym defendants and their  
24 managing member (Meher Depo. 21:23-26:10);<sup>6</sup>

25 \_\_\_\_\_  
26 <sup>5</sup> Because Defendants fail to demonstrate the bona fide error defense applies based  
27 on their interpretation of the membership agreement and advice of counsel, the  
28 Court does not reach the issue of whether Defendants’ EFTA violation was  
intentional and whether Defendants maintained procedures reasonably adapted to  
avoid errors as required for application of the bona fide error defense.

<sup>6</sup> Defendants state this fact is undisputed. (*See* Defendants’ Response to

- 1           2.     As the managing member of the gym defendants, Meher  
2           “oversees the operations” of the gyms and is the “ultimate  
3           decision maker” at the gyms including with respect to “legal  
4           compliance measures” and any decisions of how the club  
5           operates during COVID” (*id.* at 26:12-14, 27:23-28:6) and  
6           “[i]n [his] capacity as manager member of 360 it was  
7           [Meher’s] idea” to charge the \$9.99 starting in 2020 during the  
8           government shutdown of the gyms (*id.* 55:25-56:5);<sup>7</sup> and
- 9           3.     ABC required the gym defendants and Meher to confirm that  
10           “[a] hundred percent of the members that the club desires ABC  
11           to continue billing during the closure period have agreed to  
12           such continued billing” (*id.* at 144:23-145:15).<sup>8</sup>

13     Plaintiff also submits evidence that the billing continuation agreement with ABC  
14     was signed by Meher which provided “[i]n reliance on the representations and  
15     other agreements made herein by Club, ABC agrees to continue billing the Club’s  
16     members during the Closure Period . . . .” (Dkt. No. 47-3.) Therefore, the  
17     undisputed evidence demonstrates Defendant Meher was involved in Defendants’  
18     decision to withdraw the \$9.99 amount from class members’ accounts during the  
19     closure of the gyms, and thus personally involved in the underlying violation of  
20     the EFTA. Accordingly, it is undisputed Defendant Meher is personally liable for

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21     Statement of Fact No. 28.) (*See also* Meher Decl. ¶ 2 (declaring Meher is the  
22     owner and managing member of the defendant gyms).)

23     <sup>7</sup> Defendants, citing to the same deposition testimony by Meher, argue the fact  
24     identified by Plaintiff that “Meher oversees the operations of USA Fitness and is  
25     the ultimate decision maker at the club, including with respect to charging  
26     members the \$9.99 fee during shutdown against the advice of ABC and whether  
27     such decision was legally complaint” is “Disputed.” (*See* Defendants’ Response  
28     to Statement of Fact No. 30.) Defendants contend Meher testified “he was the  
29     managing member and ultimate decision maker at the club, however, not that he  
30     was the ultimate decision maker with respect to charging members the \$9.99 as far  
31     as that policy was implemented in the normal course of corporate procedures for  
32     to respond to the pandemic closures.” (*See id.*) However, it is undisputed Meher  
33     testified at his deposition that it was his “idea” as managing member of the gym  
34     defendants to charge the \$9.99 amount during the closures of the gym during the  
35     pandemic. (*See also* Friedman Decl. Ex. A, Defendant Meher’s Responses to  
36     Interrogatory No. 2 (stating Meher is the “President and Managing Member” of  
37     Club 360); *id.* No. 3 (stating Meher “oversaw the operations of CLUB 360”); *id.*  
38     No. 5 (stating Meher “had authority to make decisions regarding policies and  
39     charging members”); *id.* No. 7 (stating Meher “was involved in decisions that  
40     charged amounts were to be reduced for members to a “freeze fee” of \$9.99”).)

41     <sup>8</sup> Defendants state this fact is undisputed. (*See* Defendants’ Response to  
42     Statement of Fact No. 35.)

1 the EFTA violation in this case.

2 **(5) Actual Damages**

3 Defendants also contend there is a genuine issue of disputed fact as to  
4 whether Plaintiff suffered actual damages. In this Court’s April 4, 2023 MSJ  
5 Order, the Court found “the harm suffered for the EFTA claim in this case is the  
6 electronic withdrawal of \$9.99 from Plaintiff Golan’s account without his prior  
7 written authorization.” (Dkt. No. 151 at 27 n.11.) As the Court noted, the purpose  
8 of the EFTA is to protect consumers from “errant and unauthorized monetary  
9 transfers.” (*Id.* at 16 (citing *Guarnieri v. Be Money Inc.*, 2022 WL 11381916, at  
10 \*8 (C.D. Cal. Oct. 18, 2022)).) Here, it is undisputed Defendants charged class  
11 members \$9.99 during the gym closures at the time of the pandemic and there is  
12 no dispute as to the total \$47,672.28 amount electronically withdrawn from class  
13 members’ accounts. Therefore, there is no triable issue of fact as to actual  
14 damages for Plaintiff’s EFTA claim.

15 **(6) Statutory Damages**

16 15 U.S.C. § 1693m of the EFTA provides:

17 Except as otherwise provided by this section and section 1693h of  
18 this title, any person who fails to comply with any provision of this  
19 subchapter with respect to any consumer, except for an error resolved  
in accordance with section 1693f of this title, is liable to such  
consumer in an amount equal to the sum of—

20 **(1)** any actual damage sustained by such consumer as a result  
21 of such failure;

22 **(2)(A)** in the case of an individual action, an amount not less  
than \$100 nor greater than \$1,000; or

23 **(B)** in the case of a class action, such amount as the court may  
24 allow, except that (i) as to each member of the class no  
25 minimum recovery shall be applicable, and (ii) the total  
26 recovery under this subparagraph in any class action or series  
of class actions arising out of the same failure to comply by the  
same person shall not be more than the lesser of \$500,000 or 1  
per centum of the net worth of the defendant; and

27 **(3)** in the case of any successful action to enforce the foregoing  
28 liability, the costs of the action, together with a reasonable  
attorney’s fee as determined by the court.

1 In determining the amount of liability in any action under subsection  
(a), ***the court*** shall consider, among other relevant factors--

2 (1) in any individual action under subsection (a)(2)(A), the  
3 frequency and persistence of noncompliance, the nature of  
4 such noncompliance, and the extent to which the  
noncompliance was intentional; or

5 (2) in any class action under subsection (a)(2)(B), the  
6 frequency and persistence of noncompliance, the nature of  
7 such noncompliance, the resources of the defendant, the  
number of persons adversely affected, and the extent to which  
the noncompliance was intentional.

8 (Emphasis added.) Pursuant to the express language of the statute, the Court  
9 determines the statutory damages to award under 15 U.S.C. § 1693m. *See id.*; *see*  
10 *also Anderson v. Expressmart*, 2013 WL 121471, at \*3 n.1, n.6 (N.D. Ala. Jan. 4,  
11 2013).

12 At the hearing on the Motion, Plaintiff conceded there was a triable issue  
13 regarding statutory damages. Accordingly, the remaining issue to be tried by the  
14 Court is the amount of statutory damages, if any, to be awarded against  
15 Defendants under 15 U.S.C. § 1693m.

16 **(7) Treble Damages**

17 Plaintiff argues in a footnote that the EFTA allows for treble damages for  
18 willful or malicious acts and that if summary judgment or summary adjudication is  
19 granted, “Plaintiff reserves the right to seek such treble damages, plus  
20 prejudgment interest at 10% per annum on actual damages at trial.” (Motion at 25  
21 n.21.)<sup>9</sup> Plaintiff did not cite to the authority relied upon permitting recovery of  
22 treble damages under the EFTA in his papers, but represented to the Court during  
23 the hearing that he was relying on 15 U.S.C. § 1693f. 15 U.S.C. § 1693f provides  
24 for recovery of treble damages against a financial institution where “the financial  
25 institution did not provisionally recredit a consumer’s account” within ten days  
26 from receiving oral or written notice from a consumer regarding an account error  
27

28 <sup>9</sup> Defendants do not address treble damages in their opposition.

1 and “did not make a good faith investigation of the alleged error, or . . . did not  
2 have a reasonable basis for believing that the consumer’s account was not in  
3 error,” or “the financial institution knowingly and willfully concluded that the  
4 consumer’s account was not in error when such conclusion could not reasonably  
5 have been drawn from the evidence available to the financial institution at the time  
6 of its investigation.” However, the SAC does not assert a violation of the EFTA  
7 based on a failure to investigate after receiving notification of an error from  
8 Plaintiff or class members. Moreover, 15 U.S.C. §1693f applies to financial  
9 institutions, and Defendants are not financial institutions.

10 Therefore, Plaintiff cannot recover treble damages under 15 U.S.C. § 1693f  
11 in this action.

#### 12 IV. CONCLUSION

13 Accordingly, the Court **GRANTS** Plaintiff Golan’s Motion for Summary  
14 Judgment on his remaining EFTA claim, and awards \$47,672.28 in actual  
15 damages to Plaintiff and the class. The remaining issue to be tried **by the Court**  
16 is any statutory damages award against Defendants under 15 U.S.C. § 1693m of  
17 the EFTA.

18 **IT IS SO ORDERED.**

19  
20 DATED: May 20, 2025.

  
21 **CONSUELO B. MARSHALL**  
22 **UNITED STATES DISTRICT JUDGE**