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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

OSBERT AYENI-AARONS,  
Plaintiff,  
v.  
BEST BUY CREDIT  
SERVICES/CBNA, et al.,  
Defendants.

No. 2:18-cv-01625-MCE-KJN

**MEMORANDUM AND ORDER**

This action arises out of Plaintiff Osbert Ayeni-Aarons's purchase of an allegedly defective laptop computer from Best Buy with a credit card issued by Defendant Citibank, N.A. ("Citibank"). Presently before the Court is Citibank's Motion to Compel Arbitration and Stay this Action pursuant to an agreement to arbitrate between Plaintiff and Citibank. ECF No. 24. For the following reasons, Citibank's Motion is GRANTED.

**BACKGROUND<sup>1</sup>**

Plaintiff opened a Best Buy credit card account issued by Citibank (the "Account") in October 2013. Citibank's Mot., ECF No. 24, at 2. At the time of its opening, the

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<sup>1</sup> The following recitation of facts is taken from Plaintiff's Second Amended Complaint ("SAC"), ECF No. 23, and Citibank's Motion to Compel Arbitration ("Citibank's Mot."), ECF No. 24.

1 Account was subject to an arbitration clause (the “Arbitration Agreement”), which was  
2 reflected in a Card Agreement. Citibank’s Mot., ECF No. 24, at 2. On or about  
3 December 15, 2015, Citibank claims to have mailed Plaintiff a “Notice of Change in  
4 Terms and Right to Opt Out” (the “2015 Notice”), which included a new Card Agreement  
5 with an amended arbitration clause (“Amended Arbitration Agreement”). Id. Citibank’s  
6 records reflect that the 2015 Notice was not returned by the postal service as  
7 undeliverable. Id. The 2015 Notice stated that Citibank is “changing your card  
8 agreement by replacing it with a new one,” and that the effective date for the changes, to  
9 include changes to the Arbitration Agreement, was February 4, 2016. Id.

10 The fundamental dispute between these parties arises out of a transaction  
11 involving a laptop computer that Plaintiff purchased from Best Buy in Elk Grove,  
12 California on July 9, 2016. SAC ¶ 12. Plaintiff used the Account to purchase the laptop.  
13 SAC ¶ 12. Plaintiff alleges that after purchasing the laptop, he discovered that it was  
14 defective and attempted to exchange it on August 28, 2016 at Best Buy’s retail store in  
15 Chico, California. SAC ¶ 16. During the exchange attempt at the Chico Best Buy, a  
16 dispute ensued between Plaintiff and the Best Buy retail employees, which resulted in  
17 the defective laptop being turned into Best Buy without Plaintiff receiving an operational  
18 laptop in return. SAC ¶¶ 14, 15. After this incident, Plaintiff claims he sought assistance  
19 from Best Buy’s customer service to no avail. SAC ¶ 16. Best Buy allegedly did not  
20 return the defective laptop to Plaintiff or otherwise cancel the sale, but instead kept the  
21 laptop and continued to charge Plaintiff for the purchase. SAC ¶ 17.

22 When Plaintiff stopped making payments on the laptop that was no longer in his  
23 possession, negative reports regarding his credit worthiness were sent to the consumer  
24 credit reporting agencies, which caused damage to Plaintiff’s credit score. SAC ¶ 17.  
25 Plaintiff thereafter filed this action on June 5, 2018. ECF No. 1. By its instant Motion,  
26 Citibank seeks to compel arbitration of the Plaintiff’s claims against it pursuant to the  
27 Arbitration Agreement.

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1 appellate court “properly resolved any doubts of arbitrability”); see also Hodsdon v.  
2 Bright House Networks, LLC, 2013 WL 1499486 at \*2 (E.D. Cal. Apr. 11, 2013)  
3 (“Because there is a presumption in favor of arbitration, the Court is required to resolve  
4 any doubts concerning the scope of arbitrable issues in favor of arbitration.”).

5 To determine the validity of an agreement to arbitrate, the district court looks to  
6 “general state-law principles of contract interpretation, while giving due regard to the  
7 federal policy in favor of arbitration.” Wagner v. Stratton Oakmont, Inc., 83 F.3d 1046,  
8 1049 (9th Cir. 1996). In assessing whether to compel arbitration, the Court may not  
9 review the merits of the dispute. Instead, the Court must limit its inquiry to three steps:  
10 (1) whether the contract containing the arbitration agreement evidences a transaction  
11 involving interstate commerce; (2) whether there exists a valid agreement to arbitrate;  
12 and (3) whether the dispute(s) fall within the scope of the agreement to arbitrate.  
13 Republic of Nicaragua v. Standard Fruit Co., 937 F.2d 469, 476-78 (9th Cir. 1991)

## 14 15 ANALYSIS

### 16 17 A. Transaction Involving Interstate Commerce

18 The FAA provides that “[a] written provision in any . . . contract evidencing a  
19 transaction involving commerce to settle by arbitration a controversy thereafter arising  
20 out of such contract or transaction . . . shall be valid, irrevocable, and enforceable . . . .”  
21 9 U.S.C. § 2. Section 1 defines “commerce” to mean, among other things, “commerce  
22 among the several States or with foreign nations . . . .” Id. § 1. “The ‘interstate  
23 commerce’ provision has been interpreted broadly, embracing any agreement that in its  
24 operation directly or indirectly affects commerce between states in any fashion.”  
25 Affholter v. Franklin Cnty. Water Dist., No. 1:07-CV-0388-OWW-DLB, 2008 WL  
26 5385810, at \*2 (E.D. Cal. Dec. 23, 2008) (citing Allied-Bruce Terminix Cos., Inc. v.  
27 Dobson, 513 U.S. 265, 277-282 (1995)).

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1 In this case, the parties do not dispute that the Card Agreement evidences a  
2 transaction involving interstate commerce. Indeed, the contract containing the arbitration  
3 agreements at issue is a contract for a consumer credit card between citizens of two  
4 different states—California and South Dakota. Accordingly, the transaction “involve[s]  
5 interstate commerce.” See Ackerberg v. Citicorp USA, Inc., 898 F. Supp. 2d 1172, 1175,  
6 1177 (N.D. Cal. 2012) (compelling arbitration under the FAA based on arbitration clause  
7 contained in credit card agreement between citizens of different states); see generally  
8 Allied-Bruce Terminix Cos. v. Dobson, 513 U.S. 265, 274-75 (1995) (interstate-  
9 commerce requirement should be construed broadly to include all activities that merely  
10 affect interstate commerce).

11 **B. Existence of a Valid Agreement to Arbitrate**

12 The Court’s second task is to determine whether there exists a valid agreement to  
13 arbitrate. Standard Fruit, 937 F.2d at 476-78; see also Sanford v. MemberWorks, Inc.,  
14 483 F.3d 956, 962 (9th Cir. 2007). While the FAA expresses a strong public policy in  
15 favor of enforcing arbitration agreements, the Court must first establish that there is an  
16 agreement to be enforced. Baker v. Osborne Dev. Corp., 159 Cal. App. 4th 884, 892  
17 (2008). “[T]he question of whether a party is bound by an agreement containing an  
18 arbitration provision is a ‘threshold question’ for the court to decide.” Microchip Tech.  
19 Inc. v. U.S. Philips Corp., 367 F.3d 1350, 1357 (Fed. Cir. 2004) (citing John Wiley &  
20 Sons, Inc. v. Livingston, 376 U.S. 543 (1964)) (applying Ninth Circuit law). In  
21 determining whether an agreement to arbitrate exists, the district court “appl[ies] general  
22 state-law principles of contract interpretation, while giving due regard to the federal  
23 policy in favor of arbitration by resolving ambiguities as to the scope of arbitration in  
24 favor of arbitration.” Wagner v. Stratton Oakmont, Inc., 83 F.3d 1046, 1049 (9th Cir.  
25 1996); see also Pokorny v. Quixtar, Inc., 601 F.3d 987, 994 (9th Cir. 2010).

26 Here, the Arbitration Agreement in effect at the time that Plaintiff opened the  
27 Account contains the following language:

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**ARBITRATION**

**PLEASE READ THIS PROVISION OF THE AGREEMENT CAREFULLY. IT PROVIDES THAT ANY DISPUTE MAY BE RESOLVED BY BINDING ARBITRATION, ARBITRATION REPLACES THE RIGHT TO GO TO COURT, INCLUDING THE RIGHT TO A JURY AND THE RIGHT TO INITIATE OR PARTICIPATE IN A CLASS ACTION OR SIMILAR PROCEEDING. IN ARBITRATION, A DISPUTE IS RESOLVED BY AN ARBITRATOR INSTEAD OF A JUDGE OR JURY. ARBITRATION PROCEDURES ARE SIMPLER AND MORE LIMITED THAN COURT PROCEDURES.**

**Agreement to Arbitrate:** Either you or we may, without the other’s consent, elect mandatory, binding arbitration for any claim, dispute, or controversy between you and us (called “Claims”).

ECF No. 24-2, at 9 (bolding in original). The Amended Arbitration Agreement, as allegedly provided via the 2015 Notice, contains the following language:

**ARBITRATION**

**PLEASE READ THIS PROVISION OF THE AGREEMENT CAREFULLY. THIS SECTION PROVIDES THAT DISPUTES MAY BE RESOLVED BY BINDING ARBITRATION. ARBITRATION REPLACES THE RIGHT TO GO TO COURT, HAVE A JURY TRIAL OR INITIATE OR PARTICIPATE IN A CLASS ACTION. IN ARBITRATION, DISPUTES ARE RESOLVED BY AN ARBITRATOR, NOT A JUDGE OR JURY. ARBITRATION PROCEDURES ARE SIMPLER AND MORE LIMITED THAN IN COURT. THIS ARBITRATION PROVISION IS GOVERNED BY THE FEDERAL ARBITRATION ACT (FAA), AND SHALL BE INTERPRETED IN THE BROADEST WAY THE LAW WILL ALLOW.**

**Covered Claims**

- You or we may arbitrate any claim, dispute or controversy between you and us arising out of or related to your account, a previous related account, or our relationship (called “Claims”).
- **If arbitration is chosen by any party, neither you nor we will have the right to litigate that Claim in court or have a jury trial on that Claim.**

ECF No. 24-4, at 6-7 (bolding in original). While Plaintiff contests Citibank’s contention that the Amended Arbitration Agreement is applicable and enforceable as to Plaintiff, he concedes that Citibank may nevertheless compel arbitration via the initial Arbitration

1 Agreement. Pl.'s Opp. to Citibank Mot., ECF No. 27, 1. Accordingly, the Court finds that  
2 a valid agreement to arbitrate exists between the parties.

3 **C. Plaintiff's Dispute with Citibank Falls Within the Scope of the**  
4 **Arbitration Agreement**

5 "In considering the scope of an arbitration clause's application, U.S. courts have  
6 recognized a distinction between 'broad' and 'narrow' language." Concat LP v. Unilever,  
7 PLC, 350 F. Supp. 2d 796, 807 (N.D. Cal. 2004) (quoting Mediterranean Enterprises,  
8 Inc. v. Ssangyong Corp., 708 F.2d 1458, 1463-64 (9th Cir. 1983)). The rule is that,  
9 where an arbitration clause applies to matters "arising under" the agreement, its scope is  
10 narrowly defined, but where it applies to matters "arising out of or relating to" the  
11 agreement, its application should be broadly construed. Id. "[W]hen an arbitration  
12 clause refers to disputes or controversies 'under' or 'arising out of' the contract,  
13 arbitration is restricted to 'disputes and controversies relating to the interpretation of the  
14 contract and matters of performance.'" Mediterranean Enterprises, Inc., 708 F.2d at  
15 1465.

16 There is no dispute that the initial Arbitration Agreement extends to the bulk of  
17 Plaintiff's instant claims against Citibank. Instead, Plaintiff argues that the Amended  
18 Arbitration Agreement should not be enforced against him during arbitration on account  
19 that this amendment was made unilaterally and without his knowledge or consent. Pl.'s  
20 Opp. to Citibank Mot., ECF No. 27, at 1. Citibank, for its part, argues that the Amended  
21 Arbitration Agreement is valid and enforceable against Plaintiff under South Dakota Law,  
22 which applies here pursuant to the choice-of-law provision in the underlying Card  
23 Agreement. Citibank's Mot., ECF No. 24, at 1.

24 Despite the parties' contentions concerning the applicable arbitration agreement,  
25 the Court need not reach this dispute here. Since the Court has found the existence of  
26 an enforceable arbitration agreement that encompasses parties' dispute, determining if  
27 the amendment is enforceable against Plaintiff is a matter for the arbitrator to determine.  
28 See Chiron Corp. v. Ortho Diagnostic Sys., 207 F.3d 1126, 1130 (9th Cir. 2000)

1 (explaining that the Court's role is "limited to determining (1) whether a valid agreement  
2 to arbitrate exists and, if it does, (2) whether the agreement encompasses the dispute at  
3 issue."); see also Cuadras v. MetroPCS Wireless, Inc., No. CV 09-7897 CAS (AJWx),  
4 2011 WL 11077125, at \*7 (C.D. Cal. Aug. 8, 2011) ("[T]he Court finds that plaintiff's  
5 arguments regarding the sufficiency of notice of amendments to the [arbitration  
6 agreement] implicate the separability doctrine, which requires certain challenges to  
7 contracts containing arbitration clauses to be heard by the arbitrator rather than by the  
8 court.").

9 Accordingly, while the Court orders that Plaintiff and Citibank engage in arbitration  
10 pursuant to their agreement, it makes no determination on whether the provisions of the  
11 Amended Arbitration Agreement apply to Plaintiff.

### 12 13 CONCLUSION

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15 Citibank's Motion to Compel Arbitration and Stay the Case is GRANTED. ECF  
16 No. 24. The litigation is STAYED only as to Plaintiff's claims against Citibank, pending  
17 completion of the arbitration. The parties shall submit a joint status report within sixty  
18 (60) days of the date this Order is filed, and additional joint status reports each sixty (60)  
19 days thereafter. The parties are further directed to notify the Court, in writing, within ten  
20 (10) days after an arbitration decision has been rendered.

21 IT IS SO ORDERED.

22 Dated: August 20, 2019

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25 MORRISON C. ENGLAND, JR.  
26 UNITED STATES DISTRICT JUDGE  
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