AMERICAN ARBITRATION ASSOCIATION
COMMERCIAL ARBITRATION RULES

[redacted]	:	
	:	Case No. [redacted]
Claimant,	:	
-against-	:	
[redacted],	:	
Respondent.	:	

DECISION ON PARTIAL MOTION TO DISMISS

Claimant [redacted] ("Claimant" or [redacted]) commenced this proceeding on [redacted], 2024, alleging liability on the part of Respondent [redacted] ([redacted] or "Respondent") for a wire transfer under two theories: (1) common law negligence; and (2) U.C.C. Article 4(A). For fifteen (15) months, the case proceeded, and discovery was taken, which included depositions, based on those two theories. After several delays, a final hearing was scheduled for [redacted], 2025. In advance of the hearing, the parties were required to submit their pre-hearing materials by [redacted], 2025. On that date, Claimant submitted a memorandum asserting for the first time, a claim based on the Electronic Funds Transfer Act of 1978 ("EFTA"), 15 U.S.C. sections 1963 *et seq*..[1] [redacted], in accordance with Procedural Order No. 1, then requested permission to file a motion *in limine* to preclude the EFTA claim. Rather than consider that motion, a conference concerning the new claim was held on [redacted],

[1] Claimant originally sought to add claims under the New York Executive Law section 63(12) and General Business Law section 349 but withdrew that request.

2025. After argument, Claimant was permitted to amend her statement of claim and Respondent was given the opportunity to move to dismiss the newly asserted claim. A briefing schedule for the motion to dismiss the EFTA claim was set. The matter is currently scheduled for hearing on [redacted], 2025.

Claimant's claim under the EFTA is based entirely on a case brought by the Attorney General of the State of New York, *The People of the State of New York, by Leticia James v. Citibank, N.A.*, 763 F. Supp. 3d 496 (S.D.N.Y. 2025) commenced in January 2024 (" NYAG Decision"). In January 2025, Judge Oetken of the Southern District of New York issued a decision which, *inter alia*, refused to dismiss the claim against Citibank for violation of the EFTA. That case, which was not decided on the merits, was certified for an interlocutory appeal to the Second Circuit.

Respondent objects to the EFTA claim on several grounds. First, it argues that wire transfers are not covered by the EFTA. Next it argues that the NYAG Decision is not controlling authority and emphasizes that the Consumer Financial Protection Board ("CFPB"), the regulatory agency that administers regulations under the EFTA, withdrew its statement of interest in the case stating, in essence, that the decision goes against established precedent. Finally, [redacted] argues that the transfer at issue here was authorized.[2] After briefing, this Tribunal invited counsel to orally argue the motion to dismiss the EFTA claim. At that argument, Respondent reiterated the position taken in its request to file a motion *in limine* and cogently pointed out that allowing the EFTA claim to stand would cause it prejudice. Considering the parties' arguments one-by-one, this Tribunal will grant the motion to dismiss the EFTA claim.

[2] This is a factual issue which will, in any event, be addressed at the hearing.

Prior to the NYAG Decision, the law was clear that wire transfers are exempt from EFTA coverage. Regulation E promulgated under the EFTA specifically excludes wire transfers and case law interpreting the EFTA and Regulation E so held. See, *Nazimuddin v. Wells Fargo Bank, N.A.,* 2025 U.S.App. LEXIS 204 (5th Cir. Jan.6, 2025); *Stepakoff v. IberiaBank Corp.,* 637 F.Supp.3d 1309 (S.D. Fla. 2022); *Rahimian v. Wells Fargo Bank N.A*., 2024 U.S. Dist. LEXIS 212913 (C.D. Cal. Sept. 20, 2024). Claimant does not address this long-standing precedent or the EFTA statute or regulations. Instead, she argues that the NYAG Decision must be followed and/or given weight under the doctrines of *stare decisis*, *res judicata*, or be adopted as persuasive authority.

The cases cited by Claimant regarding *stare decisis* are unpersuasive. *Mendenhall v. Cedarapids, Inc.,* 5 F.3d 1557 (Fed. Cir. 1993) is a patent case where the issue of a finding of validity for the same patent in a prior case was at stake. The court there did not follow the prior decision, which unlike the AG Decision here, was fully litigated and determined. *Broaddrick v. Exec. Office of the Pres.,*139 F. Supp. 55 (D.D.C. 2001), is a privacy case where the court refused to follow prior decisions on whether the Office of the President was an agency within the Freedom of Information Act leaving it to the judge hearing the case to determine what, if any, effect the earlier holdings would have on the current case. In *McGinley v. Houston*, 361 F. 3d 1308 (11th Cir. 2004), there was a question whether a judge needed to follow his own prior decision and there was a circuit court decision that the district court needed to follow. In that case, the court stated that a district court decision neither binds the judge who issued it or another district court. All these cited cases do is stand for the unremarkable proposition that the law favors predictability and consistency; none of them hold that an arbitrator must follow a district court decision, let alone one that has been certified for an interlocutory appeal. *IBM Credit*

Corp. v. United Home for Aged Hebrews, 848 F. Supp. 495 (S.D.N.Y. 1994), cited by Respondent makes clear that district court decisions are not binding precedent in other cases; they only have influence to the extent that jurists in other cases find them convincing. Given the state of play of the NYAG Decision and the long line of cases holding that wire transfers are not governed by the EFTA, this Tribunal does not find the NYAG Decision convincing.

Claimant's *res judicata* argument fares no better since the NYAG Decision is not a decision on the merits. The procedural posture and the nature of the issue in *Zdanok v. Glidden Corp*., 327 F. 2d 944 (2d Cir. 1964) bears no resemblance to the proceeding at bar. In that case, there was a full decision on the merits that involved construction of a contract, a matter of law, as opposed to, as here, questions of fact. In any event, the court there recognized that law of the case does not bind a court to its former decisions. *Taylor v. Sturgell*, 553 U.S. 880 (2008), also cited by Claimant, is similarly distinguishable. That case also involved a full trial on the merits, and the issue before the Court was virtual representation. The Court set forth six factors where virtual representation may bind a later litigant. Significantly, Claimant here does not fit into any of the enumerated categories.

Finally, in its motion *in limine* and again at oral argument on the instant motion, [redacted] claims that it will be prejudiced if the EFTA claim is allowed. This Tribunal agrees. Until [redacted] 2025, this matter consisted of two claims: common law negligence and U.C.C. Article 4(A). It was only upon submission of pre-hearing briefing that Claimant raised the EFTA claim. All discovery in this case was tailored to address the two claims asserted. Claimant, in her opposition to the motion *in limine*, chides [redacted] for not disclosing, *inter alia*, the AG Decision in discovery. First, Claimant never raised any issue of discovery with this Tribunal. Second, the AG Decision was a matter of public record six months before Claimant raised it.

The proof required to defend the extant claims and to defend an EFTA claim is, as Respondent's counsel argued, quite different. Indeed, [redacted] counsel argued persuasively that it would need additional witnesses to defend any EFTA claim. Accordingly, this Tribunal finds that permitting the EFTA claim at this late date would cause prejudice to Respondent.

For all of the foregoing reasons, [redacted]'s motion to dismiss the EFTA claim is granted. This matter shall proceed to hearing on [redacted], 2025 on the two claims of negligence and U.C.C. Article 4(A).

Dated: September 7, 2025

Lynne M. Fischman Uniman
Arbitrator