

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

XPO LAST MILE INC.,  
Petitioner,  
v.  
ANESSA'S TRANSPORT INC.,  
Respondent.

Case No. [18-cv-00709-SK](#)

**ORDER TO SHOW CAUSE  
REGARDING JURISDICTION**

United States District Court  
Northern District of California

Pursuant to the Federal Arbitration Act (FAA), 9 U.S.C. § 1, *et seq.*, Petitioner XPO Last Mile Incorporated filed this action for an order confirming an arbitration award providing Respondent Anessa’s Transport Incorporated with nothing. Now pending before the Court is Petitioner’s motion to confirm the arbitration award. However, after reviewing the petition and motion, the Court directs Petitioner to Show Cause why this matter should not be dismissed for lack of subject matter jurisdiction.

Under the FAA, and unless otherwise agreed by the parties, a petition to confirm, vacate, or modify an arbitration award may be made to the district court “for the district in which the award was made.” 9 U.S.C. §§ 9, 10, 11. “However, the FAA does not itself confer jurisdiction on federal district courts over actions to compel arbitration or to confirm or vacate arbitration awards, nor does it create a federal cause of action giving rise to federal question jurisdiction under 28 U.S.C. § 1331.” *United States v. Park Place Associates, Ltd.*, 563 F.3d 907, 918 (9th Cir. 2009) (citations omitted). Thus, a federal court has jurisdiction to enter judgment on an arbitration award only where there is an independent basis for federal jurisdiction. *Id.*; *see also Moses H. Cone Memorial Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 25 n.32 (1983).

Petitioners invoke this Court’s diversity jurisdiction under 28 U.S.C. § 1332. Federal district courts have jurisdiction over civil actions in which the matter in controversy exceeds the

1 sum or value of \$75,000 (exclusive of interest and costs) and is between citizens of different  
2 states. 28 U.S.C. § 1332. The petition asserts that the parties are citizens of different states and  
3 that the amount in controversy in the underlying arbitration exceeds \$75,000.

4 Whether the jurisdictional amount is based on the amount in controversy in the underlying  
5 arbitration, or on the amount of the arbitration award depends upon whether the parties are seeking  
6 to re-open the arbitration proceedings. See *Theis Research, Inc. v. Brown & Bain*, 400 F.3d 659  
7 (9th Cir. 2005). In *Theis Research*, the plaintiff moved to vacate an arbitration award of zero  
8 dollars, but also filed a complaint seeking damages for substantially the same claims asserted in  
9 the underlying arbitration. *Id.* at 661. The court held that the amount in controversy was satisfied  
10 because the plaintiff was seeking to obtain \$200 million in damages in the underlying action, and  
11 that attempt to seek that amount equated to a request to reopen its arbitrated claims. *Id.* at 665  
12 (“Although [neither party has] asked that the arbitration proceedings be reopened, Theis sought to  
13 obtain by its district court complaint substantially what it had sought to obtain in the arbitration.  
14 Theis simply chose to ‘reopen’ its claims in the district court rather than in arbitration.”).

15 The *Theis Research* court noted that, although there is a split among the circuits on  
16 whether the amount in controversy is determined by the arbitration award or the amount at issue in  
17 the underlying arbitration, in general “the cases have turned upon whether the party seeking to  
18 vacate an arbitration award also sought to reopen the arbitration.” *Id.* at 664 (citing cases). The  
19 court cited *Baltin v. Alaron Trading Corp.*, 128 F.3d 1466 (11th Cir. 1997), in which the court  
20 found the amount in controversy was not met where the plaintiffs sought to vacate an arbitration  
21 award requiring them to pay \$36,284.69 but did not seek to reopen arbitration. “The maximum  
22 remedy sought by the Baltins was the vacatur of the arbitration award” which did not meet the  
23 jurisdictional minimum. *Theis Research*, 400 F.3d at 665. The court in *Ford v. Hamilton*  
24 *Investments, Inc.*, 29 F.3d 255 (6th Cir. 1994), also concluded that the jurisdictional minimum was  
25 not satisfied because the plaintiffs sought only to vacate a \$30,524 arbitration award and neither  
26 party sought additional damages. *Theis Research*, 400 F.3d at 665. The court in *Ford* “was quite  
27 clear that, had the losing party sought to challenge the arbitrator’s denial of that party’s  
28 counterclaims,” which were valued over the jurisdictional minimum, then the amount in

1 controversy would have been met. *Id.* (citing *Ford*, 29 F.3d at 260); accord *Peebles v. Merrill*  
2 *Lynch, Pierce, Fenner & Smith Inc.*, 431 F.3d 1320 (11th Cir. 2005) (holding amount in  
3 controversy was met where plaintiff sought to vacate a zero-dollar award and requested a new  
4 hearing before a different arbitration panel where he would seek recovery of up to two million  
5 dollars).

6 Following *Theis Research*, courts have held that “[w]hen a petitioner seeks confirmation or  
7 vacatur of an award, without seeking a remand for further arbitration proceedings, the amount in  
8 controversy is the value of the [arbitration] award itself . . . .” *Hansen Bev. Co. v. DSD*  
9 *Distributors*, 2008 WL 5233180 at \*5 (S.D. Cal. Dec. 12, 2008) (quotations and citation omitted);  
10 see also *Coffey v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 2012 WL 94545 at \*5 (C.D. Cal.,  
11 Jan. 11, 2012) (same); cf. *Shannon Associates LLP v. MacKay*, CW, 2009 WL 4756568 at \*3  
12 (N.D. Cal., Dec. 8, 2009) (concluding that petition to confirm a \$7,000 arbitration award did not  
13 meet the required amount for diversity jurisdiction, but that petitioners’ request to strike the  
14 arbitrators’ \$260,000 offset in damages satisfied the jurisdictional amount).

15 Here, no one is seeking to reopen the arbitration proceedings. Therefore, based on *Theis*  
16 *Research*, it appears as though the amount in controversy is determined by the amount of the  
17 arbitration award, which is zero dollars. If Petitioner obtains all the relief requested in its Petition,  
18 it will receive zero dollars. Likewise, Respondent will receive zero dollars. Accordingly,  
19 Petitioner is directed to file a response to this order, showing cause why this matter should not be  
20 dismissed for lack of subject matter jurisdiction, without prejudice to seeking confirmation of the  
21 arbitration award in a proper forum. Petitioner’s response shall be filed no later than April 23,  
22 2018 and shall not exceed 5 pages.

23 **IT IS SO ORDERED.**

24 Dated: April 16, 2018

25 

26 SALLIE KIM  
27 United States Magistrate Judge  
28