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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

ROBERT STEVEN MAWHINNEY,  
Petitioner,  
vs.  
AMERICAN AIRLINES,  
Respondent.

Case No. 15cv259-MMA (BLM)

**ORDER DENYING MOTION TO  
ENFORCE JUDGMENT OR, IN THE  
ALTERNATIVE, COMPEL  
ARBITRATION**

[Doc. No. 38]

AMERICAN AIRLINES, INC.,  
Cross-Petitioner,  
vs.  
ROBERT STEVEN MAWHINNEY,  
Cross-Respondent.

Respondent American Airlines (“American”) has filed a motion to enforce judgment or, in the alternative, compel arbitration. Doc. No. 38. Petitioner Robert Steven Mawhinney (“Mawhinney”) opposed the motion (*see* Doc. Nos. 40, 42), and American replied (Doc. No. 43). The Court found the matter suitable for determination on the papers and without oral argument pursuant to Civil Local Rule 7.1.d.1. For the reasons set forth below, the Court **DENIES** American’s motion.

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**BACKGROUND**

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2 Robert Mawhinney began working at American Airlines in 1989 as an Aviation  
3 Maintenance Technician. After Mawhinney was terminated from American in 2001, he  
4 filed an administrative whistleblower complaint with the U.S. Department of Labor  
5 (“DOL”) pursuant to the Wendell H. Ford Aviation Investment and Reform Act for the  
6 21st Century (“AIR21,” codified at 49 U.S.C. § 42121). The parties subsequently entered  
7 into a settlement agreement and American reinstated Mawhinney’s employment. As part  
8 of the settlement agreement, the parties agreed to resolve any further disputes through  
9 binding arbitration. American terminated Mawhinney again in September 2011, and  
10 Mawhinney initiated arbitration proceedings shortly thereafter, alleging claims for, among  
11 other things, retaliation and wrongful termination. Mawhinney also filed a second AIR21  
12 complaint with the DOL, alleging retaliation and wrongful termination.

13 The DOL investigated Mawhinney’s claims, but dismissed his complaint because it  
14 was unable to determine that Mawhinney had been retaliated against or wrongfully  
15 terminated for reporting air safety concerns. Mawhinney was granted a hearing with an  
16 administrative law judge (“ALJ”) regarding his AIR21 complaint (“ALJ Action”), but the  
17 proceeding was stayed pending American’s bankruptcy proceedings.

18 When the ALJ Action resumed, American moved to dismiss because arbitration  
19 proceedings had already been initiated pursuant to the parties’ settlement agreement. The  
20 ALJ granted the motion, but Mawhinney appealed the decision to the Administrative  
21 Review Board (“ARB”).

22 In November 2014, after six days of arbitration proceedings which included live  
23 testimony from nine witnesses, an arbitrator ruled in favor of American on all claims.  
24 Among other things, the arbitrator found that Mawhinney was “unable to establish that he  
25 was engaged in a protected activity,” that he was “constructively terminated,” or that “his  
26 reporting of misconduct of other employees was a motivating factor in his termination.  
27 Doc. No. 14-4 at 17.

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1 In February 2015, Mawhinney petitioned this Court to vacate the arbitration award.  
2 American opposed vacatur, and cross-petitioned to confirm the arbitration award. The  
3 Court denied Mawhinney's petition, granted American's cross-petition, and entered  
4 judgment in American's favor in August 2015. The Court denied Mawhinney's motion to  
5 alter or amend the judgment on December 9, 2015, and Mawhinney appealed the  
6 judgment on December 31, 2015.

7 In January 2016, the ARB reversed the ALJ's dismissal of the AIR21 complaint,  
8 finding that the ALJ did not have authority to dismiss merely based on the parties'  
9 initiation of arbitration proceedings under the settlement agreement, and remanded for  
10 further proceedings.

11 American filed the instant motion to enforce judgment on April 28, 2016.  
12 American argues that because the claims in the ALJ Action were already adjudicated in  
13 arbitration, and this Court confirmed the arbitration award, Mawhinney's claims in the  
14 ALJ Action are barred by res judicata and collateral estoppel. Accordingly, American  
15 urges the Court to enjoin the ALJ Action from proceeding pursuant to the All Writs Act,  
16 or, alternatively, to compel the parties to arbitrate the claims in the ALJ Action.

#### 17 LEGAL STANDARD

18 Under the Federal Arbitration Act ("FAA"), a party may petition of the court for an  
19 order confirming, vacating, or modifying an arbitrator's award. 9 U.S.C. §§ 9–11. If the  
20 arbitrator's award is confirmed, "[t]he judgment so entered shall have the same force and  
21 effect, in all respects, as, and be subject to all the provisions of law relating to, a judgment  
22 in an action; and it may be enforced as if it had been rendered in an action in the court in  
23 which it is entered." 9 U.S.C. § 13. However, "there are fundamental differences  
24 between confirmed arbitration awards and judgments arising from a judicial proceeding."  
25 *Chiron Corp. v. Ortho Diagnostic Sys., Inc.*, 207 F.3d 1126, 1133 (9th Cir. 2000). For  
26 instance, "[a]bsent an objection on one of the narrow grounds set forth in sections 10 or  
27 11, the Act requires the court to enter judgment upon a confirmed arbitration award,  
28 without reviewing either the merits of the award or the legal basis upon which it was

1 reached.” *Id.* Accordingly, “a judgment upon a confirmed arbitration award is  
2 qualitatively different from a judgment in a court proceeding, even though the judgment is  
3 recognized under the FAA for enforcement purposes.” *Id.* at 1133–34; *see also*  
4 *Employers Ins. Co. of Wausau v. OneBeacon Am. Ins. Co.*, 744 F.3d 25, 29 (1st Cir. 2014)  
5 (“[I]f a federal court, in enforcing an arbitration award, held that the arbitration was not  
6 fraudulent, and thus was enforceable, a subsequent arbitrator would not be able to decide  
7 to the contrary,” but “if a federal court has nothing to say about the merits of the  
8 arbitration decision that it confirms (which is almost always the case), then a subsequent  
9 arbitrator does not infringe on the prerogatives of the federal court by determining the  
10 preclusive effect of that arbitration decision.”).

#### 11 DISCUSSION

12 This Court denied Mawhinney’s petition to vacate the arbitrator’s award because he  
13 failed to establish any of the narrow grounds for vacatur under 9 U.S.C. 10. *See* Doc. No.  
14 17 (“Mr. Mawhinney’s disagreement with Judge Sullivan’s conclusions, without more, is  
15 not a grounds for vacatur under 9 U.S.C. § 10. Mr. Mawhinney provides no evidence that  
16 Judge Sullivan acted with prejudice, engaged in misconduct, or acted with manifest  
17 disregard for the law.”). The Court granted American’s cross-petition to confirm the  
18 award because a court must enter an order confirming an arbitration award “unless the  
19 award is vacated, modified, or corrected” as prescribed in 9 U.S.C. §§ 10–11. 9 U.S.C. §  
20 9. This Court did not consider the merits underlying Mawhinney’s claims, and therefore  
21 enforcement of its judgment is limited to those issues it actually considered. *See Chiron*  
22 *Corp. v. Ortho Diagnostic Sys., Inc.*, 207 F.3d 1126, 1133–34. American’s reliance upon  
23 *Leon v. IDX Systems Corporation*, 464 F.3d 951 (9th Cir. 2006) is misplaced because  
24 *Leon* involved actions taken by a district court to enforce its own judgment rendered after  
25 considering the merits of the issues presented, not the more narrow judgment this Court  
26 reached when it in summarily confirmed the arbitrator’s award. *See Chiron*, 207 F.3d at  
27 1134 (noting that “the court issuing the original decision is best equipped to determine  
28 what was considered and decided in that decision and thus what is or is not precluded by

1 that decision,” and such a policy is not served “when the district court merely confirmed  
2 the decision issued by another entity, the arbitrator, and was not uniquely qualified to  
3 ascertain its scope and preclusive effect”).

4 Because the arbitration clause in the settlement agreement<sup>1</sup> appears to broadly  
5 encompass all disputes arising between the parties involving Mawhinney’s employment, it  
6 is likely the parties will need to seek to arbitrate the issue of whether or not the ALJ  
7 Action is precluded by the arbitrator’s award. If the parties are unable to agree to arbitrate  
8 their dispute concerning the preclusive effect of the arbitrator’s award, then either party  
9 may seek an order compelling arbitration of the issue by filing a petition to compel  
10 arbitration pursuant to 9 U.S.C. § 4. Although American alternatively requests that this  
11 Court compel arbitration of the ALJ Action now, the Court is not in the best position to  
12 determine the preclusive effect of the arbitrator’s award. *See Chiron*, 207 F.3d at 1134.  
13 Furthermore, this case was closed and judgment was entered more than one year ago. The  
14 issues now giving rise to American’s request to compel arbitration are unrelated to the  
15 initial petitions to vacate or confirm the arbitration award. Accordingly, to the extent  
16 American wishes to file a petition to compel arbitration pursuant to 9 U.S.C. 4, it must file  
17 its petition as a new case, not as an alternative request in a motion to enforce judgment.

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21 <sup>1</sup> The parties’ settlement agreement is very broad, and provides that:

22 In the event of any dispute as to the compliance by either party with the terms of this  
23 Agreement, or in the event of any dispute arising at any time in the future between the  
24 Parties ... involving Plaintiff’s employment which may lawfully be the subject of pre-  
25 dispute arbitration agreements, and which Plaintiff chooses not to grieve under any  
26 Collective Bargaining Agreement governing his employment, Plaintiff and American  
27 Airlines agree to submit such dispute to final and binding arbitration (“Private  
28 Arbitration”) for resolution. Private Arbitration shall be the exclusive means of resolving  
any such disputes and no other action will be brought in any other forum or court. . . .

The arbitrator shall have the authority to order any legal or equitable relief or remedy  
which would be available in a civil or administrative action on the claim.

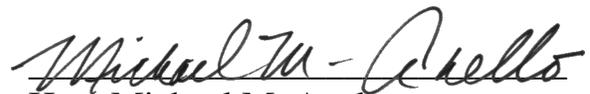
Doc. No. 38-1 at 3 (emphasis original).

CONCLUSION

Because this Court did not consider the merits underlying Mawhinney's claims in confirming the arbitration award, it is unable to enforce the arbitrator's judgment or determine the preclusive effect of the arbitrator's judgment in the ALJ Action. Accordingly, American's motion to enforce judgment or, in the alternative, compel arbitration, is **DENIED**.

**IT IS SO ORDERED.**

Dated: August 23, 2016



Hon. Michael M. Anello  
United States District Judge

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