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NOT FOR PUBLICATION

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

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9 Patrick LaCross, *et al.*,

No. CV-15-00990-PHX-JJT

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Plaintiffs,

**ORDER**

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v.

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Knight Transportation Incorporated, *et al.*,

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Defendants.

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At issue is Plaintiffs' Motion for Reconsideration of this Court's September 22, 2016 Order (Doc. 149), in which Plaintiffs ask the Court to reconsider its ruling (Doc. 148) on Defendants' Motion to Compel Arbitration and Stay Action (Doc. 111).

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Motions for reconsideration should be granted only in rare circumstances. *Defenders of Wildlife v. Browner*, 909 F. Supp. 1342, 1351 (D. Ariz. 1995). A motion for reconsideration is appropriate where the district court "(1) is presented with newly discovered evidence, (2) committed clear error or the initial decision was manifestly unjust, or (3) if there is an intervening change in controlling law." *School Dist. No. 1J, Multnomah County v. ACandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993). Here, Plaintiffs argue that the Court committed clear error when it did not decide whether Plaintiffs are exempt from arbitration under Section 1 of the Federal Arbitration Act ("FAA"), 9 U.S.C. § 1, which provides that the FAA does not apply to "contracts of employment" of any "workers engaged in foreign or interstate commerce." (Doc. 149 at 3.) Plaintiffs thus ask the Court to make that determination now. *See Van Dusen v. Swift Transp. Co. Inc.*, 654 F.3d 838, 843-44 (9th Cir. 2011) (stating that, before a district court enforces an

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1 arbitration agreement between the parties and compels arbitration, it must “consider  
2 whether the agreement at issue is of the kind covered by the FAA”).

3 Plaintiffs have the burden to show that the agreements they entered into are  
4 “contracts of employment” under Section 1 of the FAA. *See Circuit City Stores, Inc. v.*  
5 *Adams*, 532 U.S. 105, 119 (2001). The plain language of the Section 1 exemption  
6 provides that it applies to employment contracts of transportation workers, and the  
7 exemption is to be construed narrowly. *Id.* at 118; *see also In re Swift Transp. Co. Inc.*,  
8 830 F.3d 913, 919-20 (9th Cir. 2016) (Ikuta, J. dissenting) (noting “the only issue before  
9 the district court is a legal one” and the term “contracts of employment” is not to be read  
10 expansively “to mean any contract between parties in an employment relationship”);  
11 *Terrebonne v. K-Sea Transp. Corp.*, 477 F.3d 271, 278-80 (5th Cir. 2007) (concluding  
12 that the Section 1 exemption applies to employment contracts, not any contracts made by  
13 parties in an employment relationship).

14 An employment contract is “an agreement setting forth ‘terms and conditions’ of  
15 employment.” *Modzelewski v. Resolution Trust Corp.*, 14 F.3d 1374, 1376 (9th Cir.  
16 1994). As one can surmise from the very title of the agreement between Plaintiffs and  
17 Defendant Knight Transportation Inc. (“Knight”)—“Independent Contractor Operating  
18 Agreement” (“ICOA”)—the agreement is not, on its face, a “contract of employment” as  
19 contemplated by Section 1 of the FAA. The ICOA expressly provides that each Plaintiff,  
20 as a “Contractor,” agrees “to provide services as an independent Contractor and  
21 acknowledges that it is an independent Contractor,” and that the ICOA does not create an  
22 “employer/employee,” “master/servant,” or “principal/agent” relationship. (Doc. 111-2,  
23 ICOA ¶ 1.) Plaintiffs do not point the Court to any specific provision of the ICOA that  
24 would indicate that it is an employment contract. The Court need not go beyond the plain,  
25 unambiguous characterization of the relationship between the parties in the ICOA to  
26 conclude that it was the intent of Plaintiffs to enter into an independent Contractor  
27 agreement with Knight, not an employment contract. *See Alvarado v. Pac. Motor*  
28 *Trucking Co.*, No. EDCV 14-0504-DOC(DTBx), 2014 WL 3888184, at \*4-5 (C.D. Cal.

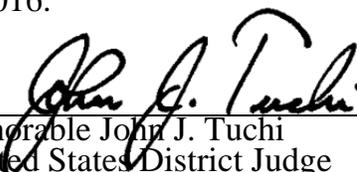
1 Aug. 7, 2014) (finding that the court did not need to go beyond the express  
2 characterization of the relationship between the parties in their agreement).

3 As Defendants point out (Doc. 138 at 10), the ICOA also contains all the terms  
4 required to create the presumption of an independent contractor relationship under  
5 Arizona law, A.R.S. § 23-1601(B). Specifically, in the ICOA, Plaintiffs agreed that  
6 (1) they will provide services as an independent Contractor (ICOA ¶ 1); (2) they will not  
7 be employees (ICOA ¶ 1); (3) they will handle tax liability and maintain any required  
8 registration, license or other authorization (ICOA ¶¶ 1, 2.1(j)); and (4) they will not be  
9 insured under workers' compensation (ICOA ¶ 1), may accept or decline requests for  
10 services (ICOA ¶ 2.2), may determine in which periods they work (ICOA ¶ 2.1(d)), will  
11 not be paid a regular salary (ICOA ¶ 10), will provide and maintain tools and equipment  
12 (ICOA ¶¶ 2.1(h), (j)), will be responsible for expenses (ICOA ¶ 2.1(j)), and that the same  
13 terms apply to the Contractor's employees, if any (ICOA ¶¶ 1, 5). *See* A.R.S. § 23-  
14 1601(B). Plaintiffs have not met their burden to demonstrate that the ICOAs are  
15 employment contracts under Section 1 of the FAA, and thus the Section 1 exemption  
16 does not apply to prevent enforcement of the Arbitration Agreement Plaintiffs entered  
17 into with Knight in the ICOAs.

18 The Court declines Plaintiffs' further invitation to decide whether certain  
19 provisions of the ICOAs are unlawful under the National Labor Relations Act. As the  
20 Court concluded in its prior Order (Doc. 148), Plaintiffs entered into a valid Arbitration  
21 Agreement with Knight that included a delegation provision, and the arbitrator will have  
22 the authority to determine the arbitrability of Plaintiffs' claims and resolve the claims that  
23 are properly subject to arbitration.

24 IT IS THEREFORE ORDERED denying Plaintiffs' Motion for Reconsideration  
25 of this Court's September 22, 2016 Order (Doc. 149).

26 Dated this 18th day of October, 2016.

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Honorable John J. Tuchi  
United States District Judge