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

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11 CRYPTO ASSET FUND, LLC, et
12 al.,

13 Plaintiff,

14 vs.

15 MEDCREDITS, INC., et al.,

16 Defendants.
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Case No. 19-cv-1869-LAB-MDD

**ORDER DENYING PLAINTIFF'S
APPLICATION FOR LEAVE TO
FILE MOTION FOR
RECONSIDERATION [Dkt. 33]**

18 The Court's March 30, 2020 Order granted Defendants' Motion to
19 Compel Arbitration and stayed the case. Dkt. 23. Plaintiffs Crypto Asset
20 Funds, LLC, Timothy Enneking, and Kyle Chaykowski filed an Application for
21 Leave to File a Motion for Reconsideration of that Order based on
22 purportedly new evidence. Dkt. 33. For the reasons stated below, the Court
23 **DENIES** the Motion.

24 Motions for reconsideration "are disfavored and will be summarily
25 denied" unless the moving party can point to new evidence, a change in
26 controlling law, or a clear error in the Court's earlier ruling. Standing Order in
27 Civil Cases § 3(e). Plaintiffs' Application contends reconsideration is
28 warranted by new evidence: Defendants, who previously argued that the

1 Court should compel arbitration, now take contrary positions before the
2 arbitrator. Dkt. 33 at 3-6.

3 Defendants' change of position isn't new evidence that warrants
4 reconsideration. New evidence may affect the factual premises of an order,
5 but the same can't be said of a changed litigation strategy. Here, the Motion
6 to Compel was granted because the language of the Seed Round Agreement
7 binds the parties to arbitration in case of a dispute, even as to questions of
8 arbitrability. See Dkt. 23 at 7-11. This is still the case, even if Defendants are
9 singing a different tune than they were before.

10 Certainly, equitable concerns arise when a party successfully
11 persuades one tribunal to adopt a position and then reverses course before
12 a subsequent tribunal. See, e.g., *New Hampshire v. Maine*, 121 S. Ct. 1808,
13 1814 (2001) (describing doctrine of judicial estoppel). But when that
14 happens, the solution isn't to set aside the prior order. Instead, the second
15 tribunal decides whether the positions are inconsistent and whether the
16 litigant should be held to its original position. See *id.*

17 The Court **DENIES** the Application for Leave to File a Motion for
18 Reconsideration. Nevertheless, the Court takes the opportunity to clarify its
19 Order in one respect. Plaintiffs misunderstand that the Order required the
20 Plaintiffs to commence a new arbitration proceeding, separate from the
21 proceeding that was underway when Plaintiffs initiated this litigation. The
22 Order recognized that the Seed Round Agreement gave the arbitrator the

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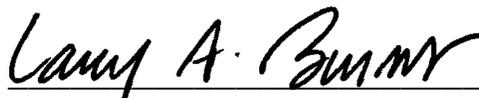
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1 “exclusive authority and jurisdiction to make all procedural and substantive
2 decisions regarding a dispute.” Dkt. 23 at 9. Disputes over the joinder of
3 claims fall within the scope of this arbitration provision.

4 **IT IS SO ORDERED.**

5 Dated: October 13, 2020

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7 **HON. LARRY ALAN BURNS**
8 United States District Judge

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