544 Fed.Appx. 724 (Mem)
This case was not selected for
publication in the Federal Reporter.
Not for Publication in West's Federal Reporter
See Fed. Rule of Appellate Procedure 32.1
generally governing citation of judicial decisions
issued on or after Jan. 1, 2007. See also Ninth
Circuit Rule 36-3. (Find CTA9 Rule 36-3)
United States Court of Appeals,
Ninth Circuit.

Virginia VAN DUSEN; et al., Plaintiffs–Appellants,
v.
SWIFT TRANSPORTATION CO.,
INC.; et al., Defendants–Appellees.

No. 11–17916.
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Submitted Nov. 4, 2013. *

* The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R.App. P. 34(a)(2).

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Filed Nov. 6, 2013.

Attorneys and Law Firms

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Appeal from the United States District Court for the District of Arizona, John W. Sedwick, District Judge, Presiding. D.C. No. 2:10–cv–00899–JWS.

Before: FARRIS, FERNANDEZ, and IKUTA, Circuit Judges.

MEMORANDUM **

** This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36–3.

Virginia Van Dusen and Joseph Sheer appeal the district court's denial of their motion for reconsideration of the grant of Swift Transportation Co., Inc.'s (Swift) motion to compel arbitration. We have jurisdiction under 28 U.S.C. § 1292(b).

Our prior opinion in this case, *In re Van Dusen,* expressly held that a district court must determine whether an agreement for arbitration is exempt from arbitration under § 1 of the Federal Arbitration Act (FAA) as a threshold matter. 654 F.3d 838, 843–45 (9th Cir.2011). This ruling is the law of the case. *United States v. Jingles,* 702 F.3d 494, 499 (9th Cir.2012). Further, the resolution of this issue was germane to *Van Dusen's* consideration of the third *Bauman* factor (whether the district court's order was clearly erroneous), *see Bauman v. U.S. Dist. Court,* 557 F.2d 650, 654–55 (9th Cir.1977), and occurred "after reasoned consideration in a published opinion." *United States v. Johnson,* 256 F.3d 895, 914 (9th Cir.2001) (en banc) (plurality opinion). Therefore, the ruling is also the law of the circuit. *Id.* The district court erred in holding otherwise. On remand, the district court must determine whether the Contractor Agreements between each appellant and Swift are exempt under § 1 of the FAA before it may consider Swift's motion to compel.

REVERSED AND REMANDED.

All Citations

544 Fed.Appx. 724 (Mem), 22 Wage & Hour Cas.2d (BNA) 1419