

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

JAN 08 2009

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

ROBERT GENDLER; YORKYS  
RAMIREZ,

Plaintiffs-counter-defendants -  
Appellants,

v.

ALL PRO VAN LINES,

Defendant-counter-claimant -  
Appellee.

No. 05-17196

D.C. No. CV-04-00251-DCB

MEMORANDUM\*

Appeal from the United States District Court  
for the District of Arizona  
David C. Bury, District Judge, Presiding

Submitted February 26, 2008\*\*

Before: FARRIS, BEEZER, and HALL, Circuit Judges.

Robert Gendler and Yorkys Ramirez appeal the district court's order  
granting summary judgment in favor of All Pro Van Lines. We have jurisdiction

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\* This disposition is not appropriate for publication and is not precedent  
except as provided by Ninth Circuit Rule 36-3.

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

under 28 U.S.C. § 1291. We review de novo, *Universal Health Servs., Inc. v. Thompson*, 363 F.3d 1013, 1019 (9th Cir. 2004), and affirm.

The facts of the case are known to the parties and we do not repeat them here.

To the extent that Gendler and Ramirez sue for failure to deliver goods and intentional infliction of emotional distress as a result of failure to deliver goods, the Carmack Amendment, 49 U.S.C. § 14706(a)(1), preempts their claims. *See White v. Mayflower Transit, LLC*, 543 F.3d 581, 586 (9th Cir. 2008). To the extent Gendler and Ramirez sue for fraud, the Carmack Amendment provides a complete defense to their claims. *See id.* at 584.

**AFFIRMED.**