

Exhibit A

NO. 14-15204

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

TUCSON UNIFIED SCHOOL DISTRICT,
Defendant – Appellant,

vs.

UNITED STATES OF AMERICA,
Plaintiff – Intervenor – Appellee,

ROY FISHER, et al.,
Plaintiffs – Appellees,

and

MARIA MENDOZA, et al.,
Plaintiffs – Appellees.

Appeal from the U.S. District Court for Arizona at Tucson
D. C. Nos. 74-cv-00090-DCB

BRIEF OF APPELLEES THE MENDOZA PLAINTIFFS

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This Court subsequently reaffirmed its conclusion in *Nat'l Org. for Reform of Marijuana Laws v. Mullen*, 828 F.2d 536, 540 (9th Cir. 1987) (“orders of reference to a master are generally interlocutory and not appealable”) (citing *Deckert v. Independence Shares Corp.*, 311 U.S. 282 (1940)). *See also Bogard v. Wright*, 159 F.3d 1060, 1063 (7th Cir. 1998) (appointment of a special master is a procedural order; although such orders often have the form of an injunction, they are not classified as such for purposes of §1292(a)(1)).²

C. THE CHALLENGED ORDERS FAIL TO MEET THE CARSON TEST

In *Carson*, 450 U.S. 79, the Supreme Court set forth what this Court has referred to as “special rules” (*U.S. v. El Dorado County*, 704 F.3d 1261, 1263 (9th Cir. 2013)), to be applied when a party seeks to appeal orders that are claimed to modify consent orders like the USP or other orders that fail by their express terms

decide if the appointment order modified the consent decree. There is no comparable issue in this case because here the Appointment Order preceded, and therefore could not have modified, the consent decree (the USP).

²Perhaps because it senses that it is on weak ground, TUSD also asserts that the Appointment Order is injunctive because the USP refers to certain of its provisions and because, it asserts, the USP “incorporates the provisions of the Appointment Order not inconsistent with the USP...” (TUSD Opening Br. at 15-16.) It offers no explanation for how reference to provisions of the Appointment Order in the USP renders the Appointment Order injunctive and it is wrong when it says the USP “incorporates” the Appointment Order. The language of the USP to which it cites says only: “All Orders not inconsistent herewith remain in full force and effect.” (TUSD Opening Br. at 16, n.8.)

to fall neatly within the ambit of §1292(a)(1). This Court wrote that to satisfy the *Carson* requirements, “the appealing party must show that the order (1) has ‘the practical effect of the grant or denial of an injunction’; (2) has ‘serious, perhaps irreparable consequences’; and (3) can be ‘effectively challenged only by immediate appeal.’” *Id.* (quoting *Thompson*, 815 F.2d at 1326-27.)

TUSD addresses neither *Carson* nor the *Carson* test in its brief. (TUSD Opening Br. at 13-16.) Mendoza Plaintiffs show below that none of the Challenged Orders can meet the *Carson* special rules.

1. The Challenged Orders Do Not Have the Practical Effect of Granting or Denying an Injunction

The Challenged Orders do not modify an injunction or the injunctive aspect of any order. As referenced above and explained more fully below (at pp. 13-25), the Orders merely clarify the process for the filing and review of Special Master reports governed by USP §I(D)(1).

An injunction is defined as an order “that is (1) directed to a party, (2) enforceable by contempt, and (3) designed to accord or protect some or all of the substantive relief sought by a complaint in more than preliminary fashion.”

Orange County v. Hongkong and Shanghai Banking Corp. Ltd., 52 F.3d 821, 825 (9th Cir. 1995) (internal citation omitted). An injunction “does not include ‘restraints or directions in orders concerning the conduct of the parties or their