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	Date: 11/20/2008 _____
	Time: 9:00 a.m. _____
	Judge Wickham

HONORABLE CHRIS WICKHAM

SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR THURSTON COUNTY

DAROLD R. J. STENSON,

Plaintiff,

v.

ELDON VAIL, Secretary of Washington
Department of Corrections (in his official
capacity); *et al.*,

Defendants.

No. 08-2-02080-8

PLAINTIFF'S REPLY IN SUPPORT OF
PLAINTIFF'S MOTION FOR
PRELIMINARY INJUNCTION

1 When this case was filed, Mr. Stenson did not have an execution date, his petition for
2 writ of certiorari was pending before the United States Supreme Court and a federal court
3 order prohibited Defendants from setting a date for his execution. Mr. Stenson's counsel
4 initiated Public Disclosure Act ("PDA") requests to the Department of Corrections ("DOC")
5 two and one-half months after *Baze*, he filed a complaint two months after that, and
6 immediately served discovery requests, sought Defendants' cooperation in scheduling an
7 inspection of the execution site and at all times moved to expedite this proceeding. During
8 that same time, Defendants failed to respond to Mr. Stenson's discovery requests,
9 significantly revised their execution policy and submitted 85 pages of "evidence" in support
10 of a grossly premature summary judgment motion. They have not even answered Mr.
11 Stenson's complaint. Despite the last-minute changes Defendants made to their policy,
12 which necessitates court review, they continue to repeat their disingenuous argument that
13 somehow Mr. Stenson is to blame—and his complaint should be barred and execution
14 should be carried out—when it is Defendants' actions that delay and complicate that very
15 review.
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35 **I. Mr. Stenson Is Not Late in Challenging the DOC's Execution Protocol**

36 Prior to its most recent changes on October 25, 2008, DOC last modified its protocol
37 in June 2007, explaining that that revision contained "major change[s]." Compl., Ex. 1 at 1.
38 The Supreme Court issued its decision in *Baze v. Rees*, 128 S.Ct. 1520, 170 L. Ed. 2d 420
39 (2008), in April 2008. On July 1, 2008, Mr. Stenson's counsel submitted PDA requests to
40 DOC to determine whether it in fact had in place rules or practices beyond its policy then in
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1 effect that would prevent the risk of maladministration of the death-causing drugs as
 2 described in *Baze*. Peterson Decl., Ex. 2. Though DOC has produced documents in
 3 installments over the last few months, it has not yet completed its PDA response. Peterson
 4 Decl., ¶ 4; *id.*, Ex. 3; Peterson Supp. Decl. ¶ 5. No such safeguards have been identified.
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10 Mr. Stenson filed his Complaint on September 5, 2008, and the next day served
 11 discovery requests. Peterson Decl., Ex. 4. Mr. Stenson's counsel twice requested that an
 12 inspection of the execution chamber be scheduled as soon as possible. *Id.*, Exs. 5, 6.
 13 Defendants' counsel has twice requested discovery extensions. Defendants moved to
 14 dismiss this action on September 24, and the hearing date, originally scheduled for
 15 October 31, has been twice rescheduled by the Court.
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23 On October 24, Defendants announced in their reply papers that DOC had a brand
 24 new policy effective October 25.¹ On October 29, 2008, Mr. Stenson filed an Amended and
 25 Supplemental Complaint, expanded to challenge specifically this new policy and the
 26 "process" by which it came to be enacted. Mr. Stenson requested his medical records from
 27 DOC on October 27, but does not have them yet. *See* Meyers Decl. ¶¶ 6-7.
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35 Defendants moved for summary judgment on November 13, initially setting a
 36 hearing date of December 12—*after* the execution date now set for Mr. Stenson. Mr.
 37 Stenson served a deposition notice (Ex. A) for five witnesses whose declarations were
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 43 ¹ Defendants disingenuously claim that this new policy was not enacted in response to this litigation,
 44 but was begun in response to *Baze* "long before Stenson filed his complaint." Defs. Br. at 14. Leaving aside
 45 the amazing congruence of timing between the Complaint and the amended policy, nowhere in the responses to
 46 the comprehensive PDA requests was there a single document suggesting that anyone was reviewing or
 47 suggesting any changes to the policy. Peterson Decl. ¶ 4; Peterson Supp. Decl. ¶ 5.

1 submitted in connection with Defendants' summary judgment motion and its response here.
 2
 3 Undersigned counsel learned, upon consultation with Mr. Stenson on November 18, 2008,
 4
 5 that key assertions made therein *are not true*. See Meyers Decl. ¶¶ 2-5.
 6

7 Dr. Michael Souter's Supplemental Declaration, submitted herewith, points out
 8
 9 additional flaws in Defendants' declarations and gives his professional opinion that DOC's
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 11 new protocol "is not the same or substantially similar" to the Kentucky protocol at issue in
 12
 13 *Baze*, and presents a "serious risk that an inmate may not be adequately sedated after
 14
 15 administration of sodium thiopental." Souter Supp. Decl. ¶ 3.
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18 **II. The Preliminary Injunction Standard Compels Granting Relief In This Case**

19 Defendants concede that the criteria for granting a preliminary injunction must be
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 21 examined in light of equity and balancing of the relative interests. Def. Br. at 3. They do
 22
 23 not deny that the three factors are not weighed equally, but on a continuum, such that if one
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 25 or more factors are strongly implicated, the showing on the third factor need not be as
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 27 strong. Pl. Mot. at 4; see also *Marion Richards Hair Design, Inc. v. Journeymen Barbers,*
 28
 29 *Hairdressers, Cosmetologists & Proprietors Intern. Union of Am. Local 195-A*, 59 Wn. 2d
 30
 31 395, 396, 367 P.2d 806 (1962) (concluding that while "defendants would not sustain serious
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 33 harm" if an injunction was ordered, "plaintiff is threatened with the disruption of its
 34
 35 business" and an injunction would go "no further than the preservation of the *status quo*."
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42 Defendants cannot—and do not—deny that executing Mr. Stenson before this case
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 44 is resolved fully satisfies two criteria favoring relief: invasion of right and actual and
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 46 substantial injury, and that the required showing on the third element, likelihood of success
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1 on the merits, is consequentially less. *Id.* In any event, Mr. Stenson makes a strong
 2 showing on likelihood of success and a preliminary injunction should be entered to preserve
 3 the status quo. *See* Pl. Mot. at 6-15; Souter Suppl. Decl.; Meyers Decl.
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 8 **III. Mr. Stenson's Challenge to DOC Protocol is Plainly Timely**
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10 If there were any doubt whether Mr. Stenson's Complaint were timely, Defendants
 11 resolved it by changing their execution protocol on October 25. And Defendants' worn out
 12 refrain that Mr. Stenson is late—arguably correct only if Mr. Stenson challenged lethal
 13 injection as a *mode* of execution—is wholly inapposite. Mr. Stenson challenges the *manner*
 14 in which the State carries out its executions, a right conclusively recognized in *Baze*.
 15
 16

17 Indeed, before they changed the protocol on October 25, Defendants argued that a challenge
 18 to lethal injection protocol would be timely if brought within three years of “the date the
 19 individual becomes subject to a ‘new or substantially changed’ execution protocol....” Def.
 20 Mot. to Dismiss at 8 (citation omitted). That date is October 25. Defendants control
 21 whether and when they will establish a constitutionally sufficient protocol (and when it is
 22 changed) and can hardly blame Mr. Stenson for challenging protocol enacted after the onset
 23 of this litigation. It is Defendants who are late.
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26 Numerous courts, including the Kentucky trial court in *Baze*, have granted
 27 preliminary injunctions under less compelling circumstances. *See* Pl. Mot. at 5 & Exs. 1-8
 28 (citing cases). The cases Defendants cite are inapposite. *None* involved review of a freshly
 29 minted execution policy. All but one were decided before the Supreme Court's decision in
 30 *Baze*. And Defendants simply ignore the facts specific to these cases that make them utterly
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1 inapplicable here, including the many cases in which the complaints were filed only days
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3 before a scheduled execution² or challenged policies that had already been fully reviewed.³
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5 The real problem is not the timing of Mr. Stenson's claim. The real problem is that
6
7 DOC does not want *any* review of its protocol *ever*, and one has to wonder why.⁴
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10 IV. Defendants' Actions Are Not Immune From Judicial Review

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12 *Baze* made clear that the courts are the final arbiters of the federal constitutionality of
13
14 states' execution protocols. Likewise, state law requires that "adequate procedural
15
16 safeguards must be provided ... for *testing the constitutionality of the rules after*
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18 *promulgation.*" *In re Powell*, 92 Wn. 2d 882, 891, 602 P.2d 711 (1979) (citations omitted;
19
20 emphasis added). These safeguards protect against the "unnecessary and uncontrolled
21
22 discretionary power" of administrative agencies. *Id.*
23
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26 The determination of "crime[] and punishment is a legislative function." *State v.*
27
28 *Ermert*, 94 Wn. 2d 839, 847, 621 P.2d 121 (1980). Although the legislature may delegate
29
30 this authority, under the separation of powers doctrine, it must define what is to be done and
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32 identify the administrative body to do it. When delegating authority to DOC, the Legislature
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36 ² See *Hill v. McDonough*, 547 U.S. 573, 126 S. Ct. 2096, 165 L. Ed. 2d 44 (2006); *Nelson v.*
37
38 *Campbell*, 541 U.S. 637, 124 S. Ct. 2117, 158 L. Ed. 2d 924 (2004); *Gomez v. U.S. Dist. Court for N. Dist. of*
39
40 *Cal.*, 503 U.S. 653, 112 S. Ct. 1652, 118 L. Ed. 2d 293 (1992); *Workman v. Bredeson*, 486 F.3d 896 (6th Cir.
41
42 *2007*); *Cooey v. Strickland*, 484 F.3d 424 (6th Cir. 2007); *Diaz v. McDonough*, 472 F.3d 849 (11th Cir. 2006);
43
44 *Rutherford v. McDonough*, 466 F.3d 970 (11th Cir. 2006); *Brown v. Livingston*, 457 F.3d 390 (5th Cir. 2006);
45
46 *Smith v. Johnson*, 440 F.3d 262 (5th Cir. 2006); *Neville v. Johnson*, 440 F.3d 221 (5th Cir. 2006); *Berry v.*
47
48 *Epps*, 506 F.3d 402 (5th Cir. 2007).

49 ³ See *Hill*, 547 U.S. 573; *Crowe v. Donald*, 529 F.3d 1290 (11th Cir. 2008); *Lambert v. Buss*, 498
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51 F.3d 446 (7th Cir. 2007); *Woods v. Buss*, 496 F.3d 620 (7th Cir. 2007); *Workman*, 486 F.3d 896; *Grayson v.*
52
53 *Allen*, 491 F.3d 1318 (11th Cir. 2007); *Diaz*, 472 F.3d 849; *Rutherford*, 466 F.3d 970.

54 ⁴ DOC's remaining arguments for denial of a preliminary injunction (claiming this action is a
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56 collateral attack, time barred, and barred by *res judicata*), have been fully briefed on Defendants' Motion to
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58 Dismiss and will not be repeated here. See Pl. Resp. to Defs.' Mot. to Dismiss at 6-7, and 16-24.

1 typically does so by specific enabling statute. *E.g.*, RCW 9.94.070(2) (directing DOC to
2 promulgate rules designating “serious infraction” pursuant to RCW 72.09.130). There is no
3 analogous grant of authority to DOC to enact execution policies.
4
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8 Moreover, Defendants would have this Court believe that the means by which they
9 kill inmates under a sentence of death is a mere “directive,” without the force of law and
10 therefore exempt from any standards governing its promulgation. Defs. Resp. at 14.
11
12 Defendants’ argument is circular—because they have acted without legislative directive,
13 they were only enacting a policy; because they enacted only a policy, they could act without
14 legislative directive. But, more critically, it also portends a dangerously naïve view of that
15 which they do: execute death sentences. Death is different, as courts have long recognized,
16 *see, e.g., Gregg v. Georgia*, 428 U.S. 153, 188, 96 S.Ct. 2909, 49 L.Ed.2d 859 (1976), and
17 there are important constitutional limits on the manner by which a state executes its citizens.
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28 The cases Defendants cite underscore Mr. Stenson’s argument, by recognizing the
29 specificity that typically accompanies a legislative delegation and by confirming that
30 multiple chances for review of agency policy must exist. In *State v. Brown*, the Washington
31 Supreme Court struck down internal prison rules because they were promulgated under the
32 wrong statute. 142 Wn. 2d 57, 11 P.3d 818 (2000). In *Joyce v. State*, that Court
33 acknowledged that where a policy directive is “the equivalent of a liability-creating
34 administrative rule,” that “status may endow the directive with the force of law.” 155 Wn.
35 2d 306, 323, 119 P.3d 825 (2005) (citation omitted). And in *State v. Simmons*, the court was
36 reassured that the promulgation of DOC’s serious infraction rules was proper because (1) the
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1 Legislature expressly authorized DOC to promulgate the rules in question and (2) the statute
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 3 provided *three* levels of review: administrative review, judicial review, and the procedural
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 5 safeguards available to criminal defendants charged with an infraction. 152 Wn. 2d 450,
 6
 7 456, 98 P.3d 789 (2004); *see also State v. Crown Zellerbach Corp.*, 92 Wn. 2d 894, 901, 602
 8
 9 P.2d 1172 (1979) (same safeguards available); *Dawson v. Hearing Comm.*, 92 Wn. 2d 391,
 10
 11 597 P.2d 1353 (1979) (prisoner entitled to a hearing); *Foss v. Dep't of Corr.*, 82 Wn. App.
 12
 13 355, 918 P.2d 521 (1996) (identifying three avenues of review of DOC actions). Incredibly,
 14
 15 Defendants argue that Mr. Stenson is entitled to no review and suggest that this somehow
 16
 17 comports with the line of cases they cite—which, to the contrary, uniformly require review.⁵
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 22 **V. Defendants' Attempt to Avoid Judicial Review With Self-Serving Declarations**
 23 **by Witnesses Who Have Not Yet Been Subjected to Cross-Examination**
 24 **Underscores the Need for Discovery and Fact Finding Proceedings**
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26 Defendants' submission of a Summary Judgment Motion and five declarations
 27
 28 attempting to support it proves too much. By this filing, Defendants admit that whether their
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 30 policy comports with constitutional standards requires consideration of facts not before this
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 32 Court and facts which Mr. Stenson has had no opportunity yet to discover, despite his many
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 34 efforts. Defendants steadfastly avoid their obligation to respond to discovery requests (now
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 36 more than two months old) and still refuse to identify dates on which an inspection of the
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 38 execution site can occur. CR 56(f) protects against the hasty entry of judgment in cases, like
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 45 ⁵ RAP 16.2, RCW 7.16.150; and RCW 7.16.290 are largely indistinguishable, nonexclusive
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 47 substitutes for this equitable action. *See State ex rel. Hunt v. Okanogan County*, 153 Wash. 399, 280 P.
 31(1929) (noting that statutory mandamus proceedings are in substance civil actions); *Brower v. Charles*, 82
 Wn. App. 53, 914 P.2d 1202 (1996) (writ of prohibition is counterpart to writ of mandamus).

1 this, in which the resisting party cannot present facts essential to his opposition. *See, e.g.,*
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 3 *Butler v. Joy*, 116 Wn. App. 291, 299, 300, 65 P.3d 671 (2003) (summary judgment an
 4
 5 abuse of discretion where opposing party had insufficient time to prepare a response); *see*
 6
 7 *also Nat'l Life Ins. Co. v. Solomon*, 529 F.2d 59, 61 (2d Cir. 1975) ("drastic device" of
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 9 summary judgment should not be imposed when party had no opportunity for discovery).
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 12 Before judgment can be passed on the sufficiency of DOC's execution methods and
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 14 procedures—under federal and the more liberal state constitutions—discovery must be had
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 16 and an evidentiary hearing held. The Court, not Defendants, is the arbiter of whether their
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 18 procedures survive constitutional scrutiny. Defendants' apparent position that the Court
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 20 could accept Defendants' declarations at face value and without any cross-examination, and
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 22 grant dismissal on that basis, is unprecedented. It would be a particular travesty in this case
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 24 where (1) Mr. Stenson's medical records will contradict the Defendants' declarations and (2)
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 26 Dr. Souter's opinion contradicts material assertions by the declarants. An order based on
 27
 28 this record could hardly be upheld on appeal.⁶
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 42 ⁶ Even if the assertions in Defendants' declarations could be credited and accepted without cross-
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 44 examination or rebuttal, they do not prove that the new DOC protocol is substantially similar to the Kentucky
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 46 protocol upheld in *Baze*. *See* Pl. Sur-Reply Ex. 1 (identifying significant differences); Souter Supp. Decl. ¶ 3.
 47 While two declarants attempt to show that they follow *some portions of* Kentucky protocol that differ from
 DOC protocol, to the extent that those aspects of Kentucky's protocol are not written into, and required by,
 DOC's protocol, there is no protection that these safeguards will in fact be followed in this or any future
 execution.

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DATED: November 19, 2008

PERKINS COIE LLP

By: *Diane Meyers*
Sherilyn Peterson, WSBA No. 11713
Elizabeth D. Gaukroger, WSBA No. 38896
Diane Meyers, WSBA No. 40729

Attorneys for Mr. Stenson

Exhibit A

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THE HONORABLE CHRIS WICKHAM

SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR THURSTON COUNTY

DAROLD R. J. STENSON,

Plaintiff,

v.

ELDON VAIL, Secretary of Washington
Department of Corrections (in his official
capacity); *et al.*,

Defendants.

No. 08-2-02080-8

PLAINTIFF'S NOTICE OF DEPOSITIONS

TO: Defendants Eldon Vail, Stephen Sinclair, Cheryl Strange, Marc Stern, and the Washington Department of Corrections ("DOC"), and party deponents Stephen Sinclair, Dan J. Pacholke, and Dell Autumn Witten, and defendants' experts Mark Dershwitz, M.D., Ph.D, and Fiona Jane Couper, Ph.D.

AND TO: Defendants' Counsel of Record

PLEASE TAKE NOTICE, pursuant to Washington Civil Rule 30, that the testimony of the persons named below will be taken upon oral examination at the request of plaintiff Darold R.J. Stenson in the above-entitled action, before a Notary Public, at the times, dates and places specified below. The testimony will be recorded stenographically.

PLAINTIFF'S NOTICE OF DEPOSITIONS - 1

Perkins Coie LLP
1201 Third Avenue, Suite 4800
Seattle, WA 98101-3099
Phone: 206.359.8000
Fax: 206.359.9000

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As used herein the term "document" means any kind of handwritten, typewritten, printed or recorded material whatsoever, including, without limitation, all drafts, copies, data compilations in computer readable form, all foreign language documents and all translations of foreign language documents. Documents which are identical except for handwritten or other annotations are considered non-identical, separate documents.

<u>Deponents</u>	<u>Place of Depositions</u>	<u>Dates and Times</u>
Stephen D. Sinclair Washington Department of Corrections c/o Robert M. McKenna Sara J. Olson John J Samson ATTORNEY GENERAL OF WASHINGTON Corrections Division P.O. Box 40116	Perkins Coie LLP 1201 3rd Avenue, Suite 4800 Seattle, WA 98115	November 24, 2008 9:00 a.m.

Mr. Sinclair is instructed to bring the documents listed on Schedule A.

Dan J. Pacholke Washington Department of Corrections c/o Robert M. McKenna Sara J. Olson John J Samson ATTORNEY GENERAL OF WASHINGTON Corrections Division P.O. Box 40116	Perkins Coie LLP 1201 3rd Avenue, Suite 4800 Seattle, WA 98115	November 24, 2008 1:30 p.m.
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Mr. Pacholke is instructed to bring the documents listed on Schedule B.

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Deponents

Place of Depositions

Dates and Times

Dell Autumn Witten	Perkins Coie LLP	November 25, 2008
Washington Department of	1201 3rd Avenue, Suite 4800	9:00 a.m.
Corrections	Seattle, WA 98115	
c/o Robert M. McKenna		
Sara J. Olson		
John J Samson		
ATTORNEY GENERAL OF		
WASHINGTON		
Corrections Division		
P.O. Box 40116		

Ms. Witten is instructed to bring the documents listed on Schedule C.

Mark Dershwitz, M.D., Ph.D	Perkins Coie LLP	November 25, 2008
University of Massachusetts	1201 3rd Avenue, Suite 4800	10:00 a.m.
c/o Robert M. McKenna	Seattle, WA 98115	
Sara J. Olson		
John J Samson		
ATTORNEY GENERAL OF		
WASHINGTON		
Corrections Division		
P.O. Box 40116		

Dr. Dershwitz is instructed to bring the documents listed on Schedule D.

Fiona Jane Couper, Ph.D	Perkins Coie LLP	November 25, 2008
Washington State	1201 3rd Avenue, Suite 4800	4:00 a.m.
Toxicologist	Seattle, WA 98115	
c/o Robert M. McKenna		
Sara J. Olson		
John J Samson		
ATTORNEY GENERAL OF		
WASHINGTON		
Corrections Division		
P.O. Box 40116		

Dr. Couper is instructed to bring the documents listed on Schedule E.

PLAINTIFF'S NOTICE OF DEPOSITIONS - 3


LEGAL14942627.1

Perkins Coie LLP
1201 Third Avenue, Suite 4800
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DATED: November 17, 2008

PERKINS COIE LLP

By: 
Sherlyn Peterson, WSBA No. 11713
Elizabeth D. Gaukroger, WSBA No. 38896
1201 Third Avenue, Suite 4800
Seattle, WA 98101-3099

Attorneys for Plaintiff

PLAINTIFF'S NOTICE OF
DEPOSITIONS – 4

LEGAL14942627.1

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SCHEDULE A

Mr. Sinclair is instructed to bring the documents listed below:

1. All documents describing the authority and procedures under which the October 25, 2008 protocol was adopted;
2. All documents related to the consideration, enactment and implementation of the October 25, 2008 protocol;
3. All documents related to the consideration, enactment and implementation of any changes to the DOC's execution policy since *Baze v. Rees*, 128 S.Ct. 1520 (2008) was decided on April 16, 2008;
4. All documents related to the practice sessions described in your declaration dated November 7, 2008 ("Declaration");
5. All documents related to the qualifications, training and professional experience of any person involved in the procedures for execution by lethal injection as described in your Declaration;
6. A floor plan or diagram, and photographs, of the execution chamber, injection room and witness room;
7. All documents related to the review and observations of Mr. Stenson described in your Declaration;
8. Mr. Stenson's medical records and all medical records reviewed by you in connection with preparation for Mr. Stenson's execution (see attached medical release);
9. All documents related to any execution practice sessions that DOC has conducted in the past two years;
10. All documentation related to your training for observing signs of unconsciousness.

SCHEDULE A - 1

Perkins Coie LLP
1201 Third Avenue, Suite 4800
Seattle, WA 98101-3099
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Fax: 206.359.9000

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SCHEDULE B

Mr. Pacholke is instructed to bring the documents listed below:

1. All documents describing the authority and procedures under which the October 25, 2008 protocol was adopted;
2. All documents related to the consideration, enactment and implementation of the October 25, 2008 protocol;
3. All documents related to the consideration, enactment and implementation of any changes to the DOC's execution policy since *Baze v. Rees*, 128 S.Ct. 1520 (2008) was decided on April 16, 2008;
4. All documents related to the practice sessions described in your declaration dated November 7, 2008 ("Declaration");
5. All documents related to the qualifications, training and professional experience of any person involved in the procedures for execution by lethal injection as described in your Declaration;
6. A floor plan or diagram, and photographs, of the execution chamber, injection room and witness room;
7. All documents related to the review and observations of Mr. Stenson described in your Declaration;
8. Mr. Stenson's medical records and all medical records reviewed by you in connection with preparation for Mr. Stenson's execution (see attached medical release);
9. All documents related to any execution practice sessions that DOC has conducted in the past two years;
10. All documentation related to your training for observing signs of unconsciousness.

SCHEDULE B - 1

LEGAL14942627.1

Perkins Coie LLP
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Seattle, WA 98101-3099
Phone: 206.359.8000
Fax: 206.359.9000

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SCHEDULE C

Ms. Witten is instructed to bring the documents listed below:

1. All documents describing the authority and procedures under which the October 25, 2008 protocol was adopted;
2. All documents related to the consideration, enactment and implementation of the October 25, 2008 protocol;
3. All documents related to the consideration, enactment and implementation of any changes to the DOC's execution policy since *Baze v. Rees*, 128 S.Ct. 1520 (2008) was decided on April 16, 2008;

SCHEDULE C - 1

LEGAL14942627.1

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SCHEDULE D

Dr. Dershwitz is instructed to bring the documents listed below:

1. Your entire file for *Stenson v. Vail*, Case No. 08-2-02080-8, pending in the Thurston County Superior Court;
2. All documents or correspondence outlining the terms of your employment on this case;
3. All documents or correspondence received from defendants' counsel;
4. All documents or correspondence received from defendants Eldon Vail, Stephen Sinclair, Cheryl Strange, Marc Stern, Washington Department of Corrections, or any of their agents;
5. All documents or correspondence received from any person or entity working on behalf of defendants;
6. All documents or correspondence you or anyone acting on your behalf has sent to defendants' counsel or defendants, or their agents;
7. All documents that relate to the analyses described in your November 3, 2008 declaration and attached at Exhibits B and C thereto, including without limitation, the models used to generate these analyses;
8. All documents that you reviewed in connection with this case;
9. All documents that you rely on in forming your opinions in this case;
10. All documents that you created in connection with this case;
11. All exhibits, charts, summaries, or the like that you may use for your testimony at trial;
12. Your billing records for this case; and
13. Your most current resume or C.V;

SCHEDULE D - 1

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SCHEDULE E

Dr. Couper is instructed to bring the documents listed below:

- 1. Your entire file for *Stenson v. Vail*, Case No. 08-2-02080-8, pending in the Thurston County Superior Court;
- 2. All documents or correspondence outlining the terms of your employment on this case;
- 3. All documents or correspondence received from defendants' counsel;
- 4. All documents or correspondence received from defendants Eldon Vail, Stephen Sinclair, Cheryl Strange, Marc Stern, Washington Department of Corrections, or any of their agents;
- 5. All documents or correspondence received from any person or entity working on behalf of defendants;
- 6. All documents or correspondence you or anyone acting on your behalf has sent to defendants' counsel or defendants, or their agents;
- 7. All documents that you reviewed in connection with this case;
- 8. All documents that you rely on in forming your opinions in this case;
- 9. All documents that you created in connection with this case;
- 10. All exhibits, charts, summaries, or the like that you may use for your testimony at trial;
- 11. Your billing records for this case; and
- 12. Your most current resume or C.V.;

SCHEDULE E - 1

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