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15 **IN THE UNITED STATES DISTRICT COURT**
16 **FOR THE DISTRICT OF ARIZONA**

17 Edward Harold Schad, Jr., and Robert
18 Glen Jones, Jr.,
19 Plaintiffs,

20 v.

21 Janice K. Brewer, *et al.*,
22 Defendants.

Case No.2:13-cv-02001-ROS

Plaintiffs' Request for Clarification from
Defendants

**Executions Scheduled October 9, 2013,
and October 23, 2013**

23 Defendant Director Charles Ryan indicated in an affidavit submitted to this Court
24 that "unexpired, domestically obtained Pentobarbital" would be used in Plaintiffs'
25 scheduled executions. (ECF No. 19-1, ¶ 4.) In response to the ACLU's request for
26 information regarding the drugs to be used in the executions of Mr. Schad and Mr. Jones
27 (ECF No.11-1, Ex. K), the Arizona Department of Corrections provided documentation
28

1 regarding a purchase of the drug Nembutal,[®] as well as product inserts for Nembutal[®]
2 (ECF No. 1, Ex. E; ECF No. 16).¹

3 On October 5, 2013, in response to this Court's Order (ECF No. 23), Defendants
4 filed their Notice of Disclosure, in which they state that the manufacturer of the drug
5 they intend to use in Plaintiffs' executions is Lundbeck, Inc. (ECF No. 24 at 1, ¶ a.)

6 Plaintiffs believe that this information may be faulty or inaccurate. Before
7 approximately December 2011, Nembutal[®] sold legitimately in the United States was
8 manufactured solely by Hospira for Lundbeck, Inc. (*See, e.g.*, Ex. S, photo of vial of
9 Nembutal[®]; *see also* Compl. at Ex. C, at 1 ("For instance, if Hospira was the
10 manufacturer for Lundbeck, and the brand name of the drug was Nembutal,[®] Messrs.
11 Jones and Schad would know that the pentobarbital was FDA-approved.").

12 Therefore, Plaintiffs request this Court to order Defendants to provide
13 clarification (e.g. through photographs of the labels or vials of the drug), indicating
14 whether Lundbeck, Inc., is, in fact, the manufacturer of the pentobarbital to be used in
15 Plaintiffs' scheduled executions; whether Hospira is the manufacturer of the
16 pentobarbital to be used in Plaintiffs' scheduled executions; or whether another entity is
17 the manufacturer of the pentobarbital to be used in Plaintiffs' scheduled executions.

18 Plaintiffs further request this Court to order Defendants to state whether the
19 pentobarbital to be used in their scheduled executions is Nembutal.[®]

20 Respectfully submitted this 5th day of October 2013.

21 Kelley Henry
22 Asst. Federal Public Defender

23 Denise Young

24 s/ Kelley Henry
25 Counsel for Schad

Jon M. Sands
Federal Public Defender
Dale A. Baich
Robin C. Konrad
Assistant Federal Public Defenders

s/ Dale A. Baich
26 Counsel for Jones

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¹ Nembutal[®] is a name brand for the drug pentobarbital.

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Certificate of Service

I hereby certify that on October 5, 2013 , I electronically filed the foregoing Plaintiffs' Request for Clarification from Defendants with the Clerk's Office by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

s/ Dale A. Baich
Capital Habeas Unit

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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Edward Harold Schad, Jr., and Robert
Glen Jones, Jr.,
Plaintiffs,

v.

Janice K. Brewer, *et al.*,
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Case No.2:13-cv-02001-ROS

Order

Plaintiffs have filed a Request for Clarification from Defendants. (ECF No. 25). Upon consideration, this Court GRANTS the request of Plaintiffs.

Accordingly,

IT IS ORDERED Defendants shall publically file with this Court **at or before 11:00 A.M. on October 6, 2013**, photographs of the labels or vials of the drug to be used in Plaintiffs' scheduled executions, which shall include documentation of the manufacturer and the brand name of the drug.

DATED this 5th day of October, 2013.

Roslyn O. Silver
Senior United States District Court Judge