

ATTACHMENT 1

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

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11 Edward Harold Schad, Jr., and
12 Robert Glen Jones, Jr.,

Plaintiffs,

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vs.

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15 Janice K. Brewer, et al.,

Defendants.

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No. CV-13-02001-PHX-ROS

DEATH PENALTY CASE

ORDER

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Plaintiffs Edward Schad, Jr., and Robert Glen Jones, Jr., have applied for a preliminary injunction. (Doc. 11.) Based on the standard applicable to such requests, the evidence presented, and the arguments made at the October 4, 2013 hearing, Plaintiffs have carried their burden of establishing that they are likely to succeed, in part, on the merits, that they are likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in their favor, and that an injunction is in the public interest. Plaintiffs' request will therefore be granted in part. A more complete order will be issued no later than October 7, 2013.

1 Plaintiffs have established a First Amendment right to access information regarding
2 the manufacturer of the lethal-injection drugs, the National Drug Code of the drugs, the lot
3 numbers of the drugs, and the expiration date of the drugs. *See California First Amendment*
4 *Coalition v. Woodford*, 299 F.3d 868 (9th Cir. 2002). Further, Defendants have not carried
5 their burden under *Turner v. Safely*, 482 U.S. 78 (1987), to demonstrate that the withholding
6 of this information is reasonably related to legitimate penological objectives, and that it is
7 not an exaggerated response to those concerns. Specifically, in view of the fact that
8 Defendants have disclosed this very information in the past, *see* Document 39 in *West v.*
9 *Brewer*, CV-11-1409-PHX-NVW, and at today's hearing could not articulate any harm
10 stemming from that disclosure, the Court finds that their refusal to disclose identical
11 information now constitutes an exaggerated response to the asserted penological justification.
12 Defendants have, however, demonstrated that there are legitimate penological reasons for not
13 disclosing information that might identify the execution team. Finally, Plaintiffs have not
14 established any current basis to enjoin their executions.

15 Accordingly,

16 **IT IS ORDERED granting in part** Plaintiffs' Motion for Preliminary Injunction
17 **(Doc. 11)**. No later than 12:00 p.m. on Saturday, October 5, 2013, Defendants must file on
18 the docket, not under seal, the following information:

19 a. The manufacturer of the lethal-injection drugs that will be used in Plaintiffs'
20 executions;

21 b. The NDCs of the lethal-injection drugs that will be used in Plaintiffs' executions;

22 c. The lot numbers of the lethal-injection drugs that will be used in Plaintiffs'
23 executions; and

24 d. The expiration dates of the lethal-injection drugs that will be used in Plaintiffs'
25 executions.

26 In all other respects, the Motion is **denied**.

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IT IS FURTHER ORDERED granting the Motion of Robert Glen Jones, Jr., to Intervene (**Doc. 8**).

DATED this 4th day of October, 2013.



Roslyn O. Silver
Senior United States District Judge

ATTACHMENT 2

1 THOMAS C. HORNE
ATTORNEY GENERAL
2 (FIRM STATE BAR NO. 14000)

3 JEFFREY A. ZICK, STATE BAR #018712
CHIEF COUNSEL

4 JOHN PRESSLEY TODD, STATE BAR #003863
5 MATTHEW H. BINFORD, STATE BAR #029019
ASSISTANT ATTORNEYS GENERAL

6 CAPITAL LITIGATION SECTION
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7 PHOENIX, ARIZONA 85007-2997
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8 ATTORNEYS FOR DEFENDANTS

9
10 **UNITED STATES DISTRICT COURT**
11 **DISTRICT OF ARIZONA**

12 Edward Harold Schad, Jr., and CV-13-02001-PHX-ROS
13 Robert Glen Jones Jr.

14 Plaintiffs,

[CAPITAL CASE]

15 -vs.

16 Janice K. Brewer, Governor of
17 Arizona; Charles L. Ryan,
18 Director, Arizona Department of
19 Corrections; Ron Credio, Warden,
20 Arizona Department of
21 Corrections-Eyman; and Lance
22 Hetmer, Warden, Arizona
23 Department of Corrections,
24 Florence,

NOTICE OF DISCLOSURE

25 Defendants.

26 Pursuant to this Court's Order entered on the docket on October 4, 2013
27 (Dkt. 23), Defendants submit—over objection—the following information:

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- a. The manufacturer of the Pentobarbital is “Lundbeck, Inc.”
 - b. The National Drug Code for the Pentobarbital is “67386-501-55.”

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c. The lot number for the Pentobarbital is “941853F.”

d. The expiration date of the Pentobarbital is “NOV 2013.”

In a separate pleading, Defendants will be filing a notice of appeal of the Court’s order.

RESPECTFULLY SUBMITTED this 5th day of October, 2013.

THOMAS C. HORNE
ATTORNEY GENERAL

/s/ _____
JEFFREY A. ZICK
CHIEF COUNSEL
JOHN PRESSLEY TODD
MATTHEW H. BINFORD
ASSISTANT ATTORNEYS GENERAL
CAPITAL LITIGATION SECTION
ATTORNEYS FOR DEFENDANTS

I hereby certify that on October 5, 2013, I electronically transmitted the attached document to the Clerk’s Office using the ECF System for filing. Participants in the case who are registered ECF users will be served by the appellate ECF system.

/s/ Barbara Lindsay

ATTACHMENT 3

The Woodlands Compounding Pharmacy

3200 Research Forest Dr. Ste. A3

The Woodlands, TX 77381

Phone: 281-419-1340

Fax: 281-419-2181

October 4, 2013

Judge Larry Gist
Board Member, Texas Board of Criminal Justice
Fax 512.305.9398

Brad Livingston
Texas Department of Criminal Justice
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Bryan Collier
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Texas Department of Criminal Justice
Fax 936.437.2651

Region I Deputy Director Robert "Jay" Eason
Texas Department of Criminal Justice
Fax 936.437.2651

Katherine D. Hayes
Assistant Attorney General
Fax 512.320.8132

Dear Sirs and Madam:

I am the owner and pharmacist-in-charge of the Woodlands Compounding Pharmacy, the pharmacy that has provided TDCJ with vials of compounded pentobarbital.

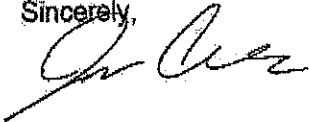
Based on the phone calls I had with Erica Minor of TDCJ regarding its request for these drugs, including statements that she made to me, it was my belief that this information

would be kept on the "down low" and that it was unlikely that it would be discovered that my pharmacy provided these drugs. Based on Ms. Minor's requests, I took steps to ensure it would be private. However, the State of Texas misrepresented this fact because my name and the name of my pharmacy are posted all over the internet. Now that the information has been made public, I find myself in the middle of a firestorm that I was not advised of and did not bargain for. Had I known that this information would be made public, which the State implied it would not, I never would have agreed to provide the drugs to the TDCJ.

I, and my staff, are very busy operating our pharmacy, and do not have the time to deal with the constant inquiries from the press, the hate mail and messages, as well as getting dragged into the state's lawsuit with the prisoners, and possible future lawsuits. For these reasons, I must demand that TDCJ immediately return the vials of compounded pentobarbital in exchange for a refund.

Please contact me immediately to arrange for the return of the drugs. Otherwise I may have to ask the Court in the prisoners' lawsuit to consider my concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "Jasper Lovoi", written over a horizontal line.

Jasper Lovoi, RPh.