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

13 Joseph Rudolph Wood III,
14 Plaintiff,

15 v.

16 Charles L. Ryan, et. al,
17 Defendants.

Case No: 2:14-cv-01447-NVM-JFM

Reply to Response in Opposition to
Plaintiff Joseph Rudolph Wood III's
Motion for Preliminary Injunction or
Temporary Restraining Order

Execution Scheduled for July 23, 2014

18
19 Plaintiff Joseph R. Wood is seeking a narrow ruling from this Court that he, like
20 all citizens, has a First Amendment right of access to non-confidential information
21 relating to the “historically open” execution proceedings.¹ For the reasons stated below,
22 as well as the reasons previously stated, this Court should grant Mr. Wood’s motion and
23 issue a preliminary injunction.
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28 ¹ *Cal. First Amendment Coal. v. Woodford*, 299 F.3d 868, 875 (9th Cir. 2002); Pl. Wood’s Mot. for Prelim. Inj. or TRO (ECF No. 11).

1 **I. Mr. Wood has met the standard for a preliminary injunction**

2 **A. Mr. Wood has a demonstrated a likelihood of success on the**
3 **merits of his First Amendment claim.²**

4 **1. A prisoner has First Amendment rights.**

5 A prisoner “retains those First Amendment rights that are not inconsistent with
6 his status as a prisoner or with the legitimate penological objectives of the corrections
7 system.” *Pell v. Procunier*, 417 U.S. 817, 822 (1974). Here, Mr. Wood has
8 demonstrated that he maintains his rights as an “individual citizen” who is thus entitled
9 to participate in an informed manner to the “constitutionally protected discussion of
10 governmental affairs.”³

11 To support their argument that Claim 2 is not plausible, Defendants ignore Circuit
12 precedent and instead rely upon out-of-circuit cases involving various types of
13 challenges to the lethal-injection process in different states.⁴ Except for *Wellons*,⁵ no
14 other federal appellate court decision that Defendants cite has addressed the First
15 Amendment.⁶ In that case, the Eleventh Circuit provided no analysis but simply agreed

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17 ² In his motion for a preliminary injunction, Mr. Wood explained that not only does he
18 have a First Amendment right to the information, but that based on ADC’s history, there
19 are additional reasons (e.g., due-process concerns) that highlight the importance of this
20 information. Mot. at 10. He did not refer to those due-process concerns in his argument.
His only claim is a First Amendment claim.

21 Because Mr. Wood has not raised a due-process claim, he will not respond to
22 that portion of Defendants’ Response. Resp. at 11-12. As such, Mr. Wood replies to the
arguments advanced by Defendants as to Claim 2.

23 ³ *Cal. First Amendment Coal.*, 299 F.3d at 875 (internal quotation marks omitted)
(quoting *Globe Newspaper Co.*, 475 U.S. at 604-05); see also Order, *Schad v. Brewer*,
24 No. 2:13-cv-02001-ROS at *6 n.1 (D. Ariz. Oct. 7, 2103) (“*Schad* Oct. 7 Order”).

25 ⁴ Resp. in Opp’n to Pl.’s Mot. for TRO of Prelim. Inj. at 5-6 (ECF No. 15)

26 ⁵ *Wellons v. Comm’r of Ga. Dep’t. of Corr.*, No. 14-12663-P, ___ F.3d ___, 2014 WL
27 2748316 (11th Cir. June 17, 2014), cited in Resp. in Opp’n to Pl.’s Mot. for TRO or
28 Prelim. Inj. at 5 (ECF No 15).

⁶ See, e.g., *Sepulvado v. Jindal*, 729 F.3d 413, 417 (5th Cir. 2013) (due process); *Sells v.*
Livingston, 750 F.3d 478, 481 (5th Cir. 2014) (citation omitted) (Eighth and Fourteenth
Amendment); *Williams v. Hobbs*, 658 F.3d 842, 845 (8th Cir. 2011) (ex post facto clause
and due process); *In re: Lombardi*, 741 F.3d 888, 891 (8th Cir. 2014) (en banc) (Eighth
Amendment and Ex Post Facto claims); *Whitaker v. Livingston*, 732 F.3d 465, 466-67
(5th Cir. 2013) (Eighth and Fourteenth Amendments, Supremacy Clause, and Due

1 with the district court that “the cases *Wellons* relies upon turn on the public’s, rather
 2 than the individual’s need to be informed” under the First Amendment. *Id.* at *6. This
 3 Court should not follow *Wellons* because, besides being non-binding precedent, it offers
 4 no reasoning or analysis for its conclusion.

5 **2. The First Amendment provides for a public right of access**
 6 **to governmental proceedings, including execution**
 7 **proceedings.**

8 “It is well-settled that the First Amendment guarantees the public—and the
 9 press—a qualified right of access to governmental proceedings.”⁷ Mr. Wood is an
 10 individual citizen who has a First Amendment right of access to governmental
 11 proceedings, including execution proceedings. This right “is premised on the common
 12 understanding that a major purpose of [the First] Amendment was to protect the free
 13 discussion of governmental affairs.”⁸ The right of access to governmental proceedings,
 14 including executions, exists because executions have been historically open, and because
 15 “public access plays a significant positive role in the functioning of the particular
 16 process in question.”⁹

17 Despite the controlling Supreme Court law, as well as this Circuit’s precedent,

18 Process clause).

19 Defendants also cite an opinion issued earlier this year by the Georgia Supreme
 20 Court. In *Owens v. Hill*, __ S.E.2d __, 2014 WL 2025129 (Ga. May 19, 2014), at issue
 21 was Georgia’s state statute that makes confidential and prevents disclosure (even under
 22 judicial process) of the detailed and specific identifying information. The language of
 23 Georgia’s statute is more specific and detailed than Arizona’s statute. What is more, the
 24 *Owens* case relied upon many of the same cases that Defendants rely upon in support of
 25 their argument. For reasons discussed *infra*, these cases are not relevant to the narrow
 26 issue presented here.

27 ⁷ *Cal. First Amendment Coal.*, 299 F.3d at 873 (citing *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 579 (1980); *Press-Enter. Co. v. Super. Ct.*, 478 U.S. 1, 8–14 (1986) (“*Press-Enter.II*”); *Press-Enter. Co. v. Super. Ct.*, 464 U.S. 501, 510–11 (1984) (“*Press-Enter.I*”); *Globe Newspaper Co. v. Super. Ct.*, 457 U.S. 596, 603–11 (1982)).

28 ⁸ *Id.* at 875 (quoting *Globe Newspaper Co. v. Super. Ct.*, 475 U.S. 596, 604 (1982)) (alteration in original) (quoting *Mills v. Alabama*, 384 U.S. 214, 218 (1996) (internal quotation marks omitted).

⁹ *Id.* (quoting *Press-Enter. v. Super. Ct.*, 478 U.S. 1, 8-9 (1986)) (citing *Globe Newspaper Co. v. Super. Ct.*, 457 U.S. 596 (1982)) (internal quotation marks omitted).

1 Defendants assert that Mr. Wood has no First Amendment right to access the limited
2 governmental information he seeks, and that he thus has no likelihood of success on the
3 merits of Claim 2. They do that by relying on cases that either predate the relevant
4 Supreme Court cases (e.g., *Richmond Newspapers*), or stand only for the unremarkable
5 proposition that the First Amendment does not provide a right of access to *non-public*
6 information. The Court, however, never suggested that there is no right of access to *any*
7 governmental information. Indeed, in a “watershed” case,¹⁰ the Court specifically held
8 that there *is* a right to access governmental information. “The right of access to places”
9 traditionally open to the public . . . may be seen as assured by the amalgam of the First
10 Amendment guarantees of speech and press.”¹¹

11 Mr. Wood asks only for information related to governmental actions in the sphere
12 of executions—proceedings that the Ninth Circuit has held have been “[h]istorically[]
13 open to all comers[,]” and have been “fully open events in the United States as well.”¹²
14 Defendants have no answer to the controlling precedent in this Circuit, *California First*
15 *Amendment Coalition*, which itself flows from *Press-Enterprises*. As the Ninth Circuit
16 explains, its holding comes directly from *Press-Enterprises*: “two complementary
17 considerations inform our determination that the public has a First Amendment right of
18 access to governmental proceedings in general and executions in California in particular:
19 (1) whether the place and process have historically been open to the press and general
20 public[] and (2) whether public access plays a significant positive role in the
21 functioning of the particular process in question.”¹³

22 Rather than addressing the controlling precedent, Defendants only cite cases that
23 cannot defeat Mr. Wood’s legitimate request for information related to historically

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25 ¹⁰ *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 582 (1980) (Stevens, J.
concurring).

26 ¹¹ *Id.* at 577.

27 ¹² *Cal. First Amendment Coal.*, 299 F.3d at 875.

28 ¹³ *Id.* (quoting *Press-Enter. II*, 478 U.S. at 8-9) (internal quotation marks omitted)
(alteration in original).

1 public proceedings. Those cases support the basic proposition that *nonpublic*
2 information is not available under a First Amendment claim. The distinction between
3 publically available information and nonpublically information is critical.

4 First, Defendants rely on *Houchins*,¹⁴ a case that predates *Richmond Newspapers*
5 by two years, which is not relevant here. *Houchins* dealt with a situation in which
6 members of the press asked for nonpublic information that was available through
7 alternative (though potentially less convenient) ways of getting the information it
8 requested. The information that Mr. Wood requests is part of “historically open”
9 execution proceedings; moreover, because Defendants have sole control of this public-
10 proceedings information, that information is not available through any other means.

11 Defendant’s other cited cases are equally inapposite. Two cases of the cases dealt
12 with national-security information; two dealt with statutory restrictions on nonpublic
13 information; and five cases are either tangentially related to the First Amendment, or are
14 not related to the First Amendment at all.

15 In the national-security arena, courts have unsurprisingly found that the
16 information at issue is nonpublic and has been historically unavailable. *McGehee* dealt
17 with a CIA agent who wished to publish classified information.¹⁵ In that case, the agent
18 had signed a required secrecy agreement that he alleged was unconstitutional.¹⁶ The
19 court analyzed the CIA’s classification in the context of nonpublic national security
20 information, and compared the agent’s rights with those of an ordinary citizen making a
21 freedom-of-information (FOIA) request for similar information.¹⁷ In *Center for*
22 *National Security Studies*,¹⁸ the plaintiffs sought personal information about the people
23

24 ¹⁴ *Houchins v. KQED*, 438 U.S. 1 (1978), cited in Resp. at 6, 8.

25 ¹⁵ *McGehee v. Casey*, 718 F.2d 1137 (D.C. Cir 1983), cited in Resp. at 7.

26 ¹⁶ *McGehee*, 718 F.2d at 1139.

27 ¹⁷ *Id.* at 1147-48.

28 ¹⁸ *Ctr. for Nat’l Sec. Studies v. U.S. Dep’t. of Justice*, 331 F.3d 918, 920 (D.C. Cir.
2003), cited in Resp. at 7.

1 detained “in the wake of the September 11 terrorist attacks.”¹⁹ Like the court in
2 *McGehee*, the court held that under the First Amendment right of access, the government
3 did not need to “disclose information compiled during the exercise of quintessential
4 executive power—the investigation and prevention of terrorism.”²⁰

5 Defendants also cite cases that involve statutory protection of historically
6 nonpublic information. In *Los Angeles Police Department v. United Reporting*
7 *Publishing Corporation*, the Supreme Court decided the matter and based its decision on
8 a facial challenge to a state statute, and left open the possibility that other types of
9 challenges could be addressed if they were later properly presented and preserved.²¹
10 Similarly, in *United States v. Miami University*, the court held that “the First
11 Amendment does not confer a public right of access to university disciplinary records”
12 because those records are protected from public disclosure under the Family Educational
13 Rights and Privacy Act.²²

14 The other five cases that Defendants cite are not directly relevant to the First
15 Amendment. Defendants use two cases to assert that the First Amendment does not
16 “requir[e] a government official who is an ‘unwilling speaker’ to impart information.”²³
17 See *Kline v. Republic of El Salvador*, 603 F.Supp. 1313, 1319 (D.D.C. 1985) (explaining
18 that federal defendants sued in their official capacity had immunity from tort liability
19 and were accordingly not required to make information available); see also *Virginia*
20 *State Board of Pharmacy v. Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748,
21 761-62 (1976) (holding that statute could not restrain commercial speech of pharmacists
22 who were willing speakers). But those cases are inapposite to the issue here.

23 ¹⁹ *Id.*

24 ²⁰ *Id.* at 935.

25 ²¹ *L.A. Police Dep’t. v. United Reporting Pub’g Corp.*, 528 U.S. 32, 40-41 (1999), cited
26 in Resp. at 8.

27 ²² *United States v. Miami University*, 91 F.Supp.2d 1132, 1154 (S.D. Ohio 2000), cited
28 in Resp. at 8.

²³ Resp. at 8.

1 The other three cases relied upon by Defendants are unrelated to each other and to
2 this case. *McBurney* dealt with a FOIA request asserted under a “privileges and
3 immunities” claim.²⁴ *Weatherford* was a due-process case under *Brady*, and therefore
4 does not implicate the First Amendment.²⁵ In *Entler*, an unpublished decision, the court
5 made a conclusory statement about *Houchins* but did not explain any of the facts, much
6 less how those facts related to the First Amendment.²⁶

7 Accordingly, Defendants have failed to show why Mr. Wood, who bases his
8 claim on Supreme Court and controlling Circuit precedent, is not likely to succeed on
9 the merits of his claim.

10 **B. Mr. Wood can demonstrate irreparable harm, the balance of**
11 **equities tips in his favor, and an injunction in this case is in the**
12 **public interest**

13 Defendants recognize that Mr. Wood has an interest in being executed in a
14 constitutional manner, but that he will not suffer irreparable harm because his claim fails
15 on the merits.²⁷ As already discussed, Mr. Wood disagrees, and for the reasons urged in
16 his motion, he will suffer irreparable harm if an injunction is not issued.

17 Defendants argue that because there have been more than twenty years since Mr.
18 Wood was sentenced to death, that any additional delay in carrying out his sentence
19 urges against an injunction.²⁸ But, as discussed in section III, *infra*, Mr. Wood has not
20 caused any delay in bring this claim. The balance of equities tip in his favor.

21 Defendants assert that an injunction is not in the public interest because Mr.
22 Wood failed to present plausible constitutional questions.²⁹ For the reasons stated in Mr.

23 _____
24 ²⁴ *McBurney v. Young*, 133 S.Ct. 1709, 1713 (2013), cited in Resp. at 6-7.

25 ²⁵ *Weatherford v. Bursey* 429 U.S. 545 (1977), cited in Resp. at 7.

26 ²⁶ *Entler v. McKenna*, 487 Fed.Appx. 417, 418 (9th Cir. 2012), cited in Resp. at 7.

27 ²⁷ Resp. at 13.

28 ²⁸ *Id.* at 13-14.

²⁹ *Id.* at 14.

1 Wood's motion, and because no public interest would be injured by the granting of
2 preliminary relief,³⁰ the public interest weighs in favor of granting an injunction.

3 **II. Defendants previously disclosed information about the source of the drugs.**

4 Defendants assert that *all* previous disclosures related to the information Mr.
5 Wood now seeks was "in response to court order."³¹ This, however, is not accurate.
6 Defendants provided photographs of the execution drugs (which included the drug
7 manufacturer, national drug code, and lot numbers) in discovery during litigation in the
8 *West* case.³² These photographs were neither marked confidential nor ordered by this
9 Court to be produced publically.³³

10 As Defendants' notice of disclosure in *West* indicates, Defendants ensured that
11 certain discovery was marked as confidential; those documents were therefore provided
12 pursuant to the protective order in place in that case. The protective order in *West*
13 defined confidential information as "information sufficient to determine 'the identity of
14 executioners and other persons who participate or perform ancillary functions in an
15 execution,' as that information is defined and protected under A.R.S. 13-704(c)."³⁴ But
16 when Defendants had the opportunity to assert that drug-related information was
17 confidential under the statute, they did not. They have offered no compelling reason
18 why this information must be kept confidential.³⁵

19 _____
20 ³⁰ *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1138 (9th Cir. 2011)
(considering "whether there exists some critical public interest that would be injured by
21 the grant of preliminary relief").

22 ³¹ Resp. at 10.

23 ³² *West v. Brewer*, No. 11-cv-1409-NJW. (D.Ariz. 2011), attached as Ex. J to Exs. To
24 Mot.

25 ³³ Exs. To Mot. at Ex. J (Notice of Service of Def's Rule 26 Disclosures) (ECF No. 11-
26 1).

27 ³⁴ *See West v. Brewer*, No. 11-cv-1409-NJW, Protective Order at 1, ECF No. 36 (D.
28 Ariz. filed Aug. 10, 2011), attached as Ex. L.

29 ³⁵ Defendants rely on a block quote of portion of Chief Judge Kozinski's dissent in
Landrigan v. Brewer, and adopt it as a policy reason for Arizona's confidentiality
statute. (*Brewer*, 625 F.3d 1132, 1140 (9th Cir. 2010) (Kozinski, C.J. dissenting from
denial of rehearing en banc). But Defendants cite no legislative history surrounding

1 Moreover, in *Schad*, this Court ordered Defendants to turn over similar
2 information that is now at issue here.³⁶ Defendants did so and did not appeal the district
3 court's order.

4 **III. Mr. Wood has not been dilatory in seeking injunctive relief**

5 It was not clear on April 22 that Defendants were set on using the two-drug
6 midazolam/hydromorphone combination. Relying upon correspondence from
7 Defendant Ryan dated April 22, 2014, Defendants state that Mr. Wood has known for
8 more than two months that midazolam and hydromorphone were the drugs that would be
9 used to carry out his scheduled execution.³⁷ They blame Mr. Wood for waiting until
10 three weeks before his scheduled execution to seek equitable relief from this Court.³⁸

11 Defendants rely upon one sentence from Defendant Ryan's letter, which states
12 that the two-drug protocol will be used. Defendants, however, ignore the next sentence:
13 "In the event [the Arizona Department of Corrections] ADC is able to procure
14 Pentobarbital, ADC will provide notice of its intent to use that drug in accordance with
15 Department Order 710, Attachment D at (C)(1)."³⁹ Department Order 710 gives the
16 ADC Director the discretion to decide "which lethal chemical(s) will be used for the
17 scheduled execution."⁴⁰ The Department Order instructs that the Director's "decision

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19 Arizona's statute including any policy reasons supporting its enactment—because none
20 exists. Speculation by a federal appellate judge as to why a state adopted a law cannot
21 be used in support of "the policy reason behind Arizona's statute." Resp. at 10. An
22 observation that "Arizona has a legitimate interest in avoiding a public attack on its
23 private drug manufacturing sources", *id.* at 11, cannot withstand First Amendment
24 analysis. The State of Arizona does not have nor has it articulated, a reason or an
25 interest in protecting a private corporation. Moreover, Defendants offer no authority for
26 their interpretation of the statute; even considering the statute on its face, "[p]rinciples of
27 statutory construction do not support construing the language in such a broad manner."
28 Order granting Prelim. Inj., *Schad v. Brewer* No. 2:13-cv-02001-ROS (D.Ariz. Oct. 4,
2013).

24 ³⁶ *Id.* at 16.

25 ³⁷ Resp. at 14 (citing Exs. To Mot. at Ex. A).

26 ³⁸ *Id.*

27 ³⁹ Exs. To Mot. at Ex. A.

28 ⁴⁰ *Id.* at Ex. I, at Attach. D § C(1)).

1 will be provided to the inmate in writing 20 calendar days prior to the scheduled
2 execution date.” (*Id.*) Defendant Ryan provided this information in a letter dated June
3 25, addressed and delivered to Mr. Wood. (Letter from Charles Ryan, Director, Arizona
4 Department of Corrections, to Joseph Rudolph Wood (June 25, 2014), attached as Ex.
5 M.⁴¹

6 In this letter addressed to Mr. Wood, Defendant Ryan expressly states that “the
7 purpose of this correspondence is to notify you that the two-drug protocol using
8 Midazolam and Hydromorphone will be used to carry out the execution scheduled for
9 July 23, 2014.” (*Id.*) Unlike the April 22 letter addressed to counsel for Mr. Wood, the
10 June 25 letter did not state that Defendants were still attempting to procure
11 pentobarbital. Mr. Wood brought filed his motion for preliminary injunction within six
12 days of his receiving the notice required under Department Order 710. Given these
13 circumstances, Mr. Wood did not “delay[] unnecessarily in bringing the claim.”⁴²

14 Respectfully submitted this 8th day of July, 2014.

15 Jon M. Sands
16 Federal Public Defender
17 District of Arizona
18 Dale A. Baich
19 Robin C. Konrad

20 s/ Dale A. Baich
21 Counsel for Plaintiff Joseph R. Wood III

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26 _____
27 ⁴¹ A copy of this letter was not provided to undersigned counsel by Defendant Ryan;
28 undersigned counsel received a copy of the letter from Mr. Wood’s appointed attorney,
Julie Hall, on June 28, which was the same day she received it. (*See id.* at 2.)

⁴² *Nelson v. Campbell*, 541 U.S. 637, 649-50 (2004).

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Certificate of Service

I hereby certify that on July 8, 2014 , I electronically filed the foregoing Reply to Response in Opposition to Plaintiff Joseph Rudolph Wood III’s Motion for Preliminary Injunction or Temporary Restraining Order 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/ Chelsea Hanson
Legal Assistant
Capital Habeas Unit

Exhibit L

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Thomas Paul West, et al.,)	No. CV-11-01409-PHX-NVW
Plaintiffs,)	PROTECTIVE ORDER
vs.)	
Janice K. Brewer, et al.,)	
Defendants.)	

IT IS HEREBY ORDERED that any depositions of medical team members or special operations team members will take place pursuant to the following Protective Order:

1. “Confidential Information”

1.1 As used throughout this Protective Order, the phrase “Confidential Information” shall mean information sufficient to determine “the identity of executioners and other persons who participate or perform ancillary functions in an execution,” as that information is defined and protected under A.R.S. 13-704(c).

1.2 Counsel for defendants shall be responsible for designating as Confidential any such information contained in the Deposition transcripts.

1.3 Confidential Information will be designated by counsel for defendants by submitting to counsel plaintiffs, within ten (10) days following the Deposition in which

1 such information was disclosed, a proposed redacted copy of any pages of the Deposition
2 transcript containing such information. Notwithstanding this requirement, the failure to
3 designate Confidential Information shall not be deemed a waiver of the protections of the
4 Protective Order. However, those individuals authorized to review the Deposition
5 transcripts under this Protective Order (as described below, in paragraph 4) shall not be
6 liable for inadvertent disclosure of Confidential Information if such information has not
7 been properly designated.

8 1.4 If, after counsel for plaintiffs receive information designated pursuant to the
9 provisions of paragraph 1.3 of this Protective Order, it appears to counsel for plaintiffs
10 that any proposed redacted information is not, in fact, Confidential Information,
11 plaintiffs' counsel shall first notify counsel of record for defendants in writing. If the
12 parties are unable to reach an agreement as to whether the information should be treated
13 as Confidential under the terms of this Protective Order, plaintiffs' counsel may then or
14 thereafter submit the matter for decision by the Court. Counsel for defendants shall bear
15 the burden of proving that the designated information constitutes Confidential
16 Information. Plaintiffs, however, shall not be obligated to challenge the propriety of any
17 designation by Defendants, and a failure to do so shall not constitute a waiver or in any
18 way preclude a subsequent challenge of the propriety of such designations.

19 2. Names of Deponents

20 The names of the medical team members and special operations members
21 shall not be revealed in connection with the litigation of this lawsuit to anyone other than
22 counsel for defendants, counsel for plaintiffs, one (1) staff investigator and one (1)
23 paralegal employed by the Federal Public Defender's office. Counsel for defendants and
24 counsel for plaintiffs will agree upon a generic identifier to be used when referring to or
25 addressing the aforementioned individuals. Such identifier will include only the person's
26 title, such as "medical team leader" or "IV team member #1."

1 3. Videotapes of Depositions

2 The Depositions may be videotaped. No videotape may be disseminated
3 in any form, although the videotapes may be used by counsel at trial.

4 3.1 Initially, the videotapes of the depositions will be given only to counsel for
5 defendants, who shall maintain custody of the video tapes until such time as the parties
6 enter into a separate agreement or pre-trial order governing the use of the videotapes by
7 counsel for plaintiffs in pre-trial preparations and during trial.

8 3.2 Upon conclusion of the litigation of this case, including any appeals, any
9 videotapes will be returned to counsel for defendants or destroyed.

10 4. Transcripts of the Depositions

11 Transcripts of the Depositions will not be made available to plaintiffs
12 Gregory Dickens, Charles M. Hedlund, Robert Wayne Murray, Theodore Washington, and
13 Todd Smith. Nor will plaintiffs' counsel disclose to plaintiffs Confidential Information.
14 Confidential Information obtained in the Depositions will not be disclosed to anyone other
15 than counsel for the parties and counsel's employees, only insofar as is necessary for
16 purposes of this litigation. Confidential Information will only be shared with outside
17 consultants and experts retained by the parties to assist counsel specifically for the
18 purposed of this litigation, to the extent necessary for such experts to prepare a written
19 opinion, prepare to testify, or to assist counsel.

20 5. Filing of Documents Containing Confidential Information with the Court

21 Counsel for either plaintiffs or defendants may file with the Court documents
22 containing Confidential Information.

23 5.1 Any document filed with the Court that contains Confidential
24 Information shall be filed under seal. Such documents may be filed using the ECF system
25 without filing a separate motion to file under seal, so long as the inclusion of Confidential
26 Information is the only reason for filing the document under seal. If the filing party seeks
27 to seal the document on other grounds, a separate motion to seal must be filed.

28

Exhibit M

Arizona Department of Corrections



JANICE K. BREWER
GOVERNOR

1601 WEST JEFFERSON
PHOENIX, ARIZONA 85007
(602) 542-5497
www.azcorrections.gov



CHARLES L. RYAN
DIRECTOR

RECEIVED

JUN 28 2014

June 25, 2014

Inmate Joseph Rudolph Wood
ADC #086279
ASPC-Eyman/Browning Unit
P.O. Box 3500
Florence, AZ 85132-3500

Mr. Wood:

The purpose of this correspondence is to notify you that the two-drug protocol using Midazolam and Hydromorphone will be used to carry out the execution scheduled for July 23, 2014. The two-drug protocol is outlined in Department Order 710 Attachment D, Chemical Chart C.

I also want to confirm that visitation with two of your attorneys of record may occur between 7:00 a.m. and 9:00 a.m. on the morning of the execution.

Additionally, you may choose to make a final statement that is reasonable in length and does not contain vulgar language or intentionally offensive statements directed at the witnesses. The microphone will remain on during your statement. It will be turned off, however, in the event you use vulgarity or make intentionally offensive statements.

As a final matter, I want to inform you that closed-circuit monitors in the designated witness room will allow witnesses to observe the IV team's assessment of the IV sites and the insertion of the primary and the secondary IV catheters. A microphone will also be turned on during this process. After the IV catheters have been inserted, the microphone will be turned off. When the execution is ordered to proceed, the microphone will be turned on, the curtain will be opened, and the closed-circuit monitors will be turned off. The Warden will read the Warrant of Execution and you will have an opportunity to make a final statement before the execution is completed.

Regards,

A handwritten signature in black ink, appearing to be "CLR", written over a horizontal line.

Charles L. Ryan
Director

CLR/dn/hp

Inmate Joseph Wood, ADC #086279

June 25, 2014

Page Two

cc: ✓ Julie Hall, Attorney for Inmate Joseph Wood
Jeff Zick, Division Chief, Capital Appeals, Attorney General's Office
Matthew Binford, Assistant Attorney General
Joe Sciarrotta, General Counsel, Office of the Governor
Jeff Hood, Deputy Director
Dawn Northup, General Counsel
Carson McWilliams, Interim Division Director, Offender Operations
Ron Credio, Warden, ASPC-Eyman
Lance Hetmer, Warden, ASPC-Florence
Donna Hallam, Arizona Supreme Court
Kristine Fox, Capital Case Staff Attorney, U.S. District Court