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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

First Amendment Coalition of Arizona, Inc.;
Charles Michael Hedlund; Graham S. Henry;
David Gulbrandson; Robert Poyson; Todd
Smith; Eldon Schurz, and Roger Scott,

Plaintiffs,

v.

Charles L. Ryan, Director of ADC; James
O’Neil, Warden, ASPC—Eyman; Greg
Fizer, Warden, ASPC—Florence; and Does
1-10, Unknown ADC Personnel, in their
official capacities as Agents of ADC,

Defendants.

No. CV-14-01447-PHX-NVW

**ORDER FOR DISMISSAL OF
CLAIMS SIX AND SEVEN**

Plaintiffs Charles Michael Hedlund, Graham S. Henry, David Gulbrandson, Robert Poyson, Todd Smith, Eldon Schurz, and Roger Scott (collectively, “Plaintiffs”), and Defendants Charles L. Ryan, Director of the Arizona Department of Corrections (“ADC”); James O’Neil, Warden, ASPC—Eyman; and Greg Fizer, Warden, ASPC—Florence (collectively, “Defendants”), have jointly stipulated to dismiss Claims Six and Seven of Plaintiffs’ Second Amended Complaint (ECF Nos. 94 & 97) and Supplemental Complaint (ECF No. 163) (“Claims Six and Seven”), based upon the recitals in the parties’ concurrently filed Stipulated Settlement Agreement for Dismissal of Claims Six and Seven (“Stipulated Settlement Agreement”) (ECF No. 186), and under the terms that follow below.

1 Having considered the parties' Stipulated Settlement Agreement, and good cause
2 appearing, IT IS HEREBY ORDERED that:

3 (1) Claims Six and Seven of Plaintiffs' Second Amended Complaint and
4 Supplemental Complaint are dismissed, without prejudice.

5 (2) Upon any showing by any Plaintiff or any other current or future prisoner
6 sentenced to death in the State of Arizona that any of the Defendants, any of the
7 Defendants' successors, or the ADC intend to engage in or have actually engaged in any
8 of the following conduct (together, the "Prohibited Conduct"):

9 (a) adopt language in any future version of the ADC's execution
10 procedures that purports to disclaim the creation of rights or obligations;

11 (b) grant the ADC and/or the ADC Director the discretion to deviate
12 from timeframes set forth in the ADC's execution procedures regarding issues that
13 are central to the execution process, which include but are not limited to those
14 relating to execution chemicals and dosages, consciousness checks, and access of
15 the press and counsel to the execution itself;

16 (c) change the quantities or types of chemicals to be used in an
17 execution after a warrant of execution has been sought without first notifying the
18 condemned prisoner and his/her counsel of the intended change, withdrawing the
19 existing warrant of execution, and applying for a new warrant of execution;

20 (d) select for use in an execution any quantity or type of chemical that
21 is not expressly permitted by the then-current, published execution procedures;

22 (e) fail to provide upon request, within ten calendar days after the State
23 of Arizona seeks a warrant of execution, a quantitative analysis of any
24 compounded or non-compounded chemical to be used in an execution that reveals,
25 at a minimum, the identity and concentration of the compounded or non-
26 compounded chemicals;

27 (f) use or select for use in an execution any chemicals that have an
28 expiration or beyond-use date that is before the date that an execution is to be

1 carried out; or use or select for use in an execution any chemicals that have an
2 expiration or beyond-use date listed only as a month and year that is before the
3 month in which the execution is to be carried out;

4 (g) adopt or use any lethal-injection protocol that uses a paralytic
5 (including but not limited to vecuronium bromide, pancuronium bromide, and
6 rocuronium bromide); or

7 (h) adopt any provision in any future version of the ADC's execution
8 procedures that purports to permit prisoners or their agents to purchase and/or
9 supply chemicals for use in the prisoner's own execution; then

10 Claims Six and Seven shall be reinstated and reopened pursuant to Rule 60(b)(6) of the
11 Federal Rules of Civil Procedure, and, based on the agreement and consent of the parties
12 granted in their concurrently filed Stipulated Settlement Agreement, an injunction shall
13 immediately issue in this action or in a separate action for breach of the parties'
14 Stipulated Settlement Agreement, permanently enjoining Defendants, Defendants'
15 successors, and the ADC from engaging in any of the Prohibited Conduct.


16 (3) Plaintiffs shall not be awarded attorneys' fees or costs incurred in litigating
17 Claims Six and Seven unless Defendants, Defendants' successors, or the ADC breach the
18 parties' Stipulated Settlement Agreement, in which case Plaintiffs shall be entitled to an
19 award, either in this action or in a separate action for breach of the parties' Stipulated
20 Settlement Agreement, of their reasonable attorneys' fees and costs incurred in litigating
21 this action from its inception through the date of this Order (which currently are in excess
22 of \$2,630,000), as determined by the Court after briefing by the parties. In that
23 circumstance, Plaintiffs shall also be entitled to seek to collect their reasonable attorneys'
24 fees and costs incurred in moving to enforce the parties' Stipulated Settlement Agreement
25 and this Order.

26 (4) The stay order (Doc. 68) entered November 24, 2014, is vacated.
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With the entry of this Order, all claims of all parties have been disposed of. The Clerk shall terminate this case.

Dated: June 22, 2017.



Honorable Neil V. Wake
Senior United States District Judge