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**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.

Case No. 2:14-cv-01447-NVW-JFM

**STIPULATED SETTLEMENT
AGREEMENT AND [PROPOSED]
ORDER FOR DISMISSAL OF CLAIM
ONE**

1 Plaintiffs Charles Michael Hedlund, Graham S. Henry, David Gulbrandson,
2 Robert Poyson, Todd Smith, Eldon Schurz, and Roger Scott (collectively, “Plaintiffs,”),
3 and Defendants Charles L. Ryan, Director of the Arizona Department of Corrections
4 (“ADC”); James O’Neil, Warden, ASPC–Eyman; and Greg Fizer, Warden, ASPC–
5 Florence (collectively, “Defendants”), hereby stipulate and agree as follows:

6 **WHEREAS**, Claim One of Plaintiffs’ Second Amendment Complaint (“Claim
7 One”) challenges ADC’s intended use of lethal injection drug Protocol C that consists of
8 midazolam, which belongs to a class of drugs called benzodiazepines, followed by a
9 paralytic (vecuronium bromide, rocuronium bromide, or pancuronium bromide), and
10 potassium chloride under the Eighth Amendment;

11 **WHEREAS**, Defendants contend that ADC’s previous supplier of midazolam no
12 longer provides the drug for use in lethal injection executions and that ADC’s supply of
13 midazolam expired on May 31, 2016;

14 **WHEREAS**, ADC has removed Protocol C, the three-drug combination
15 beginning with midazolam that Plaintiffs’ challenge in Claim One, from Department
16 Order 710;

17 **WHEREAS**, Defendants hereby represent, covenant, and agree, and Plaintiffs
18 and Defendants (collectively, the “parties”) intend, that ADC will never again use
19 midazolam, or any other benzodiazepine, as part of a drug protocol in a lethal injection
20 execution;

21 **WHEREAS**, Plaintiffs contend that they have incurred in excess of \$2,080,000 in
22 attorneys’ fees and costs in litigating this action;

23 **WHEREAS**, the parties agree that, because of the above-described
24 circumstances, resolution of Claim One—without further litigation, without any
25 admission of liability, and without any final adjudication of any issue of fact or law—is
26 appropriate and will avoid prolonged and complicated litigation between the parties;

1 **WHEREAS**, the parties intend this stipulated settlement agreement to be
2 enforceable by, and for the benefit of, not only the Plaintiffs but also all current and
3 future prisoners sentenced to death in the State of Arizona (“Condemned Prisoner
4 Beneficiaries”), who are express and intended third-party beneficiaries of this stipulated
5 settlement agreement and who are entitled to all rights and benefits provided to Plaintiffs
6 herein, and who, upon any showing that ADC intends to use midazolam, or any other
7 benzodiazepine, in an execution or in an execution protocol, may continue this action as
8 substituted plaintiffs pursuant to Rule 25(c) of the Federal Rules of Civil Procedure;

9 **WHEREAS**, the parties intend this stipulated settlement agreement to bind
10 Defendants, ADC, and any of Defendants’ successors in their official capacities as
11 representatives of ADC, who, in the event that any Plaintiff or Condemned Prisoner
12 Beneficiary moves to reopen this proceeding under Rule 60(b)(6) of the Federal Rules of
13 Civil Procedure, will be deemed to have been automatically substituted as defendants in
14 this action pursuant to Rule 25(d) of the Federal Rules of Civil Procedure;

15 **WHEREAS**, the parties intend and agree that, upon any breach of this stipulated
16 settlement agreement, (a) any Plaintiff or Condemned Prisoner Beneficiary has standing
17 and the right to move to reopen this proceeding under Rule 60(b)(6) of the Federal Rules
18 of Civil Procedure, and (b) an order shall issue permanently enjoining ADC from using
19 midazolam, or any other benzodiazepine, in an execution or in an execution protocol;

20 **WHEREAS**, in the event that any Plaintiff or Condemned Prisoner Beneficiary
21 moves to reopen this proceeding under Rule 60(b)(6) of the Federal Rules of Civil
22 Procedure, the parties agree that Defendants, ADC, and/or any of Defendants’
23 successors in their official capacities as representatives of ADC waive all objections to
24 this Court’s reopening of this proceeding, including on the basis of timing, ripeness,
25 mootness, or the standing of the moving parties;

26 **WHEREAS**, in the event that this stipulated settlement agreement is breached
27 through ADC’s use or intent to use a benzodiazepine in an execution or in an execution
28

1 protocol, and any Plaintiff's or Condemned Prisoner Beneficiary's motion to reopen this
2 proceeding under Rule 60(b)(6) of the Federal Rules of Civil Procedure is not granted
3 for reasons related to the moving parties' standing or the Court's jurisdiction,
4 Defendants consent to the entry of an order in a separate action by a Plaintiff or a
5 Condemned Prisoner Beneficiary for breach of this agreement that permanently enjoins
6 ADC from using midazolam, or any other benzodiazepine, in an execution or in an
7 execution protocol.

8 **IT IS THEREFORE STIPULATED AND AGREED that:**

9 (1) Claim One of Plaintiffs' Second Amended Complaint is dismissed,
10 without prejudice.

11 (2) Upon any showing by any Plaintiff or Condemned Prisoner Beneficiary
12 that ADC intends to use midazolam, or any other benzodiazepine, in an execution or in
13 an execution protocol, Claim One shall be reinstated and reopened pursuant to Rule
14 60(b)(6) of the Federal Rules of Civil Procedure, and, based on the agreement and
15 consent of the parties granted herein, an injunction shall issue in this action or in a
16 separate action for breach of the parties' stipulated settlement agreement permanently
17 enjoining ADC from using midazolam, or any other benzodiazepine, in an execution or
18 in an execution protocol.

19 (3) Plaintiffs agree not to seek their attorneys' fees and costs incurred in
20 litigating Claim One unless Defendants or ADC breach this stipulated settlement
21 agreement, in which case Plaintiffs shall be entitled to seek an award of their reasonable
22 attorneys' fees and costs incurred in litigating Claim One, in an amount to be determined
23 by the Court, either in this action or in a separate action for breach of the parties'
24 stipulated settlement agreement. In that circumstance, Plaintiffs shall also be entitled to
25 seek to collect their reasonable attorneys' fees and costs incurred in moving to enforce
26 this stipulated settlement agreement.

1 Dated: December 19, 2016

Sidley Austin LLP

2 s/ Mark E. Haddad

3 Mark E. Haddad

4 Attorneys for Plaintiffs Charles Michael

Hedlund; Graham S. Henry; David

5 Gulbrandson; Robert Poyson; Todd Smith;

6 Eldon Schurz; and Roger Scott

7 Dated: December 19, 2016

Office of the Arizona Attorney General

8 s/ Jeffrey L. Sparks

9 Jeffrey L. Sparks

10 David Weinzweig

11 Lacey Stover Gard

John Pressley Todd

12 Attorneys for Defendants

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15
16 I, Mark Haddad, hereby attest that
17 counsel for Defendants, Jeffrey L. Sparks,
18 authorized the use of his signature on, and
19 concurred in the filing of, this document,
on December 19, 2016.

20 s/ Mark E. Haddad

21 Mark E. Haddad

22
23
24 * * *

ORDER

IT IS SO ORDERED.

DATED this ____ day of _____, 2016.

Neil V. Wake
United States District Judge