

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

THOMAS WHITAKER, et. al.,	§	
<i>Plaintiffs,</i>	§	
	§	
v.	§	ACTION NO. H-13-2901
	§	
BRAD LIVINGSTON, et. al.,	§	
<i>Defendants.</i>	§	

**DEFENDANTS' ADVISORY REGARDING DISCOVERY**

On September 4, 2015, the Court ordered that Defendants provide four items of discovery: (1) the purchase and creation dates for the compounded pentobarbital used in past Texas executions; (2) autopsy reports for those executed with compounded pentobarbital; (3) the master formulation record; and (4) the certificate of analysis. Order Disc., ECF No. 103. Defendants file this advisory to update the Court.

Defendants have provided (1) the purchase and creation dates of the compounded pentobarbital to Plaintiffs. Defendants cannot provide (2) autopsy reports to Plaintiffs because the State of Texas does not conduct them on executed offenders.

Neither (3) the master formulation record nor (4) the certificate of analysis are in the direct or constructive possession, custody, or control

of Defendants. Therefore, Defendants cannot provide them to the Court for in camera review.

On information and belief, Defendants reasonably believe that they cannot obtain the (3) master formulation record and (4) certificate of analysis for the on-hand lethal injections. Defendants also reasonably believe that additional attempts to obtain such documentation will lead to termination of services necessary to carry out lawful sentences.

Finally, Defendants reserve, their rights to assert any and all objections as to the discovery of such documents and/or their admissibility in this action, or in any other proceedings, on any and all grounds including, but not limited to, competency, relevancy, materiality, and privilege.<sup>1</sup>

Respectfully submitted,

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For Criminal Justice

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<sup>1</sup> See Tex. Gov't Code § 552.1081 (West 2015).

EDWARD L. MARSHALL  
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s/ Fredericka Sargent

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### **CERTIFICATE OF SERVICE**

I do hereby certify that on September 11, 2015, I electronically filed the foregoing document with the Clerk of the Court for the U.S. District Court, Southern District of Texas, using the electronic case-filing system of the Court. The electronic case-filing system sent a "Notice of Electronic Filing" (NEF) to the following counsel of record, who consented in writing to accept the NEF as service of this document by electronic means:

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