

**IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION**

**RICHARD JORDAN, RICKY CHASE,
and THOMAS EDWIN LODEN JR.,**

Plaintiffs

vs.

No. 3:15-cv-00295-HTW-LRA

**MARSHALL L. FISHER, Commissioner,
Mississippi Department of Corrections, in
his Official Capacity; EARNEST LEE
Superintendent, Mississippi State Penitentiary,
in his Official Capacity; THE MISSISSIPPI
STATE EXECUTIONER, in his Official
Capacity; an UNKNOWN EXECUTIONERS,
in their Official Capacities,**

Defendants

DEFENDANTS' ANSWER AND DEFENSES

COME NOW Defendants Marshall Fisher, Commissioner of the Mississippi Department of Corrections, ("MDOC"), and Earnest Lee, Superintendent of the Mississippi State Penitentiary at Parchman, the Mississippi State Executioner and Unknown Executioners (collectively referred to as the "State Defendants") in their official capacities and file this their Answer and Defenses to Plaintiffs' amended complaint [Doc. 50], stating as follows:

ANSWER

Nature of Action

1. The State Defendants admit only that Plaintiffs have filed an amended complaint which contains allegations of constitutional violations in connection with execution by lethal

injection. The State Defendants deny the remaining allegations in paragraph 1 of Plaintiffs' amended complaint.

2. The State Defendants admit the allegations in the first sentence of paragraph 2 of Plaintiffs' amended complaint. The State Defendants further admit that MDOC's amended lethal injection protocol speaks for itself. The State Defendants deny the remaining allegations in paragraph 2 of Plaintiffs' amended complaint as stated.

3. The State Defendants deny the allegations in paragraph 3 of Plaintiffs' amended complaint.

4. The State Defendants admit that MDOC intends to use midazolam as the first drug in Plaintiffs' executions and that midazolam is classified as a benzodiazepine. The State Defendants deny the remaining allegations in paragraph 4 of Plaintiffs' amended complaint.

5. The State Defendants admit that pentobarbital and midazolam are not classified as "ultra short-acting barbiturates." The State Defendants deny the remaining allegations in paragraph 5 of Plaintiffs' amended complaint, and specifically deny that pentobarbital and midazolam are not "other similar drugs" as required by Miss. Code Ann. § 99-19-51.

6. The State Defendants deny the allegations in paragraph 6 of Plaintiffs' amended complaint.

7. The State Defendants admit only that the declaration of MDOC Commissioner Marshall Fisher and MDOC's amended lethal injection protocol speak for themselves. The State Defendants deny the allegations in paragraph 7 of Plaintiffs' amended complaint as stated.

8. The State Defendants lack knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations in paragraph 8 of Plaintiffs' amended complaint, and

therefore deny same.

9. The State Defendants admit only that the declaration of MDOC Commissioner Marshall Fisher speaks for itself and that Plaintiffs' counsel have submitted public records requests to MDOC seeking documents related to the pentobarbital purchased by MDOC in 2012. The State Defendants deny the remaining allegations in paragraph 9 of Plaintiffs' amended complaint.

10. The State Defendants deny the allegation in paragraph 10 of Plaintiffs' amended complaint.

11. The State Defendants admit only that MDOC obtained a supply of pentobarbital from a compounding pharmacy on May 20, 2012. The State Defendants deny the remaining allegations in paragraph 11 of Plaintiffs' amended complaint.

12. The State Defendants admit only that MDOC's amended lethal injection protocol speaks for itself and that they notified the Court of the amendment to the protocol on July 28, 2015. The remaining allegations in paragraph 12 of Plaintiffs' amended complaint are denied.

13. Paragraph 13 of Plaintiffs' amended complaint does not contain factual allegations against the State Defendants. However, if a response is required, the State Defendants deny same.

14. The first sentence of paragraph 14 of Plaintiffs' amended complaint does not contain factual allegations against the State Defendants. However, if a response is required, the State Defendants deny same. The State Defendants admit the allegations in the second and third sentences of paragraph 14 of Plaintiffs' amended complaint.

Jurisdiction and Venue

15. The State Defendants deny the allegations in paragraph 15 of Plaintiffs' amended complaint.

16. The State Defendants deny the allegations in paragraph 16 of Plaintiffs' amended complaint.

17. The State Defendants admit only that venue would be proper if Plaintiffs' Complaint stated a viable claim, which it does not. The State Defendants deny the remaining allegations in paragraph 17 of Plaintiffs' amended complaint.

The Parties

18. The State Defendants admit the first, second, and fourth sentences in paragraph 18 of Plaintiffs' amended complaint. The State Defendants deny the remaining allegations in paragraph 18 of Plaintiffs' amended complaint.

19. The State Defendants admit the first, second, and fourth sentences in paragraph 19 of Plaintiffs' amended complaint. The State Defendants deny the remaining allegations in paragraph 19 of Plaintiffs' amended complaint.

20. The State Defendants admit the first, second, and fourth sentences in paragraph 20 of Plaintiffs' amended complaint. The State Defendants deny the remaining allegations in paragraph 20 of Plaintiffs' amended complaint.

21. Admitted.

22. The State Defendants admit only that MDOC is a state agency and that the statutes referenced in paragraph 22 of Plaintiffs' amended complaint, which set forth the duties and powers of MDOC, speak for themselves. The State Defendants deny remaining allegations in

paragraph 22 of Plaintiffs' amended complaint are denied as stated.

23. The State Defendants admit only that Commissioner Marshall Fisher is the chief executive officer of MDOC and that the statutes referenced in paragraph 23 of Plaintiffs' amended complaint, which set forth the duties and powers of Commissioner Fisher, speak for themselves. The State Defendants deny the remaining allegations in paragraph 23 of Plaintiffs' amended complaint are denied as stated.

24. The State Defendants admit only that the statutes referenced in paragraph 24 of Plaintiffs' amended complaint speak for themselves. The State Defendants deny remaining allegations in paragraph 24 of Plaintiffs' amended complaint are denied as stated.

25. The State Defendants admit only that inmates committed to the custody of MDOC must be treated in accordance with the standard of care required by law. The State Defendants deny the remaining allegations in paragraph 25 of Plaintiffs' amended complaint.

26. Admitted.

27. The State Defendants admit only that Earnest Lee is the Superintendent of the Mississippi State Penitentiary in Parchman, Mississippi, and that the statute referenced in paragraph 27 of Plaintiffs' amended complaint speaks for itself. The State Defendants deny the remaining allegations in paragraph 27 of Plaintiffs' amended complaint as stated.

28. The State Defendants admit only that Superintendent Lee has the responsibilities imposed by law and delegated to him by Commissioner Fisher. The State Defendants deny the remaining allegations in paragraph 28 of Plaintiffs' amended complaint as stated.

29. The State Defendants admit only that persons incarcerated at the Mississippi State Penitentiary in Parchman, and/or transported to Parchman for an execution, must be treated in

accordance with the standard of care required by law. The State Defendants deny the remaining allegations in paragraph 29 of Plaintiffs' amended complaint as stated.

30. Admitted.

31. The statute referenced in paragraph 31 speaks for itself. The State Defendants admit the remaining allegations in paragraph 31 of Plaintiffs' amended complaint.

32. The statutes referenced in paragraph 32 of Plaintiffs' amended complaint speak for themselves. The State Defendants admit only that the State Executioner and/or his designees and members of the State Execution Team will comply with the duties imposed by these statutes.

33. Admitted.

Relevant Procedural Background

34. Admitted.

35. The State Defendants admit only that Plaintiffs filed a motion for preliminary injunction on June 3, 2015, that the State Defendants filed a motion to dismiss on June 22, 2015, and that the State Defendants' motion to dismiss and supporting memorandum speak for themselves. The State Defendants deny the remaining allegation in paragraph 35 of Plaintiff's amended complaint as stated.

36. Admitted.

37. The State Defendants admit only that they filed a notice of MDOC's amendment to its lethal injection protocol on July 28, 2015 at 6:38 p.m., and that MDOC's amended lethal injection protocol speaks for itself. The State Defendants deny the remaining allegations in paragraph 37 of Plaintiffs' amended complaint as stated.

38. Admitted.

Factual Allegations

39. The statute quoted in paragraph 39 of Plaintiffs' amended complaint speaks for itself. The State Defendants admit only that MDOC acts in compliance with the obligations required by law. The State Defendants deny the remaining allegations in paragraph 39 of Plaintiffs' amended complaint as stated.

40. The MDOC lethal injection protocol referenced in paragraph 40 of Plaintiffs' amended complaint speaks for itself. The State Defendants deny the remaining allegations in paragraph 25 of Plaintiffs' amended complaint as stated.

41. The State Defendants deny the allegations in paragraph 41 and footnotes 2 and 3 thereto as stated. MDOC's amended lethal injection protocol speaks for itself. The State Defendants admit only that pentobarbital is a short-acting barbiturate; that vecuronium bromide and potassium chloride are the second and third drugs required by the protocol; that MDOC purchased a supply of vecuronium bromide in July 2014, which expired on October 1, 2015; and that MDOC purchased a supply of potassium chloride in October 2014, which expired on September 1, 2015. The remaining allegations in footnote 4 to paragraph 41 of Plaintiffs' amended complaint are denied.

42. The State Defendants admit only that MDOC's amended lethal injection protocol speaks for itself and that midazolam is classified as a benzodiazepine. The State Defendants deny the remaining allegations in paragraph 42 of Plaintiffs' amended complaint.

43. The State Defendants deny the allegations in paragraph 43 of Plaintiffs' amended complaint.

44. The State Defendants deny the allegations in paragraph 44 of Plaintiffs' amended

complaint.

45. The State Defendants deny the allegations in paragraph 45 as stated. MDOC's amended lethal injection protocol speaks for itself. The State Defendants admit only that vecuronium bromide is one of the drugs which may be used as the second drug required by the amended protocol.

46. The State Defendants deny the allegations in paragraph 46 of Plaintiffs' amended complaint.

47. The State Defendants deny the allegations in paragraph 47 of Plaintiffs' amended complaint.

48. The State Defendants lack knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations in paragraph 48 of Plaintiffs' amended complaint, and therefore deny same.

49. The State Defendants deny the allegations contained in paragraph 49 of Plaintiffs' amended complaint.

50. The State Defendants deny the allegations contained in paragraph 50 of Plaintiffs' amended complaint.

51. The State Defendants deny the allegations in paragraph 51 of Plaintiffs' amended complaint as stated. MDOC's amended lethal injection protocol speaks for itself. The State Defendants admit only that potassium chloride is the third and final drug required by the amended protocol.

52. The State Defendants deny the allegations in paragraph 52 of Plaintiffs' amended complaint.

53. The State Defendants lack knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations in paragraph 53 of Plaintiffs' amended complaint, and therefore deny same.

54. The State Defendants admit only that midazolam is not classified as a barbiturate. The State Defendants deny that midazolam is "not pharmacologically equivalent" to a barbiturate. The State Defendants lack knowledge or information sufficient to form a belief as to the truth or accuracy of the remaining allegations in paragraph 54 of Plaintiffs' amended complaint, and the footnote thereto, and therefore deny same.

55. The State Defendants admit only that the lethal injection process must comply with the standard of care required by law. The State Defendants deny the remaining allegations in paragraph 55 of Plaintiffs' amended complaint.

56. The State Defendants admit only that all "drugs" may have "known and documented risks." The State Defendants deny the remaining allegations in paragraph 56 of Plaintiffs' amended complaint.

57. The State Defendants deny the allegations in paragraph 57 of Plaintiffs' amended complaint as stated.

58. The State Defendants deny the allegations in paragraph 58 of Plaintiffs' amended complaint as stated.

59. The State Defendants deny the allegations in paragraph 59 of Plaintiffs' amended complaint as stated.

60. The State Defendants deny the allegations in paragraph 60 of Plaintiffs' amended complaint as stated.

61. The State Defendants deny the allegations in paragraph 60 of Plaintiffs' amended complaint as stated.

62. The State Defendants deny the allegations in paragraph 62 of Plaintiffs' amended complaint.

63. The State Defendants deny the allegations in paragraph 63 of Plaintiffs' amended complaint as stated.

64. The State Defendants deny the allegations in paragraph 64 of Plaintiffs' amended complaint as stated.

65. The State Defendants deny the allegations in paragraph 65, and the footnote thereto, of Plaintiffs' amended complaint.

66. The State Defendants deny the allegations in the first sentence of paragraph 66 of Plaintiffs' amended complaint. The State Defendants lack knowledge or information sufficient to form a belief as to the truth or accuracy of the remaining allegations in paragraph 66 of Plaintiffs' amended complaint, and therefore deny same.

67. The State Defendants deny the allegations in paragraph 67 of Plaintiffs' amended complaint.

68. The State Defendants admit only that certain pharmaceutical manufacturers have taken steps to prevent their products from being used in lethal injection executions, primarily because of pressure from anti-capital punishment advocates. The State Defendants deny the remaining allegations in paragraph 69 of Plaintiffs' amended complaint as stated.

69. The State Defendants admit only that, on information and belief, certain pharmacy-related organizations have made statements concerning capital punishment and that those

statements speak for themselves. The State Defendants deny the remaining allegations in paragraph 69 of Plaintiffs' amended complaint as stated.

70. The State Defendants admit only that sodium thiopental is not available for use in executions, primarily because of pressure from anti-capital punishment advocates. The State Defendants deny the remaining allegations in paragraph 70 of Plaintiffs' amended complaint as stated.

71. The State Defendants admit only that, on information and belief, in the past certain states may have imported sodium thiopental from other countries for use in lethal injection executions. The State Defendants lack knowledge or information sufficient to form a belief as to the truth or accuracy of the remaining allegations in paragraph 71 of Plaintiffs' amended complaint, and therefore deny same.

72. The State Defendants admit only that, on information and belief, in the past the DEA seized sodium thiopental from certain states which may have imported that drug from other countries for use in lethal injection executions. The State Defendants lack knowledge or information sufficient to form a belief as to the truth or accuracy of the remaining allegations in paragraph 72 of Plaintiffs' amended complaint, and therefore deny same.

73. The State Defendants lack knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations in paragraph 73 of Plaintiffs' amended complaint, and therefore deny same.

74. The State Defendants lack knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations in paragraph 74 of Plaintiffs' amended complaint, and therefore deny same.

75. The State Defendants lack knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations in paragraph 75 of Plaintiffs' amended complaint, and therefore deny same.

76. The State Defendants admit only that MDOC's amended lethal injection protocol speaks for itself. The State Defendants deny the remaining allegations in paragraph 76 of Plaintiffs' amended complaint as stated.

77. The State Defendants admit only that Sodium Pentothal has not been used in executions in Mississippi since 2010 and that MDOC is unable to obtain Sodium Pentothal for use in executions. The State Defendants deny the remaining allegations in paragraph 77 of Plaintiffs' amended complaint as stated.

78. The State Defendants admit only that MDOC's amended lethal injection protocol speaks for itself. The State Defendants deny the allegations in paragraph 78 of Plaintiffs' amended complaint as stated.

79. The State Defendants admit, on information and belief, the allegations in paragraph 79 of Plaintiffs' amended complaint.

80. The State Defendants admit, on information and belief, the allegations in paragraph 80 of Plaintiffs' amended complaint.

81. The State Defendants lack knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations in paragraph 81 of Plaintiffs' amended complaint, and therefore deny same.

82. The State Defendants lack knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations in paragraph 82 of Plaintiffs' amended complaint, and

therefore deny same.

83. The State Defendants admit, on information and belief, the allegations in paragraph 83 of Plaintiffs' amended complaint.

84. The State Defendants admit the allegations in paragraph 84 of Plaintiffs' amended complaint.

85. The State Defendants admit only that the receiving report referenced in paragraph 85 of Plaintiffs' amended complaint speaks for itself. The State Defendants deny the remaining allegation in paragraph 85 of Plaintiffs' amended complaint as stated.

86. The State Defendants deny that in May 2012 MDOC obtained "the active pharmaceutical ingredients . . . to compound pentobarbital" and that the pentobarbital it obtained in May 2012 was not "legally obtained." The State Defendants admit, on information and belief, the remaining allegations in paragraph 86, and the footnote thereto, of Plaintiffs' amended complaint.

87. Admitted.

88. The State Defendants admit only that MDOC has no pentobarbital in any form whatsoever. The State Defendants deny the remaining allegations in paragraph 88 of Plaintiffs' amended complaint as stated.

89. The State Defendants lack knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations in paragraph 89 of Plaintiffs' amended complaint, and therefore deny same.

90. The State Defendants lack knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations in paragraph 90 of Plaintiffs' amended complaint, and

therefore deny same.

91. The State Defendants lack knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations in paragraph 91 of Plaintiffs' amended complaint, and therefore deny same.

92. The State Defendants lack knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations in paragraph 92 of Plaintiffs' amended complaint, and therefore deny same.

93. The State Defendants lack knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations in paragraph 93 of Plaintiffs' amended complaint, and therefore deny same.

94. The State Defendants lack knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations in paragraph 94 of Plaintiffs' amended complaint, and therefore deny same.

95. The State Defendants admit only that the report issued by Oklahoma following its investigation into the execution of Clayton Lockett speaks for itself; that Oklahoma revised its lethal injection protocol after its investigation; and that Oklahoma's revised protocol was litigated in federal court, resulting in the United States Supreme Court's rejection of a constitutional challenge to Oklahoma's revised protocol in *Glossip v. Gross*, 135 S.Ct. 2726 (2015). The State Defendants deny the remaining allegations in paragraph 94 of Plaintiffs' amended complaint as stated.

96. The State Defendants admit only that some states have turned to compounding pharmacies to obtain drugs for use in lethal injection executions. The State Defendants deny the

remaining allegations in paragraph 96 of Plaintiffs' amended complaint as stated.

97. The State Defendants lack knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations in paragraph 97 of Plaintiffs' amended complaint, and therefore deny same.

98. The State Defendants lack knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations in paragraph 98 of Plaintiffs' amended complaint, and therefore deny same.

99. The State Defendants lack knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations in paragraph 99 of Plaintiffs' amended complaint, and therefore deny same.

100. The State Defendants lack knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations in paragraph 100 of Plaintiffs' amended complaint, and therefore deny same.

101. The State Defendants lack knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations in paragraph 101 of Plaintiffs' amended complaint, and therefore deny same..

102. The State Defendants lack knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations in paragraph 102 of Plaintiffs' amended complaint, and therefore deny same.

103. The State Defendants lack knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations in paragraph 103 of Plaintiffs' amended complaint, and therefore deny same.

104. The State Defendants lack knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations in paragraph 104 of Plaintiffs' amended complaint, and therefore deny same.

105. The State Defendants lack knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations in paragraph 105 of Plaintiffs' amended complaint, and therefore deny same.

106. The State Defendants lack knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations in paragraph 106 of Plaintiffs' amended complaint, and therefore deny same.

107. The State Defendants admit only that the brand name Nembutal, an injectable form of pentobarbital, manufactured by the Danish pharmaceutical company Lundbeck, is no longer available for use in executions in the United States, and that on one occasion in the past, MDOC obtained pentobarbital from a compounding pharmacy in Grenada, Mississippi. The State Defendants deny the remaining allegations in paragraph 107 of Plaintiffs' amended complaint as stated.

108. The State Defendants admit only the allegations in the first sentence of paragraph 108 of Plaintiffs' amended complaint and that, on information and belief, the compounding pharmacy in Grenada purchased the pentobarbital from the company identified in the third sentence of paragraph 108. The State Defendants deny the remaining allegations in paragraph 108 of Plaintiffs' amended complaint, and the footnote thereto, as stated.

109. Admitted.

110. The State Defendants admit only that 70 grams of powdered pentobarbital was

obtained from this source and that these 70 grams of powdered pentobarbital were packaged as 14 vials containing 5 grams each. The State Defendants deny the remaining allegations in paragraph 110 of Plaintiffs' amended complaint.

111. The State Defendants admit only that all remaining vials of pentobarbital purchased by MDOC in May 2012 were destroyed in June 2015 after they expired. The State Defendants deny the remaining allegations in paragraph 111 of Plaintiffs' amended complaint.

112. The State Defendants deny that MDOC has any pentobarbital in its possession.

113. The State Defendants deny the allegations in paragraph 113 of Plaintiffs' amended complaint.

114. Admitted.

115. The State Defendants deny the allegations in paragraph 115 of Plaintiffs' amended complaint.

116. The State Defendants admit only that the Mississippi State Penitentiary at Parchman does not operate its own licensed pharmacy and that the drugs administered to prisoners in the State Penitentiary are kept in the drug room of the State Penitentiary hospital. The State Defendants deny the remaining allegations in paragraph 116 of Plaintiffs' amended complaint as stated.

117. The State Defendants admit only that MDOC's lethal injection drugs were kept at Unit 17, but have been moved to the drug room at the State Penitentiary hospital. The State Defendants deny the remaining allegations in paragraph 117 of Plaintiffs' amended complaint as stated.

118. The State Defendants admit only that MDOC never used the pentobarbital obtained

from the compounding pharmacy in Grenada in an execution. The State Defendants deny the remaining allegations in paragraph 118 of Plaintiffs' amended complaint as stated.

119. The State Defendants admit only that the pentobarbital was in powdered form and was never put into an injectable form of the drug, or sent to a compounding pharmacy to do so. The pentobarbital was destroyed on June 8, 2015. The State Defendants deny the remaining allegations in paragraph 119 of Plaintiffs' amended complaint as stated.

120. The State Defendants deny the allegations in paragraph 120 of Plaintiffs' amended complaint.

121. The State Defendants admit only that if Plaintiffs are executed using a powdered form pentobarbital after it has been either compounded or reconstituted into an injectable form, they will be the first death row inmates in Mississippi to be executed with such compounded or reconstituted pentobarbital. The State Defendants deny the remaining allegations in paragraph 121 of Plaintiffs' amended complaint.

122. The State Defendants deny the allegations in paragraph 122 of Plaintiffs' amended complaint.

123. The State Defendants deny the allegations in paragraph 123 of Plaintiffs' amended complaint.

124. The State Defendants lack knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations in paragraph 124 of Plaintiffs' amended complaint, and therefore deny same.

125. The State Defendants lack knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations in paragraph 125 of Plaintiffs' amended complaint, and

therefore deny same.

126. The State Defendants lack knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations in paragraph 126 of Plaintiffs' amended complaint, and therefore deny same.

127. The State Defendants lack knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations in paragraph 127 of Plaintiffs' amended complaint, and therefore deny same.

128. The State Defendants deny the allegations in paragraph 128 of Plaintiffs' amended complaint.

129. The State Defendants deny the allegations contained in paragraph 108 of Plaintiffs' amended complaint.

130. The State Defendants admit only that "the source of the active pharmaceutical ingredients" that were used to make the pentobarbital MDOC obtained from the compounding pharmacy in Grenada is not known. The State Defendants deny the remaining allegations contained in paragraph 130 of Plaintiffs' amended complaint.

131. The State Defendants lack knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations in paragraph 131 of Plaintiffs' amended complaint, and therefore deny same.

132. The State Defendants admit only that they do not know the ultimate source of the active pharmaceutical ingredients that were used to make the pentobarbital MDOC obtained from the compounding pharmacy in Grenada. The State Defendants deny the remaining allegations in paragraph 132 of Plaintiffs' amended complaint.

133. The State Defendants lack knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations in paragraph 133 of Plaintiffs' amended complaint, and therefore deny same.

134. The State Defendants deny the allegations in paragraph 134 of Plaintiffs' amended complaint.

135. The State Defendants lack knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations in paragraph 135 of Plaintiffs' amended complaint, and therefore deny same.

136. The State Defendants admit only that the statutes referenced in paragraph 136 of Plaintiffs' amended complaint speak for themselves. The State Defendants lack knowledge or information sufficient to form a belief as to the truth or accuracy of the remaining allegations in paragraph 136 of Plaintiffs' amended complaint, and therefore deny same.

137. The State Defendants lack knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations in paragraph 137 of Plaintiffs' amended complaint, and therefore deny same.

138. The State Defendants admit only that there are a limited number of compounding pharmacies located in Mississippi. The State Defendants deny the remaining allegations in paragraph 138 of Plaintiffs' amended complaint.

139. The State Defendants deny the allegations in paragraph 139 of Plaintiffs' amended complaint.

140. The State Defendants lack knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations in paragraph 140 of Plaintiffs' amended complaint, and

therefore deny same.

141. The State Defendants deny that MDOC has any pentobarbital in its possession.

142. The State Defendants deny the allegations in paragraph 142 of Plaintiffs' amended complaint.

143. Admitted.

144. The State Defendants lack knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations in paragraph 144 of Plaintiffs' amended complaint, and therefore deny same.

145. The State Defendants deny the allegations in paragraph 145 of Plaintiffs' amended complaint.

146. The State Defendants admit only that the statute referenced in paragraph 146 of Plaintiffs' amended complaint speaks for itself. The State Defendants deny the remaining allegations in paragraph 146 of Plaintiffs' amended complaint as stated.

147. The State Defendants admit only that MDOC was forced to obtain the powdered form of pentobarbital for use as the first drug in the three-drug lethal injection protocol because it could no longer obtain sodium thiopental or Nembutal, due in large part to pressure applied by anti-capital punishment advocates against the manufacturers of those drugs. The State Defendants deny the remaining allegations in paragraph 147 of Plaintiffs' amended complaint.

148. The State Defendants admit only that pentobarbital is not an ultra short-acting barbiturate, but deny that it is not an "other similar drug" as required by Miss. Code Ann. § 99-19-51. The State Defendants deny the remaining allegations in paragraph 148 of Plaintiffs' amended complaint.

149. The State Defendants lack knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations in paragraph 149 of Plaintiffs' amended complaint, and therefore deny same.

150. The State Defendants deny the allegations in paragraph 150 of Plaintiffs' amended complaint.

151. The State Defendants lack knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations in paragraph 150 of Plaintiffs' amended complaint, and therefore deny same.

152. The State Defendants deny the allegations in paragraph 152 of Plaintiffs' amended complaint.

153. The State Defendants admit only that MDOC's current lethal injection protocol speaks for itself. The State Defendants deny the remaining allegations in paragraph 153 of Plaintiffs' amended complaint as stated.

154. The State Defendants admit only that the execution logs referenced in paragraph 154 of Plaintiffs' amended complaint speak for themselves. The State Defendants deny the remaining allegations in paragraph 154 of Plaintiffs' amended complaint as stated.

155. The State Defendants deny the allegations in paragraph 155 of Plaintiffs' amended complaint.

156. The State Defendants admit only that administration of "ultra short-acting barbiturate or other similar drug" as provided for in Miss. Code Ann. § 99-19-51, such as sufficiently pure and potent pentobarbital, is a crucial step in the execution procedure under Mississippi's current lethal injection protocol. The State Defendants deny the remaining

allegations in paragraph 156 of Plaintiffs' amended complaint as stated.

157. The State Defendants deny the allegations in paragraph 157 of Plaintiffs' amended complaint.

158. The State Defendants deny the allegations in paragraph 158 of Plaintiffs' amended complaint.

159. Admitted.

160. The State Defendants admit only that MDOC provided the MacArthur Justice Center with ten pages of documents in response to its November 20, 2014 public records request, and to the extent those documents contained information that would reveal the identity of the drug supplier and/or the members of the executions team, they were redacted in order to protect the safety of MDOC law enforcement personnel, the privacy rights of the drug supplier, and the interests of the State in carrying out executions. The State Defendants deny the remaining allegations in paragraph 160 of Plaintiffs' amended complaint.

161. The State Defendants deny that MDOC has failed to the comply with the Mississippi Public Records Act by refusing to publicly disclose the identity of the supplier(s) of lethal injection drugs. The State Defendants admit the remaining allegations in paragraph 161 of Plaintiffs' amended complaint.

162. The State Defendants admit only that in response to the MacArthur Justice Center's February 20, 2015 public records request, MDOC provided documents that were redacted in order to protect the safety of MDOC law enforcement personnel, the privacy rights of the drug supplier, and the interests of the State in carrying out executions. The State Defendants deny the remaining allegations in paragraph 162 of Plaintiffs' amended complaint.

163. The State Defendants admit only that on April 14, 2015, MDOC provided documents relating to the 2012 purchase of pentobarbital that had the month redacted, as well as documents relating to the six executions carried out by MDOC in 2012, to the MacArthur Justice Center in response to its February 20, 2015 public records request inquiring about five vials of pentobarbital that had left MDOC's custody since 2012. The State Defendants deny the remaining allegations in paragraph 163 of Plaintiffs' amended complaint as stated.

164. The State Defendants deny the allegations in paragraph 164, and the footnote thereto, of Plaintiffs' amended complaint.

165. The State Defendants admit only that MDOC's responses to the MacArthur Justice Center's public records requests submitted between May and July 2015 speak for themselves. The State Defendants deny the allegations in paragraph 165 of Plaintiffs' amended complaint as stated.

166. The State Defendants admit only that Plaintiffs' counsel were previously able to identify one supplier of MDOC's lethal injection drugs; that since that time MDOC has purchased new supplies of vecuronium bromide and potassium chloride; and that because of the sensitive and confidential nature of these matters, and because of separate, ongoing litigation, MDOC has not disclosed or produced information or documents that would identify the supplier(s) of the vecuronium bromide and potassium chloride. The State Defendants deny the remaining allegations in paragraph 166 of Plaintiffs' amended complaint as stated.

167. The State Defendants admit only that in response to the MacArthur Justice Center's August 5, 2015 public records request, MDOC provided 16 pages of records that were redacted in order to protect the safety of MDOC personnel, the privacy rights of its drug supplier(s), and

the interests of the State in carrying out executions; and that the 16 pages of redacted records speak for themselves. The State Defendants deny the remaining allegations in paragraph 167 of Plaintiffs' amended complaint as stated.

168. The State Defendants admit only that because of the sensitive and confidential nature of these matters, and because of separate, ongoing litigation, MDOC has not disclosed or produced information related to the creation, preparation and/or acquisition of its lethal injection drugs. The State Defendants deny the remaining allegations in paragraph 168 of Plaintiffs' amended complaint.

169. The State Defendants admit the allegations in the first sentence of paragraph 169 of Plaintiffs' amended complaint. The State Defendants deny the remaining allegations in paragraph 169 of Plaintiffs' amended complaint as vague and ambiguous.

170. The State Defendants admit the allegations in the first sentence of paragraph 170 of Plaintiffs' amended complaint. The State Defendants admit only that the pleadings referenced in the second sentence of paragraph 170 of Plaintiffs' amended complaint speak for themselves. The State Defendants deny the remaining allegations in the second sentence of paragraph 170 of Plaintiffs' amended complaint as stated.

171. Admitted.

172. The State Defendants admit only that the powdered pentobarbital that expired on May 20, 2015 was never put into an injectable form of the drug, and that if Plaintiffs were executed with compounded or reconstituted pentobarbital, they would be the first death row inmates in Mississippi to be executed with compounded or reconstituted pentobarbital. The State Defendants deny the remaining allegations in paragraph 172 of Plaintiffs' amended complaint as

stated.

173. The State Defendants admit only that because of the sensitive and confidential nature of these matters, and because of separate, ongoing litigation, MDOC has not disclosed or produced information related to the creation and/or preparation of its lethal injection drugs. The State Defendants deny the remaining allegations in paragraph 173 of Plaintiffs' amended complaint.

174. The State Defendants deny the allegations in paragraph 174 of Plaintiffs' amended complaint.

175. Admitted.

176. The State Defendants deny the allegations in paragraph 176 of Plaintiffs' amended complaint.

177. The State Defendants deny the allegations in paragraph 177 of Plaintiffs' amended complaint.

178. The State Defendants deny the allegations in paragraph 178 of Plaintiffs' amended complaint.

179. The State Defendants admit the allegations in the first sentence of paragraph 179 of Plaintiffs' amended complaint. The State Defendants admit only that MDOC's amended lethal injection protocol and the prior version of MDOC's protocol speak for themselves. The State Defendants deny the remaining allegations in paragraph 179 of Plaintiffs' amended complaint as stated.

180. The State Defendants admit only that the state court transcript referenced in paragraph 180 of Plaintiffs' amended complaint speaks for itself. The State Defendants deny the

remaining allegations in paragraph 180 of Plaintiffs' amended complaint as stated.

181. Admitted.

182. The State Defendants deny the allegations in paragraph 182 of Plaintiffs' amended complaint.

183. The State Defendants deny the allegations in paragraph 183 of Plaintiffs' amended complaint.

184. The State Defendants deny the allegations in paragraph 184 of Plaintiffs' amended complaint.

185. The State Defendants admit only that MDOC's amended lethal injection protocol speaks for itself. The State Defendants deny the allegations in paragraph 185 of Plaintiffs' amended complaint as stated.

186. Admitted.

187. The State Defendants lack knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations in paragraph 187, and the footnote thereto, of Plaintiffs' amended complaint, and therefore deny same.

188. The State Defendants lack knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations in paragraph 188 of Plaintiffs' amended complaint, and therefore deny same.

189. The State Defendants lack knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations in paragraph 189 of Plaintiffs' amended complaint, and therefore deny same.

190. The State Defendants lack knowledge or information sufficient to form a belief as to

the truth or accuracy of the allegations in paragraph 190 of Plaintiffs' amended complaint, and therefore deny same.

191. The State Defendants admit only that midazolam is classified as a benzodiazepine, while sodium thiopental and pentobarbital are classified as barbiturates. The State Defendants deny the remaining allegations in paragraph 191 of Plaintiffs' amended complaint.

192. The State Defendants deny the allegations in paragraph 192 of Plaintiffs' amended complaint.

193. The State Defendants lack knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations in paragraph 193 of Plaintiffs' amended complaint, and therefore deny same.

194. The State Defendants lack knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations in paragraph 194 of Plaintiffs' amended complaint, and therefore deny same.

195. The State Defendants lack knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations in paragraph 195 of Plaintiffs' amended complaint, and therefore deny same.

196. The State Defendants lack knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations in paragraph 196 of Plaintiffs' amended complaint, and therefore deny same.

197. The State Defendants lack knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations in paragraph 197 of Plaintiffs' amended complaint, and therefore deny same.

198. The State Defendants deny the allegations in paragraph 198 of Plaintiffs' amended complaint.

199. The State Defendants admit only that MDOC's amended lethal injection protocol speaks for itself. The State Defendants lack knowledge or information sufficient to form a belief as to the truth or accuracy of the remaining allegations in paragraph 199 of Plaintiffs' amended complaint, and therefore deny same.

200. The State Defendants deny the allegations in paragraph 200 of Plaintiffs' amended complaint.

201. The State Defendants deny the allegations in paragraph 201 of Plaintiffs' amended complaint.

202. The State Defendants admit only that the statute referenced in paragraph 202 of Plaintiffs' amended complaint speaks for itself. The State Defendants deny the remaining allegations in paragraph 202 of Plaintiffs' amended complaint as stated.

203. The State Defendants admit that MDOC is unable to obtain Sodium Pentothal, Nembutal, or pentobarbital, in any form; and that MDOC has purchased midazolam for use as the first drug under MDOC's amended lethal injection protocol.

204. The State Defendants admit only that midazolam is classified as a benzodiazepine and is not classified as a barbiturate. The State Defendants deny the remaining allegations in paragraph 204 of Plaintiffs' amended complaint as stated.

205. The State Defendants admit only that when properly administered, the first drug in a three-drug protocol will render the prisoner unconscious and insensate to pain before the injection of the second and third drugs, and thus there is no substantial risk of pain. The State

Defendants deny the remaining allegations in paragraph 205 of Plaintiffs' amended complaint as stated.

206. The State Defendants admit only that the statutory language referenced in paragraph 206 of Plaintiffs' amended complaint speaks for itself. The State Defendants deny the remaining allegations in paragraph 206 of Plaintiffs' amended complaint.

207. The State Defendants deny the allegations in paragraph 207 of Plaintiffs' amended complaint, and therefore deny same.

208. The State Defendants deny the allegations in paragraph 208 of Plaintiffs' amended complaint.

209. The State Defendants admit only that MDOC's amended lethal injection protocol speaks for itself. The State Defendants deny the allegations in paragraph 209 of Plaintiffs' amended complaint.

210. The State Defendants admit only that MDOC's amended lethal injection protocol speaks for itself. The State Defendants deny the allegations in paragraph 210 of Plaintiffs' amended complaint.

Claims For Relief

211. The State Defendants reallege and incorporate by reference their Answers to the preceding paragraphs.

212. The State Defendants admit only that Sodium Pentothal and sodium thiopental are no longer available for purchase in the United States, that Sodium Pentothal is classified as an "ultra short-acting barbiturate," and that the statute referenced in paragraph 212 of Plaintiffs' amended complaint speaks for itself. The State Defendants deny the remaining allegations in

paragraph 212 of Plaintiffs' amended complaint.

213. The State Defendants admit only that MDOC does not have an "FDA-approved form of pentobarbital" because it is no longer available for use in executions. The State Defendants deny the remaining allegations in paragraph 213 of Plaintiffs' amended complaint.

214. The State Defendants deny the allegations in paragraph 214 of Plaintiffs' amended complaint.

215. The State Defendants deny the allegations contained in paragraph 215 of Plaintiffs' amended complaint.

216. The State Defendants deny the allegations in paragraph 216 of Plaintiffs' amended complaint.

217. Paragraph 217 of Plaintiffs' amended complaint states legal conclusions that do not require a response from the State Defendants. However, if a response is required, the State Defendants deny same.

218. The State Defendants deny the allegations in paragraph 218 of Plaintiffs' amended complaint.

219. The State Defendants deny the allegations in paragraph 219 of Plaintiffs' amended complaint.

220. The State Defendants deny the allegations in paragraph 220 of Plaintiffs' amended complaint.

221. The State Defendants deny the allegations in paragraph 221 of Plaintiffs' amended complaint.

222. The State Defendants deny the allegations in paragraph 222 of Plaintiffs' amended

complaint.

223. The State Defendants deny the allegations in paragraph 223 of Plaintiffs' amended complaint.

224. The State Defendants deny the allegations in paragraph 224 of Plaintiffs' amended complaint.

225. The State Defendants deny the allegations in paragraph 225 of Plaintiffs' amended complaint.

226. The State Defendants deny the allegations in paragraph 226 of Plaintiffs' amended complaint.

227. The State Defendants deny the allegations in paragraph 227 of Plaintiffs' amended complaint.

228. The State Defendants deny the allegations in paragraph 228 of Plaintiffs' amended complaint.

229. The State Defendants deny the allegations in paragraph 229 of Plaintiffs' amended complaint.

230. The State Defendants deny the allegations in paragraph 230 of Plaintiffs' amended complaint.

231. The State Defendants deny the allegations in paragraph 231 of Plaintiffs' amended complaint.

232. The State Defendants reallege and incorporate by reference their Answers to the preceding paragraphs.

233. The State Defendants admit only that Sodium Pentothal and sodium thiopental are

no longer available for purchase in the United States, that Sodium Pentothal is classified as an “ultra short-acting barbiturate,” and that the statute referenced in paragraph 233 of Plaintiffs’ amended complaint speaks for itself. The State Defendants deny the remaining allegations in paragraph 233 of Plaintiffs’ amended complaint.

234. The State Defendants admit only that MDOC does not have an “FDA-approved form of pentobarbital” because it is no longer available for use in executions. The State Defendants deny the remaining allegations in paragraph 234 of Plaintiffs’ amended complaint.

235. The State Defendants admit only that MDOC has been unable to obtain pentobarbital in any form. The State Defendants lack knowledge or information sufficient to form a belief as to the truth or accuracy of the remaining allegations in paragraph 235 of Plaintiffs’ amended complaint, and therefore deny same.

236. The State Defendants admit only that MDOC amended its lethal injection protocol on July 28, 2015, and that MDOC’s amended lethal injection protocol speaks for itself. The State Defendants deny the remaining allegations in paragraph 236 of Plaintiffs’ complaint as stated.

237. Paragraph 237 of Plaintiffs’ amended complaint states legal conclusions that do not require a response from the State Defendants. However, if a response is required, the State Defendants deny same.

238. The State Defendants deny the allegations in paragraph 238 of Plaintiffs’ amended complaint.

239. The State Defendants deny the allegations in paragraph 239 of Plaintiffs’ amended complaint.

240. The State Defendants deny the allegations in paragraph 240 of Plaintiffs' amended complaint.

241. The State Defendants admit only that midazolam is classified as a benzodiazepine and is not classified as a barbiturate. The State Defendants deny the remaining allegations in paragraph 241 of Plaintiffs' amended complaint.

242. The State Defendants deny the allegations in paragraph 242 of Plaintiffs' amended complaint.

243. The State Defendants deny the allegations in paragraph 243 of Plaintiffs' amended complaint.

244. The State Defendants lack knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations in paragraph 244 of Plaintiffs' amended complaint, and therefore deny same.

245. The State Defendants deny the allegations in paragraph 245 of Plaintiffs' amended complaint.

246. The State Defendants deny the allegations in paragraph 246 of Plaintiffs' amended complaint.

247. The State Defendants deny the allegations in paragraph 247 of Plaintiffs' amended complaint.

248. The State Defendants deny the allegations in paragraph 248 of Plaintiffs' amended complaint.

249. The State Defendants deny the allegations in paragraph 249 of Plaintiffs' amended complaint.

250. The State Defendants deny the allegations in paragraph 250 of Plaintiffs' amended complaint.

251. The State Defendants deny the allegations in paragraph 251 of Plaintiffs' amended complaint.

252. The State Defendants deny the allegations in paragraph 252 of Plaintiffs' amended complaint.

253. The State Defendants deny the allegations in paragraph 253 of Plaintiffs' amended complaint.

254. The State Defendants reallege and incorporate by reference their Answers to the preceding paragraphs.

255. The State Defendants admit only that the statute referenced in paragraph 255 of Plaintiffs' amended complaint speaks for itself. The State Defendants deny the remaining allegations in paragraph 255 of Plaintiffs' amended complaint.

256. The State Defendants deny the allegations in paragraph 256 of Plaintiffs' amended complaint.

257. Admitted. However, the State Defendants submit that this drug cannot be obtained by Mississippi or any other state, primarily because of the efforts of anti-capital punishment advocates to pressure drug manufacturers into prohibiting the sale and distribution of lethal injection drugs to states that impose the death penalty.

258. The State Defendants admit only that the statute referenced in paragraph 258 of Plaintiffs' amended complaint speaks for itself. The State Defendants deny the remaining allegations in paragraph 258 of Plaintiffs' amended complaint.

259. The State Defendants admit only that Sodium Pentothal is no longer available for purchase in the United States, and that MDOC's amended protocol speaks for itself. The State Defendants deny the remaining allegations in paragraph 259 of Plaintiffs' amended complaint as stated.

260. The State Defendants admit only that pentobarbital is not an ultra-short-acting barbiturate, but deny that it is not an "other similar drug" as required by Miss. Code Ann. § 99-19-51. The State Defendants deny the remaining allegations in paragraph 260 of the Plaintiffs' complaint as stated.

261. The State Defendants deny the allegations in paragraph 261 of Plaintiffs' amended complaint.

262. The State Defendants admit only that MDOC's amended lethal injection protocol speaks for itself. The State Defendants deny the allegations in paragraph 262 of Plaintiffs' amended complaint as stated.

263. The State Defendants admit only that midazolam is classified as a benzodiazepine and is not classified as a barbiturate. The State Defendants deny the remaining allegations in paragraph 263 of Plaintiffs' amended complaint.

264. The State Defendants deny the allegations in paragraph 264 of Plaintiffs' amended complaint.

265. The State Defendants deny the allegations in paragraph 265 of Plaintiffs' amended complaint.

266. The State Defendants deny the allegations in paragraph 266 of Plaintiffs' amended complaint.

267. The State Defendants deny the allegations in paragraph 267 of Plaintiffs' amended complaint.

268. The State Defendants deny the allegations in paragraph 268 of Plaintiffs' amended complaint.

269. The State Defendants reallege and incorporate by reference their Answers to the preceding paragraphs.

270. The State Defendants admit only that the cases cited and quoted in paragraph 270 of Plaintiffs' amended complaint speak for themselves. The State Defendants deny the remaining allegations in paragraph 270 of Plaintiffs' amended complaint as stated.

271. Admitted.

272. Admitted.

273. Admitted.

274. The State Defendants admit only that MDOC no longer possesses any form of pentobarbital, although at one time MDOC purchased a powdered form of pentobarbital from a compounding pharmacy. The State Defendants deny the remaining allegations in paragraph 274 of Plaintiffs' amended complaint.

275. The State Defendants admit only that MDOC's amended lethal injection protocol speaks for itself, that MDOC has purchased a supply of midazolam, and that MDOC has not disclosed information that would reveal the identity of its drug supplier(s) in order to protect its supplier(s) and the State's interest in carrying out executions. The State Defendants deny the remaining allegations in paragraph 275 of Plaintiffs' amended complaint as stated.

276. The State Defendants deny the allegations in paragraph 276 of Plaintiffs' amended

complaint.

277. The State Defendants lack knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations in paragraph 277 of Plaintiffs' amended complaint, and therefore deny same.

278. The State Defendants lack knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations in paragraph 278 of Plaintiffs' amended complaint, and therefore deny same.

279. The State Defendants deny the allegations in the first sentence of paragraph 279 of Plaintiffs' amended complaint. The State Defendants lack knowledge or information sufficient to form a belief as to the truth or accuracy of the remaining allegations in paragraph 279 of Plaintiffs' amended complaint, and therefore deny same.

280. The State Defendants lack knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations in paragraph 280 of Plaintiffs' amended complaint, and therefore deny same.

281. The State Defendants deny the allegations in paragraph 281 of Plaintiffs' amended complaint.

282. The State Defendants deny the allegations in paragraph 282 of Plaintiffs' amended complaint.

283. The State Defendants deny the allegations in paragraph 283 of Plaintiffs' amended complaint.

284. The State Defendants reallege and incorporate by reference their Answers to the preceding paragraphs.

285. The State Defendants admit only that Sodium Pentothal is no longer available for purchase in the United States and that is an “ultra short-acting barbiturate.” The State Defendants deny the remaining allegations in paragraph 285 of Plaintiffs’ amended complaint.

286. The State Defendants admit that not only does MDOC not possess an “FDA-approved form” of pentobarbital, it does not have any form pentobarbital in its possession.

287. The State Defendants admit only that MDOC no longer possesses any form of pentobarbital, although at one time MDOC purchased a powdered form of pentobarbital from a compounding pharmacy. The State Defendants deny the remaining allegations in paragraph 287 of Plaintiffs’ amended complaint.

288. The State Defendants admit that they did not disclose to Plaintiffs how and where they may have intended to convert the powdered pentobarbital into a sterile injectable form when MDOC possessed powdered pentobarbital. However, the State Defendants deny that MDOC now possesses any form of pentobarbital, or any ingredients to make compounded pentobarbital, and that MDOC has any intention of attempting to compound a sterile injectable form of pentobarbital. The State Defendants further deny any and all remaining allegations in paragraph 288 of Plaintiffs’ amended complaint.

289. The State Defendants admit that they have not disclosed to Plaintiffs the training and qualifications of any individuals responsible for trying to compound the raw ingredients to make a sterile injectable form of pentobarbital, because they have no intention of compounding raw pentobarbital. The State Defendants deny the remaining allegations in paragraph 289 of Plaintiffs’ amended complaint.

290. The State Defendants admit only that MDOC’s amended lethal injection protocol

speaks for itself, that MDOC has purchased a supply of midazolam, and that MDOC has not disclosed information that would reveal the identity of its drug supplier(s) in order to protect its supplier(s) and the State's interest in carrying out executions. The State Defendants deny the remaining allegations in paragraph 290 of Plaintiffs' amended complaint as stated.

291. The State Defendants admit only that midazolam has never been used in an execution in Mississippi, but deny that midazolam has not been successfully used by other states in executions carried out pursuant to a three-drug protocol. The State Defendants deny the remaining allegations in paragraph 291 of Plaintiffs' amended complaint as stated.

292. The State Defendants deny the allegations in paragraph 292 of Plaintiffs' amended complaint.

293. The State Defendants deny the allegations in paragraph 293 of Plaintiffs' amended complaint.

294. The State Defendants deny the allegations in paragraph 294 of Plaintiffs' amended complaint.

295. The State Defendants deny the allegations in paragraph 295 of Plaintiffs' amended complaint.

296. The State Defendants reallege and incorporate by reference their Answers to the preceding paragraphs.

297. The State Defendants admit only that Sodium Pentothal is no longer available for purchase in the United States and that is an "ultra short-acting barbiturate." The State Defendants deny the remaining allegations in paragraph 285 of Plaintiffs' amended complaint.

298. The State Defendants admit that MDOC no longer possesses any form of

pentobarbital.

299. The State Defendants admit only that MDOC's amended lethal injection protocol speaks for itself. The State Defendants deny the remaining allegations in paragraph 299 in Plaintiffs' amended complaint as stated.

300. The State Defendants admit only that MDOC's amended lethal injection protocol speaks for itself. The State Defendants deny the remaining allegations in paragraph 300 in Plaintiffs' amended complaint as stated.

301. The State Defendants deny the allegations in paragraph 301 of Plaintiffs' amended complaint.

302. The State Defendants admit only that MDOC has purchased a supply of midazolam, and that MDOC has not disclosed information that would reveal the identity of its drug supplier(s) in order to protect its supplier(s) and the State's interest in carrying out executions. The State Defendants deny the remaining allegations in paragraph 302 of Plaintiffs' amended complaint as stated.

303. The State Defendants admit only that because of the sensitive and confidential nature of these matters, and because of separate, ongoing litigation, MDOC has not disclosed or produced information or documents that would identify the supplier(s) and/or manufacturers of its lethal injection drugs. The State Defendants deny the remaining allegations in paragraph 303 of Plaintiffs' amended complaint.

304. The State Defendants deny the allegations in paragraph 304 of Plaintiffs' amended complaint.

305. The State Defendants deny the allegations in paragraph 305 of Plaintiffs' amended

complaint.

306. The State Defendants deny the allegations in paragraph 306 of Plaintiffs' amended complaint.

307. The State Defendants deny the allegations in paragraph 307 of Plaintiffs' amended complaint.

308. The State Defendants deny the allegations in paragraph 308 of Plaintiffs' amended complaint.

Prayer for Relief

The State Defendants deny the allegations in the paragraph beginning with "WHEREFORE, Plaintiffs request . . ." on page 56 of the amended complaint, including subparts 1 through 11, and specifically deny that Plaintiffs are entitled to any relief whatsoever.

Any and all remaining allegations in the complaint which have not been specifically admitted above are hereby denied.

DEFENSES

FIRST DEFENSE

The Plaintiffs' complaint fails to state a claim against the State Defendants upon which relief may be granted.

SECOND DEFENSE

The court lacks jurisdiction over the parties and the asserted claims in this cause.

THIRD DEFENSE

The State Defendants are entitled to and hereby affirmatively plead their Eleventh Amendment immunity to suit and liability in this cause, including relief from discovery

procedures.

FOURTH DEFENSE

The Defendants are entitled to and hereby affirmatively plead their federal law qualified immunity to suit and liability in this cause, including relief from discovery procedures.

FIFTH DEFENSE

The complaint should be dismissed for lack of justiciability, including, but not limited to, for lack of standing, mootness, and/or ripeness.

SIXTH DEFENSE

The State Defendants are entitled to and hereby affirmatively plead their sovereign immunity defenses to suit and liability in this cause pursuant to and inclusive of the provisions of Miss. Code Ann. §11-46-1, *et seq.*,

SEVENTH DEFENSE

The Plaintiffs' complaint is subject to the exhaustion of remedies requirement of 42 U.S.C. § 1997(e), and this action is barred for failure to comply therewith.

EIGHTH DEFENSE

Some or all of Plaintiffs' claims are barred by the applicable statute of limitations.

NINTH DEFENSE

There was insufficient service of process on Defendants, Marshall Fisher, Earnest Lee, the State Executioner and Unknown Executioners.

TENTH DEFENSE

Some or all of the Plaintiffs' claims are barred by the doctrines of laches, waiver, res

judicata and/or estoppel.

FOR THESE REASONS, the State Defendants respectfully request that their Answer and Defenses be received, and moves the Court to enter an order dismissing Plaintiffs' amended complaint with prejudice, and at their sole cost.

THIS the 26th day of October, 2015.

Respectfully submitted

JIM HOOD
ATTORNEY GENERAL
STATE OF MISSISSIPPI

s/ Wilson D. Minor

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CERTIFICATE OF SERVICE

This is to certify that I, Wilson D. Minor, Special Assistant Attorney General for the State of Mississippi, have electronically filed the foregoing Answer with the Clerk of the Court using the ECF system which sent notification of such filing to the following:

James W. Craig
Emily M. Washington
4400 South Carrollton Ave.
New Orleans, LA 70119

Stacy Ferraro
239 N. Lamar St., Suite 604
Jackson, MS 39201

This the 26th day of October, 2015.

s/ *Wilson D. Minor*
Wilson D. Minor