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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

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

Plaintiffs,

v.

David Shinn, Director of ADC; Stephen
Morris, Warden, ASPC–Eyman; Jeff Van
Winkle, 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 THREE AND FOUR**

Plaintiffs Charles Michael Hedlund, David Gulbrandson, Robert Poyson, Todd Smith, Eldon Schurz, and Roger Scott (collectively, “Plaintiffs”),¹ and Defendants David Shinn, Director of the Arizona Department of Corrections (“ADC”); Stephen Morris, Warden, ASPC–Eyman; and Jeff Van Winkle, Warden, ASPC–Florence (collectively, “Defendants”),² have jointly stipulated to dismiss Claims Three and Four of Plaintiffs’ Second Amended Complaint (ECF Nos. 94 & 97) based upon the recitals in the parties’

¹ Plaintiff Graham Henry passed away on February 9, 2018. The remaining Plaintiffs in this litigation are seeking the same relief as Mr. Henry. *See* Fed. R. Civ. P. 25(a).

² Pursuant to Fed. R. Civ. P. 25(d), Defendants David Shinn, Stephen Morris, and Jeff Van Winkle have been substituted in place of former Defendants Charles Ryan, James O’Neil, and Greg Fizer, respectively.

1 concurrently filed Stipulated Settlement Agreement for Dismissal of Claims Three and
2 Four (“Stipulated Settlement Agreement”) (June 22, 2020), and under the terms that
3 follow below.

4 Having considered the parties’ Stipulated Settlement Agreement, and good cause
5 appearing, IT IS HEREBY ORDERED that:

6 (1) Claims Three and Four of Plaintiffs’ Second Amended Complaint are
7 dismissed, without prejudice.

8 (2) Upon any showing by any Plaintiff or any other current or future prisoner
9 sentenced to death in the State of Arizona that any of the Defendants, any of the
10 Defendants’ successors, or the ADC intend to engage in or have actually engaged in any
11 of the following conduct (together, the “Prohibited Conduct”):

12 (a) adopt language in any future version of the ADC’s execution
13 procedures that purports to restrict the ability of execution witnesses to hear the
14 sounds of the execution in their entirety beyond the limited exception for vulgarity
15 or intentionally offensive statements set forth in the Stipulated Settlement
16 Agreement;

17 (b) restrict the ability of execution witnesses to hear the sounds of the
18 execution in their entirety beyond the beyond the limited exception for vulgarity or
19 offensive speech set forth in the Stipulated Settlement Agreement; then

20 Claims Three and Four shall be reinstated and reopened pursuant to Rule 60(b)(6) of the
21 Federal Rules of Civil Procedure, and, based on the agreement and consent of the parties
22 granted in their concurrently filed Stipulated Settlement Agreement, an injunction shall
23 immediately issue in this action or in a separate action for breach of the parties’ Stipulated
24 Settlement Agreement, permanently enjoining Defendants, Defendants’ successors, and
25 the ADC from engaging in any of the Prohibited Conduct.

26 (3) Plaintiffs shall not be awarded attorneys’ fees or costs incurred in litigating
27 Claims Three and Four unless Defendants, Defendants’ successors, or the ADC breach
28

1 the parties' Stipulated Settlement Agreement, in which case Plaintiffs shall be entitled to
2 an award, either in this action or in a separate action for breach of the parties' Stipulated
3 Settlement Agreement, of their reasonable attorneys' fees and costs incurred in litigating
4 this action from its inception through the date of this Order (which currently are in excess
5 of \$2,950,000, approximately \$445,000 of which was incurred pursuing the appeal of
6 Plaintiffs' First Amendment claims since this Court's June 22, 2017, entry of judgment),
7 as determined by the Court after briefing by the parties. In that circumstance, Plaintiffs
8 shall also be entitled to seek to collect their reasonable attorneys' fees and costs incurred
9 in moving to enforce the parties' Stipulated Settlement Agreement and this Order.

10 The Clerk shall terminate this case.

11 Dated this 26th day of June, 2020.

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Neil V. Wake
Senior United States District Judge