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28 Attorneys for Defendants
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3 **IN THE UNITED STATES DISTRICT COURT**
4 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
5 **SAN JOSE DIVISION**

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7 MICHAEL ANGELO MORALES,) CASE NO. C 06 0219 (JF) (RS)
8) C 06-926 (JF) (RS)
9 Plaintiff,)
10 vs.) STIPULATION OF THE PARTIES TO
11) CONTINUE HEARING TO SEPTEMBER
12) 19, 2006; [PROPOSED] ORDER
13 JEANNE WOODFORD, Secretary of the)
14 California Department of Corrections;)
15 EDDIE YLST, Warden, San Quentin State)
16 Prison, San Quentin, CA; and DOES 1-50,)
17 Defendants.)
18 _____)

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17 IT IS HEREBY STIPULATED by and between the parties herein through their
18 respective attorneys of record that the evidentiary hearing currently scheduled for May 2,
19 2006, be continued until September 19, 2006. Good cause exists for this stipulation as
20 follows:
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22 1. "The dates for the evidentiary hearing were adopted in part on the
23 assumption that the parties would cooperate in the discovery process." Order Deferring
24 Ruling on Plaintiff's Motion to Continue Hearing, April 4, 2006, at 1. In this regard, the
25 parties have and continue to cooperate in the discovery process. Any discovery
26 disagreements have resulted from the reasonable representation of the clients' interests.
27 Counsel have been in regular contact throughout the discovery process and have had
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1 numerous meetings in good faith pursuant to Local Rule 37-1 to resolve all discovery
2 issues. Almost all disagreements have been resolved by counsel. Proceeding reasonably
3 in this manner has required the bulk of the short period of time to prepare for the May 2
4 evidentiary hearing.

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6 2. Despite the efforts of the parties, discovery is not complete. The parties
7 have not completed paper discovery, scheduling depositions, conducting depositions, or
8 reviewing transcripts and redacting Protected Information (see id. at 2). After efforts to
9 search for and collect requested documents pertaining to Procedure 770, Defendants only
10 recently (on April 21, 2006) were able to provide Plaintiff the ability to inspect and copy
11 those documents. Efforts are currently being undertaken to determine if additional
12 documents exist. Plaintiffs have obtained four depositions, and through those
13 depositions, the identities of additional witnesses recently have become known.
14 Remaining depositions that must be completed include the execution team leader for the
15 previous 8 lethal injection executions conducted at San Quentin, and the medical
16 personnel who had various assignments during these executions, including the scheduled
17 execution for plaintiff on February 21, 2006. Those depositions were not possible due to
18 the unavailability of the witnesses.

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23 3. The parties have made substantial efforts to protect the confidentiality of
24 lethal injection team members. This effort has required additional time, and has
25 necessitated court intervention.

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27 4. Counsel have met in person to outline the remaining discovery required to
28 be conducted before a hearing can take place. In doing so, counsel reasonably believe

1 that most or all witnesses who need to be deposed have been identified. Some of these
2 witness have not been in the country for several weeks or months, and may not be in the
3 country at present. Arrangements are being made to determine when and where these
4 witnesses can be deposed. A schedule for conducting and completing the depositions of
5 the other witnesses has been agreed to by counsel.
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8 5. Counsel anticipate and have agreed to complete these depositions by June
9 30, 2006.

10 6. Defendants are assessing whether further revisions are required to
11 Procedure 770, in writing or in practice, in light of recent rulings in other jurisdictions.
12 Additional discovery may be required with respect to these revisions.
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14 7. The parties agree that certain expert witnesses are unavailable to attend a
15 May 2 evidentiary hearing. Many of plaintiff's expert witnesses work and reside on the
16 East Coast and scheduling and completing their depositions will require additional time.
17

18 8. The parties have agreed to exchange expert reports by August 15, 2006,
19 and complete expert depositions by September 8, 2006.
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21 9. The parties agree that certain witnesses necessary to conduct a full hearing
22 are unavailable to attend a hearing scheduled to commence on May 2. Arrangements are
23 being made to either ensure their availability to attend a September 19, 2006 hearing, or
24 make the witnesses available for a deposition to be used in lieu of testimony to be
25 presented at the hearing.
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1 In light of the foregoing, IT IS HEREBY STIPULATED AND AGREED that the
2 evidentiary hearing, if possible with the Court's calendar, be continued to September 19,
3 2006. It is also requested that a four-day hearing be scheduled.
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6 DATED: April 26, 2006


MCBREEN & SENIOR

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9 By: 

10 DAVID A. SENIOR
11 Attorneys for Plaintiff
12 MICHAEL ANGELO MORALES

13 SENIOR ASSISTANT ATTORNEY GENERAL

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15 DATED: April 26, 2006

16 By: 

17 DANE R. GILLETTE
18 Attorneys for Defendants
19 JEANNE S. WOODFORD and
20 EDDIE S. YLST

21 IT IS SO ORDERED.

22 DATED: April 27, 2006

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24 By: 

25 JEREMY FOGEL
26 UNITED STATES DISTRICT JUDGE
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