

1 David A. Senior (# 108759)  
McBreen & Senior  
2 1880 Century Park East, Suite 1450  
Los Angeles, CA 90067  
3 Phone: (310) 552-5300  
Fax: (310) 552-1205  
4 dsenior@mcbreenseior.com

5 John R. Grele (# 167080)  
Law Offices of John R. Grele  
6 703 Market Street, Suite 550  
San Francisco, CA 94103  
7 Phone: (415) 348-9300  
Fax: (415) 348-0364  
8 jgrele@earthlink.net

9 Richard P. Steinken  
Jenner & Block LLP  
10 One IBM Plaza  
Chicago, IL 60611-7603  
11 Phone: (312) 923-2938  
Fax: (312) 840-7338  
12 rsteinke@jenner.com

13 Attorneys For Plaintiff MICHAEL ANGELO MORALES

14 **IN THE UNITED STATES DISTRICT COURT**  
15 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

MICHAEL ANGELO MORALES,	)	Case No.
	)	
Plaintiff,	)	<b>COMPLAINT FOR EQUITABLE AND</b>
	)	<b>INJUNCTIVE RELIEF</b>
	)	<b>[42 U.S.C. § 1983]</b>
	)	
v.	)	
	)	
RODERICK Q. HICKMAN, Secretary of the	)	<b>EXECUTION IMMINENT:</b>
California Department of Corrections; STEVEN	)	<b>EXPEDITED REVIEW REQUESTED</b>
ORNOSKI, Warden, San Quentin State Prison,	)	
San Quentin, CA; and DOES 1-50,	)	
	)	
Defendants.	)	

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1 **NATURE OF ACTION**

2 1. This action is brought pursuant to 42 U.S.C. § 1983 for violations and threatened violations of  
3 the right of plaintiff to be free from cruel and unusual punishment under the Eighth and Fourteenth  
4 Amendments of the United States Constitution. Plaintiff seeks temporary, preliminary, and  
5 permanent injunctive relief to prevent the defendants from executing plaintiff by means of lethal  
6 injection, as that method of execution is currently used in California. Plaintiff contends that lethal  
7 injection, as performed in California, unnecessarily risks infliction of pain and suffering. Plaintiff  
8 further contends that the use of pancuronium bromide, a paralytic agent that acts as a chemical veil  
9 over the lethal injection process, disguises the pain and suffering to which he will be subjected.  
10 Plaintiff additionally contends that defendants, as a result of their failure to use medically approved  
11 procedures and properly trained personnel, have inflicted pain and torture on several executed  
12 prisoners in the past, making plaintiff certain he will suffer the same fate unless defendants adopt a  
13 humane and safe execution protocol.

14 **JURISDICTION AND VENUE**

15 2. This Court has jurisdiction pursuant to 28 U.S.C. § 1331 (federal question), § 1343 (civil  
16 rights violations), § 2201 (declaratory relief), and § 2202 (further relief). This action arises under the  
17 Eighth and Fourteenth Amendments to the United States Constitution and under 42 U.S.C. § 1983.

18 3. Venue is proper pursuant to 28 U.S.C. § 1391(b) in that plaintiff is currently incarcerated at  
19 San Quentin State Prison (“San Quentin”) in San Quentin, California, located in this District. All  
20 executions conducted by the State of California (“State”) occur at San Quentin. The events giving  
21 rise to this complaint have occurred and will occur in this District.

22 **THE PARTIES**

23  
24 4. Plaintiff Michael Angelo Morales is a United States citizen and a resident of the State. He is  
25 currently a death-sentenced prisoner under the supervision of the California Department of  
26 Corrections. He is held at San Quentin State Prison, San Quentin, California, 94974.

27 5. Defendant Roderick Q. Hickman is the Secretary of the California Department of Corrections.  
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1 6. Defendant Steven Ornoski is the Warden of San Quentin State Prison, where the plaintiff is  
2 incarcerated and where the plaintiff's execution is scheduled to occur.

3 7. Plaintiff is ignorant of the true names of Does 1-50 but alleges that they have or will  
4 participate in plaintiff's execution by virtue of their roles in designing, implementing, and/or carrying  
5 out the lethal injection process. When plaintiff discovers the Doe Defendants' true identities, he will  
6 amend his complaint accordingly.

7 **GENERAL ALLEGATIONS**

8 8. On January 18, 2006, a public session was held in the Superior Court of Ventura County in  
9 the case of People v. Morales, No. CR 17960, at which hearing the court set February 21, 2006 as  
10 the date of execution of Mr. Morales' judgment of death.

11 9. Under California law, death sentences shall be carried out by "administration of a lethal gas  
12 or by an intravenous injection of a substance or substances in a lethal quantity sufficient to cause  
13 death, by standards established under the direction of the Department of Corrections." Cal. Penal  
14 Code § 3604(a). The statute prescribes no specific drugs, dosages, drug combinations, or the manner  
15 of intravenous line access to be used in the execution process; nor does the statute prescribe any  
16 certification, training, or licensure required of those who participate in the execution process. All of  
17 the details of the execution process are to be determined by the Department of Corrections.

18 10. The Department of Corrections has decided to execute plaintiff by poisoning him with a lethal  
19 combination of three chemical substances: sodium pentothal, a short-acting barbiturate; pancuronium  
20 bromide, which paralyzes all voluntary muscles; and potassium chloride, an extremely painful  
21 chemical which activates the nerve fibers lining the prisoner's veins and interferes with the heart's  
22 contractions, causing cardiac arrest.

23 11. In performing plaintiff's execution by lethal injection, the Department of Corrections will  
24 follow the protocol established in San Quentin Operational Procedure No. 770. The protocol by  
25 which lethal injection executions are performed under Procedure No. 770 violates constitutional and  
26 statutory provisions enacted to prevent cruelty, pain, and torture.

1 12. Procedure No. 770 was adopted without any medical research or review to determine that a  
2 prisoner would not suffer a painful death. No member of the medical community was involved in its  
3 adoption. The procedure was adopted by the former Warden of San Quentin, Daniel Vasquez, after  
4 observing two executions in Texas, without any input from or consultation with medical personnel.

5 13. The absence of standardized procedures for administration of the chemicals, the lack of  
6 qualifications of the personnel involved in the process, and the combination of the three particular  
7 chemicals used in Procedure No. 770 create a grave and substantial risk that plaintiff will be  
8 conscious throughout the execution process and, as a result, will experience an excruciatingly painful  
9 and protracted death.

10 14. Procedure No. 770 lacks medically necessary safeguards, thus increasing the risk that plaintiff  
11 will suffer unnecessary pain during the lethal injection process. There is no standardized time to  
12 administer each of the three chemicals. The protocol identifies no procedures for ensuring that the  
13 anesthetic agent is properly flowing into the prisoner, and it identifies no procedures for ensuring that  
14 the prisoner is properly sedated prior to the administration of the lethal chemicals as would be  
15 required in any medical or veterinary procedure before the administration of a neuromuscular  
16 blocking agent, such as pancuronium bromide, or the administration of a painful potassium chloride  
17 overdose.

18 15. The protocol established in Procedure No. 770 does not establish any minimum qualifications  
19 or expertise required of the personnel who perform all of the tasks in the lethal injection process.  
20 There are no guidelines upon which these personnel can rely if they are required to exercise their  
21 discretion during the process. The protocol has no plan in place if the plaintiff requires medical  
22 assistance during the execution.

23 16. Sodium pentothal, in an ordinary clinical dose, is a very short-acting barbiturate that is  
24 usually administered only during the preliminary phase of anesthesia administration. There is a  
25 reasonable likelihood that sodium pentothal, if ineffectively delivered (which is particularly likely  
26 given the inadequacy of the administration procedures under Procedure No. 770), will not provide a  
27 sedative effect for the duration of the execution process. Without adequate sedation, plaintiff will  
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1 experience excruciating pain as a result of the conscious asphyxiation caused by pancuronium  
2 bromide and the painful internal burn and cardiac arrest caused by a potassium chloride overdose.

3 17. Pancuronium bromide, the second chemical administered in the lethal injection process,  
4 paralyzes voluntary muscles, including the diaphragm, but it does not affect consciousness or the  
5 perception of pain. Pancuronium bromide, administered by itself as a “lethal dose,” would not result  
6 in a quick death; instead, it would ultimately cause someone to suffocate to death while still  
7 conscious. There is no indication in the Department of Correction’s lethal injection protocol,  
8 however, that pancuronium bromide is used to cause death. It therefore is completely unnecessary in  
9 the lethal injection process and only serves to mask any pain or suffering that the plaintiff may  
10 experience.

11 18. Pancuronium bromide could not lawfully be used alone as the fatal agent because causing  
12 death by suffocation violates the Eighth Amendment’s prohibition against cruel and unusual  
13 punishment.

14 **COUNT I**

15 **VIOLATION OF RIGHT TO BE FREE FROM CRUEL AND UNUSUAL**  
16 **PUNISHMENT PURSUANT TO THE EIGHTH AND FOURTEENTH**  
17 **AMENDMENTS TO THE UNITED STATES CONSTITUTION**

18 **(42 U.S.C. § 1983)**

19 19. Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1  
20 through 18.

21 20. Defendants Roderick Q. Hickman, Steven Ornoski, and Doe Defendants are acting under  
22 color of California law in causing to be administered to plaintiff chemicals that will cause  
23 unnecessary pain in the execution of a sentence of death, thereby depriving plaintiff of his rights  
24 under the Eighth and Fourteenth Amendments to be free from cruel and unusual punishment, in  
25 violation of 42 U.S.C. § 1983.

26 21. The California Department of Corrections Procedure No. 770, which specifies the State’s  
27 lethal injection protocol, violates plaintiff’s rights under the cruel and unusual punishment clause of  
28 the Eighth Amendment because (a) the protocol creates the unreasonable and unacceptable risk of

1 unnecessary physical and psychological pain; (b) the protocol does not comport with contemporary  
2 norms and standards of society; and (c) the protocol offends the dignity of the person and society.

3 22. The Department of Correction's lethal injection protocol requires utilization of three  
4 dangerous chemicals but does not ensure that the personnel entrusted with the lethal injection  
5 procedure possess the proper and necessary training, experience, or expertise to administer those  
6 drugs. Moreover, the protocol fails to specify any timing for the administration of the three separate  
7 chemicals, which is an essential requirement for their proper administration.

8 23. The use of pancuronium bromide as administered under the Department of Correction's lethal  
9 injection protocol increases the risk that the use of this chemical, in combination with the initial dose  
10 of sodium pentothal, will result in plaintiff being paralyzed but conscious and suffering death from  
11 the burning veins and heart failure caused by the administration of the potassium chloride.

12 Moreover, because the Department of Correction's protocol calls for the potassium chloride to be  
13 administered in a lethal dose, the use of pancuronium bromide serves no purpose in the execution  
14 process. Pancuronium bromide unnecessarily increases the risk that a conscious prisoner will be  
15 paralyzed during the injection of an extremely painful drug, yet be entirely unable to inform the  
16 attendants of his condition. Without the use of pancuronium bromide, a prisoner would be able to  
17 indicate that he was still conscious prior to the administration of potassium chloride. This is  
18 particularly crucial because the Department of Correction's protocol indicates that the prisoner will  
19 be alone in a room when he is executed, making it impossible to determine whether a prisoner is  
20 conscious once he is paralyzed by the pancuronium bromide.

21 24. The American Veterinary Medical Association (AVMA) states that a combination of a  
22 barbiturate and a neuromuscular blocking agent such as pancuronium bromide, a combination similar  
23 to that called for by Procedure No. 770, is not an acceptable euthanasia method for animals when  
24 used alone.

25 25. Sodium pentothal, which is an extremely fast-acting but not long-lasting barbiturate in an  
26 ordinary clinical dose, is used as the anesthetic agent in the Department of Correction's lethal  
27 injection procedure. In veterinary medicine, sodium phenobarbital, a somewhat slower-acting but  
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1 longer-lasting barbiturate, is used for animal euthanasia. The AVMA states that when potassium  
2 chloride is used for euthanasia, it is extremely important for the personnel who perform euthanasia to  
3 be trained and knowledgeable in anesthetic techniques and competent in assessing the anesthetic  
4 depth appropriate for potassium chloride administration, a depth at which animals are in a surgical  
5 plane of anesthesia characterized by loss of consciousness, loss of reflex muscle response, and loss of  
6 response to noxious stimuli. California law requires non-veterinary personnel who perform animal  
7 euthanasia to undergo strict training by a veterinarian and/or a registered veterinary technician who  
8 specializes in anesthesia. The Department of Correction's lethal injection protocol under Procedure  
9 No. 770 includes no comparable requirement; in fact, it does not require any training of the personnel  
10 who use the same drug in executing prisoners.

11 26. The Department of Correction's lethal injection procedure fails to address the individual  
12 prisoner's medical condition and history. Several regularly prescribed drugs at San Quentin interfere  
13 with the ability of sodium pentothal to act properly as an anesthetic. Moreover, the lethal injection  
14 protocol allows for prisoners to take Valium shortly before the execution, a drug which can also  
15 interfere with the sodium pentothal's effectiveness.

16 27. Procedure No. 770 contains no description of the training, credentials, certifications,  
17 experience, or proficiency required of any personnel involved in the administration of the lethal  
18 injection procedure, notwithstanding the fact that it is a complex medical procedure requiring a great  
19 deal of expertise in order to be performed correctly. For example, Procedure No. 770 does not  
20 require at the execution the presence of any personnel who possess sufficient expertise to insert an  
21 intravenous line properly, determine if there is a blockage in the intravenous line, or evaluate whether  
22 a prisoner is properly sedated before proceeding with the painful parts of the execution process.

23 28. The absence of such trained personnel greatly increases the risk that a prisoner would not  
24 receive the necessary amount of anesthetic prior to being paralyzed by the pancuronium bromide and  
25 then experience the painful internal burn of the potassium chloride. Toxicology reports from  
26 prisoners executed by other states suggest that some prisoners likely remained conscious during the  
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1 administration of lethal drugs, which could have occurred because of improper insertion of the  
2 intravenous line, an unrecognized blockage in the line, or various other reasons.

3 29. Inducing unconsciousness by correctly administering sodium thiopental is indispensable to  
4 preventing the wanton infliction of pain when the potassium chloride overdose is administered.  
5 Procedure No. 770, however, does not require the preparation of backup syringes of sodium  
6 thiopental.

7 30. The Department of Correction's lethal injection protocol fails to address any reasonably  
8 foreseeable complications with any appropriate medical response. Moreover, the protocol includes  
9 no safeguards that would protect the prisoner in the event a stay of execution is entered after the  
10 lethal injection process has begun. Thus, the protocol fails to provide any protections to prevent a  
11 prisoner from being wrongly executed should a reprieve be granted after the process has begun but  
12 before death has occurred.

13 31. At any time before the potassium chloride is administered, the prisoner could be readily  
14 resuscitated if trained personnel and routine resuscitation medication and equipment were present at  
15 the execution site. Even after the potassium chloride is administered, resuscitation would still be  
16 possible, although admittedly it would be more challenging. Any resuscitation, however, would  
17 require the close proximity of the necessary equipment, medication, and properly trained personnel.  
18 The omission of such personnel and equipment under the protocol set forth in Procedure No. 770  
19 further undermines the constitutionality of the procedure.

20 32. Although it is possible to conduct executions in a constitutionally compliant manner, the  
21 Department of Corrections has chosen not to do so. The Department of Corrections could choose to  
22 use different chemicals that pose a low risk of administration error yet do not cause extraordinarily  
23 grave consequences to a condemned inmate if not properly administered; instead, it has knowingly or  
24 recklessly chosen to use chemicals that pose a high risk of administration error. Moreover, it has not  
25 taken precautions to ensure that the personnel who administer the lethal injection chemicals possess  
26 the training, experience, and expertise needed to administer those chemicals properly. Thus, while it  
27 is possible for the Department of Corrections to choose different lethal injection chemicals and/or  
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1 retain qualified personnel to administer its chosen chemicals in order to ensure the constitutionality  
2 of its lethal injection procedure, the Department of Corrections has not done so.

3 **COMPLAINT FOR EQUITABLE AND INJUNCTIVE RELIEF**

4 33. The use of pancuronium bromide under the protocol established in Procedure No. 770 to  
5 paralyze plaintiff greatly increases the risk that a conscious prisoner will be subjected to a painful and  
6 protracted death. Moreover, it serves no legitimate penological purpose.

7 34. Pancuronium bromide does not play a legitimate role in killing the condemned person. The  
8 execution protocol provides that potassium chloride kills the condemned. The administration of  
9 pancuronium bromide cannot be justified on the grounds that the drug paralyzes the breathing  
10 muscles because death by asphyxiation is itself a form of cruel and unusual punishment under the  
11 Eighth Amendment.

12 35. If pancuronium bromide is administered, paralyzing plaintiff during the execution procedure,  
13 he will have no alternative “reasonable and effective means of communication” to communicate that  
14 he was not properly anaesthetized because he will be dead at the conclusion of the procedure.

15 36. Enjoining the administration of pancuronium bromide will have no appreciable impact on  
16 California correctional institution procedures. If anything, it will simplify the execution process by  
17 eliminating one step in the process.

18 37. The question of whether there exist readily available alternatives to pancuronium bromide is  
19 not an issue in this case because paralyzing a condemned inmate in the execution process is not a  
20 legitimate penological goal.

21 38. The Ninth Circuit and this Court have previously held that Defendants and their predecessors,  
22 in order to forestall discussion and criticism of California’s lethal injection procedure, have  
23 implemented restrictions on the execution process in order to prevent witnesses from being aware of  
24 complications experienced during the procedure.

25 39. The Department of Correction’s failure to require sufficient training, credentials, certification,  
26 experience, or proficiency of the personnel involved in the administration of the lethal injection  
27 procedure greatly increases the risk that a conscious prisoner will experience excruciating pain as a  
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1 result of the conscious suffocation caused by the pancuronium bromide and the painful internal burn  
2 and cardiac arrest caused by a potassium chloride overdose. Moreover, it serves no legitimate  
3 penological purpose.

4 40. Allowing personnel who lack sufficient training, credentials, certification, experience, or  
5 proficiency to conduct the lethal injection procedure does not play a legitimate role in killing the  
6 condemned person. Conscious suffocation, as caused by the administration of pancuronium bromide,  
7 violates the Eighth Amendment because death by asphyxiation is itself a form of cruel and unusual  
8 punishment. Similarly, conscious internal burning and cardiac arrest, as caused by a potassium  
9 chloride overdose, constitute unnecessary physical and psychological pain in violation of the Eighth  
10 Amendment.

11 41. If plaintiff remains conscious during the administration of the pancuronium bromide and  
12 potassium chloride, he will have no alternative “reasonable and effective means of communication”  
13 to communicate the fact that he was not properly anaesthetized because the pancuronium bromide  
14 will paralyze him and he will be dead at the conclusion of the procedure.

15 42. Enjoining the administration of the lethal injection procedure by personnel who lack  
16 sufficient training, credentials, certification, experience, or proficiency will have no appreciable  
17 impact on the correctional institution.

18 43. The question of whether there exist readily available alternatives to requiring personnel who  
19 possess sufficient training, credentials, certification, experience, or proficiency to conduct the lethal  
20 injection procedure is not an issue in this case because causing a prisoner who has not been properly  
21 anaesthetized as a result of administration error to experience excruciating pain from the conscious  
22 suffocation caused by pancuronium bromide and the painful internal burn and cardiac arrest caused  
23 by a potassium chloride overdose is not a legitimate penological goal.

#### 24 **EXHAUSTION ALLEGATIONS**

25 44. On January 9, 2006, plaintiff filed an inmate appeal on CDC Form 602 alleging that his  
26 execution under the lethal injection protocol of the California Department of Corrections would  
27 constitute cruel and unusual punishment. A copy of the Form 602 is attached hereto as Exhibit A.

1 Plaintiff asked that his appeal be processed as an emergency appeal pursuant to 15 Cal. Code Regs.  
2 § 3084.7 on the ground that the State of California shortly intended to seek his execution date.

3 45. On or about January 27, 2006, the Director's Level Appeal Decision was issued, which stated  
4 that "no further relief shall be afforded the appellant at the Director's Level of Review." The  
5 decision stated that "This decision exhausts the administrative remedy available to the appellant  
6 within CDCR." A copy of the Director's Level Appeal Decision is attached hereto as Exhibit B.

7 46. Plaintiff's challenge to the lethal injection protocol that the Department of Corrections intends  
8 to use to execute him is ripe for adjudication now.

9 **PRAYER FOR RELIEF**

10 WHEREFORE, Michael Angelo Morales prays for:

11 1. Temporary, preliminary, and permanent injunctive relief to enjoin the defendants,  
12 their officers, agents, servants, employees, and all persons acting in concert with them from  
13 executing plaintiff by lethal injection using Procedure No. 770;

14 2. In the event that Procedure No. 770 is not enjoined in its entirety as violating the  
15 Eighth and Fourteenth Amendments, temporary, preliminary, and permanent injunctive relief to  
16 enjoin defendants, their officers, agents, servants, employees, and all persons acting in concert with  
17 them from administering pancuronium bromide during the execution process;

18 3. In the event that Procedure No. 770 is not enjoined in its entirety as violating the  
19 Eighth and Fourteenth Amendments, temporary, preliminary, and permanent injunctive relief to  
20 enjoin defendants, their officers, agents, servants, employees, and all persons acting in concert with  
21 them from allowing personnel who lack sufficient training, credentials, certification, experience, or  
22 proficiency to conduct the lethal injection procedure;

23 4. Reasonable attorneys' fees pursuant to 42 U.S.C. § 1983 and the laws of the United  
24 States;

25 5. Costs of suit; and

26 6. Any such other relief as the Court deems just and proper.  
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MICHAEL ANGELO MORALES

By:  
John R Grele

Dated: February 10, 2006

David A. Senior (# 108759)  
McBreen & Senior  
1880 Century Park East, Suite 1450  
Los Angeles, CA 90067  
Phone: (310) 552-5300  
Fax: (310) 552-1205  
dsenior@mcbreenseior.com

John R. Grele (# 167080)  
Law Offices of John R. Grele  
703 Market Street, Suite 550  
San Francisco, CA 94103  
Phone: (415) 348-9300  
Fax: (415) 348-0364  
jgrele@earthlink.net

Richard P. Steinken  
Benjamin J. Bradford  
Janice H. Lam  
Stephanie L. Reinhart  
Jenner & Block LLP  
One IBM Plaza  
Chicago, IL 60611-7603  
Phone: (312) 923-2938  
Fax: (312) 840-7338  
rsteinken@jenner.com

Ginger D. Anders  
Jenner & Block LLP  
601 Thirteenth Street, NW  
Suite 1200 South  
Washington DC 20005-3823  
Phone: (202) 639-6000  
Fax: (202) 639-6066  
ganders@jenner.com