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11 CLARENCE RAY ALLEN

12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA
14 SAN FRANCISCO DIVISION
15

16 CLARENCE RAY ALLEN,
17 Plaintiff,

18 v.

19 RODERICK HICKMAN, SECRETARY,
CALIFORNIA DEPARTMENT OF
20 CORRECTIONS AND REHABILITATION,
STEVEN ORNOSKI, WARDEN, CALIFORNIA
21 STATE PRISON AT SAN QUENTIN, ARNOLD
SCHWARZENEGGER, GOVERNOR OF
22 CALIFORNIA, AND DOES 1 THROUGH 25,
23 INCLUSIVE,

24 Defendants.

Case No. C 05-5051 JSW

**FIRST AMENDED COMPLAINT
FOR VIOLATION OF CIVIL
RIGHTS; 42 U.S.C. SECTION 1983**

1 INTRODUCTION

2 1. Clarence Ray Allen is a 75-year-old Native American inmate with diabetes and
3 coronary artery disease on Death Row at San Quentin State Prison. He is the oldest person on
4 Death Row in California. Even though Mr. Allen suffers from coronary heart disease, is severely
5 diabetic, and is legally blind, the Glenn County Superior Court set a January 17, 2006, execution
6 date for Mr. Allen. If the execution is carried out, Mr. Allen will be the oldest and sickest person
7 executed in the United States since the death penalty was reinstated in 1977. The Defendants are
8 the Warden of San Quentin Prison, the Governor of California, the Secretary of the California
9 Department of Corrections and Rehabilitation, who have been and continue to be responsible for
10 the conditions of Mr. Allen's confinement, including his medical treatment.

11 2. Defendants repeatedly have manifested gross indifference to Mr. Allen's medical
12 needs. Among other things, they have cut off prescribed medications, delayed delivering
13 necessary medications despite adverse ill effects suffered by Mr. Allen, failed to provide
14 recommended and necessary medical procedures, and neglected Mr. Allen's vision and dietary
15 needs. Most recently, after Mr. Allen suffered a heart attack, Defendants failed to provide
16 Mr. Allen bypass surgery that was recommended by Defendants' own doctors — as well as other
17 medical procedures. Knowing that Mr. Allen is facing an imminent execution date, after
18 Mr. Allen's heart attack, Defendants simply patched up Mr. Allen enough to execute him and have
19 denied him the medical care to which he is entitled.

20 3. Defendants' conduct, including their deliberate indifference to Mr. Allen's serious
21 medical needs, also has materially impeded Mr. Allen's ability to timely prepare an adequate
22 petition for clemency to the Governor, as is Mr. Allen's right to do. On November 17, 2005, the
23 Governor directed that Mr. Allen submit any petition in support of his request for executive
24 clemency by December 13, 2005. Therefore time is of the essence. There is evidence that
25 Mr. Allen suffers from organic brain damage, a mitigating factor that may support a grant of
26 clemency. However, because of the Defendants' conduct, Mr. Allen's defense team has been
27 prevented from adequately preparing his clemency petition.

1 4. Defendants have violated 42 U.S.C. Section 1983 by denying Mr. Allen under the
2 color of law his Fifth, Sixth, Eighth, and Fourteenth Amendment rights guaranteed by the U.S.
3 Constitution. By this Complaint, Mr. Allen seeks, among other things, a stay of execution until
4 adequate medical procedures are provided and adequate testing can be completed. These are
5 necessary both for the investigation and presentation of neurological and neuropsychological
6 issues supporting Mr. Allen's case for executive clemency and for Mr. Allen's medical care.
7 Because Defendants' conduct has materially impeded Mr. Allen's ability to timely prepare an
8 adequate clemency petition, Mr. Allen requests that this Court grant him sufficient time to do so.

9 **JURISDICTION AND VENUE**

10 5. This Court has jurisdiction of the subject matter of this action under 42 U.S.C.
11 Section 1983. Venue is proper in the Northern District of California, under 28 U.S.C.
12 Section 1391(b), in that all Defendants reside in this State and one Defendant resides in this
13 district, or a substantial part of the events or omissions giving rise to plaintiff's claims occurred in
14 this district.

15 **THE PARTIES**

16 6. The plaintiff in this case is Clarence Ray Allen, an adult citizen of California and a
17 condemned inmate at San Quentin State Prison. In 1982, Mr. Allen was convicted of murder and
18 sentenced to death.

19 7. The Defendants are Roderick Hickman, Secretary, California Department of
20 Corrections and Rehabilitation; Steven Ornoski, Warden, California State Prison at San Quentin;
21 and Arnold Schwarzenegger, Governor of California.

22 8. Defendants are legally responsible, in whole or in part, for the operation of and
23 conditions at San Quentin State Prison and/or other prison facilities in California.

24 9. Plaintiff does not know the true names and capacities of defendants Does 1 through
25 25, inclusive, and therefore sues them by such fictitious names. Plaintiff is informed and believes
26 and thereon alleges that each fictitiously named defendant is responsible for the occurrences
27 herein alleged. When Plaintiff ascertains the true names and capacities of Does 1 through 25,
28 Plaintiff will amend this complaint accordingly.

1 reports include numerous detailed examples of medical neglect and
2 malfeasance. As just one example, the experts found a stack of
3 hundreds of health services request forms on a nurse's desk waiting
4 to be logged, triaged, or prioritized; many of these were for
5 medication refill. The triage nurse position had been vacant for over
6 a month, during which time the forms simply accumulated. The
7 contract nurse assigned to the area commented, "Some of these
8 guys are either dead or better, one of the two." Nursing Experts'
9 Report on San Quentin, April 9, 2005, at 4.

6 *Plata* at *10-11.

8 14. As detailed below, Defendants' mistreatment of Mr. Allen and their neglect of his
9 medical needs are consistent with the findings of this Court regarding the shocking conditions
10 surrounding medical care at San Quentin. Mr. Allen's situation is unique, however, because in
11 this case, Defendants' failure to provide proper medical care has profoundly impeded Mr. Allen's
12 ability to seek clemency.

13 **A. Defendants Have Inappropriately Terminated Mr. Allen's Medication**
14 **on Numerous Occasions**

15 15. On a number of occasions during the course of Mr. Allen's incarceration,
16 Defendants have inexplicably cut off his medication. For example, in early 1993, Mr. Allen was
17 given 400 International Units of Vitamin E per day and was advised to take it without fail, but
18 around September 1993, the prison medical staff failed to renew Mr. Allen's prescription and told
19 him that that Vitamin E does not help heart attack problems.

20 16. In and around February 1997, Mr. Allen's diabetic medication was abruptly cut in
21 half from about 56 to 28 tablets every two weeks, without any explanation or medical
22 examination. Mr. Allen's repeated requests to discuss his condition and medication were ignored.

23 17. This pattern continued through 2005. On or about June 16, 2005, Defendants cut
24 off critical medication. Mr. Allen's Outpatient Medication Administration Record shows that the
25 following critical medications were not renewed after the prescriptions for them expired on June
26 16: Furosemide 20 mg; Enteric Aspirin 325 mg; Atenolol 50 mg; Lovastatin 20 mg; Nifedipine
27 XL 30 mg; Metformin 500mg; and Multivitamin Plain. These medications were intended to treat
28 his heart condition, high blood pressure, diabetes and kidney damage. Mr. Allen complained and

1 demanded his medication, but the Defendants ignored him. It was not until about August 4, 2005,
2 that his medication was restored. The August 4, 2005 Outpatient Medication Administration
3 Records show that delivery of the following medications had been interrupted since June 15:
4 Nifedipine XL 30 mg; Enteric Aspirin 325 mg; Metformin 500 mg; Lovastatin 20 mg; Enalapril
5 5mg; Atenolol 50 mg. The damage done to Mr. Allen during this two-month period when his
6 medication was denied may have been critical, for Mr. Allen soon suffered a heart attack.

7 **B. After Mr. Allen Suffered a Heart Attack in September 2005,**
8 **Defendants Failed to Provide Recommended Surgery, Shuffled**
9 **Mr. Allen from Facility to Facility, Impeded Mr. Allen's Access to**
10 **Counsel, and Denied Mr. Allen an Adequate Opportunity to Prepare**
11 **His Clemency Petition**

12 18. On September 1, 2005, Mr. Allen began experiencing recurring chest pains. He
13 ingested several nitroglycerin pills in an attempt to control his symptoms. On September 2, 2005,
14 Mr. Allen suffered a heart attack. In response, Defendants failed to provide the medical
15 procedures necessary to properly treat his heart condition.

16 19. After his heart attack, Mr. Allen was taken first to the hospital in San Quentin and
17 then to Marin General Hospital. While undergoing cardiac catheterization at Marin General,
18 Mr. Allen developed cardiac arrest and his heart stopped beating three times. Doctors were able
19 to resuscitate him and performed angioplasty. Doctors inserted an intra-aortic balloon and stented
20 his left main coronary artery with a drug-eluting stent. Mr. Allen responded to these measures
21 and he was extubated and the balloon pump was removed twenty-four hours later. Mr. Allen
22 successfully underwent cardiac catheterization while at Marin General.

23 20. After Mr. Allen regained consciousness, on or about September 9, 2005, his treating
24 physician at Marin General informed him that he would need open heart surgery and Mr. Allen
25 agreed to undergo the procedure. Mr. Allen's doctor at Marin General, Dr. Henry L. Zhu, wrote,
26 "I think the patient will benefit greatly from coronary bypass grafting surgery. I explained this to
27 the patient with regard to our recommendation and the patient is agreeable to undergo coronary
28 bypass grafting surgery." *But Defendants never performed this coronary bypass surgery.*

29 21. Mr. Allen's Marin General Hospital Discharge Summary, dated two days later,
30 states, "Given the severity of LAD and right coronary artery disease, it was felt that definitive

1 revascularization with coronary artery bypass graft surgery was indicated, given his diabetic
2 status. It was felt by the medical staff at San Quentin that the patient should be transferred to
3 Queen of the Valley Hospital to continue antibiotic therapy and consider coronary artery bypass
4 graft surgery.”

5 22. Mr. Allen remained at Marin General Hospital for approximately two weeks.
6 However, Mr. Allen did not undergo the recommended surgery. Instead, Mr. Allen was
7 transferred to Queen of the Valley Hospital in Sonoma County on September 18 for, among other
8 things, revascularization.

9 23. Thereafter Mr. Allen was seen on September 19 by Dr. Klingman. Dr. Klingman
10 recommended that Mr. Allen undergo another cardiac catheterization to determine whether
11 coronary artery bypass grafting would be appropriate. Upon discharge, Dr. Klingman
12 recommended that if Mr. Allen consented to the surgery, he should be referred “urgently to
13 Queen of the Valley Hospital.”

14 24. However, Mr. Allen was not given the proper advice to determine whether surgery
15 was appropriate, and he was not permitted to confer with counsel before making a decision
16 regarding surgery. Despite the clear need for bypass surgery evident in Mr. Allen’s medical
17 records, the need was never fully explained to Mr. Allen. After more than two weeks had passed
18 since the date of his heart attack, Mr. Allen became hopeless about the prospects of ever
19 obtaining bypass surgery. Exhausted by his heart attack, lacking clear guidance from any family
20 member as a result of having been prevented from having any family visits, and without any
21 opportunity to discuss his options with his legal counsel, Mr. Allen signed a “Refusal of
22 Examination and/or Treatment” form. He was then returned to San Quentin.

23 25. Immediately thereafter, on September 20, 2005, Mr. Allen informed San Quentin
24 medical staff that the need for surgery had not been explained to him. When he learned more
25 information, he wanted surgery. Mr. Allen’s September 20 Mental Health Interdisciplinary
26 Progress Notes state: “Competency - . . . 75 year old, Caucasian Condemned man who has been
27 refusing life-saving medical procedures & no longer can be medically managed at S.Q. - CSP.
28 Dr. Aydar has discussed DNR procedures & consent with him. Patient now agrees to have the

1 surgery and explained that he was not properly explained about need for surgery previously. He
2 now says that he consents ... Assessment: Appears Competent for med consent - plan; proceed
3 with surgery consent.”

4 26. On September 21, 2005, Mr. Allen was transferred to Corcoran State Prison.
5 According to Mr. Allen’s medical records, due to the severity of his medical condition, it was
6 determined that he could no longer be medically managed at San Quentin. Despite the fact that
7 instructions from Queen of the Valley and San Quentin’s own medical staff advised that he should
8 undergo open-heart surgery as soon as he consented, which he had done as of September 20,
9 2005, and should be referred “urgently” to Queen of the Valley, Mr. Allen was instead transferred
10 to Corcoran.

11 27. While housed at Corcoran State Prison for about eight days, medical staff monitored
12 Mr. Allen’s vital signs and took blood samples to monitor his diabetes, but never discussed with
13 him the need for bypass surgery or any other procedures to address his heart condition.

14 28. On September 28, 2005, Mr. Allen was transferred back to Queen of the Valley
15 Hospital — his fourth transfer in less than a month following his heart attack. At Queen of the
16 Valley on this occasion, Mr. Allen was seen by Dr. Andrew Wong, not Dr. Klingman. Mr. Allen
17 said he now wished to go through with the bypass surgery. Dr. Wong indicated that as an initial
18 step, repeat angiographic imaging would be necessary.

19 29. After undergoing the angiographic imaging, Mr. Allen was left to wait for the
20 results. However, at no time did his doctor or any other doctor return to discuss the results with
21 him. Instead, a guard came to his room the next day asking if he was ready to return “home” to
22 San Quentin.

23 30. Mr. Allen’s medical records reflect that Dr. Klingman decided that Mr. Allen was
24 “not an appropriate surgical candidate” and that his condition could be treated “medically.” This
25 information was not communicated to Mr. Allen before he was returned to San Quentin on
26 September 30, 2005. To date, the bypass surgery that was originally recommended and that
27 Mr. Allen consented to has not been done.
28

1 31. On October 17, 2005, Mr. Allen was independently examined by Dr. Peter Pompei,
2 a physician with Stanford University. Dr. Pompei concluded that Mr. Allen is at serious risk of
3 suffering another heart attack. Dr. Pompei confirms that Mr. Allen may need further medical
4 treatment for his coronary artery disease. He recommended that, at a minimum, Mr. Allen should
5 have further discussions with his primary care physician to determine whether he should undergo
6 a stress test to assess whether a revascularization procedure is necessary to treat his artery disease
7 adequately at this time.

8 32. Mr. Allen has requested a stress test, but the Defendants have refused to provide
9 one. Defendants, knowing that Mr. Allen has an impending execution date, have refused to treat
10 his heart condition.

11 **C. Defendants Neglected and Abused Mr. Allen Upon His Return to**
12 **San Quentin And Summarily Cut Off His Insulin**

13 33. Upon his return to San Quentin, Mr. Allen was returned to San Quentin's Outpatient
14 Hospital Unit (OHU). Notably this is the same unit which this Court, after touring the facility,
15 found to be in "deplorable condition." *Plata* at *9. Mr. Allen reported to the doctor in charge that,
16 during his last stay, he lacked adequate cover and was so extremely cold that he was unable to
17 sleep or relax. The doctor ignored Mr. Allen's request, and he was returned to the second floor of
18 the hospital to suffer from the extreme cold.

19 34. In the hospital cells, the slot for the food tray is two to three feet from the ground.
20 Defendants forced Mr. Allen to get down on his hands and knees and shove his arm into the tray
21 slot for his twice-daily insulin shot. This was very difficult and painful for Mr. Allen because he
22 is generally confined to a wheelchair as the result of his diabetes.

23 35. On October 4, 2005, Mr. Allen was released from the San Quentin hospital and
24 returned to his cell.

25 36. Defendants then summarily cut off Mr. Allen's insulin. As a diabetic, Mr. Allen has
26 been required to take a twice daily dose of insulin for approximately twenty years, but on or about
27 October 4, 2005, his insulin was abruptly and inexplicably discontinued. His blood sugar
28 gradually rose from the normal level (with insulin) of 98-100 up to 307. It was not until October

1 18, 2005 — two weeks later — that Defendants once again allowed Mr. Allen to receive insulin.
2 Defendants' failure to give Mr. Allen insulin imposed a significant additional health risk to
3 Mr. Allen, particularly in light of his recent heart attack and his exhaustion from multiple transfers
4 to different facilities.

5 37. On October 6, 2005, Mr. Allen had a legal visit in one of the prison's visiting rooms.
6 Upon completion of the visit, Mr. Allen was taken through the visiting room exit door and then
7 chained to a toilet in a small bathroom. He was left chained to the toilet for approximately three
8 hours before a guard finally came to escort him back to his cell. By the time he was unchained,
9 his hands were painfully swollen.

10 **D. Defendants' Conduct Has Significantly Impeded Mr. Allen's Ability to**
11 **Prepare His Clemency Petition**

12 38. The Defendants' repeated shuffling of Mr. Allen from facility to facility, their
13 continued denial of adequate medical care, and their abusive treatment of Mr. Allen have severely
14 impeded Mr. Allen's ability to be examined by his legal team's medical experts in order to prepare
15 Mr. Allen's clemency petition, and have severely impeded Mr. Allen's ability to assist his legal
16 team in their work.

17 39. Counsel for Mr. Allen retained Dr. Dale Watson, a forensic psychologist with a
18 specialty in neuropsychology, to assess Mr. Allen's brain functioning to help prepare Mr. Allen's
19 clemency petition. Dr. Watson was scheduled to see Mr. Allen on September 20, but the
20 appointment was canceled because up until that time Mr. Allen had been at an outside hospital.
21 The next day, September 21, Dr. Watson did see Mr. Allen, but Mr. Allen was so fatigued that out
22 of concern for the fragility of Mr. Allen's health, Dr. Watson had to abbreviate the session.
23 Without any explanation, Mr. Allen was shackled during that session, which further impeded Dr.
24 Watson's ability to test Mr. Allen. On September 22, when Dr. Watson was scheduled to see
25 Mr. Allen again for further examination, Dr. Watson was advised at the gate that Mr. Allen had
26 been transferred by prison authorities to the California State Prison at Corcoran. The multiple
27 shifting of Mr. Allen has materially delayed Dr. Watson's efforts to assess Mr. Allen.

28

1 40. Also while at Corcoran, Mr. Allen's counsel, Michael Sattris, attempted to contact
2 Mr. Allen to prepare Mr. Allen's clemency petition, but the prison facility never advised Mr. Allen
3 that Mr. Sattris was attempting to contact him. Mr. Sattris was therefore unable to communicate
4 with his client. During this critical stage, Mr. Allen was denied access to counsel.

5 41. The Defendants' conduct amounts to a denial of adequate medical care. Further, the
6 cumulative effects of Defendants' indifference to Mr. Allen's medical needs has exhausted
7 Mr. Allen and prevented him from conferring with and assisting his legal team in their
8 preparation of his petition for clemency.

9 **E. Defendants Failed to Provide Recommended Eye Surgery and Other**
10 **Medical Procedures Necessary for Mr. Allen to Prepare His Clemency**
11 **Petition**

12 42. Defendants have also failed to care properly for Mr. Allen's eyes and to provide him
13 with recommended medical procedures that are necessary for Mr. Allen to prepare his clemency
14 petition.

15 43. Mr. Allen is legally and virtually blind.

16 44. In June 2005, Dr. Jahangir Sadeghi, an ophthalmologist, examined Mr. Allen,
17 concluded that Mr. Allen suffers from diabetic retinopathy, and recommended that Mr. Allen have
18 laser surgery to correct his vision problem. On July 18, 2005, Dr. Sadeghi submitted a request
19 that Defendants schedule the recommended laser surgery. *To date, however, this surgery has not*

20 45. Having eye surgery is necessary to Mr. Allen's preparation of his clemency petition.
21 Mr. Allen's medical history reveals that he likely suffered organic brain damage from a number of
22 assaults to his brain. For example, Mr. Allen may have had *in utero* exposure to toxins and in
23 1946 he contracted severe pediatric encephalitis. Much of this evidence has never been presented
24 in any court proceeding. Evidence of brain damage serves as a mitigating factor that will inform
25 Mr. Allen's clemency petition. Evaluating the functioning of Mr. Allen's brain is, thus, a central
26 issue in Mr. Allen's clemency petition, but without improving Mr. Allen's eyesight, Mr. Allen's
27 defense team cannot complete its evaluation of his brain function.

1 46. One of Mr. Allen's experts, Dr. Watson, has been asked to perform a battery of
2 neuropsychological tests to assess Mr. Allen's brain functioning in order to help prepare
3 Mr. Allen's clemency petition, but Dr. Watson has been unable to complete his testing because
4 Defendants have failed to provide the eye surgery necessary to improve Mr. Allen's vision.
5 Because of Mr. Allen's lack of vision, Dr. Watson has only been able to administer tests, or parts
6 of tests, that do not require more than minimal visual input. He has been unable to administer any
7 neuropsychological tests, or parts of any such tests, that require improved vision, a range of
8 which are typically administered as part of the battery of neuropsychological tests. Accordingly,
9 Dr. Watson's testing of Mr. Allen is incomplete in essential respects.

10 47. Although Dr. Watson has not completed his analysis, the tests that he has been able
11 to administer thus far already show signs of neuropsychological deterioration. Dr. Watson has
12 reason to believe that completing the battery of tests after Mr. Allen's vision has been improved
13 will provide a more complete picture of his brain functioning and may provide further evidence of
14 cognitive deterioration. However, Dr. Watson cannot complete the tests until Defendants provide
15 Mr. Allen the eye surgery necessary to improve his vision.

16 48. To further investigate whether Mr. Allen has suffered brain damage, Dr. Watson
17 recommends that Mr. Allen undergo an MRI and SPECT (or PET) procedures. These procedures
18 would aid in the investigation into whether Mr. Allen suffers from brain damage. These
19 procedures would provide a structural and functional picture of Mr. Allen's brain and its activity,
20 respectively, and the results would be useful in informing Dr. Watson's analysis of the functioning
21 of Mr. Allen's brain.

22 49. Mr. Allen's counsel has requested that Defendants permit Mr. Allen to obtain a
23 SPECT test and MRI procedure, but Defendants have failed to do so.

24 50. Defendants' conduct has also delayed the work of other experts who would rely on
25 the results of Dr. Watson's examination to perform their own specialized assessments of
26 Mr. Allen.

FIRST CAUSE OF ACTION

*Against All Defendants in Their Individual and Official Capacities
Violation of the Eighth Amendment (as incorporated by the Fourteenth Amendment) of the
United States Constitution, Actionable Pursuant to 42 U.S.C. § 1983
(Cruel and Unusual Punishment)*

51. Plaintiff realleges and incorporates by reference as though fully contained herein, the allegations set forth in Paragraphs 1 through 50, above.

52. The acts or omissions complained of herein were taken with deliberate indifference to Mr. Allen's serious medical needs. On information or belief, prison officials intentionally denied, delayed or interfered with Mr. Allen's medical treatment.

53. Mr. Allen's heart condition, diabetes, and blindness qualify as serious medical needs because the failure to treat these conditions can result in further significant injury and the unnecessary and wanton infliction of pain.

54. Mr. Allen's medical conditions posed a substantial risk of serious harm, which risk and harm defendants were aware of and disregarded. The chosen course of treatment was medically unacceptable under the circumstances; thus, defendants acted with deliberate indifference to the serious risks posed by Mr. Allen's medical conditions.

55. Each of the Defendants acted under color of state law as to the matters set forth herein. All of the acts or omissions complained of herein are the result of specific decisions, official policies or customs of Defendants. Each of the Defendants knows of and is responsible for the acts or omissions set forth herein.

56. Defendants have a duty to provide adequate medical care to Mr. Allen and other state prisoners.

57. Defendants' acts and omissions complained of herein amount to deliberate indifference to Plaintiff's serious medical needs and therefore constitute cruel and unusual punishment in violation of the Eighth Amendment of the United States Constitution as incorporated by the Fourteenth Amendment.

58. Defendants' acts and omissions complained of herein have caused Plaintiff to suffer economic and non-economic damages in an amount to be determined at trial.

1 59. Plaintiff also seeks a judgment declaring that the acts and omissions complained of
2 herein are prohibited by the Eighth Amendment of the United States constitution and 42 U.S.C.
3 § 1983 and seeks the injunctive relief set forth in the prayer for relief.

4 **SECOND CAUSE OF ACTION**

5 *Against All Defendants in Their Individual and Official Capacities*
6 *Violation of Due Process in the Fourteenth Amendment of the United States Constitution,*
7 *Actionable Pursuant to 42 U.S.C. § 1983 (Due Process)*

8 60. Plaintiff realleges and incorporates by reference as though fully contained herein,
9 the allegations set forth in Paragraphs 1 through 50, above.

10 61. Each of the Defendants acted under color of state law as to the matters set forth
11 herein. All of the acts or omissions complained of herein are the result of specific decisions,
12 official policies or customs of Defendants. Each of the Defendants knows of and is responsible
13 for the acts or omissions set forth herein.

14 62. Defendant Governor Schwarzenegger has required Mr. Allen's petition for
15 executive clemency to be submitted no later than thirty-five calendar days before the scheduled
16 execution date, which is currently set for January 17, 2006. Requiring Mr. Allen to proceed with
17 the clemency petition process under the conditions set forth in this complaint violates Mr. Allen's
18 Due Process rights.

19 63. Defendants' acts and omissions complained of herein amount to a denial of Due
20 Process by preventing Mr. Allen from adequately preparing his petition for executive clemency.

21 64. Defendants' acts and omissions complained of herein have caused Plaintiff to suffer
22 economic and non-economic damages in an amount to be determined at trial.

23 65. Plaintiff seeks a temporary and permanent injunction staying his execution, staying
24 all clemency procedures tied to the currently scheduled execution date and staying procedures
25 connected with the execution until Plaintiff has had an adequate opportunity to prepare and
26 present his petition for executive clemency.
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THIRD CAUSE OF ACTION

*Against All Defendants in Their Individual and Official Capacities
Violation of the Sixth Amendment (as incorporated by the Fourteenth Amendment) of the
United States Constitution, Actionable Pursuant to 42 U.S.C. § 1983
(Right to Counsel)*

66. Plaintiff realleges and incorporates by reference as though fully contained herein, the allegations set forth in Paragraphs 1 through 50, above.

67. Each of the Defendants acted under color of state law as to the matters set forth herein. All of the acts or omissions complained of herein are the result of specific decisions, official policies or customs of Defendants. Each of the Defendants knows of and is responsible for the acts or omissions set forth herein.

68. Defendants' conduct alleged herein denied Mr. Allen adequate access to counsel necessary to allow him to prepare his petition for executive clemency.

69. Plaintiff seeks a temporary and permanent injunction staying his execution and postponing the deadline for submitting a petition for executive clemency until Plaintiff has had an adequate opportunity to prepare and present his petition for executive clemency.

PRAYER

WHEREFORE, plaintiff prays for judgment against all defendants, and each of them, as follows:

1. For preliminary and permanent injunction staying Mr. Allen's execution until Mr. Allen has received adequate medical care and received the medical procedures necessary for an adequate preparation of a petition for executive clemency.

2. For preliminary and permanent injunction ordering Governor Schwarzenegger to postpone the deadline for submission of Mr. Allen's clemency petition until Mr. Allen has received the medical care necessary to adequately prepare a petition for executive clemency.

3. For a preliminary and permanent injunction staying any procedures connected with the execution of Mr. Allen.

4. For general damages against all defendants, jointly and severally, in an amount to be proven at trial;

