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United States District Court
For the Northern District of California

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ESTATE OF "JODY" MACK MILLER WOODFOX,
JANICE COLLINS, M.W., a minor, by and through
his guardian ad litem, KARINA SANDERS, J.W., a
minor, by and through his guardian ad litem, AISHA
NALLS, J.B.P., a minor, by and through his guardian
ad litem, SHAMILIA SMART,

Plaintiffs,

v.

CITY OF OAKLAND, HECTOR JIMENEZ,
individually and in his capacity as a police officer for
the City of Oakland, and DOES 1-20, inclusive,

Defendants.

No. C 08-04148 WHA

**ORDER RE JIMENEZ
DEPOSITION AND
ORDER OF
REFERENCE TO
MAGISTRATE JUDGE
FOR DISCOVERY**

When a deponent in a civil case is under criminal investigation, there is no automatic right to be excused from a deposition. The deponent may invoke his Fifth Amendment rights on a question-by-question basis. The other side may then move to compel. The Court will then balance the competing considerations and decide whether the circumstances warrant allowing the deponent to later waive and then to testify at trial. To tee this up properly in our case, Officer Jimenez should appear for his deposition as scheduled and invoke the Fifth Amendment (but only as appropriate) to various questions. Whether he would later be allowed to reverse course and to answer will have to be visited at that time. However, the Court recommends that


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counsel postpone the Jimenez deposition until after all other officers at the scene have been deposed. This may be only a short delay but at least this accommodation is reasonable.

Due to the press of one trial after the other, including a long capital prosecution to begin in February, the Court has run out of time to supervise discovery in this case and, therefore, all discovery disputes are hereby **REFERRED** to a magistrate judge to be appointed. Counsel are admonished to bring motions in sufficient time for the magistrate judge to rule on them and to allow time for his or her decision, as well as any necessary follow-up discovery. Put differently, please do not later ask for extensions of the trial date or summary judgment date on the ground that a discovery matter is still pending before the magistrate judge.

IT IS SO ORDERED.

Dated: January 20, 2009.



WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE