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Attorneys for Plaintiffs

18 UNITED STATES DISTRICT COURT  
 19 NORTHERN DISTRICT OF CALIFORNIA

20 ESTATE OF "JODY" MACK MILLER  
 21 WOODFOX, et al,

Plaintiffs,

vs.

22 CITY OF OAKLAND; et al.,

Defendants.

No. C08-04148 WHA (BZ)

**STIPULATION AND ~~PROPOSED~~  
 ORDER REGARDING  
 INVOCATION OF 5<sup>TH</sup>  
 AMENDMENT PRIVILEGE AND  
 CONTINUED DEPOSITION OF  
 DEFENDANT HECTOR JIMENEZ**

23 Whereas, on January 20, 2009, the Court entered an Order re Jimenez Deposition and  
 24 Order of Reference to Magistrate Judge for Discovery;

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 26 Stipulation and Order re Discovery  
 27 Woodfox v. City of Oakland, et al., Case No. C08-04148 WHA

1           Whereas, plaintiffs took the deposition of defendant Hector Jimenez and the sole  
2 percipient witness officer to the subject incident as recommended by the Court in said January  
3 20, 2009, Order;

4           Whereas, defendant Jimenez invoked his 5<sup>th</sup> Amendment testimonial privilege at his  
5 deposition on any and all questions pertaining to the subject incident wherein he shot and  
6 killed plaintiffs' decedent, "Jody" Mack Miller Woodfox;

7           Whereas, on January 26, 2009, the Honorable Bernard Zimmerman entered an Initial  
8 Discovery Order setting forth his procedures for the submission of discovery disputes to his  
9 Court;

10           Whereas, plaintiff's counsel wrote to Judge Zimmerman on February 25, 2009,  
11 pursuant to his Initial Discovery Order to present to his Court the parties' discovery dispute  
12 concerning defendant Jimenez' invocation of his 5<sup>th</sup> Amendment privilege at his deposition  
13 and to request that Judge Zimmerman compel the testimony of defendant Jimenez at  
14 deposition and to preclude him from testifying at trial if he refused to so testify;

15           Whereas, Judge Zimmerman held a phone conference with plaintiffs' counsel and  
16 counsel for defendant Jimenez on March 6, 2009, and thereafter issued an Order thereon in  
17 which he recommended that the parties arrive at a stipulation concerning the matter and, if  
18 unsuccessful in doing so, setting a briefing schedule which would not have permitted for the  
19 resolution of the issue until on or after July 29, 2009;

20           Whereas, plaintiffs' counsel believed that the delay in resolving the issue of defendant  
21 Jimenez' invocation of the 5<sup>th</sup> Amendment privilege until on or about July 29, 2009, would  
22 prejudice plaintiffs' ability to comply with the Court's fact discovery cut-off date and deadline  
23  
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1 to exchange completed expert Rule 26 reports by September 30, 2009, and

2           Whereas, the parties wish to resolve the issues pertaining to the deadline for defendant  
3 Jimenez to decide whether to waive his 5<sup>th</sup> Amendment privilege claim and to testify at  
4 deposition concerning the subject incident,

5           **THE PARTIES, BY AND THROUGH THEIR RESPECTIVE COUNSEL OF**  
6 **RECORD, DO HEREBY STIPULATE AND AGREE THAT:**

- 7           1.       Counsel for defendant Hector Jimenez shall advise the parties and the Court  
8                   by no later than **5:00 p.m. on May 26, 2009**, whether defendant Jimenez will agree  
9                   to waive his 5<sup>th</sup> Amendment testimonial privilege and agree to testify at deposition  
10                  with respect to the events leading up to, including and following his shooting of  
11                  plaintiffs' decedent, "Jody" Mack Miller Woodfox.  
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- 13           2.       In the event that defendant Jimenez agrees to waive his 5<sup>th</sup> Amendment  
14                  testimonial privilege by 5:00 p.m. on May 26, 2009, he shall appear for a further  
15                  session of his deposition commencing at 10:00 a.m. on June 15, 2009, at the Law  
16                  Offices of John L. Burris at which time he shall waive his 5<sup>th</sup> Amendment  
17                  testimonial privilege and shall testify as to all matters relating to the subject  
18                  incident, including all events leading to, during and following the subject incident.  
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- 20           3.       In the event that defendant Jimenez learns that he is no longer subject to the  
21                  possibility of criminal prosecution for his conduct during the subject incident at  
22                  any time prior to May 26, 2009, his counsel shall promptly (within 48 hours of  
23                  learning that he is no longer the subject of a possible criminal prosecution) advise  
24                  all counsel and the Court of the same and shall agree to appear for deposition on a  
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mutually convenient date earlier than June 15, 2009.

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2 4. In the event that defendant Jimenez declines to waive his 5<sup>th</sup> Amendment  
3 privilege claim by 5:00 p.m. on May 26, 2009, he shall be barred from testifying at  
4 trial as to any matters relating to the incident which is the subject of this litigation,  
5 including, but not limited to, the events leading up to, during and following the  
6 shooting of plaintiffs' decedent, "Jody" Mack Miller Woodfox, and he shall be  
7 barred from submitting any written declaration or other testimony and statements  
8 on the subject at trial and/or in any motions, including, but not limited to, motions  
9 for summary judgment.

10 5. The parties shall reserve the right to assert all claims and defenses concerning  
11 the issues of whether adverse inferences can drawn from defendant Jimenez'  
12 invocation of the 5<sup>th</sup> Amendment privilege at trial.  
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14 IT IS SO STIPULATED:

15 Dated: March 12, 2009

\_\_\_\_\_/S/\_\_\_\_\_  
JAMES B. CHANIN  
Attorney for Plaintiffs

17 Dated: March 12, 2009

\_\_\_\_\_/S/\_\_\_\_\_  
JOHN L. BURRIS  
Attorney for Plaintiffs

19 Dated: March 16, 2009

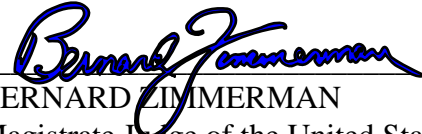
\_\_\_\_\_/S/\_\_\_\_\_  
STEPHEN Q. ROWELL  
Attorney for Defendant  
CITY OF OAKLAND

22 Dated: March 12, 2009

\_\_\_\_\_/S/\_\_\_\_\_  
JOHN VERBER  
Attorney for Defendant  
HECTOR JIMENEZ

1 PURSUANT TO STIPULATION,  
IT IS SO ORDERED:

2 Dated: March 16, 2009



3 BERNARD ZIMMERMAN  
4 Magistrate Judge of the United States  
District Court

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Stipulation and Order re Discovery  
Woodfox v. City of Oakland, et al., Case No. C08-04148 WHA