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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

ESTATE OF "JODY" MACK MILLER WOODFOX, et al, Plaintiffs, vs. CITY OF OAKLAND; et al., Defendants.	No. C08-04148 WHA (BZ) **STIPULATION AND ~~[PROPOSED]~~ ORDER REGARDING INVOCATION OF 5TH AMENDMENT PRIVILEGE AND CONTINUED DEPOSITION OF DEFENDANT HECTOR JIMENEZ**

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

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

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

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

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

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

Whereas, plaintiffs' counsel believed that the delay in resolving the issue of defendant Jimenez' invocation of the 5th Amendment privilege until on or about July 29, 2009, would prejudice plaintiffs' ability to comply with the Court's fact discovery cut-off date and deadline

to exchange completed expert Rule 26 reports by September 30, 2009, and

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

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

1. Counsel for defendant Hector Jimenez shall advise the parties and the Court by no later than **5:00 p.m. on May 26, 2009**, whether defendant Jimenez will agree to waive his 5th Amendment testimonial privilege and agree to testify at deposition with respect to the events leading up to, including and following his shooting of plaintiffs' decedent, "Jody" Mack Miller Woodfox.

2. In the event that defendant Jimenez agrees to waive his 5th Amendment testimonial privilege by 5:00 p.m. on May 26, 2009, he shall appear for a further session of his deposition commencing at 10:00 a.m. on June 15, 2009, at the Law Offices of John L. Burris at which time he shall waive his 5th Amendment testimonial privilege and shall testify as to all matters relating to the subject incident, including all events leading to, during and following the subject incident.

3. In the event that defendant Jimenez learns that he is no longer subject to the possibility of criminal prosecution for his conduct during the subject incident at any time prior to May 26, 2009, his counsel shall promptly (within 48 hours of learning that he is no longer the subject of a possible criminal prosecution) advise all counsel and the Court of the same and shall agree to appear for deposition on a

mutually convenient date earlier than June 15, 2009.

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

5. The parties shall reserve the right to assert all claims and defenses concerning the issues of whether adverse inferences can drawn from defendant Jimenez' invocation of the 5th Amendment privilege at trial.

IT IS SO STIPULATED:

Dated: March 12, 2009

_____/S/_____
JAMES B. CHANIN
Attorney for Plaintiffs

Dated: March 12, 2009

_____/S/_____
JOHN L. BURRIS
Attorney for Plaintiffs

Dated: March 16, 2009

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

Dated: March 12, 2009

_____/S/_____
JOHN VERBER
Attorney for Defendant
HECTOR JIMENEZ

PURSUANT TO STIPULATION,
IT IS SO ORDERED:

Dated: March 16, 2009

BERNARD ZIMMERMAN
Magistrate Judge of the United States
District Court