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10 Attorneys for Plaintiffs

11 UNITED STATES DISTRICT COURT
 12
 13 NORTHERN DISTRICT OF CALIFORNIA

14 THE ESTATE OF JERRY A. AMARO III;
 15 GERALDINE MONTOYA; STEPHANIE
 16 MONTOYA;

17 Plaintiffs,

18 vs.

19
 20 CITY OF OAKLAND, et al.,
 21

22 Defendants.
 23
 24
 25
 26

)
) CASE NO: C09-01019 WHA
)
) ~~PROPOSED~~ ORDER GRANTING
) PLAINTIFF’S MOTION TO COMPEL
) DEFENDANT POULSON’S FURTHER
) DEPOSITION AND, IN THE
) ALTERNATIVE, BARRING HIM FROM
) TESTIFYING AND/OR OFFERING
) DECLARATIONS ABSENT A WAIVER
) OF HIS FIFTH AMENDMENT
) TESTIMONIAL PRIVILEGE

1 On November 6, 2009, Plaintiffs' motion to compel the further deposition testimony of
2 Defendant Edward Poulson and/or to bar his testimony as to any matters upon which he invoked
3 his Fifth Amendment privilege, came regularly on for hearing before the Honorable William H.
4 Alsup. Plaintiffs appeared through their counsel, James B. Chanin, and Defendant Edward
5 Poulson appeared through his counsel, James Higa. Having considered the letter brief of
6 Defendant Poulson's counsel dated September 17, 2009, the letter brief of Plaintiffs' counsel
7 dated November 2, 2009, which framed the discovery dispute, the argument of counsel for the
8 parties, and for good cause shown, the Court makes the following findings and Orders:
9

10 WHEREAS, Defendant Edward Poulson invoked his Fifth Amendment testimonial
11 privilege at his deposition on September 23, 2009, and declined to testify as to any matter
12 relating to the subject matter of this litigation, including, but not limited to, the arrest of Jerry A.
13 Amaro III on March 23, 2000, Mr. Amaro's death on April 21, 2000, any matter related to the
14 subsequent Oakland Police Department homicide and internal affairs investigations into the
15 arrest and death of Mr. Amaro, or to any matter concerning any subsequent federal investigations
16 into Mr. Amaro's arrest and death; and,
17

18 WHEREAS, Plaintiffs will suffer substantial prejudice if they are not allowed to depose
19 Defendant Poulson on these subjects prior to trial, expert witness disclosure, other Case
20 Management deadlines and any dispositive motions brought by the defense;
21

22 IT IS HEREBY ORDERED THAT counsel for Defendant Edward Poulson shall have
23 until the close of business on December 1, 2009, to advise the Court and Plaintiffs' counsel
24 whether Defendant Poulson intends to waive his Fifth Amendment testimonial privilege. In the
25 event that Defendant Poulson agrees to waive his Fifth Amendment privilege, he shall appear for
26 a further deposition on or before December 13, 2009, and shall testify with regard to any and all
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1 matters related to the subject matter of this litigation, including, but not limited to, the arrest and
2 death of Mr. Amaro and the subsequent investigations by the Oakland Police Department and
3 federal agencies.

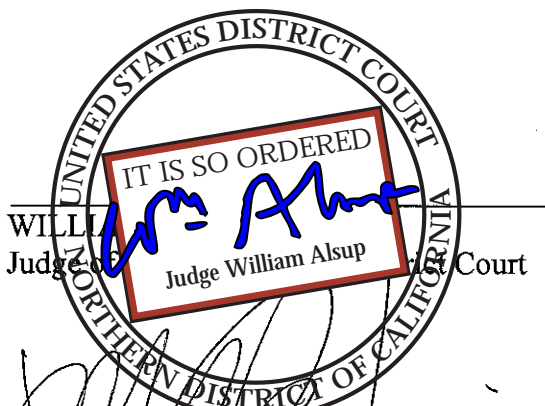
4 IT IS HEREBY FURTHER ORDERED THAT in the event that Defendant Poulson does
5 waive his Fifth Amendment privilege as stated above, the Court may consider extending the
6 deadline for Rule 26 expert disclosures which is currently set for December 31, 2009.

8 IT IS HEREBY FURTHER ORDERED THAT in the event that Defendant Poulson does
9 not agree to waive his Fifth Amendment testimonial privilege by the close of business on
10 December 1, 2009, he shall be barred from testifying at any proceedings in this case, including at
11 trial, and shall be barred from filing any declarations or affidavits in lieu of his testimony, on any
12 matter upon which he has invoked his Fifth Amendment testimonial privilege.

14 IT IS HEREBY FURTHER ORDERED THAT in the event that Defendant Poulson does
15 not waive his Fifth Amendment privilege, this Order shall be without prejudice to Plaintiffs
16 filing appropriate motions at trial requesting that the jury be instructed that adverse inferences
17 may be drawn from Defendant Poulson's invocation of his Fifth Amendment privilege.

19 IT IS SO ORDERED:

21 Dated: November 9, 2009



22 WILLIAM ALSUP
23 Judge Court

24 Approved as to Form:

26 Dated: November 6, 2009

27 JAMES HIGA
28 Attorney for Defendant Poulson