

BY FAX

1 BARBARA J. PARKER, City Attorney, SBN 069722  
2 MARIA BEE, Chief Assistant City Attorney, SBN 167716  
3 KEVIN P. MCLAUGHLIN, Supervising Deputy City Attorney, SBN 251477  
4 One Frank H. Ogawa Plaza, 6th Floor  
Oakland, California 94612  
Telephone: (510) 238-2961; Fax: (510) 238-6500  
Email: kmclaughlin@oaklandcityattorney.org

5 Attorneys for Plaintiff  
6 CITY OF OAKLAND

FILED/ENDORSED  
Clerk of the Superior Court  
FEB 01 2022  
By [Signature]  
DEPUTY CLERK

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA ASSIGNED TO  
9 COUNTY OF SOLANO JUDGE CHRISTINE CARRINGER  
10 FOR ALL PURPOSES

11 CITY OF OAKLAND,  
12 Plaintiff,  
13 v.  
14 MARCELL PATTERSON and DOES 1-10,  
15 Defendants.

Case No. **FCS057752**  
COMPLAINT OF PLAINTIFF CITY OF  
OAKLAND

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1 Plaintiff City of Oakland (“Plaintiff” or “City”) complains as follows:

2 **THE PARTIES**

3 1. The City is a charter city existing under the laws of the State of California, in the  
4 County of Alameda.

5 2. Defendant Marcell Patterson is an individual. The City is informed and believes that  
6 Defendant lives in the City of Vallejo, County of Solano.

7 3. The names and capacities of the defendants named as Does 1 through 10, inclusive,  
8 are currently unknown to the City. The City is informed and believed, and thereon alleges, that  
9 Does 1 through 10, inclusive, are the affiliates, employees, agents, partners, co-venturers, control  
10 persons, or aiders and abettors of the other defendants, and each other, and that Does 1 through 10,  
11 inclusive, are legally responsible in some manner for the events herein alleged. The City alleges  
12 that each Doe is a natural person or entity, whether public or private, whether natural persons or  
13 corporations, partnerships associations, or sole proprietorships, duly organized and existing and  
14 authorized to do business in the State of California. When the City learns the identities and  
15 capacities of Does 1 through 10, the City will amend the Complaint accordingly.

16 **GENERAL ALLEGATIONS**

17 4. Defendant is a police officer employed with the City of Oakland. On June 5, 2019,  
18 Defendant drove a motor vehicle in Vallejo, California, and negligently collided with a motor  
19 vehicle driven by Terry Baker. The accident caused injury to Ms. Baker.

20 5. Ms. Baker filed a lawsuit in the County of Alameda against the City and Defendant,  
21 styled *Terry Baker v. City of Oakland, Marcell Patterson, and Does 1 to 10*, Case No.  
22 RG20054133. In the lawsuit, Ms. Baker sought to recover damages against the City and Defendant  
23 for her injuries incurred in the accident. During the lawsuit, the City contended that Defendant was  
24 not within the scope of employment with the City when the accident occurred.

25 6. The City provided Defendant with a legal defense in the *Baker* lawsuit pursuant to  
26 Government Code sections 825 and 995.2. The legal defense was provided pursuant to an  
27 agreement with Defendant reserving the rights of the City not to pay any judgment, compromise, or  
28 settlement in the *Baker* case until it is established that the injury arose out of an act or omission

1 occurring within the scope of Defendant's employment with the City. In that circumstance, the City  
2 is required to pay the judgment, compromise, or settlement only if it is established that the injury  
3 arose out of an act or omission occurring in the scope of Defendant's employment as an employee  
4 of the City. *See* Gov. Code § 825(a).

5 7. In fact, Defendant was not in the scope of employment at the time of the June 5,  
6 2019 accident. Among other things, Defendant was off the clock and uncompensated for his  
7 driving, was driving his ordinary commute home, was not in uniform and had no job duties while  
8 driving, was not required to drive home from work, and his driving provided no benefit to the City  
9 on the date of the accident.

10 8. The *Baker* lawsuit settled, with the City paying in excess of \$4 million to Ms. Baker  
11 to resolve her claims against the City and Defendant. The parties agreed that the settlement would  
12 not alter or affect any obligation of Defendant to indemnify the City.

13 9. In this action, the City seeks to have it established that the June 5, 2019 accident and  
14 Ms. Baker's resulting injuries arose out of an act or omission of Defendant not within the scope of  
15 Defendant's employment with the City, and to hold Defendant liable to indemnify the City, and/or  
16 pay in contribution in proportion to fault, for the claims, losses, damages, and settlement expenses  
17 incurred in mitigation and defense of the claims asserted against the City in the *Baker* case.

#### 18 JURISDICTION AND VENUE

19 10. This Court has jurisdiction to address the issues raised in this Complaint because,  
20 among other things, Defendant resides in this state and is employed in this state, and because the  
21 amount in controversy is within the amount for unlimited jurisdiction.

22 11. Venue is proper in this Court because Defendant is believed to reside within Solano  
23 County.

#### 24 FIRST CAUSE OF ACTION – EQUITABLE INDEMNITY

##### 25 Against All Defendants

26 12. The City re-alleges and incorporates by reference each allegation contained in the  
27 foregoing paragraphs, as if fully set forth herein.

28 13. The City is without fault, culpability, negligence, or other liability in the *Baker*

1 case, but was required to defend itself and settle that case as a result of Defendants' acts or  
2 omissions. Defendants therefore have an equitable obligation to indemnify and hold harmless  
3 the City against the claims, losses, damages, and settlement expenses incurred in mitigation and  
4 defense of the claims asserted against the City in the *Baker* case.

5         Wherefore, the City prays for judgment against Defendants, and each of them, as  
6 hereinafter set forth.

7                                 **SECOND CAUSE OF ACTION – EQUITABLE CONTRIBUTION**

8   **Against All Defendants**

9             14.     The City re-alleges and incorporates by reference each allegation contained in the  
10 foregoing paragraphs, as if fully set forth herein.

11             15.     The City is without fault, culpability, negligence, or other liability in the *Baker*  
12 case, but was required to defend itself and settle that case as a result of Defendants' acts or  
13 omissions. Defendants therefore have an equitable obligation of contribution in the payment of  
14 the claims, losses, damages, and settlement expenses incurred in mitigation and defense of the  
15 claims asserted against the City in the *Baker* case in proportion to the actual culpability, fault,  
16 responsibility, and negligence caused and created by Defendants.

17         Wherefore, the City prays for judgment against Defendants, and each of them, as  
18 hereinafter set forth.

19   **PRAYER FOR RELIEF**

20         WHEREFORE, the City respectfully requests judgment as follows:

21             1.     For judgment against Defendants requiring that Defendants indemnify the City for  
22 all claims, losses, damages, and settlement expenses incurred by the City in mitigation and  
23 defense of the claims asserted against the City in the *Baker* case;

24             2.     For judgment against Defendants requiring that Defendants contribute in payment of  
25 the claims, losses, damages, and settlement expenses incurred in mitigation and defense of the  
26 claims asserted against the City in the *Baker* case in proportion to the actual culpability, fault,  
27 responsibility, and negligence caused and created by Defendants;

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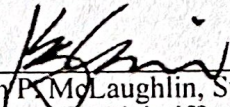
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3. For costs of suit incurred herein; and

4. For such other and further relief as the Court deems just and proper.

Dated: February 1, 2022

BARBARA J. PARKER, City Attorney

By:   
Kevin P. McLaughlin, Supervising Deputy City Attorney  
Attorneys for Plaintiff  
CITY OF OAKLAND