

CITY OF OAKLAND



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June 19, 2012

HONORABLE CITY COUNCIL
Oakland, California

Subject: Resolution To Indemnify Former Oakland Police Officer Ingo Mayer For \$40,000 In Punitive Damages Awarded By The Federal Court In Smith et al. v. City of Oakland et al., Case No. C 07-6298 MHP, Our File No. SS25818 (OAKLAND POLICE DEPARTMENT –“Strip” Search)

President Reid and Members of the City Council:

The subject resolution authorizes indemnification of former police officer Ingo Mayer for \$40,000 in punitive damages that U.S. District Judge Marilyn Hall Patel awarded to plaintiffs Lucas (\$25,000) and Bradshaw (\$15,000). Council discussed this matter in closed session and received advice from this Office regarding the applicable standards and requirements.

Mr. Mayer is a defendant in one of the subject strip search cases. He is represented by John Verber, conflict counsel. Mr. Verber is an attorney with the law firm of Burnam and Brown. Burnam and Brown submitted a scheduling request asking the Rules Committee to schedule consideration of Mayer's request that the City indemnify him for a \$40,000 punitive damages award.

Attached is a February 6, 2012 letter from Mr. Mayer's conflict counsel requesting indemnification and explaining Mr. Mayer's reasons for the request and why he believes City has an obligation to pay the punitive damages.

This case arises out of allegations that two Oakland Police Officers strip searched the two plaintiffs, Spencer Lucas and Kirby Bradshaw, in public in view of passersby. Both plaintiffs contend that the officers did not have reasonable suspicion to

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stop or detain them. Mr. Lucas further alleges that he was wrongfully arrested, falsely imprisoned and that his residence was unlawfully searched by Officer Mayer.

The officers denied strip searching the plaintiffs. After trial, U.S. District Court Judge Patel found for plaintiffs, entered judgment in their favor and awarded compensatory damages against the City of Oakland and Officer Mayer in the amount of \$205,000. The court determined that the officers did not have reasonable suspicion for the traffic stop, did not have probable cause to search the homes that the officers believed Mr. Lucas may have been living in and further found that the officers were not credible in denying that the strip search occurred.

Judge Patel awarded general damages of \$100,000 each to Mr. Lucas and Mr. Bradshaw, and the court awarded an additional \$5,000 to Mr. Lucas for the prolonged detention he experienced without probable cause while the officers drove him around to various residences after they concluded the initial search.

Judge Patel also found that Plaintiff Lucas and Plaintiff Bradshaw were entitled to punitive damages from Officer Mayer. The punitive damages determination created a conflict of interest that precluded the City Attorney from continuing to represent Officer Mayer. The City Attorney retained Mr. Verber of Burnham Brown to represent Officer Mayer as conflict counsel. After considering the matter, Judge Patel ruled that Officer Mayer is liable for punitive damages in the amount of \$25,000 to Plaintiff Lucas and \$15,000 to Plaintiff Bradshaw.

Mr. Verber requested that the City pay the punitive damages award.

California Government Code §825 (b) allows the City to pay punitive damages that a court has awarded against a City employee if each element of that statute is satisfied and the Council makes findings that meet each of the three requirements. Government Code section 825(b) provides in pertinent part:


... a public entity is authorized to pay that part of a judgment that is for punitive or exemplary damages if the governing body of that public entity, acting in its sole discretion except in cases involving an entity of the state government, finds all of the following:

1. *The judgment is based on an act or omission of an employee or former employee acting within the course and scope of his or her employment as an employee of the public entity. §825 (b)(1)*
2. *At the time of the act giving rise to the liability, the employee or former employee acted, or failed to act, in good faith, without actual malice and in the apparent best interests of the public entity. §825 (b)(2)*

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3. *Payment of the claim or judgment of punitive damages would be in the best interests of the public entity. §825 (b)(3)*

Respectfully submitted,


BARBARA J. PARKER
City Attorney

Attorney Assigned:
Arlene Rosen

978723v1



BURNHAM | BROWN
CITY OF THE CITY CLERK
OAKLAND

a professional law corporation
12 JUN -8 PM 2:50

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AIMEE HAMOY-PERERA
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Direct Dial (510) 835-6815

February 6, 2012

Barbara Parker
CITY OF OAKLAND
1 Frank H. Ogawa Plaza, 2nd Floor
Oakland, CA 94612

Re: John Smith, et al. v. City of Oakland, et al.
United States District Court Action No. C07-06298 MHP
Our Client: Ingo Mayer

Dear Ms. Parker:

As you are aware, our office represents retired Oakland Police officer Ingo Mayer in the case of Smith, et al. v. City of Oakland, et al. We are writing on behalf of Mr. Mayer to bring to your attention the City's obligation to indemnify him for an unjust punitive damage award issued by the Northern District Court.

Mr. Mayer received a medical retirement from the Oakland Police Department in May 2011 following 11 years of service to this city. During his 11 years with the Department, he was the recipient of numerous commendations, including the silver star. For 8 of his 11 years, Mr. Mayer was assigned to a special multi-jurisdictional unit comprised of OPD, State Parole and County Probation officers. Their job was to conduct compliance checks and searches of people on parole or probation. The unit also served as a fugitive apprehension team.

On December 15, 2005, Mr. Mayer, his long-term partner, Officer D'Var Thurston along with Officers Mack and Martinez and parole agent Nakamura stopped a car in the area of MLK and 32nd Street in West Oakland. The car was driven by a parolee, Spencer Lucas. There were two other individuals in the car, including Kirby Bradshaw. After determining that Mr. Lucas was on parole, the occupants were detained and both Mr. Lucas and Mr. Bradshaw were searched for weapons and contraband. At no time were either person's clothing removed. Following additional investigation Mr. Lucas was arrested on a parole violation and Mr. Bradshaw was arrested on an unrelated outstanding arrest warrant.

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Neither Mr. Lucas nor Mr. Bradshaw filed a complaint with the Oakland Police Department following the incident. However, in 2007, almost two years after the car stop, they filed a lawsuit claiming that their civil rights had been violated by both officers. Although the plaintiffs alleged in their complaint that both officers violated their civil rights by subjecting them to a strip search in public, plaintiffs only pursued Officer Mayer and the City of Oakland in Court. The Department conducted an investigation into the allegations and the officers were exonerated of any wrong doing.

The complaint filed by Lucas and Bradshaw was one of approximately 75 alleged "strip search" cases filed against the City and various officers of the Oakland Police Department at about the same time. It was, however, the only case involving any allegations against Officer Mayer.

In an effort to try and resolve all the cases efficiently, the Court and counsel agreed to try two "test" cases in 2010. The idea was that trying a couple of cases would allow the parties to gauge the relative strengths and weaknesses of their positions and see how the issues resonated with the Court in the hope that this information would allow them to reach agreement on the value, if any, of the remaining 70+ cases without the time and expense of trying each case individually.

During the many months leading up to the trial, Officer Mayer was represented by the Oakland City Attorney's office. Officer Mayer was satisfied with the attorney assigned to represent him. However, after many months of preparation and with mere weeks to go before the start of trial, the City hired a new lawyer, someone from outside the City Attorney's Office, to represent the City and Officer Mayer. This attorney had little time to educate himself about the case and throughout the trial appeared to have little or no grasp of the legal issues or evidence. In fact, there were many instances during the trial when he turned to Officer Mayer for help with questions about the facts or evidence. Officer Mayer found this quite disturbing and noted several such instances in his notebook. Most disturbing however, was that at no point prior to the trial had any attorney told Officer Mayer that he was facing exposure to punitive damages, for which he may be held personally liable.

Despite the fact that IAD had already investigated the incident and concluded that Officer Mayer and his partner had followed existing departmental policy and done nothing wrong, the Court ruled differently. The Judge "split the baby" by finding for the defendants in one case and for the plaintiffs in the other. We suggest that this was a result-oriented verdict that was intended to convince both sides of the risks involved with a trial, rather than a decision based on the merits. The impact of the Court's decision was that in the case involving Officer Mayer, each plaintiff was awarded \$100,000 in compensatory damages and Officer Mayer was found to be liable for punitive damages in the amount of \$40,000.

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Pursuant to California Government Code Section 825(b),

... a public entity is authorized to pay that part of a judgment that is for punitive or exemplary damages if the governing body of that public entity, acting in its sole discretion except in cases involving an entity of the state government, finds all of the following:

- (1) The judgment is based on an act or omission of an employee or former employee acting within the course and scope of his or her employment as an employee of the public entity.
- (2) At the time of the act giving rise to the liability, the employee or former employee acted, or failed to act, in good faith, without actual malice and in the apparent best interests of the public entity.
- (3) Payment of the claim or judgment would be in the best interests of the public entity.

(emphasis added).

The Ninth Circuit also recently referenced Section 825, noting that “Although municipal defendants are immune from liability for punitive damages under § 1983, municipalities may pay punitive damages in some circumstances.” Bell v. Clackamas County, 341 F.3d 858, 868 n. 4 (9th Cir. 2003) (citations omitted).

As discussed above, Internal Affairs did not sustain any of the allegations claimed by Bradshaw or Lucas against Mr. Mayer. Mr. Mayer has consistently stated, during the IA investigation and during the trial, that the events did not occur as described by the Plaintiffs. Obviously, the City Attorney’s Office also believed Mr. Mayer; otherwise they would not have proceeded to trial on this case. The decision to try the case was made solely by the City, without consulting Mr. Mayer and without educating him regarding his personal financial risk at trial. Mr. Mayer was clearly acting in good faith as an Oakland police officer when he arrested the Plaintiffs and therefore should be indemnified by the City. Again, it is apparent from the rulings made by the Court in these two test cases that the judge was motivated to issue a verdict that would encourage both sides to make efforts to resolve the remaining 70+ cases.

We note that the City has previously indemnified former Oakland police officers who were held liable following a trial, despite internal investigations finding that the allegations were not sustained. For instance, in the Tory Smith matter, the officers allegedly planted firearms in the plaintiff’s residence during a search. While the allegations were not sustained by Internal Affairs, a jury concluded otherwise and awarded punitive damages. In the Lorenzo Hall case, the former officer was accused of planting a gun on the plaintiff during a search of his person after receiving a tip from a confidential informant. The Internal Affairs investigation concluded

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that these allegations were not sustained, however a jury disagreed and awarded Hall compensatory and punitive damages. In both the Smith and Hall cases, the City indemnified the officers. No officer was required to personally pay any damage award. These two examples involve much more egregious accusations and resulted in much greater actual harm to those plaintiffs than alleged by Kirby and Bradshaw.

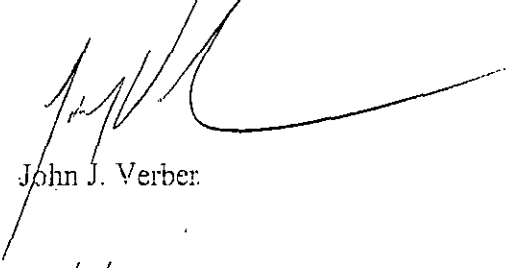
We also emphasize to you and City Council that Mr. Mayer is on fixed income of about \$4,000 per month, money that he receives as a result of a medical disability suffered as a result of his service to this City. The punitive damage award issued by the Court is particularly upsetting for Mr. Mayer because he knows he did nothing wrong.

The bottom line is the alleged "strip search" never happened. Mr. Mayer was never a "problem" officer. In fact, he was an exemplary officer with a distinguished 11 year record of service to this City. It is now time for the City to do the right thing, to stand behind one of its finest, and agree to indemnify him against an unjust punitive damage award.

Please contact our office to further discuss the issues outlined above. John Verber can be reached at (510) 835-6817 and Aimee Hamoy-Perera can be reached at (510) 835-6815. We look forward to your prompt response.

Very truly yours,

BURNHAM BROWN



John J. Verber

/s/

Aimee Hamoy-Perera

AHP:jr

cc: Randolph Hall (City Attorney's Office)
Ingo Mayer
Barry Donelan, President, OPOA

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12 JUN -7 PM 3:21 OAKLAND CITY COUNCIL

Resolution No. _____ C.M.S.

Resolution To Indemnify Former Oakland Police Officer Ingo Mayer For \$40,000 In Punitive Damages Awarded By The Federal Court In Smith et al. v. City of Oakland et al., Case No. C 07-6298 MHP

WHEREAS, in 2005, Oakland Police Officer Ingo Mayer along with several other officers detained, searched and arrested plaintiffs Spencer Lucas and Kirby Bradshaw; and

WHEREAS, Mr. Lucas and Mr. Bradshaw subsequently filed a lawsuit in U.S. District Court alleging that the City of Oakland and Officer Mayer violated their civil rights by conducting an intrusive search of their persons; and

WHEREAS, upon learning of the allegations, the Oakland Police Department conducted an internal investigation and determined that Officer Mayer's actions were in compliance with policies and procedures in effect at the time of the incident; and

WHEREAS, despite these findings, attempts were made to resolve the matter prior to trial and those attempts were unsuccessful; and

WHEREAS, in 2010, the matter proceeded to trial before the Honorable Marilyn Hall Patel (Smith, et al. v. City of Oakland, et al., C 07-6298 MHP); and

WHEREAS, ultimately, Judge Patel found for plaintiffs, entered judgment in their favor and awarded compensatory damages against the City of Oakland and Officer Mayer in the amount of \$205,000.00 and \$40,000 in punitive damages were also assessed against Officer Mayer; and

WHEREAS, following the trial, Officer Mayer, through his conflict counsel, requested that the City of Oakland indemnify him; and

WHEREAS, the Oakland City Council, having considered this request for indemnification, along with the relevant facts giving rise to the Smith litigation and having been advised by the Office of the Oakland City Attorney of the applicable legal standards and requirements, makes the following findings; and

WHEREAS, at the time of the allegations at issue in the Smith case, the Oakland Police Department had a policy which allowed officers to conduct a search of a person being detained or arrested and

WHEREAS, following an assessment of the allegations in the Smith case, the Oakland City Council concluded that at all relevant times Officer Mayer was acting within the course and

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scope of his employment as a police officer with the City of Oakland, that he acted in good faith and in compliance with then existing Oakland Police Department policies in the discharge of his duties and without actual malice toward Mr. Lucas and Mr. Bradshaw and that his actions were in the apparent best interests of the City; and

WHEREAS, subsequent to the filing of the Smith case, the Oakland Police Department implemented policy changes affecting the circumstances under which an officer could conduct a search of a suspect's person, including a change in the method for documenting such searches; and

WHEREAS, the Oakland City Council has determined that h is in the best interests of the community to support the Oakland Police Department and its officers who act in good faith to comply with existing departmental policies; now therefore be it

RESOLVED: that the Oakland City Council agrees to fully indemnify Officer Mayer for the punitive damages awarded by the Northern District of California in the case of Smith, et al v. City of Oakland, et al, C-07- 6298 MHP; namely, \$25,000.00 to Plaintiff Spencer Lucas and \$15,000.00 to Plaintiff Kirby Bradshaw, plus any associated costs and interest.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

BRUNNER, KERNIGHAN, NADEL, SCHAAF, DE LA FUENTE, BROOKS, KAPLAN AND
PRESIDENT REID

AYES-

NOES -

ABSENT -

ABSTENTION --

ATTEST:

LATONDA SIMMONS

City Clerk and Clerk of the Council of
the City of Oakland, California

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MEETING OF THE
OAKLAND CITY COUNCIL

JUN 19 2012