



500 West Big Beaver  
Troy, MI 48084  
troymi.gov

## CITY COUNCIL AGENDA ITEM

Date: July 1, 2021

To: Honorable Mayor and City Council Members

From: Lori Grigg Bluhm, City Attorney  
Allan T. Motzny, Assistant City Attorney

Subject: Tennille Viau v. Troy et. al




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Attached please find a lawsuit filed against the City of Troy and Parks and Recreation employees Elaine Bo and Scott Mercer, as well as two unnamed persons, identified as John Doe and Jane Doe. This case was filed in the U.S. District Court for the Eastern District of Michigan, and assigned to federal Judge Mark Goldsmith.

According to the Complaint, Ms. Tennille's 10 year old daughter was enrolled in a summer soccer camp in the summer of 2019. The Complaint alleges that the camp participants were segregated into different groups for an exercise, and that these groups were selected based on race. She also complains that at the soccer camp, the children were pitted against each other for the exercises. Ms. Tennille complained to the Recreation staff a couple of days later, and pulled her daughter out of the soccer camp, receiving a refund of her money. She has now filed this lawsuit, asserting a 14<sup>th</sup> Amendment Equal Protection Claim, as well as alleging that her daughter was denied the ability to participate in the soccer camp. She also claims that the City is liable, since this particular soccer exercise was long standing.

The proposed resolution authorizes the City Attorney's Office to represent the City's interests. Please let us know if you have any questions or concerns.

# UNITED STATES DISTRICT COURT

for the  
Eastern District of Michigan 

TENNILLE VIAU

*Plaintiff*

v.

CITY OF TROY, et al

*Defendant*

Civil Action No. 2:21-cv-11169

## NOTICE OF A LAWSUIT AND REQUEST TO WAIVE SERVICE OF A SUMMONS

To: CITY OF TROY

*(Name of the defendant or - if the defendant is a corporation, partnership, or association - an officer or agent authorized to receive service)*

### Why are you getting this?

A lawsuit has been filed against you, or the entity you represent, in this court under the number shown above. A copy of the complaint is attached.

This is not a summons, or an official notice from the court. It is a request that, to avoid expenses, you waive formal service of a summons by signing and returning the enclosed waiver. To avoid these expenses, you must return the signed waiver within 60 days *(give at least 30 days, or at least 60 days if the defendant is outside any judicial district of the United States)* from the date shown below, which is the date this notice was sent. Two copies of the waiver form are enclosed, along with a stamped, self-addressed envelope or other prepaid means for returning one copy. You may keep the other copy.

### What happens next?

If you return the signed waiver, I will file it with the court. The action will then proceed as if you had been served on the date the waiver is filed, but no summons will be served on you and you will have 60 days from the date this notice is sent (see the date below) to answer the complaint (or 90 days if this notice is sent to you outside any judicial district of the United States).

If you do not return the signed waiver within the time indicated, I will arrange to have the summons and complaint served on you. And I will ask the court to require you, or the entity you represent, to pay the expenses of making service.

Please read the enclosed statement about the duty to avoid unnecessary expenses.

I certify that this request is being sent to you on the date below.

Date: 06/22/2021



*Signature of the attorney or unrepresented party*

HANNAH R. FIELSTRA

*Printed name*

645 GRISWOLD STREET, STE. 4100  
DETROIT, MI 48226

*Address*

HANNAH@ECLLAWFIRM.COM

*E-mail address*

313-965-5555

*Telephone number*

# UNITED STATES DISTRICT COURT

for the

Eastern District of Michigan



TENNILLE VIAU

*Plaintiff*

v.

CITY OF TROY, et al

*Defendant*

Civil Action No. 2:21-cv-11169

## WAIVER OF THE SERVICE OF SUMMONS

To: CITY OF TROY

*(Name of the plaintiff's attorney or unrepresented plaintiff)*

I have received your request to waive service of a summons in this action along with a copy of the complaint, two copies of this waiver form, and a prepaid means of returning one signed copy of the form to you.

I, or the entity I represent, agree to save the expense of serving a summons and complaint in this case.

I understand that I, or the entity I represent, will keep all defenses or objections to the lawsuit, the court's jurisdiction, and the venue of the action, but that I waive any objections to the absence of a summons or of service.

I also understand that I, or the entity I represent, must file and serve an answer or a motion under Rule 12 within 60 days from 06/22/2021, the date when this request was sent (or 90 days if it was sent outside the United States). If I fail to do so, a default judgment will be entered against me or the entity I represent.

Date: 06/22/2021

*Signature of the attorney or unrepresented party*

CITY OF TROY

*Printed name of party waiving service of summons*

*Printed name*

*Address*

*E-mail address*

*Telephone number*

### Duty to Avoid Unnecessary Expenses of Serving a Summons

Rule 4 of the Federal Rules of Civil Procedure requires certain defendants to cooperate in saving unnecessary expenses of serving a summons and complaint. A defendant who is located in the United States and who fails to return a signed waiver of service requested by a plaintiff located in the United States will be required to pay the expenses of service, unless the defendant shows good cause for the failure.

"Good cause" does *not* include a belief that the lawsuit is groundless, or that it has been brought in an improper venue, or that the court has no jurisdiction over this matter or over the defendant or the defendant's property.

If the waiver is signed and returned, you can still make these and all other defenses and objections, but you cannot object to the absence of a summons or of service.

If you waive service, then you must, within the time specified on the waiver form, serve an answer or a motion under Rule 12 on the plaintiff and file a copy with the court. By signing and returning the waiver form, you are allowed more time to respond than if a summons had been served.

UNITED STATES DISTRICT COURT  
IN THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

TENNILLE VIAU,  
as Next Friend of K.V.,

Plaintiff,

vs.

Case No.

Hon.

CITY OF TROY, a municipal corporation,  
JOHN DOE, JANE DOE, ELAINE BO  
and SCOTT MERCER,  
Jointly and Severally,

Defendants.

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ERNST CHARARA & LOVELL, PLC

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Hannah Fielstra P82101

Counsel for Plaintiff

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(313) 965-5555

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[hannah@ecllawfirm.com](mailto:hannah@ecllawfirm.com)

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**COMPLAINT AND JURY DEMAND**

Plaintiff, by Counsel, in support of her complaint states as follows:

**VENUE AND JURISDICTION**

1. Plaintiff was at all times relevant hereto, a citizen of the United States and State of Michigan residing in the Eastern District of Michigan.
2. The cause of action arose in the City of Troy, Michigan, in the Eastern District of Michigan.



3. The City of Troy is a municipal corporation and political subdivision of the State of Michigan.
4. Defendant John Doe was at all times relevant hereto an agent of the City of Troy Recreation Department and was acting under color of state law, and pursuant to the policies, practices, customs, and usages of the City of Troy Recreation Department and is being sued in his individual capacity.
5. Defendant Jane Doe was at all times relevant hereto an agent of the City of Troy Recreation Department and was acting under color of state law, and pursuant to the policies, practices, customs, and usages of the City of Troy Recreation Department and is being sued in her individual capacity.
6. Defendant Elaine Bo was at all times relevant hereto an employee of the City of Troy Recreation Department and was acting under color of state law, and pursuant to the policies, practices, customs, and usages of the City of Troy Recreation Department and is being sued in her individual capacity.
7. Defendant Scott Mercer was at all times relevant hereto an employee of the City of Troy Recreation Department and was acting under color of state law, and pursuant to the policies, practices, customs, and usages of the City of Troy Recreation Department and is being sued in his individual capacity.

8. The federal claims brought herein are cognizable under the United States Constitution and 42 U.S.C. §1983. Accordingly, jurisdiction is conferred by 28 USC § 1331 as this matter involves a federal question.
9. The state law claims brought herein are cognizable under Michigan law and supplemental jurisdiction is conferred by 28 USC § 1367 as these claims form part of the same case or controversy.

### **FACTUAL ALLEGATIONS**

10. On or about July 10, 2019, Plaintiff Tennille Viau's Next Friend, ten-year-old K.V., was enrolled in the City of Troy Recreation Department's summer sports camp for soccer.
11. The summer sports soccer camp took place in a City of Troy public park.
12. The summer sports soccer camp was jointly administered by Defendants John and Jane Doe, who jointly participated with various Troy Recreation Department officials in administering the summer sports camp program.
13. On July 10, 2019, K.V.'s soccer coach, John Doe, informed Kira and approximately 14 other similarly aged children that they were going to play a game called "Bomb the Country".
14. Her coach then proceeded to ask all the non-white children what country they were from.

15. The coach then proceeded to segregate the children based on their ancestral country of origin and/or color, race, or ethnicity.
16. One Asian-American child indicated that her family was from China, and the coach instructed her that she would be on Team China.
17. Another Argentine-American child indicated that her family was from Argentina, and the coach instructed her that she would be on Team Argentina.
18. K.V., who is biracial, i.e., African American and Caucasian, was asked where she was from and when she responded that she was from the United States of America, the coach placed her on Team Argentina.
19. None of the white children were asked what country they were from, and all were placed on Team America.
20. None of the non-white children were placed on Team America.
21. Thus, the Team America children were all white and all the non-white children were not Team America.
22. The coach then pitted the segregated children against each other.
23. The children were instructed to take a soccer ball and pretend it was a bomb and kick it into the other "countries" to blow them up, pitting the white children against the non-white children.

24. The words and actions of soccer coach, John Doe, Troy Recreation Department's agent, created an intimidating, hostile, and/or offensive public accommodations/public services environment.
25. K.V. felt offended, intimidated, alienated and stigmatized by being segregated based on her color and/or race.
26. On July 11, 2019, Ms. Viau complained about the practice to the City of Troy Recreation Department Director Elaine Bo, to Scott Mercer, the Troy Recreation Supervisor and to Troy official Sarah Davis (hereafter collectively referred to as "the Troy officials").
27. On July 11, 2019, Scott Mercer, informed Ms. Viau that the game had been played for "years" and the children loved it and requested it.
28. However, the children did not request to play "Bomb the Country" and did not request to be segregated based on their national origin, color or race; the game was chosen by the soccer coach and he also chose to segregate them.
29. Ms. Viau was also told by the Recreation Supervisor that the game "might need a name change", but no one addressed the segregation of the children by race, color and/or national origin.
30. On July 12, 2019, K.V.'s soccer coach, Jane Doe, informed the kids that they were going to play a game called "Cowboys vs. Indians."



31. Upon learning of this development, Ms. Viau informed the Troy officials that the “Cowboys vs. Indians” game was inappropriate and that children were being pitted against each other in an “us versus them” environment.
32. Later on July 12, 2019, upon learning that K.V. had been placed in the Argentina group two days earlier while the white children were placed in the American group, she notified the Troy officials that the children had been segregated by national origin, race and/or color.
33. Elaine Bo responded by stating it was “good to know.”
34. However, once again, no one addressed the segregation of the children based on color, race or country of origin, or the disparate treatment to which K.V. was subjected based on her color and/or race or the intimidating, hostile, or offensive environment that had been created.
35. Ms. Viau then promptly pulled her children out of the Troy summer sports camp.
36. K.V. was constructively denied access to the summer sports camp program by the intimidating, hostile, and/or offensive environment.
37. Defendants’ actions and/or omissions proximately caused K.V. the damages set forth below.

**COUNT I - ALL DEFENDANTS**  
**DENIAL OF EQUAL PROTECTION**  
**IN VIOLATION OF FOURTEENTH AMENDMENT**

38. Defendants John and Jane Doe, Elaine Bo and Scott Mercer denied K.V. the equal protection of the law by segregating her based on her race, color or national origin.

39. Defendants John and Jane Doe, Elaine Bo and Scott Mercer were acting under color of law when he/they denied K.V. the equal protection of the law by segregating her based on race or color.

**COUNT II - CITY OF TROY ONLY**  
**MONELL LIABILITY**

40. Defendant City of Troy had a custom and practice of allowing segregation based on race, color and/or national origin as evidenced by its Recreation Director admitting that the segregation practice had been going on “for years”.

41. The custom and practice was a driving force behind the constitutional violation.

**COUNT III - ALL DEFENDANTS**  
**DENIAL OF EQUAL PUBLIC ACCOMMODATIONS IN VIOLATION OF**  
**THE ELLIOTT-LARSEN CIVIL RIGHTS ACT, MCL 37.2101 et. seq.**

42. Defendant City of Troy’s agents denied K.V. the full and equal enjoyment of the services and accommodations of a place of public accommodation in violation of the Elliott-Larsen Civil Rights Act, MCL 37.2101 et seq.

43. The agents of Defendant City of Troy were acting in the course and scope of their agency when they denied K.V. the full and equal enjoyment of the services and accommodations of a place of public accommodation.

44. Defendant City of Troy is vicariously liable as *respondeat superior* for the denial of the full and equal enjoyment of the services and accommodations of a place of public accommodation.

**COUNT IV - ALL DEFENDANTS**  
**DIRECT OR INDIRECT DENIAL OF PUBLIC ACCOMMODATIONS,**  
**ADVANTAGES, FACILITIES AND PRIVILEGES IN VIOLATION OF**  
**MCL 750.146**

45. Defendants directly or indirectly refused, withheld or denied K.V. one or more of the accommodations, advantages, facilities and privileges of the Troy summer sports camp based on race, color or national origin.

46. The agents of Defendant City of Troy were acting in the course and scope of their agency when they denied K.V. one or more of the accommodations, advantages, facilities and privileges of the Troy summer sports camp based on race, color or national origin.

47. Defendant City of Troy is vicariously liable as *respondeat superior* for the direct or indirect refusal, withholding or denial of one or more of the accommodations, advantages, facilities and privileges of the Troy summer sports camp.

**DAMAGES**

48.As a direct and proximate result of the unconstitutional and unlawful actions of the individual and official Defendants as set forth above, K.V. was caused the following injuries and damages, past and future, including but not limited to: Mental anguish, mental distress, loss to reputation, embarrassment, humiliation, mortification, fear, anxiety, depression and loss of the enjoyment of life.

49.As a result of the Defendants' reprehensible, wanton, oppressive unconstitutional and unlawful actions and/or omissions, and their deliberate indifference to Kiara's rights under federal law, K.V. is entitled to recover for the damages and injuries referenced above in the form of economic and non-economic compensatory damages and is entitled to recover punitive damages on her federal claims and treble damages under MCL 750.147 for the denial of equal public accommodations.

50.Plaintiff is also entitled to recover reasonable costs and attorney's fees under 42 USC § 1988 and MCL 37.2101 et seq.

WHEREFORE, Plaintiff respectfully requests judgment for damages against each Defendant, jointly and severally, in whatever amount a jury shall determine is reasonable, fair and just, plus interest, costs and attorney's fees.



**JURY DEMAND**

Plaintiff hereby demands trial by jury on all issues allowed by law.

Respectfully submitted,

ERNST CHARARA & LOVELL, PLC

/s/ Kevin Ernst

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Date: May 20, 2021