

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
NORTHERN DIVISION**

MARCUS MAYS,

Plaintiff,

v.

DOUG HOWELL and
CITY OF LAGRANGE, MISSOURI,

Defendants.

)
)
)
)
)
)
)
)
)
)
)

Case No. 2:12-CV-6

JURY TRIAL DEMANDED

PLAINTIFF'S COMPLAINT

COMES NOW Plaintiff Marcus Mays (hereinafter "Plaintiff"), by and through his attorney, and for his Complaint against Defendant Doug Howell (hereinafter "Defendant Howell") and Defendant City of LaGrange, Missouri (hereinafter "Defendant LaGrange") and respectfully states to this Honorable Court the following:

1. This is a civil action arising under 42 U.S.C. § 1983 and common law avenues of recovery for deprivations of Plaintiff's rights against both Defendants.

2. Plaintiff sues Defendant Doug Howell in his individual capacity.

JURISDICTION

3. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1331 and § 1341.

VENUE

4. Venue is proper under 28 U.S.C. § 1391(b).

5. At all times relevant herein, Plaintiff resided and was a citizen of LaGrange, Missouri.

6. Defendant City of LaGrange, Missouri is a political subdivision of the State of Missouri acting under color of State law, and is a person for purposes of a 42 U.S.C. § 1983 action

of damages.

7. Defendant Howell, at all times relevant herein, was a police officer employed by the City of LaGrange, Missouri.

COLOR OF STATE LAW

8. At all times relevant herein, Defendant Howell acted under color of state law.

9. Particularly, Defendant Howell acted under color of the laws, statutes, ordinances, regulations, policies, customs and usages of the State of Missouri, and its political subdivisions.

FACTUAL BACKGROUND

10. On March 31, 2010, Plaintiff owned a dog named "Cammie", a female American Bulldog.

11. On March 31, 2010, Cammie was approximately 1 ½ years old.

12. On information and belief, Cammie was in heat and broke free from her chain at Plaintiff's residence.

13. At all times relevant herein, Cammie had a dog collar around her neck.

14. A neighbor of Plaintiff's, Mary Coleman saw Cammie and called the LaGrange Police Department.

15. Defendant Howell put a noose around Cammie's neck with a Snare pole.

16. Prior to Defendant Howell putting a noose around Cammie's neck with a Snare pole, someone had chained Cammie to a vehicle near Mary Coleman's residence.

17. After the noose being put around Cammie's neck, Cammie tried to run away, but Defendant Howell pulled the end of the Snare pole forcing Cammie to turn in a circular motion.

18. Cammie came to a stop and Defendant Howell un-holstered his pistol and fired one round into Cammie's chest while she was standing there with the noose around her neck.

19. Cammie dropped on her side immediately after being shot.

20. Defendant Howell re-holstered his weapon.

21. Cammie began to wag her tale while lying on her side and after about 35 seconds, Defendant Howell un-holstered his weapon again and shot Cammie in the head, killing her.

22. The shooting of Cammie was videotaped by Defendant Howell or his partner's car camera. (*See Plaintiff's Exhibit 1 attached hereto*).

COUNT I
VIOLATION OF CIVIL RIGHTS
42 U.S.C. § 1983 AND FOURTH AMENDMENT
AGAINST DEFENDANT HOWELL
FOR COMPENSATORY DAMAGES, PUNITIVE DAMAGES
AND ATTORNEY'S FEES

23. Plaintiff re-alleges all of the preceding paragraphs as if set forth fully herein.

24. Defendant Howell's shooting and killing Plaintiff's dog constituted a seizure under the Fourth Amendment¹.

25. The right to possess a dog is clearly established².

26. Defendant Howell's shooting and killing Plaintiff's dog was objectively unreasonable in that Plaintiff's dog was standing still with a noose around from the Snare pole being held by Defendant Howell when Defendant Howell un-holstered his firearm and shot Plaintiff's dog and Defendant Howell was not in any immediate danger, which called for the use of deadly force³.

Compensatory Damages

27. Under 42 U.S.C. § 1983 Plaintiff is entitled to an award of compensatory damages against Defendant Howell in his individual capacity.

Punitive Damages

28. Defendant Howell's actions were:

¹ Leshner v. Reed, 12 F.3d 148, 150-51 (8th Cir.1994).

² Id.

³ Fuller v. Vines, 36 F.3d 65 (9th Cir. 1994)

- a. Reckless;
- b. Showed callous indifference toward the rights of Plaintiff; and
- c. Were taken in the face of a perceived risk that the actions would violate federal law.

29. Plaintiff is entitled to an award of punitive damages against Defendant Howell in his individual capacity, in order to punish him and to deter others.

Attorney's Fees

30. Under 42 U.S.C. § 1988 if Plaintiff is the prevailing party in this litigation, then he will be entitled to receive an award of reasonable attorney's fees, non-taxable expenses and costs.

WHEREFORE, Plaintiff prays for judgment under 42 U.S.C. § 1983 and 1988 against Defendant Howell in his individual capacity, for compensatory damages in a fair and reasonable amount, for punitive damages, for reasonable attorney's fees, for and non-taxable expenses, for costs, and Plaintiff prays for such other relief as may be just under the circumstances and consistent with the purpose of 42 U.S.C. § 1983.

COUNT II **VIOLATION OF CIVIL RIGHTS** **42 U.S.C. § 1983 AND FOURTEENTH AMENDMENT** **AGAINST DEFENDANT CITY OF LAGRANGE, MISSOURI** **FOR COMPENSATORY DAMAGES AND ATTORNEY'S FEES**

31. Plaintiff re-alleges all of the preceding paragraphs as if set forth fully herein.

Compensatory Damages

1st Alternative Basis of Municipal Liability

Delegation to Defendant Howell

32. As the first alternate basis for liability against Defendant City of LaGrange, the policy maker for Defendant City of LaGrange is an aldermanic board, the mayor, or someone else, and that person delegated full authority and/or empowered Defendant Howell to make

policy.

33. That delegation of authority by the actual policy maker of Defendant LaGrange placed Defendant Howell in a policy making position, and the acts of Defendant Howell may fairly be said to be those of the municipality⁴.

34. Those acts therefore subject Defendant LaGrange to liability for the constitutional violations of Defendant Howell⁵.

2nd Alternative Basis of Municipal Liability – Failure to Train, Supervise, Control

35. As the second alternative basis for liability against Defendant LaGrange, Defendant LaGrange failed to properly hire, train, supervise, control and/or discipline Defendant Howell. Defendant LaGrange was thus deliberately indifferent to the rights of others in adopting its hiring and training practices, and in failing to supervise, control and/or discipline Defendant Howell such that those failures reflected a deliberate or conscious choice by Defendant LaGrange⁶.

36. Those deficiencies caused Plaintiff damages⁷.

37. In light of the fact that it was Defendant Howell who engaged in the constitutional violations, the need to correct the deficiencies is so obvious, and the inadequacy so likely to result in the violation of constitutional rights, that the policymakers of Defendant LaGrange can reasonably be said to have been deliberately indifferent to the need⁸.

38. If Defendant LaGrange had properly hired, trained, supervised, controlled and/or disciplined Defendant Howell, the constitutional violations committed by Defendant Howell would not have occurred.

39. These failures by Defendant LaGrange to hire, train, supervise, control and/or discipline Defendant Howell subject Defendant LaGrange to liability for the constitutional

⁴ Id. at 483, and Kujawski v. Board of Com'rs of Bartholomew County, Ind., 183 F.3d 734, 737 (7th Cir. 1999).

⁵ Id. at 483; Kujawski v. Board of Com'rs of Bartholomew County, Ind., 183 F.3d 734, 737 (7th Cir. 1999).

⁶ City of Canton v. Harris, 489 U.S. 378, 389 (1989).

⁷ Larson By Larson v. Miller, 76 F.3d 1446, 1454 (8th Cir. 1996).

⁸ Andrews v. Fowler, 98 F.3d 1069, 1076 (8th Cir. 1996).

violations committed by Defendant Howell.

Waiver of Sovereign Immunity

40. Upon information and belief, at the relevant time, Defendant LaGrange had purchased and had in effect a policy of insurance to insure itself against claims or causes of action for damages caused by city employees engaged in government functions, including torts as described herein.

41. The purchase of that insurance constitutes a waiver of sovereign immunity by Defendant LaGrange⁹.

Compensatory Damages

42. Under 42 U.S.C. § 1983, Plaintiff is entitled to an award of compensatory damages against Defendant LaGrange.

Attorney's Fees

43. Under 42 U.S.C. § 1988 if Plaintiff is the prevailing party in this litigation, then he will be entitled to receive an award of reasonable attorney's fees, non-taxable expenses and costs.

WHEREFORE, Plaintiff prays for judgment under 42 U.S.C. § 1983 and 1988 against Defendant LaGrange for compensatory damages in a fair and reasonable amount, for reasonable attorney's fees, and non-taxable expenses, for costs and such other relief as may be just under the circumstances and consistent with the purpose of 42 U.S.C. § 1983.

COUNT III **VIOLATION OF CIVIL RIGHTS** **42 U.S.C. § 1983, *RESPONDEAT SUPERIOR*** **AGAINST DEFENDANT CITY OF LAGRANGE, MISSOURI** **FOR COMPENSATORY DAMAGES AND ATTORNEY'S FEES**

44. Plaintiff re-alleges all of the preceding paragraphs as if set forth fully herein.

45. At all relevant times Defendant Howell was:

⁹ RSMo. 71.180 and/or 537.610.

- a. Serving as an employee of Defendant LaGrange as a police officer;
- b. Engaging in a government function; and
- c. Acting within the course and scope of that employment.

46. Defendant LaGrange is liable under a theory of *respondeat superior*¹⁰.

47. The actions of Defendant Howell caused Plaintiff to suffer the damages outlined herein.

Compensatory Damages

48. Under 42 U.S.C. § 1983, Plaintiff is entitled to an award of compensatory damages against Defendant LaGrange.

Attorney's Fees

49. Under 42 U.S.C. § 1988 if Plaintiff is the prevailing party in this litigation, then he will be entitled to receive an award of reasonable attorney's fees, non-taxable expenses and costs.

WHEREFORE, Plaintiff prays for judgment under 42 U.S.C. § 1983 and 1988 against Defendant LaGrange for compensatory damages in a fair and reasonable amount, for reasonable attorney's fees, and non-taxable expenses, for costs and such other relief as may be just under the circumstances and consistent with the purpose of 42 U.S.C. § 1983.

¹⁰ Plaintiff makes this claim based on the dissent of Justice Breyer in Board of County Com'rs of Bryan County, Okl. v. Brown, 520 U.S. 397, 416 (1997).

Respectfully submitted,

SCHOTTEL & ASSOCIATES, P.C.

BY: s/James W. Schottel, Jr.

James W. Schottel, Jr. #51285MO
906 Olive St., PH
St. Louis, MO 63101
(314) 421-0350
(314) 421-4060 Facsimile
jwsj@schotteljustice.com

Attorney for Plaintiff
Marcus Mays

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
NORTHERN DIVISION**

MARCUS MAYS,

Plaintiff,

v.

DOUG HOWELL and
CITY OF LAGRANGE, MISSOURI,

Defendants.

)
)
)
)
)
)
)
)
)
)
)

Case No. 2:12-CV-6

NOTICE OF EXHIBIT FILING

Exhibit 1 to Plaintiff's Complaint will be filed with the Clerk's Office in DVD format.

I certify that within 24 hours of the filing of this Notice, I will file and serve a DVD copy of the item identified above.

Dated: January 19, 2012

Respectfully submitted,

SCHOTTEL & ASSOCIATES, P.C.

BY: s/James W. Schottel, Jr.

James W. Schottel, Jr. #51285MO
906 Olive St., PH
St. Louis, MO 63101
(314) 421-0350
(314) 421-4060 facsimile
jwsj@schotteljustice.com

Attorney for Plaintiff
Marcus Mays

JS 44 (Rev. 11/04)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

MARCUS MAYS

(b) County of Residence of First Listed Plaintiff Lewis County
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Schottel & Associates, P.C., 906 Olive St, PH, St.
Louis, MO 63101; (314) 421-0350

DEFENDANTS

DOUG HOWELL and CITY OF LAGRANGE, MISSOURI

County of Residence of First Listed Defendant Lewis County
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	PROPERTY/INJURY	LABOR	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Mod. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FOOD AND DRUG TAXES <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input checked="" type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
42 U.S.C. § 1983

Brief description of cause:

Police Unreasonable Seizure - 4th Amendment

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):


JUDGE

DOCKET NUMBER

DATE

01/19/2012

SIGNATURE OF ATTORNEY OF RECORD



FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI

MARCUS MAYS

Plaintiff,

v.

DOUG HOWELL and CITY
OF LAGRANGE, MISSOURI

Defendant,

Case No. 2:12-CV-6

ORIGINAL FILING FORM

**THIS FORM MUST BE COMPLETED AND VERIFIED BY THE FILING PARTY
WHEN INITIATING A NEW CASE.**

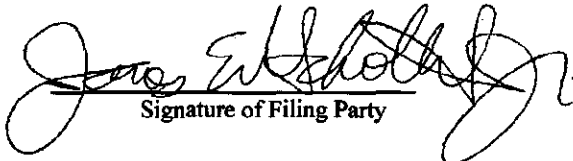
☐ THIS SAME CAUSE, OR A SUBSTANTIALLY EQUIVALENT COMPLAINT, WAS
PREVIOUSLY FILED IN THIS COURT AS CASE NUMBER _____
AND ASSIGNED TO THE HONORABLE JUDGE _____.

☐ THIS CAUSE IS RELATED, BUT IS NOT SUBSTANTIALLY EQUIVALENT TO ANY
PREVIOUSLY FILED COMPLAINT. THE RELATED CASE NUMBER IS _____ AND
THAT CASE WAS ASSIGNED TO THE HONORABLE _____. THIS CASE MAY,
THEREFORE, BE OPENED AS AN ORIGINAL PROCEEDING.

☒ NEITHER THIS SAME CAUSE, NOR A SUBSTANTIALLY EQUIVALENT
COMPLAINT, HAS BEEN PREVIOUSLY FILED IN THIS COURT, AND THEREFORE
MAY BE OPENED AS AN ORIGINAL PROCEEDING.

The undersigned affirms that the information provided above is true and correct.

Date: 01/19/2012


Signature of Filing Party



United States District Court
EASTERN DISTRICT OF MISSOURI
NOTICE OF LAWSUIT AND
REQUEST FOR WAIVER OF SERVICE OF SUMMONS

*** * Plaintiff to Complete Gray Area * ***

TO: Doug Howell; 200 W Washington St, LaGrange, MO 63448

(Name of defendant)

(as _____ of _____)

(Title)

(Name of business)

A lawsuit has been commenced against you (or the entity on whose behalf you are addressed). A copy of the complaint is attached to this notice. It has been filed in the United States District Court for the Eastern District

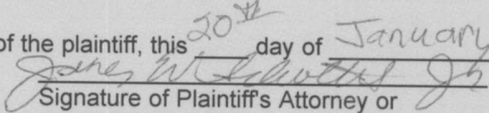
of Missouri and has been assigned docket number 2:12-CV-6

This is not a formal summons or notification from the court, but rather my request that you sign and return the enclosed waiver of service in order to save the cost of serving you with a judicial summons and an additional copy of the complaint. The cost of service will be avoided if I receive a signed copy of the waiver within 30 days after the date designated below as the date on which this Notice and Request is sent. I enclose a stamped and addressed envelope (or other means of cost-free return) for your use. An extra copy of the waiver is also attached for your records.

If you comply with this request and return the signed waiver to the undersigned, it will be filed with the court and no summons will be served on you. The action will then proceed as if you had been served on the date the waiver is filed, except you will not be obligated to answer the complaint before 60 days from the date designated below as the date on which this notice is sent (or before 90 days from that date if your address is not in any judicial district of the United States).

If you do not return the signed waiver within the time indicated, I will take appropriate steps to effect formal service in a manner authorized by the Federal Rules of Civil Procedure and will then, to the extent authorized by those Rules, ask the court to require you (or the party on whose behalf you are addressed) to pay the full costs of such service. In that connection, please read the statement concerning the duty of parties to waive the service of the summons, which is set forth on the foot of the waiver form.

I affirm that this request is being sent to you on behalf of the plaintiff, this 20th day of January, 2012.


Signature of Plaintiff's Attorney or
Unrepresented Plaintiff

DUTY TO AVOID UNNECESSARY COSTS OF SERVICE OF SUMMONS

Rule 4 of the Federal Rules of Civil Procedure requires certain parties to cooperate in saving unnecessary costs of service of the summons and complaint. A defendant located in the United States who, after being notified of an action and asked by a plaintiff located in the United States to waive service of summons, fails to do so will be required to bear the cost of such service unless good cause be shown for its failure to sign and return the waiver.

It is not good cause for a failure to waive service that a party believes that the complaint is unfounded, or that the action has been brought in an improper place or in a court that lacks jurisdiction over the subject matter of the action or over its person or property. A party who waives service of the summons retains all defenses and objections (except any relating to the summons or to the service of summons), and may later object to the jurisdiction of the court or to the place where the action has been brought.

A defendant who waives service must within the time specified on the waiver form serve on the plaintiff's attorney (or unrepresented plaintiff) a response to the complaint and must also file a signed copy of the response with the court. If the answer or motion is not served within this time, a default judgment may be taken against that defendant. By waiving service, a defendant is allowed more time to answer, than if the summons had actually served, when the request for waiver of service was received.



United States District Court
EASTERN DISTRICT OF MISSOURI

WAIVER OF SERVICE OF SUMMONS

NOTICE TO DEFENDANT(S)

** Plaintiff To Complete Gray Area **

To: James W. Schottel, Jr.
(Name of plaintiff's attorney or unrepresented plaintiff)

I acknowledge receipt of your request that I waive service of a summons in the action of:

Case Caption: Mays vs. Howell and City of LaGrange

Case Number: 2:12-CV-6

in the United States District Court for the Eastern District of Missouri. I have also received a copy of the complaint in this action, two copies of this instrument, and a means by which I can return the signed waiver to you without cost to me.

I agree to save the cost of service of a summons and an additional copy of the complaint in this lawsuit by not requiring that I (or the entity on whose behalf I am acting) be served with judicial process in the manner provided by Rule 4.

I (or the entity on whose behalf I am acting) will retain all defenses or objections to the lawsuit or to the jurisdiction or venue of the court except for objections based on a defect in the summons or in the service of the summons.

I understand that a judgment may be entered against me (or the party on whose behalf I am acting) if an answer or motion under Rule 12 is not served upon you within 60 days after January 20, 2012

(Date Waiver sent)

or within 90 days after date if the request was sent outside the United States.

DEFENDANT'S ACKNOWLEDGMENT OF WAIVER OF SERVICE

Date

Print name

Signature

as _____
(Officer or Agent)

of _____
(Corporation or Association)

Address

City, State, Zip Code



United States District Court
EASTERN DISTRICT OF MISSOURI
NOTICE OF LAWSUIT AND
REQUEST FOR WAIVER OF SERVICE OF SUMMONS

* * Plaintiff to Complete Gray Area * *

TO: Ronnie Powers; 118 S. Main St., LaGrange MO 63448
(Name of defendant)
(as Mayor of City of LaGrange, Missouri)
(Title) (Name of business)

A lawsuit has been commenced against you (or the entity on whose behalf you are addressed). A copy of the complaint is attached to this notice. It has been filed in the United States District Court for the Eastern District

of Missouri and has been assigned docket number 2:12-CV-6

This is not a formal summons or notification from the court, but rather my request that you sign and return the enclosed waiver of service in order to save the cost of serving you with a judicial summons and an additional copy of the complaint. The cost of service will be avoided if I receive a signed copy of the waiver within 30 days after the date designated below as the date on which this Notice and Request is sent. I enclose a stamped and addressed envelope (or other means of cost-free return) for your use. An extra copy of the waiver is also attached for your records.

If you comply with this request and return the signed waiver to the undersigned, it will be filed with the court and no summons will be served on you. The action will then proceed as if you had been served on the date the waiver is filed, except you will not be obligated to answer the complaint before 60 days from the date designated below as the date on which this notice is sent (or before 90 days from that date if your address is not in any judicial district of the United States).

If you do not return the signed waiver within the time indicated, I will take appropriate steps to effect formal service in a manner authorized by the Federal Rules of Civil Procedure and will then, to the extent authorized by those Rules, ask the court to require you (or the party on whose behalf you are addressed) to pay the full costs of such service. In that connection, please read the statement concerning the duty of parties to waive the service of the summons, which is set forth on the foot of the waiver form.

I affirm that this request is being sent to you on behalf of the plaintiff, this 20th day of January, 2012

Signature of Plaintiff's Attorney or
Unrepresented Plaintiff

DUTY TO AVOID UNNECESSARY COSTS OF SERVICE OF SUMMONS

Rule 4 of the Federal Rules of Civil Procedure requires certain parties to cooperate in saving unnecessary costs of service of the summons and complaint. A defendant located in the United States who, after being notified of an action and asked by a plaintiff located in the United States to waive service of summons, fails to do so will be required to bear the cost of such service unless good cause be shown for its failure to sign and return the waiver.

It is not good cause for a failure to waive service that a party believes that the complaint is unfounded, or that the action has been brought in an improper place or in a court that lacks jurisdiction over the subject matter of the action or over its person or property. A party who waives service of the summons retains all defenses and objections (except any relating to the summons or to the service of summons), and may later object to the jurisdiction of the court or to the place where the action has been brought.

A defendant who waives service must within the time specified on the waiver form serve on the plaintiff's attorney (or unrepresented plaintiff) a response to the complaint and must also file a signed copy of the response with the court. If the answer or motion is not served within this time, a default judgment may be taken against that defendant. By waiving service, a defendant is allowed more time to answer, than if the summons had actually served, when the request for waiver of service was received.



United States District Court
EASTERN DISTRICT OF MISSOURI

WAIVER OF SERVICE OF SUMMONS

NOTICE TO DEFENDANT(S)

** Plaintiff To Complete Gray Area **

To: James W. Schottel, Jr.
(Name of plaintiff's attorney or unrepresented plaintiff)

I acknowledge receipt of your request that I waive service of a summons in the action of:

Case Caption: Mays vs. Howell and City of LaGrange

Case Number: 2:12-CV-6

in the United States District Court for the Eastern District of Missouri. I have also received a copy of the complaint in this action, two copies of this instrument, and a means by which I can return the signed waiver to you without cost to me.

I agree to save the cost of service of a summons and an additional copy of the complaint in this lawsuit by not requiring that I (or the entity on whose behalf I am acting) be served with judicial process in the manner provided by Rule 4.

I (or the entity on whose behalf I am acting) will retain all defenses or objections to the lawsuit or to the jurisdiction or venue of the court except for objections based on a defect in the summons or in the service of the summons.

I understand that a judgment may be entered against me (or the party on whose behalf I am acting) if an answer or motion under Rule 12 is not served upon you within 60 days after January 20, 2012

(Date Waiver sent)

or within 90 days after date if the request was sent outside the United States.

DEFENDANT'S ACKNOWLEDGMENT OF WAIVER OF SERVICE

Date

Print name

Signature

as _____
(Officer or Agent)

of _____
(Corporation or Association)

Address

City, State, Zip Code