

IN THE CIRCUIT COURT OF BOONE COUNTY, MISSOURI

TIGER TOTS CHILD DEVELOPMENT	)	
CENTER, LLC, and	)	
	)	
TIGER TOTS ACADEMY, LLC, and	)	
	)	
PAUL PREVO,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	Case No.: 20BA-CV01607
	)	
STEPHANIE BROWNING, DIRECTOR	)	
COLUMBIA/BOONE COUNTY	)	
DEPARTMENT OF PUBLIC HEALTH	)	
AND HUMAN SERVICES,	)	
	)	
Defendant.	)	

**MOTION TO DISMISS AND/OR MOTION FOR MORE DEFINITE STATEMENT**

COMES NOW Defendant in her separate, official capacity as the Local Health Authority for Boone County, by and through counsel, and for her Motion pursuant to Missouri Supreme Court Rule 55.27 states as follows:

1. Defendant moves to dismiss this matter on the grounds of insufficiency of process, insufficiency of service of process, and lack of personal jurisdiction.
  - a. No summons has been issued or served in this matter as required by Missouri Supreme Court Rule 54.
  - b. Without a summons it is impossible to determine who and in what capacity plaintiffs seek to join in this matter as a party for each claim.
  - c. Service of a summons is an essential prerequisite to this Court exercising personal jurisdiction.

2. Defendant moves to dismiss this matter on the grounds of lack of plaintiffs' standing to challenge all or part of the Boone County Local Health Authority's Order which leads to a lack of subject matter jurisdiction.
  - a. A claim that a party lacks standing is treated as a motion to dismiss for lack of subject matter jurisdiction. Borges v. Missouri Public Entity Risk Management Fund, 358 S.W.3d 177 (Mo.App. W.D. 2012).
  - b. The two (2) LLC plaintiffs operate businesses located within the municipal boundaries of the City of Columbia. The County's Local Health Authority's Orders only have force and effect outside the city limits of the City of Columbia. These LLC plaintiffs therefore lack standing to challenge the daycare restrictions or other business restrictions in the County's Order.
  - c. All plaintiffs lack standing to challenge any other business restrictions in any Health Order other than those for which Plaintiff is directly involved in which is the operation of a daycare for children. The LLC plaintiffs have no legally protected interest at stake beyond the operation of their child daycare business within the corporate limits of the City of Columbia.
3. Defendant moves to dismiss this action for the reason that several claims have been improperly united.
  - a. Plaintiffs have plead in one cause of action challenges to the Orders from the Local Health Authority from the City of Columbia and the County of Boone. Those Orders are jurisdictionally separate and have no overlapping force and effect. Plaintiffs lack standing to challenge certain aspects of the County's Order but tries

to include all of these claims in one petition against both Orders. These claims are not properly joined in one cause of action.

4. Defendant moves to dismiss this matter for failure to state a claim upon which relief can be granted.
5. Defendant moves to dismiss this matter for failure to join a necessary party.
6. Defendant moves for a more definite statement to outline what claims which plaintiff has specifically against which particular provision(s) of the County's Local Health Authority's Orders and which claims which plaintiff has against which particular provision(s) of the City's Local Health Authority's Orders, as it is impossible to determine plaintiffs' standing, draft adequate pleadings, or prepare adequate defenses without such delineation.

WHEREFORE, Defendant moves the Court dismiss this matter for the reasons stated herein, alternatively to order a More Definite Statement so that an adequate responsive pleading can be drafted, and for such further Orders as the Court deems fitting and proper.

Respectfully submitted:

/s/ Charles J. Dykhouse

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