

**IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MISSOURI  
CENTRAL DIVISION**

MICHAEL POSTAWKO, et al.,	)	
	)	
Plaintiffs,	)	
	)	Case No. 16-04219-CV-C- NKL
v.	)	
	)	
MISSOURI DEPARTMENT OF	)	
CORRECTIONS, et al.,	)	
	)	
Defendants.	)	

**MDOC DEFENDANTS’ ANSWER TO PLAINTIFFS’  
SECOND AMENDED COMPLAINT**

Defendants Missouri Department of Corrections and Ann L. Precythe<sup>1</sup> (“MDOC”), hereby answer Plaintiffs’ Second Amended Complaint as follows:

**INTRODUCTION**

1. MDOC denies the allegations in Paragraph 1.
2. Paragraph 2 is a recitation of Plaintiffs’ causes of action, to which no response is required. To the extent a response is required, MDOC denies that Plaintiffs state causes of action upon which they can prevail and deny any factual allegations in Paragraph 2.
3. MDOC denies the allegations in Paragraph 3.

**JURISDICTION AND VENUE**

4. The allegations in this paragraph constitute a legal conclusion to which no response is required. To the extent a response is required, MDOC denies the allegations in Paragraph 4.

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<sup>1</sup> Adrienne Hardy and Anne L. Precythe (substituted for George Lombardi) were dismissed pursuant to the Court’s Order of May 11, 2017. Inasmuch as Anne L. Precythe remains a defendant in Count I, her answer to the Second Amended Complaint is coextensive with the answer of the Missouri Department of Corrections.

5. The allegations in this paragraph constitute a legal conclusion to which no response is required. To the extent a response is required, MDOC denies the allegations in Paragraph 5.

6. MDOC admits that Michael Postawko is an adult individual and is currently incarcerated at the Jefferson City Correctional Center in Jefferson City, Missouri. MDOC denies that Mr. Postawko states any cognizable claim for relief, deny that Mr. Postawko has set forth sufficient allegations to meet his burden for certification of a class, and deny any remaining allegations in Paragraph 6.

7. MDOC admits that Christopher Baker is an adult individual and is currently incarcerated at a State of Missouri correctional center. According to current MDOC records, Mr. Baker is incarcerated at Western Reception and Diagnostic Center in St. Joseph, Missouri. MDOC denies that Mr. Baker states any cognizable claim for relief, deny that Mr. Baker has set forth sufficient allegations to meet his burden for certification of a class, and deny any remaining allegations in Paragraph 7.

8. MDOC admits that Michael Jamerson is an adult individual and is currently incarcerated at Missouri Eastern Correctional Center in Pacific, Missouri. MDOC denies that Mr. Jamerson states any cognizable claim for relief, deny that Mr. Jamerson has set forth sufficient allegations to meet his burden for certification of a class, and deny any remaining allegations in Paragraph 8.

9. The allegations in this paragraph constitute a legal conclusion to which no response is required. To the extent a response is required, MDOC denies the allegations in Paragraph 9.

10. MDOC admits that around the time of the filing of the Second Amended Complaint George Lombardi was the Director of MDOC. Anne Precythe is the current Director of MDOC and was substituted in for Lombardi on January 23, 2017. Lombardi was sued in

official capacity only, and Ms. Precythe is sued in her official capacity only. The remaining statements in Paragraph 10 constitute legal conclusions to which no response is required. To the extent a response is required, MDOC denies and all remaining allegations in Paragraph 10.

11. Admitted.

12. MDOC lacks knowledge and information sufficient to admit or deny the allegations of Paragraph 12, and therefore denies them.

13. MDOC lacks knowledge and information sufficient to admit or deny the allegations of Paragraph 13, and therefore denies them.

14. MDOC lacks knowledge and information sufficient to admit or deny the allegations of Paragraph 14, and therefore denies them.

15. MDOC lacks knowledge and information sufficient to admit or deny the allegations of Paragraph 15, and therefore denies them.

16. MDOC lacks knowledge and information sufficient to admit or deny the allegations of Paragraph 16, and therefore denies them.

17. MDOC lacks knowledge and information sufficient to admit or deny the allegations of Paragraph 17, and therefore denies them.

18. MDOC lacks knowledge and information sufficient to admit or deny the allegations of Paragraph 18, and therefore denies them.

19. MDOC lacks knowledge and information sufficient to admit or deny the allegations of Paragraph 19, and therefore denies them.

20. MDOC lacks knowledge and information sufficient to admit or deny the allegations of Paragraph 20, and therefore denies them.

21. MDOC lacks knowledge and information sufficient to admit or deny the allegations of Paragraph 21, and therefore denies them.

22. MDOC lacks knowledge and information sufficient to admit or deny the allegations of Paragraph 22, and therefore denies them.

23. MDOC lacks knowledge and information sufficient to admit or deny the allegations of Paragraph 23, and therefore denies them.

24. MDOC lacks knowledge and information sufficient to admit or deny the allegations of Paragraph 24, and therefore denies them.

25. MDOC lacks knowledge and information sufficient to admit or deny the allegations of Paragraph 25, and therefore denies them.

26. MDOC lacks knowledge and information sufficient to admit or deny the allegations of Paragraph 26, and therefore denies them.

27. MDOC admits that Defendant Adrienne Hardy is a registered nurse. MDOC denies the remaining allegations in Paragraph 27.

28. MDOC lacks knowledge and information sufficient to admit or deny the allegations of Paragraph 28, and therefore denies them.

29. MDOC lacks knowledge and information sufficient to admit or deny the allegations of Paragraph 29, and therefore denies them.

30. MDOC lacks knowledge and information sufficient to admit or deny the allegations of Paragraph 30, and therefore denies them.

31. MDOC lacks knowledge and information sufficient to admit or deny the allegations of Paragraph 31, and therefore denies them.

32. MDOC lacks knowledge and information sufficient to admit or deny the allegations of Paragraph 32, and therefore denies them.

33. The allegations in this paragraph constitute a legal conclusion to which no response is required. To the extent a response is required, MDOC denies the allegations in Paragraph 33.

## **FACTS**

### **Chronic Hepatitis C Virus**

34. MDOC lacks knowledge and information sufficient to admit or deny the allegations of Paragraph 34, and therefore denies them.

35. MDOC lacks knowledge and information sufficient to admit or deny the allegations of Paragraph 35, and therefore denies them.

36. MDOC lacks knowledge and information sufficient to admit or deny the allegations of Paragraph 36, and therefore denies them.

37. MDOC lacks knowledge and information sufficient to admit or deny the allegations of Paragraph 37, and therefore denies them.

38. MDOC lacks knowledge and information sufficient to admit or deny the allegations of Paragraph 38, and therefore denies them.

39. MDOC lacks knowledge and information sufficient to admit or deny the allegations of Paragraph 39, and therefore denies them.

40. MDOC lacks knowledge and information sufficient to admit or deny the allegations of Paragraph 40, and therefore denies them.

41. MDOC lacks knowledge and information sufficient to admit or deny the allegations of Paragraph 41, and therefore denies them.

42. MDOC lacks knowledge and information sufficient to admit or deny the allegations of Paragraph 42, and therefore denies them.

43. MDOC lacks knowledge and information sufficient to admit or deny the allegations of Paragraph 43, and therefore denies them.

44. MDOC lacks knowledge and information sufficient to admit or deny the allegations of Paragraph 44, and therefore denies them.

45. MDOC lacks knowledge and information sufficient to admit or deny the allegations of Paragraph 45, and therefore denies them.

46. MDOC lacks knowledge and information sufficient to admit or deny the allegations of Paragraph 46, and therefore denies them.

47. MDOC lacks knowledge and information sufficient to admit or deny the allegations of Paragraph 47, and therefore denies them.

48. MDOC lacks knowledge and information sufficient to admit or deny the allegations of Paragraph 48, and therefore denies them.

49. MDOC lacks knowledge and information sufficient to admit or deny the allegations of Paragraph 49, and therefore denies them.

50. MDOC lacks knowledge and information sufficient to admit or deny the allegations of Paragraph 50, and therefore denies them.

51. MDOC lacks knowledge and information sufficient to admit or deny the allegations of Paragraph 51, and therefore denies them.

52. MDOC lacks knowledge and information sufficient to admit or deny the allegations of Paragraph 52, and therefore denies them.

53. MDOC lacks knowledge and information sufficient to admit or deny the allegations of Paragraph 53, and therefore denies them.

54. MDOC lacks knowledge and information sufficient to admit or deny the allegations of Paragraph 54, and therefore denies them.

55. MDOC lacks knowledge and information sufficient to admit or deny the allegations of Paragraph 55, and therefore denies them.

56. MDOC lacks knowledge and information sufficient to admit or deny the allegations of Paragraph 56, and therefore denies them.

57. MDOC lacks knowledge and information sufficient to admit or deny the allegations of Paragraph 57, and therefore denies them.

58. MDOC lacks knowledge and information sufficient to admit or deny the allegations of Paragraph 58, and therefore denies them.

59. MDOC lacks knowledge and information sufficient to admit or deny the allegations of Paragraph 59, and therefore denies them.

60. MDOC lacks knowledge and information sufficient to admit or deny the allegations of Paragraph 60, and therefore denies them.

61. MDOC lacks knowledge and information sufficient to admit or deny the allegations of Paragraph 61, and therefore denies them.

62. MDOC lacks knowledge and information sufficient to admit or deny the allegations of Paragraph 62, and therefore denies them.

63. MDOC lacks knowledge and information sufficient to admit or deny the allegations of Paragraph 63, and therefore denies them.

64. MDOC lacks knowledge and information sufficient to admit or deny the allegations of Paragraph 64, and therefore denies them.

65. MDOC lacks knowledge and information sufficient to admit or deny the allegations of Paragraph 65, including subparagraphs (a) through (h) and therefore denies them.

66. MDOC lacks knowledge and information sufficient to admit or deny the allegations of Paragraph 66, and therefore denies them.

67. MDOC denies the allegations in the first sentence of Paragraph 67. With regard to the allegations in the second sentence of Paragraph 67, MDOC is without sufficient knowledge and information to admit or deny the allegations and therefore denies them.

68. MDOC denies the allegations in Paragraph 68.

69. MDOC lacks knowledge and information sufficient to admit or deny the allegations of Paragraph 69, and therefore denies them.

70. MDOC lacks knowledge and information sufficient to admit or deny the allegations of Paragraph 70, and therefore denies them.

71. MDOC lacks knowledge and information sufficient to admit or deny the allegations of Paragraph 71, and therefore denies them.

72. MDOC lacks knowledge and information sufficient to admit or deny the allegations of Paragraph 72, and therefore denies them.

73. MDOC lacks knowledge and information sufficient to admit or deny the allegations of Paragraph 73, and therefore denies them.

74. MDOC lacks knowledge and information sufficient to admit or deny the allegations of Paragraph 74, and therefore denies them.



75. MDOC lacks knowledge and information sufficient to admit or deny the allegations of Paragraph 75, and therefore denies them.

**Methods for Determining Progression of Fibrosis/Cirrhosis**

76. MDOC lacks knowledge and information sufficient to admit or deny the allegations of Paragraph 76, and therefore denies them.

77. MDOC lacks knowledge and information sufficient to admit or deny the allegations of Paragraph 77, and therefore denies them.

78. MDOC lacks knowledge and information sufficient to admit or deny the allegations of Paragraph 78, and therefore denies them.

79. MDOC lacks knowledge and information sufficient to admit or deny the allegations of Paragraph 79, and therefore denies them.

80. MDOC lacks knowledge and information sufficient to admit or deny the allegations of Paragraph 80, including subparts (a)-(d), and therefore denies them.

81. MDOC lacks knowledge and information sufficient to admit or deny the allegations of Paragraph 81, and therefore denies them.

82. MDOC lacks knowledge and information sufficient to admit or deny the allegations of Paragraph 82, and therefore denies them.

83. MDOC lacks knowledge and information sufficient to admit or deny the allegations of Paragraph 83, and therefore denies them.

84. MDOC lacks knowledge and information sufficient to admit or deny the allegations of Paragraph 84, and therefore denies them.

85. MDOC lacks knowledge and information sufficient to admit or deny the allegations of Paragraph 85, and therefore denies them.

86. MDOC lacks knowledge and information sufficient to admit or deny the allegations of Paragraph 86, and therefore denies them.

87. MDOC lacks knowledge and information sufficient to admit or deny the allegations of Paragraph 87, and therefore denies them.

**HCV Treatment Policy of Defendants Lombardi, MDOC, and Corizon**

88. MDOC denies the allegations in Paragraph 88.

89. MDOC denies the allegations in Paragraph 89.

90. MDOC denies the allegations in Paragraph 90.

91. MDOC denies the allegations in Paragraph 91.

92. MDOC denies the allegations in Paragraph 92.

93. MDOC denies the allegations in Paragraph 93.

94. MDOC denies the allegations in Paragraph 94.

95. MDOC denies the allegations in Paragraph 95.

96. MDOC denies the allegations in Paragraph 96.

97. MDOC denies the allegations in Paragraph 97.

98. MDOC denies the allegations in Paragraph 98.

99. MDOC denies the allegations in Paragraph 99.

100. MDOC lacks knowledge and information sufficient to admit or deny the allegations of Paragraph 100, and therefore denies them.

101. MDOC lacks knowledge and information sufficient to admit or deny the allegations of Paragraph 101, and therefore denies them.

102. MDOC lacks knowledge and information sufficient to admit or deny the allegations of Paragraph 102, and therefore denies them.

103. MDOC denies the allegations in Paragraph 103.

104. MDOC lacks knowledge and information sufficient to admit or deny the allegations of Paragraph 100, and therefore denies them.

105. MDOC lacks knowledge and information sufficient to admit or deny the allegations of Paragraph 102, and therefore denies them.

106. MDOC lacks knowledge and information sufficient to admit or deny the allegations of Paragraph 102, and therefore denies them.

**Plaintiff Christopher Baker**

107. MDOC lacks knowledge and information sufficient to admit or deny the allegations of Paragraph 107, and therefore denies them.

108. MDOC lacks knowledge and information sufficient to admit or deny the allegations of Paragraph 108, and therefore denies them.

109. MDOC lacks knowledge and information sufficient to admit or deny the allegations of Paragraph 109, and therefore denies them.

110. MDOC lacks knowledge and information sufficient to admit or deny the allegations of Paragraph 110, and therefore denies them.

111. MDOC lacks knowledge and information sufficient to admit or deny the allegations of Paragraph 111, and therefore denies them.

112. MDOC lacks knowledge and information sufficient to admit or deny the allegations of Paragraph 112, and therefore denies them.

113. MDOC denies the allegations in Paragraph 113.

114. MDOC lacks knowledge and information sufficient to admit or deny the allegations of Paragraph 114, and therefore denies them.

115. MDOC lacks knowledge and information sufficient to admit or deny the allegations of Paragraph 115, and therefore denies them.

116. MDOC admits that in July, Baker was transferred from JCCC to Algoa Correctional Center. MDOC lacks knowledge and information sufficient to admit or deny the remaining allegations of Paragraph 116, and therefore denies them.

117. MDOC lacks knowledge and information sufficient to admit or deny the allegations of Paragraph 117, and therefore denies them.

118. To the extent Paragraph 118 calls for a legal conclusion, no response is required. To the extent a response is required, MDOC denies the allegations in Paragraph 118.

**Plaintiff Michael Jamerson**

119. MDOC lacks knowledge and information sufficient to admit or deny the allegations of Paragraph 119, and therefore denies them.

120. MDOC lacks knowledge and information sufficient to admit or deny the allegations of Paragraph 120, and therefore denies them.

121. MDOC lacks knowledge and information sufficient to admit or deny the allegations of Paragraph 121, and therefore denies them.

122. MDOC lacks knowledge and information sufficient to admit or deny the allegations of Paragraph 122, and therefore denies them.

123. MDOC denies the allegations in Paragraph 123.

124. MDOC lacks knowledge and information sufficient to admit or deny the allegations of Paragraph 124, and therefore denies them.

125. MDOC denies the allegations lack knowledge and information sufficient to admit or deny the allegations of Paragraph 125, and therefore denies them.

126. To the extent Paragraph 126 calls for a legal conclusion, no response is required. To the extent a response is required, MDOC denies the allegations in Paragraph 126.

**Class Action Allegations**

127. MDOC admits that Plaintiffs purport to bring a class action under Rules 23(a) and 23(b)(2), but deny that a class should be certified under Rules 23(a) and 23(b)(2). MDOC denies any remaining allegations in Paragraph 127.

128. Paragraph 128 contains Plaintiffs' recitation of the proposed class definition, and contains no facts to which a response is required. To the extent a response is required, MDOC denies that certification of a class is proper and deny any remaining allegations in Paragraph 128.

129. MDOC denies the allegations in Paragraph 129.

130. MDOC denies the allegations in Paragraph 130.

131. MDOC denies the allegations in Paragraph 131, including each subparagraph A-C.

132. MDOC denies the allegations in Paragraph 132.

133. MDOC denies the allegations in Paragraph 133.

134. MDOC denies the allegations in Paragraph 134.

**Count I**

135. MDOC incorporates all preceding paragraphs of their Answer as if fully set forth herein.

136. MDOC denies the allegations in Paragraph 136.

WHEREFORE, MDOC requests that this Court dismiss Count I with prejudice, award MDOC its costs and attorneys' fees, and order such other relief as this Court deems just and proper.

## **Count II**

137. MDOC incorporates Paragraphs 1-136 of their Answer as if fully set forth herein.

138. Paragraph 138 states a legal conclusion to which no response is required. To the extent a response is required, MDOC denies that Plaintiffs have stated a claim under the ADA and deny and remaining allegations in Paragraph 138.

139. Paragraph 139 states a legal conclusion to which no response is required. To the extent a response is required, MDOC denies that Plaintiffs have stated a claim under the ADA and deny and remaining allegations in Paragraph 139.

140. Paragraph 140 states a legal conclusion to which no response is required. To the extent a response is required, MDOC denies that Plaintiffs have stated a claim under the ADA and deny and remaining allegations in Paragraph 140.

141. MDOC denies the allegations in Paragraph 141.

142. MDOC denies the allegations in Paragraph 142.

143. MDOC denies the allegations in Paragraph 143.

144. MDOC denies the allegations in Paragraph 144.

WHEREFORE, MDOC requests that this Court dismiss Count II with prejudice, award MDOC its costs and attorneys' fees, and order such other relief as this Court deems just and proper.

## **Count III**

145. MDOC incorporates Paragraphs 1-106 and 135-136 of their Answer as if fully set forth herein.

146. MDOC denies the allegations in Paragraph 146.

147. MDOC denies the allegations in Paragraph 147.

148. MDOC denies the allegations in Paragraph 148.

149. MDOC denies the allegations in Paragraph 149.

150. MDOC denies the allegations in Paragraph 150.

151. MDOC denies the allegations in Paragraph 151.

WHEREFORE, MDOC requests that this Court dismiss Count III with prejudice, award MDOC its costs and attorneys' fees, and order such other relief as this Court deems just and proper.

#### **Count IV**

152. MDOC incorporates Paragraphs 1-106 and 135-151 of their Answer as if fully set forth herein.

WHEREFORE, MDOC requests that this Court dismiss Count IV with prejudice, award MDOC its costs and attorneys' fees, and order such other relief as this Court deems just and proper.

#### **Count V**

153. MDOC incorporates Paragraphs 1-99, 107-118, and 135-136 of their Answer as if fully set forth herein.

154. MDOC denies the allegations in Paragraph 154.

155. MDOC denies the allegations in Paragraph 155.

156. MDOC denies the allegations in Paragraph 156.

157. MDOC denies the allegations in Paragraph 157.

158. MDOC denies the allegations in Paragraph 158.

159. MDOC denies the allegations in Paragraph 159.

WHEREFORE, MDOC requests that this Court dismiss Count V with prejudice, award MDOC its costs and attorneys' fees, and order such other relief as this Court deems just and proper.

**Count VI**

160. MDOC incorporates Paragraphs 1-99, 107-118, 135-144 and 153-159 of their Answer as if fully set forth herein.

WHEREFORE, MDOC requests that this Court dismiss Count VI with prejudice, award MDOC its costs and attorneys' fees, and order such other relief as this Court deems just and proper.

**Count VII**

161. MDOC incorporates Paragraphs 1-99, 119-126, and 135-136 of their Answer as if fully set forth herein.

162. MDOC denies the allegations in Paragraph 162.

163. MDOC denies the allegations in Paragraph 163.

164. MDOC denies the allegations in Paragraph 165.

165. MDOC denies the allegations in Paragraph 165.

166. MDOC denies the allegations in Paragraph 166.

167. MDOC denies the allegations in Paragraph 167.

WHEREFORE, MDOC requests that this Court dismiss Count VII with prejudice, award MDOC its costs and attorneys' fees, and order such other relief as this Court deems just and proper.

**Count VIII**



168. MDOC incorporates Paragraphs 1-99, 119-126, 135-144 and 161-67 of their Answer as if fully set forth herein.

WHEREFORE, MDOC requests that this Court dismiss Count VIII with prejudice, award MDOC its costs and attorneys' fees, and order such other relief as this Court deems just and proper.

### **Jury Trial Demand**

MDOC respectfully demands a jury trial on any claims and issues so triable.

### **Affirmative Defenses**

1. Plaintiffs' claims in their Second Amended Complaint fail, because Plaintiffs fail to state a claim upon which relief can be granted pursuant to Rule 12(b)(6) and Rule 12(c).
2. Plaintiffs' claims against MDOC is barred by Eleventh Amendment immunity.
3. To the extent Plaintiffs purport to assert claims against MDOC employees in their individual capacities, such claims are barred by qualified immunity. Qualified immunity is applicable, because no Plaintiff has alleged or can prove that his clearly established rights were violated.
4. Plaintiffs' claims fail, because Plaintiffs have failed to exhaust their administrative remedies, including the grievance procedure available to him at the Missouri Department of Corrections.
5. Plaintiffs' claims are barred by the applicable statute of limitations.
6. Plaintiffs' claims are barred in whole or in part because Plaintiffs' own negligence contributed to the injuries alleged in the Second Amended Complaint.
7. Plaintiffs' ADA claims fail, because Defendants had a legitimate non-discriminatory reason for their actions.

8. To the extent Plaintiffs make any claim for punitive damages, such damages are not available in this case.

9. MDOC denies that class certification for Plaintiffs' proposed class is proper and assert that Plaintiffs' proposed class fails to meet the requirements set forth in Rule 23.

10. MDOC reserves any and all rights to assert additional affirmative defenses as they become known during the course of the litigation.

Respectfully submitted,

**JOSHUA D. HAWLEY,**  
Attorney General

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*Attorneys for the Missouri Department of  
Corrections*

### **CERTIFICATE OF SERVICE**

I hereby certify that on May 25, 2017, the foregoing was served via the Court's electronic filing system upon all counsel of record.

/s/ Michael D. Quinlan  
Michael D. Quinlan  
Assistant Attorney General