

**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’ MOTION TO DISMISS SECOND AMENDED COMPLANT

Plaintiffs Michael Postawko, Christopher Baker and Michael Jamerson bring a putative class action on behalf of themselves and other inmates within the Missouri Department of Corrections (“MDOC”) infected with the Hepatitis C virus (“HCV”). Plaintiffs claim that they and all other inmates infected with HCV are entitled, under the Eighth Amendment and the Americans with Disabilities Act (“ADA”), to receive a novel course of drugs as treatment. However, Plaintiffs’ claims against MDOC, MDOC Director Anne L. Precythe, and MDOC employee Adrienne Hardy (collectively the “MDOC Defendants”) should be dismissed for the following reasons:

1. Plaintiffs have failed to state a claim under the Eighth Amendment against the MDOC Defendants because Plaintiffs have no constitutional right to obtain the particular course of treatment they demand.
2. Plaintiffs’ Eighth Amendment claims for damages against MDOC Director Precythe are not cognizable under 42 U.S.C. § 1983 and are barred by the Eleventh Amendment.
3. Plaintiff Baker fails to state a claim against Defendant Hardy for violation of the Eighth Amendment, and any such claim is barred by qualified immunity.

4. Plaintiffs fail to state a claim under the ADA because an ADA claim cannot be based on medical treatment decisions.

5. Plaintiffs' ADA claims alleged against MDOC in Counts IV, VI, and VIII are barred by the Eleventh Amendment.

6. Pursuant to Local Rule 7.0(a), the MDOC Defendants have filed herewith suggestions in support of this motion, setting forth the authorities and arguments relied upon.

WHEREFORE, for all the foregoing reasons and for the reasons set forth in the suggestions filed herewith, the MDOC Defendants respectfully request the Court to dismiss Plaintiffs' claims against them, and grant the MDOC Defendants any such other and further relief the Court deems fair and appropriate.

Respectfully submitted,

JOSHUA D. HAWLEY

Attorney General

/s/ H. Anthony Relys

H. Anthony Relys, #63190

Assistant Attorney General

Post Office Box 861

St. Louis, MO 63188

Tel: (314) 340-7861

Fax: (314) 340-7029

E-mail: Tony.Relys@ago.mo.gov

*Attorneys for the Missouri Department of
Corrections, Anne L. Precythe, and
Adrienne Hardy*

CERTIFICATE OF SERVICE

I hereby certify that on February 21, 2017, the foregoing was served via the Court's electronic filing system upon all counsel of record.

/s/ H. Anthony Relys
H. Anthony Relys
Assistant Attorney General