

IN THE CIRCUIT COURT OF COLE COUNTY
STATE OF MISSOURI
19th Judicial Circuit

THOMAS HOOTSELLE, *et al.*,)
)
 Plaintiffs,)
)
 vs.)
)
GEORGE LOMBARDI, *et al.*,)
)
 Defendants.)

Case No. 12AC-CC00518

**STATEMENT OF UNCONTROVERTED MATERIAL FACTS
IN SUPPORT OF DEFENDANTS’ MOTION FOR SUMMARY JUDGMENT**

Pursuant to Rule 74.04, Defendants George Lombardi and the Missouri Department of Corrections hereby state that, as evidenced by the attached affidavits, deposition testimony, and exhibits, the following facts are uncontroverted:

Uncontroverted Facts

1. George Lombardi is the Director of the Missouri Department of Corrections (“MDOC”) and has served in that position since he was appointed by the State governor in 2009. (Lombardi Aff. ¶ 1, Exh. A).
2. David Dormire is the Director of the MDOC’s Division of Adult Institutions. (Dormire Aff. ¶ 1, Exh. B).
3. The Division of Adult Institutions oversees the operation of the following Missouri correctional centers at the following locations:

	Correctional Center	Address
1.	Algoa Correctional Center	8501 No More Victims Road, Jefferson City, MO
2.	Booneville Correctional Center	1216 E. Morgan Street, Booneville, MO
3.	Chillicothe Correctional Center	3151 Litton Road, Chillicothe, MO
4.	Crossroads Correctional Center	11115 E. Pence Road, Cameron, MO
5.	Eastern Reception, Diagnostic & Correctional Center	2727 Highway K, Bonne Terre, MO
6.	Farmington Correctional Center	1012 W. Columbia St., Farmington, MO
7.	Fulton Reception and Diagnostic Center	1393 Highway O, Fulton, MO
8.	Jefferson City Correctional Center	8200 No More Victims Road, Jefferson City, MO
9.	Kansas City Reentry Center	651 Mulberry St., Kansas City, MO
10.	Maryville Treatment Center	30227 U.S. Highway 136, Maryville, MO
11.	Missouri Eastern Correctional Center	18701 Old Highway 66, Pacific, MO
12.	Moberly Correctional Center	5201 S. Morely, Moberly, MO
13.	Northeast Correctional Center	13698 Airport Road, Bowling Green, MO
14.	Ozark Correctional Center	929 Honor Camp Lane, Fordland, MO
15.	Potosi Correctional Center	11593 State Highway, Mineral Point, MO
16.	South Central Correctional Center	255 W. Highway 32, Licking, MO
17.	Southeast Correctional Center	300 E. Pedro Simmons Dr., Charleston, MO
18.	Tipton Correctional Center	619 N. Osage Ave., Tipton, MO
19.	Western Missouri Correctional Center	609 E. Pence Road, Cameron, MO
20.	Western Reception, Diagnostic & Correctional Center	3401 Faraon, St. Joseph, MO

21.	Women's Eastern Reception, Diagnostic & Correctional Center	1101 E. Highway 34, Vandalia, MO
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(Dormire Aff. ¶ 4, Exh. B; Kempker Aff. ¶ 8, Exh. C).

4. At each of these various correctional centers, the MDOC employs correctional officers, among others, and, in particular, employs correctional officers at levels 1 and 2 ("C.O.-1s" and "C.O.-2s") (Dormire Aff. ¶ 6, Exh. B).

5. The principal job for which the MDOC has hired its C.O.-1s and C.O.-2s is to watch over the offenders who are imprisoned at each of these State correctional centers. (Lombardi Aff. ¶ 2, Exh. A; Hootselle Depo. p. 87, Exh. D).

6. The specific job duties ("C.O. Job Duties") for which the MDOC has hired its C.O.-1s and its C.O.-2s are as follows:

- a. Supervise the movement of offenders, conduct periodic counts of offenders, and search offenders and their living quarters for contraband;
- b. Escort and/or transport offenders to predetermined locations;
- c. Supervise offenders in housing units and during the performance of work activities and recreational and religious activities;
- d. Conduct inspections of housing units for health and safety hazards;
- e. Prepare and submit reports on offender violations of divisional or correctional facility rules, unusual offender behaviors, and offender security breaches or failures; and
- f. Promote offender rehabilitation by attempting to modify offender's social attitudes, discouraging undesirable behaviors, and encouraging worthwhile activities for offenders.

(Lombardi Aff. ¶ 2, Exh. A; Dormire Aff. ¶ 7, Exh. B).

7. The MDOC has paid and continues to pay its C.O.-1s and C.O.-2s for the time that each of them spends in performing these C.O. Job Duties. (Lombardi Aff. ¶ 3, Exh. A; Dormire Aff. ¶ 8, Exh. B;).

8. The job shift of a C.O.-1 or a C.O.-2 begins at the time that the Officer arrives at his or her assigned job post and ends when the Officer is relieved and departs from that job post. (Dormire Aff. ¶ 11, Exh. B).

9. With relatively few exceptions, each such job shift is scheduled to last for a total duration of 8 hours, including any meal or rest periods. (Dormire Aff. ¶ 14, Exh. B; Dicus Depo. pp. 49, 60, 62, 228, Exh. E).

10. The MDOC pays its C.O.-1s and C.O.-2s for the time that they serve on any such shift, including meal or rest periods. (Lombardi Aff. ¶ 3, Exh. A; Dormire Aff. ¶ 15, Exh. B; Hootselle Depo. p. 138, Exh. D; Dicus Depo. pp. 49, 60, 62, Exh. E).

11. The MDOC also pays its C.O.-1s and C.O.-2s for the overtime they are required to work when a relief officer is late in replacing the C.O.-1 or C.O.-2 at the assigned job post, and when, prior to the start of his or her job shift or after the end of such job shift, the C.O.-1 or C.O.-2 responds to inmate fighting or an escape attempt or other misconduct. (Dormire Aff. ¶ 19, Exh. B; Dicus Depo. pp. 231, 232, Exh. E).

12. The MDOC does not pay its C.O.-1s or C.O.-2s for the time they regularly spend prior to starting work at an assigned post ("Pre-Shift Time"). (Lombardi Aff. ¶ 7, Exh. A; Dormire Aff. ¶ 16, Exh. B).

13. Such Pre-Shift Time typically includes the time it takes to do the following:

- a. Log in his or her arrival at the correctional center, either by scanning a bar-coded card or signing or initialing an entry log;
- b. Pass through security screening, including a metal detector and an airlock; and
- c. Walk to the assigned job post within the correctional center.

(Lombardi Aff. ¶ 8, Exh. A; Dormire Aff. ¶s 16-17, Exh. B; Kempker Aff. ¶ 25, Exh. C).

14. At some correctional centers and for some correctional officers, such Pre-Shift Time may also include the time it takes to:

- d. Pick up keys and/or a radio, if needed;
- e. Report for and receive a duty assignment;
- f. After arriving at the post, get briefed, if necessary, by the officer he or she is replacing

(Kempker Aff. ¶ 21, Exh. C; Dicus Depo. p. 73, Exh. E).

15. None of such Pre-Shift Time spent on these activities includes the supervision and control of inmates for which the MDOC hires and pays its correctional officers. (Lombardi Aff. ¶ 9, Exh. A; Dormire Aff. ¶ 18, Exh. B; Kempker Aff. ¶ 24 , Exh. C).

16. The MDOC does not consider such Pre-Shift Time to be work time for which correctional officers should be paid. (Lombardi Aff. ¶ 11, Exh. A; Kempker Aff. ¶ 25, Exh. C; Hootselle Depo. pp. 32-33, 37, 38, Exh. D; Dicus Depo. pp. 91, 92, 96, Exh. E).

17. The MDOC has never promised to pay correctional officers for such Pre-Shift Time. (Lombardi Aff. ¶s 12, 13, Exh. A; Dormire Aff. ¶s 15-16, Exh. B; Kempker Aff. ¶s 25, 26, Exh. C; Hootselle Depo. pp. 33-34, 36-37, Exh. D; Dicus Depo. pp. 91-92, Exh. E).

18. At the time they are first hired, correctional officers for the MDOC are told that they will not be paid for such Pre-Shift Time. (Hootselle Depo. pp. 34, 133-34, 142-43, Exh. D; Dicus Depo. pp. 237-38, Exh. E).

19. Since starting with the MDOC on December 2, 2002, Plaintiff class representative Thomas Hootselle has never expected that the MDOC would pay him for Pre-Shift Time. (Hootselle Depo. pp. 30, 33-34, 36-37, Exh. D).

20. Since starting with the MDOC in 1989, Plaintiff class representative Daniel Dicus has never expected that the MDOC would pay him for Pre-Shift Time. (Dicus Depo. pp. 12, 92, Exh. E).

21. The Plaintiff class representatives in this lawsuit have never submitted any requests to be paid overtime compensation for such Pre-Shift Time. (Hootselle Depo. p. 33, Exh. D; Dicus Depo. pp. 124, 135, 148, 150-51, Exh. E).

22. The following wardens at the following State correctional centers have never had any correctional officer claim or seek to claim payment for the time spent either before arriving at his or her assigned job posting or after departing from his or her assigned job posting:

- a. Warden Jay Cassady, Jefferson City Correctional Center (Cassady Aff. ¶s 14, 15, Exh. F-1);
- b. Warden Gaye Colborn, Maryville Treatment Center (Colborn Aff. ¶s 14, 15, Exh. F-2);
- c. Warden Ryan Crews, Western Reception, Diagnostic & Correctional Center (Crews Aff. ¶s 13, 14, Exh. F-3);
- d. Warden Cindy Griffith, Potosi Correctional Center (Griffith Aff. ¶s 14, 15, Exh. F-4);
- e. Warden Billy D. Harris, Fulton Reception & Diagnostic Center (Harris Aff. ¶s 14, 15, Exh. F-5);
- f. Warden Jason W. Lewis, Southeast Correctional Center (Lewis Aff. ¶s 14, 15, Exh. F-6);
- g. Warden Angela Mesmer, Women's Eastern Reception, Diagnostic & Correctional Center (Mesmer Aff. ¶s 14, 15, Exh. F-7);
- h. Warden Dean Minor, Moberly Correctional Center (Minor Aff. ¶s 14, 15, Exh. F-8);
- i. Warden Jeff Norman, Boonville Correctional Center (Norman Aff. ¶s 14-15, Exh. F-9);
- j. Warden Douglas J. Prudden, Tipton Correctional Center (Prudden Aff. ¶s 14, 15, Exh. F-10);
- k. Warden Jennifer Saschse, Missouri Eastern Correctional Center (Sachse Aff. ¶s 14, 15, Exh. F-11); and
- l. Warden Troy Louis Steele, Eastern Reception & Diagnostic Center (Steele Aff. ¶s 14, 15, Exh. F-12).

23. The Missouri Corrections Officers Association ("MOCO") is the labor union that represents C.O.-1s and C.O.-2s employed by the MDOC. (Hootselle Depo. p. 73, Exh. D; Dicus Depo. p. 98, Exh. E; MOCO Labor Agreement, Exh. G).

24. MOCOIA does not claim that its member C.O.-1s or C.O.-2s are legally entitled to be paid for any Pre-Shift Time. (Dicus Depo. pp. 98, 108-09, Exh. E).

25. Each of the C.O.-1s and C.O.-2s who work for the MDOC – including the Plaintiff class representatives in this lawsuit – have signed an “Acknowledgment” stating that each of them understands the following to be true:

- a. “[The MDOC] does not recognize verbal or implied contracts for employment”;
- b. “The contents of [the MDOC’s Employee Handbook] do not constitute an express or implied contract of employment”.

(Signature Pages, Exh. H).

26. Each of the Signature Pages is part of the MDOC’s Employee Handbook, which is distributed to each correctional officer at the time he or she is hired by the MDOC. (Employee Handbook, Exh. I).

Based upon the foregoing Uncontroverted Facts and the governing case law cited in the Memorandum of Law filed herewith, the Court should enter Summary Judgment on Plaintiff’s remaining claims.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on December 28, 2016, Defendants' Motion for Summary Judgment on Plaintiffs' remaining claims, together with the Statement of Uncontested Facts, with attached exhibits, and Memorandum of Law, were filed with the Clerk of the Court using the Missouri Courts Electronic Filing System, and also were served by hand-delivery to:

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