IN THE CIRCUIT COURT OF COLE COUNTY
STATE OF MISSOURI

THOMAS HOOTSELLE, JR., et al.,	)	
	)	
Plaintiffs,	)	Case No. 12AC-CC00518
	)	
vs.	)	
	)	
ANNE L. PRECYTHE, et al.,	)	
	)	
Defendants.	)	

PLAINTIFFS' MOTION TO EXCLUDE EXPERT TESTIMONY OF CHESTER HANVEY AND ELIZABETH ARNOLD

COME NOW Class Plaintiffs, by and though their class representatives, Thomas Hootselle, Daniel Dicus, and Oliver Huff and through their attorneys, and hereby move pursuant to Mo. Rev. Stat. § 490.065 to exclude the testimony and opinions of Defendants' experts Chester Hanvey and Elizabeth Arnold, who are paid consultants from the Berkeley Research Group in California, hired specifically to "refute" the opinions offered by Plaintiffs' expert, Dr. William H. Rogers of Lindenwood University. As described in more detail below, the testimony of Defendants' two "experts" fails to meet the standard for admissibility under the Missouri Rules of Evidence and relevant case law, in that it is both unreliable and unhelpful to the trier of fact. Moreover, their testimony has a high potential to mislead and confuse the jury.

I. Introduction

At the eleventh hour in this litigation (in January 2018),[1] MDOC designated two experts in an effort to "refute" the opinions offered by Plaintiffs' expert, Dr. Rogers.[2] As discussed in more detail below, Defendants' experts should be excluded, as their testimony does not satisfy the standards set forth in Mo. Rev. Stat. § 490.065. They have based their opinions on insufficient data, conducting what they admit was a "preliminary study" insufficient for extrapolation during a few hours over three days at half of the prisons in this case, and ultimately, the opinions they provide are irrelevant to liability in this matter. Even more troubling, these experts have willfully ignored the mountain of sworn evidence that has been developed over the six years that this case is pending. Instead, MDOC now asks that Mr. Hanvey and Ms. Arnold be allowed to inject what amounts to their personal subjective beliefs about the work that Dr. Rogers has done. This testimony is patently improper and inadmissible under Mo. Rev. Stat. § 490.065 and should be excluded in its entirety.

II. Legal Standard

In March of 2017, the State of Missouri revised the rule of evidence dealing with experts, adopting language modeled on the federal standard (Federal Rule of Evidence 702), commonly known as the "*Daubert* standard" (*see Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993)). That new law took effect on August 28, 2017. The relevant text of Mo. Rev. Stat. § 490.065 states as follows:

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[1] A "Summary of Opinions" was produced on the eve of their depositions.

[2] The document sent from MDOC to Dr. Hanvey and Dr. Arnold retaining their services states explicitly that the doctors are retained to "refute" the opinions of Plaintiffs' expert, thus securing the conclusion of the research before it was even begun.

> 2. In all actions except those to which subsection 1 of this section applies:
>
> (1) A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if:
>
> (a) The expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;
>
> (b) The testimony is based on sufficient facts or data;
>
> (c) The testimony is the product of reliable principles and methods; and
>
> (d) The expert has reliably applied the principles and methods to the facts of the case.

Mo. Rev. Stat. § 490.065.

The United States Supreme Court has interpreted the relevant language to require that expert evidence be "not only relevant, but reliable." *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579, 589 (1993); *see also Kumho Tire Co., Ltd. v. Carmichael*, 526 U.S. 137, 147 (1999) ("In *Daubert*, this Court held that Federal Rule of Evidence 702 imposes a special obligation upon a trial judge to 'ensure that any and all scientific testimony . . . is not only relevant, but reliable.'"). *Kumho* confirmed that the *Daubert* standard extends beyond traditional scientific testimony to all types of expert testimony, including testimony founded on engineering principles or other technical or specialized knowledge. 526 U.S. at 147.

The U.S. Supreme Court further explained in *Daubert* that "[t]he adjective 'scientific' implies a grounding in the methods and procedures of science," and "the word 'knowledge' connotes more than subjective belief or unsupported speculation." 509 U.S. at 590. *Daubert* mandates that the trial judge serve as a gatekeeper, who screens out "any and all scientific testimony or evidence" unless it is both "relevant" and "reliable." *Id.* at 589. The proponent of the evidence, in this case Defendants, bears the

burden of proving the admissibility of the expert testimony "by a preponderance of proof." *Id.* at 592 n.10 (internal citation omitted).

In *Daubert*, the Supreme Court outlined four non-exclusive factors that the district court may look to in evaluating the reliability of expert testimony: (1) whether the scientific technique can be or has been tested; (2) whether the theory or technique has been subjected to peer review or publication; (3) the known rate of error for the technique or theory and the applicable standards for operation; and (4) whether the technique is generally accepted. *Johnson v. Mead Johnson & Co., LLC*, 754 F.3d 557, 562 (8th Cir. 2014) (citing *Daubert*, 509 U.S. at 593–94). *Daubert*'s progeny provide additional factors such as: "whether the expertise was developed for litigation or naturally flowed from the expert's research; whether the proposed expert ruled out other alternative explanations; and whether the proposed expert sufficiently connected the proposed testimony with the facts of the case." *Lauzon v. Senco Products, Inc.*, 270 F.3d 681, 687 (8th Cir. 2001). As the Supreme Court explained in *Kumho Tire Company*, "the test of reliability is 'flexible,' and *Daubert*'s list of specific factors neither necessarily nor exclusively applies to all experts or in every case. Rather, the law grants a court the same broad latitude when it decides how to determine reliability as it enjoys in respect to its ultimate reliability determination." 526 U.S. at 141–42.

> The proffered expert's testimony must be reliable, meaning it
>
> must be based on the 'methods and procedures of science' rather than on 'subjective belief or unsupported speculation'; the expert must have 'good grounds' for his or her belief . . . . [A]n inquiry into the reliability of scientific evidence under Rule 702 requires a determination as to its scientific validity.

In re Paoli Railroad Yard PCB Litigation, 35 F.3d 717, 742 (3d Cir. 1994) (quoting *Daubert*, 509 U.S. at 590 & n.9).

When analyzing the reliability of a particular methodology, a district court should consider all relevant factors, including:

> (1) whether a method consists of a testable hypothesis; (2) whether the method has been subject to peer review; (3) the known or potential rate of error; (4) the existence and maintenance of standards controlling the technique's operation; (5) whether the method is generally accepted; (6) the relationship of the technique to methods which have been established to be reliable; (7) the qualifications of the expert witness testifying based on the methodology; and (8) the non-judicial uses to which the method has been put.

Id. at 742 n.8.

Reliable expert evidence must be based "in the knowledge and experience of the relevant discipline." *Kumho*, 526 U.S. at 149 (internal citation, quotation marks, and alteration omitted). Expert evidence cannot be reliable unless the expert uses and explains a sound process, such as the scientific method, to reach his or her conclusions. *Daubert*, 509 U.S. at 590; *see also* Mo. Rev. Stat. § 490.065 (To be admissible, expert testimony must be "the product of reliable principles and methods."). The reliability inquiry focuses on the validity of the expert's "principles and methodology," rather than on the correctness of the expert's conclusions. *Daubert*, 509 U.S. at 595. Beyond such principles and methodology, "an expert's testimony . . . must be accompanied by a **sufficient factual foundation** . . . ." *Elcock v. Kmart Corp.*, 233 F.3d 734, 754 (3d Cir. 2000) (internal citation and quotation marks omitted). "[W]here the expert's opinion is so fundamentally unsupported that it can offer no assistance to the jury, it must be excluded." *Sterling v. Redevelopment Auth. of City of Philadelphia*, 836 F. Supp. 2d 251, 272 (E.D. Pa. 2011) (internal citation and quotation marks omitted), *aff'd*, 511 Fed. Appx. 225 (3d Cir. 2013). Although the reliability inquiry allows a court flexibility, an expert's opinion must employ "the same level of intellectual rigor that

characterizes the practice of an expert in the relevant field." *Kumho*, 526 U.S. at 152. A court must determine through independent evaluation whether the expert's reliance is reasonable, and "the standard is equivalent to Rule 702's reliability requirement – there must be good grounds on which to find the data reliable." *Paoli*, 35 F.3d at 748.

An expert may not simply self-validate the reliability of his or her testimony. As the Supreme Court observed in *General Electric v. Joiner,* "[n]othing in either *Daubert* or the Federal Rules of Evidence requires a district court to admit opinion evidence that is connected to existing data only by the *ipse dixit* of the expert." 522 U.S. 136, 146 (1997). If Defendants fail to provide sufficient validation of the assumptions and facts underlying the opinions and reasoning of their expert, the court cannot make the findings required by Rule 702 (and Mo. Rev. Stat. § 490.065) and must exclude the testimony. *See Daubert*, 509 U.S. at 589-590.

III. The Opinions and Testimony of Mr. Hanvey and Ms. Arnold Do Not Meet the Standard for Admissibility

As described in more detail below, the testimony and opinions of Mr. Hanvey and Ms. Arnold, offered by the MDOC to "refute" the testimony of Plaintiffs' expert, Dr. Rogers, simply do not hold up to scrutiny, are methodologically flawed, fail to consider sufficient data (including virtually the entire discovery record developed over the six-year litigation history of this case), and are unreliable and irrelevant. This testimony must be excluded.

A. Hanvey and Arnold Admit That Their Data Cannot Be Extrapolated To Any Meaningful Results

Mr. Hanvey and Ms. Arnold base their opinions, entirely, on observations that they made over the course of three days in January of 2018. See Exhibit 5 to the Deposition of Elizabeth Arnold, attached hereto. These observations were made at ten

prisons (six visited by Mr. Hanvey; four visited by Ms. Arnold), with the visit at each prison lasting about 3 and a half hours. Each visit included significant time sitting and talking with wardens and other administrative personnel at each facility. The prisons (and administrative persons participating in the visits) were made aware that Mr. Hanvey and Ms. Arnold were coming, in advance, by the Attorney General's office. Ex. 5, Site Visit Information; Ex. 1, Arnold Dep. at 115:11-22. During these visits, Mr. Hanvey and Mr. Arnold interviewed one or two management employees at each prison, speaking to 14 people in total, but not speaking to or interviewing any member of the certified class. Ex. 5, Site Visit Information; Ex. 1, Arnold Dep. at 97:3-98:8.

Mr. Hanvey and Ms. Arnold then timed the movement of various employees moving between different points in the prison, apparently recording times by using the lap function on their cell phones. Ex. 1, Arnold Dep. at 127:7-22. Mr. Hanvey and Ms. Arnold also observed COIs and COIIs as they engaged in different activities before and after their shifts. Ex. 9, Site Observation Data. These "experts" provided no information regarding how many employees they observed, how they knew that the people they were observing were class members as opposed to visitors, volunteers, food service personnel or other types of entrants other than to admit:

> The interviews and site visits were just preliminary. They were not intended to be a representative sample. They were really just looking to get a sense of the actual range of times and duration that it takes CO's to actually get in and out from their posts and finish their posts. It was not intended to be a complete study.

Ex. 1, Arnold Dep. at 125:2-8; *see also id.* at 139:5-13 (admitting that it would be "inappropriate" to extrapolate any information from their "preliminary observation[s]"); Ex. 2, Hanvey Dep. at 70:24-71:1 (admitting that he "can't extrapolate the information you got here to the class as a whole"); *id.* at 70:17-23 (admitting that they would need to

"schedule observations such that each work day shift is appropriately represented" if they wanted "to collect a representative sample").

These admissions are decisive on the issue of whether the opinions of Hanvey and Arnold are admissible. "Trained experts commonly extrapolate from existing data. But nothing in either Daubert or the Federal Rules of Evidence requires a district court to admit opinion evidence that is connected to existing data only by the *ipse dixit* of the expert." *Gen. Elec. Co. v. Joiner*, 522 U.S. 136, 146 (1997) In light of the fact that – by their own admission – "there is simply too great an analytical gap between the data and the opinion proffered,"[3] Defendants' expert opinions should not be admitted at the trial. *Id*. It will undoubtedly only confuse and mislead the jury who will be considering the case on behalf of the certified class as a whole.

B. Hanvey and Arnold Express Conclusory, Personal, Lay Opinions Unsupported by Facts and Based on Insufficient Data

Both witnesses admitted – stunningly – that they had not considered the vast amount of discovery that had been adduced in this case that would have been relevant to their research, including entry and exit logs, testimony regarding pre and post shift activities from Plaintiff and Defendant witnesses, handwritten logs or any other evidence in rendering their opinions. Instead, they looked at such a small amount of the discovery record (which they could not remember or describe at their depositions), developed over six years, involving dozens of witnesses, thousands of documents and multiple sworn answers to interrogatories and requests for admission, that – when

[3] By comparison, Plaintiffs' expert relied on thousands of pages of entry and exit log and reviewed numerous declarations, investigative reports, employment data, handbooks, and Bureau of Labor statistics to calculate, by prison, the total losses of the Class Members. *See* Rogers Economic Loss Report exhibit 7 to Opposition to Motion To Decertify.

compared to the date they did rely on – it is plain that they have not relied on sufficient readily available data to be allowed to suggest what amount to personal, subjective lay opinions to the jury here.

> Q. Okay. So would you agree with me that instead of looking at the depositions, interrogatory answers, declarations, you guys went and collected your own data rather than relying on the evidence in this case?
>
> A. We did collect our own data. I wouldn't say rather than anything, just what we felt was going to give us the most reliable data.
>
> Q. Okay. And but it was rather than. You didn't read all the depos. You didn't look at the declarations. You didn't look at all the interrogatory answers about what all this was, the pre and post shift activity. Instead of looking at the declarations, the sworn testimony, the sworn interrogatory answers, you guys went and did your survey to the ten facilities over those three days. Is that accurate?
>
> A. I'm struggling with the use of survey
>
> Q. She used that word, not me.
>
> A. Survey is generally a written self-report instrument. I mean it can be used more broadly.
>
> Q. What did you do? You don't want to use the word survey. What word do you want?
>
> A. I would say we collected verbal self reports through structure interviewing techniques. I would say that we conducted observations based on time and motion methodology. And I would say that we collected distance measurements.

Ex. 2, Hanvey Dep. at 49:1-50:1.

> Q. Was there a reason why -- so what you did is you guys used your site visits instead of going to the record in this case, the depositions, the declarations, the interrogatories; is that fair?
>
> A. It's fair. It was supplemented with some of that information, but the primary source of the opinions is the data we collected.

Id. at 50:16-22.

But you guys decided to do this methodology of a site visit as well as maybe a couple depos that you read, you chose to do that rather than look at the depositions, the declarations, the interrogatory answers, fair?

A. That's correct.

Id. at 51:5-10.

A. So again, the data that we collected is supportive of our comments about the assumptions that Roger made in his report. It's not entirely the basis of our opinions.

Q. What else is the basis of your opinions other than the data you collected?

A. We looked at –

Q. What other data other than the -- I want to be clear on the question. I'm not trying to interrupt you, honestly, okay? Other than we have Exhibits 5 through 8 which I thought was all your data, what other data are you basing your opinions other than that stuff, and your notes, which is 10?

A. Right.

Q. Other than that, 5 through 10, what other data are you relying on?

A. So just to clarify, that's the scope of the data that we collected, but I was trying to differentiate between the fact that we collected that data and that's supportive of our critiques regarding his assumptions. However, we also did analysis of his data.

Q. Okay. So you're saying the data that you collected is supportive of your opinions, right?

A. Right, right.

Q. Okay. So what other data did you rely on then in your opinions other than your data?

A. His [Dr. Rogers'] data.

Q. What of his data did you rely on?

A. So we analyzed his data and looked at his code and looked at a variety of assumptions that he made in the analysis. I think that Chester is going

> to speak to more detail about specifically what code and assumptions were made through that process. But that is also a piece of our findings.

Ex. 1, Arnold Dep. at 123:16-124:24.

Despite Ms. Arnold's attempted evasions of the question, she – like Mr. Hanvey – was forced to concede that the data that was the basis of their opinions was the observations that they had made at 10 prisons over three days in January. Ms. Arnold's belated reference to looking at Dr. Rogers' data is also problematic, as it is clear that this "analysis" was done orally, by unnamed Berkeley Group researchers whose work was not produced in the course of expert discovery. As such, the ***only data*** that forms the basis of these "expert" opinions is the extraordinarily limited observations taken at the 10 prisons over 3 days in January. This paucity of data renders their opinions unreliable and inadmissible. *See PODS Enterprises, Inc. v. U-Haul Int'l, Inc.*, No. 12-cv-01479, 2014 WL 12628664, at *4 (M.D. Fla. June 27, 2014) ("Dr. Leonard's blind acceptance of and reliance on one-sided data from U–Haul, his failure to apply any analytical methodology whatsoever, and his parroting of the generic definition urged by U–Haul render his post–1998 opinions unreliable and therefore inadmissible."); *Barber v. United Airlines, Inc.*, 17 F. App'x 433, 437 (7th Cir. 2001) (excluding expert who cherry-picked facts and "did not adequately explain why he ignored certain facts and data, while accepting others")

C. Hanvey and Arnold Employed Flawed Methodologies, Violating Their Own Rules, in Gathering Their Data

Hanvey and Arnold violated several rules in collecting their data, which renders their methodology unscientific, and their data hopelessly compromised. As such, even if their data set were not fatally limited in scope – which it is, by their own admission – it is also tainted and flawed due to the ways in which the data was collected.

As an initial matter, both witnesses admitted – as their own documents showed – that they did not come at the so-called "study" they conducted from a neutral perspective, as the scientific method requires. Instead, as their own retention document showed, they were hired – ***specifically*** – to refute the opinions offered by Dr. Rogers. Thus, even before they started their data collection efforts, their "study" was already compromised and had a predetermined conclusion.

> Q. As an independent opinion you're supposed to start from a position of neutrality, right?
>
> A. That's correct.

Ex. 2, Hanvey Dep. at 18:20-22.

> Q. And what we know is that in any -- when you use the scientific method or when someone uses the scientific method to analyze a problem you're supposed to start from a position of neutrality, fair?
>
> A. Correct.
>
> Q. And then what you do -- and is that what you endeavor to do and Dr. Hanvey endeavors to do in all the matters that you work on?
>
> A. Correct.

Ex. 1, Arnold Dep. at 55:9-17.

> Q. And in this case isn't it fair to say that you guys were hired from the get-go to refute or disagree with the opinions of the plaintiffs' class action damage calculation?
>
> A. I think, as I said, initially we were retained to review and evaluate the report and to look at some of the underlying assumptions that were made.
>
> Q. Doesn't the document, the retention authorization that I just showed you, say that you were hired and Hanvey was hired to review, analyze, and refute the opinions of plaintiffs' class action damages estimated to be more than $95 million? Isn't that correct?
>
> A. The document says that.

Id. at 56:3-16. This alone is grounds for exclusion. *See Perry v. United States*, 755 F.2d 888, 892 (11th Cir. 1985) ("A scientist who has a formed an opinion as to the answer he is going to find before he even begins his research may be less objective than he needs to be in order to produce reliable scientific results."); *Claar v. Burlington N. R.R. Co.*, 29 F.3d 499, 502–03 (9th Cir. 1994) ("Coming to a firm conclusion first and then doing research to support it is the antithesis of [the scientific] method.").

In addition to the flawed starting point for the so-called study, Mr. Hanvey conceded that he and Ms. Arnold violated their own stated principles of how such studies should be conducted, including informing the persons being studied that their job performance is not being evaluated:

> Q. Did you -- and you didn't tell the CO's that you were observing and timing that you weren't evaluating their performance and that they should perform their job normally during the observation, correct?
>
> A. Correct.
>
> Q. Is there a reason why you departed from that recommendation that you wrote in your book?
>
> . . . .
>
> Q. You wrote, quote, in particular it should be clear and communicated to those being observed that their performance is not being evaluated and that they should perform their job normally during the observation, close quote, correct?
>
> A. That's what it says there, correct.

Ex. 2, Hanvey Dep. at 71:2-8, 71:16-21.

> Q. Okay. And you know that live observations cannot be conducted without the knowledge of the person you're observing, fair, for ethical reasons?
>
> A. It depends on the circumstance.

Q. So you wrote, quote, same Page 299, live observations cannot be conducted without the incumbent's knowledge for practical and ethical reasons, period, close quote; is that correct?

A. I wrote that, yes.

Q. And you did not so communicate that to the CO's that you were observing, fair?

A. Correct.

Id. at 73:9-20.

These examples of how Mr. Hanvey and Ms. Arnold violated their own principles – principles they themselves had written about as essential to the proper and valid collection of legitimate data – demonstrates that the data they collected was tainted, flawed and ultimately unreliable. Similarly, the opinions that the MDOC now seeks to present to the jury at trial are wholly unreliable and should be stricken from the record.

D. Any Criticisms of Dr. Rogers's Methodologies Based on Berkeley Group Analysts is Irrelevant and Incomplete As It Was Never Produced In Discovery

As noted above, Hanvey and Arnold offer criticisms based on limited data that cannot survive judicial scrutiny under Mo. Rev. Stat. § 490.065. In particular, they should not be allowed to present opinions when much of the data that they purport to rely on has not been produced in this case. Plaintiffs' counsel brought this to the attention of the MDOC at the deposition of Ms. Arnold on February 8:

Q. All right. In the materials you've provided to us today did you provide the analysis done by your analyst at the Berkley group who pulled apart Rogers' data or his methodology?

A. We didn't run any new analysis. We simply pulled apart what he did.

Q. Did you provide that to us?

A. No.

> Q. Okay. I'm going to move that no testimony regarding that be admitted into this case.

Ex. 1, Arnold Dep. at 183:8-17.

Plaintiffs cannot be expected to respond to – let alone appropriately cross-examine – a witness when the very material upon which they are purporting to base their opinions has not been disclosed, as is the situation here. Allowing any testimony on work done by anonymous, unnamed analysts, whose work is wholly secreted from the Plaintiffs and the certified class, is patently inappropriate under Mo. Rev. Stat. § 490.065.

E. The Opinions Offered by Hanvey and Arnold Are Irrelevant to Liability.

As Plaintiffs point out in their opposition to Defendants' motion to decertify the class (filed contemporaneously herewith), the times spent by Class Members is not relevant to the issue of liability.

First, whether an activity is compensable does not turn on the amount of time it takes. Instead, the time relates only to the *de minimis* defense. *See* 29 C.F.R. § 785.47 (providing that "insubstantial or insignificant periods of time beyond the scheduled working hours, which cannot as a practical administrative matter be precisely recorded for payroll purposes, may be disregarded"). The regulation points to decisions finding that even "$1 of additional compensation a week is 'not a trivial matter to a workingman,' and was not de minimis." *Id.* Here, there is no evidence that recording the full time spent inside their facilities would be impractical to record. In fact, all evidence demonstrates the opposite, as Defendants' log the entry and exit of each guard every day. Thus, Defendants cannot rely on the *de minimis* defense.

Second, under the continuous workday rule, all "[p]eriods of time between the commencement of the employee's first principal activity and the completion of his last principal activity on any workday must be included in the computation of hours worked." 29 C.F.R. § 790.6(a). Because Plaintiffs allege that their workday begins when they log their arrivals at Defendants' facilities and that their continuous workday ends when they log their departure, the time it takes after entering the facility to pick up their radios, receive assignments, and walk to their shifts must be compensated.

Because the times calculated by Hanvey and Arnold are irrelevant, they will not assist the trier of fact in determining liability. Their testimony will only confuse the jury as to what constitutes comopensable work, and it should be excluded.

F. Hanvey and Arnold Relied on Problematic Interviews of Unsworn DOC Witnesses Who Were Subject to Intimidation and Bias

Hanvey and Arnold's study, as discussed above, was riddled with potential for error, bias and tainted data collected under unscientific conditions. For yet another example, the witnesses that were chosen to be interviewed were MDOC management employees, all of whom have reason to curry favor with the MDOC by providing testimony that favors the MDOC's theory of the case. None of these MDOC management witnesses were under oath, providing information upon penalty of perjury, or in any other way giving information in a setting that could be described as unbiased or non-coercive. Additionally, some of these same witnesses have provided sworn testimony in depositions in this case, but Hanvey and Arnold failed to read that testimony, instead preferring to conduct their own one-sided interviews without the benefit of a transcript or objections as a system of checks and balances. As such, all of the data obtained from these MDOC management employees – about how long COs take

to move between points in the prison; about how often COs seek compensation for pre and post-shift activity; about whether COs are engaged in work-related activities while at the prison – is biased, non-scientific, and unreliable. Accordingly, any opinions or conclusions that Mr. Hanvey or Ms. Arnold draw from this flawed and tainted data should be excluded as inadmissible under Mo. Rev. Stat. § 490.065.

> Q. Before you go here, let me just ask you this. Your point on this overtime is that the people you talked to said that the wardens at the four locations said that overtime is regularly worked and paid?
>
> A. Yes.
>
> Q. And your expertise, you're an observational study expert, correct?
>
> A. Correct.
>
> Q. And you accepted the unsworn, unchallenged, anecdotal statements of DOC management, because that's who you're talking to, as the best evidence for the facts of whether or not overtime is regularly worked and paid?
>
> A. Well, actually we expect -- we've requested and expect to be receiving that information so we can analyze it.

Ex. 1 Arnold, Elizabeth, (Page 231:11 to 231:25)

In short, Mr. Hanvey and Ms. Arnold conducted a hurried, poorly conceived, slap-dash and amateurish effort to gather data that would confirm the biases that they brought to the assignment, gathering a flawed data set that can have no relevance to the class as a whole. For all of these reasons, cited here and above, their testimony should be stricken in its entirety. Defendant's attempts to use these hired arms of their defense team as bolstering witnesses for the credibility of their administrators is improper and forbidden under the law.

IV. Conclusion

For the foregoing reasons, any testimony from Chester Hanvey and Elizabeth Arnold, offered as experts to rebut Plaintiffs' expert Dr. Rogers, should be excluded pursuant to Mo. Rev. Stat. § 490.065.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing was filed and emailed on this 7th day of March, 2018 to Defendant's attorney of record:

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