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**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH**

VIRGINIA TUCKER, STEPHANIE
DOMBROSKI, SANDY PHILLIPS,
DAKOTA GRUNWALD, and AMBERLI K.
MORRIGAN,

Plaintiffs,

v.

UTAH DEPARTMENT OF CORRECTIONS;
JARED GARCIA, EXECUTIVE DIRECTOR
OF THE UTAH DEPARTMENT OF
CORRECTIONS, *in his official capacity*;
SHARON D'AMICO, WARDEN OF THE
UTAH STATE CORRECTIONAL
FACILITY, *in her official capacity*; UTAH
DEPARTMENT OF HEALTH AND HUMAN
SERVICES; TRACY GRUBER,
EXECUTIVE DIRECTOR OF THE UTAH

**DEFENDANTS' SUMMARY
JUDGMENT MOTION ON PLAINTIFFS'
FAILURE TO EXHAUST**

Case No. 2:25-cv-01108

Honorable Judge Tena Campbell

Magistrate Judge Jared C. Bennett

DEPARTMENT OF HEALTH AND HUMAN SERVICES, *in her official capacity*; DR. STACEY BANK, EXECUTIVE MEDICAL DIRECTOR OF CLINICAL SERVICES UTAH DEPARMENT OF HEALTH AND HUMAN SERVICES, *in her official capacity*; *and* DR. MARCUS WISNER, DIRECTOR OF CORRECTIONAL HEALTH SERVICES, UTAH DEPARTMENT OF HEALTH AND HUMAN SERVICES, *in his official capacity*.

Defendants.

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Pursuant to [Federal Rule of Civil Procedure 56](#), Defendants Utah Department of Corrections (“UDC”), Jared Garcia, Executive Director of the Utah Department of Corrections (“Exec. Dir. Garcia”), Sharon D’Amico, Warden of the Utah State Correctional Facility (“Warden D’Amico”), Utah Department of Health and Human Services (“UDHHS”), Tracy Gruber, Executive Director of UDHHS (“Exec. Dir. Gruber”), Dr. Stacey Bank, Executive Medical Director of Clinical Services Utah Department of Health and Human Services (“Dr. Bank”), and Dr. Marcus Wisner, Director of Correctional Health Services of UDHHS (“Dr. Wisner”) (collectively “Defendants”) submit this Motion for Summary Judgment concerning (“Motion”) Plaintiffs’ Virginia Tucker (“Tucker”), Stephanie Dombroski (“Dombroski”), Sandy Phillips (“Phillips”), Dakota Grunwald’s (“Grunwald”), Amberli K. Morrigan’s (“Morrigan”), (collectively “Plaintiffs”) failure to exhaust their claims as required by the Prisoner Reform Litigation Act (“PLRA”).

INTRODUCTION

Congress passed the Prison Litigation Reform Act to give prisons the first opportunity to address an inmate’s concerns about a specific prison condition. Central to that purpose is PLRA’s exhaustion requirement. This requirement provides that, as a precondition to filing suit, an inmate must exhaust each issue alleged in support of a claim.

Exhaustion requires an inmate to adhere to the prison’s administrative process, and an issue is considered exhausted when it properly follows that process. Per UDC policy, an inmate who seeks to grieve a prison condition obtains exhaustion upon reaching the third level review—a Level III decision—for that specific grievance.

Here, Plaintiffs Phillips, Dombroski, and Tucker bring Eighth Amendment and

Americans with Disabilities Act (“ADA”) claims against Defendants.¹ However, neither Phillips nor Dombroski has exhausted any issue related to those claims. Phillips has not filed any grievance, and Dombroski’s single Level III grievance concerned an unrelated strip search. Phillips’ and Dombroski’s failure to follow UDC’s grievance process results in them having no exhausted issues for this Court to consider concerning their Eighth Amendment and their ADA claims, thereby requiring dismissal.

Tucker filed a single Level III grievance concerning the denial of hormone replacement therapy (“HRT”). This means Tucker’s only relevant exhausted issue in support of the Eighth Amendment and ADA claims is denial of HRT. Consequently, Tucker is limited to one issue, *i.e.*, denial of HRT, in support of Tucker’s claims.

Plaintiff Grunwald brings an ADA claim. Grunwald has not filed any Level III grievances and so has not exhausted any issue alleged in support of the ADA claim. Accordingly, dismissal is required.

Plaintiff Morrigan also brings an ADA claim. Morrigan has filed two Level III grievances. One concerns Morrigan’s request to be placed in female housing, and the other concerns a request for a new psycho-sexual evaluation. Neither of those issues is alleged in support of Morrigan’s ADA claim. With no exhausted issues in support of Morrigan’s ADA claim, it must be dismissed.

BACKGROUND

Requiring exhaustion is particularly important here because, as a remedy, Plaintiffs ask this Court to constitutionalize access to medical transition care—specifically, cross-sex hormone

¹ Named Defendants for the Eighth Amendment cause of action do not include UDC or DHHS.

replacement therapy and sex reassignment surgery. (See First Amend. Compl. for Declaratory & Injunctive Relief 77, ECF No. 52 (“Amend. Compl.”) (requesting the Court to declare Defendants’ policies violate the Eighth Amendment and require Defendants to “provide Plaintiffs . . . with . . . hormone therapy,” as well as assessments and access to “surgical interventions”); Pls.’ Mot. & Memo. of Law in Support of a Preliminary Inj. (“PI Motion”) 2-3, ECF No. 35 (requesting an order that “Defendants provide the Plaintiffs with adequate medical care, including hormone therapy”).)

Plaintiffs’ requested interventions involve either administering high doses of cross-sex hormones (estrogen for males, testosterone for females)—causing significant changes to the body—or surgeries that permanently remove breasts or genitalia. See *United States v. Skrmetti*, 605 U.S. 495, 534-36 (2025) (Thomas, J., concurrence) (describing cross-sex hormones and sex reassignment surgeries).

Notably, more than twenty states have banned providing cross-sex hormones as a medical transition procedure for minors.² While these policy changes have focused on minors, the evidentiary concerns underlying them apply broadly. One key driver of this nationwide legislative action has been an increasing awareness that the purported benefits of hormones and surgery are unproven and rest on low-quality evidence. For example, the Supreme Court in *Skrmetti* upheld a state law banning the administration of medical transition procedures for

² See, e.g., Alabama SB184 (2022), Arkansas HB1570 (2021), Florida CS/SB254 (2023), Georgia SB140 (2023), Iowa Senate File 538 (2023), Idaho HB71 (2023), Indiana SA538 (2023), Kansas SB63 (2025), Kentucky SB150 (2023), Louisiana HB648 (2023), Missouri SB49 (2023), Mississippi HB1125 (2023), North Carolina HB808 (2023), New Hampshire HB377 (2025), North Dakota HB1254 (2023), Ohio HB68 (2024), Oklahoma SB613 (2023), South Carolina HB4624 (2024), South Dakota HB1080 (2023), Tennessee SB1 (2023), Texas SB14 (2023), and Wyoming Senate File SF0099 (2024).

minors. 605 U.S. 495, 511 (2025). In doing so, the Court noted that state legislatures have especially “wide discretion to pass legislation” regulating areas of “medical and scientific uncertainty.” *Id.* at 524. The Court then observed that cross-sex hormonal treatment is an area of uncertainty: the “current understanding of the long-term health impacts of hormone interventions is limited and needs to be better understood.” *Id.* at 524-25.

Besides States, medical organizations are moving away from recommending medical transition procedures. As recently as February 2026, the American Society of Plastic Surgeons (“ASPS”) issued a statement that they no longer recommend that minors receive transition-related surgeries.³ Shortly after, the American Medical Association told a news organization that it agreed with ASPS’ statement.⁴ That shift is notable. Just a few years prior, the same organization wholeheartedly recommended those procedures.⁵ These movements in position are due, as ASPS notes, to the “overall evidence base” for both surgery and hormonal transition

³ American Society of Plastic Surgeons, *Position Statement on Gender Surgery for Children and Adolescents* 3 (Feb. 3, 2026), <https://www.plasticsurgery.org/documents/health-policy/positions/2026-gender-surgery-children-adolescents.pdf>; see also *id.* 6 (noting that systematic reviews of WPATH’s guidelines found “that these documents do not meet accepted criteria for high-quality, trustworthy clinical practice guidelines”).

⁴ Haley Strack, *First Major Medical Org Comes Out Against Trans Surgeries for Minors*, *National Review*, National Review (Feb. 3, 2026), <https://www.nationalreview.com/news/first-major-medical-org-comes-out-against-trans-surgeries-for-minors/>

⁵ See Jesse Singal, *Medical Associations Trusted Belief Over Science on Youth Gender Care*, *New York Times* (Feb. 24, 2026) (“[H]ow did the American Medical Association go from arguing that ‘forgoing gender-affirming care can have tragic consequences’ for ‘pediatric patients’ in its 2021 letter to its present stance that one such treatment, surgery, should be delayed — potentially for many years — as a general matter of course?”), https://www.nytimes.com/2026/02/24/opinion/medical-associations-youth-gender-care.html?unlocked_article_code=1.OIA.D-bb.H8j1nSLtphWn&smid=url-share.

treatment being “low quality.”⁶ And “recent publications report[] very low/low certainty of evidence regarding mental health outcomes.”⁷ The lived experiences of detransitioners exemplify the uncertain outcomes of these medical transition procedures.⁸ Detransitioners have begun initiating lawsuits arguing that the medical transition care they’ve received amounts to medical malpractice.⁹

Fortunately, gender dysphoria treatment need not involve irreversible and controversial medical interventions. Indeed, other interventions exist, like psychotherapy and social transition care. See *Hardeman v. Smith*, 764 F. App’x 658, 663 (10th Cir. 2019) (observing the current treatment options for gender dysphoria include social transitioning and psychotherapy).

Given the unsettled medical evidence, evolving professional standards, and the risks of malpractice lawsuits arising from the treatment Plaintiffs seek, the importance of strict compliance with the PLRA’s exhaustion requirements cannot be overstated. Exhaustion would give Defendants the initial opportunity to address Plaintiffs’ concerns internally. It would also allow Defendants to utilize the full scope of available remedies for Plaintiffs’ concerns before

⁶ American Society of Plastic Surgeons, *Position Statement on Gender Surgery for Children and Adolescents* 3 (Feb. 3, 2026), <https://www.plasticsurgery.org/documents/health-policy/positions/2026-gender-surgery-children-adolescents.pdf>

⁷ *Id.*

⁸ A detransitioner is a person who once identified as transgender and underwent some form of transition, but no longer identifies as transgender. See Lisa Littman, Stella O’Malley, Helena Kerscher, & J Michael Bailey, *Detransition and Desistance Among previously Trans Identified Young Adults*, abstract (2024), <https://pubmed.ncbi.nlm.nih.gov/38038854/>.

⁹ Recently, a detransitioner won \$2 million in a medical malpractice suit against medical providers who encouraged her to remove her breasts. Emma Pitts, *This landmark ruling could change the future of gender-related treatment for minors*, Deseret News (Feb. 2, 2026, 3:45 p.m. MST), <https://www.deseret.com/politics/2026/02/02/lawsuit-over-gender-affirming-surgeries-on-minors-healthcare-providers-damages/>. Other detransitioners are bringing similar cases. See *id.* (observing that the reported on detransitioner case is “one of nearly 30 detransitioner lawsuits nationwide”).

being hauled into court.

UNDISPUTED MATERIAL FACTS

I. Plaintiffs Allege Being Transgender Inmates and that Defendants have Violated the Eighth Amendment.

1. Plaintiffs allege being “transgender people . . . incarcerated at the Utah State Correctional Facility (the “USCF” or the “prison”) within the custody of [Defendant UDC].” (Amend. Compl. ¶ 1).
2. Plaintiffs allege that they suffer from “gender dysphoria.” (*Id.*) Gender dysphoria is a diagnostic category in the most recent version of the Diagnostic and Statistical Manual of Mental Disorders (*See id.* ¶¶ 41-42.)
3. Plaintiffs allege that “[g]ender dysphoria is a serious medical condition characterized by clinically significant distress resulting from the incongruence between a person’s gender identity and the sex they were assigned at birth.” (*Id.* ¶ 2.)
4. Plaintiffs Tucker, Dombroski, and Phillips Complaint bring an Eighth Amendment claim and allege Defendants were deliberately indifferent to Plaintiffs’ serious medical needs. (*See id.* ¶¶ 279-91.)
5. Plaintiffs Tucker, Dombroski, and Phillips’ Eighth Amendment claim rests on a number of alleged incidents. (*See id.*)
6. Plaintiffs Tucker, Dombroski, Phillips, Morrigan, and Grunwald also bring a claim under the Americans with Disability Act. That claim also rests on a number of alleged incidents. (*See id.* ¶¶ 292-302.)

II. UDC’s Grievance Policies Contained in AG38 and ADM29, Provide the Grievance Process for Plaintiffs to Exhaust Their Remedies.

A. AG38 Policies and Process

7. UDC's grievance policy is guided by AG38, titled "Offender Grievances." (*See* AG38, attached hereto as Ex. B.)¹⁰
8. AG38 has been effective since November 8, 2019. (*Id.* at 1.)
9. All UDC inmates have a grievance process available to them for the resolution of complaints. (*Id.* at 2, § 1.02.)
10. Inmates receive orientation to the grievance process when they arrive at the prison. (*Id.*)
11. Forms to begin a grievance process are readily available from any prison staff member. (*Id.* at 3, § 1.06(A)(3).)
12. UDC provides assistance to inmates for understanding the grievance process. (*Id.*)
13. "In general, all offender complaints are grievable." (*Id.* at 2-3, § 1.04.)
14. Throughout the grievance process, the scope of available remedies for an inmate grievance is broad and applied on a case-by-case basis. (*Id.* at 3, § 1.05.)
15. Inmates may only grieve one issue at a time through the grievance process. (*Id.* at 2-3, §§ 1.03(D), 1.06(A)(1).)
16. The grievance process has three levels. (*Id.* at 6-8.)
17. An inmate initiates Level I of the grievance process by completing and timely submitting the Level I grievance form. (*Id.* at 6-7, § 2.01.)

¹⁰ Exhibit B is authenticated by Declaration of Jonah Shaw ("Shaw Decl."), attached hereto as Exhibit A.

18. If the inmate is dissatisfied with the Level I response to the grieved issue, the inmate may raise the grieved issue to Level II by completing and timely submitting the Level II grievance form. (*Id.* at 6-7, § 2.01(C).)
19. If the inmate is dissatisfied with the Level II response to the grieved issue, the inmate may raise the grieved issue to Level III by completing and timely submitting the Level III grievance form. (*Id.* at 7, § 2.02.)
20. Once a grieved issue reaches Level III, the Level III response is final, and an inmate has exhausted the grievance process for that specific grieved issue. (*Id.* at 7, § 2.03.)¹¹
21. This grievance process “authorize[s] reviewers at each level to take steps to address a valid grievance. Such steps may include granting the inmate’s requested relief, attempting to resolve the grievance through an Offender Management Review, providing the inmate with information about available materials or resources related to the grievance, or proposing alternative solutions to the grievance and the remedy requested by the inmate.” (Shaw Decl., ¶ 20.)

B. ADM29 Policies and Process

22. ADM29 governs the medical grievance process. (ADM29, attached hereto as Ex. C.)¹²
23. ADM29’s “grievance process provides a path for an inmate to disagree with or question the healthcare system.” (*Id.* at 1.)

¹¹ Outside of rape and sexual assault issues, UDC does not allow a prisoner to grieve on behalf of another. (AG38 at 6-7, §§ 1.07, 2.02.)

¹² Exhibit C is authenticated by Jonah Shaw. (Shaw Decl. ¶ 14.)

24. ADM29's grievance process "shall adhere to the grievance policy and procedures as outlined in UDC AG38 Offender Grievances." (*Id.* at 2.) Thus, an inmate grieves a medical issue by following the process provided in AG38.

III. Phillips Has Not Filed Any Grievances; Dombroski Has Only One Unrelated Level III Grievance; Tucker Has Only One Level III Grievance; Grunwald Has No Level III Grievance; and Morrigan has Two Unrelated Level III Grievances.

A. Plaintiff Phillips

25. Phillips has not filed any grievances. (Shaw Decl., ¶ 15.)

B. Plaintiff Dombroski

26. Dombroski filed one Level III grievance, number 990930350.¹³ (Ex. A, Tab A, ("Dombroski's Grievances") at State of Utah -014989.) This Level III grievance concerned a strip search incident completely unrelated to any of Dombroski's claims, allegations, or remedies sought in Plaintiffs' Complaint. (*See id.*)

C. Plaintiff Tucker

27. Tucker filed one Level III grievance, number 990932401.¹⁴
28. For Tucker's Level III grievance, 990932401, the responding coordinator observed, "you are grieving that you are requesting to be placed on Hormone Replacement Therapy

¹³ Exhibit A, Tab A, containing Dombroski's Level III grievance, is authenticated by Jonah Shaw. (Shaw Decl., ¶ 10.) Dombroski filed the following Level I grievances: 990929031, 990931447, 990932593, 990933189, 990934265, 990934265, and 99093551, all of which Defendants will provide to Plaintiffs' counsel shortly following the filing of this Motion. However, outside of grievance 990930350, which reached Level III on an issue completely unrelated to this litigation, none of Dombroski's other grievances reached Level III. (*See* Shaw Decl. ¶ 9.)

¹⁴ Exhibit A, Tab B, containing Tucker's Level III grievance, is authenticated by Jonah Shaw. (Shaw Decl., ¶ 10.) Tucker's Level I grievances that didn't reach Level II are 990926612, 990929760, 990927020, 990931211, 990931984, 990931922, and 990933000. Tucker's Level II grievance that did not reach Level III is 99931872. Defendants will provide all of Tucker's grievances to Plaintiffs' counsel shortly following the filing of this Motion.

(HRT) as a part of your gender affirming care.” (Ex. A, Tab B, (“Tucker’s Grievances”) at State of Utah -015147.)

29. Thus, Tucker “ha[s] exhausted the administrative remedy process” solely concerning their request to be placed on HRT, nothing more. (*See id.* at State of Utah -015148.)

D. Plaintiff Grunwald

30. Grunwald has not filed any Level III grievances.¹⁵ (Shaw Decl. ¶ 9.)

E. Plaintiff Morrigan

31. Morrigan filed two Level III grievances, grievances numbers 990919415 and 990919917.¹⁶ (Ex. A, Tab C (“Morrigan’s Grievances”).)

32. Grievance 990919917 reached Level III exhaustion concerning allegedly being denied placement into female housing. (*See id.* at State of Utah -015120.)

33. Grievance 990919415 reached Level III exhaustion concerning the appropriate diagnostic tool in determining Morrigan’s “sex offender treatment” plan. (*Id.* at State of Utah -015118.)

34. Thus, Morrigan has exhausted issues completely unrelated to those in Plaintiffs’ Complaint.

¹⁵ Grunwald’s Level I grievances are 99082766, 99092938, 990916778, 990920435, 990928155, 990933236, and 990933237. Defendants will provide all of Grunwald’s grievances to Plaintiffs’ counsel shortly following the filing of this Motion.

¹⁶ *See* Exhibit A, Tab C, containing all of Morrigan’s grievances, is authenticated by Jonah Shaw. (Shaw Decl. ¶ 12.) Morrigan’s Level I grievances are 990928069, 990925914, and 990926320. Morrigan’s Level II grievances are 990925460 and 990936341. Defendants will provide all of Morrigan’s grievances to Plaintiffs’ counsel shortly following the filing of this Motion.

LEGAL STANDARD

Summary judgment is appropriate where the record demonstrates “there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” [Fed. R. Civ. P. 56\(a\)](#); [Schaffer v. Salt Lake City Corp.](#), 814 F.3d 1151, 1155 (10th Cir. 2016).

Once the movant meets this standard, the burden shifts to the nonmovant to “designate specific facts showing that there is a genuine issue for trial.” [Celotex Corp. v. Catrett](#), 477 U.S. 317, 324 (1986). The nonmovant may not defeat summary judgment by relying only on allegations from the complaint. [Id.](#) Factual disputes are genuine when “the evidence is such that a reasonable jury could return a verdict for the nonmoving party,” and facts are material when they “might affect the outcome of the suit.” [Bird v. West Valley City](#), 832 F.3d 1188, 1199 (10th Cir. 2016) (quoting [Anderson v. Liberty Lobby, Inc.](#), 477 U.S. 242, 248 (1986)).

An inmate’s failure to exhaust prison remedies under the PLRA is an affirmative defense, and therefore an inmate need not plead exhaustion in their complaint. [Jones v. Bock](#), 549 U.S. 199, 212 (2007). However, as an affirmative defense, it is an appropriate subject for summary judgment. [See id.](#) For summary judgment, a defendant has the burden of proving the plaintiff did not exhaust their administrative remedies. [May v. Segovia](#), 929 F.3d 1223, 1234 (10th Cir. 2019). Once shown, the burden shifts to plaintiffs to show that no administrative remedies were available to them. [Id.](#) To avoid summary judgment on a failure to exhaust, the incarcerated person “must offer evidence, not bare allegations.” [Estrada v. Smart](#), 107 F.4th 1254, 1262 (10th Cir. 2024). Further, in the context of exhaustion, the Court may resolve factual disputes without sending the case to a jury. [Id.](#) at 1263.

ARGUMENT

I. The Prison Litigation Reform Act Requires Exhaustion of Administrative Remedies Before Bringing a Civil Action.

A. Under PLRA, Unexhausted Issues Cannot be Considered by this Court.

The Prison Litigation Reform Act (PLRA) is a comprehensive set of laws “governing the course of prison litigation in the federal courts.” *Martin v. Hadix*, 527 U.S. 343, 349-350 (1999). “Congress enacted . . . [PLRA] . . . in the wake of a sharp rise in prisoner litigation in the federal courts” with a number of provisions “designed to bring [prisoner] litigation under control.” *Woodford v. Ngo*, 548 U.S. 81, 84 (2006). Thus, in passing the PLRA, Congress “impos[ed] a strict administrative-exhaustion requirement . . . [on] civil-rights claims filed by prisoners.” *Pakdel v. City and Cnty. of San Francisco*, 594 U.S. 474, 481 (2021) (per curiam) (citing 42 U.S.C.S. § 1997e(a)).

Under the Act, “[n]o action shall be brought with respect to prison conditions under [42 U.S.C. § 1983], or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted.” 42 U.S.C. § 1997e(a). The Supreme Court has often emphasized, “[t]hat language is ‘mandatory.’” *Ross v. Blake*, 578 U.S. 632, 638 (2016). Thus, the exhaustion requirement under the Act is not “left to the discretion of the district court.” *Woodford*, 548 U.S. at 85. Put simply, an inmate *must* exhaust their claims as a “precondition to filing suit.” *Estrada*, 107 F. 4th at 1262. Accordingly, courts require exhaustion before an inmate seeks injunctive relief. *See Farmer v. Brennan*, 511 U.S. 825, 847 (1994) (“When a prison inmate seeks injunctive relief, a court need not ignore the inmate’s failure to take advantage of adequate prison procedures, and an inmate who needlessly bypasses such procedures may properly be compelled to pursue them.”); *Little v. Jones*, 607 F.3d

1245, 1249 (10th Cir. 2010) (addressing exhaustion before reaching the merits of a plaintiff's request for a preliminary injunction due to prison conditions).

Several principles guide how courts analyze PLRA's exhaustion requirement. First, PLRA requires exhaustion for any cause of action concerning "prison conditions." 42 U.S.C. § 1997e(a). The term "prison conditions" applies broadly "to all inmate suits about prison life, whether they involve general circumstances or particular episodes, and whether they allege excessive force or some other wrong." *Porter v. Nussle*, 534 U.S. 516, 532 (2002). Thus, PLRA requires exhaustion for Eighth Amendment causes of action. See *Hardeman v. Smash*, No. 21-7018, 2022 WL 470741 at *2-3 (10th Cir. Feb. 16, 2022) (affirming dismissal of all unexhausted claims related to a transgender inmate's deliberate indifference cause of action). It requires exhaustion for ADA causes of action, too. *Jones v. Smith*, 109 Fed. Appx 304, 306-08 (10th Cir. 2004) (requiring exhaustion for issues raised under an ADA cause of action).

Second, "no unexhausted claim may be considered." *Jones*, 549 U.S. 199 at 219-220. In other words, each incident supporting a cause of action must be exhausted before it is considered. For example, in *Burnett v. Jones*, an inmate asserted "thirteen counts" supported by "twenty incidents." 437 F. App'x 736, 741 (10th Cir. 2011). The court determined that the inmate had "failed to exhaust" ten of those incidents and therefore, "in considering [the inmate's] ... counts," the court did not consider those ten unexhausted incidents. *Id.* at 742; see also *id.* 742-47 (analyzing the inmate's counts based on the remaining ten incidents).

Third, PLRA requires "proper exhaustion." *Woodford*, 548 U.S. at 90. Proper exhaustion is "compliance with deadlines and other critical procedural rules, with no exceptions for special circumstances." *Ramirez v. Collier*, 595 U.S. 411, 421 (2022) (cleaned up). Thus, to properly

exhaust all remedies, a prisoner must use “all steps that the agency holds out, and do[] so properly so that the agency addresses the issues on the merits.” *Woodford*, 548 U.S. at 90 (cleaned up). In other words, the rules governing exhaustion are defined by the specific prison grievance process itself, not by PLRA. See *Jones v. Bock*, 549 U.S. 199, 218 (2007); see also *Little*, 607 F.3d at 1249 (“Because the prison’s procedural requirements define the steps necessary for exhaustion, an inmate may only exhaust by properly following all of the steps laid out in the prison system’s grievance procedure.”) (cleaned up).

Because federal law requires proper exhaustion, substantial compliance with the available procedures is not enough for exhaustion. See *Thomas v. Parker*, 609 F.3d 1114, 1118 (10th Cir. 2010). Thus, “[a]n inmate who begins the grievance process but does not complete it is barred from pursuing a § 1983 claim under PLRA for failure to exhaust his administrative remedies.” *Jernigan v. Stuchell*, 304 F.3d 1030, 1032 (10th Cir. 2002).

Fourth, the grievance process may be excused only in narrow and limited circumstances, and courts cannot broaden those circumstances. Indeed, the Supreme Court has emphasized that courts cannot “add unwritten limits onto [the PLRA’s] rigorous textual requirements” and has rejected “freewheeling” approaches to PLRA’s exhaustion requirement. *Ross*, 578 U.S. at 639. The Supreme Court has identified only three narrow situations where exhaustion is excused. *Id.* at 643-44. First, the administrative process operates as a “dead end”—with “officers unable or consistently unwilling to provide any relief to aggrieved inmates.” *Id.* at 643 (emphasis added). Second, the grievance system is “so opaque” that it is “incapable of use.” *Id.* And third, if prison administrators “thwart” inmates from using the grievance process through “machination, misrepresentation, or intimidation.” *Id.*

Importantly, an alleged or supposedly futile outcome does not excuse the grievance process. *See, e.g., Booth v. Churner*, 532 U.S. 731, 741 n.6 (2001) (“[W]e will not read futility or other exceptions into statutory exhaustion requirements where Congress has provided otherwise.”); *Whitesell v. Burnham*, 716 F. App’x 809, 811 (10th Cir. 2017) (“[T]he failure to pursue a Level Three appeal cannot be excused based on futility.”). “In fact, ‘[PLRA] mandates initial recourse to the prison grievance process even when a prisoner seeks . . . a remedy not available in that process.’” *Estrada*, 107 F.4th at 1266 (quoting *Porter v. Nussle*, 534 U.S. at 525 n.4 (cleaned up)).

And finally, each individual inmate must exhaust their claim on their own behalf, if required by the administrative process. Thus, if a prison’s grievance policy does not allow it, an inmate may not “exhaust their administrative remedies by piggybacking onto another inmate’s grievances.” *Mason v. Raemisch*, 840 F. App’x 381, 382 (10th Cir. 2021).

B. The Policy Rationale Behind PLRA’s Exhaustion Requirement.

While PLRA’s exhaustion requirement may appear strict, this duly enacted federal law cannot be tossed aside because it serves a significant purpose and provides important benefits. For example, “proper exhaustion often results in the creation of an administrative record that is helpful to the court [because] [w]hen a grievance is filed shortly after the event giving rise to the grievance, witnesses can be identified and questioned while memories are still fresh, and evidence can be gathered and preserved.” *Woodford*, 548 U.S. at 94-95 (cleaned up). Further, it “reduces the quantity of prisoner suits,” and that’s especially so when “prisoners are successful in the administrative process.” *Id.* at 94.

Moreover, exhaustion allows a prison an opportunity to review and adjust its policies and procedures in response to legitimate inmate concerns. As the Supreme Court explained, when an inmate files a grievance, it provides “prisons with a fair opportunity to correct their own errors” and “afford corrections officials time and opportunity to address complaints internally” before litigation begins. *Woodford*, 548 U.S. at 93 (cleaned up). Indeed, the Tenth Circuit has consistently relied on this rationale in enforcing exhaustion. It did so in *Estrada v. Smart*, where the court affirmed dismissal of an inmate’s claim for failure to exhaust administrative remedies—even though the inmate was shot in a courthouse. 107 F.4th 1254, 1267 (10th Cir. 2024), cert. denied, 146 S. Ct. 90 (2025). The court reasoned that had the inmate properly grieved the shooting, “he would have alerted prison officials that CDOC officers perhaps need additional training” or signaled that a “systematic problem” existed. *Id.* Thus, exhaustion serves an important purpose of the PLRA: giving prisons the first opportunity to identify and remedy issues internally before they escalate to federal court.

The bottom line is that PLRA’s exhaustion requirement affords real and tangible benefits. Plaintiffs are obligated to exhaust, and doing so will realize those benefits.

II. Phillips and Dombroski Have Not Exhausted Any Incidents Related to their Eighth Amendment Claim.

Plaintiffs Phillips and Dombroski cannot bring their Eighth Amendment claim because they failed to exhaust the UDC grievance process, and Defendants should receive summary judgment against those Plaintiffs. As a reminder, UDC has a three-level grievance process. If an inmate does not bring a grievance through all three levels of review (to Level III), the inmate has not properly exhausted the grievance.

Here, Phillips has not filed any grievances. (Shaw Decl., ¶ 15.) Phillips, therefore, has not

sought to grieve any alleged incident underlying their Eighth Amendment claim. Accordingly, Phillips is barred from bringing any Eighth Amendment claim. *See Estrada*, 107 F.4th at 1270 (affirming summary judgment that barred an inmate's unexhausted claim).

Further, Dombroski has filed a Level III grievance. But that grievance concerned a strip search unrelated to this litigation. (*See Dombroski's Grievances*, at State of Utah -014989.) It did not grieve any of the alleged incidents related to Dombroski's Eighth Amendment claim. With no exhausted allegations in support, Dombroski is barred from bringing an Eighth Amendment claim. *See Estrada*, 107 F.4th at 1270.

III. Phillips and Dombroski Have Not Exhausted Any Incidents Related to their ADA Claim.

For the same reasons Phillips and Dombroski failed to exhaust any issue supporting their Eighth Amendment claim, they likewise failed to exhaust any issue supporting their ADA claim.

IV. Plaintiff Grunwald Has Not Exhausted Any Issue Related to the ADA Claim.

Grunwald has not filed any Level III grievance. Grunwald, therefore, has not sought to grieve any alleged incident underlying the ADA claim. Accordingly, Grunwald is barred from bringing it. *See Estrada*, 107 F.4th at 1270.

V. Plaintiff Morrigan Has Not Exhausted Any Issue Related to the ADA Claim.

Morrigan has filed two Level III grievances, grievance numbers 990919917 and 990919415. In grievance 99099917, Morrigan exhausted the issue of being denied housing in the female housing facilities. (*Morrigan's Grievances* at State of Utah -015120.) In grievance 990919415, Morrigan exhausted the issue concerning whether the appropriate diagnostic tool was used in determining Morrigan's "sex offender treatment" plan. (*Id.* at State of Utah -015118.) Since neither incident Morrigan raised to Level III bears any relation to Morrigan's ADA claim,

Morrigan is barred from bringing an ADA claim. *See Estrada*, 107 F.4th at 1270.

VI. Plaintiff Tucker Has Exhausted Only One Issue: Denial of HRT.

Tucker has one Level III grievance limited solely to the denial of HRT. (*See* Tucker’s Grievances at State of Utah -015174 (“[Y]ou are grieving that you are requesting to be placed on [HRT] as part of your gender affirming care.”).) Thus, Tucker’s allegation regarding the specific denial of HRT can be seen as being exhausted. However, because Tucker has *not* exhausted any other alleged incident in support of the Eighth Amendment cause of action, those other incidents cannot be considered. As a result, the only issue the Court can consider concerning Tucker’s Eighth Amendment claim is the denial of HRT to Tucker.

Case law confirms this result. In *Burnett*, of the twenty incidents forming the foundation of the inmate’s thirteen counts, only ten were considered—those excused from exhaustion. 437 F. App’x 736, 744-748 (analyzing the inmate’s counts or causes of action on the exhausted incidents). The same analysis applied in *Hardeman v. Smash*, No. 21-7018, 2022 WL 470741 (10th Cir. Feb. 16, 2022). There, a transgender inmate alleged several incidents undergirding a deliberate indifference claim—that the prison officials improperly denied the inmate “a supplemental gender-dysphoria evaluation” and “failed to provide hormone therapy and items such as cosmetics and female attire.” *Id.* at *3. Yet, the inmate only exhausted the supplemental gender dysphoria evaluation issue. *Id.* The court then considered that specific issue exhausted for purposes of summary judgment. *See id.* at **3-4.

Other district courts in the Tenth Circuit follow the same path. *See, e.g., Townsend v. Colorado Dep’t of Corr.*, No. 14-CV-02961-RBJ-KMT, 2016 WL 1178280 at *3-6 (D. Colo. Mar. 28, 2016), *aff’d*, 671 F. App’x 712 (10th Cir. 2016) (analyzing if the inmate’s four

contentions in support of two claims claim were properly exhausted); *Duvall v. Oklahoma State Bd. of Osteopathic Examiners*, No. CIV-17-247-F, 2018 WL 6333708 at *4-7 (W.D. Okla. Aug. 10, 2018), *report and recommendation adopted*, No. CIV-17-0247-F, 2018 WL 4963078 (W.D. Okla. Oct. 15, 2018) (dismissing a deliberate indifference claim because the two allegations in support were not exhausted); *Smith v. Drawbridge*, No. CIV-16-1135-HE, 2018 WL 3913175 **4, 11-13 (W.D. Okla. May 22, 2018), *report and recommendation adopted*, No. CIV-16-1135-HE, 2018 WL 2966946 (W.D. Okla. June 13, 2018), *aff'd*, 764 F. App'x 812 (10th Cir. 2019) (observing that out of the nine issues advanced in support of the Free Exercise claim, only one had been properly exhausted, and therefore the court evaluated the First Amendment claim only on that single exhausted issue). In short, courts could *not* consider any unexhausted arguments, incidents, or issues pertaining to a claim that falls under the PLRA.

Accordingly, insofar as Tucker's Eighth Amendment and ADA claims encompass any alleged incidents, arguments, or issues beyond the specific denial of HRT, those incidents, arguments, or issues are unexhausted. Tucker can proceed on the Eighth Amendment and ADA claims only with respect to the limited issue of an alleged denial of HRT.

CONCLUSION

Defendants respectfully request that the Court grant their Motion for Summary Judgment. Plaintiffs Phillips, Dombroski, Morrigan, and Grunwald's failure to exhaust their claims as required by the PLRA means that their claims must be dismissed. Further, Tucker's claims should be limited to the specific, finite issue of denial of HRT because that is the only exhausted issue as to Tucker.

DATED: March 6, 2026.

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CERTIFICATE OF SERVICE

I hereby certify that on March 6, 2026, the foregoing, *Defendants' Summary Judgment Motion on Plaintiffs' Failure to Exhaust*, was filed using the Court's electronic filing system, which gave notice to the following:

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