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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
DEPARTMENT OF HEALTH AND HUMAN
SERVICES, *in her official capacity*; DR.
STACEY BANK, EXECUTIVE MEDICAL
DIRECTOR OF CLINICAL SERVICES
UTAH DEPARTMENT 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.

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

Case No. 2:25-cv-01108-TC

Judge Tena Campbell

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**Pro hac vice granted by court*

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I. INTRODUCTION

Plaintiffs Virginia Tucker, Stephanie Dombroski, Sandy Phillips, Dakota Grunwald, and Amberli K. Morrigan (collectively “Plaintiffs”) brought claims against Defendants due to Defendants’ failure to provide medically necessary care, discrimination because of their disability of gender dysphoria, denial of equal access to benefits, programs, and services, and denials of reasonable accommodations in violation of the Eighth Amendment to the U.S. Constitution and the Americans with Disabilities Act (“ADA”).¹ Defendants move for summary judgment alleging that Plaintiffs failed to exhaust the administrative grievance process as required under the Prison Litigation Reform Act (“PLRA”). Defendants’ Motion should be denied because as a matter of law, Defendants do not have the authority to provide any administrative remedies and therefore exhaustion is not required. Additionally, there are genuine issues of material fact as to the availability of administrative remedies and actual exhaustion. In the alternative, Defendants’ motion should be denied because material facts needed to oppose the motion are unavailable.²

First, exhaustion of administrative remedies is not required because administrative remedies are not available. *Second*, Defendants contest the scope of exhaustion, a plain reading of the grievances shows that Ms. Tucker has exhausted with respect to all issues in the First Amended Complaint (“FAC”). *Third*, there are several disputed material facts which preclude summary judgment as to all Plaintiffs, including, *inter alia*, whether all Plaintiffs’ complaints were grievable

¹ The ADA Amendments Act of 2008 passed September 25, 2008, and effective January 1, 2009 was enacted to restore the intent and protections of the original ADA of 1990. 42 U.S.C.A. § 12101. While Plaintiffs use “ADA” as opposed to “ADAAA,” they rely on the full provisions of the ADA Amendments Act.

² Plaintiffs have filed simultaneously a motion under Rule 56(d). (ECF No. ____, Plaintiffs’ Rule 56(d) Motion).

and whether grievance processes were available. While Plaintiffs' requests, grievances, and complaints may differ, one aspect is common throughout: Defendants did not have the authority to provide any relief due to (1) their internal policies, (2) their erroneous position that the medical condition, gender dysphoria, is not covered by the ADA, and (3) their lack of discretion to take actions to provide certain treatments for gender dysphoria under H.B. 252 and GEN-29.00's prohibitions on the initiation of hormone therapy and individualized assessments for surgical interventions as treatment for gender dysphoria. These facts are material to the PLRA requirements and whether exhaustion is required when Defendants do not have the authority to provide any relief and Defendants' processes are unavailable to the Plaintiffs. *Fourth*, in the alternative, the Court should deny Defendants' Motion based on Plaintiffs' detailed explanation set forth in Plaintiffs' Rule 56(d) Motion. (ECF No. ____, Plaintiffs' Rule 56(d) Motion). Plaintiffs and the Court do not have the benefit of fact discovery to see the full spread of material evidence to make fully informed decisions and responses. Utah courts often deny motions for summary judgment where developing the factual record would help determine whether genuine issues of material fact exist. *Zurich Am. Ins. Co. v. Ascent Constr., Inc.*, No. 20-00089, 2022 WL 280779, at *2 (D. Utah Jan. 31, 2022) (unpublished) (collecting cases).

Accordingly, as set forth in more detail below, Plaintiffs respectfully request that the Court deny Defendants' Motion for Summary Judgment.

II. RESPONSE TO DEFENDANTS' "UNDISPUTED" MATERIAL FACTS

Plaintiffs do not dispute the following facts from the Undisputed Material Facts section of Defendants' Motion for Summary Judgment: paragraphs 1–7; 10–11; 16–17; 22; 25; and 30–33.

However, Plaintiffs dispute the following:

8. *AG38 has been effective since November 8, 2019. (Id. at 1.)*

Plaintiffs do not dispute that a version of AG38 has been in effect since November 8, 2019. Plaintiffs dispute that an unchanged and unamended version has been in effect since that time. The current version of AG38 states “Date Revised: 2-4-2025.” (ECF No. 55-1 Defs’ MSJ Ex. B, AG 38). The full extent and materiality of those revisions is unknown to Plaintiffs at this time.

9. *All UDC inmates have a grievance process available to them for the resolution of complaints. (Id. at 2, § 1.02.)*

Plaintiffs dispute that they had a grievance process consistently and fully available to grieve their denials of medically necessary care; to grieve discrimination because of the disability of gender dysphoria; to grieve denials of equal access to Defendants’ institutional programs, services, activities, and benefits including healthcare programs; denials of reasonable accommodations and modifications; to grieve the lawfulness of H.B. 252; and to grieve the lawfulness of AG37 and GEN-29.00. While Defendants’ grievance policies exist, their “availability” was negated first by the limitations of AG37, then the implementation of GEN-29.00, and then again by the passage and later implementation of H.B. 252, and, finally, the revision and continued implementation of GEN-29.00. (ECF No. 36-1, Pla. Mot. For PI Ex. 1, H.B. 252; ECF No. 54-2, GEN-29.00).

Defendants have consistently communicated to Plaintiffs that H.B. 252 prohibits the relief they seek, both through medical staff,³ and the grievance process.⁴ (*See also* Ex. 1, Declaration of Sandy Phillips ¶ 7). Defendants have also communicated to Plaintiffs that an ADA request is not the appropriate process for relief because “it is UDC’s position that Gender Dysphoria is not

³ The following is a non-exhaustive, chronological list of medical record notes where CHS documented advising Plaintiffs that H.B. 252 prohibited care: Ex. 2, **State of Utah -010228-29** (Ms. Phillips medical note dated 5/9/25 states: [REDACTED]); Ex. 3, **State of Utah -010224** (Ms. Phillips medical note dated 5/13/25 states [REDACTED]); Ex. 4, **State of Utah -011561-62** (Ms. Tucker’s medical note dated 5/23/25 states [REDACTED]); Ex. 5, **State of Utah -011431** (Ms. Tucker’s medical note dated 7/18/25 states [REDACTED]).

⁴ The following is a non-exhaustive, chronological list of grievance responses where Defendants cited H.B. 252 as the reason for denied relief: Ex. 6, **State of Utah -015068** (Ms. Morrigan’s grievance response dated 5/9/25 states [REDACTED]); Ex. 7, **State of Utah -015013** (Ms. Dombroski’s grievance response dated 6/12/25 states [REDACTED]); ECF No. 56-2, Defs’ MSJ Exhibit A, Tab B, “Tucker’s Grievances,” **State of Utah -015164** (Ms. Tucker’s grievance response dated 6/27/25 states [REDACTED]); ECF No. 56-2 **State of Utah -015156** (Ms. Tucker’s grievance response dated 7/25/25 states [REDACTED]); ECF No. 56-2, **State of Utah -015147** (Ms. Tucker’s grievance response dated 10/21/25 states [REDACTED]).

covered by the ADA.” (Ex. 8, Dombroski ADA Denial, SD002290; Ex. 9, Tucker ADA Denial, VT000002).

12. *UDC provides assistance to inmates for understanding the grievance process. (Id.)*

Plaintiffs dispute that they were provided assistance with understanding the grievance process. (Ex. 1, Phillips Decl. ¶¶ 1–6, 8).

13. *“In general, all offender complaints are grievable.” (Id. at 2-3, § 1.04.)*

Plaintiffs dispute all offender complaints were grievable and incorporate their response to Paragraph 9 above. Defendants communicated the decisions of the AG37 and GEN-29.00 committees to Plaintiffs and it is unclear from Defendants’ own policies if such healthcare determinations are final, grievable, or appealable.

Additionally, the Handbook expressly carves out “GRAMA decisions,” “ADA decisions,” and “other matters outside the Department’s jurisdiction or governed by a separate process” as non-grievable. (Ex. 10, Utah Correctional Facilities Handbook 2025 (“Handbook”) at 20)).

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.)*

Plaintiffs dispute that the scope of available remedies is “broad.” As explained below, *see infra* Part V.B, administrative remedies were unavailable due to H.B. 252, Defendants’ policies on the treatment of Gender Dysphoria, including AG37 and GEN-29.00, and Defendants’ legal position that gender dysphoria is excluded from the ADA.

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).)*

Plaintiffs admit that Paragraph 15 correctly cites AG38, but dispute what is considered a single “issue.” AG38 does not define the scope of a single “issue.” Plaintiffs assert healthcare

related to their gender dysphoria may be considered a single issue even if multiple types of treatments or accommodations are requested in one grievance.

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).)*

Plaintiffs admit that Paragraph 18 correctly cites the process detailed in AG38, but dispute that the administrative process is available to Plaintiffs. Many times when Plaintiffs submitted grievances, they did not receive responses. (Ex. 11, Declaration of Amberli K. Morrigan ¶¶ 14, 20; Ex. 12, Declaration of Virginia Tucker ¶¶ 7–12).

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.)*

Plaintiffs admit that Paragraph 19 correctly cites the process detailed in AG38, but dispute that the administrative process is available to Plaintiffs. Many times when Plaintiffs submitted grievances, they did not receive responses. (Ex. 11, Morrigan Decl. ¶¶ 14, 20; Ex. 12, Tucker Decl. ¶¶ 7–12).

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.)*

Plaintiffs admit that exhaustion may be achieved by completing all three levels of the grievance process, but dispute that such procedure is required when administrative remedies are unavailable. For the reasons detailed below, *see infra* Part V. B, the grievance process was an administrative dead end. This was clearly communicated to all Plaintiffs at multiple times by multiple different actors. (*See supra* n.3 and n.4).

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 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.)

Plaintiffs dispute that grievance reviewers had authority to address valid grievances. Defendants’ communications make clear that they interpreted H.B. 252 as a blanket ban on the relief that Plaintiffs sought. (*See supra* n.3 and n.4). Defendants’ communications also show that they could not provide relief through ADA requests due to their legal position that Gender Dysphoria is not covered by the ADA. (Ex. 8, Dombroski ADA Denial; Ex. 9, Tucker ADA Denial).

23. ADM29’s “grievance process provides a path for an inmate to disagree with or question the healthcare system.” (*Id.* at 1.)

Plaintiffs admit that Paragraph 23 correctly cites ADM29 but dispute that the grievance process was available to Plaintiffs for the reasons stated in response to Paragraph 9, above. (*See supra* n.3 and n.4).

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

Plaintiffs admit that Paragraph 24 correctly cites ADM29 but dispute that the grievance process was available. Plaintiffs incorporate their response to Paragraphs 9 and 23, above.

26. Dombroski filed one Level III grievance, number 990930350. (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.*)

Plaintiffs admit that Paragraph 26 correctly cites a Level III grievance filed by Ms. Dombroski but dispute that it is the only one. Plaintiffs incorporate the arguments of their simultaneously filed Rule 56(d) Motion as to why Plaintiffs’ need limited discovery which will likely disclose facts that would establish a dispute of material facts as to Paragraph 26.

27. Tucker filed one Level III grievance, number 990932401.

Plaintiffs admit that Paragraph 27 correctly cites a Level III grievance filed by Ms. Tucker but dispute that it is the only one. Plaintiffs incorporate the arguments of their simultaneously filed Rule 56(d) Motion as to why Plaintiffs' need limited discovery which will likely disclose facts that would establish a dispute of material facts as to Paragraph 27. ECF No. ___, Rule 56(d) Motion.

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

Plaintiffs admit that Paragraph 28 correctly quotes a Level III grievance response issued to Ms. Tucker but dispute that hormone therapy was the only thing Ms. Tucker included in that grievance. Defendants mischaracterize Ms. Tucker's grievances without addressing the actual language and requests therein. Ms. Tucker's Level I, II, and III grievances all raise the issue of the lack of communication from Defendants on Gender Dysphoria treatment decisions, failure to provide treatment options other than HRT, and failure to provide mental health and other support services for gender dysphoria. (ECF No. 56-2 Defs' MSJ Exhibit A, Tab B, "Tucker's Grievances"). Moreover, Defendants fail to acknowledge that the final grievance response states,

[REDACTED]

[REDACTED] (*Id.* at State of Utah -015147). Defendants' own exhibit shows there is a material dispute as to whether Ms. Tucker has exhausted administrative remedies only for hormone therapy.

To the extent this fact assumes that this is Ms. Tucker's sole Level III grievance, Plaintiffs incorporate the arguments of their simultaneously filed Rule 56(d) Motion as to why Plaintiffs

need discovery which will likely disclose facts that would establish a dispute of material facts as to Paragraph 28. ECF No. ___, Rule 56(d) Motion.

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 Utah -015148).

Though the parties agree that Ms. Tucker has exhausted, Plaintiffs dispute that this is limited to her request for hormone therapy. Plaintiffs incorporate their full argument on this issue below. *See infra* Part V.C.1.

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

Plaintiffs dispute that Ms. Morrigan has exhausted issues unrelated to those raised in Plaintiffs’ FAC. Specific to grievance No. 990919917, Ms. Morrigan raised the issue of her housing assignment that relates to healthcare for transgender people, ADA accommodations, personal safety, and medical privacy. (ECF No. 56-3 Defs’ MSJ Exhibit A, Tab C, “Morrigan’s Grievances”). For grievance No. 990919415, Ms. Morrigan raised the issue of sex offender risk assessments and treatment programs that were not scientifically validated for transgender women. *Id.* This grievance addressed the lack of individual medical assessments for surgery to treat gender dysphoria, which acted as a bar to access appropriate risk assessments and treatment programs. *Id.*

Additionally, Ms. Morrigan exhausted her grievances through her complaints submitted to the Department of Justice (“DOJ”). (ECF No. 36-3, Pla. Mot. For PI Ex. 3, DOJ Letter of Findings). Ms. Morrigan alleged in her DOJ complaint “that UDOC discriminated against her because of her disability, gender dysphoria, by denying her equal access to health care and denying her requests for reasonable modifications.” (*Id.* at 1). The DOJ found that UDC discriminated against Ms. Morrigan because of her disability of gender dysphoria in violation the ADA by

denying her “equal access to healthcare services,” “[i]mposing unnecessary eligibility criteria for assessment and treatment for gender dysphoria that it does not require for other conditions,” and “[f]ailing to reasonably modify policies, practices, or procedures where necessary to avoid discriminating against” Ms. Morrigan. (*Id.* at 2).

III. ADDITIONAL STATEMENT OF MATERIAL FACTS

A. Defendants’ policies prior to the implementation of H.B. 252: AG 37 and GEN-29.00

1. AG37, entitled “Diagnosis & Treatment of Offenders with Gender Dysphoria,” appears to have been in place from December 19, 2018, until January 7, 2025. (ECF No. 36-2, AG37).

2. AG37 created a “gender dysphoria committee” (“GD Committee”) and described the procedure to “diagnose and treat offenders with gender dysphoria.” (*Id.* AG37/01.01).

3. The policy instructs that a mental health provider should perform an initial evaluation and present the results to the GD Committee. (*Id.* AG37/02.02 (B)–(C)).

4. The policy then provides that UDC’s Director of Clinical Services or their designee (who chairs the GD Committee) shall have “final approval” on whether to refer the person for an assessment for gender dysphoria. (*Id.* AG37/02.02 (D)).

5. The policy does not explain an appeal avenue, only that “Offenders who are denied may apply to be re-evaluated after one year.” (*Id.* AG37/02.02 (E)).

6. If the individual is granted an assessment for gender dysphoria, UDC’s Director of Clinical Services or their designee “shall review and consider any recommendations made by the contract psychologist in developing a treatment plan,” and “may” order “treatment with hormones.” (*Id.* AG37/02.04 (A)–(C)).

7. The policy does not contain any requirement that, to be eligible for hormone therapy, an individual must have lived as that gender for one year. (*Id.* AG37).

8. AG37's successor from January 7, 2025 to May 7, 2025 was GEN-29.00 entitled "Gender Dysphoria." (ECF No. 54-2, GEN-29.00).⁵

9. GEN-29.00 requires Defendant UDC to "ensure inmates seeking treatment for gender dysphoria receive timely, appropriate, and individualized evaluations and mental health services as clinically indicated." (*Id.* GEN-29.00/(III)(A)).

10. It establishes two new committees, the Interdisciplinary Case Staffing Team ("ICST") and the Multidisciplinary Services Team ("MDST"). (*Id.* GEN-29.00/(II)(H)–(I)).

11. GEN-29.00 requires the ICST committee to review health care requests from individuals who self-identify as transgender to approve them for an evaluation of gender dysphoria. (*Id.* GEN-29.00/(IV)(B)(2)(c)).

12. That evaluation shall be completed within thirty days but, regardless of the outcome, the policy prohibits access to hormone therapy stating: "Any inmate who is not on HRT and requests HRT shall be informed that HRT cannot be initiated while incarcerated pursuant to UCA §26B-4-1003." (*Id.* GEN-29.00/(IV)(B)(1)(c), (C)(3)(a)).

13. GEN-29.00 does not include an evaluation process for surgical interventions but states that "[t]he CHS director, the CHS medical director, the DHHS executive medical director, or the DHHS executive director may make exceptions to this policy." (*Id.* GEN-29.00/(V)(A)).

⁵ GEN-29.00 indicates a revision on May 7, 2025. All references to GEN-29.00 in this brief refer to the pre-revised policy. To the best of Plaintiffs' knowledge, and given the timeline of the policy's revision, it is unlikely that the revised version applied Plaintiffs.

14. GEN-29.00 provides that the MDST has the ultimate power to implement, review, and revise the individualized service plan for a person with gender dysphoria as needed. (*Id.* GEN-29.00 /(II)(I)).

15. The policy does not offer a mechanism to appeal these decisions. (*Id.* GEN-29.00).

B. The passage of H.B. 252

17. On March 19, 2025, the Utah Legislature enacted H.B. 252, with an effective date of May 7, 2025. (2025 Utah Laws Ch. 88).

18. Section 5 of H.B. 252, codified at Utah Code § 26B-4-1003(1), states that DHHS may not initiate a “cross-sex hormone treatment” or a primary or secondary “sex characteristic surgical procedure” for an incarcerated person. (Utah Code § 26B-4-1003(1); *see also* Utah Code § 26B-4-1001 defining “cross-sex hormone treatment”).

C. Plaintiffs’ experiences with the committee processes of AG37 and GEN-29.00 and Defendants’ application of H.B. 252 and GEN-29.00.

19. Ms. Tucker self-identified as transgender and sought an evaluation for gender dysphoria in June 2021. (Ex. 12, Tucker Decl. ¶ 3; Ex. 13, State of Utah -014638). She was evaluated by Dr. Paul Binks on December 18, 2024 (Ex. 14, State of Utah -011871) and received a diagnosis on January 9, 2025 (Ex. 15, State of Utah -011826; Ex. 12, Tucker Decl. ¶ 4). Ms. Tucker was orally told that she must wait a full year, until January 2026, before starting hormone therapy. (Ex. 12, Tucker Decl. ¶¶ 4–5).

20. Ms. Dombroski self-identified as transgender and sought care for gender dysphoria in February 2024. (Ex. 16, State of Utah -001770; Ex. 17, Declaration of Stephanie Dombroski ¶ 2). She was evaluated by Dr. Karen Malm in June 2024 and diagnosed with gender dysphoria. (Ex. 7, State of Utah -015013; Ex. 17, Dombroski Decl. ¶ 4). The “GD interdisciplinary team” issued its

decision finding Dr. Malm's diagnosis of gender dysphoria and approval for hormone therapy unsupported and declining to provide the recommended care to Ms. Dombroski. (Ex. 18, State of Utah -001563; Ex. 7, State of Utah -015013). Leslie Forbush told Ms. Dombroski that she needed to live as a woman for one year before she could become eligible. (Ex. 17, Dombroski Decl. ¶ 7).

21. Ms. Phillips self-identified as transgender and sought care for gender dysphoria in September 2024. (Ex. 19, State of Utah -010348). She was evaluated by Dr. Paul Binks in November 2024 and diagnosed with gender dysphoria. (Ex. 20, State of Utah -010299-302). Ms. Phillips was never started on hormone therapy despite her expectations and attempts to do so. (Ex. 1, Phillips Decl. ¶¶ 5–7). In May 2025, Ms. Forbush told Ms. Phillips that she would not receive hormone therapy because she needed to [REDACTED] [REDACTED] and the recent enactment of H.B. 252 prohibits hormone therapy. (Ex. 2, State of Utah -010228-29; Ex. 1, Phillips Decl. ¶ 7).

22. Mr. Grunwald has been in USCF's custody since 2015 and self-identified as transgender around 2018. (Ex. 21, Declaration of Dakota Grunwald ¶¶ 1, 3). The first time he learned about UDC's policy related to transgender people, the policy excluded transgender people from receiving hormone therapy unless the person had started receiving it before entering prison. (*Id.* ¶ 4). Defendants diagnosed Mr. Grunwald with Gender dysphoria in August 2018. (Ex. 22, State of Utah -014903). His requests for gender affirming clothing began in 2019 (Ex. 21, Grunwald Decl. ¶ 3) and he began hormone therapy in January 2021 but his requests for individual assessments for surgical interventions were denied by the GD committee. (Ex. 23, State of Utah -005850; Ex. 24, State of Utah -005551-552; Ex. 25, State of Utah -005417).

23. Ms. Morrigan self-identified as transgender shortly after her incarceration in July 2021 and sought care for gender dysphoria. (Ex. 26, State of Utah -006340-41; Ex. 11, Morrigan Decl. ¶¶ 1-3). She was evaluated multiple times before being diagnosed with gender dysphoria in June 2022. (Ex. 27, State of Utah -006312-13; Ex. 28, State of Utah -006223-25; Ex. 11, Morrigan Decl. ¶ 4). She was approved for HRT in November 2022 (Ex. 29, State of Utah -009856), began receiving HRT in January 2023 (Ex. 30, State of Utah -009713; Ex. 11, Morrigan Decl. ¶ 5), but her repeated requests for individual assessments for surgical interventions were denied due to H.B. 252 and GEN-29.00 (*See* Ex. 31, State of Utah -007080; Ex. 11, Morrigan Decl. ¶ 17).

24. Defendants began to implement and enforce UDC's GEN-29.00 on January 7, 2025.

25. Defendants began implementing and enforcing H.B. 252 on its effective date of May 7, 2025. (ECF No. 56-2, State of Utah -015164 -015156, -015148; Ex. 32, State of Utah -015187-88).

26. Defendants cited H.B. 252 when denying Ms. Morrigan's Level II Grievance No. 990925460 on May 9, 2025, just days after H.B. 252 became effective. (Ex. 11, Morrigan Decl. ¶ 17). The denial stated in part: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (Ex. 6, State of Utah -015068).

27. Defendants also cited H.B. 252 multiple times when denying Ms. Tucker's grievances. On June 27, 2025, in its response denying Ms. Tucker's Level I Grievance No. 990932401, Defendants wrote that [REDACTED]

[REDACTED] and that [REDACTED]
[REDACTED] (ECF No. 56-2, State of Utah -015164). Defendants reiterated H.B. 252's prohibition on care when denying Ms. Tucker's Level II Grievance, No. 990932401, on July 25, 2025. (*Id.* at State of Utah -015156; Ex. 32, State of Utah -015187-88). And again Defendants cited H.B. 252 to deny Ms. Tucker's Level III Grievance No. 990932401, on October 21, 2025, stating that [REDACTED]
[REDACTED] (ECF No. 56-2, State of Utah -015148).

28. Defendants cited H.B. 252 to deny Ms. Dombroski's Level I Grievance No. 990932593 on June 12, 2025 as well, stating that [REDACTED]
[REDACTED] (Ex. 7, State of Utah -015013).

D. UDC ADA policy and Handbook provide instruction on ADA request procedures

29. UDC's ADA policy is labeled AG12. (Ex. 33, AG12).
30. AG12 states that "ADA requests, complaints and appeals shall be handled independent of the offender grievance process." (*Id.* AG12/05.03(A)).
31. AG12 specifically and affirmatively requires that all offenders are to receive an orientation on ADA procedures. (*Id.* AG12/03.03). AG12 does not state that an ADA request or complaint must be preceded by a general grievance.
32. AG12 affirmatively states that "Offenders who cannot put their request in writing may make the request verbally to a UDC staff member who shall put the request in writing and have the offender sign or otherwise acknowledge the request." (*Id.* AG12/03.08).
33. AG 12 affirmatively states that "A staff member who notices or is informed that an offender may have a disability that is preventing them from accessing a Department program or

services shall: remind the offender of the Department's ADA process and notify them of where to obtain a copy of the ADA Request form." (*Id.* AG12/03.08).

34. The policy does not permit the grievance process to address ADA issues. (*Id.* AG12/05.03(B)).

35. AG12 instructs that individuals "who believe they have a physical or mental impairment requiring an accommodation under the ADA may initiate an ADA request." (*Id.* AG12/03.08(A)).

36. A "reasonable accommodation" under the policy is defined as "a modification or adjustment accommodation to the environment and or program, or the way things are usually done that enables a qualified person with a disability equal opportunities; an equal opportunity means an opportunity to achieve the same level of performance, or to enjoy equal benefits and privileges, as the average person without a disability in a similar situation." (*Id.* AG12/01.03 Definitions).

37. To initiate an ADA request, an individual must follow these four steps:

1. request and obtain an ADA Request Form from any UDC staff member;
2. complete the information requested on the ADA Request Form;
3. sign and date the ADA Request Form;
4. submit the completed, signed, and witnessed ADA Request Form to the ADA Committee Facilitator.

38. These requests will then be reviewed by the ADA committee "which will approve or deny the requested accommodation." (*Id.* AG12/03.08 (E)).

39. The policy also provides an appeal mechanism for those who are not satisfied with the ADA committee's decision. (*Id.* AG12/03.08 (G)).

40. The UDC Inmate Handbook also instructs on ADA requests. It states: "If you feel a disability is preventing you from participating in or benefiting from a program, service, or

activity offered by the Department, you may request an accommodation at any time by submitting an ADA request form to the ADA Committee Facilitator.” (Ex. 10, Handbook at 8).

E. The United States Department of Justice’s investigation and findings

41. On March 12, 2024, the DOJ issued a letter (“DOJ Letter”) directed at Defendant UDC entitled “The United States’ Findings and Conclusions Based on Its Investigation of the State of Utah Department of Corrections under Title II of the Americans with Disabilities Act, DJ # 204-77-88.” (DOJ Letter at 1).

42. The DOJ Letter states that it “opened this investigation in response to a complaint from an incarcerated transgender woman (Complainant) alleging that UDOC discriminated against her because of her disability, gender dysphoria, by denying her equal access to health care and denying her requests for reasonable modifications.” (*Id.* at 1).

43. That Complainant was Plaintiff Amberli Morrigan. (Ex. 11, Morrigan Decl. ¶ 23).

44. Based on the investigation, the DOJ Letter stated that UDC violated the ADA by (1) “denying [Ms. Morrigan] equal access to healthcare services,” (2) “[i]mposing unnecessary eligibility criteria for assessment and treatment for gender dysphoria that it does not require for other conditions,” and (3) [f]ailing to reasonably modify policies, practices, or procedures where necessary to avoid discriminating against [Ms. Morrigan].” (DOJ Letter at 2).

45. To investigate Ms. Morrigan’s complaint, the DOJ interviewed Ms. Morrigan, “UDOC’s Medical Director, ADA Coordinator, and other UDOC staff and UDOC contractors.” The DOJ also “requested and reviewed records and policies produced by UDOC.” (*Id.* at 2).

46. Discussing Ms. Morrigan’s request for reasonable accommodations, the DOJ Letter found that “[Ms. Morrigan] sought reasonable modifications by completing detailed ADA request

forms and making repeated requests orally and in writing to UDOC health care and correctional staff. When those requests were ignored or rejected, she filed grievances and appeals. These, too, were ignored or rejected.” (*Id.* at 4).

47. The DOJ Letter concluded with a list of remedial measures for UDC to ensure that it ceases violating Title II, Ms. Morrigan’s Civil rights, including:

1. Adopt, revise, and implement relevant policies, practices, and procedures to ensure UDOC provides individuals with gender dysphoria an equal opportunity to participate in and benefit from UDOC services, programs, and activities. This includes providing health care services for gender dysphoria consistent with UDOC’s treatment of other medical conditions.
2. Reasonably modify UDOC policies, practices, and procedures when necessary to ensure that individuals with gender dysphoria have equal access to all UDOC services, programs, and activities including commissary, pat and visual searches, housing, and required and optional programming.

....

4. Designate employees to coordinate UDOC’s overall efforts to comply with Title II and this Agreement and to coordinate each UDOC facility’s ADA compliance efforts, including investigating and resolving ADA complaints and grievances with respect to gender dysphoria.

(*Id.* at 7–8).

F. Plaintiffs’ ADA requests and Defendants’ position that gender dysphoria is not covered by the ADA

48. Plaintiffs all filed ADA requests per the ADA policy (Ex. 33, AG12) seeking to remedy discrimination based on their disability of gender dysphoria and reasonable accommodations to allow them full access to programs and services—including healthcare services—because of their disability. (Ex. 8, Dombroski ADA Denial; Ex. 34, Tucker ADA

Appeal; Ex. 9, Tucker ADA Denial; Ex. 35, Grunwald ADA Denial, DG002467; Ex. 1, Phillips Decl. ¶ 9; Ex. 11, Morrigan Decl. ¶¶ 19–21).

49. In multiple responses to ADA requests from Plaintiffs, Defendants consistently deny requests related to gender dysphoria on the basis that “UDC’s position is that gender dysphoria is not covered by the ADA,” and referred Plaintiffs to Clinical Health Services. (Ex. 8, Dombroski ADA Denial; Ex. 9, Tucker ADA Denial VT000002; Ex. 35, Grunwald ADA Denial).

G. Defendants’ grievance process and disclosure of grievances

50. Under AG38, inmates are limited to raising one issue per grievance, although the policy does not define what an “issue” is. (ECF No. 55-1, AG 38 at 2–3, §§ 1.03(D), 1.06(A)(1)). At each level, “[t]he designee shall ensure the . . . grievance doesn’t introduce new issues” and if the grievance “fails to address the original matter at hand” the designee “shall return a . . . grievance with a problem form” to the inmate. (*Id.* at 7, §§ 2.02(A)(1), 2.03(A)(1)). If the grievance presents new issues, the prison “shall” refer the inmate to open a new Level I grievance. (*Id.* at 7, §§ 2.02(A)(2), 2.03(A)(2)). However, even though grievances are limited to a single issue, if multiple grievances are received on “similar or related issues” the grievance coordinator can combine them and assign them a single grievance number. (*Id.* at 3, § 1.06(A)(6)). Thus, upon reaching a level III response, all related issues in the grievance are presumably exhausted because they were not rejected earlier in the process as would otherwise be required by the policy.

51. Plaintiffs filed many grievances and ADA requests that went unanswered. (Ex. 12, Tucker Decl. ¶ 10; Ex. 17, Dombroski Decl. ¶ 9; Ex. 36, State of Utah -015011; Ex. 11, Morrigan Decl. ¶ 20).

52. After filing their Motion for Summary Judgment, Defendants produced a number of grievances to Plaintiffs' counsel by way of an email from Asia Reid. (Ex. 37, Asia Reid email). That email refers to the disclosure as a "complete collection of grievances by all Plaintiffs." (*Id.*; Ex. 12, Tucker Decl. ¶ 8; Ex. 17, Dombroski Decl. ¶ 12; Ex. 21, Grunwald Decl. ¶ 11; Ex. 11, Morrigan Decl. ¶ 8).

53. Plaintiffs are in possession of grievances they filed that were not in Defendants' disclosure. (Ex. 38, AKM003105-112; Ex. 39, AKM003052; Ex. 40, AKM003165; Ex. 41, AKM003115; Ex. 42, AKM003131-35; Ex. 43, AKM003097-98; Ex. 44, VT003463). Thus, Plaintiffs believe that there are grievances in Defendants' possession that have not yet been disclosed. (Ex. 12, Tucker Decl. ¶¶ 9-10; Ex. 17, Dombroski Decl. ¶ 13; Ex. 21, Grunwald Decl. ¶¶ 12-16; Ex. 11, Morrigan Decl. ¶¶ 9-15).

IV. LEGAL STANDARD

Summary judgment is appropriate only "if the movant shows that 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). "In reviewing a motion for summary judgment, the court reviews the facts and all reasonable inferences those facts support in the light most favorable to the nonmoving party." *Evans v. Sandy City*, 944 F.3d 847, 852 (10th Cir. 2019) (citation modified). "[A] 'judge's function' at summary judgment is not 'to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial.'" *Tolan v. Cotton*, 572 U.S. 650, 656 (2014) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986)). "A fact is 'material' if, under the governing law, it could have an effect on the outcome of the lawsuit. A dispute over

a material fact is ‘genuine’ if a rational jury could find in favor of the nonmoving party on the evidence presented.” *Jones v. Norton*, 809 F.3d 564, 573 (10th Cir. 2015).

Because exhaustion is an affirmative defense, Defendants “bear the burden of asserting and proving that the plaintiff did not utilize administrative remedies.” *Tuckel v. Grover*, 660 F.3d 1249, 1254 (10th Cir. 2011). Once Defendants make their showing, the burden shifts to Plaintiffs to show that remedies were unavailable to them. *Id.* “[A] prisoner’s sworn affidavit, standing alone, may create a genuine dispute of material fact that forecloses summary judgment on exhaustion even if the record lacks corroborating evidence.” *Lamb v. Kendrick*, 52 F.4th 286, 296 (6th Cir. 2022); *see also In re Grandote Country Club Co., Ltd.*, 252 F.3d 1146 (10th Cir. 2001) (quoting *Jaxon v. Circle K Corp.*, 773 F.2d 1138, 1139 n.1 (10th Cir. 1985) (affirming that verified complaints have evidentiary value at the summary judgment stage so long as “the facts asserted are within the pleader’s personal knowledge”). The availability of administrative remedies is a fact intensive inquiry. *Ross v. Blake*, 136 S. Ct. 1850, 1856-60 (2016); *Aquilar-Avellaveda v. Terrell*, 478 F.3d 1223, 1225 (10th Cir. 2007).

V. ARGUMENT

Defendants wholly fail to demonstrate that summary judgment is appropriate for several reasons. First, as a matter of law, Defendants do not have the authority to provide any administrative remedies therefore exhaustion is not required. Second, there are several genuine issues of material fact including whether grievance processes were available to Plaintiffs, whether all Plaintiffs’ complaints could be grieved, and what specific issues were actually grieved. Third, the undisputed evidence demonstrates that Ms. Tucker has exhausted with respect to all issues in the FAC. Finally, Defendants’ Motion itself is premature where there has not been sufficient fact-

discovery for this Court to determine whether there are genuine issues of material fact.⁶ For these reasons, Plaintiffs respectfully submit that Defendants’ Motion must be denied.

As a clarifying matter, Defendants’ Motion mischaracterizes Plaintiffs’ claims and relevant caselaw. Defendants erroneously frame Plaintiffs’ claims as constitutionalizing “access to medical transition care—specifically, cross-sex hormone replacement therapy and sex reassignment surgery.” (ECF No. 55, Defs’ MSJ 2-3). Plaintiffs’ claims are that Defendants have acted with deliberate indifference to Plaintiffs’ serious medical need of gender dysphoria by denying medically necessary care and that Plaintiffs face discrimination because of their disability of gender dysphoria, namely, that they are denied equal access to programs, services, and benefits, including healthcare programs. (ECF No. 52, FAC Count I ¶¶ 279–91; Count II ¶¶ 292–302).

A. Exhaustion of administrative remedies is not required because administrative remedies are not available.

In order to properly exhaust available administrative remedies, plaintiffs must follow the grievance procedure set forth by the facility in which they are housed. *Jones v. Bock*, 549 U.S. 199, 218 (2007). The exhaustion requirement is mandatory, however, it only requires exhaustion of “available” remedies. *Ross*, 136 S. Ct. at 1856–60 (2016) (remanding case for a determination of if the prison grievance process was “available” to plaintiff); *Little v. Jones*, 607 F.3d 1245, 1250 (10th Cir. 2010). The three situations that courts have found an administrative procedure unavailable are when (1) “it operates as a simple dead end—with officers unable or consistently unwilling to provide any relief to aggrieved inmates,” (2) it is “so opaque that it becomes, practically speaking, incapable of use,” and (3) “when prison administrators thwart inmates from

⁶ See ECF No. ____, Plaintiffs’ Rule 56(d) Motion.

taking advantage of [a grievance process] through machination, misrepresentation, or intimidation.” *Ross*, 136 S. Ct. at 1859–60. In the Tenth Circuit district courts are “obligated to ensure that any defects in exhaustion were not procured from the action or inaction of prison officials” before dismissing a claim for failure to exhaust. *Aquilar–Avellaveda v. Terrell*, 478 F.3d 1223, 1225 (10th Cir. 2007).

An administrative procedure is unavailable when “it operates as a simple dead end—with officers unable or consistently unwilling to provide any relief to aggrieved inmates,” *Ross*, 136 S. Ct. at 1859–60. As the Supreme Court explained in *Ross v. Blake*:

First, as *Booth* [*v. Churner*, 532 U.S. 731 (2001)] made clear, an administrative procedure is unavailable when (despite what regulations or guidance materials may promise) it operates as a simple dead end—with officers unable or consistently unwilling to provide any relief to aggrieved inmates. . . . In *Booth*’s words: Some redress for a wrong is presupposed by the statute’s requirement of an “available” remedy; where the relevant administrative procedure lacks authority to provide any relief, the inmate has nothing to exhaust. So too if administrative officials have apparent authority, but decline ever to exercise it. Once again: The modifier “available” requires the possibility of some relief. When the facts on the ground demonstrate that no such potential exists, the inmate has no obligation to exhaust the remedy.

Ross, 136 S. Ct. at 1859 (citation modified).

One such situation in which exhaustion is excused for unavailable remedies is where another binding authority prohibits agency action. *See Doe v. McHenry*, 763 F. Supp. 3d 81, 87 (D.D.C. 2025) (excusing exhaustion excused where the Bureau of Prisons was required to take the challenged action pursuant to Executive Order and, thus, “there is no form of relief that is within the BOP’s discretion to provide and that would remedy the plaintiffs’ supposed constitutional violations”); *Younger v. Crowder*, 79 F.4th 373, 380 (4th Cir. 2023) (“An administrative remedy is unavailable if an inmate’s only hope for relief is that officials act contrary to statute and

regulation.”). Evidence of a policy or practice that prohibited the requested remedy is sufficient to make a showing that the remedy was not available and plaintiff was met with an administrative dead end. *Kingdom v. Trump*, No. 25-691, 2025 WL 1568238, at *7-8, (D.D.C. June 3, 2025) (finding that exhaustion as not required because plaintiff had reached an administrative dead end where “all evidence suggests that the BOP’s policy at the time was to withhold hormone therapy except where a court order mandated it do otherwise.”).

Plaintiffs have shown that Defendants’ policies were a *Ross* dead-end. Repeated requests for gender dysphoria care, especially for hormone therapy, were met with rejection after rejection and communications between Defendants and Plaintiffs demonstrate that there were no remedies available. (*See supra* n.3 and n.4). Defendants do not have the authority to provide any administrative remedies because H.B. 252 prohibits Defendants from providing the medically necessary care for gender dysphoria. It is also Defendants’ legal position that gender dysphoria is excluded from the ADA’s coverage which precludes that avenue of relief. (*See* Ex. 8, Dombroski ADA Denial; Ex. 9, Tucker ADA Denial). Therefore, Defendants do not have the authority to provide any administrative remedies for discrimination because of Plaintiffs’ gender dysphoria.

B. There are disputed materials facts including but not limited to whether Defendants’ grievance and ADA processes were “available” to Plaintiffs.

Defendants’ motion presents several material facts that are in dispute and preclude summary judgment, most notably: (1) the scope of Ms. Tucker’s exhausted claims; (2) whether Defendants’ grievance policy was “available” to Plaintiffs to exhaust; (3) whether Defendants’ ADA procedure was “available” to Plaintiffs to exhaust; and (4) whether the AG37 and GEN-29.00 committees issued final, non-grievable decisions that serve to exhaust Plaintiffs claims under the PLRA. Given all of these disputes, Defendants’ Motion should be denied.

1. *Plaintiffs Ms. Tucker, Ms. Dombroski, and Ms. Phillips have put forward sufficient evidence to establish a question of material fact as to whether the grievance procedure was “available” to them because Defendants do not have authority to provide any relief due to H.B. 252 and GEN-29.00.*

As the evidence set forth above illustrates, Defendants’ policy of denying access to care for those with gender dysphoria due to H.B. 252 and GEN-29.00 is evident from multiple communications to Plaintiffs. The grievance process does not provide Plaintiffs Ms. Tucker, Ms. Dombroski, or Ms. Phillips with an “available” remedy for their claims because Defendants do not have the authority to provide any relief, making exhaustion not required.

As a preliminary matter, the Utah Legislature enacted H.B. 252 on March 19, 2025 with an effective date of May 7, 2025. (ECF No. 36-1, Pla. Mot. For PI Ex. 1, H.B. 252). H.B. 252 prohibits Defendants from initiating hormone therapy as treatment for gender dysphoria and categorically bans individual assessment for surgical interventions for treatment of gender dysphoria for incarcerated transgender people with gender dysphoria. (ECF No. 36-1, H.B. 252).

In the month after H.B. 252 was passed, Defendants cited H.B. 252 when denying Ms. Dombroski’s Level I Grievance No. 990932593 regarding Defendants’ refusal to provide her hormone therapy. (Ex. 7, State of Utah -015013). The response states that [REDACTED]

[REDACTED] (*Id.*). Defendants’ reliance on H.B. 252 was consistently applied as they denied Ms. Tucker and Ms. Morrigan’s grievances on the same grounds, explicitly citing and quoting H.B. 252. (ECF No. 56-2, State of Utah -015147-48, -015155-56, -015164; Ex. 32, State of Utah -015187-88; Ex. 6, State of Utah -015068). This message was consistently passed on from medical providers and other UDC staff as well. (*See supra* n.3 and n.4; Ex. 1, Phillips Decl. ¶ 7).

It is clear from the totality of Defendants' communications that they (1) viewed H.B. 252 as a total barrier to providing individual assessments for treatment of gender dysphoria, (2) believed that they were bound by the total ban established by state law, and (3) believed that they lacked the authority to grant Plaintiffs Ms. Tucker, Ms. Dombroski, and Ms. Phillips any of the relief they sought. The PLRA does not force these Plaintiffs to continue to appeal where a remedy is clearly "unavailable" and their only hope is that Defendants will violate state law to grant their requests. *Ross v. County of Bernalillo*, 365 F.3d 1181, 1186 (10th Cir. 2004) (*citing Booth*, 532 U.S. at 736 n.4, 738) ("prisoners need not engage in entirely fruitless exercises when no form of relief is available at all.").

Thus, Plaintiffs Ms. Tucker, Ms. Dombroski, and Ms. Phillips have put forward ample evidence to establish a genuine dispute of material fact as to whether the grievance process was "available" to them, thus precluding summary judgment, or, in the alternative, establishing a basis for limited discovery pursuant to Plaintiffs' simultaneously filed Rule 56(d) Motion, and for denial of Defendants' summary judgment motion.

2. *Administrative exhaustion is not required as to Plaintiffs' ADA claim because there is a genuine issue of material fact whether a remedy was "available" through the ADA request process due to Defendants' legal position that gender dysphoria is not covered by the ADA.*

As the evidence set forth above illustrates, Defendants' ADA request process does not provide Plaintiffs with an "available" remedy for their claims because of Defendants' legal position that gender dysphoria is not covered by the ADA.

The hypothetical situation posed in *Ross v. Blake* clairvoyantly predicted Plaintiffs' predicament with the ADA requests. 578 U.S. at 632. The *Ross* Court posited, "[s]uppose, for example, that a prison handbook directs inmates to submit their grievances to a particular

administrative office—but in practice that office disclaims the capacity to consider those petitions. The procedure is not then ‘capable of use’ for the pertinent purpose.” *Id.* at 643. Plaintiffs attempted to use the ADA request process to seek accommodations to access programs and services—including healthcare programs and services—that were denied due to Defendants’ position that gender dysphoria is not covered by the ADA.

a) Defendants’ ADA policy and procedures describe how individuals can address issues related to their disabilities.

First and foremost, the UDC ADA policy makes clear that the “ADA requests, complaints and appeals shall be handled independent of the offender grievance process.” (Ex. 33, AG12/05.03(A)). And in fact, individuals “may not use the offender grievance process to address ADA issues.” (*Id.* AG12/05.03(B)); *see also* (Ex. 10, Handbook at 20 (per the Handbook, “ADA decisions” may not be grieved.)).

The UDC Handbook (2025) instructs Plaintiffs:

If you feel a disability is preventing you from participating in or benefiting from a program, service, or activity offered by the Department, you may request an accommodation at any time by submitting an ADA request form to the ADA Committee Facilitator.

(Ex. 10, Handbook at 8). And the UDC ADA policy, AG12, states in relevant part: “Offenders who believe they have a physical or mental impairment requiring an accommodation under the ADA may initiate an ADA request.” (Ex. 33, AG12/03.08(A)).

To initiate that request, the policy instructs the person to:

1. request and obtain an ADA Request Form from any UDC staff member;
2. complete the information requested on the ADA Request Form;
3. sign and date the ADA Request Form;
4. submit the completed, signed, and witnessed ADA Request Form to the ADA Committee Facilitator.

(*Id.* AG12/03.08 (B)). Per the policy, “[a]ll requests will be reviewed by the ADA Committee, which will approve or deny the requested accommodation.” (*Id.* AG12/03.08 (E)).

b) Defendants’ ADA request Process is unavailable to the Plaintiffs because Defendants have unlawfully excluded the disability of gender dysphoria from adherence to the ADA and thus do not have authority to provide any relief.

Citing their ADA policy and their unlawful policy position that gender dysphoria is not covered by the ADA, Defendants refused to consider Plaintiffs’ ADA requests and, thus, as a matter of law removed the availability of a remedy through this process excusing exhaustion.

Plaintiffs sought to use the ADA process because their issues related to the denial of access to programs and services—including health services—because of (1) their disability of gender dysphoria, (2) discrimination based on their disability of gender dysphoria, and (3) denials of reasonable accommodations they requested from other, informal avenues. They each filed the appropriate form per the policy and were either denied or never heard back. (Ex. 8, Dombroski ADA Denial; Ex. 9, Tucker ADA Denial, Ex. 35, Grunwald ADA Denial, Ex. 11, Morrigan Decl. ¶¶ 19–21). For Plaintiffs Ms. Tucker and Ms. Dombroski specifically, Defendants made a final decision under the ADA process that their disability of gender dysphoria was not covered under the ADA and, therefore, Defendants would not hear their complaints related to their disability. (Ex. 8, Dombroski ADA Denial; Ex. 9, Tucker ADA Denial).

The template responses received by Plaintiffs Ms. Tucker and Ms. Dombroski begin by denying the authority to address this issue: “Currently, UDC’s position is that gender dysphoria is not covered by the ADA. The ADA committee is not considering requests related to gender dysphoria.” (Ex. 8, Dombroski ADA Denial; Ex. 9, Tucker ADA Denial). From these template responses, it is clear that Defendants’ position is to decline ADA requests related to gender

dysphoria despite the handbook's instruction that persons with disabilities could request accommodation through the ADA request procedure. The Handbook expressly excludes "ADA decisions" as a grievable issue so Plaintiffs could not grieve these responses. (Ex. 10, Handbook at 20). Thus, this procedure is not "capable of use," no remedy through it is "available," and Plaintiffs could proceed no further.

Placing two of Defendants' denials to Mr. Grunwald's ADA request and grievance side by side demonstrates the catch-22 that Defendants' policies presented. Mr. Grunwald sought gender affirming clothing through the grievance process but it was denied as [REDACTED]
[REDACTED]
[REDACTED] (Ex. 45, State of Utah -014964-65). Yet, when Mr. Grunwald made an ADA request for an individual assessment for surgical intervention to treat his gender dysphoria, Defendants' denial stated: "This is not something which falls under the American disabilities act. Your request needs to be directed to the medical department." (Ex. 35, Grunwald ADA Denial). After having attempted both processes (ADA and grievance) with no success, Plaintiffs had hit an administrative dead end and exhaustion is excused.

Plaintiffs' argument that the ADA process was unavailable is bolstered by an independent finding by the DOJ. In its Letter issued on March 12, 2024, the DOJ found Defendants' handling of ADA complaints with respect to gender dysphoria ineffective and unlawful. (ECF No. 36-3, DOJ Letter at 1). The DOJ Letter explains that Ms. Morrigan's ADA requests were ignored or improperly rejected. (*Id.* at 4). As a result, the DOJ imposed remedial measures including revising policies and procedures "to ensure UDOC provides individuals with gender dysphoria an equal opportunity to participate in and benefit from UDOC services, programs, and activities," and

designating employees to ensure ADA compliance, “including investigating and resolving ADA complaints and grievances with respect to gender dysphoria.” (*Id.* at 7–8). Notably, Defendants never appealed this finding and, as shown by the continued denials, continue to make the ADA process unavailable to Plaintiffs. The DOJ Letter also establishes a basis for additional discovery that Plaintiffs need to fully refute Defendants’ Motion as explained in Plaintiffs’ contemporaneously filed Rule 56(d) Motion.⁷

For all these reasons, Plaintiffs have shown that Defendants’ practice was to outright deny ADA requests related to gender dysphoria and, thus, the remedy was not “available” to Plaintiffs and exhaustion is not required. At a minimum, there is a genuine dispute of material fact whether the ADA request process provided an available administrative remedy to Plaintiffs.

3. *Alternatively, Plaintiffs exhausted their claims by proceeding through the committees established by AG37 and GEN-29.00 that made final, non-grievable determinations on their medical care for gender dysphoria.*

Under AG37 and GEN-29.00⁸ Defendants’ committees for the diagnosis and treatment of gender dysphoria, some Plaintiffs have received final determinations on their issues as they relate to gender dysphoria. Plaintiffs allege that these committee decisions are final. (ECF No. 52, First FAC ¶¶ 29, 30, 65, 87, 96, 98). As discussed above, Defendants’ responses establish that Defendants do not have the authority to provide any remedy Plaintiffs seek related to adequate medical care for their gender dysphoria. Plaintiffs have exhausted their claims through these

⁷ Reports of a public office from a legally authorized investigation are admissible unless shown to be untrustworthy. *Beech Aircraft Corp. v. Rainey*, 488 U.S. 153, 170 (1988) (“factual findings” include underlying facts as well as conclusions and opinions contained in an agency report); *see Chandler v. Roudebush*, 425 U.S. 840, 863 n.39 (1976) (recognizing that prior administrative findings may be admitted as evidence in subsequent federal litigation).

⁸ AG37 policy came first, followed by GEN-29.00, establishing procedures and committees treat individuals with gender dysphoria. (ECF No. 36-2, AG37; Exhibit A, GEN-29.00).

committee processes, or have raised a dispute with a material fact.⁹ These policies—nor the grievance policy—provide plaintiffs with meaningful avenues to grieve the committee decisions.

Defendants have created a separate process to exclusively govern diagnoses and treatment of gender dysphoria that is excluded from the traditional grievance process. (Ex. 10, Handbook at 20) (“In general, all your complaints may be grieved except . . . other matters outside the Department’s jurisdiction or governed by a separate process.”). CHS then funneled Plaintiffs through the committee process of AG37 or GEN-29.00 respectively. Even the ADA committee directed individuals to CHS for issues related to healthcare and hormone therapy. (Ex. 8, Dombroski ADA Denial; Ex. 9, Tucker ADA Denial; Ex. 35, Grunwald ADA Denial).

AG37 created a “gender dysphoria committee” (“GD Committee”) and described the procedure to “diagnose and treat offenders with gender dysphoria.” (ECF. No. 36-2, AG37/01.01). The policy instructs that, upon intake or at any other time, if an incarcerated person self-identifies as transgender and requests a mental health evaluation through the Inmate Care Request process, the mental health provider is to meet with the requestor within 14 working days. (*Id.* AG37/02.02(A)). The incarcerated person is to have an initial evaluation from a mental health provider who then presents the results to the GD Committee. (*Id.* AG37/02.02 (B)–(C)). The policy then provides that UDC’s Director of Clinical Services or their designee (who chairs the GD Committee) shall have “*final approval*” on whether to refer the person for an assessment for gender dysphoria. (*Id.* AG37/02.02 (D)) (emphasis added). The policy does not explain an appeal avenue or that the final decisions are grievable, only that “Offenders who are denied may apply to be re-

⁹ Alternatively, Plaintiffs have supported their need for discovery to determine the impact of these committees’ authority, procedures, and decision-making as it relates to exhaustion. (*See* ECF No. ____, Plaintiffs’ Rule 56(d) Motion).

evaluated after one year.” (*Id.* AG37/02.02 (E)). If the individual is granted an assessment for gender dysphoria, UDC’s Director of Clinical Services or their designee “shall review and consider any recommendations made by the contract psychologist in developing a treatment plan,” and “may” order “treatment with hormones.” (*Id.* AG37/02.04 (A)–(C)). Again, the policy does not contemplate appeal of this treatment plan decision or that the final decision is grievable.

Likewise, GEN-29.00 requires Defendant UDC to “ensure inmates seeking treatment for gender dysphoria receive timely, appropriate, and individualized evaluations and mental health services as clinically indicated.” (GEN-29.00/(III)(A)). It establishes two new committees, the Interdisciplinary Case Staffing Team (“ICST”) and the Multidisciplinary Services Team (“MDST”), which appear to function substantially similarly to the GD Committee under AG37. GEN-29.00’s procedure requires the ICST committee to review health care requests from individuals who self-identify as transgender to approve them for an evaluation of gender dysphoria. (GEN-29.00/(IV)(B)(2)(c)). That evaluation shall be completed within thirty days but, regardless of the outcome, the policy prohibits access to hormone therapy. (GEN-29.00/(B)(1)(c), (C)(3)(a)). It does not include an evaluation process for surgical interventions but indicates that there could be exception to this policy. (GEN-29.00/(V)(A)). GEN-29.00/(II)(I) provides that the MDST has the ultimate power to implement, review, and revise the individualized service plan for a person with gender dysphoria as needed. The policy does not offer a mechanism to appeal these decisions or state that the final decisions are grievable.

- a) *Each Plaintiff received final decisions related to medical care for their gender dysphoria that could not be appealed nor grieved and thus exhausted the processes under AG37 and GEN-29.00.*

Each Plaintiff went through the process described by AG37 or GEN-29.00 and, at the conclusion, received a final decision that either (1) they would start a treatment plan for their gender dysphoria including hormone therapy, (2) they needed to live as the gender for one year and then reapply, or (3) H.B. 252 barred the processes under these policies from proceeding. Without an avenue to appeal or grieve the decisions of the committee, the decisions passed on from the AG37 and GEN-29.00 committees were essentially final.

As detailed above, *see supra* Part III.C ¶ 19, Ms. Tucker was diagnosed with gender dysphoria on January 9, 2025. (Ex. 12, Tucker Decl. ¶¶ 3-5), at which time she was told that she must wait a full year before she could start hormone therapy. (Ex. 12, Tucker Decl. ¶ 5). By that time, H.B. 252 and GEN-29.00 would bar Ms. Tucker's care and she had no further means of appealing this decision.

As detailed above, *see supra* Part III.C ¶ 20, Ms. Dombroski self-identified as transgender in April 2024 and was diagnosed with gender dysphoria in June 2024. (Ex. 17, Dombroski Decl. ¶¶ 2, 4). The GD interdisciplinary team rejected Dr. Malm's diagnosis and declined to provide recommended care. (Ex. 17, Dombroski Decl. ¶ 6; Ex. 18, State of Utah -001563). Leslie Forbush advised that Ms. Dombroski needed to live as a woman for one year before becoming eligible. (Ex. 17, Dombroski Decl. ¶ 7). By that time, H.B. 252 and GEN-29.00 would bar Ms. Dombroski's care and she had no further means of appealing this decision.

As detailed above, *see supra* Part III.C ¶ 21, Ms. Phillips self-identified as transgender in September 2024 and was diagnosed with gender dysphoria in November 2024. (Ex. 1, Phillips Decl. ¶ 7; Ex. 20, State of Utah -010299-302). One of the committees associated with AG37 or GEN-29.00 approved Ms. Phillips requests for hormone therapy in January 2025, but treatment

was never started. In May 2025, Ms. Forbush told Ms. Phillips she needed to [REDACTED] [REDACTED] and that H.B. 252 prohibited hormone therapy. (Ex. 1, Phillips Decl. ¶ 7; Ex. 2, State of Utah -010228).

As detailed above, *see supra* Part III.C ¶ 22, Mr. Grunwald self-identified as transgender around 2018, was diagnosed with gender dysphoria, and started hormone therapy in January 2021. (Ex. 22, State of Utah -014903; Ex. 21, Grunwald Decl. ¶ 8). In September 2021, he requested to be evaluated for additional treatment for his disability of gender dysphoria, chest surgery, which the GD committee denied. (Ex. 23, State of Utah -005850; Ex. 24, State of Utah -005551-52; Ex. 25, State of Utah -005417).

As detailed above, *see supra* Part III.C ¶ 23, Ms. Morrigan self-identified as transgender in July 2021, was diagnosed with gender dysphoria in June 2022, and began hormone therapy in January 2023. (Ex. 11, Morrigan Decl. ¶¶ 1, 3-5). Her requests for individual assessments for surgical interventions have been denied due to H.B. 252 and GEN-29.00. (Ex. 6, State of Utah -015068; Ex. 11, Morrigan Decl. ¶ 17).

Each Plaintiff therefore fully exhausted their claims through either the AG37 or GEN-29.00 committee processes by receiving final decisions that either (1) required them to wait one year before reapplying, or (2) cited H.B. 252 as barring further relief. Without an avenue to appeal or grieve these committee decisions, administrative exhaustion was achieved. If the Court finds Plaintiffs have not put forward enough facts to dispute whether these policy decisions were final and non-grievable, Plaintiffs incorporate their arguments from the contemporaneously filed Rule 56(d) Motion.

C. Summary judgment should be denied as to Ms. Tucker who has properly exhausted her claims through the grievance process.

- 1. Ms. Tucker's Level III grievance, which Defendants concede is fully exhausted, is broader than just hormone therapy and encompasses all the allegations in the FAC.*

It is undisputed that Ms. Tucker fully exhausted Defendants' stated three-level grievance process in AG-38 and ADM-29 regarding her request for hormone therapy. (ECF No. 55, Defs' MSJ ¶ 29). At every stage of the grievance process, Ms. Tucker complied with the prison's stated policies in AG-38 to fully exhaust her claims, continually providing ample information that allowed Defendants to investigate and address her issues accessing treatment for her gender dysphoria. *See Norton v. Coles*, No. 20-32, 2025 WL 1504431, at *3 (D. Utah May 27, 2025) (quoting *Kikumura v. Osagie*, 461 F.3d 1269, 1285 (10th Cir. 2006)) ("A grievance which supplies the information requested by prison officials 'satisfies § 1997e(a)'s exhaustion requirement so long as it provides prison officials with enough information to investigate and address the inmate's complaint internally."). Thus, the only question is whether that grievance encompasses the incidents alleged in her FAC: lack of access to individualized medical treatment consistent with accepted medical standards, denial of access to programs and services including healthcare services because of her disability of gender dysphoria, discrimination based on her disability of gender dysphoria, and denial of reasonable accommodations. (ECF No. 52, FAC ¶¶ 279–302). A close review of Ms. Tucker's Level III grievance fully encompasses these concerns and thus provides proper exhaustion of all of her claims.

First, Ms. Tucker initiated the grievance process by filing a Level I grievance form addressing the denial of equal access to Defendants' programs, services, and benefits—including healthcare programs—seeking [REDACTED] (ECF No. 56-2, State

of Utah -015168). Ms. Tucker stated: [REDACTED]

[REDACTED] (*Id.* at State of Utah -015162).

Defendants' the related relief of "communication between CHS and the transgender community," "HRT," "Gender Affirming clothing," and access to therapy. (*Id.* at State of Utah -015164). Ms. Tucker then filed her Level II appeal, again broadly addressing her issue of accessing care for her gender dysphoria and denial of equal access to care, including mental health access, clothing, and HRT. (*Id.* at State of Utah -015158-162). Defendants issued a Level II response in which DHHS and CHS again acknowledged that the grievance was related to the lack of healthcare for Ms. Tucker's gender dysphoria—again listing HRT and mental health services as part of this care. (*Id.* at State of Utah -015155-56). Finally, Ms. Tucker reached the third and final level of the grievance process and filed her Level III appeal. At level III, she sought to [REDACTED]

[REDACTED] (*id.* at State of Utah -015151) and reiterated that [REDACTED]

[REDACTED] (*id.* at State of Utah -015153). HRT was again listed as just one of the facets of care requested, alongside mental health care and proper communication. (*Id.* at State of Utah -015153-54). Thus, at each level Ms. Tucker has broadly listed the access to care she sought and Defendants responded in time, addressing each topic she raised and treating them as one, overarching grievance.

Defendants now, for the first time, contend that Ms. Tucker's level III grievance was limited only to her request for HRT. (ECF No. 55, Defs' MSJ at 18–19). This claim is unfounded. First, it is belied by their own responses, [REDACTED]

[REDACTED] (ECF No. 56-2, State of Utah -015147). Defendants' responses at all levels

acknowledge and respond to several aspects of Ms. Tucker's access to Defendants' programs, services, and benefits, including but not limited to gender affirming clothing, a gender dysphoria diagnosis, HRT, mental health treatment, and better communication between DHHS and the transgender community. (*Id.* at State of Utah -015147-48). In short, Ms. Tucker's issue was access to a broad array of treatment for gender dysphoria—or lack thereof—which was articulated in *every* grievance and response.

Second, Defendants waived any procedural defect by repeatedly responding to the grievances on the merits as opposed to rejecting them for a procedural deficiency. *See Norton*, No. 20-32, 2025 WL 1504431, at *7–8 (citing *Ross*, 365 F.3d at 1186 (10th Cir. 2004)). The Tenth Circuit has found that prison officials waive a procedural defect when they respond to a grievance on the merits. *Ross*, 365 F.3d at 1186 (10th Cir. 2004) (*overruled on other grounds in Jones v. Bock*, 549 U.S. 199, 206 (2007)). Here, even if HRT, therapy, communication, clothing, etc. are considered separate issues, Defendants did not reject the grievance on procedural grounds and, in fact, proceeded to address the grievances in their entirety on the merits, thus waiving any procedural defect. The alternative would simply be unfair. Ms. Tucker cannot now be denied exhaustion for a deficiency that Defendants never identified nor provided an opportunity for her to cure.

And finally, the cases that Defendants rely on are unpersuasive. (ECF No. 55, Defs' MSJ. at 18, ¶ 2). Defendants cite multiple cases that reject exhaustion for clear procedural issues like timeliness, failure to file a grievance, or failure to appeal that do not apply here. *See Townsend v. Colorado Dep't of Corr.*, No. 14-02961, 2016 WL 1178280, at *4–6 (D. Colo. Mar. 28, 2016), *aff'd*, 671 F. App'x 712 (10th Cir. 2016) (grievances were not timely, did not adhere to space

limitations, and/or did not address conduct alleged in the pleadings); *Duvall v. Oklahoma State Bd. of Osteopathic Examiners*, No. 17-247, 2018 WL 6333708 at *5 (W.D. Okla. Aug. 10, 2018) (failure to file appeal); *Burnett v. Jones*, 437 F. App'x 736, 741–742 (10th Cir. 2011) (procedural deficiencies like untimeliness, failure to grieve the issue, or failure to appeal); *Smith v. Drawbridge*, No. 16-1135, 2018 WL 3913175, at *4–11 (W.D. Okla. May 22, 2018)) *report and recommendation adopted*, No. 16-1135, 2018 WL 2966946 (W.D. Okla. June 13, 2018), *aff'd*, 764 F. App'x 812 (10th Cir. 2019) (failure to seek an administrative remedy and procedurally deficient grievances). No such deficiency notice was issued as to Ms. Tucker's grievance.

Defendants only cite one case which appears to briefly grapple with the procedural issue of limiting exhausted grievances to a single issue, *Hardeman v. Smash*, No. 21-7018, 2022 WL 470741, at *2–3 (10th Cir. Feb. 16, 2022). However, to the extent the *Hardeman* Court relied on the Oklahoma Department of Corrections policy that only one issue is allowed per grievance, UDC's policy provides an avenue for combining multiple related issues and instructs that a procedural deficiency notice should be issued if an individual attempts to grieve multiple unrelated issues. (ECF No. 55-1, AG 38 at 3, § 1.06(A)(6), (9)).

For all these reasons, Defendants' argument that Ms. Tucker's Level III grievance is limited to her request for hormone therapy is unpersuasive and summary judgment should be denied because Ms. Tucker has put forward ample evidence that her Level III grievance encompasses the allegations in the FAC.

D. For any remaining issues, Plaintiffs respectfully request their Rule 56(d) Motion be granted and Defendants' Motion be denied.

Plaintiffs are limited in their ability to respond to Defendants' Motion without the benefit of discovery. If the Court finds that Plaintiffs have not produced sufficient factual evidence to

create a dispute of material fact on any issue, Plaintiffs respectfully request the Court grant their Rule 56(d) Motion to permit limited discovery. *See Zurich*, No. 20-00089, 2022 WL 280779, at *2 (collecting cases denying summary judgment where developing the factual record would help determine whether genuine issues exist).

VI. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court deny Defendants' Motion for Summary Judgment.

Respectfully submitted this 3rd day of April, 2026,

/s/ Abigail Cook
Abigail Cook
Attorney for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of April, 2026, a true and correct copy of the foregoing was served on Defendants via ECF.

/s/ Abigail Cook
Abigail Cook
Attorney for Plaintiffs