

Derek Brown
Utah Attorney General
David N. Wolf (6688)
Keith W. Barlow (15532)
Jorden W. Truman (19718)
Assistant Utah Attorneys General
Joshua B. Cutler (16434)
Assistant Solicitor General
Office of the Utah Attorney General
dnwolf@agutah.gov
kwbarlow@agutah.gov
jwtruman@agutah.gov
jbcutler@agutah.gov
Counsel for Defendants

HEATHER CHESTNUT (6934)
Assistant Utah Attorney General
OFFICE OF THE UTAH ATTORNEY
GENERAL
Telephone: (385) 584-6509
hchesnut@agutah.gov
Counsel for Utah Department of Corrections

STEPHANIE SAPERSTEIN (5541)
MOLLIE MCDONALD (8589)
Assistant Utah Attorneys General
OFFICE OF THE UTAH ATTORNEY
GENERAL
Telephone: (385) 584-6509
stephaniesaperstein@agutah.gov
mlmcdonald@agutah.gov

*Counsel for Utah Department of Health and
Human Services*

**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

**DEFENDANTS' REPLY
MEMORANDUM IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT
ON PLAINTIFFS' FAILURE TO
EXHAUST**

Case No. 2:25-cv-01108

Honorable Judge Tena Campbell

Magistrate Judge Jared C. Bennett

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 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](#) and [DUCivR 56-1](#), 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 Reply in support of their Motion for Summary Judgment concerning Plaintiffs’ Virginia Tucker’s (“Tucker”), Stephanie Dombroski’s (“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

Under the PLRA, an inmate must exhaust all available administrative remedies before filing suit. Exhaustion is mandatory if the administrative process offers any form of relief, is capable of use, and inmates are not prevented from using it. UDC and DHHS provide three such processes—AG38 (grievances), ADM29 (medical grievances), and AG12 (ADA appeals).

Defendants moved for summary judgment (Defs.’ Summ. J. Mot. on Pls.’ Failure to Exhaust, ECF No. 55 (“Motion”)) because, at the time of Plaintiffs’ filing their First Amended Complaint, ECF No. 52 (“Complaint”), the record reflected that only Tucker had exhausted a grievance related to the claims alleged in the Complaint. Dombroski had exhausted only an unrelated strip-search complaint; Phillips and Grunwald had exhausted none; and Morrigan had

exhausted two grievances unrelated to the Complaint.

In opposition, Plaintiffs point to additional grievances. After further review, Defendants learned of communication issues between UDC and DHHS's respective record keepers regarding the initial compiling of grievance records.¹ Defendants have resolved these communication issues and have now, simultaneous with filing this Reply, produced to Plaintiffs all of the grievance records available to them (the "second production"). Even with this more complete record of Plaintiffs' grievances, Defendants' exhaustion arguments remain the same for Grunwald, Phillips, Tucker, and Dombroski. The only changes are for Morrigan and Tucker. Morrigan exhausted a grievance regarding the denial of gender-affirming clothing and appealed ADA decisions concerning female housing, an electric razor, and access to a female sex-offender treatment plan; Morrigan can proceed on those grieved issues. Tucker has an ADA appeal concerning the denial of HRT, which is redundant to the denial of HRT exhausted in her Level III grievance. However, Grunwald, Phillips, and Dombroski still cannot proceed with any claims.

Plaintiffs attempt to excuse their non-exhaustion by arguing futility—because allegedly

¹ In 2023, CHS (the correctional health care services division of DHHS) took over the medical care of inmates from UDC and responsibility for medical records. When compiling grievance records for disclosure to Plaintiffs, UDC and CHS assumed the other had responsibility for the medical records prior to 2023 and that the other would compile them. *See* Declaration of Lucy Ramirez, Ex. 1, ¶¶ 9-13 ("Lucy Decl."); *see also* Declaration of Jonah Shaw, Ex. 2, ¶¶ 4-8 ("Shaw Decl.").

As a result of this miscommunication, certain grievances were inadvertently omitted from Defendants' March 9, 2026, production (the "first production"). Plaintiffs did not notify counsel of missing grievances until their April 10, 2026, opposition to Defendants' MSJ. After learning of the oversight, counsel investigated, retrieved the omitted records, and has now produced all remaining grievance records to Plaintiffs concurrently with this Reply. Defendants' record keepers have confirmed that all grievance records in both UDC and CHS systems have now been provided. (Ex. 1, Lucy Decl. ¶ 13.) Notably, this oversight only changed the exhaustion analysis as to Morrigan, nothing more. Defendants and their counsel apologize to Plaintiffs and the Court for the oversight.

the administrative processes cannot provide the precise outcomes they seek. But futile outcomes don't excuse exhaustion. Exhaustion is required whenever the process can provide any relief for a complaint. Here, Plaintiffs can appeal ADA denials, grieve committee decisions, healthcare decisions, and prison conditions. And through those complaints, while Defendants cannot offer HRT or sex-reassignment surgeries, Plaintiffs can have their concerns heard, investigated, and receive other forms of relief. Plaintiffs' own declarations confirm they've used these processes, even though three stopped short of exhausting them on the relevant issues.

Plaintiffs also suggest factual disputes. But the material facts are undisputed: 1) the grievance systems exist, 2) Plaintiffs knew about them and used them, and 3) the grievance processes were capable of providing some relief for their claims raised in the Complaint.

In short, Phillips, Grunwald, and Dombroski failed to exhaust, and their claims must be dismissed. Only Tucker and Morrigan may proceed. And they are limited on the issues they exhausted.

Undisputed Facts & Responses

I. Undisputed facts

A. AG38, ADM29, and AG12 provide three administrative processes for inmate complaints

The following facts are not in dispute.

1. Inmates receive orientation on Defendants' grievance processes and are made aware that grievance forms are readily available. (Pls.' Resp. to Defs.' Summ. J. Mot. on Pls.' Failure to Exhaust ("Response") 2, ECF No. 87.)
2. ADM29 governs the procedure for grieving a medical issue. (*Id.* 2.)
3. UDC has a grievance policy, AG38, titled "Offender grievances." (*Id.* 2.)

4. AG38 has a three-level appeals process, and a Level 1 offender complaint initiates that process. (*Id.* 2.)
5. AG12 is the ADA policy. (*Id.* 15, ¶ 29.)
6. AG12 allows for a separate appeals process for ADA decisions “handled independent of the offender grievance process.” (*Id.* 15, ¶ 30.)
7. AG12 “provides an appeal mechanism for those who are not satisfied with the ADA committee’s decision.” (*Id.* 16, ¶ 39)
8. AG12 requires offenders to receive orientation on ADA procedures. (*Id.* 15, ¶ 31.)

Thus, the parties agree that 1) Defendants have three administrative processes in place to handle inmate complaints; 2) ADM-29 governs medical-related complaints; 3) AG-38 governs general offender complaints; and 4) AG12 governs ADA decisions and appeals of those decisions.

A. It is undisputed that Phillips and Grunwald failed to complete a grievance process

9. Both parties agree that Phillips has not filed any grievances. (Resp., 2.)
10. Both parties agree that Grunwald has not taken a complaint to Level III. (Resp., 2.)

II. Defendants’ reply to Plaintiffs’ responses to Defendants’ facts; Defendants’ reply to Plaintiffs’ additional facts

A. Defendants’ replies to Plaintiffs’ responses to Defendants’ facts

Plaintiffs responded to Defendants’ statement of facts **Nos. 8, 9, 12, 13, 14, 15, 18, 19, 20, 21, 23, 24, 26, 27, 28, 29, & 34.** (Resp., 2-10.) Defendants herein reply to those responses.

No. 8. Plaintiffs allege they do not have the prior version of AG38. (Resp., 3.) This is

immaterial because the current version of AG38 contains the same grievance process as the prior version of AG38. (Ex. 3, Declaration of Wendy Horlacher-Aldrich, ¶¶ 5-6 (“Wendy Decl.”).)²

No. 9. Plaintiffs contend they lacked an available grievance process due to HB252, AG37, and GEN29. (Resp., 3.) But AG38, ADM29, and AG12, the administrative processes, do not eliminate the grievance process for medical and general complaints. Plaintiffs’ own declarations confirm they submitted grievances regarding gender-dysphoria-related healthcare and accommodations. (See Resp., Ex. 1, Decl. of Sandy Phillips, ¶ 9; *id.* Ex. 11, Decl. of Amberli Morrigan, ¶ 9; Ex. 12, Decl. of Virginia Rose Tucker, ¶ 10; *id.* Ex. 17, Decl. of Stephanie Dombroski, ¶ 13; *id.* Ex. 21, Decl. of Dakota Grunwald, ¶ 12.)

No. 12. Plaintiffs contend they were not provided assistance in understanding the grievance process, citing the declaration of Phillips. (Resp., 5.) Phillips’ declaration discusses an ADA complaint—not AG38, which is the subject of **No. 12.** (Resp., Ex. 1, Phillips Decl., ¶¶ 2-3.) Further, Phillips’s declaration recounts receiving UDC’s help to file an ADA request, contradicting Plaintiffs’ assertions. (*Id.* ¶ 3.)

No. 13. Plaintiffs mischaracterize Defendants’ grievance processes (Resp., 5), and Defendants incorporate their No. 9 response here.

No. 14. Plaintiffs misstate that Defendants no longer have broad authority to afford relief because they cannot provide the specific relief of HRT or sex reassignment surgeries. (Resp., 5.) Under AG38 and ADM29, Defendants retain authority to consider and offer a range of other forms of relief in response to a grievable complaint concerning gender dysphoria. (Ex. 3, Wendy

² Although the prior version of AG38 is irrelevant, Defendants will provide it to Plaintiffs. (Ex. 3, Wendy Decl., ¶ 6, attachment A.)

Decl., ¶¶ 19-25; Ex. 2, Shaw Decl. ¶ 9.)

No. 15. Neither party disputes AG38's requirement that an inmate should only grieve one issue and that AG38 doesn't define "issue." (Resp., 5-6.)

No. 18. Defendants agree that AG38 has a three-level review process for an offender's complaint. (Resp., 6.) Defendants clarify that even if a response is not given, Plaintiffs may "request for status" of a non-responded grievance, where, once received, the lack of response will be investigated. (Ex. 3, Wendy Decl. ¶ 27.)

No. 20. Defendants agree that a Level III grievance is an exhausted complaint. (Resp., 6.) Plaintiffs' interpretation of what constitutes a dead end is a legal dispute, not factual.

No. 21. Plaintiffs conflate Defendants' ability to grant a particular remedy with Defendants' authority to address and resolve a valid grievance (Resp., 6-7.) Defendants offer alternate remedies when the requested remedy is unavailable. (*See* Ex. 3, Wendy Decl. ¶¶ 19-20; Ex. 2, Shaw Decl. ¶ 9.)

Nos. 23 and 24. Plaintiffs incorporate their No. 9 response concerning whether ADM-29, the medical grievance policy, makes a process available to Plaintiffs to bring medically related complaints. (Resp., 7.) Defendants incorporate their No. 9 reply here.

No. 26. Plaintiffs dispute, without evidence, on whether Dombroski filed more than one Level III grievance. (Resp., 7.) Defendants' second production of grievances to Plaintiffs confirms that Dombroski has only one Level III grievance. (Ex. 1, Lucy Decl., ¶ 7.)

No. 27. Plaintiffs dispute, without evidence, whether Tucker filed more than one Level III grievance. (Resp., 8.) Defendants' second production of grievances to Plaintiffs confirms that Tucker has only one Level III grievance. (Ex. 1, Lucy Decl., ¶ 8.)

Nos. 28 and 29. Plaintiffs dispute what issues Tucker exhausted in the Level III grievance, 99092401. (Resp., 8-9.) There is no genuine dispute of fact concerning what Tucker's grievance 99092401 says because the documents speak for themselves, and there is no disagreement regarding the actual text contained therein.

No. 34. Plaintiffs dispute what issues Morrigan exhausted in grievances 990919917 & 990919415. (Resp., 9-10.) Because Morrigan's grievances speak for themselves and there is no disagreement about what they say, there is no genuine dispute of fact.

B. Defendants' responses and clarifications to Plaintiffs' facts

In Nos. 1-8. Plaintiffs describe AG37, and in **Nos. 9-15**, they describe GEN-29. (Resp., 10-12.) Defendants do not dispute those policies. However, Plaintiffs mischaracterize the effect of them in **Nos. 4, 5, 14, and 15** by asserting that committee decisions related to an offender's gender-dysphoria-related care are "final" and not subject to appeal. However, these committee decisions are grievable through the AG38 and ADM29 processes. (*See* Ex. 2, Shaw Decl. ¶ 10.)

Nos. 17-18. Defendants do not dispute Plaintiffs' quotes from HB252. (Resp., 12.) Defendants add that HB252 allows for "psychotherapy, mental health care, or any other necessary and appropriate treatment" in treating gender dysphoria. [Utah Code § 26B-4-1003\(2\)](#).

Nos. 19-23. Plaintiffs describe various interactions concerning their medical care. (Resp., 12-15.) These are not material facts for purposes of exhaustion. (*See infra*, 12-13.)

Nos. 26-28. Plaintiffs describe grievances where Morrigan, Dombroski, and Tucker were told that their specific requested remedy of HRT could not be provided because of HB252. (Resp., 12-15.) The language of the grievances is not in dispute. Defendants clarify that they investigated Plaintiffs' complaints and that alternate care was identified and offered. For

example, Plaintiffs cite to a Level II response for Morrigan, where Morrigan was told to seek “other resources that CHS provides,” including access to “mental health services.” (Resp., Ex. 6, State of Utah -015068.)

Nos. 29-39. Plaintiffs describe Defendants’ ADA policy, AG12. (Resp., 15-16.) AG12 is not in dispute. Defendants clarify **No. 34:** through Defendants’ grievance policies, ADM29 and AG38, Plaintiffs can bring grievances concerning their medical treatment and conditions of their confinement. Further, as Plaintiffs recognize in **No. 39**, AG12 allows Plaintiffs to appeal an ADA decision.

Nos. 41-47. Plaintiffs describe a letter Defendants received from the DOJ concerning an ADA-related investigation. (Resp., 17-18.) That letter is immaterial to Defendants’ administrative processes. Further, the DOJ voluntarily dismissed its case against UDC and DHHS.³

Nos. 48-49. Plaintiffs describe the responses to their ADA requests. (Resp. 18-19.) Those records are not in dispute. Defendants clarify that Plaintiffs are still able to receive gender dysphoria-related healthcare, despite an ADA denial. (*See, e.g.*, Resp., Ex. 35, DG002467, (notifying Grunwald to bring health care requests to the health department).)

Nos. 52-53. Plaintiffs describe not having all the grievances from Defendants’ first production of grievance documents. (Resp. 20.) However, this unintentional oversight has now been corrected, and this only changes the nature of Defendants’ Motion as to Morrigan’s claims. Importantly, the second production of grievance documents further confirms that Phillips and

³ Notice of Voluntary Dismissal Pursuant to [Fed. R. Civ. P. 41\(a\)\(1\)\(A\)\(i\)](#), Case No. 2:24-cv-00241-JNP-JCB, ECF No. 33.

Grunwald have not filed any Level III grievance (Ex. 1, Lucy Decl. ¶¶ 5-6), Tucker has only one Level III grievance. (*Id.* ¶ 8.)⁴ And Dombroski has one, unrelated, Level III grievance. (*Id.* ¶ 7.)

The second production does reveal that Morrigan filed a Level III grievance from 2022, concerning the denial of gender affirming clothing, which Plaintiffs provided in their Response. (*See* Resp., ECF No. 87, Ex. 39, AKM003052.) The second production also reveals that Morrigan appealed three ADA decisions.: the issues were access to an electric razor, (Ex. 5, State of Utah -15607); a request for access to a female sex offender treatment plan, (Ex. 6, State of Utah -15600-601; Ex. 7, State of Utah -15603); a request to be moved to a female housing facility. (Ex. 6, State of Utah -15600-601; Ex. 7, State of Utah -15603.)

ARGUMENT

Plaintiffs contend that exhaustion is not required because Defendants are precluded, by law, from providing their preferred outcomes. Plaintiffs misunderstand the requirements of the PLRA and exhaustion. The PLRA requires inmates to exhaust “such administrative remedies as are available” before filing suit. [42 U.S.C. § 1997e\(a\)](#). Accordingly, the issue presented here is whether an administrative process was available to the Plaintiffs that could afford them any form of relief for their complaints. *See Burnett v. Oklahoma Dep’t of Corr.*, 737 F. App’x 368, 372 (10th Cir. 2018). If so, exhaustion is required. And here, exhaustion was not only required for all Plaintiffs, it was clearly not met for Phillips, Dombroski, and Grunwald.

I. Defendants provide administrative processes for Plaintiffs to exhaust their claims, and proper exhaustion requires full compliance with that process

It’s undisputed that Defendants have three administrative processes through which

⁴ Tucker also filed an appeal over an ADA decision. (Resp., Ex. 34.) It related to a denial of HRT, (Ex. 8, State of Utah -17010), which Tucker’s Level III grievance already addresses.

inmates can exhaust complaints. AG38 provides a three-level grievance process for “in general, all offender complaints.” (Motion, Ex. B, § 1.04(B).) ADM29 provides a three-level grievance process for any medically-related “personal injury, loss, or harm” caused by a policy or practice. (Motion, Ex. C, § II(C).) AG12 provides an ADA appeal process for denials of accommodations. (Resp., Ex. 33, § 3.08(G).) And, Plaintiffs, upon entering prison, receive an inmate handbook instructing them on the availability of these processes. (*Id.* Ex. 10, at 8-10, 19-20.)

Under the PLRA, Plaintiffs must properly exhaust. 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). Proper exhaustion doesn’t hinge on an inmate’s subjective belief on what is grievable or not. Indeed, “[s]ection 1997e(a) says nothing about a prisoner’s subjective beliefs, logical or otherwise, about the administrative remedies that might be available to him. The statute’s requirements are clear: If administrative remedies are available, the prisoner must exhaust them.” *Gonzales–Liranza v. Naranjo*, 76 Fed. Appx. 270, 273 (10th Cir. 2003).

Applied here, Plaintiffs who do not bring a medical or prison condition complaint to Level III have failed to properly exhaust, as required under ADM29 and AG38. Further, Plaintiffs who did not appeal an ADA decision, as required by AG12, have not exhausted that process. Yet, despite these requirements, Plaintiffs argue they’ve “fully exhausted” their claims because there’s no “avenue to appeal or grieve” decisions made by the committees authorized under AG37 and GEN29 healthcare. (Resp., 33.)

Plaintiffs’ position is incorrect for two reasons. First, committee decisions on healthcare are grievable. (Ex. 2, Shaw Decl. ¶ 10.). And second, neither party disputes the plain language of

ADM29, and nowhere in that policy does it exempt decisions by committee members. Indeed, ADM29 allows an inmate to file a grievance over any allegations of “personal injury, loss, or harm caused by the application or omission of a policy or practice.” (Motion, Ex. C, § II(C).) Committee decisions on healthcare fall within that broad area of what an inmate can grieve. Thus, Plaintiffs have not obtained exhaustion (nor are they excused from doing so) simply because of a committee decision.

II. Plaintiffs have not excused their failure to use the administrative processes

The Supreme Court has recognized only three narrow circumstances in which Plaintiffs may be excused from the PLRA’s mandatory exhaustion requirement: (1) where the process is a “dead end,” (2) where the system is “so opaque” that it is incapable of use, or (3) where officials “thwart” the inmate through machination, misrepresentation, or intimidation. *Ross v. Blake*, 578 U.S. 632, 643-44 (2016).

Plaintiffs do not allege that Defendant’s administrative processes are opaque or that they have been thwarted in their attempts to grieve. The question then becomes whether the “dead end” exception excuses any Plaintiffs’ failure to exhaust. The answer is no.

A. Defendants’ administrative processes afford Plaintiffs some form of relief; no “dead end” exists

In *Ross*, the Supreme Court held “an inmate is required to exhaust only those . . . grievance procedures that are capable of use to obtain some relief for the action complained of.” *Ross*, 578 U.S. at 642 (cleaned up). The Court then defined a “dead end” as a circumstance where prison officials are “unable or consistently unwilling to provide *any* relief to aggrieved inmates.” *Id.* at 643 (emphasis added). Thus, an administrative process is a “dead end” only when it cannot offer *any* form of relief—not when it cannot grant the inmate’s preferred

outcome.

The Tenth Circuit reinforced this principle in *Burnett v. Oklahoma Department of Corrections*, 737 Fed. Appx. 368 (2018). There, a Jewish inmate challenged a prison policy prohibiting inmates from having certain religious items. *Id.* at 370-71. That inmate wanted an item not allowed per policy—calling it “essential” to practicing his faith. *Id.* at 371. But the prisoner did not grieve that prohibition and, in a lawsuit, argued he was excused from doing so because it was an administrative dead end. *Id.* 371-72. He said it was pointless because the process would not have resulted in a change in policy. *See id.* at 372. The Tenth Circuit disagreed; it observed that, despite the religious item policy making it impossible for the prisoner to obtain the item he wanted, the prisoner “has not shown [the prison’s] grievance process was unavailable to him.” *Id.*; *see also Kee v. Raemisch*, 793 F. App’x 726, 736 (10th Cir. 2019) (indicating that investigating a complaint shows the administrative process is not a dead end).

Plaintiffs here repeat the mistake the inmate made in *Burnett*. They argue that because HB252 forecloses the possibility of Plaintiffs receiving the precise remedy they seek (HRT or sex reassignment surgeries), the entire administrative process must therefore be a “dead end.” (Resp., 24.) But *Ross* and *Burnett* make clear that this is not the standard. A process is a “dead end” only when officials cannot offer any relief—not when they cannot offer the exact remedy an inmate demands.

B. HB252 and GEN29 allow for Plaintiffs to receive some form of relief for their claims over medical care and prison conditions

The Parties do not dispute the plain language of HB252 or GEN29. Those policies allow for Defendants to provide other forms of medical care apart from HRT and sex reassignment surgeries. Thus, for any Plaintiffs’ complaint requesting HRT or sex reassignment surgeries as a

remedy for their gender dysphoria, Defendants can offer alternate forms of care.

For instance, when Tucker grieved a denial of HRT, CHS investigated the claim and responded by telling Tucker what was provided, such as gender affirming curriculum, clothing, visits for mental health therapy, and medication to alleviate mental health symptoms, for example. (*See* Motion, Ex. A, Tab B, State of Utah -15156 (describing the care Tucker received and continues to be offered to alleviate gender dysphoria symptoms).) Indeed, that response exemplifies that, outside of HRT or surgeries, CHS can offer evaluations, psychotherapy, medications for mental health, gender affirming clothing and makeup, access to group therapy, among others. (Ex. 2, Shaw Decl. ¶ 9.)

Plaintiffs can also obtain some form of administrative relief for non-medical complaints. Plaintiffs are allowed to file a grievance on nearly any prison condition, and UDC seeks to provide remedies for those complaints. (*See* Ex. 3, Wendy Decl. ¶¶ 4, 9, 19-20 (describing AG38's process excepts complaints over decisions that involve different administrative processes, such as GRAMA requests, ADA decisions, and board of parole decisions.)

For example, consider Dombroski's Level III grievance, Dombroski filed a complaint after feeling uncomfortable during a search. (Motion, Ex. A, Tab A, State of Utah -14989.) In response, UDC investigated the issue, trained officers on searching transgender inmates, and accommodated her by using a more private location for those searches. (*Id.*) Thus, that grievance demonstrates the existence of the broad scope of available remedies for non-medically related concerns about gender dysphoria.

Accordingly, Defendants' administrative process can afford some relief for an inmate's complaints about gender dysphoria treatment. And because all that is needed to defeat a dead-end excuse is simply one available remedy for a complaint, Plaintiffs' dead-end excuse fails.

C. Plaintiffs' reliance on *Ross* and out-of-circuit cases fails to demonstrate that Defendants' administrative process is a dead end

Plaintiffs support their dead-end argument with three out-of-circuit cases that determined a dead-end excuse was merited. (Resp., 23-24.) These cases are inapposite. All three courts Plaintiffs cite recognized that if there existed any remedy available for an inmate's complaint, the dead-end argument would fail. *Kingdom v. Trump*, No. 25-691, 2025 WL 1568238, at *6 (D.D.C. June 3, 2025) ("If the agency has 'authority to take *some action*' in response to a complaint, but not the action which the plaintiff seeks, exhaustion remains mandatory notwithstanding the claim's futility."); *Doe v. McHenry*, 763 F. Supp. 3d 81, 86 (D.D.C. 2025) ("The 'dead end' exception is narrowly construed. If the BOP is capable of providing *some* relief, even if it is not the relief that the plaintiff requests, administrative exhaustion is required."); *Younger v. Crowder*, 79 F.4th 373, 380 (4th Cir. 2023) ("For an administrative remedy to qualify as 'available,' it must be able to provide some type of relief."). Indeed, one court recognized that if a policy-led denial would always allow inmates to have a dead-end excuse, that exception "would soon swallow the rule, and there would be nothing left of the PLRA's exhaustion scheme." See *Kingdom*, 2025 WL 1568238 at *7. Because Defendants can provide relief in response to Plaintiffs' complaints, even if not the specific relief requested, Plaintiffs do not have a dead-end excuse.

Plaintiffs' reliance on *Ross* is equally unavailing. There, the Supreme Court indicated that it might find a dead-end excuse available if the evidence showed that an inmate's grievance had

no way of being heard. *See* 578 U.S. at 648 (listing questions the Court wanted the lower court to consider on remand). The Court alternatively recognized that a dead-end excuse may not exist if the “standard grievance procedures *potentially* offer relief” to the inmate. *See id.* (emphasis added). That reasoning applies here. Defendants have gone beyond merely demonstrating potential to offer relief. Defendants have and can provide relief to Plaintiffs’ gender dysphoria related grievances.

Plaintiffs’ “Catch-22” argument also fails. (Resp., 29.) The *Ross* Court indicated it might find a dead end if it “really is [the prison’s] procedure” to deny a complaint as procedurally improper if the system always rejected a grievance—no matter which process the inmate used—by automatically directing the inmate to the other process. *Ross*, 578 U.S. at 647-48. So, despite having one of Grunwald’s complaints over gender affirming clothing being denied as procedurally improper, that denial does not indicate system-wide procedure. (*See* Resp., 29 (notably, Plaintiffs do not argue this occurred for any Plaintiff other than Grunwald.) Indeed, by example, Tucker’s Level III grievances show that the administrative process is available to hear and provide relief for gender-related issues, including clothing. (Motion, Ex. A, Tab B, State of Utah -15156.)

Because Defendants’ administrative process can provide some form of relief for Plaintiffs’ gender-dysphoria-related complaints, no dead-end excuse exists. The PLRA thus requires Plaintiffs to avail themselves of Defendants’ administrative processes to exhaustion prior to filing suit, which, outside of Tucker and Morrigan, has not happened here.

D. Any claim that the ADA improperly denied Plaintiffs' gender dysphoria as a protected category must be exhausted through Defendants' appeals process for ADA denials

Plaintiffs argue that ADA decisions are not grievable. (Resp., 28.) But it's undisputed that AG12 allows Plaintiffs to appeal ADA decisions. (*Supra* 10, No. 39.) Because AG12 provides an appeals process for ADA decisions, Plaintiffs must avail themselves of that process before claiming that those determinations were wrong.

III. It's undisputed that Plaintiffs Dombroski, Phillips, and Grunwald failed to exhaust their administrative remedies

A. Dombroski has not exhausted any relevant claims

Dombroski has not filed an ADA appeal nor even alleged to have done so. (*See* Resp., Ex. 17, ¶ 14 (only alleging to have filed an ADA request.)) Dombroski has one Level III grievance concerning a strip search. (Ex. 1, Lucy Decl., ¶ 7.) That grievance does not encompass her ADA claims,⁵ nor her deliberate indifference medical claims. (*See* Motion, Ex. A, Tab A, State of Utah -14989 (considering the grievance through the Fourth Amendment unreasonable searches context).) Simply put, Dombroski failed to exhaust complaints concerning medical treatment and her ADA claims. Accordingly, Dombroski should be dismissed from this matter.

B. Phillips has not exhausted any claims

Neither party disputes that Phillips has not filed any grievances. (*Supra* 6, ¶ 9.) Thus, Phillips has not grieved any medical issue nor any gender dysphoria-related treatment or prison condition. Phillips does not allege to have made an ADA appeal (Resp. Ex. 1, ¶¶ 1-9), and

⁵ Notably, Dombroski's ADA claims consist almost entirely of treatment as a result of HB252 or GEN29. (FAC, ¶¶ 294-97.) Dombroski also alleges an ADA violation about not receiving "meaningful access to the benefits of Defendants' services, programs, or activities." (*Id.* ¶ 298.) And not receiving ADA-related information, or partaking in an ADA-related interactive processes. (*Id.* ¶ 299.) Dombroski's grievance over a search issue is unrelated to those claims.

Defendants have not found one existing. (*See* Ex. 1, Lucy Decl., ¶ 5.) Accordingly, Phillips should be dismissed from this matter.

C. Grunwald has not exhausted any claims

The parties agree that Grunwald has not raised any medical or non-medical issues to Level III. (*Supra*, 6, ¶ 10.) Thus, Grunwald failed to exhaust any alleged gender dysphoria related medical or non-medical treatment comprising the ADA claims. Neither Grunwald's declaration nor the records confirm that Grunwald attempted to appeal an ADA decision. (Ex. 1, Lucy Decl., ¶ 6; Resp., Ex. 21, Grunwald's Decl. ¶ 14-16.) Accordingly, Grunwald should be dismissed from this matter.

D. Morrigan exhausted the administrative remedies available to bring an ADA claim

The second production of records reveals that Morrigan has three appealed ADA decisions. (Ex. 5, 6, 7.) Thus, Morrigan exhausted the administrative remedies on those appeals. This includes exhausting access to female sex offender treatment plans and being moved to female housing, (Ex. 6, State of Utah -15600-601; Ex. 7, State of Utah -15603) and access to an electric razor (Ex. 5, State of Utah -15607); Thus, with those complaints exhausted, Morrigan's ADA claim may continue on those issues. Further, Morrigan also exhausted a complaint about being denied access to female clothing, in 2022. (Resp, Ex. 39, AKM003052.) Morrigan may also continue on that issue in the context of Morrigan's ADA claim.

E. Tucker's only Level III grievance supports that her Eight Amendment claim is strictly limited to the finite issue of denial of HRT; that said, a broader reading of Tucker's grievance shows it is limited to mental health care, communication, HRT, and clothing

Tucker raised a Level III grievance. Defendants do not dispute the contents of that

grievance. And Defendants agree that Tucker fully exhausted the administrative process concerning Tucker's request for HRT.

However, the Parties disagree on whether that Level III grievance exhausted more than the issue of HRT denial. Per UDC grievance policy, an inmate may only grieve one issue at a time; otherwise, the grievance may be returned to the inmate with a "Problem Form." (Motion, Ex. B §§ 1.03, 1.06.) Tucker did not receive a Problem Form. And Tucker's grievance states that "following a review," the grievance constituted a request "to be placed on Hormone Replacement Therapy (HRT) as part of your gender-affirming care." CHS understood that Tucker's Level III grievance needing to be addressed was denial of HRT. (Ex. 4, Wisner Decl. ¶¶ 4-5.)

Plaintiffs' argument that Tucker's grievance encompasses more than the issue of denial of HRT is understandable. Tucker's request for communication⁶ regarding gender-related treatment, raised at Level I and repeated at each level, would naturally lead to a discussion on the scope of that treatment. That said, even under a broader reading of that grievance, there are limits as to what issues Tucker exhausted. Tucker's Level III grievance discussed communication between DHHS and the transgender community, HRT, gender affirming clothing items, and mental health care. If the grievance were read broadly, those four issues may be considered exhausted.

IV. No material dispute of facts exists that would preclude summary judgment

Plaintiffs identify four areas of dispute they consider material facts and therefore argue that Defendants' Motion should be denied. (Resp., 24.)

First, Plaintiffs contend that a factual dispute exists because the parties disagree about the

⁶ Tucker's own declaration states that "In spring of 2025," "I started filing grievances about the lack of communication." (Ps.' Mot. and Mem. Of Law in Supp. of a Preliminary Injunction, Ex. 6, ¶ 24, ECF No. 36.)

scope of issues encompassed by Tucker’s Level III grievance. Not so. (Resp., 24.) Both parties agree on the text of Tucker’s Level III grievance; the disagreement concerns its interpretation for PLRA exhaustion purposes. Accordingly, the dispute between the parties is legal, not factual.

Second, Plaintiffs assert a factual dispute exists as to whether “Defendants’ grievance policy was ‘available.’” (Resp., 24.) This is a legal question concerning Plaintiffs’ dead-end arguments. And, as discussed, those policies remain available to Plaintiffs, and Plaintiffs have used them to file grievances concerning their gender dysphoria related treatment. (*See supra*, 11-12.)

Third, Plaintiffs claim a factual dispute exists as to whether “Defendants’ ADA procedure was available.” (Resp., 24.) Again, this is a legal dispute. And AG12, Defendants’ ADA policy, expressly provides an appeal process for ADA determinations. (*Supra* 11-12.) Plaintiffs, therefore, have an administrative process to exhaust ADA denials.

Fourth, Plaintiffs argue a factual dispute exists as to whether the AG37 and GEN29 committees issue “final, non-grievable” decisions that automatically exhaust their claims. (Resp., 24.) Defendants’ grievance policies allow inmates to grieve those committee decisions. (*Supra*, 11-12; *see also* Ex. 2, Shaw Decl. ¶ 10 (a “grievance response could overrule a decision of an internal committee”).)

Thus, none of these four issues identified by Plaintiffs creates a genuine dispute of material fact. Further, to the extent there is a dispute of material fact, which there isn’t, those disputes may be resolved by the court without denying Defendants’ Motion on that basis.

The Tenth Circuit made that point in *Estrada v. Smart*, where it affirmed a district court’s resolution of a PLRA exhaustion issue on summary judgment without a hearing, despite the

presence of disputed issues, including factual issues. *See* 107 F.4th 1254, 1261-62 (10th Cir. 2024). The Tenth Circuit held “that judges may resolve factual disputes relevant to the exhaustion issue.” *Id.* at 1262. Central to that decision was the court’s recognition that PLRA’s exhaustion requirement is “a precondition for bringing suit”; thus, “to allow a § 1983 claim to reach a jury trial [or, in other words, proceed beyond the summary judgment process] *before* determining the status of administrative exhaustion would violate the statute’s plain language.” *Id.* (observing also that an evidentiary hearing may be appropriate.)

Thus, Defendants’ Motion for Summary should be granted. Dombroski, Grunwald, and Phillips failed to exhaust administrative remedies and should be dismissed from this matter. Morrigan and Tucker have satisfied the PLRA’s exhaustion precondition by obtaining a final determination on their respective exhausted grievances and ADA appeals. They may proceed with their claims, limited to those issues or incidents that Morrigan and Tucker grieved and were exhausted.

CONCLUSION

For the above reasons, Defendants respectfully request that the Court grant their Motion for Summary Judgment, in part.

Respectfully submitted April 17, 2026.

Derek Brown
Utah Attorney General

Jorden W. Truman
DAVID WOLF
KEITH W. BARLOW
JORDEN W. TRUMAN
Assistant Utah Attorneys General
Counsel for Defendants

I, Jorden W. Truman, certify that this Motion to Dismiss contains 5,583 words (excluding the caption, table of contents, table of authorities, and signature block) and complies with DUCivR7-1(a)(4).

/s/ Jorden W. Truman
Jorden W. Truman
Assistant Utah Attorney General
Attorney for Defendants

Appendix of Exhibits

- A. Exhibit 1 – Declaration of Lucy Ramirez**
- B. Exhibit 2 – Declaration of Jonah Shaw**
- C. Exhibit 3 – Declaration of Wendy Horlacher- Aldrich**
 - Attachment A: AG38, eff. 11-8-2019**
- D. Exhibit 4 – Declaration of Dr. Marcus Wisner declaration**
- E. Exhibit 5 – Morrigan’s ADA appeal, June 20, 2023**
- F. Exhibit 6 – Morrigan’s ADA appeal, September 11, 2023**
- G. Exhibit 7 – Morrigan’s ADA appeal, March 15, 2023**
- H. Exhibit 8 – Tacker ADA decision May 29, 2025**
- I. Exhibit 9 – Phillips’ ADA decision, May 7, 2025**

CERTIFICATE OF SERVICE

I hereby certify that on April 17, 2026 the foregoing, *Defendants' Reply Memorandum in Support of Motion for Summary Judgment on Plaintiffs' Failure to Exhaust*, was filed using the Court's electronic filing system, which gave notice to the following:

Abigail Julia Cook
ACLU OF UTAH
311 S STATE ST
SALT LAKE CITY, UT 84103
801-871-8926
Email: acook@acluutah.org
Attorney for Plaintiffs

Jason Michael Groth
311 S STATE ST STE 310
SALT LAKE CITY, UT 84111
563-419-4261
Fax: 801-532-2850
Email: jgroth@acluutah.org
Attorney for Plaintiffs

Thomas Ford , Jr.
AM CIVIL LIBERTIES UNION OF
UT FOUNDATION
311 S STATE ST STE 310
SALT LAKE CITY, UT 84111
801-521-9862
Email: tford@acluutah.org
Attorney for Plaintiffs

David W. Tufts
DENTONS DURHAM JONES
& PINEGAR PC
111 S MAIN ST STE 2400
PO BOX 4050
SALT LAKE CITY, UT 84110-4050
801-415-3000
Fax: 801-415-3500
Email: david.tufts@dentons.com
Attorney for Plaintiffs

Correction Section (FYI)
UTAH ATTORNEY GENERAL'S OFFICE
LITIGATION UNIT
160 E 300 S 6TH FL
PO BOX 140856
SALT LAKE CITY, UT 84114-0856
(801)366-0100
Email: inmateissues@agutah.gov
Party to be Noticed

Prisoner Litigation Unit
US District Court, District of Utah
utdecf_prisonerlitigationunit@utd.uscourts.gov
Party to be Noticed

/s/ Asia Reid
ASIA REID
Paralegal