UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

LADDY CURTIS VALENTINE and RICHARD ELVIN KING, on behalf of themselves and others similarly situated,	§	
Plaintiffs,	§	
v.	§	Civil Action No. 4:20-cv-01115
BRYAN COLLIER, in his official capacity, ROBERT HERRERA, in his official capacity, and TEXAS DEPARTMENT OF CRIMINAL JUSTICE,	§	
Defendants.	§	

PLAINTIFFS' REPLY IN SUPPORT OF CLASS CERTIFICATION

Plaintiffs easily satisfy the "rigorous analysis" required for class certification and this Court should follow the numerous other federal courts that have certified identical class actions.[1]

I. PLAINTIFFS HAVE STANDING TO SUPPORT CERTIFICATION OF THE CLASS

Defendants' standing analysis is misguided. Standing is a jurisdictional prerequisite for class actions, as it is in *all* suits in federal courts. The standing requirements arise from the Article III limitation that courts may only decide "cases" or "controversies." *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 102 (1998). To meet the standing requirements of Article III, a plaintiff must allege that they "have suffered, or be threatened with, an actual injury traceable to the defendant and likely to be redressed by a favorable judicial decision." *Lewis v. Cont'l Bank Corp.*, 494 U.S. 472, 477 (1990). And in a class action, the named plaintiffs must "be . . . among the injured." *Sierra Club v. Morton*, 405 U.S. 727, 735 (1972). However, it is not disputed that Plaintiffs meet these requirements—Plaintiffs have alleged that their conditions of confinement place them at substantial risk of harm from COVID-19, in violation of their Eighth and Fourteenth Amendment rights, and that Defendants are being deliberately indifferent to their obvious and serious medical and safety needs. Complaint (ECF No. 1) ¶¶ 74–79 (alleging Eighth and Fourteenth Amendment violations); *see also Valentine v. Collier*, No. 4:20-CV-1115, 2020 WL

[1] *See, e.g.*, *Gayle v. Meade*, No. 20-21553, 2020 WL 2744580, at *2 (S.D. Fla. May 22, 2020) (recommending class cert. for COVID-19 class at ICE facility); *Gomes v. Acting Sec'y, U.S. Dep't of Homeland Sec.*, No. 20-CV-453-LM, 2020 WL 2113642, at *3 (D.N.H. May 4, 2020) (certifying class for civil immigration detainees relating to COVID-19 protections); *Ahlman v. Barnes*, No. SACV20835JGBSHKX, 2020 WL 2754938, at *7 (C.D. Cal. May 26, 2020) (certifying jail-wide class of detainees challenging COVID-19 precautions); *Fraihat v. U.S. Immigration & Customs Enf't*, No. EDCV191546JGBSHKX, 2020 WL 1932570, at *18 (C.D. Cal. Apr. 20, 2020) (certifying system-wide class of ICE detainees concerning COVID-19 response); *Cameron v. Bouchard*, No. CV 20-10949, 2020 WL 2569868, at *19 (E.D. Mich. May 21, 2020), *on reconsideration*, No. CV 20-10949, 2020 WL 2615740 (E.D. Mich. May 22, 2020) (certifying class of detainees and inmates at jail seeking COVID-19 protection); *Alcantara v. Archambeault*, No. 20CV0756 DMS (AHG), 2020 WL 2315777, at *7 (S.D. Cal. May 1, 2020) (certifying class of detainees at ICE facilities seeking protection from COVID-19); *Zepeda Rivas v. Jennings*, No. 20-CV-02731-VC, 2020 WL 2059848, at *1 (N.D. Cal. Apr. 29, 2020) (certifying class of ICE detainees seeking COVID-19 protections); *Mays v. Dart*, No. 20 C 2134, 2020 WL 1987007, at *22 (N.D. Ill. Apr. 27, 2020) (certifying class of jail inmates seeking protection from COVID-19).

1916883, at *13 (S.D. Tex. Apr. 20, 2020) (finding Plaintiffs likely to establish these allegations).

Defendants argue that Plaintiffs purported failure to exhaust the TDCJ grievance process limits Plaintiffs' standing and, in turn, their ability to represent the class. Opp. at 6. This position is incorrect for two primary reasons:

First, the PLRA's exhaustion requirement is not jurisdictional and does not limit Plaintiffs' standing. A failure to exhaust does not impact standing because "standing is a jurisdictional requirement" *Audler v. CBC Innovis Inc.*, 519 F.3d 239, 247–48 (5th Cir. 2008), whereas the PLRA's exhaustion requirement is not, *Woodford v. Ngo*, 548 U.S. 81, 101 (2006) ("[It is] clear that the PLRA exhaustion requirement is not jurisdictional."); *Underwood v. Wilson*, 151 F.3d 292, 295 (5th Cir. 1998) (same). Thus, even if Plaintiffs had failed to exhaust available administrative remedies (they have not) "this failure to exhaust would have no effect on these plaintiffs' standing." *Dunn v. Dunn*, 219 F. Supp. 3d 1163, 1169 (M.D. Ala. 2016).

Second, even if exhaustion under the PLRA were a requirement for standing (it is not), there is no such requirement in *this* case because Plaintiffs are not required to exhaust unavailable administrative remedies. Following Supreme Court precedent, this Court explained that "the PLRA has a 'built-in exception to the exhaustion requirement: A prisoner need not exhaust remedies if they are not 'available.'" *Valentine*, 2020 WL 1916883, at *8 (S.D. Tex. Apr. 20, 2020) (quoting *Ross v. Blake*, 136 S. Ct. 1850, 1855 (U.S. 2016)). Thus, "an inmate is required to exhaust only those grievance procedures that are 'capable of use to obtain 'some relief for the action complained of.'"[2] *Id.* (quoting Ross, 136 S. Ct. at 1859). The Supreme Court outlined three

[2] Defendants incorrectly assert that "the Fifth Circuit has never allowed a prisoner to bypass the PLRA by bringing a federal lawsuit without exhausting administrative remedies." Opp. at 12. Yet, consistent with *Ross*, in *Days v. Johnson*, the Fifth Circuit found that where facts of the case show that an administrative remedy is "unavailable" to the plaintiff, the PLRA's requirements were satisfied. 322 F.3d 863, 867–68 (5th Cir. 2003) (concluding that plaintiff "sufficiently alleged that, prior to filing the instant § 1983 suit, he exhausted the administrative remedies that were personally available to him").

examples of "unavailable" procedures in *Ross*, but Circuit Courts have recognized these are not exclusive. *West v. Emig*, 787 F. App'x 812, 815 (3d Cir. 2019); *Ramirez v. Young*, 906 F.3d 530, 538 (7th Cir. 2018); *Muhammad v. Mayfield*, 933 F.3d 993, 1000 (8th Cir. 2019); *Andres v. Marshall*, 867 F.3d 1076, 1078 (9th Cir. 2017); *Williams v. Correction Officer Priatno*, 829 F.3d 118, 123 n.2 (2nd Cir. 2016).

In addressing Plaintiffs' application to vacate the Fifth Circuit's stay of this Court's preliminary injunction, Justice Sotomayor provided guidance as to availability under the PLRA. *Valentine v. Collier*, 140 S. Ct. 1598 (U.S. 2020). Justice Sotomayor did not agree with the Fifth Circuit's rejection of "the possibility that grievance procedures could ever be a 'dead end' even if they could not provide relief before an inmate faced a serious risk of death." *Id.* at 1600. Instead, Justice Sotomayor explained that districts courts could find grievance procedures unavailable where "a plaintiff has established that the prison grievance procedures at issue are utterly incapable of responding to a rapidly spreading pandemic like Covid-19 much in the way they would be if prison officials ignored the grievances entirely." *Id.* at 1600–01. Ultimately, the Justice cautioned "that in these unprecedented circumstances, where an inmate faces an imminent risk of harm that the grievance process cannot or does not answer, the PLRA's textual exception could open the courthouse doors where they would otherwise stay closed." *Id.* at 1601. Thus, an administrative remedy is properly found to be unavailable where the district court finds after a "fact-based inquiry" that the "grievance procedures at issue are utterly incapable of responding to a rapidly spreading pandemic like Covid-19." *Maney v. Brown*, No. 6:20-CV-00570-SB, 2020 WL 2839423, at *11 (D. Or. June 1, 2020) (quoting *Valentine v. Collier*, 140 S. Ct. at 1601.).

Here, the Court already found that "TDCJ's lengthy administrative procedure, which TDCJ may choose to extend at will, presents no "possibility of some relief" and is not "'capable of use'

to obtain the relief Plaintiffs seek." *Id.* at *9; *see also Sowell v. TDCJ*, No. 20-cv-1492, 2020 WL 2113603, at *3 (S.D. Tex. May 4, 2020) (Ellison, J.) ("These grievance procedures are too measured and inflexible to meet the emergency needs of individual prisoners on a case-by-case basis during critical times."). At the TRO stage, Defendants admitted that the three-step grievance procedure requires months to exhaust, assuming they do not grant themselves extensions that further delay the process. *See Valentine*, 2020 WL 1916883, at *8.

The facts since have borne out this Court's reasoning. Mr. Valentine began the grievance process on March 27, 2020 by sending an I-60 "Inmate Request to Official" to the Pack Unit Safety Offer, Mr. Selby. Ex. 1, Valentine Decl. ¶ 3.[3] Despite having started this process over two months ago, Mr. Valentine still has not received a response to his Step 2 grievance. *Id.* ¶ 11. While waiting for this lumbering process to conclude so he could "exhaust" his remedies, Mr. Valentine contracted COVID-19 (*id.* ¶ 12), the very thing he was trying to prevent by filing his grievance. *Id.* ¶ 5.

While this alone is enough to show unavailability, Defendants have since tacitly admitted the same. Documents produced two days ago, but dated May 18–26, 2020, show that TDCJ changed its policies so that all COVID-related grievances must be processed "with an expedited time frame (15 calendar days) with no extensions" for the Step 1 and Step 2 responses. Ex. 3. The

[3] In their opposition, Defendants repeat their misleading assertion that Plaintiffs "did not even initiate the grievance process before filing their lawsuit." The evidence is clear that Mr. Valentine began the grievance process on March 27, 2020, three days before Plaintiffs filed suit, when he sought informal resolution of his grievance as TDCJ's policy required. Ex. 1, Valentine Decl. ¶¶ 2-3. TDCJ's "Grievance Operations Manual" is clear that "[o]ffenders must document an attempt to informally resolve the issue prior to filing a Step 1 grievance. . . . Offender grievances that do not include a documented attempt at an informal resolution may be returned to the offender unprocessed."). Ex. 2 at 0370. This "informal resolution" is a mandatory and necessary part of the grievance process. See *Johnson v. Johnson*, 385 F.3d 503, 517 (5th Cir. 2004) ("[P]risoners are generally required to follow the procedures adopted by the state prison system."); *Lawson v. Harris Cnty. Sheriff's Dep't*, No. 10-cv-1272, 2012 WL 135597, at *2 (S.D. Tex. Jan. 13, 2012) (Ellison, J.) (analyzing Harris County's "three-step" grievance process that starts with an "attempt [at] informal resolution"). Defendants incorrect assertion is also ultimately irrelevant, as Plaintiffs were not required to file any grievance at all since no remedies were available. *See Malik v. D.C.*, 574 F.3d 781, 785 (D.C. Cir. 2009) (Garland, J.).

only inference that can be drawn from TDCJ's shortening its previous 80-day (extendable to 160-day) multi-step grievance process to 30 days is that the existing process was not able to provide remedies for COVID-related grievances. Just yesterday, Defendant Bryan Collier admitted as much, testifying that "the prior policy's time frames did not give adequate attention to the COVID-19 issue." Ex. 4, June 4, 2020 Collier Dep. Tr. 98:2–12. Defendants' change is laudable, but the availability inquiry is not forward looking. Plaintiffs were only required to exhaust the remedies that existed *when they filed*. *See Capozzi v. Pigos*, 640 F. App'x 142, 145 (3d Cir. 2016) (holding that the "plain language of the PLRA . . . suggests that prisoners must exhaust those remedies that exist at the time that they bring the action"). Since no remedies were available, there was no such requirement to exhaust.

Other district courts have similarly found administrative remedies unavailable where the grievance procedures were not able to response to the rapid spread of COVID-19. *See, e.g.*, *McPherson v. Lamont*, No. 3:20CV534 (JBA), 2020 WL 2198279, at *10 (D. Conn. May 6, 2020) (explaining that the Connecticut prison system's analogous grievance process "was not set up with a pandemic in mind" and finding it "'practically speaking, incapable of use' for resolving COVID-19 grievances") (quoting *Ross*, 136 S. Ct. at 1859); *Maney*, 2020 WL 2839423, at *11 (holding that the Oregon prison system's "grievance process is currently unavailable to grieve the systemic COVID-19 issues that Plaintiffs challenge in this case" and that "exhaustion is not required for Plaintiffs to proceed on their Section 1983 claims").

II. PLAINTIFFS SATISFY THE REQUIREMENTS OF RULE 23(A)

A. PLAINTIFFS SATISFY THE COMMONALITY REQUIREMENT

The test for commonality "is not demanding"—there must only be "at least one issue, the resolution of which will affect all or a significant number of the putative class members." *Lightbourn v. Cnty. of El Paso, Tex.*, 118 F.3d 421, 426 (5th Cir. 1997) (affirming class

certification); *see also Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011) (class certification turns on "the capacity . . . to generate common answers").

Defendants contend that Plaintiffs failed to meet a "same injury" requirement. Opp. at 15. Not so. The class contends (i) that Defendants refusal to provide adequate COVID-19 protection to inmates creates a high risk of serious harm amounting to an unconstitutional condition of confinement and an intentional denial of safe housing and medical care in violation of the Eighth Amendment; (ii) that Defendants' policy foreclosing appropriate protections from the ongoing COVID19 emergency is a condition of confinement and an intentional denial of medical care that poses a substantial risk of serious harm to their health; and (iii) that Defendants are deliberately indifferent to inmate health and safety because Defendants know of but fail to adequately remedy the substantial risk of harm posed by withholding necessary precautions to guard against COVID-19. Common answers to these contentions drive the resolution of this litigation. *See Yates v. Collier*, 868 F.3d 354, 361 (5th Cir. 2017). Moreover, "these common answers may indeed relate to the injurious effects experienced by the class members, but they may also relate to the defendant's injurious conduct." *In re Deepwater Horizon*, 739 F.3d at 811.

In addition, this is not a case where commonality is not satisfied because individual plaintiffs experienced the harm in meaningfully different ways. Rather, all class members "experienced the alleged harm from [Defendants'] response to coronavirus in the same or similar ways, specifically their allegedly increased risk of exposure to the virus." *Mays*, 2020 WL 1987007, at *17; *Fraihat*, 2020 WL 1932570, at *18 (rejecting argument that "variation between facilities and between the degree of COVID-19 threat to each individual" undermines commonality).[4]

[4] Individual variations in medical needs are also still insufficient to defeat class certification when the class challenges a common policy or practice denying inmates medical care. *See Cole v. Livingston*, No. 4:14-CV-1698, 2016 WL

B. PLAINTIFFS SATISFY THE TYPICALITY REQUIREMENT

Likewise, the typicality inquiry "is not demanding," and "focuses on the similarity between the named plaintiffs' legal and remedial theories and the legal and remedial theories of those whom they purport to represent." *Lightbourn v. Cnty. of El Paso, Tex.*, 118 F.3d 421, 426 (5th Cir. 1997). "Typicality is fairly easily met so long as other class members have claims similar to the named plaintiff." *Postawko v. Missouri Dep't of Corr.*, 910 F.3d 1030, 1039 (8th Cir. 2018) (internal quotation marks omitted). Defendants take issue with typicality two fronts, neither of which is availing. *First*, they hold fast to their argument that Plaintiffs' failure to exhaust PLRA remedies weighs against typicality. As discussed, this Court has already found that "Plaintiffs' claims are not barred by the PLRA's exhaustion requirement," Mem. & Order 15, ECF No. 51, a finding that has only been reinforced by subsequent events and newly discovered facts. Exhaustion presents no bar to typicality here. *Second*, Defendants claim Plaintiffs cannot meet the non-demanding typicality requirement because of purported variances in risk exposure across the Pack Unit inmates. Setting aside the inescapable fact that scores of Pack Unit inmates have needlessly become recently infected directly because of Defendants' Eighth Amendment violations, all the non-infected inmates at Pack continue to face a real and present risk that they too will become infected. While prevailing medical knowledge suggests that those who recover from COVID-19 may have some immunity for at least some amount of time, little is known about how long that immunity will last or how much protection it will provide—which means, in effect, inmates who recover from the virus may be at risk of contracting it *again*. And Defendants' half-hearted arguments about separating positive and negative inmates says noting of the possibility of cross-contamination from correctional officers, contractors, staff, and medical personnel who may come

3258345, *7 (S.D. Tex. June 14, 2016) (Ellison, J., certifying class of inmates at risk of heat stroke).

into contact with both types of inmates.

The named Plaintiffs here and the legal theories they seek to advance are indisputably typical of the other Pack Unit inmates they seek to represent. And all class members seek an injunction requiring policy changes that will guard them against infection or reinfection, and thus all inmates have satisfied the non-demanding typicality standard.

C. PLAINTIFFS SATISFY THE ADEQUATE REPRESENTATION REQUIREMENT

First, the adequacy of the named plaintiffs is satisfied when they demonstrate "knowledge of and engagement with the litigation." *M.D. v. Perry*, 294 F.R.D. 7, 46 (S.D. Tex. Aug. 27, 2013) *appeal dismissed at* 547 Fed. Appx. 543 (5th Cir. Nov. 19, 2013). Each of the Plaintiffs demonstrated more than adequate "knowledge and engagement" at their depositions. Both Mr. King and Mr. Valentine have read and are familiar with the complaint, have assisted counsel through conferring about the claims and the facts at the unit, have submitted a declaration, and Mr. King has been deposed and Mr. Valentine will be deposed, showing familiarity with the claims. This is more than adequate understanding of the claims and participation in the litigation to satisfy the adequacy requirement. *Cole,* 2016 WL 3258345 at *9 (S.D. Tex. June 14, 2016). "Adequate" representative does not mean "perfect plaintiff"—the standard the Defendants' apparently propose. But a class representative does not need to be "the best representative" possible – he "does not have to be perfect . . . merely adequate." *Stanich v. Travelers Indem. Co.*, 259 F.R.D. 294, 318 (N.D. Ohio 2009). Indeed, an adequate class representative is not required to have the detailed knowledge of the legal theories that Defendants demand. "[K]nowledge of all the intricacies of the litigation is not required and several courts have found that general knowledge of what is involved is sufficient." Wright & Miller, 7A Fed. Prac. & Proc. 3d § 1766. Each named plaintiff demonstrated "general knowledge" of the claims. An adequate class representative's "explanation of the claims" does not need to be "couched in legal terms" to "demonstrate an understanding of

the facts and claims at issue." *Stanich*, 259 F.R.D. at 317. Class representatives "need not be legal scholars and are entitled to rely on counsel," *Berger v. Compaq Computer, Corp.*, 257 F.3d 475, 483 (5th Cir. 2001) and simply "cannot be expected to have a sophisticated understanding of the legal intricacies involved in class action lawsuits," *Cole*, 2016 WL 3258345 at *9.

Second, there are also no conflicts between Plaintiffs and the proposed Class. Plaintiffs are not required to pursue a class action for damages—the position Defendants would require—to satisfy their obligations as adequate representatives of the entire class. Indeed, a class action for injunctive relief to secure the rights of inmates is a prototypical Rule 23(b)(2) class. Wright & Miller, 7AA Fed. Prac. & Proc. 3d § 1776 ("[A] common use of Rule 23(b)(2) is in prisoner actions brought to challenge various practices . . . on the ground that they violate the constitution"). This type of case simply does not present res judicata concerns that would create an intra-class conflict. "A suit for damages is not precluded by reason of the plaintiff's membership in a class for which no monetary relief is sought." *Norris v. Slothouber*, 718 F.2d 1116, 1117 (D.C. Cir. 1983). The Fifth Circuit rejected Defendants' approach, in the prison reform context, in *Bogard v. Cook*, 586 F.2d 399, 408–409 (5th Cir. 1978), and permitted a prisoner who was a member of a class of inmates to later bring a separate damages action. The Fifth Circuit noted that the "important public policy" embodied by § 1983 suits justifies setting aside res judicata principles, and the significant concerns with managing the prison reform class action "if individual damage relief had been requested," permitted separate suits for damages despite res judicata concerns. *Id.* at 408. That underlying class action, exactly like this case, "was never framed or presented as a suit for monetary relief," making it "a harsh and improper application of *res judicata* to hold … that prisoners forfeited their rights to personal redress."[5] *Id.* at 409; *accord Wright v. Collins*, 766 F.2d

[5] The cases Defendants rely on are inapposite, and involve situations where the named plaintiffs would be depriving unnamed class members of valuable claims if a preclusive effect were to attach. The Court could solve any potential

841, 848 (4th Cir. 1985) (res judicata would not preclude individual inmate class member from also seeking damages in a separate suit).

III. PLAINTIFFS SATISFY THE SPECIFICITY REQUIREMENTS OF RULE 23(B)

Defendants claim that Plaintiffs do not meet the requirements of specificity for two reasons: first, because Plaintiffs "do not explicitly detail the injunction relief they seek in their [Emergency Motion for Class Certification]," and second, because Plaintiffs did not provide a date-certain for when the class may be disbanded. Defs.' Response at 26-27. Both are unfounded. Defendants are well aware that Plaintiffs seek specific relief relating to mitigating the rampant spread of COVID-19 at the Pack Unit. This litigation has been ongoing for several months with proceedings in three separate courts, and where this Court has already entered a detailed preliminary injunction narrowly tailored to address Plaintiffs concerns. Plaintiffs have presented expert reports and have, both in this Court and before the Fifth Circuit, provided specific, narrowly tailored measures that would alleviate the blatant constitutional violations occurring at the Pack Unit. Ex. 5.. As to Defendants' second point, no one can know precisely when this pandemic will end; to expect Plaintiffs to articulate a specific end-date for this pandemic would be to expect Plaintiffs to be clairvoyant. That is not what Rule 23 requires, however. Plaintiffs have been as specific as possible—and as required of them by the Rule and case law—that the classwide relief is necessary as long as the threat of COVID-19 remains. In short, as stated in Plaintiffs' Motion, the circumstances at hand are exactly those that Rule 23(b)(2) were designed to address. Mot. at 41.

IV. CONCLUSION

For the further reasons, Plaintiffs respectfully request that the Court certify the proposed class and sub-classes pursuant to Federal Rule of Civil Procedure 23.

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issues related to claims for damages by granting unnamed class members the right to opt out and pursue their own litigation. *See Slade v. Progressive Ins. Co.*, 856 F.3d 408, 414 (5th Cir. 2017).

Dated: June 5, 2020

WINSTON & STRAWN LLP

By: */s/ John R. Keville*

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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing document has been served on counsel of record who are deemed to have consented to electronic service on June 5, 2020, via electronic filing using the Court's CM/ECF system.

/s/ Brandon W. Duke

Exhibit 1

Second Declaration of Laddy Valentine

Valentine et al. v. Collier et al. (TXSD 4:20-cv-1115)

1. My name is Laddy Valentine. I am over the age of 18 and of sound mind. The following is based on my personal knowledge.
2. I am currently incarcerated in the TDCJ Pack Unit (TDCJ # 017820338).
3. On Friday, March 27, I sent an I-60 "Inmate Request to Official" form to Mr. Selby, the Pack Unit Safety Officer. A true and correct copy of this I-60 is attached as Exhibit A.
4. I asked Mr. Selby to allow inmates to have "hand sanitizer for use within the dormitory environment during the course of this viral pandemic" as a "proactive and preventative measure." I noted on the I-60 that "this is informal resolution request."
5. As of March 27, 2020, I was not experiencing any symptoms of COVID-19, and had not been tested. My goal was to prevent catching this dangerous virus.
6. It is my understanding that before filing a Step 1 grievance that a prisoner must first make an attempt at informal resolution. I sent the I-60 to Mr. Selby to attempt informal resolution.
7. When I had not received a response to the I-60 by March 31, 2020, I prepared a Step 1 grievance, and signed it.
8. Inmates turn in their grievances at the Pack Unit in a grievance box near the showers. Because my dorm was "locked down" due to an inmate living in my dorm having potential COVID-19 symptoms, that week TDCJ prohibited me from leaving the dorm except when we were taken to shower. On March 31, 2020, we were not taken out to shower, ~~so I could not submit the grievance that day~~ until after Grievances were picked up, TDCJ could not have Stamped Received That Day
9. ~~On April 1, 2020, we were taken to shower, and I placed the grievance that I had signed and was prevented from submitting on March 31 into the grievance box.~~

10. I received a response to my Step 1 grievance on or about April 22, 2020. A true and correct copy of my Step 1 grievance with TDCJ's response is attached as Exhibit B to this declaration. [redacted] I Timely Filed my step 2. Jdv

11. As of the date of this declaration, I still have not received a response to my Step 2 grievance.

12. I was told that I had contracted COVID-19 on or about May 20, 2020. I had filed the I-60 and grievances to try and prevent catching COVID-19.

13. I make this declaration under the penalty of perjury.

6-5-20
Signed this Day

Laddy C. Valentine
Laddy Valentine
TDCJ # 01782033

Exhibit A

14-6

TEXAS DEPARTMENT OF CRIMINAL JUSTICE — **INSTITUTIONAL DIVISION**

INMATE REQUEST TO OFFICIAL

REASON FOR REQUEST: (Please check one)

PLEASE ABIDE BY THE FOLLOWING CHANNELS OF COMMUNICATION. THIS WILL SAVE TIME, GET YOUR REQUEST TO THE PROPER PERSON, AND GET AN ANSWER TO YOU MORE QUICKLY.

1. ☐ *Unit Assignment, Transfer (Chairman of Classification, Administration Building)*
2. ☐ *Restoration of Lost overtime (Unit Warden-if approved, it will be forwarded to the State Disciplinary Committee)*
3. ☐ *Request for Promotion in Class or to Trusty Class (Unit Warden- if approved, will be forwarded to the Director of Classification)*
4. ☐ *Clemency-Pardon, parole, early out-mandatory supervision (Board of Pardons and Paroles, 8610 Shoal Creek Blvd. Austin, Texas 78757)*
5. ☐ *Visiting List (Asst. Director of classification, Administration Building)*
6. ☐ *Parole requirements and related information (Unit Parole Counselor)*
7. ☐ *Inmate Prison Record (Request for copy of record, information on parole eligibility, discharge date, detainers-Unit Administration)*
8. ☐ *Personal Interview with a representative of an outside agency (Treatment Division, Administration Building)*

TO: MR Selby / Unit Safety Officer DATE: 28 May 20
(Name and title of official)

ADDRESS: Pac Unit, 2400 Wallace Pack Rd. Navasota TX 77868

SUBJECT: *State briefly the problem on which you desire assistance.*

Request the issue of hand sanitizer for use within the Dormitory environment, during the course of this viral pandemic to lessen the chances of contamination. There are 52 persons using the communal areas such as day-room and bath-room creating a large surface area and the issuance of small amounts of soap for bathing and exigent sanitation requirements are not of a sufficient quantity or strength. A hand sanitizing solution for individual use would enhance and strengthen our defense against this contagion. This is a proactive and preventive measure as opposed to reactive. This is informal resolution request.

Name: Laddy C. Valentine No: 1732033 Unit: Pac

Living Quarters: 14-6 Work Assignment: UTL Med SQ 2

DISPOSITION: (Inmate will not write in this space)

HAND SANITIZER IS A SECURITY CONCERN AND NEEDS TO BE ADDRESSED TO THE MAJOR. WE HAVE INCREASED BLEACH TO 55I TO KEEP DORMS CLEAN. IT IS IMPERATIVE THAT OFFENDERS MAINTAIN SOCIAL DISTANCING AS MUCH AS POSSIBLE, AND TO WASH THEIR HANDS AS OFTEN AS POSSIBLE. UTL - SERGT.

☆I-60 (Rev. 11-90)

Exhibit B

(EMERGENCY GRIEVANCE)

Texas Department of Criminal Justice

STEP 1 OFFENDER GRIEVANCE FORM

OFFICE USE ONLY	
Grievance #:	2020098479
Date Received:	APR 07 2020
Date Due:	5/11/20
Grievance Code:	503
Investigator ID #:	T21047
Extension Date:	
Date Retd to Offender:	APR 22 2020

Offender Name: Laddy C. Valentine TDCJ # 1782033

Unit: PAC Unit Housing Assignment: D 14-6

Unit where incident occurred: PAC Unit, 2400 Wallace Pack Rd. Navasota TX 77868

You must try to resolve your problem with a staff member before you submit a formal complaint. The only exception is when appealing the results of a disciplinary hearing.

Who did you talk to (name, title)? Submitted I-60 To Mr Selby/Unit Safety When? 27 Mar 20

What was their response? No Response as of This date.

What action was taken? N/A

State your grievance in the space provided. Please state who, what, when, where and the disciplinary case number if appropriate

On 27 March 20, I submitted to Unit Safety Officer, Mr. Selby, an attempt to informally resolve the lack of hand sanitizing solutions for individual use within the Doemitory as well as additional cleaning supplies for individual cubicles. It has been Five Days and the issue Remains unresolved. I am therefore, filing an emergency grievance, Step 1, for hand sanitization supplies, gloves, masks and additional cleaning supplies such as bleach and amonia based cleaners, to be issued individually for prevention and suppression of contagions, specifically COVID-19.

Action Requested to resolve your Complaint. Immediate issue of personal hand sanitizers, additional cleaning supplies for community areas and personal cubicles.

Offender Signature: [signature] Date: 31 March 2020

Grievance Response:

Your grievance has been received and investigated. The Wallace Pack Unit is following all necessary precautions to help minimize the exposure to COVID-19. Staff is following all guidelines The Wallace Pack Unit has designated protocols to keep staff and offenders safe during this time. The Wallace Pack Unit is promoting social distancing on the recreation yards, dayrooms, hallways, and showers when possible. All staff and incoming offenders have their temperatures taken prior to entering the facility. Hand sanitizer is only necessary if soap is not available and the Wallace Pack Unit has an ample supply of soap. The Wallace Pack Unit also began issuing cloth mask to offenders on 4/14/20 and as of 4/15/20 all offenders on the Wallace Pack Unit received a cloth mask. No further action warranted at this time.

Signature Authority: [signature] Date: 4/22/20

If you are dissatisfied with the Step 1 response, you may submit a Step 2 (I-128) to the Unit Grievance Investigator within 15 days from the date of the Step 1 response. State the reason for appeal on the Step 2 Form.

Returned because: *Resubmit this form when the corrections are made.

- ☐ 1. Grievable time period has expired.
- ☐ 2. Submission in excess of 1 every 7 days. *
- ☐ 3. Originals not submitted. *
- ☐ 4. Inappropriate/Excessive attachments. *
- ☐ 5. No documented attempt at informal resolution. *
- ☐ 6. No requested relief is stated. *
- ☐ 7. Malicious use of vulgar, indecent, or physically threatening language. *
- ☐ 8. The issue presented is not grievable.
- ☐ 9. Redundant, Refer to grievance #_____
- ☐ 10. Illegible/Incomprehensible. *
- ☐ 11. Inappropriate. *

UGI Printed Name/Signature: _____

Application of the screening criteria for this grievance is not expected to adversely Affect the offender's health.

Medical Signature Authority: _____

OFFICE USE ONLY

Initial Submission UGI Initials:_____

Grievance #: _____

Screening Criteria Used: _____

Date Recd from Offender: _____

Date Returned to Offender: _____

2nd Submission UGI Initials:_____

Grievance #: _____

Screening Criteria Used: _____

Date Recd from Offender: _____

Date Returned to Offender: _____

3rd Submission UGI Initials:_____

Grievance #: _____

Screening Criteria Used: _____

Date Recd from Offender: _____

Date Returned to Offender: _____

I-127 Back (Revised 11-2010)