

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

|                                           |   |                                |
|-------------------------------------------|---|--------------------------------|
| LADDY CURTIS VALENTINE and                | § |                                |
| RICHARD ELVIN KING, individually and      | § |                                |
| on behalf of those 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.                               | § |                                |

**DEFENDANTS' SURREPLY IN OPPOSITION TO PLAINTIFFS'  
MOTION FOR CLASS CERTIFICATION**

Defendants Bryan Collier (“Collier”), Robert Herrera (“Herrera”), and the Texas Department of Criminal Justice (“TDCJ”) (collectively, “Defendants”) file this Surreply in Opposition to Plaintiffs’ Motion for Class Certification. In support, Defendants offer the following:

**INTRODUCTION**

Plaintiffs insist that they were not required to exhaust their administrative remedies prior to filing suit because those remedies were unavailable to them. ECF 137 at 3-6. To support this dubious argument, they now point to TDCJ’s recently implemented procedure requiring an expedited review of all COVID-19 related grievances. *Id.* Plaintiffs erroneously argue that the implementation of this policy constitutes a tacit admission that TDCJ’s original grievance process - was and remains unavailable –to provide remedies for COVID-19 related grievances and make the unsupported leap that “the only inference that can be drawn from TDCJ’s shortening its

previous...grievance process...is that the existing process was not able to provide remedies for COVID-related grievances.” *Id.* at 5-6.

Rather than make unsupported inferences, Plaintiffs would be better-served looking to the evidence. Nothing in the record supports that the original grievance process was unavailable or that TDCJ was unable to provide remedies for COVID-related grievances. Instead, TDCJ’s revision to the grievance process evidences continuing efforts on the part of TDCJ and the Defendants to adjust the response to the changing circumstances of the COVID-19 pandemic. As Collier testified, “TDCJ...tried to improve and have a better, more robust response time...by moving it to 15 days, giving it [ ] a special category, also making sure that if it is a medical issue, that it goes to a[n] immediate supervisor on the unit to be reviewed. [TDCJ] took extra steps to try to heighten the alert on those type [of] grievances and the time frame for those responses.” Exhibit 1 (Collier’s deposition) at 191:25-192:21. Thus, the evidence shows TDCJ’s original grievance policy was reasonable, adequate, and available to remedy Plaintiffs’ complaints, and TDCJ simply exercised discretion under the existing grievance policy to improve the response time for grievances related to COVID-19.

TDCJ’s implementation of an expedited grievance review process shows TDCJ’s continued commitment to promptly addressing COVID-19 related grievances. More importantly, Plaintiffs fail to demonstrate TDCJ’s pre-existing grievance process was incapable of providing Plaintiffs “some” relief. In fact, TDCJ’s original grievance process *has* provided Plaintiffs much of the relief they requested. Therefore, Plaintiffs have not, and cannot show, TDCJ’s administrative remedies were “unavailable.” The fact remains that they were required to exhaust

their remedies prior to filing suit, and their failure to do so renders them incapable of representing a class because they lack standing to do so.

### **ARGUMENT AND AUTHORITIES**

#### **I. TDCJ's expedited process for COVID-19 related grievances is not evidence that its original grievance process was inadequate.**

Effective May 26, 2020, TDCJ implemented a new process for addressing offender grievances related to COVID-19. ECF 137-3. Under this process, a Step 1 grievance related to COVID-19 must be reviewed within 15 days with no extensions. *Id.* at 4. A Step 2 grievance must also be reviewed within 15 days with no extensions. *Id.* at 5. Plaintiffs contend that the expedited grievance process implemented by Defendants evidences their "tacit admission" that their original grievance process is unavailable for offenders with COVID-19 related grievances and make the unsupported leap that "the only inference that can be drawn from TDCJ's shortening its previous...grievance process...is that the existing process was not able to provide remedies for COVID-related grievances. ECF 137 at 5-6.

The record reflects that the original grievance process was readily available to provide remedies for COVID-related grievances. Regarding the new procedure for COVID-related grievances, Collier explained that although the original grievance procedure was reasonable and adequate to respond to COVID-related grievances, "TDCJ...tried to improve and have a better, more robust response time...by moving it to 15 days, giving it [] a special category, also making sure that if it is a medical issue, that it goes to a[n] immediate supervisor on the unit to be reviewed. [TDCJ] took extra steps to try to heighten the alert on those type [of] grievances and the time frame for those responses." Exhibit 1 at 191:25-192:21. Collier further explained that the expedited grievance process was implemented to "elevate [] the importance of COVID" related issues and

to increase “a sense of urgency within [TDCJ’s] grievance staff” so that those issues could be more quickly identified. *Id.* at 193:18-194:8. The evidence shows TDCJ’s original grievance process was adequate and the implementation of an expedited response time for COVID-related grievances only further improved TDCJ’s COVID-19 response.

**II. TDCJ’s original grievance process was capable of providing relief—and *did* provide relief to Plaintiffs.**

Plaintiffs’ unavailability argument once again hinges on a speculative hypothetical—that prior to implementing its expedited grievance policy, TDCJ *could have* taken up to 160 days to resolve Plaintiffs’ grievances—not that TDCJ actually took that long. ECF 137 at 6. Plaintiffs’ complaint represents nothing more than mere dissatisfaction with the grievance process, which is insufficient to show that the process is “unavailable.” *See Valentine v. Collier*, 956 F.3d 797, 804 (5th Cir. 2020).

Plaintiffs insinuate TDCJ’s grievance process operates as a “dead end” because it is possible they will not receive timely relief. ECF 137 at 4. But, as the Supreme Court has explained, an administrative process operates as a “dead end” only when it creates no “potential” for an inmate to obtain relief. *See Ross v. Blake*, 136 S. Ct. 1850, 1859 (2016). So long as the State’s administrative procedure grants “authority to take *some* action in response to a complaint,” that procedure is considered “available,” even if it cannot provide “the remedial action an inmate demands.” *See Booth v. Churner*, 532 U.S. 731, 736 (2001) (emphasis added).

**A. Plaintiffs availed themselves of the grievance process.**

Plaintiffs submitted the following grievances *after* suit was filed on March 30, 2020:

- Valentine: March 31, 2020 - Hand sanitizing solution and cleaning supplies for cubicles. Exhibit 2.

- King: April 2, 2020 - Offenders being transferred into the Pack Unit during the pandemic. Exhibit 3.
- Valentine: May 10, 2020 - COVID-19 testing. Exhibit 4.
- King: May 12, 2020 - Cleaning chemicals. Exhibit 5.

Though Plaintiffs filed no grievances prior to filing suit, they have subsequently filed numerous grievances seeking much of the same relief they seek in this lawsuit. Plaintiffs have repeatedly availed themselves of the original grievance procedure showing (1) reasonable prisoners could use it and (2) Plaintiffs were not thwarted from taking advantage of the original grievance process. *Ross*, 136 S. Ct. at 1859–60.

**B. Defendants possess authority to take action in response to Plaintiffs’ grievances.**

Plaintiffs have failed to meet their burden to show that the original grievance procedure “operates as a simple dead end” because “the relevant administrative procedure lacks authority to provide any relief.” *Id.* The evidence establishes, and Plaintiffs do not dispute, that TDCJ has authority to take action in response to Plaintiffs’ grievances. For example, regarding the following grievances submitted by Plaintiffs, the evidence shows TDCJ has the necessary authority to take action in response to the following:

1. Valentine’s grievance dated March 31, 2020, asked for hand sanitizing solutions and individual cleaning supplies for cubicles. Exhibit 2. The evidence shows TDCJ considered and discussed the use of hand sanitizer within its facilities, *see* Exhibit 1 at 102:7-13, and offenders can obtain a spray bottle of cleaning solution to disinfect their own cubicles Exhibit 6 (Herrera’s deposition) at 148:2-4.

2. King's grievance dated April 2, 2020, requested that inmate transfers to the Pack Unit be stopped during the pandemic. Exhibit 3. King testified that TDCJ has the authority to stop inmate transfers into the Pack Unit and that transfers into the Pack Unit have stopped since he filed his grievance. Exhibit 7 (King's deposition) at 122:19-23; 136:5-11.

3. Valentine's grievance dated May 10, 2020, requested COVID-19 testing. Exhibit 4 at 2384-85. TDCJ has been able to, in conjunction with the University of Texas Medical Branch ("UTMB"), the Texas Department of State Health Services ("DSHS"), and the Texas Department of Emergency Management ("TDEM"), provide targeted testing on units with older and more vulnerable offender populations. Exhibit 1 at 131:23-132:11.

4. King's grievance dated May 12, 2020, requested additional cleaning chemicals. Exhibit 5. King testified that TDCJ had the authority to provide additional cleaning chemicals. Exhibit 7 at 129:22-130:5.

**C. Plaintiffs substantially received their requested relief through the grievance process.**

Plaintiffs fail to show TDCJ's original grievance procedure is not "available" because the evidence supports that the "administrative officials have apparent authority," and have used it. *Ross*, 136 S. Ct. at 1859-60 (holding that a remedy is not available—and exhaustion is not required—when...the administrative officials have apparent authority, but decline to ever exercise it...). Plaintiffs' argument regarding TDCJ's new COVID-19 grievance process does not support a conclusion that TDCJ's original grievance process operated as a "dead end" and was therefore "unavailable." Clearly, even that grievance process had "potential" for inmates to obtain relief, because Plaintiffs *did* obtain relief. *See Ross*, 136 S. Ct. at 1859.

Plaintiffs received relief with respect to their grievances regarding “hand sanitizing solutions,” mass testing for COVID-19, and offender movement into and out of the Pack Unit. Each offender receives 5 bars of soap per week and may request additional bars of soap at any time and at no cost. ECF 126-1 at 15. Additionally, mass testing of both the offender population and employees of the Pack Unit was conducted just days after Valentine submitted his grievance related to testing. *Id.* at 2-8.

Finally, regarding offender movement, there are no transfers in or out of the Pack Unit except for medically necessary appointments or emergencies. ECF 36-9 at 5. And any offender who returns from the Pack Unit from a free-word hospital visit is quarantined for 14 days in the unit’s education building. ECF 126-1 at 11. Therefore, not only did TDCJ’s original grievance process have the “potential” to provide Plaintiffs relief, Plaintiffs *actually* received relief. This reality conclusively demonstrates that TDCJ’s administrative remedies were available to Plaintiffs even before the expedited COVID-related grievance process was implemented.

Despite Plaintiffs’ unsupported arguments, the fact that TDCJ implemented a grievance process specific to COVID-19 does not constitute evidence that TDCJ’s prior-grievance process was inadequate or unavailable to address Plaintiffs’ COVID-related grievances; rather, this additional measure taken by TDCJ shows its commitment and dedication to addressing COVID-related grievances in an expeditious manner. To further show TDCJ’s original grievance procedure is “available,” Plaintiffs have repeatedly utilized it and have largely received the relief they requested. There is no evidence that TDCJ did not have the authority to provide the relief Plaintiffs requested, nor is there evidence that the grievance procedure operated as a “dead end.”

Prisons should not be penalized for updating and improving their processes to provide resolution to grievances even more promptly during a pandemic.

### **III. Plaintiffs Lack Standing to Represent a Class**

In their reply, Plaintiffs maintain they have standing to represent a class—notwithstanding their failure to exhaust—because failure to exhaust is an affirmative defense and is not jurisdictional. ECF 137 at 3. While it is true that failure to exhaust is an affirmative defense and does not impact Article III standing,<sup>1</sup> Plaintiffs’ argument misses the mark.

*Plaintiffs lack standing to represent a class.* This inquiry is a threshold issue that must be resolved before considering whether Plaintiffs meet the requirements of Rule 23. *See Lewis v. Cain*, 324 F.R.D. 159, 163–66 (M.D. La. 2018) (examining whether any of the named plaintiffs had exhausted their administrative remedies under the PLRA as a threshold issue before engaging in a Rule 23 analysis). Since neither Valentine nor King exhausted their available administrative remedies prior to filing suit, they lack standing to represent a class. *See Gates v. Cook*, 376 F.3d 323, 330 (5th Cir. 2004). The Court, therefore, should deny class certification without the need to consider whether Plaintiffs meet the requirements of Rule 23. *See Lewis*, 324 F.R.D. at 163–66.

Even if the Court were to examine whether Plaintiffs meet Rule 23’s requirements for class certification, Plaintiffs’ failure to exhaust forecloses their ability to meet those requirements as well. Since Plaintiffs failed to exhaust, their claims are barred by the PLRA. Therefore, Plaintiffs cannot be adequate class representatives within the meaning of Rule 23(a)(4). *See* FED. R. CIV. P. 23(a)(4). Plaintiffs cannot possibly protect the interests of the proposed class members when they have no viable claims before the Court. *See Stirman v. Exxon Corp.*, 280 F.3d 554, 562 (5th Cir.

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<sup>1</sup> *Woodford v. Ngo*, 548 U.S. 81, 101 (2006).

2002). Additionally, Plaintiffs' failure to exhaust precludes a finding of typicality under Rule 23(a)(3). *See* FED. R. CIV. P. 23(a)(3). Specifically, their failure to exhaust makes them vulnerable to PLRA exhaustion defense to which any proposed class members who *have* exhausted would not be vulnerable. As such, Plaintiffs cannot demonstrate that they have claims and defenses typical of the proposed class, and the court should deny class certification for this reason too. FED. R. CIV. P. 23(a)(3).

**IV. Due Process necessitates a trial continuance to the extent that the Motion for Class Certification is granted.**

Additionally, as a practical matter, class certification will require the current trial date of July 13, 2020 to be substantially pushed back. Plaintiffs seek to certify a general subclass of “[a]ll current and future inmates” incarcerated at the Pack Unit. ECF 94 at 25. They also seek to certify a sub-class of “all current and future inmates” incarcerated at the Pack Unit who have specific characteristics that, according to Plaintiffs, place them at a higher risk of severe illness, injury, or death should they contract COVID-19. *Id.* The Pack Unit houses well over 1,000 offenders.<sup>2</sup> Permitting the addition of over 1,000 plaintiffs to this case would significantly expand the scope of discovery in this case, making a trial scheduled to begin in one month impossible.

Without first conferring with counsel for Defendants, counsel for Plaintiffs have already made an informal request to the Court for an even earlier trial date which, even as the case stands now, is untenable. Plaintiffs' desire to certify a class of an indefinite number of offenders is entirely inconsistent with the swift justice they seek. For that reason—in addition to the grounds raised by

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<sup>2</sup> Texas Department of Criminal Justice, Unit Directory, Pack (P1), [https://www.tdcj.texas.gov/unit\\_directory/p1.html](https://www.tdcj.texas.gov/unit_directory/p1.html) (last visited June 11, 2020).

Defendants in their response in opposition to class certification—the Court should deny Plaintiffs’ motion for class certification.

### **CONCLUSION**

Plaintiffs’ argument that TDCJ’s original grievance process was “unavailable” is contradicted by Plaintiffs’ actions. Plaintiffs submitted multiple Step 1 and Step 2 Grievances after they filed suit - *and importantly - Plaintiffs secured their requested relief sought many of those grievances.* For example, Valentine requested hand sanitization materials, and all offenders at the Pack Unit receive unlimited access to hand soap at no charge. Valentine requested testing of all offenders at the Pack Unit, and all of the offenders at the Pack Unit have been tested. King requested that offenders from other units not be brought into the Pack Unit, which has also occurred

Therefore, Plaintiffs own conduct establishes that TDCJ’s grievance process was available to them, and they were required to exhaust their administrative remedies prior to filing suit. Since they failed to exhaust their administrative remedies, Plaintiffs lack standing to represent a class, and their motion for class certification should be denied.

Respectfully Submitted.

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Attorney General of Texas

**JEFFREY C. MATEER**  
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**NOTICE OF ELECTRONIC FILING**

I, CHRISTIN COBE VASQUEZ, Assistant Attorney General of Texas, certify that I have electronically submitted a true and correct copy of the foregoing for filing in accordance with the Court's electronic filing system, on June 12, 2020.

/s/ Christin Cobe Vasquez  
**CHRISTIN COBE VASQUEZ**  
Assistant Attorney General

**CERTIFICATE OF SERVICE**

I, CHRISTIN COBE VASQUEZ, Assistant Attorney General of Texas, certify that a true and correct copy of the foregoing **Defendants' Surreply in Opposition to Plaintiffs' Motion for Class Certification** has been served electronically upon all counsel of record *via* the electronic filing system of the Southern District of Texas, on June 12, 2020.

/s/ Christin Cobe Vasquez  
**CHRISTIN COBE VASQUEZ**  
Assistant Attorney General



ORAL DEPOSITION OF BRYAN COLLIER

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

LADDY CURTIS VALENTINE  
and RICHARD ELVIN KING,  
individually and on  
behalf of those similarly  
situated,

Plaintiffs,

VS.

BRYAN COLLIER, in his  
official capacity; ROBERT  
HERRERA, in his official  
capacity; and TEXAS  
DEPARTMENT OF CRIMINAL  
JUSTICE,

Defendants.

\* Case No. 4:20-cv-01115

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Hon. Keith P. Ellison

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ORAL AND VIDEOTAPED DEPOSITION OF  
BRYAN COLLIER

June 4, 2020

(Reported Remotely)

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ORAL AND VIDEOTAPED DEPOSITION of BRYAN COLLIER,  
produced as a witness at the instance of the  
Plaintiffs, and duly sworn, was taken in the  
above-styled and numbered cause on the 4th day of  
June, 2020, from 10:11 a.m. to 4:17 p.m., via  
videoconference, before Holly P. Burns, CSR, RMR, CRR,  
in and for the State of Texas, reported by machine  
shorthand, at the offices of Texas Department of  
Criminal Justice, Huntsville, Texas, pursuant to the  
Federal Rules of Civil Procedure, Seventeenth Emergency  
Order Regarding the COVID-19 State of Disaster, and the  
provisions stated on the record or attached hereto.

Job No. 67601

## ORAL DEPOSITION OF BRYAN COLLIER

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|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>1 APPEARANCES<br/>2 (Via Videoconference)<br/>3 FOR THE PLAINTIFFS:<br/>4 Mr. John Keville<br/>5 Mr. Jason Rudloff<br/>6 Mr. Brandon Duke<br/>7 Winston &amp; Strawn, L.L.P.<br/>8 1111 Louisiana, 25th Floor<br/>9 Houston, Texas 77002<br/>10 Telephone: (713) 651-2600 -- Fax: (713) 651-2700<br/>11 jkeville@winston.com<br/>12 Mr. Jeff Edwards<br/>13 The Edwards Law Firm<br/>14 The Haehnel Building<br/>15 1101 East 11th Street<br/>16 Austin, Texas 78702<br/>17 Telephone: (512) 623-7727 -- Fax: (512) 623-7729<br/>18 jeff@edwards-law.com</p> <p>19 FOR THE DEFENDANT:<br/>20 Ms. Christin Vasquez<br/>21 Ms. Landon Wade<br/>22 Office of the Attorney General<br/>23 300 West 15th Street<br/>24 Austin, Texas 78701-1220<br/>25 Telephone: (512) 463-2080 -- Fax: (512) 936-2109<br/>christin.vasquez@oag.texas.gov</p> <p>FOR DEFENDANT TEXAS DEPARTMENT OF CRIMINAL JUSTICE:<br/>Ms. Kristen Worman<br/>Mr. Eric K. Miller<br/>Ms. Katherine S. Tanner<br/>Ms. Melinda Hall<br/>Texas Department of Criminal Justice<br/>Office of the General Counsel<br/>P.O. Box 4004<br/>Huntsville, Texas 77342<br/>Telephone: (936) 437-6700</p> <p>ALSO PRESENT:<br/>Mr. Tony Tran, the Videographer<br/>Mr. Manu Vadlamudi<br/>Mr. Adam Shaw<br/>Ms. Catherine Urbanek</p> | <p>1 THE VIDEOGRAPHER: Today's date is<br/>2 June 4th, 2020. The time is 10:11 a.m. We are<br/>3 beginning the deposition of Bryan Collier.<br/>4 Will all attorneys present please<br/>10:11 5 introduce themselves for the record?<br/>6 MR. KEVILLE: For the plaintiffs, this is<br/>7 John Keville.<br/>8 MS. VASQUEZ: For the defendants,<br/>9 Christin Vasquez.<br/>10:11 10 THE VIDEOGRAPHER: Counsel has agreed<br/>11 that pursuant to the COVID-19 emergency order this<br/>12 deposition will be taken by videoconference via Zoom<br/>13 and the court reporter will swear in the witness<br/>14 remotely.<br/>10:12 15 (Witness sworn.)<br/>16 MS. VASQUEZ: And Defendants would like<br/>17 to read and sign, please. Thank you.<br/>18 BRYAN COLLIER,<br/>19 having been first duly sworn, testified as follows:<br/>10:12 20 EXAMINATION<br/>21 BY MR. KEVILLE:<br/>22 Q. Sir, would you introduce yourself, please?<br/>23 A. (No answer.)<br/>24 Q. Mr. Collier, can you hear me?<br/>10:12 25 A. Yes, sir, I can hear you now. Sorry.</p>                                                                                                                                                                                                                                                   |
| Page 3                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | Page 5                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
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2 (Pages 2 to 5)

Innovative Legal Solutions, Inc., Phone: 713-658-0802, Fax: 713-658-0704

## ORAL DEPOSITION OF BRYAN COLLIER

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|------------|--------------------------------------------------------|------------|---------------------------------------------------------|
| 1          | deposition, I'm going to ask that those be produced    | 1          | procedure that has been in effect before the recent     |
| 2          | immediately.                                           | 2          | change regarding COVID, were the time lines in that     |
| 3          | Many of those Mr. Collier has said were                | 3          | original grievance procedure reasonable and adequate    |
| 4          | in the hands of general counsel, and, so, I think they | 4          | regarding COVID-related complaints by inmates?          |
| 16 : 12 5  | should be produced immediately. And once we have a     | 16 : 14 5  | MR. KEVILLE: Objection. Leading.                        |
| 6          | chance to review those, we'll decide whether we're     | 6          | Objection. No foundation.                               |
| 7          | going to ask for more time and take that up with you,  | 7          | A. I think that the, the policies that were in          |
| 8          | but I do need those documents to be provided           | 8          | place, the time frames that were in place before we     |
| 9          | immediately.                                           | 9          | modified those were reasonable. I think they were       |
| 16 : 12 10 | MS. VASQUEZ: And per our discovery                     | 16 : 14 10 | adequate for the typical things that you may receive,   |
| 11         | responses, we have said we will supplement our         | 11         | additional cleaning supply requests, other type         |
| 12         | production; however, it was Plaintiffs' counsel's      | 12         | requests from COVID.                                    |
| 13         | choice to move forward with Mr. Collier's deposition.  | 13         | I think from TDCJ's perspective in that                 |
| 14         | We are in the process of reviewing documents for       | 14         | area as well as many other areas we've just continued   |
| 16 : 12 15 | production, and we will produce those as soon as that  | 16 : 14 15 | to try to improve and have a better, more robust        |
| 16         | has been completed.                                    | 16         | response time, and by moving it to 15 days, giving it   |
| 17         | MR. KEVILLE: When do you expect that                   | 17         | a, a special category, also making sure that if it is a |
| 18         | will be, Christin?                                     | 18         | medical issue, that it goes to a immediate supervisor   |
| 19         | MS. VASQUEZ: I don't have a certain                    | 19         | on the unit to be reviewed, we took extra steps to try  |
| 16 : 12 20 | date. We can discuss that off-line.                    | 16 : 15 20 | to heighten the alert on those type grievances and the  |
| 21         | MR. KEVILLE: Well, we'd like to. I                     | 21         | time frame for those responses.                         |
| 22         | mean, we're coming up to trial very soon, and we, you  | 22         | MS. VASQUEZ: All right. No further                      |
| 23         | know, we're here taking depositions of an individual   | 23         | questions. We can go off the record.                    |
| 24         | who said he had all these documents. And I think at    | 24         | MR. KEVILLE: No. Let's -- let me just                   |
| 16 : 13 25 | least you can tell me how many documents are there and | 16 : 15 25 | follow up on -- since you got that question.            |

| Page 191   |                                                         | Page 193   |                                                         |
|------------|---------------------------------------------------------|------------|---------------------------------------------------------|
| 1          | how long it's going to take you to review.              | 1          | MS. VASQUEZ: Well, Mr. Keville, you've                  |
| 2          | MS. VASQUEZ: There are a lot of                         | 2          | already used your, your four hours.                     |
| 3          | documents, and we're in the process of reviewing them.  | 3          | MR. KEVILLE: Sure. I understand, but                    |
| 4          | MR. KEVILLE: How long do you think it                   | 4          | you asked a question and I have the, the right to ask a |
| 16 : 13 5  | will take? I won't hold you to it if you're off a day   | 16 : 15 5  | follow-up to your questions.                            |
| 6          | or two, but I need some idea.                           | 6          | MS. VASQUEZ: I, I disagree. I think                     |
| 7          | MS. VASQUEZ: A couple weeks, and we have                | 7          | that you could have reserved time.                      |
| 8          | been producing documents on a rolling basis. Like I     | 8          | MR. KEVILLE: Well, I have one question.                 |
| 9          | said, we have a lot to review, and we will produce      | 9          | Are you going to instruct him not to answer?            |
| 16 : 13 10 | those promptly as that's being done.                    | 16 : 15 10 | MS. VASQUEZ: Ask your question.                         |
| 11         | MR. KEVILLE: All right. We may need to                  | 11         | FURTHER EXAMINATION                                     |
| 12         | address that with the Court, but we can talk about that | 12         | BY MR. KEVILLE:                                         |
| 13         | off-line.                                               | 13         | Q. If the grievance procedure that was previously       |
| 14         | Mr. Collier, thank you for your time.                   | 14         | in place was reasonable and adequate, as you say, as to |
| 16 : 13 15 | THE WITNESS: Yes, sir. Thank you.                       | 16 : 16 15 | the time line, why did you change the time line?        |
| 16         | MR. KEVILLE: Ms. Vasquez, if you would                  | 16         | THE WITNESS: Okay to respond?                           |
| 17         | stay on the line, I think Cori has something she wants  | 17         | MS. VASQUEZ: Yes.                                       |
| 18         | to talk to you about off-line.                          | 18         | A. Okay. Just to, again, elevate even the               |
| 19         | MS. VASQUEZ: I just have a couple of                    | 19         | importance of COVID, elevate the categorization of      |
| 16 : 14 20 | questions for Mr. Collier.                              | 16 : 16 20 | those grievances so that we saw them as they occurred,  |
| 21         | MR. KEVILLE: Sorry. I didn't realize                    | 21         | and, also, to ensure that we identified what those      |
| 22         | you had --                                              | 22         | issues were and respond to them quickly, as we have     |
| 23         | EXAMINATION                                             | 23         | done, again, in the pandemic, lots of different changes |
| 24         | BY MS. VASQUEZ:                                         | 24         | to escalate or response times and response issues. So,  |
| 16 : 14 25 | Q. Mr. Collier, with regard to the grievance            | 16 : 16 25 | we've never been in this kind of situation before.      |

Page 196

1 foregoing pages contain a true and correct transcript  
2 of the testimony given by me at the time and place  
3 stated, with the corrections, if any, and the reasons  
4 therefor noted on the foregoing correction page(s).  
5  
6  
7 

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BRYAN COLLIER  
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Page 197

1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE SOUTHERN DISTRICT OF TEXAS  
3 HOUSTON DIVISION  
4 LADDY CURTIS VALENTINE \* Case No. 4:20-cv-01115  
and RICHARD ELVIN KING, \*  
5 individually and on \*  
behalf of those similarly \*  
6 situated, \*  
7 Plaintiffs, \*  
8 VS. \*  
9 \* Hon. Keith P. Ellison  
10 BRYAN COLLIER, in his \*  
official capacity; ROBERT \*  
11 HERRERA, in his official \*  
capacity; and TEXAS \*  
12 DEPARTMENT OF CRIMINAL \*  
13 JUSTICE, \*  
14 Defendants. \*  
15  
16 STATE OF TEXAS:  
17 REPORTER'S CERTIFICATE  
18  
19 I, HOLLY P. BURNS, Certified Shorthand Reporter in  
20 and for the State of Texas, do hereby certify to the  
21 following:  
22 That this transcript is a true record of the  
23 testimony given by the witness, BRYAN COLLIER, after  
24 said witness was duly sworn by me;  
25 That the deposition transcript was submitted on  
\_\_\_\_\_, 2020, to the witness or to the  
attorney for the witness for examination, signature and

ORAL DEPOSITION OF BRYAN COLLIER

Page 198

1 return to INNOVATIVE LEGAL SOLUTIONS within 30 days;  
2 That the amount of time used by each party at the  
3 deposition is as follows:

4 Mr. John Keville - 04:04  
5 Ms. Christin Vasquez - 00:01

6 I further certify that I am neither attorney nor  
7 counsel for, related to, nor employed by any of the  
8 parties to the action in which this testimony was  
9 taken. Further, I am not a relative or employee of any  
10 attorney of record in this cause, nor do I have a  
11 financial interest in the action.

12 SUBSCRIBED AND SWORN TO by the undersigned on this  
13 the \_\_\_\_\_ day of \_\_\_\_\_, 2020.

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HOLLY P. BURNS, CSR, RMR, CRR  
Texas Certification No. 4956  
Expiration Date: 7/31/2022  
Innovative Legal Solutions, Inc.  
Firm Registration No. 370  
The Lyric Centre  
440 Louisiana, Suite 1100  
Houston, Texas 77002  
713.658.0802

51 (Page 198)

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

**LADDY CURTIS VALENTINE and** §  
**RICHARD ELVIN KING, individually and** §  
**on behalf of those similarly situated,** §  
*Plaintiffs,* §

**V.**

**BRYAN COLLIER, in his official capacity, §  
ROBERT HERRERA, in his official capacity, §  
and TEXAS DEPARTMENT OF §  
CRIMINAL JUSTICE, §  
Defendants. §**

**Civil Action No. 4:20-cv-01115**

**DEFENDANTS' SURREPLY IN OPPOSITION TO PLAINTIFFS' MOTION FOR CLASS  
CERTIFICATION**

# EXHIBIT 2



(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 #:     | I21047      |
| 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 1-60 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 Dormitory 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 ammonia 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: \_\_\_\_\_

2<sup>nd</sup> Submission UGI Initials: \_\_\_\_\_

Grievance #: \_\_\_\_\_

Screening Criteria Used: \_\_\_\_\_

Date Recd from Offender: \_\_\_\_\_

Date Returned to Offender: \_\_\_\_\_

3<sup>rd</sup> Submission UGI Initials: \_\_\_\_\_

Grievance #: \_\_\_\_\_

Screening Criteria Used: \_\_\_\_\_

Date Recd from Offender: \_\_\_\_\_

Date Returned to Offender: \_\_\_\_\_

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

**LADDY CURTIS VALENTINE and  
RICHARD ELVIN KING, individually and  
on behalf of those similarly situated,  
*Plaintiffs,***

**V.**

**BRYAN COLLIER, in his official capacity,  
ROBERT HERRERA, in his official capacity,  
and TEXAS DEPARTMENT OF  
CRIMINAL JUSTICE,  
Defendants.**

[illegible]

**Civil Action No. 4:20-cv-01115**

**DEFENDANTS' SURREPLY IN OPPOSITION TO PLAINTIFFS' MOTION FOR CLASS  
CERTIFICATION**

# EXHIBIT 3

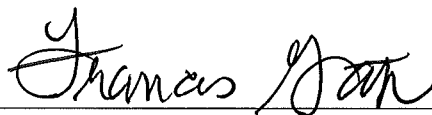
DECLARATION OF **FRANCES GATTIS**

"I am over 21 years of age, of sound mind, capable of making this declaration, and personally acquainted with the facts herein stated.

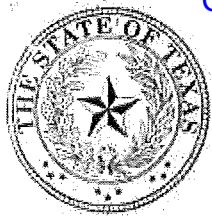
I am the custodian of records for the Offender Grievance Department, a part of the Texas Department of Criminal Justice (TDCJ) located in Huntsville, Texas. Attached are true and correct copies of *the grievance records for offender King, Richard TDCJ#00516700, Cause Number 4:20-CV-1115, for the time period of 03/01/20 to 05/04/20*, which are kept by the TDCJ in the regular course of its business activity. The entries of such records were made as a regularly conducted activity and a regular practice of the TDCJ, and were made at or near the time of the occurrence of the matters set forth by, or from information transmitted by, a person with knowledge of those matters.

My name is **Frances Gattis** and I am an employee of the TDCJ, a governmental agency. I am executing this declaration as part of my assigned duties and responsibilities. I declare under penalty of perjury that the foregoing is true and correct."

Executed in **Walker** County, State of Texas, on the 7<sup>th</sup> day of **May, 2020**.

A handwritten signature in cursive script, appearing to read "Frances Gattis", written over a horizontal line.

**Frances Gattis**  
**Deputy Division Director**  
**Administrative Review & Risk Management**  
Texas Department of Criminal Justice



APAC  
**STEP 1**

**OFFENDER  
GRIEVANCE FORM**

|                        |             |
|------------------------|-------------|
| Grievance #:           | 2020099042  |
| Date Received:         | APR 02 2020 |
| Date Due:              | 05/12/20    |
| Grievance Code:        | 200         |
| Investigator ID #:     | I2047       |
| Extension Date:        |             |
| Date Retd to Offender: | MAY 04 2020 |

Offender Name: RICHARD KING TDCJ # 516700  
 Unit: Pack Housing Assignment: E-18-02  
 Unit where incident occurred: Pack

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)? N/A When? \_\_\_\_\_

What was their response? \_\_\_\_\_

What action was taken? \_\_\_\_\_

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

THIS GRIEVANCE IS AGAINST STATE CLASSIFICATION WHO CONTINUES TO MOVE OFFENDERS FROM OTHER UNITS TO THE PACK UNIT DURING THIS CORONAVIRUS PANDEMIC. ALL THE WAY FROM THE PRESIDENT OF THE UNITED STATES TO THE GOVERNOR OF TEXAS TO MAYORS OF THE CITIES & TOWNS ARE URGING PEOPLE TO STAY AT HOME AND LIMIT THEIR CONTACT WITH OTHER PEOPLE. HOWEVER, CLASSIFICATION PAYS NO ATTENTION AND MOVES OFFENDERS ON CROWDED BUSES. PACK UNIT IS OVERWHELMING HOUSED BY OLDER OFFENDERS WITH SERIOUS MEDICAL CONDITIONS THE MAKE THEM THE MAIN ONES DYING FROM THIS VIRUS. YET JUST YESTERDAY APRIL 1, 2020 OVER TEN (10) NEW OFFENDERS WERE BROUGHT ONTO THE PACK UNIT.

THIS SHOWS A TOTAL DISREGARD FOR THE LIVES OF OFFENDERS ON THE PACK UNIT.

Action Requested to resolve your Complaint. STOP BRINGING IN OFFENDERS FROM OTHER PRISONS UNTIL THIS CORONAVIRUS IS UNDER CONTROL

Offender Signature: Richard Ruiz 516700 Date: 2 APRIL 2020

Grievance Response:

Your grievance has been received and investigated. Per Classification, Unit Classification has no control over offenders arriving at the Pack Unit. Due to the COVID-19 pandemic, as of April 9, 2020, chain was suspended until further notice. No further action warranted at this time.

Signature Authority: [Signature] Date: \_\_\_\_\_

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: \_\_\_\_\_

I-127 Back (Revised 11-2010)

### OFFICE USE ONLY

Initial Submission UGI Initials: \_\_\_\_\_

Grievance #: \_\_\_\_\_

Screening Criteria Used: \_\_\_\_\_

Date Recd from Offender: \_\_\_\_\_

Date Returned to Offender: \_\_\_\_\_

**2<sup>nd</sup> Submission** UGI Initials: \_\_\_\_\_

Grievance #: \_\_\_\_\_

Screening Criteria Used: \_\_\_\_\_

Date Recd from Offender: \_\_\_\_\_

Date Returned to Offender: \_\_\_\_\_

**3<sup>rd</sup> Submission** UGI Initials: \_\_\_\_\_

Grievance #: \_\_\_\_\_

Screening Criteria Used: \_\_\_\_\_

Date Recd from Offender: \_\_\_\_\_

Date Returned to Offender: \_\_\_\_\_

Appendix F

DEFENDANTS' DISCLOSURE - 0647

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

**LADDY CURTIS VALENTINE and  
RICHARD ELVIN KING, individually and  
on behalf of those similarly situated,  
*Plaintiffs,***

**V.**

**BRYAN COLLIER, in his official capacity,  
ROBERT HERRERA, in his official capacity,  
and TEXAS DEPARTMENT OF  
CRIMINAL JUSTICE,  
Defendants.**

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**Civil Action No. 4:20-cv-01115**

**DEFENDANTS' SURREPLY IN OPPOSITION TO PLAINTIFFS' MOTION FOR CLASS  
CERTIFICATION**

# EXHIBIT 4

## EMERGENCY GRIEVANCE

## Texas Department of Criminal Justice



## STEP 1

OFFENDER  
GRIEVANCE FORM

Offender Name: Laddy C. Valentine TDCJ # 1782033  
 Unit: Poc Housing Assignment: D14-6  
 Unit where incident occurred: Poc Unit

## OFFICE USE ONLY

Grievance #: 2220119641  
 Date Received: MAY 12 2020  
 Date Due: 4/24/20  
 Grievance Code: 1008  
 Investigator ID #: 12433  
 Extension Date: \_\_\_\_\_  
 Date Reid to Offender: \_\_\_\_\_

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)? MR. Ken Stecker through I-60 When? on or about 1 May 20

What was their response? No Response I-60 for Internal Resolution NOT Returned

What action was taken? No Action taken

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

Request immediate testing for COVID-19 virus. Throughout the Nation and State Test kits for COVID-19 are available. However we have been given no information concerning scheduled testing. With the expanding pandemic as well as increasing illness within the Poc Unit and based on my vulnerability as outlined by the CX, I Request an immediate COVID-19 Test.

Action Requested to resolve your Complaint.

*Immediate Termination*

Offender Signature:

*[Signature]*

Date: *10 May 20*

Grievance Response:

Signature Authority:

Date:

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: \_\_\_\_\_

I-127 Back (Revised 11-2010)

#### OFFICE USE ONLY

Initial Submission UGI Initials: \_\_\_\_\_  
 Grievance #: \_\_\_\_\_  
 Screening Criteria Used: \_\_\_\_\_  
 Date Recd from Offender: \_\_\_\_\_  
 Date Returned to Offender: \_\_\_\_\_  
 2<sup>nd</sup> Submission UGI Initials: \_\_\_\_\_  
 Grievance #: \_\_\_\_\_  
 Screening Criteria Used: \_\_\_\_\_  
 Date Recd from Offender: \_\_\_\_\_  
 Date Returned to Offender: \_\_\_\_\_  
 3<sup>rd</sup> Submission UGI Initials: \_\_\_\_\_  
 Grievance #: \_\_\_\_\_  
 Screening Criteria Used: \_\_\_\_\_  
 Date Recd from Offender: \_\_\_\_\_  
 Date Returned to Offender: \_\_\_\_\_

Appendix F



Texas Department of Criminal Justice

OFFICE USE ONLY

# STEP 1 OFFENDER GRIEVANCE FORM

## EMERGENCY GRIEVANCE

Offender Name: LADDY C. VALENTINE TDCJ # 1782033  
 Unit: PAC Housing Assignment: D14-6  
 Unit where incident occurred: PAC UNIT

Grievance #: 202024948  
 Date Received: MAY 21 2020  
 Date Due: 6-30-20  
 Grievance Code: 506  
 Investigator ID #: 12433  
 Extension Date: \_\_\_\_\_  
 Date Retd to Offender: \_\_\_\_\_

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)? Sgt. Hurd When? 19 May 20  
 What was their response? Didn't have an answer  
 What action was taken? None

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

Why didn't staff utilize the space available within 14 Dorm for "Social Distancing", when cubicles were empty in abundance, approximately 19 before numerous inmates tested positive for COVID-19 protein? For weeks prior to testing up until, approximately 5 days, post-testing ample bed space was available to distance some inmates as others were removed due to fever or other Covid-19 symptoms. However, no action was taken, even though the CDC and the State of Texas continually warned to social distance for months. Why such a blatant indifference to the health and lives of inmates when proactive measures could have eliminated suffering and possibly saved lives?

~~EMERGENCY RESPONSE~~

Action Requested to resolve your Complaint.

Take protective steps to contain and protect those in harms way?

Offender Signature:

Date:

Grievance Response:

Signature Authority:

Date:

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: \_\_\_\_\_

I-127 Back (Revised 11-2010)

**OFFICE USE ONLY**

Initial Submission UGI Initials: \_\_\_\_\_

Grievance #: \_\_\_\_\_

Screening Criteria Used: \_\_\_\_\_

Date Recd from Offender: \_\_\_\_\_

Date Returned to Offender: \_\_\_\_\_

**2<sup>nd</sup> Submission** UGI Initials: \_\_\_\_\_

Grievance #: \_\_\_\_\_

Screening Criteria Used: \_\_\_\_\_

Date Recd from Offender: \_\_\_\_\_

Date Returned to Offender: \_\_\_\_\_

**3<sup>rd</sup> Submission** UGI Initials: \_\_\_\_\_

Grievance #: \_\_\_\_\_

Screening Criteria Used: \_\_\_\_\_

Date Recd from Offender: \_\_\_\_\_

Date Returned to Offender: \_\_\_\_\_

Appendix F

DEFS 3RD SUPPL DISCLOSURE - 2387

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

**LADDY CURTIS VALENTINE and  
RICHARD ELVIN KING, individually and  
on behalf of those similarly situated,  
*Plaintiffs,***

**V.**

**BRYAN COLLIER, in his official capacity,  
ROBERT HERRERA, in his official capacity,  
and TEXAS DEPARTMENT OF  
CRIMINAL JUSTICE,  
Defendants.**

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**Civil Action No. 4:20-cv-01115**

**DEFENDANTS' SURREPLY IN OPPOSITION TO PLAINTIFFS' MOTION FOR CLASS  
CERTIFICATION**

# EXHIBIT 5

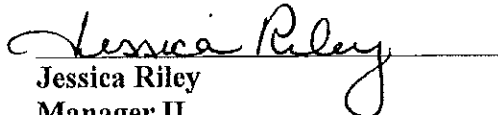
DECLARATION OF JESSICA RILEY

"I am over 21 years of age, of sound mind, capable of making this declaration, and personally acquainted with the facts herein stated.

I am a Manager II in the Administrative Review and Risk Management Division of the Texas Department of Criminal Justice (TDCJ), a part of the TDCJ located in Huntsville, Texas. Attached are true and correct copies of *two pending grievances filed by Richard King, TDCJ #516700, filed since April 27, 2020*, which are kept by the TDCJ in the regular course of its business activity. The entries of such records were made as a regularly conducted activity and a regular practice of the TDCJ, and were made at or near the time of the occurrence of the matters set forth by, or from information transmitted by, a person with knowledge of those matters.

My name is JESSICA RILEY and I am an employee of the TDCJ, a governmental agency. I am executing this declaration as part of my assigned duties and responsibilities. I declare under penalty of perjury that the foregoing is true and correct."

Executed in WALKER County, State of Texas, on the 26th day of MAY, 2020.

  
Jessica Riley  
Manager II  
Administrative Review and Risk Management  
Texas Department of Criminal Just



## Texas Department of Criminal Justice

# STEP 1

## OFFENDER GRIEVANCE FORM

OFFICE USE ONLY

Grievance #: 2020120907  
 Date Received: MAY 14 2020  
 Date Due: 6-23-20  
 Grievance Code: 503  
 Investigator ID #: 12433  
 Extension Date: \_\_\_\_\_  
 Date Read to Offender: \_\_\_\_\_

Offender Name: RICHARD KING TDCJ # 516700  
 Unit: PACK I Housing Assignment: E-18-02  
 Unit where incident occurred: PACK I

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): MS. MAXEY - PROPERTY & CHEMICALS When: 5-12-20

What was their response? THIS IS THE WAY IT HAS ALWAYS BEEN DONE.

What action was taken? NONE

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

I ASKED MS. MAXEY WHO DETERMINED HOW MUCH CHEMICALS WERE ISSUED TO THE DORM JANITORS FOR CLEANING. HER ANSWER WAS AS STATED ABOVE, "THIS IS THE WAY IT HAS ALWAYS BEEN DONE."

I THINK THIS IS A VERY UNUSUAL TIME TO BE DOING THINGS AS WE HAVE ALWAYS DONE THEM. JANITOR ARE ISSUED ONE OUNCE OF POWDER BLEACH, POURED INTO A 40P BUCKET WITH WATER IN IT. ABOUT TWO OUNCES OF POWDERED GIPSY AND TWO OUNCES OF LIQUID DOUBLE D DISINFECTANT. THIS DOUBLE D COMES TO THE UNIT IN A CONCENTRATE AND THE CHEMICAL ROOM DILUTES IT BEFORE ISSUING IT TO THE DORM JANITORS. THEN WE HAVE TO DILUTE IT FURTHER TO MAKE A 16 OUNCE BOTTLE. THIS IS SUPPOSE TO LAST FOR A 12 HOUR SHIFT. NOT ENOUGH DISINFECTANT TO PROPERLY DISINFECT AND SANITIZE A DORM.

Action Requested to resolve your Complaint.

TO BE GIVEN ENOUGH DISINFECTANT TO  
PROPERLY CLEAN AND SANITIZE OUR DORMS

Offender signature:

Richard Kue

Date: 5-12-20

Grievance Response:

Signature Authority:

Date:

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: \_\_\_\_\_

-127 Back (Revised 11-2016)

| OFFICE USE ONLY             |                     |
|-----------------------------|---------------------|
| Initial Submission          | UGI Initials: _____ |
| Screening Criteria Used     | _____               |
| Date Received from Offender | _____               |
| Date Returned to Offender   | _____               |
| 2nd Submission              | UGI Initials: _____ |
| Grievance #                 | _____               |
| Screening Criteria Used     | _____               |
| Date Received from Offender | _____               |
| Date Returned to Offender   | _____               |
| 3rd Submission              | UGI Initials: _____ |
| Grievance #                 | _____               |
| Screening Criteria Used     | _____               |
| Date Received from Offender | _____               |
| Date Returned to Offender   | _____               |

Appendix F



## Texas Department of Criminal Justice

## STEP 2

OFFENDER  
GRIEVANCE FORM

Offender Name: RICHARD KING TDCJ # 516700  
 Unit: PACK Housing Assignment: 18-02  
 Unit where incident occurred: PACK UNIT

## OFFICE USE ONLY

Grievance # 2020099042  
 UGI Recd Date: MAY 14 2020  
 HQ Recd Date: MAY 15 2020  
 Date Due: 6-23  
 Grievance Code: 200  
 Investigator ID#: 12448  
 Extension Date: \_\_\_\_\_

You must attach the completed Step 1 Grievance that has been signed by the Warden for your Step 2 appeal to be accepted. You may not appeal to Step 2 with a Step 1 that has been returned unprocessed.

Give reason for appeal (Be Specific). I am dissatisfied with the response at Step 1 because...

While, AS STEP ONE STATES, NO OFFENDERS ARE BEING SHIPPED FROM OTHER UNITS OFFENDERS FROM MEDICAL CHAINS ARE BEING BROUGHT BACK. THESE OFFENDERS HAVE BEEN TO ESTELLE, HOSPITAL GALVESTON, AND/OR OTHER UNITS. ALL THE WHILE PACKED ON CHAIN BUSES COMING IN CONTACT WITH OFFENDERS FROM MANY OTHER UNITS. EVEN WITH HALF THE NORMAL LOAD OF OFFENDERS ON A CHAIN BUS THEY ARE IN CLOSE PROXIMITY TO OFFENDERS FROM NUMEROUS OTHER UNITS.

FOR THIS REASON THE PRACTICE IS UNACCEPTABLE AND DANGEROUS TO OUR LIVES

Offender Signature:

*Richard King*

Date: *5-7-20*

Grievance Response:

Signature Authority:

Date:

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

- ☐ 1. Grievable time period has expired.
- ☐ 2. Illegible/Incomprehensible.\*
- ☐ 3. Originals not submitted. \*
- ☐ 4. Inappropriate/Excessive attachments.\*
- ☐ 5. Malicious use of vulgar, indecent, or physically threatening language.
- ☐ 6. Inappropriate.\*

CGO Staff Signature: \_\_\_\_\_

**OFFICE USE ONLY**

**Initial Submission**

CGO Initials: \_\_\_\_\_

Date UGI Recd: \_\_\_\_\_

Date CGO Recd: \_\_\_\_\_

(check one) ☐ Screened ☐ Improperly Submitted

Comments: \_\_\_\_\_

Date Returned to Offender: \_\_\_\_\_

**2<sup>nd</sup> Submission**

CGO Initials: \_\_\_\_\_

Date UGI Recd: \_\_\_\_\_

Date CGO Recd: \_\_\_\_\_

(check one) ☐ Screened ☐ Improperly Submitted

Comments: \_\_\_\_\_

Date Returned to Offender: \_\_\_\_\_

**3<sup>rd</sup> Submission**

CGO Initials: \_\_\_\_\_

Date UGI Recd: \_\_\_\_\_

Date CGO Recd: \_\_\_\_\_

(check one) ☐ Screened ☐ Improperly Submitted

Comments: \_\_\_\_\_

Date Returned to Offender: \_\_\_\_\_

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

**LADDY CURTIS VALENTINE and  
RICHARD ELVIN KING, individually and  
on behalf of those similarly situated,  
*Plaintiffs,***

**V.**

**BRYAN COLLIER, in his official capacity,  
ROBERT HERRERA, in his official capacity,  
and TEXAS DEPARTMENT OF  
CRIMINAL JUSTICE,  
Defendants.**

**§**

**Civil Action No. 4:20-cv-01115**

**DEFENDANTS' SURREPLY IN OPPOSITION TO PLAINTIFFS' MOTION FOR CLASS  
CERTIFICATION**

# EXHIBIT 6

|    |                                                                                       |    |                                         |
|----|---------------------------------------------------------------------------------------|----|-----------------------------------------|
| 1  | IN THE UNITED STATES DISTRICT COURT<br>SOUTHERN DISTRICT OF TEXAS<br>HOUSTON DIVISION | 1  | REMOTE APPEARANCES                      |
| 2  |                                                                                       | 2  |                                         |
| 3  | LADDY CURTIS VALENTINE )                                                              | 3  | FOR THE PLAINTIFFS:                     |
| 4  | and RICHARD ELVIN )                                                                   | 4  | Jeff Edwards, Esq.                      |
| 5  | KING, individually and )                                                              | 5  | David James, Esq.                       |
| 6  | on behalf of those )                                                                  | 6  | Scott Medlock, Esq.                     |
| 7  | similarly situated, )                                                                 | 7  | THE EDWARDS LAW FIRM                    |
| 8  |                                                                                       | 8  | The Haehnel Building                    |
| 9  | Plaintiffs, )                                                                         | 9  | 1101 East 11th Street                   |
| 10 |                                                                                       | 10 | Austin, Texas 78702                     |
| 11 |                                                                                       | 11 | 512.623.7727                            |
| 12 |                                                                                       | 12 | jeff@edwards-law.com                    |
| 13 |                                                                                       | 13 | Benjamin D. Williams, Esq.              |
| 14 |                                                                                       | 14 | Brandon W. Duke, Esq.                   |
| 15 |                                                                                       | 15 | WINSTON & STRAWN LLP                    |
| 16 |                                                                                       | 16 | 800 Capitol Street, Suite 2400          |
| 17 |                                                                                       | 17 | Houston, Texas 77002                    |
| 18 |                                                                                       | 18 | 713.651.2600                            |
| 19 |                                                                                       | 19 | bwilliams@winston.com                   |
| 20 |                                                                                       | 20 | FOR THE DEFENDANTS:                     |
| 21 |                                                                                       | 21 | Christin Cobe Vasquez, Esq.             |
| 22 |                                                                                       | 22 | Jeffrey Farrell, Esq.                   |
| 23 |                                                                                       | 23 | Shawn Cowles, Esq.                      |
| 24 |                                                                                       | 24 | Sheaffer Fennessey, Esq.                |
| 25 |                                                                                       | 25 | OFFICE OF THE ATTORNEY GENERAL          |
|    |                                                                                       |    | STATE OF TEXAS                          |
|    |                                                                                       |    | 300 W. 15th Street                      |
|    |                                                                                       |    | Austin, Texas 78701                     |
|    |                                                                                       |    | christin.vasquez@oag.texas.gov          |
|    |                                                                                       |    | Kristen Worman, Esq.                    |
|    |                                                                                       |    | Katie Tanner, Esq.                      |
|    |                                                                                       |    | Eric Miller, Esq.                       |
|    |                                                                                       |    | TEXAS DEPARTMENT OF CRIMINAL JUSTICE    |
|    |                                                                                       |    | OFFICE OF THE GENERAL COUNSEL           |
|    |                                                                                       |    | P.O. Box 4004                           |
|    |                                                                                       |    | Huntsville, Texas 77342                 |
|    |                                                                                       |    | 936.437.6700                            |
|    |                                                                                       |    | VIDEOGRAPHER: Tim Bishop                |
|    |                                                                                       |    | --oOo--                                 |
| 1  | REMOTE VIDEO-RECORDED DEPOSITION OF                                                   | 1  | INDEX                                   |
| 2  | ROBERT HERRERA, VOLUME 1, produced as a witness at the                                | 2  | Page                                    |
| 3  | instance of the Plaintiffs, and duly sworn, was                                       | 3  | REMOTE APPEARANCES 3                    |
| 4  | taken in the above styled and numbered cause on                                       | 4  |                                         |
| 5  | Tuesday, May 19, 2020, from 10:09 a.m. to 4:41 p.m.                                   | 5  | EXAMINATION OF ROBERT HERRERA:          |
| 6  | CDT, before Susan Perry Miller, CSR-TX, CCR-LA,                                       | 6  | BY MR. EDWARDS..... 6                   |
| 7  | CSR-CA-13648, RDR, CRR, CRC, Notary Public, reported                                  | 7  |                                         |
| 8  | via Machine Shorthand with Realtime Computer                                          | 8  | CHANGES AND SIGNATURE 192               |
| 9  | Translation, pursuant to the Federal Rules of Civil                                   | 9  | REPORTER'S CERTIFICATION 193            |
| 10 | Procedure.                                                                            | 10 |                                         |
| 11 | --oOo--                                                                               | 11 | Support Index: Page                     |
| 12 |                                                                                       | 12 | Instruction Not to Answer 58            |
| 13 |                                                                                       | 13 | Instruction Not to Answer 59            |
| 14 |                                                                                       | 14 | Instruction Not to Answer 61            |
| 15 |                                                                                       | 15 |                                         |
| 16 |                                                                                       | 16 | EXHIBITS                                |
| 17 |                                                                                       | 17 | Plaintiffs Description Page             |
| 18 |                                                                                       | 18 | Exhibit 1 Affidavit and Records from 37 |
| 19 |                                                                                       | 19 | Wallace Pack Unit                       |
| 20 |                                                                                       | 20 | [HERRERA'S SDT RESPONSE-0728            |
| 21 |                                                                                       | 21 | - 0767]                                 |
| 22 |                                                                                       | 22 | [ATTORNEYS EYES ONLY]                   |
| 23 |                                                                                       | 23 | Exhibit 2 Interim Guidance on 106       |
| 24 |                                                                                       | 24 | Management of Coronavirus               |
| 25 |                                                                                       | 25 | Disease 2019 (COVID-19) in              |
|    |                                                                                       |    | Correctional and Detention              |
|    |                                                                                       |    | Facilities                              |
|    |                                                                                       |    | --oOo--                                 |

1250 South Capital of Texas Highway, Building 3, Suite 400 Austin, Texas 78746 (512) 474-4363  
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Robert Herrera - 5/19/2020

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p style="text-align: right;">145</p> <p>1 Q. Okay. So what I hear you saying is,</p> <p>2 look, you need to interview the people who have</p> <p>3 tested positive to find out who they came into</p> <p>4 contact with, right?</p> <p>5 <b>A. I think that they all need to be talked</b></p> <p>6 <b>to, to which I have talked to one or two of them</b></p> <p>7 <b>myself by telephone.</b></p> <p>8 Q. Which ones?</p> <p>9 <b>A. I know I talked to Officer Okonedo.</b></p> <p>10 Q. Anybody else?</p> <p>11 <b>A. I didn't personally talk to Officer</b></p> <p>12 <b>Nixon, but we had contact with his father, who is</b></p> <p>13 <b>also a building captain on a unit.</b></p> <p>14 Q. Did his father have close contact with</p> <p>15 his son?</p> <p>16 <b>A. I don't know what the relationship is.</b></p> <p>17 Q. Don't you think that's a pretty</p> <p>18 important question?</p> <p>19 <b>A. For who?</b></p> <p>20 Q. Where is his father a building captain,</p> <p>21 sir? Which unit?</p> <p>22 <b>A. At the Luther unit.</b></p> <p>23 Q. Don't you think it's a pretty important</p> <p>24 question for the administrators and staff at the</p> <p>25 Luther unit as well as the inmates at the Luther</p> | <p style="text-align: right;">147</p> <p>1 <b>could go back and get the information that I would</b></p> <p>2 <b>need if you want it.</b></p> <p>3 Q. Do you know if it's -- do you know if</p> <p>4 the average age of inmates at the Pack Unit is</p> <p>5 higher or older than other TDCJ units?</p> <p>6 <b>A. It is higher than other --</b></p> <p>7 MS. VASQUEZ: Vague, ambiguous.</p> <p>8 <b>A. Sorry. It is higher than others.</b></p> <p>9 <b>BY MR. EDWARDS:</b></p> <p>10 Q. Okay. What do you do differently for</p> <p>11 the inmates who are identified as being in contact</p> <p>12 with an infected person?</p> <p>13 <b>A. Do what, now?</b></p> <p>14 Q. What do you do differently for the</p> <p>15 inmates who are identified as being in contact with</p> <p>16 an infected person?</p> <p>17 <b>A. We medically restrict them.</b></p> <p>18 Q. Anything else?</p> <p>19 <b>A. If we have an offender that tests</b></p> <p>20 <b>positive and he lives in a certain dormitory,</b></p> <p>21 <b>whatever dorm he may live in, we will take that</b></p> <p>22 <b>entire dormitory, get them a clean change of sheets,</b></p> <p>23 <b>escort all the offenders out to the shower, of</b></p> <p>24 <b>course enforcing social distancing, give them a</b></p> <p>25 <b>shower, give them all -- and we will go in there</b></p> |
| <p style="text-align: right;">146</p> <p>1 unit?</p> <p>2 <b>A. I think that the Luther unit</b></p> <p>3 <b>administration took care of that.</b></p> <p>4 Q. What does that mean?</p> <p>5 <b>A. It's their responsibility. They're the</b></p> <p>6 <b>ones -- that's where he's working.</b></p> <p>7 Q. Did you call the Luther unit and say</p> <p>8 that his son was exposed?</p> <p>9 <b>A. I think we may have been notified by the</b></p> <p>10 <b>Luther unit in the beginning.</b></p> <p>11 Q. Has the father been tested, to your</p> <p>12 knowledge?</p> <p>13 <b>A. To my knowledge, no. But I have</b></p> <p>14 <b>heard -- well, I guess you could say to my</b></p> <p>15 <b>knowledge, he has. I don't know that for a fact.</b></p> <p>16 Q. All right. Do you know the average age</p> <p>17 of inmates at the Pack Unit?</p> <p>18 <b>A. Exactly what it is, I'd have to reflect</b></p> <p>19 <b>back to or go back to --</b></p> <p>20 Q. If you don't know, you don't know. Do</p> <p>21 you know?</p> <p>22 <b>A. Huh?</b></p> <p>23 Q. Do you know what the average age of the</p> <p>24 inmates at the Pack Unit is?</p> <p>25 <b>A. Well, at this moment in time, no, but I</b></p>                        | <p style="text-align: right;">148</p> <p>1 <b>with spray bottles and disinfect the entire dorm,</b></p> <p>2 <b>and then each individual offender can obtain a spray</b></p> <p>3 <b>bottle to go in there and spray his individual</b></p> <p>4 <b>cubicle.</b></p> <p>5 Q. So what did you do to disinfect</p> <p>6 Mr. Clerkly's dorm?</p> <p>7 <b>A. Do what, now?</b></p> <p>8 Q. What did you do to disinfect</p> <p>9 Mr. Clerkly's dorm?</p> <p>10 <b>A. Used the bleach solution, go in there</b></p> <p>11 <b>and spray it down.</b></p> <p>12 Q. Who?</p> <p>13 <b>A. Who what?</b></p> <p>14 Q. Who did that? Who used the solution to</p> <p>15 do things?</p> <p>16 <b>A. It's either an officer or an offender</b></p> <p>17 <b>under the supervision of an officer.</b></p> <p>18 Q. That's like the inmates who do</p> <p>19 janitorial duties?</p> <p>20 <b>A. That could be one of them, yes.</b></p> <p>21 Q. Was an officer involved in cleaning</p> <p>22 Mr. Clerkly's dorm?</p> <p>23 <b>A. I'm sure that there was an officer</b></p> <p>24 <b>involved, a staff member involved in one way or the</b></p> <p>25 <b>other.</b></p>                                                                                                                                                                                                  |

WRIGHT WATSON &amp; ASSOCIATES

1250 South Capital of Texas Highway, Building 3, Suite 400 Austin, Texas 78746 (512) 474-4363

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Robert Herrera - 5/19/2020

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p style="text-align: right;">157</p> <p>1 that we are doing everything we can to keep it under</p> <p>2 control. We are doing numerous things to keep it</p> <p>3 under control.</p> <p>4 <b>BY MR. EDWARDS:</b></p> <p>5 Q. So the question is, are you doing</p> <p>6 enough, right? You'd agree with that?</p> <p>7 MS. VASQUEZ: Objection, calls for a</p> <p>8 legal conclusion.</p> <p>9 MR. EDWARDS: No, it doesn't.</p> <p>10 <b>BY MR. EDWARDS:</b></p> <p>11 Q. Do you think you're doing enough, sir?</p> <p>12 <b>A. I think --</b></p> <p>13 MS. VASQUEZ: Vague, overbroad.</p> <p>14 <b>A. -- that we're doing everything that we</b></p> <p>15 <b>can to control it.</b></p> <p>16 <b>BY MR. EDWARDS:</b></p> <p>17 Q. Okay. What you just said was, I think</p> <p>18 we are doing everything we can to control it, it</p> <p>19 being the COVID-19 disease.</p> <p>20 Did I hear you correctly?</p> <p>21 <b>A. Well, is that what we're talking about?</b></p> <p>22 Q. Sir, you're responsible for the health</p> <p>23 and safety of the men in your care, right, and</p> <p>24 custody, right?</p> <p>25 <b>A. That's what I'm saying, Mr. Edwards.</b></p>                                                        | <p style="text-align: right;">159</p> <p>1 bottles with the chemicals. You know, maybe the --</p> <p>2 Q. What's also -- I'm sorry. I</p> <p>3 interrupted, I apologize.</p> <p>4 <b>A. Maybe the choice of words of we're doing</b></p> <p>5 <b>everything that we can or maybe -- that may be a</b></p> <p>6 <b>poor choice of words.</b></p> <p>7 Q. It's only a poor choice of words because</p> <p>8 it's not true, right?</p> <p>9 MS. VASQUEZ: Objection,</p> <p>10 argumentative.</p> <p>11 <b>A. Depends on how you look at it.</b></p> <p>12 <b>BY MR. EDWARDS:</b></p> <p>13 Q. Well, how do you look at it? Is it true</p> <p>14 that you're doing everything you can to help stop</p> <p>15 the spread of this disease, sir?</p> <p>16 <b>A. Like I said, that may be a poor choice</b></p> <p>17 <b>of words.</b></p> <p>18 Q. I want to be clear. It's a poor choice</p> <p>19 of words because it flatly is not true, correct?</p> <p>20 <b>A. Again, I think that's -- goes with how</b></p> <p>21 <b>you're going to translate that or, you know, how</b></p> <p>22 <b>you're going to take to it. I mean --</b></p> <p>23 MS. VASQUEZ: Jeff, can we take a</p> <p>24 break?</p> <p>25 MR. EDWARDS: No, let's go</p> |
| <p style="text-align: right;">158</p> <p>1 <b>Anytime something happens on that facility, it</b></p> <p>2 <b>concerns me. Whether it's COVID-19 --</b></p> <p>3 Q. And on behalf -- I'm sorry, I</p> <p>4 interrupted. I apologize.</p> <p>5 <b>A. No, go ahead.</b></p> <p>6 Q. With respect, it's more -- more</p> <p>7 important than your concern is trying to fix the</p> <p>8 problem, right?</p> <p>9 <b>A. We're going to do whatever we can to fix</b></p> <p>10 <b>the problem.</b></p> <p>11 Q. What do you think the problem is in this</p> <p>12 line of questioning?</p> <p>13 MS. VASQUEZ: Objection, vague,</p> <p>14 ambiguous.</p> <p>15 <b>A. What do I think the problem is with</b></p> <p>16 <b>what?</b></p> <p>17 <b>BY MR. EDWARDS:</b></p> <p>18 Q. Well, you just said we're doing</p> <p>19 everything we can to fix the problem. What do you</p> <p>20 mean?</p> <p>21 <b>A. We have numerous things in place that we</b></p> <p>22 <b>do. We have things that we are enforcing, such as</b></p> <p>23 <b>the social distancing, the temperature checks of</b></p> <p>24 <b>employees, the soap and water, the additional soap</b></p> <p>25 <b>up and down the hallway into the podiums, the spray</b></p> | <p style="text-align: right;">160</p> <p>1 another -- well, we can take a break in five</p> <p>2 minutes, all right?</p> <p>3 <b>BY MR. EDWARDS:</b></p> <p>4 Q. Sir, you were aware that there was an</p> <p>5 empty dorm that could have been utilized to increase</p> <p>6 social distancing, right?</p> <p>7 <b>A. Are you referring -- which dorms are you</b></p> <p>8 <b>referring to, sir?</b></p> <p>9 Q. I don't know. Was there an empty dorm</p> <p>10 or not?</p> <p>11 <b>A. There was.</b></p> <p>12 Q. And prior to the injunction hearing, it</p> <p>13 wasn't being used to increase social distancing, was</p> <p>14 it?</p> <p>15 <b>A. It wasn't being used because -- part of</b></p> <p>16 <b>it may have been because it was still under</b></p> <p>17 <b>construction and we still had construction being</b></p> <p>18 <b>done on that side of the building.</b></p> <p>19 Q. Is it being used now?</p> <p>20 <b>A. Yes, it is.</b></p> <p>21 MS. VASQUEZ: Jeff, it's been an</p> <p>22 hour. We need a break, please.</p> <p>23 THE WITNESS: If y'all don't mind, I</p> <p>24 do need one.</p> <p>25 MR. EDWARDS: That's fine, we'll</p>                                                                    |

**WRIGHT WATSON & ASSOCIATES**

1250 South Capital of Texas Highway, Building 3, Suite 400 Austin, Texas 78746 (512) 474-4363

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

**LADDY CURTIS VALENTINE and  
RICHARD ELVIN KING, individually and  
on behalf of those similarly situated,  
*Plaintiffs,***

**V.**

**BRYAN COLLIER, in his official capacity,  
ROBERT HERRERA, in his official capacity,  
and TEXAS DEPARTMENT OF  
CRIMINAL JUSTICE,  
Defendants.**

[illegible]

**Civil Action No. 4:20-cv-01115**

**DEFENDANTS' SURREPLY IN OPPOSITION TO PLAINTIFFS' MOTION FOR CLASS  
CERTIFICATION**

# EXHIBIT 7

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

LADDY CURTIS VALENTINE and \*  
RICHARD ELVIN KING, \*  
individually and on behalf \*  
of those 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, \*  
Defendant. \*

\*\*\*\*\*

REMOTE ORAL DEPOSITION OF

RICHARD KING

MAY 27, 2020

\*\*\*\*\*

REMOTE ORAL DEPOSITION of RICHARD KING, produced as  
a witness at the instance of the Defendants, and duly  
sworn, was taken in the above-styled and numbered cause  
on Wednesday, May 27, 2020, from 10:08 a.m. to 4:01 p.m.  
Central Time, before Steven Stogel, CSR in and for the  
State of Texas, remotely reported via Machine Shorthand,  
pursuant to the Federal Rules of Civil Procedure.

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| <p style="text-align: right;">122</p> <p>1 A. Yes.</p> <p>2 Q. Meaning there was no attempt at informal</p> <p>3 resolution?</p> <p>4 A. Yes.</p> <p>5 Q. And on the second page, Bates numbered 0647,</p> <p>6 you still received a response from the unit saying that,</p> <p>7 "Your grievance has been received and investigated. Per</p> <p>8 classification, unit classification has no control over</p> <p>9 offenders arriving at the Pack Unit. Due to the</p> <p>10 COVID-19 pandemic, as of April 9, 2020, chain was</p> <p>11 suspended until further notice. No further action</p> <p>12 warranted at this time."</p> <p>13 Is that what it says?</p> <p>14 A. Yes.</p> <p>15 Q. So, you would agree with me that even though</p> <p>16 you didn't attempt informal resolution, your grievance</p> <p>17 was still processed. Correct?</p> <p>18 A. Yes.</p> <p>19 Q. Do you believe that TDCJ has the authority to</p> <p>20 stop inmate transfers into the Pack Unit?</p> <p>21 A. TDCJ? You mean the prison system?</p> <p>22 Q. Yes.</p> <p>23 A. Of course they -- of course they do.</p> <p>24 Q. Okay.</p> <p>25 A. Yes.</p>                                                             | <p style="text-align: right;">124</p> <p>1 Correct?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. You didn't ask her for more chemicals,</p> <p>4 did you?</p> <p>5 A. Yes. Maybe not in a direct current -- I mean</p> <p>6 a direct way, but prior to this I asked her, you know,</p> <p>7 "Could we get more chemicals," and she told me no.</p> <p>8 Q. When did she tell you no?</p> <p>9 A. I don't remember what date. I mean, I -- in</p> <p>10 the future, I think I'll make a daily calendar on -- you</p> <p>11 know, write a date and a time on everything I ask, but I</p> <p>12 didn't. I remember it was after I got the job, after</p> <p>13 the COVID mess, you know, I seen we weren't getting</p> <p>14 enough chemicals and I -- you know, and I asked her.</p> <p>15 Q. You -- you would agree that that's not what</p> <p>16 this grievance says? It doesn't say that you asked her</p> <p>17 for more chemicals and she denied you. It says that you</p> <p>18 asked her who determined how much chemicals were issued.</p> <p>19 Correct?</p> <p>20 A. That's correct.</p> <p>21 Q. Okay. What resolution did you want to come</p> <p>22 from this grievance?</p> <p>23 A. Get more chemicals, more cleaning supplies.</p> <p>24 Q. Did you ask for that?</p> <p>25 A. Let me --</p>                                                                                                                                                  |
| <p style="text-align: right;">123</p> <p>1 MS. VASQUEZ: Okay. We can take a break.</p> <p>2 Five or ten minutes.</p> <p>3 MR. MEDLOCK: Sounds good to me.</p> <p>4 THE REPORTER: Off the record at 2:34.</p> <p>5 (Recess from 2:34 p.m. to 2:51 p.m.)</p> <p>6 THE REPORTER: Okay. We are back on the</p> <p>7 record at 2:51 p.m.</p> <p>8 Q. (By Ms. Vasquez) Okay, Mr. King. I'm going</p> <p>9 to talk about the grievance that you submitted on</p> <p>10 May 12th.</p> <p>11 A. Yes.</p> <p>12 Q. Ending in No. 0907. This is going to be</p> <p>13 marked as Exhibit B.</p> <p>14 MS. VASQUEZ: Sorry. For the record, the</p> <p>15 first exhibit we discussed -- I'll have to get the</p> <p>16 number in a minute -- will be marked as Exhibit A.</p> <p>17 (Exhibits A and B marked)</p> <p>18 Q. (By Ms. Vasquez) The subject of this</p> <p>19 grievance, Exhibit B, says, you know, the informal</p> <p>20 resolution -- it looks like you asked Ms. Maxey who</p> <p>21 determined how much chemicals were issued to the dorm</p> <p>22 janitors for cleaning. Is that correct?</p> <p>23 A. Yes.</p> <p>24 Q. And her response was, "This is the way it has</p> <p>25 always been done."</p> | <p style="text-align: right;">125</p> <p>1 MR. MEDLOCK: She's got it on the screen,</p> <p>2 Richard, if you want to look at the screen.</p> <p>3 THE WITNESS: Oh, okay. Yeah.</p> <p>4 A. Yeah, I would think that that's asking for,</p> <p>5 you know, more chemicals.</p> <p>6 Q. (By Ms. Vasquez) But you would agree with me</p> <p>7 in a conversation that is related on the first page of</p> <p>8 this grievance, it does not say that you asked Ms. Maxey</p> <p>9 for more chemicals and she denied you. Is that right?</p> <p>10 A. At this -- at this particular time, all I</p> <p>11 asked her was who determined -- because she had already</p> <p>12 told me that I wasn't going to get any more chemicals.</p> <p>13 So I asked her who determined that I wouldn't get -- and</p> <p>14 she said, "Well, this is the way it's always been done,"</p> <p>15 and so that's why I filed the grievance the way I did.</p> <p>16 Q. Have you asked for more chemicals since you</p> <p>17 filed this grievance?</p> <p>18 A. No.</p> <p>19 Q. Why not?</p> <p>20 A. Well, they have the grievance. If they wanted</p> <p>21 to give me more chemicals, they could easily give me</p> <p>22 more chemicals, me and the other janitors also. And</p> <p>23 it's not just me, you know. I mean, this is -- all the</p> <p>24 janitors get the same amount of chemicals.</p> <p>25 Q. Don't you think it would be prudent to ask for</p> |

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| <p style="text-align: right;">126</p> <p>1 more chemicals if you need more to clean the dorms?</p> <p>2 MR. MEDLOCK: Object to form.</p> <p>3 A. Well, you know, I've asked once. I've filed a</p> <p>4 grievance. You know, I could take a club and hit</p> <p>5 somebody in the head, but that wouldn't necessarily mean</p> <p>6 that I'm going to get what I want.</p> <p>7 Q. (By Ms. Vasquez) Have there been times where</p> <p>8 you've run out of -- strike that.</p> <p>9 Let me ask you: When you asked Ms. Maxey</p> <p>10 for more cleaning chemicals before you filed this</p> <p>11 grievance on May 12th, when did you ask for that? Was</p> <p>12 it at the beginning of your shift or after you started</p> <p>13 your shift?</p> <p>14 A. Well, I start my shift at 6:00. Sometimes</p> <p>15 she's there shortly thereafter. Sometimes it's an hour</p> <p>16 or so later. So I couldn't tell you exactly when, you</p> <p>17 know, I asked her.</p> <p>18 Q. Was it before or after you got the chemicals</p> <p>19 that she issued you daily for cleaning? Strike that.</p> <p>20 Not before or after. At the same time or</p> <p>21 after she issued you --</p> <p>22 A. Well, it was --</p> <p>23 Q. -- the chemicals for cleaning?</p> <p>24 MR. MEDLOCK: Object to form.</p> <p>25 A. It would have been during the time she was</p> | <p style="text-align: right;">128</p> <p>1 Q. Okay. So, when she gives you the chemicals,</p> <p>2 is that when you asked for the additional chemicals, or</p> <p>3 would --</p> <p>4 A. Yes.</p> <p>5 Q. -- you -- okay.</p> <p>6 And her response was what?</p> <p>7 A. I don't remember her exact response, but -- I</p> <p>8 didn't get any extra, so I -- you know, I don't -- I</p> <p>9 don't remember her correct words.</p> <p>10 Q. What was your statement to her?</p> <p>11 A. I told her -- I said, "This is not enough</p> <p>12 disinfectant, mainly, and bleach that goes in the mop</p> <p>13 bucket to last the whole shift."</p> <p>14 And I don't remember what her response</p> <p>15 was exactly, but it -- it wasn't positive, whatever it</p> <p>16 was.</p> <p>17 And then a week or so later, I asked her</p> <p>18 who determined how much chemicals we got. She said,</p> <p>19 "This is the way it's always been done."</p> <p>20 And I said, "Okay."</p> <p>21 And then I filed a grievance.</p> <p>22 Q. Have you ever -- when you've run out of</p> <p>23 chemicals during your shift, have you ever asked any</p> <p>24 officers nearby for more chemicals?</p> <p>25 A. Yes.</p>                                                                           |
| <p style="text-align: right;">127</p> <p>1 issuing chemicals. Until just recently, she has an</p> <p>2 inmate with her that does the actual issuing. She just</p> <p>3 sits there and supervises. He pushes a cart that has</p> <p>4 the chemicals on it, and -- but the dorm next door to</p> <p>5 me, where they come out of, they had a guy that tested</p> <p>6 positive over there. We had one guy tested positive in</p> <p>7 our dorm. So they don't -- now Ms. Maxey does it</p> <p>8 herself.</p> <p>9 MS. VASQUEZ: Object to the nonresponsive</p> <p>10 portion of the answer.</p> <p>11 Q. (By Ms. Vasquez) When you asked Ms. Maxey for</p> <p>12 additional chemicals, which you just testified to a few</p> <p>13 minutes ago, did you ask her for the additional</p> <p>14 chemicals when she issued the chemicals or after you had</p> <p>15 already been working for the day?</p> <p>16 A. Well, like I said, she don't get there at the</p> <p>17 very beginning of the -- of the shift.</p> <p>18 Q. So who issued --</p> <p>19 A. She gets there --</p> <p>20 Q. So who issued you the chemicals?</p> <p>21 A. We -- we don't have any chemicals until she</p> <p>22 gets there.</p> <p>23 Q. And when she gets there, she gives you the</p> <p>24 chemicals. Correct?</p> <p>25 A. Right.</p>                                            | <p style="text-align: right;">129</p> <p>1 Q. Who?</p> <p>2 A. I couldn't tell you who. Like I said earlier,</p> <p>3 we're liable to have four or five, six different</p> <p>4 officers working outside our door at any one given time.</p> <p>5 I mean, they come and go. They -- they relieve each</p> <p>6 other. They -- one gets a call somewhere else.</p> <p>7 Somebody comes to take his place for a short while. And</p> <p>8 they change every day. I mean, we don't -- we very</p> <p>9 seldom have the same officer working. So I don't -- I</p> <p>10 don't know who.</p> <p>11 Q. How many times have you asked an officer for</p> <p>12 additional chemicals during your shift?</p> <p>13 A. Maybe two times.</p> <p>14 Q. And what was their response?</p> <p>15 A. "The chemicals, Ms. Maxey handles that."</p> <p>16 Q. And so can you go to Ms. Maxey and ask her for</p> <p>17 more chemicals?</p> <p>18 A. No.</p> <p>19 Q. Did you ask them to ask Ms. Maxey for more</p> <p>20 chemicals?</p> <p>21 A. No, I didn't ask them that, no.</p> <p>22 Q. Do you believe Ms. Maxey has the authority</p> <p>23 to -- or the Pack Unit has the authority to give you</p> <p>24 more chemicals if you ask for it?</p> <p>25 A. I would hope so. I don't -- I don't know.</p> |

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| <p style="text-align: right;">130</p> <p>1 Q. Do you have any reason to believe that the<br/>2 Pack Unit does not have the authority to give you more<br/>3 chemicals if you ask for it?<br/>4 A. I don't see why they wouldn't have the<br/>5 authority.<br/>6 Q. When was the first time that you ran out of<br/>7 chemicals during your shift?<br/>8 A. Well, we basically run out of chemicals every<br/>9 day.<br/>10 Q. So would it be safe to say that you would have<br/>11 run out of chemicals on your first day of working as a<br/>12 janitor around April 13th?<br/>13 A. Yeah, possibly. I mean, yeah.<br/>14 Q. But you didn't raise that with TDCJ or anyone<br/>15 from TDCJ, including Ms. Maxey, until somewhere<br/>16 around -- let me see. You filed your grievance on<br/>17 May 12th, and you said that you talked to Ms. Maxey<br/>18 about it and asked her for more chemicals a week before<br/>19 that. So that was about three weeks after you had been<br/>20 running out of chemicals on a daily basis?<br/>21 MR. MEDLOCK: Object to form.<br/>22 A. No, because I -- I mentioned to Ms. Maxey a<br/>23 number of times about we needed more chemicals.<br/>24 Q. (By Ms. Vasquez) Well, earlier --<br/>25 A. And I --</p>  | <p style="text-align: right;">132</p> <p>1 me to the job. I don't know exactly, you know, when,<br/>2 and --<br/>3 Q. (By Ms. Vasquez) How many times would you say<br/>4 you complained to Ms. Maxey or anybody about not<br/>5 receiving enough chemicals?<br/>6 A. I've mentioned it to Ms. Maxey a couple of<br/>7 times, three times. I don't know -- you know, when you<br/>8 get kind of just ignored, you get tired of asking. You<br/>9 know, you -- when there's no reason why they shouldn't<br/>10 give us more chemicals. So I don't -- I don't know --<br/>11 you know, I don't know exactly how many times I asked<br/>12 her. I know that she's got upset with me a couple of<br/>13 times about it. I know that.<br/>14 Q. Why did you wait until May 12th to file a<br/>15 grievance about it?<br/>16 A. Well, when I seen I wasn't going to get any<br/>17 chemicals, then I asked her, you know, who was --<br/>18 determined how many chemicals we got, and that's when<br/>19 she gave me the response she did, "That's the way it's<br/>20 always been done."<br/>21 And I said, "Okay."<br/>22 So then I filed a grievance. Now,<br/>23 that's, you know -- I don't know, you know -- I can't<br/>24 tell you why there was a delay. I only work every four<br/>25 days for four days, so, you know, maybe I was on my off</p> |
| <p style="text-align: right;">131</p> <p>1 Q. You just testified that you asked her for the<br/>2 first time about more chemicals or to get more chemicals<br/>3 a week before you submitted your grievance.<br/>4 A. Well, I can't remember --<br/>5 MR. MEDLOCK: Object to form.<br/>6 A. I can't remember every -- every date, every,<br/>7 you know, question that I asked. But since I've had the<br/>8 job, I have informed her that we wasn't -- didn't have<br/>9 enough chemicals.<br/>10 Now, I can't give you an exact date or<br/>11 exact time, but she knows because I've made her mad<br/>12 about asking her about chemicals.<br/>13 Q. (By Ms. Vasquez) So what are you telling<br/>14 Judge Ellison that -- when did you first complain to<br/>15 Ms. Maxey that you were not receiving enough chemicals<br/>16 to clean the areas you're required to clean?<br/>17 MR. MEDLOCK: Object to form.<br/>18 A. I -- I don't know what -- you know, I can't<br/>19 tell you a date. I don't -- you know --<br/>20 Q. (By Ms. Vasquez) Was it --<br/>21 A. I don't remember.<br/>22 Q. Was it one week before you filed your<br/>23 grievance?<br/>24 MR. MEDLOCK: Object to form.<br/>25 A. It -- it would be sometime after they assigned</p> | <p style="text-align: right;">133</p> <p>1 days. I don't know.<br/>2 Q. I'm not sure --<br/>3 MS. VASQUEZ: Objection; nonresponsive.<br/>4 Q. (By Ms. Vasquez) Why did you wait until<br/>5 May 12th to file a grievance regarding the amount of<br/>6 chemicals you were receiving for your janitorial shift?<br/>7 A. Well, I don't know what you want me to say. I<br/>8 mean, I --<br/>9 Q. I'm just wondering why, if you talked to<br/>10 Ms. Maxey multiple times about more chemicals since you<br/>11 started as a janitor on April 13th, you didn't file a<br/>12 grievance until a month later, and I'm wondering why.<br/>13 A. Well, that goes back to that informal<br/>14 resolution. You don't understand our grievance<br/>15 procedure. Grievances mean absolutely nothing to these<br/>16 people.<br/>17 MS. VASQUEZ: Objection; nonresponsive.<br/>18 Q. (By Ms. Vasquez) On the informal resolution<br/>19 on your grievance, you did provide a date, did you not?<br/>20 A. A date that I filed it?<br/>21 Q. A date that you attempted to informally<br/>22 resolve the issue.<br/>23 A. Yes.<br/>24 Q. And what was that date?<br/>25 A. 5/12.</p>                                                                                                                                                                             |

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| <p style="text-align: right;">134</p> <p>1 Q. The same date you filed the grievance.<br/> 2 Correct?<br/> 3 A. Right.<br/> 4 Q. You didn't state the several -- what you're<br/> 5 testifying now, which is several attempts to informally<br/> 6 resolve prior to filing this grievance. Correct?<br/> 7 A. No.<br/> 8 Q. Okay. Was there anything preventing you from<br/> 9 filing a grievance before you did?<br/> 10 A. No.<br/> 11 Q. Okay. With regard to the previous grievance,<br/> 12 Exhibit A, which ends in No. 9042, was there anything<br/> 13 preventing you from filing that grievance before<br/> 14 April 2nd?<br/> 15 A. No.<br/> 16 Q. Okay. Have you ever raised any of your<br/> 17 complaints with Warden Herrera, Bryan Collier, TDCJ that<br/> 18 form the basis of this lawsuit before you filed suit?<br/> 19 A. No.<br/> 20 MR. MEDLOCK: Object to form.<br/> 21 Q. (By Ms. Vasquez) Are you aware whether these<br/> 22 issues were brought to their attention before this<br/> 23 lawsuit was filed?<br/> 24 A. I'm not aware of it, no.<br/> 25 Q. You identified some things earlier that you</p>                                                                                          | <p style="text-align: right;">136</p> <p>1 THE REPORTER: Off the record at 3:14.<br/> 2 (Recess from 3:14 p.m. to 3:20 p.m.)<br/> 3 THE REPORTER: We are back on the record<br/> 4 at 3:20 p.m.<br/> 5 Q. (By Ms. Vasquez) Mr. King, you filed a<br/> 6 grievance about the transfers into Pack around<br/> 7 April 2nd. Correct?<br/> 8 A. Yes.<br/> 9 Q. And you said since then the transfers have<br/> 10 stopped?<br/> 11 A. Yes.<br/> 12 Q. All right. The grievance you submitted about<br/> 13 your -- the cleaning chemicals, that was just filed on<br/> 14 May 12th?<br/> 15 A. Yes.<br/> 16 Q. Have you received a response yet?<br/> 17 A. No.<br/> 18 Q. Okay. So that grievance is still in process.<br/> 19 Right?<br/> 20 A. Yes.<br/> 21 Q. Regarding the cleaning chemicals, what are you<br/> 22 not receiving -- or what are you not being able to clean<br/> 23 as a result of running out of those chemicals halfway<br/> 24 through your shifts?<br/> 25 A. We -- there's hail the size of golf balls it</p>                                                                                                                                                             |
| <p style="text-align: right;">135</p> <p>1 believed the Pack Unit should be doing to protect you<br/> 2 from the COVID-19 virus. Correct?<br/> 3 A. Yes.<br/> 4 Q. Those things were they should force all<br/> 5 officers to wear masks at all times, give you enough<br/> 6 chemicals to clean the dorms. Right?<br/> 7 A. Yes.<br/> 8 Q. And do you believe -- is hand sanitizer one of<br/> 9 those issues?<br/> 10 A. Yes. Right now we're in our dorm. It<br/> 11 doesn't -- it wouldn't be applicable to that. But if we<br/> 12 ever come off of lockdown, there's places like in the<br/> 13 chow hall that -- you know, we touch tables, touch<br/> 14 everything in there. It wouldn't hurt to, you know,<br/> 15 have sanitizer available there. When we leave the chow<br/> 16 hall, squirt some on our hand, because, you know -- I<br/> 17 mean, there's -- you know, we're not going to get hand<br/> 18 sanitizer in our dorms. I know that.<br/> 19 Q. Okay.<br/> 20 A. I mean, and I wouldn't even think about that.<br/> 21 But they could be numerous places.<br/> 22 MR. MEDLOCK: Is everybody there but<br/> 23 Richard?<br/> 24 MS. VASQUEZ: Let's go off the record.<br/> 25 MR. MEDLOCK: Yeah.</p> | <p style="text-align: right;">137</p> <p>1 sounds like. We've got -- we get a very small amount of<br/> 2 liquid disinfectant. That's used a lot, more than<br/> 3 anything else.<br/> 4 Q. Okay.<br/> 5 MS. VASQUEZ: Mr. King, I'm going to<br/> 6 object as nonresponsive.<br/> 7 Q. (By Ms. Vasquez) My question is: What are<br/> 8 you not able to clean because you run out of your<br/> 9 chemicals halfway through your shifts?<br/> 10 A. Well, we -- the --<br/> 11 Q. If anything.<br/> 12 A. We dilute it down so much, that probably<br/> 13 nothing is getting cleaned properly, and by the middle<br/> 14 of the day it's gone for the most part. You know,<br/> 15 there's no -- there's no disinfectant.<br/> 16 Q. And do you put the water -- do you mix the<br/> 17 water with the chemicals?<br/> 18 A. Yes.<br/> 19 Q. Okay. So my question is: What's -- what's<br/> 20 not able to be cleaned because you run out of the<br/> 21 chemicals?<br/> 22 A. I guess the short answer is everything gets<br/> 23 cleaned up until midmorning, noon. And then after that,<br/> 24 there's -- there's -- we clean, but there's not enough<br/> 25 disinfectant to go around.</p> |