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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION - LOS ANGELES

| | | |
|--------------------------|---|-------------------------------|
| JEFFREY POWERS, et al., |) | Case No. CV 22-8357-DOC (KSx) |
| |) | |
| Plaintiffs, |) | Los Angeles, California |
| |) | Thursday, September 26, 2024 |
| v. |) | 9:08 A.M. to 9:19 A.M. |
| |) | 9:59 A.M. to 10:04 A.M. |
| DENIS RICHARD MCDONOUGH, |) | 10:16 A.M. to 10:37 A.M. |
| et al., |) | 11:19 A.M. to 11:53 A.M. |
| |) | |
| Defendants. |) | |
| |) | |

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE DAVID O. CARTER
UNITED STATES DISTRICT JUDGE

| | |
|------------------------|---|
| Appearances: | See Page 2 |
| Deputy Clerk: | Karlen Dubon |
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APPEARANCES:

For the Plaintiffs:

Robins Kaplan LLP
By: ROMAN M. SILBERFELD
2121 Avenue of the Stars, Suite 2800
Los Angeles, California 90067
(310) 552-0130
rsilberfeld@robinskaplan.com

Robins Kaplan LLP
By: TOMMY H. DU
2049 Century Park East, Suite 3400
Los Angeles, California 90067
(310) 552-0130
tdu@robinskaplan.com

Public Counsel
By: MARK D. ROSENBAUM
610 South Ardmore Avenue
Los Angeles, California 90005
(213) 385-2977
mrosenbaum@publiccounsel.org

For the Defendants:

United States Department of Justice
Civil Division - Federal Programs Branch
By: BRAD P. ROSENBERG
1100 L Street N.W.
Washington, D.C. 20005
(202) 514-3374
brad.rosenberg@usdoj.gov

United States Department of Justice
Civil Division - Federal Programs Branch
By: TAYLOR N. PITZ
1100 L Street N.W.
Washington, D.C. 20005
(202) 305-5200
taylor.n.pitz@usdoj.gov

United States Department of Justice
Civil Division - Federal Programs Branch
By: CODY T. KNAPP
1100 L Street N.W.
Washington, D.C. 20005
(202) 532-5663
cody.t.knapp@usdoj.gov

1 APPEARANCES:
2 (Con't)

3 For the Defendants: United States Department of Justice
4 Civil Division
5 By: JODY D. LOWENSTEIN
6 1100 L Street N.W.
7 Washington, D.C. 20005
8 (202) 598-9280
9 jody.d.lowenstein@usdoj.gov

7 United States Department of Justice
8 Civil Division
9 By: CARLOTTA P. WELLS
10 1100 L Street N.W.
11 Washington, D.C. 20005
12 (202) 307-0340
13 carlotta.wells@usdoj.gov

11 United States Department of Justice
12 Civil Division
13 By: AGBEKO C. PETTY
14 1100 L Street N.W.
15 Washington, D.C. 20005
16 (202) 616-8470
17 agbeko.c.petty@usdoj.gov

16 For the Intervenor: Elkins Kalt Weintraub Reuben Gartside
17 LLP
18 By: ERNEST J. GUADIANA
19 10345 West Olympic Boulevard,
20 Los Angeles, California 90064
21 (310) 746-4499
22 eguadiana@elkinskalt.com
23
24
25

1 LOS ANGELES, CALIFORNIA, THURSDAY, SEPTEMBER 26, 2024, 9:08 A.M.

2 THE COURT: Okay. We're on the record, and let me
3 just indicate that counsel are present for the parties.

4 And I'd like to circle back to the beginning of
5 yesterday, and I need Mr. Johnson's help, Mr. Suberoth's
6 [sic] help, and the plaintiff's help, initially, along with
7 the VA, and here's the problem:

8 MARK D. ROSENBAUM: Your Honor, Mr. Silberfeld here
9 is -- I'm sorry.

10 THE COURT: Yeah.

11 MR. ROSENBAUM: Thank you.

12 THE COURT: So here's the problem I'd like you to
13 help the Court resolve: You've requested up to 750 of
14 temporary housing, but your input is critical to the Court in
15 shaping that for a number of reasons. First, I don't want --
16 and I don't think any of us want -- 750 units built of
17 temporary housing and we have 300 empty spaces. That's
18 Mr. Kuhn's point. Number two, to lessen the burden on the
19 VA, this might go into two different fiscal years in terms of
20 their budget, rather than one fiscal year. Number three, if
21 the 1,800 plus 489, approximately, don't keep up with the
22 beginning intake of people on the street, then we've got
23 people languishing in modules for two or three years, which
24 has been the complaint about the tiny homes.

25 So Mr. Suberoth and Mr. Kuhn, I want you to listen

1 for a moment because you'll be very helpful with this. So,
2 if you're recommending, for instance, modules, which was not
3 the place we started, that means we're taking more land
4 because you can't build on top of a module. And let's say
5 you tell the Court and counsel that you need 20 per acre. It
6 makes a difference in how I view the initial number that I
7 would write into an injunctive order because I certainly
8 wouldn't write 750.

9 And so I don't know, unless the developers also
10 help onsite, what we do with the 1,800 because in theory this
11 is over six years as the plaintiffs requested. So, if it's
12 over six years, we can have 1,400, hypothetically, coming
13 onboard the last two years, but we have this influx of
14 veterans, and if we don't have something there to attract and
15 keep them, they're going to go right back to the street, and
16 the reason for this is, if I'm a veteran and there's another
17 veteran on the street, some of our best therapy is talking to
18 each other. Now, we might be in a tent or cardboard box, but
19 we formed a relationship out there talking about combat
20 experiences, and to move from Altadena down here to someplace
21 called West L.A. that we can't even find and unless there's
22 outreach that's aggressive getting these people in -- I don't
23 mind overbuilding by 50. I mind overbuilding by a couple
24 hundred.

25 The second thing is, when you first came in, you

1 had proposed -- not you -- Mr. Suberoth has proposed two-
2 stories. If you're going to build two-stories, it almost has
3 a sense of permanency about it. And why aren't we putting in
4 plumbing, et cetera, and all we're creating are 400-foot
5 modules, smaller than long-term supportive housing; so why
6 are we devoting those kinds of resources to the front side?
7 So the plaintiffs have to come up -- for me and the VA --
8 with something that is sequenced and reasonable.

9 And you have to tell me, finally, are you going to
10 request modules to begin with? Are you going to request a
11 mix to begin with? Do you want to take a test run at 150 or
12 200 initially with modules -- or 75? What land are we going
13 to get because, if they're modules, we can use parking lots.
14 If they're not modules and we're going to more permanent
15 structures, like they have in the Republic of Georgia,
16 they're foundational. So with modules you can probably
17 accomplish it quickly -- well, more quickly.

18 And I think, Mr. Kuhn, that is one of your
19 concerns, and it's my concern also. So I'm listening to you.
20 Trust me. First of all, it's better if we space the costs
21 because -- second, I don't want to overbuild. So I need your
22 help in this participation. Okay? And I don't know the
23 right number right now.

24 Now, also -- Una (phonetic), could you find that
25 provision in the -- about staffing.

1 We want to read something to you that we're having
2 a difficult time interpreting because I think the VA will
3 take the position that this is staffing, Dr. Braverman, for
4 nurses, for instance, or critical people. It could also be
5 read as security guards, janitors.

6 So, Una, when you pull that up, direct them to the
7 VA guidance in this for just a moment so they can look at it.

8 So what you, Mr. Suberoth, tell your plaintiffs
9 makes a huge difference in terms of what I write. Okay?

10 All right. So in other words -- and you may go for
11 a mix. You may decide that you want to go and request 150 of
12 the Court, and I have to decide if that's reasonable, and
13 maybe we could do that in 12 months. Maybe we could do that
14 in 8 months literally. And then, if we have too many,
15 Mr. Kuhn, you and I can adjust to that. You know, we see
16 that not enough veterans are coming in. Well, that also
17 makes a difference on the backside in terms of our long-term
18 supportive housing because if we're not getting the initial
19 intake on the front side -- you know, in other words, it
20 requires some flexibility on all of our part. But I need to
21 have a starting point, and I need you and Dr. Braverman's
22 participation, if you will, with your -- and with your best,
23 you know, guidance.

24 And you've got to make a decision at some point,
25 Mr. Johnson, and -- where's Mr. Suberoth?

1 UNIDENTIFIED SPEAKER FROM GALLERY: (Inaudible.)

2 THE COURT: Oh, that's right. No, no. I excused
3 him for the day. I forgot.

4 Now, have you found that?

5 Would you read the section to them. Now -- come on
6 down or -- in fact, come up to the witness box. Tell them
7 this section that we're looking at.

8 CONA CAHILL: I believe you're talking about 38 --

9 THE COURT: No. Use the mic.

10 THE COURT: (Inaudible.)

11 MS. CAHILL: In 38 -- okay.

12 Okay. I'm Una Cahill, for the record.

13 So this is what you're talking about. In a
14 footnote --

15 THE COURT: Yeah.

16 MS. CAHILL: -- in the order on -- footnote 10 on
17 page 41 (reading): In directing the secretary of the VA to
18 provide medical facilities, 38 U.S.C. 8101(3) defines
19 "medical facility" to include, in part, "any facility or part
20 thereof which is, or will be, under the jurisdiction of the
21 Secretary, or as otherwise authorized by law, for the
22 provision of health-care services (including hospital,
23 outpatient clinic, nursing home, or domiciliary care or
24 medical services), including...accommodations for attending
25 personnel.

1 THE COURT: We don't know how to define "attendant
2 personnel." Now, I don't think -- if I was Dr. Braverman I
3 would take the position that these are nurses and critical
4 staff, potentially, but the argument could be made, also,
5 that these are folks that just are security and everyday
6 folks out there -- critical personnel. So therefore, when we
7 build, I'm not afraid to overbuild. I'm afraid to overbuild
8 by hundreds because that money could -- should be used
9 switched to long-term supportive housing.

10 Now, do you have any questions of me about that?
11 Because I really need you to meet and confer, and Steve Peck
12 is here -- he's a developer, thank goodness. But I'd like to
13 have that conversation this morning because if we're going to
14 write -- which I am eventually am, you know, some figure --

15 ROMAN M. SILBERFELD: Right.

16 THE COURT: I just don't want to figure 750.

17 MR. SILBERFELD: Right.

18 THE COURT: Okay? I've got to have a plan out
19 there that's realistic and how we sequence that in. So
20 that's the discussion.

21 MR. SILBERFELD: We can certainly --

22 THE COURT: Okay.

23 MR. SILBERFELD: -- meet with the Government on
24 that.

25 THE COURT: And consult with the VA.

1 MR. SILBERFELD: I think there's two moving parts
2 that haven't been mentioned this morning about this
3 particular topic. The two moving parts that are worth
4 talking about -- and we'll be happy to talk with them about
5 -- is how effective will there additional staffing be at
6 affecting referrals for housing --

7 THE COURT: Right.

8 MR. SILBERFELD: -- both project based and tenant
9 based vouchers. So the effectiveness of the additional
10 staffing that the Court has ordered matters for purposes of
11 people coming online for new housing.

12 THE COURT: Right.

13 MR. SILBERFELD: And the other piece to keep in
14 mind is that -- and that chart that the Court has referenced
15 about when buildings come online for occupancy, there's --
16 again, subject to the methane problem, there are, I think,
17 around 3- or 400 additional units set to open in the next
18 year, which is another source of housing that may affect the
19 amount of temporary housing that needs to be built quickly.

20 But I can tell the Court -- we'll talk some more
21 about this, and I'll talk with Mr. Johnson about this -- the
22 temporary supportive housing that we have in mind is modular,
23 that doesn't disturb the ground, that hopefully doesn't
24 involve an environmental review, at least a full one, and
25 that allows us to put those units in place that are dignified

1 and habitable units in a very, very short period of time,
2 hopefully less than a year.

3 THE COURT: Okay. Any comments from the VA? Any
4 other comments? Because I'd like to recess right now. I'd
5 really like you to have that discussion. Otherwise, I don't
6 want to make an arbitrary decision.

7 MR. SILBERFELD: Happy to.

8 THE COURT: All right. Okay.

9 Any questions of me about this request?

10 (Pause.)

11 THE COURT: Okay. Sir, Dr. Braverman, I'd love to
12 have your input on this. Mr. Kuhn, on your input. Join the
13 group. Okay?

14 I'm here waiting, then. Go have that conference
15 for a moment.

16 (Recess from 9:19 a.m. to 9:59 a.m.)

17

18 AFTER RECESS

19 THE COURT: Okay. Then -- are we on the record.

20 All right. We're on the record, and once again,
21 good morning, counsel.

22 So, counsel, I know you've met with the special
23 master and Mr. Houston. He's tried to explain to the Court
24 -- well, he's ably explained to the Court, I think, your
25 proposal, but I -- we need a record of it and then any

1 thoughts that we can share with each other.

2 MR. SILBERFELD: John, do you want to do it or
3 should I?

4 UNIDENTIFIED SPEAKER: Why don't you.

5 MR. SILBERFELD: All right. Roman Silberfeld,
6 Your Honor.

7 The discussion we had pertains to how to begin the
8 sequencing of temporary housing units on the property, and
9 the agreement that we've reached, I believe, is that we will
10 begin, as soon as possible, with preparing sites 1, 2, and 4
11 on the map, that is, the two solar fields, the open parking
12 lot, and the area around Patriot House, which is a total of
13 approximately 12 acres, where depending upon the
14 configuration of the modular units that would be used -- and
15 these would all be single story, Your Honor, but depending
16 upon the configuration, we think we can get somewhere between
17 20 and 30 units --

18 THE COURT: Okay.

19 MR. SILBERFELD: -- per acre, which would be
20 somewhere between 240 and 360 units.

21 To address the concerns the VA has, I believe the
22 agreement we have is we're going to start there and
23 reevaluate --

24 THE COURT: As we go.

25 MR. SILBERFELD: -- in a number of months, maybe

1 six, with the monitor's help, and with input from VA and
2 having now had the benefit of the actual experience of
3 increased staffing and having had the actual experience of
4 other permanent supportive housing opening on the property in
5 the interim, we'll have a better idea as to what to do next.
6 There are other parcels that we've talked about, where there
7 are, perhaps, you know, a bit more contentious issues around
8 whether to use those, but as a beginning point, to allow the
9 Court to issue an order which will ultimately lead to a
10 judgment sooner rather than later, we propose parcels 1, 2,
11 and 4 at this juncture --

12 THE COURT: Now --

13 MR. SILBERFELD: -- with a review later.

14 THE COURT: Brad, what are your thoughts? Did you
15 want to share? If not, that's fine. Or Dr. Braverman or
16 whoever, you know, wants to speak.

17 BRAD P. ROSENBERG: I'll defer to whether my VA
18 colleagues, who are now sitting at the table behind me -- if
19 they have anything additional to say.

20 I just want to -- one small comment, which is in
21 the context of this agreement. Of course, the context is
22 compliance with an implementation of the Court's orders,
23 including its opinion from September 6th and its minute order
24 from September 18th. So, you know, just want to be clear
25 that, you know, the Government nonetheless --

1 THE COURT: You're not agreeing to it. Your part
2 of that participation.

3 MR. ROSENBERG: Exactly.

4 THE COURT: I'm going to protect you in that
5 regard. I'm going to make a record that you're not
6 necessarily agreeing with this. I just want your
7 participation. So participation doesn't mean acquiescence.
8 Is that fair enough?

9 MR. ROSENBERG: That is exactly --

10 THE COURT: Okay. Good.

11 MR. ROSENBERG: -- what I was getting at.

12 THE COURT: Now, just a moment.

13 MR. ROSENBERG: So with that said, I think that
14 captures the one clarification that we wanted to make, but
15 I'll defer to my VA colleagues to see if they have anything
16 else that they would like to add.

17 (Court steps off the bench.)

18 THE COURT: And for the record, obviously, I'll
19 help you protect those appeal rights if you decide to appeal.
20 Okay? So that it's very clear that this is a discussion
21 right now, et cetera, but it's in good faith to give the
22 Court some guidance but that doesn't mean acquiescence by the
23 defense.

24 Okay. We're going to put this up for a moment, and
25 I'm going to ask a couple questions, and I need Mr. Johnson.

1 (Courts confers with staff putting exhibit up on
2 monitor.)

3 THE COURT: Excellent. What I have is a revised 4.
4 So let's label this for the record. Because I was working
5 off of the old 4, and what the revised 4 shows is the parking
6 lot we discussed yesterday. And here's why --

7 (Courts confers with staff putting exhibit up on
8 monitor.)

9 THE COURT: I want to wait for IT so everybody can
10 see this for just a moment.

11 (Recess from 10:04 a.m. to 10:16 a.m.)

12

13 AFTER RECESS

14 THE COURT: We're on the record. All counsel are
15 present.

16 First of all, I appreciate the effort, and I'm
17 complimentary of this effort.

18 If we're going to have modular housing, if you have
19 a paved surface, Mr. Johnson, is that easier to put in
20 modular housing than 4, which is dirt; 2, which is solar
21 panel; and 1, which is dirt?

22 RANDY JOHNSON: Yes.

23 THE COURT: Okay. Now, hold on.

24 If it's easier -- yeah. He said yes.

25 MR. ROSENBAUM: Yes.

1 THE COURT: Yes -- then we already have a -- what
2 I'm going to call a "revised 2-4-8," and on the Revised
3 2-4-8, we've added the parking lot, or a portion thereof,
4 that we talked about. So, as you were talking to me, I
5 didn't have -- yeah -- I didn't have that revision. So just
6 a moment ago I put down 1.7, 3.7, 4.3, which is 9.3. But you
7 gave me different acreage. So how much does this parking lot
8 add? How much acreage?

9 MR. SILBERFELD: 2 acres.

10 THE COURT: Okay. So I'm -- we're at 11 --

11 UNIDENTIFIED SPEAKER: Well, we're at 12 acres for
12 the three parcels (inaudible).

13 UNIDENTIFIED SPEAKER: (Inaudible) parking lot.

14 UNIDENTIFIED SPEAKER: Well, roughly. Yeah.

15 THE COURT: No. You're at 11.3. Yeah. So you're
16 at 11 acres right now. You're not at 12.

17 You believe that you can build 20 to 30 modular per
18 acre; correct?

19 MR. SILBERFELD: Correct.

20 THE COURT: All right. If we have the ability to
21 move quickly and get some veterans off the street, then why
22 aren't we potentially considering the safe parking structure
23 across the street, which is already paved, which is -- let me
24 point to it -- here.

25 MR. SILBERFELD: Because it's within the 500 feet.

1 THE COURT: Because it's within 500 feet?

2 MR. SILBERFELD: From the freeway.

3 THE COURT: So you could start with revised 4, and
4 if that was, let's say, 20 to 40 units, hypothetically, we
5 could see what mistakes we were making.

6 And would these be approximately 400-foot modulars.

7 MR. JOHNSON: Correct.

8 THE COURT: Okay. Is the infrastructure present
9 for revised lot 4, or specifically the parking lot? And I'm
10 assuming it is only because the building is there. In other
11 words, there's a building right here.

12 UNIDENTIFIED SPEAKER: There's two buildings.

13 THE COURT: Two buildings.

14 UNIDENTIFIED SPEAKER: Correct.

15 MR. JOHNSON: Yeah, Judge, we would need to verify
16 that.

17 THE COURT: Does anybody know?

18 ROBERT MERCHANT: Judge, we would need to verify
19 that. That parking lot -- revised parking lot 4 --

20 THE COURT: Yeah.

21 MR. MERCHANT: -- (indecipherable) has been -- this
22 area right here --

23 THE COURT: Right.

24 MR. MERCHANT: -- has been newly repaved. So I
25 don't know what's underground there. It used to be dirt.

1 THE COURT: Yeah.

2 MR. MERCHANT: So we would need to understand --

3 THE COURT: But there's lighting on that structure.

4 MR. MERCHANT: There is.

5 THE COURT: So we know we've got electricity.

6 MR. MERCHANT: There is.

7 THE COURT: And at least we're closer -- or at
8 least we're close to some kind of sewer line because we have
9 the hospital. So we're not moving a significant difference
10 -- or, distance. I'm sorry.

11 I'm very complimentary. Let's try this. And the
12 ability is we can see what mistakes we're making on a smaller
13 level, and we can see if we're able to start attracting
14 veterans in before we make, you know, this gigantic leap on a
15 number, and then we can adjust and work together, hopefully,
16 to rectify the mistakes we're making. I'm very complimentary
17 to everybody.

18 Without acquiescing or your consent so you reserve
19 your right for appeal. Okay? So thank you.

20 MR. MERCHANT: If I could, just on that --

21 THE COURT: Yeah.

22 MR. MERCHANT: -- on that revised 4 there -- so
23 that parking lot has been newly developed to help compensate
24 for the parking that will be lost when this blank area here
25 starts going under construction for a new parking garage. So

1 this is moving the parking around the campus as we start
2 these major construction activities. Parking Lot 1 does
3 remain available -- you've seen it -- for safe parking.
4 There are roughly ten vehicles there on any given night, but
5 that is within the 500-foot --

6 THE COURT: Yeah.

7 MR. MERCHANT: -- setback.

8 THE COURT: Okay. Now, that means that 2 has solar
9 panels on it. That means those panels need to be removed,
10 but it was represented to me that they would be removed
11 anyway at some point. And would a modular home go on dirt,
12 or would we need to pave that area?

13 MR. JOHNSON: (Inaudible.)

14 THE COURT: No. I need a microphone.

15 MR. JOHNSON: Like to do it on a paved --

16 THE COURT: Paved. Okay. And that would also --
17 that would be the condition of No. 1 as well; correct?

18 MR. JOHNSON: Correct.

19 THE COURT: All right. Now, the more difficult
20 portion is the remaining area of No. 4 because remember, when
21 we walked that, we kind of swept around the number of trees,
22 but the portion that faces Ohio gives us a lot of building
23 room. It's when we move around the corner that we have
24 apartments that, if we could, we want to be sensitive to.

25 UNIDENTIFIED SPEAKER: Correct.

1 THE COURT: So now -- I'm going to take 11, not 12.
2 In other words, I'm going to plan for the worst and hope for
3 the best. So I'm reducing it from 12, hypothetically, to 11.
4 I think it's 11.3 if we did the addition -- 11 acres. What
5 do you think you could put on there that, you know, is decent
6 modular housing? How many units?

7 MR. JOHNSON: 220.

8 THE COURT: Okay. Now, hold on. That if you were
9 putting me in the position of writing an injunctive order now
10 -- subject to objection -- I would write what I did in my
11 original order, "up to 700," to preserve that number, but I
12 would start with 200 to 220 to give us a range so we can
13 adjust along the way. How long?

14 MR. JOHNSON: Well, we were talking with the VA
15 about procurement. We have to go through that. So we're
16 hoping we can do everything within 18 months.

17 THE COURT: What you just said is "We're going to
18 do that"; right? Congratulations.

19 MR. JOHNSON: Yeah.

20 THE COURT: All right. Now -- well, okay.

21 How do we know if something is going amiss where
22 there needs to be intervention along the way? What
23 milestones do we have so we just don't walk away, you know,
24 in good faith, and then all of a sudden the judge comes in
25 and, you know -- I'm trying to avoid that along the way so

1 that -- even though we're not acquiescing so we keep having a
2 record -- you know, how do we kind of adjust through this
3 process so, if we see we're making mistakes, we can adjust
4 that? Do I schedule, like, a monthly conference so Brad is
5 either coming out or sending somebody out on a regular basis
6 and we're just not calling you. I want you to discuss that.
7 And maybe we set that up on a six-week basis -- or whatever
8 -- but give me a reasonable time so that you can plan on
9 coming out -- without acquiescing. Okay?

10 I'm very complimentary. I really think that that
11 gives us a chance to really talk, and if we're overbuilding,
12 let's stop it and put that into permanent supportive housing.
13 Because if I was to write the injunctive order today -- at
14 the end of the day, I'm going to ask you what you're
15 requesting of me, if anything -- then I would always write
16 the 1,800 or "up to 1,800" because, in fact, if we're not
17 getting people in temporary supporting housing, if we're not
18 attracting veterans, that 1,800 is an unreasonable figure,
19 and this is kind of going to give us a test run to see how we
20 get that (indecipherable) in.

21 Okay. I have no further compliments except to
22 compliment you.

23 Mr. Johnson, any thoughts?

24 (Pause.)

25 THE COURT: John, any thoughts?

1 (Pause.)

2 THE COURT: Let's try it.

3 JOHN KUHN: Your Honor, if I might? Just one
4 thought. If the -- John Kuhn, VA.

5 THE COURT: Oh, thanks.

6 MR. KUHN: If, when the order is written, instead
7 of writing "permanent supportive housing," which is a very
8 specific kind of housing for folks who are unhoused, it could
9 be written as "housing for folks who are" -- "veterans who
10 are homeless or at risk" --

11 THE COURT: If I'm asked --

12 MR. KUHN: -- so we don't restrict it.

13 THE COURT: If I'm asked to write something today,
14 why don't I do this: Why don't I send around a proposed order
15 first? In other words -- you're not acquiescing to it. Let
16 me keep make that record.

17 But I agree with you. Let's get that terminology
18 so it's understandable. Because right now I simply talk
19 about "temporary" and "permanent supportive housing." That's
20 the lingo I'm using to shorthand it.

21 MR. KUHN: Right.

22 THE COURT: That way we could --

23 MR. KUHN: Thank you.

24 THE COURT: Okay. All right.

25 Okay. John?

1 JOHN HOUESTON: I think that covers the first
2 agenda item that we wanted --

3 THE COURT: Yeah. That's a huge help to the Court,
4 by the way, instead of this leap of faith into 750
5 arbitrarily. I didn't, quite frankly, know how to handle
6 that, and I thought it was arbitrary there would be 750, but
7 I didn't know the number. That way, we can really adjust to
8 this. All right.

9 You come up with a check-in date, a milestone date,
10 and I would suggest every month to six weeks so, if we're
11 running into a problem, it's a regular meeting and I'm not
12 suddenly calling you to fly in on a Tuesday of the next week.
13 It would be rude on my part. I'll try not to do that. Okay?

14 MR. SILBERFELD: We'll be happy to take the
15 laboring oar to schedule a monthly check-in, and if there's
16 nothing to talk about, we can always cancel it with the
17 Court.

18 THE COURT: Well, you're going to be here
19 regardless. Okay? No matter what. When we set those dates,
20 everybody is gathering no matter what on those dates even if
21 we have nothing to talk about. Okay? All right.

22 I'd like to hear for a moment from the Brentwood
23 School. They've been patiently waiting and been very polite.
24 And that may -- I don't think that's going to make any
25 adjustment to what we're talking about now, but I'll let --

1 Mr. Miller --

2 SKIP MILLER: Yes.

3 THE COURT: -- Counsel, why don't you come up.

4 MR. MILLER: Okay. We've been going back and
5 forth. My name is Skip Miller. I'm a lawyer for Brentwood
6 School, and my client, the chairman of the Board of Trustees,
7 Adam Cohn, is here, along with other -- another member of the
8 Board and another person that's very knowledgeable.

9 We've been going back and forth -- first of all, I
10 want to thank Your Honor for the last couple of days because
11 we really want to get this resolved. This is not a matter
12 where our first choice is to go into litigation. We want to
13 get -- we want a resolution for the veterans and for our
14 students and parents.

15 So we've been going back and forth over the last
16 couple of days. We met this morning with Mr. Silberfeld on a
17 proposal they made last night, and I think the next step is
18 for us to sit down -- we have a couple of really important
19 points that we have to deal with -- just sit down with
20 Mr. Silberfeld and his colleagues, Mr. Rosenbaum and so
21 forth, and with the monitor, Mr. Houston, and see if we can
22 iron out the remaining points, and then we'll -- if we can
23 accomplish that, then we'll take it back to our Board of
24 Trustees with a recommendation that it be approved. That's
25 the plan.

1 THE COURT: Can we have that discussion today?

2 MR. MILLER: We can have it right now.

3 THE COURT: Okay.

4 MR. MILLER: The sooner the better.

5 THE COURT: Let me give you a couple thoughts from
6 what I heard yesterday, but this is not a ruling, and I'm
7 wide open to suggestions. First of all, I'd like to get you
8 out of the press. Okay? I think it's harmful for the
9 school, frankly, and harmful for the children. That has
10 nothing to do with what I'm about to say, though. That's
11 just personal. These are, you know, wonderful young people.

12 If, Mr. Miller, you would -- if Brentwood School
13 was in the position of building infrastructure -- if you were
14 putting in a pool, you were putting in a track, you were
15 putting in tennis courts -- I would expect that you would
16 want a long-term or a longer lease because you can't make
17 that kind of investment and not have some indication that
18 that investment is a good investment if that was potentially
19 an investment that in one year a court somehow revoked.

20 MR. MILLER: Agreed.

21 THE COURT: Okay. And that's your position
22 yesterday?

23 MR. MILLER: Yes.

24 THE COURT: But here we already have a pool, we
25 already have tennis courts, we already have the center, we

1 already have the weight room, and we have the track, and what
2 I'm concerned about is, if you came to the Court with, you
3 know, a two-, three- -- a three-, four-, five-, six-year
4 lease, I would be concerned even if it was a revocable lease
5 because I don't understand why the Court would acquiesce to a
6 term. And I'm suggesting to you that if it's a one-year
7 revocable term and we don't need this property that we're in
8 the same position as if it was a three- or five-year
9 revocable term. Because the Court has no intention -- and
10 I'll put this on the record -- to arbitrarily take Brentwood
11 land -- and "take" is a bad word but -- Brentwood land when
12 in fact it could be used, and it could be used by the school,
13 and it could be used by the veterans.

14 So somehow I'm looking for a one-year revocable
15 lease, working in good faith, no surprises, and I would hope
16 that the real accommodation is between the Veterans entering
17 into this discussion and the school because even though you
18 might be historically curious, is there a way to come up with
19 an accommodation so that the Veterans have it in a reasonable
20 period of time but the children at Brentwood also have it in
21 a reasonable time -- and I don't know if that's 12:00 noon or
22 1:00 o'clock, but they should be in school, and you should
23 have a set period of time. But then, obviously, I don't
24 think with school children -- we want veterans, you know,
25 mingling with the school children. So maybe the afternoon

1 belongs to the young people out there.

2 Now, if we could work together on that, that's just
3 a basic idea of mine. It's not a ruling, but I think we'd
4 like to preserve these facilities for the benefit of
5 everybody involved, Skip. Okay?

6 MR. MILLER: I think --

7 THE COURT: But if you come back to me with a
8 multiyear lease -- I'm pushing and saying please don't
9 because I think we can work on a one-year revocable lease,
10 and I don't want to three to five years with the ability to
11 terminate at any time. It's got to be a one-year revocable,
12 and then let's get together and try to make certain that, you
13 know, we share these facilities but these kids, you know,
14 have their own privacy, their own school, for goodness's
15 sakes and we don't --

16 MR. MILLER: We're not even talking about a lease.
17 We're talking about just an agreement that -- a sharing
18 agreement and use of the facilities.

19 THE COURT: No. I'm talking about a lease and here
20 -- well, I'm sorry. "Lease" is a bad word. I'm talking
21 about the ability to revoke -- because you hear our
22 conversation with the VA -- and I'm happy that you're
23 present. The more I have an issue with the VA in terms of
24 telling me a problem about a piece of property, I'm forced
25 into the position of either going over to UCLA or over to

1 Brentwood or or over to Barrington Park, and every time a
2 piece of property comes up, there's a problem, and you've
3 heard that with methane at Barrington.

4 I've got to have the greatest amount of acreage,
5 but I pledge to you -- and I'll put it on the record -- I'm
6 not trying to take your land arbitrarily. I don't want to.
7 And if it's not going to be used, there's no reason that
8 you're not using it. But by the same token, if I'm in a box
9 with the VA and they're telling me that something came up on
10 parcel -- pick a couple parcels -- 5, 6, 8, then I'm in a
11 position of having to look for the land, and that's the trap
12 we got into before because originally, when the VA argued
13 this to me, Skip -- and you weren't here -- there was a
14 problem in terms of having a lot of this land available, and
15 that's put me in a box. So you can have the discussion with
16 Mr. Houeston.

17 But, John, that's kind of my bottom line on that,
18 and if you can't reach that accord, then let me know. Okay.
19 Go talk --

20 MR. MILLER: We included Mr. Kuhn. We briefed him
21 this morning. We told him the status of our discussions.
22 There's a core piece of the property -- the track, the field,
23 the pavilion -- we really need that for the students --

24 THE COURT: I know.

25 MR. MILLER: -- and it's, also, very beneficial for

1 the exclusive use of the veterans, and we'll split the hours
2 up. And his response was "We don't plan to ever use that
3 property to build on it. We don't" -- "That's not something
4 that we would do."

5 MR. KUHN: That's not what --

6 THE COURT: Whose response --

7 MR. MILLER: "It would be very difficult."

8 THE COURT: Whose response?

9 MR. KUHN: -- exact -- that's not correct.

10 THE COURT: Whose response? I didn't hear you.

11 Whose response?

12 MR. MILLER: That's Mr. Kuhn.

13 MR. KUHN: That's not correct. I did not say we
14 would "never" take it.

15 THE COURT: Okay. Now, that's why -- time out. Go
16 have this discussion.

17 MR. MILLER: Okay. Well, I don't want to -- I
18 don't want to misquote you.

19 THE COURT: No. Time out. We're going to get off
20 the "he said, she said." We're done with that. Go have this
21 discussion.

22 MR. MILLER: I think we should all be part of this
23 discussion.

24 THE COURT: Okay. Well --

25 MR. MILLER: Okay. We'll do it.

1 THE COURT: Fine.

2 MR. MILLER: Thank you.

3 THE COURT: Go back.

4 Veterans, you need to be involved, and hopefully
5 you'll be gracious, also. Okay? Forget the past rulings,
6 the past hurts, et cetera. Let's see if we can make this
7 work.

8 And, Mr. Kuhn, I want you involved. You're going
9 to give your input.

10 John?

11 THE COURT: But if we need it, then I've got to
12 have this available in some form.

13 MR. HOUESTON: The other item we were going to
14 discuss -- and, Mr. Kuhn, I can't remember --

15 THE COURT: Folks?

16 MR. HOUESTON: -- if you were the leader in this
17 discussion, Mr. Kuhn. Sorry.

18 THE COURT: Gentlemen? Okay.

19 MR. HOUESTON: The statistics and date about
20 staffing? Remember?

21 MR. KUHN: We have it.

22 MR. HOUESTON: Great. So, if you can email it to
23 me. And there was supposed to be an update on the case
24 staffing too.

25 MR. KUHN: Got that too.

1 MR. HOUESTON: Okay. Great. So will someone --
2 you're going to --

3 THE COURT: Now, if you want to have that --

4 CODY KNAPP: We will get it to you later today.

5 THE COURT: Well, we're here until we do. So --

6 MR. KNAPP: Well, yeah. Yeah.

7 THE COURT: -- hopefully we'll catch a plane
8 sometime.

9 MR. KNAPP: Exactly.

10 THE COURT: I'm just joking.

11 MR. HOUESTON: Yeah. Can you email it -- just --
12 you have my email address. Thank you.

13 THE COURT: Roman? Go see if you can work this
14 out.

15 MR. SILBERFELD: Yeah. That's where --

16 THE COURT: Okay?

17 MR. SILBERFELD: That's where we're headed.

18 THE COURT: Okay.

19 (Recess from 10:37 a.m. to 11:19 a.m.)

20

21 AFTER RECESS

22 THE COURT: Okay. So, counsel, we're back on the
23 record and -- whoops. We're waiting.

24 (Pause.)

25 THE COURT: And, counsel, if it's acceptable, then

1 go back on the record?

2 All right. Then we're back on the record, and the
3 special master has imparted some information to the Court,
4 but I'd like to hear that information and your thoughts on
5 the record.

6 MR. SILBERFELD: I'm not sure what we're talking
7 about.

8 MR. HOUESTON: Yeah, well, I think it might be
9 helpful for plaintiffs and defense counsel to provide an
10 update in the court -- well, Brentwood counsel provide an
11 update to the Court in the direction of where you're trying
12 to go to reach some sort of agreement, and there were some
13 issues and priorities suggested, and I think the Court would
14 be prepared to give some feedback on that, which will be
15 useful to bringing that to a conclusion.

16 MR. SILBERFELD: Sure. I'll be happy to start --

17 THE COURT: Okay. Thank you.

18 MR. SILBERFELD: -- and just outline for the Court
19 what we talked about overnight, and the VA was provided with
20 this as well and -- as was Brentwood's counsel.

21 Essentially, any new agreement would not be an
22 agreement over parcels of land. It would be a facilities
23 agreement -- a facilities and use agreement by Brentwood of
24 the facilities that belong to the VA and the veterans -- the
25 former leased property. What we had in mind was to have a

1 provision in there that the agreement would be for a term of
2 years -- not one, but a term of years, which I'll explain --
3 coupled with an absolute right on the part of VA -- and we
4 included the monitor in our version of it -- the right to
5 reclaim the use of that land from Brentwood on some
6 reasonable notice. It could be 3 months, 6 months, 12 months
7 depending upon the need.

8 We asked for an increase in the rent. We asked for
9 Brentwood to continue the services Brentwood provides -- the
10 in-kind services, we asked that Brentwood continue to
11 maintain the property, and we asked Brentwood to make a cash
12 payment in support of this new arrangement. Those are the
13 essential --

14 THE COURT: Okay.

15 MR. SILBERFELD: -- terms of it.

16 And then we heard the Court, you know, less than an
17 hour ago express the Court's views about you wanted nothing
18 more than a one-year term, and one of the conversations we
19 had, after the Court made those remarks, was that, from our
20 perspective, a longer term coupled with the absolute right on
21 the part of VA and the monitor to say, "Give me that parcel
22 back because we need it," really amounts to fundamentally the
23 same thing, we think, but we want to be, obviously, mindful
24 of the Court's remarks.

25 That's my presentation. I don't know if Skip has

1 anything to add.

2 THE COURT: Mr. Miller, come up for just a moment.

3 Let me test a couple thoughts and seek your wisdom.

4 I don't understand the difference between, let's
5 say, a three-year term, hypothetically, and a one-year term
6 because in a three-year term it's incongruent to the one-year
7 term that UCLA may be under, that the parking lot may be
8 under, and so I worry about the incongruity of that.

9 MR. SILBERFELD: I think the answer lies in two
10 places for the difference, and I don't want to make
11 Mr. Miller's argument for him, but I'll try.

12 MR. MILLER: I accept.

13 MR. SILBERFELD: One difference is that -- well,
14 this is also true of UCLA to a degree, but one difference is
15 that Brentwood has invested significant amount of money in
16 the improvements that are there.

17 THE COURT: Okay.

18 MR. SILBERFELD: And the second one, which is
19 unique, I think, to Brentwood -- and Skip will make his own
20 points about this -- is that, if they're going to have to
21 vacate and stop using those facilities, they need more than a
22 year's lead time --

23 THE COURT: I see.

24 MR. SILBERFELD: -- to make those arrangements.
25 We've had a very candid discussion about the fact that, at

1 the moment at least, there is no parcel of land where they
2 can move this school to. That's one thing.

3 THE COURT: I see.

4 MR. SILBERFELD: The second is -- and this also
5 affects the term of years as expressed by the board chair
6 from Brentwood. If they're under a constant one-year cycle
7 having to do with those athletic facilities -- the core
8 athletic facilities, not the hilltop softball field and not
9 the baseball diamond down below but the track and the
10 pavilion and the swim stadium and the tennis courts -- if
11 they're under a constant one-year cycle as to those
12 properties, they tell us that they will lose students --

13 THE COURT: I see.

14 MR. SILBERFELD: -- and there will be an enrollment
15 crisis that affects the school. I have no idea whether
16 that's the case but I also -- no reason to disbelieve it.

17 MR. MILLER: Let me build on that, if I can,
18 Your Honor, to explain. It all comes down to the properties
19 we're talking about. Okay? We have about 2 to 3 acres
20 available. It's below the tennis courts. They can have it
21 now. Okay? That's not going to -- that's not going to drive
22 off prospective students. I mean, we need 30 days', 60 days'
23 notice.

24 THE COURT: Sure.

25 MR. MILLER: Then there's -- there's that -- we've

1 been talking about property 9, 4.8 acres up on top
2 overlooking Brentwood Glen. Okay. That's where the baseball
3 diamond is and the soccer field. We need a little time -- we
4 need some lead time, but if they need that to build on, okay,
5 we understand. You know, we've discussed that with Mr. Kuhn.
6 It's the core -- it's the football field, the track, the
7 pavilion, the aquatic center, and the tennis courts -- that's
8 what we call the "core area." Without that -- without that
9 core area, our students have nowhere to, you know, exercise.

10 And so we raised that back -- in the back of the
11 room with the veterans. There's three or four veterans here,
12 and they're response was "We want that area too. We want to
13 use it. We've just got to figure out when we get it during
14 the day and when you" -- you know, "when the students get
15 it," which I think we can do. Okay. We can allocate the
16 hours, and we can make them happy, and we can make our
17 students happy and our school happy. That's the core area.
18 Without that core area, we've got a big problem at the school
19 -- big problem. And without that core area, the veterans
20 don't get the benefit of it. So that's kind of what it kind
21 of comes down to.

22 The financial -- you know, the increase in the rent
23 and so forth and maybe payments in cash -- I mean, there's --
24 somebody floated the idea of bridging the gap for the chapel
25 with \$2 million. That's a possibility. I don't have

1 authority to -- you know, to say that now, but that's
2 something that is potentially available; and increasing the
3 rent by as much as 20 or 30 percent, which would be
4 substantial; and continuing with the other in-kind services,
5 obviously; and building -- you know, building the community
6 and building the relationships, which I think needs more
7 work.

8 So that's kind of -- that's where we're at, and we
9 need -- you know, we want the Court to understand exactly
10 what's going on, and we want the Court to bless it if we can
11 come to an agreement.

12 THE COURT: Let me repeat back. One of the
13 difficulties for the school is the impression that with a
14 one-year revocable that a student might believe that there's
15 instability here?

16 MR. MILLER: Right.

17 THE COURT: Within this area, I can't imagine the
18 veterans, the Court, or anyone taking a look at the core area
19 first, rather than later, because it's a potential benefit to
20 the veterans now and certainly a potential benefit -- whether
21 it's a walking track, a pool, a weight room -- as the
22 population increases.

23 I've got to rethink this in terms of your
24 presentation because, when I thought this through, I have
25 other concerns that are related to you, but they're also

1 related to UCLA. I have no idea what they're going to do, if
2 anything. And I know with UCLA they're not going back to a
3 ten-year lease. So, if they sit in their present position,
4 at the best, they're going to a one-year revocable lease, and
5 that's it because I'm not going to ever go to a two-year or
6 three-year, but you're -- you've got a different, unique
7 situation, and I've got to take that into account. I don't
8 know what UCLA is going to do in the future, and I've made my
9 ruling; so we'll see what they do. Maybe nothing. Maybe
10 they come back and offer you veterans' housing, maybe they
11 offer you something, but right now I'm also worried about
12 that incongruity, and that's where I was last evening trying
13 to think through this. I don't know that that's a deal
14 stopper in terms of all of you. Okay? I need to really back
15 away now and really think about that.

16 I do recognize this core area. I really do
17 question, though, if the one-year revocable is something that
18 a young person would consider going to this school. I don't
19 think most parents care if they see this go on from year to
20 year, and if the concern is within the school area that this
21 is the -- obviously, one of the last areas that the Court
22 would consider -- especially in your good faith in terms of
23 lot 9, Skip, and this other parcel -- how would the Court
24 benefit by ever arbitrarily placing the track, the pool as
25 the Court's first priority when it's a benefit to the

1 veterans if the two of you can work that out?

2 So I'm saying in good faith -- I think we're saying
3 the same thing. I think it's a hang-up over the perception
4 that the school has in terms of potential instability. I'm
5 not discounting that, but I'm concerned. It's the first I've
6 heard of that. I need some time to think that through,
7 frankly. Right now, if you force me into a position, I would
8 still say one-year revocable, but that may be unreasonable on
9 my part, but it just seems to me one-year revocable, working
10 in good faith, and the Court recognizing that this is a core
11 area -- I will tell you -- I'll make a record of that -- that
12 would probably be the last area I would consider with
13 property available. And if I've got 9 and I've got the --
14 why am I harming the veterans by taking that facility out
15 from your use. By the same token, I don't like the
16 incongruity because I don't know the unknown with UCLA right
17 now.

18 So I'm going to go -- ask you to go back in good
19 faith, because I'm working with you in good faith, and really
20 consider the one-year revocable. You could dress this up in
21 an agreement that within the core area that this might be the
22 last that will be considered. I don't know what the Veterans
23 think and, you know -- and I'm not adamant about that, but
24 I'm reluctant just in terms of extending this and having this
25 incongruity. I'm trying to get everybody back, if these

1 properties continue on, to a one-year revocable so in case we
2 need them, but this isn't going to be arbitrary by the
3 Court, Skip, and I recognize that this is a core area that
4 you need.

5 MR. MILLER: I appreciate that.

6 THE COURT: Okay? And if we need to put that in
7 some kind of writing or some kind of, you know -- maybe we
8 should consider that, but I just don't like, unfortunately
9 and intuitively right now -- but I'm not dogmatic about it,
10 but I just don't like this two-, three-, four-year -- now, I
11 doubt the way we're going, but it depends upon the VA. The
12 VA lately has been very cooperative. I'll make that on the
13 record. I think you're, in good faith, both trying to come
14 up with pieces of property. I want to make that record and
15 be very positive about that.

16 But if I get put in a box with surprises, Skip,
17 like, methane or some of this other stuff that's concerned,
18 then I've got no place else to go. I can't imagine why, if I
19 was invoking some kind of relief now, I would have ever gone
20 to your track, for instance, that the veterans can use, the
21 swimming pool that they can use. I would have probably
22 looked at 9 and what you're offering right now. Now, I don't
23 know about the tennis courts -- if you need that many tennis
24 courts -- I'm just kidding -- and maybe pickle ball but --
25 you know, but the end result is I don't know how far I would

1 have gone up the road, you know, but I think we can work
2 together in good faith on something like that.

3 I would ask this: I've got a choice right now with
4 all of you. I can bring you back today, which is silly. I
5 have to go out to the Valley to meet with a bunch of folks on
6 different homeless cases of the County and LAHSA. I'm not
7 going to reconvene today because I'm going from there over to
8 the VA and fighting traffic. I don't know whether I'm there
9 at 3:00 o'clock, but Michele's assured me it won't be,
10 probably, until 4:00 now.

11 So, Brad, if you're going out there, or you folks
12 are going out there, I'll meet you, but I'm just going to do
13 the following: I'm just going to go by 209, 208, and 205.
14 I'm just going to verify that folks are moving on. I trust
15 you, but I just want to see that.

16 I'm going to go take a picture of your parking lot,
17 Dr. Braverman, so you know. Dr. Braverman? I'm going to see
18 -- I'm going to go by your parking lot.

19 DR. BRAVERMAN: Yeah, that's not where they're
20 moving in.

21 MR. KUHN: No. 401.

22 DR. BRAVERMAN: 401 is where they're moving in.

23 THE COURT: 401. Huh? I mean, but I'm going to
24 meet you at 209. In other words, I know where that is, and
25 then I'm going to go down to 401. Okay? Because I've got

1 parking at 209. I know I've got parking there, and I think I
2 still have construction around 401; So I don't want to be in
3 the way. I'm going to be there two seconds, probably, to
4 verify that. I'm going to go down and take a picture of your
5 parking lot all the way around the hospital. Okay? And I'm
6 going to go check on the stadium.

7 MR. MILLER: Judge, can I leave you with -- leave
8 the Court with one last thought on the incongruity point,
9 which I now understand. I didn't understand it before.
10 There's a big difference in these properties between the core
11 area -- we don't have another core area right now. There --
12 just -- this is it for us --

13 THE COURT: Skip, but UCLA is going to tell me the
14 same thing in terms of the baseball stadium. They're going
15 to come in and say, "We don't have any other place for the
16 baseball stadium."

17 MR. MILLER: That's just not true. I mean, you
18 could lease -- USC has a baseball diamond, Cal State
19 Northridge has baseball -- there's baseball diamonds in
20 Santa Monica. They're all over. It's just not true.
21 There's -- we have no other core area, and we need it --

22 THE COURT: No. I -- no.

23 MR. MILLER: That's my point.

24 THE COURT: I think we're saying the same thing.
25 You just need some assurance from the Court that this is the

1 last area I'm going to look at, and so therefore, from my
2 perspective, I don't see why the one-year revocable -- I
3 understand your point in terms of three years, but not going
4 to hurt you in terms of your core area first because it's not
5 to my interest and it's not to veterans' interest, frankly,
6 so.

7 Okay. Now, here's the last choice. I've got to
8 leave, and I don't want to bring you back tomorrow. I can,
9 but that's, under the Eighth Amendment, cruel and unusual
10 punishment. Okay? I think that we should meet on
11 October 2nd.

12 Brad and you folks can get home to your families
13 today or tonight.

14 I think Brad's going to come out to the site
15 briefly, and I'll meet you, and maybe you give me the number,
16 and I'll coordinate and phone you.

17 If one of you want to come out, that's fine so it's
18 co-equal. But literally I'm going to be there 5 to 15
19 minutes. Okay? And I don't know when.

20 Now, maybe we should just stop at this point, and
21 maybe I'm not writing injunctive relief tonight because I
22 need more time to go through each item and each area and see,
23 Roman, what you still have on the table. So let's walk
24 through it a moment.

25 I've already issued injunctive relief on

1 Bridgeland. That's final. Now, if Bridgeland wants to
2 appeal me to the circuit, they can take that up to the
3 circuit. It's not part of an omnibus order.

4 With the parking lot, we're still kind of looking
5 at this parking lot issue, and you needed more time in terms
6 of an accounting, you know, to see what records we have, if
7 any, and maybe even get that person in here by subpoena. I
8 don't know. I'll leave that to the litigants. So that's
9 kind of on hold right now.

10 We've got UCLA, and I've made my decision, and now
11 it's their decision about what to do, if anything.

12 I've got a hold that I'd like to put on you folks
13 so that we all have time to go back, okay, but right now I'm
14 still at one-year revocable. So, Roman, I just disagree with
15 you on that. Okay? I think we can work that out with
16 (inaudible) language to give some security within this area,
17 that this is a core area that we all recognize. And if the
18 schools' coming to me in good faith without me having to, you
19 know, take this with 9 -- lot 9 -- that, Johnson, we can
20 start looking at -- and that may be, by the way, the last
21 area we look at within, you know, this whole sphere. Maybe
22 it's too far out. So we're not after Brentwood's land
23 especially. We just need a lot of options. Maybe Barrington
24 comes onboard, and maybe that's a much better option to it.
25 We never get to 9.

1 But if you force me into it, I probably would've
2 taken something from the school today. I'd rather have that
3 a reasoned process between us and see if we can reach an
4 accommodation because, quite frankly I would think it's in
5 your best interest for the children, as you say, to get out
6 of the news. Okay?

7 MR. MILLER: I mean, it's really --

8 THE COURT: Yeah.

9 MR. MILLER: -- a problem with the students because
10 they come onboard for a four-year commitment for the baseball
11 team or the football -- for whatever --

12 THE COURT: (Indecipherable.)

13 MR. MILLER: -- and if we're on a one -- a year-to-
14 year --

15 THE COURT: Yeah. See, that's you talking. I have
16 a --

17 MR. MILLER: -- we're done.

18 THE COURT: I have a different view, and that is
19 you should trust me. (Indecipherable) my view. You should
20 trust me when I say to you that core area is something
21 recognized by me, I want to preserve that in the veterans'
22 self-interest and the Court's self-interest, and I don't know
23 the unknown out there with a two-year, three-year -- I can't
24 foresee that. So I don't like the incongruity of that. So I
25 think we're saying the same thing, and if you put that in

1 writing in somehow, I think we can give you enough security,
2 and I just don't believe the students are reading the fine
3 print, et cetera.

4 Now, hold on. Unless you want to come back
5 tomorrow (indecipherable) what's left. I think we have a
6 workable plan that is less burdensome to the VA in terms of
7 what we've set out -- and I'd like to see that in writing --
8 with its 200 modulars going in. We have staffing that we'd
9 still like to make certain that is up to snuff. We've got
10 now multiple financing, which has nothing to do with the
11 order that I would write because now we have the developers
12 able to go the traditional route of credits. They now have
13 small market rate, fair market value. They're back in a
14 conventional setting, hopefully, with a bigger pool. I can't
15 force the VA to directly fund. I can only suggest that.
16 That's the VA's option. And what's left?

17 (Indecipherable), Roman, what's left?

18 MR. SILBERFELD: Um.

19 THE COURT: No. Here's what's left: It's Treasury
20 -- and let's thank Treasury for coming in, but at least they
21 came in yesterday or the day before -- and then it's your
22 choice. If you want me writing injunctive relief on that, so
23 be it, but, quite frankly, the question is you're going to
24 have to test that anyway whether I write injunctive relief,
25 and why shouldn't I be turning around and giving some praise

1 to the VA -- especially, Dr. Harris, thank you, again -- for
2 making this effort, even if he was ignored, because this has
3 nationwide significance. Now, if you want me to write
4 injunctive relief on that, fine, but it seems to me, if we
5 could test that --

6 Now, Mark, I don't know your thoughts on this, but
7 I'm happy to write on that area if you want to. I've already
8 written, by the way, in my opinion. It's already there. So
9 what injunctive relief are you asking me to write right now
10 other than Mr. Miller --

11 MR. ROSENBAUM: So -- can I respond?

12 THE COURT: Yeah. Please.

13 MR. ROSENBAUM: So, first of all, as I've
14 personally expressed to Dr. Harris and counsel, we appreciate
15 what was done --

16 THE COURT: Yeah.

17 MR. ROSENBAUM: -- and we know it made a
18 difference. The concern, I think, we have is --

19 THE COURT: Pull this closer.

20 MR. ROSENBAUM: The concern we have is that no
21 veteran be denied eligibility for any housing by virtue of
22 their disability, which is what everybody is aiming at
23 anyway. That, to me, is a cleanup provision --

24 THE COURT: Okay.

25 MR. ROSENBAUM: -- that just protects.

1 THE COURT: Let's play with that for a moment.
2 Let's assume that we're a developer and we've got, you know,
3 these rates, et cetera, and there might be a percentage but
4 -- quite frankly, they're not going to lose money, but they
5 would decrease their intake, but we've got, hopefully, a
6 hundred-some units coming onboard and another hundred units
7 coming onboard; so it gives us some flexibility there to not
8 go back to the developer, who is tied to these credits, you
9 know, and cause financial harm to them. Because I think,
10 Mark, we've got enough coming onboard, you know, hopefully,
11 that we could start with that position in the future so that
12 our developers were forewarned about that and they can
13 account for that. Now, I'm not -- I'm just saying that might
14 be very fair to them because, you know, they're working on a
15 margin, also.

16 And plus, these folks who are the present
17 developers know that campus. Now, in my self-interest, I
18 can't push a particular developer forward, but they've got
19 pretty good relations with the VA that, they know the campus,
20 we know who these folks are, and maybe they could build
21 faster, quite frankly, and -- because of the relationships
22 with all of you folks than, you know, a new developer coming
23 in.

24 MR. ROSENBAUM: Can I suggest in response to that,
25 inquiring of Mr. Kuhn and Dr. Harris, what do you think the

1 likelihood that, given the circumstances that were just
2 described, any veteran currently in housing or -- or that
3 down the road any veteran might in fact not get eligibility
4 on account of the locals haven't yet done what they've done
5 some developer is dependent on? You see that as zero percent
6 or that there's some risk of that?

7 KEITH HARRIS: Hard to say zero. This is
8 Keith Harris.

9 The flexibility that we've gotten here is that with
10 Treasury's action, all of the buildings, for instance, on
11 campus now -- some have units where the income calculation
12 method will now change. It'll be adopted -- they will adopt
13 this new method. So there ought to be enough flexibility in
14 the buildings where no veteran is shut out. But we do still
15 need the cleanup piece -- the County, the City. There are
16 other entities that have not yet adopted this and need to in
17 order to make it every unit in a building.

18 MR. ROSENBAUM: What about the tenant-based and the
19 project-based off of the campus?

20 MR. HARRIS: Okay. Great question. The tenant-
21 based will be 80 percent AMI everywhere, and there should be
22 no veteran shut out of eligibility for that once their VA
23 disability benefits are excluded, and that HUD can do
24 already. So the tenant-based should be zero percent shutout
25 on the basis of their disability benefits.

1 The community-based project units -- there may
2 still need to be some local adoption in order to make it
3 every unit assured.

4 MR. ROSENBAUM: That's our concern.

5 MR. HARRIS: Okay.

6 MR. ROSENBAUM: I appreciate the candor.

7 MR. HARRIS: Yeah. It is a very small number, and
8 every indication we have is that the local entities are
9 working quickly to align with HUD and Treasury.

10 THE COURT: Instead of letting the perfect get in
11 the way of good, what could we do with that small number if
12 it came to our attention? In other words, if we're dealing
13 very few people, instead of, you know, destroying this in a
14 sense, how could we work together to accommodate that small
15 number?

16 MR. HARRIS: I think that's very solvable, sir.
17 It's -- again, any of these veterans are going to qualify for
18 a tenant-based voucher automatically. So finding them in a
19 location where the veteran desires would be one solution.
20 Otherwise, there will be project-based units whose income
21 calculation method has updated because of these actions, and
22 we could find one of those. There are sufficient vacancies,
23 in my mind, to account for anybody who was shut out.

24 THE COURT: So, Mark, I'm not going away. You're
25 not going away. If this comes up -- so the question is

1 whether you want to road test this or not, and if you don't,
2 I've already -- by the way, I've already written the
3 injunctive relief in my opinion. So it's already there.

4 So what -- I'm going to ask this -- I need you
5 folks need to think what's left --

6 UNIDENTIFIED SPEAKER: Right.

7 THE COURT: -- and what you really want the Court
8 to consider, and I'm just suggesting to you that we might,
9 unfortunately or fortunately, take that up on October 2nd.
10 Okay?

11 UNIDENTIFIED SPEAKER: Yeah.

12 THE COURT: And that would, then, not bring you
13 back tomorrow. It would give you time to reflect and to talk
14 to your clients because all of this was literally two days
15 ago.

16 UNIDENTIFIED SPEAKER: Right.

17 THE COURT: Now, I've got a request from
18 Congressman Sherman because he thinks I want to meet with
19 him. He wants to talk to me. I don't want to talk to him.
20 I'd like him to come into court, and with your permission,
21 I'd like to extend an invitation for October 2nd -- he's a
22 Congress person -- to find out what this bill is because, if
23 this bill is languishing, maybe there's more or less that the
24 Court has to do that might be considered because this bill
25 has been languishing forever.

1 UNIDENTIFIED SPEAKER: Right.

2 THE COURT: Okay. So -- and with your permission,
3 I'd like to extend that invitation. If he shows up
4 (indecipherable).

5 MR. SILBERFELD: We'd -- we would favor that.

6 THE COURT: Number two, I want to make sure that
7 this is not -- that I have both your permission, and if I
8 don't, fine. It saves me a lot of money. I'd like to make a
9 contribution to the Wavery -- I'm -- come on -- to the
10 Wadsworth Chapel. Okay? My apologies. And I'd like to go
11 to Mr. Peck's fundraiser to be supportive of that, but I
12 won't do that unless I have the specific consent by each of
13 you.

14 MR. SILBERFELD: I'll see you there.

15 THE COURT: Well, I won't talk to you, but yeah,
16 that's good.

17 THE COURT: So, Brad, if I don't, that's fine.

18 UNIDENTIFIED SPEAKER: They're talking to my wife
19 again.

20 MR. ROSENBERG: I try to avoid ever giving advice
21 to Article III judges, but I would be concerned that there
22 might be an ethical conflict on that.

23 THE COURT: That's why I'm asking. In other words,
24 I need your consent, and if I don't have your consent, that's
25 fine.

1 MR. ROSENBERG: I don't think that I can give
2 consent on that.

3 THE COURT: Okay.

4 Steve, so at the present time, unfortunately, I
5 won't see you. I'd like to make a contribution if that comes
6 up in the future and we resolve this issue. Okay? Okay.

7 So you want to come back tomorrow?

8 MR. SILBERFELD: October 2nd sounds good.

9 THE COURT: Huh?

10 MR. SILBERFELD: October 2nd sounds good.

11 THE COURT: All right.

12 How about you folks?

13 MR. ROSENBERG: We'll be here October 2nd.

14 THE COURT: Okay. Is 1:30 okay?

15 MR. ROSENBERG: Yes.

16 THE COURT: Because I've got a hearing in the
17 morning on some other homeless matters with the City and the
18 County.

19 MR. ROSENBERG: Do you need -- we've brought many
20 of our VA colleagues.

21 THE COURT: Your choice. Your choice. You tell --
22 you produce those folks you want to produce who might be
23 necessary, and I can't contemplate what comes up on
24 October 2nd. It's just a little bit of breathing room. But
25 I think our last significant link is the school. Okay?

1 MR. ROSENBERG: We'll confer and figure it out.

2 THE COURT: Okay.

3 Now, Bridgeland, you wanted to speak last night,
4 and it was time to go home because the chief judge had
5 graciously granted us an exemption for evening hours.

6 ERNEST J. GUADIANA: Yes, Your Honor. So we did
7 see that the order was -- Ernest Guadiana on behalf of
8 Bridgeland Resources.

9 We saw that the order was issued this morning. We
10 very much respect the Court's decision. My client does
11 intend to appeal, and we would request that the Court stay
12 the order of injunctive relief until the appeal is final.

13 THE COURT: Let me think about that.

14 MR. GUADIANA: Thank you, Your Honor.

15 THE COURT: And the reason I'm thinking out loud in
16 transparency with you is a stay lets this matter languish in
17 the Ninth Circuit. A nonstay on this Court part makes the
18 circuit come back to this directly and quickly, and I'd like
19 to get a resolution of that also. So it's not an
20 impoliteness to you. I'm a little reluctant to stay this
21 matter because we'd like to get it up to the circuit if
22 there's an appeal on this. Okay? So let me think about
23 that. Okay?

24 MR. GUADIANA: Thank you, Your Honor.

25 THE COURT: But file that request with the Court so

1 I have a chance.

2 MR. GUADIANA: Yes, Your Honor.

3 THE COURT: Okay. Then is there anything further
4 today, then, counsel?

5 MR. SILBERFELD: One other thing, Your Honor. The
6 federal defendants and the plaintiffs have worked on a
7 proposed form of judgment that has, obviously, blanks for the
8 injunctive relief portions, but we do have a form. If that
9 will assist the Court, we're prepared to submit it.

10 THE COURT: It would.

11 MR. SILBERFELD: All right.

12 THE COURT: But do you want me to decide -- right
13 now I'm not quite certain what your request is going to be.
14 Well, this isn't the injunctive relief? This is --

15 MR. SILBERFELD: Correct.

16 THE COURT: -- the judgment?

17 MR. SILBERFELD: This is the form of judgment.

18 THE COURT: Okay. Okay. Why don't you submit that
19 to the Court.

20 MR. SILBERFELD: We'll do that. We'll finish it up
21 and -- we'll finish it up --

22 MR. ROSENBERG: Yeah. We've been working on that.
23 I think we probably need to go through, maybe, another round
24 of edits. So it might be a couple days.

25 THE COURT: I'm going to be in trial. So I'd

1 expect it sometime next week, maybe even October 2nd, you
2 know.

3 MR. ROSENBERG: That --

4 THE COURT: So there's no definite time. I'm just
5 aware of it. Just submit it to the Court at your
6 convenience.

7 MR. SILBERFELD: We'll do that. Thank you.

8 THE COURT: Fair enough.

9 MR. ROSENBERG: That should also help to guide the
10 Court's --

11 THE COURT: Okay. Anything else, then?

12 MR. SILBERFELD: No, sir.

13 THE COURT: Then we'll see you October 2nd at 1:30.
14 Okay?

15 (Proceedings adjourned at 11:53 a.m.)

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CERTIFICATE

I certify that the foregoing is a correct transcript
from the electronic sound recording of the proceedings in the
above-entitled matter.

/s/ Julie Messa
Julie Messa, CET**D-403
Transcriber

September 26, 2024
Date